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Leroy Pooler v. State of Florida

SC05-2191

THE NEXT CASE, POOLER VERSUS STATE OF FLORIDA.

GOOD MORNING MAY IT PLEASE THE MAY IT PLEASE THE COURT MATTHEWED BAVARO FROM LAW SOEFS BRADLEY AND COLLINS ON BEFORE OF MR. POOLER -- ARGUMENT TODAY FOCUSING ON ISSUES TWO AND SIX, WHICH ARE THE POLICY PHASE ISSUES, IN THE EVENT THE COURT HAS ANY QUESTIONS, ON THE GUILT PHASE I'M MORE THAN HAPPEN TO ANSWER HE WOULD OTHERWISE LIKE TO FOCUS ON THE HE PENALTY FAZE.

TRY AND GET THE CLOCK SQUARED WAY.

NO PROBLEM.

ARE YOU REGISTERED --

WE ARE -- THAT IS CORRECT.

17 AND 3?

HE IS UP TO, OKAY.

YES.

RIGHT.

THE OPINION OF THE COURT AND OPINIONS OF THE UNITED STATES SUPREME COURT IN THE PAST -- PAST STATED IN ORDER FOR A DEATH PENALTY SENTENCED CONSTITUTIONAL PERMISSIBLE THE DEATH PENALTY HEARING OR SENTENCING HEARING MUST BE AN INDIVIDUALIZED SENTENCING HEARING IN ACQUIT THE FACTS AND CIRCUMSTANCES OF THE \$\$ DEFENDANT'S RIGHTS, ARE HEARD BY A JURY AND JUDGE AND INFORMED DECISION CAN BE MADE WHETHER OR NOT THE DEATH FINE IS APPROPRIATE, THE UNITED STATES SUPREME COURT IN GRAY VERSUS GEORGIA ONE OF THE KIDS A CITED IN OUR INITIALLY BRIEF FOUND AT 228 VRES 153, STATES AN ACCURATE SENTENCING INFORMATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! INFORMATION, IS AN INDISPINS HEING PREAMBLE REQUISITION TO IT DETERMINATION WHEN A DEPARTMENT -- DEFENDANT SHOULD LIVE OR A DIE MADE BY JURY MAY NEVER HAVE MADE SENTENCING DECISION.

YOU ARE FOCUSING ON DEFICIENCY WHAT SEEMS ODD IN THIS CASE, IS IN A -- NORMALLY!!\$\$!!!!!!!!!!!!!!!!!!!!!! NORMALLY, AFTER IN THE SECOND PART OF THE CASE, WHEN SCHOOL RECORDS ARE UNCOVERED!!\$\$!!!!!!!!!!!!!!!!!!!!!! UNCOVERED, AND MILITARY RECORDS!!\$\$!!!!!!!!!!!!!!!!!!!!!! RECORDS, WERE GOING OH, MY GOD IF WE HAD THIS THIS REALLY WOULD HAVE BEEN POWERFUL MITIGATION I UNDERSTAND LET'S ASSUME FAIL FOUR GET THE MEDICAL RECORDS!!\$\$!!!!!!!!!!!!!!!!!!!!!! RECORDS, AND THE SCHOOL RECORDS!!\$\$!!!!!!!!!!!!!!!!!!!!!! RECORDS, WAS DEFICIENT, BUT, BASED ON, THEM -- HAVING MADE A DECISION AND DOING -- SOME INVESTIGATION TO GO POSITIVE SO TO SPEAK, AND ACTUALLY ONE OF THE MITIGATORS FOUND WAS THIS MILITARY SERVICE -- HOW WOULD WE FIND PREJUDICE WHEN THE MILITARY RECORDS ARE \$\$ REPLETHORA WITH THIS GUY INSTEAD OF A VIETNAM VETERAN REALLY SOMETHING -- SOB WOW THIS GUY SERVED OUR COUNTRY, IS IT IS FILLED WITH HE MISCONDUCT!!\$\$!!!!!!!!!!!!!!!!!!!!!! MISCONDUCT, AND SO FORTH. AND SO I ASK PERHAPS, TO LET'S JUST ASSUME FOR THE MOMENT THERE ISSOME DEFICIENCY, AND I'M NOT GOING TO SAY I AGREE WITH YOU ON IT BUT LET'S ASSUME COULD YOU JUST FOCUS BRIEFLY ON HOW OUR COMPETENCE AND THE RESULT IS UNDERMINED GIVEN THE NATURE -- OF THE WHAT WAS IN THESE RECORDS.

ABSOLUTELY, I THINK THAT IS AN EXCELLENT QUESTION ON THE ISSUE OF PREJUDICE, I SUBMIT TO THE COURT THAT THERE IS A SIGNIFICANT ISSUE OF PREJUDICE HERE -- FOR EXAMPLE IF WE ARE GOING TO YOU MENTIONED THE MILITARY SERVICE, THE FACT THAT HE SERVESED IN THE

MILITARY STILL WOULD HAVE BEEN MITIGATED\$!!!!!!ING HOWEVER IN THIS COURT IN THIS CASE, THE TRIAL COURT MADE A NUMBER OF SPECIFIC FACTUAL FINDINGS, AND DENIED SOME VERY WEIGHTY MITIGATORS MENTAL HEALTH INTELLIGENCE MITIGATORS BASED UPON FICTIONED THE COURT HAD THE FACTS, THE JUDGE HAD THE FACTS BEFORE HER, WOULD NOT HAVE DENIED THAT MITIGATION.

HE LIED TO HIS OWN LAWYER, TO THE EXPERTS, THAT HE WAS HONORABLY DISCHARGED AND THAT HE GRADUATED HIGH SCHOOL.

THAT IS CORRECT, AND HOWEVER THAT ARGUMENT WAS SKWAERL ADDRESSED IN UNITED STATES SUPREME COURT OF PILLAR VERSUS BEARD, THE STATE AND IN THAT CASE, ACTUALLY MADE THE ARGUMENT THAT MR. -- HIMSELF SENT HIS ATTORNEY ON FALSE LEADS THAT THE ATTORNEY IN ROMPILA, SPOKES WITH FIVE FAMILY MEMBERS HAD THREE COMPETENCY EXPERTS!!\$!!!!!!!!!!!!!! EXPERTS.

ROMPELA, THE FILE ON THE DESK WAS IT NOT THEY DIDN'T GO THROUGH FILE TO KNOW ABOUT THE PRIOR CONVICTIONS IT WAS NEVER -- WASN'T THAT THRUST WHERE ROMPELA WAS GOING. THAT IS ONE OF THE ISSUES BUT I DON'T THINK THAT IN OF ITSELF.

--

YES, I MEAN IT IN FACT, THE FACTS AND CIRCUMSTANCES OF ROMPILA STRIKINGLY SIMILAR TO HERE.

DID THE JURY NOT HEAR THAT THE GENTLEMAN WAS IN THE MILITARY IS THAT WHAT YOUR POINT IS.

THE JURY DID HERE, THAT HE WAS IN THE MILITARY.

OKAY.

HOWEVER THAT GOOD MILITARY CAREER OR THE FICTITIOUS ACCOUNT OF A GOOD MILITARY CAREER WAS ACTUALLY USED AGAINST MR. POOLER IN CERTAIN MITIGATION, THE -- ALLEGATION THAT HE GRADUATED HIGH SCHOOL WAS USED AGAINST MR. POOLER, IN TERMS OF BELL INTELLIGENCES!!\$!!!!!!!!!!!!!! INTELLIGENCES MENTAL HEALTH MITIGATION HE WAS DENIED BECAUSE THE TRIAL ATTORNEY DID NOT HAVE ALL THE FACTS BEFORE HIM IF I CAN CONTINUE TO ADDRESS THE ISSUE OF PREJUDICE IN THIS CASE -- SPECIFICALLY FOR EXAMPLE ARE DULL INTELLIGENCE -- COURT FOUND DULL INTELLIGENCE HAPPENS SO BE A WHITEY MITT GATOR LOOK TOWARDS, YOU KNOW PEOPLE HAVE UNDER PRIVILEGED BACKGROUND!!\$!!!!!!!!!!!!!! BACKGROUND, DO NOT HAVE A SELLR EDUCATION, WE LOOK TO THAT, IN TERMS OF MITIGATION IN A DEATH PENALTY CASE, AND THIS CASE, THE TRIAL COURT ACTUALLY DENIED THE MITT GATOR OF DULL INTELLIGENCE, BECAUSE MR. POOLER HAD IN FACT, AS FOUND BY TRIAL COURT GRAD HIGH SCHOOL, THAT HE HAD A STELLAR MILITARY CAREER THAT HE HAD SUCCESSFUL JOB RECORD -- WHOEVER!!\$!!!!!!!!!!!!!! WHOEVER, IN THE IN THE POSTCONVICTION RELIEF PROCEEDINGS WE LEARNED MR. PEELER NEVER GRADUATED HIGH SCHOOL, IN FACT HE DIDN'T MAKE IT OUT OF 11th GRADE HE WAS -- HIS GRADES WERE RIFE WITH Ds\$, F, HE WAS DESCRIBED BY TEACHERS THROUGHOUT TENURE IN THE SCHOOL AS BEING SLOW, AND THESE ARE ALL FACTORS O WHICH WOULD HAVE SUPPORTED A FINDING OF DULL INTELLIGENCE IN THIS CASE ALL FACTORS THAT WOULD HAVE, SUPPORTED, THE -- ABILITY TO APPRECIATE CRIMINALITY OF CONDUCT CONFORM TO REQUIREMENTS OF CONDUCT OF LAW THIS VERY BASIC BACKGROUND INFORMATION THAT MUST BE ATTAINED, AND ROMPELA THE TRIAL ATTORNEY WAS ACTUALLY HAVE SET ON FALLS LEADS BY HIS CLIENT, THE CLIENT HIMSELF, GAVE AN UNEVENT!!\$!!!!!!!!!!!!!! UNEVENTFUL, DEPICTION OF HIS LIFE, THAT UNEVENTFUL DEPICT!!\$!!!!!!!!!!!!!! DEPICTION OF HIS LIFE WAS ALSO SUPPORTED BY FIVE FAMILY MEMBERS, AND THREE COMPETENCY EXPERTS.

AS JUSTICE LIST YOU JUSTICE LUCEOE JUSTICE LEWIS POINTED OUT YOU HAD THE FILE IN FRONT OF HIM, THEY ARE, YOU HAVE GOT NOT ONLY EXPERIENCED DEFENSE ATTORNEY, BUT YOU ALSO HAD HIM HAVING RETAIN AND NOW SWITCHING BACK AND FORTH, WITH -- PERFORM RETAINED SERVICES OF EXPERIENCED GATOR CAPITAL EXPERIENCE WENT TO LOUISIANA, MET WITH THE FAMILY MEMBERS, GOT LETTERS FOR BACKGROUND INFORMATION!!\$!!!!!!!!!!!!!! INFORMATION, ACTUALLY WAS TRYING TO GET RECORDS, THAT AND SO THE JUDGE FOUND THE TRIAL COUNSEL CONDUCTED A REASONABLE INVESTIGATION, AND WHEN REASONABLE DUMGS NOT AVAILABLE ALTERNATIVE MEANS CORROBORATION WAS FOUND WITH THAT BEING THE \$\$

JUDGE'S FINDING ON DEFICIENT!!\$\$!!!!!!!!!!!!!!!!!!!! DEFICIENTS PERFORMANCE AND GIVEN THAT IF THERE IS COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THAT FINDING!!\$\$!!!!!!!!!!!!!!!!!!!! FINDING, WE HAVE TO DEFER TO THAT, HOW DO YOU GET AROUND -- THE -- THAT THERE IS REALLY NO DEFICIENT PERFORMANCE IN THIS CASE.

I TAKE!!\$\$!!!!!!!!!!!!!! COISH WITH ONE STAINLT MADE THAT HE WAS TRYING TO GET THE RECORDS, THERE IS NO EVIDENCE, WHATSOEVER!!\$\$!!!!!!!!!!!!!!!!!!!!!! WHATSOEVER, OF ANYONE TRYING TO OBTAIN RECORDS IN THIS CASE. IF YOU IN FACT, THE MILITARY RECORDS!!\$\$!!!!!!!!!!!!!!!!!!!! RECORDS, THE MILITARY RECORDS!!\$\$!!!!!!!!!!!!!!!!!!!! RECORDS, THAT WE GOT WAS JUST A MOT MATTER OF -- WITH THEM THE EXPERIENCED INVESTIGATORS AS YOUR HONOR HAS PUT IT IN FACT, IN HIS FILE AND IT WAS MADE EXHIBIT IN THIS TRIAL IS PART OF THE RECORD FOR YOUR HONORS TO REVIEW!!\$\$!!!!!!!!!!!!!! REVIEW, ACTUALLY HAD A MEMO IN MISS FILE ORDER THE RECORDS HE HAD THE EXACTLY WHERE TO IF FEND -- SEND IT A WAIVER. HE DIDN'T JUST NEVER DID IT.

I'M A BIG BELIEVER IN -- HAVING PEOPLE GET RECORDS, I MEAN AND I USUALLY WANT ESPECIALLY THE SCHOOL RECORDS!!\$\$!!!!!!!!!!!!!!!!!!!! RECORDS, TO LOOK AT. BUT HERE, IS, A SITUATION, WHERE YOU GOT ALMOST A DECORATED VIETNAM VETERAN, WHO IS NOT BEING ATTACKED BY THE STATE BASED ON HIS MILITARY RECORD, AND THAT IS GOING TO BE PRETTY -- IMPRESSIVE STUFF. I'M WONDERING AGAIN GO BACK TO JUST THE MILITARY GET HIS MILITARY ROERDZ RECORDS!!\$\$!!!!!!!!!!!!!!!!!!!!!! EPORTS!!\$\$!!!!!!!!!!!!!!!!!!!! REPORTS, YOU GO OH, MY GOODNESS SOMEBODY WHOS SOMEBODY THESE RECORDS COME IN, THIS BLOWS HIS WHOLE ASPECT YOU AGREE THAT AT LEAST WITH RESPECT TO MILITARY RECORDS, THAT IT WAS WOULD HAVE BEEN, THAT INSTEAD OF A FAVORABLE THING IT WOULD HAVE JUST THE MILITARY RECORDS PLACED HIM THE DEFENDANT, IN AN UNFAVORABLE LIGHT. THAT IS A REASONABLE CONCLUSION!!\$\$!!!!!!!!!!!!!!!!!!!!!! CONCLUSION, AS TO THE MILITARY RECORDS.

UNFAVORABLE IN DEATH PENALTY CASE UNFORTUNATELY IS NOT ALWAYS BAD THING, IN FACT, THE MILITARY RECORDS WOULD HAVE SUPPORTED MENTAL HEALTH MITIGATION THE FACT THAT HE SUFFERED TRAUMA IN VIETNAM, THE FACT THAT HE -- DOESN'T HAVE A STELLAR, MILITARY CAREER WOULD HAVE SUPPORTED FINDINGS SUCH AS INTELLIGENCE, OTHER MENTAL HEALTH MITIGATION THE COURT DID GIVE WEIGHT TO HIS MILITARY CAREER, THE COURT STILL COULD HAVE GEVEN WEIGHT TO MILITARY CAREER EVEN WITH RECORDS, HOWEVER THE COURT COULD NOT HAVE USED IT AS A SWORD TO STRIKE DOWN, A NUMBER OF MENTAL HEALTH MITIGATION THAT WAS STRUCK DOWN IN THIS CASE, AND SPECIFICALLY, BECAUSE OF A SUPPOSED STELLAR MILITARY CAREER, THAT COULD NOT HAVE BEEN USED AGAINST MR. POOLER.

SO IS THIS A CASE WHERE YOU GOT THE RECORDS GOT NEW MENTAL HEALTH EXPERTS THE EXPERTS HAVE COME, IN AND GIVEN WEIGHTY TESTIMONY AS TO STATISTIC -- STATUTORY MENTAL HEALTH MITIGATORS.

CORRECT IN THIS CASE THERE WAS A NUMBER IF I CAN GO BACK TO JUSTICE PARIENTE, AND YOUR QUESTION, TO GO SEE SOME PREJUDICE THAT WE HAVE IN THIS CASE, FIRST, WE HAVE EVIDENCE OF -- INTOXICATION, AND EVIDENCE OF -- ALCOHOL!!\$\$!!!!!!!!!!!!!!!!!!!! ALCOHOLISM, THAT WAS NEVER PRESENTED TO THE JURY, AND THOSE ARE TWO SEPARATE AND DISTINCT MITIGATORS BOTH ALCOHOL RELATED THERE WAS EVIDENCE THAT HE WAS INTOXICATED TELL IT OF THE OFFENSE IN FACT IF YOU RECALL EVEN IF WASN'T GOING TO BE USED IN THE GUILTY PHASE IT IS MITT INVESTIGATING IN SENTENCING PHASE, IF YOU --

ALSO, I MEAN WITH THAT, THE POLICE HE HAD CONTACT WITH POLICE OFFICERS AN HOUR OR SO BEFORE THIS EVENT, AND -- ALLOWED HIM TO DRIVE AWAY SO THERE IS -- DOESN'T THAT RUN REALLY IN THE FACE OF THAT MAKES THAT PRETTY HOLLOW ARGUMENT DOESN'T IT?

IT IS STILL WOULD HAVE BEEN A QUESTION FOR THE JURY SOMETHING FOR THE JURY TO HAVE CONSIDERED MR. POOLER WAS PASSED OUT DRUNK IN HIS CAR LITERALLY HOURS, BEFORE THIS MURDER --

THEN HE REPORTED TO IT THE -- POLICE.

THAT IS CORRECT.

THAT WHAT IS JUSTICE LEWIS WAS RESERVEING TO HOW INTOXICATE COD HE HAVE BEEN IF HOURS LATER HE REPORTED TO THE POLICE -- COHERENT -- THEN YOU HAVE THE MURDERS.

WELL -- STILL, IN -- MENTAL HEALTH MITIGATION AND IN MITIGATION FOR A DEATH PENALTY

CASE THE ATTITUDE IS WIDE -- LATITUDE WIDE OPEN CODE OF HAVE BEEN BROUGHT BEFORE THE A JURY ALSO EVIDENCE NOT ONLY OF INTO BEINGS CAKES AT THE TIME OR BEFORE OFFENSE BUT EVIDENCE IN TERMS OF INTOXICATION DR. BRANNON FOUND MR. POOLER DOES SUFFER FROM SEVER DEPENDENCY ABUSE, AND WE ALSO HAD THE REPORT OF DR. GUTMANN -- FINDS MR. POOLER DEFINITELY HAS A SUBSTANCE AND SPECIFICALLY ALCOHOL DEPENDENCE PROBLEM -- AND, AGAIN, HE -- THE COURT USED BOTH THE HIGH SCHOOL GRADUATION!!\$\$!!!!!!!!!!!!!!!!!!!! GRADUATION, AND THE MILITARY CAREER, AND THE SUPPOSESED GREAT WORK HISTORY AGAINST MR. POOLER A NUMBER OF OCCASIONS!!\$\$!!!!!!!!!!!!!!!!!!!! OCCASIONS.

DID YOU TRY TO -- HAVE THE ORIGINAL EXPERTS, WHO EXAMINED HIM NEF THE EVIDENTIARY HEARING IF THEY HAD THE SCHOOL RECORDS, AND THE MILITARY RECORDS, THAT THEY WOULD HAVE REACHED A SUBSTANTIALLY DIFFERENT CONCLUSION!!\$\$!!!!!!!!!!!!!!!!!!!! CONCLUSION, ABOUT MITIGATION!!\$\$!!!!!!!!!!!!!!!!!!!! MITIGATION?

NO, THEY IN FACT DID NOT TESTIFY IN THE 3.850 HEARING.

I HAVE A PROBLEM WITH THAT, BECAUSE ALTHOUGH I'M GOING TO ASK THE STATE ABOUT THIS IDEA, THAT THERE WERE SORT OF LABORED UNDER FALSE PRETENSES!!\$\$!!!!!!!!!!!!!!!!!!!! PRETENSES, THAT IS THAT OF A -- OF A HERE IS A GUY THAT WAS -- YOU KNOW, PARTIALLY -- COME PET TENSEY INITIALLY, ENDS UP -- WHERE HE IS A HIGH SCHOOL GRADUATE, DOES FINE I THINK THE RECORD -- IS DEVOID OF THAT, SO I THINK THAT IS THE RUTHER FORD IN CASE LAW, THERE, JUST OBTAINING A BETTER EXPERT, HAS NEVER BEEN SOMETHING THAT WE HAVE SAID COULD CONSTITUTE DEFICIENT PERFORMANCE DOESN'T ALL WHAT YOU ARE SAYING HANG ON THAT HE SHOULD HAVE ATTAINED THE SCHOOL RECORDS, AND SCHOOL RECORDS!!\$\$!!!!!!!!!!!!!!!!!!!! RECORDS, HAVE DEVASTATING INFORMATION!!\$\$!!!!!!!!!!!!!!!!!!!! INFORMATION, THAT IT WOULD HAVE COMPLETELY CHANGED THE MENTAL MITIGATION?

WOULD I ACTUALLY LIKE TO -- DRAW THE \$COURT'S ATTENTION TO NOT ONLY ROMP!!\$\$!!!!!! ROMPILA SAID BEFORE BUT ANOTHER CASE OPEN AN OPINION OF THIS COURT, WHICH IS FOUND AT EXCUSE ME FOUND AT 88372nd\$\$, 766 THIS ISSUE THAT YOU ARE RAISING RIGHT NOW IS -- SQUARELY -- THERE WERE THREE EXPERTS THAT WERE APPOINT!!\$\$!!!!!!!!!!!!!!!!!!!! APPOINTED FOR COMPETENCY ONLY, THEY WERE NEVER HAD ANY INDICATION THAT THEY WOULD BE DOING ANY TYPE OF MENTAL HEALTH MITIGATION, IN THIS CASE, THE, HE -- EXPERTS RETAINED WERE COMPETENCY EXPERTS ONLY IF YOU GO BACK AND LOOK AT THEIR TESTIMONY FOR EXAMPLE THERE TAKES DR. BY THE NAME OF I BELIEVE STEPHEN ALEXANDER, WHO TESTIFIED MR. POOLER IS COMPLETELY INCOMPETENT TO EVEN PROCEED, THEN DR. RAVINE DEFEND THE TRIAL ATTORNEY TWAELT MADE IT DIFFICULT FOR HIM NEVER GAVE HIM BACKED MATERIALS NEVER SPOKE WITH HIM BEFORE THE VALUATION, AND AS THIS COURT RECOGNIZED IF THE OPINION OF - -. SO I SHER CASE, THAT COMPETENCY AND SANITY ARE PURELY LEGAL!!\$\$!!!!!!!!!!!!CONCEPTS, DIFFERENT FROM OPEN ENDED TYPE MITIGATION THAT WE SEE, IN A FORENSIC!!\$\$!!!!!!!!!!!!!!!!!!!! FORENSIC MENTAL HEALTH MITIGATION EXAMS.

THAT IS DIFFERENT NOW YOU ARE SAYING, THAT A -- THAT HE ERRED NO FOR THE HIRING DIFFERENT EXPERTS FOR MITIGATION MY QUESTION TO YOU WAS IS, KNOW THERE ARE CASES WHERE, THE DECISION IS MADE NOT OH, TO USE MENTAL MITIGATION IF YOU ARE GOING POSITIVE -- IS HOW IS IT -- DOES, THE ISSUE OF NOT GETTING THE SCHOOL RECORDS BECOME AND THE MILITARY RECORDS SORT OF BECOMING IMPORTANT UNDERPINNING OR, BECAUSE IF THEY DIDN'T HAVE THAT THEY COULD HAVE HAD ALL THE EXPERTS THEY THAT THEY CALLED, THEY STILL WOULD HAVE HAD THE VERY POSITIVE IMAGE OF THIS DEFENDANT. SO IS THAT THE UNDER SNIENG I THINK WHAT THE COURT IS ALLUDING TO STRATEGY OF THE TRIAL COURT TO GO POSITIVE AS OPPOSED TO GO NEGATIVE OR TO PRESENT THIS OTHER INFORMATION!!\$\$!!!!!!!!!!!!!!!!!!!! INFORMATION. THERE IS ACTUALLY AT A CASE THAT I JUST RAN ACROSS I FILED IT SUPPLEMENTAL AUTHORITY, HORTON RGS ADDRESSES STRATEGY AND DEFERENCE THAT COURT SHOULD BE, A COURT SHOULD GIVE TO THE STRATEGY DETERMINATION, OF A TRIAL ATTORNEY IN SUCH IN A CASE LIKE THIS, WHEN A TRIAL ATTORNEY HAS ALL OF THE INFORMATION, AT HIS OR HER DISPOSAL, AND THEN CHOOSES!!\$\$!!!!!!!!!!!! CHOOSES, THE CORRECT STRATEGY BASED UPON ALL OF THAT INFORMATION, THAT SHOULD BE GIVEN GREAT DEFERENCE HOWEVER THE CASE I RECENTLY FILED WITH THIS COURT SUPPLEMENTAL AUTHORITY --

DID YOU GIVE YOUR POSING COUNSEL THAT.

YES A.

WE DIDN'T REFEREE IT TILL THIS MORNING -- DIDN'T RECEIVE IT TILL THIS MORNING.
HORTON SO THAT HORTON -- IT IS FOUND AT -- NINE HAVE ONE -- 941 FED SECOND, 1449 I WILL
QUOTE THE CASE IT STATES SO CALLED, QUOTE UNQUOTE STRATEGIC DECISIONS THAT ARE
BASED ON A MISTAKEN UNDERSTANDING OF THE LAW OR THAT ARE BASED ON A
MISUNDERSTANDING OF THE FACTS, ARE ACTUALLY ENTITLED TO LESS DEFERENCE, THE --
COURT STATES CASE LAW REREJECTS THE NOTION A QUOTE UNQUOTE STRATEGIC DECISION CAN
BE REASONABLE, WHEN THE ATTORNEY FAILED TO INVESTIGATE OPTIONS MAKE REASONABLE
CHOICE BETWEEN THEM SO THAT IS EXACTLY WHAT WE HAVE HERE ALL THE TERM --
THE RULE OF LAW LAW YOU WANT IS THAT ABSENT A FULL RECEIPT AND SCOURING OF SCHOOL
AND MEDICAL RECORDS, THEN IT IS PER SE PREJUDICIAL!!\$\$!!!!!!!!!!!!!!!!!!!!!! PREJUDICIAL.
THAT IS WHAT THE COURT THE COURT IN ROMPLIMIT A THINK COURT FELL JUST SHORT OF
FINDING A PER SE STANDARD IN A CASE LIKE THAT, I MEAN, AND --
BUT FROM ROMPELA DEFENDANT NEW THE STATE WAS GOING TO USE A PRIOR CONVICTION
THERE WAS A FILE READILY AVAILABLE THAT WOULD PROVIDE INFORMATION THAT IS NOT
REALLY THE ISSUE HERE.

THAT WAS ONE OF THE ISSUES IN ROMPELA THE COURT ADDRESSED JUST, BASICALLY WHAT THE
COURT SAID IF THEY WOULD HAVE IF THE TRIAL ATTORNEY WOULD HAVE ACTUALLY RECEIVED
THE SCHOOL RECORD, WOULD IT HAVE --

I WOULD QUOTE BROUGHT FEWS FROM ROMPEWILL IA BASICALLY THE COURT STATISTICED
STATED THAT SKOUNS COULD HAVE BECOME SKEPTIC OF THE IMPRESSION GIVEN BY THE FIVE
FAMILY MEMBERS WOULD IT HAVE GONE UNQUESTIONABLY FURTHER, IN BUILDING A
MITIGATION CASE, IN ROMPLA JURY NEVER IN OTHER WORDS MUCH MITIGATION OR ANY
MITIGATION PRESENTED AT PORT KWIFGS PROCEEDINGS THE COURT STATED IN THAT CASE THE
POSTCONVICTION COUNTER PARTS MEANING THE EXPERTS THAT TESTIFIED IN POSTCONVICTION
PROCEEDINGS WERE ALETED BY INFORMATION FROM SCHOOL MEDICAL PRISON
RECORDS!!\$\$!!!!!!!!!!!!!! RECORDS, THAT TRIAL OCCURRENCE NEVER SAW, FOUND PLENTY RED
FLAGS POINTING TO A NEED TO TEST FURTHER, I WANTED TO ADDRESS THECH OF THE PROO
PRY\$\$!!!!ITY OF A-- RELYING SOLELY UPON MR. POOLER FOR INFORMATION IN THIS CASE MR.
POOLER A 75 IQ!!\$\$!! IQ, THAT WAS --
-- YOUR REBUTTAL AS REMINDER.

OKAY I WILL TAKE VERY BRIEFLY!!\$\$!!!!!!!!!!!!!! BRIEFLY.

MR. -- MR. POOLER HAS 75 IQ THAT WAS FOUND BY OUR EXPERT DR. BRANNON WAS ALSO FOUND
IN THE SCHOOL RECORDS, FROM ALMOST 50 YEARS AGO, THE TRIAL ATTORNEY HIMSELF SAID AT
COMPETENCY HEARING HE TALKS TO HIM INVESTIGATOR TALKING TO HIM OTHER ATTORNEY IN
OFFICE TALKS TO HIM THEY COME OUT SCRATCHING THEIR HEADS, NOT SURE THEY ARE EVEN
GETTING THROUGH TO HIM, YOU HAD, ONE EXPERT THAT -- FOUND HIM COMPLETELY
INCOMPETENT ALL THREE EXPERTS AGREED THAT MR. POOLER -- WAS GOING TO HAVE
DIFFICULTY COMMUNICATING WITH HIS ATTORNEY, AND HIS ATTORNEY WAS LIKELY TO GET MIS-
- MISINTERPRET WHAT MR. POOLER WAS TRYING TO TELL HIM, EVERY EXPERT THAT TESTIFIED
HAD REAL ISSUES ABOUT MR. POOLER'S ABILITY TO MOUNT AND ASSIST IN HIS DEFENSE IT IS
UNREASONABLE FOR THE TRIAL ATTORNEY TO RELY SOLELY UPON MR. POOLER FOR TO GATHER
ALL THE INFORMATION!!\$\$!!!!!!!!!!!!!! INFORMATION, WHEN THESE OTHER RECORDS WERE
READILY AVAILABLE I WILL SAVE REST OF TIME FOR REBUTTAL THANK YOU VERY MUCH FOUR
YOUR HONORS!!\$\$!!!!!!!!!!!!!! HONORS.

FOR THE STATE?

THANK YOU, MAY IT PLEASE THE COURT LISA MARIE THE ATTORNEY !!\$\$!!!!!!!!!!!!!! ATTORNEY
GENERAL'S OFFICE FOR THE STATE OF FLORIDA -- GOING DIRECTLY TO THE ISSUES MY
APPROXIMATE COUNSEL HERE, DISCUSS ABOUTED THE PREJUDICE, THE TRIAL COURT IN ITS
SENTENCING ORDER, THE ONLY MITIGATING FACTOR IT GAVE SIGNIFICANT WEIGHT TO WAS THE
HONORABLE MILITARY SERVICE, I HAVE REVIEWED A NUMBER OF DEATH PENALTY CASES IN MY
WORK ALSO IN RV!!\$\$!! RVING THE CASE LAW, IT IS VERY UNUSUAL, FOR A TRIAL COURT, TO GIVE
SIGNIFICANT WEIGHT TO A MITT GATOR, THE MITT GATORS THAT THE DEFENSE IS PUTTING

FORWARD, THAT THE TRIAL COUNSEL SHOULD HAVE TRIED TO GET WERE LOW INTELLIGENCE, AND MENTAL HEALTH ISSUES, LOW INTELLIGENCE IS UNLIKELY TO GET A SIGNIFICANT WEIGHTING. THIS IS WHAT I HAVE A PROBLEM WITH, THOUGH, AND REAL -- REALLY TOUCHED ON AT VERY END OF THE ARTICLE ARGUMENT. -- VERY END OF ORAL ARGUMENT THE RED FLAGS THAT HAVE BEEN RAISED AT THE TIME OF THE COMPETENCY EXPERTS, DR. ALEXANDER, WHO IS A I THINK HE IS ACTUALLY IN HOUSE, IN PALM BEACH COUNTY OR AT LEAST HE WAS AT THE TIME, TALKING ABOUT THE SIGNIFICANT PROBLEMS AND COMMUNICATION -- AND UNDER THE CIRCUMSTANCES, NOT TO KNOW THAT YOUR CLIENT IS IN FACT SOMEONE OF DULL -- DULL INTELLIGENCE IN TERMS OF JUST THE ACCURACY OF WHAT IS BEING TRANS -- GIVEN TO THEM, WHAT WAS HIS REASON FOR NOT TRYING TO GET RECORD VERIFICATION, OR FURTHER EXPLORE THE MENTAL HEALTH STATUS OF HIS CLIENT, FOR PURPOSES BOTH OF YOU KNOW, CONSULTING WITH HIM, AS WELL AS MAKING A DECISION ON MENTAL HEALTH MITIGATION, BECAUSE, AGAIN, THE CASE LAW IS -- AS MENTIONED WHICH IS REASONABLE INVESTIGATION YOU MAKE A CHOICE TO GO POSITIVE, WE HAVE A CASE LIKE THAT TOMORROW, IT IS GOING TO BE SUSTAINED BUT HERE, IT WAS AS IF -- THIS WHOLE SIDE OF HIM WHICH IS THAT HE WAS REALLY A TERRIBLE STUDENT, DIDN'T EVEN MAKE IT THROUGH HIGH SCHOOL -- WASN'T EVEN KNOWN -- LIKE YOU ARE DEALING WITH A -- A DIFFERENT PERSON.

I HAVE TWO RESPONSES TO THAT. FIRST OF ALL, DURING THE COMPETENCY HEARINGS, DR. ARMSTRONG WAS ONE OF THE DOCTORS THE OTHER TWO DOCTORS SAID THAT MR. POOLER COULD COORDINATE WITH HIS DEFENSE COUNSEL TO HELP PRESENT -- ADEQUATE DEFENSE IN FACT DR. LEAVINE WHO WAS ONE OF THE COMPETENCY DOCTORS!!\$\$!!!!!!!!!!!!!! DOCTORS, WAS NOT JUST A NORMAL PSYCHOLOGIST, HE WAS A NEUROPSYCHOLOGIST, SO MR. -- THE TRIAL COUNSEL ACTUALLY WENT OUT GOT NORMAL PSYCHOLOGISTS!!\$\$!!!!!!!!!!!!!! PSYCHOLOGISTS, TWO OF THEM, TO GO AND INTERVIEW MR. --

THE NEUROYOU SEE COLONEL JIFRTS DO NEUROPSYCHOLOGICAL TESTING!!\$\$!!!!!!!!!!!!!! TESTING. HE DID A DISEASE NEUROPSYCHOLOGICAL!!\$\$!!!!!!!!!!!!!! NEUROPSYCHOLOGICAL. WHAT WAS IQ ON NERO.

BETWEEN 75 AND 58.

SO THEY NEW -- SO THEY NEW HE HAD NOT STELLAR INTELLIGENCE.

YES, THEY DID, AND THAT WAS PRESENTED TO THE TRIAL COURT DURING THE COMPETENCY HEARING, THE TRIAL JUDGE, SAID HE DID NOT GIVE CREDENCE TO DR. ARMSTRONG'S REPORT. HE DID NOT FIND IT BELIEVABLE!!\$\$!!!!!!!!!!!!!! BELIEVABLE. HE FOUND THE OTHER TWO DOCTORS BELIEVABLE. THAT LEFT THE TRIAL ATTORNEY IN A SITUATION WHERE HE HAD BEEN TRYING TO TALK TO HIS CLIENT!!\$\$!!!!!!!!!!!!!! CLIENT, TRYING TO GET MR. POOLER TO TAKE A LIFE OFFER TAKE A LIFE OFFER. AND WAS AFTER MR. POOLER REFUSED THE LIFE OFFER WE GOT THE COMPETENCY HEARING WHICH I SUSPECT BECAUSE THEY WERE BEATING THEIR HEADS AGAINST THE WALL. MR. SALNICK LEFT WITH A TRIAL COURT RULING THAT POOLER IS COMPETENT. HE THEN HAD TO GO FORWARD, DEALING WITH MR. POOLER AND WHAT MR. POOLER SAID. HOWEVER MY SECOND RESPONSE,, MR. SALNICK DID NOT RELY ON MR. POOLER'S REPORTING. HE HAD A INVESTIGATOR, HE SENT MR. JIMMY OUT TO LOUISIANA TO DO PERSONAL INVESTIGATION TO TRY TO GO TO THE SCHOOLS, CALL THE SCHOOLS, GET THE SCHOOL RECORDS. MR. GENERALLEY SAID HE SPOKE TO THE SCHOOLS WHERE MR. POOLER WENT. WAS TOLD BY THE SCHOOLS YOU NEED TO DO THIS IN WRITING. SENT INDIVIDUAL LETTERS TO THE SCHOOLS AND RECEIVED RESPONSES BACK WHICH THE TRIAL COURT SAW SAYING THERE WERE NO RECORDS. MR. JENNY DIDN'T REST ON THAT. HE WENT AND TRIED TO FIND NEIGHBORS, FAMILY MEMBERS. HE END HE INTERVIEWED ACTUALLY A NUMBER OF FAMILY MEMBERS. POOLER'S HIS BROTHER, HIS SISTER, HIS FATHER AND AS WELL AS MORE DISTANT RELATIVES. GOT FULL INTERVIEWS. PLCHT SALNICK HAD WHAT INTERVIEWS WAS MR. POOLER WAS REPORTING IN WEST PALM BEACH. MR. JENNY SAID WE HAVE THESE OTHER PEOPLE THEY DON'T LIVE IN THE SAME STATE, THEY DON'T LIVE IN SAME HOUSE WITH EACH OTHER. THEY LIVE IN DIFFERENT HOUSEHOLDS. EACH OF THEM INDIVIDUALLY CORROBORATED THAT MR. WHAT POOLER SAID.

HE WAS MILITARY HERO AND GRADUATED HIGH SCHOOL.

AND GRADUATED HIGH SCHOOL. SO HE GOT OUTSIDE CORROBORATION AS BEST HE COULD.

SO ONLY, WHAT YOU'RE SUGGESTING IS THE ONLY REAL TROUBLESOME POINT IS NOT GETTING

THE MILITARY RECORDS. THAT HE DID FOLLOW UP WITH WITH THE SCHOOLS AND THERE IS DOCUMENTATION THAT THE SCHOOL RECORDS ARE JUST NOT AVAILABLE?

THAT IS CORRECT.

IS THERE SIMILAR EVIDENCE WITH REGARD TO THE MEDICAL RECORDS? I'M SORRY TO THE MILITARY RECORDS?

WITH THE MILITARY RECORDS, MR. JENNY TESTIFIED AT THE EVIDENTIARY HEARING HERE SAYING THAT THERE WAS INDEED A MEMO IN HIS FILE SAYING HOW TO GET IT. AND HIS TESTIMONY WAS, THAT, HE PROBABLY SENT A REQUEST FOR MILITARY RECORDS YOU ABOUT DIDN'T HAVE A COPY IN HIS FILE AND THAT'S ON PAGES 112 AND 113. SO THAT'S THE EVIDENCE. THAT'S THE END OF THAT? THAT IS THE ONLY EVIDENCE?

THAT IS THE END OF THAT.

OKAY.

AND THEY DIDN'T GET ANYTHING ELSE. BUT AS THE COURT NOTED DURING THE PREVIOUS ARGUMENT, THE MILITARY RECORDS WERE ACTUALLY QUITE HARMFUL NOT ONLY DID YOU HAVE DISRUPTIVE BEHAVIOR AND TALKING BACK TO COMMANDING OFFICERS, AND AWOL, YOU ALSO HAD ACTUAL PRIOR ASSAULTIVE CONDUCT FOR WHICH HE WAS INCARCERATED IN THE MILITARY. THAT WAS PART OF THE MILITARY RECORDS AS WELL. SO YOU HAVE ASSAULTIVE BEHAVIOR HERE WHERE HE TRIES TO KILL MISS BROWN'S BROTHER. ACTUALLY, BEATS MISS BROWN AND KILLS HER. THEN YOU HAVE THE ASSAULTIVE RECORD IN THE MILITARY RECORDS AS WELL.

WAS THERE ANY EFFORT TO PRESENT THOSE TO THE MENTAL HEALTH EXPERTS AND SEE HOW THAT MAY HAVE CHANGED THEIR EVALUATION? OR DIAGNOSIS?

YOU MEAN IN POSTCONVICTION WHEN --

RIGHT.

YES, I BELIEVE THE DEFENSE, AND THE DEFENSE OF COURSE IS MORE ABLE TO RESPOND TO THIS THAN I, DID GIVE ALL THE RECORDS TO THEIR EXPERT, DOCTOR BRANNON, WHO ENDED UP TESTIFYING AT THE EVIDENTIARY HEARING. I BELIEVE HE LOOKED AT THE OTHER PSYCHOLOGICAL REPORTS, THE SCHOOL RECORDS, THE MILITARY RECORDS AND SO FORTH. BUT INTERESTINGLY ENOUGH, EVEN IN THE EVIDENTIARY HEARING WHEN DR. BRANNON TESTIFIED, DR. BRANNON, AFTER HE REVIEWING ALL OF THESE, INCLUDING DR. LEVINE'S NEUROPSYCHOLOGICAL TESTING FOUND THAT MR. POOLER HAD NO MAJOR MENTAL DISORDER. WAS NOT MENTALLY RETARDED. DID NOT HAVE ORGANIC BRAIN DAMAGE. THE MOST THE DOCTOR BRANNON COULD GO OUT ON A HIM AND SAY, YES, HE HAD ALCOHOL ABUSE AND, A HISTORY OF THAT. AND THAT HE MAY HAVE HAD SOME BRAIN INJURY FROM A PHYSICAL INJURY. IMPAIRING HIS JUDGMENT.

WAS THERE ANY AXSYS DIAGNOSIS, AXIS I, TWO, THREE, OUR FOUR?

MR. POOLER DID NOT HAVE ANY MENTAL HEALTH --

DISSOCIAL TUFF OR SCHIZOPHRENIA OR MAJOR, THERE WERE NO MENTAL HEALTH MITT MITIGATORS?

NO NOT BY DR. BRANNON AT THE EVIDENTIARY HEARING. AND NO OTHER MENTAL HEALTH EXPERT TESTIFIED AT THE EVIDENTIARY HEARING. I WANT TO MAKE ONE COMMENT ABOUT WHETHER OR NOT THE ALCOHOL ABUSE WAS USED DURING THE PENALTY PHASE. IT'S THE STATE'S CONTENTION IN FACT IT WAS. THE TRIAL ATTORNEY, MR. SALNICK, ACTUALLY USED THE FACT THAT MR. POOLER WAS DRUNK ON A NUMBER OF OCCASIONS IN FRONT OF MISS GLASS, WHO WAS A WITNESS TO THE THREATS, TO ARGUE THAT BECAUSE HE WAS DRUNK WHEN HE WAS MAKING THE THREATS AGAINST MISS BROWN, THAT THAT NEGATED THE COLD, CALCULATED PREMEDITATED MURDER. AND IN FACT THE TRIAL COURT AGREED WITH THAT AND STRUCK THAT AGGRAVATE BASED ON MR. POOLER'S DRINKING HISTORY AS EVIDENCE BY MISS GLASS'S TESTIMONY.

SO YOUR CONTENTION ACTUALLY IF WE WERE SOMEHOW TO REVERSE THIS FOR A NEW PENALTY PHASE, THAT IT WOULD BE FAR MORE, IT WOULD BE UNLIKELY THAT THEY COULD GET THE MILITARY RECORD AS A STRONG MITIGATOR BECAUSE THE STATE NOW WOULD ABLE TO PUT IN THIS WHOLE MILITARY RECORD AND WITHOUT THERE BEING ANY STATUTORY MENTAL HEALTH MITIGATORS, ESSENTIALLY END UP WITH SAYING THAT THERE WAS ALCOHOLISM, AND, NOT

MUCH MORE?

ESSENTIALLY, NOT TO BE FLIP BUT THE PENALTY PHASE THAT MR. POOLER HAD AS GOOD AS IT WAS GOING TO GET.

MIGHT BE BETTER ACTUALLY. INSTEAD OF ONLY COMPETENCE MIGHT BE UNDERMINED THE JUDGE WOULD NEVER HAVE FOUND THE MITIGATOR HE DID FIND.

CORRECT. WHICH HE GAVE SIGNIFICANT WEIGHT. BUT IT'S THE STATE'S POSITION THAT THERE WAS NO DEFICIENT PERFORMANCE EVEN TO BEGIN WITH BECAUSE THEY DID DO THIS EXTENSIVE INVESTIGATION. AND ADDITIONALLY BECAUSE NOT ONLY DID MR. POOLER NOT GIVE ACCURATE INFORMATION BUT ALL OF MR. POOLER'S RELATIVES AND COWORKERS ALSO GAVE INACCURATE INFORMATION TO BOTH THE INVESTIGATOR AND THE TRIAL ATTORNEY. AND THIS COURT IN BROWN AND STEWART AND A NUMBER AND PHIL MORE EVEN HAVE SAID THAT, WHEN THE DEFENDANT AND HIS FAMILY GIVE INACCURATE INFORMATION ON WHICH THE TRIAL ATTORNEY RELIES HE CANNOT TURN AROUND AND CLAIM DEFICIENT PERFORMANCE BECAUSE THE TRIAL ATTORNEY BELIEVES THEM. AND, IN THIS CASE, MR. SALNICK DID TRY TO GET OUTSIDE CORROBORATING BUT COULD NOT. JUST ONE HE BRIEF COMMENT ON THE VOLUNTARY INTOXICATION. AT THE EVIDENTIARY HEARING THE COURT FOUND THAT THERE WAS NO EVIDENCE WHATSOEVER, THAT MR. POOLER WAS INTOXICATED AT THE TIME OF THE CRIME. MR. POOLER DID NOT TESTIFY AT THE EVIDENTIARY HEARING. OFFICER A LON SEW, THE POLICE OFFICER WHO TOOK THE THEFT REPORT BETWEEN 6:AND 7:15 IN THE MORNING, SPECIFICALLY TESTIFIED THAT POOLER WAS NOT INTOXICATED.

THAT IS AT THE EVIDENTIARY HEARING?

YES.

WAS THERE EVER AN ATTEMPT TO THAT IN, IN THE TRIAL, THE INCIDENT WITH HIM BEING ROBBED? NO. IN FACT, MR. SALNICK SAW THIS REPORT BEFORE SEPTEMBER 2005 AND DECIDED NOT TO GO INTO IT HE DIDN'T WANT THE JURY TO KNOW THAT POOLER WAS SITTING DOWN THE STREET WITH A PROSTITUTE SIX HOURS BEFORE --

THAT IS WHAT THIS INCIDENT WAS?

YES.

HE WAS ROBBED BY THE PROSTITUTE?

RIGHT.

AND FOR HIM TO PUT ON THE DEFENSE OF THIS MAN WAS SO DISTRAUGHT EMOTIONALLY AND FLIPPED OUT AND KILLED HER BECAUSE HE WAS LOVESICK, TO BE WITH A PROSTITUTE SIX HOURS BEFORE IS SOMEWHAT DAMAGING TO THE DEFENSE. SO HE DID HE NOT PURSUE IT.

ADDITIONALLY, WHEN MR. POOLER FINALLY ADMITTED TO MR. JENNY, THE TRIAL INVESTIGATOR, IN EARLY JANUARY, LATE DECEMBER, 2005, 2006, ABOUT THIS, THEY DISCUSSED IT AND DID NOT WANT TO BRING OUT THE AGAIN, THAT HE WAS WITH A PROSTITUTE. SO THAT IS WHY THAT WAS NOT PURSUED. AND NONE OF THE EYEWITNESSES, MOST OF WHOM, FIVE OUT OF SIX KNEW MR. POOLER, WHO SAW THE CRIME, NONE OF THEM TESTIFIED ABOUT HIM BEING INTOXICATED AND, THE ONLY EVIDENCE THAT, AT THE EVIDENTIARY HEARING THAT CAME OUT WAS HIS NEPHEW, MR. POOLER'S NEPHEW MENTIONED, A NUMBER OF HOURS AFTER THE MURDER, IN THE AFTERNOON. SO OVER SIX HOURS AFTER THE MURDER HE SOUNDED DRUNK ON THE TELEPHONE. AND THAT IS THE ONLY EVIDENCE THAT WAS PRESENTED AT THE EVIDENTIARY HEARING. MR. SALNICK CONSIDERED THE VOLUNTARY INTOXICATION DEFENSE IN THE EVIDENTIARY HEARING RECORD AND, DID NOT PURSUE IT BECAUSE IT HAD NO CORROBORATING EVIDENCE AND, TWO, MR. POOLER, AT NO TIME EVER WAS WILLING TO ADMIT KILLING MISS BROWN AND SHOOTING HER BROTHER. AND, THE DEFENSE MENTIONED IN ITS REPLY BRIEF THAT POOLER CHANGED HIS MIND AND THERE IS DIRECT, THERE IS NO EVIDENCE FROM MR. POOLER THAT THAT'S TRUE AND THERE IS DIRECT CONTRADICTION ON, MR. SALNICK'S TESTIMONY AND ALSO,, MR. JENNY. MR. JENNY SAID ON PAGE 144, POOLER ABSOLUTELY NEVER CHANGED HIS MIND ABOUT CONCEDED THE SHOOTING. IF THERE IS OTHER QUESTIONS THE STATE THANKS YOU AND ASKS YOU TO AFFIRM.

THANK YOU. REBUTTAL?

I ONLY WISH I HAD ANOTHER HOUR BECAUSE I -- FEW MINUTES THAT I HAVE LEFT. WOULD ASK THE COURT TO GO BACK READ THE TESTIMONY OF DR. LEVINE IN COMPETENCY HEARING. IT'S IN

VOLUME 10 OF THE ORIGINAL PROCEEDINGS. DR. LEVINE ACTUALLY FOUND HIS TEST RESULTS WERE SOMEWHAT EFFECTIVE BECAUSE THE STORY THAT MR. POOLER GAVE HIM DID NOT MATCH WITH THE PSYCHO, WITH THE TESTING THAT WAS DONE. IN FACT HE STATED HE DID NOT EVER DO A FULL PSYCH CALL VALUATION OF MR. POOLER AND HIS TWO CONCERNS FOR MR. POOLER WAS ABILITY TO ASSIST HIS ATTORNEY IN PLANNING A DEFENSE AND CHALLENGING THE STATE'S WITNESSES.

YOU AGREE HE DID DO AN IQ TEST.

I BELIEVE HE DID DO AN IQ TEST BUT HE NEVER DID A FULL PSYCHOLOGICAL EXAM OF MR. POOLER. NONE OF THE EXPERTS DID WHATSOEVER. ULTIMATELY THIS COURT IS GOING TO HAVE TO DECIDE THIS CASE AND DECIDE AS A MATTER OF CONSTITUTIONAL LAW AND A MATTER OF PUBLIC POLICY, IN THE STATE OF FLORIDA, ARE WE GOING TO ALLOW THE STATE OF FLORIDA TO PUT SOMEONE TO DEATH BASED UPON FICTIONS AS OWE BOSSED TO FACTS?.

GIVE ME THE BEST SHOT. OF A REVIEWING ALL THE RECORD WHAT YOUR DEFENSE EXPERT STATED AT THAT EVIDENTIARY HEARING?

ABSOLUTELY. MR. BRENNAN, MR. BRENNAN WENT INTO NUMBER OF ISSUES THAT WOULD BE MITIGATING. FOR EXAMPLE, THE ALCOHOLISM. AGAIN I'VE ALREADY GONE INTO THE DULL INTELLIGENCE.

GIVEN TIME YOU AGREE NO STATUTORY MITIGATORS?

I DON'T AGREE THERE WERE NO STATUTORY MITIGATORS.

HE AGREED HE WOULD TESTIFY THERE WAS --

HIS TESTIMONY WAS THAT WE HAVE FOUND THAT MR. POOLER DID HAVE IN FACT A DULL INTELLIGENCE. HE SAID IT DID NOT RISE TO THE LEVEL OF FULL MENTAL RETARDATION. BUT WAS CERTAINLY IN THE BORDERLINE RAISE.

ASKING YOU ABOUT STATUTORY MITIGATORS. YOUR TIME IS GOING. PLEASE RESPOND TO THAT. I DON'T BELIEVE OTHER THAN WHAT I JUST ADDRESSED AND ABOUT BRENNAN AND ANY OTHER STATUTORY MITIGATOR.

THAT IS NOT A STATUTORY MITIGATOR, DULL INTELLIGENCE, IS IT?

NO IT IS NOT, YOUR HONOR.

SO WE DIDN'T HAVE ANY OF THOSE, TO BE CLEAR.

THAT'S CORRECT. ER WE'RE NOT LIMITED TO ONLY STATUTORY MITIGATORS. WE HAVE TO LOOK AT ALL THE CIRCUMSTANCES.

YES.

ANOTHER MINUTE, THANK YOU VERY MUCH. DR. BRENNAN TESTIFIED THAT MR. POOLER WAS NOT MALINGERING AND HIS FULL PSYCHOLOGICAL EXAM HAD BEEN DONE IN FACT THE FIRST ONE HAS BEEN, HE STATED MR. POOLER HAD IQ 75 CONSISTENT WHAT WAS FOUND IN THE SCHOOL RECORDS. THAT MR. POOLER SUFFERS FROM SEVERE ABUSE DEPENDENCY. THAT HE SUFFERED TRAUMA FROM THE SERVICE HE DID IN VIETNAM. UNFORTUNATELY HE WASN'T ABLE TO FULLY EXPLORE THAT AREA BECAUSE MR. POOLER'S READING LEVEL IS SUCH, A ON SUCH A LOW LEVEL HE WASN'T REALLY EVEN ABLE TO FULLY, EXAMINE HIM IN THAT AREA BUT HE DID FIND THERE WAS TRAUMA AS A RESULT OF HIS SERVICE IN VIETNAM. THE TRAUMA RESULTED IN BOTH PARANOIA AND PROGRESSION. AND ALSO THE HISTORY OF ALCOHOLISM IS ALSO SUPPORTED BY THE MEDICAL RECORDS WHICH SHOWS THAT MR. POOLER IS ACTUALLY SUFFERING FROM HEPATITIS-C.

TWO QUICK THINGS. DO YOU AGREE, THAT THE RECORD CLEARLY DEMONSTRATES THAT THERE IS EVIDENCE IN THE FILE THAT THE SCHOOL RECORDS REPORTS CAME BACK THEY DON'T EXIST? CORRECT. BECAUSE HE ORDERED THEM FROM THE WRONG SCHOOL DISTRICT. WE JUST WROTE ONE LETTER. WE GOT THEM.

OKAY.

IT WASN'T AN ARDUOUS TASK ON OUR PART.

OKAY.

SO THAT'S THE ANSWER TO THAT THEY JUST WENT TO THE WRONG PLACE.

CORRECT.

AND DO YOU AGREE, OR DO YOU NOT THAT THE MILITARY RECORDS WERE REALLY ACT AS DOUBLE-EDGED SWORD?

THE MILITARY RECORDS COULD ACT AS DOUBLE-EDGED SWORD. HOWEVER, AGAIN I THINK THE MILITARY RECORDS WOULD HAVE FAVORED MR. POOLER'S POSITION THAT HE DOES HAVE IN FACT DULL INTELLIGENCE AND IT DOES SUPPORT MENTAL HEALTH MITIGATION. AGAIN THE COURT STILL COULD HAVE WOULD HAVE FOUND HIS MILITARY SERVICE WAS MITIGATING. THERE IS STILL NO QUESTION MR. POOLER PUT HIS LIFE ON THE LINE FOR THIS COUNTRY. HE SENT TO VIETNAM. HE DID FIGHT IN VIETNAM. HE SAW COMBAT ACTION. HE WASN'T SITTING BEHIND A DESK SOMEWHERE. I DON'T THINK ANY LESS WEIGHT WOULD HAVE BEEN PLACED ON MILITARY RECORDS THEMSELVES HAD THEY BEEN PROPERLY BEEN OBTAINED REPRESENTED TO THE COURT. WITH OUR ASSISTANCE YOU'VE GONE WAY OVER OUR TIME.

JUST IN CONCLUDING I ASK THE COURT REVERSE FOR BOTH NEW TRIAL AND NEW SENTENCING. THANK YOU FOR YOUR PRESENTATIONS. THE COURT WILL TAKE IT UNDER ADVISEMENT. THANK YOU SO MUCH.

THE COURT WILL STAND IN RECESS UNTIL 9:00 TOMORROW AMONG. -- MORNING. PLEASE RISE.