

>> ALL RISE.

>> SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

PLEASE BE SEATED.

>> WE NOW COME TO THIRD CASE ON
TODAY'S DOCKET, ALLEN V. THE
STATE OF FLORIDA.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, MY NAME
IS LISA BORT, AND I REPRESENT
MARGARET ALLEN.

MS. ALLEN'S CONVICTION--

>> PLEASE SPEAK INTO THE MIC SO
WE CAN HEAR YOU.

>> I'M SORRY.

IS THAT BETTER?

THANK YOU.

MS. ALLEN'S CONVICTIONS AND
DEATH SENTENCES SHOULD BE
VACATED BECAUSE THEY'RE NOT
SUPPORTED BY COMPETENT AND
SUBSTANTIAL EVIDENCE.

ONLY TWO AGGRAVATORS WERE
INDEPENDENTLY FOUND BY THE TRIAL
COURT, AND THE ONLY SUPPORT WERE

THE TESTIMONY OF THE
CO-DEFENDANT, QUENTIN, WHO TOOK
A PLEA DEAL AND IS ALREADY OUT
OF PRISON.

AND THE TESTIMONY OF DR. KAISER
WHO IS A MEDICAL EXAMINER WHO
DID NOT PERFORM THE VICTIM'S
AUTOPSY AND TESTIFIED THAT
UNCONSCIOUS PEOPLE FEEL PAIN.

>> CORRECT ME IF I'M WRONG, BUT
WE'RE HERE ON POST-CONVICTION.
NOT ON THE DIRECT APPEAL.

WE ALREADY AFFIRMED BASED ON
SUFFICIENCY OF EVIDENCE IN THE
INITIAL APPEAL.

>> CORRECT.

IN POST-CONVICTION NOT ONLY WAS
IT BRIGHT TO LIGHT THAT TRIAL
COUNSEL DID NOT PERFORM A
CONSTITUTIONALLY ADEQUATE
MITIGATION INVESTIGATION AND
THAT A STATUTORY MITIGATOR DID
EXIST, BUT THE TESTIMONY OF BOTH
QUINTON AND DR. KAISER WAS
UNDERMINED WHICH IN TURN WOULD

UNDERMINE THE HAC AGGRAVATOR AS WELL.

THAT'S WHY IT'S IMPORTANT, THAT THERE WAS ONLY TWO AGGRAVATORS THAT WERE FOUND AT TRIAL.

>> CAN YOU EXPLAIN, BECAUSE I WAS TRYING TO UNDERSTAND IT, THEY DID PUT ON TWO EXPERT WITNESSES AT TRIAL.

THE-- WERE THERE RECORDS THAT WERE NOT DISCOVERED, EITHER SCHOOL RECORDS OR MEDICAL RECORDS THAT WERE THEN DISCOVERED AND USED IN POST-CONVICTION?

SO JUST ON THE ISSUE OF RECORDS, SCHOOL RECORDS, MEDICAL RECORDS, PSYCHOLOGICAL RECORDS, WHAT'S THE, WHAT IS THE DIFFERENCE IN WHAT WASN'T DISCOVERED, IF ANYTHING, BEFORE, BEFORE TRIAL AND WHAT YOU'VE NOW FOUND AND ABLE TO GIVE TO EXPERT WITNESSES.

>> SOME OF THE EXPERTS AT TRIAL

DID HAVE SOME RECORDS; HOWEVER,
NONE OF THE EXPERTS AT TRIAL
ACTUALLY SPOKE TO ANY OF
MS. ALLEN'S FAMILY.

>> OKAY, NO.

BUT I JUST ASKED YOU ABOUT
RECORDS.

SO THERE--- YOU DIDN'T--- THEY
FOUND AND USED ALL AVAILABLE
RECORDS?

IT'S NOT A CASE OF WHERE THE
INVESTIGATION FAILED TO REVEAL
RECORDS.

>> I MEAN, THERE WAS SOME
RECORDS THAT DID COME OUT IN
POST-CONVICTION, BUT THERE WAS A
DECENT AMOUNT OF RECORDS---

>> OKAY.

SO YOU'RE NOT MAKING THE CLAIM
ABOUT THE FAILURE TO INVESTIGATE
RECORDS.

>> NOT RECORDS PER SE, BUT, FOR
INSTANCE, DR. GABEL WHO WAS ONE
OF THE EXPERTS THAT DID TESTIFY
AT TRIAL, HE HAD NO IDEA WHAT

THE DETAILS OF THE CRIME WERE--

>> OKAY, NOW WE'RE GETTING INTO OTHER ISSUES.

ON THE FACT THAT THE EXPERTS DID NOT KNOW THE DETAILS OF THE CRIME, WHAT DID THE TRIAL ATTORNEY SAY ABOUT, WAS IT A STRATEGIC DECISION TO-- BECAUSE THE DETAILS OF THE CRIME, OBVIOUSLY, ARE PRETTY HORRENDOUS.

WAS THERE A STRATEGIC REASON FOR NOT, IF THEY WERE GOING TO BE TESTIFYING ABOUT EXTREME EMOTIONAL DISTRESS, AT LEAST ONE OF THEM WAS, FOR NOT TELLING THE EXPERT ABOUT THE DETAILS OF THE CRIME?

>> THERE WAS NOT.

MR. BANKOWITZ WAS THE TRIAL COUNSEL.

HE ACTUALLY TOOK THE CASE OVER ABOUT TWO AND A HALF YEARS PRIOR TO TRIAL, SO HE DIDN'T HIRE THE EXPERTS.

THE EXPERTS WERE PREVIOUSLY
HIRED BY THE PUBLIC DEFENDER'S
OFFICE WHEN MS. ALLEN HAD THEM
AS HER ATTORNEYS.

HE DIDN'T PROVIDE THEM WITH ANY
ADDITIONAL RECORDS AFTER HE CAME
ON THE CASE OR HAVE THEM TALK TO
FAMILY MEMBERS--

>> I KNOW YOU-- JUST STAY WITH
THE QUESTION ABOUT THE DETAILS
OF THE CRIME.

WAS THERE A REASON IF THEY WERE,
AT LEAST HAVE ONE EXPERT TESTIFY
TO A STATUTORY MITIGATOR WHICH
WOULD HAVE TO KNOW SOMETHING
ABOUT THE CRIME TO KNOW, TO
RELATE IT, WHY HE DIDN'T, YOU
KNOW, SOMETIMES THERE'S A
STRATEGIC REASON FOR NOT GOING
OVER THE DETAILS OF THE CRIME,
EITHER THE EXPERT DIDN'T WANT
THE DETAILS-- CAN YOU--
ANYTHING IN THE RECORD ABOUT
THAT?

>> TRIAL COUNSEL ACTUALLY JUST

THOUGHT THAT EVERYTHING THAT WAS
ALREADY DONE WAS SUFFICIENT.

IN ESSENCE, HE THOUGHT THAT THE
MITIGATION WAS READY TO BE JUST
PUT ON--

>> SO HE DIDN'T, SO FOR THE TWO
AND A HALF YEARS AFTER HE TOOK
OVER, HE DIDN'T DO ANYTHING
ADDITIONAL?

>> HE SPOKE TO MYRTLE HUDSON,
WHO WAS MS. ALLEN'S AUNT, AND,
IN ESSENCE, TRIED TO HAVE HER
BRING SOME OF ALLEN'S FAMILY TO
HIM AND BRING THEM TO HIS
OFFICE.

BUT EVEN WHEN HE DID SPEAK TO,
FOR INSTANCE, ONE OF THE OTHER
AUNTS, MS. CAPERS-- WHO
ACTUALLY HAD A LOT TO SAY IN
POST-CONVICTION ABOUT
MS. ALLEN'S ABUSIVE CHILDHOOD--

>> DIDN'T HE SAY HE ACTUALLY HAD
ATTEMPTED OTHER PEOPLE, HE
EITHER COULDN'T REACH THEM OR
SOMETHING, BUT HE DID, IN FACT,

TESTIFY AT THE EVIDENTIARY
HEARING OF OTHER THINGS THAT HE
HAD DONE TO TRY TO GET OTHER
WITNESSES, ISN'T THE-- DOESN'T
THE RECORD REFLECT THAT?

>> JUST WHAT I SPOKE OF WITH
MS. HUDSON.

SO, IN ESSENCE, HE HAD
MS. HUDSON GET SOME PEOPLE AND
BRING THEM TO OFFICE.

I BELIEVE HE JUST SPOKE TO THOSE
PEOPLE.

HE WAS ALSO HIRED BY THE
BROTHER, SO MS. ALLEN'S BROTHER,
I BELIEVE HE SPOKE TO BRIEFLY,
BUT NONE OF THEM TESTIFIED.

HE HAD NO NOTES OF ANYTHING ON
THAT.

>> SO WHAT DO YOU CONSIDER TO BE
A SIGNIFICANT DIFFERENCE BETWEEN
WHAT WAS PRESENTED IN THE
PENALTY PHASE WITH TWO EXPERTS
AND THOUSAND COMING OUT IN
POST-CONVICTION?

WHAT IS THE SIGNIFICANT

DIFFERENCE BETWEEN THE TWO
PRESENTATIONS?

>> WELL, THE PRESENTATION THAT
WAS PROVIDED IN POST-CONVICTION
PAINTS A MUCH DARKER PICTURE OF
MS. ALLEN'S CHILDHOOD.

NONE OF THE CHILD ABUSE THAT SHE
SUFFERED CAME OUT AT TRIAL AT
ALL.

SO NO ONE KNEW ABOUT ANY OF
THAT.

NO ONE KNEW--

>> THE AUNT DIDN'T TALK ABOUT
ANY CHILDHOOD ISSUES IN HER
TESTIMONY IN THE TRIAL?

>> JUST THAT SHE MOVED FROM
HOUSE TO HOUSE.

BUT IT MADE IT SOUND LIKE SHE
WAS BEING PROTECTED AT THESE
HOMES, NOT THAT SHE WAS BEING
SEXUALLY ABUSED, NOT THAT HER
MOTHER WAS HOLDING HER HEAD
UNDERWATER, NOT THAT HER
GRANDFATHER WAS LINING UP THE
CHILDREN AND BEATING THEM ONE BY

ONE UNTIL THEY BLED.

[INAUDIBLE CONVERSATIONS]

>> I'M SORRY.

>> DIDN'T THE EXPERTS TESTIFY TO
CHILDHOOD ABUSE?

>> JUST THAT THERE WAS SOME
ABUSE IN THE-- NOT ABUSE, BUT
JUST IN THE NEIGHBORHOOD THAT
THERE WAS--

>> YEAH, I THOUGHT THE EXPERTS
TESTIFIED THAT SHE WAS ABUSED
PHYSICALLY.

>> NOT SPECIFICALLY.

ONE OF THE EXPERTS, DR. GABEL,
SAID THAT THERE WAS POTENTIAL
POSSIBLE SEXUAL ABUSE BUT, IN
FACT, WHEN IT WAS EVEN FOUND IN
THE MITIGATOR THAT IS THE TRIAL
COURT DID GIVE THAT SOME WEIGHT
THAT IT WAS POSSIBLE SEXUAL
ABUSE.

IN POST-CONVICTION NOT ONLY WAS
SHE SEXUALLY BATTERED BY HER
BROTHER, AND THERE WAS A POLICE
REPORT AVAILABLE AT THE TIME OF

TRIAL, SO THAT COULD HAVE COME
OUT AT THAT POINT.

HER GRANDFATHER ALSO SEXUALLY
ABUSED HER, SO DID HER UNCLE AS
WELL AS ANOTHER MAN.

SO IT WAS A VERY DIFFERENT--

>> WELL, I ASK YOU ABOUT
RECORDS.

NOW YOU'RE TELLING ME THERE WERE
RECORDS OF THINGS THAT HAPPENED
DURING HER CHILDHOOD THAT WERE
NEVER DISCOVERED?

>> THEY WERE DISCOVERED, JUST NO
ONE TESTIFIED ABOUT THEM.

>> SO WERE THEY SHOWN TO
EXPERTS?

>> I BELIEVE D. GABEL DID HAVE
THE POLICE REPORT OR THE
RECORDS, AND THAT'S WHY HE SAID
THERE WAS A POSSIBLE SEXUAL
ABUSE.

>> WHAT IS THE QUALITY OF THE
TESTIMONY?

YOU SAID THAT THE AUNT THAT
WASN'T CALLED WAS BARBARA

CAPERS.

>> CORRECT.

>> THE AUNT THAT TESTIFIED WAS MYRTLE HUDSON.

WHAT WAS THE REASON?

BECAUSE IT LOOKS LIKE BARBARA CAPERS GIVES VERY SPECIFIC AND EXTENSIVE TESTIMONY ABOUT WHAT SHE PERSONALLY OBSERVED.

WHAT WAS THE REASON GIVEN FOR NOT CALLING, BECAUSE THERE ARE SOME OTHERS THAT SAID BARBARA CAPERS.

YOU SAID HE KNEW ABOUT BARBARA CAPERS.

DID HE MAKE A STRATEGIC DECISION TO GO WITH MYRTLE HUDSON?

WHAT WAS THE TESTIMONY ON THAT?

>> HE ONLY WENT WITH MYRTLE HUDSON.

HE DID SPEAK WITH MS. CAPERS, BUT HE NEVER ACTUALLY ASKED MS. CAPERS TO TESTIFY--

>> WELL, BUT DID HE KNOW-- WHAT I'M ASKING YOU, YOU HAVE A

BURDEN TO SHOW DEFICIENT
PERFORMANCE.

WHAT WAS THE TESTIMONY ABOUT WHY
THIS LAWYER WOULD NOT PUT ON
WHAT IS EXTENSIVE TESTIMONY
ABOUT HER CHILDHOOD OF ABUSE AND
PHYSICAL AND SEXUAL ABUSE?

DID HE NOT-- WAS SHE NOT
COOPERATIVE?

WAS, HE THOUGHT IT WOULD BE
DUPLICATIVE OF MYRTLE HUDSON, OR
WAS THE QUESTION EVEN ASKED OF
COUNSEL?

>> I BELIEVE THE RECORD REFLECTS
THE FACT THAT HE THOUGHT HE WAS
FINE WITH MS. HUDSON, HE THOUGHT
EVERYTHING WAS FINE WITH THE
MITIGATION THE WAY IT STOOD WITH
THE EXPERTS, THAT EVERYTHING HE
HAD WAS SUFFICIENT, AND HE JUST
DIDN'T GO ANY FURTHER WITH THAT
BECAUSE MS. CAPERS ACTUALLY WENT
TO TRIAL, AND SHE DID WANT TO
TESTIFY, BUT SHE HAD NO IDEA IT
WOULD EVEN HELP BECAUSE FROM THE

LIMITED DISCUSSIONS THAT SHE HAD WITH TRIAL COUNSEL, I DON'T THINK HE ASKED HER THE RIGHT QUESTIONS, IN MY OPINION.

SO HE DIDN'T KNOW THE EXTENT OF THE ABUSE THAT THEY HAD ALL SUFFERED AND THAT MS. CAPERS COULD ACTUALLY TESTIFY ABOUT THE FACT THAT SHE HAD WITNESSED THAT AS WELL.

>> SO THERE WASN'T A SITUATION WHERE THE LAWYER SAID, YOU KNOW, I LOOKED AT THIS, I THOUGHT THERE COULD BE A DOWNSIDE IN THE JURY HEARING SOMETHING, NOTHING LIKE THAT?

>> NOT WITH MS. CAPERS. HE DID SAY THINGS ABOUT SOME OF THE OTHER WITNESSES THAT HE THOUGHT HE MIGHT NOT WANT TO CALL THEM FOR CERTAIN REASONS. HOWEVER, HE DIDN'T EVEN INTERVIEW THE OTHER WITNESSES. FOR INSTANCE, THE CHILDREN. HE DIDN'T EVEN INTERVIEW THEM.

SO HE HAD NO IDEA--

>> I'M NOT-- I MEAN, I THINK
THEY WERE VALID REASONS FOR NOT
PUTTING ON THE CHILDREN, SO I
REALLY JUST WAS FOCUSING ON
BARBARA CAPERS.

SO HOW IN QUALITATIVELY DID THE
DR. RUSSELL CHANGE THE PICTURE
OF THE MENTAL MITIGATION IN THIS
CASE?

>> WELL, DR. RUSSELL ACTUALLY
WAS ABLE TO SPEAK TO FAMILY
MEMBERS, AND HE WAS ABLE TO FIND
OUT MORE OF THE SYMPTOMS OF PTSD
THAT IN THE PAST WAS NOT EVER
UNCOVERED BECAUSE OF THE FACT
THAT NO ONE SPOKE WITH THE
FAMILY.

AND ALSO AT TRIAL DR. GABEL
TESTIFIED; HOWEVER, ONLY HAD A
LIMITED EVALUATION WITH
MS. ALLEN DUE TO FACT THAT THERE
WAS A GUARD IN THE ROOM.

>> NOW, PTSD, THE CRIME HERE DID
NOT OCCUR BECAUSE THERE WAS SOME

KIND OF FLASHBACK.

THIS WAS A CRIME THAT WAS,
OCCURRED OVER HOURS AND HOURS
AND HOURS AND HOURS.

SO I AM-- WHILE I MIGHT BE
SYMPATHETIC TO SOME MORE
INTERESTING MITIGATION, HOW
WOULD THAT ESTABLISH, HOW IS
THAT CONNECTED TO WHAT HAPPENED
IN THIS CASE?

IT'S NOT LIKE SHE KILLED A
BOYFRIEND OR SHE, YOU KNOW,
BECAUSE HE WAS TRYING TO HAVE
SEX WITH HER OR THAT SOMETHING
TRAUMATIC TRIGGERED SOMETHING.

THIS IS A, YOU KNOW, WHETHER THE
FACTS OF THIS CRIME ARE, YOU
KNOW, AN EXTENSIVE TIME PERIOD
OR WHERE THIS VICTIM WAS--I
MEAN, JUST TERRIBLE.

WE DON'T NEED TO GO INTO THE
FACTS.

HOW IS IT CONNECTED UP THAT PTSD
WOULD HAVE ESTABLISHED SOME KIND
OF OVERWHELMING MITIGATION THAT

WOULD UNDERMINE CONFIDENCE IN
THE OUTCOME OF THIS CASE?
THERE WAS SOME DEFICIENCY, WHERE
IS THE PREJUDICE?

>> UNDERSTAND.

I MEAN, EVEN WITH THOSE FACTS, I
MEAN, YOU WOULD HAVE TO TAKE
QUENTON'S TESTIMONY AS THE
TRUTH.

AND IF I HAVE TIME, I'LL GET TO
THAT AS WELL.

>> I'M HAVING TROUBLE HEARING
YOU.

>> OH, I'M SORRY.

IN ESSENCE, FOR THOSE FACTS YOU
WOULD HAVE TO BELIEVE WHAT
QUENTON, THE CO-DEFENDANT, SAID
AS WELL WHICH IN POST-CONVICTION
WE DID UNDERMINE HIS TESTIMONY.
IF I HAVE TIME, I WILL GET TO
THAT.

BUT TO ANSWER YOUR QUESTION,
WHAT DR. RUSSELL SAID, THE WAY
HE EXPLAINED IT WAS THE EXTREME
EMOTIONAL DISTURBANCE WAS

RELATED TO MS. ALLEN'S PTSD.

THE LONGER SHE COULDN'T FIND HER MONEY, THE MORE FRUSTRATED SHE BECAME, AND AS HER EMOTION ESCALATED, SHE WAS UNABLE TO THINK LOGICALLY, RATIONALLY, AND SHE DID NOT HAVE THE ABILITY TO HANDLE THE STRESSOR WITHOUT OVERREACTING.

THAT'S THE WAY HE EXPLAINED IT. AND HE SAID HE WOULDN'T HAVE BEEN ABLE TO FIND PTSD IF IT HADN'T HAVE BEEN FOR THE FACT THAT HE DID SPEAK WITH THE FAMILY, BECAUSE THEY WERE ABLE TO SPEAK TO A LOT OF THE OTHER SYMPTOMS THAT MARGARET DOESN'T-- SHE DOESN'T COME FORWARD WITH ALL THE TIME BECAUSE SHE DOES HAVE AVOIDANCE SYMPTOMS AS WELL, AND SHE DOES HAVE ISSUES REMEMBERING A LOT OF HER TRAUMATIC EVENTS JUST LIKE PTSD.

>> WHAT DID TRIAL, WHAT DID THE

TRIAL COURT SAY ABOUT THAT
TESTIMONY?

>> ON--

>> IN THE JUDGES WHO HEARD THE
TESTIMONY, WHAT DID THE JUDGE
SAY ABOUT THAT?

>> WELL, IN ESSENCE, THEY
APPARENTLY DIDN'T FIND IT
CREDIBLE, BECAUSE THEY DECIDED
NOT TO GRANT RELIEF.

BUT WE BELIEVE THEIR FINDINGS
ARE NOT SUPPORTED BY COMPETENT
EVIDENCE.

DR. GAMACHE DID NOT DO ANY
EVALUATION OF MS. ALLEN, HE DID
NOT MEET WITH ANY OF HER FAMILY
MEMBERS EVEN THOUGH HE AGREED
THAT WOULD HAVE BEEN HELPFUL.
AND IT'S ALWAYS GOOD TO GET A
THIRD PARTY'S REPORT SO YOU CAN
SEE IF ANYTHING WAS MISSING IN
THE SELF-REPORT.

AND ALSO HE HARPED ON A TEST
THAT WAS TAKEN WHICH WAS JUST
BASICALLY TAKEN IN ORDER TO SHOW

CONSISTENCY.

>> IT LOOKS LIKE WHAT THE JUDGE DID ON PAGES 73, 74, 75 WAS COMPARE THE EXPERT DR. RUSSELL WITH DR. GAMACHE AND FOUND THAT BASED ON A LOT OF SPECIFICS THAT IT WAS NOT, THE PTSD WAS NOT A FACTOR IN TO OCCURRENCE OF THIS CRIME.

ISN'T THAT-- AND THE JUDGE MADE A FACTUAL DETERMINATION OF THE CREDIBILITY OF THE TWO WITNESSES.

>> CORRECT.

WE DO NOT FEEL THAT'S SUPPORTED BY EVIDENCE JUST DUE TO FACTORS THAT WERE TESTIFIED ABOUT.

THE FAMILY MEMBERS DID CORROBORATE THOSE SYMPTOMS, THEY DID START PRIOR TO THE CRIME, THEY STARTED EVEN INTO HER TEENS AND INTO HER 20s.

A FEW WITNESSES DID TESTIFY THOSE SYMPTOMS--

>> SO IF DR. RUSSELL'S THE ONE

WHO SAID SHE HAD POST-TRAUMATIC
STRESS DISORDER, CORRECT?

HOW DID HE RELATE THAT TO CRIME?

IT SEEMS TO ME THAT THIS PERSON
SEEMED TO HAVE GONE THROUGH A
LOT OF MACHINATIONS TO COMMIT
THE CRIME, TO COVER IT UP AND
ALL OF THIS.

SO HOW DID HE ACTUALLY RELATE
THAT DIAGNOSIS TO HOW THIS CRIME
WAS COMMITTED?

>> IN ESSENCE, IT WAS THE
EMOTIONAL DISREGULATION PRONG OF
THE PTSD THAT--

>> PLEASE, CONTINUE TO KEEP YOUR
VOICE UP.

>> OH, I'M SORRY.

IN ESSENCE, IT WAS DUE TO
EMOTIONAL DISREGULATION PART OF
THE PTSD.

SO AS SHE BECAME MORE AND MORE
FRUSTRATED, SHE WAS UNABLE TO
CONTROL HERSELF AT THAT POINT.

>> SO SHE LOST THE PURSE, AND
THAT ALL TRIGGERED THIS

EMOTIONAL REACTION TO KILL THE
VICTIM.

>> THE LONGER AND LONGER THAT
SHE COULDN'T FIND HER MONEY, IT
JUST ESCALATED, IS THE WAY HE
DESCRIBED IT.

>> YOU ARE NOW ONE MINUTE INTO
YOUR REBUTTAL TIME.

YOU MAY KEEP GOING OR--

>> I WILL RESERVE FOR REBUTTAL.
THANK YOU VERY MUCH.

>> GOOD MORNING, MAY IT PLEASE
THE COURT, MY NAME IS DORIS
MEACHAM, AND I'M HERE ON BEHALF
OF THE STATE.

I'D LIKE TO BEGIN WITH THE PTSD
DIAGNOSIS THAT DEFENSE EXPERT
DR. RUSSELL MADE.

HIS SPECULATION OF WHAT WAS
GOING ON IS THAT, PURE
SPECULATION.

WHEN HE SPOKE TO MS. ALLEN, SHE
ACTUALLY DENIED THE MURDER.
SHE NEVER WENT INTO SPECIFICS AS
TO WHAT HAPPENED THAT DAY.

SHE NEVER TOLD HIM WHAT WAS GOING ON IN HER MIND. IS THIS, THIS SCENARIO THAT DR. RUSSELL PAINTED OF HER BEING IN SUCH EMOTIONAL DISTRESS THAT SHE LOST HER PURSE AND HER MONEY AND THAT IT JUST ESCALATED WAS JUST HIM ASSUMING THAT BASED ON THE FACTS OF THE CASE THAT WERE GIVEN TO HIM.

>> SO HE WENT TO SEE HER.

>> HE SPOKE TO HER.

>> AND THEY-- HOW LONG A PERIOD WAS THIS?

BECAUSE IT SOUNDS LIKE SHE WAS NOT COOPERATIVE.

>> SHE WAS NOT COOPERATIVE.

HE SPOKE WITH HER ONCE, DENIED THE MURDER AND NEVER BE GAVE SPECIFICS AS TO WHAT OCCURRED THAT DAY.

SO HE BASED THIS OFF OF WHAT HE KNEW FROM THE POLICE REPORTS, THE CASE FILE AND FROM SPEAKING TO FAMILY MEMBERS.

AS FAR AS WHAT THEIR
CONTRIBUTION WAS FOR THE
SYMPTOMS, AGAIN, WE'RE NOT
REALLY BASED ON ANYTHING.
THEY SAID THAT SHE HAD SOME
ANXIETY, THAT SHE HAD SWEATY
PALMS, THAT SHE SLEPT A LOT.
THERE WAS NOTHING TO CORROBORATE
THE SYMPTOMS.

THE AVOIDANCE--

>> WAS THERE TESTIMONY THAT SHE
USED DRUGS?

>> THERE WAS TESTIMONY THAT SHE
WAS INVOLVED WITH DRUGS, THAT
SHE GREW UP IN A NEIGHBORHOOD OF
DRUGS AND VIOLENCE.

THE FACT THAT--

>> BUT THERE WAS NO TESTIMONY
THAT SHE WAS ACTUALLY A USER.

>> A USER OF DRUGS.

DR. GABEL TESTIFIED THAT SHE HAD
AN OVERDOSE BACK IN 1989.

THAT WAS BROUGHT OUT.

>> IT SEEMS TO ME BASED ON THE
FAILURE TO PUT ON SUFFICIENT

EVIDENCE OF THE EXTREME
EMOTIONAL DISTRESS, I DON'T SEE
THAT AS BEING MUCH OF A POINT.
TWO AREAS THAT CONCERN ME.
ONE IS THIS IS, THIS WAS A WOMAN
THAT IF YOU LISTEN NOW TO
TESTIMONY OF BARBARA CAPERS HAD,
IT WASN'T JUST GROWING UP IN A
DRUG-RIDDEN NEIGHBORHOOD.
IT APPEARS THAT THERE WAS
EXTREME VIOLENCE AND PERSONALLY
TO HER IN HER UPBRINGING THAT IS
QUITE DETAILED.

I'M TRYING TO UNDERSTAND AS
COMPARED TO MYRTLE HUDSON--
>> RIGHT.

>>-- WHAT, THAT TESTIMONY IS
NOTHING LIKE ANYTHING WE HAD IN
THE DIRECT APPEAL.

WHAT WAS THE LAWYER'S REASON--
I UNDERSTAND THAT HE MADE SOME
DECISIONS AS TO CHILDREN.

>> RIGHT.

>> BUT WHAT, WHAT WOULD BE THE
REASON FOR NOT DETAILING IN THE

POLICE REPORTS, WHATEVER, THIS
EXTREME HISTORY OF ABUSE AGAINST
HER, DOMESTIC VIOLATION, YOU
KNOW, IN RELATIONSHIPS?

>> WELL, MYRTLE HUDSON DID
TESTIFY TO THAT.

SHE DIDN'T GO INTO THE SPECIFICS
OF THE CHILDHOOD ABUSE.

SHE DID MENTION THE SEXUAL
ABUSE.

AS FAR AS THE DOMESTIC
VIOLENCE--

>> DID SHE NOT KNOW ABOUT-- YOU
SEE, I'M TRYING, AND, AGAIN,
I'VE GOT TO LOOK AND COMPARE.
BUT DID SHE, WHAT WAS-- WERE
THERE DIFFERENT, YOU KNOW, YOU
HAVE AUNTS.

>> RIGHT.

>> WERE THERE DIFFERENT
RELATIONSHIP?

DID ONE LIVE WITH HER AND THE
OTHER WAS NOT THERE?

>> WELL, AS FAR AS BARBARA
CAPERS' TESTIMONY ABOUT THE

SEXUAL ABUSE, THIS WAS BASICALLY
ALL HEARSAY.

SHE WAS ONLY PRIVY TO ACTUALLY
ONE INSTANCE WITH THE
BROTHER-IN-LAW THAT SHE ACTUALLY
WITNESSED.

>> AND WHAT DID SHE WITNESS?

>> THE BROTHER-IN-LAW OR THE
FATHER-IN-LAW THAT SEXUALLY
ABUSED HER.

BUT ALL THE OTHER ONES WERE
THINGS THAT SHE HAD HEARD--

>> HOW OLD WAS SHE WHEN SHE WAS
SEXUALLY ABUSED BY THE
BROTHER-IN-LAW?

>> THAT WAS IN HER TEENS, I
BELIEVE, YOUNGER.

>> DID NOT THAT-- DID MYRTLE--
DID SHE HAVE SPECIFICS?

>> SHE DID NOT HAVE SPECIFICS.
SHE SAID SHE WAS SEXUALLY ABUSED
AS A CHILD.

>> IS THAT NOT, AND AGAIN, I
UNDERSTAND THIS MAY END UP THE
SAME WAY.

JUST THE DEGREE OF DETAIL IN
MYRTLE-- I'M SORRY, BARBARA
CAPERS' TESTIMONY IS SO
DIFFERENT THAN JUST SAYING
YOU'VE GOT, YOU GREW UP IN A
DRUG-RIDDEN NEIGHBORHOOD.

WERE THERE POLICE-- WHAT ABOUT
THE POLICE REPORT?

>> WELL, MYRTLE HUDSON DID GIVE
SPECIFICS TO WHAT SHE WITNESSED
AS FAR AS THE DEFENDANT BEING
PREGNANT AT THE TIME SHE WAS
BEATEN SO BADLY, SHE WENT INTO
THE HOSPITAL.

SHE WAS THERE TO WITNESS WHEN
SHE GOT THERE THE DOOR WAS
LAYING ON TOP OF HER.

SHE WAS THERE FOR OTHER
INSTANCES WHERE SHE SAW HER FACE
WAS SWOLLEN, WHERE SHE HAD--

>> ISN'T IT THE CASE THAT THE
TRIAL COURT FOUND AMONG THE
NONSTATUTORY MITIGATING
CIRCUMSTANCES, ONE, THAT ALLEN
WAS THE VICTIM OF PHYSICAL ABUSE

AND POSSIBLE SEXUAL ABUSE IN THE
PAST--

>> CORRECT.

>>-- AND THAT ALLEN HAS BRAIN
DAMAGE AS A RESULT OF PRIOR ACTS
OF PHYSICAL ABUSE?

>> YES.

ALL OF THAT CAME OUT THROUGH THE
TESTIMONY--

>> I MEAN, THOSE ARE--

>> I MEAN, EVERYTHING CAME OUT
OF THE EVIDENTIARY HEARING, CAME
OUT DURING PENALTY PHASE.

AND THEY FOUND THAT.

THEY FOUND THAT SHE HAD AT LEAST
TEN TRAUMATIC INJURIES THAT
CAUSED THIS BRAIN INJURY TO HER.

>> I THINK WHAT WE'RE DEALING
WITH, AND I APPRECIATE-- I'VE
READ THE SENTENCING ORDER, I'VE
READ THE POST-CONVICTION ORDER,
I'VE READ MOST OF THE TESTIMONY.

YOU HAVE A UNANIMOUS JURY
VERDICT HERE.

IF YOU DIDN'T, YOU WOULD GET

HURST RELIEF.

AND I'M LOOKING AT THIS NOT WHAT
THE TRIAL COURT-- BUT WHAT THE
QUALITATIVE TESTIMONY WAS ABOUT
HER CHILDHOOD AND INTO HER
ADULTHOOD.

AND THAT'S, YOU KNOW, THAT--
IT'S A DIFFERENT, IT'S NOT JUST
THAT THE TRIAL COURT FOUND IT,
BECAUSE WE'RE NOT-- WE'RE HERE
ON, TO ME, HOW WOULD THIS HAVE
AFFECTED, YOU KNOW, THE JURY
VERDICT.

>> RIGHT.

AND THE POST-CONVICTION COURT
HELD THAT, BASICALLY, THE
EVIDENCE THAT WAS PRESENTED WAS
CUMULATIVE, THAT EVERYTHING THAT
CAME OUT WAS BROUGHT OUT BY
MYRTLE HUDSON.

THE SEXUAL ABUSE WAS NOT BROUGHT
OUT AS DETAILED AS MS. CAPERS
DID, BUT IT WAS FOUND AS A
NONSTATUTORY MITIGATOR.

AND AS FAR AS WHY HE ONLY WENT

WITH MYRTLE HUDSON, HE TESTIFIED THAT HE REACHED OUT TO FAMILY MEMBERS.

HE HAD MS. HUDSON REACH OUT TO FAMILY MEMBERS, AND THEY WERE UNCOOPERATIVE.

HE ALSO MENTIONED THAT THERE WAS AN AUNT THAT WAS SICK.

HE DIDN'T MENTION IT BY NAME. IT MAY HAVE BEEN MS. CAPERS, I DON'T KNOW, BUT SHE WAS SICK, AND SHE DID NOT FEEL THAT SHE COULD TESTIFY.

MS. CAPERS SAID SHE WAS THERE DURING THE TRIAL, SHE WAS THERE WITH MS. HUDSON, SHE WAS THERE WHEN THE ATTORNEY ASKED MS. HUDSON TO TESTIFY, YET SHE DID NOT DO ANYTHING.

SHE DID NOT COME FORWARD.

SHE DID NOT SAY I WANT TO SPEAK ON BEHALF OF MS. ALLEN.

SO IT'S A MATTER OF YOU WERE THERE, YOU KNEW THIS WAS GOING ON, AND WHETHER OR NOT SHE WAS

THE ONE THAT SAID SHE COULDN'T
TAKE THE STAND BECAUSE SHE WAS
SICK, THAT'S WHAT IT SOUNDS
LIKE.

>> WAS THAT ASKED IN THE
EVIDENTIARY HEARING?

>> IN THE EVIDENTIARY HEARING.

>> SHE SAID THAT I WAS SICK,
THAT'S WHY I DIDN'T TESTIFY?

>> SHE SAID I WAS PRESENT THAT
THE DEFENSE ATTORNEY WAS TALKING
TO HER--

>> DIDN'T SHE SAY I WOULD HAVE
TESTIFIED IF THE ATTORNEY ASKED
ME?

>> IF HE WOULD HAVE ASKED HER,
RIGHT.

BUT WHETHER OR NOT SHE WAS THE
ONE THAT WAS ACTUALLY TELLING
HIM THAT SHE COULDN'T TESTIFY, I
DON'T KNOW.

HE JUST MENTIONED SPEAKING TO
TWO AUNTS, AND THE ONLY TWO
AUNTS THAT WERE MENTIONED WERE
MYRTLE HUDSON AND MS. CAPERS.

SO WHETHER OR NOT AT THE TIME
MS. CAPERS TOLD HIM I'M NOT WELL
ENOUGH TO TESTIFY, I DON'T KNOW,
BECAUSE HE COULDN'T REMEMBER HER
NAME.

BUT AGAIN, THE POST-CONVICTION
COURT FOUND THAT EVERYTHING THAT
CAME OUT DURING THE HEARING,
EVIDENTIARY HEARING WAS BROUGHT
OUT IN FRONT OF THE JURY EXCEPT
FOR THE PTSD WHICH THEY REALLY
DIDN'T FIND A BASIS FOR.

AND AS FAR AS, LET'S SEE,
SPEAKING TO THE DOCTORS, I
BELIEVE THERE WAS SOME ASSERTION
THAT HE JUST TOOK THE CASE FROM
THE PD'S OFFICE AND DIDN'T
INQUIRE INTO IT.

DURING THE EVIDENTIARY HEARING,
MR. BANKOWITZ DID STATE THAT HE
GOT THE MITIGATION FROM THE PD'S
OFFICE, HE SPOKE TO DOCTORS,
FELT THAT THEY HAD DONE A
SUFFICIENT JOB, AND THAT'S WHY
HE WENT FORWARD WITH THEM.

IF YOU HAVE ANY FURTHER
QUESTIONS, I BELIEVE I'M DONE.
THANK YOU.

>> I BELIEVE THE RECORD ACTUALLY
SHOWS THAT MR. BANKOWITZ
ACTUALLY SAID THAT HE TRIED TO
CONTACT TWO OF HER SISTERS AND
THAT ONE OF THE SISTERS WAS
SICK.

SO I DO NOT BELIEVE THAT HE WAS
REFERRING TO MS. CAPERS.

FURTHER, VERY BRIEF MENTIONS OF
SEXUAL ABUSE WOULDN'T FORECLOSE
RELIEF TO MS. ALLEN.

THERE'S BEEN OTHER CASES OUT
THERE SUCH AS ELLERBEE WHERE
THERE HAVE BEEN LIMITED
REFERENCES REGARDING SOME SORT
OF CHILD ABUSE OR SOME SORT OF
SEXUAL ABUSE AND DID NOT
FORECLOSE RELIEF DUE TO MUCH
DARKER PICTURE THAT WAS PAINTED
IN POST CONVICTION.

MS. CAPERS OBSERVED THE
CHILDHOOD ABUSE BECAUSE SHE WAS

THERE AT THE SAME TIME THAT
MS. ALLEN WAS ALSO BEING ABUSED
WHEREAS MS. HUDSON, SHE DID
WITNESS CHILD ABUSE, BUT SHE WAS
NEVER ASKED ABOUT IT AT TRIAL.
SHE WAS ONLY ASKED THAT ONE
BRIEF MENTION ABOUT SEXUAL
ABUSE, BUT THERE WASN'T
OBJECTION ABOUT PREDICATE, SO IT
ENDED UP GETTING GLAZED OVER,
THE FACT THAT SHE HAD BEEN TOLD
ABOUT.

SO MS. CAPERS WOULD HAVE
ACTUALLY BEEN A REALLY GOOD
WITNESS FOR MR. BANKOWITZ TO PUT
ON.

FURTHER--

>> HOW DOES THAT RELATE TO, AND
I'M QUOTING FROM JONES VERY
STATE, A 2008 CASE FROM THIS
COURT, WE'VE REPEATEDLY HELD
THAT COUNSEL IS NOT INEFFECTIVE
FOR FAILING TO PRESENT
CUMULATIVE EVIDENCE OF.
AND IT SOUNDS LIKE, YOU KNOW,

MR. BANKOWITZ DID PRESENT EVIDENCE THAT WAS SUFFICIENT TO GET THE FINDINGS THAT JUSTICE CANADY ASKED ABOUT EARLIER AND THAT THE TESTIMONY, WHILE IT MAY HAVE BEEN MORE POWERFUL IN HINDSIGHT, WOULD APPEAR TO BE CUMULATIVE TO EVIDENCE THAT SUPPORTED THE FINDINGS.

>> WELL, I WOULD SAY THAT THE ONLY THING THAT COULD EVEN BE ANY QUESTION OF CUMULATIVE WOULD BE THE DOMESTIC VIOLATION.

THERE WAS SOME BRIEF REFERENCES TO DOMESTIC VIOLENCE THAT WAS AT TRIAL.

BUT LIKE I SAID, THERE WAS NOTHING IN TERMS OF CHILD ABUSE THAT WAS PRESENTED AT TRIAL AND ONLY THE VERY BRIEF MENTION OF SEXUAL ASSAULT, AND NOTHING CAME UP ABOUT HER BROTHER SEXUALLY BATTERING HER EVEN THOUGH THERE WAS REPORTS ABOUT THAT--

>> BUT THOSE WERE THE DOCUMENTS

GIVEN BY THE EXPERT, AND THE
EXPERT TESTIFIED TO POSSIBLE
SEXUAL ABUSE.

>> CORRECT.

NO ONE ACTUALLY TESTIFIED
WHETHER THAT HAPPENED, WERE
THERE OTHER INSTANCES WHERE
THERE ENDED UP BEING QUITE A FEW
INSTANCES OF SEXUAL ABUSE, MOST
OF THEM PERPETRATED BY
MS. ALLEN'S FAMILY.

ALSO ANOTHER REASON WHY THIS IS
SO IMPORTANT IS THE FACT THAT
THE HAC AGGRAVATOR WAS
UNDERMINED IN POST-CONVICTION AS
WELL.

DR. SPITZ DID TESTIFY THERE WERE
NO LIGATURE MARKS, AND HE
UNDERMINES QUINTON'S TESTIMONY.

IF HE WAS TO BE BELIEVABLE--

>> BUT SHE WAS TERRORIZED FOR
HOURS AND HOURS BEFORE.

I MEAN, IT'S NOT JUST THE IDEA
THAT SHE WAS-- HOWEVER SHE WAS
STRANGLER, IT WENT ON FOR HOW

MANY HOURS, THIS TYING HER UP,
TELLING-- YOU KNOW, HITTING
HER.

THAT DOESN'T GO INTO THE LEAD-UP
THAT SHE MUST HAVE FEARED THAT
SHE WAS GOING TO DIE THIS.

>> IT WOULD IF YOU BELIEVE
QUINTON.

HOWEVER, WE BELIEVE BASED ON THE
FACT THAT HIS TESTIMONY WAS NOT
CREDIBLE IN A LOT OF ANGLES AND
THAT DR. SPITZ DID DISCREDIT
SOME OF HIS TESTIMONY ON TOP OF
THAT AND THAT HE SHOULD HAVE
BEEN IMPEACHED FURTHER BASED ON
SOME OF OUR OTHER CLAIMS, IF YOU
DON'T BELIEVE EVERYTHING QUENTIN
HAS TO SAY, THERE WAS NO ONE
ELSE THERE THAT COULD TESTIFY
WHO HAPPENED IN THAT ROOM.

WE WILL NEVER KNOW BECAUSE THE
ONLY PEOPLE THAT WERE THERE WERE
HER AND QUINTON, SUPPOSEDLY.

SO IN TERMS OF THAT--

>> WHERE WAS MR. MARTIN IN ALL

OF THIS?

WASN'T THERE A MR. MARTIN WHO
ALSO HELPED THEM WITH THIS, THIS
SITUATION?

>> NOT UNTIL AFTER THE FACT.

HE WAS IN ANOTHER ROOM IN THE
HOUSE AND SLEEPING.

>> WASN'T HE THERE WHEN THE
VICTIM WAS FIRST ALIVE?

>> HE WAS I BELIEVE AT ONE
POINT, BUT HE WAS IN THE OTHER
ROOM, HE WAS SLEEPING, HE WAS ON
DRUGS, HE WASN'T VERY CREDIBLE
IN TERMS OF ANY OF THAT AS WELL.
IN ESSENCE--

>> YOUR TIME HAS NOW EXPIRED.
IF YOU WANT TO SUM UP IN ABOUT
30 SECONDS.

>> YES.

AND I WOULD JUST ASK THIS COURT
VACATE MS. ALLEN'S CONVICTIONS
AND DEATH SENTENCE AND REMAND
FOR A NEW TRIAL.

>> THANK YOU.

>> WE THANK YOU BOTH FOR YOUR

ARGUMENTS.

THE COURT WILL NOW BE IN RECESS.