

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

John Ruthell Henry v. State of Florida

PLEASE RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEAD, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING, LADIES AND GENTLEMEN, AND WELCOME TO THE FLORIDA SUPREME COURT. THE FIRST CASE ON TODAY'S DOCKET IS HENRY VERSUS STATE OF FLORIDA. JUSTICE QUINCE IS RECUSED ON THIS CASE. YOU MAY PROCEED. MR. HARRIS.

MAY IT PLEASE THIS HONORABLE COURT. MISS SABELLA, I AM HERE ON BEHALF OF JOHN HENRY, THE APPELLANT. THE JUDGE ERRED WHEN HE FOUND THAT JOHN HENRY WAS, IN THE COURSE OF HIS RETRIAL, DID FURTHER, DID WHAT THE PROSECUTION COULD NOT HAVE DONE, AND THAT IS TO DROP A VIRTUAL BOMBSHELL ON THE JURORS BY HAVING MR. HENRY TESTIFY THAT, TWO YEARS BEFORE HE KILLED EUGENE CHRISTIAN AND HIS MOTHER, HE HAD WALKED OUT-OF-STATE PRISON AFTER SERVING ONLY 7 YEARS FOR MURDERING HIS FIRST WIFE, PATRICIA RODDY, THAT HE STABBED HIM TO DEATH IN MUCH THE SAME FASHION THAT HE KILLED EUGENE, AND THAT WHEN HE KILLED MRS. RODDY, HE WAS NOT UNDER THE INFLUENCE OF CRACK COCAINE. DEFENSE COUNSEL DID NOT STOP THERE. HE ADDED MOREHOUSE INADMISSIBLE, INCRIMINATING FUEL TO THE FIRE, BY HAVING MR. HENRY TESTIFY THAT, AS FAR AS SUZANNE HENRY WAS CONCERNED, HE HAD BEEN CONVICTED OF PREMEDITATED FIRST-DEGREE MURDER AND THAT HE WAS ALREADY ON DEATH ROW FOR THAT CRIME.

LET'S SEPARATE THE TWO, BECAUSE WE HAD HELD ON, AS FAR AS SUZANNE HENRY, WHAT WAS, WAS THERE AN EVIDENTIARY HEARING ON THE ISSUE OF WHY DEFENSE COUNSEL HAD PUT IN THE EVIDENCE OF THE KILLING OF HIS FIRST WIFE?

YES, THERE WAS. JUDGE BEACH CONDUCTED AN EVIDENTIARY HEARING IN THAT CASE, YOUR HONOR.

WHAT WAS DEFENSE COUNSEL'S EXPLANATION FOR HAVING DONE THAT?

HE SAID THAT IT WAS A TACTICAL DECISION. HE SAID THAT HE WANTED TO ESTABLISH A GOOD RELATIONSHIP WITH THE JURY, BECAUSE HE THOUGHT HE MIGHT LOSE DURING THE GUILT PHASE, AND HE WANTED TO TRY TO ESTABLISH SOME CREDIBILITY WITH THE JURY, AND THEREFORE SAVE HIS BEST SHOT FOR THE PENALTY PHASE.

I GUESS THAT IS WHERE I WAS HAVING A HARD TIME AND MAYBE WE CAN UNDERSTAND THIS. WAS THERE, DID HE TRY, BEFORE TRIAL, TO, WAS THERE AN ISSUE WHETHER THAT EVIDENCE WAS GOING TO COME IN OR NOT? A MOTION TO BRING IT IN?

ABSOLUTELY NOT, YOUR HONOR. THE STATE NEVER EVEN TRIED, THEY GAVE NO NOTICE WHATSOEVER THAT THEY WERE GOING TO TRY TO INTRODUCE THE PATRICIA RODDY EVIDENCE, NEVER EVEN THOUGHT ABOUT IT. THE ASSISTANT STATE ATTORNEY WAS SHOCKED, WHEN DEFENSE COUNSEL OFFERED THIS EVIDENCE, AND HE OFFERED IT BY HAVING JOHN HENRY TESTIFY TO IT IN DETAIL. YES, MA'AM.

SO THERE WAS NO MOTION IN LIMINE FILED BY DEFENSE COUNSEL TO KEEP IT OUT BEFOREHAND.

ABSOLUTELY NOT. DEFENSE COUNSEL ALWAYS INTENDED TO PUT IT IN EVIDENCE, HE HAVE THEN IT WAS ABSOLUTELY INADMISSIBLE AND EVEN THOUGH IT WAS TERRIBLY PREJUDICIAL.

WHAT ABOUT SUZANNE HENRY. WAS THERE NOTICE?

YOUR HONOR, I AGREE THIS COURT SAID IN HENRY ONE THAT THE FACTS OF THE SUZANNE HENRY CASE WERE INEXTRICABLY ENTWINED WITH THE EUGENE CHRISTIAN CASE, AND SO THOSE FACTS COULD COME IN, BUT YOU DIDN'T SAY THAT THE JURY COULD BE TOLD THAT IN A CASE THAT WAS COMMITTED JUST HOURS BEFORE EUGENE WAS KILLED, THAT HE WAS CONVICTED OF PREMEDITATED FIRST-DEGREE MURDER, AND HE WAS SENTENCED TO DEATH! THAT IS WHAT IS SO STRIKING ABOUT THE SUZANNE HENRY TESTIMONY. THAT COULD HAVE NEVER BEEN PRESENTED TO THE JURY, BUT DEFENSE COUNSEL DECIDED THAT IT COULD BE. NOW, NONE OF THIS EVIDENCE WAS ADMISSIBLE, YOUR HONOR, DURING THE GUILT PHASE, BECAUSE OF THE PROVISIONS OF SECTION 90.6101 OF THE FLORIDA STATUTES, THAT SAYS THAT ALL THE STATE COULD HAVE DONE, WITH REGARD TO RODDY, WAS SAY YOU EVER BEEN CONVICTED OF A FELONY OR MISDEMEANOR INVOLVING DISHONESTY, AND IF SO, HOW MANY TIMES. THAT IS ALL

SO LET'S ASSUME THAT, FOR THE SAKE OF MY ARGUMENT, THAT IT WAS ERROR, DEFICIENT PERFORMANCE, WHATEVER, TO HAVE HIS CLIENT TESTIFY AS TO THE FIRST, THE STABBING OF THE FIRST WIFE. COULD YOU GO TO WHERE THERE IS A CONFESSION AND NOT AN ISSUE OF IDENTITY, HOW YOU FIT INTO THE SECOND PRONG OF THE STRICKLAND TEST.

YOUR HONOR, I UNDERSTAND I NEED TO ESTABLISH A STRICKLAND PRONG, AND COUNSEL DID WHEN HE DID THAT. FIRST OF ALL, JUST CONSIDER THE HEINERITY OF THIS TESTIMONY. THE PROSECUTOR CERTAINLY CONSIDERED IT. IF YOU WILL REFER TO PAGE 44 OF MY BRIEF, HERE IS WHAT THE PROSECUTOR SAID. HE SAID, MR. HENRY, IN RESPONSE TO MR. FURTES QUESTION, YOU HAVE ALREADY ADMITTED TO THE JURY THAT, WITH MR. CHRISTIAN'S DEATH, THAT THE TOTAL NUMBER OF PEOPLE YOU HAVE KILLED AT YOUR HAND, NOW NUMBERS THREE. IS THAT CORRECT? I MEAN, THE HEINERITY. THIS IS NOT LIKE THOSE CASES AND INSTANCES THAT MS. SABELLA CITES IN HER BRIEF, WHERE COUNSEL MAKES DISPARAGING REMARKS ABOUT HIS CLIENT. HE SAYS, YOU KNOW, THE YARBOROUGH CASE IS ONE CASE THAT SHE RELIES ON. WELL, MY CLIENT MAY BE A REPRIBATE AND A DRUG DEALER BUT HE IS NOT GUILTY OF THE CRIME CHARGED. THIS IS TELLING THIS JURY ABOUT A MURDER!

LET ME ASK YOU A QUESTION.

YES, SIR. DO YOU AGREE THAT, TRIAL COUNSEL WERE EXPERIENCED DEATH PENALTY LAWYERS?

ABSOLUTELY.

AND BOTH SAID THEY DISCUSSED IT AMONG THEMSELVES AND WITH THE DEFENDANT.

THEY DID, YOURSELF.

AND THAT THEY WERE AWARE OF THE PRIOR TRIAL IN THIS CASE, WHERE THE PRIOR ATTEMPTED INSANITY OR VOLUNTARY INTOXICATION HAD NOT WORKED AND THERE HAD BEEN SUBSTANTIAL VERDICTS OF DEATH.

YES, SIR.

AND THAT THEY SAID THAT THEY DISCUSSED IT IN SOME DETAIL WITH THE DEFENDANT. AND THAT THEY SAID THAT THIS WAS A TACTICAL DECISION THAT WE ALL MADE, BASICALLY, FREELY, VOLUNTARILY AND KNOWINGLY, WITH ALL OF THE EVIDENCE ABOUT MITIGATION, %%

--ppAND WE DISCUSSED IT I N DETAIL, CORRECT?

CORRECT, YOUR HONOR.

SO WE WO ULD HAVE TO BASICALLY DETERMINE THAT , UNDER NO CIRCUMSTANCES, WOULD THIS EVER BE A REASONABLE TA CTICAL DECISION .

NO, SIR, AND, YOUR HONOR , IN ANOTHER CASE , YOU ASKED ME KIND OF THE SAME THI NG, AND I WANT TO MAKE SOMETHINGCLEAR.WE ARE NOT TALKING ABOUT INTEGRITY HERE. WE AR E NOT TAL KING ABOUT THE CAPABILITY OF TWO VERY EXPERIENCED LA WYERS . IT ONLY GOES TO PERFORMANCE IN A PARTICULAR CASE , SO THERE IS NO DISPARAGING OF COUNSEL.

I AM NOT TALKING ABOUT INTEGRITY.I AM JUST SAYING THAT WE HAVE TO SAY, BASICALLY, THAT THERE IS NO REASONABLE BASIS TO COME UP WITH THIS STRATEGY.

ABSOL UTELY , AND LET ME TELL YOU WH Y IT WAS NOT REASONABLE AND THE PROSECUTOR IS THE ONE THAT REALLY FI GURED THAT OUT. IN THIS PARTICULAR CASE, UNLIKE CASES CITED BY MISS SABELLA , IF YOU HAVE GO T A SITUATION WHERE PROOF OF YOUR CLIE NT'S GUILT IS SO ABSOLUTELY OVERWHELMING,WELL, THEN , YES , M AYBE YOU WANTED TO GO AHEAD AND S OFTEN THINGS U P FOR THE PENALTY PHASE BY TELLING THE JURORS ABOUT THE ROD DING SITUATION , BE CAUSE - - ABOUT THE RODDY SI TUATION , BECAUSE YOU WANT TO GET TO THE PENALTY PHASE AND HAVE SOME CREDIBILITY WITH THE JURY , WHERE YOU ARE JUST DEAD ON THIS ISSUE , AND I HAVE TO SAY TO COUNSEL'S CREDIT, THEY PUT TO GETHER A HE CK OF A VOLUNTARY INTOXICATION DEFENSE. THEY HAD NO LESS THAN THREE MEDICAL EXPERTS , TWO ME DICAL DOCTORS AND A CLI NICAL PSYCHOLOGIST WHO SAID UNEQUIVOCALLY, THAT JOHN HENRY COULD NOT FOR M THE REQUISITE PREMEDITATED INTENT TO COMMIT FIRST-DEGREE MURDER , BECA USE HE WAS ME NTALLY ILL AND HE WAS ME SSED UP ON CRACK COCAINE.

WASN'T THAT A FACT THAT DISTINGUISHED THIS M URDER FROM, BOTH THE SUZANNE HENRY MURDER AND THE OTHER MURDER.

EX ACTLY , YOUR HONOR.

SO WASN'T THE COUNSEL , WASN'T IT A STRATEGICDECISION ON THE PART OF COUNSEL TO SAY THIS IS HOW WE ARE GOING TO DISTINGUISH THIS MURDER , BECAUSE FOR THIS HE WAS VOLUNTARILY INTOXICATED FOR THE OTHER ONES HE WASN'T. WE HAVE TO PRESENT THE OTHER ONES , IN ORDER TO DEMONSTRATE THAT DISTINCTION.

YOUR HONOR, THAT COULD NOT HAVE BEEN A STRATEGIC, A SOUND STRATEGIC DECISION.YOU HAVE SAID THAT YOU JUST CAN'T GET UP AND WAVE AR OUND A FLAG OF TAC TICS OR STRATEGY AND THAT TAKES COUNSEL OF F THE HOOK. THE STRATEGY, THE TACTIC HAS TO BE REASONABLE. L OOK HOW THE PROSECUTOR HANDLED THIS. I MEAN , HE SAID THIS , AND THIS IS ON PAGE 4 6 OF MY BRIEF AND WE ARE TALKING ABOUT RODDY. COUNSEL ASKED MR. HENRY , NOW , IN THAT 1975 MURDER , YOU WERE NOT UNDER THE INFLUENCEOF CO CAINE WHEN YOU KILLED PATRICIA RODDY , WERE YOU, AND JOHN HENRY ADMITTED THATHE WAS NOT . NOW , WATCH HOW THE PROSECUTOR HANDLES THIS, BECAUSE THE QU ESTION WAS WHY DID JOHN HENRY KILL THIS CHILD. IT WAS ONE OF TWO THINGS.IT WAS EITHER THAT HE WAS A VICIOUS , SOCIOPATH WHO JUST GETS OUT OF PRISON TWO YEARS AND KILLS PEOPLE AGAIN , O R HE WAS MEN TALLY ILL AND HE WAS SO MESSED UP O N CRACK COCAINE AT THE TI ME, THAT THE VOLU NTARY INTO XICATION DEFENSE WOULD WORK , AND WATCH WHAT THE PROSECUTOR DOES. AFTER , BASED UPON THE RODDY TESTIMONY , HERE IS WHAT HE SAYS, IT IS ON PAGE 49 OF MY BRIEF, AND JUST GIVE ME ASECOND, BECAUSE THIS IS REALLY THE KEY T O MY ARGUMENT. COUNSEL AR GUES , MR . TW ENTY I TOLD YOU MR . FUENTES TOLD YOU THAT THE MURDER OF SUZANNE HENRY AND MR . CHRISTIAN ARE NOT A PART OF THIS CASE. THIS IS NOT T RUE. THEY ARE A PART OF THIS CASE. THEY ARE A PART OF THIS CASE, BECAUSE IT IS THE MOTIVE.IT IS THE REASON THAT

EUGENE CHRISTIAN IS DEAD. WAS IT BECAUSE OF VOLUNTARY INTOXICATION , OR WAS H E JUST A MEAN SPIRITED SOCIOPATH, AND THIS IS WHAT THE PROSECUTOR SAID , BECAUSE JOHN HENRY HAD THE TA STE OF PRISON. W HERE. AS A RE SULT OF KILLING PATRICIA RODDY , AND HE SERVED HIS TIME FOR THAT ANDGOT OUT, AND THEN WHEN SUZANNE HENRY WAS MURDERED AT HIS HAND, HE REALIZED HEWAS GOING BACK TO PRISON OR PERHAPS WORSE WOULD BE HISFATE , AND THESE TWO CIRCUMSTANCES TOGETHER , THE FIRST MURDER AND S ECOND MURDER , PRODUCE ED THE MOTIVE FOR THE KILLING OF EUGENE CHRISTIAN.IN OTHER WORDS , THE JURY HAD TO DECIDE WHERE DID HE KILL THIS CHILD. DO WE HAVE A MAN WHO IS MENTALLY ILL AND MESSE D UP ON COC AINE? THERE FOR WE HAVE A V OLUNTARY INTOXICATION DEFENSE.O R IS HE JUST A COLD-BLOODED KILLER. AND BECAUSE OF THE RODDY TESTIMONY AND THE FACT THAT HE WAS NOT ON CRACK COCAINEWHEN HE KILLED MS. RODDY, THAT IS WHAT THE PROSECUTOR DROVE HOME TO THAT JURX THAT THIS VOLUNT ARY INTOXI CATION DEFENSE DO ESN'T WORK.

MR . HA RRRIS , YOU ARE REALLY IN , THE OUTLINE OF YOUR PROCEEDINGS, YOU NOTED THAT THE PROSECUTOR TESTIFIED THAT HE WAS SHOCKED THAT DEFENSE COUNSEL BROUGHT THESE MA TTERS OUT.

YES, SIR.

WOULD YOU , ARE YOU SAYING THAT, AT POSTCONVICTION EVIDENTIARY HEARING , THE PROSECUTOR TESTIFIED TO THAT EFFECT?

NO. IT IS IN THE RECORD IN THETRIAL.HERE IS WHAT HAPPENED. AT THE CLOSE OF DI RECTION , THE PROSECUTOR GOES, HE DIDN'T JUST START HIS CROSS-EXAMINATION.HE GOES UP TO THE BENCH , AND IT IS RIGHT THERE IN MY BRIEF , AND HE SAYS, YOUR H ONOR , I THINK THEY HAVE OPENED THE DO OR FOR ME TO QUESTION AND GO INTO THE DETAILS ON ALL THREE OF THESE MURDERS, AND DEFENSE COUNSEL SAYS I A G REE. AND THE JU DGE SAID, AND I AM PARAPHRASING, ABSOLUTELY. HAVE AT IT. THAT IS THE PO INT. THE PROSECUTOR COULDN'T BELIEVE IT . HE HAD NOT EVEN TRIED TO INTRODUCE , I MEAN, HOW, THE PROSECUTOR, HE IS THINKING NO WAY ARE THEY GOING TO TRYTO GET ANYWHERE NEAR THE PATRICIA RODDY TESTIMONY.

DIDN'T DEFENSE COUNSEL SAY THAT WAS PART OF THE STRATEGY?

ABSOLU TELY. YOUR HONOR , THIS

TO SUR PRISE THE PROSECUTOR.

YES, SIR. THIS IS A STRATEGY

I AM NOT SAYING IT WAS GOOD OR BAD. I AM JUST ASKING. THAT WAS PART OF THE STRATEGY WAS TO SO-CALLEDTHROW THE PROSECUTOR OFF HIS OR HER FEET.

IF YOU DETERMINE THAT THIS WAS SOUND STRATEGY , WE LOSE. I ADMIT THAT. BUT THIS WAS NOT STRATEGY

DO WE HAVE TO DET ERMINEIT WAS SOUND STRATEGY OR DO WE HAVE TO DETERMINE IT WAS STRATEGY?

ABSOLUTELY CLEARLY, ITHAS GOT TO BE SOUND STRATEGY . JUDGE SHEV INS SAID IN ONE OF THE CASES DECIDED, IT HAS GOT TO B E REASONABLE. THIS WAS NOT REASONABLE STRATEGY. WHO EVER HEARD OF GRATUITOUSLY TELLING A JURY WHO IS SE TTING IN JUDGMENT OF YOUR CLIE NT, B Y THE WAY, HE KILLED ANOTHER PERSON OVER HERE!

WELL , UNLESS YOU THINK IT IS GOIN G TO COME OUT AT THE TRIAL. NOW

WHICH TRIAL?

LET'S GO INTO THE PENALTY PHASE, IT WOULD HAVE COME OUT IN THE PENALTY PHASE.

ABSOLUTELY. THE DETAILS COME OUT. THAT IS WHAT COUNSEL WAS SAYING.

THESE GO BACK, AND I GUESS THIS IS ON THE SECOND PRONG OF STRICKLAND. IF YOU AGREE IT DOESN'T UNDERMINE OUR CONFIDENCE IN THE PENALTY PHASE BECAUSE IT WOULD HAVE COME OUT IN THE PENALTY PHASE.

ABSOLUTELY.

SO NOW WE GO BACK TO THE GUILT PHASE.

RIGHT.

HE CONFESSED TO THE KILLING.

RIGHT.

I RESPECTFULLY, I THINK THAT OUR REASONING ABOUT WHY THAT SUZANNE HENRY KIND OF CRIME WOULD COME OUT, INsofar AS IT BEING INEXTRICABLY INTERTWINED, THAT WAS OUR HOLDING, SO IT IS LOGICAL TO SAY THAT THAT WOULD COME OUT. I MEAN, IT DID COME OUT AND IT WAS APPROPRIATE. WAS ALL OF THAT, AND YOU ARE SAYING, WELL, HE HAD A GOOD VOLUNTARY INTOXICATION DEFENSE. I DON'T, I HAVE NEVER, THERE MAY BE A GOOD ONE, BUT I DON'T EVER KNOW ONE THAT ACTUALLY CONVINCES A JURY TO NOT FIND SOMEBODY GUILTY OF FIRST-DEGREE MURDER FROM MURDER. MURDER. SO THE QUESTION IS HOW DOES IT UNDERMINE OUR CONFIDENCE IN THE GUILT PHASE?

YOUR HONOR, THERE WAS NO QUESTION HE ADMITTED TO THE HOMICIDE, BUT HE WAS NOT ADMITTING TO PREMEDITATED MURDER. THAT IS THE DISTINCTION, AND THAT IS THE CRITICAL DISTINCTION IN THIS CASE. NOW, LOOK, HE HAD A, IN FLORIDA WE HAVE A DUAL, A BIFURCATED SYSTEM FOR HANDLING DEATH CASES. YOU DON'T JUST THROW IN THE TOWEL ON THE GUILT IS SUE. YOU KNOW, AND SAY WE ARE GOING TO GO TO A PENALTY PHASE AND CROSS OUR FINGERS AND HOPE FOR THE BEST.

ISN'T A CASE LIKE NIXON, WHERE COUNSEL ACTUALLY SAID WE AGREE THIS WAS A PREMEDITATED MURDER. THAT IS NOT WHAT HAPPENED HERE.

NO.

AS TO THE EUGENE MURDER, HE DIDN'T CONCEDE THAT.

NO. NO. NO. HE INTRODUCED EVIDENCE THAT THE PROSECUTOR USED TO SHOW THIS WAS NOT A VOLUNTARY INTOXICATION CASE. THIS WAS JUST A MEAN-SPIRITED, HORRIBLE INDIVIDUAL, WHO JUST WENT OUT AND, AS SOON AS HE GOT OUT OF PRISON FOR KILLING M.S. RODDY, KILLED TWO MORE PEOPLE, AND THAT IS THE POINT. THE LAWYER, JUST ICE BELL, THE LAWYER, I HAD TO ADMIT, I THINK HE DID A GREAT JOB UP TO THE POINT OF INTRODUCING THIS OTHER EVIDENCE.

IN PART OF THIS FACTORING IN, WHAT OF THE MENTAL HEALTH EVIDENCE FOR VOLUNTARY INTOXICATION, WASN'T PRESENTED IN THE PRIOR CASE BY EXPERTS THAT DIDN'T WORK, IN THE TRIAL ATTORNEY'S WORDS?

I HAVE TO CONCEDE THAT ESSENTIALLY THE SAME EVIDENCE IN THE FIRST TRIAL, ON MENTAL HEALTH, INVOLUNTARY INTOXICATION, WAS A PART OF THE SECOND TRIAL. IT IS MY OPINION

THAT IT WAS MARTIALED MUCH BETTER IN THE SECOND MARSHAL ED - - IT WAS MAR TIALED MUCH BETTER IN THE SECOND TRIAL. AND C HIEF JUSTICE PARIENTE , T AKE A HARD LOOK AT THE QUALITY OF THAT EVIDENCE. DR . BERLAND, A CLI NICAL PSYCHOLOGIST, SAID HE SPENTTEN HO URS WITH HENRY , THATHE WAS SERIOUSLY MENTALLY ILL AND TH AT HE COULD NOT FORM THE PREREQUISITE INTENT TO COMMIT FIRST- DEGREE MURDER. DR. SP REE SAID THE SAME THING , DR . AFIELD SAID THE SAME THING, AND THEY HAD ONE TOXICOLOGIST WHO SAID THE COCAINE EF FECT WOULD KIN D OF CLEAR UP QUI CKER THA N THE DEFENSE IS SAYING, AND THEN THEY PRES ENTED DR . FESLER WHO WAS KIND OF ON DEFENSE , AND SAID, WELL , I THINK HE CAN PROBABLY FORM THE REQUISITE INTENT B UT I AM NOT REAL SURE ABOUT IT . MY POIN T IS THIS , IF THIS CASE GOT TO THE PENALTY PHASE, JOHN HENRY WAS TO AST. I MEAN , MY GO SH , YOU KILL THE FIRST WI FE. YOU KILL YOUR SECOND WIFE. AND YOU KILL HER CH ILD. I MEAN , HE THAT WOULD ALL HAVE COME IN THE PENALTY PHASE.

ABSOLUTELY.HE WAS TOAST. HE WAS TOAST , IF THIS CASE GOT TO A PENALTY PHASE. THE BEST WAY TO PRESENT YOUR CLIENT FROM GETTING THE DEATH PENALTY IS DON'T LET IT GET TO THE PENALTY PHASE, AND HE HAD A FANTASTIC OPPORTUNITY TO DO THAT, AND THAT WAS

M R . HAIRS AND , YOU ARE IN YOUR RE MR . HAR RISON , YOU A RE IN YOUR REBUTTAL. EYE APOLOGIZE. I APPRECIATE IT. I

APOLOGIZE. I APPRECIATE IT. I WI LL SIT DOWN. THANKS.

MAY IT PLEA SE THE COURT. MY NAME IS CANDACE SABELLA . WHAT WE HAVE TO DO IS PUT THIS CASE IN THE POSITION THAT THE DEFENSE COUNSEL HAD APPROACHED IT AT THE SECOND TRIAL. THEY KNEW THAT THERE HAD ALREADY BE EN A TRIAL WITH THESE IDEN TICAL FA CTS AND THAT THIS THE JURY HAD ALREADY FO UND THIS DEFENDANT G UILTY OF FELONY AND FIRST-DEGREE MURDER AND THAT JURY HAD RECOMMENDED DEATH BY A VOTE OF 10-TO- 2. AT THIS POINT , COUNSEL HAS TO PULL A RABBIT OUT OF THE HAT. HE KNOWS THEY PRESEN TED THIS VOLUNTARY INTOXICATION DEFENSE AND IT DID NOT WORK. THEY ARE GOING T O PRESENT IT THE SECOND TI ME BUT THEY COME UP WITH THIS STRATEGY. WELLS COMES UP TOGETHER WITH A CONVERSATION WITH THE DEFENDANT AND AGREE THAT THEY ARE GOING TO GO AHEAD AND LET EVERYTHING COME OUT IN THE GUILT PHASE , WITH THE FULL KNOWLEDGE THAT THE PATRICIA RODDY MURDER WAS NOT ADMISSIBLE IN THE GUILT PHASE AND WITH THE FULL KNOWLEDGE THAT THE DEATH SENTENCE FOR SUZANNE HENRY WAS NOT ADMISSIBLE , BUT THEY KNEW THAT IT WOULD COME OUT LATER, AND THEY DID NOT WANT TO LOSE THEIR C ANDOR WITH THE JURY. THEY WANTED TO HAVE SOM E CREDIBILITY LE FT .

MS. SABELLA, ISN'T THERE A DIFFERENCE IN CANDOR AND ADMITTING CER TAIN FACTS THAT ARE GOING TO COME IN AT TRIAL , LIKE A N IX ONE CASE , HAD SOME PRETT Y SEVERE FACTS , AND THE LA WYER WAS TRYING TO COME UP WITH A STRATEGY TO NOT LOSE CREDIBILITY. IT SEEMS TO ME THAT, WHEN YOU START DRAWING ON PAST CRIMES AND SOME PRETTY BAD PAST CRIMES.

ABSOLUTELY.

THAT YOU ARE IN A DIFFERENT QUALITATIVE POSITION, IT S E EMS.

THERE IS NO QUESTION THAT IT IS AN UNUSUAL POSITION. THERE IS NO QUE STION THAT THIS RA RELY IF EVER, HAPPENS , B UT THE FACT I S COUNSEL KNEW THAT, ON THESE FACTS WITH THIS DEFENSE, THIS DEFENDANT HAD ALREADY BEEN FOUND GUILTY, SO AT THIS POINT

YOU ARE NOT LOSING THE CREDIBILITY. I CERT AINLY AGREE THAT YOU NEED THAT CREDIBILITY , THAT STABILITY AND APPROACH. THIS SEEM S TO ME THAT YOU ARE REACHING OUT TO B RING IN SOMETHING , AN OTHER HORRENDOUS SI TUATION , THAT COMPOUNDS THE , WHETHER IT IS AN ANGE R OR FE ELING OR E MOTION OF A JURY AG AINST A PERSON IN A GUILT PHASE.

COUNSEL EXPLAINED THEIR THINKING ON THAT AND IT IS V ERY THOROUGHLY SE T OUT IN MY BRIEF, BECAUSE H E TALKED ABOUT IT QU ITE A BIT IN LENGTH, AND WHAT HE SAID WAS , THEY DID NOT HONESTL Y BELIEVE THAT THEY WERE GOING TO BE ABLE TO GET A CONVICTION FOR LESS THAN SECOND-DEGREE MURDER. THEY WERE HOPING FOR FIRST-DEGREE MURDER , BUT BASED ON THE FACTS THAT THEY HAD BEFORE THEM , THEY KNEW IT WAS NOT LI KELY. THEREFORE THEY KNEW THEYWERE GOING TO GO TO THEPENALTY PHASE, SO WHAT THEY WANTED TO DO WAS TO BR ING IT ALL OUT. THEY DIDN'T WANT THE JURY TO BE LATER SURPRISED AND GO , WAIT A MINUTE , YOU DIDN'T TELL US THERE WAS ANOTHER MURDER!

WHAT HE SAID WAS HE DIDN'T THINK THEY COULD GETAN ACQUITTAL.

NO. HE DIDN'T THINK HE COULD GET SECOND-DEGREE.

THE INVOLUNTARY TOX WOULD NOT WORK?

IT WOULD NOT WORK. BUT WHAT HE A R GUED , WHAT HE SAID WAS THAT THEY GO AHEAD AND HAD JOHN HENRY ADMITTHAT HE HAD A DEATH SENTENCE FOR THE SUZANNE HENRY MURDER, BECAUSE THEY THOUGHT THE JURY MIGHT THINK , O KAY , HE HAS GOT ALR EADY A DEATH SENT FOR THIS SO WE CAN G IVE HIM SECOND-DEGREE , BECAUSE HE IS GOING TO BE IN PRISON FOR THE DEATH PENALTY, SO WE DON'T HAVE TO GO THE FULL LENGTH.

WOULD YOU ADDRESS THE CONCERN THAT I HAD WITH THE TRIAL JUDGE'S ORDER ANDNUMBER OF STATE MENTS THAT THE TRIAL JUDGE MAKES. THE TRIAL JUDG E, ON MORETHAN ONE OCCASION , COMMENTS THAT HE HAS CONC LUDED THAT TRIAL COUNSEL EXERCISED BAD JUDGMENT. HE SA YS THAT SEVERAL TIMES, IN TERMS OF COMMENTING ON TRIAL COUNSEL'S CONDUCT , AND THE N IN ONE OF THOSE INSTANCES , HE AC TUALY C ITES A DISSENTING OPINION FROM O NE OF THE JUSTICES OF THIS COURT, THAT SAYS SOMETHING LIKE, WELL , JUST BAD JUDGMENT SHOULDN'T BE ENOUGHTO SHOW INEFFECTIVE NESS OR SOMETHING LIKE THAT. I AM CONCERNED AS TO WHETHER OR NOT I AM CONCERNED AS TOWHETHER OR NOT TRIAL JUDGEWAS REALLY APPLYING THE PROPER STANDARD, IN EVALUATING THE COND UCT OF DEFENSE COUNSEL. WE HAVE BEEN REC ENTLY REMINDED BY THE U.S. SUPREME COURT THAT THERE ARESTANDARDS OUT THERE THAT TRIAL JUDGES SHOULD APPL Y, SUCH AS THE ABA STAN DARDS TO THE CONDUCT O F COUNSEL . WOULD YOU HE LP ME. I S THERE A CH ANCE HERE THAT THE TRIAL JUDGE IS , REALLY , APPLIED THE WRONG STANDARD , IN SAYING THAT HE BELIEVES THAT COUNSEL APPL IED BAD JUDGMENT BUT THAT THAT IS NOT ENOUGH?

ACTUALLY , YOUR HO NOR , I DISAGREE WITH YOU AS TO WHAT THE ORDER SAYS. WHAT MY READING OF THE ORDER IS

YOU DON'T READ THE ORDER AS COMMENTING ON BAD JUDGMENT.

YES, HE DOES COMMENT ON BAD JUDG MENT, BUT WHAT HE SAYS WAS, EVEN I F THIS COURT SHOULD FIND THAT HE EXERCISED BAD JUDGMENT, HE IS NOT ENTI TLED TO POST-CONVICTION RE LIEF, AND HE SAYS THAT REPEATEDLY WITH REGARD TO DI FFERENT IS SUES. HE DOESN'T SAY IT W ITH REGARD TO ALL OF THEM, BUT JUDGE BEACH IS A VERY EX BUT JUDGE BEECH IS A VERY EXPERIENCED TRIAL JUDGE. HE IS VERY COMPETENT AS A JUDGE AND I AM SUR E HE KNEW THE STRICKLAND STANDARD AND APPLIED IT ACCURATELY.

WHERE ARE WE HE ADED , THEN , I F THE TRIAL JUDGE THAT LISTENS TO THIS ENDS UP CONCLUDING AND STATES IT ON A NUMBER OF OCCASIONS THAT THE LAWYER MAY HAVE EXERCISED BAD JUDGMENT BUT NEVERTHELESS, I DON'T FIND THAT HIS CONDUCT WAS UNREASONABLE .

WHAT HE SAID WAS

ISN'T THAT WHAT WE ARE TRYING TO DETERMINE, WHEN WE SCRUTINIZE TRIAL COUNSEL'S CONDUCT, IS WHAT HIS JUDGMENT WAS UNDER A REASONABLE ATTORNEY STANDARD?

ACTUALLY YOUR HONOR, I DISAGREE WITH YOU THAT THAT IS WHAT THE ORDER SAYS. WHAT MY READING OF THE ORDER IS, HE SAYS THAT HE FOUND THAT THESE WERE STRATEGIC REASONS, BUT THAT EVEN IF YOU FOUND THAT IT WAS BAD JUDGMENT, THAT HE IS NOT ENTITLED TO RELIEF, AND THAT IS ABSOLUTELY TRUE, BECAUSE EVEN IF HE CANNOT, EVEN IF HE CAN ESTABLISH DEFICIENT PERFORMANCE, HE CANNOT ESTABLISH PREJUDICE, AND THE EVIDENCE OF THAT IS THE PRIOR TRIAL, BECAUSE THAT JURY RECOMMENDED DEATH BY 10-TO-2 WHEN THEY WERE NOT GIVEN THIS INFORMATION. THEY FOUND HIM GUILTY OF FELONY MURDER AND THEY FOUND HIM GUILTY OF FIRST-DEGREE MURDER.

WOULD THE JURY, DURING THE GUILT PHASE, HAVE BEEN ENTITLED TO KNOW THAT HE HAD HAD THE DEATH PENALTY IMPOSED IN A PRIOR CASE, ABSENT COUNSEL'S BRINGING THAT OUT?

NO.

WOULD THE JURY HAVE GOTTEN TO KNOW THAT HE WAS CONVICTED OF ANOTHER PRIOR MURDER

YES.

ABSENT COUNSEL BRINGING THAT OUT, THE FIRST MURDER?

NOT IN THE GUILT PHASE, NO. IN THE PENALTY PHASE, YES.

SO IN THE GUILT PHASE, YOU AGREE THAT THEY WOULD NOT HAVE GOTTEN TO KNOW THAT HE HAD ALREADY BEEN SENTENCED TO DEATH.

I AGREE.

AND ABOUT THE FIRST MURDER CONVICTION.

I AGREE. AND COUNSEL FUENTES TESTIFIED TO THAT.

I THOUGHT YOU SAID THAT, AS FAR AS THE SUZANNE HENRY MURDER, THEY WOULDN'T GET TO KNOW THAT HE WAS SENTENCED TO DEATH FOR IT. BUT WOULD THEY GET TO KNOW THAT HE HAD MURDERED SUZANNE HENRY?

YES.

I THOUGHT, SO, IT IS REALLY, SO IT IS THE, AND, A GAIN, THE OTHER THING I WANT TO UNDERSTAND, BECAUSE MAYBE I AM CONFUSED ABOUT THE STRATEGY REASON, WHAT YOU ARE SAYING IS THAT THE STRATEGY REASON FOR INTRODUCING PRIOR ACTS OF MISCONDUCT, WAS TO GAIN CREDIBILITY IN THE PENALTY PHASE. NOT IN THE GUILT PHASE.

WELL, NOT JUST TO GAIN CREDIBILITY BUT WHAT THEY DIDN'T WANT, THEY WANTED SOME SEPARATION. THEY THOUGHT, WE BRING THIS OUT IN THE GUILT PHASE WHEN THEY ARE FINDING HIM GUILTY, AND THEY ARE GOING TO FIND HIM GUILTY. WHEN WE GET THE PENALTY PHASE, THERE WILL BE NO SURPRISES. THEY WILL NOT THINK, OKAY, WE HID THIS FROM THEM. WE KEPT THIS FROM THEM. THEY ARE GOING TO KNOW EVERYTHING. THEREFORE WE CAN ARGUE TO THEM, YOU KNEW ALL THIS. NOW YOU CAN HAVE SYMPATHY. YOU CAN GIVE HIM LESS. THERE WAS THE COCAINE. THINGS OF THAT NATURE, AND THAT WAS THEIR DECISION, AND THAT DECISION WAS BASED ON THE FACT THAT THE ONLY OTHER WAY THAT COUNSEL SUGGESTS THAT THEY SHOULD HAVE APPROACHED THIS DIDN'T WORK!

SO WHAT DID THEY ARGUE TO THE JURY IN THE GUILT PHASE IN THE FIRST CASE, THAT HE WAS GUILTY OF FIRST-DEGREE MURDER AND IN OTHER WORDS, I GUESS THE PROBLEM, AND IT GOES BACK TO WHAT JUSTICE LEWIS WAS SAYING ABOUT THIS CREDIBILITY ISSUE, IS WE ARE NORMALLY USED TO HEARING THIS, AND THOSE OF US THAT WERE TRIAL LAWYERS, IF YOU KNOW SOMETHING BAD IS GOING TO COME OUT IN YOUR CASE, YOU WANT TO BE THE ONES WHO BRING IT OUT. IF YOU KNOW IT IS GOING TO COME OUT. BUT THE REASON WE HAVE A SEPARATE GUILT AND PENALTY PHASE, IS PRECISELY BECAUSE IT IS UNDERSTOOD THAT THERE WILL BE THINGS THAT COME OUT IN THE PENALTY PHASE THAT CAN'T POSSIBLY COME OUT IN THE GUILT PHASE, SO WE DON'T WANT THE JURY TO CONVICT SOMEBODY FOR A REASON OTHER THAN ON THE LAW AND THE FACTS, RATHER THAN SOMETHING THAT IS IMPERMISSIBLE. SO LET ME GET BACK TO A QUESTION. IF I DON'T AGREE THAT THIS COULD HAVE BEEN A REASONABLE STRATEGY DECISION, IF THAT IS THE FIRST PRONG OF STRICKLAND IS MET, CAN YOU TELL ME, AS FAR AS THE FINDING OF GUILT, WHETHER OR NOT THIS WOULD UNDERMINE CONFIDENCE IN THE OUTCOME OF THE GUILT PHASE.

ABSOLUTELY NOT. AND WE KNOW THAT, BECAUSE THE EXACT SAME EVIDENCE WAS PRESENTED IN THE FIRST TRIAL, AND HE WAS FOUND GUILTY.

CAN YOU GIVE ME SOMETHING TO DO WITH THIS CASE, WHICH IS, YOU KNOW, IN OTHER WORDS, WHAT IS THE EVIDENCE THAT WE WOULD RELY ON NOT JUST FACT THAT HE WAS FOUND GUILTY BEFORE.

THE EVIDENCE THAT WAS PRESENTED IN THIS CASE WAS JOHN HENRY'S OWN CONFESSION, THAT AFTER MURDERING SUZANNE HENRY, HE TOOK THE KNIFE OUT OF HER BODY, AND THEN TOOK HER FIVE-YEAR-OLD CHILD. WENT AND BOUGHT COCAINE. BOUGHT THE CHILD FRIED CHICKEN. BOUGHT MORE COCAINE. BOUGHT MORE COCAINE, AND THEN WE WENT OUT TO PLANT CITY, OUT INTO A FIELD AND SAT THERE WITH EUGENE IN HIS LAP, AND HE THOUGHT, YOU KNOW, I HAVE KILLED HIS MOTHER. HE IS NOT GOING TO HAVE A MOTHER, AND YOU KNOW, WE REALLY SHOULD ALL GO TO HEAVEN TOGETHER, SO I KILLED EUGENE BECAUSE I WANTED TO BE WITH HIM IN HEAVEN AND THEN I PLANNED TO KILL MYSELF BUT I JUST COULDN'T DO IT, SO HE CLEARLY, CLEARLY TOLD THE OFFICERS IN HIS CONFESSION, THAT HE PLANNED TO KILL EUGENE. WHETHER HE WAS ON COCAINE OR WHATEVER ELSE WAS GOING ON, HE PLANNED TO KILL EUGENE. IN THE FIRST TRIAL AND IN THE SECOND TRIAL, THE STATE ARGUED THAT HIS MOTIVE FOR DOING SO WAS THAT EUGENE WAS A WITNESS TO THE MURDER OF SUZANNE HENRY. THERE WAS ADDITIONAL EVIDENCE, BECAUSE THEY WERE ABLE TO ALSO ARGUE HE DIDN'T WANT TO GO BACK TO JAIL, BUT PREVIOUSLY THE JURY WOULD HAVE ALREADY KNOWN THAT HE HAD BEEN CONVICTED OF ANOTHER CRIME, SO THAT WAS, ALSO, PART OF THE FIRST TRIAL.

SO HOW MUCH DID THE PROSECUTOR EMPHASIZE THE MOTIVE THAT HE DIDN'T WANT TO GO BACK TO JAIL IN THIS CASE?

IT WAS PART OF THE CLOSING ARGUMENT. HE SAID THAT HE HAD BEEN TO JAIL BEFORE, THAT EUGENE WAS A WITNESS TO THE CRIME, AND THAT HE HAD TO ELIMINATE THE WITNESS. THAT WAS PART OF THE FIRST TRIAL, AND IN FACT THE AVOID-ARREST AGGRAVATOR WAS OUT IN THE FIRST TRIAL FOR THAT VERY REASON.

DID IT COME OUT IN THE GUILT PHASE IN THE FIRST TRIAL, THAT HE HAD BEEN IN PRISON FOR RODDY MURDER?

NO. THE ARGUMENT WAS PRESENTED IN THE GUILT PHASE BUT NOT

YOU HAVE BEEN VERY CANDID WITH THE FACT THAT THE STATE WAS NOT GOING TO TRY TO PUT IN THE RODDY MURDER OR THAT HE HAD BEEN CONVICTED OF DEATH SENTENCE.

CORRECT.

FOR SUZANNE HENRY.

CORRECT. THEY DID NOT INTEND TO DO. THAT THAT WAS GOING TO BE PRESENTED IN THE PENALTY PHASE.

HOW MANY HOURS OR WHAT WAS THE TIME LAPSE BETWEEN THE SUZANNE HENRY MURDER AND THE EUGENE HENRY MURDER?

I WOULD SAY PROBABLY IN THE NEIGHBORHOOD OF FOUR OR FIVE HOURS, SOMETHING LIKE THAT. IT WAS BASICALLY THE SAME DAY. HE HAD GONE OVER THERE ON DECEMBER 23, TO TALK ABOUT CHRISTMAS PRESENTS ALLEGEDLY, ALTHOUGH THE STATE CONTENDED HE WENT TO GET MONEY TO BUY DRUGS. AND THAT, THEN HE TOOK EUGENE AND THEY DROVE AROUND FOR A FEW HOURS AND BOUGHT COCAINE.

I AM HAVING, I AM STRUGGLING OVER THE QUESTION OF GETTING TO THIS JURY DURING THE GUILT PHASE, THE FACT THAT ANOTHER JURY AND ANOTHER JUDGE, HAD IMPOSED THE DEATH PENALTY, AND THE PREJUDICE OF THAT. WHEN THE JURY GOES BACK AND THEY ARE WEIGHING THE GUILT PHASE IN THIS CASE, HOW ARE THEY NOT GOING TO CALCULATE, WELL, YOU KNOW HAD, THERE HAS ALREADY BEEN ANOTHER JURY AND ANOTHER JUDGE WHO HAVE HEARD THE TESTIMONY OF THE WIFE'S MURDER AND IMPOSED THE DEATH PENALTY, SO HOW DOES THAT NOT FACTOR INTO THE JURY'S WEIGHING DECISION?

WELL, AGAIN, THE FIRST TRIAL THEY DIDN'T KNOW THAT WHEN THEY WENT BACK AND FOUND HIM GUILTY, BUT FOR THE SECOND TRIAL, COUNSEL FUENTES TESTIFIED THAT HE AND MR. HENRY AGREED THAT THE REASON THEY SHOULD DO THAT WAS BECAUSE THE JURY MIGHT BE MORE INCLINED TO FIND SECOND-DEGREE BECAUSE THEY KNOW HE ALREADY HAS THE DEATH SENTENCE. THEY WERE BASICALLY GOING TO A - - FOR A JURY PARDON.

YOU TALKED ABOUT FINDING HIM GUILTY THE FIRST TIME BUT THERE WAS REASON FOR THE SECOND TIME, BECAUSE, WHAT WAS THE ERROR IN THE FIRST CASE?

A VERY UNUSUAL CASE, IN THAT THERE WAS NO ERROR THAT THIS COURT AGREED BY A MAJORITY. THERE WAS EVERY ISSUE THAT WAS RAISED, THE MAJORITY OF THE COURT FOUND THAT THERE WAS NO ERROR, BUT THERE WAS NOT A MAJORITY OF THE COURT THAT FOUND ANY ONE, IT WAS SO, EVEN THOUGH IT WAS SENT BACK FOR A NEW TRIAL, THERE WAS NO ERROR THAT WAS REVERSIBLE.

WAS THERE, WHATEVER WAS IDENTIFIED AS THE ERRORS, WERE THOSE SAME THINGS BROUGHT IN, IN THIS CASE?

THE THINGS THEY HAD RAISED ON APPEAL AS ERRORS, YES, THE SAME THINGS WERE BROUGHT IN, BECAUSE THIS COURT, WITH REGARD TO EACH OF THEM, FOUND THAT THERE WAS NO ERROR.

THERE IS NO DIFFERENCE IN THE EVIDENCE IN THE TWO CASES, OTHER THAN THAT IN THIS CASE, WHAT THE DEFENSE BROUGHT IN, THE DEATH SENTENCE AND THE RODDY. OTHERWISE THE TESTIMONY

PATRICIA RODDY, THE TESTIMONY OF JOHN HENRY WITH REGARD TO PATRICIA RODDY AND THE FACT THAT HE HAD A DEATH SENTENCE WERE THE ONLY THINGS THAT WERE PRESENTED IN THE SECOND TRIAL THAT WASN'T PRESENTED IN THE FIRST.

WAS THERE EVIDENCE PRESENTED BEFORE THE TRIAL JUDGE, CONCERNING THE McNULTY

INTERROGATION ? THAT LAID THE PREDICATE FOR THE INTRODUCTION OF THE CONFESSION, IN ADDITION TO WHAT HAD BEEN PRESENTED

THEY HAD ATTEMPTED TO GET ANOTHER SUPPRESSION. THEY HAD ANOTHER SUPPRESSION HEARING AND THEY ATTEMPTED TO GET IT SUPPRESSED AGAIN. IT WAS NOT AND THIS COURTAFFIRMED IT ON DIRECT APPEAL .

ALL RIGHT.

THERE ARE NO FURTHER QUESTIONS, I ASK YOU TO AFFIRM. ,,

MAY IT PLEASE THE COURT.

HOW DOES IT FACTOR INTO THE ANALYSIS OF DEFICIENT PERFORMANCE THAT COUNSEL SPECIFICALLY CONSULTED WITH HENRY AS TO THIS STRATEGY , EXPLAINED THE REASONS FOR THE STRATEGY , AND THE DEFENDANT CONSENTED TO IT?

RESPECTFULLY, YOUR HONOR , UNDER THE CIRCUMSTANCES OF THIS CASE , THAT IS A COP-OUT . JOHN HENRY

HOW DOES IT FACTOR INTO ANALYSIS THOUGH? HOW DO WE TAKE THAT INTO ACCOUNT? IS THAT AN ISSUE ? IS THAT RELATIVE AT ALL. IS IT DISPOSITIVE? WHAT IS IT?

IT IS AN ELEMENT THAT THIS COURT HAS CITED IN SOME OF ITS OPINIONS THAT IT IS SOMETHING TO BE TAKEN INTO CONSIDERATION . BUT MY GOSH , JOHN HENRY HAD A SERIES OF MENTAL PROBLEMS. THIS MAN WAS SICK, AND TO SUGGEST THAT YOU CAN ESCAPE RESPONSIBILITY FOR THESE KINDS OF DECISIONS , BASED UPON THE FACT THAT YOUR MENTALLY - ILL CLIENT WENT ALONG WITH IT, THAT IS JUST NOT PROPER LAWYERING.

I AM GOING THINKING OF THE U.S. SUPREME COURT'S DECISION IN NIXON VERSUS FLORIDA OR FLORIDA VERSUS NIXON, AND IN THAT CASE WE HAD SAID THAT IT WAS DEFICIENT PERFORMANCE NOT TO CONSULT WITH THE CLIENT AND SIMPLY TO CONCEDE GUILT ESSENTIALLY , AND YET THE U.S. SUPREME COURT SAID , NO , EVEN IN THOSE CIRCUMSTANCES , THE ATTORNEY MAY REASONABLY BELIEVE THAT CONCEDED GUILT IS APPROPRIATE UNDER THE CIRCUMSTANCES OF THAT CASE. SO GIVEN THAT LAW , WHERE THE LAWYER ACTUALLY DOES CONSULT WITH THE CLIENT ABOUT A STRATEGY AND THE CLIENT DOES CONSENT SPECIFICALLY , ISN'T THAT EVEN MORE REASON TO SAY THAT IS A REASONABLE STRATEGY , AND IT IS WITHIN THE COUNSEL'S DISCRETION TO DO THAT?

YES. I THINK THAT WOULD BE TRUE , YOUR HONOR, IF JOHN HENRY WAS THE KIND OF PERSON EMOTIONALLY AND MENTALLY , THAT COULD REALLY ADD SOMETHING TO THE MIX, BUT EVERYONE AGREES THAT THIS MAN WAS MENTALLY ILL , AND I THINK TO RELY ON THE FACT THAT HE DIDN'T PROTEST THIS , IS PRETTY WEAK. I THINK A LAWYER , I CAN TELL YOU JUST FROM BEING A STREET LAWYER, YOU HAVE GOT TO MAKE TOUGH AND HARD DECISIONS. SOMETIMES EVEN IF YOUR CLIENT DOESN'T AGREE WITH IT. I GUESS I AM OUT OF TIME, YOUR HONOR . THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU BOTH.