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**Billy Leon Kearsse v. State of Florida**

**SC05-1876 | SC06-942**

NEXT CASE ON OUR CALENDAR  
WILL BE KEARSE vs. STATE OF  
FLORIDA.

>> FLY -- MY NAME THE PAUL  
KALIL.

WITH ME IS CHRISTINA DIAZ,  
YOUR FIRST APPEARANCE BEFORE  
THE COURT.

>> WE OF COURSE  
REPRESENTATIVE ON APPEAL  
3.851 DENIAL AFTER AN  
EVIDENTIARY HEARING.  
I WOULD LIKE TO CONCENTRATE  
THIS MORNING ON THE ARGUMENT  
SURROUNDING AN EFFECTIVE  
ASSISTANCE OF COUNSEL AT THE  
PENALTY PHASE.

THERE'S TWO PRONGS  
ESSENTIALLY TO THAT WHICH  
HAVE TO DO WITH THE  
PRESENTATION OF MENTAL  
HEALTH AND ALSO CHALLENGING  
THE STATING A GREAT  
AGGRAVATING CIRCUMSTANCE OF  
THE VICTIM BEING A POLICE  
OFFICER AND HIS LAWFUL  
DUTIES.

WITH REGARD TO THE  
INEFFECTIVE ASSISTANCE OF  
MENTAL HEALTH PRESENTATION  
OF MITIGATION, THERE'S  
ESSENTIALLY TWO PRONGS  
THERE.

THERE'S NO QUESTION THAT  
SOME MITIGATION WAS  
PRESENTED.

THE DISTURBING FACTOR THAT I  
FIND HERE IS THAT AFTER THE  
MITIGATION IS PRESENTED  
TRIAL COUNSEL THEN  
DIMINISHES ALL OF THAT IN  
HIS CLOSING ARGUMENT BY  
CALLING IT PSYCH OBABBLE  
TELLING THE JURY HE DOESN'T  
UNDERSTAND WHAT MY OF THAT

MEANS AND THE JURY PROBABLY  
SHOULDN'T UNDERSTAND IT  
EITHER.

I THINK IN THE EVIDENTIARY  
HEARING, WE DISCOVERED THAT,  
IN FACT THE TRUE.

TRIAL COUNSEL DIDN'T HAVE  
THE NECESSARY KNOWLEDGE AND  
EXPERTISE IN THE MENTAL  
HEALTH MITIGATION AREA TO  
PRESENT IT TO THE JURY.

HE DIDN'T PREPARE HIS  
EXPERTS PROPERLY.

AND AS A RESULT MR. KEARSE  
PREJUDICE -- I THINK A GOOD  
EXAMPLE OF THAT IS RELYING  
ON HIS EXPERT NEUROFARM CALL  
GIST TO TRY TO PRESENT  
PERSONALITY TEST DATA.

HE SAID IN CLOSING ARGUMENT  
BEFORE THE JURY HE DIDN'T  
KNOW THE DIFFERENCE BETWEEN  
AN INTELLIGENT TEST AND  
PERSONALITY TEST.

HE DID RETAIN THE SERVICES  
OF NEUROFARM CALL GIST TO  
PRESENT EVIDENCE OF FETAL  
ALCOHOL EFFECT AND THEN  
HAVING NOT DONE THE  
NECESSARY INVESTIGATION AND  
CONTACTING EXPERTS IN  
PERSONALITY ASSESSMENT  
ATTEMPTED TO GET DATA  
THROUGH THE  
NUEROPHARMOCOLOGIST --

>> WAS THAT SUSPECTED OR WAS  
THERE OBJECTIONS TO THAT IN  
A RULING THAT THIS COULDN'T  
BE ACCEPTED?

>> THERE WAS AN OBJECTION  
AND THE  
NEUROPHARMOQ -- COLOGITS WAS  
THREATENED WITH SANCTION AND  
POSSIBLE PROSECUTION FOR  
PRACTICING WITHOUT A  
LICENSE.

THE EVIDENCE DID COME IN.  
BUT IT THE PHARMOCOLOGIST IN  
A TENABLE POSITION AND THE  
STATE WAS ABLE TO CAPITALIZE  
QUICKLY ON THE FACT THAT HE  
WAS REALLY TESTIFYING IN AN  
AREA WHERE HE WAS RELYING ON  
AN EXPERT OF ANOTHER

DISCIPLINE AND HE HAD NO KNOWLEDGE HIMSELF. HE'S NOT IN THE POSITION TO PERFORM PERSONALITY TESTING OR ANY PSYCHOLOGICAL TEST OF THAT NATURE.

AND IT'S VERY CLEAR THAT IN CLOSING ARGUMENT THE STATE WAS ABLE TO CAPITALIZE -- CAPITALIZE VERY HEAVILY ON THAT.

>> WAS HE ATTEMPTING TO TAKE THE INFORMATION FROM THE PERSONALITY TEST AND PUT IT WITH THE USE OF THE ALCOHOL SYNDROME TEST?

IS THAT HOW THE PHARMACOLOGIST USED THIS INFORMATION?

>> I THINK THE PHARMACOLOGIST.

MR. UDEL TESTIFIED THE REASON HE HAD THE PHARMACOLOGIST TESTIFY FROM THE DAD OEU OF THE MMPI THAT WAS THE WAY HE WAS GOING TO GET IT IN.

AND THERE WAS NO NEED TO CALL THE NEUROPSYCHOLOGIST TO TESTIFY ABOUT THE DATA BECAUSE HE COULD GET IT THROUGH THE PHARMACOLOGIST. THAT'S NOT AN EFFECTIVE USE OF YOUR EXPERT.

IT OPENS UP YOUR EXPERT TO CROSS-EXAMINATION AND A THREAT OF A CRIMINAL SANCTION.

>> YOU REMEMBER THE NONSTATUTORY MITIGATING CIRCUMSTANCES FOUND BY TRIAL JUDGE AND DID IT INCLUDE THAT KIND OF INFORMATION. THE INFORMATION THAT CAME IN ABOUT THIS AND THE PERSONALITY TEST.

>> YES.

THERE WAS AT TRIAL THE TRIAL COURT DIDN'T GIVE A LOT OF WEIGHT TO THE MENTAL HEALTH MITIGATION THAT WAS PRESENTED.

THE NONSTATUTORY MITIGATION.

>> BUT HE DID --

[INAUDIBLE]

THERE WERE A NUMBER OF FACT  
CONSIDERED IN MITIGATION.  
I THINK IT'S RELEVANT IN THE  
ORDER DENYING THE 3.850 FOR  
THE 3.851, THE TRIAL COURT  
I'M SORRY I'M DRAWING A  
BLANK.

THE -- WITH REGARDS.

>> THAT HAPPEN TO ALL OF US.  
CATCH YOUR THOUGHTS AND.

>> THANK YOU I APPRECIATE  
THAT.

I THINK SHE'S GOING TOWARD  
THE DIRECTION OF THAT SOME  
OF US THIS STUFF DID COME IN  
AND THE QUESTION THAT REALLY  
HELPS THE COURT WHEN WE'RE  
LOOKING AT THESE KINDS OF  
THINGS IS THAT WAS THERE  
SOMETHING QUALITATIVELY  
DIFFERENT THAT WAS AVAILABLE  
THAT SHOULD HAVE BEEN  
BROUGHT IN THAT WAS  
DISCUSSED AT THE EVIDENTIARY  
HEARING THAT PUTS THIS CASE  
IN A DIFFERENT LIGHT KIND OF  
THING.

>> THANK YOU.

>> DOES -- DOES THAT JOG YOU  
A LITTLE BIT.

>> ABSOLUTELY.

I THINK THERE WERE SEVERAL  
AREAS PRESENTED A TT  
EVIDENTIARY HEAR.

NUMBER ONE IS ACCESS ONE  
DIAGNOSIS OF POSTTRAUMATIC  
STRESS DISORDER.

YOU MAY RECALL AT THE  
PENALTY PHASE A SOCIAL  
WORKER BY THE NAME OF PAMELA  
BAKER TESTIFIED THAT  
MR. KEARSE SHOWED SIGNS OF  
POSTTRAUMATIC STRESS  
DISORDER.

THIS WAS NEVER FOLLOWED UP  
BY COUNSEL OR EXPERT.

>> SO THERE WAS SOME  
EVIDENCE NOT JUST DEVELOPED.

>> IT WAS COMPLETELY NOT  
DEVELOPED.

IT WAS MERELY HE SHOWS SIGN  
OF POSTTRAUMATIC STRESS  
DISORDER.

DR. DUDLEY AT THE EVIDENTIARY HEARING TESTIFIED THAT MR. KEARSE DOES SUFFER FROM POSTTRAUMATIC STRESS DISORDER BASED ON THE ABUSE AND NEGLECT SUFFERED IN CHILDHOOD THAT CARRIES OVER INTO ADULthood AND THAT TIES INDIRECTLY WITH THE CIRCUMSTANCES OF THE OFFENSE.

>> SO YOU GOT THAT ONE. ARE THERE ANY OTHER THAT ARE QUALITATIVELY DIFFERENT?

>> IN A SIMILAR THERE'S ATTENTION DEFICIT HYPERACTIVITY DISORDER DIAGNOSED IN CHILDHOOD AND CARRYING TO ADULthood AND THAT WAS BACKED UP BY DR. DUDLEY.

THAT GOES TO THE CIRCUMSTANCES OF THE OFFENSE.

>> NOT DEVELOPED AGAIN DURING TRIAL.

>> CORRECT.

TRIAL COUNSEL SEEMED TO FOCUS ON DR. LIPMAN THE PHARMACALL GIST.

IT'S CLEAR THAT THE DIDN'T KNOW WHAT FETAL ALCOHOL EFFECT REALLY WAS.

HE TESTIFIED AT THE EVIDENTIARY HEAR HE THOUGHT FETAL ALCOHOL EFFECT WAS A TERM THAT DR. LICHTMAN MADE UP.

AND I THINK THAT THE OTHER DOCTORS AT THE EVIDENTIARY HEARING WERE ABLE TO ESTABLISH IT WHILE IT'S NOT LISTED IN THE DSM AS A RECOGNIZED DISORDER IT'S A DISORDER THAT'S PART OF THAT SPECTRUM OF DISORDERS INVOLVING PRENATAL ALCOHOL INSULT.

>> LET ME TELL YOU WHERE MY PROBLEM IS.

BECAUSE I JOINED IN A DISSENT IN THE MAIN CASE.

AND IF YOU -- WHEN YOU READ

JUSTICE -- I THINK IT WAS  
JUSTICE ANSTEADS' DESCENT IT  
GOES THROUGH IN GREAT DETAIL  
VERY IMPRESSIVE MENTAL  
HEALTH MITIGATION AND I'M  
HAVING TROUBLE  
SQUARING -- YOU KNOW WHEN I  
THINK OF ALL OF OUR CASES  
THAT HAVE AS FAR AS WHAT IS  
REASONABLY EFFECTIVE COUNSEL,  
IT SEEMS LIKE THERE WAS,  
AGAIN AN AWFUL LOT OF MENTAL  
HEALTH MITIGATION PRESENTED.  
NOW WHETHER IT COULD HAVE  
BEEN PRESENTED BETTER THAT  
WE START TO GET INTO SHADES  
THAT ARE VERY DIFFICULT AND  
TO SAY WELL NOW OR  
CONFIDENCE IS UNDERMINED  
WHEN YOU GOT CLEARLY AT  
LEAST AGAIN ENOUGH FOR  
JUSTICE ANSTEAD TO SAY THIS  
IS VERY SUBSTANTIAL MENTAL  
HE -- HEALTH MITIGATION THAT  
SHOULD HAVE EITHER THAT  
WARRANTED YOU KNOW AN  
IMPOSITION OF A LIFE  
SENTENCE.

HOW DO YOU SQUARE THAT AND  
TO SAY WELL, MAYBE A LITTLE  
BIT -- I FEEL LIKE YOU SAY,  
WELL HE HAD JUST DONE MORE  
ON POSTTRAUMATIC STRESS  
DISORDER AND THAT WOULD  
HAVE -- ARE WE GOING TO SAY  
THERE WOULD HAVE BEEN A  
STATUTORY -- STATUTORY  
MITIGATING CIRCUMSTANCE  
FOUND THAT JUST WAS NOT  
FOUND.

AND SO AGAIN TELL US IN  
TERMS OF THE CASES THAT WE  
HAVE HAD.

>> UH-HUH.

>> IS THIS SIMILAR TO ANY  
CASE THAT WE WE REVERSED FOR  
A NEW PENALTY PHASE BASED ON  
THIS LEVEL OF PRESENTATION  
OF MENTAL HEALTH MIT TPAEUGS.

>> THERE'S A COUPLE OF  
ASPECTS TO THE QUESTION.  
I THINK THE PRESENTATION OF  
THE MITIGATION EVIDENCE AT  
THE SECOND PENALTY PHASE WAS

SUCH THAT EFFECTIVE I WILL  
BEFORE THE JURY -- EFFECTIVELY  
BEFORE THE JURY THERE WAS  
NOTHING THERE.

I SAY THAT BECAUSE THEY MADE  
NO TO PREPARE FOR DOCTOR  
MARTEL.

HE TESTIFIED TO ALL SORTS OF  
THINGS THAT TRIAL COUNSEL  
COULD NOT HAVE KNOWN BECAUSE  
HE HADN'T DONE ANY SORT OF  
RESEARCH OR DISCOVERY ON  
WHAT DR. MARTEL WOULD  
PRESENT.

AS A RESULT MARTEL WAS HELD  
UP AS BEING A VERY POLISHED  
AND EXPERIENCED EXPERT AND  
MR. UDEL WAS LEFT CONCEDED  
THIS IS PSYCHO BABBLE THAT  
WHAT HE'S PRESENTING HE  
DOESN'T UNDERSTAND.

>> LET'S TALK THE PSYCHO  
BABBLE IN CONTEXT.

>> SURE.

>> THERE WERE EXPERTS ON  
BOTH SIDES AT THE PENALTY  
PHASE; RIGHT.

>> CORRECT.

>> AND HIS DESCRIPTION OF  
THE TESTIMONY AS PSYCH  
OBABBLE DIDN'T HE SAY BUT IF  
YOU WILL -- IF YOU WILL  
BELIEVE THE STATE'S EXPERT  
YOU HAVE TO BELIEVE OUR  
EXPERT.

>> YES.

THAT'S IN THE CONTEXT OF  
TELLING THE JURY THAT HE  
DOESN'T UNDERSTAND ANY OF  
THIS.

>> DON'T A LOT OF ATTORNEY  
DOS THAT TO THE JURY YES I  
TO DEVELOP A REPORT WITH THE  
JURY AND SAY I'M LIKE YOU.

I KNOW IT'S HARD TO  
UNDERSTAND.

I DON'T UNDERSTAND IT VERY  
WELL.

BUT THIS IS WHAT THEY SAID.  
THINGS LIKE THAT.

>> WE -- WITH RESPECT TO  
MR. UDEL IN THIS CASE I  
THINK THAT WAS THE  
SITUATION.

>> AND ISN'T THAT PROPER STRATEGY.

WHAT ARE YOU SAYING IS THE SITUATION HE DIDN'T UNDERSTAND.

>> REALLY DIDN'T UNDERSTAND IT.

DIDN'T HE SAY HE REALLY DIDN'T UNDERSTAND IT.

>> ESSENTIALLY YES.

WHEN HE QUESTIONED HE DIDN'T KNOW THE DIFFERENCE BETWEEN THE PSYCHIATRIST AND PSYCHOLOGIST.

HE DIDN'T THE BASIC TESTMENT THAT ARE USED THE MM PEU, TO WEXLE -- XE -- WEXLER ADULT INTELLIGENCE SCALE.

HE DIDN'T KNOW WHAT THEY WERE.

IT'S EASY TO MAKE A DECISION BASED ON EXPERTISE.

BUT ANOTHER THINGS TO PUT WITNESSES NOT HAVING FULL UNDERSTANDING OF WHAT THEY WILL TESTIFY TO AND THEN BEING EVISCERATED BY THE STATE'S EXPERT WITNESS AND HAVING TO CONCEDE TO THE JURY THAT YOU DON'T REALLY UNDERSTAND THE STUFF YOURSELF.

>> ONE OF THE TRIAL JUDGE WHO HEARD THE EVIDENTIARY HEARING IN THIS CASE, WHAT WAS HIS EVALUATION OF MR. UDEL AND WHETHER THIS STRATEGY OR HOW DID HIS EVALUATE IT?

>> ONE THING THAT REALLY STANDS OUT THE TRIAL COURT FOUND THAT THE DECISION SO-CALLED DECISION NOT TO NOT DEPOSE THE STATE'S EXPERT WAS A REASONABLE STRATEGY DECISION.

I DON'T SEE HOW THAT COULD BE.

I MEAN TO NOT DO DISCOVERY AND FIND OUT WHAT THE STATE'S EXPERT.

>> WHAT DID MR. UDEL SAY WHY HE DIDN'T DESUPPOSE -- DEPOSE THE

STATE'S REBUTTAL EXPERT?

>> HE SAID AND THIS IS ALL  
IN THE BRIEF AND RECORD,  
OBVIOUSLY.

HE SAID THAT HE DIDN'T FEEL  
IT WAS NECESSARY TO DEPOSE  
THE WITNESS BECAUSE HE KNEW  
WHAT THE WITNESS WAS GOING  
TO SAY BECAUSE THEY ALL SAY  
THE SAME THING.

AND HE WAS FAMILIAR WITH THE  
WITNESSES' ASSOCIATE  
DR. DEITZ WHO ESSENTIALLY  
ALWAYS SAYS THE SAME THING.  
HE TOOK IT TO MEAN THAT HE  
JUST ASSUMED THAT IN BILLY  
KEARSE'S CASE HE WOULD SAY  
THE SAME THING.

>> HE SPOKE TO THE  
PROSECUTORS?

>> HE SAID HE SPOKE TO THE  
PROSECUTORS.

>> IS IT NOT UNCOMMON IF THE  
PROSECUTOR AND THE DEFENSE  
ATTORNEY HAVE A GOOD  
RELATIONSHIP THAT IN  
THE -- BECAUSE OF THE HORSE  
TIME FRAME HERE THEN THE  
TRIAL JUDGE FIND THAT WAS  
REASONABLE UNDER THE  
CIRCUMSTANCES?

>> WELL, AT -- ON THE DIRECT  
APPEAL THIS COURT FOUND THAT  
WAS AT THE TIME FRAME WAS  
REASONABLE AND THAT THE  
STATUTE PROVIDED OR THE RULE  
PROVIDES FOR A SHORT TIME  
FRAME.

WITH REGARD TO THE  
RELATIONSHIP BETWEEN THE  
ATTORNEYS, SURE, THAT WOULD  
BE ACCEPTABLE FOR SOME  
WITNESSES.

I THINK IN THE CIRCUMSTANCE  
OF VERY COMPLEX TESTIMONY  
INVOLVING MENTAL HEALTH,  
MENTAL HEALTH INSTRUMENT  
ESPECIALLY IN AREA WHERE  
MUDEL DIDN'T HAVE THE  
EXPERTISE THAT HE REQUIRED.  
DOESN'T HE -- WASN'T THERE  
THE MR. MARTEL'S  
DR. MARTEL'S BROAD DATA  
GIVEN TO HIM AND FORWARDED

THAT TO HIS EXPERT?  
ISN'T THERE TESTIMONY TO  
THAT EFFECT HERE, ALSO?  
>> DR. MARTEL --  
>> YOU'RE TALKING ABOUT HIM  
NOT HAVING EXPERTISE IN  
THESE PARTICULAR AREAS.  
AND YOU KNOW, A LOT OF  
LAWYERS DON'T.  
BUT AS -- IF HE FORWARDED TO  
EXPERTS TO LOOK AT THEM  
DOESN'T THAT MAKE A  
DIFFERENCE HERE?  
>> DR. MARTEL'S DATA WAS  
LIMITED.  
HE DIDN'T PERFORM ANY  
TESTING HIMSELF IN.  
THE STATE'S EXPERT DIDN'T  
PERFORM A LOT OF TESTING.  
WHAT HE HAD WHICH WAS VERY  
VALUABLE, I THINK WAS A  
VIDEOTAPE OF THE EXAMINATION  
THAT DR. MARTEL HAD  
PERFORMED.  
WHICH HE NEVER BOTHERED TO  
GET AND NEVER BOTHERED TO  
GIVE TO HIS EXPERT WHO COULD  
VIEW IT TO SEE WHAT  
DR. MARTEL'S TECHNIQUES  
WERE.  
AND THERE WAS EVIDENCE OR  
TESTIMONY THAT, THAT THE  
EVIDENTIARY HEARING OF THE  
APPROPRIATENESS OF THAT.  
I DON'T RECALL THERE BEING  
ANY SPECIFIC DATA THAT WAS  
EXCHANGED.  
THERE WAS DATA THAT WAS  
PROVIDED TO DR. MARTEL AND  
YOU LYED UPON IN FORMING HIS  
OPINION.  
>> YOU ARE INTO YOUR  
REBUTTAL.  
YOU ONLY HAVE FOUR MINUTES.  
USE YOUR TIME AS YOU WISH.  
>> I WILL SAVE OF -- THE  
REST OF MY TIME FOR  
REBUTTAL.  
THANK YOU.  
>> I GUESS I SHOULD SAY  
WELCOME BACK.  
MAY IT PLEASE THE COURT  
LESLEY CAMPBELL WITH THE  
ATTORNEY GENERAL'S OFFICE ON

BEHALF OF THE STATE IN THIS IS AS JUSTICE PARIENTE MENTIONED ONE OF THE BEST LITIGATED CASES FOR A PENALTY PHASE.

I DIDN'T QUITE SAY THAT. LAUGH I'M SORRY YOUR HONOR. I'M PUTTING IN THE BEST LIGHT FOR THE STATE.

MR. UDEL DID EVERYTHING. HE PUT ON SOME -- HE RAISED SOME 40 DIFFERENT AREAS --

>> DID HE NOT KNOW THE DIFFERENCE BETWEEN A PSYCHIATRIST AND A PSYCHOLOGIST?

>> KNOWS THE DIFFERENCE IS A CORRECT REPRESENTATION?

>> I THINK HE MAY HAVE CONFUSED THEM IN TESTIFYING. BUT MR. UDEL HAS BEEN DOING THIS SINCE 1980 HE KNOWS MENTAL HEALTH EXPERTS AND ALL OF THIS AREA VERY, VERY WELL.

HE'S.

>> DID YOU ANSWER JUSTICE ANSTEAD'S QUESTION.

>> HE DID.

HE CONFUSED IT IN HIS TESTIMONY.

BUT HE IS I THINK THAT WAS MORE OF A MISSTATEMENT THAN A CONFUSION.

HE IS AS I SAID HE'S BEEN DOING THIS SINCE 1980 --

>> CAN I SAY ALONG THAT LINE NO QUESTION HE'S BEEN DOING IT A LONG TIME.

AND SUGGEST HE'S A PREMIER LAWYER IN HIS AREA.

AND I DON'T KNOW WHO ELSE IS THERE SO THAT DOESN'T NECESSARILY SAY THAT MAKES HIM EFFECTIVE.

WHAT ABOUT FETAL ALCOHOL SYNDROME?

DID HE NOT KNOW THAT, THAT WAS A VERY WELL RECOGNIZED SYNDROME, THAT IS NOT JUST MADE UP IN THIS CASE?

DID HE SAY SOMETHING ABOUT THAT?

>> HE SAID HE WAS TRYING TO

GET FETAL ALCOHOL SYNDROME  
BROUGHT IN.

HOWEVER, THERE WAS NOT  
ENOUGH EVIDENCE TO SUPPORT  
THAT.

AND THAT'S WHAT DR. LICHTMAN  
SAID.

HE NEVER SAID HE DIDN'T KNOW  
IT WAS A REALLY SYNDROME  
THAT HE DIDN'T UNDERSTAND --  
>> HE UNDERSTOOD FETAL  
ALCOHOL SYNDROME WAS  
SOMETHING THAT WAS WELL  
RECOGNIZED.

WHAT THEY -- WHAT  
DR. LICHTMAN AND  
DR. -- MR. UDEL WERE DOING  
WERE THEN SAYING SINCE WE  
CAN'T PROVE THIS HIGH FETAL  
ALCOHOL SYNDROME WHAT'S THE  
NEXT THING LOWER.

THAT'S FETAL ALCOHOL EFFECT.  
AND IN FACT, THE DEFENSE  
DOCTORS IN THE EVIDENTIARY  
HEARING SAY IT'S STILL  
DISCOUNT THE FETAL ALCOHOL  
EFFECT BUT THEY RECOGNIZE  
THE FETAL ALCOHOL SYNDROME.

>> WHERE THERE STATUTORY  
MITIGATORS FOUND IN THIS?  
BUT NOT IN THE -- WHAT  
IMPRESSES ME ABOUT  
POSSIBILITY OF -- AGAIN, I  
WHEN YOU LOOK AT JUSTICE  
ANSTEAD'S DECENT CLEARLY  
THERE WAS A LOT LOT  
PRESENTED BECAUSE THERE WAS  
ENOUGH FOR THE THREE  
JUSTICES THAT THERE WAS  
SUBSTANTIAL INFORMATION.  
WE'RE LOOKING AT IT WHAT WE  
KNOW ABOUT IN TERMS OF  
PRESENTING TO THE JURY HOW  
POWERFUL WAS THIS  
POSTTRAUMATIC STRESS  
DISORDER.

HE WAS 18 AT THE I'M.  
WHAT HE HAD BEEN THROUGH IN  
CHILDHOOD AND WHETHER SOME  
HOUSE -- HOW THIS WAS  
TRIGGER IN WHETHER THE NEW  
EVIDENCE PRESENTED WOULD  
HAVE SUPPORTED A STATUTORY  
MITIGATOR IN ADDITION QUITE

POWERFUL FOR THE JURY KWROEU  
TO HEAR A CONNECTION BETWEEN  
WHAT HAPPENED AS THEY WERE  
GOING ON AND WHAP ANED I WAS  
THINKING OF THAT CASE WHERE  
THERE'S A WOMAN WHO THOUGHT  
SHE WAS BEING ATTACKED.  
SHE WAS ACTUALLY ABUSED.  
WHAT IS THE QUALITATIVE -- YOU  
SEE THE SAME PRESENTATION  
WRAPPED UP DIFFERENTLY AND  
CAN YOU TELL US WHETHER YOU  
SEE HONESTLY YOU HAVE BEEN  
HERE AND I KNOW YOU THAT YOU  
WITH US ANY QUALITATIVE  
DIFFERENCE?

>> BETWEEN THE EVIDENTIARY  
HEARING TESTIMONY AND THE  
TESTIMONY THAT WAS GIVEN AT  
THE SECOND PENALTY PHASE, I  
WOULD SAY THERE ISN'T REALLY  
ANYTHING QUALITATIVELY  
DIFFERENT THAT WOULD HAVE  
SWAYED ANYONE TO GIVE ANY  
MITIGATION OR TO -- AND THAT  
REALLY ISN'T THE STANDARD.  
IT WOULD BE TO ACTUALLY GET  
A LIFE SENTENCE.

>> OPPOSING COUNSEL SAID IT  
WAS JUST MENTIONED NO  
DEVELOPMENT AT ALL.  
WE WILL NOT FIND THAT?

>> YOU ARE GOING TO FIND IN  
THE RECORD FROM THE PENALTY  
PHASE DISCUSSION OF  
MR. KEARSE'S PANIC OR HE  
DOESN'T RESPOND WELL UNDER  
STRESS.

YOU WILL FIND A LOT OF THAT  
INFORMATION IN THERE.  
THAT WAS THE DEFENSE.

>> WE ARE GOING TO FIND --

>> 12 SECONDS OF PANIC.

>> ARE WE GOING TO FIND THE  
POSTTRAUMATIC STRESS  
SYNDROME THE DISCUSSION OF  
THE SCIENCE OF THAT, WAS  
THAT PRESENTED AT THE TRIAL  
OR WAS IT NOT AS YOUR  
OPPOSITION -- I WASN'T  
PRESENTED.

>> IT WASN'T PRESENTED AS  
POSTTRAUMATIC STRESS.

>> IT WASN'T.

>> AND WASN'T PRESENTED AS  
THE -- WHAT IS ADHD.  
HIS ATTENTION DEFICIT.  
WASN'T PRESENTED IN THOSE  
TERMS.  
BUT YOU HAVE ALL OF THAT  
INFORMATION WITHIN THE  
RECORD.  
YOU KNOW THAT HE'S -- HE  
REACTS POORLY UNDER STRESS.  
YOU HAVE ALL OF THAT  
UNDERLYING INFORMATION.  
YOU ALSO HAVE DR. PETRILLA  
WHO SPENT OVER 20 HOURS WITH  
THE TKFT.  
THIS IS HIS SECOND GO  
AROUND.  
HE TESTIFIED IN THE 1991  
TRIAL.

>> BUT DID HE TESTIFY AT THE  
TRIAL TO A STATUTORY  
MITIGATOR?

>> BOTH MITIGATORS.

>> AND IT WAS JUST THAT WE  
DON'T KNOW OF COURSE WHAT  
THE JURY DECIDED.

BUT THE TRIAL JUDGE IN HIS  
SENTENCING ORDER JUST DIDN'T  
FIND IT.

DID HE NOT FIND IT.

>> HE DID NOT FIND.

>> DID HE EXPLAIN WHY?

>> YES, HE DID.

WHAT HE SAID WAS THAT IF YOU  
WILL READ THE DISCUSSION OF  
THE TWO MENTAL MITIGATORS,  
THEY WERE DISCOUNTED BECAUSE  
OF HIS -- BECAUSE OF  
MR. KEARSE'S ACTION THAT  
NIGHT MORE THAN I WILL  
BELIEVE ONE EXPERT OVER  
ANOTHER EXPERT.

THE TRIAL COURT SAID I  
AGREE.

MR. KEARSE HAS HAD A  
TERRIBLE LIFE.

BUT IT DOESN'T RISE  
TO -- ALL OF THESE THINGS  
DON'T RISE TO THE LEVEL OF,  
DREAM OR MENTAL DISTURBANCE.

ALL OF HIS ACTION BOTH  
BEFORE AND AFTER THE CRIME  
WERE VERY METHODICAL.  
SO AGAIN IT'S NOT THAT HE

COULDN'T CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW. KNEW EXACTLY WHAT HE WAS DOING BOTH BEFORE AND AFTER. HE WAS AWARE THAT THERE WAS A WARRENT OUT FOR HIS ARREST.

>> HE DIDN'T WANT TO BE ARRESTED.

HE GAVE THREE FALSE NAMES. AND EVEN THOUGH HE WAS GIVEN THREE OPPORTUNITIES TO JUST TKEUF HIS NAME AND I'LL GIVE YOU A TICKET.

THAT'S WHAT THE OFFICER SAID.

AS FAR AS THE EXTREME MENTAL OR EMOTIONAL DISTRESS AGAIN HE ACTED VERY CALMLY WITH THE OFFICER UP UNTIL THE TIME THE OFFICER WAS GOING TO ARREST HIM AND THEN HE WENT FOR THE RO'S GUN, SHOT HIM 13 -- OFFICERS GUN AND SHOT HIM 13 TIMES THERE WERE SPACES IN BETWEEN THOSE SHOTTINGS AND THEN DROVE OFF AND HIT THE CAR, HID THE GUN WHEN HE WAS ARRESTED HE LYED TO THE POLICE, ALL OF MR. KEARSE'S ACTIONS UNDER -- UNDERCUTS COMPLETELY THOSE MENTAL MITIGATORS.

SO IT'S COME IN NOW AND SAID HE HAS ATTENTION DEFICIT DISORDER OR POSTTRAUMATIC DISTRESS.

THAT'S NOT GOING -- THAT'S NOT GOING TO UNDERCUT HIS ACTUAL ACTION ON THE NIGHT OF THE CRIME.

AS FAR AS MR. UDEL'S USE OF PSYCHO BABBLE.

MR. UDEL ON 2658 SAID, FOR THE RECORD THIS IS NOT PSYCHO BABBLE.

AND -- AND IT'S ONLY WHEN HE WAS TRYING TO SAY, WELL YOU KNOW ALL OF THESE NUMBERS FROM THE -- FROM ALL OF THE TESTING IF YOU WANT TO CONSIDER IT PSYCHO BABBLE. MR. UDEL HAS BEEN DOING THIS

FOR MANY YEARS HE UNDERSTANDS THE JURY I -- JURY IN INDIAN RIVER COUNT. HE TRYING TO BUY INTO MITIGATION. HE SAYING IF YOU DON'T BELIEVE MY EXPERT, THEN YOU CAN'T BELIEVE THEIR EXPERT. WHAT MR. UDEL HAD THAT THE STATE DIDN'T HAVE HE ALSO HAD PAMELA BAKER, HER HUSBAND AND THERE WERE TWO OTHER TEACHER PRINCIPAL FIGURES IN THERE THAT GAVE A HISTORY FOR MR. KEARSE THAT DID SUPPORT HIS MENTAL HEALTH EXPERT. IT WASN'T THAT MR. UDEL WAS RELYING NEARLY ON ONE OR TWO MENTAL HEALTH EXPERTS. HE HAD DR. PETRILLA WHO ALSO HAD ACCESS TO HIS WIFE'S MENTAL HEALTH REPORT OF MR. KEARSE WHEN HE WAS NINE OR TEN. THAT INFORMATION CAME OUT. ALSO DR. DESIDES INFORMATION WHEN HE EVALUATED MR. KEARSE. THAT WAS BROUGHT OUT. THE MMPI WAS BROUGHT OUT THROUGH MR. DR. PETRILLA. >> IS DOCTOR PETRILLA WHAT IS HIS AREA OF EXPERTISE? >> HE WAS A PSYCHOLOGIST. >> WHO WAS A NEUROPHARMOCOLOGIST. >> I CAN'T REMEMBER WHAT OTHER AREA HE WAS INTERESTED IN. HE WAS TRYING TO GET INFORMATION TO CONFIRM. TRYING TO GET INFORMATION FROM DR. PETRILLA WHAT THE MMPI MEANT. I BELIEVE IT WAS THE CASE INVOLVED IN THAT. AND DR. PETRILLA WASN'T ABLE TO SUPPORT THAT. IT WASN'T ABLE TO GIVE THOSE ANSWERS. SO DR. LICHTMAN WENT OUT AND HE CONTACTED THREE OTHER EXPERTS.

DR. LEVINE, DR. RUMCOUGH AND  
DR. FRIEDMAN.

AND DR. FRIEDMAN TESTIFIED  
AT THE EVIDENTIARY HEARING.  
THE BOTTOM LINE OF THIS, ALL  
OF THE EVIDENCE THAT CAME  
OUT IN THE EVIDENTIARY  
HEARING FOR THE MENTAL  
HEALTH MITIGATION REALLY  
DOESN'T CHANGE WHAT WAS  
PRESENTED AT THE SECOND  
PENALTY PHASE.

>> MR. KEARSE SAYS THAT THE  
LAWYERS WERE SO  
SELF-CONFIDENT THEY DIDN'T  
TAKE THE DEPOSITION OR  
PREPARE FOR IT EXPERT  
WITNESSES THEY WERE JUST  
GOING TO DEVASTATE THEM.  
MR. UDEL DOES NOT LIKE TO  
TAKE DEPOSITIONS OF EXPERTS.  
HE DOESN'T LIKE TO DO  
DISCOVERY IN FRONT OF THE  
STATE.

HE TRIES TO DO THAT FIND OUT  
THE INFORMATION OTHER WAYS.  
HE DOESN'T LIKE TO PRESENT  
HIS CASE TO THE STATE BEFORE  
TRIAL.

HE WILL TALK TO THE  
PROSECUTOR AND ASK WHAT THE  
MENTAL HEALTH EXPERT WILL  
SAY.

AGAIN AS MR. UDEL HAS BEEN  
DOING THIS SINCE 190.

IT'S PRETTY CLEAR IF THE  
STATE WILL PUT ON A MENTAL  
HEALTH EXPERT THE MENTAL  
HEALTH EXPERT WILL BE  
REFUTING WHAT THE MENTAL  
HEALTH EXPERT THAT --

>> IS THAT REALLY A  
SATISFACTORY RESPONSE TO NOT  
DOING YOUR FUNDAMENTAL WORK  
OF TRYING TO KNOW AS MUCH AS  
YOU CAN ABOUT THE CASE ON  
THE OTHER SIDE.

AND HOW DID MR. UDEL  
RECONCILE THIS BELIEF THAT  
HE HAD THAT JURY IN INDIAN  
RIVER COUNTY DIDN'T BELIEVE  
IN MENTAL HEALTH EVIDENCE  
AND THEN HIS STRATEGY OR  
DECISION AS TO WHETHER OR

NOT TO PRESENT THAT KIND OF EVIDENCE.

THAT I'M HAVING DIFFICULTY UNDERSTANDING IF HE DIDN'T THINK THAT THE JURY IN INDIAN RIVER COUNTY PUT ANY STOCK IN MENTAL HEALTH EVIDENCE THEN WHERE WAS HIS DEFENSE HERE IN TERMS OF ADVOCATING THE MENTAL HEALTH EVIDENCE?

HOW DID HE RECONCILE THOSE TWO WHICH APPEAR TO ME TO BE OPPOSITES THAT IS THAT YOU KNOW TO SAY WELL I DON'T KNOW WHAT I WILL DO.

I WILL HAVE A JURY THAT THINKS THIS IS ALL FOOLISH. SO HOW DID HE RECONCILE THAT.

>> MR. UDEL NOT ONLY PUT ON THE EXPERT, BUT HE PUT ON LAY WITNESSES.

WHO SUPPORTED THOSE PERTS. SO WHILE GENERALLY MENTAL HEALTH TESTIMONY AND IN THIS PARTICULAR CASE I WOULD SUGGEST THAT THE MENTAL HEALTH TESTIMONY REALLY IS UNDERCUT BY THE FACTS OF THE CASE.

NONETHELESS HE PUT ON BOTH SO THAT THE JURY NOT EVERYONE DISAGREES WITH MENTAL HEALTH TESTIMONY. BUT GENERALLY THAT IS HIS EXPERIENCE.

AND THEY'VE BEEN DOING THIS FOR NOW ALMOST 30 -- SINCE 1980.

CLOSE TO WHAT -- 27 YEARS.

AND HE HAS A GOOD FEEL.

HE DOES MOST OF THE CAPITAL CASES IN 19th CIRCUIT.

IT'S INDIAN, RIVER MARTIN AND ALL OVER.

HE'S WELL EXPERIENCED.

HE NOT ONLY -- GOES THROUGH HIS TRIALS, BUT HE DOES SIT IN OTHER TRIALS TO FIND OUT WHAT'S GOING ON IN THE COUNTY.

>> YOU'RE SAYING A FAIR READING OF HIS TESTIMONY AND

HIS EVIDENCE WOULD REFLECT THAT HE WAS VERY KNOWLEDGEABLE ABOUT MENTAL HEALTH ISSUES.

THE SYNDROME AND THE OTHER CONCEPTS AND THE DIFFERENCE BETWEEN A PSYCHIATRIST AND PSYCHOLOGIST.

>> YES.

IN OTHER WORDS THAT THE OPPOSITION HERE IS REALLY PAINTED A FALSE PICTURE.

>> I THINK HE'S PAINTED A PICTURE USING -- RAISES LITTLE BITS AND PWAOS -- PIECE OF WHAT UDEL SAYS TO PAINT A PICTURE THAT'S FOR HIM.

HOWEVER, IF YOU TAKE MR. UDEL IN HIS TOTALITY, HE HAS DONE I THINK ABOUT 19 CAPITAL CASES OVER 90 HOMICIDE CASES AND HE IS COMPEL -- WELL EXPERIENCED. WE WITH TAKE A LOOK AT WHAT HE DID IN 1990 -- 1991 AND TAKE A LOOK WHAT HE DID IN 1997 FOR THE RETRIAL.

>> HE HAD TWO EXPERTS. DR. PTRILLA AND DR. DESAI. AND HE CHOSE THAT GOT HIM 11-1 RECOMMENDATION OF DEATH.

I HAVE TO DO SOMETHING DIFFERENT HERE.

HE DIDN'T PUT ON THE EXACT SAME CASE.

HE FOUND DR. LITTMAN AS I MENTIONED ALSO HAD THREE OTHER EXPERT SUPPORTING HIS POSITION.

MR. UDEL PUT ON DR. UDEL AND DR. LICHTMAN PLUS THE LAY WITNESSES AND THE RECOMMENDATION AGAIN WAS 12-0.

ONE HAS TO UNDERSTAND THAT IT'S THE FACTS OF THE CASE AGAIN THAT UNDER CUT THIS MENTAL HEALTH TESTIMONY.

>> I HAVE JUST AN ISSUE I WANT TO ASK YOU ABOUT. I DON'T THINK IT REALLY CHANGES ANYTHING ABOUT THE OUTCOME HERE.

BUT THE STATE ATTORNEY'S LETTER THAT THEY SENT TO MR. UDEL, AND WHETHER THE STATE ARGUES THAT THAT LETTER WAS EXEMPT FROM DISCLOSURE AS WORK PRODUCT. THEY CALL UDEL AS A WITNESS. UDEL IS TALKING ABOUT HIS ATTORNEY FOR MR. KEARSE, OBVIOUSLY THEY WAIVE ATTORNEY-CLIENT PRIVILEGE THAT WAY.

HE'S ON THE STAND.

IS -- IT'S A LETTER THAT THE STATE SENDS TO HIM.

YOU'RE NOT SAYING THAT HE COULDN'T THEN REVEAL THE LETTER TO WHOEVER HE WANTED TO.

HOW DID THAT -- JUST AM HAVING A TROUBLE SEEING HOW THAT ONCE YOU SENT IT OUT TO A WITNESS AND THAT IS THE DEFENDANT'S OWN ATTORNEY HOW YOU CAN CONTINUE TO CLAIM WORK PRODUCT PRIVILEGE AND EVEN IF YOU CAN, YOU -- MR. UDEL JUST HAND IT OVER.

>> HE PUT ON THE LETTER THIS IS WORK PRODUCT.

HE'S CLAIMING A WORK PRODUCT PRIVILEGE.

MR. UDEL RECOGNIZED THAT. AND HONORED THAT REQUEST. TO KEEP IT CONFIDENTIAL.

>> AND YOU'RE SAYING THAT ANY WITNESS YOU SEND A LETTER TO OUTLINING THE CASE, THAT WITNESS

DOESN'T -- WOULDN'T -- ONCE YOU SENT IT TO THAT WITNESS THAT -- IT'S NOT THE STATE -- IF YOU TALK ABOUT WORK PRODUCT.

>> ASSUMING THAT YOU COULD BE ARRESTED FOR TURNING OVER THE LETTER.

>> IF IT IS SEPTEMBER OUT TO A WITNESS AND THAT WITNESS WANTED TO DEPOSE IT.

HOW IS THAT CONTINUE TO BE SOMETHING --

>> BECAUSE MR. UDEL WAS

HONORABLE AND RESPECTED  
MR. MUM MONEY'S WISHES THAT  
IT WAS WORK PRACTICE.  
THE SAME AS MR. MUR MONEY  
WITNESS PREPARATION IT IS  
WORK PRODUCT FROM THAT  
ATTORNEY THEY ARE DISCUSSING  
THE MATTER THAT IS GOING TO  
BECOMING BEFORE THE COURT  
AND AND THE TESTIMONY.

>> CORRECT ME IF I'M WRONG  
THE ISSUE ON APPEAL IS  
WHETHER THIS WAS A PUBLIC.

>> IT WAS REQUEST TO THE  
STATE TO PRODUCE THAT.  
IT'S NOT A PUBLIC RECORD.  
IT IS DURING LITIGATION THAT  
IT TAKES RIGHT OUT OF PUBLIC  
RECORD ARENA.

BUT THE QUESTION WAS WHETHER  
MR. UDEL COULD BREAK THE --

>> HE WAS ASKED TO SEE THE  
LETTER AND THEN THE COURT  
SAYS THE WAY I SEE APPEAL AN  
EXAMINED IT AS MR. UDEL SAID  
HERE IT IS.

>> BECAUSE THE STATE WAS  
CLAIMING A WORK PRODUCT  
PRIVILEGE AND ALSO THAT THIS  
WAS WITNESS PREPARATION.

>> I KNOW MR. KEARSE -- OR  
MR. KALIL WILL GO INTO THE  
OTHER ISSUE WHICH IS  
MR. MARTEL AND THE PSITE  
MATTER.

LET'S TAKE A FEW MINUTES TO  
MENTION THAT.

THAT IS NOT NEWLY DISCOVERED  
EVIDENCE WHAT OCCURRED IN  
THE SPIDY CASE WAS GENERATED  
AFTER THERE WAS A SENTENCING  
HEARING.

SO.

>> YOUR ARGUMENT THIS IS NOT  
EVIDENCE THAT EXISTED AT THE  
TIME BUT HAD NOT BEEN  
DISCOVERED THROUGH NO LACK  
OF DILIGENCE.

>> THAT'S CORRECT, YOUR  
HONOR.

>> IT'S A FACT THAT OCCURRED  
AFTER THE TRIAL IN THIS  
CASE.

>> THAT'S CORRECT.

>> AND IF WE HELD THE DEFINITION OF NEWLY DISCOVERED SOMETHING THAT EXISTED AT THE TIME BUT WASN'T DISCOVERED.  
>> THAT'S THE DEFINITION. IT HAD TO EXIST AT THE TIME OF THE EVENT, THAT IT COULD NOT HAVE BEEN SCHEDULED WITH DUE DILIGENCE AND THAT THE THIRD PRONG IS THAT IT WILL DO -- IT WILL IMPACT EITHER THE SENTENCE OR THE PENALTY.  
>> ON THE FIRST PRONG RECANTATION OCCURS -- THERE'S MANY CASES WHERE YOU SAY IT'S NEWLY DISCOVERED RECANTATION DOESN'T EXIST AT THE TIME BUT AFTERWARDS. YOU MAY BE FINE ON ANOTHER PRONG. I DON'T KNOW WE EVER SAID IT HAD TO EXIST AT THE TIME --  
>> IT'S TWO PRONG. IF IT'S RECANTATION YOU TALK ABOUT SOMETHING WHERE THE LIE OCCURRED AT THE SAME -- AT THE TIME OF TRIAL. OF COURSE.  
>> THE NEWLY DISCOVERED WAS THAT HE WAS LYING AT THE TIME OF TRIAL.  
>> LYING AT THE TIME OF TRIAL. THIS IS MERELY A COLLATERAL ISSUE. WHAT DR. MARTEL DID IN THE CASE IN NEW MEXICO IT CLEARLY IS COLLATERAL AND WAS ONLY GOING TO BE USED TO TRY TO IMPEACH HIM AS FAR AS HIS BIAS AS THE DEFENSE WOULD SAY. BIAS TOWARD THE STATE. WELL, OF COURSE THE STATE IS PUTTING HIM ON. HE WILL SAY SOMETHING PREJUDICIAL TO THE DEFENSE. AND I -- AS I SAID IT'S PURELY COLLATERAL ISSUE.  
>> THAT'S THE SECOND COMMENT.

>> RIGHT.  
WITH OUR ASSISTANCE YOU HAVE  
EXHAUSTED ALL OF YOUR TIME.  
>> NO ONE HAS ANY OTHER  
QUESTIONS.  
I WON'T RELY ON MY BRIEF.  
>> YOUR TIME IS UP.  
THEY WILL HAVE TO WAIT.  
>> YES, SIR.  
>> LET ME ASK YOU A  
FUNDAMENTAL QUESTION ON THIS  
ISSUE OF THE COUNSEL'S  
INEFFECT  
THE -- INEFFECTIVENESS.  
I MAY HAVE A BAD MEMORY.  
BUT IN MOST OF THE CASES  
THAT I'VE SEEN HERE THAT  
ALLEGE INEFFECTIVE  
ASSISTANCE FOR FAILURE TO  
PUT ON ADEQUATE MITIGATION,  
I HAVEN'T SEEN A CASE YET  
AND AGAIN YOU CAN REFRESH MY  
RECK HREBGION.  
BUT I DON'T RECALL A CASE  
WHERE -- RECOLLECTION.  
I DON'T RECALL A CASE WHERE  
THE DEFENSE PUT ON TWO  
MENTAL MITIGATION EXPERTS AT  
TRIAL AND THE DEFENDANT IS  
STILL ARGUING THAT HE DIDN'T  
PUT ON ENOUGH.  
THE ONES I'VE SEEN IS WHERE  
THEY DIDN'T PUT ANYTHING ON.  
>> IT'S NOT SO MUCH THE  
QUANTITY OF THE EVIDENCE  
THAT WAS PRESENTED.  
IT'S THE QUALITY OF IT.  
AND IT'S THE --  
>> HAVE WE HAD A  
CASE -- HAVE WE HAD A CASE  
LIKE THAT?  
EVER?  
HAVE YOU CITED A CASE TO US  
WHERE THE DEFENSE HAS PUT ON  
TWO MENTAL MITIGATION  
EXPERTS?  
AND WE HAVE HELD WELL THAT  
WAS INEFFECTIVE ASSISTANCE.  
>> SPECIFICALLY BEFORE THIS  
COURT I'M NOT AWARE OF ANY.  
>> THAT SEEMS TO ME PRETTY  
IMPORTANT BECAUSE WE'RE  
ESSENTIALLY YOU'RE ASKING US  
TO DECLARE INEFFECTIVE

ASSISTANCE OF A MENTAL  
HEALTH EXPERT NOT  
INEFFECTIVE ASSISTANCE OF  
COUNSEL.

THERE ARE U.S. SUPREME COURT  
CASES IN THE NAMES ES KA UP  
ME.

VERY SIMILAR SITUATION WHERE  
MULTIPLE MENTAL HEALTH  
PROFESSIONALS.

>> YOU HAVE TO LOOK THERE AS  
TO WHETHER IN THE SITUATION  
WHERE THEY ARE JUST NOW  
MENTAL HEALTH EXPERT.

I DON'T KNOW WHETHER YOU  
TALK ABOUT THE WHERE THE  
RECORD NOW THAT ARE NEVER  
UNCOVERED BY THE LAWYER TO  
GIVE TO THE EXPERT THAT'S A  
DIFFERENT SITUATION.

BUT WHERE IT SORT OF A  
BETTER EXPERT A DIFFERENT  
EXPERT OR A PREPACKAGED  
EXPERT.

I'M SEARCHING FOR THAT SAME  
CASE AND I DON'T THINK THAT  
THERE IS REALLY, REALLY IN.  
YOU COULD HAVE MAYBE DONE  
BETTER.

ESPECIALLY WHEN HE HAD TWO  
DIFFERENT -- NOW HE HAS WENT  
THROUGH TWO PENALTY PHASES.  
MORE THAN A SECOND.

>> YEAH AND AGAIN, IT'S NOT  
A QUESTION OF THE QUANTITY  
OF WHAT WAS PRESENTED OR HE  
COULD HAVE DONE BETTER.

IT'S A QUESTION OF  
EVERYTHING THAT HE PUT ON HE  
JUST COMPLETELY NEGATED BY  
ALLOWING THE STATE'S EXPERT  
TO ESSENTIALLY RUN RAMSHOT  
OVER EVERYTHING AND THEN  
DIMINISHING HIS OWN EXPERTS  
BY NOT PREPARING THEM  
PROPERLY OR GIVING THEM THE  
INFORMATION THEY NEEDED.

>> WOULDN'T WE HAVE TO SAY  
THAT IT'S UNREASONABLE  
STRATEGY NOT TO DEPOSE THE  
STATE'S EXPERT?

>> I DON'T I DON'T SEE THAT  
DECISION AS BEING A STRATEGY  
AT ALL.

I SEE THAT AS BEING NOT  
FULLFILLING YOUR DUTY IN  
DISCOVERY.

AGAIN, HAVE WE HELD IN  
ANOTHER CASE THAT BY THE  
MERE VIRTUE OF NOT DEPOSING  
THE STATE'S EXPERTS THAT  
AL -- ALONE IS INEFFECTIVE  
ASSISTANCE OF COUNSEL.

>> I'M NOT AWARE OF THAT  
HOLDING, NO.

BUT NOT PREPARING HIS OWN  
EXPERT ADEQUATELY BY  
PROVIDING THE INFORMATION  
THAT WAS GOING TO BE  
CAPITALIZED OR BY THE STATE.  
BOLSTERING CREDIBILITY OF  
DR. MARTEL BY SAYING LOOK HE  
HAD THESE STATEMENTS.  
HE HAD THE EYEWITNESS  
STATEMENTS AND THE  
DEFENDANT'S STATEMENTS AND  
SO FORTH.

THERE'S NO STRATEGY REASON  
IN NOT PROVIDING YOUR EXPERT  
WITH EVERYTHING THAT'S  
NECESSARY.

WHICH IS ANOTHER  
CONSIDERATION.

AND ONE OTHER THING IF I  
STILL HAVE A MOMENT THE  
STATE WAS DISCUSSING  
DR. PATRILLA.

HE TESTIFIED SPECIFICALLY  
WITH REGARD TO THE MMPI AND  
DEFERRED HIS OPINION ON THE  
MMPI DATA AND WHETHER OR NOT  
IT WAS VALID AND  
INTERPRETABLE TO  
DR. FRIEDMAN.

THAT'S WHERE WE GET INTO THE  
PROBLEM HERE WITH THE  
FAILURE TO PREPARE AND TO  
HIRE THE EXTERTS AND EXPLAIN  
TO THE JURY THE WAY HE DID  
AT EVIDENCE HEARING THE  
IMPORTANCE OF F SCALE.  
THE F ENTICES IT WOULD HAVE  
BOLSTERED THE MITIGATION  
CASE.

I WOULD HAVE COUNTERED THE  
REBUTTAL THAT WAS PRESENTED  
BY THE CASE.

>> WITH -- THANK YOU VERY

MUCH.

WE THANK BOTH PARTIES FOR  
THE ARGUES.

WE WILL TAKE THE CASE UNDER  
ADVISEMENT.

THE COURT WILL TAKE ITS  
MORNING RECESSSION.

>> ALL RISE.