David Eugene Johnston v. State of Florida

SC65525 | SC09-839

>> THE NEXT CASE ON THIS COURT

DOCKET IS

JOHNSTON VERSUS STATE.

>> GOOD MORNING, MAY IT

PLEASE THE COURT AND

COUNSEL, TODD DALTON ON

BEHALF OF DAVID JOHNSTON, I

BEGIN MY ARGUMENT BY

FOCUSING ON THE DENIAL OF

DNA TESTING THAT WAS

SUBMITTED IN THE CIRCUIT

COURT

THE JUDGE WADDLES HAD

ORDERED AND FOUND THAT THE

EVIDENCE THAT WE HAD

REQUESTED TO BE TESTED WOULD

NOT RESULT IN AN EXONERATION

OF MR. JOHNSTON

>> WAS THERE EVER A

DETERMINATION SPECIFICALLY

AS TO THE FINGERNAIL

SCRAPINGS, WHETHER THERE WAS

-- WHETHER THE EVIDENCE

STILL EXISTED AND WHETHER

THERE WAS SUFFICIENT AMOUNT

TO ALLOW FOR DNA TESTING?

>> JUDGE WADDLES DID NOT --

WADDLES DID NOT MAKE THAT

SPECIFIC FINDING

I HAD COMMUNICATED TO JUDGE

WADDLES I HAD BEEN TO THE

ORLANDO POLICE DEPARTMENT AT

THE HEARING, AND THERE WERE

IN FACT FINGERNAIL CLIPPINGS

THERE

AND I HAVE WENT THROUGH THE

EVIDENCE WITH THE ORLANDO

POLICE DEPARTMENT

REPRESENTATIVES TO DETERMINE

WHETHER OR NOT THIS EVIDENCE

WAS IN FACT THERE

>> THAT EVIDENCE HAS NEVER

BEEN TESTED?

BY ANYBODY?

>> THERE'S NO INDICATION

WHATSOEVER THAT IT'S BEEN

TESTED

AND THE FORENSICS SEROLOGIST

TESTIFIED THAT THERE WAS

BLOOD ON THERE, NOT ENOUGH

FOR SEROLOGY TESTING, DNA,

THERE WASN'T ENOUGH FOR

TESTING, WE'RE TALKING ABOUT

1983, 1984 AND THE

INDICATIONS WAS THERE WAS

FLESH UNDERNEATH THOSE

FINGERNAILS

>> THIS CASE IS OVER 25

YEARS OLD, CORRECT?

>>

>> AND THIS EVIDENCE HAS

BEEN AROUND SINCE THAT TIME?

THAT'S WHAT IS TROUBLING TO

ME, IS WE'VE HAD MULTIPLE

CASES INVOLVING THIS

DEFENDANT, OF COURSE, WE'VE

HAD POST CONVICTION, WE'VE

HAD HABEAS, KEYS GONE TO

FEDERAL COURT, AND YET NO

ONE EVER ASKED TO HAVE

THIS EVIDENCE TESTED BEFORE

WE HEAR, YOU KNOW, 25 YEARS

LATER ON THE EVE OF

EXECUTION AND WE FINALLY GET

A MOTION TO TEST THIS

EVIDENCE, AND YOU KNOW, IT

SEEMS TO ME THAT AS SOON AS

ANY DEFENDANT HAS, IT CAN

WAIT UNTIL THE LAST MOMENT

BEFORE AN EXECUTION IS

SUPPOSED TO TAKE PLACE AND

ASK TO HAVE THIS KIND OF

EVIDENCE TESTED

>> I CAN'T SPEAK TO ANY OF

THE PRIOR COUNSEL

I WAS APPOINTED ON

APRIL 24TH, ONCE THE WARRANT

HAD BEEN SIGNED AND I FILED

IT 12 DAYS LATER AFTER

REVIEWING THE RECORD

>> BUT YOU UNDERSTAND -- WE

UNDERSTAND YOU'RE GOING TO

DO EVERYTHING YOU CAN TO

POSTPONE THE EXECUTION, BUT

GOING BACK, AND I UNDERSTAND

THAT THERE'S NOT A SPECIFIC

TIME BAR FOR THE DNA MOTION,

BUT IN THIS CASE, AND

LOOKING BACK ON ALL THE

PRIOR POST-CONVICTION

PROCEEDINGS, ACTUAL

INNOCENCE DOES NOT LOOK LIKE

THERE WAS EVER THE THRUST OF

THIS PARTICULAR CASE

AND I CAN CERTAINLY

UNDERSTAND WHY, BECAUSE HOW

DO YOU GET AROUND THE

FOOTPRINT OF THE KITCHEN

WINDOW, THE SCRATCH MARKS ON

HIS FACE, AS LATE AS 2:00

A.M., HE DIDN'T HAVE IT, THE
BLOOD-COVERED WATCH FOUND ON
THE BATHROOM COUNTERTOP, THE
BUTTERFLY PENDANT THAT WAS
THE DEFENDANT'S ENTANGLED IN
THE VICTIM'S HAIR, HIS
ADMITTED POSSESSION OF ITEMS
FROM HER HOME, SILVER AWARE,
CANDLE -- SILVERWARE,
CANDLESTICKS, TEA POUT AND
CREATING THESE BOGUS
CONFESSIONS FROM ANOTHER
PERSON THAT HE FABRICATED
I MEAN, THIS SEEMS TO BE A
CASE OF OVERWHELMING GUILT
NOW
I MEAN, WHETHER THIS IS A
MENTALLY ILL DEFENDANT THAT
SOME TIME BACK THAT SHOULD
HAVE BEEN DEVELOPED FURTHER,
AS FAR AS WHAT IS GOING
THROUGH HIS MIND AT THE TIME
OF THE CRIME, THAT'S ANOTHER
STORY
BUT IT DOESN'T SEEM TO ME,
IN TERMS OF THE ACTUAL
INNOCENCE, THAT THERE WAS
ANYTHING THAT THE DEFENSE
LAWYER THOUGHT HE OR SHE

SHOULD BE PURSUING GIVEN ALL
OF THIS OTHER OVERWHELMING
EVIDENCE
>> WELL, WE ARE TALKING
ABOUT A PROFOUNDLY MENTALLY
ILL INDIVIDUAL THAT'S BEEN
THE SUBJECT OF MANY
COMPETENCY HEARINGS WITH
VOLUMINOUS MEDICAL RECORDS
SHOWING HE HAD BEEN FOUND
INCOMPETENT IN KANSAS AND
HAD MANY PSYCHIATRIC
>> AND I'M PUTTING ASIDE
WHETHER THIS IS A MENTALLY
ILL DEFENDANT
I KNOW THAT'S NONE OF YOUR
POINT
BUT AS FAR AS THE ACTUAL
INNOCENCE OR THIS
PROBABILITY OF AN ACQUITTAL
OR THE THRESHOLD FOR THE
3.853, A REASONABLE
PROBABILITY OF AN ACQUITTAL,
NOTHING HAS EVER -- THERE'S
NOTHING THAT TAKES AWAY FROM
ALL OF THOSE ITEMS THAT I'VE
JUST MENTIONED THAT JUST
POINT TO THAT THIS DEFENDANT

KILLED THIS ELDERLY VICTIM

>> I THINK IT DOES, AND

WHERE I WAS GOING WITH THE

FACT OF BEING MENTALLY ILL,

I THINK WE CAN DISCOUNT MUCH

OF WHAT MR. JOHNSON HAS SAID

BECAUSE IT IS THE RAMBLING

OF A MENTALLY ILL MAN

WHEN YOU LOOK AT THE

PENDANT, THE TESTIMONY

REGARDING THE PENDANT, WE

HAD ACTUALLY CITED IN OUR

REPLY BRIEF AS TO THERE WAS

CONFLICTING TESTIMONY ON

THAT WHERE THE GIRLFRIEND

INITIALLY IDENTIFIES IT AS

THE BUTTERFLY PENDANT, BUT

LATER ON, SHE SAYS THAT NO,

HE HAD A HEART-SHAPED

PENDANT ON AND DARREN

MARTIN, THAT WAS THE ROOMMATE

OF MR. JOHNSON, ALSO

TESTIFIED HE HAD A

HEART-SHAPED PENDANT

SO I DON'T THINK THAT THAT'S

AS CONCLUSIVE AS WHAT THE

CIRCUIT COURT HAD MADE IT

OUT TO BE

WE'VE ALSO ASKED TO BE ABLE

TO TEST THE FOOTPRINT
EVIDENCE THAT'S OUT THERE
THAT HAS NEVER BEEN TESTED
THAT BASICALLY WAS JUST SAID
WELL IT APPEARS TO BE THE
TREADWARE WHICH TIES
IN WITH OUR FORENSIC TESTING
MOTION AND THE NATIONAL
ACADEMY OF SCIENCE REPORT
THAT HAS SAID WE NEED
STRICTER STANDARDS, WE NEED
TO HAVE MORE RELIABILITY IN
THIS TESTING
WHEN YOU LOOK AT THE
ARGUMENT I HAD CITED FROM
THE STATE, THEY'VE NEVER
INDICATED THAT THERE WAS
ANYONE ELSE THAT WAS
INVOLVED OTHER THAN
MR. JOHNSTON AND THAT HE WAS
THE ONLY ONE IN THAT HOUSE
MR. JOHNSTON, GRANTED,
THERE'S MUCH INCONSISTENCY
IN WHAT HE SAID, WE CAN
GLEAN THAT HIS STORY IS HE
COMES IN THE HOUSE, WHOEVER
THE ATTACKER AND KILLER WAS
HAD ALREADY PERPETRATED THE

CRIME AND LEFT, SO WE HAVE

--

>> LET ME ASK YOU THIS:

WHAT ABOUT THE BLOOD ON THE

DEFENDANT'S PERSON?

HE'S GOT A SUBSTANTIAL

AMOUNT OF BLOOD ON HIM,

RIGHT?

>> THAT IS CORRECT

>> NOW, IN ALL THESE

DIFFERENT STORIES, HE'S TOLD

-- THAT HE'S TOLD, DID HE

EVER GIVE ANY INDICATION

THAT HE HAD CONTACT WITH

THIS THIRD PARTY

PERPETRATOR?

>> NOT TO MY RECOLLECTION

>> WHAT HE SAID IS HE SAW

SOMEBODY

HE NEVER INDICATED THEY HAD

SOME KIND OF COLLISION THAT

WOULD HAVE RESULTED IN THE

TRANSFER OF BLOOD FROM THIS

THIRD PARTY TO HIM, AND SO

THE BLOOD, WE CAN GLEAN FROM

THAT, WOULD BE TOTALLY --

TOTALLY INCONSISTENT

IF YOU'RE LOOKING FOR SOME

EVIDENCE THERE, IT WAS -- IT

WOULD BE TOTALLY

INCONSISTENT WITH ANYTHING

THE DEFENDANT EVER SAID,

RIGHT?

>> I DON'T THINK SO

HE HAD TESTIFIED THAT HE

COMES IN AT ONE POINT -- OR

THAT HE MAKES A STATEMENT,

HE NEVER TESTIFIED, BUT HE

MAKES A STATEMENT THAT HE

COMES IN THE ROOM AND

APPROACHES TO WHERE THE

VICTIM IS AND LEANS DOWN AND

GRABS A HOLD OF HER ON THE

BED

WE DON'T KNOW IF THERE'S ANY

MIX OF THIS OTHER

PERPETRATOR WITH HIS BLOOD

OUT SOMEWHERE THERE BECAUSE

THE INDICATION FROM HER

FINGERNAILS IS SHE STRUGGLED

WITH WHOEVER THE ATTACKER

WAS, THUS THE BLOOD AND THE

FLESH ON THERE, AND I THINK

OUT OF ALL THE THINGS WE'VE

REQUESTED TESTING THAT

THAT'S THE MOST DEFINITIVE,

BECAUSE WHEN YOU LOOK AT THE

CLOSING ARGUMENT, THE

CLOSING ARGUMENT THAT THE

PROSECUTOR AT THE TIME MAKES

IS THIS VICTIM IS SCRATCHING

AND CLAWING FOR HER LIFE ON

HER BED AND THAT'S WHERE THE

SCRATCH ON MR. JOHNSTON'S

FACE HAD COME FROM, AS

OPPOSED TO HIS STORY THAT HE

HAD IN FACT PURCHASED A

PUPPY THAT DAY AND WHEN HE

WAS MAKING WITH THE PUPPY

THAT IT HAD SCRATCHED HIM

THERE IS EVIDENCE TO

CORROBORATE THE FACT THAT HE

DID BUY A PUPPY THAT DAY,

THERE IS OTHER TESTIMONY TO

SAY THAT WELL, I DIDN'T SEE

A SCRATCH ON HIM WHENEVER HE

LEFT AT 12:00 WITH THE TIME

AND DEATH BEING SOMEWHERE

BETWEEN 3:00 AND 4:00, BEST

WE CAN TELL

THE EVIDENCE OF THOSE

FINGERNAILS, THOUGH, I

THINK, IS CRITICAL HERE

IT WASN'T AVAILABLE BACK IN

1983-'84, WE HAD THE SIMPLE

SEROLOGY TESTING THAT WAS

NOT NEAR AS ACCURATE AS WE
HAVE NOW, PARTICULARLY THE
MITOCHONDRIAL TESTING OR THE
REPEAT TESTING WE CAN NOW DO
THE FURTHER CERTAIN AND I
CITE THUNDERSTORM IN MY
BRIEF IS THE CASE THAT'S
CURRENTLY PENDING BEFORE THE
U.S. SUPREME COURT,
OSBOURNE, WHERE IT DEALS
WITH ACCESS TO DNA EVIDENCE
AND WHETHER OR NOT DENYING
ACCESS TO THE DNA EVIDENCE
IS A DUE PROCESS VIOLATION
IN AND OF ITSELF, AND I
THINK THAT MR. JOHNSTON HAS
A RIGHT HERE AS TO ACCESSING
THIS EVIDENCE AND HAVING IT
TESTED, AND THAT WHEN WE
LOOK AT IT IN THE SCHEME OF
THINGS, THAT THE TESTING
WON'T TAKE THAT LONG
IT'S EITHER GOING TO BE
SHOWING THAT SOMEONE ELSE'S
DNA IS THERE OR IT'S GOING
TO BE SHOWING THAT HIS DNA
IS THERE, OR POSSIBLY
INCONCLUSIVE

AT THAT POINT, IT'S MUCH
MORE DEFINITIVE AS FAR AS
GOING FORWARD WITH THE
EXECUTION OF MR. JOHNSTON
HE'S COMPLIED WITH EVERY
ASPECT OF 3.853, WITH NO
TIME LIMITATION BEING THERE
I UNDERSTAND THIS COURT'S
CONCERN, BUT THERE'S NO TIME
LIMITATION THERE, AND
MR. JOHNSTON HAS LAID OUT
EACH AND EVERY ASPECT OF
3.853, THE ONLY THING THAT
JUDGE WADDLES
IS HUNG ON IS THIS
EVIDENCE THAT WOULD
EXONERATE HIM OR NOT
NOW, WHEN I DISCUSSED THE
FIRST BORN CASE, I USE THAT AS
A PREDICATE TO ESTABLISH
THAT WE'RE ALSO ENTITLED TO
THIS FORENSIC EVIDENCE
THAT'S THERE, SUCH AS THE
FOOTPRINT
I HAVE REPRESENTED TO JUDGE
WADDLES THERE IN THE TRIAL
COURT THAT I'VE PERSONALLY
SEEN THE CASTS, THE CASTS
ARE STILL THERE, THE

FOOTPRINT EVIDENCE IS STILL
THERE SO THAT WE CAN HAVE
SOMEONE DO A MORE RIGOROUS
EXAMINATION THAN WHAT WAS
REVEALED IN THE TRIAL
TRANSCRIPT, WHICH BASICALLY
THEY JUST SAID IT APPEARED
TO BE SO
THEY DIDN'T REALLY GO
THROUGH A WHOLE LIST OF
QUALIFICATIONS
>> NOW, ON SOMETHING THAT'S
NOT BEING DNA TESTED, AND
YOU'VE SAID THE FOOTPRINT
HAS -- THE CAST HAS BEEN
THERE, YOU DON'T HAVE A
FREESTANDING RIGHT JUST TO
HAVE ANYTHING TESTED
I MEAN, THE GOVERNOR CAN SAY
YES, I CAN GET IT TESTED BUT
IT CAN'T -- IF IT CAN'T BE
DNA TESTS, WHERE IS THE
AUTHORITY THIS COURT HAS IN
-- LET'S SAY LET'S ORDER
TESTING OF ALL OTHER ITEMS?
>> I HAD CITED TO THE
OSBOURNE CASE WHERE THE
ARGUMENT WAS MADE --

>> THE U.S. SUPREME COURT

>> IT'S BEFORE THE U.S.

SUPREME COURT, HOWEVER, THE

UNITED STATES NINTH CIRCUIT

OF APPEALS HAD INDICATED IT

DIDN'T LIMIT THEIR RULING TO

DNA EVIDENCE

IT SAID BIOLOGICAL EVIDENCE

I THINK THAT THAT'S MORE --

>> BUT YOU WOULD AGREE THE

STATUTE WHICH DOESN'T HAVE A

TIME LIMIT IS LIMITED TO DNA

EVIDENCE?

>> ABSOLUTELY 3.853 IS

LIMITED TO DNA EVIDENCE, AND

THAT'S WHY JUDGE PARIENTE,

BROUGHT IT IN TWO MOTIONS,

BECAUSE I UNDERSTAND WE'RE

TALKING ABOUT TWO SEPARATE

MECHANISMS, TWO SEPARATE --

>> WAS THE FOOTPRINT EVER

CHALLENGED?

I KNOW THAT THERE HAVE BEEN

CASE THAT IS TALK ABOUT A

LOT OF THE SCIENCE THAT IS

USED

THE FOOTPRINT ANALYSIS HAS

COME UNDER FIRE AS ONE OF

THE AREAS THAT REALLY ISN'T

AS ACCURATE AS WE MIGHT HAVE
FIRST THOUGHT, BECAUSE AS
JUDGE QUINCE SAID, THERE
HAVE BEEN CONVICTION PHASE A
COUPLE OF DECADES AND I
DON'T RECALL THERE BEING A
CHALLENGE, REFRESH MY
RECOLLECTION, TO THE
FOOTPRINT EVIDENCE
>> I DON'T RECALL THAT THAT
HAD EVER BEEN CHALLENGED
HAD IT BEEN CHALLENGED, I
WOULD HAVE PRESENTED IT TO
THE COURT WHATEVER THE
RESULTS WITH WERE AND I
CAN'T ANSWER THE QUESTION AS
TO WHY IT HASN'T BEEN
>> I THINK POST-CONVICTION,
IT WASN'T ARGUED THAT NOW WE
HAVE A FOOTPRINT EXPERT THAT
CAN SHOW THIS MIGHT NOT BE
OR WASN'T MR. JOHNSTON'S
FOOTPRINT
>> I HAVE NO INDICATION --
>> I MEAN, I UNDERSTAND, YOU
CAME IN APRIL, AND YOU ARE
CERTAINLY, HAVE DONE A YEOMAN'S
JOB ON MR. JOHNSON'S HALF BUT

THROWING ALL OF THIS OUT AFTER 25 YEARS, IS -- YOU KNOW, IS JUST -- TURNS THE PROCESS ON ITS HEAD.

AND THE TIME LIMITS THAT ARE IMPORTANT FOR, YOU KNOW, IN THE SCHEME OF THE WAY DEATH CASES GO AND I THINK -- I DON'T THINK ANY AUTHORITY, FOR TO YOU ORDER ANYTHING OTHER THAN THAT -- THE DNA TESTING ASSUMING, THERE IS A THRESHOLD ON THAT.

>> I THINK THERE IS A DUE PROCESS RIGHT AND THAT IS WHY I SPECIFICALLY LINKED IT TO OSBORNE AND ALSO, IT DOVETAILS INTO THE NEWLY DISCOVER CLAIM REGARDING THE NATIONAL ACADEMY OF SCIENCES REPORT THAT CAME OUT AND CALLS INTO QUESTION, MUCH OF WHAT HAS BEEN DONE, IN THESE OTHER FORENSIC SCIENCE AREAS, AS ILLUMINATED BY DNA TESTING --

>> HAVEN'T WE REALLY CROSSED THE BRIDGE WITH REGARD TO STUDIES AND THOSE KINDS OF THINGS WITH REGARD TO WHETHER THESE THINGS ARE REALLY NEWLY DISCOVERED EVIDENCE.

AS OPPOSED TO FACTUAL MATTERS
DEALING WITH THE CASE, HAVEN'T
WE ALREADY CROSSED THAT...
>> MY UNDERSTANDING OF THE
COURT'S CASE LAW REGARDING THAT
IS THAT IT NEEDS TO BE TIED
SPECIFICALLY TO A PARTICULAR
CASE, AND I AM AWARE OF RUTH
FORD AND THAT -- THE WHOLE LINE
OF CASE THAT'S DEALT WITH THE
ABC REPORT WHICH I SUBMITTED A
MUCH MORE GENERAL REPORT THAN
WHAT WE HAD WITH THE NATIONAL
ACADEMY OF SCIENCES AND IS MORE
IN LINE WITH WHAT I CITED, WHERE
THE COURT RELINQUISHED
JURISDICTION SO TREPAL COULD
HAVE AN EVIDENTIARY HEARING AND
THE ABILITY TO LINK THE FBI
REPORT REGARDING FRAUD IN THAT
LAB TO HIS CASE, THE COURT NEVER
INDICATED THIS WASN'T
NECESSARILY NEWLY DISCOVERED
EVIDENCE, IN AT THE TREPAL CASE
AND IT SAID IT WASN'T
ESTABLISHED THAT IT ROSE TO THE
LEVEL OF WARNING RELIEF FOR
TREPAL I DIDN'T TAKE THAT AS A

CATEGORICAL EXEMPTION AND I
SPECIFICALLY -- DIDN'T LINK IT
SPECIFICALLY TO THE CASE AND THE
SPECIFIC PIECES OF EVIDENCE THAT
WERE ADMITTED INTO
MR. JOHNSTON'S CASE SO THAT THIS
COURT COULD SEE, THE VALUE OF
THAT.
AND I THINK, TOO, WHEN WE ARE
TALKING ABOUT THAT KIND OF
EVIDENCE AND TALKING ABOUT
EXONERATION THERE WERE 14 PRINTS
THAT WERE LIFTED WITHIN THE
VICTIM'S HOME.
FOR YOU WERE USABLE.
AND WERE ACTUALLY COMPARED TO
MR. JOHNSTON TO THE VICTIM AND
TO KEVIN WILLIAMS, THE SUBJECT
OF ALERT SUPPOSEDLY WRITTEN BY
HIM AND LATER DEBUNKED AND IT
DIDN'T MATCH THAT AND WHEN WE
COME AND ASK ABOUT EXONERATION
AND THE POSSIBILITY THAT THERE
IS SOMEONE ELSE'S FLESH AND
SOMEONE ELSE'S BLOOD UNDER
THERE, AT A REASONABLE
PROBABILITY THERE IS SOMETHING
ELSE THERE AND IT IS HEIGHTENED
BY MR. JOHNSTON'S MENTAL ILLNESS

THAT HE IS -- RAMBLING OF A
PROFOUNDLY MENTALLY ILL MAN AND
I THINK IT IS BEYOND DISPUTE
HE'S MENTALLY ILL AND HEIGHTNESS
THE NEED TO CORROBORATE WHAT
HE'S SAYING AND SIT IN CONTRAST
TO WHAT THE PROSECUTOR ARGUED IN
CLOSING ARGUMENT I CITED IN MY
BRIEF.
>> YOU ARE WELL INTO YOUR
REBUTTAL IF YOU WANT TO SAVE
SOME TIME.
>> THANK YOU VERY MUCH.
>> MR. NUNNELLEY.
>> I REPRESENT THE STATE OF
FLORIDA.
LET ME START --
>> COULD YOU START IN THE PART?
HOW LONG DID MR. JOHNSTON
EFFECTIVELY NOT HAVE A LAWYER
BECAUSE THE PRIOR LAWYER OR THE
CTCC HAD MOVED FOR WITHDRAWAL,
WHAT IS THE TIMEFRAME?
>> IF I... I'M MATH CHALLENGED
THIS MORNING, JUSTICE PARIENTE.
MAYBE A YEAR.
I THINK --
NO, NO, I'M SORRY, NOVEMBER OF

LAST YEAR, I BELIEVE, IS WHEN
THE MOTION TO WITHDRAW WAS
FILED.
>> AND THEY -- WHAT WAS THE
BASIS FOR THEIR MOVING FOR
WITHDRAWAL.
>> THEY WERE TOO BUSY.
>> THIS IS THE CTRC MENTAL.
>> YES MA'AM THE BASIS OF THEIR
MOTION TO WITHDRAW WAS THEY WERE
TOO BUSY TO DO THE CASE.
>> AND WHEN IT WAS SIGNED, THE
JUDGE HEARD IT AND DECIDED THEY
WEREN'T TOO BUSY AND APPOINTED
MR. DODD AS COUNSEL.
>> WELL, JUDGE WALLACE NEVER --
HE LET CCRC OUT ON THE POINT OF
MR. DOS AND DIDN'T MAKE FINDINGS
ON WHETHER THEY WERE TOO BUSY,
THEY WERE THERE AND SAID WE
CAN'T DO IT WEEKS HAVE THE FILES
BOX U. DOWNSTAIRS AND THE JUDGE
SAID, MR. DOSS YOU WOULDN'T TAKE
THE -- WANT TO TAKE THE CASE AND
TO HIS CREDIT, HE SAID, YES,
SIR, I AM.
>> BUT AT THE POINT THEY SAID
THEY WERE TOO BUSY WAS THERE
ANYTHING GOING ON IN MORE

JOHNSTON'S CASE?

>> NO.

>> HAVE THEY JUST...

>> [INAUDIBLE].

>> YOU GOT THE FREE BE I GUESS.

>> THAT'S OKAY.

>> I'M I MEAN, I'M CONCERNED
BECAUSE WARRANTS ARE GETTING
SIGNED AND THIS ENDED UP
HAPPENING, THIS IS -- IT IS
DETRIMENTAL TO THE
ADMINISTRATION OF JUSTICE IF YOU
HAVE A NEW LAWYER JUMPING IN
LESS THAN 30 DAYS BEFORE AN
EXECUTION AND NOW HAVING TO LOOK
AT THE WHO'LL THING AND NOW,
MAYBE CCR MENTAL SHOULD HAVE
BEEN LOOKING AT THE ISSUE, IT
SEEMS LIKE THE FINGER IS NOW...
[INAUDIBLE] CAN YOU HELP ME
ANYBODY MORE ON WHETHER THINGS
STARTED TO HAPPEN, IN
MR. JOHNSTON'S CASE AND CCRC
MENTAL SAYS WE ARE TOO BUSY OR
JUST FILED IT IN MR. JOHNSTON'S
CASE AND NO OTHER CASE?
WE CAN'T REPRESENT THE DEFENDANT
BECAUSE WE ARE TOO BUSY.

>> LET ME ANSWER THAT IN THE

WAY:

OKAY.

THE LAST PROCEEDING -- LAST RUN

THROUGH THIS COURT WAS THE

MENTAL RETARDATION PROCEEDING IN

2006.

WHEN MR. JOHNSTON WAS

REPRESENTED BY ED MILLS.

MR. MILLS HANDLED THAT --

>> AND WHO WAS HE.

>> HE WAS REGISTRY COUNSEL

APPOINTED BY JUDGE WALLACE WHO

REPRESENTS MR. JOHNSTON AS I

RECALL AND THIS IS A LOT OF

DUSTY FILES, JUSTICE PARIENTE

BUT BOTTOM LINE, MR. MILLS WAS

APPOINTED, TRIED THE MENTAL

RETARDATION HEARING, AND STAYED

IN THE CASE, FOR A PERIOD OF

TIME, AFTER THAT, I DON'T

HONESTLY REMEMBER IF HE SOUGHT

CERTIFICATE REVIEW OR NOT, I

DON'T KNOW, DOESN'T MATTER,

ULTIMATELY, MR. MILLS SAID --

APPARENTLY REACHED THE

CONCLUSION THERE IS NOTHING MORE

I CAN DO AND FILED THE MOTION TO

WITHDRAW WHICH WAS GRANTED.

>> BUT UNDER THE SYSTEM HE'S SUPPOSED TO STAY IN UNTIL THE EXECUTION.

ISN'T THAT -- I MEAN, WE NEED -- THESE THINGS, BECAUSE WE NEED TO KNOW THERE HAS BEEN -- I THINK THE ATTORNEY GENERAL'S OFFICE NEEDS TO MAKE SURE THE GOVERNOR'S OFFICE NEEDS TO KNOW THE SYSTEM MAY START TO BE BREAKING DOWN, BECAUSE EITHER THERE ARE NOT EFFICIENT REGISTRY COUNSEL FOR CCRC MENTAL OR STAFF ARE TOO BUSY, WE CAN'T THEN -- IT PUTS THIS COURT IN A POSITION OF INSTEAD OF MR. JOHNSTON HAVING ONE PERSON REPRESENTING HIM OVER THE LASTING, YOU KNOW, DECADE, HE'S NOW HAVING SOMEBODY COMING IN FOR THIS AND SOMEONE COMING IN FOR THAT, AND MAYBE THAT IS THE REASON WHY NOBODY LOOKED AT THE WHOLE CASE TO SAY, THERE IS AN ISSUE THAT NEEDS TO BE EXPLORED.

>> AFTER MR. MILLS WAS ALLOWED OUT, ANOTHER REGISTRY ATTORNEYS WAS PROMPTLY APPOINTED, A

MR. SOLIS I BELIEVE IT IS.

SOLIS, I THINK.

AND HE APPOINTED TO THE CASE, BY JUDGE WADDLES, AND SOME SEVERAL MONTHS, 6, 8, 10 MONTHS, LATER, HE FILES A MOTION TO WITHDRAW. STATING THAT I HAVE REVIEWED THE FILES AND RECORDS AND I SEE NOTHING THAT I CAN RAISE.

>> MR. NUNNELLEY, HEARS MY CONCERN, YOU HAVE A CASE, THE DEFENDANT IS IN NO HURRY FOR... [INAUDIBLE] THEY FILE A MOTION TO WITHDRAW.

DISMISSED.

NO ONE IS SCHEDULED FOR THE HEARING.

[INAUDIBLE] INTO THIS WOULD BE THE CCR MOTION.

>> RIGHT.

MOTION TO WITHDRAW AND UNTIL THAT IS RESOLVED, I THINK YOU KNOW, YOUR OFFICE KNOWS, THE CASE IS NOT GOING ANYWHERE.

WHY IS IT THAT YOUR OFFICE [INAUDIBLE] WHY DID YOU NOT SCHEDULE IT FOR A HEARING.

>> THERE WAS NO ACTION GOING ON IN THE CASE.

CCRC HAD MOVED TO WITH DRAW, IT
WAS THEIR MOTION AND WOULD HAVE
BEEN THEIR BURDEN TO SEEK A
RULING ON THAT MOTION, AND UNTIL
THAT MOTION IS RULED ON THEY
REPRESENT THE MAN, THEY ARE
STATUTORILY CHARGED TO REPRESENT
HIM.
>> THEY FILED A MOTION, DIDN'T
SCHEDULE IT FOR A HEARING.
IT SITS THERE FOR A YEAR.
WHY DOESN'T YOUR OFFICE SCHEDULE
FOR A HEARING, AD AND LET'S
BRING IT TO A HEAD AND GET GOING
ON THIS.
OTHERWISE, IT HAPPENS WHEN THE
GOVERNOR SIGNS THE EXECUTION
WARRANT.
>> I CANNOT GIVE YOU AN ANSWER
FOR THAT.
PERHAPS WE SHOULD HAVE.
BUT, ON THE OTHER HAND, CCR AS
THE MOVING PARTY, IS THE ONE
THAT HAS THE BURDEN TO GET THE
CASE IN FRONT OF THE COURT.
IF THEY WERE -- IF THEY WANT TO
-- A RULING ON THEIR MOTION THEY
NEED TO ASK FOR IT.

>> YOU ARE SAYING, THERE WAS A SECOND REGISTRY COUNSEL WHO THEN MOVED TO WITHDRAW AND IS THAT WHEN --

>> CCRC WAS APPOINTED AND IT WAS SOMETIME AFTER THAT, NOT IMMEDIATELY, SOMETIME LATER, THAT THEY CAME IN, SAYING, WE ARE TOO BUSY TO HANDLE THIS CASE.

>> THE IMPLICATION THERE IS, THERE ARE OTHER THINGS THAT ARE AVAILABLE TO DO, WE ARE JUST TOO BUSY TO DO IT, BECAUSE, CERTAINLY, CAN'T BE TOO BUSY TO DO NOTHING.
WHICH IS WHAT YOU ARE SAYING THE OTHER REGISTRY COUNSEL --

>> THEY DID NOT SAY THAT THEY WERE TOO BUSY TO DO NOTHING.
THEY SAID, WE CAN NOT -- CANNOT TAKE THIS CASE INTO OUR OFFICE.

>> LET ME ASK YOU, AND MAYBE THIS IS WHERE YOU ARE GOING.
I'M CONCERNED, I DON'T KNOW HOW CONCERNED I AM, BUT I AM CONCERNED THAT DNA TESTING WAS NEVER DONE ON THESE FINGER NAIL SCRAPINGS, WHICH COULD EITHER

CONCLUSIVELY SHOW MR. JOHNSTON
IS THE PERPETRATOR, OR, RAISE
GENUINE CONCERNS IF IT IS
POINTED TO ANOTHER PERSON, I
MEAN, DNA, WHY DIDN'T THE STATE
JUST SAY, YOU KNOW, OKAY.
WE'LL HAVE THIS -- THESE
FINGERNAIL DESCRIPTIONS, DNA
TESTED AND HOW COME THAT WAS
NEVER DONE?
I DON'T UNDERSTAND IT.
>> I'LL GIVE YOU TWO ANSWERS AND
I DON'T MEAN TO BE INTEMPERATE
WITH THE FIRST ONE --
INTEMPERATE WITH THE FIRST ONE,
JUSTICE, I REALLY DON'T BUT IT'S
NOT THE STATE'S BUSINESS TO
RETRY FINAL CASES AND THIS
SECOND REASON WHICH IS REALLY
THE FIRST REASON I SUPPOSE, IS
THIS IS NOT AND NEVER HAS BEEN A
LABORATORY EVIDENCE CASE.
THIS IS A CASE THAT IS BASED
UPON THE EVIDENCE THAT YOU
DISCUSSED WITH MR. DOSS THE
BUTTERFLY PENDANT FOUND IN THE
VICTIM'S HAIR AND THE BLOOD ON
THE DEFENDANT'S CLOTHING, THAT

HAS NEVER, EVER, EVER BEEN

DISPUTED AS TO WHOSE IT WAS,

UNTIL MAY OF THIS YEAR.

THE FOOTPRINT FOUND OUTSIDE THAT

HAS NEVER, EVER, EVER BEEN

DISPUTED IN 25 YEARS, UNTIL NOW

--

>> DID MR. JOHNSTON SAY AT SOME

POINT THAT HE PICKED THE VICTIM

UP.

>> YES, MA'AM --

>> FOUND HER AND SO, I MEAN,

THEORETICALLY THAT IS HOW SOME

BLOOD COULD HAVE GOTTEN ON HIS

PERSON.

>> THIS IS --

>> WAIT A MINUTE.

OKAY.

>> I'M SORRY.

>> THERE ARE OTHER EXPLANATIONS

FOR SOME OF THE EVIDENCE THAT --

EXPLANATIONS FOR SOME OF THE

EVIDENCE WE DO HAVE AGAINST HIM

AND THAT IS WHY IT IS OF CONCERN

THAT THESE OTHER PIECES OF

EVIDENCE WERE NEVER TESTED.

I AM TRULY CONCERNED THAT WE

DON'T HAVE A RULE THAN REQUIRES

YOU, IF THERE IS SOMETHING YOU

WANT TO HAVE TESTED, THAT YOU
ASK FOR THE IT BEFORE YOU KNOW,
THE GOVERNOR SIGNS A DEATH
WARRANT, BUT, BE THAT AS IT MAY
IT SEEMS TO ME THAT SOME OF THE
OTHER EVIDENCE AGAINST
MR. JOHNSTON, THERE ARE OTHER
EXPLANATIONS FOR.
THIS SEEMS TO BE REALLY
SOMETHING THAT COULD, YOU KNOW,
PUT THE NAIL ON IT, AS IT WERE,
BECAUSE IT'S EITHER HIS DNA
UNDER THE LADY'S FINGER NAILS OR
IT ISN'T.
>> LET ME ANSWER THAT BEST I
CAN, YOU MAY HAVE TO HELP ME OUT
WITH SOME OF THIS HERE, JUSTICE
QUINCE, I'M NOT SURE I WILL BE
ABLE TO REMEMBER ALL OF IT.
THE BOTTOM LINE IS THAT
MR. JOHNSTON HAS HAD THE
AVAILABILITY OF DNA TESTING WHEN
HE WAS REPRESENTED BY OLD CCR.
CCR-NORTH, BEFORE THEY WERE
DISSOLVED.
HE COULD HAVE SOUGHT DNA TESTING
THEN.
ANDREWS HAD JUST COME OUT.

EVERYBODY KNEW ABOUT DNA.

HE DIDN'T DO IT.

YOU HAVE IN THE CASE, WHILE

MR. JOHNSTON, THROUGH HIS

STATEMENTS, HAS TRIED TO EXPLAIN

-- AND I BELIEVE THERE ARE

EITHER FIVE OR SIX OF THEM, HE

TRIED TO EXPLAIN AWAY EVERYTHING

KIND OF PIECE BY PIECE, WHEN HE

FOUND OUT, FOR EXAMPLE, THAT LAW

ENFORCEMENT KNEW THAT HE HAD

THAT HE HAD SCRATCHES ON HIS

FACE AND NEXT, HE SAID I BOUGHT

A PUPPY AND THE PUPPY SCRATCHED

ME.

WHEN HE FINDS OUT THE BUTTERFLY

PENDANT IS TANGLED UP IN THE

VICTIM'S HAIR, HE SAYS, OH, I

HAVE KNOWN HER TWO OR THREE

YEARS AND I GAVE IT TO HER AS A

GIFT.

NEVER MIND THE FACT THAT HIS

FORMER FIANCEE TESTIFIED THAT

SHE -- AND SHE WORKED IN A

CONVENIENCE STORE, NOT TERRIBLY

FAR FROM THE CRIME SCENE,

TESTIFIED THAT SHE GAVE THAT

NECKLACE TO HIM AND THAT HE WAS

WEARING IT WHEN SHE SAW HIM,

SHORTLY BEFORE THE MURDER TOOK

PLACE.

NOW, THERE WAS TESTIMONY --

>> CAN YOU ADDRESS THE COMMENT

THAT OPPOSING COUNSEL MADE ABOUT

A HEART-SHAPED PENDANT AS

OPPOSED TO A BUTTERFLY PENDANT.

>> YOU ARE READING MY MIND,

JUSTICE!

YEAH.

THERE IS TESTIMONY, THAT HE HAD

A HEART-SHAPED NECKLACE ON ALSO.

THAT IS WHAT THAT TESTIMONY IS

ABOUT.

NONE OF THE WITNESSES ARE -- AND

LET ME... I WOULD DIRECT THE

COURT TO 572 AND 577, OF THE

RECORD.

AGAIN, FOLLOWED BY 713 OF THE

RECORD, WHERE MR. BARTON IS

TALKING ABOUT HIM HAVING ON A

HEART-SHAPED NECKLACE AND HE

SAID, YEAH, HE HAD ON THAT BUT

HE WAS NOT ASKED, DID HE OR DID

HE NOT HAVE A BUTTERFLY NECKLACE

ON HIM, THAT BUTTERFLY NECKLACE

WAS ON HIS NEXT UNTIL IT WAS

RIPPED OFF BY HIS VICTIM WHEN HE

KILLED HER AND THAT
MR. JOHNSTON'S WATCH, COVERED
WITH BLOOD AND FOUND IN THE
VICTIM'S APARTMENT BY THE
BATHROOM SINK DOESN'T CHANGE.
HE HAD IT ON SHORTLY PRIOR TO
THE MURDER.
>> I WANT TO ASK YOU, BACK TO
THE FINGER NAIL SCRAPINGS.
DOES THE STATE KNOW OR WAS THERE
ANY INQUIRY AS TO WHETHER THESE
SCRAPINGS STILL EXIST AND HAVE
SUFFICIENT AMOUNT OF MATERIAL TO
ALLOW FOR DNA TESTING?
>> I CAN ANSWER HALF OF THAT
QUESTION.
MY UNDERSTANDING FROM REVIEWING
THE EVIDENCE LOGS MAINTAINED BY
THE POLICE DEPARTMENT IS THAT
ITEMS DENOTED AS, QUOTE,
FINGERNAILS, CLOSE QUOTE, REMAIN
IN EVIDENCE AT ORLANDO PD.
WHETHER OR NOT THERE IS ANYTHING
UNDER OR CONTAINED IN OR ON
THOSE FINGERNAILS THAT CAN BE
TEST ORDER NOT, I DO THE NOT
KNOW.
WHETHER -- AND WHETHER -- AND I
SAY, WHETHER IT CAN OR CANNOT BE

TESTED, I MEAN, FIRST OF ALL,

DOES IT EXIST?

B, IS IT IN SUFFICIENT QUANTITY

TO BE TESTED AND, C, IS IT EACH

IN SUCH A STATE THAT TESTING IS

EVEN POSSIBLE.

I DO NOT KNOW THE ANSWER TO

THOSE QUESTIONS.

>> BUT IT WAS A RELEVANT ISSUE

AT TRIAL, THAT IS, THE

FINGERNAIL SCRAPINGS, AND

MR. HALL, WHO WAS ONE OF THE

WITNESS -- EXPERT WITNESSES WAS

ASKED WHY THEY WERE NOT ANALYZED

AND HIS -- OF COURSE AGAIN, IT

IS PRE-DNA AND HE SAID,

SOMETHING ABOUT IT IS OUTSIDE OF

MY FIELD TO DO IT.

SO, THERE IS NEVER IN THE

MEDICAL -- AND THE MEDICAL

EXAMINER CONFIRMED HE TOOK

SAMPLES FROM THE VICTIM'S

FINGERNAILS AND THERE IS NO REAL

EXPLANATION AS TO WHY THEY

WOULDN'T HAVE BEEN TESTED AND,

OF COURSE, DNA TESTING OF THIS

TYPE WAS NOT AVAILABLE --

CERTAINLY NOT AVAILABLE AT THE

TIME OF TRIAL.

AND THE PROSECUTOR ARGUED THAT

THE VICTIM WAS SCRATCHING AND

CLAWING AT JOHNSTON, BASING THAT

ON THE SCRATCH MARKS.

SO WHETHER YOU CALL IT THAT -- I

MEAN -- LET ME ASK YOU THIS

QUESTION:

IF THESE WERE TESTED AND IT

SHOWED THE DNA UNDER HER

FINGERNAILS DID NOT COME FROM

MR. JOHNSTON AND WAS -- NOT FROM

HER, WOULD THAT BE PRETTY

POWERFUL EVIDENCE?

>> NOT COUPLED WITH ALL OF THE

REST OF IT, BECAUSE, WHAT YOU

HAVE IN THE -- IN THIS CASE,

FIRST OF ALL, MR. JOHNSTON IS

STUCK WITH HIS STORY ABOUT THE

PUPPY SCRATCHING HIS FACE.

THE STATE OF THE EVIDENCE IS,

THAT THAT DID NOT HAPPEN.

IT IS UNDISPUTED THAT THE

BUTTERFLY PENDANT THAT WAS FOUND

IN ENGINE -- ENTANGLED IN THE

VICTIM'S HAIR, HAD A BROKEN

CHAIN.

THAT IS NOT DISPUTED.

IT IS A REASONABLE IN FENCE FROM

THE EVIDENCE --

INFERENCE FROM THE EVIDENCE,

REGARDLESS OF WHAT DNA TURNS UP

IN THE FINGER NAILS, IN THE

COURSE OF THE STRUGGLE, THAT IS

HOW THAT HAPPENED AND BOMB LINE,

JUSTICE PARIENTE, THE STATE'S

CASE DOESN'T CHANGE A BIT, BASED

UPON THE DNA EVIDENCE.

WE HAVE THE VICTIM'S BLOOD ON

THE DEFENDANT.

NEVER HAS BEEN DISPUTED.

IT WAS NEVER DISPUTED UNTIL THIS

MONTH.

>> WAS IT TEST --

>> MATCHED UP AB-O GROUP.

>> AND ON THE CLOTHING.

>> YES, MA'AM.

THAT WAS TESTED TO THE EXTENT OF

1984 TECHNOLOGY.

NO QUESTION ABOUT THAT.

HE'S ALWAYS SAID -- I MEAN, HE

SAID, HE GOT THE VICTIM'S BLOOD

ON HIM AND WHEN HE PICKED HER UP

AND CRADLED HER HEAD AND CRIED

OVER HER BODY WAS THE STORY HE

GAVE IN ONE OF HIS MULTIPLE

STATEMENTS, BUT THE BOTTOM LINE,

YOU HAVE AN ALIBI DEFENSE THAT

COLLAPSED.

YOU HAVE AN ATTEMPT BY JOHNSTON

TO POINT THE FINGER AT THIS

KEVIN WILLIAMS PERSON.

THAT COLLAPSED.

YOU HAVE JOHNSTON TAKING ITEMS

FROM -- RATHER, LET ME BACK UP.

TAKE PILLOW CASE OUT OF THE

VICTIM'S HOUSE AND GATHERING UP

A BUNCH OF ITEMS AND TAKE THEM

NEXT-DOOR AND HIDING THEM AT THE

DEMOLITION SITE NEXT-DOOR WHERE

HE WAS WORKING CLAIMING HE TOOK

THEM AS A MEMENTO OF THE VICTIM.

>> I UNDERSTAND AND YOU ALSO

HAVE A DEFENDANT WHO WAS THE ONE

THAT CALLED THE POLICE AND SAID,

YOU KNOW, CRYING, SOMEBODY

KILLED MY GRANDMA.

SO IT'S NOT LIKE HE -- I MEAN,

COMMITTED THE CRIME AND THEN

TRIED TO HIDE.

HE, I MEAN -- HE CALLED THE

POLICE.

NOW --

>> GAVE THEM A FAKE NAME WHEN HE

DID, TOO.

>> WHAT.

>> GAVE A FALSE NAME WHEN HE

DID.

>> I MEAN, THE HOME -- MAYBE THE

MURDERER IS EXPLAINED BY

SOMEBODY WHO IS MENTALLY ILL, I

MEAN, IT IS A VERY -- SEEMS LIKE

A VERY BIZARRE SET OF

CIRCUMSTANCES.

NOT THAT WE DON'T SEE THIS.

>> FORTUNATELY WE DON'T HAVE TO

-- THEY ARE NOT RATIONAL -- THEY

ARE FREQUENTLY NOT RATIONAL

ACTS.

BUT, LET ME -- SINCE YOU MENTION

THE MENTAL ILLNESS, LET ME --

>> THERE IS NO MENTAL

MITIGATION, IN THE CASE.

>> NO, THAT WAS AN ISSUE IN THE

'90S, THE 1991, 5850, AND '91,

'92, BEFORE I HAD THE CASE, AND

LET ME MENTION AND TOUCH ON THAT

A BIT.

WE ARE SEEING FOR THE FIRST TIME

AND I'M NOT TAKING A SHOT AT

MR. DOSS HE'S DOING A GOOD JOB

AND DOING THIS BEST HE CAN WITH

WHAT HE'S GOT AND THE FACT HE'D

DEFEND THE CASE IN

POSTCONVICTION DIFFERENTLY FROM
THE WAY IT HAS BEEN DONE BEFORE
IS NOT THE STANDARD, NOT WHAT WE
ARE HERE ABOUT.
WE ARE HERE ABOUT AND TO THE
EXTENT WE ARE TALKING ABOUT A
MENTAL ILLNESS CLAIM THAT, CLAIM
HAS NEVER, EVER BEEN RAISED TO
CHALLENGE MR. JOHNSTON'S
STATEMENTS UNTIL NOW.
AND THAT COMPONENT OF IT IS
PROCEDURAL BARRED, JUST LIKE ANY
OF THE OTHER TESTING ISSUES, THE
NON- DNA TESTING IS WHAT I
CALLED IT THAT IS BARRED AND
COULD HAVE BEEN DONE A LONG,
LONG, LONG TIME AGO.
AND IT WASN'T.
I DON'T KNOW WHY AND IT DOESN'T
MATTER, BECAUSE THAT IS A
PROCEDURAL BAR.
AS FAR AS THE DNA TESTING, THERE
IS NO TIME LIMIT ON IT.
BUT, THAT RULE AND THAT -- THE
STATUTE UNDERPINNING THE RULE,
WERE NEVER INTENDED TO BE A ONE
FREE STAY OF EXECUTION RULE.
I WOULD SUGGEST TO THE COURT
THAT THE TIMING OF ALL OF THAT

IS HIGHLY, HIGHLY SUSPECT.

AND I DON'T MEAN THAT IN A

DISPARAGING FASHION.

>> SPEAKING OF TIMING, HOW DO

YOU SEE THE TIMELINE FROM THE

ENACTMENT OF THE STATUTE AND THE

RULE AND HOW IT CORRESPONDS WITH

WHEN COUNSEL WAS APPOINTED AND

REPRESENTING THE GENTLEMAN, AND

WHEN THEY HAD WITHDRAWN OR FILED

MOTIONS TO WITHDRAW?

WHAT IS THE TIMELINE AND WHAT

WOULD THAT SHOW US.

>> WE ARE NOT THAT LATE, JUSTICE

LEWIS, WE ARE IN THE EARLY '90s

WHEN IT COULD HAVE BEEN DONE.

>> THE RULE WAS NOT IN THE EARLY

'90s, I'M ASKING ABOUT THE RULE,

IF YOU ADDRESS THAT, THE STATUTE

THERAPY RULE.

>> HE HAD THE OPPORTUNITY

POST-RULE TO MAKE THE MOTION HAD

HE CHOSEN TO DO SO AND WE --

>> I AGREE AND AGAIN, WOULD YOU

DEGREES WHEN HE HAD A LAWYER AND

WHEN HE DIDN'T?

>> HELP ME OUT OF WHEN THE RULE

TOOK EFFECT, JUSTICE LEWIS AND

I'LL HAVE TO...

>> THE RULE TOOK EFFECT,

PROBABLY, IN THE -- AROUND 2002,

I GUESS.

2, 4...

>> AMENDED IN 2006 AND 2007 TO

REMOVE THE TIME LIMITATIONS.

>> HE HAD A LAWYER, IN THE STATE

-- I'M SORRY.

THE FEDERAL HABEAS PROCEEDING

WHICH WAS LATE '90s AND WAS

REPRESENTED, STILL, BY THAT

ATTORNEY, I BELIEVE, UP UNTIL --

I AM HAVING TROUBLE REMEMBERING

ALL OF THE DATES.

I KNOW MR. MILLS CAME INTO IT,

AROUND 2003, OR 2004.

AND I KNOW THAT IS WHEN

MR. MILLS CAME IN, RIGHT WHEN

THE CASE WAS SENT BACK FOR...

>> MENTAL RETARDATION.

>> LET ME SEE IF I HAVE ANOTHER

TIMELINE TO HELP ME OUT HERE.

>> ISN'T IT THE CASE, THAT WE

HAVE TO LOOK AT THIS, AND

EVALUATE THIS, JUST LIKE WE

WOULD EVALUATE IT, IF HE HAD

RAISED IT, FIVE YEARS AGO.

OR SIX YEARS AGO.

OR, RIGHT AFTER THE RULE WAS

ADOPTED.

BECAUSE, IN ITS CURRENT

INCARNATION, THIS RULE HAS NO

TIME LIMIT.

THERE IS NO BAR IN THE RULES TO

BRINGING THIS UP AT THE 11th

HOUR.

>> THAT'S TRUE, IT'S NOT AND LET

ME -- FOUND THE TIMELINE AND GOT

MY CHEAT SHEET HERE.

HE WAS IN THE COURT IN 2000 ON A

PETITION FOR WRIT OF HABEAS

CORPUS, IN STATE CIRCUIT COURT

IN 2002, ON A 3.851 MOTION, AND

CAME OUT OF THIS COURT MAY THE

4TH OF 2006 WITH AN AFFIRMANCE,

AND YES.

HE HAD COUNSEL THAT WAS ACTIVELY

LITIGATING THAT CASE AND JUSTICE

LEWIS I APOLOGIZE FOR BEING SO

LOW TO GET TO THAT ANSWER FOR

YOU, TOO MANY DATES.

>> ONE LAST QUESTION.

IT SEEMS TO ME IN READING THIS

RECORD, THAT THE... STRUGGLE,

SEEMS TO ME SHE PROBABLY

SCRATCHED HIS FACE AND SEEMS TO

ME THE DNA... PROBABLY IS

UNDERNEATH HER NAIL.

THE NAIL CLIPPINGS, THAT ARE NOW

AT THE ORLANDO POLICE

DEPARTMENT.

WHY NOT JUST TEST IT AND WE'LL

BE SURE?

>> BECAUSE I DON'T MEAN, I DON'T

-- I MEAN NO DISRESPECT.

I REALLY DON'T...

>> [INAUDIBLE].

>> [LAUGHTER].

>> IT IS TOO EARLY FOR THAT,

STILL, BUT THE STANDARD IS NOT

WHAT DOES IT HURT.

THE STANDARD IS, IS THERE A

REASONABLE PROBABILITY OF A

DIFFERENT RESULT?

AND, UNDER THESE FACTS, WITH

THIS EVIDENCE, UNDER THE LEGAL

STANDARD --

>> YOU DON'T THINK A JURY OF 12

PEOPLE, IF THEY HEARD THAT THE

DNA, YOU KNOW, THE BLOOD

UNDERNEATH THE VICTIM'S NAILS,

BELONGED TO SOMEONE ELSE, THAT

THAT WOULD NOT RAISE THE ISSUE

WITH THEM.

>> NO, NOT AGAINST THE REST OF

THE FACTS.

NOT AGAINST THE REST OF THE

FACTS AND NOT AGAINST

MR. JOHNSTON'S PREEMPTIVE FAILED

EXPLANATION FOR THOSE FACTS,

WHICH COULD BE TURNED AROUND AND

ARGUED AS... GUILT YOU HAVE

SUBSTANTIAL OTHER EVIDENCE

WITHOUT THE SCRATCHES ON HIS

FACE, AND HE'S THIS ONE THAT

KILLED THE POOR LADY.

I WOULD SUGGEST THE LOWER COURT

SHOULD BE AFFIRMED IN ALL

RESPECTS, AND ANY STAY OF

EXECUTION SHOULD BE DENIED.

IT IS TIME FOR THE SENTENCE TO

BE CARRIED OUT.

>> THANK YOU, MR. NUNNELLEY,

MR. DOSS.

>> I'D LIKE TO FIRST TAKE ISSUE

WITH THE STATEMENT THAT THE

FINGERNAIL SCRAPINGS, WHETHER OR

NOT THERE IS ANYBODY ELSE'S

FLESH OR BLOOD IS ON THAT, FLIES

IN THE FACE OF THE OTHER

EVIDENCE, YOU CAN LOOK BACK TO

THE CLOSING ARGUMENT, THE

PROSECUTOR ARGUING THERE IS NO

EVIDENCE THAT ANYBODY ELSE WAS
IN THE APARTMENT DAVID
EUGENE JOHNSTON AND I WOULD ASK
YOU TO RETURN A VERDICT THAT
SPEAKS THE TRUTH BECAUSE THAT IS
WHAT A TRIAL IS, THAT IS 989.
AS WELL, THE PROSECUTOR ARGUED,
THAT HAPPENED DURING A VIOLENT
STRUGGLE.
THAT HAPPENED WHEN MARY HAMMOND
WAS FIGHTING FOR HER LIFE, WHEN
MARY HAMMOND WAS FIGHTING FOR
HER LIFE, THAT HAPPENED WHEN
MARY HAMMOND WAS SCRATCHING AND
CLAWING AT DAVID EUGENE JOHNSTON
WHEN SHE SCRATCHED HIS FACE AND
NEXT AND RIPPED THE CHAIN FROM
HIS NECK AND THEN IT LODGED IN
HER HAIR AND IT FLIES IN THE
FACE OF WHAT IS ARGUED HERE
TODAY.
THAT IT DOESN'T MATTER.
IT ABSOLUTELY MATTERS AND EACH
ONE -- EACH ONE OF THE ITEMS OF
EVIDENCE THAT HAS BEEN SUGGESTED
TO YOU THAT CONTINUED DISTRICTS
WHETHER OR NOT SOMEONE ELSE WAS
THERE, I DON'T SEE THE RELEVANCE
OF IT.

IT PALES IN COMPARISON TO THE
DNA OF SOMEONE ELSE, THE PUPPY,
AS WAS ARGUED IS SOMETHING THAT
WAS CONVENIENTLY CONJURED UP AND
MR. MARTIN SAID MR. JOHNSTON HAD
A PUPPY AND THERE IS AN ISSUE AS
TO WHETHER OR NOT IT WOULD
SCRATCH AND I URGE THE COURT TO
TAKE A LOOK.
I HAVE DETAILED IN FOOTNOTE 3,
REGARDING THE BUTTERFLY
NECKLACE, THAT, YES, PATRICIA
MANN INITIALLY STATED SHE HAD
SEEN HIM WEARING THE NECKLACE AT
572 AND LATER ADMITTED WHAT SHE
ACTUALLY SAW WAS THE
HEART-SHAPED PENDANT ON 577.
WHICH WAS ALSO CONFIRMED BY
MARTIN AT 713, A HEART-SHAPED
PEN DAN AND THERE IS ABSOLUTELY
DOUBT, MUCH MORE THAN WHAT THE
STATE WOULD LIKE TO ADMIT.
AS TO THE COURT QUESTIONS
REGARDING TIMING, ONCE THE
MENTAL RETARDATION CLAIM WAS
DENIED BY THE COURT IN 2006 AND
MAY, 2006, MR. MILLS, THEN MOVED
TO WITHDRAW.

HE WITHDREW AND MR. SOLIS WAS

APPOINTED.

AND MR. SOLIS NEVER TOOK TO IT

FEDERAL COURT AND NEVER

PROCEEDED ANYWHERE ELSE AND

ASKED TO WITHDRAW.

>> [INAUDIBLE].

>> I'M -- I COULDN'T --

>> DO YOU KNOW WHY WE ASKED TO

WITHDRAW.

>> HE SAYS THERE WERE NO OTHER

ISSUES, WHICH, WHICH MEANT HE

DIDN'T TAKE IT INTO FEDERAL

HABEAS COURT AND DIDN'T TAKE IT

ANYWHERE AND THAT LANGUAGE, FOR

A WHILE, HE WAS ALLOWED TO

WITHDRAW.

CCRC MENTAL WAS APPOINTED TO THE

CASE.

THEY MADE THEIR MOTION, IT

LANGUISHED.

UNTIL THE DEBT WARRANTED WAS

SIGNED AND JUDGE WADDLES

APPOINTED ME AND MR. JOHNSTON

HAS EFFECTIVELY BEEN WITHOUT

COUNSEL IN MY ESTIMATION SINCE

MAY OF 2006 WHICH IS A PERIOD OF

THREE YEARS, WHICH IS TIME

PERIOD WITHIN WHICH THE TIME BAR

WAS LIFTED, ON OUR RULE OF
CRIMINAL PROCEDURE 3.853 AND MY
RECOLLECTION OF THE AMENDMENT,
LIFTING THE TIME BAR IS 2006 AS
THE JUSTICE SUGGESTED AND WHEN
WE LOOK AT THAT AND WE CONSIDER
THIS CASE, THAT IT CRIES OUT FOR
THE DNA TESTING, AND THIS COURT
REVERSE AND SEND BACK TO THE
TRIAL COURT SO THE TESTING CAN
BE CONDUCTED.
APPRECIATE YOUR TIME.
>> THANK YOU, MR. DOS S AND
THANK YOU MORE NUNNELLEY, AND
THE COURT WILL TAKE ITS MORNING
RECESS FOR FIVE MINUTES.
>> PLEASE RISE.