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**Dwayne Irwin Parker v. State of Florida**

**SC06-2176**

>> THE NEXT CASE IS PARKER  
VERSUS STATE OF FLORIDA.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, SUZANNE  
KEFFER ON BEHALF OF THE  
APPELLANT, DWAYNE PARKER.  
WE ARE HERE TODAY AFTER THIS  
COURT REMANDED ON TWO ISSUES FOR  
AN EVIDENTIARY HEARING.  
TODAY I WOULD LIKE TO FOCUS ON  
THE EFFECTIVENESS OF THIS  
COUNCIL AND THE EVIDENCE THAT  
WAS PRESENTED AT THE EVIDENTIARY  
HEARING.

AT THE EVIDENTIARY HEARING  
NUMEROUS WITNESSES TESTIFIED AND  
IT WAS AN ABUNDANCE OF EVIDENCE  
THAT WAS NEVER HEARD BY THE  
JURY.

>> CAN I ASK A QUESTION?  
WOULD YOUR CASE BE WEAKER IF THE  
JUDGE IN THE INITIAL CASE  
CONFRONTED WITH TESTIMONY ABOUT  
MR. PARKER'S CHILDHOOD -- A  
TERRIBLE CHILDHOOD -- HAD FOUND  
NON-STATUTORY MITIGATION BASED  
ON WHAT WAS PRESENTED?

>> I THINK THAT'S CERTAINLY WHAT  
WE HAVE HERE IS, THERE WAS A  
FINDING THAT NO MITIGATION  
WHATSOEVER HAD BEEN ESTABLISHED.

>> WHAT I'M TRYING TO UNDERSTAND  
IS IF IT CAME OUT AT ALL IF HOW,  
EVEN WITH WHAT WAS PRESENTED AT  
THE INITIAL PENALTY PHASE, COULD  
A JUDGE FIND NO MITIGATION,  
INCLUDING NON-STATUTORY  
MITIGATION?

IS THAT YOUR ARGUMENT, THAT IT  
WAS SO POORLY DONE THAT IT WAS,  
AND IT WAS SO -- IT WAS SO  
POORLY PRESENTED AND SO  
THOROUGHLY IMPEACHED THAT IT HAD  
NO CREDIBILITY?

IS THAT PART OF YOUR ARGUMENT

HERE?

>> I THINK CERTAINLY BECAUSE THERE WAS NO MITIGATION ESTABLISHED, NOT EVEN GIVEN LITTLE WEIGHT OR WHAT NOT THAT CERTAINLY IS INDICATIVE OF THE PRESENTATION WAS GIVEN. AT TROWELER THE PRESENTATION THAT WAS GIVEN WAS HEARSAY LARGELY UNCOOPERATIVE. THEY WERE IMPEACHED, ALL THE WITNESSES AT PENALTY PHASE WERE IMPEACHED BY THE FACT THE MOST OF THEIR INCLINATION CAME FROM MR. PARKER HIMSELF WITH THE EXCEPTION OF A FEW PHONE CALLS TO FAMILY MEMBERS AND ONE INVESTIGATOR TRAVELING TO SEE THOSE FAMILY MEMBERS.

>> DIDN'T THEY SAY THE REASON THEY HAD DONE THAT, THEY KNEW ABOUT THE EVIDENCE BUT THE REASON THEY USED THE INVESTIGATORS WAS BECAUSE THEY WERE TRYING TO KEEP OUT ALL OF THIS REALLY BAD STUFF ABOUT THIS DEFENDANT?

>> THAT IS WHAT MR. BOORAS, THE COUNSEL SAID.

>> I GUESS, SO IT DIDN'T THEY THEN, EVEN IF IT WAS NOT POORLY PRESENTED BUT THEY HAD INVESTIGATED, THEY KNEW IT EXISTED AND DIDN'T THEY MAKE A STRATEGIC DECISION AS TO HOW TO PRESENT -- THERE WASN'T ANY HEARSAY OBJECTION THAT WOULD RAISE THE EVIDENCE.

AS I SAID, EXCEPT FOR THE JUDGE FINDING NONE OF IT, I WOULD THINK HE WOULD HAVE A PRETTY DIFFICULT ROAD HERE, SO HELP ME WITH THAT ISSUE.

THAT IS THAT IT WAS PRESENTED, IT WAS KNOWN, IT WAS THE CHOICE OF OUT OF PRESENT IT AND EVEN THOUGH IT WAS IMPEDE AND NOW HINDSIGHT SAID WE SHOULD HAVE BROUGHT IN MORE PEOPLE.

>> A STRATEGY CAN ONLY BE REASONABLE TO THE EXTENT IT IS SUPPORTED BY REASONABLE INVESTIGATION. THE ATTORNEY FOR MR. PARKER DID

NOT FOLLOW THROUGH ON THE INVESTIGATION.

WHAT WE HAVE HERE IS A PUBLIC DEFENDER INVESTIGATORS THAT INITIALLY BEGAN TO WORK UP THE CASE.

THEIR WORK ON A CASE FOR FIVE MONTHS, THE WORKED UP A SOCIAL HISTORY AND BEGAN SEEKING WITNESSES BY TRAVELING TO JACKSONVILLE.

ONCE MR. PARKER WAS APPOINTED AS SPECIAL PUBLIC DEFENDER.

THOSE TWO ATTORNEYS THAT REPRESENTED HIM AND NEVER FOLLOWED UP ON THE INFORMATION GAINED BY THE PUBLIC DEFENDER'S OFFICE.

THERE WERE NUMEROUS DEFENDANTS, MANY THAT WE PRESENTED AT THE FIRST CONVICTION HEARING, THAT PROVIDED SUBSTANTIAL MITIGATION INFORMATION MUCH MORE DETAILED, THE QUALITY OF THE TESTIMONY BEING PRESENTED NOW IS SO MUCH MORE SUBSTANTIAL AND WHAT IT MADE SUCH A DIFFERENCE TO A JURY.

>> CAN YOU TELL ME IF THE RECORDS WERE IS INTERESTED IN SUPPORT?

AND DR. CADDY DID NOT HAVE ANY OF THE RECORDS.

>> THAT IS CORRECT AND THAT WOULD ALSO TO --

>> WHAT RECORDS DO WE NOW HAVE?

DO WE HAVE ALL THE HRS RECORDS?

>> THEY ARE NOT HRS RECORDS BUT WHAT WE DID PRESENT AT POST CONVICTION IS DR. LARRY RICHARDSON.

HE WAS THE INVESTIGATOR AND WORKED ON MR. PARKER'S CASE FOR SEVERAL YEARS.

HE WAS RESPONSIBLE FOR RESPONDING TO MR. PARKER'S CALL WHEN MR. PARKER'S MOTHER WOULD HAVE HER SCHIZOPHRENIC BREAKDOWN.

HE WITNESSED MR. PARKER'S REACTION TO THE BREAKDOWN.

>> AT ABOUT 11 YEARS OLD?

>> YES.

>> BUT HE DIDN'T GET THE

RECORDS?

>> THERE ARE NO HRS RECORDS PROVIDED.

>> HOW ABOUT SCHOOL RECORDS?

>> THERE ARE SCHOOL RECORDS.

>> WHAT IS IN THE SCHOOL RECORDS THAT YOU NOW SAY WOULD PUT THIS CASE IN A WHOLE DIFFERENT LIGHT?

>> I THINK WHAT IS IMPORTANT IS THAT DR. CADDY TESTIFIED.

>> TELL ME WHAT IS IN THE RECORD.

>> HE TESTIFIED THERE WAS INFORMATION IN THE SCHOOL RECORD REGARDING AN IQ TEST DONE OF MR. PARKER IDENTIFYING AN IQ OF 78. DR. CADDY TESTIFIED HAD BEEN ON THAT INFORMATION, HAD BEEN PROVIDED THAT HE WOULD HAVE SOUGHT TO DO FURTHER TESTING AND THAT IS WHAT WE HAVE DONE NOW IMPOSE CONVICTION FOR DO IT CONDUCTED FURTHER TESTING IN AND THAT THE RESULTS OF NEUROPSYCHOLOGICAL TESTING ARE THAT MR. PARKER SUFFERS FROM FRONTAL LOBE DEFICIT, HE HAS BRAIN DAMAGE.

WHAT IS INTERESTING IN THAT VEIN IS WHAT WE PRESENTED AND WHAT WAS NOT KNOWN AT THE TIME OF TRIAL WAS THE EXTENT THAT MR. PARKER'S MOTHER'S SCHIZOPHRENIA NOT ONLY HAD ON HIS DEVELOPMENT AND GROWING UP IN HIS ENVIRONMENT BUT ALSO THERE IS A CONNECTION HERE THAT CERTAIN ELEMENTS OF SCHIZOPHRENIA, SPECIFICALLY FRONTAL LOBE DEFICIT, FRONTAL LOBE DEFICIT IN PATIENTS WITH SCHIZOPHRENIA, THAT THAT CAN BE PASSED ALONG TO FIRST-DEGREE RELATIVES.

>> THIS INFORMATION INITIALLY CAME FROM MR. RICHARDSON ABOUT HIS MOTHER'S SCHIZOPHRENIA?

>> IN TERMS OF THE INFORMATION ABOUT THE ELEMENTS THAT ARE PASSED ALONG.

>> I REALIZE THAT CAME FROM THE EXPERTS BUT THE SCHOOL RECORDS, DID THEY REVEAL THE MOM WAS SCHIZOPHRENIC?

>> THERE IS INFORMATION IN THE

SCHOOL RECORDS WITH RESPECT TO THE MOTHER'S BEHAVIOR, WHICH WOULD HAVE CAUSED A REASONABLE ATTORNEY TO CONTINUE TO INVESTIGATE FURTHER, TO SEEK OUT MEDICAL RECORDS FROM THE MOTHER AND WE DO HAVE MEDICAL RECORDS. WE HAVE RECORDS REGARDING HER EMPLOYMENT THAT DETAIL THE EXTENT OF HER ILLNESS.

>> DID DR. CADDY OR ANY OTHER WITNESS TESTIFIED THAT THIS NEW INFORMATION WOULD ESTABLISH STATUTORY LITIGATION?

>> DR. PICKARD AND DR. CROWN ALL SAID THEY WOULD HAVE FOUND, THEY FOUND THE STATUTORY MITIGATION UNDER EXTREME EMOTIONAL -- AT THE TIME OF THE CRIME AND THE DEFENDANT'S ABILITY TO APPRECIATE -- I'M SORRY, TO CONFORM WAS SUBSTANTIALLY IMPAIRED.

I WANT TO POINT OUT TOO THAT DR. CADDY ALSO WAS THE PSYCHOLOGIST AT TRIAL.

HE ALSO MADE IT VERY CLEAR THAT WHILE A CHILD -- HIS CONDUCT WAS MILDLY IMPAIRED.

GIVEN THE INFORMATION HE HAS NOW, THE RECORD, HIS OPINION WOULD BE VIEWED MUCH STRONGER. IT WOULD HAVE STOOD UP BETTER. HE FELT HE COULD HAVE STOOD UP BETTER TO CROSS-EXAMINATION AND IN FACT HE STATED THAT HE IS UNCOMFORTABLE WITH THE TERM MILDLY IMPAIRED AND HE SAID HE WOULD TERM IT SUBSTANTIALLY MORE THAN MILDLY.

HE BELIEVES THAT MR. PARKER WAS SUBSTANTIALLY AND PROFOUNDLY IMPAIRED THROUGHOUT THE COURSE OF HIS LIFE STATE AND THAT WAS DEFINITELY IMPACTING ON HIM IN AN EMOTIONAL WAY AT THE TIME OF THE CRIME.

>> HOW DO THEY CONNECTED TO THE CIRCUMSTANCES OF THE CRIME? HOW DOES THIS IMPAIRMENT EFFECT.

>> CERTAINLY ALL OF THE DOCTORS THAT WERE PRESENTED, I THINK DR. TUMOR EXPLAINED IT VERY WELL THAT AS A RESULT OF MR. PARKER'S

PSYCHOLOGICAL ISSUES, EVERYTHING THAT OCCURRED DURING THE CRIME.

[INAUDIBLE]

HE WAS UNABLE TO MAKE, CONDUCT HIGHER ORDER THOUGHT PROCESS AND HE IS UNABLE TO PROJECT CONSEQUENCES AND THINK THROUGH HIS ACTIONS.

HE SIMPLY LACKS THE ABILITY TO BE ABLE TO MAKE THOSE KINDS OF REASONED CHOICES.

>> LET ME TRY -- THE MOTHER I WOULD ASSUME WOULD HAVE SIMILAR CHARACTERISTICS AND I DON'T KNOW IF THERE IS EVIDENCE THAT SHE HAS COMMITTED A MURDER -- SO HELP ME OUT WITH SPECIFICITY AS TO THIS CRIME, THE CARRYING OUT OF THIS CRIME, HOW DID THAT EVIDENCE REALLY TIE IN TO WHAT HAPPENED HERE?

>> I THINK WE HAVE TO LOOK AT, CERTAINLY DON'T HAVE EVIDENCE THAT THE MOTHER COMMITTED A CRIME BUT WE HAVE TO LOOK HOW THE MOTHER IMPACTED HIS LIFE AND THE FACT THAT MR. PARKER HAD NO FAMILY IN PLACE, NO STABILITY IN PLACE.

IN ORDER TO DEVELOP THE NECESSARY SKILLS TO CONDUCT HIGHER ORDER THOUGHT, TO BE ABLE TO THINK ABOUT -- THE MAJORITY OF MR. PARKER'S LIFE WAS SURVIVING, SURVIVING WITHOUT A HOME, SURVIVING WITHOUT A STABLE MOTHER, STABLE PARENT.

HE WENT FROM FOSTER HOME TO FOSTER HOME AND THERE'S QUITE A BIT OF DETAIL IN THE RECORD ABOUT WHAT EXACTLY HE WAS EXPERIENCING NOT ONLY AT THE FOSTER HOMES.

>> AGAIN, HE DID HAVE A SERIOUS HISTORY OF PRIOR CRIMINAL OR VIOLENT BEHAVIOR, CORRECT?

>> THERE ARE INDICATIONS IN THE RECORD OF AGGRESSIVENESS WHICH DOCTOR DID EXPLAIN AS A RESULT OF HIS --

>> HOW DOES THAT TIE IN TO THIS CRIME?

I IMAGINE THE MOTIVE HAD A BAD BACKGROUND.

WHAT I'M TRYING TO FIGURE OUT IS  
HOW DOES ALL THIS TIE IN TO  
EXPLAINING THIS CRIME?

>> I DON'T THINK IT IS SIMPLY  
THAT HIS MOTHER HAD  
SCHIZOPHRENIA.

YOU HAVE TO LOOK AT HIS WHOLE  
LIFE.

MITIGATION DOES NOT HAVE TO HAVE  
A DIRECT CONNECTION TO, THERE'S  
THIS MITIGATION, THEREFORE THIS  
IS WHY HE COMMITTED A CRIME.

IT IS PROVIDING A PICTURE OF  
WHAT THIS PERSON'S LIFE WAS LIKE  
AND WHAT BROUGHT THEM TO WHERE  
THEY ARE.

>> THAT IS TRUE FOR  
NON-STATUTORY MITIGATION BUT FOR  
THE MITIGATION WE HAVE TO  
REEXPOND, WE ARE MORE LIKELY  
IMPRESSED BY -- UNDER THE  
INFLUENCE OF THE MOTION OF  
DISTRESS, AND THAT IS WHERE  
JUSTICE CANTERA SAID DR. CADDY  
WAS NOW ESTABLISHED THAT IT WAS  
THERE AND THERE WAS SIGNIFICANT  
IMPAIRMENT.

THE QUESTION THAT JUSTICE  
CANTERA WAS ASKING, AND I JUST  
WANT TO MAKE SURE YOU HAVE GIVEN  
YOUR EXPLANATION, IT IS EXPLAIN  
WHAT IT IS THAT, BECAUSE OF HIS  
FRONTAL LOBE DAMAGE OR WHATEVER  
THAT IN THIS CRIME, CAUSED HIM  
TO BE UNDER SIGNIFICANT  
IMPAIRMENT.

>> YOU HAVE TO LOOK AT THE FACT  
THAT SOMEBODY WITH FRONTAL LOBE  
DEFICIT, IT AFFECTS THEIR  
FUNCTIONING.

>> THE TESTIMONY YOU OFFERED.

>> YES, THAT IS EXECUTIVE  
FUNCTIONING, THAT IT CREATES  
IMPULSIVITY.

HE IS UNABLE TO CONTROL  
IMPULSES.

>> THIS IS WHAT DR. CADDY  
TESTIFIED TO?

>> NO, ALL OF THE EXPERTS,  
DR. PICKARD, DR. CROWN AND  
DR. TUMOR -- I WANT TO BE CLEAR  
BECAUSE I DON'T WANT TO  
MISREPRESENT THE RECORD.  
DR. CADDY SAID HE WOULD MEET THE

STATUTORY MITIGATORS NOW.  
HE INDICATED HE WAS  
UNCOMFORTABLE WITH TERMING IT AS  
MILDLY IMPAIRED, THAT HE WOULD  
SAY THAT HE WAS SUBSTANTIALLY  
MORE THAN MILDLY BUT HE DID NOT  
GO SO FAR AS TO SAY.

[INAUDIBLE]

>> DID ANY EXPERT GO THAT FAR?

>> DR. TUMOR, DR. CROWN AND  
DR. PICKARD.

>> WHAT DO WE MAKE OF THE  
BEGINNING OF PAGE FIVE OF THE  
ORDER THAT SAID THE COURT HAVING  
CONSIDERED THE KNOWLEDGE SKILLS  
TRAINING, EDUCATION AND  
EXPERIENCE OF THE EXPERTS AND  
MOST IMPORTANTLY HAVING  
CONSIDERED THE REASONS FOR THEIR  
OPINIONS FINDS THAT THEIR  
OPINIONS ARE NOT CREDIBLE TO A  
LARGE EXTENT AND IN NO WAY WOULD  
UNDERMINE A CHANGE IN THE  
ORIGINAL PROCEEDINGS OR RESULT  
IN THIS CASE, SO HE SEVERELY  
DISCOUNTED THE CREDIBILITY OF  
THE EXPERTS.

THESE ARE ALL THE FACTS THAT YOU  
ARE AND THE OPINIONS YOU ARE  
GIVING US RIGHT NOW ARE ONES  
THAT THE COURT FOUND NOT  
CREDIBLE.

>> I DON'T KNOW WHAT HE IS  
FINDING NOT CREDIBLE.

ALL HE STATES IS BASED ON THE  
REASON FOR THEIR OPINION, WHILE  
THEY GAVE A RATHER LENGTHY  
TESTIMONY AND I'M NOT QUITE  
SURE, I CAN'T BE MORE SPECIFIC  
WITH RESPECT TO THE ORDER -- I  
CAN SPEAK ON WHAT THE STATE HAS  
ARGUED AS TO WHY THEY ARE NOT  
CREDIBLE BUT THERE ARE NO  
FINDINGS, SPECIFIC FINDINGS AS  
TO WHAT IN THE RECORD HE IS  
POINTING TO TO FIND THEM NOT  
CREDIBLE.

>> SO IF HE FINDS THE OPINIONS  
ARE NOT CREDIBLE TO A LARGE  
EXTENT, DOESN'T THAT EXPLAIN WHY  
THEN WE HAVE TO DISREGARD THAT  
FINDING?

>> I THINK THAT FINDING IS NOT  
SUPPORTED BY THE RECORD.

I THINK HERE WE HAVE ALL THE DOCTORS THAT REVIEW SUBSTANTIALLY MORE INFORMATION THAN WAS PROVIDED TO DR. CADDY. THEY SPOKE -- DR. TUMOR SPOKE TO NUMEROUS FAMILY MEMBERS. DR. RICHARDSON'S TESTIMONY HERE WAS VERY CRUCIAL PART OF WHAT WAS PRESENTED.

IT WAS SOMEBODY WHO WAS INVOLVED WITH MR. PARKER FOR SOME YEARS.

>> HOW DID YOU FIND HIM?

>> I'M SORRY?

>> HOW DID YOU LOCATE HIM AND WAS HE REASONABLY AVAILABLE TO COUNSEL?

>> MY UNDERSTANDING IS IF MR. PARKER HAS BEEN IN CONTACT WITH THEM, WE WOULD HAVE NO DIFFICULTY CONTACTING HIM.

>> WHAT WAS THE EVIDENCE, WHY HE DID NOT FIND RICHARDSON -- WHAT YOU ARE TELLING ME IS PARKER WAS AWARE OF RICHARDSON.

>> COUNSEL HAD NO RECOLLECTION OF ANY OF THESE WITNESSES THAT WE PRESENTED AT THE EVIDENCIARY HEARING.

HE HAD NO RECOLLECTION OF SPEAKING TO THEM.

HE NEVER DID ANYTHING.

>> IS THERE ANY QUESTIONING ABOUT WHETHER NOT COUNSEL OF THE DEFENDANT AND THE DEPENDENT DISCLOSED TO MR. RICHARDSON OR DID NOT DISCLOSE, WHAT WAS THE RELATIONSHIP?

>> YOU YOURSELF SAID THERE WAS THE PUBLIC INVESTIGATOR WHO WAS LOOKING FOR FOLKS SO WE HAD TO FIND WHERE HE WAS GOING.

>> THEY DID THE INITIAL INVESTIGATION AND THE PUBLIC DEFENDER'S ACTUALLY WORKED OUT VERY EXTENSIVE LISTS OF PEOPLE TO CONTACT FOR THE ATTORNEYS, ONCE THEY PASSED INTO LAW, THERE WAS EXTENSIVE LISTS AND BACKGROUND INFORMATION.

>> WAS RICHARDSON ON THAT LIST?

>> RIGHT NOW I DON'T RECALL ALL THE SPECIFIC NAMES BUT THERE WERE PAGES OF NAMES THAT WERE PROVIDED TO COUNSEL FROM THE

INITIAL INVESTIGATION.

THE ONLY PEOPLE THE COUNSEL  
COULD POINT TO WHO THEY SPOKE TO  
WAS PARKER'S MOTHER AND HIS WIFE  
AND I BELIEVE HIS FATHER WHO  
WANTED TO HAVE NOTHING TO DO  
WITH HIM, AS WAS THE CASE FOR  
HIS ENTIRE LIFE.

>> WHAT ABOUT THE INVESTIGATORS  
WHOSE NOTES WERE LOST?

>> THERE WAS AN INVESTIGATOR, AT  
SOME POINT WHEN HE CAME BACK  
FROM JACKSONVILLE HIS NOTES OF  
WHAT HE HAD SEEN AND DONE THERE  
HAD ALL BEEN LOST SO ESSENTIALLY

--

>> WAS HE ABLE TO RECAPITULATE  
OR REMEMBER WHO HE HAD SPOKEN  
TO?

>> HE DID IN HIS TESTIMONY BUT  
HE HAS NO RECOLLECTION OF  
SPEAKING TO TRIAL COUNSEL PRIOR  
TO PREPPING HIM FOR TESTIMONY.  
HE DOESN'T RECALL ANY TIME WHERE  
THEY WENT OVER -- THIS PERSON  
TOLD ME THERE'S SIMPLY NO  
EVIDENCE HERE THE TRIAL COUNSEL  
DID ANY WEIGHING OF POSITIVE AND  
NEGATIVE ASPECTS OF THESE  
WITNESSES' TESTIMONIES.

THAT IS NOT IN THE RECORD.

>> GO AHEAD AND FINISH YOUR  
ANSWER.

>> I THINK THERE'S NOTHING HERE  
THAT SUGGESTS THAT TRIAL COUNSEL  
WENT BEYOND TALKING TO ONE OR  
TWO PEOPLE.

THEY DID NOT GET RECORDS, THEY  
DID NOT CONTACT THE WITNESSES  
THAT THE PUBLIC DEFENDER'S  
OFFICE HAD MADE THE CONTACT WITH  
AND THESE WERE THE WITNESSES  
THAT REALLY CORROBORATE WHAT  
HAPPENED TO MR. PARKER IN HIS  
LIFE, THEY WERE THE FIRSHTHAND  
WITNESSES TO THE ABUSE, SEXUAL  
ABUSE AND HIS ABANDONMENT BY HIS  
PARENTS.

>> GOOD MORNING, MAY IT PLEASE  
THE COURT.

LESLIE CAMPBELL WITH THE  
ATTORNEY GENERAL'S OFFICE ON  
BEHALF OF THE STATE.

>> IT DOES APPEAR TO ME THAT

THERE WAS A DECISION PERFORMANCE  
HERE, THIS IS ANOTHER ISSUE BUT  
CAN YOU EXPLAIN AS TO THIS  
ISSUE, WHY THERE WAS NOT A  
DECISION PERFORMANCE?

>> ARE YOU TALKING ABOUT WITH  
REGARD TO THE ALLEGATION THAT  
COUNSEL SHOULD HAVE DONE A  
SECOND INVESTIGATION AFTER THE  
PUBLIC DEFENDER DID THEIRS, OR  
IS YOUR HONOR TALKING ABOUT WITH  
REGARD TO THE MENTAL HEALTH  
EXPERTS THAT WERE BROUGHT FORTH  
AFTER?

>> I THINK A COMBINATION OF BOTH  
BUT IT SEEMS TO ME THERE WERE  
SEVERAL WITNESSES THAT ATTORNEYS  
DID NOT, THE ATTORNEY NEVER  
TRAVEL TO JACKSONVILLE.  
I DON'T THINK THE INVESTIGATOR  
TRAVELED TO JACKSONVILLE.

>> YES HE DID YOUR HONOR.  
THERE IS AN EXTENSIVE  
INVESTIGATION IN THIS CASE.  
MR. FINKELSTEIN WHO HAS BECOME A  
PUBLIC DEFENDER FOR BROWARD  
COUNTY DID AN INITIAL  
INVESTIGATION.

HE TALKED TO FAMILY MEMBERS, HE  
TALKED TO MR. PARKER AND HE  
DEVELOPED A PSYCHOLOGICAL  
HISTORY OF MR. PARKER.  
ALSO, MR. CARLTON MOORE, WHO IS  
NOW AND WAS AT THAT TIME A  
SITTING CITY COUNCILMAN WAS ALSO  
DOING AN INVESTIGATION AND HE  
ALSO, HE IS THE PERSON WHO WENT  
TO JACKSONVILLE AND HE SPENT  
FOUR OR FIVE DAYS UP THERE AND  
HE SPOKE WITH AND HE RODE AROUND  
WITH MR. PARKER'S SISTER.

>> I THINK ONE OF THE  
INVESTIGATORS FOR THESE  
ATTORNEYS, AS I UNDERSTAND THIS  
RECORD, THAT INVESTIGATOR NEVER  
DID ANYTHING IN THE PENALTY  
CASE.  
THEN INVESTIGATOR, THE ONE WHO  
WORKED FOR THESE ATTORNEYS NEVER  
WENT TO JACKSONVILLE, NEVER  
CONTACTED THESE PEOPLE.

>> FIRST OF ALL THIS COURT HAS  
NEVER HELD THAT A SUBSEQUENT  
ATTORNEY CANNOT RELY UPON THE

INVESTIGATION THAT WAS DONE BY A PRIOR ATTORNEY.

IN FACT, IT WAS THE OPPOSITE, HOWEVER TO ANSWER YOUR QUESTION DIRECTLY, THE INVESTIGATORS THAT THE FINAL ATTORNEYS HAD, ONE WAS INTO BACKGROUND OF THE VICTIM IN THIS CASE AND HIS CRIMINAL HISTORY AND ALSO INTO THE BALLISTICS AND PHOTOGRAPHY AND OTHERS.

>> CERTAINLY THE COUNSEL IS ENTITLED TO RELY ON AN OLD INVESTIGATOR BUT DOES A NEW COUNSEL HAVE TO FOLLOW UP ON LEADS THE FIELD INVESTIGATOR FOUND?

>> THEY DID CALL MR. WARREN OLDTS WHO WAS THE ORIGINAL PUBLIC DEFENDER.

THEY HAD SIGNIFICANT DISCUSSIONS WITH HIM AND CONTRARY TO MR. CARLTON MOORE AND MR. FINKELSTEIN, MR. MOORE DOES RECALL HAVING CONVERSATIONS WITH THE PUBLIC DEFENDER INVESTIGATORS.

WHAT IS IMPORTANT HERE IS, WHILE THE INFORMATION THAT WAS PRESENTED AT TRIAL IS CLAIMED NOW TO BE JUST HEARSAY, TWO POINTS.

ONE, MR. MOORE DID SAY THAT HE SPOKE TO NOT ONLY MR. PARKER AND GOT INFORMATION FROM MR. PARKER BUT HE ALSO TALKED TO FAMILY MEMBERS, HE SPOKE TO TEACHERS, HE TALKED TO THE PASTOR FOR MR. PARKER.

HE ALSO TALKED TO ALSO FAMILY MEMBERS.

>> THE FACT THAT HE WAS IN FOSTER CARE FOR SO LONG, THAT IS A MOTHERLOAD OF INFORMATION. THIS IS CHILLING TESTIMONY FOR MR. RICHARDSON ABOUT THE DEFENDANT WHEN HE WAS 11 AND 12 YEARS OLD, THEY KNEW HE WAS IN FOSTER CARE AND IS THERE ANY EVIDENCE THEY TRIED TO FIND THE CASEWORKER?

>> YES, MR. MOORE DID AND HE TRIED TO GET AHOLD OF THE HRS RECORDS BUT BECAUSE OF THE AGE

OF THE CASE AND AT THE TIME, THE  
HRS RECORDS WERE DESTROYED  
BECAUSE.

>> WAS THERE ANY EVIDENCE THAT  
THEY ASKED PARKER, WHO IS YOUR  
CASEWORKER?

KIDS KNOW THESE CASEWORKERS.

>> MR. MOORE DID TRY TO TALK TO  
MR. PARKER'S TEACHER.

HE ALSO TRIED TO FIND THE  
SCHOOLS.

>> ANSWER MY QUESTION ABOUT THE  
CASEWORKER.

>> IT WAS NOT THAT MR. MOORE DID  
NOT HAVE THE INFORMATION FOR MR.  
PARKER.

THEY WENT FURTHER AND MR. MOORE  
WENT INTO THE COMMITTEE AND  
TRIED TO FIND WHAT HE COULD  
FIND.

>> NOT THAT THEY CAN'T RELY ON  
THE PRIOR INVESTIGATIONS, BUT  
THIS WAS WHAT WAS DONE BY THE  
PUBLIC DEFENDER'S OFFICE.

>> THIS WAS WHAT MR. HITCHCOCK  
RELIED UPON.

>> NORMALLY HE WOULD BE UP HERE  
SAYING -- IT IS HARD FOR ME AND  
I WANT TO QUOTE FROM DIRECT  
APPEAL.

HOW COULD WE WITH THIS WEALTH OF  
INFORMATION SUPPOSEDLY PRESENTED  
AT TRIAL, UPHOLD THE FINDINGS OF  
NOTE NON-STATUTORY MITIGATION  
AND WHAT HE SAID WAS THAT THE  
COURT HAD CONSIDERED THE  
PROPOSED MITIGATOR IS AND  
WHETHER THEY HAD BEEN  
ESTABLISHED AND SAID THE TRIAL  
COURT DID THIS BUT THE  
MITIGATION WAS NOT SUPPORTED BY  
THE EVIDENCE.

NOW IF WE SAID THAT --

>> I DON'T THINK THAT IS QUITE  
ACCURATE.

>> WE SAID THAT, THE ONLY  
EXPLANATION THAT I HAVE FOR THIS  
COURT EVEN IN 1994 SAYING THAT  
THE TRIAL COURT DID NOT FIND ANY  
MITIGATION WOULD BE THAT WE  
LOOKED AT IT AND SAID WHAT KIND  
OF LITIGATION IS THIS?

I'VE NEVER SEEN, AND YOU CAN  
TELL ME CASES WHERE YOU PUT ON

EVIDENCE WHEN YOU PRACTICE  
STATUTORY MITIGATION.

PUBLIC DEFENDER INVESTIGATORS  
CAN TELL THE JURY ABOUT IT.  
BY THEIR VERY NATURE THAT SEEMS  
TO ME THE WORST KIND OF WITNESS  
TO PUT ON.

IF YOU ARE GOING TO HAVE THEM  
COME IN THROUGH A MENTAL HEALTH  
EXPERT I CAN UNDERSTAND IT BUT A  
PUBLIC DEFENDER INVESTIGATOR, I  
CAN'T IMAGINE THAT THE JURY MUST  
HAVE GONE, WHAT KIND OF  
SITUATION IS THIS?

THAT IS THE ONLY EXPLANATION I  
HAVE FOR HOW NO NON-STATUTORY  
MITIGATION -- TELL ME IF IT IS  
GOING BACK TO JUSTICE, IT IS NOT  
SUFFICIENT PERFORMANCE, HOW  
COULD THERE BE NO FINDING OF NOT  
STATUTORY MITIGATION?

>> I THINK YOUR HONOR, IN  
LOOKING AT THE OPINION THAT THIS  
COURT ISSUED, I THINK THE COURT  
OVERSTATED WHAT WAS SAID IN THE  
ACTUAL SENTENCING ORDER.

THE SENTENCING ORDER SAYS, IT  
DOESN'T SAY THAT I FIND NO  
MITIGATION.

WHAT THE SENTENCING ORDER SAYS  
IS THAT THE COURT IS CONSIDERED  
ALL THE EVIDENCE PRESENTED AT  
THE SENTENCING HEARING IN FOR  
YOUR HONOR'S RECORD I DON'T  
REMEMBER THE VOLUME, BUT IT IS  
RECORD 28.

I AM READING FROM PAGE 28, 94.  
THE COURT IS CONSIDERED ALL THE  
EVIDENCE PRESENTED ALONG WITH  
THE CIRCUMSTANCES OF THE OFFENSE  
AND FINDS NOTHING IN THE  
DEFENDANT'S CHARACTER RECORD TO  
BE IN MITIGATION.

I BELIEVE WHAT HE IS SAYING IS  
NOT THAT IT WAS IMPROVED AND HE  
HAD A HORRIFIC TRIAL BUT JUST  
THAT HE DID NOT FIND IT  
MITIGATING FOR THIS PARTICULAR  
CRIME.

>> HOW CAN THAT BE BASED ON CASE  
LAW?

>> THIS IS A 1980 CASE -- 1994.  
WHAT AGE WAS THE DEFENDANT?

>> HE WAS 29 AT THE TIME US.

>> SO HE WAS NOT 65, WHERE A TRIAL WOULD HAVE NOTHING TO DO WITH WHAT.

>> YOU ARE SAYING THAT TODAY OR IN 1994 THAT THE EVIDENCE PRESENTED AT THE EVIDENTIARY HEARING INCLUDING MR. RICHARDSON COULD BE PRESENTED, THAT IT WOULD BE PERFECTLY FINE FOR A TRIAL COURT TO FIND NOTHING ON CONTROVERTED TO BE OF NO MITIGATION AND THAT --

>> YOUR HONOR FIRST OF ALL, THE SENTENCING ORDER WAS DONE IN 1990.

I AGREE THE OPINION IS 1994. THE SENTENCING ORDER CAME OUT BEFORE THIS COURT'S CAMPBELL OPINION AND I MAY BE WRONG BY A FEW MONTHS BUT I BELIEVE IT CAME OUT BEFORE, WHICH WOULD MAKE THAT CURSORY STATEMENT MADE HERE WITH REGARD TO THIS NON-STATUTORY MITIGATION A LITTLE MORE POWERFUL THAN IT WOULD BE NOW.

IN A SENSE THE ORDER WOULD BE A LITTLE MORE DETAILED IT WERE DONE TODAY.

>> IF IN FACT THE EVIDENCE THAT WAS PUT ON AT THE EVIDENTIARY HEARING, NOT THE WAY IT WAS DONE, BUT THE EVIDENCE AS IT WAS PRESENTED AT THE EVIDENTIARY HEARING IN THIS CASE HAD BEEN PRESENTED IN 1990 AND THE TRIAL JUDGE FOUND NO LIMIT -- MITIGATION, YOU WERE SAYING WE WOULD NOT SUSTAIN THAT?

>> I BELIEVE YOUR HONOR DEPENDING ON HOW THE COURT CHARACTERIZES HOW IMPORTANT IN A DIFFERENT ORDER, YES YOUR HONOR, THIS COURT WOULD STATE THAT. WHAT IS ALSO IMPORTANT.

>> IN 1990 THERE ARE NO CASES FROM THE ERA IN 1990 WHERE BACKGROUND INFORMATION IN THIS KIND OF INFORMATION THAT WE NOW HAVE FROM THE EVIDENTIARY HEARING WAS BOUND TO BE MITIGATED.

THEY MAY HAVE BEEN GIVEN LITTLE WEIGHT, SLIGHT WEIGHT, WHATEVER

THOSE TERMS ARE THAT TRIAL COURTS USE, BUT YOU ARE TELLING ME THAT IF THE TRIAL JUDGE SAID NO WAY IT COULD BE GIVEN TO ANY OF THESE THINGS WE WOULD HAVE SUSTAINED THAT.

>> YOUR HONOR IS ASKING ME TO SPECULATE AND MY SPECULATION IS YOU VERY WELL MAY HAVE, HOWEVER WHAT YOUR HONOR NEEDS TO ALSO LOOK AT, AND IT IS DETAILED IN MY BRIEF, IS THAT ALL OF THE INFORMATION, WHETHER IT CAME OUT AS HEARSAY AT TRIAL, OR CAME OUT TO THE INDIVIDUAL WITNESSES AT THE EVIDENTIARY HEARING IS ALMOST VERBATIM THE SAME. NOW, ALL WE ARE QUIBBLING ABOUT NOW IS HOW THAT EVIDENCE SHOULD BEEN PRESENTED AT TRIAL.

>> DOESN'T THAT REALLY GO TO THE WEIGHT, BECAUSE WE ACCEPT YOUR ARGUMENT.

AND COME BACK AND ARGUE WHETHER THE INFORMATION IS THERE BUT IT HAS NO WEIGHT OR A LITTLE WEIGHT IF IT IS ALL BUT HERE'S A.

IF YOU HAVE MR. RICHARDSON SAY I'M IN THE HOME AND THE MOTHER IS -- AND THE SCHIZOPHRENIA AND EVERYTHING ELSE PRESENTED, THAT IS POWERFUL STUFF.

>> YES YOUR HONOR BUT IT IS THE SAME INFORMATION THAT THE BOARD HAS.

THIS IS THE SAME TRIAL JUDGE THAT SENTENCED AND THE SAME TRIAL JUDGE THAT HEARD THE INFORMATION OF MR. PARKER.

>> IN OUR MOST RECENT CONTENTION WE HELD THAT ALL OF THIS NEW EVIDENCE THAT THEY CLAIM EXISTS AND NOW THAT HAS BEEN PRESENTED AS POST CONVICTION HEARING IS ALL THE NEW AND ADDITIONAL MORE SUBSTANTIAL EVIDENCE.

>> WHICH OPINION ARE YOU SPEAKING OF?

>> I'M TALKING ABOUT THE POST CONVICTION.

>> THAT WAS BASED ON THE ALLEGATION.

>> THIS DETAILED COMPARISON IN OUR OPINION OF THE PREVIOUS

INFORMATION THAT HAD BEEN PRESENTED AND THE INFORMATION.

>> THOSE WERE ALLEGATIONS.

>> THEIR OPINION, THIS WAS NEW AND SUBSTANTIAL.

WHAT I THINK YOU ARE HEARING THE CONCERN OF THE COURT IS IS THAT AFTER HAVING FIRST SAID THE TRIAL COURT HAD FOUND THE FACTS ALLEGED IN MITIGATION WERE NOT ENFORCED BY EVIDENCE, THEREFORE WE HAVE THESE ZERO, ZIP, NO MITIGATION THAT WE END UP IN THIS CASE FINDING THIS TO BE ONE OF THE MOST MITIGATED CASES IN TERMS OF THE BACKGROUND THAT WE HAVE SEEN.

THAT IS THAT WE ARE TALKING ABOUT A CHILD THAT HAS LIVED ON THE STREETS SINCE HE WAS AGED 12 OR 14, IN AND OUT OF MENTAL INSTITUTIONS, HIS FAMILY LIFE, HOW HE WAS BEATEN AND ABUSED AND WHAT WE ARE TRYING TO RECONCILE IS GOING FROM SAYING THERE WAS ABSOLUTELY NO MITIGATION HERE AFTER A JURY BY AN EIGHT TO FOUR VOTE RECOMMENDED, NOW THAT WE FIND THAT THERE IS EXTENSIVE MITIGATION AND HOW CAN WE NOT SAY THAT THE MISCARRIAGE OF JUSTICE IN TERMS OF THE TREATMENT OF MITIGATION, NOT THE ULTIMATE RESULT.

>> IT IS STILL THE SAME EFFORT.

IT DEPENDS ON HOW YOU ARE LOOKING AT WHAT THE TRIAL COUNSEL THAT.

SHOULD HE HAVE PUT ON THE WITNESSES -- LAY WITNESSES LIFE OR COULD HE HAVE STARTED THROUGH MR. FINKELSTEIN?

>> FINDING NO MITIGATION REALLY IS A CONDEMNATION OF THAT THE TRIAL LAWYERS STRATEGY IN THIS CASE AND IS SAYING THIS WAS THE MOST EFFECTIVE PRESENTATION OF WHAT OBVIOUSLY IS THERE IS MITIGATION BECAUSE IT IS THE CONCLUSION THAT ENDS UP THE JUDGE SAYS, YOU HAVE PUT ON YOUR INVESTIGATORS AND EVERYTHING AND I FIND THERE IS NO MITIGATION BASED ON THE EVIDENCE THAT YOU

PRESENTED TO ME.

>> YOUR HONOR, WE ARE FORGETTING THE FACT THAT THE SAME JUDGE, PUT THE SAME EVIDENCE AGAIN AND HE SAID IT IS JUST MORE OF THE SAME, THERE'S NOTHING NEW OR DIFFERENT AND I COME TO THE SAME CONCLUSION.

>> BUT WITHOUT EXPLANATION. HE DOESN'T GO THROUGH IN HIS ORDER AND SPEND THE TIME AND SAY, AND GIVE COMPARISONS AND WHY THEY ARE NOT CREDIBLE. HE JUST SAYS I'LL FIND IT CREDIBLE.

THE CURRENT ORDER.

>> I AM TALKING ABOUT THE FACT ABOUT MR. PARKER'S BACKGROUND. WITH REGARD TO MENTAL HEALTH EXPERTS, WITHIN THE CLOSING MEMO AND AGAIN IN ITS BRIEF, THERE ARE MANY FACTORS WHY THESE DOCUMENTS SHOULD BE DISCOUNTED. NUMBER ONE DR. CADDY SAID HE WOULD NOT CHANGE HIS CONCLUSION WHILE HE MIGHT HAVE GIVEN -- IT STILL COMES DOWN TO THE SAME CONCLUSION.

HE GAVE NO STATUTORY MITIGATION.

>> WE HAVE OFTEN FOUND, EVEN THOUGH IT DIDN'T RISE TO THE LEVEL OF THE STATUTORY MITIGATOR, THAT SOME EVIDENCE IS NOT STATUTORY MITIGATION.

>> HOWEVER GIVEN THE FACT OF THIS CASE, WHAT DR -- IS TALKING ABOUT AND I BELIEVE HE RELIED ON DR. CROWN'S MISCALCULATION OF THE TESTING AND THAT IS WHAT HIS GROUNDS WERE DISCOUNTING DR. PICKARD AND DR. CROWN, BUT ALSO DR. PICKARD IS SAYING HERE, WE HAVE A PERSON WHO ROBBED FAST-FOOD RESTAURANTS AND THEREFORE BECAUSE HE ROBBED FAST-FOOD RESTAURANTS THAT IS HIS WAY, HE WOULD PERSEVERATE ON ROBBING FAST FOOD RESTAURANTS THERE FOR THE SERVICE COMES ABOUT WHEN MR. PARKER IS CONFRONTED BY A POLICE OFFICER AND A POLICE OFFICER SHOOTS BACK AND THAT ALL OF A SUDDEN HAS A CHANGE SET.

>> ON THE FACT OF WHETHER OR NOT THIS REALLY WAS EXTREME MENTAL DISTURBANCE OR WHETHER OR NOT HE COULD INFORM HIS CONDUCT TO THE REQUIREMENT OF LAW.

IT SEEMS TO ME THERE IS ENOUGH IN ALL OF THIS THAT YOU COULD HAVE FOUND THAT SOME OTHER TYPE OF NON-STATUTORY MITIGATING EXTENSIVE, SO TO JUST DISCOUNT TOTALLY THESE EXPERTS OR ANY OF THESE OTHER WITNESSES TESTIMONY WITHOUT SAYING ANYTHING ABOUT THEM JUST SMACKS TO ME OF, I MADE MY DECISION ONCE AND I'M GOING TO STICK TO IT.

>> I DON'T THINK THAT IS WHAT THE JUDGE WAS DOING.

>> YOU MAY NOT THINK IT BUT.

[INAUDIBLE]

THIS IS A GOLD MINE OF -- THIS IS POWERFUL.

[INAUDIBLE]

AREN'T WE AT SOME POINT BECAUSE WE ARE HERE -- I UNDERSTAND THAT A REASONABLE FACT FINDER WOULD COME TO FIND UNDER THE EVIDENCE SUBMITTED AND THE EVIDENCE AT THE HEARING THAT SUBSTANTIAL MITIGATION -- THE QUESTION I THINK IS, SHOULD IT UNDERMINE OUR CONFIDENCE IN THE OUTCOME AND YOU'LL PROBABLY SAY NO THERE IS SIGNIFICANT AGGRAVATION.

>> OF COURSE YOUR HONOR, HOWEVER THE FACT OF THE MATTER IS THE SAME EVIDENCE -- AND REMEMBER WE ARE ON POST CONVICTION RELIEF.

WE ARE NOT HERE ON DIRECT APPEAL.

WE ARE DEALING WITH WHAT COUNSEL DID AND WHAT IN HINDSIGHT MAYBE HE SHOULD HAVE DONE, WHICH IS NOT THE STANDARD.

THE STANDARD IS DID HE DO A REASONABLE JOB?

WAS IT REASONABLE, PROFESSIONAL FOR HIM TO RELY ON THE PRIOR INVESTIGATION?

WAS IT PROFESSIONAL FOR HIM TO GET A MENTAL HEALTH EXPERT?

>> SPEAKING OF RELYING ON PRIOR ISSUE, WHAT IS THE STATE OF OUR RECORD IN REGARD TO ANY KIND OF

REPORT FROM THESE TWO, WE KNOW THAT MOORE'S NOTES WERE LOST, CORRECT?

BUT THE OTHER, FINKELSTEIN? HOW DETAILED ARE THESE NOTES ABOUT THESE PEOPLE BECAUSE IF YOU HAVE A LIST OF PEOPLE THAT YOU SAY MIGHT HAVE MITIGATING INFORMATION, THERE IS NO DETAIL ABOUT WHAT THESE PEOPLE ARE GOING TO SAY, THAT IS ONE THING BUT OF THE NOTES ARE REALLY DETAILED AND TELLS WHAT THESE PEOPLE WHAT IT BEEN ABLE TO CONTRIBUTE AND ALL THAT, THAT IS ANOTHER THING SO WHAT KIND OF INFORMATION TO WE HAVE ON FINKELSTEIN?

>> I SEE MY TIME IS UP BUT TO ANSWER YOUR QUESTION, AND IF I COULD ANSWER SOMETHING ON ONE OF THE MENTAL HEALTH EXPERTS, IF FACT IS MR. FINKELSTEIN DID THE LOCAL INVESTIGATION.

IT WAS MR. MOORE THAT HAD THE MORE DETAILED INFORMATION AND HE WENT OUT INTO THE COMMUNITY. THAT IS THE ONE USED NOTES WERE LOST.

REMEMBER HE TRIED TO GET OTHER RECORDS AND WAS UNSUCCESSFUL. HIS RATE OF SUCCESS SHOULD NOT BE --

>> IS HE THE ONE WHO TESTIFIED HE NEVER REALLY HAD A DISCUSSION WITH THE DEFENSE ATTORNEYS PRIOR TO HIM COMING TO THE COURT?

>> I BELIEVE THAT WAS HIS TESTIMONY HOWEVER MR. BOORAS' RECOLLECTION IS DIFFERENT. IF I COULD JUST -- ONE OTHER POINT ON THE MENTAL HEALTH EXPERT.

REMEMBER JUST BECAUSE YOU GET ANOTHER MENTAL HEALTH EXPERT TO COME IN YEARS LATER IT DOES NOT MEAN THAT THE REGIONAL MENTAL HEALTH EXPERT OR THE ORIGINAL INVESTIGATION WAS INEFFECTIVE. THE FACT IS, ALL OF THE EVIDENCE THAT WAS PRESENTED WAS GATHERED INITIALLY AND GIVEN TO THE JURY. IT WAS EVALUATED BY THIS TRIAL COURT AND AGAIN, THIS TRIAL

COURT THEN EVALUATED IT USING  
LIVE WITNESSES INSTEAD OF  
INVESTIGATORS AND CAME TO THE  
SAME CONCLUSION.

I DON'T BELIEVE GIVEN THE  
AGGRAVATORS AND MITIGATORS IN  
THIS CASE, EVEN IF HE MADE A  
FINDING THEY SHOULD HAVE BEEN  
FOUND, THAT YOU ARE CONFIDENT IN  
THIS OUTCOME SHOULD BE  
UNDERMINED AT ALL.

THANK YOU.

>> REBUTTAL?

COUNSEL, I WANT TO ASK YOU A  
QUESTION ABOUT, WE DETAILED IN  
OUR REMAND DEFENSES SOME OF THE  
ALLEGATIONS OF ADDITIONAL  
MITIGATION EVIDENCE AND OF  
COURSE AS WE DISCUSSED IT IS  
QUITE DETAILED BUT I WANT TO  
CONFIRM WITH YOU THE REALITY OF  
WHETHER OUR DETAILED LIST  
ACTUALLY ENDED UP BEING  
DEMONSTRATED IN THE TRIAL COURT,  
AND IS IT YOUR POSITION THAT IT  
WAS DEMONSTRATED IN THE TRIAL  
COURT AS OPPOSED TO THE  
EVIDENTIARY HEARING?

HERE I WANT TO READ SOME OF THE  
THINGS THAT WERE SET OUT IN  
HERE.

ONE OF THE ITEMS WE HAVE IS THAT  
PARKER WAS GANG RAPED AT NINE  
YEARS OLD AND ON OTHER OCCASIONS  
MOLESTED BY A MAN LIVING IN HIS  
NEIGHBORHOOD.

THAT IS ITEM NINE.

THAT DEMONSTRATED POST  
EVIDENTIARY.

>> WE DID DEMONSTRATE SEXUAL  
ABUSE.

THE SPECIFIC INSTANCES, I DID  
NOT HEAR ANYBODY SPEAK  
SPECIFICALLY ABOUT THOSE.

>> ITEM TEN SAYS PARKER WAS  
RAPED BY AN OLDER MAN WHEN HE  
WAS TEN YEARS OLD.

>> WHAT WAS TESTIFIED AT THE  
EVIDENTIARY HEARING WAS THREE  
INSTANCES WHERE SOMEONE  
EVIDENCED MR. PARKER BEING  
SEXUALLY ABUSED BY OLDER BOYS.

>> WAS PARKER THE VICTIM OF A  
TWO YEAR SEXUAL RELATIONSHIP

WITH HIS OWN LEGAL GUARDIAN WHEN HE WAS 16 YEARS OLD?

>> DR. RICHARDSON SPOKE ABOUT HOW MR. PARKER WAS PLACED IN A FOSTER HOME THAT ONLY ACCEPTED TEENAGE BOYS AND THAT FOSTER HOME WAS LATER CLOSED DUE TO ALLEGATIONS OF SEXUAL MISCONDUCT.

>> IT IS YOUR CONTENTION AT LEAST THAT THESE THINGS WERE DEMONSTRATED AT THE POST CONVICTION EVIDENCIARY HEARING, THE THINGS DETAILED IN OUR REMAND ORDER.

>> NOT ONLY IS THIS QUALITATIVELY DIFFERENT THAN WHAT WE PRESENTED AT TRIAL, THERE ARE NEW DETAILS THAT WE HAVE BEEN ABLE TO SUBSTANTIATE SPECIFIC INSTANCES OF ABUSE WITH HIS MOTHER AS WELL AS IN THE FOSTER CARE HOME, THE SPECIFIC INSTANCES OF SEXUAL ABUSE. THERE WAS A WITNESS WHO TESTIFIED TO SEEING MR. PARKER BEING ABUSED.

I WANT TO JUST VERY QUICKLY ADDRESS A PREDJUDICE ISSUE. HERE, WHETHER IT IS ABUNDANT MITIGATION, MY POSITION IS THERE IS STATUTORY MITIGATION, AND THE CREDIBILITY OF OUR EXPERTS, AND I EXPLAINED WHY IN THE BRIEF, BECAUSE I AM SURE I WON'T GO INTO THAT.