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**Norman Grim v. State of Florida**

**SC06-122 | SC06-1575**

THE NEXT CASE THIS MORNING,  
IS, GRIM VERSUS STATE OF  
FLORIDA.....

>> GOOD MORNING.

PLEASE THE COURT.

JEFF HAZEN.

APPELLANT --

[LOW AUDIO]

>> CAN I GET A

CLARIFICATION.

MR. GRIMM MADE IT PRETTY  
CLEAR IN THE UNDERLYING CASE  
THAT, HE, WANTED THE DEATH  
PENALTY.

HIS, IS IT NOW, HIS POSITION  
THAT WE SHOULD IGNORE ALL OF  
THAT THOSE EXPLICIT  
DIRECTIONS?

HE'S NOW QUESTIONING THAT HE,  
HIS, INSTRUCTIONS TO HIS  
CLIENT?

>> I DON'T THINK, THAT'S ONE  
THING I DID WANT TO MENTION.

AS ARGUMENT.

THAT IS SORT OF A  
MISPERCEPTION THAT MR. GRIMM  
WANTED THE DEATH PENALTY.

MR. GRIMM --

>> HE WANTED TO, IF HE WAS  
FOUND GUILTY, HE WANTED NO  
OTHER PUNISHMENT BUT THE  
DEATH PENALTY.

>> I DON'T THINK HE WANTS TO  
DIE.

I THINK THAT'S SOMETHING  
THAT -- THERE WAS A WAIVER  
OF MITIGATION.

I'M NOT CLEAR THERE WAS NOT  
A WAIVER BUT HE DOES NOT  
WANT TO DIE.

>> SO YOU HAVE YOUR CLIENT'S  
FULL APPROVAL OF, OF,  
ATTACKING THE PENALTY PHASE  
OF THIS CASE?

>> YES, MA'AM.

YES, MA'AM..

AND I THINK, WANTED TO POINT OUT IF YOU LOOK AT JUDGE BELL'S -- FOR PURPOSES OF THIS ARGUMENT.

>> THAT'S FINE.

>> IF YOU LOOK AT HIS ORDER HE FINDS SPECIFICALLY IN HIS ORDER HE NEVER EXPRESSED HIS DESIRE TO DIE.

SO, BUT I DO AGREE THERE WAS A WAIVER OF MITIGATION.

AT ANY RATE I WOULD LIKE TO FOCUS ON INEFFECTIVE COUNSEL AS TO THE FAILURE TO PRESENTMENTS TALL HEALTH -- PRESENTMENT TALL HEALTH, DRUG USE EVIDENCE IF TIME PERMITS.

>> I'M HAVING TROUBLE, HOW CAN YOU, IF SOMEONE EXPLICITLY KNOWINGLY INSTRUCTED COUNSEL NOT TO PUT ON MENTAL HEALTH MITIGATION HOW CAN IT BE INEFFECTIVE NOT TO PUT ON MENTAL HEALTH MITIGATION?

>> SURE.

I THINK WHAT THE THEME THAT RAN THROUGH THE TRIAL OF THIS CASE AND, SORT OF -- WAIVER OF MITIGATION.

MY ARGUMENT, I THINK WHAT YOU WILL SEE THE THEME OF POST-CONVICTION WAS WAIVER WAS BASED ON, THERE WAS A FAILURE TO INVESTIGATE CERTAIN SPECIFIC EVIDENCE WHICH THE TRIAL ATTORNEYS WERE AWARE OF, WHICH THEY ACKNOWLEDGED THEY WERE AWARE OF.

THAT RENDERS THAT WAIVER INVALID.

TRIAL ATTORNEYS IN THIS CASE, DR. LARSON WAS RETAINED AT THE TRIAL PROCEEDINGS IN THIS CASE AND HE EXAMINED MR. GRIMM AND HE, FOUND THAT, BASED ON HISS VALUATION WHICH HE REVIEWED, RECORDS FROM THE AVALON CENTER WHICH MR. GRIMM CHECKED HIMSELF

INTO VOLUNTARILY HE FOUND  
THERE WAS AN UNDERLYING,  
MENTAL DISEASE INTERMITTENT  
EXPLOSIVE DISORDER AND  
MR. GRIMM WAS BEING  
PRESCRIBED PROZAC AND  
DEPAKOTE IN ADDITION TO  
CONSUMING MASSIVE AMOUNTS OF  
ALCOHOL.

WHAT DR. LARSEN DID HE  
ADVISED MR. GRIMM'S TRIAL  
ATTORNEYS WE'VE GOT SOME  
ISSUES GOING ON HERE WITH  
THE ISSUE OF PROZAC AND  
DEPAKOTE, UNDERLYING MENTAL  
CONDITION.

YOU NEED TO HIRE A DRUG  
EXPERT ON.

THIS I'M NOT QUALIFIED TO  
LOOK INTO THIS.

I'M NOT QUALIFIED TO GIVE  
YOU, THERE COULD BE THINGS  
GOING ON HERE THAT YOU NEED  
TO LOOK AT.

AT THE EVIDENTIARY HEARING  
IN THIS CASE, MR. GRIMM'S  
TRIAL ATTORNEYS TESTIFIED  
THAT THEY WERE AWARE OF THE  
RECOMMENDATION FROM  
DR. LARSEN.

THEY BOTH SAID, HE  
RECOMMENDED THAT TO US.  
AND THEY BOTH ACKNOWLEDGED  
THAT THEY DID NOT FOLLOW UP  
ON THAT RECOMMENDATION.

NOW WHAT THEY SAID WAS,  
MR. , HIS GUILT PHASE  
ATTORNEY, TESTIFIED THAT HE  
PERSONALLY REJECTED A  
VOLUNTARY INSTOCKS DEFENSE.  
THAT IS ONE OF THE REASONS  
HE DID NOT LOOK INTO, INTO  
THE, THIS DEFENSE.

HE ALSO TESTIFIED --

>> YOU SAID HE PERSONALLY  
YOU MEAN, GRIMM OR, THE  
COUNSEL?

>> NO.

THE TRIAL COUNSEL.  
TRIAL COUNSEL.

>> WASN'T IT GRIMM  
INSTRUCTED HE DIDN'T WANT A  
INVOLUNTARY INTOXICATION  
DEFENSE.

>> I THINK THAT'S TRUE,  
JUSTICE CANTERO.  
HE TESTIFIED MR. GRIMM IN  
CONTEXT OF GENERAL VOLUNTARY  
INTOX, IF YOU READ THE  
TESTIMONY HE SAID I WAS  
DRINKING TOO MUCH.  
THE ARGUMENT I THINK RECORD  
IS CLEAR THIS DEFENSE WAS  
PROPOSED WAS MUCH MORE  
COMPLEX, MORE MORE  
COMPLICATED THAN SIMPLY I  
WAS DRINKING TOO MUCH BEER  
THAT NIGHT AND, HE DID NOT  
WANT TO, USE VOLUNTARY INK  
TOX FOR THOSE PURPOSES.

>> DR. LARSEN TESTIFIED THAT  
THE AL -- APPELLANT WAS  
ADAMANT WAS ONLY INTERESTED  
IN EXONERATION.  
DID NOT WANT ANY OF THAT  
EVIDENCE TO BE USED.

>> I THINK DR. LARSEN DID  
TESTIFY TO THAT.  
THAT, MY ARGUMENT IS HIS  
STATEMENT WAS NOT BASED ON,  
IT WAS MADE WITHOUT BEING  
AWARE OF THE DEFENSE THAT  
COULD HAVE BEEN PRESENTED,  
THE, DRUG USE, AND, THE  
UNDERLYING DISORDER OF  
INTERMITTENT EXPLOSIVE  
DISORDER.

THE --  
>> WHAT, IN TERMS OF THE  
CASE LAW, BECAUSE, WE  
PROTECT THROUGH A SERIES OF  
CASES, THE FACT THAT, WHEN  
SOMETHING LIKE THIS IS GOING  
TO HAPPEN, WHICH IS, NO  
PRESENTATION OF MITIGATION,  
THAT THERE IS UNDER KUHN, A  
PROFFER, ALL OF THE THINGS  
THAT PROTECT THE INTEGRITY  
OF THE TRIAL.  
IN THIS CASE NOT ONLY WERE  
THEY DONE BUT TO ME THEY  
WERE DONE EVEN, I MEAN  
SUBSTANTIALLY BETTER BY BOTH  
COUNSEL, COUNSEL DIDN'T GIVE  
UP.  
THEY KEPT ON, YOU KNOW, THEY  
HAD DR. LARSEN, AND THEN YOU  
HAVE THE TRIAL COURT LOOKING

AT IT.

IT SEEMS THAT TO ME THAT, IF WE WERE TO EVEN REMOTELY FIND THERE TO BE INEFFECTIVE ASSISTANCE, WE WOULD JUST BE UNDERMINING EVERYTHING WE HAVE DONE, IN THE CASES, LIKE KUHN LIKE MUHAMMAD WHEN SOMETHING LIKE THIS COMES UP.

I DON'T SEE HOW YOU CAN SAY THEY SHOULD HAVE JUST DONE THAT ONE THING.

MAYBE THAT MIGHT BE TRUE IF HE HAD NOT INSTRUCTED THEM NOT TO DO ANYTHING BUT I THINK WE WOULD BE CHANGING OUR LAW SUBSTANTIALLY. WE ALMOST HAVE TO SAY THERE WAS ERROR AT THE TRIAL COURT LEVEL IN WHAT HAPPENED IN THE ORIGINAL TRIAL.

>> YES.

I DON'T, I AGREE THERE WAS A, A SERIOUS EFFORT BY THE TRIAL COURT TO PROTECT THE RECORD IN TERMS OF THE WAIVER AND, IT'S NOT, I CAN SEE THAT THIS ISN'T A CASE WHERE, I CITED TO THE LEWIS CASE.

I BELIEVE THIS CASE, ISN'T, A ANALOGOUS TO LEWIS BUT IT'S NOT A CASE LIKE LEWIS WHERE THEY DID NOTHING AT ALL.

I'M NOT SAYING THAT THEY DIDN'T, WHAT I'M SAYING, THAT, BASED ON THE, TWO MOST RECENT OPINIONS FROM THE UNITED STATES SUPREME COURT, PILLA AND WIGGINS THERE IS DUTY TO CONTINUE TO INVESTIGATE EVEN, I THINK KOON --

>> THIS ISN'T A CASE WHERE THEY DIDN'T GET ANY EXPERTS. YOU'RE TALKING ABOUT A CASE WHERE THEY DID NOT EVEN TALK TO EXPERTS.

HERE, THE, COUNSEL GOT EXPERTS.

EXPERT DR. LARSEN EVEN SPOKE WITH THE DEFENDANT.

NOT A ISSUE THAT THEY FAILED TO INVESTIGATE.

THEY HAD THE INFORMATION. DEFENDANT SAID WE DON'T WANT YOU TO USE THAT.

>> THAT'S NOT TRUE.

THE THAT IS PARTIALLY TRUE.

YES THEY DID HIRE AN EXPERT.

AND I CAN SEE THAT.

THEY DID HIRE AN EXPERT.

WHAT HAPPENED WAS THEY, THAT EXPERT MADE A SPECIFIC RECOMMENDATION TO THEM ABOUT CONSULTING WITH A DRUG EXPERT BECAUSE HE DIDN'T HAVE THE QUALIFICATIONS TO, TELL THEM WHAT'S GOING ON WITH THIS.

AND, HAD THEY -- THIS JUST ISN'T SORT OF, THEY, JUST A GENERAL SENSE OF, YOU KNOW, CAN BE ANYTHING OUT THERE, AND THEY DIDN'T FIND IT.

IT WAS A SPECIFIC RECOMMENDATION TO, AND THEY HAD ALREADY, I WOULD POINT OUT THEY HAD ALSO USED THAT TYPE OF EXPERT IN THE PAST. SO THEY WERE AWARE THAT THAT TYPE OF EVIDENCE COULD BE USED.

>> WHICH MAKES IT EVEN MORE REASONABLE THAT THEY DIDN'T KEEP ON KNOCKING THEIR HEADS AGAINST THE WALL AND DOING THINGS THAT WEREN'T GOING TO MAKE NO DIFFERENCE BECAUSE DON'T YOU HAVE TO SHOW THIS DEFENDANT, IF HE HAD, OH YOU MEAN I COULD HAVE PRESENTED A DRUG DEFENSE, WOULD HAVE SAID OKAY, EVERYTHING I'VE BEEN TELLING YOU FOR THE LAST MONTHS IS OUT THE WINDOW.

IN OTHER WORDS, WHAT IS YOUR STANDARD OF PREJUDICE?

LET'S JUST ASSUME THEY SHOULD HAVE, DONE ONE MORE THING, THAT IS, GONE GOT A DRUG EXPERT.

DON'T YOU HAVE TO SHOW THAT, THAT THERE WOULD HAVE BEEN A THAT THIS DEFENDANT WOULD

HAVE SOMEHOW CHANGED HIS MIND ABOUT WAIVING MITIGATION?

>> I THINK WE HAVE TO DEMONSTRATE THAT THE TRIAL ATTORNEYS WERE, THAT THEY WERE UNREASONABLY, THAT THEY UNREASONABLY ABANDONED THE INVESTIGATION AT THAT POINT.

>> OKAY.

LET'S JUST SAY THAT IS TRUE ON DEFICIENCY.

LET'S SAY THEY UNREASONABLY ABANDONED THE INVESTIGATION. WHAT DO YOU HAVE TO SHOW AS FAR AS PREJUDICE IN THE RECORD?

>> I THINK YOU HAVE TO LOOK AT THE EVIDENCE THAT WAS PRESENTED AT TRIAL, EXCUSE ME AT THE EVIDENTIARY HEARING.

YOU HAVE TO LOOK AT THAT EVIDENCE AND HOW IT WOULD HAVE AFFECTED -- I THINK WHAT --

>> I DON'T THINK THAT IS CORRECT.

I THINK YOU HAVE TO LOOK AND ESTABLISH SOMEHOW, JUST LIKE THE, HILL VERSUS LOCKHART, THAT SOMEBODY WHO HAS WAIVED MITIGATION, NOW, IF I HAD KNOWN THAT, I WOULD HAVE HAD ALL THIS MITIGATION PRESENTED AND THEN, IT WOULD HAVE MADE A DIFFERENCE IN THE RESULT.

AND I DON'T THINK YOU'VE GOT THAT.

>> WELL, FIRST OF ALL, WITH ALL DUE RESPECT, I DON'T THINK THAT'S THE STATE OF THE LAW THAT I HAVE TO, DEMONSTRATE, I HAVE TO PUT MY CLIENT ON THE STAND TO SAY, YEAH IF I HAD THAT THEN I WOULD I WOULDN'T HAVE WAIVED.

HE --

>> BUT YOU HAVE A SITUATION WHERE THE JURY DOESN'T HEAR MITIGATION, RIGHT?

>> CORRECT.

>> OKAY.

SO NOW YOU'RE SAYING, THAT,  
THE JURY STILL WOULDN'T HAVE  
HEARD MITIGATION.

JUST OUT THERE, THE TRIAL  
COURT WOULD HAVE HAD ONE  
MORE THING UNDER KUHN THAT  
WOULD HAVE BEEN OFFERED.  
SEEMS YOU'VE GOT TO TIE IT  
TOGETHER TO WHAT ACTUALLY  
HAPPENED IN THIS PROCEEDING  
FOR IT TO REACH THE LEVEL  
THAT IT UNDERMINES  
CONFIDENCE IN THE OUTCOME IF  
WE'VE ACCEPTED THE FACT THAT  
PEOPLE CAN WAIVE MITIGATION.  
WHICH WE HAVE ACCEPTED.  
SO THAT'S WHERE I'M HAVING  
TROUBLE.

>> I WOULD JUST, I THINK I,  
I THINK I SORT OF UNDERSTAND  
THE POINT YOU'RE GETTING TO.  
THAT WE HAVE SOME SORT OF  
BURDEN TO PROVE MR. GRIMM  
WOULD NOT HAVE WAIVED.  
I DON'T THINK THAT'S THE  
STATE OF THE LAW, THAT WE  
HAVE TO PROVE SOMEHOW HE  
WOULD NOT HAVE WAIVED.  
WHAT I CAN POINT TO, THE  
FACT THAT MR. GRIMM DID SEE  
DRS. LARSEN.  
HE DIDN'T REFUSE TO SEE HIM.  
HE SAW DR. LARSEN AND  
DR. LARSEN TESTIFIED  
MR. GRIMM WAS OPEN WITH HIM.  
HE WASN'T HAPPY ABOUT IT  
NECESSARILY.  
BUT HE WAS OPEN WITH HIM  
ABOUT EVERYTHING.  
AND HE, TALKED TO HYMN.  
AND ALSO IN POST-CONVICTION  
HE ALSO SAW DR. LIPMAN.

>> BUT HE STILL DIDN'T WANT  
ANY OF THAT PUT ON IN THE  
PENALTY PHASE.

>> I DON'T THINK THAT HAS  
THAT'S WHAT YOU'RE ASKING ME  
IF, A BURDEN UPON ME TO PUT  
MY CLIENT ON THE STAND TO  
TESTIFY.

>> I'M JUST SAYING HOW DO  
YOU FIND AN UNDERMINING  
CONFIDENCE IN THE OUTCOME IF

THE OUTCOME, ANYWAY, IS,  
THAT MITIGATION WASN'T GOING  
TO BE PRESENTED TO THE JURY?  
AS LONG AS THAT IS ALLOWED  
THAT'S PER MISSABLE WE ALLOW  
DEFENDANTS, TO WAIVE  
MITIGATION, SEEMS THAT  
YOU'VE GOT TO SHOW SOMETHING  
MORE THAN, THAN, JUST THAT  
THERE WAS SOMETHING ELSE OUT  
THERE TO BE PROFFERED TO THE  
TRIAL JUDGE.

>> WELL I THINK, I THINK  
WE'VE MET THE BURDEN OF  
PROOF BY PRESENTING THE  
EVIDENCE IN POST-CONVICTION.  
I THINK WE'VE, OUR ARGUMENT  
IS THAT THAT EVIDENCE WOULD  
HAVE BEEN PRESENTED IN  
MITIGATION AND THAT MR. GRIM  
WOULD NOT HAVE WAIVED HAD  
THEY INVESTIGATED THAT  
EVIDENCE WHICH THEY WERE  
SPECIFICALLY ON ALERT TO.

>> SO YOU'RE SAYING THAT  
THAT EVIDENCE WOULD HAVE  
BEEN AVAILABLE TO PRESENT TO,  
AT THE SENTENCING AT THE  
SPENCER HEARING OR JUST TO  
THE JUDGE?

>> NO, MA'AM.  
MY ARGUMENT IS WOULD HAVE  
BEEN AVAILABLE TO PRESENT TO  
THE JURY, TO THE JUDGE AT  
THE SPENCER HEARING, BOTH.  
THERE WAS NOT HAVE BEEN A  
WAIVER.

>> SAYING HE DID NOT WANT TO  
PUT ON MITIGATION?

>> RIGHT.  
I THINK THERE ARE OTHER  
CASES, LEWIS CASE WE'VE  
TALKED ABOUT, THE BLANCO  
FROM THE 11th CIRCUIT AND  
THE WIGGINS CASE ALTHOUGH  
THE WIGGINS CASE IS NOT A  
WAIVER CASE.

IT'S PROBABLY NOT -- IN  
THOSE CASES YOU'VE HAD A  
CASE WHERE THE DEFENDANT  
SAID I WANT TO WAIVE.  
I DON'T WANT TO PRESENT ANY  
MITIGATION.  
BUT, YOU GO TO THE

POST-CONVICTION PROCEEDING AS WE DID HEAR THERE WAS CERTAIN EVIDENCE THAT WAS, THE TRIAL ATTORNEYS WERE AWARE OF, AND THAT THEY FAILED TO TAKE THAT EXTRA STEP AND INVESTIGATE.

AND, MY ARGUMENT IS IF THEY HAVE DONE THAT, MR. GRIM WOULD NOT HAVE WAIVED THE MITIGATION.

>> DON'T YOU ALWAYS HAVE TO SHOW THAT, NOT ONLY WOULDN'T HE WAIVE MITIGATION BUT THAT THEN THE MITIGATION THAT WOULD BE PRESENTED WOULD HAVE BEEN PRESENTED WITHOUT WEIGHING THE AGGRAVATING CIRCUMSTANCES?

>> SURE.

>> OR AT LEAST OUR CONFIDENCE IN THE OUTCOME IS UNDERMINED TO THAT EXTENT?

>> YES, YOUR HONOR.

THAT IS ABSOLUTELY RIGHT.

>> HOW IS THIS NEW MITIGATION BE SO OVERWHELMING AS TO, OUTWEIGH THE AGGRAVATETORES?

>> SURE.

I THINK IF YOU LOOK AT JUDGE BELL'S SENTENCING ORDER HE FOUND THE DRUG USE, THE USE OF DRUGS WAS NOT ESTABLISHED.

HE FOUND, HE DID NOT FIND ANY STATUTORY MITIGATORS.

DR. LIPMAN AND DR. LARSEN, IF YOU LOOK AT THEIR

TESTIMONY, DR. LIPMAN

TESTIFIED THAT MR. GRIMM HAD UNDERLYING MENTAL DISEASE.

HE WAS USING PROZAC AND DEPAKOTE.

AFFECTING HIS BEHAVIOR.

TWO TO FOUR TIMES LEGAL

LIMIT IN TERMS OF

BLOOD-ALCOHOL CONTENT.

HE TESTIFIED IN HIS OPINION

THERE WAS NO INTENT --

>> WASN'T HIS DEFENSE AT TRIAL HE DIDN'T COMMIT THE CRIME?

>> YES.

ESSENTIALLY IT WAS --

>> HOW WOULD THE FACT THAT HE WAS, TAKING PROZAC AND ALL THESE THINGS, HOW IS THAT CONSISTENT WITH A DEFENSE, I DIDN'T COMMIT THE CRIME?

>> IT'S NOT, YOUR HONOR. IT'S NOT.

MY ARGUMENT IS THAT, MR. GRIM WOULD HAVE ENT PRESENTED A DIFFERENT DEFENSE.

HE WOULD HAVE PRESENTED DEFENSE BASED ON INTERACTION OF THE DRUGS AND UNDERLYING MENTAL DEFECT AND ALCOHOL.

WE HAVE PRESENTED THAT DEFENSE RATHER THAN THE DEFENSE -- WHICH THE --

>> EXCUSE ME.

NOW WE'RE GETTING ON GUILT PHASE.

ON THE GUILT PHASE I THOUGHT THAT THE EVIDENCE WAS PRETTY WELL UNCON VERY VERTED THAT HE -- UNCONTROVERTED THE NOTION OF QUOTE, DIMINISHED CAPACITY DEFENSE, BECAUSE HE, CONTINUED TO INSIST THAT HE WAS NOT GUILTY.

NOW, UNLESS YOU SAY, WELL, THE SOMEHOW, LAWYERS WERE DEFICIENT NOT CONVINCING HIM OTHERWISE I THINK ALL OF THIS IS ACADEMIC.

>> I DON'T AGREE, YOUR HONOR.

RESPECTFULLY.

AGAIN, MY ARGUMENT IS ALTHOUGH THERE WERE SOME STATEMENTS BY MR. GRIMM APPARENTLY HE DIDN'T WANT, AGAIN I THINK I MENTIONED THIS TO JUSTICE CANTERO EARLIER.

THIS WAS IN CONTEXT OF A DISCUSSION BETWEEN MR. HILL AND MR. GRIM ABOUT VOLUNTARY INTOX DEFENSE WHICH WAS NOT EXACTLY PRESENTED IN THE POST-CONVICTION HEARING.

THEY DID, THEY DID, THE, ATTORNEYS DID NOT

INVESTIGATE THIS DEFENSE AND  
THEY DID NOT DISCUSS IT WITH  
MR. GRIM.

HE HAD NO BASIS UPON WHICH  
TO SAY, I DON'T WANT TO DO  
THAT.

THIS IS A SPECIFIC DEFENSE  
THEY SHOULD HAVE  
INVESTIGATED AND, THEY DID  
NOT.

AND, MY ARGUMENT IS IF THEY  
HAVE DONE THAT THEY WOULD  
HAVE, THAT DEFENSE COULD  
HAVE BEEN PRESENTED AT  
TRIAL.

IN ADDITION TO BEING  
PRESENTED AS A GUILT PHASE,  
IT ALSO CONTAINED  
SUBSTANTIAL AMOUNT OF  
MITIGATION.

>> YOU'RE WELL INTO  
REBUTTAL.

USE YOUR TIME AS YOU WISH.  
BUT YOU'RE WELL INTO  
REBUTTAL.

>> I ALSO, JUST WANT TO  
POINT THE COURT TO THE BRADY  
VIOLATION WITH REGARDS  
MEDICAL EXAMINER IN THIS  
CASE.

I WOULD JUST INVITE THE  
COURT TO TAKE A LOOK AT  
THAT.

>> YOU'RE OPENING A WHOLE  
NEW CAN OF WORMS.  
IF YOU'RE GOING TO ARGUE  
THAT I HAVE SOME QUESTIONS  
ON THAT.

>> I WILL CERTAINLY TAKE A  
QUESTION, SURE.

>> THE COUNSEL KNEW ABOUT  
THE, MEDICAL EXAMINER'S  
LOSING HIS LICENSE IN  
MISSOURI, CORRECT?

>> THERE IS DISCREPANCY  
ABOUT THAT.

I DON'T KNOW THAT HE, I  
DON'T THINK THE RECORD IS  
CLEAR HE WAS AWARE OF IT  
BECAUSE HE TESTIFIED --

>> FORMER COUNSEL DEPOSED  
THE MEDICAL EXAMINER, THE  
PRIOR DEFENSE COUNSEL.

>> THE PUBLIC DEFENDER.

IT IS NOT CLEAR MR. HILL WAS  
EVER AWARE OF THOSE RECORDS.  
HE DEAD ON DIRECT  
EXAMINATION HE WAS NOT AWARE  
OF THAT UNTIL AFTER TRIAL  
AND HE CERTAINLY WOULD HAVE  
USED HIT IT BEEN AVAILABLE.

>> HOW IS THAT THE THE  
STATE'S FAULT THAT THE  
DEFENSE COUNSEL DIDN'T  
OBTAIN THE PRIOR DEPOSITION?

>> AGAIN, I WOULD ALSO SAY  
THAT, IF, THE COURT WAS, TO,  
TAKE THAT STEP AND TO SAY HE  
SHOULD HAVE, SHOULD HAVE  
SOMEHOW BEEN AWARE OF THE  
DEPOSITION, I WOULD ALSO  
POINT OUT THE --

>> SOMEHOW.

ON COUNSEL INHERITS A CASE,  
ISN'T THAT COUNSEL ONE OF  
THE DUTIES OF THAT COUNSEL  
IS TO READ THE DEPOSITIONS?

>> SURE.

>> NOT SHOULD HAVE SOMEHOW,  
YOU'RE RESPONSIBLE FOR  
GETTING COPIES OF THE  
DEPOSITIONS.

>> AGREE YOUR HONOR, I AGREE  
WITH THAT.

I THINK WHAT YOU'RE GETTING  
TO, I WOULD, POINT OUT TO  
THE COURT THIS CLAIM WAS  
ARGUED ALTERNATIVELY AS  
INEFFECTIVE ASSISTANCE OF  
COUNSEL CLAIM.

IF THIS COURT WERE TO FIND  
THAT MR. HILL SHOULD HAVE  
BEEN AWARE OF THE DEPOSITION  
THEN HE WAS INEFFECTIVE,  
BECAUSE HE TESTIFIED AT  
HEARING HE WAS, THAT HE  
CERTAINLY WOULD HAVE USED  
HIT HE BEN AWARE OF IT.

I ALSO WANT TO MAKE THE  
POINT THAT THE DEPOSITION IS  
DIFFERENT THAN THE DOCUMENTS  
THAT WERE PRESENTED AS AN  
EXHIBIT IN THIS CASE.

THE DOCUMENTS ARE CLEARLY  
MORE POWER -- THE DEPOSITION  
IS COMPLETELY --

>> DOCUMENTS WERE ALL PUBLIC  
RECORDS IN MISSOURI, WEREN'T

THEY?

>> THEY WERE PUBLIC RECORDS,  
YES.

>> SO IF YOU KNEW OF THE  
DEPOSITION, DEFENSE COUNSEL  
CERTAINLY COULD HAVE  
OBTAINED THOSE PUBLIC  
RECORDS HIMSELF?

>> I THINK THERE'S A  
REASONABLE ARGUMENT THAT HE  
COULD HAVE OBTAINED THOSE  
RECORDS, YES, YOUR HONOR.  
I WILL SAVE WHAT TIME I HAVE  
LEFT FOR REBUTTAL.

>> ALL RIGHT.,,

>> MAY IT PLEASE THE COURT,  
RONALD WLATH THAT MANY FOR  
THE STATE OF FLORIDA.

COUPLE THINGS AT THE OUTSET.  
I WANT TO TALK A LITTLE BIT  
WHAT TOOK PLACE DURING THE  
ACTUAL TRIAL.

MR. GRIM WAS, ASKED, SEVERAL  
TIMES BY, THEN JUDGE BELL,  
JUSTICE BELL, REGARDING, ARE  
YOU SURE THIS IS HOW YOU  
WANT TO PROCEED?

MR. GRIM WAS BE WHO HAD  
BEEN CONVICTED IN EXCUSE ME,  
192 AND AGAIN IN 1990 IN  
TEXAS.

FIRST CONVICTION WAS IN  
FLORIDA.

HE HAD EXPRESSED TO,  
EVERYBODY, HE EXPRESSED ON  
THE RECORD HIS CONCERN WAS  
THAT HE DIDN'T WANT TO SPEND  
THE REST OF HIS LIFE IN  
PRISON.

HAVING EXPERIENCED, HAVING  
EXPERIENCED WHATEVER HE GONE  
THROUGH WITH HIS EIGHT YEAR  
INCARCERATION FOR HIS EIGHT  
AT THIS CRIME SPREE OR TWO  
YEARS OF INCARCERATION IN  
TEXAS.

HE SPECIFICALLY SAID I DO  
NOT WANT TO SPEND THE REST  
OF MY LIFE IN PRISON.

THE TRIAL COURT ASKED  
SEVERAL TIMES ARE YOU SURE  
THIS IS HOW YOU WANT TO  
PROCEED?

THERE IS EVEN ONE EXCHANGE

WHERE MR. GRIM SAYS, NOW I KNOW THE TRIAL COURT HAS SOME CONCERNS. I'M NOT, IT'S NOT A SITUATION WHERE I'M TRYING TO COMMIT SUICIDE OR SOMETHING LIKE THAT. THESE WERE HIS WORDS I'M NOT TRYING TO COMMIT SUICIDE. I KNOW HOW I WANT TO PROCEED AND HOW I WANT TO PROCEED IS SIMPLY THAT, IT'S EITHER, BEING FOUND NOT GUILTY IF I AM FOUND GUILTY, TO, SUBMIT TO, BEING SENTENCED TO DEATH. SO, THIS WAS A DECISION BY SOMEBODY WHO HAD A 109 IQ. THIS WAS NOT SOMEBODY WHO FOUND TO BE SOMEHOW MENTALLY INFIRMED. THIS IS SOMEBODY VERY EXPERIENCED IN CRIMINAL JUSTICE SYSTEM AND UNDERSTOOD THE LAY OF THE LAND AS IT WERE RELATING TO WHAT HE FACED BY PROCEEDING, BY PROCEEDING TO TRIAL. MOREOVER, DURING THE ACTUAL TRIAL WHAT WAS ARGUED AND, MAINLY WAS ARGUED DURING THE CLOSING ARGUMENT WAS, AGAIN, THIS WAS, THIS WAS A CRIME THAT MR. GRIM WAS NOT STOPSABLE FOR. THE ARGUMENTS WERE MADE THAT COUNSEL CONSTANTLY REITERATED TO THE JURY PLEASE USE YOUR COMMON SENSE, PLEASE USE YOUR COMMON SENSE. REMEMBER, MR. GRIM WAS NOT SOME DISCUSSION WAS MR. GRIM'S ACTIVITIES AND BEHAVIORS WITH PRIFRS ON JULY 27th, 1998 WHEN THEY CAME TO HIS HOME AND, THEY WERE QUESTIONS, APPARENTLY MR. GRIM WAS ACTING BIZARRE. HE EVENTUALLY BE A SKONDS TO OKLAHOMA. WHAT WAS ARGUED AT TRIAL AND CLOSING ARGUMENT THERE MAY BE OTHER PEOPLE MIGHT HAVE

BEEN INVOLVED IN THIS CRIME.  
THERE MAY HAVE BEEN OTHER  
CIRCUMSTANCES.

WE HAVE TO CALL IN QUESTION  
THE POLICE'S CONDUCT AND WE  
HAVE TO CALL INTO QUESTION  
SOME OF THE EVIDENCE THAT  
WAS ACTUALLY RECOVERED AT,  
DURING THE CRIME SCENE.

SO LOT OF THESE ARGUMENTS  
WERE MADE WAS, MR. GRIM WAS  
NOT ACTUALLY RESPONSIBLE FOR  
THE CRIME.

SO, A LOT OF THESE ISSUES  
RELATED TO MEANT A TALL  
MITIGATION AND DIMINISHED  
CAPACITY I MAY HAVE BEEN  
USING DEPAKOTE AND, VARIOUS  
OTHER PSYCHOTROPIC DRUGS  
THESE MIGHT HAVE GONE TO  
PERHAPS REDUCING HIS,  
REDUCING WHAT HIS SENTENCE  
TO MAYBE SECOND-DEGREE  
MURDER, SOME LESSER GRIME  
BUT IT WASN'T, THIS WAS  
CERTAINLY, THIS IS NOT HOW  
HE WANTED TO PROCEED.

MR. GRIM IS ASKED THROUGHOUT  
THE PROCEEDINGS HE IS ASKED,  
DURING THE KUHN HEARING,  
DURING THE PENALTY PHASE,  
THROUGHOUT THE PROCEEDINGS  
HE IS ALWAYS CONSTANTLY  
ASKED OUT ARE YOU SURE THIS  
IS HOW YOU WANT TO PROCEED.  
IT IS PLACED ON THE RECORD  
BY HIS COUNSEL.

THIS IS CERTAINLY AN  
INSTANCE IF ANYBODY WHO  
UNDERSTOOD WHAT HE FACED,  
THIS WAS CERTAINLY AN  
INDIVIDUAL WHO DID  
UNDERSTAND WHAT, WHAT WERE  
THE POTENTIAL PITFALLS OF  
DEFENSE WHERE, IT'S EITHER I  
DID IT, EXCUSE ME I DIDN'T  
DOT CRIME, IF YOU DO FIND ME  
GUILTY I'M GOING TO SUBMIT  
TO THE DEATH PENALTY AS  
OPPOSED TO A LIFE SENTENCE.  
I DIDN'T KNOW, JUSTICE  
CANTERO I KNOW YOU MADE  
REFERENCE TO THE ISSUE,  
EXCUSE ME, MR. HAZEN AS WELL

MADE REFERENCE TO THE BRADY  
ISSUE.

STATE WILL SUBMIT THERE IS  
NO BRADY ISSUE HERE.

FIRST THING WE HAVE TO  
UNDERSTAND IS THAT IN THIS  
RECORD IS CLEAR, HIS, PUBLIC  
DEFENDER ACTUALLY BROACHED  
THIS QUESTION WITH MR. ,  
DR. BURDLAND.

DR. BURKLAND WAS CERTAINLY  
FORTH COMING I NO LONGER  
HAVE MYNESS LICENSE.  
THIS MATTER IS CURRENTLY  
UNDER APPEAL.

>> BUT WOULD YOU HAVE TO  
ADMIT, 23 PAGES OR SO OF  
DOCUMENTS THAT CAME IN ABOUT  
THE REF CROWCATION OF HIS --  
REVOCATION OF HIS LICENSE,  
MUCH MORE DAMAGING THAN THE  
DOCTOR IN HIS DEPOSITION  
TRIES TO DANCE AROUND IT  
MAKE IT SOME DISPUTE BETWEEN  
HIM AND ONE OF THE, I GUESS  
THE HEAD MEDICAL EXAMINER.

>> YES.

AS THESE DOCUMENTS SAY THIS  
MAN FABRICATED INFORMATION  
ABOUT AN AUTOPSY.  
IT SEEMS TO ME, REALLY  
DIFFERENT INFORMATION FROM  
WHAT WAS, CAME OUT OF THE  
DEPOSITION.

>> I RESPECTFULLY DISAGREE,  
YOUR HONOR.

FOR A FEW, FOR A FEW  
REASONS.

FIRST, THIS COURT HAS MADE  
REFERENCE IN VARIOUS  
JURISPRUDENCE IN THE 11th  
CIRCUIT AS WELL THIS, THE  
INFORMATION THAT WAS, THERE  
WAS, SUBSTANTIAL EVIDENCE  
WITHIN THE RECORD WHERE INN  
IF MR. GRIM'S COUNSEL, THERE  
WAS ENOUGH INFORMATION IN  
THE RECORD THAT MR. GRIM'S  
COUNSEL COULD HAVE PURSUED  
THIS FURTHER.

AGAIN THERE IS, THE RECORD  
IS, CLEAR.

THEY, ANT TOE NET STIT WAS  
AWARE OF THIS.

SHE PROPOUNDED THE QUESTION,  
TO, MR. , DR. BURKLAND.

IT WAS INCUMBENT UPON THE  
DEFENSE.

MAYBE THEY SHOULD HAVE  
COORDINATED WITH ONE ANOTHER  
AND PERHAPS STIT SHOULD HAVE  
TALKED TO HILL AND ROLO  
ABOUT THESE ISSUES DOCTOR  
HAD BUT IT WAS CONCERNLY IN  
THE RECORD.

THE DEFENSE WAS COGNIZANT  
THERE WAS SOME TYPE OF ISSUE  
WITH DR. BURKE.

>> YOU SAY YOU DISAGREE WITH  
JUSTICE QUINCE'S PARAFLAZ OF  
THE EVIDENCE.

DOES THAT MEAN YOU DISAGREE  
FACTUALLY THE RECORD DID NOT  
SHOW MUCH MORE ALLEGATIONS  
OF MISCONDUCT THAN, JUST THE  
MERE RECORD OF HIM, LOSING  
HIS LICENSE?

>> TO BE FAIR --.

>> YOU DISAGREE ON THE FACT?

>> TO BE FAIR,  
JUSTICE ANSTEAD --

>> WHAT DID THE RECORD SHOW?  
HOW WOULD YOU CHARACTERIZE  
THE RECORDS AS TO THE SAY  
THE MOST SEVERE MISCONDUCT  
OF THE DOCTOR?  
IN THE RECORDS?

>> OKAY.

THE RECORD, WHAT DOCTOR  
BURKELAND SUGGESTED THAT, I  
APOLOGIZE FOR NOT BEING  
ENTIRELY CONVERSANT WITH THE  
MEDICAL NOMENCLATURE HE DOES  
SAY TO THE EXTENT THERE WERE  
SEVEN TEACHING BRAINS WHICH  
HE MADE A MISTAKE IN TERMS  
OF, AUTOPSY, AUTOPSY.

AUTOPSY PROCEDURES HE WAS  
RESPONSIBLE FOR AS MEDICAL  
EXAMINER IN MISSOURI.

I WITH DO HAVE IN THIS  
RECORD, SOME EVIDENCE THIS  
WAS AN INDIVIDUAL WHO HAD  
APPARENTLY MADE MULTIPLE  
ERRORS IN TERMS OF --

>> I THOUGHT THE RECORDS  
REALLY CHARACTERIZED HIS  
CONDUCT AS, JUST ATROCIOUS.

THAT IS THAT HE FABRICATED FINDINGS AND, VERY EXTENSIVE ALLEGATIONS.

>> ARE YOU TALK ABOUT THE FACTS --

>> TALKING ABOUT THE RECORDS OF --

>> CAME IN -- TALKING ABOUT.

>> RECORDS THAT CAME IN DURING THE POST-CONVICTION HEARING.

>> OKAY.

>> THE STATE HAD.

NOW, I MEAN THOSE, AND, WHAT WE'RE, APPARENTLY FACED WITH, AND, HAS NOTHING TO DO WITH REFUTING YOUR ARGUMENT ABOUT WHAT THE DEFENSE SHOULD HAVE DONE, ONCE THEY KNEW HE LOST HIS LICENSE, WHATEVER, THAT IS A SEPARATE ARGUMENT.

BUT ARE YOU SAYING YOU DON'T AGREE THAT THE RECORD SHOW MUCH MORE MISCONDUCT ON THE DOCTOR'S PART THAN THE MERE LOSING OF HIS LICENSE?

>> WELL --

>> DO YOU DISAGREE FACTUALLY THAT'S WHAT THEY SHOW OR YOU DON'T AGREE?

>> I'M GOING TO ANSWER AS TO WHAT WE DO HAVE IN THIS RECORD, DR. BURKELAND'S OWN WORDS.

DOCTOR DOES ACKNOWLEDGE MISTAKES WERE MADE.

DR. BURKELAND.

ACKNOWLEDGED --.

>> FEEL LIKE YOU'RE SORT OF DANCING AROUND THIS.

WE HAVE A DEPOSITION WHERE HE CONCEDES THAT HE LOST HIS LICENSE AND HE CHARACTERIZES IT AS A DISAGREEMENT WITH WHOEVER WAS IN CHARGE OF THE MEDICAL EXAMINERS IN THE STATE.

AND WE HAVE RECORDS, THAT SHOW IN MUCH MORE DETAIL, ALL RIGHT?

WOULD YOU AGREE WITH THAT?

>> THERE IS, MORE DETAIL, JUSTICE ANSTEAD I DON'T WANT US TO LOSE SIGHT OF WHAT

DR. BURKELAND ACTUALLY TESTIFIED TO AND WHAT TOOK PLACE AS MOST IMPORTANT AS IT RELATES TO THE TRIAL?

>> I THINK YOU BETTER ANSWER JUSTICE ANSTEAD'S QUESTION. HE WILL NOT LET YOU GET AWAY FROM THAT.

>> CERTAINLY, CERTAINLY I APOLOGIZE.

IF THE ANSWER IS YES THERE IS MORE DETAIL THAN THE RELATIVELY SHORT, SHORT DEPOSITION ANSWERS, THE WE HAVE ABOUT THREE OR FOUR PAGES OF DEPOSITION, TESTIMONY FROM DR. BURKELAND WHERE HE DOES ACKNOWLEDGE, THERE ARE MIGHT BE MORE SUBSTANTIVE --

>> IN YOUR VIEW IN THE STATE'S VIEW THERE REALLY IS NO MEANINGFUL DISTINCTION BETWEEN THE RECORD AND THE DEPOSITION?

IS THAT THE YOUR OPINION?

>> THERE IS MORE, PERHAPS THERE IS MORE DEPTH TO THE, ALLEGATIONS AGAINST DR. BURKELAND THAN.

>> NOT MEANINGFUL?

>> I THINK BOTH CONCEDE THERE IS A ISSUE, INDIVIDUAL LOST HIS LICENSE.

AND, BECAUSE OF MEDICAL, APPARENT SOME MALFEASANCE, SIR, PROBLEMS WITH HIS PERFORMANCE OF HIS DUTIES IN THE STATE OF MISSOURI. BUT I DON'T THINK EITHER ONE --

>> LET'S JUST, IT WOULD BE SO EASY FOR YOU TO SAY YOU KNOW WHAT, THAT IS A VERY SIGNIFICANT DIFFERENCE. IT'S DEVASTATING.

THIS IS MY CONCERN AND IT'S, TO HELP YOU OUT, BECAUSE, I DON'T UNDERSTAND HOW THE TRIAL COUNSEL DIDN'T EVEN IMPEACH DR. BURKELAND AT TRIAL WITH EVIDENCE OF REVOCATION OF HIS MISSOURI LICENSE WHICH HE KNEW ABOUT.

SO LET'S ASSUME BOTH IT'S  
BRADY AND OR, ALTERNATIVELY  
IT'S DEFICIENT PERFORMANCE.  
ADDRESS THE PREJUDICE PRONG  
BECAUSE I THINK THAT'S  
PROBABLY YOUR BEST ARGUMENT  
HERE THAT, YOU KNOW THERE'S  
NOTHING THAT HAS ATTACKED  
FINDINGS.

>> EXACTLY.

>> OKAY.

BUT IT'S ALWAYS A GOOD THING,  
I REALIZE, THERE'S REALLY NO  
BENEFIT TO BE SAYING IT'S  
THE SAME THING BECAUSE IT'S  
REALLY SOME PRETTY  
DEVASTATING STUFF.

>> APOLOGIES IF I, GAVE THE  
IMPRESSION THAT THEY WERE  
BUT, THERE ARE MORE DEPTH,  
PERHAPS THERE IS MORE DEPTH  
TO THE NEWSPAPER ARTICLES  
AND WHAT HAVE YOU, BUT THEY,  
GETTING TO THE PREJUDICE  
PRONG, EXCUSE ME TO  
PREJUDICE --

>> IT'S THE SAME UNDER BRADY  
AND STRICKLAND RIGHT?  
WE'VE SAID EITHER WAY IT'S  
SORT OF UNDERMINING  
CONFIDENCE, NOT, AS OPPOSED  
TO JILIO.

>> WHAT WE'RE DEALING WITH,  
DURING DR. BURKELAND'S  
TESTIMONY, CONTEMPORANEOUS  
TO HIS TESTIMONY PHOTOGRAPHS  
WERE BEING SHOWN TO THE JURY  
AT THE SAME TIME.

THESE INJURIES WERE  
APPARENTLY OBVIOUS TO  
EVERYBODY THAT SAW THEM.  
EVEN, GRIM'S OWN ATTORNEYS  
MADE REFERENCE THESE WERE  
OBVIOUS INJURIES.

THESE WERE EASILY  
OBSERVEABLE.

EASILY OBSERVEABLE.

>> OBVIOUS INJURIES ABOUT  
THE MURDER BUT WHAT ABOUT  
THE SEXUAL BATTERY?

>> NO, I BELIEVE, THAT'S MY,  
WHEN DR. BURKELAND'S  
TESTIMONY I HAVE TO AGAIN  
LOOK AT RECORD BUT I'M

ALMOST CERTAIN  
CONTEMPORANEOUS TO HIS  
TESTIMONY ABOUT THE VAGINAL  
INJURIES THAT'S WHEN THEY  
START, DISCUSSION ABOUT THAT,  
I DO BELIEVE THERE WERE  
PHOTOGRAPHS, WERE, BEING,  
THESE WERE BEING SHOWN TO  
THE JURY AS WELL.

I THINK THAT, MOREOVER, THE  
SEXUAL BATTERY, SEXUAL  
BATTERY IS CONSISTENT WITH,  
FLORIDA, FINDING OF SEXUAL  
BATTERY WAS ENTIRELY  
CONSISTENT WITH FLORIDA LAWS  
DEFINITION OF SEXUAL BATTERY  
IN THIS CONTEXT.

THERE WAS --

>> WASN'T IT THE MEDICAL  
EXAMINER'S TESTIMONY THAT  
ACTUALLY ESTABLISHED THAT  
THERE WAS A SEXUAL BATTERY  
IN THIS CASE?

IT JUST SEEMS TO ME IF YOU  
HAVE A MEDICAL EXAMINER, WHO  
HAS, IN THE PAST, ON A  
NUMBER OF OCCASIONS,  
FABRICATED FINDINGS, ABOUT,  
AUTOPSY, AND THEN YOU'VE GOT,  
A SEXUAL BATTERY HERE REALLY  
PRETTY MUCH SUPPORTED BY THE  
MEDICAL EXAMINER'S TESTIMONY,  
AND AN ATTORNEY, WHO SAYS  
NOTHING ABOUT THE MEDICAL  
EXAMINER, DOES NOT POINT OUT  
TO THE JURY THAT THE MEDICAL  
EXAMINER HAS IN THE PAST  
FABRICATED THIS KIND OF  
TESTIMONY, WHY ISN'T THAT  
INEFFECTIVE ASSISTANCE OF  
COUNSEL?

COULDN'T, ISN'T THE  
PREJUDICE HERE, THAT HE MAY  
NOT HAVE BEEN CONVICTED OF  
THE SEXUAL BATTERY HAD THE  
JURY UNDERSTOOD THAT?

>> WELL, EVEN, SETTING ASIDE  
THE SEXUAL BATTERY, THIS WAS,  
THIS WAS A PREMEDITATED,  
PREMEDITATED MURDER.  
FELT UNDER DEFINITION OF  
PREMEDITATED MURDER.  
THIS WAS INSTANCE MULTIPLE  
WEAPONS WERE USED TO EFFECT

WAIT THE CRIME.  
THE VICTIM WAS, STABBED  
REPEATEDLY.  
PREMEDITATION WAS  
ESTABLISHED BY EITHER WAY  
THE WEAPON OR MANNER IN  
WHICH THE DEBT WAS  
EFFECTUATED.  
SEXUAL BATTERY, AGAIN, YOUR  
HONOR, THIS WAS EVIDENCE  
THAT WAS PRESENTED, EVEN HIS  
ATTORNEYS APPEARED TO  
CONCEDE THESE INJURIES DID  
EVIDENCE, EVIDENCE THERE WAS  
THESE APPARENTLY VAGINAL  
TEARING, OF THE STRUCK IF  
YOU.  
AGAIN THE SEXUAL BATTERY  
ISSUE, WAS NOT ONLY CONCEDED  
TO BY MR. GRIM'S OWN  
ATTORNEYS BUT APPARENTLY THE  
JURY WAS MADE AWARE OF THESE  
PICTURES AND THEY WERE --  
>> WAS THERE ANY EVIDENCE AT  
THE POST-CONVICTION  
EVIDENTIARY HEARING THAT THE,  
BURKELAND AUTOPSY WAS WRONG?  
>> NO, YOUR HONOR.  
THERE WAS NOTHING TO SUGGEST  
THERE WAS ANY, ANYTHING THAT,  
HE STATED EITHER, THROUGH  
HIS TESTIMONY OR THROUGH HIS  
EVALUATION THAT WAS  
INCONSISTENT WITH ACTUALLY  
HOW THE VICTIM ACTUALLY DIED.  
SO THERE WAS NOTHING IN THE  
RECORD AT ALL.  
>> HOW ABOUT AS TO THE  
SEXUAL ASSAULT?  
>> NO, YOUR HONOR.  
THERE IS NOTHING TO SUGGEST,  
THERE WAS NOTHING REALLY TO  
CALL INTO QUESTION ANYTHING  
RELATED TO THESE VAGINAL  
INJURIES WERE ALL, NOTHING,  
NOTHING WAS BROUGHT FORTH  
INN POST-CONVICTION TO CALL  
INTO QUESTION ANYTHING ABOUT  
THE SEXUAL BATTERY.  
>> DID THEY PRESENT ANY  
MEDICAL EXAMINER AT THE  
EVIDENTIARY HEARING SAYING I  
WOULD HAVE CONDUCT THIS HAD  
DIFFERENTLY OR ANYTHING OF

THAT SORT?

>> NO YOUR HONOR, THERE IS NOTHING AGAIN TO SUGGEST THAT THERE WERE, WE WOULD HAVE DONE SOMETHING DIFFERENT HAD WE BEEN AWARE OF SOMETHING WE MIGHT HAVE LOOKED A LITTLE CLOSER, WHATEVER.

NO, YOUR HONOR, THERE IS NOTHING, NOTHING IN THIS RECORD TO SUGGEST THAT AT ALL.

YOUR HONORS, I, CERTAINLY, AGAIN A LOT OF THE ISSUES THAT HAVE BEEN BROUGHT FORWARD BY MR. , MR. GRIM I DO WANT TO EMPHASIZE THE FACT THIS WAS AN INDIVIDUAL WHO KNEW WHAT HE WANTED TO DO AND HOW HE WANTED TO PROCEED.

ALL THESE NEW CLAIMS RELATED TO, POTENTIAL ALCOHOLISM OR, PSYCHOTROPIC DRUGS OR WHAT HAVE YOU, PRIOR PRECEDING THE CRIME THESE ALL MIGHT HAVE GONE TO MINIMIZING HIS CULPABILITY, PERHAPS RENDERING HIM INELIGIBLE FOR A LESSER OFFENSE BUT THAT IS NOT HOW HE WANTED TO PROCEED.

HE CERTAINLY WAS AWARE, HE CERTAINLY WAS AWARE WHAT HE WANTED TO DO.

AND IF THERE ARE NO, NO FURTHER QUESTIONS?

>> I JUST HAD ANOTHER QUESTION ON THE BRADY ASPECT.

>> OKAY.

>> OF THE MEDICAL EXAMINER. ARE THESE ALL DOCUMENT THAT IS THE, DEFENSE COUNSEL HAVING KNOWN EVER THE TESTIMONY AT THE DEPOSITION, COULD HAVE THROUGH REASONABLE DILIGENCE OBTAINED THE RECORDS THEMSELVES?

>> CERTAINLY, YOUR HONOR. THIS IS, THERE WAS NOT AN INSTANCE AN INSTANCE OF

TRYING TO HIDE THE  
PROVERBIAL BALL.

THERE WAS NO SUGGESTION THAT  
THE DEFENSE WAS AWARE OF  
THIS AND, THERE WAS NO, THEY  
WEREN'T AWARE, THE RECORD  
WAS CLEAR THEY WERE AWARE OF  
IT.

AS A MATTER OF FACT --

>> THAT GOES BACK TO, WHEN  
THE STATE, IN A DEATH CASE,  
WE'VE, USES, A MEDICAL  
EXPERT, HAD THEIR, LICENSE  
REVOKED, WHAT THEY END UP  
DOING, THEY PUT THE WHOLE  
CONVICTION AT RISK.

AND THEN NOT TO, NOT GIVE  
MATERIALS THAT WOULD FURTHER  
SHOW THIS PERSON IS REALLY  
QUESTIONABLE CONCERNS ME.

NOW AGAIN I THINK THEY DON'T  
WIN ON THE PREJUDICE PRONG  
BUT, I'M JUST CONCERNED THAT  
WE LOOK AT THESE CASES AND

THAT THE STATE'S GOT A  
GREATER OBLIGATION, NOT TO  
EVEN USE PEOPLE SUCH AS THIS,  
THAT ARE, WHERE THERE ARE, I  
MEAN, HE WAS ACCUSED OF  
FABRICATING INFORMATION.

WHY WOULDN'T THEY HAVE  
SOMEONE ELSE LOOK AT AUTOPSY  
AND, PUT ON THAT PERSON?

THAT'S JUST SORT OF  
RHETORICAL.

>> RIGHT.

>> BUT IT'S FOR THE FUTURE.

IT SEEMS TO ME THIS ISN'T A  
GOOD THING TO ESTABLISH THAT  
THE STATE SHOULD JUST NOT BE  
PROVIDING THIS INFORMATION  
OR SHOULD PUT ON PEOPLE LIKE  
THIS PARTICULAR MEDICAL  
EXAMINER.

>> RESPECTFULLY, YOUR HONOR  
I UNDERSTAND YOUR CONCERNS.  
I DO JUST WANT TO AGAIN, YOU  
TOUCH ON JUSTICE CANTERO'S  
POINT ABOUT THIS INFORMATION  
WAS, CERTAINLY COULD HAVE  
BEEN, MISS STI.

IT COULD HAVE TRANSFERRED  
THE INFORMATION TO THE HILL  
AND ROLOO.

YOU HAVE IN THE RECORD,  
MR. HILL MAKES REFERENCE TO  
THE FACT HE TRANSFERRED THE  
FILE HE SAYS TO THE EFFECT I  
READ THE DEPOSITIONS, READ  
EVERYTHING THAT WAS IN THE  
PUBLIC DEFENDER'S FILE.

WE SORT OF HAVE, IT'S KIND  
OF, I DON'T WANT TO SAY  
DISINGENUOUS, LATER ON HE  
SAYS PERHAPS IF I WOULD HAVE  
BEEN AWARE OF THIS  
INFORMATION I MIGHT HAVE  
PURSUED IT FURTHER.

WE DO HAVE HIM MAKING  
STATEMENTS TO THE FACT THAT  
I HAD READ THE DEPOSITIONS  
AND I WAS AWARE --

>> THERE REALLY ISN'T FOR  
BRADY, I HAVEN'T DEALT WITH  
BRADY IN A WHILE GOT IN  
POSSESSION JUST LIKE A  
POLICE REPORT, THE FACT  
MAYBE THROUGH DUE DILIGENCE  
A DEFENSE LAWYER COULD FIND  
IT IS NOT REALLY A DEFENSE,  
IF IT'S MATERIAL, STATE  
PRODUCING IT.

NOW, IT IS AS  
JUSTICE ANSTEAD WAS POINTING  
OUT, IT'S A DIFFERENCE IN  
DEGREE THAT YOU'VE LOST YOUR  
LICENSE, VERSUS AND HE IS  
CONTESTING OH THAT WAS SOME  
ADMINISTRATIVE SCREW-UP,  
VERSUS, YOU FABRICATED  
EVIDENCE IN AUTOPSIES AND  
FALSIFIED AUTOPSIES.

>> RIGHT.

YOUR HONOR, I, YOUR HONOR, I  
JUST WOULD ASK THE COURT TO  
LOOK AGAIN AT DR. BURKELAND'S  
DEPOSITION TESTIMONY.

HE DOES ACKNOWLEDGE, I DON'T  
HAVE MY LICENSE.

THIS IS UNDER APPEAL.

I MADE A SERIES OF MISTAKES  
IN MISSOURI, MULTIPLE,  
MULTIPLE AUTOPSIES AND, THIS  
IS, I MEAN, PERHAPS THESE  
NEWSPAPER ARTICLES MAY BE A  
LITTLE BIT MORE, MORE,  
PERHAPS MORE DETAIL AND MORE  
INFORMATION.

TO THE EXTENT THAT, THE  
DEFENSE WAS UNAWARE OF ANY  
PROBLEMS WITH DR. BURKELAND  
THAT IS SIMPLY NOT THE CASE.  
THE DOCTOR WAS FORTHCOMING  
TO THE EXTENT I HAVE  
PROBLEMS AND THERE ARE  
QUESTIONS AS TO MY  
CREDENTIALS IN ANOTHER  
JURISDICTION.

I DON'T THINK THAT THAT,  
THAT IS INFORMATION HIS  
ATTORNEYS WERE AWARE OF.  
THEY WENT, APPARENTLY WAS IN  
THE FILE AND IF THIS WAS IN  
THE FILE, THIS IS SOMETHING  
THAT HIS ATTORNEYS SHOULD  
HAVE AT LEAST VERY LEAST  
HAVE REVIEWED PRIOR TO TRIAL  
AND, EVEN THEY SEEM TO  
ACKNOWLEDGE WE READ  
EVERYTHING THAT WAS IN THIS  
IT BOTH WAYS WHEREIN YOU SAY  
WE DIDN'T READ THE  
DEPOSITION F WE KNEW ON THE  
OTHER HAND YOU DO SAY I READ  
THIS INFORMATION AND I READ  
EVERYTHING THAT THE PD HAD  
IN THEIR FILES.

WITH THAT YOUR HONOR.

>> YOU'VE USED YOUR TIME.

>> THANK YOU, YOUR HONOR.

>> THANK YOU VERY MUCH.

>> SIMPLY ASK THIS COURT  
AFFIRM THE DEFILE OF  
MR. GRIM'S POST-CONVICTION  
CLAIMS.

>> ALL RIGHT.

REBUTTAL?

>> DON'T APPEAR TO HAVE MUCH  
TIME AS BRIEFLY AS TO THE  
BRADY VIOLATION.

I KNOW MR. LATHAM HE IS  
HOLDING FAST HIS POSITION.

I DO WANT TO MAKE CLEAR  
THERE IS A SIGNIFICANT  
DIFFERENCE BETWEEN THE  
DOCUMENTS PRESENTED AND THE  
DEPOSITION.

THE DEPOSITION, DR. BURKELAND  
HE, BASICALLY SAID THAT THE,  
HE WAS, LOST HIS LICENSE  
BECAUSE HIS BOSS DIDN'T LIKE  
HIM AND HE WAS MEETING UP

WITH HIS BOSS WHY THE PROCEEDINGS WERE INSTITUTED. HE TESTIFIED THAT THE PROBLEMS OF AUTOPSY WERE DUE TO A SPELLING ERROR.

>> DON'T YOU HAVE TO SHOW THAT THERE IS SOME INACCURACY, IN THE AUTOPSY ITSELF?

HAVE SHOWN ANYTHING LIKE THAT IN THIS POST-CONVICTION PROCEEDING.

>> I WOULD CONCEDE THAT THE, BRADY, DOCUMENTS GO TO IMPEACHMENT VALUE. IT'S CRITICALLY IMPEACHING OF HIM.

THERE IS NO SPECIFIC CONTROVERSY --

>> THAT DIDN'T REALLY, HERE WE ARE, IN POST-CONVICTION IN THIS VERY SERIOUS CAPITAL CASE AND, THE, BOTTOM LINE IS, WAS THE AUTOPSY ITSELF PUT INTO QUESTION?

AND THE ANSWER IS, THERE ISN'T ANY EVIDENCE IN POST-CONVICTION THAT IT WAS.

>> JUSTICE WELLS, I WOULD AGREE THERE ISN'T EVIDENCE THAT THE AUTOPSY WAS WRONG BUT BRADY ALSO GOES TO IMPEACHMENT VALUE.

YOU'RE TALKING ABOUT A MEDICAL EXAMINER BY A JUDICIAL ORDER IN MISSOURI FROM JUDGE CLARK THAT HE FALSIFIED 12 AUTOPSIES, THREE OF THEM BEING HOMICIDES.

I AGREE, THAT IT IS, IMPEACHMENT.

IT DOESN'T GO TO, CONTRADICTING THE ACTUAL AUTOPSY I CAN SEE THAT. BUT IT IS POWER ANY IMPEACHING EVIDENCE.

>> AND WITH THAT YOU'VE USED YOUR --

>> I WOULD ASK THE COURT TO REVERSE THE TRIAL COURT'S ORDER AND VACATE MR. GRIM'S CONVICTIONS.

I APPRECIATE THE OPPORTUNITY

TO ARGUE IN FRONT OF THE  
COURT.

>> THANK YOU VERY MUCH.  
THE COURT WILL STAND IN  
RECESS UNTIL 9:00 TOMORROW  
MORNING.