

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE, THE
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION AND YOU
SHALL BE HEARD.

GOD SAVE THE UNITED STATES, THE
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.

THE FIRST CASE ON THE COURT'S
AGENDA IS RIMMER VERSUS STATE.

THE PARTIES MAY PROCEED.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

CELESTE BACCHI, ASSISTANT
REGIONAL COUNSEL ON BEHALF OF
THE DEFENDANT, ROBERT RIMMER.
WE ARE HERE TODAY FOLLOWING THE
DENIAL OF THE RELIEF IN THE
CIRCUIT COURT AFTER AN EVIDENCE
HEARING ON SOME CLAIMS OF
SUMMARY DENIAL OF THE REMAINING
CLAIMS IN THE 3851 MOTION.

I WOULD LIKE TO FOCUS THIS
MORNING ON INEFFECTIVE
ASSISTANCE RENDERED BY TRIAL
COUNSEL FIRST AND PRIMARILY AT
THE PENALTY PHASE.

HOWEVER, AT THE OUTSET I WOULD
LIKE TO NOTE THAT WHILE THERE
WERE SEVERAL SIGNIFICANT ERRORS
WITH THE CIRCUIT COURT'S ORDER
FOLLOWING THE EVIDENTIARY
HEARING, PERHAPS THE MOST
SIGNIFICANT ERROR WAS THE
COURT'S FAILURE TO CONDUCT A

PROPER ANALYSIS OF INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS IN GENERAL.

BOTH WERE THE PENALTY PHASE AND THE GUILT PHASE BY NOT PROPERLY EVALUATING THE PROCESS STRICKLAND DEFICIENT PERFORMANCE AND PREJUDICE.

BASICALLY, RATHER THAN EVALUATING THE ERRORS COLLECTIVELY THE CIRCUIT COURT EVALUATED THE ERRORS INDIVIDUALLY ITEM BY ITEM AND STRICKLAND AND ITS PROGENY MADE CLEAR IT IS SUPPOSED TO BE THE SUM TOTAL CONSIDERATION OF COUNSEL ERRORS RATHER THAN AN INDIVIDUAL ASSESSMENT OF EACH ERROR AND A PREJUDICE THAT WOULD HAVE ARISEN, AND WHETHER THAT PREJUDICE WOULD BE SUFFICIENT TO WARRANT A NEW OUTCOME.

SO, THE CIRCUIT COURT DID NOT DO THIS EITHER FOR THE PENALTY PHASE OR FOR THE GUILT PHASE AND SO IT'S OPPOSITION FINDINGS OF NO PREJUDICE ARE IN ERROR.

MOVING NOW SPECIFICALLY TO THE INEFFECTIVE ASSISTANCE THAT MR. RIMMER RECEIVED DURING THE PENALTY PHASE OF HIS TRIAL.

THERE WERE THREE MAJOR ERRORS COMMITTED BY PENALTY PHASE COUNSEL WITH SERIOUS PREJUDICE. FIRST AND FOREMOST WAS PENALTY PHASE COUNSEL'S FAILURE TO PRESENT A SIGNIFICANT HISTORY OF CHILDHOOD ABUSE.

>> LET ME ASK YOU THIS.

YOU ARE TALKING ABOUT THE RECORDS THAT WERE NOT GIVEN? I WANT TO TALK ABOUT THE RECORDS

THAT WERE NOT GIVEN TO THE PENALTY PHASE EXPERT.

>> YES.

>> HOW IS-- EXACTLY WHAT RECORDS WERE AVAILABLE THAT COULD HAVE BEEN GIVEN TO COUNSEL?

>> YES, WELL FIRST IT SHOULD BE NOTED PENALTY PHASE COUNSEL DID NOT OBTAIN ANY RECORD-- EXCUSE ME, DID NOT GIVE ANY RECORD TO DR. JACOBSON.

>> DID HE HAVE ANY RECORD?

>> THE RECORD IS UNCLEAR ON THAT ACTUALLY.

IT WAS ESTABLISHED HE DID NOT OBTAIN SCHOOL OR WORKPLACE RECORDS, WHICH HE SHOULD HAVE ACCORDING TO ABA GUIDELINES REGARDING PENALTY PHASE ASSISTANCE.

REGARDING THE DOC RECORDS, WHICH WERE THE MOST IMPORTANT RECORDS IN THIS CASE, HE SAID EITHER HE DID NOT HAVE THOSE RECORDS AT THE TIME HE WAS WORKING WITH DR. JACOBSON, AND IF HE DID HAVE THEM HE DID NOT REVIEW THEM, AND HE DEFINITELY DID NOT GIVE THEM TO DR. JACOBSON AND IN THOSE RECORDS WAS-- THOSE RECORDS WERE WHAT ESTABLISHED THE HISTORY OF MR. RIMMER'S MENTAL ILLNESS.

THERE WAS NO OTHER DOCUMENTARY ILLNESS AVAILABLE THAT ESTABLISHED THAT HE HAD A HISTORY OF MENTAL ILLNESS AND THAT WAS THE MAIN THING THAT DR. JACOBSON WAS IMPEACHED ON BY THE STATE DURING THE PENALTY PHASE CAUSE, BECAUSE SHE GAVE HER OPINION THAT MR. RIMMER SUFFERED FROM A SCHIZOAFFECTIVE DISORDER

AND SHE REPORTED THAT MR. RIMMER TOLD HER THAT HE HAD SOUGHT PSYCHIATRIC TREATMENT WHILE HE WAS INCARCERATED BUT SHE HAD NO RECORD TO BACK THAT UP.

>> WHAT WAS THE TREATMENT THAT WAS ACTUALLY DONE WHILE HE WAS INCARCERATED, OR WAS THERE ANY?

>> THERE WAS.

IT WAS MAINLY GROUP THERAPY WHICH WAS AVAILABLE TO HIM IN THE VARIOUS INSTITUTIONS WHERE HE WAS INCARCERATED AT THE TIME. HE SOUGHT PSYCHIATRIC ASSISTANCE ON AT LEAST THREE OCCASIONS. HE SPOKE WITH MENTAL HEALTH PRACTITIONERS THAT WERE IN THE PRISON.

HE DID NOT HAVE WHAT WE WOULD CONSIDER TO BE A TREATING PHYSICIAN BUT HE DID GO TO GROUP THERAPY IN AN ATTEMPT TO FIGHT THE PROBLEM.

>> DID THEY MAKE THE DIAGNOSIS OF HIM AT THAT POINT?

>> THERE WAS SOME DISCUSSION OF PARANOIA.

I DON'T BELIEVE THERE WAS AN OFFICIAL DIAGNOSIS MADE AT THOSE INSTITUTIONS BUT MR. RIMMER REPORTED A LONG-STANDING HISTORY BEGINNING IN CHILDHOOD OF HALLUCINATIONS AND VIOLENT DREAMS.

>> DID ANY OF THE SCHOOL RECORDS OR OTHER RECORDS REVEAL INFORMATION THAT WOULD HAVE SUBSTANTIATED THESE CLAIMS OF HALLUCINATIONS AND SUFFERING FROM SCHIZOPHRENIA?

>> MY RECOLLECTION OF THE RECORD IS THAT, FIRST, BY THE TIME WE

COLLECTED SCHOOL RECORDS THE NUMBER OF THEM HAD BEEN DESTROYED SO I CAN'T SAY WHAT WOULD HAVE BEEN IN SOME OTHER RECORDS.

>> THEY HAD BEEN WHAT NOW?

>> DESTROYED.

WE WERE ABLE TO OBTAIN SOME SCHOOL RECORDS AND THERE WAS INDICATION IT WAS MOSTLY IN TERMS OF PROBLEMATIC BEHAVIOR WHERE HE WOULD HAVE REACTIONS THAT TEACHERS WOULDN'T UNDERSTAND THE SITUATION THAT OTHER CHILDREN COULD HANDLE MORE GRACEFULLY.

BUT NO, THERE WAS NOT A DIAGNOSIS BY A MEDICAL PRACTITIONER AT THE SCHOOL LEVEL OF ANY KIND.

>> WHAT PART DOES THE COUNSEL, WITH REGARD TO PLACING BEFORE THE JURY EXTENSIVE INCARCERATION INVOLVEMENT WITH THE DEPARTMENT OF CORRECTIONS, DID THIS DEFENDANT PLAY IN THE ANALYSIS? DID THAT HAVE ANY ROLE TO BE DISCUSSED, TO BE THOUGHT ABOUT? APPARENTLY-- IS THERE NOT SOME RECORD INFORMATION?

I REALLY DID NOT WANT TO BANTER BEFORE THIS JURY HIS PRISON HISTORY.

I'M JUST GOING TO TELL THEM THE DEFENSE HERE, HE DIDN'T DO IT SO I WANT TO TRY TO KEEP THIS CLAIM.

IS THAT PROPER FOR THIS DISCUSSION?

>> I BELIEVE IN THE GUILT PHASE IT WOULD BE ABSOLUTELY PROPER AND CERTAINLY MR. GARFIELD HAD

CONCERN ABOUT PUTTING SOME OF THE DOC RECORDS BEFORE THE JURY. THOSE WERE RELATING TO MR. RIMMER'S EYESIGHT PROBLEM BUT AT THE PENALTY PHASE THE JURY WAS AWARE MR. RIMMER HAD A HISTORY OF INCARCERATION BECAUSE THAT WAS AN AGGRAVATION AGAINST HIM BY THE STATE SO AT THAT STAGE OF THE PROCEEDINGS NO, I DON'T THINK THAT WOULD HAVE BEEN A VALID CONCERN BUT I SHOULD NOTE THAT MR. CHANCE, THE PENALTY PHASE ATTORNEY, ADMITTED EITHER I DIDN'T GET THE RECORD, I DIDN'T REVIEW THEM AND CERTAINLY DID NOT GIVE THEM TO THE EXPERTS, SO YOU KNOW THAT CAN'T BE A REASONABLE STRATEGIC DECISION BECAUSE HE DIDN'T DO THE INVESTIGATION THAT WOULD SUPPORT THAT CHOICE.

>> LET'S TALK ABOUT-- I GUESS UNLESS YOU WANT TO GO THROUGH ALL THE THREE PARTS WHERE HE WAS EFFICIENT AND GO BACK TO PREJUDICE-- IF YOU WOULD RATHER DO THAT.

THE SECOND THING YOU WERE GOING TO START WITH WAS THE PHYSICAL ABUSE AS A CHILD.

HOW OLD WAS MR. RIMMER AT THE TIME OF THIS MURDER?

>> HOW OLD WAS MR. RIMMER? HE WAS IN HIS HIS MID-TWENTIES.

>> AND, AS FAR AS THE PHYSICAL ABUSE, IS IT CORRECT THAT NOBODY TOLD DEFENSE COUNSEL ABOUT IT AND HIS MOTHER SAID THAT THEY WERE VERY EMBARRASSED ABOUT IT AND DID NOT WANT TO REVEAL IT?

>> THAT IS NOT ENTIRELY CORRECT,

YOUR HONOR.

IT IS CORRECT THAT MRS. RIMMER TESTIFIED DURING THE EVIDENTIARY HEARING THAT SHE WAS EMBARRASSED ABOUT THE FAMILY HISTORY AND PHYSICAL ABUSE SHE RECEIVED FROM HIS FATHER BUT, HOWEVER, MR. RIMMER REPORTED TO DR. JACOBSON THAT HE WAS BEATEN AS A CHILD.

AND DR. JACOBSON PUT THAT IN HER REPORT TO MR. SCHANTZ, THE PENALTY PHASE COUNSEL, BUT HE WAS ON NOTICE THAT AT LEAST MR. RIMMER HAD REPORTED A HISTORY OF CHILDHOOD ABUSE AND HE SIMPLY NEVER FOLLOWED UP ON THAT.

>> DID THE MOTHER REPORT TO THEIR LAWYERS OR THE INVESTIGATORS ABOUT THE MOVEMENT TO NORTH CAROLINA AND THE GOING BACK TO OHIO AND ALL THIS BACK-AND-FORTH?

WAS THAT GIVEN TO THE LAWYERS?

>> YES IT WAS.

SOME OF THAT INFORMATION WAS GIVEN FROM THE MOTHER AND FROM THE FATHER TO MR. SCHANTZ AND SOME OF IT WAS PRESENTED AT THE PENALTY PHASE BUT MR. RIMMER'S ENTIRE SOCIAL HISTORY WAS ABSOLUTELY NOT PRESENTED AT THE PENALTY PHASE.

>> IS IT A MATTER-- AGAIN, YOU CAN ALWAYS ADD MORE SO WHAT ACTUALLY DID GO BEFORE THE JURY DURING THE PENALTY PHASE AND WHAT WAS TOLD?

DID THEY PRESENT WHAT THEY WERE TOLD AND THEN YOU FIND MORE AND ADD MORE?

I UNDERSTAND THAT YOU CAN GO TO DIFFERENT DEPTHS, BUT DID THE LAWYERS PUT ON WHAT THEY WERE TOLD OR DID THEY NOT?

>> MR. SCHANTZ DID NOT PUT ON THE INFORMATION REGARDING CHILD-ABUSE.

>> THE STATEMENT THAT IS IN THE JUDGE'S ORDER THAT SAYS, ACCORDING TO MR. SCHANTZ, THERE WAS NO INDICATION THAT HIS CLIENT HAD BEEN PHYSICALLY ABUSED AS A CHILD.

YOU ARE SAYING HE, IN FACT, TOLD DR. JACOBSON THAT THERE WAS CHILDHOOD ABUSE?

>> YES, HE DID.

>> THAT IS--

>> IF I MAY, DR. JACOBSON, DURING HER PENALTY PHASE TESTIMONY, REPORTED THAT MR. RIMMER HAD TOLD HER THAT HE EXPERIENCED SOME BEATINGS AND SOME VIOLENCE IN THE HOME.

>> SO, NOW WHAT WAS THE TESTIMONY THAN THAT YOU PRESENTED ABOUT THE EXTENT AND NATURE OF THE CHILDHOOD PHYSICAL ABUSE, NUMBER OF YEARS, WHAT TYPE OF ABUSE?

>> YES.

LET ME JUST SAY FIRST BRIEFLY THAT THERE WAS NO DISCUSSION DURING THE PENALTY PHASE OF THE CHILDHOOD ABUSE PRIMARILY BECAUSE THE INFORMATION ABOUT MR. RIMMER'S CHILDHOOD WAS PRESENTED ONLY THROUGH HIS FATHER, WHO WAS THE ABUSER AND HE CERTAINLY NEVER ADMITTED WHAT HE DID TO THE CHILDREN.

SO, I AM SORRY-- YOU WERE ASKING

DURING THE EVIDENTIARY HEARING
WHAT WAS PRODUCED?

WE PRESENTED MR. RIMMER'S AUNT,
JEANETTE RIMMER, WHO WAS A
WITNESS TO THE ABUSE.

>> YOU TALKED ABOUT PHYSICAL, OR
ARE YOU TALKING ABOUT MENTAL
ABUSE?

I THOUGHT THEY TESTIFIED
BASICALLY HE WAS A NEGLECTFUL
FATHER AND USED HIS MONEY IN
WAYS OTHER THAN TAKING CARE OF
THE BOYS.

>> SHE DID TESTIFY TO THAT AS
DID MRS. RIMMER BOTH DURING THE
HEARINGS.

HIS AUNT JEANETTE WAS AWARE THAT
THE CHILDREN EXPERIENCED
PHYSICAL ABUSE.

THEY WERE DEPRIVED OF FOOD FOR
DAYS AT A TIME.

SHE WOULD HAVE TO BRING THEM
FOOD IN ORDER FOR THEM TO EAT.
HE WOULD LEAVE THEM AT HOME
ALONE AND NOT ALLOW THEM TO
LEAVE.

HE BEAT THEM, ACCORDING TO THE
AUNT, AND HIS BROTHER-- HE BEAT
THEM WITH STRAPS, BELTS,
SWITCHES, WHATEVER WAS
AVAILABLE.

IT HAPPENED SOMETIMES ON A DAILY
OCCURRENCE, DEPENDING ON
MR. RIMMER'S OWN MOOD.

MISTER RIMMER WAS ACTUALLY
DIAGNOSED WITH-- HAD VARIOUS
DIAGNOSES BUT DEPRESSION, SOME
PSYCHOSIS.

>> YOU ARE TALKING ABOUT THE
FATHER?

>> I AM TALKING ABOUT LOUIS
RIMMER, THE FATHER.

HE WAS ACTUALLY PUT ON MEDICATION DURING THE TIME THE CHILDREN LIVED WITH HIM, SO THE KIDS HAD WELTS.

THEY HAD SCARS.

THOSE WERE OBSERVED BY THE AUNT, JEANETTE RIMMER, AS WELL AS BY THE MOTHER WHEN THE CHILDREN EVENTUALLY WENT BACK TO LIVE WITH HER.

>> WHAT WAS THE STATE OF THE TESTIMONY THAT WAS ACTUALLY PRESENTED AT THE PENALTY PHASE? WHAT KIND OF FAMILY AND FRIENDS WERE EXAMINED AT THE ACTUAL PENALTY PHASE?

I BELIEVE THE MOTHER ONLY TESTIFIED AT THE CENSURE HEARING AND THE SISTER?

>> AT THE CENSURE HEARING IT WAS THE MOTHER AND DR. WALCZAK. AT THE PENALTY PHASE, MR. SCHANTZ TESTIFIED AT THE EVIDENTIARY HEARING THAT HIS APPROACH THAT MR. RIMMER WAS A GOOD FATHER, A GOOD WORKER AND A GOOD SON, SO THAT WAS THE FOCUS OF THE WITNESS.

THE WITNESSES INCLUDED HIS FATHER, LOUIS RIMMER, HIS WIFE AT THE TIME, AND STEP-DAUGHTER. ONE OF HIS EMPLOYERS, MELODY FRITZINGER, AND AGAIN THE GIST OF THEIR TESTIMONY WAS THE GOOD DAD, GOOD SON, GOOD WORKER PRESENTATION.

>> FOR EXAMPLE, WITH THE AUNT, WHICH WOULD NOT BE CUMULATIVE TESTIMONY, DID HE, DID THE AUNT SAY THAT SHE WAS AVAILABLE TO TESTIFY AND WAS SHE NEVER CONTACTED, OR WAS IT THAT SHE

WAS SPOKEN TO AND HE DECIDED NOT TO USE HER?

>> SHE WAS NEVER SPOKEN TO DURING THE TIME OF TRIAL.

MR. RIMMER GAVE JEANETTE RIMMER'S NAME TO MR. SCHANTZ AS SOMEONE IN THE FAMILY TO SPEAK TO.

HE WENT TO OHIO AND JEANETTE RIMMER STILL LIVED IN OHIO.

I AM SORRY, HE WENT TO OHIO TO INTERVIEW THE DAD AND JEANETTE LIVED IN OHIO AT THE TIME AND WAS AVAILABLE.

SHE WAS NEVER INFORMED MR. SCHANTZ WAS COMING ON THAT PARTICULAR VISIT.

SHE WAS LATER MADE AWARE OF ROBERT RIMMER'S CIRCUMSTANCES AND SHE SAID SHE WOULD HAVE BEEN AVAILABLE TO TESTIFY HAD ANYBODY ASKED HER.

>> I KNOW THERE WERE A COUPLE OF WITNESSES YOU SAY SHOULD HAVE BEEN CALLED.

THE DEFENSE ATTORNEY DID SAY HE MADE A STRATEGIC DECISION NOT TO CALL, I THINK, THE BROTHER AND GIRLFRIEND.

>> SPECIFICALLY, AS TO LOUIS ODELL, THE BROTHER, MR. SCHANTZ DID SAY HE MADE A STRATEGIC DECISION NOT TO CALL HIM EXCEPT OUR POSITION IS THAT STRATEGIC DECISION IS NOT BASED ON A REASONABLE INVESTIGATION AND THEREFORE WAS NOT A REASONABLE CHOICE, BECAUSE HE NEVER SPOKE TO LOUIS ODELL.

HE HAD NO IDEA WHAT LOUIS ODELL WOULD SAY TO HIM AND EVEN AFTER SPEAKING TO HIM HE MADE THE

DECISION NOT TO PUT HIM ON
BECAUSE LOUIS ODELL WAS
INCARCERATED AT THAT TIME.
HE AT LEAST SHOULD HAVE GOTTEN
THE INFORMATION FROM LOUIS
ODELL.

>> WHAT WAS HE INCARCERATED FOR?

>> FOR MURDER.

>> DID HE SAY HE WANTED TO-- HE
WANTED PEOPLE TO THINK THE
DEFENDANT CAME FROM A FAMILY OF
MURDERERS?

>> MR. SCHANTZ?

HE DID SAY THAT, BUT AGAIN, THAT
INFORMATION WOULDN'T HAVE-- HE
COULD NOT HAVE MADE THAT
DECISION PROPERLY AND REASONABLY
WITHOUT FIRST SPEAKING WITH
LOUIS ODELL AND KNOWING WHAT HE
HAD TO SAY ON THE INFORMATION
LOUIS ODELL PRESENTED WAS
SIGNIFICANT AND SHOULD HAVE BEEN
PRESENTED TO THE JURY EITHER IF
COUNSEL MADE THE DECISION TO PUT
HIM ON AS A WITNESS OR THROUGH
DR. JACOBSON.

>> WHAT WAS THE TESTIMONY?

>> LOUIS ODELL'S TESTIMONY?

HE GAVE EXAMPLES OF SEVERAL
SERIOUS INCIDENTS INVOLVING THE
FATHER AND THE CHILDREN.
HE SUBSTANTIATED THE TRAUMA THAT
THE SIBLINGS EXPERIENCED BY THE
BACK-AND-FORTH BETWEEN THEIR
PARENTS.

HE TOLD DURING THE EVIDENTIARY
HEARING-- HE TESTIFIED HOW THE
FATHER TOLD THEM THAT THEIR
MOTHER DID WANT THEM ANYMORE,
THAT THEY DIDN'T LOVE THEM
ANYMORE HOW THE MOTHER TOLD THE
KIDS THE FATHER WAS DEAD, THE

EMOTIONAL IMPACT THAT HAD ON THE CHILDREN.

HE ALSO WOULD HAVE LED-- HE DID LEAD AND WOULD HAVE LED MR. SCHANTZ TO OTHER WITNESSES WHO COULD HAVE SUBSTANTIATED THE ABUSE, NAMELY JEANETTE RIMMER.

>> YOU ARE INTO YOUR REBUTTAL. I JUST WANTED TO GIVE YOU A MOMENT TO TALK ABOUT THE PREJUDICE, BECAUSE IT STRIKES ME, AND THIS MAY BE A SITUATION WHERE THERE IS SOME DEFICIENCY IN NOT DEVELOPING THIS INFORMATION, BUT THAT, IN LIGHT OF THE VERY SUBSTANTIAL AGGRAVATION IN THIS CASE, HOW WOULD THIS UNDERMINE CONFIDENCE IN THE OUTCOME?

SO IF YOU CAN JUST SPEND THE REMAINDER GIVING YOUR PERSPECTIVE ON THAT?

>> YES, OF COURSE.

I THINK IT WAS CLEARLY ESTABLISHED THROUGH A NUMBER OF FACTORS.

ONE, DR. JACOBSON AND DR. SULTAN, WHO TESTIFIED AT THE TESTIMONY-- HEARING-- FOUND EXTREME MENTAL ABUSE.

THAT WAS NOT FOUND AT TRIAL.

>> YOU DEFINED IT, BUT GIVEN THE CIRCUMSTANCES OF THIS CRIME, IT IS NOT A CRIME THAT IS SOMEHOW A PRODUCT OF EXTREME EMOTIONAL DISTRESS TO SAY THEY CALCULATED ROBBERY AND THEN SHOOTING OF A VICTIM AND ASSAULT AND YOU KNOW ALL SORTS OF THINGS, SO I AM HAVING TROUBLE LINKING HOW EVEN IF SOMEONE MOUTHED THOSE WORDS AT THE TIME OF TRIAL, HOW THAT

WOULD ALTER THE OUTCOME OF THAT BALANCE OF THE AGGRAVATORS AND MITIGATORS?

>> I WILL TRY TO MAKE THIS BRIEF.

I WOULD SAY THERE WAS ADDITIONAL MITIGATION, NONSTATUTORY MITIGATION, THAT WAS EXTREMELY SIGNIFICANT, NAMELY THE CHILDHOOD ABUSE THAT WOULD HAVE COURSE BE FACTORED INTO THE CALCULUS OF AGGRAVATION VERSUS MITIGATION.

AS TO THE STATUTORY MITIGATOR, FAYE SULTAN TESTIFIED, BECAUSE OF MR. RIMMER'S PSYCHIATRIC CONDITION, WHICH IS CHRONIC LONG-STANDING AND SOMETHING HE EXPERIENCES ON A DAY-TO-DAY BASIS, HE WOULD HAVE BEEN-- HE IS LESS LIKELY TO REACT TO SITUATIONS IN A WAY THAT IS THOUGHTFUL OR CALCULATED AND IN FACT SOME OF THE ACTUAL EVIDENCE OF THE CRIME ITSELF INDICATES THAT PERHAPS MR. RIMMER DID NOT GO IN THERE INTENDING TO SHOOT HER BECAUSE WE HAVE MAINTAINED IT WAS NOT MR. RIMMER-- GO IN THERE INTENDING TO KILL THESE PEOPLE.

HE LEFT AND CAME BACK.

SOME MAY VIEW HIS CALCULATION.

DR. SULTAN'S VIEW, THAT IS AN INDICATION OF THE PARANOIA AND THE DELUSION HE EXPERIENCED DAILY.

AND THEN JUST BRIEFLY I WOULD ADD THAT, AGAIN, IN TERMS OF THE CALCULUS FOR THE AGGRAVATION-- AND THERE WERE TWO AGGREGATORS STRUCK, ONE BY THIS COURT WHICH

WAS THE HACK AGGRAVATOR, HEINOUS AND CRUEL, AND THE AGGREGATORS STRUCK BY THE CIRCUIT COURT, AND IF YOU TAKE INTO ACCOUNT OUR ARGUMENT THE JURY WAS EXPOSED TO IMPROPER ARGUMENTS BY THE PROSECUTOR, WHICH WOULD HAVE AFFECTED THEIR DETERMINATION OF AGGRAVATION VERSUS MITIGATION AND, FINALLY, THE FACT THAT THE JURY ISSUED A 93 REC ON A CASE WHERE THERE WAS MINIMAL LITIGATION, THIS COURT NOTED MINIMAL LITIGATION, CIRCUIT COURT NOTED.

>> IT SEEMS TO ME IT REALLY-- WASN'T THERE A LOT OF STEREO EQUIPMENT TAKEN FROM THE SCENE HERE AND PUT IN SOME KIND OF STORAGE BIN?

>> YES THERE WAS, BUT THE CIRCUIT COURT FOUND THAT AGGREGATORS SHOULD NOT HAVE BEEN CONSIDERED AND DID NOT CONSIDER IT ULTIMATELY.

THE JURY WAS EXPOSED TO THE ARGUMENT AND JURY INSTRUCTION BUT THE COURT FOUND THEY SHOULD NOT HAVE BEEN, AND DID NOT CONSIDER IT HERSELF.

I WILL SAVE WHATEVER TIME I MAY HAVE FOR REBUTTAL.

>> YOU HAVE A MINUTE OR SO.

>> OKAY.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

LESLIE CAMPBELL ON BEHALF OF THE STATE.

TO ADDRESS YOUR QUESTION ON JUSTICE QUINCE REGARDING THE PECUNIARY GAIN, THE TRIAL COURT DID NOT FIND THAT, BECAUSE WHAT

THE TRIAL COURT STATED WAS THAT THE ROBBERY WAS OVER, THE INCIDENT WAS OVER, AND WAS POINTING MORE TOWARDS THE AVOID ARREST-- THAT THE AVOID ARREST WAS THE BASIS FOR THE SHOOTING. THE SHOOTING WAS NOT A PECUNIARY GAIN.

THE STATE WOULD DISAGREE WITH THAT RATIONALE, BUT THAT WAS THE TRIAL COURT'S RATIONALE.

SO THE AGGREGATOR WAS NOT STRICKEN.

IT WAS MERELY NOT FOUND BY THE TRIAL COURT.

>> YOU KNOW, MY REAL PROBLEM WITH THIS CASE REALLY IS-- WE SEE ALL THE TIME ARGUMENTS ABOUT RECORDS THAT ARE GIVEN OR NOT GIVEN TO THE EXPERTS, AND THIS SEEMS TO BE ONE OF THOSE CASES WHERE THERE WERE IN FACT RECORDS AVAILABLE.

THE TRIAL COUNSEL DID NOTHING TO GET THOSE RECORDS, AND SO THE EXPERT WAS PRETTY MUCH LEFT ON HER OWN TO DO WHATEVER RESEARCH SHE COULD DO ABOUT THE SITUATION.

SO, WHY ISN'T IT THE WAY THE ATTORNEY HANDLED THIS EXPERT WITNESS?

>> NUMBER ONE, THE EXPERT DID NOT REQUEST THOSE RECORDS.

>> DOES THE EXPERT HAVE TO?

I MEAN, USUALLY IT IS THE COUNSEL WHO IS CHARGED WITH GETTING THESE THINGS TOGETHER.

THAT IS WHAT STRICKLAND IS ABOUT, IS THE ATTORNEYS PORTION OF THE INVESTIGATION.

MOST ATTORNEYS GET THESE RECORDS

TOGETHER AND GIVE THEM TO THE
EXPERT.

THE EXPERT DOESN'T HAVE TO ASK
FOR THEM.

>> THIS IS TRUE YOUR HONOR.

MOST ATTORNEYS DO PROCURE THOSE
RECORDS.

HOWEVER, IN THIS PARTICULAR
CASE, THE EXPERT WAS ASKED TO BE
A MITIGATION EXPERT AND TO LOOK
THROUGH THE MENTAL HEALTH TO
LOOK AT HIS HISTORY.

HAVING JUST GOTTEN THE DEFENDANT
SIDE OF IT, SHE NEVER FOLLOWED
UP AND ASKED FOR ANYTHING
ADDITIONAL.

THAT DOESN'T MEAN THAT COUNSEL
SHOULD NOT HAVE GOTTEN THOSE
RECORDS TO HER, BUT IN THIS
SITUATION THERE CLEARLY IS NO
PREJUDICE.

>> LETS JUST SPEND A FEW MORE
MINUTES ON THE DEFICIENCY
BECAUSE I THINK IT IS IMPORTANT.

THE JUDGE FOUND THAT
DR. JACOBSON DID NOT HAVE
EXTENSIVE BACKGROUND
INFORMATION.

BUT SHE HAD INFORMATION PROVIDED
TO HER BY THE DEFENDANT.

NEVERTHELESS, SHE DIAGNOSED THE
DEFENDANT WITH PARANOIA, MANIA,
PSYCHOPATHIC DEVIATION, ALL OF
THIS.

THE FACT OF HAVING, AND I
HAVEN'T LOOKED BACK AT THE
CROSS-EXAMINATION AND TRIAL, BUT
IT IS INEVITABLE THAT IF ALL THE
DIAGNOSIS IS BASED ON THE TESTS
AND SELF-REPORT OF THE
DEFENDANT, THERE WOULD HAVE BEEN
RECORDS THAT WOULD HAVE

SUBSTANTIATED THIS.

TO SAY THAT, WELL, IT IS THE FAULT OF THE EXPERT AS OPPOSED TO THE COUNSEL JUST RUNS COUNTER TO EVERYTHING THAT THE U.S. SUPREME COURT HAS SAID IN THE LAST SEVERAL YEARS AND WHAT THIS COURT HAS SAID ABOUT IT, SO I JUST WANT TO MAKE SURE WE ARE CLEAR THAT WE ARE NOT A RULE THAT SAYS THE DEFENSE COUNSEL HAS TO ONLY GET BACKGROUND INFORMATION IF IT IS REQUESTED BY THE MENTAL HEALTH EXPERT.

>> I AM NOT SAYING THAT, YOUR HONOR.

I AM SAYING THIS COULD HAVE BEEN ALLEVIATED HAD MENTAL HEALTH EXPERTS ASKED FOR SOMETHING ELSE, AND IF YOU LOOK AT THE RECORDS, THEY DON'T REALLY SUBSTANTIATE ANYTHING MORE, BECAUSE DR. JACOBSON DID NOT CHANGE HER ANALYSIS.

>> YES, BUT WE HAVE ALL BEEN IN THE COURTROOM AND WE UNDERSTAND THAT, WHEN AN EXPERT GETS UP AND SIMPLY GIVES AN OPINION AND THERE IS NOTHING THAT BACKS IT UP, THE CREDIBILITY OF WHAT THAT IS IS AFTER-THE-FACT JUSTIFICATION, SO IF THERE ARE RECORDS THAT SUBSTANTIATE A HISTORY, AND AGAIN, WE CAN FOCUS ON THE PREJUDICE AND OVERALL IN LIGHT OF THE AGGREGATORS, BUT THERE IS JUST NO WAY TO, FROM MY POINT OF VIEW, SAY CUMULATIVE WHEN AN EXPERT DOESN'T HAVE THIS INFORMATION AND IF AN EXPERT HAD IT, IT IS NOW AN OPINION THAT IS BACKED UP BY ACTUAL OBJECTIVES,

BACKGROUND INFORMATION.

>> WE ARE TALKING WEIGHT VERSUS ADMISSIBILITY AND I DON'T BELIEVE THE TRIAL COURT WAS SAYING BAD THAT A LACK OF RECORDS ISSUE WAS THE CUMULATIVE PORTION.

I THINK SHE WAS FOCUSING THE 3815 TRIAL COURT-- WAS FOCUSING MORE ON THE FAMILY HISTORY AND BACKGROUND.

WHAT WAS CUMULATIVE AND WAS THE EXACT SAME-- WAS THE INITIATIVE, THE BOTTOM-LINE DIAGNOSIS OF THE SCHIZOAFFECTIVE DISORDER OR SCHIZOPHRENIA OR THIS MENTAL ILLNESS.

>> WHAT WAS THE ORIGINAL EVALUATION, BECAUSE WE SAID THERE WAS VERY WEAK MITIGATION. WHAT WAS THE STATUTORY MITIGATOR FOUND IN THIS CASE?

>> NO, IT WAS NOT BECAUSE THE EXPERT DID NOT SAY SHE FOUND IT.

>> THE POST-CONVICTION WAS HAVING THESE RECORDS, THAT THEY TESTIFIED THERE WAS STATUTORY MITIGATION?

>> SHE SAID DR. JACOBSON IS SAYING THAT NOW, HOWEVER, HER UNDERLYING FINDING, HER UNDERLYING MENTAL HEALTH DIAGNOSES, IS EXACTLY THE SAME. IT IS A SEVERE MENTAL ILLNESS OR IT IS AN IMPORTANT MENTAL ILLNESS.

AND, THEREFORE, IT IS MERELY SEMANTICS.

OKAY, NOW I FIND THAT THERE ISN'T AN AGGRAVATOR-- EXCUSE ME-- A MITIGATOR WHERE I DIDN'T FIND IT BEFORE BASED ON THE SAME

MENTAL HEALTH DIAGNOSIS.

>> BUT THE PROBLEM IS, THE COURT FOUND, FIRST OF ALL, THAT THIS COUNSEL WAS INEFFECTIVE AND SAID THE OPINIONS WERE BASICALLY THE SAME AND CONFIRMED EACH OTHER, BUT WHAT YOU ARE SAYING IS NOW THESE EXPERTS HAVE TESTIFIED TO A STATUTORY MITIGATOR WHEREAS NO ONE TESTIFIED TO THAT AT THE TIME OF TRIAL, SO I GUESS NORMALLY WE DEFER TO THE TRIAL COURT'S FINDINGS AND THERE SEEMS TO BE SOME PROBLEMS WITH DOING THAT IN THIS CASE BECAUSE WHAT IS SAID IN THE ORDER IN DOESN'T REFLECT WHAT ACTUALLY HAPPENED IN TRIAL.

>> I THINK IT DOES, YOUR HONOR, IN THIS RESPECT.

THE MENTAL HEALTH DIAGNOSIS OF SCHIZOPHRENIA OR SCHIZOAFFECTIVE DISORDER IS EXACTLY THE SAME.

ALL THREE OF THEM-- ALL THREE DOCTORS ARE TALKING ABOUT THAT, SO THEIR BOTTOM LINE, WHAT THEY WOULD BASE A MITIGATOR ON, IS THE SAME, HASN'T CHANGED.

>> NOW, WAS ANY KIND OF MENTAL HEALTH MITIGATION FOUND AT ALL BY THE TRIAL COURT IN THE ORIGINAL PENALTY PHASE?

>> NONSTATUTORY.

>> I UNDERSTAND THAT.

I AM SAYING WAS ANY--

>> YES, BUT HE HAD NOT BEEN-- HIS MENTAL HEALTH DISORDER HAD NOT BEEN ADDRESSED.

>> THAT IS IT?

>> THAT IS IT AND THEN THE OTHER, LIKE THE DYSFUNCTIONAL FAMILY, THOSE TYPES OF

MITIGATORS.

>> THE JUDGE SAID IN THE SENTENCING ORDER, BOTH EXCERPTS ON PAGE 31, HAS A MENTAL DISORDER, HOWEVER THERE WAS NO DOCUMENTED HISTORY OF MENTAL DISORDER.

CONSIDERING THE NUMBER OF CONTACTS WITH THE CRIMINAL JUSTICE SYSTEM, THE ABSENCE OF ANY HISTORY OF MENTAL ILLNESS WAS-- AND DOESN'T THAT-- BECAUSE THAT STATEMENT-- ISN'T THAT COMPLETELY CHANGED BY THE FACT THAT THERE WAS DOCUMENTED HISTORY OF MENTAL ILLNESS AS REVEALED IN THE RECORDS THAT THE COUNSEL FAILED TO OBTAIN AND PROVIDE TO THE EXPERTS?

>> AND THE DOCUMENTED HISTORY IS THAT-- COMPLAINTS BUT THERE HAS BEEN NO DIAGNOSIS BY THE NUMEROUS CONTACTS HE HAD WITH THE MENTAL HEALTH PEOPLE IN DOC.

>> AGAIN, THE JUDGE FINDS IN THE SENTENCING ORDER, THERE MAY BE SOME PATHOLOGY INDICATIVE OF A MENTAL ILLNESS BUT THE COURT GAVE NONSTATUTORY MITIGATOR LITTLE WEIGHT IN DETERMINING THE APPROPRIATE SENTENCE.

NOW, IT IS HARD TO SAY THAT.

I MEAN IT WAS BASICALLY DISCOUNTED.

I MEAN, YOU WOULD HAVE TO AGREE WITH THAT.

YOU MAY WANT TO SAY, AND I THINK THERE IS AN ARGUMENT TO BE SAID, THAT EVEN WITH THIS, CONSIDERING THIS AGGRAVATION AND NATURE OF THE CRIME, IT STILL DOES NOT UNDERMINE CONFIDENCE IN THE

OUTCOME AND I AM MUCH MORE-- AND I AM HAVING-- THAT PART I UNDERSTAND, BUT ACTUALLY SAYING THAT THEY WOULDN'T HAVE CHANGED THE FINDING OF THE MITIGATORS, I HAVE TROUBLE WITH THAT IN THIS CASE, GIVEN WHAT THE ORIGINAL TRIAL JUDGE FOUND, THAT THERE WAS NO DOCUMENTED HISTORY, WHEN, IN FACT, THERE WAS.

>> BUT NO DOCUMENTED HISTORY OF AN ACTUAL MENTAL HEALTH DIAGNOSIS.

>> THE DEFENDANT IS NOW SAYING WE HAVE THESE RECORDS THAT SAY, WHEN HE WAS IN PRISON, HE WENT TO GROUP THERAPY, SO WHAT WAS THE BASIS OF HIM EVEN GOING TO GROUP THERAPY?

DID SOMEONE SAY YOU NEED TO DO THIS?

DID THE DEFENDANT SAY, I AM HAVING SOME PROBLEMS, I NEED TO DO THIS?

HOW DID ALL OF THIS COM ABOUT?

>> FROM MY READING OF IT, IT LOOKS LIKE IT WAS SOMETHING THE DEFENDANT DISCUSSED AND THEN WAS PUT INTO THIS GROUP THERAPY, SO THERE IS NO, AS I SAID BEFORE, THERE IS NO MENTAL HEALTH EXPERT, NO DOCTOR, NO ACTUAL FINDING OF MENTAL HEALTH DISORDER BY DOC.

>> AND NOTHING IN THE SCHOOL RECORD THAT WOULD INDICATE THAT HE WAS HAVING SOME MENTAL ISSUES, EVEN WHEN HE WAS IN SCHOOL?

>> NONE THAT I RECALL, YOUR HONOR.

>> BUT AGAIN, THERE WAS

TESTIMONY ABOUT A DYSFUNCTIONAL FAMILY.

THERE IS OTHER EVIDENCE THAT THE JURY DID HAVE.

>> LET'S TALK ABOUT THE CHILDHOOD.

THIS JUDGE FOUND, THE 3.851 JUDGE, THAT THERE WAS NO INDICATION, ACCORDING TO MR. SCHANTZ, FROM ANYONE THAT HIS CLIENT HAD BEEN PHYSICALLY ABUSED AS A CHILD.

NOW, IS IT CORRECT THAT DR. JACOBSON, THAT IT WAS REPORTED TO DR. JACOBSON THERE WAS PHYSICAL ABUSE?

>> IT WAS REPORTED TO DR. JACOBSON-- BUT IT WAS CHARACTERIZED BY MR. RIMMER-- THAT IT WAS PUNISHMENT.

IT WASN'T CHARACTERIZED AS PHYSICAL ABUSE.

THE EXTENT OF WHAT HE ALLEGEDLY SUFFERED WAS NOT GIVEN TO DR. JACOBSON.

>> AS ONE OF THE 24 WITNESSES THAT MR. RIMMER GAVE TO MR. SCHANTZ?

>> THAT MAY HAVE BEEN PROVIDED TO HIM.

>> IT MAY OR IT WAS?

>> IT WAS PROVIDED TO HIM, HOWEVER, WHAT MR. SCHANTZ SAID WHEN HE CONTACTED THE FATHER-- HE ASKED THE FATHER IF THERE WAS ANYBODY ELSE OUT THERE THAT HE COULD TALK TO.

>> LET'S THINK ABOUT THIS THOUGH.

THE FATHER IS THE ONE THAT PUNISHED-- OR THERE WAS PHYSICAL ABUSE.

THE FATHER LEFT THE HOME,
ABANDONED THE MOTHER OR
WHATEVER.

ASKING THE FATHER IF THERE WAS
ANYONE ELSE SEEMS TO BE, WHAT
KIND OF LOGIC WAS THAT?

IF THERE WERE 23 OTHER WITNESSES
THAT THE DEFENDANT HAS GIVEN TO
THIS LAWYER-- AND MY CONCERN
HERE ON THE PHYSICAL ABUSE-- AND
AGAIN, I'M TRYING TO EVALUATE IT
QUALITATIVELY, IS THAT IF THERE
WAS A WHOLE HISTORY OF PHYSICAL
ABUSE DURING HIS UPBRINGING,
WHAT AGAIN, GOING BACK TO WHAT
THE ORIGINAL TRIAL COURT FOUND,
HE SAYS WHILE THE COURT FOUND HE
CAME FROM A BROKEN HOME AND HAD
LITTLE PARENTAL INSTRUCTION, HE
GAVE IT LITTLE WEIGHT IN
DETERMINING THE APPROPRIATE
SENTENCE.

SO, TO SAY THAT NOW YOU HAVE GOT
DOCUMENTATION OF SOMETHING THAT,
YOU KNOW, AGAIN, THAT CERTAINLY
WHAT HAS BEEN A NONSTATUTORY
MITIGATOR, BUT YET THE TRIAL
JUDGE, THIS TRIAL JUDGE, SAYS
IT WASN'T DEFICIENT PERFORMANCE
SO WE ARE LEFT WITH THE TRIAL
COURT'S INCORRECT FINDINGS AS TO
NO DEFICIENCY IN THIS REGARD.

>> BUT, YOUR HONOR WHAT
MR. SCHANTZ HAD WAS COMMENTS
FROM THE FATHER HE DIDN'T DO IT
AND I UNDERSTAND YOUR HONOR'S
CONCERN THAT THE ABUSER DOES NOT
REPORT HIS ABUSE, BUT
MR. RIMMER'S MOTHER DID NOT SAY
ANYTHING-- MR. RIMMER DID NOT
SAY ANYTHING TO DEFENSE COUNSEL
SO ALL OF THAT IS WHAT DEFENSE

COUNSEL IS RELYING UPON.
HE ALSO HAS THE REPORTS MERELY
DISCUSSING THIS AS PUNISHMENT BY
MR. RIMMER.

>> WHAT IS THE EXPLANATION FOR
NOT INTERVIEWING ALL THE OTHER
WITNESSES AND MAKING A
QUALITATIVE EVALUATION OF WHO
WOULD BE THE MOST CREDIBLE
WITNESSES?

DID HE HAVE AN EXPLANATION FOR
NOT CONTACTING THE OTHER
WITNESSES?

>> NOT FOR NOT CONTACTING THE
DEFENDANTS, HOWEVER, HE WAS UP
THERE BUT WASN'T TOLD OF HER
WHEN HE WAS OUT THERE.

SO, WHAT WE HAVE IS SOME FAMILY
MEMBERS BEING HELPFUL.

MR. RIMMER'S MOTHER NOT BEING
HELPFUL UNTIL AFTER THERE HAS
BEEN A CONVICTION OR AFTER THERE
HAS BEEN A JURY RECOMMENDATION.
WE HAVE MR. RIMMER NOT BEING
FORTHRIGHT WITH HIS COUNSEL SO
WE HAVE TO.

>> YOU SAID HE WAS NOT
FORTHRIGHT.

WAS THE DEFENSE COUNSEL
QUESTIONED?

>> I DON'T BELIEVE THAT IS IN
THE RECORD WHETHER HE QUESTIONED
HIM ABOUT IT.

WHAT WE HAVE IS MR. RIMMER
REPORTING IT AS PUNISHMENT, NOT
AS PHYSICAL ABUSE, AND WHAT
MR. SCHANTZ HAD IS THIS PICTURE
OF A DIFFICULT CHILDHOOD.

HE HAD A PICTURE OF MR. RIMMER
COMING THROUGH THAT DIFFICULT
CHILDHOOD, BEING A GOOD WORKER,
A GOOD FATHER, A GOOD HUSBAND

AND THAT IS WHAT HE BASED HIS DEFENSE ON OR HIS MITIGATION PRESENTATION ON, AND GIVEN WHAT HE HAD AVAILABLE TO HIM, HE IS ALLOWED TO MAKE THOSE KINDS OF STRATEGIC DECISIONS OR DECISIONS AS TO WHAT HE WANTS TO PRESENT VERSUS A WHOLE NEW AREA THAT WE ARE GOING TO GO INTO.

>> WE SAY THAT WHEN SOMEONE IS INVESTIGATED AND MADE A DECISION THEY ARE NOT GOING TO PURSUE ONE LINE OF MITIGATION BECAUSE THEY HAVE DECIDED IT IS BETTER TO PORTRAY A DIFFERENT PICTURE. THAT IS NOT THIS CASE, AND THEN WE HAVE DEFENSE LAWYERS AND WE SEE ALL DIFFERENT SORTS, YOU HAVE GOT SOME DEFENSE LAWYERS THAT THINK, AND HOPEFULLY THEY DON'T DO THIS ANYMORE, THAT EVERYTHING IS-- AND THEN THERE ARE LAWYERS WHO UNDERSTAND THEY ARE THE ONES WHO ARE THE EXPERTS IN THIS CASE.

THEY ARE THE ONES WHO HAVE TO EXPLAIN WHAT KIND OF MITIGATION IS HELPFUL AND BE MORE AGGRESSIVE.

AGAIN, THE ISSUE OF PREJUDICE, STILL OVERALL PREJUDICE, STILL IS THE THING THAT I THINK IS THE GREATEST HURDLE HERE FOR THE DEFENDANT, SO IN YOUR REMAINING TIME WHY DON'T YOU JUST FOCUS ON IT.

EVEN IF THEY FOUND-- LET'S ASSUME THEY FOUND PHYSICAL ABUSE AS A CHILD.

LET'S ASSUME THAT THEY FOUND THAT THERE WAS MENTAL ILLNESS. WHAT IS YOUR ARGUMENT ABOUT,

THAT IT WOULDN'T CHANGE THE
BALANCE OF THE WEIGHING PROCESS?
>> AS YOUR HONOR HAS RECOGNIZED
THERE REALLY IS NO PREJUDICE
HERE.

THERE IS ABSOLUTELY NO PREJUDICE
FROM THE LACK OF PUTTING ON
THOSE TWO MITIGATORS, WHETHER
THE STATUTORY MITIGATOR OR
NONSTATUTORY MITIGATOR.

WE HAVE A GREATLY AGGRAVATED
CRIME.

WE HAVE SOMEBODY WHO HAS BEEN
IMPRISONED AND WAS ON CONTROLLED
RELEASE.

WE HAVE SOMEBODY--

>> WHAT WAS HE IN PRISON FOR?

>> ROBBERY.

>> ROBBERY.

AND HE ALSO HAS THE PRIOR
VIOLENT FELONY SO YOU HAVE
SOMEONE OUT OF VERSUS ON
CONTROLLED RELEASE.

WE HAVE SOMEBODY WHO HAS PRIOR
VIOLENT FELONIES.

WE HAVE THE CONTEMPORANEOUS
FELONIES IN THIS CASE.

WE HAVE CCP AND WE HAVE AVOID
ARREST AND THE AVOID ARREST IN
THE CCP RUNS COUNTER, AS JUSTICE
PARIENTE MENTIONS, ONE COUNTER
TO THE MENTAL HEALTH MITIGATION.

WE HAVE MR. RIMMER

SPECIFICALLY-- HE STARTED TO
LEAVE, HE STOPPED, CAME BACK IN
AND QUESTIONED THE TWO EMPLOYEES
REGARDING WHETHER OR NOT THEY
KNEW HIM, AND THEN HE SHOT THEM.

IT IS CLEAR THAT HE WAS THINKING
ABOUT THE CRIME HE WAS
COMMITTING AND HOW TO GET AWAY
FROM THAT CRIME TO AVOID ARREST.

THE FACT THAT HE WAS ABUSED AS A CHILD OR THE FACT THAT HE MAY HAVE PARANOIA OR A SCHIZOAFFECTIVE DISORDER CERTAINLY DOES NOT DETRACT AT ALL FROM THE ACTIONS HE COMMITTED ON THE DAY OF THE MURDER.

>> I BELIEVE THAT THEIR ARGUMENT WAS BASICALLY THE FACT THAT HE WAS ABOUT TO LEAVE AND THEN COMES BACK AND STARTS QUESTIONING HIM ABOUT, DON'T YOU KNOW ME?

SO, TO DEMONSTRATE THIS WHOLE PARANOIA THAT THE MENTAL HEALTH EXPERT SAYS THAT HE SUFFERS FROM.

>> OR IT COULD JUST BE THAT HE WAS VERY CONSCIOUS HE HAD BEEN IN THAT STORE, HAD ARGUED WITH THE EMPLOYEE, WAS DISSATISFIED WITH THE WORK THEY DID, AND RECALL THAT THEY MAY REMEMBER HIM.

HE DID NOT TOUCH THE OTHER WITNESSES WHO HE THOUGHT MIGHT NOT HAVE SEEN HIM.

HE HAD HIS CAP DOWN AND HE WAS WALKING BACK AND FORTH.

TWO OF THEM WERE ON THE FLOOR AND ONE COULD NOT IDENTIFY HIM SO IT WAS THE FACT THAT HE HAD QUITE A BIT OF CONTACT WITH THE TWO MEN THAT HE DID KILL.

HE LEFT THE OTHERS ALIVE, WHICH INDICATES HE WAS TRYING TO AVOID ARREST BECAUSE OF THE PRIOR CONTACTS.

>> IF THERE ARE NO OTHER QUESTIONS ABOUT THE PREJUDICE ON THE CUMULATIVE ERROR ARGUMENTS,

THE TRIAL COURT FOUND THAT-- SHE FOUND NO ERROR SO THERE WAS NO BASIS FOR A CUMULATIVE ERROR ANALYSIS.

>> SO, IF WE FIND THAT THERE ARE IN FACT SOME ERRORS IN WHAT TRIAL COUNSEL'S PERFORMANCE WAS HERE, HOW DO WE DO THAT? DO WE DO EACH ONE INDIVIDUALLY AND THEN CUMULATIVELY OR HOW DOES THAT WORK?

>> YES, BECAUSE YOU HAVE TO FIND AT LEAST TWO ERRORS BEFORE YOU DO A CUMULATIVE ERROR ANALYSIS SO IF YOU LOOK AT THEM INDIVIDUALLY AND DO NOT FIND THEM TO BE IN ERROR, THEN ONLY ONE ERROR IS FOUND, THEN THERE IS NO CUMULATIVE ERROR ANALYSIS. IT IS A REALLY PREJUDICE ANALYSIS UNDER STRICKLAND.

>> IF THERE ARE NO OTHER QUESTIONS, I ASK THE COURT TO AFFIRM THIS DENIAL OF POST-CONVICTION RELEASE AND DENY THE HABEAS, AND I REST ON MY BRIEF FOR ANY OTHER ARGUMENTS. THANK YOU.

>> REBUTTAL?

>> JUST BRIEFLY I WOULD LIKE TO ADDRESS THE COURT'S QUESTIONS AND CONCERNS REGARDING THE PREJUDICE ASPECT OF THE STRICKLAND ANALYSIS. THE PREJUDICE IS VERY CLEAR. THERE WERE TWO JUDGES WHO FOUND STATUTORY MITIGATION. THE JURY NEVER HEARD ANYTHING ABOUT STATUTORY MITIGATION. THERE WAS DIAGNOSIS BY TWO EXPERTS OF MAJOR MENTAL ILLNESS WHICH WAS NOT COUNTED BY THE

STATE AND WHICH THE JURY NEVER
HEARD OR CONSIDERED.

THERE WAS SIGNIFICANT
NONSTATUTORY MITIGATION OF
EMOTIONAL ABUSE THE SIBLINGS,
INCLUDING MR. RIMMER, SUFFERED.

>> ARE YOU SAYING DURING THE
PENALTY PHASE THE MENTAL HEALTH
EXPERT DID NOT SAY HE HAD A
MENTAL ILLNESS?

>> NO, EXCUSE ME.

I'M SAYING SHE DID NOT FIND
STATUTORY MITIGATION.

>> BUT SHE DID FIND THAT HE HAD
A MENTAL ILLNESS?

>> SHE DID FIND THAT HE HAD
MENTAL ILLNESS.

IF I MISSPOKE I APOLOGIZE.

HIS ENTIRE SOCIAL HISTORY WAS
NOT COMPLETE AND YET DESPITE THE
LIMITED AMOUNT OF MITIGATION
THAT THE JURY HEARD, THEY STILL
ISSUED A 9-3 RECOMMENDATIONS OF
THE PREJUDICE IS SIGNIFICANT AND
WE WOULD ASK THAT THIS COURT
PROVIDE RELIEF ON THIS MATTER.
THANK YOU.

>> THANK YOU BOTH.