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## **Harry Jones v. State of Florida**

**SC06-474 | SC07-729**

> > ALL RISE.

O YEA, O YEA, O YEA, THE  
SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.

ALL THOSE HAVING BUSINESS  
BEFORE THIS COURT DRAW NI,  
GIVING ATTENTION YE SHALL BE  
HEARD GOD SAFER THE UNITED  
STATES GREAT STATE OF  
FLORIDA AND THIS HONORABLE  
COURT,,,

.  
> > GOOD MORNING, GOOD  
MORNING.

LADIES AND GENTLEMEN THE  
FLORIDA SUPREME COURT PLEASE  
BE SEATED.

> > GOOD MORNING, FRIENDS  
WELCOME TO THE FLORIDA  
SUPREME COURT AND ORAL, AT  
SCHEDULED FRIDAY  
FEBRUARY 8TH THE FIRST CASE  
ON OUR CALENDAR THIS MORNING  
IS JONES VERSUS STATE.

READY TO PROCESS!!\$\$!!ED?

> > GOOD MORNING MARKETS  
FLEES COURT JEFF -- CHIEF  
JUSTICE\$\$!!!!IS LUCE\$\$!!!!IS MEMBERS OF  
THE COURT JEFF HAYNES ON  
BEHALF OF THE APELLANT HARRY  
JONES, WE ARE HERE ON THE  
DENIAL OF MR. JONES  
POSTCONVICTION ADMONITION  
AFTER AN EVIDENTIARY HEARING  
CIRCUIT COURT I'D LIKE TO  
DEVOTE MY ARGUMENT TO THEE  
PENALTY FACE --SISTANCE OF  
COUNSEL ESPECIALLY REGARDING  
FAILURE TO PRESENT MENTAL  
HEALTH DEVOTE PART OF THE  
ARGUMENT TO BRADY CLAIM TO  
WITNESS KEN --

> > AS TO THE INEFFECTIVE  
ASSISTANCE OF COUNCIL, AT  
THE PENALTY PHASE, THE --

MR. GREGG CUMMINGS WAS  
MR. JONES TRIAL ATTORNEY NO  
THIS CASE HE INHERITED THIS  
CASE FROM THE PUBLIC  
DEFENDER'S OFFICE HE  
REPRESENTED MR. JONES FOR  
TWO, THREE MONTHS.  
ON THE CASE P.  
HE INHERITED THEIR FILE, AND  
IN THAT FILE, THERE WAS A  
MEMORANDUM WHICH WAS WRITTEN  
BY THE CO-COUNCIL UNANIMOUS  
SKWILIE WALLETER THAT MEMORY  
RANDUM WAS WRITTEN TO GENE  
TAILOR, LEAD COUNCIL, THE --  
THE SUBSTANCE THAT HAVE  
MEMORANDUM WAS AND  
EVALUATION, OR PARTIAL  
EVALUATION OF MR. JONES,  
WHICH IS DONE BY DR.

ROBERT --

> > WHAT WAS THE COUNCIL'S  
TESTIMONY INsofar AS HIS  
KNOWLEDGE OF THAT MEMORANDUM  
AND A DECISION WHETHER TO  
FOLLOW UP ON THE CONTENTS  
THAT HAVE MEMORANDUM?

> > HIS MR. -- OF ITTED  
TESTIFIED THAT MEMO WAS PART  
OF HIS FILE HE HAD IT AND  
WAS AWARE OF IT.

SO HE HE HAD KNOWLEDGE OF  
THE MEMORANDUM -- TESTIFIED  
TO THAT.

> > MORE DIRECTLY, AND DID HE  
TESTIFY THAT HE WAS FAMILIAR  
WITH THAT MEMORANDUM, AND HE  
CONSIDERED IT, AND THEN HE  
MADE A A CONSCIOUS DECISION  
NOT TO FOLLOW UP, ON IT OR  
WHAT I'M --

> > I'M REALLY ASKING YOU,  
OPEN ENDED QUESTION.

> > SURE.

> > WHAT DID HE SAY ABOUT HIS  
REVIEW OF THAT MEMORANDUM,  
AND HIS KNOWLEDGE OF THE  
CONTENTS, AND THEN ANY  
DECISION HE MADE TO FOLLOW  
UP, YOU KNOW WITH THE MENTAL  
HEALTH EXPERT WITHOUT THE  
QUESTIONS REALLY JUST A  
MENTAL HEALTH EXPERT RAISED  
IN HIS CONVERSATIONS WITH

THE PREVIOUS LAWYER.

> > SIR.

> > WELL, COUPLE OF THINGS,  
HE HAD NO CONVERSATIONS HE  
TESTIFIED WITH THE PUBLIC  
DEFENDERS!!\$\$!!!!!!!  
DEFENDERS, TALKING IN  
SHOWALTER!!\$\$!!!!!!!  
SHOWALTER, TESTIFIED SHE  
COULD NOT REMEMBER TALKING  
TO MR. CUMMINGS, MR. TAYLOR  
LEAD COUNSEL IN THE CASE WAS  
DECEASED AT THE TIME OF THE  
HEARING.

HE -- MR. CUMMINGS TESTIFIED  
HE HAD NO RECOLLECTION OF  
TALKING TO DR. BERLIN, ABOUT  
THE MEMORANDUM, DIDN'T CALL  
HIM, DR. BERLIN, TESTIFIED  
THAT HE HAD NO RECOLLECTION  
OF TALKING TO MR. CUMMINGS  
NEVER MET HIM NEVER TALKED  
TO HIM.

MR. -- TESTIFIED THAT THE  
MEMORANDUM WAS SOMETHING  
THAT HE KNEW ABOUT, AT THAT  
IS SORT OF OF WHAT THE  
RUBBER MEETS THE ROAD HERE,  
WHERE.

> > WHAT DID HE DO ABOUT IT?  
THERE WERE --

> > DID MISS SHOWALTER  
REPETITIVE THAT IT WAS HER  
INTENT IF SHE SHE GOT THIS  
EVALUATION!!\$\$  
EVALUATION, IN THEIR FIRST  
THREE MONTHS OF REPRESENTING  
MR. JONES?

> > THAT IS CORRECT, YOUR  
HONOR!!\$\$!!!!!!!  
HONOR.

> > WAS DID SHE TESTIFY THAT  
IT WAS HER INTENT TO FOLLOW  
OFF AND TO DEVELOP MENTALITY  
HEALTH MITIGATION.

> > SHE TESTIFIED THAT SHE  
PENALTY PHASE THEY OBVIOUSLY  
NEW THAT PENALTY PHASE WAS A  
POSSIBILITY!!\$\$!!

POSSIBILITY, THE STATE WAS  
SEEKING DEATH AND THAT  
MITIGATION WAS SOMETHING  
THEY WERE DEVELOPING IN PART  
OF THEIR FILE, WHICH

ILLEGALS I BELIEVE WAS  
INTRODUCED!!\$\$  
INTRODUCED INTRODUCED AS  
EXHIBIT THIS MITIGATION  
BACKGROUND!!\$\$  
BACKGROUND.

> > DID SHE SAY HER YOU KNOW,  
IT IS A MIXED BAG AS TO WHAT  
AT THAT POINT, SHE THIS THE  
DOCTOR IS GOING TO SAY SO IF  
SURE.

> > DID SHE SAY THAT HER  
CLEAR INTENT WAS THAT HAD TO  
BE WE HAD TO WIN THIS OWN  
MENTAL HEALTH MITIGATION OF  
COURSE WE WERE GOING TO  
FOLLOW UP ON THIS BECAUSE IT  
WAS THE ONLY WAY THAT WE  
COULD HAVE AVOIDED ANYTHING  
LIKE THAT.

> > I DON'T THINK THAT WAS  
ANYTHING THAT SPECIFIC, I  
DON'T THINK IT HAD THAT THE  
CASE DEVELOPED FOR THEM, FAR  
ENOUGH LONG, TO DECIDE  
WHETHER OR NOT THEY MADE A  
SPECIFIC DECISION TO USE DR.  
BERLIN, THEY HAD HIS  
MEMORANDUM!!\$\$  
MEMORANDUM.

> > SHE ONLY TESTIFIED THAT  
IS WHAT SHE DID, YOU DIDN'T  
NOBODY ASKED HER QUESTIONS  
ABOUT WHAT SHE WAS THEN  
GOING TO DO, TO FOLLOW-UP.

> > RIGHT THEY CONFLICTED OFF  
THE CASE BEFORE THAT WAS A  
DECISION THAT WAS EVER  
MADE -- ABOUT USE\$\$!!ING DR.  
BERLIN ORTHOPEDIC NOT THERE  
WAS NO TESTIMONY ABOUT YES,  
WE ARE DEFINITELY GOING TO  
USE HIM WE WERE NOT GOING TO  
USE HIM.

> > JUST THAT KIND OF  
TESTIMONY, MIGHT HAVE HAVE  
BERNGS HELPFUL TO UNDERSTAND  
THE REASONABLENESS OF WHAT  
MR. CUMMINGS DID BUT THERE  
IS NOTHING IN THE RECORD  
THAT OTHER THAN MR. CUMMINGS  
SAYING I DIDN'T THINK IT WAS  
NECESSARY TO FOLLOW UP ON  
THIS, AND I JUST DIDN'T

THINK IT WAS GOING HELPFUL,  
YOU DON'T HAVE ANY OTHER  
TESTIMONY ABOUT THE  
REASONABLE NEGS THAT HAVE  
DECISION.

> > WELL, I THINK WILL WAS  
SOME TESTIMONY ABOUT THE  
REASONABLE!!\$\$  
REASONABLENESS, AND SOME --  
> > DIDN'T THAT --  
MR. CUMMINGS TESTIFY THAT HE  
BELIEVED THAT HE HAD CONSULT!!\$!!!  
CONSULTED, WITH THE EXPERT  
BECAUSE DIDN'T HE SAY  
OTHERWISE, WOULD HE NOT HAVE  
REALLY BEEN ABLE TO  
UNDERSTAND THE REPORT, THE  
GRAPHS!!\$\$!

GRAPHS,  
> > AND THAT IS -- TESTIMONY  
TO THAT EFFECT FROM MR. KUM  
THINGS.

> > YES, THERE IS SOME  
TESTIMONY -- THAT IS --  
MR. CUMMINGS' TESTIMONY  
ABOUT THE GRAPH, AND THE DOC  
FILES WHICH THERE WERE SOME  
STARS, SOME HIGHLIGHTS IN  
DO-- FILES, HE TESTIFIED, HE  
-- FIRST OF ALL HE TESTIFIED  
I DON'T HAVE ANY SPECIFIC  
MEMORY OF MAKING A DECISION  
TO FORGO MENTAL HEALTH  
MITIGATION BECAUSE OF THESE  
THIS MEMORANDUM, OR THESE  
DFC RECORDS HE SPECULATED  
AND HE MAY HAVE -- FOREGONE  
MENTAL HEALTH MITIGATION  
BECAUSE BECAUSE OF WHAT HE  
SAW IN THE DOC FILE, THERE  
IS NO IF YOU LOOK AT -- HE  
ALSO CONCEDED THAT HE MAY  
HAVE DONE IT MAY HAVE --  
THAT HE MAY NOT HAVE TALKED  
TO ANYBODY.  
HE DIDN'T KNOW.  
HE DID CONCEDE WHEN!!\$!!!!!!THAT WHEN HE  
INITIALLY TALKED TO ME ABOUT  
THE CASE I CAME TO SPEAK TO  
HIM, SEVERAL MONTHS PRIOR TO  
THE EVIDENCE, AND I ASKED --  
HE EVIDENTIARY HEARING I  
PROVIDED THE MEMO BEFORE I  
TALKED TO HIM.

> > IS THIS IN THE RECORD  
WHAT YOU ARE JUST ABOUT TO  
SAY.

> > YES, I ASKED HIM ABOUT  
THAT AT THE HEARING AND HE  
CONCEDED THAT YES WHEN I  
CAME INITIALLY TO TALK TO  
HIM THAT HE SAID I WOULDN'T  
TALK TO HAR-- HARRY AT THE  
JAIL DIDN'T FEEL THERE WERE  
MENTAL HEALTH ISSUES SUF TO  
OVERCOME -- SUFFICIENT TO  
OVERCOME THAT THERE WERE  
SIFT MENTAL HEALTH ISSUES  
WOULD NECESSITATE A DR. IN  
THIS CASE.

> > YOU GO BACK TO BRVL  
BEFORE WE GO FURTHER I'M NOT  
SURE YOU FINISHED JUSTICE  
PARIENTE!!\$\$!!!!

PARIENTE'S QUESTION YOU  
ABOUT ABOUT TO EXPLAIN  
REASONABLE!!\$\$  
REASONABLENESS OF DECISION  
AND EVIDENCE SO WE DON'T  
LOSE TRACK THAT IS CERTAINLY  
A CRITICAL QUESTION, TO  
RESPONDED TO.

> > I ASKED WHAT I WAS ASKING  
YOU WAS I SAID WAS THERE  
ANYONE ELSE THAT  
MR. SHOWALTER DIDN'T TESTIFY  
ANY OTHER IN EVIDENCE THIS  
RECORD SPORANOS TO OUR!!\$\$!AS OPPOSED TO OUR  
CONCLUSIONS AS TO REASONABLE!!\$\$  
REASONABLENESS OF HIS  
DECISION.

> > YES YOUR HONOR, I THINK  
THE RECORD DEMONSTRATES THAT  
HE DIDN'T HE KNEW EMPLOY  
THIS MEMORANDUM, HE DIDN'T  
DO ANYTHING, TO FOLLOW UP ON  
IT.

TO FIND OUT, TO TALK TO  
SOMEBODY, TO FIND OUT WHAT  
AM I IF I DON'T IF I -- LOOK  
AT THE I LOOKED AT THESE --  
YOU LOOKS DOC FILES HE SEIZE  
TOME REFERENCES TO CHARACTER  
DISORDER REFERENCES TO --  
PAST CRIMINAL -- HE SAYS I  
DON'T WANT TO THAT O OH,  
COME OUT SO I'M NOT GOING  
PRESENT MENTAL HEALTH IF I

PRESENT MENTAL HEALTH.

> > THAT IS WHAT HE SAID IN A  
THAT IS WHAT HE SAYS HE SAID  
-- I THINK MAYBE THAT IS  
WHAT I DID, BASED ON THE  
FACT I HAD THESE HIGHLIGHTED!!\$\$!!  
HIGHLIGHTED I WOULD ARGUE  
THAT ALSO, THE FACT THAT THE  
THESE RECORDS WERE HIGHLIGHT!!\$\$!!!!!!  
HIGHLIGHTED AND STARRED, MAY  
ONLY INDICATE THAT HE LOOKED  
AT THE RECORDS, IF YOU HE  
HAS THERE IS NO.

WHO GOT THE -- RECORDS O DID  
HE GET THE DI. O.C.

> > NO THE PUBLIC DEFENDER  
GOT THE RECORDS INTO DID HE  
WERE THERE ANY OTHER, MENTAL  
EVALUATIONS ANY OTHER  
MEDICAL RECORDS THAT EITHER  
WERE OBTAINED THEN, OR YOU  
HAVE OBTAINED SUBSEQUENTLY  
TO DOCUMENT WHAT KIND OF  
MENTAL ILLNESS IF ANY THIS  
DEFENDANT HAD SO IF THERE  
WERE NO RECORDS THAT WERE  
OBTAINED BY BY MR. CUMMINGS,  
HE JUST LOOKED AT WHAT  
PUBLIC DEFENDER HAD.

> > PUBLIC DEFENDER HAD DOC  
RECORDS!!\$\$!!!  
RECORDS?

> > THAT IS CORRECT.

> > ALL RIGHT, HAVE YOU  
SUBSEQUENT!!\$\$  
SUBSEQUENTLY, FOUND ANY  
OTHER RECORDS?  
OF MENTAL ILLNESS, OR  
MEDICAL RECORDS.

> > WE HAVE HAD WE HAVE HAD A  
FULL EVALUATION BY DR.  
BERLIN POSTCONVICTION, HE  
EVALUATED MR. JONES IN 2003.

> > NO, I'MING FOR  
PREEXISTING RECORDS ANY  
PREEXISTING RECORDS HE HAD A  
PROBLEM HERE, MR. JONES, WAS  
IN AN ACCIDENT, AFTER THE  
MURDER, AND --

> > CORRECT.

> > WAS IN HOSPITAL, SO YOU  
HAVE GOT -- THAT IS  
ANOTHERSH!!\$\$!!!!!!  
ANOTHERSH.

> > RIGHT.

> > SO I'M ASKING

MR. PREEXISTING EITHER SCHOOL RECORDS, MEDICAL RECORDS KINDS OF THINGS THE HARD EVIDENCE THAT WE LOOK TO TO SAY YOU KNOW, THIS IS SOMETHING THAT ANY REASONABLE COUNCIL COUNSEL WOULD HAVE FOLLOWED UP ON, DID YOU -- IS THERE ANYTHING LIKE THAT, THAT YOU HAVE NOW PRESENTED, OTHER THAN THE TESTIMONY OF DR. BERLIN.

> > DR. BERLIN DID IN TERMS OF THE ACCIDENT, DR. BERLIN DID OBTAIN THE -- INTELLIGENCE SCALE TESTING DONE IN 1978, AT THE DOC AND HE TESTIFIED THAT THAT WHICH OBVIOUSLY WAS SOME 13 YEARS PRIOR TO THE ACCIDENT, AND AT THE TIME OF THE -- THAT THAT TESTING, DEMONSTRATED TO MR. JONES SUFFERS FROM BRAIN DAMAGE CADE, BRAIN DAIJ.

> > WERE THOSE RECORDS, WAS THAT EARLY TEST IN THE DOC RECORDS!!\$\$!!! RECORDS.

> > IT WAS NOT.

> > OKAY.

> > THAT IS ANOTHER RECORD THAT -- THAT ANY OTHER ANY OTHER RECORD HARD RECORD THAT CREATES -- THE MURDER!!\$\$! MURDER --

> > I THINK THAT IS IN TERMS OF NEW RECORDS, IN TERMED OF NEW RECORDS.

> > WHAT WAS DR. --

> > A QUESTION.

> > OKAY.

> > WHAT WAS DR. McLAREN'S TESTIMONY AT THE EVIDENTIARY HEARING WE HAVE TO TAKE THE RECORD IN THE LIGHT MOST FAVORABLE TO THE STATE HERE, CORRECT?

> > I DON'T I DON'T KNOW ABOUT THAT.  
YOUR HONOR.

> > THERE WAS CONFLICTING

EVIDENCE AT THE EVIDENTIARY HEARING ABOUT THIS MENTAL STATE AND WHAT HIS RECORDS WOULD SHOW WE HAVE TO TAKE THE IS THE DR. McLAREN DID I TELL TESTIFY DR. McLAREN NEVER SAW MR. JONES. HE WAS HIRED TWO DAYS PRIOR TO THE EVIDENTIARY HEARING, IN THIS CASE I POINT OUT THIS HEARING WAS SCHEDULED THREE MONTHS PRIOR TO HEARING STATE WAITED TILL TWO DAYS PRIOR TO HEARING TO HIRE HIM.

> > WHOSE TESTIMONY DID THE JUDGE CREDIT --

> > HE DIDN'T -- WELL HE NEVER MENTIONED DR. McLAREN'S TESTIMONY AT ALL, IN HIS ORDER.

SO I'M ASSUMING THE JUDGE DISREGARDED DR. McLAREN'S TESTIMONY AND DR. McLAREN TESTIFIED THAT HE COULD NOT PROVIDE ANY DIAGNOSIS OR OPINION ABOUT MR. JONES SPECIFICALLY!!\$\$!!!! SPECIFICALLY, HE SPECULATED ABOUT LOOKED AT A RECORDS SAID WELL THIS KIND OF GUY THAT MIGHT HAVE AN ANTISOCIAL PERSONALITY DISORDER, BUT THE JUDGE GARY DIDN'T NEVER MENTIONED DR. McLAREN'S TESTIMONY AS TO DR. BERLIN IN TERMS OF CREDIBILITY DR. BERLIN LOWER COURT ORDER HE FINDS IT CREDIBILITY IS REDUCED BECAUSE HE USED THE MMPANY 1991 RATHER THAN MMPI 2, DR. BERLIN TESTIFIED, THAT MMPI, WAS THE VALID TEST, MPI2 ONLY IN EXISTENCE TWO YEARS PROBLEMS NOT WORKED OUT HE DIDN'T FEEL COMFORTABLE USING IT HE ALSO TESTIFIED THAT THE MMPI 1, EVEN IF YOU USED TODAY IS STILL VALID, WOULDN'T CHANGE ANY OF THE RESULTS.

> > DR. McLAREN TESTIFY THERE WAS APPLE EVIDENCE COULD

HAVE BEEN USED TO IM-PIECH  
THE MENTAL MITIGATION  
INCLUDING, HIS CRIMINAL  
HISTORY PSYCHOLOGICAL  
EVALUATION, AND OTHER  
INFORMATION!!\$\$!!  
INFORMATION, THAT COULD BE  
DAMAGING?

.  
> > I BELIEVE HE TESTIFIED  
THAT, I BELIEVE HE  
TESTIFIED, YES, THAT IS  
KIND OF THING THAT EXPERTS  
ARE USUALLY CROSS-EXAMINED  
ABOUT, AND BUT DR. BERLIN IS  
ALSO -- IN TERMS OF LET ME  
GO BACK IN TERMS OF CRIMINAL  
HISTORY, THAT WAS OBVIOUSLY  
COMING OUT, TO SUPPORT THE  
PRIOR VIOLENT FELONIES THAT  
WAS COME\$\$!!ING NO SO NOT PUT  
DRUG BERLIN ON THE STAND  
GOING TO KEEP THAT OUT OF  
THE RECORD, AS TO THE --  
REFERENCES TO CHARACTER  
DISORDER, IN DOC FILES DR.  
BERLIN TESTIFIED THAT THAT  
WAS PART THAT HE CONCEDED  
THAT IS WHY HE PROBABLY IS  
SOME THAT HAVE GOING ON  
HERE, THAT IS PART OF THE  
SPECTER OF MR. JONES' MENTAL  
ILLNESS!!\$\$!!!  
ILLNESS, BUT THAT IS JUST A  
SMALL PART OF IT THE MENTAL  
ILLNESS, THE PSYCHOTIC -- IS  
MUCH MORE SALIENT FEATURE OF  
HIS -- THE INSPECT RUMENT OF  
HIS PROBLEMS, AND SPECTRUM  
OF HIS PROBLEMS, THE  
REFERENCES!!\$\$  
REFERENCES, TO PERSONALITY  
DISORDER THE CRIMINAL  
HISTORY, DID NOT CHANGE HIS  
OPINIONS AT ALL, REGARD.  
> > REGARDING THE PREJUDICE  
PRONG WHAT EVIDENCE DID YOU  
PUT ON THE EVIDENTIARY  
HEARING THAT WOULD GO  
UNDERMINE CONFIDENCE IN THE  
OUTCOME --  
> > THERE WAS -- THERE WAS NO  
MENTAL HEALTH TESTIMONY  
PRESENTED AT ALL.

> > I UNDERSTAND WHAT DID YOU SHOW WHAT MENTAL HEALTH TESTIMONY WOULD UNDER MOOIP CONFIDENCE IN OUTCOME THERE IS EVIDENCE OF IQ BEING BELOW 70, OR -- EVIDENCE THAT WHEN HE WAS A CHILD, HE NEEDED COUNSELING, THAT HE NEEDED SPECIAL HELP IN SCHOOL, ANYTHING LIKE THAT?

> > DR. BERLIN TESTIFIED HE TESTIFIED THAT MR. JONES SUFFERS FROM CHRONIC PSYCHOTIC DISTURBANCE HE DESCRIBED A BIOLOGICAL MENTAL ILLNESS SOMETHING THAT IS BIOLOGICAL TO MR. JONES THAT IT EXISTED AT LEAST TWO YEARS PRIOR TO THE CRIME IN THIS CASE.

HE TESTIFIED THAT HAVE BOTH STATUTORY MITIGATORS APPLY -- SUBSTANTIAL IMPAIRMENT.

> > ON THAT TO ME THE MOST CRITICAL PART OF THIS ALTHOUGH THERE WERE STRONG AGGREGATOR SOUND, THE ONE OF THE STRONGEST ONES WOULD BE HAC!!\$\$!!!!

HAC, YET, THE EVIDENCE IS THAT HE WAS DRINKING, AND BLOOD ALCOHOL WAS 99.269. WHAT DID DR. BERLIN SAY SPECIFICALLY AS OPPOSED TO THIS GENERAL WHAT JUSTICE LEWIS SOMETIMES SAYS IS TALK!!\$\$!!!!!!

TALKE TALK YOU KNOW ABOUT THE MITIGATOR O EXISTS, ABOUT WHAT THIS UNDERLYING CHRONIC PSYCHOTIC DISTURBANCE WITH THE INGESTION THAT HAVE MUCH ALCOHOL HOW WOULD THAT AFFECT THIS CRIME, WHICH DOES SEEM TO BE SOMETHING WHERE HE IS GOING ROB HIM AND THEN YOU, SOMETHING ELSE HAPPENS WAS HE SPECIFIC ON IT COULD YOU POINT TO THAT TESTIMONY?

> > HE WAS, HE TESTIFIED THAT MR. JONES, PSYCHOTIC DISTURBANCE, AFFECTS HIS DECISION-MAKING!!\$\$!

DECISION-MAKING, HIS ABILITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW.

> > THAT IS A CONCLUSION, I WANT TO SPECIFICALLY, HOW WOULD THAT OPERATE DID HE TESTIFY HOW THAT WOULD OPERATE, OPERATED NIGHT IN QUESTION TO HAVE CAUSED SUBSTANTIALLY IMPACTED HIS ACTIONS IN COMMITTING THIS CRIME.

> > RIGHT, HE POINTED TO THE BLOOD-ALCOHOL LEVEL.269 OBVIOUSLY WAY ABOVE LEGAL LIMIT TRACE OF COCAINE MR. JONES SYSTEM, HE SAID THAT THE USE OF ALCOHOL, AT THAT LEVEL IN THE COCAINE, AM REPLY\$\$!!!!PHIZE THE PSYCHOTIC DISTURBANCE THAT HE SUFFERS FROM, AND THAT IT WOULD HAVE CAUSED HIM TO NOT BE ABLE TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW.

AND THAT THERE WAS A SPECIFIC NEXIS BETWEEN THAT DISTURBANCE, THE USE OF ALCOHOL AND A COCAINE, AND COMMITTING THE CRIME.

> > NOW THE TRIAL COURT ORIGINAL SENTENCING COURT FOUND THOSE TWO STATUTORY MENTAL HEALTH MITIGATORS DID IT O NOT.

> > NO, SIR HE FOUND SUBSTANTIAL IMPAIRMENT, MITIGATING FACTOR NOT EXTREME DISTURBANCE HE BASED, JUST JUDGE GARY -- BASED THE FINDING ON, MR. JONES' TESTIMONY THAT HE WAS DRINKING THAT NIGHT HAD A99.269 BAC, SO THAT IS WHERE HE HE DID HE DID FIND THAT MITIGATOR!!\$\$!!!!!!!

MITIGATOR,AT THE -- GIVE A GAVE SOME WASTE DID NOT FIND EXTREME SO IF YOUR WELL INTO YOUR REBUTTAL IF YOU WANT TO SAVE SOME OF YOUR TIME, CERTAINLY USE IT AS YOU DEH DEINSPIRE JUST DESIRE.

> > WOULD I LIKE TO POINT OUT

THE -- MR. PRIM, THAT --  
THERE -- THE EVIDENCE IS  
CLEARLY INDICATED THAT THERE  
WAS A PROMISE OF A DEAL  
HERE.

> > YOU SAY EVIDENCE CLEARLY  
INDICATES, WASN'T THERE  
TESTIMONY AT THE EVIDENTIARY  
HEARING THAT THERE WAS NO  
PROMISE?

> > THERE WERE -- YES YOUR  
LON!!\$\$!!!!  
LONER.

> > SO -- THERE -- YOUR  
HONOR.

> > MR. MAY HAVE BEEN  
CONFLICT TESTIMONY IF THE  
JUDGE FOUND THAT THERE WAS  
NO PROMISE WE HAVE TO ACCEPT  
HIS CREDIBILITY FINDINGS  
WHEN YOU SAY THAT THERE WAS  
CLEAR EVIDENCE THERE WAS A  
DEAL HOW CAN YOU THAT WHEN  
TO THAT THERE WAS OBVIOUSLY  
TEST THERE WAS NOT A DEAL.

> > I SAY CLEAR EVIDENCE --  
TESTIFIED MR. PRIM TOLD HER  
HE WAS A GIVEN DEAL INTO  
THERE WAS CONFLICTING  
EVIDENCE.

> > I AGREE THERE WAS  
MR. WOODS THE DETECTIVE AND  
MR. WADED.

> > HOW ARE WE GOING CREDIT \$\$  
SOMEBODY'S CONFLICKING  
EVIDENCE WHETHER THE JUDGE  
FOUND OFFICERS CREDIT TLIBL  
WAS NO DEAL HOW CAN WE  
REVERSE THAT.

> > WELL I THINK WE HAVE TO  
LOOK BEYOND TESTIMONY, WHAT  
IS THE OTHER EVIDENCE WHEN.

> > WHAT DOES LAW SAY ABOUT  
LOOKING BEYOND TESTIMONY IS  
THERE ANY LAW SAYS WE CAN  
LOOK BEYOND THE TESTIMONY  
AND WE CREDIBILITY AT THIS  
LEVEL.

> > I THINK THERE HAS TO BE  
COMPETENT SUBSTANTIAL TO  
EVIDENCE SUPPORT THE  
FINDINGINGS

> > THE TESTIMONY OF OFFICERS!!\$\$!!!!  
OFFICERS, AND ASSISTANT

STATE ATTORNEYS IS NOT  
COMPETENT SUBSTANTIAL  
EVIDENCE?

I THINK THAT THE EVIDENCE  
THAT -- MISS DANNIES  
PROVIDER CONTRADICHOTOMIES  
WHAT THEY TESTIFIED.

> > THAT HAPPENS EVERY DAY,  
IN COURT THIS CONTRADICTORY  
EVIDENCE, AND A JUDGE OR A  
JURY HAS TO WEIGH THE  
CREDIBILITY AND CREDIT ONE  
SIDE OR THE OTHER.

> > IF YOU WERE MR. WADE HE  
TESTIFIED THAT THIS WAS  
BASED ON ALTERCATION, THAT  
-- THOSE ARE SO -- SO DEBUNK!!\$\$!  
DEBUNKED BY THIS EVIDENTIARY  
HEARING!!\$\$!!!

HEARING, THAT THE ORAL  
ARGUMENTS CASE THERE IS HAVE  
TO WAY THAT THAT WAS --

> > WASN'T THERE ANOTHER  
PERSON IN THE JAIL WHO  
ACTUALLY SAID THEY WITNESSED  
THE CONFRONTATION.

> > MR. WATSON TESTIFIED THAT  
HE -- ALL HE TESTIFIED TO HE  
HEARD THE ALLEGED CONFESSION  
THAT WAS GIVEN TO MR. PRIM,  
WITNESS WHO HAS BEEN --

> > AND HE SAID THAT THERE  
WAS A A CONFRONTATION, ALSO.

> > I'M NOT SURE IF HE  
TESTIFIED THERE WAS A --

> > I DON'T KNOW THAT WHETHER  
A CONFRONTATION ACTUALLY  
HAPPENED, I DON'T KNOW, THE  
POINT IS THAT HE THE  
CONFRONTATION WAS NOT THE  
BASIS FOR THE ORAL -- WOULD  
I INVITE THE COURT TO LOOK  
AT THE TESTIMONY --

> > THERE WAS CONTRARY  
TESTIMONY TO THAT, WE ARE  
SEE WE ARE, WE ARE  
STRUGGLING WITH YOU HERE IS  
THAT WHETHER A FACT-FINDER,  
WHICH IS WHAT THE JUDGE  
BECOMES ON AN ISSUE LIKE  
THAT, HEARS TWO PEOPLE, AND  
ONE SAY THAT THE LIGHT WAS  
RED, AND THE OTHER SAYS THE  
LIGHT WAS GREEN, THAT ON

REVIEW!!\$\$!

REVIEW, WE HAD TO TAKE THAT MOST FAVORABLY HOW THE TRIAL JUDGE FOUND IF THERE IS ANY EVIDENCE, IN HERE, WE'VE GOT A PROSECUTOR, WE'VE GOT THE DETECTIVE, WE'VE GOT THE OTHER JAIL HOUSE WITNESS, AND AT LEAST THE PROSECUTOR IN AND THE DETECTIVE, AS I READ THEIR TESTIMONY SAID EMPHATICALLY THAT HE WAS NOT RELEYSSED PURSUANT TO ANY DEAL, THAT HE WAS ONLY RELEASED BECAUSE THERE HAD BEEN THIS CONFRONTATION, IN THE HOSPITAL WARD.

> > AGAIN --

> > IS THAT RIGHT OR NOT.

> > I DON'T THINK THAT IS RIGHT!!\$\$!!!!!!!

RIGHT.

> > WELL --

> > -- I DON'T THINK IT IS RIGHT THEY TESTIFIED TO THAT.

> > W THEY TESTIFY TO, THAT YOU SEE, THE FACT-FINDER THEN HAS THE OPTION TO SAY I BELIEVE THAT, IS MORE CREDIBLE, OUR BELIEVE THE OTHER.

> > I THINK.

> > SEE PROUSH.

> > I THINK THAT IS I DO, YOUR HONOR.

> > I THINK THAT IS MY ARGUMENT IS.

> > CHIEF WILL GIVE YOU MORE TIME --

> > MY ARGUMENT IS THAT THAT IS FINDING IS NOT REASONABLE!!\$\$ REASONABLE.

> > THE WAY THE EVIDENCE DOESN'T SUPPORT THEIR TESTIMONY.

> > I WILL TAKE -- SAVE ARE TO TIME IF I HAVE ANY.

> > IF IT PLEASE THE COURT, STEVE WHITE, APPEARING ON BEFORE GENERAL McCOLLUM FOR THE STATE OF FLORIDA ADDRESSING SOME OF THE CONCERNS OF THE COURT, AS TO

THE FINE PHASE, THE EXPERT  
ISSUE, FIRST OF ALL, I THINK  
WE NEED TO UNDERSTAND THAT  
THIS WAS A 1992 TRIAL, AND  
THE EVIDENTIARY HEARING IN  
2004.

SO --

> > BUT THIS ONE, LET'S START  
WITH SOMETHING, AND THIS YOU  
KNOW, WE HAVE WE HEAR THESE  
CLAIMS ALL THE TIME, SO YOU  
HAVE TO TRY SOMETIMES TELL  
YOU THIS ONE THAT THE  
STRONGER CLAIM, THAN NOT AND  
THIS MY CONCERN, IN THE  
CASE, YOU KNOW, IT WAS NO  
FIREARM USED IN THIS CRIME,  
UNLIKE THE PRIOR FELONIES  
THAT MR. JONES HAD IT  
APPEARS HE INTENDED TO ROB  
THEM AND THEY WERE BOTH  
DRUNK, AND HE ENDS UP  
KILLING OBVIOUSLY KILLING  
HIM, AND HAC IS FOUND, SO  
WHICH IS A STRONGING A IS A  
GREAT \$\$ ING A ELEVATESOR I'M  
SITTING THERE DEF LAWYER  
1991, 1992, AND PUBLIC  
DEFENDER HAS ALREADY GOTTEN  
A REPORT FROM DR. BERLIN IN  
THE FIRST THREE MONTHS, THAT  
SAYS THAT THIS DEFENDANT HAS  
A LONGSTANDING YOU SEE COTS!!\$\$!!!!!!  
COTSIC DISTURBANCE, IT IS A  
BIOLOGICAL PROBLEM WITH THE  
BRAIN CAN BE EITHER GENETIC  
OR DO YOU TO BRAIN DAMAGE  
INVOLVED HALLUCINATIONS,  
THAT HE YOU KNOW SAID WOULD  
IT HAVE CONTRIBUTED TO  
CAUSES AND A CAUSE THIS I  
GUESS THE QUESTION I THEN  
HAVE HAVE IN TERMS OF THE  
REASONABLE!!\$\$  
REASONABLENESS WHAT THE NEXT  
LAWYER DOES, IS HE READS IT  
AND I'M -- AND DOESN'T EVEN  
TALK TO DR. BERLIN IS, MEAN,  
EVERY LAWYER WE WERE MANY OF  
US WERE TRIAL LAWYERS, I  
JUST CAN'T CONCEIVE IN WHERE  
I'M COMING FROM, NOT  
EXPLORING IT, NOW, YOU KNOW  
WE GO TO MAYBE WHERE THE

PREJUDICES IS BUT ON  
DEFICIENT PERFORMANCE HOW DO  
YOU SAY A LAWYER WHO IS NOT  
PARTICULARLY YOU KNOW, THAT  
HAS THIS MANUFACTURING!!\$\$!!!!!!INFORMATION IN HIS  
FILE CAN MAKE AN INFORMED  
DECISION, ABOUT NOT PURSUING  
MENTAL HEALTH MITIGATION  
WITHOUT TALKING TO THE VERY  
PERSON THAT THE HAS MADE THE  
REPORT?

> > WELL YOUR HONOR --  
LOOKING BACK RETROSPECTIVELY  
FOR A DECADE, TRIAL COUNSEL  
ADMIT BELIEVED CUMMINGS  
ADMITTED HIS MEMORY WAS  
FUZZY!!\$\$!!!!!!

FUZZY, HE THOUGHT THAT HE  
MAY HAVE TALKED TO DR.  
BERLIN BUT HE WASN'T  
CERTAIN, DR. BERLIN DID  
TESTIFY HE DIDN'T RECEIVE A  
CALL FROM TRIAL COUNSEL,  
TRIAL COUNSEL REALLY DIDN'T  
REMEMBER HE THOUGHT HE  
MIGHT, HAVE HE KNOWS HE --  
HE BELIEVES HE CONO SULTED  
WITH SOME EXPERTS.

> > IS THERE ANY RECORDS,  
THAT HAVE?  
ANY TIME SHEETS ANYTHING  
THAT --

> > THE TIME SHEETS, SHOW  
THAT HE SPENT HOURS WORKING  
ON THE FINE PHASE BUT IT --  
PENALTY FACE BUT ISN'T  
BROKEN DOWN BY EXACTLY WHAT  
HE DO IED BE HONEST WITH YOU  
SOME NOTES ARE A LITTLE HARD  
TO READ, ALSO, BUT HE -- HE  
CLEARLY DID SPEND QUITE A  
BIT OF TIME ON PENALTY  
PHASE, BUT, THE LAW DOES NOT  
INDICATE THAT HE  
SPECIFICALLY CALLED DR.  
BERLIN.

> > SO YOU AGREE, THEN THAT  
UNDER FLORIDA LAW, A LACK OF  
OF RECOGNITION OR  
RECOLLECTION I GUESS I  
SHOULD SAY LACK OF  
RECOLLECTION OF DOING  
SOMETHING CERTAIN DOES NOT  
OVERCOME POSITIVE TESTIMONY

THAT EVENT NEVER OCCURRED.

> > WELL WHAT HE DID DO YOUR HONOR HE KNOWS HE CONSULTSED WITH RANDY A VERY EXPERIENCED ATTORNEY, HE BELIEVES THAT HE DID CONSULT WITH ONE OR MORE EXPERTS COULDN'T TELL US WHO IT WAS, AND HE -- HE WENT THROUGH THE RECORDS NOT ONLY THE MEMO FROM UNANIMOUS SKWLIE WALTER BUT THE DOC RECORDS, AND HE, TESTIFIED AT OFF THE EVIDENTIARY HEARING THIS IS LOOKS LIKE MY HIGHLIGHTING, AND THE STUFF THAT HE HIGHLIGHTED WAS WERE THINGS THAT COULD HARM LATER, THAT COULD BE DAMAGING IN FRONT OF THE JURY SUCH AS, MENTALLY DISORDERED SEX OFFENDER ANTISOCIAL PERSONALITY DISORDER SO THAT DOESN'T ADDRESS WHETHER HE DID OR DID NOT TALK TO THE PERSON THAT --

> > WELL HIS CONCLUSION WAS YOUR HONOR THAT GIVEN THE NEGATIVE THAT'S THE STATE WOULD BE ABLE TO IF HE PURSUED THE MENTAL MITIGATION ANY FURTHER BY THE WAY, ANOTHER -- A NOTE WITHIN THE MEMO ALSO INDICATED THAT DR. BERLIN TOLD SHOWALTER, THAT DON'T DO ANY MORE MEDICAL DON'T DO MEDICAL TESTING BECAUSE COULD IT COME BACK NEGATIVE, AND SO, GIVEN ALL THESE CIRCUMSTANCES, GIVEN THE --

> > WHAT WAS COMING -- CUMMINGS WHAT DID CUMMINGS TESTIFY AS TO HIS KNOWLEDGE OF THIS MEMO.

> > HE SAID IT WAS IN THE FILE, THERE WAS SOME THINGS MISFILED AND THEY HAD TROUBLE LOCATING BUT FOR THE EVIDENTIARY HEARING, EVIDENTIARY HEARING AND HE SAID IT AS WELL AS THE DOC RECORDS WERE IN HIS POSSESSION. AND THEN HE REVIEWED THEM.

> > THAT HE HAD REVIEWED THEM AT THE TIME.

> > YES, YOUR HONOR.

> > WAS HE ASKED ABOUT THE SUGGESTION THAT NEUROPSYCHOLOGICAL TESTING IS THE...

> > SPECIFICALLY AS TO THAT PHRASE WITHIN THE MEMO, I DON'T RECALL THAT HE WAS, YOUR HONOR, IT WAS CLEARLY THERE FOR AS YOU WOULD TO REVIEW IN TERMS OF THE REASONABLENESS -- HE REVIEWED THAT, THAT MEMO AND REVIEWED THE DOC RECORDS, MULTIPLE DOC RECORDS THAT INDICATED ANTI-SOCIAL PERSONALITY DISORDER.

> > DOESN'T THE QUESTION REMAIN AS TO HOW HE COULD MAKE ANY INFORMED DECISION ABOUT WHAT TO DO WITH REFERENCE TO MENTAL HEALTH MEDICATION WITHOUT FOLLOWING UP WITH ALL OF THE ISSUES THAT DR. BURRLAND RAISED IN HIS CONVERSATION WITH THE PREVIOUS LAWYER.

IN OTHER WORDS YOU READ THOSE NOTES, AND IT JUMPS OUT AT YOU, THAT THE LAWYER HAS TO BE BACK IN TOUCH WITH THAT MENTAL HEALTH EXPERT AND FOLLOW UP -- THERE ARE WORDS LIKE THERE LIKE BRAIN DAMAGE AND I'M CONCERNED ABOUT THE COMBINATION OF THE LAWYER SAYING ALTHOUGH HE WAS AN EXPERIENCED CRIMINAL LAWYER THAT THIS WAS HIS FIRST DEATH PENALTY CASE.

> > HE KNEW THAT AND CONSULTED WITH MORE EXPERIENCED --

> > YES.

BUT HERE WE HAVE THIS REPORT -- CALL IT A REPORT.

> > MEMO.

> > AS TRANSCRIBED BY THE MEANS OF THE LAWYER AT LEAST THAT CRIES OUT FOR FOLLOW UP. IT REALLY IS SAYING WE NEED TO BE BACK IN TOUCH AND EXPLORE THESE THINGS, YOU KNOW, BEFORE WE GET TO THE PENALTY PHASE OF THE TRIAL OR WHATEVER. AND I -- I'M JUST HAVING

DIFFICULTY SEEING ANY REAL EXPLANATION BY THE LAWYER OF WHY HE DIDN'T FOLLOW UP. AND CONTACT THE DOCTOR AND HAVE A FURTHER EXAMINATION AND -- LIKE I SAY THE WORDS LIKE "BRAIN DAMAGE" ME KNOW POTENTIALLY, NOT NECESSARILY, BUT POTENTIALLY COULD LEAD TO VERY SUBSTANTIAL MEDICATIONS. SO IS THERE REALLY AN EXPLANATION IN THE RECORD?

> > WELL, TWO POINTS ON THAT, YOUR HONOR.

ONE IS, AGAIN, HE THOUGHT HE WAS'NT SURE, GIVEN HIS MEMORY AND LOGS ARE NOT SPECIFICALLY BROKEN DOWN BUT HE THOUGHT -- I FORGOT HIS EXACT LANGUAGE, HE THOUGHT HE PROBABLY MAY HAVE CONTACTED DR. BURRLAND AND HE WASN'T SURE.

> > HE HAS NOTHING, THOUGH, IN HIS TIME SHEETS OR --

> > NOT WRITING DOWN ANYTHING.

> > REALLY, TO --

> > AND THE DOCTOR SAID THERE WAS NO FOLLOW-UP.

> > HE SPENT HOURS ON MENTAL MITIGATION BUT IT IS NOT BROKEN DOWN BY PHONE CALL TO THE DOCTOR, NO, SIR.

> > WHAT IS THIS AVERAGE -- HOURS OF MENTAL MITIGATION OR HOURS ON MITIGATION?

> > I AM -- ON THENALITY PHASE I'M NOT CERTAIN, YOUR HONOR. I'M NOT CERTAIN.

> > JUSTICE --

> > HELP ME UNDERSTAND WHAT THE EVIDENCE WAS IN THE RELATIONSHIP WITH THE DECEASED CO-COUNSEL AND THE EXPERIENCE LEVEL AND INVOLVEMENT OF THE CO-COUNSEL.

WAS THERE A CO-COUNSEL?

> > AT THE TIME OF THE SECOND TRIAL, NO, YOUR HONOR.

THIS IS -- THERE WAS A HUNG JURY THE FIRST TRIAL.

AND THIS SECOND TRIAL, NO, SIR, THERE WAS NO CO-COUNSEL.

BASICALLY WHAT HAPPENED IS THE PD CONFLICTED OUT AND GREG

CUMMINGS INHERITED THE CASE BUT  
I SECOND -- I SECOND POINT --  
> > WAS SOMEBODY ELSE --  
> > I'M SORRY, YOUR HONOR.  
> > JUSTICE BELL'S QUESTION WAS  
YOU SAID HE CONSULTED WITH --  
> > RANDY MOREL.

AS WELL AS HE THOUGHT HE'D  
CONSULTED WITH SOME OTHER,  
MENTAL EXPERTS INCLUDING --  
ESPECIALLY ON THE MMPI.  
HE SAID DETECTIVES TESTIFIED  
SOMETHING TO THE EFFECT, I  
WOULDN'T KNOW HOW TO READ THIS  
AND SO, I JUST HAVE -- MUST  
HAVE CONSULTED WITH AN EXPERT  
TO INTERPRET THIS, BECAUSE I  
INTERPRETED IT -- MY CONCLUSION  
WAS IT WAS NEGATIVE.  
AND ACTUALLY HE ENDS UP BEING  
VINDICATED BY DR. MCLAREN'S  
TESTIMONY, WHO HAVE TESTIFIED  
AT THE EVIDENTIARY HEARING THE  
MMPI THAT DR. BURRLAND  
ADMINISTERED IN 1991 IS  
DIFFERENT WITH THE CRIMINAL  
PERSONALITY OF SOMEBODY WHO  
DOES THEY WICKED DEED LIKE THE  
MURDER THAT WE HAVE BEFORE THE  
COURT TODAY.

> > IS THAT THE HEART OF THE  
PREJUDICE ARGUMENT THAT YOU  
WOULD MAKE?  
WOULD YOU ELABORATE ON THE  
PREJUDICE ASPECT?  
MOVING BEYOND JUST THE QUESTION  
OF WHETHER THERE IS DEFICIENT  
PERFORMANCE?

> > YES, YOUR HONOR.  
DR. MCLAREN DID PRESENT  
TESTIMONY.  
IT IS TRUE THAT THE TRIAL COURT  
DID NOT ADDRESS IT AND NEITHER  
ACCEPTED MORE REJECTED IT, BUT  
DR. MCLAREN DID PRESENT  
TESTIMONY TO THE COURT THAT  
INTERPRETED THE SAME MMPI,  
THERE WAS ALSO AN INDICATION IN  
THE ORDER THAT THE MMPI WON  
WHICH DR. BURRLAND ADMINISTERED  
LACKED CREDIBILITY ALTHOUGH  
MCLAREN -- THE DOCTOR SAID IF  
YOU RELY ON THIS MMPI IT IS  
CONSISTENT WITH THIS HEINOUS

ATROCIOUS AND CRUEL-TYPE CRIME,  
THE FACTS THAT WE HAVE.

WE HAVE TWO VERY STRONG  
AGGRAVATORS.

WE HAVE IN ADDITION TO HAC AND  
THE BROKEN ARM, THE FRACTURED  
RIBS, THE -- WHICH ARE PRE-MORT  
EM DEFENSIVE INJURIES.

> > DID HE HAVE A GUN WITH HIM.

> > NO EVIDENCE OF A GUN, YOUR  
HONOR AND THE PRIOR FELONIES WE  
HAD A ROBBERY, ATTEMPTED  
ROBBERY, ROBBERY WITH A FIREARM  
AND FORB WITH -- ROBBERY WITH A  
FIREARM WITH A KIDNAPPING AND  
IT WAS -- FELONY TIMES FIVE I  
BELIEVE IN TERMS OF THE WEIGHT  
OF THE AGGRAVATOR AND --

> > IN REGARD TO THE MITIGATION  
THAT WAS PRESENTED, THERE WAS  
MITIGATION OF MS. STEWART I  
THINK HIS SISTER, WHO PRESENTED  
TESTIMONY ABOUT HIS CHILDHOOD  
AND THE FACT THAT THE MOTHER  
HAD STABBED TO DEATH THE  
STEPFATHER?

IS THAT CORRECT.

> > YES, YOUR HONOR.

IN FACT, IN -- SHE TESTIFIED IN  
GREAT DETAIL TO THE SAME FACTS,  
ESSENTIALLY THE LITANY OF  
WITNESSES TESTIFIED TO AT THE  
EVIDENTIARY HEARING AND I WOULD  
POINT OUT ALSO, THAT DR. BERLAND  
INDICATED THIS DELUSIONAL HA  
NEWSER TO MINDSET OF THE  
DEFENDANT WAS RNING -- HA LOSER  
TO MINDSET WAS CHRONIC AND WAS  
IKT CONFLICTING IN TERMS OF THE  
OTHER EVIDENCE, THE FAMILY  
MEMBERS TESTIFIED AS TO LIFE  
EVENTS WHICH BASICALLY CHANGED  
-- IT WASN'T ORGANIC BRAIN  
DAMAGE, CONTRARY TO DR. BERLAND  
AND INSTEAD LIFE EVENTS CHANGED  
THE MINDSET OF THE DEFENDANT.

> > DID HE GRADUATE FROM HIGH  
SCHOOL.

> > HE RECEIVED HIS GED, YOUR  
HONOR.

> > WHAT WAS THAT TEST THAT THE  
-- THERE WAS REFERENCE TO SOME  
TEST, NOT THE MMPI, THAT HAD  
BEEN DONE IN THE PRISON.

DR. BERLAND OBTAINED TWO YEARS EARLIER, FROM THE DATA -- DATE OF THE CRIME.

> > I THINK THERE WAS AN IQ TEST THAT INDICATED, HIS IQ WAS, I'VE FORGOTTEN AN EXACT NUMBER BUTRABLY AROUND 100.

> > SOMETHING ABOUT THE -- IT SHOWED ABNORMALITY THAT WAS REFERRED TO.

> > IS THE MMPI AND THE WAIS.

> > DR. MCLAREN TESTIFIED AT THE EVIDENTIARY HEARING THERE WAS PLENTY OF EVIDENCE TO IMPEACH THE MENTAL MITIGATION, HAD THAT BEEN PRESENTED, ESSENTIALLY SAYING THERE WAS A TWO-EDGED SWORD.

> > EXACTLY, YOUR HONOR.

> > WHAT WAS THAT EVIDENCE THAT WOULD HAVE COME OUT?

> > HE AMPLIFIED WHAT IN FACT COUNSEL CONCLUDED IN TERMS OF THE ANTI-SOCIAL PERSONALITY DISORDER.

AS WELL AS THE MDSO, MENTALLY DISORDERSED SEX OFFENDER.

> > THAT ONE, THE SEX OFFENDER AND WE ALWAYS TALK, WE DON'T WANT THE NEGATIVE TO COME OUT BUT THE JURY HEARD HE HAD ALL THESE PRIOR VIOLENT FELONIES, CORRECT.

> > YES, YOUR HONOR, BUT THE JURY HAD NOT HEARD THAT HE HAD ANTI-SOCIAL PERSONALITY DISORDER, BASICALLY, A CRIMINAL MINDSET.

AS WELL AS --

> > WHAT --

> > DETAILED --

> > WHAT EXPLAINS SOMEBODY THAT HAS COMMITTED MULTIPLE CRIMINALS THAT -- CRIMES THAT INVOLVE A FIREARM OVER A PERIOD OF TIME, EITHER NOT MENTALLY ILL OR THEY HAVE A ANTI-SOCIAL -- I MEAN, IT IS SORT OF SELF-EVIDENT THAT HE HAD THINGS IN HIS LIFE THAT WERE -- CAUSED HIM TO BE, YOU KNOW, A CHRONIC CRIMINAL.

BUT THE OTHER CRIMES WERE DIFFERENT IN QUALITY AND THIS

IS WHAT I'M THINKING ABOUT,  
AGAIN, WHERE I SEE THE POSSIBLE  
PREJUDICE COMING IN, THIS ONLY  
WAY THAT A JURY LOOKING AT THIS  
-- AND IT MAY NOT BE COMPELLING  
ENOUGH, IS TO SAY THAT NIGHT HE  
DIDN'T SET OUT TO KILL THIS  
PERSON.

HE SET OUT TO ROB THEM BECAUSE  
THAT IS WHAT HE DOES BUT THEY  
WERE BOTH VERY DRUNK AND THAT,  
WHICH THE JURY HEARD, RIGHT.

> > RIGHT.

> > THE VICTIM WAS VERY DRUNK  
ALSO.

YES?

> > UNDER THE INFLUENCE AT  
LEAST.

> > OKAY.

THAT THE ISSUE OF WHETHER THIS  
MENTAL ILLNESS ADDS ENOUGH TO  
UNDERMINE CONFIDENCE IS REALLY  
WHAT WHAT WE HAVE TO FOCUS ON  
IN MY VIEW.

> > THE CASES ARE LEGION WHERE  
THE COURT POINTED OUT  
ANTI-SOCIAL PERSONALITY  
DISORDER IS IN FACT SOMETHING  
THE JURY VIEWS VERY NEGATIVELY  
AND TRIAL COUNSEL CONCLUDED AND  
WHICH DR. MCLAREN AIFIED AND IN  
ADDITION TO THAT, THE DOC  
RECORDS INDICATED THAT THE  
DEFENDANT HAD BEEN PREVIOUSLY  
-- PREVIOUSLY ARRESTED FOR  
BERYLIZING A PLACE WHILE HE WAS  
TOTALLY NUDE WHICH PROMPTED THE  
MENTALLY DISORDER SEX OFFENDER  
RECOMMENDATION IN TERMS OF HIS  
TREATMENT WITH MDOC WHICH WOULD  
HAVE BEEN AN ADDITIONAL  
NEGATIVE --

> > WAIT, WAIT, WAIT.

HE BURG -- THAT HE BURGIZE AID  
PLACE WHEN HE WAS TOTALLY NUDE.

> > YES, YES, YOUR HONOR.

> > DID HE ASSAULT A FEMALE.

> > NO, YOUR HONOR BUT THIS WAS  
THE JUSTIFICATION THE DOC WAS  
USING TO -- ACTUALLY I THINK IT  
WAS THE COURT THAT RECOMMENDED  
THE DOC THAT IT RECEIVE THE  
MENTALLY --

> > I HEAR THAT AND THAT STARTS

TO MAKE HE THINK THAT HE ACTUALLY -- THAT THERE MUST HAVE BEEN SOME UNDERLYING MENTAL ILLNESS AS DR. BERLAND POINT OUT BECAUSE THAT IS CERTAINLY BIZARRE BEHAVIOR. YOU THINK THAT IS A NEGATIVE THE JURY HEARING THAT WOULD HAVE MADE THEM FEEL LIKE THE GUY IS YOU KNOW --.

> > I DON'T SEE MDSO AS INCONSISTENT WITH ANTI-SOCIAL PERSONALITY DISORDER, AND ADDS A SEXUAL COMPONENT TO IT AND MAKES IT EVEN MORE DAMAGING IN FRONT OF THE JURY.

> > THE TRIAL COURT IN THIS CASE FOUND THAT THE DEFENDANT WAS UNABLE TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW.

> > YES, YOUR HONOR.

> > MITIGATING CIRCUMSTANCES. WHAT WAS PRESENTED THAT THIS WAS BASED ON?

> > THE DEFENDANT TESTIFIED THAT HE WAS DRUNK, THAT EVENING AND THAT HE WAS .26 PERCENT AND BASICALLY HE WAS DRUNK.

AND BUT IT WAS NOT BASED ON ANY PRECONDITION THAT -- WHETHER ANTI-SOCIAL PERSONALITY DISORDER OR BRAIN DAMAGE OR OTHER EXPERT TESTIMONY.

IT WAS BASED ON THE DEFENDANT'S DRUNKEN CONDITION.

> > SO WHEN THE SISTER, I BELIEVE HIS SISTER TESTIFIED --

> > AND THE SISTER, YES, YOUR HONOR.

> > DID SHE TESTIFY TO ANYTHING ABOUT ANY KIND OF CONSUMPTION OF ALCOHOL, USING DRUGS, ANYTHING LIKE THAT?

> > DRUGS, NO, YOUR HONOR, I BELIEVE THERE WAS SOME TESTIMONY IN THE EVIDENTIARY HEARING THAT THE DEFENDANT HAD SKOOURMD CONSUMED MARIJUANA ON OCCASION.

BUT THE SISTER DID TESTIFY THAT THERE WERE CERTAIN LIFE EVENTS, GETTING TO YOUR POINT, YOUR HONOR, IN TERMS OF HIS MINDSET, CERTAIN EVENTS IN HIS LIFE THAT

TRIGGERED HIM TO BE UNCONTROLLEDABLE OR REBELLIOUS AND SO ON, SUCH AS WHEN HIS FATHER LEFT HIM AND HIS MOTHER WAS SENT TO PRISON.

BUT, THERE WAS NO EXPERT LABEL PUT ON THAT, BUT THAT WAS IN FACT IN FRONT OF THE JURY THROUGH OFFICER STEWART WHICH -- WHO WAS THE SISTER WHOM TRIAL COUNSEL DID CALL TO THE WITNESS STAND.

AND I WOULD ARGUE THAT THAT IS A LOT MORE COMPELLING THAN EXPERTS' LABELS THAT WE CAN QUIBBLE ABOUT EXACTLY WHAT THEY MEAN AND ONE EXPERT DOES ONE TEST AND ANOTHER EXPERT SAYS, WELL, THAT TEST IS NOT COMPELLING IN FACT IT IS NEGATIVE.

BUT HERE YOU HAVE THE SISTER TESTIFYING IN FRONT OF THE JURY AS TO THESE TRAUMATIC LIFE EVENTS WHICH IN FACT THE TRIAL COURT WEIGHED, GAVE SOME WEIGHT SENATE HOW LONG HAD HE BEEN OUT OF -- MUST HAVE BEEN IN PRISON MOST -- GOOD DEAL OF HIS LIFE? ADULT LIFE.

> > I THINK HE HAD BEEN OUT FOR A FEW YEARS.

I DON'T KNOW THE EXACT NUMBER OF YEARS.

> > HIS LAST CRIME WAS 1984. AND WHEN DID HE GET OUT FOR THE 1984 CRIME?

> > I KNOW -- I THINK HE GOT TEN YEARS FOR ONE OF THE CRIMES, OBVIOUSLY, SINCE THIS IS IN 1991.

HE HAD GOTTEN OUT AT SOME POINT BEFORE THAT.

BUT I DON'T KNOW EXACTLY --

> > THE TESTIMONY ABOUT HOW HE WAS FUNCTIONING IN SOCIETY, AFTER HE WAS RELEASED FROM HIS -- YOU KNOW, THE LAST CRIME.

> > HE WAS LIVING HAND-TO-MOUTH. HE WAS STAYING WITH TIMOTHY HOLLIS'S MOTHER.

TIMOTHY HOLLIS'S SON TESTIFIED HE WAS A COUSIN AND I THINK MAY HAVE BEEN \$25 A DAY.

HE WORK AT THE CATFISH PAD.  
BASICALLY HE WAS BORROWING  
MONEY, HE NEEDED MONEY AND  
GETTING -- IN TERMS OF THE  
PREMEDITATION, THE MOTIVE TO  
ROB, BUT, ALSO, TAKING THE  
VICTIM OUT TO THIS REMOTE,  
ISOLATED AREA AND THE PROLONGED  
NATURE OF THE -- THAT GAVE RISE  
TO THE FINDING OF HAC, OF THE  
INJURIES THAT WERE INFLICTED.  
BUT, GETTING BACK TO YOUR  
QUESTION, YOUR HONOR, HE WAS  
LIVING HAND-TO-MOUTH FROM --  
THERE WAS SOME TESTIMONY THAT  
HE MAY HAVE -- THIS WAS DEFENSE  
TESTIMONY AT THE TRIAL, HE MAY  
HAVE BEEN TRYING TO BUY A CAR  
FROM A COUPLE OF PEOPLE.  
DEFENSE COUNSEL PUT ON SEVERAL  
WITNESSES, A COUPLE OF THEM  
TESTIFIED THAT HE WAS ABLE TO  
MUSTER A COUPLE OF HUNDRED  
DOLLARS TO BUY A CAR AND HAD  
TENDERED AN OFFER FOR THAT CAR,  
TRYING TO KNEE GAIT THE MONEY  
MOTIVE THAT THE STATE HAD HAD  
FOR THE ROBBERY/MURDER.

BUT, YOU KNOW, --

> > I SEE IN THE BRIEFS THAT  
AFTER THE FIRST MISTRIAL THAT  
THE STATE OFFERED HIM A LIFE  
SENTENCE?

> > THERE WAS SOME INDICATION IN  
THE RECORD THAT THERE WERE PLEA  
NEGOTIATIONS AFTER THE HUNG  
JURY.

> > AND HE TURNED DOWN THAT  
OFFER.

> > I BELIEVE THAT IS CORRECT,  
YOUR HONOR, YES.

> > LET'S SEE.

I HAVE... TEN SECONDS.

> > COULD YOU AFFIRM THAT THERE  
WAS TESTIMONY BY THE PROSECUTOR  
AND THE DETECTIVE AND THEY\##\$\$  
CO-PRISONER THAT THERE WAS AN  
ALTERCATION AND THAT THAT WAS  
THE BASIS OF THE RELEASE.

> > YES, YOUR HONOR.

IN FACT THAT NOT ONLY -- NOT  
ONLY THE EVIDENTIARY HEARING  
BUT ALSO AT THE TRIAL ITSELF,  
GREG CUMMINGS PUT ON JEAN

TAYLOR WHO WAS A PREDECESSOR COUNSEL, REPRESENTING MR. JONES, AND JEAN TAYLOR TESTIFIED THAT THERE WAS A CONFRONTATION. IMMEDIATELY AFTER THE DEFENDANT MOUND OUT THAT MR. PRIM WAS GOING TO TESTIFY AGAINST HIM OR WAS BEING --

> > THAT WAS THE MAIN TRIAL.

> > IN THE MAIN TRIAL, YES, YOUR HONOR.

> > AND AT THE POST-CONVICTION HEARING THE PROSECUTOR AND THE DETECTIVE BOTH TESTIFIED THAT THE BASIS OF HIS ROR RELEASE WAS THE CONFRONTATION.

> > THEY ALSO ARE -- ROR FOR HIM TO COME OVER TO TALK TO THE PROSECUTOR AS WELL BUT THE CONFRONTATION WAS AN INTEGRAL PART OF THAT, NO DOUBT ABOUT IT IN TERMS OF TESTIMONY AND NO EQUIVOCATION AND THE TRIAL COURT ACCREDITED THAT TESTIMONY.

> > WITH OUR HELP YOU HAVE EXCEEDED YOUR TIME.

> > THANK YOU, YOUR HONOR, THE STATE WOULD ASK THE COURT AFFIRM AS WELL AS DENY THE HABEAS PETITION. THANK YOU.

> > I GIVE YOU A COUPLE OF MINUTES, YOU ARE BEYOND YOUR TIME.

> > I THINK I CAN DO IT QUICKLY. JUST A COUPLE OF POINTS, AS TO THE TESTIMONY OF MR. CUMMINGS, WHETHER OR NOT HE TALKED TO DR. BERLAND I ASK THE COURT TO LOOK AT THAT TESTIMONY AND MAY BE IN DEZ AGREEMENT AND I THINK MR. CUMMINGS TESTIFIED HE HAD NO ELECTION OF TALKING TO DR. BERLAND AND IN TERMS OF THE MEDICAL TESTING OR THE MEMO WHERE HE TALKS ABOUT THE MEDICAL TESTS, DON'T RUN OUT AND DO MEDICAL TESTING, THE DOCTOR TESTIFIED THAT HE WAS TALKING ABOUT MRI OR CT SCAN, TEST THAT PREDATED THE PET SCAN WHICH HE WOULD HAVE HAD MORE CONFIDENCE IN.

MR. CUMMINGS, THIS WAS HIS FIRST MURDER CASE OF ANY KIND. HE TESTIFIED THAT HE HAD DEFENDED FELONIES AT THE PUBLIC DEFENDER AND THIS WAS HIS FIRST MURDER CASE OF ANY SORT, NOT JUST CAPITAL AND HE DID NOT HAVE CO-COUNSEL.

> > NOT JUST A DEATH PENALTY, HE DIDN'T HAVE ANY PREVIOUS HOMICIDES.

> > RIGHT.

HE TESTIFIED HE HAD HANDLED FELONIES AT THE PUBLIC DEFENDERS OFFICE BUT NOT MURDER CASES, HOMICIDE CASES.

IN TERMS OF THE LIFE DEAL, MR. CUMMINGS TESTIFIED THAT THERE WERE TWO SEPARATE OCCASIONS ON WHICH A LIFE DEAL WAS OFFERED AND MR. JONES REJECTED THOSE.

AND WITH THAT I WOULD CONCLUDED BY ARGUMENT.

> > WE'LL TAKE YOUR CASE UNDER ADVISEMENT.