

>>> LAST CASE ON THE DOCKET
TODAY IS ABDOOL VERSUS STATE.
>> GOOD MORNING.
MAY IT PLEASE THE COURT,
MY NAME IS JULISSA FONTAN ALONG
WITH MY CO-COUNSEL,
MARIA DELIBIRAO REPRESENT
MR. ABDOOL.
HE DESERVES A NEW TRIAL BECAUSE
THE LAWYERS FAILED TO DISCOVER
EVIDENCE OF BRAIN DAMAGE AND
ALLOWED HIS PATHOLOGICAL MOTHER
TO DIRECT THE INVESTIGATION
WHICH PROVIDE AD FALSE REPORT AT
SENTENCINGS FOR MR. ABDOOL.
FURTHERMORE MR. ABDOOL HAD HIS
DUE PROCESS RIGHTS VIOLATED IN
INTERROGATION ROOM.
HIS TRIAL COUNSEL FAILED TO FILE
A MOTION TO SUPPRESS.
>> MAY WANT TO GET THE
MICROPHONE CLOSER TO YOU.
>> SORRY, SIR.
I WOULD LIKE TO FIRST ADDRESS
THE SPLIT MITIGATION CLAIM AND
PROCEED TO MOTION TO DISMISS
CLAIM.
IN THIS CASE WHAT WAS PRESENTED
AT TRIAL WAS NOT A COMPLETELY
ACCURATE PORTRAIT OF MR. ABDOOL.
THE MITIGATION INVESTIGATION WAS
HEAVILY STEERED BY HIS MOTHER,
HAS REASON MUHAMMAD.
NAZARENE MUHAMMAD DESCRIBED BY
COUNSEL AND MITIGATION
INVESTIGATOR IN THIS CASE AS
VERY STRONG PERSONALITY.
IN ACTUALITY THE FAMILY
DESCRIBED HER AS THE FAMILY
BULLY.
SHE TOLD PEOPLE WHAT TO SAY TO
THE MITIGATION INVESTIGATION AND
TO TRIAL COUNSEL.
SHE DIRECTED WHO THEY SHOULD
SPEAK TO.
>> WHERE WERE, WERE THE TRIAL
ATTORNEYS AWAY OF THAT?
>> NO THEY WERE NOT.
>> ACTUALLY THE MITIGATION
SPECIALIST ACTUALLY TESTIFIED TO

THAT ALTHOUGH THEY ARE RESPONSIBLE FOR FOLLOWING UP ON MUCH OF THE INFORMATION THAT MISS MUHAMMAD PROVIDED TO TRIAL COUNSEL AND TO THE TRIAL TEAM, A LOT OF IT WAS ACTUALLY NOT FOLLOWED UP UPON AND THAT--
>> THAT IS SORT OF A DIFFERENT APPROACH WHEN IT IS NOT FOLLOWED UP.

I MUST TELL YOU THAT EVERY DEATH PENALTY CASE POST-CONVICTION, THE TRIAL ATTORNEY STARTS WITH FAMILY MEMBERS, START WITH MENTAL HEALTH PARTICULARLY FOR MOTHERS AND FATHERS. THAT IS FOR US TO SAY YOU DON'T BEGIN THERE TO BEGIN THERE IS PRETTY HARSH KIND OF REALITY THAT THAT'S NOT WHERE YOU WOULD GO.

I MEAN THAT IS USUALLY THE ONES WHO ARE MOST DEAR TO THE DEFENDANT.

NOW IF IT'S A QUESTION OF NOT FOLLOWING UP, THAT IS A DIFFERENT STORY BUT, THE SELECTION OF THE MOTHER IS WHAT I'M SPEAKING TO.

WHY WOULD YOU NOT GO TO THE MOTHER?

>> I AGREE YOU HAVE TO START SOMEWHERE ESPECIALLY WITH THE FAMILY.

HOWEVER, AND THIS WAS SOMETHING TRIAL COUNSEL ACKNOWLEDGED DURING THEIR TESTIMONY, THE FAMILY DEATH PENALTY DEFENDANTS CAN NOT BE TRUSTED BECAUSE THEY WILL TRY TO HIDE CERTAIN ASPECTS, HIDE WHAT CAN ACTUALLY BE MITIGATION.

>> SURE.

>> WHAT WAS CRITICAL HERE WAS THE LACK OF FOLLOW-UP.

>> WHAT CAN THE LAWYERS RELY ON? THEY HAVE TO RELY ON PEOPLE CLOSEST TO THE DEFENDANT?

>> AS STARTING POINT.

>> RIGHT.

>> BUT THAT IS HAVE INVESTIGATION NEEDS TO BE DONE FOLLOWING UP WHAT IS PRESENTED TO THEM BY THE FAMILY EITHER THROUGH DOCUMENTATION OR OTHERWISE.

>> THIS IS NOT REALLY SELECTION OF THE MOTHER, IT IS THE FOLLOW-UP, IT IS THE INVESTIGATION WHAT YOU'RE SAYING?

>> YES.

THAT IS WHERE THE MAIN FOCUS NEEDS TO RELY UPON BECAUSE HAD THEY ACTUALLY INVESTIGATED, FOLLOWED UP ON THE INFORMATION PROVIDED BY NOT JUST MOTHER BUT OTHER MEMBERS OF THE FAMILY, THEY WOULD HAVE DISCOVERED THAT WE HAVE A PROBLEM WITH MOTHER AND SOME OF THE INFORMATION BEING PRESENTED.

FOR EXAMPLE, ONE OF THE DOCUMENTS THAT WAS DISCOVERED DURING THE POST-CONVICTION INVESTIGATION AND PRESENTED DURING THE POST-CONVICTION HEARING WAS DOCUMENTATION REGARDING HER DIVORCE WITH HER FIRST HUSBAND, MR. ABDOOL'S FATHER, PATRICK.

SHE ACTUALLY FILED A PROSAY DIVORCE AND MADE REPRESENTATIONS TO UNDER THE DOCUMENT THAT THERE WERE NO CHILDREN TO THE MARRIAGE.

SHE ALREADY MARRIED PRIOR TO ARRIVING IN THE UNITED STATES. MR. ABDOOL'S STEPFATHER IN RELIGIOUS CEREMONY.

THIS WAS NOT UNCOVERED DURING THE TRIAL.

FURTHERMORE--

>> SO WHAT WAS THAT RELEVANT TO?

>> THIS IS RELEVANT, ALL THIS INFORMATION IS RELEVANT TO ACTUALLY ADDRESSING THE REAL PORTRAIT THAT WAS COVERED UP PRIMARILY BECAUSE MISS MUHAMMAD WAS GOING AROUND, GOING I NEED

YOU TO SAY THIS.

I DON'T WANT YOU TO SAY ANYTHING BAD ABOUT THE FAMILY OR ANYTHING LIKE THAT.

THERE JUST SIMPLY WASN'T FOLLOW UP DONE TO SPEAK INDIVIDUALLY TO THESE FAMILY MEMBERS, OKAY, WE'VE HEARD THIS FROM THIS FAMILY MEMBER.

IS THAT THE TRUTH?

IS THAT VERIFIED?

THERE WAS ALSO TESTIMONY DURING THE POST-CONVICTION THAT WHEN THEY DID INTERVIEW THESE INDIVIDUALS AND THE FAMILY MEMBERS, THAT MISS MUHAMMAD WAS ACTUALLY PRESENT DURING MANY, MANY OF THE INTERVIEWS, HEARD WHAT WAS BEING SAID.

A LOT OF THEM INCLUDING MR. ABDOOL'S BROTHER RYAN.

>> LET ME JUST ASK YOU THIS.

IN THIS CASE I BELIEVE THIS IS ABDOOL, THERE WAS NUMBER OF MITIGATING CIRCUMSTANCES FOUND BY THE TRIAL JUDGE BOTH STATUTORY MITIGATING AND JUST A PANOPLY OF NON-STATUTORY MITIGATING.

SO WHAT MORE DO WE HAVE NOW TO ADD TO THIS THAT WE DIDN'T HAVE BEFORE?

>> THE TRIAL COURT DID FIND FOUR STATUTORY MITIGATORS, TWO OF THEM WERE THE MENTAL HEALTH MITIGATORS.

OF HOWEVER, THE TRIAL COURT ASSIGNED THEM LITTLE WEIGHT AS THE TRIAL COURT DESCRIBED IT, THIS MITIGATION WAS NOT TIED INTO THE ACTIONS OF THE CRIME ON THE NIGHT OF THE CRIME AND THAT GOES TO THE OTHER PIECE OF MITIGATION THAT WAS UNCOVERED THAT IS VERY IMPORTANT DURING THE POST-CONVICTION PHASE IS THE DISCOVERY THAT MR. ABDOOL SUFFERED FROM BRAIN DAMAGE.

>> LET'S STAY WITH THE, YOU MADE A AN ALLEGATION, THAT YOU PUT ON

EVIDENCE THAT IT WAS THE MOTHER WAS DIRECTING THIS AND THAT THE, THE FAMILY MEMBERS FELT PRESSURED BECAUSE OF THE MOTHER. BUT TRIAL COUNSEL DURING THE EVIDENTIARY HEARING TESTIFIED THEY HAD A MITIGATION SPECIALIST, TONY MALONEY?

>> YES.

>> TO ASSIST THEM.

AND SHE SPECIFICALLY, ALTHOUGH THE MOTHER HELPED SET UP THE INTERVIEWS, SHE MADE IT CLEAR THAT SHE, THE MOTHER, WOULDN'T BE PRESENT AND THAT NONE OF THE WITNESSES TOLD HER THEY WERE BEING PRESSURED OR INFLUENCED BY THE MOTHER.

AND IN LOOKING AT, AND I THINK THIS IS, NOT ONLY DO YOU HAVE AN ENORMOUS AMOUNT OF MITIGATION THAT WAS FOUND IN THE ORIGINAL TRIAL, BUT, YOU'VE GOT, ONE OF THE MOST COMPREHENSIVE ORDERS FROM A TRIAL JUDGE THAT I HAVE EVER SEEN OF 108-PAGE ORDER DETAILING ALL THE TESTIMONY. AND MAKING ALL THESE FINDINGS. SO ALTHOUGH YOU MAKE, CERTAINLY YOU HAVE DONE YOUR DUE DILIGENCE IN PUTTING FOURTH THIS VIEW, IT SEEMS TO ME THAT ITS'S MORE OF NOT A QUESTION OF THE TRIAL LAWYERS NOT DOING WHAT THEY WERE SUPPOSED TO DO BUT AS WE OFTEN HAVE SEEN, SOMEBODY SAYING WELL, I WOULD HAVE TESTIFIED DIFFERENTLY.

IT IS SORT OF THE MONDAY MORNING QUARTERBACK.

SO THAT IS ON THE FAMILY MEMBERS.

ON ISSUE OF BRAIN DAMAGE, WHAT IS THE DEFICIENCY?

WHAT DID THE TRIAL LAWYERS WHO RELIED ON AND PRESENTED MENTAL HEALTH MITIGATION, WHAT DID THEY FAIL TO DO THAT A REASONABLY COMPETENT LAWYER WOULDN'T DO?

>> DURING THE POST-CONVICTION

ONE OF THE TRIAL ATTORNEYS,
SPECIFICALLY MR. SIMS, TESTIFIED
THAT PRIOR TO MR. SIMS OR MISS
CASHMAN, THE TRIAL ATTORNEYS IN
THIS CASE BEING HIRED, THE
FAMILY HAD ACTUALLY HIRED
ANOTHER ATTORNEY WHO HAD TOLD
THEM, GO GET A MENTAL HEALTH
SPECIALIST, SOMEBODY TO
INVESTIGATE MENTAL HEALTH.
I THINK THAT IS GOING TO BE
IMPORTANT IN THIS CASE.

THAT PERSON WAS DR. ALLEN BURNS.
MR. SIMS TESTIFIED THAT HE DID
HAVE A PHONE CONSULTATION WITH
THAT DOCTOR WHO EVENTUALLY WAS
NOT USED AT TRIAL AND IN
MR. SIMS' NOTES DURING THE
TELEPHONE CONVERSATION THERE WAS
A RECOMMENDATION, DO A
NEUROPSYCH EVALUATION.

THAT IS WHAT MR. SIMS WROTE IN
HIS NOTES WITH REGARDS TO THAT
TELEPHONIC CONFERENCE.

THERE WAS ALSO ANOTHER MENTAL
HEALTH SPECIAL WHO DID NOT
TESTIFY AT TRIAL, DR. BERLIN,
WHO WAS CONSULTED BY THE TRIAL
ATTORNEYS WHO ALSO TOLD THEM, I
HAVE CONCERNS REGARDING BRAIN
DAMAGE WITH RESPECT TO
MR. ABDOOL.

THESE TWO RECOMMENDATIONS WERE
NEVER FOLLOWED UP UPON.
WHAT WAS PRESENTED AT TRIAL WAS
SIMPLY THAT MR. ABDOOL HAD
LEARNING DISABILITIES AND WAS A
LITTLE SLOW IN SCHOOL BUT THE
ACTUAL SOURCE OF THOSE LEARNING
DISABILITIES WERE NEVER REALLY
EXPLORED EVEN THOUGH THEY WERE
COMPLETELY RED FLAGS.

THERE HAD BEEN A TRAUMATIC
BIRTH, CAR ACCIDENTS, HEAD
INJURIES, THESE WERE ALL RED
FLAGS FOR BRAIN DAMAGE AND NONE
OF THAT WAS EXPLORED TRULY OR
PRESENTED EVEN THOUGH THEY DID
HAVE TWO EXPERT TELL THEM, YOU
MIGHT WANT TO HAVE A NERO

PSYCHOLOGICAL EVALUATION, THERE SEEMS TO BE RED FLAGS FOR BRAIN DAMAGE HERE NOT FROM ONE EXPERT BUT TWO.

AND, THAT WAS NOT DONE OR PRESENTED AT TRIAL UNTIL POST-CONVICTION.

THAT IS ACTUALLY THAT TIES PARTIALLY ON THE CLAIM ON THE MOTION TO SUPPRESS BECAUSE OBVIOUSLY ONE HAS TO TAKE INTO CONSIDERATION WHETHER A CONFESSION WAS VOLUNTARY AND ONE OF THE THINGS YOU HAVE TO LOOK AT WHETHER THAT INDIVIDUAL VOLUNTARILY GAVE UP.

YOU LOOK AT INDIVIDUAL CIRCUMSTANCES OF THAT DEFENDANT. IN THIS CASE, THE BASIS FOR THE MOTION TO SUPPRESS WOULD HAVE BEEN A HALLIBURTON ISSUE, AN ATTORNEY AT THE GATE.

WHEN MR. ABDOOL WAS TAKEN IN ON MAY 2nd, 2006, FOR QUESTIONING, THIS WAS THE FINAL QUESTIONING, THE POLICE HAD ALREADY PROBABLE CAUSE TO ARREST MR. ABDOOL AT THAT POINT.

JUST SEARCHED HIM WITH A SEARCH WARRANT ON HIS VEHICLE AND PLACE OF WORK LOOKING FOR EVIDENCE OF THE CRIME.

DURING THAT QUESTIONING MR. ABDOOL'S MOTHER AND A LAWYER HIRED ON HIS BEHALF BY THE FAMILY APPEARED AT THE WINTER GARDEN POLICE DEPARTMENT.

THAT LAWYER WENT AND SAY, I KNOW MY CLIENT IS HERE.

I WANT TO TALK WITH HIM.

AND MR. ABDOOL WAS NEVER TOLD OF THAT FACT.

>> ARE YOU, THE TRIAL COUNSEL STATED, AND I THINK YOU HAD IT, AND IT IS A GOOD BASES IS FOR A MOTION TO DISMISS, TO SUPPRESS, WE HAVE THIS IN ANOTHER CASE PENDING IN FRONT OF THE COURT IS THAT ISSUE LAWYERS WANT TO SEE THEIR CLIENT.

THE LAWYER SAID, WE WANTED THIS CONFESSION TO BE HEARD BY THE JURY BECAUSE WE WEREN'T PUTTING HIM ON THE STAND AND THE FACTS ARE HORRENDOUS BUT WE WANT THE JURY TO KNOW FROM HIS OWN WORDS WHAT THINKING WAS GOING ON. NOW, WHICH WAS, I MEAN THERE ARE DEFENSES, IT WAS SORT OF JUST, WENT HAYWIRE AND IT WAS AN ACCIDENT AND, WHAT DO YOU SAY TO THAT AND WHAT DID THE JUDGE SAY TO THAT AS FAR AS WHY THEY DIDN'T PURSUE SUPPRESSION AND WHAT THEY WANTED TO HAVE IN THIS CASE, HIS CONFESSION TO BE HEARD?

>> THE TRIAL ATTORNEY SAID THEY WANTED TO HEAR HIS VOICE BECAUSE HE PUT FORWARD THE DEFENSE THAT THAT HAD BEEN AN ACCIDENT. HOWEVER THE TRIAL COUNSEL ACKNOWLEDGED UNDER OATH DURING THE POST-CONVICTION PROCEEDINGS THAT WAS REALLY HORRENDOUS CONFESSION.

IN ACTUALITY IT HELPED PROVE IN A LOT OF WAYS SOME OF THE AGGRAVATING FACTORS AGAINST MR. ABDOL.

THIS IS ONLY A TRUE AGGRAVATOR FACTOR CASE.

IT WAS HAC AND CCP.

>> IT'S A VERY, I MEAN, NO MATTER HOW YOU LOOK AT IT, THIS IS A HORRENDOUS CASE.

AND SO COULD YOU ADDRESS WHY A LAWYER IS UNREASONABLE IN TRYING TO PORTRAY THIS AS A TOTAL ACCIDENT?

THIS WAS REALLY A MISTAKE AND I DIDN'T MEAN THIS TO HAPPEN, AS APPROACH TO THE CASE?

THERE IS NOT MANY OTHER DEFENSES, ARE THERE?

>> THE REASON THAT THIS PARTICULAR CONFESSION WAS SO BAD IS, ALTHOUGH MR. ABDOL DOES SAY, THIS WAS AN ACCIDENT, HE PROCEEDS TO LAY OUT IN THAT

CONFESSION EVERYTHING THAT
OCCURRED ON THAT NIGHT.
I MET THIS YOUNG WOMAN.
I HAD SEX WITH HER.
WE GOT INTO AN ARGUMENT.
ON THE WAY OF TAKING HER HOME.
I STOPPED AT A GAS STATION AND
PURCHASED THE TOOLS THAT HE
EVENTUALLY USED TO COMMIT THIS
CRIME.

WHICH LAYS OUT MORE OF A
PREMEDITATED AND COMPLETELY
UNDERMINES--

>> WELL, DIDN'T HE CONFESS TO
OTHER PEOPLE?

>> HE DID.

HE CONFESSED TO ONE YOUNG LADY,
MISS AMANDA INMAN.

BUT TO HER ALL HE EVER TOLD HER
WAS, WE GOT INTO AN ARGUMENT.
IT WAS AN ACCIDENT.

I DIDN'T MEAN IT.

HE DIDN'T LAY IT OUT QUITE AS
SPECIFICALLY AS HIS OWN
CONFESSION TO THE POLICE.

>> DIDN'T MEET THE PEOPLE PRIOR
TO THIS INCIDENT AND ASKED THEM
TO SORT OF KILL HER?

TO GET RID OF THE BABY?

>> THE, THE PREVIOUS PEOPLE HE
SPOKE TO LEADING UP TO THIS
CRIME WERE THREE INDIVIDUALS.
ONE OF WHICH WAS JULIANNE PINOCH
WHO TESTIFIED, WAS ONLY PERSON
THAT SAID, ABDOOL WANTED ME TO
KILL HER.

HOWEVER HE, DURING
CROSS-EXAMINATION, WAS UNABLE TO
EVEN IDENTIFY MR. ABDOOL IN THE
COURTROOM, WHICH MAKES THAT
STATEMENT SUSPECT.

THE OTHER TWO STATEMENTS WERE, I
JUST WANT HER TO GET RID OF THE
BABY.

I WANT TO GET RID OF THIS BABY,
WHICH I JUST WANT TO MAKE CLEAR
TO THIS COURT AT THE TIME OF
THIS CRIME THE VICTIM WAS NOT
PREGNANT.

SO THERE WAS NO CHILD BUT THAT

WAS A BELIEF SHE WAS
PERPETUATING AND HAD HIM BELIEVE
SHE WAS PREGNANT AT THE TIME.
BUT THE OTHER TWO WERE ALSO
CASUAL ACQUAINTANCES.

THEIR STATEMENTS WERE SUSPECT.
>> HOW ELSE WERE THE JURY GOING
TO HEAR, IF THEY DID NOT HEAR
THE CONFESSION FROM THE
DEFENDANT, THIS WAS A TOTAL
ACCIDENT, THIS WAS A MISTAKE?
HOW ELSE WAS THAT GOING TO BE IN
FRONT OF THE JURY TO TRY TO
MITIGATE THE PREMEDITATION?

>> THIS WOULD HAVE BEEN BEFORE
THE JURY BECAUSE IT WAS
CONFESSION THROUGH AMANDA INMAN.
IF HIS POLICE CONFESSION HAD
BEEN SUPPRESSED THEY STILL WOULD
BE ABLE TO GO FORWARD WITH A
STATEMENT OF ACCIDENT.

MISS INMAN'S STATEMENT MAKES IT
CLEAR, HE TELLS HER, THIS WAS A
HORRIBLE ACCIDENT.

I DIDN'T MEAN TO DO IT, BUT
DOESN'T GET INTO THE VERY
SPECIFICITY THAT UNDERMINES THE
ASSERTION THIS WAS AN ACCIDENT.
IF I MAY RESERVE THE REST OF MY
TIME FOR REBUTTAL.

THANK YOU.

>> GOOD MORNING.

SCOTT BOWNE ON BEHALF OF THE
STATE OF FLORIDA.

-- BOWNE.

WITH REGARD TO THE CONFESSION,
THE REASONABLE DECISION OR
TACTICAL DIVISION OF VERY
EXPERIENCED DEFENSE ATTORNEYS IN
THIS CASE WAS THAT THIS JURY
NEEDED TO HEAR AND SEE DANA BE
A-- DANE ABDUOL.

THIS WAS A DECISION BOTH
ATTORNEYS AGREED UPON.
ONCE MORE, MISS CASHMAN, WHO WAS
ON THE LIFE OVER DEATH STEERING
COMMITTEE HAS STUDIED CAPITAL
LITIGATION.

SHE TAUGHT OTHER ATTORNEYS HOW
TO ENGAGE IN IT.

SHE STUDIED RESENTENCINGS AND WANTED TO KNOW WHY ON RESENTENCINGS OFTEN TIMES A JURY VOTE FOR DEATH IS ACTUALLY MORE IN FAVOR OR WORSE FOR THE DEFENDANT.

AND HER CONCLUSION, BASED ON STUDIES WAS THAT JURIES HAVE LESS TIME TO ACTUALLY HUMANIZE THE DEFENDANT, TO SEE HIM, TO HEAR HIM.

SO CERTAINLY SOME NEGATIVE DETAILS WERE INTRODUCED THROUGH THE CONFESSION.

BUT THEY ALSO GOT TO HEAR DANE ABDUOL TALK ABOUT CARS AND THE JURY THAT IT WAS AN ACCIDENT. ACTUALLY HAVE THE DETECTIVE GO, I KNOW, I KNOW IT, IT WAS AN ACCIDENT.

YOU DIDN'T MEAN TO HURT.

SO THEY MADE THAT DECISION EARLY ON IN THE CASE.

>> WHAT DID THEY THINK ABOUT, DID THEY EVALUATE THE MOTION TO SUPPRESS?

BECAUSE THERE IS ONE ISSUE AS TO WHETHER IT WAS VOLUNTARY BUT THE OTHER ISSUE IS THIS QUESTION OF THE LAWYER COMING AND TRYING TO SPEAK TO--

>> RIGHT.

>> DID THEY LOOK AT THAT AND REALIZE THAT THAT ACTUALLY WAS, A VERY GOOD BASIS TO SUPPRESS THE CONFESSION?

OR DID THEY THINK THIS WAS, THEY WEREN'T GOING TO WIN ANYWAY, SO THEY WEREN'T GOING TO WORRY ABOUT IT?

WHAT DID THEY SAY?

>> THERE WERE TWO DIFFERENT FINDINGS AND THE TRIAL COURT SUPPORTED BOTH.

AT FIRST IT WAS A TACTICAL DECISION.

BUT ALSO THERE WEREN'T GROUNDS FOR SUPPRESSION IN THIS CASE.

>> BUT THAT'S WHERE, IF THEY LOOKED AT SOMETHING AND, I DON'T

KNOW IF IT'S A DEATH CASE BUT I KNOW WE HAVE THE ISSUE ABOUT WHEN A LAWYER IS TRYING TO SEE WHO HAS BEEN HIRED BY THE FAMILY AND THIS IS ONLY A 19-YEAR-OLD AND THAT THEY, THE POLICE KNOW THE LAWYER'S THERE, THAT ABOUT WHETHER THEY, WHETHER THEY HAVE TO LET THE LAWYER SEE THE DEFENDANT.

SO IF THEY DIDN'T THINK THAT WAS, I MEAN, DID THEY THINK ABOUT THAT AT ALL?

>> I'M NOT SURE THERE WAS MUCH TESTIMONY ON THAT BELOW.

WE KNOW MR. BARKER TESTIFIED, YOU KNOW, THAT WAS NEVER EVEN A SPECIFIC CLAIM IN THE POST-CONVICTION MOTION.

NOW I UNDERSTAND THAT THE JUDGE ADDRESSED IT, BUT THEY NEVER CLAIMED THERE WAS A DUE PROCESS VIOLATION BASED ON THIS ATTORNEY SHOWING UP WHO HAD NEVER ONCE BEFORE TALKED TO DANA ABDOOL. THE LAW IS PRETTY CLEAR, YOUR HONOR, MIRANDA, THE RIGHT TO COUNSEL IS A PERSONAL RIGHT. MORAN v. BERMINE.

THIS COURT RECOGNIZED IN A VERY RARE CIRCUMSTANCE IN HALLIBURTON THAT IT CAN AMOUNT TO A DUE PROCESS VIOLATION BUT YOU DON'T HAVE THOSE OUTRAGEOUS CIRCUMSTANCES HERE.

THERE WAS NO COURT ORDER LIKE YOU HAD IN HALLIBURTON, ALLOWING FROM A JUDGE, THAT WAS IGNORED, STATING THAT I WANT THIS ATTORNEY TO COME IN HERE AND SEE THAT CLIENT.

AND AGAIN, YOU DON'T HAVE A DISCUSS TOWED Y'ALL INTERROGATION-- A CUSTODIAL INTERROGATION IN IT CASE. THEY DIDN'T ESTABLISH THAT BELOW.

THE TAPE IS CORDIAL.

IT IS NON-CONFRONTATIONAL.

IT IS NON-COERCIVE.

THERE ARE SIMPLY NO OUTRAGEOUS CIRCUMSTANCES HERE.

EVEN IF YOU GET BEYOND THAT NO REASONABLE DEFENSE ATTORNEY COULD HAVE MADE THIS DECISION, AND I DON'T THINK YOU NEED TO GET TO THAT STEP, BUT IF YOU DO, WOULD THIS CONFESSION HAVE BEEN SUPPRESSED ON THESE FACTS? SIMPLY STATED, NO.

THAT IS THE DECISION THAT WAS MADE BY THE TRIAL COURT IN THIS CASE.

WITH REGARD TO MITIGATION, THIS, AS THIS COURT HAS ALREADY RECOGNIZED, YOUR HONOR, 48 NON-STATUTORY MITIGATING CIRCUMSTANCES WERE FOUND BY THIS TRIAL COURT, TWO MENTAL HEALTH EXPERTS TESTIFIED DURING THE PENALTY PHASE, BOTH STATUTORY MENTAL MITIGATORS WERE FOUND.

>> THEIR ARGUMENT SEEMS TO GO MORE TO THE THAT THEY HAD REASON TO HAVE HAD HIM EXAMINED FOR BRAIN DAMAGE.

AND, THAT THE ATTORNEYS, OBVIOUSLY, IGNORED IT AND DIDN'T.

AND SO, WHAT DO WE HAVE ON POST-CONVICTION THAT SHOWS WHAT WOULD HAVE BEEN FOUND WITH EXAMINING HIM FOR THAT?

>> WELL, FIRST OF ALL, YOUR HONOR, I WANT TO, THERE WERE NO RED FLAGS WITH BRAIN DAMAGE.

DR. BERLIN MAY HAVE MADE A RECOMMENDATION AS A MATTER OF COURSE YOU MIGHT WANT TO FOLLOW-UP BUT HE FOUND NO INDICATIONS OF BRAIN DAMAGE. HE LEARNED THAT ABDOOL HAD A COUPLE OF BRAIN INJURIES EARLY ON AS A CHILD BUT WHAT THE DEFENSE ATTORNEYS DID IN THIS CASE THEY RELIED ON TWO EXPERIENCED FORENSIC EXPERTS IN THIS CASE.

DR. GOLD AND DR. KARIN. NEITHER ONE OF THEM TOLD THE

DEFENSE ATTORNEYS THAT NEITHER BELIEVED THAT ADDITIONAL TESTING WAS REQUIRED.

DR. GOLD SUBMITTED 21 TEST.

>> I THOUGHT THERE WAS AN EXPERT THAT SAID WE THINK ADDITIONAL NEUROPSYCHOLOGICAL TESTING WOULD BE APPROPRIATE?

>> I THINK THAT IS AN ACCURATE REPRESENTATION BUT THAT EXPERT HAD ONE PHONE CONVERSATION WITH THE ATTORNEY, NEVER FULLY EVALUATED DANE ABDOL TO MY KNOWLEDGE.

ONCE YOU GET THAT RECOMMENDATION YOU HIRE EXPERTS AND THEY'RE TELLING YOU THE SAME THING.

>> I THINK THEY LOSE ON PREJUDICE ON IT BUT, YOU KNOW, YOU HAVE GOT A 19-YEAR-OLD WHO HAS COMMITTED THIS HORRENDOUS, UNBELIEVABLY HORRENDOUS ACT WITH A BACKGROUND OF GROWING UP IN TRINIDAD AND BEING TRANSPLANTED AND THIS ISSUE MUSLIM VERSUS CHRISTIAN AND HERE IT IS THE CHILD IS THE VICTIM IS BURNED.

A LOT OF PRETTY, HIGHLY, GOING TO SAY INFLAMMATORY, I DON'T MEAN THAT DEROGATORY.

YOU KNOW I WOULD WANT TO KNOW AS A DEFENSE LAWYER IF THERE WAS AN INDICATION OF ORGANIC BRAIN DAMAGE BECAUSE JURIES HEAR THESE OTHER THINGS, PSYCHOLOGICAL TESTING AND ALL THAT BUT YOU ACTUALLY HAVE ORGANIC BRAIN DAMAGE AND RIGHT FRONTAL LOBE BRAIN DAMAGE, FOR A 19-YEAR-OLD IT CAN EXPLAIN IMPULSIVITY.

WHAT WAS IT, I THINK THE EVIDENCE AT POST-CONVICTION WAS A LITTLE WEAK ON THIS ANYWAY. THAT'S WHAT I WANT YOU TO FOCUS ON.

>> EXACTLY.

IT WAS WEAK.

IN FACT DR. OLEANDER, THE ONLY EXPERT THAT CLAIMED THERE WAS

BRAIN DAMAGE AGREED IT WAS IN THE MILD RANGE.

IT WASN'T EVEN IN THE FRONTAL LOBE.

HER TESTIMONY WAS REMARKABLY SIMILAR TO THE BRAIN DYSFUNCTION, THE NON-VERBAL LEARNING DISABILITY THAT DR. COWARD IN TESTIFIED AT TIME OF TRIAL.

THEY MERELY REPACKAGED WHAT WAS PRESENTED AT TIME OF TRIAL IN THIS CASE.

NOW THEY SEEK TO FAULT THE DEFENSE ATTORNEYS.

YOUR HONOR, IT IS VERY WEAK AND SHE ACKNOWLEDGED IT WAS WEAK, I MEAN IN THE MILD RANGE.

ALSO DR. OLEANDER, DIDN'T, THIS WAS NOT AN IMPULSIVE ACT. THAT IS ONE OF THE PROBLEMS.

THEY PRESENTED EMOTIONAL IMMATURITY.

HAD A LEARNING DISABILITY AT TIME OF TRIAL, DANE ABDOOL HAS A PROBLEM IN HIS LIFE.

ONE OF THE STRESSORS THAT DR. OLANDER FOUND TO SUPPORT HER FINDING OF EMOTIONAL DISTRESS, IT WAS REALLY TOUGH AND STRESSFUL ON DANE ABDOOL TO HAVE TWO GIRLFRIENDS.

IT IS INCREDIBLY DIFFICULT. ONE OF THEM HAD TO GO.

I DON'T KNOW HOW COMPELLING A JURY WOULD FIND THAT WHEN HE WAS WORRIED ABOUT HIS RELATIONSHIP WITH HIS GIRLFRIEND FINDING OUT ABOUT HIS AFFAIR AND PERHAPS HIS UNBORN CHILD.

THAT IS WHY HE MURDERED THE VICTIM IN THIS CASE A 17-YEAR-OLD GIRL.

NONE OF THAT INFORMATION WAS THE LEAST BIT COMPELLING.

AGAIN, WHAT THIS CASE SHOWS IS THAT IF YOU HAVE TWO VERY COMPETENT DEFENSE ATTORNEYS, WHO HIRE MENTAL HEALTH EXPERTS, PRESENT 10 FAMILY AND FRIENDS IN

MITIGATION, CAN THEY IMPROVE UPON THAT PRESENTATION WITH UNLIMITED TIME AND UNLIMITED RESOURCES?

AND I SAY, STATE THAT BECAUSE THEY HIRED AN EXPERT FROM TEXAS, A JURY SELECTION EXPERT FROM NEBRASKA.

CAN THEY IMPROVE UPON WHAT THE DEFENSE ATTORNEYS DID IN THIS CASE?

VERY LITTLE.

NOTHING MATERIALLY DIFFERENT OR COMPELLING WAS DISCOVERED AND PRESENTED IN POST-CONVICTION HAD THIS CASE.

>> THERE IS AN IRONY ABOUT THIS THAT WHEN YOU HAVE POST-CONVICTION, I GUESS CCR, THEY DON'T HAVE TO GET THEIR MONEY FROM THE COURT TO GET EXPERTS SO WE HAVE SORT OF A LOPSIDED INFORMATION, WE HAVE A CASE TOMORROW WHERE SOMEBODY TRIED TO GET A MITIGATION EXPERT AND THEY DIDN'T ALLOW IT. WE REALLY, THAT IN ITSELF IS TELLING.

>> IT IS CLEAR--

>> BUT I DO HAVE A QUESTION, THIS WAS A 10-2 RECOMMENDATION WITH HAC AND CCP.

IT WAS BROUGHT UP IN THE ORIGINAL CASE AS A, THAT THEY HAD RAISED IT BUT IT WAS REJECTED.

THIS IS SORT OF A HURST TYPE OF CASE BUT YET WHEN RING HAS BEEN, WAS APPLIED, IT WAS NEVER APPLIED RETROACTIVELY.

SO WOULD YOUR POSITION BE IN THIS CASE THAT EVEN IF THE SUPREME COURT RULES ADVERSELY TO THE STATE IN HEARST THAT IT WOULDN'T BE--

>> THAT IS CORRECT, YOUR HONOR. IF IT DOES INDEED RULE AGAINST US, AGAIN OUR, OUR SITUATION IS DIFFERENT FROM ARIZONA.

I DO NOT BELIEVE IT WOULD BE

RETROACTIVE BUT YES, ABDUOL
WOULD BE A TRUE RING CASE AS
THERE WAS NO PRIOR VIOLENT
FELONY.

THERE IS NON-UNANIMOUS JURY
RECOMMENDATION.

THE FINAL POINT I WANT TO MAKE
HERE IS THAT, THEY MENTIONED
FAMILY DYSFUNCTION OR ABUSE.
ARE WHAT DID THE TRIAL ATTORNEYS
HAVE AT TRIAL?

THEY HAVE DANE ABDUOL TELLING
THEM THAT I HAVE A LOVING AND
SUPPORTIVE FAMILY.

MY STEPFATHER TOOK ME IN AND MY
BROTHER AND, REALLY HE WAS A
FATHER TO ME.

YOU HAVE ALL OF THE FAMILY
MEMBERS TESTIFYING UNIFORMLY
THAT THEY WERE LOVING AND
SUPPORTIVE.

SO NOW WE'RE GOING TO,
ATTEMPTING TO FAULT COUNSEL FOR
FAILING TO PRESENT MILD FAMILY
DYSFUNCTION WHICH WAS COMPLETELY
AT ODDS AT WHAT THEY WERE BEING
TOLD AT THE TIME OF TRIAL.

AND INDEED, DANE ABDUOL'S
BROTHER TESTIFIED DURING THE
POST-CONVICTION HEARING THAT
INDEED STEPFATHER AND MOTHER
WERE LOVING AND SUPPORTIVE
PARENTS.

SO HOW PERSUASIVE AND HOW
COMPELLING THIS CHANGE OF
STORY WHERE IT HAS VERY LITTLE
SUPPORT AND COUNSEL TELL CAN NOT
BE FAULTED FOR RELYING UPON HER
CLIENT AND THE FAMILY MEMBERS
AND THEIR REPRESENTATIONS OF HIS
FAMILY LIFE AT THE TIME OF
TRIAL.

THANK YOU.

STATE HAS NOTHING FURTHER.

>> I WOULD LIKE TO CLARIFY A FEW
THINGS.

FIRST OF ALL DR. OLANDER WHEN
SHE TESTIFIED IN THE
POST-CONVICTION HEARING
TESTIFIED THAT MR. ABDUOL DID

ACTUALLY HAVE FRONTAL BRAIN
DYSFUNCTION AS WELL AS RIGHT
HEMISPHERE DYSFUNCTION.

IN OTHER WORDS, BRAIN DAMAGE.

>> WELL IT IS NOT-- IS
FUNCTION, I'M NOT--
DYSFUNCTION, I'M NOT SURE, IS
THE NO THE SAME AS, AS BRAIN
DAMAGE.

I MEAN TRAIN DAMAGE IS A VERY
SPECIFIC FINDING.
DYSFUNCTION COULD POTENTIALLY
APPLY TO A WHOLE HOST OF
ABNORMALITIES, WOULD YOU AGREE
WITH THAT?

THAT IT IS NOT THE SAME AS
SAYING BRAIN DAMAGE?

>> I WOULD AGREE WITH THAT BUT
THE SPECIFIC THING THAT
DR. OLANDER FOUND WAS A
COGNITIVE DISORDER STEMMING FROM
THAT FRONTAL LOBE DAMAGE--
FRONTAL LOBE DAMAGE.

>> THE PROBLEM IS, WE HAD THIS
YESTERDAY IN A CASE, YOU DON'T
HAVE AN IMPULSIVE ACT TO THE
EXTENT HE IS HAVING SEX WITH HER
AND HE JUST LOSES IT.

YOU HAVE PLANNING AND, HE IS
SAYING, ACCIDENT.

HE IS NOT, HE IS NOT SAYING I
WENT CRAZY OF THE HE SAID, OH, I
DIDN'T MEAN TO DO IT.

SO IT REALLY DON'T GO ALONG WITH
HOW THE CASE WAS PRESENTED.

HOW WOULD YOU RESPOND TO THAT?

>> I WOULD, WOULD RESPOND TO
THAT BECAUSE THE WAY DR. OLANDER
EXPLAINED, MR. ABDOOL'S BEHAVIOR
THAT NIGHT, SHE SAID IT WAS A
PERFECT STORM.

ONE OF THE THINGS THIS BRAIN
DAMAGE AND THE DYSFUNCTION THAT
HE SPECIFICALLY HAS IS THAT HE
PRESENTS WITH ALMOST ASPERGER
LIKE SYMPTOMS.

HE DOES NOT READ PEOPLE VERY
WELL.

HE DOES NOT UNDERSTAND OTHER
PEOPLE'S CUES.

IN THIS CASE HIS STORY WAS, I ONLY MEANT TO SCARE HER BUT HE IS NOT VERY GOOD AT COPING MECHANISMS.

HE IS NOT VERY GOOD WITH ACTUALLY SAYING, OKAY, IF I DO THIS, WHAT WILL THE EFFECT AT THE END OF THE DAY WILL BE? BECAUSE THE CAUSE AND EFFECT ARE NOT THERE.

>> HOW IS, HOW MUCH, HOW WAS SHE TAPED?

WAS SHE LIGHTLY TAPED OR HOW WAS SHE TAPED?

>> SHE WAS LIGHTLY TAPED.

SHE MANAGED TO GET OUT OF IT. THEY FOUND THE TAPE UNBURNED SOMEWHERE ELSE.

IT WASN'T LIKE HE AGGRESSIVELY TAPED HER UP AND SHE COULDN'T FIGHT BACK.

PART OF HIS STORY, SHE CAME AT HIM, SO SHE WAS ABLE TO MOVE AND FIGHT BACK.

ANOTHER THING WITH THE BRAIN DAMAGE THAT IT AFFECTS ALSO IS THAT IT CLEARLY, NOT ONLY AFFECT HIS ABILITY TO READ OTHER PEOPLE AND OBVIOUSLY MAKE COPING PLANS, BUT ON THAT NIGHT THERE IS TESTIMONY THAT HE HAD BEEN DRINKING ALCOHOL, WHICH ALSO AFFECTS AND IMPAIRS YOUR REASONING.

AND HE DOES ACTUALLY, THERE WAS TESTIMONY ACTUALLY, AT THE TRIAL LEVEL THAT HE DOES ACTUALLY SUFFER FROM AN IMPULSE CONTROL DISORDER.

THAT HE DOES HAVE IMPULSIVITY ISSUES.

HE DOES NOT CONTROL HIMSELF VERY WELL IN THAT RESPECT.

>> AS MIGHT EVERY YOUNG MAN 25 AND UNDER.

THAT IS ONE MUCH YOUR EXPERTS, WHAT THE DEVELOPING BRAIN IS. REALLY THAT COULD GO TO ANY YOUNG PERSON.

I MEAN THAT IS, AND WE STILL

HAVE THE DEATH PENALTY FOR 25