

PLEASE RISE.

>> FLORIDA SUPREME COURT IS NOW  
IN SESSION.

PLEASE, BE SEATED.

>> WE NOW TURN TO THE SECOND  
WYATT CASE ON OUR DOCKET.  
>> MORNING AGAIN.

UM, I WANT TO ADDRESS TWO  
ASPECTS OF THE BRIEF IN THIS  
PARTICULAR CASE, YOUR HONORS.  
FIRST OF ALL, I WANT TO GO BACK  
BRIEFLY TO THE CBLA ISSUE AS IT  
RELATES TO THIS PARTICULAR CASE,  
AND AFTER THAT I WOULD LIKE TO  
ADDRESS THE --

>> COULD YOU SPEAK INTO THE

MICROPHONE, PLEASE?

>> I'M SORRY.

REGARDING THE BULLET LEAD  
ANALYSIS IN THIS CASE, I THINK  
IT'S VERY CLEAR FROM THE TRIAL  
RECORD, PARTICULARLY THE  
PROSECUTOR'S CLOSING ARGUMENT,  
THAT THEY RELIED VERY, VERY  
HEAVILY ON THE CBLA TESTIMONY IN  
THE NYDEGGER CASE.

>> IN THIS CASE WHAT ADDITIONAL  
EVIDENCE IS THERE?

LET'S NOT GO INTO THE JAILHOUSE  
SNITCH.

>> NO, NO.

>> WHAT'S THE INDEPENDENT  
EVIDENCE HERE?

MAYBE A LITTLE LESS THAN THE  
OTHER CASE?

>> WELL, THIS CASE IS A LITTLE  
BIT, THIS CASE IS THE ONE WHERE  
THE COMPARATIVE BULLET LEAD  
ANALYSIS IS REALLY THE KEY TO  
ESTABLISHING THAT --

>> I UNDERSTAND.

I ACCEPT THAT.  
WHERE'S THE OTHER EVIDENCE?  
HOW DO YOU VIEW -- OTHER THAN  
THE JAILHOUSE SNITCH --  
>> HE WAS CERTAINLY VERY  
IMPORTANT.  
>> NOW, WHAT'S THE REST OF THE  
EVIDENCE?  
WE HAVE THEM LEAVING TOGETHER ON  
THE EVENING THE LADY  
DISAPPEARED.  
>> YES, YOUR HONOR, I MEAN --  
>> OKAY.

WHAT'S THE OTHER EVIDENCE?  
>> I WASN'T PLANNING TO GO INTO  
THAT.  
>> WELL, IT'S IMPORTANT ANALYSIS  
BECAUSE THAT'S HOW YOU'RE GOING  
TO GET THERE WITH JONES, ARE YOU  
NOT?  
DO YOU NOT NEED TO DO THAT?  
IF YOU THINK YOU DON'T NEED TO  
DO THAT, THEN THAT'S FINE.  
>> WHAT I THINK I NEED TO DO IS  
GO BACK AND LOOK AT WHAT THE  
PROSECUTOR SAID AT THE CLOSING  
ARGUMENT WHICH WAS -- HE SPENT  
ABOUT A PAGE AND A HALF TYING IN  
THROUGH THE CBLA TESTIMONY THE,  
THIS WAS THE FACT THAT THESE TWO  
PEOPLE SHOT THESE TWO BULLETS.  
AND WHAT HE SAID WAS, IF IT  
HADN'T BEEN THEM -- THAT IS TO  
SAY WYATT AND LOVETTE -- FIRING  
THE GUN, THE BULLET WOULD HAVE  
BEEN DIFFERENT.  
IN OTHER WORDS, HE WAS  
PREDICATING HIS POSITION THAT  
THESE TWO FIRED THAT GUN ON THE  
COMPARATIVE BULLET LEAD  
ANALYSIS.  
IF NOTHING ELSE, TO SHOW THAT

THAT WAS THE CASE.

I MEAN, THERE'S OTHER THINGS,  
OBVIOUSLY, THAT LED TO THE  
CONVICTION, BUT THE FIRING OF  
THE GUN.

SO IT IS QUALITATIVELY  
DIFFERENT.

>> WHAT WAS -- DOES FOX TESTIFY  
IN THIS CASE?

>> I DON'T RECALL, YOUR HONOR.

I'D HAVE TO CHECK THAT.

>> I THOUGHT THAT FRED FOX,  
WHETHER I'VE GOT THIS RIGHT,  
WHAT HAPPENED DIDN'T -- FIRST OF  
ALL, DIDN'T HE MAKE -- HE MADE  
STATEMENTS TO FRED FOX, AND I  
THOUGHT THAT FRED FOX PAWNED THE  
GUN OR SOMETHING?

>> YES, YOUR HONOR.

I DON'T REMEMBER THE DETAILS, I  
APOLOGIZE.

>> I GUESS THE REASON THOSE  
DETAILS COULD BE IMPORTANT  
BECAUSE THEY LINK, IF THEY LINK  
WYATT WITH THE GUN.  
BUT MAYBE THE STATE CAN TELL US  
ON THAT ABOUT THAT EVIDENCE.  
AND I AGREE WITH YOU THAT THE,  
IN THIS CASE IT WAS THE DNA OF  
THE CO-DEFENDANT --

>> YES, YOUR HONOR --

>> -- THAT WAS FOUND INSIDE THE  
VICTIM.

HE DOES ADMIT, AND HE SAYS THEY  
ALL CAME BACK TO HIS HOTEL ROOM,  
CORRECT?

THAT'S WHAT HE SAID.

>> YES, YOUR HONOR.

>> BUT THAT HE FELL ASLEEP AND  
THEN NYDEGGER WAS GONE, WOKE UP.  
IS THAT WHAT HE SAID?

>> I BELIEVE IN SO MANY WORDS,  
YOUR HONOR.

>> BUT HIS HAIR IS FOUND INSIDE  
OF NYDEGGER'S VEHICLE FOR HAIR  
ANALYSIS?

>> YES.

I BELIEVE SO.

>> HE SAYS, WELL, THE VEHICLE  
WAS LEFT THERE.  
LOVETTE SAID SHE LEFT IT THERE  
FOR HIM TO USE, AND HE JUST USED  
IT AND THEN ABANDONED IT?

>> I BELIEVE THAT'S THE CASE,

YOUR HONOR.

>> WELL, I MEAN, I'M A JURY

LISTENING TO THAT, AND  
STATEMENTS, THE INCULPATORY  
STATEMENTS HE MADE TO THE  
POLICE, THE FACT THAT HE WAS  
WITH HER THE NIGHT BEFORE, FACT  
THAT HE IS STILL LINKED TO THIS  
GUN THROUGH FOX.

I COULD BE WRONG ON THAT.  
TO ME, THE FACT OF BEING ABLE TO  
ESTABLISH A PROBABILITY OF AN  
ACQUITTAL IS, IS A HIGH BURDEN.  
I DON'T SEE HOW TO ESTABLISH  
WITHOUT THAT EVIDENCE, YOU KNOW,  
PROBABILITY OF ACQUITTAL.

>> YES, YOUR HONOR.

AGAIN, I'D LIKE TO GO BACK.  
I'M NOT GOING TO REHASH WHAT I  
SAID IN THE FIRST ARGUMENT,  
BUT --

>> IN THE FIRST ARGUMENT,

THOUGH --

>> IT WAS A DIFFERENT SITUATION.

>> I WOULD AGREE THAT THERE'S

QUALITATIVELY DIFFERENT EVIDENCE  
IN THIS CASE.

I THINK YOU MIGHT HAVE A

STRONGER CASE HERE THAN IN THE DOMINO'S PIZZA BECAUSE IN DOMINO'S PIZZA HIS DNA IS FOUND INSIDE OF THE RAPE VICTIM.

HERE IT'S LOVETTE'S DNA THAT'S FOUND INSIDE OF THIS VICTIM.

>> YES, YOUR HONOR.

ANYWAY, I STAND ON MY BRIEF ON THAT PARTICULAR POINT.

I'D LIKE TO MOVE TO THE PENALTY PHASE, INEFFECTIVE ASSISTANCE OF COUNSEL, YOUR HONOR.

IN PARTICULAR THE CLAIM THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY INVESTIGATE MENTAL HEALTH MITIGATIONS IN THIS CASE.

>> IN THIS CASE WYATT DID

PRESENT MENTAL HEALTH TESTIMONY.

>> HE DIDN'T, HE DID NOT GIVE

ANY PURPORTED WAIVER IN THIS CASE, YOUR HONOR.

>> AND IT WAS INVESTIGATED, AND

THERE WERE WITNESSES THAT WERE PRESENTED, AND THERE WAS MENTAL HEALTH EXPERTS WHO WERE CONSULTANTS -- CONSULTED.

A STRATEGIC DECISION MADE NOT TO PUT ON MENTAL HEALTH EXPERTS.

TELL ME WHAT'S WRONG WITH THE JUDGE'S VERY, VERY COMPREHENSIVE ANALYSIS OF WHY THERE WAS NO INEFFECTIVE ASSISTANCE.

>> I WOULD TAKE ISSUE WITH THE

FACT THAT THE STRATEGIC DECISION WAS MADE TO PUT ON NO MENTAL HEALTH MITIGATION.

>> ISN'T THAT WHAT THE DEFENSE

ATTORNEY -- I MEAN, THE DEFENSE ATTORNEY HAD THOSE TWO EXPERTS.

>> SHE DID HAVE THOSE EXPERTS,

YOUR HONOR.

>> SO WHAT WOULD BE THE

DECISION?

>> IT WAS BASED ON A LESS THAN

FULL INVESTIGATION, A LESS THAN  
PROPER INFORMATION.

>> WE'RE TALKING ABOUT THE

MENTAL HEALTH EXPERTS.

>> YES, YOUR HONOR.

EXACTLY.

>> WHAT ELSE -- YOU GET MENTAL

HEALTH EXPERTS, AND THEY PERFORM  
A MENTAL HEALTH INVESTIGATION OR  
EVALUATION, THEN THEY SUPPLY IT  
TO YOU.

WHAT IS THE ATTORNEY SUPPOSED TO  
DO?

>> THE ATTORNEY IS SUPPOSED TO  
SUPPLY INFORMATION TO THE MENTAL  
HEALTH, TO THE MENTAL HEALTH  
PROFESSIONAL WHICH WOULD ASSIST  
WITH THE DETERMINATION OF  
WHATEVER MENTAL MITIGATION THERE  
MIGHT BE.

THIS COURT HAS SEEN A NUMBER OF  
INSTANCES IN WHICH A TRIAL  
ATTORNEY CONSULTS A MENTAL  
HEALTH PROFESSIONAL, THE MENTAL  
HEALTH PROFESSIONAL CONDUCTS AN  
INTERVIEW WITH THE CLIENT AND  
FORMS AN OPINION WITHOUT  
CONSULTING ANY COLLATERAL  
INFORMATION, SCHOOL RECORDS,  
THAT KIND OF THING, TALKING TO  
SCHOOL TEACHERS, FAMILY MEMBERS,  
AND THE MENTAL HEALTH  
PROFESSIONAL GETS ABSOLUTELY  
TORN TO SHREDS ON  
CROSS-EXAMINATION BECAUSE THE  
STATE WILL SAY, OKAY, THIS  
CLIENT, THIS DEFENDANT IS TRYING  
TO SAVE HIS LIFE, HE'S SAYING

THINGS TO THE MENTAL HEALTH PROFESSIONAL WHO CANNOT COLLABORATE -- WHO CANNOT CORROBORATE THEM WITH THIRD PARTY INFORMATION.

THAT'S WHAT HAPPENS HERE.

NOW, IN THAT WAY THE FAILURE TO DO A PROPER SOCIAL HISTORY IS VERY MUCH LINKED TO THE FAILURE TO DO A PROPER MENTAL HEALTH EVALUATION.

>> WELL, WHAT SHOULD HAVE BEEN SUPPLIED THAT WASN'T?

>> INFORMATION RELATING TO

MR. WYATT'S CHILDHOOD TRAUMA, HIS HISTORY OF ABUSE AT THE HANDS OF HIS FAMILY, THE FACT THAT HE WAS CONSUMING ALCOHOL FROM A VERY YOUNG CHILDHOOD AGE, UM, THE FACT THAT HIS MOTHER HERSELF WAS MENTALLY ILL. SHE WAS SCHIZOPHRENIC.

ALL OF THESE THINGS SHOULD HAVE BEEN FACTORED IN TO HIS MENTAL HEALTH EVALUATION.

>> I GUESS MY -- THE JUDGE, I'M

SOMEWHAT INFLUENCED BY THE JUDGE'S VERY DETAILED EVALUATION OF THIS PLAYING WHICH IS VERY HELPFUL TO US WHEN WE HAVE THIS. IS THIS NOT TRUE THAT THERE WAS, AGAIN, A HOST OF VERY UNFAVORABLE EVIDENCE THAT WOULD HAVE COME OUT?

NOW, I UNDERSTAND SOMETIMES YOU KIND OF WEIGH AND SAY WHAT'S BAD WITH -- BUT THERE WAS -- THEY DIDN'T FIND EVIDENCE OF BRAIN DAMAGE, AND YOUR NEW WITNESS FINDS SOME MILD IMPAIRMENT AS A NOTORIOUS AND INFAMOUS REPUTATION FOR BEING AGGRESSIVE STARTING IN MIDDLE SCHOOL.

HE WAS INVOLVED IN ALL KINDS OF CRIMINAL ACTIVITIES, HE WAS PHYSICALLY ABUSIVE TOWARDS HIS WIFE, HE BEAT A PERSON FOR AT LEAST 30 MINUTES AND LOCKED HIM IN A TRUNK, HE DEMONSTRATED BIAS TOWARD HOMOSEXUAL ADVANCES, HE'D BEEN LOCKED UP SINCE HE WAS A JUVENILE, HE HAS SHOWN GREAT ENTREPRENEURSHIP AND INGENUITY MANIPULATING THE SYSTEM. HIS NICKNAME IN PRISON WAS "KILLER" FOR HIS WILLINGNESS TO FIGHT, AND I COULD GO ON AND ON. I MEAN, AGAIN, I UNDERSTAND SOMETIMES YOU TRY TO SAY, WELL, HOW BAD IS IT?

THIS IS PRETTY BAD.

I MEAN, THIS IS -- I DON'T SEE HOW AN ATTORNEY FACED WITH ALL OF THAT BAD STUFF COULD BE FAULTED FOR DECIDING TO PUT ON COOPERATIVE LATE WITNESSES IN THIS CASE.

>> WELL, AGAIN, I THINK THE COURT NEEDS TO LOOK AT THE CASE LAW.

I THINK IT'S WILLIAMS V. TAYLOR THAT MADE VERY CLEAR THAT, YES, SOMETIMES BAD STUFF COMES OUT OF AN INVESTIGATION.

QUITE FREQUENTLY IN THESE CASES. BUT YOU DON'T STOP YOUR INVESTIGATION JUST BECAUSE BAD STUFF COMES OUT.

YOU HAVE TO HAVE A COMPLETE PICTURE THAT YOU CAN SEE A MENTAL HEALTH PROFESSIONAL, AND IN THAT CASE IF THE PROFESSIONAL SAYS I CAN'T HELP YOU --

>> DOES DR. RIFKIN NOT KNOW ABOUT THE MOTHER'S MENTAL ILLNESS?

>> HE MAY HAVE KNOWN

PERIPHERALLY.

I DON'T BELIEVE HE SPOKE WITH  
HER.

I DON'T BELIEVE HE SPOKE WITH  
SCHOOL TEACHERS, I DON'T BELIEVE  
HE SPOKE WITH FAMILY FRIENDS, I  
DON'T BELIEVE HE SPOKE WITH  
OTHER FAMILY MEMBERS,  
MR. WYATT'S EX-WIFE -- LIKE  
DR. SULTAN DID -- WHO TESTIFIED  
IN THE EVIDENTIARY HEARING.

>> IS THERE AN OBLIGATION FOR --

AGAIN, I AGREE WITH YOU THAT YOU  
WANT TO MAKE SURE THAT COUNSEL  
DOES A REASONABLE INVESTIGATION  
TO UNCOVER RECORDS, SCHOOL  
RECORDS DEPENDING ON WHAT YEAR  
IT IS IN THE --

[INAUDIBLE]

BUT IS THE MENTAL HEALTH EXPERT  
CHARGED WITH GOING OUT AND DOING  
HIS OR HER OWN INVESTIGATION?

>> NO, YOUR HONOR.

THE MENTAL HEALTH EXPERT HAS TO  
DO WHATEVER THE MENTAL HEALTH  
EXPERT FEELS IS APPROPRIATE TO  
BE ABLE TO FORM AN OPINION TO  
THE BEST OF THEIR ABILITY GIVEN  
WHAT THEIR DISCIPLINE IS WITHIN  
MENTAL HEALTH.

WHAT I'M SAYING IS, FIRST OF  
ALL, IF TRIAL COUNSEL HAD DONE A  
PROPER SOCIAL HISTORY AS  
MANDATED BY WIGGINS AND THE  
OTHER LINE OF CASES FROM THE  
FLORIDA SUPREME COURT -- FROM  
THE UNITED STATES SUPREME COURT,  
THEN THERE WOULD HAVE BEEN A  
MUCH MORE COMPELLING  
PSYCHOLOGICAL EXPLANATION OF  
BOTH THE GOOD AND THE BAD THINGS  
THAT HAPPENED IN MR. WYATT'S --

>> LET'S LOOK AT THE PREJUDICE  
PRONG FOR A MOMENT.  
AND I HAVE TO SAY THAT I GUESS I  
REALLY THOUGHT, THINK YOU HAVE A  
HARD TIME OF SHOWING THE  
DEFICIENCY.

BUT ON THE PREJUDICE WHAT WAS  
THE -- BY THE TIME THAT THIS  
TRIAL CAME UP, HE ALREADY HAD  
BEEN CONVICTED OF THE DOMINO'S  
PIZZA --

>> YES.

>> -- SECOND TRIAL.

SO WHAT WAS THE AGGRAVATION  
FOUND IN THIS CASE?

>> WELL --

[INAUDIBLE]

OBVIOUSLY, YOUR HONOR, AND FALSE  
IMPRISONMENT, AVOIDING ARREST.  
THERE WERE MANY -- CCP WAS FOUND  
BUT THEN REVERSED BY THIS COURT  
ON DIRECT APPEAL.

>> I GUESS WHAT I'M TRYING TO

FIND OUT IS DO YOU THINK OR CAN  
YOU TELL US HOW THE ASSESSMENT  
OF MITIGATION WHERE THEY WOULD  
HAVE SAID -- AND HOW OLD WAS  
WYATT AT THE TIME THIS HAPPENED?

>> AT THE TIME OF THE CRIME, 24,

YOUR HONOR.

>> HOW HIS SOCIAL HISTORY WOULD  
HAVE CHANGED THE MIX SO IT WOULD  
UNDERMINE OUR CONFIDENCE IN THE  
OUTCOME?

WOULD IT ESTABLISH A STATUTORY  
MENTAL MITIGATOR?

DID DR. SULTAN TESTIFY TO THAT?

>> SHE TESTIFIES TO A PLETHORA

OF --

>> I GUESS THE ANSWER IS, NO,

SHE DIDN'T ESTABLISH A STATUTORY

MENTAL MITIGATOR?

>> NO, YOUR HONOR, SHE DID NOT.

BUT I WOULD LIKE TO TURN, ALSO,  
TO THE SOCIAL HISTORY THAT  
REFLECTS ON THE  
NEUROPSYCHOLOGIST WHO WAS  
RETAINED AT THE 2007 EVIDENTIARY  
HEARING.

MR. BORDINI DID  
NEUROPSYCHOLOGICAL TESTING AND  
FOUND THAT MR. WYATT DOES HAVE  
FRONTAL LOBE DYSFUNCTION.  
NOW, THIS IS SOMETHING THAT  
SHOULD HAVE BEEN LOOKED AT AT  
THE TIME OF TRIAL AND COULD HAVE  
BEEN LOOKED AT IF TRIAL COUNSEL  
HAD DONE THE SOCIAL HISTORY.  
BECAUSE ALL THE INDICATORS WERE  
THERE FROM HIS CHILDHOOD,  
PARTICULARLY HIS HEAVY CHILDHOOD  
CONSUMPTION OF ALCOHOL FROM A  
VERY, VERY YOUNG AGE AND ALSO  
HIS PHYSICAL ABUSE, BOTH THE  
EMOTIONAL AND PHYSICAL TRAUMA  
THAT HE UNDERWENT FROM HIS  
FATHER AND DURING HIS CHILDHOOD.  
THOSE SORT OF FACTORS, HAD THEY  
BEEN INVESTIGATED, SHOULD HAVE  
LED TRIAL COUNSEL TO INVESTIGATE  
THE POSSIBILITY OF BRAIN DAMAGE  
FURTHER THAN THEY DID.

I MEAN, JUST HIRING A  
PSYCHOLOGIST, DR. RIFKIN, WHO  
DOES A VERY CURSORY EVALUATION  
WITHOUT GOING INTO THE FAMILY  
BACKGROUND IS NOT IN AND OF  
ITSELF HELPFUL BECAUSE HE'S  
RELYING FULLY ON HIS IMPRESSIONS  
OF THE PERSON IN FRONT OF HIM.

>> JUST GOING BACK TO SOMETHING  
THAT JUSTICE POLSTON ASKED.  
THE JUDGE IN HER ORDER SAID  
WYATT POINTS TO NO SPECIFIC

MITIGATION DOCUMENT.  
DEFENSE COUNSEL FAILED TO OBTAIN  
AND DELIVER TO DR. RIFKIN AND/OR  
DR. McMILLAN OR THAT COUNSEL  
FAILED TO REVIEW FOR THE PENALTY  
PHASE.

IS THAT AN INCORRECT STATEMENT?  
>> DOCUMENTATION?

I DON'T BELIEVE SCHOOL RECORDS  
WERE SUPPLIED.

>> SO IN OTHER WORDS THAT'S

WRONG, THAT CONCLUSION OF FACT  
BY THE TRIAL JUDGE IS ERRONEOUS?

>> NO.

I DON'T BELIEVE THAT SCHOOL  
RECORDS WERE LOCATED AT ANY  
POINT.

OR THEY COULD HAVE BEEN LOCATED  
AT THE TIME OF MR. WYATT'S TRIAL  
IN 1991, I'M NOT SURE.

HOWEVER --

>> BUT THAT'S A PRETTY, YOU

KNOW, IF WE ASK A -- AND I  
REALIZE YOU'VE GOT TWO CASES  
BACK TO BACK, AND THESE ARE  
FACTUALLY INTENSE, BUT IF YOU'RE  
GOING TO TELL US THAT THEY  
FAILED TO DO SOMETHING, WE'VE  
GOT TO KNOW THAT THERE WAS A  
RECORD THAT WAS RIGHT THERE OR  
SHOULD HAVE BEEN THERE TALKING  
ABOUT THESE WIGGINS AND  
WILLIAMS, AND WE'RE FAMILIAR  
WITH THAT.

THIS, THAT THE LAWYERS FAILED TO  
UNCOVER SOMETHING THAT WOULD  
HAVE CHANGED THE WHOLE MIX OF  
THE MENTAL PICTURE.

>> I'M NOT PUTTING IT VERY WELL,

YOUR HONOR, CLEARLY.

WHAT I'M SAYING IS THAT THERE  
WERE INDIVIDUALS, PARTICULARLY

THE SCHOOLTEACHER -- SARAH COX -- WHO TRIAL COUNSEL COULD HAVE TALKED TO.

THE TRIAL COUNSEL READ A VERY CURSORY REPORT FROM NORTH CAROLINA AND DECIDED SHE DIDN'T, WASN'T GOING TO GO ANY FURTHER WITH MS. COX.

IN FACT, SARAH COX HAD A GREAT DEAL TO SAY WHICH SHED LIGHT ON HIS EARLY LIFE WHICH IN TURN WOULD HAVE BEEN ABLE TO SHED LIGHT ON HIS MENTAL MITIGATION. THAT'S WHAT I'M TRYING TO SAY TO YOU, YOUR HONOR.

I DON'T KNOW IF I CAN PUT IT IN ANY OTHER WORDS.

BUT I DO BELIEVE THAT, I MEAN, THE SOCIAL HISTORY THAT DR. SULTAN WAS ABLE TO ELICIT THROUGH SPEAKING NOT ONLY TO MR. WYATT, BUT ALSO OTHER MULTIPLE WITNESSES WAS THE SORT OF THING THAT TRIAL COUNSEL COULD HAVE DONE AND, ARGUABLY, SHOULD HAVE DONE IN ORDER TO THROW LIGHT ON MR. WYATT'S EARLY LIFE.

AND BE ABLE TO SHOW NOT ONLY, YOU KNOW, THE GOOD THINGS AND THE BAD THINGS THAT HAPPENED TO HIM AND, ULTIMATELY, THERE WERE SOME BAD THINGS, BUT PUT THEM IN A CONTEXT AS TO HOW HE GOT TO THE PLACE WHERE HE WAS.

>> BUT IT SEEMS LIKE THAT IS THE QUINTESSENTIAL MONDAY MORNING QUARTERBACK IN THIS REGARD. IF NOBODY'S GOING TO BE ABLE TO SAY THAT THIS CRIME ITSELF WAS THE PRODUCT OF SOME EXTREME EMOTIONAL DISTRESS OR OTHER MENTAL ILLNESS, THEN YOU REALLY

RISK THE IDEA THAT THE WHOLE HISTORY OF THIS DEFENDANT IS JUST, IT'S JUST BAD STUFF. IT'S MORE BAD STUFF. THEY'RE ALREADY GOING TO GET THE BAD STUFF FROM DOMINO'S AND THE IDEA THAT THEY THINK THIS GUY IS JUST, YOU KNOW, IT'D BE LIKE SAYING DANNY RAWLINGS HAD THIS OR THAT. AT SOME POINT IT'S NOT -- IT ALMOST DOESN'T MATTER. THE AGGRAVATION IS SO SIGNIFICANT THAT IT PALES IN COMPARISON TO ANY MITIGATION. AND THIS SEEMS LIKE THAT CASE. >> WELL, I MEAN, THE UNITED STATES SUPREME COURT HAS MADE IT VERY CLEAR THAT THAT DOES NOT HAVE TO BE AN EXPERT BETWEEN THE MITIGATION, THE MENTAL HEALTH MITIGATION -- >> I KNOW IT DOESN'T HAVE TO BE, BUT FOR IT TO UNDERMINE OUR CONFIDENCE IN THE OUTCOME IS THAT WE WOULD THINK A JURY FACED WITH THIS MIGHT REACH A DIFFERENT CONCLUSION. IT'S GOT TO BE PRETTY COMPELLING. >> WELL, AT LEAST ONE JUROR IN THIS PARTICULAR CASE UNLIKE THE DOMINO'S CASE, SO, I MEAN, THERE IS, THERE IS A STRONG POSSIBILITY THAT OTHER JURORS MIGHT HAVE DONE GIVEN THE MORE COMPELLING INVESTIGATION AND PRESENTATION. YOUR HONOR, I BELIEVE MY LIGHT IS ON. AM I INTO REBUTTAL? >> YOU'RE INTO YOUR REBUTTAL

TIME.

>> OKAY.

IN THAT CASE, YOUR HONOR, I'LL RESERVE THE REMAINDER OF MY TIME.

>> MAY IT PLEASE THE COURT,

LISA-MARIE LERNER WITH THE ATTORNEY GENERAL'S OFFICE AGAIN FOR THE STATE.

ON THE FIRST ISSUE, THE COMPARATIVE BULLET LEAD ANALYSIS, JUST BRIEFLY AGAIN, THIS ISSUE WAS NOT CONTESTED AT TRIAL.

IT WAS NOT PART OF THE DEFENSE STRATEGY TO ATTACK THIS EVIDENCE BY TRYING TO KEEP IT OUT, AND --

>> AGAIN, IS THAT REALLY, YOU

KNOW, YOU'VE GOT THE FBI SAYING IT'S SCIENCE, SO I DON'T KNOW -- THE FACT IT WASN'T CONTESTED, IS IT TRUE THAT THE CLOSING ARGUMENT OF THE PROSECUTOR RELIED ON IT FAIRLY HEAVILY?

>> WELL, THE PROSECUTOR DID RELY ON IT.

I DON'T KNOW IF IT WAS HEAVILY. HE HAD A LOT OF OTHER FACTS.

>> LET'S GO TO THE OTHER FACTS.

WAS THIS CASE, UNLIKE THE DOMINO'S PIZZA MURDERS, IT DOESN'T HAVE HIS, QUOTE, FINGERPRINT IN THE FORM OF DNA IN THE VICTIM.

IN FACT, IT HAS LOVETTE'S DNA. AND SO TELL US THE, ALL THE COMPELLING EVIDENCE THAT SHOWS THAT EVEN IF THIS CAME OUT, THERE WOULD NOT BE A PROBABILITY OF AN ACQUITTAL.

>> FIRST OF ALL, THIS EVIDENCE

DOES NOT ESTABLISH HIM AS THE

SHOOTER.

THE BARTENDER AT THE BAR  
TESTIFIED THAT SHE KNEW  
MS. NYDEGGER, AND SHE SAW  
MS. NYDEGGER LEAVING THE BAR  
WITH WYATT ALONE.

THEY WERE GONE FOR ABOUT AN  
HOUR, AND THEN WYATT CAME BACK  
IN HER CAR BY HIMSELF.

THAT WAS TESTIMONY FROM THE  
BARTENDER.

THERE'S TESTIMONY THAT FREDDIE  
FOX SAW WYATT DRIVING  
MS. NYDEGGER'S CAR AFTER THE DAY  
AFTER.

A PILLOW FROM THE MOTEL ROOM  
WHERE WYATT WAS STAYING WAS  
FOUND --

>> BEFORE YOU GO FURTHER, I

THOUGHT THAT THE EVIDENCE WAS --  
YOU SAID THAT WYATT LEFT THE BAR  
WITH MS. NYDEGGER ALONE.

I THOUGHT THE THREE OF THEM --  
THAT IS THAT WYATT, NYDEGGER AND  
LOVETTE -- ALL LEFT THE BAR  
TOGETHER AND WENT TO WYATT'S  
HOTEL ROOM.

>> I BELIEVE, AND I CAN LOOK IT

UP I HOPE WHILE I'M ARGUING,  
THAT THE BARTENDER TESTIFIED  
THAT WYATT AND MS. NYDEGGER LEFT  
ALONE.

>> I HAVE THE TRIO SPENT MUCH OF

THE NIGHT TOGETHER DRINKING,  
PLAYING POOL AND PLAYING THIS  
CRANE GAME.

WYATT AND NYDEGGER DISAPPEARED  
FOR ABOUT 15 MINUTES.

WYATT REAPPEARED, TALKED TO  
LOVETTE, AND ALL THREE LEFT FOR  
THE EVENING.

NOW, THAT IS FROM EITHER, IT'S  
FROM THE TRANSCRIPT OF THE

TESTIMONY, AND I'M ASSUMING THAT'S FROM TESTIMONY OF THE BARTENDER.

SO I DON'T THINK WHAT JUSTICE -- I THINK WHAT JUSTICE QUINCE IS ASKING IS PRETTY IMPORTANT.

IF, OBVIOUSLY, HE LEFT WITH NYDEGGER FOR AN HOUR AND CAME BACK IN HER CAR ALONE, WE'VE GOT A VERY STRONG, MUCH STRONGER CASE.

BUT IF THEY ONLY DISAPPEARED FOR 15 MINUTES, AND THE THREE LEFT TOGETHER, THEN IT'S WEAKER.

>> UM, I BELIEVE THAT, UM, BIT

OF EVIDENCE CAME FROM WYATT. WYATT, AGAIN, TESTIFIED IN THIS TRIAL.

AND THIS IS ACCORDING TO MY NOTES.

I DON'T HAVE THE TRANSCRIPT IN FRONT OF ME.

BUT IN VOLUME FIVE, PAGE 736 TO 38 MS. OHLER, THE BARTENDER, TESTIFIED THAT KATHY HUNG OUT WITH WYATT AT THE BAR.

THEY WERE PLAYING THE CRANE GAME, THEY WON ANIMALS, AND SHE SAW MS. NYDEGGER AND WYATT LEAVE THE BAR WITH TOYS.

AND SHE DIDN'T SEE KATHY AGAIN AFTER.

WYATT RETURNED WITHIN 15 MINUTES, WENT AND GOT LOVETTE AND LEFT.

>> OKAY, 15 MINUTES.

SO IS THE IDEA THAT IN THE 15 MINUTES IS WHEN HE KILLED NYDEGGER?

>> I'M NOT SURE.

I --

>> IS THERE ANY EVIDENCE OF

WHERE SHE WAS KILLED?

>> YES.

>> WHERE WAS SHE --

>> OUT OFF OF STATE ROAD 60.

>> AND WHERE WAS THE BAR FROM

STATE ROAD 60?

>> IT WAS APPROXIMATELY, I

BELIEVE IF MY MEMORY IS CORRECT,  
THREE AND A HALF MILES AWAY.

>> SO, AGAIN, AND I GUESS WE'VE

GOT TO -- BECAUSE WE HAVE GOT

THIS EXACT TRANSCRIPT.

I THOUGHT -- AND SO WHEN UNDER  
THAT THEORY WOULD LOVETTE HAVE

HAD THE CHANCE IF THERE WAS

ONLY, IF SHE WAS KILLED IN THAT

15 MINUTES WOULD LOVETTE HAVE

HAD THE CHANCE TO HAVE A SEXUAL

ENCOUNTER WITH HER?

>> I, I DON'T KNOW, YOUR HONOR.

SO IT IS --

>> WELL, WHO TESTIFIED IN THIS

WHOLE SCENARIO?

I THOUGHT THEY LEFT THE BAR AND

WENT TO SOME HOTEL ROOM?

>> THAT WAS MR. WYATT WHO

TESTIFIED THAT.

>> THAT'S JUST MR. WYATT'S

TESTIMONY.

THERE'S NO OTHER EVIDENCE TO

SUPPORT THAT THEY ALL LEFT THE

BAR AND WENT SOMEPLACE ELSE?

>> NO.

>> I THOUGHT, AGAIN, WYATT

REAPPEARED, TALKED TO LOVETTE

AND ALL THREE LEFT FOR THE

EVENING.

THAT'S TRANSCRIPT PAGE 738 OF

VOLUME FIVE.

>> RIGHT.

AGAIN, I'M RELYING ON MY NOTES.

I DON'T HAVE THE TRANSCRIPT.  
SHE SAW MS. NYDEGGER LEAVE WITH  
WYATT, AND SHE NEVER SAW  
MS. NYDEGGER AGAIN.  
WYATT CAME BACK, LOVETTE AND  
THOSE TWO LEFT.  
>> OKAY.

LET'S GO BACK TO THE FRED FOX  
TESTIMONY.  
HE SAW HIM, HIM -- WYATT --  
DRIVING NYDEGGER'S CAR THE NEXT  
DAY, AND WE KNOW THAT A HAIR WAS  
AT LEAST CONSISTENT WITH WYATT'S  
FOUND IN THE CAR.  
BUT ISN'T THERE SOME -- WHAT  
ABOUT LINKING HIM WITH THE GUN  
THAT KILLED NYDEGGER?  
>> THERE'S A COUPLE OTHER

ADDITIONAL PIECES OF EVIDENCE.  
MR. FOX WAS THE ONE WHO HAD THE  
BAG OF BULLETS AND THE CHARTER  
ARMS PISTOL.  
AND HE TESTIFIED THAT WYATT WAS  
THE ONE WHO GAVE HIM BOTH THE  
CHARTER ARMS PISTOL AND THE BAG  
OF AMMUNITION.  
>> SO IN THIS CASE THE MURDER  
WEAPON WAS FOUND?  
>> THEY BELIEVE IT WAS THE

CHARTER ARMS PISTOL.  
MR. FOX PAWNED IT AT A PAWNSHOP  
AND TOLD THE POLICE HE DID SO.  
THE POLICE WENT AND GOT IT FROM  
THE PAWNSHOP, DID TEST FIRINGS  
WITH IT.  
THEY SAID THAT IT WAS CONSISTENT  
WITH THE RIFLING MARKS FOUND ON  
THE BULLET OF NYDEGGER, BUT THEY  
COULDN'T BE 100% SURE BECAUSE  
THE BULLET WAS DAMAGED.  
>> OKAY.

SO ISN'T THIS WHERE, THEN, CBLA

TESTIMONY BECOMES MUCH MORE  
CRITICAL BECAUSE WHAT IS THE --  
WE NOW HAVE A GUN THAT'S TRACED  
TO WYATT WHICH IS -- BECAUSE HE  
GIVES THE GUN TO FOX AND  
BULLETS.

>> AND THE GUN IS THE ONE THAT  
SHOT THE BULLET.

>> IT'S CONSISTENT.

>> IT'S CONSISTENT WITH THE ONE  
THAT SHOT THE BULLET.

>> THAT HAS NOT BEEN QUESTIONED.

>> NO.

>> WHAT PART, THOUGH, DOES THE  
COMPARATIVE BULLET LEAD ANALYSIS  
PLAY IN THIS CASE?

WHAT ELSE WAS THEN TESTIFIED TO  
THAT WAS IMPORTANT TO THE  
STATE'S CASE?

>> WELL, THE STATE PUT ON THAT  
THE CHEMICAL COMPOSITION WAS THE  
SAME AS IN DOMINO'S, AND THEN  
THE STATISTICAL --  
>> NO, BUT EXPLAIN.

THE CHEMICAL COMPOSITION OF  
WHICH, OF THE BULLET FOUND AT  
THE SCENE, I MEAN, FOUND IN HER?  
>> YES.

>> WAS THE SAME BULLET AS THE  
BULLET THAT WERE IN THE BAG OF  
BULLETS GIVEN TO FRED FOX?

>> WAS THE SAME CHEMICAL  
COMPOSITION, AND THEN THE FBI  
AGENT TESTIFIED ABOUT IT COMING  
FROM A CERTAIN, YOU KNOW,  
PRODUCTION AND BOX.

>> SO THEY TOOK IT FROM  
SOMETHING THAT WOULD BE HELPFUL  
ON THAT ONE.  
DOESN'T THAT THEN BECOME ALMOST  
SCIENTIFIC CERTAINTY AT LEAST IN

THE EYES OF THE JURY THAT NO  
MATTER WHAT ELSE WYATT'S SAYING,  
THAT THIS IS LIKE THE  
FINGERPRINT EVIDENCE OF THAT  
THIS GUN, YOU KNOW, MAY HAVE  
BEEN USED TO SHOOT NYDEGGER, BUT  
NOW THE CBLA SHOWS THAT -- OR  
SHOWED AT THE TIME -- THAT IT  
WAS, LIKE, 100% CERTAIN IT'S THE  
GUN AND THE BULLETS THAT WERE  
USED?

>> THE FBI AGENT DIDN'T SAY

ANYTHING ABOUT THE GUN AND  
DIDN'T --

>> OR THE BULLET.

>> AND DIDN'T GIVE ANY

PERCENTAGES.

>> WHAT DID HE SAY?

>> HE JUST SAID THAT --

[INAUDIBLE]

THAT THE BULLETS IN THE BAG DID.  
BUT ON CROSS-EXAMINATION THE  
DEFENSE ATTORNEY ESSENTIALLY  
COMPLETELY DISCREDITED HIS  
TESTIMONY.

SHE GOT HIM TO ADMIT THAT HE HAD  
NO INFORMATION ON HOW MANY  
BULLETS HAD BEEN PRODUCED.

IT COULD BE BILLIONS.

NO INFORMATION ON WHERE THE  
BOXES WERE SOLD OR DISTRIBUTED,  
AND SHE COMPLETELY DECIMATED HIS  
TESTIMONY ON CROSS.

I OUTLINE IT IN DETAIL IN MY  
BRIEF, AND I'D ASK THE COURT IF  
YOU WANT THE DETAILS TO  
INCORPORATE MY BRIEF INTO MY  
ARGUMENT.

I DON'T HAVE THEM RIGHT IN FRONT  
OF ME.

BUT SHE COMPLETELY NEUTRALIZED  
HIS TESTIMONY ON HER  
CROSS-EXAMINATION.

>> AND THE TRIAL COURT WENT INTO THAT IN HER ORDER.

>> I WOULD LIKE YOU TO ADDRESS THE QUESTION THAT I POSED TO OPPOSING COUNSEL AND ALLOW YOU THE TIME TO EXPLAIN TO US THE EVIDENCE THAT YOU SEE ABSENT, ABSENT THAT REPORT OR THE FBI INFORMATION THAT INCULPATES THIS PARTICULAR DEFENDANT IN THIS MURDER.

I THINK THAT IS CRITICAL IN THIS CASE.

>> YES.

UM, THERE WAS THE BARTENDER LINKING WYATT WITH --

>> YOU'VE DONE THAT.

I WANT TO MAKE SURE YOU GO FURTHER, OR HAVE YOU COMPLETED IT?

>> NO, I HAVEN'T.

>> OKAY.

>> THERE WAS A GUN THAT FREDDIE

FOX HAD, AND FINALLY, WYATT WAS STAYING IN A MOTEL THAT HAD A PILLOW THAT WAS FOUND AT THE CRIME SCENE, AND THERE WAS TESTIMONY FROM THE POLICE OFFICER AND THE MOTEL PEOPLE SAYING THAT IT WAS CONSISTENT WITH BEING THEIR PILLOW.

AND THEY HAD A UNIQUE WAY OF PUTTING TWO PILLOW CASES AND FOLDING IT IN A SPECIAL WAY, AND THE PILLOW FOUND NEXT TO MS. NYDEGGER WAS THE SAME AS THE ONE IN WYATT'S ROOM.

THEY COULDN'T SAY IT'S ABSOLUTELY THE PILLOW, BUT THEY SAID --

>> COULD YOU EXPLAIN THE GEOGRAPHICAL RELATIONSHIP THAT'S

REFLECTED?

>> UM --

>> WHERE WAS THE HOTEL, WHERE

WAS THE CRIME SCENE?

YOU MEAN THE PLACE WHERE HER  
BODY WAS FOUND.

>> RIGHT.

SHE WAS SHOT ONCE IN THE HEAD,  
AND POLICE THINK THAT --

>> SORRY.

I DIDN'T MAKE MYSELF CLEAR.

>> I, I'M SORRY.

I BELIEVE ACCORDING TO MY MEMORY  
IT'S ABOUT THREE-AND-A-HALF  
MILES.

THE BAR WAS MAYBE A BUILDING OR  
TWO FROM THE MOTEL.

THEY WERE RIGHT NEXT TO EACH  
OTHER.

AND THEN THE CRIME SCENE WAS  
ABOUT THREE-AND-A-HALF MILES  
AWAY GOING BACK TOWARD THE BEACH  
ON STATE ROAD 60.

SO THREE-AND-A-HALF MILES.

>> IN CONTINUING ON, I THINK

WHAT YOU DIDN'T YET MENTION IS  
WHAT DID McCOOMBS HAVE TO SAY  
IN THIS CASE?

>> McCOOMBS IN THIS CASE

TESTIFIED THAT WYATT ADMITTED  
SHOOTING HER AND ADMITTED THAT  
HE WAS GOING TO HAVE SEX WITH  
HER BUT DECIDED NOT TO AND THAT  
HE TOOK HER OUT AND SHOT HER  
JUST TO SEE HER DIE AND THAT SHE  
WAS NOBODY, SHE WAS JUST A  
BARFLY.

IN TERMS OF THE INFORMATION THAT  
McCOOMBS KNEW THAT HE COULDN'T  
HAVE GOTTEN FROM THE POLICE  
REPORTS AND, YOU KNOW, THE  
EXTRADITION THING, HE KNEW THAT

WYATT HAD BEEN PLAYING A STUFFED ANIMAL CRANE GAME WITH HER. THAT WAS IN HIS TESTIMONY. HE KNEW HOW SHE HAD BEEN KILLED AND THE INJURIES.

THE TOP OF HER HEAD HAD BEEN BLOWN OFF AS OPPOSED TO JUST BEING SHOT IN THE HEAD OR SOMEWHERE ELSE.

HE ALSO KNEW WHERE THE BODY WAS. HE SAID THAT IT WAS NEAR A CANAL OFF OF STATE ROAD 60 BACK TOWARD YEEHAW JUNCTION, AND HE, AGAIN, KNEW ABOUT FAST EDDIE BECAUSE WYATT SAID THAT HE'D GOTTEN THE CAB RIDE FROM SOMEONE NAMED "FAST EDDIE."

AND, AGAIN, IN THIS TRIAL THE STATE AGAIN BROUGHT IN EDDIE TO TESTIFY THAT HE PICKED UP WYATT, THAT HIS NICKNAME WAS "FAST EDDIE."

SO McCOOMBS KNEW THOSE, THAT --

>> DID HE TESTIFY AT ALL ABOUT HOW LOVETTE WAS INVOLVED IN THIS CRIME?

>> McCOOMBS?

>> YES.

>> NO.

>> HOW WAS LOVETTE INVOLVED IN THE CRIME?

WHAT WAS THE STATE'S -- WAS HE TRIED FOR THIS MURDER TOO?

>> NO.

NO.

HE WAS JUST TRIED FOR THE DOMINO'S.

>> DO WE --

>> LOVETTE WASN'T TRIED FOR THIS MURDER?

>> I DON'T BELIEVE SO, NO.

>> WAS THERE, WHAT WAS  
LOVETTE'S -- OBVIOUSLY, LOVETTE  
WAS INVOLVED IN SOME WAY.  
WHAT WAS THE -- THERE HAD TO BE  
SOME WAY THAT HIS DNA WAS IN THE  
VICTIM, I MEAN, VICTIMS.  
>> MR. WYATT TESTIFIED THAT THEY  
WENT OFF, AND MR. LOVETTE AND  
MS. NYDEGGER WERE FOOLING  
AROUND, AND LOVETTE HAD SEX WITH  
HER, AND THEN HE FELL ASLEEP,  
AND THEY LEFT.  
LOVETTE CAME BACK BY HIMSELF  
WITH HER CAR, LEFT THE CAR AT  
THE MOTEL, WENT SOMEWHERE, AND  
WYATT SAID, "HE DIDN'T COME  
BACK, SO I JUST TOOK THE CAR AND  
LEFT."  
>> SO WHY ISN'T THAT, I MEAN,  
AGAIN, IF WE'RE LOOKING AT  
EXPLANATIONS OF INNOCENCE, WHY  
ISN'T THAT A POSSIBLE SCENARIO  
IN THIS CASE, THAT WYATT REALLY  
DIDN'T HAVE ANYTHING TO DO WITH  
IT?  
>> WELL, IT WAS PRESENTED TO THE  
JURY.  
>> WELL, I KNOW, BUT WE'RE  
TALKING ABOUT THE ISSUE OF THE  
PROBABILITY OF THE ACQUITTAL  
BECAUSE OF THE CBLA.  
SO YOU'RE SAYING THAT YOU  
DON'T --  
>> BUT YOU STILL HAVE THE GUN.  
AND THAT'S A CRITICAL ISSUE  
BECAUSE WYATT HAD POSSESSION OF  
THE MURDER WEAPON AFTER HE  
SEPARATED FROM LOVETTE.  
IF LOVETTE --  
>> BECAUSE HE GAVE IT TO FREDDIE  
FOX TO --

>> TO PAWN.

>> -- PAWN?

>> YES.

>> SO THAT'S VERY -- AND THAT

TESTIMONY HADN'T BEEN CALLED  
INTO QUESTION?

FREDDIE FOX'S TESTIMONY?

>> NEVER.

AND SO, I MEAN, THE FACT THAT  
WYATT POSSESSED THE GUN AFTER  
THE MURDER AND GAVE IT TO  
SOMEONE TO PAWN, THAT LINKS  
WYATT DIRECTLY TO THIS CRIME.  
AND THAT HAS NOTHING TO DO WITH  
McCOOMBS OR THE BULLET LEAD  
ANALYSIS.

UM, MOVING ON TO THE PENALTY  
PHASE, I JUST WANTED TO INFORM  
THE COURT OF SOME FACTUAL  
MATTERS.

THE DEFENSE ATTORNEYS, THERE  
WERE TWO OF THEM, MS. LITTY AND  
MR. SIDEAWAY.

THEY BOTH WENT DOWN TO BOTH  
NORTH AND SOUTH CAROLINA AND  
INTERVIEWED WITNESSES THEMSELVES  
AND HAD INVESTIGATORS INTERVIEW  
WITNESSES.

MS. LITTY TESTIFIED AT THE  
EVIDENTIARY HEARING IN 2007 THAT  
SHE HAD 15 BANKER BOXES OF  
MATERIAL AND REPORTS ON WYATT'S  
SOCIAL, MEDICAL AND CRIMINAL  
HISTORY.

AND THEY INCLUDED SCHOOL  
HISTORIES, SOCIOECONOMIC  
BACKGROUNDS, SOCIOECONOMIC  
HISTORIES FROM HIS PAROLE  
OFFICER AND A MYRIAD OF  
PSYCHOLOGICAL REPORTS.

SHE GAVE THAT INFORMATION TO  
DR. RIFKIN, AND SHE TESTIFIED TO  
THAT AT THE EVIDENTIARY HEARING.

>> WHAT WAS HER, WHAT'S HER  
BACKGROUND, OR WHAT WAS HER  
BACKGROUND AT THE TIME?  
>> SHE WAS A PRIVATE DEFENSE  
ATTORNEY.  
>> DID SHE SUBSEQUENTLY BECOME A  
PUBLIC DEFENDER?  
>> SHE BECAME THE PUBLIC  
DEFENDER IN THE FIFTH CIRCUIT.  
>> BUT THAT HAPPENED AFTER  
THE --  
>> YES.

SO SHE TESTIFIED THAT NOT ONLY  
DID SHE COLLECT 15 BOXES OF  
RECORDS AND MATERIALS, BUT THAT  
SHE GAVE THE RELEVANT  
INFORMATION TO DR. RIFKIN TO  
EVALUATE.  
IN FACT, THAT'S WHERE DR. RIFKIN  
GOT ALL THE BAD INFORMATION HE  
INCLUDED IN HIS REPORT.  
ADDITIONALLY, SHE HAD A  
NEUROLOGIST APPOINTED TO EXAMINE  
MR. WYATT FOR POSSIBLE BRAIN  
DAMAGE.  
THEY DIDN'T FIND ANYTHING.  
BEFORE MS. NYDEGGER'S TRIAL  
BEGAN, SHE -- MS. LITTY --  
ACTUALLY ASKED THE TRIAL JUDGE  
TO APPOINT DR. BORDINI, THE  
EXACT EXPERT WHO TESTIFIED IN  
POSTCONVICTION, AS A  
NEUROPSYCHOLOGIST TO EXAMINE HIM  
FOR BRAIN DAMAGE.  
THE TRIAL COURT DENIED THAT  
REQUEST BUT ALLOWED HER TO GET  
AN MRI, AND THE MRI DID NOT SHOW  
ANY BRAIN DAMAGE.  
SO MS. LITTY AND MR. SIDEAWAY'S  
PERFORMANCE WAS NOT DEFICIENT.  
THEY DID A COMPLETE WORK-UP OF  
THE MITIGATION BOTH IN TERMS OF

THE LAY WITNESSES, COLLECTING RECORDS AND CONSULTING EXPERTS. THEY MADE A STRATEGIC DECISION TO GO WITH THE LAY WITNESSES BECAUSE THEY WOULD GET OUT THE INFORMATION THEY NEEDED ABOUT THE ALCOHOL AND DRUG ABUSE, THE ABUSE BY THE FATHER AND STEPFATHER AS WELL AS THE SEXUAL ABUSE BY THE TEACHER. AND THE TRIAL JUDGE MADE A FINDING AFTER THE TWO EVIDENTIARY HEARINGS THAT THE WITNESSES THAT MR. WYATT PUT ON IN POSTCONVICTION MERELY PROVIDED CUMULATIVE INFORMATION AND THAT MR. WYATT COULD NOT SHOW PREJUDICE BECAUSE OF THIS. AND WE ASK THE COURT TO AFFIRM.

>> I'M NOT SURE HOW LONG I HAVE

LEFT, BUT I JUST WANT TO --

>> [INAUDIBLE]

>> SORRY?

>> ABOUT TWO MINUTES.

>> OKAY.

REGARDING MS. LITTY'S CROSS-EXAMINATION OF AGENT RILEY, I THINK IT'S WORTH NOTING TO THE COURT THAT ON REDIRECT THE STATE, AGAIN, GOT MR. RILEY TO SAY, YES, THIS STUFF IS RELIABLE, AND IT'S THE PRODUCT OF 25 YEARS OF RESEARCH. AND IN HIS OPINION THE BULLET FOUND IN THE VICTIM CAME FROM THE SAME BOX THAT MR. WYATT, WAS IN HIS POSSESSION. HE DIDN'T CHANGE HIS OPINION AT ALL AND, IN FACT, HIS OPINION WAS RELIED UPON VERY STRONGLY BY DAVID MORGAN, THE PROSECUTOR, IN HIS CLOSING ARGUMENT.

>> THAT WAS THE BULLET, THAT WAS

THE BULLET ANALYSIS.  
HOW ABOUT THE GUN?  
IS IT CORRECT THAT THE GUN, THAT  
HE, THAT HE -- WYATT -- GAVE TO  
FREDDIE FOX WAS LINKED TO THE  
MURDER WEAPON?  
>> WELL, THEY TRIED TO CONNECT  
THE GUN WITH THE MURDER WEAPON  
THROUGH THE BULLET, AND THEY  
WEREN'T ABLE TO DO THAT WITH THE  
STIPPLING, SO THEY HAD TO DO  
CBLA.  
>> SO THEY'RE SAYING THE FACT  
THAT HE'S IN POSSESSION OF THE  
PARTICULAR GUN WOULD HAVE NO  
EVIDENTIARY SIGNIFICANCE?  
>> IT WOULDN'T TIE IT DOWN IN A  
WAY THAT THE CBLA REPORTEDLY  
DID, YOUR HONOR.  
IF THE COURT HAS NO FURTHER  
QUESTIONS, I WOULD ASK THE COURT  
TO REMAND THIS CASE TO FURTHER  
PROCEEDINGS --  
[INAUDIBLE]  
THANK YOU.  
>> WE THANK YOU BOTH FOR YOUR  
ARGUMENT.