Wydell Jody Evans v. State of Florida & Wydell Jody Evans v. James McDonough
SC05-632 & SC05-1974

CHIEF JUSTICE: THE COURT WILL CALL THE NEXT CASE OF EVANS VERSUS THE STATE OF FLORIDA.

CHIEF JUSTICE: JUST ONEMINUTE. PARTIES READY?

MAY IT PLEASE THE CO URT. MY NAME I S R ICHARD KI LE Y AND I REPRESENT WYDELL EV ANS IN THIS ISSUE BEFORE YOU T O DAY AND WITH ME IS M Y PARTNER .

CHIEF JUSTICE: ARE YOU S TILL WITH CCR C ?

YES .

CHIEF JUSTICE: SO HE ISANOTHER CCRC EMPLOYEE?

YES, YOUR HONOR. HE IS. YOUR HONOR, I WOULD LI KE TO ARGUE THAT ISSUE T WO, THE LOWER COURT ERRED IN HO LDING THAT MR . EVANS WAS NOT DENIED EFFECTIVE SENTENCING COUNSEL IN THE CAPITAL CASE OF HIS TR IAL IN VIOLATION OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE FLO RIDA CONSTITUTION. THE STATE INADEQUATELY F AILED TO CHALLENGE THE CASE AND COUN SEL'S -- COUNSEL 'S FAILED TO CHALLENGE THE STATE'S CASE AND COUNSEL WAS DEFICIENT .

JUSTICE: YOU REPRESENTED HIM AT THE EVIDENTIARY CASE?

I REPRESENTED HIM AND MY PARTNER.AS TIME PERMITS , I WOULD ALSO LIKE TO AR GUE ISSUE THREE. THE LOWER COURT ERR ED IN HOLDING THAT MR . EVANS WAS NOT DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AT THE PENALTY PHASE BECAUSE HIS ATTORNEY WAS INEFFECTIVE IN FAILING TO REQUEST THE STATUTORY MITI GATION JURY INSTRUCTIONS BE GIVEN IN VIOLATION OF THE 5th , 6th , 11th 1 4th AMENDMENTS OF THE UNITED STATES CONSTITUTION .

CHIEF JUSTICE: LET'S GETTO THE FACT, BECAUSE EACH OF THESE CASES AS WE LEARNED THIS MORNING , VERY FACT-SPECIFIC , SO GIVE US YOUR BEST SHOT AND OF COURSE HERE YOU HAVE GOT A VERY COMPREHENSIVE TRIAL COURT ORDER THAT MADE FINDINGS , AS TO WHAT IS THE DEFICIENCY . GIVE US THE , AND THEN PLEASE HIT ON THE PREJUDICE , BECAUSE A LOT OF TYPES WE S PEND TIME ON DEFICIENCY AND WE GO HERE IS A GUY THAT THIS COULD HAVE BEEN A TWO-EDGED SWORD, BECAUSE THIS WAS A VERY VI OLENT PERSON, SO IF YOU COULD , STICK TO THE FACTS.

YES. FIRST OF ALL REGA RDING ISSUETWO THE FACTS OF TRIAL COUNSEL DEFICIENT PERFORMANCE REGARDING INVESTIGATION AND PREPARATION OF THE PENALTYPHASE OF THE TRIAL HAS BEEN CONDEMNED EITHER BY THIS COURT OR THE UNITED STATES SUPREME COURT.

CHIEF JUSTICE: LET'S GET TO THE FACTS, NOT JUST STATEMENTS BUT LET'S HEAR THE FACTS OF THIS CASE THAT PUT THIS CASE INTO ONE IN W HICH COUNSEL WAS NOT FUNCTIONING AS THE SIXTHAMENDMENT REQUIRES.

VERY WE LL. YOUR HONOR , CONTACT WITH HIS CLIENT WAS A TOTAL OF TWO HOURS ON DECEMBER 23 RX 1 98 AND THEN AN OTHER TWO -- DECEMBER 23 , 1998 AND THEN TWO HOURS

SHORT B ILY BEFORE TRIAL , IN 1999. HE DID NOT HAVE EVIDENCE AT TRIAL EVALUATED BY A ME NTAL HEALTH PROFESSIONAL. HE TESTIFIED THAT IT WAS NOT HIS US UAL PR ACTICE TO INVESTIGATE HIS CLIENT'S LIFE TO SEE IF THE MITIGATION WAS PREJUDICED. FURTHER, YOUR HONORS , AT THE EVIDENCE YEAR HEARING , M R . -- EVIDENTI ARY HEARING , MR . STUDFIELD TESTIFIED THAT , HAD HE KNOWN ABOUT THE BRAIN INJURY THAT OCCURRED WHEN MR . EVANS WAS THREE YEARS OLD , HE WOULD NOT HAVE IGNORED IT. THAT STATEMENT ALONE VIRB YATES ANY TECHNICAL ARGUE - - EVISCERATES ANY TECHNICAL ARGUMENT THAT --

CHIEF JUSTICE: ARE YOU ARGUING THAT FOR A PER SE RULE THAT YOU ALWAYS NE ED A M ENTAL HEALTH EXPERT?

NO.

CHIEF JUSTICE: W HAT WAS, DID THE , THE ATTORNEY OBTAIN THE SCHOOL RECORDS OR THE MEDICAL RECORDS?

HE DID NOT.

CHIEF JUSTICE: ALL RI GHT. WHAT, WOULD THE SCHOOL RECORDS HAVE REVEALED INFORMATION THAT WOULD HAVE PUT HIM ON NOT ICE THAT HE NEEDED A MENTAL HEALTH EXPERT?

FI RST OF ALL , JUDGE , BEFORE THAT , THE HOSPITAL RECORDS INDICATING THAT EVANS WAS ST RUCK B Y A CAR , STOPPED BREA THING , AND WE CALL THE WITNESS IN THE EVIDENTIARY HEARING , SA NDRA , WHO GAVE HIM MOUTH-TO-MOUTH RESUSCITATION, WOULD HAVE PUT HIM ON NOTI CE. THE SCHOO L RECORDS - -

JUSTICE: FIRST OF ALL ON THE HOSPITAL RECORDS, THEFACT THAT HE WAS STRUCK BY A CAR AND STOPPED BREATHING WHEN HE WAS THREE YEARS OL D.

LA NDED ON HIS HEAD WITH AHEAD INJURY .

JUSTICE: WAS THERE ANYTHING L A TER ON THAT WHEN COUNSEL WAS WITH HIM THAT W OULD HAVE PUT COUNSEL ON NOTICE THAT THIS IS SOMETHING THAT MAY HAVE MENTAL HEALTH ISSUES , SOMETHING IN SPEAK ING TO HIS CLIENT OR HAV ING TO DO WITH THE CASE WOULD HAVE PUT HIM ON NOTICE THAT THERE WERE MENTAL HEALTH ISSUES HERE ?

THIS WAS A COMPULSIVE ACT , ONE SHOT DURING A HEATED ARGUMENT .

JUSTICE: WHAT ABOUT THE PSI THAT HE HAD AVAILABLE TO HIM , THE PRESENTENCE INVESTIGATION FROM PR IOR CRIMES, HAVE M E DICAL HISTORYAND WHATEVER, WHERE , WASTHERE ANYTHING IN THAT?

THE PSI WOULD HAVE INDICATED EVANS 'S PRIOR OFFENSES, W HICH WERE PRIMARILY IMPULSIVE, IN FACT ALMOST SO LELY --

JUSTICE: CAN THE PSI HASSOCIAL HISTORY , FA MILY HISTORY , MED ICAL HISTORY. WAS THERE ANYTHING IN THE PSI THAT WOULD HAVE INDICATED JUST BRAIN INJURY IS ALL I AM TALKING ABOUT R IGHT NOW.

THERE WAS NO INDICATION OF A BRAIN INJURY IN THE PSI.

CHIEF JUSTICE: LET'S GO BACK TO SCHOOL RECORDS. YOU WERE SAYING WHAT WAS IN THE SCHOOL RECORDS THAT WOULD HAVE PUT HIM O N NOTICE?

THE SCHOOL RECORDS WERE INTRODUCED AND WITNESSES, HIS TEAC HERS WERE CALLED ,

INDICATING THAT EVANS HAD DEVELOPED, THEY WERE AWAREOF THE BRAIN INJURY THAT, THE BRAIN INJURY WAS DISCUSSED IN THE SCHOOL RECORDS.THAT IS WH Y HE WAS PLACED IN THE SP ECIAL LEARNING DISABILITIES CLASS. HE WAS TESTED BY THE SCHOOL S YSTEM AND DETERMINED TO HAVE BRAIN DAMAGE. BUT THE SCHOOL RECORDS THEMSELVES INDI CATED THAT HE HAD A LACK OF IM PULSE CONTROL.HE HAD A SPEECH IMPEDIMENT . HE WAS THE SUBJECT O F DERITION AM ONG HIS PEERS. HE HATED BEING LAUGHED AT , AND HE TRIED TO CONTROL HIS ANGER BUT COULD NOT, AND WAS AWARE OF THAT. HE HAD NEVER COMPLETED ANY TASK. HE COULD NOT SIT STILL FOR ANY LENGTH OF TIME. WHEN QUESTIONED BY THE PROSECUTOR , M S. ON SHAUGHNESSY , I BE LIEVES -- MS. O' SHAUGHNESSY WAS, I BELIEVE , ONE OF HIS TEACHERS , AND WHEN AS KED I F SHE WASAVAILABLE , HE SAID I WI SH SHE COULD HAVE BEEN.

JUSTICE: THE MOTHER , THE COUSIN, THE FR IENDS LI NDA KEY AND PA TTY WALKER AND MR . KEF ANS WER, HIM SELF , WH ICH -- AND MR . EVANS , HIMS ELF, WHICH OF TH OSE FIVE OR SI X WIT NES SES PLACED HIM ON NOTICE THAT THERE WAS A DA RK S IDE AS OPPOSED TO THE GOOD SIDE THEY PRESENTED UNDEROATH AT TRIAL?

NONE , BECAUSE MR . STUDFIELD SENT OUT BASICALLY A FORM LET TER, ASKING THESEPEOPLE TO SAY ONLY GOOD THI NGS ABOUT MR . HE HAVEANCY -- MR . EVANS. MR . STUDFIELD DID NOT INVESTIGATE ANYTHING ABOUT HIS CL IENT'S PA ST. IN FACT HE SAID AT THE EVIDENTIARY HEARING, IT WAS NOT HIS PRACTICE TO INVESTIGATE HIS CLIENT'S PAST.

JUSTICE: HE ALSO SAID THAT HE KNEW ABOUT THE EXTREME VI OLENT HISTORY OF HIS CLIENT . HE KNEW BY PRIOR RECORDS , CORRECT?

YES.

JUSTICE: SO HE KNEW ABOUT THE VIOLENCE, BUT WHAT DID THESE WITNESSES SAY AND HE LP ME WHAT THE RECORD SHOWS AS O PPOSE ED TO ONLY GIVE ME G OOD OR LET ME KNOW ABOUT IT .

ONLY G IVE ME GOOD THEY TEST IFIED THAT MR . EVANS WAS AN A -B STUDENT. HE WAS NOT . AND AN EXAMPLE OF THE SCHOOL RECORDS WOULD HAVE SHOW N THIS MAN WAS D'S AND F'SBEFORE HE DROPPED OUT AT TENTH GRADE.

JUSTICE: BUT THE MOM SAID THAT HE HAD A 'S, B'S AND C'S , CORRECT ?

YES.

CHIEF JUSTICE: WHAT YOU ARE SAYING IS HE GAVE AN IMPRESSION , SAID I WANT T O HEAR, THAT TESTIMONY THAT GOES WITH I WAS ASKING FOR GOOD STUFF OR THE WITNESSES SAID HE WA NTED TO HEAR GOOD STUFF FROM US SO THAT IS WHAT W E TOLD HIM?

BOTH , YOUR HONOR. B OTH. MR. STUDFIELD'S LETTERS INTRODUCED AS EVIDENCE , S PEAK FOR THEMSELVES. DO YOU HAVE ANY GOOD THINGS TO SAY ABOUT WYDELL EVANS ? HIS FAMILY MEMBERS WERE ASKED , CAN YOU SAY GOOD THINGS? WHY THIS MAN IS W O RTH SA VING . THEY DIDN'T ASKS , I ASKED WHY DIDN'T YOU TELL HIM A BOUT THE BRAIN INJURY. HE DIDN'T ASK . SHE WAS PREJUDICED . STUDFIELD NEVER ASKE D MR . EVANS DID YOU HAVE A HEAD INJURY . NO!

CHIEF JUSTICE: LET'S GOTO THE PREJUDICE PRONG AND ASSUME DEFICIENCY FOR THESAKE OF THIS ARGUMENT. THE RE IS ALWA YS THE ARGUMENT IN A PRIOR CASE THIS PERSON HAD NO PRIOR HISTORY OF VIOLENCE . HERE THIS IS A DEFENDANTTHAT HAD A HISTORY OF VIOLENCE , AND WOULDN'T THIS JUST HAVE FURTHER SHOWN THAT THIS WAS JUST A VERY VIOLENT PERSON THAT HAS L I VED HIS WHOLE LIFE IN A WAY THAT WAS JUST AGGR ESSIVE AND WOULDN'T THAT

HAVE BR OUGHT OUT MORE BAD THING S THAN WOULD HAVE HELPED THE CASE?

NO , YOUR HONOR. RESPECTFULLY THIS PA INTED AN INCORRECT PICTURE OF MR . EVANS AND WHY THIS CRIMEOCCURRED. THE PREJUDICE IS THAT THE JURY WAS UNDER THE IMPRESSION THAT AN A-B STUDENT WHO LOVED HIS FAMILY , SHOT THIS GI RL FOR NO APPARENT REAS ON, AND THE REASON WAS EVANS 'S BRAIN INJ URY CA USED HIM PROBLEMS IN SCHOOL , STARTED HIS CRIMINAL RECORD , AND THEN UNDER THE EXPERT TESTIM ONY , WAS EXACERBATED BY ALCOHOL. IT IS A PERFECTLY LO GICAL EXPLANATION.IN FACT, HAD THIS , THE PREJUDICE TO THE JURY , HADNO IDEA WHO THEY WERE RECOMMENDING DEATH FOR.

CHIEF JUSTICE: WHAT WASTHE PRIOR, WHAT DID THEY HEAR ANYWAY ABOUT THE PRIOR OFFENSES? IN OTHER WORDS WAS --

IT WAS A STIPULATION THAT HE HAD A PRIOR VIOLENT FELONY AND WAS ON PROBATIONAT THE TIME OF THE --

CHIEF JUSTICE: WHAT WAS THAT PRIOR VIOLENT FELONY?

BATTERY ON A LAW ENFORCEMENT OFFICER.

CHIEF JUSTICE: WOULDN'TPUTTING ON THIS OTHER EVIDENCE HAVE OP ENED THE DOOR TO WHAT E LSE WOULD THEY HAVE HEARD ABOUT HIS VIOLENTPAST?

-- PAST? THIS IS SOMETHING THAT HAD JUST GO TTEN OUT OF PRISON TWO DAYS BEFORE.

YES.

CHIEF JUSTICE: WOULDN'T THEY HAVE HEARD ABOUT NUMEROUS OTHER ACTS OF VIOLENCE THAT THE DEFENDANTHAD COMMITED?

YES BUT THEY WOULD HAVE ALSO HEARD ABOUT WHY , WHAT CAUSE HAD THIS MAN TO BE SO VIOLENT. AND THE CLINICAL OP INION IDON'T KNOW OF DR . McCLARIN , WHO WAS THE STATE DOCTOR CALLED BY US , FO UND BRAIN DAMAGE, LACK OF IMPULSE CONTROL.DR . CARPENTER FOUND BRAINDAMAGE, LACK OF IMPU LSE CONTROL , EXACERBATED BY ALCOHOL. DR . DEE DID A COM PLETE BATTERY OF TESTS AND FOUND DIAGNOSEABLE BRAIN DA MAGE, LACK OF IMPULSE CONTROL RESUL TING IN AGGRESSION. THE SCHOOL RECORDS WOULDHAVE BROUGHT THAT OUT. THIS MAN HAS THESE AN GER PROBLEMS ALL OF HIS LIFE.

JUSTICE: SO YOU WOULDHAVE CON CEDED , THEN , IF DEFENSE COUNSEL HAD BEEN A WARE OF THAT, THEN THERE WOULD HAVE BEEN NO WAY TO PRESENT THE DEFENSE THAT THIS WAS AN ACT.

THERE WAS NO WAY , AND WYDELL'S TW ISTED MIND IT WAS. HE IMPULS IVELY SHOT THIS G IRL .

JUSTICE: I THOUGHT THE DEFENSE WAS THAT SHE HAD HITTHE GUN AND IT ACCIDENTALLY WENT OFF. WOULD YOU CONCEDE THAT THE DEFENSE , IF , T ALK B INGT PREJUDICE PART, IF THEDEFENSE HAD KNOWN ABOUTTHIS, THEN DO YOU AGREE OR DISAGREE THAT THERE IS JUST NO WAY THAT THE DEF ENSE THAT WAS PRESE NTED IN THE GUILT P HASE COULD HAVE BEEN THEDEFENSE AND M A INTAIN ANY CREDIBILITY IN THE PENALTYPHASE?

I AM NOT SURE I UNDERSTAND YOUR QUESTION.

JUSTICE: THE DEFENSE SAID THIS WAS COMPLETE ACCIDENT. THIS WAS A G REAT GUY AND IAM GOING TO HUMANIZE HIM IN THE PENALTY PHASE.

RIGHT.

JUSTICE: ALL OF THIS , IF HIS BROTHERS HAD TESTIFIEDTHIS IS THE ME ANES , ANG RIEST G UY THAT I HAVE EVER SEEN AND HIS TEA CHERS TESTIF IED TO THAT , W OULDN'T THAT BE A DIFFERENT LIGHT THAN THE STATEMENT OF WHEN HE WAS IN JAIL IF HE SAID WHEN I GOTOUT I AM GOI NG TO KILL HER? WOULDN'T IT HAVE BEEN HA RDTO PRESENT A N ACCIDENT DEFENSE?

YES , JUDGE, BUT THE ISSUE IS STUDFIELD DID NOT EVEN RESEARCH ANY OTHER POSSIBLE DEFENSES AT THE GUILT PH ASE OF THE TR IAL. HE DID NOT RESEARCH I N TO THE LAW.

JUSTICE: I UNDERSTAND. THAT GOES TO THE DEFICI ENCY BUT AS TO THE PREJUDICE DISI AM ASKING DO YOU AGREE THAT , IF THE DEFENDANT'S STATEMENTTO LAW ENFORCEMENT THAT IT WAS AN ACCIDENT ESSENTIALLY AND HE WANTED TO PRESENT A DEFENSE THAT WAS AC TUALLY PRESENTED , COULD NOT HAVE BEEN REASON ABLY PRESENTED TO A JURY THAT THIS WAS A PURE ACCIDENT.

YES, IT COULD , JUDGE.

JUSTICE: ON WHAT BASIS?

HE T URNED AROUND, WHEN HE SMASHED THE WINDSHIELD, WHICH EVANS DIDN'T REMEMBER , THE WOMEN LAUGHED AT HIM. EVANS COULDN'T STAND TO BE LAUGHED AT ACCORDING TO HIS TEACHERS. HE TURNED AROUND AND SAID YOU THIN K IT IS FUNNY, YOU THINK IT IS F U NNY, AND HIS TESTIMONY WAS, UNSUPPORTED B Y THE EVIDENCE , OF COURSE, THAT ANGEL KNO CKED THE GUN AWAY AND WENT OFF, BUT THE A CTION OF HIM PO INTING THE GUN ATTAIN GEL IS NOT IN DIS PUTE . BUT MORE IMPORTANTLY , JUDGE , I WOULD LIKE IT TO FO CUS U PON THE PENA LTY PHA SE. THE JURY, FIRSTFUL OF ALL THIS COURT IN -- FIRST OF ALL IN ITS PROPORTIONAL ITY ANALYSIS WAS SP LI T 4-TO-3. NOW , HAD STUDFI ELD ESTABLISHED THE STATUTORY MITIGATION, THIS COURT WOULD HAVE TI PPED THE SCALES O F JUSTICE IN THE DEFEND ANT'S L IGHT , BECAUSE EVANS WAS CLEARLY OPERATING UNDER EXTREME ME NTAL EMOTIONAL DISTRESS AND HE COULD , THE CAPACITY TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT WAS SUBSTANTIALLY IMPAIRED , BOTH BY THE BRAIN INJURY AND BY AL COHOL CONSUMPTION. THIS IS A ONE-SHOT , BANG , SHE WAS DEAD!

JUSTICE: DR . McCLARIN AND THE TRIAL JUDGE 'S CONCLUSION ARE DIFFERENT THAN WHAT YOU JUST PRESENTED , CORRECT?

DR . McCLARIN AND THE T RIAL JUDGE , DR . McCL ARIN WOULD NOT HAVE BEEN THE EXPERT WE P ICKED BUT DR . McCLARIN FOUND BRAIN DAMAGE.NOW , THE TRIAL JUDGE'SCONCLUSION IS EXAC TLY POST H OC RATIONALIZATION THAT THE WIGGINS LOWER COURT ENGAGED IN. IN OTHER WORD S, YOU CAN'T SAY WE DON'T FIND THIS EVIDENCE PERSUASIVE , BECAUSEIT WASN'T PRESENTED. IT IS POST HOC RATIONALIZATION , COMPLETELY CONDEMNED BY WIGGINS. AND , ALSO COND EMNED BY THIS COURT IN OREM V STATE NOREM , MITIGATION WAS NOT PRESENTED, AND IT HE WAS EVALUATED .

JUSTICE: HELP ME OUT. BOTH THE TRIAL JUDGE AND ACCORDING TO McCLARIN 'SSTATEMENT , IT WOULD HAVE BEEN A HARD C HOICE AT TRIAL IF BRAIN DYSFUNCTION WAS PRESENTED AS A MITIGATOR , SUBJECT TO THE DEFENDANT'S AGGRESSIVE ACTS AND LONG HISTORY OF VIOLENCE , THIS WAS JUSTICE P A RIENTE SPEAKING. HOW DO YOU GET AC ROSS THAT ? GIVEN THE PRESUMPTION THAT WE HAVE , SO LONG AS THETRIAL COURT'S DECISIONS ARE SUPPORTED BY COMP ETENT SUBSTANTIAL EVIDENCE , WE WILL NOT SUBSTITUTE OURJUDGMENT FOR THAT OF THE TRIAL COURT ON QUESTIONS OF F ACT AND CREDIBILITY OF WITNESSES.

WELL, JUDGE, THE ISSUE IN THIS CASE IS NOT WHETHER THE POSTCONVICTION COURT BELIEVED THE MITIGATION TO BE PERSUASIVE BUT WHET HER MITIGATION SHOULD HAVE BEEN FOUND,

EVAL UATED ANDPRESENTED TO THE JURY! JURY JURY I AM SORRY. I AM TR YING TO DEAL WITH THE -- JUDGE JUDGE I AM SOR RY. I AM TRYING TO DEAL WITH --

JUSTICE: I AM SORRY . I AM TRYING T O DEAL WITH THE PREJUDICE PRONG AND HOW WAS PREJUDICE INDICA TED. THE TRIAL COUNSEL AND D R . McCLARIN , HO W DO WE FIND THERE IS NO COMPETENT EVIDENCE TO SU PPORT THE IR CONCLUSION.

JUDGE, I AM WELL INTO MY REBUTTAL A TIME.IF I CAN GO QUICKLY. STUDFIELD SAID IF I HAD KNOWN ABOUT THE HEAD INJURY , I WOULD HAVE NOT IGNORED T THERE WAS A HEAD INJURY BUT EVANS HAD A CHOICE TO A DOPT A C R IMINAL LIFESTYLE AND CHOSE TO DO SO. NOW , I WOULD HAVE PUT DR . McCLARIN UP AGAINST DR . CARPENTER AND DE E TO RE BUT . THE JURY NEVER HEARD THAT. THAT WAS MITIGATION FOR THEJURY TO DECIDE. IT WAS NOT ESTABLISHED BECAUSE HE DIDN'T LO OK .

CHIEF JUSTICE: YOU WANT TO SAVE THE REST OF YOUR TIME FOR REBUTTAL. MS. DAVIS .

MAY IT PLEASE THE COURT. MY NAME IS BARBARA DAVIS. I REPRESENT THE STATE OF FLORIDA. AND FIRST I WOULD LI KE TO SAY THAT GOING DIRECTLY TO THE PREJUDICE PRONG OF THE PENALTY PHASE , WHAT HAS NOW BEEN PRESENTED IS THAT MR . EVANS HAS AN ANTISOCIAL PERSONALITY DISORDER . HE STA RTED SELLING CRACK AT AGE 18. HE STARTED CARRYING A GUN BECAUSE -- CHIEF LET'S GO BACK TO BRAIN INJURY . WAS IT UNCONTESTED THAT HE HAD BRAIN DAMAGE?

THAT , IF, THE QUESTION IS THE NEXUS OF THE BRAIN D AMAGE TO THE CRIME.

CHIEF JUSTICE: JUST LET'SWAS IT UNCONTESTED THAT HE HAD BRAIN DAMAGE?

YES.

CHIEF JUSTICE: AND WAS IT UNCONTESTED THAT HIS SCHOOL RECORDS WOULD HAVE AT LE AST PROVIDED A FERTILE GROUND FOR EBBS MORING , AND I KNOW YOU WANT TO GET TO THE PREJUDICE, BUT EXPLORING THEFACT THAT THIS ISN'T JUST SOME MADE-UP AFTER-THE - FA CT DEFENSE OF MITIGATION , THAT THIS WAS SOMETHING DOCUMENTED IN YE ARS O F S CHOOL RECORDS.

NOW , I DON'T RECALL THE SCHOOL RECORDS TALKING ABOUT THE ACCIDENT AT THREE YEARSOLD.THE SCHOOL RECORDS TALKED ABOUT HIM BEING LEARNING DISABLED , HAVING SPEECH THEY WERE AND I EMOTIONALLY HANDICAPPED. HOWEVER -- AND EMO TIONALLY HANDICAPPED. HOWEVER , DR . McCLARIN 'S TESTIMONY ON THE BRAIN DAMAGE WAS THAT IT WAS FUSE SPECIFIC AND MA Y OR MAY NOTHAVE BEEN RELATED TO THE CRIME.

CHIEF JUSTICE: MAY HAVE BEEN BRAIN DAMAGE BUT TESTIFIED TO BY ALL THE EXPERTS .

YES.

CHIEF JUSTICE: YOU SAY THE PROBLEM RE LATEED TO THEY COULD NEVER RELATE IT TO HOW THE M URDER OCCURRED.

THAT IS WHAT THE TRIAL JUDGE FOUND THAT THERE WAS NO LINK TO THE MURDER, BECAUSE AT AGE 2 8 WE HAVE WYDELL EVANS WHO HAS A HISTORY OF VIOLENCE AND F IGHTING AND BOXING INCIDENTS AND ALLEGEDLY POLICE BR UTALITY .

JUSTICE: DESPITE THAT , IT SEEMS TO BE THE PROBLEM HERE, THIS IS A 1 998 DAYS CASE. THIS MURDER OC CURRED IN 1998. CORRECT?

YES.

JUSTICE: AT THAT TIME IT WAS GEN ERALLY ACCEPTED THAT DEFENSE ATTORNEYS WOULD GETAT LEAST SOME OF THE SCHOOL RECORDS AND THOSE KINDS OF THINGS ABOUT HIS DEFENDANT AND THOSE RECORDS WOULD, THEN, POSSIBLY LEAD TO DEVELOPMENT OF MITIGATING EVIDENCE, THOSE KINDS OF THINGS, SO WHY DIDN'T THE DEFENSE ATTORNEY DO THAT IN THIS CASE?

LET'S TALK ST RAIGHT ABOUT PREJUDICE, IN THAT THE SCH OOL RECORDS AND EVERYTHING THAT IS NOW PRESENTED, IS NOT MITIGATING. AND THERE LIES THEDISTINCTION WITH WIGGINS AS TO WHAT THEY DISCOVERED WAS MITIG ATING. NONE OF THIS WAS MITIGATING.

JUSTICE: BUT DIDN'T WIGGINS ALSO SAY THAT , BEFORE YOU CAN DETERM INE W HAT YOU ARE GOING TO D O IN THESE CIRCUMSTANCES , WHAT YOU ARE GOING TO PRESENT IN MITIGATION , THAT YOU HAVE GOT TO INVESTIGATE SO YOU CAN MAKE SOME CHOICES , SOME DETERMINATION?

AND THAT IS THE DEFICIENCY PRON G. BUT ON THE PREJUDICE PRONG , THE COURT SAID GIVEN BOTH THE NATURE AND EX TENT OF THE ABUSE PETI TIONER SUFFERED, THERE IS A REASONABLE POSSIBILITY THAT THIS COULD HAVE CHANGED THE V OTE. WE FIND THIS T O BE POWERFUL MITIGATING EVIDENCE. IN OUR CASE , ON THE BR IDGE DISPRONG, NONE OF THIS IS MIGHT -- ON THE PREJUDICE PRONG , NONE OF THIS IS MITIGATING.

JUSTICE: I THOUGHT THE DEFENSE TESTIF IED HERE THAT THE MITIGATING FACTORS WOULD HAVE BEEN FOUND IF THEY HAD THE OPPORTUNITY BEFORE TRIAL TO EVAL UATE THE DEFENDANT, BASED ON THE BRAIN AND SUBSTANCE ABUSE PROBLEMS THAT HE HAD. IS THAT SAID OR NOT?

THE DEFENSE EXPERTS. HOWEVER , DR . McCLARIN WAS CREDITED BY THE DEFENSE , WHOSAID NO.THERE WAS NO INABILITY TO APPRECIATE, THERE WAS NO EMOTIONAL DISTURBANCE. DR . McCLARIN SPENT THREE DAYS WITH MR . EVANS.

JUSTICE: HOW DO YOU ANSWER THE ARG UMENT OF THE DEFENSE THAT IT WOULD HAVE BEEN UP TO A JURY TO AT LEAST HAVE THE THAT INFORMATION AVAI LABLE TO THEM AND MAD E THE CHOICE,THEN, OF WHETHER OR NOT THEY BE LE EFTED , BASED ON -ON BELIEVED, BASED ON CONFLICTING EVIDENCE -- BELIEVED, BASED ON CONFLICTING EVIDENCE , WHATEVER, THAT THESE STATUTORY MITIGATING FA CTORS EXISTED. WASN'T THE DEFENDANT ENTITLED TO A LAWYER THAT DID THE INVESTIGATION, THAT JUSTICE QUINCE IS TALKING ABOUT , AND THEN MADE CHOICES ABOUT THIS, SO THAT THE JURY, AND OF COURSE WE DON'T KNOW WHAT THE JURY WOULD HAVE DONE WITH THIS. WE KNOW WHAT THE TRIAL JUDGE APPARENTLY WOULD HAVE DONE WITH IT , BASED O N HIS CONCLUSIONS HERE , BUT WHAT ABOUT THE OPPORTUNITY FOR THE DEFENDANT TO PRESENT THAT TESTIMONY TO A JURY?

WE ALSO KNOW WHAT DEFENSE COUNSEL SAID, BECAUSE THE TRIAL COURT QU OTED HIM , ATTACHED SECTIONS OF THE RECORD, THAT HE WAS NOT GOING TO PRESENT THE VIOLENT BEHAVIOR O F HIS P AST.

JUSTICE: THE VIOLENT BEHAVIOR IS PRESENTED IN A TOTALLY DI FFERENT CONTEXT, WHEN YOU ARE TALKING ABOUT M ENTAL HEALTH EXPE RTS , B RAIN DAMAGE, AND A SUBSTANTIAL RECORD, AND AURNL , O F MENTAL PROBLEMS THAT ARE, SO ARE YOU CONCEDING -- AND APPARENTLY OF MENTAL PROBLEMS THAT ARE , ARE YOU CONCEDING THAT T HERE ARE MENTAL HEALTH PROBLEMS HERE?

NO.

JUSTICE: HOW ABOUT COMING BACK IF YOU ARE NOT CONCE DING IT AND ANSWERING JUSTICE QUINCE'S QUESTION. THAT IS WE HAVE, AND THIS IS 1998, AND ALL OF THE RECENT CASE LAW F ROM THE U.S. SUPREME COURT , OUR CASE LAW , TOO , SAYS YOU INVE STIGATE FIRST AND THEN YOU DEVELOP STRATEGY , AND SO ISN'T IT OBVIOUSLY IN A DEATH-PENALTY CASE, THE RESPONSIBILITY OF COUNSEL TO THE LIFE O F HISCLIENT IS AT STA KE, TO DO A THOROUGH INVESTIGATION FIRST, AND THEN MAKE CHOICES , BASED ON BEING IN FORMED , NOW , ABOUT EV ERYTHING , SO HOW WAS THIS LAWYER 'S CONDUCT IN THIS PARTICULAR CASE , HOWCAN WE FIND THAT IT WASN'T DEFICIENT ? BECAUSE HE DIDN'T DO THAT.

THE TRIAL JUDGE FOUND THAT HE WAS NOT DEFICIENT. HE HIRED AN INVEST IGATOR , P AGE 85 6. HE TALK ED TO THE MOM AND THE A UNT , AS FAR BACK AS MARCH.

JUSTICE: NO M E DICAL RECORDS. NO SCHOOL RECORDS. NO DISCOVERY OF THIS BRAIN INJURY. DID HE HAVE ANY MENTAL HEALTH EVALUATION DON E?

NO, BUT THE FAMILY AND THE DEFENDANT AND THE AUNT WHO LIVED WITH WYDELL HISENTIRE LIFE , KN EW ABOUT THIS AND NEVER BROUGHT IT UP. NOW , SAYING THAT, WELL , MR . STUDFIELD NEVER ASKED THERIGHT QUESTIONS IS NOT QUITETRUE, BECAUSE HE MET WITH THE MOM AND THE AUNT. THEY WENT O VER ALL OF THIS. THEY BROUGHT OUT THE FACT THAT THE MOM WAS A C R ACK ADDICT.

JUSTICE: WHOSE DUTY IS IT TO INVESTIGATE TO LO OK AT SCHOOL RECORDS AND LOOK AT MEDICAL RECORDS? IS T IS NOT DEFENSE COUNSEL RESPONSIBILITY TO DO THAT?

IT IS HIS RESPONSIBILITY BUT IF THE DEFENDANT, HIS FAMILY AND HIS M OTHER LEAD YOU TO BE LIEVE YOU ARE NOT GOING TO FIND ANYTHING GOOD HERE, STRICKLAND AND FOTOPOULOS, BOTH SAY YOU CAN RELY ON YOUR C LIENT.

JUSTICE: I THINK THAT IS A CRITI CAL ISSUE HERE.WHAT THE DEFENDANT PRESENTS IS THAT THE ATTORNEY KIND OF LED THE CH ARGE HERE AND SAID , PUT BLINDERS ON AND SAID I ONLY WANT GOOD EVIDENCE. GIVE ME WHAT GOOD EVIDENCEYOU HAVE. AND YOU ARE SAYING THE OPPOSITE. WHAT IS THE RECORD TELL US ABOUT THAT CONVERSATION WITH THE DEFENDANT. THEY WERE SAYING A VERY MINIMAL MEETING WITH THE DEFENDANT ON MITIGATION AND WHAT THE FAMILY MEMBERS T O LD COUNSEL IN THE CONTEXT IN WHICH IT WAS BEING A S KED.

WE DON'T KNOW EVERYTHING THEY TOLD HIM BUT WE KNOW THAT THEY TALKED ABOUT A LOT OF THIN GS , BECAUSE IT CAME O UT, THE TRIAL COURT FOUND OUT THE MITIGATOR , THAT HE HAD AN ABUSE AND DEPRIVED CHILDHOOD AND THAT THE MOM WAS A CRACK ADDICT. THE MOM TOOK COMP LETE , THIS ALL CAME OUT AT THE PENALTYPHASE.THE MOM SAID THAT HE DIDN'T HAVE THE RIGHT CLOTHES TO GO TO SCHOOL . THAT IS WHY HE DROPPED OUT. S HE WAS A CRACK ADDICT ANDIT RE ALLY DISTURBED HIM THAT SHE LEFT HIM AT THE AGE OF BETWEEN 11 AND 15679 SHE WAS A CRACK ADDICT. SHE WAS ON -- BETWEEN THEAGE OF 11 AND 15. SHE WAS A CRACK ADDICT.SHE WAS ON THE STREETS AND PEOPLE WOULD COME BAC K TO HIM AND SAY THEY SAW HER ON THE STREET AND SHE SAID HIS CRIMINAL PROBLEMS ARE MY FAULT. I ABANDONED HIM AND THAT IS WHEN HE STARTED AC TING OUT. THAT I S WHEN HIS BE HAVIOR BECAME REALLY BA D.

JUSTICE: TELL US ABOUT HIS PROBLEMS. HOW DO WE GET FROM AN A, B STU DENT G UY TO AN EXCEPTIONAL CLASS?

WELL , THEY JUST DIDN'T TELL THE LAWYER THE TRUTH. HE TALKED TO THEM ABOUT THAT. MOM SAID HE IS A GOOD STUDENT. HE LO VES MUSIC. HE IS I N 4-H. HE BROUGHT FREENDZ HOME. -- FRIENDS HOME.

CHIEF JUSTICE: GOING BACK TO THE PREJUDICE, YOU KNOW THAT HE HAS DROP PED OUT OF

SCHOOL AND EVEN IF YOU WANT TO VERIFY THAT HE WAS A GOOD STUDENT, WHAT IS THE EXCUSE FOR NOT GETTING THE SCHOOL RECORDS?

HE DIDN'T GIVE ANYEXCUSES. SO I ME AN, THAT IS WHY I WANT TO FOCUS ON PREJUDICE , BECAUSE THERE IS NONE.IN THIS COURT --

JUSTICE: LET'S EXPLORETHE PARAMETERS OF THAT A LITTLE BIT.

OK AY.

JUSTICE: ISN'T BRAIN DAMAGE AND THE IM PACT OF B RAIN DAMAGE DOCUMENTED THAT EXPERTS ALL AGREE TO , A QUANTITATE I FEE L DI FFERENT THAN EX -- QUANTITATIVE LY DIFFERENT THAN AN EXCUSE , A PRACTICAL MA TTER, BRAIN DAMAGE THAT EVERYBODY AGREES TO PRO DUCES SUCH-AND-SUCH BEHAVIOR, WHY S H OULD THAT NOT BE A FACTOR THAT GOES BEFORE A JURY AND YOU MAY HAVE AND HAVE ALL OF THE OTHER THINGS COME OUT AS WELL, BUT ISN'T I T QUALITATIVE LY DIFFERENT?

YOU CAN'T SAY BRAINDAMAGE AND ALL OF A S U DDEN THAT MAKES EVER YTHING RI GHT.

JUSTICE: NO, THEY WERE HOOKING IT TO SCHOOL RECORDS AND DIS ABILITY CL ASSES AND I THOUGHT THE STATE AGRE EDTHAT THE EXPERTS , THAT THEBRAIN DAMAGE HAD SOME IMPACTWITH THE RECORDS IN SCHOOL. THEY DID NOT.

NO.

JUSTICE: BRAIN DAMAGE IS JUST IN THE AIR IN THIS CASE IS WHAT THEY SAID.

DR . McCLARIN WHO SPENT THREE DAYS WITH THE DEFENDANT AND WHOSE INTERVIEWS ARE ALL VIDEOTAPED , WHOSE TESTIMONYIS SU PPORTED BY THE FACTS OF THIS CRIME AND THE RECORD , S AID ANTISOCIAL PERSONALITY WITH NARCISSISTIC BEHAVIOR EXPLAINS EVERYTHING IN THIS CRIME. THE BRAIN DAMAGE COULD BE F ROM THREE YEARS OLD. IT COULD B E FROM , BECAUSE HE LIKES TO DRINK. IT COULD BE FROM ANYTHING. THERE IS NO QUESTION THEREIS SOMETHING GOING ON , BUT IT IS NOT RE LATED TO THE FACTS OF THIS CRIME. THE FACT OF THIS CRIME --

JUSTICE: I AL WAYS UNDERSTOOD THE MITIGATION WAS TO BE THE FULL PICTURE OF THE PERSON AND THAT IT NOT NECESSARILY IN THE EYES OF THE LAW , BE AN EXCUSE FOR THE CONDUC T OF THE MURDER. I DIDN'T THINK THAT WAS EVEN WHAT IT WAS FOR. IT WAS TO GET A FULL PICTURE OF THE INDIVIDUAL THAT YOUARE DEALING WITH, WAS IT NOT ?

WELL , BUT, THAT IS THE STRATEGY. AND MR . STUDFIELD SAID I WAS TRYING TO KEEP ALL HIS VIOLENT PAST OUT, AND THE TRIAL JUDGE FOUN D, AND MR. STUDFIELD HAD AN INVESTIGATOR AND TALKED TOTHE FAMILY AND DID ALL OF THIS AND WHAT WE HAVE NOWS IS THE TRIAL JUDGE SAID THATHE IS A VIOLENT VICIOUS PREDATOR AND THAT IS WHAT MR . STUDFIELD WAS TRYING TO KEEP AWAY FROM THE JURY AND SUCCEEDED AT KEEPING AWAY FROM THE JURY WAS AT THE PENALTY PHASE , WHAT HAPPENED IS DR . CARPENTER AND DR . DEEWAS THERE AND YOU SEE THE TRIAL EVIDENCE , LET'S TALK ABOUT COND UCT , DIS ORDER , LET'S TALK ABOUT AT 15 HE THOUGHT CO PS WERE BAD BECAUSE THEY ARRESTED HIM. HE STARTED THROWING ROCKS AT POLICE CAR AND BA TTER ING POLICE OFFICERS.

JUSTICE: I AM INTERESTED IN THE P SI.

YE S.

JUSTICE: NOW , DID THE PSI CONTAIN ANYTHING ABOUT PRISON RECORDS ?

THE PSI CONT AINED A LITANY O F JUVENILE HISTORY AND ANTISO CIAL BEHAVIOR. I MEAN, IT IS A ROAD MAP TO ANTISOCIAL BEHAVIOR. AND IF THE STATE WERE ALLOWED TO USE EVERYTHING THAT THEY HAVE NOW PREVENTED . HE IS A DRUG DEALER. HE LIKES , HE DOES A JACK BOY.HE PRI DES HIMSELF IN BEING A JACK BOY, A ROBBER. HIS BROTHER EVEN SAYS HE WANTED, ALL HE EVER WAN TED TO BE FROM TEENAGER ON IS A GAUGE SISTER. HE LOVED TO INTIMIDATE -- IS A GAN GSTER. HE WANTED TO IN DIM TATE -- INTIMIDATE PEOPLE. HE LOVE D TO BE "THE MA N" .

MR . STUD FIELD HAD THE P SI?

YES, HE DID.

JUSTICE: HOW LONG ABOUT BEFORE THE TRIAL DID HE HAVE IT?

I DON'T KNOW.THE DATE ON MINE SAYS NOVEMBER 30 AND THE TRIALWAS IN NOVEMBER ON, SO IT WOULD HAVE BEEN --

JUSTICE: WAS THERE ANY FOLLOW-UP INVESTIGAT ION CONCERNING WHAT IS CONTAINEDIN THE PSI? PRIOR TO THE TRIAL.

THERE WERE THREE VIOLENT FELONIES THAT CAME IN. AND MR . STUDFIELD REBUTED THAT WITH TESTIM ONY AND HE LOOKED INTO THAT , BUT THERE IS NOTHING IN THIS PSI THAT SHOWS ANYTHING BUT VIOLENT VICIOUS PREDATOR .

CHIEF JUSTICE: THE JURY HEARD ABOUT THIS ACT , INCIDENT AND THEY HEARD THREE PRIOR VIOLENT FELONIES THROUGH THE PSI.

TWO BATTERIES ON A LE O AND ONE AGGRAVATED BATT ERY.

CHIEF JUSTICE: SO THEY ALREADY HEARD ABOUT A LOT O F VIOLENT HISTORY, CORRECTSOME.

YES.

CHIEF JUSTICE: SO NOW I AM TRYI NG TO UNDERSTAND HOWTHE TWO-EDGED S WORD WOULDWORK IN THIS CASE AND I AM BATTLING WITH THIS IN THIS WAY. YOU HAVE GOT A SITUATION WHERE A JURY AL READY KNOWS ABOUT PRIOR VILE VIOLEN CE. THE IS SUE IS -- PRIOR VIOLENCE. THE ISSUE IS, IS HEARING ABOUT MORE OF IT W ITH THEHOPE OF EXPLAINING THAT THERE IS A BRAIN -RELATED REASON FOR THIS ANTI SOCIAL BEHAVIOR, WHAT IS THE DO WN S IDE OF DOING THAT , AND NOT HAVING THAT, WHY WOULDN'T THAT, PER HAPS , T IP THE SCALES? AND THIS IS WH ERE WE ARE STRUGGLING WITH IT . AS TO , AND IT IS TIED IN , EVEN THOUGH I AGREE YOU HAVE GOT PREJUDICE SEPARATELY, WHEN THERE ISN'T AN INFORMED C HOICE , IT IS HARD TO REA LLY GO AND SAY, WELL , HE HAD NO REASON FOR NOT PRESENTING IT BECAUSE HE DIDN'T KNOW IT EXISTED. SO HOW DO YOU ANS WER THAT , THAT IT I S THAT IT WOULD HAVE DONE IN THIS CASE , MORE GOOD THAN HARM BECAUSE THEY ALL HAD ALREADY HEARD ABOUT THIS HISTORY OF PRIOR VIOLENCE .

AND MR . STUD FIELD KNEW ABOUT HIS VIOLENT HISTORY , AND THE BRAIN DAMAGE , EMORPHOUS DAMAGE , HE LIKES THIS BEHAVI OR, HE L IKES THIS BEHAVIOR AND LIKES TO BE AGGRESSIVE AND ANGRY AND CONTROLLING. THAT EXPLAINS IT , AND MR . STUDFIELD MADE THE STRATEGICCHOICE THAT I AM GOING TO PRESENT HIM AS A SALVAGEABLE PERSON WAS AS THE JUDGE QUOTED GUYS , YOU DON'T PRESENT -- QU OTED TWICE , YOU DON'T PRESENT YOUR GUY A S TO ONE ME AN MAN , BECAUSE THAT WILL PREJUDICE THE --

CHIEF JUSTICE: ISN'T THAT THE E FFECT OF WHAT WAS PRESENTED BY THE STATE THROUGH THESE PRIOR VIOLENT ACTIONS IS?

THEY HAD THE PROBATION OFFICER COME IN AND SAY HE WAS ON PROBATION AT THE TIME. THAT PROVES THAT HERE ARE THREE PRIOR VIOLENT FELONIES , JUDGMENT AND SENTENCING COMES IN AND IN THE MEANTIME MR. STUDFIELD MADE POINTS WITH THE PROBATION OFF ICER OF, WELL, WE KNOW HE GOT OUT OF JAIL BUT HE IMMEDIATELY CAME AND REPORTED TO YOU AND WYDELL WAS ABLE TO REBUT THE PRIOR VIOLENT FELO NIES . ONLY THREE. YOU LOOK AT THE PSI ANDTHERE IS ABOUT 23 AND THEREIS THIS WHOLE PA TTERN O F LOVING TO BEAT UP WOMEN AND CARRYING GUNS EVEN THOUGH ISHE A CONVICTED FELON. HAVING A GUN THEN. WHAT, P LUS THE JUDGE FOUNDTHAT THE AC CIDENT WAS THE DEFENDANT CA NNOT BE FOUND INEFFECTIVE FOR PURSUING A COURSE OF ACTION THE DEFENDANT INSISTED UP ON, AND WYDELL'S STORY WAS HE D IDN'T WANT THE GUN IN THE FRONT S EAT BECAUSE IS HE A CON VICTED FELON. HE WAS HANDING THE GUN AND ACTED IT OUT AT TRIAL, HANDING THE GUN TO ANGEL WHEN SHE HI T IT AND IT ACCIDENTALLY WENT OFF. THAT IS WAS THE THEORY OF THE SENTENCE . -- THE THEORY O F THE DEFENDANT.NOW, WE STARTED PRESENTING TESTIMONY OF, THE DEFENSE , MR. STUDFIELD, OF, WELL , HERE IS THIS AWFUL , AWFUL PERSON WHO IS EXPLOSIVE AND LOOK AT ALL OF THIS AND HE IS ANTISOCIAL AND HE ROBS PEOPLE AND THRE ATEN S HIS OWN BROTHER WITH A GUN.

JUSTICE: I THOUGHT PA RTOF THE UNDERLYING FAC TS, THIS IS NOT ONE OF THOSE CASES WHERE I AM SOMEWHERE ELSE AND THIS FLIES RIGHT IN THE FACE OF EVERYTHING. I THOUGH T THERE WAS EVIDENCE FROM PEOPLE IN THE CA R THAT HE TURNED AR OUND AND POINTEDTHE GUN. WASN'T THAT PART OF WHAT WE WERE GOIN G TO HAVE TO DEAL WITH.

THE TWO WITNESSES THAT WERE HER FRIENDS WHO CAME IN IN JAIL GASH , THEY TESTIFIED THAT -- IN JAIL G ARB , THEY TESTIFIED THAT HE POINTEDTHE GUN AND SAID YOU THINK THIS IS FUNNY? YOU THINK THIS IS FUNNY ?

JUSTICE: SO DOES IT NOT COME BACK TO THE FACT S. THE IMPULSE, THAT , AGAIN HE MAYBE DOES STU FF THAT IS STUPID AND IDIOTIC , BUT IS THIS PART OF THE IMPULSE CONTROL? STILL I AM HAVING DIFFICULTY WITH THE IMPU LSE CONTROL AND THIS IS INCONSISTENT WITHTHE DEFENSE. I SEE THOSE CASES WHERE THE IN CONSIST TENS I MAY THROW YOU INTO -- THE INCONSISTENCY MAY THROW YOU IN WITH THE DEFENSE , BUT WHYIS THAT NOT THE FACTS OF THECASE?

MR. W YDELL SAID I KNEW WHAT I WAS DOING. I WAS PERFECTLY IN CONTROL. I WAS HANDING THE GUN TO HERAND SHE HI T THE GUN , NOT THAT I T URNED ARO UND BECAUSEI WAS FURIOUS AND I JUST SHOT HER TO D EATH.

JUSTICE: THOSE ARE THEFACTS THAT THE LAWYER WAS DEALING WITH, THE TURN ON SAYING IT IS NOT REALLY INCONSISTENT WITH THE LAWYER'S FACTS HE HAD TO DEAL WITH. STIPULATIONS THE PENALTY PHASE IS INCONS ISTENT WITH ANY OF THE FACTS , B UT HA THAT IS WHERE HERE I SEE SOME CONSISTENCY BETWEEN THEBRAIN DAMAGE , THE IMPULSE CONTROL AND SOME OF THE EVIDENCE , AND IT MAY BE SOME DIFFERENT BUT THAT THIS IS NOT REALLY CONTRARY TO SOME OF THE FACTS OF THE UNDERLYING.

EXCEPT THAT IT IS CONTRARY TO MR. EVANS'S OWN TESTIMONY , HIS ORIGINAL STATEMENT , AND HIM SAYING I N EVER MEANT TO SHOOT HER. I KNEW EXACTLY WHAT I WAS DOING. I WAS HANDING HER THAT GUNAND SHE HIT IT , AND HIS FRIENDS TESTIFIED TO THESAME THING AT TRIAL , S O THERE WAS EVIDENCE TO SUPPORT. THAT MR . STUDFIELD DID A GREAT JOB ON THE ACCIDENT , BECAUSE HE THEN WAS ANGE L THE DAY BEFORE , SO HIM SAYING IT IS A ACCI DENT , THAT IS A VI ABLE DEFENSE. THEN YOU HAVE TO DEAL WITH THE AFTER FACTS OF AM NOT LETTING HER GO TO THE HOSPITAL .

JUSTICE: WHAT ABOUT THE STATEMENT FOR GE TTING THE POLICE, THAT HE MADE IN JAIL , THAT HE MADE THAT I AM GOINGTO GET HER. TELL ME ABOUT THAT , MENTIONED IN THE ORIGINAL

SENTENCE.

THERE WAS AN IN MATE THAT , ROGERS THAT SAID THAT HE HAD SAID THAT ANGEL WAS CH EATING ON HIS BR OTHER AND I AM GOING TO TAKE CARE OF MY BROTHER'S BUSI NESS AND I AM GONNA GET HER , BUT HE SAID , AND THE FACTS BEAR OUT THAT HE WAS TALKING TO THE MOTHER OF ONE OF HIS CHILDREN,BECAUSE SHE WAS NOT TAKING CARE OF THE CHI LD AND HE WAS GOING TO GET HER. SURE ENOUGH WHEN HE GOT OUT OF JAIL THE NEXT DAY , HE CHASED HER DOWN AND BEAT HER UP, SO I MEAN , IT IS A DECISION THAT TRIAL COUNSELMADE, BUT THE TRIAL JUDGEFOUND THAT EVANS INSISTED ON THIS ACCIDENT DEFENSE. IT IS NOT UNREASONABLE FOR HIM TO RELY ON HIS C LIENT , AND YOU SEE --

JUSTICE: I GU ESS I AM HAVING TROUBLE AS JUDGE LEWIS , AND I GUE SS WHAT THE TRIAL JUDGE FIGURED OUT IS THIS EVIDENCE WOULD BE M ORE CONSISTENT AND WHAT YOU ARE ARGUING IS IT WOULD BE MORE CONSISTENT WITH AN ANTISOCIAL PERSONALITY , NARCISSISTIC , MEAN PERSON , IMPULSE , I AM ANGRY AND IT JUST HAPPEN ED.

ABSOLUTELY AND SEE, WYDELL NEVER SAID IT JUST HAPPENED BECAUSE I CAN'T CONTROL MY TEMPER. HE KEPT SAYING I KNEW EXACTLY WHAT I AM DOING. I AM HANDING HER THE GUN JUST LIKE THIS.

CHIEF JUSTICE: HE D IDN'T RECALL THAT HE HAD SMA SHEDTHE WINDSHIELD FIRST? HAD HE SMASHED THE WINDSHIELD?

SEE , H AD HE A PRIOR INCIDENT OF SMASH AGO WINDSHIELD, AND --

CHIEF JUSTICE: DID H E SMASH THE WINDSHIELD IN THIS CASE?

HE CRACKED THE WIND SHIELD, Y ES, AND EVERYBODY TESTIFIEDABOUT THAT.

CHIEF JUSTICE: AND HE DIDN'T RECALL DOING IT.

HE SAID HE DIDN'T BUT THEN THE EXP ERT SAID THAT I S HIS NARS I CISM KICKING IN BECAUSE HE DOESN'T WANT TO ADMIT ANY OF THE BAD THINGS.

CHIEF JUSTICE: SO IF YOU DON'T ACC EP T RESPONSIBILITY YOU ARE NARCISSISTIC? I JUST WANT TO KNOW THAT FOR THE PEOP LE --

YOU ARE ANTISOCIAL .

CHIEF JUSTICE: WITH OURHELP, MS. DAVIS , YOU HAVE USED UP YOUR TIME.

I WOULD ASK THE COURT , JUST TRIAL COURT ORDER IS S O COMPREHENSIVE ON EVERYPOINT.HE ATTA CHED EVERY SECTION OF THE RECORD SUPPORTING THIS, AND I WOULD ASK THAT YOUAFFIRM THE TRIAL COURT ORDER.

CHIEF JUSTICE: IT CERTAINLY WAS A V ERY COMPREHENSIVE TRIAL COURT ORDER.THA NK YOU , MS. DAVIS. REBUTTAL .

JUSTICE LE WIS'S CONCERN AND JUSTICE B E LL'S CONC ERN , YOU CAN'T HAVE INCONSISTENT DEFENSE IN GUILT AND PEN ALTY PHASES. THE EVIDENCE HAS ALREADY CONVICTED HIM AND THAT IS WHY MR . STUDFIELD MADE A MOTION FOR A SEPARATE JURY , BECAUSE HE SAID I AM NOT GOING TO SAY PLEASE SAVE HIS L IFE AFTER HE AR GUED WHATEVER HE WAS ARG UING IN GUILT PHASE , BUT ALSO HOWEVER I WOULD LIKE T O ADDRESS MS. DAVIS'S COMMENTTHAT THIS WAS NOT MITIGATION. NONE OF THIS WAS MITIGATING. THE BRAIN DAMAGE WASN'T MITIGATING. THE EMOTIONALLY HANDICAPPED SCHOOL INC IDENTS WERE NOT MITIGATING . IT FA LSE

SQUARELY ON POINT WITH WILLIAMS V TAYLOR , WHICH STATES THE GRAPHICDESCRIPTION OF WILLIAMS 'S CHILDHOOD , FI LLED WITH AB USE AND THE REALTY THAT HE WAS BORDERLINE M E NTALLY RETARDED MIGHT WELL HAVE INFLUENCED THE JURY'S APPRAISAL OF HIS MORAL CULPABILITY. NOW , IF YOU TAKE OUTBOARDER LINE MENTALLY RET ARDED AND PUT I N DEMONSTRABLY BRAIN DAMAGED , EXACERBATED BY ALCOHOL , THAT MAY HAVE VERY WELL INFLUENCED THE JURY 'S APPRAISAL OF HIS MORAL CULPABILITY . NOW , THEY DIDN'T HEAR BACK NOT BECAUSE STUDFIELD DECIDED NOT TO PORTRAY HIM . STUDFIELD DIDN'T KNOW. HE TESTIFIED IF HE HAD KNOW N ABOUT THE BRAIN IN JURY , HEWOULD NOT HAVE IGNORED IT .

JUSTICE: BUT WHAT , GO TOTHE NEXT STEP. WHAT DID HE SAY HE WOULD HAVE DONE DIFFERENTLY IF HE HAD KNOWN ABOUT IT?

HE DIDN'T SAY THAT.

JUSTICE: AND HE -- HE DIDN'T FO LLOW YOU THROUGHON WHAT HE WOULD HAVE DONE.

JUSTICE: FOR THE ACT.

NO, SIR . QUITE FRANKLY , HE SAID SO MANY AMA ZING THINGS , FOR EXAMPLE --

JUSTICE: ANSWER THE QUESTION THAT JUSTICE LEWIS AND I WOULD HAVE ASKED ABOUTTHE ISSUE OF THE ANTI-PERSONALITY, NARCISSISTIC, YOU GET THAT BEFORE A JURY AND I THINK WHAT IS CL EAR HERE IS THAT IS THE DEATH PENA LTY AS OPPOSED TO THE IMPULSE CONTROL PROBLEM.

YES. AND --

JUSTICE: IS I T A TWO-EDGED SWORD HERE THAT A REASONABLE ATTORNEY COULD DIFFER ON WHAT TO DO , ASSUMING HE HAD KN OWN ABOUT IT.

ASSUMING HE HAD KNOWNABOUT IT, IT IS A TWO-EDGEDSWORD.HOWEVER , HE DIDN'T KNOW ABOUT IT. AND CERTAINLY AN EXPLANATIONAS TO WHY EVANS WAS VIOL ENT, WHY EVANS COUL DN'T STAND TO BE LAUGHED AT, WHY EVANS , HE WAS IN A SPECIAL PROGRAM, IS SIGNIFICANT , AND I T IS MITIGATING. IT IS STATUTORILY MITIGATING . THE OUTCOME WOULD HAVE BEEN DIFFERENT , IF THIS EVIDENCE HAD BEEN --

JUSTICE: HOW OLD WAS EVANS ?

SIR

JUSTICE: HOW OLD WAS EVANS AT THE TIME?

HE WAS 28.

JUSTICE: 28.

AND HE WAS HANGING AROUND WITH ADOLESCENTS , PRETTY MUCH . ON D RTION -- ON DR UGS , ADOLESCENCE. HE HAD BEEN OUT OF JAIL FOR TWO DAYS AND THE JURY HEAR D ABOUT THAT.

CHIEF JUSTICE: WITH OUR HELP, YOU HAVE USED UP YOUR T IME. I THINK BOTH SIDES IN THIS CASE HAVE A VERY COMPREHENSIVE TRIAL COURT ORDER T APPEARS THAT THIS CASE, UN LIKE THE FIRST CASE THAT WE HEARD THIS MORNING , HAS MO VED FA IRLY PROMPTLY ALONG , AND BOTH COUNSEL HAVE CONDUCTED THEMSELVES IN A VERY PROFESSIONAL WAY AND WE APPRECIATE THAT.

THANK YOU.

THANK YOU.

MARSHAL: PLEASE RISE.