

.  
>> PLEASE RISE.

LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> LAST CASE ON THE COURT'S  
AGENDA FOR TODAY IS DENNIS  
VERSUS STATE.

THE PARTIES MAY PROCEED.

>> GOOD MORNING.

SUES SANG KEFFER ON THE BEHALF  
OF APPLE LENT LA {BRANLT}  
DENNIS.

WE'RE REMANDED AFTER CIRCUIT  
PROCEEDINGS TO THE CIRCUIT  
COURT.

WE HAVE SUMMARY DENIAL WITH A  
ORDER ONLY marginally better  
than first one we were remanded  
on.

>> IT WAS AN EVIDENTIARY  
HEARING BEFORE.

>> THERE WAS EVIDENTIARY  
HEARING BEFORE.

>> ON THE SAME ALLEGATIONS?

>> THE SAME 3851 MOTION, THE  
SAME ARGUMENTS, ESSENTIALLY THE  
SAME ARGUMENTS WERE MADE AT THE  
CASE MANAGEMENT CONFERENCE.  
AND NOW WE HAVE THE SUMMARY  
DENIAL.

>> I GUESS WHAT I'M GOING TO BE  
ASKING THE STATE IF IT IS THE  
SAME MOTION, IF WE WERE ABLE TO  
DETERMINE ON THE FACE OF THE  
MOTION THAT IT WAS NOT, YOU  
WEREN'T ENTITLED TO RELIEVE WE  
WOULDN'T HAVE SENT IT BACK.  
THAT IS HELPFUL QUESTION TO YOU  
BUT --

>> ABSOLUTELY THAT WOULD BE MY  
ARGUMENT, YOUR HONOR.

>> I THINK CERTAINLY WHEN YOU HAVE A EVIDENTIARY HEARING WITH ONE JUDGE, AND IT IS SENT BACK BECAUSE FOR WHATEVER REASONS THAT ORDER WAS INAPPROPRIATE OR DUE TO THE MOTION TO RECUSE. ANOTHER JUDGE ON THE SAME FACTS, ON THE SAME ARGUMENT SUMMARILY LITTLE DENIES SIGNIFIES THE ARBITRARINESS OF THIS PROCESS.

>> SUM MERRILLY DENIED, WAS SHE ABLE TO REVIEW THE EVIDENTIARY HEARING AND RELY ON WHAT WAS IN THE EVIDENTIARY HEARING?

>> NO.

THE EVIDENTIARY HEARING WAS NOT RELIED ON BECAUSE IT WAS SENT BACK FOR NEW PROCEEDINGS. IT WAS BOTH MR. DENNIS'S POSITION AND I BELIEVE THE STATE'S POSITION THAT THOSE PROCEEDINGS SHOULD NOT BE CONSIDERED.

>> WELL, YOU KNOW THE RULE IS, THAT YOU'RE ENTITLED TO AN EVIDENTIARY HEARING ON ANY CLAIMS WHERE THERE NEEDS TO BE FACTUAL DEVELOPMENT, CORRECT?

>> CORRECT.

>> AND SO, TELL US THE SPECIFICALLY WHAT CLAIMS NEEDED TO HAVE FACTUAL DEVELOPMENT IN THIS CASE?

>> ABSOLUTELY.

I THINK, PREDOMINANTLY, IT WOULD HAVE BEEN THE INEFFECTIVE ASSISTANCE OF COUNSEL AT GUILT PHASE.

INEFFECTIVE ASSISTANCE THE COUNSEL AT BRADY CLAIM.

THEY'RE CLAIMS, THAT WE CERTAINLY ARGUED BELOW THAT THE RECORD DID NOT --

>> WERE THESE CLAIMS YOU HAD AN EVIDENTIARY HEARING ON BEFORE?

>> WE HAD A FULLEST TRIHEARING ON DEFINITELY THE INEFFECTIVE ASSISTANCE OF COUNSEL AT THE PENALTY PHASE.

WE HAD AN EVIDENTIARY HEARING ON THE BRADY CLAIM.

THEN THERE WERE PORTIONS, GUILT PHASE WE RECEIVED IN EVIDENTIARY HEARING.

>> IT SEEMS TO ME THAT ON THE PENALTY PHASE, I DON'T KNOW HOW WE CAN DETERMINE THIS FROM THE FACE OF THE RECORD, AND PERHAPS THE BRADY BUT THERE DOES SEEM TO BE SOME OF THE GUILT PHASE THAT ARE NOT, DO NOT NEED FACTUAL DEVELOPMENT SUCH AS THE FAILURE TO REQUEST A SECOND ATTORNEY AND NOT REALLY, I MEAN, THAT IS A STAND-ALONE CLAIM, THAT THERE SHOULD BE A SECOND ATTORNEY?

>> I'M NOT SURE WHAT YOU MEAN IN TERMS OF A STAND-ALONE CLAIM BUT I THINK CERTAINLY WITH RESPECT TO THE GUILT PHASE CLAIMS IT IS INEFFECTIVE ASSISTANCE OF COUNSEL AND SO, YOU WOULD NEED TO BE ABLE TO PRESENT THE TRIAL ATTORNEY TO DETERMINE WHETHER HE HAD A STRATEGY FOR NOT DOING CERTAIN THINGS.

CERTAINLY THERE ARE SEVERAL ALLEGATIONS OF OBJECTIONS THAT HE FAILED TO MAKE.

FAILED TO PRESERVE THE RECORD

FOR APPEAL.

>> I'M SAYING ON THE ONE, WELL  
AND HE WAS INEFFECTIVE FAILING  
TO REQUEST A SECOND ATTORNEY.  
YOU HAVE TO BE ABLE TO POINT TO  
DEFICIENCIES BECAUSE THERE  
WASN'T MORE THAN TWO ATTORNEYS,  
THAT THE DEFENSE ATTORNEY  
WASN'T ABLE TO HIRE HIS EXPERT  
OR DO THAT.

YOU JUST CAN'T SAY IN A VACUUM,  
SOMEONE SHOULD HAVE, THERE IS  
NO RIGHT TO TWO ATTORNEYS IN  
THE GUILT PHASE.

>> CERTAINLY THOUGH, THE ABA  
GUIDELINES DO RECOMMEND THAT  
THERE BE A SECOND CHAIR  
ATTORNEY.

AND PART OF WHAT THE REASONING  
BEHIND THAT IS, AND I THINK  
WHAT'S MENTIONED IN THE MOTION  
AND WHERE IT DEFINITELY  
IMPACTED MR. DENNIS IS WITH  
RESPECT TO THE PENALTY PHASE.

>> SO IT WOULD FLOW, SO IT  
REALLY FLOWS NOT JUST GUILT  
PHASE?

YOU WEREN'T SAYING HE SHOULD  
HAVE TWO ATTORNEYS FOR THE  
GUILT PHASE?

>> I'M SAYING HE SHOULD HAVE  
HAD TWO ATTORNEYS FROM THE  
GET-GO BECAUSE WE KNOW THAT YOU  
BEGIN INVESTIGATING THE ENTIRE  
CASE FROM THE BEGINNING.  
AND SO OF COURSE THAT WOULD  
HAVE BEEN IMPORTANT.

I THINK ALSO THERE ARE CLAIMS  
WITHIN THE INEFFECTIVE  
ASSISTANCE OF COUNSEL GUILT  
PHASE CLAIM THAT HE FAILED TO  
DO OTHER INVESTIGATIONS IN

TERMS OF OTHER SUSPECTS.

AND ALSO, FAILED TO HIRE  
EXPERTS TO REFUTE THE STATE'S  
EXPERTS THAT WERE PRESENTED.

>> THERE MAY BE SUBCLAIMS THAT  
COULD BE SUMMARILY DENIED.  
OUR ARGUMENT WOULD BE LISTEN,  
YOU WANT TO LOOK AT THE WHOLE  
PICTURE WHAT THE ATTORNEY'S  
PERFORMANCE IS, RATHER THAN TRY  
TO SAY THIS ONE ISN'T A GOOD  
ARGUMENT OR THAT ONE?  
MIGHT AS WELL --

>> I THINK ABSOLUTELY IN TERMS  
OF THE GUILT PHASE THAT THERE  
ARE, NUMEROUS SUBCLAIMS THAT  
HAVE TO BE LOOKED AT AS A  
WHOLE.

AND, CERTAINLY, I THINK THAT  
IT'S NECESSARY TO BE ABLE TO  
CALL THE TRIAL ATTORNEY, TO  
DETERMINE WHETHER HIS STRATEGY  
FOR NOT DOING, IF THERE WAS A  
STRATEGY, FOR NOT DOING CERTAIN  
THINGS.

AND THEN AGAIN, WHETHER THAT  
STRATEGY WAS REASONABLE.

I DON'T THINK THAT THE RECORD  
REFUTES THOSE ALLEGATIONS  
CONCLUSIVELY REFUTES THOSE  
ALLEGATIONS.

I DO WANT TO POINT OUT, AND AS  
I STATED, THE CIRCUIT COURT'S  
ORDER IS NOT MUCH BETTER THAN  
THE FIRST ONE WE WERE HERE ON  
WHICH IS PARTICULARLY TROUBLING  
GIVEN AGAIN --

>> CONTINUE TO SPEAK INTO THE  
MIKE.

>> I'M SORRY, IT IS  
PARTICULARLY TROUBLING GIVEN  
WHAT JUSTICE PARIENTE AND

JUSTICE QUINCE HAS POINTED OUT, THAT WE HAD AN EVIDENTIARY HEARING AND NOW WE HAVE A SUMMARY DENIAL.

SPECIFICALLY WITH RESPECT TO THE INEFFECTIVE ASSISTANCE OF COUNSEL AT THE PENALTY PHASE AND THE BRADY CLAIM WHERE -->> LET ME ASK YOU THIS ABOUT THE EVIDENTIARY HEARING ISSUE.

IF, IF THE TRIAL JUDGE HAD IN FACT USED THE TRANSCRIPT FROM THE ORIGINAL, FROM THE EVIDENTIARY HEARING THAT DID TAKE PLACE, WOULD THERE BE A PROBLEM WITH THAT?

>> I THINK THERE WOULD BE A PROBLEM WITH THAT BECAUSE PART OF CONDUCTING AN EVIDENTIARY HEARING IS FOR THE COURT TO SIT AND EVALUATE THE CREDIBILITY OF THE WITNESSES.

I DON'T, THINK IT IS APPROPRIATE TO DO THAT ON A COLD RECORD.

I THINK THAT, YOU KNOW, WHAT WAS PROPER TO DO WOULD HAVE BEEN TO HOLD ANOTHER EVIDENTIARY HEARING.

>> AND YOU MADE THAT ARGUMENT TO THE TRIAL JUDGE?

>> I ABSOLUTELY MADE THAT ARGUMENT AT THE CASE MANAGEMENT CONFERENCE TO THE CIRCUIT, YES I DID.

I POINTED OUT BOTH WITH RESPECT TO THE ALL OF THE FACTUAL CLAIMS BUT AGAIN FOCUSING, BECAUSE I THINK THE ORDER IS REALLY DEFICIENT WITH RESPECT TO PENALTY PHASE AND BRADY,

THAT THE RECORD CERTAINLY DOES NOT REFUTE THAT ONE TRIAL COUNSEL DID ABSOLUTELY NO INVESTIGATION INTO THE PENALTY PHASE.

>> IS THIS, THIS IS THE CASE WHERE JUST THE MOTHER AND THE GRANDMOTHER TESTIFIED AT THE PENALTY PHASE?

>> THE MOTHER AND TWO GRANDMOTHERS TESTIFIED AT THE PENALTY PHASE.

AND, ESSENTIALLY THEIR TESTIMONY, I WOULD ARGUE WAS CUMULATIVE.

THEY SAID THAT MR. DENNIS WAS A GOOD SON.

THAT HE WAS A GOOD STUDENT.

HE WENT TO COLLEGE.

AND, HAD A RAP CAREER.

THAT WAS IT.

>> A PART OF YOUR ARGUMENT ON THE PENALTY PHASE IS REALLY THERE WAS NO MENTAL MITIGATION.

BUT, WAS HE EXAMINED AT ALL ORIGINALLY, EITHER DURING THE GUILT PHASE OR THE PENALTY PHASE?

>> THERE IS NOTHING IN THE RECORD TO SUGGEST THAT HE WAS.

>> AND SO DID YOU PRESENT SOME MENTAL MITIGATION AT THAT EVIDENTIARY HEARING THAT IS NO LONGER --

>> THE PREVIOUS EVIDENTIARY HEARING WE DID PRESENT TWO PSYCHOLOGICAL EXPERTS AND I CERTAINLY ARGUED THAT AT THE CASE MANAGEMENT IN CONFERENCE IN FRONT OF THE CIRCUIT COURT

THIS TIME AROUND TOO.  
THAT WE HAD TWO PSYCHOLOGICAL  
EXPERTS THAT WERE AVAILABLE TO  
TESTIFY.  
THEY WERE AVAILABLE TO TESTIFY  
TO THE EFFECTS OF MR. DENNIS'S  
ENVIRONMENT GROWING UP ON HIS  
LATER ADULT LIFE.  
ON HIS DEVELOPMENT.  
SPECIFICALLY THE VIOLENT  
COMMUNITY THAT HE GREW UP IN,  
LIBERTY CITY IN MIAMI.  
WE ALSO SAID THAT WE HAD AN  
EXPERT THAT COULD TESTIFY TO  
HIS OVERALL MENTAL HEALTH AND  
MENTAL ABILITIES AND HOW THAT  
WOULD AFFECT HIS ABILITY TO  
ADAPT TO PRISON.  
THAT WAS SET FORTH IN OUR  
MOTION.  
IT WAS ARGUED AT THE CASE  
MANAGEMENT CONFERENCE AND THE  
JUDGE HERE IN HER ORDER  
BASICALLY SAID THAT, MR. DENNIS  
DID NOT STATE WHAT EXPERTS  
WOULD BE AVAILABLE.  
AND I THINK THAT BOTH THE  
MOTION AND THE ARGUMENT  
COMPLETELY REFUTE THAT.  
AND THAT IS JUST SIMPLY AN  
INACCURATE FINDING.  
>> DID, ON THE FIRST GO-AROUND,  
THE STATE SOMETIMES DOES  
STIPULATE TO EVIDENTIARY  
HEARINGS.  
WAS THE EVIDENTIARY HEARING  
ORIGINALLY STIPULATED TO?  
>> MY RECOLLECTION IS NOT  
ENTIRELY CLEAR.  
I BELIEVE GOING INTO THE FIRST  
CASE MANAGEMENT CONFERENCE THE  
STATE WAS OPPOSING AN

EVIDENTIARY HEARING.  
HOWEVER, ONCE THE JUDGE GRANTED  
A HEARING AS WE PROCEEDING  
THROUGH, GRANTED A HEARING ON  
CERTAIN CLAIMS AND THAT THE  
STATE CAN CORRECT THIS IF I'M  
WRONG, I'M NOT QUITE SURE.  
I THINK THEY SAID WELL, IF  
WE'RE GOING TO HAVE AN  
EVIDENTIARY HEARING ON THIS  
CLAIM, WE MIGHT AS WELL HAVE IT  
ON THIS CLAIM AND THIS CLAIM.  
WE WON'T -- THAT'S MY  
RECOLLECTION.  
AGAIN, IF I'M WRONG, BY ALL  
MEANS THE STATE CAN CORRECT ME.

BUT CERTAINLY THAT'S MY  
RECOLLECTION.  
THIS TIME AROUND THE STATE  
OPOSED AN EVIDENTIARY  
TRIHEARING ON EVERY CLAIM.  
>> AND WHAT WAS, THEIR ARGUMENT  
WAS THEY CAN BE DETERMINED FROM  
THE RECORD?  
>> I BELIEVE THE STATE'S  
ARGUMENT WAS EITHER THE MOTION  
WAS FACIALLY INSUFFICIENT OR  
WAS REFUTED BY THE RECORD.  
>> WAS THE CLAIM, SEE THAT'S  
WHAT I'M TRYING TO FIND OUT.  
THIS IS THE LAW OF THE CASE  
GOING ON AS FAR AS THIS COURT'S  
LAW OF THE CASE, IF THE  
ALLEGATIONS WERE FACIALLY  
INSUFFICIENT, AND I'M LOOKING  
BACK AT THE ORIGINAL APPEAL OF  
THE POST-CONVICTION, THAT'S  
SOMETHING THAT, WAS THAT, THAT  
SHOULD HAVE BEEN RAISED ON THE  
FIRST GO-AROUND APPEAL.  
IF THIS COURT FOUND THEN THAT

THE PLEADINGS WERE FACIALLY INSUFFICIENT, THEY SHOULD HAVE BEEN GIVEN, YOU WOULD THEN HAVE GONE BACK AND BEEN GIVEN A CHANCE TO AMEND.

THEY COULD BE FACIALLY SUFFICIENT.

SO I'M HAVING TROUBLE SEEING HOW ALL OF A SUDDEN WE'RE TAKING THE SAME CLAIMS THAT WE GRANTED EVIDENTIARY HEARING THAT WE DIDN'T AFFIRM ON ALTERNATIVE GROUNDS FIRST TIME AROUND, THAT IT WAS FACIALLY INSUFFICIENT OR DIDN'T NEED TO BE EVIDENTIARY HEARING AND NOW TAKE THE SAME MOTION AND SAY, NO, IT IS FACIALLY INSUFFICIENT.

>> WELL THAT IS NOT ENTIRELY THE, THE COURT DIDN'T ULTIMATELY FIND THAT ALL OF THE CLAIMS WERE FACIALLY INSUFFICIENT.

IN FACT SHE MAKES RULINGS WITH RESPECT TO THE GUILT PHASE CLAIM AND SHE MAKES A RULING WITH RESPECT TO THE BRADY CLAIM THAT IS NOT, THAT DOESN'T SAY IT IS FACIALLY INSUFFICIENT.

>> JUST CONCLUSIVELY REFUTED BY THE RECORD?

>> CORRECT.

OR WITH RESPECT TO THE BRADY CLAIMS SAYS UNDER EITHER VERSION OF THE MEDICAL EXAMINER'S TESTIMONY, HAC IS SUPPORTED.

I'M HAVING TROUBLE WITH THIS AS WELL AND HAD TROUBLE WITH THIS FROM THE TIME I GOT THE CIRCUIT COURT'S ORDER.

I MAINTAIN THAT FROM THE  
BEGINNING OF THIS PROCESS  
MR. DENNIS'S MOTION IS FACIALLY  
SUFFICIENT.

WE HAVE --

>> IS THIS REALLY THE SAME  
MOTION OR, I THOUGHT THERE WAS  
A AMENDMENTS THAT WERE MADE TO  
THIS MOTION WHEN WE SENT IT  
BACK?

>> WE DID AMEND THE MOTION.  
WE ADDED TWO ADDITIONAL CLAIMS.

THERE WERE NOT AMENDMENTS MADE  
TO THE EXISTING CLAIMS.

SO ALL OF THOSE FACTS ARE THE  
SAME.

THERE WAS A LETHAL INJECTION  
CLAIM MADE THAT WE ADDED.  
AND A CLAIM WITH RESPECT TO A  
REPORT THAT CAME OUT WITH  
RESPECT TO FORENSIC SCIENCE.

>> REWORD IT, THE MOTION, YOU  
JUST ADDED AN AMENDMENT TO IT  
THAT ADDED THESE OTHER CLAIMS?

>> THAT'S CORRECT.

NONE OF THE EXISTING CLAIMS  
WERE CHANGED.

>> SO THE MOTION IS THE MOTION  
THAT WAS FILED NOVEMBER OF  
2003?

IT IS THE SAME MOTION?

>> CORRECT.

>> AND SO, IT IS OVER 70 PAGES.

>> CORRECT.

>> A LOT OF SPECIFIC  
ALLEGATIONS.

>> THE PAGE LIMIT IS 75 PAGES.

THERE ARE VERY SPECIFIC  
ALLEGATIONS.

IT WAS VERY FACT-INTENSIVE AND,  
AGAIN, YOU KNOW, WE BOTH KEEP  
SAYING IT IS PROBLEMATIC THAT  
ONE JUDGE GRANTS AN EVIDENTIARY  
HEARING ON THE SAME INFORMATION  
AND ONE JUDGE DOESN'T.

AND THEN AGAIN, YOU LOOK AT THE  
ORDER, THIS ORDER DOES NOT MAKE  
SPECIFIC REFERENCES TO THE  
RECORD.

IT IS INACCURATE IN MANY PLACES  
AND USES, I WAS SAYING WITH  
RESPECT TO THE BRADY CLAIM, IT  
USES INAPPROPRIATE STANDARD FOR  
REVIEW.

THERE IS NOT EVEN ANY MENTION  
OF BRADY OR WHAT THE COURT'S  
UNDERSTANDING OF WHAT THE  
PRAYED DID I ANALYSIS SHOULD  
BE.

>> TO ME THE POINT IS, IF THIS  
COURT THOUGHT THE BRADY CLAIM  
WAS INSUFFICIENT OR  
CONCLUSIVELY REFUTED WE  
WOULDN'T HAVE SENT IT BACK.  
MAYBE THAT WE WEREN'T CLEAR ON  
THAT.

BUT THAT IS WHAT IS FRUSTRATING  
TO ME.

>> I AGREE.

>> I FEEL LIKE WE MAYBE BEING  
CLEARER MISLED THE JUDGE  
THINKING THIS SUMMARY DENIAL  
WAS APPROPRIATE?

>> I AGREE.

YOU KNOW THE ORDER THAT THIS  
COURT SET FORTH AFTER THE LAST  
ORAL ARGUMENT, AND I WOULD  
POINT OUT I REMEMBER STANDING  
HERE AND ARGUING AT GREAT  
LENGTH ABOUT THE BRADY CLAIM  
AND ABOUT MATERIALITY AND

WHETHER IT COULD BE DISPOSED OF  
SIMPLY ON MATERIALITY AND LIKE  
YOU SAID, THIS COURT SENT IT  
BACK EVEN AFTER THOSE  
ARGUMENTS.

YOU KNOW, THE ORDER THAT WAS  
SENT BACK SAID THAT IT WAS FOR  
A NEW POST-CONVICTION  
PROCEEDING.

SO I CAN'T SAY WHAT CIRCUIT  
COURT WAS THINKING IN THAT  
REGARD AND WHAT SHE FELT HER  
OBLIGATION WAS.

I SIMPLY WOULD AGAIN, REITERATE  
TO THIS COURT THAT LOOKING AT  
THE CIRCUIT COURT'S ORDER AND  
LOOKING AT MOTION, THIS MOTION  
WAS SUFFICIENTLY PLED TO  
WARRANT AN EVIDENTIARY HEARING,  
SPECIFICALLY WITH RESPECT TO  
INEFFECTIVE ASSISTANCE OF  
COUNSEL AT THE GUILT PHASE.  
THERE ARE NUMEROUS FACTUAL  
CLAIMS.

INEFFECTIVE ASSISTANCE AT THE  
PENALTY PHASE, ESPECIALLY WHERE  
THERE WAS SO LITTLE PRESENTED  
AND SO LITTLE IN THE IN  
COMPARISON TO WHAT WE HAVE  
PRESENTED IN THE MOTION.

AND ABSOLUTELY WITH RESPECT TO  
THE BRADY CLAIM BECAUSE I DON'T  
BELIEVE MATERIALITY CAN BE  
RESOLVED ON THIS RECORD, NOT  
WITHOUT THE TESTIMONY OF THE  
TRIAL ATTORNEY IN PARTICULAR.

WITH THAT, IF THE COURT HAS NO  
FURTHER QUESTIONS I WHICH  
RESERVE THE REST OF MY FOR  
REBUTTAL.

>> MAY IT PLEASE THE COURT.  
SANDRA JAGGARD, ASSISTANT

ATTORNEY GENERAL ON BEHALF OF  
THE STATE.

THE STATE'S POSITION ALWAYS HAS  
BEEN THIS MOTION WAS  
INSUFFICIENTLY PLED AND DID NOT  
MERIT EVIDENTIARY HEARING.

>> IT WAS ALWAYS YOUR POSITION  
EVEN IN THE FIRST APPEAL?

>> EVEN IN THE FIRST APPEAL.

THERE WAS AN ISSUE ABOUT  
RECUSAL AND AN ORDER ENTERED  
AFTER RECUSAL MOTION BEING VOID  
AND THEREFORE THIS COURT'S  
ORDER TO REDO THE PROCEEDINGS  
DIDN'T SAY WE FOUND IT  
SUFFICIENT AND WE'RE GOING TO  
HAVE A HEARING.

>> BUT, AND AGAIN, I KNOW --

>> IF AN ORDER IS VOID.

THE ORDER IS VOID.

IT DOESN'T MATTER.

>> I GUESS THOUGH THE PROBLEM  
IS, I THINK, HER TIME NEEDS TO  
START.

THAT, MY, THE PROBLEM IS, WE  
HAVEN'T ACTUALLY HAD THIS IN A  
LONG TIME.

WITH WE HAVEN'T HAD CASES WHERE  
THERE ARE SUMMARY DENIALS ON  
VERY SPECIFIC PLEADINGS.

IT WAS SURPRISING, WHEN I SAW  
THIS, I REMEMBER THIS CASE.

I GO BACK TO THE OTHER CASE.

MY GOODNESS THERE WAS  
EVIDENTIARY HEARING.

WE SENT IT BACK BECAUSE THE  
JUDGE HAD DIED AND THERE WERE  
INSUFFICIENT FINDINGS.

IF WE THOUGHT THAT IT WAS  
INSUFFICIENTLY PLED, WE COULD  
HAVE MADE EVERYONE'S LIFE  
EASIER AND JUST SAID, THIS IS

INSUFFICIENTLY PLED.

>> YOU HAVE A BRADY CLAIM THAT SAYS, WELL, THE STATE SENT A MEMO TO ITS MEDICAL EXAMINER, ASKING HER TO TESTIFY IN A SPECIFIC MANNER WHERE SHE DOESN'T TESTIFY IN THAT SPECIFIC MANNER.

YOU HAVE VICTIMS WHO ARE BEATEN TO DEATH AND PHYSICAL EVIDENCE.

>> I'M ASKING YOU, ISN'T IT REALLY A VARIATION OF THE LAW OF THE CASE, YOU ALREADY SAID YOU RAISED THE ISSUE IT WAS LEGALLY, OR FACIALLY INSUFFICIENT OR CONCLUSIVELY REFUTED.

IF WE THOUGHT THAT IT WAS, WE WOULDN'T HAVE SENT IT BACK. WE WOULD HAVE AFFIRMED ON A DIFFERENT BASIS.

>> WELL AND IF YOU THOUGHT THERE NEEDED TO BE EVIDENTIARY HEARINGS ON CERTAIN ISSUES YOU COULD HAVE WRITTEN THAT ORDER TOO.

YOU SAY GO BACK DO THE PROCEEDING OVER AGAIN.

>> WE'VE NOW SAID, WE WANT A NEW PROCEEDING.

I WOULD THINK THAT THAT WOULD HAVE INCLUDED A NEW EVIDENTARY HEARING.

>> BUT WE HAVE CLAIMS LIKE COUNSEL INEFFECTIVE FOR FAILING INVESTIGATE OTHER SUSPECTS WHERE WE HAVE ABSOLUTELY NO ALLEGATION OF WHAT IT WAS AN INVESTIGATION OF OTHER SUSPECTS WOULD HAVE REVEALED.

>> MISS JAGGARD, WE UNDERSTAND,

THAT OFTEN IN THESE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS THERE ARE NUMEROUS CLAIMS. WE ARE NOT SAYING THAT EVERYONE OF THOSE HAVE, YOU HAVE TO HAVE AN EVIDENTIARY HEARING ON. BUT THERE ARE SOME CLAIMS HERE AT THAT THERE SEEMS TO BE A QUESTION OF FACT THAT IS NOT A PART OF THE RECORD.

THOSE ARE THE KINDS OF CLAIMS THAT WE HAVE SAID YOU NEED AN EVIDENTIARY HEARING ON.

>> BUT ALL OF THE GUILT PHASE CLAIMS ARE EITHER CLAIMS WHERE IT IS COUNSEL INEFFECTIVE FOR MAKING NON-MERITORIOUS OBJECTION.

ONLY THINGS THEY HAD EVIDENTIARY HEARING ON WAS FIRST TIME THE COUNSEL WAS INEFFECTIVE FIRST TIME FAILING TO HIRE CRIME SCENE EXPERTS. AT EVIDENTIARY HEARING THEY PRESENTED NO CRIME SCENE EXPERTS WHATSOEVER.

IN THE MOTION THEY DON'T ALLEGE WHAT PRESENTING A CRIME SCENE EXPERT WOULD DO.

>> WHAT ABOUT THE GUILT PHASE, I MEAN THE PENALTY PHASE?

>> THE PENALTY PHASE --

>> SEEMS TO ME, THAT, THE ALLEGATION IS, THAT THERE WAS NOT A THOROUGH INVESTIGATION OF THIS CASE.

THERE WERE ONLY A COUPLE OF WITNESSES PRESENT AT THE PENALTY FACE.

CERTAINLY THERE WAS NO MENTAL HEALTH MITIGATION PRESENTED AT THE PENALTY PHASE.

SO HOW DOES THE RECORD REFUTE THAT THERE WAS INSUFFICIENT INVESTIGATION?

>> IT REFUTES THAT THEIR ALLEGATIONS ABOUT WHAT WOULD HAVE BEEN DISCOVERED WOULD HAVE PREJUDICED THE DEFT. THEIR ALLEGATIONS WERE THAT YOU WOULD GET NON-STATUTORY MITIGATION THAT HE WAS PSYCHOLOGICALLY AFFECTED BY GROWING UP IN A BAD NEIGHBORHOOD AND WOULD DO WELL IN PRISON.

-- DEFENDANT.

YOU HAVE A TRIAL COURT WHO ON THE RECORD WITHOUT ANY PSYCHOLOGICAL TESTIMONY FOUND THE EXTREME MENTAL OR EMOTIONAL DISTURBANCE.

SO ON THEIR ALLEGATIONS THEY'RE NEGATING THEIR OWN MITIGATION.

AND THEN YOU HAVE A CASE WITH HAC, CCP, DURING THE COURSE OF A FELONY AND PRIOR VIOLENT FELONY.

SO YOU'RE GOING TO PRESENT NON-STATUTORY MITIGATION, REBUT YOUR OWN STATUTORY MITIGATION AND IT IS NOT GOING TO OUTWEIGH.

>> SOUNDS TO ME LIKE ALL THE CASES WITH YOU WE'VE HAD EVIDENTIARY HEARINGS ON WE SHOULD HAVE THROWN THEM OUT AND NOT HAVE EVIDENTIARY HEARINGS BECAUSE MANY OF THEM HAVE CCP AND HAC.

WE KNOW THEY ARE PRESENT, NO MATTER HOW MUCH, NON-STATUTORY MITIGATING EVIDENCE, IT IS NOT

GOING TO MAKE A DIFFERENCE.  
WE JUST MAKE THAT DETERMINATION  
UP FRONT, NO EVIDENTIARY  
HEARING.

>> IT DEPENDS WHAT THE  
ALLEGATIONS ARE.

IF THE ALLEGATIONS ARE THIS  
DEFENDANT HAD HORRIBLY ABUSIVE  
CHILD HOOD AND HE WAS, HE HAD  
BIPOLAR DISORDER AND HE WAS A  
DRUG ADDICT, SURE YOU MAY NEED  
AN EVIDENTIARY HEARING.

THAT IS NOT THE ALLEGATIONS IN  
THIS CASE.

THERE IS NO ALLEGATIONS ABOUT  
ANYTHING LIKE THAT.

>> BECAUSE, WELL --

>> THE MOTION SIMPLY PLED --

>> BECAUSE YOU DON'T HAVE THE  
SAME KIND OF ALLEGATIONS OF  
WHAT THE MENTAL OR EVEN FAMILY  
MITIGATION IS GOING TO BE DOES  
NOT NEGATE THE FACT THAT A  
DEFENDANT OUGHT TO BE ABLE TO  
SHOW THAT THERE WAS IN FACT  
MENTAL AND FAMILY MITIGATION  
THAT, THAT THE TRIAL COUNSEL  
DID NOT INVESTIGATE AND DID NOT  
PRESENT.

>> IF HE ALLEGES SUFFICIENT  
FACTS TO SHOW THAT IT IS GOING  
TO OUTWEIGH THE AGGRAVATION.  
WHERE HE ALLEGES FACTS THAT ARE  
NOT GOING TO SHOW THAT WILL  
OUTWEIGH, ACTUALLY NEGATE HIS  
OWN MITIGATION HE GOT.

HE GOT STATUTORY MITIGATION.  
THEIR ALLEGATIONS WOULD SAY  
WE'LL PRESENT AN EXPERT TO SAY,  
NO HE JUST HAS NON-STATUTORY.

>> I'M CONCERNED THEN, BECAUSE  
WHEN IT SOUNDS LIKE TO ME

YOU'RE SAYING THE DEFT HAS GOT  
TO MAKE HIS CASE, --  
>> THE DEFT --  
>> EXCUSE ME.  
THE DEFT YES, HAS TO MAKE  
ALLEGATIONS IN HIS --  
DEFENDANT.  
HAS TO MAKE ALLEGATIONS IN HIS  
3.851 MOTION.  
WHAT YOU'RE SAYING TO ME A  
DEFENDANT HAS TO PROVE HIS CASE  
IN 3.851 MOTION.  
>> NO.  
WHAT I'M SAYING THE DEFENDANT  
HAS TO PLEAD SUFFICIENT FACTS  
TO SHOW ENTITLEMENT TO RELIEVE.

WHERE HIS PLEADINGS SHOWS  
ITSELF HE WOULD NOT BE ENTITLED  
TO RELIEF IF HE PROVED THE FACT  
HE IS ALLEGING, ACCEPTING HIS  
ALLEGATIONS AS TRUE, HE IS NOT  
GOING TO BE ENTITLED TO  
RELIEVE.

>> [INAUDIBLE].  
-- THEY ARE TO HIRE A CRIME  
SCENE EXPERT.  
>> THERE IS NO ALLEGATION WHAT  
A CRIME SCENE EXPERT WOULD DO.

AS FAR AS THE FAILURE TO OBJECT  
TO THE ALLEGED COMMENT ON THE  
RIGHT TO REMAIN SILENT, WHAT  
HAD HAPPENED WAS, THE DEFENDANT  
HAD SHOWED UP AT THE POLICE  
STATION AT DAY OF THE CRIME  
WHEN THE POLICE WEREN'T READY  
TO SPEAK TO THEM.  
HE HAD GIVEN THEM AN ALIBI.  
HAD DONE THINGS, BEEN  
FINGERPRINTED.  
THE DEFENSE DURING THE

CROSS-EXAMINATION OF THE LEAD  
DETECTIVES ATTEMPTED TO PORTRAY  
THIS AS MANY BEING COOPERATIVE.

HE WAS WUFFLI COOPERATIVE.  
DESPITE THIS FACT THE POLICE  
ZEROED IN ON HIM ANYWAY.  
ALL THE STATE DID WAS POINT OUT  
THAT THAT WASN'T TRUE.  
THEY WANTED TO SPEAK TO HIM  
MORE LATER WHEN THEY WERE  
ACTUALLY READY AND HE WASN'T  
BEING COOPERATIVE.

WHERE THE DEFENDANT LIES ABOUT  
WHAT HAPPENED, THE STATE IS  
ALLOWED TO BRING UP THE FACT  
THAT HE INVOKED HIS  
CONSTITUTIONAL RIGHTS AND THAT  
IS NOT TRUE.

>> WHAT ABOUT THE BRADY CLAIM?

>> THE BRADY CLAIM WAS A TRIAL  
PREPARATION MEMO TO THE MEDICAL  
EXAMINER SAYING FOR THE PENALTY  
PHASE, YOU'RE BEING BROUGHT IN  
FOR HAC WE NEED TO TALK ABOUT  
THE NUMBER OF BLOWS.

WE NEED YOU TO TALK ABOUT THE  
VICTIM'S SUFFERING.

IT SUGGESTS, SHE USED TERM  
LANGUISH AND DIE, WHICH SHE  
DOESN'T USE.

IF WE WERE COACHING HER WE  
WEREN'T VERY SUCCESSFUL.

YOU HAVE A CASE WHERE THIS  
VICTIM, THESE VICTIMS WERE  
BEATEN TO DEATH AND THEY HAVE  
DEFENSIVE WOUNDS.

AND THE MALE VICTIM ACTUALLY  
GOT UP, AND WALKED AROUND AND  
WE HAVE HIS HANDPRINTS ALL  
ALONG THE WALLS, COMING UP ON  
THE DOOR AS HE IS TRYING TO GET

OUT.

HE IS STILL ALIVE WHEN HIS ROOMMATE SHOWS UP AND HE TURNS HIS FACE WHEN HIS ROOMMATE CALLS HIS NAME.

THE FEMALE VICTIM WAS STILL ALIVE WHEN THE MEDICAL EXAMINER'S CAME IN AND SHE ATTEMPTED TO MOVE IN RESPONSE TO THEM.

WHERE YOU HAVE A BEATING VICTIM, WHERE YOU HAVE A BEATING DEATH WHERE THE VICTIMS WEREN'T IMMEDIATELY KILLED AND RENDERED UNCONSCIOUS, IT IS HAC.

SO YOU CAN IMPEACH THE MEDICAL EXAMINER FROM HERE UNTIL THE COWS COME HOME.

IT IS STILL HAC IT DOESN'T AFFECT ANYTHING.

>> HOW ABOUT THERE WERE ISSUES WITH REGARD TO OTHER SUSPECTS? I KNOW ONE WAS RAY LEWIS BUT THERE WERE OTHERS AND HOW WAS THAT PLED AND WHAT IS YOUR POSITION WITH REGARD TO WHETHER THERE'S ENOUGH, GIVEN TO THE JUDGE FOR THE ENTITLEMENT OF A HEARING AND WHAT IS THAT INFORMATION?

>> AND THE PLEADING, THAT CLAIM WAS SUMMARILY DENIED THE FIRST TIME.

THEY WERE IN FACT TOLD IT WAS UNSUFFICIENTLY PLED AND THE JUDGE WOULD ALLOW THEM TO AMEND IT AND THEY NEVER DID.

THE PLEADINGS SAYS COUNSEL SHOULD HAVE INVESTIGATED OTHER SUSPECTS.

MISS LUMP KIN HAS A DIARY.

AT THE BEGINNING OF THE DIARY  
HAS A PAGE SAYS -- HAS INITIALS  
ON CERTAIN DAYS.  
THERE IS BACK PART OF THIS  
DIARY WHERE THERE IS A  
DAY-TO-DAY PLANNER.  
ON ONE DAY WHERE THE INITIAL R  
APPEARS, THERE IS KNOWTATION  
THAT MISS LUMPKINS WENT AND SAW  
MR.^LEWIS'S FOOTBALL PRACTICE.

FROM THAT WE'RE NOW GOING TO  
ASSUME THAT MISS LUMPKINS WAS  
SLEEPING WITH THESE PEOPLE.  
AND THEN, WE SHOULD HAVE  
INVESTIGATED THESE PEOPLE AND,  
OH BY THE WAY WE TRIED TO  
INVESTIGATE MR.^LEWIS AND HE  
REFUSED TO SPEAK TO US.  
AND THAT WAS IT.  
NEVER SAID WHAT AN  
INVESTIGATION OF THESE PEOPLE  
WOULD DO.

AT ALL.

>> WERE ANY ONE OTHER THAN THAT  
ONE INDIVIDUAL?

>> IT WAS RAY LEWIS BASED ON  
THE R AND SOMEONE NAMED P.  
THAT WAS THE ENTIRE ALLEGATION  
WHO THIS PERSON EVEN WAS.  
WHY THAT CLAIM HAS ALWAYS BEEN  
SUM MERRILY DENIED BECAUSE IT  
WAS FACIALLY INSUFFICIENT.  
COUNSEL FAILING TO OBJECT TO  
TOME TESTIMONY THAT THIS COURT  
RULED ON DIRECT APPEAL WAS NOT  
TO THE EX-~~{TONLT}~~ THERE WERE ON  
{SWREBS}S THE ADMISSION OF THE  
OBJECTIONS THE ADMISSION OF THE  
EVIDENCE WAS HARMLESS AND THERE  
WEREN'T OBJECTIONS IT WAS UNDER  
MENTAL AREA^ERROR.

UNDER THIS COURT'S CHANDLER  
CASE MEANS SHE CAN'T PROVE  
PREJUDICE.

WE HAD CLAIMS THAT COUNSEL WAS  
INEFFECTIVE FOR FAILING TO  
OBJECT TO ADMISSIBLE EVIDENCE  
THAT IS CLEARLY ADMISSIBLE  
EVIDENCE.

THINGS LIKE SOMEONE SAYING, I  
LOOKED AT A SLASH IN A TIRE  
LOOKED MORE LIKE A KNIFE MARK  
THAN IT DID LIKE A NAIL  
PUNCTURE.

WHEN IS THIS ALLOWED TO TESTIFY  
AND ALLOWED WHAT THEY SAW --  
WITNESSES.

A CLAIM THAT COUNSEL WAS  
INTEXT TUFF FOR FAILING TO  
OBJECT TO THE INTRODUCTION OF  
THE FACT THEY DID A RAPE KIT ON  
MISS LUMPKINS WHERE THE DEFENSE  
WAS, THAT THE POLICE DIDN'T  
INVESTIGATE OTHER MOTIVES.  
THIS IS DIRECT REBUTTAL TO THE  
DEFENSE.

THIS IS ADMISSIBLE EVIDENCE.

AND SO, WE HAVE A MOTION THAT  
WAS INSUFFICIENTLY PLED WITH  
REGARD TO THE GUILT PHASE.  
YOU HAVE A BRADY CLAIM THAT  
EVEN ASSUMING YOU CAN SHOW THAT  
WE DIDN'T GIVE YOU THIS TRIAL  
PREP MEMO IS NOT GOING TO MAKE  
A DIFFERENCE BECAUSE EVEN IF  
YOU IMPEACH THE SECOND MEDICAL  
EXAMINER, IT IS STILL GOING TO  
BE HAC BASED ON THE PHYSICAL  
EVIDENCE.

AND YOU HAVE AN ALLEGATION  
ABOUT MITIGATION THAT YOU'RE  
GOING TO PRESENT FOR AN AN  
INVESTIGATION WHERE YOUR OWN

ALLEGATIONS SHOW THAT YOU  
WOULDN'T END UP GETTING RELIEF.

AND THEREFORE, IT IS THE  
STATE'S POSITION THIS WAS  
PROPERLY SUM MERRILLY DENIED.

IF THE COURT HAS NO FURTHER  
QUESTIONS, THE STATE  
RESPECTFULLY REQUESTS YOU  
AFFIRM.

>> ANY REBUTTAL?

>> JUST BRIEFLY.

I DO WANT TO POINT OUT A COUPLE  
THINGS THAT, WHAT IS REQUIRED  
UNDER RULE 3.851 IS WE MAKE A  
DETAILED FACTUAL ALLEGATION OF  
THE CLAIMS.

THAT HAS BEEN DONE HERE.

AS JUSTICE QUINCE POINTED OUT,  
THE POINT OF AN EVIDENTIARY  
HEARING IS FOR MR.^DENNIS TO  
PROVE THOSE CLAIMS.

IT DOESN'T HAVE TO BE PROVEN IN  
THE MOTION OTHERWISE, NOBODY  
WOULD NEED AN EVIDENTIARY  
HEARING.

>> BUT THE POINT IS, IF THE  
FACTS THAT YOU ALLEGE HOWEVER,  
DON'T ADD UP TO A BASIS FOR  
RELIEF, THEN IT CAN BE DENIED  
WITHOUT A HEARING.

IT IS NOT A QUESTION, BECAUSE,  
YOU'RE ABSOLUTELY RIGHT TO THE  
EXTENT THAT YOU MEAN THAT THE  
COURT HAS TO ACCEPT ALL THE  
ALLEGATIONS AS BEING TRUE.

BUT, IF THE COURT HAVING DONE  
THAT SAYS, WELL, SO WHAT?  
IT WOULDN'T HAVE MADE ANY  
DIFFERENCE OR, EITHER WASN'T  
DEFICIENT PERFORMANCE OR, THERE

WOULD BE NO PREJUDICE OR  
WHATEVER, THEN IT CAN BE DENIED  
WITHOUT A HEARING, RIGHT?

>> ABSOLUTELY.

BUT I'D LIKE TO POINT OUT THAT  
IS NOT WHAT THE CIRCUIT COURT  
HERE TODAY, ONE, WITH RESPECT  
TO THE PENALTY PHASE.

THE CIRCUIT COURT SAID THERE  
WAS NO DEFICIENT PERFORMANCE  
BECAUSE TRIAL COUNSEL PRESENTED  
EVIDENCE WE'RE NOW ALLEGING.  
THAT IS NOT TRUE.

WE PRESENTED NUMEROUS FACTS.

>> CAN I ASK YOU QUESTIONS  
ABOUT THE PENALTY PHASE.

IT SEEMS THIS A LITTLE  
DIFFERENT THAN SOME YOU HAVE  
PRESENTED TO US AND THAT WE  
SEEN IN THESE CONTEXTS.

IS AN ALLEGATION THAT A DEFT  
HAS LIVED OR GROWN UP, OR  
REARED IN MIAMI AND THAT'S A  
VIOLENT AREA, SUFFICIENT JUST  
IN AND OF ITSELF WITHOUT MORE  
TO GO INTO HOW THE IMPACT ON  
THE INDIVIDUAL TO REQUIRE A  
HEARING?

>> ABSOLUTELY.

>> SHARE WITH ME, YOU KNOW,  
THAT IS A CONCLUSION.

HELP ME UNDERSTAND WHAT YOUR  
VIEW IS ON THAT.

>> I --

>> I'M FROM MIAMI, I DON'T KNOW  
JUST SAYING THAT MAKES THAT YOU  
TRUE.

>> I DON'T THINK IT IS A MATTER  
FROM COMING FROM MIAMI.  
THIS PARTICULAR AREA OF MIAMI,  
LIBERTY CITY, WE WERE ABLE TO  
PRESENT PREVIOUSLY.

>> RIGHT.

>> WOULD BE ABLE TO DO SO AGAIN  
AN EXPERT WHICH REALLY TALKED  
ABOUT THE EXTENT OF THE  
VIOLENCE IN THAT AREA.

>> ALL RIGHT.

SO I ACCEPT THAT.

>> WHAT THAT WOULD MEAN TO A  
CHILD'S DEVELOPMENT  
SPECIFICALLY, THEN MR.^DENNIS'S  
DEVELOPMENT IN THAT AREA.

>> WHAT IS THAT?

>> IT IMPACTED THE, HIS  
RELATIONSHIPS.

HE HAD A VERY UNSTABLE HOME  
LIFE.

WENT ON TO EXPLAIN THAT IT  
CERTAINLY, WITNESSING THAT KIND  
OF VIOLENCE THEN IMPACTS HOW  
MR.^DENNIS RESPONDS IN CERTAIN  
SITUATIONS IN HIS OWN BEHAVIOR.

AND THAT CERTAINLY HAS BEEN  
ALLEGED.

I THINK ALSO THIS COURT HAS  
GRANTED PENALTY PHASE RELIEF --

>> DID THE TRIAL JUDGE IN THIS  
CASE FIND HE WAS UNDER SEVERE  
MENTAL STRESS AT THE TIME?

I MEAN IN THE ORIGINAL  
SENTENCING?

>> THE TRIAL COURT CALLED IT  
EMOTIONAL DISTRESS, NOT EXTREME  
EMOTIONAL DISTURBANCE.

>> OKAY.

>> BASED ON THE FACT THAT THE  
STATE CONCEDED THAT THAT  
MITIGATOR COULD BE POSSIBLE  
GIVEN THE STATE'S OWN THEORY.

>> I UNDERSTAND STATUTORY  
CORRECT, THAT'S WHAT WE'RE

SPEAKING OF?

>> YES THE CIRCUIT COURT CALLED IT EMOTIONAL DISTRESS.

>> THAT WAS FOUND IN THE SEVERE EMOTIONAL DISTRESS.

>> IT WAS GIVEN LITTLE TO NO WEIGHT.

THAT IS WHAT THE STATE IS NEGLECTING TO SAY THAT THE CIRCUIT COURT GAVE IT LITTLE TO NO WEIGHT.

HAD TRIAL COUNSEL DONE HIS JOB, HAD TRIAL COUNSEL DONE ANY INVESTIGATION WHATSOEVER, ALL OF THIS INFORMATION ABOUT THE VIOLENT COMMUNITY, HOW THAT IMPACTED THE DEFT, HOW IT IMPACTED HIS ADULT DEFENDANT, HIS AD ADULT LIFE AND BEHAVIOR AND HIS RELATIONSHIPS --

>> HE IS WITNESS TO A MURDER, SOMEBODY BEING KILLED?

>> WE DETAILED SEVERAL VIOLENT INCIDENTS, THAT YES, MR.^DENNIS WITNESSES.

ONE OF THEM WAS SOMEBODY BEING SHOT I BELIEVE AT POINT-BLANK RANGE IN THE HEAD RIGHT IN FRONT OF HIM WHEN HE WAS YOUNGER.

THERE WAS A COUPLE OTHER VIOLENT INCIDENTS MR.^DENNIS WITNESSED.

WE ALLEGED THE McDUFFY RIOTS OCCURRED IN THIS AREA AND THAT WAS CERTAINLY VERY VIOLENT.

FOR A CHILD TO BE IN THE COMMUNITY AND IN THAT AREA AT THE TIME, CERTAINLY WOULD HAVE IMPACTED MR.^DENNIS.

SO AULD OF THESE VERY SPECIFIC FACTS WERE ALLEGED.

I WANT TO POINT OUT THAT THIS COURT HAS GRANTED PENALTY PHASE RELIEF ON NON-STATUTORY MITIGATION.

MOST RECENTLY IN DUANE PARKER v. STATE.

IN THAT CASE THE COURT SAID THAT JUST ON THE BASIS OF NON-STATUTORY MITIGATION HE WAS ENTITLED TO A NEW PENALTY PHASE.

SO WHETHER OR NOT THERE'S STATUTORY MITIGATORS OR NOT WOULD NOT PRECLUDE MR. DENNIS FROM GETTING AN EVIDENTIARY HEARING.

LAST THING I WANT TO SAY, I'M JUST ABOUT DONE, IS ON THE BRADY CLAIM.

THE STATE HAS STOOD UP HERE AND ARGUED TO THE COURT THIS WAS JUST SIMPLY WITNESS CONTACT. HOWEVER, THIS IS DISINGENUOUS.

THE STATE STOOD UP HERE AT THE LAST ORAL ARGUMENT IN RESPONSE TO JUSTICE QUINCE'S QUESTION SAID THIS MEMO SHOULD HAVE NEVER BEEN WRITTEN.

AND WHEN PUSHED ON THAT, WHETHER IT SHOULD HAVE BEEN TURNED OVER TO DEFENSE COUNSEL, JUSTICE QUINCE LET THE ANSWER GO AND, MISS JAGGARD DIDN'T ANSWER.

THE ISSUE HERE IS MATERIALITY.

AND THAT CAN'T BE PROVEN ON THE RECORD.

THERE NEEDS TO BE AN EVIDENTIARY HEARING TO HEAR FROM TRIAL COUNSEL TO, HEAR

TRIAL COUNSEL WOULD HAVE DONE  
AND THEN, IT CAN BE ARGUED HOW  
THE JURY WOULD HAVE WEIGHED THE  
HAC.

NOT SIMPLY WHETHER IT EXISTED  
OR NOT BUT HOW THE JURY WOULD  
HAVE WEIGHED THE HAC KNOWING,  
THAT DR.^RAO WAS IMPEACHED AND  
ALSO YOU NOW GIVEN THE  
MITIGATION THAT'S NOW  
AVAILABLE.

SO I WOULD ASK THIS COURT TO  
REMAND FOR AN EVIDENTIARY  
HEARING ON THE FACT-BASED  
CLAIMS.

>> THANK YOU BOTH FOR YOUR  
ARGUMENTS HERE TODAY.  
THE COURT WILL NOW BE IN  
RECESS.

>> PLEASE RISE.  
THE SUPREME COURT IS NOW  
ADJOURN