William Reaves v. State of Florida

MR. CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE ORAL ARGUMENT CALENDAR FOR THURSDAY. THE FLORIDA SUPREME COURT. THE FIRST CASE ON THE ORAL ARGUMENT CALENDAR IS REAVES VERSUS STATE. JUSTICE HARDING WILL NOT BE HERE FOR ORAL ARGUMENT THIS MORNING, BUT HE WILL PARTICIPATE IN THE DECISION. OF COURSE THE ORAL ARGUMENT IS ON VIDEO AND, ALSO, HAVE THE ADVANTAGE OF THE AUDIO, SO MR. HENNIS. YOU MAY PROCEED.

THANK YOU, MR. CHIEF JUSTICE AND MEMBERS OF THE COURT. I AM WILLIAM HENNIS. I AM ASSISTANT CAPITAL COLLATERAL REGIONAL COUNSEL FROM FT. LAUDERDALE, HERE ON BEHALF OF MR. REAVES. JUST BRIEFLY, OF COURSE, THE CASE THAT YOU HAVE BEFORE YOU ORIGINALLY WAS TRIED IN 1987. THERE WAS A 12-0 JURY RECOMMENDATION FOR DEATH. THIS COURT SENT THAT DECISION BACK, BASED ON INVOLVEMENT BY A PROSECUTOR WHO HAD PREVIOUSLY REPRESENTED MR. REAVES IN SOME OF THE ENUMERATED FELONIES THAT WERE USED AS AGGRAVATORS. THE SECOND TRIAL TOOK PLACE IN 1992. THERE WAS A 10-TO-2 JURY RECOMMENDATION FOR DEATH. THE 3.850 IN THIS CASE WAS FILED IN FEBRUARY OF 1999, AND THE SUMMARY DENIAL BY THE COURT BELOW WAS ON FEBRUARY 9, 2000. OBVIOUSLY THE SUMMARY DENIAL TAKES UP THE VAST MAJORITY OF THE INITIAL BRIEF AND THE STATE'S RESPONSE, AND IN THE JUDGE'S ORDER, SUMMARILY DENYING AN EVIDENTIARY HEARING ON THIS CASE, AT 1099 IN THE RECORD, HE SAYS THAT THE COURT IS AWARE THAT THE DETERMINATION OF TRIAL STRATEGY IS BEST MADE AFTER AN EVIDENTIARY HEARING. HOWEVER, HE GOES ON TO SAY THAT TRIAL COUNSEL STRATEGY WAS APPARENT FROM THE RECORD IN THIS CASE. THAT IS ONE OF THE RONTS THAT HE DENIED AN EVIDENTIARY -- ONE OF THE REASONS THAT HE DENIED AN EVIDENTIARY HEARING ON ALL OF THE CLAIMS IN THE CASE. OF COURSE, AT THE HUFF HEARING, AS WELL AS IN OUR 3.850 AND IN OUR NIFBL INITIAL BRIEF -- OUR INITIAL BRIEF, I THINK WE MADE THE POINT THAT WE COULDN'T HAVE DONE MORE TO MORE CLEARLY LAY OUT THE FACTS OF THE EXPERTS AND WHAT THEY WOULD HAVE TESTIFIED TO IN AN EVIDENTIARY HEARING, HAD IT TAKEN PLACE. I GUESS SPECIFICALLY THE IS TESTIMONY OF DR. WHITES IS SOMETHING THAT I WOULD LIKE TO FOCUS ON AT THE BEGINNING. DR. WHITES, OF COURSE, HAD NOT BEEN RETAINED BY MR. KIMPBLINGNER, WHO WAS TRIAL COUNSEL IN 1992, INDEBLT OF THE REST OF THE HISTORY -- INDEPENDENT OF THE REST OF THE HISTORY OF THE CASE. QUITE THE CONTRARY, IN FACT. THE INITIAL TRIAL COUNSEL, CLIFFORD BARNES, HAD OBTAINED DR. WHITES'S TESTIMONY BACK IN 1987,TIC LARLING WITH REGARD TO DR. WHITES, THE FIRST THAT HE HAD HEARD OF THE CASE, AFTER HE HAD BEEN RETAINED BY MR. BARNES AND THEN NOT CALLED AT THE ORIGINAL PROCEEDING IN 1987, WAS A LETTER HE HAD GOTTEN FROM MR. KIRCHNER, INFORMING HIM THAT HE HAD BEEN APPOINTED AN EXPERT OF THE CASE IN 1991 AND THAT LETTER INCLUDED A COPY OF THE LETTER APPOINTING HIM. THAT LETTER INCLUDED AND POINTS OUT THAT HE HAD NOT CONSULTED WITH DR. WHITES, THE SOLE EXPERT THAT HE CALLED IN THE CASE, UNTIL AFTER HE HAD ALREADY BEEN REAPPOINTED BY THE NEW TRIAL JUDGE IN THE NEW PROCEEDING. OF COURSE THAT RAISES SOME INTERESTING QUESTIONS WHY HE REPRESENTED ON THE RECORD THAT THE REASON THAT HE WANTED DR. WHITES APPOINTED WAS BECAUSE OF THIS VAST EXPERIENCE THAT DR. WHITES HAD IN VETERANS AFFAIRS AND POST-TRAUMATIC STRESS DISORDER, WHICH, OF COURSE, WAS KEY FEATURE OF THE CASE.

DID DR. WHITES THEN DO AN ADDITIONAL EXAMINATION OF THE DEFENDANT? I ASSUME THAT HE DID ONE BACK IN THE 1980s, SO NOW DID HE DO A NEW INITIAL EVALUATION?

YOU ARE QUITE RIGHT, JUSTICE QUINCE. WHEN HE WAS ORIGINAL APPOINTED BACK IN 1987, HE

ORIGINALLY SAW MR. REAVES FOR 3 TO 4 HOURS, ACCORDING TO HIS TESTIMONY AND DEPOSITION. HE DID THREE THINGS. HE REPEATED THE MMPI PERSONALITY TESTING THAT HE HAD DONE BACK IN 1987. I BELIEVE HE TESTIFIED THAT HE DID THAT, BECAUSE THERE WAS A NEW VERSION OF THE MMPI THAT WAS NOT AVAILABLE IN 1987. HE, ALSO, DID A SHORTENED CLINICAL INTERVIEW, WHICH HE EXPLAINED THAT HE DID BECAUSE HE HAD ALREADY SEEN MR. REAVES FOR 7 OR 8 HOURS, BACK IN 1987, AND HE DID THE BECK DEPRESSION INVENTORY, WHICH, AS BEST I CAN UNDERSTAND FROM HIS TESTIMONY, HE BELIEVED WOULD BE AT LEAST ONE THING THAT WOULD BE USEFUL IN HIM DETERMINING OR REEVALUATING HIS DIAGNOSIS, AND WHAT HE CAME UP WITH WAS A SLIGHT VARIATION IN DIAGNOSIS. BACK IN '87, WHERE, AGAIN, HE DIDN'T TESTIFY, HE FOUND THAT MR MR. REAVES SUFFERED FROM ANTISOCIAL PERSONALITY DISORDER, AND HE FOUND THAT MR. REAVES SUFFERED FROM COCAINE ABUSE. HE REVISED HIS EVALUATION, AFTER HIS REVISED THREE-HOUR EVALUATION, HE FOUND THAT MR. REAVES SUFFERED NOT FROM COCAINE ABUSE BUT FROM POLYSUBSTANCE ABUSE, AS DEFINED IN THE DSM.

SO AN IS YOUR ARGUMENT ABOUT THIS PARTICULAR EXPERT A PART OF YOUR EIGHT CLAIM OR IS IT A PART OF YOUR CLAIM THAT THE DEFENSE ATTORNEYS SHOULD HAVE HAD A VOLUNTARY INTOXICATION DEFENSE OR BOTH?

IT IS ACTUALLY PART OF BOTH. THE VOLUNTARY INTOXICATION ISSUE PRIMARILY REVOLVES AROUND THE FACT THAT WHITES WAS ALLOWED TO PROFFER SOME TESTIMONY AT THE GUILT PHASE, BUT HE WAS NOT ALLOWED TO TESTIFY BEFORE THE JURY, WHEREAS, AS TO THE PENALTY PHASE ISSUES, IT IS A LITTLE BIT MORE COMPLICATED THAN THAT, WHICH I HOPE I AMABLE TO GET INTO A LITTLE BIT MORE. NOW, ABOUT TRIAL COUNSEL'S USE OF WHITES AS BEING DEFICIENT PERFORMANCE, WE TALK ABOUT THIS IN THE BRIEF, AND WHAT I WAS TRYING TO POINT OUT TO YOU, UP UNTIL NOW, IS THAT IT WASN'T REALLY A REASONED DECISION THAT HE MADE, FIRST, TO OBTAIN DR. WHITES. IT WAS SOMETHING THAT HE DID WITHOUT ANY INDICATION OF THE RECORD, WITHOUT LOOKING AT THE RECORD IN THE ENTIRETY, IS HE PICKED OUT THE EXPERT THAT CLIFFORD BARNES DIDN'T CALL IN 19987. OF COURSE THERE WAS A -- IN 1987. OF COURSE THERE WAS A REASON THAT HE DIDN'T CALL HIM, AND THAT IS BECAUSE HE WOULD TESTIFY THAT HE HAD ANTI-PERSONALITY DISORDER, WHICH IS PARTICULARLY NOT WHAT HE WOULD WANT TO USE, PARTICULARLY SINCE DR. WHITES, IN BOTH HIS PROFFER AND PENALTY-PHASE TESTIMONY, THAT THE ANTISOCIAL DISORDER WAS HIS PRIMARY DIAGNOSIS. HE EMPHASIZED THAT THAT IS WHAT IT WAS. I THINK IT WAS A LAZY AND UNINFORMED DECISION, JUST TO GO BACK AND GET DR. WHITES, KNOWING WHAT HE KNEW, ESPECIALLY SINCE HE KNEW THAT CLIFF BARNES HAD NOT EVEN CALLED HIM.

BUT YOUR POINT IS THAT WE CANNOT TELL WHAT THE BASIS FOR THE DECISION IS, WITHOUT AN EVIDENTIARY HEARING.

ABSOLUTELY, YOUR HONOR. THAT IS A KEY POINT. ABSOLUTELY. NOW, THERE WAS NO NEUROPSYCHOLOGIST APPOINTED IN THIS CASE, AS WE POINTED OUT. THERE WAS NO DRUGS EXPERT. HE TRIED TO USE DR. WHITES AS A SUBSTANCE ABUSE EXPERT, WITHOUT GETTING ANY KIND OF INDEPENDENT EVALUATION OF MR. REAVES FOR SUBSTANCE ABUSE, AND IN FACT AS DR. WHITES POINTS OUT, HE DIDN'T EVEN HAVE ALL OF THE INFORMATION THAT HE WANTED, AT THE TIME OF HIS DEPOSITION OR HIS TESTIMONY IN 1992. IN THE DEPOSITION, HE ASKED THE STATE AND HIS DEFENSE COUNSEL IF THEY COULD PLEASE PROVIDE HIM WITH MR. REAVES'S D.O.C. RECORDS BECAUSE HE THINKS IT WOULD BE USEFUL, SINCE FOUR YEARS HAS PASSED SINCE HIS EVALUATION, TO SEE HOW MR. REAVES HAS PERFORMED IN PRISON, WHAT HIS PSYCHOLOGICAL AND MEDICAL RECORDS ARE IN PRISON. HE HADN'T HAD THE ONES BEFORE. HE WANTED ALL OF THEM, INCLUDING THE ONES UP UNTIL THE TIME OF HIS EVALUATION. MR. BARNES NEVER PROVIDED THOSE AND, OF COURSE, WE POINT OUT IN OUR PLEADING THAT THE D.O.C RECORDS WERE ONE OF THE SOURCES FOR CONFIRMATORY INFORMATION ABOUT HEAD INJURIES AND OTHER PSYCHOLOGICAL AND SUBSTANCE ABUSE PROBLEMS THAT MR. REAVES HAD DURING HIS ENTIRE COURSE IN PRISON, INCLUDING REFERRALS TO SUBSTANCE ABUSE TREATMENT, SO,

AGAIN, THAT WASN'T PROVIDED. I AM SORRY, YOUR HONOR.

DIDN'T THE COURT ULTIMATELY FIND, THOUGH, THAT THE DEFENDANT MET THE STATUTORY MENTAL MITIGATORS, DIDN'T HE? ISN'T THAT WHAT WAS FINALLY TESTIFIED TO?

ACTUALLY THE EXPERT, IN FACT, DID TESTIFY TO BOTH STATUTORY MENTAL HEALTH MITIGATORS. THAT'S RIGHT, YOUR HONOR, ALTHOUGH THE TRIAL COURT, IN ITS ORDER, DIDN'T FIND ANY STATUTORY OR MENTAL MITIGATORS IN THAT SITUATION. THE ONLY THING THAT THE TRIAL COURT FOUND WAS THE FACT THAT MR MR. REAVES A HONORABLE DISCHARGE FROM THE ARMY. INTERESTINGLY THAT HE HAD A GOOD REPUTATION IN THE COMMUNITY, UP UNTIL THE TIME HE WENT INTO THE ARMY, UP UNTIL THE AGE OF 15 OR 16, WHICH, OF COURSE, COMPLETELY CONTRADICTS THE ANTISOCIAL PERSONALITY DISORDER DIAGNOSIS BY DR. WHITES, AND, YOU KNOW, ALSO, IT CERTAINLY HELPS SUPPORT WHY THE JUDGE MADE THE FINDINGS THAT HE MADE IN HIS ORDER. I MEAN, DR. WHITES WAS COMPLETELY CONTRADICTED ON EVERY FINDING THAT HE MADE, BY THE PSYCHIATRIST, DR. CHESHIRE, THAT THE STATE CALLED DURING THE TRIAL. DR. CHESHIRE SAID HE DOESN'T SUFFER FROM ANTISOCIAL PERSONALITY DISORDER. WHAT HE HAS IS A SUBCLINICAL ADULT BEHAVIORAL DISORDER, HAVING TO DO WITH AIN'T SOCIAL, NOT ANTISOCIAL PERSONALITY DISORDER, AND HE, ALSO, SAID THAT THERE WAS NO INDICATION OF ANY PSYCHIATRIC DISORDER, INCLUDING SUBSTANCE ABUSE DISORDER ON, FOR THAT MATTER, AND HE BASICALLY RIDICULED DR. WHITES'S FINDING OF VIETNAM SYNDROME AND BASICALLY CLAIMED DR. WHITES WAS JUST MAKING THIS UP. THIS WASN'T SOMETHING THAT HAD ANY STANDING AT ALL, ACCORDING TO THE STATE'S EXPERT. NOW, THE STATE TRIES TO SAY, IN THEIR BRIEF, AND THEY, ALSO, SAID IN THEIR HUFF HEARING RESPONSE, THAT OUR ALLEGATION THAT DR. WHITES'S EVALUATION WAS INCOMPETENT DOESN'T SQUARE UP WITH ROSE V STATE. THAT, IN FACT, THIS IS A ROSE V STATE SITUATION. WE ARE JUST TRYING TO SAY THAT WE GOT SOME EXPERTS. THEY DISAGREE WITH DR. WHITES. EXPERTS DISAGREE, SO WHAT? OUR EXPERTS, THE INFORMATION THAT WE PUT IN THE PLEADING AND THE INFORMATION WE PROFFERED AT THE HUFF HEARING, I THINK, MAKES ABSOLUTELY CLEAR THAT IT IS NOT JUST A DISGREEMENT WITH DR. WHITES. WHAT WE WERE TRYING TO LAY OUT IS THAT THE ANTISOCIAL PERSONALITY DISORDER DIAGNOSIS THAT WAS THE FEATURE OF DR. WHITES'S TESTIMONY, WAS COMPLETELY WRONG. THAT THE DSM-3 R DEFINITION OF ANTISOCIAL PERSONALITY DISORDER THAT IS REFERRED TO CONSTANTLY, DURING THE DEPOSITION AND THE EXAMINATION, SPECIFICALLY ISN'T MET BY THE TERMS OF DR. WHITES'S TESTIMONY, AND IN FACT HE ESSENTIALLY ADMITS THAT, DURING HIS TESTIMONY.

WHAT WAS WHITES'S BACKGROUND?

WHITES WAS A CLINICAL PSYCHOLOGIST WHO HAD A FAIRLY SUBSTANTIAL BACKGROUND AND HISTORY IN MILITARY PSYCHOLOGY. HE HAD BEEN, I GUESS, TRAINED, WHILE HE WAS IN THE MILITARY, AS A PSYCHOLOGIST. HE HAD WORKED FAIRLY SUBSTANTIALLY IN VETERANS' CLINICS AFTER THE VIETNAM WAR. HE WAS NOT A COMBAT VETERAN, WHICH I THINK IS VERY RELEVANT, IN TERMS OF THE FINDINGS THAT HE MADE. IN FACT, THE STATE CROSS-EXAMINED HIM ABOUT WHETHER OR NOT HE WAS A COMBAT VETERAN OR NOT, USED THAT TO IMPEACH HIS FINDINGS, AND I THINK THAT PROBABLY HAD SOME IMPACT ON THE JUDGE'S ULTIMATE HAT FINDINGS. THE STATE'S -- ULTIMATE FINDINGS. THE STATE'S OUTLINE OF THEIR EXTENSIVE BRIEF, IN THEIR BACKGROUND, WHICH THEY BASICALLY PULL OUT OF THE PLEADING, IS PRETTY STRAIGHTFORWARD. I DON'T HAVE ANY DISAGREEMENT WITH THEIR OUTLINE OF HIS CREDENTIALS AND BACKGROUND.

AND THE CLAIM, HERE, IS, HAS TO BE CENTERED ON STRICKLAND. RIGHT?

THAT'S RIGHT, YOUR HONOR.

HAS TO BE CENTERED ON WHETHER THE LAWYER WAS INEFFECTIVE, NOT WHETHER THE EXPERT

ENDED UP BEING INEFFECTIVE.

WELL, I THINK INSOFAR AS THE EXPERT --

THE QUESTION IS WHETHER ANY REASONABLE LAWYER, WHETHER IT WAS OUTSIDE THE VERY WIDE BOUNDARIES OF STRICKLAND, FOR THIS EXPERT TO BE HIRED BY THIS LAWYER. ISN'T THAT, FOR PURPOSES --

I THINK THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM AS TO MR. KIRCHNER, THAT'S RIGHT, YOUR HONOR. I THINK AS TO THE ACHEY CLAIM, THE RELIABILITY OF DR. WHITES'S EXAMINATION CLEARLY IS SOMETHING THAT IS AT ISSUE, BUT AS I POINT POINTED OUT ALREADY, I THINK MR. KIRCHNER'S DECISION TO RETAIN HIM, WITHOUT EVEN HAVING TALKED TO HIM, HAVING LOOKED AT WHAT WAS IN THE RECORD ALREADY, IS AWFULLY DAMNING, AS TO MR. KIRCHNER.

WHY DID THE JUDGE ARTICULATE THE REASON WHY HE WOULD NOT ALLOW THE HEARING?

ARE YOU ASKING ABOUT AT THE GUILT PHASE, JUSTICE SHAW?

RIGHT.

MY RECOLLECTION IS THAT THE STATE ARGUED, AT THE GUILT PHASE AND THE JUDGE AGREED, THAT THE CASE LAW IN FLORIDA THEN, I GUESS, BUNNY AND SOME OF THE OTHER CASES, DIDN'T ALLOW FOR THIS TESTIMONY, SINCE THERE WAS NO SPECIFIC, YOU KNOW, DSM LEVEL MENTAL HEALTH CONDITION. IN OTHER WORDS VIETNAM SYNDROME, INSTEAD OF PTSD, WHICH I GUESS WOULD HAVE BEEN AN AXIS ONE DISORDER IN DSM. HE HAD THIS GENERAL VIETNAM SYNDROME, WHICH THE JUDGE GAVE NO CREDIBILITY IN HIS SENTENCING ORDER AND OBVIOUSLY FOUND NO CREDIBILITY DURING THE PROFFER AT THE GUILT PHASE, AND HE, ALSO DIDN'T MAKE ANY FINDING THAT MR. REAVES ACTUALLY HAD A SUBSTANCE ABUSE DISORDER, AND OF COURSE IF THERE IS NO SUBSTANCE ABUSE DISORDER, IF THERE IS NO CREDIBILITY -- CREDIBLE EVIDENCE FROM THE JUDGE'S POINT OF VIEW, OF THE INTOXICATION AT THE TIME OF THE OFFENSE, THERE IS NOT A BUNNY BIAS ISSUE AT THE GUILT PHASE. NOW, OF COURSE, WE HAD THIS CONFESSION, THIS 43-PAGE CONFESSION BY MR. REAVES, TWO DAYS AFTER THE OFFENSE, WHEN HE WAS, AFTER HE WAS ARRESTED IN ALBANY, IN WHICH 18 TIMES HE TALKS ABOUT HOW HE IS HIGH ON COCAINE, ABOUT HOW HE WAS STRUNG-OUT ON COCAINE, ABOUT HE DIDN'T KNOW WHAT HE WAS DOING BECAUSE OF COCAINE. JUST COCAINE EVERYWHERE, SO THAT AT THE EARLIEST OPPORTUNITY, BACK WHEN CLIFF BARNES WAS APPOINTED AND CERTAINLY WHEN MR. KIRCHNER WAS APPOINTED, THEY HAD A ROAD MAP FOR AN INTOXICATION DEFENSE FROM THEIR CLIENT, JUST BASED ON HIS CONFESSION. THE STATE REPEATEDLY GOES AFTER PORTIONS OF THAT CONFESSION, WHERE MR. REAVES TALKS ABOUT THE ACTUAL SHOOTING OF THE OFFICER, AND THEY COMPLETELY IGNORE THE FACT THAT HE IS TALKING CONSTANTLY ABOUT THE FACT THAT HE DID ONE AND THREE-QUARTER GRAMS OF COCAINE, 30 MINUTES BEFORE THE OFFENSE TOOK PLACE.

JUSTICE QUINCE.

ONE OF THE ARGUMENTS OF THE DEFENDANT WAS MAKING IS THAT HE HAD BEEN IN THE WAR AND A LOT OF HIS PROBLEMS WERE CENTERED ON THE FACT THAT HE HAD BEEN IN VIETNAM. ISN'T THAT, AND WAS THERE ANY REASON FOR THE DEFENSE ATTORNEY TO BELIEVE THAT DR. WISE WAS NOT AN EXPERT ON THIS WHOLE MILITARY ISSUE? THE FACT THAT HE WASN'T IN COMBAT WOULDN'T NEGATE HIM BEING AN EXPERT ON THE PSYCHOLOGICAL MATTERS CONCERNING PEOPLE WHO ARE IN THE WAR, WOULD IT?

NO. THAT WOULD NOT, IN AND OF ITSELF NEGATE HIS EX-FERNS.

SO WHAT WAS THERE -- EXPERIENCE.

SO WHAT WAS THERE THAT THE DEFENSE ATTORNEY SHOULD HAVE LOOKED AT AND WOULD HAVE MADE HIM AWARE THAT THIS WAS NOT A GOOD EXPERT ON MATTERS CONCERNING MILITARY PROBLEMS?

WELL, CERTAINLY HE SHOULD HAVE LOOKED AT THE DSM 3 R AND REALIZED THAT THE STATE'S ARGUMENT, WHEN THEY IMPEACHED MR MR. WHITES ON HIS VIETNAM SYNDROME DIAGNOSIS AND THEY SAID THIS DOESN'T APPEAR ANYWHERE IN DSM-3-R, SO THERE IS NO BASIS FOR THIS. HE SHOULD HAVE LOOKED AT THE DSM DSM-3-R DEFINITION ABOUT ANTISOCIAL PERSONALITY DISORDER AND SAID MY EXPERT IS NOT CREDIBLE ON THIS ISSUE, BECAUSE HE HAS NOT MADE ANY FINDING OF JUVENILE CONDUCT DISORDER BEFORE THE AGE OF 15, AND SO THIS IS SOMETHING THAT THE STATE IS GOING TO KILL HIM ON, WHICH, IN FACT, THEY DID DO. AND DEFENSE COUNSEL, AT SENTENCING, ACTUALLY ARGUED, IN OPTION TO HIS EXPERT. HE ARGUED THAT HIS EXPERT'S ANTISOCIAL PERSONALITY DISORDER FINDING, BASICALLY HE ARGUED THAT THAT WAS NOT TRUE, BECAUSE THERE WAS GOOD CONDUCT BY THE CLIENT, UP UNTIL THE TIME HE WENT TO VIETNAM, WHICH, OF COURSE, IS WHAT THE JUDGE FOUND. THAT IS ONE OF THE NONSTATUTORY MITIGATING FACTORS THAT THE JUDGE FOUND, SO HE SHOULD HAVE BEEN ON NOTICE THAT THERE WAS A REAL PROBLEM WITH HIS TESTIMONY. I SEE THAT THE --

YOU TR IN YOUR REBUTTAL.

-- REBUTTAL LIGHT IS ON, SO I THINK THAT I PROBABLY BETTER SIT DOWN REIN SERVE THE REST OF MY TIME, YOUR HONOR. MR. CHIEF JUSTICE: THANK YOU. MS. TERENZIO.

GOOD MORNING. MAY IT PLEASE THE COURT. CELIA TERENZIO, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE OF FLORIDA. FOR THIS COURT TO REMAND THIS CASE FOR AN EVIDENTIARY HEARING, IT WOULD HAVE TO FIND OR IGNORE THREE SIGNIFICANT CATEGORIES OF UNREBUTTED EVIDENCE. AND THE FIRST CATEGORY INVOLVES THE EXPERTISE OF DR. WISE AND WHAT DOCTOR WISE DID IN THIS CASE.

ONE OF THE ISSUES WAS WHETHER OR NOT THE ATTORNEY FAILED TO HAVE A VOLUNTARY INTOXICATION DEFENSE, YES?

YES.

BUT HOW DOES DR. WEISS'S TESTIMONY FIT INTO THAT? BECAUSE IT DOESN'T GO TO THAT PARTICULAR ISSUE YET. AS DEFENSE ATTORNEY POINTS OUT, THERE ARE ALL OF THESE INDICATIONS IN THE RECORD THAT THE GUY KEPT SAYING HE WAS HIGH AND HAD BEEN TAKING COCAINE DURING THE TIME OF THE INCIDENT.

OKAY. WELL, ACTUALLY THAT GOES TO THE SECOND TWO CATEGORIES OF EVIDENCE THAT THIS COURT WOULD HAVE TO IGNORE. FIRST OF ALL, THE DEFENDANT DID, IN HIS CONFESSION, TALK ABOUT BEING PANICKED, AND HIGH ON COCAINE, BUT AT NO TIME DID HE EVER SAY HE WAS NOT AWARE OF WHAT HE WAS DOING. AND AS A MATTER OF FACT, IN TWO SEPARATE PARTS OF THE DEFENDANT'S STATEMENT TO THE POLICE, THE DEFENDANT SAYS, OFFICER PIZANTE ASKS HIM, SO THE GUN FALLS OUT OF YOUR SHORTS. REAVES YES, SIR YES, SIR. HE STEPPED ON IT. I PUSHED HIS NEO IT AND SAID, OFFICER, I AM NOT GOING TO GIVE YOU MY GUN, BECAUSE YOU DONE CHECKED ME OUT. I AM CLEAN AND EVERYTHING. ALL I WANT TO DO IS GO HOME. THAT IS WHEN I HAD HIM RIGHT THERE. THE DEFENDANT THEN HAD THE GUN, AND THE OFFICER AT THAT POINT WAS UNARMED. HIS ARMS WERE UP LIKE THIS.

BUT 3.850 COUNSEL IS SAYING THAT, REALLY, THE ONLY VIABLE DEFENSE HE CONFESSED TO THE SHOOTING RIGHT AFTER, THE ONLY VIABLE DEFENSE WAS INVOLUNTARY IN DOCKS INDICATION -- INTOXICATION, AND THAT THAT DO HAVE TAILED WITH THE WITNESSES, SAYING -- AND THAT DID YOU HAVE-TAILED WITH THE WITNESSES -- AND THAT DOVE-TAILED WITH THE WITNESSES'S

TESTIMONY THAT HE FREAKED OUT AND WITH HIS TESTIMONY THAT HE FREAKED OUT AND STARTED SHOOTING, BECAUSE HE WAS STRETCHED OUT ON COCAINE AT THE TIME, AND HIS TRIAL COUNSEL DID NOT PURSUE THIS AT ALL. HE DIDN'T USE THAT AS THE DEFENSE FOR MITIGATION OR ANYTHING. HE JUST IGNORED IT.

THERE IS ABSOLUTELY NO WAY THAT HE COULD HAVE PRESENTED A VALID CREDIBLE VOLUNTARY INTOXICATION DEFENSE IN THIS CASE. ABSOLUTELY NOT LOOK AT WHAT YOU HAVE HERE. YOU HAVE GOT A DEFENDANT THAT WALKS TWO MILES FROM HIS HOUSE TO GO CALL A CAB.

WHAT WAS HIS VIABLE DEFENSE?

EXCUSEABLE HOMICIDE, BASED ON THE FACT THAT, ALTHOUGH THEY COULDN'T CALL IT VIETNAM SYNDROME IN THE GUILT PHASE, IT WAS A HOMICIDE DEFENSE BASED ON THE FACT THAT THE COCAINE MADE HIM PARANOID, AND HE PERCEIVED THAT THE OFFICER WAS A THREAT TO HIS LIFE, SO THEREFORE HE HAD TO ELIMINATE THAT THREAT, WHICH IS BASICALLY THE COMPLETE OPPOSITE OF A VOLUNTARY INTOXICATION DEFENSE. YOU HAVE GOT A GUY THAT WALKS TWO MILES TO GO CALL A CAB. HE RUNS OUT OF CHANGE. HE CALLS 911 TO GET A CAB. OFFICER RASKOWSKI COMES ON THE SCENE. THEY A DISCUSSION. I HAVE OBVIOUSLY AT THAT POINT -- OBVIOUSLY AT THAT POINT OFFICER RASKOWSKI IS IN NO WAYAL ALARMED AT THE DEFENDANT'S BEHAVIOR. HE CALLS 911 BACK AND EVEN REFERS TO THE DEFENDANT AS A GENTLEMAN. HE CALLS TO THE DISPATCH AND SAYS TO THE DISPATCH OFFICER, PLEASE CALL THIS GENTLEMAN A CAB FOR ME, AFTER TALKING TO REAVES AND MAKING SURE AND CHECKING OUT HIS NAME AND ADDRESS, SO AT THAT POINT --

HOW IS THE TESTIMONY CONCERNING HIM BEING JITTERY AND THIS DEFENSE THAT HE PUT ON, HOW IS THAT OPPOSITE OF INVOLUNTARY INTOXICATION, BECAUSE WHAT YOU ARE REALLY SAYING, EVEN WITH THAT DEFENSE, THAT THIS MAN HAD TAKEN ALL OF THESE DRUGS AND THEREFORE IT MADE HIM PARANOID. I MEAN IT SEEMS TO ME THAT THIS KIND OF DOVETAILS INTO THE DEFENSE THAT THEY ARE NOW MAKING THE COP SIT.

I THOUGHT INVOLUNTARY INTOXICATION DEFENSE WAS THAT YOU COULD NOT FORM THE SPECIFIC INTENT TO KILL, AND WE HAVE JUST OPPOSITE HERE. ABSOLUTELY THIS OFFICER WAS RUNNING AWAY FROM THE SCENE, AND THE DEFENDANT SHOOTS HIM FOUR TIMES IN THE BACK! AND, BUT, EVEN BEFORE WE GET TO THAT, THEN WE HAVE A DEFENDANT WHO GETS THE GUN FROM THE OFFICER, SO HE IS NOT THAT STRUNG-OUT, WHERE HE ISABLE TO GET THE GUN FROM THE OFFICER. THE OFFICER STARTS BACKING UP. THE DEFENDANT SAYS TO HIM IT IS EITHER ME OR YOU. THE DEFENDANT, EXCUSE ME, OFFICER RASKOWSKI TURNS TO RUN AND KISS HIM IN THE BACK, SHOOTS HIM FOUR TIMES. THEN AT THAT POINT THE DEFENDANT HAS THE WHEREWITHAL TO BE ABLE TO GO SEVEN MILES IN THE WOODS AND UNDERBRUSH, TO AVOID DETECTION, TO A FRIEND'S HOUSE, BEFORE HE GETS TO THE FRIEND'S HOUSE HE IS ABLE TO CALL. THE FRIEND, JERRY BRYANT, TO MEET HIM THERE, SO HE CAN GET HIM OUT OF TOWN. HE DISCLOSES -- HE DISPOSES OF THE GUN. HE DISPOSES OF THE CLOTHES. HE TAKES A SHOWER AND HE GOES OFF TO GEORGIA. WHERE IS THERE AN INVOLUNTARY INTOXICATION DEFENSE THERE?

AM I CORRECT THAT, WAS ONE OF THE FACTORS THAT HE DIDN'T KNOW THE DIFFERENCE BETWEEN RIGHT AND WRONG?

NO. ONE OF THE FACTORS WAS AN INVOLUNTARY INTOXICATION DEFENSE. AS I TOLD YOU, SOME OF THE TERMS ARE HIS ABILITY TO GET AWAY, AND PLEASE LOOK AT THE STATEMENT, WHERE HE SAYS --

I THOUGHT THE TRIAL COURT EXPLICITLY SET OUT, IN HIS TRIAL COURT ORDER, THAT WHAT JUSTICE SHAW JUST REPEATED WAS FACTOR IN HIS DENIAL FOR AN EVIDENCIARY HEARING. DIDN'T HE?

HE MAY HAVE REFERENCED THAT PORTION OF THE RECORD. HOWEVER, IN CONCLUSION, THE COURT SAID THE CLAIM IS REFUTED BY THE RECORD. THERE WAS NO EVIDENCE TO SUPPORT THE VOLUNTARY INTOXICATION DEFENSE. THAT IS APPARENTLY. AND THAT IS WHY IT WAS NOT USED.

BUT YOU DON'T DENY THAT THERE WAS LOTS OF EVIDENCE THAT HE WAS INTOXICATED ON COCAINE?

I ABSOLUTELY DO DENY.

WHAT WERE ALL THESE REFERENCES IN HIS CONFESSION?

THE SELF-SERVING REFERENCES BY THE DEFENDANT THAT HE WAS PANICKED. OKAY. AND THAT --

IN OTHER WORDS THERE ARE NO REFERENCES IN HIS CONFESSION THAT HE WAS HIGH ON COCAINE?

YES. HE SAID HE WAS -- BUT --

ISN'T THAT EVIDENCE THAT HE WAS INTOXICATED?

NO.

I SEE.

NO, AND AS A MATTER OF FACT, IN THAT SAME CONFESSION, JUSTICE ANSTEAD, HE SAYS I COULDN'T LET THE OFFICER GET THE GUN, BECAUSE I AM AN EX-FELON, SO THE OFFICER STARTED TO BACK AWAY. HE GOT TO THE BACK OF THE CAR. TURNED RIGHT AROUND THE CORNER ON THE PASSENGER SIDE, HE STARTED RUNNING AWAY. THE OFFICER ASKED HIM, SO THEN WHAT HAPPENED? THAT IS WHEN I RAISED MY GUN AND STARTED SHOOTING AT HIM. TWO --

ISN'T THE VERY FACT THAT THE STATE HAD AN IRONCLAD CASE AGAINST THIS DEFENDANT, THE EVIDENCE OF HIS GUILT WAS OVERWHELMING, THAT REQUIRES THE DEFENSE LAWYER TO LOOK, TO SEE IF THERE IS SOME DEFENSE THAT HE CAN PUT UP HERE, AND WITH THIS CONFESSION, ISN'T STARING IN HIS FACE THE FACT THAT THIS MAN HAD CONSUMED THESE QUANTITIES OF COCAINE? AND, OF COURSE WE ALL OUT THERE, IN TRYING TO REMOVE THIS SCOURGE ARE SAYING CONSTANTLY THAT COCAINE AND THESE OTHER TERRIBLE DRUGS ARE ONE OF THE THINGS THAT ARE RESPONSIBLE FOR THIS HORRIBLE CONDUCT, SUCH AS OCCURRED HERE. NOW, HOW CAN A LAWYER WHO SEES THAT IN THIS DETAILED CONFESSION TIME AFTER TIME AFTER TIME, AND INDEED DECIDES TO TRY TO PUT ON A DEFENSE THAT RELATES TO THAT, IN THE SENSE OF THE VIETNAM VETERAN SYNDROME, IGNORE, THOUGH, IT THAT THE DEFENDANT, HIMSELF, REPEATEDLY SAYS THAT HE WAS ON COCAINE? NOW, YOU ARE TALKING ABOUT THAT THERE MAY BE PLENTY OF EVIDENCE, OBVIOUSLY, THE JURY REJECTED THE VIETNAM SYNDROME DEFENSE, AND AS WELL COULD REJECT A VOLUNTARY INTOXICATION DEFENSE, BECAUSE YOU ARE POINTING OUT THERE IS PLENTY OF EVIDENCE THAT HE KNEW WHAT HE WAS DOING, BY THE STATEMENTS HE MADE, BUT HOW COULD THE LAWYER REASONABLY IGNORE ALL OF THESE STATEMENTS THAT HE WAS HIGH ON COCAINE, AND HOW CAN YOU SAY, THEN, THAT THERE IS NO EVIDENCE THAT HE WAS ON COCAINE, AND THAT IS WHAT YOU ARE SAYING, ISN'T IT?

TO SAY THAT I HIM PANICKED OR HIGH ON COCAINE DOES NOT EQUATE TO I DIDN'T KNOW WHAT I WAS DOING. IT ABSOLUTELY DOES NOT, AND NOWHERE IN HIS CONFESSION --

ALL WE ARE TALKING ABOUT, HERE, IS HAVING A HEARING. WE ARE NOT TALKING ABOUT THE

ULTIMATE DECISION THAT COMES OUT OF THE HEARING. WE ARE TALKING ABOUT WHETHER THERE IS ENOUGH EVIDENCE AND WHETHER THE RECORD, THE RECORD, HERE, WOULD HAVE TO DEMONSTRATE THAT THERE IS NO EVIDENCE THAT HE WAS HIGH ON COCAINE, WOULD IT NOT? IN ORDER TO DENY A HEARING?

NO, SIR. I DON'T THINK THAT. I THINK ALL THE RECORD HAS TO SHOW, THAT THERE WAS OVERWHELMING EVIDENCE THAT HE KNEW EXACTLY WHAT HE WAS DOING, AND I STILL TAKE ISSUE AT THE FACT THAT THE DEFENDANT SAID ALL HE SAID WAS HE WAS STRUNG-OUT ON COCAINE. HE NEVER SAID HE DIDN'T KNOW WHAT HE WAS DOING. AS A MATTER OF FACT --

WHAT DOES STRUNG-OUT ON COCAINE MAIN MEAN?

IT PANICKED -- COCAINE MEAN?

IT PANICKED. HE WAS PARANOID. THAT IS WHAT HE SAID. HE WAS AFRAID. WHEN HE SAW HIS GUN DROP, HE THOUGHT AH-OH, I AM AN EX-FELON. AS A MATTER OF FACT AT THE END HE SAID I DIDN'T GIVE UP MY GUN TO THE OFFICER, BECAUSE I AM AN EX-FELON, AND I KNOW IF I GOT CAUGHT WITH THAT GUN AND THE MAN TAKE ME DOWN THERE, I AM GOING TO GET A MANDATORY THREE YEARS, ALREADY, ON THE GUN. HE WAS THINKING THAT WHILE THIS WHOLE THING WAS GOING DOWN. HOW DOES THAT SHOW THAT HE DOESN'T KNOW WHAT IS HAPPENING?

ARE WE DEALING IN RESPECT TO THIS PROVISION, THIS CLAIM? THIS IS A INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM?

YES, SIR.

AND THE JUDGE, IN THE ORDER, WHICH WAS RATHER DETAILED HE WAS NOT SO PRESENTABLE TO KNOW RIGHT OR WRONG, TOGETHER WITH DRUG OR EVIDENCE OF ALCOHOL ABUSE TO NEGATE THE SPECIFIC INTENT. WHAT WAS THE ALLEGATION IN THE MOTION HERE?

WELL, THAT THE, THAT MR. KIRCHNER DID NOT ADEQUATELY PURSUE BOTH THE VOLUNTARY INTOXICATION DEFENSE. ACTUALLY THAT IS, WHERE YOU ARE READING FROM, JUSTICE WELLS, IS FROM THE PENALTY PHASE PORTION OF IT. I AM NOT SURE IF YOU ARE GOING TO THE PENALTY PHASE OR THE GUILT PHASE.

OKAY.

BUT, ALSO, AT THE GUILT PHASE WHEN THEY GETTING IN THE VIETNAM SYNDROME, AND THE REASON IT WASN'T LET IN WAS BECAUSE THERE WAS NOT ENOUGH EVIDENCE OF INVOLUNTARY INTOXICATION, WHICH THIS COURT, I MIGHT ADD, FOUND ON DIRECT APPEAL, AND IT IS AT THAT POINT WHERE HE SAID, IN TERMS OF THE GUILT PHASE, THAT IT SIMPLY WAS REASONABLE TRIAL STRATEGY, BECAUSE THERE WAS NO EVIDENCE TO SUPPORT IT. THERE IS NO EVIDENCE TO SUPPORT AN INVOLUNTARY INTOXICATION DEFENSE.

WHAT PAGE ARE YOU LOOKING AT?

I AM LOOKING, RIGHT NOW, AT PAGE 1099.

1099 OF THE, AND THAT IS PART OF THE TRIAL JUDGE'S ORDER.

YES, SIR.

UNDER --

RIGHT NOW I AM LOOKING AT 22-B.

B.

LET'S SEE. REASONABLE. THE COURT IS AWARE THAT A DETERMINATION OF A REASONABLE TRIAL STRATEGY IS BEST MADE AT THE EVIDENTIARY HEARING. AND THEN RIGHT ABOVE THAT, HE STARTS THE PARAGRAPH, WITH THIS CLAIM IS, ALSO, REFUTED BY THE RECORD. I WOULD, ALSO, ASK THE COURT TO LOOK AT, ON PAGE 1092, THAT IS WHERE HE TALKS ABOUT THE BIAS STATE VERSUS BIAS ARGUMENT. THE RECORD DEMONSTRATES THAT VOLUNTARY INTOXICATION WAS NOT AN AVAILABLE DEFENSE.

THAT IS WHERE I WAS READING.

RIGHT. OKAY. ACTUALLY, THEN, I WAS LOOKING ABOVE THAT, IN TERMS OF THE PENALTY PHASE. I GUESS BOTH OF THOSE, IN ESSENCE, KIND OF SEGUE TOGETHER, IN TERMS OF WHETHER OR NOT COUNSEL WAS INEFFECTIVE FOR FAILING TO PUT ON A VOLUNTARY INTOXICATION DEFENSE, AND IT, ALSO, TIES IN WITH THE "A" CLAIM.

LET'S JUST FOCUS ON THAT AND THEN WE WILL GO TO THE OTHER.

OKAY.

I THINK INSTEAD OF HAVING THESE BLEED OVER ON EACH OTHER IS CREATING SOME CONFUSION. WITH NO OTHER VIABLE DEFENSE, WHY WASN'T COUNSEL INEFFECTIVE? BY NOT FOCUSING ON THAT, AND DOESN'T IT AT LEAST MERIT A HEARING, TO SEE WHETHER HE WAS OR NOT?

NOT IN THIS CASE, BECAUSE THE DEFENSE, AT THE GUILT PHASE, EVEN THOUGH HE WAS NOT ALLOWED TO PUT ON THE QUOTE/UNQUOTE VIETNAM STRESS SYNDROME, BECAUSE THERE WAS NO EVIDENCE OF VOLUNTARY INTOXICATION, AS FOUND BY THIS COURT, HE STILL WAS ABLE TO KIND OF GET IT IN THE BACK DOOR, BY CLAIMING EXCUSEABLE HOMICIDE, AND HE DID GET AN INSTRUCTION ON VOLUNTARY INTOXICATION DEFENSE, BY THE WAY. THE STATE DIDN'T OBJECT TO THAT, BASED ON THE DEFENDANT'S STATEMENT THAT HE WAS STRUNG-OUT THAT NIGHT. OKAY. SO HE WAS STILL ABLE TO GET IN THE BACK DOOR WHAT HE COULDN'T GET IN THE FRONT DOOR, AND THAT IS SAYING, OKAY, I WAS PARANOID. I WAS HIGH. BUT I WASN'T THAT HIGH. AND NOWHERE DOES HE SAY THAT. SO HE IS STILL ABLE TO TRY TO MAINTAIN SOME CREDIBILITY, GET THAT DEFENSE IN, WHEN HE IS UP AGAINST ALL THE PURPOSEFUL ACTIONS, UNREBUTTED, THAT I MENTIONED, AND I HAVEN'T EVEN GOTTEN INTO, YET, HINT ONE'S STATEMENTS, WHERE -- HINTON'S STATEMENTS, WHERE THE OFFICER BEGGED AM NOT TO SHOOT HIM, AND THE DEFENDANT SAYS, TO HIM, IT IS EITHER ME OR YOU. NOW, THE JURY HEARD ALL THAT. HOW COULD YOU COUP WITH A STRAIGHT UP VOLUNTARY INTOXICATION DEFENSE, BASED ON THOSE UNREBUTTED AND UNREFUTED FACTS? IT WAS JUST SIMPLY IMPOSSIBLE. COUPLED WITH THE DEFENDANT'S TWO STATEMENTS TOWARDS THE END OF HIS CONFESSION, WHERE HE SAID IT WAS EITHER ME OR HIM. I AM AN EX-FELON. I CAN'T GET CAUGHT WITH THIS GUN. THAT IS WHAT IT WAS, AND IN TERMS OF HAVING A HEARING ON THAT, AGAIN, I THINK THE EVIDENCE IS CLEAR WHAT WAS AVAILABLE AND WHAT WASN'T, AND BASED ON RUTHERFORD AND KNIGHT, I THINK THE COURT, AND THE TRIAL COURT WAS VERY AWARE OF THIS COURT'S, HOW THIS COURT FAVORS EVIDENTIARY HEARINGS, AND GASKINS CAME OUT, AND THE COURT STILL SAID, BASED ON THIS RECORD THERE IS NO POSSIBLE WAY HE COULD HAVE PRESENTED A VOLUNTARY INTOXICATION.

EXACTLY WHY DID THE TRIAL COURT DENY THE HEARING, IN YOUR OPINION?

ON THIS CLAIM? BECAUSE IT WAS REFUTED FROM THE RECORD.

BECAUSE WHAT?

IT WAS REFUTED FROM THE RECORD. BASED ON, AND DON'T FORGET, WE HAVE A VERY DETAILED,

EIGHT-HOUR DEPOSITION BY DR. WHITES, BEFORE THE RETRIAL, WHICH IS SOMEWHAT UNUSUALLY, AND IN THERE, HE DISCUSSES PAINSTAKINGLY, WHAT WAS AVAILABLE, AND WHAT WASN'T, AND IT WAS CLEAR HE TALKED ABOUT HOW THE DEFENDANT WAS IN SURVIVOR MODE. HE SAW A THREAT, AND HE HAD TO ELIMINATE IT, AND GIVEN THE FACT THAT THIS DEFENDANT DID HAVE SOME EXPERIENCE IN VIETNAM, HE WAS ABLE TO GATHER THAT ALL TOGETHER AND, IN SOME WAY, TRY TO COME UP WITH AN EXCUSEABLE HOMICIDE DEFENSE AT THE GUILT PHASE, AND THEN THAT WAS CONSISTENT, THEN, IN THE PENALTY PHASE, WHERE HE TALKED ABOUT HIS VIETNAM STRESS SYNDROME.

THE RECORD YOU ARE TALKING ABOUT IS THE RECORD OF THE TRIAL?

YES, SIR. THE EIGHT-HOUR DEPOSITION WAS PRIOR TO THE RETRIAL. AND IN TERMS OF, I WOULD JUST LIKE TO ADD ONE THING, IN TERMS OF DR. WHITES'S QUALIFICATIONS. THIS IS MAN WHO WAS PRACTICING FOR 20 YEARS IN CLINICAL AND MILITARY PSYCHOLOGY. HE WAS TRAINED AT WALTER REED HOSPITAL. HE WAS THE ASSISTANCE DIRECTOR THERE OF THE READJUSTMENT PROGRAM FOR THE VIT RANS ADMINISTRATION. AT THE TIME, HE WAS EMPLOYED IN THIS CASE, HE WAS THEN THE DIRECTOR OF A SIMILAR PROGRAM IN PALM BEACH COUNTY. HE HAD INTERVIEWED, TREATED, AND EVALUATED OVER 6,000 VIETNAM VETS. HE HAD TESTIFIED IN OVER 50 CASES FOR POST-TRAUMATIC STRESS SYNDROME, BEFORE THIS CASE. HE WAS QUALIFIED AS AN EXPERT. UNOBJECTED TO BY THE STATE, IN THIS CASE, IN BOTH CLINICAL PSYCHOLOGY, MILITARY PSYCHOLOGY, AND POST-TRAUMATIC STRESS SYNDROME. THIS MAN WAS EMINENTLY QUALIFIED IN HIS FIELD, AND GIVEN THE FACT THAT, IN THIS CASE, ALL, IF ANYTHING, THAT WILLIAM REAVES HAD GOING FOR HIM WAS THE FACT THAT HE WAS A VIETNAM VET. THAT IS IT. IF THERE ARE NO OTHER QUESTIONS.

WELL, RELATIVE TO THE JUROR ISSUE.

YES, SIR.

WOULD YOU SPEAK TO THAT. COUNSEL WAS INFORMED, AS I UNDERSTAND IT, THAT ONE JUROR HAD A SET OPINION, BEFORE HE DECIDED, BEFORE THE DELIBERATION STARTED, THAT HE TRIED TO GET OVER TO THE OTHER JURORS, AT LEAST THIS WAS WHAT WAS REPRESENTED TO DEFENSE COUNSEL, TRIAL KFS COUNSEL. DEFENSE COUNSEL LEARNED ABOUT THIS AND DID ABSOLUTELY NOTHING ABOUT IT. WHY WASN'T THAT INEFFECTIVE?

THIS CLAIM WAS PLED IN ONE SENTENCE, AND ALL IT SAID WAS WE HAVE LEARNED, THROUGH INVESTIGATION, THAT A JUROR TALKED ABOUT THE GUILT OF THE DEFENDANT THROUGHOUT THE TRIAL. IT DOESN'T NAME THE TWO JURORS WHO SUPPOSEDLY WENT TO COUNSEL, AND IT DOESN'T SAY WHEN THAT HAPPENED. SO FIRST OF ALL, BEFORE YOU CAN EVEN GET TO AN INEFFECTIVE CLAIM OBVIOUSLY THE TIMING OF WHEN THIS DEFENSE COUNSEL FOUND THAT OUT IS CRITICAL, AND NOWHERE AT ANY TIME DID THE DEFENSE TRY TO TELL THE COURT THAT. AND EVEN AT THE HUFF HEARING, WHEN --

DID DEFENSE COUNSEL TRY TO TELL THE COURT WHAT HE HAD FOUND OUT?

I AM SORRY. POSTCONVICTION COUNSEL, IN THEIR PLEADINGS. IF THEY ARE CLAIMING IN EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, ISN'T IT CRITICAL TO TELL, IN YOUR PLEADINGS, TO SAY IN YOUR PLEADINGS, THE TIMING THAT THE DEFENSE COUNSEL, KIRCHNER, WHEN HE KNEW, ALLEGEDLY KNEW ABOUT THIS, AT NO TIME DID THEY EVER TRY OR DID THEY EVER SPECIFY WHEN THAT WAS, AND AT NO TIME DO WE EVEN KNOW WHO THESE TWO JURORS ARE, AND AT THE HUFF HEARING, DEFENSE COUNSEL, POSTCONVICTION COUNSEL, THE ONLY THING THEY WANTED TO AMEND THE PLEADINGS WITH WAS THE NAME, THE SOURCE OF THEIR INVESTIGATION, WHO WAS THE TRIAL COUNSEL. AT NO TIME DID THEY TRY TO, THEN ENLIGHTEN THE COURT AS TO WHEN THIS ALLEGED CONVERSATION BETWEEN THESE TWO JURORS AND MR. KIRCHNER TOOK PLACE, AND AT THAT POINT, THE JUDGE SAID, IN DENYING THIS CLAIM, THE

JUDGE INVITED THEM TO DO A MOTION TO INTERVIEW JURORS. AND THEY HAD NEVER DONE THAT TO THIS DAY. MR. CHIEF JUSTICE: THANK YOU, MS MS. TERENZIO. MR. HENNIS, REBUTTAL.

BRIEFLY ON THE JUROR MISCONDUCT ISSUE, I THINK, IF YOU WILL LOOK AT THE HUFF HEARING, YOU WILL SEE THAT THE COURT REFUSED TO ALLOW US TO GO BEYOND THE FOUR CORNERS OF THE PLEADING. I THINK WE HAVE, IN THE, MY LAST RESPONSIVE BRIEF, I LAID OUT EXACTLY WHAT HAPPENED, AND I THINK IF YOU WILL LOOK AT THAT, YOU CAN MAKE UP YOUR OWN MIND ABOUT THAT. IT IS OBVIOUS, I THINK THAT, A HEARING IS REQUIRED ON THAT ISSUE. IN FACT, I THINK THIS CASE CRIES OUT FOR DE NOVO REVIEW BY THIS COURT ON A NUMBER OF DIFFERENT ISSUES, INCLUDING THE JUROR MISCONDUCT ISSUE AND THE GENERAL SUMMARY DENIAL ISSUE. GOING BACK VERY BRIEFLY, TO SOME OF THE DR. WHITES'S ISSUES, DR. WHITES DID TESTIFY ABOUT FLASHBACKS, BUT HE DIDN'T CALL THEM THAT. HE TALKED ABOUT FIREWORKS THAT MR. REEVES REPORTED SEEING AT THE TIME OF THE OFFENSE, THAT RELATED BACK TO VIETNAM. MR. REAVES WAS ARRESTED IN ALBANY, GEORGIA, AND THE ARRESTING OFFICER FOUND HIM WITH FOUR OUNCES OF COCAINE, WHICH HE REPORTED THAT HE HAD BROUGHT FROM HIS HOUSE IN FORT LAWSUIT DADE -- IN FT. LAUDERDALE, HIS MOTHER'S HOUSE, PARDON ME IN VERO. ALSO MR. HINTON'S AFFIDAVIT IS CRITICAL IN THIS. WE ATTACHED THREE AFFIDAVITS TO OUR 3.850 PLEADING. I ACTUALLY ARGUED, BECAUSE I WAS JUNIOR COUNSEL AT THE TIME, AGAINST ATTACHING THOSE, BUT MR. HINTON'S AFFIDAVIT SPECIFIES THAT MR. REAVES TOLD HIM THAT HE WAS INTOXICATED AT THE TIME OF THE OFFENSE, ON COCAINE, IN NO UNCERTAIN TERMS, AND OF COURSE MR. HINTON NEVER TESTIFIED AT THE SECOND PROCEEDING. HIS TESTIMONY FROM THE FIRST PROCEEDING WAS READ INTO THE RECORD. AND OBVIOUSLY, UNLESS MR. HINTON IS TESTIFYING BEFORE THE COURT, I JUST DON'T THINK THE CREDIBILITY FINDINGS BY THE COURT, BASED ON THE AFFIDAVIT ATTACHED, ARE APPROPRIATE IN THIS CASE. MR. HINTON, AT AN EVIDENTIARY HEARING, WOULD BE ABLE TO EXPAND SIGNIFICANTLY, ON WHAT ACTUALLY HAPPENED. OF COURSE MR. HINTON WAS CHARGED AS AN ACCESSORY AFTER THE FACT, WHICH PROVIDES SOME INDICATION, I THINK, AS TO WHY HE WOULD HAVE MADE SOME OF THE STATEMENTS HE MADE BACK AT THE TIME OF THE OFFENSE, WHEN HE WAS ARRESTED. HINTON'S AVAILABILITY AT THE EVIDENTIARY HEARING WAS NEVER REALLY RAISED, AND I THINK HE WILL BE AVAILABLE IN THE FUTURE AT AN EVIDENTIARY HEARING. THE STATE ARGUED THAT YOUR FINDING OF HARMLESS ERROR ON DIRECT DIRECT APPEAL, -- ON DIRECT APPEAL, REGARDING THE PRECONCLUSION OF VIETNAM SYNDROME EVIDENCE AT THE GUILT PHASE, PREINCLUDES A PREJUDICE FINDING IN THIS CASE, AND I THINK, AGAIN, ALL I CAN SAY IS THANK GOODNESS YOU CAN DO A DE NOVO REVIEW OF EVERYTHING THAT HAS HAPPENED IN THIS CASE. WE WERE SHOCKED, WHEN WE DIDN'T GET AN EVIDENTIARY HEARING ON ANY ASPECT OF THIS CASE FORM THE STATE, IN FACT, CONCEDED THAT MR MR. REEVES WAS -- MR. REAVES WAS HIGH ON COCAINE, SEVERAL TIMES DURING THEIR CROSS-EXAMINATION. I THINK, IF YOU WILL LOOK AT THE RECORD. THERE --

IN THE GUILT PHASE, HOW WOULD YOU ADDRESS THE STATE'S ARGUMENT THAT THE FACT THAT HE WAS HIGH ON COCAINE DOES NOT NECESSARILY DIMINISH THE FACT THAT HE WAS CONSCIOUS OF WHAT HE WAS DOING AND KNEW THE DIFFERENCE BETWEEN WHAT HE WAS DOING AND WHETHER IT WAS RIGHT AND WRONG AND THIS TYPE OF THING?

I THINK THAT IS WHY THE BUNNY BIAS LINE OF CASES IS IMPORTANT, BECAUSE OUR EXPERTS, AT AN EVIDENTIARY HEARING, WOULD BE ABLE TO TESTIFY ABOUT THE PRESENCE OF THE MAJOR MENTAL DISORDER, POST-TRAUMATIC STRESS DISORDER THAT WAS PRESENT IN THIS CLIENT AT THE TIME OF THE OFFENSE, ABOUT THE BRAIN DAMAGE THAT HE SUFFERS, ABOUT THE POLYSUBSTANCE ABUSE, WITH THE ENTIRE UNIVERSE OF BACKGROUND MATERIALS THAT WE CAN PROVIDE, AS WELL AS AN EXPERT IN SUBSTANCE ABUSE THAT WE WOULD PUT ON AT THE EVIDENTIARY HEARING, AND WE WOULD BE ABLE TO MAKE, I THINK, A PRETTY FAIR CASE FOR AN INTOXICATION DEFENSE AT THE TIME OF THE OFFENSE, BUT WE NEVER EVEN GOT TO THE POINT WHERE WE WERE ALLOWED TO PUT ON THE EVIDENCE, JUSTICE SHAW, THAT WE WOULD HAVE DONE IN AN EVIDENTIARY HEARING. NOW, OF COURSE, THIS RELATES BACK TO THE INEFFECTIVE

ASSISTANCE. MR. CHIEF JUSTICE: YOUR TIME IS UP.

THANK YOU, MEMBERS OF THE COURT, MR. CHIEF JUSTICE.