THE NEXT CASE UP WILL BE ORME
V. ORME.
SORRY, VERSUS STATE.
[BACKGROUND SOUNDS]
MORNING.
YOU MAY PROCEED WHEN YOU'RE
READY.
>> EXCUSE ME.
MAY IT PLEASE THE COURT, LINDA
McDERMOTT ON BEHALF OF
RODERICK MICHAEL ORME.
ISSUE I'D LIKE TO ADDRESS THIS
MORNING IS ARGUMENT ONE IN THE
INITIAL BRIEF FROM THE DENIAL OF
3850.
AND THAT SPECIFICALLY RELATES TO
THE TRIAL COUNSEL'S PERFORMANCE
AT THE RESENTENCING PROCEEDING
AS TO HIS PRESENTATION OF
MITIGATION AND THE CHALLENGE,
THE AGGRAVATING CIRCUMSTANCES.
IN TERMS OF ASSESSING TRIAL
COUNSEL'S PERFORMANCE, THIS
COURT HAS BEEN CLEAR THAT TRIAL
COUNSEL IS REQUIRED TO KNOW THE
LAW AND TO INVESTIGATE AND
PREPARE AND TO HAVE A REASONABLE
STRATEGY.
AND IN THIS CASE, THIS DIDN'T
HAPPEN.
AND THE RESULT WAS THAT THE JURY
WAS PRESENTED WITH EVIDENCE THAT
WAS-- BY HIS OWN COUNSEL THAT
WAS, IN FACT, AGGRAVATING, THAT
GAVE THE TRIAL COURT AND THE
JURY ADDITIONAL EVIDENCE TO
SUPPORTING A SATING
CIRCUMSTANCES, AND THE
MITIGATION WAS SIMPLY NOT
DEVELOPED.
>> NOW, LET ME ASK YOU THIS, YOU
CAN-- I APPRECIATE THE BROAD
STATEMENT, BUT THERE WERE TWO,
THERE WERE CO-COUNSEL FOR THIS
RESENTENCING, CORRECT?
>> YES.
>> OKAY.
ONE OF THEM HAD-- WHAT WAS
HIS-- COULD YOU TELL US THE
EXTREERNS OF THE CO-COUNSEL?

THE EXPERIENCE IN DEATH CASES
AND CRIMINAL CASES?
>> RIGHT.
I MEAN, THE RECORD, FROM THE
RECORD AT THE EVIDENTIARY
HEARING, APPARENTLY THERE HAD
BEEN AN APPOINTMENT OF COUNSEL,
THIS INDIVIDUAL NAMED RUSS
RAYMY, WHO HAD PREVIOUSLY WORKED
FOR THE STATE ATTORNEY'S OFFICE,
AND HE HAD BEEN A PRIVATE
DEFENSE ATTORNEY AND DONE OTHER
TYPES OF LAW MOST RECENTLY WHEN
HE WAS APPOINTED.
SO HE WAS INVOLVED IN THE
CRIMINAL SYSTEM--
>> I THOUGHT, HAD HE, WHAT WAS
HIS EXPERIENCE IN DEATH CASES?
>> UM, I'M NOT SURE--
>> WELL, I GUESS WHAT I THOUGHT
FROM THE PICTURE THAT I HAD WAS
THAT THERE WERE TWO EXPERIENCED
COUNSEL, THERE WAS PRO BONO
COUNSEL ASSISTING, AND THERE WAS
A RESENTENCING SO THEY HAD THE
ENTIRE TRANSCRIPT FROM THE FIRST
TRIAL AND THAT EVERYTHING THAT
WAS DONE, ALTHOUGH I APPRECIATE
THAT YOU'RE HERE TO SAY, WELL,
IT SHOULD HAVE BEEN DONE
DIFFERENTLY, IT LOOKS TO ME LIKE
CLASSIC HINDSIGHT-- WELL, THEY
SHOULD HAVE DONE IT THIS WAY.
AND SO MY, LET'S GET SPECIFIC.
I KNOW THE TWO THINGS, YOU FEEL
THEY BROUGHT UP LINGERING DOUBT
INAPPROPRIATELY AND THAT THEY
SHOULD HAVE CALLED FOR MORE
WITNESSES, ONE DECEASED, BUT
THEY SHOULD HAVE USED THOSE
DEPOSITIONS FOR BIPOLAR
DISORDER.
I MEAN, THERE MAY BE OTHER
THINGS, BUT THOSE SEEM TO BE THE
TWO THAT JUMPED OUT AS YOU BEING
FOCUSED ON THAT.
SO IF YOU COULD TALK ABOUT WHAT
WAS SO AWFUL ABOUT WHAT THESE
LAWYERS DID THAT WOULD RISE TO
THE LEVEL THAT THEY WEREN'T

FUNCTIONING AS SIXTH AMENDMENT
COUNSEL.
>> YES.
FIRST, LET ME JUST CLARIFY THE
RECORD DOESN'T SAY ANYTHING
ABOUT MR. RAIMI'S EXPERIENCE IN
CAPITAL CASES THAT I RECALL.
AS FOR MR. STONE, HE HAD BEEN A
PUBLIC DEFENDER FOR MANY YEARS
AND HAD DONE CAPITAL CASES, BUT
HE HADN'T DONE IT FOR MORE THAN
TEN YEARS.
AND HE SAID AT THE
POSTCONVICTION EVIDENTIARY
HEARING THAT HE DIDN'T THINK
MUCH HAD CHANGED IN THE DEATH
PENALTY SORT OF FORUM AT THAT
TIME.
AND I WOULD JUST SATE-- STATE
THAT THAT'S JUST RIDICULOUS.
THE DEATH PENALTY IS CONSTANTLY
EVOLVING AND CHANGING, AND WE
SEE CASES COMING OUT ALL THE
TIME THAT CHANGE THE WAY WE
THINK ABOUT HOW WE'RE GOING TO
PROCEED IN VARIOUS CASES.
THE OTHER REASON HE HAD PRO BONO
COUNSEL WAS BECAUSE THERE WAS A
CONCERN THAT MR. RAIMI WAS NOT
DOING A VERY EFFECTIVE JOB IN
REPRESENTING HIM.
AND SO THERE WAS THIS SORT OF
REACH OUT TO HOLLAND & KNIGHT
AND REQUEST THEM TO COME IN AND
ACTUALLY SERVE AS SOLE COUNSEL.
AND IT CAUSED QUITE A BIT OF
TENSION, CERTAINLY, BETWEEN
MR. RAIMI, MR. ORME AND THE HOLD
ANED-- HOLLAND AND KNIGHT
ATTORNEYS WHICH RESULTED THIS
THEM BACKING OFF ONCE THE JUDGE
SAID YOU'RE NOT GOING TO BE
PERMITTED TO BE THE FIRST CHAIR
COUNSEL ON THIS CASE.
SO FROM THE VERY INCEPTION,
THERE WAS ISSUES ABOUT COUNSEL,
HIS MEETINGS WITH MR. ORME,
WHETHER OR NOT THERE WAS
ADEQUATE COMMUNICATION AND
WHETHER OR NOT HE WAS DOING

ANYTHING IN THE CASE TO MOVE THE PROGRESS FORWARD.
BUT WITH THAT SAID, LET ME JUST START WITH THE WAY THAT COUNSEL APPROACHED THE AGGRAVATORS IN THE CASE.
AND AS THIS COURT KNOWS FROM THE ORIGINAL POSTCONVICTION HEARING THAT WAS REVERSED, THERE WERE THREE AGGRAVATORS.
THERE WAS PRIOR CONVICTION OF SEXUAL BATTERY, PECUNIARY GAIN AND HEINOUS, ATROCIOUS AND CRUEL.
THOSE WERE IS THE SAME AGGRAVATORS THE STATE WAS SEEKING IN THIS RESENTENCING PROCEEDING.
AND WHAT THE DEFENSE DID WAS THEY APPROACHED THE AGGRAVATORS AS HAVING TO CHALLENGE THEM TO SHOW THAT THEY DIDN'T EXIST.
AND, FOR EXAMPLE, WITH PECUNIARY GAIN, YOU CAN CHALLENGE PECUNIARY GAIN BECAUSE YOU ALSO HAVE TO SHOW THAT THAT WOULD BE THE PRIMARY MOTIVATION OF THE DEFENDANT IN COMMITTING THE HOMICIDE.
SO THERE WOULD HAVE BEEN AN ADEQUATE WAY TO CHALLENGE PECUNIARY GAIN THAT HAD NOTHING TO DO WHETHER OR NOT--
>> YOU SURE THAT IT HAS TO BE THE PRIMARY MOTIVE?
I THOUGHT THIS WAS JUST FOR AVOID ARREST.
>> I THINK THAT THERE'S LANGUAGE THAT IT HAS TO BE, IT HAS TO BE BEYOND JUST THE ELEMENTS OF THE ROBBERY CONVICTION.
THERE HAS TO BE SOME MOTIVE ON THE DEFENDANT'S PART BEYOND THAT.
BUT NOW FOR SEXUAL BATTERY, FOR EXAMPLE, THE ELEMENTS OF SEXUAL BATTERY THAT MR. ORME WAS ALREADY CONVICTED OF WAS GOING TO BE THE EXACT SAME THING AS WHAT THE JURY WAS GOING TO BE

TOLD THAT HE WAS ALREADY
CONVICTED OF THAT.
SO THAT AGGRAVATOR HAD BEEN
ESTABLISHED.
>> SO WOULD YOU-- I MEAN, SO
WHAT YOU'RE SAYING IS THE SEXUAL
BATTERY COULDN'T HAVE BEEN
CHALLENGED.
>> IT COULD HAVE BEEN-- A
REASONABLE ATTORNEY WOULD HAVE
SAID THE WAY TO CHALLENGE THAT
AGGRAVATOR IS TO USE THE
MITIGATION, TO USE THE BIPOLAR,
TO USE THE FACT THAT THIS PERSON
WASN'T IN THE RIGHT FRAME OF
MIND, THAT HE WAS SUFFERING FROM
EXTREME EMOTIONAL DISTURBANCE
AND THAT HE DID NOT HAVE THE
CAPABILITY TO THE ADEQUATELY
APPRECIATE THE CRIMINALITY OF--
>> AND THEY DIDN'T, THEY DIDN'T
USE THE MENTAL HEALTH MITIGATION
TO TRY TO ESTABLISH STATUTORY
MITIGATION?
I THOUGHT--
>> WELL, WHAT THEY-- THEY DID.
>> OKAY.
>> SO THERE'S SORT OF TWO THINGS
GOING ON HERE.
ALL I'M TRYING TO ADDRESS RIGHT
NOW IS THE AGGRAVATION.
THE TRIAL ATTORNEY COMES OUT IN
OPENING STATEMENTS AND SAYS
THERE'S RESIDUAL DOUBT HERE X.
HE'S NOT JUST TALKING ABOUT THE
AGGRAVATORS, HE'S TALKING ABOUT
THE CONVICTION.
AND THAT HAS CLEARLY BEEN FOUND
TO BE, FIRST OF ALL,
IMPERMISSIBLE AND, SECOND OF
ALL, IN THIS PARTICULAR CASE
WHEN YOU LOOK AT WHAT'S
HAPPENING AND THE EVIDENCE THAT
THE STATE HAS, IT'S
UNREASONABLE.
AND, IN FACT, THEN THE OTHER
DEFENSE ATTORNEY STANDS UP IN
THE CLOSING AND SAYS WE'RE NOT
TRYING TO SAY HE DIDN'T COMMIT
THIS CRIME.

SO IT WAS INCONSISTENT WHAT WAS GOING ON, AND IT WAS SO HAPHAZARD THAT IT WAS REALLY QUITE OFFENSIVE IN TERMS OF THE EVIDENCE THAT THE JURY WAS HEARING TO TRY TO CHALLENGE THE VARIOUS AGGRAVATORS.
SPECIFICALLY, TRIAL COUNSEL RAIMI AND MIKE STONE TALKED A LOT ABOUT THE-- THEY TRIED TO ESTABLISH THAT THERE WAS NO INJURIES TO MR. ORME, THAT HE HAD NO SCRATCHES ON HIM OR BRUISES.
THEY HAD THIS RIDICULOUS EVIDENCE ABOUT A THIRD PARTY'S DNA UNDER THE VICTIM'S FINGERNAIL CLIPPINGS, AND THEY ALSO BROUGHT OUT THAT MS.REDD HAD BRUISES ON HER KNUCKLES--
[INAUDIBLE]
IDENTIFIED THE DNA UNDER HER FINGERNAILS?
>> THERE WAS A WEAK THIRD PROFILE UNDER HER FINGERNAILS.
BUT THERE WAS ALSO MR. ORME'S DNA UNDER HER FINGERNAILS, AND THERE WAS, OBVIOUSLY, HER OWN DNA.
THE TRIAL ATTORNEY SAID IN OPENING IT WAS A THIRD PARTY UNDER HER FINGERNAILS.
AND MADE IT SEEM LIKE HE WAS GOING THE PRESENT EVIDENCE THAT MR. ORME DIDN'T, IN FACT, COMMIT THE CRIME.
WHEN, IN FACT, IT WAS MR. ORME'S DNA WAS THERE, THERE WAS JUST A WEAK PROFILE.
AND FROM THE DATA--
[INAUDIBLE]
HIS PROFILE.
>> CORRECT.
AND FROM THE DATA, THE DNA EXPERT, MR. HARMER, SAID THAT HE WOULD HAVE TO INTERPRET DATA TO SAY IT WAS A FEMALE'S DNA, BECAUSE IT WASN'T SHOWING UP ON THE YSDR TESTING.
SO THERE WAS THAT EVIDENCE.

THEN HE ALSO ASKED CAROL ORME,
MR. ORME'S MOTHER, ON DIRECT
EXAMINATION AS TO THE THREAT
THAT HAD SUPPOSEDLY OCCURRED
TOWARD MS. REDD FROM HER
EX-HUSBAND, THAT HE WOULD KILL
HER IF SHE KEPT HANGING AROUND
WITH MR. ORME.
SO ALL OF THAT EVIDENCE WAS
PRESENTED TO TRY AND SHOW
MR. ORME DIDN'T COMMIT THE
CRIME.
AND THEN AT THE SAME TIME, IN
THE CLOSING--
>> WHAT'S WRONG WITH THAT?
>> WHAT'S WRONG WITH THAT IS
THAT HE WAS, THE JURY WAS TOLD
HE'S CONVICTED OF THIS CRIME.
>> I UNDERSTAND THAT.
I UNDERSTAND THAT.
BUT IF THE COUNSEL CAN SUCCEED
IN CREATING IN THE JURORS' MINDS
SOME DOUBT ABOUT THAT, I
UNDERSTAND RESIDUAL DOUBT IS NOT
PERMISSIBLE.
BUT IF COUNSEL CAN DO THINGS
THAT ARE GOING TO CREATE SOME
DOUBT THERE, IT SEEMS TO ME THAT
THAT'S NOT AT ALL UNREASONABLE
FOR COUNSEL TO DO THAT.
>> WELL, YOU HAVE TO THINK ABOUT
THE JURY AND HOW INCONSISTENT
THAT IS.
>> YOU'VE GOT TO REMEMBER, IT'S
A DIFFERENT-- PART OF IS, I
THINK, THAT ENTERS INTO THAT
ANALYSIS IS IT'S A DIFFERENT
JURY THAT MIGHT BE MUCH LESS
REASONABLE IF IT'S-- TELL ME IF
I'M WRONG ABOUT THAT-- IF IT'S
THE JURY THAT ACTUALLY RETURNED
THE CONVICTION.
BUT WE HAVE A NEW JURY HERE,
CORRECT?
>> YES.
>> SO THEY, THIS IS A DIFFERENT
GROUP OF PEOPLE WHO HAVE NOT
THEMSELVES MADE THAT DECISION
ABOUT GUILT ON THESE UNDERLYING
OFFENSES.

I'M JUST, I'M STRUGGLING WITH SEEING WHY THIS IS JUST SO OFF THE WALL THE WAY YOU'RE PRESENTING IT.
IT SEEMS LIKE-- I MEAN, OBVIOUSLY, THIS IS NOT AN EASY CASE BASED ON THE RECORD THAT HAS ALREADY BEEN, THE CONVICTIONS THAT HAVE BEEN ESTABLISHED.
SO GIVEN THAT CONTEXT, THERE'S NO PERFECT WAY TO PROCEED.
SO I'M TRYING TO UNDERSTAND WHY THIS IS SO OFF THE WALL THAT YOU'RE GOING TO SAY IT'S INEFFECTIVE.
>> WELL, IT WAS OFF THE WALL BECAUSE IF THE STATE HAD OBJECTED TO IT, IT SHOULD HAVE BEEN--
>> WELL, BUT ARE YOU TELLING ME THAT IT'S A BAD STRATEGY FOR COUNSEL TO TRY TO GET EVIDENCE BEFORE A JURY EVEN THOUGH IT MAY BE INADMISSIBLE, AND IF THE OTHER SIDE IS ASLEEP AT THE SWITCH OR WHATEVER, IF THEY DON'T OBJECT, IF IT'S FAVORABLE EVIDENCE THAT THE COUNSEL-- EVEN THOUGH IT MAY BE INADMISSIBLE-- IF IT'S FAVORABLE EVIDENCE AND COUNSEL CAN SUCCEED IN GETTING IT BEFORE THE JURY, WHY IS THAT INEFFECTIVE?
>> IT'S COMPLETELY UNREASONABLE. YOU'RE GOING TO FORM YOUR STRATEGY AROUND THE HOPE THAT YOU CAN GET IN INADMISSIBLE EVIDENCE BECAUSE THE PROSECUTOR'S NOT PAYING ATTENTION.
COMPLETELY UNREASONABLE.
IF THE TRIAL ATTORNEYS HAD WANTED TO TRY TO GET THE EVIDENCE IN, THEY COULD HAVE DONE WHAT'S BEEN DONE IN OTHER CASES, FOR EXAMPLE, IN THE MERK CASE WHERE THEY MOVED BEFORE THE TRIAL TO SAY CAN WE PRESENT THIS

EVIDENCE, AND THE TRIAL COURT
THEN SAID, NO, I DETERMINED
THAT'S LINGERING DOUBT.
AND SO, NO, YOU CAN'T PRESENT
IT.
SO THEN THEY HAVE THEIR CANNES,
AND THEY COULD ADJUST.
BUT HERE THE STRATEGY WAS MADE
IN THE HOPE THAT THE PROSECUTOR
WOULDN'T STAND UP AND SAY,
OBJECTION, THIS IS LINGERING
DOUBT.
BUT SECOND OF ALL, THE PROBLEM
WITH THE STRATEGY IN THIS CASE
IS THAT THERE WAS EVIDENCE, AS
THIS COURT HAS FOUND, THERE WAS
EVIDENCE THAT HE DID, IN FACT,
COMMIT THE CRIME AND THAT HE
DID, IN FACT, COMMIT THE SEXUAL
BATTERY, AND HE'D ALREADY BEEN
CONVICTED OF THAT.
AND THEN THIS CLOSING ARGUMENT,
THE STATE GET WITHS UP AND SAYS
WHAT ARE THEY SAYING?
ARE THEY SAYING HE DID IT IN A
RAGE?
ARE THEY SAYING HE DID IT
BECAUSE HE WAS BIPOLAR?
ARE THEY SAYING HE DID IT
BECAUSE OF THE DRUGS, OR ARE
THEY SAYING HE DIDN'T DO IT?
TOTALLY INCOHESIVE.
IT WAS UNREASONABLE FOR THEM NOT
TO FIGURE OUT THAT WHAT THEY
NEEDED TO DO WAS WHAT WAS DONE
IN THE POSTCONVICTION HEARING
THAT CAUSED THIS REPORT TO SAY
THE CONFIDENCE WAS UNDERMINED.
WHICH WAS FOCUS ON THE
MITIGATION AND PRESENT THE
MITIGATION AND LINK IT TO THE
DRUG ABUSE SO THAT YOU COULD
THEN DECREASE THE WEIGHT OF THE
AGGRAVATORS AND PRESENT THE
PICTURE OF MR. ORME THAT WOULD
HAVE THE JURY FIND THAT HE WAS
NOT, THAT THIS WAS NOT ONE OF
THE WORST OF THE WORST CASES AND
THAT THEY WOULD GIVE HIM A LIFE
SENTENCE.

THAT WAS WHAT WOULD HAVE BEEN
REASONABLE IN THIS CASE.
AND THE FACT THAT THE TRIAL
COURT, COUNSEL HAD THIS COURT'S
OPINION, THEY UNDERSTOOD THEY
HAD THE WHOLE PRIOR SORT OF WE
CALLED IT A DRESS REHEARSAL OF
THE MITIGATION AT THE PRIOR
POSTCONVICTION EVIDENTIARY
HEARING, AND THEY ESSENTIALLY
ABANDONED MUCH OF IT AND FAILED
TO PRESENT SPECIFIC THINGS LIKE
THEY DON'T ASK MR. HERKOV ABOUT
THE STATUTORY MITIGATORS WHEN
HE'S ALREADY TESTIFIED TO THEM.
THEY KNOW WHAT THE ANSWER'S
GOING TO BE, AND YET THEY JUST
DON'T DO IT.
AND THE TRIAL JUDGE, OR THE
POSTCONVICTION COURT SAYS, WELL,
THE INFORMATION HE HAD WOULD
HAVE ESTABLISHED THOSE ANYWAY,
SO THERE'S NO PREJUDICE.
BUT THE PROBLEM IS IN THE
STATE'S CLOSING ARGUMENT THEY
REPEATED TO THE JURY YOU NEVER
HEARD DR. HERKOV SAY THAT.
YOU NEVER HEARD HIM SAY THOSE
MAGIC WORDS.
AND, THEREFORE, IT WAS IMPORTANT
THAT THEY GET OUT THE STATUTORY
MITIGATORS THROUGH BOTH OF THE
EXPERTS, PRESENT DR. WARNER'S
TESTIMONY.
IF YOU'RE NOT GOING TO CALL
DR. McCLAIN, YOU COULD HAVE
HAD ONE OF THE EXPERTS TESTIFY
TO DR.McCLAIN'S INFORMATION
AND PRIOR DIAGNOSIS.
AND YOU COULD HAVE PUT ON THE
EVIDENCE ABOUT THE DOCTORS IN
THE JAIL WHO HAD FOUND AND
RENEWED DR. WALKER'S DIAGNOSIS
OF BIPOLAR BY RENEWING THE
PRESCRIPTIONS.
AND THERE WAS ALSO THE
INFORMATION FROM THE D.O.C.
FILES THAT WAS NOT JUST SORT OF
NEGATIVE TO MR. ORME IN TERMS OF
THE BIPOLAR BECAUSE THERE WERE

THESE INSTANCES WHERE HE WAS PUT
ONCE ON MELORIL WHICH IS AS
EXPLAINED IN THIS POSTCONVICTION
HEARING IS IMPORTANT BECAUSE IT
SHOWS THAT THE, IT IS ONE WAY TO
TREAT THE BEGINNING STAGES OF
MANIA AND THAT HE WAS ALSO AT
ONE POINT CHARACTERIZED AS
HYPERMANIA WHICH IS, AGAIN,
ANOTHER PART OF WHAT YOU WOULD
SEE WITH BIPOLARS.
SO I WOULD LIKE TO RESERVE THE
REST OF THE TIME AT THIS POINT,
BUT I WOULD ASK THE COURT TO
CONSIDER THOSE THINGS.
>> MAY IT PLEASE THE COURT,
PATRICK DELAINEY, ASSISTANT
ATTORNEY GENERAL REPRESENTING
THE STATE OF FLORIDA.
IN THIS CASE TRIAL COUNSEL HAD A
CAREFULLY-PLANNED STRATEGY TO
ATTACK THE STATE'S AGGRAVATORS
BY INJECTING DOUBT INTO THOSE
AGGRAVATORS.
>> LET ME ASK, THIS IS SORT OF
WHAT CONCERNS ME, THE, YOU KNOW,
THE ORIGINAL APPEAL AND IN THE
GUILT PHASE AND OUR STATEMENT OF
THE FACTS WHEN HE APPEARED RIGHT
AFTER-- WAS IT RIGHT AFTER THE
MURDER THAT HE WENT TO THE
RECOVERY CENTER, OR HOW MUCH
TIME HAD ELAPSED?
>> IT'S UNCLEAR AS TO EXACTLY
HOW MUCH TIME FROM THE MURDER--
>> OKAY.
>>-- THAT MR. ORME--
>> BUT IT WAS HE WAS
DISORIENTED, UNABLE TO RESPOND
TO QUESTIONS, HE MANAGED TO
WRITE A MESSAGE.
IT WAS LEE'S MOT, ROOM 15.
I-- READING THE JUDGE'S
SENTENCING ORDER IN THIS CASE
AND LOOKING BACK AT OUR OPINION
IN THE, WHEN WE SAID IT SHOULD
GO BACK, THIS COURT OBVIOUSLY
WAS VERY IMPRESSED WITH THE
AMOUNT OF MITIGATION.
NOT, TO ME, AND I WOULD-- IT'S

NOT ATTACKING THE AGGRAVATION.
I DON'T KNOW HOW YOU REALLY END UP ATTACKING IT, BUT IT'S WHAT, IT'S THIS MITIGATION THAT SEEMED LIKE IT WAS VERY, THIS IS A GUY THAT MAY HAVE BEEN REALLY UNDER EXTREME EMOTIONAL DISTRESS.
HE WAS 30 YEARS OLD, HAD NOT, DID NOT HAVE PRIOR CRIMINAL HISTORY.
SO I READ THIS JUDGE'S SENTENCING ORDER, AND IT'S LIKE, YEAH, THERE'S NO BIPOLAR DISORDER, OR THERE'S LITTLE, AND THERE'S NO EXTREME EMOTIONAL DISTRESS, AND THERE'S AN 11-1 JURY VERDICT WHEREAS THE FIRST TIME AROUND 7-5.
SO I'M NOT-- AND I UNDERSTAND THINGS CAN GO WRONG BECAUSE YOU'VE GOT A DIFFERENT JURY.
BUT THE STRATEGY OF HOW BIPOLAR WAS PRESENTED AND HOW IT MUST HAVE VARIED FROM THE WHAT WAS PRESENTED AT THE EVIDENTIARY HEARING, DO WE NOT CONSIDER THAT AT ALL?
NOW, AGAIN, MAYBE IT'S NOT INEFFECTIVE ASSISTANCE OF COUNSEL, BUT IT DOES SEEM LIKE A LOT OF THESE ISSUES, LIKE THEY ALMOST HAD A ROAD MAP FOR HOW THIS CASE SHOULD HAVE BEEN PRESENTED, AND DID THEY GO OFF THE ROAD MAP?
>> NO.
AND THEY, THEY DID PRESENT THE MENTAL MITIGATION EVIDENCE THAT WAS PRESENTED AT THE INITIAL POSTCONVICTION HEARING WHICH ALLOWED MR. ORME TO HAVE A NEW PENALTY PHASE.
DEFENSE COUNSEL IN THIS CASE PRESENTED DR. HERKOV AND MR. MAYER WHO BOTH TESTIFIED TO MR. ORME'S BIPOLAR DIAGNOSIS.
IN ADDITION, THROUGH THE STATE'S EXPERT, THE JURY ALSO HEARD THAT DR. WARNER AND DR. McCLAIN HAD ALSO DIAGNOSED MR. ORME AS BEING

BIPOLAR.
HOWEVER, IN THIS CASE THE STATE
PRESENTED TWO OTHER DOCTORS,
DR. McCLAREN AND DR. PRITCHARD
WHO TESTIFIED THAT MR. ORME WAS
NOT BIPOLAR, HAD NO HISTORY OF
BIPOLAR IN HIS BACKGROUND.
BY ALL ACCOUNT, HE HAD BEEN A
SUCCESSFUL INDIVIDUAL.
HE GRADUATED HIGH SCHOOL, HE WAS
ATTENDING COLLEGE, WHERE HE
INITIALLY MET MS. REDD IN THEIR
PAST, AND HE WAS WORKING AS A
MERCHANT MARINE FOR A MARINER
CORPORATION.
SO THE EVIDENCE SHOWED THAT HE
WAS NOT BIPOLAR AND, STILL, THE
TRIAL COURT DID APPLY THOSE
MITIGATORS AS IT RELATED TO HIS
POLYSUBSTANCE ABUSE.
THE STRATEGY OF LINGERING DOUBT
IN THIS CASE WAS NOT THE ONLY
ONE PRESENTED BY DEFENSE
COUNSEL.
IT WAS IN ADDITION TO ALL OF THE
MENTAL HEALTH MITIGATION.
AND IT WAS A CLEAR CUT STRATEGY
BY MR. RAIMI AND BY MR. STONE
WHO COMBINED HAD 55 YEARS OF
LEGAL EXPERIENCE IN OVER 600
JURY TRIALS BETWEEN THEM.
AT ONE POINT IN TIME, MR. STONE
WAS MR. ORME'S ORIGINAL ATTORNEY
ON THIS CASE.
SO HE KNEW THE CASE BACKWARDS
AND FORWARDS.
THIS IS A STRATEGY THAT SOUGHT
TO INJECT DOUBT INTO THE TWO OF
THE STATE'S AGGRAVATORS, SEXUAL
BATTERY AND PECUNIARY GAIN.
AT NO POINT IN TIME DID THEY
ARGUE THAT THE MURDER, LINGERING
DOUBT TOWARDS THE MURDER, THAT
WAS NEVER ARGUED.
IT WAS ONLY ARGUED
SPECIFICICALLY TOWARDS SEXUAL
BATTERY AND PECUNIARY GAIN, AND
IT WAS DONE SO THROUGH EXPERT
TESTIMONY.
EXPERTS CAME UP AND TESTIFIED

THERE WAS EVIDENCE THAT COULD SUGGEST SEXUAL BATTERY DID NOT EXIST AND THAT THE SEX WAS CONSENSUAL.
IN ADDITION, THERE WAS EXPERT TESTIMONY THAT SAID THAT THERE IS THIS THIRD PERSON DNA UNDER THE VICTIM'S FINGERNAILS AND THAT MR. ORME DID NOT HAVE ANY MARKS ON HIM.
THIS WAS A STRATEGY THAT THE DEFENDANT CONSENTED TO, WAS INFORMED OF.
HE GOT A SECOND CHANCE TO ASSERT HIS INCIDENCE TOWARDS THESE AGGRAVATORS IN FRONT OF A BRAND NEW JURY WHICH IS IS IF THERE WAS AN OPPORTUNITY FOR IT TO BE PERMISSIBLE, IT'S THIS ONE.
A NEW JURY THAT DID NOT JUST CONVICT HIM OF FIRST-DEGREE MURDER, SEXUAL BATTERY AND ROBBERY.
AND MOREOVER, THE OPTION IS, THE ALTERNATIVE OPTION IS TO DO NOTHING.
THESE AGGRAVATORS OF SEXUAL BATTERY AND PECUNIARY GAIN GO UNCHALLENGED.
AND WHEN PRESENTED WITH THIS ADDITIONAL MITIGATIONAL EVIDENCE, THERE IS CONFLICTING TESTIMONY TOO.
IT WASN'T A CLEAR CUT DETERMINATION THAT MR. ORME WAS BIPOLAR.
IT WAS THE DEFENSE'S POSITION THAT HE WAS BIPOLAR AND THE STATE'S EXPERTS THAT SAY HE'S NOT BIPOLAR.
AND THE EVIDENCE SHOWED THAT HE WAS NOT BIPOLAR.
HE HAD A STRONG POLYSUBSTANCE ABUSE ISSUE, AND THAT'S WHAT THE STATE'S EXPERTS GOT UP AND TESTIFIED TO, THAT EVERYTHING IN HIS BACKGROUND CAN BE TIED TOWARDS POLYSUBSTANCE ABUSE.
AND WHEN WE HAVE THIS HORRENDOUS, HORRENDOUS MURDER

COMBINED WITH A RAPE AND A
ROBBERY, THE MITIGATING EVIDENCE
THAT DRUGS MADE HIM DO THAT IS
NOT GOING TO OVERCOME THAT IN
FRONT OF THE JURY, AND THAT'S
WHAT, THAT'S WHY MR. RAIMI AND
MR.--
[INAUDIBLE]
PURSUED THE STRATEGY WITH THE
DEFENDANT'S CONSENT AND
INSISTENCE THAT THE JURY KNOW
THAT THE SEX BETWEEN MS.REDD
AND HIM WAS CONSENSUAL.
>> DO WE HAVE A CLEAR TIMELINE
OF WHAT HAPPENED HERE?
I MEAN, THE MURDER TOOK PLACE,
DID THE MEDICAL EXAMINER SAY HOW
LONG THE VICTIM HAD BEEN DEAD AT
THE TIME THAT THE EXAMINATION
TOOK PLACE?
>> NO.
WE DON'T HAVE A CLEAR TIMELINE.
WHAT WE KNOW--
>> BECAUSE I'M INTERESTED IN
KNOWING WHETHER OR NOT-- I KNOW
THAT IT SEEMS ANYWAY FROM THE
RECORD THAT MR. ORME BECAME VERY
UPSET WHEN SHE THREW AWAY HIS
DRUGS OR SNATCHED THEM OUT OF
HIS HAND OR SOMETHING, AND SO IS
IT CLEAR FROM THE RECORD THAT
THE MURDER TOOK PLACE AT THAT
POINT, THEN HE WENT OUT, TOOK
HER MONEY, CREDIT CARDS OR
WHATEVER AND PURCHASED MORE
DRUGS?
I'M JUST NOT SURE-- AND THEN
WENT FROM THAT POINT, THEN WENT
TO THE CENTER THAT HE WENT TO?
>> IT'S NOT CLEAR.
WHAT WE KNOW IS THAT THROUGHOUT
THE NIGHT MR. ORME CAME AND LEFT
THE MOTEL ROOM USING BOTH THE
VICTIM'S CAR AND A TAXI CAB AT
SOME POINT IN TIME.
THE TAXI CAB DRIVER TESTIFIED TO
PICKING UP MR. ORME AT VARIOUS
POINTS THROUGHOUT THE NIGHT, AND
WE KNOW THAT THE GENTLEMAN WHO
LIVED CATTY CORNER OR ACROSS THE

STREET WHO FREQUENTLY SAW THE COMINGS AND GOINGS FROM THE MOTEL, HE TESTIFIED TO SEEING MR. ORME COME AND GO.
WHEN THE HOTEL MANAGER--
>> DID HE SEE WHEN THE VICTIM CAME?
>> THERE'S NO TESTIMONY DIRECTLY AS TO WHEN HE SAW THE VICTIM CAME.
HE SAW THE VICTIM'S CAR ARRIVE AROUND 8:00 OR NOTICED IT THERE AROUND 8:00, BUT HE DOESN'T SAY WHETHER OR NOT HE SPECIFICALLY SAW HER GET OUT OF THE CAR AND GO INTO THE HOTEL ROOM AT THAT POINT IN TIME.
WHAT WE KNOW IS THAT THROUGHOUT THAT NIGHT MR. ORME DID PURCHASE DRUGS, ALSO MADE USE OF A PROSTITUTE, AND AT SOME POINT IN TIME THE RAPE, ROBBERY AND MURDER OF LISA REDD HAPPENS.
BY THE TIME THE HOTEL MANAGER GOES TO ROOM 15 AFTER MR. ORME HAS ARRIVED AT THE DETOX CENTER AND THEY HAVE DECIPHERED HIS NOTE, MS. REDD'S BODY WAS ALREADY COLD, AND THERE WAS NOTHING THAT TOLD US PRECISELY WHEN SHE HAD BEEN KILLED.
WHICH WAS WHY THE DEFENSE USED THIS STRATEGY OF ASSERTING THAT THE SEX WAS CONSENSUAL, BECAUSE THE MEDICAL EXAMINER COULD NOT TESTIFY IF SHE HAD BEEN RAPED PRIOR TO BEING BEATEN AND STRANGLED.
SO--
>> BUT THERE'S BEEN A FINDING OF A SEXUAL BATTERY WHICH THE JURY THEN HEARS.
THE JURY IS INSTRUCTED.
DOES IT BECOME UNREASONABLE, I MEAN, YOU COULD CHALLENGE HAC MAYBE, BUT CHALLENGING THE SEXUAL BATTERY AGGRAVATOR?
>> IT'S UNREASONABLE IF THAT IS THE ONLY STRATEGY USED BY THE DEFENSE AND THE STATE OBJECTS

AND THE TRIAL COURT SUSTAINED
THAT OBJECTION.
AT THAT POINT IN TIME, THAT
STRATEGY IS COMPLETELY
UNREASONABLE.
HOWEVER, IF TRIAL COUNSEL KNOWS
THAT A TRIAL COURT MAY LET A
STRATEGY IN, MAY LET AN
IMPERMISSIBLE ARGUMENT IN AS
STRATEGY, THEN A DEFENSE
ATTORNEY IS BEING EFFECTIVELY
UTILIZING THAT TO HIS ADVANTAGE.
>> ALL RIGHT.
IT JUST SEEMS LIKE IT ENDS UP
WHERE IT BECOMES, AS WAS SAID,
OFFENSIVE.
THAT YOU'RE CHALLENGING
SOMETHING THAT IS CLEARLY ISN'T
ALL THE EVIDENCE AND THE
CONVICTION THAT THEY'RE
INSTRUCTED ON BECAUSE NOTHING
SEEMS VERY CREDIBLE.
YOU CAN'T JUST KEEP ON, YOU
KNOW, SORT OF THIS SHOTGUN
APPROACH.
AND, AGAIN, MAYBE WE'RE JUST
QUESTIONING REASONABLE BUT WOULD
HAVE DONE IT DIFFERENTLY, AND
THE DEFENDANT INSISTED ON IT?
NOW, WHERE IS THAT FROM, THE
DEFENDANT INSISTING THAT THEY
SAY IT WAS CONSENSUAL?
>> MR. RAIMI--
>> HE DIDN'T TESTIFY.
>> THE DEFENDANT DID NOT
TESTIFY, BUT MR. RAIMI'S
TESTIMONY ESTABLISHES THAT THE
DEFENDANT WAS INFORMED OF THE
STRATEGY TO NOT JUST ATTACK THE
SEXUAL BATTERY AGGRAVATOR, BUT
TO USE THE STRATEGY OF INJECTING
DOUBT INTO THE STATE'S
AGGRAVATORS.
THAT APPEARS VOLUME 20 ON 3096.
DECISION, MR. RAIMI ALSO SAYS ON
PAGE 3121 OF VOLUME 20 THAT HE
AND MR. STONE FELT THAT BECAUSE
IT WAS MR. ORME'S LIFE ON THE
LINE, THAT HE SHOULD HAVE INPUT
INTO HIS DEFENSE, AND HE SHOULD

BE ABLE, SHOULD BE AN INTEGRAL
PART OF THAT DEFENSE AND THAT
STRATEGY, AND THEY MADE HIM A
PART OF THAT STRATEGY.
THE ONLY THING THAT MR. ORME
WANTED TO PRESENT AT THE
RESENTENCING HEARING THAT WAS
NOT PRESENTED WAS A RELIGIOUS
CONVERSE, AND THEY
HAD ADVISED HIM AGAINST
THAT PARTICULARLY DUE TO THE
TIMING OF THE RESENTENCING AND
THE TYPICAL-- AND THE NATURE OF
THE RELIGIOUS CONVERSION.
THEY THOUGHT IT WOULD HAVE
COUNTED AGAINST HIM.
IF THERE ARE NO FURTHER
QUESTIONS, FOR THE
AFOREMENTIONED REASON, STATE OF
FLORIDA RESPECTFULLY REQUESTS
THIS COURT AFFIRM THE TRIAL
COURT'S ORDER DENYING
POSTCONVICTION RELIEF.
THANK YOU.
>> IN TERMS OF THE OTHER
EXPERTS-- WARNER, McCLAIN AND
WALKER-- THE STATE PROSECUTOR
GOT UP IN FRONT OF THE YOUR AND
SAID THE ONLY EXPERTS WHO
DIAGNOSED ORME WITH BIPOLAR ARE
HERKOV AND MAYER AND WALKER.
SO TO SAY THAT THERE WAS PASSING
REFERENCE IN DR. PRITCHARD'S
TESTIMONY THAT HE ACKNOWLEDGED
THAT WARNER AND McCLAIN HAD
DIAGNOSED HIM, THE STATE
CERTAINLY DIDN'T THINK THAT THAT
WAS SIGNIFICANT ENOUGH BECAUSE
IN THEIR CLOSING, THEY
DISREGARDED THOSE EXPERTS AND
ONLY RELIED-- AND TOLD THE JURY
THE ONLY EVIDENCE YOU'VE HEARD
ABOUT BIPOLAR IS FROM HERKOV,
MAYER AND THIS DIAGNOSIS FROM
WALKER AT THE JAIL.
AND SO THAT-- IF THAT'S, IF THE
STATE'S NOW CONCEDING THAT THERE
WERE MORE EXPERTS AND THAT
DR. PRITCHARD'S TESTIMONY IS
SOMEWHAT MORE IMPORTANT, THEN I

WOULD ALSO SUGGEST THAT THAT WAS MISLEADING TO THE JURY, WHAT THE STATE SAID IN ITS CLOSING ARGUMENT.
IN TERMS OF THE STATE'S EXPERTS, THEY ALSO DID DIAGNOSE MR. ORME WITH A DEPRESSIVE DISORDER WHICH IS A MAJOR MENTAL HEALTH DISORDER.
SO TO SAY THAT IT WAS JUST SIMPLY POLYSUBSTANCE ABUSE IS NOT TRUE.
THEY DID GIVE THAT DIAGNOSIS BASED ON THE HISTORY, AND THEY DISPUTED PUSHING HIM INTO THE BIPOLAR DIAGNOSIS.
BUT THERE WAS THAT AS WELL.
SO THAT WAS NEVER CONSIDERED BY THE TRIAL COURT.
IN SENTENCING MR. ORME.
AND SO I WOULD JUST SAY THAT THAT WAS ALSO AN ERROR ON TRIAL COME'S PART FOR NOT-- COUNSEL'S PART FOR NOT ALSO PRESENTING THAT AS MITIGATION.
>> WHAT DO WE KNOW ABOUT THE TIME FRAME BETWEEN WHEN THE MURDER OCCURRED AND--
[INAUDIBLE]
COHERENT AND--
>> RIGHT.
I MEAN, THE STATE'S THEORY IS THAT, YOU KNOW, MR. ORME MADE THE STATEMENT TO LAW ENFORCEMENT, SO THE STATE'S THEORY WAS TAKING HIS STATEMENT, HE SAYS THAT AFTER MS.REDD ARRIVED AND THEY HAD THE ARGUMENT BECAUSE SHE PUSHED THE CRACK INTO THE TOILET, THAT HE THEN LEFT THE APARTMENT, AND HE DOESN'T REMEMBER WHAT HAPPENED AFTER THAT.
NOW, THE STATE'S THEORY WAS IF THAT'S TRUE, THEN SHE HAD TO HAVE ALREADY BEEN DEAD, BECAUSE SHE HAD TO GO TO WORK THAT NIGHT.
OBVIOUSLY, THERE WAS A PHONE, SHE COULD HAVE WALKED DOWN TO

THE OFFICE, AND THE FACT THAT
NOTHING HAPPENED AT THAT POINT
MEANS THAT THE ATTACK HAD
ALREADY OCCURRED BEFORE HE LEFT
THE MOTEL FOR THE FIRST TIME.
SO THAT WAS THE STATE'S THEORY.
AS FAR AS ANY OTHER-- AND IT'S
JUST SORT OF BASED ON THAT
COMMON SENSE OF THAT WE KNEW SHE
HAD TO GO TO WORK, AND WE
KNEW--
>> I GUESS, NO, I'M JUST TRYING
TO UNDERSTAND BECAUSE IT'S NOT
MENTIONED IN THE JUDGE'S
SENTENCING ORDER, THE FACT THAT
DOESN'T SEEM TO, JIBE WITH THE
JUDGE'S FINDING IN, THIS IN THE
SENTENCING ORDER IN THE SECOND
RESENTENCING, THAT HE WAS,
CAPABLE OF DRIVING, THAT.
HE WAS NOT UNDER THE INFLUENCE
OF COCAINE OR CRACK.
WAS THAT BROUGHT OUT IN THIS, IN
THE POST-CONVICTION, THAT THAT
EVIDENCE WAS EVIDENCE THAT HE
WAS UNDER THE INFLUENCE OF
EXTREME EMOTIONAL DISTURBANCE AT
THE TIME OF THE MURDER?
>> I MEAN THE EMPLOYEES FROM THE
REHABILITATION CENTER AS WELL AS
SOME OF THE PERSONNEL FROM THE
HOSPITAL WERE CALLED TO TESTIFY
BY THE STATE AND DURING THEIR
TESTIMONY, THEY DID DISCUSS HIS
MEDICAL CONDITION AND THAT HE
WAS, AT ONE POINT
HYPERVENTILATING AND HIS BLOOD
PRESSURE WAS GOING UP VERY HIGH.
SO THERE WAS PHYSIOLOGICAL--
>> EXPERTS AT THE ORIGINAL
RESENTENCING RELATE THAT TO WHAT
HIS STATE WOULD HAVE BEEN AT THE
TIME OF THE MURDER?
>> NO.
>> OKAY.
>> DO YOU
[INAUDIBLE]
BY THE TIME HE TOLD THEM TO GO
TO THIS MOTEL AND THEY GOT
THERE, THAT HER VICTIM'S WAS

COLD?
BECAUSE THAT WOULD CERTAINLY
INDICATE THAT THERE WAS SOME
PERIOD OF TIME BETWEEN THE TIME
THAT SHE WAS KILLED AND THE TIME
THAT HE ACTUALLY SHOWED UP AT
THE DETOX CENTER.
>> YES.
I MEAN THAT WAS IN HIS
STATEMENT.
THAT IS WHERE THEY GOT THAT
FROM.
THAT THE BODY WAS COLD.
I SEE MY TIME IS QUICKLY EXPIRED
OR HAS EXPIRED.
I WOULD JUST ASK THE COURT TO
CONSIDER THAT IF, IF I MAY, THAT
IN TERMS OF THE PREJUDICE
ANALYSIS, HAD THIS CASE BEEN
DONE CORRECTLY, LIKE IT WAS IN
THE POST-CONVICTION HEARING
THERE COULD HAVE BEEN STATUTORY
MITIGATORS OF NO SIGNIFICANT
PRIOR CRIMINAL HISTORY, EXTREME
MENTAL OR EMOTIONAL DISTURBANCE
AT THE TIME OF THE CRIME.
THAT HIS CAPACITY TO, APPRECIATE
THE CRIMINALITY OF HIS CONDUCT
WAS SUBSTANTIALLY IMPAIRED AS
WELL AS THE CHILDHOOD ABUSE AND
NEGLECT, THAT THE TRIAL COURT
REFUSED TO WEIGH, THIS COURT
FOUND ERROR ON DIRECT APPEAL.
HIS REMORSE, HIS BIPOLAR OR AT A
MINIMUM, THE DEPRESSIVE DISORDER
AND HIS DRUG AND ALCOHOL
ADDICTION WHICH IS CLEARLY
LINKED TO HIS MENTAL HEALTH
DISORDERS.
AND I SUBMIT THAT THAT TYPE OF
EVIDENCE IS EXACTLY THE TYPE OF
EVIDENCE THAT WOULD HAVE
RESULTED IN THIS JURY
RECOMMENDING A LIFE SENTENCE.
SO I WOULD ASK THAT THE COURT
REVERSE.
THANK YOU.
>> COURT WILL BE IN RECESS FOR
TEN MINUTES.