

>> WE THANK YOU FOR YOUR ARGUMENTS AND WILL NOW MOVE TO THE SECOND CASE ON THE DOCKET TODAY.

GENGHIS NICHOLAS KOCAKER VERSUS THE STATE.

>> GOOD MORNING MISTER TEETH JUSTICE AND MAY IT PLEASE THE COURT.

MY NAME IS CHELSEA SHIRLEY AND I REPRESENT GENGHIS NICHOLAS KOCAKER.

HE SUFFERS NEUROVASCULAR LESIONS THAT HAVE BEEN INCREASING IN SIZE, NUMBER AND LOCATION RENDERING HIM INCOMPETENT TO PROCEED.

THESE NEUROVASCULAR LESIONS HAVE BEEN CONFIRMED BY NEUROIMAGING AND ARE ESSENTIALLY HOLES OR AREAS IN GENGHIS NICHOLAS KOCAKER'S BRAIN WHERE THERE SHOULD BE ACTIVE NEUROLOGICAL TISSUE WHERE THERE IS NONE.

THESE HOLES ARE CAUSED BY A SMALL LITTLE BRAIN DISEASE WHICH IS GETTING WORSE OVER TIME AND FOR WHICH THERE IS NO CURE AND AS A RESULT MULTIPLE EXPERTS IN THIS CASE HAVE FOUND GENGHIS NICHOLAS KOCAKER TO BE IMPOVERISHED AND VACANT IN HIS Demeanor.

DISTINCTIVENESS NEUROLOGICAL CONDITION GENGHIS NICHOLAS KOCAKER SUFFERS FROM A CHRONIC SERIOUS MENTAL ILLNESS.

TAKEN TOGETHER OR SEPARATELY THESE CONDITIONS IMPAIR HIS ABILITY TO THINK LOGICALLY OR TO RATIONALLY UNDERSTAND THE POSTCONVICTION PROCESS.

>> TRIAL COURT CONTINUED TO SUPPORT THE STATEMENTS YOU ARE MAKING THE CORRECT?

IT WAS ALL PRESENTED TO THE TRIAL COURT.

>> CORRECT.

ALL THIS EVIDENCE WAS PRESENTED

TO THE TRIAL COURT.

>> WE AGREE THERE IS COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING OF COMPETENCE?

>> I WOULD NOT AGREE.

>> THERE IS NO TESTIMONY?

>> THERE IS NOT COMPETENT OR SUBSTANTIAL EVIDENCE THAT THERE ARE TWO REASONS FOR THAT.

THE LOWER COURT FOUND DOCTOR KIRSCH AND DOCTOR SUAREZ WERE THE MOST CREDIBLE, THERE ARE TWO REASONS FOR THAT.

THE FIRST IS THEY DID A THOROUGH REVIEW OF MENTAL HEALTH RECORDS AND THE SECOND IS THEY HAD DAILY OBSERVATIONS OF GENGHIS NICHOLAS KOCAKER AND THERE'S NO EVIDENCE TO SUPPORT EITHER OF THOSE FINDINGS.

THE FIRST --

>> DIDN'T THEY REVIEW THE SF ET RECORDS?

THAT IS AN IN TREATMENT HOSPITAL WHERE GENGHIS NICHOLAS KOCAKER WAS LOCATED AND THOSE RECORDS INDICATED DAILY OBSERVATION OF GENGHIS NICHOLAS KOCAKER.

>> CORRECT.

>> I UNDERSTAND WHAT YOU ARE GETTING AT THE DOCTORS THEMSELVES DID NOT DAILY OBSERVED BUT THEY HAD INFORMATION BEFORE THEM IN GENGHIS NICHOLAS KOCAKER'S TIME AT THE HOSPITAL WHERE THERE IS DAILY OBSERVATION FROM WHICH THEY RENDER THEIR OPINIONS.

>> THAT IS CORRECT.

THIS INFORMATION WAS GIVEN TO ALL THE EXPERTS.

THE TRIAL COURT SIGNED THE DISCOVERY ORDER AND THOSE DAILY TREATMENT RECORDS WERE GIVEN TO ALL THREE EXPERTS.

WASN'T JUST DOCTOR KIRSCH AND DOCTOR SUAREZ.

>> THE STATEMENT WAS THEY

CONDUCTED A THOROUGH REVIEW AND HAD INFORMATION ABOUT HIS DAILY TIME.

THEY DID AND RENDERED AN OPINION CONTRARY TO OTHER DOCTORS.

WHY IS THAT NOT COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING?

>> JUST BECAUSE THESE DOCTORS HAD THE SAME RECORDS AVAILABLE TO ALL THE OTHER DOCTORS DOESN'T MAKE THEM MORE CREDIBLE SO FOUND THE MORE CREDIBLE FOR THESE RECORDS BUT EXPERTS HAD THESE RECORDS.

>> IT WAS ON SCENE, DOCTORS WORKED AT THE HOSPITAL.

>> DOCTOR SUAREZ IS AN INDEPENDENT CONTRACTOR WHO ONLY SAW GENGHIS NICHOLAS KOCAKER ONE TIME.

HE DIDN'T WORK AT THE TREATMENT CENTER.

>> THAT STATEMENT WOULD BE TRUE AND THE DOCTOR WOULD BE MORE CREDIBLE, AT LEAST THE TRIAL COURT JUDGE WHO HEARD THE TESTIMONY THAN SOME OF THE OTHER DOCTORS.

>> SHE DID NOT SEE GENGHIS NICHOLAS KOCAKER EVERY DAY AND SAW HIM ONE TIME THE DAY HE WAS ADMITTED AND ON THAT DAY, THERE WAS NO IDEA WHY HE WAS THERE. WHAT HE HOPED TO GET OUT OF THE TREATMENT.

GENGHIS NICHOLAS KOCAKER WAS PRESENT AT THE COURT HEARING WHEN THE COURT SAID I AM SENTENCING YOU TO THE TREATMENT CENTER AND HERE'S WHY.

HE HAS NO RECOLLECTION OF THAT.

>> I'M CERTAIN THERE IS EVIDENCE CONTRARY TO WHAT THE DOCTORS TESTIFIED TO JUST LIKE THIS EVIDENCE SUPPORTING THEIR CONCLUSIONS.

THERE IS A DOCTOR WHO WORKED AT THE HOSPITAL WHO HAD RECORDS OF

HIS EVERYDAY TREATMENT WHO DID
RENDER AN OPINION OF THE TRIAL
COURT FOUND THAT TO BE MORE
CREDIBLE.

HOW COULD WE AS AN APPELLATE
COURT OVERTURN THOSE FINDINGS
BASED ON THAT RECORD?

>> HE HAD ACCESS TO THE SAME
RECORDS EVERYONE ELSE DID.
SHE TESTIFIED SHE DID NOT SEE
GENGHIS NICHOLAS KOCAKER EVERY
DAY, SHE SAW HIM ONCE A WEEK
AND IT WAS HER OR SOMEONE ELSE.
THAT IS A LOT OF ORS IN THAT
STATEMENT, NOT SEEING THEM
EVERY DAY AND INTERACTING WITH
HIM BUT THE SECOND IS GOING
BACK TO JUSTICE LAWSON'S
QUESTION.

THEY ALLEGEDLY DID A THOROUGH
REVIEW OF HIS MENTAL HEALTH
RECORDS AND THAT IS IMPOSSIBLE
BECAUSE THEY DID NOT HAVE HIS
DEPENDENT OF CORRECTION RECORDS
AND WE ARE TALKING 3000 PAGES
OF RECORDS.

CATATONIC STATES FROM
PSYCHIATRIC WARD AND
OBSERVATION UNITS AND
SWALLOWING RAZOR BLADES AND
SHOOTING HIMSELF, THE PERMIT OF
CORRECTIONS SAID HE IS
PSYCHOTIC OR MAJOR DEPRESSIVE
DISORDER FOR WITH CURRENT
PSYCHOTIC FEATURES.

THE TRIAL COURT'S FINDING THEY
DID A THOROUGH REVIEW OF MENTAL
HEALTH RECORDS IS INCORRECT.

>> WHAT RECORDS DID THEY HAVE?

>> ONLY THE RECORDS THEY
TREATED?

>> HE WAS THERE HOW LONG?

>> ABOUT TWO MONTHS OR THREE.

>> HOW MANY PAGES OF RECORDS
DID THAT COMPLY ALL OVER THOSE
TWO MONTH OF OBSERVATIONS.

>> NOT SURE OF THE TOP OF MY
HEAD.

>> IT WAS GIVEN TO ALL OF THESE
RECORDS FOR ACCESS TO THIS

INFORMATION.

>> HE WAS INCOMPETENT IN THE PAST TO BE RESTORED TO COMPETENCE.

AND THESE WERE THE DOCTORS, ONE WAS A DOCTOR WHO WAS OVERSEEING HIS TREATMENT AND EVALUATING HIM TO DETERMINE IF IT WAS SUCCESSFUL IN RESTORING HIM TO COMPETENCY.

I HAVE A HARD TIME UNDERSTANDING WHY IT IS RELEVANT TO THAT EXPERT'S OPINION.

HE KNEW THIS DEFENDANT WAS INCOMPETENT AND THE PAST AM A SEVERE PSYCHOLOGICAL PROBLEMS, THAT IS WHY HE WAS THERE.

>> SHE KNEW TO THE EXTENT, IN ADDITION TO HAVING 3000 PAGES OF MENTAL HEALTH RECORDS, SHE DIDN'T HAVE HIS PRIOR PSYCHOLOGICAL TESTING AND SHE TESTIFIED TO THIS IN HER TESTIMONY BECAUSE WHEN SHE WAS ASKED BY COLLATERAL COUNSEL WHY CAN'T YOU CORRELATE THESE NEUROLOGICAL LESIONS WITH HIS LOW TEST SCORES AND SHE SAID I DON'T KNOW THE HISTORY OF THE SCORES, AND WITHOUT HAVING THE HISTORY IN THE DOC RECORDS, HAVING PRIOR PSYCHOLOGICAL TESTING.

WITH ATYPICAL BEHAVIOR.

>> WHY WOULD SCORES MATTER OF ANYONE AGREES HE'S NOT MALINGERING?

THERE IS NO REASON TO DOUBT THE SCORES.

ENABLING DURING SITUATION, MIGHT BE MORE RELEVANT.

ALL THE DOCTORS RELYING ON TESTS, WHY IS IT RELEVANT WHAT HE TESTED PREVIOUSLY IF NOW AFTER HAVING BEEN RESTORED AND RECEIVED TREATMENT THE SCORES ARE IN LINE WITH SOMEONE WHO IS COMPETENT?

>> DOCTOR SUAREZ AND DOCTOR

KIRSCH SAID THEY HAD TO GIVE CREDENCE TO THE FACT HE WAS MALINGERING, AND THE MMPI SCORES SHOWED MALINGERING FOR NOT GIVING GOOD EFFORT. THIS IS BECAUSE THEY DIDN'T KNOW THE HISTORY OF THE SCORES WHICH TIE BACK TO THE LESIONS. DOCTOR SUAREZ, DOCTOR KIRSCH, ALL THE OTHER DOCTORS ALL SAID THESE SCORES ARE ATYPICAL AND THESE REPRESENT SOMEONE WITH DYSFUNCTION SO THE OTHER FOUR DOCTORS SAID THIS CORRELATE WITH BRAIN LESIONS AND CAN COMPARE IT TO THE 2007 SCORES. DOCTOR KIRSCH DID NOT HAVE THE PRIOR SCORES AND COULDN'T SEE SCORES ARE DROPPING IF WE SEE AN INCREASE IN LESIONS AND SEEING MORE SCATTER IN THE TEST SCORE TO CORRESPOND WITH AREAS OF THE BRAIN THAT HAVE MORE LESIONS AND LARGE LESIONS. THEY SAID THESE SCORES MUST BE DUE TO HIM HAVING NOT GOOD EFFORT.

>> AT THE END OF THE DAY, THE EXPERT REPORTS ARE ADVISORY AND THE TRIAL JUDGE'S RESPONSIBILITY TO DETERMINE COMPETENCE IN THIS CASE.

THE JUDGE LOOKED AT THE VIDEOS AND THE ORDER, HOW -- WHAT ARE WE SUPPOSED TO DO WITH THAT?

>> JUST BECAUSE THE TRIAL COURT MAKES THESE FINDINGS DOESN'T MAKE THEM IMMUNE.

THIS COURT CAN OVERTURN THEM IF IT DOESN'T FIND COMPETENT AND SUBSTANTIAL EVIDENCE TO SUPPORT THEM.

I THINK BY RELYING ON DOCTORS WITH THE LEAST AMOUNT OF INFORMATION OF GENGHIS NICHOLAS KOCAKER THEY DIDN'T HAVE HIS PRIOR HISTORY SCORES, MAKING THEM MORE CREDIBLE SIMPLY BECAUSE THEY WORK FOR THE TREATMENT CENTER OR ALLEGEDLY

HAD THE SAME ACCESS TO EVERYONE ELSE DOESN'T INHERENTLY MAKE THE MORE CREDIBLE.

SUBSTANTIAL EVIDENCE TO SAY THEY ARE MORE CREDIBLE BECAUSE THEY HAD THE SAME INFORMATION EFFORT.

>> I DON'T WANT TO SPEAK FOR HIM BUT WHAT I HEAR HIM ASKING HIS DESPITE WHAT THE DOCTORS SAID, OUR CASE LAW SUGGESTED IT IS AN INDEPENDENT OBLIGATION OF THE JUDGE, NOT JUST TO PARENT THE DOCTORS BUT TO MAKE THEIR OWN DETERMINATION BASED ON OBSERVATIONS AND OTHER EVIDENCE IN THE CASE.

THE TRIAL JUDGE LOOKED AT THE VIDEOS AND RENDERED AN OPINION HERE.

BASED ON THAT OBSERVATION HOW IS THAT NOT ALONE COMPETENT SUBSTANTIAL TO SUPPORT THE FINDINGS OF THE TRIAL COURT? THAT IS WHAT I UNDERSTOOD.

>> I APOLOGIZE.

THE VIDEOS REFLECTS WHAT EXPERTS TESTIFY.

THERE WAS NO FINDING IN THE LOWER COURT'S ORDER, THERE IS NO EVIDENCE TO CORROBORATE THE DIDN'T COME OUT OF THE EVIDENTIARY HEARING.

THE RECORD THAT WE HAVE, THIS COURT HAS THE SAME INFORMATION THE TRIAL COURT DID.

THE TRIAL COURT'S FINDINGS CAN STILL BE REVIEWED FOR ABUSE OF DISCRETION WHICH IS WHAT WE HAVE HERE.

THE COURT RELYING ON THESE EXPERTS IN THE FIRST ROUND OF COMPETENCY PROCEEDINGS AND FINDING THEM THE MOST CREDIBLE, 6 MONTHS LATER IS REGARDING DOCTOR MAYER'S FINDINGS, NO CREDIBILITY FINDINGS WITH HIM AT ALL AND SAYING I WILL RELY ON THESE OTHER DOCTORS THAT HAVE SEEN HIM A LESS AMOUNT OF

TIME AND HAD LESS INFORMATION
EVEN THOUGH I THINK THESE ARE
EXPERTS ARE MOST CREDIBLE THIS
TIME.

THAT IS ILLOGICAL.

>> I UNDERSTAND, YOUR ARGUMENT,
THE RULE ASSUMES THERE ARE SOME
TYPES OF CLAIMS WHERE YOU DON'T
NEED A DEFENDANT'S HELP AND
OTHERS WORKING LIGHT.

I UNDERSTAND THE ARGUMENT IF
SOMEONE IS INCOMPETENT HOW DO I
KNOW THE THINGS THEY MIGHT
POINT OUT TO ME BUT IN THIS
CASE IT WAS NEVER CLEAR WHAT
THE SPECIFIC ISSUES ARE THAT
YOU WOULD WANT HIS HELP WITH.
THERE HAS NEVER BEEN A CLEAR --
IN THE POOL -- AND THE RULE THE
NOTION IS THE TRIAL JUDGE IS
SUPPOSED TO SPECIFICALLY SAY
LOOK INTO HIS COMPETENCE, THE
DEFENDANT CAN HELP WITH XYZ
ISSUES BUT HERE IT WAS MORE
FUZZY, LOOKING AT COMPETENCE
AND YOU COMMENDED THE MOTION
AND EVERYTHING.

WHAT ARE THE ISSUES THAT ARE
RELEVANT?

WHAT ARE THE ISSUES YOU FEEL
YOU HAVEN'T BEEN ABLE TO
DEVELOP BECAUSE OF THE
COMPETENCE ISSUE?

>> THE MAIN ISSUE IS THE
INEFFECTIVE ASSISTANCE OF TRIAL
COUNSEL.

THAT REQUIRES COUNTERFACTUAL
DEVELOPMENT, A CASE VERY CLEAR,
IN ORDER TO PROPERLY
INVESTIGATE THAT CLAIM AND
PRESENT IT WE HAVE TO TALK TO
THE CLIENT ABOUT THINGS TO
DISCUSS WITH TRIAL COUNSEL.
DID YOU TELL HIM TO
INVESTIGATE?

ARE THERE THINGS YOU ASK TRIAL
COUNSEL TO DO THAT HE NEVER
DID?

GENGHIS NICHOLAS KOCAKER CAN'T
REMEMBER HE TESTIFIED AT HIS

CAPITAL TRIAL.

WE CAN'T TALK TO HIM ABOUT HOW
DID TRIAL COUNSEL PREP YOU?
WHAT DID THEY TALK TO YOU
ABOUT?

I COULD ASK TRIAL COUNSEL THESE
QUESTIONS THAT PART OF THE
INQUIRY IS WHAT DID THE
DEFENDANT UNDERSTAND?

>> THAT IS AN ISSUE IN EVERY
ONE OF THESE CASES.

IF IT IS A SUCCESSIVE THING DO
YOU THINK THE RULE IS BASED ON
A FALSE PREMISE THAT THERE WILL
BE CASES SOMEONE COULD BE NOT
COMPETENT WITH THE 3851 GOING
FORWARD?

>> I DON'T THINK SO.

THERE ARE THINGS ABOUT A
CAPITAL DEFENDANT THAT ONLY THE
CAPITAL DEFENDANT KNOWS.

A LOT WOULD BE PENALTY PHASE
WITH FIRST RELIEF IN THIS CASE
BUT A LOT GOES TO GUILT PHASE.

TALK TO ME ABOUT THE DAYS
LEADING UP TO THE CRIME, WHO
DID YOU SEE COULD YOU TALK
ABOUT THE DAY OF THE CRIME, DO
YOU HAVE AN ALIBI WITNESS?

TALK ABOUT YOUR INTOXICATION
LEVELS OR THINGS LIKE THAT,
TALK ABOUT WHAT HAPPENED
IMMEDIATELY FOLLOWING THE
CRIME.

WHO DO YOU TALK TO ABOUT YOUR
MOVEMENT?

HE CAN'T HELP WITH THESE THINGS
BECAUSE HE DOESN'T HAVE MEMORY
OF THEM.

IN ORDER TO INVESTIGATE THE
GUILT PHASE WE HAVE TO TALK TO
GUILT PHASE REFERENCES BECAUSE
GENGHIS NICHOLAS KOCAKER
DOESN'T REMEMBER THEM.

>> ON THAT ISSUE IT SEEMED SOME
OF THE EXPERTS IN TRIAL COURT
COMMENTED ON THE FACT HE DIDN'T
SEEM RECALL OF THE EVENTS.
SEEING SOMETHING DIFFERENT THAN
THE JURY FOUND.

TO TALK ABOUT THE DAY IN QUESTION AND ALL THAT.
>> YOU ARE CORRECT THE LOWER COURT DID FIND THAT.
IT WAS A ROSE ROUTINE MEMORY.
HE GAVE THE EXAMPLE OF THAT, WHEN YOU HAVE A DEMENTIA PATIENT, A STORY FROM 15 YEARS AGO WHEN THEY WENT FISHING BUT HOW MANY FACT IN THE STORY ARE ACTUALLY TRUE OR WHAT IT MEANS TO THE PRESENT DAY, THEY CAN'T TELL YOU.
THIS STORY THAT HE CAN REPEAT IS A SIGN OF DEMENTIA AND HE WAS IMPORTANT IN THIS REGARD, HE WAS THE ONLY EXPERT WHO WORKED WITH THE PATIENTS, HE HAS A CLINICAL PRACTICE AND DOESN'T JUST DO FOR IN 6.
IN THIS PRACTICE HE WORKS WITH DEMENTIA PATIENTS AND HIS FAMILY WITH SIGNS AND SYMPTOMS WHEN HE COMES ACROSS THEM AND TALKING TO GENGHIS NICHOLAS KOCAKER HE SAYS THE STORY REPEATS ABOUT THE TRIAL IS LIKE A DEMENTIA PATIENT.
HE CAN ADD TO THE FACT.
IF YOU ASK ANYTHING OTHER THAN THOSE FACTS LIKE THE DAY OF THE CRIME HE CAN'T RECALL THEM.
HE HAS NO MEMORY.
ASKING WHO IS THIS WITNESS, I DON'T KNOW, NEVER HEARD OF THEM.
SHE TESTIFIED AT YOUR FILE, NO SHE DIDN'T.
THERE IS NO MEMORY.
DOES THAT ANSWER YOUR QUESTION?
I AM IN MY REBUTTAL TIME SO I WILL RESERVE THE REST.
>> MAY IT PLEASE THE COURT.
MY NAME IS CHRISTINA PACHECO REPRESENTING THE STATE FLORIDA.
COMPETENT SUBSTANTIAL EVIDENCE DOES SUPPORT THE LOWER COURT'S COMPETENCY RULING.
ONE ELEMENT THAT IS MISSING FROM THIS SURELY'S ARGUMENT WAS

DOCTOR MARSH.

THE LOWER COURT FOUND HIM ALONG WITH DOCTOR SUAREZ AND DOCTOR KIRSCH MORE CREDIBLE THAN OTHER EXPERTS.

HE HAD BEEN A LONG TIME EXPERT IN THIS CASE HAVING EVALUATED A DEFENDANT ALL THE WAY BACK FROM 2008 DURING THE PENALTY PHASE. HE HAD ALL THE DOC RECORDS AND OTHER EXPERTS RECORDS AND HE CONSISTENTLY REFUTED THE OTHER EXPERTS AND FOUND THERE WAS NO EVIDENCE OF ANY NEUROCOGNITIVE DISORDER OR PSYCHOSIS OR ANYTHING LIKE THAT.

THE DEFENDANT WENT TO THE EVALUATION CENTER DOCTOR KIRSCH CAME IN AND SHE WAS HEAD OF THE TREATMENT CENTER.

SHE EVALUATED HIM AND COULD NOT FIND ANYTHING TO DIAGNOSE OR TREAT HIM WITH.

SHE THEN HAD DOCTOR SUAREZ CONDUCTED EXTENSIVE NEUROCOGNITIVE TESTING AND HE IS AN INDEPENDENT DOCTOR.

HE DID A BATTERY OF EXPENSIVE TESTS AND FOUND AGAIN NO EVIDENCE OF ANYTHING THAT THE EXPERTS PREVIOUSLY FOUND HIM INCOMPETENT, FOUND NO EVIDENCE OF THAT IN THE TESTING AT ALL.

THE COURT RELIED ON THESE EXPERTS, EXTENSIVE FINDINGS BY THE LOWER COURT SUPPORT THE LOWER COURT'S ULTIMATE RULING AND RESPECTFULLY WE ARE NOT HERE THE CREDIBILITY OF THE WITNESSES, THAT IS A FUNCTION OF THE TRIAL COURT.

THE TRIAL COURT DID THAT.

THERE IS EVIDENCE WHY THE TRIAL COURT FOUND THESE THREE EXPERTS MORE CREDIBLE.

THERE IS OPPOSING COUNSEL DOESN'T AGREE WITH THAT AND WANTS THE COURT TO LOOK AT EXPERTS.

THAT IS THE FUNCTION OF THIS

COURT ON APPEAL.

WITH REGARD TO YOUR QUESTION REGARDING WHAT CLAIMS REQUIRED GENGHIS NICHOLAS KOCAKER'S INPUT, IT IS TELLING IN THE REPLY BRIEF, COUNSEL CONCEDED THAT NONE OF THE ISSUES BROUGHT BEFORE THE COURT IN POSTCONVICTION MOTION REQUIRED GENGHIS NICHOLAS KOCAKER'S INPUT AND THEY WERE ALL LEGAL ISSUES.

THERE HAS NOT BEEN ANY CLAIM RAISED THE COUNCIL STATED REQUIRED FURTHER INPUT FROM HIM AND ALSO IT IS SIGNIFICANT IN THE RECORD THAT BACK AFTER THE INITIAL PRETRIAL COMPETENCY HEARING WHERE GENGHIS NICHOLAS KOCAKER WAS FOUND COMPETENT HIS TRIAL ATTORNEY AT THAT POINT SAID WE NEVER HAD ANY PROBLEMS WITH OUR CLIENT.

HE IS VERY HELPFUL, VERY TALKATIVE, GIVES US A LOT OF INFORMATION AND THAT IS IN VOLUME 24, PAGE 23 OF THE RECORD.

THERE HAS BEEN NO CLAIMS THAT EVEN REQUIRE HIS INPUT THAT HAVE NOT -- HE HASN'T BEEN ABLE TO PROVIDE.

THE EVIDENCE IS CLEAR THAT HE HAD NO PROBLEM TALKING WITH HIS ATTORNEYS PRETRIAL IN DURING THE TRIAL.

I WOULD ALSO LIKE TO POINT OUT THAT THE TRIAL COURT IN THIS CASE THAT FOUND HIM COMPETENT, THAT IS THE RULING AT ISSUE HERE, HAS BEEN THE SAME COURT ALL ALONG.

THAT JUDGE SAW GENGHIS NICHOLAS KOCAKER TESTIFIED DURING TRIAL, DURING PENALTY PHASE, HE TESTIFIED RELEVANTLY, HE WAS ABLE TO RESPOND APPROPRIATELY TO QUESTIONS AND DURING THE COMPETENCY PROCEEDINGS, THE JUDGE DID LOOK AT THE

EVALUATION THIS AND COULD SEE HOW GENGHIS NICHOLAS KOCAKER BEHAVED THEN.

THE JUDGE WAS IN GREAT POSITION, THE PERFECT POSITION TO ASSESS THESE WITNESSES AND DID SO AND THERE IS COMPETENT SUBSTANTIAL EVIDENCE THAT SUPPORTS THAT RULING AND NO BASIS TO DISSERVE THAT RULING.

>> HOW ARE WE FROM A TECHNICAL PERSPECTIVE, HOW ARE WE DOING OUR REVIEW?

WHAT STANDARD SHOULD WE BE IMPLYING WHEN TALKING ABOUT WORKING WITH THE JUDGE'S DETERMINATION?

SOME OF HER CASES TALKED ABOUT ABUSE AND DISCRETION, SOME TALKED ABOUT COMPETENCY, IT IS NOT OBVIOUS HOW YOU DO THAT WHEN TALKING ABOUT JUDGE'S OWN OBSERVATIONS.

DO YOU HAVE ANY THOUGHTS HOW WE SHOULD BE THINKING ABOUT THAT?

>> I AGREE THE CASE LAW IS CONFUSING INTERCHANGING THE DISCRETION AND COMPETENT SUBSTANTIAL EVIDENCE STANDARD BUT THE CASE LAW WHEN LOOKING AT THE TRIAL COURT'S CREDIBILITY DETERMINATIONS BETWEEN DIFFERENT EXPERTS, THAT RULING IS REVIEWED FOR COMPETENT SUBSTANTIAL EVIDENCE AND THAT IS WHAT WE HAVE HERE. THE COURT IS FINDING CERTAIN WORDS MORE CREDIBLE AND RELYING ON THOSE EXPERTS OPINIONS OVER OTHERS SO THE APPROPRIATE STANDARD FOR THIS COURT'S REPLY WOULD BE COMPETENT SUBSTANTIAL EVIDENCE STANDARD.

>> IF THERE ARE NO FURTHER QUESTIONS, I WILL RELY ON OUR BRIEFING FOR THE REMAINING TIME AND ASK THAT THE COURT AFFIRMED THE LOWER COURT'S DENIAL OF RELIEF.

THANK YOU.

>> THANK YOU.

VERY BRIEFLY, AS FAR AS DOCTOR GAMESH HE HAD ACCESS TO THE RECORDS AND THAT IS PARTIALLY TRUE SO THE STATE CHERRY PICKED 500 PAGES OF THE 3000 FOR HIS REVIEW.

SO HE DID NOT HAVE THE VAST MAJORITY OF THE RECORDS AND YOU CAN FIND THAT IN THE ORIGINAL RECORD ON APPEAL.

500 OUT OF THE 3000.

THE SECOND THING IS HE HAD AN OUTLYING OPINION ON MANY THINGS NO OTHER EXPERT AGREED WITH AND HE GAVE GENGHIS NICHOLAS KOCAKER A TEST HE MADE UP.

I MADE UP THIS 20 QUESTION TEST AND GAVE IT TO GENGHIS NICHOLAS KOCAKER.

IT IS NOT STANDARDIZED.

THIS IS WHAT HE RELIED ON FOR HIS OPINION.

IN THE SECOND THING, JUST BECAUSE THE TRIAL COURT FOUND GENGHIS NICHOLAS KOCAKER COMPETENT PRETRIAL DOES NOT MEAN HE IS CURRENTLY IN COMPETENT.

THE CASE LAW IS CLEAR YOU WILL DO A COMPETENCY EVALUATION AND SOMEONE CAN BE COMPETENT AND INCOMPETENT AND COMPETENT.

IT CAN VACILLATE AND WAIVER.

ART OF THE REASON THE TRIAL COURT FOUND DOCTOR CARPENTER THE MOST CREDIBLE EXPERT THE FIRST TIME AROUND IS HE SAW GENGHIS NICHOLAS KOCAKER PRETRIAL AND GAVE HIM A MARGINAL PASS IN COMPETENCY.

HE DOES NOT MAKE IT ACROSS THE THRESHOLD, DECLINED

DRASTICALLY, HE HAS AGED 20 YEARS IN 5, THERE ARE MORE LESIONS ON HIS BRAIN, HE'S MORE OF ASHES, MORE VACANT, SOMETHING IS HAPPENING TO THIS MAN.

THE TRIAL COURT FOUND HIM MORE

CREDIBLE DURING THE FIRST ROUND
OF PROPOSED CONVICTION
COMPETENCY HEARING.

THAT UNIQUE PERSPECTIVE SHOULD
HAVE CARRIED OVER.

THE LOWER COURT GAVE NO REASON
THE EXPERT HE FOUND MOST
CREDIBLE TWO OF THREE ROUND OF
COMPETENCY PROCEEDINGS HE WILL
COMPLETELY DISREGARD THIS
EXPERT'S POINT OF VIEW.

WITH THAT IF THERE ARE ANY
OTHER QUESTIONS I WOULD ASK
THIS COURT TO REVERSE BECAUSE
GENGHIS NICHOLAS KOCAKER IS
FRAGILE AND CONFUSED AND
INCOMPETENT.

THIS RENTED FIRST CONVICTION
RECEDING FUNDAMENTALLY FLAWED
AND WE ASK THIS COURT TO
REVERSE THE SIMILAR COURT'S
JUDGMENT.

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