>> NEXT CASE ON THE DOCKET IS ARMSTRONG V. STATE OF FLORIDA.
>> WHENEVER YOU'RE READY.
>> GOOD MORNING, MAY IT PLEASE THE COURT, NICOLE NOEL AND RACHEL DAY ON BEHALF OF MR. ARMSTRONG.
FOLLOWING A VERY LIMITED EVIDENTIARY HEARING IN CIRCUIT COURT AND THE SUMMARY DENIAL OF THE REMAINDER OF OUR CLAIMS.
WHEN THIS COURT REMANDED THIS CASE FOR RESENTENCING BACK IN 2003, MR. ARMSTRONG WAS GIVEN A SECOND CHANCE TO CONVINCE A JURY THAT HE DIDN'T DESERVE TO DIE.
HIS RESENTENCING COUNSEL SQUANDERED THAT OPPORTUNITY.
RESENTENCING COUNSEL HAD A ROAD MAP OF WHAT TWO MEMBERS OF THIS COURT CALLED SUBSTANTIAL, IMPORTANT MITIGATION WHICH RESENTENCING COUNSEL NEVER INVESTIGATED, NEVER PRESENTED AND TO THIS DAY NO JURY HAS EVER HEARD.
INSTEAD, RESENTENCING COUNSEL CHOSE A DOOMED ARGUMENT THAT MR. ARMSTRONG WAS MERELY A VICTIM OF CIRCUMSTANCE AND WAS IN THE WRONG PLACE AT THE WRONG TIME WHICH, GIVEN THESE FACTS, WAS OBJECTIVELY UNREASONABLE.
>> RESENTENCING COUNSEL WAS A DIFFERENT ATTORNEY?
>> YES, YOUR HONOR.
>> AND HE WAS APPOINTED AT WHAT POINT?
>> HE WAS NOT APPOINTED, YOUR HONOR, HE WAS HIRED.
>> HIRED AT WHAT POINT?
>> HE WAS HIRED ABOUT A YEAR BEFORE THE RESENTENCING BEGAN.
>> OKAY.
>> MR. ARMSTRONG HAD APPOINTED COUNSEL, HILLYARD MALL DO HAVE, WHO HE DISCHARGED IN FAVOR OF HIRING--
>> AND AT THE EVIDENTIARY HEARING, MR. ROE DISCUSSED THE

MITIGATION EVIDENCE THAT WAS
PRESENTED, AND HIS STRATEGY FOR
THE PRESENTING OF MITIGATION?
>> NO, HE DID NOT, YOUR HONOR.
WE WERE DENIED A HEARING ON THAT
CLAIM, SO WE, THE STATE HAD
OBJECTED TO US PRESENTING
EVIDENCE ON THAT.
SO WE WERE NOT ALLOWED TO ASK
MR. ROE ABOUT HIS STRATEGY, HIS
INVESTIGATION, WHETHER HE
INVESTIGATED, WHAT HE
INVESTIGATED OR WHY HE CHOSE TO
PUT ON--
>> SO WHAT, ISN'T-- I WAS
LOOKING AT YOUR BRIEF.
SO ISN'T THE ISSUE REALLY THAT
THE TRIAL COURT, DID THE TRIAL
COURT ERR IN NOT GRANTING AN
EVIDENTIARY HEARING, BECAUSE ON
THE STRATEGIC REASONS?
IS THAT-- I MEAN, WE WOULDN'T,
YOU WOULDN'T THINK BASED ON THIS
RECORD THAT WE WOULD JUST
REVERSE FOR ANOTHER SENTENCING
HEARING, RIGHT?
YOU'RE JUST ASKING THAT IT GO
BACK ON THAT CLAIM FOR AN
EVIDENTIARY HEARING?
>> AT THE VERY LEAST, YOUR
HONOR, YES.
>> WELL, THAT'S THE MOST THAT WE
COULD DO.
COULD YOU ADDRESS-- THE TRIAL
COURT SEEMED TO THINK IN VERY
DETAILED ORDER THAT THE COLLOQUY
AND THE RECORD, BECAUSE
APPARENTLY THE STATE WAS
CONCERNED WITH PUTTING WHAT THEY
PUT ON.
I MEAN, THEY PUT ON A DOCTOR TO
TALK ABOUT THE BENIGN TUMOR.
>> YES.
>> THEN THEY PUT ON
MR. ARMSTRONG FOR EIGHT HOURS.
>> YES.
>> AND AS YOU SAID, SOME OF WHAT
HE SAID, IT WAS JUST ABSOLUTELY
BIZARRE.
>> YES.

>> AND IT DOES SEEM LIKE THIS MR. ROE WAS, I DON'T WANT TO PUT MENTAL HEALTH EVIDENCE ON BECAUSE HE'S NOT CRAZY.
>> RIGHT.
>> WITH THAT THEY, THAT THE TRIAL COURT DECIDED THE COLLOQUY THAT WAS GIVEN REALLY SHOWED THAT MR. ARMSTRONG KNEW ABOUT THE MITIGATION, BECAUSE HE WAS THERE IN 2001 AT THE EVIDENTIARY HEARING, AND THAT HE MADE AN INFORMED DECISION BASED ON A DISCUSSION WITH HIS LAWYER THAT HE WASN'T GOING TO PUT OTHER MITIGATION ON.
SO WHY ISN'T IN THIS CASE BECAUSE THE PROSECUTOR CLEARLY ANTICIPATED EXACTLY WHAT IS HAPPENING NOW AND URGED THE TRIAL COURT TO ENGAGE IN THIS EXTENSIVE COLLOQUY.
SO WHY SHOULDN'T THAT BE THE REASON TO AFFIRM THE SUMMARY DENIAL?
>> WELL, YOUR HONOR, THIS COURT IS ONLY-- OWES DEFERENCE TO THE CIRCUIT COURT'S RULING ON THAT ISSUE IF IT'S SUPPORTED BY SUBSTANTIAL, COMPETENT, SUBSTANTIAL EVIDENCE.
>> WE DON'T OWE ANY DEFERENCE, IT'S A LEGAL-- I MEAN, NO EVIDENTIARY HEARING.
WE OWE NOTHING, WE JUST HAVE TO DECIDE WHETHER THAT WAS A KNOWING WAIVER BY MR. ARMSTRONG BASED ON THE RECORD.
>> CORRECT.
AND I WOULD SUBMIT THAT IT WAS NOT.
HIS WAIVER NEEDED TO BE KNOWING, INTELLIGENT AND VOLUNTARY.
NOW, THIS ALL GOES BACK TO MR. ROE'S FAILURE TO INVESTIGATE.
BECAUSE IF MR. ROE DIDN'T INVESTIGATE WHAT THE AVAILABLE MITIGATION EVEN WAS THAT MR. ARMSTRONG COULD PRESENT, IF

HIS ATTITUDE TOWARDS MENTAL
HEALTH MITIGATION WAS, WELL,
WE'RE NOT GOING TO STAY HE'S
CRAZY, THAT WAS HIS
UNDERSTANDING OF MITIGATION
WHICH WAS TO SAY HE DIDN'T
UNDERSTAND IT AT ALL.
AND IF HE COULDN'T UNDERSTAND
IT, HE CERTAINLY COULD NOT
EXPLAIN IT TO HIS CLIENT WHO HAD
LANGUAGE ISSUES, IS DYSLEXIC.
AT THE TIME THERE WAS READING
AND WRITING ISSUES.
HE HAD TAUGHT HIMSELF TO READ
AND WRITE A BIT IN PRISON, AND
SIX YEARS HAD PASSED BETWEEN THE
2001 EVIDENTIARY HEARING AND THE
2007 RESENTENCING.
NOW, THE STATE ATTORNEY AT THE
RESENTENCING MERELY READ A LIST
OF NAMES AND SAID YOU WAIVED
THOSE, RIGHT?
HE SAID, OKAY, YEAH, I DO.
AND THE COURT ASKED A SERIES OF
QUESTIONS WHERE MR. ARMSTRONG
RESPONDED, YES, YES, YES.
BUT, AGAIN, THIS GOES BACK TO
MR. ROE'S FAILURE TO UNDERSTAND
MITIGATION, AND IF HE COULDN'T
UNDERSTAND IT TO MR. ARMSTRONG,
THEN HE OBVIOUSLY WOULDN'T
UNDERSTAND WHAT HE WAS WAIVING
EITHER.
AND ALSO SOME OF THE OTHER
COMMENT THAT IS MR. ARMSTRONG
DID MAKE DURING THE COLLOQUY
INDICATE HIS LACK OF
UNDERSTANDING.
WHEN THE COURT ASKED HIM DO YOU
HAVE ANY OTHER MITIGATION YOU'D
LIKE TO PRESENT, MR. ARMSTRONG
SAID, WELL, OTHER THAN POLICE
MISCONDUCT AND PROSECUTORIAL
MISCONDUCT AND OTHER THAN THAT,
NO.
SO CLEARLY HE DIDN'T UNDERSTAND
WHAT MITIGATION CONSISTED OF.
>> WELL, WE REALLY DON'T KNOW IT
BECAUSE THERE HASN'T BEEN AN
EVIDENTIARY HEARING ON THAT.

I HOPE MS. CAMPBELL WILL ADDRESS IT, BEFORE THE SPENCER HEARING, APPARENTLY EITHER GOT RELIGION OR GOT SOMETHING BECAUSE HE STARTED TO TALK ABOUT, WELL, WAIT A SECOND, I NEVER HAD A TRANSCRIPT OF THE EVIDENTIARY HEARING.
I WANT TO DISCHARGE MY COUNSEL BECAUSE MY COUNSEL DIDN'T CALL THESE WITNESSES.
THERE'S NO BE-- THE JUDGE JUST DENIED THAT AND NEVER TALKED TO HIM ABOUT IT.
>> THAT'S CORRECT, YOUR HONOR. THAT ACTUALLY OCCURRED AT THE SPENCER HEARING, AND THE FIRST ONE WAS ON DECEMBER OF 2007, AND THAT WAS WHERE MR. ARMSTRONG HAD EXPRESSED HIS CONCERNS WITH MR. ROE'S LACK OF INVESTIGATION, SPECIFICALLY MENTIONED THERE WERE WITNESSES WHO WERE AVAILABLE WHO HAD TESTIFIED IN 2001 THAT THEY WOULD HAVE BEEN AVAILABLE HAD THEY BEEN CALLED AND THAT HE WANTED TO DISCHARGE HIS COUNSEL.
SO, AGAIN, CLEARLY, BEFORE SENTENCING MR. ARMSTRONG HAD INDICATED TO THE COURT THAT HE WAS DISSATISFIED WITH MR. ROE'S REPRESENTATION, THAT HE WASN'T OKAY WITH WHAT HE HAD DECIDED TO DO AND THAT HE HAD NOT, IN FACT, UNDERSTOOD WHEN HE DID THIS PURPORTED WAIVER, HE HADN'T REALLY UNDERSTOOD WHAT WAS GOING ON.
>> WHY WASN'T THIS BROUGHT UP AS EITHER THE ISSUE OF MITIGATION-- YOU MENTIONED KUHN, WHICH THAT DOESN'T APPLY BECAUSE MITIGATION WAS PUT ON. WHY WASN'T THERE ANY ISSUE OF KNOWING AND VOLUNTARY WAIVER BROUGHT UP AS AN ISSUE ON APPEAL?
DIRECT APPEAL?
>> I DON'T KNOW, YOUR HONOR.

>> BUT YOU DON'T EVEN RAISE IT
AS A HABEAS ISSUE.
IT SHOULD HAVE BEEN BROUGHT UP.
>> WELL, I MEAN, WE DO RAISE THE
ISSUE THAT THIS PURPORTED WAIVER
WAS NOT KNOWING, INTELLIGENT AND
VOLUNTARY.
>> NO, I'M ASKING IT SHOULD
HAVE BEEN RAISED ON DIRECT
APPEAL.
YOU DON'T RAISE THAT AS A--
>> YES, YOUR HONOR.
>> YES, YOU DID NOT?
>> WELL, WE DID DISCUSS THE LACK
OF INVESTIGATION IN BOTH THE
BRIEF AND THE HABEAS PETITION, I
BELIEVE, AS TO WHY NONE OF THIS
WAS EVER PRESENTED.
I'D LIKE TO ALSO DISCUSS THE
RESENTENCING COURT'S EVALUATION
OF PREJUDICE ON THIS CASE.
THE RESENTENCING COURT IN THIS
CASE DID MERELY A CURSORY
DISMISSAL OF THE AVAILABLE
MITIGATION.
HE-- IT WAS LIMITED TO A COUPLE
OF SENTENCES SAYING THAT THE
MENTAL HEALTH EVIDENCE THAT WAS
PRESENTED IN 2001 WOULDN'T HAVE
MADE ANY DIFFERENCE TO A JURY
BECAUSE THE EXPERTS DIDN'T KNOW
ENOUGH ABOUT THE FACTS OF THE
CRIME.
SO BY DOING SO-- WELL, HE
ADOPTED THE FIRST POSTCONVICTION
COURT'S REASONING, CUT AND
PASTED PRETTY MUCH FROM THAT
ORDER, AND IMPOSING AN
UNCONSTITUTIONAL NEXUS
REQUIREMENT, FIRST OF ALL.
AND ALSO FAILED TO ENGAGE IN THE
SORT OF PROBING FACT-SPECIFIC
ANALYSIS THAT THE COURT'S
REQUIRED TO DO UNDER PORTER AND
IN SEARS.
WHAT THE RESENTENCING COURT
ESSENTIALLY DID IN THIS CASE WAS
THE TYPE OF POST-HOC
RATIONALIZATION OF COUNSEL'S
CONDUCT THAT THE UNITED STATES

SUPREME COURT REJECTED IN
WIGGINS.
AND, BASICALLY, AS YOU
MENTIONED, JUSTICE PARIENTE IN
THIS CASE THERE WAS NO REAL
ADVERSARIAL TESTING AT THE
RESENTENCING.
THE JURY WAS GIVEN, ESSENTIALLY,
NOTHING BY WHICH THEY COULD
GAUGE MR. ARMSTRONG'S MORAL
CULPABILITY.
>> WHAT WAS-- I'M INTRIGUED BY
EIGHT HOURS OF A DEFENDANT.
WHAT WAS THE EIGHT OUR-- HOURS?
WAS THAT MOSTLY
CROSS-EXAMINATION OR WAS THAT
JUST A SOLILOQUY BY
MR. ARMSTRONG?
COULD YOU KIND OF EXPLAIN THAT
AS WELL AS THE OTHER TWO
WITNESSES THAT WERE CALLED?
>> I GUESS I WOULD CHARACTERIZE
IT AS A SOLILOQUY.
IT WAS INTERRUPTED OCCASIONALLY
BY A PROMPTING QUESTION BY
MR. ROE, JUST ANYTHING ELSE YOU
WANT TO SAY?
WHAT ELSE DO YOU WANT TO SAY?
AND MR. ARMSTRONG ESSENTIALLY
GOT UP IN FRONT OF THE JURY AND
CONTINUED TO MINIMIZE HIS
INVOLVEMENT IN THE CRIME WHICH
WAS, AGAIN, UNREASONABLE FOR
MR. ROE TO PRESENT THAT AND
BORDERLINE INSULTING TO THE JURY
THAT HAD JUST SAT THROUGH 29
STATE WITNESSES WHO ALL
DESCRIBED IN DETAIL, INCLUDING
FORENSIC EXPERTS, DNA EXPERTS,
BALLISTICS EXPERT DESCRIBED
MR. ARMSTRONG'S INVOLVEMENT IN
DETAIL.
AND THEN MR. ROE PUTS
MR. ARMSTRONG UP ON THE STAND TO
SAY, WELL, I WAS JUST IN THE
WRONG PLACE AT THE WRONG TIME.
I'M A BUSINESSMAN, I DON'T HAVE
ANY REASON TO COMMIT AN ARMED
ROBBERY EVEN THOUGH HE HAD
SHOWED UP AT A CHICKEN

RESTAURANT AT 2:00 IN THE
MORNING ARMED WITH AN AUTOMATIC
WEAPON.
>> WHAT HAPPENS IF MR. ARMSTRONG
INSISTED ON DOING THAT?
>> I'M SORRY, I DIDN'T HEAR
THAT.
>> WHAT HAPPENS IF MR. ARMSTRONG
INSISTED ON TAKING THE STAND AND
DOING THAT DESPITE COUNSEL'S
RECOMMENDATION NOT TO DO THAT?
I MEAN, WHAT DO YOU DO?
>> WELL, MR. ARMSTRONG DID, OF
COURSE, HAVE A RIGHT TO TESTIFY.
>> RIGHT.
>> BUT THIS COURT AND THE UNITED
STATES SUPREME COURT HAVE HELD
THAT EVEN IF THAT IS A STRATEGY
OR THE WAY THAT THEY CHOOSE TO
GO-- AND I HESITATE TO CALL IT
A STRATEGY BECAUSE IT WAS DONE
WITHOUT ANY INVESTIGATION-- BUT
IT DOESN'T NECESSARILY MEAN THAT
MITIGATION, THAT MENTAL HEALTH
MITIGATION, SOCIAL HISTORY
MITIGATION, IT'S NOT NECESSARILY
MUTUALLY EXCLUSIVE.
AND, IN FACT, FROM ARMSTRONG--
MR. ARMSTRONG DID NOT WAIVE
PRESENTATION OF SOCIAL HISTORY
ED.
HE TESTIFIED ABOUT SOME OF IT
HIMSELF.
THE PROBLEM IS IT WASN'T
CREDIBLE TO THE JURY.
THE RESENTENCING COURT
CHARACTERIZED IT AS SELF-SERVING
TESTIMONY.
BECAUSE HE WAS, AGAIN, TRYING TO
MINIMIZE HIS INVOLVEMENT.
SO THE LITTLE BIT OF SOCIAL
HISTORY THAT MR. ARMSTRONG
HIMSELF DID TESTIFY TO WAS NOT
CRED POSSIBLE THE JURY.
NOW, THE 2001 EVIDENCE THAT WAS
PRESENTED AT EVIDENTIARY
HEARING, THERE WAS A GREAT DEAL
OF SOCIAL HISTORY EVIDENCE
PRESENTED THERE.
HIS BROTHER, HIS AUTOMATIC, TWO

OF HIS BROTHERS AND HIS AUNT HAD
TESTIFIED ABOUT THE HORRIFIC
ABUSE THAT HE ENDURED AT THE
HANDS OF HIS STEPFATHER, THAT HE
WAS BEATEN WITH STICKS, BELTS,
SHOES, FISTS, A SPECIAL STRAP
THAT HE KEPT FOR THE OCCASION,
AND WE ALSO HAD MENTAL HEALTH
TESTIMONY WHERE SEVERAL OF THE
EXPERTS, ALL OF THE EXPERTS
WOULD HAVE TESTIFIED TO
STATUTORY MITIGATORS.
WHICH, AGAIN, THE JURY NEVER
HEARD ANY OF THIS EVIDENCE.
SO MR. ARMSTRONG-- SO WHAT WE
HAD AT THE RESENTENCING, TO GET
BACK TO YOUR QUESTION, JUSTICE
PARIENTE, WHAT WE DID HAVE AT
THE RESENTENCING WAS EIGHT HOURS
OF MR. ARMSTRONG'S RAMBLING,
SELF-SERVING TESTIMONY, A DOCTOR
WHO WAS AB ECONOMIST WHO
TESTIFIED VERY GENERALLY ABOUT
THE ECONOMIC CONDITIONS IN
JAMAICA AT THE TIME THAT
MR. ARMSTRONG WAS GROWING UP IN
THE '70s.
IN STARK CONTRAST TO DR. LORI
GUNST WHO HAD TESTIFIED AT THE
2001 EVIDENTIARY HEARING WHO WAS
ALSO AN EXPERT IN CARIBBEAN
CULTURE.
BUT SHE WAS ABLE TO TESTIFY MUCH
MORE IN DETAIL ABOUT
MR. ARMSTRONG'S PERSONAL
SITUATION.
AND THE ABUSE THAT HE ENDURED
THERE BOTH AT SCHOOL AND AT
HOME.
HE WAS BEATEN NOT ONLY BY HIS
STEPFATHER AND AUNT AT HOME, BUT
HE WAS ALSO BEATEN IN SCHOOL
BECAUSE OF HIS DYSLEXIA AND HIS
INABILITY TO LEARN.
BUT MR. ROE FAILED TO PRESENT
DR. GUNST, AND THAT'S THE
CONFLICT ISSUE IN OUR BRIEF.
AND THEN THE LAST WITNESS
PRESENTED AT THE RESENTENCING
HEARING WAS IN THIS MEDICAL

DOCTOR WHO TESTIFIED ABOUT THE
BENIGN GROWTH THAT MR. ARMSTRONG
HAD.
AND THAT'S ALL THE JURY HEARD.
>> WHAT WAS THAT-- COULD YOU--
WHAT WAS THE BENIGN GROWTH?
WHAT WAS THAT OFFERED AS FAR AS
BE MITIGATION OR WHAT?
>> I COULDN'T TELL YA.
AND WE WEREN'T ALLOWED TO ASK
MR. ROE WHAT HIS THINKING COULD
POSSIBLY HAVE BEEN ON THAT.
I THINK WHAT DR. MORRISON
TESTIFIED TO WAS THAT IT WAS A
BENIGN GROWTH THAT COULD MAYBE
AT SOME TIME TURN CANCEROUS.
AND SUPPOSEDLY, THAT WAS
MITIGATING, ACCORDING TO
MR. ROE.
WHICH, AGAIN, JUST INDICATES THE
FACT THAT HE DID NOT UNDERSTAND
WHAT MITIGATION WAS.
I MEAN, IT'S CLEAR THAT EVEN
UNDER RULE 3.112 IT'S CLEAR FROM
THE LIMITED EVIDENTIARY HEARING
THAT WE WERE GIVEN ON THIS THAT
MR. ROE WAS SIMPLY NOT QUALIFIED
TO HANDLE A CAPITAL CASE.
HE HAD NEVER BEFORE HANDLED A
CAPITAL PENALTY PHASE EVER.
AND THE FEW CASES, CAPITAL CASES
HE HAD HANDLED HAD EITHER BEEN
DISMISSED OR NOT CROSSED BY THE
STATE, OR THE STATE TOOK DEATH
OFF THE TABLE BEFORE IT GOT TO A
PENALTY PHASE.
>> WELL, DOES IT MATTER AT ALL
THAT THE STATE, TRIAL COURT GAVE
MR. ARMSTRONG HILLYARD MALDOFF
WHO'S AN EXPERIENCED CAPITAL
ATTORNEY, AND HE, MR. ARMSTRONG,
DECIDED TO HIRE MR. ROE?
I REALIZE INEFFECTIVE ASSISTANCE
OF COUNSEL IS, YOU KNOW, EVEN IF
YOU'RE PRIVATELY RETAINED, BUT
DOES THAT PLAY AT ALL INTO THE
FACT THAT JUST LIKE JUSTICE
LABARGA SAID, HE WANTED TO
TESTIFY, AND IF HE WANTED TO
RAMBLE FOR EIGHT HOURS, THAT WAS

HIS RIGHT, WHY DIDN'T HE HAVE A
RIGHT TO HAVE SOMEBODY THAT
WASN'T DEATH QUALIFIED?
IF THAT'S THE CASE, THAT HE
BUDGET?
>> WELL, THIS COURT-- THE RULE
WAS PROMULGATED TO MAKE SURE
THAT WHEN SOMEONE IS
REPRESENTING CAPITAL CLIENT,
THEY'RE COMPETENT.
THE SIXTH AMENDMENT, STRICKLAND,
GUARANTEES THAT YOU NOT ONLY
HAVE COUNSEL, BUT YOU HAVE
COMPETENT COUNSEL.
>> BUT IS IT, DOES IT, DID IT
MEAN-- ARE YOU SAYING, AGAIN,
THIS SEEMS TO BE IT WOULD HAVE
BEEN AN APPELLATE ISSUE THAT
WHEN THE MOTION FOR SUBSTITUTION
WAS MADE THAT THE TRIAL COURT
ERRED IN NOT MAKING SURE THAT
THE SUBSTITUTE COUNSEL MET THE
CRITERIA OF THE RULE?
>> I BELIEVE WHAT THE TRIAL
COURT FOUND WAS JUST THAT
BECAUSE HE HAD HANDLED A FEW
CAPITAL MATTER ANDS EVEN THOUGH
HE HADN'T-- I DON'T THINK THEY
ADDRESSED THE ISSUE OF WHETHER
HE HAD--
>> SO, AGAIN, IT SEEMS TO ME
THAT THAT ISSUE IS NOT AN ISSUE
WE WOULD ADDRESS ON
POSTCONVICTION, YOU KNOW?
IT SHOULD HAVE BEEN RAISED, IN
MY VIEW IF IT WAS GOING TO BE
ANYTHING, IN DIRECT APPEAL.
INCOMPETENT-- SOMEBODY WHO WAS
NOT DEATH QUALIFIED REPRESENTED
THIS DEFENDANT.
>> YES, YOUR HONOR.
AND THE CO-COUNSEL HAD NEVER
EVEN DONE A CAPITAL CASE AT ALL.
THE ONLY REASON HE WAS
APPOINTED, HE HAD FILED A MOTION
FOR EXTRAORDINARY REPRESENTATION
OR SOMETHING SAYING THAT HE
SPEAKS PATOIS, AND THAT WAS WHY
HE WAS QUALIFIED TO REPRESENT
MR. ARMSTRONG.

>> YOU'RE INTO YOUR REBUTTAL, BUT YOU'RE FREE TO CONTINUE IF YOU WANT.
>> YOUR HONOR, AS THREE MEMBERS OF THIS COURT RECOGNIZED LAST WEEK IN MIDDLETON, THE DIFFERENCE BETWEEN A THOROUGH ASSESSMENT OF MITIGATION AND A CURSORY ONE COULD QUITE LITERALLY BE A MATTER OF LIFE AND DEATH.
SO WE ASK THAT THIS COURT REVERSE THE POSTCONVICTION COURT'S RULING AND REMAND THIS CASE FOR A NEW RESENTENCING.
THANK YOU, AND I'LL RESERVE THE REMAINDER OF MY TIME.
>> MAY IT PLEASE THE COURT, GOOD MORNING.
LESLIE CAMPBELL WITH THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE.
REALLY WHAT THIS CASE ALL BOILS DOWN TO IS WHETHER OR NOT MR. ARMSTRONG COULD MAKE THE DETERMINATION WITH THE ASSISTANCE OF COUNSEL AS TO WHAT MITIGATING EVIDENCE HE WISHED TO PUT ON AND WHETHER OR NOT HE WAS FORCED TO FOLLOW WHAT POSTCONVICTION COUNSEL DID IN 2001.
>> AND I AGREE WITH YOU THAT THAT IS WHAT IT MIGHT BOIL DOWN TO.
I JUST, WHAT I'M CONCERNED ABOUT IS THAT THERE BUDGET-- THAT THIS BUDGET EXPLORED AT AN EVIDENTIARY HEARING.
BECAUSE, CLEARLY, IT WAS AN UNUSUAL SITUATION.
AGAIN, I FEEL FOR THE STATE, I DO.
BUT AT LEAST AND MY COLLEAGUES MIGHT AGREE, SO THIS IS JUST ME, THAT I WOULD PREFER THAT ESPECIALLY BECAUSE HE MOVED TO DISCHARGE BEFORE THE SPENCER HEARING AND STARTED TO TALK ABOUT IN THIS MITIGATION AND

LOOKING AT WHAT THE MITIGATION
WAS AS PRESENTED BY JUSTICE
ANSTEAD IN THE FOOTNOTE IN 2003,
PRETTY SUBSTANTIAL MITIGATION.
AND I DON'T UNDERSTAND WHY THE
STATE WOULDN'T AT LEAST SAY,
YEAH, LET'S HAVE AN EVIDENTIARY
HEARING ON THAT CLAIM BECAUSE
THERE WERE ON OTHER CLAIMS.
TO SEE THAT IT WAS WHAT WAS
DISCUSSED BEFOREHAND, WHAT
MR. ROE UNDERSTOOD TO BE THE
MITIGATION, WHY HE DIDN'T CALL
ONE EXPERT VERSE OR US ANOTHER,
WHY HE PICKED A MEDICAL DOCTOR
TO TALK ABOUT A TUMOR THAT WAS
BENIGN AS OPPOSED TO HIS
SUBSTANTIAL PHYSICAL ABUSE
SUFFERED AS A CHILD, HIS PICA
FROM EATING PAINT.
WHY HE CHOSE NOT TO PRESENT
THAT.
WHY ISN'T OUR PRECEDENT REALLY
ALMOST REQUIRED THAT WE LEAST
RELINQUISH FOR AN EVIDENTIARY
HEARING JUST ON THAT PART OF THE
CLAIM SO WE CAN BE SURE OF WHAT
MR. ROE TOLD MR. ARMSTRONG AND
WHAT MR. ARMSTRONG UNDERSTOOD?
>> YOUR HONOR, IN THIS COURT'S
PRECEDENT DOES FAVOR AN
EVIDENTIARY HEARING.
HOWEVER, IN THIS PARTICULAR CASE
THERE WERE MULTIPLE COLLOQUIES
WITH THE DEFENDANT, THERE WERE
MULTIPLE DISCUSSIONS.
AND THE RECORD ON APPEAL FROM
THE RESENTENCING CLEARLY
ESTABLISHES THAT MR. ARMSTRONG
KNEW WHAT EVIDENCE WAS AVAILABLE
TO BE PUT ON, THAT HE SPOKE TO
MR. ROE ABOUT THAT EVIDENCE,
THAT THEY-- THAT HE KNEW ALL
THE PARTICULAR WITNESSES--
>> ISN'T THE QUESTION WHETHER OR
NOT MR. ROE KNEW WHAT THE
EVIDENCE WAS?
>> THE DEFENDANT KNEW, YOUR
HONOR.
FROM TWO--

>> I UNDERSTAND THAT.
BUT I THINK THE QUESTION IS
WHETHER OR NOT THE DEFENSE
ATTORNEY KNEW.
>> AND MR. ROE ALSO KNEW.
THERE IS DISCUSSION IN THE
RECORD WHERE MR. ROE SAYS THAT
HE HAS THIS EVIDENCE, THAT HE
UNDERSTANDS WHAT WAS PUT ON
BEFORE X HE'S HAD DISCUSSIONS
WITH MR. ARMSTRONG FROM THE
BEGINNING OF HIS REPRESENTATION.
AND THAT WAS BACKED UP BY
MR. PARKER IN THE COLLOQUY WITH
THE COURT THAT MR. ARMSTRONG
WANTED THE DEFENSE, THE
MITIGATION DEFENSE, THAT HE
ACTUALLY PUT ON.
NOW--
>> LET ME ASK YOU THIS THOUGH.
IT SEEMS TO ME THAT WHAT AT
LEAST THE TRIAL JUDGE UNDERSTOOD
WAS THAT THEY WANTED TO DO
MITIGATION THAT WAS LIKE
HUMANIZING THE DEFENDANT.
>> THAT'S CORRECT.
>> SO EXPLAIN TO ME WHY THE
PRESENTATION OF MENTAL HEALTH
MITIGATION, IT WOULD NOT BE
CONSISTENT WITH THAT KIND OF
STRATEGY, IT SEEMS TO ME, IF
YOU'RE HUMANIZING SOMEONE THAT
YOU ALSO SHOW THAT THEY HAVE
WHATEVER MENTAL DEFICIENCIES
THEY MIGHT HAVE.
THAT IS HUMANIZING ALSO, ISN'T
IT?
>> AND IF THE--
>> SO WHY WOULD, WHY WOULD IT
NOT HAVE INCLUDED THAT KIND OF
EVIDENCE?
>> BECAUSE THE DEFENDANT DID NOT
WANT THAT EVIDENCE.
AND HE IS--
>> BUT THE DEFENDANT'S, WAS IT
THE DEFENDANT'S CHOICE, OR WAS
THIS WHAT WAS TOLD TO HIM BY THE
DEFENSE ATTORNEY?
>> THIS IS CLEAR FROM THE RECORD
THAT IT'S THE DEFENDANT'S

CHOICE.
AS THIS COURT WILL RECOGNIZE IN THE FIRST SENTENCING, WE DID NOT HAVE THIS, ALL OF THIS EVIDENCE THAT WAS PUT ON AT THE POSTCONVICTION.
AT POSTCONVICTION THIS EVIDENCE WAS PUT ON, OF COURSE, BECAUSE THE DEFENDANT HAD BEEN SENTENCED TO DEATH.
NOW HE GETS A NEW PENALTY PHASE, COMES BACK FOR THE NEW PENALTY PHASE AND AGAIN MAKES THE DECISION THAT HE WANTS TO PRESENT HIMSELF AS A BUSINESSMAN DOING WELL AND THAT HE WAS THE VICTIM OF CIRCUMSTANCE.
HE WAS NOT THE DRIVING FORCE.
>> BUT HERE'S THE PROBLEM I'VE GOT WITH THAT, BECAUSE WE HAVE CASES WHERE THE DEFENSE LAWYER SAYS I WANT TO PUT ON THESE WITNESSES AND MENTAL HEALTH MITIGATION, BUT MY CLIENT IS INSISTING.
AND THEN WE KNOW THAT.
BUT HERE-- AND IT'S IN THE BRIEF OF, WELL, IT'S IN THE ORDER DENYING THE MOTION-- I FIND IT SOMEWHAT PECULIAR WHAT MR. ROE SAYS.
HE SAYS I TOLD COUNSEL THAT WE CAN ONLY PRESENT EVIDENCE WITH A CONSISTENT DEFENSE.
I'M NOT PRESENTING EVIDENCE.
CLEAR THERE WAS A SHOOTOUT, AND HE GOES ON ABOUT HIS PARTICIPATION.
WELL, FIRST OF ALL, BY INSISTING ON HE WAS A MINOR PARTICIPANT, THIS WAS A RESENTENCING.
IT WASN'T A GUILT PHASE.
YOU HAD 19 WITNESSES FROM THE STATE ALL SAYING HOW HE WASN'T A MINOR PARTICIPANT.
SO THAT SEEMS LIKE, WHAT, YOU'RE GOING TO PUT ON ONLY MR. ARMSTRONG TO SAY I WAS A MINOR PARTICIPANT?
AND THEN HE SAYS, AS JUSTICE

QUINCE SAYS, WE'VE ESTABLISHED A NUMBER OF THINGS THAT CONSTITUTE HUMANIZATION OF THE DEFENDANT. HOW DOES A MEDICAL DOCTOR WHO IS SAYING HE'S GOT A BENIGN TUMOR GO TO HUMANIZATION OF A DEFENDANT?
AND THEN HE SAYS I INDICATED TO MR. ARMSTRONG IF THE DEFENSE IS SAYING THE CIRCUMSTANCES LED HIM TO THIS SITUATION, HE CAN'T BE MAD AND INSANE AT THE SAME TIME. WE ARE NOT BRINGING OUT THAT HE WAS SCHIZOPHRENIC.
JUST BECAUSE THERE'S CASE LAW OUT THERE, DEFENSE IS CLEAR, REMAINS CLEAR, WE'RE GOING TO PRESENT EVIDENCE FROM THE WITNESS'-- I MEAN BE, I DON'T EVEN UNDERSTAND WHAT MR. ROE IS SAYING.
IT SEEMS, FRANKLY, BIZARRE TO ME.
AND ALL I'M SUGGESTING IS BECAUSE IN THIS SEEMS SO OUT OF THE NORM AND IT MAY VERY WELL BE THAT MR. ROE ACTUALLY WANTED TO PUT ON ALL THIS EVIDENCE AND MR. ARMSTRONG SAID NO OR IT COULD BE THAT THEY REALLY DID DISCUSS IT AND THEN THERE'S BUYER'S REMORSE, WHICH IS MAYBE-- AND THAT'S WHAT YOU'RE SAYING.
BUT IT DOESN'T-- HOW DOES IT HARM US WHEN WE'RE GOING, WE'RE PUTTING A GUY TO DEATH MAYBE AT SOME POINT NOT TO KNOW, TO MAKE SURE THAT THE MITIGATION THAT WAS AVAILABLE WAS SOMETHING THAT HE CONSCIOUSLY SAID I DON'T WANT YOU TO PUT ON ANYBODY OTHER THAN MY MEDICAL DOCTOR WHO SAYS I HAVE A BENIGN TUMOR.
>> WE CAN TELL THAT FROM TWO PLACES IN THE RECORD.
ONE, WHEN MR. ROE AND MR. PARKER ARE TELLING THE TRIAL COURT THAT THE DEFENDANT WANTS THE DEFENSE THAT WAS PUT ON.

AND SECOND, WE CAN TELL FROM THE WITNESSES THAT MR. ARMSTRONG WISHES-- STATED HE WISHED TO PUT ON DURING THE MULTIPLE SPENCER HEARINGS.
AND THE DEFENDANT CHOSE THOSE WITNESSES.
HE DID NOT CHOOSE ANY MENTAL HEALTH EXPERTS.
HE DID NOT CHOOSE OTHER WITNESSES, LAY WITNESSES SUCH AS KAY ALLEN ON WHICH WE DID HAVE AN EVIDENTIARY HEARING, AND HE GOT THE DEFENSE, THE MITIGATION DEFENSE THAT HE WANTED, THAT HE CONSTRUCTED AND THAT HE REQUESTED.
SO IN THIS PARTICULAR CASE, THE DEFENDANT SAT THROUGH THE-- THE DEFENDANT SAT THROUGH HIS TRIAL, HIS INITIAL TRIAL, THE DEFENDANT SAT THROUGH THE 2001 THREE-DAY EVIDENTIARY HEARING WHERE MULTIPLE WITNESSES FROM BOTH MENTAL HEALTH AND LAY WITNESSES WERE PUT ON, AND HE AGAIN SAT THROUGH HIS PENALTY PHASE AND MADE REQUESTS OF AND DEMANDS OF COUNSEL AFTER THE JURY CAME BACK WITH ITS 9-3 RECOMMENDATION OF DEATH.
IT IS CLEAR FROM THIS RECORD IT DOES NOT NEED ADDITIONAL EVIDENTIARY DEVELOPMENT.
THE DEFENDANT CREATED THE DEFENSE, PUT ON THE DEFENSE AND WAS HAPPY WITH THAT DEFENSE UNTIL HE GOT A DEATH RECOMMENDATION.
THESE WERE NOT SHORT COLLOQUIES.
AS THE COURT, THE TRIAL COURT QUOTED AT LENGTH, QUOTED FROM VOLUME 28, PAGES 1023-29.
FROM VOLUME 30, 1374-91.
AND FROM VOLUME 36, PAGES 19-24.
THIS WAS NOT A SHORT DISCUSSION.
THERE WERE TIMES WHEN MR. ARMSTRONG TALKED TO DEFENSE COUNSEL.
THEY-- MR. ARMSTRONG TRIED TO

EQUIVOCATE AT ONE POINT AND THEN
WAS TOLD THIS IS THE TIME THAT
YOU HAVE TO PUT ON WITNESSES, HE
SAID HE HAD NO OTHER WITNESSES
TO PUT ON.
>> WASN'T THERE SOMEPLACE WHERE
MR. ROE SAID, LISTEN, I DON'T
EVEN WANT YOU TO GO INTO THIS,
THIS IS ATTORNEY/CLIENT
PRIVILEGE, WHAT HAPPENED?
>> YES, HE SAID THAT.
HOWEVER, HE ALSO AGREED THAT
AFTER THE DEFENDANT TESTIFIED,
HE HAD NO OBJECTION TO THE COURT
INQUIRING IF THERE WERE ANY
OTHER WITNESSES THAT THE
DEFENDANT WISHED TO PUT ON.
SO IT WAS CLEAR THAT THAT WAS A
DECISION THAT MR. ROE MADE.
THE BOTTOM LINE IN THIS CASE IS
THAT THE DEFENDANT SAT THROUGH
THE 2001 EVIDENTIARY HEARING,
KNEW EXACTLY WHAT WAS AVAILABLE
OUT THERE AND CHOSE NOT TO PUT
IT ON AT THE RESENTENCING.
UNLESS THERE ARE ANY OTHER
QUESTIONS, I COULD MOVE ON TO
SOME OF THE OTHER ISSUES--
>> DO YOU WANT TO ADDRESS THIS
ISSUE ABOUT MINIMUM STANDARDS?
>> YES, YOUR HONOR.
>> I'M LOOKING, IS THAT
SOMETHING THAT-- DID THIS
LAWYER NOT MEET THE MINIMUM
STANDARDS?
>> HE HAD DONE FOUR CAPITAL
CASES, STATE AND FEDERAL.
HE WAS RETAINED, HE WAS NOT
APPOINTED--
>> NO, I UNDERSTAND THAT.
>> RIGHT.
>> I JUST WANT-- DID HE MEET
THE MINIMUM STANDARDS UNDER
3.112?
>> HE DID NOT HAVE FIVE.
HOWEVER--
>> DID ANYONE EVER RAISE THAT?
>> IT WAS DISCUSSED AT THE
EVIDENTIARY HEARING.
>> WAS IT BEFORE THE TRIAL

COURT?
>> NO.
THERE WAS A HEARING ON WHETHER
OR NOT HE COULD BE APPOINTED,
AND--
>> I MEAN, AGAIN, THIS IS A
FRIENDLY QUESTION.
I DON'T UNDERSTAND HOW IN
POSTCONVICTION WHEN SOMEONE'S
RETAINED SOMEBODY AND NO ONE
BRINGS IT UP BEFOREHAND, THAT
YOU CAN NOW SAY HE'S NOT
COMPETENT BECAUSE HE DIDN'T
MEAN 3.112.
>> RIGHT.
AND EVEN IN THE NOTES FOR THAT
RULE, IT SAYS IT DOESN'T GIVE A
PARTICULAR-- IT DOESN'T GIVE A
NEW RIGHT TO THE DEFENDANT.
WHAT IT DOES IS IT ALLOWS THE
DEFENDANT TO RAISE A STRICKLAND
CLAIM WHICH HAS BEEN DONE HERE.
AND IT'S THE STATE'S POSITION
THAT THIS WAS NOT DEFICIENT
PERFORMANCE, AND THIS CERTAINLY
WASN'T PREJUDICIAL PERFORMANCE.
THERE WAS NO INEFFECTIVE
ASSISTANCE OF COUNSEL.
UNLESS THE COURT HAS ANY OTHER
QUESTIONS, RELY ON MY BRIEF.
I WOULD ASK THAT THE COURT
AFFIRM THE DENIAL BOTH OF THE
SUMMARY DENIAL AND THE DENIAL
AFTER AN EVIDENTIARY HEARING.
IT WAS CLEAR MR. ROE WAS
COGNIZANT OF EVERYTHING THAT WAS
AVAILABLE, MR. ARMSTRONG WAS
COGNIZANT OF EVERYTHING THAT WAS
AVAILABLE.
AND JUST A REMINDER, THE TRIAL
COURT WHO SENTENCED
MR. ARMSTRONG WAS THE COURT THAT
HELD THE POSTCONVICTION
EVIDENTIARY HEARING AND RULED ON
THE POSTCONVICTION MOTION.
AND HE WAS AWARE OF EVERYTHING
THAT WAS AVAILABLE.
>> WELL, HERE'S WHAT HAPPENS
THOUGH AGAIN, AND I APPRECIATE
THAT.

IT MUST BE VERY FRUSTRATING TO A TRIAL JUDGE AND STATE, AGAIN, TO FEEL LIKE YOU DID TRY TO PROTECT AGAINST THIS, AND NOW IT'S EXACTLY COMING UP.
AND SO I FEEL, AGAIN, I UNDERSTAND IT, I'M JUST STILL FEELING LIKE WE OUGHT TO HAVE IT EXPLORED.
THAT'S-- BUT I APPRECIATE WHAT YOU'RE SAYING.
>> AND AS I SAY, YOUR HONOR, IT'S VERY CLEAR FROM THE RECORD THAT EVERYBODY KNEW WHAT WAS GOING ON AS FAR AS WHAT WAS AVAILABLE.
>> ON PAGE 27 I GUESS IN THE COLLOQUY--
>> I DIDN'T HEAR THE PAGE, YOUR HONOR?
>> 27-57 THAT WE FILED MR. ARMSTRONG'S INSTRUCTIONS SPECIFICALLY, I'M NOT GOING TO ANTAGONIZE THE DEFENDANT AND SAY MR. ARMSTRONG IS SENSIBLE, COOL, CALM AND COLLECTIBLE, MAKING-- WORKING AS A CONTRACTOR, MAKING MONEY.
AGAIN, SAYING HE WAS CALM, COOL AND-- WE HAVE NO OBJECTION TO THE INQUIRY, BUT I'M MAKING IT QUITE CLEAR WHAT THE INSTRUCTIONS ARE, AND WE FILED THE INSTRUCTION.
THE DEFENSE THAT WE PUT ON IS WHAT MR. ARMSTRONG TOLD US.
ISN'T THAT TRUE?
AND HE ASKED MR. PARKER, AND HE SAID, YES.
SO, CLEARLY, IF YOU SENT IT BACK FOR A HEARING ON THIS, I MEAN, HE'S ALREADY SAID WHAT HIS STRATEGY WAS, TRY TO HUMANIZE HIM.
NOW, MAYBE ANOTHER ATTORNEY MIGHT HAVE A DIFFERENT APPROACH, BUT, YOU KNOW, SAY LA SEE.
>> THAT IS CORRECT, YOUR HONOR. IT'S THE DEFENDANT WHO GETS TO MAKE THOSE CHOICES UNDER BOYD.

HE DID PUT ON SOME MITIGATION
EVIDENCE.
HE CHOSE NOT TO PUT ON OTHERS.
IT'S NOT A MOHAMED ISSUE.
>> AND THERE WERE 15 WITNESSES?
WEREN'T THERE 15 WITNESSES ON
THE WITNESS LIST?
>> THERE WERE 15 WITNESSES--
>> AND YOU SAID HE ONLY WANTED
FOUR?
>> OUT OF THOSE, I BELIEVE
THAT'S CORRECT, YOUR HONOR.
SO THE STATE--
>> AND THEY ASKED HIM ABOUT
THOSE WITNESSES, DID THEY NOT?
>> THEY ASKED ABOUT EVERY SINGLE
WITNESS THAT WAS ON THAT WITNESS
LIST.
>> OKAY.
>> IF THERE'S-- ONE ORE THING
ON DR. GUNST, THERE IS NO
CONFLICT OF INTEREST.
MR. ROE DID NOT REPRESENT
MR. ARMSTRONG AT THE SAME TIME
THAT HE HAD A CONFLICTING
INTEREST WITH DR. GUNST.
HE NEVER REPRESENTED DR. GUNST,
AND HE ON THE RECORD GAVE
REASONS WHY HE CHOSE DR. RHODE
OVER DR. GUNST.
THAT IS NOT A CLAIM THAT HAS ANY
MERIT AND SHOULD BE DENIED.
I THANK THE COURT AND ASK YOU TO
CONFIRM THE DENIAL OF
POSTCONVICTION RELIEF AND DENY
THE PETITION FOR WRIT OF HABEAS
CORPUS.
THANK YOU.
>> THANK YOU.
>> JUST TO ADDRESS THE STATE'S
POINT, MR. ROE WAS REPRESENTING
MR. ARMSTRONG THROUGHOUT THE
PENDENCY OF THESE LAWSUITS.
HE WAS REPRESENTING MR. CIAGA
THROUGHOUT HIS REPRESENTATION OF
MR. ARMSTRONG, AND THAT CASE WAS
ONLY DISMISSED ONE MONTH BEFORE
THIS RESENTENCING BEGAN.
BUT IT WAS STILL PENDING
THROUGHOUT MR. ROE'S

REPRESENTATION OF MR. ARMSTRONG.
IN TERMS OF THE COLLOQUY THAT
YOU HAD QUOTED FROM JUSTICE
PERRY, IT'S IMPORTANT TO NOTE
THAT MOST OF THOSE CONVERSATIONS
TOOK PLACE OUTSIDE OF
MR. ARMSTRONG'S HEARING.
QUITE A BIT OF THAT TOOK PLACE
AT SIDEBAR, SO HE WASN'T PRIVY
TO THOSE CONVERSATIONS.
WHEN THE COURT ASKED IF HE HAD
ANYTHING ELSE HE WANTED TO
PRESENT, HE STARTED TO SPEAK,
AND THE COURT SAID, YES, GO TALK
TO YOUR COUNSEL, AND MR. ROE
SAID GIVE US TWO MINUTES.
TWO MINUTES.
IN COURT TO DECIDE WHETHER HE
WAS GOING TO PUT ON MORE
MITIGATION.
>> SO THAT COULDN'T HAVE BEEN
DECIDED BEFOREHAND?
IT TOOK TWO MINUTES TO REITERATE
WHAT THE PLAN WAS?
>> WELL, YOUR HONOR, AGAIN, I
WOULD ARGUE THAT IT COULDN'T
HAVE BEEN DECIDED AT ALL BECAUSE
MR. ROE--
>> I UNDERSTAND THAT YOU WOULD
HAVE HANDLED IT DIFFERENTLY.
>> YES.
AND THAT HE WASN'T ABLE TO
PROPERLY COUNSEL HIM ABOUT
WHETHER HE SHOULD WAIVE IT OR
NOT TO.
THE STATE'S PUTTING AN AWFUL LOT
OF TRUST IN MR. ARMSTRONG BEING
HIS OWN LAWYER HERE.
WE'RE TALKING ABOUT A PERSON WHO
HAS A LONG AND WELL-DOCUMENTED
HISTORY OF COGNITIVE DEFICITS,
DYSLEXIA, LEARNING DISABILITIES,
AND THE STATE SEEMS TO THINK
THAT IT'S FINE FOR MR. ARMSTRONG
TO DECIDE WHAT HE WANTS TO DO
FOR HIS DEFENSE.
>> BUT--
>> THAT'S THE REASON WHY WE HAVE
COUNSEL.
>> DIDN'T MR. ARMSTRONG HAD A

CONSTRUCTION BUSINESS WHERE HE
DID REPAIRS, HE RAN HIS
BUSINESS, HE WAS SUCCESSFUL, HE
HAD PEOPLE RUNNING FOR HIM, HE
HAD SUBCONTRACTORS-- I MEAN, HE
WAS DEPICTED AS BEING A
SUCCESSFUL PERSON.
AND NOW ALL OF A SUDDEN HE CAN'T
MAKE ANY EXECUTIVE DECISIONS.
>> WELL, HE TESTIFIED TO THAT
HIMSELF--
>> HE OWNED CARS, HE OWNED
HOUSES, OWNED PROPERTY.
I MEAN, HE DID THIS HIMSELF.
I MEAN--
>> AGAIN, MR. ARMSTRONG IS THE
ONLY ONE WHO EVER TESTIFY TODAY
THAT.
BUT DR. HYDE HAD TESTIFIED IN
THE EVIDENTIARY HEARING THAT HE
DOESN'T NECESSARILY BELIEVE IT.
THERE WAS ALSO LAY WITNESS
TESTIMONY AT THE EARTH SHARE
HEARING FROM HIS FAMILY MEMBERS
WHERE THEY DESCRIBE THE FACT
THAT THEIR WORKERS WOULD GET
FRUSTRATED WITH HIM BECAUSE HE
WASN'T ABLE TO READ THE PLANS,
HE WOULD, QUOTE-UNQUOTE, SPACE
OUT.
HE WOULD NOT SHOW UP FOR JOBS,
HE WOULD JUST WALK AWAY FROM THE
JOB SITE.
SO THERE WAS OTHER SUBSTANTIAL
EVIDENCE TO INDICATE THAT WASN'T
THE TRUTH AND THAT MR. ARMSTRONG
WAS MERELY PUFFING HIMSELF UP,
SO TO SPEAK.
BUT THE POINT THAT I'D LIKE TO
FINISH WITH, YOUR HONORS, IS
THAT WE DON'T KNOW WHAT MR. ROE
KNEW.
WE DON'T KNOW.
WE DON'T KNOW WHAT HE
INVESTIGATED OR FAILED TO
INVESTIGATE.
WE DO KNOW FROM MR. MALDOFF THAT
HE NEVER CONTACTED PRIOR
COUNSEL.
HE CERTAINLY NEVER CONTACTED

CCRC EVEN THOUGH CCRC HAD PUT ON
THE 2001 EVIDENTIARY HEARING IN
WIGGINS, AND THE ABA GUIDELINES
RECOMMEND AT THE VERY MINIMUM
YOU NEED TO INVESTIGATE ALL THE
EVIDENCE PUT ON BEFORE.
AND BECAUSE WE DON'T KNOW THAT,
WE DON'T KNOW WHAT HIS
INVESTIGATION WAS.
IT'S OBJECTIVELY UNREASONABLE.
THIS IS FOUR YEARS POST-WIGGINS,
AND IT'S SUBJECTIVELY
UNREASONABLE, INEFFECTIVE, AND
MR. ARMSTRONG IS PREJUDICED.
THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT IS IN RECESS FOR TEN
MINUTES.