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Ronald Palmer Heath v. State of Florida

SC07-771

RONALD PALMER HEATH V STATE OF FLORIDA
OCTOBER 8 2008

>>> FIRST CASE THIS MORNING, HEATH
VERSUS STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT.

MY NAME IS ROBERT HARPER WITH THE
COUNSEL TABLE IS MY LAW PARTNER
AND MY SON ROBERT HARPER III.

WE ARE

HERE ON BEHALF OF OF MR. RONALD
PALMER HEATH, THE 30 YEARS PLUS
THAT I'VE BEEN LOOKING AT DEATH
PENALTY WORK AND DOING THIS
WORK, IN FRONT OF THIS
ASSEMBLAGE HAS CERTAINLY CHANGED
A LOT FROM TALKING ABOUT THE
INITIAL GETTING THINGS MOVING
AFTER FUHRMAN, TO HOW DO WE GET
THIS INSTITUTION THAT HAS BEEN
DORMANT IN THE INTERVENING YEARS
AND ADDRESS ALL DUE PROCESS
ISSUES THAT NEED TO BE ADDRESSED
BEFORE IT.

THE DEATH PENALTY
PROCESS REACHES A RELIABILITY
LEVEL THAT WE CAN DEPEND ON.
I SUBMIT THAT THIS CASE HAS YET
TO REACH THAT POINT, AND THE
PROCESS ITSELF HAS FLAWS PARTICULARLY
PERTINENT, MOST DIFFICULT FOR ME
TO RECONCILE IN THIS CASE THAT
IS THE TRIAL JUDGE MAKING THE
FINDING THAT IN HIS SENTENCING
ORDER IT HAS NOT BEEN PROVEN
BEYOND A REASONABLE DOUBT THAT
RONALD PALMER HEATH KILLED
ANYBODY IN THIS CASE.

>> -- KEEP YOUR VOICE UP,
PLEASE.

>> IN THIS PARTICULAR CASE -- ARE
YOU GOING TO DISCUSS ALL THESE
ISSUES, OR ARE YOU GOING TO GET
TO THE RECANTATION ISSUE FIRST?
OR --

>> WELL, I'VE BEEN PRACTICING
TOO MUCH IN FRONT OF JUDGE

CHOFLAT, AS HE SAYS, "GIVE ME YOUR BEST SHOT FIRST."

I WAS NOT NECESSARILY GOING TO FOLLOW THE ORDER OF THE BRIEF, YOUR HONOR.

>> GIVE US YOUR BEST SHOT FIRST.

>> ALL RIGHT.

>> WE WILL APPRECIATE THAT, TOO.

>> AND, ACCORDINGLY, WE RELY MOST HEAVILY ON THIS FINDING BY THE JUDGE, THAT IT WAS NOT PROVEN BEYOND A REASONABLE DOUBT THAT MR. RONALD PALMER HEATH CAUSED THE DEATH IN THIS CASE.

>> WOULD YOU JUST TELL US WHICH -- YOU KNOW, BECAUSE YOU HAVE SEVERAL ISSUES -- SO THAT WE CAN FOCUS.

WHAT ISSUE IS THAT?

>> I'VE BEEN CALLING IT THE CAMPBELL SLATER ISSUE, BUT I KNOW THAT IS NO HELP TO YOU.

LET'S SEE.

IT IS IN THE INITIAL BRIEF, PAGES 85 FOLLOWING -- AND

--

>> IS YOUR CONCERN THE CUMULATIVE --

>> NUMBER 7, THE NON-- NO, LET'S SEE.

WELL, IT IS NOT -- THE ISSUE -- JUST THAT WE ARE JUST TRYING TO FIGURE OUT BECAUSE THE FIRST POINT YOU RAISED HAD TO DO WITH THE RECANTED TESTIMONY

TESTIMONY OF THE BROTHER TO THE TRIAL COURT FINDING ON THAT.

IS THIS A DIFFERENT ISSUE THAN RECANTED --

>> YES, MA'AM.

>> YOU SAID THE JUDGE MADE A FINDING THAT -- HE DIDN'T KILL ANYONE, THE FINDING WAS MADE IN THIS -- ORDER IN THIS CASE?

>> IN THE SENTENCING ORDER IN THIS CASE, YES.

>> THE ORIGINAL SENTENCE? IN THE ORIGINAL SENTENCE ORDER.

>> BUT THEN THE COURT UPHELD THE DEATH PENALTY.

>> YES, MA'AM.

>> YOU SAID WHAT YOU ARE GOING TO DO IS SHOW HOW THAT

UNRELIABLE WHAT HAVE YOU PUT ON
IN THIS POSTCONVICTION
PROCESSING TO RENDER THE FACT
THAT THE COURT MADE A FINDING,
WHATEVER YOU SAID IN THE
SENTENCING ORDER, THAT THAT
WOULDN'T JUSTIFY THE
IMPOSITION OF THE DEATH
PENALTY?

>> I UNDERSTAND BETTER.

>> OKAY.

>> THERE ARE SEVERAL THINGS,
YOUR HONOR.

ONE IS THE CHIEF, IF NOT THE SOLE
DIRECT EVIDENCE AGAINST
MR. RONALD HEATH WAS, OF COURSE,
THE TESTIMONY WITH HIS BROTHER
KENNETH HEATH, WHO I SUBMITTED
RECANDED HIS TESTIMONY.

>> I THINK THAT IS WHERE WE --
ISN'T THAT WHAT JUSTICE ASKED
YOU -- -- RECANDED TESTIMONY?

>> SHE DID, BUT -- I SEE BETTER
WHERE YOU -- HOW IT COMES INTO
FOCUS HERE, BECAUSE THE
RELIABILITY ISSUE, FACTUALLY,
THERE ARE FACTUAL ISSUES I THINK
THAT IMPUGN THE RELIABILITY
OF THIS DEATH SENTENCE, AND
THERE ARE LEGAL ISSUES.

>> LET'S GO TO THE FACTUAL
ISSUES, AS TO THE RECANDED QUOTE
RECANDED TESTIMONY THE JUDGE
MADE FINDINGS OF.

I MEAN, WAS

THERE AN EVIDENTIARY HEARING ON
MR. HEATH'S TESTIMONY?

>> YES, MA'AM.

>> ALL RIGHT.

AND THE JUDGE FOUND
IT WAS NOT RELIABLE?

>> MADE THOSE FINDINGS.

>> ALL RIGHT.

AND YOU ARE -- SINCE
YOU ARE AN EXPERIENCED LITIGATOR
YOU KNOW THAT WE RELY HEAVILY ON
THE JUDGE'S FINDINGS ON
CREDIBILITY, AND, YOU KNOW, MR. RUSH, WHAT
I GUESS I GOT THE SENSE OF AS
THAT REALLY WASN'T ALL THAT
DIFFERENT, WHAT HE SAID NOW THAN
WHAT HE SAID AT THE ORIGINAL
TRIAL, STILL PLACES HIS BROTHER
AS THE MAJOR

PERPETRATOR OF THIS OFFENSE.

>> THERE'S SOME CONSIDERABLE DIFFERENCES, YOUR HONOR, WHAT --

>> DON'T WE COME BACK TO THE POINT THAT -- THAT THE POSTCONVICTION FOR THIS -- DISCREDITED RECANTATION THE TRIAL COURT DISBELIEVES -- WHETHER DIFFERENT OR NOT, KIND OF BESIDE THE POINT, ISN'T IT?

>> WELL, WHEN WE TALK ABOUT CONSISTENCY AND RELIABILITY, YOU HAVE A STAR EYEWITNESS WHOSE TESTIMONY IS DIFFERENT AND TWO PROCEEDINGS WHERE A MAN'S LIFE IS AT STAKE, GOOD ENOUGH TO PUT HIM TO DEATH BUT NOT GOOD ENOUGH TO GIVE HIM A LIFE SENTENCE.

AND THERE ARE MAJOR DIFFERENCES BETWEEN SOMEBODY SHOOTING SOMEBODY --

>> DEAL WITH THE FACT THAT HE SAYS THAT HE TOLD THE TRUTH, BOTH TIMES.

HE TELLS US THAT HE IS DOING THIS, BASICALLY, BECAUSE HIS MOTHER WANTS HIM TO DO IT. SO HOW DO WE DEAL WITH THIS?

A TRIAL JUDGE USED THOSE FACTORS AND SAID THIS MAN'S RECANTATION, IF THAT IS WHAT YOU WANT TO CALL IT, REALLY IS NOT RELIABLE.

>> WELL -- YOU BETTER UNDERSTAND WHY I WAS STARTING OFF THIS ARGUMENT WITH THE FACT THAT THE FINDING OF THE TRIAL JUDGE WAS THAT IT WASN'T PROVEN BEYOND A REASONABLE DOUBT THAT --

>> WHERE WAS THIS FINDING AND IN WHAT -- SEE, WE ARE -- WE ARE STILL STRUGGLING WITH WHAT ISSUE IS IT YOU ARE TRYING TO PUT BEFORE US THAT YOU PUT IN THIS BRIEF.

WHERE IS THAT ISSUE ABOUT THE TRIAL JUDGE'S FINDINGS, THAT THIS MAN DID NOT KILL HIM?

>> I GUESS WE NEED TO FOCUS ON THIS, BECAUSE YOUR TIME IS RAPIDLY DECREASING HERE.

>> PAGE TWO OF THE INITIAL BRIEF RECITES -- PAGE ONE AND PAGE TWO OF THE INITIAL BRIEF RECITE TO THE

ORDER IMPOSING DEATH, WHICH WAS RECORDED IN THE RECORD AT PAGE 446 THROUGH PAGE 452.

>> OKAY.

THIS IS THE BOTTOM LINE, AT LEAST FOR ME, IN THE ORIGINAL OPINION AFFIRMING THE IMPOSITION OF THE DEATH PENALTY AGAINST MR. HEATH, THE POINT WAS RAISED THAT HE CLAIMS THE TRIAL COURT ERRED IN SENTENCING HEATH TO DEATH BECAUSE HE WAS NO MORE CULPABLE THAN THIS BROTHER KENNETH, WHO RECEIVED A LIFE SENTENCE, AS EXPLAINED AT GREAT LENGTH IN THE SENTENCING ORDER. SO WE ARE NOT GOING -- YOU KNOW, WE'VE GOT THAT IN THE RECORD, THE TRIAL COURT CONSIDERED FOUR FACTORS IN EVALUATING KENNETH'S LIFE SENTENCE IN MITIGATING THE FOUR FACTORS IN EVALUATING KENNETH'S LIFE SENTENCE AS A MITIGATING CIRCUMSTANCE, THE DEGREE OF PARTICIPATION OF EACH BROTHER, WHETHER ONE BROTHER EXERCISED A DOMINATING INFLUENCE, WHO RECEIVED THE GREATEST BENEFIT FROM THE MURDER AND ROBBERY, AND WHETHER THE DIFFERENCES BETWEEN THE TWO WERE GREAT ENOUGH TO WARRANT THE DIFFERENCE IN SENTENCES. THE TRIAL COURT DETERMINED KENNETH OPERATED UNDER THE DOMINATION OF RONALD, THIS DOMINATION WAS THE PRIMARY CAUSAL FACTOR WHICH RESULTED IN SHERIDAN'S DEATH, MURDER NOTWITHSTANDING REASONABLE FINDINGS HE STILL CONSIDERED KENNETH'S LIFE SENTENCE TO BE A NONSTATUTORY MITIGATING SOURCE AND GAVE IT SUBSTANTIAL WEIGHT. NOW, THAT IS -- THAT FINDING, IS IF IT WAS UNCONSTITUTIONAL, OR -- DENIAL OF DUE PROCESS TO GIVE THE DEATH PENALTY TO HEATH BECAUSE WHAT YOU ARE SAYING, I THINK, IS THAT NOW IT REALLY SHOWS THAT -- HAS ALWAYS SHOWN THAT HIS BROTHER WAS EQUALLY OR MORE CULPABLE, YOU HAVE GOT TO SHOW

SOMETHING THAT NOW RENDERED THAT
HAD FIND YOU THINK RELIABLE.
THE ONLY THING YOU CAN REALLY POINT
TO IS WHAT THE BROTHER NOW SAYS,
BUT THE BROTHER'S STATEMENTS ARE --
I MEAN HE'S ALREADY GOT LIFE.
THAT GOES BACK TO THE ISSUE HERE
THAT IT IS -- THE JUDGE I MEAN
THERE'S NOT THAT MUCH OF A
DIFFERENCE, AND I DON'T SEE HOW
IT UNDERMINES ANY FINDINGS THAT
ARE IN OUR ORDER THAT RECITE
WHAT THE ORIGINAL TRIAL COURT
ORDER FOUND.
YOU ARE GOING TO
BE QUICKLY OUT OF TIME.
SORT OF CONCISELY SAY WE SHOULD BE VERY
CONCERNED ABOUT THE RELIABILITY
OF THIS DEATH SENTENCE
BECAUSE WE GOT THE WRONG PERSON.
SHOULD IT HAVE BEEN A DEATH PENALTY
ON THE OTHER BROTHER, OR WHAT IS
IT THAT NOW SO CHANGES HERE
THAT WOULD RESULT UNDER THE JONES
STANDARD AND PROBABILITY OF
ACQUITTAL OR A LESSER SENTENCE?
>> YOUR HONOR, MY POINT
ALONG THOSE LINES IS THAT UNDER
THIS OPINION, THIS COURT'S
OPINION IN SLATER AND CAMPBELL
THAT THIS SENTENCE, UNDER THE
CIRCUMSTANCES, IS NOT
PROPORTIONAL, I GUESS IS THE
RIGHT WORD FOR IT.
BUT IT CERTAINLY ISN'T IN ACCORD WITH
THESE DECISIONS.
>> OKAY.
BUT ISN'T THAT -- AREN'T
YOU IN -- WE ARE IN POSTCONVICTION.
AREN'T YOU RELITIGATING THE
MERITS OF THE COURT'S 1995
OPINION, AND IF YOU -- IS THERE A
CASE -- ARE YOU SAYING THAT
SOMEHOW THAT THE FINDINGS THAT
WERE MADE THEN, THAT THE LAW HAS
CHANGED AND THAT THE LAW
CONCERNING EQUAL OR MORE
CULPABILITY HAS CHANGED SO THAT
THIS IS NO LONGER GOOD LAW?
>> I DON'T -- MA'AM, WHAT I WAS
TRYING TO DO WITH KENNETH
HEATH'S TESTIMONY AND HIS
EVIDENCE THAT -- THAT CAME IN TO
THE EVIDENTIARY HEARING IS THAT

THOSE FACTS WERE SUPPORTED BY HIS TESTIMONY, THOSE CHANGED, SUPPORTED HIS CULPABILITY --
>> YOU MUST UNDERSTAND THAT WE ARE HERE AS A REVIEWING COURT, WE CAN LOOK AT THE LAW INDEPENDENTLY -- WE DON'T HAVE MR. KENNETH HEATH IN FRONT OF US.

BUT, TO ME, AT FIRST BLUSH IT WOULD BE UNRELIABLE TESTIMONY. OF COURSE, THE MOTHER SAYS TO THE BROTHER YOU'VE GOT TO HELP SAVE YOUR BROTHER'S LIFE, YOU'VE GOT TO DO SOMETHING.

EVEN WITH THAT, HE COMES IN AND DOESN'T SUBSTANTIALLY OR EVEN MATERIALLY CHANGE WHAT HE HAS ALWAYS SAID.

>> BUT, YOUR HONOR, THAT IS ALSO TIED IN WITH THE CLAIM OF INEFFECTIVENESS IN TERMS OF FAILING TO PRODUCE NONSTATUTORY MITIGATING CIRCUMSTANCES.

>> WE HAVE -- AGAIN, HERE IT WAS AN EVIDENTIARY HEARING, WE HAD A LAWYER THAT IS VERY, VERY POSITIVE AND, YOU KNOW, SOMETIMES STRATEGY SOUNDS LIKE JUST AN AFTERTHOUGHT, BUT SAID, LOOK, I CONSIDERED THESE THINGS THAT YOU ARE ASKING ME ABOUT, AND I DIDN'T AGREE THAT THAT WAS A GOOD STRATEGY TO FOLLOW. I FOLLOWED THE STRATEGY THAT I THOUGHT, AND THE JUDGE FOUND THAT TO BE A REASONABLE STRATEGY.

>> IN HIS FIRST CASE.

>> BOTH OF THE LAWYERS WHO WERE INVOLVED IN THIS LITIGATION, WON WAS DISCIPLINED AND THE OTHER, TOGETHER THEY WERE BOTH TRYING THEIR FIRST MURDER CASE, FIRST CAPITAL MURDER CASE.

AND -- AS -- [INAUDIBLE]

>> YES, SIR.

[INAUDIBLE]

>> I HAVE TRIED THOSE CASES. BUT THE POINT IS THAT IS NOT CONSISTENT WITH THE REPORTS THE DEFENDANT GAVE THE POLICE OFFICER AND WHAT THE LAWYER SAID.

>> ARE YOU SAYING THAT HE
HE TOLD THE POLICE OFFICER THAT
HE WAS DRUNK AND DIDN'T DO THIS,
AND -- HE WAS --

I'M -- I'M HAVING A HARD TIME
TRYING TO FIGURE OUT EXACTLY
WHAT IT IS THAT YOU ARE SAYING
HERE ON BEHALF OF MR. HEATH.
WAS HE INTOXICATED OR WAS
HE NOT THERE?

>> HE WAS -- BUT --

>> HE WAS BUT --

>> I UNDERSTAND.

I'M NOT BEING
GLIB.

[INAUDIBLE]

>> IT WAS NOT ONE OF THESE
CLEAR-CUT KIND OF CASES, WAS IT?

>> WAS NOT ONE OF THOSE CLEAR
WHAT, YOUR HONOR?

>> CLEAR-CUT CASES.

THIS IS THE

ONLY DEFENSE, THERE IS -- THIS IS
WHAT YOU HAVE TO USE, IF YOU
DON'T DO IT YOU HAVE NO DEFENSE
AT ALL, BECAUSE DIDN'T THE
EXPERTS UNDERMINE THE IDEA OF
EVEN USING AN INTOXICATION
DEFENSE?

IT WAS INCONSISTENT WITH WHAT THIS
PERSON COULD TALK ABOUT.

>> I JUST -- PERSONALLY, I DON'T
THINK IT WAS DEVELOPED, YOUR
HONOR, AND -- MY EXPERIENCE HAS
BEEN IN -- IN DEATH PENALTY
CASES IS THAT YOU USE THAT
DEFENSE TO HELP NOT NECESSARILY
MITIGATE GUILT OR INNOCENCE BUT
MITIGATE THE INTENT, AND IT --

>> DO YOU AGREE THAT IT IS
INCONSISTENT TO SAY I WASN'T
THERE, BUT, YES, I WAS THERE AND
I WAS INTOXICATED?

>> I THINK THAT IS INCONSISTENT.

>> YOU LAWYERS WOULD HAVE TO
MAKE A SELECTION.

>> I SURE -- WHAT --

>> MAKE A DECISION, AM I GOING TO
PRESENT INCONSISTENT, TOTALLY
INCONSISTENT POSITIONS TO
PEOPLE OFF THE STREET, CITIZENS
ON THE STREET, AND WILL THAT BE
EFFECTIVE.

YOU HAVE TO MAKE THAT CALL, DON'T

YOU, AS A LAWYER.

>> I THINK YOU DO, YOUR HONOR.

>> AND DO YOU SAY THAT IT IS THAT THERE AMOUNTS TO INADEQUATE COUNCIL IF SOMEONE MAKES THE SELECTION THAT -- I THINK BASED ON ALL THESE FACTS WE TALKED ABOUT IT -- THAT TO TAKE THE APPROACH THAT HE WASN'T THERE, WE'VE GOT JAILHOUSE WITNESSES WHO HE SUPPOSEDLY SAID "I WASN'T THERE," AND YOU'VE GOT OTHER -- IS THAT INEFFECTIVE ASSISTANCE BY SELECTING THAT DEFENSE FOR WHICH THERE IS EVIDENCE OVER THE INTOXICATION APPROACH?

>> YOUR HONOR, IN THE CONTEXT OF THAT QUESTION I DON'T DISAGREE WITH YOU.

>> WELL, ISN'T THAT WHAT -- HELP ME UNDERSTAND, THEN, WHY THAT IS NOT -- WHAT THE LAWYER IS FACED WITH.

>> THERE IS NOTHING STRATEGIC ABOUT ATTORNEY IGNORANCE AND AN ATTORNEY MAKING A BAD DECISION IN CHOOSING A DEFENSE.

THAT, AS A PRACTICAL MATTER, SHOULDN'T BE TRIED VERSUS CHOOSING A DEFENSE WHICH IS --

>> WHAT IN THIS RECORD SHOWS THAT IT WASN'T EFFECTIVE ASSISTANCE TO USE THE DEFENSE "I DIDN'T PARTICIPATE IN THIS"?

>> OTHER STATEMENTS OF THE DEFENDANT.

>> EVEN, YOU KNOW, VOLUNTARY INTOXICATION, I CAN'T -- OVER THE LAST SEVERAL YEARS WE HAVE HAD THAT RAISED ON POSTCONVICTION, AND OVER AND OVER AGAIN WE HAVE SAID THAT -- WHAT -- MR. RUSH SAID IN HIS TESTIMONY IT IS A -- SINGULARLY INEFFECTIVE DEFENSE ELIMINATED BY STATUTE, "I GOT SO DRUNK DIDN'T KNOW WHAT I WAS DOING."

JURIES DON'T BUY THAT.

YOU ARE SAYING THAT IS NO -- THAT AS A MATTER OF LAW THAT IS NOT TRUE, IT IS AN EFFECTIVE DEFENSE, AND THAT'S WHERE I'M HAVING, YOU KNOW, I DEFER TO YOU, YOU YOURSELF HAVING MANY YEARS OF

EXPERIENCE.

UNFORTUNATELY, THIS
CASE, YOU ARE NOT THE WITNESS
ADVOCATING.

WE'VE GOT A RECORD,
AND WE'VE GOT A LOT OF THE
CASES THAT SEEM TO SAY IT IS
NOT NECESSARILY INEFFECTIVE
ASSISTANCE, AND PER SE,
CERTAINLY, TO REJECT A
VOLUNTARY INTOXICATION
DEFENSE -- FIRST OF ALL, YOU
AGREE THERE IS CASE LAW THAT
SAYS THAT.

>> YES, MA'AM.

>> SECOND OF ALL, YOU AGREE YOU
ARE NOT A WITNESS IN THIS CASE.

>> THAT'S RIGHT.

>> AND, THEREFORE, WE HAVE TO LOOK
AT WHAT WAS PRESENTED AND SEE
WHETHER THERE IS A FACTUAL BASIS
IN THE RECORD FOR THE TRIAL
COURT FINDING THAT UNDER THE
FACTS OF THIS CASE THAT WAS
REASONABLE STRATEGY.

>> I AGREE.

>> OKAY.

>> UNDER THE SCENARIO OF JUSTICE
LEWIS IT CAN BE FOUND, BUT --
BUT -- IT WAS NOT SO SIMPLE, IN
TERMS OF THE DETAILS OF THIS
RECORD, AS THE DECISION AND THE
RECORD WOULD LET IT BE SEEN,
WHEN YOU LOOK AT THE TRIAL
RECORD.

AND THE EXHIBITS --

>> YOU ARE IN YOUR -- YOU ARE
ALMOST OUT OF YOUR TIME.

I DON'T
KNOW IF YOU --

>> ALL RIGHT.

I WILL RESERVE --
THANK YOU.

>> MAY IT PLEASE THE COURT.
MY NAME IS MEREDITH CHARBULA,
ASSISTANT ATTORNEY GENERAL.
I REPRESENT THE STATE OF FLORIDA
IN THIS APPEAL.

IF I MIGHT START WITH -- SINCE
OUR LAST DISCUSSION WAS ON THE
ISSUE OF CLAIM OF INEFFECTIVE
ASSISTANCE OF COUNSEL, BASED ON
VOLUNTARY INTOXICATION,
MR. HEATH ALLEGES THAT TRIAL

COUNSEL IS INEFFECTIVE FOR FAILING TO PRESENT EVIDENCE THAT MR. HEATH WAS SO INTOXICATED THAT HE COULD NOT FORM THE SPECIFIC INTENT TO PREMEDITATE THE MURDER OF MR. SHERIDAN, AND TO -- ROB HIM.

>> WHAT YEAR DID THIS CASE --

>> THE MURDER HAPPENED --

>> -- TAKE PLACE?

>> 24th OF MAY, 1989.

>> OKAY.

SO AT THAT TIME

VOLUNTARY INTOXICATION WAS STILL A DEFENSE.

>> YES, YOUR HONOR, IT WAS, BECAUSE ROBBERY IS A SPECIFIC INTENT CRIME, AND SO IT WAS AT THAT TIME A DEFENSE.

BUT I THINK YOU HAVE TO LOOK WHEN YOU DETERMINE INEFFECTIVE ASSISTANCE OF COUNCIL, THE RECORD ABSOLUTELY DOES NOT SUPPORT THE TRIAL COUNSEL WAS IGNORANT, TRIAL COUNSEL TESTIFIED AT THE EVIDENTIARY HEARING THAT HE CONSIDERED THE EVIDENCE OF VOLUNTARY INTOXICATION, AND HE DID NOT BELIEVE IT WAS THERE, AND I THINK THE RECORD SUPPORTS THAT, FIRST OF ALL, JENNIFER BERQUIST WAS A BARTENDER AT THE PURPLE PORPOISE, WHERE RONALD HEATH AND KENNY HEATH HATCHED THEIR PLAN TO MURDER THE --

>> GOING TO THE FACTS, WHAT WERE THE AGES OF THESE BROTHERS AT THE TIME?

>> MR. HEATH WAS 28 YEARS, AND MR. -- RONALD HEATH WAS 28 YEARS OLD, KENNY HEATH WAS 23.

>> THERE IS FOUR YEARS AND SOME CHANGE DIFFERENCE BETWEEN THE BROTHERS, RONALD HEATH HAD BEEN OUT OF PRISON FOR EIGHT MONTHS AT THE TIME OF THE MURDER, HE HAD MURDERED MICHAEL GREEN WHEN HE WAS 16 YEARS OLD, AND SPENT --

>> THE SECOND-DEGREE MURDER.

>> YES, SIR, STABBED TO DEATH MICHAEL GREEN WHEN HE WAS 16 1/2 YEARS OLD, HAD BEEN IN PRISON FROM AGE 16 TO AGE 27, HAD BEEN

OUT OF PRISON FOR EIGHT MONTHS,
KENNY HEATH HAD BEEN IN PRISON
FOR I THINK, A ROBBERY-BURGLARY,
OUT OF PRISON THREE MONTHS AT THE
TIME OF THIS MURDER.

JENNIFER BERQUIST TESTIFIED SHE
KNEW RONALD HEATH, IN FACT RONALD AND
KENNETH HAD BEEN IN THE PURPLE
PORPOISE, THEY HAD BEEN OUT BEFORE HAD
GOTTEN DRUNK, SHE OFFERED THEM
A PLACE TO STAY OVERNIGHT.
THEY DID.

THE NEXT DAY THEY WERE IN THE
PURPLE PORPOISE.

WHEN THEY LEFT
WITH MICHAEL SHERIDAN THEY WERE
NOT DRUNK.

THAT IS WHAT TRIAL
COUNSEL HAD FIRST --

>> DID TRIAL COUNSEL TESTIFY
THAT HE DID CONSIDER AN
INTOXICATION DEFENSE?

>> ABSOLUTELY, HE CONSIDERED IT,
HE LOOKED AT THE EVIDENCE, HE --
YOU KNOW, HE TESTIFIED AT THE
EVIDENTIARY HEARING, WE HAVE
THESE PEOPLE WALKING, WE HAVE
THESE PEOPLE DRIVING, MAKING
DECISIONS, HE DID NOT FEEL THAT
A VOLUNTARY INTOXICATION DEFENSE
WAS A VIABLE DEFENSE, SO HE
HAD JENNIFER BERQUIST, WHO KNEW
THAT -- KNEW RONALD HEATH SAID
HE WAS NOT INTOXICATED WHEN HE
LEFT THE BAR, HE HAD THE
BROTHERS -- RONALD HEATH DRIVING,
NOW AT TRIAL KENNETH HEATH
TESTIFIED THAT RONALD DROVE, AT
THE EVIDENTIARY HEARING KENNETH
HEATH TESTIFIED HE DROVE RONALD,
DIRECTED HIM, YOU HAVE RONALD
HEATH EITHER DRIVING OR
DIRECTING HIS BROTHER TO DRIVE FIVE
MILES FROM PURPLE PORPOISE,
CHOOSING A SIGHT, ACCORDING TO
KENNY, WHERE THEY WOULDN'T BE
SEEN, NOTICING THAT WHEN AFTER
-- KENNETT DOESN'T HAVE THE GUN,
SIGNALING TO KENNETH TO GET THE
GUN IN THE CAR, SHOOT
MR. SHERIDAN.

WHEN MR. SHERIDAN
EXPRESSED SURPRISE AT THE FACT
BEING ROBBED BY TWO MEN WHO

BEFRIENDED HIM IN THE BAR.

>> WAS THERE ANY MARIJUANA USED?

>> THERE WAS MARIJUANA USE APPARENTLY, KENNETH HEATH TESTIFIED THAT WHEN THEY GOT TO THE MURDER SITE, THEY GOT OUT OF THE CAR, THEY FIRED UP A JOINT, THEY WERE PASSING IT AROUND.

JENNIFER BERQUIST TESTIFIED THAT SHE SAW THE BROTHERS AND MR. SHERIDAN GO OUT THE BACK OF THE BAR, SHE SUSPECTED BUT DID NOT KNOW WHETHER THEY WERE SMOKING MARIJUANA.

WE HAVE ONLY THE TESTIMONY OF KENNETH HEATH AS FAR AS THE ACTUAL ONE JOINT OF MARIJUANA --

>> WHAT IS -- WAS THE ALIBI -- SAYING THAT WAS JUST PER SE UNREASONABLE TO PURSUE AN ALIBI DEFENSE?

COULD YOU ILLUMINATE ON THAT?

>> NOW, THE --

CERTAINLY, MR. HEATH'S REPORTS TO THE POLICE OFFICERS WERE NOT ADMITTED INTO EVIDENCE.

HOWEVER, I BELIEVE MR. HEATH TOLD THE POLICE OFFICERS HE WASN'T THERE, AT THE MURDER SCENE, BUT NONETHELESS, THE --

>> WHAT SUPPORT IS THERE FOR THAT ALIBI?

>> THIS IS THAT HE WAS -- OH, WELL, I THINK -- THERE IS NO SUPPORT FOR -- OF THE ALIBI, BUT WHAT MR. RUSH DID, HE CALLED SOME 15 WITNESSES, WHO WERE ABLE TO GIVE A LITTLE SNAPSHOT PICTURE OF KENNY HEATH'S INVOLVEMENT, FOR INSTANCE, WHAT MR. RUSH WANTED TO DO WAS TO SHOW THAT KENNY HEATH WAS THE SOLE KILLER, RONALD WAS AT THE PURPLE PORPOISE ASLEEP IN THE PARKING LOT AT THE TIME OF THE MURDER, KENNY CAME BACK, WOKE HIM UP AFTER THE MURDER.

>> HOW FAR DID HE SHOW THAT -- WHO TESTIFIED THAT HE WAS STILL AT THE PURPLE PORPOISE?

>> NO ONE TESTIFIED.

NOW, PENNY

JENNIFER BERQUIST TESTIFIED THAT WHEN SHE LEFT THE BAR AT 3:30 A.M., KENNY'S CAR WAS IN

THE PARKING LOT AT THE PURPLE
PORPOISE.

TRIAL COUNSEL ELICITED FROM HER,
WELL, IF RONALD HEATH WAS ASLEEP
IN THE CAR, WOULD YOU HAVE BEEN
ABLE TO SEE HIM?

SHE TESTIFIED NO.

HE ALSO PRESENTED EVIDENCE OF
INMATE WITNESSES WHO KENNETH HEATH
SAID VARIOUS THINGS TO
INCLUDING, THAT -- ONE
WITNESS ASKED KENNY WHY DID YOU
CUT HIS THROAT?
BECAUSE HE PISSED ME OFF,
WOULDN'T DIE.

TRIAL COUNSEL WAS TRYING TO INTIMATE
KENNY HEATH WAS THE ONE CUT HIS
THROAT AND SHOT HIM.

>> IS THERE ANYTHING NOW TO CALL
INTO QUESTION?

THERE WAS ONLY ONE
PERPETRATOR OF THIS MURDER?

>> IN OTHER WORDS, HOW DID THE
STATE PROVE OTHER THAN THROUGH
THE BROTHER THAT THERE WERE
TWO PEOPLE INVOLVED?

>> OBVIOUSLY, KENNY HEATH IS
THE ONLY SURVIVOR OTHER THAN
DEFENSE WITNESS.

>> AT THE SCENE DOES IT SHOW, YOU
KNOW --

>> THERE WAS NO PHYSICAL
EVIDENCE LINKING -- THEY DID NOT
FIND THE BODY FOR SIX DAYS
AFTER THE MURDER.

THEY FOUND THE BODY ON MAY 30.

THERE IS NO

PHYSICAL EVIDENCE LINKING THE
DEFENDANT TO THE SCENE.

HOWEVER, THERE WERE WITNESSES PRESENTED
BY THE STATE THAT SHOWED THAT
MICHAEL SHERIDAN'S WATCH -- RONALD
HEATH WORE MICHAEL SHERIDAN'S
WATCH --

>> I'M SAYING WHAT EVIDENCE
SUPPORTS THE TWO DEFENDANTS MURDERED
THE VICTIM?

>> KENNETH HEATH'S TESTIMONY.

>> THAT IS OKAY.

SO THAT IS NEVER CHANGING.

>> KENNETH HEATH --

>> THAT HAS NOT CHANGED, THAT
HIS BROTHER WAS THERE.

>> ABSOLUTELY NOT, KENNETH HEATH,

AT THE EVIDENTIARY HEARING HE TESTIFIED THAT CONSISTENT WITH HIS TRIAL TESTIMONY WHEN THEY ARRIVED AT THE MURDER SITE IT WAS RONNIE -- NUMBER WON, TESTIFIED IT WAS RONALD'S IDEA TO TAKE THE -- TO ROB MICHAEL SHERIDAN. HE SAID THAT BOTH TIMES.

>> -- HE SAID THAT BOTH TIMES.

>> ABSOLUTELY.

IN FACT AT THE EVIDENTIARY HEARING HE SAID SOMETHING HE DID NOT SAY AT TRIAL, WHICH WAS THEY DISCUSSED KILLING MICHAEL SHERIDAN AT THE BAR, TO ELIMINATE HIM AS A WITNESS.

SO I THINK THAT DIRECTLY RELEVANT TO ANY CLAIM OF NEWLY DISCOVERED EVIDENCE AT THE PENALTY PHASE BECAUSE THAT EVIDENCE WOULD BE ADMISSIBLE AT A NEW TRIAL.

>> WHAT WERE THE --

>> CCP WAS NOT FOUND.

THE TWO AGGRAVATORS WERE FOUND PRIOR VIOLENT FELONY MURDER AND MURDER IN THE COURSE OF A ROBBERY.

THE JURY WAS INSTRUCTED ON THE AAC BECAUSE OF THE TIME AND THE WOUNDS.

HE WAS SHOT FIRST IN THE CHEST.

HE SAT DOWN.

RONALD KICKED HIM WHEN HE WOULDN'T IMMEDIATELY.

THE JURY WAS INSTRUCTED ON THE HAC, BUT THE JURY DID NOT FIND HAC.

>> ALL THE PHYSICAL EVIDENCE --

NOT THE PHYSICAL EVIDENCE --

THE MEDICAL EXAMINER'S EVIDENCE REPORTED THAT WHAT

KENNETH HEATH REPORTED TO AS TO BOTH THE STABBING AND SHOOTING.

>> EXACTLY.

THE MEDICAL EXAMINER AND DR. HAMILTON TESTIFIED THAT THE CAUSE OF DEATH WAS GUNSHOT WOUNDS, TWO GUNSHOT WOUNDS TO THE HEAD, ONE GUNSHOT WOUND TO THE CHEST, AND THE KNIFE WOUND TO THE NECK.

HE SAID A SHARP FORCE INJURY TO THE NECK.

NOW, WE ALSO HAVE TO RECALL THIS IS MAY, THE BODY WASN'T FOUND FOR SIX DAYS, SO THERE WAS SOME DETERIORATION, BUT DR.^HAMILTON UNEQUIVOCALLY TESTIFIED THE CAUSE OF DEATH WAS GUNSHOT WOUNDS AND THE KNIFE WOUNDS.

>> IT SOUNDS LIKE THE ALIBI DEFENSE WAS PRETTY WEAK, BUT WE CAN STILL EVALUATE WHAT THE, WHAT DID MR. -- WHAT DID HE SAY BESIDES HE COULDN'T FIND EVIDENCE THAT THE CLIENT WAS INTOXICATED.

DID HE ALSO TESTIFY HIS CLIENT, SOMETIMES CLIENTS INSTRUCT A PERSON, I WANT TO TAKE THE VIEW THAT I WASN'T THERE.

>> ABSOLUTELY.

HE SAID HE DISCUSSED THIS WITH MR.^HEATH ON NUMEROUS OCCASIONS.

HE DISCUSSED THE RELATIVE STRENGTHS.

THE GOAL OF THE DEFENSE TEAM WAS TO PRESENT THE ABSOLUTE BEST MOST VIABLE DEFENSE THEY COULD.

HE RECOGNIZED KENNETH HEATH'S TESTIMONY PUT HIS CLIENT AT THE MURDER SCENE AND PUT HIM IN THE LEADERSHIP ROLE.

SO WHAT HE HAD TO DO WAS TRY IN HIS VIEW TO PUT THE BLAME ON KENNY AND HE WAS ABLE TO SHOW THAT IT WAS KENNETH'S KNIFE IN FACT TO THE KNIFE WAS FOUND AND THAT'S ONE OF THE WITNESSES HE CALLED AT THE GUILT PHASE, THE KNIFE THAT WAS USED TO, TO CUT MR.^SHERIDAN IT WAS'S THROAT BEGAN TO KENNY.

RONNY HAD HAD IT AT ONE TIME AND IT WAS FOUND AT KENNY'S GRANDMOTHER'S HOUSE SO HE PRESENTED KENNY WAS THE ONE WHO HAD MR.^SHERIDAN'S CREDIT CARDS AND WAS THE ONE SIGNING THE CREDIT CARD RECEIPTS.

HE HAD AGAIN INMATE WITNESSES THAT SAID KENNY MADE VARIOUS

STATEMENTS ABOUT HOW HE WAS GOING TO GET HIS BROTHER BECAUSE HE WOULDN'T LIE FOR HIM AND THAT HE WAS THE ONLY ONE AT THE SCENE.

SO.

>> BUT YOU HAVE, WELL, YOU'VE GOT ALSO, I, BECAUSE THE ISSUE OF EQUAL CULPABILITY OR MORE CULPABILITY YOU KNOW SOMETIMES IS AT LEAST OF CONCERN TO ME. NOW IN THIS CASE THE STATE HAD A, A PLEA WITH KENNETH ACTUALLY A PLEA TO LIFE IN PRISON.

>> THAT'S CORRECT.

>> WE HAVE TWO AT LEAST WHERE HE GETS THE DEATH SENTENCE, I MEAN, HE GETS LIFE, BUT DID THE, I ASSUME THE STATE MADE A DECISION THAT HE WAS NOT AS CULPABLE IN TERMS OF THE MURDER AS THE BROTHER.

>> WELL, HE WAS THE YOUNGER BROTHER.

AND AS THE EVIDENCE EVOLVED, AND KENNY TESTIFIED CONSISTENTLY BOTH AT TRIAL AND AT THE EVIDENTIARY HEARING THAT IT WAS RONALD'S IDEA TO ROB MICHAEL SHERIDAN.

RONNY PICKED THE SPOT, RONNY DIRECTED HIM TO GET THE GUN OUT OF THE CAR, RONNY SAID SHOOT HIM.

>> AND THIS IS ALL CONSISTENT WITH REALLY THE, THE AGE OF THE BROTHERS PLUS THE FACT THAT MR. -- THIS DEFENDANT IS A MURDERER.

HE MURDERED AT 16.

>> THIS DEFENDANT IS A DOUBLE MURDERER, AND WE HAVE AGAIN RONNY'S DIRECTION.

NOW, COUNSEL HAS BROUGHT THE ISSUE UP THAT IN THE SENTENCING ORDER, AND OF COURSE THAT'S A DIRECT APPEAL ISSUE, THIS ISSUE OF THE SENTENCING ORDER BECAUSE THIS OBVIOUSLY, THIS COURT'S RECOGNIZED IMMEDIATELY THAT AS FAR AS THE RELIABILITY OF THE SENTENCE, YOU HAVE TO LOOK THAT IN TERMS OF INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM,

AND COUNSEL PRESENTED EVIDENCE.
WHEN YOU OVERLIE WHAT HE
PRESENTED AT THE PENALTY PHASE
YOU HAVE TO UNDERSTAND THAT
RONNY HEATH WAS IN PRISON FROM
AGE 16 TO AGE 27.

COUNSEL HAS NOTED THAT COUNSEL
-- TRIAL COUNSEL WAS
INEFFECTIVE FOR PRESENTING
EVIDENCE ONLY OF RESIDUAL
DOUBT.

BUT IF YOU LOOK AT THE EVIDENCE
AT THE PENALTY PHASE, AS WELL
AS THE CLOSING ARGUMENT,
DEFENSE COUNSEL TALKED
EXTENSIVELY ABOUT THE RELATIVE
CULPABILITY, AND MR. ^HARPER'S
CITATION TO THE SENTENCING
ORDER, IF YOU LOOK IN THAT
SENTENCING ORDER, YOU SEE WHERE
THE JUDGE IS TALKING ABOUT IT
CAN'T BE ESTABLISHED BEYOND A
REASONABLE DOUBT THAT RONALD
HEATH KILLED MICHAEL SHERIDAN.
IT'S IN DISCUSSING THE RELATIVE
CULPABILITY OF THE TWO
BROTHERS, AND I, NO ONE HAS
EVER DISSPUTED THAT AFTER
RONALD HEATH CUT MICHAEL
SHERIDAN'S THROAT WITH THIS
DULL KNIFE AND THEN TOLD HIS
BROTHER SHOOT HIM AGAIN TO MAKE
SURE HE'S DEAD, AND KENNETH
DID.

AND RONALD SAID SHOOT HIM
AGAIN.

AND KENNETH DID.

THERE'S NO DISPUTE THAT THAT
THIRD SHOT, THE -- OR, SECOND
OR THIRD SHOT WAS THE FATAL
WOUNDS, AND I THINK THAT WHEN
YOU LOOK IN CONTEXT OF THE
SENTENCING ORDER, THE COURT IS
SAYING THAT, THAT AT THE POINT
WHERE RONALD HEATH TRIED TO CUT
HIS THROAT, COULDN'T DO IT
BECAUSE THE KNIFE WAS DULL, HE
INSTRUCTED HIS BROTHER TO SHOOT
HIM AGAIN, AND HE DID.

AND HE INSTRUCTED HIM TO SHOOT
HIM AGAIN, AND HE DID.

AND THAT'S WHAT ULTIMATELY
KILLED MR. ^SHERIDAN WAS THE TWO
GUNSHOTS AT CLOSE RANGE TO THE

HEAD.

KENNETH HEATH TESTIFIED HE STOOD OVER HIM AND SHOT TWO GUN -- GUNSHOTS INTO HIS HEAD AFTER RONALD HEATH TOLD HIM SHOOT HIM AGAIN TWICE. SO I THINK THAT'S WHERE, IF YOU LOOK IN THE CONTEXT OF THAT SENTENCING ORDER THAT'S WHERE YOU SEE IT BECAUSE HE'S TALKING ABOUT THE RELATIVE CULPABILITY OF THE TWO BROTHERS, AND THE TWO EXPERTS AT THE EVIDENTIARY HEARING BOTH TESTIFIED THAT ALCOHOL DID NOT INTERFERE WITH RONALD HEATH'S CAPACITY TO KNOW WHAT HE WAS DOING, SO RIGHT THERE THERE'S ABSOLUTELY NO VIABLE VOLUNTARY INTOXICATION DEFENSE.

IN HINDSIGHT, WHICH WE DON'T LOOK AT INSOFAR AS INEFFECTIVE COUNSEL, THOSE EXPERTS SUPPORTED TRIAL COUNSEL'S DECISION NONETHELESS.

>> WHAT DID THE TRIAL COUNSEL BASE EXTREME DISTURBANCE MITIGATING FACTOR ON? WAS IT THE ALCOHOL?

>> IT WAS -- BECAUSE THERE WAS SOME EVIDENCE HE WAS DRINKING, BECAUSE THERE WAS SOME EVIDENCE HE WAS USING SOME MARIJUANA, HE FOUND THE EXTREME EMOTIONAL DISTURBANCE.

I THINK THAT WAS, HE WAS GIVING THE DEFENDANT THE BENEFIT OF THE DOUBT.

IN FACT, BOTH EXPERTS AT THE EVIDENTIARY HEARING SAID THERE WAS NO EVIDENCE HE WAS UNDER EXTREME EMOTIONAL DISTURBANCE. THERE WAS NO EVIDENCE THAT HIS CAPACITY TO APPRECIATE THE CRIMINALITY OF HIS ACTION WAS IMPAIRED.

>> SO OBVIOUSLY THE DEFENDANT AT SOME POINT DECIDED WAS IT IN THE PENALTY PHASE THAT HE WANTED TO PUT ON EVIDENCE OF, THAT THERE WAS DRINKING? I MEAN, BECAUSE THERE'S TWO THINGS. WHETHER YOU'RE DRINKING AND

UNDER INFLUENCE TO THE EXTENT THAT YOU MIGHT HAVE AN IMPAIRED ABILITY TO APPRECIATE IT VERSUS THE ABILITY TO FORM SPECIFIC INTENT THAT'S HOW I UNDERSTAND VOLUNTARY INTOXICATION DEFENSES ARE SO IMPOSSIBLE BECAUSE IT'S BEYOND THE STATUTORY MITIGATOR.

>> CERTAINLY.

>> SO THERE WAS --, THE, THE, DEFENSE LAWYER DID PRESENT EVIDENCE THEN OR DID INSTANT.

>> ABSOLUTELY, AND AGAIN, IT SORT OF GOES BACK TO THIS ISSUE OF INEFFECTIVE FOR FAILING TO RELY SOLELY ON RESIDUAL DOUBT. THE DEFENSE COUNSEL REMINDED THE JURY THAT THERE WAS ALCOHOL USE THAT, YOU KNOW, THAT BOTH BROTHERS WERE USING ALCOHOL, AND MARIJUANA, AND THAT MR. HEATH COULD GET HELP WITH ANY SUBSTANCE ABUSE PROBLEMS THAT HE HAD IN JAIL AND BY THE WAY, DR. KROP FOUND NO EVIDENCE THAT HE HAD A SUBSTANCE ABUSE PROBLEM AND DR. ROTHSCHILD SAID HE SUSPECTED BUT COULDN'T CONFIRM BECAUSE HEATH DOWNPLAYED HIS USE OF MARIJUANA.

PENNY POWELL, AT THE PENALTY PHASE, THE TRIAL COUNSEL TRIED TO ELICIT EVIDENCE OF A GOOD FATHER AND SON, A PERSON WHO WAS A GOOD CHILD UNTIL HE GOT INVOLVED IN DRUGS, GOOD FAMILY, SUPPORTIVE ENVIRONMENT TO SUPPORT THIS NOTION THAT IF THEY -- IF THE JURY WOULD SENTENCE RONALD HEATH TO PRISON, HE WOULD HAVE A GOOD SUPPORT SYSTEM.

>> CAN I ASK YOU ABOUT THAT? IT'S SORT OF, YOU KNOW, WHEN YOU LOOK AT FAMILIES AND SEE THAT BY 16 SOMEBODY HAS MURDERED A PERSON AND THEN GETS OUT OF PRISON EIGHT MONTHS LATER OF COURSE THEN YOU WONDER WHAT'S HAPPENED IN THE PRISON SYSTEM BUT -- AT LEAST I WONDER THAT, WHAT I, WHAT WAS THE, DID

THEY TRY TO SHOW THIS TIME, AND WHAT WOULD YOU SAY ABOUT IT, THAT THIS STRATEGY OF TRYING TO SHOW THE DEFENDANT IN A POSITIVE LIGHT WHEN HE WAS IN PRISON FOR 12 YEARS THAT THEY HAD TO GO AND SHOW SOMETHING IN THIS CHILDHOOD THAT WOULD HAVE, UNLESS HE WAS, YOU KNOW, THAT WOULD HAVE CAUSED THIS PERSON AT 16 TO BE SOMEBODY THAT HAD THE CAPACITY TO KILL A PERSON? WHAT WAS THE, COULD YOU -- ON THAT ISSUE OF MITIGATION AND THE, THE STRATEGY, WELL, I WENT WITH THE POSITIVE LIGHT, YOU KNOW, THAT'S ONE THING WHEN SOMEBODY HASN'T, YOU KNOW, WELL, HOW COULD YOU PUT HIM IN A POSITIVE LIGHT? DON'T YOU NEED TO EXPLAIN WHAT WOULD'VE LED SOMEONE AT 16 TO MURDER?

>> WELL, I, I THINK, I MEAN, COUNSEL TRIED TO DO THAT. BUT AS YOU SAY, HE'S, HE'S GOT THE FACT.

I MEAN, HE CAN'T, HE CAN'T EGNOR THE FACT THAT, THAT RONALD HEATH HAS BEEN IN PRISON FOR MURDER.

>> BUT WHAT WOULD HAPPEN IN HIS LIFE UNTIL 16?

WAS -- WHAT DID THEY SHOW UP THE CHILDHOOD TO SHOW WHAT WOULD HAVE PRODUCED THIS TYPE OF, YOU KNOW, THE WORST OF THE WORST CRIMINAL BEHAVIOR THAT, YOU KNOW, KILLING A FELLOW PERSON?

>> WELL, WHAT THEY PRESENTED WAS VIVIAN HEATH AND WILLIAM HEATH, THE PARENTS, TESTIFIED THAT THEIR SON WAS ESSENTIALLY A PERFECT CHILD UNTIL ABOUT AGE 12 WHEN HE STARTED BREAKING INTO PEOPLE'S HOUSES, HE STARTED STEALING THINGS, AND THAT HE, THEY DISCOVERED THAT HE HAD BEGUN EXPERIMENTATION WITH DRUGS OR THEY BECAME CONCERNED.

>> WAS HE AN ADDICT?

I MEAN,, WAS HE ADDICTED TO A

CERTAIN TYPE OF DRUGS.

>> ABSOLUTELY NOT.

ABSLOTLY NOT.

BOTH DR.^KROP FOUND NO EVIDENCE OF SUBSTANCE ABUSE.

DR.^ROTHSCHILD SAID HE

SUSPECTED BUT COULDN'T CONFIRM.

PENNY POWELL TESTIFIED HE NEVER USED MARIJUANA AND HE DIDN'T

DRINK ALCOHOL EXCESSIVELY WHEN

HE LIVED WITH HER IN THOSE

EIGHT MONTHS BEFORE THE MURDER

SO WE DON'T HAVE A SUBSTANCE

ABUSE PROBLEM BUT I MEAN AT THE

EVIDENTIARY HEARING THE PARENTS

TESTIFIED THEY WENT FISHING

WITH THE KIDS THEY TOOK THEM

SHELLING THEY HAD A BOAT, THEY

WENT TO HIS SUPPORTING EVENTS,

WHEN RONALD STARTED --

>> THAT WAS AT THE EVIDENTIARY HEARING.

>> I'M TRYING TO FIND OUT --

>> AT TRIAL.

>> PRESENTED DIFFERENTLY TO SAY

IT WAS INEFFECTIVE WHAT THEY

PRESENTED AT THE ORIGINAL -- I

MEAN NOTHING CAME OUT ABOUT

SEVERE PHYSICAL ABUSE, SEXUAL

ABUSE.

>> ABSOLUTELY NOT.

AT THE EVIDENTIARY HEARING BOTH

DOCTORS OPINED HE WAS -- BASED

ON ANECDOTAL EVIDENCE ONE

WHIPPING THE FATHER SHOWED

BRUISES.

>> THE TESTIMONY THAT RONALD SEXUALLY ABUSED HIS BROTHER.

>> THAT CAME OUT AT THE

EVIDENTIARY HEARING.

IT DID NOT COME OUT AT TRIAL

AND THAT'S ONE THING TRIAL

COUNSEL TESTIFIED WHEN HE WAS

EXAMINING THE ISSUE OF HEATH

WITH DOMINATION HE HAD TO BE

CAREFUL OF BECAUSE THERE WAS

NOT ONLY EVIDENCE THAT RONALD

HAD SEXUALLY ABUSED HIS BROTHER

BUT HAD SHOT HIM WITH A BOW AND

ARROW AND HAD MURDERED A FRIEND

OF KENNY'S IN FRONT OF HIM TO

SHOW HIM THAT HE COULD DO

ANYTHING HE WANTED TO AND SO

TRIAL COUNSEL HAD -- THAT CAME

OUT AT THE EVIDENTIARY HEARING AND TRIAL COUNSEL HAD TO BE VERY CAREFUL OF EXPLORING THIS ISSUE OF DOMINATION.

>> SIMPLE ANSWER TO THIS THOUGH.

SHE IS LOOKING FOR AN EXPLANATION, AND THE MENTAL HEALTH EXPLANATION WAS ONE THAT, THAT THE EXPERT SAID WON'T HELP YOU.

>> ANTISOCIAL.

>> IT'S AN ANTISOCIAL PERSONALITY DISORDER.

EVERY DISCUSSED AND SAID WE'RE NOT GOING TO USE THAT.

>> ABSOLUTELY.

>> I MEAN, THAT'S THE BOTTOM LINE ON THAT, AND DIDN'T THE I GUESS THE CO-DEFENDANT EVEN ADMITTED DURING THIS EVIDENTIARY HEARING THAT THE ONLY PERSON IN THE WHOLE WORLD THAT HE FEARED WAS MR.^HEATH.

>> HE DID, YOUR HONOR.

>> IF THERE ARE NO FURTHER QUESTIONS, THE STATE WOULD ASK THAT THIS COURT AFFIRM THE COLLATERAL COURT'S ORDER AND DENY MR.^HEATH'S MOTION FOR POSTCONVICTION RELEASE.

>> THANK YOU VERY MUCH.

MR.^HARPER?

>> THANK YOU.

AS TO THIS CHILDHOOD CONDUCT, IT WAS PROVEN AT THE EVIDENTIARY HEARING QUITE A BIT OF THESE THINGS, NAMELY THAT THE FATHER USED A BELT TO SPIKE THE DEFENDANT NOT JUST ONE TIME BUT JUST ONE TIME HE PULLED HIS PANTS DOWN AFTER SPIKING HIM TO SEE WHAT HARM HE HAD DONE. AND LEFT RED WELTS.

>> BUT THERE REALLY IS NO EVIDENCE IN THIS RECORD THAT THERE WAS A CONSTANT PHYSICAL ABUSE OF THIS DEFENDANT. IS THERE?

>> WELL, WHAT IS CONSTANT?

>> WELL, WELL, I MEAN, ONE WHIPPING IS WHAT WEAVE, WE REALLY HAVE IN THIS RECORD, EVEN IF WE HAD TWO CORPORAL

PUNISHMENT INCIDENTS.

I MEAN THAT IS NOT THE KIND OF PHYSICAL ABUSE WE SEE IN THESE CASES ALL THE TIME.

>> I, I'M SURE IT'S A MATTER OF DEGREE, ESPECIALLY FROM WHERE YOU ALL SEE, YOUR HONOR. THE, BUT, BUT LET ME JUST CARRY ON WITH SOME OF THE OTHER THINGS JUST LIKE THE, THE ALCOHOL ABUSE, OUR EXPERTS SAID THERE WAS ALCOHOL ABUSE.

>> WELL, I MEAN, DOESN'T THAT FLY IN THE FACE OF HERE'S A PERSON THAT HAS BEEN INCARCERATED FOR TEN YEARS. DID HE ENGAGE IN ALCOHOL ABUSE IN PRISON?

>> NOT VERY EASILY, YOUR HONOR.

>> WELL, THAT'S, THIS WHOLE THING JUST DOESN'T MAKE SENSE, AND HIS, HIS WHAT THEY CALLED COMMON LAW WIFE THAT HE WASN'T A DRINKER OR DRUGGER.

>> WELL, THE, THE, BEFORE HE GOES TO JAIL, HE'S STANDING THERE TALKING TO HIS PARENTS AND JUST TOPPLES OVER. TAY TAKE HIM TO THE DOCTOR TO SEE WHAT IT IS AND THEY SAID WELL HE BUSTED HIS HEAD OPEN BUT HE STITCHED IT UP WITHOUT MEDS BECAUSE HE'S SO LOADED HE DIDN'T KNOW THE DIFFERENCE ANYWAY.

AND, AND THOSE WERE THE TYPES OF THINGS NOT JUST ONE OF THOSE TYPES OF THINGS BUT THOSE ARE TYPES OF THINGS WE SAID THAT HE HAD THIS HISTORY, PLUS BEING SEXUALLY ABUSED IN PRISON.

>> WELL, THAT ONE HE INSISTED, DID HE NOT, THAT THE LAWYER NOT USE THAT.

>> WELL, SO THE LAWYER SAID YES, SIR.

>> WELL, THAT'S THE EVIDENCE. THAT'S -- I MEAN, THAT'S ALL WE CAN RELY ON IS WHAT PEOPLE SAY.

>> I, I, I HEAR YOU.

>> WELL, MR. HARPER, YOU'VE USED UP ALL OF YOUR TIME. IF YOU'D LIKE TO MAKE A CONCLUDING STATEMENT.

>> WELL, I JUST DON'T WANT TO
LOSE THE, THE, THE PERSPECTIVE
OF THIS, THE EVIDENCE HERE IS
ONE BROTHER AGAINST ANOTHER
BROTHER WHO DON'T -- WHO
DOESN'T LIKE EACH OTHER, AND
FOR THE TRIAL JUDGE TO SIT IN
THE VERY END AND SAY HE CAN'T
SAY THAT RONALD PALMER HEATH
KILLED AND KENNETH HEATH WALKS.
ON THIS CASE OR AT LEAST
GETS --

>> HE HAS A LIFE SENTENCE.

>> GETS A PLEA BARGAIN.

IT SEEMS TO ME THAT'S THE TIME
AND THE PLACE THIS COURT NEEDS
TO STEP IN.

THANK YOU.

>> THANK YOU VERY MUCH.