

THE COURT WILL PROCEED TO THE
SECOND CASE ON TODAY'S DOCKET.
DOUGLAS VERSUS THE STATE OF
FLORIDA.

>> COUNSEL MAY PRESENT.

>> PLEASE THE COURT...

REPRESENTING MR. DOUGLAS, WHO
WAS DENIED A RELIABLE PENALTY
PHASE PROCEEDING BECAUSE OF
COUNSEL'S INEFFECTIVE
PERFORMANCE IN TRYING TO
INVESTIGATE OR LACK OF
INVESTIGATION, AS TO MENTAL
HEALTH MITIGATION.

>> I THINK IT APPEARS THAT THE
TRIAL COURT ORDER, EITHER FIGURE
GUARDS THAT BECAUSE OF THIS, THE
FACT THAT COUNSEL DIDN'T HAVE
DOCUMENTS, THAT... HE WASN'T --
HE WAS GOING TO GO RIGHT TO
PREJUDICE, SO, I'M GOING TO,
RIGHT NOW, HELP YOU -- HELP YOU
IN THIS REGARD.

IT SEEMS TO ME, AND I'M JUST,
THERE IS... THERE IS DEFICIENCY,

IN NOT FOLLOWING UP AFTER
DR. KROP SAID THEY NEEDED
RECORDS AND ALL OF THAT AND WHAT
YOU WANT TO DEVOTE YOUR TIME TO
IS THE PREJUDICE COMPONENT
BECAUSE THAT IS WHAT THE JUDGE
ULTIMATELY DECIDED, IS THAT IF
THE MENTAL HEALTH -- THAT YOU
PRESENTED AT THE EVIDENTIARY
HEARING, HAD BEEN PRESENTED,
PRESUMABLY, YOU WOULD HAVE ALSO
PRESENTED THE LAY WITNESSES, THE
JURY WOULD HAVE HEARD THIS IS A
DANGEROUS, BAD GUY AND IT WOULD
THE NOT HAVE YOU KNOW -- DOESN'T
-- THE MENTAL HEALTH, BECAUSE
YOU HAVE SOMEBODY THAT WILL SAY
SOMETHING DOESN'T UNDERMINE
CONFIDENCE IN THE OUTCOME OF THE
PENALTY PHASE.

>> I WAS HOPING YOU WOULD START
THAT.

YOUR HONOR, I'D LIKE TO START
WITH THE PRESENTATION DONE IN
THE PENALTY PHASE AND WHAT

COUNSEL DID, THEY PROCEEDED WITH
THE THEORY OF THE GOOD GUY
DEFENSE AND TO BE AS CANDID AS
POSSIBLE, THAT WAS NOT SUPPORTED
BY THE EVIDENCE AT THE TRIAL.

ONE OF THE MITIGATING FACTORS
THEY ACTUALLY ASKED FOR,
NONSTATUTORY, WAS THAT HE WAS
KIND TO WOMEN, AS THE COURT
UNDERSTANDS THIS WAS A
RAPE/MURDER CASE WITH AN HAC
AGGRAVATING FACTOR.

>> WOULD YOU GO INTO THE
SPECIFICS, THOUGH, RATHER THAN
THE OVERVIEW, TALK-TALK KIND OF
STUFF, LOOKING AT THE BRIEFS AND
THE RECORD I'VE LOOKED AT SO
FAR, THE FULL RECORDS OBTAINED
FROM THE TRIAL...

>> CORRECT, JUDGE.

>> AN OFFICER OF THE COURT, WHAT
DO YOU SEE IN THOSE RECORDS...
IT APPEARS TO ME THAT THIS WAS
AN ESE COMPONENTS TO THIS AND
THE INDIVIDUAL WAS IN THE 7TH

GRADE, THREE TIMES.

>> ACTUALLY FLUNKED FIVE TIMES.

>> FIVE, OKAY.

IS THERE A DOUBLE EDGED SWORD IN
THE SCHOOL RECORDS?

SOMETHING THAT HURTS HIM FROM
THE SCHOOL RECORDS.

>> FIRST OF ALL --

>> IF SO, WHAT IS IT?

>> EVERY DEATH PENALTY CASE
THERE WILL BE SOMETHING THAT
FURTHER THE INDIVIDUAL ON FIRST
DEGREE MURDER AND THE U.S.
SUPREME COURT SAID THAT
PREJUDICE TIS CAN BE FOUND IF
THERE IS EVIDENCE OF NEGATIVE
INFORMATION.

HOWEVER, COMPETENT COUNSEL HAS A
DUTY TO TURN THE NEGATIVE INTO A
POSITIVE.

>> I ASKED YOU A SPECIFIC
QUESTION.

IN THE RECORDS.

>> AT THE AGE OF TEN HE HAD AN
IQ OF 75, SEEN BY A SCHOOL

PSYCHOLOGIST TWICE, 8 AND 10,
AND, IT CORRELATES WHEN ABUSE IS
GOING ON IN THE FAMILY, HIS
SISTER IS SEXUALLY ABUSED AND
MR. DOUGLAS, PHYSICALLY ABUSED,
THERE WAS TESTIMONY IN THE
PENALTY PHASE THAT WHEN HE WAS
IN THE WOMB, HIS MOTHER WAS
PUNCHED IN THE STOMACH BY HIS
FATHER AND THESE CORRELATE WITH
THE ABUSE AND SCHOOL RECORDS.

WHAT HAPPENS, HE WAS HAVING
BEHAVIORAL PROBLEMS --

>> HOW BAD WERE THOSE?

SOMETHING THAT SHOWS A
SOCIOPATH.

>> THE PSYCHOLOGISTS WERE --

FINDINGS STATED THAT HE WAS
HAVING COGNITIVE DEFICIENCIES
AND PROBLEMS, LONG TERM MEMORY
AND HAVING PROBLEMS INFORM PEER
RELATIONSHIPS AND HAVING ANXIETY
DISORDERS, HAVING POOR
SELF-DOUBT AND THERE WAS A WIDE
ARRAY.

HE WAS A SCREWED-UP KID, 8 AND
10 AND THEY PUT HIM INTO THE
SPECIAL EDUCATIONAL PROGRAM,
LIKE YOU TALKED ABOUT, FOR
ESSENTIALLY HIS ENTIRE ACADEMIC
CAREER.

>> SO HE WAS... THE MURDER
OCCURRED WHEN HE WAS 37.

BUT I THINK, JUSTICE LEWIS IS
ASKING YOU, SO, YOU PUT IT ON
THE SCHOOL RECORDS, THAT'S WHAT
YOU WOULD DO UNDER THE PENALTY
PHASE.

HOW WOULD THAT... AND YOU WOULD
ESTABLISH THAT AS 75 IQ AND HAD
LEARNING DISABILITIES.

NOW, LET'S GET TO HOW THE MURDER
HAS A VERY SIGNIFICANT HAC AND
SIGNIFICANT SEXUAL BATTERY OF A
16 -- 15-YEAR-OLD BY A
37-YEAR-OLD.

HOW DOES IT ALL YOU KNOW -- WHAT
YOU HAVE WOULD HAVE DONE WITH
THE SCHOOL RECORDS, PLANT ANY OF
THAT.

>> THERE IS MORE THAN SCHOOL
RECORDS THAT WERE NOT DISCOVERED
BY COUNSEL.

THE JURY, BY THE WAY, DID NOT
FIND PREMEDITATED MURDER, FOR
ONE REASON OR ANOTHER, IT WAS A
FELONY MURDER CASE, THERE WAS A
SPECIAL FORM AND THEY DID NOT
CHECK THAT.

SO WITHOUT SPECULATING THERE WAS
SOMETHING THEY FOUND HIM NOT
COMPLETELY CULPABLE FOR THE
CRIME AND THERE NEEDED TO BE AN
EXPLANATION WHY SOMEONE WOULD
COMMIT THE HEINOUS CRIME, IT WAS
HEINOUS AND THE NEXUS OF HIM
GOING, AT THE AGE OF 8, SOMEBODY
IS NOT... [INAUDIBLE] WHEN A
CHILD HAS THESE PROBLEMS AT 8,
SOMETHING IS GOING ON AND WHERE
THE DOCTORS HAVE ESTABLISHED
THAT HE HAS SOME KIND OF ORGANIC
BRAIN DAMAGE THERE NEEDS TO BE A
NEXUS BETWEEN WHAT HAPPENS IN
THE SCHOOL AND WHEN HE'S IN THE

SCHOOL, HAVING FEELINGS OF
SELF-DOUBTED AND ANXIETY AND
TURNS TO DRUGS AND ALCOHOL,
WHICH WAS OF COURSE NOT
DISCOVERED BY COUNSEL, OR
IGNORED, DIDN'T HAVE ANY
RECORDS, WHAT HE WAS DOING...

>> IS THAT IN THE SCHOOL RECORD.

>> TESTIFIED TO BY THE EXPERTS.

YOUR HONOR.

HE WAS DRINKING A PINT OF
CANADIAN MIST FOLLOWED BY
MARIJUANA AND INK BALL OF
COCAINE EVERY DAY-AND-A-HALF.

>> AT THE TIME OF THE MURDER?

>> THROUGHOUT -- WHEN HE WAS
ALMOST 13 TO THE MURDER, HE WAS
-- 24 YEARS?

>> SUBSTANCE ABUSE FOR A LONG
TIME AND THE PENALTY PHASE IN MY
OPINION SHOULD HAVE LED COUNSEL
TO DO MORE INVESTIGATION.

HIS MOTHER SAYS HE WAS BEING A
TRUANT IN SCHOOL WHICH IS
CONTRARY TO THE FACTS.

WHEN HE DROPPED OUT OF -- THE
LAST TERM AT 7TH GRADE HE HAD
PERFECT ATTENDANCE, HE WAS
SELLING DRUGS ON THE STREET AND
USING THEM AND HIS MOM TESTIFIED
TO THAT IN THE PENALTY PHASE.

>> HIS SELF-REPORTED HISTORY
INCLUDED A RAPE CHARGE DROPPED,
AND TWO DOMESTIC VIOLENCE
CONVICTIONS, DRIVE-BY SHOOTING
AND DRUG RELATED CHARGES.

IS THAT -- YOU FEEL COMFORTABLE
THAT THAT... REALIZE THAT WOULD
COME IN, IN A NEW PENALTY PHASE.

>> YES.

>> OKAY.

YOU PUT ON NOW -- OTHER THAN THE
SCHOOL RECORDS -- SHOWED
DEFICIENCIES IN HIS IQ.
WERE THERE -- I DON'T REMEMBER
SEEING IT, WERE THERE ANY OTHER
RECORDS, MENTAL HEALTH RECORDS,
HOSPITALIZATIONS, THAT YOU HAVE
DISCOVERED THAT WOULD BE
PARTICULARLY POWERFUL?

>> UNFORTUNATELY, YOUR HONOR I
NEED TO MENTION WE WERE NOT
EVIDENTIARY HEARING COLLATERAL
COUNSEL.

>> YOU ARE STUCK... DID THEY
FIND ANY OTHER RECORDS?

>> I DON'T BELIEVE THEY DID.

>> YOU WOULD KNOW.

YOU REVIEWED THE RECORD.
ANYTHING ELSE PUT INTO EVIDENCE.

>> SCHOOL RECORDS AND THE
DOCTOR'S TESTIMONY AND
DR. KROP'S DEPOSITION.

>> DRS. KROP SAID HE SUFFERED
FROM A FRONTAL LOBE IMPAIRMENT
THAT WOULD TYPICALLY BE
RESULTANT OF SOME TYPE OF
ORGANIC BRAIN DAMAGE, UNABLE TO
DETERMINE HE HAD ANY BRAIN
DAMAGE AND SAID WHAT HE WOULD
HAVE DIAGNOSED DOUGLAS WITH IS
SOME TYPE OF PERSONALITY
DISORDER WITH ANTI-SOCIAL
FEATURES AND THERE WOULD BE
PSYCHO PATHIC TRAITS BASED ON AN

ELEVATED IMPULSE CONTROL...

COULDN'T USE THE WORD EXTREME.

THAT IS A QUESTION OF FACT.

HE SAID HE WASN'T MENTALLY

RETARDED, DIDN'T SUFFER FROM

MAJOR MENTAL ILLNESS, AND HIS

CURRENT RESULTS WOULD BE

CONSISTENT WITH THOSE THAT HE

WOULD HAVE OBTAINED.

I'M NOT REALLY -- YOU KNOW, I

BUY THE FACT THAT HIS DEFENSE

LAWYERS DROPPED THE PAUL IN

LOOKING INTO MENTAL HEALTH AND

NOT GETTING THE SCHOOL RECORDS

AND GIVING THOSE TO DR. KROP.

I THINK THE TRIAL JUDGE, TOO,

I'M NOT SEEING IN DR. KROP, WHO

HAD HIM IN THE CASE HISTORY.

NOT SEEING THAT IT IS

PARTICULARLY EXPLAINING THIS

RAPE/MURDER CASE, HAC, ARE YOU?

AM I MISSING SOMETHING IN WHAT I

SAID ABOUT THE TESTIMONY?

>> THE DOCTOR SAID THAT AND HE

SAID THIS ORGANIC BRAIN IN THE

PARENT, BRAIN DAMAGE ALSO
EXPLAINED WHY MR. DOUGLAS IS
IMPULSIVE AND HAS A LACK OF
MOTIVATION.

>> SOMEONE CAN THROW OUT THEY
HAVE A TYPE OF OR GANG BRAIN
DAMAGE BUT WHERE DOES HE GET
THAT FROM, HIS DIAGNOSIS?

>> HE DID A MULTITUDE OF TESTS
FOR THE EVIDENTIARY HEARING.

>> BUT THEY -- THE MULTITUDE OF
TESTS, TYPICALLY IF THEY SHOW, A
NEUROPSYCHOLOGIST, THEY'LL HAVE
SOMETHING THAT WILL THEN SHOW
FRONTAL LOBE IMPAIRMENT.

HE HAD AN ELEVATED SCORE ON THE
MMPI.

SO, IT IS SOFT MENTAL -- I GUESS
WHAT I SEE WITH DR. KROP, I
CONSIDER IT TO BE SOFT MEANT
HEALTH, THAT SHOULD HAVE BEEN
PURSUED AND THEN MAYBE A
REASONABLE LAWYER MIGHT HAVE
MADE A DECISION, THIS IS REALLY
NOT GOING TO EXPLAIN WHAT

HAPPENED HERE TO A 37-YEAR-OLD
GUY, AND WE'LL HAVE A HOST OF
BAD STUFF COMING IN.

SO, THEN YOU HAVE ONE OTHER
EXPERT, THAT TESTIFIED, RIGHT?

>> DR. MILLER, YES.

>> TELL ME THE HIGHLIGHTS OF
WHAT HE -- HE TESTIFIED, BEGAN
HIS CAREER AS A DRUG SALESMAN
AND GOT INTO TROUBLE FOR SALE OR
POSSESSION OF DRUGS, AND WE HAVE
A GUY, NOT JUST A DRUG USERS BUT
SELLER OF DRUGS, RIGHT?

>> RIGHT.

>> OKAY.

HE THOUGHT HE HAD INTERMITTENT
VIOLENT BEHAVIOR DURING HIS
ENTIRE LIFE.

SO LET'S SEE YOU, AND HE'D
CHARACTERIZE DEFENDANT AS A
DANGEROUS MAN, PATTEN OF
VIOLENCE, PRONE TO REACT
EXCESSIVELY AND VIOLENTLY AND HE
WENT ON WITH THAT.

SO THAT'S YOUR... BUT HE DOESN'T

REALLY ATTRIBUTE THAT TO ANY
ORGANIC -- ANYTHING GOING ON,
OTHER THAN HE JUST WAS A BAD KID
DURING HIS WHOLE LIFE.
HE WAS A -- GOT ANGRY, HE GOT --
A SOCIOPATH, HOW IS THAT GOING
TO HELP YOU IN A RETRIAL?
>> JUDGE, ALL OF THIS CAN BE
CORRELATED TO HIS CHILDHOOD.
>> WELL, THAT WAS WHAT -- DID
DR. MILLER SAY THIS WAS A
RESULT... RESULT OF -- WHAT
TRAUMATIC EVENT IN HIS
CHILDHOOD?
BEING EXPOSED TO DOMESTIC
VIOLENCE?
>> HIS SISTER WAS BEING SEXUALLY
ABUSED AND HE WAS A VICTIM OF
VIOLENCE AND THE FATHER WAS
KICKED OUT OF THE HOUSE, THE
SISTER AND MOTHER GOT TREATMENT
AND INSTEAD OF GETTING
TREATMENT, MR. DOUGLAS TURNED TO
DRUGS AND ALCOHOL AND IT WAS
CORRELATING WITH HIS SCHOOL AND

BECAUSE OF HIS LACK OF
TREATMENT, FRONTAL LOBE
DISORDERS AND LOW IQ, BECAUSE OF
THE DEFICIENCY IN HIS RATION AND
REASONING AND JUDGMENT SKILLS,
IT COMPILED TO CREATE WHAT
HAPPENED HERE AND THE JURY
NEEDED --

>> I THINK YOU HAVE GIVEN IT A
WONDERFUL PACKAGE THAT I DIDN'T
REALLY SEE DR. MILLER GIVING IT,
YOU KNOW, IN THAT WAY AND REALLY
WITH A LOT OF HOLES IN IT.

IS THERE -- CAN YOU POINTS TO
WHERE, IF I LOOK AT DR. MILLER'S
TESTIMONY AGAIN, WHERE THAT
EXPLANATION THAT HE GAVE WOULD
BE TIED IN, LOWER IQ, FRONTAL
LOBE IMPAIRMENT, EXPOSED TO
VIOLENCE, BEING A REASON THAT
THIS DANGEROUS MAN HAD A
LIFELONG HISTORY OF VIOLENT
ACTIVITY.

>> JUDGE I'LL HAVE TO... IF THE
CORE REQUESTS, I DON'T HAVE THE

CITEN FRONT OF ME.

HE SAID A COMBINATION OF
DEFICITS, ENVIRONMENT,
NEUROLOGICAL IMPAIRMENTS, THAT,
QUOTE, THESE ARE DYNAMICS
ACCORDING TO DR. MILLER MAKE THE
CRIME UNDERSTANDABLE, TO THE
JURY.

>> I GUESS I'D ASK YOU, IF THE
JUDGE SUMMARIZED HIS OPINION IN
THE TRIAL COURT ORDER, IS THERE
ANYTHING INCORRECT ABOUT THE
TRIAL JUDGE'S SUMMARY OF
DR. MILLER'S OPINION?

>> EDIDN'T TAKE THE SUMMARY IN
THE TOTALITY OF CIRCUMSTANCES
AND --

>> AGAIN BACK TO THE VARIOUS
RECORDS, SCHOOL RECORDS.
HE DROPPED OUT, 7TH GRADE.
WHAT ELSE?

>> OTHER THAN THE SCHOOL
RECORDS?
OR WHAT IS INSIDE THE SCHOOL
RECORDS?

>> I GUESS, JUST, YOU ARE SAYING
THE SCHOOL RECORDS, UP TO 7TH
GRADE WOULD SHOW ALL OF... WHAT
DR. MILLER NEEDED TO... HAVE A
DIAGNOSIS.

>> IN THE PRESENTS TIME, REFLECT
WHAT WAS HAPPENING, 20-SOME
YEARS AGO WHEN HE WAS A CHILD IN
SCHOOL, HE WAS HAVING BEHAVIORAL
PROBLEMS, ACTING OUT.

HE WAS ACTUALLY GOING TO CLASSES
BUT THERE WAS SOMETHING
FUNCTIONALLY WRONG WITH HIS
BRAIN WHICH DR. KROP AND
DR. MILLER FOUND THROUGH
NEUROLOGICAL TESTS --

>> I THINK THAT IS A GROWTH
OVERSTATEMENT AND THAT'S MY
PROBLEM.

IN TERMS OF WHETHER THIS IS THE
KIND OF -- AND, YOU RAISE
SERIOUS QUESTIONS, WHETHER THIS
IS THE TYPE OF THING THAT
UNDERMINES OUR CONFIDENCE IN THE
OUTCOME OF THIS AND WE NEED TO

RELY HEAVILY ON HOW STRONG THE
STATUTORY MITIGATORS WOULD BE,
BECAUSE THAT IS REALLY WHAT YOU
NEED TO HAVE, TO OVERCOME... AND
DID HE TESTIFY --

>> THE EXTREME EMOTIONAL
DISTURBANCE, THE DOCTOR DIDN'T
WANT TO MAKE THE ASSESSMENT, HE
THOUGHT THAT WAS A LEGAL TERM
FOR THE JURY TO MAKE.

HE SAID HE BELIEVED THERE WAS A
SEVERE EMOTIONAL DISTURBANCE,
AND, DR. KROP SAID THE CAPACITY
TO CONFORM THE CONDUCT, AND
REQUIREMENTS OF LAW WAS
DIMINISHED BUT NOT TO THE POINT
OF MEETING THE STATUTORY
MITIGATOR.

NOW ALONG WITH THOSE TWO
MITIGATORS YOU HAVE IN MY
OPINION, SEVERAL STRONG OTHER --
NONSTATUTORY MITIGATORS DEALING
WITH IMPULSIVITY AND LACK OF
MOTIVATION BECAUSE OF HIS
ORGANIC BRAIN PROBLEM AND LOW IQ

AND, I HAVE TO MENTION BECAUSE I
KNOW THE JUSTICES WILL TALK
ABOUT THIS, THE STATE IN THEIR
CLOSING COMPLETELY DIMINISHED
THE THEORY OF THE CASE, CALLING
MR. DOUGLAS A SMART GUY WHO HAD
ALL THE TOOLS FOR SUCCESS.
IN REALITY THAT WAS COMPLETELY

--

>> YOUR THING WOULD BE HE'S A
DANGEROUS GUY THAT WENT THROUGH
MOST OF HIS LIFE BEING DANGEROUS
AND COMMITTING VIOLENT THINGS.

>> MY THING WOULD BE --

MR. DOUGLAS MIGHT NOT BE THE
MOST LIKABLE GUY TO THE JURY BUT
YOU CAN PLAIN WHY HE DID THESE
THINGS, LACK OF TREATMENT IN HIS
DEFICIENCIES, LED TO THIS AND
WITH TREATMENT, AS DR. MILLER
SAID, THE INDIVIDUAL PROBABLY
COULD HAVE AT LEAST DONE
SOMETHING WITH HIS LIFE,
HOPEFULLY, NOT COMMITTED THE
MURDER.

>> IN THE RECORDS, WITH REGARD
TO EMPLOYMENT, I MEAN, YOU ARE
PAINTING A PICTURE FROM 7TH
GRADE TO 37 AS BEING A VACUUM.
WHAT OTHER RECORDS ARE THERE IN
THE INTERIM PERIOD, EMPLOYMENT,
WHATEVER?

>> 12 PEOPLE TESTIFIED TO A
SPARSE EMPLOYMENT HISTORY.

>> NO RECORDS, NO NOTHING?

>> I'M SORRY, YOUR HONOR.

>> DON'T BE SORRY.

I KNOW THAT THE LAY TESTIMONY IS
THERE.

NO DOCUMENTATION,
HOSPITALIZATIONS, NOTHING AT
ALL.

>> NOT PROVIDED THE AT THE TIME.

I CANNOT SPEAK FOR -- I WOULD
LOVE TO GO BACK BUT...

>> YOU ARE DOWN TO A TOTAL OF 3
MINUTES.

>> MAY I SAVE THE REST FOR
REBUTTAL?

APPRECIATE THAT.

>> LEZ THE COURT, -- MAY IT
PLEASE THE COURT, THE
13-YEAR-OLD AN 16-YEAR-OLD IS IN
THE NEXT CASE... HE WAS 25 YEARS
AN 6 MONTHS OLD AT THE TIME OF
THE MURDER...

>> HOW ABOUT A VICTIM?

>> 18 YEARS OLD.

.

>> SORRY ABOUT THAT.

>> THE -- YOU... THE 3716

CASE... [INAUDIBLE] I'D LIKE TO

START OUT WITH THE TRIAL --

COLLATERAL COURT CLEARLY FOCUSED

ON THE PREJUDICE...

>> THEY DID.

HERE'S WHAT -- LET'S GO BACK --

THESE ARE THE PARTS THAT CONCERN

ME.

THE DEFENSE LAWYER SAID THAT SHE

WOULD BE SHOCKED OR WOULD BE

SHOCKED TO LEARN, THINK HE HAD

AN IQ OF 75.

HE HAS AN IQ OF 75.

THE FACT THAT THE JUDGE SAID

THAT THE DROPPING OUT OF SCHOOL
OR DEFENSE -- STATE SAID HE
DROPPED OUT OF SCHOOL, SORT OF
HIS OWN CHOOSING AND HE HAD THE
LEARNING DISABILITIES, IQ OF 75,
THAT FACTOR SEEMS TO ME TO BE
CALLED INTO QUESTION.

NOW THAT MAY -- DO YOU AGREE
THOSE FINDINGS AND THAT KIND OF
APPROACH DOES COLOR WHAT THE
JURY HEARD AND WHAT THE JUDGE
KIDDED?

>> TWO THINGS, IN ANSWER TO
THAT.

FIRST OF ALL, BOTH MR. ELLER,
WHO HAD 20 YEARS EXPERIENCE AS A
CRIMINAL DEFENSE LAWYER AND
MS. EPPLER WHO HAD 15 YEARS AS A
CRIMINAL DEFENSE LAWYER SAW HIM
AS AN ENGAGING, INTELLIGENT
CLIENT, HOW DOES THAT WORK WITH
THIS 75.

PEOPLE WHO KNEW HIM BEST, HIS
STEPFATHER, UNCLE, PERCEIVED
THAT HE WAS OF SMART OR AVERAGE

INTELLIGENCE.

HOW DO YOU SQUARE THAT?

AS MONEY OF THE WITNESSES TALKED
ABOUT, THERE ARE DIFFERENT KINDS
OF SMART.

BOOK SMART AND COMMON SENSE AND
STREET SMART AND HE WAS SOMEONE
WHO HAD FOUR CHILDREN FROM FOUR
DIFFERENT MOTHERS.

HE --

>> MAYBE THAT IS WHY I THOUGHT
HE WAS 37.

>> THE PEOPLE WHO KNEW HIM BEST
PERCEIVED HIM AS INTELLIGENT,
AVERAGE INTELLIGENCE AND ONE
UNCLE SAID HE DIDN'T THINK HE
WAS AS QUICK AS HIS OTHER
SIBLINGS BUT, PEOPLE WHO KNEW
HIM TESTIFIED THAT HE WAS
INTELLIGENT AND HIS LAWYERS
FOUND HIM TO BE IN TELLING
GENTLEMEN AND ENGAGING.

AND YOU HAVE TO LOOK AT THAT
MAYBE HE'S NOT BOOK SMART BUT,
HIS SCHOOL RECORD INDICATED THAT

HE WAS ENGAGING IN INAPPROPRIATE
BEHAVIORS BUT HE IMPRESSES
PEOPLE AS BEING SMART AND
ENGAGING FROM THE PEOPLE WHO
KNEW HIM BEST AND I THINK YOU
HAVE TO CONSIDER THAT WHEN YOU
CONSIDER THE IQ.

I WANT TO TALK ABOUT...

>> IT SEEMS TO ME, READING THE
CASES AND PARTICULARLY THE U.S.
SUPREME COURT CASES, THAT THEY
HAVE EMPHASIZED OVER AND OVER,
ABOUT PRESENTING A PICTURE OF
THIS INDIVIDUAL, THE DEFENSE
SHOULD DO THAT.

AND I MUST TELL YOU, IT IS THE
FIRST F NOTHING SHOWED UP
IN THE SCHOOL RECORDS, WE
WOULDN'T BE HERE TODAY, BUT IN
THE SCHOOL RECORDS, THERE'S THE
ESE DESIGNATION AND CAN'T GET
OUT OF THE 7TH GRADE AND HERE'S
A BRIGHT AN BRILLIANT GUY WHO
MADE THESE DECISIONS AT LEAST IS
A FACT QUESTION FOR THE JURY TO

CONSIDER.

I DON'T KNOW WHETHER IT WOULD
CARRY THE DAY BUT THAT IS NOT
WHY WE ARE HERE, ABSOLUTELY
CERTAIN ONE WAY OR THE OTHER.
ALL THAT IS REQUIRED TO GIVE
INFORMATION, THAT IS AVAILABLE,
WHICH THAT WAS, FOR A JURY TO DO
THE EVALUATION TO KNOW THE WHOLE
PERSON.

>> IF YOU LOOK AT CLOSING
ARGUMENTS.

JUSTICE PARIENTE, THIS IS YOUR
CLOSING ARGUMENT.

NO EMOTIONAL PLEA APPEALS, NO
MERCY, TO THE FACTS AND, THE
DEFENSE COUNSEL...

>> THOSE FACTS UNDERMINE,
RESPECTFULLY, FOR A LAWYER TO
STAND AND ARGUE IT IS A BRIGHT
AND BRILLIANT GUY.

IT PAINTS THE PICTURE OF
SOMEBODY QUITE DIFFERENT, AND AN
ESE STUDENT WHO STRUGGLES IN
SCHOOL.

YOU CAN'T ACCEPT THAT.

>> JUSTICE LEWIS, LOOK AT THE
CLOSING ARGUMENTS THERE WAS ONE
COMMENT, HE PUTS HE IS SMART.

>> I THOUGHT THERE WERE SEVERAL
I READ THROUGH.

>> WELL THE PROSECUTOR DID TALK
ABOUT HIS EMPLOYMENT RECORD, ONE
OF THE THINGS THE WITNESSES SAID
THAT HE WORKED SPORADICALLY AND
HE COULD WORK IN THEIR OPINION
THE IN FACT MATTHEW MCKEEVER
TALKED ABOUT, THE STEPFATHER,
KNOWN HIM 12 YEARS, SAID HE WAS
A GOOD WORKER AND THAT HE TALKED
TO ONE OF HIS EMPLOYERS AND THE
EMPLOYER SAID HE WAS GOOD AT
RUNNING THE TOW... AND INTENDED
TO TEACH HIM MORE AND OTHER
TALKED ABOUT HIS SPORADIC
EMPLOYMENT.

IT'S A SOMEWHAT OVERSTATEMENT TO
SAY THE PROSECUTOR WAS HAMMERING
ON HOW SMART AND VOLITIONAL IT
WAS.

>> THE PROSECUTOR DID IN FACT
MAKE A STATEMENT TO SAY THERE
WAS NOTHING MENTAL OR PHYSICAL
THAT WOULD EXPLAIN THIS
DEFENDANT, NOTHING WRONG WITH
HIM MENTALLY OR PHYSICALLY.
DIDN'T THE PROSECUTOR MAKE A
STATEMENT TO THAT EFFECT.

>> THE WITNESSES TESTIFIED THEY
KNEW OF NO MENTAL OR PHYSICAL
DISABILITY THAT WAS AFFECTING
HIM.

FAMILY MEMBERS AND FRIENDS.
WHO LIVED WITH HIM...

>> THE THINGS ABOUT...

>> ONE OF THE THINGS THAT REALLY
BOTHERS ME ABOUT THIS CASE, AND
IT... YOU KNOW, I'M NOT SURE
WHERE IT GETS US, BUT, WE HAVE
TWO LAWYERS, BOTH OF THEM
TESTIFIED AT THE EVIDENTIARY
HEARING AND NONE OF ANY
RECOLLECTION, NONE CAN RECALL
WHAT THEY DID.

YOU KNOW, WE HAVE A SERIES OF,

EVERYBODY HAS A MISSING FILE,
DON'T RECALL THAT AND CAN'T
REMEMBER THAT BUT WE DO KNOW
THERE WAS -- SEEMS TO BE,
NOTHING WAS DONE AFTER DR. KROP
ASKED THEM TO GET BACK GROUND
RECORDS.
PRISON RECORDS.
ANY KIND OF INFORMATION.
LET'S HAVE ANOTHER EVALUATION OF
THE GUY TO SEE IF WE CAN PUT
TOGETHER ANY KIND OF MITIGATING
CIRCUMSTANCE AND YET THERE'S
NOTHING IN THE RECORD THAT SHOWS
US THE DEFENSE ATTORNEYS
FOLLOWED THROUGH WITH THAT.
>> YOUR HONOR, I AGREE.
WHAT HAPPENED IS, IN THIS CASE,
TRIAL COUNSEL TURNED THE
ORIGINAL FILE OVER TO COLLATERAL
COUNSEL, IF IT IT WAS A
CONFIDENTIAL PSYCHOLOGICAL FILE
AND CORRESPONDENCE FILE WHICH
WAS TESTIFIED, THAT IS WHERE
HE'D HAVE PLACED HIS NOTES ABOUT

THE CONVERSATION WITH THE DOCTOR
AND IT RETURNED TO HIM BEFORE
THE EVIDENTIARY HEARING, THE
CONFIDENTIAL PSYCHIATRIC FILE AN
CORRESPONDENCE FILE WAS MISSING.
THESE ARE CRIMINAL LAWYERS WITH
THOUSANDS OF DEFENDANTS.
BUT, YOUR HONORS, WHAT I'M
SAYING IS, IN THE COLLATERAL
COURT RECOGNIZED THE LACK OF
MEMORY PRECLUDED HIM -- HE
DECIDED THE LACK OF MEMORY ON
THE PART OF COUNSEL ALTHOUGH HE
THINKS IT WAS A REASONABLE
STRATEGY ---ED .
>> HOW COULD IT BE A REASONABLE
STRATEGY IF WE HAVE NO IDEA IF
THE DEFENSE ATTORNEYS HAVE THE
INFORMATION -- YOU HAVE TO HAVE
THE INFORMATION TO HAVE A
STRATEGY, IT SEEMS TO ME.
YOU HAVE TO HAVE THE INFORMATION
ABOUT THE DEFENDANT'S CHILDHOOD,
LOW IQ, NOT BEING ABLE TO FINISH
SCHOOL AND JUXTAPOSE THAT WITH

THIS OTHER INFORMATION THAT HIS
FAMILY WAS GOING TO GIVE, AND
MAKE A DECISION.

HOW IN THE WORLD COULD THEY MAKE
A DECISION IF THEY DON'T HAVE
THE INFORMATION?

>> AGREED, ONE THING WE KNOW,
THE MOM TESTIFIED ABOUT HIS
READING DEFICIENCIES, SPECIAL
EDUCATION PROGRAM, TALKED ABOUT
THE READING HELP PLUS I THINK --

>> WOULDN'T THAT BE A TRIGGER TO
FOLLOW UP?

AND SEE IF THERE IS SOMETHING
THERE.

>> MR. EL LER TESTIFIED WHEN HE
REVIEWED DR. KROP'S REPORT AND
BELIEVES HE SPOKE WITH HIM ON
THE PHONE HE RECEIVED
INFORMATION, ANTI-SOCIAL
PERSONALITY IN THE MIX AND HE
DECIDED TO --

>> WAS THAT REALLY IN DR. -- IN
DR. KROP'S REPORT.

>> A REQUEST FOR INFORMATION,

BUT THE DOCTOR AT THE
EVIDENTIARY HEARING SAID THE
IMPRESSION WAS ANTI-SOCIAL
PERSONALITY TRAIT.

A PERSONALITY DISORDER AND DID
NOT DIAGNOSE HIM, BECAUSE HE
WASN'T ASKED TO BUT, HE WOULD, A
PERSONALITY DISORDER WITH
ANTI-SOCIAL PERSONALITY TRAITS.

AND IT IS REASONABLE TO THINK
COUNSEL -- THAT IS WHAT COUNSEL
GOT AND ONCE HE HEARD
ANTI-SOCIAL, MR. ELER DECIDED TO
GO ANOTHER WAY.

>> REALLY, IN THIS CASE YOU WILL
LOSE YOUR ARGUMENT IF YOU FOCUS
ON MAKING A REASONABLE STRATEGIC
DECISION.

>> I'M TRYING TO GET OFF IT,
JUSTICE PARIENTE.

TRYING TO -- IF YOU ALLOW ME TO
TALK ABOUT THE PREJUDICE PRONG.

>> GO DIRECTLY TO THE PREJUDICE
AND, AS I UNDERSTAND THE LAW
FROM THE UNITED STATES SUPREME

COURT, THE MITIGATION ONE MAY
PRESENT, TALKING ABOUT THE
PREJUDICE, DOES NOT HAVE TO HAVE
SOME TYPE OF EXPLANATION FOR THE
DIRECT LINK TO WHY THE MURDER
WAS -- OCCURRED, IT IS TO
PRESENT A PICTURE FOR THE TIME
SENTENCING OF THIS -- WHO THIS
INDIVIDUAL IS, MAY OR THEY NOT
TIE DIRECTLY.

>> ABSOLUTELY AND -- OF COURSE,
WHETHER SOMETHING HAS A NEXUS TO
THE MURDER IS PROBABLY RELEVANT
TO WEIGHT BUT OF COURSE WE KNOW
IT DOESN'T HAVE TO DO... BUT
WHAT IS CRITICAL TO LOOK AT
ESPECIALLY DR. MILLER'S
TESTIMONY.

HE TALKED ABOUT HOW
MR. DOUGLAS'S, I GUESS TENDENCY
TO OVERREACT IS SUCH THAT RATHER
THAN EXTENDING HIS MIDDLE FINGER
TO A PERSON WHO CUTS HIM OFF IN
TRAFFIC HE'LL GET OUT, HE'LL GET
OUT AND SHOOT UP THE CAR AND

DR. MILLER DESCRIBED WHEN
TALKING ABOUT HIS PSYCHOLOGICAL
PROFILE, THAT AT ONE POINT WHICH
IS ILLUSTRATED, DOUGLAS PULLED A
GUN ON ONE OF THE FOUR MOTHERS
OF THE CHILDREN, BECAUSE HE
PERCEIVED HE WAS NAGGING HIM.
AND HE WAS GOING TO SHOOT HIM
BUT FOR THE INTERVENTION OF HIS
BROTHER.

AND THAT COMES INTO EVIDENCE, IF
YOU BRING UP ANYTHING ABOUT THE
SCHOOL --

>> NO, THE SCHOOL RECORDS
INDICATED BEHAVIORAL, BUT, THAT
IS NOT THE CLAIM, THEY SHOULD
HAVE JUST INTRODUCED THE SCHOOL
RECORDS, THE CLAIM IS THEY
SHOULD HAVE PRESENTED DR. KROP
OR DR. MILLER AND HAD THAT COME
OUT --

>> IF THEY HAD THE RECORDS.
HE SAID, GIVE ME MORE RECORDS.

>> BUT, AGAIN, I DON'T WANT TO
GET BACK ONTO THE DEFICIENT

PERFORMANCE PROBLEMS.

BUT, WHAT I'M SAYING, MR. ELER
SAID HE RECEIVED INFORMATION OF
ANTI-SOCIAL AND DECIDED TO GO
ANOTHER WAY AND I THINK --

>> ONCE THE DOCTOR AND MILLER
HAD THE SCHOOL RECORDS, THEIR
TESTIMONY JUST -- I THINK TO ME
IS IMPORTANT, I DON'T SEE HOW
THAT IS HELPFUL AND, A FRIENDLY
QUESTION TO YOU, BUT EXPLAIN
WHAT DR. MILLER SAID WHEN YOU
HE HAD THE SCHOOL RECORDS AND
TESTING AND WHAT DID DIAGNOSE,
WHAT WAS HIS MENTAL ILLNESS AND
DIAGNOSIS?

NO MENTAL ILLNESS, NOT MENTALLY
RETARDED AND DR. MILLER DIDN'T
DIAGNOSE HIM BUT AGREED HE'D
PROBABLY HAVE A PERSONALITY
SCORED AND TALKED ABOUT HIS
ANTI-SOCIAL TRAITS.

BUT, ALSO, EVEN DR. KROP
TESTIFIED, ADD STRAIGHT THE MMPI
AND HE SHOWED AN ELEVATED SCORE

ON THE PSYCHOPATHIC DEVIANT

SCALE AND APPARENTLY --

>> THAT WOULD ALLOW THESE OTHER
EVENTS TO COME INTO EVIDENCE IF
THAT IS PURSUED?

>> ABSOLUTELY.

>> I MEAN, YOU DIAGNOSE SOMEBODY
AS BEING A PSYCHOPATH, NOT BASED
ON THE CRIME BUT WHATEVER HE HAS
DONE DURING HIS LIFE.

>> EXACTLY.

THAT'S WHY IT IS RELEVANT AND
ADMISSIBLE.

DR. MILLER WOULD HAVE DESCRIBED
THESE THINGS.

ONE OF THE THINGS ABOUT THE
SCHOOL RECORDS, DR. MILLER HAD
INFORMATION ABOUT SOME OF THE
EDUCATION PROGRAMS DOUGLAS WENT
INTO AS A TEEN AND DESCRIBED
THAT HE HAD BEEN ENROLLED IN THE
JACKSONVILLE MARINE INSTITUTE, A
SCHOOL FOR TROUBLED KIDS AND
DR. MILLER TESTIFIED AND WOULD
COME OUT IF SCHOOL RECORDS WERE

INTRODUCED BECAUSE DR. MILLER
SAID THAT DOUGLAS FAILED IN THAT
PROGRAM NOT BECAUSE HE HAS AN IQ
OF 75 BUT BECAUSE OF THE
CONTINUED BEHAVIOR PROBLEMS AND
ATTITUDE OF INDIFFERENCE AND
DISRESPECT FOR THE LAW, AND THAT
WAS PART OF THE SCHOOL RECORDS
NOT INTRODUCED INTO THE HEARING
AND THAT IS PAGE 449 OF THE POST
QUICK RECORDS AND DR. MILLER
SAID JMI IS AN EXCELLENT
PROGRAM, AND...

>> I ASKED THE QUESTION, ARE
THERE OTHER DOCUMENTS IN
ADDITION TO THE JACKSONVILLE.

>> I DON'T KNOW HOW HE GOT THE

--

>> IS THAT THE ONLY DOCUMENTS.

>> BEG YOUR PARDONED .

>> ARE THOSE THE ONLY OTHER
DOCUMENTS BETWEEN 7TH GRADE AND
ADULTHOOD, JACKSONVILLE MARINES.

>> NO RECORDS INTRODUCED AT THE

--

>> I UNDERSTAND.

OTHER INFORMATION ABOUT THE --
RECORDS FROM SOMEPLACE.

>> HE MUST HAVE.

I DON'T KNOW WHETHER --

>> IS THERE ANYTHING ELSE OTHER
THAN THOSE NOW?

>> ABOUT HIS EDUCATION?

>> RIGHT.

>> NO.

EVIDENCE IN THE SCHOOL RECORDS
INDICATED INAPPROPRIATE
BEHAVIORS.

BUT HIS MOTHER TESTIFIED ABOUT
HIS HAVING ENROLLED IN THE ESC
AS FAR AS SPECIAL READING AND
MATH PROGRAMS, DROPPING OUT IN
7TH GRADE AND OTHER RELATIVES
TESTIFIED ABOUT HIS READING AND
MATH DEFICIENCIES...

>> LOOKING AT THE MITIGATORS
FOUND BY THE JUDGE, ORIGINAL
TRIAL, APPARENTLY ALL OF THIS
ABOUT THE ABUSE THAT WAS --
WITNESSED, WAS ALL INTRODUCED.

>> ABSOLUTELY.

>> WITH NONE OF THE DOWNSIDE OF TALKING ABOUT WHAT A DANGEROUS PERSON HE WAS.

>> EXACTLY.

THAT'S IT'S ONE THING, THE STATE ESSENTIALLY DID NOT CONTEST THAT HE HAD BEEN PHYSICALLY ABUSED BY A FATHER WHO USED EXCESSIVE CORPORAL PUNISHMENT, DID NOT DENY THAT HE HAD BEEN EXPOSED TO DOMESTIC VIOLENCE IN THE HOUSEHOLD.

AND SO WHAT -- IF YOU WOULD HAVE PRESENTED THE EVIDENCE THAT WOULD HAVE COME OUT BEFORE THE JURY.

DR. MILLER SAID, HE'S A GUY WHO KNOWS RIGHT FROM WRONG AND CHOOSES TO DO WRONG AND THAT --

>> LET ME MAKE SURE, YOU SAID THEY DIDN'T FIND MENTAL ILLNESS, DID THEY MENTION BRAIN DAMAGE? DID ANYBODY DOCUMENT ANY KIND OF OBJECTIVE BRAIN DAMAGE?

>> JUSTICE PARIENTE, IN THE POST
QUICK PROCEEDINGS IN THE RECORD,
COLLATERAL COUNSEL, ORDERED --
ASKED FOR MRI AND HE WAS GRANTED
ONE AND TRANSPORTED DOUGLAS TO
ONE AND CHARGED FOR ONE AND NO
RECORDS WERE INTRODUCED AT THE
COLLATERAL PROCEEDING.

REASONABLE ASSUMPTION, WHY NOT?
BUT THERE WAS ONE DONE AND IT
WASN'T INTRODUCED --

>> MOST OF THOSE TESTS, AN MRI
ISN'T GOING TO SHOW A FRONTAL
LOBE IMPAIRMENT.

YOU KNOW, I THINK YOU WILL DO
SEARCHES -- AS A JUDGE, JUROR,
WHAT WOULD MAKE SOMEBODY A
26-YEAR-OLD, TAKE SOMEBODY'S --
A FRIEND OF A GIRLFRIEND AND
BECAUSE SHE SAID SOMETHING THAT
HE FOUND OFFENSIVE RAPE HER AND
STRANGLE HER AND LEAVE HER, AND
YOU GO BACK AND SAY, WHAT IS IT?
IS IT SOMETHING THAT OCCURRED IN
TERMS OF A BRAIN DYSFUNCTION?

OR WAS HE SO TRAUMATIZED BY
EARLY CHILDHOOD EVENTS THAT HE
REALLY BECAME A VERY ILL, YOU
KNOW, MENTALLY ILL PERSON?
WE'RE NOT -- THAT IS WHERE I'M
-- WE'RE NOT -- WHAT WE ARE
FETING IS THAT IF THINGS
HAPPENED IN HIS EARLY CHILDHOOD,
HE WAS IN ESE BUT GOT HIS GED.
>> IN THE RECORD NOW HIS MOTHER
TESTIFIED THAT HE STARTED
COLLEGE AT -- CLASSES AT
COMMUNITY COLLEGE BUT THERE IS
NO... IT WAS REALLY QUESTIONABLE
WHETHER HE GOT HIS GED.
>> PLANNED FOR SELF-IMPROVEMENT
BUT THE REST OF HIS LIFE AFTER
HE DROPS OUT, HE SELLS DRUGS.
>> HE WORKS SPORADICALLY AND
MAKES HIS LIVING AS A DEALER
AND...
>> HE PRESENTED YOUR COUNSEL --
YOUR COUNSEL PRESENTED A PICTURE
THAT HE HAS HEAVY SUBSTANCE
ABUSE SINCE AGE 13.

>> SELF-REPORT.

>> IN PARAGRAPH 27 OF THE
SENTENCING ORDER, NO EVIDENCE OF
CHRONIC OR LONG TERM DRUG AND
ALCOHOL ABUSE PRESENTED IN
MITIGATION.

IS THAT A DEFICIENCY?

>> NO, SIR.

FIRST OF ALL, THAT IS

SELF-REPORT.

NOT A SINGLE BIT OF OBJECTIVE
EVIDENCE THAT HE WAS A HEAVY
USER OF DRUG AND ALCOHOL.

HIS MOTHER DID TESTIFY THAT HE
SOLD DRUGS AND GOT INTO DRUGS,
THAT WAS BROUGHT OUT IN THE
PENALTY PHASE, THAT HE WAS OUT
ON THE STREET, HAVING TO SELL
DRUGS TO BUY SHOES.

BUT INSOFAR AS THE OBJECTIVE
EVIDENCE OF HIS DRUG AND ALCOHOL
ABUSE, NO.

AND I THINK JUSTICE POLSTON,
SMART COUNSEL DO NOT PRESENT
INCONSISTENT PICTURES.

WHAT THEY WANTED TO DO WAS
HUMANIZE HIM AT THE PENALTY
PHASE.

I THINK MOST REASONABLE JURORS
DON'T ACCEPT VOLUNTARY DRUG USE
AND -- DON'T KNOW JUSTICE
PARIENTE WHAT JURORS THINK BUT
IT'S A REASONABLE ASSUMPTION,
THEY ARE NOT SYMPATHETIC TO
VOLUNTEER ALCOHOL AND DRUG USE
BUT HAD COUNSEL ESKEWED TH
HUMANIZING, AND GOING TO ROUTE,
NEVER HEARD HE WAS ARRESTED FOR
DOMESTIC VIOLENCE AND ARRESTED
FOR RAPE AND... A DRIVE BY
SHOOTING AND THE ABILITY TO
PAINT HIM AS A GOOD, MILD
MANNERED GUY WOULD BE GONE.
CALLING MENTAL HEALTH
MITIGATION.

>> I ALWAYS WONDERED WHY THE
DEFENSE ATTORNEYS DO THAT.
BEING A GOOD MILD MANNERED GUY
DOES NOTHING IN MY ESTIMATION TO
EXPLAIN WHY SOMEONE WOULD RAPE

AND MURDER SOMEONE.

THOSE STRATEGIES TO ME JUST --

HE WAS A NICE GUY AND THEN WHAT?

ONE DAY HE DECIDES TO RAPE AND

MURDER SOMEONE.

>> I THINK, YOUR HONOR, THE

PROBLEM IS, IS THE DEFENSE

COUNSEL HAVE WHAT THEY HAVE.

HAVE THEIR CLIENT.

>> HAVE WHAT THEY HAVE...

>> YES.

YOUR HONOR AND AGAIN I GO BACK

TO THE FACT, THERE WAS

ANTI-SOCIAL PERSONALITY KNOWN.

WHAT I WANT TO SAY IS, JUDGES,

IF YOU CAN -- ONE -- HAD COUNSEL

PRESENTED THE MITIGATION IT

WOULD HAVE DONE AWAY WITH THE

ONE STATUTORY AGGREGATE IF IT

WAS -- MITIGATOR WAS FOUND, YOU

KNOW, PRIOR CRIMINAL HISTORY.

SIGNIFICANT ACTIVITY.

>> A LOT OF THOSE INCIDENTS THAT

YOU TALKED ABOUT WERE NEVER

REALLY PROSECUTED, WERE THEY.

>> RAPE AND ARREST AND THE
DRIVE-BY SHOOTING WERE DROPPED
BUT THERE WERE TWO DOMESTIC
VIOLENCE CONVICTION.
WHICH WOULD HAVE TAILORED INTO
DR. MILLER'S TESTIMONY ABOUT
HOW... GUN ON THE MOTHER OF ONE
OF HIS CHILDREN.
THE FACT IS THAT... IF I COULD
FINISH MY STATEMENT, JUSTICE
CANADY.
THE FACT IS ON THE PREJUDICE
PRONG, HAD TRIAL COUNSEL
PRESENTED THIS EVIDENCE THAT HE
SAYS NOW, SHOULD HAVE PRESENTED,
THE JURY WOULD HAVE HEARD THAT
HE'S A VIOLENT, DANGEROUS MAN.
CONTRARY TO ALL THE WITNESSES'
TESTIMONY, AMENABLE TO
REHABILITATION AND, AT THE END
OF THE DAY THERE'S COMPETENT
SUBSTANTIAL EVIDENCE TO SUPPORT
THE COLLATERAL COURT RULING THAT
THERE WAS NO PREJUDICE IN THIS
CASE AND THAT'S WHAT THE STATE

WOULD ASK YOU TO FIND.

THANK YOU.

>> THANK YOU.

>> ONE SENTENCE ABOUT THE

STRATEGY, WE DISAGREE WITH

MS. CARBULA, AND... HAS LITTLE

WEIGHT AND SAID IT WAS

RELATIVELY INSIGNIFICANT AND

THIS STATE ATTORNEY CALLED THE

MITIGATION A STUDY IN

CONTRADICTION AND SO, WITHOUT

SAYING MORE, BASIC MITIGATION

WAS NOT DONE --

>> WAS THE MITIGATOR OF NO PRIOR

CRIMINAL HISTORY FOUND?

>> MAYBE MS. CARBULA CAN ANSWER

THAT.

NOT DURING THE PENALTY PHASE TO

THE JURY.

>> DID THE JUDGE FIND IT?

YES.

BUT GAVE IT LITTLE WEIGHT

BECAUSE OF THE PRIOR DRUG USE

THAT CAME OUT THROUGH HIS MOTHER

OR DRUG -- A TERM YOU COULDN'T

TELL IF HE WAS SELLING OR USING

IT --

>> DO YOU AGREE -- WAS HE

SELLING DRUGS FOR A GOOD DEAL OF

THE TIME THAT HE WAS AT THE

SCHOOL.

>> THE EVIDENCE STRONGLY POINTS

HE WAS NOT ONLY SELLING BUT

USING.

>> WHAT TYPE OF DRUGS WAS HE

SELLING?

>> UNCLEAR.

I DON'T THINK THE MOTHER

TESTIFIED TO THAT --

>> WHAT CAME OUT AFTER --

>> HE TALKED ABOUT, TO THE

EXPERTS, WAS, HE -- I THINK

COCAINE, TO BE HONEST.

>> ONE OF THE THOSE DOUBLE-EDGED

SWORDS, NICE GUY BUT... NOT JUST

A DRUG ADDICT, DRUG DEALER,

SELLING COCAINE TO OTHER PEOPLE,

AND I THINK THAT IS TOUGH STUFF

THERE.

>> TOUGH STUFF IN EVERY DEATH

PENALTY CASE.

>> AND THE QUESTION IS, WHAT YOU
HAVE BROUGHT OUT, IS OUR
CONFIDENCE IN THE PENALTY PHASE
UNDERMINED.

>> IT IS CLEAR -- NEUROLOGICAL
TESTING DONE BY THE DOCTOR, HE
DID A SERIES OF TESTS AND FOUND
FRONTAL LOBE DISORDER COMBINED
WITH HIS LOW IQ AND EMOTIONAL
ISSUES AND DEFICIENCIES FOUND
SINCE HE WAS GOING TO
KINDERGARTEN, YOU CAN CREATE A
NEXUS WHERE THESE CRIMES ARE
LESS BLAME-WORTHY WITH A PERSON
WITH THESE DEFICIENCY, THE
SCREWED UP KID CONTINUED TO DO
IT WITHOUT ADEQUATE TREATMENT AN
RUT IN DRUGS AND BECAME A
TICKING TIME BOMB.

>> IT IS ONE THING IF HE SHOT
SOMEBODY IN A MURDER... ROBBERY,
DRIVE BY BUT WHAT EXPLAINS WHAT
MUST BE HIS CONTEMPT FOR WOMEN?
TWO DOMESTIC VIOLENCE

CONVICTIONS.

AND THIS BEING A RAPE/MURDER.

EXPLAIN WHAT IT IS THAT IN HIS
CHILDHOOD?

THAT WOULD EXPLAIN HIS TAKING
OUT HIS ANGER OR HIS... VIOLENCE
ON WOMEN?

>> THERE WAS DOMESTIC VIOLENCE
FROM HIS OWN FATHER TO THE WOMEN
IN HIS HOUSEHOLD.

>> DID SOMEONE EXPLAIN THAT?
A CYCLE OF DOMESTIC VIOLENCE?
WAS THAT A THEORY?

>> HE WAS DOUBLY CURSED DEALING
WITH HIS ENVIRONMENTAL ISSUES
COMBINED WITH THE ABUSE HE SAW
AND WAS PERSONALLY --

>> YOU THINK A PICTURE OF SAYING
BECAUSE HE WITNESSED DOMESTIC
VIOLENCE HE MIMICKED THAT AND HE
HIMSELF BECAME A DOMESTIC --
ABUSER OF WOMEN.

THAT THAT WOULD BE A GOOD
MITIGATOR IN THE CASE?

>> NO, I THINK IT IS AN

EXPLANATION OF WHY HE WOULD --

THERE'S GOING TO BE... NEGATIVE

THINGS THAT COME OUT IN HIS

LIFE.

HE WAS HAVING THESE NEGATIVE

THINGS BEFORE HE WAS LITERALLY

GOING TO MIDDLE SCHOOL.

TRANSCENDS INTO UNFORTUNATELY A

LIFE OF --

>> WHAT DID HE DO TO HELP

HIMSELF?

JACKSONVILLE, THE JURY HEARS

THAT, YOU KNOW, HE'S STRUGGLING,

DIDN'T HAVE -- IQ WAS NOT THE

HIGHEST, HE HAD OTHER ISSUES,

BUT WHAT DID HE DO IN HIS LIFE

TO TRY TO OVERCOME THAT.

>> NEUROLOGICAL IMPAIRMENT,

FRONTAL LOBE DAMAGE, ONE OF THE

MAIN CHARACTERISTICS IS LACK OF

MATT VACATION AND COMBINED WITH

HIS DEPRESSION, DR. MILLER FOUND

AND DIAGNOSED, AND SAID WAS

APPARENT -- AT LEAST IN

EXISTENCE AT THE TIME OF THE

CRIME ALONG WITH THE STATUTORY
MITIGATOR OF EXTREME AND
EMOTIONAL DISTURBANCE COUPLED
WITH THE FACT THERE WERE REPORTS
OF THEM DRINKING ON A PRETTY
GOOD AMOUNT OF ALCOHOL DURING
THE NIGHT IN QUESTION AND THE
TRIAL COURT IN THE SENTENCING
ORDER SAID HE WAS DRIVING AROUND
AND MUST NOT HAVE BEEN THAT MUCH
ALCOHOL.

YOU HAVE... A GROUP OF THINGS,
WHEN PUT TOGETHER, CAN CREATE
PRETTY SUBSTANTIAL MITIGATION,
TO THE JURY, MY OWN EXPERIENCE.
AND, A VERY DIFFICULT -- TO FIND
A CLIENT WITH NO NEGATIVE
QUALITIES ABOUT THEM.

LASTLY, ONE MORE THING TO SAY.
I ENCOURAGE THE COURT TO READ
THE STATE'S CLOSING ARGUMENT.
BECAUSE, IT ESSENTIALLY DEALT
WITH HIS ACCOUNTABILITY AND ON
THE END OF HIS CHOSEN PATH AND,
HOLD HIM ACCOUNTABLE.

HE HAD THE TOOLS TO SUCCEED AND
DID NOT AND CHOSE WHAT HE DID
AND USED THE DEFENSE'S POORLY
CONCEIVED MITIGATION STRATEGY
BECAUSE THAT WAS THE ONLY
STRATEGY THEY HAD, AGAINST THEM
AND REFLECTS IN THE JURY'S 11-1
DECISION.

THERE WAS NO PREMEDITATION FOUND
AND STILL AN 11-1 VERDICT AND I
UNDERSTAND THERE WAS AN HAC
AGGRAVATOR FOUND WHICH HAPPENED
DUE TO SEXUAL BATTERY BUT 11-1.
THE JURY WAS THINKING THE SAME
THING THE JUDGE AND STATE
ATTORNEY WERE.

THESE FACTORS ARE INSIGNIFICANT
AND DON'T EXPLAIN ANYTHING THAT
HAPPENED IN THE CRIME.

THESE WOULD HAVE GIVEN THE JURY
SOMETHING TO HANG THEIR HAT ON
AND SAY I UNDERSTAND.

>> YOUR TIME IS UP.

>> THANK YOU.

>> THANK YOU, THE COURT WILL

TAKE A 10 MINUTES RECESS.

>> ALL RISE.