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Michael Allen Griffin v. State of Florida

CHIEF JUSTICE: ALL RIGHT. LOOKS LIKE YOU ARE ALL READY TO GO IN THE NEXT CASE, AND THE NEXT CASE IS GRIFFIN VERSUS STATE. COUNSEL, YOU MAY PROCEED.

GOOD MORNING, JUSTICES. IF IT PLEASE THE COURT, MY NAME IS CORETTA LUCINDA, AND I REPRESENT MR. GRIFFIN ON HIS APPEAL OF THE DENIAL OF THE 3.850 MOTION, AND ALTHOUGH I INTEND TO ARGUE ON WHETHER AN EVIDENTIARY HEARING WAS GRANTED, IF I HAVE TIME, ONE ISSUE THAT RELATES TO A CLAIM THAT WAS GRANTED AT THE 3.850 LEVEL THAT IT WAS SUMMARILY DENIED AT THE TRIAL COURT LEVEL.

CHIEF JUSTICE: YOUR FIRST ISSUE IS ADDRESSED AT THE EVIDENTIARY HEARING.

YES.

WHAT ISSUE IS THAT?

TRIAL COUNSEL'S PERFORMANCE AT THE PENALTY PHASE, WHICH WAS HIS FAILURE TO BOTH ADEQUATELY PREPARE FOR THE PENALTY PHASE OF THE PROCEEDINGS AND TRIAL COUNSEL DID NOT ENGAGE CO-COUNSEL. HE DID BOTH THE GUILT PHASE AND THE PENALTY PHASE, AND HIS FAILURE, AS WELL, TO PRESENT ANY REAL SIGNIFICANT MITIGATION AT THE PENALTY PHASE.

WOULD YOU GIVE US SOME BACKGROUND ON THAT AS TO WHAT HE DID DO.

CERTAINLY.

IN LOOKING AT IT, IT APPEARED THAT HE AT LEAST TRIED TO GET SOME DIRECTION FROM MENTAL HEALTH SOURCES, BUT MAYBE NOT ENOUGH, BUT IT SEEMED AS THOUGH THERE WAS SOME ATTEMPTS. WOULD YOU SHARE WITH US HOW YOU SEE THAT.

MY UNDERSTANDING IS THAT, IN PREPARING FOR PENALTY PHASE, HE SPENT APPROXIMATELY, AND THIS IS TOTAL, 50-SOME HOURS OUT OF COURT PREPARING FOR PENALTY PHASE, VERSUS 400 HOURS OUT OF COURT PREPARING FOR GUILT PHASE. ONE OF THE THING THAT IS HE DID DO WAS HE DID RETAIN A MENTAL HEALTH EXPERT, DR. MARY HABER, HOWEVER DR. HABER'S REPORT IN WHICH SHE CONCLUDED THAT SHE COULD NOT BE OF HELP, DID NOT REACH COUNSEL UNTIL TWO DAY BEFORE THE PENALTY PHASE BEGAN, SO IN OTHER WORDS AT THAT POINT, HE FINDS OUT, AND I DON'T KNOW THAT IT IS ENTIRELY HIS FAULT, BUT CERTAINLY AT THIS POINT THAT IS THE PERSON OR THAT IS WHO WE HAVE TO DISCUSS IS HIS PERFORMANCE, HE FINDS OUT THAT HE HAS NO MENTAL HEALTH EXPERT, AND HE DOESN'T HAVE A CONTINGENCY PLAN. HE DOESN'T, SO HE SIMPLY DOES NOT PRESENT ANY EVIDENCE OF MENTAL MITIGATION OF ANY SORT AT THE PENALTY PHASE, OTHER THAN SOME WITNESSES WHO BASICALLY, OTHER THAN THE DEFENDANT'S FATHER, TOMMY GRIFFIN, AND HIS SORT OF ADOPTIVE FATHER, MR. MOTEOYO, ARE THE ONLY FIVE OR SIX WITNESSES THAT WERE CALLED AT PENALTY PHASE, THAT REALLY HAD EXTENDED CONTACT WITH MICHAEL GRIFFIN.

DID COUNSEL TESTIFY AT THE EVIDENTIARY HEARING?

YES, HE DID.

WOULD YOU GIVE US A SUMMARY OF WHAT COUNSEL'S TESTIMONY WAS, ABOUT HIS STATE OF PREPAREDNESS AND HIS STRATEGY?

HE BASICALLY DIDN'T DISCUSS STRATEGY IN HIS, AT THE EVIDENTIARY HEARING. THERE WAS NO QUESTION DIRECTED SPECIFICALLY TO STRATEGY. WHAT HE DID SAY WAS THAT HE HAD ASKED AROUND. COUNSEL WAS A FORMER PUBLIC DEFENDER IN, I BELIEVE IT IS DADE COUNTY, FOR NINE JEERX WHAT HE HAD DONE BEFORE HIRING DR. HABER WAS HE HAD ASKED AROUND AND CONSULTED OTHER LAWYERS AND WAS TOLD THAT SHE WAS GOOD. WHAT HE DID SAY WAS THAT HE HAD NEVER PREPARED FOR PENALTY PHASE IN A DEATH PENALTY CASE AND THAT HE DIDN'T KNOW IF SHE HAD EVER PREPARED FOR PENALTY PHASE IN A DEATH-PENALTY CASE OR EVEN IN A DEATH CASE. SO CERTAINLY WHAT THE RECORD SUGGESTS THAT HE WASN'T PREPARED. AT THE VERY LEAST, WHEN, AT THE EVIDENTIARY HEARING, THE EXPERT WHO DID TESTIFY, DR. LEO BORDINI, WHO HAD SPENT AT LEAST, IF YOU FIGURE IT OUT IN HOURS, AT LEAST AT WEEK'S WORTH OF MAN-HOURS INTERVIEWING MICHAEL GRIFFIN, REVIEWING A VARIETY OF DOCUMENTS THAT WERE NOT PROVIDED TO DR. HABER, AND I WILL ADD, IN TERMS OF PREPARATION, DEFENSE COUNSEL DID STATE THAT, WHAT HE PROVIDED DR. HABER WAS MR. GRIFFIN'S SCHOOL RECORDS. WHAT WAS PROVIDED TO THE SECOND EXPERT, THE EXPERT WHO ACTUALLY WAS ABLE OR TESTIFIED HE WOULD HAVE BEEN ABLE TO ESTABLISH THE MENTAL MITIGATORS, HE LOOKED AT DEPARTMENT OF CORRECTIONS RECORDS. HE LOOKED AT MEDICAL RECORDS. HE LOOKED AT SCHOOL RECORDS. HE LOOKED AT ALL THE DEPOSITIONS OF THE FAMILY MEMBERS. HE LOOKED AT THE POLICE REPORTS. HE LOOKED AT WITNESS STATEMENTS. SO HE HAD A LARGE BODY OF MATERIAL TO DRAW FROM, WHEREAS DR. HABER DID NOT.

DID THE STATE PRESENT A MENTAL HEALTH EXPERT AT THE EVIDENTIARY HEARING?

YES, THEY DID. A DOCTOR. ANSLY.

DID THAT EXPERT DISAGREE WITH DR. BORDINI'S --

SHE DID IN PART AND I BELIEVE TO SOME EXTENT WAS IMPEACHED ON CROSS-EXAMINATION, BECAUSE SHE DID NOT SPEND ANY TIME WITH THE DEFENDANT, LIKE DR. BORDINI DID.

WHERE DID THE TRIAL COURT COME DOWN, IN TERMS OF EVALUATING THE RESPECTIVE TESTIMONY OF THE STATE'S MENTAL HEALTH EXPERT AND DR. BORDINI?

THE COURT'S DENIAL OF THIS ISSUE ESSENTIALLY DISCOUNTS DR. BORDINI ENTIRELY AND SAID IT IS CANCELLED OUT BY THE FACT THAT THE STATE HAD AN EXPERT WHO CONTRADICTED HIM, BUT I BELIEVE THE POINT HERE IS THAT THE SENTENCING COURT NEVER HEARD IT IN THE FIRST PLACE. I MEAN, THE ISSUE ISN'T REALLY --

OFTEN HERE, WE OFTEN HAVE OPPOSE THE CONVICTION, ANOTHER EXPERT WHO COMES IN -- ON POSTCONVICTION, ANOTHER EX-PERTH WHO COMES IN AND GIVES -- EXPERT WHO COMES IN AND BASICALLY GIVES DIFFERENT INFORMATION THAN WHAT THE ORIGINAL EXPERT DID GIVE AND ESSENTIALLY WE HAVE TRIAL COUNSEL ENGAGING THE SERVICES OF AN EXPERT IN MENTAL HEALTH, CORRECT?

YES.

AND ARE YOU CONTENDING THERE WAS ANYTHING IN THAT REPORT THAT THAT MENTAL HEALTH EXPERT GAVE COUNSEL, THAT WOULD HAVE REQUIRED COUNSEL TO GO FURTHER AND FIND SOME OTHER MENTAL HEALTH EXPERT?

WELL, MY UNDERSTANDING IS THAT IT WASN'T ACTUALLY EVEN A REPORT, THAT THE INITIAL SUBMISSION TO COUNSEL WAS IN THE FORM OF A LETTER, WHICH BASICALLY SAID, AND I AM NOT QUOTING, BUT SORRY I CAN'T HELP YOU.

WHETHER IT IS A REPORT OR LETTER, COUNSEL GOT SOMETHING FROM THE MENTAL HEALTH EXPERT THAT HE HAD ENGAGED, THAT SAID WHETHER OR NOT, TO WHAT EXTENT THERE WAS ANY MENTAL MITIGATION. IS THERE ANYTHING IN THAT LETTER OR REPORT THAT WOULD HAVE REQUIRED THE DEFENSE ATTORNEY TO DO SOMETHING MORE BEYOND THAT?

WELL, I BELIEVE THE FACT THAT THERE WAS VERY LITTLE INFORMATION IN THE REPORT. IN OTHER WORDS IT WASN'T A REPORT THAT SAID I LOOKED AT THIS AND DISCOUNTED IT. I LOOKED AT THIS AND DISCOUNTED IT, THAT THERE WAS BASICALLY VERY LITTLE ETCHED THIS THE WRORT -- LITTLE EVIDENCE IN THE REPORT WOULD HAVE SUGGESTED TO AN EXPERIENCED TRIAL COUNSEL, AND CERTAINLY THAT IS NOT A NEW TECHNIQUE. IT YOU HIRE A CONFIDENTIAL EXPERT, FOR EXAMPLE, WHO GIVES YOU A REPORT THAT, YOU KNOW, EMPHASIZES ONE THING OVER ANOTHER, IT IS NOT UNUSUAL TO GO SEEK A SECOND OPINION, AND I AM SUGGESTING THE LACK OF REAL REVIEW BY DR. HABER, NOW WHETHER OR NOT IT WAS DR. HABER'S FAULT OR COUNSEL'S FAULT, SHE DIDN'T HAVE THE INFORMATION, SO SHE DIDN'T PROVIDE MUCH OF A RESPONSE, AND AT THAT POINT, I THINK COUNSEL HAD A DUTY TO RECOGNIZE. I BELIEVE SHE DID PROVIDE SOME INFORMATION THAT HE HAD A LEARNING DISABILITY AND A POTENTIALLY A PERSONALITY DISORDER. I MEAN, CERTAINLY SOME BASIS THAT I WOULD HAVE WANTED TO GO FURTHER, WERE I TRIAL COUNSEL.

CAN YOU TRACK STRICKLAND AND IN PARTICULAR THE TRIAL COURT DID HOLD AN EVIDENTIARY HEARING.

YES.

BECAUSE PARTICULARLY THE TRIAL COURT'S HEARING WITNESSES, IN A VERY THOROUGH ORDER, AND IN THIS PARTICULAR CASE DR. BORDINI'S TESTIMONY WAS DISCOUNTED BECAUSE IT LACKED CREDIBILITY IN PRESENTATION, AND THE TRIAL COURT FOUND THAT CREDIBLE EVIDENCE DOES NOT SUPPORT A CONCLUSION THAT THE DEFENDANT SUFFERS OR SUFFERED FROM ANY ORGANIC BRAIN DAMAGE OR ANY SIGNIFICANT MENTAL ILLNESS, SO WE HAVE TO GET, FOR THERE TO BE PREJUDICE UNDER STRICKLAND, THERE HAS GOT TO BE COMPELLING EVIDENCE OF MENTAL MITIGATION THAT WOULD HAVE AFFECTED OR UNDERMINED OUR CONFIDENCE IN THE OUTCOME, AND THEN NOT ONLY IF YOU TAKE THAT PART AND THEN THE SECOND PART BEING THAT IT MIGHT HAVE DONE MORE HARM THAN GOOD, BECAUSE THERE WAS A LOT OF BACKGROUND EVIDENCE ABOUT THIS PARTICULAR DEFENDANT THAT COULD HAVE CLEARLY WORKED MORE HARM THAN GOOD, SO I GUESS THE TWO PARTS ARE HOW DO YOU GET AROUND THE MENTAL HEALTH EXPERT TESTIMONY BEING DISCOUNTED, AND, TWO, THE BALANCING ACT OF SAYING, LIST HE, THIS WOULD HAVE BEEN A WASH OR MAYBE IT WOULD HAVE BEEN WORSE FOR MR. GRIFFIN.

AS I UNDERSTAND IT, UNDER THE LINE OF CASES FROM THIS COURT HAVING TO DO SPECIFICALLY WITH FAILURE TO PROVIDE MITIGATION, SPECIFICALLY RAGSDALE AND ROSE AND THOSE CASES, WHAT THIS COURT IS LOOKING FOR IS A QUOTE/UNQUOTE RELIABLE SENTENCING PENALTY PHASE HEARING. NOT ONLY DO WE HAVE IN THIS CASE, AND I WILL ADDRESS MORE SPECIFICALLY THE MENTAL MITIGATION IN A MINUTE, BUT WE, ALSO, HAVE TWO WITNESSES WHO WERE PRESENT DURING MICHAEL'S CHILDHOOD, HIS NATURAL MOTHER, WHO I BELIEVE IS A DIAGNOSED PARANOID SCHIZOPHRENIC, AND SHE TESTIFIED AT THE EVIDENTIARY HEARING, AND HIS HALF BROTHER, WHO PROVIDED A MUCH MORE GRUESOME STORY OF HIS CHILDHOOD, PROVIDED SNAP SHOTS THAT HIS FATHER, WHO ALSO DID TESTIFY AT THE ORIGINAL PENALTY PHASE HEARING, DOES, IN LARGE PART BECAUSE THE FATHER IS THE SOURCE OF MUCH OF HIS CHILDHOOD TRAUMA, AND BASICALLY WHEN HE GETS ON THE STAND AT PENALTY PHASE, KIND OF MINIMIZES HIS INVOLVEMENT, SO IN ADDITION TO THE MENTAL MITIGATION, YOU HAVE THIS OTHER EVIDENCE --

DO I UNDERSTAND THAT THE MOTHER HAD SOME VERY SERIOUS PROBLEMS, HERSELF, AND WAS

THIS NOT ADDRESSED BY THE TRIAL ATTORNEY AND AS A SPECIFIC REASON FOR NOT PROVIDING THAT PERSON AS A WITNESS? WAS THAT NOT DISCUSSED AND EXPLORED TO SOME EXTENT?

THE RECORD SHOWS THAT THE TRIAL ATTORNEY MADE NO REAL EFFORT TO CONTACT MARY ANN GRIFFIN, ONCE SHE TOESFIED, TOO, AT THE EVIDENCE -- ONCE SHE TESTIFIED TO AT THE EVIDENTIARY HEARING AND THAT SHE WAS NEVER EVEN MADE AWARE AND CERTAINLY SHE WOULD BE ABLE TO TESTIFY. CERTAINLY DESPITE HER PROBLEMS SHE DID TESTIFY AT THE EVIDENTIARY HEARING AND NOT JUST FOR FIVE SECONDS. I MEAN, SHE DID PROVIDE SOME TESTIMONY, AND SHE INDICATED THAT, HAD SHE BEEN CONTACTED SHE WOULD HAVE BEEN WILLING TO DO THE SAME, AND THAT IS EXACTLY THE SAME THING WITH CHARLES GRIFFIN, MICHAEL GRIFFIN'S HALF BROTHER. HE INDICATED THAT HE WAS NEVER CONTACTED. NOW, TRIAL COUNSEL INDICATED THAT HE BELIEVED HE WAS TOLD CHARLES WAS UNVEILABLE, BUT WHAT IS NOT CLEAR FROM THE EVIDENCE -- UNVEILABLE, BUT WHAT IS NOT CLEAR FROM THE TESTIMONY AT THE EVIDENTIARY HEARING IS WHO WAS IT THAT TOLD HIM, BECAUSE CHARLES GRIFFIN TESTIFIES THAT HE WAS NEVER CONTACTED, AND THE ATTORNEY TESTIFIES THAT HE WAS TOLD CHARLES WAS UNAVAILABLE.

I AM STILL WAITING FOR AN ANSWER TO MY QUESTION.

I APOLOGIZE JUSTICE. I GOT OFF TRACK. I FIND IT DIFFICULT TO RECONCILE THE COURT'S ORDER, AS, DOING AS IT DID, DISCOUNTING ENTIRELY DR. BORDINI'S TESTIMONY, WHEN HE WAS, AND FINDING IT INCREDIBLE, WHEN HE WAS, IN FACT, THE ONLY MENTAL HEALTH EXPERT WHO SPENT ANY SIGNIFICANT TIME WITH MICHAEL GRIFFIN. HE, DR. BORDINI, ADMINISTERED 25 SEPARATE PROCEDURES TESTS. HE WAS THE ONE THAT ACTUALLY REVIEWED THE RECORDS, AND SO I GUESS WHAT I AM SUGGESTING, ALTHOUGH IT IS A HARD ARGUMENT TO MAKE, IS THAT BASED ON THE FACTS THAT THIS COURT HAS AVAILABLE TO IT, I MEAN, IT IS POSSIBLE TO READ DR. BORDIN I'S TESTIMONY AND DR. ANSLEY'S TESTIMONY AND COME UP -- DR. BORDINI'S TESTIMONY AND DR. ANSLEY'S TESTIMONY, THAT SHE, IN FACT, WAS THE CREDIBLE ONE AND NOT TAKE THE TESTIMONY FROM DR. BORDINI.

WHAT IS THE COMPELLING EVIDENCE, AND IT IS NOT STATUTORY MITIGATION, WHERE WE THROW OUT BRAIN DAMAGE AS IF WE THINK IT MEANS SOMETHING. WHAT IS THE ARGUMENT, AS TO HOW THIS AFFECTED THIS DEFENDANT'S CRIME, ITSELF, OR ANYTHING SURROUNDING IT, THAT HE HAD SOME KIND OF UNDEFINED BRAIN DAMAGE?

WELL, DR. BORDINI TESTIFIED THAT HE FELT THAT THE MENTAL MITIGATOR, AND THIS ONE DOESN'T ACTUALLY SO MUCH GO TO THE BRAIN DAMAGE BUT IT IS THE OTHER SORT OF MENTAL MITIGATOR, WHICH IS UNDER DURESS AT THE TIME OF, HAVING TO DO WITH THE FACT THAT MICHAEL GRIFFIN'S FRIEND HAD BEEN RECENTLY, I AM NOT, I CAN'T REMEMBER IF HE WAS SHOT OR KILLED, BUT ANYWAY HE HAD A CLOSE FRIEND WHO WAS DECEASED AND HIS BROTHER WAS DECEASED IN A FAIRLY SHORT PERIOD OF TIME, AND THAT HE WAS EXPERIENCING --

IN RELATIONSHIP TO THE MURDER THAT TOOK PLACE HERE --.

I WAS JUST ABOUT TO FINISH MY SENTENCE, AND HE WAS EXPERIENCING A SENSE OF RAGE, WHICH COUPLED WITH HIS BRAIN DAMAGE, AND THE SPECIFIC TYPE OF BRAIN DAMAGE THAT DR. BORDINI CLAIMS HE FOUND WAS EXECUTIVE FUNCTIONING, AND ONE OF THE THINGS IS AN INABILITY TO PLAN OR FORESEE CONSEQUENCES, AND THE OTHER PART OF IT IS IMPULSE CONTROL, AND SOFS EXPERIENCING ALL OF THESE EMOTIONS, AND HE FOUND HIMSELF IN THIS SITUATION WHERE HE BASICALLY REACTED, CERTAINLY WITHOUT THINKING, AND IN A FASHION THAT IS TOTALLY ILLOGICAL. I MEAN, EVEN ASSUMING THAT WHAT MICHAEL GRIFFIN SAYS IS TRUE, WHICH IS THAT HE CLAIMS THAT HE WAS SHOT AT FIRST, EVEN ASSUMING THAT, YOU CERTAINLY RATIONALLY DON'T SHOOT BACK AT THE POLICE, BUT THAT IS IN FACT WHAT MICHAEL GRIFFIN DID. BUT THAT IS THE WAY DR. BORDINI CONNECTS THE BRAIN DAMAGE THAT

HE FINDS TO MICHAEL GRIFFIN'S ACTIONS, THROUGH THE EMOTIONAL BACKGROUND OF THESE THINGS THAT HAD GONE ON IN HIS PERSONAL LIFE. ALTHOUGH DR. BORDINI DIDN'T ACTUALLY ADDRESS THE OTHER MENTAL MITIGATOR, WHICH IS HIS CAPACITY TO APPRECIATE THE RESULTS OF HIS CONDUCTOR HIS INABILITY TO CONFORM HIMSELF TO THE LAW, I CERTAINLY THINK THAT HIS --

UNDER THIS EXTREME MENTAL AND EMOTIONAL DISTRESS, I MEAN, ONE OF THE THINGS THAT ALWAYS IS PUZZLING TO ME IS HOW FAR AWAY OR HOW CLOSE IN TIME DOES THIS MENTAL DISTRESS NEED TO BE, IN ORDER TO BE RELEVANT TO THE CRIME THAT WAS COMMITTED? WHEN WAS THE FRIEND AND BROTHER, WHEN DID THEY DIE, IN RELATIONSHIP TO WHEN THIS MURDER TOOK PLACE? BECAUSE I AM HAVING A HARD TIME SEEING HOW THESE EVENTS ACTUALLY CAUSED MICHAEL GRIFFIN TO, YOU KNOW, GO OUT AND BURGLARIZE THIS PLACE AND THEN, IN AN ATTEMPT TO GET AWAY FROM THE BURGLARY, SHOOTS A POLICE OFFICER.

MY UNDERSTANDING, AND I DON'T KNOW THAT ANYBODY ACTUALLY PUT DATES INTO THE RECORD, CERTAINLY I REVIEWED THE TESTIMONY AGAIN LAST NIGHT AND SAW NO ACTUAL DATES, BUT IT WAS WITHIN THE LAST YEAR, WHICH TO THE DOCTOR, HE REFERRED TO IT AS A RELATIVELY SHORT PERIOD OF TIME. NOW, I AM NOT GOING TO STAND HERE AND SAY THAT I NECESSARILY THINK IT IS BUT THAT WAS THE TIME FRAME.

YOU ARE IN YOUR REBUTTAL TIME.

I AM SORRY.

CHIEF JUSTICE: IF YOU WANT TO SAVE.

I WOULD LIKE TO. THANK YOU, JUSTICE.

CHIEF JUSTICE: COUNSEL.

MAY IT PLEASE THE COURT. SANDRA JAGGARD, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE. WITH REGARD TO THE LAST QUESTION, MY UNDERSTANDING IS THE BROTHER DIED IN 1987. THIS CRIME OCCURRED IN 1990, SO IT WAS ABOUT THREE YEARS PASSED.

WHAT ABOUT THE FRIEND?

I DON'T RECALL EVER SEEING A DATE WITH REGARD TO THE FRIEND. I DO RECALL SEEING '87 WITH REGARD TO THE BROTHER.

HOW DID THEY DIE?

THE BROTHER HAD AIDS. THE PARTNER IN CRIME "E" I BELIEVE, WAS KILLED DURING A CRIME. -- THE PARTNER IN CRIME, I BELIEVE, WAS KILLED DURING A CRIME.

ARE THEY GOING TO PUT THAT IN AND SAY THAT IT WAS A RAGE REACTION AT THE TIME OF THIS CRIME?

HE WAS SAYING THAT THIS PROBLEM WITH EXECUTIVE FUNCTIONING CAUSED AM NOT TO BE ABLE TO BE UNDER EMOTIONAL DISTRESS THERE. IS SEVERAL SMALL PROBLEMS WHICH LED THE TRIAL COURT TO FIND THIS PERSON INCREDIBLE. DR. BORDINI IGNORED THE FACT THAT THIS DEFENDANT WAS ROBBING, BURGLARIZING A PLACE THAT HE HAD PREVIOUSLY BURGLARIZED. DR. BORDINI IGNORED THE FACT THAT THIS DEFENDANT HAD STOLE AND CAR TO USE IN THESE BURGLARIES. DR. BORDINI IGNORED THE FACT THAT THEY HAD STASHED THIS CAR SOMEWHERE. DR. BORDINI IGNORED THE FACT THAT THEY WENT TO THE STASH CAR, DRIVING A CAR RECOGNIZABLE TO THEM, THEN GOT INTO THE STASH CAR AND WENT TO CLUBS AND WAITED

OUTSIDE TO FIND PEOPLE TO ROB, THAT THEY HAD THE NIGHT BEFORE, FOUND SOMEBODY, HAULED THEM HOME AND ROBBED THEM, AND THAT THEY WERE OUT DOING THIS, THE SAME THING THE NEXT NIGHT, AND WHEN THEY COULDN'T FIND SOMEBODY TO ROB THEM, HE SAID HEY, I KNOW A GREAT PLACE TO BURGLARIZE. I HAVE BURGLARIZED IT BEFORE. THIS IS NOT SOMETHING WHERE THIS PERSON IS ACTING IMPULSIVELY AND IRRATIONALLY. THIS DEFENDANT WAS ACTING WITH A COLD PLAN. THIS DEFENDANT SAID, THE NIGHT BEFORE, I AM GOING TO KILL A POLICE OFFICER IF WE GET STOPPED. THIS DEFENDANT SAYS, WHILE HE IS TRYING TO PREVENT THE CODEFENDANT FROM STOPPING THE CAR TO OBEY THE POLICE LIGHTS AND SIREN, I AM GOING SHOOT THE COP, IF WE GET STOPPED! THIS IS NOT AN IRRATIONAL IMPULSIVE ACT. AND BEYOND THAT, DR. BORDINI'S TEST RESULTS, HE COMES BACK WITH ALMOST ALL NORMALS, AND THEN HE SAYS BUT HE IS BRAIN DAMAGED.

WHAT DID THE STATE'S EBBS PERTH DR. ANSLEY --

DR. ANSLEY -- EXPERT, DR. ANSLEY --

DR. ANSLEY SAID --

DID SHE EVER RUN ANY TEST ON THIS DEFENDANT? WHAT WAS THE BASIS OF HER OPINION THAT HE DIDN'T SUFFER FROM ANY KIND OF SERIOUS BRAIN DAMAGE?

SHE RAN HER OWN TESTS. SHE REVIEWED THE RAW DATA FROM DR. BORDINI. SHE REVIEWED THE RAW DATE A FROM THE -- DATA FROM THE FIRST DEFENSE EXPERT, DR. EISENSTEIN, WHO DIDN'T TESTIFY IN THE RECORD, AND SHE SAID COMPLETELY DISREGARD EVERYTHING THAT WAS SAID. THIS DEFENDANT IS ANTISOCIAL AND NARCISSISTIC. WHICH IS WHAT DR. HABER SAID. YES, SHE DIDN'T WRITE HER REPORT UNTIL THEN BUT SHE HAD BEEN ON THE PHONE WITH DEFENSE COUNSEL THE WHOLE TIME. HE KNEW WHAT SHE WAS DOING.

DID COUNSEL TESTIFY TO THAT FACT?

YES.

THAT HE HAD TALKED WITH THE EXPERT PRIOR TO ACTUALLY GETTING THE REPORT?

YES. HE KNEW WHAT WAS GOING ON WITH DR. HABER. HE HAD BEEN SPEAKING TO HER ON THE PHONE. HE GAVE HER THE SCHOOL RECORDS. HE DID NOT GIVE HER THE PRISON RECORDS BECAUSE THERE WAS NEGATIVE INFORMATION IN THERE AND HE DIDN'T WANT HER TO HAVE IT.

AND THAT WAS THE PART OF THE TESTIMONY ABOUT ALL OF THIS BEING A TWO-EDGED SWORD, BECAUSE AS MUCH AS YOU WOULD GET INTO HIS BACKGROUND, YOU WOULD GET INTO A LOT OF HIS CRIMINAL --.

YOU WOULD GET INTO THE FACT THAT HE BEAT UP TEACHERS WHEN HE WAS IN SCHOOL AND HAS BEEN A MULTICRIME, HE HAS HAD THREE INCARCERATION SENTENCES AND BEEN ON PROBATION, BY THE TIME IS HE 20 AND COMMITTING THIS CRIME. THIS IS NOT A NICE DEFENDANT.

HE WAS NOT RAISED BY THIS MOTHER. IS THAT CORRECT?

NO. HE WAS NOT. THIS MOTHER, THE MOTHER SAYS SHE RAISED HIM. EVERYONE ELSE SAYS THAT, BY THE TIME IS HE IN AN INFANT, APPROXIMATELY SIX MONTHS OLD, HE GOES TO LIVE WITH THE MONTEYOS. HE REMAINS AT THE MONTEYOS, UNTIL APPROXIMATELY SIX MONTHS BEFORE THERE WAS A FIRE AT THE HOUSE, WHICH IS DEPENDING ON THE TESTIMONY YOU ARE READING, HE IS BETWEEN EIGHT AND TEN, SHE IMMEDIATELY LEAVES RIGHT AFTER THE FIRE, SO SHE WAS WITH THIS KID FOR MAYBE A YEAR OF HIS LIFE AND HAS NO CONTACT WITH HIM AFTER THAT UNTIL HE IS ON DEATH ROW. THE TRIAL COURT FOUND THAT SHE WAS UNVEILABLE, BECAUSE SHE --

UNAVAILABLE, BECAUSE SHE TESTIFIED AT THE TIME OF THIS TRIAL THAT SHE WAS HOSPITALIZED IN NORTH CAROLINA IN A DIABETIC COMB A THAT FACTUAL FINDING IS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE AND SHOULD BE AFFIRMED.

WHAT ABOUT, SOUNDS LIKE THE MOTHER WAS, HAD A PRETTY SERIOUS MENTAL ILLNESS. WAS THERE, WHAT WAS PRESENTED ON THE EVIDENTIARY HEARING, NOT ON THE BRAIN DAMAGE SIDE, ON ANY SIGNIFICANT MENTAL ILLNESS THAT THIS DEFENDANT SUFFERED FROM?

DR. BORDINI SAID I THINK HE MAY BE MANIC-DEPRESSIVE. DR. ANSLEY SAID THERE IS NO, BUT DR. BORDINI ADMITS HE HAS NEVER HAD THE LOW SIDE OF MANIC.

THE WHAT?

THE DOWN SIDE OF MANIC AS OPPOSED TO THE HYPERACTIVE SIDE OF MANIC.

WAS HE EVER TREATED FOR A MENTAL ILLNESS?

NO. THERE IS NO EVIDENCE HE WAS EVER TREATED FOR MENTAL ILLNESS. SHE WAS, AND HE SAID, WELL, BASED ON HER HISTORY, EVEN THOUGH THERE IS NO EVIDENCE IN THIS CHILD'S LIFE THAT THIS HAPPENED OR THIS DEFENDANT'S LIFE THAT THIS HAPPENED, I AM GOING TO ASSUME THAT HE HAS THE TENDENCY FOR IT.

NOW, ALL THE JUVENILE RECORDS, WERE THOSE SOMETHING THAT THIS, THE INITIAL LAWYER, THE LAWYER AT TRIAL HAD AVAILABLE BUT JUST DECIDED THAT THERE WAS, AGAIN, MORE HARM THAN GOOD IN THOSE RECORDS?

HE SAID HE HAD THE PRIOR IN CARSTIVE RECORDS. -- INCARCERATION RECORDS.

THAT INCLUDED, WERE THERE JUVENILE RECORDS?

I BELIEVE THERE WERE AND I BELIEVE HE HAD THEM. HE SAID I LOOKED AT THEM. THEY WERE INCREDIBLY NEGATIVE I DIDN'T WANT TO PRESENT THEM TOLT DR. HABER SO I DIDN'T.

THIS IS A CHILD THAT STARTED COMMITTING ANTISOCIAL ACTS AT AN EARLY AGE?

YES. HE IS BEATING UP TEACHERS SOMEWHERE AROUND TEN, ELEVEN, TWELVE.

NOBODY EVER DIAGNOSED WHAT WAS GOING ON, WHAT LED TO THIS?

NO. HE DID GET IT DIAGNOSED AS EMOTIONALLY HANDICAPPED IN SCHOOL. I DON'T RECALL THERE WAS EVER ANY BASIS FOR THAT OTHER THAN BASICALLY ANTISOCIAL CONDUCT DISORDER, WHICH IS JUVENILE ANTISOCIAL. WITH HIS DIAGNOSIS, DR. BORDINI GOES BACK AND LOOKED AT THE RECORDS AND SAID, NO, IT IS NOT CONDUCT DISORDER. IT IS HYPER ACTIVITY. AND DR. ANSLEY SAID THE PEOPLE WHO SAW HIM THEN SAID IT IS CONDUCT SDORD, AND BASED ON THE COLD RECORDS, YOU CAN'T REALLY GO BACK AND CHANGE THE DIAGNOSIS, WITHOUT HAVING SEEN AND TALKED TO PEOPLE. AND SO BASICALLY, YOU HAVE A CREDIBILITY DETERMINATION THAT DR. ANSLEY IS CREDIBLE. DR. BORDINI ISN'T, AND THAT CREDIBILITY DETERMINATION BINDS THIS COURT, AS LONG AS IT IS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE, AND IN THIS RECORD IT IS.

WOULD IT BE CORRECT TO SAY THAT THE REPORT OF DR. HABER AND THE EVIDENCE WITH REFERENCE TO DR. HABER'S EVALUATION AND OPINIONS, REALLY CORROBORATED DR. ANSLEY'S TESTIMONY?

YES.

SO THAT THERE WAS REALLY MORE THAN JUST ONE-ON-ONE EXPERT, AS FAR AS THE PERSONAL --
YES.

-- CREDIBILITY EVALUATION? THAT THE EARLIER EVALUATION REALLY WAS CONSISTENT WITH
DR. ANSLEY, I --

YES. SHE SAYS ANTISOCIAL. DR. ANSLEY SAYS NONSPECIFIED PERSONALITY DISORDER WITH
ANTISOCIAL AND NARCISSISTIC, SO IT IS BASICALLY THE SAME DIAGNOSIS.

YOU MENTIONED ANOTHER EXPERT, AND TELL ME ABOUT --

DR. --

-- LIMITED KNOWLEDGE WE HAVE ABOUT THE OTHER EXPERT.

DR. EISENSTEIN TESTIFIED AND HIS COMMENTS WERE RELIED UPON DURING THE DEFENSE TIME
FRAME. IT WAS CHOSEN NOT TO CALL HIM.

WHEN WAS THIS?

DURING POSTCONVICTION. HE WAS THE ORIGINAL POSTCONVICTION EXPERT AND THEN THE
STATE DEPOSES HIM AND THEN THERE IS A SUBSTITUTION OF EXPERTS.

DR. BORDINI CAME IN AFTER THAT?

YES AND THEN DR. ANSLEY COMES IN AT THE END AND REVIEWS EVERYTHING ELSE EVERYONE
ELSE HAS DONE AND DOES HER OWN TEST ANGSAAYS, NO, ANTISOCIAL -- AND SAYS -- DOES HER
ONE TESTING, AND SAYS, NO, ANTISOCIAL.

WAS THERE ANY REPORT OF WHAT THE FINDINGS WERE AS A RESULT OF THIS TESTING?

NOT IN THE RECORD. HE WAS DEPIECED BY THE STATE, BUT -- HE WAS DEPOSED BY THE STATE,
BUT I DON'T KNOW THAT THAT IS IN THE RECORD, AND AFTER THAT THERE WAS A DECISION
MADE NOT TO CALL HIM AND TO SUBSTITUTE THE EXPERT. WITH REGARD TO THE BROTHER,
COUNSEL TESTIFIED THAT HE DID, IN FACT, ATTEMPT TO LOCATE THE BROTHER. HE SENT OUT HIS
INVESTIGATOR, TO FIND THE BROTHER. THE INVESTIGATOR REPORTED BACK. HE COULDN'T FIND
THE BROTHER. THE BROTHER TESTIFIED THAT HE WAS LIVING IN GEORGIA NOT IN CONTACT WITH
HIS FAMILY, WHICH LED THE TRIAL COURT TO FIND HE WAS UNAVAILABLE TO TESTIFY.

WERE THERE DOWN SIDES, ALSO, TO THE BROTHER'S TESTIMONY?

WELL, THE BROTHER ISN'T WITH HIM VERY MUCH, BECAUSE, AGAIN, HE IS BEING RAISED AT THE
MONTEYOS, SO THE BROTHER IS BRINGING OUT BASICALLY THE DEFENDANT WAS NEGLECTED,
WHICH WAS FOUND AS MITIGATION, BASED ON THE TESTIMONY OF THE FATHER, THE NEIGHBOR,
THE TEACHER, AND EVERYONE AT THE TIME OF TRIAL, SO THIS IS REALLY CUMULATIVE TO WHAT
THE DEFENSE ALREADY PRESENTED AND WAS ALREADY FOUND AS MITIGATION.

RECAP, IF YOU WOULD, THE TESTIMONY OF THE MOTHER AGAIN, AS FAR AS THE SUM AND
SUBSTANCE OF THIS. HER HOSPITALIZATION AND THE COMA BUT, ALSO, THE REST OF HER
TESTIMONY.

SHE SAYS THE DEFENDANT WAS RAISED AT HOME BY HER AND HER HUSBAND, THAT HE ONLY
SPENT SHORT PERIODS OF TIME WITH THE BABY-SITTER. SHE CONTRADICTS HERSELF ON CROSS-
EXAMINATION ON THIS. SHE CONTRADICTS THE TESTIMONY OF EVERY OTHER WITNESS IN THE

CASE ABOUT THIS. SHE SAYS THE DEFENDANT WAS NOT REALLY ABUSED PHYSICALLY, THAT HE WAS OCCASIONALLY SPANKED. THE BROTHER SAYS HE KNOWS OF ONE TIME WHEN THE CHILD, WHEN THE DEFENDANT WAS HIT. BUT BASICALLY SHE GIVES US NEGLECT. SHE GIVES US THAT SHE HAS A HISTORY OF MENTAL ILLNESS, WHICH, UNLESS THERE IS SOME TIED TO HIM HAVING A HISTORY OF MENTAL ILLNESS, ISN'T REALLY RELEVANT TO THE DEFENDANT.

SO WHAT DOES THE CREDIBLE EVIDENCE SHOW AS THE LENGTH OF TIME SHE ACTUALLY SPENT WITH THE CHILD?

PROBABLY SOMEWHERE AROUND A YEAR, FROM BIRTH TO SIX MONTHS, VISITING HIM PERIODICALLY WHEN HE WAS LIVING THERE AND VISITED HIM FOR SIX MONTHS AND THEN SO FOR A PERIOD OF TIME WHEN THE CHILD COMES BACK TO THE FAMILY, SO SHE WASN'T REALLY THERE.

WAS THERE SOME TESTIMONY THAT SHE LIVED OFF PROSTITUTION?

THERE WAS SOME TESTIMONY THAT THE DEFENDANT AT SOME POINT SAW HER OUTSIDE A STRIP CLUB, EXPOSING HER BARE BOTTOM. AND THAT THE DEFENDANT HAD SEEN A PICTURE OF HER ENGAGED IN A SEXUAL ACT WITH ANOTHER MAN. BUT SHE IS NOT RAISING HIM. THE MONTEYOS ARE RAISING HIM. COUNSEL'S THEORY AT THE PENALTY PHASE WAS THIS WAS BASICALLY A GOOD KID, WHO HAD WE LEFT HIM AT THE MONTEYOS, WOULD HAVE GROWN UP TO BE A PROTECTIVE CITIZEN, BUT BECAUSE THIS MEAN FAMILY OF HIS RIPS HIM AWAY FROM THERE AND THEN NEGLECTS HIM, HE BECOMES A CRIMINAL. AND THAT IS WHAT COUNSEL PRESENTED AT THE PENALTY PHASE, AND THAT CAUSED A FINDING OF A BAD CHILDHOOD, WHICH IS WHAT YOU GET FROM THE MOTHER, THE BROTHER AND THE WITNESS STEVEN MINNIX.

I ASKED YOUR OPPONENT EARLY ON, ABOUT THE TESTIMONY OF THE LAWYER, IN TERMS OF WHAT HIS STRATEGY WAS AND WHAT HIS EXPLANATION WAS. COULD YOU --

HIS STRATEGY? HIS STRATEGY WAS?

RIGHT. THE DEFENSE OF THE CASE.

HE SAYS I HAVE HAD LOTS OF EXPERIENCE WORKING WITH CAPITAL CASES. I HAVE NEVER TRIED A CAPITAL CASE ON MY OWN. WORKED WITH THEM ON, AT THE PD'S OFFICE, THAT ONCE I KNEW DR. HABER FROM HAVING USED HER THERE, I KNEW HER FROM OTHER LAWYERS AT THE PD'S OFFICE WHO SAID SHE WAS A GREAT MITIGATION WITNESS, SO I HIRED HER. I GAVE HER THE RECORDS FROM THE SCHOOL, PUT HER IN TOUCH WITH THE DEFENDANT'S FATHER, WHO WAS A FAMILY MEMBER I WAS MOST IN TOUCH WITH. GOT HER THE HISTORY. LET HER DO HER THING. I HAD THE PRIOR INCARCERATION RECORDS. I DECIDED NOT TO GIVE THEM TO HER BECAUSE OF THE NEGATIVE INFORMATION CONTAINED THERE IN, THAT I DIDN'T WANT HER TO KNOW ABOUT SO SHE COULDN'T TESTIFY ABOUT.

THAT SHE WOULD BE EXPOSED TO IF SHE DID.

YES AND THE JURY WOULD BE EXPOSED TO IT, IF WE HAD ASKED THEM TO RELY ON WHAT SHE RELIED UPON.

BUT YOU SAID THERE WASN'T A LOT.

YES AND GIVING THEM TO HER WOULD HAVE ONLY HURT, SO HE DIDN'T GIVE HER THOSE. HE HAS HER EXAMINE HIM. SHE, THEY ARE SPEAKING TO ONE ANOTHER ON THE PHONE. HE IS LOOKING FOR FAMILY MEMBERS. HE CALLS MR. MONTEYO AT THE PENALTY PHASE. HE CALLS THE DEFENDANT'S FATHER AT THE PENALTY PHASE. HE CONSIDERS CALLING THE DEFENDANT'S MOTHER. HE SPEAKS TO THE DEFENDANT'S FATHER ABOUT THE CONDITION OF THE CONDITION OF

THE DEFENDANT'S MOTHER AND DECIDES SHE REALLY IS NOT GOING TO BE ABLE TO TESTIFY VERY WELL AND IS GOING TO PRESENT A NEGATIVE IMPACT ON THE JURY SO I AM NOT GOING TO CALL HER. HE SENDS OUT AN INVESTIGATOR TO FIND THE HALF BROTHER WHO CAN'T BE FOUND. HE HAS AN INVESTIGATOR LOOKING FOR MR. MINNIS. HE CAN'T FIND MR. MINNIS. MR. MINIS THEN SHOWS UP AT THE COURTHOUSE AND HE TRIES TO FIND MR. MINNIS, WHO GOES OUT, AND HE WALKS IN DURING TESTIMONY AND HE ASKS HIM TO GO BACK OUTSIDE BECAUSE THE RULE HAS BEEN INVOKED. AND WHEN HE GOES BACK TO TALK TO HIM TO GET HIM ON THE STAND, HE HAS LEFT, AND HE THEN SENDS THE INVESTIGATOR TO FIND HIM AGAIN. THE INVESTIGATOR COMES BACK. CAN'T FIND HIM. MR. MINNIS HAS TOLD HIS FAMILY NOT TO TELL THE DEFENDANT'S LAWYERS WHERE HE WAS BECAUSE HE DIDN'T WANT TO GO BACK DOWN TO THE COURTHOUSE.

WHAT DID HE TESTIFY TO AT THE EVIDENTIARY HEARING? WHAT IS THE GIST OF WHAT MR. MINNIS COULD HAVE ADD TO THE MITIGATION? -COULD HAVE ADDED TO THE MITIGATION?

WHAT HE COULD HAVE ADDED TO THE MITIGATION IS THAT THE DEFENDANT WAS NEGLECTED, WHICH IS CUMULATIVE TO WHAT IS ALREADY THERE, AND WHAT HE COULD HAVE ADDED TO THE AGGRAVATION IS THAT THIS DEFENDANT HAD A HISTORY WITH THIS OFFICER AND THAT THIS DEFENDANT WAS AWARE IT WAS THIS OFFICER HE WAS SHOOTING AT, WHEN HE WAS SHOOTING AT HIM. WHICH WOULD HAVE TENDED TO ADD TO THE FACT THAT HE WANTED TO KILL HIM.

AS FAR AS THE MENTAL HEALTH ISSUE IS CONCERNED, IS IT A FAIR SUMMARY OF COUNSEL'S TESTIMONY THAT, THROUGH HIS KNOWLEDGE THAT THE PUBLIC DEFENDERS OFFICE AND OTHER PUBLIC DEFENDERS AND IN HIS OWN VIEW THAT, DR. HABER HAD CONSIDERABLE CREDIBILITY AS AN EXPERT?

YES.

AND THAT HE WAS RELYING ON DR. HABER, AND THAT IN ESSENCE DR. HABER SAID THERE IS NOTHING POSITIVE THAT I CAN REALLY HELP YOU WITH.

YES, AND DR. HABER, ALSO, TOLD HIM THAT, DIDN'T INDICATE ANY NEED FOR ADDITIONAL TESTING. DR. ANSLEY AGREES THAT THE EVALUATIONS DON'T INDICATE ANY NEED FOR ADDITIONAL TESTING. COUNSEL SAID, HAD DR. HABER SAID YOU NEED ADDITIONAL TESTING, YOU NEED ANOTHER EXPERT OF A DIFFERENT TYPE OR KIND, HE WOULD HAVE SOUGHT A CONTINUANCE AND OBTAINED ONE AND THAT SINCE HE SAW NO REASON FOR IT, HE DIDN'T, AND COUNSEL HAS A REASONABLE EXPECTATION TO TURN OVER EVERY STONE AND DO EVERYTHING. HE HIRED AN EXPERT AND HAD THAT EXPERT DO THE EVALUATION AND PRESENTED THAT EXPERT WITH WHAT HE STRATEGICALLY THOUGHT SHOULD BE PRESENTED TO THE EXPERT AND HE MADE A STRATEGIC DECISION NOT TO PRESENT IT.

ACCORDING TO THE TRIAL COURT, TO THE TESTIMONY, THIS EXPERT IS NOT SOMEBODY THAT IS A HACK. IT IS A QUITE AN INFLUENTIAL PERSON.

I HAVE HALF OF MY CASES INVOLVING DR. HABER IF NOT MORE. SHE DOES A LOT OF PENALTY PHASE WORK. IF THE COURT HAS NO FURTHER QUESTIONS, THE STATE WOULD RESPECTFULLY REQUEST THAT YOU AFFIRM.

CHIEF JUSTICE: COUNSEL.

THANK YOU, JUSTICES. THE STATE FOCUSES HERE ON A COUPLE OF THINGS. ONE IS WHETHER OR NOT DR. BORDINI'S TESTIMONY WAS VALID AND UNCONTRADICTED AND NUMBER TWO, THE FACTS OF THE CASE. THE ARGUMENT HERE, AND WHAT I WISH TO FOCUS THE COURT'S ATTENTION ON, IS WHAT MR. GRIFFIN'S TRIAL AND PENALTY PHASE LAWYER DID NOT DO. AND WHAT HE DID NOT DO WAS SPEAK TO MR. GRIFFIN'S NATURAL MOTHER, SPEAK TO MR. GRIFFIN'S HALF BROTHER, AND WHAT HE DID DO WAS PUT THE ONE PERSON ON THE STAND WHO HAD A VESTED INTEREST

IN WHITEWASHING THE TRAUMAS OF MICHAEL GRIFFIN'S CHILDHOOD AND THAT WAS TOMMY GRIFFIN. THE PICTURE THAT WAS PRESENTED --

HOW DO YOU SQUARE THAT WITH THE FACT THAT THE TRIAL JUDGE, IN FACT, DID FIND THAT MR. GRIN HAD A TRAUMATIC CHILDHOOD, DIDN'T HE, AS A MITIGATING CIRCUMSTANCE?

YES, HE DID, IN FACT FIND THAT, BUT I THINK THERE IS A DIFFERENCE BETWEEN, IN TERMS AFTER EXACT ON A JURY HERE, AND I AM ACTUALLY GOING BACK TO MY UNDERSTANDING OF THE LAW, WHICH IS THAT WE ARE ACTUALLY LOOKING AT WHAT WOULD HAVE HAPPENED AT THE ORIGINAL SENTENCING HEARING, HAD THIS TYPE OF EVIDENCE BEEN PRESENTED, AND I UNDERSTAND THAT TOMMY GRIFFIN TOOK THE STAND AND ADMITTED THAT HE HAD AN ALCOHOL PROBLEM AND THAT HE WAS PERHAPS RESPONSIBLE FOR SOME CORPORAL PUNISHMENT, BUT THE PICTURE THAT IS PAINTED BY CHARLES AND MARY ANN IS MUCH, MUCH MORE THAN THAT. THE PICTURE THAT IS PAINTED BY THEM IS THAT MICHAEL GRIFFIN WAS LEFT IN BARS WHEN HE WAS A TEN-YEAR-OLD OVERNIGHT, BEING TAKEN HOME PIE WAITRESSES BECAUSE DAD JUST WENT OUT FOR TWO DAYS, OF GETTING IN THE CAR WITH A DRUNKEN FATHER WHO THEN CRASHES THE CAR THROUGH A GUARDRAIL AND MAKES HIS OTHER SON, WHO MAYBE IS OR MAYBE ISN'T 16, DRIVE HOME. IT IS A SNAPSHOT OF A MUCH MORE VIVID COLOR, IF YOU WILL, AND IT IS SOMETHING THAT THE TRIAL JURY DIDN'T HEAR, BECAUSE THE PENALTY THE ATTORNEY DIDN'T SPEND ANY TIME PREPARING FOR PENALTY PHASE, BECAUSE WHAT HE PREPARED FOR WAS TRIAL. HE DIDN'T SPEND -- YES THERE, IS TESTIMONY IN THE RECORD AT THE EVIDENTIARY HEARING THAT HE SPOKE TO DR. HABER ON THE PHONE, BUT WHEN YOU ACTUALLY LOOK AT WHAT HE SUBMITTED TO THE COURT FOR PAYMENT, HE HAS, LIKE, THREE CONVERSATIONS TOTE ALONG TWO HOURS. HE DOESN'T -- TOTALING TWO HOURX, AND HE DOESN'T -- TWO HOURS, AND HE DOESN'T GET THE REPORT UNTIL THE DAY BEFORE, AND HE IS STUCK WITH IT. HE HAS NO CLUE. HE IS STUCK WITH PLAN B, AND BECAUSE SHE DIDN'T TELL HIM TO GO OUT AND HIRE ANOTHER EXPERT, THAT IS THE REASON THAT HE DIDN'T, BUT I FIND THAT SORT OF IRONIC, BECAUSE ON THE ONE HAND HE DIDN'T GIVE HER ALL OF THE INFORMATION THAT WAS AVAILABLE, AND CERTAINLY THERE IS DETRIMENTAL INFORMATION IN PRISON RECORDS, BUT WHAT ALSO WAS IN THE PRISON RECORDS WAS THAT THE PRISON DOCTORS DIAGNOSED MICHAEL DRIVEN AS HAVING POST-TRAUMATIC STRESS DISORDER AND SEIZURES ON A REGULAR BASIS, AND INFORMATION THAT PERHAPS WOULD HAVE AFFECTED DR. HABER'S ABILITY TO FIND MENTAL MITIGATION. NONE OF THAT INFORMATION WAS PROVIDED TO HER.

SEIZURES, SEIZURE DISORDER. THAT IS THE FIRST TIME I AM HEARING THAT, AT LEAST IN THIS ARGUMENT. DID DR. BORDINI TESTIFY, HE IS A PSYCHOLOGIST, DO YOU HAVE ANY MEDICAL TESTIMONY --

MY UNDERSTANDING, I BEG YOUR PARDON. I DIDN'T MEAN TO INTERRUPT, JUSTICE, IS THAT HE IS A NEUROPSYCHOLOGIST, AND WHAT HE TESTIFIED TO WAS THAT WAS WHAT THE PRISON RECORDS SHOW, THAT WAS WHAT THE PRISON DOCTORS FOUND AND HE COULDN'T TESTIFY TO IT PERSONALLY, BUT THEY ACTUALLY HAD MICHAEL GRIFFIN ON ANTI-SEIZURE MEDICATION IN THE PRISON SYSTEM.

THE PROBLEM IS YOU CAN'T JUST THROW OUT EVERYTHING AND THEN SAY I HOPE SOMETHING STICKS. UNLESS THERE WAS A NEW, THAT SOMEHOW THERE WAS THIS INFORMATION THAT JUST WAS TOTALLY AND WHOLLY NEGLECTED THAT WOULD UNDERMINE OUR CONFIDENCE IN THE FUNCTIONING OF THE COUNSEL IN THE PENALTY PHASE, I DON'T SEE HOW YOU HAVE A, YOU KNOW, A VALID STRICKLAND CLAIM, GIVEN THIS PARTICULAR RECORD AND THE PERFORMANCE THAT THE DEFENSE LAWYER DID PERFORM. MAYBE HE DIDN'T DO EVERYTHING, BUT HE ALSO DID SOME THINGS.

WELL, JUSTICE, THE FACT THAT HE SPENT ONE TENTH OF THE TIME ON PENALTY PHASE VERSUS GUILT PHASE, TO ME SUGGESTS A PROBLEM FROM THE START. NUMBER TWO, THE FACT THAT THE

SENTENCING JURY NOR THE JUDGE HEARD EVIDENCE OF MENTAL MITIGATION, EVEN IF IT WERE CONTRADICTED BY THE STATE AT THE SAME PROCEEDINGS, SUGGESTS TO ME THAT THERE WERE THINGS HE COULD HAVE DONE THAT HE DIDN'T DO.

CHIEF JUSTICE: ALL RIGHT. WE HAVE TO TAKE THE REST OF IT ON THE BRIEFS. THANK YOU BOTH VERY MUCH.

THANK, JUSTICES.