

>> THE NEXT CASE ON THE  
DOCKET IS TANZI VERSES THE  
STATE OF FLORIDA.

[INAUDIBLE CONVERSATIONS]

THE COURT IS STILL IN  
SESSION.

GOOD MORNING, I'M PAUL  
CALLO, I REPRESENTATIVE  
MICHAEL TANZI IN THIS  
APPEAL.

I WOULD LIKE TO FOCUS THIS  
MORNING ON THE CLAIM OF --  
AS SHE WAS GRANTED AN  
EVIDENTIARY HEARING ABOUT  
THE 47XYY SYNDROME, I WANT  
TO BE VERY CLEAR ABOUT WHAT  
47XYY IS, AND WHAT IT IS  
NOT.

IT IS NOT THE CRIMINAL GENE.

IT DUH NOT AUTOMATICALLY  
MAKE SOMEONE A CRIMINAL.

IF IT DID, I WOULD BE UP  
HERE ARGUING INSANITY, AND  
OBVIOUSLY I'M NOT.

WHAT IT IS, IS A FUNDAMENTAL

CHROMOSOME DISORDER WHERE  
MR. TANZI GENETIC MAKE UP IS  
DIFFERENT FROM ANY OTHER  
THOUSAND MALES.

>> CAN YOU JUST TELL US WHO  
IN THE EVIDENTIARY HEARING  
TOLD THE JUDGE ABOUT THIS?

>> THIS WAS DR. KARL METCH,  
AND HE EXPLAINED TO THE  
COURT THAT IN THE 60s AND  
70S THERE WAS A CRIMINAL GEE  
AND THIS XYY SYNDROME WAS  
BLAMED FOR CRIMINAL  
BEHAVIOR.

RESEARCH HAS RETREATED FROM  
THAT.

DR. METCH EXPLAINED THAT THE  
SYSTEM HAS SYMPTOMS AND  
SIGNS THAT RESULT IN AN  
INCREASED RISK FOR CERTAIN  
BEHAVIORAL AND DEVELOP  
MENTAL PROBLEMS.

NOT EVEN WITH 47XYY HAS ALL  
OF THESE SYMPTOMS AND SIGNS.  
SOME PEOPLE ARE GOING TO

HAVE MORE AN OTHERS.

I THINK IN MR. TANZI'S CASE,  
IT'S VERY CLEAR THAT HE  
SHOWS JUST ABOUT EVERY SIGN  
THAT DR. MENCH DISCUSSED AT  
THE HEARING.

IT'S EVIDENCE IN THE RECORD  
AND IT'S EVIDENCE BASED ON  
THE RECORDS THAT WERE  
SUBMITTED AT THE HEARINGS  
AND THE TRIAL, THAT HE IS  
THE PHYSICAL MANIFESTATION  
OF THAT GENETIC DISORDER.

>> CAN YOU TELL US EXACTLY  
WHAT YOU CLAIM THIS XY  
THING WOULD CAUSE SOMEONE TO  
DO?

WHAT SF --

WHAT IS IT, ASSUMING THE  
WORST CASE SCENARIO, WHAT  
DOES IT CAUSE?

>> IT DIDN'T SPECIFICALLY  
CAUSE HIM TO DO ANYTHING.

>> SO THEN HOW DOES IT PLAY  
IN ROLE N THIS?

>> IT CAUSED THE  
DEVELOPMENTAL AND BEHAVIORAL  
PROBLEMS HE EXHIBITED.

IF I WAS TO COME HERE AND  
ARGUE THAT THIS CAUSED HIM  
TO COMMIT THIS CRIME IT  
WOULD BE AN INSANITY  
DEFENSE, BUT IT'S NOT IT'S  
MITIGATION.

IT CAUSES THE KINDS OF  
BEHAVIORAL PROBLEMS  
ATTRIBUTED TO ANTISOCIAL  
ANXIETY DISORDER.

IMPULSIVELY IS A GOOD  
EXAMPLE OF BEHAVIORS THAT  
THEY ARE AT AN INCREASED  
RISK FOR, ALSO BEING  
EMOTIONAL, BEING WITHDRAWN,  
BEING SOCIALLY MALL-ADAPTED.  
UNABLE TO MAKE FRIENDS.

AS A MATTER OF FACT,  
DR. MENCH MENTIONED PEOPLE  
WITH XYY WILL OFTEN CREATE  
CONFLICT WITH OTHER PEOPLE,  
ESPECIALLY CHILDREN CAN.

AND THIS IS EXACTLY THE TYPE  
OF BEHAVIOR MR. TANZI WAS  
INVOLVED IN STARTING FROM  
BEING AN VERY EARLY CHILD  
WHERE HE WOULD PICK A FIGHT,  
AND THEN RETREAT AND TRY AND  
NOT DEFEND HIMSELF.

IT WASN'T AN ACT OF  
AGGRESSION AS IT IS A  
MANIFESTATION OF THESE  
BEHAVIORAL PROBLEMS DUE TO  
THIS ORDER.

>> DID HE TAKE --

WHAT THEY KNOW ABOUT AND  
WHAT THEY DON'T KNOW, AND  
SAY NOW WITH THAT OVERLAY,  
THAT HE HAS THIS, WHEN YOU  
LOOK AT HIS BEHAVIOR AT AGE  
8, THE BEGINNING OF THE  
ACTUAL ABUSE.

--

SEXUAL ABUSE.

>> AROUND THAT TIME, RIGHT.

>> WE SAY NOT ONLY WAS IT  
SEXUAL ABUSE, BUT LIKELY A

GENETIC PREDISPOSITION.

DID THE DOCTOR GIVE THAT  
SCIENTIFIC STATEMENT FOR  
THIS CASE?

BECAUSE YOU'RE DOING A VERY  
GOOD JOB OF GIVING IT TO US,  
BUT OUR JOB IS TO LOOK AT IT  
AND SAY DOES IT UNDERMINE  
OUR CONFIDENCE IN THE  
OUTCOME BECAUSE THE OVERLAY  
WAS NOT SUPPLIED TO THE  
JURY.

>> AT TRIAL, THE EXPERTS DID  
TESTIFY THERE WAS A GENETIC  
COMPONENT TO SOME OF THESE  
BEHAVIORAL ISSUES.

THEY WERE NOT AWARE OF THE  
FACT THAT MR. TANZI DOES  
SUFFER FROM THIS DISORDER.

>> DID THEY TESTIFY IF WE  
HAD KNOWN THIS THAT THE  
ANTISOCIAL PERSONALITY  
DISORDER --  
WE WOULD NOT HAVE EVEN  
ALLOWED THE MITIGATION OF

GIVE IT MUCH WEIGHT, AND NOW

THEY KNOW IT'S STRONGER?

DID THEY TESTIFY TO THIS?

>> NO, BECAUSE THEY'RE NOT

QUALIFIED TO.

SO GO BACK TO DR. MENCH.

THE THING THAT EXISTS, THE

BEHAVIOR, DID HE DO IT OR

NOT DO IT.

>> WHAT HE TESTIFIED TO IS

THAT THERE ARE CERTAIN RISK

FACTORS FOR PEOPLE WITH XYY

DISORDER AND MR. TANZI AND

HIS BACKGROUND AND HISTORY

ARE CONSISTENT WITH THOSE

RISK FACTORS AND THAT

INCLUDES PHYSICALLY,

BEHAVIORAL MANIFESTATIONS,

THE MENTAL ILLNESS ISSUES,

ARE ALL CONSISTENT WITH THE

XYY DISORDER.

HE WOULDN'T HAVE TESTIFIED

--

HE DID NOT TESTIFY THAT THIS

CAUSED THE BEHAVIOR.

>> SO ISN'T THAT THEN YOUR  
PROBLEM?

WE'RE DEALING WITH A CRIME  
THAT IS --

THE DEATH PENALTY IS  
UNBELIEVABLY TERRIBLE, BUT  
THIS ONE IS SORT OF THE TOP,  
TOP OF THE TREE.

HOW, AND AGAIN THIS WASN'T  
JUST A CRIME, THIS WAS OVER  
HOURS, HOW DOES THAT THEN  
TAKE ANYTHING, WHEN THE JURY  
HEARD THAT, THE 12-0  
VERDICT, WHICH YOU DON'T SEE  
THAT OFTEN THAT NOW WE'RE  
GOING TO --

THAT THIS IS OVERWHELMING  
MITIGATION.

>> THERE ARE A COUPLE OF  
THINGS IN THE QUESTION THAT  
YOU ASKED.

YES, THIS IS AN EXTREMELY  
AGGRAVATED CASE.

THIS IS ALSO EXTREMELY  
MITIGATED, I BELIEVE.

I BASE THAT NOT UPON NEARLY  
A HISTORY OR BELIEF THAT HE  
HAS A GENETIC DISORDER,  
WHICH IS NOT THE CASE.

OR, AS THE STATE ARGUED IN  
TRIAL, THAT HE CHOOSES TO  
HAVE THESE BEHAVIORAL  
PROBLEMS OR MADE THESE  
CHOICES.

THIS IS A FUNDAMENTAL  
GENETIC ISSUE WITH MR.TANZI.

ONE OUT OF A THOUSAND MALES  
HAVE THIS DISORDER.

IF YOU THINK ABOUT HIS  
HISTORY, IT'S VERY CLEAR  
THAT HE MANIFESTS THE SIGNS  
OF THIS SYNDROME.

CERTAINLY, I WOULD THINK A  
JURY WOULD BE INTERESTING TO  
KNOW THAT.

I THINK THE KOWRLD SHOULD  
HAVE --

COURT SHOULD HAVE BEEN  
INTERESTED TO KNOW THAT.

I THINK IF IT WERE ARGUED

EFFECTIVELY AT TRIAL, IT  
COULD GO MORE TO NOT THAT HE  
LEARNED THIS, IT WAS NOT  
NATURE VERSES NURTURE --  
>> SO IF YOU TAKE THE  
FINDING, STUART THIS --  
START WITH THIS ONE --  
SOMEWHERE AROUND PARAGRAPH  
37 AND HE EXPLAINS IT THE  
MAN HAS CHROMOSOMES, AND HE  
HAS A DISABILITY TO EXHIBIT  
RESTRAINT FOR COMPULSIVE  
BEHAVIOR.  
HIS HISTORY OF ANTISOCIAL  
BEHAVIOR WAS BROUGHT FORWARD  
IN THE TRIAL, AND THE JURY  
CHOSE TO DISREGARD HIS  
BEHAVIOR.  
THE JURY HAS AN OBJECTIVE  
REASONING FOR HIS BEHAVIOR,  
THEY'RE GOING TO GIVE THAT  
PERSONALITY DISORDER MORE  
CREDENCE, IS THAT WHAT YOU  
WOULD SAY?  
>> NO.

I THINK THE JURY VIEWED  
ANTISOCIAL BEHAVIOR AS THIS  
COURT HAS VIEWED IT, AS NOT  
BEING MITIGATING.

AND IN THE CONTEXT IT WAS  
PRESENTED IT'S NOT  
MITIGATING.

>> I GUESS WHAT I'M HAVING  
TROUBLE WITH, WE AGREE THEY  
REALLY SHOULD HAVE TAKEN  
THIS ALL THAT WAS HANDED TO  
HIM, AND RUN WITH IT, AND  
CREATED A WHOLE DIFFERENT  
CASE.

AND YOU WOULD SAY THAT WHOLE  
DIFFERENT CASE WOULD BE THAT  
THEY WOULDN'T USE THE  
EXPERTS TO ALTER THE NOTES  
BECAUSE --

WHY WOULD YOU REMOVE THAT IF  
IT'S GOING TO BE  
DISCREDITED, AND YOU  
WOULDN'T HAVE TWO EXPERTS  
WITH INCONSISTENT DIAGNOSIS,  
BUT LEFT WITH IT, AND WHAT

ARE YOU GOING TO DO?

WHAT'S A JURY GOING TO BE

PRESENTED WITH AS TO HIS

MENTAL ILLNESS, INABILITY TO

CONTROL HIS IMPULSES.

WHAT'S THE NEW PICTURE GOING

TO BE?

AND I THINK THAT'S ALWAYS

THE PROBLEM WITH A

CONVICTIONS.

YOU COME UP WITH SOME GOOD

ARGUMENTS, RATHER THAN A

LOT, BUT I'M STILL NOT SURE

THAT WHEN THE SMOKE CLEARS,

WHAT IS THE COMPELLING

MITIGATION THAT NOW IS

PRESENTED?

>> THE REASON THAT THIS IS

COMPELLING, THIS XYY

DISORDER.

THIS IS NOT A CLAIM OF A

PERSONALITY DISORDER THAT

THIS PERSON HAS A

PERSONALITY PROBLEM.

THIS IS A GENETIC DISORDER.

YOU CAN LOOK AND SEE --  
COUNSEL COULD HAVE COME AND  
PUT A PICTURE UP AS I DID  
FOR JUDGE GARCIA THAT SAYS  
THIS IS A NORMAL CHROMOSOME,  
AND THAT'S INARTFUL, BUT  
THIS IS A NORMAL PATTERN AND  
THIS IS MR. TANZI'S PATTERN.  
THESE TYPES OF THINGS JURORS  
GRASP MORE EASILY.  
>> BUT YOU HAVE TO GO AND  
SAY THAT WHAT YOU REALLY  
HAVE TO SHOW, TO ME, IS THAT  
THIS CRIME WAS A BUDGET OF  
IMPULSIVE BEHAVIOR.  
AND HE TARGETED THIS PERSON  
AND TOOK HER, AND THERE WAS  
NOTHING IMPULSIVE ABOUT  
FORCING HER TO HAVE ORAL  
SECTION, AND RAPED HER, IT'S  
AN ONGOING SEVERAL HOUR  
HORRIBLE, HORRIBLE THOUGHT  
OUT, EVEN TO THE EXTENT THAT  
AFTER HE KILLED HER, HE  
DOESN'T GO BUY GO AND BUY

DRUGS, HE BUYS GROCERIES.

I JUST DON'T SEE HOW THAT  
CHROMOSOME CHANGES THE  
PICTURE, AND THE MENTAL  
MITIGATION TO AN EXTENT THAT  
IT WOULD UNDERMIND  
COMPETENCE.

>> I DON'T BELIEVE THIS  
CRIME WAS ESPECIALLY WELL  
THOUGHT OUT.

BASED ON THE FACT THAT IT  
WAS DONE ON A VERY IMPULSIVE  
BASIS, CERTAINLY --

>> YOU DON'T THINK --  
WHAT EXPERT, YOU GO BACK TO  
THIS, I THINK THOUGH YOU  
DON'T.

THEN YOU NEED, I THINK YOU  
NEEDED ONE OF THOSE EXPERTS  
TO SAY NOW THAT THE THIS,  
THE WAY I WOULD HAVE  
EVALUATED EVERYTHING FALLS  
INTO PLACE.

I NOW UNDERSTAND EVERYTHING  
THAT HAPPENED IN HIS LIFE,

AND NOW I HAD EXPLAIN HOW  
THIS CRIME IS RELATED TO  
HAVING THIS GENETIC  
PREDISPOSITION.

>> IF YOU'RE SUGGESTING THAT  
MR. TANZI NEEDED TO SHOW  
THAT HIS TRIAL EXPERTS  
CHANGED THEIR OPINIONS ON  
THIS.

>> NOT JUST THAT, BUT THAT  
SOMEBODY DID OTHER THAN  
DR. MENC ARE SAYING THESE  
ARE PREDISPOSITIONS.

IT'S LIKE SAYING WE CAN'T  
HAVE BRAIN DAMAGE, AND IT  
WOULD CAUSE SOMEBODY TO BE  
IMPULSIVE, AND YET, YOU  
DON'T REALLY GET IT ALL --

>> DR. DUDLEY, A MEDICAL  
SCIENTIST WITH LIMITED  
TRAINING IN GENETICS WAS  
ABLE TO TESTIFY ABOUT THE  
IMPORTANCE OF THE XYY  
DIAGNOSIS.

WE'RE NOT SAYING XYY CAUSED

HIM TO DO THIS, AND WE'RE  
NOT SAYING THAT XYY DISORDER  
CAUSED HIM TO BE COMPULSIVE  
TO THE DEGREE THAT HE  
COMMITTED SUCH CRIMES.  
WE'RE SAYING IF YOU LOOK AT  
IT DEVELOP MENTAL HISTORY,  
THERE ARE EXPLANATIONS,  
THERE ARE REASONS OTHER THAN  
MICHAEL TANZI IS AN  
EVENTUALLY PERSON.

--

EVIL PERSON.

>> BUT WE KNOW THERE IS A  
MARGIN OF PEOPLE WITH THIS  
CONDITION DO NOT DO THINGS.  
AND OTHER THINGS THAT MIGHT  
BE CONSIDERED SOCIALLY  
UNACCEPTABLE.  
THIS ARE PEOPLE THAT HAVE  
THAT PARTICULAR CONDITION,  
WITH NORMAL LAW ABIDING  
LIVES, AND ARE PERFECTLY  
FINE, ISN'T THAT CORRECT?  
>> THAT IS CORRECT, HOWEVER,

I THINK THAT VIEW IS  
SELECTING THIS ONE AREA OF  
MITIGATION WITHOUT EXPLORING  
OR CONSIDERING OTHER AREAS.  
MITIGATION WAS PRESENTED,  
BUT IT DOESN'T HAVE --  
IT DIDN'T COMPLETE THE  
PUZZLE.

AND THE PUZZLE IS --  
WHY DOES MICHAEL TANZI  
BEHAVE THIS WAY.

>> YOU JUST SAID IT DOESN'T  
DEMONSTRATE THAT JUST  
BECAUSE HE HAS THIS DISEASE  
DOESN'T NECESSARILY MEAN  
THAT THAT'S WHY HE DID THIS  
CRIME.

SO I'M STILL AT A LOSS HERE,  
IF THE JURY HEARD HE HAD  
THIS CONDITION, BUT NOTHING  
ELSE RED LIGHT ABOUT THE  
TESTIMONY WOULD HAVE  
CHANGED, WE STILL WOULD HAVE  
DOCTORS SAYING WHAT HE SAID  
ABOUT THE PERSONALITY

DISORDER AND ALL THESE OTHER  
THINGS, I'M JUST NOT SURE  
WHERE THAT --  
WHAT WOULD A JURY HAVE DONE  
WITH THAT?

>> I THINK A JURY, AGAIN,  
ANTISOCIAL PERSONALITY  
DISORDER IS NOT NECESSARILY  
A VERY MITIGATING THING >>  
SO YOU HAVE THE PERSONALITY  
DISORDER BECAUSE YOU HAVE AN  
XYY CHROMESOMAL MAKE UP WILL  
MAKE THE DIFFERENCE?

>> IT CONTRIBUTES TO THE  
PERSONALITY DISORDERS THAT  
MR. TANZI SHOWS.

>> THE XYY, IS THAT A  
VIOLENT GENE?

>> ABSOLUTELY NOT.  
THE TERM "VIOLENCE GENE" OR  
CRIMINAL GENE HAS BEEN  
DEBUNKED SINCE THE 60s AND  
70S BUT THERE IS A LINK TO  
BEHAVIORAL AND DEVELOP  
MENTAL PROBLEMS.

THOSE SORTS OF PROBLEMS ARE  
THE TYPES OF THINGS THAT  
CONTRIBUTE TO SOMEBODY LATER  
BEING DIAGNOSED WITH CONDUCT  
DISORDER OR ANTISOCIAL  
PERSONALITY DISORDER.

>> YOU HAVE USED ALL OF YOUR  
TIME EXCEPT FOR ABOUT TWO  
MINUTES.

>> I WILL RESERVE MY TIME,  
THANK YOU.

>> SCOTT BROWN, THE PROBLEM  
FOR THE APPELLANT IN THIS  
CASE BESIDES THE FACTS AND  
FACTORS IS THAT XYY WAS NOT  
SHOWN TO BE THE VIOLENT GENE  
OR ANYTHING, FOR THAT  
MATTER, RELATING TO THE  
FACTS OF THIS CASE.

>> THE WAY I SEE IT, THIS IS  
NOT A BRAIDY VIOLATION.  
IF I'M AN DEFENSE LAWYER,  
I'M GOING WOW, I HAVE  
SOMETHING I NEED TO EXPLORE.  
WHY DIDN'T THEY EXPLORE IT.

DO YOU KNOW?

DID THEY GET COVER --

OVERWHELMED OR --

>> IT'S IN THE PUBLIC FILE

THAT MR. KALIL WAS THE ONLY

POSTCONVICTION COUNSEL

AVAILABLE, THE ADDITIONAL

PUBLIC DEFENDER ASSIGNED IN

THE CASE WAS NOT AVAILABLE

AT THE TIME OF THE EVIDENCE

SHARE HEARING.

>> NOBODY USED IT.

>> CORRECT, YOUR HONOR.

>> I WOULD AT LEAST SAY

THIS, IF YOU HAVE THIS, IN

THE FACTS, YOU WOULD TRY TO

MAKE SOMETHING OF IT.

THAT CERTAINLY WOULD BE

BETTER THAN THAT OLD

ANTISOCIAL PERSONALITY

DISORDER.

AND IMPULSE CONTROL AND ALL

OF THAT --

AND THEN YOU HAVE SEXUAL

ABUSE, AND HERE IS MY

PROBLEM, AND I STILL THINK I  
COME OUT WITH THE SAME  
THING, BUT I HAVE TO SAY IT.  
I DO NOT UNDERSTAND, FIRST  
OF ALL, HOW YOU WOULD --  
HOW SOMEBODY WOULD USE AN  
EXPERT --  
HAVE 7 EXPERTS THEY HIRED,  
THAT HAS BEEN KNOWN TO BE  
DISCREDITED BECAUSE HE  
ALTERS NOTES IN ONE OF THE  
MOST WELL KNOWN MURDER  
TRIALS OF THE LAST CENTURY,  
MENDEZ, SO NO, I'M NOT GOING  
TO USE THAT EXPERT BECAUSE  
THAT WILL DESTROY HIS  
CREDIBILITY.  
YOU USE HIM, AND THEN YOU  
FIND OUT HE SAYS BIPOLAR  
DISORDER, EVEN THOUGH NO  
OTHER EXPERT HAS, SO NOW  
THEY'RE TRYING TO FIND  
SOMETHING TO HANG THEIR HAT  
ON.  
I WOULD RATHER USE XYY THAN

BIPOLAR FROM A GUY WHO IS  
KNOWN TO HAVE ALTERED HIS  
RECORD.

AND THEN SOMEONE WHO CAN'T  
DIAGNOSIS WITH THAT.

YOU MAY WANT THE DIAGNOSIS  
TO CONFER, BUT YOU WANT TO  
TELL THEM THAT SO AND SO  
FOUND BIPOLAR SO YOU HAVE A  
CONSISTENT HEARING.

SO MY CONCERN IS MAYBE  
NOTHING WILL --

WITH THE SIX AGGRAVATORS IN  
THIS TYPE OF CRIME THAT WILL  
UNDERMINE A DEATH PENALTY  
CASE ANY WAY YOU TRY IT, BUT  
I THINK USING THOSE  
COMBINATIONS,, NOT HAVING AT  
CONSISTENT THEORY OF THE MEN  
TAT STATE, AND NOT DOING  
ANYTHING WITH THE XYY THAT  
WOULD HELP, SEEM THAT'S  
THERE ARE INCONSISTENCIES.  
HELP ME, IT MAY NOT BE  
PREJUDICE, BUT IT DOES SEEM

LIKE, EVEN WHEN THEY DID A  
LOT, RIGHT, THEY DID A LOT.  
BUT SOMETIMES YOU CAN DO A  
LOT AND FORGET THAT YOU DO  
SOMETHING VERY SPECIFIC FOR  
THE DEFENDANT, NOT JUST  
THROW IT ALL OUT THERE.

>> FIRST OF ALL, THESE ARE  
HIGHLY EXPERIENCED DEFENSE  
ATTORNEYS IN THE PUBLIC  
DEFENDERS OFFICE.

BILL KIPER HAS A TREMENDOUS  
AMOUNT OF TRIAL EXPERIENCE.  
HE WAS THE GO-TO GUY IN THAT  
OFFICE.

HE RECOGNIZED EARLY ON AFTER  
THE DEPOSITION THAT THEY HAD  
A PROBLEM BASED ON THAT  
CASE, ANDED DIDDED THAT --  
AND DECIDED HE WAS THE MOST  
COMPELLING EXPERT HE HAD.

HE HAD A SLIDE SHOW, AND HE  
HAD WHAT TRIAL COUNSEL  
THOUGHT TO BE THE MOST  
EFFECTIVE PRESEN NATION THIS

CASE.

ANOTHER PROBLEM THE TRIAL  
COUNCIL HAS IS SOME OF THE  
EXPERTS HE CONSULTED WITH  
THOUGHT THAT MR. TANZI'S  
PRIOR MESSAGE WAS RELEVANT  
IN THIS CASE.

SO YOU CAN'T USE DR. MYER,  
IT'S NOT LIKE THERE WAS A  
WEALTH OF EXPERTS, CAN  
DESPITE CONSULTING WITH 7  
THAT HAD FAVORABLE TESTIMONY  
IN THIS CASE.

ONE DID, DR. RAFAEL  
TESTIFIED AT TRIAL ON BEHALF  
OF MR. TANZY, HE WAS A  
NEUROPSYCHOLOGIST.

HE WAS CALLED BY THE STATE  
TO TESTIFY, AND IT WAS HIS  
OPINION THAT XYY WAS  
COMPLETELY IRRELEVANT TO  
ANYTHING --

>> THAT'S NOT WHAT THIS IS

--

I APPRECIATE THAT BUT --

>> IT'S IN THE RECORD, BUT

THAT'S ACTUALLY THE

OPPOSITE.

>> EXACTLY, YOUR HONOR.

>> THE STATE --

IS IT TRUE THE STATE TURNED

OVER THIS EVIDENCE ABOUT THE

XYY A COUPLE DAYS BEFORE THE

PENALTY FAZE?

--

PHASE.

>> I BELIEVE IT WAS THREE OR

FOUR.

>> WHEN DOES THE STATE GET?

>> THE SAME DAY IT RECEIVED

THAT INFORMATION BECAUSE IT

WAS AN INNORMAL TELEPHONE

CALL.

THERE WAS NO FORMAL REPORT

GENERATED THAT SAID

MR. TANZI IS XYY.

IT'S THE EXPERT THAT SAYS BY

THE WAY HE IS XYY, AND THE

PROSECUTOR SAYS I DON'T KNOW

ANYTHING ABOUT IT, BUT IT

SOUNDS LIKE I MAY NEED TO  
TURN IT OVER.

>> DID THE DEFENSE AT ANY  
POINT ASK THE JUDGE FOR  
ADDITIONAL TIME SO THEY  
COULD DO ANYTHING WITH THE  
NEW INFORMATION

>> INFORMATION?

>> NO, HE WAS A QUALIFIED  
MEDICAL DOCTOR, HE DIDN'T  
HAVE ANY COMPELLING TO SAY  
ABOUT MR. TANZI WHO WAS  
NEVER EXAMINED, HE DIDN'T  
LIKE HIS CONDUCT TO XYY, AND  
HE HAS HAD OCCASION IN HIS  
45 YEAR CAREER TO COUNSEL  
FIVE EXPECTING MOTHERS AND  
FATHERS, THAT SHOW THAT  
THEIR CHILD HAS XYY.  
IT TELLS THEM IN ALL  
LIKELIHOOD YOU WILL NOT KNOW  
YOUR CHILD HAS IT, THEY WILL  
BE PERFECTLY NORMAL.  
THAT'S THE FACTS IN THIS  
CASE.

IT WAS NOT SHOWN THAT XYY  
WAS REMOTELY COMPELLING.  
DR. DUDLEY MENTIONED IT IN  
HIS LEGITIMATE H  
LENGTHY TESTIMONY.

>> IF YOU DON'T HAVE

DR. RAFAEL SAYING IT, WHEN  
HE SAYS WHEN I

[UNINTELLIGIBLE]

IS THERE ANYTHING  
THERAPY-WISE THEY DO, OR  
THEY DO NOT WORRY ABOUT  
CREATING THAT PERSON ANY  
DIFFERENTLY.

>> I BELIEVE HE SAYS THERE'S  
NO NEED TO WORRY, IN ALL  
LIKELIHOOD YOU'LL NEVER  
KNOW.

>> IF YOU HAVE A CHILD THAT  
ACTS OUT, WOULD YOU THEN  
FIND SPECIFIC TREATMENT  
KNOWING YOU HAVE A GENETIC  
DISORDER, OR DO YOU NOW DO  
CERTAIN THINGS BECAUSE YOU  
KNOW IT MAY BE BECAUSE OF A

GENETIC PREDECISION POSITION  
THAT THE CHILD IS EXHIBITING  
CERTAIN BEHAVIOR.

>> HIS --

>> I'M SAYING, DR. MENCH,  
SAID THAT MEN WITH THIS  
DISORDER ARE MORE AT-RISK  
FOR CERTAIN TYPES OF  
BEHAVIOR INCLUDING LEARNING  
DISABILITIES, IMPULSE  
CONTROL --

HE DIDN'T SAY --

>> IMPULSE CONTROL AS A  
CHILD, YES.

>> IF THEY KNOW, AND THAT  
STARTS TO HAPPEN, DO THEY  
JUST NOT DO ANYTHING  
DIFFERENTLY BECAUSE THEY'RE  
EXHIBITING A GENETIC  
DISORDER?

>> I WILL SAY THIS ABOUT  
DR.MNETZ.

HE DID NOT >> IN PARAGRAPH  
45 THE TRIAL JUDGE MADE A  
FINDING THAT THIS YXX GENE

IS NOT SOME TYPE OF SYNDROME  
AS GENERALLY UNDERSTOOD BY  
PSYCHIATRIST AND  
PSYCHOLOGISTS.

IF THERE'S NO SYNDROME  
THERE'S NO TREATMENT FOR IT.

>> THAT'S PART OF THE  
DEFENSE IN THIS CASE, YOU'RE  
EXACTLY RIGHT.

THERE'S NO TREATMENT, IT'S  
NOT RECOGNIZED AS A GENETIC  
DISORDER AFFECTING BEHAVIOR,  
AND THE ONLY ANSWER  
TESTIFIED TO AT TRIAL,  
DR. RAFAEL SAID I DON'T  
THINK IT SHOULD EVEN BE  
MENTIONED.

IT'S LIKE BEING LEFT-HANDED.  
SOME STUDIES SHOW  
LEFT-HANDED PEOPLE ARE MORE  
STATISTICALLY SHOWN TO  
COMMIT CRIMES.

>> WHAT'S IN THE RECORD TO  
SUPPORT THAT FINDING ON THAT  
ISSUE?

>> THE CROSS EXAMINATION OF  
DR. MENCH.  
HE COULD NOT MENTION A  
PARTICULAR SYNDROME  
SUPPORTED BY LITERATURE AND  
I KNOW POSTCONVICTION  
COUNSEL FOUND SO THE SUPPORT  
EVIDENCE THAT IT'S  
RECOGNIZED AS AN ABBOAR  
RATION, --  
ABERRATION, BUT THERE'S NO  
COMMONLY ASSOCIATED  
BEHAVIORS WITH THIS 47XY.  
SO YOU HAVE SOMETHING SO  
INCONSEQUENTIAL.  
SHOULD IT HAVE BEEN  
MENTIONED?  
PERHAPS.  
BUT THIS IS A CASE WITH SIX  
AGGRAVATING FACTORS WHERE  
MR. TANZI'S CHILDHOOD  
DIFFICULTS --  
DIFFICULTIES WERE EXPLORED.  
THERE WAS NO BEAR BONES  
PRESENTATION.

THIS WAS EVERYTHING FROM HIS  
BACKGROUND, GOOD BAD AND  
UGLY THAT TRIAL COUNSEL  
DEVELOPED EXCEPT FOR THAT  
PRIOR MURDER THAT HAPPENED 8  
MONTHS PRIOR TO MR. TANZI  
ABDUCTING, ACTUALLY  
ASSAULTING, AND MURDERING  
CAROLYNN HOLDER.

THEY PRESENT DR. DUDLEY WHO  
HAS AN ENTIRELY INCONSISTENT  
DIAGNOSIS WITH EVERY OTHER  
EXPERT.

SO THEY WANT TO CHERRY PICK  
SOME OF THE FAVORABLE  
INFORMATION WHILE IGNORING  
THE ELEPHANT IN THE WORLD.

THE PRIOR MURDER INTRODUCED  
BEFORE AND AND THE FACTS ARE  
HORRENDOUS.

HE SELECTED AN ISOLATED  
FEMALE VICTIM.

HE BEAT HER ON THE HEAD WITH  
A STICK, WHEN SHE WASN'T  
DYING HE STABBED HER WITH

SCISSORS AND HE SAT ON HER

UNTIL SHE BLED OUT.

>> THE TREMENDOUS NEGATIVE

INFORMATION PROPERLY

INTRODUCED AND CONSIDERED,

THERE IS NO DOUBT THAT

COUNSEL HAS NOT CARRIED A

BURDEN OF ESTABLISHING

PREJUDICE.

AND THE STATE DOES NOT SEE

ANY DEFICIENCY ON THE PART

OF TRIAL COUNCIL IN THIS

CASE.

>> NO FURTHER QUESTIONS?

>> HOW IS THE GENETIC

SCENARIO AS PLAYED OUT FOR

THE PRESENCE OF THE JURY,

DIFFERENT THAN PRESENTATION

OF MILITARY BACKGROUND AS

ANALYZED BY THE COURT, AND

LOOKING AT THE BROAD GENERAL

STATEMENTS THAT THE JURY IS

SUPPOSED TO HAVE ALL ASPECTS

OF CONSIDERING AROUND ABOUT

THE PRESIDENT.

HOW WOULD YOU ADDRESS.

>> YOUR HONOR, IT'S A VERY  
UNIQUE CASE ON THE FACT THAT  
SIGNIFICANT COMBAT  
EXPERIENCE --

>> I KNOW EXACTLY WHAT THEY  
WERE AND THAT THOSE WERE  
FACTORS, AND THEN THE BROAD  
GENERAL STATEMENTS THAT COME  
OUT OF IT.

>> I THINK FIRST OF ALL,  
YOU'RE MOST LIKELY NEVER  
GOING TO KNOW THE GENETIC  
DISORDER.

I HAVE EXAMED THOUSANDS OF  
PEOPLE AND IT JUST HAPPENS  
WE KNOW WHO IS XYY.

THE DEFENSE DID NOT  
ESTABLISH THAT IT WAS  
SIGNIFICANTLY MITIGATED OR  
MITIGATING I WOULD SAY AT  
ALL.

MORE LIKELY THAN NOT IF YOU  
HAVE XYY YOU WILL BE  
PERFECTLY NORMAL.

MOST PEOPLE WITH XYY DON'T  
KNOW THEY HAVE IT.

--

>> WHEN YOU LOOK AT PORTER,  
MY FORMER PARTNER BEFORE I  
CAME ON THE COURT, WHO WAS  
EXPOSED TO SOME UNBELIEVABLE  
WARTIME CONDITIONS.

HIS FEET WERE FROZEN AND HE  
DIDN'T KILL ANYBODY.

AND SO, YOU KNOW, IT'S THAT

--

THE COURT SAYS IN THE CON  
TEX, YOU NEED TO PRESENT  
THOSE KIND OF THINGS TO THE  
JURY.

THIS COURT HELD THAT IT WAS  
NOT PREJUDICIAL.

THERE ARE THINGS THAT ARE  
SIGNIFICANT ENOUGH.

SO I'M ASKING HERE, HOW DO  
YOU PERCEIVE, YOU'RE SAYING  
GENETICS MAY OR MAY NOT  
APPLY.

WAR HEROS ARE THE SAME

THING.

>> REGARDLESS OF MAY OR MAY  
NOT APPLY, THE COMBAT  
EXPERIENCE ONE HAS SERVING  
THEIR COUNTRY IS DIFFERENT  
THAN HAVING AN EXTRA Y  
CHROMOSOME THAT MORE PEOPLE  
ARE PERFECTLY NORMAL MORE  
THAN NOT.

>> YOU SAID THERE ARE RISK  
FACTORS.

>> EXACTLY.

>> SOME MAY AND SOME MAY  
NOT.

>> RIGHT, JUST LIKE A POOR  
CHILDHOOD.

>> ALL OF WHICH WERE EXPLORED  
AND PRESENTED.

>> I LOOK BACK AT PORTER,  
AND THE [UNINTELLIGIBLE]

>> I'M A DEFENSE LAWYER, AND  
I FIND OUT A I HAVE GENETIC  
DISORDER, IT'S PROBABLY NOT  
A DOWNSIDE TO ME PRESENTING  
THIS AND TRYING TO DEVELOP.

BUT WHAT WE'RE POINTING AT  
NOW IS DR. RAFAEL THAT SAYS  
IT MADE A DIFFERENCE IN THE  
TESTIMONY.

SO THAT IS SUFFICIENT ENOUGH  
TO EXEMPLOYER.

--

EXPLORE.

IT DOESN'T ADD UP TO  
UNDERMINE CONFIDENCE.

I DON'T THINK WE KNOW ENOUGH  
TO SAY IT'S NOT MITIGATING.

I WOULD TRY TO GRAB ON TO IT  
TO PUT SOMETHING IN CONTEXT  
AND WHICH THE ROLE --

>> YOU MIGHT LATCH ON UNLESS  
YOUR EXPERT SAYS IT'S NOT  
RELEVANT.

>> WELL YOU CAN'T GO AFTER  
AND SAY WHY DIDN'T YOU DO  
IT?

THEY DIDN'T DO IT BECAUSE IT  
WAS TOO LATE AND THEY PUT IT  
IN THE FUEL, AND IT WASN'T  
LIKE THEY EXPLORED IT.

>> WE LOST ONE OF THE  
DEFENSE ATTORNEYS, WE DON'T  
KNOW WHAT SHE DID.

>> --

YOU EXPLORE IT, I DON'T  
THINK WE CAN SAY IF THEY  
DIDN'T EXPLORE IT THAT WOULD  
BE ACCEPTABLE.

>> IT'S NOT --

WE NEVER AGREED IT WAS A  
GENETIC DISORDER, IT'S NOT  
DOWN SYNDROME.

YOU'RE PERFECTLY NORMAL.

>> IT'S A GENOTYPE, AND  
THAT'S IT, AND I DISPUTE THE  
NOTION THAT THERE'S ANY  
RECOGNIZED BEHAVIOR  
ASSOCIATED WITH HAVING  
47XYY.

>> CHILDHOOD DIFFICULTS.

>> I THINK HE HAD GIVEN THE  
OVERWHELMING AGGRAVATIONS IN  
THIS CASE, PRIOR TO THE  
MURDER AND THE GREW SYSTEM

--

GRUESOME DETAILS.

WE ASK THAT YOU AFFIRM THE  
POSTCONVICTION, THANK YOU.

>> I KNOW I'M REALLY SHORT

ON TIME, BUT I HAVE TO

RESPECTFULLY CORRECT

MR. BROWN.

THE STATE DID NOT CALL

DR. RAYFIELD, THE DEFENSE

CALLED DR. RAYFIELD.

HE WAS A PSYCHOLOGIST WITH

NO TRAINING OR EXPERTISE IN

GENETICS.

HE TESTIFIED THAT HE --

HE PRONOUNCES IT RAY-FEEL.

HE WOULD NOT APPEAR IN

PERSON SO WE PUT HIM ON THE

PHONE.

I NOTICED IN THE BRIEF, I

THOUGHTING IT WAS A TYPO,

IT'S A MISTAKE AND THAT

HAPPENS.

MY CONCERN IS THAT THIS

COURT WILL PUT ANY CREDENCE

THAT HE HAD ONLY DONE A

SEARCH ON THE INTERNET ABOUT  
THE DISORDER.

>> WHAT WAS HIS PURPOSE.

>> IT WAS TO PRESENT THE  
FACT THAT HE WAS NEVER  
PRESENTED WITH THIS FACT.

>> AND HE WERE UNABLE TO GET  
THE OPINION AHEAD OF HIM  
THAT MAY HAVE DONE SOMETHING  
HERE.

I'M SURE --

I'M SURE THAT YOU SEARCHED  
FOR SOMEBODY THAT WOULD HAVE  
TAKEN THIS AND PUT IT INTO  
THE PACKAGE THAT WOULD HAVE  
MADE IT REALLY COMPELLING,  
AND IT'S ABSENT THIS RECORD  
THAT THERE IS ANYTHING OTHER  
THAN A GENETIC TYPE, AN  
INCREASED RISK FACTOR.

>> AGAIN, I HAVE TO  
RESPECTFULLY DISAGREE WITH  
YOU.

IT IS A DISORDER.

ONE OUT OF A THOUSAND --

>> YOU DON'T HAVE TO --  
>> ONE OUT OF A THOUSAND I  
THINK IS A DISORDER.  
THERE ARE PHYSICAL AND  
PSYCHOLOGICAL MAN --  
MANIFESTATIONS OF IT.  
HE IS RELYING ON THIS  
UNPROVEN PRIOR MURDER.  
THAT EVIDENCE WOULD HAVE  
NEVER COME IN BEFORE A JURY.  
AND HAD THE STATE TRIED TO  
PUT @ IN BEFORE A JURY,  
THERE WOULD HAVE BEEN AN  
ISSUE AT THE TRIAL.  
THERE WAS A MOTION, IT WOULD  
HAVE BEEN SUCCESSFUL, AND  
ALL OF THAT WOULD BE  
EXCLUDED.  
>> HAS HE BEEN CONVICTED OF  
THAT CRIME?  
>> NOT TO MY KNOWLEDGE.  
>> WAS HE CONVICTED?  
>> PLEASE SUM UP.  
>> I ASK THAT YOU REVERSE  
THE TRIAL COURT'S ORDER AND

HAVE AN ADDITIONAL  
EVIDENTIARY HEARING OR  
REVERSE FOR A NEW PENALTY  
PHASE.

>> WE THANK YOU BOTH FOR  
YOUR ARGUMENT, THE COURT  
WILL NOW STAND IN RECESS FOR  
10 MINUTES.

>> ALL RISE.

[INAUDIBLE CONVERSATIONS]