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Dwayne Irwin Parker v. State of Florida

MARSHAL: PLEASE RISE. PLEASE BE SEATED.

WE ARE READY TO GO ON PARKER VERSUS STATE. IF COUNSEL IS READY TO PROCEED.

MAY IT PLEASE THE COURT. I AM DAN HALLENBERG TODAY ON BEHALF MR. DWAYNE IRWIN PARKER. FOLLOWING THE PENALTY PORTION OF MR. PARKER'S TRIAL, THE JURY RECOMMENDED THAT THE TRIAL COURT IMPOSE THE DEATH PENALTY, BY A VOTE OF 8-TO-4. AFTER THE SENTENCING PROCEEDINGS, THE TRIAL COURT ELECTED TO IMPOSE THE DEATH PENALTY, FINDING THE EXISTENCE OF FOUR AGGRAVATORS. SIGNIFICANTLY, THE TRIAL COURT CONCLUDED THAT NO MITIGATION HAD BEEN ESTABLISHED. ON DIRECT APPEAL OF MR. PARKER'S CONVICTION, THE COURT NOTED THAT THE TRIAL COURT'S FINDING THAT THERE WAS NO MITIGATION IN THIS CASE, WAS BASED UPON THE FACT THAT THE FACTS ALLEGED IN MITIGATION WERE NOT SUPPORTED BY THE EVIDENCE.

THAT SOUNDS LIKE A LEAD IN TO AN ISSUE, AND SINCE YOU HAVE AN APPEAL AND A PETITION HERE BEFORE US, WITH MANY ISSUES, CAN YOU TELL US WHICH ISSUES YOU INTEND TO ADDRESS THIS MORNING.

YES. I WOULD LIKE TO ADDRESS THE PENALTY PHASE, THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS RELATEDED TO THE PENALTY PHASE, AND --

ANY OTHER ISSUES?

I WOULD LIKE TO ADDRESS THE GUILT PHASE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS AS WELL.

SO THOSE TWO ISSUES.

YES, SIR.

ALL RIGHT. WOULD YOU PROCEED.

YES. I WOULD LIKE TO START --

YOU CAN ASSUME THAT WE KNOW SOMETHING ABOUT THE CASE.

VERY WELL, SIR. MR. PARKER HAS ALLEGED IN HIS 3.850, OF COURSE AS THE COURT KNOWS, THIS WAS A SUMMARY DENIAL. MR. PARKER ALLEGED IN HIS RULE 3.850 50 MOTION RELATED TO -- 8.850 MOTION RELATED TO THE PENALTY PHASE, INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS, THAT TRIAL COUNSEL FAILED TO PRESENT A MYRIAD OF FACTS THAT PROVIDED SUBSTANTIAL DETAILS RELATING TO MR. PARKER'S QUITE CHAOTIC --

WOULD YOU GIVE US A QUICK THUMBNAIL COMPARISON, IN TERMS OF THE ALLEGATIONS IN THE 3.851, AS TO WHAT EVIDENCE WAS AVAILABLE OR INFORMATION WAS AVAILABLE ON MITIGATION FOR COUNSEL TO PRESENT, AND THEN A COMPARISON OF THAT TO WHATEVER INFORMATION OR EVIDENCE COUNSEL ACTUALLY DISCOVERED AND PRESENTED. I THINK THAT WOULD HELP SET THE PICTURE.

ABSOLUTELY, YOUR HONOR. MR. PARKER HAS ALLEGED IN HIS 3.850, IN THE CITATIONS TO THE RECORD AS WELL AS TO THE 3.850 ITSELF, ARE CONTAINED IN THE INITIAL BRIEF, THAT EVIDENCE WAS AVAILABLE THAT MR. PARKER SUFFERED FROM MENTAL ILLNESS AND POSSIBLY HAD ORGANIC BRAIN DAMAGE THAT, MR. PARKER WAS DIAGNOSED BORDERLINE RETARDED AT AGE 14, WITH A MENTAL AGE OF SEVEN YEARS, AND THAT THIS CONDITION REGRESSED WHEN MR. PARKER WAS UNDER PRESSURE. MR. PARKER HAS ALSO ALLEGED THAT HE HAD WEAKNESSES IN HIS LOGICAL AND ABSTRACT THINKING ABILITY, ALONG WITH DIFFICULTY IN INTERPRETING SOCIAL SITUATIONS.

THESE ARE VERY SPECIFIC ALLEGATIONS IN THE PLEADING?

YES, MA'AM.

DOES IT INDICATE WHETHER THOSE ALLEGATIONS, AND I AM NOT SUGGESTING YOU HAD TO, BUT THOSE COME FROM SCHOOL OR MEDICAL RECORDS? DO WE KNOW FROM THIS RECORD, WHERE THOSE ALLEGATIONS COME FROM?

IT IS NOT CONTAINED IN THE RECORD WHERE THOSE ALLEGATIONS, THOSE ALLEGATIONS COME FROM OUR INVESTIGATION.

ALL RIGHT, BUT IN TERMS OF JUST AS TO THOSE, ESPECIALLY THE BORDER LINE RETARDED AGE 14, MENTAL AGE OF SEVEN, SUFFERING FROM MENTAL ILLNESS, WERE THERE ANY RECORDS INTRODUCED AT THE ORIGINAL TRIAL, THAT IS SCHOOL RECORDS OR MEDICAL RECORDS?

THERE WERE NO RECORDS INTRODUCED. WHAT HAPPENED WAS TRIAL COUNSEL CALLED TO TESTIFY PUBLIC DEFENDER INVESTIGATORS TO, IN PARTICULAR, ONE INVESTIGATOR TESTIFIED THAT HE HAD LOOKED AT SCHOOL RECORDS AND SPOKE TO SOME OF THE FAMILY MEMBERS, AND, BUT HE DID NOT, IN NO SENSE OF THE WORD DID HE EX-CUP ATE THE INFORMATION CONTAINED IN THOSE RECORDS.

THAT WOULD BE UNUSUAL, TO PUT ON MITIGATION, AGAIN, SINCE THIS IS A SUMMARY DENIAL, WE DON'T KNOW WHAT CAUSED COUNSEL TO PUT ON THE INVESTIGATOR RATHER THAN TO PUT ON THE ACTUAL WITNESSES.

RIGHT, YOUR HONOR, AND THAT IS PART OF, ALTHOUGH I WILL ADMIT IT WAS NOT SPECIFICALLY PLED THIS WAY IN OUR 3.850, I THINK I ARGUED IT IN OUR BRIEF, THAT, I GUESS IT CAN BE ARGUED THAT THE REASON THAT THE TRIAL COURT DID NOT FIND THAT THE FACTS ALLEGED IN MITIGATION WERE ESTABLISHED, I WOULD ARGUE, WAS THAT ALL TRIAL COUNSEL DID WAS PRESENT THIS EVIDENCE THROUGH TO INVESTIGATORS.

HE HAD A MENTAL HEALTH EXPERT, DIDN'T HE?

HE DID HAVE A MENTAL HEALTH EXPERT WHO HAD HIS OWN PROBLEMS THAT WE WOULD ASSERT THERE WERE PROBLEMS WITH HIS EVALUATION. HE ADMITTED UNDER CROSS-EXAMINATION THAT HE DID NOT DO A COMPLETE WORKUP OF MR. PARKER. HE ADMITTED UNDER CROSS-EXAMINATION, THAT HE RELIED ALMOST EX-CLUSIVEIVELY ON MR. PARKER'S OWN SELF REPORTING, TO REACH HIS OPINION, AND AS A MATTER OF FACT THE STATE ATTORNEY WAS QUITE VIGILANT IN CROSS-EXAMINATION WITH DR. CADDY ON THAT POINT AND ALSO POINTED OUT TO THE JURY IN THE PENALTY PHASE CLOSING ARGUMENTS, SO WE WOULD ASSERT THAT, THROUGH A COMBINATION OF TRIAL COUNSEL RELYING ON THESE INVESTIGATORS TO PRESENT EVIDENCE THAT THE INVESTIGATORS SAID THEY GLEANED FROM SPEAKING WITH FAMILY MEMBERS AND LOOKING AT SCHOOL RECORDS, AND I THINK THERE WAS ONE INVESTIGATOR SPOKE TO TEACHERS AND A MINISTER, INSTEAD OF CALLING THOSE PERSONS TO TESTIFYTY PENALTY PHASE -- TESTIFY AT THE PENALTY PHASE, TRIAL COUNSEL JUST CALLED THE

INVESTIGATOR, AND I THINK IT IS SIGNIFICANT, BECAUSE FROM THE JURY'S PERSPECTIVE, THE JURY IS HEARING ALL OF THESE ALLEGATIONS OF MITIGATION, BUT THEY ARE HEARING IT THROUGH KIND OF THIS SECONDHAND WAY THROUGH THE INVESTIGATORS. THEY HAVE NO REAL ABILITY TO JUDGE THE CREDIBILITY OF THAT INFORMATION, WHEN THEY DON'T HAVE THE PERSONS WHO PROVIDED THE INFORMATION, ACTUALLY TESTIFYING.

WOULD YOU CONTINUE AND ADDRESS ONE OF THE RESPONSES, I BELIEVE, OF THE STATE, IS THAT ALL OF THESE ALLEGATIONS, REALLY, APPEAR TO JUST CITE CUMULATIVE EVIDENCE OF MITIGATION, SIMILAR TO THAT, YOU KNOW, THAT WAS ALREADY PRESENTED, EVEN THOUGH IT WAS DISCOUNTED BY THE TRIAL COURT JUDGE, SO WHAT IS THE FLAW IN THE STATE'S ARGUMENT?

THE FLAW IN THE STATE'S ARGUMENT IS, IF THE COURT EXAMINES CLOSELY THE TESTIMONY AT THE PENALTY PHASE AND COMPARES IT TO THE ALLEGATION INS OUR 3.850 -- ALLEGATIONS IN OUR 3.850, AND I WOULD ASK THE COURT TO DO THAT AND I AM SURE THE COURT WILL, IT IS ANALOGOUS TO, I WOULD CHARACTERIZE IT AS THIS, THE PENALTY PHASE WITNESSES KIND OF GAVE GENERAL TOPICS OF MITIGATION. HE HAD A PROBLEM CHILDHOOD, HIS MOTHER WAS MENTALLY ILL AND WAS COMMITTED NUMEROUS TIMES AND AS A RESULT, MR. PARKER HAD TO GO TO FOSTER HOMES, AND THE OTHER POINT THAT WAS MADE WAS THAT MR. PARKER NEVER REALLY WENT TO THE SAME FOSTER HOME. HE WAS ALWAYS SENT TO A DIFFERENT FOSTER HOME AS COMPARED TO HIS SISTER, AND THAT MADE IT DIFFICULT FOR MR. PARKER, AND THERE WERE ALLEGATIONS OF SEXUAL ABUSE THAT DID COME OUT AT THE PENALTY PHASE AS WELL, BUT IT IS OUR CONTENTION --

TELL US ABOUT THIS -- HOW DID THIS COME OUT, THE SEXUAL ABUSE ALLEGATION? WAS THAT --

THROUGH THE INVESTIGATOR, I BELIEVE, I BELIEVE INVESTIGATOR FINKEL STEEN AND DR. CADDY, AND AGAIN DR. CADDY SAID THAT THIS WAS ALL BASED ON MR. PARKER'S OWN SELF REPORTING. OUR CONTENTION IS THAT WE, IF WE WERE TO HAVE AN EVIDENTIARY HEARING, WHICH WE CONTEND WE ARE ENTITLED TO, WE WOULD BE ABLE TO PRESENT SIGNIFICANT DETAILS THAT WOULD REALLY FLESH OUT THE SEXUAL ABUSE, THAT WOULD REALLY FLESH OUT --

SO YOU ARE CLAIMING, I TAKE IT, THAT THERE WOULD HAVE BEEN A SUBSTANTIAL QUALITATIVE DIFFERENCE, THAT WHILE THESE TOPICS WERE TREATED GENERALLY IN THE MITIGATION THAT WAS PRESENTED, AS FAR AS THE QUALITY --

THAT'S CORRECT.

-- OF THE EVIDENCE TO ESTABLISH THESE THINGS, THAT, IS THAT WHERE THE ESSENCE OF YOUR --

THAT IS THE ESSENCE OF IT, BUT I WOULD ALSO CONTEND THAT, I MEAN, THERE ARE CERTAINLY LOTS OF FACTS THAT WE HAVE ALLEGED IN OUR MOTION, THAT WERE NOT PRESENTED, THAT HAVE TO DO WITH --

THERE WERE AN ADDITIONAL AND WHAT WERE THESE ADDITIONAL CIRCUMSTANCES?

OTHER THAN THOSE I HAVE ALREADY NAMED AT THE BEGINNING, MR. PARKER HAD, WELL, HE HAD A PRIMARY READING DISABILITY AND FACED FRUSTRATION AND SHAME OVER THE FACT THAT HE COULD ONLY READ, THAT HE WAS IN THE NINTH GRADE AND HE COULD ONLY READ AT A FOURTH-GRADE LEVEL. THAT DOCTORS SUSPECTED ADD THAT HE SUFFERED FROM CHILDHOOD SCHIZOPHRENIA OR AUTISM, WHEN AT THE AGE OF 8 HE STOPPED TALKING ENTIRELY, A THAT HE SUFFERED FROM HEAD INJURIES AND PHYSICAL TRAUMA AS A CHILD, THAT WHEN HE FIRST ENTERED THE JUVENILE JUSTICE SYSTEM, HE WAS SHOWING ACUTE SIGNS OF MENTAL DISTRESS.

THESE WERE ALL ALLEGED THAT WERE NOT PRESENTED AT THE ORIGINAL PENALTY PHASE.

YES.

HOW ABOUT YOUR OTHERS, AS TO THE GUILT PHASE, INEFFECTIVENESS CLAIM?

MR. PARKER IS CONTENDING THAT TRIAL COUNSEL WAS INEFFECTIVE AT THE GUILT PHASE, TO FAILING TO PRESENT, DISCOVER AND PRESENT EVIDENCE RELATING TO THE IDENT OF THE FATAL BULLET, WHICH -- THE IDENTITY OF THE FATAL BULLET, WHICH THE COURT KNOWS WAS THE MAJOR ISSUE IN THE GUILT PHASE PORTION OF THE TRIAL AND ALSO BECAME A MAJOR ISSUE IN THE PENALTY PHASE AS WELL.

YOU SEEM TO BE SAYING IN CONNECTION WITH THE GUILT PHASE HAD, THAT THERE HAS BEEN TAMPERING WITH THE EVIDENCE. I MEAN, LET'S NOT MINCE WORDS ABOUT THAT IS PRIMARILY WHAT YOU ARE ARGUING, AND HOW WOULD THE EXPERTS, THE PHOTOGRAPHIC AND THE TOOL MARK, WHAT ROLE WOULD THEY HAVE PLAYED IN CONNECTION WITH THAT TYPE OF ALLEGATION?

WELL, IN A NUTSHELL, IT WOULD HAVE REBUTTED THE STATE'S EXPERTS. IN THE GUILT PHASE, THE STATE PRESENTED THE TESTIMONY OF EXAMINER GARLAND, WHO ALTHOUGH HE IS NOT QUALIFIED AS AN EXPERT ESSENTIALLY TESTIFIED AS ONE, TESTIFYING THAT THE BULLET APPEARED TO BE THE SAME. TRIAL COUNSEL HAD NO EXPERT AND PRESENTED NO EXPERT TESTIMONY.

HAVE YOU ALLEGED THAT YOU HAVE CONSULTED AN EXPERT NOW, AND THAT HIS, THAT THE EXPERT THAT YOU HAVE CONSULTED WOULD THOROUGHLY IMPEACH THE STATE'S EVIDENCE ABOUT THIS, OR CONTRADICT THE STATE'S EVIDENCE, OR WHAT HAVE YOU ALLEGED IN TERMS OF THIS CLAIM, THAT IF COUNSEL HAD DONE THIS, THAT, YOU KNOW, WHAT WOULD HAVE BEEN THE OUTCOME?

WE ALLEGE THAT WE CAN PRESENT EXPERT TESTIMONY THAT, BASICALLY, I WOULD THINK IN A NUTSHELL DISAGREES WITH THE FINDINGS OF THE STATE, THE STATE EXPERTS.

WHAT DOES YOUR PETITION ALLEGE THAT YOU HAVE NOW, WITH FURTHER INVESTIGATION AND CONSULTING WITH EXPERTS, THAT YOU HAVE COME UP WITH THAT IS SO SIGNIFICANT?

WELL, THE ALLEGATION IN THE PETITION IS, ESSENTIALLY SAYS THAT TRIAL COUNSEL FAILED TO PRESENT EXPERT TESTIMONY THAT WOULD HAVE CALLED, THAT WOULD HAVE REBUTTED THE, THE STATE'S EXPERTS BASICALLY BASED THEIR OPINION UPON A PHYSICAL EXAMINATION OF THE BULLET AND THAT THE MARKS ON THE FIRST BULLET WERE SIMILAR TO THE MARKS ON THE BULLET SHOWN IN THE PHOTO, SHOWING THE BULLET IN A SACRUM OF THE VICTIM, SO THAT MAY NOT HAVE ANSWERED YOUR QUESTION.

WELL, IT SEEMS TO ME THAT YOU WOULD HAVE AN OBLIGATION IN YOUR PETITION, TO BE PRETTY SPECIFIC WITH REFERENCE TO AN ALLEGATION THAT THERE IS EVIDENCE THAT THE LAWYER COULD HAVE COME UP WITH AND THAT YOU HAVE NOW COME UP WITH, THAT WOULD HAVE MADE A SERIOUS IMPACT IN THIS CASE, IF IT HAD BEEN PRESENTED, BUT THAT, AND SO I, IF I AM HEARING YOU CORRECTLY, YOU HAVE NOT BEEN ABLE TO ALLEGE THAT IN THIS PETITION, IS THAT CORRECT?

IT HAS NOT BEEN ALLEGED IN THAT SPECIFICITY.

I APPRECIATE YOUR CANDOR.

BUT I WOULD POINT OUT THAT THERE ARE OTHER ALLEGATION THAT IS ARE RELATED TO THE IDENTIFICATION.

LET ME ASK YOU, WITH THE BULLET, THERE IS, IF THE, IF THE VICTIM HAD BEEN SHOT BY A POLICE, SOMEONE ASSOCIATED WITH THE POLICE IN THE COURSE OF THE DEFENDANT RUNNING FROM THE SCENE, THAT WOULD BE, WOULDN'T THAT BE FELONY MURDER?

I BELIEVE IT WOULD BE FELONY MURDER OF THE SECOND-DEGREE, IF --

WHAT, WHERE DOES THIS SECOND-DEGREE COME IN HERE?

THE STATUTE 782.04 SUBSECTION 3, I BELIEVE, IF THE PERSON SHOT WAS NOT ONE OF THE PERPETRATORS OF THE FELONY, THEN IT FALLS UNDER THE CATEGORY OF SECOND-DEGREE MURDER. SO --

BUT DOESN'T THIS, DOESN'T THIS WHOLE IDEA OF THE BULLET, DON'T YOU ALSO ALLEGE THIS HAS TO DO WITH THE PUBLIC RECORDS ISSUE? COULD YOU EXPOUND ON THAT? BECAUSE IT SEEMS TO ME THAT, AS I READ YOUR BRIEF, A PART OF YOUR ARGUMENT IS THAT THESE OFFICERS WHOM YOU ALLEGE, AS JUSTICE LEWIS SAID, TAMPERED WITH EVIDENCE OR, HAVE NOW BEEN UNDER INVESTIGATION FOR DOING THAT KIND OF ACTIVITY IN OTHER CASES, AND SO HOW DOES THAT RELATE TO YOUR ISSUE ABOUT THE FAILURE TO PROVIDE PUBLIC RECORDS ON SOME OF THESE POLICE OFFICERS?

WELL, AS YOUR HONOR INDICATED, WE FILED PUBLIC RECORDS REQUESTS, WHEN WE DISCOVERED THAT SEVERAL OF THE OFFICERS INVOLVED IN MR. PARKER'S CASE, HAD ALLEGATIONS RAISED AGAINST THEM, AND QUITE A FEW MURDER CASES IN BROWARD COUNTY. THERE WAS HUGE AMOUNTS OF PUBLICITY AND UP IN REPORTS, AND -- AND UP IN REPORTS -- AND NEWSPAPERER REPORTS, AND WITH THE OBLIGATION FOR PUBLIC RECORDS INFORMATION REQUESTED AND THOSE ALLEGATION INS THOSE CASES AND WHICH THE TRIAL COURT DENIED.

DIDN'T YOU ISSUE A BLANKET REQUEST AS TO EVERY OFFICER IN THE DEPARTMENT, BASICALLY, OR IN THE HOMICIDE DIVISION, AND THEN TWO SPECIFIC ONES, AND THE COURT GRANTED YOU AS TO THE TWO SPECIFIC ONES?

WE DID A, IT WASN'T A BLANKET REQUEST. IT WAS A REQUEST FOR INFORMATION, INTERNAL AFFAIRS RECORDS, PERSONNEL FILE RECORDS OF ALL OF THE OFFICERS THAT WE COULD DETERMINE WERE INVOLVED IN THE INVESTIGATION OF MR. PARKER'S CASE. WE WEREN'T ASKING FOR INFORMATION ON ALL OF THE OFFICERS IN THE WHOLE DEPARTMENT.

CHIEF JUSTICE: THE MARSHAL HAS TURNED ON THE CAUTION LIGHT, THAT YOU ARE INTO YOUR REBUTTAL TYPE, SO MAKE A JUDGMENT ABOUT WHETHER YOU WANT TO RESERVE THE REST OF YOUR TIME.

I WILL RESERVE THE REST OF MY TIME.

THANK YOU VERY MUCH.

THANK YOU.

> GOOD MORNING AGAIN.

GOOD MORNING AGAIN. MAY IT PLEASE THE COURT. LESLIE CAMPBELL WITH THE ATTORNEY GENERALS OFFICE ON BEHALF OF THE STATE OF FLORIDA. JUST JUST TO START WITH THE PUBLIC RECORDS, THERE WAS A PUBLIC RECORDS HEARING, AND WHAT COUNSEL HAD REQUESTED WAS THAT CERTAIN IA FILES, INTERNAL AFFAIRS FILES, BE TURNED OVER, BUT IT WAS BASED ON A

NEWS ARTICLE, AND IT WAS SPECIFIC TO DETECTIVE WILEY AND DETECTIVE CHEF OR SERGEANT CHEF, I THINK, AT THE TIME, AND THOSE WERE GRANTED. THOSE REQUESTS WERE GRANTED.

THE REQUEST DID NOT ASK FOR INTERNAL AFFAIRS RECORDS ON OTHER OFFICERS THAT THEY ALLEGED WERE A PART OF THE INVESTIGATIVE TEAM?

YES. IT DID ASK FOR OTHER OFFICERS. HOWEVER, WHAT COUNSEL WAS TALKING ABOUT AT THE TIME, WAS THAT IT WAS BASED ON THESE NEWS ARTICLES. THAT IS WHY HE NEEDED THESE ADDITIONAL RECORDS.

AND THESE OTHER OFFICERS WERE NOT A PART OF THE INVESTIGATION?

I THOUGHT -- INVESTIGATION? I THOUGHT THERE WAS MORE THAN TWO OFFICERS WHO WERE INVOLVED IN THIS INVESTIGATION AND WHO WERE INVOLVED IN THE ALLEGED INTERNAL AFFAIRS INVESTIGATION.

THERE WERE OTHER OFFICERS INVOLVED IN THE INVESTIGATION, YES, BUT WHAT WAS THE BASIS FOR THE REQUEST WAS A NEWS ARTICLE THAT HAD COME OUT RECENTLY, WITH REGARD TO AN INVESTIGATION OF THE HOMICIDE UNIT, AND THAT WAS SPECIFIC FOR SERGEANT CHEF AND DETECTIVE WILEY, AND THE COURT DID GIVE THEM, DID GIVE THE DEFENSE THOSE RECORDS, AND THE DEFENSE TO DATE, HAS YET TO USE THOSE RECORDS IN THIS PROCEEDING.

HOW DID THIS REQUEST EXPAND, THEN, TO OTHER UNNAMED OFFICERS? HOW WERE THEY DESIGNATED IN THIS REQUEST FOR PUBLIC RECORDS OR FOCUSED ON? IN OTHER WORDS WERE THEY ALLEGED TO BE ANY OTHER OFFICERS THAT WERE PART OF THIS INVESTIGATION?

THERE WERE OFFICERS THAT WERE INVOLVED. HOWEVER, THE BSO ATTORNEY DID COME IN AND SAID THAT HE HAD GIVEN OVER ALL OF THIS INFORMATION, AS MUCH AS WAS REQUIRED, AND THAT ANYTHING OVER THAT, WAS OVERLY BURDENSOME AND THE COURT AGREED, BUT SAID THAT WITH THIS NEW INFORMATION ON THOSE OTHER TWO OFFICERS, THAT ADDITIONAL INFORMATION SHOULD BE TURNED OVER AND THAT YOU KNOW, IT WAS GRANTED. WITH REGARD TO THE INEFFECTIVE ASSISTANCE OF THE GUILT PHASE --

BEFORE YOU MOVE FROM THAT, WHAT WAS THE TRIAL JUDGE'S RULING? ON THESE OTHER OFFICERS. WHAT DID THE TRIAL JUDGE, WE KNOW THAT THERE WERE OTHER OFFICERS, OTHER THAN THESE TWO INVOLVED IN THIS INVESTIGATION. AND WE KNOW THAT ONLY THOSE TWO WERE TURNED OVER, CORRECT?

YES. WELL --

SO WHAT DOES THE SECOND TRIAL JUDGE SAY ABOUT THE OTHER OFFICERS AND WHY THEY WERE NOT ENTITLED TO THE INFORMATION ON THE OTHER OFFICERS?

THAT THEY HAD, THE DEFENSE HAD ALREADY RECEIVED THAT, AND ANYTHING WAS OVERLY BURDENSOME, AND THAT THERE WAS NOTHING THAT WAS SHOWN THAT COULD COME OUT OF THAT INFORMATION. THERE WAS NOTHING THAT WOULD HAVE LED TO ANY RELEVANT INFORMATION.

STOP THE PART, YOU SAY THAT THE DEFENSE HAD ALREADY BEEN PROVIDED THOSE RECORDS?

THAT IS WHAT THE BSO COUNSEL SAID, THAT HE HAD GIVEN, I THINK IT WAS 19,000 PAGES' WORTH OF INFORMATION, IF I REMEMBER THE NUMBER CORRECTLY.

FROM THE PERSONNEL FILES OF --

FROM THE INVESTIGATION, FROM THE PRIOR REQUESTS, FROM THE PRIOR PUBLIC RECORDS REQUEST.

SO THE TRIAL COURT, THEN, ASKED DEFENSE COUNSEL, TO COME UP WITH A REASON.

TO COME UP WITH SOME BASIS.

AS TO WHY IT SHOULD BE EXPANDED TO ADDITIONAL RECORDS?

THAT'S CORRECT, AND THE ADDITIONAL BASIS APPEARED TO BE THIS NEWS ARTICLE THAT SPECIFICALLY NAMED TWO OFFICERS, AND THE COURT GAVE THE ADDITIONAL INFORMATION ON THOSE TWO OFFICERS. WITH REGARD TO THE GUILT PHASE, THE ORIGIN OF THE BULLET, THE COLOR OF THE PHOTOGRAPH OF THAT BULLET, WHETHER THERE WAS A CUT OR NOT, WAS THOROUGHLY INVESTIGATED AND DELVED INTO AT TRIAL. THERE HAS BEEN NO --

THE COUNSEL SAID THAT HE HAD NO EXPERTS THAT, THE ATTORNEY WHO TRIED THIS CASE JUST USED CROSS-EXAMINATION AND DID NOT USE THE SERVICES WITH REGARD TO A PHOTOGRAPHIC EXPERT, FOR THE CHANGES IN COLOR, APPARENTLY, WITH THE, WITH THE PROJECTILE, APPARENTLY, THAT IT CHANGED COLORS FROM THE DEPOSITION TESTIMONY TO THE SLIDE. THAT KIND OF THING. I MEAN, THEY JUST DID NOT USE EXPERTS, CORRECT? HE RELIED UPON CROSS-EXAMINATION.

HE RELIED UPON CROSS-EXAMINATION. THAT CROSS-EXAMINATION WAS VERY THOROUGH. IT WENT INTO THE COLORS THAT ARE USED IN ORDER TO DEVELOP A COLOR PHOTO, MADGEENT AND, WHETHER THERE IS TOO MUCH MAGENTA IN THE PHOTO OR NOT. IN ADDITION TO THAT, THE MEDICAL EXAMINER HAD MADE CERTAIN STATEMENTS IN HIS ORIGINAL REPORT, AS FAR AS THE COLOR OF THE BULLET. HOWEVER, HE HAD CORRECTED THAT AND EXPLAINED HOW HE HAD MADE THE ERROR. IN ADDITION, THERE WAS A DETECTIVE WHO WAS AT THE AUTOPSY, AND THE BULLET, THERE WAS NO QUESTION THE OFFICER SAID THAT IS THE BULLET THAT WAS REMOVED AND THAT IS THE BULLET THAT WAS PUT INTO THE ENVELOPE, AND THERE IS NO PROBLEM WITH THE CHAIN OF CUSTODY.

BUT THAT WAS THE DEFENSE. I MEAN, THE DEFENSE AT TRIAL, WAS, AS FAR AS GUILT, WAS THIS SILVER BULLET THEORY, CORRECT? SO THE QUESTION, BECAUSE WE ARE HERE ON A SUMMARY DENIAL AND WE HAVEN'T SEEN TOO MANY OF THOSE IN THE LAST FEW YEARS, THANKFULLY.

THIS IS A OLD RULE CASE, YOUR HONOR.

IS THAT HOW DO WE ASSESS THE QUALITATIVE EFFECT OF WHATEVER THEY MIGHT PRESENT AT AN EVIDENTIARY HEARING, IF WE HAVEN'T, IF A JUDGE HASN'T BEEN ABLE TO EVALUATE WHAT THERE IS FIRST? I MEAN, WE ARE JUST, SO WE ARE SAYING, WELL, I THINK YOUR ARGUMENT IS THE SAME THING WITH THE PENALTY PHASE, IS IT IS JUST CUMULATIVE, BUT ORDINARILY, MOST OF THOSE CASES, THEY ARE TALKING ABOUT EVEN CUMULATIVE IN THE PENALTY PHASE, RELY ON WHAT HAS HAPPENED IN ADD EVIDENTIARY HEARING, TO -- WHAT HAS HAPPENED IN AN EVIDENTIARY HEARING TO SAY THIS IS WHAT WAS PRESENTED, IT IS NOT QUALITATIVELY PRESENTED, AND WE ARE NOT ABLE TO SEE, BASED ON WHAT IS OR WHAT ISN'T, BASED UPON WHO TESTIFIES AND WHAT THEY HAVE TO SAY.

YOUR HONOR, GIVEN THAT THIS IS AN OLD RULE CASE, THE TRIAL JUDGE HAD TO LOOK AT THE ALLEGATIONS PRESENTED IN THE 3.8150 MOTION, AND THE ALLEGATIONS SAY THAT DEFENSE COUNSEL SHOULD HAVE HIRED AN EXPERT, BUT NOT A NEW EXPERT OR WHAT ANYONE ELSE COULD CONSIDER.

YOU ARE SAYING AS TO -- COULD COUNTER.

YOU ARE SAYING AS TO THE GUILT PHASE, IF IT IS LEGALLY, JUST SAYING YOU COULD HAVE HIRED AN EXPERT IS NOT ENOUGH.

ESPECIALLY IN THIS CASE, AND I HAVEN'T FOUND A CASE THAT SAYS DEFENSE COUNSEL MUST HIRE AN EXPERT. EVERYTHING THAT WAS TESTIFIED TO AS REGARD TO A COLOR OF A PHOTOGRAPH OR A COLOR OF A METAL OBJECT, CERTAINLY IS WITHIN THE REALM OF ANY ORDINARY CITIZEN SITTING ON THE JURY. THEY CAN EASILY TAKE A LOOK AT A PHOTOGRAPH AND SAY THIS LOOKS LIKE IT HAS BEEN OVEREXPOSED. EVERYONE HAS TAKEN SOME SORT OF PHOTOGRAPH, AND --

THERE IS NO ALLEGATION HERE THAT WE HAVE HIRED SUCH AN EXPERT NOW.

THAT'S CORRECT, YOUR HONOR.

AND THAT EXPERT WOULD SAY SO-AND-SO, WHICH WOULD REALLY BE DAMAGING TO THE STATE'S CASE AND SUPPORTIVE OF THE DEFENSE.

THAT'S CORRECT. AND THE SAME WOULD GO WITH A TOOL MAKING EXPERT. WITH REGARD TO THE PENALTY PHASE, IF THERE AREN'T ANY OTHER QUESTIONS ON THE GUILT PHASE, WHAT WAS TESTIFIED TO AT THE PENALTY PHASE AT TRIAL, YES, THEY HAD TWO PUBLIC DEFENDER INVESTIGATORS, AND THEY HAD SPOKEN TO SEVERAL FAMILY MEMBERS AND LOOKED AT CERTAIN RECORDS. DR. CADDY HAD ALSO SPOKEN TO THE DEFENDANT, AND HIS MOTHER, AND --

WERE THERE ANY FAMILY MEMBERS OR CLOSE FAMILY FRIENDS OR WHAT YOU WOULD SAY SORT OF REAL WITNESSES, THAT ACTUAL OBSERVED THE DEFENDANT IN HIS EARLY CHILDHOOD?

THE DEFENDANT'S MOTHER TESTIFIED.

THE MOTHER TESTIFIED. ANY OTHERS?

YES, SIR. THE "DEFENDANT TESTIFIED, WHICH WOULD HAVE -- THE CODEFENDANT TESTIFIED, WHICH WOULD HAVE GONE TO ANY ACTIONS AT THE TIME OF THE CRIME.

THIS IS ONE THAT TROUBLES ME. I SEE YOUR POINT ON THE GUILT PHASE, BUT THE ALLEGATIONS IN THIS 72-PAGE AMENDED MOTION, ARE PRETTY SPECIFIC ABOUT WHAT FACTS THEY FEEL THEY CAN ESTABLISH, SUCH AS MENTAL ILLNESS, ORGANIC BRAIN DAMAGE, BORDERLINE RETARDED AT AGE 14, HEAD INJURIES, THAT HE YOU KNOW, THAT HIS, THAT HE WAS BEAT WITH AN ELECTRIC CORD AND POURED HOT WATER ON HIM. PARTICULARLY, IN A SITUATION WHERE NOT ONLY DOES THE TRIAL COURT FIND NO STATUTORY OR NONSTATUTORY MITIGATION, BUT THIS COURT AFFIRMED, SAYING THERE WAS NO EVIDENCE TO SUPPORT STATUTORY OR NONSTATUTORY MITIGATION, SO HOW IN THE WORLD, IF ANY OF THESE THINGS ARE IN FACT TRUE, COULD, THEY WOULD CONSTITUTE MITIGATING EVIDENCE, AND YET IT IS NOT IN THE RECORD AS A MITIGATOR, SO HOW DO WE NOT SEND THIS BACK, AT LEAST FOR THE ADD EVIDENTIARY HEARING ON THE PENALTY PHASE, GIVEN -- AT LEAST FOR AN EVIDENTIARY HEARING ON THE PENALTY PHASE, GIVEN ALL OUR CASE LAW, UNLESS IT IS REFUTED CONCLUSIVELY BY THE RECORD?

OF THE LIST YOU HAVE JUST GIVEN, YOUR HONOR, I BELIEVE THAT, IF YOU LOOK AT THE TESTIMONY THAT WAS GIVEN AT THE TRIAL, YOU WILL FIND THAT MOST IF NOT ALL, ARE REFUTED FROM THE RECORD. FOR EXAMPLE, WHETHER OR NOT HE IS BORDERLINE MENTAL RETARDATION. WELL, THERE WAS TESTIMONY WITH REGARD TO HIS FACT THAT HE WAS IN SPECIAL EDUCATION. HE HAD BELOW AVERAGE INTELLIGENCE.

WHO TESTIFIED TO THAT?

DR. CADDY TESTIFIED TO THAT.

HOW, THEN, DID THE COURT, HOW DID A COURT REJECT, DID THE STATE HAVE AN EXPERT TO TESTIFY THAT HE WASN'T MENTALLY RETARDED, BORDERLINE MENTALLY RETARDED?

NO. THE STATE DID NOT PUT ON AN EXPERT. HOWEVER --

HOW COULD THE TRIAL COURT HAVE NOT FOUND THAT AS A MITIGATOR, AND HOW ON APPEAL, COULD WE HAVE SAID THERE WAS NO EVIDENCE TO SUPPORT THE MITIGATION, UNLESS WE THOUGHT IT WAS YOU KNOW, SO WEAK THAT IT DIDN'T CONSTITUTE MITIGATION?

WELL, THEN, I THINK THE COURT IS TALKING ABOUT WHETHER OR NOT IN A QUALITATIVE VERSUS QUANTITATIVE, WAS THE QUALITY SUFFICIENT? DID IT RISE TO THE LEVEL OF MITIGATION? YOU KNOW, THE TRIAL COURT SAID --

ISN'T THAT, THOUGH, WHAT AN EVIDENTIARY HEARING TAKES CARE OF, THAT IS THAT IF YOU WERE MAKING THESE SAME ARGUMENTS AND THERE HAD BEEN AN EVIDENTIARY HEARING, AND THE TRIAL COURT HAD CONCLUDED, AFTER EXAMINING WHAT HAD BEEN PRESENTED BEFORE AND NOW EXAMINING WHAT, AND CONCLUDED HEY, YOU ARE JUST TALKING ABOUT THE SAME THINGS YOU KNOW, THAT WERE PRESENTED BEFORE, AND THESE THINGS ARE NO MORE CONVINCING THAN THEY WERE YOU KNOW, WHEN THEY, BUT WITHOUT THAT SORT OF PROTECTIVE LAYER OF THE EVIDENTIARY HEARING, CAN WE REALLY ENGAGE IN THIS KIND OF AN ANALYSIS AND IN ANY WAY COME OUT ACCURATELY, WITHOUT THEIR HAVING BEEN AN EVIDENTIARY HEARING?

IT CERTAINLY WOULD MAKE THE STATE'S ARGUMENT EASIER IF THERE HAD BEEN AN EVIDENTIARY HEARING. HOWEVER, GIVEN THE FACT THAT MUCH HAS BEEN BROUGHT OUT, AND IF YOU TAKE A LOOK AT THE ALLEGATIONS, MENTAL ILLNESS, IT WAS SOME MENTAL ILLNESS THAT WAS DISCUSSED AT TRIAL.

LET ME ON THAT PART, YOU HAD DR. CADDY AT THE PENALTY PHASE.

THAT'S CORRECT.

BUT DIDN'T DR. CADDY SPECIFICALLY STATE HE DID NOT DO A DIAGNOSTIC WORKUP OF THIS DEFENDANT?

HE DID NOT DO THE TESTING. THAT'S CORRECT.

SO WE GET BACK TO THE WHOLE IDEA THAT EVERYTHING DR. CADDY TESTIFIED TO, WAS REALLY JUST A REGURGITATION OF WHAT THE DEFENDANT HAD TOLD HIM OR THE MOTHER. HE DID SPEND 25 MINUTES, I BELIEVER THE RECORD INDICATES -- I BELIEVE THE RECORD INDICATES, WITH THE MOTHER, SO WHAT WE HAVE IS THE DOCTOR REALLY REGURGITATING WHAT THE DEFENDANT SAID, WITHOUT ANY INDEPENDENT EXAMINATION OF HIS OWN.

WE HAVE THE DOCTOR. WE HAVE THE DOCTOR MAKING AN EVALUATION BASED ON WHAT THE DEFENDANT TOLD HIM, WHAT THE MOTHER TOLD HIM, AND THE DEPOSITION AND POLICE REPORT.

HAD NO, AND IT IS CLEAR, ALSO, FROM THIS RECORD, THAT HE HAD NO MEDICAL REPORTS. HE HAD NO SCHOOL REPORTS. HE HAD NO CORRECTIONS REPORTS ON THIS DEFENDANT, CORRECT?

THE RECORD DOES NOT SAY THAT HE REVIEWED THOSE. THAT IS WHAT THE RECORD SAYS.

AND SO THE, WHEN, WHAT IT IS SAYING THAT THE DEFENDANT, THAT DR. CADDY TESTIFIED THE DEFENDANT WAS IN AND OUT OF HRS CUSTODY AND THAT HE HAD BEEN BEATEN WHILE LIVING

IN FOSTER HOMES AND HE ATTENDED 12-TO-15 DIFFERENT SCHOOLS, HIS HOME AND SCHOOL LIFE WAS UNSTABLE, THOSE WERE ALL THAT HE HAD SERIOUS TROUBLES IN SCHOOL, THAT IS ALL FROM EITHER THE DEFENDANT OR THE MOTHER.

THAT'S CORRECT.

AND I WOULD IMAGINE IN CLOSING ARGUMENT, A GOOD ASSISTANT STATE ATTORNEY WOULD HAVE SAID WHAT WE ALWAYS HEAR, WHICH IS THAT WHAT ELSE DO YOU THINK THE MOTHER IS GOING TO SAY AND WHAT ELSE DO YOU THINK THAT THE DEFENDANT IS GOING TO TELL THEM? WHAT WHERE IS THE REAL -- WHERE IS THE REAL EVIDENCE OF THIS?

BUT YOU HAVE THE INVESTIGATOR ALSO TESTIFYING TO WHAT THE SISTERS AND BROTHERS AND OTHER PEOPLE TESTIFIED TO, AND THEY ARE IN ESSENCE, BY PUTTING ON AN INVESTIGATOR, YOU ARE PROTECTING THAT OTHER INFORMATION FROM ADDITIONAL ALLEGATIONS.

THAT MAY HAVE BEEN THE STRATEGY REASON THAT COUNSEL DID IT, BUT IF YOU ASK ME, IF I AM SITING ON A JURY AND I HEAR AN INVESTIGATOR FROM THE DEFENDANT'S ATTORNEY'S OFFICE, TELLING ME THIS, I KIND OF JUST DON'T EVEN LISTEN. TO ME, THAT IS THE WEAKEST FORM OF TESTIMONY I COULD EVER IMAGINE ON MITIGATION, AND YES THIS WOULD BE GREAT KNOWING ABOUT IT IF THERE WAS GOING TO AND EVIDENTIARY HEARING, IF THERE WAS GOING TO BE ALL OF THIS STUFF THAT WAS NEGATIVE AND THEY AVOIDED IT, SO IT BECAME A GREAT STRATEGY DECISION BUT WE DON'T KNOW. THAT.

BASED ON THE ARGUMENTS THAT WERE GIVEN TO THE TRIAL COURT IN THE 3.851 MOTION, REALLY THERE ARE TWO THAT ARE REALLY NOT DIRECTLY REFUTED FROM THE RECORD, AND I WOULD SUBMIT THAT THOSE ARE LEGALLY INSUFFICIENT. SOME SORT OF MENTAL ILLNESS NOT SPECIFIED, AND ALSO THAT THERE IS POSSIBLE ORGANIC BRAIN DAMAGE. CERTAINLY POSSIBLE DOES NOT RISE TO THE LEVEL OF AN ALLEGATION SUFFICIENT TO SHOW A NEED FOR AN EVIDENTIARY HEARING.

IF HE IS BORDER LINE, THE ALLEGATION IS THAT HE IS BORDERLINE MENTALLY RETARDED AND AT 14 HAD HE A MENTAL AGE OF 7. I GUESS NOW IT COULD COME INTO A POST ATKINS CASE, BUT THAT SOUNDS PRETTY CLOSE TO MENTAL RETARDATION, WHICH COULD BE PRETTY POWERFUL MITIGATION.

AND ALSO THE EVIDENCE AT THE PENALTY PHASE --

FROM WHOM?

SERIOUS PROBLEMS AT SCHOOL.

WE HAVE THIS FROM THE INVESTIGATOR AND FROM DR. CADDY. SERIOUS PROBLEMS IN SCHOOL. DIDN'T DO WELL SCHOLASTICLY.

DR. CADDY DIDN'T EVEN DO HIS OWN INDEPENDENT TESTING OF THE DEFENDANT.

THAT'S CORRECT.

AND THEN THE INVESTIGATOR, AGAIN, I MEAN, GENTLEMEN, YOU CAN PUT HEARSAY IN -- I MEAN, AGAIN, YOU CAN PUT HEARSAY IN BUT IT IS HEARSAY UPON HEARSAY, AND IT MUST HAVE BEEN THE ONLY POSSIBLE REASON, THAT THE TRIAL COURT FOUND THAT THERE WAS NO MITIGATING EVIDENCE, BECAUSE THIS IS CLASSIC MITIGATION EVIDENCE.

THE TRIAL COURT DIDN'T SAY THAT IT DIDN'T FIND IT BASED ON THE FACT THAT ONLY INVESTIGATORS TESTIFIED OR THAT IT CAME FROM --

BUT HOW CAN THIS TYPE OF EVIDENCE UNREFUTED, BE NOT MITIGATING? UNLESS IT WAS SO WEAK AS TO BE ESSENTIALLY NOT WORTHY OF ANY BELIEF?

ALTHOUGH IF YOU LOOK AT IT FROM THE STANDPOINT THAT THIS POSSIBLE MENTAL ILLNESS THAT IS TALKED ABOUT NOW, OR THIS POSSIBLE CHILDHOOD SCHIZOPHRENIA OR POSSIBLE AUTISM AT THE AGE OF EIGHT, YOU ARE TALKING YOU KNOW, ALMOST 20 YEARS BEFORE THE ACTUAL CRIME. THE ACTUAL CRIME TAKES PLACE AND HE IS TALKING TO THE WITNESSES IN THE PIZZA HUT. HE IS INTERACTING WITH FAMILY AND FRIENDS. IS HE MARRIED. HE HAS TWO CHILDREN. SO THE QUESTION IS, THEN, SHOULDN'T THE TRIAL COURT HAVE BEEN ALLOWED TO TAKE A LOOK AT THE TOTAL PICTURE, THE CRIME, THE DEFENDANT'S LIFE, AND SAY WHETHER OR NOT WHAT WAS PUT ON WAS MITIGATION?

ISN'T WHAT YOU ARE DOING REALLY SAYING IF, AFTER AN EVIDENTIARY HEARING, THE TRIAL COURT MADE AN ASSESSMENT LIKE THAT, THEN THAT WOULD BE A GOOD REASON FOR UPHOLDING THE TRIAL COURT'S DECISION TO DENY --

IT CERTAINLY WOULD BE.

BUT -- BUT WE JUST DON'T HAVE THAT CONTEXT.

WE HAVE SIMILAR TESTIMONY AT TRIAL, AND WE HAVE THE COURT COMING AND YOU KNOW, MAKING THE DETERMINATION THAT THIS COURT HAS CONSIDERED ALL OF THE EVIDENCE PRESENTED AT THE SENTENCING HEARING, ALONG WITH THE CIRCUMSTANCE OF THE OFFENSE, AND FINDS NOTHING IN THE DEFENDANT'S CHARACTER OR RECORD TO BE IN MITIGATION. SO HE HAS LOOKED AT ALL OF THIS STUFF AND IS SAYING THAT IT IS NOT IN MITIGATION.

HAVE WE EVER HAD A CASE WHERE, IF SOMEBODY HAD ONE OF THESE CHILD HOODS, LIKE THIS PERSON APPARENTLY MUST HAVE HAD, AT LEAST IT IS ALLEGED, WHERE FROM, HE WAS IN MULTIPLE FOSTER HOMES. HE WAS IN AND OUT. HE WAS, YOU KNOW, BARELY FINISHED SCHOOL OR WHEREVER HE WENT TO, AND HE IS IN HIS 20s NOW, HIS LATE 20S?

AT THE TIME OF THE CRIME?

NOT 100 OR 75 YEARS OR 100 YEARS OLD, THAT THAT ISN'T THE TYPE OF CLASSIC THING THAT WE SAY IS MITIGATION, NOT THAT IT IS STATUTORY MITIGATION BUT IT IS NONSTATUTORY MITIGATION?

OF LATE, THE COURT HAS RECOGNIZED IT AS --

THIS TRIAL WASN'T --

THIS TRIAL WAS IN THE LATE '80s, EARLY '90s. WITH REGARD TO THE FOSTER HOMES, SUCH THINGS WERE, AT TRIAL, MALL TREATMENT, BEATEN IN THE -- MAL TREATMENT, BEAT THEN THE FOSTER HOME, SEXUALLY ABUSED, ALL OF THAT WAS PRESENTED TO THE TRIAL COURT. THE FACT THAT HIS EARLY LIFE WAS DYSFUNCTIONAL WAS PRESENTED TO THE TRIAL COURT THAT, THE DEFENDANT FELT ABANDONED, THAT RELATIVES WOULD TAKE IN HIS SISTER BUT THEY WOULD HAVE THE DEFENDANT SENT TO HRS, WHERE HE ENDED UP BEING IN SEVERAL DIFFERENT FOSTER HOMES, WHERE AGAIN HE WAS BEATEN AND SEXUALLY ABUSED. ALL OF THIS STUFF WAS BEFORE THE TRIAL COURT, AND I THINK IF YOU TAKE A LOOK AT THE ALLEGATIONS, IT DID APPEAR, IT DOES APPEAR CUMULATIVE, IT IS CUMULATIVE, AND THAT IS THE ASSESSMENT THAT THE TRIAL COURT WAS MAKING ON THE 3.850. IF THE COURT DOESN'T HAVE ANY OTHER QUESTIONS, I WOULD RELY ON THE BRIEF AND ASK THE COURT TO AFFIRM THE SUMMARY DENIAL.

THANK YOU VERY MUCH.

THANK YOU.

CHIEF JUSTICE: MR. MARSHAL, HOW MUCH TIME LEFT? OKAY.

THANK YOU, YOUR HONOR. I WOULD LIKE TO BRIEFLY ADDRESS THE PUBLIC RECORDS ISSUE AND MAKE THE POINT THAT, BECAUSE COUNSEL MENTIONED THAT, WITH REGARD TO THE SHERIFFS OFFICE, THAT THE SHERIFF REPRESENTED FROM THE SHERIFF -- A REPRESENTATIVE FROM THE SHERIFF CAME IN AT THE PUBLIC RECORDS HEARING AND INDICATED THAT THEY HAD PROVIDED ALL OF THE RECORDS REQUESTED. WELL, THAT WERE REQUESTED IN OUR INITIAL REQUEST, AND OF COURSE, WE ARGUED THAT THAT WAS NOT TRUE, AND THEN IT WAS SUBSEQUENT TO THAT THAT THE NEWSPAPER ARTICLES HIT AND WE MADE THE SUBSEQUENT REQUESTS, BUT IT IS INTERESTING TO NOTE THAT, AFTER WE MADE OUR SECOND REQUESTS, AND WE ARGUED THAT WE WERE ENTITLED TO THESE RECORDS, BASED UPON THESE ALLEGATIONS OF A COUPLE OF THE DETECTIVES INVOLVED IN OTHER CASES, THEN THE REPRESENTATIVE FROM THE SHERIFF SAID, OH, OKAY, WE WILL GIVE YOU THE IA FILES ON WILEY AND CHEF. WE HAD ASKED FOR THOSE INITIALLY IN OUR FIRST GROUP OF RECORDS, AND HE HAD COME IN AND SAID THAT HE HAD GIVEN THIS, GIVEN ALL OF THAT TO SUS-- TO US, SO I THINK THAT THAT IS KIND OF SIGNIFICANT, IN TERMS OF THE SHERIFFS OFFICE REPRESENTATION THAT THEY HAD GIVEN US EVERYTHING AT THE OUTSET.

WELL, WHO, WHAT OTHER RECORDS DO YOU ALLEGE SHOULD HAVE BEEN GIVEN TO YOU THAT WERE NOT GIVEN?

WELL, WE HAD REQUESTED THE RECORDS, ANY RECORDS RELATED TO THE ALLEGATIONS OF, INVOLVING THE OTHER MURDER CASES THAT INVOLVE THE TWO OFFICERS OR AT LEAST THE TWO DETECTIVES THAT WERE INVOLVED IN MR. CARPER'S CASE.

I UNDERSTAND THAT THE JUDGE SAID THAT THAT WAS OVERLY BROAD AND MAY NOT DEMONSTRATE THAT IT WAS GOING TO LEAD TO ANYTHING, BUT DID YOU ASK SPECIFICALLY FOR INTERNAL AFFAIRS RECORDS ON OTHER DETECTIVES WHO WERE INVOLVED IN THIS MURDER CASE?

YES, WE DID.

THAT YOU DID NOT RECEIVE?

WE DID NOT RECEIVE THOSE AND WE MADE THOSE REQUESTS IN OUR INITIAL REQUEST FOR PUBLIC RECORDS.

WHAT ABOUT DID YOU ASK FOR ANYTHING ON THESE SAME OFFICERS IN YOUR SUBSEQUENT REQUEST?

YES. WELL, WE RENEWED IN OUR SUBSEQUENT REQUEST, WE RENEWED ALL OF OUR ORIGINAL REQUESTS, WHICH WERE FOR INTERNAL AFFAIRS RECORDS ON ALL THE OFFICERS THAT WE KNEW OF THAT WERE INVOLVED IN SOME MANNER ON THE INVESTIGATION OF THE CASE.

YOU NAMED THOSE OFFICERS?

WE NAMED THEM, AND THEY ARE PART OF THE RECORD. I BELIEVE I SUPPLEMENTED THE RECORD.

WERE THESE OFFICERS, WERE SOME OF THESE OFFICERS ACTUALLY INVOLVED IN THIS WHOLE NEW INVESTIGATION THAT WAS GOING ON, BASED ON WITNESS TAMPERING, ET CETERA, IN OTHER CASES?

I BELIEVE JUST TWO, WILEY AND CHEF. AND WE DID GET IA RECORDS ON THOSE TWO.

SO YOU ARE SAYING NO OTHER OFFICERS WERE INVOLVED IN THIS INVESTIGATION, WERE INVOLVED IN THAT NEW INVESTIGATION THAT WAS GOING ON?

NO ONE, OTHER THAN WILEY AND CHEF. I WOULD LIKE TO GO BACK TO THE GUILT PHASE BRIEFLY, AND JUST NOTE THAT WE ARE ALLEGING INEFFECTIVE ASSISTANCE, NOT JUST WITH RESPECT TO THE FAILURE TO CALL EXPERT TESTIMONY. I MEAN, WE HAVE ALLEGED THAT TRIAL COUNSEL FAILED TO INTRODUCE THE EVIDENCE OF THE PRINT OF THE BULLET SHOWN IN THE FLESH OF THE VICTIM THAT APPEARS MORE SILVER THAN THE PRINT THAT WAS ACTUALLY INTRODUCED BY THE STATE. NOW, THE TRIAL ATTORNEY MADE, I THINK THERE WAS A DISCOVERY VIOLATION THAT WAS LITIGATED ON DIRECT APPEAL WITH RESPECT TO THAT PHOTOGRAPH, BUT THAT PHOTOGRAPH WAS NEVER ENTERED INTO EVIDENCE, AND WE CERTAINLY THINK THAT IT SHOULD HAVE BEEN, AND THAT IS ONE OF OUR ALLEGATION.

CHIEF JUSTICE: ALL RIGHT. THE TIME HAS EXPIRED ON THE ARGUMENT, SO WE THANK YOU VERY MUCH. WE THANK YOU, BOTH, VERY MUCH.

THANK YOU.