

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> THE LAST CASE ON THE COURT'S DOCKET FOR TODAY IS RANDY LAMAR SCHOENWETTER V. STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT, I AM JAMES DRISCOLL HERE ON BEHALF OF RANDY SCHOENWETTER.

THIS IS A CASE IN WHICH COUNSEL FALSELY AND PREJUDICIOSLY PRODUCED EVIDENCE AGAINST THEIR OWN CLIENT, CHILD PORNOGRAPHY.

THAT WAS INEFFECTIVE OF MR. SCHOENWETTER, OF WHAT HE WAS ENTITLED UNDER THE U.S. CONSTITUTION.

>> YOU HAVE A VERY HIGH BURDEN HERE.

THIS IS NOT A CASE WHERE THE LAWYERS FAILED TO INVESTIGATE, HAPHAZARDLY PUT ON AN EXPERT.

BOTH LAWYERS TESTIFIED TO THEIR STRATEGY OF BELIEVING THAT THE ONLY WAY TO EXPLAIN THESE MURDERS AFTER YOUR CLIENT HAD ALREADY PLED GUILTY WAS TO PUT ON EVIDENCE FROM A PSYCHOLOGIST WHO TESTIFIED TO THIS, AND THEY THOUGHT THAT WAS SOUND STRATEGY.

NOW, OUR CASE LAW SEEMS TO SAY THAT IF, IF OTHER ALTERNATIVES HAVE BEEN INVESTIGATED AND REJECTED THAT A REASONABLE STRATEGIC DECISION IS ENTITLED TO EXTREME DEFERENCE.

YOU HAVE GOT NOT ONLY WHAT THEY DID IN THE ORIGINAL TRIAL, BUT YOU HAVE A FULL EVIDENTIARY HEARING WHERE THE JUDGE WAS ABLE TO EVALUATE THE LAWYERS AND THEIR STRATEGY.

AND THEY DID DETERMINE THE STRATEGY WAS REASONABLE.

HOW DO YOU GET AROUND THAT?

>> FIRST OF ALL, YOUR HONOR, I SUBMIT TO THIS COURT THAT PUTTING ON EVIDENCE THAT YOUR CLIENT IS OBSESSED WITH SATAN, WITH CHILD PORN, IN FACT, IT IS NOT TRUE.

>> YOU LEFT OUT THE SEX PART, WHICH IS THE MOST IMPORTANT PART WHICH MAKES IT RELEVANT.

>> MR. SCHOENWETTER HAD AN INTEREST IN SEX, BUT NOT CHILD PORNOGRAPHY.

THE QUESTION IS WHY PUT ON CHILD PORNOGRAPHY IF, IN FACT --

>> DOESN'T IT COME FROM THE SAME WITNESS THAT TALKS ABOUT HIS OBSESSION WITH SEX, THE SAME WITNESS?

>> THE SAME WITNESS, DR. RIEBSAME SAID THAT.

THE DEFENSE LITIGATION WENT AND PUT ON THE MOTHER TO REFUTE THE IMAGES GIVEN TO POLICE BY MR. SCHOENWETTER'S MOTHER --

>> WHEN YOU JUMP FROM ONE TO ANOTHER, YOU TAKE THINGS OUT OF CONTEXT, IT MAKES THINGS VERY DIFFICULT TO MAKE UP A COHERENT JUDGMENT.

I WOULD LIKE TO KNOW.

HERE WE HAVE A YOUNG MAN, 18, IN HIS LATE TEENS, GOES OUT TO A HOME, BREAKS INTO A HOME.

WE HAVE A VICIOUS MURDER OF A YOUNG GIRL, A KNIFE MURDER OF THE MOTHER.

THEN WHEN THIS FELLOW IS IN PRISON SENDS THE LETTER SAYING, I DID IT.

I WANT TO PLEAD GUILTY.

I INTENDED TO HAVE SEX.

IS THAT A FAIR STATEMENT OF FACTS?

>> YES.

>> OKAY.

I AM A LAWYER.

I HAVE GOT TO TRY TO FIGURE OUT HOW CAN I BEST DEFEND THIS PERSON.

WHY IS IT UNREASONABLE FOR THAT LAWYER WHEN SOMEONE'S BRINGS THEM INFORMATION, THAT EXPERT BELIEVES THAT THIS GUY HAS A SEXUAL OBSESSION THAT PART OF THAT ALSO INCLUDES SOME SATANISM STUFF AND MAY INCLUDE SOME PORNOGRAPHY KINDS OF THINGS, SAME WITNESS.

WHY WOULD I NOT, AS A LAWYER, WANT TO DEMONSTRATE THERE IS SOMETHING WRONG WITH MY CLIENT?

THAT IS THE ONLY EVIDENCE I WOULD HAVE TO SAY THAT HE WAS OBSESSED BY THIS AND COULD NOT HELP HIMSELF.

HE WAS DRIVEN TO THIS.

WHY IS THAT UNREASONABLE WHEN THERE IS NO OTHER POSSIBILITY THAT IS PRESENTED TO ME AS THE LAWYER TO TRY TO DEFEND THIS CLIENT?

>> WELL, IF, IN FACT, IN THIS CASE OF CHILD PORNOGRAPHY WHY CALL AN EXPERT TO REFUTE THAT?

>> IT HAPPENED TO BE PART OF THE TESTIMONY OF THE WITNESS WHO TESTIFIED ABOUT THE SEX.

I WILL TRY TO NEUTRALIZE THEM.

I CAN'T HELP WHAT HE IS GOING TO SAY.

HE'S GOING TO SAY WHAT HE IS GOING TO SAY.

HE HAS A KEY COMPONENT, WHICH IS THE OBSESSION WITH SEX CAUSED THIS, NOT MY CLIENT.

SOME BAGGAGE WITH THAT.

I WILL TRY TO ELIMINATE BAGGAGE BY BRINGING IN THE POLICE OFFICER.

>> WHAT DR. RIEBSAME, BEFORE YOU UNDERMINE THIS DEFENSE EXPERT THAT YOU WANT THE JURY TO BELIEVE HAS A CREDIBLE OPINION.

THEN WHEN YOU HAVE THE SATANISM WHY NOT CALL THESE TO REFUTE THAT, IN FACT, HE HAD CHANGED.

>> NOW YOU'RE BRINGING UP THE ISSUE OF WHY THEY DIDN'T PUT ON WITNESSES.

LET'S GO BACK TO THE QUESTION, WHY WAS IT NOT A REASONABLE STRATEGIC POSITION.

YOU ARE NOW SAYING THEY SHOULD HAVE PREPARED HIM BETTER.

THAT IS SORT OF A DIFFERENT SUBSET.

AS FAR AS DECIDING THAT THIS WOULD BE AN IMPORTANT PART TO DEVELOP, AND IT WASN'T JUST THE SEXUAL FANTASY.

THEY WERE CONNECTING IT WITH HAVING ASPERGER'S SYNDROME AND OTHER BRAIN DISORDERS.

IT WASN'T JUST STANDING OUT AS HE HAD SEXUAL FANTASIES.

THEY WERE RELATED TO SOMETHING MORE DAMNING THAT WAS IN THIS YOUNG MAN'S BRAIN.

AND SO IT WAS PART OF THE WHOLE PICTURE.

>> AND ASPERGER'S WAS AN INCREDIBLE ASPECT OF THIS CASE.

WASN'T AN ASPERGER'S EXPERT, DR. PRICHARD.

THE SATAN, THE PORN, THE SEXUALITY.

IF IT WAS, IN FACT, WHAT DR. RIEBSAME WAS GOING FOR, WHY, IN FACT, DID THEY NOT HAVE DR. RIEBSAME INFORM DR. PRICHARD?

>> YOU COULD HAVE DONE IT BETTER IN HINDSIGHT.

THAT IS THE FEELING THAT YOU ARE SAYING HERE.

YOU CAN NOW LOOK AT IT AND SAY, WELL, IF I WOULD HAVE TRIED THIS I WOULD HAVE MADE SURE THAT, YOU KNOW, THE DEPUTY TALKED TO HIM.

BUT THAT IS NOT GOING TO ESTABLISH IT.

>> HAD THIS, IN FACT, COME UP, BEEN THEIR INTENTION ALL ALONG HE WOULD HAVE HAD A CONSISTENT OPINION FROM DR. PRICHARD AND YOU WOULD NEVER HAVE CALLED A POLICE OFFICER.

>> THE TWO DOCTORS WERE PUT ON BECAUSE EACH ONE OF THEM HAD A DIFFERENT MENTAL HEALTH MITIGATOR THAT THEY WANTED TO PUT ON.

ONE ONLY SAID THAT HE HAD THE INABILITY TO CONTROL HIS CONDUCT.

THE OTHER SAID HE WAS LABORING UNDER, YOU KNOW, EMOTIONAL DISTURBANCE.

SO WHY NOT PUT ON BOTH OF THOSE?

THOSE DON'T HAVE TO NECESSARILY -- I MEAN, BASICALLY THEY ARE THEIR OWN DIAGNOSES.

BOTH OF THEM SAID HE HAD THE ASPERGER'S SYNDROME, CORRECT?

>> YES.

>> THAT IS WHAT GAVE HIM SOME, HE STARTED OBSESSING ON SOMETHING.

IF YOU HAD PUT THAT ON, THAT HE STARTS OBSESSING ON SOMETHING, WELL, OKAY. HE OBSESSES.

WHAT IS HE OBSESSING ABOUT?

HOW DOES THIS FIT IN WITH THIS MURDER?

IT SEEMS TO ME THAT YOU HAVE TO HAVE THE OTHER INFORMATION THAT CONNECTS WHAT HE WAS OBSESSING ON AND HOW THAT RELATED TO THE MURDERS.

>> DR. PRICHARD, WHICH DEFENSE COUNSEL TRIED TO DISTANCE THEMSELVES FROM AT THE HEARING, DID A FINE JOB OF THAT.

SO HE BECOMES PREOCCUPIED --

>> PREOCCUPIED WITH WHAT?

>> HAVING SEX WITH YOUNG GIRLS AT THE HOUSE.

SHE SAID WHY DO YOU, WHY PRESENT THAT IN A WAY THAT IS GOING TO BE PRESENTED TO THE JURY WHICH WE SHOWED WAS NOT, IN FACT, TRUE AND WAS, IN FACT, MISCONSTRUED BY DR. RIEBSAME.

I WOULD LIKE TO ADD THAT THERE SHOULD HAVE BEEN A SEXUAL COMPONENT TO THIS CASE.

EVEN THOUGH WE WERE DENIED THE HEARING, MR. SCHOENWETTER'S LETTER TO THE JUDGE WAS AN OFFER TO PLEAD GUILTY WHICH SHOULD HAVE BEEN SUPPRESSED.

>> WHO MADE THE OFFER?

>> MR. SCHOENWETTER.

>> WHAT LANGUAGE ARE YOU POINTING TO IN HIS LETTER TO THE JUDGE THAT IS WAS AN OFFER?

>> YOUR HONOR, I WANT TO PLEAD GUILTY.

I DID THIS.

I WON'T SPEND A LOT OF TIME LIKE THIS.

IT IS SIMILAR TO CALABRO.

THEY COULD HAVE CALLED CHAPLAIN IF, IN FACT, THAT WAS THE CASE.

THEY SHOULD HAVE LOOKED AT THE OTHER CHAPLAINS THAT WERE AVAILABLE.

AFTER HE HAD THIS RELIGIOUS TRANSFORMATION WHICH WOULD ALLOW HIM TO OPEN UP MORE THAT HE WOULD HAVE BEEN ABLE TO DO THROUGHOUT HIS WHOLE LIFE WITH ASPERGER'S.

>> TESTIFIED AT THE HEARING.

THEY WERE ASKED ABOUT THAT ASPECT OF THIS CASE ALSO.

ALLEGED RELIGIOUS CONVERSION.

IF I RECALL CORRECTLY THEY MADE A DECISION NOT TO PRESENT THAT EVIDENCE BECAUSE OF MR. SCHOENWETTER'S OWN PRESENTATION.

HE WOULD GET ON THE STAND AND BE REALLY GRANDSTANDING ABOUT HIS CONVERSION.

>> DID NOT HAVE TO CALL MR. SCHOENWETTER WHICH WE DID NOT DO AT THE HEARING BECAUSE OF HIS ASPERGER'S AND ADHD.

IT IS AN INCREDIBLE CHALLENGE.

WHAT YOU COULD HAVE DONE, YOU COULD HAVE SAID, DO YOU HAVE ANYBODY ELSE HERE THAT HAS WORKED WITH RANDY SCHOENWETTER THAT WE COULD SPEAK TO?

IF, IN FACT, THAT IS THE FACT THEY COULD ASK JUST THAT ONE QUESTION.

THEY WOULD HAVE HAD THE CHAPLAIN WHO BAPTIZED HIM, AND THEY WOULD HAVE HAD THE CHAPLAIN WHICH MR. SCHOENWETTER WENT WITH AND ASKED THEM TO PRAY WITH HIM DESPITE HIS ASPERGER'S SYNDROME.

>> SO IS IT YOUR INTENTION THAT THIS RELIGIOUS CONVERSION INFORMATION WOULD HAVE BEEN SUFFICIENT TO CHANGE THE JURY RECOMMENDATION OF THE COURT'S FINDING THAT THE AGGRAVATING CIRCUMSTANCES OUTWEIGHED THE MITIGATING?

>> IT CERTAINLY WOULD HAVE HAD AN INFLUENCE ON THE JURY.

SUPPLEMENTAL AUTHORITY.

THIS IS INCREDIBLE INFORMATION.

THIS IS A YOUNG MAN WITH ASPERGER'S SYNDROME.

THIS IS A MAN TEN MONTHS AFTER THE DEATH PENALTY.

ADHD.

A HORRIBLE BACKGROUND.

HE HAD CAT-SCAN THAT SHOWED THE BRAIN DAMAGE.

ALSO COULD HAVE BEEN PRESENTED RATHER THAN PUT ON AN EXPERT TO HAND TO THE JURY WHAT IS GOING TO HAPPEN TO MR. SCHOENWETTER.

MAYBE MR. SCHOENWETTER SHOULD HAVE BEEN AFFECTED AND TALKED TO CHAPLAINS WHO COULD HAVE TOLD THE JURY WHAT COULD HAVE BEEN ACCOMPLISHED.

INSTEAD, THAT WAS NOT PUT ON.

COUNSEL STOPPED TALKING TO MR. SCHOENWETTER AND DID NOT INVESTIGATE FURTHER.

>> IS IT UNREASONABLE FOR A PROFESSIONAL THAT MAY NOT HAVE THE SAME BELIEFS?

BUT OTHERS MAY NOT.

YOU FEEL LIKE YOU ARE ROLLING THE DICE IN CERTAINLY EVERYONE WHO IS CAUGHT AND THEY ALL OF SUDDEN HAVE A RELIGIOUS REVEALING AFTER THEY ARE IN PRISON.

SO THE THOUGHT PROCESS, YOU KNOW, THIS COULD BECOME OFFENSIVE TO SOME PEOPLE.

ALL YOU HAVE TO DO IS I GOT RELIGION NOW.

IT EXCUSES EVERYTHING THAT I HAVE DONE.

WHETHER YOU AGREE WITH IT OR NOT, AT LEAST AS A JUDGE, A STRATEGIC JUDGMENT BY THE PROFESSIONAL IN THAT COMMUNITY WITH THE CRIME HE IS FACED WITH.

>> THEY HAVE TAKEN THE TIME TO SPEAK WITH THOSE CHAPLAINS WHICH WERE SO IMPORTANT IN MR. SCHOENWETTER'S LIFE, MAYBE THEY COULD THINK THAT.

COUNSEL DOES NOT TRY THESE CASES.

YOU ARE TALKING ABOUT RELIGIOUS BELIEFS THAT WOULD BE HELD BY MANY IN THE COMMUNITY COMPARED TO THE SATANISM WHICH COUNSEL PUT ON.

IF YOU ADVOCATE THE GOOD WITH THE BAD.

THE FACT THAT MR. SCHOENWETTER MAY HAVE FELT FORGIVEN ON HIS PAST LIFE, COULDN'T THEY HAVE DONE THAT?

THEY COULD NOT BECAUSE THEY, IN FACT, NEVER TOOK THE TIME.

>> YOU'RE POINTING OUT MITIGATION WHICH SOUNDS -- WHAT WE HAVE IN THIS CASE IS A DOUBLE MURDER.

WE HAVE GET HAV.

WE HAVE AVOID ARREST.

WE HAVE A THIRD ATTEMPTED MURDER.

WE HAVE A MURDER OF THE 10-YEAR-OLD.

THOSE ARE SUBSTANTIAL AGGRAVATING FACTORS.

NOW, IN TERMS OF THE MITIGATING DAMAGES, SO WE'RE CLEAR ABOUT THIS, ASPERGER'S SYNDROME IS A MILD FORM OF AUTISM.

THERE IS NO EVIDENCE IN THE RECORD THAT ASPERGER'S ITSELF WOULD HAVE CAUSED HIM TO HAVE VIOLENT URGES.

IT IS REALLY MORE FOCUSED ON WHETHER HE HAS BECOME OBSESSED WITH SOMETHING LIKE YOUNG GIRLS.

SO I THINK THAT WE STILL HAVE TO TAKE THIS AS A SITUATION OF SOMEONE WHO IS JUST PROFOUNDLY IMPAIRED BUT HAS, PERHAPS, DIFFICULTY IN THIS SOCIAL COPING AND BECOMES UPSET.

NO MATTER HOW YOU DRESS IT UP YOU STILL CAN'T GET AWAY FROM THE TREMENDOUSLY OVERWHELMING AGGRAVATION IN THIS CASE.

>> WELL, THE TWO JURORS ON THE TRIAL AND THREE JURORS, THEY FELT THAT SHOULD BE AN APPROPRIATE PUNISHMENT.

MR. SCHOENWETTER WAS ONLY TEN MONTHS PASSED THE AGE WHERE HE CAN RECEIVE THE DEATH PENALTY.

I RESPECTFULLY DISAGREE.

THAT IS WHY THIS BRIEF, IN MY BRIEF.

MILD IS A TERM THAT DOCTORS USE AND SO FORTH.

THAT IS A SEVERE CONDITION.

SEVERELY IMPAIRED MR. SCHOENWETTER THROUGHOUT HIS LIFE.

THAT LED TO THE ALIENATION.

MR. SCHOENWETTER, IT WAS NOT BROUGHT OUT STRONG ENOUGH.

YOU ARE TALKING ABOUT THE LOBE DAMAGE.

WHEN AN IDEA POPS INTO HIS HEAD THE ASPERGER'S SYNDROME MIGHT MAKE HIM OBSESSED WITH IT.

THE IMPULSIVITY MAKES IT POSSIBLE FOR IT TO HAPPEN.

THIS IS ONE OF THE MOST MITIGATED CASES THAT WILL COME BEFORE THIS COURT.

THERE ARE FACTS IN THIS.

HAD THEY RECEIVED THE WHOLE TRUTH ABOUT MR. SCHOENWETTER AND NOT WHAT WAS FALSELY PRESENTED IT WOULD HAVE BEEN A REASONABLE POSSIBILITY THAT THERE WAS A DIFFERENT OUTCOME IN THIS CASE.

I SEE THAT I AM INTO MY REBUTTAL TIME.

>> MAY IT PLEASE THE COURT, MY NAME IS BARBARA DAVIS.

THE COUNSEL DID TALK TO THE CHAPLAIN.

THEY MADE A STRATEGIC DECISION NOT TO CALL THEM BECAUSE IN THEIR OPINION IT SHOWED LACK OF REMORSE.

THEY ALSO EMPHASIZED WHEN MR. SCHOENWETTER FIRST GOT TO JAIL HE WAS --

>> IS THAT WHAT THEY SAID AT THE JUDICIARY HEARING?

>> YES.

>> SHOWED LACK OF REMORSE.

>> THEY SAID THAT HE HAD BEEN FORGIVEN OF HIS SINS.

HE HAD BEEN CLEANSED, AND IT WAS A NEW DAY.

ACTUALLY, IN THE EVIDENTIARY HEARING, PAGE 362, IT TALKS ABOUT, THE ATTORNEY IS TESTIFYING ABOUT HOW THEY WERE STUNNED WHEN THEY TALKED TO THE PASTORS.

THEY REALIZED THAT IF THEY PRESENTED EVIDENCE OF THIS THE JURY COULD CONCEIVE OF THAT AS ACCEPTING NO RESPONSIBILITY FOR WHAT HE HAD DONE BECAUSE OF THE ATTITUDE EXPRESSED THROUGH THE PASTORS THAT EVERYTHING IS FORGIVEN AND IT IS A CLEAN SLATE AND YOU HAVE NO RESPONSIBILITIES.

THEY MADE A STRATEGIC DECISION.

THEY ACTUALLY, ALL OF THE DEFENSE ATTORNEY NOTES ARE IN THE RECORD.  
THEY TALKED TO TWO PASTORS.  
ONE OF THE ATTORNEYS SAID THAT, ONE OF THEM SAID THAT IT SHOWED THAT HE COULD NOT FEEL REMORSE.  
THAT ONE OF THE WITNESSES WAS GOING TO SAY THAT.  
THAT IS THE PASTOR ISSUE.  
THEY MADE A STRATEGIC DECISION THAT IT WOULD HAVE BEEN VERY HARMFUL TO PRESENT THAT IN THEIR OPINION.  
NOW, THEY CONSULTED SIX EXPERTS.  
THEY HAD THREE OF THEM TESTIFY.  
IT WAS DR. RIEBSAME WHO DID THE TESTING.  
ALSO DR. PRICHARD HAD DONE TESTING.  
HE DID NOT TESTIFY BECAUSE HE DID NOT HAVE ANYTHING TO SAY.  
DR. WEISS IS NEUROLOGICAL.  
AND DR. DANZIGER ALSO EXAMINED MR. SCHOENWETTER.  
WHO THEY CALLED AT THE HEARING WAS DR. RIEBSAME WHO DID NEUROLOGICAL TESTING, FOUND EVIDENCE WHICH WOULD CALL IMPULSIVITY, FOUND EVIDENCE OF ASPERGER'S SYNDROME, ORDERED TESTING BY DR. WU, WHO IS A PSYCHIATRIST.  
DR. WU DID THE TESTING AND TESTIFIED CONSISTENTLY WITH DR. RIEBSAME.  
YES, THERE IS FRONTAL LOBE DAMAGE CONSISTENT WITH ASPERGER'S SYNDROME.  
SO THEY DEVELOPED THIS ENTIRE IMPULSE CONTROL.  
THEN THEY BROUGHT IN DR. NONA PRICHARD WHO IS THE EXPERT ON ASPERGER'S SYNDROME.  
SO DR. RIEBSAME DID THE BACKGROUND.  
THAT SEGUED INTO DR. PRICHARD WHO VERIFIED ADHD AND ASPERGER'S, THE EXPERT ON THAT.  
AND DR. WU CONFIRMED THAT.  
THEIR THEORY, YOU HAVE TO PLAY THE CARDS YOU'RE DEALT.  
THE DEFENDANT, WITHOUT THEM KNOWING -- I BROKE INTO THE FRISKEY'S HOUSE WITH THE CLEAR DESIRE TO HAVE SEX WITH ONE OR BOTH.  
THIS WHOLE THING ABOUT DR. WU SAYING, THE MOTHER HAD FOUND WHAT SHE FELT WAS CHILD PORNOGRAPHY.  
HE WAS DOWNLOADING IT ON MY COMPUTER.  
THE THING ABOUT PORNOGRAPHY CAME OUT FROM ALL THE WITNESSES.  
IT WAS THERE.  
EVEN TESTIFIED ABOUT THEM LOOKING AT.

WHAT HE SAID IS, THIS IS ON PAGE 739.

HE IS TALKING ABOUT HIS IRRESISTIBLE IMPULSES OBSESSING WITH SEX TO THE POINT OF BEING OBSESSED WITH PORNOGRAPHY AND SATANISM AND THAT HE EVEN DOWNLOADED SOME CHILD PORNOGRAPHY.

WELL, THEN COUNSEL CAME BACK AND SAID HE TOLD YOU HE DOWNLOADED THE CHILD PORNOGRAPHY, AND HE SAID THE MOM BASICALLY PROVIDED THE ENTIRE HISTORY.

NO, THAT IS JUST WHAT THE MOM TOLD ME.

THAT IS IN THE RECORD, PAGE 794.

THEN THEY BROUGHT IN DETECTIVE MUTTERS WHO SAID IT WAS NOT CHILD PORNOGRAPHY.

>> I GUESS WHAT THEY'RE SAYING ON THAT IS IF YOU ARE CAREFULLY CONSTRUCTING A CASE AND YOU WANT TO EMPHASIZE THE OBSESSION WITH SEX AS PART OF HIS BRAIN IMPAIRMENT AND THE ASPERGER'S, IT IS ALMOST AS IF AS THEY ARE GOING ALONG THEY SAY, UH-OH, THIS EXPERT SAID SOMETHING INCORRECT.

NOW WE ARE GOING TO BRING IN ANOTHER WITNESS.

SO IF THEY HAD DONE A LITTLE MORE PREPARATION OF THEIR EXPERT, THE EXPERT THAT SAID IT WAS CHILD PORNOGRAPHY THAT WAS DOWNLOADED.

>> IT IS NOT A LACK OF PREPARATION.

THE ATTORNEYS KNEW CHILD PORNOGRAPHY ISSUE WAS OUT.

THE PROSECUTORS PROBABLY GOING TO BRING IT UP.

>> IF IT WASN'T CHILD PORNOGRAPHY THEN THEY COULD HAVE FOUND A MOTION THAT SAID THERE ARE A LOT OF ISSUES IN THIS CASE, BUT DOWNLOADING CHILD PORNOGRAPHY ISN'T ONE OF THEM.

FRANKLY, EVEN IF IT WAS SUFFICIENT I'M NOT SURE HOW IT ENDS UP UNDERMINING THE OUTCOME.

IT DOES SEEM LIKE IF THEY KNEW IT WAS GOING TO BE AN ISSUE, BUT ALSO KNEW THAT IT WASN'T, DID NOT, IN FACT, TURN OUT TO BE CHILD PORNOGRAPHY THEY MIGHT NOT WANT TO LIMIT THE TESTIMONY; ISN'T THAT CORRECT?

>> ISSUE OF THE ABILITY OF THESE TWO DEFENSE ATTORNEYS BECAUSE NUMBER ONE WE DON'T COACH OUR EXPERTS.

WE DON'T TELL THEM WHAT TO SAY.

IN HINDSIGHT THEY COULD HAVE DONE THAT.

THE MOM TOLD DR. RIEBSAME HE IS DOWNLOADING CHILD PORN.

THEY MADE LEMONADE OUT OF LEMONS AT THIS POINT BECAUSE THERE IS THAT ONE LITTLE MENTION.

LET ALONE THE PROSECUTOR IS GOING OFF CHILD PORN AND PEDOPHILIA.

DR. RIEBSAME WAS READY FOR HIM.

HE DOES NOT MEET THE CRITERIA FOR PEDOPHILIA.

TOTALLY PREPARED FOR THAT ATTACK BY THE PROSECUTOR.

THEN THE DEFENSE ATTORNEY GETS TO COME IN ON REDIRECT AND SAY, WELL, IT WASN'T CHILD PORN AND HERE IS MUTTERS.

IT HAPPENS.

YOU CAN'T CHANGE THE CARDS YOU'RE DEALT.

IF THEY ASK YOU ANYTHING ABOUT CHILD PORNOGRAPHY, THE MOM TOLD THEM THAT IS WHAT HAPPENED.

>> DID THE MOTHER TESTIFY AT TRIAL?

>> SHE TESTIFIED THAT SHE TESTIFIED SHE PUT BLOCKS ON THE PHONE AND COMPUTERS BECAUSE HE WAS VERY INTERESTED IN ALL THESE THINGS THAT SHE DID NOT THINK WERE APPROPRIATE.

>> I MEAN, HE WAS DOWNLOADING PORNOGRAPHY.

IT WAS STILL GOING TO COME OUT.

HE WAS OBVIOUSLY OBSESSED WITH THE FRISKEY GIRLS.

YOU'RE NOT GOING TO GET AROUND THAT.

>> AND THAT IS WHERE THESE ATTORNEYS HAD A CASE WHERE YOU HAVE HIM WRITING THIS UNSOLICITED LETTER TO THE JUDGE.

WE HAVE THE 10-YEAR-OLD DEAD IN THE BED, STABBED THROUGH HER HANDS IN THE CHEST.

WE HAVE MOM BLEEDING.

SHE WAS SO BEAT UP.

DAD RUNNING TO THE NEIGHBORS SO COVERED IN BLOOD HIS OWN BROTHER COULD NOT RECOGNIZE HIM, DYING IN THE ARMS OF A NEIGHBOR.

THIS IS NOT A GREAT DEFENSE CASE.

THEN YOU HAVE A DEFENDANT WHO MAKES A COMPLETE CONFESSION.

HIS DNA.

THERE'S A BLOOD TRAIL RIGHT BACK TO HIS APARTMENT.

CLOTHES WITH THEIR DNA IS IN THE DUMPSTER WITH THE MURDER KNIFE.

COMPLETE CONFESSION.

THEN HE IS THE ONE WHO INTERJECTED THE WHOLE SEXUAL CESSATION.

>> WAS THAT THE ONLY EVIDENCE OF IT, HIS LETTER TO THE COURT?

>> THAT WAS THE ONE.

ALL THE EXPERTS, IN THEIR OPINION, SAID HE COULD NOT REALLY TELL MOTIVE.

EVEN IN THE ORIGINAL CONFESSION THE DETECTIVES HAD SAID, WELL, DID YOU GO IN TO HAVE SEX WITH THE GIRLS?

HE SAID NO.

ULTIMATELY WHEN HE BECAME MORE RELIGIOUS AND WANTED TO ACCEPT RESPONSIBILITY AND CONFESS TO ALL THIS HE DID.

>> SO MY QUESTION, I THINK, WAS THAT THE ONLY EVIDENCE WAS THIS LETTER THAT HE SENT.

>> THAT WAS THE FIRST BIT OF EVIDENCE.

THEN WHEN THE EXPERTS TALKED TO HIM HE TALKED OPENLY.

>> DID THE MOTHER ALSO INDICATE THAT SHE BECAME CONCERNED?

THE DEFENDANT CALLING THE 900-NUMBERS OR DOING ALL THIS.

SO THERE WAS EVIDENCE, AT LEAST FROM THE MOTHER, THAT THIS WAS THE DIRECTION OF HIS INTEREST.

>> YES, AND FROM THE FRIEND WHO WAS THE MARINE THAT TALKED ABOUT THE PORNOGRAPHY.

THE JUDGE FOUND BECAUSE OF DR. RIEBSAME THE JUDGE FOUND EXTREME.

>> BUT HE GAVE IT LITTLE WEIGHT BECAUSE HE DID NOT FIND THE COURT'S CONDUCT CONSISTENT WITH ANYTHING AND HE ALSO QUESTIONED, I THINK, IN HIS SENTENCING ORDER THAT THERE HAD BEEN CONTRARY TESTIMONY THROUGH THE STATE'S EXPERTS AT THE COMPETENCY HEARING THAT THE DEFENDANT DID NOT STRUGGLE WITH THAT.

SO IT IS NOT LIKE HE GAVE IT GREAT WEIGHT.

HE FOUND IT BUT UNDERMINED HIS FINDINGS BY SAYING IT DID NOT ACTUALLY PROVIDE THE MOTIVATION FOR THE MURDER.

>> THAT AGAIN SHOWS ABILITY OF THESE TWO DEFENSE ATTORNEYS WHO ARE FACED WITH PRETTY MUCH THE WORST FACTS YOU CAN EVER HAVE WHERE HE BRINGS A BOX CUTTER TO THE SCENE, OPENS THE SCREEN, SLIDES IN.

HE SPENT THE NIGHT IN THE HOUSE.

HAS THE KNIFE.

BY THE TIME THE MOTHER SEES HIM HE'S TOUCHING THE LITTLE GIRL.

DO WE THROW UP OUR HANDS AND SAY WE HAVE ALL THE FACTS?

OR DO WHAT THEY DID AND TRY TO MAKE LEMONADE OUT OF LEMONS.

WE ARE GOING TO MAKE, WE ARE GOING TO FIND A WAY TO MAKE SENSE OF THESE FACTS.

THAT IS WHAT THEY DID.

>> I'M CURIOUS ABOUT THE FACTS.

THE 16-YEAR-OLD, HE FIRST APPROACHED THE GIRL.

WAS SHE ACTUALLY IN THE BEDROOM?

>> SHE WAS IN THE BEDROOM.

>> DID SHE EVER COME OUT?

>> SHE DID.

WHEN SHE HEARD ALL THE NOISE SHE SAID ALL SHE SAW WAS A PILE OF BODIES.

SHE RAN BACK INTO HER ROOM AND LOCKED THE DOOR AND CALLED 911.

>> MY UNDERSTANDING IS HE WAS ALLEGED TO HAVE GONE BACK AND KILLED THE 10-YEAR-OLD.

>> HE DID.

>> AS AN AFTERTHOUGHT.

>> HE DID NOT TRY TO GET INTO THE BEDROOM OF THE 16-YEAR-OLD?

>> HE DID.

WHEN HE FIRST WENT IN -- IN HIS CONFESSION HE TALKS ABOUT THIS.

THE DOOR WAS LOCKED.

THE 10-YEAR-OLD SLEEPS WITH THE DOOR OPEN AND THE LIGHT ON.

HE WENT INTO HER BEDROOM.

SHE WAS SHRIEKING AND CRYING.

THE LITTLE GIRL CALLED HIS NAME OUT, SO HE WENT BACK AND STABBED HER IN THE CHEST.

SO AS FAR AS -- I THINK I MAY HAVE COVERED EVERYTHING.

I DID JUST WANT TO TOUCH ON THE CALABRO ISSUE.

IF YOU LOOK AT CALABRO, WHICH IS THE CASE THEY ARE RELYING ON, RULE 3172, CALABRO IS TO PROMOTE PLEA BARGAINING.

CLEARLY SAYS THAT THERE MUST BE PLEA NEGOTIATIONS AND INTENT.

THERE WAS NO INTENT TO NEGOTIATE WITH THE JUDGE.

THIS DID NOT REQUIRE AN EVIDENTIARY HEARING BECAUSE EVERYTHING WAS IN THE RECORD.

IT HAPPENED.

THE JUDGE MADE CORRECT FINDINGS.

I DO WANT TO TOUCH ON THE JUDGE'S FINDINGS BECAUSE HE NOT ONLY SUMMARIZED ALL THE TESTIMONY, HE ATTACHED RECORDS THAT SUPPORTED HIS FINDINGS.

I WOULD ASK YOU TO REFER TO THE FINDINGS AND DENY POST CONDITIONS.

>> THANK YOU.

>> I THINK THE RECORD IS CLEAR THAT EACH CHAPLAIN WAS ASKED WHETHER THEY COULD CONTACT.

VICTOR WHO TESTIFIED WOULD NOT HAVE BEEN OFFENSIVE.

OF COURSE HE WAS.

>> BUT ISN'T THAT THE POINT, THEY ACTUALLY DID CONSIDER THEY HAD HIM.  
THEY MADE A STRATEGIC DECISION TO OFFER HIM AT THE DISPENSARY HEARING.  
BUT, INDEED, THAT IS A QUINTESSENTIAL STRATEGIC DECISION.

>> NO.

THEY HAD AN ASPERGER'S DOCTOR TESTIFY AT THE TRIAL.  
THIS WAS AN AFTERTHOUGHT TO APPEASE MR. SCHOENWETTER.  
WE DON'T STOP THERE.

WE TALKED IN DETAIL WITH SENIOR CHAPLAIN THOMAS WOOD, WHO, IN FACT, MADE THE  
VIDEOTAPE.

YOU GO AND TALK TO DAVE AND RICHARD DEAN YOU PRAYED WITH MR. SCHOENWETTER.  
ALL OF WHOM SAID THIS YOUNG MAN DOES NOT HAVE A LACK OF REMORSE.  
BECAUSE OF HIS ASPERGER'S SYNDROME HE WAS HINDERED.

BECAUSE OF HIS RELIGIOUS TRANSFORMATION HE WAS ABLE TO FEEL THAT REMORSE.  
WHAT YOU HAVE IN THIS CASE, THE TRIAL COUNSEL INEFFECTIVE AND TRIAL COUNSEL  
REFUSAL TO INVESTIGATE, TO GO FURTHER UNDER THE SIXTH AMENDMENT.  
IT BECAME MUCH WORSE.

BECAME A CASE IN WHICH MR. SCHOENWETTER, ONLY TEN MONTHS INTO BEING ABLE TO  
GET THE DEATH PENALTY, RECEIVED THE DEATH PENALTY WHEN THERE IS A REASONABLE  
PROBABILITY THAT IF THE EVIDENCE WAS NOT PRESENTED IN THE WAY IT WAS THE RESULT  
WOULD HAVE BEEN DIFFERENT.

CERTAINLY THE PROPER READING OF THE RECORD IS THAT THIS WAS, IN FACT, THEY WERE  
ASKING QUESTIONS THAT EVERY ATTORNEY KNOWS YOU DON'T ASK BECAUSE YOU DON'T  
KNOW THE ANSWER TO.

PAGE 794, ASKED WHETHER DR. RIEBSAME KNEW WHAT MUTTER SAID.

MS. ROBERTS AT THE TIME, WHETHER DR. RIEBSAME KNEW OR MS. ROBERTS KNEW THAT  
WAS CHILD PORNOGRAPHY.

TO THAT DR. RIEBSAME SAID NO.

CERTAINLY MUTTER WOULD HAVE BEEN AN EXPERT WHERE MR. SCHOENWETTER'S  
MOTHER WHO PROBABLY DID NOT WANT ANY PORNOGRAPHY ON THE COMPUTER WAS  
NOT.

THERE IS THAT.

I THINK IF YOU LOOK AT WHAT ACTUALLY WAS PRESENTED AT THE EVIDENTIARY HEARING  
AND HOW IT WAS PRESENTED NONE OF THAT WOULD HAVE BEEN PRESENTED TO THE  
JURY.

IT VERY WELL COULD HAVE SAVED MR. SCHOENWETTER'S LIFE.

IT SHOWED THAT HE HAD CHANGED.

HE WAS A VICTIM IN PRISON.

HE COULD HAVE GONE ON TO MAKE A CONTRIBUTION IN A PRISON SETTING.

I SEE I AM OUT OF TIME.

I ASK THAT YOU REVERSE.

GRANT MR. SCHOENWETTER RELEASE.

FIND THAT THE DEATH PENALTY IS INAPPROPRIATE AND ALTERNATIVELY REMAND THIS CASE BACK FOR AN EVIDENTIARY HEARING ON THE CLAIMS ON WHICH MR. SCHOENWETTER WAS DENIED A HEARING.

>> THANK YOU VERY MUCH.

THANK BOTH OF YOU FOR YOUR ARGUMENTS.

THE COURT WILL NOW BE IN RECESS UNTIL TOMORROW MORNING.

>> PLEASE RISE.