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Fred Anderson, Jr. v. State of Florida

SC07-648 | SC08-644

>> THE NEXT CASE ON THE COURT'S AGENDA IS ANDERSON VERSUS STATE.

MISS CHAMBERLIN.

>> MAY IT PLEASE THE COURT, I'M MARIA CHAMBERLIN.

CAPITAL COLLATERAL REGIONAL COUNCIL.

ALONG WITH MY CO-COUNSEL REPRESENT FRED ANDERSON.

I WILL BEGIN ADDRESSING ISSUE ONE OF MY INITIAL BRIEF.

MR.^ANDERSON DEMONSTRATED BY COMPETENT SUBSTANTIAL EVIDENCE THAT TRIAL COUNCIL RENDERED INEFFECTIVE ASSISTANCE OF COUNCIL DURING HIS PENALTY PHASE.

TRIAL COUNSEL PERFORMANCE FELL BELOW PREVAILING NORMS AND COUNSEL FAILED TO INVESTIGATE AND PRESENT MITIGATION IN THREE SPECIFIC AREAS.

FIRST, TRIAL COUNSEL FAILED TO UNCOVER A 8-YEAR HISTORY OF VIOLENT TRAUMATIC RAPES FOR MR.^ANDERSON.

>> IS THAT OF RECORD?

>> THAT IS RECORD, YOUR HONOR.

>> WASN'T THERE EVIDENCE THAT CAME ON THAT THESE DISCUSSIONS WERE HAD AND THAT THIS WAS NEVER, NEVER DISCLOSED?

ALL THE WHILE THE TRIAL GOING ON AND LEADING UP TO THE TRIAL AND THIS IS SOMETHING COMES UP AFTER TRIAL IS OVER?

>> THAT'S CORRECT, YOUR HONOR.

ABUSE WAS NEVER DISCOVERED.

BRIEFLY EXPLAIN. THE

QUESTIONNAIRE WHICH IS PART OF POST-CONVICTION RECORD, IT SIMPLY WAS A QUESTIONNAIRE MEANT AS YOU CAN SEE TO TAKE A LOOK IT DURING THE INTERVIEW SESSION BETWEEN THE INVESTIGATOR AND THE CLIENT.

WHAT HAPPENED TO MR. ^ANDERSON'S CASE WAS DEPARTURE OF THE NORM. INVESTIGATOR WILLIAMS DROPPED OFF QUESTIONNAIRE TO MR. ^ANDERSON TO FILL IT OUT AND RETURN AT LATER DATE TO COLLECT IT.

TRIAL COUNSEL FOLLOWED UP, HE NEVER FOLLOWED UP TO ANY QUESTIONS.

>> HE ANSWERED NO TO EVERYTHING.

WHAT IS THE FOLLOW-UP?

THIS INDIVIDUAL, SIX YEARS OF COLLEGE, VERY STRAIGHTFORWARD QUESTIONS, VERY SIMPLISTIC QUESTIONS.

I FIND IT DIFFICULT TO AFTER IT IS ALL OVER ALL OF SUDDEN FORGOT TO TELL YOU ABOUT THIS.

ALL OF SUDDEN IT BECOMES A MAJOR FEATURE.

>> WELL, IN THIS CASE, YOUR HONOR, TRIAL COUNSEL'S PERFORMANCE, THEIR MITIGATION INVESTIGATION WAS SO UNREASONABLE.

DID SO LITTLE WORK.

MITIGATION INVESTIGATION BEGAN MERE 12 DAYS BEFORE TRIAL. THIS QUESTIONNAIRE SAT IN A DRAWER FOR ALL WE KNOW.

NOBODY FOLLOWED UP ON IT.

BOTH TRIAL DOWN COUNSELS TESTIFIED TO THAT.

>> ON THE POINT YOU'RE CONCERNED ABOUT, WHAT WOULD THERE HAVE BEEN TO FOLLOW UP ON?

HE WROTE, HE SPECIFICALLY WROTE IN THE QUESTIONNAIRE, I WASN'T AN ABUSED CHILD.

HE WAS PRESENTED WITH THINGS TO UNDERLINE, PROBLEMS HE HAD EXPERIENCED IN HIS CHILDHOOD.

HE, HE UNDERLINED SOME THINGS.

EXTREME FEARS.

ACCIDENT-PRONE.

SICK A LOT.

BUT HE FAILED TO UNDERLINE

SEXUALLY MOLESTED.

NOW, IS IT YOUR CONTENTION THAT BASICALLY IT WAS, COUNSEL HAD A PROFESSIONAL DUTY TO ASK HIM IF

HE MISREPRESENTED FACTS IN HIS ANSWERS TO QUESTIONNAIRE.

>> NO, YOUR HONOR.

WHAT I'M ARGUING COUNSEL HAD A DUTY TO COMPLETE A THOROUGH MITIGATION INVESTIGATION.

THERE WERE ENOUGH RED FLAGS ON THIS QUESTIONNAIRE, HAD COUNSEL CONDUCTED MEANINGFUL MITIGATION PRIOR TO 12 DAYS BEFORE THIS TRIAL WHEN ADMITTEDLY THEY KNEW THIS CASE WAS HOPELESS FROM A GUILT STANDPOINT.

COUNSEL WOULD HAVE DONE, COUNSEL DIDN'T FOLLOW UP ON EXTREME FEARS.

DIDN'T FOLLOW UP ON SICK A LOT.

IN DIRECT CONTRAST TO

MR.^ANDERSON SAYING I HAD A NORMAL CHILDHOOD.

THE QUESTION YOU'RE RESPONSE REFERRING I ABUSED CHILD WAS UNDER A QUESTION OF REFERING TO HIS PARENTS.

IN ADDITION, MR.^ANDERSON LISTED HIS ABUSER ON THE QUESTIONNAIRE.

MICHAEL BETWEEN, THE ABUSER, HIS NAME WAS ON THE QUESTIONNAIRE ABSENT, IN IT WAS IN A LIST OF SEVERAL OTHER PEOPLE WHOSE DEATHS EFFECT MR.^ANDERSON.

>> DR.^McMAHON CONDUCTED FOUR SEPARATE EVALUATIONS RIGHT BEFORE TRIAL, SHE TESTIFIED SHE CONDUCTED A FULL NEUROPSYCHOLOGICAL EVALUATION. CONDUCTED MMPI-2 TEST.

SHE DID EVERYTHING SHE COULD HAVE DONE EVEN IF SHE HAD SIX MONTHS TO DO IT.

SO WHAT ELSE COULD HAVE BEEN DONE?

>> I DISAGREE WITH THAT ASSESSMENT.

DR.^McMAHON IS PSYCHOLOGIST, NOT A NEUROPSYCHOLOGIST.

SHE DID A SCREENING.

NOT THE SAME AS FULL

NEUROPSYCHOLOGICAL BATTERY.

SHE DID DO SOME PSYCHOLOGICAL TESTING.

SHE ONLY MET WITH THE

MR. ^ANDERSON TWO TIMES
PRIOR TO TRIAL.
MET THREE WEEKS PRIOR TO
TRIAL WHEN SHE DID TESTING.
MET WITH HIM ONE MORE TIME ON
TRIAL AND DAY OF TRIAL WITH
HYPNOTIC SESSION.
SHE DIDN'T DO ANY TESTING.
MET HIM AGAIN BETWEEN THE GUILT
AND PENALTY PHASE MERELY TO
REASSESS COMPETENT COMPETENCY.
SHE DIDN'T HAVE ANY BACKGROUND
MATERIAL.
DIDN'T TALK TO ANY MITIGATION
WITNESSES.
SHE SIMPLY DIDN'T HAVE ENOUGH
TIME TO CONDUCT A THOROUGH
EVALUATION.
SHE ADMITTEDLY SAID HAD SHE
KNOWN, ASKED ABOUT THE ABUSE, HE
COULD HAVE BEEN THINKING FROM
HIS PARENTS.
SHE WASN'T THINKING HE WAS
MOLESTED BY INDIVIDUAL ACROSS
THE STREET.
>> WHEN WAS THE FIRST POINT IT
WAS LEARNED ABOUT THIS SEXUAL
ABUSE?
WHEN DID HE FINALLY COME OUT
AND SAY LISTEN THIS HAPPENED TO
ME?
>> IT WAS DISCLOSED DURING
POST-CONVICTION.
>> DURING POST-CONVICTION?
>> THAT'S CORRECT.
>> HE SPOKE TO HOW MANY
PSYCHOLOGISTS, HOW MANY
LAWYERS?
>> AT PRETRIAL HE HAD, THERE
WAS ONE MENTAL HEALTH EXPERT
APPOINTED THREE WEEKS BEFORE
TRIAL.
>> HE HAD DR. ^VILLALOBSS.
>> THAT WAS POST-CONVICTION.
>> DR. ^BERLAND.
DR. ^McMAHON.
>> ALSO IN POST-CONVICTION.
>> THEN TRIAL COUNSEL, TRIAL
COUNSEL THAT WAS BASICALLY TO
AVOID THE DEATH PENALTY.
HE TESTIFIED I BELIEVE DURING
THE EVIDENTIARY HEARING THERE
WAS NOTHING INDICATIVE IN HIS
CONTACT WITH HIS CLIENT THAT

WOULD INDICATE TO THAT SUCH A PROBLEM EXISTED.

>> AND THAT'S --

>> HOW ARE THESE LAWYERS SUPPOSED TO KNOW THESE THINGS? I MEAN HE IS BEING REPRESENTED FOR MURDER.

YOU WOULD THINK THAT, HE WOULD TELL YOUR LAWYER, WHEN I WAS A KID THIS HAPPENED TO ME.

YOU THINK THAT MAY HAVE IMPACT ON THIS?

HOW IS THE LAWYER SUPPOSED TO KNOW THIS.

>> ABSOLUTELY HAD TRIAL COUNSEL DEVELOPED NECESSARY TRUST AND RAPPORT WITH MR.^ANDERSON THAT IS REQUIRED BY PREVAILING NORMS AND, HOLDINGS OF THIS COURT, THEY DIDN'T DO SOME THEY DROP OFF THIS IMPERSONAL FORM TO MR.^ANDERSON AND EXPECT HIM TO DISCLOSE HORRIFIC, EIGHT YEAR TRAUMA OF SEXUAL ABUSE, -- SEXUAL ABUSE.

>> WHAT ARE YOU REALLY SAYING? I THOUGHT YOU I HEARD YOU SAY AT ONE POINT, IF HE HAD GONE THROUGH THIS FORM THAT WAS GIVEN TO MR.^ANDERSON, THERE WAS SOMETHING THERE THAT MAY HAVE BEEN A RED FLAG.

WHAT ON THIS FORM SHOULD HAVE GIVEN THE DEFENSE COUNSEL SOME REASON TO DIG FURTHER.

>> ABSOLUTELY.

SEVERAL THINGS.

FIRST OF ALL, THE CONTRAST BETWEEN MR.^ANDERSON SAYING I WASN'T AN ABUSE CHILD.

I HAD A NORMAL CHILDHOOD AND UNDERLINING OF EXTREME FEARS, ACCIDENT-PRONE, SICK A LOT.

THESE SYMPTOMS FROM HIS CHILDHOOD.

HE UNDERLINED SYMPTOMS

WEIGHT LOSS, WEIGHT GAIN.

SEVERE HEADACHES.

I BELIEVE ANXIETY WAS ALSO ONE OF THEM. AND --

>> WOULD THAT HAVE NECESSARILY, MADE, SOMEONE DECIDE, WELL LET ME FIND OUT IF HE WAS SEXUALLY ABUSED?

OR WOULD THAT LED SOMEONE TO
MAYBE THINK, LET ME LOOK AT
SOME MEDICAL RECORDS.

>> YOUR HONOR, I THINK BOTH.
IT WOULD HAVE, THE
QUESTIONNAIRE WAS MEANT TO BE A
STARTING POINT.

A STARTING POINT FOR THE
MITIGATION INVESTIGATION.
THE PROBLEM WAS, THEY NEVER
FOLLOWED UP ON IT.
THE TRIAL COUNSEL
ESSENTIALLY --
HAD TRIAL COUNSEL SAID --

>>> THIS COURT HAS OBVIOUSLY
SEEN EVIDENCE OF TRAUMATIC
SEXUAL ABUSE EFFECT ON
CHILDREN --

>> THAT IS FINE, BUT WE HAVE
HAD A FULL EVIDENTIARY HEARING
IN THIS CASE VERY BRIEF, THE
JUDGE AGREED TO HAVE AN
EVIDENTIARY HEARING ON EVERY
CLAIM ASKED, THE TRIAL COURT
MADE EXTENSIVE FINDINGS OF
FACT ABOUT WHAT DEFENSE LAWYER
DID TO PREPARE FOR MITIGATION
IN THIS TRIAL.

YOU SAY IT WASN'T
ENOUGH, BUT THAT IS NOT THE
STANDARD UNDER THE 6TH
AMENDMENT, OR STRICKLAND, AND WE
HAVE TO DEFER TO FACTUAL
FINDINGS, AND THE JUDGE
FOUND THAT THE PERFORMANCE WAS
NOT SUFFICIENT.

FOR YOU TO SAY HE SHOULD HAVE
COVERED MORE ABOUT SEXUAL
ABUSE OR THE DOCTOR SHOULD
HAVE ASKED MORE QUESTIONS,
SEEMS WE ARE SECOND-GUESSING
WHAT WAS GOING ON, I
DON'T -- WE HAVE HAD CASES,
WHERE THE DEFENSE LAWYERS
VIRTUALLY DO NOTHING.
THIS ISN'T THAT CASE, YOU HAVE TO
AGREE WITH THAT.

>> WELL, CERTAINLY THEY DIDN'T
DO NOTHING, BUT I BELIEVE THE
RECORD IS CLEAR BELOW THAT
THE ACTUAL MITIGATION
INVESTIGATION DIDN'T START
TILL THE MONTH OF TRIAL.

INVESTIGATORS, WILLIAMS NOTES

--

>> YOU ARE REARGUING WHAT WAS PRESENTED TO THE TRIAL COURT, WHO MADE FINDINGS OF FACT, THAT WE HAVE TO DEFER TO THAT. THERE WAS AN EXTENSIVE INVESTIGATION THAT WAS DONE BY THE DEFENDANT, AND DEFENSE LAWYER.

THE MERE FACT THAT ONE MIGHT SAY, WELL, THEY SHOULD HAVE STARTED TWO MONTHS BEFORE -- BUT THAT IS NOT REALLY -- WE HAVEN'T PUT A BRIGHT LINE RULE WHEN DEFENSE LAWYER IS SUPPOSED TO START INVESTIGATING MITIGATING EVIDENCE, HAVE WE?

>> NO, I MEAN PREVAILING NORMS, A.B. GUIDELINES INDICATE MITIGATION SHOULD BEGIN AS SOON AS POSSIBLE, AS SOON AS THE -- THIS CASE ASIDE, I THINK --

>> THE THING THAT TROUBLES ME THE MOST ON YOUR POINT IS THIS.

I UNDERSTAND THAT SEXUAL ABUSE OF A YOUNG BOY GOING THROUGH A PERIOD OF TIME MUST BE INCREDIBLY TRAUMATIC. BUT IN THIS CASE, GIVEN THE NATURE OF THIS CRIME, NOT A SEXUAL CRIME, NOT A CRIME OF -- VIOLENCE, I MEAN A CRIME OF VIOLENCE -- NOT A RAGE CRIME, IT WAS A CAREFULLY PLANNED CRIME. EVEN IF THIS EVIDENCE, THE SEXUAL ABUSE, HAD COME IN, WHAT YOU HAVE TO MEET IS THE SECOND PRONG OF STRICKLAND, BUT IS IT PREJUDICE THAT OUR CONFIDENCE IN THE OUTCOME OF THIS DEATH PENALTY IS UNDERMINED?

I HAVE A HARD TIME SEEING HOW THIS EVIDENCE PRESENTED TO THE JURY PUT THIS -- AS FAR AS MURDER, AGGRAVATOR MITIGATORS SUCH A DIFFERENT LIGHT AS TO INCREDIBLE COMPETENCY OUTCOME -- WHAT IS YOUR BEST

ARGUMENT ON THAT?

>> SEVERAL ARGUMENTS.

THIS WAS

A -- OBVIOUSLY WITH --

AGGRAVATOR -- THERE WAS NO
STATUTE OF MITIGATION FOUND AT
ALL.

DEFENSE DIDN'T ARGUE FOR
ANY.

>> HOW WOULD THIS HAVE
GIVEN A STATUTORY
MITIGATION, THE FACT HE WAS SEXUALLY
ABUSED WHEN A YOUNG BOY?

>> EVIDENCE AT POSTCONVICTION
BY DOCTORS WAS THAT SEXUAL
ABUSE -- HE MET STATUTORY
MITIGATORS EXTREME EMOTIONAL
DISTURBANCE, THE
IMPAIRED, THE DOCTOR
INTEGRATED SEXUAL ABUSE
POSTTRAUMATIC STRESS DISORDER WITH
ACTIONS ON ROBBERY, ARGUABLY
THIS IS DISTINGUISHABLE FROM SOME
CASES THAT THE STATE RELIED ON
BECAUSE THERE WAS AN
COMPETENCY BETWEEN --

>> I'M SORRY.

HOW DOES THIS
RELATE TO THE ACTUAL DATE OF
THE ROBBERY?

>> WELL THERE WAS TESTIMONY
IN TWO WAYS.

FIRST OF ALL,
OBVIOUSLY, SEXUAL ABUSE AS A
MITIGATOR CAN CERTAINLY BE A
STAND-ALONE MITIGATING FACTOR.
IT OFFERS THE JURY A PICTURE OF
WHO MR. ANDERSON IS, IT OFFERS A
WAY TO HUMANIZE MR. ANDERSON,
PRECISELY WHAT THE LAWYER SAID SHE
WANTED TO DO.

THEY FAILED TO
PRESENT THIS EVIDENCE.
SECOND, THE DOCTOR TESTIFIED AS A
RESULT OF THIS ABUSE,
MR. ANDERSON SUFFERED FROM
POSTTRAUMATIC STRESS DISORDER
ON THE DAY OF THE CRIME IN A
DISSOCIATIVE STATE, EN BANC,
JUSTICE, THERE WAS --

>> HOW DOES THAT BILL RELATE
TO THE ACTUAL FACTS OF THIS
CASE?
IN ANY CASE

DISASSOCIATIVE STATE FACTS
DON'T REPORT THIS, DO THEY?

>> I THINK THEY DO.

THE TESTIMONY IN BRIEF TO READ TO
PLANNING, THE STATE OF MIND THAT
MR. ANDERSON WAS IN AT THE
TIME OF THAT, AND OBVIOUSLY THERE
WAS TESTIMONY --

>> HE BROUGHT A GUN TO -- THE
SAME TWO GUNS.

>> CERTAINLY, THE EVIDENCE, TO
THAT, THE PLANNING TO COMMIT
THE ROBBERY, I MEAN, THAT IS
-- THAT WAS PRESENTED
BELOW, AND I MEAN I THINK I
HAVE TO CONCEDE THERE WAS
CERTAINLY COMPETENT EVIDENCE
THE SHOOTER PLANNED THE ROBBERY.
THE ARGUMENT BELOW WAS THE SHOOTING
WAS NOT PREMEDITATED, THAT --

>> HOW MANY SHOTS WERE FIRED?

>> 10 SHOTS FIRED.

>> BUT REGARDLESS OF WHETHER
OR NOT IT HAS AN -- THIS COURT
NEVER HELD THAT THIS HAS
TO TAKE PLACE BETWEEN --

>> WHEN WE GET TO PREJUDICE
THEN YOU'VE GOT YOU ADMIT
STRONG AGGRAVATORS,
GOES IN A DAY BEFORE, A
CALCULATING CRIME, AND WHETHER
IT WAS DONE OUT OF
DESPERATION, FOR THERE TO BE
THE KIND OF PREJUDICE THAT
REQUIRES A NEW TRIAL BASED ON
POSTCONVICTION PROCEEDING,
THAT IS WHAT I THINK IS
MISSING HERE.

>> CERTAINLY, YOUR HONOR, I WOULD
RESPOND SAYING THIS JURY
VERIFIED VIRTUALLY NO
MITIGATION, THAT HE WAS IN
CHURCH, THIS SEEMS OUT OF
CHARACTER, THEY ARE LEFT WITH
A PICTURE THAT IS A BRUTAL ACT.
SOMETHING AS SIGNIFICANT AS
AN 8-YEAR HISTORY OF TRAUMATIC
SEXUAL ABUSE, VIOLENT REPEATED
HOMOSEXUAL RAPE BY AN OLDER
COUSIN HUMANIZES MR.
ANDERSON BEFORE THE JURY.
I SEE
I'M INTO REBUTTAL.
I WILL BE

HAPPY TO ANSWER ANY
QUESTIONS.

>> THANK YOU.

>> MR. NUNNELLEY.

>> MAY IT PLEASE THE COURT.
KEN NUNNELLEY REPRESENTING
THE STATE OF FLORIDA
IN THIS PROCEEDING.

I DON'T KNOW THAT I NEED TO
SAY A WHOLE LOT ABOUT THE --
COMPONENT I'M NOT GOING TO
CONCEDE -- CERTAINLY DEFICIENT
PERFORMANCE ON THE PART OF
COUNSEL, BUT UNDER THESE
FACTS, WITH THIS MURDER, THIS
COURT IS WELL AWARE WHAT THE FACTS
ARE.

I DON'T NEED TO GO BACK
INTO THEM, THERE IS NO
PREJUDICE, HE CAN NEVER PROVE
STRICKLAND, A PREJUDICE --

>> WHAT MITIGATION WAS FOUND
IN THIS CASE?

>> THERE WAS NO MENTAL HEALTH
MITIGATION, STATUTORY OR
NONSTATUTORY; CORRECT?

>> NO, MA'AM, THERE WAS NO
MENTAL HEALTH MITIGATION FOUND.

DR. MCMAHON DID NOT TESTIFY
AT TRIAL, BECAUSE -- SHE HAD
-- SHE DETERMINED AND THERE IS
NO QUESTION ABOUT HER
COMPETENCE AS A PSYCHOLOGIST,
TOLD DEFENSE COUNSEL
STONE I'VE GOT NOTHING TO SAY
THAT IS GOING TO HELP, AND FOR
THAT REASON MR. STONE DID THAT
LAWYER STUFF THAT THEY HAVE
TO DO IN DECIDING NOT TO CALL
HER AND TO FOCUS ON OR --
PORTRAYING MR. ANDERSON, AS A
COMPASSIONATE KIND OF GUY,
PRETTY GOOD GUY, JUST MADE
THIS ONE MISTAKE.

>> WHAT --

>> HE DIDN'T HAVE ANYTHING TO
WORK WITH --

>> -- FAMILY MEMBERS WERE
INTERVIEWED PRIOR TO THE PENALTY
PHASE, WAS THERE AN OPPORTUNITY
TO HAVE FOUND RAYMOND GREEN,
ALSO SEXUALLY ABUSED BY
MICHAEL GREEN?
WAS HE LISTED?

WAS HE SOMEONE WHO WAS AVAILABLE, THAT THE DEFENSE COUNSEL COULD HAVE FOUND DURING TRIAL PREPARATION?

>> PROBABLY SO.

THEY HAD A NUMBER OF PEOPLE IN -- LET ME BACK UP.

THIS IS A PRETTY SMALL COMMUNITY, THEY HAD ISSUED A -- THE AREA IN LAKE COUNTY, AND MR. ANDERSON I BELIEVE -- DON'T HOLD ME TO THIS IF I MISSPEAK -- I BELIEVE LIVED IN THE EUSTIS AREA, A NUMBER OF RELATIVES LIVED CLOSE BY.

MR. RAYMOND GREEN LIVED IN ANOTHER LITTLE COMMUNITY ABOUT EIGHT MILES FROM MR. ANDERSON'S RESIDENCE. I'M NOT SURE EXACTLY WHERE IT WAS.

MR. ANDERSON, OF COURSE, LIVED WITH HIS MOTHER, A NUMBER OF -- AND A NUMBER OF THESE PEOPLE WERE CALLED TO TESTIFY THAT KNEW MR. ANDERSON, EQUAL NUMBER OF PEOPLE TOLD TRIAL COUNSEL YOU DON'T WANT ME, I'M NOT GOING TO SAY ANYTHING THAT HELPS YOU, AND I'M KIND OF GOING AROUND JUSTICE QUINCE, BUT IT STANDS TO REASON THAT ANDERSON'S MOTHER CERTAINLY KNEW RAYMOND GREEN, KNEW WHO HE WAS.

WHETHER SHE TOLD HIM, WHETHER SHE TOLD DEFENSE COUNSEL ABOUT -- LET ME BACK UP. SHE DIDN'T TELL DEFENSE COUNSEL ABOUT RAY GREEN NOBODY TOLD DEFENSE COUNSEL ABOUT RAYMOND GREEN, AND RAYMOND GREEN WASN'T MENTIONED BY ANY WITNESSES, AS I RECALL THE TESTIMONY, TO EITHER OF DEFENSE COUNSEL.

EVEN IF THAT IS DEFICIENT, EVEN IF IT IS, CAN'T MEET STRICKLAND PREJUDICE -- I CAN'T TALK THIS MORNING -- AGAINST THESE FACTS, AGAINST THIS AGGRAVATION.

THE SEXUAL ABUSE CLAIM CERTAINLY IS HORRIBLE, TERRIBLE. NO CHILD SHOULD HAVE TO GO THROUGH THAT. BUT DOES IT MITIGATE THIS CRIME? NOT ONE BIT.

>> I ASSUME WHAT THEY WOULD BE LOOKING TO IS THAT HE HAS GONE THROUGH THIS TRAUMATIC FINISH HYPOTHETICALLY I ASSUME THIS IS WHAT IT IS, A POSTTRAUMATIC ASSESS SYNDROME KIND OF CIRCUMSTANCE, CREATED IT, CAUSED THE -- REALLY NO EXPLANATION FOR ALL THE SHOOTING REALLY, OTHER THAN THAT THAT IS WHAT HAPPENED, I WOULD THINK --

>> DID EXPERTS TESTIFY THAT THIS IS WHAT SET HIM OFF, ONCE HE WAS IN THE BANK, AFTER HE HAD GONE BACK OUT TO THE CAR, CAME BACK IN, AND -- IS THAT WHAT THIS IS THEORETICALLY ABOUT?

>> I DON'T KNOW, BECAUSE YOU CAN'T TIE CHILD SEXUAL ABUSE BY A MALE COUSIN TO THE EXECUTION OF A BANK TELLER.

>> LET ME ASK YOU THIS, HOW DID THE OPPOSITION EXPERTS ATTEMPT TO CONNECT --

>> THEY DIDN'T.

>> NOT EVEN -- IN ANY WAY, THAT IT HAD NO RELATIONSHIP --

>> NONE.

>> -- TO ACTIONS CONDUCTED IN ANY WAY?

>> NO.

>> LET ME ASK YOU THIS. YOU MENTIONED EARLIER THAT -- THAT DEFENSE COUSEL HAD NOTHING TO WORK WITH FROM A FACTUAL STANDPOINT, MR. ANDERSON WAS APPREHENDED AT THE SCENE OF THE BANK BY POLICE. THEY HAD A STRONG CASE.

>> HE WAS TRULY CAUGHT.

>> -- ISN'T THAT -- MORE REASON TO, PERHAPS, CONCENTRATE ON THE EFFORT IN SAVING HIM FROM THE DEATH PENALTY, DIG DEEPER INTO PERSONAL BACKGROUND, CHILDHOOD, INTO THIS FAMILY COUSIN,

WHATEVER, WOULDN'T THAT NOT
HAVE BEEN THE WAY TO GO, TO
SEE WHAT COULD BE FOUND
OUT, THAT PERHAPS MAY SWAY A
JURY OUT OF RECOMMENDING DEATH?
ISN'T THAT WHAT THEY ARE ARGUING
HERE?

>> BUT THAT IS WHAT THEY DID.
THAT IS WHAT DEFENSE COUNSEL
DID.

AND IF NO ONE SAYS ANYTHING TO
-- TWO VERY EXPERIENCED PUBLIC
DEFENDERS AND EXTREMELY
EXPERIENCED PUBLIC DEFENDER
INVESTIGATOR TO INTIMATE,
SUGGEST OR EVEN HINT
MR. ANDERSON HAD EVER BEEN
SEXUALLY ABUSED, WHAT IS
DEFENSE COUNSEL SUPPOSED TO DO?
IS HE -- LET ME PUT IT THIS
WAY.

IS DEFENSE COUNSEL
SUPPOSED TO DO TO
MR. ANDERSON'S -- SAY WE
HAVE A QUESTIONNAIRE, HE
SAYS HE WAS -- ABOUT THE
SEXUALLY ABUSED, WE WANT TO ASK
YOU WAS HE SEXUALLY ABUSED.
THEY DID THAT.

SHE SAID NO, SHE
DIDN'T KNOW ABOUT IT.

>> YOU COULD HAVE ASKED.
SOMETIMES PEOPLE ARE TOO
ASHAMED, EMBARRASSED.
ARE YOU SURE IT DIDN'T HAPPEN?
IS THERE

ANY INCIDENT IN THE -- THAT HE
IS TOO ASHAMED TO MENTION THAT
HE IS WILLING TO DIE RATHER
THAN MENTION?

>> THAT TESTIMONY
WASN'T DEVELOPED, IT WAS VERY
CLEAR NOT JUST ONCE BUT
REPEATEDLY DENIED ANY SEXUAL
ABUSE.

THIS IS NOT -- WELL --
HINYARD HAVE SOME UNDERCURRENT
OF SEXUAL HUES
FLOATING AROUND OUT THERE?

>> BUT, IN THIS PARTICULAR
CASE, THERE IS NOT EVEN A
SUGGESTION THAT WOULD GIVE
EVEN A TWITCH OF INFORMATION
TO FOLLOW UP AND SUGGEST THAT

THIS SEXUAL ABUSE, THEY GOT --
YOU GOT TO LOOK AT FROM
DEFENSE COUNSEL'S PERSPECTIVE,
TOO.

THEY'VE GOT A CLIENT
THAT IS ABSOLUTELY AS COLD AS
ONE CAN BE.

IT DOESN'T GET ANY
BETTER FOR THE STATE, AND IT
DOESN'T GET ANY WORSE FOR THE
DEFENSE.

>> ISN'T THAT THE POINT,
THOUGH, IN TERMS OF HAVE
JUSTICE IS ASKING YOU ABOUT,
IS WE KNOW THAT EITHER YOU ARE
GOING TO PLEAD GUILTY, OR
ESSENTIALLY THERE IS NOT
MUCH YOU CAN DO TO AVOID A
A CONVICTION, EVERY OUNCE OF
YOUR TIME AND ENERGY IS SPENT
FIGURING OUT HOW TO SAVE
HIM FROM THE DEATH PENALTY.
HE HIRED DR. MCMAHON BUT ONLY
TWO WEEKS BEFORE THE TRIAL
STARTED.

>> SHE WAS INVOLVED IN THE
CASE BEFORE THAT.

>> SO, YOU KNOW, I GUESS IT
DOES LOOK LIKE THIS IS NOT THE
STANDARD UNDER STRICKLAND, BUT
IT -- THERE WASN'T THE KIND OF
CAREFUL PREPARATION FOR THE
PENALTY PHASE THAT ONE WOULD
EXPECT SHOWING THAT THERE IS
NOTHING MUCH YOU CAN DO ABOUT
THE GUILT PHASE.

SO GOING

BACK TO THIS ISSUE OF WHAT
ELSE YOU COULD DEVELOP, I
THOUGHT THAT THE EXPERTS
THAT WERE CALLED AT THE
EVIDENTIARY HEARING, DR.
BERLAND AND -- DID TESTIFY
AS TO STATUTORY MENTAL
MITIGATION; IS THAT CORRECT?
THEY DID OR DID NOT?

>> THEY TESTIFIED IT WAS
PRESENT THE STATE EXPERT
TESTIFIED IT WAS FOR THE -- LET ME
GO BACK.

>> WHAT WAS IT THAT THE TWO
EXPERTS, MENTAL HEALTH EXPERTS
TESTIFIED TO THAT CONNECTED
HIS CRIME TO HIS MENTAL

HEALTH, UNDERLYING
MENTAL ILLNESS OR HISTORY OF
POSTTRAUMATIC STRESS
DISORDER?

DIDN'T THEY TRY TO
LINK THAT UP?

>> IT WAS KIND OF --

[INAUDIBLE] TESTIMONY, JUSTICE.
LET ME TALK A LITTLE BIT ABOUT
WHAT EXPERT TESTIMONY AT TRIAL
WAS.

I'M SORRY.

AT THE POSTCONVICTION
HEARING DR. VILLALBA
TESTIFIED THAT ANDERSON'S
POSTTRAUMATIC STRESS DISORDER

--

>> AS A RESULT OF THE SEXUAL
ABUSE.

>> AS A RESULT OF THE SEXUAL
ABUSE, AND BORDERLINE, AND
BORDERLINE PERSONALITY
DISORDER, WHICH IS KIND OF A --
AKIN TO ANY SOCIAL PERSONALITY
DISORDER, ARGUABLY WORSE.

>> DR. BERLAND, WHO ALSO TESTIFIED
AT A POSTCONVICTION PROCEEDING SAYS THAT
ANDERSON IS NOT BORDERLINE
PERSONALITY DISORDERED, BUT
RATHER IS WHAT DR. BERLAND
CALLS AN AMBULATORY PSYCHOTIC
WHICH IS -- NOT IN -- DSM, BUT
I GUESS IT WILL WORK FOR OUR
PURPOSES HERE.

DR. BERLAND SAYS HE DID NOT LOOK AT
POSTTRAUMATIC STRESS DISORDER.
WHY HE DIDN'T DO THAT, HE NEVER
EXPLAINED.

>> BUT HE TESTIFIED THAT
THERE WAS IN THIS -- WE HAVEN'T
DISCUSSED THIS MORNING, THAT
THERE WAS BRAIN INJURY
RESULTING FROM AN AUTOMOBILE
ACCIDENT.

>> SO I GUESS HE WAS
TESTIFYING THERE MIGHT BE
BRAIN DAMAGE?

>> YES, MA'AM.

BUT THERE IS NO
INDICATION, NO SUGGESTION, NO
INTIMATION OF ANY PROCESS
THAT CAUSED MR. ANDERSON TO
SHOOT TELLERS 10 TIMES WITH
TWO WEAPONS UNDER THESE FACTS,

NOW, THE STATE'S EXPERT, DR. MCLAREN, TESTIFIED THAT IN HIS OPINION ANDERSON WAS NOT POSTTRAUMATIC STRESS DISORDERED. BECAUSE MR. ANDERSON, AT LEAST TO DR. MCLAREN AND MASON HAS A HISTORY OF DECEPTION. WE DON'T QUITE KNOW WHAT TO BELIEVE WHEN HE SAYS IT, BUT ANDERSON, TO DR. MCLAREN DENIED A CRUCIAL COMPONENT OF A POSTTRAUMATIC STRESS DOCTORED DIAGNOSIS THAT ANDERSON DENIES REEXPERIENCING THE TRAUMATIC EVENT, WHICH IS ONE OF THE DIAGNOSTIC CRITERIA THAT HAS TO BE PRESENT BEFORE SAYING THAT SOMEONE IS POSTTRAUMATIC STRESS DISORDERED. WHAT YOU HAVE IS THIS JUMBO OF PSYCHOLOGICAL TESTIMONY THAT CANCELED ITSELF OUT.

>> YOU ARE SAYING WITH ALL OF THIS IF WE EXAMINE WHAT TESTIMONY DOESN'T RISE TO THE -- THE WORDS THAT HE WAS UNDER EMOTIONAL DISTRESS -- LET ME FINISH.

>> SORRY.

>> IT DOESN'T RISE TO THE LEVEL OF REALLY GIVING ANY MEANINGFUL EXPLANATION OF HOW HIS PAST, CAN IMPLEMENT WHAT HAPPENED THAT DAY?

>> NO, MA'AM.

>> THE ONLY THING, THIS MURDER, THIS MURDER AND THIS ATTEMPTED MURDER WERE COMMITTED BECAUSE MR. ANDERSON DIDN'T WANT TO GO TO PRISON, BECAUSE HE OWED \$4,000 IN RESTITUTION.

AND HE WANTED TO GET THAT MONEY, AND NOT GO TO PRISON. THAT IS WHAT HAPPENED WITH HIM.

AND --

>> BUT DOESN'T THAT ITSELF SHOW SOME KIND OF ABNORMAL, HE

DIDN'T HAVE ABILITY TO PAY,
NOBODY WAS GOING TO SEND HIM
TO -- PROSECUTE FOR FAILURE TO PAY
RESTITUTION --

>> HE'S GOING TO BE SENT
TO RESTITUTION CENTER IN
ORLANDO TO WORK OFF THE OWED
RESTITUTION, IF YOU RECALL THE
DAY BEFORE THE ROBBERY TOOK
PLACE MR. ANDERSON CALLED HIS
PROBATION OFFICER AND TOLD HER
HE HAS MONEY I'VE GOT
THE MONEY, HOW DO I GO ABOUT PAYING
THIS SO I DON'T HAVE TO GO DOWN
TO DRR CENTER DOWN IN ORLANDO.
BUT IN GOING BACK TO
THE VERY FIRST THING YOU ASKED,
YOU KNOW, WITH THIS
QUESTION WE HAVE HAD GOING ON
HERE, JUSTICE, I'M PARAPHRASING
WHAT YOU SAID ALONG THE LINES
WHEN YOU GOT A CASE LIKE THIS
-- SHOULDN'T COUNSEL BE
WORKING HARDER ON THE PENALTY.
I'M DOING A POOR JOB
PARAPHRASING YOUR QUESTION,
BUT THE ANSWER IS, YES, THEY
SHOULD, AND FOR THAT REASON,
YOU DON'T FOCUS ON MATTERS
THAT THE CLIENT HAS TOLD
YOU ARE GOING TO HELP,
DON'T YOU FOCUS ON ISSUES THAT
HAVE BEEN AFFIRMATIVELY DENIED
BY THE CLIENT BECAUSE YOU NEED
TO BE LOOKING FOR SOMETHING
THAT IS GONNA HELP RATHER THAN
RUNNING A RABBIT DOWN A TRAIL THAT
DOESN'T HAVE ANYTHING AT THE
END OF IT?
THAT IS WHAT COUNSEL
THOUGHT THEY HAD, AND HAD BEEN
TOLD THEY HAD AS TO THIS
SEXUAL ABUSE TESTIMONY.
BUT THE BOTTOM LINE -- I MEAN
WHEN IT IS ALL I GUESS SAID
AND DONE, THE DEATH PENALTY, THE
POSTCONVICTION PROCESSING WAS
BASICALLY THE WHAT-MIGHT-HAVE-BEEN
TYPE OF PRESENTATION,
THAT WE FREQUENTLY SEE IN POSTCONVICTION
MENTAL HEALTH ISSUES,
IN THIS PARTICULAR CASE, THIS
TESTIMONY FROM THE VARIOUS
MENTAL HEALTH EXPERTS WHO

TESTIFIED, INCLUDING DR. MCMAHON, WHO DID NOT CHANGE WHAT WOULD HAVE BEEN HER TRIAL TESTIMONY HAD SHE BEEN CALLED, BUT SHE WASN'T, DR. MCMAHON DIDN'T CHANGE HER OPINION, IF YOU PUT -- THEM UP THERE TOGETHER, YOU HAVE A WASHOUT, YOU DON'T HAVE ANY MENTAL MITIGATION. TO BEGIN WITH, YOU'VE GOT A 12-0 JURY RECOMMENDATION.

I WOULD SUGGEST THAT WOULDN'T CHANGE EVEN IF IT HAD BEEN SUBMITTED TO THAT -- TO THE LAKE COUNTY JURY.

I ASK THE COURT TO AFFIRM --

>> THANK YOU -- POINTS TO CLARIFY.

FIRST OF ALL, RAYMOND GREEN DID TESTIFY AT THE POSTCONVICTION HEARING, HE WAS AVAILABLE AT THE TIME OF TRIAL, AND THAT HAD HE BEEN CONTACTED BY TRIAL COUNSEL HE WOULD HAVE TESTIFIED TO SEXUAL ABUSE.

>> HOW IS TRIAL COUNSEL IN TERMS OF A REASONABLE COMPETENT DEFENSE COUNSEL, HOW IS HE SUPPOSED TO FIND MR. GREEN? HE DID A LOT -- AS INVESTIGATOR WENT OUT, HE ASKED FOR A LIST OF WITNESSES, HE TALKED TO HIS MOTHER, I JUST -- I THINK THAT AT SOME POINT WHERE WE ARE GOING, WELL, NOW YOU HAVE THE CHANCE TO FIND HIM, SO THAT MUST MEAN SOMEONE SHOULD HAVE BEEN LOOKING FOR HIM.

>> YOUR HONOR, I DISAGREE WITH THE FINDING BY THE TRIAL COURT. I DON'T BELIEVE IT IS SUPPORTED BY COMPETENT EVIDENCE, COUNSEL DID A LOT, NO INDICATION ANY MITIGATION WITNESSES WERE SPOKEN TO MORE THAN 12 DAYS PRIOR TO TRIAL. THEY HAD THE CASE FROM MARCH '99 TO SEPTEMBER 2000, ADMITTED FROM THE VERY BEGINNING THIS CASE WAS HOPELESS, THAT -- JUSTICE, AND YOU POINTED OUT --

>> EVEN IF 12 DAYS BEFORE TRIAL DID ANYONE MENTION RAYMOND GREEN OR MICHAEL

GREEN?

>> YES, MICHAEL GREEN'S NAME WAS ON THE QUESTIONNAIRE FROM THE VERY BEGINNING.

>> MICHAEL GREEN WAS DEAD SO WE KNOW THAT THEY COULDN'T GO FIND MICHAEL GREEN.

WAS RAYMOND GREEN'S NAME MENTIONED BY ANY OF THE WITNESSES THAT WERE QUESTIONED BY THE INVESTIGATOR OR THAT MR. ANDERSON HIMSELF --

>> THE RECORD IS SILENT WHETHER RAYMOND GREEN'S NAME WAS ACTUALLY LISTED --

>> DID DEFENSE COUNSEL SAY THEY DO NOT RECALL ANY RAYMOND GREEN BEING --

>> THAT QUESTION WAS NOT ASKED, AT POSTCONVICTION I BELIEVE THE RECORD IS SILENT WHETHER OR NOT TRIAL COUNSEL KNEW OF THE EXISTENCE OF RAYMOND GREEN --

>> THEY DIDN'T ASK HIM WHETHER TRIAL COUNSEL -- WHETHER THEY KNEW OF RAYMOND GREEN.

>> I BELIEVE THE RECORD SPEAKS FOR ITSELF, I BELIEVE IT IS SILENT WHETHER THEY KNEW RAYMOND GREEN.

CERTAINLY RAYMOND GREEN TESTIFIED A FAMILY MEMBER, NOT LIKE A STRANGER, HE LIVED IN TOWN, A FAMILY MEMBER MR. ANDERSON'S MOTHER KNEW.

THAT BRINGS ME TO ANOTHER POINT.

I BELIEVE MR. ANDERSON'S RECORD WILL SPEAK FOR ITSELF.

I DON'T BELIEVE MISS ANDERSON WAS EVER ASKED WHETHER OR NOT MR. ANDERSON WAS SEXUALLY ABUSED.

I DON'T THINK THAT IS A ACCURATE REFLECTION OF THE RECORD.

MR. NUNNELLEY STATED TRIAL COUNSEL WENT TO

ANDERSONS'S MOTHER, ASKED WHETHER OR NOT MR. ANDERSON HAD BEEN SEXUALLY ABUSED.

SHE SAID NO, DIDN'T BELIEVE THAT IS AN ACCURATE REPRESENTATION WHAT

HAPPENED.

IN ADDITION, DR.

MCMAHON --

>> DOES SHE EVEN KNOW ABOUT --

MICHAEL GREEN, OR RAYMOND
GREEN, DOES SHE KNOW --

>> SHE KNEW WHO THEY WERE.

>> DOES SHE KNOW HER SON HAD
BEEN SEXUALLY ABUSED BY
MICHAEL GREEN?

>> NO, SHE WAS --

>> DID SHE KNOW RAYMOND GREEN
HAD BEEN SEXUALLY ABUSED BY
MICHAEL GREEN?

>> SHE DID NOT, A TRAUMATIC
EVENT THAT TWO CONSPIRED
THROUGHOUT THEY MAY HAVE HID
THIS --

>> I UNDERSTAND THIS, THIS IS THE
BOTTOM LINE.

THIS CRIME ITSELF,
IF YOU ARE LOOKING AT IT AS A
LAWYER, AS A DEFENSE LAWYER, EVEN
AN EXPERIENCED DEFENSE LAWYER, YOU
ARE GOING -- LET'S SEE --
COMMITTING ROBBERY, BRUTAL
KILLING OF BANK TELLER,
BECAUSE I'M DESPERATE FOR
MONEY, AND I TOLD MY PROBATION
OFFICER I'M GOING TO HAVE
MONEY, YOU KNOW, THIS SOUNDS LIKE
A GUY THAT IS SEXUALLY ABUSED --
IT DOESN'T.

THE TWO JUST DON'T GO
ALONG.

TO PUT SOMEBODY ON
NOTICE THAT THEY BETTER START
LOOKING FOR SEXUAL ABUSE -- IF HE
HAD, YOU KNOW, MURDERED A
CHILD AND WAS A JIMMY RICE
TYPE CASE, YOU WOULD BE GOING
WHAT ELSE IS IN THE BACKGROUND
TO, YOU KNOW, JUSTIFY OR TO
EVEN NOT JUSTIFY -- TO EXPLAIN
WHAT MIGHT HAVE HAPPENED.
BUT THAT IS WHERE I'M -- IT IS THAT THE
TWO JUST DON'T SEEM TO GO
ALONG, DID HE HAVE A LAWYER'S
MIND AFTER IT HAS BEEN
EXPLICITLY DENIED TO RISE TO
LEVEL OF SUFFICIENT
PERFORMANCE.

>> I UNDERSTAND.

HOWEVER, I

THINK YOU MENTIONED EARLIER THIS CRIME WAS SORT OF -- SO OUT OF CHARACTER FOR MR. ANDERSON IT DOES EVIDENCE SOME ABNORMAL THINKING THAT YOU KNOW YOU'VE GOT THIS PERSON, NO HISTORY OF PRIOR VIOLENCE, SOME -- HAD PRIOR FELONY, OBVIOUSLY GRAND THEFT, SAID HE WAS NEEDING MONEY FOR, BUT IT IS SO OUT OF CHARACTER THAT THERE MUST BE SOMETHING GOING ON, THERE HAS TO BE SOMETHING GOING ON WHEN YOU LOOK AT THE QUESTIONNAIRE, THE RED FLAGS ARE ON THE QUESTIONNAIRE, THAT MAY HAVE NEVER FOLLOWED UP ON, AND THE PROBLEM IS THAT COUNSEL -- KNOWING THAT THEY HAD --

>> HOW IS SEXUAL ABUSE AN EXPLANATION FOR THIS CRIME?

>> OKAY.

>> YOU ARE ALMOST OUT OF TIME, BUT JUST TELL ME WHAT IS -- AND BECAUSE, CLEARLY, THESE -- EXPERTS THAT YOU PRESENTED COULDN'T GIVE A COHERENT VIEW HOW ONE RELATED TO THE OTHER TO SHOW STATUTORY MENTAL MITIGATION.

>> I THINK THAT EXPERTS DID -- I THINK DR. VILLALBA EXPLAINED POSTTRAUMATIC STRESS DISORDER, HOW IT AFFECTED ON THE DAY OF CRIME, THIS IS A SO STAND-ALONE MITIGATING FACTOR, THERE IS NO REQUIREMENT THE MITIGATION ACTUALLY HAS NEXUS TO THE CRIME.

I UNDERSTOOD THE COURT'S CONCERN, BUT THERE IS NO REQUIREMENT, THERE HAS NEVER BEEN A REQUIREMENT.

>> WE UNDERSTAND THAT, BUT TO UNDERMINE CONFIDENCE IN THE OUTCOME WITH THE AGGRAVATORS YOU HAVE TO COME UP WITH, SOMETHING THAT WOULD BE I KNOW SORT OF BEING THE HOME RUN OF MENTAL MITIGATION TO OVERCOME THE KIND OF AGGRAVATION IN THIS CASE, WHY I'M BRINGING IT UP.

>> I UNDERSTAND THAT THERE IS A CASE, TRIAL COUNSEL'S REPRESENTATION ALL ABOUT NORMS, THEY DIDN'T SEPARATE MITIGATION ESSENTIALLY PRESENT NOTHING TO OFFER INJURY, ANY CLEAR UNDERSTANDING OR POSSIBLE REASON WHY MR. ANDERSON COULD HAVE COMMITTED THE ACT.

I'M ALMOST OUT OF TIME.

I ASK THIS COURT TO REVERSE, REMAND FOR NEW TRIAL.

THANK YOU.

>> THANK YOU BOTH FOR YOUR ARGUMENTS.

THE COURT WILL NOW TAKE ITS MORNING RECESS, FOR 10 MINUTES.