

1 PUTS MR. EIDE ON NOTICE THAT THE STATE WAS CERTAINLY
2 GOING TO USE ANY PRIORS THAT HE MAY HAVE HAD. I DON'T
3 KNOW WHAT ELSE WE CAN DO, YOUR HONOR.

4 THE COURT: WELL, IT SHOWS ADJUDICATION WAS
5 WITHHELD, ORIGINALLY.

6 MR. EIDE: THAT'S CORRECT, YOUR HONOR.

7 MR. BENDER: AND THAT'S WHAT I WAS RELYING ON.

8 MR. EIDE: AND THAT'S WHAT I WAS RELYING ON.

9 THE COURT: AND IT JUST SHOWS PROBATION VIOLATION,
10 BUT IT DOESN'T SHOW THE DISPOSITION ON THE PROBATION
11 VIOLATION FOR 1988.

12 MR. BENDER: SO WE HAVE COMPLIED WITH THE DISCOVERY
13 UNDER 3.220, THAT MR. EIDE IS STATING. WE HAVE PROVIDED
14 A RAP SHEET THAT WE HAD, AND THAT THAT'S ABOUT ALL I
15 CAN DO, JUDGE; PARTICULARLY, WHEN I JUST FOUND OUT ABOUT
16 IT TODAY.

17 THE COURT: ALL RIGHT. I'LL GRANT THE DEFENDANT'S
18 MOTION TO EXCLUDE THE J AND S AND THE QUESTIONING
19 CONCERNING THE WITNESS, AS FAR AS IMPEACHMENT IS
20 CONCERNED, BASED ON THE MARTIN CASE, 517 SO.2D 737,
21 WITH A COMMENT THAT IT REALLY REACHES THE LEVEL OF
22 OF ABSURDITY THAT THE DEFENDANT, WHO IS THE PERSON
23 INVOLVED IN THE CASE ORIGINALLY, WOULD KNOW WHETHER
24 HE HAS BEEN ADJUDICATED OR NOT; MISLEADS HIS ATTORNEY
25 AS TO ADJUDICATION, AND THEN IS ALLOWED AT TRIAL TO

1 KEEP EVIDENCE OUT, WHEN ALL ALONG HE HAD AS MUCH OF
2 A DUTY TO DETERMINE WHETHER THERE WAS AN ADJUDICATION
3 AS DID THE STATE, TO PROVIDE ANY EVIDENCE OF THAT.

4 SINCE IT WAS A MATTER OF RECORD FOR THE
5 COURT, IN THE COURT'S FILE, AS OPPOSED TO A RECORD
6 WITHIN THE STATE ATTORNEY'S OFFICE, AS IS TYPICAL,
7 IT'S SOME OF THE FAR-REACHING DECISIONS IN FAVOR OF
8 THE DEFENDANT.

9 HOWEVER, I THINK THE CASE, SINCE I'VE BEEN
10 SHOWN NO OTHER EVIDENCE TO CONTROVERT IT, IS APPLICABLE
11 HERE. THAT BASED ON THE DEFENDANT RAISING THE DEFENSE
12 OF ALIBI, THAT HIS VERACITY IS OBVIOUSLY TESTED BY THE
13 CREDIBILITY, BY THE IMPEACHMENT, BASED ON THE PRIOR
14 CONVICTION FOR FELONY CRIME.

15 AND THEN UNDER THOSE CIRCUMSTANCES HAVING
16 DEVELOPED, THAT WHILE THE DISCLOSURE WAS THROUGH NO
17 FAULT OF THE STATE, ANY LACK ON THE STATE AS FAR AS
18 DISCLOSING PRIOR J AND S'S -- AND I DON'T KNOW WHAT
19 OTHER JUDGES IN THIS CIRCUIT PROVIDE.

20 BUT IT WOULD SEEM ENCUMBANT UPON THE DEFENSE
21 TO INVESTIGATE, AS MUCH AS THE STATE, OF A DEFENDANT'S
22 PRIOR RECORD THAT HE HIMSELF EARNS BY HIS MISDEEDS.

23 BE THAT AS IT MAY, THE STATE WOULD BE
24 PROHIBITED. THE MOTION IN LIMINE GRANTED TO PROHIBIT
25 THE STATE FROM INQUIRING CONCERNING HIS PRIOR CONVICTION.

1 MR. BENDER: YOUR HONOR, MAY I MOVE THE COURT TO
2 REQUEST ONE MORE ADDITIONAL ARGUMENT BEFORE YOU MAKE
3 THAT RULING COMPLETELY FINAL?

4 I THINK THE INTERPRETATION THAT YOU'VE MADE
5 OF THIS CASE THAT'S BEEN SUBMITTED, THE FACTS THAT WE
6 HAVE ARE CLEARLY DISTINGUISHABLE. AND THAT'S WHAT
7 MAKES STARE DECISIS SO IMPORTANT.

8 PERHAPS THE COURT DECIDED IN THIS PARTICULAR
9 CASE, THAT AFTER THE DEFENDANT HAD ALREADY TAKEN THE
10 STAND AND ONLY AFTER THE DEFENSE HAD BEGUN QUESTIONING,
11 WHEN THE STATE ON CROSS-EXAMINATION FOR THE VERY FIRST
12 TIME --

13 THE COURT: I TOOK THAT INTO CONSIDERATION BECAUSE
14 THE WHOLE THEORY OF DEFENSE HERE IS ALIBI; WHICH WOULD,
15 OF NECESSITY, IN ORDER TO HAVE A THEORY OF ALIBI WOULD
16 REQUIRE THE TESTIMONY OF THE DEFENDANT.

17 MR. BENDER: AS YOU KNOW, YOU SAID BEFORE THAT
18 YOU UNDERSTOOD THAT A WITHHOLD WAS SUFFICIENT FOR
19 IMPEACHMENT.

20 THE COURT: YEAH.

21 MR. BENDER: WE PROVIDED AT THE VERY OUTSET THE
22 RAP SHEET, AS REQUESTED. I DON'T KNOW WHAT DISCOVERY
23 VIOLATION THE STATE HAS COMMITTED HERE, WHEN FOR THE
24 VERY FIRST TIME HERE IN ALL OF THIS DISCOVERY HAVE
25 I LEARNED THERE WAS AN ADJUDICATION. SO THERE HAS

1 TO BE SOME DISCOVERY VIOLATION IN THE COURT.

2 AND THIS CASE HERE INVOLVING MARTIN FOUND
3 THE STATED TO BE IN VIOLATION OF THE RULINGS OF
4 DISCOVERY.

5 THE COURT: BY FAILING TO PROVIDE THE JUDGMENT
6 AND SENTENCE TO THE DEFENDANT PRIOR TO TRIAL. IT SAYS
7 ARGUMENT WAS MADE, THE COLLOQUY BETWEEN THE COURT AND
8 COUNSEL FOR APPELLATE PURPOSES: "IF I HAD HAD THIS
9 INFORMATION PRIOR TO TRIAL, I COULD HAVE GONE OVER IT
10 ALL WITH MY CLIENT. I COULD HAVE PROPERLY PREPARED
11 HIM TO TAKE THE STAND. I COULD HAVE EFFECTIVELY
12 REPRESENTED HIM AS FAR AS DETERMINING WHETHER HE
13 SHOULD TESTIFY. I ALSO COULD HAVE HAD AN INDEPENDENT
14 EXAMINER POSSIBLY, IF THERE WAS A DISAGREEMENT -- I
15 DON'T KNOW IF WE DISAGREE WITH THESE DOCUMENTS -- TO
16 DETERMINE WHETHER OR NOT THOSE ARE HIS FINGERPRINTS.

17 "I HAVE BEEN PREVENTED FROM DOING SO BY LATE
18 DISCOVERY. I'VE ALSO BEEN PREVENTED FROM ASKING VOIR
19 DIRE QUESTIONS THAT I MIGHT HAVE ASKED RELATED TO THESE
20 PRIOR CONVICTIONS.

21 "SO EVEN THOUGH IT'S NOT MY BURDEN TO SHOW
22 PROCEDURAL PREJUDICE, I AM PROFFERING TO THE COURT THAT
23 THAT IS PROCEDURAL PREJUDICE THAT I HAVE SUFFERED."

24 THEY REFER TO THE ACTUAL CONVICTIONS, THE
25 NATURE OF THE CRIME, AND SO ON, IN HERE.

1 MR. BENDER: YOUR HONOR, THOUGH IN THAT CASE --

2 THE COURT: AND IT SAYS: "WE THINK APPELLANT
3 DEMONSTRATED SUFFICIENT PREJUDICE AS A RESULT OF THE
4 STATE'S REFUSAL TO FURNISH HIM WITH COPIES OF THE
5 CONVICTIONS TO PRECLUDE THE APPLICATION OF HARMLESS
6 ERROR RULE TO THE FACTS OF THIS CASE."

7 MR. EIDE: YOUR HONOR, COULD MY CLIENT GO TO
8 THE BATHROOM?

9 COULD YOU TAKE HIM OVER THERE?

10 THE COURT: WE'RE -- ALL RIGHT. TAKE HIM OVER.

11 MR. EIDE: WE WOULD WAIVE HIS PRESENCE WHILE HE
12 IS OUT.

13 (THEREUPON, THE DEFENDANT DEPARTED THE COURTROOM.)

14 MR. BENDER: YOUR HONOR, IT ALSO STATES, "THE
15 STATE'S REFUSAL TO FURNISH COPIES". I DON'T KNOW
16 EXACTLY WHAT THEY ARE REFERRING TO. BUT, HERE, THE
17 DEFENSE HAS BEEN PROVIDED WITH KNOWLEDGE.

18 THE COURT: THEY MADE A GENERAL DEMAND. BECAUSE,
19 OBVIOUSLY, THE IMPEACHMENT SURPRISED THEM.

20 MR. BENDER: BUT, HERE, WE'VE PROVIDED THEM WITH
21 KNOWLEDGE AND NOTICE, IMMEDIATELY UPON SEEING THE
22 DISCOVERY; SENDING THE DISCOVERY, THAT THAT'S AN
23 ADJUDICATION OF GUILT WITHHELD ON THE BURGLARY CHARGE.

24 AND, AS YOU HAVE STATED, THAT YOUR
25 UNDERSTANDING WAS UNTIL TODAY AND PERHAPS IT STILL IS,

1 THAT EVEN WITH A WITHHOLD OF ADJUDICATION IT CAN BE
2 USED FOR IMPEACHMENT ON A WITNESS' TESTIMONY.

3 SO I FAIL TO SEE THERE BEING ANY SURPRISE
4 TO THE PREPARATION OF THE DEFENSE CASE. BECAUSE IT'S
5 POSSIBLE THAT A WITHHOLD OF ADJUDICATION COULD STILL
6 BE USED FOR IMPEACHMENT PURPOSES. THEREFORE, THEY
7 WOULD HAVE BEEN ON FULL NOTICE.

8 WE HAVE JUST SEEN THE FILE. AS YOU'VE SEEN,
9 IT WAS BURIED IN THE COURT FILE. WE CANNOT FURNISH
10 COPIES OF J AND S'S TO THE PUBLIC DEFENDER'S OFFICE.
11 WE DON'T HAVE COPIES OF THE J AND S'S IN OUR OFFICE.

12 THE COURT: I UNDERSTAND YOUR ARGUMENT. I DON'T
13 DISAGREE WITH YOU. BUT I THINK UNDER THESE CASES AND
14 UNDER THE MARTIN CASE, AT LEAST, WE'RE TREADING ON
15 VERY THIN ICE IF I WERE TO ALLOW YOU TO DO THAT.

16 MR. BENDER: IF WE COULD PUT ON THE RECORD THAT
17 WE WOULD RESPECTFULLY ARGUE THAT YOU HAVE NO REASON TO
18 ABIDE BY THIS CASE. IT IS NOT IN YOUR DISTRICT, AND
19 IT IS NOT BINDING ON THE COURT. AND, CLEARLY, IT IS
20 DISTINGUISHABLE FROM THE FACTS IN THIS CASE. WE FEEL
21 IT WOULD BE HARMLESS ERROR.

22 THE COURT: ALL RIGHT. HEARING ALL THOSE ARGUMENTS,
23 THE COURT WOULD STILL GRANT THE MOTION IN LIMINE.

24 MR. BENDER: THANK YOU FOR YOUR TIME, YOUR HONOR.

25 MR. EIDE: YOUR HONOR, IT'S ALSO MY UNDERSTANDING

1 THAT THE MOTION IN LIMINE WAS ALSO GRANTED TO
2 MR. HYLAND AND MR. WILLEY?

3 THE COURT: WELL, WILLEY --

4 MR. BENDER: IT WAS MICHAEL WILLEY.

5 MR. EIDE: SHAWN WILLEY WAS HERE.

6 THE COURT: IS THAT SOMEBODY ELSE THAT'S COMING?

7 MR. EIDE: YES.

8 MR. BENDER: WE'RE NOT GOING TO TALK AT ALL ABOUT
9 ANYBODY'S PRIOR ARREST OR CONVICTIONS HISTORY, YOUR
10 HONOR, I ASSURE YOU, UNLESS MR. EIDE BRINGS IT UP.

11 THE COURT: ALL RIGHT. ON MR. HYLAND, HE WAS
12 NOT ADJUDICATED GUILTY. SO UNDER THE DICTA IN BARBER,
13 THE MOTION IN LIMINE WOULD BE GRANTED AS FAR AS
14 MR. HYLAND IS CONCERNED.

15 MR. MERSON. NOW, I DON'T KNOW ABOUT
16 MR. WILLEY. I DON'T KNOW OF ANY WITHHOLDING. BUT
17 THE STATE HAS SAID THEY ARE NOT GOING TO ASK, ANYWAY.

18 THAT WAS WITHHELD, RIGHT. SO UNDER THE
19 SAME THEORY, UNDER THE DICTA IN BARBER, THAT WOULD
20 NOT BE PERMITTED TO BE ASKED, AS WELL.

21 IT WOULD BE AN INTERESTING AREA TO RESEARCH
22 ONCE WE GET DONE WITH THE TRIAL.

23 RETURN THE JURY.

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