

A Report On Multiple Observations

Vincent Insinga

April 27, 2016

**JOSHUA D. NELSON, Appellant v. SECRETARY, FL DOC et al.,
Appellees**

The first Observation that I made in the process of writing this report was on Tuesday April fifth in the Eleventh Circuit Court of Appeals. The case that I observed was a death penalty case from Florida. The appellant, Joshua D. Nelson, was appealing his conviction of a homicide that occurred in 1995 to which he confessed.

Even with the use of PACER (Public Access to Court Electronic Records), I was unable to access a brief that detailed the facts of the original case. I found a brief stating the nature of the appeal on PACER (this brief is attached), but not one relating the nature of the charges originally brought against Joshua Nelson. I did however locate documents, including the brief and published opinion, relating to an appeal he made to the Supreme Court of Florida. I have cited these.

Facts of Case

In 1995, Joshua Nelson and Keith Brennan murdered Thomas Owens. They

Nelson was eighteen years old and Brennan was too young to be sentenced to death..¹

Observations

I entered the building into a small room with three unique walls. The one that I faced immediately was one of bullet proof glass that separated me from the security guards inside; the wall to my right was filled with small lockers, into which I was instructed to place my phone and bottle of water, and to my left was the conveyor belt through which I was instructed to send my jacket, wallet, and shoes and the metal detector through which I myself had to step in order to enter the building.

1. "JOSHUA D. NELSON, Appellant, vs. STATE OF FLORIDA, Appellee.," Florida State College of Law, accessed April 27, 2016, <http://archive.law.fsu.edu/library/flsupct/89540/89540a.pdf>.

Upon entering, I was asked to sign a peice of paper with my name and the time at which I signed. The man sitting behind this counter questioned me about my age, me looking too young to carry a college I.D. After asking for directions to the room in which the arguments were being held, I continued up the elevator. The whole building had a feel of abandonment to it, being extraordinarily large yet almost entirely empty. Indeed none of the many large rooms were occupied, none short of this one. It is hard to describe the feel of those empty hallways, but it was a unique one. I was unsure weather to stand in awe of the buildings grandeur or in apathy of its smallness.

The hearing was very short, much shorter than I expected. The hearing started at 2:00 PM and I signed out of the court at 2:40. There was a large digital clock on the desk of the clerk which indicated that the hearing could only last for a maximum of one hour and twelve minutes, allowing one half hour for each sides opening statements and six minutes for their rebuttals. Of course, neither of them did. Neither of them seemed particularly confident in the case itself going anywhere. In fact, I happened ti rude the same elevator as the prosecutor. I asked her how much time she spent preparing for this case and she replied "for this one in particular? I didn't really, because it's kind of an easy topic."

Reflections

At one point, one of the judges asked the appellant lawyer "do you know if Florida has allowed any executions to go through since the Hurst ruling?" The lawyer replied that they had not. After that exchange I realised that I had not; I realised that there was a large likelihood that even if the court rejects his appeal, that Nelson, a man who has lived on death row for longer than I have been alive, will never face execution.

Conclusions

Justice is slow. Justice is more than slow. Justice works at a tenth the speed any other thing. Truly, there is no absurdity which can do justice to the slowness of justice. Justice is, in fact slower than history. Legislation has come and gone, major decisions have been made and implemented, two and a half decades have passed since two teenagers killed a third with a box cutter and a baseball bat. Still, one of them does not yet know his fate. Indeed, it seems that the system waited itself out. In taking such a long time to move this case through the legal system, that very system has made the case obsolete.

State vs Isaiah Simmons

Facts of Case

The defendant, Isaiah Demarko Simmons was dating two women simultaneously, without either of them having knowledge of this. Melanie Davis is in her late twenties and Nicole Simpson is in her forties. Melanie Davis was aware of Simpson's existence, but only as a kind mentor helping her boyfriend get a job.

Soon, each found out about the other and, as could be expected, problems ensued for the relationships. Though, Davis would later state that she and Simmons did not stop dating, they "were just having the problems you would have dating any white boy" (both of the two are African-American). Simpson however, decided to terminate her relationship with Simmons. Strangely, it was not the two women who got angry - it was Simmons.

Isaiah Simmons sent a long series of threatening text messages to Melanie Davis before she eventually stopped answering. He then began to threaten to come to her home. Unfortunately, these threats were not as empty as those sent prior.

Davis arrived home to her door on the floor, instead of proceeding inside, she ran back out and called the police. Additionally, she showed the police the text messages sent

to her by Simmons and they called the number, asking the person who answered to verify their identity. Isaiah Simmons replied that that was indeed who he was. Upon entering the home, they discovered the massive amount of damage that had been done. Wires were cut; taps were opened all the way, so as to cause water damage; tires were slashed; things were broken and smashed. While Melanie Davis still claimed in court that she was unsure whether the perpetrator was indeed Simmons, It is clear that whoever broke into her home that day unleashed all of their anger and rage on that house.

Soon after this, Nicole Simpson reported her car stolen and house stolen from (Simpson had a key, having lived there at a point). When the police arrived, she insisted that no charges be filed and that her car not be reported stolen, sure that she could call Simmons. Soon afterwards she arranged with Simmons to meet him somewhere to get her car back. The police did not head this request and apprehended Simmons while he was travelling to that location on which he agreed to meet Simpson. Upon searching the car, the police found marijuana and added a violation of drug laws to his charges. Simmons was arrested and taken into custody.

While in jail, he spoke on the phone often with both women, especially Melanie. During these conversations, they both said that they forgave him and tried to help him with his legal issues.

Observations

This case challenged, not only my preconceived expectations about court, but also those notions which were set forward by the first case that I observed. This building, despite belonging to a lower court, had a much grander feel. These buildings are about the same size, but nonetheless, the small room through which I entered the Elbert P. Tuttle court house, enclosed by bulletproof glass did not feel the same as the large, modern entryway that led into the Cobb County Superior courthouse. The courtroom itself made

a similar distinction, instead of the hushed juryless room, above which three justices sat, in the eleventh circuit, the courtroom in the superior court was much more formal and inviting.

The security measures taken here were far less strict. In my first observation, I entered the building only to see two people looking at me through bulletproof glass, separated by two sets of doors (or one metal detector and a door) in either direction. I was instructed then to place my water bottle and phone in a locker and pass my shoes, jacket, and wallet through a conveyor belt, before stepping through a metal detector. The process that I underwent upon entering Superior Court bore no resemblance to this. The entrance, with its high ceilings and elegant tiled floors, was open and welcoming. Again, I was still required to put my wallet, shoes, phone, and jacket, through a conveyor belt and scanner, but the process was far more relaxed.

The judge began the session by reading a long speech to the jurors, detailing proper rules and procedures.

The Prosecutor started the trial with a serious tone "RESPECT", she announced in a bellowing voice, "This trial is about respect, or, more correctly, Isaiah Simmons' lack of respect for property, for law, for women..." She continued to lay down the fact pattern of the case in a very engaging anduhjuh9ihu manner. Her voice would get quiet as she would slowly, gradually, and intentionally begin to whisper before, once again, raising her voice. "So, you know, they break up... and what does he do?" she posed this question in a voice so faint that i could hardly hear, before abruptly answering it with "HE GETS ANRGY". This is a tactic that she employed repetitively, quietly explaining the situation before again exclaiming "HE GETS ANGRY" and detailing another offense.

The defendant lawyer was all too quick to dismantle the air of seriousness and overwhelming guilt created by the Prosecutor. He began with a statement that absolutely obliterated the idea of formality in the court. "Do you know what I love about trials?" he

asked in a light tone, "They're like pancakes!" No, I assure you, this is no a fabrication; it is not an accademic dishonesty, in fact, either of the two students with whom I attended this case can indeed confirm that the attorney, Jason Treadaway, began his arguments in this trial by comparing trials with a sweet breakfast food. He continued, saying "No matter how you make 'em, or how thin you can get 'em in a non stick pan, they've always got two sides."

The entirety of the beginning arguments played out as a battle between both sides. The burden, of course, lied on the shoulders of the defendant to undo all which the prosecutor had previously done. The prosecutor previously said "As you can tell, there's going to be a lot of drama. It's going to be like day time television 'Oooh, who's with who? Who's doing what?' Just nonsense drama; it doesn't matter!" before urging the jury to ignore all of the drama and focus on those charges that needed to be proved:

- Burglary in the First Degree (two counts)
- Theft By Taking
- Criminal Damage to Property in the Second Degree
- Terroristic Threats
- Violation Of Georgia Controlled Substances Act

Instead, the defendant lawyer dismissed that idea, saying that the drama was very important to understand the nature of the case. He argued that, while "you cannot convict a man on the basis of him being among the top ten least stellar boyfreinds of all time, which he might well have been" that understanding that would be a vital part of this case. It is worth noting that these six charges were broken up into two different cases, one for Isaiah Simmons' transgressions against Nicole Simpson (burglary in the first degree, theft by taking, and violation of Georgia Controlled Substances Act) and another for

those involving Melanie Davis (burglary in the first degree, criminal damage to property in the second degree, terroristic threats).

This trial presented some excellent examples of the effect that tone and body language have on the way speech is perceived. Both sides, the defense and the prosecution, used the same exact quote from Nicole Simpson. "He is just being childish" - the prosecutor said this in a small, meak voice, so as to portray the image of a startled and helpless woman speaking to police. The defendant lawyer spoke that sentence confidently between chuckles.

There were several objections during the defendant's argument, causing complications, in this case in particular, because of a request from the defendant. The defendant asked that the screens should all be blanked and the jury evacuated any time an objection was made. On the third or the fourth time that this occurred, the judge was visibly annoyed and frustrated; he finally made himself heard to the defence. He was very clear in saying that "it's your right" and "it's your decision". Nonetheless, his frustration leaked into his voice.