

>> ALL RISE.
>> SUPREME COURT IS NOW IN
SESSION, PLEASE BE SEATED.
NEXT CASE ON THE DOCKET, HOWARD
STEVEN AULT V. STATE OF FLORIDA.
>> MAY IT PLEASE THE COURT, MY
NAME IS YOUNG TINDALL
AND I REPRESENT HOWARD STEPHEN
AULT, A CONVICTION FOR DOUBLE
MURDER AND 3.851, HEARING ON THE
3.851 WHICH WAS DENIED.
THE JURY IN THE CASE REPRIMANDED
DEATH BY A VOTE OF 9-3,
10-2, UNLESS THE COURT HAS
OTHER QUESTIONS, MY ARGUMENT IS
REPRESENTATION AT THE 2007
PENALTY PHASE.
AT THE TIME IT CAME BACK
REVERSED BECAUSE MAJORITY ERROR,
AT THE TIME IT CAME BACK THE
PENALTY PHASE COUNSEL IS
APPOINTED TO THE CASE, HE WAS
AWARE OF ALL THE POTENTIAL
WITNESSES THAT MIGHT BE CALLED
BY THE STATE IN REBUTTAL.
ONE OF THOSE WITNESSES WITH A
PSYCHOLOGIST NAMED SHERRY CARTER
WHO WAS HIRED BY THE STATE TO
EVALUATE MISTER AULT AND GIVE
TESTIMONY REGARDING LACK OF
STATUTORY LITIGATORS.
SHE GAVE 100 PAGES OF TESTIMONY,
IN 1999, WHEN IT CAME TIME FOR
HER AFTER MISTER AULT
PRESENTED HIS CASE AND TIME
FOR REBUTTAL, DOCTOR CARTER WAS
ABLE TO TESTIFY AND WAS HAVING
MEDICAL PROBLEMS.
EVERYBODY AGREED SHE WAS
UNBELIEVABLE UNDER THE RULES AND
MIGHT HAVE TO COME IN.
AND TO TESTIFY, INSTEAD OF
REQUIRING HER TO TESTIFY IN THE
PENALTY PHASE, PENALTY PHASE
COUNSEL STIPULATED AS IT WAS IN
1999.
IN 1999, SHE GAVE DAMNING
TESTIMONY, WAS NOT IN MY OPINION
EFFECTIVELY CROSS-EXAMINED BY
THE THEN COUNCIL, TRYING HER

FIRST PENALTY PHASE CASE.
ONE OF THE THINGS DOCTOR CARTER
TALKED ABOUT IN HER TESTIMONY,
LATELY MISTER AULT HAS SEVERE
PSYCHOPATH HE, THIS IS, IN HER
TESTIMONY, MULTIPLE TIMES, THIS
IS THE MOST DANGEROUS TYPE OF
PERSON TO SOCIETY, EXTREMELY
DANGEROUS PERSON.
MISTER AULT, WAS NOT OBJECTED TO
AT THE TIME.
MY RESEARCH, I QUESTIONED HER
ABOUT THIS AT THE HEARING ON THE
3.851, A THEORY THAT WAS MADE UP
BY A CANADIAN PSYCHOLOGIST,
NEVER RECOGNIZED BY THE EPA OR
THE AMA, THE DIAGNOSIS, ANY
OTHER ORGANIZATION.
DOCTOR CARTER WAS ABLE TO
TESTIFY AT LENGTH IN THE 2007
PENALTY PHASE ABOUT THIS WITHOUT
OBJECTION, NOT TO SAY SHE MIGHT
NOT HAVE BEEN ABLE TO TESTIFY TO
IT BUT FILED ON AT LEAST 5
OCCASIONS, SHE REFERRED TO IT AS
A DIAGNOSIS.
AT ONE POINT SHE SAID, THIS IS A
QUOTE, THE DIAGNOSIS OF
PSYCHOPATHY GOES FAR BEYOND
ANTISOCIAL PERSONALITY.
WHEN I QUESTIONED HER ABOUT
WHETHER SHE GAVE THE JURY THAT
OPPRESSION OR SAID THERE WAS A
DIAGNOSIS, SHE SAID NO.
SHE DIDN'T BUT IT IS CLEARED
WHAT SHE DID IN 1999 WAS
CALLED A DIAGNOSIS.
HER TESTIMONY IN 1999 WENT
UNCHECKED.
SHE GAVE LONG NARRATIVE ANSWERS
THAT WOULD HAVE BEEN
OBJECTIONABLE AND NEVER WERE
OBJECTED TO THEN AND IN 2007
THERE WAS NO OBJECTION TO THEM.
THERE WAS ONLY ONE OBJECTION TO
A TESTIMONY IN 1999 ABOUT A
NARRATIVE ANSWER, AND IT WAS
SUSTAINED.
>> DOES SHE TESTIFY -- WAS SHE
CALLED TO TESTIFY AT EVIDENTIARY

HEARING?

>> SHE WAS.

>> AND REAFFIRM WHAT SHE HAD SAID IN 1999.

>> MORE OR LESS.

>> I WAS LIMITED IN CROSS-EXAMINATION ON THAT DAY BUT I WAS ABLE TO GET OUT SOME THINGS I THOUGHT WOULD BE FAVORABLE.

>> BY WHO?

>> THE COURT, OBJECTION FROM THE STATE AND THE COURT.

>> BY RULING ON OBJECTIONS?

>> YES, YOUR HONOR.

>> I ASSUME YOU DO A GREAT AMOUNT OF TRIAL WORK.

>> YES, YOUR HONOR.

>> DO YOU DISAGREE ON THE PROPOSITION THAT AT TIMES AS A TRIAL LAWYER YOU WOULD PREFER TO HAVE A COLD DEPOSITION RATHER THAN A LIVE WITNESS LOOKING AT THE JURY TALKING TO THE JURY, GIVING THE SAME INFORMATION.

>> THERE ARE TIMES WHEN THAT IS TRUE.

>> IN THIS CASE DEFENSE COUNSEL SAYS THAT IS PART OF THE REASON THAT DIDN'T INSIST ON BRINGING UP WHAT SOUNDED LIKE THE LADIES ON HER DEATHBED AND DOWN AT TIMES BUT THAT IS THE REASON DIDN'T INSIST SHE COME IN.

>> THAT IS WHAT HE SAID.

>> WHY IS A TRIAL JUDGE IN ERROR IN ACCEPTING THAT AS A STRATEGY?

>> FIRST OF ALL WHEN YOU DO STIPULATE THE TESTIMONY, PRIOR TESTIMONY, IT DEPENDS ON THE WITNESS AND WHAT THEY SAID.

IN THIS CASE IT WAS AN ERROR ON COUNSEL'S PART.

>> YOU JUST ADMITTED YOU SAID THE SAME THING, TESTIMONY IS THE SAME TODAY AS IT WAS DURING HER DEPOSITION.

>> IT COULD HAVE BEEN AS MUCH IS GOING INTO THE TRIAL BUT NEVER IS.

>> I AM TRYING TO UNDERSTAND WHY IT IS IN ERROR FOR A TRIAL JUDGE HAVING BEEN INVOLVED IN THE CASE, I DON'T FIND THAT TO BE OUT OF THE NORM FOR TRIAL LAWYERS AND APPARENTLY YOU AGREE THAT AT TIMES, SO EXTRA SPECIAL, YOU CAN ALWAYS ARGUE, SHOULDN'T USE THE DEMO, I UNDERSTAND THAT. IT SEEMS TO ME, DON'T KNOW HOW YOU HOLD A TRIAL JUDGE IN ERROR FOR ACCEPTING THAT TESTIMONY.

>> I JUST BELIEVE THE ATTORNEY SHOULD NOT HAVE SITUATED TO THE TESTIMONY, SHOULD HAVE TAKEN AN OPPORTUNITY BEFORE THE JURY TO BRING OUT THINGS IN DOCTOR CARTER'S TESTIMONY THAT WERE INACCURATE, NOT SOMETHING SHE COULD TESTIFY TO.

THERE IS A LOT TO THAT, SHE COULD HAVE ANNOUNCED A LOT MORE QUESTIONS, COULD HAVE BEEN ASKED A LOT MORE THINGS IN CROSS-EXAMINATION.

>> IS THAT PART OF THIS RECORD THAT SHE ENTERED THIS FAVORABLY TO MISTER AULT?

>> NO.

>> AREN'T WE JUST GUESSING WHAT THE WITNESS MAY HAVE SAID? SHE CAME IN IN THE POST TRIAL PROCEEDINGS AND SAID THE SAME THING SHE SAID IN HEARD THAT BO. WHAT DO WE RELY ON TO SAY YOU ARE MISTAKEN IN HOLDING THE STRATEGY?

>> SHE SHOULD HAVE BEEN CROSS-EXAMINED.

>> OTHER THAN MAKING THOSE STATEMENTS, ON CROSS-EXAMINATION SHE ADMITTED X WHY CD.

WE DON'T HAVE THAT.

>> WE DON'T.

>> I KNOW YOUR INITIAL BRIEF WAS FILED IN 2015.

HAVE YOU FILED A SUPPLEMENTAL REQUEST FOR RELIEF UNDER HURST?

>> I HAVEN'T.

I UNDERSTAND THE COURT HASN'T

MADE A DECISION ON THE
RETROACTIVITY OF HURST YET, BUT
-- KIND OF WALKING AN ETHICAL
TIGHT ROPE IN TERMS OF WHAT MY
CLIENT WANTS ME TO DO.
HE WILL SWITCH BACK AND FORTH
AND SO ON.

I DON'T -- I WILL TAKE
APPROPRIATE ACTION WHEN IT NEEDS
TO BE DONE.

THAT IS ALL I CAN SAY.
I HAVEN'T FILED ANYTHING ELSE.

>> WAS RING EVER RAISED ON
DIRECT APPEAL?

OR AT ANY POINT?

>> I'M SURE IT WAS.

>> THE SENTENCING TOOK PLACE IN
2007, THE RESENTENCING.

CORRECT?

WHEN WAS THE INITIAL SENTENCING?

>> THE JURY'S VERDICT?

>> WHEN WAS THE ORIGINAL TRIAL?

>> 1999.

>> 1999.

THIS COURT SAID HE WAS ENTITLED
TO RESENTENCING WHICH TOOK PLACE
IN 2007.

THE APPEAL FROM THE 2007
RESENTENCING.

DID THAT INCLUDE A RING ISSUE?

>> I'M SURE IT DID.

I DID NOT HANDLE IT.

I KNOW I HAVE READ IT.

I AM SURE IT DID.

IF I COULD GO ON.

ONE OF THE THINGS I THINK --

>> WHAT YOU SAID ABOUT YOUR
CLIENTS, YOUR CLIENT WANTS A NEW
PENALTY PHASE, A NEW TRIAL,
TRYING TO WAIVE HIS
POSTCONVICTION.

>> HE HAS TRIED A NUMBER OF
TIMES.

>> HE WANTS TO WAIVE.

>> HE DOESN'T WANT TO WAIVE IT
RIGHT NOW.

I WOULD NOT FORESEE ANYTHING
FURTHER IF I HAD TO DO THAT.

JUST BACK AND FORTH.

>> I APPRECIATE THAT.

>> ANY INSTRUCTIONS FROM HIM AND THERE WILL BE ANOTHER INSTRUCTION.

I TRY, WHAT HE HAS ASKED ME TO DO.

>> THE STATE WOULD BE ACCOMMODATING IF HE DIDN'T WANT TO PURSUE FURTHER RELIEF.

>> YES.

>> WE HAVE APPRECIATION FOR THE DIFFICULTY OF YOUR POSITION, AND DEALING WITH THOSE ISSUES.

>> THIS IS A DIFFICULT CASE.

YOU ASKED ME AND I TRIED OVER 50 FIRST-DEGREE MURDER CASES AND MANY OF THEM ARE WHAT MIGHT BE CONSIDERED HELPLESS, BUT YOU STILL HAVE TO DO IN THOSE CASES EVERYTHING POSSIBLE, TAKE EVERY DEPOSITION, ACQUIRE EVERY PIECE OF DOCUMENT THAT YOU CAN.

DO EVERYTHING YOU CAN TO DO THE BEST JOB YOU CAN OR THERE IS NO ERROR, NOT COMING HERE ON 3.851. I APPRECIATE THAT.

I MADE MY MISTAKES.

>> WE UNDERSTAND AND APPRECIATE YOUR SERVICE.

>> YOU HAVE A CLIENT WHO CONFESSED TO WHAT HE HAD DONE IN PRETTY MUCH GREAT DETAIL IN THE BODIES OF TWO YOUNG LADIES FOUND IN HIS ATTIC SO THIS WOULD HAVE BEEN A DIFFICULT CASE FOR ANY LAWYER TO DEAL WITH.

>> IT WOULD HAVE.

THERE WERE THINGS TO DO IN THE PENALTY PHASE.

>> WHAT WAS HIS IQ?

>> AROUND 80.

ONE OF THE THINGS I DID IN THE STRICKLAND CASE, EVEN THOUGH BEFORE TAKING A STEP LIKE BRINGING TO THE TESTIMONY OF A WITNESS COMING IN WITHOUT CROSS-EXAMINING HIM IS TO MAKE SURE THEY HAVE DONE AN INVESTIGATION OF THE CASE.

MY INVESTIGATOR, DON CARPER, HAS BEEN AN INVESTIGATOR FOR 50

YEARS, 50 YEARS IN CAPITAL CASES, HAD HIM GO THROUGH THE FILES I GOT FROM PENALTY PHASE COUNSEL AND I ALREADY KNEW WHAT THERE WAS BUT WANTED A WITNESS, HE WENT THROUGH THE FILE TO SEE WHAT PENALTY PHASE COUNSEL HAD DONE TO PREPARE FOR CROSS-EXAMINATION OF DOCTOR CARTER AND WHEN HE TESTIFIED, THE ONLY THING HE FOUND IN THE FILE WAS A TRANSCRIPT OF DOCTOR CARTER FROM THE PRIOR TRIAL THAT WAS IN PRISTINE CONDITION, NO NOTES, NO OUTLINING, NOTHING TO INDICATE COUNSEL HAD PREPARED FOR CROSS-EXAMINATION OF DOCTOR CARTER.

>> BACK TO THE 2011 APPEAL, MISTER AULT'S FIRST ARGUMENT THAT THE DEATH PENALTY IS UNCONSTITUTIONAL FOR FAILING TO REQUIRE UNANIMOUS RECOMMENDATION IN FAVOR OF DEATH.

THE COURT IS REPEATEDLY AND CONTINUALLY REJECTED SUCH CLAIMS SO IT LOOKS LIKE IT WAS SPECIFIC.

>> THANK YOU.

ANOTHER THING STRICKLAND REQUIRES IS NOT ONLY TO ADVOCATE FOR HIS CLIENTS BUT KEEP INFORMED OF WHAT IS GOING ON.

THE DECISION TO NOT CROSS-EXAMINE DOCTOR CARTER IT WAS ACTUALLY DONE OUTSIDE THE PRESENCE OF THE CLIENT IN THE SIDEBAR.

AT NO TIME WAS IT PUT ON THE RECORD THAT -- I'M NOT GOING TO CROSS-EXAMINE THE THIS WITNESS WOULD I WANT YOU TO KNOW THAT, A DECISION WE ARE MAKING AND AT NO TIME WAS IT EVER DONE.

HE DOESN'T REMEMBER EVER DOING THAT.

DOESN'T REMEMBER DOING THAT.

THE JUDGE NEVER INQUIRED.

IS IT OKAY IF HE DOESN'T CROSS-EXAMINE?

WE DON'T MAKE DOCTOR CARTER
CROSS-EXAMINE, IS THAT OKAY?
JUST TO READ THE PRIOR
TESTIMONY.

>> IS THAT TYPICAL?

>> I WOULD CERTAINLY -- HERE IS
AN IMPORTANT THING COMING UP AND
THIS IS WHAT WE ARE DOING AND
WHAT DO YOU THINK?

IS IT OKAY WITH YOU?

AGREE BEFORE THE COURT SO IF THE
COURT STRUCK WHAT IS GOING ON,
IT IS OKAY.

>> I THAT WOULD NOT BE OKAY IF
YOU ALREADY TALK TO YOUR CLIENT
BUT DON'T PUT IT ON THE RECORD.

>> THAT WOULD BE OKAY TOO

>> WE DON'T KNOW THAT, ONE WAY
OR THE OTHER.

>> ONE WAY OR THE OTHER.

THIS WAS A VERY IMPORTANT
DECISION IN MY OPINION.

ALSO DURING THE PENALTY PHASE
PENALTY PHASE COUNSEL CALLED
DOCTOR KRAMER, PSYCHIATRIST,
TESTIFIED ON THE MAIN PART OF
THE CASE.

HE WAS THERE TO TESTIFY
STATUTORY MITIGATED, WAITING FOR
THE TRIAL, PENALTY PHASE COUNSEL
HAD BEEN ON THE CASE FOR TWO
YEARS AND ONE WEEK BEFORE THE
TRIAL HE HIRES AN EXPERT WHO
GOES AND SEES THE DEFENDANT FOR
TWO HOURS AND HAS NOT PROVIDED
HALF THE MATERIALS THAT WERE
AVAILABLE THAT EVEN DOCTOR
CARTER TESTIFIED TO WHICH HE
TESTIFIED.

AND HE WAS CROSS-EXAMINED BY THE
PROSECUTOR, THE COURT MADE A
FINDING THAT HE WAS AN PREPARED.
AND PREPARING TO TESTIFY.

AND DOCTOR ROSS, THE
NEUROLOGIST'S GAVE SOME
TESTIMONY, EKG, AND THERE WAS
ORGANIC BRAIN DAMAGE FROM MISTER
AULT, NOBODY WAS CALLED TO SAY
THAT MEANS ANYTHING AND DOCTOR
CARTER SAYS IT DOESN'T MEAN

ANYTHING.

THERE WAS A WITNESS WHO TESTIFIED IN THE 1990 TRIAL. WOULD HAVE LINKED THAT UP, WOULD HAVE SAID, HE SAID PREVIOUSLY HE HAS ORGANIC BRAIN DAMAGE FROM THE TEST THAT WAS DONE AND THIS IS WHAT CAUSES HIM TO DO CERTAIN THINGS THAT WOULD HAVE COME IN.

>> AN EVIDENTIARY HEARING?

>> WASN'T AT THE EVIDENTIARY HEARING.

THE 1999 PENALTY PHASE, HE TESTIFIED.

WASN'T CALLED IN 2007.

BECAUSE OF THESE THINGS I DON'T BELIEVE MISTER AULT RECEIVED A FAIR PENALTY PHASE.

THERE IS A REASONABLE PROBABILITY BUT FOR THE PENALTY PHASE COUNSEL, THINGS HE DID DO AND THINGS HE DIDN'T DO THAT HIS ACTIONS AND INACTIONS AT THE OUTCOME WOULD HAVE BEEN DIFFERENT, YOU NOT A UNANIMOUS VERDICT, PENALTY PHASE WAS A UNANIMOUS VERDICT.

THANK YOU.

>> GOOD MORNING.

LESLIE CAMPBELL WITH THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE.

STARTING WITH DOCTOR KRAMER. DOCTOR KRAMER WAS CALLED AS A PSYCHIATRIST AND WAS REJECTED BY THE TRIAL COURT, AND IN THE BRIEFS AND POSTCONVICTION MOTIONS, THERE WAS NOTHING THAT WAS SAID, NOTHING THAT WAS OFFERED THAT DOCTOR KRAMER, HAD HE HAD ADDITIONAL INFORMATION, HAD HE LOOKED AT OTHER FACTORS WOULD HAVE COME UP WITH A DIFFERENT OPINION OR MORE FAVORABLE OPINION AND AS WITH DOCTOR EISENSTEIN, THE SAME THING IS TRUE.

IT IS A LEGALLY SUFFICIENT CLAIM, DOCTOR EISENSTEIN WAS NOT OFFERED AS FAR AS WHAT MORE HE

COULD HAVE REVIEWED, WHAT DIFFERENT OPINION HE COULD HAVE COME UP WITH AND IN FACT THE TRIAL COURT IN 1999 SPECIFICALLY REJECTED HIS TESTIMONY FINDING HIM NOT CREDIBLE AND CLEARLY IT WOULD NOT HAVE BEEN A GOOD DECISION TO PUT ON DOCTOR EISENSTEIN IN 2007 WHERE THE SAME TRIAL COURT WHO LISTEN TO THE GUILT PHASE IN 99 WAS HEARING THE PENALTY PHASE IN 2007 AND AGAIN WAS THE SAME JUDGE THAT DECIDED THE POSTCONVICTION MATTER.

WITH REGARD --

>> WHAT WAS THE VOTE IN THE FIRST PENALTY PHASE?

>> I BELIEVE IT WAS THE SAME. WITH REGARD TO DOCTOR CARTER, PENALTY PHASE COUNSEL SAID HE UNDERSTOOD HER MEDICAL CONDITION, WASN'T GOING TO CHALLENGE HER UNAVAILABILITY, THE STATE IS NOT SAYING SHE WAS UNAVAILABLE, DEFENSE COUNSEL DID NOT UNDERSTAND HER SITUATION. HE THOUGHT, THIS IS WHAT CAME OUT IN THE EVIDENTIARY HEARING TESTIMONY THAT IT WOULD BE BETTER TO HAVE THE COLD RECORD FOR TWO REASONS.

ONE, SHE IS AN EXCELLENT WITNESS FOR WHOEVER PERHAPS SHE IS TESTIFYING.

HER INFLECTION, VOCALIZATION, PREFERRED THE COLD RECORD THERE. BY HAVING A COLD RECORD SHE WAS UNABLE TO CHALLENGE ANYTHING SAID BY THE PSYCHIATRIST OR THE NEUROLOGIST, THOSE EXPERTS THAT WERE PUT ON IN 2007.

WHEN WE GET TO THE EVIDENTIARY HEARING, SHE ADMITTED SHE COULD NOT READ THE PET SCAN AND THE EEG THE NEUROLOGIST GAVE TESTIMONY ON THOSE MATTERS SHE DID READ THEIR TESTIMONY AND STOOD BY HER TESTIMONY TAKING A LOOK AT WHAT MISTER AULT DID AND

SAID ABOUT HIS CRIMES.
HIS ACTIONS TO HER SPOKE LOUDER
THAN WHATEVER ARGUMENT WAS MADE
AS FAR AS ANY ORGANIC BRAIN
DAMAGE OR ANYTHING THAT CAME OUT
OF THE NEUROLOGIST'S TESTIMONY.
WE HAVE THE EVIDENTIARY HEARING
ON DOCTOR CARTER, WE KNOW THE
STRATEGY OF DEFENSE COUNSEL.
IT WAS A CLEAR STRATEGY SO THERE
IS NO DEFICIENCY AND NO
PREJUDICE AS HIS BEEN POINTED
THE OUT, THIS WAS A FULLY
CONFESSED CRIME FROM THE TIME HE
AND MISTER AULT FOUND THE
CHILDREN, BEFRIENDED THE
CHILDREN OF THE FAMILY, AND GET
INTO THE CAR.
THE ASSAULT ON THE MURDERS.
THERE WAS NOTHING LEFT UNSAID
ABOUT THOSE CRIMES UNLESS THERE
ARE ANY OTHER QUESTIONS I RELY
ON MY BRIEF AND ASK THIS COURT
TO AFFIRM DENIAL OF
POSTCONVICTION RELIEF.
>> THE ONLY THING I WOULD SAY IS
WHAT I SAID BEFORE.
MORE NEEDED TO BE DONE.
AND CAN'T GO THROUGH THE MOTIONS
WHEN YOU HAVE A CASE LIKE THAT.
>> THANK YOU FOR THE ARGUMENTS.