

>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.

>> NEXT CASES ON THE DOCKET, JAMES ROBERTSON V. STATE OF FLORIDA.

>> I AM JULIUS AULISIO FROM THE TENTH CIRCUIT OF THE PUBLIC DEFENDER'S OFFICE.

OUR OFFICE WAS APPOINTED TO REPRESENT MR. ROBERTSON ON THIS DEATH PENALTY CASE.

MR STEVE BULLETIN WAS ASSIGNED TO THE INITIAL APPEAL AND I WAS APPOINTED AFTER HIS RETIREMENT. HE REALIZED HE WAS ON THE HORNS OF A DILEMMA WHEN HE HAD THIS CASE BECAUSE MR. ROBERTSON DID NOT WANT TO HAVE AN APPEAL. HE WANTED TO SEEK THE DEATH PENALTY.

ON THE ONE HAND HE WAS CONSTRAINED BY THE RULES OF THE FLORIDA BAR WHERE HE HAD TO FOLLOW HIS CLIENT'S WISHES ON THE OBJECTIVES.

>> ARE YOU AWARE OF THE HISTORY? YOU ARE HERE BASICALLY BECAUSE THE COURT REQUIRES, THE BELIEF IS EVEN SOMEONE WHO WANTS TO DIE, NEED TO MAKE SURE ALL THE ELEMENTS ARE THERE AND THE GUILTY PLEA IS NOT BEING ATTACKED.

YOUR ONLY SHOES HAVE TO DEAL WITH WHETHER THE PROCEDURE THAT WAS FOLLOWED ENSURE THAT ALL BUT MITIGATION WOULD BE HEARD.

I WILL SAY THIS FROM MY POINT OF VIEW BECAUSE I BELIEVE THIS NEEDS TO BE AIRED.

IN THE BRIEF YOU DO NOT NEED TO USE THE WHOLE 30 MINUTES.

>> THANK YOU.

>> HE WANTS TO DIE.

YOUR CLIENT MADE IT CLEAR FROM THE BEGINNING HE WAS IN PRISON FOR A LONG TIME, DIDN'T LIKE BEING IN PRISON, HE PICKED SOMEBODY, HE DIDN'T LIKE BEING IN CLOSE MANAGEMENT, HE PICKED

SOMEBODY COULD KILL AND HE
KILLED THAT PERSON WITH THE IDEA
THAT HE WANTED TO GET THE DEATH
PENALTY, CORRECT?

>> THAT IS CORRECT.

THE IRONY IN THIS CASE, HE WOULD
PROBABLY STILL BE ALIVE.

UNFORTUNATELY, MR. ROBERTSON WAS
REPRESENTED INITIALLY, CHARGED
WITH SECOND-DEGREE MURDER BUT
NOT EVEN A CAPITAL CASE.

>> YOU ARE NOT ARGUING ABOUT THE
AGGRAVATOR.

WHAT DO YOU THINK THE STRONGEST
THAT IS ON THE SENTENCING OR
PENALTY PHASE THAT HAS BEEN
MADE?

>> IN OF FACT, THE ASSISTANCE OF
COUNSEL AT THE WHOLE PROCEEDING.

>> INEFFECTIVE ASSISTANCE OF
COUNSEL IS POST CONVICTION AND
THAT CAN BE WAIVED BY YOUR
CLIENT.

>> CORRECT.

IT CAN.

BUT THIS IS ASSISTANCE ON THE
FACE OF THE BRACKET.

I HAVE NEVER SEEN A DEFENSE
ATTORNEY ACTUALLY TAKE UP THE
MANTLE OF HIS CLIENTS WISHING TO
BE PUT TO DEATH AND HE ACTUALLY
EXCEEDED HIS WISHES.

AS A MATTER OF FACT THE PROBLEM
IS --

>> HIS LAWYER.

>> THAT IS WHAT HE WANTED.

THAT IS WHAT THE CLIENT WANTED.
THE LAWYERS REPRESENTING HIM.
OR IS THAT NOT RIGHT I GUESS?

>> THE LAWYER, THE LAWYERS, THE
LAWYER'S REPRESENTATION SHOULD
NOT HAVE BEEN CONSISTENT WITH
THE CLIENT'S VIEW OF THE
CLIENT'S OBJECT IN THE
REPRESENTATION.

>> IN THIS PARTICULAR CASE THAT
IS RIGHT.

THE LAWYER'S ASSISTANT WAS
UNAWARE, HE WASN'T CERTIFIED AS
A TRIAL ATTORNEY.

>> IS THAT AN ISSUE HERE?
>> THAT GOES TO EXPLAIN WHY HE
WASN'T A FACTOR BECAUSE HE
WASN'T AWARE.
>> WHAT IS IT THAT YOU ARE
REALLY ASKING THE COURT TO DO
ABOUT THE PENALTY PHASE IN THIS
CASE?
IT SEEMS TO ME YOU HAVE ARGUED
HERE THERE WAS SOMETHING WRONG
WITH THE PRE SENTENCE
INVESTIGATION AND THE ATTORNEY
SHOULD HAVE PRESENTED MORE
MITIGATION BASICALLY?
THOSE ARE THE TWO ISSUES YOU
HAVE?
SO WHAT WAS WRONG WITH THE FREE
SENTENCE INVESTIGATION?
IT SEEMS TO ME FROM THAT
DOCUMENT THE TRIAL COURT FOUND A
NUMBER OF MITIGATING
CIRCUMSTANCES IN THIS CASE.
>> THE PRE SENTENCE
INVESTIGATION WAS TOTALLY
INADEQUATE.
FIRST IT WAS PERFORMED BY THE
DEPARTMENT OF CORRECTIONS
PROBATION OFFICER AND THERE IS
NO ADVERSARIAL --
>> THE FORMS.
>> THAT IS NORMALLY PERFORMED.
>> A LOT OF CRIMINAL CASES WE
GET A FREE SENTENCE
INVESTIGATION DONE BY THAT
DEPARTMENT, CORRECT?
AND THAT FREES SENTENCE
INVESTIGATION MAY HAVE THE
BACKGROUND, CRIMINAL HISTORY,
THOSE KINDS OF THINGS ABOUT THE
DEFENDANT, CORRECT?
>> CORRECT.
>> WHAT WAS DIFFERENT ABOUT THIS
ONE?
>> NOTHING.
THAT WAS THE PROBLEM.
IT REQUIRES SOMEONE DIFFERENT
FROM THE STANDARD PSI.
>> SOMETHING THAT IS MISSING?
>> IT IS COMPREHENSIVE.
THE ORDER OF THE PRESENTENCE

INVESTIGATION.

IT IS A COMPREHENSIVE P.S.I.
THERE ARE NO PRISON RECORDS, NO
SCHOOL RECORDS, NO MEDICAL
RECORDS, THE PSI WAS A REHASHING
OF PREVIOUS PSIs IN THAT CASE ON
NON CAPITAL CASES.

>> THE 13 PAGE DOCUMENT, WENT
THROUGH AS FAR AS WE KNOW.
I AM NOT SURE I COMPLETELY
UNDERSTAND, WHAT MORE SHOULD
HAVE BEEN IN THE PRE SENTENCE
INVESTIGATION.

>> THE PERSON DOING THE PRESENT
INVESTIGATION, THE ACTUAL
RECORD, THE PRESENT RECORD,
THERE ARE NO SCHOOL RECORDS.

>> ARE THOSE NORMALLY ATTACHED
TO A PRESENT INVESTIGATION.

>> NORMALLY ELECTED IN CAPITAL
CASES BY DEFENSE ATTORNEY.

>> EXACTLY AND THAT IS THE WHOLE
POINT, WHEN THERE IS NO DEFENSE
ATTORNEY DOING THAT, THE
PROBATION OFFICER WHO IS DOING
THE PRESENTENCE INVESTIGATION IS
CHARGED WITH PRESENTING ALL OF
THAT EVIDENCE, SO THAT THEY CAN
HAVE A FAIR AND UNIFORM IN
POSITION OF THE DEATH PENALTY.

>> LET'S JUST GO OVER WHAT IN
FACT HAPPENED IN THE PENALTY
PHASE.

YOU SAID ONE OF THE ATTORNEYS
WAS NOT QUALIFIED.

THE COAT COUNCIL WAS DEAF
QUALIFIED, CORRECT?

>> CO-COUNSEL DID NOTHING IN
THIS CASE.

>> CO-COUNSEL WAS DEATH
QUALIFIED?

>> WHEN ASKED HE SAID I THINK
SO.

>> WERE THESE PRIVATE ATTORNEYS?

>> YES.

>> WAS THE PENALTY PHASE BEFORE
THE JURY OR THE JUDGE?

>> THE JUDGE.

>> THAT IS IMPORTANT.

MR. ROBERTSON HAD INSTRUCTED HIS

CLIENT.

MR. ROBERTSON HAD INSTRUCTED HIS ATTORNEY, HE WANTED TO WAIVE MITIGATION, CORRECT?

WANTED TO WAIVE HIS RIGHT TO PRESENT MITIGATION.

>> CORRECT.

>> YOU ARGUE AS A MATTER OF LAW INDEPENDENT COUNSEL SHOULD HAVE BEEN APPOINTED BUT YOU CERTAINLY ARE AWARE THIS COURT AS RECENTLY AS LAST MONTH SAID THAT THAT IS NOT A REQUIREMENT, CORRECT?

>> CORRECT.

>> LET'S ASSUME THE PS I WAS NOT AS COMPREHENSIVE AS YOU THINK MUHAMMED WOULD REQUIRE.

GIVEN THE AGGRAVATING CIRCUMSTANCES IN THIS CASE, THAT HE IS UNDER A SENTENCE OF IMPRISONMENT, THAT HE PREMEDITATES AND CAREFULLY PLANS A MERGER, THAT THERE IS, I THINK THERE'S ANOTHER AGGRAVATOR.

>> VIOLENT FELONY.

>> PRIOR VIOLENT FELONY HE WAS INCARCERATED FOR.

AND HE IS HOW OLD AT THE TIME OF THIS CRIME?

>> LATE 40s, 48.

>> WHAT POSSIBLE EFFECT IN THAT SITUATION COULD GETTING SCHOOL RECORDS HAVE DONE TO CHANGE THE JUDGE'S DECISION TO IMPOSE THE DEATH PENALTY OR FOR THIS COURT TO DETERMINE THAT THE IMPOSITION OF THE DEATH PENALTY IS A PROPORTIONATE SENTENCE?

>> THERE COULD HAVE BEEN RECORDS INVOLVING HIS IQ.

WE DON'T KNOW WHAT HIS IQ IS. THERE COULD HAVE BEEN RECORDS EXPLAINING WHY APPARENTLY HE HAD ADHD.

>> DID THE JUDGE REQUIRE A COO WAIVER WHERE THEY PRESENTED WHAT MITIGATION THEY COULD HAVE PRESENTED?

>> NO.

THAT IS ONE OF THE OTHER ISSUES

IN THIS CASE, IT COMPLETELY DENIED COMPLIANCE.

>> THERE WAS NO COLLOQUY ABOUT WHAT MITIGATION COULD HAVE BEEN PRESENTED?

>> THERE WAS NO COLLOQUY BECAUSE THERE WAS NO MITIGATION INVESTIGATION EVER DONE BY THE TRIAL ATTORNEY.

HE DIDN'T KNOW WHAT MITIGATION EXISTED.

THE ONLY THING THAT HAPPENED WAS THE TRIAL ATTORNEY APPARENTLY HAD READ COON, WAS AWARE OF IT BUT DIDN'T UNDERSTAND WHAT IT REQUIRED BECAUSE --

>> DO YOU HAVE A GOOD-FAITH BELIEF, I REALIZE YOU CAN'T REVEAL ANYTHING BUT WE ARE DEALING WITH A CLIENT WITH A DEFENDANT THAT IS NOT MENTALLY, THAT IS MENTALLY ILL, MENTALLY RETARDED, IT IS A DIFFERENT ISSUE.

DO YOU HAVE A BELIEF THAT HE COULD BE MENTALLY RETARDED?

>> I HAVE NO IDEA BECAUSE THE MITIGATION WASN'T DONE.

THEY TALK ABOUT TWO EVALUATIONS FROM TWO DOCTORS BUT THOSE EVALUATIONS SIMPLY ADDRESSED SANITY AND CONFIDENCE.

THEY DIDN'T ADDRESS ANY MITIGATION ISSUES.

>> YOU MET WITH HIM PERSONALLY?

>> I HAVE NOT.

>> IN YOUR OFFICE?

>> NO ONE IN OUR OFFICE MET WITH HIM PERSONALLY.

>> I WANT TO ASK A QUESTION.

>> I TRIED TO MAKE CONTACT, SET UP A PHONE CALL WITH HIM AND HE REFUSED TO COME OUT.

>> DOESN'T WANT THIS APPEAL.

>> RIGHT.

THAT IS TRUE.

>> YOU ARE NOT HERE ACTING FOR HIM.

>> ABSOLUTELY NOT.

I AM HERE AT THE COURT'S ORDER

TO PROSECUTE THE APPEAL.

>> HE IS ESSENTIALS COME HE FILED A BRIEF HERE WHICH SEEMS PRETTY COHERENT, DOES NOT SEEM LIKE, DOESN'T SEEM TO ME THE EVIDENCE OF SOMEONE WHO HAS ANY OF THE PROBLEMS THAT WERE INDICATED EARLIER BUT JUST TO BE CLEAR ABOUT THIS, HE POSTED THIS APPEAL, HIS OBJECTIVE ON COMMITTING THIS CRIME WAS TO OBTAIN THE DEATH PENALTY AND HE HAS BEEN CONSISTENT IN HIS APPROACH TO THAT THROUGHOUT.

>> SOMETHING ELSE.

YOU RAISED AN ISSUE ABOUT THE TRIAL JUDGE PREPARING THE SENTENCING ORDER BEFORE THE SENTENCING HEARING.

HOW DID THAT HAPPEN?

>> NOT ONLY BEFORE THE SENTENCING HEARING BUT BEFORE THE PLAY.

BASICALLY THE ORDER WAS COMPOSED OF NOT PRESUMED INNOCENT MAN.

>> HOW COULD A JUDGE NO PLEA WAS WORTH COMING?

>> THE DEFENSE ATTORNEY INFORMED THE JUDGE THAT THEY SCHEDULE A DATE FOR THE PLEA AND SENTENCING, TWO MONTHS OUT, APPARENTLY THE JUDGE PRIOR TO ANY PLEA BEING ENTERED ORDERED PSI.

BUT IT IS PRETTY FAIR FROM THE RECORD THAT THEY PREPARED THE ORDER PRIOR TO THIS HEARING BECAUSE THE PLEA WAS TAKEN AND THERE WAS AN 11 MINUTE RECESS TAKEN WHERE THE JUDGE THEN COMES BACK AND IMPOSED A SENTENCE AND HAVING THIS WHOLE PROCEDURE DOESN'T COMPLY, THEY TAKE THE PLEA.

>> WAS THE SENTENCING ORDER READY AT THE TIME OF SENTENCING?

>> EITHER THE SENTENCING ORDER WAS READY FOR THE JUDGE READ THE SENTENCING ORDER WHICH WAS ALMOST VERBATIM WITH THE WRITTEN

ORDER, CAME UP WITH IT DURING THAT 11 MINUTE BREAK WHICH SEEMS TO BE IMPOSSIBLE.

IT WAS A EIGHT PAGE SENTENCING ORDER THAT DEFIES LOGIC THAT IT COULD HAVE BEEN WRITTEN DURING THAT 11 MINUTE BREAK.

IT TOOK SOME TIME FOR HER TO WALK BACK TO CHAMBERS.

THE ONLY LOGICAL EXPLANATION WAS IT WAS PREPARED PRIOR TO ENTRY OF THE PLEA WHICH WAS ANOTHER ISSUE ABOUT THE PRE COMMITMENT. OBVIOUSLY THE JUDGE, KNEW WHAT SHE WAS GOING TO DO, WHAT SENTENCE HE WAS GOING TO IMPOSE EVEN BEFORE THE PLEA WAS ENTERED OR IF IT WAS GOING TO OCCUR.

AS HE COULD OF CHANGED HIS MIND.

>> WHAT IS THE PRE SENTENCE INVESTIGATION?

THIS WAS SOMEBODY THAT -- DO YOU KNOW WHAT YEAR HE WAS BORN?

I AM SURE IT IS IN THE PSI.

BORN IN 1963.

HIS FIRST OFFENSE OCCURRED WHEN HE WAS 12 YEARS OLD, 1975.

HE WAS SENTENCED TO THE FIRST TIME HE WAS SENTENCED TO ADULT PRISON WAS WHEN HE WAS 17 AND SO HE WAS IN FOR 28 YEARS.

ON WHAT CHARGE WAS HE IN THAT WAS -- IS THAT 1995?

FIRST-DEGREE ATTEMPTED MURDER. IN 1995.

IN OTHER WORDS I AM TRYING TO FIGURE OUT WHAT AGE HE WAS WHEN HE WENT INTO PRISON.

>> 17.

>> 18.

>> SO HE WAS -- HIS SENTENCE, WHAT SENTENCE DID HE HAVE AT THAT TIME?

>> I THINK IT WAS A BURGLARY INITIALLY AND WHAT HAPPENED WAS KEPT GETTING WORSE AND KEPT UP CHARGES WHEN HE WAS IN PRISON. HE WENT TO PRISON INITIALLY ON A 5 OR 10 YEAR SENTENCE.

>> NOTHING IN THE RECORD ABOUT

-- THIS IS, IT SAYS -- BASICALLY HIS SCHOOL RECORDS, HE DROPPED OUT IN THE A DEGRADE WHEN HE WAS IN ORLANDO.

GOT HIS G.E.D. AT THIS SODA CORRECTIONAL INSTITUTE IN 1982 AND SENT IT SOME POINT TO OKEECHOBEE SCHOOL FOR BOYS. THERE IS NOTHING MUCH ABOUT HIS BACKGROUND OTHER THAN THE OFFENDER DID SAY -- HE SAID HE HAD A NORMAL UPBRINGING, RIGHT? WE REALLY DON'T KNOW A LOT ABOUT HIS BACKGROUND.

>> RIGHT.

>> BUT WHAT WE KNOW IS THESE AGGRAVATOR IS WOULD BE HARD TO OBVIATE NO MATTER WHAT MITIGATION COULD HAVE BEEN PUT ON.

>> BUT WE DON'T SUMMARILY DECIDE

--

>> NO WE DON'T AND THAT IS WHY WE HAVE THE PSI AND THE APPEAL AND WANTS TO MAKE SURE WE ARE DEALING WITH A COMPETENT DEFENDANT HAS A SIGNIFICANT MENTAL ILLNESS AND DOES NOT HAVE AN IQ SO LOW THAT HE WOULD NOT BE CAPABLE OF BEING EXECUTED AND HAPPY THAT HIS WHY I AGREE THAT WE NEED THESE APPEALS, WHY I WOULD IF I WERE ABLE TO DICTATE, HAVE AN INDEPENDENT COUNSEL APPOINTED IN CASES LIKE THIS BECAUSE IT PUTS EVERYBODY IN A DIFFICULT SITUATION.

I AM SATISFIED THAT THIS PSI DOES NOT INDICATE ANYTHING ELSE THAT WOULD HAVE CHANGED THE RESULT HERE AND YOU ARE SAYING PROCESSWISE THERE SHOULD HAVE BEEN MORE.

>> THERE SHOULD HAVE BEEN MORE PROCESSWISE THAT THERE WAS NO SIGNIFICANT MENTAL HEALTH MITIGATION DONE.

WE KNOW THAT HE STARTED DOING DRUGS AND ALCOHOL AT AGE 12. IF THERE WAS THE NARROW

PHARMACOLOGIST IN THIS CASE, HIS WHOLE FRONTAL LOBE THAT WAS THE INHIBITING FACTOR FOR COMMITTING CRIMES I GUESS MIGHT BE DESTROYED.

THAT TYPE OF MITIGATION WAS NOT DONE.

>> THERE ARE NO FURTHER QUESTIONS, I WILL SAVE THE REST FOR REBUTTAL.

>> MADE IT PLEASE THE COURT, ASSISTANT ATTORNEY GENERAL STEPHEN AKE.

I WOULD LIKE TO DISCUSS THE PROCESS THAT TOOK PLACE STARTING WITH THE PLEA AND SENTENCING HEARING IN THE COON INQUIRY. WHAT HAPPENED IN THIS CASE IS THE JUDGE WAS WELL AWARE THAT THE DEFENDANT WAS GOING TO BE ENTERING THIS PLEA AND THE DEFENSE ATTORNEY HAD OBTAINED COMPETENCY EVALUATIONS BY TWO DOCTORS AND TWO SANITY EVALUATIONS BY THE SCENE TWO DOCTORS SO THE DEFENSE ATTORNEY HAD THE SAME REPORTS FROM THESE EXPERTS, PROVIDED THOSE TO THE JUDGE IN CAMERA WITH A NUMBER OF OTHER DOCUMENTS AND THE JUDGE HAD THAT FROM TWO MONTHS.

>> WHAT KIND OF DOCTOR?

>> THE INVESTIGATION REPORT FROM THE DEPARTMENT OF CORRECTIONS REGARDING THE CRIME, THE AUTOPSY REPORT FROM THE MEDICAL EXAMINER, THE PSI OBVIOUSLY, A NUMBER OF HIS JUDGMENT AND SENTENCES WERE INTRODUCED TO THE JUDGE.

THE JUDGE AT THE OUTSET OF THE HEARING LISTED IN NUMERICAL ORDER ALL THE THINGS SHE REVIEWED PRIOR TO THAT HEARING SO THE JUDGE HAD A PACKET OF INFORMATION.

>> DO WE HAVE THOSE REPORTS?

>> THEY ARE IN THE RECORD.

>> PSYCHOLOGICAL.

>> DOCTORS SILVER AND SHARIF DID

THE REPORTS A YEAR APART WHEN MR. ROBERTS AND WAS REPRESENTED BY PRIOR COUNSEL IN 2011, HE DID A SANITY EVALUATION, SO THEY DID VERY DETAILED REPORTS ON THOSE INSTANCES AND A YEAR LATER ROBERTSON'S CURRENT COUNCIL MOVE FOR COMPETENCY EVALUATION AND THOSE SAME DOCTORS DID TWO ADDITIONAL REPORTS SO THOSE WERE ALL IN THE RECORD AND THE JUDGE HAD FLOWS AND THE DEFENSE ATTORNEY HAD THOSE.

THE DEFENSE ATTORNEY KNEW THE MITIGATION THAT WAS AVAILABLE IN THIS CASE FROM DOCTORS' REPORTS AND THOSE FOUR DOCTORS' REPORTS AND THE PSI IN THIS CASE AND THE JUDGE KNEW THAT.

WHEN THEY CAME TO THE HEARING THAT DEFENSE ATTORNEY PROVIDED THE JUDGE WITH THE COON DECISION AND SAID THEY NEEDED TO A COON INQUIRY AND THE COURT DID NOT DO A DETAILED COON INQUIRY LIKE THIS COURT HAS SUGGESTED IN THE COON CASE THAT THE STATE WILL SUBMIT THAT IS HARMLESS IN THIS CASE BECAUSE THE RECORD DOES REFLECT THE RATIONALE BEHIND COON THAT THE DEFENSE ATTORNEY MUST HAVE MADE HIS CLIENT AWARE WHAT MITIGATION WAS AVAILABLE AND MUST HAVE KNOWINGLY VOLUNTARILY WAIVED THAT.

THE RECORD IN THIS CASE SHOWS THAT IS THE CASE.

THE DEFENDANT OBVIOUSLY WAS WAVING MITIGATION, HE DID AN AFFIDAVIT TO THAT EFFECT AND THE DEFENSE ATTORNEY KNEW FROM THIS EXPERT REPORT AND THE PSI WHAT MITIGATION WAS AVAILABLE.

THE DEFENDANT HAD THAT INFORMATION ALSO, HE REVIEWED THE PSI AND WAS COOPERATING WITH THE EXPERTS SO THEY ALL KNEW THE MITIGATION IN THIS CASE SO -->> SEEMS TO ME IN THE PSI IT

DOES DO A PRETTY DECENT JOB OF GOING THROUGH HIS FAMILY BACKGROUND, THE FATHER DIED AND FROM CANCER, THE FATHER USED TO BEAT HIM WITH SWITCHES AND IT SEEMS TO ME THAT TO SOME EXTENT IT CONTAINS THE KIND OF INFORMATION THAT USUALLY IS PRESENTED.

IS THAT CORRECT?

>> ABSOLUTELY, VERY COMPREHENSIVE, THEY MAKE THE ARGUMENT IS NOT BECAUSE THERE IS NO RECORD ATTACHED TO THE PSI BUT THAT IS NOT A REQUIREMENT IN MUHAMED THAT THE PROBATION OFFICER PHYSICALLY ATTACHES DOCUMENTS TO THE PSI. HE INDICATED HE REVIEWED A NUMBER OF DOCUMENTS IN PREPARING THAT PSI.

IT GOES THROUGH HIS FAMILY HISTORY AND MENTAL HEALTH HISTORY AND THE DEPARTMENT OF CORRECTIONS WHERE HE BASICALLY HAD BEEN HOUSED SINCE 17 UNTIL THIS CRIME WHEN HE WAS 45. IT GOES THROUGH ALL THAT, FAMILY HISTORY, SCHOOL HISTORY AND IT IS A LITTLE BRIEF, HE QUIT SCHOOL IN THE EIGHTH GRADE.

>> HE GOT HIS G.E.D.

>> HE GOT HIS G.E.D. IN PRISON BUT THOSE RECORDS ARE NOT PHYSICALLY ATTACHED BUT THAT DOESN'T MEAN PSI IS NOT COMPREHENSIVE AS YOU POINTED OUT, IT IS A 12 PAGE DOCUMENT, THOSE THREW EVERY AREA OF MENTAL HEALTH, DRUG USE, FAMILY BACKGROUNDS.

>> WHAT IS THE COURT'S POSITION WHEN A DEFENDANT COMMITS THE CRIME, THAT THEY WANT THE STATE TO EXECUTE THEM.

MR. ROBINSON MADE IT VERY CLEAR HE WAS SICK OF CLOSED MANAGEMENT, IS THAT LIKE SOLITARY?

>> I DON'T BELIEVE SO BECAUSE HE WAS IN WITH ANOTHER CELLMATE.

>> HE DIDN'T LIKE THE CELLMATE WHO HE FELT WAS A CHILD MOLESTER AND HE THOUGHT THE ONLY WAY OUT WAS TO KILL HIM TO GET THE DEATH PENALTY.

AT THAT POINT, WHEN SOMEBODY HAS DECIDED THAT IS WHAT THEY WANT, WHAT IS THE STATE'S POSITION WAS ADVERSARIAL TESTING SHOULD TAKE PLACE?

>> CONSTITUTIONAL READ THIS COURT HAS TO LOOK WHEN HE COMES IN TO ENTER A PLEA IF HE IS GOING TO ENTER A PLEA IT HAS TO BE A KNOWING VOLUNTARY INTELLIGENTLY AND THEN THE COURT CAN LOOK AT THAT AND MAKE SURE THAT IS THE CASE.

THE RECORD SUPPORTS THAT.

>> THIS IS WHERE JUSTICE KENNEDY HAS BEEN CONCERNED.

WHAT ABOUT HIS WILLINGNESS TO ENTER A PLEA TO THE DEATH PENALTY?

>> HE CAN PLEAD TO FIRST-DEGREE MURDER AND IT IS UP TO THE JUDGE TO DECIDE APPROPRIATE SENTENCE. AS LONG AS HE IS MAKING A KNOWING INTELLIGENT PLEASE THAT IS WHAT THE COURT IS CONCERNED WITH BUT THE TRIAL JUDGE HAS TO DETERMINE THE APPROPRIATE SENTENCE AND THAT WAS DONE IN THIS CASE.

WE HAVE FOUR AGGRAVATORS IN THIS CASE, SERVING IMPRISONMENT OF PRIOR VIOLENT FELONIES.

>> THERE IS NO INDICATION HE COMMITTED THIS CRIME UNDER SOME MENTAL -- QUITE THE CONTRARY.

>> HE HAD BEEN THINKING ABOUT IT FOR FOUR MONTHS.

HE HAD DONE A VERY DETAILED STATEMENT AND WENT FOR RUTH, VERY COHERENT AS TO HIS PLANNING OF THIS CRIME.

I POINT OUT ACCORDING TO THE PSI IN THE DOCUMENT IN THIS CASE HE HAD KILLED A COUPLE OTHER INMATES PREVIOUSLY AND FLED

THOSE DOWN TO MUCH LESSER
CHARGES APPARENTLY SO --
>> WAIT, WAIT, WAIT.
IN THE RECORD IT SHOWS HE HAD
MURDERED IN PRISON.
>> THAT IS WHAT HE WAS
ORIGINALLY CHARGED, HE SAYS HE
KILLED LEATHER INMATES WITH A
KNIFE BUT HE PLED THOSE DOWN TO
LESSER CHARGES.
>> THAT IS PRETTY -- WAS THAT A
WAY TO CLEAR OUT OF PRISON, TO
GET THIS GUY INTO -- THAT IS
PRETTY SERIOUS STUFF.
>> YES APPARENTLY SO.
>> THAT IS SERIOUS BECAUSE IF
THE DEPARTMENT OF CORRECTIONS
KNEW THAT HE WAS A DANGER AND
STILL PUT INMATES IN WITH HIM --
>> WAS CLOSED MANAGEMENT.
AS WITH A PROBATION OFFICER --
>> ANYTHING THAT SHOWS THERE
WERE OTHER MURDER CHARGES?
>> I BELIEVE THAT IS IN THE
PSYCHIATRIST REPORT AND NOT IN
THE PS I.
THE PS SIDE REFLECTS THE ACTUAL
CONVICTION.
ACCORDING TO WHAT HE WAS
CONVICTED OF, ACCORDING TO HIS
STATEMENTS HE KILLED THE INMATE.
>> HE WAS IN PRISON, HE WAS SENT
TO PRISON WHEN HE WAS 17 FOR
WHAT?
>> THE ORIGINAL CHARGE WAS A
BURGLARY.
THEN HE COMMITTED A NUMBER OF
OFFENSES WHEN INCARCERATED.
>> AS FAR AS THE INCIDENTS IN
WHICH HE CLAIMED HE MURDERED
OTHER PEOPLE ARE YOU SAYING THAT
HE JUST BRAGGED ABOUT IT AND GOT
AWAY WITH IT?
OR JUST -- WENT TO COURT?
>> HE PLEDGED TO AND THAT IS HOW
HE WAS APPROACHING THE REPORT, I
WAS ORIGINALLY CHARGED WITH THIS
BUT THEY FLED IT DOWN, A WAS AN
AGGRAVATED BATTERY WITH A DEADLY
WEAPON.

THAT WAS ONE OF THEM.
IT JUST GOES TO SHOW THAT IN MY
MIND THIS DEFENDANT KNEW WHAT HE
WAS DOING.

HE HAD BEEN PLANNING THIS MURDER
FOR FOUR MONTHS BECAUSE HE
DIDN'T LIKE HIS CELLMATES AND
MADE NO BONES ABOUT IT AND HE
WAS GOING TO DO IT, VERY COLD,
CALCULATED MURDER.

>> DOES THIS REFLECT ANYTHING
ABOUT WHY HE WAS INITIALLY
CHARGED WITH SECOND-DEGREE
MURDER FOR THIS CRIME?

>> NO.

THE RECORD DOESN'T REFLECT
ANYTHING ABOUT THE CHARGE.
ORIGINALLY WAS CHARGED, SECOND
DEGREE, TO THE WILD TO BE AT
GRADE TO FIRST DEGREE AND WHEN
THE STATE DID INDICT HIM FOR
FIRST-DEGREE ANOTHER ATTORNEY
WAS APPOINTED HIS MAIN ATTORNEY
AT THAT POINT IN TIME WAS NOT
DEATH QUALIFIED AS COUNCIL SAID.

>> THE STATUS OF THE POSITION
THAT ANY PROCEDURAL AREA, AND
THE COURT SHOULD AFFIRM THE
JUDGMENT.

AND CONVICTION.

>> I DID WANT TO MENTION ONE
OTHER THING, THE COURT
CONSIDERING THE DEFENDANT'S
WISHES IT WAS THE NON STATUTORY
AGGREGATIVE THAT SHOULD NEVER
HAVE BEEN CONSIDERED.

>> THE TRIAL COURT'S ORDER MAY
NOT BE A MODEL FOR CERTAIN
RESPECTS, BUT THE CIRCUMSTANCES
ABOUT HIS INTENT AND HIS PURPOSE
IN THIS WHOLE EPISODE WOULD
CERTAINLY BE RELEVANT, WOULD IT
NOT?

TO THE CCP AGGRAVATOR.

>> IT MAY BE, BUT --

>> IF SOMEBODY SAYS I DID THIS
BECAUSE I SAW THIS AS A ROUTE TO
COMMITTING THIS MURDER AS A WAY
TO GET A DEATH SENTENCE, THAT
SEEMS LIKE A CALCULATED

PREMEDITATED WAY TO GO ABOUT
PLANNING THE MURDER.
ISN'T THAT RIGHT?

>> YES.

>> AND SENT BY USING, GIVING
GREAT WEIGHT TO HIS WISHES AND
INTENSE, USING NON STATUTORY
AGGRAVATOR WHICH THIS COURT HAS
HELD AS NOT HARMLESS, NOT
SUBJECT TO HARM IF THERE'S ANY
MITIGATION AVAILABLE AT ALL.
YOU MENTIONED NO INDICATION THAT
HE WAS UNDER THE INFLUENCE OF
EXTREME EMOTIONAL DISTURBANCES
AND SURPRISINGLY THE TRIAL COURT
DID FIND THAT AS A MITIGATING
CIRCUMSTANCE THE ONLY A SLIGHT
WAY AND OUR THEORY IS THAT IS
SOMETHING THAT SHOULD HAVE BEEN
DEVELOPED, TRIAL COUNSEL AND
MITIGATION.

>> TRIAL COUNSEL COULD NOT
DEVELOP IT BECAUSE TRIAL COUNSEL
IS BEING INSTRUCTED BY HIS
CLIENT TO WAIVE MITIGATION.
AT THAT POINT IT SEEMS TO ME
EITHER TRIAL COUNSEL OR THE
STATE SAYS THERE IS -- MY CLIENT
HAS SOME SIGNIFICANT FINANCIAL
ISSUES THAT I BELIEVE SHOULD BE
DEVELOPED.

I WOULD ASK, SOMEONE ASKED TO
PLEASE APPOINT INDEPENDENT
COUNSEL WHICH IS DONE BY CERTAIN
JUDGES AT CERTAIN TIMES.
BATCH IS A DISCRETIONARY CALL BY
THE TRIAL JUDGE GIVEN THE
CIRCUMSTANCES.

GIVEN THIS PARTICULAR CASE
ALTHOUGH I DO THINK IT WOULD BE
A GOOD PROCEDURE I REALLY DON'T
THINK ANYTHING COULD HAVE MADE A
DIFFERENCE IN THE OUTCOME OF
THIS CASE NO MATTER BASED ON HIS
OWN STATEMENTS AND BASED ON THE
AGGRAVATION.

SO THAT IS MY OBSERVATION.
THERE HAD BEEN MITIGATION BUT WE
RELY ON THE OF PSI AND THE
JUDGES LOOKING AT EVERYTHING,

STATE PUTTING IN EVERYTHING THEY HAVE WHICH THEY SAID THEY DID TO GET AS MUCH OF A COMPLETE PICTURE AS POSSIBLE.

>> THE GUIDELINES SAY IT IS INEFFECTIVE FOR THE FILE ATTORNEY JUST TO EXCEED TO THE CLIENT'S WISHES TO BE PUT TO DEATH.

WE KNOW THAT HE CAN'T JUST ACCEPT THE CLIENT'S WISH TO BE PUT TO DEATH.

THERE HAS TO BE MITIGATION.

>> THE TRIAL ATTORNEY WITH THE MENTAL HEALTH EVALUATION DONE CONCERNING INSANITY.

>> COME --

>> EYES AND HE ASKED THE COURT TO APPOINT A COUPLE EXPERTS --

>> IT WAS THE PRIOR DEFENSE ATTORNEY.

>> DEFENSE ATTORNEY DID THAT AND THOSE REPORTS WERE AVAILABLE. RIGHT?

>> IT IS THE BIG DIFFERENCE, DEFENSE ATTORNEY WAS TRYING TO REPRESENT THE CLIENT IN AN ADVERSARIAL PROCEEDING.

THE ATTORNEY WHO HAD THE COMPETENCY EVALUATION DONE WAS TRYING TO GET THIS THROUGH THE COURT, TO SAY HIS CLIENT WAS COMPETENT SO HE COULD ENTER THE PLEA.

AS FAR AS THE MITIGATION GOES WE DON'T KNOW -- THERE CERTAINLY COULD HAVE BEEN STRONG MITIGATION.

OBVIOUSLY HE THE GUY, HIS THOUGHT PROCESS IS NOT LOGICAL AS TO WHAT MOST OF SOCIETY WOULD THINK, THAT YOU ARE GOING TO KILL PEOPLE AND GET THE DEATH PENALTY AND GOES AGAINST OUR HOLE IN 8 INSTINCTS OF SURVIVING.

>> MOST OF SOCIETY ALREADY SPENT ALMOST 30 YEARS IN PRISON.

>> THERE WAS EXTENSIVE -- ALCOHOL AND DRUG USE AS A CHILD,

HE WELL COULD HAVE HAD STRONG MY SUGGESTION IS FRONTAL LOBE DAMAGE THAT HIS BRAIN ALTHOUGH HE COULD FUNCTION IN OTHER AREAS HIS INHIBITION CONTROLLING DOES NOT EXIST WHICH WOULD BE STATUTORY MIDDLE OF THE COMITIGATORS WOULD EXIST AND STRONG STATUTORY MITIGATE IS THAT COULD OVERCOME THE OTHER AGGRAVATION IN THIS PARTICULAR CASE.

>> THAT IS AN INTERESTING ARGUMENT BECAUSE WE LOOK AT THE HISTORY OF ALL THE THINGS HE HAS DONE IN PRISON.

HE DIDN'T ATTEMPT TO CONTROL HIMSELF ALL THOSE YEARS IN PRISON, ONE AFTER THE OTHER ALERT OFFENSES HE COMMITTED IN PRISON.

>> AS FAR AS I AM AWARE, I DON'T THINK HE FILLS OTHER PEOPLE IN PRISON FROM THE RECORDS THAT I COULD TELL, THERE WAS ATTEMPTED MURDER AND ONE OF THE WAS HE GOT FIVE YEARS, I CAN'T SEE HIM NOT GETTING THE LIFE SENTENCE. HE WASN'T UNDER A LIFE SENTENCE AT THE TIME, THIS PARTICULAR MURDER.

IS RELEASED A WAS 30 YEARS OUT.

>> 30 YEARS AFTER THE 28 FOOD. WHAT WAS HIS ORIGINAL SENTENCE, WHEN --

>> BURGLARY AT BELIEVE.

>> HOW LONG WAS THAT SENTENCE?

>> I AM NOT SURE.

>> FOUR YEARS.

>> SO HE BASICALLY GAVE HIMSELF INCREASED SENTENCES.

>> COMMITTING CRIMES IN PRISON AND EVENTUALLY MADE IT A FACT OF THE LIFE SENTENCE THAT HE WAS ALMOST 50 YEARS OLD AND HAD 30 YEARS TO SERVE.

BASICALLY TO SUM UP, THERE WERE AT EXTENSIVE PROCEDURAL AND SUBSTANTIVE AREAS IN THIS CASE. THE DEATH PENALTY PROCEEDING WAS

TOTALLY FLAWED.
IT DID NOT COMPLY WITH THE
REQUIREMENTS THAT THE
CONSTITUTION AND LEGISLATURE AND
CASE LAW REQUIRE A DEATH PENALTY
PROCEEDING AND DEATH SENTENCE
CAN'T BE UPHELD AND SHOULD BE
REVERSED FOR LIFE SENTENCE FOR
NEW APPROPRIATE SENTENCING
PROCEEDING.