

>> OKAY.

CASE NUMBER TWO IS MCMILLIAN
VERSUS STATE.

WHENEVER YOU'RE READY.

>> MAY IT PLEASE THE COURT, ANN
FINNELL ON BEHALF OF THE
RESPONDENT, JUSTIN MCMILLIAN.
YOUR HONOR, WE'RE HERE TODAY ON
INEFFECTIVE ASSISTANCE OF
COUNSEL IN BOTH THE GUILT AND
PENALTY PHASES.

I WOULD LIKE TO START WITH THE
ISSUES SURROUNDING INEFFECTIVE
ASSISTANCE OF COUNSEL FOR
FAILURE TO INVESTIGATE PROPERLY
MENTAL HEALTH ISSUES,
SPECIFICALLY THE ISSUE OF
POST-TRAUMATIC STRESS DISORDER.
EARLY ON, AFTER THE FIRST
INTERVIEW BY PUBLIC DEFENDER
INVESTIGATOR, TRIAL COUNSEL WERE
AWARE THAT DEFENDANT,
MR. MCMILLIAN, WORKED IN BOTH
IRAQ AND AFGHANISTAN FOR FIVE
YEARS AS A CIVILIAN DURING WAR
TIME CONDITIONS.

>> BUT, I MEAN, THE ELEPHANT IN
THE ROOM IS NOT THAT KIND OF
ISSUE.

WE'VE GOT ONE SIDE SAYING THIS
PERSON TOLD ME THAT HE WAS A
PERSONAL TRAINER WORKING IN AN
AIR CONDITIONED GYMNASIUM.
AFTER EVERYTHING'S OVER, WE'VE
GOT THE DEFENDANT SAYING ALL
HELL BROKE LOOSE AND I'M A
WRECK.

SO ISN'T THE BATTLE HERE A
FACTUAL DISPUTE AS TO WHAT --
THAT SOMEBODY HAD TO RESOLVE
WITH WHAT WAS IT?

>> WELL, I THINK IT WAS A
COMPLETE FAILURE ON THE PART OF
TRIAL COUNSEL TO DO ANY
INVESTIGATION, KNOWING THAT THIS
MAN HAD BEEN IN IRAQ AND
AFGHANISTAN.

>> HERE AGAIN, THIS IS -- YOU
KNOW, AND I UNDERSTAND THAT THE
DEFENSE HAS TO DO MORE, BUT,

FIRST OF ALL, THIS LAWYER HE WAS HIMSELF A FORMER MILITARY PERSON, AND WHEN HE HEARD THAT HE HAD BEEN OVERSEAS, HE WANTED TO KNOW ABOUT IT.

>> THERE WERE NO NOTES --

>> AND THE GUY SAYS, NO, I WASN'T IN COMBAT.

AND SO THERE'S A FACTUAL FINDING.

WHAT IS HE SUPPOSED TO SAY, NO, I'M GOING TO GET YOUR MILITARY RECORDS AND SEE IF YOU'RE NOT TELLING THE TRUTH ABOUT IT?

HE HAS HIM EVALUATED BY DR. KROP, WHO DOESN'T FIND EVIDENCE OF PTSD.

I THINK WE WOULD BE PUTTING A TERRIBLE BURDEN, FIRST OF ALL, FOR US TO REVERSE WHAT THE TRIAL COURT FIND, BUT TO SAY THAT WHEN SOMEONE AFFIRMATIVELY SAYS

SOMETHING, IT'S UP TO --

DIFFERENT, LIKE, AGAIN, I WAS NEVER SEXUALLY ABUSED.

I WAS NEVER SEXUALLY ABUSED.

WERE YOU -- NEVER.

TO SAY THAT YOU'RE GOING TO SAY, WELL, I AM GOING TO GO INTO EVERYTHING AND MAKE SURE I FIND OUT THAT YOU WERE NOT SEXUALLY ABUSED.

>> RESPECTFULLY, NOT THE SAME ISSUE.

NOT THE SAME ISSUE.

BECAUSE THIS YOUNG MAN HAD AN IQ OF 74.

NOT THE SAME ISSUE BECAUSE CAN WE EXPECT ANYONE, ESPECIALLY SOMEONE WITH AN IQ OF 74, TO EVEN RECOGNIZE WHAT POST-TRAUMATIC STRESS DISORDER IS.

>> THEY DIDN'T ASK HIM DO YOU HAVE PTSD.

THEY SAID WHEN YOU WERE OVERSEAS, WHAT DID YOU DO?

HE GOES, I WAS NOT IN COMBAT.

I WASN'T EXPOSED TO IT.

I WAS IN -- AS JUSTICE LEWIS

SAID.

SO HE DIDN'T -- YOU KNOW, I DON'T KNOW ABOUT HIS IQ HAVE TO DO WITH IT, BUT HE WASN'T ASKED, DO YOU HAVE ANY SYMPTOMS OF PTSD.

I WOULD UNDERSTAND THAT AS BEING, NO, YOU DON'T ASK SOMEBODY THAT.

>> HAD HE BEEN ASKED, HAD THE ATTORNEY SIMPLY GONE TO THE DSM, THE DIAGNOSTIC AND STATISTICAL MANUAL AND GONE DOWN THE LIST OF CRITERIA FOR POST-TRAUMATIC STRESS DISORDER WITH MR. MCMILLIAN, THEY WOULD HAVE FOUND OUT.

FIRST OF ALL, THERE WAS A RED FLAG FOR THAT.

HIS ATTEMPT TO COMMIT SUICIDE BY POLICE OFFICER, WHICH CAME OUT NOT ONLY TO THE INVESTIGATOR WHEN HE WAS FIRST INTERVIEWED, BUT ALSO DURING HIS STATEMENT TO THE POLICE.

SO EVERYBODY WAS AWARE OF THIS. THAT IS SYMPTOMATIC OF POST-TRAUMATIC STRESS DISORDER IN AND OF ITSELF.

THAT WAS HIDDEN, DELIBERATELY HIDDEN FROM HIS PSYCHOLOGIST, DR. KROP, BY HIS TRIAL COUNSEL. MR. TILL, TRIAL COUNSEL FOR THE GUILT PHASE, HAD NOT ONE SINGLE NOTE ABOUT THE VERY THINGS THAT THIS COURT IS INQUIRING ABOUT. THERE WAS NOT ONE SINGLE NOTE ABOUT WHAT MR. MCMILLIAN TOLD HIM REGARDING IRAQ AND AFGHANISTAN.

AND MR. MCMILLIAN TESTIFIED AT THIS EVIDENTIARY HEARING THAT HE SPECIFICALLY TOLD TRIAL COUNSEL ABOUT THE ONE PERSON WHO WAS BEST ABLE TO DESCRIBE MR. MCMILLIAN'S ACTIVITIES IN IRAQ AND HE WAS NEVER CONTACTED BY TRIAL COUNSEL.

TOP THAT WITH THE FACT THAT MR. GAZALEH, THE PENALTY PHASE

COUNSEL, ONLY SAW MR. MCMILLIAN TWICE.

HOW IN THE WORLD CAN PENALTY PHASE COUNSEL FERRET OUT AND PROPERLY INVESTIGATE ANYTHING, YET ALONE MENTAL HEALTH MITIGATION WHEN YOU ONLY SEE A PERSON TWO TIMES?

>> DID DR. KROP HAVE THE MILITARY RECORDS?

>> NO, SIR.

IN FACT, MR. GAZALEH --

>> WAIT A MINUTE.

HE DID NOT HAVE THE EMPLOYMENT RECORDS?

BY MY READING OF THIS, SEEMED TO INDICATE THAT THEY DID HAVE THE RECORDS FROM BROWN, ROOT, WHATEVER?

>> KELLOGG, BROWN AND --

>> RIGHT.

>> THAT THOSE RECORDS WERE VERY -- YES.

THERE WASN'T A MILITARY HISTORY.

>> HE WAS NOT IN THE MILITARY.

HE WAS A CIVILIAN CONTRACTOR.

>> RIGHT.

THOSE RECORDS THEY FINALLY GOT, ALTHOUGH THE INVESTIGATOR -- THEY GOT THEM VERY LATE.

DR. KROP WAS STILL ASKING FOR RECORDS IN THIS CASE FOUR DAYS BEFORE THE TRIAL STARTED AND HIMSELF WAS CRITICIZING NOT JUST VERBALLY OVER THE PHONE, BUT IN LETTERS THAT WE INTRODUCED, CRITICIZING DEFENSE COUNSEL FOR THE SUPERFICIAL INTERVIEWING THEY HAD DONE AND THEIR INVESTIGATOR HAD DONE OF THE WITNESSES IN THIS CASE.

ON TOP OF THAT --

>> DO YOU KNOW WHAT THOSE MILITARY RECORDS DR. KROP HAD SHOW?

>> THEY'RE VERY, VERY, VERY LIMITED.

THESE -- KBR IS A CIVILIAN CONTRACTOR.

IT'S NOT MILITARY.

THEY ARE CIVILIAN CONTRACTORS AND BASICALLY THEY GO INTO PLACES LIKE RURAL GEORGIA IN THIS CASE AND OFFER PERSONS WHO CAN'T GET A DECENT JOB ANYTHING MORE THAN MINIMUM WAGE LIKE \$20 AND \$30 AN HOUR. AND THEY LITERALLY TAKE THEM AND PUT THEM IN THESE WAR TIME CONDITIONS THAT THEY ARE NOT PREPARED FOR. THEY GIVE THEM A KEVLAR VEST AND A PITH HELMET AND TELL THEM WHEN THEY HEAR THE INCOMING TO HEAD FOR THE BUNKER. PEOPLE ARE NOT GETTING PROPER MILITARY TYPE TRAINING ON HOW TO DEAL WITH THESE WAR TIME CONDITIONS. THIS IS A TERRIBLE SITUATION. AND SO THESE MILITARY -- THE CIVILIAN CONTRACTOR RECORDS ARE VERY SKETCHY. THEY DON'T GIVE A WHOLE LOT OF DETAIL. WHAT WE DO KNOW WAS THAT MR. MCMILLIAN WAS FIRST TAKEN OVER AS A DAY LABORER AND PROGRESSED INTO THIS TRAINING POSITION. >> SO THERE'S NOTHING IN THOSE RECORDS OBTAINED THAT DR. KROP OR HIS LAWYERS SHOULD HAVE KNOWN FROM THOSE RECORDS THAT WOULD SUBSTANTIATE THE CLAIMS YOU'RE MAKING HERE. >> THERE IS NOTHING IN THE RECORDS THEMSELVES OTHER THAN THE PLACES WHERE HE WAS. WE KNOW HE WAS AT CAN CAMPS, BUT NO ONE INVESTIGATED THOSE CAMPS. THEY WERE SUBJECT TO DAILY BOMBING, MORTAR FIRE. >> SO HE'S PLUCKED OUT OF SOUTH GEORGIA, BROUGHT TO -- BY A PRIVATE CONTRACTOR. HE SAYS -- AND, AGAIN, SOME DEFENSE -- ONE OF THE DEFENSE LAWYERS KNOWS THIS, ASKS WHAT DID YOU DO THERE?

AND HE SAYS I WAS IN AN AIR
CONDITIONED BUILDING.
I WAS A PERSONAL TRAINER.
IS THAT A COMPLETE LIE ON HIS
PART?
>> NO.
HE WAS A TRAINER.
>> HE WAS A PERSONAL TRAINER?
>> HE WAS A --
>> SO THAT'S NOT A DAY LABORER.
THAT SOUNDS LIKE A PRETTY -- HE
WAS GETTING \$30 AN HOUR AS A
PERSONAL TRAINER.
>> HE STARTED OFF AS A LABORER.
HE WAS THERE FOR FIVE YEARS.
HE STARTED OUT AS A LABORER AND
MOVED UP INTO THAT POSITION.
AT THE TIME THIS HAPPENED THAT
IS WHAT HE WAS DOING, HE WAS A
PERSONAL TRAINER.
>> AND HE WAS ASKED BY THE
DEFENSE LAWYER.
HE'S GOT AN IQ IN THE 70s.
HE'S ASKED A SPECIFIC QUESTION.
WERE YOU EXPOSED TO ANY BOMBING,
ANYTHING.
HE GOES, NO I WAS, I WAS IN --
NO?
>> I DIDN'T GET THE IMPRESSION
THAT HE WAS ASKED WERE YOU
EXPOSED TO ANY BOMBING.
DID THIS BOTHER YOU?
DID THIS AFFECT YOU?
AND THE ANSWER WAS THAT HE
SNICKERED.
AND THAT WAS IT.
>> AND HE WHAT?
>> SNICKERED.
HE SNICKERED.
THAT'S WHAT MR. TILL TESTIFIED
TO, THAT HE SNICKERED.
HOWEVER, MR. TILL HAD ABSOLUTELY
A SINGLE NOTE --
>> SNICKERED AND THEN SAID WHAT?
WHAT DOES THE RECORD SHOW?
>> HONESTLY, WAS THERE
SOMETHING?
I REREAD IT AND I THOUGHT HE
JUST SAID HE SNICKERED.
>> AND HAD A STATEMENT ACCORDING

TO WHAT I --

>> JUDGE, HELP ME.

I DON'T RECALL WHAT THE STATEMENT WAS.

I RECALL THAT WHEN MR. TILL TESTIFIED, HE JUST SAID HE SNICKERED.

THAT'S ALL I RECALL HONESTLY FROM THE TESTIMONY, BUT I DIDN'T REREAD THAT TRANSCRIPT LAST NIGHT.

>> BUT YOU'VE GOT MR. TILL SAYING THAT HE HIMSELF IS A MILITARY VETERAN.

WE'VE GOT NOW ALL THESE VETERANS COURTS.

AND HE'S VERY FAMILIAR WITH THE SYMPTOMS OF PTSD.

HE SAID THAT IN SPEAKING TO MCMILLIAN ABOUT HIS EXPERIENCE, HE NEVER HEARD ANYTHING OF ANY KIND THAT WOULD YOU CONSIDER IN ANY WAY, SHAPE OR FORM SOMETHING THAT COULD CREATE POST-TRAUMATIC STRESS.

NOW YOU'RE SAYING THAT MR. TILL IS SO INCOMPETENT THAT HAVING LOOKED FOR THIS AND HAVING ASKED HIM ABOUT IT, THAT HE JUST IGNORED WHAT WAS RIGHT IN HIS FACE?

>> I THINK HE BROUGHT HIS CULTURAL PRESUMPTIONS WITH HIM. HE WAS A COLONEL IN THE MARINE CORPS.

MR. TILL IS UP IN AGE AND HIS IDEA OF WAR IS COMPLETELY DIFFERENT THAN WHAT IRAQ AND AFGHANISTAN IS TODAY.

HE WAS -- HE EXPECT THAT SOMEBODY WHO SUFFERS FROM PTSD HAS BEEN EXPOSED TO COMBAT AND IS A COMBAT VETERAN AND HAS ALL THIS STUFF.

HE DOESN'T REALIZE THAT THESE CAMPS IN AND OF THEMSELVES ARE VERY, VERY DANGEROUS FOR EVERYBODY.

IT'S NOT JUST -- YOU DON'T HAVE TO BE WEARING A UNIFORM TO BE

EXPOSED TO PTSD OR TO SUFFER FROM IT.

>> LET'S ASSUME THAT HE SHOULD HAVE ASKED MORE QUESTIONS. DO YOU WANT TO ADDRESS THE PREJUDICE PRONG?

AGAIN, PTSD NOW IS BEING USED -- IT'S A -- YOU KNOW, WHEN WE TALK ABOUT PEOPLE BEING MENTALLY ILL AND BEING DIAGNOSABLE MENTALLY ILL, PTSD IS SORT OF A -- IT'S A -- IT'S A -- MANY SYMPTOMS PUT TOGETHER.

HOW DID DR. KROP JUST MISS IT COMPLETELY?

AND HOW DID YOUR EXPERT JUST PUT IT TOGETHER SO -- LET ME JUST FINISH THIS, SO THAT THE JURY JUST WOULD HAVE BEEN LOOKING AT THIS MURDER AND SAYING, WELL, THERE'S A STATUTORY MITIGATOR OR SOMETHING TO THAT EFFECT?

>> DR. KROP DIDN'T CATCH IT, BUT IT WASN'T DR. KROP'S FAULT.

DR. KROP WAS PRESENTED WITH MATERIALS VERY LATE IN THE GAME. VERY LATE IN THE GAME.

AND THE WITNESSES WHO WERE INTERVIEWED, THE CIVILIAN WITNESSES WERE PRIMARILY THOSE, THE JACKSONVILLE FAMILY THAT DIDN'T HAVE AN OPPORTUNITY TO SEE MR. MCMILLIAN DURING THE TIMES HE WAS COMING BACK FROM IRAQ AND AFGHANISTAN AND WHO DIDN'T SEE THE CHANGES IN MR. MCMILLIAN'S BEHAVIOR.

WE PRESENTED A TON OF WITNESSES, BECAUSE WE ASKED THE RIGHT QUESTIONS, HOW DID HIS BEHAVIOR CHANGE FROM THE TIME HE WENT TO IRAQ AND AFGHANISTAN UNTIL HE CAME BACK?

BEFORE HE WENT TO IRAQ AND AFGHANISTAN, HE DID NOT DRINK. HE DID NOT ABUSE ANY DRUGS. HE WAS NOT ANXIOUS. HE HAD A VERY HARD, TIGHT WORK ETHIC.

HE WAS NOT PARANOID.

HIS EMOTIONAL BEHAVIOR WAS VERY LEVEL-HEADED AND COOL AND CALM. DURING THE PERIOD OF TIME, THIS FIVE-YEAR PERIOD, AND GOING BACK AND COMING AND GOING BACK, HE LOST OVER 100 POUNDS.

HE BECAME ANXIOUS.

HE BECAME PARANOID.

HE STARTED ABUSING ALCOHOL.

HE STARTED EXPERIMENTING WITH MARIJUANA.

THERE WERE TONS OF CHANGES THAT THESE PEOPLE WITNESSED IN MR. MCMILLIAN'S BEHAVIOR.

AND OF THE SIX CRITERIA FOR POST-TRAUMATIC STRESS DISORDER.

DR. HERKOV DIAGNOSED HIM WITH FIVE OF THE SIX CRITERIA.

BUT DON'T FORGET WE'VE GOT HIM WITH A LOW IQ OF 74, 76.

DR. KROP RECOGNIZED THAT HE HAD COGNITIVE DEFICITS.

HE HAS DAMAGE TO HIS FRONTAL AND TEMPORAL LOBE.

AND DR. KROP SUGGESTED TO TRIAL COUNSEL, GAZALEH AND TILL, THAT THEY HAVE HIM EXAMINED BY A NEUROLOGIST, WHICH THEY NEVER DID.

DR. HERKOV IS A NEUROPSYCHOLOGIST.

SO HE CAN PUT TOGETHER THE PACKAGE.

WHAT WE HAVE HERE --

>> YOU JUST COMBINED TWO THINGS. YOU SAID NEUROLOGIST, WHICH WOULD BE -- AND THEN YOU SAID NEUROPSYCHOLOGIST.

SO NEUROLOGIST WOULD BE TO SEE IF THERE WERE ANY CHANGES --

>> WHAT WAS THE PROBLEM WITH HIS TEMPORAL AND -- BOTH DR. --

DR. KROP RECOGNIZED THERE WAS DEFICITS WITH HIS TEMPORAL AND FRONTAL LOBE.

DR. HERKOV ALSO DID TESTING, NEUROPSYCHOLOGICAL TESTING, FOR THOSE DEFICITS.

BUT GOING BACK TO DR. KROP, BACK WHEN TRIAL COUNSEL HAD THE CASE,

DR. KROP SAID I'M SEEING THESE SAME THINGS.

I BELIEVE THERE'S A POSSIBILITY OF TEMPORAL AND FRONTAL LOBE DEFICITS HERE.

WE HAVE AN IQ OF 74.

I DON'T KNOW IF IT'S CAUSED GENETICALLY BECAUSE HIS MOTHER, CAROLYN MCMILLIAN, HAD COGNITIVE DEFICITS THAT WERE VERY SEVERE AND RECOGNIZED BY TRIAL COUNSEL, BUT THEY NEVER DID ANYTHING WITH THAT.

I DON'T KNOW IF IT'S GENETIC OR I DON'T KNOW IF IT'S SOMETHING THAT --

>> WAS THAT TESTED POST-CONVICTION?

>> THE ONLY TESTING AT POST-CONVICTION WE DID WAS WITH A NEUROPSYCHOLOGICAL ISSUES BECAUSE ONCE DR. HERKOV FOUND THE POST-TRAUMATIC STRESS DISORDER, HE COULD PRESENT A PACKAGE WITHOUT -- I NEVER SENT HIM TO A NEUROLOGIST, IN ANSWER TO YOUR QUESTION, JUSTICE QUINCE.

I PERHAPS SHOULD HAVE, BUT I DID NOT.

>> IF WE COULD JUST GO BACK FOR A MOMENT TO THE NOTION OF WHAT MR. MCMILLIAN TOLD HIS TRIAL COUNSEL.

>> WE DON'T KNOW.

THERE ISN'T A SINGLE NOTE. THESE FOLKS ARE RELYING ON A MEMORY.

>> WHETHER THERE'S A NOTE OR NOT, IF I RECALL CORRECTLY, THE DEFENSE ATTORNEY SPECIFICALLY REMEMBERED HAVING CONVERSATIONS WITH MR. MCMILLIAN ABOUT HIS SERVICE -- HIS WORKING OVERSEAS AND HE SPECIFICALLY ASKED HIM ABOUT BEING IN A COMBAT ZONE, AND HE -- MR. MCMILLIAN LAUGHED, AS YOU SAID, OR SNICKERED. BUT HE WENT ON TO SAY HE WAS IN -- ALTHOUGH HE WAS IN IRAQ, HE

WAS A PERSONAL TRAINER, YOU KNOW, LAUGHED OFF THE NOTION THAT HE WAS IN A COMBAT ZONE. SO I'M ASKING YOU TO TELL US FROM THAT WHAT DO YOU ALLEGE THAT THE DEFENSE ATTORNEY SHOULD HAVE DONE?

>> WELL, MR. TILL SHOULD HAVE AT LEAST LOOKED AT THE RECORDS FROM KBR.

>> OKAY.

WE HAVE THE RECORDS FROM KBR.

>> HE COULD HAVE VERY EASILY GONE ON THE INTERNET AND FOUND OUT SOMETHING ABOUT KANDAHAR AND BAGRAM.

WHO DID YOU WORK WITH?

HE GAVE THE NAME PEREZ STAPLES.

HIS TESTIMONY WAS VERY COMPELLING.

HE SAID THAT BAGRAM WAS SUBJECTED TO ALMOST DAILY MORTAR FIRE, THAT MR. MCMILLIAN HAD A SEVERE REACTION TO THIS MORTAR FIRE, THAT HE WAS SCARED.

>> YOU KNOW, I'M LISTENING TO YOU, BUT ACCORDING TO THE DEFENSE COUNSEL, HE SAID HE ASKED HIM ABOUT HIS EXPERIENCE. HE SAID IT WAS EASY.

IF THERE WERE BOMBS AND BOMBING AND INCOMING MORTAR ALL THE TIME, WOULD YOU DESCRIBE THAT AS EASY?

>> I WOULD DESCRIBE BEING A PERSONAL TRAINER AS EASY.

I DON'T KNOW THAT -- I WOULDN'T DESCRIBE MORTAR FIRE --

>> THEN HE SAID HE HAD A VIVID RECOLLECTION OF THE CONVERSATION WITH MCMILLIAN WHERE HE SPECIFICALLY ASKED HIM WHETHER OR NOT HE HAD BEEN EXPOSED TO COMBAT CONDITIONS IN IRAQ AND AFGHANISTAN.

MCMILLIAN LAUGHED AND SAID, NO, I WAS A PERSONAL TRAINER.

I MEAN, THAT'S WHAT HE SAID.

I MEAN --

>> JUSTICE PERRY, WHAT IF

MR. MCMILLIAN -- IF
MR. MCMILLIAN WAS COMPLETELY
UNABLE TO COMMUNICATE WITH
COUNSEL, DOESN'T COUNSEL STILL
HAVE THE DUTY TO INVESTIGATE?
WHAT IF MR. MCMILLIAN WERE
COMPLETELY UNCOOPERATIVE WITH
COUNSEL?

>> HE WASN'T.

HE WASN'T.

THAT'S A HYPOTHETICAL THAT SEEMS
TO ME TO HAVE NOTHING TO DO WITH
THIS CASE.

>> THE BIGGEST PROBLEM --

>> WHAT YOU'VE BEEN CONFRONTED
HERE WITH BY WHAT MY COLLEAGUE
CITED FROM THE RECORD IS
SPECIFIC TESTIMONY THAT
FUNDAMENTALLY UNDERMINES THE
POINT YOU'RE TRYING TO MAKE.
AND YOU CAN SAY WE DON'T KNOW.
I UNDERSTAND.

YOU HAVE SAID THERE'S CERTAIN WE
DON'T KNOW.

AND CANDIDLY, CANDIDLY, WE KNOW
SOME THINGS THAT ARE IN THE
RECORD, AND --

>> HERE'S MY --

>> YOU MAY THINK THAT THE
EVIDENCE IS NOT SUFFICIENT AND
YOU MAY THINK THAT COUNSEL
MISREMEMBERED AND THAT COUNSEL
-- BECAUSE COUNSEL DIDN'T HAVE
NOTES, THAT COUNSEL WASN'T
COMPETENT TO TESTIFY.

BUT THAT'S NOT CONSISTENT WITH
OUR LAW, I DON'T BELIEVE.
IS IT?

>> NO, BUT -- BUT I THINK WE
FORGET ONE THING, AND I THINK
IT'S A VERY BIG THING.

I THINK IT'S THE NATURE OF THE
DISEASE, WHICH I THINK
DR. HERKOV EXPLAINED.

POST-TRAUMATIC STRESS DISORDER
SUFFERERS AVOID TALKING ABOUT IT
BECAUSE IT IS SO STRESSFUL.

>> BUT THE POINT IS WE HAVE
DR. KROP, WHO -- AM I GETTING
HIS NAME RIGHT?

>> WE DID.

>> WHO EVALUATED HIM.

NOW, YOU VERY CAREFULLY SAID
EARLIER NONE OF THIS WAS
DR. KROP'S FAULT.

>> I DON'T THINK IT WAS BECAUSE
I THINK COUNSEL WAS DEFICIENT
WITH PROVIDING HIM THE
INFORMATION HE NEEDED.

>> BUT, AGAIN, WHAT WE HAVE HERE
ARE THESE QUESTIONS THAT COUNSEL
ASKED.

COUNSEL -- IF DR. KROP CAN'T
FIGURE THIS OUT, HOW IS COUNSEL
SUPPOSED TO FIGURE IT OUT BASED
ON THE INFORMATION THAT THE
CLIENT PROVIDED HIM?

>> DR. HERKOV DIDN'T FIGURE IT
OUT SO MUCH FROM MR. MCMILLIAN.
IT WASN'T UNTIL WE DID ALL THE
COLLATERAL INTERVIEWING AND WENT
BACK AND TALKED TO THE PEOPLE
LIKE PEREZ STAPLES, WHO WORKED
WITH MR. MCMILLIAN IN IRAQ AND
SAW THE CONDITIONS AND
EXPLAINED, FOR INSTANCE, THE WAY
MR. MCMILLIAN ACTED ON THE
AIRPLANE WHEN THE AIRPLANE HAD
TURBULENCE ON THE WAY BACK FROM
IRAQ.

>> DID MR. -- YOU SAID
MR. MCMILLIAN GAVE HIM THE NAME
OF MR. STAPLES, RIGHT?

>> HE DID.

>> AND COUNSEL DID NOTHING AT
ALL WITH THAT?

>> NOTHING.

>> AND MR. STAPLES WAS AROUND
AND AVAILABLE --

>> HE WAS.

>> -- AND COULD HAVE TESTIFIED?

>> HE WAS.

NOW, MR. STAPLES CAME IN AND
SAID I COULDN'T COME BECAUSE I
HAD WORK, BUT HE WAS NEVER
SERVED WITH A SUBPOENA.

WE ALL KNOW HOW TO GET AROUND
WORK ISSUES.

YOU SERVE SOMEBODY WITH A
SUBPOENA.

>> WAS HE WORKING OVERSEAS AT THE TIME?

>> NO.

HE WAS ACTUALLY BACK AT THE TIME.

SO MR. STAPLES WAS HERE AND AVAILABLE, BUT NOBODY EVER CONTACTED HIM.

THE PROBLEM IS MR. GAZALEH WENT TO GEORGIA, BUT HE NEVER TALKED TO ANYBODY OTHER THAN THE MOTHER.

HE DIDN'T TALK TO THAT SIDE OF THE FAMILY.

HE DIDN'T TALK TO THE RIGHT PEOPLE.

BUT EVEN TALKING TO THE RIGHT PEOPLE, YOU HAVE TO ASK THE RIGHT ANSWERS.

IF YOU HEAR THAT A CLIENT -- IF I HEAR THAT A CLIENT HAS SERVED IN IRAQ AND AFGHANISTAN AND THEY SAY NOTHING HAPPENED, I'M AT LEAST GOING TO HAPPEN, WELL, DID YOU SEE HIM?

THESE OTHER COLLATERAL WITNESSES.

DID YOU SEE HIM?

HOW WAS HE ACTING?

YOU ASK THOSE QUESTIONS BECAUSE OF THE NATURE OF THE DISEASE.

YOU'RE NOT NECESSARILY GOING TO GET AN ANSWER FROM THE PERSON WHO'S OFFERING FROM IT BECAUSE IT'S NOT SOMETHING THEY WANT TO TALK ABOUT.

>> DID THE DOCTORS -- IF EVERYONE IN THIS ROOM WENT TO IRAQ AND AFGHANISTAN, WOULD WE ALL COME BACK WITH POST-TRAUMATIC STRESS?

>> NO.

>> OKAY.

>> AND JUST LET ME SAY THIS.

IT'S NOT JUST THE POST-TRAUMATIC STRESS DISORDER.

IT'S HOW IT FIT IN WITH THE COGNITIVE DEFICITS HE HAD, HIS LOW IQ.

DR. HERKOV EXPLAINS THIS VERY

WELL WHEN HE SAID THERE WERE TWO
STATUTORY MITIGATING
CIRCUMSTANCES THAT HE WOULD HAVE
FOUND, EXTREME MENTAL AND
EMOTIONAL DISTURBANCE, AND HIS
ABILITY TO --

>> CONTROL HIS CONDUCT.

>> THANK YOU.

>> WAS SUBSTANTIALLY IMPAIRED.
HE SAID BASICALLY THAT BECAUSE
OF THE EMOTIONAL SETTING THAT HE
CAME BACK TO, HE WAS BROUGHT
HERE KIND OF BACK ON FALSE
PRETENSES.

HE WAS EXPECTING ONE THING.

HE FOUND SOMETHING ELSE.

HE DID NOT HAVE THE COPING
MECHANISMS TO DEAL WITH IT.

IT WAS A COMBINATION OF THE
POST-TRAUMATIC STRESS DISORDER,
THE COGNITIVE DEFICITS, THE LOW
IQ.

EVERYTHING WAS ON TOP OF HIM ALL
AT ONCE.

HE DID NOT HAVE THE COPING
MECHANISMS TO DEAL WITH IT.

>> I KNOW MENTAL HEALTH
MITIGATION WAS FOUND IN THE
ORIGINAL PROCEEDING?

>> I BELIEVE THAT THE COURT
FOUND SOME -- GAVE SOMETHING
SLIGHT WEIGHT.

>> EXCUSE ME?

>> THERE WAS NO STATUTORY MENTAL
HEALTH ARGUED AT ALL IN THE
PENALTY PHASE.

NONE WHATSOEVER.

AND MAY I RESERVE THE REST OF MY
TIME?

>> YOU'RE OUT OF TIME, BUT I'LL
GIVE YOU A COUPLE MINUTES.

>> THANK YOU, JUDGE.

>> MAY IT PLEASE THE COURT,
COUNSEL, CARINE EMLIT,
ASSISTANT ATTORNEY GENERAL ON
BEHALF OF THE STATE.

TO ANSWER THE LAST QUESTION,
THERE WAS INDEED TWO STATUTORY
MITIGATORS CONSIDERED BY THE
COURT.

THE NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL ACTIVITY HAD BEEN GIVEN LITTLE WEIGHT, AND THE MITIGATOR OF THE FELONY HAVING BEEN COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE THE COURT FOUND WAS NOT PROVEN AND GAVE IT NO WEIGHT.

>> HOW MANY YEARS AFTER HE CAME BACK FROM IRAQ, AFGHANISTAN DID THIS CRIME OCCUR?

>> I DON'T RECALL PRECISELY. I WANT TO SAY IT WAS A FEW YEARS.

THREE, FOUR YEARS.

THERE WAS SOME TIME.

HE DIDN'T JUST COME BACK AND COMMIT THIS MURDER.

>> WAS THERE EVER ANYTHING IN THE RECORD ABOUT ANY KIND OF HOSPITALIZATION OR HAVING TO SEE ANY KIND OF DOCTORS OR ANYTHING DURING THIS PERIOD FROM THE TIME THAT HE GOT BACK FROM IRAQ AND THE TIME OF THIS MURDER?

>> NO, YOUR HONOR.

>> I THINK THE MOST COMPELLING PART, AND, AGAIN, YOU'VE HEARD, MOST OF THE QUESTIONS ARE IT WAS REALLY UP TO HIM TO SAY SOMETHING.

BUT THE PART WHERE HE ACTUALLY WAS WITH A FRIEND WHO WAS KILLED NEXT TO HIM, DID THAT COME OUT ON POST-CONVICTION?

>> THERE IS AN ALLEGATION THAT CAME OUT AT THE EVIDENTIARY HEARING I BELIEVE THROUGH THE DEFENDANT'S TESTIMONY THAT HE WITNESSED SOMEONE HE'D BEFRIENDED, SOMEONE WHO WAS ACTUALLY IN THE MILITARY AND HAD BEFRIENDED -- I DON'T KNOW IF HE ACTUALLY WITNESSED THE KILLING, BUT BECAME AWARE OF THE KILLING AND THEN HAD TO WATCH THE --

>> DID HE EXPLAIN -- YOU KNOW, I CAN UNDERSTAND WHERE, YOU KNOW,

IF YOU'RE ASKED ABOUT CHILDHOOD SEXUAL ABUSE, YOU MAY NOT WANT TO TALK ABOUT IT OR YOU MIGHT NOT REMEMBER IT BECAUSE, YOU KNOW, IT HAPPENED WHEN YOU WERE YOUNG AND YOU SUPPRESSED IT. BUT IS THERE AN EXPLANATION IN THE RECORD WHY HE FLAT OUT LIED TO HIS LAWYER?

>> NO, YOUR HONOR.

>> DOES HE EXPLAIN IT?

>> HE DOESN'T EXPLAIN IT.

IN FACT, IN HIS EVIDENTIARY HEARING TESTIMONY HE ADMITS THAT HE DIDN'T TELL THEM.

>> IS IT POSSIBLE THAT HE'S LYING NOW, THAT NONE OF WHAT HE'S SAYING HAPPENED ACTUALLY?

>> WELL, I DON'T KNOW DISBELIEVE THAT HE WAS OVER THERE WORKING AT A CIVIL CONTRACTOR.

THE STATE IS NOT CONVINCED --

>> [INAUDIBLE] FROM THE COMPANY THAT HE WAS.

>> THERE'S NO DOUBT THAT HE WAS OVER THERE AND WORKED AS A CIVILIAN.

>> AGAIN, IT DOES SEEM, AGAIN -- LISTEN, HINDSIGHT IS 20/20. THAT'S WHY WE DON'T SAY THINGS ARE INEFFECTIVE.

BUT YOU'RE FIVE YEARS OVER THERE, THREE DIFFERENT TOURS, WITH A PRIVATE CONTRACTOR. AND, OH, YEAH, NO, I WAS FINE. I WAS WORKING KANDAHAR.

WHERE WAS HE IN IRAQ?

>> I DON'T REMEMBER.

>> WELL, AND, OH, YEAH, HE'S JUST WORKING AS A PERSONAL TRAINER IN AN AIR CONDITIONING PLACE AND EVERYTHING IS FINE. THAT SOUNDS FAIRLY INCREDIBLE, THAT THAT WOULD BE THE CASE.

BUT I DON'T -- AGAIN, THE QUESTION IS WAS THERE A WITNESS THAT HE SAID YOU CAN TALK TO ABOUT MY TIME IN IRAQ THAT THEY DIDN'T THEN TALK TO?

>> NO.

BOTH TRIAL COUNSEL TESTIFIED AT THE EVIDENTIARY HEARING THAT HE HAD NOT GIVEN THEM THE NAMES OF ANY OF THE PEOPLE WHO HE WAS IDENTIFYING AT THE EVIDENTIARY HEARING.

>> THE ONE THAT HE SAID NOW IS BEING OFFERED AS BEING WOULD HAVE KNOWN EVERYTHING WAS NOT ONE THAT HE GAVE.

>> EXACTLY.

AND THE TRIAL COURT MADE A FACTUAL FINDING ON THAT. THEY DETERMINED THAT COUNSEL'S STATEMENTS REGARDING THAT WERE MORE CREDIBLE THAN THE DEFENDANT'S.

AND FRANKLY IT'S HARD TO BELIEVE THAT HAD THEY BEEN GIVEN THAT INFORMATION, AGAIN, KIND OF REPEATING WHAT THE COURT MENTIONED EARLIER, THAT MR. TILL, HAVING THIS MILITARY BACKGROUND, HAD BEEN GIVEN A NAME OF SOMEONE THAT HE COULD HEAR EXACTLY WHAT WAS HAPPENING FROM AND JUST CHOSE NOT TO INTERVIEW HIM.

THAT JUST -- IT MAKES NO SENSE.

>> THEY INTERVIEWED A LOT OF PEOPLE.

>> I'M SORRY?

>> THEY INTERVIEWED A LOT OF --

>> OH, YES.

YEAH.

YEAH.

YEAH.

>> DID THEY EVER ASK ANY OF THE FAMILY MEMBERS -- AS I UNDERSTAND, AT LEAST FOUR OF THEM TESTIFIED AT THE ORIGINAL PENALTY PHASE.

DID THEY EVER ASK ANY OF THEM ABOUT HIS TIME SPENT IN AFGHANISTAN AND IRAQ?

>> TRIAL COUNSEL TESTIFIED THAT THEY TRIED TO GET THIS INFORMATION FROM THE FAMILY MEMBERS, THOSE WITNESSES, AS WELL AS THE DEFENDANT, AND THAT

NO ONE DIVULGED ANY INFORMATION,
NOT PTSD, NOT EVEN SYMPTOMS OF
PTSD.

FRANKLY, WHEN YOU LOOK AT THE
EVIDENTIARY HEARING TESTIMONY,
IT'S NOT THAT HELPFUL.

HIS OWN FATHER SAYS HE WAS QUIET
AND SECLUSIVE AND WOULD RAMBLE
WHEN HE GOT HOME, BUT I
ATTRIBUTE THAT TO HIM FINDING
HIS NEXT DEPLOYMENT.

>> I THINK IN THIS CASE THERE'S
NO QUESTION IT WAS ASKED.

IT WAS NOT FORTHRIGHT.

BUT I THINK WHAT WE KNOW ABOUT
-- AND IT MAY BE A GENERATIONAL
THING.

YOU KNOW, WORLD WAR II, PEOPLE
CAME HOME, NO ONE TALKED ABOUT
WHAT THEIR -- YOU KNOW, YOU'RE
THE HERO, YOU'RE THIS, YOU
WITNESSED THINGS.

IT'S NOT TALKED ABOUT.

WE NOW KNOW AND THE VETERANS
COURTS SHOW YOU'RE EXPOSED TO
COMBAT CONDITIONS AND, YOU KNOW,
THE CHANCE OF STARTING TO HAVE,
YOU KNOW, PTSD AND EXHIBITING
THAT BEHAVIOR IS INCREASED.

NOW, AGAIN, NOT EVERYBODY THEN
GOES OUT AND COMMITS A MURDER.

SO I THINK IT'S -- DO YOU WANT
TO AT LEAST MAYBE ADDRESS THE
PREJUDICE PRONG?

LET'S ASSUME THE JURY HAD HEARD
A MORE SYMPATHETIC ROLE FOR HIM,
THAT HE HAD REALLY SEEN SOME OF
THESE AWFUL THINGS, LIKE, AGAIN,
IF HE SAW SOMEBODY BEING BLOWN
UP.

>> AND THERE WAS NO TESTIMONY TO
THAT.

THE TESTIMONY THAT CAME OUT FROM
THE DEFENDANT WAS THAT HE SAW --
HE HAD TO WATCH A PROCESSION OF
CASKETS BEING DRIVEN DOWN THE
ROAD EACH TIME THEY HAD TO SEND
SOLDIERS HOME.

THERE WAS TESTIMONY THAT HE WAS
HAVING TO HIDE IN A BUNKER

BECAUSE OF ROCKET FIRE.
BUT NO TESTIMONY THAT HE WAS HIT
OR ACTUALLY SAW SOMEONE KILLED
OR ANYTHING LIKE THAT.

I DON'T KNOW THAT WHAT HE SAW
ACTUALLY RISES TO THE LEVEL OF
PTSD.

BUT EVEN IF, EVEN IF THERE HAD
BEEN A FINDING BY SOMEONE AT THE
TRIAL LEVEL THAT HE HAD PTSD, WE
STILL HAVE THESE OVERWHELMING
AGGRAVATORS.

>> THE DOCTOR -- THE
NEUROPSYCHOLOGIST WHO TESTIFIED
AT THIS EVIDENTIARY HEARING DID
IN FACT DIAGNOSE HIM WITH PTSD,
CORRECT?

>> CORRECT.

>> SO IF WE ASSUME THAT THAT
KIND OF TESTIMONY HAD BEEN
PRESENTED AT THE PENALTY PHASE

--

>> RIGHT.

>> OKAY.

>> RIGHT.

I DON'T THINK THAT IT WOULD HAVE
CHANGED THE OUTCOME OF THIS
CASE.

THE AGGRAVATORS WERE WEIGHTY.
THERE WAS AN ATTEMPTED MURDER OF
A POLICE OFFICER AND THE FACT
THAT HE WAS ON FELONY PROBATION
FOR A PRIOR FELONY FLEEING AND
ELUDING.

>> WHEN DID THAT OCCUR?

>> WHEN?

>> YES.

THIS WAS SOMETHING, SOME CRIME
HE COMMITTED AFTER HE CAME BACK
FROM IRAQ.

>> RIGHT, AND IT WAS BEFORE THIS
CASE.

I DON'T KNOW THE EXACT DATE, BUT
I CAN TELL YOU HE WAS ONE YEAR
INTO A FIVE-YEAR PROBATION
SENTENCE, SO IT HAD TO HAVE
HAPPENED AT LEAST A YEAR, MAYBE
18 MONTHS PRIOR TO THE MURDER.

>> SO WHAT EXACTLY WAS IT?

BECAUSE MY QUESTION IS IS THAT

INDICATIVE OF SOME KIND OF OTHER BEHAVIOR THAT MAY HAVE BEEN A RESULT OF WHAT HE WENT THROUGH IN AFGHANISTAN AND IRAQ?

>> I DON'T THINK SO, BECAUSE HE TESTIFIED ABOUT THAT AT TRIAL. HE ACTUALLY OPENED THE DOOR TO ALLOWING THE STATE TO CROSS-EXAMINE HIM ABOUT THE FACTS OF THAT CASE.

AND HE CAME OUT AND SAID I RAN BECAUSE I HAD A GUN AND DRUGS IN THE CAR.

AND SO I WENT AND GOT RID OF THOSE AND THEN WENT TO THE POLICE STATION AND TURNED MYSELF IN.

SO IT DOESN'T SEEM -- I MEAN, IT'S CLEAR.

HIS PURPOSE IN RUNNING THAT TIME WAS TO GET RID OF FURTHER EVIDENCE THAT WOULD END UP WITH MORE CHARGES.

SO I DON'T THINK THAT THERE'S A CORRELATION THERE, PTSD, BETWEEN THE TWO OFFENSES.

YOU KNOW, I THINK THAT THE COURT -- IT SEEMS THAT THE COURT'S IN AGREEMENT WITH ME ON MY POSITION.

AGAIN, I MEAN, HE -- IT'S NOT JUST A MATTER OF MR. MCMILLIAN NOT PROVIDING INFORMATION ABOUT SYMPTOMS OF PTSD OR WHAT HE MAY OR MAY NOT HAVE SEEN.

HE OUTRIGHT DENIED IT.

THERE WAS SNICKERING.

THERE WAS LAUGHING.

BUT HE OUTRIGHT DENIED IT, WHEN ASKED.

HE ACTUALLY SAID, QUOTE, I DIDN'T SEE ANYTHING.

SO YOU'VE GOT THESE ATTORNEYS WHO ARE TRYING SO HARD, ONE WITH

--

>> WELL, IS IT A CREDIBLE STATEMENT -- I MEAN, IF YOU ARE IN THESE PLACES WHERE THERE WAS ALL KINDS OF MILITARY ACTION GOING ON, IS IT A CREDIBLE STATE

FOR HIM TO HAVE SAID I DIDN'T
SEE ANYTHING?

>> I THINK IT'S CREDIBLE WHEN
YOU PUT THAT ALONG WITH EVERY
OTHER STATEMENT HE MADE.
I JUST WORKED IN AN AC GYM AND
LAUGHS.

WHEN YOU PUT THEM ALL TOGETHER,
THEY'RE ALL CONSISTENT AND I
THINK CREDIBLE.

HE NEVER TOLD THE FAMILY.
HIS FATHER TESTIFIED INITIALLY
THAT HE HAD NEVER SAID ANYTHING
TO HIM.

HE DIDN'T SAY ANYTHING TO
DR. KROP.

THERE WAS NO MENTION OF IT IN
HIS EMPLOYMENT RECORDS, NO
MENTION OF IT IN PRIOR MEDICAL
RECORDS.

I MEAN, THERE WAS NOTHING THAT
TRIAL COUNSEL COULD HAVE LOOKED
AT TO, YOU KNOW, MAKE THE LIGHT
GO OFF AND SAY, OH, WAIT A
MINUTE, LET ME CONSIDER WE MIGHT
HAVE THIS ISSUE.

>> THE FATHER AND WAS IT SOME
COUSINS OR A SISTER THAT
TESTIFIED?

NONE OF THEM SAID ANYTHING ABOUT
-- I MEAN, YOUR OPPONENT TALKS
ABOUT HE BEGAN USING ALCOHOL AND
DRUGS AFTER HE CAME BACK FROM
HIS OVERSEAS ASSIGNMENTS.
AND I ASSUME HE NEVER DID THAT
BEFORE HE WENT.

AND SO DID THEY EVER TALK ABOUT
ANYTHING LIKE THAT, WHERE THEY
ASKED ABOUT THOSE KINDS OF
THINGS?

>> ACCORDING TO TRIAL COUNSEL,
THEY WERE ASKED, AND THEY JUST
DIDN'T HAVE ANY INFORMATION.
I THINK THE FATHER TOLD TRIAL
COUNSEL THAT THE DEFENDANT NEVER
REALLY TALKED ABOUT HIS
EXPERIENCE OVERSEAS.

THE ONE THING HE MENTIONED --
>> NO.

I DON'T MEAN AN EXPERIENCE

OVERSEAS, BUT THE CHANGE IN HIM FROM DRINKING AND USING ILLICIT DRUGS WHEN HE HAD NOT DONE THAT PRIOR TO THIS.

>> THAT WAS NOT ADDRESSED IN PENALTY.

THEY DIDN'T TESTIFY ABOUT THOSE THINGS AT PENALTY.

AT THE EVIDENTIARY HEARING THEY DID TESTIFY ABOUT IT, AND THEIR TESTIMONY WAS -- THERE WAS INCONSISTENCIES WITHIN THEIR TESTIMONY.

THE APPELLANT MAKES ISSUE WITH THE FACT THAT HE LOST WEIGHT FROM HAVING BEEN OVER THERE.

THERE WERE VARYING ACCOUNTS OF HOW MUCH WEIGHT HE LOST.

ONE WITNESS SAID HE GAINED WEIGHT.

PEREZ STAPLES, THE ONE WHO WAS OVERSEAS WITH HIM, SAID HE DRANK A LOT BEFORE HE WENT OVERSEAS.

SO HE DRANK BEFORE AND HE DRANK AFTER.

AND THE WAY THAT THEY DESCRIBED HIM, IT WAS, OH, HE LOOKED A LITTLE MORE DEPRESSED, HE DRESSED A LITTLE MORE SLOPPY, NOTHING THAT SCREAMS MENTAL DISORDER OR PTSD, NOTHING THAT LIKE YOU SEE IN THE CASE OF PORTER, THE PORTER CASE, WHERE THE GUY WAS CLIMBING THE WALLS WITH KNIVES AND ATTACKING PEOPLE AND JUST ACTING CRAZY.

THAT'S NOT HERE.

>> I MEAN, IS THAT NECESSARY FOR --

>> I DON'T THINK IT HAS TO BE -- PTSD?

>> ALL THOSE INITIALS.

>> I DON'T THINK THE DIAGNOSIS WOULD REQUIRE THAT DEGREE OF FACTUAL BASIS.

BUT HERE WE HAVE NOTHING.

WE HAVE NOTHING.

AND THEN WE HAVE A DENIAL ON TOP OF IT.

>> WHAT ABOUT MR. STAPLES, AS

SHE MENTIONED?

>> WHAT ABOUT HIM?

>> AS A WITNESS.

COULD YOU ADDRESS WHAT THE DEFENSE COUNSEL DID OR DID NOT DO REGARDING MR. STAPLES?

>> WELL, TRIAL COUNSEL TESTIFIED AT THE EVIDENTIARY HEARING THAT HE NEVER HAD HIS NAME, THAT HE HAD ASKED FOR NAMES AND IT WAS NEVER PROVIDED, THAT NAME. HE WAS ACTUALLY SPECIFICALLY ASKED ABOUT PEREZ STAPLES AND HE SAID I NEVER HEARD OF THAT NAME BEFORE.

SO HE DIDN'T DO ANYTHING BECAUSE HE DIDN'T KNOW ABOUT HIM.

>> DID YOU SAY THE JUDGE MADE A FINDING ON THAT?

>> YES.

THE JUDGE MADE A FINDING THAT TRIAL COUNSEL WAS MORE CREDIBLE THAN THE DEFENDANT WHEN THEY TESTIFIED THEY WEREN'T GIVEN THE NAMES OF THE WITNESSES.

WELL, IF THE COURT DOESN'T HAVE ANY FURTHER QUESTIONS, I WOULD ASK THAT YOU AFFIRM THE TRIAL COURT'S ORDER DENYING THE POST-CONVICTION MOTION.

THANK YOU.

>> THANK YOU.

>> YOUR HONOR, JUST BRIEFLY, IN MR. MCMILLIAN'S EVIDENTIARY HEARING WE CALLED AT LEAST ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT WITNESSES, ALL WHO TESTIFIED THAT MR. MCMILLIAN WAS RELUCTANT AND UNWILLING TO DISCUSS DETAILS OF WHAT OCCURRED TO HIM IN IRAQ AND AFGHANISTAN.

>> WILL YOU TALK INTO THE MICROPHONE, PLEASE?

>> EXCUSE ME.

EIGHT WITNESSES.

ALL OF THEM TESTIFIED THAT MR. MCMILLIAN WAS RELUCTANT AND UNWILLING TO DISCUSS DETAILS OF WHAT HAPPENED IN AFGHANISTAN AND IRAQ, WHICH IS DIAGNOSTIC OF

POST-TRAUMATIC STRESS DISORDER.
THE VERY NATURE OF HIS DISEASE
IS CAUSING HIM NOT TO WANT TO
DISCUSS THE VERY THING THAT'S
CAUSING HIM THE PROBLEM.
COUNSEL INDICATED THAT TRIAL
COUNSEL --

>> LET ME ASK YOU, DOES THE
RECORD INDICATE THAT -- WHETHER
OR NOT TRIAL COUNSEL EVER ASKED
ANY OF THE WITNESSES WHO
TESTIFIED AT PENALTY ABOUT
MR. MCMILLIAN'S IRAQ/AFGHANISTAN
WORK?

>> THAT'S THE PROBLEM.
THAT'S WHAT THEY FAILED TO DO.
THEY WERE GIVEN THE RED FLAG
THAT HE WAS THERE, BUT THEN THEY
COMPLETELY NEGLECT TO ASK ANY OF
THE FAMILY MEMBERS -- OF COURSE,
THEY INTERVIEWED THE WRONG
FAMILY MEMBERS.

THEY DIDN'T INTERVIEW THE ONES
IN GEORGIA, WHO WERE THE ONES
THAT ACTUALLY SAW HIM FOLLOWING
HIS IRAQ AND AFGHANISTAN TIME.
BUT THEY NEVER ASKED THE
QUESTIONS.

BASICALLY, MR. TILL JUST BLEW IT
OFF.

HE JUST BLEW IT OFF BASED UPON
HIS OWN CULTURAL PRESUMPTION
THAT YOU NEEDED TO HAVE COMBAT
EXPERIENCE IN ORDER TO HAVE
POST-TRAUMATIC STRESS DISORDER.
THE PREJUDICE HERE IS THAT THERE
WERE ONLY TWO AGGRAVATING
CIRCUMSTANCES FOUND BY THE TRIAL
COURT.

AND THESE WOULD HAVE PROVIDED
TWO STATUTORY MITIGATING
CIRCUMSTANCES, WHICH THESE TWO
STATUTORY MITIGATING
CIRCUMSTANCES ARE VERY WEIGHTY.
AND I THINK THAT THERE CLEARLY
IS A STRONG LIKELIHOOD THAT THIS
WOULD HAVE CHANGED THE OUTCOME
OF THIS PENALTY PHASE.

>> WHAT WAS THE VOTE OF THE JURY
IN THIS CASE?

>> 10-2.

BUT THIS WAS ALSO A JURY WHO HAD
ALSO LISTENED TO THE FACTS OF
THE ATTEMPTED MURDER WITH A
POLICE OFFICER, WHICH I HAVE
ALSO ALLEGED SHOULD NEVER HAVE
BEEN CONSOLIDATED BY DEFENSE
COUNSEL IN THE FIRST PLACE.

I KNOW.

I'M UP.

I'M SORRY.

THANK YOU SO MUCH FOR YOUR TIME.

>> THANK YOU FOR YOUR ARGUMENTS.

WE'RE IN RECESS FOR TEN MINUTES.