

>> NEXT CASE UP.

TAI A. PHAM V. STATE OF FLORIDA.
AM I CORRECT?

>> MAY IT PLEASE THE COURT, GOOD MORNING.

I REPRESENT THE PETITION AND PILLAGE IN THIS CASE, MR. TAI PHAM.

MR. PHAM COMES BEFORE THIS COURT ON DENIAL OF A MOTION TO VACATE JUDGMENT SENTENCED, INEFFECTIVE ASSISTANCE OF COUNSEL.

I WOULD LIKE TO START MY AGREEMENT WITH ARGUMENT I, PARTICULARLY I WANT TO START WITH THE PREJUDICE PROMPT WHICH IS THE MAIN ISSUE OF THIS CASE AS OPPOSED CONVICTION COURT MAKES IT CLEAR IN HER ORDER THAT TRIAL COUNSEL FAILED TO GIVE SATISFACTORY EXPLANATION AS TO WHY THEY DIDN'T ATTEMPT A PHONE CALL TO CALL THE FAMILY OF MR. PHAM OR GET THE DEPARTMENT OF CHILDREN AND FAMILY RECORDS AND THE FLORIDA STATE HOSPITAL RECORDS.

THAT IS QUITE CLEAR IN HER ORDER.

WITH REGARD TO THE PREJUDICE PRONG I SUBMIT TO THE COURT THAT THE THOSE CONVICTIONS COURT ERRED IN FINDING NO PREJUDICE ESTABLISHED.

>> BEFORE YOU GO INTO WHY THERE IS NO PREJUDICE THERE WERE HOW MANY MENTAL HEALTH EXPERTS DID LAWYER PUT ON?

>> AT THE PENALTY PHASE?

IT WAS DR. DEBRA D. A. BEFORE THE JURY AND DR. JACQUELINE --

>> DID THE DOCTOR KNOW ABOUT THE DEFENDANT BEING AN ORPHAN IN VIETNAM, WAS THAT PART OF HER WHOLE DIAGNOSIS OF EXTREME MENTAL DISTRESS OR STATUTORY MITIGATES?

>> --

>> THAT WAS PART AND PARCEL OF THEIR CASE.

THE QUESTION OF WHETHER THEY SHOULD HAVE ACTUALLY GOTTEN RECORDS AND HAD SOMEONE TESTIFY AS TO THOSE RECORDS, GOING WITH THAT BACKDROP OF MENTAL HEALTH EXPERT REALLY EXPLAINING THE SIGNIFICANCE OF WHAT HAD HAPPENED TO THIS DEFENDANT THAT WOULD HAVE CAUSED HIM TO DO THESE TERRIBLE CRIMES, WHERE IS THE PREJUDICE FROM WHAT THEY DIDN'T PUT ON OR DIDN'T DISCOVER?

>> THE PROBLEM WITH DR. DAY'S PRESENTATION IS WHAT SHE KNEW AND WHAT SHE HAD.

YOU CAN SEE THIS WHEN IT DISCREDITS HER.

ALL SHE HAD WAS SOME OF MR. PHAM'S INFORMATION SHE PROVIDED AND OBVIOUSLY HE HAS MENTAL HEALTH ISSUES.

HE GAVE HER NUANCES.

A LITTLE BIT ABOUT FLASHBACKS, NIGHTMARES, TOLD HER HE WAS BORN IN MALAYSIA WHICH WE KNOW NOT TO BE TRUE FROM THE EVIDENTIARY HEARING.

TOLD A LITTLE BIT ABOUT HIS TRAVEL INTO THE UNITED STATES AND EVEN DR. D. A. SAID SHE DIDN'T KNOW WHERE HE CAME TO THE UNITED STATES WHICH WAS PROBLEMATIC BECAUSE TRIAL COUNSEL SAID THEY CAME TO ILLINOIS AND THOSE RECORDS HAVE THAT INFORMATION SO SHE DID NOT HAVE THE INFORMATION PRESENTED AT THE EVIDENTIARY HEARING.

SHE HAD NUANCES' FROM THE CLIENT AND DURING HER TESTIMONY, SHE HADN'T EVEN LOOKED AT THE FLORIDA STATE HOSPITAL COMPLETE RECORDS.

SHE LOOKED AT A REPORT FROM DR. AUGUSTINEOW WHICH SHE LOOKED AT, SHE WAS LACKING WHAT INFORMATION SHE HAD 4 MAJOR DEPRESSIVE DISORDER DIAGNOSIS THAT SHE MADE.

SHE COULDN'T FIND PTSD
BECAUSE SHE LACKED HISTORICAL
INFORMATION, TRIAL COUNSEL KNEW
THAT.

AND -- I AM SORRY, ENJOY CAMPING
AND SEE ALL ABOUT BEING THERE.
HISTORICAL INFORMATION TO COME
TO THE DIAGNOSIS.

WHAT THE EVIDENTIARY HEARING
SHOWED IS WHAT HAPPENS
ESPECIALLY DR. MCCLAREN, DR.
BLAKE, OR WHAT HAPPENS WITH THE
ENTIRE INFORMATION WHICH WAS
ALREADY AVAILABLE.

THE TESTIMONY OF THE FAMILY,
TESTIMONY FROM ALL THE WITNESSES
THAT CAME FROM ILLINOIS, ILL.
RECORDS AND COMPLETE HOSPITAL
RECORDS WHICH DR. MCLAREN MADE
GREAT EFFORTS TO MAKE SURE HE
HAD ALL OF THEM.

APPROPRIATE DIAGNOSIS OF
POST-TRAUMATIC STRESS DISORDER
WHICH WAS VERY CREDIBLE BECAUSE
WITH ALL THE FAMILY INFORMATION,
THE COMPELLING TRAUMA YOU HAVE
FIRSTHAND KNOWLEDGE NOW.

THEY HAVE THAT FOR THE PTSD AND
DR. MCLAREN HAS THE INFORMATION,
DR. LEE HAS INFORMATION TO ASK
MR. PHAM ABOUT THOSE INSTANCES.
LAW TO MCLAREN SAYS HE IS NOT
RULING OUT BIPOLAR DISORDER BUT
DIDN'T SEE A MANIC EPISODE.

DR. BLAKE HAD A FIRSTHAND
EXPERIENCE OF A MANIC EPISODE
WITH MR. PHAM WHEN HE
INTERVIEWED HIM WHEN
INCARCERATED SO HAD A BIPOLAR
SPECTRUM DIAGNOSIS.

WITH THE EVIDENTIARY HEARING
SHOWS VERY CLEARLY FROM THE
STATE'S EXPERTS WHAT HAPPENS
WHEN YOU GIVE THE EXPERT
EVERYTHING BUT FOR TRIAL
COUNSEL'S FAILURE, THEY HAD THE
NAME OF THE FAMILY TO PICK THE
PHONE, MAKE ATTEMPTS TO CALL HIM
SO YOU KNOW HIS ENTIRE HISTORY,
HIS CHILDHOOD HISTORY, DON'T

KNOW ABOUT THE HYPOXIA WHICH DR. MCCLAREN SAID THOSE PROBLEMS WERE DEVELOPMENTAL AND WERE IMPORTANT.

EVEN THE STATE'S EXPERTS, THE PENALTY PHASE TALKS ABOUT HOW HE COULDN'T COME WITH A COGNITIVE IMPAIRMENT DIAGNOSIS BECAUSE HE DIDN'T HAVE INFORMATION ABOUT PROBLEMS AT SCHOOL, BEHAVIOR PROBLEMS IN TERMS, LAW ENFORCEMENT, DIDN'T HAVE LONG PERIODS OF INSTABILITY.

THAT ALL CAME OUT FROM THE ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY, KEVIN OUT FROM THE FAMILY TESTIMONY, TESTIMONY AT THE ILLINOIS WITNESSES.

DR. MCCLAREN TALKED ABOUT THE COGNITIVE IMPAIRMENT DIAGNOSIS BECAUSE HE HAS EVERYTHING.

AND WHEN YOU HAVE A JURY DETERMINING THE MORAL CULPABILITY OF YOUR CLIENTS, IT HAS TO BE A PARTICULAR LIGHT SENTENCING.

YOU HAVE TO BRING OUT THIS PARTICULAR CHARACTERISTIC OF MR. PHAM AND TELL THIS JURY WHY THEY SHOULD SPARE HIS LIFE.

UNLESS YOU TALK ABOUT HIM, HIS LIFE, HIS DIAGNOSIS, THE COMPLETE STORY AS WE DID AT THE EVIDENTIARY HEARING THE JURY DOESN'T KNOW HIM AND IT IS VERY EVIDENT, THIS IS A RARE INSTANCE WHEN THEY HAVE THE COLLOQUY WITH THE JURORS REGARDING STEP THEY HEARD ABOUT ETHNIC BIAS.

KRISTIN APPLEMOON CAME IN AND SAID I HEARD TALKS ABOUT HE COMES TO THIS COUNTRY, HE SHOULD KNOW RIGHT FROM WRONG, HE ABIDE BY OUR LAWS.

YOU LEARN ABOUT HOW IT GOT HERE. FIRST-TIME HE LEFT AND ENDED UP IN THE PRISON WITH HIS SISTER AND PRIOR TO THAT FOR A MONTH, JUST DEPLORABLE CONDITIONS YOU HEAR THEY TRICKED HIM.

HE WAS SENT AWAY WITH HIS
SISTER, COMES BACK SEVERAL
MONTHS LATER AND YOU HEAR FROM
THE FAMILIES THAT HE IS SO HAPPY
TO BE BACK WITH HIS MOTHER, BACK
HOME AND A FEW DAYS LATER ONCE
AGAIN THEY LIE TO HIM AND HE IS
AGAIN SEND OFF FROM HIS FAMILY,
FORCED AWAY.

THIS WASN'T A CHILD, A MAN WHO
WANTED TO LEAVE ON HIS OWN FOR A
BETTER EDUCATION.

YOU WANTED TO STAY HOME WITH HIS
MOM BUT HE WAS SENT AWAY AND HE
ENDS UP ON THIS BOAT AND SOME OF
THAT TESTIMONY CAME OUT BUT AS
SHE TESTIFIED, SHE PASSED OUT
FOR MUCH OF THE BOAT RIDE.

AND HE COMES TO THE UNITED
STATES AND YOU HEAR EVENTUALLY
EVEN IN THE COURT'S INITIAL
SENTENCING ORDER HE IS IN AN
ORPHANAGE BUT WE DON'T KNOW WHAT
HAPPENED AFTER END AT THE
EVIDENTIARY HEARING, YOU FILL IN
THOSE GAPS THROUGH THE TESTIMONY
OF DR. WAY WHO SEES HIM SHORTLY
AFTER HE COMES TO A LOYAL.
HIS CASEWORKER REMEMBERS THE
INSTABILITY.

>> REALLY KIND OF COMPELLING
STORY ABOUT SOMEONE IN AGREEING
TO THIS COUNTRY AND ALL BUT HOW
DOES THAT FIT INTO WHAT WOULD
HAVE BEEN MITIGATING TO THE
EXTENT THAT IT WOULD HAVE
OVERCOME THAT AGGRAVATION IN
THIS CASE?

>> CERTAINLY, ONE OF THE MAJOR
FACTORS THEY TALK ABOUT THIS
STATUTORY MITIGATION OF EXTREME

--

>> TALK ABOUT WHAT?

>> EXTREME EMOTIONAL DISTRESS AT
THE TIME OF THE CRIME.

IN TERMS OF EXPERIENCES, THEIR
PROFESSION, THEY DEAL WITH
SOUTHEAST ASIAN PRISONERS OF
WAR, PEOPLE WITH PETE PSC.
TESTIFIED AT THE TIME OF THE

CRIME THAT MR. PHAM WAS SUFFERING FROM THE PTSD PROPELLED BY THE BIPOLAR SPECTRUM WENT THIS TRAGIC INCIDENT HAPPENED SO IT TIES IN WHEN YOU LOOK AT HOW THEY GOT THE POST-TRAUMATIC STRESS DIAGNOSIS, IT TIES IN WHEN YOU LOOK AT THE BIPOLAR SO THEY WERE ABLE TO TIE IN WHAT HAPPENED ONCE THE DEPARTMENT OF CHILDREN STEPPED IN TO MR. PHAM'S LIFE AND TOOK AWAY HIS CHILDREN, DR. MCCLAREN TALKS ABOUT THE DOWNHILL SPIRAL WHEN THAT HAPPENS.

>> I UNDERSTAND WHAT THE JUDGE FOUND, DEFICIENCY IN NOT EXPLORING THIS.

WHAT WAS THE TRIAL LAWYER'S EXPLANATION FOR NOT PURSUING THE FAMILY, RECORDS, DOCTORS IN ILLINOIS?

>> THE MAIN ATTORNEY IS MENTIONED IN THE COURT SENTENCING ORDER BUT THE ATTORNEY IN A STRATEGIC MISTRIAL COUNCIL WAS MISSING FROM THE ORDER.

HE TESTIFIED HE HAD THE NAMES, FOUND THE MONEY HIS COMPUTER BUT HAD ABSOLUTELY ZERO EXPLANATION WHY HE DIDN'T FOLLOW THEM UP. HE DOESN'T KNOW WHY HE DIDN'T FOLLOW IT UP, HAD NO STRATEGIC REASONS NOT TO END THE SAME THING, HE KNEW THAT TAI PHAM WAS IN ILLINOIS BUT HAD NO REASON TO FOLLOW AFTER WORD.

>> WHAT YEAR DOES HE COME TO THIS COUNTRY?

>> 1984.

>> HOLD AT THAT TIME?

>> HE IS ABOUT 9 OR 10 I BELIEVE.

>> THIS CRIME, HE IS IN THE ORPHANAGE FOR WHAT AGE?

>> HE LEFT ABOUT 18 OR 19.

>> SO HE IS -- PARENTS, IT IN THE ORPHANAGE, DOES HE HAVE A

FULL EDUCATION IN THEIR?
DOES HE GET EDUCATED AND
GRADUATE?

>> HE EVENTUALLY GETS A G.E.D..
>> DID THEN COME IN AT THE TRIAL
IS THAT SUBSEQUENT THAT THEY
LEARNED?

>> I APOLOGIZE I AM TRYING TO
RECALL.

PERHAPS THROUGH THE
BROTHER-IN-LAW.

I THINK IT WAS HIS
BROTHER-IN-LAW.

>> HE THEN, AT ONE POINT, HE IS
NOW 18 AND AS I UNDERSTAND THE
JUDGE FOUND HE HAD WORKED EVEN
THOUGH HIS IQ WAS MAYBE
BORDERLINE THAT HE HELD DOWN A
JOB AND WAS CAPABLE, DID NOT
HAVE -- DID HE HAVE A CRIMINAL
HISTORY?

>> THIS STARTED AFTER THE
DEPARTMENT OF CHILDREN AND
FAMILIES BECAME INVOLVED AND
THERE WAS AN INJUNCTION AND
EVENTUALLY THIS CRIME, THERE WAS
AN ACTIVATED -- AGGRAVATED
STALKING.

>> THE DELAYED, TALKING ABOUT
POST-TRAUMATIC STRESS FROM HIS
EARLY CHILDHOOD BUT LOOKS LIKE
THERE WAS A PERIOD OF TIME WHERE
HE WAS ABLE TO CONFORM TO
SOCIETY'S NORM AND WHAT WAS --
WHAT DID THE JURY HERE?
WHAT WAS HEARD IN POST
CONVICTION THAT TRIGGERED THIS
DOWNWARD SPIRAL THAT THEN LED TO
THE MURDERS?

THE MURDER AND ATTEMPTED MURDER?

>> AT THE EVIDENTIARY HEARING
DR. BLAKE TALKS ABOUT THE PT SP,
DR. LEE DOES TOO, REQUIRES THE
TRIGGER.

>> WHAT WAS THE TRIGGER?

>> WHEN MR. PHAM CALLED HIS
DAUGHTER LAW NOT PHAM, HE FOUND
OUT SHE WAS HOME ALONE AND HIS
YOUNGER CHILDREN WERE NOT AT
HOME AND WERE NOT WITH THE

FAMILY.

A REFERENCE'S HOMES.

>> DID DR. D. A. TALK ABOUT THAT TRIGGER?

>> SHE AND THE COURT SENTENCING ORDER CRITICIZED, SHE BELIEVED THE TRIGGER FOR THE MAJOR DEPRESSIVE DISORDER WAS THAT HE KNEW ABOUT THE BOYFRIEND.

CHRISTOPHER HIGGINS DATING -- CHRISTOPHER HIGGINS WAS ON A DATE WITH HIS WIFE WHICH WAS INCONSISTENT AS THE COURT FOUND, WHEN HE CAME BY HIS INTESTINE MONEY TO THE HOUSE --

>> BUT THAT'S COMING FROM THE DEFENDANT, WHAT TRIGGERED IT. SO IF HE DIDN'T EXPLAIN IT TO DR. DAY AND NOW HE'S EXPLAINING THIS DIFFERENTLY, THAT'S NOT THE FAULT OF THE MENTAL HEALTH EXPERT OR THE LAWYER.

>> THAT TESTIMONY DIDN'T COME FROM MR. PHAM.

THAT CAME FROM DR. DAY.

THAT'S HER BELIEF WAS THE TRIGGER, THAT HE KNEW ABOUT THE BOYFRIEND.

>> YOU'RE SAYING THE DOCTOR NOW SAYS IT WAS A DIFFERENT TRIGGER, THAT HE THOUGHT HIS CHILDREN WERE NOT BEING PROTECTED.

>> RIGHT.

THAT'S WHAT DR. ABUEG'S OPINION WAS.

>> BASED ON WHAT?

>> BASED ON READING THE POLICE REPORTS AND TALKING TO MR. PHAM AND MR. PHAM'S TESTIMONY.

>> BUT THERE YOU CAN'T CRITICIZE DEFENSE LAWYERS IF THEIR OWN MENTAL HEALTH EXPERT COMES UP WITH A DIFFERENT CONCLUSION.

>> I UNDERSTAND, BUT WHAT HAPPENED AT PENALTY PHASE WAS THAT DR. DAY DIDN'T HAVE ALL OF THE INFORMATION, VERSUS DR. LEE, DR. MCCLAREN AND DR. ABUEG'S, WHO HAD ALL THE INFORMATION. SO NOW YOU HAVE, YOU KNOW, A

MAJOR MENTAL DISORDER IN TERMS OF THE PTSD AND BIPOLAR THAT'S PROPELLING MR. PHAM ONCE THE TRIGGER IS ESTABLISHED, THAT HE KNEW HIS DAUGHTERS WERE NOT AT HOME WHERE HE WANTED THEM TO BE, BECAUSE HE'D RATHER THEY BE WITH A VIETNAMESE FAMILY BECAUSE OF HIS UPBRINGING.

EVEN DR. MCCLAREN SAYS THAT HE BELIEVED THAT THERE WAS GREAT EMOTIONAL DISTURBANCE.

[QUESTION OFF MIC]

>> THE YOUNGER ONES WERE HIS.

>> LANA WASN'T.

SHE WAS IN HERE EARLY TEENS.

SHE WAS ABOUT 18.

APOLOGIZE.

>> 18?

>> YES.

>> AND SHE WAS HOME ALONE AT 18.

>> CORRECT.

AND THAT WAS HIS STEPDAUGHTER.

>> OKAY.

>> AND SO PROBLEM BECOMES IS --

AND TRIAL COUNSEL'S DEFICIENCY

CAUSED THESE PROBLEMS WITH

DR. DAY, WHO ONLY SAW HIM FOUR

TIMES, AND TWO OF THE TIMES IS

WHEN HE WAS HAVING THE MANIC

EPISODE AND WHEN HE WAS

SUICIDAL.

BUT SHE NEVER SAW HIM AFTER THE

COMPETENCY HEARING.

SHE'D ALREADY MADE HER

DETERMINATION.

EVEN AT THE DEPOSITION SHE SAYS

SHE DOESN'T HAVE ALL THIS

INFORMATION.

TRIAL COUNSEL SHOULD HAVE MADE

REASONABLE EFFORTS AT THAT POINT

TO TRY AND GET IT TO HER.

WHAT DO YOU NEED TO GET TO THIS

PTSD?

WHAT DO YOU NEED TO GET TO

BIPOLAR?

THE EVIDENTIARY HEARING SHOWED A

COMPLETELY DIFFERENT STORY, MORE

COMPELLING, GUT-WRENCHING AND

COMPLETE BECAUSE THE

INVESTIGATION DONE WAS COMPLETE AT THAT POINT.

>> YOU'RE INTO YOUR REBUTTAL TIME.

YOU'RE WELCOME TO CONTINUE IT.

>> I WILL SAVE MY LAST FEW MINUTES FOR REBUTTAL.

THANK YOU.

>> MAY IT PLEASE THE COURT, I'M STACEY KIRCHER, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE IN THIS CASE.

I'D LIKE TO BEGIN THIS MORNING BY ADDRESSING A COUPLE POINTS. TO ADDRESS JUSTICE PARIENTE'S QUESTION AS TO THE NUMBER OF MENTAL HEALTH EXPERTS IN THIS CASE, YES, DR. DAY WAS THE PRIMARY DOCTOR, ALONG WITH DR. OLANDER, WHO TESTIFIED DURING THE PENALTY PHASE. HOWEVER, MR. PHAM HAD THE BENEFIT OF NO LESS THAN FIVE COMPLETE MENTAL HEALTH EVALUATIONS, WHICH DR. DAY HAD THE REPORTS OF AND CONSULTED BEFORE MAKING HER RECOMMENDATION IN THIS CASE.

[QUESTION OFF MIC]

>> WERE THEY ALL DONE AFTER THE MURDER OR DO WE HAVE SOME THAT WERE BEFORE?

>> BECAUSE THERE WERE SO MANY IN THIS CASE, LUCKILY I DID MAKE A CHART.

THE ONLY THAT WAS BEFORE THE MURDER WAS APPROXIMATELY A YEAR AND A HALF BEFORE THE MURDER, IN COORDINATION WITH THE FAMILY LAW CASE AND THE STALKING CASE, WHICH COUNSEL ALLUDED TO, AND THAT WAS IN 2005.

DR. DAY DID HAVE THAT. THERE WAS ALSO DR. JEAN RICHARDSON.

THERE WAS DR. -- WELL, DR. DAY OBVIOUSLY.

DR. DANSINGER WAS HAPPENING AT THE SAME TIME.

HE DID THREE VISITS OF THE

DEFENDANT AND DID THREE REPORTS FOR THE COURT.

ALSO DR. VALENTINE, WHO WAS THE OTHER COURT-ORDERED COMPETENCY EVALUATION, WHO VISITED WITH HIM TWICE.

HE SPENT APPROXIMATELY FOUR TO SIX WEEKS AT THE MENTAL HOSPITAL.

HE WAS IDENTIFIED BY DR. RIEBSAME FOR THE STATE.

>> HE WAS FOUND INCOMPETENT INITIALLY WITH RESPECT TO THIS CASE?

>> TOWARD THE END.

THIS CASE WENT APPROXIMATELY THREE YEARS FROM CRIME TO TRIAL, AND IN SEPTEMBER OF 2007

DR. DAY VISITED HIM FOR THE FOURTH TIME.

>> WHO ORDERED THE EVALUATION BEFORE THE MURDER?

>> THAT WAS FOR THE FAMILY LAW CASE.

>> WHO ORDERED THAT EVALUATION?

>> THAT WAS THE FAMILY LAW JUDGE, IS MY UNDERSTANDING, THOUGH THE RECORD IS SILENT ON THAT.

>> DR. TRESSLER, WHAT WAS HIS REPORT?

>> THAT'S IMPORTANT AS WELL.

DR. DAY TESTIFIES SHE IS CONSISTENT WITH ALL FIVE OF THESE OTHER DOCTORS.

DR. TRESSLER DIAGNOSES HIM AXIS I AND II.

HE DOES IQ TESTING AS WELL, WHICH IS CONSISTENT WITH THE IQ TESTING DONE WITH SUSAN OTTESON, THE DCF WORKER IN ILLINOIS THAT TESTIFIED IN THE EVIDENTIARY HEARING.

HIS IQ TESTS ARE ALWAYS NORMAL TO ABOVE AVERAGE.

HE WAS 100 ON THE IQ TEST THAT DR. TRESSLER DID.

SO DR. DAY DID MAKE A DIAGNOSTIC EVALUATION OF HIM.

IT'S IMPORTANT TO NOTE AS WELL

THAT I BELIEVE COUNSEL WAS MAKING THE ARGUMENT THAT SHE HAD A LIMITED AMOUNT OF INFORMATION. SHE TESTIFIED THAT SHE DID APPROXIMATELY 15 TO 20 HOURS OF RESEARCH ON ALL THE DOCUMENTS THAT TRIAL COUNSEL PROVIDED HER WITH.

SHE MET WITH HIM FOUR TIMES, WITH APPROXIMATELY 4.5 TO SIX HOURS OF IN-PERSON TIME.

SHE DID HOURS OF RESEARCH ON VIETNAMESE BOAT PEOPLE AND ASSIMILATION OF UNACCOMPANIED MINORS INTO THE COUNTRY INDEPENDENTLY.

>> I THINK THAT WHAT THE ISSUE HERE -- OF COURSE IN THE SENTENCING ORDER, IT SAID DR. DAY -- BECAUSE THE ISSUE WAS WHETHER HE WAS UNDER EXTREME MENTAL DISTRESS AND DR. DAY SAID THE DEFENDANT THE STRESS WAS UNDER BECAUSE THE VICTIM CAME HOME WITH A DATE AND THEN THE JUDGE SAYS THERE'S NO EVIDENCE THAT THE DEFENDANT KNEW SHE HAD BEEN ON A DATE AT THE TIME HE PLANNED AND INITIATED THE ATTACK.

FOR ME IT'S A CLOSE CASE BECAUSE THERE'S DEFICIENCY FOUND AND NOW YOU'RE TRYING TO DECIDE WHETHER THE FAILURE TO GIVE THE FULL PICTURE UNDERMINES CONFIDENCE IN THE OUTCOME.

AND THERE ARE CERTAINLY STRONG AGGRAVATORS.

BUT WOULDN'T THE ADDITION OF ALL OF WHAT HAPPENED IN ILLINOIS, YOU KNOW, HOW YOU -- WHAT HAPPENED TO HIM DURING THOSE YEARS IN THE ORPHANAGE AND THAT TIME PERIOD FROM THE PEOPLE THAT ACTUALLY -- WAS IT A PSYCHOLOGIST OR PSYCHIATRIST THAT ACTUALLY --

>> PSYCHOLOGIST.

>> AND WHAT DID THAT PSYCHOLOGIST TESTIFY, IN THE

EVIDENTIARY HEARING?

>> CORRECT.

>> AND THEIR REASON FOR NOT CALLING THE PSYCHOLOGIST WAS THEY JUST FORGOT?

THEY DIDN'T -- I MEAN, WHAT IS IT?

>> AND JUSTICE PARIENTE, I'M GLAD THAT YOU BROUGHT THIS UP BECAUSE THIS IS AN IMPORTANT POINT.

IN THE SENTENCING ORDER THE JUDGE MAKES A POINT TO RELY ON TRIAL COUNSEL FIGGATT.

AND THEY'RE CO-COUNSEL.

THEY BOTH HAD EQUAL PART IN THE PENALTY AND GUILT PHASE.

TRIAL COUNSEL FIGGATT BASICALLY DOES A -- SAYS I DON'T KNOW.

AT THE EVIDENTIARY HEARING HE ACTUALLY SLAPS HIS FOREHEAD AND SAYS I MIGHT HAVE FALLEN ASLEEP DURING THAT PORTION.

I'M NOT SURE WHY.

JUSTICE ALVA DOESN'T POINT OUT THAT TRIAL COUNSEL CAUDILL SAYS HE KNEW WHAT WAS IN THE RECORDS. HE KNEW THAT IT WAS GOING TO SET THE STAGE FOR A CONDUCT DISORDER PRIOR TO AGE 15 AND HE DIDN'T WANT TO OPEN THE DOOR TO AN ANTISOCIAL PERSONALITY DISORDER, WAS THE REASON HE DIDN'T ORDER THE ILLINOIS RECORDS AND THE FLORIDA STATE HOSPITAL RECORDS.

>> I MEAN, HERE'S THE PROBLEM AGAIN.

ASSUMING THAT HE HAD A REASON, THAT DOESN'T -- TO ME THERE'S A DIFFERENCE BETWEEN WHAT YOU'RE GOING TO GIVE TO YOUR EXPERT AND WHAT YOU'RE GOING TO MAKE SURE YOU DISCOVER TO KNOW IF THIS IS GOING TO BE INFORMATION THAT WOULD CHANGE THE WAY THE JURY WOULD LOOK AT HIM.

BECAUSE HERE'S WHAT I THINK IS DIFFERENT ABOUT THIS CASE THAN OTHER CASES WE SEE.

YOU'VE GOT A VIETNAMESE

IMMIGRANT, AND IN THE INITIAL APPEAL WE TALK ABOUT THAT THERE MIGHT HAVE BEEN SOME BIAS, LIKE, HEY, EVERYBODY, YOU KNOW, WHEN SOMEONE COMES TO AMERICA, THEY'RE SUPPOSED TO, YOU KNOW, CONFORM.

SO THERE WAS -- WHERE WAS THIS CASE TRIED?

>> SEMINOLE COUNTY.

>> SO IT'S SEMINOLE COUNTY.

AND, YOU KNOW, THERE MAY HAVE BEEN SOME PREJUDICES AGAINST IMMIGRANTS.

AND SO TO GIVE THIS WHOLE STORY OF A CHILD THAT IS LEFT WITHOUT PARENTS, THAT IS WITH -- YOU KNOW, A BOAT CHILD AND THE YEARS THAT HE AND HIS SISTER SPENT IN THE ORPHANAGE, I MEAN, I THINK THAT THAT WOULD HELP ME TO SEE A WHOLE DIFFERENT PICTURE OF THIS DEFENDANT.

AND SO I DON'T UNDERSTAND, I GUESS, HOW SOMEBODY WOULD JUST SAY I'M NOT GOING TO LOOK AT THAT BECAUSE MAYBE IT WON'T BE THAT HELPFUL.

HOW DO YOU MAKE THAT DECISION WITHOUT LOOKING AT IT AND TALKING TO THE PEOPLE UP THERE WHO MAY IMPRESS YOU AS, YOU KNOW, OBVIOUSLY WERE PRESENTED AT THE EVIDENTIARY HEARING.

>> AND JUSTICE PARIENTE --

>> WASN'T THAT TOLD BY THE OLDEST SISTER WHO GREW UP WITH HIM?

>> YES.

>> WHO WENT THROUGH THAT TRAGIC ORDEAL WITH HIM?

>> AND THAT'S WHAT I WAS GOING TO GO INTO.

>> PLEASE ANSWER MINE AND THEN YOU CAN ANSWER JUSTICE PERRY'S QUESTION.

I'M ASKING YOU -- WE WERE TALKING ABOUT DEFICIENCY.

>> CORRECT.

>> AND YOU SAID THAT THERE WAS A

STRATEGIC REASON WHY IT WASN'T OBTAINED.

AND I'M ASKING YOU HOW IS THAT-- WITHOUT LOOKING AT WHAT'S IN THE RECORDS AND TALKING TO PEOPLE, HOW DO YOU MAKE THAT STRATEGIC DECISION AS TO I'M GOING TO CALL THE SISTER VERSUS CALLING THE MENTAL HEALTH PEOPLE?

>> AND MY ANSWER TO YOUR QUESTION IS BECAUSE HE WAS AWARE OF WHAT WAS IN THE RECORDS WITHOUT PHYSICALLY HAVING THE RECORDS.

HE WAS AWARE OF WHAT HAPPENED IN CHICAGO -- OR IN PEORIA.

IT'S IMPORTANT TO NOTE AS WELL THAT IT WOULD ABSOLUTELY PAINT A DIFFERENT PICTURE FOR THE JURY TO HAVE THIS INFORMATION.

BUT THE IMPORTANT THING TO NOTE IS IT WOULD PAINT A MUCH LESS MITIGATING PICTURE BECAUSE WHAT THE JURY HEARD FROM DR. DAY IS THAT HE'S THIS -- AND NOT AT ALL TO TAKE AWAY ANYTHING FROM HIS HARROWING EXPERIENCES AS A CHILD BECAUSE THAT'S NOT MY PURPOSE HERE.

BUT THE JURY GOT A PICTURE OF AN UNACCOMPANIED CHILD WITH A DISTRAUGHT OLDER SISTER WHO SPENT THIS TIME IN AN ORPHANAGE. DR. DAY SAYS HIS SUCCESS RATE AS AN UNACCOMPANIED MINOR HAS TO DO WITH WHETHER OR NOT HE HAS SUPPORT IN AMERICA.

SO THE JURY GOT A PICTURE THAT HE HAS NO SUPPORT.

NO ONE WOULD LOVE HIM, NURTURE HIM.

WHEN WE GET THE RECORDS FROM ILLINOIS, THAT'S NOT THE CASE AT ALL.

WHEN WE HEAR FROM SUSAN OTTESON AND MISS VINSTRED, WE HEAR HE HAD THREE UNCLES HE WAS PLACED WITH AFTER BEING SENT TO ILLINOIS.

HE HAD TWO UNCLES IN ILLINOIS,
ONE IN ROCKLAND, ONE IN PEORIA
AND ONE IN NORTH CAROLINA.
HE WAS SENT TO THESE VARIOUS
UNCLES' HOMES IN A FAMILY
SITUATION.

HE WAS TAKEN IN WITH THEIR
FAMILY AND HE HAD CONTINUOUS
CONDUCT DISORDER WITH VIOLENT,
ANGRY OUTBURSTS.

HE COULDN'T ASSIMILATE INTO HIS
OWN FAMILY.

AND THEY WERE CONTINUALLY HAVING
PROBLEMS WITH HIM, WHICH
ULTIMATELY LED TO HIM GOING TO
THE BOYS' HOME, THE HOME AWAY
FROM HOME HOUSE, WHERE HE STAYED
FOR A COUPLE YEARS AND AT 18 HIS
SISTER THUY, WHO WAS LIVING IN
ORLANDO AT THE TIME, CAME AND
SENT FOR HIM.

SO IT WAS IN FACT NOT A
SITUATION THAT HE HAD NO FAMILY
SUPPORT.

AND ALSO WHAT WE LEARN FROM THE
EVIDENTIARY HEARING THAT PAINTS
A LESS MITIGATING PICTURE FOR
THE JURY IS WE HEAR THIS
HARROWING TALE OF TWO WEEKS IN
THE BELLY OF A FISHING BOAT WITH
NO FOOD, NO WATER, NO BATHROOM
FACILITIES, WHERE THEY'RE SICK.
THEY END UP IN A HOSPITAL.

WHEN WE GET THE RECORDS FROM
ILLINOIS, WE FIND OUT THAT THAT
BOAT RIDE WAS ACTUALLY ONLY
THREE TO FOUR DAYS AND THEY
APPROACHED AN OFFSHORE OIL RIG
FOR ASSISTANCE AND WERE GIVEN
FOOD AND WATER AND SENT ON THEIR
WAY TO MALAYSIA.

AND THE ULTIMATE STRATEGY BY
DEFENSE COUNSEL WAS TWOFOLD: TO
PRESENT THE HARROWING DETAIL OF
HIS CHILDHOOD IN VIETNAM, COMING
OVER, AND ALSO TO PAINT HIM AS A
NOT-SO-BRIGHT INDIVIDUAL.

THE RECORDS FROM SUSAN OTTESON
AND ILLINOIS PAINT HIM AS
GETTING As AND Bs WHEN HE

APPLIES HIMSELF, JUST HAVING ANGRY OUTBURSTS, NOT WANTING TO DO HIS WORK, NOT ABLE TO CONFORM TO THE RULES AND WITH AN ABOVE AVERAGE IQ.

HE WAS PUT IN THE 5TH GRADE WITH PEOPLE OF HIS OWN AGE.

THIS GOES AGAINST THE ULTIMATE TRIAL STRATEGY.

AND CAUDILL DOES TESTIFY TO THAT.

>> IT'S PRETTY CLEAR THE JUDGE MADE A FINDING THAT THERE WAS NOT A SATISFACTORY EXPLANATION FOR THE FAILURE TO OBTAIN MUCH OF THE EVIDENCE.

>> CORRECT.

>> SO WE'VE GOT TO ASSUME THERE WAS NOT A PROPER REASON AND THEN GO TO THE PREJUDICE PRONG.

>> SURE.

AND IN THIS CASE I WAS KIND OF LEADING INTO THAT ALREADY, THAT WE'RE NOT GOING TO HAVE A REASONABLE PROBABILITY OF A LIFE SENTENCE IN THIS CASE, BECAUSE IF YOU, AS THEY DID IN THE EVIDENTIARY HEARING, CALL SUSAN OTTESON AND DR. WEI, DR. ABUEG'S AND DR. LEE, IF WE GET THE RECORDS FROM ILLINOIS AND THE FLORIDA STATE HOSPITAL RECORDS, WHAT THAT'S GOING TO SHOW IS THAT WE HAVE A VIOLENT PERSON WHO HAS CONTINUOUS ANGRY OUTBURSTS, IS GOING TO SET THE STAGE FOR AN ANTISOCIAL PERSONALITY DISORDER BECAUSE CLEARLY WE HAVE THREE CRIMINAL EPISODES, ONE WHERE HE STOLE SOMETHING FROM A STORE, ONE WHERE HE STOLE A CAR, ONE WHERE HE HAD A GUN, WHICH WERE NEVER PROSECUTED, BUT THAT'S WHAT CAME OUT IN THOSE RECORDS.

SO WE'RE GOING TO HAVE A CONDUCT DISORDER PRIOR TO AGE 15 AND HE'S GOING TO PROVIDE THAT TO DR. DAY, WHO'S THEN GOING TO MAKE AN ANTISOCIAL PERSONALITY

DISORDER DIAGNOSIS.
SO THERE IS NO PREJUDICE IN THIS
CASE.

THERE'S NO REASONABLE
PROBABILITY OF A DIFFERENT
OUTCOME AT TRIAL HAD THIS
INFORMATION CAME OUT -- CAME
OUT.

AND IN FACT THE JURY WOULD HAVE
HAD A MUCH LESS MITIGATING
PICTURE OF HIM.

AND AS IT WAS, WE HAVE A 10-2
DECISION.

WE HAVE A CASE THAT'S RARE IN
THAT FIRST RESPONDERS ARRIVED TO
FIND DEFENDANT IN THE VICTIM'S
HOME STILL ENGAGED IN THE
STRUGGLE WITH CHRISTOPHER
HIGGINS, FOR WHOM HE HAD THE
CONVICTION FOR ATTEMPTED MURDER,
THE KNIFE STILL IN HIS HAND.
WE HAVE COVERED IN THE VICTIM'S
BLOOD.

THE VICTIM IS HAVING EITHER JUST
EXPIRED OR EXPIRING ON THE FLOOR
IN THE HALLWAY AS FIRST
RESPONDERS ARE COMING IN.

WE HAVE AN EYE WITNESS IN THE
FORM OF LANA PHAM, WHO HE HAD
HIS STEPDAUGHTER BOUND AND SAW
THE WHOLE THING, AND ALSO
CHRISTOPHER HIGGINS.

THERE IS NO PREJUDICE IN THIS
CASE.

THE JURY WOULD HAVE HAD A LESS
MITIGATING PICTURE HAD THESE
RECORDS COME IN.

THE RECORDS FROM FLORIDA STATE
HOSPITAL SHOW A PERSON ENGAGING
IN VIOLENT BEHAVIOR ON THE
STAFF, VIOLENT BEHAVIOR ON OTHER
PATIENTS, AND THE DOCTOR THERE
DIAGNOSED HIM, DR. WU AT FLORIDA
STATE HOSPITAL, DIAGNOSED HIM
WITH INTERMITTENT EXPLOSIVE
DISORDER.

SO THAT'S NOT GOING TO BE
HELPFUL AT ALL TO DEFENSE
COUNSEL'S STRATEGY OR IN
MITIGATION IN THIS CASE.

SO WHAT THE JURY DID GET FROM DR. DAY IS A DIAGNOSIS OF PERSONALITY DISORDER NOT OTHERWISE SPECIFIED AND A SEVERE MOOD DISTURBANCE.

DR. DAY DID TESTIFY AS TO BOTH OF THE STATUTORY MITIGATORS AND SUBSTANTIATED THOSE.

THE JUDGE DID NOT FIND THOSE AND MADE A CREDIBILITY FINDING THAT DR. RIEBSAME, HIS TESTIMONY WAS MORE THOROUGH, COMPREHENSIVE AND MORE CREDIBLE IN THIS CASE, TALKING ABOUT THE FACTORS OF THE CASE AS WELL THAT WOULD LEAD ONE AWAY FROM NOT UNDERSTANDING THE CRIMINALITY OF HIS CONDUCT.

AND IT WASN'T, IT'S IMPORTANT TO NOTE AS WELL, -- AND DR. DAY DID TALK ABOUT PTSD.

SHE TALKS ABOUT TRAITS OF BIPOLAR.

SHE DOESN'T SAY IN HER TESTIMONY THAT SHE HAD A LACK OF HISTORICAL INFO.

SHE SAID SHE HAD A LACK OF HISTORICAL ACCOUNTS OF EPISODES.

WE HAVE NO TESTIMONY FROM DR. DAY IN POSTCONVICTION THAT WOULD LEAD US TO BELIEVE THAT HER TESTIMONY WOULD CHANGE HAD SHE HAD THESE DOCUMENTS.

DR. DAY WASN'T CALLED IN POSTCONVICTION.

AND, YOU KNOW, AND I THINK THERE WAS A COMMENT THAT HIS IQ WAS BORDERLINE, AND EVERY INDICATION THAT WE HAVE EXCEPT FOR DR. OLANDER, WHO TESTIFIED IN THE PENALTY PHASE THAT HE HAD ORGANIC BRAIN DAMAGE FROM THE FOUR TO SIX-WEEK TRIP AND EXTREME DEHYDRATION, THAT WOULD HAVE BEEN DISCREDITED HAD THEY HAD THIS INFORMATION THAT SHOWED THAT THE TRIP WAS ONLY ACTUALLY THREE TO FOUR DAYS.

SO AS IT WAS, HE GOT THE BENEFIT OF THE JURY HEARING THAT HE HAD ORGANIC BRAIN DAMAGE AS WELL.

IN POSTCONVICTION EVERYONE --
EACH DOCTOR WHO WAS CALLED IN
POSTCONVICTION, DR. LEE,
DR. ABUEG'S, DR. MCCLAREN, ALL
TESTIFIED THAT THERE WAS NO
INDICATION OF ORGANIC BRAIN
DAMAGE THERE.

AND DR. LEE ACTUALLY TESTIFIES
AS WELL THAT EVEN THOUGH HE GAVE
HIM A DIAGNOSIS OF PTSD, THIS
CRIME WAS NOT A REACTIONARY
CRIME AS WOULD RELATE TO A PTSD
DIAGNOSIS.

HE LAID IN WAIT FOR
APPROXIMATELY AN HOUR, HAD
PLANNED IT CAREFULLY.

IT WAS NOT AS THOUGH HE SAW HIS
WIFE ON A DAY, SNAPPED AND
STABBED HER.

SO THE MITIGATING FACTOR OF THAT
WOULD BE LESSENER AS WELL.

IF THERE ARE NO FURTHER
QUESTIONS, I WOULD ASK THAT THIS
COURT AFFIRM THE CIRCUIT COURT'S
DENIAL OF DEFENDANT'S MOTION FOR
3851 RELIEF.

THANK YOU.

>> REBUTTAL?

>> THANK YOU.

I DISAGREE WITH OPPOSING
COUNSEL.

THE EVIDENTIARY HEARING DID
PRESENT A MORE MITIGATING AND A
MORE COMPLETE PRESENTATION IN
TERMS OF MITIGATION.

I WANT TO CORRECT A COUPLE OF
FACTS THAT WERE PRESENTED.

DR. OLANDER WAS ONLY PRESENTED
AT THE SPENCER HEARING, NOT AT
PENALTY PHASE IN FRONT OF THE
JURY.

I JUST WANT TO MAKE SURE THE
COURT RECOGNIZES THAT.

AND THIS PROSECUTOR DURING
CLOSING ARGUMENTS TALKS ABOUT
DR. DAY'S TESTIMONY, AND IT'S IN
THE RECORD INVOLVING 14,521 TO
523, AND THE PROSECUTOR
PARTICULARLY POINTS OUT THAT SHE
-- THAT DR. DAY HAD ALREADY COME

TO HER DECISION BEFORE SHE HAD LOOKED AT ANY REPORTS FROM DR. DANSINGER OR DR. VALENTINE. SHE HADN'T LOOKED AT A REPORT FROM FLORIDA STATE HOSPITAL. SHE HADN'T REVIEWED ANY OF THE TESTING THAT WAS PERFORMED. AND SHE WAS JUST RELYING ON WHAT THE DEFENDANT TOLD HER TO BASE HER OPINION.

SO IT'S CLEAR THAT WHEN DR. DAY CAME TO HER OPINION NONE OF THE EXPERTS' FINDINGS, TESTIMONY HAD ANY MERIT WHATSOEVER.

AND YOU CAN SEE WHAT HAPPENS AT THE EVIDENTIARY HEARING WHEN YOU HAVE PROVIDED EVERYTHING TO YOUR EXPERTS AND WHAT YOU GET IS POST-TRAUMATIC STRESS DISORDER, BIPOLAR DISORDER.

COUNSEL MENTIONED THAT THE REASON WHY THE EVIDENTIARY HEARING IS NOT MITIGATING IS THE CASEWORKER IN ILLINOIS TALKED ABOUT VIOLENT OUTBURSTS.

LET'S MAKE IT VERY CLEAR THAT HE SAID HIS VIOLENT OUTBURSTS WERE MORE ANGRY.

HE WAS UPSET AT HIMSELF. AT NO POINT WAS HE VIOLENT TOWARD ANY INDIVIDUALS, NO ONE IN HIS FAMILY, NOT TO OTHER CHILDREN.

SHE WAS CLEAR IN THAT TESTIMONY. WHENEVER HE FELT TRAPPED, HE WOULD BREAK SOMETHING, RUN AWAY, HIDE.

THAT WAS A PATTERN YOU SAW THROUGHOUT HIS LIFE.

COUNSEL MENTIONED VIOLENT INCIDENTS AT FLORIDA STATE HOSPITAL.

IT WAS BROUGHT TO NOTE -- I THINK DR. MCCLAREN TALKED ABOUT IT AND THEY TALKED ABOUT IT IN PENALTY PHASE, TOO.

THE FIRST INCIDENT WAS WITH AN INMATE.

I BELIEVE THE INMATE HAD PUT DOWN A PHONE.

THE INMATE PUNCHED MR. PHAM.
MR. PHAM FOUGHT BACK.
HE HAD ANOTHER INCIDENT WHERE HE
WAS HIDING AND GOT INTO AN
INCIDENT WITH A STAFF MEMBER
BECAUSE OF THAT AND THAT'S WHEN
THEY GOT THE AXIS I DIAGNOSIS.
YOU SEE THAT PATTERN OF
FIGHTING.

IT'S TWO INCIDENTS, ONE WHERE HE
WAS PUNCHED FIRST AND THE OTHER
ONE WAS HE DIDN'T WANT TO COME
OUT OF HIDING.

AND DR. DAY NEVER SAID THAT HE
HAD POST-TRAUMATIC STRESS
DISORDER.

THE INCIDENT SHE'S MISSING IS
WITH RESPECT TO BIPOLAR, WHICH
DR. BALLANTYNE WAS SUSPICIOUS
ABOUT, DR. DANSINGER WAS
SUSPICIOUS ABOUT.

THEY DIDN'T HAVE ENOUGH
INFORMATION TO MAKE THE
COGNITIVE FINDING.

I THANK THE COURT FOR THE TIME.
I ASK THE COURT TO GRANT RELIEF
IN MR. PHAM'S CASE.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.
COURT'S IN RECESS UNTIL TOMORROW
MORNING.