

>> ALL RISE.  
THE FLORIDA SUPREME COURT IS  
NOW IN SESSION.  
PLEASE BE SEATED.  
>> NEXT CASE OF THE DAY IS  
FLETCHER V. STATE OF FLORIDA.  
YOU MAY PROCEED.  
>> THANK YOU, YOUR HONOR, MAY  
IT PLEASE THE COURT.  
I REPRESENT MR. †FLETCHER ON  
THIS CAPITAL APPEAL FROM THE  
7TH DISTRICT CIRCUIT.  
MR. †FLETCHER CONVICTED OF  
FIRST-DEGREE MURDER†--  
>> †COULD YOU SPEAK UP A  
LITTLE?  
>> SORRY, CAME OFF A COLD.  
SORRY.  
CONVICTED OF FIRST-DEGREE  
MURDER AND SENTENCED TO DEATH  
FOLLOWING JURY VOTE OF 8-4.  
WE RAISED SEVERAL ISSUES ON  
APPEAL.  
I'D LIKE TO ADDRESS AT LEAST  
TWO, WHICH I THINK MERIT  
REVERSAL IN THIS CASE.  
THE FIRST ISSUE IS, ACTUALLY  
ISSUE NUMBER ONE IN OUR  
BRIEF, AND THAT IS THE  
INFORMATION THAT WAS -- CAME  
OUT DURING THE COURSE OF THE  
TRIAL AS TO THE NATURE AND  
THE SENTENCE THAT  
MR. †FLETCHER WAS SERVING WHEN  
HE ESCAPED FROM THE PUTNAM  
COUNTY JAIL AND EVENTUALLY  
RESULTED IN THE DEATH OF MS.  
GOOGE, THE VICTIM IN THIS  
CASE.  
DEFENSE COUNSEL HAD BELOW  
ATTEMPTED AT EVERY STAGE OF  
THE PROCEEDINGS TO KEEP THIS  
INFORMATION OUT.  
>> WELL, THEY HAD MOTION IN  
LIMINE WHICH GRANTED THIS.  
>> CORRECT.  
>> THE FIRST THING HE TRIED  
TO DO WAS THE MOTION TO SEVER  
THE ESCAPE AND THE CIRCUIT  
COURT ENTERED AN ORDER SAYING

THERE IS NOT PREJUDICE HERE  
BECAUSE THE NATURE OF THE  
OFFENSE WHICH HE WAS SERVING  
IS NOT GOING TO COME OUT.

>> AS THE QUESTION WAS  
PROPOUNDED AS I READ THE  
TRANSCRIPT, THE DEFENSE  
COUNSEL WAS ALERT AND  
OBJECTED BEFORE THE ANSWER  
WAS GIVEN, DIDN'T HE?

>> YES.

>> AND THE ANSWER WAS NEVER  
GIVEN INITIALLY.

>> CORRECT, THERE WERE THREE  
INSTANCES, IT WAS INCREMENTAL  
TYPE OF PREJUDICE IN THIS  
CASE.

THE FIRST IS WHEN THE FIRST  
WITNESS TESTIFIED THAT  
MR. †FLETCHER WAS KEPT IN THE  
FELONY POD OF THE JAIL.  
ALREADY JURORS KNEW HE WAS A  
FELON.

SECONDLY, WHEN THE OTHER  
OFFICER TESTIFIED HE HAD BEEN  
SENTENCED, JURORS NOW KNEW HE  
WAS A SENTENCED FELON.

AND THE LAST THING IS WHEN  
THE STATEMENT CAME IN THAT  
WAS UNREDACTED BY THE STATE  
WHICH SAYS HE'S SERVING TEN  
YEARS, THE JURY KNOWS HE WAS  
A CONVICTED FELON SERVING TEN  
YEARS.

>> ON THE REDACTION, THAT'S A  
SEPARATE ISSUE AND THE  
DEFENSE WAS GIVEN OPPORTUNITY  
TO REDACT.

>> THAT'S CORRECT.

IN FACT, AND THE DEFENSE  
LAWYER SPECIFICALLY TOLD THE  
COURT AND THE PROSECUTOR AS  
WELL THAT THEY HAD  
INADVERTENTLY FORGOTTEN TO  
REDACT THAT PORTION.

BUT, NONETHELESS, EVEN THE  
CIRCUIT COURT INDICATED, YOU  
KNOW, IT WAS YOUR OBLIGATION,  
TURNING TO THE PROSECUTOR.

>> IF WE CAN KEEP THE LEGAL

ISSUES IN PERSPECTIVE HERE.  
MY CONCERN WITH THE FIRST ONE  
IS THAT THE TRIAL COURT DID,  
DID SUSTAIN THE OBJECTION,  
AND ASK IF THE DEFENSE WANTED  
A CURATIVE OF ANY KIND.  
DEFENSE SAID NO, AND THE  
DEFENSE MOVED FOR A MISTRIAL?  
>> CORRECT.  
>> AND THE TRIAL COURT  
REFUSED AT MISTRIAL.  
WHAT IS OUR STANDARD?  
>> WELL, WHETHER OR NOT THIS  
TRIAL SHOULD HAVE BEEN  
GRANTED†--  
>>†ON WHAT, THOUGH?  
AFTER GOING THROUGH THIS,  
ISN'T IT ABUSE OF DISCRETION  
AT THAT POINT, THAT WE'RE  
LOOKING TO, AS OUR STANDARD?  
>> CORRECT, AND I THINK WHAT  
-- THE REASON I TRIED GIVE  
THE COURT A LITTLE PROCEDURAL  
HISTORY WHAT WAS GOING ON  
HERE IS BECAUSE THIS COULD  
ALL HAVE BEEN AVOIDED IF THE  
COURT AND THE PROSECUTION HAD  
BASICALLY FOLLOWED THROUGH ON  
WHAT WAS AGREED TO BEFORE  
TRIAL, THAT THERE WAS A  
STIPULATION ENTERED.  
HE WAS IN LAWFUL CUSTODY,  
PERIOD, THAT'S ALL WE'RE  
GOING TO GET INTO.  
EVERYONE RELIED ON THAT.  
THE STIPULATION WAS READ TO  
THE JURY.  
AND THE FIRST WITNESS OUT OF  
BOX STARTED SAYING HE WAS A  
FELON AND I THINK IT'S  
IMPORTANT ALSO TO NOTE, THIS  
IS A VERY COMPRESSED TRIAL.  
THE TESTIMONY IN THIS CASE  
WAS THREE DAYS.  
IT STARTED ON WEDNESDAY AND  
ENDED ON FRIDAY.  
THIS WAS NOT A SITUATION  
WHERE THE JURY WAS LEARNED OF  
SOMETHING ON THE FIRST DAY  
AND ENDED UP WITH A VERDICT

21 DAYS LATER.

IT WAS NOT A QUESTION WHETHER YOU COULD UNRING THE BELL SO EASILY.

I THINK THAT IS VERY IMPORTANT BECAUSE AT ONE POINT I BELIEVE THE STATE ARGUED IN BRIEF, WELL, YOU HAD ALL THESE WITNESSES THAT FOLLOWED THE PRESENTATION OF THESE OFFICERS.

MOST OF THEM WERE CRIME SCENE OFFICERS IN ANY EVENT AND DIDN'T REALLY ADD MUCH TO THE CASE, AND WE'RE TALKING ABOUT A VERY COMPRESSED TIME PERIOD.

>> SPEAKING OF THAT, I GUESS, ON THE ERRORS IN POINT ONE, AND IT ALWAYS IS TROUBLING WHEN SOMEONE GOES TO THE TROUBLE OF FILING A MOTION IN LIMINE, THE JUDGE GRANTS IT. THE -- HERE, WHAT DID THE JURY KNOW WITHOUT REGARD TO THE MOTION IN LIMINE CONCERNING THIS DEFENDANT? HE ESCAPED, CORRECT?

>> THAT HE ESCAPED FROM THE JAIL, CORRECT?

>> HE'S ESCAPED.

THEY'RE EITHER THINKING HE WAS BEING HELD PENDING A TRIAL OR ALREADY BEEN CONVICTED, RIGHT?

>> OR BEING HELD FOR A DRIVING OR LICENSE SUSPENDED. WHEN THEY FIND OUT TEN YEARS.

>> THINK ABOUT IT.

I'M SURE YOU HAVE.

IF HE'S IN THERE FOR DRIVING WITH A SUSPENDED LICENSE AND DECIDES HE'S GOING TO COME UP WITH THIS ELABORATE PLAN TO ESCAPE THROUGH A TOILET AND DO EVERYTHING, I MEAN I GUESS I'M JUST THINKING OF THE HARM -- WHETHER IT IS HARMFUL ERROR IN THIS CASE.

COULD YOU ADDRESS THAT.

IT'S CERTAINLY ERROR, BUT THE QUESTION REALLY IS DOES IT VITIATE THE TRIAL?

>> THE CIRCUIT COURT ANSWERED THAT QUESTION, IT DOESN'T TAKE A ROCKET SCIENTIST TO KNOW HE MUST HAVE DONE SOMETHING PRETTY BAD FOR SERVING TEN YEARS.

SHE PULLED THE TRANSCRIPTS AND SAID NO MORE TRANSCRIPTS.

>> THAT WAS THE SECOND PART WHERE THE TRANSCRIPT -- EXPLAIN THAT, WAS THAT READ TO THE JURY?

>>†THE VIDEO WAS SHOWN AND TRANSCRIPTS WERE HANDED TO THE JURORS.

>> AND IT CAME UP TO THE TEN YEARS, DID SOMEBODY GO WHOOPS.

>> THE DEFENSE OBJECTED AND AT THAT POINT THE COURT RECESSED AND THE JURORS WERE OUT OF THE ROOM AND SHE COLLECTED ALL THE TRANSCRIPTS, THE DEFENSE MOVED FOR A MISTRIAL.

SHE SAID I WANT TO TAKE IT UNDER ADVISEMENT AND IT ENDED UP BEING ARGUED AT THE MOTION FOR NEW TRIAL EVENTUALLY, WHERE SHE SAID, LOOK, I'M NOT GOING GRANT A NEW TRIAL.

THIS WAS SIMPLY A VERY SHORT BLIP IN THE PROCEEDINGS.

WHICH IS THE REASON I TRIED TO MENTION THE THREE DAYS OF TESTIMONY.

>> ARE YOU SAYING IT AFFECTED THE GUILT?

>> ABSOLUTELY.

>> I GUESS I CAN'T, MAYBE I'M --†WASN'T THE EVIDENCE AND I KNOW HARMLESS ERROR HAS TO DO WITH THE EFFECT OF TRIER OF FACT.

>> CORRECT.

>> BUT THINKING OF THE ELABORATE ATTEMPTS TO ESCAPE

AND THEN THE FACTS OF THIS  
CRIME, DO I CARE AS A JUROR  
WHETHER THIS GUY IS IN FOR  
TEN YEARS?

FIVE YEARS?

>> I THOUGHT ABOUT THAT YOUR  
HONOR, AND CAN HAVE A VERY  
EASY ANSWER FOR YOU.

THAT IS THE DEFENDANT'S  
STATEMENT BASICALLY SAID  
BROWN IS THE ONE THAT  
COMMITTED THIS CRIME.

I WENT WITH HIM, I WENT INTO  
MY STEP-GRANDMOTHER'S HOUSE,  
IT WAS DONNY BROWN.

NOW THE JUROR HAVE TO ASSESS  
CREDIBILITY BY SAYING HE'S A  
CONVICTED FELON SERVING TEN  
YEARS.

MUCH TO THE CREDIBILITY WHEN  
THEY GIVE THIS MAN WHO SAYS  
DONNY BROWN DID IT TOTALLY  
UNDERMINED THE DEFENSE  
THEORY.

>> WHOSE DNA IS UNDER THE  
STEP-GRANDMOTHER'S  
FINGERNAILS?

IN OTHER WORDS, ISN'T THERE A  
LOT OF EVIDENCE OTHER THAN  
THEY DON'T BELIEVE THAT --  
THEY BELIEVE IT'S HIM THAT  
SHOWS THAT HE WAS THE  
MURDERER?

>> PART OF THE PROBLEM IS  
DEFENSE COUNSEL DIDN'T ASK  
FOR INDEPENDENT ACT  
INSTRUCTION, WHICH IS IF  
THAT'S THE THEORY OF YOUR  
DEFENSE.

BUT MY POINT TO YOUR HONOR  
IS, IF THEY'RE GOING TO  
ASSESS HIS STATEMENT, BECAUSE  
THE DEFENSE LAWYER TOOK THE  
STATEMENT AND RAN WITH IT AND  
SAID THIS IS OUR DEFENSE.  
DONNY BROWN COMMITTED THIS  
CRIME.

WHEN THE JURY IS ASSESSING  
THE CREDIBILITY OF  
MR. †FLETCHER WHO DID NOT

TESTIFY BUT STATEMENT IS  
BROUGHT BEFORE THEM, THEY ARE  
NOW TOLD HE IS A CONVICTED  
FELON.

AND, IN FACT, THE PROSECUTOR  
ARGUED THAT SUCH INFORMATION  
IS RELEVANT TO ASSESS THE  
CREDIBILITY OF THE DEFENDANT.  
SO THAT -- I GUESS WHAT I'M  
TRYING TO SAY--

>>†THEY LOST ON THAT, YOU'RE  
NOT MAKING AN ARGUMENT THAT  
THE PROSECUTION LET THIS SLIP  
IN, IN VIOLATION OF THE  
COURT'S MOTION IN LIMINE?

>>†THE ONLY THING I CAN TELL  
YOU IS ALL THE INFORMATION  
CAME OUT DURING DIRECT  
EXAMINATION NOT  
CROSS-EXAMINATION, SO IT IS  
ELICITED BY THE STATE.

WHETHER IT CAME IN OR NOT?

>> IT WAS IN THE CONTEXT OF  
ANSWERING A QUESTION, NOT A  
QUESTION PROPOUNDED NOT  
INTENDED TO ELICIT--

>>†THAT'S CORRECT.

CLEARLY THE WITNESSES WERE  
NOT INSTRUCTED, DON'T MENTION  
THIS.

THERE IS A STIPULATION AND  
EVERYONE AGREED TO THIS AND  
THERE'S A COURT ORDER TO THE  
FILE THAT SAYS YOU CAN'T DO  
IT AND THE OFFICERS WENT  
AHEAD AND DID SO.

I LEAVE THE JUDGMENT FOR  
ANOTHER DAY, I'M TRYING TO  
EXPLAIN WHY IT WAS  
PREJUDICIAL TO MR.†FLETCHER.  
OUR ARGUMENT IS IT IS  
PRESUMPTIVELY HARMFUL WHEN  
YOU INTRODUCE EVIDENCE OF  
ANOTHER CRIME, AND THAT'S  
EXACTLY WHAT HAPPENED IN THIS  
CASE, AS THE CIRCUIT COURT  
SAID IT DOESN'T TAKE A ROCKET  
SCIENTIST FOR JURORS TO SAY  
THIS IS A PRETTY BAD FELLOW.  
IN THE PENALTY PHASE THE

ACTION CAME IN THROUGH ONE OF THE STATE'S WITNESSES. OUR ARGUMENT IN THIS PARTICULAR MATTER IS MR. FLETCHER WAS UNFAIRLY PREJUDICED DURING THE GUILT PHASE, DEFENSE COUNSEL TOOK EVERY STEP AVAILABLE TO KEEP THE INFORMATION OUT, AND WE WOULD ASK THAT THE COURT REVERSE ON THAT ISSUE. I WOULD ALSO POINT OUT AS THIS COURT INDICATED RECENTLY, THAT IN CAPITAL CASES, THERE IS, AND THIS IS THE LANGUAGE OF THIS COURT IN DELHALL, AN EXTRA OBLIGATION TO ENSURE FAIRNESS, AND THAT'S EXACTLY THE STANDARD THAT THIS COURT SHOULD APPLY.

>> ARE YOU SAYING THAT THE HARM IS THAT THE JURY KNEW HE WAS INCARCERATED?

>> NO, THAT CAME IN THROUGH ESCAPE. THOUGH COUNSEL TRIED TO SEVER THAT. HE TRIED THAT. AND THE JUDGE SAID NO, THE NATURE OF THAT OFFENSE IS NOT GOING TO COME IN. THAT'S IN HER ORDER. AND LO AND BEHOLD, THAT WENT BY THE WAYSIDE RIGHT AWAY, BECAUSE ALL THE EVIDENCE CAME IN AS HE WAS A FELON, HE WAS SERVING TEN YEARS AND SENTENCED. THAT MEANS ANOTHER JURY MADE A DETERMINATION OR JUDGE MADE A DETERMINATION HE IS GUILTY AS SIN TO THIS. HE'S NOT EVEN PENDING TRIAL. HE'S A SENTENCED PRISONER SERVING TEN YEARS FOR A FELONY. THAT IS WHAT EVENTUALLY CAME OUT IN THE THREE DAYS OF TESTIMONY, PRIOR TO THE JURY VERDICT AS TO WHETHER HE'S



GUILTY OR NOT GUILTY.  
THE OTHER ISSUE I WOULD LIKE  
TO ADDRESS, WHICH I THINK IS  
-- IN DURING THE PENALTY  
PHASE WHICH I THINK MERITS  
REVERSAL AS TO THE CAPITAL,  
AND THAT IS THE ABSOLUTE  
BREATH-taking TESTIMONY BY  
DR. †PRICHARD DURING THE  
TESTIMONY OF THE PENALTY  
PHASE, WHICH LABELED THE  
DEFENDANT EVERYTHING FROM A  
PSYCHOPATH TO A CRIMINAL  
PERSONALITY.

ALL THIS CAME OUT, EVEN  
THOUGH THE DEFENSE NEVER  
ARGUED AND NEVER PROPOSED  
THAT ANTI-SOCIAL PERSONALITY  
DISORDER WAS MITIGATION, IN  
ANY WAY, SHAPE, OR FORM.  
THEY FILED AN ACTUAL WRITTEN  
NOTICE AS TO THE MITIGATORS  
THEY WERE GOING TO RELY ON,  
NOT ONE INVOLVED ANTI-SOCIAL  
PERSONALITY DISORDER.

DR. †CROP CALLED BY THE  
DEFENSE, MENTIONED IN PASSING  
HE HAD DIAGNOSED HIM AS THAT  
BUT DID NOT GO INTO DETAIL  
WHATSOEVER.

WHAT THE STATE DID ON CROSS  
OF DR. †CROP WAS TO DRIVE A  
MAC TRUCK THROUGH THE  
STATEMENT AND INTRODUCE  
THROUGH CROSS-EXAMINATION OF  
DR. †CROP ALL KINDS OF  
INFORMATION AS TO WHETHER OR  
NOT MR. †FLETCHER WAS A  
PSYCHOPATH, ASKING HIM  
POINT-BLANK, THAT'S LACK  
REMORSE, CORRECT?

ASKING HIM POINT-BLANK, HE'S  
A PSYCHOPATH, CORRECT?  
THESE ARE QUESTIONS BY THE  
PROSECUTOR.

>> THE REMORSE IS AN ELEMENT  
OF THE DIAGNOSIS.  
ONE OF THE ELEMENTS, CORRECT?  
AND SO ARE YOU SAYING THAT,  
ON EXAMINATION, A LAWYER

CANNOT OBTAIN, IN THE PRESENCE OF THE JURY, ONE OF THE ELEMENTS NECESSARY FOR THE DIAGNOSIS THAT THE EXPERT HAS.

>> WHAT I'M SAYING, YOUR HONOR, THIS ISN'T IN THE NATURE OF CROSS-EXAMINATION. THIS WAS NOT A MITIGATOR THAT WAS ADVANCED BY THE DEFENSE.

>> IT WAS PART OF THE DIAGNOSIS, WAS IT NOT? THE FINAL ELEMENT?

>> YES, HE CAME TO THE DIAGNOSIS BUT MADE NO ELABORATION DURING HIS TESTIMONY.

I HAVE INFORMED, IN THE 30 PAGES OF HIS DIRECT EXAMINATION, HE MENTIONED THIS MATTER ON THE COURSE OF OVER THREE PAGES LASTING 20 LINES WITH NO SPECIFICS. ON CROSS-EXAMINATION, WHICH LASTED 28 PAGES, 14 PAGES, HALF OF THE CROSS-EXAMINATION, DEALT WITH ANTI-SOCIAL PERSONALITY DISORDER BY THE PROSECUTION. HALF OF IT.

LEADING TO 345 LINES OF QUESTIONING.

>> I'M MISSING SOMETHING HERE.

THIS IS WHAT IS PLACED IN EVIDENCE BEFORE THE JURY BY AN EXPERT THAT THE DEFENSE PRESENTED, CORRECT?

>> NOT AS MITIGATION, YOUR HONOR.

>> HE PRESENTED THE TESTIMONY AND TELL THEM WHAT IT IS. WHAT IS IT PRESENTED ARE?

>> HE WAS ASKED ALL THE DIAGNOSIS THAT YOU GAVE THEM. POLYSUBSTANCE ABUSE, DEPRESSION, BIPOLAR DISORDER, AND DIAGNOSED HIM WITH THIS, AND MADE NO ELABORATION AS TO THE DIAGNOSIS.

>> THE STATE HAS TO LEAVE IT HANGING OUT THERE AND CAN'T ASK ABOUT THE DIAGNOSIS THAT THE DEFENSE PUTS BEFORE THE JURY?

THAT'S WHAT YOU HAVE TO BE SAYING.

>> MY POINT IS, YOUR HONOR, HE WENT INTO ELABORATION, NOT JUST ON THE CROSS-EXAMINATION OF DR.†CROP BUT THEN BROUGHT IN DR.†PRICHARD.

WHAT IS DR.†PRICHARD REBUTTING?

HE'S NOT REBUTTING ANYTHING, HE'S AGREEING WITH DR.†CROP. THE CIRCUIT COURT JUDGE SAYS YOU'RE NOT REBUTTING ANYTHING, REBUTTING IS TO REBUT, NOT TO MAKE SOMETHING BAD EVEN WORSE.

>> THE PROBLEM I HAVE AND THE DILEMMA ABOUT PEOPLE, DEFENDANTS WHO HAVE A DISORDER THAT HAS BEEN LABELED ANTI-SOCIAL PERSONALITY DISORDER, WHICH ENDS UP BEING HEY, THIS IS A BAD GUY, IT'S NOT JUST A DISORDER, HE'S BEEN A BAD GUY HIS WHOLE LIFE.

THAT IS WHY WHEN WE SEE IN POST-CONVICTION, WE SEE THAT ATTORNEYS SOMETIMES SAY WE'RE NOT GOING TO PUT ON MENTAL HEALTH TESTIMONY BECAUSE WHAT WE DO IS EXPOSE US AND THE DEFENDANT TO THE ARGUMENT THAT THIS IS A BAD GUY, IT GOES THROUGH EVERYTHING IN THE GUY'S LIFE, ALL THE BAD THINGS HE DID.

IT'S NOT INVITED IN THE SAME WAY, BUT FOLLOWING UP, ISN'T IT PART AND PARCEL OF WHAT THE STATE'S ENTITLED TO DO ONCE THE DEFENDANT IS SAYING ANTI-SOCIAL PERSONALITY DISORDER IS A MITIGATOR, AND THEY ARE SAYING, WELL THIS IS

WHAT IT IS, IT'S VOLITIONAL  
AND IT IS -- THESE ARE ALL  
THE THINGS THAT ARE THERE.  
IT'S -- THE DANGER IS, THEY  
MAY SAY, YEAH, THAT THIS IS A  
GUY THAT'S GOING TO KEEP ON  
KILLING IF WE DON'T PUT HIM  
TO DEATH.

DOESN'T THAT GO WITH THE  
DANGER OF WHAT IS INHERENT OR  
INEXTRICABLY INTERTWINED WITH  
THE DIAGNOSIS?

>> RIGHT.

BUT THE KEY TO THIS ARGUMENT  
IS IT WAS NOT ADVANCED AS A  
MITIGATOR.

THAT IS THE POINT.

>> WHY IT WASN'T WHAT?

>> ADVANCED AS A MITIGATOR.

>> I'M MISSING THAT POINT AS  
WELL, BECAUSE THEY GO INTO AN  
EARLY AGE, IT'S PART OF HIS  
CHILDHOOD BACKGROUND.

IT IS THE TYPICAL MITIGATION  
WE SEE.

JUST BECAUSE YOU PUT THAT  
LABEL ON IT, IT IS EXACTLY  
WHAT WE SEE EVERY DAY, THAT  
DEFENDANTS PLACE BEFORE A  
JURY THAT TRY TO EXPLAIN THE  
CONDUCT OF A DEFENDANT.

AND YOU MAY SAY, WELL, THAT'S  
NOT TECHNICAL MITIGATION.

IT'S EXACTLY WHAT IT IS OR  
WHAT IS THE RELEVANCE IN IT.  
SHOULDN'T BE TESTIFYING AT  
ALL.

>> DR.†CROP TESTIFIED ABOUT  
POLYSUBSTANCE ABUSE,  
DEPRESSION AND ALL THE OTHER  
MATTERS WHERE HE DID GO INTO  
MAJOR ELABORATION UNDER  
DIRECT EXAMINATION, TO BE  
FAIR, HE DIAGNOSED HIM WITH  
THE PARTICULAR DISORDER BUT  
DID NOT ELABORATE NOR DID THE  
DEFENSE AT THIS TRIAL, BRING  
ADVANCE NOTICE TO THE STATE,  
IN ARGUMENT TO THE JURY OR  
ARGUMENT TO THE COURT, EVER

STATE THAT THAT WAS A  
MITIGATOR, AND IN FACT, THE  
COURT RECOGNIZED THAT.

THE CIRCUIT COURT.

SHE SAYS, WAIT A SECOND.

THEY NEVER ADVANCED THIS AS  
A MITIGATOR.

DON'T TALK ABOUT FUTURE  
DANGEROUSNESS.

DON'T TALK ABOUT THE  
PSYCHOPATHIC SCALE.

DON'T TALK ABOUT ALL THE OTHER  
THINGS, CALLING HIM AS A  
PSYCHOPATH.

AT ONE POINT DR. PRICHARD  
CALLED HIM THE WORST OF THE  
CRIMINALS, THE WORST OF THE  
CRIMINALS.

>> ISN'T THAT THE DANGER YOU  
FACE WHEN YOU CALL THESE  
PSYCHOLOGICAL EXPERTS?

SEEMS TO ME WHEN YOU PUT THEM ON  
THE STAND AND THEY GO THROUGH  
WHATEVER THESE DIAGNOSES MAY BE  
THAT YOU RUN THE RISK OF BAD  
THINGS COMING OUT AND, JUST AS  
MUCH AS WILL HELP YOU IN  
MITIGATION?

MY POINT TO YOUR HONOR IS.

HAD DEFENSE COUNSEL MADE THE  
ARGUMENT, YOU KNOW, HE SUFFERS  
FROM ALL THESE OTHER THINGS,  
PLUS HE SUFFERS FROM ANTISOCIAL  
PERSONALITY DISORDER AND THAT  
SHOULD BE CONSIDERED BY YOU AS A  
MITIGATOR, ABSOLUTELY.

WE'LL BE IN A TOTALLY DIFFERENT  
POSTURE.

>> I'M AT A LOSS TO UNDERSTAND  
HOW YOU CAN PARSE A WITNESS'S  
TESTIMONY, A PSYCHOLOGICAL  
WITNESS, WHO IS COMING IN, PUT  
ON BY THE DEFENSE, TO EXPLAIN TO  
THE JURY, WHO THIS PERSON IS AND  
THEN WHEN HE DOES THEN YOU  
CAN'T TALK ABOUT IT, YOU CAN'T  
PRODUCE ANY EVIDENCE OR  
CROSS-EXAMINE HIM ABOUT THOSE  
ELEMENTS?

I'M MISSING SOMETHING.

I UNDERSTAND THAT YOU CAN NOT MAKE THE FEATURE OF THE TRIAL, LACK OF REMORSE, BUT THESE WERE DIRECT ELEMENTS FROM DR. KROP WITH REGARD TO WHAT HIS FINDINGS WERE ON THIS, ON THIS PARTICULAR DEFENDANT.

AND IF WE ARE TO SPECULATE AS TO WHAT A JURY MAY THINK ABOUT FUTURE DANGEROUSNESS, ABOUT TESTIMONY, THEN WE CAN'T PUT ON ANY EVIDENCE BECAUSE I THINK, I THINK THE, JUST ABOUT EVERYBODY THAT COMES THROUGH THIS COURT IN THESE KIND OF CASES A JURY COULD COME TO A CONCLUSION, WELL, THESE PEOPLE ARE PRETTY DANGEROUS BECAUSE OF WHAT THEY DID.

SO I DON'T KNOW THAT IS THE CRITERIA, WHAT A JURY MAY THINK ABOUT A DIAGNOSIS ABOUT YOU, DEFENSE PUT THIS ON.

>> THE PROBLEM ALSO, YOUR HONOR, IS, EVEN THE CIRCUIT COURT BELOW RECOGNIZED, THAT ASSUMING FOR A MATTER OF, JUST FOR SAKE OF ARGUMENT, THIS WAS SOMEHOW ADVANCED AS A MITIGATOR, WHAT THE STATE WAS DOING, CONVERTING MITIGATOR INTO AN AGGRAVATOR. THAT IS EXACTLY WHAT THE JUDGE CALLED HIM ON.

YOU CAN NOT CONVERT, ASSUMING IT'S A MITIGATOR, YOU CAN'T CONVERT IT INTO AN AGGRAVATOR. HE WAS MAKING THE ARGUMENT THROUGH HIS CROSS-EXAMINATION THAT THIS MAN, THAT IS AN AGGRAVATING CIRCUMSTANCE, THIS JURY SHOULD CONSIDER.

AND THAT IS ALSO CONTRARY TO THE JURISPRUDENCE OF THIS COURT.

SO WE ASK UNDER THIS PARTICULAR --

>> WAS THAT ARGUED BY THE PROSECUTOR?

>> IT IS INTERESTING, EXCUSE ME, LANGUAGE BUT AT THE OPENING OF THE GUILT PHASE, WHAT

IS THE FIRST THING THE  
PROSECUTOR SAYS?  
SHE IS NOT MY GRANDMA.  
SHE'S A BITCH.  
THAT IS HOW HE STARTED HIS OPENING  
STATEMENT.

IT WAS BEGINNING THAT THE  
STATE'S WHOLE THEORY,  
PROSECUTION IN THIS CASE WAS  
THAT THE DEFENDANT'S LACK OF  
REMORSE.

>> SO AFTER THIS TOOK PLACE, IN  
THE PENALTY PHASE, HOW DID THE  
PROSECUTOR ARGUE THAT EVIDENCE?

>> HE MADE MENTION OF THE  
DEFENDANT'S STATEMENT THAT WAS  
RECORDED WHERE HE CALLS HER,  
IGNORANT, A DUMBASS, A BITCH,  
REFERRING BACK BASICALLY TO THE  
TESTIMONY OF THE EXPERTS WHICH  
SAID THAT WAS IN FACT, LACK OF  
REMORSE.

IF THAT IS NOT AN ARGUMENT, A  
LACK OF REMORSE, I DON'T KNOW  
WHAT IS.

WHAT HAS THAT GOT TO DO WITH THE  
PENALTY PHASE?

UNLESS YOU'RE TRYING TO TELL THE  
JURORS HE HAD TOTAL LACK OF  
REMORSE.

UNLESS YOU'RE, AND THE CIRCUIT  
JUDGE EVEN THOUGH SHE TRIED TO  
REIN IN WHAT I CONSIDER A LOOSE  
CANNON OF CROSS-EXAMINATION AND  
DIRECT EXAMINATION BY THE  
PROSECUTION, ACTUALLY MENTIONED  
THE SEVEN FACTORS, ANTISOCIAL  
PERSONALITY DISORDER IN HER  
SENTENCING ORDER.

SO, SOMETHING THAT CLEARLY  
WAS IN, IN HER THINKING WHEN SHE  
ENTERED THE ORDER.

WE WOULD REQUEST UNDER THESE  
CIRCUMSTANCES, WOULD TURN THE  
HEAD OF ALL THE LAW IN THE STATE  
UPSIDE DOWN, UNDER THIS RECORD  
OF CONVERTING A MITIGATOR TO AN  
AGGRAVATOR OR LACK OF REMORSE OR  
FUTURE DANGEROUSNESS, IF THIS  
COURT WERE TO SAY NO, THIS IS

HARMLESS ERROR, THIS IS SOMETHING THAT IS APPROPRIATE BECAUSE IT WOULD OPEN FLOODGATES TO ALL KINDS OF CROSS-EXAMINATION AND DIRECT EXAMINATION WHICH WOULD VIOLATE THE EXTRA OBLIGATION OF FAIRNESS IN CAPITAL LITIGATION.

THE ONLY OTHER THING I WANT TO ADDRESS, AND I RECOGNIZE THAT WERE THERE NO OBJECTIONS BUT I BELIEVE THAT THE COURT SHOULD LOOK AT THE STATEMENTS, THE ARGUMENTS MADE BY IT PROSECUTOR BELOW WHERE HE, MENTIONED, FOR EXAMPLE, SEND THIS DEFENDANT A MESSAGE.

THAT'S A COMPLETE RIP-OFF OF THE CAMPBELL OBJECTIONS OF SEND THE COMMUNITY A MESSAGE.

YOU CAN'T ARGUE THOSE THINGS. THOSE THINGS CAN NOT BE ARGUED TO A JURY.

THERE IS DISTRICT COURT OPINION THAT CITED, WHICH SPECIFICALLY TALKS ABOUT, SENDING A MESSAGE TO THE DEFENDANT THAT IS INAPPROPRIATE.

AND AS FAR AS THE PENALTY PHASE ARGUMENT, AGAIN, I MENTIONED PREVIOUSLY THE PROSECUTOR SAYS, WHAT IS THE APPROPRIATE SENTENCE FOR SOMEONE WHO THREE DAYS AFTER THE MURDER CALLS HER BITCH, IGNORANT AND DUMBASS?

THAT IS REFERENCE TO LACK OF REMORSE.

THREE DAYS.

NOT HIS STATE OF MIND AT THE TIME.

BUT THE STATE OF MIND THREE DAYS LATER AND HE ALSO ASKED, HE DENIGRATED THE MITIGATOR AND HE COMPARED LIFE CHOICES.

WELL THERE IS A LOT OF PEOPLE THAT ARE DYSFUNCTIONAL.

THEY DON'T COMMIT MURDER.

A LOT OF PEOPLE WHO HAVE ARTISTIC ABILITIES AND THEY DON'T COMMIT A MURDER.



HE WENT THROUGH THIS LITANY OF WHOLE GROUPS OF PEOPLE THAT WOULDN'T COMMIT A MURDER. THAT IS IRRELEVANT TO THESE PROCEEDINGS.

>> DID YOU COMMENT ON THE JUDGE GIVING WHAT APPEARS TO BE LESS WEIGHT, OR SAYING, THIS HAD SOMETHING TO DO WITH THE MURDER, I'M NOT, I'M JUST DISCOUNTING IT.

YOU CERTAINLY HAVE STATUTORY MITIGATION, BUT IF YOU HAVE COMPELLING MITIGATION ANY ASPECT OF THE DEFENDANT'S CHARACTER OR BACKGROUND --

>> YES.

>> -- CAN THE JUDGE SAY I WILL NOT GIVE IT WEIGHT BECAUSE IT DOESN'T RELATE TO THE MURDER?

>> THERE IS NO NEXUS REQUIREMENT.

>> DO YOU THINK, AGAIN, SO DO YOU THINK THAT THAT'S WHAT THE JUDGE DID?

>> I THINK THAT'S WHAT THE JUDGE DID.

I THINK IF, THE STATE CAN ARGUE FOR ITSELF, BUT THE STATE IS ARGUING NO, THAT IS ONLY HER GIVING IT LESS WEIGHT.

BUT THAT'S NOT, OR GIVING HIM NOT AS MUCH WEIGHT AS SHE WOULD NORMALLY BUT WHAT THE JUDGE WAS ACTUALLY DOING, IN MY ESTIMATION, HAVING READ THE SENTENCING ORDER VERY CAREFULLY, SHE WAS TAKING MITIGATORS AND SAYING, WELL, IT WAS NOT RELATED TO THE MURDER SO I WILL NOT GIVE IT THAT MUCH WEIGHT.

IF THE NEXUS REQUIREMENT MEANS ANYTHING, THEN YOU SHOULDN'T REALLY BE GETTING, DELVING INTO THE TYPE OF ANALYSIS BECAUSE THEN IT TOTALLY UNDERMINES ALL MITIGATION.

THE JURY INSTRUCTIONS SPECIFICALLY SAYS, MITIGATION IS

NOT, DOES NOT HAVE TO BE RELATED TO THE --

>> BUT AS A PRACTICAL MATTER IF THE JURY DOESN'T SEE ANY LINK BETWEEN WHAT HAPPENED AND THE BACKGROUND, SAY, THE CLASSIC THING, THE DEFENDANT HAS DIABETES, OKAY.

THAT'S MITIGATING, THEY HAVE DIABETES BUT THERE'S REALLY NOTHING IT IS JUST OUT THERE IN THE AIR.

IT DOES, IT CAN BE GIVEN LITTLE OR NO WEIGHT?

>> I AGREED THAT IF THERE'S A NEXUS TO THE CRIME, FOR EXAMPLE, HE WAS UNDER THE INFLUENCE OF DRUGS AT THE TIME OF THE OFFENSE, THEN PERHAPS YOU CAN GIVE IT, A GREATER WEIGHT. THAT'S, THAT SEEMS TO ME COMMON SENSE BUT THAT IS NOT WHAT SHE WAS SAYING.

SHE WAS NOT TRYING TO GIVE THE MITIGATOR GREATER WEIGHT.

SHE WAS GIVING THE MITIGATOR LESSER WEIGHT.

SO THE ANALYSIS WAS TURNED UPSIDE DOWN AND IN MY PRESENTATION IN THE BRIEF THERE ARE SEVERAL INSTANCES WHERE THE JUDGE DID THAT.

I BASICALLY FEEL THAT WAS ERRONEOUS.

THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT. MY NAME IS MITCH BISHOP ON BEHALF OF THE STATE OF FLORIDA. IF I COULD START BY ADDRESSING THE FIRST ISSUE THAT THE APPELLANT ARGUED.

IN RESPONSE TO A QUESTION THAT JUSTICE PARIENTE HAD ABOUT THE ERROR OR THE HARMLESS ERROR NATURE OF WHAT WAS MENTIONED, IN THIS CONTEXT WITH THE MOTION FOR MISTRIAL THE APPELLANT HAS TO ESTABLISH AND PERSUADE THIS COURT THAT THE MENTIONING OF HIM HAVING BEEN SENTENCED TO 10

YEARS MUST HAVE VITIATED HIS TRIAL.

THAT HIS CONVICTIONS IN THIS CASE COULD NOT HAVE BEEN OBTAINED BUT FOR THE MENTION OF THAT SENTENCE AND --

>> HERE IS WHAT TROUBLES ME THOUGH, AND I AGREE THAT'S, THE MISTRIAL STANDARD IS A VERY HIGH STANDARD BUT THE DEFENSE LAWYER GOES, AND MAYBE IT WOULD HAVE MADE NO DIFFERENCE IF THE JURY HEARD JUST DIRECTLY THE 10 YEARS, MAYBE IT WOULD HAVE BEEN BETTER THERE WERE BURGLARIES, THEY WERE PROPERTY CRIMES. THEY WEREN'T VIOLENT CRIMES. MAYBE THAT WOULD HAVE ALL BEEN FINE BUT THE DEFENSE DIDN'T THINK SO AND THEY MADE A MOTION IN LIMINE AND THE JUDGE GRANTED IT AND WENT TO GREAT LENGTHS AND THE FIRST WITNESS FOR THE STATE SAYING THIS.

THEN WE'VE GOT THE TRANSCRIPT THAT THE STATE PUTTING IN HAVING THE VERY INFORMATION THAT THE STATE WAS SUPPOSED TO EXCLUDE AND THERE SEEMS TO BE SOMEWHAT OF A PATTERN IN THIS CASE, YOU KNOW, ARGUMENTS THAT WEREN'T OBJECTED TO BUT ARGUMENTS THAT WE'VE CONDEMNED SOME TIME AGO. SO HOW DO WE DEAL WITH THAT? IN OTHER WORDS, WE WANT THE INTEGRITY OF THAT TRIAL, THIS IS THE DIRECT APPEAL, TO BE SOUND AND I PROBABLY, I DON'T SEE HOW WE CAN SAY IT IS THE MISTRIAL STANDARD BUT IT SHOULD BE SHOULD BE SOME CONSEQUENCE FOR SOME, YOU KNOW, PROSECUTOR NOT TAKING ALL STEPS NECESSARY TO INSURE THAT THE SUBJECT OF A MOTION IN LIMINE IS NOT BROACHED BY THE, THEIR WITNESSES OR BY WHAT THEY PUT IN EVIDENCE.

>> JUSTICE PARIENTE, THIS WASN'T A SITUATION WHERE WE HAVE THE

PROSECUTOR TRYING TO  
SURREPTITIOUSLY --

>> WE DON'T KNOW THAT REALLY, DO  
WE?

>> WELL AS THE FIRST WITNESS  
TESTIFIED, OFFICER WORD, ONE OF  
THE CUSTODIAL DEPUTIES FOR  
CORRECTIONAL CENTER AND ONE OF THE  
FIRST TO DISCOVER FLETCHER  
MISSING, HE TALKED ABOUT  
FLETCHER BEING HOUSED IN THE B  
POD.

HE SAID THE FELONY POD.  
HE WASN'T ASKED A QUESTION WHAT  
THE B POD WAS.

HE JUST VOLUNTEERED THAT.

>> ON THE STAND, DOESN'T THE  
PROSECUTOR, BUT THE OTHER WAY  
AROUND, STATE OF MIND WITNESS,  
THERE IS A MOTION IN LIMINE,  
WHEN YOU TESTIFY, YOU CAN'T TALK  
ABOUT WHAT HE WAS THERE FOR IN  
ANY RESPECT.

AND YOU KNOW, AGAIN THERE IS NO  
WAY TO REALLY KNOW WHAT WAS SAID  
OR NOT BUT OOPS, IT WAS JUST SLIP  
OF THE TONGUE.

>> WE DON'T KNOW, AND, AS YOU  
READ THROUGH THIS PARTICULAR  
OFFICER'S TESTIMONY IT IS  
POSSIBLE HE JUST MISUNDERSTOOD  
WHATEVER CONVERSATION HE HAD  
WITH THE PROSECUTOR PRIOR TO,  
THE NATURE OF THE OFFENSE HERE,  
THE FACT THERE HAD BEEN A BURGLARY,  
THE THAT IS WHAT THE NATURE WAS,  
JURY NEVER HEARD WHAT HE WAS  
INCARCERATED FOR.

>> IT WOULD ABETTOR, FELONY POD  
AND THEN 10 YEARS, MAYBE YOU  
HEAR IF IT'S A BURGLARY, MAYBE  
THAT WOULD HAVE REDUCED HARM.  
SEEMS LIKE THE HE GOT OF THE  
WORST OF THE VIOLATION IN THE  
MOTION IN LIMINE BY, MIGHT AS  
WELL GOTTEN WHAT THE CRIME WAS.

>> AND BUT TO GO ON FURTHER  
ABOUT WHAT OFFICER WORD SAID,  
ONCE HE SAID THAT, AGAIN  
UNINVITED BY THE STATE, THE

DEFENSE COUNSEL OBJECTED.  
THE COURT SUSTAINED IT AND  
IMMEDIATELY INSTRUCTED THE JURY  
TO DISREGARD IT AND THEN THEY  
MOVED ON.

I ALSO POINT OUT THAT THE  
APPELLANT DIDN'T BRING UP THE  
OFFICER WORD PORTION, THE FACT  
HE WAS HOUSED IN FELONY, HE  
DIDN'T BRING THAT UP IN INITIAL  
BRIEF.

ONLY MENTIONED THAT IN THE REPLY  
BRIEF.

THAT'S WHY I CERTAINLY DIDN'T  
ADDRESS THAT MY ANSWER BRIEF.  
INITIAL ISSUES IN THE ORIGINAL  
BRIEF, OFFICER FAULKNER,  
TRANSPORTING DEPUTY, WHO  
ALMOST SAID, FLETCHER TOLD ME  
GOT SENTENCED TO AND OBJECTION.  
THE TRIAL COURT MOVED AT THAT  
POINT.

SENT JURY OUT OF THE ROOM.  
THEY HAD A DISCUSSION OFF THE  
RECORD AND, AND MOVED ON FROM  
THERE AND HE DIDN'T, HE DIDN'T  
SAY, HE HAD BEEN SENTENCED TO 10  
YEARS OR HE HAD BEEN SENTENCED FOR  
A SOMETHING, .

THAT WAS IMMEDIATELY --  
OFFICER FAULKNER'S TESTIMONY IS  
REALLY A NON-ISSUE.

>> YOU LOOK AT THE PATTERN.  
TWO OFFICERS BOTH MISUNDERSTOOD  
WHAT THE SUBJECT WAS MOTION IN  
LIMINE?

FOLLOWED BY THE TRANSCRIPT THAT  
PUTS IT OUT ALL THERE?

>> AND, WITH REGARD TO THE  
TRANSCRIPT IT WASN'T JUST A  
TRANSCRIPT.

WE HAVE A VIDEO OF THE DEFENDANT  
BEING INTERVIEWED BY LAW  
ENFORCEMENT WITH THE DETECTIVE  
FROM PUTNAM COUNTY SHERIFFS AND  
STATE ATTORNEY'S INVESTIGATOR  
AND TWO, THIS IS TWO HOUR AND 36  
MINUTE, 55 SECOND REDACTED  
INTERVIEW.

THERE IS HOUR'S WORTH OF

REDACTIONS THAT WERE DONE.  
AND TWO HOURS AND SIX MINUTES  
AND 10 SECONDS INTO THAT VIDEO  
IS WHEN HE SAYS, AND THEN I JUST  
GOT SENTENCED TO 10 YEARS AND  
THAT'S A LONG TIME AND I DIDN'T  
WANT -- HE IS TELLING THE  
OFFICERS HIS MOTIVE FOR HAVING  
ESCAPED.

HE IS TELLING THEM, WHY DID YOU  
ESCAPE?

HE IS TELLING THEM EXACTLY WHY  
HE ESCAPED.

AND AT THAT POINT THAT'S WHEN  
THE TRIAL COURT STOPPED, DEFENSE  
COUNSEL OBJECTED.

THEY EXCUSED THE JURY.

THE TRIAL COURT COLLECTED THE  
TRANSCRIPTS.

TRANSCRIPTS ORDERED NOT TO GO  
BACK TO THE JURY ROOM.

>> MAYBE I'M, HERE'S MY CONCERN  
IS THAT, THE JUDGE RECOGNIZED IT  
WAS A VIOLATION OF THE MOTION IN  
LIMINE?

>> IF HER ORDER IN LIMINE AND  
THE DEFENSE REQUESTED THIS BE  
EXCLUDED AND THEN MEMORIALIZED  
THAT IN THE ORDER.

>> AND THE PATTERN HERE APPEARS  
TO BE MAYBE THE STATE DIDN'T  
QUITE HONOR THAT MOTION IN  
LIMINE AND YET THE STANDARD,  
ONCE IT'S THERE, IT IS REALLY,  
HEY, LISTEN, GOT TO VITIATE THE  
WHOLE TRIAL.

YOU KNOW MAYBE IT MAKES IT WORTH  
IT FOR THE STATE TO VIOLATE  
MOTIONS IN LIMINE BECAUSE IT'S  
CAUGHT AND AS EVERY DEFENSE  
LAWYER KNOWS, THE MORE YOU GIVE  
CURATIVE INSTRUCTIONS.

YOU HEARD HIM SAY GOT SENTENCED  
TO 10 YEARS FOR THIS.

DISREGARD IT.

AND --

>> THAT WAS THE ATTORNEY'S  
STRATEGY IN THIS CASE.

HE DIDN'T WANT A CURATIVE  
INSTRUCTION.

>> IT WAS HEARD IN THREE DIFFERENT WAYS. HOW DOES THAT NOT STAY WITH THE JURY? NOW IT MAY, AGAIN, I CAN'T, I'M NOT EVEN SURE THAT I COULD SAY, EVEN IF IT WAS NOT OBJECTED TO, I MEAN IF IT WAS OBJECTED TO AND OVERRULED IN THIS CASE IT WOULD HAVE, BUT YOU KNOW, THAT IT WAS HARMLESS, OR HARMFUL ERROR BUT IT DOES CONCERN ME SO --

>> I GUESS, JUSTICE PARIENTE, THE FACT THAT THIS TAKES US TO A FOOTNOTE I DROPPED IN MY ANSWER BRIEF ABOUT ME HAVING QUOTED INADMISSIBLE WITH THIS EVIDENCE BECAUSE THE STATE CERTAINLY AGREED BELOW, THIS WASN'T A STIPULATION THAT THIS DIDN'T HAPPEN BUT JUST AGREES WE'RE NOT GOING TO PUSH THE ISSUE ON THAT. WE'LL REDACT THAT PORTION. AND AGAIN THE DEFENSE AND, THE DEFENSE HAD TWO DAYS PRIOR TO TRIAL TO REVIEW THIS. THE STATE MADE NUMEROUS, AT LEAST AN HOUR WORTH OF REDACTIONS IN THIS VIDEO AND MISSED AMONGST THE PLETHORA OF THEM THIS ONE. BUT THE FACT THAT HE IS ADMITTING TO THE OFFICERS HIS MOTIVE FOR HAVING ESCAPED, THE STATE WOULD SUBMIT THAT IS NOT NECESSARILY INADMISSIBLE EVIDENCE OF THE THIS TRIAL COURT DID RULE, I'M GOING TO GRANT YOUR REQUEST, DEFENSE COUNSEL, THAT WE'LL EXCLUDE THIS BECAUSE YOU DON'T WANT TO IT IF THE STATE IS NOT GOING TO PUSH THE ISSUE.

IN THIS COURT'S ANALYSIS OF WHETHER THE MISTRIAL WAS NECESSARY, AND WHETHER THIS WOULD HAVE VITIATED THE TRIAL, THAT'S NOT, IF THE STATE HAD WANTED TO PUSH THAT PARTICULAR ISSUE IN THE TRIAL COURT BELOW INSTEAD OF JUST ENTER INTO THAT AGREEMENT, THIS IS SOMETHING

THAT WOULD BE ADMISSIBLE TO PROVE HIS MOTIVE FOR HAVING ESCAPED WHICH IS, CHARGED IN THE INDICTMENT THAT IS BEFORE THE JURY FOR THEM TO DECIDE HIS GUILT OR INNOCENCE.

SO THAT ALL FACTORS IN I THINK IN THIS COURT'S ANALYSIS. BUT AGAIN WITH FLETCHER HAVING CONFESSED TO EVERY CRIME THAT HE COMMITTED, THAT IS IN THE INDICTMENT THAT'S BEFORE THE JURY, EVEN CONFESSING TO FELONY MURDER, EVEN CONFESSING, ONCE HE CHANGES HIS STORY, AND STARTS GIVING A SECOND VERSION AFTER CONFRONTED WITH THE DNA EVIDENCE AND CONFESSING HE IS ACTIVE PARTICIPANT.

>> THOSE ARE ALL, THOSE ARE ALL THERE BUT I THINK THAT THERE'S A TENOR TO THIS TRANSCRIPT AND I AND I SEE ARGUMENTS IN THIS CASE I HAVE NOT SEEN IN 10 YEARS BECAUSE THEY HAVE BEEN, AT LEAST THE STATE HAS BEEN ADVISED NOT TO USE THESE ARGUMENTS FOR AT LEAST THAT LONG IN URBAN BROWN, CAMPBELL, AND THE, TO SEND A MESSAGE ARGUMENT, CREATES THE OVERALL IMPRESSION OF A PROSECUTION GONE WILD.

I MEAN, AND IT HAPPENS IN CASES WHERE YOU HAVE GOT SLAM-DUNK CASES.

JUST GET, I DON'T KNOW WHAT THE WORD IS BUT OVERLY AGGRESSIVE WHEN THERE IS NO NEED FOR THIS. AND PARTICULARLY AFTER BEING SCOLDED BY THIS COURT OVER A NUMBER OF YEARS ON THIS.

SO THAT'S THE CONTEXT WITHIN WHICH WE'RE SEEING THESE THINGS ARISE.

SO YOU TALK ABOUT CUMULATIVE PROBLEMS, THAT'S WHERE IT COMES IN TO LOOK AT THE CUMULATIVE ERRORS THAT ARE HERE WHEN ISOLATED MAYBE NO ONE OF THEM WOULD BE SUFFICIENT.



WHAT'S THE STATE'S POSITION ON THAT?

I MEAN, YOU DO AGREE THAT THE SEND A MESSAGE ARGUMENT IS NOT PERMITTED?

>> IF I MAY, JUSTICE LEWIS ABOUT THE SEND A MESSAGE ARGUMENT BECAUSE --

>> I TAKE IT YOU DON'T AGREE?

>> I WANT TO MAKE A DISTINCTION IF I MAY.

SEND A MESSAGE, ARGUMENT I AGREE JUSTICE LEWIS, IN PENALTY PHASE AS THE JUDGE SAID IN URBAN AND CAMPBELL, IS ABSOLUTELY IMPROPER.

THE STATE CAN NOT SAY SEND A MESSAGE WITH YOUR DEATH RECOMMENDATION, MEMBERS OF THE JURY.

CERTAINLY THE OVERARCHING PROBLEM THIS COURT HAD WITH SEND A MESSAGE ARGUMENTS, SEND A MESSAGE TO THE COMMUNITY, BEYOND HIS GUILT.

>> REGARDLESS OF HOW GUILTY THE DEFENDANT IS OR WHETHER HE IS GUILTY OR NOT.

THAT IS THE MAIN CONCERN QUITE HONESTLY IN THE FIFTH DISTRICT COURT OF APPEALS CASE IN BROWN THAT THE APPELLANT CITES WHERE THE PROSECUTOR IS ARGUING IN A CASE THAT HAS VERY WEAK EVIDENCE AND MAKING OTHER DISPARAGING REMARKS --

>> YOU'RE TELLING US THIS COURT REALLY NEEDS TO COME DOWN ON THE STATE LET IT KNOW, THE LET THE STATE KNOW THAT THE SEND THE MESSAGE ARGUMENT IS NOT ONE TO BE MADE IN ANY DEATH PENALTY TRIAL?

>> WELL --

>> IS THAT WHAT YOU'RE SAYING?

>> WELL IT'S NOT CLEAR.

ESPECIALLY AFTER THE ZANT CASE I CITE IN MY BRIEF THAT CAME OUT OF 2005 AFTER URBAN AND AFTER CAMPBELL WHERE THIS COURT FOUND

IT WASN'T FUNDAMENTAL ERROR FOR THE PROSECUTOR.

THEY WERE LABELING THIS A SEND THE MESSAGE ARGUMENT, THE APPELLANT WAS IN THE ZANT CASE AND PROSECUTOR ARGUED FOR THE JURY TO ACT ON IT IS CONSCIENCE OF THE COMMUNITY ESSENTIALLY AND TO HOLD THE DEFENDANT ACCOUNTABILITY FOR HIS ACTIONS AND THAT'S REALLY WHAT THE PROSECUTOR WAS DOING HERE.

HE SAID --

>> NO, HE SAID SEND A MESSAGE.

>> HE SAID, SEND A MESSAGE, JUSTICE LEWIS.

SEND A MESSAGE TO THIS DEFENDANT SHE DIDN'T DESERVE TO DIE AND HOLD HIM ACCOUNTABLE FOR HIS ACTIONS.

HE WASN'T ASKING THE JURY TO PUNISH THE DEFENDANT AS AN EXAMPLE AND MAKE AN EXAMPLE OUT OF HIM IRRESPECTIVE OF HIS GUILT.

HE WAS ASKING THE JURY TO HOLD HIM ACCOUNTABLE FOR HIS GUILT AND FOR HIM HAVING CALLED HELEN GOOGE'S DEATH.

I DON'T THINK THIS PARTICULAR AREA, JUSTICE LEWIS, THE COURT MAY CLEAR IT UP FOR ME, I UNDERSTAND THAT, BUT THIS PARTICULAR AREA IN LIGHT OF URBAN AND CAMPBELL IT IS NOT THE PENALTY PHASE ARGUMENT THIS COURT PATENTLY CONDEMNED.

IT IS HAPPENING IN THE GUILT PHASE AND IT IS HAPPENING IN THE CONTEXT OF HOLDING HIM ACCOUNTABLE FOR HIS ACTIONS.

THE LAST ISSUE THAT THE APPELLANT ARGUED ABOUT THE QUESTIONING REGARDING THE ANTISOCIAL PERSONALITY DISORDER CHARACTERISTICS AND CRITERIA, IF I COULD KIND OF WALK THROUGH HOW THIS ALL PLAYED OUT BECAUSE THE DEFENSE PRESENTED DR. KROP IN THEIR CASE IN MITIGATION. THEY PRESENTED HIM TO GIVE HIS

MENTAL HEALTH DIAGNOSIS OF THE DEFENDANT WHICH INCLUDED ANTISOCIAL PERSONALITY DISORDER. FLETCHER'S CONDUCT DISORDER AS ADOLESCENT THAT SUPPORTED ASPD. FLETCHER HAVING GOTTEN INTO THE CRIMINAL SYSTEM VERY EARLY ON. HIS EXTENSIVE ILLICIT DRUG USE AND POLYSUBSTANCE DRUG DEPENDENCE, SITUATIONAL. IT WAS NOT CONSTANT DEPRESSION BUT SITUATIONAL DEPENDING WHERE HE WAS --

>> LET ME ASK YOU THIS, PART OF THAT IS OF CONCERN TO ME THAT DR. PRICHARD.

WE HAVE THE PROSECUTOR QUESTIONING DR. KROP AS YOU KNOW, AS YOUR OPPONENT INDICATES FOR HALF OF 28 PAGES ABOUT THIS ASPD.

WHAT WAS THE PURPOSE OF CALLING DR. PRICHARD?

>> THE JURY --

>> BECAUSE WE ALREADY HAD THIS EXTENSIVE CROSS-EXAMINATION ABOUT THIS SO WHY CALL DR. PRICHARD?

>> AND THIS SORT OF PLAYS INTO THE REASON BEHIND ME SUBMITTING THIS SUPPLEMENTAL AUTHORITY OF KANSAS v. CHEEVER CASE AFTER SOMETHING IS PRESENTED IN MITIGATION BY THE DEFENSE, STATE HAS RIGHT TO REBUT IT EVEN WITH THEIR OWN EXPERT BECAUSE DR. KROP LEFT THE JURY WITH ONE IMPRESSION OF ANTISOCIAL PERSONALITY DISORDER.

ONE OF THE FIRST THINGS THAT DR. PRICHARD STARTS TO CLARIFY AND THE STATE NEEDS AN EXPERT TO BE ABLE TO SAY THIS, DIFFERENTIATE BETWEEN WHAT IS A MENTAL ILLNESS UNDER THE DSM AND WHAT IS BEHAVIORAL DISORDER. MENTAL ILLNESS BEING NEUROCHEMICALLY DRIVEN, BEHAVIOR DISORDERS, NON-NEUROCHEMICALLY DRIVEN.

DR. KROP DIDN'T GO INTO THAT.  
AND THEY DIDN'T CROSS-EXAMINE  
DR. KROP IN THAT PARTICULAR  
AREA.

THEY HAD THEIR OWN EXPERT TO  
PRESENT IT IN THAT PARTICULAR  
FASHION.

THIS GOES BACK TO THE TIME  
HONORED IDEA OF A JURY TRIAL AND  
TRIAL WITH TRUTH SEEKING  
FUNCTION AND PERHAPS HAVING  
COMPETING VIEWS.

DR. KROP SPINS THE MENTAL  
HEALTH SYSTEM IN ONE WAY,  
THE STATE HAD AN EXPERT WITH A  
DIFFERENT INTERPRETATION OF THAT  
MENTAL HEALTH TESTIMONY.

>> SEEMS TO ME WITH ALL OF THIS  
CROSS-EXAMINATION OF THE, OF THE  
DEFENSE EXPERT ABOUT THIS,  
WHETHER YOU CALL IT A DISEASE OR  
PERSONALITY DISORDER, AND THEN,  
HAVING ANOTHER EXPERT COME ON  
AND REALLY TALK ABOUT IT SOME  
MORE, THAT IT REALLY LOOKS LIKE  
YOU'RE CHANGING THIS FROM WHAT,  
INTO A NON-STATUTORY AGGRAVATING  
CIRCUMSTANCE?

>> WELL, AND THIS COURT HAS  
NEVER REQUIRED THAT THE STATE  
JUST SIMPLY ACCEPT WHAT THEY GET  
OUT OF A CROSS-EXAMINATION FROM  
THE DEFENSE'S MENTAL HEALTH  
EXPERT AND THEN IF THE DEFENSE  
HAS OPENED THE DOOR TO MENTAL  
HEALTH AND THE STATE IS THEN  
SOMEHOW, REGARDLESS OF HOW LONG  
THEY'RE ABLE TO CROSS-EXAMINE  
THAT EXPERT THAT THEY ARE  
SOMEHOW PROHIBITED AT THIS POINT  
OR SHOULDN'T TO PRESENT THE JURY  
WITH DIFFERENT VERSION OR  
ANOTHER PERSPECTIVE OF THE  
MENTAL HEALTH EVIDENCE I WANT TO  
CLARIFY ABOUT OPPOSING COUNSEL  
SAYING THIS WORD PSYCHOPATH OVER  
AND OVER AGAIN.

DR. PRICHARD SAID IT ONE TIME.  
DEFENSE OBJECTED ONCE.  
WHEN DR. PRICHARD WAS GOING

THROUGH SOME OF THE SPECIFICS OF  
PRIOR CRIMINAL HISTORY A LOT OF  
WHICH DR. KROP ALREADY DISCUSSED  
ON DIRECT EXAMINATION FROM THE  
DEFENSE COUNSEL.

THEY OBJECTED.

THEY EXCUSED THE JURY.

AND THEN THE TRIAL COURT PUT  
SOME PARAMETERS ON WHAT  
DR. PRICHARD COULD SAY AND  
DIDN'T WANT DR. PRICHARD GOING  
OVER AND OVER AGAIN ABOUT THE  
SPECIFIC NATURE OF THE OFFENSES  
THAT HE HAD PREVIOUSLY BEEN  
ARRESTED FOR.

AND THEN THERE WAS A SECOND OBJECTION,  
ABOUT THE INSTRUMENT USED IN THE  
MENTAL HEALTH EXPERT'S  
TEST BATTERIES TO EXAMINE  
THEIR MENTAL HEALTH IN THE  
CONTEXT OF ASPD CRITERIA  
HE WENT THROUGH CATEGORIES OF  
THE TEST.

THAT IS WHEN THE DEFENSE COUNSEL  
OBJECTED.

THE JURY IS EXCUSED.

DR. PRICHARD GOES THROUGH MORE  
DETAIL, DAMAGING DETAIL ABOUT  
THE PSYCHOPATHY CHECKLIST  
BUT OUTSIDE THE PRESENCE OF THE  
JURY.

THE SCORE ON THE PCLR WAS  
ELICITED FROM DR. PRICHARD WAS  
OUTSIDE OF THE JURY.

THEY NEVER HEARD IT.

DEFENSE COUNSEL WAS CONCERNED  
DR. PRICHARD WOULD START TALKING  
ABOUT FUTURE DANGEROUSNESS IN  
ANSWERS TO THE QUESTIONS WITH  
THE PCLR.

SO THE TRIAL COURT SAID I DON'T  
WANT ANY DISCUSSION OF THAT.  
WHEN THE JURY CAME BACK IN AFTER  
THAT BREAK, THE STATE TENDERED  
THE WITNESS.

AND THEY DIDN'T ASK  
DR. PRITCHARD ANY FURTHER  
QUESTIONS ABOUT THE PCLR.

SO THEY BASICALLY GOT THROUGH  
SOME FOUNDATIONAL CRITERIA THAT

IT TESTS AS A TESTING BATTERY  
BUT DIDN'T GET ANYTHING ELSE OUT  
IN FRONT OF THE JURY ABOUT THAT  
PARTICULAR INSTRUMENT.

AND SO THERE ARE A LOT OF  
THINGS, AND DR. PRICHARD WAS NOT  
UP THERE IN FRONT OF THE JURY  
CALLING TIM FLETCHER A  
PSYCHOPATH OVER AND OVER AGAIN.  
THAT IS A MISCONSTRUCTION OF THE  
TESTIMONY.

THERE WAS, THERE WAS A LOT OF  
JURY IN AND OUT OF THIS  
PARTICULAR INSTANCE AND NOT ALL  
OF IT HAPPENED IN THEIR  
PRESENCE.

SO, AND LAST THING I'LL SAY, THAT  
THE APPELLANT ARGUED, NOWHERE IN  
THE STATE'S CLOSING ARGUMENT DID  
THE STATE USE THE WORDS, LACK OF  
REMORSE.

THE STATE ARGUED THE WORDS, THAT  
THE DEFENDANT HIMSELF USED TO  
DESCRIBE THE VICTIM AND THE  
STATE SIMPLY ARGUED THAT THE --  
>> NOW HE DOES SAY, HE DIDN'T SAY  
THAT BUT HE SAYS, THAT THE  
STATEMENT HE MAKES AFTER THE  
FACT IS THE EQUIVALENT OF SAYING  
HE HAD NO REMORSE WHEN HE, YOU  
KNOW, CALLS THE VICTIM BY, YOU  
KNOW, WHAT HE CALLED HER.

>> THE DISPARAGING REMARKS THAT  
THE DEFENDANT USED ABOUT THE  
VICTIM IN THIS CASE, THOSE WERE  
HIS STATEMENTS ABOUT HER.  
THEY WERE ADMISSIBLE INTO  
EVIDENCE.

THEY WERE, IT'S, IT'S THE FACTS  
AS THEY ARE.

IT'S NOT --

>> THEY WERE ADMISSIBLE TO SHOW  
WHAT?

>> THEY WERE ADMISSIBLE TO SHOW  
HIS, HIS INTENT.

HIS ANIMOSITY TOWARDS HER  
BECAUSE ONE OF THE THINGS  
FLETCHER CONTESTS HERE WHICH THE  
STATE WOULD SUBMIT THAT HE IS  
THE STRANGLER IN THIS CASE,

BUT HE CONTESTS THAT HE IS NOT.  
HE SAYS THAT DONNY BROWN IS THE  
ONE THAT STRANGLERED HER.  
THE ANIMOSITY WAY HE IS  
DESCRIBING HER IN THOSE  
DISPARAGING WORDS, JUSTICE  
QUINCE, IS PART OF HIS INTENT  
AND ANIMOSITY TO WANT TO  
STRANGLE HER.

>> AND GOES TO WHICH AGGRAVATOR?  
>> IT WOULD GO TO ESTABLISHING  
HIM AS THE ACTUAL KILLER INSTEAD  
OF DONNY BROWN.

AND THAT TIES INTO THE HAC  
AGGRAVATOR AS WELL.

THE FACT THAT HE'S, THAT HE IS  
THE ONE THAT STRANGLERED HER.  
AND THE STATE SIMPLY ARGUED THAT  
WHAT WAS PROFFERED AS MITIGATION  
SHOULDN'T BE GIVEN MUCH WEIGHT.  
AND, THE STATE IS ALLOWED TO  
ARGUE THAT AND THE TRIAL COURT  
IS ALLOWED TO FIND, THERE IS NO  
NEXUS REQUIREMENT, JUSTICE  
PARIENTE, AS YOU WERE  
QUESTIONING MY OPPOSING COUNSEL,  
THERE IS CERTAINLY NOT THAT  
REQUIREMENT BUT IT IS PERSUASIVE  
TO THE JURY AND TO THE COURT IF  
THERE IS SOME TYPE OF CONNECTION  
TO THE OFFENSE.

THIS DOESN'T OFFEND THIS COURT'S  
JURISPRUDENCE ON EVERYTHING HE  
WANTED TO IN MITIGATION.

THE TRIAL COURT FOUND 17  
NON-STATUTORY MITIGATORS AND  
DIDN'T DISCOUNT ANYTHING.

THIS DOES NOT OFFEND THIS  
COURT'S JURISPRUDENCE OR LOCKET.  
AND, LAST THING I'LL SAY ABOUT  
THE REMORSE THAT IT APPEARS THAT  
FLETCHER ACTUALLY GOT THE  
BENEFIT FROM HIS SPENCER HEARING  
AND THE TRIAL COURT ACTUALLY  
FOUND AND BEHAVE LITTLE WEIGHT  
TO HIM HAVING REMORSE AND  
APOLOGIZING FOR HAVING COMMITTED  
THE OFFENSES.

IF THERE ARE NO FURTHER  
QUESTIONS THE STATE WOULD ASK

THAT THIS COURT AFFIRM THE  
CONVICTION AND SENTENCES.

>> REBUTTAL.

>> YES, VERY BRIEFLY,  
PAGES 3602 TO 3605 WHERE  
DR. PRICHARD CONTINUOUSLY  
LABELED MR. FLETCHER A  
PSYCHOPATH.

NOT JUST ONCE AS COUNSEL FOR THE  
STATE HAS SUGGESTED BUT  
CONTINUOUSLY, CALLING HIM A  
TURBOCHARGED ANTISOCIAL  
PERSONALITY DISORDER.

>> AND THOSE PAGES WOULD  
DEMONSTRATE --

>> BEFORE THE JURY.

>> OH ABSOLUTELY.

ABSOLUTELY.

THIS IS WHEN DR. PRICHARD WAS  
CALLED BACK AFTER HE GAVE HIS  
PROFFER, AND AT WHICH POINT HE  
THEN TALKED ABOUT THE  
PSYCHOPATHIC CHECKLIST.

IT IS IN THE RECORD SO IT IS  
VERY CLEAR.

WE DID RAISE IN OUR INITIAL  
BRIEF OFFICER WORD'S TESTIMONY  
ABOUT THE FELONY AREA ON PAGE 56  
OF OUR INITIAL BRIEF.

AND LASTLY, WE WOULD ARGUE VERY  
STRENUOUSLY THAT STATE'S  
REPEATED ARGUMENTS, AND I THINK  
JUSTICE LEWIS MADE THIS VERY  
CLEAR, IN THIS CASE ON ISSUES  
THAT HAVE BEEN SETTLED LAW IN  
THIS STATE FOR DECADE HAS BEEN  
VIOLATED IN THIS CASE AND  
BASED ON THAT WE WOULD ASK THE  
COURT TO REVERSE THE CONVICTION  
AND SENTENCE, THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.