Elmer Carroll vs State of Florida

THE FIRST CASE ON THE ORAL ARGUMENTCAL ENCAR IS -- CALENDAR IS CAROL VERSUS STATE, CONSOLIDATED WITH CAROL VERSUS MICHAEL MOORE. MR. MARIO, YOU MAY PROCEED.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS SCOTT MARIO, AND WITH ME IS TIMOTHY SCATTLE, OF THE NORTHERN COLLATERAL REGION AND WE ARE HERE, TODAY, ON BEHALF OF ELMER CARROLL. THIS CASE IS HERE ON DENIAL OF RELIEF FOCUSED ON THE EVIDENTIARY HEARING. THIS MORNING I AM GOING TO FOCUS ON THE ISSUES RELATING TO MR. CAROL'S MENTAL HEALTH, AND LET ME PREFACE THAT WHAT THIS ENTIRE CASE COMES DOWN TO IS THAT THE JUDGE AND THE JURY THAT TRIED AND SENTENCED MR. CAROL TO DEATH, DID SO, BASED ON A TOTAL MISCONCEPTION OF WHO HE WAS. AT TRIAL, MR. CAROL WAS DEPICTED AS SANE, INTELLIGENT, CALCULATING, THAT HE WAS MERELY FAKING HIS SYMPTOMS OF MENTAL ILLNESS, IN ORDER TO DECEIVE THE JURY AND ESCAPE RESPONSIBILITY FOR THIS CRIME. THE REALITY, AS WE, NOW, KNOW, IS THAT MR. CAROL WAS NOT FAKING HIS SYMPTOMS OF MENTAL ILLNESS, THAT HE IS, IN FACT, A DEEPLY-DISTURBED MAN, WHO HAS BEEN AFFLICTED WITH BRAIN DAMAGE, GOING BACK TO PRIOR TO HIS BIRTH, A LIFELONG HISTORY OF MENTAL ILLNESS, WHICH IS FAMILIAL IN ORIGIN, HAS LOW IQ AND HAS CONSISTENTLY TESTED OUT LOW IQ SINCE HIS CHILDHOOD, WHICH WOULD BE 70 TO 80, IN THE BORDER LINE RANGE FOR MENTAL RETARDATION AND THE MENTAL CAPACITY OF A 11 11-YEAR-OLD CHILD.

DOESN'T THE TESTIMONY COUNTERTHE EXPERTS WHO TESTIFIED TO HIS SANITY AT THE TRIAL? IN OTHER WORDS IS THERE TESTIMONY TO THE CONTRARY THAT HE WAS SERIOUSLY MENTALLY ILL, THAT WAS PRESENTED DURING THE COURSE OF THE TRIAL, WAS THERE NOT?

THE TESTIMONY DURING THE COURSE OF THE TRIAL --

DIDN'T TWO MENTAL HEALTH EXPERTS TESTIFY, ON HIS BEHALF, THAT HE WAS SERIOUSLY MENTALLY ILL, AND, IN FACT, OFFERED OPINIONS THAT HE WAS INSANE?

WELL, I THINK IT NEEDS TO BE QUALIFIED. OF THE THREE EXPERTS WHO TESTIFIED ON BEHALF OF THE DEFENSE, TWO WERE COURT COURT-APPOINTED EXPERTS. THE OTHER IT WAS DR. McMAHON, WHO I WILL DEAL WITH IN A MOMENT, BUT THE COURT-APPOINTED EXPERTS, PROBABLY THE BEST EXPERT FOR THE DEFENSE WAS DR. DANZINGER, AND HE TESTIFIED TO THE JURY THAT HE WAS INSANE, BUT HE, ALSO, TESTIFIED TO THE JURY THAT HE WAS 51% CONFIDENCE OF THAT OPINION. THE OTHER EXPERTS, WHO TESTIFIED FOR THE STATE --

HE TESTIFIED MORE THAN THAT, DID HE NOT? DIDN'T HE DESCRIBE SERIOUS ILLNESSES ON THE PART OF THE DEFENDANT, AND DIDN'T THE OTHER TWO EXPERTS PRESENTED, FOR THE DEFENSE, TESTIFY AS TO SERIOUS MENTAL ILLNESSES SUFFERED BY THE DEFENDANT, AND THAT THEY WERE CHRONIC?

I THINK THAT THE ONLY EXPERT WHO SAID THAT, UNEQUIVOCALLY, WOULD BE DR. BEN ONE -- DR. BENSON. DOCTOR MacMAHON, WHO I MENTIONED A MOMENT AGO, SHE HAD ORIGINALLY BEEN BROUGHT INTO THE CASE BY THE FORMER TRIAL COUNSEL AND FORMER PUBLIC DEFENDER MR. FUSSEL. SHE SAW MR. CAME CAROL FOR TWO -- SHE SAW MR. CAROL FOR TWO HOURS, AND THAT WAS WITHIN 48 HOURS OF THE OFFENSE.

I THINK YOU SHOULD BE CAREFUL, IF YOU ARE GOING TO PRESENT THE ENTIRE TESTIMONY THAT WAS PRESENTED AT TRIAL IN A PARTICULAR WAY, AND SAY THAT THAT TESTIMONY ALL SHOWED THAT YOUR CLIENT WAS A SANE, INTELLIGENT PERSON THAT KNEW WHAT HE WAS DOING --

CERTAINLY. I INDZ YOUR CONCERN -- I UNDERSTAND YOUR CONCERN, YOUR HONOR.

IN FACT, THAT WAS ALL THAT WAS PRESENTED AT TRIAL, AND IF THAT IS NOT THE CASE --

THAT WAS JUDGE PERRY'S FINDING AND WHAT THE TRIAL COURT ARRIVED AT AND, IN A SENTENCE, IT SAID, BASED ON ALL OF THE MENTAL HEALTH EVIDENCE THAT WAS PRESENTED AT TRIAL, YOU COULD DRAW ONE OF TWO CONCLUSIONS. YOU COULD EITHER CONCLUDE THAT MR. CAROL WAS, EITHER, IN FACT, MENTAL DISTURBED AND THESE ACTIONS WERE ACTIONS FROM SOMEONE WHO WAS SUFFERING AN EXTREME EMOTIONAL DISTURBANCE, OR YOU COULD CONCLUDE THE FACT THAT MR. CAROL WAS FAKING ALL OF THE SYMPTOMS AND IT WAS FRAUD AND MAYBE THERE IS NOTHING WRONG WITH HIM, AND HE IS AN INDIVIDUAL WITH A SOCIOPATH I CAN PERSONALITY. AND IF -- SOCIOPATH PENALTY.

IF SOMEONE IS PRESENTED WITH THAT TESTIMONY, THEY HAVE TO MAKE CHOICES, DO THEY NOT, HAS TO MAKE CHOICES AMONGST THE THE TESTIMONY. WHICH ISSUES ARE YOU GOING TO FOCUS ON, NOW, BECAUSE WE HAVE A LIMITED TIME, DESPITE THE FACT THAT YOU HAVE A HABEAS PETITION AND A LIMITED APPEAL.

I AM GOING TO FOCUS ON THREE ISSUES. I THINK THEY ALL CONCERN THE MENTAL HEALTH ISSUE, AND THAT IS MR. CAROL'S COMPETENCY TO BE TRIED AND THE INEFFECTIVE ASSISTANCE DEFENSE AND THE PENALTY PHASE AND HOW THE INEFFECTIVE ASSISTANCE OF COUNSEL MADE IT TO THOSE POSITIONS. THE TOTALITY OF THE TESTIMONY IS COMPLETELY DIFFERENT. THERE IS REMARKABLE CONTRAST BETWEEN WHAT WAS PRESENTED THROUGH THE STATE'S EXPERTS AND WHAT WAS SHOWN AT TRIAL. DR. GUTMAN, AT TRIAL, REPUDIATEED THE EVIDENCE THAT WAS GATHERED DURING POSTCONVICTION. I WANT TO MAKE CLEAR TO THIS COURT THIS IS NOT A CASE OF SIMPLY ADDED EVIDENCE. JUDGE PERRY'S ORDER, DENYING POSTCONVICTION RELIEF, SAYS, WELL, THE EVIDENCE PRESENTED IN POSTCONVICTION PROBABLY WOULDN'T HAVE ADDED MUCH OR GO OUT AND FIND ONE MORE EXPERT TO ADD ON TO THE EVIDENCE THAT WAS ALREADY BEFORE THE TRIAL COURT AND BEFORE THE JURY. THAT IS NOT WHAT THIS CASE IS ABOUT. THIS CASE IS ABOUT CHANGING THE EVIDENCE ENTIRELY. NOT ADDED EVIDENCE. CHANGED EVIDENCE. THE SAME EXPERTS WHO TESTIFIED AT TRIAL THAT MR. CAROL WAS -- THAT MR. CAROL WAS MALINGERING, THAT HE HAD NO EVIDENCE OF BRAIN DAMAGE, NO THOUGHT DISORDER.

HOW MANY EXPERTS TESTIFIED AT TRIAL THAT HE WAS MALINGERING?

DR. GUTMAN. TWO STATE'S EXPERTS.

THAT IS THE EXPERT THAT TESTIFIED FOR THE STATE. IS THAT RIGHT?

THAT'S CORRECT.

DID DR. GUTMAN, ALSO, TESTIFY, THOUGH, THAT HE BELIEVED THAT THE DEFENDANT WAS SUFFERING FROM SERIOUS MENTAL ILLNESSES 6.

HE SAID THAT MR. CARROLL WAS SAVVY, HIS IQ IN THE 110 RANGE, TESTIFIED THAT HE WAS REGARDING THE AUDIO AND VISUAL HALLUCINATIONS AND ALL OF THIS AND SAID IT WAS FEIGNING MENTAL ILLNESS. THAT WAS THE ENTIRE THRUST OF THE STATE'S CASE.

WHAT WAS DISCOVERED, AFTER A TRIAL OF A SORT OF DOCUMENTARY OR SUBSTANTIVE

NATURE, BECAUSE I THINK WHAT JUDGE PERRY IS SAYING, WELL, YOU CAN FIND AN EXPERT TO SAY SOMETHING DIFFERENT. WHAT IS IT THAT YOU ARE FOBLING USING ON THAT -- FOCUSING ON THAT TRIAL COUNSEL DID NOT DISCOVER, THAT RENDERED THE FORM DEFICIENT AND UNDERMINE THE RESULTS. ARE THERE SOME RECORDS THAT ARE DIFFERENT IN KIND THAN THE RECORDS THAT THE EXPERTS --

ABSOLUTELY. WELL, LET ME PUT IT THIS WAY. THE ONLY EXPERTS THAT THE TRIAL EXPERTS HAD TO RELY ON, IN FORMING THEIR OPINIONS, PROVIDED BY THE STATE, AND WHAT THESE RECORDS WERE, WERE RECORDS OF DEPARTMENT OF CORRECTIONS RECORDS FROM ABOUT 1980 TO 1990, DURING THE PERIOD OF MR. CARROLL'S INCARCERATION. THEY HAD NOTHING FROM FAMILY MEMBERS. OKAY. THERE WAS NO TESTING DONE. THE RECORDS OF POSTCONVICTION --

WAS THERE ANY INVESTIGATION DONE OF FAMILY MEMBERS OR SCHOOL RECORDS?

NONE WHATSOEVER, YOUR HONOR, AND THAT IS PLED IN THE BRIEF, AND THAT IS AT THE HEART OF THE ISC CLAIM. IN POSTCONVICTION, THERE WERE NUMEROUS TESTS OF PSYCHOLOGICAL NATURE DONE ON MR. CARROLL WHICH SHOWED ORGANIC BRAIN DAMAGE, WHICH ONE EXPERT TESTIFIED TO WAS BACK IN UTERO.

NO TESTING WAS DONE OF THIS DEFENDANT?

AT THE TIME OF THE TRIAL?

AT THE TIME OF TRIAL.

NO. THAT IS VERY INTERESTING AND THAT IS A GOOD POINT AND BRINGS IN DR. MacMAHON, WHO WAS BROUGHT IN BY THE PUBLIC DEFENDER, TO DO THIS EVALUATION, FIRST OF ALL TO SEE IF MR. CARROLL WAS COMPETENT, AND, SECONDLY, TO PERFORM TESTING AS A CONFIDENTIAL EXPERT. WHEN DR. MacMAHON SAW MR. CARROLL AT THE ORANGE COUNTY JAIL, 48 HOURS AFTER THE ARREST, HE WAS SO PSYCHOTIC THAT SHE COULD NOT PERFORM AN EVALUATION, SO AFTER THREE HOURS SHE TERMINATED THE INTERVIEW. SHE CALLED THE PUBLIC DEFENDER'S OFFICE AND SAID HE NEEDS TO BE MEDICATED. IF HE IS MED DATED -- MEDICATED, I WILL BE HAPPY TO COME BACK AND DO THE TESTING, AS REQUIRED IN THIS CASE. MR. TAYLOR IS THEN APPOINTED IN THE CASE. MR. TAYLOR NEVER CONTACTS DR. MacMAHON, AGAIN, UNTIL, IN FACT, THE EVE OF THE TRIAL. IN FACT, SHE, HERSELF, CALLED AND WANTED TO SEE WHAT WAS GOING ON AND WHY NO ONE HAD GOTTEN IN TOUCH WITH HER WITH REGARDS TO THE TEST O'CLOCK. IN FACT, THE TESTING -- IN REGARDS TO THE TESTING. IN FACT, THE TESTING WAS NEVER DONE, AND ALL SHE COULD TESTIFY TO WAS, ON THE DAY THAT SHE HAD SEEN HIM, HE WAS SO PSYCHOTIC THAT SHE COULD NOT PERFORM A TEST. NOW, THE TESTING THAT WAS DONE, HAD SHE BE ABLE TO DO SO, WAS DONE POSTCONVICTION.

THIS IS AS TO COMPETENCY AS TO GUILT PHASE. IS THAT HOW THE TESTIMONY CAME IN?

THE DEFENSE'S EXPERTS?

CORRECT.

YES. MR. TAYLOR WAS ASSERTING AN INSANITY DEFENSE, AND HE RELIED ON DR. McMAHON AND TWO OF THE COURT-APPOINTED EXPERTS, TO SUPPORT HIS THEORY OF INSANITY IN THIS CASE. AND --

WERE THERE -- SO YOU WERE GOING ON ABOUT WHAT RECORDS THERE WERE.

IN ADDITION TO THE TESTS THAT REVEALED A HISTORY OF BRAIN DAMAGE, IN MR. CARROLL'S CASE, ONE VERY CRUCIAL THING THAT WAS NEVER CONSIDERED BY THE TRIAL EXPERTS, WITH

EARLY RECORDS OF PSYCHOLOGICAL TESTING, RECORDS PREDATING THE 1980 DOC RECORDS, GOING ALL THE WAY BACK TO WHEN MR. CARROLL WAS IN SCHOOL. THEY WERE REPEATED WHEN HE WAS 12 YEARS OLD AND 13 YEARS OLD, AND HE CONSISTENTLY TESTED OUT WITH LOW IQ THAT, HE HAD NO REASON TO MALINGER, OBVIOUSLY, AS 12 YEARS OLD OR 13 YEARS OLD, AS THE STATE WOULD SUGGEST AT TRIAL.

WAS THERE ANYTHING IN THE IQ THAT WAS REVEAL ANYTHING OF A SIGNIFICANT NATURE?

IN ADDITION, FAMILY MEMBERS WERE INTERVIEWED IN POSTCONVICTION.

HOW ABOUT RECORDS?

ABOUT RECORDS. IT WAS THE EARLY SCHOOL RECORDS, SUCH AS REPORT CARDS AND WHATNOT. IT WAS PSYCHOLOGICAL RECORDS OF VARIOUS IQ TESTS AND PSYCHOLOGICAL TESTS THAT HAD BEEN DONE, THROUGHOUT HIS CHILDHOOD AND EARLY ADULTHOOD, AND BEYOND --

WHAT DO THOSE PSYCHOLOGICAL RECORDS SHOW ABOUT HIS MENTAL ILLNESS?

THAT IT HAS BEEN STABLE OVER TIME. LET ME MAKE THIS POINT IS THAT ALL OF THE EXPERTS WHO SAW MR. CARROLL AT THE TIME OF HIS TRIAL, ALL OF THEIR PRETRIAL REPORTS AND THEIR TESTIMONY, THEY, ALL, OBSERVED THE SAME SET OF SYMPTOMS. MR. CARROLL WAS REPORTING THAT HE WAS HEARING VOICES, THAT HE WAS HALLUCINATING, THAT HE WAS DELUSIONAL. THE DIFFERENCE IS HALF OF THESE EXPERTS BELIEVED HE WAS SIMPLY FEIGNING THIS. THE SYMPTOMS WERE NOT REAL. AND THE OTHER HALF BE BELIEVED -- BELIEVED THAT THEY WERE GENUINE.

IF THESE RECORDS WERE DISCOVERED THAT WERE GOING ON BACK IN HIS CHILDHOOD.

YES, YOUR HONOR, AND WHAT THE EXPERTS TESTIFIED TO, IN POSTCONVICTION, THAT THE EARLY RECORDS PROVIDE ADD LONGITUDINAL VIEW, SO -- PROVIDED A LONGITUDINAL VIEW, SO IF ONE SAID 51% CERTAIN 49% UNCERTAIN, SUCH AS DR. DANZINGER, THE VIEW FROM TERMS OF 4IS EARLY CHILD -- OF HIS EARLY CHILDHOOD FORWARD AND SHOWED A BATTERY OF PHYSICAL ABUSE FROM FAMILY MEMBERS AND A HISTORY SHOWING SEXUAL ABUSE AND FAMILY ABUSE --

YOU ARE SHOWING A LIFELONG ILLNESS OF AUDITORY HALLUCINATIONS AND THOSE TYPES OF THINGS, OR ARE WE JUST TALKING ABOUT SCHOOL RECORDS, WHERE SOMEBODY WAS PERFORMING AT A SUBSTANDARD LEVEL. WHAT IS IT?

ALL I CAN SAY IS WHAT THE EXPERTS TEST TIED IT -- TESTIFIED TO IN POSTCONVICTION.

YOU DON'T HAVE THE RECORDS?

IT IS IN THE RECORD, YOUR HONOR, AND WHAT THE EXPERTS SAID, DR. GUTMAN, I THINK, MOST IMPORTANTLY, BECAUSE HE WAS THE STATE'S CHIEF WITNESS AT THE TRIAL, SAID THAT, HAD THEY HAD ACCESS TO THESE RECORDS AT THE TIME OF TRIAL, IT WOULD HAVE CONFIRMED THAT HE WAS SUFFERING FROM A SEVERE MENTAL DISTURBANCE, AND THAT THIS WAS SOMETHING THAT HE WAS SUFFERING OVER TIME. THIS IS SOMETHING THAT IS NOT A FABRICATION, IN ORDER TO ESCAPE RESPONSIBILITY FOR HIS CRIME. I SEE THAT MY TIME IS UP. I WOULD LIKE TO RESERVE THE BALANCE OF MY TIME FOR REBUTTAL.

YOU MAY. MR. BROWN.

GOOD MORNING. SCOTT BROWN FOR THE STATE OF FLORIDA. YOUR HONORS, THIS IS NOT A CASE WHERE THE DEFENSE ATTORNEY IGNORED MENTAL HEALTH ISSUES. IN FACT, HE CHALLENGED APPELLANT'S COMPETENCY PRIOR TO TRIAL, AND HE OFFERED AN INSANITY DEFENSE ON THE

APPELLANT'S BEHALF.

WHAT ABOUT THE PROBLEM, THOUGH, THAT APPARENTLY THIS RECORD SHOWS THAT THE DEFENSE LAWYER OFFERED ABSOLUTELY NO MITIGATION EVIDENCE AT THE PENALTY PHASE OF THIS TRIAL, AND SORT OF DEFAULTED, IN EFFECT, TO THE STATE OFFERING AGGRAVATING EVIDENCE AT THE PENALTY PHASE, AND THAT THE ONLY PURPOSE OF THE MENTAL HEALTH EVALUATIONS WAS FOCUSED ON THE COMPETENCY AND THE INSANITY DEFENSE, THAT ALL OF THE MENTAL HEALTH EXPERTS THAT TESTIFIED FOR THE DEFENDANT, ALSO TESTIFIED AT THIS HEARING THAT THEY WERE ONLY HIRED AND ASKED TO EVALUATE THE DEFENDANT, FROM THE STANDPOINT OF COMPETENCY OR THE INSANITY DEFENSE, AND THEREFORE IN ESSENCE WHAT WE HAVE, APPARENTLY, ON THE FACE OF IT, IS A DEFENSE LAWYER THAT OFFERED NO MITIGATION EVIDENCE AT THE PENALTY PHASE, HIRED OR INQUIRED OF THE -- OF NO MENTAL HEALTH EXPERTS, WITH REFERENCE TO MITIGATION, AND DID NO BACKGROUND INVESTIGATION OF A PERSON WHO APPARENTLY HAS A DETAILED BACKGROUND OF NONSTATUTORY MITIGATION, IN ADDITION TO THE MENTAL, SO ON THE FACE OF THIS RECORD, AT LEAST, IT APPEARS THAT THE DEFENSE LAWYER DID ABSOLUTELY NOTHING TO DEFEND THIS DEFENDANT, AT THE PENALTY PHASE. I AM OVERSTATING THAT, IN A SENSE, BUT THAT IS MY CONCERN.

YOUR HONOR --

IF YOU HAVE A LAWYER THAT OFFERED ABSOLUTELY NOTHING IN EVIDENCE AT THE PENALTY PHASE AND, YET, WE KNOW THAT THERE WAS A WEALTH OF STATUTORY AND NONSTATUTORY MITIGATION, APPARENTLY, AVAILABLE.

YOUR HONOR, AT FIRST GLANCE, IT MIGHT APPEAR TROUBLING, BUT THIS COURT HAS, IN THE PAST, APPROVED OF A DEFENSE ATTORNEY STRATEGY TO RELY UPON THE GUILT PHASE TESTIMONY, IN WHICH THEY ARGUE INSANITY. IN PROVENZANO VERSUS DUGGAR, THIS COURT APPROVED OF THAT TACTIC, NOT RECALLING THE GUILTY-PHASE EXPERTS AND RELYING ON THAT TACTIC. BUT THAT IS WHAT YOU HAVE HERE IS CLEAR EVIDENCE AFTER TACTICAL DECISION ON MR. DUGGAR'S PART. HE DID NOT WANT TO CALL THE DEFENSE EXPERTS, WHO WAVERED ON CROSS-EXAMINATION, AND HAVE THE PROSECUTOR RELIVE THE HORRIBLE DETAILS OF THIS OFFENSE.

THE STATE PUT ON THE HORRIBLE DETAILS OF THIS OFFENSE, DURING THE PENALTY PHASE, DID THEY NOT, THROUGH THE MEDICAL EXAMINER'S TESTIMONY?

YOUR HONOR, THEY WERE PRECLUDED FROM GOING THROUGH IT, AGAIN, THROUGH THE CROSS-EXAMINATION OF EACH EXPERT, AND WHAT HAPPENED AT THE EVIDENTIARY HEARING, AT TRIAL, WAS THAT EACH EXPERT'S TESTIMONY, DR. BENSON AND DR. DAN SINGER, THEIR TESTIMONY HAD GOAL-DIRECTED CONDUCT AT THE TIME OF THE DEFENSE. NOW, REMEMBER, THE DEFENDANT CREPT INTO THE VICTIM'S HOUSE, NOT AWAKENING THE STEPFATHER, WHO WAS SLEEPING 30 FEET AWAY. HE GAINED A STEALTHFUL ENTRY TO THE HOUSE, WENT INTO HER ROOM, AND HE HORRIBLY RAPED HER AND KILLED HER, TO KEEP HER THERE FROM CRYING OUT, AS SHE SURELY DID DURING THE ATTACK. THAT CONDUCT, ALONE, SHOWED THAT HE KNEW WHAT HE WAS DOING. HE, ALSO, FINISHED HIS ATTACK. HE LEFT MATERIAL THERE, SO HE COMPLETED HIS GOAL AND HE LEFT AND CLOSED THE DOOR, 30 FEET FROM THE STEPFATHER.

DON'T WE HAVE, HERE, THE EXPERT COMING BACK AND SAYING, IF I HAD HAD THIS INFORMATION BEFORE, I WOULD NOT HAVE EXPRESSED THE OPINION THAT HE WAS MALINGERING, AND I CHANGE MY VIEW, NOW THAT I KNOW THAT HIS MENTAL HEALTH HISTORY GOES BACK AS FAR AS IT GOES AND IS AS SERIOUS AS IT APPEARS TO BE, FROM THESE RECORDS AND FROM ADDITIONAL INFORMATION. WHAT DID THE STATE'S -- IN OTHER WORDS THE STATE'S EXPERT THAT TESTIFIED AT TRIAL, TESTIFIED AT THE POSTCONVICTION HEARING, DID HE NOT?

YES, YOUR HONOR, HE DID, AND I HAVE READ OVER HIS TESTIMONY A COUPLE OF TIMES. FIRST OF

ALL, DR. GUTMAN DID NOT CHANGE HIS OPINION AS TO MR. CARROLL'S COMPETENCY, AND I WANT TO MAKE THAT CLEAR FROM THIS RECORD THERE. IS NOT A SINGLE EXPERT WHO WOULD HAVE CHANGED HER OPINION AS TO EITHER THE PELL APARTMENT'S COMPETENCY AT THE TIME OF TRIAL OR HIS SANITY, AT THE TIME OF THE OFFENSE. NOT ONE EXPERT, AT THE EVIDENTIARY HEARING, TESTIFIED TO THAT EFFECT. NOT ONE.

NOW WE ARE OFFERING MITIGATION EVIDENCE, RIGHT?

EXACTLY, YOUR HONOR, AND IF I CAN GET BACK TO THAT, DR. GUTMAN, THE MOST THAT CAN BE SAID IS HIS OPINION OF THE APPELLANT AS A MALINGERER WAS NOT AS IT WAS AT TRIAL, BUT HE DIDN'T CLEAR UP THAT OPINION.

WHAT INFORMATION DID HE THINK WAS SIGNIFICANT?

LET ME CLEAR THIS UP. THE INFORMATION THAT HE THOUGHT WAS SIGNIFICANT WAS GOING BACK TO THE IQ TEST, GOING BACK TO THE THIRD GRADE, WHICH RECORDS CONTAINED A LOW IQ, AND ALSO EVIDENCE FROM FAMILY MEMBERS. THIS IS NOT A CASE WHERE YOU HAVE EVIDENCE OF PREVIOUS HOSPITAL PSYCHIATRIC EVALUATIONS. THAT IS NOT WHAT WELL ARE TALKING ABOUT. WHAT G GUTMAN TALKED ABOUT WAS WAS TESTIFIED TO AT TRIAL, AND THAT WAS A LOW IQ, BUT DR. GUTMAN WAS THE ONLY EXPERT WHO TESTIFIED THAT HE HAD A LOW IQ, AND DR. KIRK LAND, WHO TESTIFIED AT TRIAL, ACCEPTED THAT THE APPELLANT HAD A LOWER THAN AVERAGE IQ. SO WE ARE NOT TALKING ABOUT ANYBODY CHANGING HER TESTIMONY IN THIS CASE. NOW IF I CAN GET BACK TO THE MITIGATION. IT IS ABUNDANTLY CLEAR, NOT ONLY FROM THE EVIDENTIARY HEARING TESTIMONY BUT FROM THE TRIAL TESTIMONY, IT WAS CLEAR THAT MR. TAYLOR DID NOT WANT TO RECALL HIS EXPERTS, AND THAT WAS TACTICAL DECISION. HIS EXPERTS WERE WAVERING. AND YOU HAVE EVIDENCE OF NOT ONLY A TECHNICAL NATURE OF THAT DECISION BUT YOU HAVE A STRATEGIC BENEFIT OF THAT, AS WELL, BECAUSE THE PROSECUTOR WAS JUMPING UP AND DOWN, WHEN HE LEARNED THAT THE DEFENSE COUNSEL WAS NOT GOING TO CALL HIS EXPERTS DURING THE PENALTY PHASE. HE HAD A STACK OF INFORMATION THAT HE WAS WAITING TO CROSS-EXAMINE ON. PAST INFORMATION OF A KNOWN SEX OFFENDER, AND EVIDENCE THAT HE WAS A CLOSET SEX OFFENDER AND THE FACT THAT HE MOLESTED HIS OWN NIECE, SO THIS MATERIAL WAS FRUSTRATING, BECAUSE THE PROSECUTOR TRIED TO INTRODUCE MORE MATERIAL ABOUT THE APPELLANT'S PSYCHIATRIC HISTORY, AND THE TRIAL JUDGE SAID, LOOK, YOU CAN'T GET THAT IN. HIS EXPERTS AREN'T TESTIFYING, SO THERE WAS AN OBVIOUS STRATEGIC BENEFIT TO COUNSEL'S DECISION, AND I SET THAT FORT IN MY BRIEF. THIS IS A CASE WHERE, NOT ONLY DO YOU HAVE THE EVIDENTIARY HEARING TESTIMONY, TELLING US THAT IT WAS A TACTICAL DECISION, AND YOU LARGELY HAVE EVIDENCE AGAINST YOU, AND IT WAS A STRATEGIC BALANCE TO THAT DECISION.

IT SEEMS THAT YOU ARE PAINTING A PICTURE, QUITE FACTUALLY DIFFERENT FROM THE OPPOSITION. YOU ARE SAYING THERE WAS NEUROLOGICAL TESTING EARLIER, NOT AT POST TRIAL BUT EARLIER, SOME RECORDS OF HALLUCINATIONS AND THOSE KINDS OF THINGS THAT WERE NOT DISCLOSED TO THE EXPERTS, AND YOU ARE CHARACTERIZING THE RECORDS AS ONLY BEING IQ RECORDS FROM SCHOOL RECORDS.

THAT IS MY UNDERSTANDING. IT IS IQ TEST RECORDS FROM THE SEVENTH GRADE. REMEMBER APPELLANT IS 35 AT THE TIME OF TRIAL. HE WAS NOT RIGHT OUT OF SCHOOL. THE JURY WAS, ALREADY, EXPOSEED TO WHICH OF THIS EVIDENCE. THAT HE DROPPED OUT OF SCHOOL AT THE SEVENTH GRADE AND THAT HE HAD EARLY ALCOHOL EXPOSURE, AND I DIDN'T SEE RECORDS FROM EARLY TEEN YEARS OR ANYTHING ELSE. I THINK WHERE WE PICK UP IS D.O.C. RECORDS, WHEN HE WAS INCARCERATED FOR A PRIOR SEX OFFENSE AGAINST A CHILD. LET ME ADDRESS THE PRIOR DEFENSE RECORDS. NONE OF THE DEFENDANT'S FAMILY HAD SEEN HIM FOR TEN YEARS PRIOR TO THE TIME OF TRIAL, AND THE INTERESTING THING ABOUT THIS CASE IS IT WASN'T BECAUSE OF THE CURRENT OFFENSE, AND IT WAS A HORRENDOUS OFFENSE, BUT

LARGELY BECAUSE HE HAD SEXUALLY MOLESTED HIS SISTER'S DAUGHTER. HE HAD, ALSO, SEXUALLY MOLESTED THE DAUGHTER OF HIS BROTHER'S NEIGHBORS, SO YOU HAVE A DEFENDANT, HERE, WHO HAS HAD NO CLOSE CONTACT WITH FAMILY MEMBERS FOR A DECADE PRIOR TO TRIAL. NOW THEY ARE WILLING TO COME IN AND GIVE EVIDENCE THAT SUPPORTS HIM, THAT DOESN'T MEAN THAT IT WAS INEFFECTIVE. HE RELIED ON IT AT THE TIME OF TRIAL. HE ASKED THEM --

DID THE DEFENSE COUNSEL KNOW ABOUT HIS PREVIOUS HISTORY OF MOLESTATION OF OTHER CHILDREN, AT THE TIME OF THE PENALTY PHASE?

YES. HE SOUGHT TO KEEP MUCH OF IT OUT, DURING THE CASE-IN-CHIEF. HE WAS UNSUCCESSFUL PARTIALLY IN THAT RESPECT, BECAUSE DR. DANZINGER DID TESTIFY THAT IT WOULD BE RELEVANT, IN TERMS OF SANITY IN THIS CASE, BECAUSE REMEMBER WE ARE TALKING ABOUT WHETHER OR NOT THIS IS GOAL-DIRECTED BEHAVIOR. IT IS NOT SOMETHING OUT OF THE ORDINARY FOR THE APPELLANT. HE MOLESTS CHILDREN. THAT IS WHAT HE DOES.

SO THE JURY HEARD ABOUT THAT, IN THE GUILT PHASE.

NOT TO THE PROSECUTOR. YES. MINIMALLY. NOTHING ABOUT SEXUALLY MOLESTING HIS NIECE. DIDN'T LEARN ABOUT THE TOTAL EXTENT OF HIS PRIOR HISTORY.

THEY KNEW KNOWING ABOUT THIS -- THEY KNEW NOTHING ABOUT THIS HISTORY OF HIM BEING ABUSED AS A CHILD?

THEY DID KNOW THAT, YOUR HONOR. IN FACT, HIS DEFENSE ATTORNEY, DID OFFER, IN A PRIOR CONVICTION FOR MR. MAYS, FOR ALLEGEDLY SEXUALLY ASSAULTING THE APPELLANT, WHEN HE WAS 12 OR 13.

HOW DID THAT COME OUT? IS THIS THE EVIDENCE THAT THE STATE HAD TO GIVE TO TRIAL COUNSEL, BECAUSE HE WAS UNAWARE OF IT?

YES, YOUR HONOR, BUT IT, ALSO, CAME OUT DURING ONE OF THE EXPERT'S TESTIMONY. I DON'T KNOW IF IT WAS DR. BENSON OR DR. DANZINGER. THAT WAS ARGUED DURING THE PENALTY PHASE, THAT HE HAD BEEN PREVIOUSLY SEXUALLY ABUSED.

I GUESS THE QUESTION OF WHAT WAS GOING ON WITH THIS TRIAL COUNSEL WAS EITHER STRATEGY OR JUST DEFAULT, IN THE WAY HE PRESENTED THE PENALTY PHASE, AND THAT IS MY CONCERN, IS THAT WE HAVE A SITUATION WHERE EXPERTS, WHO EXAMINED THIS DEFENDANT, NEVER HAD THE CHANCE TO DO ANY TESTING, BECAUSE THEY WERE ONLY CONTACTED AT THE VERY BEGINNING OF THE CASE AND WERE NEVER RECONTACTED, SO THERE WAS NO -- IS THAT CORRECT? THERE WAS NO NEURO PSYCHOLOGICAL TEST DUNK?

THERE WAS NEURO PSYCHOLOGICAL TESTING DONE. AND WHEN THEY DO THAT KIND OF TESTING, THE DOCTORS FIND THE APPELLANT COMPETENT. DR. DANZINGER HAD HIM ADMITTED. HE HAD HIM COME INTO THE PSYCHIATRIC WARD OF THE JAIL, BUT AFTER OBSERVING AND ADMITTING TO A BATTERY OF TEST, HE FOUND HIM COMPETENT TO STAND TRIAL. HE FOUND HIM COMPETENT TO AID THE DEFENSE. THIS WAS NOT A CASE WHERE IT WAS IGNORED. THERE WERE ADDRESSED. THIS DEFENDANT FOUND THE IN SAABITY -- THE INSANITY DEFENSE AND FOUR OUT OF THE FIVE FOUND HIM COMPETENT TO PROCEED. THE STATE IS, BY NO MEANS, CONCEDING A DEFICIENCY, BUT IF YOU LOOK AT THE EXPERTS -- YOUR HONOR?

AT THE POSTCONVICTION PROCEEDING, WERE THEY ASKED SPECIFICALLY OR, EVEN, IN GENERAL TERMS, TO ADDRESS WHETHER OR NOT THEIR OPINION CONCERNING COMPETENCY WOULD DIFFER, NOW THAT WE HAVE WHATEVER RECORDS OR HAVE BEEN PRESENTED?

NO, YOUR HONOR. NOT ONE. THERE IS NOT A SHRED OF TESTIMONY ADDRESSING HIS COMPETENCY. AND, IN FACT, THE INTERESTING THING IS THE DEFENSE CALLED DR. DAN SINGER, AND DR. DANZINGER, AT TRIAL, IT WAS 51-49, A VERY CLOSE CALL, TESTIFIED THAT HE WAS INSANE AT THE TIME OF THE DEFENSE. DID HE TESTIFY LATER THAT, WITH ADDITIONAL RECORDS, HE COULD, NOW, SAY IT WAS 70-30? HE DIDN'T. WE HAVE NO REASON TO BELIEVE THAT HIS INSANITY DEFENSE WAS ANY STRONGER, TODAY, WITH THE BENEFIT OF THESE ADDITIONAL MATERIALS. NO REASON TO BELIEVE THAT.

WHAT WAS FOUND BY THE TRIAL JUDGE IN THIS CASE, THE NONSTATUTORY MITIGATION?

HE FOUND NONSTATUTORY MENTAL ABNORMALITIES, BASED ON MITIGATION. THEY DIDN'T RISE -- NOW, THE DEFENSE ATTORNEY DID ARGUE THE STATUTORY MENTAL MITIGATORS. BUT THE JUDGE SAID IT WAS ABUNDANTLY CLEAR THAT THE APPELLANT SUFFERED FROM MENTAL ABNORMALITIES, AND HE WEIGHED THAT.

WAS THERE ANY MENTION ABOUT THE IQ OF THE DEFENDANT?

IN NONSTATUTORY MITIGATION?

CORRECT.

I WOULD HAVE TO GO AND READ THE ORDER, BUT I THINK IT WAS COVERED. THERE WAS NO DOUBT, THOUGH, THAT THE LOW IQ WAS PRESENTED. NO DOUBT ABOUT IT. THERE WAS ONLY ONE EXPERT THAT DISPUTED THE PRIOR PSYCHOLOGICAL TESTING. EVEN DR. KIRKLAND AGREED THAT IT WAS LOWER THAN AVERAGE IQ, NOT MENTAL RETARDED BUT HAD A LOW IQ.

DID HE FIND HE HAD BEEN ABUSED AS CHILD, AS A MITIGATING FACTOR?

I BELIEVE IT WAS MENTIONED IN THE ORDER. I AM GOING TO HAVE TO CHECK TAKE AGAIN. IN FACT, I HAVE THAT BEFORE ME, BUT I WON'T WASTE MY TIME IN LOOKING AT IT. I DO BELIEVE IT WAS PRESENTED TO THE JURY. IT WAS ARGUED TO THE JURY.

I GUESS I AM MORE INTERESTED IN WHETHER OR NOT IT WAS WEIGHED AS A FACTOR, BY THE TRIAL JUDGE.

AGAIN, YOUR HONOR, I BELIEVE IT IS IN THERE. I CAN'T TELL YOU, ONE WAY OR THE OTHER, RIGHT NOW. I DO KNOW IT WAS PRESENTEDED. I AM NOT -- IT WAS PRESENTED. I NO, MA'AM NOT SURE WHETHER IT WAS -- I AM NOT SURE WHETHER IT WAS WEIGHED. BUT THE DEFENSE ATTORNEY LIST -- LISTENED TO ALL OF THE EVIDENCE PRESENTED AT TRIAL AND EVEN THE TRIAL JUDGE HAD IN HIS ORDER, EVEN IF YOU COULD HAVE PRESENTED MENTAL MITIGATORS IN THIS CASE, IT WOULD NOT HAVE CHANGED THAT CASE. IT WAS 12-0 IN FAVOR OF DEATH. THIS MAN RIPPED APART A LITTLE GIRL AS HE RAPED HER, AND HE FLED. HE RAN AWAY, AND THERE IS NO REASON TO BELIEVE THAT ANY JURY, EVEN WITH THE ADDITIONAL EVIDENCE DREDGED UP, IN THE AFFIDAVITS OR TESTIMONY FROM LONG LOST FAMILY MEMBERS, NONE OF THAT IS GOING TO MAKE A DIFFERENCE, BECAUSE THEY ARE, ALSO, GOING TO KNOW THAT HE IS A CHRONIC SEX ABUSER OF YOUNG CHILDREN, SO WITH THE GOOD COST BAD, AND THERE IS NO REASON TO BELIEVE THERE WOULD BE A DIFFERENT RESULT. THE APPELLANT CLEARLY DID NOT MEET, BOTH, EITHER THE DEFICIENCY BUT CERTAINLY NOT THE PREJUDICE PROBLEMS WITH STRICKLAND. THE STATE HAS NOTHING FURTHER.

THANK YOU, MR. BROWN. MR. MARIO.

I AM GOING TO SPEND MOST OF MY REBUTTAL TIME TALKING ABOUT THE PENALTY PHASE, BUT JUST BEFORE I GET INTO THAT, I WANT TO ADDRESS A COUPLE OF POINTS THAT THE STATE HAS RAISED. AGAIN, I DON'T THINK IT IS PROPTORY CHARACTERIZE THIS CASE AS AN INSTANCE

WHERE WE HAVE ADDED EVIDENCE AND JUDGE PERRY MAKES THE FINDING THAT THE ADDED EVIDENCE WOULD NOT HAVE MADE A DIFFERENCE. THAT IS NOT THE POINT. HAD TRIAL COUNSEL DONE HIS JOB IN THAT CASE, HE WOULDN'T HAVE HAD DR. GUTMAN SITTING ON THE WITNESS STAND AT THE TRIAL, TELLING THE JURORS THAT THE DEFENDANT, MR. CARROLL, WAS FAKING HIS SYMPTOMS, AND THAT HE IS HIGHLYLY INTELLIGENT, AND THAT THERE IS NOTHING WRONG WITH HIM. YOU WOULDN'T HAVE HAD DR. KIRKLAND TELLING THE JURY THAT THE DEFENDANT HAS NO EVIDENCE OF BRAIN DAMAGE, NO EVIDENCE OF THOUGHT DISORDER. THAT SIMPLY WOULD NOT HAVE HAPPENED.

WHAT DID THE JURY HEAR, ABOUT THIS DEFENDANT'S PRIOR HISTORY OF HAVING, HIMSELF, ABUSED OTHER CHILDREN?

THERE WAS TESTIMONY THAT CAME OUT, AND I BELIEVE IT WAS FROM, ACTUALLY, THE DEFENSE EXPERTS. PERHAPS ONE OF THE STATE'S EXPERTS, BUT I KNOW THE DEFENSE EXPERTS, ON CROSS-EXAMINATION, THE PROSECUTING ATTORNEY HAD ASKED WERE YOU AWARE THAT MR. CARROLL HAD A HISTORY OF THIS AND THAT, OR THERE WAS ANOTHER POINT AT WHICH THE PROSECUTION SOUGHT TO MAKE THE POINT THAT THE ONLY TIMES IN MR. CARROLL'S PAST, WHERE HE EXHIBITS SYMPTOMS OF PSYCHOSIS OR WHEN HE IS RECALLING SOMETHING, IS WHEN HE IS ACCUSED OF AN OFFENSE. CERTAINLY THERE WAS INFORMATION BEFORE THE JURY, ABOUT THIS PRIOR HISTORY, AND THAT BRINGS ME --

ABOUT HIS PERSONAL -- ABOUT HIM, PERSONALLY, BEING ABUSED?

NO. I THINK JUSTICE PARIENTE'S QUESTION WAS ABOUT MR. CARROLL'S HISTORY OF OFFENSES, INVOLVING --

THE NEXT QUESTION WAS, DID THE EXPERTS KNOW ABOUT THE HISTORY THAT -- OF HIS OWN -- OF THE DEFENDANT'S OWN SEXUAL ABUSE BY OTHERS? DID THE EXPERTS WHO TESTIFIED AT TRIAL HAVE THAT, AND WERE THEY ABLE TO TELL THE JURY ABOUT HOW THAT MIGHT HAVE BEEN A CAUSE OF HIS --

NO. IT IS UNCLEAR. I BELIEVE THAT ONE EXPERT OR TWO WERE AWARE OF IT, AND THAT POINTS TO THE PROBLEM WITH THE EVALUATIONS IN THIS CASE. BECAUSE THESE EXPERTS HAD NOTHING RELY ON, IN EVALUATING MR. CARROLL, OTHER THAN THE RECORDS PROVIDED BY THE STATE, FROM THE DOC, AND MR. CARROLL'S OWN SELF-REPORTING, SO IF MR. CARROLL HAD TOLD ONE OF THE EXPERTS ABOUT THE INCIDENT, THEN, YES, THEY KNEW T NOT ALL OF THEM MENTIONED IT. IN MY THINKING, I THINK ONE EXPERT MENTIONS THAT IN THEIR REPORT. THE FAMILY MEMBERS THAT WERE CONTACTED IN POSTCONVICTION, AND HOW THEY HAVE DESCRIBED AS BEING LONG-LOST IS BEYOND ME, BECAUSE THEY TESTIFIED, AT THE TIME OF THE HEARING AND MR. CARROLL'S TRIAL, THEY LIVED IN THE VICINITY OF ORANGE COUNTY AND WOULD HAVE BEEN WILLING TO COME TO TESTIFY AND TO OFFER THIS INFORMATION TO EXPERTS, HAD THEY EVER BEEN CONTACTED, WHICH THEY WERE NOT. THEY DESCRIBE, IN THEIR AFFIDAVITS AND THEIR TESTIMONY, IN POSTCONVICTION, THIS HISTORY OF SEXUAL ABUSE AND CHILDHOOD RAPE AND HORRENDOUS ABUSE THAT CONTINUED FOR ABOUT A YEAR AND-A-HALF, WHEN MR. CARROLL WAS ABOUT THE AGE OF 12, AND THEY, ALSO, DESCRIBED, IN THOSE MATERIALS, MR. CARROLL'S HISTORY OF APPARENT HALLUCINATIONS AND HEARING VOICES AND BEATING A HOLE IN THE GROUND AND THINKING HE WAS KILLING DEMONS, AND OTHER PROBLEMS WITH MR. CARROLL'S FAMILY MEMBERS, INCLUDING HIS MOTHER, WHO WAS INSTITUTIONLIZED, AT ONE TIME, WITH MENTAL ILLNESS. THOSE ARE THE THINGS THAT THE EXPERTS USED TO DIAGNOSE THAT HE IS SCHIZOPHRENIC, AND I THINK I NEED TO ADDRESS THE TACTICAL REPORT BY THE DEFENDANT THAT NOTHING WAS PRESENTED IN MITIGATION. NOTHING WAS PRESENTED, ON MR. CARROLL'S BEHALF IN THE PENALTY PHASE, OTHER THAN ON PIECE OF PAPER THAT WAS HANDED BY THE DEFENSE ATTORNEY TO THE STATE'S ATTORNEY AND SAID YOU MAY NEED THIS. MR. PERRY APPARENTLY WAS UNAWARE OF THE POLICE REPORT OF THE CHILD SEXUAL ABUSE, AND AS FAR

AS HIM ARGUING THAT, IN HIS CLOSING ARGUMENT, I THINK HIS EXACT WORDS WERE THIS REPORT, HERE, MAY HAVE SOMETHING TO SAY ABOUT WHY MR. CARROLL ACTED THE WAY HE DID, ON THE NIGHT OF THE OFFENSE. THAT WAS THE ARGUMENT, AS PERTAINS TO THE CHILDHOOD ABUSE. NOW, AS FAR AS THE TACTICAL DECISION GOES, WE DON'T HAVE TO SPECULATE WHAT HIS REASONS WERE. HIS REASONS FOR NOT PRESENTING THE EVIDENCE, BECAUSE HE WAS ASKED THAT QUESTION, POINT-BLANK AT THE HEARING. MR. TAYLOR, WHY DIDN'T YOU CALL ANY WITNESSES, AT THE EVIDENTIARY HEARING, AND HE REPLIED, BECAUSE I HAD NO ONE, I THOUGHT, I COULD CALL. AND HE, ALSO, SAID THAT HE WANTED TO DO SOMETHING ELSE IN THE PENALTY PHASE, RATHER THAN RELY ON WHAT HE PRESENTED IN THE GUILT PHASE. HE SAYS NOTHING ABOUT A TACTICAL DECISION THAT IS SOMETHING THE STATE IS SUPPLYING, POST WHO CAN, SUPPLYING THE -- POST HOC, IN SUPPLYING THE MOTIVE FOR THIS MENTAL MITIGATION.

HE TESTIFIED THAT HE THOUGHT THEIR TESTIMONY WAS PRETTY GOOD, AND THAT HE DIDN'T WANT TO TAKE A RISK, BECAUSE THEY WERE WAIVERING IN SOME OF THEIR OPINIONS?

I BELIEVE HE SAID THAT ON CROSS. AT SOME POINT DURING THE HEARING HE GIVES INCONSISTENT ERRORS AND HE WAIVES, BUT THE BOTTOM LINE IS HE DIDN'T HAVE ANY IDEA WHERE THE EXPERT WAS GOING, BECAUSE HE DIDN'T ASK FOR MILE MITIGATION OR TO ADDRESS THIS GET QE, THAN IS THE MAJOR PROBLEM, AND THE PREJUDICE IS THAT, IN POSTCONVICTION, ALL FIVE OF THE DOCTORS WHO TESTIFIED IN POSTCONVICTION, TESTIFY, UNEQUIVOCALLY THAT, BOTH STATUTORY MENTAL HEALTH MITIGATORS APPLY IN THIS CASE. THAT INCLUDES DR. GUTMAN. THAT INCLUDES DR. --

YOU TESTIFIED ABOUT -- YOU MENTIONED ABOUT WHETHER THE TRIAL COURT, IN THE STATUTORY ORDER, TREATED ANY NONSTATUTORY MENTAL MITIGATION?

THE ONLY STATUTORY MITIGATION WAS HE FOUND MENTAL ABNORMALITY. HE FOUND THAT THE EVIDENCE WAS INSUFFICIENT TO FIND THAT EITHER OF THE MENTAL HEALTH MITIGATORS APPLY, AND I THINK IT IS IRONIC THAT JUDGE PERRY, ALTHOUGH THE TRIAL HE FINDS THE EVIDENCE INSUFFICIENT TO SUPPORT STATUTORY MITIGATION, AND IN HIS ORDER FOR POSTCONVICTION RELIEF, THE SAME JUDGE SAYS, WELL, THIS WAS REASONABLE NOT TO PRESENT MITIGATION IN THE PENALTY PHASE, EVEN THOUGH HE FOUND THAT, BECAUSE MITIGATION HAD NOT BEEN PRESENTED IN THE PENALTY PHASE, HE HADN'T FOUND MENTAL MITIGATORS. THAT IS LOGICAL TO FIND THAT THAT IS WHAT OCCURRED.

HOW WOULD YOU DISTINGUISH YOUR APPROACH FROM THE PROVENZANO TYPE OF APPROACH OR ON THIS ISSUE OR TYPE OF CONCERN?

FIRST OF ALL, I THINK THIS IS A CASE WHERE THE MENTAL HEALTH EXPERTS WERE IN DISPUTE WITH ONE ANOTHER. THERE WAS A CONFLICT, AND THERE WAS AN EXPERT WILLING TO DO THE EVALUATION, WHO SAID THE TESTING WAS NEEDED, AND MR. TAYLOR NEVER EVEN A VEILED HIMSELF OF HER SERVICES. NEVER EVEN CALLED HER, SO IT IS NOT REASONABLE TO RELY ON THE TESTIMONY OF EXPERTS WHOSE OPINIONS ARE IN CONFLICT WITH ONE ANOTHER AND ARE BASED ON COMPLETE INFORMATION, MISLEADING INFORMATION, AND, THEN, TO GO FORWARD, INTO PENALTY PHASE, AND SAY -- I DON'T THINK THAT HE DID MAKE ANY DECISION, ANY KIND OF TACTICAL DECISION TO RELY ON WHAT THEY SAID. I THINK THAT THE EVIDENTIARY HEARING TESTIMONY REFUTES THAT, BUT EVEN IF HE WERE THINKING THAT HE WAS GOING TO RELY ON THEIR TESTIMONY TO SUPPORT A FINDING OF STATUTORY MITIGATION, IT IS UNREASONABLE, BECAUSE HE HAD NOT PREPARED THESE EXPERTS. HE HAD NOT EVEN ASKED THEM ABOUT STATUTORY --

I THINK, COUNSEL, YOUR TIME IS UP.

THANK YOU, YOUR HONOR.