

>> ALL RISE.

HERE YE, HERE YE, HERE YE.

THE FLORIDA SUPREME COURT IS NOW IN SESSION.

DRAW NEAR, GIVE ATTENTION, YOU WILL BE HEARD. "GOD SAVE THESE UNITED STATES, THIS GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

>> The Court: GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT. TODAY, WE WILL BE TAKING UP COLLEY V. STATE AND COLLEY V. DEPARTMENT OF CORRECTIONS NUMBER 2024-1011 AND 2024-1647.

>> Mr. Shakoor: GOOD MORNING, COURT. MY NAME IS ALI A. SHAKOOR. COCOUNSEL DEBORAH BELL. I HAVE THE PLEASURE OF REPRESENTING JAMES COLLEY JR. THIS IS INITIAL POST CONVICTION CASE. ALTHOUGH, WE STAND ON ALL THE ISSUES WE RAISED AND PLED AND APPEALED AND PETITIONED. TODAY I PLAN ON SPENDING MY TIME DISCUSSING PENALTY RELIEF WITH A SPECIFIC FOCUS ON 6 AND 7. MR. COLLEY SITS ON DEATH ROW BECAUSE OF THE PREDUDICIAL, UNDUE INFLUENCE, THROUGH THE TESTIMONY OF A SITTING COURTHOUSE COUNTY JUDGE -- JUDGE TINLAND -- WHO TESTIFIED ON BEHALF OF THE STATE IN THE CAPITAL CASE. HIS TESTIMONY WAS INADMISSABLE. AND IF HIS TESTIMONY WAS ADMISSABLE AND WE SUBMIT THAT IT WAS NOT THEN TRIAL COUNSEL SHOULD HAVE MOVED TO HAVE THE CASE MOVED TO A DIFFERENT CIRCUIT.

>> The Court: WAS THE JUDGE SUBPOENAED TO BE THERE OR THE PROSECUTOR JUST GIVE HIM A CALL TO TESTIFY?

>> Mr. Shakoor: THE PROSECUTOR CALLED HIM TO TESTIFY FOR THE STATE.

>> The Court: NO SUBPEONA?

>> Mr. Shakoor: I CAN'T RECALL IF THERE WAS A SUBPEONA OR NOT BUT HE WAS COMPELLED TO TESTIFY FOR THE STATE.

>> The Court: THE JUDGE PRESIDING OVER THE SAME DAY OF THE MURDERS IN THIS CASE, THE JUDGE PRESIDED OVER THE DOMESTIC VOILENCE INJUNCTION OR SOMETHING LIKE THAT.

>> Mr. Shakoor: AN INJUNCTION PROCEEDING. YES, SIR.

>> The Court: AND HE, YOUR CLIENT PLED GUILTY TO THAT. IT WAS A NEGOTIATED PLEA.

>> Mr. Shakoor: CORRECT, SIR.

>> The Court: IT WAS A MISDOMENOR?

>> Mr. Shakoor: CORRECT.

>> The Court: AND THE JUDGE CONDUCTED A PLEA COLLOQUY?

>> Mr. Shakoor: THE SAME MORNING, CORRECT.

>> The Court: AND NOW, THAT ENTIRE HEARING THAT THE JUDGE PRESIDED OVER WAS VIDEO TAPED.

>> Mr. Shakoor: CORRECT, IT WAS.

>> The Court: AND THAT VIDEO TAPE WAS ALSO INTRODUCED INTO EVIDENCE.

>> Mr. Shakoor: YES, IT WAS.

>> The Court: IT WAS PLAYED FOR THE JURY?

>> Mr. Shakoor: YES, IT WAS.

>> The Court: SO THE ENTIRE COLLOQUY THE JUDGE TESTIFIED ABOUT THE JURY GOT TO SEE.

>> Mr. Shakoor: THE JURY GOT TO SEE THE COLLOQUY BUT THE VIDEO WAS NOT VERY GOOD QUALITY. JUDGE MOSS MENTIONED THAT IN THE CASE MANAGEMENT CONFERENCE. THE VIDEO WAS NOT VERY GOOD QUALITY SO THEY - THE STATE AIMED TO PUT THIS JUDGE ON THE STAND, JUDGE CHARLES TIDLAND, A COUNTY JUDGE, TO TESTIFY FOR THE STATE IN REBUTTAL TO MR. COLLEYS TESTIMONY - MR COLLEYS PRESENTATION REGARDING THE FACT THAT HE WAS IMPAIRED AT THE TIME OF THE CRIMES. SO THE STATE PUT ON A SITTING COURTHOUSE JUDGE, JUDGE CHARLES TIDLAND, WITH 28 YEARS OF EXPERIENCE ON THE BENCH IN THAT SAME COURTHOUSE.

>> The Court: RIGHT BUT YOUR ARGUMENT IS NOT THAT A JUDGE CAN NEVER BE CALLED AS A WITNESS, IS IT?

>> Mr. Shakoor: NO. WE ARE NOT SAYING THAT.

>> The Court: AND YOUR ARGUMENT IS NOT WHETHER OR NOT A JUDGE CAN BE CALLED DEPENDS ON HOW MANY YEARS OF SERVICE HE HAS, RIGHT?

>> Mr. Shakoor: NOT SPECIFICALLY, NO.

>> The Court: OKAY. SO FOCUSING IN ON THE POINT THAT YOU ARE TRYING TO MAKE, AND I AM FOLLOWING HERE. JUST AS A - QUESTION. IT WOULD SEEM TO ME LIKE IF THE DEFENDANT HAS PUT IN ISSUE HIS COMPETENCY OR STATE OF MIND OR STATE OF IMPAIRMENT THAT MORNING, THE JUDGE WOULD SEEM TO BE A WITNESS TO HIS STATE OF MIND.

WHAT AM I MISSING?

DID HE TESTIFY IN A ROBE?

TELL ME WHAT CREDIBILITY THAT ARE UNDO THAT THE JUDGE'S TESTIMONY HE HAD?

>> WHEN HE TESTIFIED, HE WAS REFERRED TO AS "JUDGE."

>> LET'S STIPULATE THAT IT WOULD HAVE BEEN BETTER IF SOMEHOW THAT HAD BEEN, I DON'T KNOW, AVOIDED.

IS THAT THE ERROR?

IF A JUDGE TESTIFIES, DON'T CALL HIM JUDGE OR DON'T CALL HER JUDGE?

>> THE ERROR IS TO TESTIFY PARTICULARLY IN A CAPITAL CASE WHEN THERE'S NOT A COMPELLING NEED FOR THE JUDGE IN THAT CASE.

>> WHAT YOU'RE CALLING INTO QUESTION THE STATE OF IMPAIRMENT IN THAT ISSUE.

>> CORRECT, BUT THE STATE SHOULD HAVE CALLED ANOTHER WITNESS.

>> I UNDERSTAND THE STATE SHOULD'VE CALLED ANOTHER WITNESS.

ANY OTHER FACT WITNESS IS PRESENT, RIGHT, HAD AN OBSERVATION OF THE DEFENDANT'S DEemeanOR AND INTERACTION.

IT WOULD SEEM TO ME LIKE HE POSSESSES RELEVANT EVIDENCE AND THE QUESTION OF EVIDENTIARY MATTERS COMES TO QUESTION THAT OVERWHELMS THE TESTIMONY BY MAKING IT PREJUDICIAL IN SOME WAY, AND I'M NOT HEARING WHAT SPECIFICALLY CAUSES THAT IN YOUR ARGUMENT.

YOU'RE SAYING MAYBE IT WAS THE FACT THAT HE WAS REFERRING TO AS "JUDGE."

>> THERE HAS TO BE A COMPELLING NEED FOR A JUDGE'S TESTIMONY.

EVEN THE CASES SUBMITTED BY THE STATE, IN THE STATE DID DO AN ANSWER BRIEF IN THIS CASE AND THE STATE DECIDED TO A CASE CALLED RODRIGUEZ VERSUS STATE.

AND IN THAT CASE, RODRIGUEZ ONE OF THE TRIAL JUDGE IN RODRIGUEZ, THE JUDGE HAS TESTIFIED REGARDING RECORDS.

HE DID NOT TESTIFY FOR OR AGAINST ONE OF THE PARTIES.

>> THE COMPELLING NEED, IT WOULD BE IF THERE'S NO OTHER EVIDENCE AVAILABLE TO PROVE [INDISCERNIBLE] PERSON AMPLE IF THE ONLY PERSON [INDISCERNIBLE] DEFENDANT THAT PARTICULAR DAY HAD BEEN THE JUDGE BUMPED INTO HIM, WALK INTO THE COURTHOUSE, SAW HIM AT KMART THAT MORNING.

JUDGES SHOP, TOO.

THAT KIND OF THING WHERE THE JUDGE WAS THE ONLY ONE WHO SAW HIM.

BUT THE STATE HERE HAD MANY ALTERNATIVES.

>> I CONDUCTED THOSE HEARINGS AS A TRIAL JUDGE.

WHEN YOU DO FIRST APPEARANCES IN THE COURTHOUSE, THERE ARE A NUMBER OF PEOPLE AROUND.

THERE ARE DEPUTIES THERE.

OFFICERS, POLICE OFFICERS, WHO COME AND TESTIFY HE WAS SOBER.
THERE'S COURT REPORTERS.
THERE'S THOUSANDS OF PEOPLE.
YOU CAN'T EVEN CALL SOMEONE IN THE ATTORNEY'S OFFICE WHO WAS PRESENT
TO TESTIFY.
YOU SEE A JUDGE COME IN AND TESTIFY AND TELL A JURY I'M A JUDGE AND
I'M TELLING YOU HE WAS SOBER WHEN THERE'S A VIDEOTAPE AND THERE ARE
OTHER WITNESSES THAT CAN TESTIFY TO THAT?
I MEAN, I CAN'T THINK OF ANY MORE PREJUDICIAL.
IT'S A FACT OF THE MATTER WHETHER HE WAS SOBER OR NOT.
THE JURY CAN LOOK AT THE TAPE AND SEE WHETHER OR NOT HE WAS SOBER.

>> CORRECT, THE JURY CAN SEE WHETHER OR NOT HE WAS SOBER.

>> HE DID POINT OUT THERE ARE QUESTIONS ABOUT THE QUALITY OF THE TAPE
AND THE EVALUATION FROM THIS GRAINY TAPE IS DIFFERENT THAN THE
EVALUATION OF SOMEONE WHO WAS THERE WHO HAD THE RESPONSIBILITY TO
DECIDE THAT HE WAS COMPETENT TO ENTER THE GUILTY PLEA.
ISN'T THAT TRUE IT'S FUNDAMENTALLY DIFFERENT?

>> HIS TRIAL ATTORNEY WAS SITTING NEXT TO HIM THE ENTIRE TIME AND
THEN HE HAD A DUTY TO MAKE SURE MR. COLLEY WAS COMPETENT NOT IN ISSUE
OF COMPETENCY PLEA.

>> BUT HERE'S THE REALITY.
YOU DON'T CONTEST THAT IT COULD BE ADMITTED THAT A DETERMINATION HAD
BEEN MADE THAT MORNING THAT HE WAS COMPETENT TO ENTER THE PLEA, DO
YOU?

>> I THINK THERE NEEDS TO BE AN EVIDENCE SHERRY HEERY TO MAKE THAT
DETERMINATION.
THAT'S WHAT I'M ASKING THE COURT.
WE NEED AN EVIDENTIARY --

>> NO, I'M TALKING TO THE HISTORICAL FACT OF WHAT HAPPENED IN THAT
HEARING.
YOU DON'T CONTEST THAT THAT WAS ADMISSIBLE?

>> I DON'T CONTEST IT WAS ADMISSIBLE.
IT WAS NOT ADMISSIBLE TO THE SITTING --

>> WHEN YOU'RE CONTESTING IS THE WAY IT CAME IN, BUT IT SEEMS TO ME
ONCE IT COMES IN, THIS WHOLE THING DISSOLVES INTO QUIBBLING.
OVER NOT MUCH.
BECAUSE OF THE HISTORICAL FACT THAT THE JUDGE AT THAT HEARING, THAT
INJUNCTION HEARING, HAD MADE THAT DETERMINATION CAN COME IN, WHETHER
YOU GIVE THE TESTIMONY, I DON'T SEE WHETHER YOU GIVE THE TESTIMONY
DIRECTLY FROM THE JUDGE IF YOU CAN COME IN THAT THE TESTIMONY WAS
MADE.

>> BEFORE WE EVEN CONCEDE WE HAVE TO LOOK AT THE TESTIMONY OF THIS CASE.

>> I THOUGHT HE ALREADY CONCEDED IT.

>> I WANT TO STICK TO THE CONTEXT OF THE CLAIMS THAT WE RAISED. ASSUMING IT WAS ADMISSIBLE, THE INFORMATION REGARDING IMPAIRMENT IS ADMISSIBLE, THEN IT NEEDS TO COME FROM ANOTHER WITNESS WHO IS NOT PERMISSIBLE, WHO'S NOT BEING CALLED "JUDGE" WITH 20 YEARS OF EXPERIENCE, WITHOUT HIS COUNSEL REFERRING HIM TO HEY, JUDGE -- THE GUILT PHASE ATTORNEY COULD HAVE TESTIFIED TO THE EXACT SAME.

>> THE PROBLEM IS HERE, AND YOU KNOW, YOU GOT TO DO THE BEST YOU CAN WITH WHAT YOU'VE GOT.

THE PROBLEM IS THESE FACTS ARE HIGHLY PREJUDICIAL.

I MEAN, HE HAD THIS HEARING WHERE HE SEEMED TO BE PERFORMING VERY WELL, BUT THAT'S JUST WHAT HAPPENED.

>> OKAY.

>> AND IT'S INCONSISTENT.

IT SEEMS TO BE.

OR AT LEAST ONE COULD TAKE THE REASONABLE VIEW THAT ITS INCONSISTENT WITH THE STORY THAT HE'S UNDER SOMETHING, SOME KIND OF STATE WHERE HE REALLY DOESN'T KNOW WHAT HE'S DOING WHEN HE'S THERE DEMONSTRATING THAT HE DOES KNOW WHAT HE'S DOING.

AND SO THAT'S WHAT'S PREJUDICIAL HERE.

WHETHER THE JUDGE IS TALKING ABOUT IN OR NOT SEEMS TO ME TO BE A MATTER OF MINOR SIGNIFICANCE IN THE CONTEXT OF WHAT THE ACTUAL FACTS ARE.

NOW I'M I UNDERSTAND YOU DON'T AGREE WITH THAT, SO TELL ME WHAT I'M WRONG ABOUT THAT.

>> THE DEFENSE MADE IMPAIRMENT IN ISSUE WITH TRIAL.

IN REBUTTAL, THE STATE CALLED A SITTING COURTHOUSE JUDGE, JUDGE TENLINE, THEY COULD'VE CALLED, CALLED A PROSECUTOR, JOSH BYRD, WHO WAS THERE AS THE JUSTICES MENTIONED.

SPEAKING OF WHAT MR. COLLEY WAS GOING THROUGH, HE WASN'T JUST PAIRED WITH INTOXICANTS.

HE'S A POOR METABOLIZER FOR A DRUG CALLED CYMBALTA, AND THE FACT THAT MR. COLLEY IS A POOR METABOLIZER FOR THE DRUG, IF THE JURY WOULD'VE HEARD THIS INFORMATION, IT WOULD'VE HUMANIZED MR. COLLEY.

MR. COLLEY WAS DOING EVERYTHING HE COULD TO SAVE HIS MARRIAGE.

HE WAS SPIRALING.

HE WAS CRASHING OUT.

HE WAS HAVING SO MANY MENTAL HEALTH ISSUES, SUBSTANCE ABUSE ISSUES. HE WENT TO SEE A DOCTOR AND SAID HEY, DOCTOR, HERE'S WHAT I'M GOING THROUGH.

THE DOCTOR GAVE HIM WELLBUTRIN.
TURNS OUT MR. COLLEY IS A POOR METABOLIZER FOR WELLBUTRIN.
-- ALSO EXACERBATED THESE ISSUES AND THAT'S ALSO WHY MR. COLLEY IS
SITTING TODAY.

>> THOSE ARE ALL FACTS THAT ARE, YOU KNOW, PART OF THE CONTEXT OF THE
CASE AS IT COMES TO US, BUT ON THIS ISSUE, THIS PRESENTS AS A
STRICKLAND QUESTION, CORRECT?
THE QUESTION IS THE PREJUDICE THAT RESULTS TO YOUR CLIENT AS A RESULT
OF THE JUDGE'S TESTIMONY AND THE LAWYER' AS FAILURE TO OBJECT TO IT.
I GUESS WHAT I WOULD LIKE TO HEAR IS YOUR ARGUMENT THAT YOUR CLIENT
WOULD HAVE RECEIVED A LIFE SENTENCE, BUT FOR THE JUDGE OF OSTIA'S
TESTIMONY.

>> OUR CLIENT WOULD RECEIVE A LIFE SENTENCE, BUT FOR THE JUDGE'S
TESTIMONY BECAUSE JURORS ARE TAUGHT TO BELIEVE IN AND TRUST JUDGES.
JUDGES AND JUSTICES WEAR ROBES.
THEY STAND UP WHEN WE COME IN.
I THINK TRIAL COURT MIGHT'VE MENTIONED THIS IS NO DIFFERENT THAN A
POLICE OFFICER TESTIFYING IN A TRIAL CASE.
JURORS WATCH TV SHOWS.
THEY MAY HAVE UNEQUIVOCAL OPINIONS WHEN IT COMES TO POLICE OFFICERS.
NOT WHEN IT COMES TO JUDGES.
AND HERE IN FLORIDA, WE HAVE CANON 2A, THE IMPARTIALITY OF THE
JUDICIARY, THE INTEGRITY AND IMPARTIALITY OF THE JUDICIARY.

>> WELL, IS THEIR ARGUMENT THAT JUDGE TENLINE VIOLATED THE JUDICIAL
CANONS WHEN SUBPOENAED BY THE STATE OR CALLED BY THE STATE?

>> I'M NOT SAYING HE VIOLATED THE JUDICIAL CANONS.
I'M SAYING THE STATE TREATS JUDICIAL TESTIMONY VERY DIFFERENTLY.

>> I'M HAVING A HARD TIME UNDERSTANDING THE RELEVANCE OF CANON TO THE
DECISION WE HAVE TO MAKE.

>> WE ARE TREATING JUDGES DIFFERENT WHEN IT COMES TO THEM TESTIFYING
LIKE FOR SOMEBODY IN A BAR GRIEVANCE BECAUSE THEY HAVE THIS HIGHER
STANDARD, AND WE NEED TO KEEP THAT SAME ANALYSIS AND SAME INJURY IN A
CAPITAL CASE.
JUDGES ARE NOT JUST COMMON WITNESSES.
CASE AFTER CASE IN DIFFERENT CONTEXT, THIS COURT, THIS STATE TREATS
JUDGES AS --

>> THIS PARADE OF HORRIBLES I'M NOT IMPRESSED WITH BECAUSE THIS IS A
PRETTY UNIQUE SITUATION.
WE ARE THE MIDDLE STATE OF THE DEFENDANT IS RELATED TO CRIMES THAT
HAPPENED LATER IN THE DAY.
IT IS -- WAS ALSO AT ISSUE IN A JUDICIAL PROCEEDING THAT WAS
CONDUCTED EARLIER IN THE DAY.

THAT DOESN'T HAPPEN THAT OFTEN.

I'M NOT SAYING IT WOULD NEVER HAPPEN, BUT IT CERTAINLY -- I DON'T SEE IF WE DECIDE THIS ADVERSELY TO YOU, THAT MEANS THERE'S GOING TO BE A PARADE OF JUDGES TESTIFYING.

THIS IS A CIRCUMSTANCE WHERE THE JUDGE ACTUALLY HAD TO MAKE A DETERMINATION ABOUT THE COMPETENCY OF THE DEFENDANT.

AND THAT'S WHAT WE HAVE HERE.

THAT'S DIFFERENT THAN OTHER CASES WHERE SOMEBODY MIGHT JUST WANT TO CALL A JUDGE.

SO THE PARADE OF HORRIBLES DIDN'T IMPRESS ME.

>> SO IF THE JUDGE MAKES A DETERMINATION REGARDING THE COMPETENCY OR THE DEPENDENCY OF THE DEFENDANT IN FRONT OF THEM, THAT ALSO GOES TO MENTAL JUDGMENTS.

I'D ALSO LIKE TO CITE AUTHORITY I PLAN ON ADDING AFTER THIS HEARING, U.S. V. MORGAN --

>> YOU NEED TO LET PEOPLE KNOW ABOUT YOUR SUBMENTAL AUTHORITY BEFORE YOU COME IN HERE TALKING ABOUT IT.

>> I WILL CITE IT AND THE COURT CAN DO WHAT THEY WILL.

IT TALKS ABOUT EXACTLY WHAT MORGAN IS SAYING.

U.S. V. MORGAN 313 U.S.409 IS A FLORIDA SUPREME COURT CASE.

>> I DON'T THINK YOU HEARD ME.

>> I HEARD YOU.

I WILL ALSO BE DOING 333 F SUB SECOND -- HEIGHTENED SCRUTINY. WE ARE STILL TALKING ABOUT HEIGHTENED SCRUTINY, NEED, NECESSITY. CASE AFTER CASE WHETHER THE STATE WANTS THE JUDGE TO TESTIFY, DEFENDANT WANTS THE JUDGE TO TESTIFY OR SIMPLE CASE.

MEANING NECESSITY, HIGHER LEVEL OF SCRUTINY, WHICH WE DON'T HAVE IN THIS CASE.

BUT PERHAPS WE WOULD BE ABLE TO GET IF WE WERE IN EVIDENTIARY HEARING.

SOMETHING OF SUCH GREAT IMPORTANCE, I'D ASK THIS COURT TO REMAND FOR AN EVIDENT YEAR HEARING SO THAT WE CAN SEE WHAT TRIAL COUNSEL HAD, WHAT TRIAL COUNSEL STRATEGY WAS, WHAT THEIR TACTICAL DECISIONS WAS. SOMETHING THIS GREAT, THIS IMPORTANT --

>> BUT NONE OF THAT WOULD BE RELEVANT TO THE PREJUDICE ISSUE, WHICH SEEMS LIKE A LOT OF THE QUESTIONS HAVE BEEN FOCUSED ON THAT.

>> WELCOME PREJUDICE WAS PART OF THE EVIDENT YEAR HEARING.

>> NO, YOU'RE TALKING TO THE FACTS -- BUT LET'S ASSUME THAT COUNSEL SHOULD HAVE OBJECTED TO THIS.

I MEAN, YOU'D STILL -- LIKE, WHAT MORE WOULD WE KNOW ABOUT PREJUDICE IF THERE WERE AN ADDITIONAL PROCEEDING ON THAT?

>> IF THERE'S AN ADDITIONAL PROCEEDING, THEN WE WOULD KNOW WHAT TRIAL COUNSEL STRATEGY WAS.

REGARDING PREJUDICE, MORE WILL COME OUT REGARDING PREJUDICE FOR WHAT MR. COLLEY WAS GOING THROUGH INCLUDING HE WAS IMPROPERLY MEDICATED WITH CYMBALTA THAT HE COULD NOT METABOLIZE.

>> SO THAT'S A SEPARATE ISSUE THEN THE JUDGE ISSUED.

I MEAN, THE PREJUDICE WOULD BE -- HAVE TO, YOU KNOW, WE'D BE EVALUATING IN LIGHT OF EVERYTHING ELSE.

YOU KNOW, THE AGGRAVATING FACTORS, ALL THE OTHER WAYS -- I MEAN, I'M NOT REALLY SURE GIVEN THE FACT THAT OBVIOUSLY THERE WAS A FULL HEARING YOUR CLIENT'S KIND OF PERSPECTIVE ON HIS MENTAL STATE AND EVERYTHING, YOU KNOW, BOTH THE JURY AND THE SENTENCE WERE ABLE TO CONSIDER ALL THAT AND THEY STILL MADE THE DECISIONS THEY DID, SO IT'S STILL HARD TO BELIEVE THIS WOULD TIP THE SCALES, ESSENTIALLY.

>> IT WOULD TIP THE SCALES BECAUSE THE JURY WAS THERE AND THE JURY HEARD A SITTING JUDGE SAY THAT HE SEEMED OKAY TO ME.

I STAND HERE WITH THE STATE.

AND I'M PARAPHRASING.

A JUDGE WITH 20 YEARS OF EXPERIENCE FOR THE STATE IN A CAPITAL CASE, JUST LIKE A POLICE OFFICER --

>> IT SEEMS LIKE YOU'RE ALMOST ARGUING THAT ITS STRUCTURAL HERE, BUT YOU REALLY HAVEN'T ARGUED THAT.

YOU HAVE NOT ARGUED THAT ITS STRUCTURAL ERROR, HAVE YOU?

>> NO, PREJUDICE.

>> SO YOU CAN SEE WE GOT TO SHOW PREJUDICE.

BUT THEN YOU ARE IN EFFECT ARGUING THAT IT'S NOT STRUCTURAL ERROR, IT'S CLOSE TO STRUCTURAL ERROR BECAUSE JUST HAVING A JUDGE TESTIFY SUBJECT DEVASTATING THING.

>> THIS NEEDS COURT NEEDS A RECORD TO SEE HOW DEVASTATING IT IS, SO THAT'S WHY -- WHAT OTHER WITNESSES COULD HAVE TESTIFIED.

>> WHAT'S DEVASTATING IN THIS RECORD I THINK MANY PEOPLE WOULD SAY HAS NOTHING TO DO WITH WHAT THE JUDGE DID.

THERE'S A LOT OF THINGS IN THIS RECORD THAT ARE NOT BAD.

>> JUSTICE KENNEDY, THIS IS A CAPITAL CASE.

ALL CAPITAL CASES HAVE HEIGHTENED DEGREE OF DEVASTATION.

THIS IS NOT MEAN MR. COLLEY DOES NOT HAVE RIGHTS UNDER THE U.S. CONSTITUTION.

THAT'S WHY I'M HERE TODAY.

BUT I'M WILLING TO YIELD MY REBUTTAL TIME.

THANK YOU.

>> MAY IT PLEASE THE COURT?

MY NAME IS NAOMI NICHOLS AND I REPRESENT THE STATE IN THIS CASE, THE APPELLATE.

AMANDA COLLEY WAS GRANTED -- AUGUST 10, 2015.

A LITTLE BIT OVER TWO WEEKS LATER, MR. COLLEY IN THE WEE HOURS OF THE MORNING BEFORE SUNRISE DECIDED TO GO TO HER HOME.

HE WASN'T THERE.

WHAT HE FOUND INSTEAD WAS SOME EVIDENCE THAT SHE WAS HAVING A RELATIONSHIP WITH ANOTHER MAN.

HE RANSACKED THE HOME AND LEFT.

LATER THAT MORNING, HE DROVE HIMSELF TO COURT AND ENTERED A COUNSELED PLEA, WHICH WAS RECORDED, AND THE JURY SAW THAT VIDEO.

HE THEN DROVE HIMSELF AFTER MAKING SEVERAL STOPS BACK TO AMANDA'S HOME.

BY THAT TIME, SHE HAD THREE FRIENDS OVER.

[NAMES] AND RACHEL HENDRIX.

JAMES COLLEY CONCEALED HIS VEHICLE AND APPROACHED THE HOME AFTER ARMING HIMSELF FROM THE BACK.

HE THEN OPENED FIRE FROM THE BACK SLIDING GLASS DOORS.

THE OCCUPANTS OF THE HOUSE FLED WHEN THEY HEARD THE GUNSHOTS.

LAMAR DUBLY RAN OUT AND ESCAPED THE HOUSE.

>> SORRY, CAN YOU JUST RESPOND TO THIS?

PICK UP WHERE HE LEFT OFF AND RESPOND TO THE ARGUMENTS HE MADE?

>> Naomi Nichols: THE BOTTOM LINE IS THAT THE DEFENSE CANNOT SHOW PREJUDICE WITH THE JUDGE TESTIMONY.

DR. DANSINGER ALSO TESTIFIED IN REBUTTAL AND HE TESTIFIED HAVING REVIEWED DEPOSITION TRANSCRIPTS AND THE DEFENSE ATTORNEY WHO REPRESENTED MR. COLLEY AT THAT PLEA.

WHO TESTIFIED FOR THE DEFENSE DURING THE GUILT PHASE THAT HE HAD NO CONCERNS ABOUT MR. COLLEY'S COMPETENCE TO ENTER THE PLEA AT THAT TIME.

HE TESTIFIED THAT HE SEEMED A LITTLE MORE AGITATED THAN USUAL, BUT HE HAD NO CONCERNS ABOUT HIS --

>> GOING BACK TO THE PREJUDICE [INDISCERNIBLE] I HAVE BEEN ON THIS COURT NOW FOR GOING ON 17 YEARS AND I THINK I'VE SEEN JUST ABOUT EVERYTHING.

I'VE SEEN MURDER CASES THAT WERE JUST ATROCIOUS.

AND YOU SIT BACK AND THINK THERE'S NO WAY A REASONABLE JURY WOULD NOT RECOMMEND DEATH IN SUCH A CASE.

I'M TALKING ABOUT BEARING PEOPLE ALIVE AND THINGS LIKE THAT.

THERE'S JUST NO WAY.

AND YOU LOOK AT IT, IT'S LIKE 7-5.

THIS WHOLE BUSINESS ABOUT MONDAY MORNING QUARTERBACKING WHAT JURIES WOULD DO AND US DECIDE THERE'S NO WAY A REASONABLE JURY WOULD NOT RECOMMEND DEATH IS SILLY.

BECAUSE IT HAPPENS ALL THE TIME AND WE STARTED GETTING UNANIMOUS DECISIONS BACK WHEN WE REQUIRED IT DURING A PERIOD OF TIME. BUT NOW, BEFORE IT WAS UNANIMOUS, WE USED TO GET THOSE KIND OF USUALLY TWO, THREE, FOUR CLOSE SOMETIMES JURIES IN CASES YOU WOULD THINK THERE'S JUST NO WAY.

IF YOU'RE GOING TO HAVE A DEATH PENALTY, THIS CASE IS -- TO TRIAL. HOW CAN WE SIT HERE AND PRETTY MUCH CONCLUDE THAT A JURY WOULD NOT EVER BE INFLUENCED BY A JUDGE TESTIFYING.

>> Naomi Nichols: THE STANDARD THAT THE COURT CITED IN THE STRICKLAND IS THAT THE COURT IS TO PRESUME THAT THE JUDGE AND THE JURY FOLLOWED THE LAW, AND THAT THE JURY WAS INSTRUCTED IN THIS CASE TO WEIGH THE CREDIBILITY OF WITNESSES.

ONE DIFFERENCES ABOUT IN THE JUDICIAL CANON THAT TALKS ABOUT JUDGES GIVING TESTIMONY THAT THEY SHOULD NOT GIVE TESTIMONY IN CASES WHERE THEY ARE TESTIFYING ABOUT THE CREDIBILITY OF ANOTHER PERSON, BUT THAT'S NOT WHAT HAPPENED IN THIS CASE.

HE EXPLAINED HIS ROLE, JUDGE TENLINE, AND HE EXPLAINED HE WOULD NOT ACCEPT A PLEA IF HE HAD ANY INDICATION THAT SOMEONE WAS UNDER THE INFLUENCE.

IN THIS CASE, MR. COLLEY'S TOLD HIM THAT HE WAS NOT UNDER THE INFLUENCE OF ANY SUBSTANCES.

>> SEE, HERE'S MY CONCERN.

THIS IS RECORDED IN THE STATE OF FLORIDA.

WE'RE GOING TO WRITE AN OPINION AND SAY IT'S OKAY FOR A JUDGE TO COME IN AND TESTIFY.

HAVE THE JUDGE TESTIFY AS TO A FACTUAL MATTER IN THE CASE TO BE DECIDED BY A JURY.

WE ARE GOING TO OPEN UP THAT FLOODGATE.

FROM NOW ON, IN MANY CASES, YOU'RE GOING TO HAVE BEEN MAKING IT OKAY FOR A JUDGE TO BE CALLED IN ANY CASES REGARDING MENTAL HEALTH ISSUES. MENTAL HEALTH ISSUES.

I MEAN, JUDGE SAY GUILT PHASE, INSANITY DEFENSE.

WELL, HE WAS WITH ME THE DAY HE KILLED HIM.

HE SEEMED OKAY.

HE SEEMED TO UNDERSTAND EVERYTHING.

PROSECUTORS SEEM TO GET A GREEN LIGHT AND CALL JUDGES.

>> Naomi Nichols: I UNDERSTAND YOUR CONCERN.

IT'S VERY FACTUALLY SPECIFIC AND I CAN'T IMAGINE THERE'S GOING TO BE MANY CASES WHERE A DEFENDANT WAS IN FRONT OF A JUDGE THE SAME DAY THAT THEY THEN COMMITTED A CRIME AND THE JUDGE WHEN MENTAL HEALTH IS BROUGHT INTO THE DEFENSE, THE JUDGE WOULD THEN NEED TO TESTIFY.

IT'S VERY NARROW AND IN ANY CASE --

>> SO YOU STARTED OFF, THOUGH, FOCUSING ON PREJUDICE, WHICH WOULDN'T REQUIRE THE COURT TO AFFIRMATIVELY SAY THE QUESTION ASSUME WE SAY OH, THIS IS OKAY QUOTE UNQUOTE.

WHAT'S YOUR POSITION ON WHETHER PUTTING ASIDE -- WE KNOW OBVIOUSLY WHAT YOUR POSITION ON PREJUDICE IS, BUT IS YOUR POSITION THAT IT IS QUOTE UNQUOTE OKAY, SHOULD THE STATE HAVE TO -- THERE HAVE TO BE SOME KIND OF, YOU KNOW, KIND OF PARTICULAR NEED FOR THIS? ARE YOU SORT OF GOING ALONG WITH THE IDEA THAT WE JUST KIND OF AFFIRMATIVELY SAY HEY, WE ARE JUST GETTING ONE JUDGE OR WHOEVER?

>> Naomi Nichols: I BELIEVE THAT THERE IS NO CASE LAW THAT SAYS THAT A JUDGE IS INCOMPETENT TO TESTIFY, AND IF YOU DECIDE THIS AND YOU PUT SOME LIMITATION, THAT'S GOING TO BE A NEW THING. I COULDN'T FIND ANY CASE LAW THAT SAYS ANYTHING OTHER THAN A JUDGE IS A COMPETENT WITNESS, BUT SHOULD LIMIT THEIR TESTIMONY IN CASES WHERE CREDIBILITY -- NOT CREDIBILITY, BUT YOU DON'T WANT THEM TO BE SUPPORTING THE PERSON THEY ARE TESTIFYING ABOUT.

>> BUT YOU SEE, THAT'S THE THING. ONCE A DECISION IS MADE THAT A JUDGE IS COMPETENT TESTIFYING IN TRIAL, WHAT LIMITATIONS CAN WE PUT ON IT?

>> Naomi Nichols: THE DECISIONS ARE MADE JUDGE IS COMPETENT. THAT HAS BEEN HELD.

>> WHAT LIMITATIONS CAN WE BE PUT ON A JUDGE? CAN YOU DECIDE WHICH TIME AND JUDGE CAN TESTIFY IN WHICH TIME A JUDGE CANNOT TESTIFY? HOW WOULD YOU DECIDE THAT?

>> Naomi Nichols: THE JUDICIAL CANONS ARE THERE ALREADY.

>> WHAT DID, IN THIS CASE, I MEAN, WHAT DID HAVING THE JUDGE SPECIFICALLY TESTIFY ABOUT THIS ADD TO THE HISTORICAL FACT THAT THERE WAS A HEARING AND THAT THE JUDGE AT THE TIME HAD MADE THE FINDING THAT MR. COLLEY'S WAS MENTALLY CONFIDENT TO ENTER THE PLEA? I MEAN, WHAT WAS SORT OF THE VALUE ADD BEYOND THAT? IT IS REALLY, I MEAN, THE JUDGE ISN'T GETTING UP THERE TESTIFYING HOW A JUDGE WAS METABOLIZING MEDICATIONS AND WHAT WAS IN THE DEFENDANT'S MIND AT THE TIME OF THE SHOOTING. I MEAN, HE'S REALLY THERE TO HEAR ABOUT THIS IS MY PERCEPTION OF THE MENTAL STATE AT THAT TIME. WHAT'S THE VALUE OF HAVING HIM TESTIFY?

>> Naomi Nichols: TO EXPLAIN TO THE JURY WHAT THE JUDGE'S ROLE IS IN A COLLOQUY. IF THEY ARE JUST PRESENTED THIS VIDEO AND THEY DIDN'T HAVE AN EXPLANATION OF, YOU KNOW, IF DEFENDANT COMES IN THERE, THEY ARE ASKED CERTAIN QUESTIONS, AND A JUDGE'S ROLE IS TO DETERMINE OR NOT HE IS IN A MENTAL STATE TO ACCEPT THAT OR NOT. IT'S FOR THEM TO PUT THAT TYPE OF HEARING AND WHAT A COURT'S ROLE IS, WHICH THEY WOULD NOT HAVE GOTTEN FROM ANYONE ELSE.

>> BUT THAT'S KIND OF AN ACADEMIC POINT.
I MEAN, IN HINDSIGHT, IS THAT SOMETHING THAT, YOU KNOW, COULD, SHOULD
THE STATE USE ANYBODY ELSE?
I MEAN, YOU DON'T REALLY NEED THE SPECIFIC JUDGE TO COME IN AND TALK
ABOUT THAT.

>> Naomi Nichols: THE STATE OF MUSTINESS POSITION IS THAT THE JUDGE
CANNOT SHOW -- IN THIS CASE BECAUSE EVEN IF THE JUDGE -- THE
TESTIMONY FROM DR. DANSINGER SPECIFICALLY ABOUT REVIEWING THE
COLLOQUY AND SEEM TO BE IN A COMPETENT MENTAL STATE ON HIS REVIEW OF
THE VIDEO.
EVEN WITHOUT THE JUDGE'S TESTIMONY, THERE CAN BE NO PREJUDICE.

>> CAN WE TALK ABOUT McCOY VERSUS LOUISIANA FOR A LITTLE BIT?

>> Naomi Nichols: SURE.

>> SO I WANT TO UNDERSTAND THE STATE'S POSITION.
OBVIOUSLY, McCOY IS A DIFFER CASE BECAUSE THE DEFENDANT THERE DENIES
COMMITTING THE ACT ALTOGETHER.
HERE, THE DEFENDANT DOESN'T COMMIT -- DOESN'T DENY PULLING THE
TRIGGER OVER AND OVER AGAIN.
THE DEFENDANT DENIES A DIFFERENT ELEMENT OF THE CRIME OF CONVICTION,
AND THAT HAS TO DO WITH HIS MENTAL STATE, AND HIS POSITION IS HE
THINKS THIS IS A MANSLAUGHTER TRIAL AND HE ASSERTS THAT HE WOULD'VE
NOT TAKEN THE POSITION HE TOOK ON THAT ELEMENT, ON THE ELEMENT OF
OTHER FIRST-DEGREE MURDER.
IS THE STATE'S POSITION THAT A DEFENDANT HAS A CONSTITUTIONAL RIGHT
ONLY TO DENY UNDER McCOY THE ACT ELEMENT OF THE CRIME?
BECAUSE IT WOULD SEEM TO ME LIKE IF THE DEFENDANT HAD A
CONSTITUTIONAL RIGHT TO DENY THAT ELEMENT, THE DEFENDANT WOULD HAVE A
CONSTITUTIONAL RIGHT TO DENY ANY ELEMENT OF THE CRIME OF CONVICTION.
HELP ME UNDERSTAND WHAT THE STATE'S DECISION IS ON McCOY.

>> Naomi Nichols: THE DIFFERENCES McCOY HIMSELF RAISED THIS ISSUE
BEFORE TRIAL STARTED.
HE WAS UNHAPPY WITH HIS DEFENSE ATTORNEY'S PLAN OF ARGUING A LESSER
INCLUDED.
HE MADE THAT KNOWN TO THE TRIAL COURT.
HE ASKED FOR A DIFFERENT ATTORNEY AND HE WAS DENIED.
AFTER HE WAS CONVICTED, HE THEN GOT A NEW ATTORNEY AND THAT ATTORNEY
FILED A NEW MOTION FOR A TRIAL BASED ON THIS ISSUE.
THAT WAS APPEALED IN THE DIRECT APPEAL.
SO WHEN THE SUPREME COURT MADE THE DECISION IN McCOY, THEY ARE
WORKING OFF OF THOSE FACTS.
SO HERE, THERE WAS NOTHING ON THE RECORD ABOUT WHAT HE WANTED OTHER
THAN HE WAS HAPPY ABOUT HIS DEFENSE'S STRATEGY --

>> HE DOES SUGGEST THAT.

>> Naomi Nichols: SEVERAL TIMES.

THE SUPREME COURT TALKED ABOUT THE OBJECTIVE OF THE DEFENSE.
IN THE TRIAL COURT FOUND THAT TRIAL COUNSEL DID COMPLY WITH THE
DEFENDANT'S OBJECTIVE OF THE DEFENSE.
HE FOUND THAT HE WAS TOLD THAT THEY DISCUSSED IT, AND THIS IS ON THE
RECORD, TOO.

>> RIGHT, BUT I'M NOT HEARING THE ANSWER TO MY QUESTION, WHICH IS
DOES McCOY GIVE ME THE RIGHT TO INSTRUCT MY LAWYERS AND INSIST ON
EACH ELEMENT OF PROOF OR IS IT JUST THE ACTUS REYES?

>> Naomi Nichols: I DON'T THINK IT DOES.

ATTORNEYS STILL NEED TO BE ABLE TO MAKE STRATEGIC DECISIONS AND HOW
IT WERE PRESENT A CLIENT.

>> SO WHAT IS SPECIAL ABOUT THE ACT ELEMENT OF THE CRIME?
LIKE, WHAT MAKES THAT DIFFERENT THAN THE OTHER ELEMENTS OF THE CRIME?

>> Naomi Nichols: IN McCOY, THE COURT ADDRESSED IT WAS HE WASN'T
GUILTY AT ALL OF ANY OF THE ELEMENTS.

SO IT'S ALL OF THEM TOGETHER.

I DON'T THINK WE CAN PULL OUT ONE EVEN IF IT IS THE MENS REA.

LET'S BROADEN McCOY NOW AND APPLY IT TO THAT.

>> IF AND ONLY IF THE DEFENDANT DENIES ALL ELEMENTS OF THE CRIME OF
CONVICTION.

THAT'S THE STATE'S POSITION?

>> Naomi Nichols: YES, THEY WANT TO PURSUE A NOT GUILTY VERDICT.

>> WE ARE ALWAYS TRYING TO PURSUE A NOT GUILTY VERDICT.

IF I AM CHARGED WITH LESSER INCLUSIVES, PERHAPS I'M WILLING TO EAT A
LESSER INCLUDED.

SO WHAT YOU'RE SAYING IS McCOY ONLY WORKS WHEN THE DEFENDANT SAYS AS
TO THE TOP LINE AND ALL THE WAY DOWN I DENY ALL OF IT.

>> Naomi Nichols: AND WITH AN EXPRESS OBJECTION ON THE RECORD AT
TRIAL.

>> IS IT ACTUALLY THERE ARE THINGS THAT ARE SAID IN McCOY THAT
SUPPORT THAT UNDERSTANDING -- SAYS THESE WERE NOT STRATEGIC DISPUTES
ABOUT WHETHER OR NOT TO CONCEDE AN ELEMENT OF A CHARGE DEFENSE.
THEY WERE INTRACTABLE DISAGREEMENTS ABOUT THE FUNDAMENTAL OBJECTIVES
OF THE DEFENDANT'S REPRESENTATION.

THIS GUY, HE WANTED TO SAY I DID NOT DO THIS.

I DID NOT DO THESE PHYSICAL ACTS.

THE LAWYER IN McCOY WAS NOT COUNTABLE WITH THAT AND WE GOT THE McCOY

CASE.

BUT THAT'S JUST DIFFERENT THAN WHAT WE HAVE HERE WHERE THERE IS NO -- THERE IS NO DISPUTE THAT THE DEFENDANT COMMITTED THE PHYSICAL ACTS. IT'S JUST HE THOUGHT THAT IT COULD BE CHARACTERIZED AS AN ACCIDENT AND THAT HE COULD BE FOUND GUILTY OF MANSLAUGHTER.

ISN'T THAT WAS GOING ON HERE?

WHICH IS ENTIRELY DIFFERENT THAN WHAT WAS GOING ON.

SO WHAT WE HAVE HERE IS A STRATEGIC MATTER ABOUT WHETHER TO CONCEDE A PARTICULAR ELEMENT?

>> Naomi Nichols: THAT'S CORRECT.

AND THE COURT DID FIND COLLEY DID TESTIMONY AND -- THIS WAS DISCUSSED.

THIS IS NOT SOMETHING THAT THEY PULLED OUT OF THEIR POCKET WITHOUT HIM KNOWING.

IT WAS DISCUSSED BEFORE HAND.

THEY TOLD HIM THAT HE WOULD NEVER GET MANSLAUGHTER, THAT WAS NEVER GOING TO HAPPEN.

>> HE DIDN'T LIKE THAT, RIGHT?

>> Naomi Nichols: HE DIDN'T LIKE THAT.

>> WE WOULD ONLY NEED TO GET TO THIS KIND OF LEVEL OF SORT OF DISSECTING McCOY IF WE ACCEPTED THE PREMISE THAT THERE WAS A KIND OF CLEAR STATEMENT BY THE DEFENDANT TO THE LAWYER SAYING LOOK, I'M WILLING TO CONCEDE MANSLAUGHTER, BUT NOT SECOND-DEGREE MURDER OR ANYTHING MORE THAN THAT.

BECAUSE YOU COULD IMAGINE A DIFFERENT CASE WHERE, YOU KNOW, YOU HAVE A SOPHISTICATED DEFENDANT OR WHATEVER AND THEY GET INTO THESE KIND OF FINE-GRAINED CONVERSATIONS WITH THEIR LAWYER AND THERE'S NO DISPUTE THE CLIENT COMMUNICATED I WILL AGREE TO THIS BUT NOT TO THAT.

ARE YOU PUTTING THIS CASE INTO THAT CATEGORY OR WOULD YOU SAY THAT IT REALLY HASN'T EVEN BEEN ESTABLISHED THAT IT ISN'T THAT COLLEY KIND OF AGREED TO OR DIDN'T AGREE TO?

>> Naomi Nichols: IT'S NOT IN THAT CATEGORY.

I DON'T THINK IT CAN BE BECAUSE IT WASN'T RAISED IN THE TRIAL COURT. THE JUDGE WAS A COLLOQUY WITH COLLEY BEFORE THE TRIAL AND WHEN THE STATE REST AGAIN --

>> BASED ON THE RECORD THAT WE HAVE NOW INPUT CONVICTION BECAUSE WHAT'S ON THE TABLE NOW IS THE OBJECTION THING.

>> Naomi Nichols: WE HAVE AN ESTABLISHED.

STILL, IT'S IMPORTANT THAT -- DOES THE TRIAL COURT MAKE A FINDING ON THAT HERE, THOUGH?

>> Naomi Nichols: ON WHICH ONE?

>> ON WHAT EXACTLY WHICH ONE DID COLLEY AGREE TO WITH HIS LEGAL TEAM OR DIDN'T AGREE TO?

>> Naomi Nichols: SHE FOUND THAT HE AGREED AND THEY PURSUED A LESSER INCLUDED OFFENSE, WHICH IS WHAT HE WANTED.
I DON'T THINK SHE MADE A SPECIFIC FINDING ON WHETHER OR NOT HE AGREED TO MANSLAUGHTER.

>> OR I GUESS REALLY THE RIGHT QUESTION WOULD BE DID HE SPECIFICALLY TELL THEM DON'T.
DID HE CLEARLY COMMUNICATE TO THEM I DO NOT WANT YOU CONCEDED SECOND DEGREE MURDER?

>> Naomi Nichols: THAT DID NOT COME ACROSS.

>> WHEN WAS THE STATEMENT MADE?
DURING AN OPENING STATEMENT?

>> Naomi Nichols: CONCEDED THE SECOND DEGREE?
AN OPENING STATEMENT.

>> OPENING STATEMENT.
AND I TAKE IT ALSO IN CLOSING STATEMENT?

>> Naomi Nichols: YES.
THEY ARGUED MANSLAUGHTER, BUT THAT WAS DIRECTED AT THE ATTEMPTED MURDER COUNTS.
IF THERE'S NOTHING FURTHER, THEN THE STATE WOULD ASK THAT THIS COURT AFFIRM --

>> JUST ONE QUESTION.
AND I DON'T WANT TO BE NITPICK, BUT I WILL BE.
ON THE QUESTION OF THE ROLE OF SEQUESTRATION, THE STATE REQUESTED AND WAS GRANTED TO ALLOW THE V DETECTIVE, IN THIS CASE DETECTIVE -- TO SIT THERE THE CASE THROUGHOUT THE ENTIRE TRIAL.
-- .616 PROVIDES THAT EXEMPTIONS TO THE RULE OF SEQUESTRATION ONE OF THEM BEING IT IS ESSENTIAL AND NECESSARY FOR THAT LEAD DETECTIVE TO SIT NEXT TO THE PROSECUTOR THROUGHOUT THE WHOLE TABLE, LISTEN TO THE TESTIMONY, AND THEN TESTIFY.
WHAT WAS IT ABOUT THIS CASE THAT WAS SO COMPLICATED THAT IT REQUIRED A LEAD DETECTIVE TO SIT NEXT TO THE PROSECUTOR?
I TRIED HUNDREDS AND HUNDREDS OF CASES.
I PRESIDED OVER AND I'VE NEVER SEEN THE JUDGE TESTIFY IN 45 YEARS AND I'VE NEVER SEEN A LEAD DETECTIVE SITTING NEXT TO THE PROSECUTOR.
WHAT WAS SO COLLOCATED ABOUT THIS CASE THAT I WAS ALLOWED?

>> Naomi Nichols: I CAN'T ANSWER THAT SPECIFIC QUESTION BECAUSE IT WAS NOT ME, BUT THERE WAS A LOT OF TIMELINES AND THERE WAS A LOT OF

VIDEOS.

THERE WAS A LOT OF EVIDENCE IN THE CASE, AND --

>> BUT ALL CASES HAVE THAT.

I MEAN, CASES THAT LAST WEEKS AND WEEKS HAVE TONS OF TESTIMONY.

>> Naomi Nichols: THIS WAS RAISED PRIOR TO TRIAL.

THE DEFENSE DIDN'T OBJECT TO IT, SO WE HAVE TO CONSIDER NOW WHETHER THAT WAS EFFICIENT AND WHETHER THERE WAS PREJUDICE --

>> HERE WE GO AGAIN, THE PREJUDICE.

>> Naomi Nichols: HER TESTIMONY ULTIMATELY WAS NOT -- SHE ENTERED IN EVIDENCE.

THERE IS NO -- THERE IS NO CONFRONTATION REALLY ISSUE WITH HER TESTIMONY.

>> I WAS JUST WONDERING WHAT WAS DIFFERENT ABOUT THIS CASE THAN ALL THE OTHER ONES WHERE WE DON'T HAVE A LEAD DETECTIVE SITTING OUT THROUGHOUT THE ENTIRE TRIAL.

>> Naomi Nichols: I DON'T HAVE A GREAT ANSWER TO THAT.

IF THERE'S NO FURTHER QUESTIONS, STATE WOULD ASK THAT THE COURT AFFIRM THE LOWER COURT DECISION IN THIS CASE.
THANK YOU.

>> THANK YOU.

>> TO CARRY ON FROM WHAT JUSTICE LABARGA -- ONE THING THAT WAS DIFFERENT IS THE FACT THAT MR. SHOEMAKER'S LAW FIRM WAS REPRESENTED DETECTIVE ENGLISH'S AGENCY AS WAS ACTIVE CONFLICT OF INTEREST.
THERE WAS GENERAL COUNSEL --

>> WHAT RULE DOES IT VIOLATE?

>> WHAT RULE?

>> YEAH, WHAT RULE.

WHAT RULE JUST AS PHYSICALLY VIOLATED?
CHAPTER AND VERSE BECAUSE THAT'S BEEN DISCUSSED.

>> WELL, JUDGE, I'M NOT HERE FOR A POP QUIZ, BUT I CAN TELL YOU IT'S CITED --

>> The Court: OH, YOU'RE NOT?
YOU'RE NOT HERE TO ANSWER QUESTIONS?

>> IT'S CITED IN MY BRIEF.

IN ANSWERING QUESTIONS, I CAN TELL YOU REGARDING QUESTIONS OF JUDGE TENLINE, MORE -- MADE IT RIGHT DIRECTLY INTO JUDGE MALTA'S ORDER.

I WOULD URGE THIS COURT TO REMAND AN EVIDENTIARY HEARING TO ALSO HEAR TESTIMONY REGARDING THE RELATIONSHIP BETWEEN JUDGE TENLINE AND JUDGE MALTA BECAUSE WITNESSES SAID THEY SAW THEM HAVING LUNCH TOGETHER -- ONE MORE THING REGARDING THE ISSUE OF McCOY AND MANSLAUGHTER. TRIAL COUNSEL IS ON NOTICE BEFORE TRIAL THAT MR. COLLEY'S DETERMINED REGARDING THIS IS A MANSLAUGHTER CASE AND STRICTLY A MANSLAUGHTER CASE AND NOTHING MORE THAN THAT. SO THAT'S ON THE RECORD. THAT'S ON THE RECORD BEFORE YOU. WHETHER TRIAL COUNSEL DISAGREED WITH THAT, THAT'S NOT TRIAL COUNSEL'S RIGHT. THEIR JOB IS TO PURSUE THE TRIAL LITIGATION STRATEGY OF THEIR DEFENDANT, AND THEY DID NOT DO THAT IN THIS CASE. BEYOND THAT, I WOULD ASK YOU TO REVERSE. I WOULD ASK YOU TO REMAND FOR AN EVIDENTIARY HEARING ON ISSUE SIX AND ALL THE OTHER ISSUES THAT WERE DENIED IN EVIDENTIARY HEARING. THIS IS A VERY KUMP LOCATED AND STRESSFUL CASE INVOLVING ADULTERY AND A PERSON WHO WAS SPIRALING OUT OF CONTROL BECAUSE HIS MARRIAGE WAS FALLING APART. THIS IS NOT A CASE INVOLVING THE MOST AGGREGATED AND LEAST MITIGATED OF OUR CITIZENS. I ASK YOU TO REVERSE AND GRANT MR. COLLEY A NEW TRIAL.

>> The Court: OKAY.
THANK YOU.
WE'RE ADJOURNED.

>> The Bailiff: ALL RISE.