THE NEXT CASE ON OUR DOCKET IS TAYLOR VERSUS THE STATE OF FLORIDA.
>> MAY IT PLEASE THE COURT, I'M MARIA... AND I ALONG WITH MY CO-COUNSEL, MARK GRUBER, REPRESENT THE APEL LABT, WILLIAM TAYLOR, AN APPEAL FROM THE CIRCUIT COURT'S DENIAL OF MR. TAYLOR'S MOTION FOR POST QUICK RELIEF AS WELL AS HIS PETITION FOR HABEAS CORPUS.
MR. TAYLOR IS SEVERELY MENTALLY ILL AND SUFFERS FROM BRAIN IMPAIRMENT IN THE FRONTAL AND TEMPORAL LOBES OF HIS BRAIN AND THE IMPAIRMENTS AFFECTED HIM THROUGHOUT HIS LIFE AND HAVE A NEXUS TO HIS CRIME AN RELATIONSHIP WITH HIS ATTORNEYS AND TO DECISIONS THAT HE MADE REGARDING HIS CASE.
DURING THE PENALTY PHASE, TRIAL COUNSEL ATTEMPTED TO PROVE THE STATUTORY MITIGATORS AND AS WELL AS HE HAD IMPAIRMENT IN THE FRONTAL AND TEMPORAL LOBES OF HIS BRAIN WHICH AFFECTED HIS BRAIN'S FUNCTION AND BEHAVIOR.
THE TRIAL COURT IN THE SENTENCING ORDER FOUND THE DEFENDANT HAD NOT PROVEN EITHER OF THE SATTER TO MITIGATING CIRCUMSTANCES, AND DID NOT FIND BRAIN DAMAGE.
SPECIFICALLY, THE TRIAL COURT FOUND THERE IS A PAUCITY OF CREDIBLE EVIDENCE TO SUPPORT THE FINDING THAT HE SUFFERS FROM BRAIN DAMAGE.
IN CLAIM 7, WE ARGUE THAT THE TRIAL COUNSEL IS INEFFECTIVE FOR FAILING TO CALL DR. SESTA.
HE WAS HIRED BY TRIAL COUNSEL PRIOR TO MR. TAYLOR'S TRIAL, AND, HE CONDUCTD A FULL DAY OF

NEUROPSYCHOLOGICAL TESTING AND
BASED ON THAT, WHICH INCLUDED
OVER 100 PAGES OF RAW DATA, HE
FOUND STRONG EVIDENCE OF MILD TO
MODERATE BRAIN IN PARENT IN THE
-- IMPAIRMENT IN THE BRAIN,
FRONTAL LOBE IMPAIRMENT, WHICH
INCLUDES IMPAIRMENT IN
REASONING, JUDGMENT,
ORGANIZATION, HYPOTHESIS
TESTING...
>> THERE WERE OTHER MENTAL
HEALTH EXPERTS WHO WERE...
>> IN POST-CONVICTION?
>> AT THE TIME OF THE...
>> AT THE TIME OF TRIAL, YES.
YES.
>> AND DIDN'T THE DEFENSE
ATTORNEYS IN THIS CASE INDICATE
THEY DID NOT CALL DR. SESTA
BECAUSE THEY FELT THAT DR. SESTA
BECAME TOO MUCH OF AN ADVOCATE
FOR THE DEFENDANT, WHEREAS THE
OTHER EXPERTS IN FACT PRESENTED
REALLY PRESENTED THEIR
INFORMATION IN A MORE NEUTRAL
MANNER, ADVOCATING FOR THE...
[INAUDIBLE] IS THAT WHAT WAS --
THE TESTIMONY IN THIS CASE.
>> PARTIALLY, YOUR HONOR.
MR. TAYLOR'S REPRESENTED AT
TRIAL BY ASSISTANT DEFENDERS
SKYE AND HE WAS MAINLY
RESPONSIBLE FOR THE GUILTY PHASE
AND MS. GOENS THE PENALTY PHASE
THOUGH THEY BOTH SPOKE ABOUT THE
-- GOINS, THOUGH THEY BOTH SPOKE
AT THE PHASE OF THE TRIAL AND
MS. GOINS TESTIFIED THE REASON
THEY CALLED DR. KROPP INSTEAD OF
DR. SESTA IS BECAUSE DR. SESTA,
ACCORDING TO HER, PERFORMED
PERSONALITY TESTING AND FOUND
THAT MR. TAYLOR SUFFERED FROM
THE ANTI-SOCIAL PERSONALITY
DISORDER.

HOWEVER, THAT IS NOT A
REASONABLE STRATEGY IN LIGHT OF
THE FACT THAT --
>> REALLY, THE THRUST WAS, IS --
AS JUSTICE QUINCE MENTIONED, NOT
ONLY DID THEY TESTIFY THAT THE
DOCTOR BECAME AN ADVOCATE WHICH
THEY THOUGHT WAS NOT GOOD FOR
THE JURY BUT, ALSO, THEY -- IN
MY VIEW, TESTIFIED CLEARLY THAT
THAT -- HE'D CRATE A CONFLICT
WITH OTHER EXPERT WITNESSES,
THAT THEY REPRESENTED GOOD
TESTIMONY.
SO, WHY IS THAT NOT -- THOSE TWO
THINGS TOGETHER, WHY WOULD THAT
NOT BE A VALID STRATEGY FOR A
TRIAL LAWYER, TRYING TO CONVINCE
A JURY?
I MEAN, YOU AND I MAY SIT HER
ACADEMICALLY AND LOOK AT EXPERT
WITNESS FROM AN ACADEMIC
STANDPOINT BUT THIS IS THE TRIAL
SETTING AND THOSE TWO FACTORS TO
ME SEEM LIKE EXACTLY PART OF
WHAT LAWYERS ARE SUPPOSED TO DO,
EVALUATE WITNESSES, DECIDE WHICH
ONES TO CALL, AND TRY TO PRESENT
THE MOST CONSISTENT, BEST
POSITION, AREN'T THEY?
>> YOU ARE REFERRING TO THE
TESTIMONY ON JOHN SKYE, WHO AS I
SAID WAS RESPONSIBLE FOR THE
GUILT PHASE OF THE TRIAL.
BOTH MR. SKYE AND MS. GOINS
TESTIFIED THAT SHE ULTIMATELY
MADE THE DECISION TO CALL
DR. CROP INSTEAD OF DR. SESTA
AND SPECIFICALLY SAID HE DIDN'T
SEE A CONFLICT BETWEEN THE
TESTIMONY OF --
>> YOU ARE SAYING THERE IS NO
EVIDENCE IN THE RECORD THAT THE
-- SOMEONE, ONE OF THE TRIAL
TEAM, SAID IT CREATED A
CONFLICT, THIS DOCTOR WAS IN

CONFLICT WITH OTHER EXPERTS?
>> THAT WAS TESTIMONY BY
MR. SCOTT --
>> AND, ARE WE NOT REQUIRED TO
ACCEPT THAT IF THAT IS -- THE
TRIAL JUDGE LOOKED AT THAT, AT
THIS STAGE OF THE PROCEEDINGS.
>> ARGUMENT IS THAT MR. SKYE WAS
NOT THE ONE WHO MADE THE
DECISION NOT TO CALL THE DOCTOR,
MS. GOINS MADE THE DECISION AND,
THEREFORE, BECAUSE IT WAS HER
DECISION, TO -- SHE WAS
RESPONSIBLE, ULTIMATELY FOR THE
DECISION NOT TO CALL DR. SESTA.
>> I GUESS THE REASON --
>> BUT, I HAVE PROBLEMS WITH,
WITH YOUR ARGUMENT, WITH REGARD
TO THIS PARTICULAR SITUATION, WE
HAVE HAD DEFENSE LAWYERS, WHO
HIRE MENTAL HEALTH EXPERTS AND
PUT THEM ON AND -- PUTS HIM ON
AND MADE A STRATEGIC DECISION TO
EVALUATE WHETHER THIS DOCTOR
WOULD ADD TO THEIR CASE, OR
HINDER THEIR CASE.
THAT IS THE QUINTESSENTIAL
STRATEGY DECISION.
I MEAN, WE HAVE CASES WHERE THE
DEFENSE LAWYERS DON'T EVEN THINK
ABOUT HIRING, MENTAL HEALTH
EXPERTS, AND, EVEN --
BUT THIS CASE SEEMS LIKE IT IS
THE COMPLETE OPPOSITE, AND, WHAT
CASE DO WE HAVE EVEN REMOTELY
SIMILAR OR THE U.S. SUPREME
COURT, REMOTELY SIMILAR, WHERE
YOU HAVE THEM EVALUATE THE
DEFENDANT AND CALLING THEM AND
DECIDING NOT TO CALL THE OTHER,
AND SOMEBODY WOULD SAY, THAT
THAT IS A -- AN UNREASONABLE
STRATEGIC DECISION, AND IT FALLS
BELOW THE NORMS OF PROFESSIONAL
CONDUCT, TO RESULT IN THE 6TH
AMENDMENT VIOLATION.

>> THE STRATEGIC DECISION MUST
BE ASSESSED FOR REASONABLENESS
AND BECAUSE SHE MADE THE
DECISION AND HER REASON FOR NOT
COLLEGE DR. SESTA WAS HE
DIAGNOSED MR. TAYLOR WITH
ANTI-SOCIAL PERSONALITY DISORDER
SO INSTEAD OF CALLING DR. SESTA,
THEY CALLED DR. CROP, WHO ALSO
DIAGNOSED MR. TAYLOR WITH
ANTI-SOCIAL PERSONALITY DISORDER
AND IT ISN'T REASONABLE NOT TO
CALL ONE DOCTOR AND CALL ANOTHER
DOCTOR INSTEAD OF THAT DOCTOR,
WHO ALSO DIAGNOSED MR. TAYLOR
WITH ANTI-SOCIAL PERSONALITY
DISORDER, IF THAT IS THE
INFORMATION THEY ARE TRYING TO
KEEP OUT...
>> I THOUGHT DR. CROP WAS
BORDERLINE PERSONALITY, AS
OPPOSED TO ANTI-SOCIAL
PERSONALITY.
I'M NOT SURE I QUITE UNDERSTAND
THE DIFFERENCE, BUT, OBVIOUSLY
THERE IS SOME DIFFERENCE.
>> DR. CROP TESTIFIED THAT
MR. TAYLOR HAD -- SUFFERED FROM
THE ANTI-SOCIAL PERSONALITY
DISORDER WITH FEATURES OF
BORDERLINE PERSONALITY DISORDER
AND MS. GOINS TESTIFIED DURING
THE EVIDENTIARY HEARING THAT HE
HAD FEATURES OF ANTI-SOCIAL
PERSONALITY DISORDER BUT
DR. CROP TESTIFIED SEVERAL TIMES
THAT HE SUFFERED FROM
ANTI-SOCIAL PERSONALITY AS DID
THE --
>> I DON'T THINK YOU ANSWERED MY
QUESTION, WHICH WAS, YOU SAID,
WELL IT WASN'T A REASONABLE
DECISION, AND AS A YOUNG LAWYER,
IT'S NOT REASONABLE, AND, THE
YOU HAVE THE LAWYERS HIRING THE
EXPERTS AND CALLED ONE, NOTE

OTHER AND WHAT CASE OUT OF THIS
COURT AND THE U.S. SUPREME COURT
REMOTELY SUGGESTS THAT WE WOULD
FIND SOMEBODY -- DEFICIENT
CONDUCT UNDER THE 6TH AMENDMENT,
UNDER SOMETHING SIMILAR TO THAT?
>> I REFER THE COURT TO THE
DUNCAN CASE, IN WHICH THEY HAD
AN EXPERT AND THE EXPERT COULD
HAVE TESTIFIED IN SUPPORT OF THE
STATUTORY MITIGATING
CIRCUMSTANCES, AND THEY DIDN'T
PRESENT THAT EXPERT.
>> DID THEY PUT ANY EXPERT ON?
>> I DON'T BELIEVE SO, YOUR
HONOR, IN THE DUNCAN CASE.
>> THIS IS A BIG DISTINCTION AND
THE POINT -- WHEN THEY HAVE
GOTTEN THE EXPERT TO TESTIFY,
AND, IT IS NOT LIKE... THE
EXPERTS THAT TESTIFIED WERE WE
OFFICIALLY INADEQUATE.
THEY ACTUALLY GAVE SIGNIFICANT
TESTIMONY.
SO, YOU'VE GOT JUST THE -- THIS
CHOICE THAT THE LAWYERS HAD TO
MAKE, THEY THOUGHT THERE WERE
DIFFERENCES, BETWEEN -- AND I
THINK THERE WERE, AND MAYBE NOT
ON THIS BORDERLINE PERSONALITY,
VERSUS ANTI-SOCIAL PERSONALITY
BUT THERE ARE OTHER DIFFERENCES
IN THE TESTIMONY, OF -- BETWEEN
THIS DOCTOR AND THE OTHERS, AND,
THEY MADE THEIR CHOICES.
AND, FOR US, NOW, TO
SECOND-GUESS THAT, IT WOULD SEEM
TO BE TOTALLY INCONSISTENT WITH
THE FRAMEWORK WITH IN WHICH WE
EVALUATE THE PERFORMANCE OF
COUNSEL.
I MEAN, THERE IS REALLY A
PRESUMPTION THAT COUNSEL, I
THINK, ISN'T THERE?
A PRESUMPTION THAT COUNSEL
PERFORMED ADEQUATELY AND THAT WE

DON'T MAKE THESE KIND OF
SECOND-GUESSING CHOICES, WELL IT
WOULD HAVE -- IN HINDSIGHT IT
WOULD HAVE BEEN BETTER IF THEY
HAD GONE WITH THE OTHER EXPERT.
YOU CAN ALWAYS FIND SOMEBODY
THAT, IN HINDSIGHT, MIGHT HAVE
BEEN BETTER.
>> BELL THIS IS INFORMATION THAT
TRIAL COUNSEL WAS AWARE OF AND
KNEW DR. SESTA HAD DONE THE FULL
BATTERY OF NEUROPSYCHOLOGICAL
TESTING AND HAD THE EVIDENCE
WHICH THE TRIAL COURT FOUND
LACKING AND FOUND CREDIBLE
EVIDENCE OF BRAIN DAMAGE WAS
LACKING AND INSTEAD OF PUTTING
ON THE DOCTOR, WHO WOULD HAVE
PRESENTED EVIDENCE OF HIS BRAIN
DAMAGE, IN THE FORM OF THE NEWER
PSYCHOLOGICAL TESTING THEY PUTS
ON DR. CROP, WHO HAD NOT
PERFORMED A FULL BATTERY OF
NEUROPSYCHOLOGICAL TESTING AND
THOUGH HE RELIED ON DR. SESTA,
THE COURT NEVER HEARD EVIDENCE
ABOUT THE TESTING AND THERE IS
ALSO TESTIMONY FROM DR. TAYLOR
THAT THE FACT THAT MR. TAYLOR
HAD NOT GOTTEN BEYOND THE LOWER
LEVELS OF USING THE FRONTAL LOBE
IS CONNECTED TO THE PERSONALITY
DISORDER AND NOT FRONTAL DAMAGE
AND THE COURT RELIED HEAVILY ON
THE STATE'S DOCTOR WHEN THEY
FOUND THE CREDIBLE EVIDENCE THAT
SUGGESTED THE FRONTAL LOBE
FUNCTIONING IS ROOTED IN
ANTI-SOCIAL AND PERSONALITY
DISORDERS.
DR. TAYLOR FIRST OF ALL, IS A
PSYCHIATRIST.
AND HE'S NOT QUALIFIED TO
ADMINISTER NEUROPSYCHOLOGICAL
TESTING OR INTERPRET OR READ LAW
DATA FROM THE TESTING AND

DR. SESTA COULD HAVE CLEARED IT UP BECAUSE HE HAS EXAMINED MANY PEOPLE WITH PERSONALITY DISORDERS AND TESTIFIED THERE IS NOT A PATTERN OF THEM BEING IMPAIRED ON FRONTAL LOBE TESTS AND THERE WAS NO SUCH REBUTTAL REGARDING THIS TESTIMONY FROM DR. TAYLOR AT THE PENALTY PHASE AND I THINK THE TRIAL COURT WAS UNDER THE MISTAKEN IMPRESSION WHICH I THINK IS COMPLETELY WRONG THAT NEUROPSYCHOLOGICAL TEST, THAT THAT IS SOMEHOW EVIDENCE YOU SUFFER FROM ANTI-SOCIAL PERSONALITY DISORDER AND THAT IS JUST PLAIN WRONG, NEUROPSYCHOLOGICAL TESTING IS NOT A TEST FOR PENALTY DISORDER. AND YOU CAN, AS MR. TAYLOR DOES, SUFFER FROM BOTH PERSONALITY DISORDER AND FROM BRAIN DAMAGE AND BRAIN IMPAIRMENT AND, IT IS DIFFICULT TO KNOW A LOT OF THE TIMES WHAT -- WHICH IS ACTUALLY AFFECTING HIS BEHAVIOR, AT ANY POINT IN TIME.
DR. CROP AS YOU, WHO IS A DOCTOR THAT TRIAL COUNSEL PUT ON INSTEAD OF DR. TAYLOR TESTIFIED WHEN YOU HAVE BRAIN DAMAGE PLUS ALCOHOL WHICH THERE WAS TESTIMONY, ESPECIALLY AT THE SPENCER HEARING, THAT MR. TAYLOR WAS CONSUMING A FAIR AMOUNT OF ALCOHOL, MARIJUANA, DURING THE NIGHT IN QUESTION, AND AN EMOTIONALLY CHARGED STATE THAT CAUSES SERIOUS DIFFICULTIES AND PROBLEMS IN ONE'S BEHAVIOR, HOWEVER TRIAL COUNSEL DIDN'T PRESENT ANY EVIDENCE ABOUT THE STRESS THAT MR. TAYLOR WAS EXPERIENCING, IN THE WEEKS LEADING UP TO THE OFFENCE. THEREFORE, ALTHOUGH THERE WAS

TESTIMONY THESE THREE THINGS ADD
UP TO CREATE SIGNIFICANT
PROBLEMS, FOR PEOPLE, BECAUSE A
JURY AND THE JUDGE NEVER HEARD
ABOUT THIS STRESSORS WE HEARD
ABOUT AT THE EVIDENTIARY
HEARING, IT DIDN'T MAKE SENSE.
AT THE EVIDENTIARY HEARING
DR. SESTA TALKED ABOUT THE WEEKS
LEADING UP TO THE OFFENCE AND
MR. TAYLOR WAS IN A DOWNWARD
SPIRAL AND HAD LOST HIS --
>> I WAS UNDER THE IMPRESSION,
SEEMS TO ME THE RECORD INDICATES
THESE OTHER WITNESSES ACTUALLY
USED THE REPORT OF DR. SESTA.
DID THEY NOT?
>> THEY RELIED ON HIS TESTING
AND LOOKED --
>> HIS REPORT?
DID THEY NOT.
>> HIS REPORT WAS NO INTRODUCED
TO THE TRIAL COURT.
>> DID THEY RELY ON HIS REPORT
TO PRESENT THEIR TESTIMONY.
>> YES, THEY DID.
>> OKAY.
>> AND THIS AGAIN IS NOT A CASE
WHERE THERE IS AN ALTOGETHER
LACK OF PRESENTATION OF
MITIGATION -- MITIGATING
EVIDENCE, AND THIS COURT MUST
LOOK AT THE TOTALITY OF THE
EVIDENCE, PRESENTED, BOTH AT THE
PENALTY PHASE AND POSTCONVICTION
AND OUR THEORY OF MITIGATION IS
ACTUALLY THE SAME AS IT WAS
DURING THE PENALTY PHASE AND
THAT BEING THAT HE SUFFERED FROM
VARIOUS MENTAL ILLNESS AND BRAIN
IMPARIMENT, ALCOHOLISM AND, THAT
THIS ALL IMPACTED HIS BEHAVIOR
ON THE NIGHT OF THE OFFENCE AND
CAUSED HIM TO ACT IMPULSIVE.
HOWEVER, TRIAL COUNSEL DID NOT
PRESENT EVIDENCE THAT WAS

AVAILABLE TO THEM, WHICH COULD HAVE HELPED THEM TO -- WHICH COULD HAVE CONVINCED THE TRIAL COURT THAT MR. TAYLOR IN FACT SUFFERED FROM BEING -- BRAIN IMPAIRMENT AND THE TWO STATUTORY MITIGATING FACTORS WERE ACTUALLY ESTABLISHED.
I ALSO WANT TO TOUCH ON THE SEIZURES, CLAIM 6.
IN THE SENTENCING ORDER THE TRIAL COURT FOUND THAT HE HAD NOT REPORTED OR RECEIVED TREATMENT FOR SEIZURES SINCE 1991.
AND THAT STATEMENT WAS ACTUALLY MADE WHILE DISCUSSING THE STATUTORY MITIGATOR OF WHETHER HE WAS UNDER THE INFLUENCE OF AN EXTREME MENTAL OR EMOTIONAL DISTURBANCE AND THE SEIZURES ARE SIGNIFICANT BECAUSE SEIZURES CAN BE CAUSED BY BRAIN DAMAGE, AND SEIZURES THEMSELVES CAN CAUSE BRAIN DAMAGE.
DURING POSTCONVICTION WE PRESENTED ADDITIONAL EVIDENCE OF SEIZURES, PARTICULARLY, THERE WAS AN INTERDISCIPLINARY TRANSFER SUMMARY AND I WANTED TO GIVE A CITE TO THE COURT BECAUSE I NEGLECTED TO IN THE BRIEF, POSTCONVICTION RECORD, 28, PAGE 3304 AND IN THE TRANSFER SUMMARY SEVERAL DAYS AFTER MR. TAYLOR WAS ARRESTED, INDICATED THAT HE HAD A HISTORY OF SEIZURES, HE WAS CURRENTLY TAKING DILANTIN AND HIS LAST SEIZURE WAS TWO WEEKS AGO WHICH WOULD HAVE BEEN SHORTLY BEFORE THE CRIME.
>> I WAS UNDER THE IMPRESSION THE RECORD ALSO INDICATED THAT THE SEIZURE MEDICATIONS HAD ENDED IN 1991.
THERE IS NO EVIDENCE OF THAT?

>> THERE WAS ON JUNE 8TH, '01,
AN ORDER FROM U.S. MAGISTRATE
JUDGE IN WHICH IT WAS DIRECTED
THAT HE RECEIVE DILANTIN.
>> THAT IS NOT MY QUESTION.
AM I INCORRECT TO SAY THAT THERE
IS EVIDENCE IN THIS RECORD THAT
THE SEIZURE MEDICATIONS
TERMINATED IN 1991?
AND WERE NOT CONTINUED
THEREAFTER UNTIL A LATER DATE?
>> IN THE -- I UNDERSTAND YOUR
QUESTION, YOUR HONOR, I DON'T
BELIEVE THERE IS ANY INDICATION
IN THE DOC RECORD FROM 1991,
UNTIL THIS ORDER --
>> THAT DIDN'T ANSWER MY
QUESTION.
MY QUESTION IS, IS THERE
EVIDENCE THE SEIZURE MEDICATIONS
ENDED IN 1991?
>> THERE IS A SELF-REPORT FROM
MR. TAYLOR IN THE FORM OF THE
INTERDISCIPLINARY TRANSFER
SUMMARY THAT HE WAS CURRENTLY
TAKING DILANTIN.
WHEN HE WAS ARRESTED FOR THIS
CRIME.
HOW FAR, I DON'T THINK THAT
THERE IS ANY DOCUMENTATION --
DOCUMENTARY EVIDENCE THAT HE WAS
TAKING SEIZURE MEDICATION FROM
1991 UNTIL HE WAS ARRESTED IN 2
--
>> THAT IS THE ANSWER TO MY
QUESTION.
>> A SELF-REPORT.
>> IS THERE ALSO EVIDENCE FROM
DR. TAYLOR, NOT MR. TAYLOR, THAT
HE DIDN'T BELIEVE THERE WAS A
SEIZURE DISORDER?
HIS OPINION WAS, NO SEIZURE
DISORDER.
>> I THINK DR. TAYLOR TESTIFIED
THAT HE BELIEVED THAT WHEN
MR. TAYLOR FELL FROM A ROOF,

WHICH IS PROBABLY IN THE 1980s,
HE SUFFERED FROM A TEMPORARY
SEIZURE DISORDER BUT DID NOT
BELIEVE THAT IT WAS A PERMANENT
SEIZURE DISORDER AND I SEE I'M
INTO MY REBUTTAL TIME.
>> GOOD MORNING AGAIN.
THE DECISION TO PUT ON DR. CROP
AND DR. McCRANEY INSTEAD OF
DR. SESTA WAS A REASONABLE
STRATEGIC DECISION, BOTH THE
DEFENSE ATTORNEYS TESTIFIED TO
THAT.
THE TRIAL COURT FOUND IT IN HIS
ORDER, DENYING POSTCONVICTION
RELIEF AND IT IS WELL SUPPORTED
BY THE EVIDENCE FROM THE
EVIDENTIARY HEARING AND THE
ATTORNEYS TALKED ABOUT HOW THEY
DISCUSSED AS A TEAM WHICH
EXPERTS TO USE AND WHY, AND JOHN
SKYE RELATED SOME OF THAT AS TO
THE CONCERNS RAISED ABOUT, WELL,
IT WAS REALLY MS. GOINS'
DECISION TO MAKE AND HER MEMORY
WAS NOT AS GOOD AND DIDN'T
REMEMBER ALL THE REASONS FOR IT.
THAT REALLY DOESN'T MATTER,
BECAUSE THIS IS AN OBJECTIVE
STANDARD, DEFICIENT PERFORMANCE
IS AN OBJECTIVE STANDARD AS TO
WHETHER...
>> LET'S GO TO THAT.
YOUR OPPOSITION SAYS THAT WHEN
YOU LOOK AT WHETHER THAT IS A
REASONABLE STRATEGY, YOU HAVE TO
LOOK AT WHAT THE SUBSTANCE IS AS
WELL.
I MEAN, YOU CAN SAY THE MOON IS
MADE OF GREEN CHEESE AND THAT IS
MY JUDGMENT SO THEREFORE YOU
CAN'T LOOK AT IT.
WE KNOW THAT'S NOT THE CASE AND
WHAT SHE POINTS TO AND IS
ARGUING AND I'D LIKE FOR YOU TO
ADDRESS IS THAT THERE REALLY

WASN'T THIS DIFFERENCE AND THE
LAWYER MAY SAY SO, BUT LET'S
TALK -- THAT IS TALKY-TALK AND
THERE REALLY WASN'T AND THERE
WAS NO CONFLICT AND THAT IS WHAT
THE ARGUMENT IS, NO CONFLICT AND
THAT THE OTHER EXPERT,
DR. SESTA, IS THE ONE WHO HAD
THE BACKGROUND, THE CREDENTIALS
TO PRESENTS THIS KIND OF
TESTIMONY.
SO, THEREFORE, NOT REASONABLE,
JUDGMENT, BUT NOT REASONABLE.
WHAT IS THE STATE'S RESPONSE?
THAT SEEMS TO BE YOUR
ARGUMENT...
>> IN TERMS OF THAT, JUST
FOCUSING ON THAT, IN PARTICULAR,
DR. CROP WAS -- YOU KNOW,
DR. SESTA REVIEWED THE TESTIMONY
PRESENTED BY DR. CROP AND SAID,
BASICALLY, I COULD HAVE SAID IT
BETTER.
I HAD BETTER CREDENTIAL AND
DR. CROP WAS QUALIFIED, WHAT
DR. SESTA SAID WAS I'M A
NEUROPSYCHOLOGIST AND DR. CROP
WAS QUALIFIED AS AN EXPERT IN
NEUROPSYCHOLOGY AND IS ALSO A
NEUROPSYCHOLOGIST, AND HAS MUCH
MORE EXPERIENCE TESTIFYING IN
CAPITAL CASES, AND DEATH PENALTY
CASES AND HAS SEEN DR. CROP ON A
NUMBER OF CASES AND IS
FREQUENTLY USED AND ONE THING
JOHN SKYE TALKED ABOUT IS WHEN
YOU MAKE THESE DECISIONS ABOUT
MENTAL HEALTH EXPERTS AND IN HIS
EXPERIENCE, AND THERE IS
CERTAINLY NOT ONLY A PRESUMPTION
THAT THESE ATTORNEYS ARE
PERFORMING REASONABLY AND ARE
NOT PERFORMING DEFICIENTENTLY,
THAT PRESUMPTION IS EVEN HIGHER
WHEN YOU HAVE AS WE HAVE IN THIS
CASE WELL EXPERIENCED CAPITAL

DEFENSE ATTORNEYS BECAUSE THIS IS WHAT...
>> YOU ARE STARTING TO TALK ABOUT CLICHES AND THIS IS A VERY SPECIFIC CHALLENGE AND I'D LIKE FOR YOU TO ADDRESS THAT.
WHY THE -- YOU KNOW, WE UNDERSTAND, HINDSIGHT, WE DON'T GO BACK AND ALL THOSE THINGS.
THIS IS A VERY SPECIFIC CHALLENGE AND THAT IS DR. SESTA HAD THE CREDENTIALS AND QUALIFICATIONS, X TESTIMONY AND TO SAY AS THE LAWYERS DO, THAT WE DIDN'T USE HIM BECAUSE OF CONFLICT OR DON'T LIKE HIS PERSONALITY, CAN'T BE A REASONABLE DECISION, BECAUSE THAT IS WHAT I WANT YOU TO ADDRESS...
>> I THINK THAT'S THE JOB OF AN ATTORNEY IS TO MAKE A DECISION ABOUT WHAT KIND OF WITNESS THE PERSON WILL BE, HOW THEY'LL BE PRESENTED TO THE JURY, HOW THEY WILL COME ACROSS TO THE JURY.
JOHN SKYE'S CONCERN IS HE COMES OVER AS A PAID EXPERT AND LOSES HIS OBJECTIVITY AND BECOMES AN ADVOCATE AND THE JURY DOESN'T THINK THAT IS CREDIBLE.
THEY THINK HE'S BEING PAID TO SAY WHATEVER HE'S BEING PAID TO SAY.
AND JOHN SKYE WANTED TO PRESENT A CREDIBLE DEFENSE THAT REALLY WOULD HAVE THE JURY GIVE THE JURY SOMETHING TO THINK ABOUT AND HE DID NOT THINK THAT SESTA WAS THE BEST WITNESS TO PUT ON.
AND CROP HAD JUST THE QUALIFICATIONS...
>> DO WE HAVE IN THIS RECORD ANYTHING THAT INDICATES WHAT THAT ASSESSMENT WAS BASED ON.
>> HE SAYS HIS EXPERIENCE IN

DEALING WITH HIM AND USING HIM
AND OTHER EXPERTS AND MEETING
AND TALKING TO HIM, AND ONE
THING JOHN SKYE TALKED ABOUT
WHICH I WAS GETTING TO, IN
DEALING -- WHEN YOU HAVE
MULTIPLE MENTAL HEALTH EXPERTS
IN MAKING THE DECISIONS, HE
SAID, WHEN YOU BRING THEM ON YOU
MAY SORT OF COMPARTMENTALIZE
THEM AND HAVE THEM DO DIFFERENT
THINGS.
FOR EXAMPLE WHEN THEY RETAINED
DR. SESTA THEY GAVE HIM SPECIFIC
INSTRUCTIONS AS JOHN SKYE SAYS
IS TYPICAL WHEN WORKING WITH
EXPERTS, DON'T TALK TO THE
DEFENDANT ABOUT THE FACTS OF THE
CRIME.
WE DON'T WANT TO GET THERE YET.
WE WANT TO KNOW MORE ABOUT HIS
GLOBAL FUNCTIONING AND THAT TYPE
OF THING, NOW, LATER ON, DOWN
THE ROAD, ONCE WE KNOW WHAT
WE'RE DEALING WITH WE MAY HAVE
ANOTHER EXPERT AND THEY HAD
DR. CROP TALK TO HIM ABOUT THE
FACTS OF THE CRIME AND
SPECIFICALLY ASKED DR. CROP TO
DO THAT BUT I THINK THAT IS
SOMETHING THAT IS CLEARLY WITHIN
THE ATTORNEY'S DISCRETION TO
DECIDE HOW HE WANTS TO USE HIS
EXPERTS.
>> YOU AND I ARE NOT
DISAGREEING.
BUT I STILL WANT YOU TO ADDRESS
THE SUBSTANCE.
THAT IS WHAT SHE'S SAYING, THIS
IS WINDOW DRESSING AND JUDGMENT
IS BASED ON TOUCHY-FEELY THINGS
AND WHAT SHE SAID THIS MORNING,
DR. SESTA HAD SUBSTANCE, TOTALLY
DIFFERENT FROM WHAT THE EXPERTS
THAT WERE USED WHICH RENDERS THE
DECISION OR JUDGMENT OF THE

LAWYERS, UNREASONABLE.
THAT IS WHAT I WANT YOU TO
ADDRESS.
>> I DON'T SEE THE SUBSTANCE
BEING ANY DIFFERENT AND, YOU
KNOW, I THOUGHT SHE WAS SAYING
WAS THE SUBSTANCE REALLY ISN'T
DIFFERENT AND THAT IS WHAT
DR. SESTA SAID WHEN HE REVIEWED
THE TESTIMONY AND WAS ASKED,
WHAT WOULD YOU ADD, OF
SUBSTANCE, OFFER TO THE JURY
THAT DR. CROP DIDN'T OFFER?
WHAT COULD YOU SAY?
AND HE SAYS I COULD DESCRIBE THE
FIELD OF NEUROLOGY AND TALK
ABOUT INFERENCES IN NEUROLOGY
BUT OTHER THAN THAT DIDN'T
IDENTIFY ANYTHING RELATED TO THE
DEFENDANT THAT WOULD HAVE BEEN
-- HE SAID I WOULD HAVE SAID IT
BETTER AND SO IT IS MORE A
PRESENTATION, WHAT IS HIS TAKE
ON IT AND CLEARLY...
>> WE HAVE BEEN TALKING ALL
MORNING ON THIS ISSUE ABOUT
DEFICIENCY.
AND I -- THE JUDGE, AFTER HE
SUMMARIZES BOTH THE DEFENSE AND
STATE ARGUMENT, HE ENDS UP
SAYING IT IS A REASONABLE
STRATEGIC DECISION.
COULD YOU JUST ADDRESS, THEN THE
PREJUDICE PROBLEM?
IF HE WOULDN'T HAVE SAID
ANYTHING DIFFERENT, THEN, WHERE
IS THE PREJUDICE?
>> GOOD QUESTION.
I DON'T SEE HOW THERE COULD BE
ANY PREJUDICE WHEN THE JURY
HEARD THE RELEVANT INFORMATION
FROM DR. CROP, AND DR. SESTA
DIDN'T HAVE ANYTHING ADDITIONAL
TO ADD TO THAT INFORMATION.
NOW, I DON'T SEE HOW -- YOU ARE
NOT CHANGING THE EVIDENTIARY

PRESENTATION, TO THE JURY AT
ALL, OR WHAT THE JURY IS HEARING
AND I DON'T SEE HOW IT COULD
POSSIBLY HAVE ANY EFFECT ON THE
OUTCOME OF THE PROCEEDINGS.
>> I MEAN, I GUESS AND WE COULD
USE OUR OWN KNOWLEDGE IN TERMS
OF DEFICIENCY, WE HAVE SEEN
CASES WHERE DEFENSE LAWYERS PUT
ON, YOU KNOW, GET ALL OF THESE
NEUROLOGISTS OR PSYCHOLOGISTS,
AND, THEY PUT EVERYBODY ON, AND
THEN ON POSTCONVICTION, THE
ARGUMENT IS, YOU PUT TOO MANY ON
AND THEY CONTRADICTED EACH
OTHER, BECAUSE THERE IS ALWAYS
THAT RISK.
EVEN -- AS YOU SAY, IF YOU WANT
TO COMPARTMENTALIZE THEM THERE
IS THIS RISK AND THE QUESTION
ABOUT USING, YOU KNOW -- I WOULD
BE AN OVERPREPARER AND WOULD
HAVE GOTTEN EVERY EXPERT AND THE
QUESTION THEN IS AT WHAT POINT
DO YOU SAY, NO, I BETTER NOT PUT
ALL OF THESE ON BECAUSE THE
DANGER IS THE STATE WILL CROSS
EXAMINE AND WE'LL GET DIFFERENT
INEVITABLY -- TO ME, THAT IS
PART OF REASONABLENESS AND ON
THE PREJUDICE, THAT IS WHAT I
HAVE BEEN -- AS YOU KEPT ON
SAYING, IT IS THE SAME
TESTIMONY, MAYBE THERE WOULDN'T
HAVE BEEN A DOWNSIDE TO PUT HIM
ON, BUT, THEN, YOU KNOW, HOW CAN
WE SAY SESTA WOULD HAVE BEEN --
BLOWN IT OUT OF THE YOU KNOW --
NAILED IT.
HIT IT OUT OF THE PARK, SO TO
SPEAK.
>> DO ANYTHING DIFFERENT AND
THERE IS NOTHING IN THE RECORD
THAT WOULD SUPPORT SESTA WOULD
HAVE THAT KIND OF IMPACT ON A
JURY.

THIS WAS OF COURSE A 12-0 JURY RECOMMENDATION AND SO -- YOU RUN INTO...
>> THE PROBLEM THAT I SEE, HOWEVER, IS THAT THERE IS... [INAUDIBLE] THERE WOULD HAVE BEEN THE CONFLICT IN TESTIMONY. AS THEIR REASON FOR NOT PUTTING THEM ON.
SO WERE THERE REALLY ANY... [INAUDIBLE] I MEAN...
[INAUDIBLE] SAYS THAT THEY BASICALLY ALL SAID THE SAME THING ABOUT THE ANTI-SOCIAL PERSONALITY, OR...
>> WELL, I KNOW, AGAIN, YOU GET INTO IT.
I DON'T KNOW THAT THERE ARE CONFLICTS THAT ARE HUGE AND IDENTIFIED BY THE ATTORNEYS AND JOHN SKYE, HIS MEMORY WAS IN TALKING WITH DEB GOINS YEARS AGO, HE THOUGHT -- HIS OBJECTION TO SESTA WAS THE PRESENTATION AND THOUGHT HER OBJECTION WAS IT WAS GOING TO PRESENT CONFLICTS AND ONE THING I KNOW IS THAT SESTA SPECIFICALLY CHARACTERIZES THE IMPAIRMENT IN THIS CASE AS MILD TO MODERATE AND I DON'T KNOW IF THAT IS -- YOU KNOW, I DON'T THINK ANY PARTICULAR CHARACTERIZATION OF IT, IN THAT SENSE WAS GIVEN BY DR. CROP TO BE ABLE TO SAY, IT WAS OR WASN'T ONE WAY OR THE OTHER BUT, THE CONFLICT REALLY IS NEVER IDENTIFIED.
AND, THAT IS JUST WHAT -- I MEAN, I THINK THAT IS WHAT HAPPENS, UNFORTUNATELY, YOU GET ATTORNEYS YEARS DOWN THE ROAD, WHO DON'T NECESSARILY REMEMBER IF THEY MADE A DECISION OR WHAT THEY KNEW AT THE TIME THEY MADE THE DECISION.

SO I THINK THAT -- THERE IS
ALWAYS THAT CONCERN ABOUT
CONFLICTS, AND I THINK WHEN YOU
ARE GETTING MORE ATTORNEYS, MORE
EXPERTS INVOLVED, THEY RAN INTO
THAT WITH THE DOCTOR
>> PRESENTED THIS KIND OF
EVIDENCE, AND THAT RENDERS THE
DECISION OF LAWYERS UNREASONABLE
BECAUSE THAT'S SOMETHING THE
LAWYERS SHOULD HAVE HEARD.
>> BOTH DOCTORS TALKED
EXTENSIVELY ABOUT SEIZURES.
BOTH FELT THAT MR. TAYLOR HAD A
PERMANENT SEIZURE DISORDER BASED
ON THE FALL HE TOOK, WHENEVER IT
WAS.
WE DON'T HAVE THOSE RECORDS, BUT
THEY SPOKE EXTENSIVELY TO THOSE
SEIZURES AND HIS DILANTIN USE.
WILLIAM TAYLOR AND, AGAIN, YOU
HAVE AN INDIVIDUAL WHO HAS SPENT
MOST OF HIS ADULT LIFE IN PRISON
AND HAS A HISTORY IN THE DOC
RECORD OF HAVING SUSPICIOUS
BEHAVIOR IN TERMS OF
MANIPULATING THE SYSTEM WHICH HE
ADMITS TO THE EXPERTS THAT HE
TALKS TO.
AND HIS THING WAS THAT HE WOULD
OVERDOSE ON DILANTIN.
SO HE WOULD FREQUENTLY
SELF-REPORT SEIZURES AND BE
PRESCRIBED THE DRUG.
THERE WAS NEVER ANY REAL
CORROBORATION OF PEOPLE
WITNESSING SEIZURES, BUT HE
WOULD EITHER ORDER IT, BUT HE
WOULD LATER OVERDOSE ON IT, AND
THAT WOULD BECOME AN ISSUE.
AND IT WAS IN 1991 WHEN
DR. GREER DID THE, I FORGET
WHETHER IT WAS AN MRI OR A PET
SCAN, BUT HE DID THE TESTS HE
DID AND DETERMINED THERE REALLY
WAS NO NEED TO HAVE MR. TAYLOR

ON ANY KIND OF ANTICONVULSANT MEDICATION AND TOOK HIM OFF THAT IN 1991.
HE DIDN'T HAVE ANY MORE SEIZURES AGAIN.
DR. TAYLOR DID SAY, I THINK THERE WAS A FALL, I THINK THERE WAS A BRAIN INJURY, AND THERE MAY HAVE BEEN SOME PARTIAL COMPLEX SEIZURES WHICH IS WHAT HE CALLED THEM, AND THOSE ARE SEIZURES WHERE YOU'RE KIND OF IN A BLACKOUT STATE AS OPPOSED TO A CONVULSING TYPE SEIZURE.
HE DISTINGUISHED THE DIFFERENT TYPES OF SEIZURES.
AND THERE REALLY WAS NO -- THE JURY WAS WELL AWARE OF HIS HISTORY OF SEIZURES AND EVERYTHING THAT WAS DOCUMENTED IN THE RECORD, AND EXPERTS HAD A DIFFERENT TAKE.
DR. TAYLOR THOUGHT THESE SEIZURES MIGHT HAVE OCCURRED FOR WEEKS OR MONTHS OR POSSIBLY EVEN A YEAR AFTER THE FALL THAT PRECIPITATED THEM WHICH WAS EITHER 1977, 1981, 1985.
BUT AT ANY RATE, SOMETIME A LONG TIME AGO.
DR. TAYLOR DID NOT SEE THERE WAS ANY BASIS TO CONCLUDE THERE WAS ANY SEIZURE ACTIVITY AFTER THAT TIME.
THE JURY HEARD ALL ABOUT THE SEIZURES, AND WHEN THIS WAS WHEN THE EVIDENTIARY HEARING WAS GRANTED ON THIS ISSUE, IT WAS ACTUALLY JUDGE FLEISCHER WHO DID THE TRIAL WAS THE ONE THAT MADE THE DETERMINATION ABOUT WHETHER TO GRANT AN EVIDENTIARY HEARING, AND SHE LATER, UNFORTUNATELY, WAS NOT AROUND TO DO THE POSTCONVICTION EVIDENTIARY HEARING.

BUT SHE SAID WHEN SHE MADE THE STATEMENT IN THE SENTENCING ORDER, SHE WAS REFERRING TO THE TIME OF THE MURDER AND MADE THAT CLEAR BECAUSE SHE WAS LOOKING AT WHETHER THAT STATUTORY MITIGATOR APPLIED AT THE TIME OF THE MURDER, SO SHE WAS CONCERNED WITH WE KNOW THERE WAS A SEIZURE AFTER THE FACT WHICH SHE ADMITS WAS DUE TO HIS INTENTIONAL OVERDOSE ON DILANTIN.
SHE WENT AHEAD AND SAID, YOU KNOW, WE CAN TALK ABOUT THAT AT THE EVIDENTIARY HEARING AS WELL. BUT IF YOU GO BACK AND LOOK AT THE PENALTY PHASE, THE JURY HEARD ALL ABOUT HIS HISTORY OF SEIZURES AND NOT ONLY FROM DR. CROP, BUT DR. McRANEY IS A NEUROLOGIST, AND HE'S A MEDICAL DOCTOR AND SPOKE EXTENSIVELY ABOUT THE, HE BELIEVED THERE WAS EPILEPSY, HE BELIEVED THERE WAS A PERMANENT SEIZURE DISORDER, AND ALL OF THAT INFORMATION WAS BEFORE THE JURY AT THE PENALTY PHASE.
>> LET ME ASK ONE QUESTION YOUR OPPOSITION REALLY DIDN'T GET INTO, BUT THE SORT OF INTERESTING AND A LITTLE CONCERNING, AND THAT IS DURING NEGOTIATION, I MEAN, THE RECORD SORT OF INDICATES THAT RIGHT BEFORE THE TRIAL IT'S BEEN SPARED THE DEATH PENALTY, I MEAN, THAT WAS THE INQUIRY AND APPLY AND SAY AWAY UNDER THE FACTS THAT WE'RE DEALING WITH IN THIS CASE.
YOU KNOW, I UNDERSTAND THAT THERE WAS NO, THE LAWYER SAID THERE IS NO REASON FOR US TO SUSPECT ETC., ETC., ETC.
WHAT WAS THE STATUS OF THE JAIL

RECORDS, THE CORRECTION RECORDS
FOR THIS INDIVIDUAL AT THE TIME
THIS WAS GOING ON?
BECAUSE WE SEEM TO HAVE ALMOST A
COUPLE DIFFERENT PERIODS OF TIME
HERE WITH A FLUCTUATING
CONDITION.
WOULD YOU JUST ADDRESS THAT A
LITTLE, PLEASE?
>> WELL, THEY, YOU KNOW, THERE
ARE SEVERAL DIFFERENT TIMES, AND
YOU'RE TALKING ABOUT, I BELIEVE,
WHEN THERE WAS -- THE LAST
DISCUSSIONS ABOUT THE PLEA WAS
IN MARCH WHEN THERE WAS, THERE
WAS A TRIAL ACTUALLY STARTED IN
MARCH, AND THEN IT WAS MISTRIED,
AND THEY DID IT AGAIN IN JUNE.
BUT ORIGINALLY IT WAS RIGHT
BEFORE THE TRIAL AS IT WAS
STARTING.
THERE WAS ONE LAST DISCUSSION OR
POTENTIAL TO WORK OUT SOME KIND
OF PLEA WHICH WAS NEVER REALLY
OFFERED AND NEVER REALLY WENT
BEYOND THAT.
AS FAR AS THE MENTAL HEALTH
RECORDS, THE ONLY THING THAT
WOULD HAVE BEEN THE JAIL RECORDS
BECAUSE HE WOULD HAVE BEEN IN
JAIL AT THAT TIME HAVING BEEN IN
JAIL FOR A COUPLE OF YEARS.
THE DOCTOR WENT THROUGH THE JAIL
RECORDS PARTICULARLY WITH REGARD
TO HIS PRESCRIPTIONS, HIS
MEDICATION AND PUT TOGETHER A
WHOLE CHART ABOUT WHAT HE WAS
ON, WHEN AND HOW LONG IT LASTED.
AND HE HAD A LOT OF CONCERNS
ABOUT THE LACK OF DOCUMENTATION
ABOUT WHEN SOMETHING WOULD BE
PRESCRIBED THAT MR. GENGHIS
WOULD SAY YOU'D WANT TO DESCRIBE
THAT, AND THAT TYPE OF STUFF.
HE REALLY DIDN'T TALK
SPECIFICALLY BEYOND THAT, ABOUT

WHAT WAS GOING ON IN
MR. TAYLOR'S MIND AT THE TIME OF
THAT MARCH DISCUSSION.
BUT WHAT WE HAVE, THE BEST
INSIGHT, I THINK, INTO THAT IS
WHEN JOHN HAD HIS LAST
DISCUSSION WITH MR. TAYLOR WHERE
HE WENT TO THE JAIL ON A SUNDAY
TO TRY AND SEE IF THEY COULD GET
MR. TAYLOR TO TALK ABOUT A PLEA,
AND MR. TAYLOR WAS ADAMANT AT
THAT TIME THAT HE DID NOT WANT
TO DISCUSS IT, HE WANTED TO GO
TO TRIAL, HE WANTED THEM TO GET
READY FOR TRIAL, AND HE GOT BACK
TO HIS OFFICE AND WROTE A LONG
MEMO TO THE TRIAL -- THAT'S ONE
OF THE EXHIBITS OFFERED AT THE
EVIDENTIARY HEARING -- THAT
EXPLAINS THE DISCUSSION THEY
HAD, EXPLAINS WHY HE DIDN'T FEEL
LIKE THE DEFENSE ATTORNEYS
REALLY NEEDED TO PRESSURE
MR. TAYLOR INTO DOING SOMETHING
HE DIDN'T WANT TO DO.
BECAUSE AS WE'VE HEARD, WITH HIS
PERSONALITY, THAT ISN'T A WAY TO
GET HIM TO COOPERATE WITH
ANYTHING.
AND THEY FELT LIKE TO BE ABLE TO
MAINTAIN A GOOD RELATIONSHIP
WITH HIM THEY HAD TO PUT IT OUT
THERE, LET HIM KNOW WHAT THE
OPTIONS WERE, THEIR OPINIONS ON
WHAT THEY THOUGHT WAS BEST, BUT
LET HIM MAKE THE DECISIONS HE
WAS GOING TO MAKE.
AND, OF COURSE, THAT'S WHAT HE
DID.
HE DIDN'T EVEN COME ATTEND HIS
EVIDENTIARY HEARING, LET ALONE
TESTIFY, SO HE DIDN'T SUGGEST
THAT HE WOULD HAVE TAKEN A PLEA
AT ANY TIME OR THERE WOULD HAVE
BEEN A WAY TO WORK IT OUT, SO
THERE'S NO SUPPORT FROM THAT

SIDE OF IT EITHER, FOR THAT ARGUMENT.
THE, IN TERMS OF -- I DID WANT TO ADDRESS IN TERMS OF THIS BEING AN IMPULSIVE CRIME SINCE THAT'S WHAT A LOT OF THIS MITIGATION GOES TO.
AND JOHN SKYE TALKED ABOUT THIS WAS OUR BASIC MENTAL MITIGATION WAS THERE WAS FRONTAL DAMAGE, WE HAD, WE KNEW DOCUMENTATION ABOUT THIS FALL HAVING OCCURRED, SEIZURES, THE MEDICATIONS AND ALL THAT.
BUT JOHN SKYE ADMITTED THIS WAS NOT AN IMPULSIVE CRIME AT ALL, AND THAT WASN'T LOST ON THE JURY EITHER.
THAT WAS THE BEST, IT WAS THE MOST CREDIBLE ARGUMENT THEY HAD FOR MITIGATION, BUT THIS WAS A CASE WHERE THE FORENSIC EVIDENCE SHOWED EVEN THOUGH MR. TAYLOR GAVE SEVERAL VARYING STORIES AND GAVE DIFFERENT ACCOUNTS TO DIFFERENT MENTAL HEALTH EXPERTS THAT HE TALKED ABOUT, HE ALWAYS TRIED TO PAINT IT AS SANDRA WAS COMING AROUND THE CORNER, AND HE JUST SHOT OUT.
CLEARLY, THAT IS NOT WHAT HAPPENED BECAUSE WE KNOW FROM THE BLOOD SPATTER AT THE SCENE SHE WAS OUTSIDE THE HOUSE, SHE WAS DOWN LOW TO THE GROUND, SHE HAD THE SHOTGUN UP TO HER MOUTH AT THE TIME THAT HE DECIDED TO EXECUTE HER.
SO THERE WAS NO, IT WAS A VERY DELIBERATE ACT, AND IT HAD BEEN DISCUSSED AND THOUGHT ABOUT WAY IN ADVANCE OF HIM EVEN GOING HOME WITH THEM AND SOCIALIZING WITH THEM ACCORDING TO ALL OF THE EVIDENCE.
SO THERE'S NO CREDIBLE

SUGGESTION THAT THIS WAS AN IMPULSIVE CRIME AND JUST MORE MITIGATION ABOUT HOW IMPULSIVE HE WAS OR IF HE MIGHT HAVE HAD ANOTHER SEIZURE OR ANY OF THAT STUFF COMING BACK TO PREJUDICE CERTAINLY WOULD NOT HAVE MADE A DIFFERENCE IN THE OUTCOME OF THESE PROCEEDINGS.
AGAIN, IF THE COURT HAS NO FURTHER QUESTIONS, I THINK THOSE ARE THE COMMENTS I WANTED TO MAKE, BUT I WOULD ASK YOU TO CONFIRM DENYING POSTCONVICTION RELEASE.
THANK YOU.
>> I'D LIKE TO USE MY REMAINING --
[INAUDIBLE]
TWO, THREE AND FOUR REGARDING THE PLEA NEGOTIATIONS.
>> COULD YOU JUST ADDRESS THE PREJUDICE ISSUE AS TO --
[INAUDIBLE]
>> ABSOLUTELY, YOUR HONOR.
UM, YOU ASKED WHERE THE PREJUDICE IS AS A SUBSTANCE OF THE DOCTOR'S TESTIMONY, THE SAME AS THE SUBSTANCE OF DR. CROP'S TESTIMONY.
AND I THINK THERE'S A HUGE DIFFERENCE IN JUST SAYING THAT SOMETHING IS TRUE, SAYING THAT MR. TAYLOR HAS BRAIN DAMAGE AND PROVING IT.
AND DEFENSE COUNSEL PUT ON TWO EXPERTS DURING THE PENALTY PHASE.
IT SAID THAT MR. TAYLOR SUFFERED FROM BRAIN DAMAGE, BUT THEY DIDN'T PROVE IT, OR THE TRIAL COURT FOUND THEY HADN'T PROVEN IT.
THEY DID PROVE IT IN THE FORM OF NEUROPSYCHOLOGICAL TESTING, AND THEY DIDN'T PUT THAT ON.

AND, ALSO, I THINK IT'S
IMPORTANT TO NOTE THAT THE
DOCTOR TESTIFIED THAT TAYLOR
ALSO REPORTED IN ADDITION TO THE
FALL FROM THE ROOF THAT HE FELL
OFF OF A BIKE AND SUSTAINED A
FRONTAL HEAD INJURY WHEN HE WAS
7 YEARS OLD.
I BELIEVE PART OF THE PROBLEM
THAT THE TRIAL COURT HAD WITH
THE FINDING OF BRAIN DAMAGE WAS
THAT MR. TAYLOR HAS A HISTORY OF
BEHAVIORAL PROBLEMS AND CRIMINAL
ACTIVITY BACK FROM WHEN HE WAS 9
YEARS OLD ON.
IF HE DID FALL OFF A BIKE AND
SUSTAIN A HEAD INJURY WHEN HE
WAS 7 YEARS OLD, THIS COULD HAVE
CONTRIBUTED TO HIS EARLY PATTERN
OF CRIMINAL BEHAVIOR.
AND ALSO THE DOCTOR TESTIFIED
THAT HAVING ONE HEAD INJURY
SIGNIFICANTLY INCREASES ONE'S
CHANCE OF HAVING A SECOND INJURY
WITH REASONING AND JUDGMENT
PROBLEMS.
>> WELL, I DON'T WANT YOU TO USE
ALL YOUR TIME, I KNOW YOU WANT
TO ADDRESS --
>> REGARDING THE PLEA ISSUE, I
JUST WANTED TO POINT OUT IN MY
BRIEF THAT I CITE SEVERAL ABA
GUIDELINES CONCERNING PLEA
BARGAINING AND COUNSEL AT EVERY
STAGE OF THE CASE SHOULD EXPLORE
WITH THE CLIENT THE DESIRABILITY
OF REACHING AN AGREED-UPON
POSITION.
MR. TAYLOR --
>> WHERE, WHERE DID THEY VIOLATE
THAT?
IT SEEMS TO ME THAT THEY DID
WORK WITH MR. TAYLOR, PRESENT IT
TO HIM.
>> THERE'S A MISTRIAL ON MARCH
15TH OF 2004.

THE CASE DID NOT GO TO TRIAL
AGAIN UNTIL JUNE OF 2004.
THERE WAS NO ATTEMPT, AND THERE
WAS TESTIMONY FROM THE TRIAL
ATTORNEY AT THE EVIDENTIARY
HEARING, THERE WAS NO ATTEMPT TO
NEGOTIATE A PLEA BARGAIN --
>> THE STATE HAD ALREADY TOLD
HIM, NO, AND WHEN THEY
APPROACHED THEM TO SAY BEFORE WE
GO TO THE FAMILY, WE NEED TO
KNOW WHETHER THIS DEFENDANT
WOULD AGREE TO A PLEA, AND THIS
DEFENDANT SAID, NO, GO AWAY.
HOW CAN YOU FAULT, I MEAN, THERE
WAS NO OPPORTUNITY THAT I'M --
IS THERE SOMETHING IN THE RECORD
THAT THERE'S ANOTHER OPPORTUNITY
WHERE THE STATE WAS WILLING
AFTER THAT LAST MEETING IN MARCH
OR DISCUSSION IN MARCH?
>> THERE WAS A RECORD OF
FLIP-FLOPPING BEHAVIOR ON BEHALF
OF MR. TAYLOR REGARDING WHETHER
HE WANTED TO TAKE A PLEA.
AND, ACTUALLY, ON MARCH 3RD OF
2004 WHICH WAS BEFORE THAT LAST
MEETING, MR. SKYE AND --
[INAUDIBLE]
MET WITH MR. TAYLOR, AND THE
ATTORNEYS AND MR. TAYLOR ALL
AGREED IT WOULD BE IN
MR. TAYLOR'S BEST INTEREST TO
ACCEPT THE PLEA BARGAINING.
>> DON'T YOU HAVE TO PROVE THAT
THE STATE, YOU'VE GOT TO PROVE
PREJUDICE HERE, THAT THERE WOULD
HAVE BEEN A PLEA, AND HE WOULD
HAVE GOTTEN A LIFE SENTENCE.
THE RECORD HAS NO INDICATION.
THAT'D BE PURE SPECULATION.
>> I CITED IN MY BRIEF, UM, AT A
STATUS HEARING, PAGE 392,
MR. HARMON TALKS ABOUT THERE
WERE DISCUSSIONS ABOUT LIFE AND
AN AVOIDANCE PLEA AND THEY WOULD

BE WILLING TO KEEP WORKING WITH
THE VICTIM'S FAMILY AND THE ONLY
THING LEFT UNDONE WAS TO SPEAK
WITH THE VICTIM'S FAMILY.
THE HOMICIDE COMMITTEE HAD
ALREADY MET, THE STATE
ATTORNEY'S OFFICE WAS ONBOARD.
ACTUALLY, IT WAS MS. BONDI IN
MARCH OF 2004 WHO APPROACHED THE
DEFENSE AND ASKED IF MR. TAYLOR
WOULD BE INTERESTED IN A LIFE
AND AVOIDANCE PLEA.
>> WELL, WE'LL HAVE TO LOOK.
I THOUGHT IT WAS THE OPPOSITE,
THAT SHE SAID SHE WOULD NOT
RECOMMEND IT, BUT SHE'D GO TO
THE -- WHATEVER THAT COMMITTEE
IS.
BUT THE RECORD WILL SHOW, I
GUESS, WHAT IT IS.
>> YOUR, YOUR TIME IS UP.
COULD YOU TAKE ABOUT 15 SECONDS
TO SUM UP?
>> THANK YOU, JUDGE.
WE WOULD JUST ASK THAT THIS
COURT GRANT RELIEF IN THE FORM
OF A NEW TRIAL OR SENTENCING ON
DIRECT APPEAL.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENT.
THE COURT WILL NOW STAND IN
RECESS FOR TEN MINUTES.
>> ALL RISE.