

>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
PLEASE BE SEATED.
>> THE NEXT CASE ON OUR DOCKET
IS GUARDADO VERSUS STATE OF
FLORIDA.
YOU MAY PROCEED.
>> GOOD MORNING JUSTICE.
CLYDE TAYLOR ON BEHALF OF JESSE
GUARDADO.
THIS IS A DEATH CASE INVOLVED A
SINGULARLY GRUESOME HOMICIDE IN
SEPTEMBER OF 2004.
LESS THAN FIVE WEEKS AFTER THE
DEFENDANT, ABSENT COUNSEL
ENTERED A GUILTY PLEA AND
INDICATED HE WANTED THE CASE
OVER WITH.
THEREAFTER COUNSEL WAS APPOINTED
IN CONJUNCTION WHAT WOULD BE
JUST A PENALTY PHASE IN THIS
CASE AND THAT'S WHAT WE'RE HERE
ON TODAY.
THERE ARE TWO ISSUES IN THE
BRIEF.
I'M REALLY GOING TO ADDRESS THE
FIRST ISSUE DEALING WITH THE,
WHAT WE'RE PHRASING INEFFECTIVE
ASSISTANCE OF TRIAL COUNSEL IN
THE PENALTY PHASE, IN FAILING
LITERALLY TO ADDRESS THE KEY
ISSUES IN THIS CASE.
AND I THINK, IT'S IMPORTANT TO
POINT OUT THAT STARTING OUT
APPOINTED COUNSEL KNEW THERE WAS
NOT A GUILT ISSUE.
SO WE'RE NOT TALKING ABOUT
HAVING TO DEAL WITH OR PREPARE
FOR TWO PHASES IN A TRIAL.
COUNSEL AT THE TIME KNEW THERE
WERE FIVE STATUTORY AGGRAVATORS
IN THE CASE INCLUDING TWO THAT
THIS COURT IN A NUMBER OF
OPINIONS INCLUDING IN THE
ORIGINAL OPINION IN, IN THE
GUARDADO CASE INDICATED WITH THE
TWO MOST SERIOUS OF STATUTORY
AGGRAVATORS, THAT BEING HAC AND
CCP.

SO WE'VE GOT AN APPOINTED COUNSEL WHO THEN PICKED UP SECOND CHAIR WORKING TOWARD A PENALTY PHASE AND THE ISSUE WAS, IN EFFECT ACCORDING TO THE TESTIMONY AT THE EVIDENTIARY HEARING, I'LL GET AN EXPERT AND I'LL HAVE THAT EXPERT FIND ME SOME STATUTORY MITIGATORS.

NOT MUCH ELSE GUIDANCE GIVEN TO DR. LARSON WHO WAS HIRED AND ON BOARD IN THE CASE.

DR. LARSON TESTIFIED AT THE PENALTY PHASE THAT HIS EXPERIENCE AS A FORENSIC PSYCHOLOGIST REALLY DIDN'T FOCUS MUCH ON DRUG ADDICTION.

THE DRUG ISSUE IN THIS CASE WAS TANTAMOUNT AND WAS KNOWN TO EVERYONE FROM DAY ONE.

THIS DEFENDANT COOPERATED WITH LAW ENFORCEMENT, CONFESSED AND BASICALLY TOLD THEM EVERYTHING THAT HAD BEEN GOING ON INCLUDING THE FACT HE HAD BEEN ON A COCAINE BINGE FOR DAYS LEADING UP AND TO THE TIME OF THE KILLING, WHICH WAS A PERSON THAT HAD HELPED HIM OUT IN THE PAST. SHE WAS AN ELDERLY WOMAN.

GIVEN HIM HOUSING, LENT HIM MONEY AND WHAT HAVE YOU.

SO THE CONDUCT WAS EGREGIOUS IT JUMPS OUT AT YOU WHY?

WHY WOULD SOMEBODY DO THIS?

GUILT WASN'T ISSUE BUT WHYS AND SHOULD HAVE BEEN ADDRESSED IN THIS CASE SO FAR AS MITIGATORS.

WHEN THE WORK WAS COMPLETED BY DR. LARSON HE TALKED ABOUT EVERYTHING LITERALLY BUT THE DRUG PROBLEM.

>> MR. TAYLOR, TO WHAT EXTENT SHOULD WE DEFER TO PROFESSIONALS SUCH AS YOURSELF THAT ARE OF THE VIEW THAT IN THESE CASES AND BRUTAL, BRUTAL KINDS OF CASES, THAT TRYING TO RELY ON MITIGATION SUCH AS VOLUNTARY INTOXICATION AND INTENTIONAL

DRUG USAGE IS REALLY LIKE
BLOWING IN THE WIND?
I MEAN BECAUSE, YOU KNOW, IF
THERE'S ONE THING I'VE SEEN IN
THE 10 YEARS I'VE BEEN HERE AND
IT IS THAT VIRTUALLY ALL OF THE
ADVOCATES SAY YOU CAN'T WIN A
CASE.

THAT IT ACTUALLY IS
COUNTERPRODUCTIVE TO ATTEMPT TO
USE THAT IN CONJUNCTION WITH
THIS MITIGATION AND PARTICULARLY
IN BAD CASES.

>> WELL I DON'T DISAGREE WITH
THE GENERAL CONCEPT BUT I THINK
MOST OF THAT STARTS OUT WHEN YOU
HAVE TO DEAL FIRST WITH THE
GUILT PHASE AND YOU'RE TRYING TO
SET UP IN THE GUILT PHASE THE
PENALTY PHASE.

WE WERE NOT TRYING TO, WE'RE
SUGGESTING THAT COUNSEL SHOULD
HAVE NOT TRIED TO EXPLAIN AWAY
OR MAKE AN EXCUSE LIKE VOLUNTARY
INTOXICATION BUT IN FACT AS BOTH
OF OUR EXPERTS TESTIFIED AT THE
EVIDENTIARY HEARING, THAT THE
MORAL COMPASS OF THIS DEFENDANT
WAS SO SKEWED, WAS SO OUT OF
CONTROL BECAUSE OF HIS COCAINE
BINGE AND USE THAT HE COULD NOT,
ONE, CONFORM HIMSELF TO THE
NORMS OF SOCIETY WHICH IS A
MITIGATOR STATUTORY, AND TWO,
THAT HE WAS JUST, COULDN'T
DETERMINE RIGHT FROM WRONG AND
LITERALLY AT THE TIME OF THE
KILLING.

THESE WOULD HAVE BEEN TWO
AGGRAVATORS -- MITIGATORS THAT
WE SUGGEST THAT THE JURY NEVER
HEARD AND THEY SHOULD HAVE BEEN
ABLE TO HEAR THAT.

>> GOING BACK INTO YOUR ARGUMENT
AGAIN WITHOUT ANSWERING MY
QUESTION AND AGAIN I COME BACK
TO, WHAT DEFERENCE SHOULD WE
PROVIDE TO THOSE OF YOU
PROFESSIONALS SUCH AS YOURSELF
THAT ARE OF THE VIEW THAT'S NOT

THE WAY TO GO AT ALL IN THESE CASES?

AND ISN'T THAT WHAT THIS DEFENSE COUNSEL'S VIEW WAS?

>> WELL I DON'T THINK THAT WE SAY YOU CAN'T GO THERE.

>> I DIDN'T SAY YOU CAN'T GO THERE BUT I MEAN TO WHAT EXTENT DO WE GIVE DEFERENCE TO THAT OPINION?

I MEAN AFTER HEARING IT FOR 12, 13 YEARS, I MEAN, VIRTUALLY EVERYONE OF THESE CASES THAT ARE LIKE THIS, YOU'RE STANDING UP HERE SAYING SHOULD DISREGARD ALL OF THAT AND THAT, THIS IS IN EFFECTIVE ASSISTANCE BECAUSE HE DIDN'T GO THAT WAY?

>> WELL I'M SAYING THAT THE JURY NEVER GOT A CHANCE TO HEAR THAT.

>> THAT WILL BE THE CASE EVERY TIME THAT A LAWYER DECIDES, I WANT TO STAY AWAY FROM THAT.

>> THEN HE BRINGS ON THE EXPERT WHO IN HIS OPINION AFTER HE TELLS THE JURY IN HIS OPENING STATEMENT, WE'RE GOING TO EXPLAIN THIS DRUG ADDICTION IN THIS CASE AND WE'RE GOING TO EXPLAIN WHY THIS HAPPENED, OPENING STATEMENT.

CLOSING STATEMENT, WE'RE GOING TO SHOW YOU WE'VE SHOWN YOU --

>> I TAKE IT YOU DON'T CARE TO ANSWER MY QUESTION?

>> I'M MISSING IT --

>> I'M ASKING YOU WHAT DEFERENCE DO WE GIVE TO TRIAL LAWYERS WHO ARE OF THE VIEW YOU DON'T WANT TO GO INTO THAT?

>> YOU HAVE TO LOOK AT THE TOTALITY OF THAT PARTICULAR CASE AND THERE'S NO ONE CASE THAT IS IDENTICAL TO ANOTHER.

THAT IS ONLY WAY I THINK I CAN ANSWER IT AND IF YOU LOOK WHAT HAPPENED HERE WITH DR. LARSON, WHEN HE STARTS TALKING ABOUT COLLATERAL ISSUES THAT THE PROSECUTOR USES DURING CROSS TO

BRING OUT THAT THE, THE EXPERT
THAT THE DEFENSE PUT ON SAID
THAT, OH, NO, HE WAS NOT INSANE
OR PSYCHOTIC.

HE DID NOT SUFFER FROM ANY
MENTAL ILLNESS, EMOTIONAL
DISORDER OR BRAIN DAMAGE AND HE
KNEW RIGHT FROM WRONG AND HAD
THE CAPACITY TO APPRECIATE THE
WRONGFULNESS OF THE MURDER AND
COMMITTED THE MURDER SOLELY TO
OBTAIN MORE CRACK COCAINE.

THAT'S REFLECTED IN THE
TESTIMONY OF DR. LARSON.

WHICH RUNS COMPLETELY AFOUL OF
TRYING TO ESTABLISH MITIGATORS.

THE WAY I WOULD COME BACK --

YES, MA'AM?

>> THERE WAS TESTIMONY, FROM
DR. LARSON AND FROM THE
DEFENDANT DURING THE COURSE OF
THE PENALTY PHASE THAT DID TALK
ABOUT DRUG ABUSE, DIDN'T IT?
WASN'T THERE?

>> YES.

>> OKAY.

AND SO WE CAN'T SAY THAT THIS
WAS TOTALLY A CASE WITHOUT ANY
INFORMATION ABOUT THE
DEFENDANT'S DRUG USE.

AND BASICALLY, SO AS I READ THIS
RECORD, AND YOU EXPLAIN TO ME
WHY I'M WRONG, THERE WAS THAT
INFORMATION ABOUT DRUG ABUSE
ENTERED INTO THE PENALTY PHASE,
ACTUALLY FOUND TWO MITIGATORS
BIT TRIAL COURT, BUT WHAT WE
HAVE DIFFERENT HERE, AS I SEE
IT, IS THAT YOU NOW HAVE TWO
EXPERTS WHO ARE EQUATING THIS
DRUG ABUSE TO MENTAL ILLNESS.

IS THAT, ISN'T THAT THE
DIFFERENCE IN WHAT WAS PRESENTED
AT PENALTY AND WHAT YOU HAVE
PRESENTED AT THE EVIDENTIARY
HEARING?

>> TO THE EXTENT ON THE MENTAL
ILLNESS, TO THE EXTENT I THINK
THE TERM THAT DR. PRITCHARD
USED, HE LOST ALL SENSE OF A

MORAL COMPASS AND COULD NOT CONFORM HIMSELF TO THE NORM BECAUSE HE HAD TO GET COCAINE. THAT EVERYTHING THAT WAS DRIVING HIM WAS THIS INCREDIBLE NEED FOR COCAINE, WHICH STARTED EARLIER THAT AFTERNOON WHEN HE TRIED TO ROB SOME STORE AND FAILED. AND ALL HE WAS AFTER WAS THE DRUG.

THE DRUG, THE DRUG. IT IS NOT AN ATTEMPT, AND I'M, I HOPE I'M NOT STATING IT IN THE WRONG WAY TO STATE THAT HE IS NOT GUILTY OF THE CRIME. THAT WAS NOT AN ISSUE.

>> WE ALL UNDERSTAND THAT, BUT, YOU SEEM TO BE GOING DOWN THE TRACK THAT THERE WAS NOTHING PRESENTED ABOUT HIS, HIS DRUG USE.

AND AS I SEE THIS RECORD THERE WAS.

AND IN FACT WHEN YOU LOOK AT DR. LARSON'S REPORT, DR. LARSON DOES IN FACT SAY THAT HE WAS DRIVEN BY HIS NEED TO GET DRUGS.

>> BUT NEITHER THE REPORT NOR THE TESTIMONY OF DR. LARSON EXPLAINED WHY, IN THIS PARTICULAR CIRCUMSTANCE THE COCAINE LITERALLY TOOK OVER THIS PERSON'S CONDUCT AND ACTIONS.

AND NOW THAT WOULD BE THE ISSUE OF MITIGATION, THAT WE WOULD SUGGEST THAT, AND I UNDERSTAND THE CASE LAW OUT OF THIS COURT REPEATEDLY OVER THE YEARS.

YOU DON'T, YOU DON'T USE THE COUNTING SYSTEM, OKAY WE'VE GOT FIVE AGGRAVATORS AND YOU'VE GOT THREE MITIGATORS THEREFORE YOU LOSE.

I THINK WHAT YOU HAVE TO DO IS LOOK AT THIS IN THE TOTALITY OF CIRCUMSTANCES.

THERE WERE FIVE SERIOUS AGGRAVATORS, TWO THAT ARE THE MOST SERIOUS.

THERE WAS NO EFFORT TO PUT ON

ANY STATUTORY MITIGATORS.
TWO EXPERTS THE DEFENSE FOUND
ESTABLISHED, WE SUGGEST, TWO
STATUTORY MITIGATORS.

AND THEN, WHAT'S ALSO CONCERNING
IS THAT --

>> YOU THINK THAT THESE EXPERTS
ESTABLISHED THAT THE TWO MENTAL
MITIGATORS?

>> I DID, IN CONJUNCTION WITH
THEIR EXPERTISE AS TO BOTH THE
DRUG USE AND ABUSE AND HOW IT
AFFECTS AN INDIVIDUAL.

AND THE SECOND PART OF THAT
WOULD BE UNDER THE CONCERN WAS
IF THERE WERE ONLY 10, I THINK,
NON-STAT MITIGATORS THAT DEFENSE
COUNSEL TRIED TO ADVANCE IN THE
PENALTY PHASE YET AT THE SPENCER
HEARING WHICH THE DEFENDANT
TRIED TO WAIVE INITIALLY, THERE
WERE ALL SORTS OF SIDES IN HERE
BUT AT THAT SEVEN ADDITIONAL
NON-STATUTORY MITIGATORS WERE
FOUND OR PRESENTED.

WHY WEREN'T THEY PRESENTED TO
THE JURY?

AND THEN THE STATE SUGGESTED TWO
ADDITIONAL MITIGATORS IN
CONJUNCTION WITH THEIR REVIEW OF
THE RECORD WHICH WOULD HAVE
BEEN, WHICH BROUGHT US TO 19
THAT THE JUDGE CONSIDERED.

WE'RE NOT TRYING TO GET A CASE
TO A JUDGE.

WE SUGGEST THAT THE, THE FOCUS
OF THE TRIAL LAWYER SHOULD BE TO
KEEP A CASE, WHEN ALL YOU'RE
DEALING WITH IS THE SENTENCING
PHASE, THE PENALTY PHASE, IS TO
KEEP THAT CASE FROM EVER GETTING
TO THE JUDGE, WHICH WOULD MEAN
YOU WOULD NEED A 6 H 6 VOTE OR
BETTER THIS VOTE WAS 12-0, AND
OUR ARGUMENT WAS THEY DIDN'T
SIMPLY GET FRIEND PRESENTED
ENOUGH EVIDENCE.

I WILL RELY ON WHAT WE PUT IN
THE BRIEF IN CONJUNCTION
WITH ISSUE NUMBER TWO WHICH

DEALS WITH THE JURORS.

THANK YOU.

>> THANK YOU.

>> MAY IT PLEASE THE COURT,
ASSISTANT ATTORNEY GENERAL
CHARMAINE MILLSAPS.

I WOULD LIKE TO, FIRST OF ALL
ESTABLISH THAT DRUGS BEING THE
MOTIVE FOR THIS MURDER WAS
REALLY NOT DISPUTED OF THE THAT
WAS EVEN THE STATE'S THEORY.
SO THAT WAS PRETTY MUCH, THAT
WAS THE BACKGROUND OF THIS CASE.
BUT --

>> MOTIVE FOR THIS KILLING?

>> THAT DRUGS, TO GET MONEY FOR
DRUGS WAS THE MOTIVE FOR THIS
KILLING SOME THAT WAS IN EFFECT
UNDISPUTED BUT THE FOCUS HERE
WAS REALLY, DR. LARSON WAS PUT
ON REALLY TO FOCUS ON REMORSE
BECAUSE THE BIG MITIGATION
THEORY WHICH WAS FOUND FOUR WAYS
BY THE JUDGE AND GIVEN GREAT
WEIGHT WAS RELATED TO REMORSE.
AND WHAT DR. LARSON WAS
ATTEMPTING TO EXPLAIN TO THIS
JURY IN CONTROLLED ENVIRONMENT
OF PRISON HE DOESN'T ADJUST WELL
OUT IN THE REAL WORLD WHERE HE
IS NOT IN A CONTROLLED
ENVIRONMENT.

HE SPENT MOST OF HIS ADULT LIFE
IN PRISON AND IN THAT
ENVIRONMENT HE DOES WELL.
HE IS PRODUCTIVE IN THAT
ENVIRONMENT.

IN OTHER WORDS WHAT THEY WERE
REALLY GOING FOR, JUST PUT HIM
BACK IN JAIL BECAUSE HE WILL BE
FINE THERE.

IT IS WHEN HE GETS OUT AND
STARTS USING DRUGS THAT HE IS
NOT FINE AND THE WAY THEY FOUND
REMORSE, THAT REMORSE WAS THEIR
BIG THEORY AND LET ME TELL YOU
THE FOUR DIFFERENT WAYS THAT THE
COURT FOUND REMORSE AS
NON-STATUTORY AGGRAVATION GIVEN
EACH ONE OF THEM GREAT WEIGHT.

THAT HE FULLY, THAT HE PLED
GUILTY WITHOUT A PLEA AGREEMENT.
THAT HE FULLY ACCEPTED
RESPONSIBILITY FOR HIS ACTIONS.
THAT HE FULLY COOPERATED WITH
LAW ENFORCEMENT, AND HE IS
CONSISTENTLY SHOWN A GREAT DEAL
OF REMORSE FOR HIS ACTIONS.
EACH ONE OF THOSE WAS GIVEN
GREAT WEIGHT AS NON-STATUTORY
MITIGATION.

SO THE FOCUS HERE WAS BOTH
SKIPPER PUT HIM BACK IN PRISON
AND HE IS NOT A PSYCHOPATH.
HE WON'T BE A DANGER TO THE
OFFICERS, DOC OFFICERS.
THAT IS WHAT, A GREAT DEAL OF
DR. LARSON'S TESTIMONY GOES
TOWARDS.

THAT HE IS NOT A PSYCHOPATH.
AND DR. LARSON DID SPECIFICALLY
HAVE TO DISAGREE WITH SOMETHING
THEY SAY IN THEIR BRIEF,
DR. LARSON DID PERFORM A KENT
SCALE DRUG ADDICTION AND TOLD
THE JURY GARR DODD DOUGH'S SCORE
WAS ELEVATED HERE.

IT WAS GIVEN THAT DRUGS WERE THE
MOTIVE FOR THIS MURDER.
TO GET THE JURY AND REMORSE AND
SKIPPER, PUT HIM BACK IN PRISON.
THAT IS WHERE HE BELONGS.
THAT IS WHAT DR. LARSON WAS
GOING TOWARDS.

THAT IS PART OF THE REASON.
REMEMBER WHAT WE'RE HERE ON,
INEFFECTIVE ASSISTANCE OF TRIAL
COUNSEL CLAIM.

AND THE TRIAL COURT FOUND NO
DEFICIENT PERFORMANCE BECAUSE
DR. LARSON WAS PRESENTED.
THEY HAD A COHERENT THEORY OF
MITIGATION AND THE COHERENT
THEORY OF MITIGATION FOCUSED ON
REMORSE AND SKIPPER-TYPE, PUT
HIM BACK IN JAIL WHERE EL DO
WELL, INSTEAD OF DRUGS.

I, I WOULD LIKE TO QUOTE TO YOU
SOMETHING THAT JUDGE POTAVANO,
FIRST DCA SAID ABOUT

INTOXICATION AND I DISAGREE WITH
OPPOSING COUNSEL.

ALCOHOL, GETTING DRUNK,
INTOXICATION DEFENSE IS VERY
SIMILAR TO DRUG ADDICTION IN THE
IN THE SENSE THEY'RE BOTH
SELF-IMPOSED AND HE SAID THIS
REGARDING INTOXICATION.

THAT WITH HIS VAST CRIMINAL
EXPERIENCE THAT HE WOULD BE
HARD-PRESSED TO FIND A SINGLE
JUDGE OR DEFENSE LAWYER WHO
WOULD TELL YOU ONE CASE WHERE
INTOXICATION SUCCEEDED AS A
DEFENSE.

I REALIZE THAT'S A DEFENSE
VERSUS MITIGATION BUT IT DOES
SHOW YOU WHAT PEOPLE REALLY
THINK ABOUT DRUG USE.

THIS IS NOT AT ALL LIKE, LIKE
CHILD ABUSE OR SOMETHING LIKE
THAT.

THIS IS TOTALLY WITHIN THE
DEFENDANT'S CONTROL AND SO
JURORS ARE NOWHERE NEAR AS
SYMPATHETIC.

THIS GOES BACK TO JUSTICE
LEWIS'S --

>> I'M NOT SURE I TOTALLY AGREE
WITH YOU, MAY BE SOMETHING
TOTALLY WITHIN THE DEFENDANT'S
CONTROL BECAUSE WE'VE SEEN MANY
CASES OF COURSE WHERE PEOPLE ARE
ADDICTED TO DRUGS, THEY HAVE NO
TREATMENT AND SO THEY STILL,
THEY ARE NOT ABLE TO CONTROL
THEIR DESIRE FOR DRUGS IF THEY
HAVE NO TREATMENT.

>> WELL --

>> CAN YOU AGREE WITH THAT AT
LEAST?

THAT WHEN PEOPLE BECOME
ADDICTED, IF THEY GET NO
TREATMENT, IT IS HARD FOR THEM
TO CONTROL THEIR DESIRE FOR
DRUGS?

>> OKAY, YES, BUT, YOUR HONOR,
IT IS A WHOLE ANOTHER MAGNITUDE
SOMETHING LIKE CHILD ABUSE THAT
IS TRULY BEYOND SOMEBODY'S

CONTROL.

THEY ARE DIFFERENT LEVELS IN
TERMS OF THAT.

>> ONE OF THE THINGS THAT STRUCK
ME IS EVEN AFTER THE EVIDENTIARY
HEARING AND EVEN AFTER THIS
SHOULD HAVE HAD OTHER 10 PEOPLE
TESTIFY, THERE IS VERY LITTLE IN
THE RECORD, BEYOND THE DRUG
ADDICTION, THAT OFTEN WE SEE
ABOUT THE CHILD THING.

WE DON'T HAVE THAT IN THIS
RECORD, DO WE?

>> NO, WE DO NOT.

EVEN DRUG ADDICTION, SHOULD HAVE
SAYING THAT SHOULD HAVE
PRESENTED THE EXPERT CLASSIFY,
NOT DR. LARSON SAID HE WASN'T
ADDICTED TO DRUGS.

DR. LARSON DID SAY THAT, SHOULD
HAVE PRESENTED EXPERT THAT WOULD
HAVE LABELED STATUTORY, INSET OF
NORTHERN STATUTORY.

THIS IS STATUTORY VERSUS
NON-STATUTORY.

DRUG USE WAS PRESENTED.

IT WASN'T A MAJOR THEME.

IT WASN'T EVEN DISPUTED.

THE STATE'S THEORY OF THE MOTIVE
OF THIS MURDER WAS HE KILLED
THIS WOMAN TO GET MONEY TO BUY
DRUGS.

SO, THEY WANTED TO FOCUS ON
SOMETHING ELSE.

NAMELY REMORSE AND SKIPPER
EVIDENCE.

I WOULD ALSO LIKE TO TALK.

FIRST OF ALL I WOULD LIKE TO
BACK UP A LITTLE BIT.

TO THE EXTENT THAT THEY'RE
SAYING THAT, DR. LARSON WAS A
BAD EXPERT, THERE IS NO SUCH
CLAIM AS INEFFECTIVE ASSISTANCE
OF EXPERT.

WE DO INEFFECTIVE ASSISTANCE OF
COUNSEL.

YOU MUST FOCUS ON WHAT COUNSEL
DID AND DID NOT DO.

WHAT A HIGHLY, WELL-QUALIFIED
EXPERT SUCH AS DR. LARSON AND

THE TRIAL COUNSEL IS NOT PERSONALLY RESPONSIBLE FOR DR. LARSON'S DIAGNOSIS. DR. LARSON IS RESPONSIBLE FOR DR. LARSON'S DIAGNOSIS. THE CLAIM RELATED TO AN EXPERT MUST BE AND MUST HIGHLIGHT WHAT TRIAL COUNSEL FAILED TO DO. FOR EXAMPLE, IF THE EXPERT SAYS, I NEED YOU TO GET A HIPAA RELEASE SO I CAN HAVE THE MEDICAL RECORDS. AND COUNSEL DIDN'T DO THAT BUT THAT'S COUNSEL'S, AND NONE OF THAT HAPPENED HERE. THAT'S COUNSEL'S FAILURE. THERE IS NO SUCH CLAIM AS INEFFECTIVE ASSISTANCE OF EXPERTS. SO THE FACT THAT THEY REALLY DON'T LIKE DR. LARSON'S OPINION IS PRETTY IRRELEVANT TO THIS CLAIM. AND THEN I WOULD ALSO LIKE TO TALK A LITTLE BIT ABOUT, THERE IS SOME HINT THAT THERE WERE SOME RECORDS WERE NOT PROVIDED TO DR. LARSON. DR. LARSON TESTIFIED THAT HE HAD THE ARREST REPORT OF THIS CRIME. WHAT HE DIDN'T HAVE WAS THE ARREST REPORTS OF THE PRIOR CONVICTIONS. SO WHEN HE WAS ASKED, WELL WERE THOSE ALSO RELATED TO DRUGS, HE SAID, I DON'T HAVE THOSE RECORDS SO I CAN'T ANSWER THAT. I'M NOT QUITE SURE WHAT RECORDS TALKING ABOUT IN THE BRIEF. FIRST OF ALL THE RECORDS WERE NOT INTRODUCED AT THE EVIDENTIARY HEARING. THIS WAS NOT EXPLORED AT THE EVIDENTIARY HEARING. IT WAS NOT RULED ON BY THE TRIAL COURT AND I CAN'T EVEN TELL YOU WHETHER THERE IS ANY PREJUDICE OR NOT BECAUSE I DON'T KNOW WHAT'S IN THOSE RECORDS. IT'S NOT JUST FAILURE TO GET

RECORDS OR GIVE RECORDS.
THE RECORDS HAVE TO CONTAIN
SOMETHING AND HERE, TO BE
RELATED TO THIS CLAIM OF
INEFFECTIVENESS, THOSE RECORDS
WOULD HAVE TO CONTAIN SOMETHING
THAT SHOWS THAT GUARDADO'S DRUG
ADDICTION WAS MORE SEVERE THAN
WE THOUGHT IT WAS BECAUSE THERE
IS NO PREJUDICE BECAUSE WEE
DON'T KNOW WHAT IS TALKING ABOUT
IN THOSE RECORDS.

>> CAN I ASK YOU JUST A QUICK
QUESTION?

HATE TO THROW YOU OFF.

WHAT IS A BREAKER BAR?

>> YOU KNOW, YOUR HONOR,
EVERYBODY TELLS ME IT'S LIKE A
TIRE IRON, LOOKS LIKE ONE, BUT
NOBODY CAN TELL ME WHAT YOU DO
WITH A BREAKER BAR, BUT I GATHER
IT IS A METAL, THAT'S WHAT THE
VICTIM WAS KILLED WITH, YOUR
HONOR.

AND THEN SHE WAS STABBED.
HE HIT HER, HE CAME IN THE HOUSE
WITH THE BREAKER BAR HYPED HIM.
AND THEY KNEW EACH OTHER SO SHE
OPENED THE DOOR.

AND HE HIT HER REPEATEDLY AND
VERY, BADLY DAMAGED HER HANDS
WITH THIS BREAKER BAR.

I'M AFRAID, YOUR HONOR, I CAN
NOT -- IT IS SOMETHING
EQUIVALENT TO A TIRE IRON IN
DETERMINES OF THE DAMAGE.

IT IS A -- IN TERMS OF DAMAGE.
IT'S A METAL BAR I THINK HAS
SOMETHING TO DO WITH CARS, YOUR
HONOR.

I'M VERY BAD AT THAT.

BUT IT'S A HEAVY METAL BAR.

AND THEN WHEN THE BREAKER BAR
DOES NOT KILL HER, HE ALSO HAS A
KNIFE AND HE STABS HER WITH THE
KNIFE.

SHE IS DEFENDING HERSELF WELL
ENOUGH.

ONE OF THE BLOWS GETS TO HER
HEAD BUT SHE, IN HIS OWN WORDS,

SHE WILL NOT DIE.

SO HE HAS TO, THEN TAKE THE KNIFE AND STAB HER WITH THE KNIFE.

AND THEN THIS IS A WOMAN, I THINK THIS IS PARTICULARLY COMPELLING TO THE JURY, THIS IS A WOMAN WHO HAD HELPED THIS MAN REPEATEDLY.

WHEN HE GOTTEN OUT OF JAIL.

>> GETTING BACK TO THE ARGUMENTS THOUGH THAT COUNSEL MADE AND IN FAIRNESS TO OPPOSING COUNSEL SEEMS TO BE MAKING SOMEWHAT OF AN ARGUMENT YOU CAN HAVE INEFFECTIVE OF ASSISTANCE IF A LAWYER SELECT AS CHIROPRACTIC PHYSICIAN WHEN YOU SHOULD BE SELECTING A NEUROPSYCHOLOGIST. AND THAT HERE, THAT THE LAWYER, HE MAY NOT BE RESPONSIBLE FOR THE OPINIONS OF DR. LARSON BUT DR. LARSON IS NOT THE EXPERT THAT OUGHT TO HAVE BEEN SELECTED WITH THE MONEY AVAILABLE.

WHAT YOU'RE, YOUR ARGUMENT WITH REGARD TO THAT?

>> FIRST OF ALL DR. LARSON IS A WELL-RECOGNIZED FORENSIC PSYCHOLOGIST AND YOU WANT HIM FOR MORE THAN ADDICTION. YOU WANT HIM FOR ALL THE OTHER THINGS AS WELL AND DR. LARSON IS NOT ONLY A WELL-RECOGNIZED EXPERT, YOUR HONOR, YOUR OWN OPINIONS REFER TO DR. LARSON 33 TIMES.

DR. LARSON IS CERTAINLY A GOOD PLACE TO START.

BUT --

>> I'M SURE DR. LARSON IS GREAT BUT WE WOULDN'T USE HIM FOR OPEN-HEART SURGERY.

>> THAT'S RIGHT.

>> THAT'S WHERE I'M GOING.

HE SEEMS TO BE SAYING THAT THIS CASE IS ONE OF THOSE THAT IS SO VERY CLEAR, THAT IT IS DRUG, DRUG, DRUG, DRUG, AND WHAT YOU NEED, WHAT A REASONABLE LAWYER

WOULD HAVE DONE IS NOT GO TO
SOMEONE LIKE DR. LARSON, WHO
AGAIN, NOT DISCREDITING HIM FOR
WHAT HE DOES, THAT YOU NEEDED A
DIFFERENT EXPERT.

>> AND WHAT --

>> THAT IS WITHIN THE POWER OF
THE LAWYER TO SELECT, CORRECT?

>> YES, YOUR HONOR.

>> JUST WHAT IS YOUR ARGUMENT TO
THAT ONE?

>> AND YES.

DON'T TAKE MY ARGUMENT ABOUT
THE, THAT YOU DON'T HAVE AN
INEFFECTIVE ASSISTANCE OF EXPERT
TOO FAR.

IF YOU HIRED, AND YOU HAD
NOTICED THAT SOMEBODY WAS
TOTALLY INCOMPETENT, THEN,
YES --

>> WE'RE NOT SAYING INCOMPETENT
I TAKE IT EVEN.

THAT HE IS IN THE WRONG
CATEGORY.

>> WELL, FIRST OF ALL LET ME PUT
HIM IN THE RIGHT CATEGORY.

>> OKAY.

>> DR. LARSON'S OWN WRITTEN
REPORT THAT 5% OF HIS PRACTICE
IS DRUG ADDICTION.

REMEMBER SOMETHING, MOST
FRANCHISES, YOUR HONOR, FROM
YOUR OWN EXPERIENCE YOU KNOW HOW
MANY OF THE CAPITAL DEFENDANTS
DO HAVE DRUG AND ALCOHOL
PROBLEMS AND SO ANYBODY WHO'S A
FORENSIC PSYCHOLOGIST OF
DR. LARSON'S EXPERIENCE NOT
ONLY, HE HIMSELF, IN HIS REPORT
SAID 5% OF IT WAS THAT, IS GOING
TO HAVE A BACKGROUND IN DRUG
ADDICTION.

HE WILL NOT HAVE THE SAME
BACKGROUND AS A SOCIAL WORKER
WHO PRESENTED WHO 100 PERCENT OF
PRACTICE IS THAT.

SHE WILL NOT HELP YOU ANOTHER
WAY.

SHE WILL NOT HELP YOU WITH
RESOURCE AND PSYCHOPATHY.

SHE IS A SOCIAL WORKER.
OF.
SHE CAN NOT DIAGNOSE THAT STUFF.
DR. LARSON IS A VERY GOOD
COMPROMISE.
HE IS GENERAL BACKGROUND IN
FORENSIC PSYCHOLOGIST.
MORE IMPORTANTLY CAPITAL CASES.
HE IS HIGHLY RESPECTED OVER
THERE.
TRIAL COUNSEL GONTAREK SAID
DR. LARSON HELPED HIM IN SEVERAL
OTHER CASES INCLUDING HAVING
LIFE INSTEAD OF THE DEATH.
NOT ONLY IS HE A GOOD PLACE TO
START BUT 5% OF HIS PRACTICE IS
DRUG ADDICTION.
AND, AND, I GUESS WHAT I'M
TRYING TO GET ACROSS TO YOU,
ALSO THAT'S NOT WHERE DEFENSE
COUNSEL HE IS WAS REALLY TRYING
TO GO.
THAT WAS UNDISPUTED AND HE
WANTED A LITTLE BIT OF THAT BUT
HE WANTED TO HIGHLIGHT TO THE
JURY SKIPPER EVIDENCE WHICH YOU
WOULD NEED SOMEBODY LIKE
DR. LARSON TO DO BECAUSE HE WAS
TRYING TO GET THAT HE WASN'T A
PSYCHOPATH AND HE WOULD NOT BE A
DANGER TO OTHER PEOPLE.
THE SOCIAL WORKER WOULDN'T BE
ABLE TO DO THAT.
SHE'S NOT A FORENSIC
PSYCHOLOGIST THE WAY DR. LARSON
IS.
SO MY FIRST --
>> ALSO HAD DR. PRITCHARD.
WHAT KIND OF PHYSICIAN IS
DR. PRITCHARD?
>> HE'S A FORENSIC PSYCHOLOGIST
AS WELL.
AND HE TESTIFIED AT THE
EVIDENTIARY HEARING HERE.
AND HE DID TESTIFY, YES, THEY
PUT ON TWO EXPERTS AT THE
EVIDENTIARY HEARING THAT
TESTIFIED THAT, THAT, AND IT
WASN'T DRUG ABUSE VERSUS
NON-DRUG ABUSE.

IT WAS DRUG ABUSE AS
NON-STATUTORY MITIGATION AND AT
THE EVIDENTIARY HEARING DRUG
ABUSE AS STATUTORY MITIGATION.

>> ISN'T THAT AN IMPORTANT
DISTINCTION?

THIS DEFENDANT PLED GUILTY.

IT'S A TERRIBLE CRIME.

IT'S DRIVEN, NOT INTOXICATION
DEFENSE BUT IT'S DRIVEN BY THIS
CRAVING, WHAT WAS HIS ADDICTION
WAS?

>> MAINLY CRACK COCAINE.

>> CRACK COCAINE WHICH DURING A
PERIOD OF TIME WAS A, I MEAN,
WHEN YOU HAVE THAT ADDICTION
APPARENTLY IT'S, THERE IS A
CRAVING AGAIN.

DOESN'T EXCUSE ANYTHING.

SO WASN'T THE ONLY WAY TO SAVE
THIS DEFENDANT'S LIFE REALLY TO
TAKE THIS, NOT AS, HE IS A DRUG
ADDICT, BUT THAT IT WAS, EXACTLY
THE REASON THAT IT WAS AFFECTING
HIM AT THE TIME OF THE CRIME, IN
ORDER TO DO SOMETHING THAT HE
WOULD DO TO SOMEONE THAT WOULD
HAD TAKEN NORMAL CARE OF HIM,
THAT HE HAD NO CONTROL?

I HAVE MEAN THAT WAS, WAS THAT
THE TACT AT TRIAL OR, NO, VERSUS
THE EVIDENTIARY HEARING?

AND THAT'S A DIFFERENCE, SAY,
I'VE HAD A LIFELONG DRUG
ADDICTION VERSUS WHAT WAS THE
CRAVINGS AT THE TIME OF THE
CRIME DROVE HIM TO DO SOMETHING
THAT WAS THIS HORRIBLE?

>> DR. LARSON TESTIFIED IN FRONT
OF THE JURY AT PENALTY PHASE
THAT HE HAD RELAPSED ABOUT TWO
WEEKS BEFORE THE, THIS MURDER
OCCURRED.

AND SO HE WAS DESCRIBING THE
JURY KNEW, THAT HE HAD RELAPSE
DACA TO --

>> WHAT DID DR. SON SAY ABOUT
THE STATE -- DR. LARSON SAY
ABOUT HIS STATE AT THE TIME OF
THE CRIME?

ABOUT THE STATUTORY MITIGATOR OF
EXTREME EMOTIONAL DISTRESS?

>> HE SAID IT DIDN'T APPLY.

THAT IS TRUE, ON CROSS,
DR. LARSON DID SAY THE
STATUTORY, THE EXTREME STATUTORY
DID NOT APPLY.

>> WHAT IS THE DIFFERENCE AGAIN,
NOW IF YOU'RE LOOKING TO SAY,
YOU'VE GOT AN EXPERT AND DID
THEY KNOW IN ADVANCE HE WAS NOT
GOING TO BE ABLE TO TESTIFY TO
THAT STATUTORY MITIGATOR?

DID THE DEFENSE THOUGH THAT?

>> NO ONE REALLY ASKED BUT YES,
YOUR HONOR.

>> AGAIN IT IS LIKE GOING TO,
THIS DEFENDANT PLED GUILTY.

SO THE ONLY WAY TO LOOK AT
SAVING HIS LIFE IS, WELL,
THERE'S A COUPLE OF WAYS BUT
FOCUSING ON WHAT DROVE HIM AT
THE TIME OF THE CRIME.

SO TELL ME THE DIFFERENCE, AT
THE EVIDENTIARY HEARING AS TO
WHY THOSE EXPERTS WERE ABLE TO
COME TO THE CONCLUSION THAT HE
WAS UNDER EXTREME EMOTIONAL
DISTRESS AT THE TIME OF THE
CRIME.

>> OKAY.

BUT FIRST I'D LIKE TO SAY THE
PREMISE IS WHAT I DISAGREE WITH.
THERE'S ANOTHER WAY AND WHAT I'M
SAYING IS, TRIAL COUNSEL HERE
FOCUSED ON THE OTHER WAY.

THE OTHER WAY BEING REMORSE AND
MITIGATION.

>> I DON'T KNOW WHY THE TWO --
MY, IN A MILLION YEARS THE ONLY
REASON YOU DON'T PUT ON OTHER
KINDS OF MITIGATION IS IF IT IS
GOING TO OPEN THE DOOR BUT
THERE'S REMORSE, YOU DON'T NEED
A SCHOOL EXIST TO TALK ABOUT
REMORSE.

THE GUY PLED GUILTY.

THAT'S, YOU'VE GOT THAT
SELF-EVIDENT.

THE ISSUE THAT YOU NEED EXPERT

TESTIMONY ON, HOW IS, I'M UNDER THE INFLUENCE OF CRACK AT THE TIME OF THE CRIME INCONSISTENT WITH REMORSE?

>> YOU NEED EXPERT TESTIMONY IF YOU'RE GOING TO DO A FULL-BLOWN SKIPPER PRESENTATION.

>> WHY ARE THE TWO NOT MUTUALLY EXCLUSIVE?

>> I'M TELLING YOU WHY THEY FOCUSED THERE, THEY DID, DR. LAST SON TALKED ABOUT DRUG ABUSE IN FRONT OF THIS JURY.

>> I UNDERSTAND BUT WE'RE TALKING ABOUT A DISTINCTION. WHAT DID THE EXPERTS SAY AT THE EVIDENTIARY HEARING ABOUT WHY HE WAS UNDER EXTREME EMOTIONAL DISTRESS AT THE TIME OF THE CRIME?

>> YOUR HONOR, IT WAS VERY, VERY VAGUE.

>> THAT IS THE IMPORTANT ISSUE. THAT IT REALLY WASN'T COMPELLING.

>> ON BOTH WHAT DR. PRITCHARD AND SOCIAL WORKER --

>> BETTER ARGUMENT, THERE WASN'T AN EXPERT THAT COULD CONVERT THIS INTO SOMETHING THAT WOULD BE, WITH A MITIGATION IS SIGNIFICANT.

THAT'S THE ARGUMENT.

>> YES.

>> THEY DID THE BEST THEY COULD WITH WHAT THEY HAD.

>> I DO THINK THAT'S -- LET ME TELL WHAT YOU THEY DID SAY. AND REMEMBER, IT IS NOT ONLY THAT THEY HAVE TO TESTIFY. THAT BOTH STATUTORY MENTAL MITIGATORS APPLY BASED ON DRUG USE BUT THE JUDGE THEN HAS TO FIND IT.

AND FIND IT OUTWEIGHS THESE FIVE AGGRAVATORS INCLUDING HAC AND CCP.

BUT WHAT DOCTOR, WHAT THE, WHAT THEY REALLY WERE SAYING WAS THIS.

WE JUST DISAGREE WITH DR. LARSON ABOUT, NOT EVEN REALLY THE SEVERITY OF THE CONDITION BUT WHETHER THAT LABEL OF STATUTORY SHOULD HAVE BEEN PUT ON IT. THERE WAS NO REAL DISPUTE AMONG ANYONE, INCLUDING THE PROSECUTOR, THAT THE DEFENDANT HERE WAS ADDICTED TO CRACK COCAINE.

THAT WAS OUR MOTIVE, YOUR HONOR. WE DIDN'T REALLY HAVE ANY INTEREST IN FIGHTING HOW ADDICTED HE WAS BECAUSE, THAT WAS OUR MOTIVE FOR THIS CRIME. WE WEREN'T TRYING TO COUNTER THAT, ONLY IN THIS SENSE. THE PROSECUTOR DID ASK DR. LARSON THAT HE WAS NON-STATUTORY, RIGHT? INSTEAD OF STATUTORY AND DR. LARSON SAID YES.

AT THE EVIDENTIARY HEARING, THEY PRESENTED DR. PRITCHARD AND JOHNSON, A SOCIAL WORKER, AND WHAT THEY BASICALLY SAID WAS THIS.

HE WAS SO ADDICTED OVER HIS LIFETIME, ALTHOUGH REALLY MOST OF HIS LIFE WAS SPENT, ADULT LIFE WAS SPENT IN PRISON, THAT IT REALLY SHOULD HAVE BEEN, THEY SHOULD HAVE TESTIFIED THAT IT WAS STATUTORY, THAT IT ROSE TO THAT LEVEL.

THAT SHE SAID AT ONE POINT, IT WAS ALMOST PSYCHOSIS BUT DR. PRITCHARD DISAGREED WITH THAT.

SO, IT WAS, THAT TESTIMONY WAS VERY AMBIGUOUS.

AND DID NOT DISAGREE, IT WASN'T SOME UNDERLYING FACT THAT THEY DISAGREED WITH ABOUT ADDICTION. WHAT THEY, ENDED UP DISAGREEING WITH, WAS THEIR POST-CONVICTION EXPERTS LABELED THIS STATUTORY AND DR. LARSON ADMITTED WHY VERY EXTREME IT WASN'T TO THE POINT OF STATUTORY, WHILE VERY SEVERE,

IT WASN'T EXTREME ENOUGH TO BE A
STATUTORY MENTAL MITIGATOR.

>> YOU'RE OUT OF TIME.

THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU FOR YOUR TIME.

>> REBUTTAL?

>> BRIEFLY, YOUR HONORS.

DR. LARSON'S, ADMINISTERED ONLY
ONE TEST THAT DEALT WITH DRUGS
AND IT DID NOT GO INTO ANY
DETAIL.

ALL THAT TEST GAVE US, HE HAD
PROPENSITY TO USE DRUGS.

DUH.

THAT IS WHAT EVERYBODY KNEW.

SO THERE WAS NOTHING NEW ADDED
BY WAY OF ANY IN DEPTH EXPERTISE
FROM DR. LARSON.

UNDER A SKIPPER INQUIRY SIMPLY
FOLLOWING UP, YOU'VE STILL GOT
TO EXPLAIN WHAT THE EFFECTS WERE
OF THESE DRUGS ON THIS MAN.

AND BOTH THE EXPERT THAT IS THE
DEFENSE CALLED AT THAT --
EXPERTS THAT THE DEFENSE CALLED,
BECAUSE OF THE UNIQUE
CIRCUMSTANCES WITH THIS
DEFENDANT, HAVING LOOKED AT ALL
OF HIS RECORDS, LOOKING AT HIS
OTHER RECORDS, HE WAS IN FACT
CONSUMED BY HIS NEED FOR CRACK
COCAINE.

>> LET'S JUST ASSUME, THAT, YOU
KNOW, A REASONABLY COMPETENT
LAWYER WOULD SAY, THIS ISN'T
REALLY DR. LARSON'S CASE, I NEED
AN ADDICTION SPECIALIST, I NEED
SOMEBODY THAT DEALS WITH THIS,
YOU STILL HAVING --

THAT ARE HEAVILY, HEAVILY,
THEY'RE SIGNIFICANT.

THEY'RE MULTIPLE.

AND, BACK TO THE NATURE OF
ALTHOUGH, I UNDERSTAND THAT --
AGGRAVATORS, I UNDERSTAND DRUGS
CAN BE AN ADDICTION, IT ISN'T
STILL THE SAME IN THE PUBLIC'S
MIND, THAT THE JURY'S MIND AT
SAME LEVEL THAT SOMEBODY SAY
BIPOLAR OR HAS A MENTAL ILLNESS.

SO GIVEN THAT HOW CAN WE SAY THAT IT, THAT THE SECOND PRONG IS MET EVEN IF YOU SAY A LAWYER MIGHT HAVE FOUND DIFFERENT EXPERT OR REALIZED THAT DR. LARSON --

>> TALKING ABOUT THE PREJUDICE PRONG?

>> YEAH.

I THINK THAT'S A HURDLE.

>> I THINK A COUPLE, A COUPLE OF ISSUES IN THAT REGARD.

ONE, HAD THE EXPERTS BEEN PRESENTED TO A JURY, THE JURY THEN COULD HAVE DETERMINED IN THEIR DELIBERATIONS WHETHER OR NOT THESE WERE STATUTORY.

>> I UNDERSTAND THAT BUT LET'S ASSUME THEY SAID, YEAH, I THINK HE WAS UNDER COCAINE, WHATEVER IT IS, BINGE AT THE TIME AND IS CRAVING IT.

>> RIGHT.

>> YOU DON'T, YOU STILL DON'T GO IN AND KILL, YOU KNOW KILL SOMEBODY WHO HAS BEFRIENDED YOU AND HAVING ALL THE OTHER LAC, CCP, THE PRIOR VIOLENT FELONY, AND SAY, WELL, THAT'S GOING TO OUTWEIGH THAT AGGRAVATION IN THIS CASE.

>> WELL, I THINK YOU WOULD PUT THEM UP AGAINST THOSE TWO SPECIFIC CATEGORIES.

>> SPECIFICALLY WHETHER IT UNDERMINES OUR CONFIDENCE IN THE OUTCOME SO THAT IT'S NOT, WELL THE JURY MIGHT HAVE HEARD IT AND MAYBE, WHAT WAS THE VOTE HERE IN THIS CASE?

>> 12 ZIP.

>> MAYBE ONE OR TWO WOULD HAVE SAID WELL, I, THAT'S, YOU KNOW, SADDER THAN I REALIZED BUT, I DON'T SEE HOW THIS ISN'T A DEATH PENALTY CASE.

AGAIN YOU'RE DOING, YOU'VE GOT LIMITED FACTS TO WORK WITH HERE.

>> THAT'S TRUE.

ONE OF THE OTHER CONCERNS THAT I

HAD ABOUT THE LARSON TESTIMONY AND WHY THE DEFENSE LAWYER WOULD SIMPLY JUST GO WITH HIM.

WE HAD AN ISSUE HERE, WE HAD THE MOTHER THAT HAD WRITTEN A LETTER, COUNSEL MADE A BIG DEAL ABOUT THE ISSUE BEING REMORSE. NEITHER MR.-- DR. LARSON WAS NO, NO GREATER POSITION TO OPINE ON REMORSE OR TO ADD ANYTHING TO IT THAN WOULD THE OTHER TWO EXPERTS, AND AS WELL AS THE DEFENDANT'S MOTHER.

THEY SUBMITTED A LETTER.

>> I MEAN I DON'T SEE THOSE AS BEING MUTUALLY EXCLUSIVE.

THIS ISN'T SOMETHING THEY'RE SAYING WENT WITH REMORSE, WE DIDN'T, YOU KNOW, THEY WERE TRYING TO DO BOTH.

YOU SHOULD DO BOTH BUT I'M STILL, DON'T SEE PROBABLY EITHER PRONG BUT CERTAINLY NOT THE SECOND PRONG.

>> I THINK ONE OF THE ISSUES THAT WE'VE HAD TO DEAL WITH IN THIS CASE IT WAS SUCH A UNIQUE CIRCUMSTANCE AT LEAST IN MY EXPERIENCE WHERE YOU HAVE A CLIENT PLEADING GUILTY, THE LAWYERS THEN GET HIRED AND THEY GET BOUGHT ON AND HALF OF THE BATTLE IS OVER.

I THINK COURT'S BEEN CONCERNED ABOUT THAT BEFORE.

AND THEN, ALL RIGHT, NOW YOU'VE GOT ALL OF YOUR TIME AVAILABLE TO DEVOTE TO THE PENALTY PHASE, AND DID IN THIS PARTICULAR CASE, UNDER THESE CIRCUMSTANCES, THAT LAWYER DO EVERYTHING THAT WOULD BE REASONABLE AND NECESSARY TO TRY TO EITHER, OFFSET OR DEFEAT THOSE FIVE STATUTORY AGGRAVATORS AND WE SUGGEST HE DID NOT.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.