

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 94-6859

TITLE RONALD DeRAY SKIPPER, Petitioner v. SOUTH CAROLINA

PLACE Washington, D. C.

DATE February 24, 1986

PAGES 1 thru 47



(202) 628-9300
20 F STREET, N.W.
WASHINGTON, D.C. 20001

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -x
RONALD DeRAY SKIPPER, :
Petitioners, :
V. : No. 84-6859
SOUTH CAROLINA :
- - - - -x

Washington, D.C.
Monday, February 24, 1986

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 11:47 o'clock a.m.

APPEARANCES:
DAVID I. BRUCK, ESQ., Columbia, South Carolina; on behalf
of the petitioner, appointed by this Court.
HAROLD M. COOMBS, JR., Assistant Attorney General of
South Carolina, Columbia, South Carolina; on behalf of
the respondent.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S

<u>CRAI ARGUMENT OF</u>	<u>PAGE</u>
DAVID I. BRUCK, ESQ.,	
on behalf of the petitioner,	
appointed by this Court	3
HAROLD M. COOMBS, JR., ESQ.,	
on behalf of the respondent	22
DAVID I. BRUCK, ESQ.,	
on behalf of the petitioner,	
appointed by this Court - rebuttal	43

1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: We will hear arguments
3 next in Skipper against South Carolina.

4 Mr. Bruck, I think you may proceed when you
5 are ready.

6 ORAL ARGUMENT OF DAVID I. BRUCK, ESQ.,

7 ON BEHALF OF THE PETITIONERS,

8 APPOINTED BY THIS COURT

9 MR. BRUCK: Mr. Chief Justice, and may it
10 please the Court, in this case the petitioner, Ronald
11 Skipper, was convicted of murder and rape in the South
12 Carolina Supreme Court, and was sentenced to death. At
13 his sentencing hearing before the trial jury, one of the
14 mitigating factors which he attempted to submit for the
15 jury's consideration was evidence of his past good
16 conduct and successful adaptation to a jail environment
17 during the seven-and-a-half months between the time of
18 his arrest and the time of his trial.

19 He attempted to prove this obviously for the
20 purpose of persuading the jury whose sole decision of
21 the sentencing phase was whether to send him to prison
22 for life or whether to sentence him to death, that if he
23 were sentenced to life instead of death, he could be
24 expected to continue to conduct himself in a non-violent
25 manner, and that he would adapt successfully and

1 non-violently to the regime of imprisonment.

2 QUESTION: Mr. Bruck, does the record disclose
3 by an offer of proof or otherwise exactly what it is
4 that the evidence of the two corrections officers, if
5 that is what we are dealing with, would have consisted
6 of?

7 MR. BRUCK: In terms of an offer of their
8 testimony on the witness stand in camera, no, it does
9 not. This proffer, the proffer is contained primarily
10 at Page 11 of the Joint Appendix, and it is counsel
11 standing in place and representing to the trial judge
12 what the witnesses would say. We have under subpoena,
13 Your Honor, two jailers to testify that the defendant
14 has made a good adjustment, and at that point the court
15 says that that issue is not relevant. The actual
16 testimony is not in the record.

17 QUESTION: For our purposes, we should
18 consider what the evidence would have been to have
19 consisted only of past conduct while incarcerated, is
20 that correct, without an element of prediction of future
21 conduct?

22 MR. BRUCK: Yes, that is what was proffered.
23 It is that he made a good adjustment. It was obviously
24 being offered for the purpose of permitting the
25 sentencing authority to draw the conclusion about his

1 future conduct. The South Carolina Supreme Court seemed
2 to feel that both were offered.

3 QUESTION: Now, under present South Carolina
4 law, do I understand correctly that the state would now
5 permit such evidence to be introduced?

6 MR. BRUCK: Yes, Your Honor, but for a very
7 limited purpose. South Carolina has again and again and
8 again adhered to the position first expressed in Koon I,
9 which was the basis of the ruling here that the issue of
10 the future good conduct of a defendant in prison is
11 irrelevant.

12 However, in Koon II, a case decided nearly a
13 year after this trial, and thus of no relevance to what
14 happened here, the Court said that past good conduct in
15 jail is admissible but only as general evidence of the
16 good character of the defendant. It is not admissible
17 on the issue of good conduct in jail, which the Court
18 has continued over and over again to say is
19 inadmissible, and proof of that, our position is that
20 the South Carolina Supreme Court has repeatedly,
21 beginning with Koon I and as recently as State against
22 Chaffee, cited in my brief, upheld the exclusion of
23 expert psychiatric testimony which was focusing solely
24 on whether or not based on a psychiatric evaluation of
25 this defendant his likely future conduct in prison would

1 be good. That conduct is always excluded, and it is
2 always excluded under South Carolina law on grounds of
3 relevancy, that is, the relevancy of the issue. There
4 has never been a case in which a psychiatrist offering
5 his testimony was held to have offered him competent
6 testimony, unreliable testimony. South Carolina focuses
7 solely on the issue of whether or not the question of
8 his future conduct itself is relevant, and South
9 Carolina says that it is not, and that is the issue
10 before the Court.

11 QUESTION: But, of course, we did limit
12 certiorari here, didn't we?

13 MR. BRUCK: Yes.

14 QUESTION: To evidence of future
15 adaptability?

16 MR. BRUCK: Evidence tending to prove future
17 adaptability.

18 QUESTION: Yes.

19 MR. BRUCK: Obviously, the evidence was not
20 offered idly. It was not offered to satisfy the jury's
21 curiosity, but rather to allow the jury to make its own
22 conclusions.

23 QUESTION: But doesn't the state say now that
24 that very testimony would be admissible at least for
25 some limited purpose?

1 MR. BRUCK: For a very limited purpose, a
2 purpose so limited that South Carolina has almost
3 invariably found exclusion to be harmless error in all
4 but one case since this time.

5 QUESTION: You tell me now that South Carolina
6 would always exclude the testimony of an expert if he
7 purported to predict how the prisoner would act.

8 MR. BRUCK: That's correct. That's correct.
9 There are, I think, three or four decisions that have
10 been filed in the South Carolina Supreme Court dealing
11 with not past testimony of guaris, but --

12 QUESTION: Well, do you understand the state's
13 submission now to be to the contrary?

14 MR. BRUCK: Well, yes. As a matter of fact,
15 the state seems at some point in its brief to say in the
16 teeth of all of the South Carolina decisions that in
17 fact the rule of State against Koon isn't really such a
18 rule, and that all South Carolina excludes is
19 incompetent lay opinion testimony. Well, there are two
20 things wrong with that. The main thing that is wrong
21 with it --

22 QUESTION: Is that it is wrong.

23 MR. BRUCK: -- is that it isn't true.

24 (General laughter.)

25 MR. BRUCK: The second thing that is wrong

1 with it is that if it were true, this testimony in this
2 case would not have been excluded because if you look at
3 the record, the testimony was as to his past --

4 QUESTION: Mr. Bruck?

5 MR. BRUCK: -- conduct. Sir?

6 QUESTION: I am not clear as to your position
7 in response to the questions that have been asked. In
8 this case the prosecutor injected by questions he asked
9 the issue of conduct in prison.

10 MR. BRUCK: Yes, sir.

11 QUESTION: And he also included that in his
12 final speech to the jury. Suppose the prosecutor had
13 not done either of those things? Would, under your
14 presentation here today, it have been appropriate for
15 counsel for the defendant to have introduced, first of
16 all, psychiatric testimony as to the likelihood of his
17 being a good prisoner for the long-term future?

18 QUESTION: Yes.

19 QUESTION: Is the answer to that yes?

20 MR. BRUCK: The answer to that is yes.

21 QUESTION: That is your position?

22 MR. BRUCK: Yes, sir.

23 QUESTION: Now, let's assume, instead of
24 having psychiatric testimony, the only testimony to that
25 effect came from the two prison guards and from the

1 woman who visited the prison once a week.

2 MR. BRUCK: Yes, sir.

3 QUESTION: Not psychiatrists. Is your answer
4 still yes?

5 MR. BRUCK: Would it have been appropriate for
6 that testimony to have --

7 QUESTION: Would that have been admissible?
8 It is purely speculation by lay people. Would it have
9 been admissible?

10 MR. BRUCK: What was offered was not
11 speculation. It was his past record, and that would
12 have been admissible.

13 QUESTION: Right, but --

14 MR. BRUCK: If the question is, would their
15 speculation --

16 QUESTION: -- you offer the past record for
17 the purpose of showing --

18 MR. BRUCK: Correct.

19 QUESTION: -- the likelihood that he would not
20 be dangerous in the future.

21 MR. BRUCK: Correct.

22 QUESTION: Well, now --

23 QUESTION: If this ability by -- excuse me.

24 QUESTION: Go ahead.

25 QUESTION: Testimony by prison guards would

1 have been admitted for that purpose?

2 MR. BRUCK: Yes, sir. Their observations,
3 what they saw, not necessarily their opinions, but what
4 they saw over seven-and-a-half months of day-to-day
5 conduct with this man would most certainly have been
6 admissible as an aspect of his character within the
7 language of -- an aspect of his record bearing on his
8 character and enabling the jury to make an intelligent
9 decision about one of the crucial issues that they had
10 to confront.

11 QUESTION: What if the state did not make
12 future dangerousness an element of the sentencing
13 process in any way. Do you still think the constitution
14 would require South Carolina to admit the sort of
15 testimony that Justice Powell was asking you about?

16 MR. BRUCK: Yes, I believe it would. Of
17 course, that is not the situation we have in this case.
18 But I think there are -- I have two responses to that.
19 First, I think that all of this Court's capital
20 sentencing case recognize the calculations of future
21 dangerousness, of future behavior, whether it be bad or
22 good, the capacity for rehabilitation is at the very
23 core of what American judges and juries do when they
24 pass sentence in all kinds of cases, and this Court's
25 cases go back half a century and more discussing that

1 fact. In Lockett itself, one of the mitigating
2 circumstances that was excluded was the defendant's
3 capacity for rehabilitation, psychiatric --

4 QUESTION: I notice you rely a great deal on
5 Lockett when it refers to aspects of the defendant's
6 character and record. Now, the character and record,
7 when were the character and record of this man made,
8 before he committed the crime or after he committed the
9 crime?

10 MR. BRUCK: I read Lockett to say both.

11 QUESTION: Do you think Lockett contemplated
12 some character evaluation of how he has acted after the
13 crime and while he is awaiting trial?

14 MR. BRUCK: That is my reading.

15 QUESTION: Well, isn't character an evaluation
16 of past conduct?

17 MR. BRUCK: It is partly that, and it is
18 partly an evaluation -- the jury cannot avoid the
19 question, if we spare this man's life, then what? The
20 jury has a great responsibility when they sentence him
21 to death, but they also have a great responsibility when
22 they take a convicted murderer and allow him to live.
23 They cannot -- the state cannot wish away the question
24 that is going to arise in the jury room, will this
25 person harm other people if we don't sentence him to

1 death. That question is there. It is inherent when a
2 judge passes sentence. It is inherent when a jury
3 passes sentence. The jury will make the question --
4 will answer that question in one of two ways. It will
5 answer it on the basis of all relevant information, and
6 if they are given that opportunity, they will answer it
7 correctly as well as our judicial system can possibly
8 allow, or the jury will answer the question in an
9 artificially created blackout of information, as
10 happened in this case, where the most reliable evidence
11 of what was likely to happen if we spared this man's
12 life, the testimony of his jailers, the people that had
13 had him and could see him day to day and could form a
14 judgment of how he would likely do in confined --

15 QUESTION: Suppose they gave him a trial
16 within a week. Do you suggest that the evidence about
17 his conduct the week between the time he committed the
18 crime and the time he was tried has any bearing on this
19 issue?

20 MR. BRUCK: I would suggest that that would be
21 of vanishingly small weight. As a general matter, my
22 answer would be that the weight to be accorded to
23 mitigating evidence is for the sentencer, and all that
24 Lockett and all that Eddings say is that the state may
25 not give it no weight by exclusion.

1 QUESTION: Suppose a question to these two
2 witnesses had been, in the hope of the court, well, now,
3 we have asked you to describe how he has acted in the
4 past. What would be your prediction for the future?
5 Don't you think that question would be proper?

6 MR. BRUCK: I would think that a jailer who is
7 a person --

8 QUESTION: You mean there is no yes or no
9 answer to that?

10 MR. BRUCK: I would think as to the jailers
11 the question would be proper, but I think that is a
12 question on which the states enjoy a degree of latitude
13 in deciding the reliability of evidence. Under South
14 Carolina law -- would be admissible.

15 QUESTION: Out of state, so don't permit
16 testimony on the ultimate issue the jury has to decide.

17 MR. BRUCK: Well, of course, this isn't the
18 ultimate issue. It is an issue of some importance.

19 QUESTION: Well, it is pretty ultimate. It is
20 pretty ultimate.

21 MR. BRUCK: I think if the witness was allowed
22 to give all of the basis, all of the facts that he
23 observed, I do not think the Constitution would require
24 us to give a straight answer.

25 CHIEF JUSTICE BURGER: We will resume there at

1 1:00 o'clock, counsel.

2 (Whereupon, at 12:00 o'clock p.m., the Court
3 was recessed, to reconvene at 12:59 o'clock p.m. of the
4 same day.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION

2 (12:59 A.M.)

3 CHIEF JUSTICE BURGER: Mr. Bruck, you may
4 resume your argument.

5 ORAL ARGUMENT OF DAVID I. BRUCK, ESQ.,

6 ON BEHALF OF THE PETITIONER,

7 APPOINTED BY THIS COURT - RESUMED

8 MR. BRUCK: Thank you, Your Honor.

9 If I may complete my response to Justice
10 White, I think basically petitioner's position would be
11 that where a lay witness is permitted to give all of his
12 observations and provide all of what he has to say based
13 on his own knowledge and experience and what he had
14 seen, the Constitution would not require that that lay
15 witness's opinion also be admitted in mitigation of
16 punishment.

17 QUESTION: Including a prison guard.

18 MR. BRUCK: I would say including a prison
19 guard. South Carolina law, I believe, state evidentiary
20 law would admit the testimony as, I believe, would the
21 federal rules, because that is someone whose knowledge
22 is based on special experience.

23 QUESTION: But a state, if it permits the
24 prison guard to testify on what he has seen and heard,
25 wouldn't need to permit an opinion from him.

1 MR. BRUCK: That is correct. That is our
2 position. All of this, as I mentioned briefly at the
3 beginning, has to do with what the jury actually is
4 required -- what is actually required of the jury at the
5 sentencing phase. As the joint opinion in Jurek stated,
6 any sentencing authority must predict a convicted
7 person's probable future conduct when it engages in the
8 process of determining what sentence to impose. That is
9 simply an inquiry which cannot be willed away. At
10 bottom, I read Lockett to be concerned with accuracy,
11 with reliability, with the concern of the Eighth
12 Amendment, and if we are to sentence people to death,
13 let it not be in error. Let it be only based on the
14 facts as best we can bring them to the sentencer's
15 attention.

16 What we have here in this case, I think, is an
17 exceptionally clear example of the sentencing
18 determination fraught with the potential for error,
19 because not only were the state's own witnesses, the
20 jail guards, who knew the most about how this man was
21 likely to do in prison, prohibited from testifying --

22 QUESTION: Let me go back to the question I
23 put to you before lunch. Suppose within 60 days after
24 the murder, the case comes to trial. Is it your
25 suggestion that Lockett requires, the Constitution

1 requires that the Court admit evidence about his good
2 behavior during the two months between the time of the
3 murder and the time of the trial?

4 MR. BRUCK: Yes. I think that would again be
5 for the weight, and the weight, as the Court said in
6 Eddings, is not for the law, not for the legislature,
7 but for the jury.

8 QUESTION: Ordinarily the character of a
9 person like reputation is based on always past events,
10 isn't it?

11 MR. BRUCK: Yes.

12 QUESTION: Not necessarily current events, but
13 things past.

14 MR. BRUCK: Well, things past up to the time
15 when his character is being evaluated, which is at the
16 time of the trial. The way people -- and this is often
17 the case when you have people who are mentally ill or
18 who suffer from character disorders, and there was
19 abundant evidence in this record that this man was a
20 product of an alcoholic home, of child abuse, of
21 terrible domestic violence, and this is the sort of
22 person that may well be unable to function out in
23 society, and yet in a structured environment might well
24 be able to function very well, and we all know of
25 dramatic examples of that. The Birdman of Alcatraz.

1 QUESTION: Are you saying he might be able to
2 function very well in the controlled environment of a
3 prison.

4 MR. BRUCK: Correct.

5 QUESTION: Is that the issue --

6 MR. BRUCK: That certainly was.

7 QUESTION: -- that society is probing at, how
8 he is going to act in prison?

9 MR. BRUCK: Yes, that is the issue. A jail
10 environment is certainly similar to a prison
11 environment, perhaps not identical, and that would be an
12 issue for cross examination by the state, to try to
13 bring out ways in which this may not really be all that
14 probative. That is grist for the jury mill. These are
15 the things we have trials to determine.

16 QUESTION: Yes, but some states bar evidence
17 that is not ante litem motam, so to speak, evidence that
18 may have been concocted by a party over a short period
19 of time after the event which is being judged came into
20 effect. Now, you are saying, I take it, that the state
21 can't do that here, that it is strictly a matter for
22 cross examination. They can't ever say that this
23 conduct was shaped by the defendant in order to produce
24 evidence for this trial.

25 MR. BRUCK: The prosecutor can certainly say

1 that to the jury, but I don't think the state can say as
2 a matter of law that because of the danger that
3 defendant is putting on an act, that therefore that
4 cannot even be weighed by the jury, that the jury can't
5 even hear it. After all, we have situations in which
6 defendants have been incarcerated for two and three
7 years, and then have a retrial, and their prison
8 behavior can be assessed over a very long period of
9 time. Now, there is still the possibility that it was
10 still concocted. I don't know that any arbitrary time
11 deadline of a week or 50 days could ever be meaningfully
12 developed.

13 We could say, well, this is too short, or
14 there is too great a risk. I mean, there are all kinds
15 of dangers. In Washington, for instance. Texas
16 recognized the danger that co-defendants would concoct
17 their stories and try to swear each other off the
18 charges, and therefore -- and that is not a completely
19 irrational concern.

20 QUESTION: Counsel, maybe I am way off base,
21 but I don't quite understand. Assuming that the trier
22 of fact concludes that this man would not be helped out
23 of jail, what would he do?

24 MR. BRUCK: Would not be helped in the sense
25 that if the trier of fact concluded that his conduct

1 would be bad, that he would be violent in jail, that he
2 would rape other inmates, as the prosecutor argued in
3 this case, that would be a consideration weighing in
4 favor of death. If the trier of fact included that
5 probably this man's conduct would be good in the sense
6 of nonviolent --

7 QUESTION: You put the testimony on.

8 MR. BRUCK: That's correct.

9 QUESTION: He couldn't withdraw it.

10 MR. BRUCK: Oh, you mean if the witnesses were
11 called and they said, as a matter of fact, this guy was
12 being a real problem, he banged on the bars and that is
13 about all we have got to say about it.

14 QUESTION: But you couldn't blame that on the
15 state, could you?

16 MR. BRUCK: Absolutely not.

17 QUESTION: So you don't begin to have the man
18 electrocuted.

19 MR. BRUCK: That is right. If we didn't
20 interview our witnesses first and call them, and
21 indeed --

22 QUESTION: You wouldn't feel any counsel
23 responsibility for it at all, would you?

24 MR. BRUCK: I would feel grave responsibility
25 if I called a witness and didn't know what he was going

1 to say and he hurt my client.

2 QUESTION: I sure hope so.

3 MR. DRUCK: Yes, sir. I sure would. By the
4 same token, and we have absolutely no quarrel with the
5 idea that if the defeniant during the one week or the 60
6 days between his arrest and his trial attempted a jail
7 break, I don't think it can be seriously contended that
8 that is not evidence relative to an aspect of his
9 character and record that the jury ought to know and
10 that they are entitled to know, and indeed, South
11 Carolina law most certainly provides for consideration.

12 Indeed, in this record there is the slightest
13 fragment of rather minor misbehavior which was admitted
14 to by the defendant himself that when they first put him
15 in jail he banged on the bars because they wouldn't let
16 him get a phone call, and the solicitor and prosecutor
17 jumped on that, seized on that in his closing argument.
18 He said, didn't he admit kicking on the bars over
19 there. That is the kind of prisoner he is, kicking on
20 the bars, kicking on the bars.

21 Now, there was nothing improper about that
22 argument. What was improper about it is that Ronald
23 Skipper's side of the story was excluded from evidence,
24 and that is all the jury heard.

25 QUESTION: I doubt you will find any prisoner

1 that at some time didn't bang on the bars.

2 MR. BRUCK: Well, I agree with that, Your
3 Honor, and I believe that is exactly what defense
4 counsel proffered the jailers to say, that after this
5 initial little problem he had the night he was locked
6 up, he made a good adaptation and did fine, and the jury
7 could fairly have concluded from that that he would have
8 done all right if they spared his life and sent him to
9 prison, and that, of course, is the testimony the jury
10 never got to hear.

11 If the Court has no further questions, I would
12 like to reserve the remainder of my time for rebuttal.

13 CHIEF JUSTICE BURGER: Very well. Mr. Coombs.

14 OFAL ARGUMENT OF HAROLD M. COOMBS, JR., ESQ.,

15 ON BEHALF OF THE RESPONDENT

16 MR. COOMBS: Mr. Chief Justice, and may it
17 please the Court, the state's position in this case may,
18 if you will, be reduced to one simple sentence.

19 Predictive testimony that is offered in mitigation may
20 be properly excluded when it is merely based upon a lay
21 witness's opinion, and when the lay witness's opinion is
22 simply illustrated by evidence in the record, and the
23 jury is free to consider that evidence for themselves.

24 Now, our position is that this properly
25 focuses the jury's attention. By properly focusing the

1 jury's attention on the characteristics of the
2 defendant, the characteristics of the crime that he has
3 committed, and his prison record, and only allowing in
4 relevant evidence.

5 QUESTION: What was excluded here?

6 MR. COOMBS: What was excluded in this case,
7 Justice White, was one thing, and that was predictive
8 testimony from lay witnesses.

9 QUESTION: That wasn't what was asked, was
10 it?

11 MR. COOMBS: That was my understanding, Your
12 Honor.

13 QUESTION: What was the question that these
14 prison guards weren't permitted to answer?

15 MR. COOMBS: Your Honor, there was never any
16 specific testimony proffered. The only fair inference
17 from the record, I would submit to the Court, is that
18 they were offered for one thing, and that was to
19 speculate on his future conduct.

20 QUESTION: Weren't they just going to --
21 wasn't it just said that they were going to testify
22 about how he had conducted himself since he had been in
23 jail?

24 MR. COOMBS: No, Your Honor, I would disagree
25 with that.

1 QUESTION: But Mr. Bruck said this morning
2 before noon.

3 MR. COOMBS: Your Honor, I think if you look,
4 for example, at the top of Appendix Page 4, the trial
5 judge is confronted with what he is going to admit into
6 evidence, and I think at Appendix Page 4 he very clearly
7 says that insofar as evidence is offered which pertains
8 to the characteristics of the defendant, it is
9 admissible into evidence.

10 If we look at Appendix Page 10, we see that
11 the defendant's former wife is testifying. She is
12 permitted to use the very words that he has made a good
13 adjustment to prison. She is permitted to testify as to
14 what she has seen about Ronald Skipper in prison. Then,
15 the defense attorney asks her to predict over an
16 extended period of time what is your opinion as to
17 whether he could make a good adjustment, and it is only
18 at that point --

19 QUESTION: And what page is that?

20 MR. COOMBS: That is at Appendix Page 10,
21 Justice White. It is only at that point that the
22 solicitor objects. The objection is sustained, and
23 defense counsel proceeds to make his offer of proof, and
24 when he makes that offer of proof, that is when very
25 strangely he makes an offer of proof for past conduct.

1 QUESTION: In South Carolina, is that the way
2 you proffer proof? You don't get the verbatim
3 statement?

4 MR. COOMBS: A summary from counsel is usually
5 considered --

6 QUESTION: This witness, if permitted to
7 testify, would testify as follows. You don't go that
8 route, do you?

9 MR. COOMBS: Justice Marshall, they do it one
10 of several ways. It is done any number of ways.
11 Counsel may make the offer of proof to the court. He
12 may put the witness on the stand and have the offer go
13 into the record that way. So the trial judge's
14 discretion is my understanding.

15 QUESTION: Do you consider this a proffer of
16 proof?

17 MR. COOMBS: I would consider this an offer of
18 proof. The trial judge --

19 QUESTION: Of what? Of what? Proof of what?

20 MR. COOMBS: I would say this is an offer of
21 proof offered to relate back to the question he was
22 attempting to elicit from the witness, which was a
23 prediction of future conduct over a period of years. It
24 is only natural that when the trial judge is sitting
25 there on the bench, and he is deciding, what am I ruling

1 upon? He is going to go back to the question that was
2 asked, and what was that question? It was a question
3 concerning a prediction of future conduct.

4 QUESTION: Well, Mr. Coombs, suppose, just
5 suppose that all that they wanted to offer was the
6 testimony of the corrections officers about past conduct
7 while in jail?

8 MR. COOMBS: Justice O'Connor, that would have
9 been admissible. Admissible.

10 QUESTION: Pardon me?

11 MR. COOMBS: Admissible.

12 QUESTION: And would it be admissible for the
13 purpose of proving future adjustability to prison life?

14 MR. COOMBS: Okay, Justice O'Connor, at that
15 point we come to what is meant by prison life. I
16 suggest to this Court that in light of the South
17 Carolina Supreme Court's decision in Plath, State v.
18 Plath and Arnold, that when our Supreme Court talks
19 about prison life, they are talking about such things as
20 how well the prisoner is going to be able to take one
21 shower a week. I will use the example used in Plath.
22 Or whether he is going to be personally happy.

23 They are not talking about his interaction
24 with other prisoners. Most certainly they are not
25 talking about future dangerousness. State v. Woomer was

1 decided when the present case --

2 QUESTION: Well, you didn't answer my
3 question. Would the evidence of past conduct in prison
4 be admissible to prove adjustability and behavior in the
5 future while in prison in South Carolina?

6 MR. COOMBS: It depends what you mean by
7 future adjustment in prison, Justice O'Connor. If it is
8 something that is going to be of consequence to the
9 determination of whether or not this man lives or dies --

10 QUESTION: Yes.

11 MR. COOMBS: -- yes, it would be admissible,
12 very clearly admissible.

13 QUESTION: Yes. And yet the judge kept it out
14 here even in the face of arguments by the prosecutor
15 that this man would be likely to attack other prisoners
16 in the future and behave badly in prison.

17 MR. COOMBS: No, Justice O'Connor. I do not
18 believe that that is a fair reading of this record. I
19 believe that the defendant was able --

20 QUESTION: Isn't that the prosecutor's
21 argument at the end? Doesn't it touch in part upon the
22 likelihood that this man would attack other prisoners in
23 the future, and that he is likely to misbehave in
24 prison?

25 MR. COOMBS: That was the prosecutor's

1 inference, Your Honor. There is plenty of evidence in
2 this record. There is plenty of evidence in the record
3 from which the prosecutor could have drawn that
4 inference.

5 QUESTION: But don't you think that it is
6 arguable that the defendant should have been allowed to
7 rebut that inference with testimony of this type from
8 corrections officers?

9 MR. COOMBS: If the testimony from the
10 corrections officers had been proffered for the purpose
11 of testifying to things that they had observed
12 concerning Ronnie Skipper when he was in jail, that
13 testimony was admissible.

14 QUESTION: That is exactly what Mr. Dusenberry
15 said. Your Honor, we have under subpoena two jailers to
16 testify that the defendant has made -- has made a good
17 adjustment.

18 MR. COOMBS: Okay, that is from, I would
19 guess, Appendix Page 11.

20 QUESTION: Yes. You say that is very strange,
21 but the court says, whether he can or cannot is not an
22 issue in this case. Even if they stay after this
23 initial period, he has made a good adjustment. The
24 court says, read Koons. That is not an issue. So none
25 of these witnesses would be permitted to testify,

1 Dusenberry asked. The court says no.

2 MR. COOMBS: Justice White, again, you have to
3 look at the question that was raised. He was trying to
4 introduce --

5 QUESTION: I thought I just did. I thought I
6 just did.

7 MR. COOMBS: That is part of the offer of
8 proof, Your Honor. The question where the solicitor
9 objected was a question which called upon his former
10 wife to predict future behavior over a period of years
11 in prison. When you examine this record, I suggest the
12 record is replete --

13 QUESTION: So you would say that you -- he
14 would say, we should judge this case, at least you say
15 we should, on the basis that if all the defense wanted
16 to do was to put on these two jailers to testify how
17 these people had -- now this defendant had behaved
18 himself in prison in the past, it would have been
19 admissible.

20 MR. COOMBS: I am sorry, Your Honor. I don't
21 understand your question, Justice White.

22 QUESTION: Well, if the defense had said, I
23 want to call these two prison guards, I want to ask them
24 how this defendant has conducted himself in the past,
25 while he has been in prison, admissible, I gather.

1 MR. COOMBS: That would have been admissible.
2 Yes, sir.

3 QUESTION: Well, that is hard to justify in
4 light of the colloquy on Page 11, I think, Mr. Coombs.
5 The court had sustained an objection to the wife's
6 testimony about whether or not he could adjust, and then
7 counsel says, we want to take up a matter of law outside
8 the presence of the jury.

9 Now, the counsel didn't reargue the wife's
10 admissibility. He said, I've got two witnesses here,
11 and as Justice White said, we have under subpoena to
12 testify that the defendant has made a good adjustment,
13 and then the trial court obviously thinks he is still
14 talking along the same line as before, but he wasn't,
15 and surely -- I mean, we can't say that he didn't make
16 his point to the trial court.

17 MR. COOMBS: I think, Justice Rehnquist, you
18 have to look at the entire record, and I think at that
19 point, on that one isolated page of the appendix, that
20 the trial judge still has the objection on his mind from
21 Page 10, but we can certainly look, for example, at
22 Appendix Page 4. We can look at the extensive record
23 before the Court in this case.

24 For example, the defendant in this case
25 testified from the stand that when he was in prison he

1 had learned vocational skills. He had applied those
2 skills. He was --

3 QUESTION: And his wife was permitted to
4 testify about how he had conducted himself.

5 MR. COOMBS: His wife, his former wife was
6 certainly permitted to testify about how he conducted
7 himself in prison --

8 QUESTION: The same sort of things that the
9 prison guards were going to talk about.

10 MR. COOMBS: If the prison guards limited
11 their testimony to things that they had actually seen,
12 that is exactly right, Your Honor. Presumably it would
13 have been very similar. They would have been paralleled
14 one another.

15 QUESTION: I am having difficulty following
16 your argument, counsel. You conceded in response to
17 several questions that evidence about his conduct was
18 admissible.

19 MR. COOMBS: Evidence about his conduct
20 certainly was admissible.

21 QUESTION: Now his counsel then offers to
22 present evidence on precisely that question, and you say
23 it is not admissible.

24 MR. COOMBS: I think, Your Honor, the question
25 is, what does the trial judge have on his mind in

1 Appendix Page 11.

2 QUESTION: Well, we have to go on the basis of
3 the record, not what is in his mind. You have said,
4 perfectly clear, several responses, that that evidence
5 is admissible, and then the judge rules it is not
6 admissible, and you either have to defend it or concede
7 it, or say that it is totally irrelevant.

8 MR. COOMBS: Our position, Your Honor, is that
9 observations of past conduct are admissible. Lay
10 witnesses' testimony which merely seeks to predict
11 future conduct is inadmissible, and I suggest the record
12 is entirely consistent with that view.

13 QUESTION: May I ask on that, directed at what
14 issue is the evidence of past conduct admissible? Is it
15 admissible on the issue of adjustability to prison
16 life?

17 MR. COOMBS: Again, that means -- you have to
18 consider what you mean by prison life. Might I suggest
19 for the Court's --

20 QUESTION: Whatever the judge meant when he
21 said it is not admissible on adjustability to prison
22 life. In your view, is it admissible on that issue?

23 MR. COOMBS: If you mean showering, how often
24 does he shower, that is not admissible. If it means is
25 he going to be a productive prisoner, it most certainly

1 is admissible, and I would cite this Court to Transcript
2 Page 1257.

3 QUESTION: Let me just keep you on this for a
4 moment. You concede that the evidence of past conduct
5 would be admissible on the issue of adjustability to
6 prison life if the term adjustability to prison life is
7 properly understood.

8 MR. COOMBS: That is correct, Your Honor.

9 QUESTION: Then how do you defend the judge's
10 ruling at the bottom of Page 11?

11 MR. COOMBS: The only thing I can say there is
12 that he still had on his mind the question that was
13 raised at Appendix Page 10.

14 QUESTION: Where do you get your view of the
15 law then?

16 MR. COOMBS: I get my view, for example, from
17 the whole --

18 QUESTION: Do you agree he committed error
19 because he didn't understand the question?

20 MR. COOMBS: I don't think he understood one
21 single question.

22 QUESTION: That just explains, it doesn't
23 justify the error. Did he commit error?

24 MR. COOMBS: No, he didn't commit error
25 because he let in everything that was offered to show

1 past conduct and he put this to the jury. He put it to
2 the jury at Trial Transcript Page 1,257. He charges the
3 jury. He charges the jury on nonstatutory mitigating
4 circumstances. And he says, nonstatutory mitigating
5 circumstance number 4, the defendant is now and during
6 the confinement under life sentence would be free of all
7 alcohol and drug dependence.

8 One more, if I might read it to the Court.
9 Nonstatutory Aggravating Circumstance Number 5. The
10 defendant has shown a progressive positive adjustment to
11 confinement, and he has the educational and employment
12 skills that would enable him to be a stable, productive
13 prisoner. The only thing that was kept out in this case
14 is simply the predictive testimony of lay witnesses.
15 What was included would be the observations of all the
16 lay witnesses as to what they actually saw. Once that
17 was in the record, then the jury was free to consider,
18 to evaluate, and if they wanted to use that as a
19 mitigating circumstance that mitigates against the death
20 penalty, they were free to take that into consideration
21 and give it whatever weight they chose.

22 QUESTION: You agree that these two guaris
23 testify as to certain facts, and that would be
24 admissible.

25 MR. COOMBS: We don't have that in the record,

1 but just hypothetically.

2 QUESTION: Do you agree that there are some
3 things he could say that would be admissible?

4 MR. COOMBS: I certainly do.

5 QUESTION: And the judge kept it out?

6 MR. COOMBS: I do not agree with that.

7 QUESTION: What did the judge say? I am not
8 going to let it in.

9 MR. COOMBS: He said at the top of Appendix
10 Page 4, for example, he said anything --

11 QUESTION: I am talking about Page 11. He
12 might get others off on Page 4, but I still think Page
13 11 is this case. The judge says you cannot put these
14 witnesses on.

15 MR. COOMBS: Transcript Page 11 or Appendix
16 Page 11 takes place for one reason, because on Page 10
17 defense counsel has asked his former wife to make a
18 prediction as to what his behavior in prison is going to
19 be over a period of years. That takes place the bottom
20 third roughly of Appendix Page 10.

21 Under prison conditions over an extended
22 period of time, what is your opinion as to whether he
23 could make a good adjustment? I say very clearly that
24 is asking her to speculate on his future conduct. It
25 has nothing to do with what she herself has actually

1 seen.

2 I remind the Court, suggest to the Court once
3 again that his former wife was permitted to characterize
4 her own testimony, to describe the testimony and then
5 characterize it by saying that Mr. Skipper had made a
6 good adjustment to prison. The defendant's mother could
7 testify that he had been free of drugs. Again, the jury
8 could take that and give it whatever weight they might
9 choose.

10 The defendant himself went into excruciating
11 detail about his past conduct, his present conduct, and
12 even his future conduct, and how detailed is his
13 testimony, what kind of leeway did the trial judge give
14 to this prisoner. He even allowed him to predict that a
15 South Carolina public school would be the school of
16 choice for his own children.

17 I think based upon this record it is hard to
18 imagine a factual scenario of where a trial judge has
19 given a prisoner more leeway in putting before the jury
20 the circumstances and the facts which the jury may
21 consider and decide if they think that is a proper
22 matter to use in mitigation of the death penalty.

23 Our position is that the evidence is to be
24 presented by the witnesses. Once that evidence is
25 presented, it is for the jury to attach whatever weight,

1 whatever meaning that they see is fit. On the basis of
2 this record, there is absolutely nothing in this record
3 to show that his former wife or the prison guards or the
4 jail visitors have any special knowledge, any special
5 insight that can make their testimony, their
6 observations more meaningful for that jury.

7 QUESTION: I am still having difficulty. At
8 the bottom of Page 11, they are discussing what they are
9 trying to introduce. They are trying to introduce
10 evidence of three people which would bear on whether he
11 could or could not adjust to prison life. And the judge
12 said, that is irrelevant. They will not be permitted to
13 testify. But you have already conceded several times
14 that that would be admissible evidence if there was no
15 opinion given.

16 MR. COOMBS: I certainly have, Mr. Chief
17 Justice. And the only thing I can suggest is at
18 Transcript Page 11 or Appendix Page 11 has to be read
19 along with Appendix Page 10, it has to be read along
20 with the top of Appendix Page 4. And it has to be read
21 along with everything else the trial judge admitted in
22 evidence during the course of this trial, which is some
23 considerable volume, right here. We are talking about --

24 QUESTION: The judge has told him
25 categorically, whether he can or cannot adjust to prison

1 life is not an issue in this case.

2 MR. COOMES: Again, Mr. Chief Justice, the
3 transcript at Page 1,257. Obviously, there is some
4 misunderstanding. The trial judge at Transcript or
5 Appendix Page 11 thinks we are still talking about
6 future adjustability, because at 1,257 he says as a
7 nonstatutory mitigating circumstance the defendant has
8 shown a progressive positive adjustment to confinement,
9 and he has the educational and employment skills that
10 would enable him to be a stable, productive prisoner.

11 So, obviously the trial judge believed that
12 that was proper, relevant, admissible testimony.

13 QUESTION: But he said the contrary,
14 categorically.

15 MR. COOMBS: That is exactly right. At
16 Appendix Page 11, he made a mistake, and why did he make
17 a mistake? Because once questions had been asked
18 calling for a prediction of future conduct, and that
19 objection was sustained, defense counsel then proceeded
20 to make an offer of proof of past conduct, which is
21 nonsensical. The trial judge became temporarily
22 confused at Appendix Page 11, and that is exactly what
23 happened.

24 QUESTION: So are you arguing that the error
25 was harmless?

1 MR. COOMBS: It was a mere number of words
2 that made absolutely no difference whatsoever as to what
3 was admitted or not admitted at trial. The only reason
4 he wanted those prison guards to testify, the only
5 reason he wanted the jailhouse visitor to testify was
6 for purposes of predicting lay testimony, predicting
7 future adaptability to prison.

8 QUESTION: What do you say about the opinion
9 of the South Carolina Supreme Court that says that the
10 convicted murderer's adaptability to prison life is not
11 a matter of any relevance to the sentencing proceeding?

12 MR. COOMBS: Justice Stevens, that again goes
13 to what the South Carolina Supreme Court has considered
14 prison life to be. For example, in State v. Plath, they
15 don't think that -- they consider prison life to involve
16 simply matters of personal hygiene or something along
17 those lines, how often he showers.

18 QUESTION: Where does the opinion in Koon I
19 make that differentiation between kinds of adaptability
20 to prison life?

21 MR. COOMBS: I don't believe it does, Your
22 Honor. You have to read the whole series of cases.

23 QUESTION: You are reading the opinion, not
24 anything in the opinion itself.

25 MR. COOMBS: Not in the opinion itself.

1 QUESTION: But it is clear, is it not, that
2 the judge apparently read his reference to what is not
3 admissible is exactly the same thing the South Carolina
4 Supreme Court said, that adjustability to prison life --
5 they used the word adaptability instead of adjustability
6 -- is not an issue at the penalty hearing.

7 MR. COOMBS: With one exception, Your Honor. I
8 don't know on the record here whether the trial judge
9 said anything about State v. Woomer. State v. Woomer is
10 an opinion of the South Carolina Supreme Court which had
11 been published at the time of the instant case. State
12 v. Woomer --

13 QUESTION: The same day as Koon I, right?

14 MR. COOMBS: I believe -- I know it had come
15 out one day apart, roughly at the same time. Woomer
16 holds that expert testimony predicting future conduct is
17 admissible. Specifically, that holds that expert
18 testimony concerning future dangerousness is
19 admissible. It goes on to say that future -- testimony
20 concerning future nondangerousness is admissible.

21 Woomer holds that expert testimony predicting
22 future conduct is admissible. Specifically, that holds
23 that expert testimony concerning future dangerousness is
24 admissible. It goes on to say that future -- testimony
25 concerning future nondangerousness is admissible. The

1 only --

2 QUESTION: That is a little different from
3 adjustability to prison life. Or do you say that is the
4 same as adjustability to prison life?

5 MR. COOMBS: I think future nondangerousness
6 could well be construed as being the same thing as
7 future good conduct in prison.

8 QUESTION: Let me just put it this way. In
9 your view, is testimony directed at the issue of whether
10 an inmate is adjustable to prison life admissible or
11 inadmissible in South Carolina at a penalty hearing?

12 MR. COOMBS: In the present case, it was
13 admissible.

14 QUESTION: As a general proposition?

15 MR. COOMBS: It is generally admissible so
16 long as it concerns matters of consequence. It is not
17 admissible if it concerns simply how often he might take
18 a shower in prison.

19 QUESTION: What was the evidence at stake in
20 Koon I that was excluded? What was the Supreme Court
21 talking about there when it said this evidence is
22 totally irrelevant?

23 MR. COOMBS: I think it was talking about
24 predicted future conduct, Your Honor, not taking a
25 shower. I don't believe it concerned a shower. I think

1 it concerned -- is probably as vague -- I believe it is
2 as vague as in the present case. Simply testimony from
3 lay witnesses concerning their predictions of future
4 conduct.

5 QUESTION: Do you think that the Supreme Court
6 of South Carolina knew what it was saying when it wrote
7 that opinion? They apparently say the trial judge
8 didn't know what he was saying.

9 MR. COOMBS: I just read the opinions, Your
10 Honor. I don't have any special insight into that.

11 QUESTION: Counsel, wasn't the evidence
12 excluded in Koon I evidence of an expert? Wasn't it
13 psychiatric testimony?

14 MR. COOMBS: I believe, Your Honor, it was
15 expert testimony, but it was --

16 QUESTION: It wasn't lay testimony.

17 MR. COOMBS: It was expert testimony, I
18 believe, that was concerned with prison life,
19 adjustability to this very vague, nebulous term, prison
20 life. And again I say the South Carolina Supreme Court
21 considered prison life often to involve matters which
22 are not relevant.

23 We believe that it is inescapable, and it is
24 inescapable because this Court has said so in Jurek v.
25 Texas, that every time a sentencing authority has

1 jurisdiction, every time that it has discretion, it has
2 to make some sort of inherent prediction concerning
3 future conduct.

4 We submit that this has been taken into
5 consideration by the State of South Carolina. We feel
6 that by limiting testimony, by excluding testimony of
7 things that are not relevant, the jury sentencing
8 discretion is properly focused. We think the state has
9 made a valid decision in focusing the attention of the
10 sentencing authority in this case, and we would ask that
11 the judgment be sustained.

12 Unless there are any questions --

13 CHIEF JUSTICE BURGER: Do you have anything
14 further, Mr. Bruck?

15 ORAL ARGUMENT OF DAVID I. BRUCK, ESQ.,

16 ON BEHALF OF THE PETITIONER,

17 APPOINTED BY THIS COURT

18 MR. BRUCK: Yes, Your Honor, only two points
19 which I would like to touch on very briefly. One, I
20 think it should just be mentioned that what the state
21 now argues is the very core of this case, and their
22 entire submission is a point never before raised by the
23 state below.

24 It is not until the state came to this Court
25 that it asserted for the first time that all that was

1 being offered to cite what the record clearly shows is
2 some sort of incompetent lay opinion testimony. There
3 was no reason for the state to make any such argument,
4 because South Carolina law is so clear that the issue of
5 future conduct in prison at least when the behavior is
6 likely to be good is inadmissible as a matter of law and
7 is categorically excluded.

8 That is what State against Koon said, the
9 exact testimony that was excluded by the psychiatric
10 witness, and it is contained in Justice Marshall's
11 opinion in Patterson versus South Carolina in Footnote
12 3. The expert said, I conclude that Koon would be a
13 very good risk for good adjustment in an institution,
14 and a very low risk for assaultive or violent behavior
15 in an institutional setting.

16 I don't think that has anything to do with how
17 often he would have taken a shower. Counsel for the
18 state keeps saying over and over again in his argument
19 that these various family witnesses were permitted to
20 testify, and he notes that a written mitigating
21 circumstance was submitted to the jury dealing with
22 future conduct. There are inconsistencies in the trial
23 judges' actions in this case, but there is a way of
24 explaining all of them. That which was objected to by
25 the state was excluded. There was no objection to the

1 wife. There was no objection to the defendant's own
2 statements on the witness stand, and therefore the judge
3 let it in.

4 There was no objection to the written
5 mitigating circumstance that was submitted. Therefore
6 the judge submitted it. The problem with the written
7 mitigating circumstance is, it had virtually no evidence
8 to back it up. The prosecutor is the one who made use
9 of that bit of writing in the sentencing instructions,
10 because he gave the prosecutor the opening for his
11 extremely effective jury argument about, if you send
12 this fellow to prison, he is going to rape other boy
13 inmates in the jail, because that is the kind of inmate
14 he is, and you know that based on what you know about
15 him, and on this record. That is why there was no
16 objection. I don't think the trial judge was all that
17 confused. His trial judge made no sui sponte rulings
18 that I am aware of during this entire -- during this
19 entire --

20 QUESTION: Well, there is certainly some
21 evidence of confusion in the transcript on Page 11,
22 where counsel says I am offering it to prove what did
23 happen, and the trial judge says, well, his answer is
24 such, he indicates he still thinks it is being offered
25 to prove future conduct.

1 MR. BRUCK: Well, it is being offered to prove
2 future conduct, his past conduct. That is the reason --

3 QUESTION: Well, yes. I suppose you could say
4 that, but I don't think it is entirely fair to say that
5 the trial court ruled absolutely consistently
6 throughout.

7 MR. BRUCK: The main point I really got to my
8 feet again to make was simply in the answer to Justice
9 O'Connor's questions and the answers to Justice Steven's
10 question were not correct. That the state gave the law
11 in South Carolina could not be clearer that the issue of
12 future good conduct in prison is inadmissible as a
13 matter of law. In this case, the South Carolina Supreme
14 Court cited Koon I in saying that evidence of future
15 adjustability or adaptability to prison was properly
16 excluded.

17 A few months later, in State against Elmore,
18 the case -- the South Carolina court made an identical
19 ruling based purely -- in a case which involved only the
20 exclusion of three prison guards who had had this man
21 for two years, and when the South Carolina Supreme Court
22 upheld the exclusion of that testimony, solely evidence
23 that there is prior good conduct, the state court cited
24 State against Skipper as their authority, so I don't
25 think there is any question about what South Carolina

1 law is.

2 My last point that I would like to make is
3 simply that the state in a -- at the last moment said
4 that the evidence here is harmless. This Court has
5 never suggested that an actual violation the rule of
6 Lockett against Ohio, that an actual exclusion of
7 relevant mitigating evidence can ever be -- If there
8 ever could be harmless error, that is to say, if a
9 reviewing court were ever able to say with certainty
10 that an error of this sort could not have affected the
11 jury's judgment, surely this is not the case. For all
12 we know based on this record, Ronald Skipper is on death
13 row today precisely because of the argument that the
14 state made which he was prevented from responding to
15 with competent evidence and the state's own jailers
16 prepared, ready, and willing to testify on his behalf,
17 and on that basis we submit that this death sentence may
18 not be carried out consistent with the commands of the
19 Eighth Amendment.

20 Thank you.

21 CHIEF JUSTICE BURGER: Thank you, counsel.
22 The case is submitted.

23 (Whereupon, at 1:32 o'clock p.m., the case in
24 the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#84-6859 - RONALD DeRAY SKIPPER, Petitioner v. SOUTH CAROLINA

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

'86 MAR -3 P5:07