

>>> NEXT CASE IS BOYD VERSUS STATE OF FLORIDA.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, SUZANNE KEFFER FROM CRCS SOUTH ON BEHALF OF MR. BOYD.

WE'RE HERE TODAY AFTER DENIAL OF MR. BOYD'S MOTION, AFTER AN EVIDENTIARY HEARING ON THREE ISSUES AND SUMMARY DENIAL OF THE REMAINING ISSUES.

THE ISSUE THAT I'D LIKE TO FOCUS ON TODAY IS THE JURY MISCONDUCT ISSUE, THE FACT THAT DURING VOIR DIRE AT LEAST ONE OF THE JURORS FAILED TO REVEAL THAT SHE WAS A THREE-TIME CONVICTED FELON AND ALSO WAS CONVICTED OF A MISDEMEANOR IN ANOTHER STATE AND SHE HAD NOT HAD HER RIGHTS RESTORED.

AS A SUB ISSUE, THERE WAS ALSO A SECOND JUROR WHO FAILED TO REVEAL THAT IN FACT HE HAD A MISDEMEANOR CONVICTION AS WELL.

>> WITH ADJUDICATION WITHHELD.

>> CORRECT.

>> NOW, MR. LASWELL?

>> THE TRIAL ATTORNEY IS

MR. LASWELL, YES.

>> THEY KNEW THAT THE FIRST JUROR, SHE REVEALED SHE HAD A JUVENILE RECORD.

>> CORRECT.

>> AND HIS STATEMENT ABOUT WHY HE DIDN'T INQUIRE FURTHER, BECAUSE I ASSUME THIS IS BEING DONE AS AN INEFFECTIVENESS ASSISTANCE OF COUNSEL?

>> WE'VE PLED IT AS TWO ISSUES.

THE FIRST IS A STRAIGHT CONCEALMENT OF THE FACT THAT SHE WAS STATUTORILY DISQUALIFIED BY THE FACT THAT SHE WAS A CONVICTED FELON.

AND I DON'T -- AND THE SECOND ISSUE IS THAT IN FACT THERE WAS INEFFECTIVENESS OF COUNSEL HERE FOR FAILING TO ADEQUATELY CONDUCT VOIR DIRE.

>> SO ON THE FIRST, WHICH IS THAT HE -- HE SAID -- AND IT'S CERTAINLY NOT UNREASONABLE, YOU LOOK FOR JURORS, IF THEY'VE GOT FRIENDS WHO ARE POLICE OFFICERS, YOU'RE A LITTLE LESS RELUCTANT AS A DEFENDANT TO HAVE THEM. BUT, BOY, IF YOU'VE HAD TROUBLE WITH THE CRIMINAL JUSTICE SYSTEM, PAST TROUBLE, THIS IS THE KIND OF JUROR I WANT ON THIS.

SO HE INTENTIONALLY DID NOT INQUIRE FURTHER, IS WHAT HE SAID.

AND IS THAT AN UNREASONABLE STRATEGY DECISION?

IT WOULD SEEM IF ANYBODY WHO WANT TO KNOW MORE, IT WOULD BE THE STATE BECAUSE THEY PROBABLY WOULDN'T WANT SOMEBODY THAT'S HAD THAT BACKGROUND.

SO I'M HAVING TROUBLE UNDERSTANDING, NUMBER ONE, THIS DEFICIENCY AND NUMBER TWO, UNDER CARATELLI, UNLESS SHE WAS ACTUALLY BIASED, I DON'T SEE HOW YOU PREVAIL ON AN INEFFECTIVENESS CLAIM.

>> AND I UNDERSTAND YOUR QUESTIONS IN RESPECT TO THE INEFFECTIVENESS CLAIM.

I DO WANT TO POINT OUT BEFORE I GET TO THAT THAT IN FACT WHAT WE'VE ASSERTED HERE IS THE FACT THAT SHE WAS STATUTORILY DISQUALIFIED IS AN INHERENT BIAS.

>> RIGHT.

SO WHAT IS THE LAW, BECAUSE I THOUGHT THERE WAS A QUESTION AS TO WHETHER SHE WAS STATUTORILY DISQUALIFIED?

HER CIVIL RIGHTS HAVE NOT BEEN RESTORED?

>> THEY HAVE NOT.

I BELIEVE, IN FACT, THAT WHAT WE PUT INTO THE RECORD FROM THE OFFICE OF EXECUTIVE CLEMENCY IS THEY WERE NOT RESTORED UNTIL

2008.

BUT WE DID OBTAIN THE CERTIFIED DOCUMENT FROM EXECUTIVE CLEMENCY.

THE TRIAL OCCURRED IN 2002.

SO TO GET BACK TO THAT, THERE DOESN'T SEEM TO BE ANY CASE LAW FROM THIS COURT AS TO WHETHER OR NOT THE STATUS OF A CONVICTED FELON, WHO HAS NOT HAD THEIR RIGHTS RESTORED, IS IN FACT INHERENT BIAS.

THE ONLY CASE LAW THAT WE HAVE COMING FROM THIS COURT IS LOWREY V STATE, WHICH ADDRESSED A SITUATION WHERE A JUROR FAILED TO REVEAL THAT IN FACT THERE WAS A PENDING PROSECUTION AT THE TIME OF VOIR DIRE.

WHAT THIS COURT SAID IS THAT IN THAT SITUATION, THERE CERTAINLY IS INHERENT BIAS, WHERE IT'S KIND OF HUNG OVER THE JUROR'S HEAD, THIS PROSECUTION BY THE STATE ATTORNEY, THE SAME STATE ATTORNEY THAT'S PROSECUTED THE DEFENDANT, AND THERE MAY BE SOME BIAS TO DO RIGHT BY THE STATE IN THAT SITUATION.

>> BUT I'M STILL HAVING TROUBLE WITH -- THE STATUTORILY DISQUALIFIED WOULD SEEM TO ME IF IT HAD BEEN REVEALED SHE COULD NOT HAVE SAT ON THAT JURY.

>> THAT'S CORRECT.

SHE COULD NOT HAVE SAT.

>> WHAT STATUTE NUMBER SUBSECTION SAYS THAT?

>> SAYS THAT A CONVICTED FELON CANNOT?

I BELIEVE -- AND WE CITE TO IT IN OUR BRIEF.

I WANT TO SAY 40.013?

>> I'M NOT SEEING IT IN YOUR

--

>> I BELIEVE IT'S THE FIRST SUBSECTION.

AND I MAY BE WRONG, BUT IT IS CITED IN OUR BRIEF.

AND WHAT IT SAYS IS THAT ANYBODY

WHO IS PENDING PROSECUTION--

>> PENDING PROSECUTION.

>>-- OR A CONVICTED FELON WHO HAS NOT HAD THEIR CIVIL RIGHTS RESTORED, AND IT EVEN GIVES -- NOT ONLY CRIMES OF BRIBERY OR FORGERY, BUT ANY FELONY.

IT HAPPENS TO DELINEATE CRIMES OF DISHONESTY, WHICH I THINK IT VERY INTERESTING, BECAUSE THAT'S PRECISELY WHAT WE HAVE HERE, IS THAT THE FEMALE JUROR HERE WAS CONVICTED TWICE OF FALSE REPORT OF A BOMBING AND ALSO OF CARRYING A CONCEALED WEAPON BY A CONVICTED FELON.

AND SO WE HAVE THAT DISHONESTY ELEMENT HERE AS WELL AS PART OF WHAT HER CRIMES ARE.

>> SO DO YOU SAY THAT -- LET'S ASSUME THAT YOU'RE CORRECT THAT IT HAD BEEN REVEALED, EVEN IF BOTH SIDES AGREED, PROBABLY THE STATE WOULD HAVE STRUCK HER, I WOULD PRESUME ANYWAY, IF THEY HAD KNOWN THIS, THAT THE CARATELLI ACTUAL BIAS PRONG WOULD MANDATE IN THIS CASE A NEW TRIAL?

>> WELL, I THINK, ONE, THAT THE INHERENT BIAS IN A CONVICTED FELON MANDATES RELIEF IN THIS CASE.

I THINK THAT THIS DOES RISE TO THE LEVEL OF INHERENT BIAS SIMILAR TO LOWREY.

>> WHAT IS IT ABOUT HER CRIMES THAT SAY TO YOU YOU COULDN'T HAVE BEEN A FAIR JUROR?

>> THAT IS GET INTO THE ACTUAL BIAS STANDARD.

CERTAINLY WHAT WE HAVE HERE IS, ONE, THESE ARE CRIMES OF DISHONESTY.

AS I SAID, FALSE REPORT OF A BOMBING, CARRYING A CONCEALED FIREARM.

AND THAT REALLY CALLS INTO QUESTION THIS JUROR'S ABILITY TO BE FAIR AND IMPARTIAL.

THIS COURT RECENTLY REITERATED THE SANCTITY OF OUR JURORS AND THE NECESSITY OF MAKING SURE THAT WE HAVE FAIR AND IMPARTIAL JURIES SO THAT THE CITIZENS OF OUR STATE REALLY HAVE FAITH IN THIS PROCESS.

>> OKAY.

LET ME -- I NOW HAVE 40.013 IN FRONT OF ME.

SO NO PERSON IS UNDER PROSECUTION FOR ANY CRIME OR HAS BEEN CONVICTED IN THIS STATE OF BRIBERY, FORGERY, PERJURY AND LARCENY.

>> IT SAYS A CONVICTED FELON, INCLUDING.

IT'S NOT EXCLUSIVE.

IT SIMPLY DELINEATES THOSE.

>> THAT'S NOT MY READING.

>> I DON'T HAVE THE STATUTE IN FRONT OF ME.

>> IT JUST SAYS OR HAS BEEN CONVICTED IN THIS STATE OF BRIBERY, FORGERY, PERJURY, LARCENY OR ANY OTHER OFFENSE THAT IS A FELONY IN THIS STATE OR WHICH IF IT HAD BEEN COMMITTED IN THIS STATE WOULD BE A FELONY.

>> YES.

>> IT DELINEATES THE FOUR CRIMES.

NOW, WHY IT USES -- AS YOU SAID, DOESN'T USE FALSE REPORTING.

I MEAN, YOU COULD MAKE A GOOD ARGUMENT IF THIS WAS INITIALLY THERE AND IT REALLY DOES SAY A LOT ABOUT HOW CAREFUL WE NEED TO BE WHEN WE'RE QUESTIONING OUR JURORS ABOUT THIS.

>> AFTER THE DELINEATION OF THOSE CRIMES, IT SAYS OR ANY OTHER FELONY IN THIS STATE OR THAT WOULD BE A FELONY IN ANOTHER STATE.

SO IT'S REFERRING TO ANY OTHER FELONY.

I DON'T KNOW WHY THE LEGISLATURE

CHOSE TO DELINEATE THOSE.

>> I SEE WHAT YOU'RE SAYING.
RIGHT.

I NOW SEE THAT.

>> WHAT I ARGUE IS THAT I FIND
IT VERY INTERESTING THAT THE
LEGISLATURE FOUND IT NECESSARY
TO DELINEATE CRIMES OF
DISHONESTY.

I WANT TO GET BACK TO WHAT
YOU'RE ASKING ABOUT.

AGAIN, AND I WANT TO EMPHASIZE,
THERE CERTAINLY IS INHERENT BIAS
FOR A CONVICTED FELON SITTING IN
A CRIMINAL TRIAL BECAUSE I DON'T
THINK IT'S AS SIMPLE AS WHAT
MR. LASWELL SAID, THAT HE WOULD
TAKE HIS CHANCES BECAUSE THE
GENERAL PROPOSITION IS THEY'RE
GOING TO BE MORE FAVORABLE TO A
DEFENDANT.

THERE'S BEEN DISCUSSION OF IT IN
THE DCAs IN THIS STATE, THERE
WAS A DISCUSSION ABOUT THE
COMPETING BIASES THAT DO COME
INTO PLAY WITH A CONVICTED
FELON.

IT'S NOT AS EASY AS SAYING, OH,
THEY FAVOR THE DEFENDANTS.

I THINK YOU CAN EASILY SAY THAT
THEY MAY HAVE -- -- THEY HAVE
DIFFICULTY WITH DEFENDANTS WHO
PROFESS INNOCENCE.

THEY MAY HAVE A DESIRE TO BE A
GOOD CITIZEN AND SERVE THE STATE
AND THAT INDICATES A FAVOR ON
BEHALF OF THE STATE.

IT'S NOT AS CUT AND DRY AS WHAT
MR. LASWELL WOULD OFF THE CUFF
SAY.

I WANT TO POINT OUT THAT
MR. LASWELL REPEATEDLY SAID,
ONE, HIS EXAMPLES OF RUN-INS
WITH THE LAW WERE A TRESPASS.
HE COULDN'T POINT TO ONE
INSTANCE IN HIS 40 SOME YEARS OF
EXPERIENCE WHERE HE HAD DEALT
WITH A CONVICTED FELON THAT HE
SAID I WOULD KEEP HIM NO MATTER
WHAT.

I THINK WHAT'S ALSO INTERESTING AND GOES TO THE BIAS ISSUE IS THAT MR. LASWELL REPEATEDLY SAID, WHEN ASKED ABOUT THE CRIMES, ABOUT THE CIRCUMSTANCES OF THE CRIMES, THAT IT SHOWED HIM HE OUGHT TO DO SOME MORE VOIR DIRE.

NOT MORE.

SOME VOIR DIRE.

EXCUSE ME.

MR. LASWELL DID ABSOLUTELY NO VOIR DIRE.

THIS IS A CASE--

>> WASN'T THAT PART OF THE TRIAL STRATEGY IN TERMS OF HIS CLIENT AGREED THAT HE SHOULD DO MINIMUM VOIR DIRE OF THE JURORS BECAUSE THE THEORY OF HIS CASE WAS THAT HE WAS FRAMED BY THE POLICE. THEREFORE, HAVING SOMEBODY CONVICTED OF CRIMES YOU WOULD THINK WOULD INURE TO HIS DEFENSE.

>> WHAT MR. LASWELL SAID AND HIS CO-COUNSEL ALSO SAID BELOW IS THAT THEY HAD NO STRATEGY WITH RESPECT TO VOIR DIRE.

MR. LASWELL REPEATEDLY SAID--

>> WELL, IN MOST INSTANCES I WOULD THINK ANYBODY THAT HAD ANY KIND OF -- WHEN YOU STRIKE A JUROR -- I MEAN, THE STATE NORMALLY WOULD PREEMPT THOSE PEOPLE FROM SITTING ON THE JURY IF THEY HAVE A CRIMINAL RECORD. SO THAT'S PROBABLY WHY WE HAVEN'T SEEN THAT MANY CASES LIKE THAT.

>> AND THAT COULD BE.

THERE HASN'T BEEN MANY CASES.

AND SO THIS IS A NEW AREA.

BUT MR. LASWELL WAS VERY CLEAR THAT HE DID NOT HAVE A SPECIFIC STRATEGY FOR SEATING A JURY.

HE LISTENED -- HE SAID HE LISTENED TO A DAY AND A HALF OF VOIR DIRE BY THE COURT, WHICH WERE QUESTIONNAIRES ABOUT GENERAL BACKGROUND INFORMATION.

THEY WEREN'T PROBING OF REALLY WHETHER A JUROR COULD BE FAIR OR NOT.

AND DR. ONGLEY, CO-COUNSEL EVEN SAID THAT.

THESE WERE THINGS JUST SO THEY COULD REMEMBER WHO THE JURORS WERE.

THEY WEREN'T INDICATIONS OF WHETHER THAT JUROR WOULD BE BIASED OR WHETHER THEY COULD BE FAIR.

HE INDICATED MORE QUESTIONS WOULD NEED TO BE ASKED.

AND SO GOING BACK TO--

>> DID YOU EXPLORE OTHER JURISDICTIONS FOR THE -- DIRECTED TO THE ISSUE OF IF YOU HAVE AN ILLEGAL, SOMEONE WHO IS PROHIBITED FROM BEING ON THE JURY, NEEDING TO COME BACK LATER AND SHOW THIS ACTUAL BIAS, AS OPPOSED TO SOMEONE WHO MAYBE DIDN'T DISCLOSE EVERYTHING, BUT IS NOT AN ILLEGAL JUROR, NEEDING TO SHOW THE BIAS.

I MEAN, HAVE YOU CONSIDERED MAKING THAT ARGUMENT, THAT THIS ACTUAL BIAS DOESN'T EVEN APPLY. THE ISSUE OUGHT TO BE HERE IS NOT WHETHER AN IMPROPER JURY REACHED THE RIGHT RESULT, BUT WHETHER THE DEFENDANT EVER HAD A PROPERLY-CONSTITUTED JURY.

>> YEAH.

WHAT I DID LOOK TO WAS SOME OF THE FEDERAL JURISDICTIONS. AND COMPANIONI IN FACT INDICATES SOME OF THOSE JURISDICTIONS, BECAUSE COMPANIONI WAS ASSERTING THE ACTUAL BIAS STANDARD. AND SO IN THOSE JURISDICTIONS IN FACT THE ONE CITED BY COMPANIONI, THEY EMPLOYED AN ACTUAL BIAS STANDARD, BUT INTERESTINGLY IN EACH ONE OF THOSE CASES THE COMPLAINING PARTY HAD AN EVIDENTIARY HEARING IN WHICH THEY WERE ABLE TO PRESENT THE JURORS.

HERE I ASKED TO QUESTION THE JURORS, AND IT WAS PROHIBITED. SO I THINK THAT'S INTERESTING THAT WHEN YOU'RE TALKING ABOUT AN ACTUAL BIAS AND WHEN YOU'RE IMPOSING THAT STANDARD ON THE COMPLAINING PARTY, IT'S A VERY DIFFICULT THING TO REACH WITHOUT EVER BEING ABLE TO TALK TO THE PERSON THAT WITHHELD THE INFORMATION.

>> NO MATTER WHAT YOU GET TO DO.

>> I AGREE.

>> YOU HAVE THAT.

BUT NO STATES LOOK TO JUST THE FACIAL VALIDITY.

EVERYBODY, ALL THE JURISDICTIONS CONSISTENTLY LOOK TO THIS ACTUAL BIAS.

>> I HAVE TO SAY THAT THE 11TH CIRCUIT CASES ARE A LITTLE BIT DIFFERENT.

THE 11TH CIRCUIT COURT OF APPEALS, U.S.V CARPA AND JACKSON V STATE OF ALABAMA.

BOTH OF THOSE THE STANDARD WHEN A JUROR HAS CONCEALED THE FACT THAT THEY ARE A CONVICTED FELON OR CONCEALED A CRIME IN FACT SAYS THAT THE COMPLAINING PARTY HAS TO PROVE TWO THINGS: ONE, THAT THE JUROR WAS DISHONEST, AND, TWO, THAT WHAT THEY CONCEALED, THE CONVICTED FELONY, WOULD HAVE BEEN A VALID BASIS FOR A CAUSE CHALLENGE.

AND IN JACKSON THEY SAY A CONVICTED FELONY IS ALWAYS GROUNDS FOR A CAUSE CHALLENGE.

>> LET ME ASK YOU A QUESTION ON HOW DID YOU -- DOES IT SHOW IN THE RECORD HOW YOU DISCOVERED THAT SHE HAD THIS ADULT FELONY TRAIL?

>> I BELIEVE IT DOES, BECAUSE I THINK I HAD PUT ON THE RECORD HOW WE DID, BECAUSE THE STATE WAS COMPLAINING THAT IN FACT WHEN WE WENT TO PUT IN THE CERTIFIED COPY OF HER GEORGIA

CONVICTION THAT WE SHOULD HAVE HAD THAT SOONER.

ALL OF THIS WAS PLED IN THE INITIAL 3850.

>> I GUESS WHAT I'M CONCERNED ABOUT, AGAIN, YOU GOT POLICY REASONS ALL OVER THE PLACE HERE, THAT IT IS CERTAINLY -- THERE'S SOME -- NOW THAT YOU CAN CHECK EVERYTHING AT THE TIME OF THE INITIAL VOIR DIRE, ESPECIALLY CONVICTIONS IN THIS STATE.

YOU CERTAINLY -- YOU CAN FIND IT OUT BEFORE THE APPEAL.

THE IDEA -- AND IT'S NOT -- I'M NOT FAULTING YOU, BUT THE IDEA THAT WE WOULD OVERTURN -- IF THAT'S THE ONLY REASON -- AN OTHERWISE VALID CONVICTION CONCERNS ME AS TO THE STANDARD AND WHETHER -- AGAIN, I WOULD SAY IF IT WAS RAISED POST-TRIAL, THAT MAYBE THE NEW TRIAL SHOULD BE GRANTED UNDER THAT CIRCUMSTANCE.

BUT DOES THE REASON FOR GRANTING THE NEW TRIAL IF IT -- CHANGE, BECAUSE WE HAVE -- THERE IS CASE LAW THAT WITH -- UNDER PROSECUTION, WHICH TO ME IS LIKE, YOU KNOW, YOU DEFINITELY DON'T WANT THAT JUROR IF YOU'RE A DEFENDANT, THAT IT STILL HAS TO BE SHOWN IF IT'S AN ACTUAL BIAS, RIGHT?

ISN'T THAT THE CASE LAW?

>> WELL, NO.

IT'S NEVER BEEN ADDRESSED IN A CRIMINAL CONTEXT BEFORE.

>> COMPANIONI--

>> THAT WAS A CIVIL CONTEXT.

WHAT THAT CASE SAID WAS IF INHERENT BIAS WAS GOING TO BE FOUND, IT WOULD BE IN A CRIMINAL CONTEXT, NOT IN A CIVIL CONTEXT. AND THAT JUST HASN'T BEEN ADDRESSED YET.

BUT WE VERY EASILY FOUND THAT SHE WAS A CONVICTED FELON.

WHEN WE DO OUR PUBLIC RECORDS

REQUEST, WE REQUEST INFORMATION ON THE JURORS BASED ON THIS COURT'S CASE LAW THAT WE NEED TO DO IT AT THE BEGINNING.

OTHERWISE WE'RE GOING TO BE PROCEDURALLY BARRED.

>> WHY SHOULDN'T IT BE IT SHOULD BE REQUIRED BEFORE THE APPEAL SO WE DON'T -- AND WHATEVER HAPPENS IN THIS CASE, IT SEEMS TO ME -- FIRST OF ALL, IT'S OUTRAGEOUS THAT THIS JUROR WOULD HAVE CONCEALED IT.

IT'S NOT LIKE AN I FORGOT. I AM NOT CONDONING AND THIS JUROR SHOULD BE BROUGHT IN AND BE ACCOUNTABLE FOR PERHAPS UNDERMINING THIS ENTIRE CRIMINAL CONVICTION.

>> THAT MAY BE SOMETHING THIS COURT NEEDS TO LOOK AT BECAUSE HERE WE ARE IN A CAPITAL POSTCONVICTION CASE AND I CERTAINLY BELIEVE THE FACT THAT A CONVICTED FELON GOT THROUGH VOIR DIRE AND SAT ON THIS JURY REALLY SPEAKS TO THE LEVEL OF REPRESENTATION AT VOIR DIRE--

>> AND BY THE STATE.

>> RIGHT.

THIS WAS A DAY AND A HALF OF VOIR DIRE.

AND THAT'S IT, IN A CAPITAL CASE.

>> RIGHT.

BUT IT IS TRUE THAT THE DEFENSE WAS THIS GUY WAS FRAMED, SO IT DOES PUT IT IN A LITTLE DIFFERENT THING, THAT PEOPLE WHO HAVE HAD RUN-INS WITH THE POLICE MIGHT BE YOUR IDEAL JUROR IF YOU'RE A DEFENDANT.

IF YOU'RE THE STATE, YOU HAVE EVERY REASON TO HAVE WANTED TO KNOW THIS.

YOU'RE CERTAINLY NOT SAYING ANYTHING WHERE THE STATE MIGHT HAVE KNOWN IT AND CONCEALED IT, ARE YOU?

>> AND EVEN GIVEN THAT--

>> ARE YOU SAYING THAT, THAT THE STATE MIGHT HAVE KNOWN IT OR SHOULD HAVE KNOWN IT?

>> I HAVE NOT SAID THAT HERE. INTERESTINGLY, THOUGH, WE DID OBTAIN THE FEMALE JUROR'S FILE FROM THE STATE ATTORNEY. THAT FILE WAS IN THEIR POSSESSION.

AND WE WERE ABLE TO OBTAIN HER RECORDS FROM THE STATE ATTORNEY'S OFFICE. BUT WE HAVEN'T ALLEGED THAT THEY KNEW OR SHOULD HAVE KNOWN. THERE WAS NO SORT OF BRADY ALLEGATION WITH RESPECT TO THIS JUROR.

>> YOU'RE DEEP IN YOUR REBUTTAL TIME.

>> OKAY.

THEN I WOULD RESERVE THE REST. THANK YOU.

>> GOOD MORNING AGAIN.

MAY IT PLEASE THE COURT, LESLIE CAMPBELL WITH THE ATTORNEY GENERAL'S OFFICE.

>> I MEAN, THIS IS REALLY AWFUL.

>> THAT A CONVICTED FELON SAT ON THIS JURY?

>> CORRECT.

>> WELL, FIRST OF ALL, WE HAVE TO LOOK AT THE TWO ALLEGATIONS. ONE IS A STRAIGHT-UP CLAIM THAT THERE WAS SOME SORT OF JUROR MISCONDUCT.

THAT IS PROCEDURALLY BARRED. REALLY WHAT IS ONLY BEFORE THIS COURT IS AN INEFFECTIVENESS CLAIM.

>> WHAT IS BARRED?

>> IT'S SOMETHING THAT COULD HAVE BEEN OR SHOULD HAVE BEEN BROUGHT UP AT THE TIME OF THE DIRECT APPEAL.

NOW, GRANTED,--

>> DOESN'T THE STATE, THOUGH, HAVE SOME OBLIGATION IN THIS TO MAKE SURE THAT -- WE'RE NOT AGAIN TALKING ABOUT IT WAS AN

AUTOMOBILE ACCIDENT TEN YEARS
AGO OR IT WAS A LITTLE BRUSH
WITH THE LAW 20 YEARS AGO.
WE'RE TALKING ABOUT -- WAS SHE
CONVICTED IN FLORIDA OF
FELONIES?

>> YES.

>> A CONVICTED FELON IN FLORIDA
WHO DIDN'T HAVE HER CIVIL RIGHTS
RESTORED.

>> AND THIS COURT HAS YET TO
IMPOSE ON THE STATE A
REQUIREMENT THAT IT PULL ANY
PUBLIC RECORDS, NCIC, FCIC
BEFORE JURY SELECTION.

>> HOW HARD IS THAT TO DO?

>> HAVING NEVER DONE IT, YOUR
HONOR, I DO NOT KNOW.

BUT AS MR. ONGLEY AND
MR. LASWELL HAVE SAID, THEY GET
50 JURORS AT THE TIME THAT THEY
ENTER THE COURTROOM AND THEY GET
THE LIST.

SO THEY'RE -- THE DEFENSE
COUNSEL ARE LOOKING AT THE LIST
AND THEY'RE QUESTIONING THE
JURORS AND THEY ARE EXPECTING
THE JURORS TO BE HONEST WITH
THEM.

SECOND POINT, THIS MAY NOT
REALLY BE A CASE OF JUROR
MISCONDUCT WHERE SOMETHING IS
WITHHELD.

WHILE SHE'S A CONVICTED FELON,
THE QUESTION THAT WAS ASKED OF
THE JURORS, DO YOU KNOW ANY
FRIENDS OR FAMILY THAT HAVE HAD
CONTACT WITH THE CRIMINAL
JUSTICE SYSTEM?

>> THE STANDARD VOIR DIRE
QUESTIONNAIRE OF JURORS, WE
DON'T ASK JURORS HAVE YOU BEEN
CONVICTED OF A FELONY?

>> THAT WAS THE QUESTION THAT
WAS ASKED--

>> NO.

I'M ASKING ON THEIR -- THEY ALL
HAVE TO FILL OUT A FORM
BEFOREHAND, DON'T THEY?
AND THAT'S WHAT THE JUDGE USES.

>> THOSE FORMS ARE NOT IN THIS CASE.

WE DO NOT HAVE ANY JUROR QUESTIONNAIRES AS EVIDENCE IN THIS CASE.

>> ARE YOU SERIOUS?

IN THIS DAY, THAT THE STATE OF FLORIDA IN CIRCUITS DO NOT HAVE THE PAPERWORK EVEN TO DETERMINE WHETHER THE PEOPLE ARE QUALIFIED TO SERVE AS JURORS?

I'VE NEVER -- EVERY TRIAL I'VE EVER BEEN INVOLVED IN, I MEAN, THAT'S THE FIRST THING THAT HAPPENS.

>> IF THAT HAPPENED IN THE JURY ROOM ----

>> NO.

NO.

AS THEY COME THROUGH.

JURORS GENERALLY REPORT TO A REPORTING AREA FOR JURORS.

>> THE JURY ROOM, YES.

>> AND GENERALLY THERE IS THE FORM THAT THEY FILL OUT, AND THERE'S A JUDGE THERE THAT GOES THROUGH AND DETERMINES CERTAIN THINGS.

>> AND THAT IS NOT EVIDENCE--

>> IT'S NOT EVIDENCE HERE.

AND YOU'RE SAYING THAT -- OKAY.

>> WE'RE TALKING ABOUT--

>> THAT QUESTION IS ALWAYS ASKED IN QUALIFYING THE JURY.

>> IN THE JURY ROOM.

>> IN THE JURY ROOM.

>> I THINK THE SAME ISSUE COMES UP WITH IMMIGRATION.

ONE HAS TO BE AN UNITED STATES CITIZEN TO SERVE ON A JURY.

AND IN FLORIDA, PARTICULARLY SOUTH FLORIDA, THAT'S A MAJOR ISSUE.

SO HOW IS THAT DETERMINED?

AND MY EXPERIENCE IS THAT AT THE JURY ROOM DOWN BELOW, WHERE ALL JURORS COME IN IN THE MORNING AND CHECK IN, SOMEBODY STEPS UP TO THE MICROPHONE AND TELLS THEM

YOU HAVE TO BE AN UNITED STATES
CITIZEN, YOU CAN'T BE A
CONVICTED FELON AND YOU CAN'T BE
THE GOVERNOR OF THE STATE OF
FLORIDA.

THAT'S IN THE STATUTE.

AND YOU CAN'T BE ALL THESE
THINGS.

IF YOU ARE ANY ONE OF THOSE,
RAISE YOUR HAND.

NOW, SOME PEOPLE MAY BE TOO
EMBARRASSED OR WHATEVER, MAY
SNEAK THROUGH THE PROCESS.

OKAY.

BUT THAT'S THE ONLY WAY THAT IT
IS BEING DONE TODAY.

AS FAR AS RUNNING NCIC ON EACH
PERSON WHEN YOU GOT 300 PEOPLE
THERE THAT MORNING, THAT'S
PHYSICALLY IMPOSSIBLE TO DO
THAT.

SO YOU HAVE TO RELY ON WHAT
PEOPLE SAY.

>> YES.

AND THAT'S WHAT I'M SAYING.

IN THIS PARTICULAR CASE WE ARE
FAILED WITH A JUROR THAT WAS
ASKED THAT ONE QUESTION IN FRONT
OF THE JUDGE -- OR THE JUDGE
ASKED THAT ONE QUESTION AND THEN
THE PARTIES WERE ALLOWED TO VOIR
DIRE.

>> OKAY.

HERE'S THE THING.

YOU WERE SAYING THAT THIS IS
PROCEDURALLY BARRED BECAUSE THEY
SHOULD -- THE DEFENDANT SHOULD
HAVE KNOWN IT.

THAT'S THE ONE -- I'M HAVING
TROUBLE.

LET'S ASSUME IT'S NOT
PROCEDURALLY BARRED AND THAT
THEY ACTED REASONABLY AT THE--

>> 3851, YES, YOUR HONOR.

>> WHAT IS THEN THE SECOND
PRONG?

IS IT ACTUAL BIAS?

>> ACTUAL BIAS, YOUR HONOR.

>> AND WHAT IS THAT BASED ON?

>> IT'S BASED ON CARATELLI.

>> WAS CARATELLI AN ILLEGAL JUROR?

>> I DON'T RECALL IF IT WAS AN ILLEGAL JUROR.

ONE THAT WAS NOT STATUTORILY QUALIFIED OR IF THERE WAS SOMETHING ELSE.

I KNOW THAT--

>> CARATELLI WAS NOT, BECAUSE I HAVE NOT -- IT'S -- IT'S A STARTLING THING TO REALIZE THAT WE HAD A CONVICTED FELON ON THIS JURY.

TO ME.

MAYBE NOT TO OTHERS.

BUT TO ME.

SO IT WOULD BE FAIRLY SAFE TO SAY CARATELLI WAS MORE OF SOMETHING THEY DIDN'T DISCLOSE OR SOMETHING THAT WASN'T ASKED.

>> AND WHAT WE HAVE -- IF WE'RE GOING ON THE MERITS OF THIS PARTICULAR CLAIM, WHAT WE HAVE ARE TWO CASES THAT DEFINE WHAT WE'RE LOOKING FOR, WHERE YOU HAVE SOMEBODY WHO'S NOT STATUTORILY QUALIFIED WE LOOK AT STATE V ROGERS AND WE HAD A PERSON WHO WAS UNDER 18. THAT'S A PERSON THAT'S NOT STATUTORILY QUALIFIED TO SIT ON A JURY.

THIS COURT SAID WE'RE NOT GOING TO UNDERMINE THE -- WE'RE NOT GOING TO REVERSE A TRIAL BECAUSE WE DON'T FIND THAT THAT IS A BIASED JUROR.

EVEN THOUGH -- NOT STATUTORILY UNQUALIFIED.

WE CAN'T SAY THAT THE JUROR WAS BIASED OR THERE WAS ANY DEFECT.

>> UNDER 18.

>> UNDER 18.

>> IT'S A FAR CRY FROM A FELONY CONVICTION THAT IS ALSO ONE OF FALSITY, WHICH IS -- AND THIS JUROR WAS NEVER QUESTIONED. SHE CONCEALED IT.

SO HOW IS THAT -- SO THAT'S

ROGERS.

>> THAT'S ROGERS.

THE OTHER CASE IS LOWREY.
THAT'S THE CASE THAT WAS
DISCUSSED EARLIER TODAY, WHERE
THE JUROR WAS UNDER ACTIVE
PROSECUTION BY THE PROSECUTOR
WHO WAS PROSECUTING THE
DEFENDANT.

AND THIS COURT FOUND THAT THAT'S
DIFFERENT.

THIS COURT SAID WE'RE GOING TO
CARVE OUT THAT EXCEPTION FROM
ROGERS BECAUSE THERE'S SOMETHING
INHERENTLY PROBLEMATIC WITH A
JUROR WHO IS POSSIBLY CURRYING
FAVOR WITH THE PROSECUTION IN
ORDER TO HELP THE JUROR'S CASE
WITH THE PROSECUTOR.

HERE WE HAVE SOMEBODY WHO HAS
BEEN CONVICTED OF A FELONY, HAS
-- IT WAS SOME 13 TO 18 YEARS
PRIOR.

THAT WAS THE LAST TIME SHE HAD
CONTACT WITH THE CRIMINAL
JUSTICE SYSTEM.

SHE DISCLOSED SOME.

SHE DIDN'T DISCLOSE ALL.

HOWEVER, SHE HAD ALSO BEEN TO
THE MILITARY AND SAID THAT SHE
HAD GOTTEN OVER IT.

>> HERE'S THE THING, THOUGH,
ABOUT WHAT HER INTENTIONS WERE
AND WHAT SHE WAS CONCEALING AND
WHY.

SHE SAID SOMETHING SHE MIGHT NOT
HAVE UNDERSTOOD THE QUESTION.

BUT ISN'T SHE THE ONE THAT
ANSWERED SHE HAD BEEN CONVICTED
AS A -- SHE HAD HAD ISSUES WHEN
SHE WAS A JUVENILE?

>> SHE'S THE ONE THAT
VOLUNTEERED--

>> OKAY.

SO JUVENILE.

SO WHAT WOULD IT BE WOULD THINK
REALLY DIDN'T HAVE TO DO WITH
HER, IT WOULD BE SOMEONE ELSE IN
HER FAMILY, IF SHE ANSWERED THE
QUESTION ABOUT A JUVENILE

PROSECUTION?

>> SHE INTERPRETED THE QUESTION AS SHE INTERPRETED IT AND GAVE THAT ANSWER.

>> WE DON'T KNOW.

WHY SHOULDN'T THERE BE -- BECAUSE THIS DOESN'T FALL IN ROGERS AND LOWREY, BUT IT MIGHT FALL IN A BIASED JUROR.

WHY SHOULDN'T IT BE EXPLORED WITH THIS JUROR ABOUT WHY SHE DIDN'T DISCLOSE IT AND EXACTLY

WHAT WAS GOING ON?

I MEAN, ISN'T THAT THE INTEGRITY OF THE SYSTEM?

>> TO HAVE AN ADDITIONAL EVIDENTIARY HEARING--

>> WELL, THERE WASN'T ONE ABOUT HER.

>> WELL, THERE WAS -- WHAT WE HAVE ARE HER WORDS ON PAPER.

WE KNOW THAT WHAT SHE SAID WAS INACCURATE BECAUSE WE HAVE HER FELONY CONVICTIONS.

WE DON'T KNOW THAT SHE WAS NECESSARILY BEING DISHONEST WHEN SHE DIDN'T ANSWER ALL OF THE CONVICTIONS, DISCUSS ALL OF HER CONVICTIONS, BECAUSE WE DON'T KNOW EXACTLY WHETHER OR NOT SHE CONSIDERED THE FACT THAT SHE HAD NOT HAD HER CIVIL RIGHTS RESTORED, WHETHER THAT ENTERED INTO HER THINKING.

BUT THAT--

>> YOU REALLY HAVE TO REALIZE -- AND, MISS CAMPBELL, YOU'VE BEEN AROUND FOR A LONG TIME.

IF THIS IS NOT AN EXAMPLE THAT SHE INTENTIONALLY DIDN'T DISCLOSE IT BASED ON WHAT SHE DID DISCLOSE, I DON'T KNOW WHAT IS.

SO IT REALLY GOES BACK TO THIS ISSUE OF THE SECOND PRONG, DOESN'T IT, AS TO WHETHER -- YOU SAY ROGERS DOESN'T ANSWER IT AND LOWREY DOESN'T ANSWER IT.

IS THAT CORRECT?

>> THAT'S CORRECT.

>> OKAY.

SO IN TERMS OF THIS, NOT WHETHER YOU ARE UNDER 18 OR OVER 70 OR YOU'RE SOME OTHER THING WHERE YOU'RE A CONVICTED FELON WITH NO CIVIL RIGHTS RESTORED, WHY SHOULDN'T THAT BE CLOSER TO LOWREY THAN IT IS TO STATE V ROGERS?

>> BECAUSE WE HAVE A LONG TIME BETWEEN THE CONVICTION AND THIS -- THE DEFENDANT'S TRIAL.

>> SO THAT'S THE -- SHE SHOULD BE LOOKING AT -- SO WHAT YOU'RE SAYING IS THERE'S NO HARD AND FAST RULE?

>> NO.

WHAT I'M SAYING IS IT'S BEEN A LONG TIME.

SHE HAS MOVED ON WITH HER LIFE. AND THE FACT THAT SHE'S CONVICTED -- THERE'S NOTHING TO SHOW BIAS MERELY BECAUSE OF A CONVICTION.

SHE CAN'T BE A VIOLATION OF PROBATION.

SHE CAN'T BE TRIED AGAIN.

I MEAN, THERE'S NO BIAS IN FAVOR OF THE STATE.

IF ANYTHING, THERE AGAIN, AS MR. ONGLEY AND MR. LASWELL SAID, THEY WOULD TAKE THEIR CHANCES WITH A CONVICTED FELON BECAUSE SHE HAD THAT CONTACT WITH THE JUSTICE SYSTEM AND THEY WOULD PREFER SOMEBODY THAT HAD THAT TYPE OF CONTACT.

AND, AGAIN, AS JUSTICE PERRY WAS SAYING, THIS IS A CASE WHERE THERE WAS A CLAIM OF PLANTING EVIDENCE.

IF THERE'S ANY BIAS, IT'S BIAS IN FAVOR OF THE DEFENDANT.

>> BUT ISN'T ONE ISSUE THE INEFFECTIVENESS ASSISTANCE OF COUNSEL, WHICH WE SAY, NO, THERE'S NO DEFICIENCY.

THE OTHER ISSUE IS THE STRAIGHT-OUT JUROR MISCONDUCT.

I THINK THAT WAS WHERE IT'S --
YOU'RE SAYING SOME OTHER THINGS
ABOUT WHETHER -- WHAT WOULD HAVE
HAPPENED IF -- IF BOTH SIDES HAD
KNOWN.

I MEAN, NO QUESTION THAT SHE
WOULD HAVE NOT SAT.

ISN'T THAT CORRECT?

NO QUESTION.

>> IF THAT WAS -- IF THAT WAS
BROUGHT UP, THE JUDGE CERTAINLY
COULD HAVE STRICKEN HER FOR
CAUSE.

>> WHAT DO YOU MEAN COULD HAVE?
THE PERSON IS -- DO YOU THINK
THAT JUDGE PERRY WHEN HE WAS A
JUDGE COULD HAVE SAID, OH,
YOU'RE NOT AN AMERICAN CITIZEN?
IT'S OKAY.

YOU CAN STILL SIT?

>> I'M SURE SHE WOULD HAVE BEEN
STRICKEN.

>> THE PROBLEM IS YOU HAVE TO
RELY ON THE ANSWERS AT THE TIME.

>> RIGHT.

>> YOU'RE HAVING A VOIR DIRE
THAT EVERYBODY'S SITTING IN THE
ROOM AND YOU HAVE TO ASK THEM
QUESTIONS.

YOU WOULD ASSUME AS A SITTING
JUDGE THAT THIS QUESTION IS
ASKED, WAS ASKED, AND IT
PROBABLY WAS, IN THE JURY
QUALIFICATION ROOM AND SHE MIGHT
HAVE LIED THEN.

BUT IN THE JURY ROOM IN FRONT OF
THE JUDGE, THE QUESTION WASN'T
ASKED, DID YOU COMMIT A FELONY.

>> THAT'S CORRECT.

>> THEY ASKED HER -- ALL THE
IMPLICATION -- I MEAN, SHE KNEW
WHAT IT WAS.

I MEAN, SHE SHOULD BE
PROSECUTED.

THAT'S THE ANSWER, IF YOU WANT
TO MAINTAIN THE INTEGRITY OF THE
SYSTEM.

BUT I DON'T THINK WE CAN REDO
THIS WHOLE TRIAL UNLESS WE SHOW
SOME ACTUAL BIAS TOWARD THE

DEFENDANT.

I WOULD THINK THE BIAS WOULD BE TOWARD THE STATE.

>> YES.

THE BIAS WOULD BE AGAINST THE STATE.

THE FACT THAT THIS PERSON DID WHAT SHE DID AND IT'S NOW BEING BROUGHT UP ON THE MERITS, ON A STRAIGHT-UP CLAIM, THAT SHOULD BE FOUND PROCEDURALLY BARRED.

>> HOW DOES THE 11TH CIRCUIT -- JUSTICE LEWIS WAS ASKING ABOUT OTHER JURISDICTIONS.

HOW DOES THE 11TH CIRCUIT VIEW THIS TYPE OF SITUATION?

>> I BELIEVE THE CASES THAT WERE CITED WERE NOT POSTCONVICTION CASES SUCH AS THIS.

I MAY BE WRONG, YOUR HONOR. BUT THIS CASE LAW THAT FLORIDA HAS IS PRETTY CLEAR.

YOU HAVE TO SHOW SOME SORT OF ACTUAL BIAS.

AND THAT HASN'T BEEN SHOWN HERE. IF ANYTHING, IT'S -- AGAIN, IT'S IN FAVOR OF THE DEFENSE.

>> WHEN I THINK BACK ON CARATELLI AND WE'RE IN THE POSTCONVICTION CONTEXT SAYING THAT YOU HAVE TO SHOW ACTUAL BIAS, IT JUST SEEMS TO ME THAT THAT'S A GOOD RULE WHEN YOU'RE TALKING ABOUT A JUROR WHO WOULD OTHERWISE HAVE BEEN QUALIFIED TO SERVE AS A JUROR.

BUT IT STRIKES ME THAT MAYBE THERE SHOULD BE A DIFFERENT RULE IF THE JUROR REALLY, FROM THE OUTSET, WAS NOT QUALIFIED TO BE A JUROR.

AND SO WHY WOULDN'T THAT BE A BETTER RULE?

I MEAN, WE CAN SIT HERE ALL DAY AND TALK ABOUT WHETHER OR NOT THIS JUROR WOULD HAVE BEEN BIASED IN FAVOR OF THE STATE AS OPPOSED TO -- AND BE FAVORABLE FOR THE DEFENDANT, BUT WE DON'T REALLY KNOW THAT.

BUT THE FACT THAT SHE WAS NOT QUALIFIED BECAUSE HER -- SHE WAS A CONVICTED FELON AND HER RIGHTS HAD NOT BEEN RESTORED.

I MEAN, WHY ISN'T THAT A BETTER RULE, THAT YOU WERE JUST NOT QUALIFIED, AND THAT'S WHAT YOU HAVE TO SHOW, THAT SHE LIED AND SHE WAS NOT QUALIFIED TO BE ON THIS JURY?

>> THIS COURT HAS ANSWERED THAT FOR SOMEBODY WHO'S NOT QUALIFIED AND BEING UNDER 18.

THIS COURT HAS ALSO ANSWERED IT FOR SOMEBODY WHO IS NOT QUALIFIED BECAUSE THEY'RE UNDER ACTIVE PROSECUTION.

THIS CASE IS IN THE MIDDLE.

HOWEVER,--

>> BUT, YOU SEE, THE ONE THAT WAS ABOUT BEING PROSECUTED HAD TO DO WITH THE WHOLE COURT SYSTEM.

AND THAT'S WHAT THIS DEFENDANT'S CONVICTION, HAS TO DO WITH -- LET ME JUST FINISH THIS.

>> YES.

>> THE COURT SYSTEM.

YOU LOOK AT THE PERSON WHO WAS 17 YEARS OLD AND THAT REALLY THIS IS A STATUS KIND OF ISSUE, HAS NOTHING TO DO WITH THEM EVER HAVING BEEN OR EVEN GOING TO BE INVOLVED IN THE JUDICIAL SYSTEM. AND SO IT JUST SEEMS TO ME IT'S A DIFFERENT SITUATION ALTOGETHER WHEN YOU ARE TALKING ABOUT SOMEONE WHO'S UNDER 17 VERSUS PEOPLE WHO ACTUALLY HAVE BEEN IN CONTACT OR IS ABOUT TO BE IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM.

>> THIS PERSON WASN'T ABOUT TO BE IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM.

>> BUT HAD BEEN.

HAD BEEN OR WOULD BE.

OKAY.

>> 13 TO 18 YEARS PREVIOUSLY.

>> HAS SHE EVER APPLIED TO HAVE

HER CIVIL RIGHTS RESTORED?
WAS THERE SOME REASON THEY HAD
NEVER BEEN RESTORED?

>> I DON'T RECALL.
I DON'T KNOW THAT SHE KNEW TO DO
IT.

WE DON'T HAVE THAT IN THE
RECORD.

THE FACT IS IT WAS RESTORED IN
2008.

BUT LOWREY IS DIFFERENT BECAUSE
LOWREY WAS -- A CONTACT WITH THE
CRIMINAL JUSTICE SYSTEM, PRESENT
TIME, WHICH IS MUCH DIFFERENT
THAN SOMEBODY WHO HAD
CONVICTIONS, YOU KNOW, 13, 18
YEARS AGO, WHO HAD BEEN THROUGH
THE MILITARY, HAD DONE THINGS
BEYOND HER INITIAL CONTACT WITH
THE CRIMINAL JUSTICE SYSTEM, NOT
SOMEBODY--

>> IT SEEMS TO ME IT WAS ALSO
SOMEONE WHO WOULD HAVE
UNDERSTOOD A QUESTION ABOUT
HAVING ANY CRIMINAL HISTORY, AS
OPPOSED TO SOMEONE WHO SAYS, OH,
WELL, I'LL TELL THEM ABOUT WHEN
I WAS A JUVENILE, BUT NOT WHEN I
WAS AN ADULT?

>> HER FIRST CONVICTION WAS AT
19.

MAYBE SHE WAS TALKING, YOU KNOW,
I WAS YOUNG.

I WAS A JUVENILE, YOU KNOW.

>> IT JUST SEEMS TO ME THERE
OUGHT TO BE SOME RULE, SUCH AS
WE EITHER HAVE, EITHER THE
ROGERS RULE OR THE LOWREY
SCHOOL, THAT SOMEONE WHO'S A
CONVICTED FELON WHOSE RIGHTS
HAVE NOT BEEN RESTORED AND IS
NOT QUALIFIED TO BE ON THE JURY,
WE CAN'T JUST LET THEM SIT
THERE, SAY NOTHING AND GO
THROUGH A CRIMINAL PROSECUTION,
ESPECIALLY -- AND WHEN WE'RE
TALKING ABOUT DEATH PENALTY
CASE.

>> THERE'S A RULE IN PLACE THAT
IF THERE WAS SOMETHING THAT CAME

UP WITHIN TEN DAYS OF THE TRIAL,
THERE COULD HAVE BEEN AN
INVESTIGATION, THIS COULD HAVE
BEEN BROUGHT UP ON DIRECT APPEAL
OR COULD HAVE BEEN BROUGHT UP TO
THE TRIAL COURT.

>> IF IT HAD BEEN BROUGHT UP ON
DIRECT APPEAL, WHAT WOULD HAVE
BEEN THE STANDARD WE WOULD HAVE
USED TO DETERMINE IF A NEW TRIAL
WAS PROPER?

>> IT DEPENDS ON WHAT WAS DONE
BELOW, IF IT WAS PROPERLY
PRESERVED BELOW, AND THEN YOU
STILL WOULD HAVE HAD THE ROGERS
AND LOWREY STANDARD.
BUT TO DO THAT ON POSTCONVICTION

--
>> AND SO WHAT ARE THOSE
STANDARDS?

WHAT IS THE ACTUAL BIAS?
WE WOULD HAVE APPLIED TO THIS
SAME KIND OF SITUATION ON DIRECT
APPEAL.

IT WOULD NOT HAVE BEEN WHETHER
SHE WAS ACTUALLY BIASED.
THAT'S WHAT WE USE ON
POSTCONVICTION.

WHAT WOULD HAVE BEEN THE
STANDARD TO APPLY IF THIS HAD
BEEN BROUGHT UP ON DIRECT
APPEAL?

>> UNDER DE LA ROSA.

>> THAT WASN'T AN ILLEGAL JUROR,
WAS IT?

I THINK WE'RE DEALING WITH A
SPECIFIC CLASS OF JURORS.
DE LA ROSA WAS A CIVIL CASE,
NUMBER ONE.

>> RIGHT.

>> NUMBER TWO, I DON'T THINK IT
WAS AN ILLEGAL JUROR, WAS IT?

>> IT WAS A CASE THAT WAS --
THAT BROUGHT UP ON DIRECT APPEAL
AND WHAT THEY WERE -- WHAT WAS
BEING ASKED WAS WHETHER OR NOT
HER NONDISCLOSURE UNDERMINED ALL
OF THE CASE.

SO WAS THERE SOMETHING--

>> RIGHT.

WENT THROUGH THE ELEMENTS AND THEN WE DID THAT INTERNATIONAL ROBOTICS.
BUT THAT'S IN THE CIVIL CONTEXT, ALL OF THOSE.
>> AND INHERENT BIAS.
RIGHT.
THERE STILL HAS TO BE SOMETHING THAT'S GOING TO UNDERMINE THE CONFIDENCE--
>> WERE THOSE ILLEGAL JURORS?
>> I BELIEVE THAT SHE WAS--
>> I THINK THAT'S JUSTICE QUINCE'S QUESTION AND ALL THESE QUESTION THIS MORNING, THAT'S TRYING TO UNDERSTAND THIS PROBLEM, THAT THIS IS A SPECIFIC PROBLEM, NOT A GENERIC, YOU KNOW, THE JUROR SHOULD NOT BE THERE.
THIS IS A VERY SPECIFIC CLASS OF JURORS.
>> AND, AGAIN, THIS COURT HAS CUT OUT THOSE CLASSES OF JURORS THAT YOU'VE MADE A DISTINCTION, BETWEEN AN UNQUALIFIED JUROR BASED ON AGES AND AN UNQUALIFIED JUROR THAT HAS AN ACTUAL BIAS AT THE TIME--
>> PROSECUTION.
>> ACTIVE PROSECUTION.
WHEREAS HERE THERE'S NO MATERIALITY.
>> I DON'T THINK WE'VE HAD THIS KIND OF ISSUE COME UP BEFORE. I CERTAINLY HAVE NEVER REMEMBERED A CASE WHERE A CONVICTED FELON ACTUALLY SERVED ON A JURY.
>> NO.
AND I'M NOT CITING ANY OF THOSE CASES TO YOU.
I'M CITING ROGERS AND LOWREY, SOMETHING IN BETWEEN.
BUT I BELIEVE IT'S CLOSER TO ROGERS, GIVEN THE FACTS OF THIS -- YOU KNOW, HER SITUATION, THAN IT IS TO SOMEBODY WHO YOU CAN SAY COULD HAVE AN ACTUAL BIAS BECAUSE SHE'S UNDER AN ACTIVE

PROSECUTION.

WE DON'T HAVE THAT HERE.

WE HAVE SOMEBODY WHO'S
STATUTORILY NOT QUALIFIED.

>> THANK YOU.

>> THANK YOU, YOUR HONOR.

>> REBUTTAL?

>> I ASK YOU TO AFFIRM.

>> AND I REALIZE I DON'T HAVE
VERY MUCH TIME, SO I JUST WANT
TO POINT OUT THAT THIS JUROR
INTERPRETED THE QUESTION TO MEAN
HERSELF AND SHE RESPONDED WITH
RESPECT TO HERSELF AND SHE LIED.
SHE SAID SHE HAD A JUVENILE
HISTORY.

>> THE JUROR IN ROGERS LIED
ABOUT HER AGE.

>> CORRECT.

>> SO HONESTY WAS AT MUCH AS
ISSUE IN ROGERS AS IT IS HERE;
ISN'T THAT CORRECT?

>> I AGREE.

I THINK HERE IT'S MORE CLOSELY
AKIN TO LOWREY.

LOWREY SPECIFICALLY
DISTINGUISHES ROGERS BY SAYING
THE ISSUE OF AGE DOES NOT CREATE
A PERCEPTION OF UNFAIRNESS.

WHAT WE'RE DEALING WITH--

>> WELL, IT'S AN ENTIRELY
DIFFERENT THING IF SOMEONE IS
ENSNARED WITH THE PROSECUTION
AND THEY MIGHT BE TRYING TO
CURRY FAVOR WITH THE
PROSECUTION.

THAT OBVIOUSLY RAISES A SPECTER
THAT'S NOT PRESENT WITH RESPECT
TO SOMEONE WHO HAD A CONVICTION
MORE THAN TEN YEARS AGO.

>> WELL, I THINK THAT LOOKING AT
THE AMOUNT OF TIME THAT THIS
CONVICTION WAS IS NOT THE ONLY
CONSIDERATION.

I THINK YOU HAVE TO LOOK AT THE
COMPLEXITY OF HER INVOLVEMENT
WITH THE SYSTEM AND THAT'S
EVIDENCED IN HER CLERK FILE.

I WAS UNABLE TO PUT HER ON THE
STAND TO GET THE TRUTH OF ALL OF

THAT, BUT THAT CERTAINLY IT INDICATES AN EXTENSIVE HISTORY. I THINK THAT IN LOWREY, TOO, THERE WERE COMPETING BIASES ON THE RECORD AND THIS COURT ASSUMED THAT THAT WITHHOLDING JUROR WOULD HAVE FELL ON THE SIDE OF WANTING TO CURRY FAVOR. IN FACT, THAT JUROR ON THE RECORD SAID THAT ALL HE KNEW WAS THAT IN THE LAST FEW MONTHS YOU JUST HAVE TO BE ACCUSED OF SOMETHING AND THEN YOU'RE STUCK PROVING YOUR INNOCENCE. THAT SOUNDS LIKE A DREAM DEFENDANT'S JUROR.

BUT THIS COURT, AGAIN, EVEN GIVEN THOSE COMPETING BIASES, THE FACT IS THERE'S BIAS.

>> IS LOWREY POSTCONVICTION?

>> YOU'RE ASKING ME A DIFFICULT -- I DON'T KNOW OFFHAND.

>> WOULD YOU AGREE THAT THE STANDARD AS IT GOES UP THE CHAIN

--
>> ABSOLUTELY.

>>-- SHOULD BE MORE RIGOROUS?

>> WELL, I THINK THAT HERE IT SHOULD BE INHERENT BIAS.

I KNOW THIS COURT'S CASE LAW IS CERTAINLY ON DIRECT APPEAL THE STANDARD IS NOT AS RIGOROUS AS IT IS IN POSTCONVICTION.

THAT'S CERTAINLY WHAT CARATELLI SAYS.

I REALIZE I'M WAY--

>> ROGERS WAS A DIRECT APPEAL CASE, CORRECT?

>> AGAIN, YOU'RE TESTING MY MEMORY ON THAT.

THAT COULD BE.

YEAH.

BUT I DO WANT TO POINT OUT THAT, ONE -- TWO THINGS.

THE LIE IN AND OF ITSELF IS EVIDENCE OF BIAS AND THAT'S WHAT THE 11TH CIRCUIT SAYS.

SECOND, I WOULD ENCOURAGE THIS COURT TO FIND INHERENT BIAS, THAT THIS IS MORE AKIN TO LOWREY

AND REVERSE THE LOWER COURT'S
DECISION AND GRANT MR. BOYD A
NEW TRIAL.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.
COURT IS ADJOURNED.

>> ALL RISE.