Sonny Ray Jeffries vs State of Florida

MR. CHIEF JUSTICE: THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS JEFFRIES VERSUS STATE. MR. BECKER. MAY IT PLEASE THE COURT. GOOD MORNING. MY NAME IS MICHAEL BECKER, ASSISTANT ATTORNEY, DAYTONA BEACH, AND I REPRESENT SUNNY JEFFRIES IN HIS APPEAL BEFORE THE COURT. MR. JEFFRIES WAS SENTENCED TO DEATH FOR THE MURDER OF MARGARET MARTIN AND APPEALS FIVE ISSUES. BEGINNING WITH THE ISSUES, I WILL DEAL WITH THE FACTS AS WE GET TO DISCUSSION ON THE ISSUES. THE FIRST ISSUE I WOULD LIKE TO DISCUSS WITH THIS COURT IS THE PROPOSE RIGHT OF THE TRIAL COURT'S RULING ON THE MOTION TO SUPPRESS. MISS MARTIN WAS KILLED ON EITHER AUGUST 20 OR 21. 1993. ON SEPTEMBER 10, 1993, APPELLANT AND HARRY THOMAS WERE STOPPED IN A VEHICLE DRIVEN BY HARRY THOMAS, IN RICHMOND HILLS, GEORGIA. THE STOP WAS PURSUANT TO A BOWL-FOR THE VEHICLE -- A BOLO FOR THE VEHICLE, AND ULTIMATELY IT WAS SHOWN THAT THERE WAS AN ARREST WARRANT OUT FOR HARRY THOMAS. THERE WAS NO ARREST WARRANT OUT FOR APPELLANT AT THE TIME. THERE WAS NO INDICATION, AT THAT TIME, THAT APPELLANT WAS WANTED FOR ANYTHING BY THE RICHMONDVILLE POLICE.

WHAT WAS GOING ON IN FLORIDA. THE TESTIMONY, BEFORE THE STOP OCCURRED, WERE THEY IN THE PROCESS OF GETTING THEIR OWN ARREST AND SEARCH WARRANT?

YES.

THAT IS BEFORE THAT TIME?

YES. DETECTIVE BERGEN TESTIFIED THAT, DURING THIS TIME, THEY WERE INVESTIGATING THE CASE, BUILDING THE CASE, WITH THE ULTIMATE GOAL OF GETTING THE ARREST WARRANT FOR APPELLANT. YES. BUT IMPORTANTLY, THERE WAS NONE AT THE TIME. THE STATE CONCEDED BELOW THAT THE ARREST AND DETENTION OF APPELLANT IN RICHMOND HILLS WAS ILLEGAL. THAT IS A GIVEN. NOTWITHSTANDING THIS ILLEGALITY, THE RICHMOND HILL POLICE SEIZED THE SHOES OF APPELLANT, AND THEY WERE ULTIMATELY ENTERED INTO EVIDENCE AGAINST APPELLANT AT TRIAL.

WAS THE SEIZURE OF THE SHOES PURSUANT TO SOMETHING THAT THE FLORIDA AUTHORITIES SAID TO THEM, OR WAS THIS THEIR ROUTINE PRACTICE?

NO. IT WAS NOT THE ROUTINE PRACTICE. DETECTIVE BERGEN FAXED SOMETHING, SAYING TAKE HIM. GET ME HIS SHOES, AND SHE SAID THAT SHE WOULD DO THAT, NO MATTER WHAT AGENCY STOPPED HIM.

IS THAT SIGNIFICANT IN TIS CASE, AS FAR AS THE INEVITABLE DISCOVERY DOCTRINE, WHICH, BASICALLY, SAYS THE POLICE SHOULD NOT BE PUNISHED FOR THEIR MISCONDUCT. COULD YOU EXPLAIN HOW THAT WORKS.

YES. I THINK IT IS VERY KEY. AGAIN, IT WAS, THE MOTION TO SUPPRESS WAS DENIED, ON THE INEVITABLE DISCOVERY DOCTRINE. THE REASON WHY THAT IS IMPORTANT, TO ANSWER YOUR QUESTION SPECIFICALLY, THEY HAD ALREADY SEIZED A PAIR OF SHOES OF APPELLANT AND HAD THEM ANALYZED, AND APPARENTLY LOOKED THEM UP TO THE FOOTPRINTS, THE SHOE PRINTS. I SUBMIT, IF THEY DID THAT, THEN WHY WOULD THEY NEED TO GET ANOTHER PAIR OF SHOES? HE COULD ONLY BE WEARING ONE PAIR OF SHOES AT A TIME. DETECTIVE BERGEN, HERSELF,

TESTIFIED, THOUGH, THAT THEY HAD ALREADY SEIZE ADD PAIR OF SHOES THAT BELONGED TO APPELLANT AND HAD THEM MATCHED, AD THIS S HER QUOTE, THEY RAN OUT THE SAME SHOE.

THEY WHAT?

THEY RAN OUT THE SAME SHOE. TO ME THAT MEANS THEY MATCHED. I THINK THAT IS A REASONABLE INTERPRETATION OF THAT STATEMENT.

SO WHICH SHOE OR SHOES WAS PRESENTED AT TRIAL?

HE ONE THAT WAS SEIZED.

IT WAS NIKE SHOE.

IN ADDITION TO THE SHOES, THERE WAS A SINGLE FINGERPRINT.

YES. THAT MATCHED TO APPELLANT. BUT THAT IS NOT SIGNIFICANT, MAINLY BECAUSE THERE IS NO TESTIMONY AS TO WHEN THAT FINGERPRINT WAS PLACED.

IT WAS CONSISTENT WITH HIS CONFESSION.

HE DID NOT CONFESS.

IT WAS NOT A CONFESSION?

NO. THERE WAS NO CONFESSION.

THERE WAS A STATEMENT THAT HE MADE, TO VARIOUS PEOPLE.

THERE WAS NONE OF THAT ENTERED INTO EVIDENCE AT TRIAL. I BELIEVE, AND THIS IS WHAT IS CONFUSING, IN THE STATE'S BRIEF, THEY CITED TO THE ARREST AFFIDAVIT THAT DETECTIVE BERGEN HAD COMPILED. THAT WAS NEVER ENTERED INTO THE EVIDENCE.

SO NONE OF THE RELATIVES TESTIFIED AT TRIAL, CONCERNING OVER HEARING CONVERSATIONS AND THINGS LIKE THIS, WHERE --

OKAY. I AM SORRY. YES. ROCKS AND DID TESTIFY AS TO -- ROXANNE DID TESTIFY AS TO OVER HEARING THE CONVERSATION BETWEEN HARRY AND THEM ABOUT ROBBING SOMEBODY. SHE DID NOT HEAR IT WAS WILL MAKE MARTIN, THOUGH, OKAY?

BUT SHE DID HEAR HIM SAY LET'S GO ROB AND KILL SOMEBODY, AND THEN THE BROTHER OF THE CO-DEFENDANT OVERHEARD A CONVERSATION, ALSO.

RIGHT.

OKAY.

EXCEPT THEY -- IT IS VERY CONFUSING. WHEN SHE HEARD THIS, SHE SAID THAT A FEW DAYS AFTER IT, SHE SAW HIM WITH THE JEWELRY WELL, MR. --

YOU ARE MOVING, IT SEEMS TO ME, AWAY. FINISH UP THE POINTS THAT YOU ARE ARGUING, NOW, ABOUT THE INEVITABLE DISCOVERY ISSUE. ARE YOU GOING TO CAP THAT, NOW, IN SOME WAY? BECAUSE IT SEEMS YOU HAVE A NUMBER OF OTHER ISSUES.

AND IT IS A LITTLE CONFUSING, BECAUSE SOMETIMES THE FACTS ARE IMPORTANT IN THE ISSUES, AND I WILL GET BACK TO YOUR QUESTION, THEN, JUSTICE QUINCE. AS FAR AS THE INEVITABLE

DISCOVERY HERE, THIS DOCTRINE, THIS COURT HAS ADOPTED IT IN CRAIG. THERE IS NO QESTION ABOUT IT. UT IN ORDER FR IT TO APPLY, THERE MUST BE A FINDING THAT THE EVIDENCE, THAT IT MUST BE SHOWN THAT THE POLICE OR WHATEVER AGENCY WOULD HAVE FOUND THE ILLEGAL EVIDENCE, ABSENT THE ILLEGAL SEARCH AND SEIZURE. IN THIS CASE, I DON'T BELIEVE THAT WAS SHOWN HERE. AND THE REASONS WHY, AGAIN, AS I ALREADY POINTED OUT, THEY HAD ALREADY SEIZED ONE SHOE AND APPARENTLY MADE A MATCH TO IT. YOU CAN'T WEAR TWO PAIR OF SHOES AT THE SAME TIME. SECONDLY, THIS WAS THREE WEEKS LATER, AND THIRDLY, THE JUDGE SAID, WELL, WHERE WOULD HE HAVE GONE? WELL, THAT IS JUST BASIC SPECULATION. HE COULD HAVE GONE ANYWHERE, HAD THEY NOT ARRESTED HIM, WHICH THEY HAD NO BASIS TO AREAS HIM. SO TO SAY, WELL, WHERE WOULD HE HAVE GONE, WE DON'T KNOW WHERE HE WOULD HAVE GONE, BUT HE CERTAINLY ACTION PROBABLY MOST LIKELY, WOULD NOT HAVE STAYED IN RICHMOND HILLS, SO TO SAY THAT, WELL, THEY WOULD HAVE GOTTEN HIM ANYWAY THAT, IS NOTHING BUT SPECULATION, AND WE HAVE CITED CASES IN THE BRIEF THAT SAYS SPECULATION CAN'T PLAY ANY PART IN THIS, WHEN YOU ARE TALKING ABOUT INEVITABLE DISCOVERY. THEY HAVE TO SHOW --

WHAT ARE THE CIRCUMSTANCES, USUALLY, WHERE INEVITABLE DISCOVERY IS APPLIED? IS IT USUALLY WHERE THERE ARE SOME SEPARATE SEARCHES GOING ON?

RIGHT. WELL, FOR INSTANCE, IN CRAIG, IT WAS THE BODIES THEY WERE TALKING ABOUT. THEY WERE GOING TO SEARCH ALL THE LAKES AND THE SINKHOLES FOR THE BODY. THAT WAS A PLAN ALREADY, SO THAT WAS NO QUESTION. THE OTHER CASE, I BELIEVE, THAT WAS CIED BY THE STATE, IN THEIR BRIEF, THEY HAD, ALREADY, SEIZED THE CAR, SO THEY, ALREADY, HAD THE EVIDENCE IN THEIR POSSESSION, ONCE THEY GOT THE CONFESSION, SO IT WAS EASY TO APPLY INEVITABLE DISCOVERY.

HERE THE TESTIMONY WAS THEY WERE PLANING TO ARREST HIM, AND THEY WERE PLANNING TO, THEN, SEIZE HIS SHOES, AND WHAT YOU ARE SAYING IS THERE IS SPECULATION, HERE, THAT ABSENT HIM BEING SOD WHERE HE WAS, AND THE SHOES TAKEN BY THE REQUEST OF THE POLICE IN FLORIDA, YOU DON'T, REALLY, KNOW WHEN HE WOULD HAVE BEEN ARRESTED OR WHAT HE WOULD HAVE BEEN WEARING.

RIGHT. EXACTLY.

SO THERE IS NO CONSISTSENS. THE STATE'S OBLIGATION TO PROVE A REASONABLE PROBABILITY THAT IT WOULD HAVE BEEN INEVITABLY DISCOVERED. THEY, REALLY, CAN'T MEET THAT --

EXACTLY. AND WHEN WE ARE TALKING ABOUT ARTICLES OF CLOTHING, I DON'T THINK IT IS ALWAYS REASONABLE TO SAY YOU ARE GOING TO BE WEARING THE SAME THING ALL THE TIME AND THEREFORE YOU WOULD HAVE DISCOVERED IT, NO MATTER WHAT.

NOW, THIS ERROR, THIS IS NOT A QUESTION WHETHER THERE IS OTHER EVIDENCE, RIGHT? IT WOULD BE A QUESTION OF WHETHER GIGLIO, WOULD THAT APPLY, THEN, IS THERE A HARMLESS ERROR ANALYSIS THAT CAN BE DONE?

I THINK, FROM MY READING OF THE CASE LAW, I THINK IT, YES, CAN BE DONE. I SUBMIT THAT IT IS NOT HARMLESS IN THIS CASE, HOWEVER, AND ONCE I GET TO THE SUFFICIENCY EVIDENCE ISSUE, I THINK THAT WOULD BECOME APPARENT HERE, AND I WOULD RATHER SAVE THAT FOR THAT.

WHEN WAS HE ARRESTED?

SEPTEMBER 10.

AND HE WAS ARRESTED IN GEORGIA?

YES. AND TRANSPORTED.

BY THE FLORIDA OFFICIALS?

YES. WELL, I THINK THEY --

DID THEY HAVE AN ARREST WARRANT AT THAT TIME?

YEAH. THEY GOT IT 12 HOURS LATER, YES.

TWELVE HOURS AFTER HE WAS SEIZED IN GEORGIA?

YES.

NOW, YOU ARE NOT CHALLENGING THE LEGALITY OF THAT ARREST, ARE YOU?

NO. NO.

WELL, FOLLOWING ALONG WITH THAT, IF THAT ARREST WAS LEGAL, AND, FOR INSTANCE, LATER HE GAVE A STATEMENT, PURSUANT TO THAT ARREST, THAT STATEMENT WOULD BE ADMISSIBLE IN EVIDENCE, WOULD IT NOT?

YES, IT WOULD.

WELL, AND THEN IN SORT OF A PARALLEL WAY, JUST HYPOTHETICALLY, HELP ME PLAY THIS OUT. IF THEY HAD ARRESTED HIM THERE AND HE WAS FULLY CLOTHED, INCLUDING HIS SHOES, AND NOW THEY TOOK HIM BACK TO FLORIDA, AND NOW THEY SEIZED THE SHOES, OKAY, THAT WOULD NOT HAVE BEEN ILLEGAL, WOULD IT?

I THINK I AM UNDERSTANDING WHAT YOU ARE SAYING.

DO YOU UNDERSTAND WHAT I AM SAYING? HE WAS ARRESTED. HE WAS FULLY CLOTHED. HE HAS HIS SHOES ON. THEY TAKE HIM BACK, THE JURISDICTION IN FLORIDA, AND NOW THEY TAKE HIS SHOES, WOULD THAT NOT --

HAD HIS NIFBL ARREST BEEN AND THE INITIAL DETENTION BEEN PURSUANT TO A WARRANT, YES, THEY COULD HAVE TAKEN THE SHOES.

WELL, NO, I AM TALKING ABOUT THE ARREST, AS IT -- YOU SAID HE WAS ARRESTED, WHAT, TWELVE HOURS LATER?

RIGHT.

OKAY. PURSUANT TO A FLORIDA WARRANT.

RIGHT.

AND YOU ARE NOT CHALLENGING THE LEGALITY OF THAT ARREST.

NO.

SO THAT IS THE ARREST THAT I AM FOCUSING ON. IF HE WAS ARRESTED TWELVE HOURS LATER, JUST AS HE ACTUALLY WAS HERE, AND HE WAS FULLY DRESSED, INCLUDING HIS SHOES --

BUT HE WASN'T.

I UNDERSTAND. OBVIOUSLY THAT IS A SERIOUS ISSUE HERE. BUT IF HE WAS AND TAKEN BACK TO FLORIDA, AND HIS SHOES, THEN, SEIZED, THAT WOULD NOT HAVE BEEN ILLEGAL, WOULD IT?

NO.

THANK.

-- THANK YOU.

AGAIN, THE STATE PLACES A LOT OF EMPHASIS ON THIS ISSUE AND AT THE HEARING, IN THE BRIEF, ON THE ARREST WARRANT. I SUBMIT TO YOU THAT THAT SHOULD NOT BE CONSIDERED BY THIS COURT, BECAUSE IT WAS NOT CONSIDERED BY THE TRIAL COURT BELOW, ALTHOUGH THEY ASKED THE COURT TO TAKE JUDICIAL NOTICE OF THE ARREST WARRANT, THE COURT NEVER DID TAKE JUDICIAL NOTICE. IT IS INCUMBENT TO GET A RULING ON A REQUEST FOR JUDICIAL NOTICE. SECOND OF ALL, HAD IT EVEN BEEN ADMITTED INTO EVIDENCE, THERE IS A LOT OF IT THAT WOULD NOT HAVE BEEN ADMISSIBLE. THIS COURT RECENTLY HELD, IN IS ALL, THAT THERE IS SOMETHING THAT IS NOT ADMISSIBLE. IN THIS PARTICULAR CASE, THERE IS DOUBLE HEARSAY, TRIPLE HEARSAY, IN THAT ARREST WARRANT, SO I SUBMIT TO YOU THAT IT WOULDN'T HAVE BEEN ADMSIBLE INTO EVIDENCE. THE TRIAL COURT'S FINDING AT ALL, I SUBMIT THAT IT WOULD HAVE BEEN I AM PROP FORT STATE TO RELY ON THAT, JUST AS IT WOULD BE IMPROPER FOR THIS COURT TO RELY ON. THAT THE SECOND ISSUE IS I WILL GET TO THE HARMLESS, WHEN IT GETS TO THE EVIDENCE, AND I THINK IT WILL BECOME APPARENT THEN.

THE SECOND ISSUE IS THE TRIAL COURT ERRED IN DENYING THE DEFENSE COUNSEL'S USE OF AN EXPERT TO THE PREEMPTORY CHALLENGE. THE STATE CHALLENGED AN AFRICAN AMERICAN WOMAN PERSON, AND WHEN THE COURT REQUIRED THE STATE TO GIVE A REASON, THE STATE SAID, WELL, SHE GAVE EQUIVOCAL ANSWERS ON QUESTIONS, 19, 20, AND 21, ON THE JURY QUESTIONNAIRE.

DO I UNDERSTAND THAT, IN THIS CASE, THAT THE VOIR DIRE, INSTEAD OF THERE BEING A TRADITIONAL VOIR DIRE, WHERE THERE WOULD BE QUESTIONS AND ANSWERS, ESPECIALLY ON SENSITIVE AREAS AS THE DEATH PENALTY, HERE, NEITHER SIDE FOLLOWED UP WITH QUESTIONS FOR THE JURY. WHAT.

WHAT THEY DID WAS FOLLOWED UP ON THE DEATH PENALTY.

WHY DID, IN NUMBER 21, WHY DID NOT THAT CRETE SOME PROBLEMS? IT SEEMS TO ME, AS YOU LOOK AT THE FORM, THAT A PERSON WOULD REALLY HAVE A PROBLEM WITH A DEATH PENALTY, AND WHY IS THAT NOT A NEUTRAL REASON, ALTHOUGH THE OTHER TWO, I UNDERSTAND, BUT THAT LAST ONE SEEMED PRETTY CLEAR.

BECAUSE THE STATED REASON IS SHE GAVE EQUIVOCAL ANSWERS. WELL, SOME OF THE OTHER CAUCASIAN JURORS WHO SERVED ON THE JURY, ALSO, GAVE EQUIVOCAL ANSWERS, SO YOU HAD THE THIRD STEP OF THE MELBOURNE TEST. THE JUDGE WOULD ANALYZE IT FOR GENUINENESS.

WOULD YOU POINT OUT -- DID YOU POINT OUT THESE OTHER JURORS WHO GAVE THE SAME KINDS OF EQUIVOCAL ANSWERS?

DEFENSE COUNSEL SAID WE HAD TONS OF CAUCASIAN JURORS WHO, ALSO, GAVE EQUIVOCAL. THE TRIAL COURT STOPPED IT, BECAUSE THE STATE ATTORNEY, AT THE TIME, SAID, YOU DON'T GO ANY FURTHER. ONCE I GIVE A RAES NEUTRAL REASON, THAT IS INQUIRY, AND THAT IS INCORRECT, BUT THE TRIAL COURT JUST DID NOT INQUIRE, AND I SUBMIT TO YOU THAT IT IS UNDER THIS COURT'S RULING IN MELBOURNE AND RODRIGUEZ, I BELIEVE, WHICH FOLLOWED UP ON THAT, THAT IT IS ABSOLUTELY INCUMBENT UPON THE TRIAL COURT TO GO TO THAT THIRD STEP AND ANALYZE THE REASON GIVEN FOR ITS GENUINENESS. HERE IT WAS PRESENTED, FOR

THE DEFENSE COUNSEL TO ARGUE ANYTHING ELSE WOULD HAVE BEEN A USELESS ACT. BUT IT WAS POIGETED OUT THAT THERE WERE OTHER CAUCASIAN JURORS.

YOU USE THE WORD EQUIVOCAL. AT LEAST THE ONE ANSWER THAT JUSTICE LEWIS WAS REFERRING TO THERE. CERTAINLY IT SEEMED TO BE THE KIND OF EXTREME ANSWER ABOUT NOT APPLYING THE DEATH PENALTY IN ANY ANSWER, THAT SEEMED TO CONSTRUE THE FIRST ANSWER, BUT WHY, LET'S TURN TO THE ELEMENT OF WHETHER OR NOT THAT THE RAES NEUTRAL REASON, WOULD YOU AGREE THAT, AT LEAST IN ISOLATION, THAT THAT EXPRESSION OF OPINION, IN THAT THIRD QUESTION, WAS A RAES NEUTRAL REASON?

YES. THIS COURT HAS HELD THAT AND INTERESTINGLY THIS COURT HAS HELD IT IN A CASE WHERE THIS VERY PROSECUTOR WAS THE PROSECUTOR.

WAS THERE ANY ATTEMPT TO CITE -- MAYBE YOU KNOW. MAYBE I DON'T KNOW. WAS THERE ANOTHER ANSWER AS UNQIFCKABLE AS THAT PARTICULAR ANSWER, IN ISOLATION, AND SOMEBODY LIKE THAT LEFT ON THE JURY BY THE STATE?

A COUPLE OF THE ANSWERS WERE SIMPLY LEFT BLA. I SUBMIT TO THAT YOU IS PRETTY EQUIVOCAL.

I AM NOT TALKING ABOUT EQUIVOCAL NOW. I AM TALKING ABOUT, IN ISOLATION, IT WASN'T EQUIVOCAL AT ALL. IT WAS UNEQUIVOCAL. IN TERMS OF SAYING I COULDN'T APPLY THE DEATH PENALTY. WOULD YOU AGREE?

WELL, SHE DIDN'T SAY "I COULDN'T APPLY." SHE SAID I WOULD HAVE TROUBLE.

READ THE. WHAT IS THE ANSWER TO THE THIRD QUESTION? IF YOU DON'T HAVE IT RIGHT THERE, IT IS IN YOUR BRIEF. I DON'T WANT TO DELAY.

IN CASES OF MURDER, IT WON'T BRING THE PERSON, PERSONS BACK. I DON'T KNOW --

THAT IS A PRETTY UNEQUIVOCAL STATEMENT, IS IT NOT?

WELL, PERHAPS, BUT WHEN YOU READ IT IN CONJUNCTION WITH THE OTHER TWO QUESTIONS, I AM NOT SURE. I THINK IT MAKES THE WHOLE AREA EQUIVOCAL.

I REALIZE THAT.

BUT YOU WERE, REALLY, TALKING ABOUT THAT LAST QUESTION SOUNDS ALMOST LIKE IT COULD HAVE BEEN A FOR-CAUSE CHALLENGE. I GUESS, GOING GOING BACK TO WHAT MY CONCERN WAS ORIGINALLY, BOTH SIDES AGREE THEY ARE GOING -- MAYBE THEY ARE GOING TO LEAVE WELL ENOUGH ALONE FOR CERTAIN JURORS. THEY EXPRESS CERTAIN OPINIONS, AND RATHER THAN EITHER POISON THE JURY WELL, THEY ARE GOING TO LOOK AT THOSE QUESTIONS, AND IF THEY DON'T WANT TO GO THERE WITH THAT JUROR, THEY ARE JUST GOING TO DECIDE THAT THEY ARE GOING TO STRIKE THAT JUROR, BECAUSE THOSE ARE THE KINDS OF VIEWS THAT COULD LEAD TO CONCERNS THAT WERE EXPLORED, AND THAT IS WHAT I AM HAVING TROUBLE UNDERSTANDING. THAT QUESTION, IF SHE GAVE THAT ANSWER OUT LOUD, YOU ARE NOT SAYING THAT SOMEBODY WOULD HAVE TO GO ON AND TRY TO SAY, WELL, AREN'T YOU -- NOW WE ARE NOT TALKING ABOUT FOR CUS. JUST PREEMPTORY. WHY WOULDN'T THAT BE ENOUGH TO SAY THAT ANSWER? NOT THAT IT IS EQUIVOCAL, BUT I THINK IT IS A PRETTY STRONG STATEMENT THAT THIS PERSON IS NOT -- HAS SOME FEELINGS ABOUT THE DEATH PENALTY, TO NOT HAVE THAT PERSON SIT ON THE JURY.

OKAY. FIRST OF ALL, THE WAY THAT THE JURY SELECTION WAS DONE IN THIS CASE WAS, IF THEY DID HAVE ANY QUESTIONS, THEY WERE QUESTIONED INDIVIDUALLY, SO THERE WAS NO

QUESTION OF POISONING THE REST OF THE JURY POOL. ANY QUESTIONS --

OUTSIDE OF THE PRESENCE OF THE JURY?

AS FAR AS THE DEATH PENALTY QUESTIONS WENT. THAT WAS THE WHOLE PURPOSE FOR THEM PICKING OUT THE --

ISN'T WHAT THE TRIAL JUDGE IS DOING, REALLY, IN THE ANALYSIS, IS EVALUATE THE GOOD FAITH OF THE PERSON MAKING THE CHALLENGE.

IN ESSENCE, YES, THAT IS WHAT THE THIRD STEP IS ABOUT, THE GENUINENESS OF THE REASON.

REALLY THE GOOD FAITH OF THAT, AND IN THE FACE OF AN ANSWER LIKE THAT, I AM HAVING A LITTLE DIFFICULTY OF WHAT ELSE IN THE RECORD WOULD SHOW THAT THAT WASN'T GOOD FAITH.

WELL, BECAUSE AGAIN, THERE IS NO DISCUSSION BY THE CRIME TRIAL COURT IN THIS THIRD STEP, BECAUSE THE PROSECUTOR TOLD THE JUDGE YOU DON'T HAVE TO GO ANY FURTHER. IF IT IS RAES NEUTRAL ON ITS FACE, YOU DON'T GO ANY FURTHER. THAT IS SIMPLY AN INCORRECT STANDARD.

WELL, LACK AGO CITATION, THOUGH, TO -- LACKING A CITATION, THOUGH, TO ANOTHER JURY THAT -- JUROR THAT GAVE THAT ANSWER, THAT WAS UNEQUIVOCAL, WHY WOULDN'T THEY HAVE TO GO THROUGH? IN OTHER WORDS, IF YOU ARE SAYING THAT IS WHERE YOU GO IS YOU LOOK AT OTHER JURORS WHO GAVE, YOU SAID, EQUIVOCAL STATEMENTS, BUT WAS THERE A CITATION TO ANOTHER JUROR THAT GAVE AN ANSWER LIKE THAT.

NO. BECAUSE THERE WAS NO DISCUSSION AS TO THIS NEXT PART. BASICALLY THE JUDGE JUST SAID I FIND THAT IT IS A RES NEUTRAL REASON. THT S, BOOM, WHAT HE DID. HE DIDN'T SAY I FIND THAT IT IS, ALSO, GENUINE.

BUT WE HAVE QUESTIONNAIRES IN THE RECORD, DON'T WE?

YES.

SO DOES IT SHOW WHETHER THEY ARE WHITE?

YES.

ALL YOU CAN POINT TO US IS THAT THERE WERE SOME OTHER JURORS WHO WERE LEFT ON, WHO JUST DIDN'T FILL IN THAT?

AND GAVE EQUIVOCAL ANSWERS. THE REASON THAT WAS GIVEN IS THAT SHE GAVE EQUIVOCAL ANSWERS, NOT THAT SHE WAS UNEQUIVOCALLY AGAINST IT. THAT WASN'T THE REASON THAT WAS GIVEN.

CLEARLY THAT IS THE IMPLICATION, THOUGH, WITH THE STATE EXERCISING THE PREEMPTORY CHALLENGE AND THEY POINT TO THESE ANSWERS, AND ONE OF THE ANSWERS SEEMS TO SAY I DON'T THINK IT SHOULD EVER BE APPLIED. WHATEVER.

I THINK THAT HIS REASON WOULD HAVE BEEN HER ANSWER ON QUESTION NUMBER 21. BUT INSTEAD HE SAID SHE GAVE EQUIVOCAL ANSWERS ON QUESTIONS 19, 0, AND 21. -- 19, 20, AND 21.

ISN'T THAT SORT OF GIVING HER THE BENEFIT OF THE DOUBT?

NO. I SUGGEST IT IS NOT. I THINK THAT MAYBE THE PROSECUTOR WAS READING THAT LAST

ANSWER AS AN EQUIVOCAL.

SO YOU THINK THE ERROR OF THE JUDGE WAS NOT SO MUCH IN HIS EVALUATION OF THIS GOOD FAITH OR WHATEVER BUT IN NOT COMPLETING THESE MELBOURNE ANALYSIS, NOT ALLOWING THERE TO BE --

ABSOLUTELY.

-- A CHALLENGE?

THE NEXT ISSUE IULD LIKE TO GO TO IS THE JUMTH OF ACQUITTAL -- IS THE JUDGMENT OF ACQUITTAL ISSUE. THEY HAVE TO PROVE THE ROBBERY FIRST. THE DEFENDANT PAWNED SOME PROPERTY EITHER THE DAY OF THE MURDER OR THE DAY AFTER THE MURDER, AND THAT THERE WERE CONVERSATIONS ABOUT GOING AND ROBBING.

WERE THE ITEMS OF JEWELRY SHOWN TO HAVE BELONGED TO THE VICTIM?

YES. RIGHT. THE PROBLEM WITH THIS IS THERE WAS NO SHOWING THAT THE ITEMS THAT WERE PAWNED WERE TAKEN ON THE DAY OF THEMDER. IF YOU TAKE THE STATEMENT OF ROXANNE AND DENNIS AT FACE VALUE, WHICH I SUBMIT IS AWFULLY HARD TO DO, BUT SHE SAID THEY HEARD THIS DISCUSSION, AND THEN, A FEW DAYS LATER, SHE SAW HIM WITH THE PROPERTY. WELL, IF THEY WERE PAWNED, EITHER THE DAY OF THE MURDER OR THE DAY FOLLOWING THE MURDER, THEN SHE COULDN'T HAVE SEEN THEM A FEW DAYS AFTER THIS CONVERSATION. IT WAS JUST IMPOSSIBLE, BECAUSE --

WELL, WE DO KNOW THAT SHE SAW THEM, AFTER THE VICTIM HAD BEEN MURDERED AND AFTER THE JEWELRY WAS TAKEN. IS THAT CORRECT? WE DO KNOW THAT.

THAT'S CORRECT. BUT THEY COULD HAVE BEEN TAKEN AT A TIME BEFORE THE MURDER.

NOW, IS THAT REALLY A REASONABLE INFERENCE TO DRAW, FROM WHAT WE HAVE HERE, IN THIS RECORD?

I BELIEVE IT IS, BECAUSE THERE IS NO SHOWING, THERE IS JUST NO SHOWING WHEN THEY WERE LAST SEEN.

WOULDN'T THAT SORT OF PRESENT A SCENARIO WHERE THE VICTIM WAS ROBBED, STUFF WAS TAKEN, AND THEN THE VICTIM WAS MURDERED?

NO. I SUGGEST TO YOU, WHAT IT POSSIBLY COULD SUGGEST WAS THAT THERE WAS A BURGLARY OF HER PLACE WHEN SHE WASN'T HOME. ITEMS WERE TAKEN AND THEN PAWNED.

IS THAT IS CORRECT, REALLY, THOUGH, SORT OF A REASONABLE HYPOTHESIS, UNDER THE CIRCUMSTANCES THAT WE HAVE HERE?

I THINK IT IS, BECAUSE NOBODY CAN PINPOINT AS TO WHEN SHE WAS LAST SEEN WITH THE JEWELRY AND WHEN IT COULD HAVE BEEN TAKEN.

IS THAT THE SAME EXPLANATION FOR THE FINGERPRINT EVIDENCE THAT WE ARE DEALING WITH?

EXACTLY. EXACTLY.

THAT IS WHAT YOU WERE SAYING. THIS IS AN EARLIER BURGLARY AND HAD NOTHING TO DO WITH IT.

BECAUSE THERE WAS NO TESTIMONY AS TO WHEN THAT FINGERPRINT WAS PLACED.

BUT ISN'T THAT A STRETCH, THAT THIS WOULD BE ONLY COINCIDENTAL THAT SHE HAPPENED TO BE KILLED LATER, THE SAME PERSON THAT WAS THE VICTIM OF THE ROBBERY?

IT DEPENDS WHO KILLED HER. IF MR. -- LET'S JUST SAY, FOR INSTANCE, THAT MR. JEFFRIES WENT THERE, AND THERE WAS TESTIMONY HE WAS GOING TO GO THERE AND, PERHAPS, RENT A HOUSE FROM HER, TOO, SO HE COULD HAVE GONE THERE AND DONE THAT. WE DON'T KNOW. HE MIGHT HAVE DONE THAT, SAW PROPERTY THERE, TOOK SOME PROPERTY, THEN TOLD HARRY THOMAS, WHO DECIDED, WELL, I AM GOING TO GET ME SOME OF THIS, TOO, AND THEN HE WENT BACK AND DID IT.

BUT ISN'T THERE ENOUGH OF OF A COINCIDENCE THERE TO MAKE IT A JURY QUESTION?

I DON'T BELIEVE SO, YOUR HONOR, AND FOR THE REASONS I SET FORTH IN THE BRIEF, BUT, ALSO, BECAUSE YOU HAVE JUST SINGLE IF I CANER PRINT. YOU HAVE THE PAWNING OF THE PROPERTY, BUT, AGAIN, THAT COULD HAVE BEEN -- THE PROPERTY COULD HAVE BEEN TAKEN AT A DIFFERENT TIME. AND YOU HAVE A FOOTPRINT, WHICH ISN'T CONCLUSIVE. THE BEST THEY CAN SAY IS IT GENERALLY MATCHES, BUT, ALSO, HARRY THOMAS'S MATCHED.

THE STANDARD IS THE TRIAL JUDGE HAS TO, FIRST, DETERMINE THERE IS COMPETENT EVIDENCE FROM WHICH THE JURY COULD INFER GUILT, TO THE EXCLUSION OF ALL OTHER INFERENCES.

YES.

WHAT YOU ARE SAYING IS THE JUDGE WAS WRONG IN CONCLUDING THAT IT WAS MORE REASONABLE INFERENCE THAT THE FINGERPRINT GOT THERE AT THE TIME OF THIS MURDER. YOU ARE SAYING THAT HE SHOULD HAVE SAID THAT THERE WAS AN EQUAL INFERENCE, THAT THE FINGERPRINT GOT THERE FROM A PRIOR BURGLARY?

THERE WAS SIMPLY NO EVIDENCE AS TO WHEN THAT FINGERPRINT GOT THERE. I MEAN NO EVIDENCE WHATSOEVER. SO IF THE ONLY -- AND THE EVIDENCE, OR THE CASES THAT DISCUSS FINGERPRINT EVIDENCE SAY THAT YOU HAVE TO SHOW THAT IT WAS DONE AT THE TIME OF THE BIG CRIME.

WASN'T THERE ANY EVIDENCE THAT HE WOULD HAVE HAD ANY ACCESS TO THE APARTMENT AT ANY OTHER TIME?

HE WAS GOING TO GO AND DISCUSS RENTING A HOUSE WITH HER. AGAIN, THE DISCUSSION THAT THEY TALKED ABOUT, THAT RACKS. ROXANNE OVERHEARD WAS SEVERAL DAYS BEFORE THE MURDER, SO, YES, THERE IS EVIDENCE THAT COULD BE INTERPRETED THAT HE WENT AT A DIFFERENT TIME.

AND WHERE DO WE PUT IN OR PLACE, IN THIS WHOLE CONTEXT, THE DISCUSSIONS? I KNOW YOU MAY CHALLENGE THE CREDIBILITY OF THEM, BUT WITH REGARD TO THIS PARTICULAR INDIVIDUAL AND THE PLANS THAT THEY HAD, WITH REGARD TO THEY ARE GOING TO GO WASTE SOMEONE OR ROB SOMEONE IN THE PROCESS. HOW DO WE FIT THAT INTO THIS?

AGAIN, THAT WAS GENERAL ROBBING, AND, IN FACT, ROCKS AND SAID THEY -- ROXANNE SAID THEY WENT TO DO SOME ROBBERIES AT DISNEY WORLD. THAT IMPLIES THAT THEY ARE TALKING ABOUT DOING A LOT OF ROBBERIES, AND, IN FACT, WE KNOW THAT HARRY THOMAS WAS WANTED FOR, THAT IS WHAT HE WAS PICKED UP FOR, A ROBBERY IN OCALA, SO THE DISCUSSION, I THINK, WAS NOT SPECIFIC TO THE VICTIM HERE NECESSARILY.

DO ANY OF THOSE STATEMENTS INCLUDE KILLING?

AT ONE POINT HE SAID IF I HAD TO, I WOULD KILL SOMEBODY, BUT, AGAIN, THAT WAS NOT KILLING WILL MAKE MARTIN.

YOU ARE -- WOMEN A MARTIN. -- WILMA MARTIN.

YOU ARE IN YOUR REBUTTAL TIME.

I WANT TO ARGUE THAT, AGAIN, WHEN THE STATE ARGUED THIS IN THEIR BRIEF, I WANT TO MAKE A POINT THAT THE STATE MADE A REFANCY AT THE SPENCER HEARING. THAT IS TOTALLY IMPROPER. THIS COURT CAN'T HEAR SOMETHING, IN DECIDING THE SUFFICIENCY OF THE EVIDENCE AT TRIAL, THAT HAPPENED SIX MONTHS DOWN THE ROAD. I SUBMIT TO YOU THAT THAT IS IMPROPER. THANK YOU.

> MR. FRENCH.

MAY IT PLEASE THE COURT. CURTIS FRENCH, REPRESENTING THE STATE OF FLORIDA.

AT THE OUT SET, MR. FRENCH, WOULD YOU AGREE WITH THE CONSISTENCY OF HIS STATEMENT? THAT IS, CONSIDERING THE GUILT PHASE, YOU CANNOT CONSIDER EVIDENCE THAT CAME IN DURING THE PENALTY PHASE OR DURING THE SPENCER HEARING?

I DON'T ACTUALLY RECALL HOW THAT WAS OR WHEN HE SAID THAT WAS RELIED ON IN THE BRIEF, BUT I WOULD TEND TO AGREE WITH THAT, YES. BUT WE THINK THE EVIDENCE IS SUFFICIENT TO WITHSTAND A MOTION FOR JUDGMENT OF ACQUITTAL, WITHOUT THAT. ACTUALLY THE STATEMENT HE MADE AT THE SPENCER HEARING, WOULD BE MORE RELEVANT TO PROPORTIONALITY, AND, ALSO, THE CERTAIN TENDENCIES THAT HE MADE AT THE PENALTY PHASE AND SO FORTH, AS TO MITIGATION.

WOULD YOU CLARIFY, AS TO THE LAST PART, ABOUT THE CIRCUMSTANTIAL EVIDENCE, THE FINGERPRINT ISSUE THAT CAME UP EARLIER THIS WEEK. THAT IS THE PERSON, IT IS NOT THEIR HOUSE. THE FINGERPRINT IS IN THERE. IN TERMS OF SAYING, WELL, HE COULD HAVE GOTTEN THERE FROM A PRIOR BURGLARY, FROM BEING IN THERE BEFORE. DOES THE DEFENDANT HAVE SOME -- WHEN YOU KNOW IT IS NOT THEIR HOUSE, IS THAT ENOUGH TO THE JURY, THEN, IS IT UP TO THE DEFENDANT TO CAME UP WITH THE OTHER INFERENCE, WELL, I WAS THERE CHANGE AGO LIGHT BULB, IN ONE CASE. HOW DOES THAT WORK?

I AM NOT SURE IN THIS CASE. THE PROBLEM WITH ANY HYPOTHESIS THAT DEFENDANT WAS PLACED AT ANOTHER TIME IS THAT IT WAS A BLOODY FINGER PRINT, AND I REALIZE THERE WAS NOER LOGICAL TESTIMONY -- THERE WAS NO SEROLOGICAL TESTIMONY SAYING THIS IS BLOOD. WHEN YOU LOOK AT THE PICTURES, IT IS HARD TO IMAGINE HOW IT COULD BE ANYTHING ELSE BUT BLOOD.

THAT ALONE?

THAT, I THINK, SAYS WHEN THAT FINGERPRINT WAS PLACED, WHICH WAS AT THE TIME OF THE MURDER. WHAT WE HAVE HERE IS A SITUATION IN WHICH WE HAVE GOT WITNESSES THAT SAY THAT THE DEFENDANT, IN THE DAYS LEADING UP TO THIS ROBBERY MURDER, THREATENED TO COMMIT ROBBERY AND THREATENED TO COMMIT MURDER, IF HE HAD TO. HE IDENTIFIED WILMA MARTIN AS PERSON THAT HE MIGHT ROB. AND THEN SHE TURNS UP MURDERED. THE NEXT DAY OR, MAYBE, EVEN THE SAME DAY, BECAUSE WE ARE NOT SURE IF SHE WAS MURDERED ON THE 20th OR THE 21st, BUT ON THE AFTERNOON OF THE 21st, THIS DEFENDANT PAWNED THREE RINGS THAT BELONGED TO THE VICTIM WILMA MARTIN, AND THERE WAS ADDITIONAL TESTIMONY THAT, IN THE DAYS FOLLOWING THE URDER, THAT HE ALL OF A SUDDEN NOW HAD MONEY AND SOME RINGING THAT HE HADN'T HAD BEFORE THE MURDER, SO WHEN YOU CONSIDER THAT HIS THREAT AND HIS PLANS TO COMMIT ROBBERY AND THE FACT THAT SHE TURNED UP MURDERED

AND THEN HE HAD HER RINGS IN HIS POSSESSION FOLLOWING THE MURDER, IS ENOUGH TO ESTABLISH THAT HE COMMITED THAT MURDER AND HE COMMITTED THE ROBBERY. IF YOU HAVE NO FURTHER QUESTIONS ABOUT THAT, I WOULD LIKE TO BACK UP TO THE NEAL SLACKY ISSUE, AND BASICALLY I AGREE, HERE, THAT THE QUESTION THAT SHE ANSWERED IS THE QUESTION BEING DO YOU THINK THE DEATH PENALTY SHOULD NEVER BE IMPOSED IN THE CASE OF MURDER, AND SHE AGREED. SHE SAYS, YES, I DO THINK THE DEATH PENALTY SHOULD NEVER BEEN IMPOSED IN CASES OF MURDER, AND NOT ONLY DID THE DEFENSE COUNSEL FAIL TO IDENTIFY ANY CAUCASIAN JURORS, AT THE TIME OF THE TRIAL, BUT HE, STILL, HAS NOT IDENTIFIED ANY JURORS WHO GAVE ANY ANSWERS LIKE THAT, AND IF YOU LOOK AT -- AND I DON'T THINK THAT WE HAVE COPIES OF THE JUROR QUESTIONNAIRES THAT, ON HIS BRIEF, HE SAYS THAT ONE JUROR GAVE A SIMPLISTIC ANSWER, NOT ALWAYS IN ANSWER TO ABOVE, BUT IF YOU LOOK AT THE THREE QUESTIONS, IF YOU ANSWER QUESTION 20, DO YOU THINK THE DEATH PENALTY SHOULD ALWAYS BE IMPOSEED, AND HE SAYS NOT ALWAYS, THEN I THINK IT IS REASONABLE TO ANSWER THE NEXT QUESTION "ANSWERED ABOVE", BUT NONE OF THESE JURORS HERE, THEY HAVE IDENTIFIED NO JURORS WHICH STATED, WHO STATED THAT THEY WOULD NEVER IMPOSE THE DEPTH PENALTY, AND I THINK THE JUDGE WAS WELL WITHIN HIS AUTHORITY TO DETERMINE THAT THAT WAS A RES REASON FOR CHALLENGING THIS JUROR. AS FOR THE MOTION TO SUPPRESS, FIRST OF ALL, AS FOR THE ALLEGATION THAT THE AFTERWARD AVED SHOULDN'T BE -- AFFIDAVIT SHOULDN'T BE MISSING BECAUSE THE JUDGE NEVER NOTICED IT, WHAT HAPPENED HERE WAS, AT THE OUTSET OF THE HEARING, THE STATE ATTORNEY TOLD THE COURT, SAID, IF DETECTIVE BERGEN IS ENTERING, I WOULD ASK THE COURT TO TAKE JUDICIAL NOTICE OF THE ARREST AFFIDAVIT FOR THE ARREST WARRANT, WHICH IS IN THE COURT FILE, FILED IN THE CRIMINAL DIVISION, SEPTEMBER 10, 1993. I HAVE A COPY HERE FOR THE COURT T MAY BE HARD TO FIND IN THE VOLUMINOUS FILE. IF I MAY OFFER THIS TO THE COURT, THERE IS A COPY IN THE COURT FILE, AS WELL, AND IT SEEMS OBVIOUS TO ME, FROM THE RECORD, THAT HE OFFERED THAT TO THE COURT AND THE COURT ACCEPTED IT, ALTHOUGH THE RECORD DOESN'T EXPLICITLY REFLECT THAT, AND ALTHOUGH THE COURT, ITSELF, DID NOT SAY I WILL TAKE JUDICIAL NOTICE OF IT, I THINK IT IS CLEAR THAT HE DID. WHAT IS IMPORTANT, THE REASON THE ARREST AFFIDAVIT IS IMPORTANT IN THIS CASE IS BECAUSE IF YOU LOOK AT THE AFFIDAVIT AND LOOK AT WHAT INFORMATION THE STATE HAD COLLECTED, DURING THIS PERIOD OF TIME BETWEEN THE DATE OF THE MURDER AND THE DATE THAT RAYMOND JEFFRIES WAS ARRESTED, EVERYTHING IN THE AFFIDAVIT, EXCEPT FOR THE LAST PAGE, THE LAST PARAGRAPH, WHICH HAS TO DO WITH THE IDENTIFICATION OF SOME ADDITIONAL RINGS, EVERYTHING THE STATE LEARNED WHICH GAVE THE STATE PROBABLE CAUSE TO ARREST MR. JEFFRIES HAD BEEN LEARNED BEFORE HE WAS ARRESTED IN GEORGIA.

I GUESS THIS IS MY CONCERN. IF WE SAY THIS IS INEVITABLE DISCOVERY, WHAT PREVENTS THE POLICE, THE NEXT TIME, FROM SAYING, YOU KNOW, WE ARE WORKING ON THIS ARREST WARRANT, AND THE SEARCH WARRANT, BUT, YOU KNOW WHAT? JUST IN CASE, WE DON'T HAVE IT YET BUT WE ARE GETTING IT. GO AHEAD. SEIZE THE PERSON. TAKE HIS -- SEARCH THE HOUSE, AND WE CAN BACK IT UP, BECAUSE TEN HOURS LATER, WE ARE GOING TO GET OUR SEARCH WARRANT. IS THAT THE SAME -- TELL ME HOW THAT -- THAT IS MY CONCERN. HOW IS THIS DIFFERENCE FROM -- DIFFERENT FROM THAT CIRCTANS?

MY UNDERSTANDING IS THAT YOU CAN MAKE A WARRANTLESS ARREST, IF YOU HAVE PROBABLE CAUSE, AND THAT PROBABLE CAUSE COULD COME FROM OTHER OFFICERS, EVEN IN ANOTHER JURISDICTION, AND THE ONLY REASON THIS ARREST WAS ILLEGAL, BECAUSE THE POLICE ARRESTED HARRY THOMAS ON A BOLO FOR HIM AND HIS CAR AND SEIZED THAT CAR. THEY DID NOT, AT THAT TIME, HAVE INFORMATION FROM FLORIDA. HAD FLORIDA OFFICERS SIMPLY CALLED HIM UP, WHEN THEY FOUND OUT THAT THEY HAD SOMEBODY FITTING THE DESCRIPTION, AND SAID WE HAVE GOT PROBABLE CAUSE TO ARREST HIM. HOLD ON TO HIM. I THINK IT WOULD HAVE BEEN FINE.

IS THAT DIFFERENT THAN INEVITABLE? WOULDN'T THAT BE, THEN, HIS ARREST WAS LEGAL?

WELL, I GUESS WHAT THE STATE'S FEAR IS THIS. THE RCHMOND HILL POLICE HAD TURNED HIM LOOSE, BECAUSE THEY DIDN'T HAVE ANY REASON TO HOLD HIM, AND BY THE WAY THE EVIDENCE SHOWS BASICALLY THAT ALL HE HAD WAS THE CLOTHES ON HIS BACK AND THE SHOES THAT HE WAS WATERING, WHICH, BY THE WAY, THREE WEEKS AFTER THE MURDER, HE WAS STILL WEARING THE SAME SHOES, AND IF THE STATE HAD TURNED HIM LOOSE THEN, FIRST OF ALL, IF THEY HAD HAD PROBABLE CAUSE, THEY COULD HAVE GONE AHEAD AND GOTTEN THE ARREST WARRANT IMMEDIATELY AND HAD HIM PICKED UP, WITHIN A VERY SHORT PERIOD OF TIME, AND IT IS HIGHLY UNLIKELY THAT HE WOULD HAVE BEEN STILL WEARING THE SHOES. SHE WOULD HAVE -- IT IS HIGHLY LIKE THAT HE WOULD HAVE STILL BEEN WATERING THE SHOES. -- BEEN WEARING THE SHOES.

WHAT ABOUT THE PHONE CALL, WHERE THEY KNEW TO TAKE THE US?

WELL, AT SOME POINT, AFTER HE WAS ARRESTED, I GUESS THEY CALLED FLORIDA AUTHORITIES AND SAID, YOU KNOW, WE HAVE GOT HARRY THOMAS. WE HAVE GOT THIS OTHER GUY HERE, AND HERE IS THE DESCRIPTION OF HIM, AND WHEN FLORIDA AUTHORITIES HEARD THAT, THEY REALIZEDHE DESCRIPTION MATCHED RAYMOND JEFFRIES OR SONNY JEFFRIES.

DID THEY SAY, AT THAT POINT, WE HAVE AN ARREST WARRANT?

APPARENTLY THEY DID NOT. APPARENTLY THEY DID NOT. WHAT THEY APPARENTLY SAID, ACCORDING TO THE TESTIMONY, WAS THAT DETECTIVE BERGEN CALLED UP THERE AND SAID, WELL, JUST HANG ON TO HIS SHOES, AND THEN THEY SPENT THE TIME TRYING TO FIND OUT FOR SURE IF THIS WAS SOUN I RAY JEFFRIES -- SO SONNY RAY JEFFRIES, BECAUSE HE GAVE A FALSE NAME AND SO FORTH, AND THEY TOOK THEIR TIME TO GET AN ARREST WARRANT, BUT OUR SUGGESTION IS THAT THEY COULD HAVE HAD PROBABLE CAUSE AND COULD HAVE GOTTEN THAT WARRANT SOONER.

IS THE TEST MOB OF WHAT HAPPENED UP THERE -- IS THE TESTIMONY OF WHAT HAPPENED UP THERE, IN GEORGIA, IN THE RECORD?

THERE IS TESTIMONY IN THE HEARING ON THE MOTION TO SUPPRESS.

I WAS TRYING TO FIGURE OUT WHETHER THIS SITUATION WAS SOMEWHAT ANALOGOUS TO HOAR HIS AND THE -- TO VOORHIS AND THE OTHER FELLOW, WHO WENT TO THE JAIL OUT IN MISSISSIPPI. BECAUSE THEY WERE GIVEN THE INVITATION TO SPEND THE NIGHT IN THE JAIL. ARE YOU FAMILIAR WITH THAT CASE?

NOT RIGHT OFFHAND. I DON'T THINK THERE WAS ANY INVITATION HERE, TO SONNY JEFFRIES, TO SPEND THE NIGHT. THEY DID HOLD HIM. DETECTIVE BERGEN TESTIFIED ON THE ARREST. THE STATE CONCEDED THAT THE ARREST WAS ILLEGAL, AND IN THEIR ARGUMENT, WHAT THEY PRESENTED WAS IT WAS INEVITABLE DISCOVERY, AND THE TRIAL COURT'S REASONING WAS BASICALLY IF THEY HAD TURNED HIM LOOSE, WHERE WOULD HE HAVE GONE? HE HAD NO TRANSPORTATION, AND THEY WOULD HAVE CAUGHT HIM VERY SOON, AND SINCE HE WAS STILL WEARING THE SAME SHOES THREE WEEKS LATER, THE REASONABLE INFERENCE IS THAT HE WOULD STILL HAVE BEEN WEARING THEM A COUPLE OF HOURS AFTER THEY TURNED HIM LOOSE. ALSO POINT OUT THAT, EVEN IF THE SHOES WERE EXCLUDEED, THE EVIDENCE IS STILL CLEAR THAT THE DEFENDANT WAS A PARTICIPANT IN THIS ROBBERY MURDER, BECAUSE OF THE STATEMENTS HE MADE, THE FACT THAT HE HAD PROCEEDS, FOLLOWING THE MURDER, PLUS HIS BLOODY FINGERPRINT AT THE SCENE, EVEN IF YOU DON'T CONSIDER THE SHOES.

WOULD THAT BE THE TESTIMONY? IN OTHER WORDS WE FOUND THAT THE SHOES WERE NOT ADMISSIBLE, AND IT IS NOT IN THE EVIDENCE.

AT THE SAME TIME WHAT YOU DO CONSIDER IS WHETHER OR NOT THE SHOES CONTRIBUTE TO THE VERDICT.

I THOUGHT, AT THE BEST, IT IS BEYOND A REASONABLE DOUBT.

CORRECT.

AND YOU HAVE TO SHOW THAT IT WAS HARMLESS ERROR.

THE SHOES WERE NEVER -- THE TESTIMONY ABOUT THE SHOES WAS THAT THEY COULD HAVE MATCHED. AND BECAUSE THREE WEEKS HAD ELAPSED, BETWEEN THE TIME THE MURDER WAS COMMITTED AND THE TIME HE WAS ARRESTED, THE SHOES WORRY, SO ALL YOU CAN SEE SAY, THE PATTERN WAS THE SAME. THE SPECIFIC IDENTIFYING POINTS, LIKE YOU MIGHT HAVE A CUT IN A CERTAIN SPOT, WELL, THAT WAS WORN, SO THE CUT DIDN'T EXACTLY LOOK THE SAME. YOU COULDN'T SAY THIS IS THE SAME SHOE EXACTLY. WHAT YOU COULD SAY IS IT COULD BE THE SAME SHOE.

SO WHAT YOU ARE SAYING IS IT WASN'T A CRITICAL PIECE OF EVIDENCE, CONSIDERING THAT THIS WAS NOT THE MOST OVERWHELMING CASE OF GUILT THAT THE STATE HAS EVER HAD. IT CERTAINLY WAS AN IMPORTANT PIECE OF EVIDENCE, WASN'T IT?

IT WAS CERTAINLY RELEVANT EVIDENCE, BUT I THINK THE FACT THAT HIS BLOODY FINGER PRINCE AT THE SCENE -- FINGERPRINTS AT THE SCENE AND THOSE STATEMENTS ARE, REALLY, STRONG EVIDENCE THAT HE IS GUILTY.

WHAT ABOUT TE SHOE PRINT, WAS THERE SOME EVIDENCE OF THE CO-DEFENDANT?

AS I RECALL THE TESTIMONY, THERE WERE NINE SHOE PRINTS OR ACTUALLY TWELVE SHOE PRINTS THAT COULD HAVE BEEN FROM THE DEFENDANT'S SHOE AND ONE FROM THE CO-DEFENDANT, HARRY THOMAS. I BELIEVE THAT I HAVE ADDRESSED ALL OF THE ISSUES AND I WILL BRIEFLY ADDRESS THE ADDITIONAL EVIDENCE. THREE TESTIFIED AT THE HEARING AND ONLY ONE TESTIFIED THAT THERE WAS A DIMINUTION IN THE CAPACITY TO CONTROL HIS BEHAVIOR. AT THE TIME THE DEFENDANT HAS A HISTORY OF MALINGERING. HE WAS EVALUATED TWICE BEFORE TRIAL AND SENT TO THE DISTRICT FOR EVALUATION AND WAS FOUND THAT HE WAS MALINGERING.

WHAT AGE WAS THE DEFENDANT?

I THINK HE WAS BORN IN 1953, AS I RECALL. IT IS DIFFICULT TO KNOW HOW FAR HE WENT IN SCHOOL, BECAUSE HE GAVE TESTIMONY TO MENTAL HEALTH EXPERTS AS TO HIS BROTHERS AND SISTERS AND WHERE HE WAS BORN. THERE IS SOME INDICATION THAT HE DROPPED OUT IN THE EIGHTH GRADE. WHETHER OR NOT HE DROPPED OUT, I DON'T KNOW.

WAS THS PRESENTED AT THE PENALTY PHASE?

AT THE PENALTY PHASE.

SO, AGAIN THERE, IS NO SCHOOL RECORDS, NO -- WERE THERE MEDICAL RECORDS INTRODUCED INTO -- AS RECORDS, ABOUT --

THERE WERE CERTAINLY DISCUSSIONS ABOUT THEM. I DON'T RECALL RIGHT OFFHAND, IF THE MEDICAL RECORDS WERE ACTUALLY INTRODUCED.

WAS HE DIAGNOSED AS SCHIZOPHRENIC?

WELL, THERE WERE THREE WITNESSES. DR. GUTMAN, DR. MINGS AND ANOTHER DOCTOR DID BELIEVE THAT HE WAS SCHIZOPHRENIC. ALL OF THEM, WHEN THEY EVALUATED IN 1984, HAD SOME EVIDENCE AS TO WHETHER HE HAD BEEN MALINGERING OR NOT.

HADN'T HE BEEN IN AN INSTITUTION AFTER HIS ARREST?

YES, SIR. HE WAS SENT TO THE DISTRICT THREE NORTH FLORIDA EVALUATION AND TREATMENT CENTER, AS A RESULT OF HIS ACTING UP IN JAIL. HE WAS EVALUATED, AND THEY SAID WE ARE NOT SURE IF HE IS REALLY SCHIZOPHRENIC OR IF HE IS MALINGERING. THEY KEPT HIM THERE FOR SIX MONTHS FOR EVALUATION AND SENT HIM BACK. HE STARTED ACTING UP, AND, AGAIN, HE WAS EVALUATED, AGAIN, BY DR. GUTMAN, DR. MINGS AND THE OTHER DOCTOR, AND HE WAS SENT BACK ONCE AGAIN TO THE NORTH FLORIDA TREATMENT CENTER, AND ONCE AGAIN HE WAS FOUND TO BE MALL EVENING ERRING, AND -- MALINGERING, AND ONCE AGAIN THE JUDGE FOUND THAT HE WAS ACTING UP AND WOULD BE SENT BACK THERE AGAIN.

WAS HE FOUND TO BE MALL EVENING ERRING?

SEVERAL TIMES E. ADMITTED, IN 1999, TO DR. GUTMAN, THAT HE HAD BEEN MALL EVENING ERRING AND DR. DANZINGER REPORTED TO THE JUDGE THAT HE WAS MALINGERING AND HAD BEEN ALL ALONG, AND IF HE HAD MENTAL PROBLEMS AGAIN, HE WOULD BE MALINGERING THEN.

WERE THERE RECORDS FROM BEFORE 1993, OF HIS MENTAL CONDITION?

YES. HE WAS SERVING A SENTENCE IN NEW JERSEY, AND ACTED LIKE HE HAD MENTAL PROBLEMS, SO HE WAS SENT FOR EVALUATION THERE, AND THEN THAT EVALUATION IS REFERENCED IN THE FIRST REPORT. I DON'T KNOW IF I WANT TO LOOK AT IT RIGHT NOW, BUT BY THE FLORIDA TREATMENT CENTER, AND ACCORDING TO THEM, WHAT THE NEW JERSEY EVALUATORS DETERMINED, VERY QUICKLY, WAS THAT HE WAS MALINGERING, THAT HE WAS FAKING AND THERE WASN'T ANYTHING WRONG WITH HIM. THE THING ABOUT HIS VARIOUS STATEMENTS AND THESE DELUSIONS THAT HE APPARENTLY SUFFERED AND HE COULDN'T REMEMBER, WAS THAT THEY WERE INCONSISTENT WITH ANY PARTICULAR DIAGNOSIS. FOR EXAMPLEEST, CLAIMED NOT TO REMEMBER WHO HIS FAMILY WAS IF HE HAD ANY BROTHERERS AND SISTERS AND WHERE HE WAS BORN AND THINGS LIKE. THAT AGAIN, THAT IS NOT YEAH WHAT SCHIZOPHRENIC WAS AND WHAT HE CAN REMEMBER OR CAN'T REMEMBER.

DO WE KNOW ANYTHING ABOUT HIS IQ?

THERE IS NO ACTUAL IQ SCORE, BUT THEY, ALL, AGREED THAT HIS INTELLIGENCE WAS WITHIN NORMAL RANGE. I MIGHT POINT OUT THAT DR. FIBER TESTIFIED -- DR. FISHER TESTIFIED, AT THE PENALTY PHASE, WHEN HE WAS ASKED IF THERE WAS ANY EVIDENCE THAT HE WAS DELUSIONAL AT THE TIME OF THE CRIME, HE POINTED OUT THAT THERE WAS NO WITNESS THAT HE KNOWS OF OR THAT HE TALKED TO, THAT REFLECTS THAT REMEMBERS ANY DELUSIONAL OR PSYCHOTIC TYPE OF BEHAVIOR BY THE DEFENDANT, AT OR BEFORE THE TIME OF THE CRIME, AND THAT HE WAS MALINGERING, AND THAT HE SUFFERED FROM NO TYPE OF PSYCHOTIC DISORDERS, AND EVEN THOUGH DR. DANZINGER SAID HE WAS MALINGERING, HE SAID THERE WAS NO EVIDENCE TO THE CONTRARY. THERE IS, ALSO, THE FACT THAT, AT HIS SECOND STAY AT THE TREATMENT CENTER, HE WAS GIVEN ANTI-PSYCHOTIC MEDICINES FOR A WHILE AND HE ACTED OKAY, AND THEY TOOK HIM OFF AND HE, STILL, ACTED OKAY, AND TWO EXPERTS TESTIFIED, I BELIEVE DR. DANZINGER DID, TESTIFIED THAT THAT WOLD BE HIGHLY UNUSUAL, FOR SOMEONE WHO WAS SCHIZOPHRENIC TO BE TAKEN OFF HIS MEDICINE AND NOT DECOMPENSATE, AND ALL THREE OF THE EXPERT WITNESSES, WHO TESTIFIED AT THE PENALTY PHASE, ALL AGREED THAT, AS FAR AS THEY KNEW, HE HAD BEEN ACTING FINE, AS FAR AS THE LAST TWO OR TWO AND-A-HALF OR THREE YEARS PRIOR TO THE TRIAL, AND DR. DANZINGER TESTIFIED THAT, FOR SOMEONE TO BE A REMISSION CONDITION, IT WOULD BE HARD TO BE IN REMISSION FOR THAT LONG.

WAS THERE A COMPETENCY HEARING HERE?

THAT I DON'T RECALL. THERE WERE CERTAINLY COMPETENCY EVALUATIONS MORE THAN ONCE.

DID SOME EXPERTS CHANGE THEIR OPINIONS, BECAUSE OF THIS MALINGERING?

A COUPLE OF THEM WENT BACK AND FORTH. ESPECIALLY DR. DANZINGER. HIS FINAL CONCLUSION WAS THAT HE HAD NEVER BEEN SCHIZOPHRENIC. THERE WAS A FERRET A HEARING, BEFORE THE -- FERETTA HEARING, AS TO THE COMPETENCY HEARING, AND ON THIS APPEAL.

BUT HE REPRESENTED HIMSELF. THIS WASN'T A CASE WHERE HE WAS WAIVING MITIGATION.

HE PRESENTED MITIGATION. HE ATTEMPTED, IF YOU READ THE QUESTIONS THAT HE ASKED, WHAT HE WAS ATTEMPTING TO ILLICIT, AMONG OTHERING -- ELICIT, AMONG OTHER THINGS, WAS THAT HIS SCHIZOPHRENIA COULD HAVE BEEN CAUSED BY VENEREAL DISEASE DISEASE, AND A DOCTOR SAID THAT SYPHILIS CAN CAUSE SCHIZOPHRENIC-TYPE SYMPTOMS, AND HIS PROBLEM WAS HE HAD GONORRHEA, AND BASICALLY THEY DISAGREED THAT THAT CAN'T HAPPEN.

WAS THERE ANY EVIDENCE OF MEDICAL DIAGNOSIS THAT HE SUFFERED FROM ANY VENEREAL DISEASE?

NO EVIDENCE PRESENTED, FROM THE POST SPENCER MEMO, SUBMITED BY HIS ATTORNEY. BY THE WAY, HE WAS REPRESENTED BY AN ATTORNEY, AGAIN, BY THE TIME HE GOT TO THE SPENCER HEARING. HE HAS BEEN EVALUATED OR TESTED, REPEATEDLY. NOBODY HAS EVER FOUND ANY ESTD EVIDENCE OF ANY VENN -- ANY EVIDENCE OF ANY VENEREAL DISEASE, AND, IN FACT, WHAT HIS LAWYER CONTENDED AT THE TIME WAS THIS SHOWS HOW MENTALLY OFF HE IS, BECAUSE HE THINKS HE HAS GOT THIS DISEASE, WHEN, IN FACT, HE DOESN'T HAVE IT. AT ANY RATE, WHEN YOU COUNTER THE -- WHEN YOU CONSIDER THE EVIDENCE, CONSIDER THE CROSS-EXAMINATION AND VARIOUS THING THAT IS WENT ON, OUR POSITION IS THE JUDGE PROPERLY EVALUATED MITIGATION, AND, IN FACT, HE FOUND THE IMPAIRMENT MITIGATOR BUT FOUND THAT IT WASN'T SUBSTANTIAL ENOUGH TO GIVE IT GREAT WEIGHT, AND HE GAVE IT SOME WEIGHT, BUT HE CONSIDERED THAT, AND IN VIEW OF THE BRUTALITY OF THIS MURDER, AND THE FACT THAT HE COMMITTED ARMED ROBBERY, THE JUDGE FOUND THAT THE AGGRAVATORS OUT WEIGHED THE MITIGATION, AND THERE WOULD BE CASE LAW TO SUPPORT IT. THANK YOU.

IF I MAY JUST CORRECT A COUPLE OF AND ANSWER SOME OF QUESTIONS FROM THAT LAST ISSUE. TWICE, HE WAS JUDGED IN COMPETENT AND SENT TO A STATE HOSPITAL PRIOR TO TRIAL. IN COMPETENT TO STAND TRIAL. EACH TIME HE CAME BACK, THERE WAS A COMPETENCY HEARING AND HWAS FOUND COMPETENT AT THE TIME.

WAS THAT THE SAME JUDGE?

YEAH. AS FAR AS THE FINDINGS, HERE, THE STANDARDS THAT THIS COURT HAS TO APPLY TO THAT IS, DID THE COURT APPLY THE RIGHT STANDARD. WE HAVE SOME EVIDENCE THAT HE DID NOT. FIRST OF ALL, WHEN HE READ HIS ORDER ON THE FIRST ISSUE, ON THE FIRST MITIGATING, HE SAID THERE WAS NO EVIDENCE THAT SUPPORTS THIS BEYOND A REASONABLE DOUBT. IT WAS, THEN, BROUGHT TO HIS ATTENTION BY THE STATE THAT, OH, YOU PROBABLY SLIPPED UP THERE, AND HE SAID OH, YOU ARE RIGHT. IT IS A TYPOGRAPHICAL ERROR E I SUBMIT TO YOU TYPING IN A WELL-THOUGHT-OUT, PLANNED ORDER, YOU DON'T JUST TYPOGRAPHICLY ERROR AND PUT IN YO BEYOND A REASONABLE DOUBT". I SUBMIT THAT THE TRIAL COURT APPLIED --

GIVE US A THUMBNAIL SKETCH OF THE BACKGROUND.

HIS BACKGROUND IS HE HAS BASICALLY BEEN IN INSTITUTIONS SINCE, I EASTBOUND LEAVE, SINCE 198 -- SINCE, I BELIEVE, 1980. HE HAS BEEN IN ALL KINDS OF TROUBLE. I DON'T THINK HE

FINISHED THE EIGHTH GRADE.

YOU SAID IN INSTITUTIONS.

MAINLY PRISONS, BUT THERE WAS A JUVENILE INSTITUTION THAT HE WAS IN, WHICH I DON'T KNOW THAT YOU WOULD CALL IT A PRISON, BUT YOU KNOW, INSTITUTIONS OF SOME KIND. MAINLY FOR HIS CONDUCT.

BORN AND RAISED IN NEW JERSEY?

YES. WELL, YES.

ANY EMPLMET HISTORY?

VERY LITTLE. ODD JOBS, BUT, REALLY, NO --

DO YOU AGREE WITH YOUR COLLEAGUE THAT IN THE EIGHTH GRADE HE DROPPED OUT OF SCHOOL?

I BELIEVE IT WAS EIGHTH GRADE. YES. THERE WAS NO TESTIMONY AS TO WHAT HIS IQ WAS, ALTHOUGH THEY DID ALL KIND OF INDICATE HE WAS WITHIN NORMAL RANGE. THE ONE INSTANCE WHERE THE DOCTOR TESTIFIED THAT HE WAS MALINGERING IN 1990, THAT WAS IN CONNECTION WITH A DIFFERENT OFFENSE, NOT THIS OFFENSE. ALL OF THE -- YES, HE WAS ADJUDICATED AND DIAGNOSED SCHIZOPHRENIC, BY SEVERAL OF THE DOCTORS. THEY DID MAKE A DIAGNOSIS THAT HE WAS SCHIZOPHRENIC, SO, YES, THERE IS THAT. THE OTHER ISSUE IS THE ACCOMPLICE ISSUE, WHERE THE TRIAL JUDGE MADE A FINDING, SAYING THE RECORD IS DEVOID OF ANYBODY ELSE PARTICIPATED IN THIS. THE RECORD IS REPLETE WITH EVIDENCE THAT HE WAS -- SOMEBODY ELSE WAS INVOLVED. HARRY THOMAS, WE KNOW, WAS INVOLVED. HE PLED GUILTY TO SECOND-DEGREE MURDER.

HE DID HIMSELF IN THERE, DID HE NOT, BY HIS STATEMENTS AT THE SPENCER HEARING?

WELL, IF YOU TAKE THEM IN THE CONTEXT OF WHAT THEY WERE DONE AT THE SPENCER HEARING, IT -- HE IS TAKING IT, BECAUSE HE HAS GOT TO EXPOSE THE CIA CONSPIRACY AND ALL OF THAT, IT WASN'T -- I AM NOT SO SURE THAT IT WAS IN THE CONTEXT OF I AM NOW CONFESSING TO EVERYTHING HERE. IT WAS, ALWAYS, WITH THIS PROVISO THAT THIS IS WHY I AM DOING IT, BECAUSE I HAVE GOT TO EXPOSE THIS HUGE CONSPIRACY THAT IS OUT THERE, WITH THE NEW JERSEY OFFICIALS AND THE CIA PEOPLE ARE TRYING TO KILL HIM AND EVERYTHING ELSE.

BUT HE DID SAY, THERE, THAT THE CO-DEFENDANT WASN'T HE HAVE THN THE HOUSE, WHEN HE KILLED THE WOMAN.

RIGHT. BUT WE HAVE -- JUDGMENT OF SENTENCE WAS ENTERED INTO EVIDENCE, SO THE RECORD IS NOT DEVOID OF ANY TESTIMONY ON. THAT THANK YOU.

THANK YOU, MR. BECKER.