Alfred Lewis Fennie v. State of Florida

CHIEF JUSTICE: NEXT CASE ON THE COURT'S DOCKET IS FENNIE VERSUS STATE.

GOOD MORNING. MAY IT PLEASE 9 COURT. MY -- MAY IT PLEASE THE COURT. MY NAME IS MICHAEL REITER AND I AM WITH THE NORTHERN REGION OFFICE OF THE CAPITAL COLLATERAL COUNSEL AND WITH ME IS JUDY WALKER OF THE CAPITAL COLLATERAL COUNSEL'S OFFICE. WE HAVE PRESENTED A WRIT OF HABEAS CORPUS AND I WOULD LIKE TO FOCUS ON JUST FIRST TWO CLAIMS IN HIS BRIEF, BASED ON THE TIME CONSTRAINTS I AM UNDER. ALTHOUGH IT MIGHT SEEM ODD THAT I ASK, I AM GOING TO FOCUS ON PHASE II, FOR SIMPLICITY'S SAKE. CLAIM ONE WE WILL LABEL AS THE RACE CLAIM. MR. FENNIE'S ATTORNEYS HAD A DUTY TO DO A PROPER AND THOROUGH INVESTIGATION INTO MR. FENNIE'S PAST, INTO HIS LIFE, FOR POSSIBLE MITIGATION TO PRESENT TO THE JURY, BECAUSE AFTER ALL, THAT IS WHAT THE WHOLE PURPOSE OF THE PENALTY PHASE DEFENSE IS, IS TO SHOW THE INDIVIDUAL, SHOW WHAT IT IS ABOUT HIM AND SHOW WHY HE DESERVES TO LIVE. THAT IS WHERE THE COUNSEL FAILED IN THIS CASE. THEY DID NOT CONDUCT A SUFFICIENT INVESTIGATION. THEY BARREL CON DEDUCTED -- THEY BARELY CONDUCTED AN INVESTIGATION IN THIS CASE, AND BECAUSE OF THAT NOT ONLY WAS THERE A PLET OR AFTER MITIGATING INFORMATION -- A PLETHORA OF MITIGATING INFORMATION THAT, I SHOULD SAY, BUT ALSO THAT THE ATTORNEYS DID NOT PREP THE WITNESSES AS THEY WENT ON AND LASTLY AND MOST IMPORTANTLY FOR THIS COURT, BECAUSE IT TIES IN WITH THE RACE CLAIM, IS THE FACT THAT ACTUAL DAMAGING TESTIMONY CAME OUT DURING THE PENALTY PHASE, THAT THE STATE WAS ABLE TO SKILLFULLY USE AND TURN AGAINST MR. FENNIE.

YOU HAD AN EVIDENTIARY HEARING IN THE TRIAL?

YES. THIS IS FROM DENIAL OF POST-CONVICTION RELIEF IN THE CIRCUIT COURT. WE DID HAVE AN EVIDENTIARY HEARING ON THE TWO CLAIMS THAT I AM ASKING TO FOCUS ON.

WHAT DID THE EVIDENTIARY HEARING REFLECT THAT COUNSEL DID? THAT IS IN OTHER WORDS WHAT DID HE DO IN TERMS OF AN INVESTIGATION IN THE PRESENTATION OF EVIDENCE DURING THE PENALTY PHASE?

WHAT WE HAD IS CONFLICTING TESTIMONY, FROM THE ATTORNEY, THEMSELVES, THEY SAID THAT THEY SPENT SEVERAL HOURS AND SEVERAL DIFFERENT TIMES WHEN THEY SPOKE WITH THE DEFENDANT'S FAMILY. HOWEVER, THE DEFENDANT'S FAMILY TESTIFIED AT THE EVIDENTIARY HEARING, THAT THE TIMES THAT THEY WERE CONTACTED BY DEFENSE COUNSEL WERE ALMOST SCHRUS I FEEL TO TRY TO HAVE THEM, THE FAMILY, ASSIST DEFENSE -- EXCLUSIVELY TO HAVE THEM, THE FAMILY, ASSIST DEFENSE COUNSEL IN TAKING A DEAL, AND I WOULD POINT OUT THAT THERE WAS NO LARGE AMOUNT OF NOTES FROM THE ATTORNEY FILE THAT WERE ENTERED INTO EVIDENCE, SHOWING THAT THERE WAS DETAILED INFORMATION TAKEN FROM MR. FENNIE'S FAMILY.

BUT MR. FENNIE'S MOTHER AND SISTER, IN FACT, TESTIFIED AT THE PENALTY PHASE OF THIS PROCEEDING, CORRECT?

YES. THAT'S CORRECT, JUSTICE QUINCE.

AND AT THE POSTCONVICTION PHASE, YOU, THEN, HAD ANOTHER SISTER WHO TESTIFIED,

CORRECT?

CORRECT.

SO WHAT IS THE DIFFERENCE THAT YOU ARE SAYING HERE, QUALITATIVELY, BETWEEN THE TESTIMONY THAT WAS ACTUALLY PRESENTED AND WHAT YOU NOW SAY SHOULD HAVE BEEN PRESENTED?

IF YOU TALK ABOUT THE ACCURATE TESTIMONY OR WHAT WE COULD DEEM THE ACCURATE TESTIMONY THAT WAS PRESENTED DURING THE PENALTY PHASE AT MR. FENNIE'S TRIAL, WOULD HAVE BEEN BASICALLY SUMMED UP THAT MR. FENNIE WAS A NICE GUY WHO HELPED WITH HIS NIECE, HELPED PEOPLE WHEN THEY NEEDED HELP WITH SOMETHING IF HE COULD AND OTHERWISE BEHAVED HIMSELF WHILE HE WAS IN JAIL AWAITING TRIAL. LIKE I SAID, THERE WAS PLENTY OF INCORRECT AND FALSE INFORMATION THAT WAS PRESENTED.

SHARE THAT WAS, WHAT YOU CONSIDER TO BE FALSE.

WHAT I CONSIDER TO BE INCORRECT TESTIMONY FOR STARTERS, MR. FENNIE'S MOTHER, WHO WAS PRETTY MUCH A WITNESS AT THE TIME OF THE TRIAL AND WHO WAS DEAD BY THE TIME OF THE EVIDENTIARY HEARING, SOME OF THE INCORRECT TESTIMONY THAT CAME OUT OF HER BECAUSE OF THE TRIAL COUNSEL'S LACK OF PREPARATION WAS, NUMBER ONE, THAT MR. FENNIE, OF ALL OF HER CHILDREN, WAS THE ONLY ONE HAD HAD DONE ANYTHING WRONG. THAT ALL OF THE CHILDREN DIDN'T HAVE ANY PROBLEMS. THAT WAS AN AND OMNI IN THE -- AN AND ONLY LEE IN THE CASE. DURING -- AND ANOMOLE IN THIS CASE. ONE BROTHER WAS SITTING IN PRISON WHILE HE WAS AWAITING TRIAL AND THE OTHER SISTER HAD PROBLEMS AND THE OTHER SISTER STARTED HER FAMILY WHILE SHE WAS A TEENAGER. WHATEVER STRUGGLES THE FAMILY HAD GROWING UP, ONLY ONE CHILD WENT BAD, AND THAT IS NOT WHAT THE -- IS NOT WHAT YOU WANT THE JURY TO HEAR.

DID THE MOTHER TESTIFY AT THE TRIAL, WITH REGARD TO THE UPBRINGING OF MR. FENNIE?

NO. SHE JUST SAID AND ANOTHER THING SHE SAID FALSELY IS THAT WHEN YOU LIVE IN THE PROJECTS, EVERYTHING IS OKAY IF YOU MIND YOUR OWN BUSINESS AND THAT IS NOT THE CASE AND THE SISTER GOT UP AND EXPLAINED WHAT THE PROJECTS WERE LIKE FOR THE FENNIE FAMILY, INCLUDING MR. FENNIE, AND THAT WAS ONE OF FEAR AND VIOLENCE. WHAT THE MOTHER NEVER TESTIFIED TO, BECAUSE THE TRIAL ATTORNEYS NEVER GOT IT OUT OF HER OR ANY OTHER WITNESSES THAT PUT ON, WAS HOW HARD IT WAS ON MR. FENNIE BEING BEAT UP, BEING CHASED, THAT MR. FENNIE WAS NOT ALLOWED TO LEAVE THE APARTMENT WITHOUT HIS MOTHER.

WAS THERE EVIDENCE OF THAT IN THE ORIGINAL RECORD OF THE ORIGINAL TRIAL?

THE EVIDENCE IS THAT WHAT COMES ACROSS AS A PRETTY NORMAL CHILDHOOD FOR MR. FENNIE. SHE INCORRECTLY STATED THAT THEY MOVED TO THE PROJECTS IN 1979 AND IT DOESN'T TAKE TOO MUCH FOR THE JURY TO DO TO THE MATH SAYING MR. FENNIE MOVED TO THE PROJECTS WHEN HE WAS 17. HE IS BASICALLY A GROWN MAN. HOW DOES THAT AFFECT HIM WHEN HE DIDN'T GET THERE UNTIL HE WAS 17, BUT IN FACT HE GOT THERE WHEN HE WAS 8 OR 9 YEARS OLD.

DID HE HAVE A SISTER TESTIFY?

YES.

DID SHE TESTIFY TO A NORMAL CHILDHOOD?

SHE WAS NOT ASKED TO TESTIFY. SHE WAS ASKED TO MAINLY TESTIFY ABOUT A HANDICAPPED DAUGHTER THAT MR. FENNIE WOULD HELP HER PICK UP AT THE BUS STOP WHEN HE COULD AND HELP THE OTHER DAUGHTER AND ENCOURAGE HER YOUNGER CHILDREN AS WELL.

WHAT WAS THE TRIAL COUNSEL'S REASON FOR WANTING TO PORTRAY THE PITH -- THE PICTURE THAT HE PORTRAYED? WAS IT A REASONED DECISION OR WAS IT JUST OUT OF IGNORANCE THAT THIS OTHER PART OF MR. FENNIE'S LIFE --

TRIAL COUNSEL LEE, AT THE EVIDENTIARY HEARING, HAD A LOT OF PROBLEMS RECALLING THING THAT IS HAD GONE ON AT THE TIME OF TRIAL, BUT BASICALLY A WHAT COMES OUT IS WHAT THEY WANTED TO DO WAS PICTURE MR. FENNIE AS A NICE GUY BECAUSE THEY DIDN'T HAVE ANYTHING ELSE TO GO WITH.

THE PROBLEM IS THERE WAS SOME TESTIMONY ABOUT HIM BEING NONVIOLENT, BUT THE MORE THAT, THIS WAS JUST SUCH A TERRIBLY VIOLENT CRIME, AND THE MORE YOU GET INTO THAT HE HAD A VIOLENT CHILDHOOD. HE IS 30 YEARS OLD AT THE TIME. I GUESS MY CONCERN IS I AM NOT SURE HOW YOU MEET THE SECOND PRONG OF STRICKLAND ON THIS TYPE OF TESTIMONY, WITH THE KIND OF AGGRAVATION THAT YOU HAVE IN THIS CASE.

WELL, I BELIEVE IF YOU ARE GOING TO WEIGH AGAINST THE AGGRAVATION, YOU ARE GOING TO HAVE TO WEIGH ALL OF THE PENALTY PHASE TESTIMONY THAT COULD HAVE BEEN BROUGHT AND THAT WAS NOT BROUGHT IN.

WHAT IS THE BEST YOU HAVE? I MEAN, THIS IS, THIS CASE INVOLVED AN EXECUTION STYLE MURDER, AND EVERY AGGRAVATOR THAT EXISTS, YOU, DO YOU HAVE ANYTHING THAT TAKES AWAY FROM THE AGGRAVATORS THAT WERE PRESENTED THAT WOULD CHANGE, ANYTHING ABOUT THE FACTS OF HOW THIS CRIME OCCURRED OR MR. FENNIE'S CULPABILITY IN IT.

WELL, BOTH DEFENDANTS WERE CONVICTED IN SEPARATE TRIALS, OF THE SAME MURDER, AND TRIAL COUNSEL DID SAY AT THE PENALTY PHASE HEARING THAT THEY WERE TURNING AND POINTING THE FINGER AT THE CODEFENDANT BEING THE MOST CULPABLE, AND THERE WAS TESTIMONY AVAILABLE REGARDING MR. FENNIE'S PERSONALITY AND THINGS HE HAD DONE IN HIS LIFE THAT DID NOT SHOW A VIOLENT PERSON, DID NOT SHOW SOMEONE WHO WOULD EVER HURT WOMEN, IN FACT SOMEONE WHO USUALLY WAS KNOWN FOR HELPING WOMEN, INCLUDING WOMEN WITH DRUG PROBLEMS. THERE WAS ALSO TESTIMONY THAT WAS AVAILABLE THAT COULD HAVE BEEN BROUGHT OUT BY LAY OR EXPERT WITNESSES, REGARDING MR. FENNIE'S OWN PERSONALITY TRAITS, BASED ON, INCLUDING BASED ON PSYCHOLOGICAL TESTING THAT HE WAS NOT ANY KIND OF LEADER TYPE PERSONALITY. HE WAS AN INDIVIDUAL WHO WAS EASILY SUSCEPTIBLE TO DURESS. HE WAS HE WAS ALWAYS TRYING TO PLEASE PEOPLE.

DID COUNSNECESSARILY THIS CASE SECURE SOME CONSULTATION -- DID COUNSEL, IN THIS CASE, SECURE SOME CONSULTATIONS WITH A DOCTOR. PEEL?

COUNSEL RETAINED DR. PEEL TO LOOK AT SOME INFORMATION, BUT DR. PEEL'S REPORT CAME BACK WITH SOME INFORMATION THAT I AM GIVING YOU REGARDING THE FACT THAT HIS HISTORY, AS WELL AS THE TESTING DONE ON MR. FENNIE, DOES NOT SHOW AN INDIVIDUAL WHO WOULD COMITY THIS KIND OF ACT, AND DR. PEEL SAID, HIMSELF, THAT YOU KNOW, AS FAR AS MR. FENNIE'S FUTURE DANGEROUSNESS, WHICH TRIAL COUNSEL WAS SURELY THINKING ABOUT IN THE PENALTY PHASE, BEING THAT THEY BROUGHT FIVE CORRECTIONAL OFFICERS IN TO TESTIFY THAT HE BEHAVED WELL LEADING UP TO TRIAL, NO BIG SHOCK, BUT IF THAT IS WHAT TRIAL COUNSEL WAS FOCUSING ON, THERE WAS EXPERT TESTIMONY THAT COULD EXPLAIN THAT THE PAST BEHAVIOR OF A DEFENDANT IS THE BEST INDICATOR OF WHAT THEIR FUTURE DANGNESS IS GOING TO BE. MR. -- DANG REST NEWS -- DANGEROUSNESS IS GOING TO BE. MR. FENNIE'S PAST INVOLVED CHECK FORGERY AND THE LIKE AND NO VIOLENCE, WHEREAS THE CODEFENDANT HAD A HISTORY OF VIOLENCE AND VIOLENCE TOWARDS WOMEN AND SUPPLYING

GUNS FOR CRIMES, WHICH IS EXACTLY WHAT HAPPENED IN THIS CASE. WHEN THE JURY CONVICTED MR. FENNIE GUILTY OF FIRST-DEGREE MURDER, THEY WERE NOT NECESSARILY SAYING THAT MR. FENNIE WAS THE PERSON WHO HELD THE GUN AND WAS THE PERSON WHO KILLED MISS SHEARIN. THE TRIAL COUNSEL HAS TO GO INTO THE PENALTY PHASE, WITH THE IDEA, ESPECIALLY BEING THAT IT WAS THEIR STRATEGY TO BEGIN WITH, THAT THE JURY STILL MIGHT BE HOLDING OUT THAT MR. FENNIE WAS NOT THE TRIGGERMAN, BUT THEY HAD EXPERT TESTIMONY FROM THEIR OWN EXPERT OR LIKE WHAT WE FOUND IN POSTCONVICTION THAT COULD HAVE GOTTEN UP AND EXPLAINED TO THE JURY THAT THIS IS NOT MR. FENNIE. SHOW THE INDIVIDUAL, WHAT HE IS, WHAT HE HAS DONE IN HIS LIFE, WHAT HE IS LIKE, AND THAT IS WHERE HE FAILED.

WHAT KINDS OF PROBLEMS DID THEY HAVE WITH THEIR EXPERT WITNESS TESTIFYING? DID THEY HAVE ANY PROBLEMS WITH DR. PEEL AND PROBLEMS IN PRESENTING HIS TESTIMONY FOR SOME REASONS?

THE ANSWER FROM THE EVIDENTIARY HEARING OR THE RECORD FROM THE EVIDENTIARY HEARING ARE NOT EXACTLY CLEAR ON THAT, AS FAR AS THEY COMMENTED THAT THEY WERE CONCERNED THAT BAD THINGS WOULD COME OUT FROM DR. PEEL, AS FAR AS THING THAT IS HAD HE BEEN TOLD BY MR. FENNIE, BUT THE ONLY THING IN DR. PEEL'S REPORT THAT IN ANY WAY SHE DID OR PUTS A NEGATIVE LIGHT ON MR. FENNIE IS THAT MR. FENNIE GAVE SOME DETAILS OF THE CRIME, WHEN HE WAS TELLING HIM WHAT OCCURRED, THAT WERE IN SOMEWHAT CONSTRASTING WITH WHAT WAS IN A POLICE REPORT THAT DR. PEEL WAS GIVEN, BUT THAT IS IT. OTHER THAN THAT, DR., I MEAN, THE STATE HAD THE SAME PROBLEM WITH THEIR WITNESSES THAT THE DEFENSE HAD WITH MR. FENNIE, VARIOUS STATEMENTS THAT HAD BEEN MADE IN THE PAST THAT WERE NOT CONSISTENT WITH WHAT WAS BEING TESTIFIED AT TRIAL OR IN MR. FENNIE'S CASE, WHAT WAS HIS LATER STORY, SO THERE WAS REALLY NO REASON TO BE SCARED TO PUT DR. PEEL OR ANY MENTAL HEALTH EXPERT ON, ESPECIALLY WHEN YOU WERE TRYING TO SHOW FUTURE DANGEROUSNESS, AND HE PUT FIVE CORRECTIONAL OFFICERS ON, ALL TO SAY THE SAME THING, THAT HE IS BEHAVING LEADING UP TO TRIAL. WHO WOULDN'T? THAT IS EXACTLY WHAT THE STATE SAID WHEN THEY GOT UP. IN FACT, EVERY BIT OF MITIGATION THAT THE DEFENSE WAS ABLE TO PUT FORWARD FOR MR. FENNIE, THE STATE WAS ABLE TO GRAB AHOLD OF AND PUT A SPIN ON IT AND TURN IT AGAINST MR. FENNIE. THEY DID SO VERY EFFECTIVELY AND IN MANY WAYS THAT TIE IN WITH THE FIRST CLAIM AND THAT IS THE RACE CLAIM, BECAUSE BASICALLY THE DEFENSE TRIED TO SAY THAT HE WAS A NICE GUY THAT HELPED WITH HIS DAUGHTER, EXCUSE ME, HIS NIECE, AND THEN THE STATE GETS UP AND SAYS MR. FENNIE HAS CHILDREN FROM VARIOUS MARRIAGES. DO YOU KNOW IF HE IS SUPPORTING THEM? DOES MR. FENNIE WORK? HE DOESN'T WORK ALL THE TIME.

HOW HAS WHAT YOU HAVE ENCOVERED CHANGE THAT PICTURE. THAT IS WHAT I AM HAVING TROUBLE WITH UNDERSTANDING, WHAT IS IT IN HIS LIFE THAT WOULD HAVE TAKEN WHAT OCCURRED HERE, IN THE CONSCIOUS ACTIONS OF THIS DEFENDANT, AND YOU KNOW, AND THE CODEFENDANT, AND TURNED THAT INTO A CASE THAT WOULD HAVE RESULTED IN THE JURY NOT RECOMMENDING DEATH AND THE JUDGE NOT IMPOSING THE DEATH PENALTY.

SHOWING THAT THE DEFENDANT IS NOT THE CODEFENDANT. SHOWING THAT THE DEFENDANT, AND EVERYTHING WE KNOW ABOUT THE DEFENDANT, FROM LAY TESTIMONY, PEOPLE WHO GREW UP WITH THE DEFENDANT, WHO KNEW THE DEFENDANT BOTH RIGHT BEFORE THE CRIME AS WELL AS BACK TO HIS CHILDHOOD AND PEOPLE WHO ALSO KNEW THE CODEFENDANT, MR. FRAZIER.

DIDN'T WE HAVE HERE AN EXAMINATION OF THE CODEFENDANT THAT INDICATED THAT HE HAD ALL OF THIS VIOLENT HISTORY? I MEAN, IT --

NO. I AM SORRY.

DON'T WE HAVE SOME INFORMATION IN THE RECORD ABOUT THIS CODEFENDANT, AS OPPOSED TO OUR DEFENDANT? I AM NOT --

ALL THAT CAME OUT AT THE TRIAL, FOR THE JURY, WAS THAT MR., THE CODEFENDANT, MR. FRAZIER, HAD PREVIOUS FELONIES. I BELIEVE IT MAY HAVE COME OUT THAT HE WAS INVOLVED IN A ROBBERY OR PREVIOUS ROBBERIES.

BUT A NUMBER OF FELONIES.

A NUMBER OF FELONIES BUT WITHOUT DETAILS OF WHAT THE FELONIES WERE. MR. FENNIE HAD FELONIES, TOO, BUT THEY WERE NONVIOLENT, AND SO THERE WAS A GOLDEN OPPORTUNITY TO SHOW THE JURY THAT MR. FENNIE'S FELONIES ARE FROM WRITING BAD CHECKS. MR. FRAZIER'S FELONIES ARE FOR COMMITTING CRIMES WITH GUNS THAT HE SUPPLIES THE GUNS FOR, AS WELL AS VIOLENCE AGAINST WOMEN, WHICH I THINK IS VERY IMPORTANT, CONSIDERING THE FACTS THAT THE STATE WAS RELYING ON TO GET A DEATH SENTENCE AGAINST MY CLIENT.

HOW WOULD THAT HAVE COME IN, BECAUSE I WOULD ASSUME THEY DID A NORMAL CROSS-EXAMINATION OF THE CODEFENDANT, WHO LATER BECAME OR WHO WAS THE CO-PERPETRATOR. HOW WOULD THAT HAVE COME IN, WITH REGARD TO --

ASKING HIM WHEN HE WAS ON THE STAND, WHEN THE CODEFENDANT WAS ON THE STAND.

AND ASK DEFAILS OF EACH ONE OF THOSE -- DETAILS OF EACH ONE OF THOSE FELONIES? IF HE ADMITS --

LET'S ASSUME HE WOULD HAVE ANSWERED HONESTLY OR WOULD HAVE KNOWN HIS OWN CRIMINAL PAST, SO IF HE WAS ASKED HAVE YOU EVER SUPPLIED GUNS FOR A CRIME AND HE ANSWERS TRUTHFULLY, THEN THAT IS SUFFICIENT AND PUTS THE INFORMATION BEFORE THE JURY. IF HE IS STUPID ENOUGH OR HIS MEMORY IS BAD ENOUGH TO ANSWER INCORRECTLY, THEN YOU CAN REALLY GET HIM ON CROSS-EXAMINATION WITH THAT AND WITH THE REPORTS, ET CETERA, BUT NOT EVEN THAT AMOUNT OF INFORMATION CAME OUT. THEY WERE TRYING TO POINT THE FINGER AT FRAZIER. THAT IS THE CODEFENDANT. POINT THE FINGER AT THE CODEFENDANT. YOU HAVE ALL OF THIS INFORMATION TO DO SO AND YOU COMPLETELY SAT ON YOUR HANDS, BUT WHAT DID COME OUT WAS ALL KINDS OF INFORMATION ABOUT MR. FENNIE FROM WITNESSES OWNERSHIP CLEARLY NOT PREPARED. DID -- WIT NEPZ WERE CLEARLY NOT PREPARED. -- WITNESSES WHO WERE CLEARLY NOT PREPARED. DID MR. FENNIE GO TO CHURCH, HIS MOTHER WAS ASKED? NO. AND THAT WAS THE ANSWER AS IT WOULD BE. HE WAS CHARGED WITH KIDNAPING AND RAPING A WOMAN WHO WAS A BLACK INDIVIDUAL, AND AT THAT POINT, ACCORDING TO ROBINSON V STATE, AND YOUR WHOLE PENALTY PHASE PRESENTATION IS SO POORLYLY UP THAT IT ALLOWS THE STATE TO GET UP AND TURN ALL AGAINST MR. FENNIE, WHAT LITTLE INFORMATION YOU HAD AT THE TIME AND TURN IT INTO MR. FENNIE IS A GAMBLING, WOMAN ANDIZING INDIVIDUAL WHO BROKE FROM THE CHURCH AND DIDN'T TAKE CARE OF THE KIDS THAT HE HAD AND THAT IS RACIAL STEREOTYPEING OF BLACK MEN IN THIS COUNTRY, SO THAT TURNS IT BACK TO THE COURT AND WHY THIS COURT SHOULD GIVE CHRONIC RELIEF TO MR. FENNIE, IF NOTHING ELSE THAN FOR A NEW SENTENCE AND SEND IT BACK TO THE SENTENCING PHASE, BECAUSE THE SEEDS WERE THERE. THIS IS A BLACK ON WHITE CRIME. WITH THE RAPE, THE SEEDS OF PREJUDICE WERE THERE AND COUNSEL DID NOTHING TO WEED OUT THE JURORS. TO MAKE MATTERS WORSE ON TOP OF THAT, HE SHOWED NO MITIGATION FOR WHAT HE DID.

WHAT ARE YOU SAYING THAT DEFENSE COUNSEL SHOULD HAVE DONE IN THE VOIR DIRE. IT SEEMS TO ME THAT AS I READ THIS RECORD OR PARTS OF IT, ANYWAY, THAT THIS DEFENSE COUNSEL DID, IN FACT, ASK THE PANEL ABOUT RACIAL ISSUES, AND IS THAT NOT THE CASE HERE?

IT IS NOT THE CASE. THE LOWER COURT MAKES A BIG DEAL, AS DOES THE STATE, THAT THERE

WAS A 900-PAGE VOIR DIRE, AND I DON'T MEAN TO BE FLIPPANT, BUT A FIRST YEAR LAW STUDENT COULD DO A 900-PAGE VOIR DIRE IF YOU ASK THE QUESTIONS OF THE JURY, HAVE YOU EVER BEEN MARRIED, DO YOU HAVE KIDS, HAVE YOU COMMITTED ANY CRIMES. THE STATEMENT AS TO A THOROUGH EXAMINATION OF THE JURORS OR POTENTIAL JURORS AS TO THEIR BELIEFS OR ANY OTHER INFORMATION ON CRIME OR RACE OR WHAT GOES ON IN BELIEFS IN THIS COMMUNITY OF BROOKSVILLE LEADING UP TO TRIAL.

WHAT WAS GOING ON IN BROOKSVILLE? AS I UNDERSTAND IT, ONE OF YOUR ARGUMENTS WAS ABOUT THE SMITH CASE, WHICH HAD TAKEN PLACE A COUPLE OF YEARS BEFORE THIS DEFENDANT ACTUALLY CAME TO TRIAL, SO WHAT WAS GOING ON IN BROOKSVILLE AT THE TIME THAT THIS CRIME WENT ON?

THE SAME THING THAT WAS GOING ON DURING THE SMITH CASE, THE SAME THING THAT WENT ON FOR DECADES AND DECADES FOR OVER A CENTURY IN THE BROOKSVILLE COMMUNITY, BEFORE THE SMITH CASE. THE ARTICLES ARE THERE.

IT SEEMS TO ME, I REALLY HAVE THE IMPRESSION THAT THIS LAWYER HAD EVEN TRIED SOME OF THOSE CASES OR AT LEAST ONE OF THOSE CASES, AND HAD HIS FINGER ON THE PULLS OF IT AND HOW, REALLY -- ON THE PULSE OF IT AND HOW, REALLY, A GOOD COMPETENT TRIAL LAWYER WOULD APPROACH AN ISSUE THAT WOULD HAVE BEEN AN ISSUE. THAT IS THE FLAVOR I AM GETTING FROM THAT.

THE PROBLEM IS THE DEFENSE COUNSEL DID NOT APPROACH IT FROM THIS CASE. THE ONE TRIAL THE DEFENSE COUNSEL ACTUALLY DID, BUT THE ARTICLES IN EXHIBIT 1 THAT WE ENTERED INTO EVIDENCE ARE NOT NECESSARILY TO SHOW WHETHER OR NOT THERE IS STILL A FIRE BURNING NECESSARILY, ACTUALLY THAT IS WHAT THE ART -- ARTICLES DO SHOW IS THAT THE ARTICLES ARE MORE FOR THE HISTORY IN THE TOWN OF BROOKSVILLE AND NOT JUST MURDER. IF YOU LOOK AT THAT LAST ARTICLE, YOU ARE BOUND TO KNOW MR. CHIEF JUSTICE

YOU ARE INTO YOUR REBUTTAL.

THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS STEPHEN AKE AND I REPRESENT THE STATE OF FLORIDA IN THIS CASE. ON THE FIRST ISSUE THAT COUNSEL SPOKE ABOUT THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM AT THE PENALTY PHASE, THE STATE WOULD SUBMIT THAT THE TRIAL JUDGE, AFTER CONDUCTING AN EVIDENTIARY HEARING IN THIS CASE, PROPERLY DENIED THIS CLAIM AND FOUND THAT COUNSEL FAILED BOTH PRONKS OF THE STRICKLAND ANALYSIS -- PRONGS OF THE STRICKLAND ANALYSIS, SHOWING DEFICIENT PERFORMANCE BY COUNSEL AND BY FAILING TO SHOW ANY PREJUDICE.

WHAT MENTAL HEALTH TESTIMONY, WAS THERE ANY PRESENTED AT THE PENALTY PHASE?

AT THE ORIGINAL TRIAL OR AT THE PENALTY?

YEAH.

AT THE ORIGINAL TRIAL THEY DID NOT CALL DR. PEEL. THEY HAD RETAINED HIS SERVICES AND HAD RECEIVED A REPORT FROM HIM. AS COUNSEL SAID, THE PENALTY PHASE LAWYER, HUGH LEE, HAS RECOLLECTION OF THE POSTCONVICTION HEARING THAT WAS NOT THAT GREAT. HE APPARENTLY HAD TURNED OVER HIS NOTES OR DID NOT HAVE OR LAST THE HIS NOTES OR -- OR LOST HIS NOTES OR WHAT HAVE YOU, BUT THE PROBLEM WITH THE OTHER ATTORNEYS AND COLLEAGUES,, AND THEY MADE A STRATEEGEICS DECISION NOT TO CALL HIM. -- STRATEGIC DECISION NOT TO CALL HIM.

HE WAS CALLED FOR COMPETENCY, CORRECT?

HE HAD BEEN HIRED TO DO COMPETENCY AND TO INVESTIGATE ANY POSSIBLE MITIGATION THAT MIGHT ARISE.

THE PART OF THE TESTIMONY THAT I GUESS I JUST WANT YOU TO ADDRESS, WHAT WAS PRESENTED, THE PENALTY PHASE, IS ABOUT HIM HAVING A PERSONALITY THAT WAS SUBSERVEIENT AND SUBJECT TO DOMINATION, AND I GUESS THE PICTURE I WANT TO UNDERSTAND, BECAUSE WE HAVE GOT TWO POTENTIAL DEFENDANTS WHO WERE, COULD HAVE BEEN EQUALLY CULPABLE, IF, BUT ONE ENDS UP GETTING THE DEATH PENALTY AND THE OTHER GETS LIFE. COULD YOU JUST GIVE ME AN IDEA OF HOW COMPELLING THE TESTIMONY WAS THAT THE, AT THIS PENALTY PHASE, ABOUT HIS PERSONALITY, REALLY, BEING ONE THAT WAS NOT A VIOLENT PERSONALITY, THAT HIS FELONIES WERE FOR THING THAT IS DIDN'T INVOLVE VIOLENCE. COULD YOU JUST --

YOUR HONOR, THAT WAS THE THEME, BOTH THAT CARRIED OVER FROM THE GUILT PHASE AND THE PENALTY PHASE, AND THAT WAS THEIR THEME WAS TO PAINT THE CODEFENDANT MICHAEL FRAZIER AS THE MORE VIOLENT OF THE TWO, AND THEIR THEME WAS CARRIED OUT BOTH IN THE GUILT AND THE PENALTY PHASE.

SPECIFICALLY YOU ARE SAYING THAT THEY ELECTED TO DO WHATEVER THEY COULD AT THE ORIGINAL TRIAL TO SHOW THAT --

THAT WAS THEIR ARGUMENT WAS THAT HE WAS MORE LIKELY OF THE TWO TO HAVE DONE THIS. NOW, THE TESTIMONY YOU HAVE TO REMEMBER FROM THE WITNESSES, THERE WERE THREE CODEFENDANTS, OTHER ONE PAMLY COLBERT, AND HER -- PAMELA COLBERT. HER TESTIMONY WAS THAT FENNIE TOOK THE WOMAN FROM THE CAR. SHE SUBSEQUENTLY CHANGED THAT TO SHOW THAT LET'S BRING OUT FRAZIER'S VIOLENT HISTORY AND SHOW THAT OUR CLIENT WAS NOT A VIOLENT PERSON, AND THAT IS WHAT THEY DID --

HOW DO THEY DO THAT AT THE GUILT PHASE?

WELL, THE GUILT PHASE --

TRADITIONAL RULES OF IMPEACHMENT THAT YOU WOULDN'T BRING OUT THE NATURE OF PRIOR VIOLENT FELONIES OR HOW WOULD YOU BRING OUT --

I BELIEVE THE TRIAL JUDGE RELAXED SOME OF THE RULES AS DEALT WITH MICHAEL FRAZIER. SOME OF THE THINGS WERE NOT AVAILABLE TO BE BROUGHT OUT BUT THEY WERE ABLE TO BRING OUT THAT HE HAD A NUMBER OF VIOLENT FELONIES.

WHAT FELONIES?

IN ADDITION TO THE THREE THAT HE WAS CONVICTED OF THE WEEK BEFORE THE TRIAL, THE MURDER, KIDNAPING AND ARMED ROBBERY AND HE ALSO TESTIFIED, AND I BELIEVE HE USED SHRANK, THAT HE OFTEN -- SLAINK, WAS THAT HE OFTEN DID THIS WAIT -- SLANG, WAS THAT HE OFTEN DID THIS WAITING FOR MONEY, THAT HE WOULD HANG OUT IN THE PROJECTS WAITING FOR SOMEONE TO DRIVE UP WITH MONEY AND ROB THEM.

AT GUNPOINT?

I DON'T KNOW IF HE SAID IT WAS AT GUNPOINT, YOUR HONOR, AT THIS POINT.

WONDERING WHY, IF THE DEFENSE LAWYER WAS GIVEN BROAD LATITUDE, WHAT WAS THE REASON 6 OF NOT BRING OUT THIS VERY VIOLENT ROBBERY OF THE KENTUCKY FRIED CHICKEN?

I DON'T KNOW IF HE WOULD HAVE BROUGHT OUT --

WHEN WAS IT RELATED TO?

I BELIEVE IT WAS A YEAR OR TWO THAT HE WAS INVOLVED IN THAT ROBBERY WITH WAYNE JONES, AND I BELIEVE THAT THERE WAS ANOTHER CODEFENDANT INVOLVED IN THAT ROBBERY, TOO. I DON'T KNOW IF THAT WAS ADMISSIBLE, FIRST OFF, BUT EVEN IF IT HAD, THE DEFENSE ATTORNEY DID A JOB OF IMPEACHING MICHAEL FRAZIER AND BRINGING OUT ALL OF THESE VIOLENT INSTANCES THAT HE HAD AND THAT WAS THE THEME AT THE GUILT AND THE PENALTY PHASE, AND THAT WAS THE STRATEGY AT THE PENALTY PHASE, TO PRESENT THEIR CLIENT AS THE LESS LIKELY TO HAVE COMMITTED THE ACTUAL SHOOTING AND THAT HE WAS MORE THE NONVIOLENT PERSON, AND SPECIFICALLY --

IT BRING TO SAY MIND THE OTHER CODEFENDANT, PAMELA COLBERT. WASN'T THERE SOME STATEMENT THAT SHE HAD MADE, TO THE EFFECT THAT BOTH OF THESE PEOPLE, BOTH MR. FRAZIER AND MR. FENNIE, BOTH, WENT DOWN, WHEREVER IT WAS, OUT OF SIGHT OF THE CAR.

IN THE WOODS.

AND WHEN THIS LADY WAS KILLED, AND WOULDN'T THAT HAVE BEEN SOMETHING THAT WOULD HAVE BEEN OF INTEREST TO THE PENALTY-PHASE JURY?

IF SHE WOULD HAVE TESTIFIED TO THAT, WHICH THEY WERE UNSURE OF. THEY WERE IN CONSTANT CONTACT WITH HER ATTORNEY. SHE WAS REPRESENTED BY AN INDIVIDUAL BY THE NAME OF MR. HARP, I BELIEVE, AND THEY WERE IN CONSTANT CONTACT WITH THAT COUNSEL AND IN QUIRING WHETHER OR NOT -- AND INQUIRING WHETHER OR NOT TO CALL THAT INDIVIDUAL, PAMELA COLBERT, AND THEY WERE STILL CONTEMPLATING WHETHER OR NOT TO CALL MS. COLBERT AT THE TRIAL, AND THEY WERE INCLINED NOT TO CALL MRS. COLBERT.

WHY WOULD SHE HURT THE TESTIMONY?

IN HER TRIAL SHE CHANGED IT ON TO SAY THAT BOTH FRAZIER AND FENNIE WENT, AND IT IS EVEN THEN NOT EXCULPATORY. THERE IS TRUE REASON TO CALL HER WHEN --

IF YOU ARE LOOKING AT THESE DEATH PENALTY CASES, THERE IS A QUESTION OF RELATIVE CULPABILITY THAT GENERALLY COMES UP, SO IF YOU HAVE SOME TESTIMONY THAT COULD POSSIBLY COME UP THAT WOULD MEAN THAT THE CODEFENDANT OR AT LEAST ONE OF THE CODEFENDANTS WAS JUST AS CULPABLE AS MR. FENNIE, ISN'T THAT THE KIND OF EVIDENCE THAT YOU WANT TO GET OUT?

WELL, AND THEY MIGHT HAVE, IF THEY WERE, IF THEY WERE GUARANTEED THAT THAT IS WHAT SHE WOULD COME IN AND SAY BUT THAT WASN'T THE REPRESENTATIONS THAT THEY HAD FROM HER ATTORNEY. THEY COULDN'T SPEAK TO HER. THEY SPOKE TO HER ATTORNEY AND HE SAID DON'T CALL HER. SHE WILL PUT YOUR CLIENT IN THE ELECTRIC CHAIR. I DON'T KNOW HOW MUCH MORE THEY COULD GO BEYOND THAT, BUT EVEN IF YOU WERE TO FIND THAT THAT WAS DEFICIENT FOR NOT CALLING HER, THEY STILL HAVEN'T MET THE PREJUDICE STANDARD IN THAT REGARD, BECAUSE LIKE I SAID, EVEN HER BEST CASE SCENARIO WAS THAT BOTH FRASIER AND FENNIE WALKED DOWN THERE AND THEN SHE HEARD THE SHOT, THAT WAS THE BEST CASE SCENARIO?

WHAT WAS HER TESTIMONY AS TO THE PERSON THAT RAPED THE VICTIM.

MICHAEL FRAZIER TESTIFIED, YOU ALSO HAVE TESTIMONY THAT HE GAVE HIS VERSION OF WHAT HAPPENED, AND FENNIE WAS THE ONE RESPONSIBLE FOR TAKING HER AT GUNPOINT. YOU ALSO HAVE TESTIMONY THAT THE GUN WAS IN FENNIE'S POSSESSION A FEW DAYS BEFORE THE

MURDER, AND THEN AFTER ALL OF THE EVENTS TAKE PLACE, FENNIE IS THE ONE DRIVING THE VICTIM'S CAR AND HE IS THE ONE TAKING THE GUN FROM BEHIND HIS BACK WHEN PULLED OVER BY LAW ENFORCEMENT AND HIDING IT UNDER THE FLOOR MATT. HE HAD THE GUN BEFORE AND AFTER THE MURDER AND HAD HIS FINGERPRINTS ON THE CREDIT CARD, SO, AND HAD A CHECK AND TRIED TO CASH IT AND WHAT HAVE YOU. YOU HAVE MICHAEL FRAZIER COMING IN AND GIVING DIRECT TESTIMONY THAT HE STAYED AT THE CAR WITH PAM La COLBERT OWN-WITH PAMELA COLBERT AND THAT HE HEARD THE SHOT AFTER -- THAT HE STAYED AT THE CAR WITH PAMELA COLBERT, AND THEN HE HEARD THE SHOT AFTER HE WALKED HER AWAY.

WHO GOT --

COLBERT GOT LIFE AND HE GOT A RECOMMENDATION.

THEY ACTUALLY WENT FOR A PENALTY PHASE FOR MICHAEL FRAZIER?

YES AND GOT LIFE AND GOT HIM TO TURN EVIDENCE AND TESTIFY FOR THE STATE IN EXCHANGE FOR THE STATE WOULD NOT SEEK AN OVERRIDE WAS THE DEAL THAT THEY HAD, AND I BELIEVE THERE WAS SOMETHING ABOUT NOT TRYING TO SEEK CONSECUTIVE SENTENCES WITH HIM, ALSO, BUT THAT WAS BASICALLY THE GIST OF HIM TESTIFYING FOR THE STATE. I WANTED TO POINT OUT AND I HADN'T POINTED IT OUT YET THAT THE TRIAL JUDGE IN THIS CASE THAT SENTENCED MR. FENNIE, DID, IN FACT, FIND A NUMBER OF THESE MITIGATING FACTORS THAT WERE NOT PRESENTED AT THE 3.850 HERE, NAMELY THAT HE CAME FROM A BROKEN HOME WITH LITTLE CONTACT WITH HIS FATHER, THAT HE HAD GROWN UP IN THE PROJECTS AND THAT HE WAS NOT A VIOLENT PERSON.

WHAT WEIGHT DID THE TRIAL JUDGE GIVE TO ALL OF THOSE?

THE TRIAL JUDGE OUTWEIGHED THE AGGRAVATING FACTORS TO THE MITIGATORS.

WHY ISN'T THIS THE TIME TO TELL US THE CASE LAW AND WHY THE APPELLATE ATTORNEY --

ON A HABEAS, RIGHT.

-- THAT THERE IS NO WEIGHING OF --

I THINK THE APPELLATE ATTORNEY WAS LOOKING AT THE CASE LAW AT THE TIME THAT WOULD NOT HAVE PUT HIM ON NOTICE THAT THIS WAS NOT NECESSARILY A VIOLATION OF CAMPBELL, BECAUSE THERE WERE A NUMBER OF CASES THAT I CITED IN MY RESPONSE THAT BASICALLY HAD THE SAME TYPE OF LANGUAGE AND THIS COURT UPHELD IT AND MAYBE HAD SAID, WELL, MAYBE NOT STRICT COMPLIANCE WITH COMBELL BUT WE ARE NOT GOING TO REVERSE IT BECAUSE IT IS A WASTE OF JUDICIAL ECONOMY TO SEND IT BACK JUST TO PUT THE WEIGHT ON IT, BUT I BELIEVE THE TRIAL JUDGE, NOT ONLY IN THE SENTENCING ORDER BUT ALSO WHEN HE WAS MAKING HIS ORAL PRONOUNCEMENTS, HE WAS MAKING A STATEMENT ABOUT THAT HE HAD WEIGHED THESE AND FOUND THAT THE AGGRAVATORS GREATLY OUTWEIGHED THE MITIGATORS, AND I DON'T THINK APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE AN ISSUE THAT MIGHT NOT HAVE HAD MERIT. I WOULD LIKE TO TALK BRIEFLY ABOUT THE RACE ISSUE THAT COUNSEL ALLUDED TO, HIS FIRST ISSUE IN THE BRIEF REGARDING THE VOIR DIRE AND COUNSEL IS ARGUATION -- IS ARGUING FOR THE COURT TO APPLY THE CHRONIC IN THIS CASE.

WAS IT REQUESTED?

IT WAS REQUESTED BUT DENIED, REQUESTED ON THE BASIS OF PRETRIAL PUBLICITY, AND THAT WAS BASICALLY WHAT WAS IN THE WRITTEN MOTION, THEN HE RENEWED THAT MOTION AGAIN AT VOIR DIRE. AT VOIR DIRE, THE PANEL WAS BROUGHT IN IN FOUR SEPARATE GROUPS OF I BELIEVE IT WAS 14 PER GROUP OR WHAT HAVE YOU, AND COUNSEL ASKED TWO OF THOSE FOUR

PANELS QUESTIONS ABOUT THE RACE OF HIS CLIENT. HE TESTIFIED THAT HIS STRATEGY IN NOT PURSUING THIS WAS THAT HE DIDN'T FEEL THAT THIS WAS A RACIAL CRIME. IT WAS MORE A CRIME OF OPPORTUNITY THAT THIS VICTIM DROVE UP AND WAS KIDNAPPED AND WHAT HAVE YOU, BUT HE DIDN'T WANT TO INTERJECT RACE INTO THIS CRIME AND THAT WAS HIS TESTIMONY, IN THAT HE DIDN'T THINK HE WANTED TO OFFEND ANY OF THE JURORS BY ASKING RACE AND INTERJECTING IT INTO THE PROCEEDINGS WHEN IT WASN'T. I BELIEVE IT WAS JUSTICE LEWIS POINTED OUT THAT THIS COUNSEL WAS THE TRIAL COUNSEL IN THE SMITH CASE THAT HAD PRECEDED THIS A COUPLE OF YEARS EARLIER, AND HE IN FACT, HAD REPRESENTED THE DEFENDANT. IT WAS AN AFRICAN-AMERICAN DEFENDANT THAT THE STATE WAS SEEKING THE DEATH PENALTY ON, AND HE WAS THE COUNSEL, AND HE GOT A THIRD-DEGREE MURDER CONVICTION OUT OF IT AND HE WAS VERY PLEASED WITH THAT, AND HE HAD HIS FINGER ON THE PULSE OF WHAT THE COMMUNITY WAS GOING THROUGH AT THAT TIME, AND I DON'T THINK THERE IS ANY BETTER COUNSEL TO HAVE IN MR. FENNIE'S CASE AS WITH REGARD TO THIS ISSUE THAN THE COUNSEL THAT HE HAD, AND HE KNEW THAT HE WASN'T GOING TO INTERJECT RACE INTO SOMETHING WHERE IT DIDN'T NEED TO BE INTERJECTED, SO I BELIEVE CERTAINLY HE IS NOT ENTITLED TO THE CHRONIC STANDARD, BECAUSE THAT DOESN'T APPLY WHATSOEVER TO THIS CASE, THAT HE DID EFFECTIVE VOIR DIRE LIKE THE TRIAL JUDGE FOUND. IT WAS OVER 900 PAGES, COVERED NUMEROUS ISSUES, AND JUST BECAUSE COUNSEL DID NOT GO INTO THE RACE THE WAY COLLATERAL COUNSEL WOULD LIKE HIM, DOES NOT MEAN HE WAS INEFFECTIVE, SO THE STATE WOULD URGE THIS COURT TO FIND THAT THE TRIAL JUDGE PROPERLY DENIED RELIEF ON THAT CLAIM, ALSO. IF THERE ARE NO FURTHER QUESTIONS, THE STATE WILL RELY ON ITS BREE. THANK YOU.

CHIEF JUSTICE: -- ON ITS BRIEF. THANK YOU.

CHIEF JUSTICE: COUNSEL. HOW MUCH TIME DOES COUNSEL HAVE?

VERY BRIEFLY, THE VIOLENT CRIME OF TAKING MONEY IN THE PROJECTS THAT WAS TESTIFIED TO, IT IS GRABBING MONEY AND RUN. NO GUN, NO VIOLENCE. AS FAR AS PEOPLE TESTIFYING TO MR. FENNIE HAVING POSSESSION OF THIS GUN BEFORE THIS CRIME OCCURRED, THAT WAS THE CODEFENDANT AND THE CODEFENDANT'S GIRLFRIEND. THE CODEFENDANT'S GIRLFRIEND LIED ABOUT SOMETHING ELSE ON THE STAND, WHICH TRIAL COUNSEL FAILED TO GET HER A COUPLE OF TYPES --

THAT WAS THE GUN FOUND IN THE CAR THAT MR. FENNIE WAS DRIVING.

CORRECT. BUT AS FAR AS MR. FENNIE HAVING POSSESSION OF THE GUN BEFORE THIS CRIME OCCURRED, ONLY THE CODEFENDANT AND HIS GIRLFRIEND. THE GIRLFRIEND ALSO TESTIFIED AT TRIAL THAT MR. FRAZIER ONLY ONCE HAD GOTTEN VIOLENT WITH HER. THAT IS TOTALLY WRONG. THE POLICE REPORT SAID SO. THE TRIAL COUNSEL FOR CODEFENDANT FAILED TO CROSS-EXAMINATION HER ON THAT.

WHAT WAS THE REASON THAT TRIAL COUNSEL SAID HE DIDN'T CROSS-EXAMINATION ON THE ROBBERY OF KENTUCKY FRIED CHICKEN AND SECONDLY, WHY WOULD YOU THINK THAT THE SPECIFICS OF THE PRIOR CRIME WOULD BE ABLE TO BE ADMISSIBLE IN EVIDENCE?

I DON'T RECALL TRIAL COUNSEL'S ANSWER ON WHY HE DID NOT. HOWEVER, THE SPECIFIC ISS OF THE CRIME AND THE -- THE SPECIFICS OF THE CRIME AND THE REPORT, ITSELF, HAVE MR. "FRAZIER" -- HAVE MR. FRAZIER SUPPLYING GUNS FOR THE ROBBERY AND IT WAS A VIOLENT CRIME, THE ROBBERY.

CHIEF JUSTICE: THANK YOU. THE COURT IS GOING TO TAKE A 15-MINUTE RECESS BEFORE TAKING THE LAST CASE ON THE DOCKET. THE COURT WILL STAND IN RECESS FOR 15 MINUTES.

MARSHAL: PLEASE RISE.