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**Ronald Lee Williams v. State of Florida**  
**SC05-226 | SC05-1579**

PLEASE BE SEATED.

OKAY.

REMAIN FOR THE FINAL CASE ON  
THE CALENDAR THIS MORNING.

RON AND LEE WILLIAMS VERSUS  
THE STATE OF FLORIDA.

MR. McDERMOTT.

>> ESSENTIALLY THE ISSUES  
INVOLVED IN THE CASE ARE I  
AM SURE THE COURT HAS  
BACKGROUNDS OVER THE MURDER,  
MULTIPLE MURDER IN  
PENSACOLA, WHERE

MR. WILLIAMS WAS ALLEGED TO  
BE THE LEADER OF THE GROUP  
FROM MIMMY, BUT NOT  
PRESENT DURING THE SLAYINGS.

WE HAVE RAISED A NUMBER OF  
ISSUES PRIMARILY ADDRESSED  
TO THE INEFFECT OF THE  
ASSISTANCE OF THE COUNSEL.

THE FIRST ONE THAT WE HAVE  
RAISED IS THAT COUNSEL AT  
THE TRIAL LEVEL FAILED TO  
ASK THE COURT FOR AN  
INDEPENDENT ACT INSTRUCTION.

THE -- OF COURSE, WE HAVE A  
STANDARD INSTRUCTION NOW,  
BUT AT THE TIME THAT THIS  
TRIAL WAS HELD, THAT WAS  
STILL THE LAW, YOU COULD ASK  
FOR A STANDARD INSTRUCTION.

DID HE NOT.

HE DID NOT.

HE CONCEDED AT THE 3850  
HEARING, THAT THAT WAS THE  
JUST OR THE THRUST OF HIS  
DEFENSE, IT WAS AN  
INDEPENDENT ACT, THAT  
MR. WILLIAMS WAS NOT  
RESPONSIBLE AND DIDN'T  
INVOLVE HIMSELF IN THESE  
KILLINGS THAT IT WAS MORE OF  
A, I THINK, THE WORD USED

WERE THESE PEOPLE WENT TO PENSACOLA AND SNAPPED WHEN THEY WERE TRYING TO RECOVER SOME DRUGS AND SOME DRUG MONEY.

WOULD THAT BE AN INDEPENDENT ACT?

>> YES, SIR.

>> IT SEEMS TO ME THAT THE WAY WE CAME DOWN ON THE INDEPENDENT ACT DEFENCE WAS THAT THE CONSPIRACY TO -- WOULD HAVE BEEN TO COMMIT THE CRIMINAL ACT, BUT THEN, THERE WAS A DECISION BY THE DEFENDANT THAT WAS, THAT THE DEFENDANT WANTED TO TERMINATE THE CONSPIRACY SHORT OF THE PERFORMANCE OF THE ACTUAL CRIME WHICH -- IS THIS RECORD SUPPORT YOUR CONTENTION THAT THERE WAS AN AGREEMENT TO KILL THESE PEOPLE TO BEGIN?

>> NO, WE DIDN'T AGREE TO THAT.

WE AGREED THAT THERE WAS PROBABLY AN AGREEMENT TO SEND THE PEOPLE TO PENSACOLA TO GET THE DRUGS AND THE MONEY.

NOT TO KILL OWN BODY.

THE KILLING TOOK PLACE AS A RESULT OF THE INDEPENDENT ACT OF THESE FELLOWS, THESE LIEUTENANT SO CALLED THAT WENT TO PENSACOLA.

THERE IS NOTHING IN THE EVIDENCE AND RECORD THAT I CAN DETERMINE THAT, UM -- WELL, YOU HAVE SOME CODEFENDANTS TESTIFYING THAT HE ORDERED THEM TO BE KILLED; HOWEVER, THERE IS NOTHING TO INDICATE THATS THERE WAN ANUND KERR LINING CRIME TO BE COMMITTED OTHER THAN RETRIEVE DRUGS OR RETRIEVE MONEY.

THERE WAS NO SUGGESTION THAT MR. WILLIAMS WANTED THESE PEOPLE KIDNAPPED OR TORTURED.

> NOTWITHSTANDING THE LACK

OF THAT INSTRUCTION, WASN'T THAT ISSUE, INDEED, THE FOCUS OF THE TRIAL, IN ANY CASE, THAT IS WITH THE STATE MAINTAINING, OF COURSE --

>> YES, SIR.

YES, SIR, IT WAS.

>> THE ONLY THREAT OF GUILT WOULD BE THE FACT HE DID DIRECT THEM TO DO THIS.

>> RIGHT.

>> SO, I MEAN, WASN'T THIS ISSUE THEN IN ESSENCE FAIRLY TRIED DESPITE THE LACK OF --

>> WAS IT FAIRLY TRIED?

>> RIGHT.

>> WASN'T THE ISSUE FAIRLY TRIED EVEN WITHOUT THE INSTRUCTION?

IN OTHER WORDS, THERE WAS NO ATTEMPT HERE BY THE STATE TO CONTEND THAT YOUR CLIENT WOULD BE GUILTY EVEN IF HE DIDN'T -- GUILTY EVEN IF HE DIDN'T DO THIS?

>> NO.

CLARIFY THAT IN TERMS OF THE ARGUMENT, THE CONTENTION WAS, HE ORCHESTRATED THE DEAL.

THAT WAS THE STATE'S CONTENTION.

HE ORCHESTRATED THE MURDERS AND THE KIDNAPPING WHICH WE SUBMIT THAT HE DID NOT.

THEREFORE, THE JURY IS DEPRIVED OF THAT VERY INSTRUCTION, THE VERY LAW THAT HE DEPENDED ON TO ESTABLISH HIS INNOCENCE, THAT IT WAS AN INDEPENDENT ACT.

IF YOU TAKE THAT AWAY FROM THE JURY, NO, YOU DON'T GET A FAIR TRIAL.

>> WHAT EVIDENCE REALLY IS THERE AN INDEPENDENT ACT HERE?

THE EVIDENCE SEEMS TO BE THAT HE NOT ONLY SENT THEM THERE TO RETRIEVE THE MONEY AND TO RETRIEVE THE DRUGS BUT THAT THERE WAS SOME LANGUAGE, I DANT L CAN'T

REMEMBER THE EXACT TERMS OF  
IT --

>> DROP THEM.

>> INTERPRET TO KILL THEM.

>> DROP THEM.

>> YES.

>> DROP THEM.

I THINK THAT IS WHAT A  
COUPLE OF CO-DEFENDANTS  
INVOLVED IN THE ACTUAL  
KILLING, THAT IS WHAT THEY  
TESTIFIED TO, OF COURSE,  
THEIR CREDIBILITY IS AN  
ISSUE.

IF YOU DON'T HAVE THE  
INDEPENDENT ACT INSTRUCTION,  
THE JURY, IN FACT, THE JURY  
ASKED THE QUESTION ABOUT THE  
PRINCIPALS, YOU KNOW?

>> OKAY.

WE HAVE THE EVIDENCE THAT  
THE CODEFENDANT SAYS, THAT  
THERE WAS SOME INSTRUCTION  
ABOUT DROPPING THESE?

>> YES.

WHAT IS THE EVIDENCE THAT HE  
DID NOT GIVE THAT  
INSTRUCTION?

>> WELL, FRASIER BROTHER,  
TWO OF THEM, ONE THAT WAS IN  
PENSACOLA, AN THE ONE THAT  
WAS SENT FROM MIAMI,  
SUPPOSEDLY ACCEPT FROM MIAMI  
TO GO TO PENSACOLA TO ASSIST  
IN THE RECOVERY, ONE OF THEM  
SAID, AT THE TIME OF THE  
INCIDENT, WE HAVE GOT OUR  
DRUGS.

WE GOT OUR MONEY.

LET'S GO.

THAT IS EVIDENCE THAT THAT,  
THAT THE CRIME HAD BEEN  
COMMITTED, IF ANY, AND IT  
WAS OVER.  
IT IS DONE.

>> ARE YOU GOING TO ADDRESS  
THE ISSUE OF COUNSEL'S  
COMPETENCY AND FAILING TO  
PRESENT MITIGATION EVIDENCE?

>> YES, SIR.

>> ALL RIGHT.

WOULD YOU?

>> I WILL DO THAT.

WE FIND THAT ISSUE THIS

DEALS WITH THE RESPECT.  
DR. LARSON'S REPORT,  
PSYCHOLOGICAL REPORT WAS  
PERFORMED BY DR. LARSON.  
IT IS EXTENSIVE AS TO  
TESTING AND IT SHOWS A LOW  
IQ, THE MENTAL AGE, PERHAPS,  
13 TO 14 OF THE CONTRARY  
ARGUMENT TO THAT, WELL, HE  
OPERATED THIS DRUG  
ORGANIZATION, SO THEREFORE,  
HE EXHIBITED A LITTLE BIT  
MORE SENSE OF A 13 OR  
14-YEAR-OLD WOULD; HOWEVER,  
THESE ITEMS WERE NOT  
PRESENTED TO THE JURY AND  
THE RECORD, THAT YOU HAVE  
SOME LITTLE DISCUSSION ABOUT  
WHAT WE HAVE THIS REPORT AND  
WE ARE NOT GOING TO PRECEPT  
IT, AND THE JUDGE ASKED THE  
QUESTION OF THE DEFENDANT --  
YOU UNDERSTAND, YOU R GOING  
TO PRECEPT THAT?

NO.

THE REAL ISSUE WITH THE  
REPORT IS THE FAILURE OF  
COUNSEL TO GO AHEAD AND  
PRECEPT THAT, WE HAD  
RECOMMENDATION OF LIFE, OF  
COURSE, TO GO AHEAD AND  
PRESENT THAT IN THE SPENCER  
HEARING AFTERWARDS.

OKAY?

COUNSEL CANNOT --

>> SO THE -- WHAT THE CLAIM  
IS IS THAT IT WAS INECTIVE  
INEFFECTIVE TO PRECEPT THIS  
ADDITIONAL MITIGATION EVEN  
THOUGH IT HAD NOT BEEN  
PRESENTED TO THE JURY?

>> YES, SIR.

>> OKAY.

SO IT IS NOT A TEETHER  
ISSUE.

I MEAN, THE THEORY HERE IS  
NOT THAT THERE SHOULD HAVE  
BEEN, THAT THERE WOULD HAVE  
BEEN, THERE WAS A REASONABLE  
BASIS FOR THE JURY TO  
RECOMMEND LIFE BECAUSE THE  
JURY DIDN'T HAVE THIS.

>> THE JURY DID NOT HAVE  
THAT.

>> RIGHT.  
>> THE NUMBER ONE -- IN  
FACT, THIS STATEMENT THAT IS  
ON THE RECORD -- RIGHT.  
>> -- IS WHERE THE LAWYER  
SAID IT WASN'T GOING TO BE  
ADMITTED AND THE JUDGE TURNS  
TO YOUR CLIENT AND  
YOUR CLIENT SAYS, OKAY --  
CLIENT, SOME WORDS TO THAT  
EFFECT.  
>> WORDS TO THAT EFFECT.  
>> RIGHT.  
>> BUT IT WAS NOT PRESENTED  
TO THE JURY?  
>> RIGHT.  
>> NOW I FEEL THAT HE  
PROBABLY SHOULD HAVE  
PRESENTED TO THE JURY AS  
WELL BECAUSE THAT GIVES THEM  
THE COURT IN THE SPENCER  
HEARING MORE GROUNDS AND  
MORE MITIGATION FACTORS TO  
UPHOLD THE LIFE  
RECOMMENDATION WHICH WE DID  
NOT.  
>> BESIDE THAT FROM.  
>> THAT WAS THE THEORY THAT  
THE LAWYER WAS ARGUING TO  
THE JURY IN THE PENALTY  
PHASE?  
WHAT WAS HIS THEORY OF WHY  
MR. WILLIAMS SHOULDN'T  
RECEIVE THE DEATH PENALTY?  
>> IN THE PENALTY PHASE IN  
FRONT OF THE JURY, HE ARGUED  
THAT MR. WILLIAMS WAS  
INVOLVED IN THIS DRUG  
OPERATION DIDN'T HAVE ANY  
REASON TO KILL THESE PEOPLE  
AND HE HAD A FEELING, HE  
SAID THERE WAS NO WAY HE  
FELT THAT MR. WILLIAMS COULD  
BE CONVICTED EVEN.  
HE WAS SO CONFIDENT OF THE  
OUTCOME.  
HE WOULDN'T BE CONVICTED  
BECAUSE HE WAS IN MIAMI.  
>> ALL RIGHT.  
>> THAT IS EVENTUALLY WHAT  
HE WAS ARGUING TO THE JURY.  
>> THERE WAS THIS EVIDENCE  
IN THE RECORD ABOUT THIS  
JACKSONVILLE SHOOTING,

CORRECT?

YES, SIR.

>> RIGHT.

HE ARGUED THAT, YOU KNOW, THERE WAS NOT ANY MURDER THERE.

CORRECT?

>> HE DID ARGUE THAT THERE WAS NO MURDER THERE.

>> AND THAT THERE WAS A RECOGNITION BY, I MEAN, THE RECORD WAS COMPLETE WITH THE FACT THAT THERE WAS SOMETHING THAT WAS ABOUT 80,000 DOLLAR FOR A WEEK THAT WAS BEING REVENUE GENERATION?

>> SIMILAR AROUND WILLING. A LARGE AMOUNT OF MONEY.

>> HE WAS AHEAD OF THIS OPERATION.

>> THERE WAS SOME TESTIMONY TO THAT EFFECT, YES, SIR.

>> WHAT I AM HAVING TROUBLE WITH IS NORMALLY, WE'RE DEALING WITH SOMETHING THAT WHERE A COUNSEL IS INEFFECTIVE BECAUSE THEY DIDN'T PRECEPT MITIGATION TO THE JURY.

>> YES.

>> HERE, THE JURY RECOMMENDED LIFE.

>> RIGHT.

ARE SAYING THAT HE WAS INEFFECTIVE FOR FAILING TO PROVIDE THE TRIAL COURT WITH THIS BECAUSE OF THIS TRIAL COURT HAD RECEIVED IT, THE TRIAL COURT WOULD HAVE AGREED WITH LIFE, IS THAT --

>> YES.

>> WELL, THEN, IF WE LOOK AT -- SO WE HAVE TO LOOK AT DOES THE FAILURE TO PRECEPT DR. LARSON'S REPORT TO THE TRIAL JUDGE UNDERMINE OUR CONFIDENCE IN THE OUTCOME OF THIS CASE?

>> ABSOLUTELY.

>> HOW DOES IT -- THAT IS WHAT I AM HAVING TROUBLE. IT IS SO CLEAR THAT IF YOU HAVE A MAN THAT IS

UNDISPUTEDLY HEAD OF A STATEWIDE DRUG RING, HE MAY HAVE BEEN SMART ENOUGH TO THINK, WELL, I SHOULDN'T HAVE HAD THEM KILLED, BUT, I THINK, WOULDN'T THE JUDGE SORT OF LAUGH AT A REPORT THAT SAYS, HE HAS GOT A MENTAL AGE OF 13 YEARS.

IS THAT THE PART YOU THINK THAT THE JUDGE WOULD HAVE --

>> WELL, NOT ONLY THAT, HE HAD THE MENTAL AGE OF 13, YEAH, I THINK THAT IS DEFINITELY --

>> ISN'T THAT -- I MEAN, WE'RE ALL HERE AS GROWN-UPS COMMON SENSE PEOPLE, IT GOES COMPLETELY CONTRARY TO THE FACTS THAT WE ARE UNCONTRADICTED, HE IS AHEAD OF THIS DRUG RING, YOU ARE ARGUING, THIS COUNSEL ARGUED, HE WAS SO SMART, WHY WOULD HE DO SOMETHING THAT WOULD UNDERCUT HIS -- WHAT IS IT DLARB 08,000 A WEEK OR SOME ABSURD AMOUNT OF MONEY HE WAS GETTING FROM THIS STATEWIDE DRUG RING.

I AM HAVING TROUBLE WITH WHERE THAT PREJUDICE PREJUDICE IS IN THE CASE?

WELL, THE PREJUDICE LIES IN THE FACT THAT THE COURT OVERRODE THE JURY WITHOUT HAVING THAT EVIDENCE.

THE COUNSEL CANNOT -- JUST BECAUSE A JURY RECOMMENDS LIFE IMPRISONMENT CAN'T STOP OR THROW IN THE TOWEL AND JUST SUBMIT A SMALL LEGAL MEMER RANDOM IN THE SPENCER HEARING.

YOU GOT TO CONTINUE TO PRECEPT MITIGATION TO THE COURT.

>> WHAT WAS HIS REASON FOR NOT GIVING DR. LARSON'S REPORT TO THE COURT?

>> HE SAID, HIS WORDS, THE BEST I CAN RECALL WAS, I JUST CHOSE NOT TO.

HE NEVER GAVE A REASON AS TO

WHY HE DIDN'T PRESENT THE REPORT.

>> HE DID NOT INDICATE HE DID NOT BELIEVE THE REPORT WAS AN ACCURATE REPRESENTATION FROM HIS --

>> HE FELT --

>> CONTACT WITH THE DEFENDANT?

>> AS TO THE MENTAL ISSUE, HE DID.

BUT THERE IS OTHER MITIGATEORS IN THE REPORT.

>> STATUTORY OR NOT STATUTORY?

>> NON-STATUTORY.

>> AT WHAT WEIGHT DO WE GIVE THE TRIAL COURT'S FINALING IS THIS POST-CONVICTION HEARING?

IN FRANCIS, WE SAID THAT THE JUDGE WHO HEARD THE MOTION THAT HIS DETERMINATION IS ENTITLED TO CONSIDERABLE WEIGHT?

YES, OF COURSE.

>> WOULD YOU SPEAK TO THAT?

>> THIS TRIAL COURT'S FINDING.

>> YES.

I HAVE A LITTLE TROUBLE WITH FRANCIS BECAUSE RIGHT ABOUT THAT TIME OR A LITTLE LATER, I BELIEVE IT SAID IN THE BRIEF, AS STEVEN'S CASE, WHICH IS ALMOST IDENTICAL TO AT THIS TIME, YET, IT WAS VINDICATION OF A TRIAL COURT -- LET'S SEE IF I HAVE THAT?

>> STEVENS WAS A FAILURE TO PRESENT THE EVIDENCE TO THE JURY, NOT TO THE TRIAL JUDGE.

>> WELL, IT COULD HAVE BEEN.

>> THAT IS WHAT IT WAS.

>> STEVEN'S OPINION.

>> IT COULD HAVE BEEN.

THIS JUR DRIP GET MITIGATEORS EITHER. RIGHT.

BUT BECAUSE THERE WAS A DECISION MADE YOU NOT TO PUT IT IN WHICH THE CLIENT AGREED TO.

>> BUT YOU HAVE TO HAVE A REASON NOT TO. YOU HAVE TO HAVE AN UNDERSTANDING WAIVER BEFORE THE CLIENT. THERE IS NO RECORD, OWN RECORD WAIVER OTHER THAN HIM SAYING, YES, I AM NOT STAND FOR IT TO BE PUT IN. THAT DOESN'T SHOW KNOWING INTELLIGENT WAIVER, SIMPLY, IT DOESN'T MEAN THAT COUNSEL CAN THEN NOT PRESENT MITIGATORS TO THE COURT WHETHER THERE IS STATUTORY, IN THE CASE, NOT STATUTORY MITIGATORS.

>> WELL, ACTUALLY, IT SET UP THE LAW THAT THE COUNSEL HAS GOT TO EXERCISE REASONABLE JUDGMENT. ABOUT WHAT HE KNOWS IS AVAILABLE. NOT THAT -- -- THERE IS NO RULE THAT SAYS THAT IS TO PUT IN.

>> HE KNOWS WHAT IS IN THE REPORT. HE HAD THE AVAILABILITY OF THE REPORT NOT ONLY TO THE MENTAL ASPECT, BUT IMPOVERISHED CHILDHOOD, BEATINGS WITH AN EXTENSION RECORD, PARENTS DRANK FREQUENTLY TO POINT OF INTOXICATION, ERRATIC SCHOOL HISTORY, DROPPED OUT WHEN HE WAS 16, LENGTHY DRUG ABUSE HISTORY, NOT RECKED FOR EMPLOYMENT, PERSONALITY DISORDER.

>> HOW WOULD THOSE RELATE? ARE THOSE ARGUMENTS THAT WAS MADE BY COUNSEL? I ASSUME. WOULD THEY NOT BE CONFLICTING?

>> NO. I THINK THAT HE PRESENTED A THEORY WITH HIS -- WELL, HE IS A GOOD GUY, BUT THEN IN CONTRARY, HE PRESENTS HIM AS A BAD GUY, SO HE TOOK BOTH POSITIONS IN THE TRIAL.

NO, THOSE ARE NOT STATUTORY  
MITIGATEORS.

THEY RUN THE REPORT.

THERE IS AN INDICATION THAT  
DR. LARSON'S REPORT THAT HE  
WILL DISCUSS THESE FURTHER  
WITH HIM.

THAT NEVER CAME OUT.

IT WAS NEVER BROUGHT OUT.

IT WAS NEVER EX PLORD.

>> WERE ANY OF THE  
CODEFENDANTS TRIED, THE  
DEFENDANTS BEFORE YOUR  
CLIENT?

>> YES.

>> ALL OF THEM.

>> WHAT WERE THE OUTCOMES?

>> THERE WAS TIMOTHY

ROBINSON, LIFE

RECOMMENDATION OVERTURNED.

THERE WAS GEORGE WILLIAMS OR

A TIMOTHY ROBINSON, THE

OTHER CODEFENDANT, I CAN'T

THINK OF HIS NAME RIGHT

OFFHAND, HE WAS ALSO

SENTENCED, LIFE IN PRISON,

RECOMMENDATION OF LIFE,

OVERTURNED DEATH.

>> COUNSEL WAS AWARE OF  
THAT?

>> OH, ABSOLUTELY.

YEAH.

HA WAS ONE OF THE SHURBS WE

RAISED ABOUT TRYING TO

DISQUALIFY THE JUDGE THAT HE

ENTERED EYE DENT CALL

SENTENCING ORDERS.

>> GOING INTO REBUTTAL SO

YOU ARE AWARE IF YOU WANT TO  
SAVE TIME?

>> OKAY.

THE THIRD DEFENDANT WAS

FRASIER WHO WAS SENTENCED TO

OVERTURNED LIFE WAS

OVERTURNED, SENTENCED TO

DEATH, THEN, HE WAS -- THE

SUPREME COURT RELINQUISHED

THE JURISDICTION BACK TO THE

TRIAL COURT.

HE TESTIFIED AGAINST

MR. WILLIAMS.

THIS SENTENCE WAS MODIFIED

TO LIFE.

HIS BROTHER GOT, I THINK, 50

YEAR, SO THOSE WERE THE SENTENCES THERE.

>> THANK YOU.

>> ON BEHALF OF THE STATE OF FLORIDA, WILL GO AHEAD AND ADDRESS THE TWO ISSUES THAT WERE ADDRESSED EARLIER IN REVERSE ORDER.

POINT OF INEFFECTIVENESS FOR FAILING TO PREVENT DR. LARSON'S REPORT AS MR. McDERMOTT POINTED OUT AN AGREED THE DEFENDANT DID SAY ON THE RECORD, HE DID NOT WANT THE REPORT PRESENTED. THAT WAS PRIOR TO, UM, THE ACTUALLY PAGE 999 THROUGH PAGE 1,000, WEIGHT IT BROUGHT OUT HE DID HAVE A CONFIDENTIAL PSYCHOLOGIST APPOINTED.

>> NOW, UNDER THESE CIRCUMSTANCES,, WE SEE THAT THERE WAS HISTORY IN THIS CASE OF JURY RECOMMENDATIONS ONE WAY AND A TRIAL JUDGE GOING IN A DIFFERENT FASHION, WHY WOULD A TRIAL ATTORNEY NOT SEE THAT AND SEE THE MASSES TY FOR PUTTING INTO EVIDENCE WHATEVER THAT ATTORNEY MAY HAVE AVAILABLE PARTICULARLY THE REPORT UPPER THESE CIRCUMSTANCES,S?

>> I THINK WHEN YOU LOOK AT THE REPORT, JUSTICE, IT DIDN'T HAVE THE INFORMATION, IT HAD BOTH CRIMINAL AND WHILE DR. LARSON HAD SAID, HIS IQ IS 75, HE SAID, HE THOUGHT THAT RESULTS WERE A LITTLE LOW BASED UPON THE TESTING CONDITIONS AND WHEN YOU LOOK AT THE DEFENDANT'S FUNCTIONING, YOU KNOW? HES WITH THE HEAD OF A DRUG OPERATION, UM, AND IN ADDITION, A TRIAL COUNSEL DID NOT FEEL THAT BECAUSE MR. WILLIAMS WAS IN A DIFFERENT POSTURE, HE WAS NOT ACTUALLY THE TRIGGERMAN, UM, COUNSEL FELT THAT HE WOULD NOT -- THAT THE COURT

WOULD LOOK AT HIM  
DIFFERENTLY.  
AGAIN, I MEAN, HIS QLIPT DID  
NOT WANT THE REPORT  
PRESENTED, THE EVIDENCE THAT  
NOW IS BEING RELIED UPON IN  
TERMS OF IMPOVERISHED FAMILY  
-- ACTUALLY, IT DOESN'T SAY  
THE DEFENDANT WAS BEATEN, IT  
SAYS THE KIDS WERE BEATEN IS  
CONTRARY TO THE EVIDENCE  
THAT WAS PRESENTED DURING  
THE OPINION TY PHASE, HIS  
MOTHER TESTIFIED, THERE WERE  
NEIGHBORS THAT TESTIFIED AS  
TO HOW THIS FAMILY, YOU  
KNOW, IT WAS GOOD FAMILY,  
THERE WERE NOT PROBLEM, SO  
HAVING PREVENTED THIS ED,  
WHICH ACTUALLY WAS NOT  
SUBSTANCEATED, THERE WAS NO  
EVIDENCE DURING THE  
EVIDENTIARY HEARING PUT ON  
AS TO THE FAMILY PROBLEMS AT  
ALL AND THAT SHOULD HAVE  
BEEN THE TIME THAT IT WAS  
PRESENTED.

>> NOW, THAT IS WHAT I WAS  
GOING TO ACTUALLY ASK AND I  
DON'T KNOW IF I SHOULD ON  
REBUTTAL, THIS IS NOT A  
SITUATION WHERE WE ARE NOW  
SAYING THERE WAS SUBSTANTIAL  
NUMBER OF WITNESSES THAT  
COULD HAVE TESTIFIED TO A  
REALLY TERRIBLE CHILDHOOD  
THAT WOULD HAVE BEEN  
OVERWHELMING MITIGATION.

>> ABSOLUTELY NOT, YOUR  
HONOR.

>> IT WAS NOT THERE?

>> I AM SORRY.

THERE WAS NOT ANY OF THAT  
TYPE OF EVIDENCE PRESENTED?

>> NO, YOUR HONOR.

>> DID THE DEFENDANT TESTIFY  
AT THE EVIDENTIARY HEARING  
AS TO WHY HE WOULD NOT HAVE  
WANTED THE DR. LARSON'S  
REPORT PUT INTO EVIDENCE?

>> NO.

HE WAS -- FROM MY RECK  
ELECTION HE WAS NOT ASKED  
OTHER THAN -- I DON'T EVEN

BELIEVE HE WAS ASKED IN REGARD TO WHERE WHETHER HE DID OR DIDN'T.

THE DEFENSE DID NOT PRECEPT ANY EVIDENCE DURING THE EVIDENTIARY HEARING AS TO ANY MENTAL MITIGATION, IN FACT, I THE STATE THAT PUT ON DR. LARSON AND DEFENSE COUNSEL WHEN HE CROSS-EXAMINED HIM DID NOT PUT ON ANY EVIDENCE AS TO WELL YOU HAVE WRITTEN DOWN IN YOUR REPORT THAT THE DEFENDANT HAD TOLD YOU THAT THE KIDS WERE BEATEN, CAN YOU TELL ME MORE ABOUT THAT? THERE WAS NO OTHER PSYCHOLOGIST, ANY OTHER MENTAL MITIGATION AT ALL PUT ON?

>> CONTRADICTION HERE, THAT IS THAT IF THE DOCTOR IS CORRECT AND LET'S FOLLOW THIS BORDERLINE MENTALLY RETARDED AND THE OTHER THINGS THAT HE HAS IN HIS REPORT, WE'RE UK TAG ABOUT THE -- WE ARE TALKING ABOUT THE DEFENDANT LIKE THAT ACTING AS INFORMED COUNSEL IN TERMS OF MAKING JUDGMENT ABOUT ALL OF THIS THAT COUNSEL SHOULD BE MAKING JUDGMENT.

COUNSEL THAT KNEW THE JUDGE HAD ALREADY, IS IT THREE CODEFENDANTS THAT THE JUDGE HAD OVERTURNED LIFE RECOMMENDATIONS? AUTOS THAT IS CORRECT, YOUR HONOR.

>> SO COUNSEL CHARGED WITH KNOWING HE HAS GOT TO PRECEPT SOMETHING TO THE JURY UNDER OUR CASE LAW THAT THE JURY DID K HANG THEIR HATS ON AND IN MAKING THE LIFE RECOMMENDATION AND THEN THE JUDGE IS BARRED FROM INTERFERING WITH THAT LIFE RECOMMENDATION.

>> I WOULD FIRST DISAGREE WITH THE CHARACTERIZATION

THAT DR. LARSON HAD FOUND  
THE DEFENDANT TO BE  
BORDERLINE RETARDED.  
WELL, LET ME TAKE THE  
HYPOTHETICAL, LET'S ASSUME  
THAT COUNSEL HAD PRESENTED  
IT FIRST TO THE JURY, AND,  
THEREFORE, THE JUDGE WAS  
AWARE OF THAT, TOO.  
SURELY, YOU ARE NOT ARGUING  
THAT THIS LIFE  
RECOMMENDATION WOULD HAVE TO  
STAND THEN AND THAT THE  
JUDGE COULD NOT OVERRIDE THE  
LIFE RECOMMENDATION WITH  
THAT INFORMATION BEFORE THE  
JURY?

ACTUALLY, I WOULD.

>> I WOULD DISAGREE.

YOU THINK THE JUDGE EVEN  
WITH THAT INFORMATION BEFORE  
THE JURY THAT THE JUDGE  
COULD STILL OVERTURN THAT  
LIFE RECOMMENDATION?

>> IF THERE IS NO REASONABLE  
BASIS FOR THE JURY'S  
RECOMMENDATION OF LIFE, YES.

>> HOW DID COUP THAT BE  
UNDER OUR CASE LAW?

>> OH, THE COURT'S CASE LAW  
LOOKS AT WHAT MENTAL  
MITIGATION, WHAT MITIGATION  
THERE IS.

THE COURT LOOKS AT THE  
STRENGTH OF THIS MITIGATION,  
HEAR WHAT THE COURT HAD IN  
FRONT OF IT WAS THE  
DEFENDANT WHO OPERATED -- HE  
WAS THE HEAD OF THE DRUG  
OPERATION THAT MADE BETWEEN  
70 AND 90,000 A WEEK THAT HE  
SENT OUT, HE HAD ALL OF  
THESE MEN WORKING FOR THEM.

>> THAT IS EVENTUALLY THE  
JURY'S CALL AS LONG AS THEY  
HAVE ANY HOOK TO HANG THEIR  
HAT ON.

IS THAT OUR CASE LAW OR NOT?

>> I THINK THE CASE LAW  
LOOKS AT WHETHER THEIR  
DECISION IS REASONABLE.  
NOT BELIEVE THAT FINDING AN  
EXPERT OPINION THAT HE IS  
HYPOTHETICALLY BORDERLINE

MENTAL RETARDED IS A BASIS FOR, THAT IT WOULD BE IMPROPER FOR THE COURT TO OVERRIDE THE JURY'S RECOMMENDATION.

>> THAT WOULD HAVE NOT BEEN ENOUGH THEN FOR THE JURY TO HAVE LOOKED AT AN TO MAKE THEIR LIFE RECOMMENDATION AND NOT REVERSIBLE BY THE JUDGE?

HYPOTHETICALLY, BASED UPON THE HYPOTHETICAL, THE STATE DOES NOT BELIEVE.

>> STILL SET ASIDE THE LIFE RECOMMENDATION.

>> BASED UPON, THAT IS THE SOUL MITIGATION, YES, YOUR HONOR.

>> TESTIFY AT THE EVIDENTIARY HEARING CONCERNING THE DECISION THAT HE MADE NOT TO PUT THIS --

>> ABC LUT RY, YOUR HONOR.

>> WHAT WAS HIS TESTIMONY.

>> HIS TESTIMONY WAS HE DID NOT FEEL ANYTHING IN THE REPORT THAT WAS HELPFUL. HE HAD TALKED TO DR. LARSON A NUMBER OF TIMES.

THAT HE DIDN'T FEEL THAT EVIDENCE WAS GOING TO BE SUFFICIENT OR NECESSARY AND HE HAD SENT AN INVESTIGATOR DOWN TO MIAMI WHO HAD TALKED TO A NUMBER OF WITNESSES, POTENTIAL PENALTY PHASE WITNESSES, DR. LARSON'S REPORT INDICATED THAT HE HAD DONE AN EXAMINATION DURING THE EVIDENTIARY HEARING, DR. LARSON TESTIFIED HE DIDN'T NEED FURTHER TESTING. THERE WAS NEVER RAKABLE ABOUT THE MENTAL ABILITY, NOT FOUND TO BE ANY PSYCHOLOGICAL PROBLEMS AND IT WASN'T THAT HE WAS MENTALLY RETARDED, HE WAS BORDERLINE, HIS INTELLECTUAL FUNCTION WAS BORDERLINE, BUT THEN --

>> AND A NUMBER OF THESE CASES THAT WE SEE, WE WHEN

YOU HAVE THESE KINDS OF REPORTS, OFTEN THE ARGUMENT IS MADE, WE ARE NOT GOING TO PUT THE REPORTS IN, WE ARE NOT GOING TO USE IT BECAUSE THERE ARE OTHER THINGS IN THESE REPORTS THAT ARE NEGATIVE AND, YOU KNOW, WOULD GO AGAINST THE DEFENDANT AS OPPOSED TO THE THING IN THE REPORT THAT WOULD BE HELPFUL TO THE DEFENDANT.

BUT IT SEEMS TO ME, IN THIS REPORT, THAT REALLY ISN'T THAT KIND OF INFORMATION SO WHAT IS THE DOWNSIDE WHETHER, WHETHER IT SAYS HE IS RETARDED OR NOT, EVEN THOUGH, IT DOESN'T SAY, HE IS RETARDED.

IT DOES SAY, HE HAS NO MENTAL FUNCTION, THOSE KIND OF THING, SO WHAT IS THE DOWNSIDE OF ONE USING THAT KIND OF REPORT?

>> WELL, ACTUALLY, THERE WAS A DOWNSIDE BASED UPON WHAT IS INCLUDED IN HIS REPORT, IT STEPS OUT HIS CRIPPLE MALL HISTORY BEGINNING WHEN HE WAS AT LEAST 16 AND HIS PENALTY PHASE EVIDENCE, HE BROUGHT IN MAYBE OR, HE BROUGHT IN FAMILY TO TESTIFY ABOUT WHAT A GOOD GUY THIS WAS.

FOR THIS REPORT TO HAVE COME IN WOULD HAVE CONTRADICTED THEIR VERY TESTIMONY, SO THERE WAS DOWNSIDE TO IT AND THE FACT THAT THERE IS NOTHING IN TRIAL COUNSEL TESTIFY, THERE WAS NOTHING THAT STOOD OUT TO THEM THAT WOULD HAVE BEEN HELPFUL HERE.

THEN, ON OF IT.

YOU HAVE THE EFFICIENT.

>> ANY CRIMINAL HISTORY THAT WAS ALREADY PRESENTED AS PART OF THE PENALTY PHASE?

>> THE STATE DID NOT PUT ON ANY FURTHER EVIDENCE AFTER

THE GUILT PHASE.

THEY RESTED UPON WHAT HAD BEEN PRESENTED AT THE PHASE.

>> AT LEAST THE CRIMINAL INCIDENT HAD BEEN PUT IN DURING THE GUILT PHASE HAVING TO DO WITH THE SHOOTING IN JACKSONVILLE, CORRECT?

>> WILLIAMS EVIDENCE. RIGHT.

>> HERE YOU HAVE TESTIMONY -- I AM SORE RY.

>> IT SEEM, I GUESS, THIS IS WHERE I SEE THE DOWNSIDE AN WHY I AM CONCERNED ABOUT THIS REPORT AND JUST FOLLOWING THROUGH WITH YOU WHAT SAID IS THAT IT ACTUALLY AND TOTALLY CONTRADICTED THE WITNESSES WHO TESTIFIED AT TRIAL CONCERNING HIS UPBRINGING INCLUDING WHAT HIS MOTHER HAD TO SAY, CORRECT?

>> SURE.

>> SO PUTTING IT BEFORE THE JURY -- HE WOULD HAVE EITHER HAD -- YOU CAN EITHER POINT TO THIS OR THAT HE DIDN'T HAVE A GOOD CHILDHOOD, SO IT WOULD HAVE REALLY PUT, IT SEEMS TO ME, IT WOULD HAVE BEEN -- THEY HAD TO YOU MAKE A CHOICE AS TO WHICH IMAGE THEY WANTED AND WHAT WITNESSES COULD BE PUTPORT. THAT IS CORRECT.

THERE IS NOT A LOT OF ALLEGATION.

HE LOOKED TO SEE WHAT THERE WAS AND WHAT HE CAME UP WITH WAS NOT THIS BORDERLINE INTEREKTUAL FUNCTIONING, HE IS NOT RETARDED, AND THEN, HE HAS THE FAMILY SAYING HE IS A GAD GUY.

NA IS WHAT HE CHOSE TO GO WITH.

>> DOES HE RETAIN CONSELL?

>> HE WASN'T RETAINED.

HE WAS COURT APPOINTED.

>> THE OPPORTUNITY TO FINISH ALL YOU WANTED TO SAY TO

JUST IS WELL, I HAVE TWO QUESTIONS.

>> I AM NOT SURE I REMEMBER THE SECOND QUESTION, I AM SORRY.

>> IF I ANSWERED ALL OF THE COURT'S QUESTIONS AS TO ISSUE 6, WILL MOVE BACK TO ISSUE 1 WHICH IS THE FAILURE TO REQUEST AN INDEPENDENT ACT INSTRUCTION.

FIRST OFF, AS THIS COURT STATED ON DIRECT APPEAL. THE EVIDENCE UNEQUIVOCALLY ESTABLISHED THAT THE DEFENDANT AND THAT HE ORDERED THE MURDERS, SO CLEARLY, THE INDEPENDENT ACT INSTRUCTION DOESN'T APPLY EVEN IF YOU LOOK PAST THAT EVIDENCE, THE DEFENDANT SET INTO MOTION ACTIVITIES THAT BROUGHT ABOUT THE MURDERS. IN THIS COURT SAID, THAT UNDER THOSE CIRCUMSTANCES, THE INDEPENDENT ACT INSTRUCTION DOES NOT APPLY. EVEN THOUGH THE INSTRUCTION WAS NOT STANDARD OPIFIED AT THIS TIME, UM, THE DEFENDANT HAS NOT SHOWN THAT THE SPECIAL INSTRUCTION WOULD HAVE BEEN SUPPORTED BY THE EVIDENCE PLUS THE DEFENDANT HAD NOT ADDRESSED THE FACT THAT THE STANDARD INSTRUCTION AS TO FIRST DEGREE MURDER COVERED THE ISSUE.

FIRST-DEGREE PREMEDITATED MURDER, THE DEATH CAUSED BY THE CRIMINAL AGENCY OF THE DEFENDANT, WELL, CLEARLY, THAT REQUIRES THE FINDING THAT THE DEFENDANT WAS INVOLVED, UM, WHETHER IT BE SENDING THEM OUT OR SETTING INTO MOTION THE FACTS THAT, THE CIRCUMSTANCES THAT LED TO THESE INDIVIDUAL'S DEATH. THLS THE COURT HAS ANY FURTHER QUESTION.

>> THANK YOU VERY MUCH.

>> THANK YOU.

>> THANK YOU.

>> THANK YOU.

MR. McDERMOTT.

>> MAY I PLEASE THE COURT,  
WITH REFERENCE TO THE  
COURT'S QUESTION ABOUT WHAT  
MR. WILLIAM SAID ABOUT THE  
REPORT, I BELIEVE, IN THE  
TRAN SCRIPT, HE SAID THAT  
THERE WAS SOME DISCUSSION  
WITH MR. ETHRIDGE AS  
APPOINTED COUNSEL, HE DIDN'T  
THINK IT WAS GOING TO DO ANY  
GOOD.

DR. LARSON'S REPORT WOULDN'T  
DO ANY GOOD.

HE DIDN'T SEE ANYTHING IN  
IT.

I THINK, AND HIS OWN  
TESTIMONY WAS, THE REPORT  
DIDN'T HURT YOU, BUT IT  
DIDN'T HELP US EITHER.

IF YOU LOOK AT ALL OF THE  
MIT GITOR, I DON'T SEE HOW  
YOU CAN AVOID THE FACT IT  
DID HELP, IT WOULD HELP.  
IT MUST HAVE HELPED.

>> SO AT THE EVIDENCEARY  
HEARING FOR THE JUDGE HERE,  
WHAT TESTIMONY DID YOUR  
CLIENT GIVE AS TO THE  
CIRCUMSTANCES AROUND HIS  
CONCEPT?

TO NOT REPING THE PRRP?

>> TO NOT REPRESENT THE  
REPORT?

>> WHAT DID YOUR CLIENT  
TESTIFY AS TO THE QUESTION  
OF HIS ASEEING TO NOT  
PRESENTING THE REPORT?

EDIDN'T RECALL.

HE DIDN'T RECALL ABOUT IT.

THAT IS MY BEST  
RECOLLECTION.

HE REMEMBERED DR. LARSON  
DOING SOME TESTS.

HE DIDN'T REMEMBER ANY  
DISCUSSION ABOUT IT.

>> SO THERE WAS NO DISPUTE?

HE DID NOT DISPUTE THAT HE  
CONSENTED THAT IT WAS --

>> I THINK THE STATE  
ATTORNEY RED SOME OF THAT  
TESTIMONY BACK TO HIM.

HE SAID, YOU KNOW, THAT IS  
WHAT THE RECORD SAID, YES,  
THAT HAPPENED.

IT WAS JUSTLY, HERE IT IS,  
YES.

WHEN THE COUNSEL TOLD HIM.  
IT WOULDN'T DO ANY GOOD.  
I DON'T EQUATE THAT WITH AN  
INTELLIGENT WAIVER.

>> LET ME ASK YOU, YOU SAID  
THERE WERE A LOT OF  
MITIGATEORS, I AM USUALLY  
THINKING UPBRINGING  
MITIGATEORS ARE POWERFUL,  
BUT THIS IS COMING IN  
THROUGH A REPORT THAT SAYS  
THE MOTHER USED TO BEAT THE  
KID, THE HABIT TO BEAT THE  
CHILDREN WITH AN EXTENSION  
CORD, WHEN THE BELT DIDN'T  
DO NO GOOD.

MOTHER TESTIFIED ALT THE  
ORIGINAL PENALTY PHASE AN  
EVERYBODY SAID HE HAD A GOOD  
UPBRINGING.

NOT BRINGING INTO THE  
EVIDENTIARY HEARING  
SUBSTANTIATING THAT THIS  
VERSION OF THE CHILDHOOD  
THAT SHOULD HAVE BEEN PUT  
ON, HOW DO YOU ESTABLISH  
THAT THESE WOULD HAVE BEEN  
MIT GITORS?

WELL, WHAT WAS PRESENEED TO  
THE JURY, AND ANYBODY GET  
SOMEBODY'S MOTHER TO SAY  
THEY HAD A GOOD UPBRINGING.

THAT IS A FLIMSY, WEAK  
MITIGATING CIRCUMSTANCE AS  
FAR AS I AM CONCERNED TO PUT  
IN FRONT OF A JURY WHEN HE  
HAS ALREADY ADMITTED OR  
TRYING TO CONCEDE HE IS A  
BAD GUY BECAUSE HE RUNS THIS  
DRUG OPERATION.

THEY ARE INCONSISTENT.  
I THINK IT POINTS OUT ALL  
THE MORE REASON WHY, I DON'T  
THINK I HAVE TO EXPLORE THAT  
ANY FURTHER.

THESE ARE MATTERS IN  
DR. LARSON'S REPORT THAT  
MR. ETHRIDGE WAS BOUND TO  
EXPLORE.

AND BOUND TO, BOUND TO  
INVESTIGATE AND BOUND TO  
GIVE A REASON WHY HE DID NOT  
PRECEPT IT.

PARDON?

YOU HAVE USED YOUR TIME.

IF YOU WILL FINISH YOUR  
RESPONSE TO JUSTICE PARIENTE.

>> THANK YOU BOTH FOR YOUR  
PRESENTATION.

THE COURT WILL STAND IN  
RECESS UNTIL 9:00 TOMORROW  
MORNING.

>> PLEASE RISE.

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