

>> OUR LAST CASE TODAY IS WILCOX VERSUS THE STATE OF FLORIDA AND WILCOX VERSUS SECRETARY FOR DEPARTMENT OF CORRECTION CASE SC2023-1498 AND SC2024-0785. WHENEVER YOU ARE READY.

>> Brittney N. Lacy: GOOD MORNING, MAY IT PLEASE THE COURT, I'M BREE LACY AND I REPRESENT THE PETITIONER DARIOUS WILCOX.

I WOULD LIKE TO FOCUS THE ARGUMENT ON CLAIM ONE FOR THE INFECTIVE ASSISTANCE OF COUNCIL AT PENALTY PHASE.

HOWEVER IN THE RARE CHANCE THAT I HAVE ADDITIONAL TIME I WILL ADDRESS THE CLIENT TO, CONCERNING THE HIRSH ERROR.

SIX ATTORNEYS WORKED ON MR. WILCOX CASE IN THE FIRST NINE MONTHS FOLLOWING HIS ARREST, NONE DID ANY WORK.

MR. WILCOX SAT LANGUISHING IN JAIL WITHOUT ANY DISCOVERY OR ANY INFORMATION.

AND AT ONE POINT, HE TOLD THE COURT HE WASN'T EVEN COMPLETELY AWARE OF THE CHARGES HE FACED.

FEELING AS IF HE HAD NO OTHER OPTION HE BEGAN FILING HIS OWN DISCOVERY MOTIONS, HIS OWN BRADY MOTIONS, AND THEN HE EXERCISED HIS CONSTITUTIONAL RIGHT TO REPRESENT HIMSELF.

FOLLOWING THE GUILT PHASE, HE THEN EXERCISED HIS CONSTITUTIONAL RIGHT FOR PENALTY PHASE COUNSEL.

AT THAT TIME THE COURT REAPPOINTED THE RCC OR CONFLICT OFFICE THAT WAS PREVIOUSLY ON MR. WILCOX'S CASE AND APPOINTED JOSEPH WALSH.

JOSEPH WALSH WASN'T A NEW PLAYER HERE.

HE HAD BEEN ON THE CASE IN THE WEEKS LEADING UP TO THE COURTS GRANTING OF MR. WILCOX MOTION TO RECEIVE PRO SE.

AT THE TIME MR. WALSH WAS 2ND CHAIR ATTORNEY WORKING UNDER [NAME] WHO HAD SUBSTANTIAL CAPITAL EXPERIENCE BUT COME MARCH 2008 WHEN HE WAS APPOINTED AS PENALTY PHASE COUNSEL, HE IS NOW LEAD COUNSEL.

HE HAS NO BENEFIT OF CO COUNSEL.

HE HAS NO SECOND CHAIR, AT THE TIME HE IS IN SOLO PRACTICE AND IN THE INFANCY OF DEVELOPING HIS OWN FIRM.

NOW MR. WALSH HAD FIVE MONTHS TO PREPARE FOR THIS MITIGATION PHASE.

NOW IT IS GETTING DIFFICULT TO CONDUCT A MITIGATION INVESTIGATION IN FIVE MONTHS.

BUT IT IS NOT IMPOSSIBLE AND WAS REQUIRED TO BE DONE HERE.

UNDER ESTABLISHED AND CONTROLLING LAW, IT IS COUNSEL'S DUTY TO CONDUCT A THOROUGH MITIGATION INVESTIGATION AND HIS OBLIGATIONS ARE NOT SET ASIDE BECAUSE HE HAS LESS TIME.

>> COULD YOU DESCRIBE IN DETAIL, BECAUSE THE BRIEF KIND OF GAVE GENERALITIES, CAN YOU TELL ME EXACTLY WHAT YOU THINK HE COULD HAVE DONE THAT WOULD HAVE BEEN MORE?

>> CERTAINLY.

HE SEES FIVE WITNESSES HIMSELF OVER THE COURSE OF TWO DAYS.

OVER A MATTER OF HOURS.

AND IN THOSE WITNESS INTERVIEWS THAT HE IS HAVING, HE HAS ONE GENERAL GROUP INTERVIEW OF FAMILY MEMBERS I KNOW THAT IS NOT NECESSARILY HOW WE DO THINGS.

ESPECIALLY WHEN YOU ARE ASKING SENSITIVE INFORMATION, IT TAKES TIME TO DEVELOP RELATIONSHIPS WITH WITNESSES.

IT TAKES TIME TO DEVELOP THAT INFORMATION.

HE DOESN'T COME BACK AND SPEAK WITH ANY OF THOSE WITNESSES AGAIN.

>> Justice Charles T. Canady: AGAIN HERE, WHAT DID HE MISS?

NOW I HAVE LOOKED AT THE MITIGATION THAT CAME IN.

AND THE PENALTY PHASE PROCEEDING.

AND, THE EVIDENCE THAT CAME IN POSTCONVICTION.

AND, THERE IS MORE, NO QUESTION.

BUT IT IS IN THE SAME GENERAL GENRE.

I MEAN, AND OBVIOUSLY HE HAD A VERY DIFFICULT UPBRINGING.

VERY CHAOTIC DYSFUNCTIONAL IN EVERY WHICH WAY.

BUT, THAT COMES THROUGH IN WHAT WAS PRESENTED AT TRIAL.

NOW, WAS IT EXPANDED ON?

WITH WHAT YOU CAME UP WITH FOR POSTCONVICTION?

YES.

I DON'T DENY THAT.

IT IS NOT IT SEEMS TO ME IT IS NOT MATERIAL LINKED TO GO BEYOND AND WHAT THEY PUT IN AT TRIAL.

WE ARE GOING TO MAKE CHOICES ABOUT HOW YOU'RE GOING TO FOCUS THINGS.

I'M JUST STRUGGLING TO SEE HOW THIS IS EITHER DEFICIENT OR PREJUDICIAL.

>> Brittney N. Lacy: I AM SEVERAL ANSWERS FOR THAT.

>> Justice Charles T. Canady: I THOUGHT YOU WOULD.

>> Brittney N. Lacy: FIRST THE JURY DID NOT HEAR SUBSTANTIAL EVIDENCE.

THEY HEARD FROM MR. WILCOX MOTHER.

WHO PRESENTED ABOUT 23 PAGES OR SO TESTIMONY MOSTLY ABOUT HER OWN STRUGGLES.

BUT BECAUSE SHE WAS HIS PRIMARY ABUSER AND SOMEBODY WHO WASN'T IN THE HOME WHERE HE LIVED THEY DIDN'T HAVE CONTEXT OF HIM.

THE JURY NEVER HEARD WHAT ACTUALLY WAS HAPPENING IN THE HOME.

THEY LET WERE LED TO BELIEVE THAT HE WAS UNDER THE CARE AND PROTECTION FROM GRANDMA.

SOME OF THAT WAS PROVIDED BUT THEY NEVER HEARD THE HORRIFIC FACTS OF WHAT WAS ACTUALLY HAPPENING IN THAT HOMES OF THE JURY WAS MISLED ABOUT THE EVIDENCE THEY ACTUALLY RECEIVED.

MOREOVER, THEY NEVER HEARD ANY MENTAL HEALTH LITIGATION, THEY NEVER HEARD ANY DETAILS ABOUT THE NEIGHBORHOOD HE GREW UP IN AND WHAT HIS EXPERIENCE WAS.

THEY NEVER HEARD THAT AS A CHILD HE HEARD GUNSHOTS ON A ALMOST

EVERYDAY BASIS AND WALKED OVER DEAD BODIES IN HIS NEIGHBORHOOD OF PEOPLE HE KNEW.

THEY NEVER HEARD THAT AT 15 YEARS OLD AT 100 POUNDS HE WENT TO A ADULT PRISON DURING HIS FORMATIVE YEARS WHILE OTHER CHILDREN ARE PREPARING FOR PROM AND LEARNING HOW TO DRIVE, THAT WAS IT MR. DARIOUS WILCOX EXPERIENCE.

THEY NEVER HEARD THIS REALLY CRITICAL INFORMATION, WHEN A JURY IS ASKED TO MAKE THE DETERMINATION OF WHETHER SOMEONE LIVES OR DIES THEY NEED A PARTICULARIZED PICTURE.

THIS COURT HAS SAID AND THE U.S. SUPREME COURT HAS SAID SOMETIMES THE SUBJECT MATTER DOES OVERLAP.

BUT THAT IS NOT NECESSARILY MEAN THAT ADDITIONAL INFORMATION IS NOT NEEDED.

AND HERE, THE JURY DIDN'T HAVE THIS INFORMATION.

THEY HAVE HEARD VERY MINIMAL.

AND SO THE ADDITIONAL INFORMATION THAT SHOULD HAVE HAPPENED IS COUNSEL SHOULD'VE PRESENTED MORE INFORMATION ABOUT HIS LIFE.

MORE CONTEXT TO THAT PRIOR AGGREGATOR THAT HE HAD.

MORE MENTAL HEALTH INVESTIGATION BUT THE PROBLEM THERE IS BECAUSE OF HIS INEXPERIENCE, AND THE LACK OF GUIDANCE HE HAD, HE COMPLETELY FAILED WHEN IT CAME TO THE MENTAL HEALTH LITIGATION.

AND THIS COURT HAS HELD THAT HIS ACTION SURROUNDING HOW HE HANDLED THAT MENTAL HEALTH MEDIATION IS SUFFICIENT.

>> DID HAVE AN EXPERT.

>> YES.

>> DID HE RELY ON THE EXPERT?

>> YES

>> HAVE WE EVER HELD THAT IT IS INEFFECTIVE TO RELY ON EXPERT AND WE WILL FIND THAT INEFFECTIVE?

>> Brittney N. Lacy: YOU UPHELD THAT HOW A TRIAL COUNSEL RELIES ON EXPERT OR HOW THEY HANDLE THE INFORMATION THEY ARE RELYING ON CAN BE DEFICIENT.

AND THAT IS IN THIS CASE KNOWING THAT HAVING AN ASPD FINDING WAS NOT GOING TO BE HELPFUL.

HE STILL TURNED THAT REPORT OVER TO THE STATE.

THE LAYERS OF THE MENTAL HEALTH HANDLING ARE DEFICIENT IN EVERY WAY THEY LOOK AT IT.

IT IS CERTAINLY NOT A PER SE RULE THIS COURT HAS.

IF YOU HIRE AND RELY ON AN EXPERT THEN YOU ARE COMPLETELY OBLIVIOUS OF ANY RESPONSIBILITY THAT IS AT FAULT.

FIRST HE HIRES A GENERAL EXPERT HE GETS THE REPORT WITH JUST SCREENING MEASURES AND PERSONALITY TESTING.

NOT ONLY DOES THAT REPORT HAVE INTERNAL INCONSISTENCIES AND EVEN IF YOU FORGIVE HIM FOR NOT UNDERSTANDING THAT WHICH I DON'T CONCEDE YOU

SHOULD, THIS EXPERT DETERMINED THAT THERE WERE COMMON DEFICITS. ANY ATTORNEY WOULD HAVE KNOWN AND THAT MOMENT THAT ANOTHER EXPERT WAS REQUIRED, ADDITIONAL TESTING WAS REQUIRED. BECAUSE WE KNOW A CAPITAL DEFENDANT IS ENTITLED TO A FULL MENTAL HEALTH EVALUATION WHICH DID NOT OCCUR HERE. ALSO, WE CANNOT JUST ALLEVIATE TRIAL COUNSEL'S OBLIGATION AND SAY, THIS IS A EXPERT AND HE RELIED ON THIS EXPERT. WE ALSO HAVE TO REMEMBER TRIAL COUNSEL HAS TO PRESENT THIS INFORMATION TO THE JURY. HAD HE HAVE CHOSEN TO PUT THIS EXPERT ON THE STAND, HE HAS TO UNDERSTAND THE EXPERT'S METHODOLOGIES AND FINDINGS IN A WAY THAT THAT EXPERT IS ABLE TO EDUCATE THE JURY. HE WOULD'VE LEARNED ABOUT THE INTERNAL INCONSISTENCIES AND WOULD'VE LEARNED MORE ABOUT THESE FINDINGS.

>> WHAT WERE THE INTERNAL INCONSISTENCIES?

>> Brittney N. Lacy: SHE USES A SCREENING MEASURE IN WHICH SHE DETERMINES THAT SHE HAS NO SIGNIFICANT PSYCHOPATHY WHICH IS A MEASURE OFTEN UTILIZED AND RELIED UPON IN A FINDING AND SEVERAL PAGES LATER WITHOUT GOING THROUGH ALL OF THE INDIVIDUAL REQUIREMENTS FOR SPD DETERMINES HE MEETS HER CRITERIA. ALSO IN SOME OF THE ANALYSIS SHE RELIES ON HER ASSUMPTIONS AND BELIEFS HE COULD HAVE HAD WITHOUT SCHOOL RECORDS, ANY COLLATERAL WITNESSES IN THE CASE. BUT WHAT YOU HAVE IS AN INEXPERIENCED ATTORNEY WAIT TO THE FOUR OR FIVE MONTHS HE HAD TO EVEN SENTIMENTAL HEALTH EXPERT LOOK AT THE REPORT AND HE HAS NO TIME. BUT THEN THE EXPERIENCE IS EVEN MORE COMPOUNDED WHEN HE FAILS TO TELL THE COURT HE NEEDS TIME. HE FAILS TO ACTUALLY TELL THE COURT WHAT IS GOING ON. HE'S GOT A BOARD CERTIFICATION EARLIER THAT SUMMER WHICH CLEARLY MATTERED HIM BECAUSE HE DIDN'T SPEAK TO A SINGLE WITNESS UNTIL AFTER THAT EXAM. HE IS JUGGLING ANOTHER CAPITAL CASE JUGGLING A BRAND-NEW FIRM AND HAS ALSO RECEIVED VERY CONCERNING MEDICAL NEWS WHICH REQUIRE ADDITIONAL MEDICAL APPOINTMENTS, HE DOES NOT HAVE THE TIME OR THE EXPERIENCE TO UNDERSTAND HIS OWN FAILURES HERE. AND WHAT HE HAS DONE WRONG. AND WE KNOW FROM AN EMAIL ON THE RECORD, THAT HE KNEW MENTAL HEALTH MITIGATION SHOULD HAVE BEEN PRESENTED TO THE JURY. WHEN HE REACHES OUT TO THE RCC DIRECTOR AND ASKED FOR ADDITIONAL FUNDING. AND IN THAT EMAIL, HE SAYS, I HAVE TO PRESENT MORE THAN THE MOTHER. AND HE THINKS THAT HE CAN CONVINCE THE JUDGE TO CHANGE THE MIND OF THE JURY WHICH BY THE WAY IN THIS CASE, SEVEN JURORS VOTED FOR DEATH.

FIVE VOTED FOR LIFE HERE.

THE PREJUDICE IS CLEAR.

JUST ONE SINGLE JUROR NEEDED TO CHANGE THEIR MIND.

THEY RECEIVED 20 PAGES OF MOM'S TESTIMONY AND STILL THEY VOTED ONLY 7 TO 5.

THIS IS NOT THE MOST AGGREGATED AND LEAST MITIGATED CASE.

MR. DARIUS WILCOX WAS ENTITLED TO FAIR AND RELIABLE SENTENCE.

HE GOT NEITHER.

NOT ONLY IS PORTER INSTRUCTED HERE ON THE LAW ON WHAT WAS NOT DONE, PORTER WAS ALSO INSTRUCTED ON THE FACTS.

MR. PORTER TRIED IN 1987, ALSO REPRESENTED HIMSELF BY GUILT.

AND LESS THAN TWO MONTHS LATER, HE WENT TO THE PENALTY PHASE HAVING BEEN ELECTED FOR REPRESENTATION.

AND HIS LAWYER ALSO ONLY PRESENTED THE TESTIMONY OF A SINGLE WITNESS.

HIS ENTIRE MITIGATION STORY ALSO SPANNED JUST OVER 20 PAGES.

NO MENTAL HEALTH INFORMATION WAS PRESENTED TO THE JURY.

THE CIRCUIT COURT AND POSTCONVICTION DETERMINES THAT THERE WAS NO IAC AND THIS COURT UPHELD THAT..

HOWEVER THE UNITED STATES SUPREME COURT REVERSED FINDING THAT ALL ADDITIONAL MITIGATION PRESENTED COULD NOT BE REDUCED TO IRRELEVANT.

AND YOU HAVE THE SAME ERRORS IN PORTER THAT YOU HAVE IN MR. WILCOX CASE BUT THE ERRORS ARE EVEN MORE GLARING.

AND IN MR. PORTER'S CASE, HE WAS DIFFICULT, HE DIDN'T WANT TO MEET WITH MENTAL HEALTH EXPERTS. MR WILCOX WAS ALWAYS PARTICIPATING WITH COUNCIL.

IN MR. PORTERS CASE BACK WHEN OUR STATE HAD A 7/5 JURY REQUIREMENT FOR DEATH MR. PORTERS JURY VOTED 12/0. MR. WILCOXS VOTED 7/5 THE PREJUDICE

HERE IS CLEAR. HOWEVER THE LOWER COURT FAILED NOT EVEN ENGAGING WITH A MITIGATION DOING THE EXACT SAME THING THAT THE FLORIDA COURT DID.

INSTEAD THE COURT MISAPPLIED THE STRICKLAND STANDARD AND DETERMINED THAT COUNCIL PERFORMED EXCELLENTLY.

I'M NOT SURE WHAT EXCELLENTLY IS WHEN WAITING FOUR MONTHS TO SEND A MENTAL HEALTH EXPERT IN A CAPITAL TRIAL FOR THE DEFENDANT.

HE TREATED THIS CASE AS AN AFTERTHOUGHT.

THE PENALTY PHASE WAS AN AFTERTHOUGHT TO HIM.

IT WAS NOT THE INTEGRAL PART OF A CAPITAL TRIAL THAT THIS COURT HAS HELD IN STATE V LEWIS WHICH IS REQUIRED.

AND, I DO REALIZE I AM IN A BIT TO MY REBUTTAL TIME.

IF THE COURT HAS NO FURTHER QUESTIONS I WILL WAIT UNTIL REBUTTAL.

>> THANK YOU.

>> Lisa-Marie Lerner: LISA MARIE LERNER AGAIN WITH THE ATTY. GEN.'S OFFICE.

YOUR HONORS, MR. WALSH PREPARED A EXCELLENT MITIGATION CASE AND DID A LOT OF WORK, BOTH HE AND HIS MITIGATION EXPERT TESTIFIED AT THE EVIDENTIARY HEARING THAT THEY PUT A TON OF WORK INTO THIS CASE.

IN FACT, BETWEEN MR. WALSH AND HIS MITIGATION EXPERT, THEY GATHERED ALL OF THEIR RECORDS THAT EXISTED ON MR. WILCOX.

SO, IN FACT, MY OPPONENT HERE IS EXTREMELY DILIGENT AND EVEN SHE COULD NOT FIND MORE DOCUMENTATION THAN WHAT MR. WALSH FOUND.

ADDITIONALLY, HE DISCUSSED DOCTOR – DIAGNOSIS AND WHAT SHE COULD TESTIFY TO WITH MR. WILCOX.

AND TOGETHER THEY MADE A STRATEGIC DECISION TO WAIVE MENTAL HEALTH MITIGATION PRESENTATION TO THE JURY.

THE COURT HELD A IN CAMERA HEARING WHERE WILCOX HIMSELF WAIVED THE PRESENTATION OF THE MENTAL HEALTH MITIGATION.

>> COULD YOU ADDRESS COUNSEL'S ARGUMENT THAT THE EXPERTS REPORT – THAT THAT REPORT WAS ESSENTIALLY INCOHERENT?

COULD SAY THIS DOESN'T MAKE SENSE.

ONE PART SAYS ONE THING AND ANOTHER PART SAYS SOMETHING THAT IS NOT CONSISTENT WITH WHAT WAS SAID.

>> Lisa-Marie Lerner: THE STATE DISAGREES, THE REPORT WAS NOT INCOHERENT. MR. WILCOX POST CONVICTION EXPERTS DISAGREE WITH HER FINDINGS.

THAT HE HAD ANTISOCIAL PERSONALITY DISORDER.

BUT THAT HIS CONDUCT AND HIS BEHAVIOR THAT DOCTOR RAPPA LISTED IN HER REPORT.

BEING ARRESTED BEFORE THE AGE OF 15 NUMEROUS TIMES, SOME OF HIS OTHER ANSWERS DID SUPPORT A FINDING OF ANTISOCIAL PERSONALITY DISORDER.

AS DID THE FACT OF HIS CONTINUED LAWBREAKING BY DRUG DEALING AND IN THIS CASE ITSELF, ADDITIONALLY COUNSEL AFTER THE JURY CAME BACK WITH A 725 RECOMMENDATION DID GET ANOTHER EXPERT, ANOTHER PSYCHOLOGIST WHO TESTIFIED AT THE SPENCER HEARING FOR THE COURT AND ESSENTIALLY WENT THROUGH ALL OF THE SAME INFORMATION THAT WAS PRESENTED POST CONVICTION ABOUT THE NEIGHBORHOOD AND THE ACE RISK FACTORS IN THE CUMULATIVE TRAUMA THE WILCOX EXPERIENCE BY LIVING IN THIS NEIGHBORHOOD AND LIVING IN THAT VERY CROWDED AND CHAOTIC – CLICK SO HOW DO YOU RESPOND TO THE ARGUMENT THAT, AT LEAST AS TO THAT ADDITIONAL INFORMATION THAT CAME IN AT THE SPENCER HEARING THAT THE JURY, THERE WAS REALLY NO STRATEGIC REASON NOT TO PRESENT THAT TO THE JURY.

>> EXCEPT THAT HE HAD NOT HIRED DOCTOR – YET.

[LAUGHTER]

>> Justice Charles T. Canady: IS THAT PROBLEMATIC THOUGH?

>> Lisa-Marie Lerner: IT IS NOT.

YOU HAVE AN ATTORNEY THAT HAS A FEW MONTHS TO PREPARE A MITIGATION CASE. HE DOES INTERVIEW THE WITNESSES.

IN FACT, TWO OF THE WITNESSES HE INTERVIEWED WERE TWO OF THE WITNESSES THAT TESTIFIED AT THE POST CONVICTION HEARING.

SO YOU TALK TO THEM, HE KNEW WHAT THEY HAD TO SAY.

HE HAD THE INFORMATION THAT THEY PRESENTED AT THE POSTCONVICTION.

HE ALSO HIRED DOCTOR – AND TALK TO HER, GAVE HER THE RECORDS THAT THEY HAD GATHERED.

WHATEVER SCHOOL AND MENTAL HEALTH AND – WHATEVER RECORDS THEY COULD FIND.

REMEMBER THAT THEY COULD NOT FIND VERY MANY SCHOOL RECORDS, BUT THEY GOT ALL OF THE OTHER RECORDS AND GIVE IT TO DOCTOR RAPPA.

ONCE SHE WROTE HER REPORT, IT WAS AT THAT POINT JURY TRIAL IS FACING HE CAN RELY ON HIS EXPERT.

HE IS UNDER NO OBLIGATION IF SHE GIVES HIM A BAD REPORT TO GO AND HIGHER OTHER EXPERTS HOPING TO GET A BETTER REPORT IF THAT WERE THE STANDARD THEN WE WOULD HAVE DEFENSE COUNSEL SERIALY HIRING EXPERTS THAT TRIES TO GIVE THEM SOMETHING THEY WANT.

AND THAT IS NOT THE STANDARD.

AND SO, BASED ON DOCTOR RAPPA'S REPORT, MR. WALSH AND WILCOX WAIVED MENTAL HEALTH MITIGATION EVIDENCE TO THE JURY.

AND AFTER THAT, MR. WALSH WAS SO CONCERNED THAT HE WENT OUT AND FOUGHT WITH HIS OFFICE TO GET MORE FUNDING, HIRED DOCTOR FICHERA IN HOPES OF CONVINCING THE JUDGE IT BASED ON THE SEVEN – FIVE RECOMMENDATIONS TO SENTENCE MR. WILCOX TO LIFE.

AND THAT IS WHY HE HIRED DOCTOR FICHERA AT THAT POINT.

BECAUSE HE WAS STILL WORKING DILIGENTLY ON THE MITIGATION.

AS TO THE OTHER ISSUES, THE STATE MAINTAINS THAT THE POST CONVICTION COURT DID MAKE APPROPRIATE CREDIBILITY FINDINGS WHICH WERE SUPPORTED BY THE RECORD AND CORRECTLY DENIED THE OTHER CLAIMS.

IF THERE ARE NO OTHER QUESTIONS I WILL REST ON MY BRIEF.

>> Justice Charles T. Canady: THANK YOU.

[COUGHING]

>> Brittney N. Lacy: THANK YOU.

I DO HAVE BRIEF ITEMS TO ADDRESS.

>> IN THE NEXT CASE, YOUR ARGUMENT WAS – THAT IS THE WORST THING IN THE WORLD.

SEE, SO I HEAR –.

[INAUDIBLE] JUST BEFORE COUNSEL WAS ABLE TO CONVINCED THE FIVE JURORS TO RECOMMEND LIFE.

SO IT SEEMS LIKE IT – HE DID SOME KIND OF A JOB TO CONVINCED THAT MANY JURORS NOT TO RECOMMEND THAT.

>> Brittney N. Lacy: IMAGINE IF HE ACTUALLY PRESENTED THE INFORMATION HE HAD DISCOVERED.

>> Justice Jorge Labarga: WHO KNOWS, HE GOT FIVE OF THEM AND THAT IS IN THE FACE OF THIS MAGNITUDE.

>> Brittney N. Lacy: I THINK THAT HELPS US UNDERSTAND THE REAL RISK OF PREJUDICE HERE.

AND THAT IS, YOU HAVE A JURY THAT WAS INSTRUCTED ON FOR AGGREGATORS

THAT WERE TURNED ON NO FINDINGS.
NOT ONE FINDING OF FACT, NOT TO THE THEORY OF GUILT OR ANY AGGRAVATION.
THIS COURT STRUCK ONE OF THOSE AGGREGATORS ON APPEAL THE ARREST
AGGREGATOR LEAVING THREE AGGREGATORS.
AS WE ESTABLISHED IN OUR BRIEFING, THAT, WE DON'T EVEN KNOW IF THE JURY
FOUND ANY OF THOSE AGGREGATORS.
THEY MAKE NO FINDINGS OF FACT TO DO SO.
AND THERE ARE FACTUAL ISSUES WHEN IT COMES TO THOSE AGGREGATORS.
AND THIS IS AFTER PRESENTING JUST A SNIPPET OF MR. WILCOX LIFE.
THERE WERE SO MUCH MORE INFORMATION THAT TRIAL COUNSEL COULD HAVE AND
SHOULD HAVE PRESENTED.
THE STANDARD ISN'T WHETHER HE DID A GREAT JOB OR TRIED HIS BEST.
THE STANDARD IS, DID HE PROVIDE CONSTITUTIONALLY EFFECTIVE
REPRESENTATION?
A LOT OF US CAN DO OUR BEST AND NOT BE GREAT.
NO MATTER HOW HARD I TRY, I AM A TERRIBLE BASKETBALL PLAYER.
HE WAS ENTITLED TO CONSTITUTIONALLY EFFECTIVE REPRESENTATION WHICH HE
DID NOT GET.
WHICH COUNSEL HAD FIVE FULL MONTHS TO PREPARE.
AND AS YOU LOOK AT THE NUMBERS IN THIS CASE, I'M A BIG NUMBERS PERSON.
THE MITIGATION SPECIALIST SPENT LESS THAN 37 SUBSTANTIVE HOURS ON THIS
CASE.
MUCH OF WHICH WAS REPORT WRITING IN WHICH HE TOOK THE TWO REPORTS THAT
SHE HAD WRITTEN ABOUT INTERVIEWS AND SHE PUT INTO A LARGER REPORT.
THERE WAS NOT A LOT OF WORK AND DOING OUR BEST HERE.
TRIAL COUNSEL TESTIFIED AT THE EVIDENTIARY HEARING THAT DID NOT HAVE A LOT
OF TIME AND HE WAS PRESSED.
AND I BELIEVE THE MITIGATION SPECIALIST TESTIFIED HE COULD'VE DONE A BETTER
JOB AND HE COULD HAVE.
I ALSO LIKE TO STATE THAT THE STATE HAS MENTIONED HE GATHERED RECORDS, HE
DID NOT USE THE RECORDS.
DID NOT USE INFORMATION GATHERED IN THOSE RECORDS.
CERTAINLY DID NOT HIRE AN EXPERT TO DISCUSS THE POSSIBLE BRAIN DAMAGE
THAT MR. WILCOX EXPERIENCED HAVING BEEN IN SOLITARY CONFINEMENT.
AND WHILE MR. WILCOX MAY HAVE WAIVED THE PRESENTATION OF MENTAL HEALTH
MITIGATION AT THE DIRECTION OF HIS TRIAL COUNSEL, THAT WAS AFTER THE
MORNING WHEN TRIAL COUNSEL TURNED THAT REPORT OVER TO THE STATE AND
THEN THE STATE STOOD UP DURING THE WAIVER AND SAID, HE'S GOT A AXIS II
FINDING OF A ASPD HE JUST WAVED AT MENTAL HEALTH MITIGATION BUT THAT ASPD
FINDING WAS THERE.
THERE IS NO STRATEGY TO WAIT FOR DOCTOR FICHERA UNTIL AFTER PENALTY
PHASE.
HIS INEXPERIENCE MEANT HE DID NOT DO PROPER VETTING OF EXPERTS TO HIRE A

APPROPRIATE EXPERT HERE.

HE DIDN'T KNOW HOW TO FIGURE OUT WHETHER THE REPORT WENT ANY USE TO HIM.

HE DID NOT FOLLOW UP WITH HIS EXPERT.

HE DIDN'T DO THE FULL MENTAL HEALTH EVALUATION THAT WAS REQUIRED.

HE PANICKED.

AND THEN HE HIRES ANOTHER EXPERT.

AND THEN HE GIVES THAT FIRST REPORT TO THE SECOND EXPERT.

SO NOW THE STATE IS ABLE TO ASK QUESTIONS ABOUT THAT FIRST EXPERT THAT MR. WILCOX WITH THE PRESENTATION OF.

WITHOUT THAT EXTRA HAVING TO SIT THERE AND UNDERGO CROSS-EXAMINATION FOR HER OWN ERRORS.

SO NOW THE STATE – THE COURT IS HEARING THIS INFORMATION UNTESTED.

THE JURY NEVER HEARD THE INFORMATION NECESSARY HERE.

THEY NEVER HEARD A COMPLETE STORY ABOUT MR. WILCOX LIFE AND THEY CERTAINLY DID NOT HEAR ANY INFORMATION POSTED HIS TIME IN PRISON AND THE YEARS LEADING UP TO THE INCIDENT ARREST.

THE INFORMATION WAS PRESENTED IN POSTCONVICTION.

I ALSO WANT TO MAKE THE POINT THAT WHILE DOCTOR FICHERA HAVE BEEN MORE ON POINT AND OFFERING INFORMATION TO THE COURT ABOUT THE ADVERSE CHILDHOOD EXPERIENCES, AGAIN THE JURY NEVER HEARD THAT INFORMATION. NEVER HEARD THE COMPELLING IMPACT THAT ADVERSE CHILDHOOD EXPERIENCES WOULD HAVE ON A CHILD'S BRAIN.

AND AS WE'VE ARGUED IN THE BRIEFING WAS NOT FULLY PREPARED.

AN EXPERIENCED AND REASONABLE ATTORNEY WOULD HAVE KNOWN THAT A SPD FINDING PARTICULARLY IN LIGHT OF THIS REPORT WAS NOT THE END BUT IT WAS THE BEGINNING.

WE ASK THAT YOU REMEDY THE CONSTITUTIONAL ERROR HERE.

AND THAT YOU REVERSE THE FINDING AND GRANTED MR. WILCOX PENALTY PHASE RELEASE.

THANK YOU.

>> Justice Charles T. Canady: THANK YOU, WE ARE ADJOURNED.