>> ALL RISE... HEAR YE HEAR YE
HEAR YE.
THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION, AND YOU
SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
THE FIRST CASE ON OUR DOCKET
TODAY IS WALKER VERSUS THE STATE
OF FLORIDA.
>> MAY IT PLEASE THE COURT, GOOD
MORNING, YOUR HONORS.
GOOD MORNING, COUNSEL.
I ALONG WITH MY CO-COUNSEL,
CAROL RODRIGUEZ ARE HERE ON
BEHALF OF THE APPELLANT AND
CROSS-APPELLEE, ROBERT SHANNON
WALKER, II.
THE CASE COMES BEFORE THE COURT
ON AN APPEAL BY MR. WALKER, OF
THE POSTCONVICTION COURT'S
DENIAL OF HIS GUILT PHASE CLAIMS
IN -- PURSUANT TO HIS MOTION TO
VACATE PURSUANT TO THE 385.1
FLORIDA RULE OF CRIMINAL
PROCEDURE AND THE CROSS-APPEAL
COMES BEFORE THE COURT BY THE
STATE OF FLORIDA ON THE
POSTCONVICTION COURT'S ORDERS
GRANTING MR. WALKER, CORRECTLY
GRANTING HIM A NEW PENALTY PHASE
OR TRIAL COUNSEL WAS INEFFECTIVE
FOR DOING UNREASONABLE
MITIGATION INVESTIGATION AND
PRESENTING THAT INVESTIGATION
DURING THE PENALTY PHASE.
I START WITH THE TWO ARGUMENTS
PRESENTED IN HIS INITIAL BRIEF

REGARDING THE GUILT PHASE CLAIM, MR. WALKER ARGUES THE POSTCONVICTION COURT ERRED IN SUMMARILY DENYING THE GUILT PHASE CLAIM SPECIFICALLY FIRST THAT TRIAL COUNSEL HAD FAILED TO TIMELY OBJECT OR TO FILE A MOTION IN LIMINE TO EXCLUDE TESTIMONY AND EVIDENCE, PHOTOGRAPHIC EVIDENCE, OF A PAIR OF BLOOD STAINS WHICH WERE NOT RELEVANT BECAUSE IT HAD NOT BEEN PROVEN WHETHER OR NOT THOSE STAINS WERE BLOOD STAINS.
>> TELL ME HOW DID THOSE BLOOD STAINS OR SUPPOSED BLOOD STAINS... [INAUDIBLE] IT SEEMS WE HAVE A BLOODING BEATING, GUY RUNS OUT, COVERED IN BLOOD, AND THE CLEAR INFERENCE OF THE COURT IS THAT ALL OF THESE STAINS ARE IN FACT BLOOD STAINS AND SO EVEN IF THE TRIAL ATTORNEY SHOULD HAVE DONE SOMETHING, MAKE AN OBJECTION ABOUT IT, WHERE IS THE PREJUDICE IN THIS CASE?
>> THE PREJUDICE, JUDGE, LOOK AT THE RECORD ON APPEAL, SPECIFICALLY AFTER THE TESTIMONY COMES IN THROUGH THE AGENT ABOUT THE APPARENT BLOOD STAINS WHEN THE STATE SHOWS THE TRIAL COUNSEL, THE PHOTOGRAPHS HE SAYS NO OBJECTION BEING TIED IN, AND, THE PROSECUTOR RESPONDS, JUDGE, I BELIEVE WE TIED IT THROUGH THE NEIGHBOR, MR. GOSS, AND THE COURT AT THAT POINT TAKES OUT THE JURY AND HAS A CONFERENCE WITH THE TWO ATTORNEYS...
>> BUT, THE ONE WHO ACTUALLY TESTIFIED THAT THE... THAT THE VICTIM IN FACT SOMEHOW GOT OUT OF THE APARTMENT, FLED THE SCENE?
>> THERE IS NO EYEWITNESS

TESTIMONY, AND THERE IS
TESTIMONY BY LESLIE RITTER WHO
TESTIFIED THAT SHE HEARD THE
VICTIM -- SOUNDED LIKE TO HER
THE VICTIM WAS RUNNING OUT OF
THE APARTMENT BUT THAT IS WHAT
SHE HEARD AND MR. GOSS ALSO
HEARD IT AND THE ONLY REAL TOUCH
COMES FROM THAT CONFESSION, BY
MR. WALKER, WHICH IS PART OF THE
SECOND ARGUMENT WHERE THE COURT
SUMMARILY DENIED THE ISSUE.
GOING BACK TO THE ISSUE OF
PREJUDICE, DURING THE --
>> WHO YOU DO WE KNOW -- IN THIS
CASE OBVIOUSLY, THEY WENT AFTER
HIM, AND PICKED HIM UP AND PUT
HIM IN THE TRUNK OF THE CAR.
SO HOW DO WE HAVE THE TESTIMONY
IN THE RECORD.
>> THROUGH MR. WALKER'S
INTERVIEW TO AGENT HERERA AND
THE OTHER AGENT, THIS IS WHERE
THE TESTIMONY COMES FROM AND
THERE IS NO DIRECT EYEWITNESS
TESTIMONY AS TO THE BLOOD ON THE
STAIRWELL, APPARENT BLOOD
STAINS... AND, JOE GIBSON DIDN'T
TESTIFY AT THIS --
>> I GUESS, FIRST OF ALL, DIDN'T
THE DEFENSE ATTORNEY OBJECT TO
PHOTOGRAPHS OF THE BLOOD STAINS?
>> HIS -- WHAT HAD HAPPENED IS,
THE EVIDENCE -- APPARENT
EVIDENCE HAD COME IN, THE RECORD
ON APPEAL ON PAGE 1158 TO 1160
AND HE AT THAT POINT SAID, NO
OBJECTION, SUBJECT TO BEING TIED
IN.
BY THAT TIME, THAT EVIDENCE WAS
ALREADY THERE IN FRONT OF THE
JURY AND THEY HEARD ABOUT THE
BLOOD STAINS ON THE STAIRWELL
AND THE COURT TALKS ABOUT
RELEVANCE AND THE COURT STARTS
QUESTIONING THE PROSECUTION ON,

YOU KNOW, HOW IS IT RELEVANT AND COMING IN, AND, YOU KNOW, THE PROSECUTOR TALKS AT THAT POINT ABOUT MR. GOSS HAVING ALREADY TESTIFIED ABOUT THIS.
AT THAT POINT, TRIAL COUNSEL SAYS, JUDGE I'M GOING TO MOVE FOR A MISTRIAL, YOU KNOW, BASED ON ALL THE EVIDENCE THAT ALREADY HAD COME IN THROUGH MR. GOSS AND OTHER WITNESSES ABOUT THE APPARENT BLOOD STAINS AND, THE TRIAL COURT SAID, DID YOU OBJECT AT THAT TIME, AND HE SAID NO.
AND, THE TRIAL COURT SAYS TO HIM SPECIFICALLY, WELL, IT IS WAIVED UNLESS IT IS FUNDAMENTAL ERROR AND HE DIDN'T TIMELY OBJECT AND IT WASN'T PRESERVED.
>> IS THAT HOW WE TREAT IT ON DIRECT APPEAL.
>> ON DIRECT APPEAL THE COURT MADE A FINDING THE COURT HADN'T ABUSED ITS DISCRETION IN ALLOWING THE EVIDENCE IN, THERE WAS NO ARGUMENT BY THE STATE OF FLORIDA ABOUT THE --
>> SO, I GUESS -- HAVEN'T -- WE ALREADY RULED THAT THE EVIDENCE IS RELEVANT AND ASSUMED THERE WAS A TIMELY OBJECTION AND I'M HAVING A HARD TIME UNDERSTANDING HOW, IF WE HAVE DEALT WITH THIS AND SAID IT WAS RELEVANT, WASN'T ABUSE OF DISCRETION, WHY WOULD YOU BE ENTITLED TO AN EVIDENTIARY HEARING?
TO DO WHAT?
>> ENTITLES THE EVIDENTIARY HEARING TO PUT TRIAL COUNSEL ON THE STAND AND ASK WHY THERE WAS --
>> LET'S ASSUME THAT HE GOES, WELL, I DID OBJECT AND THE --
NOW, IF WE DECIDE HERE, WHAT WE SAID ON DIRECT APPEAL IS THE

FACT THAT IT IS RELEVANT
EVIDENCE, THEN, AS A MATTER OF
LAW, THERE IS NO PREJUDICE AND
SO IT IS PROPERLY, SUMMARILY
DENIED AND IF YOU -- I KNOW YOU
HAVE YOUR OTHER CLAIM BUT IT
JUST DOESN'T STRIKE ME AS EVEN
IF HE MADE THE PROPER OBJECTION
OR WHATEVER THAT A JUDGE WOULD
HAVE SAID, NO WE'RE EXCLUDING
THIS AND WE'VE SAID IT WAS
RELEVANT, HE DIDN'T ABUSE HIS
DISCRETION.
>> RIGHT.
THE COURT SAID THAT THE TRIAL
COURT AT THE TIME HAD NOT ABUSED
ITS DISCRETION.
>> IN OUR CASE LAW, THAT IS THEN
-- PROCEDURALLY BARRED THAT YOU
CAN CLAIM INEFFECTIVE, DEFICIENT
PERFORMANCE BUT PREJUDICE,
UNDERMINING CONFIDENCE IN THE
OUTCOME IS LEGALLY ESTABLISHED
THAT IT WAS RELEVANT.
AM I MISSING SOMETHING?
AT LAST THE SECOND PRONG.
>> NOT THE DIRECT APPEAL YOUR
HONOR, MY ARGUMENT IS WHEN THE
-- WHEN PREJUDICE THAT THE
PROSECUTOR WITHOUT, YOU KNOW,
TRIAL COUNSEL PREVENTING HIM TO
DO SO GETS TO PAINT THIS
HORRIFIC AND GRUESOME PICTURE OF
THE VICTIM TRYING TO RUN AND
ESCAPE FOR HIS LIFE AND TALKS
ABOUT IT DURING THE CONFERENCE
AND DURING CLOSING ARGUMENTS
ABOUT HOW THIS MAN TRIES TO
ESCAPE AND RUN FOR HIS LIFE.
>> THAT IS WHAT HAPPENED.
ARE YOU SAYING -- DO YOU HAVE
EXPERTS, SOMETHING THAT WOULD
PAINT -- SAY THAT IS NOT HOW THE
CRIME OCCURRED?
I MEAN, IS THAT OFFERED AT THE
HUFF HEARING?

WE HAVE ANOTHER EXPERT TO
EXPLAIN HOW THE DEFENDANT SAID
THIS HAPPENED, DIDN'T REALLY
HAPPEN THAT WAY?
HAPPENED IN SOME WAY THAT ISN'T
HORRIBLE AND GRUESOME.
>> 385-1, PURPORTED TO PRESENT
TESTIMONY AS TO TRIAL COUNSEL
DETERMINING WHETHER OR NOT THERE
WAS REASONABLE STRATEGY FOR HIM
NOT TO YOU KNOW --
>> IT HAS TO MEAN SOMETHING, YOU
DON'T GO THROUGH THESE EXERCISES
TO SAY WELL LET'S GO AND READ
THE WHOLE TRIAL TRANSCRIPT AND
SAY I WOULD HAVE OBJECTED HERE.
WE HAVE TO LOOK AT IT IN A
PRACTICAL SENSE.
WHAT UNDERMIND OR WHAT COULD YOU
POSSIBLY SAY WOULD UNDERMIND
CONFIDENCE IN THE JURY'S FINDING
OF GUILTY OF FIRST DEGREE MURDER
OF THE VICTIM?
WHAT IS THE PICTURE, YOU HAVE
THERE SHOULD BE AN EVIDENTIARY
HEARING AND, THE JUDGE SAID THE
BLOODY EVIDENCE SHOULDN'T HAVE
COME IN, THEN WHAT?
WHAT IS THE NEW PICTURE?
DID YOU OFFER ANYTHING OR SAY
THEY DIDN'T HIRE EXPERTS THAT
WOULD HAVE CHALLENGED THIS BLOOD
EVIDENCE?
THERE WAS SOME OTHER THEORY OF
THE CRIME THAT WASN'T DEVELOPED.
>> JUDGE, THERE WAS AN
EVIDENTIARY HEARING AND NO
CHALLENGE FROM THE EVIDENCE
BECAUSE THERE WAS NO DNA TESTING
DONE OF THE BLOOD EVIDENCE AT
THE ORIGINAL TRIAL.
>> WAS THERE ANY -- DID THE
JUDGE GIVE YOU AN EVIDENTIARY
HEARING ON ANY OF THE GUILT
PHASE ISSUES?
>> NO, YOUR HONOR.

>> THESE WERE THE ONLY TWO ISSUES YOU ARE BRINGING BEFORE US, THAT YOU RAISED?
>> RIGHT.
AND IF I MISSPOKE HAVES AN ISSUE OF SHACKLING --
>> GOING TO THE DEFENDANT'S GUILT.
THIS IS IT.
THE BLOOD AND CONFESSION THEY SHOULD HAVE BROUGHT IN THE EVIDENCE OF -- THAT HE WAS ON DRUGS, BEFORE THE JURY, NOT JUST BEFORE THE JUDGE.
>> THAT'S CORRECT, YOUR HONOR AND THE SECOND PART OF MY ARGUMENT I WOULD RELY ON MY BRIEF WITH RESPECT TO THE FACT THAT THE TRIAL COUNSEL FAILED TO ARGUE THE INVOLUNTARINESS OF THE CONFESSION BY PUTTING ON DR. BERNSTEIN TO PROVE TO THE JURY IN ACCORDANCE WITH FLORIDA STANDARD JURY INSTRUCTION 3.9E IT WASN'T VOLUNTARY BECAUSE HE WAS UNDER THE INFLUENCE OF DRUGS AND SLEEP-DEPRIVED AND IT WAS SOMETHING TRIAL COUNSEL SHOULD HAVE ARGUED TO THE JURY, AS CONFESSION WAS THE MAIN PIECE OF EVIDENCE IN THIS CASE TO CONVICT MR. WALKER.
THANK YOU.
>> MAY IT PLEASE THE COUR BARBARA DAVIS, I REPRESENT THE STATE OF FLORIDA, UNLESS THERE ARE QUESTION ON THE GUILT PHASE ISSUES I WOULD RELY ON TRIAL COURT ORDER, PAGES 21-22 ON THE PHOTOS AND 17 TO 19 AND 26 ON WHETHER A DEFENSE COUNSEL MUST PRESENT THE MOTION TO SUPPRESS IN FRONT OF THE JURY AND ALSO NOTING THE TRIAL COURT FOUND THE CLAIM LEGALLY INSUFFICIENT AND NEVER LED TO THE 3851

DR. BERNSTEIN SHOULD HAVE
TESTIFIED, IT WAS GENERALLY
DEFENSE COUNSEL SHOULD HAVE DONE
WHAT HE HAD DONE AT A THREE DAY
SUPPRESSION HEARING AND THE
TRIAL JUDGE FOUND IT TOTALLY
VOLUNTARY, AN ISSUE ON APPEAL.
I'D LIKE TO GO STRAIGHT TO THE
CROSS-APPEAL, STATE'S
CROSS-APPEAL.
THE TRIAL JUDGE GRANTED THE
DEFENDANT A NEW PENALTY PHASE
AND, IT IS THE STATE'S POSITION
A DE NOVO REVIEW OF PARTICULARLY
THE PREJUDICED... WILL SHOW HE
DID NOT APPLY STRICKLAND
PROPERLY.
TWO STAGES OF THE JUDGE'S ORDER
HE STATES, PAGES 4, AND 13, HE
STATES THAT IN ASSESSING
PREJUDICE UNDER STRICKLAND YOU
REWEIGH THE EVIDENCE AND
AGGRAVATION AGAINST THE TOTALITY
OF THE MITIGATION PRESENTED
DURING THE POSTCONVICTION
EVIDENTIARY HEARING.
THAT IS NOT THE STANDARD.
STRICKLAND SETS OUT... YOU DON'T
CONSIDER ANYTHING IN A VACUUM.
STRICKLAND SETS OUT A FORMULA,
AN EQUATION, YOU HAVE X, Y, Z.
AND, THE RECENT SUPREME COURT,
U.S. SUPREME COURT CASES THE
STATE CITED IN THE BRIEFS,
CULLEN VERSUS PINHOLSTER, SETS
FORTH EXACTLY WHAT A TRIAL JUDGE
MUST DO, AND THESE CASES, BOTH
CASES, ARE VERY SIMILAR TO OUR
CASE.
THEY SAY PARTICULARLY IN WONG,
YOU... THE FIRST PART OF THE
EQUATION, YOU MUST CONSIDER ALL
RELEVANT EVIDENCE.
YOU START WITH THE MITIGATING
EVIDENCE, WHICH WAS PRESENTED AT
THE PENALTY PHASE AND RESULT

THEREON.
WE HAD MITIGATION PRESENTED, AN INVESTIGATION DONE, THERE WAS A 7-5 RECOMMENDATION.
>> I THOUGHT ONE OF THE PROBLEMS WAS THAT THERE WAS NOT SUFFICIENT INVESTIGATION, THAT NO RECORDS, SCHOOL RECORDS AND MEDICAL RECORDS, AND THOSE KINDS OF THINGS, WERE IN FACT INVESTIGATED AND USED DURING THE PENALTY PHASE.
>> THERE'S THE VACUUM.
SO IF YOU DON'T LOOK AT -- THAT IS X, X IS, YOU LOOK AT THE PENALTY PHASE, HERE'S WHAT HAPPENED AND WE LOOK AT WHAT HAPPENED AT THE EVIDENTIARY HEARING AND DON'T JUST LOOK AT THE MITIGATION THAT WAS PRESENTED AT THE EVIDENTIARY HEARING, YOU LOOK AT PINHOLSTER AND WONG AND IT IS ALL THE MITIGATION, WHAT COULD BE CONSIDERED MITIGATION, PLUS, ALL THE CROSS-EXAMINATION, OPENING THE DOOR TO THE NEGATIVE INFORMATION, WHAT ELSE CAME OUT AT THAT EVIDENTIARY HEARING THAT THE STATE COULD PRESENT.
AS FAR AS WHAT WAS PRESENTED AT THE EVIDENTIARY HEARING, WHICH WAS TOTALLY INCONSISTENT WITH THE STRATEGY OF HUMANIZING THE DEFENDANT, HERE'S WHAT WE GOT.
WE GOT A DEFENDANT WHO HAD CONDUCT DISORDER?
SCHOOL.
WE HAVE A DEFENDANT WHO WAS REFERRED TO, THE COUNSELING BECAUSE HE WAS A JUVENILE DELINQUENT AND THAT'S WHY HE WENT TO COUNSELING.
HE WAS AT AGE 15, LEFT SCHOOL, AND JOINED A MOTORCYCLE GANG THAT WAS BOMBING AND SHOOTING

PEOPLE AND MAKING BOMBS.
JUNE RIEBERT, THE LITTLE OLD
LADY THAT SAID FROM 1998 TO 2000
HE WAS NOT DOING DRUGS AND HE
WAS A WONDERFUL PERSON AND HER
SON WAS THE CAPTAIN OF THE
MOTORCYCLE GANG WHO DRAFTED THE
DEFENDANT INTO THIS GANG.
FROM THE AGE OF 15 UNTIL THIS
MURDER HAPPENED WHEN HE WAS 33
YEARS OLD, THE WITNESSES THEY
FRIEND AT THE EVIDENTIARY
HEARING, ANITA MORRIS HADN'T
SEEN HIM FOR 18 YEARS.
MR. WALKER WAS A COMPLETE,
RUNNING FROM THE LAW, IN AND OUT
OF PRISON, MOTORCYCLE GANGS,
METH DEALER, DRUG ADDICT, WE
KNEW A LITTLE BIT OF THIS IN THE
PENALTY PHASE BUT THE DEFENSE
COUNSEL, AT THE PENALTY PHASE
HAD TO SANITIZE TO WHERE
MR. WALKER WAS BIPOLAR,
METHAMPHETEMINES EXACERBATE THAT
BUT LOOK WHAT A NICE GUY HE WAS,
HE PROTECTED THE CO-DEFENDANT
WHEN HE WAS CAUGHT, HE WAS
CRYING, THE GOOD SAMARITAN CAME
AND GOT HIM.
HE WAS SO NICE TO THE GOOD
SAMARITAN AND SAVED HIM AND
KWONTD WITH THE POLICE.
HE SHOWED A LOT OF REMORSE.
THAT PENALTY PHASE STRATEGY GOT
A VOTE OF 7-5.
SO NOW WHAT WE'LL DO IN THE
PENALTY PHASE IS BRING IN
MR. WALKER, THE LOST SOUL,
VIOLENT PERSON, WHO BEAT UP THE
WEEK BEFORE, WAS BEATING UP
MR. DIORIA AT THE EVIDENTIARY
HEARING, THEY DID
METHAMPHETEMINES, THEY WERE
SPEED FREAKS, BUT HE STOPPED
HANGING AROUND MR. WALKER
BECAUSE MR. WALKER WAS BEATING

UP PEOPLE.
MR. WALKER THE DAY BEFORE HE KILLED DAVID HAMMOND HAD GONE AND BEATS UP ANOTHER PERSON IN HIS METH RING.
HE WAS THE ENFORCER AND HE WAS THE HIT MAN AND THEN, THEY...
>> LET ME ASK YOU.
I KNOW YOU HAVE GONE ON A LOT ABOUT MR. WALKER AND HIS BACKGROUND.
DID THE TRIAL COUNSEL HAVE THIS INFORMATION AND... IS YOUR ARGUMENT THAT WITH THIS INFORMATION COUNSEL MADE SOME STRATEGIC DECISION NOT TO PUT ON THAT KIND OF INFORMATION OR IS THIS NEW INFORMATION THAT WE ARE GETTING AT THE EVIDENTIARY HEARING, TRIAL COUNSEL NEVER KNEW ABOUT OR INVESTIGATED?
>> NO, HERE'S WHAT TRIAL COUNSEL DID AND TRIAL COUNSEL HIT A DEAD END.
HIS STRATEGY -- AND HE HAD MANY CONVERSATIONS WITH THE DEFENDANT -- WAS TO TRY TO SAVE HIS LIFE.
THIS IS AN AWFUL, AWFUL GUILT PHASE CASE.
>> COULD YOU ANSWER HER QUESTION?
IT IS AN IMPORTANT QUESTION.
>> WHAT HE DID.
YES.
SO THE DEFENDANT --
>> THE QUESTION WAS, DID THE TRIAL ATTORNEY ASK THAT INFORMATION THAT YOU JUST TOLD US, AND MADE A DECISION NOT TO USE THAT INFORMATION OR IS THIS NEW INFORMATION WE ARE -- HE'S GETTING AT THE EVIDENTIARY HEARING?
>> THE DEFENDANT TOLD TRIAL COUNSEL HIS PAST HISTORY WAS NOT GOOD.

HIS SCHOOL RECORDS WERE NOT
GOOD.
HE WOULD NOT FIND ANYTHING
IMPORTANT OR HUMANIZING IN HIS
SCHOOL RECORDS.
HE SAID HIS SCHOOL RECORDS WERE
AWFUL, HE KNEW ABOUT THE DRUGS,
HE KNEW ABOUT... I'M NOT SURE IF
IT IS IN THE RECORD THAT HE KNEW
ABOUT THE GANGS, BUT THE
DEFENDANT TOLD MR... THE TRIAL
COUNSEL ABOUT ALL OF HIS SORDID
PAST.
I MEAN, THAT HE WAS IN THE DRUG
RING, THAT HE WAS IN AND OUT OF
PRISON --
>> I THINK --
>> WHEN IT CAME TO FLORIDA.
>> THIS IS THE PROBLEM.
FIRST OF ALL, YOU MAKE A GOOD
ARGUMENT AND IF THE -- AFTER THE
EVIDENTIARY HEARING THE TRIAL
JUDGE HAD DENIED RELIEF, WHICH
MOST OFTEN HAPPENS, MOST OFTEN
ON THE OTHER SIDE OF THIS, WE'D
BE SAYING WELL THAT IS, YOU
KNOW, THE JUDGE WAS THERE,
VAELTDZ EVERYTHING AND MADE
CERTAIN DECISIONS BUT THIS JUDGE
BASICALLY LOOKED AND SAW AS PART
OF THE INVESTIGATION AS I
UNDERSTAND IT, HE HAD PHONE
CONVERSATIONS, AND HE NEVER
SOUGHT TO OBTAIN ANY MEDICAL,
EDUCATIONAL, CRIMINAL, DRUG
TREATMENT OR SOCIAL SERVICE
RECORDS AND I DON'T THINK WE
HAVE ANY LAW THAT SAYS WHEN A
DEFENDANT -- I DON'T THINK YOU
WILL FIND ANYTHING IN MY SCHOOL
RECORDS THAT THAT WOULD BE A
REASON WHY SOMEBODY WOULDN'T GET
THE RECORDS.
IS THAT WHAT HE SAID?
I DIDN'T GET MEDICAL,
EDUCATIONAL, CRIMINAL, SOCIAL

SERVICE RECORDS BECAUSE THE
DEFENDANT TOLD ME THERE WOULDN'T
BE ANYTHING HELPFUL IN THERE?
>> HE DID TESTIFY TO THAT AS TO
THE SCHOOL RECORDS.
LET'S FOCUS...
>> BUT ISN'T THE REALITY, THE
DEFENDANT ISN'T GOING TO
NECESSARILY KNOW WHAT IS IN HIS
SCHOOL RECORDS.
I MEAN...
>> HE KNOWS IT IS BAD.
HE KNOWS HE DIDN'T BEHAVE WELL
IN SCHOOL BUT WHAT IS REFLECTED
IN THE SCHOOL RECORDS, THE ONLY
WAY YOU KNOW THAT IS BY LOOKING
AT IT AND SHOULDN'T THE LAWYER
LOOK AT THOSE RECORDS AND...
JUST TO SEE WHAT IS THERE?
>> IF I MAY I'D LIKE TO FOCUS ON
PREJUDICE AND WANT TO ANSWER
JUDGE CONVINCE'S QUESTION
QUICKLY, AS TO WHAT HE DID DO.
HE TALKED EXTENSIVELY TO THE
DEFENDANT AND TO THE SISTER WHO
SAID...
>> HE TALKED TO THE DEFENDANT
YOU'RE REAL NOT BEFORE THE COURT
SAYING THAT IS SOMETHING HE
OUGHT TO GET... PUT A POINT IN
HIS COLUMN, BECAUSE HE TALKED TO
HIS CLIENT.
>> HE TESTIFIED THE DEFENDANT
WOULD NOT GIVE HIM INFORMATION
BUT IF I MAY, SO, HE HAD THE
REPORTS --
>> DID HE HIGHER... HIRE AN
INVESTIGATOR.
>> NOT FOR THE PENALTY PHASE.
>> CO-COUNSEL?
>> LET'S -- HE DID NOT.
BUT, IN BREVARD COUNTY THEY
DON'T -- LOOK AT WYDELL EVANS.
>> CALM DOWN FOR A MOMENT.
IT SEEMS TO ME WHAT YOUR ANSWER
REALLY IS, THIS IS NOT

INFORMATION THE TRIAL ATTORNEY HAD AND YOU TELL US, THIS... THE INFORMATION THAT YOU'VE GOT AT THE EVIDENTIARY HEARING IS NOT INFORMATION THAT THE TRIAL ATTORNEY HAD, WHEN HE MADE HIS EVALUATION, WHEN HE WAS GOING TO PUT ON AT THE PENALTY PHASE.
>> HE HAD THE RECORDS OF GRIEF COUNSELING IN HIS FILE AND HE FILED THAT BEFORE THE SENTENCING HEARING.
THAT HAS ABOUT THE CHILDHOOD CONDUCT DISORDER, AND THIS COUNSELING AT AGE 15, THAT WAS AFTER HE WAS IN -- ON JUVENILE PROBATION, AND, THAT IS THE RECORD THEY KEEP SAYING, WELL, HE HAD THAT, AND SHOULD HAVE EXPLORED THAT FURTHER AND HAD THE RECORDS FROM CIRCLES OF CARE WHICH SHOWED BIPOLAR AFTER HE WAS ARRESTED AND HIRED TWO MENTAL HEALTH EXPERTS TO DO AN EVALUATION, CALLED SEVERAL FAMILY MEMBERS, LOOKED FOR FRIENDS OUTSIDE, IN BREVARD COUNTY.
NOW, AS FAR AS PREJUDICE THOUGH, LET'S LOOK AND SEE, WHAT IF HE HAD DONE THAT AND THAT IS WHERE THE TRIAL JUDGE DEVIATED FROM THE STRICKLAND STANDARD AND WE HAVE TO LOOK AT, WHAT IF HE HAD DONE ALL THAT?
WHAT IS THE RESULT AND IF WE TAKE EVERYTHING, PINHOLSTER AND WONG AND LOOK AT WYDELL EVANS, ANOTHER CASE OUT OF THE COURT, WHEREBY PRESENTING THESE WITNESSES, YOU OPEN THE DOOR UP TO SO MUCH NEGATIVE INFORMATION AND VIOLENCE IN THIS DEFENDANT'S PAST...
>> DON'T THOSE CASES -- AND I'M FAMILIAR WITH THESE CASE,

USUALLY THIS IS A PROBLEM WHEN
YOU GET TO PREJUDICE, WHEN
SOMEONE DOESN'T OBTAIN THE
INFORMATION YOU CAN'T MAKE A
REASONABLE STRATEGIC CHOICE.
IF THEY OBTAIN THE INFORMATION
AND THEN YOU LOOK AND SAY, WELL,
NOW, IS... I DECIDED NOT TO PUT
IT ON, THEN YOU WILL LOOK AT
PREJUDICE IN A DIFFERENT WAY.
DO YOU DISAGREE WITH THAT?
IN OTHER WORDS, THE FIRST PRONG
HAS NOTHING TO DO WITH THE
SECOND PRONG AND YOU GIVE THE
DEFERENCE TO AN ATTORNEY, WHO
HAS DONE THE REASONABLE
INVESTIGATION, OBTAINED THE
INFORMATION, AND SAYS, NOPE, I'M
NOT GOING TO PROCEED DOWN THIS
PATH, I'M PROCEEDING DOWN THAT
PATH.
>> AND THAT'S EXACTLY WHAT THE
TRIAL JUDGE DID.
HE KEPT LOOKING AT WHAT COUNSEL
DIDN'T DO.
THE MOTHER AND THE FATHER
WOULDN'T HELP HIM, BUT HE SHOULD
HAVE GOTTEN INFORMATION FROM
THEM.
THE MOTHER AND THE FATHER,
SISTER, FAMILY, THEY WEREN'T AT
THE EVIDENTIARY HEARING.
THERE WAS NO INFORMATION THAT
THE -- AT THE EVIDENTIARY
HEARING THAT COULD HAVE BEEN
GLEANED FROM THEM.
>> BUT YOUR MAIN POINT IF I
UNDERSTAND CORRECTLY IS IF HE
HAD INVESTIGATED ALL OF THIS,
THE INVESTIGATION TO BEAT ALL
INVESTIGATIONS, WHAT HE WOULD
HAVE FOUND WOULD NOT HAVE BEEN
HELPFUL IN OBTAINING A SENTENCE
OTHER THAN A DEATH SENTENCE FOR
THIS DEFENDANT.
IT WOULD NOT... IT IS NOT -- AND

THEN WHAT HE PUT ON WHICH WAS
SKIMPY BUT IS BETTER THAN THE
REALITY OF THIS PARTICULAR
INDIVIDUAL'S LIFE THAT THIS
INFORMATION REVEALED.
>> THAT IS PRECISELY WHAT I'M
SAYING.
THANK YOU.
BECAUSE THAT IS WHAT STRICKLAND
SAYS YOU MUST DO.
YOU MOST LOOK AT EVERYTHING
PRESENTED AT THE PENALTY PHASE
AND THE EVIDENTIARY HEARING AND
MAKE A DETERMINATION NOW, WE'VE
GOT ALL OF THIS.
WOULD THAT HAVE GIVEN US BETTER
THAN 7-5?
>> WHERE IS THE EVIDENCE IN THE
RECORD THAT SUPPORTS THAT, THAT
IT WOULDN'T HAVE MADE ANY
DIFFERENCE?
>> THAT IS WHAT THE TRIAL JUDGE
MUST DETERMINE IN HIS PREJUDICE
STANDARD AND HE DIDN'T USE THE
RIGHT STRICKLAND ANALYSIS
BECAUSE HE SAID ON THOSE PAGES,
HE WAS LOOKING AT THE
EVIDENTIARY HEARING TESTIMONY
SAYING, WELL, IF THIS GOOD STUFF
-- AND CHERRY-PICKED,
CHERRY-PICKING INFORMATION AND
HE DID NOT DEAL WITH, NUMBER ONE
THE NEGATIVE INFORMATION WHICH
YOU HAVE TO GO EX-PENALTY PHASE
WHY, WHAT IS PRESENTED AND Z,
PUT IT ALL TOGETHER, WHAT WE
HAVE NOW, WOULD IT HAVE CHANGED
THE 7-5 RECOMMENDATION.
>> IF HE... BECAUSE THE JUDGE
SEEMS TO HAVE DONE A VERY
THOUGHTFUL ORDER.
IF YOU ARE RIGHT THAT THERE...
WHAT HE FAILED TO DO IS CONSIDER
NEGATIVE EVIDENCE, BECAUSE,
AGAIN, HE HEARD -- THOUGHT IT
WAS POWERFUL, AT LEAST THE WAY

WE EVALUATED IT, WOULD WE SEND
IT BACK TO HIM TO SAY, WOULD YOU
ALSO LOOK AND MAKE SURE YOU LOOK
AT THE NEGATIVE OR... WE CAN'T
-- HOW DO WE MAKE AN INDEPENDENT
JUDGMENT IF THE JUDGE HASN'T
THAT THE NEGATIVE WOULDN'T HAVE
BEEN HELPFUL?
>> WHAT THE COURT DID IN WONG
AND PINHOLSTER, YOU DO A DE NOVO
REVIEW AND LOOK AT EVERYTHING
AND FOLLOW THE CORRECT PROCESS
WHICH IS WHAT WAS PRESENTED AT
THE PENALTY PHASE AND GOT A 7-5,
NOW WE HAVE ALL THIS BAGGAGE
HERE AND EVERYTHING THAT WOULD
HAVE BEEN EXPOSED IN
CROSS-EXAMINATION, THAT IS
PINHOLSTER AND THEN YOU LOOK AT
THAT AND SAY...
>> THOSE ARE ALL CASES WHERE THE
DEFENSE ATTORNEY MAY -- DIDN'T
EVEN KNOW THE OTHER GOOD
INFORMATION EXISTED?
OR THEY MADE REASONABLE
STRATEGIC CHOICES TO KEEP IT
OUT?
WHICH ONE IS IT?
THOSE CASES.
>> THEY ARE -- THEY ARE A LITTLE
BIT DIFFERENT BUT THE ISSUE IS,
ON THE PREJUDICE ANALYSIS...
>> I'M ASKING YOU, ARE THOSE
CASES WHERE THE DEFENSE ATTORNEY
INVESTIGATED ALL THE OTHER
INFORMATION AND MADE A STRATEGIC
DECISION NOT TO PUT ON
WITNESSES?
>> I WOULD SAY NO.
BECAUSE I'M LOOKING AT WONG AND
IT SAYS THAT IN THE PENALTY
PHASE, THERE WAS MITIGATION
PRESENTED AND IT WAS SUBSTANTIAL
AND IN PINHOLSTER...
>> THAT IS NOT REALLY
RESPONSIVE.

VERY SIMPLE QUESTION.
AND THE QUESTION WAS, DO THOSE CASES INVOLVE SITUATIONS WHERE THE LAWYER KNEW OF WHAT IS ALLEGEDLY THIS NEW INFORMATION AND DECIDED NOT TO USE IT?
IT'S NOT A QUESTION WHETHER YOU PUT ON MITIGATION OR NOT.
THE QUESTION IS DIRECTED SPECIFICALLY TO WHAT IS NOW PRESENTED, DID THE LAWYER KNOW OF THAT BEFORE AND AS A MATTER OF STRATEGY, NOT USE IT OR DID NOT HAVE IT?
THAT IS A VERY SIMPLE, STRAIGHTFORWARD QUESTION.
>> SO IN OUR CASE, I'M NOT SURE WHAT HE KNEW.
>> WE KNOW IN THIS CASE, HE DIDN'T HAVE THE MATERIAL, CORRECT?
>> OH, NO, HE HAD THE GRIEF COUNSELING THAT TALKED ABOUT THE CONDUCT DISORDER AND THE COUNSELING.
>> DID HE HAVE SCHOOL RECORDS, SOCIAL SERVICE RECORDS?
WE REALLY NEED TO BE ABLE TO CONVERSE ON WHAT THE LAW IS, AND AT LEAST AGREE ON THE FACT AND THEN WE CAN DISCUSS THE LAW BUT WE'RE NOT EVEN GETTING THE SAME PICTURE IN THIS CASE OF WHAT THE FACTS ARE.
>> OKAY, LET'S ASSUME HE DIDN'T HAVE ANY OF THAT.
LET'S ASSUME HE DIDN'T HAVE ANY OF THAT.
AND... BUT THE INDEPENDENT ANALYSIS ON PREJUDICE IS, IF HE HAD ALL OF THAT WOULD... IT WOULD HAVE HAD MADE -- WOULD IT HAVE MADE A DIFFERENCE?
WOULD IT HAVE SHAKEN THE CONFIDENCE IN THE OUTCOMING UP.
>> YOUR BASIC ARGUMENT IS WHEN

WE LOOK AT THIS JUDGE'S ORDER
WE'LL FIND THAT THE JUDGE
INSTEAD OF LOOKING AT THE WHOLE
PICTURE ON MITIGATION, SAID,
WELL THERE WAS THIS OTHER GOOD
INFORMATION BUT SOMEHOW THE
JUDGE WHO HEARD THE WHOLE
EVIDENTIARY HEARING AND HAD --
WROTE A LONG ORDER DIDN'T
CONSIDER WHAT THE EFFECT MIGHT
HAVE BEEN ON THE BAD STUFF THAT
WOULD COME IN?
THAT IS YOUR BASIC ARGUMENT.
>> PRECISELY AND HE DID NOT GO
BACK AND LOOK AT WHAT ACTUALLY
HAPPENED AT THE PENALTY PHASE
AND THE RESULT OF THAT AND MAKE
A DETERMINATION IS CONFIDENCE IN
THE OUTCOME CHANGED?
NOW HE DID MENTION AT ONE POINT
WHEN HE TALKED ABOUT CHRIS
WALKER TESTIFYING THAT CHRIS
WALKER TESTIFIED ABOUT THE
MOTORCYCLE GANG WHERE DEFENDANT
LEFT SCHOOL AND HE DID RECOGNIZE
THAT BUT HE NEVER WEIGHED IT AND
TOOK IT ALL LIKE STRICKLAND SAYS
AND REWEIGHED EVERYTHING TO SEE
IF THERE WAS CONFIDENCE IN THE
OUTCOME...
>> YOU ARE NOW DOWN TO A MINUTE.
I'M GOING TO GIVE YOU AN EXTRA
MINUTE BECAUSE WE HELPED YOU USE
THAT UP BUT I JUST...
>> I THINK THAT JUSTICE CANADY
AND JUSTICE PARIENTE PHRASE MADE
ARGUMENT, ASIDE FROM THE
DEFICIENCY, LOOK AT THE
PREJUDICE AND TOOK THE
STRICKLAND ANALYSIS OF DE NOVO
REVIEW IT WILL SHOW THE 7-5
RECOMMENDATION COUNSEL GOT, THAT
IS AS GOOD AS IT WILL GET.
THANK YOU.
>> POSTCONVICTION COURT GOT IT
RIGHT.

IN FACT IN THIS CASE, THE
HONORABLE CHARLES HOLCOMBE WAS
NOT ONLY THE POST QUICK COURT IN
THIS CASE HE WAS ALSO THE TRIAL
COURT JUDGE.
>> WOULD YOU ADDRESS... WHY IS
THE STATE NOT CORRECT?
THE STATE IS SAYING TO US, TAKES
ALL OF THIS INFORMATION.
SO WHAT?
WHAT WILL YOU FIND OUT?
IT IS EVEN A WORSE PICTURE THAN
BEFORE.
THAT IS WHERE THE STATE IS
GOING.
NO PREJUDICE HERE.
THEY HAD SOME OF THE BASIC
INFORMATION, THEY PRESENTED
MITIGATION AND SO WHAT?
MORE EVIDENCE, THIS IS NOT A
GAME ON EVIDENCE, IT IS THE
BOTTOM LINE, IS THE CONFIDENCE
UNDERMINED.
I'D LIKE YOU TO RESPOND TO THAT.
>> THE CONFIDENCE IS UNDERMINED
AS THE POSTCONVICTION COURT
STATES IN THE ORDER AND THE
POSTCONVICTION COURT IN ITS
ORDER WRITES IT LOOKS AT THE
PENALTY PHASE EVIDENCE, IN HIS
ORDER, THE PENALTY PHASE COURT
TALKS ABOUT THE DOCTORS'
TESTIMONY THAT THE COURT FOUND
AS BEING BRIEF AND GENERAL AND
TALKS ABOUT ONLY THE BIPOLAR
DISORDER.
>> IF YOU COULD JUST TAKE IT
DOWN TO... [INAUDIBLE] AT THE
POSTCONVICTION YOU MAINTAIN...
HEARING ALL OF THIS EVIDENCE,
ALL THE THINGS THAT HE HAS DONE,
WHAT IS IT SPECIFICALLY, WHAT
ARE... [INAUDIBLE].
>> CERTAINLY, JUDGE.
MR. WALKER'S ENTIRE LIFE WASN'T
PRESENTED FROM HIS CHILDHOOD

UNTIL THE ARREST.
FIRST AND FOREMOST, MR. WALKER AS GOING TO THE FAMILY WHERE THERE WAS EXTENDED LONGSTANDING SUBSTANCE ABUSE, ALCOHOL ABUSE, AND, ANITA MORRIS...
>> YOU DON'T HAVE ANYTHING ABOUT THAT AT ALL, AT THE PENALTY PHASE.
>> CORRECT, JUDGE.
NOTHING WAS PRESENTED AS TO ALL OF THAT SUBSTANCE ABUSE AND THERE WERE CHILDREN IN THIS HOUSE AND THERE WERE PARTIES AND DRUG PARTIES WHERE IT IS TALKED ABOUT HOW MR. WALKER AS A TODDLER COULD REACH UP AND TAKE THE DRUGS AND ALCOHOL OFF THE TABLE AND THE AUNTS WERE ENCOURAGING THEM TO TAKE DRUGS AND THAT WAS PREVALENT IN HIS CHILDHOOD, THE CONTINUOUS AND LONGSTANDING DRUG AND SUBSTANCE ABUSE WHICH INFLICTED MR. WALKER FROM DAY ONE.
AND, OF COURSE, IT GOT WORSE WITH TIME AND YOU HEARD TESTIMONY FROM MR. CHRISTOPHER WALKER, HIS COUSIN, ABOUT HOW THE... BECAME INVOLVED INTO HIS WIFE AND JEFF REED WAS ONE OF THE INDIVIDUALS WHO WOULD SHOW UP TO THE PARTIES AT THE HOUSE WITH 30, 40 PEOPLE, DRUG PARTIES AND AT THE TIME WHEN HE MET WALKER AND TOOK HIM UNDER HIS WING, HE WAS 12 OR 13 YEARS OLD.
AND, MR. REED WAS ABOUT 30 YEARS OLD.
AND EXPOSES THIS CHILD TO METHAMPHETEMINES AND LIFE OF DRUGS AND VIOLENCE AND HE SEES HIS FAMILY BEATING EACH OTHER AND MOTORCYCLE VIOLENCE AND ALL OF THIS.
>> DID YOU HAVE, THEN AN EXPERT

THAT PUT THAT ALL TOGETHER?
>> YES.
>> AT THE EVIDENTIARY HEARING?
>> YES, DR. MORTON TALKED ABOUT THE SUBSTANCE ABUSE AND EFFECT IT WOULD HAVE, CONSIDERING HOW PREVALENT AND HOW, YOU KNOW, HORRIFIC IT WAS, CONSIDERING HE WAS TAKING ALMOST 17 GRAMS OF METHAMPHETEMINES AT ONE POINT AND THE DOCTOR TALKED ABOUT HOW IT AFFECTS A PERSON'S FUNCTIONING, PARANOIA, THAT IS PREVALENT IN HIS LIFE.
>> BUT, WHAT MS. DAVIS'S ARGUMENT IS, YES, YOU HAVE THAT EVIDENCE.
BUT, WHEN YOU... IT WAS A TWO EDGED SWORD, PUT ON THAT EVIDENCE, THERE WAS GOING TO BE ALL OF THIS HORRIBLE, TERRIBLE EVIDENCE THAT THE JURY WOULD HAVE HEARD AND GIVE US.
WHAT IS THE HORRIBLE, TERRIBLE EVIDENCE THAT WOULD HAVE UNDER CUT PUTTING THE EVIDENCE ON.
>> THERE... MR. WALKER WAS PART OF THE BIKER'S GANG BUT AS I TOLD THE COURT HE WAS BROUGHT IN AT 12 AND 13.
>> I THOUGHT YOU SAID THE JURY KNEW ABOUT THAT ANYWAY, BECAUSE -- DID YOU AT THE ORIGINAL TRIAL HE MENTIONED IT.
>> MR. WALKER MENTIONED TO DR. BERNSTEIN ABOUT HAVING METHAMPHETEMINE ABUSE AT THE TIME OF THE CRIME AND THAT IS WHAT THE SENTENCING COURT FOUND.
>> AND DR. BERNSTEIN WAS PUT ON...
>> AND, THIS JUDGE, WHO EVALUATED DR. BERNSTEIN'S EVIDENCE OF TRIAL, ED IT WAS CURSORY AND... TESTIMONY OR IS IT CUMULATIVE?

CUMULATIVE OF WHAT YOU ARE NOW
TRYING TO PUT ON?
>> IT IS VERY DIFFERENT, JUDGE,
AS THE POSTCONVICTION COURT
CITES, WHERE, IN THAT CASE, IT
IS DISTINGUISHED, AT THE
SENTENCING, AT TRIAL PHASE, THE
COURT FOUND MITIGATION THAT HE
WAS UNDER THE INFLUENCE AT THE
TIME OF THE MURDER AND WHAT WAS
PRESENTED AT POSTCONVICTION WAS
THE LONGSTANDING UNCONTROVERTED,
YOU KNOW, PHYSICAL ABUSE,
SUBSTANCE ABUSE, ALCOHOL ABUSE
IN MR. WALKER'S LIFE AND AS THE
COURT SAID...
>> WAS THIS PART OF THE THE
STATE MAKES REFERENCE TO,
HISTORY GOING BACK TO WHEN THE
DEFENDANT WAS 15 AND THAT
INFORMATION?
DID THAT NOT ACCOUNT FOR,
ACCOMMODATE THAT KIND OF
BACKGROUND?
>> I'M SORRY.
AS THE SENTENCING HEARING OR AT
POSTCONVICTION?
>> NO, THE STATE MAKES THE
ARGUMENT THAT THEY HAD THE
INFORMATION WITH REGARD TO
STUDIES OF -- AND THINGS THAT
WERE DONE WITH REGARD TO THIS
INDIVIDUAL BY THE TIME HE WAS
15.
>> TRIAL COUNSEL DID NOT HAVE
THAT INFORMATION, JUDGE, IN
FACT, TRIAL COUNSEL DID NOT EVEN
HAVE MR. WALKER SIGN A RELEASE
AND DIDN'T HAVE THE SCHOOL
RECORDS.
>> THERE IS NO REPORT THAT GOES
BACK TO THE JUVENILE KINDS OF
SITUATIONS THEY WERE INTO?
HERE, AGAIN, WE HAVE TWO LAWYERS
ARGUING, THAT FACTS DON'T EXIST.
AND WE OUGHT TO BE TALKING ABOUT

THE LAW HERE RATHER THAN IT DOES
OR DOES NOT.
DOES IT EXIST OR DOES IT NOT
EXIST.
>> WHAT TRIAL COUNSEL HAD IN HIS
FILES, THAT HE COULDN'T EVEN
REMEMBER AT POSTCONVICTION WAS
THE WITNESS, WHO WAS A COUNSELOR
WHO WAS APPOINTED BY A JUVENILE
JUDGE SENT IN HIS RECORDS TO
TRIAL COUNSEL AND, YOU KNOW,
ASKED TO RETURN AND IT WAS NEVER
RETURNED AND IT WAS FOUND IN
TRIAL COUNSEL'S POSSESSION AND
HIS FILES YET HE NEVER FOLLOWED
UP AND NEVER CALLED UP THE
COUNSELOR AND FOLLOWED UP WITH
THE JUVENILE PROBATION OFFICER
WHOSE NAME WAS IN THOSE RECORDS
AND INTRODUCED IT BUT NEVER DID
ANY INVESTIGATION INTO IT
BECAUSE ALL OF THE INVESTIGATION
--
>> THOSE RECORDS AND REPORTS DO
NOT AS THE STATE ASSERTS ADDRESS
THE BAD BACKGROUND?
IN ANY WAY?
>> IT DOES TALK ABOUT, YOU
KNOW...
>> IT DOES HAVE SOMETHING TO DO
WITH THOUGH BAD BACKGROUND?
THE LAWYER DID HAVE THAT?
>> ONLY HAD TO DO WITH RESPECT
TO WHAT HE TALKS ABOUT, THE
SUBSTANCE ABUSE AND ALSO WHAT HE
WAS TRYING TO DO TO...
>> YOU STOOD THERE 15 MINUTES
TELLING US ABOUT THE
METHAMPHETEMINES HE'S TAKING.
IS THAT NOT DRUG ABUSE.
>> IT IS BUT IT WAS NEVER
PRESENT TO THE JURY IN THE SENSE
OF HOW BAD OR LONGSTANDING IT
WAS.
>> THAT IS SOMETHING THAT IS
DIFFERENT.

YOU CAN ALWAYS FIND A BETTER
WITNESS.
THE QUESTION IS, WAS THAT
INFORMATION AVAILABLE?
WAS IT USED?
AND YOU ARE SAYING THAT THAT
REPORT WAS USED WITH REGARD TO
THE TRIAL.
THE UNDERLYING TRIAL.
>> IT WAS JUST... ENTERED INTO
EVIDENCE, BUT...
>> THAT IS WHAT YOU DO.
LAWYERS ENTER EVIDENCE, THAT IS
WHAT WE DO.
SO IT WAS ENTERED.
IT IS JUST NOT THE SAME WAY AS
YOU WANTED IT PRESENTED, THROUGH
POSTCONVICTION, IS THAT A FAIR
STATEMENT?
>> YES, YOUR HONOR IT WAS
ENTERED BUT WHEN THE COUNSELOR
TAKES THE STAND AT
POSTCONVICTION HE GIVES IT MORE
OF THE BACKGROUND AND TALKS MORE
ABOUT, YOU KNOW...
>> YOU FOUND WITNESSES TO
ELABORATE ON WHAT WAS PRESENTED
DURING THE TRIAL?
>> AND THAT WITNESS WAS ALWAYS
THERE.
>> THAT IS AGAIN WHAT THE CASE
IS ABOUT.
NOT NEW INFORMATION BUT
ELABORATING AND EXPANDING UPON
THAT WHICH WAS ALREADY BEFORE
THE JURY THROUGH THE FORM OF
THESE REPORTS THAT WERE PLACED
IN EVIDENCE.
>> AND THIS CASE, YOUR HONOR --
>> YES.
>> YES.
I AGREE BUT THE CASE IS ALSO
ABOUT FAILURE TO INVESTIGATE
EVIDENCE THAT WAS ALWAYS THERE
AND READY AND AVAILABLE TO TRIAL
COUNSEL.

AND THE STRATEGY OF HUMANIING
MR. WALKER WAS NOT THE STRATEGY
BY TRIAL COUNSEL, IT WAS -- AND
THE POSTCONVICTION COURT
RECOGNIZES WAS TO SHOW THE
VICTIM WAS A BAD PERSON.
YES, HE TALKS ABOUT, IT IS
IMPORTANT BUT DIDN'T DO
ANYTHING, FIVE SHORT PHONE
CALLS, 175 HOURS OF WORK FOR THE
ENTIRE CASE, THIS WAS HIS
CLIENT'S LIFE AND DIDN'T EVEN
GET BASIC MITIGATION RECORDS,
NONE OF THAT.
HE DIDN'T DO ANY INVESTIGATION.
>> HOW DID THE RECORD... I WANT
TO BE SURE I UNDERSTAND.
THERE IS SOME RECORD, ENTERED
INTO EVIDENCE, THE EVIDENCE,
RECORD THAT MS. DAVIS IS SAYING
NOW WOULD HAVE CONTAINED BAD
STUFF ABOUT THE DEFENDANT.
>> IT TALKS ABOUT, YOU KNOW, THE
YOUNG CHILD, WHO -- HIS
COUNSELOR TRIED TO HELP HIM BUT
HE COULDN'T BUT WHAT HAPPENED
WITH RESPECT TO THE SYSTEM AND
HOW IT FAILED...
>> THE DEFENSE LAWYER PUTS IT IN
EVIDENCE BUT DOES NOTHING WITH
IT TO ARGUE TO THE JURY?
>> NOTHING, JUDGE.
I MEAN, MY ARGUMENT, JUDGE, THAT
MR. STUDSTILL DIDN'T DO ANYTHING
SHORT OF THOSE FEW PHONE CALLS
AND, DR. BERNSTEIN IS THE ONE
WHO GOT THE RECORDS AND DIDN'T
EVEN HAVE A RELEASE SIGNED AND
DIDN'T GET ANY OF THOSE RECORDS,
YOUR HONOR.
>> DID THE REPORT MIRACULOUSLY
GO INTO EVIDENCE?
THERE WAS NO EVIDENCE.
>> IT WAS INTRODUCED BY TRIAL
COUNSEL, YOUR HONOR.
>> I UNDERSTAND BUT THROUGH A

WITNESS?
DOCUMENTS DON'T --
>> THROUGH DR. BERNSTEIN, THE ONE WHO...
>> SO THESE RECORDS WERE PLACED INTO EVIDENCE THROUGH A WITNESS. AND, DID THE WITNESS DISCUSS, QUESTIONS ASKED ABOUT THE REPORT?
>> NOT SPECIFICALLY, JUDGE, MY MEMORY RECALLS DR. BERNSTEIN TALKS ABOUT THERE BEING EVIDENCE IN RECORDS, ABOUT SUBSTANCE ABUSE BUT DR. BERNSTEIN'S MAIN FUNCTION AT THAT PENALTY PHASE WAS TALKING ABOUT BIPOLAR DISORDER AND HIM BEING UNDER THE INFLUENCE OF DRUG ABUSE AND SLEEP DEPRIVATION AT THE TIME OF THE KROIM.
NOT ABOUT THE LONGSTANDING DRUG ABUSE WHICH IS VERY, VERY, YOU KNOW...
>> THAT WAS IN THE REPORT THAT HE RELIED ON?
>> LONGSTANDING DRUG ABUSE, JUDGE?
NOT TO THE EXTENT PRESENTED AT THE POSTCONVICTION.
>> NOT TO THE EXTENT, WE'RE QUALIFYING WORDS AND LAWYERS PLAY WORD GAMES.
WAS IT IN THE REPORT, A SIMPLE, STRAIGHTFORWARD QUESTION.
>> YES.
BUT ONLY FOR THE BRIEF MOMENT IN TIME WHEN HE WAS UNDER THE CARE OF HIS JUVENILE PROBATION OFFICER.
>>... [INAUDIBLE].
>> THE POST QUICK COURT WAS CORRECT, THERE WAS SUBSTANTIAL EVIDENCE FOR THE POST QUICK COURT TO MAKE THIS FINDINGS AND THE COURT RECOGNIZED WE NEED TO GIVE DEFERENCE TO THE

POSTCONVICTION COURTS AND THE
CASE LAW IS CITED, SUPPORTS THE
POSITION THAT YOU KNOW,
MR. WALKER SHOULD BE GRANTED A
NEW PENALTY PHASE BECAUSE THE
TRIAL COUNSEL DIDN'T DO ANYTHING
IN TERMS OF MITIGATION EVIDENCE,
REASONABLE, MEANINGFUL AND NO
STRATEGY CAN OVERCOME THAT WHEN
THE BASIC MITIGATION
INVESTIGATION WAS ALMOST
NOTHING.
I ASK THE COURT TO AFFIRM THE
NEW PENALTY PHASE DECISION BY
THE POSTCONVICTION COURT AND
AFFORD MR. WALKER A NEW TRIAL
BASED ON THE GUILT PHASE ISSUE.
THANK YOU, YOUR HONOR.
>> BRIEFLY I WOULD NOTE THE
SENTENCING ORDER IS ATTACHED TO
THE STATE'S ANSWER BRIEF AND, IF
YOU LOOK AT THE ORDER THAT WAS
ORIGINALLY ENTERED AFTER THE
PENALTY PHASE, YOU WILL SEE THAT
THE JUDGE ADDRESSED THE SERIOUS
BIPOLAR DISORDER, COUNSELING
WHEN HE WAS 15 YEARS OLD AND
PEOPLE AFFECTED THAT WAY TEND TO
SELF-MEDICATE WITH COCAINE AND
METHAMPHETEMINES AND
DR. BERNSTEIN AND THE OTHER
DOCTOR TESTIFIED TO THIS.
THE USE OF THOSE CONTROLLED
SUBSTANCES OVER A PERIOD OF TIME
EXACERBATES BIPOLAR DISORDER.
>> WHERE DID THEY GET THE
DOCTORS?
WERE THEY PEOPLE WHO TREATED HIM
IN JAIL?
>> ONE OF THE --
>> WERE THEY... COUNSEL'S OWN
MENTAL HEALTH EXPERTS.
>> ONE WAS HIRED AND ONE, THE
JAIL PSYCHOLOGIST WITH CIRCLES
OF CARE AND I CAN'T REMEMBER
WHICH IS WHICH.

>> I GUESS YOUR ARGUMENT, WHETHER WE GO TO THE DEFICIENCY OR... YOU WERE SAYING, THE STUFF WOULD HAVE RESULTED IN ALL OF THIS BAD INFORMATION INFORMATION BUT IF THE CIRCLE OF CARE RECORD CAME IN, DID IT COME INTO EVIDENCE.
>> TWO SEPARATE RECORDS, CIRCLES OF CARE AND DR. RAYDONE AND THE CENTER FOR GRIEF COUNSELING WHEN HE WAS YOUNGER.
>> WHICH ONES DID THE COUNSEL HAVE?
>> BOTH.
>> AND WHICH ONES WENT INTO EVIDENCE.
>> BOTH.
>> BUT I THOUGHT YOU SAID THOSE ARE THE ONES THAT WOULD HAVE CONTAINED ALL OF THE BAD STUFF THAT THE STATE COULD HAVE USED TO ARGUE AGAINST THE GOOD STUFF?
>> THAT IS WHAT I NEED TO CLARIFY.
THE CIRCLES OF CARE RECORDS WENT IN AT THE PENALTY PHASE AND THE GRIEF COUNSELING, THE RECORDS WHEN HE WAS YOUNGER WITH THE CONDUCT DISORDER AND ALL THAT, CAME IN ON NOVEMBER 15, WHICH WAS BETWEEN THE SPENCER HEARING AND SENTENCING HEARING AND WERE FILED WITH THE JUDGE ONLY AND THE JUDGE IN THE SENTENCING ORDER ADDRESSED THOSE RECORDS.
>> I'M THINKING IF THEY CAME IN AND THE STATE WOULD ARGUE ALL THE BAD THINGS IN THE RECORD, AND, IT UNDERCUTS, WHY THE DEFENSE LAWYER DIDN'T PUT THEM IN, THEY WOULD HAVE BEEN PREJUDICIAL IF HE PUT THEM IN AND THE STATE DIDN'T ARGUE IT THEN IT PAINTS A DIFFERENT PICTURE HERE THAT THE STATE

REALLY DIDN'T HAVE ANYTHING TO COUNTER THESE RECORDS WITH.
>> NO, WE'RE TALKING IN FRONT OF THE JURY.
IF THESE RECORDS CAME IN AND THE -- WHICH TRIAL COUNSEL GAVE THEM TO THE JUDGE IT WOULD EXPOSE THE DEFENDANT -- AND IT'S NOT JUST THOSE RECORDS WHEN HE WAS 15, IT IS WHEN HE WAS 15 HE BECAME A REAL CRIMINAL.
HE WAS IN PRISON FOR THREE-AND-A-HALF YEARS AND HE'S ON PAROLE AND ESCAPED AND...
>> THAT DIDN'T COME BEFORE THE JURY?
>> NEVER, NO AND I'D LIKE TO POINT OUT THE CASE OF WYDELL EVANS, CITED IN MY BRIEF, ALMOST EXACT SAME SCENARIO AND SAYS THAT WHEN YOU DISPLAY THIS AND THE ESCALATING PATTERN OF VIOLENCE WHICH IS EXACTLY WHAT WE HAVE HERE, HE HAS A LONG CRIMINAL HISTORY, AND THEN SUDDENLY HE ESCALATES, HE HAS THE METH DEALER BUSINESS, HE'S GOT THIS HEAD OF STEAM AND START BEATING PEOPLE UP AND HE ENDS UP KILLING MR. --
>> YOU ARE WELL OVER.
SUM IT UP NOW.
>> POINT OUT IN WEIGHING THIS REMEMBER THE AGGRAVATING CIRCUMSTANCES.
HEINOUS, ATROCIOUS, BRUTAL, BRUTAL TORTURE, BEATING, SHOT IN THE FACE, ABDUCTED, CARRIED TO A REMOTE AREA, COLD, CALCULATED, PREMEDITATED AND THE KIDNAP OF THE TWO GIRLS.
THANK YOU VERY MUCH.
>> THANK YOU BOTH FOR YOUR ARGUMENTS,