Louis B. Gaskin v. State of Florida

MR. CHIEF JUSTICE

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS GASKIN VERSUS STATE. MR. WEST.

GOOD MORNING, YOUR HONOR. BEFORE WE PROCEED WITH THE ARGUMENT, ITSELF, MR. BROWN HAS RAISED AN OBJECTION AS TO THE DEMONSTRATIVE EXHIBITS THAT I HAVE PLACED BEFORE THE COURT, AND IF WE COULD ASK FOR A COUPLE OF MINUTES FOR THE COURT TO RULE ON. THAT I WILL BE GLAD TO REMOVE IT IF THAT IS THE WAY THE COURT RULES. MR. CHIEF JUSTICE

IS THERE ANYTHING ON THIS DOCUMENT WHICH IS NOT IN THE RECORD?

THERE IS ONE BOX ON THE LAST PART, WHERE IT SAYS THAT THE MITIGATORS OMITTED IS NOT IN THE RECORD. EVERYTHING ELSE IS IN THE RECORD. IT IS A TIME LINE OF MR. GASKIN GASKIN'S LIFE IS WHAT IT IS. MR. CHIEF JUSTICE

WHAT IS YOUR POSITION, MR. BROWN?

YOUR HONOR, I WAS ONLY MADE AWARE OF THIS THIS MORNING. I HAD A CHANCE, ONLY BRIEFLY, TO REVIEW IT. IT LEADS ME TO BELIEVE THAT THE ENTIRE EXHIBIT SHOULD NOT BE INTRODUCED, AND OBVIOUSLY I HAVE NOT HAD TIME TO LOOK AT IT. I HAVE NOTED SEVERAL GLARES DISCREPANCIES BETWEEN WHAT I HAVE OBSERVED HERE AND WHAT I FOUND IN THE RECORD. MR. CHIEF JUSTICE

WELL, IT IS NORMALLY, IF COUNSEL IS GOING TO USE AN EXHIBIT AT ARGUMENT, THAT IS WORKED OUT BY COUNSEL PRIOR TO THE ARGUMENT, AND SINCE THIS HAS NOT BEEN DONE, AND SINCE AN OBJECTION HAS BEEN RAISED, I DON'T THINK YOU OUGHT TO USE IT. I THINK IT OUGHT TO BE REMOVED. MR. WELLS: OKAY, YOUR HONOR. IF THE COURT WOULD GIVE ME A MINUTE OR TWO. MR. CHIEF JUSTICE

THANK YOU. AREYOUEATO PROCEED?

MAY IT PLEASE THE COURT, YOUR HONOR. DWIGHT WELLS ON BEHALF LOUIS GASKINS. WE ARE HERE ON HIS APPEAL OF DENIAL OF HIS 3.850 HEARING THAT WAS HELD IN THE YEAR 2000. TO START OFF, BY, REALLY, THE ISSUES IN THE BRIEF ARE VERY MUCH INTERCONNECTED, IN THAT THE FIRST ISSUE IS THAT THE TRIAL COUNSEL FAILED TO PRESENT A SUBSTANTIAL AND IMPORTANT MITIGATING EVIDENCE TO THE JURY, AND BECAUSE OF HIS FAILURE TO DO THAT, THE JURY VOTED A DEATH REC IN THIS CASE. THE SECOND ISSUE IS THAT THE TRIAL COUNSEL FAILED TO SUPPLY, TO THE PSYCHOLOGICAL EXPERTS HIRED, NAMELY DR. CROPP, INFORMATION THAT HE HAD REQUESTED IN CONTEMPLATION OF DOING AN EVALUATION OF MR. GASKIN, AND, AGAIN, BECAUSE OF THAT FAILURE TO GIVE DR. CROPP THE INFORMATION HE HAD REQUESTED, MUCH OF IT SCHOOL RECORDS, WHICH I WILL GET BACK TO IN A FEW MOMENTS, THIS AFFECTED THE OUTCOME OF DR. CROPP'S EVALUATION AND, AGAIN, AFFECTED MR. GASKIN AND THE JURY THAT THE VOTED IN THE PENALTY PHASE OF HIS TRIAL. THIRDLY, THE ISSUE THAT IS RAISED IN THE BRIEF IS THE FAILURE OF MR. GASKIN'S TRIAL ATTORNEY TO EFFECTIVELY ARGUE FOR MR. KIN AT THE END OF THE PENALTY-PHSERTF HIS TRIAL. I WOULD START OUT BY JUST QUOTING FROM THE RECORD, FROM MR. GASKIN'S TRIAL ATTORNEY'S CLOSING ARGUMENT. HE DESCRIBES HIS CLIENT, AT ONE POINT, AS A SOCIO-PATH, THIS DESPITE THE FACT THAT, DURING THE 3.850

HEARING, THE ISSUE OF STRATEGY WAS A KEY ISSUE, WHEN MR. KASK, THE TRIAL ATTORNEY, SAID I WAS CONCERNED ABOUT OTHER MATTERS COMING IN, MATTERS INSTRUMENTAL TO MR. GASKIN, YET HE CALLS HIS OWN CLIENT A SOCIO-PATH. THIRDLY, HE DESCRIBES MR. GASKIN AS AN INTELLIGENT YOUNG MAN. THERE COULD BE NO FURTHER MISS CHARACTERIZATION OF WHAT MR. GASKIN IS THAN AN INTELLIGENT YOUNG MAN. HE HAD EXTREME DIFFICULTY IN SCHOOL AND AT ONE POINT, WHEN HE REACHED THE AGE OF 16, WAS ASKED TO LEAVE SCHOOL. THIRDLY, HIS TRIAL ATTORNEY DESCRIBED MR. GASKIN AS LIVE AGO PRETTY NORMAL -- AS LIVING A PRETTY NORMAL LIFE. THESE ARE QUOTES FROM THE RECORD. MR. GASKIN, I WOULD SUBMIT, AGAIN, MR. GASKIN DID NOT LIVE A PRETTY NORMAL LIFE. HE BEGAN HIS LIFE BY BEING ABANDONED BY HIS MOTHER, AND HE WOULD NOT SEE HIS MOTHER, AGAIN, FOR SEVERAL YEARS. HE DID NOT KNOW THAT HE HAD SIBLINGS, THAT IS BROTHERS AND SISTERS. HE WOULD MEET THEM LATER IN HIS LIFE, WHEN HE WAS TEN OR 11 YEARS OLD.

YOU HAVE LAID OUT EXTENSIVELY OF COURSE, IN THE BRIEF, DETAILS OF THE EVIDENCE THAT WAS PRESENTED AT THE POSTCONVICTION HEARING, ABOUT ADDITIONAL MITIGATION OR WHATEVER, BUT HOW ABOUT BRINGING THIS INTO SHARPER FOCUS, INSOFAR AS THE ISSUES THAT YOU ARE GOING TO ADDRESS IT US, FOR INSTANCE THE ISSUE WITH REFERENCE TO YOUR CLAIM, NOW, OF THE INEFFECTIVENESS OF COUNSEL, WITH REFERENCE TO INVESTIGATING AND PRESENTING MITIGATION, AND SO WHAT IS THE EVIDENCE HERE? THE TRIAL COURT, IF I UNDERSTAND IT CORRECTLY, CONCLUDED THAT, BASED ON THE EVIDENCE THAT HE HEARD, INCLUDING THE LAWYER'S TESTIMONY, THAT HE BELIEVED THAT THE LAWYER DID DO AN ADEQUATE INVESTIGATION AND PRESENTATION OF MITIGATION, AND MADE CERTAIN TACTICAL CHOICES BECAUSE OF THE CIRCUMSTANCES OF THE CASE, SO I THINK ON APPEAL, NOW, YOU HAVE TO DEMONSTRATE TO US YOUR POSITION OF WHY, WHERE THE TRIAL COURT WENT WRONG AND WHAT, SO WHAT DOES THE RECORD TELL US, WITH REFERENCE TO THE ISSUE OF THE EFFECTIVENESS OF COUNSEL?

WELL, THANK YOU, YOUR HONOR. IT IS ARGUMENT IN THE BRIEF THAT THERE WAS NO INVESTIGATION DONE.

WHAT WAS THE EVIDENCE ABOUT THAT? THE LAWYER TESTIFIED. IS THAT CORRECT?

MR. CASK TESTIFIED AT THE EVIDENTIARY HEARING. YES, HE DID.

DID HE TESTIFY THAT I JUST GOOFED AND DIDN'T DO ANY INVESTIGATION IN THIS CASE? THE FACTS WERE SO HORRIBLE THAT I JUST TREW UP MY HANDS AND DIDN'T DO -- WHAT HAPPENED?

OKAY. WELL, THE HORRIBLE FACTS ARE CERTAINLY A FACTOR.

I AM USING THAT AS A WAY OF TRYING TO GET TO YOU TELLING US WHAT THE LAWYER TESTIFIED TO.

THE LAWYER TESTIFIED, FIRST OF ALL, THAT, IN HIS SITUATION, HE DID NOT HAVE AN INVESTIGATOR, SO HE HAD NO INDEPENDENT PERSON TO GO OUT AND INVESTIGATE THE FAMILY BACKGROUND OF MR. MR. GASKIN, THE SCHOOL HISTORY OF MR. GASKIN, AND IN THE EVIDENTIARY HEARING, WE DID, IN FACT, AND I AM GOING TO BE CITING RAGSDALE, A RECENT CASE OF THIS COURT TO THE COURT. MR. CASS ADMITTED THAT HE HAD NO CONTACT WITH MOST OF MR. GASKIN'S FAMILY. THEY WERE SOMEWHAT SPREAD OUT IN THE STATE OF FLORIDA BUT THEY WERE IN THE STATE OF FLORIDA. HIS MOTHER LIVES IN TALLAHASSEE, AND THAT HE DID NOT HAVE ANY CONTACT WITH THEM. HIS MAJOR EFFORT IN PREPARING FOR THIS TRIAL WAS TO HIRE DR. CROPP AND A DOCTOR. DAVIS, TWO PSYCHOLOGISTS. THERE WERE NEVER ANY CONTACT, AS WAS TESTIFIED AT THE HEARING, WITH ANY OF MR. GASKIN'S SCHOOL TEACHERS, PERSONNEL THAT HAD SEEN HIM IN A SPECIAL LEARNING DISABILITIES CLASS, WHICH HE WAS IN FOR ALMOST HIS WHOLE ENTIRE HISTORY IN SCHOOL. SO THAT WAS MR. CAST'S TESTIMONY AT THE -- THAT WAS MR. CASS'S TESTIMONY AT THE HEARING.

SO YOU SAY IT IS UNDISPUTED THAT THERE WAS NO INVESTIGATION DONE INTO MR. GASKIN'S BACKGROUND.

THAT IS CORRECT, YOUR HONOR.

WHAT DID THE LAWYER TESTIFY TO ABOUT HIS STRATEGY?

WELL, QUESTIONS WERE PUT ON THE TRIAL ATTORNEY ABOUT DR. CROPP, WHO DID AN EVALUATION CAME TO MR. CASS EARLY ON AND SAID I DON'T BELIEVE I CAN BE OF MUCH HELP TO YOU. THAT IS I DON'T BELIEVE I SHOULD TESTIFY AT THE TRIAL. BUT DR. CROPP TOLD THE TRIAL ATTORNEY SEVERAL, WE THINK, CRITICAL THINGS THAT SHOULD HAVE BEEN FOLLOWED UP ON, IN TERMS OF AN ADEQUATE OR SUBSTANTIAL INVESTIGATION. FOR INSTANCE, HE RECOMMENDED THAT A NEUROPSYCHOLOGICAL EXAM BE DONE, BECAUSE THERE WAS SOME INDICATION THAT MR. GASKIN HAD BRAIN DAMAGE. THAT WAS NOT DONE. DR. CROPP TESTIFIED, IN PREPARATION FOR THE EVIDENTIARY HEARING, THAT HE SPENT A TOTAL, A TOTAL OF 30 MINUTES WITH THE TRIAL ATTORNEY, BEFORE DECIDING THAT, IN FACT, HE WAS NOT OF GOING TO TESTIFY. MR. CASS TESTIFIED AT THE EVIDENTIARY HEARING THAT HE HIRED DR. DAVIS, NOT EXPECTING ANY INFORMATION FROM DR. DAVIS THAT WOULD BE USEFUL IN THE TRIAL BUT TO ELIMINATE HIM AS A POSSIBLE STATE WITNESS, SO IT IS OUR CONTENTION, AND WE PRESENTED THIS AT THE EVIDENTIARY HEARING AND HAVE ARGUED IT IN THE BRIEF, THAT HE DID NOT REALLY HIRE TWO PSYCHOLOGICAL EXPERTS EXPECTING THEM TO HELP HIM. HE HIRED ONE OF THEM TO ELIMINATE THAT PERSON AS A POSSIBLE PERSON THAT THE STATE WOULD HIRE. I THINK IT IS INTERESTING THAT DR. ROTHSTEIN, WHO WAS ALSO A PSYCHCOLOGIST, WAS HIRED BY THE STATE OF FLORIDA, AFTER MR. GASKIN WAS SENTENCED OR A RECOMMENDATION BY THE JURY HAD COME BACK TO SENTENCE MR. GASKIN TO DEATH. DR. ROTHSTEIN WAS THE ONLY PSYCH PSYCHCOLOGIST THAT TESTIFIED FOR MR. GASKIN AT ALL, AND HE TESTIFIED AT THE SENTENCING HEARING, WELL AFTER THE JURY HAD BEEN DISCHARGED. DR. ROTHSTEIN TESTIFIES THAT THE MENTAL HEALTH MITIGATOR, THAT THE COURT FINE IN ITS ORDER, SO IT IS NOT EVEN A DEFENSE WITNESS THAT PRODUCES THE ONLY STATUTORY MITIGATOR FOR MR. GASKIN. NOW, AT THE EVIENTIA HEARING, DR. TUMER TESTIFIED, AND HE TESTIFIED THAT HE WOULD HAVE FOUND BOTH THE UNDER EXTREME MENTAL DURESS AND ALSO THE INABILITY TO APPRECIATE THE LEGAL SIGNIFICANCE OF HIS ACTS. THE COURT, TRIAL COURT IN ITS ORDER, COMPLETELY DISCOUNTED DR. TIMER'S TESTIMONY, SO THAT -- DR. TUMER'S TESTIMONY, SO THAT YOU HAVE A SITUATION HERE WHERE, AGAIN, THE RESPONSIBILITY TO INVESTIGATE WAS COMPLETELY AND KRO GAITED BY THE -- ABROGATED BY THE TRIAL ATTORNEY. FOR INSTANCE, THERE IS A COMMENT PIE DR. CROPP. I NEED TO TALK TO YOU ABOUT THE CASE THAT. IS A QUOTE. THAT IS NEVER FOLLOWED UP ON. THERE IS NO DISCUSSION BETWEEN DR. CROPP AND THE TRIAL ATTORNEY ATTORNEY.

GOOD THE LAWYER EVER -- DOES THE LAWYER EVER ASK FOR AN EXPLANATION OF WHY HE DIDN'T DO A MORE COMPLETE INVESTIGATION OF THE BACKGROUND?

HIS EXPLANATION IS SIMPLY THAT HE FELT THAT ANYTHING HE WOULD PUT ON IN MITIGATION WOULD OPEN UP DOOR O OTHER CRIMES OR OTHER BAD ACTS THAT HAD BEEN COMMITTED BY. MR. GASKIN. THAT WAS THE SOLE --.

DOES THE RECORD BEAR HIM OUT IN THAT? THAT IS DOES THE RECORD DISCLOSE THAT THERE WAS, IN ADDITION TO THE CIRCUMSTANCES SURROUNDING THESE CRIMES, THAT THERE WAS LOTS OF BAD STUFF IN GASKIN'S BACKGROUND. IS THAT CORRECT?

THERE WAS LOTS OF BAD STUFF.

HOW ABOUT ADDRESSING THAT?

JUSTICE HARDING.

I AM SORRY.

LETTING. MR. CHIEF JUSTICE

GO AHEAD, JSTICE ANSTEAD.

THEREWAS LOTS OF BAD STUFF, JUSTICE ANSTEAD. >THE TRIAL COURT, I UNDERSTAD IT, ANOTHER BASIS FOR THE TRIAL COURT'S DENIAL OF RELEAF WAS, IEED, THERE WAS LOTS OF BAD UFF, AND THAT THEREFORE, EN YOU LOOK AT THE AGGRAATION IN THIS CSE, UST SURROUNDING THE CIRCUMSTANCES, AND THE DEFENDANT'S BACKGROUND, AS FAR AS THE PRIOR CRIMES AGGRAVATORS, AND THE OTHER BAD STUFF, THAT, ON THE PREJUDICE SIDE OF AN INEFFECTIVENESS OF COUNSEL, THAT BECAUSE THERE IS SO MUCH BAD STUFF, HOW COULD HE HAVE BEEN PREJUDICED BY THIS LACK OF PRESENTATION?

WELL, THE BAD STUFF STARTS WHENMR. GSN ISAUNG BY. THAT IS HE IS DOING DEVIANT ACTS AS A HILD. SO THAT THE PICTURE OF MR. GASKIN THAT WOULD HAVE BEEN OR COULD HAVE BEEN PRESENTED, THROUGH PROPER INVESTIGATION TO THE JURY, WOULD HAVE SHOWN A VERY DISTURBED CHILD, YOUNG MAN, ADULT. THE FACTS OF THIS CASE, ITSELF, I WOULD SUBMIT, ARE HORRENDOUS. THEY STAND ALONE AS BEING VERY, VERY HEINOUS, AND SO THAT A DECISION MADE NOT TO PUT ANY MITIGATION ON, BASED UPON OTHER BAD ACTS COMING IN, IWOD SUBMIT DOESOT APPLY N THIS PARTICULAR CASE. DOES THAT, IF THAT IS THE CASE, THEN DOES THAT MEAN THAT MR. , THE TRIAL ATTORNEY IN THS CASE SIMPLY DWHAT HE DO? IN FACT, HE PUTS ON TWO WITNEES SIMILAR, AGAIN, TO RAGSDALE, AND THEY ARE FAMILY WITNESSES, AND THESE FAMILY WITNESSES DESCRIBE THE HISTORY OF MR. GASKIN THAT THEY KNOW, AS BEING PRETTY NORMAL.

BUT ISN'T THAT THE PROBLEM THAT COUNSEL WAS PUT INTO THE DILEMMA OF PICKING ONE PATH OR THE OTHER? PUTTING IN THESE EXPERTS TO SHOW THAT HIS CLIENT WAS A SOCIO-PATH AND VERY BADLY DISTURBED PERSON, OR TO PUT ON THE TESTIMONY OF THESE FAMILY MEMBERS AND WITNESSES AND SO FORTH TO SHOW THAT THIS WAS A PRETTY NORMAL PERSON. THIS WAS AN ABERRATION. AND HE CHOSE THE LATTER PATH. ISN'T THAT WHAT, AS A PRACTICAL MATTER, HAPPENED?

WELL, I WOULD SAY THAT WOULD BE TRUE, JUSTICE SHAW, IF THE TRIAL ATTORNEY HAD REALLY INVESTIGATED WHAT WAS AVAILABLE FROM OTHER FAMILY MEMBERS AND, AGAIN, GOING BACK TO DR. CROPP. DR. CROPP, FOR INSTANCE, DESCRIBED MR. GASKIN AS ONE OF THE MOST DISTURBED INDIVIDUALS HE HAD EVER EVALUATED OUT OF SOME 10,000 PEOPLE AT THAT POINT IN HIS HISTORY, IN THE CRIMINAL JUSTICE SYSTEM, SO IF YOU ARE MAKING THE STRATEGY DECISION BASED ON ALL OF THE INFORMATION THAT IS AVAILABLE TO YOU, I WOULD SAY, YES, YOU CAN MAKE THAT CHOICE AND THIS IS WHAT WAS DONE, BUT IN THIS CASE, HE DID NOT HAVE, THAT IS THE TRIAL ATTORNEY DID NOT HAVE, DID NOT SEEK THE INFORMATION THAT HE WOULD HAVE NEEDED TO MAKE THAT VERY DECISION.

ONCE HE GOT INTO PUTTING ON THE EXPERTS THAT YOU ARE TALKING ABOUT, OTHER THINGS, YOU HAVE ADMITTED OTHER THINGS WERE GOING TO COME OUT THAT WERE PRETTY DAMAGING TO HIM, THAT THE STATE COULD HAVE USED AGAINST M, QUITE FRANKLY.

AND THAT, AGAIN, I DON'T DISAGREE WH THAT, BUT LET'S LOOK AT ONE RECOMMENDATION OF DR. CROPP. ONE RECOMMENDATION IS THAT YOU HIRE A NEUROPSYCHOLOGIST, TO SEE IF THIS MAN HAS BRAIN DAMAGE. NOW, IF YOU FOLLOW-UP ON THAT AND YOU, AND THE OUTCOME IS MR. GASKIN HAS BRAIN DAMAGE, IF YOU PUT SOMEONE ON TO TESTIFY ABOUT THAT BRAIN DAMAGE, NUMBER ONE, I DON'T KNOW WHAT THAT OPENS UP, IN TERMS OF OTHER BAD ACTS, BUT AT LEAST IT IS ANOTHER FACTOR THIS JURY COULD HAVE CONSIDERED AS A REASON WHY THE

ACTS WERE COMMITTED THAT HE HAD BEEN CONVICTED OF, BECAUSE THE ACTS, THEMSELVES, NEED EXPLANATION.

BUT I GUESS THE ISSUE, THE FINAL ISSUE IS, IS DEFENSE COUNSEL'S CHOICE MEASURABLY BELOW WHAT YOU WOULD EXPECT OF COMPETENT COUNSEL, ONCE HE HAD REACHED THIS DILEMA? HE CHOSE TO GO AND SHOW HIS CLIENT AS NORMAL AS HE COULD HOW HIM. AR YOU ARUING HATMAING THAT CHICEWS INCMPETET CUNSE?

S. D I AM AUIG TAT BECUSE HE JUST DID NOT HAVE THE INFORMATION. THIS COURT CITES, IN RAGSDALE, A NUMBER OF DECISIONS BY THIS COURT. ROSEANE HIL DWI N, THAT ALL -- AND HILWIN, THAT ALL HAVE A HIGHER RESPONSIBILITY IN A DEATH CASE TO DO A FULL AND COMPLETE INVESTIGATION, AND THAT IF HE DOES NOT DO THAT, THEN THE DECISIONS HE MAKES AFTER THAT, TO EITHER PUT PEOPLE ON, FOR INSTANCE IN THIS CASE, THE TRIAL TTONEY DISCUSSES WHAT HE IS GOING TO PUT ON WITH MR. GASKIN, RIG THMIDDLE OF A TRIAL, IN A HOLDING CELL, WITH A COURT REPORTER. HE TAKES A COURT REPORTER INTO THIS MEETING WITH HIS CLIENT, TO DISCUSS WHY HE HAS DECIDED NOT TO PUT ON PSYCHOLOGICAL EVIDENCE DURING THE MIDDLE OF THE TRIAL. HE HASN'T DISCUSSED IT BEFORE. WE ASKED HIM, IN THE EVIDENTIARY HEARING, WHY DID YOU TAKE A COURT REPORTER INTO MEMORIALIZE YOUR CONVERSATION WITH YOUR CLIENT? AND HIS ANSWER WAS TO COVER MYSELF, TO PROTECT MYSELF. WHAT IS HE PROTECTING HIMSELF FROM? AND THAT IS THE KIND OF, AND THE OTHER THING THAT, I WOULD ASK THE COURT TO LOOK AT, IS THAT MR. GASKIN IS ARRESTED ON DECEMBER 30 OF 1989, FOR THIS CRIME. HE IS TRIED IN MAY OF 1990. ABOUT FIVE MONTH'S TIME, FROM TIME OF ARREST TO TIME OF THE JURY TRIAL. SO, AGAIN, RELYING SOMEWHAT ON RAGSDALE AND HILWIMENT N, RE -- AND HILWIN, ROSE, WHERE THE COURT, IN ONE CASE ONE WITNESSES AND IN ANOTHE THE CRIMESATE0Q0V0X1S10=50+++TZNO CARRIERRINGCONNECT 1200 ELICITED THAT IN CROSS-EXAMINATION. BUT THEY WEREN'T SO OUTRAGEOUS. THEN, WHEN HE IS ADMINISTRATIVELY PROMOTED TO SEVENTH GRADE, HE FLUNKS SEVENTH GRADE, AND THEN HE TURNS 16, AND THE SCHOOL SYSTEM SAYS DON'T COME BACK.

SO, INSTEAD, THE JURY, IN THE ORIGINAL TRIAL, SAW, I MEAN WASN'T THIS ATTEMPT TO SAY HE IS AN INTELLIGENT YOUNG MAN, TO, WASN'T THAT A STRATEGY DECISION TO WANT TO PORTRAY HIM AS SOMEBODY THAT IS MORE DESERVING OF THE JURY'S SYMPATHY? THIS IS ALWAYS A TWO-EDGED SWORD. YOU WANT TO PORTRAY YOUR CLIENT AS A GOOD GUY, GOOD KID OR BAD KID?

BUT I DON'T THINK THE SCHOOL RECORD ACTUALLY PRESENTS HIM AS A GOOD KID OR A BAD KID. IT ATTEMPTS TO EXPLAIN WHO LOUIS GASKIN IS, AND THAT WHEN HIS OWN ATTORNEY SAYS, AGAIN, QUOTE, THAT HE IS AN INTELLIGENT YOUNG MAN, THAT THIS IS JUST NOT TRUE.

WHEN HE IS HE HE WAS HE WAS A SORB -- WHEN HE SAID HE WAS A SOCIO-PATH, WHAT WAS THAT IN REFERENCE TO? WHY DID HE CALL HIM A SOCIO-PATH?

I DON'T KNOW, YOUR HONOR. I KNOW THAT HIS CLOSING ARGUMENT WAS A TOTAL OF SIX TYPED PAGE PASS IN THE TRANSCRIPT. IT WAS VERY SHORT, VERY BRIEF, BUT HE USED THAT WORD IN HIS CLOSING ARGUMENT. MR. CHIEF JUSTICE

YOU ARE INTO YOUR REBUTTAL.

THANK YOU VERY MUCH. MR. CHIEF JUSTICE

HEAVE MR. BROWNE.

GOOD MORNING. SCOTT BROWNE FOR THE STAT OF FLODA. THE DEFENSE ATTORNEY DECIDED NOT TO PUT ON A DEFENSE EXPERT. WITH REGARD TO DR. DAVIS. WITH REGARD TO MR. CASS, IT WAS NOT TO PREVENT HIM FROM HAVING THE STATE USE HIM AS AN EXPERT, BUT HE THOUGHT

DR. DAVIS WAS GOING TO GIVE HIM A DIFFERENT ANSWER, A DIFFERENT CONCLUSION THAN HE DID. HE SAID, ALSO, UNDER CROSS-EXAMINATION TO THE PROSECUTOR THAT, ONE REASON SOME PEOPLE MIGHT HIRE AN EXPERT IS TO PREVENT THE STATE FROM USING HIM, BUT WE KNOW THAT, AT THE TIME HEHIRED DR. DAVIS, HE THOUGHT HE WOULD HELP HIM AND HELP HIS CAUSE. WITH REGARD TO DR. CROPP, THERE HAS BEEN AN ALLEGATION THAT HE RENDERED INADEQUATE ASSISTANCE BECAUSE OF THE INVESTIGATION THAT THE ATTORNEY D THAT IS NOT TRUE. THAT IS NOT PRESENTED IN THE RECORD. WITH REGARD TO ADDITIONAL NEUROLOGICAL TESTING, EXCUSE ME, DR. CROPP DID, AFTER HIS DEPOSITION, RECOMMEND SUCH TESTING, BUT HE DID CONDUCT THOSE ADDITIONAL TESTS, AND HE TESTIFIED AT THE EVIDENTIARY HEARING, THAT HE FOUND NO EVIDENCE OF BRAIN DAMAGE FROM MR. GASKIN. IN ADDITION, DR. CROPP CROPP'S DIAGNOSIS -- DR. CROPP'S DIAGNOSIS, AT THE TIME OF THE EVIDENTIARY HEARING, WAS EXACTLY THE SAME AS IT WAS AT THE TIME OF TRIAL. EXACTLY THE SAME, WITH --

IS THE ONLY INFORMATION MISSING FROM DR. CROPP, THE SCHOOL RECORDS?

EXACTLY, YOUR HONOR.

AND WHAT OTHER INFORMATION WAS PROVIDED TO DR. CROPP, AS FAR AS BACKGROUND KIND OF INFORMATION, IF WE DIDN'T HAVE SCHOOL RECORDS, WHAT KIND OF INFORMATION WAS GIVEN?

HE TALKED TO FAMILY MEMBERS, IN ADDITION TO JANET MORRIS, AKA JANET SMITH WHO, GREW UP IN THE SAME HOUSEHOLD, AND DR. CROPP, REGARDING THIS SO-CALLED ABUSIVE HOUSEHOLD, THERE IS REALLY NO EVIDENCE OF ABUSE IN THAT HOUSEHOLD. HE WAS RAISED BY HIS GREAT-GRANDPARENTS. THEY WERE STRICT BUT THEY LOVED HIM. DR. CROPP TESTIFIED THAT MR. GASKIN PERCEIVED HE WAS LOVED IN THE FAMILY. THERE WERE STRICT RULES, BUT THERE WAS NO ABUSE IN THAT HOUSEHOLD. IN FACT, WHEN ONE WITNESS CALLED BY THE DEFENSE, FAMILIAR La WILLIAMS -- PAMELA WILLIAMS, WAS ASKED, WELL, IS IT INCORRECT THAT THE GRANDMOTHER WOULD NEVER LET THEM BE SPANKED? SHE SAID, NO, THAT IS TRUE. THEY WERE NEVER SPANKED IN THAT HOUSEHOLD. THEY WERE STRICT, BUT THERE WAS NO EVIDENCE --

WHAT ABOUT, WASN'T THERE EVIDENCE WITH RESPECT TO THE GRANDMOTHER WHIPPING WITH THEM WITH -- WHIPPING THEM WITH ELECTRIC CORDS OR SOMETHING?

YOUR HONOR, THAT DID NOT COME O. THERE WAS A BEATING, TRE WAS REFERENCE TO A SCHOOL TEACHER, T THAT WASN'T TESTIFIED TO. AGAIN, THERWAS NO EVIDENCE --

WHERE DID THAT COME FROM?

THERE WAS AN ALLEGATION OF A BEATING. THE TEACHER HEARD MR. GASKIN HAD SNUCK OUT AT NIGHT, AND WHEN HE WAS CAUGHT BY HIS GREAT GRANDMOTHER, HE GOT A WHIPPING, A BAD BEATING, BUT THAT WAS DOUBLE HEARSAY AND THERE WAS NO ADDITIONAL EVIDENCE. IN FACT THE OTHER, HIS COUSIN WHO WAS RAISED WITH HIM ADMITTED THAT THERE WAS NO ABUSE IN THAT HOUSEHOLD. NO VERBAL ABUSE WAS SPOKEN SHOEN NO PHYSICAL AND -- WAS SHOWN HAD, NO PHYSICAL ABUSE, SO WHAT COUNSEL HAD HERE WAS, CERTAINLY, NOT SOMETHING THAT HE COULD TESTIFY THAT THE STATUTORY MENTAL MITIGATORS WOULD APPLY.

WHAT DID THE JURY HEAR ABOUT THESE OTHER ACTS THE, PER VERSE ACTS, THE NIGHT OF THE CRIME, OR THE OTHER TESTIMONY, BASED ON INVESTIGATION?

THERE WAS REFERENCE THAT HE HAD JACKED OFF, AS FAR AS HIS BREATHER WAS CONCERNED, THAT HE HAD JACKED OFF AND LEFT THE VICTIM STIFF. BUT HAD THE JURY HEARD OTHER TESTIMONY --

DID THAT NOT COME OUT AT TRIAL?

AS FAR AS I RECALL, I DO BELIEVE THAT THAT DID NOT.

I MEAN THAT, IS IMPORTANT TO KNOW, FOR US TO KNOW WHETHER THAT CAME OUT OR NOT.

AS I HEARD COUNSEL SAY, THAT WAS PRESENTED TO THE JURY. I DON'T BELIEVE IT TO BE TRUE IN MY RECOLLECTION. THERE IS A SLIM POSSIBILITY THAT I MISSED IT. I DON'T THINK SO. I THINK THAT ASPECT OF THE DEFENSE WAS KEPT FROM THE JURY BY THE TACTICAL DECISION OF COUNSEL. REMEMBER, HOW DAMAGING THIS INFORMATION REALLY WAS. I MEAN, COUNSEL REALLY DIDN'T TELL YOU EXACTLY WHAT IT IS. I THINK THE COURT KNOWS IT. HAD THE EXPERTS TESTIFIED, THEY WOULD HAVE REVEALED A PROR MURDER AFTER CO-WORKER, A PRIOR ATTEMPTED MURDER, AND A WHOLE PANOPLY OF SEXUAL MISCONDUCT, ANIMAL CRUELTY, TORTURE. THE PICTURE THAT WAS PRESENTED AT TRIAL WAS MUCH BETTER THAN THE PICTURE WE HAVE NOW.

WHAT WAS IT THAT LED THE ORIGINAL TRIAL LAWYER TO STATE THAT HIS CLIENT WAS A VERY INTELLIGENT PERSON WHO WAS A SOCIO-PATH. A SOCIO-PATH IMPLIES THAT THERE HAVE BEEN MANY PRIOR ACTS OF MISCONDUCT OR ANTISOCIAL BEHAVIOR. HE FELT COMPELLED TO SAY THAT, BASED ON WHAT EVIDENCE THAT THE JURY HEARD?

WELL, HE CLARIFIED HIMSELF. HE CERTAINLY WAS AWARE OF ALL OF THIS DAMAGING INFORMATION, AND HE DID HIS BEST TO KEEP FROM THE JURB AND HE WAS SUCCESSFUL. HE DID MENTION SOCIO-PATH, BUT THEN HE CORRECTED HIMSELF IN FRONT OF THE JURY AND SAID YOU HAVE NO EVIDENCE OF THAT, AND THEN HE WENT ON TO PLEAD MERCY. HE CLARIFIED IT. HE DIDN'T GO AHEAD AND SAY HE IS A SOCIO-PATH. HE DIDN'T SAY WHO KNOWS WHY HE DID IT. MAYBE IS HE A SOCIO-PATH, AND THEN HE CLARIFIED IT FOR THE JURY, SO A SOCIO-PATH WAS REALLY NOT THE IMPRESSION. THERE WAS A VERY GOOD BALANCING ACT, AND WE HAVE A VERY GOOD RECORD IN THIS CASE.

DID EVIDENCE COME IN RELATIVE TO HIM FLUSHING SMALL ANIMALS DOWN THE TOILET?

NONE OF THAT EVIDENCE WAS --

WAS THAT PUT BEFORE THE JURY?

NO, IT WAS NOT, AND IT WAS STRATEGIC DECISION ON THE PART OF COUNSEL TO KEEP THAT EVIDENCE FROM THE JURY, AND HE WAS SUCCESSFUL IN DOING. THAT WHAT YOU HAVE HERE IS AN INDIVIDUAL, AND WHEN COUNSEL REFERRED TO MR. GASKIN BEING ONE OF THE MOST SERIOUSLY DISTURBED, AGAIN, DR. CROPP DID NOT TESTIFY THAT HE IS SO DISTURBED THAT HE MET THE REQUIREMENTS FOR THE STATUTORY MENTAL HEALTH MITIGATORS, SIMPLY THAT HE IS NOT A HOMICIDEAL DEVIANT AND HE CONTINUES TO HAVE HOMICIDAL THOUGHTS, BUT HE IS ALSO A SEXUAL DEVIANT. HE SUFFERED FROM PARAPHELIA, AND REMEMBER DR. CRO IS THE EXPERT WHO SPENT THE MOST TIME WITH THE APPELLANT, AND COUNSEL DID NOT ARGUE THIS, BUT DR. TUMER IS THE ONLY OF THE FOUR EXPERTS THAT INTERVIEWED THE APPELLANT WHO FOUND THAT HE WAS SCHIZOPHRENIC, AND IT WAS CONTRARY TO THE EVIDENCE THAT WAS DEVELOPED.

SO I GUESS IT IS A TWO-EDGED SWORD, BUT TO HAVE A DEFENDANT WHO STARTS AT AN EARLY AGE COMMITTING SUCH TYPES OF ACTS AS PEDOPHILIA OR ALL OF THESE OTHER THINGS, THERE IS GENERALLY SOMETHING THAT HAS HAPPENED TO THAT CHILD TO HAVE CAUSED IT, BUT WE DIDN'T EVEN IN THE EVIDENTIARY HEARING, YOU ARE SAYING NOTHING WAS UNCOVERED THAT WOULD EXPLAIN.

THAT'S CORRECT, YOUR HONOR. IN FACT, DR. CROPP TESTIFIED THAT HE DIDN'T VIEW HIS FAMILY LIFE AS PARTICULARLY DYSFUNCTIONAL, AND THERE WAS CERTAINLY NO ABUSE IN THE HOME. THERE WAS NOTHING HE COULD FIND IN HIS BACKGROUND THAT COULD EXPLAIN THAT DEVIANCY, SO WHAT YOU HAVE HERE IS REALLY, WITHOUT A FOUNDATION OF SEVERE ABUSE AS A CHILD, THE MOST THAT DEFENSE COUNSEL WAS ABLE TO UNCOVER, AFTER YEARS OF POSTCONVICTION LITIGATION, ARE, I THINK, TWO OR THREE ADDITIONAL FAMILY MEMBERS, FAMILY MEMBERS WHO DID NOT KNOW THE APPELLANT ANY BETTER THAN THE TWO FAMILY MEMBERS WHO WERE ACTUALLY PRESENTED AT THE TIME OF TRIAL, AND YOU HAD A HIGH SCHOOL FRIEND, MR. STARR, WHO WAS IN PRISON IN 1990.

I GUESS, TRYING TO UNDERSTAND THIS, IT DOES, IT SOMEWHAT CONCERNS US, ALTHOUGH WE CERTAINLY WANT A DEFENDANT TO GET A QUICK TRIAL, THAT THIS CASE, THE DEFENDANT WENT TO TRIAL IN A MATTER OF MONTHS, AND IS THAT CORRECT?

I AM NOT SURE. I WOULD HAVE TOLL CHECK ON THAT, YOUR HONOR.

AND THERE WAS ONLY ONE DEFENSE ATTORNEY OR WERE THERE TWO DEFENSE ATTORNEYS?

THERE WAS TESTIMONY FROM MR. CASS, WHO WAS AN EXPERIENCEED CAPITAL LITIGATE OR THAT HE HAD THE ASSISTANCE OF ANOTHER ATTORNEY, AND I BELIEVE AT ONE TIME HE HAD AN INVESTIGATOR. IN FACT, HE THOUGHT HE HAD SOMEONE, AN INVESTIGATOR, OBTAIN THE SCHOOL RECORDS. NOW, I CAN'T COME UP HERE AND SAY THERE IS NO EVIDENCE THAT THE SCHOOL RECORDS WEREACTULY OBTAINED, AND IF ANYTHING, THAT IS THE ONLY DEFICIENCY, AFTER YEARS OF POST LITIGATION THAT WE HAVE, THAT THESE SCHOOL RECORDS, THEY PROBABLY SHOULD HAVE BEEN RECEIVED. I DON'T THINK THAT IS INEFFECTIVE ASSISTANCE, BECAUSE THE MOST THAT THEY REVEAL IS THAT THIS IS AN INDIVIDUAL WITH AN AVERAGE ICHT Q. HE HAD A LEARNING DISABILITY, ATTENTION DEFICIT DISORDER. HE WAS 22 WHEN HE DECIDED TO MURDER THE STURMFELS AND WENT OVER AND ATTACKED THE RECTORS IN THEIR OHM. SO WHAT YOU HAVE HERE IS ADDITIONAL STATUTORY MITIGATION THAT IS NOT COMPELLING AND CERTAINLY WOULD NOT MAKE A DIFFERENCE, WHEN YOU HAVE FOUR STRONG AGGRAVATORS IN THIS CASE, INCLUDING HAC AND CCP. IF THERE ARE NO ADDITIONAL QUESTIONS, THE STATE HAS NOTHING FURTHER. THANK YOU. MR. CHIEF JUSTICE

REBUTTAL.

THANK YOU, YOUR HONOR. FIRST OF ALL, IN RESPONSE TO THE JUSTICE PARIENTE'S QUESTION, MR. CASS DID TRY THIS CASE ALONE. HE DID SAY, IN THE EVIDENTIARY HEARING, THAT HE HAD HELP FROM SOMEONE ELSE, BUT IN TERMS OF THE TRIAL, ITSELF, IT WAS HIS CASE. THERE WERE NO TWO ATTORNEYS. GRANTED IN 1990, I THINK IT WAS BECOMING COMMON PRACTICE TO HAVE A PENALTY-PHASE LAWYER AND A GUILT-PHASE LAWYER, BUT MR. CASS DID TRY THIS CASE ALONE. I, ALSO, FEEL, AND I MADE THIS POINT VERY BRIEFLY THAT, THE TIME TAKEN TO PREPARE THIS CASE FOR TRIAL, GIVEN ITS VERY NATURE AND, YOU KNOW, THE NOTORIETY THAT IT GOT IN THE AREA, I FELT WAS SOMEWHAT SHORT. DR. CROPP, AND I WOULD CORRECT, I THINK, WHAT MR. BROWN SAID, OUR BRIEF DOES NOT ATTACK DR. CROPP. OUR BRIEF SAYS DR. CROPP DID HIS JOB. HE CAME TO HIS ATTORNEY WITH VERY, PERHAPS, HARD DECISION THAT HE DIDN'T FEEL HE COULD HELP IN THE CE, SO HE PROBABLY SHOULD NOT BE CALL TO TESTIFY. BUT DR. CROPP OPENED UP, IF ONE WANTS TO LOOK, BEING A TRIAL ATTORNEY, A WHOLE, AREAS WHERE FURTHER WORK COULD HAVE BEEN DONE, HAD THE TIME BEEN TAKEN TO DO THAT, AND I THINK THAT, WHEN YOU LOOK AT DR. ROTHSTEIN, AGAIN AS WE SOMETIMES SAY, THE PROOF IS IN THE PUDDING.

UNLESS YOU HAVE, IN TERMS OF THIS MITIGATION, FAMILY MEMBERS BUT YOU REALLY DON'T HAVE, YOU HAVE SOME ISSUES OF THE PAST, BUT AS FAR AS THE STATUTORY MITIGATION THAT HE WAS UNDER SOME EXTREME EMOTIONAL DISTURBANCE THAT, REALLY, WOULD AMPLIFY

WHAT WAS OCCURRING THE NIGHT OF THIS MURDER, DO YOU REALLY HAVE THAT, EVEN IN YOUR EVIDENTIARY HEARING RECORD, THAT PUTS IT IN A SITUATION WHERE THE JURY WOULD JUST BE SAYING, WELL, EVEN THOUGH ALL THESE TERRIBLE THINGS HAPPENED, WE NOW UNDERSTAND THAT THIS IS BASICALLY SOMETHING HE COULDN'T CONTROL THAT NIGHT, AND YOU KNOW WE ARE GOING TO FIND SUBSTANTIAL MITIGATION? I MEAN, I AM STILL NOT HEARING ANYTHING, REALLY, COMPELLING ABOUT THAT, AND, AGAIN, THE RISK OF HEARING ABOUT A WHOLE LIFETIME OF SOME VERY PER VERSE ACTS THAT, YOU KNOW, COULD DEFINITELY BACKFIRE IN FRONT OF A JURY.

WELL, AND, AGAIN, AS SEVERAL OF THE JUSTICES POINTED OUT, IT IS A BALANCING ACT, WHEN YOU HAVE A PERSON WITH A DEGREE OF DIFFICULTY OR THE DEGREE OF PROBLEMS THAT MR. GASKIN PRESENTED TO HIS TRIAL COUNSEL, BUT TO PRESENT HIM AS A NORMAL, AVERAGE, INTELLIGENT HUMAN BEING ALSO, IF YOU ARE ON THE JURY, THEN YOU ARE BACK SAYING, WELL, I MINE, IF THERE IS NOTHING REALLY WRONG WITH THIS PERSON, WHY DID HE COMMIT THESE ACTS, AND IF YOU LOOK AT THE VOTE OF THE JURY, WHICH WAS A 8-TO-4 VOTE FOR DEATH, ADDITIONAL MITIGATION PROBABLY COULD HAVE SWUNG TWO MORE VOTES TO A LIFE REC. AND SO I STILL BELIEVE THAT, GIVEN, AGAIN, THE CASE LAW, THE ECENT CASE LAW BY THIS COURT, THAT IT WAS INCUMBENT UPON MR. CASS TO PICK UP ON THE POINTERS BY MR. , DR. CROPP, AND GO FURTHER AND DO FURTHER INVESTIGATION. IT WASN'T AN INFORMED CHOICE OF JUST, OKAY, THIS IS ALL WE HAVE GOT. WE CAN'T GO ANY FURTHER. HE DIDN'T KNOW WHAT HE HAD, AND DR. CROPP DID NOT HAVE -- HE HAD MINIMAL CONTACT BY HIS OWN TESTIMONY, WITH ANY OF THE FAMILY MEMBERS. THINGS WERE NOT ARRANGED FOR DR. CROPP TO SEE THE FAMILY MEMBERS. THEY WERE NOT ARRANGED TO SEE OTHER PEOPLE THAT COULD HAVE TESTIFIED, AND THE SCHOOL TEACHERS THAT TESTIFIED, ALL, HAD MEMORIES OF MR. GASKIN HAVING DIFFICULTIES. A CHILD THAT REPEATS THIRD GRADE SIXTH GRADE TWICE AND SEVENTH GRADE TWICE, IS HARDLY SOMEONE THAT IS NOT HAVING A LOT OF DIFFICULTY IN SCHOOL. AND SO GIVEN THAT, I BELIEVE THAT IS ALL I HAVE TO SAY AT THIS TIME. THANK YOU VERY MUCH. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. THANK YOU, COUNSEL FOR YOUR ASSISTANCE.