

>> ALL RISE.  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION.  
PLEASE BE SEATED.

>> OUR NEXT CASE FOR THE DAY IS  
STATE OF FLORIDA VERSUS WOODEL.  
YOU MAY BEGIN.

>> GOOD MORNING, YOUR HONOR.  
MAY IT PLEASE THE COURT.  
I'M CAROL DITTMAR FROM THE  
ATTORNEY GENERAL'S OFFICE  
REPRESENTING THE APPELLANT IN  
THIS CASE, THE STATE OF  
FLORIDA.

MR. WOODEL COMMITTED A VERY  
BRUTAL DOUBLE MURDER IN THE END  
OF 1996.

HE WAS TRIED AND CONVICTED  
TOWARDS THE END OF 1998 AND WAS  
GIVEN TWO DEATH SENTENCES AT  
THAT TIME FOR BOTH VICTIMS.  
WHEN THIS CASE HAD, WHEN THE  
COURT HAD THE CASE ON DIRECT  
APPEAL THE COURT DETERMINED  
THAT THE SENTENCING ORDER HAD  
NOT SUFFICIENTLY EVALUATED THE  
MITIGATING EVIDENCE THAT HAD  
BEEN PRESENTED AND THIS COURT  
REMANDED FOR THE WRITING OF A  
NEW SENTENCING ORDER WHICH  
ADEQUATELY ADDRESSED THE  
MITIGATION.

UNFORTUNATELY THE TRIAL JUDGE  
WHO HAD CONDUCTED THE TRIAL IN,  
AND GENERATED THE FIRST  
SENTENCING ORDER HAD RETIRED  
AND WAS NO LONGER AVAILABLE TO  
COME BACK.

IN JUNE OF 2004, THE CASE  
HAVING BEEN REASSIGNED TO A NEW  
JUDGE HAD ENTIRELY NEW  
RESENTENCING PROCEEDING WHERE A  
NEW JURY WAS EMPANELED.  
NEW JURY RECOMMENDATIONS WERE  
TAKEN AND A NEW SENTENCING  
ORDER WAS ENTERED WHICH THIS  
COURT THEN AFFIRMED.

THE EVIDENCE --

>> LET ME ASK YOU.  
FROM THE TIME THAT WE ORDERED A

NEW TRIAL, I'M SORRY, WE SAID  
IT SHOULD BE REMANDED FOR  
RESENTENCING, THE JUDGE WAS NOT  
AVAILABLE, HOW MUCH TIME  
BETWEEN THEN AND WHEN THE  
ACTUAL PENALTY PHASE STARTED?

WAS IT A -- BECAUSE --

>> A COUPLE OF YEARS.

>> IT WAS A COUPLE OF YEARS.  
SO COULD YOU IN THAT CONTEXT  
EXPLAIN WHAT, AND YOU'RE IN  
A UNIQUE POSITION.

I DON'T THINK I'VE SEEN YOU ON  
THIS SIDE MAYBE EVER.

>> VERY DIFFERENT.

>> DIFFERENT.

YOU'RE APPEALING THE JUDGE'S  
GRANT OF A NEW PENALTY PHASE.

>> YES.

>> FROM THE TWO-YEAR PERIOD,  
WHAT DID MR. COLON?

>> COLON.

>> WHAT DID HE DO TO PREPARE  
HIMSELF FOR THE NEW PENALTY  
PHASE?

HERE IS THIS CHANCE I NOW HAVE  
THAT I DIDN'T THINK I WAS GOING  
TO HAVE TO CONVINCING THE JURY  
THIS DEFENDANT SHOULD GET LIFE?

>> ANOTHER SHOT, RIGHT.

>> WHAT DID HE DO?

>> THE THING THAT HE  
REMEMBERED, HE REMEMBERED HE  
FULLY FAMILIARIZED HIMSELF WITH  
THE RECORD.

HE REREAD THE ENTIRE TRIAL AND  
PENALTY PHASE.

HE HAD MR. WOODDEL AGAIN  
EVALUATED BY DR. DEE WHO  
TESTIFIED AT INITIAL PENALTY  
PHASE.

HAD HIM RETRANSPORTED AND HAD  
ANOTHER EVALUATION SET UP.  
HE TOUCHED BASE WITH WITNESSES  
HE HAD PREVIOUSLY PRESENTED AND  
HE --

>> HE ACTUALLY TALKED TO THOSE  
WITNESSES?

WHAT DID YOU SAY HE DID WHAT  
WITH THOSE WITNESSES?

>> WELL THEY, HE TOUCHED BASE WITH THEM AT DIFFERENT TIMES. HE, IT IS VERY UNFORTUNATE THAT HE DID NOT HAVE A GOOD MEMORY IN THIS CASE AND HE IS NOT A GOOD NOTE-TAKER.

>> WHEN WE SAY HE DOESN'T HAVE A GOOD MEMORY WE HAVE A LOT OF CASES WHERE IT'S LIKE, 20 YEARS, BUT THE RESENTENCING WAS WHEN?

>> 2004. THE EVIDENTIARY HEARING WAS 2011.

>> HE DOESN'T KEEP NOTES AND TIME RECORDS WHAT HE DID?

>> NOT VERY WELL.

MR. COLON WAS VERY DISORGANIZED. HE TESTIFIED EVEN WITH HIS BILLING WITH THE COURT HE FREQUENTLY UNDERBILLED BECAUSE HE DIDN'T KEEP GOOD TRACK OF HIS RECORDS AND DID NOT --

>> THE JUDGE FOUND, THIS IS ON THE DEFICIENCY PRONG AND PREJUDICE MAY BE A DIFFERENT ISSUE, THAT ESSENTIALLY EVEN THOUGH HE HAD GOTTEN THIS MITIGATION SPECIALIST THREE DAYS INTO THE FIRST CASE --

>> RIGHT.

>> 1998.

>> AND BOTH DR. DEE AND THE MITIGATION SPECIALIST SAID THERE'S A LOT HERE THAT WE'VE GOT TO DO.

>> RIGHT.

>> AND SHE GATHERED THE RECORDS FROM THE, HIS EARLY, HIS EARLIER YEARS.

HE JUST DECIDED NOT TO PURSUE THIS MITIGATION SPECIALIST. HE, EVEN THOUGH DR. DEE SAID THERE IS A WEALTH OF INFORMATION HERE HE ESSENTIALLY DID NOTHING.

>> I THINK HE FELT ALL THAT HAD BEEN DONE BACK IN 1998.

YES, HE WAS SCRAMBLING TO PUT ON THE PENALTY PHASE IN 1998.

>> WHAT ABOUT 1998?

>> THE TRIAL WAS A MONTH.  
WHEN YOU SAY IT WAS THE  
BEGINNING OF TRIAL WHEN THE  
MITIGATION SPECIALIST HAD COME  
ON.

DR. DEE HAD BEEN ON BEFORE THEN  
AND DR. DEE WAS REALLY THE ONE  
I THINK PUT THE MITIGATION CASE  
TOGETHER.

>> SINCE WE'RE DEALING, AGAIN,  
NOT WITH THE JUDGE HAVING  
DENIED THE MOTION, THE JUDGE  
MADE SOME FINDINGS ABOUT HOW  
MUCH HE DID AND DIDN'T DO AND  
DON'T WE, AREN'T THOSE  
FINDINGS -- BECAUSE HE IS LOOKING  
AT THE CREDIBILITY OF THE  
DEFENSE LAWYER AND EVERYONE  
ELSE THAT TESTIFIED OVER THIS  
NINE-DAY PERIOD.

WE DEFER TO THE CREDIBILITY  
DETERMINATIONS THAT HE MADE AND  
WHAT I'M, I FELT FROM READING  
THAT WHOLE, YOU KNOW, ORDER AND  
EVERYTHING ELSE, IS THAT HE  
SORT OF THOUGHT THAT THIS  
DEFENSE LAWYER ESSENTIALLY WENT  
THROUGH THE MOTIONS BUT DIDN'T --

>> DIDN'T REALLY DO ANYTHING.  
THAT MAY THE WAY THE TESTIMONY  
CAME ACROSS TO THIS JUDGE.  
MY FOCUS TODAY, I WAS INTENDING  
TO STRICTLY FOCUS ON THE  
PREJUDICE BECAUSE I THINK WE DO  
HAVE SOME CLEAR LEGAL ERRORS  
COMMITTED WITH THE PREJUDICE.  
WE DO NOT HAVE A LOT OF FACTUAL  
FINDINGS.

THE FINDINGS WE DO HAVE ON  
DEFICIENT PERFORMANCE THE JUDGE  
FOUND WHEN IT CAME BACK IN 2004  
THAT MR. COLON DID IN THE  
REHIRE OF A MITIGATION SPECIALIST  
AND DID NOT PERSONALLY TRAVEL,  
GET A MITIGATION SPECIALIST TO  
TRAVEL TO NORTH CAROLINA,  
LOUISIANA, MICHIGAN, PLACES  
WHERE MR. WOODEL LIVED.  
HE NOTICED THE SPECIFIC FACTS  
THAT THE FINDINGS THOSE WERE

THOUGHT DONE.

THAT IS WHERE HE FINDS THE DEFICIENT PERFORMANCE.

HE SAYS THERE WAS NO, NOT SUFFICIENT EFFORT MADE TO GO OUT TO CONSULT WITH EXPERTS.

THOSE ARE THE SPECIFIC DEFICIENCIES HE FINDS.

>> WERE THOSE THEN ADDRESSED IN THE EVIDENTIARY HEARING?

DID THE POST-CONVICTION COUNSEL OR COLON INVESTIGATE OR THE MITIGATION SPECIALIST GO TO THE PLACES LIKE NORTH CAROLINA THE JUDGE TALKED ABOUT IT IN THE ORDER?

>> CERTAINLY.

HE DIDN'T FIND COMPELLING, THEY ALREADY HAVE WHAT THEY FOUND IN 1998.

EVEN THOUGH THEY DIDN'T GO THERE PERSONALLY, THEY HAD THE AUNT AND SISTER AND FATHER WHO --

>> FATHER TESTIFIED FALSELY.

>> WELL HE TESTIFIED, YOU KNOW, AGAIN, WE DON'T HAVE THAT FINDING FROM JUDGE HUNTER.

WE HAVE HIS TESTIMONY WHICH IS, YOU READ IT AND IT IS

QUESTIONABLE AND YOU'RE THINKING THE JURY PROBABLY HAS QUESTIONS ABOUT THIS MAN

TESTIFYING BEFORE HIM BUT YOU HAVE HIS TESTIMONY AGAIN ALONG WITH THE SISTERS AND THE AUNTS

AND THE BIG DIFFERENCE IN 2004 FRANKLY WAS MR. WOODEL TESTIFIED.

HE HAD NOT TESTIFIED AT THE INITIAL PENALTY PHASE IN 1998.

AND ONE OF THE THINGS THAT COLON SAID BY THE TIME THE RESENTENCING CAME BACK, BECAUSE

HE MET WITH HIM FREQUENTLY, HE SAID BY THE TIME THE CASE CAME

BACK IN 2004 HE ESTABLISHED A RAPPORT WITH MR. WOODEL, AND

EVEN THOUGH WE ALWAYS WORKED WELL TOGETHER IN 1998 HE WAS

NOT THAT COMFORTABLE.  
BY THE TIME IT GOT TO 2004  
MR. WOODEL WAS COMFORTABLE  
TESTIFYING -- I CAN'T SAY  
COMFORTABLE.  
HE WAS AGREEABLE TO TESTIFYING  
AND HE DID TESTIFY AND MR. COLE  
LOAN THOUGHT THAT WAS A VERY  
GOOD STRONG FACTOR AND GOT A  
MORE FAVORABLE JURY  
RECOMMENDATION IN 2004.  
IT WAS A DIFFERENT CASE IN THAT  
SENSE IN A DIFFERENT LIGHT BUT  
A LOT OF THE SAME EVIDENCE.  
AND EVEN THOUGH A LOT OF THIS  
DID COME OUT IN 1998 BUT I  
THINK IT IS FLESHED OUT IN 2004  
BUT IT IS COMPARABLE TO THE  
CASE THAT WAS PUT ON.  
I THINK WHERE THIS CASE STANDS  
OUT AMONG CASES WHERE WE HAVE  
AN ISSUE OF INEFFECTIVE  
ASSISTANCE OF COUNSEL IS THAT  
TYPICALLY WHEN YOU HAVE THAT  
FINDING YOU LOOK AT THE  
DEFENDANT AS HE HAS BEEN  
PORTRAYED IN POST-CONVICTION  
AND YOU HAVE A COMPLETELY  
DIFFERENT PICTURE OF THE  
DEFENDANT THAN WHAT THE JURY  
HAD AT THE RESENTENCING OR AT  
THE INITIAL PENALTY PHASE AND  
IN THIS CASE IF YOU LOOK AT THE  
DEFENDANT AND YOU LOOK AT THE  
WEALTH OF MITIGATION THAT WAS  
PRESENTED CERTAINLY IN  
POST-CONVICTION BUT ALSO AT THE  
RESENTENCING AND FOR THAT  
MATTER EVEN BACK IN 1998, AND  
IT'S THE SAME PICTURE OF THE  
DEFENDANT.  
THE PICTURE REALLY DOESN'T  
CHANGE.  
>> ISSUE ABOUT DR. DEE,  
DR. DEE WAS THE EXPERT.  
>> YES.  
>> THERE'S A STATEMENT IN THE  
RECORD THAT WHERE THE DEFENSE  
LAWYER SAYS WE TRIED TO HAVE  
HIM EVALUATED.

ARE YOU FAMILIAR WITH THAT?  
DO YOU KNOW WHAT THAT, THE  
PERSON HE WAS EVALUATED BY WAS  
DR. DEE?

>> WELL INITIALLY HE WAS  
EVALUATED BY DR. McCLAIN.  
NO, THIS WAS BACK IN 1998.

>> OKAY. YOU'RE REFERRING,  
BUT HE WAS COOPERATIVE?

>> YES.

>> WITH DR. DEE?

>> YES.

>> BUT DR. DEE WHEN HE  
TESTIFIED, DR. DEE SAID, REALLY  
DIDN'T KNOW HOW THE CRIME WAS  
COMMITTED OR AND HE COULDN'T  
RELATE HIS, THE MITIGATION  
HE WAS TALKING ABOUT TO THE  
CRIME.

WHAT IS IT, COULD YOU BE A,  
COULD YOU EXPLAIN THAT BECAUSE  
THAT CONCERNS ME.

IN OTHER WORDS YOU COULD HAVE A  
MENTAL HEALTH EXPERT GET ON BUT  
IF HE HASN'T BEEN PROPERLY  
PREPPED WITH THE BACKGROUND  
INFORMATION AND THE REAL  
DYNAMICS OF THE FAMILY AND THE  
ALCOHOLISM AND THE ADDICTION --

>> DR. DEE WAS CERTAINLY  
FAMILIAR VERY MUCH WITH THE  
DYNAMICS OF THE FAMILY, WITH  
THE ROLE OF ALCOHOL BOTH AT THE  
TIME OF THE CRIME AND  
MR. WODEL'S HISTORY OF ALCOHOL  
USE AND ALCOHOLISM IN THE  
FAMILY.

THE BACKGROUND, HE WAS VERY  
FAMILIAR WITH THE FACTUAL  
BACKGROUND.

HE TALKED ABOUT WHAT A  
HORRENDOUS BACKGROUND IT WAS  
AND DR. DEE HAD A UNIQUE  
PERSPECTIVE BECAUSE I KNOW THIS  
COURT IS VERY FAMILIAR WITH  
DR. DEE BUT FOR MANY YEARS HE  
WAS PART OF THE CHILD  
PROTECTION TEAM IN POLK COUNTY  
AND HE SAW, MANY, MANY, MANY  
CASES OF VERY SEVERE ABUSE AND

NEGLECT AND HE TALKED ABOUT HAVING THAT BACKGROUND AND LOOKING AT THIS CASE AND HE SAID THIS WAS SOME OF THE MOST SEVERE NEGLECT AND ABANDONMENT AND REJECTION THIS CHILD EXPERIENCED THAN ANYONE HAS, THAN CASES THAT HE HAD SEEN IN ALL HIS YEARS DOING PRECISELY THAT WORK.

THAT WAS VERY POWERFUL MITIGATION TO COME IN.

WHEN HE TALKS ABOUT NOT BEING ABLE TO EXPLAIN THE CRIME, WHAT HE IS SAYING, YOUR HONOR, IS THAT THIS CRIME IS SO COMPLETELY OUT OF CHARACTER FOR MR. WOODEL, IT IS SO COMPLETELY INCONSISTENT WITH HIS LIFE HISTORY, HIS LIFE STORY, WHERE HE SAID HE HAD OVERCOME THIS NEGLECT AND ABUSE AND ABANDONMENT AND REJECTION AND HE SOMEHOW HAD OVERCOME IT. HE MOVED TO FLORIDA.

HE WAS TRYING TO PUT A LIFE TOGETHER WITH HIS SISTER AND HIS GIRLFRIEND AND HE WAS STRUGGLING WITH JOBS BUT HE WAS, HE WAS BEING PRODUCTIVE. HE WAS A GOOD CITIZEN.

HE WAS NOT VIOLENT.

YOU KNOW, HE WAS BASICALLY A GOOD GUY.

AND THAT'S WHERE DEE SAYS THE REAL DISCONNECT IS BETWEEN MR. WOODEL'S LIFE AND THE MURDER.

HE SAYS REALLY, YOU COULD EXPECT HOW SOMEONE LIKE THAT FROM THAT BACKGROUND WOULD COME OUT AND NOT BE A NORMAL PERSON, A GOOD GUY BUT HE SAYS IN THIS CASE, MR. WOODEL HE WAS THAT GOOD GUY.

HE REALLY HAD OVERCOME IT.

>> ANOTHER AREA OF CONCERN, DURING THE FIRST PENALTY PHASE DID HE HIRE A MITIGATION SPECIALIST?



>> HE DID AT THE VERY END.  
TONI MALONEY CAME ON.  
SHE HAD BEEN WORKING WITH THE  
PUBLIC DEFENDER'S OFFICE.  
IT IS NOT CLEAR IN THE RECORD  
AT WHAT POINT SHE WENT OUT ON  
HER OWN BUT SHE WAS WORKING  
WITH DR. DEE BASICALLY PUTTING  
TOGETHER THIS WHOLE --

>> THIS IS THE FIRST --

>> BACK IN 1998.

DR. DEE TESTIFIED ALSO IN 1998  
ABOUT THE HISTORY, THE  
BACKGROUND.

>> THE INSTANT PENALTY PHASE  
WE'RE HERE ON WAS THERE A  
MITIGATION SPECIALIST HIRED?

>> SHE DID NOT, NO, SHE DID NOT  
COME BACK INTO THE CASE WHEN  
THE CASE WAS REMANDED.

MR. COLON FELT LIKE HE REALLY  
HAD THE INVESTIGATION COMPLETED  
AND HE WAS INTERESTED IN  
PUTTING ON A VERY SIMILAR CASE  
AND JUST TRYING TO ADD, OF  
COURSE I WANTED TO FIND MORE  
AND OF COURSE I TRIED TO FIND  
MORE.

HE COULDN'T BE SPECIFIC ABOUT  
WHAT HE HAD DONE.

>> GIVEN THE FACT IT DIDN'T WORK  
THE FIRST TIME AROUND DON'T YOU  
THINK, PERHAPS THE STARTING  
POINT THE SECOND TIME WOULD  
HAVE BEEN, WITH A MITIGATION  
SPECIALIST AGAIN TO STRUCTURE  
AND PLAN HIS PENALTY PHASE AS A  
STARTING POINT?

>> HE CERTAINLY HAD MUCH MORE  
FAVORABLE CONCLUSION THE SECOND  
TIME AROUND AND I THINK HE DID  
DO SOME DIFFERENT THINGS WITH  
HIS STRATEGY, LIKE HAVING  
MR. WOODEL TESTIFY.

I DON'T KNOW THAT BECAUSE, IF  
WHAT WE SEE IN POST-CONVICTION  
IS WHAT HE COULD HAVE DONE, IF  
HE HAD BROUGHT IN A MITIGATION  
SPECIALIST AT THAT TIME, IT IS  
STILL, IT IS STILL REALLY THE

SAME EVIDENCE AND THE SAME TESTIMONY THAT WE HAD IN RESENTENCING BECAUSE THE PRIMARY BACKGROUND TESTIMONY COMES FROM THE DAD AND THE SISTER AND THE AUNT. AND OF COURSE, MR. WOODEL HIMSELF.

>> TO WHAT EXTENT DO THEY ADDRESS THE DEAF CULTURE?

>> I'M SORRY?

>> TO WHAT EXTENT DO THEY ADDRESS THE DEAF CULTURE?

>> THEY ADDRESS THE FACT THAT HIS PARENTS WERE BOTH DEAF. DR. DEE TALKED ABOUT IT EXTENSIVELY.

>> FIRST TRIAL, SECOND TRIAL?

>> YES, IN 1998 AND IN 2004 DEE TESTIFIED EXTENSIVELY ABOUT HIM BEING A CHILD WITH DEAF PARENTS AND IMPACT THAT WOULD HAVE ON HIS GROWING UP.

HOW HE WOULD BE GIVEN RESPONSIBILITIES, PARENTING RESPONSIBILITIES THAT HE WASN'T READY TO ACCEPT AND --

>> I THOUGHT DR. DEE DIDN'T EVEN KNOW THE PARENTS WERE DEAF UNTIL, AND IT WASN'T IN HIS REPORT UNTIL AFTER TONI MALONEY WAS HIRED AND TOLD HIM AND BOTH TONI MALONEY AND DR. DEE SAID THERE IS A LOT OF INFORMATION HERE THAT NEEDS TO BE PURSUED?

>> YES, BUT THEY DID THAT, I MEAN, YOU'RE TALKING ABOUT, DR. DEE SAYING THERE HAD TO BE A LOT OF THINGS, DR. DEE DIED BEFORE THE POST-CONVICTION. HE DID NOT COME IN POST-CONVICTION.

NOT LIKE HE CAME BACK IN POST-CONVICTION, SAID, WOW, IF I ONLY KNOWN THE GUY HAD DEAF PARENTS OR ONLY KNOWN ABOUT THIS.

HE KNEW ABOUT EVERYTHING. THERE IS CONFLICT IN THE RECORD AS TO WHETHER IT WAS TONI

MALONEY WHO DISCOVERED HIS PARENTS WITH WERE DEAF OR DR. DEE BECAUSE WHEN DR. DEE TESTIFIED IN 2004 HIS TESTIMONY WAS, YOU KNOW, AT ONE POINT HE WAS INTERVIEWING MR. WOODEL AND HE NOTICED HIM USING HIS HAND AND WHEN HE STARTED TALKING TO HIM ABOUT THAT, HE COMES OUT AND IT, HE REVEALS BOTH OF HIS PARENTS ARE DEAF.

HE SAID AT THAT POINT, I HAD NO IDEA.

THIS WASN'T THE FIRST TIME I INTERVIEWED HIM.

I INTERVIEWED HIM SEVERAL TIMES.

IN FACT WHAT DR. DEE DID, AND HE EXPLAINED THIS IN 2004, HE INITIALLY CAME MR. WOODEL A MMPI, A PERSONALITY TEST AND HE DID NOT UNDERSTAND WERE MR. WOODEL DID SO POORLY ON THE MMPI.

BUT HE EXPLAINED TO THE JURY, ONCE I FOUND OUT THAT HE WAS RAISED IN AN ENVIRONMENT WHERE HIS PARENTS WERE DEAF IT MADE PERFECT SENSE BECAUSE THIS HAS SUCH AN IMPACT ON THEIR COMMUNICATION SKILLS, ON HIS ABILITY TO EXPRESS HIMSELF.

HE SAID OF COURSE THE MMPI ISN'T GOING TO WORK.

HE SAYS, WHAT IT SHOWS HE IS PSYCHOTIC.

WE KNOW FOR A FACT HE IS NOT PSYCHOTIC.

NOW THE INTERESTING THING ABOUT THE POST-CONVICTION EXPERTS, THEY DON'T DO ANY MENTAL HEALTH TESTING AT ALL.

THEY DON'T DO ANY KIND OF, THEY DO NOT FIND ANY TYPE OF MENTAL ILLNESS OR MENTAL DISORDERS OR TALK ABOUT ANY MENTAL HEALTH ISSUES.

THEY'RE STILL TALKING ABOUT ALL THE BACKGROUND ISSUES.

THEY'RE TALKING ABOUT THE

FAMILY AND TALKING ABOUT THE ABANDONMENT AND THE REJECTION AND THE NEGLECT AND THESE, IT IS THE SAME THREE THEMES BASICALLY.

THE ALCOHOL USE, THE HORRIBLE CHILDHOOD AND BEING A CHILD OF DEAF PARENTS.

THE SAME THREE THEMES THAT RUN THROUGH THE 2004 RESENTENCING ARE THE SAME THREE THEMES THAT RUN THROUGH THE POST-CONVICTION SHUN EVIDENTIARY HEARING.

>> COULD YOU TELL ME WHAT, IF ANY ANYTHING DIFFERENT CAME OUT IN THE POST-CONVICTION HEARING THAT DID NOT COME OUT IN THE HEARINGS THAT WOULD POINT TO A DEFICIENCY OR PREJUDICE?

>> WELL THE, DR. MARCUS WAS THE, AN EXPERT WHO CAME IN SPECIFICALLY AS A, THEY WERE REFERRED TO AS A CODA EXPERT. A CHILD OF DEAF ADULTS EXPERTS. BUT HIS TESTIMONY WAS SIMILAR TO WHAT DR. DEE HAD SAID.

>> THERE WAS BASICALLY NOTHING DIFFERENT THOUGH?

>> FROM MY PERSPECTIVE THERE WAS VERY LITTLE DIFFERENCE. THEY DID TALK MORE ABOUT MULTIGENERATIONAL FAMILY HISTORY, TALKING ABOUT THE GREAT-GREAT-GREAT GRANDPARENTS. THERE WAS SOME DISCUSSION ABOUT THAT, WHICH POST-CONVICTION WAS ABLE TO DEVELOP, THAT EVEN THE FAMILY DIDN'T EVEN, THEY CAME AND TESTIFIED, WE DIDN'T EVEN KNOW ABOUT THIS FAMILY HISTORY. IT WAS REALLY DEVELOPED FOR HIS POST-CONVICTION CASE.

BUT IN TERMS OF LOOKING AT THE STATUTORY AGGRAVATING AND MITIGATING FACTORS WHICH WE'RE SUPPOSED TO DO FOR PREJUDICE.

>> RIGHT.

>> YOU'RE SUPPOSED TO DO, THERE IS AN ABUNDANCE OF CASE LAW HOW WE ASSESS PREJUDICE.

>> COULD I ASK A QUESTION.  
YOU'RE GOING VERY FAST.  
>> I'M SORRY.  
THERE IS LOT OF STUFF.  
>> YOU TALK ABOUT THE DEAF  
CULTURE PROBLEM, DID I UNDERSTAND  
YOU TO SAY THE FAMILY DID NOT  
KNOW TO COMMUNICATE THIS AT THE  
TIME OF THE SECOND PENALTY  
PHASE?  
>> NO.  
EVERYBODY KNEW THAT.  
BACK IN 1998 EVERYBODY KNEW  
THAT HIS PARENTS --  
>> WHAT DID YOU SAY THE FAMILY  
DIDN'T KNOW ABOUT THE DEAF?  
>> I'M SORRY, YOUR HONOR.  
>> OKAY.  
>> TALKING ABOUT  
MULTIGENERATIONAL --  
>> GREAT-GREAT GRANDPARENTS.  
THEY DIDN'T KNOW ABOUT THAT.  
>> I'M SORRY, THE FAMILY  
HISTORY IN TERMS OF, YOU KNOW,  
THE HUSBAND LEFT THE WIFE AND  
THERE'S MARITAL STRIFE AND  
THERE WAS DOMESTIC VIOLENCE AND  
THERE WAS ALCOHOLISM AND I'M  
SAYING THAT REMOTE FAMILY  
HISTORY WAS NOT SOMETHING THAT  
THE MOM, THE SISTER, THE FATHER  
AND THE AUNT WHO HAD TESTIFIED  
WERE VERY, THEY WERE NOT  
FAMILIAR WITH THAT REMOTE  
FAMILY HISTORY.  
BUT CERTAINLY IT IS EVERYTHING  
THAT HAD ADDRESSED IMPACT ON  
MR. WOODEL IT WAS THOROUGHLY  
EXPLORED BUT IN TRYING TO  
ADDRESS WHAT OTHER EVIDENCE WAS  
PRESENTED IN POST-CONVICTION  
THAT HAD COME OUT.  
BUT AGAIN IN TERMS YOU GO BACK  
TO THE ACTUAL STATUTORY  
MITIGATING FACTORS, YOU'RE  
SUPPOSED TO LOOK AT THE  
MITIGATION WHICH WAS PRESENTED  
BEFORE THE JURY AND I ADD IN  
THE POST-CONVICTION MITIGATION  
AND YOU SEE WHAT THE CHANGE IS.

AND IF YOU GO THROUGH, AND I WAS GOING TO TRY TO GO THROUGH THEM TODAY BUT I'M AFRAID I DON'T HAVE TIME, THERE REALLY IS NO REAL DIFFERENCE. THEY HAVEN'T IDENTIFIED CERTAINLY ANY NEW MITIGATING FACTOR.

THERE WAS A GREAT DEAL OF WEIGHT TO --

>> YOU ARE DEEP IN YOUR REBUTTAL TIME.

>> THE STATUTORY AND NONSTATUTORY MITIGATION.

SO WITH THAT, TAKE A BREAK AND BE BACK I GUESS.

>> THANK YOU, YOUR HONOR. MARIE-LOUISE PARMER ALONG WITH MY CO-COUNSEL I'M HERE ON BEHALF OF THE APPELLEE, MR. WOODEL.

I LIKE TO FIRST ADDRESS THE APPELLEE'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL IN THE PENALTY PHASE AND LATER ON ADDRESS THE CROSS APPEAL ISSUES --

>> I WOULD SPEND TIME FOCUSING NOT ON DEFICIENCY BUT ON PREJUDICE.

THE LAST THING THAT WAS SAID IT WAS REALLY JUST EVERYTHING THAT YOU'RE SAYING SHOULD HAVE COME OUT ACTUALLY CAME OUT.

YOU'VE GOT, IN MAYBE ORDER OF SIGNIFICANCE, WE HAVE AN 89-PAGE ORDER AND WE'VE GOT NINE DAYS OF EVIDENTIARY HEARING.

QUALITATIVELY WHAT WAS MISSED THAT WOULD HAVE, THAT SHOULD UNDERMINED OUR CONFIDENCE IN THE OUTCOME OF THIS PENALTY PHASE?

>> WELL, FIRST OFF I THINK THERE ARE, THERE WAS AN OVERWHELMING AMOUNT OF MITIGATION PRESENTED IN POST-CONVICTION.

>> WE UNDERSTAND THAT. AGAIN, IN OTHER WORDS, YOU DID

A GOOD JOB OF PUTTING ON 27  
WITNESSES.

BUT WE HAVE TO UNDERSTAND  
QUALITATIVELY WHAT WAS DONE AT  
THE TRIAL AND WHY WE SHOULD  
NOT HAVE CONFIDENCE IN THE  
JURY'S RECOMMENDATION OF DEATH  
BASED ON WHAT WAS PRESENTED?  
THAT IS HOW I SEE OUR JOB HERE.  
>> YES.

AND I UNDERSTAND.  
WHAT I WANTED TO SAY WHAT I'VE  
DONE IN ANTICIPATION OF THIS  
QUESTION IS BROKEN IT DOWN.  
THERE ARE ESSENTIALLY FIVE  
AREAS OF MITIGATION THAT WERE  
PRESENTED IN POST-CONVICTION  
THAT WERE EITHER NOT ADDRESSED  
AT TRIAL OR ONLY marginally  
ADDRESSED AND THE QUESTION, THE  
UNITED STATES SUPREME COURT HAS  
MADE IT VERY CLEAR IN SEARS v.  
UPTON THEY NEVER DENIED A  
PREJUDICE CASE SIMPLY BECAUSE  
THERE WASN'T MITIGATION  
PRESENTED.

THE QUESTION BEFORE THE COURT  
WAS NOT WHETHER THERE WAS  
MITIGATION PRESENTED AFTER  
TRIAL.

WHETHER THERE WAS A CONVICTION  
AND WHETHER ADDITIONAL EVIDENCE  
UNDERMINES CONFIDENCE IN  
THE OUTCOME.

FIRST AREA I WANT TO TALK ABOUT  
IS THE EXPERT TESTIMONY OF  
DR. DEE.

THE STATE OF FLORIDA TOLD THIS  
COURT JUST NOW THAT DR. DEE WAS  
VERY FAMILIAR WITH ALCOHOL, THE  
HISTORY OF ALCOHOLISM.

THERE IS NO TESTIMONY FROM  
DR. DEE AT EITHER TRIAL ABOUT  
THE EFFECTS OF ALCOHOL AND HOW  
THAT WOULD HAVE AFFECTED  
MR. WOODEL ON THE NIGHT OF THE  
MURDERS.

EVEN THOUGH THEIR THEORY WAS  
THAT MR. WOODEL WAS SO  
INTOXICATED HE WAS IN A QUOTE,

UNQUOTE, ALCOHOL-INDUCED COMA.  
IN POST-CONVICTION, DR. BUFFINGTON  
CAME IN AND TESTIFIED ABOUT  
THE EFFECTS OF ALCOHOL ON THE  
BRAIN AND HOW IT AFFECTS THE  
THOUGHTS AND PROCESSING AND HE  
ALSO EXPLAINED THE PHENOMENON  
OF BLACKOUT.

HE EXPLAINED --

>> LET ME ASK YOU BEFORE YOU GO  
ANY FURTHER FROM THE ALCOHOL.

>> OKAY.

>> WASN'T ALCOHOL AND DRUG  
ABUSE FOUND AS A MITIGATING  
CIRCUMSTANCE IN THIS CASE?

>> YES.

IT WAS GIVEN LITTLE WEIGHT.

>> OKAY.

AND SO AND THAT WAS BASED ON  
WHAT TESTIMONY?

>> TOMMY WOODEL'S TESTIMONY.

>> AT THE 2004 PENALTY PHASE?

>> RIGHT.

>> AND DID DR. DEE AT ALL, YOU  
KNOW, I CAN UNDERSTAND YOU'RE  
SAYING THAT THAT, YOU KNOW, YOU  
NOW HAVE AN EXPERT WHO REALLY  
TALKED ABOUT THE EFFECT OF  
ALCOHOLISM BUT WAS THAT  
DISCUSSED AT ALL, NOT THE  
EFFECTS BUT THE AMOUNT OF  
ALCOHOL, WHEN ALCOHOL WAS  
CONSUMED, THOSE KIND OF ISSUES?  
WERE THOSE DISCUSSED DURING THE  
2004 PENALTY PHASE?

>> WELL MR. WOODEL TALKED  
ABOUT --

>> SHE IS ASKING BY DR. DEE.

>> BY DR. DEE, NO, NO, HE  
DIDN'T TALK ABOUT THAT.

HE, THERE WAS NO EXPERT  
TESTIMONY THAT SAID, YOU KNOW  
WE CAN ANTICIPATE IF SOMEONE  
HAS, DR. BUFFINGTON IN  
POST-CONVICTION DID A RANGE  
WHAT WOODEL'S BLOOD-ALCOHOL  
LEVEL WOULD HAVE BEEN AND HOW  
THAT AFFECTS THE BRAIN.

>> I UNDERSTAND THAT YOU HAVE  
THE EFFECTS OF THE ALCOHOL BUT



YOU'RE SAYING, LET ME JUST  
FINISH.

ARE YOU SAYING THAT DR. DEE  
NEVER SAID ANYTHING ABOUT  
ALCOHOL AT ALL?

>> HE WAS NEVER ASKED ABOUT  
ALCOHOL.

>> OKAY.

I JUST WANT YOU TO MAKE IT  
CLEAR WHAT YOU'RE SAYING HERE.

>> HE WAS NEVER ASKED ABOUT  
ALCOHOL AND WHEN TRIAL COUNSEL  
WAS ASKED, DID YOU ASK DR. DEE  
ABOUT ALCOHOL, HE SAID, WELL, I  
SURE I HOPE I DID.

I COULDN'T THINK OF A REASON  
NOT TO BUT HE DIDN'T.

>> DIDN'T THEY FIND IN BOTH  
CASES THAT NONSTATUTORY  
MITIGATION THERE WAS ALCOHOL  
AND DRUG ABUSE --

>> YES, THEY DID.

>> -- IN '98 AND 2004?

>> BASED ON, THAT WAS THEIR  
THEORY OF DEFENSE BUT IF YOU  
DON'T PUT THAT THEORY OF A  
DEFENSE, IF YOU DON'T EXPLAIN  
TO A REASONABLE JUROR WHAT THAT  
MEANS, IF YOU DON'T EXPLAIN TO  
A REASONABLE JUROR WHY THE  
EIGHTH AMENDMENT TELLS US WE  
SHOULD SQUARE ABOUT THAT, MOST  
JURORS DON'T HAVE THE  
SOPHISTICATION AND KNOWLEDGE TO  
UNDERSTAND WHY THAT'S IMPORTANT  
AND EVEN THE SENTENCING JUDGE,  
ONLY GAVE THAT MITIGATING  
FACTOR, I BELIEVE LITTLE  
WEIGHT.

I DON'T KNOW, I MEAN, I DON'T  
WANT TO MISSPEAK BUT I'M PRETTY  
SURE IT WAS GIVEN LITTLE  
WEIGHT.

NOTHING WAS GIVEN ANYTHING MORE  
THAN MODERATE WEIGHT.

MOST OF THE MITIGATORS WERE  
GIVEN LITTLE WEIGHT.

THIS WAS THE WHOLE THEORY OF  
THEIR CASE.

NOW THE OTHER --

>> IF I COULD ASK YOU ABOUT YOUR CHARACTERIZATION OF, I BELIEVE IT WAS DR. BUFFINGTON'S TESTIMONY, POST-CONVICTION EXPERT TESTIMONY CONSIDERING ALCOHOL, DR. BUFFINGTON?

>> YES.

>> YOU MENTIONED THAT HE REFERRED TO A BLACKOUT BEING THE CONSEQUENCE OF THE ABUSE OF ALCOHOL AND COULD LEAD TO THAT. HOW CAN THAT BE, HOW CAN THE THEORY OF A BLACKOUT HERE BE RECONCILED WITH A CONFESSION THAT THE DEFENDANT IN THIS CASE GAVE?

>> THAT'S AN EXCELLENT QUESTION AND THAT'S EXACTLY --

>> THAT'S WHY I ASKED IT.

>> THAT IS EXACTLY WHY DR. BUFFINGTON AND ADDRESSED THAT AND EXPLAINED THAT BECAUSE MOST PEOPLE, IF YOU HAVEN'T EXPERIENCED AN ALCOHOL BLACKOUT ITSELF WOULD NOT BE FAMILIAR WITH THAT WHAT THAT EXPERIENCE IS LIKE.

IN A BLACKOUT YOU CAN HAVE A COMPLETE BLACKOUT OR YOU CAN HAVE A PARTIAL BLACKOUT WHERE YOU'RE WALKING AND TALKING AND MAY HAVE SNIPPETS OF MEMORY, KIND OF LIKE CLIPS FROM A MOVIE THAT ARE SOMEWHAT DISJOINTED. IF YOU LISTENED TO TOM WOODEL'S CONFESSION WHICH IS IN TAPE AND IS PART OF THE RECORD YOU CAN TELL THAT HE HAD A DISJOINTED MEMORY OF WHAT HAD HAPPENED. HE WAS A VERY CANDID --

>> EXCUSE ME, I LISTENED TO TAPE.

HE DID NOT HAVE A DISJOINTED, HE WAS SPECIFIC ABOUT THE WOMAN WALKING TO THE KNIFE. HOLDING A KNIFE TO HIS HEAD AND SHE TURNED HER NECK. HE, HE TALKED IN DETAIL ABOUT WHAT HAPPENED AND HOW IT HAPPENED AND NEVER ONCE DID HE

BLACKOUT.

THE ONLY TIME HE WAS HALTING IS WHEN HIS STORY DIDN'T MAKE SENSE AND HE TRIED TO CONVEY, HE FIGURED WELL, UH, UH, THAT KIND OF THING.

THAT WAS ALL THE BLACKOUT.

>> HE IS NOT UNDER THE EFFECTS OF ALCOHOL WHEN HE GIVES HIS CONFESSION.

IT IS A DAY OR TWO LATER. AND HE IS INTERROGATED FOR HOURS AND HOURS AND HOURS BEFORE THAT TAPE.

THEY HAVE ALREADY FILLED IN THE, THE POLICE ALREADY FILLED IN THE PIECES.

HE HAS RANDOM MEMORIES.

HE HAS SOME MEMORIES OF THE FACTS OF THE CRIME.

BUT HE SAYS AT THE END, I DON'T UNDERSTAND WHY THIS HAPPENED AND I DON'T REALLY, YOU KNOW, IT IS NOT REALLY CLEAR TO ME BUT BY THE TIME HE IS PUT ON THAT TAPE THEY HAVE GIVEN HIM INFORMATION AND HELPED HIM PUT IT ALL TOGETHER.

BUT THAT TESTIMONY IS REQUESTS TENT WITH THE EFFECTS OF AN ALCOHOLIC BLACKOUT AND A VERY HIGH BLOOD-ALCOHOL LEVEL.

>> HE HAD THREE BAGS OF THINGS THAT HE CLEANED UP FROM THE TRAILER, THE MURDER SCENE AND HE WAS DOING THIS WHILE HE WAS BLACKED OUT?

>> YES.

>> OKAY.

>> THAT'S WHY IT IS SO IMPORTANT.

BECAUSE IF YOU'RE NOT, IF YOU NEVER EXPERIENCED A BLACKOUT YOURSELF, OR IF YOU'RE NOT SOMEONE WHO STUDY IT IS THE EFFECTS OF ALCOHOL ON THE BRAIN THAT DOESN'T SEEM, THAT'S NOT PUTTING CONTEXT.

AND IT GOES TO HIS CREDIBILITY. IN FACT, THAT IS WHAT THE STATE

OF FLORIDA ARGUED ON DIRECT APPEAL IS, OH, I'M SORRY, I'M GETTING DISJOINTED BUT THAT TESTIMONY WAS VERY IMPORTANT BECAUSE IT PRESUMED, WE HAVE IT PRESUME A REASONABLE JUROR. STRICTLY THE STANDARD SAYS WE PRESUME A REASONABLE JUROR AND A REASONABLE JUROR IS GOING TO FOLLOW THE LAW AND A REASONABLE JUROR WILL LISTEN TO WHAT AN EXPERT HAS TO SAY.

DR. BUFFINGTON WAS COMPLETELY UNREBUTTED.

THE STATE OF FLORIDA HASN'T PRESENTED OR GIVE THIS COURT OR THE POST-CONVICTION COURT ANYTHING TO SUGGEST THAT WHAT DR. BUFFINGTON SAID WASN'T TRUE AND SCIENTIFICALLY ACCURATE. THEY HAD THAT OPPORTUNITY BUT THEY DIDN'T DO IT.

SO THERE IS NOTHING IN THIS RECORD TO SAY THAT THIS WASN'T THE CASE.

NOW UNLESS THERE ARE OTHER QUESTIONS ON THAT I WOULD LIKE TO MOVE ON BECAUSE THERE ARE SO MANY AREAS OF COMPELLING MITIGATION I DON'T WANT TO MISS ALL OF THEM.

NOW, ADDITIONALLY, DR. DEE DIDN'T PUT, HE DID TALK ABOUT THE FACT THAT THERE WAS NEGLECT AND ABUSE BUT HE DIDN'T PUT IT IN CONTEXT AND HE DIDN'T EXPLAIN WHY A REASONABLE JUROR SHOULD CARE.

IF YOU DON'T PUT THAT KIND OF TESTIMONY IN CONTEXT YOU MAY FIND YOURSELF WITH A JUROR WHO IS UNINFORMED ABOUT THE EIGHTH AMENDMENT AS IT APPLIES TO CAPITAL SENTENCING AND JUST SAY, HE WAS AN ABUSED CHILD. WHY DO WE CARE?

THAT IS JUST AN EXCUSE. THERE ARE PLENTY OF ABUSED KIDS OUT THERE WHO DON'T KILL ANYBODY, SO WHY DO WE CARE?

IN FACT THAT'S WHAT THE PROSECUTOR ARGUED AT CHILD. NOW OF COURSE FOR THOSE OF US WHO ARE FAMILIAR WITH THE EIGHTH AMENDMENT WE KNOW THAT IS SOMETHING WE ARE SUPPOSED TO CARE ABOUT BUT, DR. CUNNINGHAM WAS ABLE TO EXPLAIN THAT NOT ONLY WAS THERE SIGNIFICANT ABUSE, BUT THE NEGLECT STARTED FROM AN EARLY AGE.

IF YOU LOOK AT THE TRIAL TESTIMONY, IT IS REALLY NOT CLEAR WHERE TOMMY WOODEL EVEN LIVED.

HE DOESN'T HAVE A VERY CLEAR MEMORY.

HE WAS A YOUNG CHILD.

WHERE DID HE GO, ALL OF THESE THINGS?

YOU CAN'T EVEN TELL WHAT AGE THEY WERE WHEN THEY WERE SENT TO THE CHILDREN'S HOME AND, YOU GET THIS FALSE IMPRESSION THAT THEY WERE BEING TAKEN CARE OF BY THEIR GRANDMOTHER ELLA TURNS OUT TO BE THE GREAT-GRANDMOTHER BECAUSE, BECAUSE THE REAL GRANDMOTHER ABANDONED TOMMY'S FATHER.

DR. CUNNINGHAM EXPLAINED WHEN YOU ARE AN INFANT, THE MOST IMPORTANT YEARS OF YOUR LIFE ARE REALLY AGE BIRTH TO THREE. IF YOU DON'T HAVE A CONTINUING RELATIONSHIP WITH SOMEONE WHO CARES FOR YOU, YOU, A LOT OF CHILDREN WILL DEVELOP WHAT IS CALLED PRIMARY ATTACHMENT DISORDER.

IT IS INABILITY TO CONNECT WITH OTHER PEOPLE, AND IT CREATES LIFELONG PROBLEMS.

AND IN FACT, PRIMARY ATTACHMENT DISORDER THROUGH A DEPARTMENT OF JUSTICE STUDIES HAS BEEN SHOWN TO HAVE A SIGNIFICANT NEXUS FOR THE RISK OF CRIMINAL VIOLENCE.

AND SO WE KNOW NOW, FROM  
POST-CONVICTION THAT FROM THE  
TIME HE WAS BORN, HIS MOTHER  
WAS SHIPPING HIM OFF.

HIS FATHER WAS SHIPPING HIM OFF  
TO A GIRLFRIEND.

THE MOTHER WAS WRITING LETTERS  
TO THE AUNT SAYING, WHICH ONE  
OF MY KIDS DO YOU WANT TO TAKE?  
I'VE GOT TOMMY, I'VE GOT BOBBY,  
WHICH ONE DO YOU WANT TO TAKE?

WE KNOW THAT CONTINUED  
THROUGHOUT MR. WOODDELÍ'S LIFE.  
THAT'S TOXIN FOR EMOTIONAL AND  
PSYCHOLOGICAL DEVELOPMENT AND  
THAT WAS NEVER EXPLAINED TO THE  
JURY.

THEY NEVER HEARD WHY WE SHOULD  
EVEN CARE ABOUT THAT.

AND SO WE ALSO KNOW THAT THE  
TRIAL JUDGE ACTUALLY GAVE  
LESSER WEIGHT TO THE ABUSE  
BECAUSE THE TRIAL JUDGE WAS  
UNDER THE MISTAKEN IMPRESSION  
THAT TOMMY'S LIFE GOT A LITTLE  
BIT BETTER AS HE GOT OLDER AND  
GOT AWAY FROM HIS FATHER BUT IN  
FACT WE NOW KNOW AT AGE 15  
TOMMY WENT TO LIVE WITH HIS  
FATHER AND HIS FATHER STOLE HIS  
GIRLFRIEND

AND ENDED UP MARRYING HIS  
GIRLFRIEND AFTER HE HAD  
IMPREGNATED HER.

SO WE KNOW, AND WE KNOW THAT,  
THAT WAS NEVER PRESENTED.

AND I'M NOT EVEN GETTING REALLY  
TO THAT YET.

I WANT TO GO TO THE THIRD AREA  
ABOUT THE CODA TESTIMONY.

THERE WAS TESTIMONY ABOUT BEING  
A CODA AND WHAT THAT MIGHT MEAN  
BUT IT WAS DONE IN A DISJOINTED  
WAY.

I THINK IT IS REALLY IMPORTANT  
TO KEEP IN MIND THAT THE  
TESTIMONY THAT WAS GIVEN FROM  
TONI MALONEY THAT WAS CREDITED  
BY THE POST-CONVICTION JUDGE  
WHO SAW ALL OF THESE PEOPLE,

WHO GOT TO WATCH AND LISTEN TO THE DEAF WITNESSES AS THEY TESTIFY, SOME OF WHOM MAKE GUTTURAL NOISES WHEN THEY TESTIFY, HE GOT TO SEE ALL OF THAT AND HE CREDITED TONI MALONEY'S TESTIMONY THAT DR. DEE DID NOT KNOW THAT BOTH PARENTS WERE DEAF AND THAT HE, THAT DR. DEE AND TONI MALONEY REALIZED THIS WAS A VERY SIGNIFICANT PIECE OF MITIGATION AND THAT DR. DEE FELT THEY NEEDED AN EXPERT ON CODA AND THAT AND MALONEY TRIED TO FIND AN EXPERT BUT BECAUSE SHE WAS RETAINED THREE DAYS AFTER JURY SELECTION WAS STARTED THERE WASN'T TIME TO FIND AN EXPERT.  
>> COUNSEL SAYS WAS THAT, DR. DEE REEXAMINED THE DEFENDANT BETWEEN 1998 AND 2004.

SO IF WE WERE TO GO AND TAKE DR. DEE'S TESTIMONY IN 1998 AND THEN GO TO 2004 ARE THERE SIGNIFICANT DIFFERENCES IN HIS TESTIMONY?

>> I DON'T THINK SO, NO.  
>> WELL, WE WOULD HAVE TO LOOK AT THAT BUT --  
>> YOU WOULD HAVE TO LOOK BUT I DON'T THINK THERE IS ANYTHING SIGNIFICANT.

WE KNOW THAT DR. DEE LOOKED AT THE BOOK, MOTHER, FATHER, DEAF. MOTHER, FATHER, DEAF WHICH IS AN ANTHROPOLOGICAL STUDY.

HE TALKED ABOUT THOSE I BELIEVE AT BOTH TRIALS AND --

>> THAT WAS JUST GIVEN TO HIM BY --

>> TONI MALONEY.

>> IN THE FIRST TRIAL.

>> HE DIDN'T DO ANY FURTHER RESEARCH WE KNOW OF?

>> NO.

THERE IS NO INDICATION THAT WE KNOW OF FROM HIS TESTIMONY THAT

HE DID ANY FURTHER RESEARCH.

>> THERE IS A FIRST A SYNDROME AND A LOT OF TESTIMONY ABOUT IT BUT AS FAR AS MITIGATION, DOES IT, DOES IT GO TO STATUTORY MITIGATION AND IF SO, HOW OR NONSTATUTORY?

IN OTHER WORDS, IT'S A PHENOMENON THAT MAY BE IMPORTANT BUT WHAT WOULD THE JURY TAKE FROM THIS THAT THEY DIDN'T UNDERSTAND?

>> WELL, I THINK IT IS IMPORTANT BOTH, I THINK IT COULD GO TO THE EMOTIONAL DISTRESS MITIGATOR AND IT ALSO GOES TO NON-STATUTORY MITIGATION AND --

>> DID ANY OF YOUR EXPERTS, RELATED TO ANY ASPECT OF THE CRIME?

>> I DON'T KNOW THAT IT WAS SPECIFICALLY, IT WAS RELATED TO THE CRIME, YES, IN A COUPLE OF WAYS.

FIRST, ONE OF THE THINGS THAT IS INTERESTING ABOUT BEING A CODA, THERE IS SO MUCH I REALLY DO WANT TO TALK ABOUT THAT, IS THAT DEAF PEOPLE FREQUENTLY GO INTO EACH OTHER'S HOMES WITHOUT KNOCKING BECAUSE THEY CAN'T HEAR.

AND SO IF YOU'RE LIVING IN THE DEAF CULTURE.

DEAF PEOPLE TEND TO LIVE TOGETHER IN GROUPS, IN COMMUNITIES WHERE THERE IS A DEAF SCHOOL, BECAUSE A DEAF SCHOOL --

>> SOMEONE EXPLAIN IT THAT'S WHY HE WENT TO THE TRAILER?

>> THERE WAS TESTIMONY FROM DR. MARCUS THAT DEAF PEOPLE GO ROUTINELY GO INTO HOMES WITHOUT KNOCKING AND THE TESTIMONY FROM TOMMY WOODEL FROM THE BEGINNING WAS THAT HE WALKED INTO THE HOUSE TO SEE WHAT TIME IT WAS. WHICH SOUNDS LIKE A REALLY, YOU



KNOW, YOU DON'T WALK INTO PEOPLE'S HOUSES AND SEE WHAT TIME IT WAS BUT IF YOU TAKE IT IN THE CONTEXT, AS DR. MARCUS EXPLAINED YOU HAVE TO LOOK AT BOTH TOMMY, BOTH AS A HEARING PERSON AND ALSO AS A HEARING PERSON, AS A DEAF PERSON IN A HEARING PERSON'S BODY.

>> YOU'RE IN YOUR REBUTTAL. YOU HAVE TWO MORE AREAS THAT YOU SAID YOU ARE NOT DEVELOPED. JUST IF YOU COULD RESTATE THAT.

>> PROBABLY MOST SIGNIFICANTLY IS THE FALSE PICTURE OF ALBERT. IN THE ATTORNEY GENERAL'S BRIEF IT'S MENTIONED THAT THERE WAS TESTIMONY ABOUT THAT ALBERT BROUGHT PEOPLE, HELPED SMUGGLE PEOPLE INTO THE UNITED STATES. THAT PARTICULAR PART OF THE RECORD IS ABOUT A TWO-SENTENCE STATEMENT WHERE HE SAYS, YEAH, THERE WAS THIS CONFUSION AND THERE WERE PEOPLE IN AND OUT OF OUR HOUSE AND SOMEBODY SAID, MY DAD WAS BRINGING PEOPLE IN. THE CONTEXT OF THAT WAYNE REALLY PUT OUT, IT WAS NOT EXPLAINED BECAUSE WHAT ALBERT WAS DOING WAS SMUGGLING DEAF PEOPLE, MEXICAN DEAF PEOPLE INTO THE COUNTRY.

ONE OF WHOM WAS THE PERSON WHO RAPED TOMMY'S BROTHER AND TOMMY'S SISTER AND POSSIBLY EVEN --

>> THEY WOULD HAVE BEEN UNABLE TO IMPEACH ARTHUR WHITE.

ARTHUR WHITE TESTIFIED HE DIDN'T HAVE A DEAL.

BUT WHAT WE KNOW ABOUT ARTHUR WHITE IS THIS IS A REPEAT VIOLENT OFFENDER.

HE HAS ONLY BEEN OUT OF PRISON FOR A COUPLE OF MONTHS AT A TIME, SINCE ABOUT THE AGE OF 17.

HE WAS THE KEY WITNESS IN TALKING ABOUT THE FONDLING.

THERE WAS NO OTHER REASON TO PUT ARTHUR WHITE ON BECAUSE TOMMY WAS VERY CANDID AND ADMITTED TO THE CRIME, SHOWED GREAT REMORSE FOR THE TIME. SO THE ONLY THING THAT ARTHUR WHITE HAD TO PRESENT WAS THIS FONDLING WHICH THE TRIAL LAWYERS ADMITTED CREATED THE YUCK FACTOR.

THIS COURT IN FACT ON DIRECT APPEAL, DIRECT APPEAL ATTORNEY SUGGESTED THAT IT WAS AN UNOBJECTED TO COMMENT, THERE WAS IT WAS UNDER FUNDAMENTAL ERROR AND THAT REGARDLESS IT WAS SO EGREGIOUS TO NOT OBJECT THAT IT WAS INEFFECTIVE ASSISTANCE OF COUNSEL IN THE FACE OF THE APPELLATE RECORD. ARTHUR WHITE, WE KNOW THAT THE LAWYERS DID NOT, YOU KNOW, CROSS EXAMINE HIM ON THE WRONG NUMBER OF CONVICTIONS.

HAD THEY DONE SO, THEY WOULD HAVE BEEN ABLE TO BRING IN ALL THIS INFORMATION.

WE KNOW THAT HE GOT SWEETHEART DEALS.

AND WE ALSO KNOW THAT HE FALSELY STATED THAT IT WAS A DISADVANTAGE FOR HIM TO COME AND TESTIFY BECAUSE HE WAS LOSING GAME TIME IN PRISON WHEN IN FACT HIS PRISON RECORDS SHOW THAT HE WAS IN SO MUCH TROUBLE IN PRISON THAT HE WAS CONSTANTLY IN SOLITARY CONFINEMENT, WHICH IS ALSO INTERESTING BECAUSE WE KNOW THAT TOMMY WOODEL IS A MODEL PRISONER.

SO I BELIEVE I SUGGEST TO THE COURT THAT THE LOWER COURT'S RULING ON THE BRADY GIGLIO VIOLATION WAS IN ERROR AND THE COURT SHOULD AFFIRM THE GRANT OF THE PENALTY PHASE RELIEF BECAUSE THERE WAS A COMPLETE BREAKDOWN OF THE

SYSTEM IN THIS CASE, BUT ALSO  
SHOULD REVERSE THE LOWER  
COURT'S RULING ON THE BRADY  
VIOLATION.  
IF THERE'S NOTHING ELSE, I  
CONCLUDE.  
THANK YOU VERY MUCH.  
>> THANK YOU FOR YOUR  
ARGUMENTS.