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**Samuel Jason Derrick v. State of Florida**

**SC05-1559 | SC06-1380**

NTHE NEXT CASE ON OUR CALENDAR THIS MORNING IS DERRICK VERSUS THE STATE OF FLORIDA.  
THANK YOU YOUR HONOR.

THANK YOU YOUR HONOR.

READY?

I'M HARRY BRODY FOR MR. DERRICK, JEFF HAZEN IS WITH ME, APPEALING THE DENIAL OF A 3850  
MOTION BY THE CIRCUIT COURT.

WE ARE AWARE OF THAT AND WOULD I LIKE TO GO DIRECTLY TO THE ISSUE THAT THE EVER  
WILLED O EVIDENTIARY HEARING WAS HELD ON FIRST I AASSUME WANT YOU TO TALK ABOUT  
THAT AS WELL AS SUMMARY DENIAL OF GUILTY PHASE ISSUES ON THE -- PENALTY FACE.

YES YOUR HONOR.

ARE YOU CONTENDING THAT WHAT REASONBLY EFFECTIVE COUNSEL SHOULD HAVE DONE, WAS  
EVERYTHING THAT PENALTY PHASE COUNSEL DID AT THE FIRST TRIAL, EVERYTHING THAT  
PENALTY PHASE COUNSEL -- DIFFERENT PENALTY PHASE COUNSEL DID AT THE SECOND TRIAL,  
AND EVERYTHING THAT YOU PRESENTED, AT THE EVIDENTIARY HEARING, TO DO ANYTHING LESS  
WOULD BE INEFFECTIVE ASSISTANCE OF COUNSEL?

NO, YOUR HONOR, I DON'T BELIEVE THERE ARE ANY AUTOMATIC -- MECHANISMS TO COMPLY  
WITH THE STRICKLAND STANDARD.

LET'S TAKE OUT, THEN OF THIS, THE MENTAL HEALTH EXPERT, IF THEY HAD DONE EVERYTHING  
THAT THEY DID AT THE FIRST TRIAL, DECIDED TO DO EVERYTHING THEY DID AT THE FIRST TRIAL,  
AGAIN, WOULD THAT BE EFFECTIVE SWOONS THEY HAVE HAVE BEEN EFFECTIVE!!\$\$!!!!!!!!!!!!!!!  
EFFECTIVE?

THE IMPORTANT THING THEY NEEDED TO DO NOT NECESSARILY!!\$\$!!!!!!!!!!!!!!! NECESSARILY, I -  
- I THINK THAT THEY NEEDED TO WHAT THEY NEEDED TO DO WAS TO CONSIDER WHAT THEY  
WERE DOING. THEY NEEDED TO THINK ABOUT THE CASE, THEY NEEDED TO SPEAK TO THE  
WITNESSES.

ONE CONFER QUESTION I HAVE THEN -- WHY I'M ASKING ALL THESE ZBHEESHGS YES YOUR  
HONOR NOOR IF THERE HADN'T BEEN A SECOND PENALTY PHASE AND EVERYTHING THAT WAS  
PRESENTED AT THE FIRST PENALTY PHASE WAS WHAT YOU HAD IN FRONT OF FIRST PENALTY  
PHASE COUNSEL HAS BEEN AS EFFECTIVE AS!!\$\$!!!!!!!!!!!!!!! INEFFECTIVE AS IN YOUR VIEW AS  
SECOND FINE PHASE COUNSEL.

NO.

SO YOU THINK THE FIRST PENALTY PHASE COUNSEL DID A BETTER JOB THAN THE SECOND  
PENALTY PHASE COUNSEL.

YES, I DO YOUR HONOR.

NOW I THINK THAT WHAT THIS IS, IS A CLASSIC CASE OF LOOKING AT THIS IN 20-20  
HINDSIGHT!!\$\$!!!!!!!!!!!!!!! HINDSIGHT, AND I REALLY HAVE TROUBLE WITH THE SECOND-  
GUESSING NOW WOULD I LIKE YOU TO FOCUS ON THE EXPERT TESTIMONY AND BECAUSE  
NEITHER FIRST PENALTY PHASE OR SECOND PENALTY PHASE PRESENTED A MENTAL HEALTH  
EXPERT BUT, I I'M ON THAT ONE I SEE THAT THEY CONSULT!!\$\$!!!!!!!!!!!!!!! CONSULTED WITH ONE  
INITIALLY, AND THAT LOOKING AT WHAT DR. D. HAD TO SAY, I DIDN'T FIND THAT TO BE  
PARTICULARLY COMPELLING!!\$\$!!!!!!!!!!!!!!! COMPELLING MENTAL HEALTH  
MITIGATION!!\$\$!!!!!!!!!!!!!!! MITIGATION, NOT LIKE THE YOU KNOW, PERSON THAT HAD A  
HISTORY OF MENTAL ILLNESS, AND YOU KNOW, WAS -- HAD MEN!!\$\$!!!! MENTAL RETARDATION  
GIVE ME A THIS PICTURE I KNOW WE ARE PROBABLY GOING IF YOU WANT TO CONTINUE TO TALK  
ABOUT THAT AT THIS POINT I'M HAVING A HARD TIME SEEING WHY COUNSEL WASN'T

REASONABLE, IN HER STRATEGY, AND ESPECIALLY BECAUSE IT WAS ALSO WITH THE REQUEST ALTHOUGH THAT IS NOT WASN'T DETERMINED OF MR. DERRICK AS TO HOW HE WANTED THIS PENALTY PHASE TO BE HOW HE WANTED TO BE PORTRAYED.

WELL, THANK YOU YOUR HONOR. FOR YOUR CONCERNS AND COMMENTS!!\$\$!!!!!!!!!!!!!! COMMENTS. THE I THINK THAT THE SECOND COUNSEL WAS INEFFECTIVE, BECAUSE SHE DIDN'T TALK TO THE WITNESSES DID NOT INVESTIGATE, SO THAT HER DECISIONS AND WHETHER SHE WANTED TO TERM THEM STRATEGIC WERE NOT THOUGHT OUT. SHE DID NOT WORK ENOUGH ON THE CASE TO PUT IT BLUNTLY. THE DECISION NOT TO PREVENT ANYTHING ABOUT A BOY THAT -- THE CIRCUIT COURT FOUND THE MITIGATION TO BE COMPELLING. THE CIRCUIT COURT FOUND THE MITIGATION TO BE THAT HE HAD HE WAS A YOUNG MAN, HE GREW UP IN CRUSHING POVERTY.

SHE NEW THAT WAS PRESENTED YOU GOT THE SECOND PENALTY PHASE REALLY PUTS YOU IN A TO ME, WELL, AT LEAST TO ME IN A DIFFERENT SITUATION. IT WAS PRESENTED AT THE FIRST PENALTY PHASE AND IN LOOKING AT THE SENTENCING ORDER THE JUDGE TO MY SURPRISE DIDN'T FIND ANY DEPLORABLE CHILDHOOD MENTAL MITIGATION -- MITIGATION IN THE FIRST PENALTY PHASE. I MEAN DOESN'T THAT THEN INFLUENCE SECOND PENALTY PHASE COUNSEL TO SAY THIS -- AND I DON'T KNOW YOU KNOW, AGAIN PRESENTING THE ABUSER THIS DOES SOUND LIKE AN AWFUL HISTORY OF ABUSE, BUT YOU KNOW, THERE IS -- SHADES OF EXACTLY WHAT WAS GOING ON, AND FOR THE REASONS THAT SHE SAID, WHICH IT WASN'T SUCCESSFUL AT THE FIRST TRIAL, THAT SHE THOUGHT BETTER WAY TO GO WAS TO SHOW THIS AS BEING A VERY POSITIVE PERSON WITH A LIFE WORTH SAVING SHE ALMOST GOT THERE, ON A 7 TO 5 JURY VOTE.

WELL, FIRST OF ALL, I DON'T BELIEVE THERE IS ANY EVIDENCE THAT YOU CAN COMPARE THE TWO, VERDICTS THEY ARE DIFFERENT JURYIES, I CAN I THINK OF -- I WAS HAVE BEEN ON A CASE, WHERE -- YOU HAD THE SAME ATTORNEYS, THE EXACT SAME EVIDENCE, IN THE WALLS CASE ONE JURY WAS 7 TO 5 ON RETRIAL IT WAS 12 TO 0.

ALL I'M SAYING IS THAT -- THAT IS.

SOMETHING YOU ARE USING THIS VOTE TO SAY 7 TO 5 IF SHE HAD JUST PUT ON THIS -- ABUSE WOULD IT HAVE BEEN A LIFE, NOW I THINK THAT IS -- INSPECT LAT FISH YOU ARE GOING TO GO THAT -- SPECULATIVE!!\$\$!!!!!!!!!!!!!! SPECULATIVE.

IT IS THE ISN'T AS SPECULATIVE WITH THAT JURY THEY WERE VERY, VERY CLOSE, THEY JUST NEEDED IN FACT, ONLY YOU KNOW WITH THAT JURY THEY ONLY NEEDED ONE MORE JUROR, SO IT IS REASON TO BE ABLE SAY THAT IF THE JURY UNDERSTOOD!!\$\$!!!!!!!!!!!!!! UNDERSTOOD, THAT THIS YOUNG MAN WHO THEY PUT VON LITTLE MITIGATION!!\$\$!!!!!!!!!!!!!! MITIGATION, SO THAT THERE WERE FIVE JURORS THAT THOUGHT HIS LIFE SHOULD BE SPARED!!\$\$!!!!!!!!!!!! SPARED, IF THEY HAD PUT ON THE EVIDENCE, THAT AFTER THIS CRUSHING LIFE OF POVERTY WHEN HE IS 12 YEARS OLD 12 1/2 YEARS OLD HIS MOTHER DROPS HIM OFF, AT A \$\$ PEDOPHILE'S HOUSE THE FIGHT FIXED HIM UP WITH A PEDOPHILE FOR THE NEXT YEAR AND A HALF TWO YEARS, HE IS SEXUALLY RAPED AND ABUSED BY THIS STATE-SPONSORED PEDOPHILE, IT IS A HORRIBLE HORRIBLE THING THAT IS NOT NEGATIVE, IT DOES NOT REFLECT NEGATIVELY ON JASON.

BUT --

IT IS SOMETHING HE SUFFERED.

WERE THERE RECORDS OF THIS DC-- OFFICIAL RECORDS I'M NOT DENYING THAT WHETHER THERE WAS. WERE THERE RECORDS EXISTING ABOUT THE ABUSE.

THE MAN WENT TO JAIL EVENTUALLY!!\$\$!!!!!!!!!!!!!! EVENTUALLY. AS A PEDOPHILE, FOR PEDOPHILIA!!\$\$!!!!!!!!!!!!!! PEDOPHILIA, YES.

USING THIS --

I'M NOT SURE FOR IT MAY HAVE BEEN FOR OTHER KIDS, OR IT MAY HAVE BEEN --

WHEN YOU SAY I'M ALWAYS WHETHER YOUOE WHEN YOU SAY YOU ARE NOT SURE THAT SEEMS TO ME A PRETTY TO ME AT LEAST, PRETTY IMPORTANT THING, THAT THIS PARTICULAR PERSON WHO WAS PUT ON IN THE FIRST TRIAL WENT TO PRISON, FOR SEXUALLY ABUSING THIS DEFENDANT, WOULD I HOPE MR. BRODY THAT YOU WOULD KNOW THAT TO BE THE CASE.

DO I NOT KNOW THAT -- IT WOULD HEOE IT WAS GIVEN IN A HE DID GO TO PRISON I DON'T BELIEVE IT THAT WAS IT WAS FOR ABUSING MR. DERRICK PER SE!!\$\$!! SE. BUT I MAY BE WRONG ON THAT POINT. BUT HE TESTIFIED AND THERE IS NO DISPUTE THAT HE WENT TO PRISON AS A PEDOPHILE HE IS A PEDOPHILE. MR. DERRICK -- THE STATE DOES NOT DISPUTE THAT, AND THE

LOWER COURT DID NOT DISPUTE THAT. JASON DERRICK AT 12, 13, 14-YEAR-OLD BOY SPENT EVERY NIGHT FOR A YEAR AND A HALF IN THIS GUY'S BED. AND THERE IS -- IT IS THE COURT THE LOWER COURT FOUND THAT TO BE IRONIC AND TO BE HORRIBLE. AND THERE IS REALLY NO DISPUTE ABOUT THAT.

THE EVIDENCE THOUGH THIS SORT OF, AGAIN, I HAD QUESTIONS ABOUT, THAT WAS PUT ON THE FIRST PENALTY PHASE, AND IT WASN'T FOUND, AND I CAN'T SEE ANYTHING IN THE APPELLATE THING TO SAY THERE WAS A ERROR IN NOT FINDING THAT COMPELLING MITIGATION!!\$!!!!!!!!!!!!!!!!!!!! MITIGATION, IN MR. DERRICK'S FIRST CASE.

IN THE FIRST PENALTY PHASE, AND I -- I'M -- DIDN'T ATTACK THAT I WAS NOT ADDRESSING THAT BUT THERE WAS ACTUALLY THE ARGUMENT WAS SORT OF SPECULATE UNDERLINED THAT JASON SORT OF DESERVED THIS IS THE OLD WAY HE WAS A I'M VERY BUT ACTUALLY LIKED IT TO MAKE IT A NEGATIVE THING, NOW, I THINK THAT ATTORNEYS COULD HAVE HANDLED THAT MUCH BETTER THAN THEY DID, AND VIOLENTLY OPPOSED THAT THAT TYPE OF LOGIC, BUT THERE WAS IN THE FIRST CASE THAT WAS UNDERLYING THINGS, THAT HE HAD BEEN THERE, SEE, JASON DID NOT EVEN HIS HOME LIFE WAS SO BAD HE DIDN'T WANT TO GO HOME FROM THE PED FOOLZ WHEN HE WAS -- PEDOPHILES WHEN HE WAS 14 SO SORT OF THIS UNDERLYING INSINUATION HE DWAEFL LIKED THERE IT THAT IS WHAT MADE HIM BAD SO THAT WAS THAT WAS PRESENTED!!\$!!!!!!!!!!!!!!!!!!!! PRESENTED THAT COULD BE PRESENTED!!\$!!!!!!!!!!!!!!!!!!!! PRESENTED, VERY STRONGLY, THOUGH, IN A DIFFERENT WAY, AND THAT COULD HAVE BEEN OPPOSED!!\$!!!!!!!!!!!!!!!!!!!! OPPOSED. NOW I REALLY DIDN'T ADDRESS THAT OR ATTACK THAT, BUT DO I THINK THAT HIS LIFE THE TRUE FACTS OF HIS LIFE COULD AND SHOULD HAVE BEEN PRESENTED TO THE JURY SO THAT THEY WOULD KNOW WHO THEIR SENTENCING TO DEATH, IT HAS -- I MEAN THE PRESENTATION OF MITIGATION SHOULD HAVE SOME CONNECTION TO TELLING THE JURY, WHO THIS PERSON IS, AND UNDER LOKEN HITSCH KOK THAT IS WHOLE IDEA OF MITIGATION THE JURY SHOULD KNOW WHO THEY ARE SENTENCEING TO DEATH SO THIS BOY, AT 12, HE IS OBVIOUSLY TROUBLED AT THAT TIME, AND HAS A LOT OF DIFFICULTY THAT THE TIME WHEN HE IS 12. THEN AS THE LOWER COURT FOUND HE GOES TO LIVE WITH THIS PEDOPHILE. HE DROPS OUT OF SCHOOL AND BEGINS HIS DISSENT INTO THE USUAL ADOLESCENT PROBLEMS, AND ONE CAN IMAGINE HOW MIXED UP HE IS BY THE TIME HE 14IS OR 15. -- 14 OR 15 IRONICALLY, SURPRISING!!\$!!!!!!!!!!!!!!!!!!!! SURPRISINGLY SHAREEF FINDS HIM VERY GENTLE THAT HE LISTENS TO HER THAT SHE LOEFRZ HIM WAS A GOOD WHO LOVES HIM WAS A GOOD FATHER, BUT, HE MUST HAVE BEEN YOU SUFFERED AS DR. DEE DID TESTIFY SUFFERED TERRIBLY BECAUSE OF THIS ABUSE, MENTALLY.

HOW DID THE MENTAL HEALTH EXPERT THAT THE DEFENDANT OR THE DEFENSE COUNSEL USE DEAL WITH THIS I KNOW THERE WAS SOMETHING ABOUT ANTISOCIAL PERSONALITY THAT HE CAME UP WITH SOME AVOIDANCE, BUT HOW DID THAT MEANTAL HEALTH EXPERT THAT WAS AVAILABLE HOW DID HE OR SHE DEAL WITH THAT IN ANY REPORTS, OR COMMUNICATION WHAT IS WAS THAT STATISTICUS

ONE THING, THE DEFENSE COUNSEL DIDN'T GENERATE ANYTHING IN THIS CASE WHAT!!\$!!!!!! WHATEVER SHE HAD SHE O GENERATED BY SOMEBODY ELSE SHE DIDN'T GENERATE ANYTHING THE REPORT TO WHICH YOU ARE REFERRING!!\$!!!!!!!!!!!!!!!!!!!! REFERRING, I BELIEVE WAS DONE AT THE REQUEST OF THE FIRST COUNSEL. AND OF COURSE, AS SOON AS THE -- TERM ANTISOCIAL PERSONALITY DISORDER WAS MENTIONED THAT THAT RAISED SOME ALARM. AND THERE MAY HAVE BEEN.

HOW DO THEY DEAL WITH THIS ASPECT YOU ARE DISCUSSING WITH US RIGHT NOW THIS TERRIBLE ABUSE SITUATION? HOW DID THE FIRST MENTAL HEALTH EXPERT WAS THAT INCLUDED IN THE REPORT? AND IF SO HOW WAS IT ADDRESS!!\$!!!!!!!!!!!!!!!!!!!! ADDRESSED.

THEY PRESENTED MR. MARTIN, ACTUALLY, AND AGAIN, I DON'T KNOW WHAT KIND OF WITNESS HE MADE BUT MY READING HIS TESTIMONY WAS THAT IT WAS -- IT WAS FORCE!!\$!!!!!!!!!!!! FORCEFUL, BUT IT WAS NOT -- NOT PRESENTED AS CLEARLY AS -- VIOLENTLY HORRIBLY -- YOU ARE RESPONDING TO THE SAME QUESTION THAT I UNDERSTAND THE CHIEF JUSTICE IS ASKING YOU -- I THINK HE IS ASKING YOU HOW DID THE MENTAL EXPERT -- HEALTH EXPERT DEAL WITH THIS SEXUAL ABUSE OF THE DEFENDANT IN ITS CONSIDERATION OR ANALYSIS OF THE \$DEFENDANT'S MENTAL HEALTH?

SURPRISINGLY THEY DIDN'T, THEY WERE NOT ASKED TO ADDRESS IT. THAT ISSUE DID NOT COME UP IT WAS NOT IN THE REPORT OR ANYTHING NO INFORMATION AT IN ALL THE -- I DON'T BELIEVE AND I MIGHT BE -- I DON'T BELIEVE IT WAS IN THE FIRST -- ATTORNEY'S REPORT, NOW, IT WAS? NOW IS THAT WE ASSUME THAT IS THE CASE BUT THIS INFORMATION WAS CONVEYED TO THE ATTORNEY THE SECOND LAWYER WHO WAS GOING TO DO THIS TRIAL. YEAH THE SECOND LAWYER READ THE RECORD SHE NEW JOE MARTIN WAS THERE, WHAT SHE DID WAS SHE DID READ THE RECORD, AND SHE HAD A SUMMARY OF THE WHAT SHE WITNESSES TESTIFIED TO SHE READ THAT SHE DIDN'T TALK TO ANY WITNESSES DIDN'T TALK TO HIS MOTHER DIDN'T TALK TO ANY OF THEM -- DID YOU HAVE THE DEFENDANT EXAMINED BY A MENTAL HEALTH EXPERT CONSIDER THE SEXUAL ABUSE.

YES, HE PRIMARY --

FOLLOW-UP -- ON WHAT --

HE PRIMARILY JUST TESTIFIED TO THAT, AS PART OF THE BACKGROUND, NOW HE DIDN'T TEST TO IT AS PART -- HE DIDN'T TESTIFY TO IT AS PART OF THE KILLING PER SE.

CAUSE\$!!ATION.

FIS STAGE!!\$!!!!!!RST STAGE BUT WHAT EFFECT IF ANY DID THE MENTAL HEALTH EXPERT THAT YOU HIRE SAY THAT THIS SEXUAL ABUSE OF YOUR CLIENT PLAYED IN THE CLIENT!!\$!!!!!! CLIENT'S MENTAL HEALTH.

HE SAYS HE JUST SAID HE WOULD SUFFER HORRIBLY FOR HIS LIFE, BECAUSE OF IT. BOTH BOYS WOULD SUFFER HORRIBLY!!\$!!!!!! HORRIBLY, BOTH JASON AND HIS BROTHER WERE -- CONCONCLUSARY ISN'T IT YES BUT I MEAN, IN WHAT WAY?

YOU NO ANYONE COULD SAY, THAT I MEAN, THE QUESTION IS JUSTICE WANTING TO KNOW HOW DID IT IMPACT BEHAVIOR HOW DID IT IMPACT HIS -- NOTHING ABOUT THAT WAS IN THERE.

WELL, NO, AND IN A WAY, THE IMPACT OF THE TESTIMONY IT WAS POWERFUL WHEN THE LAY WITNESSES ACTUALLY HAVE TESTIFIED ABOUT IT BUT, THE THING IS IN THE CONTEXT OF THIS!!\$!!!!!! THISBOY'S LIFE THIS WAS JUST ONE THING, THIS WASN'T THE THING. IT WAS JUST ONE OF SEVERAL THINGS.

THE PROBLEM -- THAT I'M HAVING IN LISTENING TO THIS, IN SEEING WHAT WAS PUT ON AT THE EVIDENTIARY HEARING, YOU ARE EMPHASIS WAS YOUR EMPHASIS WAS THAT THIS TERRIBLE BACKGROUND WITH THE PEDOPHILE REALLY WAS A THE MAJOR EVENT IN THIS CHILD GROWING UP, INTO A MAN, AND YET THERE WASN'T ANY EMPHASIS BY DR. DEE, ON THAT AT ALL. ISN'T THAT RIGHT?

THAT IS RIGHT YOUR HONOR, WOULD I SAY THAT HE DID NOT EMPHASIZE THAT POINT, HE GAVE IT AS PART OF THE HORRIBLE BACKGROUND WHICH THE LOWER COURT FOUND, AND -- I GUESS THAT GOES BACK TO WHERE I ASKED YOU AT THE VERY BEGINNING ABOUT SHOULD HE HAVE PUT ON -- EVERYTHING FROM THE FIRST SECOND PLUS WHAT YOU PUT ON, I READ WHAT THE TRIAL JUDGE FOUND IN MATERIALS OF THE IMPRESSIVE EVIDENCE BEING THE BACKGROUND OF SEXUAL ABUSE, I -- READ AND REREAD DR. DEE!!\$!!!!!! DEE'S TESTIMONY AND ITS AMORPHOUS IT IS NOT, AND YOU KNOW, AND IT IS JUST NOT COMPELLING IN THE WAY THAT WE HAVE SEEN OTHER MENTAL MITIGATION!!\$!!!!!! MITIGATION, AND SO IT SEEMS TO ME YOU HAVE REALLY GOT TO HANG YOUR HAT ON THAT IT WAS AN UNREASONABLE STRATEGIC DECISION KNOWING THE EXTENT OF THIS \$\$BOYS, MAN'S CHILDHOOD!!\$!!!!!! CHILDHOOD, TO HAVE NOT TOLD THE JURY ABOUT ANY OF IT, AND THAT NONE OF IT WOULD HAVE BEEN INCONSISTENT WITH THE VIEW OF SHOWING HIM ALSO AS DESPITE ALL THIS HE BECAME A FINE UPSTANDING POSITIVE CITIZEN.

WELL.

IS THAT YOUR -- WOULD THAT BE --

WOULD IT BE HARD TO MAKE THAT ARGUMENT IN THE CONTEXT!!\$!!!!!! CONTEXT, BECAUSE THIS WAS JUST A PENALTY PHASE AND HE HAD BEEN CONVICTED OF THIS MURDER.

WELL ASIDE FROM THE MURDER HE WAS OTHERWISE A VERY -- AND YOUR DEALING WITH THAT, BUT SO, BUT IS THAT WHAT THE THRUST IS THAT HE -- THE NEGLECT OF SHOWING THIS PERSON'S ENTIRE BACKGROUND!!\$!!!!!! BACKGROUND, NOT JUST -- NOT THE EFFECT OF IT ON THE CRIME, WAS DEEFFICIENT --

I THINK SHE HAD SOME OBLIGATION TO INVESTIGATE AND FIND OUT WHO THIS PERSON WAS, NOT PRESENT EVERYTHING.

I DON'T YOU ARE IN REBUT!!\$\$!!!!!!! REBUT --

BUT -- IT IS NOT AS IF HAVE YOU THE SECOND PENALTY PHASE WAS THE FIRST PENALTY PHASE AND SHE DIDN'T KNOW ABOUT SEXUAL ABUSE, I THINK WOULD YOU BE ON MARCH STRONGER BASIS, TO SAY THAT IS HOW COULD SHE HAVE NOT -- IGNORED IT, BUT THAT IS NOT WHAT HAPPENED. YOU HAD AN INITIAL PENALTY PHASE WHERE IT ALL CAME OUT. .

TO A DIFFERENT JURY, THE SECOND JURY HAD NEVER HEARD IT IS, MEAN -- SHE -- I DO THINK THAT AS PART OF HIS LIFE IT WAS VERY DIFFICULT TO PRESENT TO INTRODUCE THIS MAN TO A JURY, SAY WE RECOMMEND THAT YOU BE PUT TO DEATH FOR THIS KILLING THIS ROBBERY OF THIS INDIVIDUAL AND NOT KNOWING HE IS SAYING ABOUT HOW HE HAD GROWN UP, OR WHO HE WAS, AND I THINK THE PEDOPHILE WAS PART OF IT. THE \$\$MOTHER'S ABANDONMENT THE MOTHER GIVING HIS SISTER TO THIS CRAZY AS A SEX SLAVE, THE -- HIS ENTIRE LIFE, WHICH IS -- IS GRUESOME FOR THE PURPOSE OF MITIGATION, HAS TO BE TO INTRODUCE THE JURY TO THE HUMAN BEING WHOSE LIFE THEY ARE BEING ASKED TO HOLD IN HER HANDS.

-- THERE DOES NOT -- THAT -- THAT IS NOT HAVE HAVE TO BE CONNECTION BETWEEN THIS IMPACT OF THE EVENTS --

I NO I THINK THERE SHOULD BE A STRATEGY, CERTAINLY, YOUR HONOR.

BUT WOULD THAT PRESENTED THROUGH THE EXPERTS?

DID HE SAY, THAT THIS HE WAS -- BASICALLY NONCHALANT ABOUT THE -- WAS IT BECAUSE OF THE BAD BACKGROUND? THAT IS THE --

NO -- NO HE DIDN'T SAY IT WAS EASY OR MAKE A DIAGNOSIS!!\$\$!!!!!!!!!!!!! DIAGNOSIS, AND INDEED DID NOT GO IN THAT DIRECTION. ABOUT THE ACTUAL EVENT HE DIDN'T TESTIFY AS TO THE ACTUAL ROBBERY IT WAS MORE BACKED MANY WAYS I THINK THE LAY WITNESS TESTIMONY AS POWERFUL AS THE DOCTOR POSITIONED I THINK WOULD HAVE BEEN MORE POWERFUL WITH THE JURY I THINK IT WOULD HAVE BEEN VERY, VERY STRONG. THANK YOU. 99. MAY IT PLEASE THIS HONORABLE COURT KATHRYN BLANCOATTORNEY GENERAL OFFICE AS PRELIMINARY MATTER LIKE TO ADDRESS JUSTICE PARIENTE INQUIRY AS OFFICER OF THE COURT DIRECT THIS \$\$ COURT'S ATTENTION TO THE FIRST TRIAL RECORD, IN FLORIDA SUPREME COURT CASE 73076, VOLUME FIVE PAGES 2749 THROUGH 750, HARRY JOE MARTIN WAS CHARGED AND -- WAS IN THE -- HE WAS CONVICTED HE WAS SENTENCED TO FIVE YEARS INIIS PRISONMENT SERVED THREE YEARS THE I'M VERY WAS INDEED THE DEFENDANT, SO -- AND THERE WERE ADDITIONAL TWO DEFENDANTS AND THAT WAS TRAVIS THE DEREK ALSO KNOWN AS DAVID.

THAT WAS KNOWN AT FIRST TIME --

YES, IT I WAS PROSPERITY YOUR CANDOR ON THIS -- I APPRECIATE YOUR CANDOR ON ASSIST WE SHOULD EXPECT THIS BUT I APPRECIATE IT WILL. GIVEN THAT, LET'S SET ASIDE DR. DEE, BECAUSE I DON'T FIND HIM -- HIS TESTIMONY TO BE PARTICULARLY COMPELLING. HERE IS A TRIAL COURT WHO FOUND WENT OVER IN DETAIL, IN THE EVIDENTIARY HEARING, THE DEFENDANT WAS RAISED IN DEPLORABLE CIRCUMSTANCES, THE FAMILY UNDERWENT A CRUSHING POVERTY, LIVED IN UNCONTEMPT SUBSTANDARD HOUSING!!\$\$!!!!!!!!!!!!! HOUSING, UNKEMPT AS IF THE \$\$ DEFENDANT'S FAMILY LIFE NOT BAD ENOUGH ATTEMPTS TO MOVE THE \$\$DEFENDANT'S TO BETTER CIRCUMSTANCES, LANDED HIM IN THE CLUTCHES OF THE A PEDOPHILE THE DEFENDANT IS OLDER BROTHER REPETLY SEXUALLY ABUSED BY PEDOPHILE THE DEFENDANT HAVING BEEN ABUSED EVEN LONGER TIME, IT IS TO ME, MAYBE -- I'M TRYING TO UNDERSTAND HOW THAT KIND OF BACKGROUND WHICH IS TRULY DEPLORABLE, AND TRULY TRAGIC, COULD BE SOMETHING THAT YOU WOULDN'T WANT TO PRESENT TOO JURY TO GET THE FULL PICTURE AND HOW WOULD IT CONFLICT WITH ALSO SHOWING HIM AS DESPITE ALL OF THIS, HE REALLY HAD SOME YOU KNOW, HE TRIED HIS BEST, AND HE HAD ALL THESE GOOD TRAITS!!\$\$!!!!!!!!!!!!! TRAITS, WHERE IS THE RATIONALE FOR NOT FOR NOT HAVING THE JURY KNOW THAT INFORMATION!!\$\$!!!!!!!!!!!!!! INFORMATION? .

THERE IS -- THERE ARE SEVERAL REASONS YOUR HONOR FIRST AND FOREMOST, YOU HAVE THE FACT THAT YOUR CLIENT THE DEFENDANT, WHO SAT THROUGH THE FIRST JURY PENALTY PHASE, AND COULD WITNESS THE PROFOUND IMPACT OR LACK OF IMPACT THAT THE TESTIMONY HAD ON

THOSE JURORS!!\$\$!!!!!!!!!!!! JURORS, COULD UNDERSTAND SEE HOW THAT TESTIMONY WAS BEING ABSORBED BY JURORS, REPUDIATED THE DEFENSE COUNSEL FROM THE FIRST TRIAL REPUDIATED THAT TACTIC BY THAT I MEAN HE SAID, THE NEGATIVE -- STUFF WAS PRESENTED FIRST TIME DON'T PRESENT IT IN THE SECOND TRIAL, THAT IS ONE, BUT I HAVE -- I WOULD LIKE.

THAT ONE IS IMPORTANT TO ME, BECAUSE YOU KNOW THAT IF MR. DERRICK SAID I DON'T WANT YOU TO GATOR THINGS, THERE IS STILL INVESTIGATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!! INVESTIGATION, AND I THINK YOU MADE A VALIANT ATTEMPT TO SHOW THAT SHE WOULD NOT JUST RELY ON WHAT THE DEFENSE DEFENDANT SAID, DID SHE MAKE ANY ATTEMPT TO TALK TO THE DEFENSE -- LAWYER IN THE FIRST CASE, TO REALLY WLBD WHETHER THIS WAS A MATTER AS MR. BRODY SAID SOMEHOW GOT TWISTED SO INSTEAD OF HIM LOOKING LIKE THE VICTIM HE LOOKED LIKE A -- HE WAS HAPPY TO BE IN THIS SITUATION? AND THAT MAYBE THEY NEEDED TO LOOK AT THAT STRATEGY AGAIN, SO THAT IT WOULD BE PORTRAYED IN CORRECT LIGHT? ANYTHING LIKE THAT DONE?

YOU KNOW, YOUR HONOR YOU GOT FOUR VERY EXPERIENCED DEFENSE ATTORNEYS, ON THIS CASE, AND THEY ARE ALL IN THE SAME OFFICE.

I SEE SO THAT SO YOU HAVE THEM IN THE SAME SMALL OFFICE, IN NEW PORT RICHEY. SO SHE DID --

-- THAT SHE -- SHE WAS NOT ASKED SPECIFICALLY, WHAT DISCUSSIONS DID YOU HAVE WITH BOB McCLURE, WHO WAS THE PENALTY PHASE LAWYER THE FIRST TIME, SHE NEW BOB HAD WORKED WITH HIM, I MEAN UNDISPUTED SHE DID SAY SHE REVIEWED THE ENTIRE TRIAL TRANSCRIPT THERE IS TESTIMONY IN EVIDENTIARY HEARING SHE HAD TWO PRIOR PENALTY PHASE CASES BEFORE THINK CASE BOTH WERE LIFE RECOMMENDATIONS!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!! RECOMMENDATIONS, ONE COCOUNCIL IN ONE OF THOSE CAUSES WAS BOB McCLURE ALSO -- AND SO IF SHORT -- ANSWER IS THERE IS NOTHING IN THIS RECORD -- TO SAY SHE CONSULTHD WITH HIM? -- CONSULTED WITH HIM I WOULD THINK TO SAY IT WOULD BE REASON TO BE ABLE ASK YOUR CLIENT HOW DID YOU THINK THE FIRST PENALTY PHASE WENT, THIS IS NOT A PERSON THAT IS -- YOU KNOW HE MIGHT SOME IMPRESSION, BUT HE IS THE LAST PERSON THAT IS GOING TO BE OBJECTIVE OR HAVE A REASONABLE PERSPECTIVE ON IT WHY WOULDN'T YOU RELATE GO OVER THIS WITHOE REALLY GO OVER THIS WITH DEFENSE COUNSEL TOND WHY IT -- IF IT WASN'T SUCCESSFUL, HOW COULD YOU AGAIN PORTRAY IT AS APPARENTLY MR. BRODY PORTRAYED IT, SO THAT AT LEAST THE TRIAL JUDGE AND THE JURY WOULD KNOW THAT HE HAD A DEPLORABLE CHILDHOOD AND UPBRINGING.

WHAT YOU HAVE YOUR HONOR DEFENSE COUNSEL ROBIN KESTER AND YOU DOING LAFLER DOUG WAS THE BUREAU CHIEF FOR THAT OFFICE, THE PUBLIC DEFENDERS OFFICE IN NEW PORT RICHEY AT THE TIME THEY WERE TWO ATTORNEYS THAT ONE THE RESENTENCING!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!! RESENTENCING, AGAIN, BOB McCLURE, AND STEVE DEN HART WERE ATTORNEYS THREE YEARS EARLIER FROM 88 AND BEFORE -- FOUR OF THEM WORKED TOGETHER, DO YOU NOT -- DO YOU HAVE TESTIMONY FROM ROBIN KESTER SHE WOULD SIT IN GUILT PHASE PROCEEDINGS, NOW, SHE DID NOT GO ON AND TESTIFY THAT SHE TALKED AT LENGTH WITH BOB McCLURE, WHAT SHE DID TESTIFY SHE WAS NEVER ASKEDO ASKED FRANKLY SHE TESTIFIED THE WENT THROUGH ENTIRE RECORD OUTLINED THE RECORD AS A MATTER OF FACT HER OUTLINE IN EVIDENTIARY PORTION OF THIS CASE, THERE IS ALSO SOME THIS CASE WAS REMANDED FOR A NEW PENALTY FACE AND MARCH OF 91 -- THERE IS THERE ARE HANDWRITTEN NOTES OF KEFRNS WITH JASON -- CONFERENCES WITH JASON DECK -- DERRICK JUNE 3RD OF 91 ALREADY P.D. WAS BACK GETTING ACTIVE IN THIS CASE THAT IS THE EVER DAENGSRY POSTCONVICTION EVIDENTIARY HEARING VOLUME THREE.

YOU ARE SAYING LET ME BECAUSE I YOU ARE SAYING SHE DID A LOT. SHE ABSOLUTELY DID.

OKAY, I GUESS MY QUESTION IS AND MAYBE IT GOES TO THE PREJUDICE PRONG, IF WE DON'T YOU KNOW, IF WE GOT TO SUFFICIENT PERFORMANCE MAYBE WE WOULD SOMETIMES WE DO ONE OR THE OTHER NORMAL THE STATE GETS UP SAYS NOW THEY WANT TO PUT THIS EVIDENCE ON, OF YOU KNOW, SOMETHING IN THE BACKGROUND, BUT IF THEY HAD DONE THAT, THE WHOLE THIS WHOLE PART OF HIS LIFE YOU WOULD HAVE COME OUT, CAN YOU TELL US, IF THEY HAD ATTEMPT

TO DO PUT ON WHAT MR. BRODY PUT ON IN POSTCONVICTION CONCERNING THE DEPLORABLE CIRCUMSTANCES, OF MR. DERRICK'S CHILDHOOD, AND THEN THE CIRCUMSTANCES OF THIS HORRIBLE SEXUAL ABUSE, AND THEN THE PEDOPHILE HAVING BEEN SENTENCED FOR IT, WHAT WOULD HAVE BEEN THE NEGATIVE WHAT WOULD IT COME OUT THAT THE STATE COULD REALLY HAVE USED TO UNDERMINE IT ALL?

WELL, WE HAVE WITH THE STATE USED THE FIRST TIME WHEN THE PEDOPHILE TESTIFIED WHEN YOU HAD HARRY JOE MARTIN TESTIFY WHAT IS ESTABLISHED IS THAT, HE PICKED THESE BOYS UP HITCH HIKE!!\$\$!!!!!! HIKING TWO BROTHERS, DAVID AND EXCUSE ME, JASON AND TRAVIS HE PICKED THEM UP HITCH HIKING HE FED THEM CLOTHED TELL ME TOOK THEM BACK TO THEIR HOME, THEY WOULD CALL AND SAY, PICK US UP, AND HE WOULD, HE LET THEM LIVE THERE, AND INDEED HE WAS AUTHORIZED TO BE A FORFEIT -- FOSTER PARENT NEVER SHOULD HAVE HAPPENED NOTHING --

SO YOU ARE YOU SAYING.

NOTHING TO BE PROUD TO HAVE BE SURE.

OKAY ARE YOU SAYING IF THEY PUT ON ALL THE WITNESSES THAT THEY PUT ON THE EVIDENTIARY HEARING SHOULDN'T INCLUDE PUTTING ON THE PEDOPHILE THE STATE WOULD HAVE PUT ON PEDOPHILE TO SAY -- THEY ASKED FOR IT THEY WERE HITCH HIKING THEY ASKED FOR IT? .

NO, NOT AT ALL YOUR HONOR.

WHERE IS THE NEGATIVE WHERE IS -- WHERE IS THE NEGATIVE THAT WOULD HAVE COME OUT? NOT -- THE POINT IS THE -- AFFECT IT WILL HAD ON JASON DERRICK, WHAT ABOUTED WAS ESTABLISHED AT THAT FIRST PENALTY PHASE WAS YES, HE YES INDIVIDUAL HAD BEEN CONVICTED OF LITTOE LEWD LASCIVIOUS ACTS AGAINST HIM HARI MARTIN OUT OF JAIL IN 85 HE AND DEFENDANT AND MURDER COMMITTED IN 88, WE THE -- 87 EXCUSE ME, DEFENDANT IS 20, THEY -- REKINDLE, NOT A SEXUAL RELATIONSHIP!!\$\$!!!!!!!!!!!!!!!!!!!!!! RELATIONSHIP, BUT A RELATIONSHIP WHERE THE DEFENDANT GOES TO HARRY JOE MARTIN FOR MONEY, THE DEFENDANT IS INCARCERATED CALLING HARRY JOE MARTIN FIVE TIMES A WEEK, SO THE GIST OF THAT WAS THAT IF THERE IS EVIDENCE OF SUCH A TRAUMATIC EXPERIENCE THAT THIS DEFENDANT WON'T THROUGH, PROS CUTEDOR FIRST PENALTY PHASE ARGUED THIS IS WHAT WE HAVE, IT HAPPENED, WE KNOW IT HAPPENED, THE DEFENDANT STILL ALIGNS HIMSELF WITH MARTNIN SENSE HE GETS MONEY FROM HIM, SO HE IS ESSENTIALLY TURNED IT INTO A SITUATION WHERE HE HAS NOT BEEN SO TRAMATICALLY AFFECTED BY WHATEVER ABUSE THEY ARE ALLEGING HAPPENED BUT HE IS USING IT AS A MONEY MACHINE A CASH NORTHBOUND GETS MONEY FROM MR. MARTIN

I GUESS FOLLOWING UP ON THAT DR. DEE REALM ALTHOUGH THIS SOUNDS HORRIBLE WASN'T REALLY ABLE TO LINK IT UP WITH ANYTHING DO WITH THIS CRIME.

WHAT WE HAVE.

; IS THAT CORRECT? THAT HE WAS NOT THE ABLE TO.

THAT IS CORRECT, YOUR HONOR THE TRIAL COURT FOUND THAT THE TRIAL COURT FOUND THAT THE DEFENDANT -- EXCUSE ME DR. DE DISTRICT KONIK --SCRIBED OTTO BRAIN SYMPTOM!!\$\$!!!!!!!!!!!!!! SYMPTOM, FENTAL -- LOBE FEATURES!!\$\$!!!!!!!!!!!!!! FEATURES.

HE TESTIFIED THIS WOULD NOT CAUSE CHRONIC BRAIN SYNDROME HAD NO EFFECT ON THE SYMPTOM THAT'S WHAT YOU HAVE FROM DR. DEE SUPPORTED BY COMPETENT SUBSTANTIAL IN EVIDENCE THE RECORD THE TRIAL COURT FINDING BUT WITH REGARD TO THE DECISION, THE REASONABLE STRATEGIC DECISION!!\$\$!!!!!!!!!!!!!! DECISION, TO GO WITH A POSITIVE CASE, VIEWED AS ONE WHICH WAS BASED ON YOUR CLIENT!!\$\$!!!!!!!!!!!!!! CLIENT'S REQUEST NOT TO PRESENT TESTIMONY WHICH IS DEEMED NEGATIVE, WHY IS IT DEEMED NEGATIVE? BECAUSE IT WAS PRESENTED IT DIDN'T WORK. SECOND YOU HAVE ESSENTIALLY.

DON'T YOU THINK --

DON'T YOU NORMALLY THINK OF NEGATIVE THINGS AS THAT WELL YOU HAVE GOT THIS MENTAL HEALTH EXPERT HE CAN GIVE YOU THE OR FOUR GOOD THINGS BUT ALSO HAS AN ANTISOCIAL PERSONALITY, DISORDER AND THAT IS THAT IS WILD AND CRAZY GUY HE KILLED BEFORE GOING KILL AGAIN, SO THAT IS WHEN YOU HAVE TO MAKE THOSE CALLS. I'M STILL STRUGGLING, WITH THIS IS THAT!!\$\$!!IS REALLY IN THAT CATEGORY OF NEGATIVE OR IS THIS IN A CATEGORY OF

WELL LET'S JUST DO SOMETHING DIFFERENT I JUST DON'T SEE THIS AS THAT FIRST CATEGORY OF CASES, MAYBE IT IS SECOND-GUESSING MAYBE IT IS, BUT -- I JUST CAN'T SEE IT A RATIONAL LAWYER SAYING THAT THIS HAS NO PART IN THIS CASE. THAT IS WHAT I'M -- HERE YOU HAVE NOT ONLY ONE BUT TWO VERY EXPERIENCED LAWYERS SAYING THAT IT DOESN'T BELONG AND IT IS A REASONABLE STRATEGIC DECISION YOU MAKE A DECISION TO GO WITH A STRATEGY, THAT DOES NOT BLAME THE \$\$ DEFENDANT'S PAST, BUT FOCUSES ON THE DEFENDANT POSE LIFE AND THAT HE -- NOT BLAME\$\$!!!!!!ING THAT JUST WHO HE IS. THAT -- INDEED CAN HAVE A TYPE OF A BACKLASH EFFECT IF PERCEIVED AS IT PERHAPS WAS BY THAT FIRST JURY THAT -- HE IS MAKING AN EXCUSE, FOR GOING OUT AND STABBING MR. SHARMA WHO IS WALKING HOME FROM WORK WITH A DAY'S RECEIPTS!!\$\$!!!!!!!!!!!!!! RECEIPTS, CLUCHD IN HIS SHIRT, AND HE STABSHIM 31 TIMES FACE DOWN. WE ACCEPT THAT LOGIC AND REASON THAT MEANS THAT YOU CAN ALWAYS SAY, NEVER USE MENTAL HEALTH BECAUSE EVERY MITIGATION IS AN EXCUSE. THAT IS THAT IS WHERE THIS RUNS -- YOUR HONOR THERE ARE NO ABSOLUTELIES!!\$\$!!!!!!!!!!!!!! ABSOLUTELIES, IF YOU -- ABSOLUTES THE FLIP SAID TO YOU MUST USE EVIDENCE OF SAKES ABUSE IN EVERY CASE -- SEX ABUSE EVERY CASE FIRST OF ALL IT OBVIOUSLY WOULD TURN 30 YEARS OF OR -- -- DECIDED IN 48. -- SEX ABUSE THAT WE ARE TALKING ABOUT, AND -- WELL. -- LET ME YOU KNOW, BECAUSE YOU HAVE SUCH A LIMITED AMOUNT OF TIME99I KNOW THATTURE -- THAT YOU ARE ALWAYS EXTREMELY WELL PREPARED KNOWLEDGEABLE. THANK YOU. I FOR ONE APPRECIATE THAT MUCH, AND YOUR PROFESSIONALISM ABOUT THIS, AND A LOT OF IT DOES LOOK LIKE THERE CAPABLE LAWYERS, AND THAT THIS IS A LOT OF HINDSIGHT!!\$\$!!!!!!!!!!!!!! HINDSIGHT. BUT THERE ARE SEVERAL INCONGRUOUS THINGS, THAT ARE HERE, ONE OF THE THINGS THAT STRUCK ME, AS INGE GRUNGOUS WHEN I HE INCONGRUOUS WAS WHEN I LOOK AT TWO SENTENCING ORDERS THAT IF I RECALL, THE DEFENDANT WAS 20 YEARS OLD, AT THE TIME, OF THE OFFENSE. THAT IS CORRECT YOUR HONOR, HE WAS GOING 4, 5, 6, 7. OKAY, THE TWO SENTENCING ORDERS, OKAY -- ESSENTIALLY FIND NO MITIGATION, REGARD!!\$\$!!!!!!!!!!!! REGARDLESS OF WHETHER PUTTING ON THIS EVIDENCE ABOUT FAMILY BACKGROUND, AND THE SEXUAL ABUSE BY THE PEDOPHILE, THE \$\$JUDGE'S SENTENCING ORDER IN THE FIRST CASE OTHER THAN SOME PASSING REFERENCE TO THE AGE OF THE DEFENDANT FINDS NO MITT GIGS THAT IS -- NO MITIGATION INCREDIBLE TO ME WHEN I COMPARE THEM THE \$\$ JUDGE'S ORDER DENYING RELIEF IN THIS CASE WHERE AS JUSTICE PARIENTE READ AT THE OUTSET, THE TRIAL JUDGE HERE YOU COULD NOT READ A MORE COMPELLING NARRATIVE WITH REFERENCE TO THIS FAMILY BACKGROUND AND THE SEX ABUSE THAN THIS TRIAL JUDGE CONSCIENTIOUS!!\$\$!!!!!!!!!!!!!! CONSCIENTIOUSLY SETS OUT. YET, INCREDIBLY IN THAT MILES AN HOURS SENTENCING ORDER THERE APPARENTLY -- IN THAT SENTENCING ORDER APPARENTLY CONSIDERED THE SAME THING THE JUDGE DOESN'T REFER TO IT FINDS NO MITIGATION OTHER THAN THE AGE REFERENCE. EVEN IN THE SECOND SENTENCING ORDER, NOW WITH THE SECOND STRATEGY, WITH REFERENCE TO LET'S GO POSITIVE, THE FINDING ABOUT MITIGATION!!\$\$!!!!!!!!!!!!!! MITIGATION, IS ALMOST A NULL!!\$\$!!!!!! NULLITY ABOUT THE SLIGHTEST REFERENCE AGAIN OTHER THAN YOU KNOW, OTHER THAN THE AGE,, ONE OF THE THINGS WE HAVE THE JUDGE WRITTEN IN AN ORDER DENYING RELIEF A COMPELLING DESCRIPTION OF MITIGATING EVIDENCE AND THEN IN THOSE SENTENCING ORDERS, YOU KNOW THAT THERE'S NOTHING THERE. THIS IS A LONG WAY FOR ME TO FOCUS. I WOULD THINK THAT ANY REASONABLE LAWYER, WITH PROFESSIONAL JUDGMENT WOULD WANT TO PRESENT, YOU KNOW, THIS EVIDENCE. I'M INTERESTED IN A LITTLE BIT OF TIME, TELL ME WHAT THE TESTIMONY WAS AS TO HOW FARCEFUL THE ROLE OF THE DEFENDANT WAS IN VIRTUALLY COMMANDING THE LAWYER NOT TO PRESENT ANY OF THIS EVIDENCE? BECAUSE I'M INTERESTED IN HOW MUCH THAT INFLUENCED A DECISION THAT I OTHERWISE HAVE A LOT OF DIFFICULTY WITH BUT I'M LOOKING

FOR SOME RATIONAL EXPLANATION. AND I'M THINKING, WELL, MAYBE, YOU KNOW, THAT IT IS SUPPLIED BY THAT I'M NOT SATISFIED WITH IT DIDN'T WORK. AS I RECALL, WHEN, AFTER THIS, WAS ALL PRESENTED, THE JURY AT ONE TIME SAID THEY WERE TIED 6-6 AND, AFTER FURTHER INSTRUCTIONS ENDED UP WITH THE 7-5. BUT NOT MANY OF US UP HERE WOULD REGARD 6-6 OR 7-5 AS A BAD VOTE OF A JURY. THAT IS, A, REALIZING, 7-5 YOU KNOW, ENDS UP BEING A RECOMMENDATION. BUT, NOT AS A BAD OUTCOME, YOU KNOW AS FAR AS THE EFFORTS OF THE LAWYER. SO TELL ME, WHAT WAS THE EVIDENCE ABOUT HOW STRONG A ROLE THE DEFENDANT PLAYED IN SAYING, YOU CAN'T PRESENT THIS, I ONLY WANT YOU TO PRESENT SOMETHING DIFFERENT. AND, THAT THAT WAS REALLY WHAT HAPPENED HERE AS OPPOSED TO THE EXERCISE OF PROFESSIONAL JUDGMENT AS TO THIS COMPELLING MITIGATION.

JUSTICE ANSTEAD, ROBIN CASTOR, THE PRIMARY PENALTY PHASE ATTORNEY WITH RESPECT TO THE, THESE WITNESSES, TESTIFIED, THAT THE DEFENDANT DID INSTRUCT HER HE DIDN'T WANT NEGATIVE TESTIMONY PRESENTED. HE WANTED TO GO POSITIVE. SHE DID NOT RUBBERSTAMP THAT. SHE DID CONDUCT AN INVESTIGATION.

LET ME STOP YOU RIGHT THERE. IN OTHER WORDS, BECAUSE YOU'VE USED THE PHRASE, NEGATIVE, AS JUSTICE LEWIS HAS SAID THAT IS DIFFERENT IN EVERYBODY'S EYES. DID SHE ELABORATE AND SAY, I DON'T, THAT HE SAID TO HER, DO NOT PRESENT MY CHILDHOOD BACKGROUND, OR THE, PEDOPHILE EVIDENCE OR WHATEVER, OR WAS IT JUST, NEGATIVE? WHAT, IN OTHER WORDS, HOW ARTICULATE WAS THAT?

WELL, BECAUSE OF THE SUBSTANTIAL LAPSE OF TIME TO THE, POSTCONVICTION HEARING AND THE FACT THAT AT LEAST ONE BOX OF ROBIN KESTER'S NOTES WERE MISSING SHE SAID SHE WOULD HAVE WRITTEN LIKE CRAZY AND TALKED TO JASON DERRICK FREQUENTLY AND WOULD HAVE WRINTEN LIKE CRAZY ON CASE OF THIS MAGNITUDE. THERE WERE NO COPIES OF THOSE NOTES OF WITNESS INTERVIEW OR THE DISCUSSION WITH THE DEFENDANT. SO HER RECOLLECTION WAS, THAT HE, INFORMED HER THAT HE WANTED HER TO STAY AWAY FROM THE NEGATIVE. TO GO POSITIVE. WHICH SHE INTERPRETED AS STAYING AWAY FROM THE BAD HOME LIFE INCLUDING THE TESTIMONY OF THE SEXUAL ABUSE. SO YOU HAVE TO LOOK WHAT WAS PRESENTED AT THAT FIRST PENALTY PHASE. YOU HAVE FIVE WITNESSES -- DID SHE GIVE HIM HER OPINION?

SHE SAID SHE AGREED WITH THAT ASSESSMENT BUT SHE AGREED WITH IT AFTER SHE HAD EVALUATED THE RECORD, AFTER SHE REVIEWED IT. SHE TALKED TO HIM. SHE TALKED TO EVERY WITNESS THAT SHE PUT ON TO CALL TO TESTIFY. THERE WERE FIVE WITNESSES CALLED IN THE FIRST PENALTY PHASE IN THE FIRST TRIAL IN 1988. THERE WERE EIGHT WITNESSES CALLED IN '91 BY ROBIN KOESTER AND DOUG LEFT LETTER. THOSE WERE WITNESSES PUT ON TO SHOW THE POSITIVE ASPECT WE'RE NOT MAKING EXCUSE. THE STRATEGY WAS NOT TO BLAME THE DEFENDANT'S PAST BUT FOCUS ON THE POSITIVE ASPECTS OF HIS LIFE. AND YOU ARE RIGHT, YOUR HONOR IT VERY NEARLY SUCCEED OF THE WHEN YOU HAVE A CLIENT WHO REPUDIATES THE STRATEGY EMPLOYED UNSUCCESSFULLY ON HIS BEHALF AT THE FIRST TRIAL. WHEN YOU HAVE POTENTIAL FOR BACKLASH THE PERCEPTION IT CAN BE USED AS PERHAPS AN EXCUSE TYPE FACTOR. THE THIRD THING, YOUR HONOR, IT COULD DILUTE THE POSITIVE EFFECT.

JUSTICE CANTERO HAD A QUESTION.

JUSTICE CANTERO?

YOU AGREE IF WE HAD ALL THIS MITIGATING EVIDENCE AND WE WERE IN THE FIRST PENALTY PHASE AND THE, DEFENSE LAWYER, DECIDED NOT TO PRESENT IT, YOUR POSITION WOULD BE MUCH MORE PROBLEMATIC?

OH ABSOLUTELY, YOUR HONOR. WE HAVE THE BENEFIT AFTER DRY RUN SEEING HOW THE JURY REACTED TO THAT. IT CAN DILUTE THE EFFECT OF THE POSITIVE. AND BY THAT I MEAN I WOULD DIRECT THIS COURT'S ATTENTION TO THE POSTCONVICTION RECORD AT VOLUME 6. THAT IS DOUG LOLLER'S TESTIMONY. HE IS ASKED ABOUT DILUTING THE EFFECT, ESSENTIALLY PUTTING HARRY JOE MARTIN ON TO SAY GOOD THINGS WHY THIS DEFENDANT SHOULD BE SPARED. AND, MR. LOLLER'S ASSESSMENT THAT WAS INDEED A RISK YOU TOOK. LASTLY THERE IS NO PER SE RULE, STRICKLAND TO THE CONTRARY THERE IS NO PER SE RULE IT MUST BE PRESENTED. INDEED THAT'S A MATTER OF STRATEGIC DECISION OF COUNSEL AFTER QUALITITATION WITH HIS CLIENT. AFTER REVIEW OF THE EVIDENCE BEFORE HIM. I'M -- EXCUSE ME.

I HAVEN'T HAD A CHANCE TO ASK A QUESTION. REAL QUICK. DID DR. SIMON TESTIFY IN THE FIRST TRIAL?

DR. SIMON DID NOT TESTIFY. THEY DID NOT USE DR. SIMON. THEY DID NOT CALL HER. WOULD SHE HAVE BEEN AVAILABLE TO THE STATE IN REBUTTAL OR, PRESENTATION IF MENTAL HEALTH TYPE ISSUES HAD BEEN PRESENTED IN THE RETRIAL?

WE WOULD ARGUE, YES, YOUR HONOR. CERTAINLY IF, IF DR. SIMON WAS NOT AVAILABLE, THEN ANOTHER MENTAL HEALTH --

DR. SIMON WOULD TESTIFY BEING ANTISOCIAL PERSONALITY?

DR. SIMON DID NOT TESTIFY. WE JUST HAVE HER REPORT. WE STIPULATED TO HER REPORT AT THE POSTCONVICTION HEARING. ALSO STIPULATED WHATEVER HARRY JOE MARTIN IS WHAT HE SAID AT THE FIRST TRIAL.

MY POINT IS PART OF THE CALCULATION OF COUNSEL WAS THAT DR. SIMON COULD HAVE TESTIFIED THAT HE HAD ANTIPERSONALITY -- ANTISOCIAL PERSONALITY DISORDER?

ROBIN KOESTER TESTIFIED SHE KNEW WHY THE DEFENSE DIDN'T USE HIM BECAUSE THAT'S IN THE REPORT. NARCISSISTIC, ANTISOCIAL PERSONALITY TRAITS. PORTRAYS HIMSELF AS, SOMEHOW THE PROTECTOR AND DEFENDER. SAID HE LIVED WITH HIS IN-LAWS TO PROTECT HIS MOTHER-IN-LAW FROM HIS FATHER-IN-LAW EVEN THOUGH HE WAS NOT CONTRIBUTING FINANCIALLY OR ANY WAY SHAPE AND FORM.

ALL RIGHT. WITH OUR ASSISTANCE YOU USED UP MORE THAN YOUR TIME.

IT THANK YOU.

MR. BRODY YOU'RE RIGHT AT EDGE. GIVE YOU A COUPLE MINUTES. BE DIRECT TO IT.

JUST VERY BRIEFLY I WOULD SAY THAT THE LAY TESTIMONY IS VERY POWERFUL IN THIS CASE. THE FIRST TRIAL WAS NOT REALLY A DRY RUN. I DO THINK THAT BLAMING THIS IN ANY WAY ON MR. DERRICK PARTICULARLY THIS, THING WITH THE PEDOPHILE, COULD BE HANDLED AND SHOULD NOT HAVE BEEN ALLOWED TO, NO INSINUATION WHETHER HE WAS A CASH MACHINE OR HE WAS A FRIEND OR ANYTHING LIKE THAT. SHOULD HAVE BEEN HANDLED BY THE ATTORNEY. IF THE SAME EVIDENCE WAS PRESENTED AS WAS PRESENTED IN THE FIRST TRIAL, SEEMS TO ME YOU WOULD BE HERE ARGUING THAT WE KNEW THAT WAS PRESENTED IN THE FIRST PENALTY PHASE, DIDN'T WORK YET THEY PRESENTED THE EXACT SAME THING KNOWING IT HADN'T WORKED AND THAT IS INEFFECTIVE ASSISTANCE?

I WOULDN'T DO ANYTHING AUTOMATICALLY, YOUR HONOR. AND, I WOULD EXPECT THAT SHE WOULD AT LEAST TALK TO JASON DERRICK ABOUT THE PEDOPHILIA. SHE DID NOT EVEN TALK TO HIM ABOUT IT.

WAS THAT THE ONLY AREA THAT'S REALLY LEFT OUT, SUBSTANTIAL AREA, THIS DISCUSSION ABOUT THAT?

LEFT OUT OF HER COMMUNICATIONS WITH JASON?

NO. LEFT OUT OF THE PRESENTATION OF THE EVIDENCE, WAS THAT THE PRIMARY ASPECT IS, OF HIS LIFE? OR WAS IT ALL --

IT'S A POWERFUL HUGE THING.

I UNDERSTAND.

BUT THERE WERE A LOT OF OTHER THINGS THAT WERE LEFT OUT. THERE WAS -- HIS WHOLE CHILDHOOD WAS LEFT OUT.

THE THING WITH HIS SISTER. AND THE FACT, THAT I THINK IS IMPRESSIVE THAT AFTER ALL OF THIS, IS THESE PEOPLE LOVE HIM DEEPLY.

BUT I THINK THAT, AND THIS IS REALLY HARD FOR US, AGAIN BECAUSE WE'RE SITTING UP HERE AND WHAT REALLY WORKS OUT IN THE REAL WORLD, AS MUCH AS WE ARE, HORRIFIED THAT SOMETHING LIKE THIS COULD HAVE GONE ON, YOU'RE TALKING ABOUT SOUTHWEST FLORIDA. YOU'VE GOT A, NOT A, HE'S A ADOLESCENT. THIS WAS SEXUALLY ABUSED FOR A YEAR AND A HALF. IS IT TRUE THEN, WHEN HE GOT OUT OF PRISON, AND BEFORE THIS INCIDENT THAT THEY CONTINUED TO BE FRIENDS?

HE WAS A TROUBLED MAN.

I'M JUST ASKING THE QUESTION. IS THAT TRUE?

I THINK FRIENDS IS NOT RIGHT WORD. HE TRIED TO GET MONEY FROM HIM, SURE.

THE PROBLEM WITH IT, WE UNDERSTAND THAT'S ALL PART OF THE VICTIM OF SOMEBODY WHO IS

A VICTIM AND, A SICK, HORRIBLE SITUATION. BUT A JURY COULD MISREED THAT. WOULD YOU AGREE THAT THAT'S SOMETHING THIS LAWYER HAD TO KNOW COULD BACKFIRE?

I DON'T BELIEVE THAT THIS -- I THINK THIS EVIDENCE COULD BE PRESENTED WITHOUT BACKFIRING IN ANY WAY IN A VERY POWERFUL WAY THAT WOULD PERSUADE THE JURY TO SPARE THIS BOY'S LIFE.

WITH THAT I THINK YOU'VE MADE THE PLEA. THANK YOU VERY MUCH. WE APPRECIATE YOUR CANDOR. WE'LL TAKE I HAD UNDER ADVISEMENT. THE COURT WILL STAND IN RECESS UNTIL 8:30 TOMORROW MORNING.

PLEASE RISE.