

>> THE FLORIDA SUPREME COURT IS AGAIN IN SESSION, PLEASE BE SEATED.

>> OUR THIRD AND FINAL CASE TODAY IS CRAFT V STATE OF FLORIDA 2023-1501.

>> THANK YOU.

I AM ALICE COPICK ON BEHALF OF THE APPELLANT ROBERT EARLE CRAFT I BELIEVE I RESERVED FIVE MINUTES FOR REBUTTAL.

MAY IT PLEASE THE COURT. I FEEL ODD RIGHT NOW BECAUSE THE PRIOR COUNSEL STOLE MY INTRODUCTION.

BECAUSE AS THE COURT WILL PROBABLY REALIZE THAT IT MAY BE THE ISSUES ARE NOT THE SAME AS THE PRIOR CASE THAT YOU HAD BUT THE POSTURE AND CIRCUMSTANCES ARE THE SAME AND SO.

>> I WILL NOT REPEAT WHAT I HAVE SAID YOU HAVE ALREADY HEARD IT.

>> I WON'T REPEAT ANYTHING.

LIKE I SAID, I FEAR BEING REDUNDANT AND SO I WILL JUST SAY THAT WE ARE HERE SIMPLY ASKING FOR AN EVIDENTIARY HEARING THAT WE ARE ENTITLED TO. THAT IS WHAT THE CASE LAW SAYS.

>> ON THAT, CAN YOU ADDRESS, I THINK THERE IS DISPUTE OVER WHETHER THERE IS AN ACTUAL DISPUTE TO THE ARGUMENT IS THAT REGARDLESS OF THIS REPORT THAT IS INTRODUCED ON BRAIN DAMAGE THERE'S NO FACTUAL DISPUTE BUT IS THESE FACTS AS TRUE IT CAN BE RECONCILED WITH WHAT HAPPENED IN THE TRIAL PROCEEDINGS WITH THE PRIOR EXPERT REPORTS AND FOR THAT REASON THERE IS NO NEED FOR AN EVIDENTIARY HEARING IT FEELS LIKE THE BRIEFS ARE TALKING PAST EACH OTHER A LITTLE BIT IT SEEMS LIKE THIS NEEDS TO BE DEVELOPED MORE AND THE STATES ARGUMENT IS WE WILL TAKE THIS AS TRUE.

>> YOU ARE RIGHT YOUR HONOR THAT IS EXTREMELY PERCEPTIVE.

WE ARE NOT TALKING OVER EACH OTHER WE ARE JUST DISPUTING AND I WOULD SAY THAT SOME WAYS IT IS TO SAY THERE ARE FACTUAL DISPUTES AND WHAT WE SPECIFICALLY ALLEGED WAS THAT IF MR. CRAFT HAD KNOWN THAT THE DISCOVERY CONTAINED INFORMATION THAT WAS RELEVANT TO HIM THAT HE WOULD NOT HAVE PLED GUILTY.

>> DON'T YOU THINK IT ALL RELATES.

I AGREE THAT THIS DEPENDS ON CLAIM ONE.

WE NEED TO NAIL DOWN THE ISSUE IF THE ADDITIONAL HEARING SHOULD HAVE BEEN DELAYED WITH AN ADDITIONAL EXPERT FOR THE DISCOVERY ISSUED TO GIVE ME RELEVANT.

>> RIGHT.

PRINCIPALLY THAT IS WHY WE SHAPED THIS CLAIM AS AN IEC CLAIM BECAUSE THERE WAS QUALIFIED TRIAL COUNSEL WHO HAS BEEN TO NUMEROUS. IT'S ON TO NUMEROUS A LIFE OVER DEATH AND IS AWARE OF MITIGATION AND RED FLAG WARNINGS AND SUCH LIKE THAT.

AND SO WHAT ARGUMENT IS THAT WHEN HE WAS ON NOTICE, TRIAL COUNSEL, THE COURT WAS ON NOTICE THE STATE WAS ON NOTICE WHEN THEY GOT THE

COMPETENCY EMAILS FROM ONE HOUR. IT WAS ONE OF EVALUATION FOR ONE AND A HALF HOURS OF MR. CRAFT BY TWO DOCTORS AT THE SAME TIME ONE HALF HOURS AND NO INDICATION THEY HAD ANY BACKGROUND MATERIAL ON MR. CRAFT AND I BELIEVE THAT THEY SAID THEY WANT TO LOOK AT THE DOC FILE BUT THERE'S NO INDICATION THAT THE DOC FILE CONTAINED DOCUMENTS RELATIVE TO CHILDHOOD OR RELATIVE TO BRING DAMAGE AND SO WHAT WE ARE ALLEGING IS THAT WAS A RED FLAG SYMBOL TO SAY HANG ON ONE SECOND.

HE IS MAKING DECISIONS THAT PERHAPS MIGHT BE INFLUENCED. THIS WAS A SERIOUS CAR ACCIDENT WHERE HE HAD A PLATE IN HIS HEAD AND FAILED TO FOLLOW UP WITH A NEUROLOGIST AND WE BELIEVE THE COURT ALSO BUT TRIBAL COUNCIL IS CERTAINLY AWARE THAT BRAIN DAMAGE OF THAT TYPE AND HEAD INJURY OF THAT TYPE CAN HAVE LASTING DAMAGE FOR THE REST OF YOUR LIFE AND WHAT WE ARE ALLEGING IS THAT THEN THERE SHOULD HAVE BEEN THIS MAY CREATE A PROBLEM THEN WHEN YOU LOOK AT WHEN THE PLEA QUOTE PLEA COLLOQUY IS GOING ON THAT YOU HAVE INDICATIONS IN THEIR OF THE BRAIN DAMAGE OF DECISION MAKING, A RATIONAL, IMPULSIVE, BAD DECISION MAKING AND MR. CRAFT WAS THE ONE WHO BROUGHT THIS UP.

THIS IS A CONCERN OF HIS AND HE IS SAYING I WANT TO PLEAD GUILTY AND I WANT TO DIE.

YOU GIVE ME DEATH.

AND THEN HE SAYS ON PAGE 65 OF THE CHANGE OF PLEA HEARING WHERE OR WHEN THE COURT SAYS ARE THERE ANY QUESTIONS FOR COUNSEL OR MR. CRAFT DO YOU HAVE ANY QUESTIONS AND HE SPECIFICALLY RAISES THAT HE FILED TWO MOTIONS OR WAS PLANNING TO WHEN HE SPOKE TO THE STATE AND ONE OF THEM I DON'T NEED NOW BECAUSE I'M PUTTING IN A PLEA OF GUILTY BUT I HAVE ONE THAT I WAS GOING TO SUBMIT A DEMAND FOR DISCOVERY BECAUSE I WAS SENT TO SOME DISCOVERY BUT FROM THE INDEX THAT I CAN TELL IT'S NOT ALL OF IT.

MR. CRAFT HAS THIS CONCERN AND HE IS DISTINGUISHING THE OTHER ONE IS A SENSE REALLY MOOT BECAUSE I'M PLEADING GUILTY BUT THIS OTHER ONE I CARE ABOUT AND THE STATE WANTS TO SEIZE ON THAT WILL HE WAIVED AND JUST SAID IT DOESN'T MATTER I JUST WANT MY RECORDS LATER BUT IT WAS THE COURT WHO SAID AND INTERJECTED THAT.

DO YOU WANT TO WAIT ON TAKING YOUR PLEA UNTIL AFTER YOU RECEIVE THE OTHER DISCOVERY?

OR DO YOU JUST WANTED FOR YOUR OWN RECORDS LATER?

>> YOUR ARGUMENT IS BASED ON THAT STATEMENT THAT TRIAL COUNSEL SHOULD HAVE KNOWN THIS REGARDLESS OF THE TWO EXPERT REPORTS THAT I HAVE SAYING HE'S COMPETENT AND WHEN YOU STOP THIS THERE MUST BE BRAIN DAMAGE THERE AND THAT'S THE ONLY EXPLANATION THAT COULD ACCOUNT FOR THAT?

>> I DON'T KNOW IF YOU CAN SAY THERE MUST BE BRAIN DAMAGE THERE

BUT YOU COULD SAY THERE MUST BE SOMETHING WRONG THERE.
THERE MUST BE SOMETHING HASTY THERE BECAUSE MR. CRAFT JUST ADOPTS
THE COURT I WANTED FOR MY OWN RECORDS LATER YOUR HONOR.

OKAY.

FOR YOUR OWN RECORDS FOR WHAT?

FOR FUTURE PURPOSES.

FOR SOMETHING ON THE ROAD?

WE ARE SITTING HERE.

WE ARE NOW IN RECORD PURPOSES DOWN THE ROAD AND AS SOON AS
MR. CRAFT GOT THE DISCOVERY FOR HIS OWN RECORDS THROUGH OUR 3851
IT WAS CERTAINLY INSTRUMENTAL TO HIM TO SAY IF I WOULD HAVE KNOWN
THAT I WOULD NOT HAVE PLED GUILTY.

>> DIDN'T WE FIND ON DIRECT APPEAL HOWEVER THAT HIS PLEA WAS
KNOWING AND INTELLIGENT VOLUNTARY?

>> YES WE DID AND I KNOW THE STATE SPEAKS ABOUT CASE DOCTRINE AND
I THINK THE TRIAL COURT AND POSTCONVICTION CORD DID THAT IN THEIR
ORDER BUT WHAT I WOULD SAY IS THAT THIS COURT WHEN IT WAS DOING
THE SUFFICIENCY AND KNOWING INTELLIGENT AND VOLUNTARY HAD NO
INDICATION OF BRAIN DAMAGE, THE POSSIBILITY OF BRAIN DAMAGE.

>> YES, ANSWER YOU JUST GAVE ONE MINUTE AGO TO JUSTICE SASSO WAS
CANDID IS THAT THERE ISN'T NECESSARILY EVIDENCE OF BRAIN DAMAGE
THAT AN INDIVIDUAL SAYS I WANT THIS FOR MY RECORDS AND I STILL
WANT TO PLEAD GUILTY.

IT MAY BE EVIDENCE OF POOR JUDGMENT OR IT MAY BE EVIDENCE OF ALL
SORTS OF THINGS BUT I DON'T KNOW HOW THE BRAIN DAMAGE CHANGES
FIRST OF ALL I'M NOT SURE IT'S IN THE RECORD AND SECOND BALL I
DON'T KNOW HOW IT CHANGES THE ANALYSIS WE PERFORM ON DIRECT
APPEAL.

WE'VE HEARD THIS BEFORE AND WE DECIDED IT BEFORE.

>> FIRST ANSWER THE QUESTION ALSO THERE IS NO INDICATION IN THIS
COURT OF WHAT ACTUALLY THE DISCOVERY CONTAINED.

MR. CRAFT DID NOT KNOW WHAT IT CONTAINED AND THE COURT DID NOT
KNOW WHAT IT CONTAINED IT SO I WOULD SAY THOSE ARE THE CHANGE IN
CIRCUMSTANCES THAT CALL INTO QUESTION THE KNOWING INTELLIGENT
VALID NATURE OF THIS PLEA.

THAT THOSE WERE FACTS AND CIRCUMSTANCES THAT THE COURT DID NOT
HAVE.

AND WHAT I AM SAYING ABOUT THIS I'M NOT SAYING IT'S NECESSARILY
EVIDENCE OF BRAIN DAMAGE I'M SAYING IS A MANIFESTATION OF BRAIN
DAMAGE.

BECAUSE BRAIN DAMAGE SIGNIFICANTLY IS IN THE FRONTAL LOBE WHICH
FORGIVE ME, I'M NOT AN EXPERT.

USUALLY I CAN CITE THIS STUFF BUT ESSENTIALLY IT IS YOUR EXECUTIVE
FUNCTION AND DECISIONING MAKING CAPABILITY AND IMPULSIVENESS.

WHAT I'M SAYING IS THAT IT IS SYMPTOMOLOGY OF HANG ON A SECOND MR. CRAFT YOU ARE FILING DISCOVERY AND YOU CLEARLY CARE ABOUT DISCOVERY BUT YET YOU DON'T WANT TO SEE WHAT'S IN HASTILY ADOPTS . I WOULD SAY HASTILY BECAUSE AT THIS POINT HIS MIND IS FIXED ON I DON'T CARE ABOUT ANYTHING BUT I WANT THAT.

AND SO WHAT I WOULD MAINTAIN IS OUR COURTS INCLUDING THIS COURT SHOULD GIVE MORE SIGNIFICANCE TO THESE GENTLEMEN'S RIGHTS AND LIVES THAN THEY DO.

>> ON THAT WE CERTAINLY AGREE BUT LET'S ASSUME WE GET PAST THE LAW OF CASE ISSUES AND ASSUME WE GET OTHER THINGS WE HAVE DISCUSSED SO FAR.

I'M NOT ALL THAT MOVED BY WHAT'S IN THIS DISCOVERY.

CAN WE TALK A LITTLE BIT ABOUT WHAT IS IN THE DISCOVERY CHANGED ANYTHING AT ALL ABOUT THESE PROCEEDINGS?

>> OKAY.

THE WAY I LAID IT OUT AND I BELIEVE IT IS RELEVANT AND WHY I THOUGHT IT MIGHT PERHAPS BE SIGNIFICANT MR. CRAFT IS THAT AS I ALLEGED IN THE INITIAL BRIEF AND WE FILED AS AN ATTACHMENT TO 3851 IS THAT A MONTH AFTER THIS HAPPENED MR. CRAFT FILED A GRIEVANCE AND HE SAID HEY I THANK YOU ALL SET ME UP.

HE'S AT FLORIDA STATE PRISON BUT HE SAID IT WAS COLUMBIA CI BUT I THANK YOU ALL SET ME UP AND THERE IS NO INDICATION ANY OF THE RECORDS WERE EXCULPATORY EVIDENCE >> I WANT TO ASK WHAT THE EXCULPATORY EVIDENCE YOU THINK THAT APPEARS IN DISCOVERY?

>> I WOULD SAY IT'S GOPAL BUT.

WE RAISED ON ISSUE TWO TO ENTRAPMENT DEFENSE.

I CONCEDED THAT BECAUSE THE TRIAL COURT SAID I WOULDN'T HAVE OR THE POSTCONVICTION SAID I WOULD NOT HAVE GRANT THAT THAT I COULD NOT ARGUE THIS ON DIRECT APPEAL BUT CERTAINLY IT IS MITIGATING.

>> WHAT IS THE MITIGATING OFFENSE?

>> THAT YOU HAVE A YOUNG MAN WHO HAS OBJECTIVELY OBSERVE RIDLEY MY CLIENT IN AN AGITATED HOSTILE IS IN DISCIPLINARY CONFINEMENT BECAUSE HE TRIED TO HARM ANOTHER GENTLEMAN INMATE WHO SAID I'M AFRAID HE'S GONNA TRY TO KILL ME AND THAT IS THE ONLY REASON HE IS IN DISCIPLINARY CONFINEMENT.

>> WHAT YOU THINK THAT MITIGATES?

>> I'M GONNA PUT IT LIKE IF I WAS A JUROR SITTING AND LISTENING AND THE INMATE THE INMATE PRIOR SAID HE TOLD ME HE WAS A SEX OFFENDER AND ASKED ME TOO HARM HIM AND WHEN I REFUSED TO DO IT THEY TOOK ME OUT AND PUT MR. CRAFT IN AND WRITE THERE YOU ARE BUT, THEY DIDN'T SAY THAT TO MR. CRAFT DID THEY?

I'M STRUGGLING WITH THIS.

WHAT THEY SUPPOSEDLY OKAY SUPPOSEDLY SAID TO SOME OTHER INMATE THAT IS OVER THERE BUT MR. CRAFT IS VERY CLEAR THEY DIDN'T SAY

ANYTHING LIKE THAT TO HIM ISN'T HE?

>> WELL NO AND ONE THING I WANT TO SAY IS.

>> MR. CRAFT SAYS WHAT THEY SAID TO MR. CRAFT.

>> I WANT TO PREFACE THIS WHEN I SAY MR. CRAFT SAID THIS HE HAD EVERY INCENTIVE TO SAY WHAT HE NEEDS AND WHAT HE SAID HIS I TOLD

>> IT'S HIS CHOICE.

>> I TOLD SERGEANT IF HE PUT ME IN A SO WITH ANYBODY I WILL KILL THEM AND THE SERGEANT SAID I HAVE SOMEBODY FOR YOU AND THEN MR. CRAFT SAID I AM NOT TELLING YOU THEY TOLD ME TO KILL BUT WHAT OUR ARGUMENT IS WHAT WE KNOW OBJECTIVELY TRUE IS THEY PLACED HIM IN A CELL WITH A SELF CONFESSED CHILD SEXUAL PREDATOR WHO WAS SUPPOSED TO BE UNPRODUCTIVE MANAGEMENT CUSTODY BECAUSE SADLY HE TELEGRAPHED HIS DEATH FROM THE PRISON SO THAT IS JUST OBJECTIVE EVIDENCE THAT YOU TAKE THE GENTLEMEN IN THE CARE AND CUSTODY. CARE AND CUSTODY AND CONTROL OF THE DEPARTMENT OF CORRECTIONS AND IS IN AN AGITATED PERHAPS HOMICIDAL STATE AND THEY HAVE 11 BEDS OPEN AND THIS GENTLEMAN THE VICTIM IS SUPPOSED TO BE IN PROTECTIVE CUSTODY AND THIS GUY JUST TRIED TO KILL SOMEBODY AND HE IS A CHILD SEXUAL PREDATOR AND THIS COURT I'M SURE HAS SEEN ENOUGH PRISON MURDER CASES THAT THAT IS THE LOWEST OF THE LOWEST WRONG ON THE TOTEM POLE AND THE VICTIM KNEW IT AND THAT IS WHO THEY CHOSE TO PLACE THEM IN THERE WITH AND I WOULD SAY THAT IS MITIGATING. WE TALK ABOUT IT A JURY HEARS THAT AND ALSO APPEARS THAT MR. CRAFT IS A CHILD SEX ABUSE VICTIM AND WE KNOW THAT THAT COMMENT IS SO EGREGIOUS AND THE DAMAGE THAT IT COULD DO TO CHILDREN AND SOCIETY AS A WHOLE THAT WE HAVE CHANGE THE LAW IN THE STATE OF FLORIDA TO MAKE IT THAT WE CAN EXECUTE PEOPLE WHO HAVE MOLESTED A CHILD THAT IS THE DAMAGE IT DOES TO THEM AND I AM NOT SAYING DEPARTMENT OF CORRECTIONS KNOWS HE IS A CHILD VICTIM I DON'T KNOW THAT. BUT WHAT WE DO KNOW IS THAT HE PLACED HIM IN THAT CELL WITH A SELF CONFESSED CHILD SEXUAL PREDATOR WHEN HE KNEW THAT MR. CRAFT WITH 11 OPEN BEDS KNEW HE WAS IN AN AGITATED VOLATILE STATE.

I WOULD

>> TO THE INEFFECTIVE ASSISTANCE OF COUNSEL ASPECT WE HAVE BROWN VERSUS STATE SAYING US ENTITLED TO RELY ON EXPERT EVALUATIONS THERE IS AN 11th CIRCUIT CASE I BELIEVE THE STATE CITED THE SAME PROPOSITION IT'S NOT INEFFECTIVE ASSISTANCE OF COUNSEL TO RELY ON TO EXPERTS.

HOW DID WE SQUARE THIS WITH INEFFECTIVE ASSISTANCE OF COUNSEL FRAMEWORK OR IS IT ALTERNATE ON THE DISCUSSION AND DISCOVERY?

>> WHAT I WOULD ARGUE IS NUMBER THESE ARE NOT EXPERTS THAT COUNSEL RETAINED.

THEY WERE COURT APPOINTED FOR ONE REFERRAL QUESTION AND THAT WAS WHETHER HE WAS COMPETENT TO PROCEED.

THERE IS NO REFERENCE THAT THEY WERE GIVEN ANY DOCUMENTATION IN TRIAL COUNSEL SAID LET ME GIVE YOU THIS BACKGROUND MATERIAL. NO INDICATION IN THE RECORD OR REPORT.

AS I SAID THE DOCTOR SAID HE REVIEWED THE DOC FILE AND THAT'S WHAT I WOULD SAY FIRST OFF IS HE IS NOT ENTITLED TO RELY OR SHOULDN'T BE RELYING SIMPLY ON A COURT APPOINTED EXPERT THAT HE DID NOT RETAIN AND THEN THE EXPERT SIGNIFICANT BRAIN INJURY THAT SHOULD HAVE BEEN THE RED FLAG AND THEN ALSO I WOULD SAY AGAIN THIS IS A ONE AND A HALF HOUR MEETING EVALUATION WITH MR. CRAFT LITERALLY THAT'S ALL THE PROTECTIVE THE CASE THE STATE CITES IS GOOD. TALK ABOUT PROTECTIVE DUTY THE WEIGHTINESS AND RESPONSIBILITY OF ENSURING INTELLIGENCE AND VOLUNTARINESS AND I ONE HALF HOUR EVALUATION WITH TWO EXPERTS TO DETERMINE WHETHER SOMEONE IS COMPETENT TO PROCEED WHO HAS AN INCENTIVE TO TELL THEM WHATEVER THEY WANT TO HEAR THAT WAS SAID HE IS COMPETENT. AND I KNOW I'M INTO MY REBUTTAL TIME.

IF THE COURT HAS FURTHER QUESTIONS.

>> ASSISTANT ATTORNEY GENERAL REPRESENTING THE STATE.

I WOULD LIKE TO CLARIFY ON ISSUE ONE SINCE THAT IS WHAT WE HAVE BEEN TALKING ABOUT THIS MORNING.

THEY ARE REALLY TWO SEPARATE CLAIMS.

ONE IS A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL FOR NOT RELATING TO THE FOR READ A HEARING AND THAT IS VALID BECAUSE BEFORE THE FRIDAY HEARING HE WAS REPRESENTED BY THE PUBLIC DEFENDER BUT EVERYTHING HAVING TO DO WITH THE PLEA BY THE TIME OF THE PLEA CRAFT IS REPRESENTING HIMSELF.

THESE HAVE BEEN TANGLED AND THEY NEED TO BE UNTANGLED.

I WOULD LIKE TO START WITH THE ONE VALID CLAIM OF INEFFECTIVENESS BEFORE YOU, WHICH IS WHETHER THE PUBLIC DEFENDER WHO WAS REPRESENTING CRAFT.

>> YOU DON'T MEAN VALID YOU DO NEED COGNIZANT.

>> YES IT IS NOT COGNIZABLE.

FOR READ IT ITSELF THAT REPRESENTED YOURSELF PUT IN A FOOTNOTE THAT IF HE DOES SO WE WILL NOT ALLOW INEFFECTIVENESS CLAIMS. HE CANNOT RAISE AN INEFFECTIVENESS CLAIM AGAINST HIMSELF. SO BY THE TIME OF THE PLEA HE IS REPRESENTING HIMSELF AND THAT PART IS NOT COGNIZABLE BUT THE ONE NOTE REGARDING WHETHER COUNSEL SHOULD HAVE KNOWN FROM THE TWO EXPERT REPORTS FIRST I DO HAVE ONE LITTLE IT'S PRETTY CLEAR THAT THE DOCTOR AT LEAST HAD ACCESS TO CRAFT HOSPITAL RECORDS BECAUSE IT IS THE DOCTOR'S REPORT THAT TALKS ABOUT THE ACCIDENT AND THE FOLLOW UP CRAFT WAS AN ACCIDENT WHEN HE WAS 13 OR 14 IN 24 AND THAT IS IN THE DOCTOR'S REPORT. HE IS HAVING ACCESS SOMEHOW TO, AT LEAST SOME BACKGROUND RECORDS OF CRAFT.

BUT REGARDING THAT COUNSEL IT DOES NOT MATTER WHEN YOU SAY THIS COURT HAS SAID COUNSEL IS NOT INEFFECTIVE FOR RELYING ON EXPERTS AND IT HAS NEVER BEEN LIMITED TO DEFENSE EXPERTS.

THESE ARE TWO COURT APPOINTED EXPERTS.

I PERFECTLY SEE MAYBE COUNSEL SHOULD NOT RELY ON THE STATE EXPERTS BUT THESE ARE COURT APPOINTED EXPERTS AND CONSIDER NEUTRAL AND THERE WERE TWO OF THEM AND THEY DID REFERRED TO THAT BUT I ALSO WANT TO , HAVE TWO REASONS WHY COUNSEL WASN'T INEFFECTIVE FOR NOT DELAYING THE FOR READ A HEARING.

FIRST THE CONVICTION COURT FOUND THERE WAS NO BASIS TO DO SO AND I WANT TO TALK ABOUT THAT BECAUSE THAT GETS INTO INDIANA VERSUS EDWARDS AND THEN MY SECOND ARGUMENT COURT APPOINTED COUNSEL WHO DID HAVE AT LEAST SOME BACKGROUND SOMEHOW OF CRAFT AND THEY BOTH FOUND HIM COMPETENT.

REGARDING INDIANA VERSUS EDWARDS IT DOES NOT APPLY TO PLEA AND I WANT TO SHOW DINA VERSUS MORAN THAT APPLIES TO PLEA AND I WANT TO POINT OUT THAT THIS WAS A CAPITAL CASE.

WHEN THE U.S. THAT WHAT YOU HAVE TO MEET IS THE COMPETENCY STANDARD TO ENTER A PLEA THEY WERE SAYING THAT IN A CAPITAL CASE. NOW, MOREAN -OKAY THIS WAS OUT OF NEVADA AND NEVADA THERE A PENALTY PHASES LIKE THE PENALTY PHASE HERE THERE A PENALTY PHASES ARE IN FRONT OF THREE JUDGE PANELS.

SO ALL OF THEIR SO THE BENCH PENALTY PHASE WAS A BENCH PENALTY PHASE ALSO.

THERE IS NO DISTINCTION BETWEEN CAPITAL AND NONCAPITAL.

THIS WAS A CAPITAL CASE.

INDIANA VERSUS 3.111 DON'T APPLIED TO PLEA AND THIS WAS THE PLEA THAT'S MY ANSWER ON THE PLEA IT IS NOT INVOLUNTARY.

ALL HE HAD TO DO WAS BE COMPETENT TO REPRESENT HIMSELF AND ENTER A PLEA AND THAT IS WHAT HE WAS.

IN COUNSEL THIS IS POST CONVICTION AND WHAT THEY FOUND.

HE FOUND THERE WAS NO BASIS TO DELAY THIS HEARING THAT IS WHY COUNSEL WAS INEFFECTIVE.

YOU CANNOT RELY ON INDIANA VERSUS EDWARDS OR A RULE BECAUSE IT IS DINA'S THAT APPLIES AND THERE IS NO DOUBT AND OPPOSING COUNSEL ADMITTED THAT HE WAS COMPETENT SO THIS LOWER STANDARD OF BEING HASTY AND ALL THAT NONE OF IT MATTERS.

AND THEN THERE'S ALSO NO PREJUDICE REGARDING COUNSEL, TRIAL COUNSEL'S FAILURE TO ATTEMPT TO DELAY THE FOR READ A HEARING.

HE HAD NO MEANS OF DOING SO BUT THERE'S ALSO NO PREJUDICE BECAUSE THE DEFENDANT HAS A RIGHT.

THAT'S A PERSONAL RIGHT.

COUNSEL CANNOT AND HAS NO DUTY OR OBLIGATION TO INTERFERE WITH THE DEFENDANT WHO WANTS TO ENTER A GUILTY PLEA.

THAT IS A PERSONAL RIGHT OF HIS.
AND THE OUTCOME WOULD REMAIN THE SAME.
NONE OF ANY OF THIS HAS TO DO WITH DOC AND SERGEANT BILL PUTTING
THEM IN THE SAME CELL.
IT HAD NOTHING TO DO AS THEY STATED ON THE RECORD REPEATED REASONS
FOR ENTERING THE GUILTY PLEA.
HE WANTED THE PRIVACY AND PRIVILEGE OF BEING ON DEATH ROW.
HE DID NOT WANT TO SPEND HIS INCARCERATION IN THE CHAOS AND THAT'S
A QUOTE FROM HIM OF BEING IN GENERAL POPULATION IN PRISON.
HE SPOKE ABOUT HOW DANGEROUS IT WAS END OF THE NICE THING AND IT
WAS JUST CHAOS.
HE WANTS TO BE ON DEATH ROW.
NONE OF ANYTHING THAT YOU COULD DO ALTHOUGH I COULD POINT OUT THE
POSTCONVICTION COURT AGREED WITH YOU JUSTICE THEY DIDN'T FIND
INMATES AND ALL THE INFORMATION ABOUT WHO PLACED WHO WEAR IN A
CELL BUT THAT IS NOT COGNIZABLE.
THE ONLY THING THAT IS COGNIZABLE IS THE INEFFECTIVENESS FOR NOT
TO BLAME THE
>> I HEARD TWO ANSWERS TO MY QUESTION FROM OPPOSING COUNSEL.
YOUR OPPOSING COUNSEL.
ELEVEN IS ABOUT WHETHER IT WAS EXCULPATORY AND THE OTHER WAS ABOUT
MITIGATION AND PRESUMABLY I GUESS UNDER THE CCP AGGRAVATE HER.
I THINK SHE IS CLOSER TO HAVING SOMETHING ON CCP.
CAN YOU RESPOND TO HER ARGUMENT THAT IT WAS MITIGATION EVIDENCE IN
THAT THERE WAS SORT OF A SUGGESTION THAT THE VICTIM HAD THIS
COMING AND THIS WAS A WAY FOR THE DEFENDANT TO SORT OF FIND FAVOR
WITH THE PERSONNEL AND THEREFORE PERHAPS THAT MITIGATES HIS
ACTIONS AS COLD CALCULATED.
>> FIRST OF ALL THAT KIND OF EVIDENCE DOESN'T MEET THE DEFINITION.
THERE IS EVIDENCE MITIGATION HAS TO DO WITH DEFENDANT BACKGROUND
CHARACTER AND RECORD.
WHAT THE DOCTORS, I WILL SAY THIS FOR PURPOSES OF ACCEPTING THEIR
FACTS AS THEY ARE.
WORST CASE SCENARIO OR WHATEVER INMATE BULLET SAID ABOUT HIM CRAFT
HIMSELF SAID THEY DID NOT SAY THOSE THINGS TO HIM OKAY.
SO, THERE IS --
>> IT CANNOT AFFECT HIS STATE OF MIND APPEARED AS A MATTER OF
RELEVANCE IS NOT COMING IN BECAUSE IT DOES NOT REFLECT OVER
WHETHER OR NOT HE WAS POPULATED.
>> I DO NOT EVEN THINK THAT IS ADMISSIBLE.
I DO NOT THINK IT IS RELATIVE.
>> OKAY.
>> IT IS NOT RELATIVE.
IT COULD NOT HAVE AFFECTED HIS STATE OF MIND.

HE COULD NOT HAVE BEEN INCENTIVIZED ABOUT SOMETHING THAT ACCORDING TO THE FACTS AS PLED HE DID NOT EVEN KNOW ABOUT.

>> HE HAD BEEF WITH THE VICTIM BEFORE RIGHT.

DID HE KNOW ABOUT THE BACKGROUND BEFORE BEING PUT IN THE SAME CELL?

>> HE DOESN'T SEE HIM BEFORE.

THEY WERE IN THE CELL TOGETHER TWO DAYS BEFORE THE MURDER AND YES THEY WERE FIGHTING AND CRAFT DOES ASSERT THAT THE VICTIM TOLD HIM THAT HE WAS A CHILD MOLESTER BUT I VERY MUCH THIS COURT HAS NEVER FOUND A PRETENSE FOR PURPOSES OF CCP.

>> I JUST WANT TO SORT THE ARGUMENTS AND KEEP THEM.

>> CERTAINLY BUT THIS COURT WOULD NOT CONSIDER THAT A PRETENSE OF JUSTIFICATION BASED UPON THE VICTIMS BEING EVEN IF HE HAD PROVEN THAT HE WAS THAT.

>> RIGHT.

>> BUT CRAFT DID ASSERT WHILE THEY WERE IN THE CELL TOGETHER OVER THOSE TWO YEARS, EXCUSE ME TWO DAYS THAT HE WAS PLACED IN THE CELL AND THEN TWO DAYS LATER HE MURDER THE VICTIM.

AND HE SAID THE VICTIM NEVER ATTACKED HIM.

IT WAS NOTHING LIKE THAT.

IT WOULD NOT COUNT AS A PREJUDICE.

THIS IS IN NO WAY SOME SORT OF SELF DEFENSE.

>> I DIDN'T FOLLOW WHAT YOU MEANT ON PREJUDICE.

YOU WERE SAYING THAT EVEN IF YOU GOT PAST THE PERFORMANCE THERE WOULD STILL BE NO PREJUDICE.

COULD YOU ELABORATE UPON THAT BECAUSE I DIDN'T FOLLOW IT.

>> PREJUDICE YES I DID.

I SUPPLEMENTED WITH THE CASE OF LEE.

IN THESE POST HOC RATIONAL ASSERTIONS THAT I WOULD NOT HAVE ENTERED A GUILTY PLEA WAS NOT SUFFICIENT.

>> THAT IS NOT ON THE ISSUE OF THE EFFECTIVE ASSISTANCE OF COUNSEL THOUGH?

>> THE TWO OF THEM REALLY BEFORE YOU.

ONE IS NOT EVEN COGNIZABLE.

EVERYTHING HAVING TO DO WITH THE PLEA.

>> BUT ON THE PREJUDICE THING I DID NOT UNDERSTAND IF YOU'RE MAKING A POINT ABOUT, FIRST AND YOU ARE SAYING IS COGNIZABLE IS TO COUNSEL SUFFICIENTLY INVESTIGATE WHETHER THE HEARING SHOULD HAVE HAPPENED AND WHAT HAPPENED.

>> BECAUSE TRIAL COUNSEL WAS NOT COUNSEL AT THAT POINT.

IF ANYBODY HAD A DUTY TO INVESTIGATE ANYTHING REGARDING INMATE BULLET IT WAS THE DEFENDANT HIMSELF BECAUSE AT THAT POINT HE WAS REPRESENTING HIMSELF.

HE SHOULD HAVE SAID NO I DO NOT WANT TO ENTER A PLEA I WANT TO GET

THE DISCOVERY THAT WOULD LEAD ME TOO ALL THIS.
YOUR HONOR, THE PERSON THAT HAS A DUTY TO INVESTIGATE DEFENSES AND
MITIGATION IS THE DEFENDANT HIMSELF WHEN HE IS REPRESENTING
HIMSELF.
COUNSEL IS NOT COUNSEL AT THAT POINT.
COUNSEL BECAME STANDBY COUNSEL.
BUT THERE IS NO SUCH COUNSEL AS INEFFECTIVENESS OF STANDBY
COUNSEL.
>> I UNDERSTAND.
WHAT WAS YOUR PREJUDICE POINT?
>> PREJUDICE FIRST ONE THAT IS COGNIZABLE.
>> EXPLAIN IT.
I DON'T UNDERSTAND.
>> I WILL EXPLAIN IT.
HE WOULD HAVE ENTERED A PLEA ANYWAY.
THE OUTCOME WOULD HAVE BEEN THE SAME.
BECAUSE HIS MOTIVATION FOR ENTERING THE PLEA WAS HE WANTED TO BE
ON DEATH ROW AND THIS -
>> EVEN IF HE HAD NOT BEEN ALLOWED TO REPRESENT HIMSELF WHICH IS
WHAT THE FIRST PART IS ABOUT RIGHT?
>> NOPE WHAT I'M SAYING IS IF COUNSEL HAD ASKED FOR THE FOR READ A
HEARING TO BE DEFERRED FOR SOME REASON WHICH THERE IS NOT ONE THEN
THE DEFENDANT STILL WOULD HAVE ENTERED A GUILTY PLEA BECAUSE NONE
OF ANYTHING THEY ARE TALKING ABOUT IN INDIANA VERSUS EDWARDS OR
EXPERTS OR HIS MENTAL STATE, NONE OF THAT IS HIS MOTIVATION.
HIS MOTIVATION IS HE WANTS TO BE ON DEATH ROW.
>> MY QUESTION IS WHAT MAKES THIS COGNIZABLE.
WHAT DID COUNSEL DO OR NOT DO THAT MAKES IT COGNIZABLE.
>> BECAUSE AT THE TIME BEFORE THE READ TO COUNSEL IS REPRESENTING
IT TRIAL COUNSEL.
ASSISTANT PUBLIC DEFENDER IS A COUNSEL SO HE CAN ARGUE THINGS LIKE
THAT IS A COGNIZABLE CLAIM BECAUSE HE HAS COUNSEL.
YOU HAVE TO HAVE COUNSEL TO DO AN INEFFECTIVE ASSISTANCE OF
COUNSEL.
AND BY THE TIME OF THE PLEA HE IS REPRESENTING HIMSELF.
HE HAS NOT GOT COUNSEL.
SO HE CANNOT DO ANYTHING RELATED TO THE PLEA.
SO I DO NOT THINK IT IS VIABLE IN THE SENSE IT HAS ANY LINKS.
IT IS MERITLESS BUT IT IS A COGNIZABLE CLAIM.
EVERYTHING HAVING TO DO WITH THE PLEA HE REPRESENTS HIMSELF SO
SINCE WE RECOGNIZE THE RIGHT TO RECOGNIZE THAT REPRESENT YOURSELF
LITERALLY IN THE OPINION AND THE UNITED STATES SUPREME COURT
RECOGNIZED THAT THERE IS NO SUCH THING AS INEFFECTIVE ASSISTANCE
PRO SE DEFENDANTS.

SO I SEPARATE THEM VERY MUCH.

>> DON'T YOU THINK THAT THEY ARE REALLY ARGUING THAT THEY WERE INEFFECTIVE FOR NOT DELAYING THE FOR READ AND THEY ARE INEFFECTIVE OR NOT DELAYING THE FURTHER RESEARCH FOR THE MENTAL HEALTH DAMAGE THAT COULD HAVE BEEN THERE?

>> YES.

THAT CLAIM REGARDING MENTAL HEALTH.

>> WHY DO YOU THINK THERE IS NO PREJUDICE TO THAT?

>> BECAUSE HIS MOTIVATION, THE DEFENDANT HIMSELF DID NOT EVEN WANT THIS DELAYED AND HE HAS A PERSONAL RIGHT.

COUNSEL COULD NOT HAVE TRUMPED HIS PERSONAL RIGHT NUMBER ONE.

CRAFT COULD STILL ENTER A GUILTY PLEA EVEN IF HIS COUNSEL TRIED TO SAY TO THE TRIAL COURT I WANT FURTHER I WANT TO HIRE A THIRD EXPERT.

AND EVEN IF IT HAD BEEN GRANT THE DEFENDANT COULD STILL ENTER A GUILTY PLEA.

I'M SAYING GIVEN THIS MOTIVATION THAT'S EXACTLY WHAT HE WOULD HAVE DONE.

>> RIGHT BUT WERE ASKING BECAUSE LOOK YOUR ARGUMENT ON THE PERFORMANCE IS STRONG BUT WE ARE ASKING BECAUSE IT SEEMS LIKE THE PRECEDENT YOU WOULD BE ASKING US TO SET IF WE THEN SAVED BY THE WAY THERE IS NO PREJUDICE WERE HAVING TO MAKE THESE THREE LEVELED DOWN SORT OF SPECULATIVE ASSUMPTIONS ABOUT EVEN IF THERE HAD BEEN MORE INVESTIGATION AND EVEN IF MAYBE HE COULD NOT HAVE REPRESENTED HIMSELF, YOU KNOW, THEN HE HAS A LAWYER AND HE STILL PLEADS GUILTY ANYWAY WHY WOULD WE IT SEEMS LIKE AN UNWISE THING FOR US. THAT'S WHY I DID NOT UNDERSTAND WHY YOU ARE EVEN MAKING THIS ARGUMENT.

>> I WAS JUST TRYING TO BE THOROUGH.

YOU CERTAINLY CAN STOP WITH THE NOPE PROFICIENT PERFORMANCE.

>> WHY ON THE PREJUDICE ASPECT WOULD NOT BE RELEVANT THAT IT WAS CONSIDERED ON DIRECT APPEAL?

I GUESS HE WAS NOT PRESENT ON TERMS OF DELAY BUT IT WOULD SEEM THAT BECAUSE THE COURT CONSIDERED THE ISSUE ON DIRECT APPEAL IT SEEMS LIKE IT WOULD BE RELEVANT TO PREJUDICE.

>> YES, I MEAN, YOU DID HAVE BOTH EXPERTS REPORT IN THE RECORD WHEN YOU WERE ON DIRECT APPEAL WHEN YOU FOUND THAT THE PLEA WAS VOLUNTARY BUT THE OTHER THING THAT I HAVE A PROBLEM I HAVE A RUIZ PROBLEM WITH THIS KIND OF ARGUMENT.

HE COMPLETE KNOWLEDGE FIRST PLEA TO BE VOLUNTARY UNDER UNITED STATES VERSUS RUIZ THEN ADDED YOU FIND THAT NEW FACTS AFTER THE FACT UNLESS IT AMOUNTS TO ACTUAL FACTUAL INNOCENCE THE UNITED STATES SUPREME COURT HAS DIRECTLY HELD YOU DO NOT HAVE TO HAVE COMPLETE KNOWLEDGE OF ALL THE RELEVANT FACTS FOR YOUR PLEA TO BE

VOLUNTARY.

A PLEA IS VOLUNTARY UNDER THE LAW AS IT EXISTS AT THE TIME AND UNDER THE FACTS AS YOU KNOW TO THEM AT THE TIME AND THERE IS NO POSSIBILITY HERE OF ACTUAL FACTUAL INNOCENCE.

SO, NO, HIS PLEA JUST ABSTRACTLY, HIS PLEA WAS NONVOLUNTARY. EVEN IF YOU LOOK AT INMATE BULLET AND ALL OF THAT HE DOESN'T HAVE TO KNOW ALL OF THAT FOR HIS PLEA TO BE VOLUNTARY.

AND THAT HE DISCOVERED IT AFTER THE PLEA DOES NOT RENDER HIS PLEA AND VOLUNTARY AND THAT IS FROM THE UNITED STATES SUPREME COURT CASE UNITED STATES VERSUS RUIZ.

AND WE ASK YOU TO AFFIRM THE SUMMARY DENIAL.

>> THANK YOU.

>> I WILL TRY NOT TO SPEAK TOO FAST BUT QUICKLY JUST THERE ONE OTHER PART OF THE QUESTION I FORGOT TO ANSWER AND WHEN YOU TALK ABOUT QUALIFIED EXPERTS THE EXPERTS ON THESE REPORTS WERE NOT NEUROPSYCHOLOGY.

THEY WERE NOT EXPERTS IN NEUROPSYCHOLOGY.

SO I DO WANT TO--THERE WAS A QUESTION OF WHETHER THEY WERE QUALIFIED AT ALL ON NEUROPSYCH TESTING OR NEUROLOGY ANYWAY. BUT WHEN IT COMES TO EDWARD VERSUS ARIZONA THAT THE STATE IS RAISING SAYING IT'S NOT APPLICABLE TO GUILTY PLEAS PERHAPS MIGHT BE TRUE.

THIS IS A CAPITAL CASE WHERE THE GUILTY PLEA IS AMENDED.

MR. CRAFT HAD TO REPRESENT HIMSELF IN THE PENALTY PHASE AND HE AND WAS HE COMPETENT TO REPRESENT HIMSELF OR NOT?

WHO KNOWS BECAUSE HE DIDN'T DO ANYTHING.

THIS IS IN CONTRAST TO THE CASE WE JUST HAD WHERE WE WERE ABLE TO SAY HE OBJECTED AND FILED MOTIONS BUT MR. CRAFT DID NOTHING. HIS FAMILY SHOWED UP AND HE SAID LET THEM SPEAK FOR CONSCIOUS PURPOSES.

AND SO THE STATE MENTIONED HIS BRAIN DAMAGE OR MENTAL ILLNESS UNLESS SEVERE ENOUGH DOESN'T MAKE HIM INCOMPETENT AND WE NEED EVIDENTIARY HEARING TO DETERMINE THIS.

AGAIN, YES IT'S SPECULATION BUT IS NOT SEVERE ENOUGH.

WE HAVE NO EVIDENCE OF THAT BECAUSE MR. CRAFT DID NOT DEVELOP IT AND THE POST CONVICTION COURT SAYS I WILL NOT GIVE YOU AN OPPORTUNITY TO DEVELOP IT.

OPPOSING COUNSEL SAID THAT THEY FOUND COMPETENCE TO PROCEED AS THE JUST A STANDARD.

AND OF STORING THAT IS NOT WHAT THIS SAYS.

IT SAYS FINDING COMPETENCE PROCEED TO TRIAL IS NOT ALWAYS NECESSARY BEFORE PERMITTING A GUILTY PLEA PRO SE.

THE COURT MUST TAKE ANOTHER STEP AND FIND OUT IS THE WAIVER KNOWING ACTUALLY INTELLIGENT AND VOLUNTARY.

AND SO THEY SAY IN THIS SENTENCE A HEIGHTENED STANDARD FOR GUILTY IN PRO SE BUT NOT A HEIGHTENED STANDARD OF COMPETENCY. AND AGAIN PROTECTING DUTY OF THE COURT IMPOSES THE MOST WEIGHTY RESPONSIBILITY ON THE TRIAL JUDGE DETERMINING WHETHER OR NOT IT IS AN INTELLIGENT AND COMPETENT WAIVER.

RUIZ HAS TO DO WITH IMPEACHMENT INFORMATION.

IT WAS THE GOVERNMENT WHERE THEY HAVE A FAST TRACK AND THEY WANT TO THE GOVERNMENT TO WAIVE THE ABILITY TO GET THIS MATERIAL AND THEY SAID IT'S HARD TO DETERMINE WHETHER THE TEACHING MATERIAL IS CRITICAL.

THEY SAID IT WAS NOT SUFFICIENT.

THAT IS NOT WHAT WE HAVE.

PERHAPS YOU I CAN ENTERTAIN THE FACT THAT THIS IS NOT YOUR NORMAL PRISON MURDER.

WE HAVE A YOUNG MAN WHO WAS STILL GOING TO BE A YOUNG MAN WHEN HE GOT OUT OF PRISON AND THIS IS NOT OUR USUAL HE IS THERE FOR LIFE. HE IS NOT FACING THE PREDICAMENT OF LIFE AND DEATH IN PRISON UNTIL THE DEPARTMENT OF CORRECTIONS PUT HIM IN AN AGITATED VOLATILE STATE IN WITH A CHILD SEX PRESBYTER.

HE SAID A MONTH LATER HE THOUGHT HE WAS SET UP AND HE KNEW AT THAT POINT THAT HE WRECKED HIS LIFE AND ALL HE HAD WAS LIFE OR DEATH.

AND HE MADE DECISIONS IN THE WITH BRAIN DAMAGE.

WERE ASKING YOU TO RESPECT HIS LIFE MORE THAN HE DID AND GIVEN EVIDENTIARY AIR REHEARING FOR THESE CLAIMS.

I KNOW MY TIME IS DONE.

>> THANK YOU VERY MUCH.

WE ARE ADJOURNED.

>> ALL RISE.