

NEXT CASE ON THE DOCKET IS  
ALLRED VERSUS STATE.

>> MAY IT PLEASE THE COURT, MY  
NAME IS JULIE MORLEY, AND I  
ALONG WITH MARK GRUBER ARE  
REPRESENTING THE APPELLANT IN  
THIS MATTER.

THIS CASE COMES BEFORE THE COURT  
AFTER THE CIRCUIT COURT'S DENIAL  
OF HIS POSTCONVICTION MOTION FOR  
RELIEF.

I'D LIKE TO FOCUS ON CLAIM ONE  
OF THAT MOTION, ARGUMENT ONE IN  
OUR INITIAL BRIEF.

CLAIM ONE STATES THAT HE  
RECEIVED INEFFECTIVE ASSISTANCE  
OF TRIAL COUNSEL BASED ON THEIR  
FAILURE TO ENSURE A REASONABLY  
COMPETENT MENTAL HEALTH  
EVALUATION.

WHAT IT BOILS DOWN TO IS THAT  
THE TRIAL COUNSEL IN THIS CASE  
TESTIFIED THAT HIS STRATEGY IN  
PENALTY PHASE WAS STRONG MENTAL  
HEALTH MITIGATION THAT COULD BE  
TIED TO THE FACTS OF THE CASE.  
NO MENTAL HEALTH EXPERT WAS  
PRESENTED BASED UPON HIS OWN  
MISTAKE AS TO WHAT HIS  
CONFIDENTIAL EXPERT WOULD  
TESTIFY TO.

>> THE DEFENDANT PLED GUILTY TO  
THE CRIMES IN THIS CASE.  
THEY WENT TO A PENALTY PHASE  
WITHOUT A JURY?

>> CORRECT.

HE WAIVED HIS JURY.

>> BUT IT WASN'T A WAIVER OF A  
PENALTY PHASE, JUST A PENALTY  
PHASE WITHOUT A JURY.

>> SO THERE WAS A MENTAL HEALTH  
EXAMINATION OF MR. ALLRED PRIOR  
TO THE PENALTY PHASE?

>> YES, MA'AM.

>> AND WHAT WAS -- WHAT DID THE  
MENTAL HEALTH EXPERT SAY ABOUT  
MR. ALLRED?

>> TRIAL COUNSEL HAD HIRED TWO  
CONFIDENTIAL MENTAL HEALTH  
EXPERTS.

DR. DANSINGER WAS BROUGHT ON JUST DAYS AFTER THE MURDERS TO DO AN INSANITY EVALUATION, WHICH HE DETERMINED THAT THERE WAS NO INSANITY DEFENSE.

SO HE WAS NEVER CONSULTED WITH AGAIN.

THE SECOND EXPERT, WHICH WAS THE MORE COMPREHENSIVE EXPERT, WAS DR. DAY.

SHE TESTIFIED AT THE EVIDENTIARY TRIAL, BECAUSE SHE WAS CALLED BY THE STATE AS A WITNESS, THAT SHE ACTUALLY NEVER REACHED ANY FIRM CONCLUSIONS REGARDING MR. ALLRED.

>> SHE DIDN'T MAKE ANY STATEMENTS ABOUT HIM BEING A PSYCHOPATH?

>> THIS IS WHERE IT GETS A LITTLE CONFUSING BECAUSE TRIAL COUNSEL'S FILES WERE DEVOID OF ANY NOTES OR ANNOTATIONS REGARDING MENTAL HEALTH CONVERSATIONS BETWEEN HIMSELF AND DR. DAY.

THERE WAS AN INTERNAL MEMO THAT WAS WRITTEN THAT WAS AUTHORED BY THE SECOND CHAIR ATTORNEY WHERE THE MEMO STATED DR. DAY HAS COME TO THE CONCLUSION THAT HE IS A SOCIOPATH AND THEREFORE IT WOULD NOT BE INEFFECTIVE ASSISTANCE TO CALL HER AT TRIAL.

WHEN QUESTIONED ABOUT THAT, DR. DAY SAID THOSE WERE NOT HER CONCLUSIONS, THEY WERE NEVER HER WORDS THAT SHE USED.

SHE'D NEVER REACHED ANY SORT OF DIAGNOSIS IN THIS CASE BECAUSE THERE WAS A CLEAR LACK OF EVIDENCE TO SUPPORT A CONDUCT DISORDER, SO --

>> I'M A LITTLE BIT CONFUSED BECAUSE I THOUGHT THERE WAS AT LEAST SOME TESTIMONY THAT THERE WAS AN ELEVATED SCORE IN THE PSYCHOPATH, YOU KNOW, SCALE.

>> THERE WAS AN ELEVATED SCORE, AND DR. DAY SAID THAT SHE DID

FIND TRACE OF ANTISOCIAL PERSONALITY DISORDER, BUT THAT SHE COULD NEVER MAKE A DIAGNOSIS BECAUSE OF THE CLEAR LACK OF EVIDENCES FOR A CONDUCT DISORDER PRIOR TO AGE 15.

ACTUALLY, EVERY EXPERT WHO TESTIFIED AT THE EVIDENTIARY HEARING FOR STATE AND DEFENSE ALL AGREED TO THE SAME FACT, THAT MR. ALLRED CANNOT BE DIAGNOSED WITH ANTISOCIAL PERSONALITY DISORDER.

SO DR. DAY NEVER REACHED A FORMAL DIAGNOSIS.

WHAT TRIAL COUNSEL SAID WHEN HE WAS QUESTIONED ABOUT DR. DAY'S CONCLUSIONS WAS THAT IT WAS HIS UNDERSTANDING THAT IF DR. DAY WERE TO TESTIFY AND OFFER A DIAGNOSIS, ANTISOCIAL PERSONALITY DISORDER WOULD BE THE ONLY DIAGNOSIS SHE COULD OFFER.

WHAT'S INTERESTING IS THAT ATTORNEY CAUDLE FURTHER STATED THAT HE DID BELIEVE THAT THERE WAS EVIDENCE TO SUPPORT THE FINDING OF A CONDUCT DISORDER AND THAT DR. DAY ALSO FOUND EVIDENCE TO SUPPORT A CONDUCT DISORDER.

WHEN WE QUESTIONED HIM FURTHER ABOUT THAT, HE COULD NOT GIVE SPECIFIC REASONS AS TO WHY DR. DAY CAME TO THE CONCLUSIONS THAT SHE DID, WHAT EVIDENCE IN MR. ALLRED'S PAST WOULD POINT TO THE FINDING OF A CONDUCT DISORDER.

HE WAS THE ONLY ONE WHO TESTIFIED TO THE NOTION THAT A CONDUCT DISORDER COULD HAVE BEEN FOUND.

SO THE ATTORNEY, OUR ARGUMENT IS THAT HE NEVER MADE A REASONABLY STRATEGIC DECISION BECAUSE HIS DECISION TO NOT CALL DR. DAY AS A WITNESS WAS NOT BASED ON INFORMED JUDGMENT BECAUSE HE

MISUNDERSTOOD WHAT DR. DAY'S ANALYSIS WAS AND HE MISUNDERSTOOD HER CONCLUSIONS. IT WAS NECESSARY FOR HIM TO FIND AN EXPERT WHO WAS MORE REASONABLY TAILORED TO THE PARTICULAR NEEDS OF THE CASE. TRIAL COUNSEL STATED THAT HE NEEDED -- HIS STRATEGY WAS TO PAINT MR. ALLRED'S CHILDHOOD AS BEING DISTRAUGHT, HIS FATHER BEING AN ALCOHOLIC. THERE WAS NO EXPERT TO TIE THAT INTO HIS OVERALL DEVELOPMENT OR HOW THAT AFFECTED HIM IN THE WEEKS LEADING UP TO AND THE NIGHT OF THE MURDERS IN THIS CASE, WHICH IS WHAT POSTCONVICTION PROVIDED THROUGH THE TESTIMONY OF TWO DOCTORS. WE WOULD ALSO ARGUE THAT TRIAL COUNSEL TESTIFIED QUITE THOROUGHLY THAT HE IS VERY FAMILIAR WITH ANTISOCIAL PERSONALITY DISORDER, THE CHARACTERISTICS NEEDED, THE EVIDENCE NEEDED TO SUPPORT IT BASED ON HIS WORK WITH CAPITAL CASES ALL THESE YEARS, SO HE SHOULD HAVE KNOWN BETTER TO BELIEVE THAT DR. DAY CAME TO THIS ANALYSIS OF A CONDUCT DISORDER IN THIS CASE.

>> WHAT DID THE OTHER MENTAL HEALTH EXPERT TESTIFY TO?

>> WE HAD TWO -- COLLATERAL COUNSEL HIRED TWO --

>> I'M TALKING ABOUT AT THE PENALTY PHASE.

>> NO MENTAL HEALTH EXPERT TESTIFIED.

>> BUT I THOUGHT YOU SAID HE WAS EXAMINED BY TWO DIFFERENT ONES.

>> HE WAS EXAMINED, MR. ALLRED WAS, BUT NONE TESTIFIED AT THE PENALTY PHASE HEARING.

>> DR. DAY, WE KNOW, WHETHER YOU AGREE OR NOT, THAT HE DID NOT WANT TO CALL HER BECAUSE OF THIS POSSIBLE PSYCHOPATH INFORMATION.

BUT DIDN'T DR. DANSER ALSO  
EXAMINE THE DEFENDANT PREPENALTY  
PHASE?

>> YES.

HE WAS HIRED BY ATTORNEY CAUDLE.  
[AUDIO DIFFICULTY]

>> THERE WAS NO FORMAL REPORT  
AND IT WAS AN ORAL CONVERSATION  
BETWEEN HIMSELF AND THE TRIAL  
COUNSEL WHERE HE SAID HE  
COULDN'T -- MR. ALLRED WAS  
COMPETENT AND THERE WAS NO  
INSANITY DEFENSE AND HE WAS  
NEVER CONTACTED AGAIN UNTIL  
POSTCONVICTION.

>> BUT HE WAS CONDUCTED BY THE  
STATE IN POSTCONVICTION.

>> CORRECT.

THE STATE CALLED HIM TO EVALUATE  
MR. ALLRED.

AND HE DID TESTIFY THAT HE DID  
AGREE THAT HE DOES NOT HAVE AN  
ANTISOCIAL PERSONALITY DISORDER.

>> I GUESS I'M LOOKING AT THE  
POSTURE OF THIS CASE, WHICH WAS  
THAT HE HAD PLED GUILTY, AND HE  
ACTUALLY JUST WANTED TO GET THE  
WHOLE THING OVER.

WAS THE PENALTY PHASE BEFORE A  
JUDGE OR A JURY?

>> IT WAS BEFORE A JUDGE.

>> NOW, IN EVALUATING HOW --  
WHAT -- WE'D HAVE TO CONCLUDE  
THAT THE TRIAL COUNSEL WAS  
DEFICIENT IN RELYING ON  
DR. DAY'S OVERALL ANALYSIS AND  
THE JUDGE MADE A FACTUAL FINDING  
THAT TRIAL COUNSEL REASONABLY  
RELIED ON HER OVERALL DIAGNOSIS  
AND IT WASN'T PER SE AN  
ANTISOCIAL PERSONALITY DISORDER,  
BUT IT WAS JUST EVIDENCE THAT  
WASN'T GOING TO BE REALLY  
HELPFUL IN THIS CASE.

SO HOW DO WE SET ASIDE THE TRIAL  
COURT'S FINDINGS, EVEN THOUGH  
IT'S A MIXED QUESTION OF LAW AND  
FACT, TO SAY THAT RELIANCE ON  
DR. DAY, WHO HAS A LONG HISTORY  
OF DOING FORENSIC PSYCHOLOGY AND

HAS DONE DEATH PENALTY CASES,  
THAT IT WAS UNREASONABLE TO RELY  
ON HER AND HER TEAM OF EXPERTS?  
I JUST DON'T SEE HOW YOU CAN GET  
THERE IN THIS CASE.

>> WE WOULD ARGUE THAT TRIAL  
COUNSEL INCORRECTLY  
MISINTERPRETED DR. DAY'S  
CONCLUSIONS IN THE CASE AND  
COULD HAVE USED DR. DAY IN OTHER  
WAYS, AS A NONDIAGNOSING EXPERT.  
>> BUT I GUESS THEN THE QUESTION  
IS LET'S SAY HE -- IT'S AN  
AWKWARD SITUATION BECAUSE YOU'VE  
GOT A DEFENDANT WHO HAS PLED  
GUILTY, HAS -- REALLY WANTS TO  
AT THIS POINT -- I THINK HE HAD  
-- HAD HE TRIED TO COMMIT  
SUICIDE AT SOME POINT?

>> THE NIGHT OF THE MURDER WHEN  
HE CALLED THE POLICE.

>> SO HE WAS VERY DISTRAUGHT.  
NO QUESTION.

I MEAN, I THINK THAT ANYBODY  
WOULD CONCLUDE THAT JUST BASED  
ON THE CIRCUMSTANCE AND WHAT  
HAPPENED.

BUT I GUESS IF HE HAD CALLED  
DR. DAY -- BECAUSE YOU'RE NOT  
SAYING HE SHOULD HAVE CALLED  
DR. DAY.

YOU'RE SAYING HE SHOULD HAVE  
FOUND ANOTHER EXPERT.

AND I DON'T KNOW WHERE WE -- IT  
SEEMS THAT GOES TO OUR WHOLE  
LINE OF CASES THAT SAY YOU HAVE  
A RIGHT TO RELY ON A COMPETENT  
MENTAL HEALTH EXPERT AND EVEN IF  
HER DIAGNOSIS WASN'T PER SE  
ANTISOCIAL PERSONALITY, IT  
DOESN'T SEEM THAT HER DIAGNOSIS  
WAS ONE THAT WOULD HAVE OVERALL  
HELPED THE JUDGE AND THEN US GET  
A BETTER PICTURE OF WHAT WAS  
GOING ON WITH THIS MAN THE NIGHT  
OF THE ACCIDENT.

I MEAN THE NIGHT OF THE MURDER.  
SORRY.

>> TRIAL COUNSEL TESTIFIED THAT  
HIS MAIN STRATEGY AT THE PENALTY

PHASE WAS TO SHOW STRONG MENTAL HEALTH MITIGATION TO TIE TO THE EVENTS OF THE CRIME.

HE TESTIFIED HE BELIEVED THAT MITIGATION HE PUT ON WOULD NEVER BE ENOUGH TO GET A LIFE RECOMMENDATION IN THIS CASE. HE KNEW NOT CALLING AN EXPERT WOULD BE A PROBLEM FOR HIM. IT CLEARLY WAS A PROBLEM WHERE THE TRIAL JUDGE FRAMED MR. ALLRED'S CHILDHOOD AS A HAPPY CHILDHOOD, WHICH IS THE COMPLETE OPPOSITE OF WHAT TRIAL COUNSEL WAS TRYING TO GET ACROSS.

I WOULD SUGGEST IN THIS CASE, BECAUSE HE WAS RELYING SO HEAVILY ON A STRATEGY AS BEING STRONG MENTAL HEALTH EVIDENCE, IT WAS IMPERATIVE FOR HIM TO GO GET A SECOND OPINION AND LOOKING TO ANOTHER MENTAL HEALTH EXPERT.

>> LET'S JUST SAY HE HAD DONE WHAT YOU SUGGEST.

WHAT IS IT THAT THE NOW, SECURED MENTAL HEALTH EXPERT'S SAY ABOUT THE NIGHT OF THE CRIME AND EVERYTHING ELSE THAT YOU SAY SHOULD HAVE BEEN PRESENTED AT THE ORIGINAL PENALTY PHASE?

>> DR. GASKIN AND DR. TWO DOCTORS WE HAD IN POST-CONVICTION.

DR. GEFFKIN, DESCRIBED MR. ALLRED AS ANTISOCIAL, QUIET, ISOLATIVE.

HE WAS NOT UNDULY CLOSE WITH ANYBODY.

BASED ON HIS ANALYSIS WITH HIM HE WOULD PUT HIM IN BROAD CLASS OF PERVASIVE DEVELOPMENTAL DISORDER, OVERARCHING CATEGORY COVERS ASPERGER'S SYNDROME AND AUTISM DISORDER.

WHY IT IS TIEING TO THE EVENTS OF THE CRIME SHOWING THAT FROM THE MOMENT THAT TIFFANY BARWICK WHO WAS THE FEMALE VICTIM IN CASE BROKE UP WITH MR. ALLRED IN

VERY PUBLIC SETTINGS IN THE WEEKS LEADING UP TO THE MURDER WHERE MR. ALLRED FOUND VICTIMS HAD SEXUAL INTERCOURSE WITH EACH OTHER HE WAS SO DISTRAUGHT AND HAVING EMOTIONAL BREAKDOWN, WITHOUT THIS DEVELOPMENTAL DISORDER, HE WAS NOT HAVING COPING SKILLS TO DEAL WITH THE EMOTIONS AND THIS STRESS.

DR. CADDY, HIS TESTIMONY THE INTERNAL STRESS BUILDING WITHIN MR. ALLRED FOR SEVERAL WEEKS LEADING UP TO THE NIGHT OF THE MURDER BECAME SO UNMANAGEABLE THAT ACTUALLY DECREASED OVER ALL AWARENESS OF WHAT WAS HAPPENING IN HIS SENSE OF AWARENESS GOING TOWARDS DIMINISHED CAPACITY. THE TESTIMONY WAS NEVER MITIGATED OR FOUND AT THE ORIGINAL TRIAL COURT.

I WOULD ALSO ADD THAT WHILE THE ORIGINAL JUDGE DID FIND EMOTIONAL DISTRESS THERE WAS NO FINDING OF EXTREME EMOTIONAL DISTRESS.

AND WHAT'S SIGNIFICANT IS THAT IN TRIAL COUNSEL'S SENTENCING MEMORANDUM TO THE JUDGE HE WAS TRYING TO ATTACK THE CCP AGGRAVATOR WHICH WAS FOUND AS TO BOTH VICTIMS AND HE USES THE LINE THAT MR. ALLRED JUST LOST IT ON THE NIGHT OF THE MURDER YET HE PUT NO TESTIMONY TO REALLY SHOW HOW MR. ALLRED JUST LOST IT.

SO THE TESTIMONY THAT WAS PRESENTED BY OUR EXPERTS REALLY FOCUSING ON MR. ALLRED'S STATE OF MIND ON THE DAY OF THE MURDER.

THIS COURT ON DIRECT APPEAL FOUND THAT CCP AGGRAVATOR WAS NOT, WAS GIVEN GREAT WEIGHT AND THAT WAS TO BE UPHELD AND IT WAS NOT NEGATED BY THE ONGOING DOMESTIC VIOLENCE DISPUTE BECAUSE MR. ALLRED NEVER



PRESENTED TESTIMONY OF MENTAL HEALTH EXPERTS OR A FINDING OF EXTREME EMOTIONAL DISTRESS THAT WAS HAPPENING ON THE NIGHT OF THE MURDERS.

>> EXCEPT AGAIN LOOKING AT THE FACT AS WE REPORT IT, THAT HE, HE, TOOK THE GUN, HE METHODICALLY KILLED TWO PEOPLE HE WENT THERE TO KILL, HE LEFT, REPORTED THE CRIME, COOPERATED WITH POLICE.

I GUESS I JUST, WHETHER YOU CALL IT EMOTIONAL DISTRESS OR EXTREME, NOT SURE HOW THAT WOULD MITIGATE THIS CRIME ENOUGH TO WARRANT A LIFE SENTENCE WHERE YOU'VE GOT HOW MANY VICTIMS?

>> THERE WERE TWO VICTIMS.

>> TWO VICTIMS AND YOU HAVE HAC, YOU'VE GOT, YOU KNOW, EVEN WITH EMOTIONAL DISTRESS WE STILL HAVE NOT REJECTED CCP THAT SOMEBODY WHO COULD BE UNDER EXTREME EMOTIONAL DISTRESS COULD STILL BE CAPABLE OF HEIGHTENED PLANNING.

SO I'M NOT SURE I SEE HOW THAT WOULD UNDERMINE CONFIDENCE.

I GUESS I'M LOOKING AT SECOND PRONG TO SEE IF YOU, HOW YOU WOULD REFRAME THE CALCULUS OF THE AGGRAVATORS AND MITIGATORS?

>> WELL WITH, THE TESTIMONY THAT WE PRESENTED WITH DRU DR. CADDY AND DR. GEFFKIN I BELIEVE WOULD HELP REFUTE THE CCP AGGRAVATOR GIVING IT A LESSER WEIGHT AND FINDING OF DIMINISHED CAPACITY WHICH WAS NEVER PREVIOUSLY FIND AND FINDING OF EXTREME EMOTIONAL DISTRESS WAS ONLY GIVEN MODERATE WEIGHT.

WHILE THIS WAS VERY AGGRAVATING CASE WE CONTEND WAS NEVER PROPERLY MITIGATED IN THIS CASE. THERE WAS A LEVEL OF HEIGHTENED LEVEL OF PREMEDITATION, DR. CADDY SAID A PERSON IN STATE OF DISASSOCIATION THEY CAN BE

VERY PURPOSEFUL IN THEIR ACTS  
AND INTENT.

AT THIS POINT IN I'M IN MY  
REBUTTAL TIME SO I WILL RESERVE.

>> MAY IT PLEASE THE COURT.

I'M STACY KIRCHER ON BEHALF OF  
THE STATE IN THIS CASE.

I WOULD LIKE TO BEGIN BY  
ADDRESSING A POINT THAT JUSTICE  
QUINCE BROUGHT UP.

I THINK THE PROBLEM IN THIS CASE  
IS NOT THAT TRIAL COUNSEL, TIM  
CAUDILL, DIDN'T CALL A MENTAL  
HEALTH EXPERT.

I THINK THE PROBLEM IS HAVING  
DONE COMPLETE INVESTIGATIONS AND  
PSYCHOLOGICAL EVALUATIONS BY  
BOTH DR. DANZINGER AND WHO  
EVALUATED HIM DIRECTLY AFTER THE  
MURDERS FOR INCOMPETENCY AND  
INSANITY AND THROUGH DR. DAY AND  
HER TEAM OF TWO OTHER SCHOOL  
GIVES, DR. AND MRS. JANNER,  
THROUGHOUT ALL OF THAT  
EVALUATION, THE PROBLEM IS  
MR. ALLRED DIDN'T HAVE ANY  
MITIGATING PSYCHOLOGICAL--

>> LET ME, HE IS HOW OLD AT THE  
TIME OF THIS?

>> 21.

>> WAS HIS PRIOR HISTORY?

>> HE HAD NO PRIOR HISTORY OF  
CRIMINAL ACTIVITY.

>> THERE IS SOME SUGGESTION, AND  
I UNDERSTAND THAT HE WAS, A LOT  
OF THE UNDERLYING SIMMERING WAS  
ACTUALLY ABUSE.

HIS GRANDFATHER-- EVEN KNOW I  
HEARD THAT-- WAS ADMITTED.

IT IS GOING TO GO BEFORE A TRIAL  
JUDGE, NOT BEFORE A JURY.

SO WHAT IS THE IDEA YOU WOULDN'T  
TRY TO PUT ON WITH THIS, THIS  
DEFENDANT WHO HAS NEVER ACTED IN  
THIS WAY BEFORE, BEING  
DISTRAUGHT ABOUT THE BREAKUP,  
WHAT WOULD HAVE MOTIVATED  
SOMETHING ABOUT HIS  
PSYCHOLOGICAL STATE.

NOW I DON'T, WHAT WAS HIS

THINKING OF NOT PRESENTING ANY MENTAL HEALTH MITIGATION IN FRONT OF THE JUDGE WHO IS CERTAINLY MORE CAPABLE OF LOOKING AND SAYING, WELL I KNOW IT IS NOT ANTISOCIAL PERSONALITY IN THE TRADITIONAL SENSE OF BRINGING UP, HE HAD A HISTORY OF VIOLENCE IN HIS LIFE?

>> WE, JUSTICE PARIENTE, WE KNOW EXACTLY WHAT TRIAL COUNSEL'S THINKING WAS IN NOT PRESENTING DR. DAY BECAUSE IN HIS CONVERSATIONS WITH DR. DAY AFTER HER HAVING DONE A COMPLETE PSYCHOLOGICAL PROFILE ALONG WITH HER TEAM, SHE DID THE WAYS 2, EXCUSE ME, THE WAZE 3, MMPI SECOND EDITION.

SHE REVIEWED SCHOOL RECORDS.

SHE SPOKE TO FAMILY.

SHE REVIEWED COPIOUS AMOUNTS OF LETTERS HE WROTE WHILE IN JAIL TO THE VICTIM'S FAMILY, TO HIS FAMILY, TO TRIAL COUNSEL, TO THE COURT.

SHE LOOKED AT THE INVESTIGATION NOTES, THE CRIME SCENE PHOTOS. LOOKING AT ALL OF THIS AND MEETING WITH HIM AND HER TEAM IN PERSON SHE TALKED TO TIM CAUDILL AND TRIAL COUNSEL AND SAID I HAVE NOTHING MITIGATING TO TESTIFY TO.

AND IN FACT--

>> THOSE LETTERS TO THE FAMILY, WHAT WAS THE TENOR OF THOSE LETTERS.

>> ESSENTIALLY, JUSTICE CANADY, THAT HE WAS NOT REMORSEFUL AT ALL.

THAT HE FELT JUSTIFIED IN HIS ACTIONS.

HE WAS, ALSO IN THOSE LETTERS, AS WELL AS ON THE ELEVATED TEST SCORES HE WAS SHOWING FEATURES OF ANTISOCIAL PERSONALITY DISORDER.

AND AGREE WITH OPPOSING COUNSEL WHOLEHEARTEDLY THAT EVERY MENTAL

HEALTH EXPERT THAT TESTIFIED BOTH AT THE TRIAL LEVEL, WELL AT THE PENALTY PHASE LEVEL AND AT THE POST-CONVICTION LEVEL AGREED THAT HE DOESN'T MEET THE CONDUCT DISORDER PRIOR TO AGE 15.

SO WE CAN'T DO A DIAGNOSIS OF ANTISOCIAL PERSONALITY DISORDER. HOWEVER, HAD TIM CAUDILL CALLED DR. DAY TO TESTIFY, SHE WOULD HAVE BEEN ABLE TO TESTIFY TO EVIDENCE THAT WAS IN THOSE LETTERS ON CROSS-EXAMINATION THAT OTHERWISE DIDN'T COME OUT AT ALL.

>> BUT DOESN'T, IN A WAY, AND AGAIN I GUESS YOU EVALUATE, WE'RE JUST MORE INTERESTED IN THE PSYCHOLOGICAL PROFILE OF THIS DEFENDANT, HE PLED GUILTY. HE'S, HE TRIES TO COMMIT SUICIDE, IS THAT CORRECT? THAT HE TRIED TO COMMIT SUICIDE?

>> THERE IS NO INDICATION WHATSOEVER THAT HE EVER ATTEMPTED TO COMMIT SUICIDE. THE ONLY ALLEGATION THAT HE SAID I AM GOING TO SHOOT MYSELF.

>> HE CLEARLY WANTED TO GET 24 WHOLE CASE OVER WITH.

>> CORRECT.

>> IT'S A PRETTY UNUSUAL PSYCHOLOGICAL PRESENTATION TO SAY EVEN NOW AFTER IT'S HAPPENED HE THINKS HE WAS JUSTIFIED. ALMOST LIKE THAT IN ITSELF IS SO BIZARRE, SO BIZARRE, THAT YOU IT WOULD INDICATE SOMETHING IS SERIOUSLY WRONG WITH THIS DEFENDANT.

I MEAN MENTALLY.

>> THAT IS AN INTERESTING POINT, JUSTICE PARIENTE, BECAUSE DURING DR. DAY'S EVALUATION AND IN HER SUBSEQUENT MEETING WITH TRIAL COUNSEL WHEREBY HE DECIDED HE WASN'T GOING TO BE ABLE TO CALL DR. DAY IN MITIGATION, SHE NOTES THAT THE ANTISOCIAL PERSONALITY FEATURES WERE POOR IMPULSE

CONTROL, ANGER, MANIPULATION, CYNICISM, LACK OF REMORSE, LACK OF GUILT, INDIGNATION.

AND ALSO, IT IS IMPORTANT TO NOTE THAT HAD DR. DAY BEEN CALLED TO TESTIFY, SHE COULDN'T OFFER MUCH IN MITIGATION.

SHE COULD OFFER MUCH MORE IN AGGRAVATION OR AT LEAST IN LACK OF MITIGATION BASED ON THE FACT THAT THE LETTERS THAT APPELLANT WAS WRITE TOGETHER VICTIM'S FAMILY, ASKING FOR PHOTOGRAPHS OF HER TO PUT UP IN HIS JAIL CELL, HAD KIND OF A SUPERFICIAL LEVEL OF REMORSE IN THEM UNTIL HE LEARNED THAT THEY HAD RECEIVED AN INJUNCTION AGAINST HIM AFTER WHICH THE TENOR OF HIS LETTERS CHANGED.

HOPED THAT THEY WOULD BE MISERABLE FOR THE REST OF THEIR LIVES.

HE REALLY SHOWED A LACK OF REMORSE.

BASICALLY THIS MANIPULATION THAT DR. DAY WAS TALKING ABOUT.

IT IS ALSO IMPORTANT TO NOTE THAT IN POST-CONVICTION THE EXPERTS THAT WERE CALLED WERE DR. DANZINGER, WHO BECAME A STATE'S WITNESS WHO TESTIFIED IN HIS INITIAL EVALUATION OF THE APPELLANT HE COULD OFFER NOTHING IN MITIGATION AS WELL.

EVEN AFTER HAVING REVIEWED DEPOSITIONS IN POST-CONVICTION HE COULD STILL NOT OFFER ANYTHING MITIGATING.

ALSO TO ADDRESS ANOTHER POINT, THE, MENTAL EXPERTS THAT WERE CALLED BY POST-CONVICTION COUNSEL WERE DR. CADDY AND DR. GEFFKIN.

THERE WAS SOME DISCUSSION ABOUT IT BEING AN ERROR FOR JUDGE EATON TO HAVE FOUND IT WAS A HAPPY CHILDHOOD THAT THE APPELLANT HAD.

HOWEVER BOTH OF THE BOTH

POST-CONVICTION EXPERTS,  
DR. CADDY SAYING THERE WAS SOME  
INSTABILITY BUT IT WAS AN  
UNEVENTFUL CHILDHOOD WITH NO  
INDICATION OF INDICATION OF  
SIGNIFICANT TRAUMA.

DR. GEFFKIN TESTIFIED IT WAS  
RELATIVELY NORMAL CHILDHOOD.  
JUSTICE PARIENTE, YOU REFERENCED  
SOME ALLEGATIONS ABOUT SEXUAL  
ASSAULT.

THERE WERE NO PIECES OF EVIDENCE  
PUT ON, THERE WAS NO TESTIMONY  
ABOUT THE SEXUAL ASSAULT.

THE ONLY THING THAT WE HAVE  
ABOUT THAT WHICH IS THIN AT  
BEST, IS THAT A COUSIN, MUCH  
OLDER COUSIN THEN ALLRED ACCUSED  
THAT GRANDFATHER WHO LIVED NEXT  
DOOR TO THE ALLREDS OR IN THEIR  
HOME OF SEXUAL ASSAULT AT SOME  
POINT.

BUT, GIVEN THAT THERE WAS A LINE  
OF POSSIBLE MITIGATION THERE, IT  
IS IMPORTANT TO NOTE THAT TRIAL  
COUNSEL DID A FULL INVESTIGATION  
OF THIS.

THEY ORDERED THE INVESTIGATION  
NOTES FROM THE STATE ATTORNEY'S  
OFFICE.

ED THAT HA UNSEALED.

THEY TALKED TO FAMILY MEMBERS.

THEY TALKED TO A COUSIN, AN  
AUNT, BOTH GRANDPARENTS, BOTH  
PARENTS AND TO ALLRED HIMSELF  
WHO VEHEMENTLY DENIED ANY SEXUAL  
ABUSE AT ALL.

SO EVEN IF WE'RE GIVING THE FACT  
THAT THERE IS SOME CREDENCE,  
WHICH WAS NOT PROVEN TO THE  
SEXUAL ASSAULT IT IS IMPORTANT  
TO NOTE JUDGE EATON DID GIVE  
MITIGATION TO THE DEFENDANT FOR  
HIS DEVELOPMENTAL DELAYS IN HIS  
CHILDHOOD AND GAVE THAT MODERATE  
WEIGHT.

ONCE WE LOOK AT TESTIMONY FROM  
DR. CADDY AND DR. GEFFKIN, AT  
THE BEST WHAT WE HAVE IS STILL  
NOT RISING TO THE LEVEL OF

STATUTORY MITIGATION.

THE MOST THEY TESTIFIED TO,  
DR. CADDY SPECIFICALLY SAYS, AT  
THIS POINT, HE THINKS THAT HE  
MAY HAVE BEEN IN A FUGUE STATE.  
WHICH THERE WAS A FACTUAL  
DETERMINATION BY THE JUDGE IN  
POST-CONVICTION PROCEEDINGS THAT  
DR. DANZINGER AND DR. DAY WERE  
MORE CREDIBLE THAN DR. CADDY AND  
DR. GEFFKIN IN PART.

>> I WAS IN A WHAT KIND OF  
STATE?

>> DISASSOCIATIVE FUGUE STATE.  
HE TALKED ABOUT THE FOUR TYPES  
OF DISSOCIATIVE STATES.  
HE TALKS EACH ONE EVER THOSE IN  
DEPTH.

THE FACT IT WAS VERY DELIBERATE  
ACTION.

BASED ON THE FACT THAT ALLRED  
CAME TO THE PARTY WITH THE  
LOADED GUN, HE WAS RAMMING  
TIFFANY'S CAR, HE GOES AROUND TO  
THE FRONT.

NO ONE LETS HIM IN.  
HE GOES AROUND TO THE BACK.  
SHOOTS OUT THE DOOR,  
SINGULARLY FOCUSED, DOESN'T HARM  
ANYONE ELSE, BASICALLY  
INCAPACITATES ERIC ROBERTS  
SHOOTING HIM IN THE CALF TO GET  
HIM OFF OF HIM SO HE CAN  
CONTINUE TO PURSUE TIFFANY INTO  
THE BATHROOM WHERE THEN HE  
SHOOTS HER WHICH IS CAPTURED ON  
THE 911 CALL.

HE IS VERY DELIBERATE IN HIS  
ACTIONS.

HE IS VERY WELL-THOUGHT OUT AND  
THIS IS NOT INDICATIVE OF ANY  
KIND OF DISSOCIATIVE STATE THAT  
DR. DANZINGER IS AWARE OF.

IN FACT HE SAYS THEY'RE  
INCREDIBLY RARE, LOOKING AT THE  
WHOLE SPECTRUM OF DISSOCIATIVE  
STATES, THE FOUR DIFFERENT  
TYPES, FUGUE STATE WHICH  
DR. CADDY MIGHT HAVE SAID HAD  
HAPPENED, IT IS IMPORTANT TO

NOTE THAT I'M NOT PREPARED TO SAY HE WAS OR WAS NOT IN A DISSOCIATIVE STATE. EVEN IF WE'RE ASSUMING THAT, DR. DANZINGER SAYS IN HIS 30 YEARS HE HAS SEEN THAT TWICE AND SO IT IS VERY RARE AND EVERYTHING THAT ALL OF THE FACTUAL CIRCUMSTANCES DO NOT DENOTE THERE WAS ANY KIND OF DISSOCIATIVE STATE WITH ALLRED GOING ON.

IT IS ALSO IMPORTANT TO NOTE THAT HE WAS BASICALLY TERRORIZING THESE VICTIMS IN THE 2 1/2 WEEKS BETWEEN HIS BIRTHDAY AND THE MURDERS.

IT IS NOT AS THOUGH THIS DEFENDANT CAME TO RAM THE CAR AND FORGOT WHAT WAS HAPPENING AND SNAPPED OR WHAT HAVE YOU AND SNAPPED AND SHOT THE VICTIMS. HE SAID ON THE DAY HE RECEIVED HIS GUN ON September 7TH, AFTER THE WAITING PERIOD HE SENT PICTURES VIA EMAIL TO TIFFANY BARWICK OF HER PHOTOGRAPH THAT HE HAD USED AS TARGET PRACTICE SHOOTING HOLES IN IT.

AS RECENTLY AS THE NIGHT BEFORE THE MURDER, HE WAS TELLING A FRIEND, MICHAEL SILAS, I'M BASICALLY GOING TO KILL THEM. I'M BASICALLY GOING TO START KILLING PEOPLE.

UNFORTUNATELY MR. SILAS DIDN'T TAKE THAT THREAT AS ANYTHING HIM BEING APATHETIC OR DEPRESSED FROM THE BREAKUP.

ON MORNING OF MURDERS WHEN HE WAS FIRED FROM HIS JOB HE SENT THE TEXT MESSAGE TO MICHAEL, THE FIRST VICTIM, SAYING NEXT TIME I SEE YOU I'M GOING TO KILL YOU AND ALSO TO TIFFANY.

SO WHEN SO WHEN THE TEXT CAME TO MICHAEL FROM THE DEFENDANT SAYING I'M COMING, AT THAT POINT ALL EVIDENCE IS THAT TIFFANY WENT INTO FULL PANIC MODE



BECAUSE SHE KNEW WHAT HE HAD  
BEEN PLANNING FOR THE  
APPROXIMATELY 2 1/2 WEEKS.  
THIS WAS NOT ANYTHING EXPLAINED  
AWAY BY DISSOCIATIVE STATE.  
ALSO IN THE LETTERS ALLRED TALKS  
ABOUT THIS.  
HE TALKS ABOUT SHOOTING THEM AND  
AS RECENTLY TO THE MURDERS AS  
WHEN HE GETS IN THE CAR WITH THE  
OFFICER WHO IS TRANSPORTING HIM,  
HE SAYS, I KNOW I KILLED PEOPLE.  
I THOUGHT 14 TIMES.  
I EMPTIED THE CLIP.  
SO ALL OF THESE FACTORS  
DANZINGER LOOKED AT TO SAY THIS  
IS NOT INDICATIVE OF A  
DISSOCIATIVE STATE.  
DR. GEFFKIN, WHAT HE TESTIFIED  
TO, IT IS INTERESTING THAT  
DR. GEFFKIN INTERVIEWED THE  
DEFENDANT FOR SIX HOURS.  
HE TESTIFIES DURING THE FIRST  
THREE HOURS HE DIDN'T THINK  
THERE WAS ANYTHING WRONG WITH  
THE DEFENDANT AND THEN, IN THE  
SECOND THREE HOURS HE DIAGNOSES  
HIM WITH A AUTISM SPECTRUM  
DISORDER.  
BUT EVEN WHICH, AGAIN, DR. DAY  
AND DR. DANZINGER DISAGREE WITH,  
AND THERE IS THAT CREDIBILITY  
FINDING AS TO HIS TESTIMONY AS  
WELL.  
BUT EVEN GIVEN THAT AUTISM  
SPECTRUM DISORDER, HE SAYS, THAT  
DR. GEFFKIN SAID HE WOULD BE  
HIGH FUNCTIONING ON THE AUTISM  
SPECTRUM AND THERE IS NOTHING TO  
PRECLUDE SOMEONE FUNCTIONING ON  
AUTISM SPECTRUM TO DEVELOP THE  
INTENT FOR HEIGHTENED  
FUNCTIONING AND CCP.  
EVEN IF WE GIVE FULL CREDENCE TO  
POST-CONVICTION'S EXPERTS THE  
MOST IT COULD DO WAS LESSEN THE  
HEIGHTENED PREMEDITATION FOR CCP  
BUT EVEN WITHOUT CCP, THIS IS A  
HIGHLY AGGRAVATED CASE.  
IF THERE ARE NO FURTHER

QUESTIONS FROM THE PANEL I WOULD ASK THAT THIS COURT AFFIRM THE CONVICTIONS AND SENTENCE OF DEATH.

THANK YOU.

>> THANK YOU.

>> JUST A FEW POINTS BASED ON COUNSEL'S REPRESENTATIONS.

WHAT IS INTERESTING AND THIS GOES BACK TO JUSTICE PARIENTE'S STATEMENT, WHAT IS INTERESTING IN THIS CASE THERE WAS A JURY WAIVER FOR THE PENALTY PHASE. SO IN ESSENCE THIS WAS ONE LONG SPENCER HEARING IN FRONT OF THE JUDGE.

SO ANY AGGRAVATION WHICH MAY HAVE COME OUT THROUGH DR. DAY'S TESTIMONY ON CROSS-EXAMINATION IT WOULD HAVE BEEN LESS IMPACTFUL IN FRONT OF A JUDGE WHO IS VERY EXPERIENCED DEALING WITH THESE MATTERS VERSUS A JURY COULD BE UNDULY SWAYED BY HEARING AGGRAVATION.

>> IT REALLY DOESN'T ANSWER THE QUESTION OF THAT IT SEEMS COMPLETELY REASONABLE FOR THIS DEFENSE LAWYER WHO HAD A FULL-BLOWN DISCUSSION WITH DR. DAY AND ALL THE OTHER, WASN'T JUST I GOT THE REPORT AND I'M NOT GOING TO USE IT, THOUGHT ABOUT IT AND EVEN, THAT IT'S, IT IS REASONABLE NOT TO HAVE PUT HER ON.

I DON'T KNOW HOW YOU CAN SECOND-GUESS THAT IN, CERTAINLY NOT AN INNATE CLAIM WHERE WE WOULD SAY, THIS WAS AN COMPETENT MENTAL HEALTH EXAMINATION.

AND SO EVEN IF YOU GET PAST THAT, THEY SHOULD HAVE JUST THROWN IT ALL IN, WHERE, THE, SECOND PRONG IS JUST, DOESN'T SEEM TO BE THERE FOR ALL OF THE REASONS THAT THE, THAT WAS JUST SPOKEN ABOUT AS FAR AS THE EXTENT OF THIS PLANNING AND WHETHER THE, THIS WAS A

DEFENDANT THAT HAS ASPERGER'S AND DOESN'T, HAS INABILITY TO HAVE EMPATHY OR WHATEVER IT MIGHT BE.

THAT IT REALLY CHANGES, TAKING AWAY WHAT THESE AGGRAVATORS ARE, AGAIN, WE, THIS CASE DIDN'T OCCUR THAT LONG AGO THAT YOU'VE GOT THE HAC, THIS WOMAN BEING TERRORIZED IN THE BATHROOM AND YOU HEAR IT ON THE 911 CALL.

I MEAN THAT IS, I JUST DON'T SEE HOW YOU CAN ESTABLISH EITHER DEFICIENCY BUT CERTAINLY NOT PREJUDICE.

I GUESS THAT, YOU HAVE, THERE IS SOMETHING ELSE THAT HASN'T BEEN MENTIONED, THAT WOULD SAY, OH, MY GOODNESS, NO, WHEN YOU WOULD HAVE HEARD THAT, YOU WOULD JUST GO, THIS IS, THIS PUTS THIS CASE IN A WHOLE DIFFERENT LIGHT.

>> WHAT IS AN UNUSUAL CASE IS THAT MR. ALLRED IS A PERSON THAT HAD NO HISTORY OF VIOLENCE AND ALL THE EXPERTS AGREE ON THAT. THAT HE HAD NEVER REALLY GOTTEN INTO ANY SERIOUS TROUBLE.

I THINK THERE WERE TWO SCHOOL INCIDENTS AND THAT WAS IT.

SO WHAT WAS MISSING FROM THIS CASE, AND WHAT TRIAL COUNSEL FAILED TO DO WAS GIVE A EXPLANATION HOW SOMEONE LIKE MR. ALLRED CAN GO AND COMMIT A CRIME LIKE THIS.

>> IT DOESN'T REALLY, YOU HAVE, TO ME, WHAT YOU HAVE PUT ON REALLY HASN'T ANSWERED THAT QUESTION.

BECAUSE EVEN, HIS CONDUCT IN PRISON, AS FAR AS SENDING THESE LETTERS AND THEN, YOU KNOW, GETTING UPSET WITH THE VICTIM'S PARENTS?

I MEAN, WHATEVER YOU SAY ABOUT WHAT THAT MENTAL DISORDER IS, IT IS CERTAINLY NOT SOMETHING THAT WOULD MAKE YOU FEEL, YOU KNOW, WARM AND FUZZY ABOUT THIS

PARTICULAR DEFENDANT.

>> THERE WAS TESTIMONY THROUGH DR. CADDY, THAT MR. ALLRED WAS IN THIS DISSOCIATIVE STATE POSTMURDERS AND THE REACTION COULD BE WHY WRITING LETTERS TO THE FAMILY.

THE SENTIMENTS OF THE LETTERS WHICH WAS A GENERAL LACK OF REMORSE, LACK OF EMPATHY IN THE CASE, MUCH OF THAT ALREADY CAME OUT AT THE PENALTY PHASE THROUGH MR. ALLRED'S OWN STATEMENT TO THE POLICE IN HIS CONFESSION TO THE POLICE.

THERE REALLY WOULD HAVE BEEN NO HARM IN PUTTING ON A MENTAL HEALTH EXPERT AND HAVING THESE LETTERS POTENTIALLY COME IN.

WHAT I WOULD, WOULD FURTHER ARGUE THAT THE EXPERT TESTIMONY WAS NEEDED TO SHOW WHY SOMEONE WITH NO HISTORY OF VIOLENCE BUT ONLY INSIGNIFICANT TROUBLE COULD START ACTING THIS WAY.

DR. DANZINGER DID AGREE WITH DR. GEFFKEN HE FOUND SOME TRAITS OF AUTISM SPECTRUM DISORDER IN MR. ALLRED BUT HE COULDN'T COME TO A FULL DIAGNOSIS.

SO HE DID AGREE WITH THAT STATEMENT.

DR. CADDY, THIS WASN'T FULL DISASSOCIATION.

THIS WAS MORE REDUCED GENERAL AWARENESS WHAT WAS HAPPENING BUT HE COULD STILL BE VERY PURPOSEFUL IN HIS ACTIONS IN THIS STATE.

WE WOULD JUST ARGUE THAT MITIGATION PRESENTED IN CUMULATIVE AND PENALTY PHASE AND EVIDENTIARY HEARING WAS ENOUGH TO TIP OF SCALES IN FAVOR OF A LIFE RECOMMENDATION IN THIS CASE.

GIVE EXPLANATION WHY THIS TRAGIC CRIME OCCURRED, NOT AN EXCUSE FOR IT BUT A EXPLANATION FOR WHY AND WE WOULD ASK YOU TO REVERSE

THE CIRCUIT COURT'S ORDER.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.

COURT WILL BE IN RECESS UNTIL

TOMORROW MORNING AT 9:30.

9:00.