

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.

**David Wyatt Jones v. State of Florida
SC04-2217 | SC05-1612**

>> Marshal: PLEASE RISE.
HEAR YE, HEAR YE, HEAR YE.
THE SUPREME COURT OF FLORIDA
NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA,
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.

>> GOOD MORNING, EVERYONE
AND WELCOME TO THE FLORIDA
SUPREME COURT AND THE
ARGUMENTS FOR TUESDAY
SEPTEMBER 19th.
AS WE BEGIN THE PROCEEDING,
I WOULD AGAIN REMIND ALL
COUNSEL THAT THE COURT HAS
STUDIED THOROUGHLY ALL OF
THE FACTS THAT ARE INVOLVED
AND UNLESS THERE'S A
FACTUALLY SPECIFIC ISSUE
PLEASE USE YOUR ARGUMENT
TIMES, JUDICIOUSLY.
THERE WILL BE BE A LOT OF
QUESTIONS FROM THE PANEL.
I WANT YOU TO WALK AKNOWING
YOU MADE YOUR ARGUEMENT TO
THE COURT.

MR. BRODY, PLEASE PROCEED.
THANK YOU, YOUR HONOR.
>> MAY IT PLEASE THE COURT.
I'M BORROWED -- I'M HARRY
BRODY WE'RE HERE ON BEHALF
OF WYATT JONES FROM THE
COURT OF DUVAL COUNTY IN
JACKSONVILLE.
I WOULD LIKE TO FOCUS ON
PRIMARILY FOCUS ON TWO
ISSUES.
INITIALLY I WOULD LIKE

TO -- I WOULD LIKE TO CALL
THE COURT'S ATTENTION TO OUR
CLAIM THAT TRIAL COUNSEL WAS
IN EFFECTIVE IN THE GUILT
PHASE, MOST PARTICULARLY IN
THE PENALTY PHASE OF THE
TRIAL IN FAILING TO PROPERLY
PREPARE AND PRESENT AN
EXPERT WITNESS.

AT THE EVIDENTIARY HEARING,
WE PRESENTED A AN EXPERT
DR. LI PERFECTMAN WITH WHOM
THE COURT IS FAMILIAR.
BUT WHO PROVIDED MUCH
TESTIMONY, MUCH BACKGROUND
THAT WOULD HAVE MADE A
DIFFERENCE IN THIS CASE.

THE JURY VERDICT WAS 9-3 --
>> BECAUSE A LOT OF YOUR
POINTS ARE BOTH INTERRELATED
TO THIS ISSUE.

ARE YOU GOING TO FIRST ARGUE
THE ISSUE AS TO MITIGATING
EVIDENCE IN THE PENALTY
PHASE.

>> YES, YOUR HONESTOR.

>> I THINK IN THE GUILT
PHASE THAT COUNSEL WAS
LOOKING AT THIS CASE AS A
CASE WHERE THEY WERE GOING
TO TRY TO SAVE MR. JONES'
LIFE.

EITHER BY SHOWING THAT THERE
WAS NO PREMEDITATION IN
GETTING A SECOND-DEGREE
VERDICT OR BY HAVING THE
JURY RECOMMEND LIFE.

I THINK THAT WAS THEIR
INFENCE AND I THINK FROM THE
EVIDENCE THAT WAS A LOGICAL
STRATEGY.

THE -- THERE'S MUCH
MITIGATION THAT WAS NOT
PRESENTED AT TRIAL.
THEY HAD AN EXPERT LINED UP
AT TRIAL, BUT THAT EXPERT
SIMPLY DIDN'T COME TO COURT.
THAT ISSUE WAS DEALT WITH ON
DIRECT APPEAL, BUT IT WAS A
PSYCHIATRIST WHO WAS IN
MEDICAL SCHOOL IN
GAINESVILLE AND HE
ULTIMATELY EITHER GOT COLD
FEET OR HIS THE SCHOOL

DIDN'T WANT HIM TO
TESTIMONY -- TESTIFY.

>> YOU ARE WANDERING A
LITTLE BIT.

>> YES, YOUR HONOR.

>> WE NEED TO KNOW -- WE'RE
FAMILIAR WITH WHAT
DR. LIPMAN SAID AT THIS
EVIDENTIARY HEARING.
SPECIFICALLY WHAT ARE YOU
SAYING WAS DEFICIENT ABOUT
THE PERFORMANCE OF COUNSEL
IN THE PENALTY PHASE
REGARDING PRESENTATION OF
EVIDENCE CONCERNING HIS
COCAINE ADDICTION, HIS
CHILDHOOD AND BE SPECIFIC.

>> YES, YOUR HONOR.

THE COUNSEL DID NOT PRESENT
ANY EXPERT OR ANYBODY WITH
RECORDS, WITH PAPERS, WITH
ANY -- THEY DID NOT DO A
SUFFICIENT BACKGROUND
INVESTIGATION OF THE CLIENT
SO THAT HE COULD PRESENT HIS
FULL LIFE STORY.

THEY BASICALLY JUST PUT ON
HIS EX-WIFE AND SHE
TESTIFIED IN 1986 HE GOT
INVOLVED WITH COCAINE.

WELL HIS INVOLVEMENT IN
DRUGS -- THEY SHOULD HAVE
PRESENTED AND COULD HAVE
PRESENTED WITNESSES WHO
WOULD HAVE TOLD ABOUT HIS
GROWING UP IN AN ABUSIVE
HOUSE WITH AN ALCOHOLIC
DRUNKEN FATHER, HIS
BEGINNING TO USE DRUGS AT
14 --

>> WELL, AGAIN, WASN'T HE
THE YOUNGEST?

>> HE WAS A YOUNG CHILD.

>> THAT'S RIGHT.

>> ALTHOUGH THERE WERE TIME
WHEN HE RAN OUT OF THE HOUSE
WITH A FATHER CHASING HIM
WITH A SHOTGUN.

I'M NOT SURE AT WHAT POINT
THAT DOESN'T EFFECT.

THAT'S STILL A PRETTY
HORRIFIC THING TO HAVE
HAPPEN.

>> LET ME INTERRUPT JUST

LIKE JUSTICE PARIENTE,
BECAUSE, AGAIN I'VE LOST
YOUR FOCUS HERE.
YOU STARTED OUT BY TALKING
ABOUT AN EXPERT WITNESS THAT
YOU PRESENTED AT THE
EVIDENTIARY HEARING.

>> RIGHT.

>> AND NOW YOU'VE SHIFTED TO
PROBABLY WHAT WE WOULD REFER
AS NONSTATUTORY, YOU KNOW,
MITIGATION.

HOW ABOUT ARTICULATING FOR
US, FIRST OF ALL, WHAT ISSUE
IS -- IT IS THAT YOU ARE
ADDRESSING RIGHT NOW AND
THEN GIVE US -- FLESH THAT
OUT FOR US.

>> OKAY.

I'M ADDRESSING IN EFFECTIVE
ASSISTANCE OF COUNSEL IN THE
PENALTY PHASE AND TRYING TO
SAY WHAT THE EVIDENCE THAT
COUNSEL COULD AND SHOULD
HAVE PRESENTED IS AND WHY IT
WOULD HAVE MADE AN IMPACT ON
THE JURY.

YOUR CLAIMS -- YOUR CLAIM IS
THAT COUNSEL DID AN
INADEQUATE INVESTIGATION
INTO THE BACKGROUND OF THIS
CLIENT.

>> THAT IS CORRECT.

AND THEY DID AN INADEQUATE
JOB OF PRESENTING HIS FULL
STORY TO THE JURY.

THERE'S MUCH MITIGATION THAT
WAS AVAILABLE THAT THEY
COULD HAVE PRESENTED AND
SHOULD HAVE PRESENTED, BUT
DIDN'T PRESENT.

>> WHAT WAS THE EVIDENCE BY
THE DEFENSE LAWYER, DID THE
DEFENSE LAWYER TESTIFY?

>> YES, THEY BOTH DID, YOUR
HONOR.

>> WHAT DID THE DEFENSE
LAWYERS TESTIFY AS TO WHAT
THEY DID DO?

>> WELL, THEY UNDERSTOOD THE
CASE WAS ABOUT COCAINE.
AND THEY TESTIFIED THEY
WANTED TO PRESENT AN EXPERT
ON -- ON -- CANE ADDICTION.

THEY WERE GOING TO PRESENT AN EXPERT WHO WAS AN EXPERT BY BEING AN ATTIC WHO HAD BECOME A DOCTOR.

THIS GUY DIDN'T TESTIFY.

WHAT ABOUT WITH REFERENCE TO INVESTIGATING THE DEFENDANT'S BACKGROUND AND PRESENTING ANY MITIGATING EVIDENCE CONCERNING THE DEFENDANT'S BACKGROUND THAT YOU WERE TALKING ABOUT?

>> THEY PUT ON HIS MOTHER AND THEY PUT ON HIS EX-WIFE. THE EX-WIFE WHO IS ALSO AN ATTIC AND ONE OF THE CHARACTERS IN THIS -- THOSE WERE THE TWO MAIN WITNESSES ON THE BACKGROUND. THEY DIDN'T PUT ANYTHING FOR INSTANCE ABOUT HIS MILITARY SERVICE.

>> DID THEY TOUCH ON THE DRUG USE AND IF SO TO WHAT EXTENT AND WHERE DO YOU THINK THAT THEY FELL SHORT IN THAT AREA?

>> THEY FELL SHORT IN THE QUALITY OF THE TESTIMONY THEY PRESENTED.

YOU KNOW, THERE'S TESTIMONY OF DRUG USE, BUT THIS GUY WAS, YOU KNOW WAS TRULY A VERY TROUBLED ATTIC WITH AN UNDERLYING SCHIZOPHRENIC CONDITION.

HE WAS A VERY SICK MAN WHO HAD BEEN SICK FOR A LONG TIME.

IT WASN'T A CASE JUST OF THE COCAINE.

THE COCAINE IS WHAT PROBLEM -- WHAT CAUSED HIM TO BECOME ALMOST ANIMAL-LIKE.

BUT THEY REALLY -- THEY DID NOT SHOW THE QUALITY, THE DEGREE OF THE OF HIS CONDITION.

>> DID THEY HAVE MENTAL HEALTH EXPERT EVALUATE HIM?

>> THEY DID.

THEY EVALUATED HIM PRIMARILY FOR COMPETENCY.

TO SEE IF HE WAS COMPETENT
TO STAND TRIAL.

>> IT WAS ONLY A COMPETENCY
EVALUATION?

>> THAT'S WHAT DOCTOR CROP
WAS HIRED TO PROVIDE.

THAT'S WHAT HE WOULD HAVE
TESTIFIED ABOUT.

THERE WAS NO TESTIMONY THAT
DR. CROP DID A

MITIGATION -- WAS GIVEN
BACKGROUND INFORMATION.

IN FACT, I THINK THE
ATTORNEY TESTIFIED THEY
DIDN'T PROVIDE BACKGROUND
RECORDS TO THE DOCTOR.

>> THEN WHAT WOULD HAVE BEEN
THE QUOTE DECIDEDLY HELPFUL
THING THAT DR. CROP HE WOULD
TESTIFY TO IF CALLED?

>> THAT DIDN'T COME OUT.

IT WAS PROBABLY THE DRUG USE
AND DRUG ADDICTION AND
SOMETIMES COUNSEL THINKS,
WELL, WE DON'T WANT TO SHOW
A JURY THE DEPTH OF THE
ADDICTION.

IN THIS CASE IT WAS
ABSOLUTELY NECESSARY TO
EDUCATE THE JURY ON THIS
CLIENT'S DRUG HISTORY.

THERE WAS NO POINT IN TRYING
TO MAKE IT SEEM LIKE HE WAS
A -- JUST A MODERATE DRUG
USER OF SOME KIND AND
THAT -- THIS MAN'S LIFE WAS
DOMINATED BY DRUGS FOR A
YEAR PRIOR TO THE MURDER HE
DID DRUGS EVERY DAY ALL DAY
FOR A YEAR, DID COCAINE.

JUSTICE QUINCE HAD A
QUESTION.

>> JUST TELL US WHAT YOU
HAVE NOW THAT COUNSEL COULD
HAVE FOUND AT THAT POINT AND
DID NOT PRESENT.

>> WE HAVE A -- WE HAVE
EVIDENCE THAT HE HE HAD A
SCHIZOPHRENIC LIKE CONDITION,
THAT HE HAD, HAD IT SINCE HE
WAS A CHILD, THAT HIS
BEHAVIOR WAS -- THE DOCTOR
DESCRIBED IT AS RAT-LIKE AT
THE ATM MACHINE WHEN HE WAS

USE THING CARD REPEATEDLY AND THE DOCTOR EQUATED THIS TO A RAT TRYING TO GET COCAINE IN AN EXPERIMENT IN A CONTROLLED EXPERIMENT. AND THAT'S VERY IMPORTANT FOR THE JURY TO UNDERSTAND, THAT THIS MAN WAS NOT -- ONE, HE WAS NOT INTERESTED IN ANY RAPE OR SEXUAL ACTIVITY WITH THE CLIENT, WHICH IS ANOTHER THING THE PROSECUTOR WAS TRYING TO IMPLY TO INFLAME THE JURY, BUT THIS MAN WAS RUNNING AROUND LIKE A RAT TRYING TO GET MONEY TO GET COCAINE.

AND IN ORDER TO SHOW THE DEPTH OF THAT ADDICTION AND PROBLEM YOU NEEDED THIS TESTIMONY, SO WE COULD HAVE PROVIDED TESTIMONY TO EXPLAIN THAT, THAT HE HAD A SCHIZOPHRENIC CONDITION, THAT HE HAD HEARD -- HE HAD, HAD A BREAK DOWN.

>> WHERE WAS COUNSEL SUPPOSED TO GET TKH INFORMATION THAT HE HAD A SCHIZOPHRENIC CONDITION. DID THE MENTAL HEALTH EXPERTS THAT HE HIRED TELL HIM THAT THIS DEFENDANT HAD A SCHIZOPHRENIC CONDITION?

>> WELL, THERE WERE -- THE DEFENDANT HAD A RECORD. HE HAD BEEN FOUND INCOMPETENT IN 1986 TO STAND TRIAL AND HE WAS INCOMPETENT FOR SOME TIME BECAUSE HE WAS -- HAVING THIS SCHIZOPHRENIC-LIKE CONDITION.

SO THERE WERE RECORDS --
>> SO THERE WERE RECORDS THAT RELATED THAT HE WAS SCHIZOPHRENIC.

>> YES.
YES --

>> WHAT RECORDS WERE THOSE?
>> THEY WERE FROM THE COURT FROM THE PREVIOUS DOCTORS. DR. MILLER'S RECORD.

>> THERE WAS RECORD OF

DR. MILLER WHO -- THAT
COUNSEL FAILED TO OBTAIN.

>> AND FAILED TO PROVIDE.

>> DID THEY DIAGNOSE THE
DEFENDANT WITH
SCHIZOPHRENIA.

THEY FOUND HIM INCOMPETENT
TO STAND TRIAL AND THEY PUT
HIM ON ANTI-DEPRESSANTS AND
I'VE LISTED THE EXACT
MEDICAL DIAGNOSIS.

IT'S PSYCHOSIS SPECTRUM
DISORDER.

>> THIS COMES TO US AFTER AN
EVIDENTIARY HEARING.

>> YES, YOUR HONOR.

>> IN A 60-PAGE ORDER THE
TRIAL COURT FINDS THIS.

AND I JUST WANTED TO ASK YOU
TO COMMENT ON OUR STANDARD
REVIEW ON THESE FINDING.

MR. BOZELL TESTIFIED AT THE
EVIDENTIARY HEARING THAT
COUNSEL SPENT A LOT OF TIME
RESEARCHING THE DEFENDANT'S
BACKGROUND.

HAVING DEFENDANT EXAMINE AND
TRYING TO COME UP WITH
EVIDENCE REGARDING HIS
MENTAL HEALTH.

HE TESTIFIED THAT A THRUST
OF THE DEFENDANT -- DEFENSES
TRIAL STRATEGY AND
ESPECIALLY IN THE PENALTY
PHASE WAS TO SHOW THAT THE
DEFENDANT WAS O COCAINE
ATING AND THE INTENT ELEMENT
WAS MUTED BY THIS ADDICTION.

ANOTHER DEFENSE LAWYER
TESTIFIED THE STRATEGY WAS
TO SHOW HE WAS A DRUG ATTIC.
AND TESTIFIED THAT THEY
PRESENTED AN EXPERT WHO
TESTIFIED CONCERNING HOW
COCAINE AFFECTS A PERSON'S
BEHAVIOR AND HOW AN
ADDICTION TO COCAINE ALSO
EFFECTS IT.

HE THEN GOES ON AND SAYS IF
YOU HAVE DONE A REASONABLE
MENTAL HEALTH INVESTIGATION
THE PRESENTATION OF WHAT
YOU'VE DONE ISN'T RENDER
INEFFECTIVE JUST BECAUSE YOU

HAVE ANOTHER EXPERT.
HOW -- THAT'S MY BIG PROBLEM
HERE.
IT LOOKS TO ME THAT THERE'S
A TWO-EDGED SWORD WITH SOME
OF THE TESTIMONY THAT WAS
PUT ON, ESPECIALLY THE LAY
TESTIMONY, AND YOU DO HAVE
ANOTHER EXPERT.

BUT HOW DO WE FIND A
STRICTLAND VIOLATION BASED
ON THESE FACTS AND THE TRIAL
COURT'S FINDING?

>> WELL, THE COURT -- IT'S
NOT ENOUGH JUST TO PRESENT
IN ANY CASE WHERE THE DRUGS
ARE INVOLVED TO PRESENT
SOMEBODY THAT JUST TESTIFIES
TO THE DEFENDANT HAD A DRUG
PROBLEM.

DRUGS WERE THE CAUSE OF
THIS.

THERE ARE MEDICAL DIAGNOSES
THAT REQUIRE FOR THE JURY TO
REALLY UNDERSTAND WHAT COULD
NOT CAUSE A MAN TO KILL
SOMEBODY, BUT PERMIT A MAN
TO BECOME SO ANIMAL-LIKE,
SUCH THAT HE COULD BE
INVOLVED IN SOMETHING LIKE
THIS.

FOR THE LAYPERSON, FOR A
JURY YES I TO UNDERSTAND
THAT REQUIRES PROPER
TESTIMONY --

>> IT ISN'T AS IF THEY
DIDN'T TRY.

DR. CROP WHO WE HEAR OVER
AND OVER DID RETAIN, DID AN
INVESTIGATION AND IN
CONSULTATION WITH THE
DEFENSE LAWYERS THEY DECIDED
IT WOULD BE MORE DAMAGING TO
PRESENT DR. CROP THAN NOT.

IT'S NOT AS IF THEY
DIDN'T -- THEY TRIED SEVERAL
DIFFERENT AVENUES ON THIS.

>> WELL, DR. CROP -- HE
WASN'T RETAINED JUST FOR
PURPOSES OF COMPETENCIES.
HE WAS NOT RETAINED FOR
PURPOSES OF THE MITIGATION
PART OF THE CASE.

AND AS I UNDERSTAND IT THE

HIS TESTIMONY WOULD
HAVE -- IT'S REALLY NOT A
RECORD OF WHAT HE WOULD HAVE
SAID THAT WOULD HAVE BEEN SO
HARMFUL.

I DON'T THINK THIS IS A CASE
WHERE -- I THINK THEY NEEDED
TO DO MORE TO EDUCATE THE
JURY IN THIS CASE.

THERE WAS LOT OUT THERE THEY
COULD HAVE PRESENTED THAT
THE JURY WAS PERCEPTIVE I
THINK TO WHAT THEY WERE
SAYING.

I JUST DON'T BELIEVE THEY
WENT FAR ENOUGH.

>> YOU ARE MOVING INTO YOUR
REBUTTAL.

I WILL --

>> IF YOU NEED TO TOUCH ON
ANY OTHER POINTS --

>> NO.

I WOULD DIRECT THE COURT TO
OUR ISSUE REGARDING THE
PROSECUTORS.

I THINK THAT THE PROSECUTOR
HAD A STRATEGY TO MAKE A
RAPE CASE OUT OF THIS TO
OBTAIN THE DEATH PENALTY BY
INSIN YOU WAITING THERE WAS
A RAPE WHEN THERE WAS NO
EVIDENCE OF ONE.

THE HEARING COURT ACTUALLY
FINALLY FOUND AFTER ALL OF
THIS, I BELIEVE -- THE
HEARING COURT FOUND THAT
THERE HAD BEEN -- THERE WAS
ENOUGH EVIDENCE.

AND I THINK THAT THE
PROSECUTOR DELIBERATELY USED
THAT TACTIC TO INFLAME THE
JURY.

OKAY.

STATE'S RESPONSE.

>> GOOD MORNING, YOUR HONOR.
MADE IT PLEASE THE COURT.
CASSANDRA DOLGIN ON BEHALF
OF THE STATE OF FLORIDA.

LET ME VERY BRIEFLY
ADDRESS --

>> IF YOU WOULD PLEASE PULL
THE MICROPHONE TOWARD YOU.

>> LET ME BRIEFLY ADDRESS
THE ISSUE THAT THE SECOND

ISSUE AS TO COUNSEL BEING
INEFFECTIVE FOR NOT
OBJECTING TO THE STATE'S
REFERENCE TO THE VICTIM'S
BODY CONDITION.

THAT WAS PRECISELY WHAT THE
PROSECUTOR DOES POINTING OUT
WHAT CONDITION MRS. McRAE
WAS FOUND IN.

THERE WAS NOTHING WRONG WITH
THE PROSECUTOR DOING THAT.
THE MEDICAL EXAMINER
TESTIFIED THAT HE CAME OUT
TO THE SCENE.

I WILL RELY UPON MY BRIEF
FOR THE REST OF THE
RATIONALE AS TO WHY THAT WAS
PROPER.

>> THE CLAIM OF
INEFFECTIVENESS FOR NOT
PUTTING ON MORE MITIGATION.
IS JUSTICE PAEUFRPBT POINTED
OUT THE MOTHER
DID -- PARIENTE POINTED OUT
THE MOTHER DID TESTIFY THE
DEFENDANT WAS VERY YOUNG
WHEN SHE DIVORCED HER
HUSBAND.

HE WAS ACTUALLY UNDER THE
AGE OF TWO.

THE DEFENDANT PUT ON HIS
BROTHER TO TESTIFY AND HIS
BROTHER WAS SUBSTANTIALLY
OLDER, 5 OR SIX YEARS OLDER
AND HE'S THE ONE THAT SAID,
REMEMBER THE ABUSE, THERE
WAS NO TESTIMONY FROM THE
DEFENDANT.

JUST SO WE CLARIFY.

IN OTHER WORDS AT THE
EVIDENTIARY HEARING THEY PUT
ON THE BROTHER.

BUT THEY DIDN'T PUT ON THE
BROTHER AT THE TIME OF
TRIAL.

>> THAT'S CORRECT.

>> AND HE WAS THE ONE THAT
TESTIFIED THERE WAS ONE OR
TWO TIMES THAT WE HAD RUN
OUT OF THE HOUSE BECAUSE MY
FATHER HAD THE GUN AND AT
THE TIME AND THERE WAS NO
TESTIMONY TO THE CONTRARY
THAT AT THE TIME THIS WAS

PRIOR TO THE DEFENDANT'S MOTHER HAVING SEPARATED FROM THE HUSBAND AND THUS THE DEFENDANT WOULD HAVE BEEN UNDER THE AGE OF TWO.

>> THE -- DID TRIAL COUNSEL AT THE PENALTY PHASE TALK TO BROTHER ABOUT THE LIFESTYLE? WE KNOW HE CALLED THE MOTHER.

BUT WHAT ABOUT THE BROTHER? WHY WASN'T HE BROUGHT IN AS A WITNESS?

>> THERE WAS TESTIMONY DURING THE EVIDENTIARY HEARING THAT COUNSEL -- ACCORDING TO THE BROTHER COUNSEL DIDN'T TALK TO HIM AND IT WAS NOT BROUGHT OUT DURING THE EVIDENTIARY HEARING AS TO WHY DEFENSE COUNSEL DIDN'T PUT HIM ON.

COUNSEL DID PUT ON THE MOTHER DURING THE PENALTY PHASE AND PUT HER ON DURING THE EVIDENTIARY HEARING AND SHE TESTIFIED TO LESS INFORMATION ABOUT THE FAMILY BACKGROUND DURING THE EVIDENTIARY HEARING AS SHE DID DURING THE PENALTY PHASE.

I WANT TO BRING TO THE COURT'S ATTENTION IN ADDITION TO DR. CROP I'M NOT SURE HE WAS JUST FOR THE COMPETENCY DETERMINATION. HE WAS A CONFIDENTIAL WITNESS.

>> DO WE KNOW WHAT IT IS THAT DOCTOR -- DR. CROP WAS CAUTIONING THE TKWFT ATTORNEY ABOUT. HE DID HAVE SOME INFORMATION.

ABOUT THE DEFENDANT'S MENTAL STATUS.

SO WHAT WAS IT THAT HE GS AFRAID WOULD COME OUT IF HE CALLED HIM AS A WITNESS?

>> AS A MATTER OF RECORD THAT.

WE DON'T HAVE THAT.

THE DEFENSE DIDN'T CALL
DR. CROP.
IT WAS DEFENSE COUNSEL ASKED
ABOUT HIM.
>> HE TESTIFIED IT WAS BAD
INFORMATION.
WHAT I WOULD BRING TO THE
COURT'S ATTENTION.
THERE WERE TWO EXPERTS THAT
THE TRIAL COURT HAD
APPOINTED, DR. MEYERS AND
DR. BERNARD.
AND WITHIN THEIR -- AND I
THINK IT'S REASONABLE TO
TAKE FROM THEIR REPORTS THAT
DR. CROP WOULD HAVE -- THE
BAD INFORMATION WAS THAT
BOTH DR. BERNARD AND
DR. MEYERS FOUND THAT THE
DEFENDANT WAS ANTI-SOCIAL
PERSONALITY DISORDER.
AND THAT INFORMATION -- IT'S
INCORRECT TO SAY THAT
THE -- THESE EXPERTS DIDN'T
HAVE THE INFORMATION THEY
SET OUT THE RECORDS THEY
HAD.
NOW THERE IS NOT A REFERENCE
TO THE MILITARY RECORDS.
BUT THEY DID A FULL
PSYCHIATRIC EVALUATION OF
MR. JONES.
AND I WOULD ALSO POINT OUT
THAT WITHIN --
>> WHAT WAS IN THE MILITARY
RECORD THAT WOULD HAVE BEEN
HELPFUL TO THE DEFENDANT?
>> ACTUALLY THOSE MILITARY
RECORDS WERE NOT PUT INTO
EVIDENCE DURING THE
EVIDENTIARY HEARING SO I
HAVE NOT SEEN THEM.
>> OKAY.
WHEN MR. SPEAKER BROADY SAID
THESE WOULD HAVE BEEN
HELPFUL MITIGATION, WE CAN'T
ESTABLISH THAT.
>> I THINK DR. LICHTMAN
TESTIFIED THERE WAS SOME
REFERENCE TO THE DEFENDANT'S
MENTAL CONDITION.
I DON'T REMEMBER EXACTLY
WHAT AND DR. MEYERS BASED
UPON HIS RECEIVING A

SELF-REPORT FROM THE
DEFENDANT THAT HIS DEFENDANT
HAD TOLD HIM HE RECEIVED
SOME KIND OF DISCHARGE THAT
SOMETHING HAD HAPPENED BUT
HE DIDN'T KNOW WHY.

DR. LICHTMAN IS THE ONLY ONE
THAT HAS FOUND THAT
MR. JONES HAS SOME SORT OF
SCHIZOPHRENIC DISORDER.
HE SAID IT WASN'T
SCHIZOPHRENIA.

BOTH DR. MEYER AND
DR. BERNARD SAID, THAT, NO
HE DOESN'T HAVE A MAJOR
PSYCHIATRIC DISORDER.
HE IS ANTISOCIAL
PERSONALITY.

I THINK DR. BERNARD SAID IT
WAS ANTISOCIAL PERSONALITY.

>> WHO IS DR. MILLER THAT --

>> DR. MILLER WAS THE
PSYCHIATRIST THAT HAD
EVALUATED MR. JONES.

HE HAD BEEN CHARGED IN A
MURDER IN 1986.

AND IT'S INCORRECT TO SAY
THAT DEFENSE COUNSEL DIDN'T
HAVE HIS RECORD.

DEFENSE COUNSEL SPECIFICALLY
TESTIFIED DURING THE
EVIDENTIARY HEARING THAT
THEY HAD BEEN IN CONTACT
WITH DR. MILLER.

HAD SPOKEN WITH HIM IN FACT
DURING THE TRIAL THEY EVEN
TRIED TO BRING IN
DR. MILLER'S REPORT AND THE
STATE OBJECTED.

THIS COURT LATER AFFIRMED
THE COURT'S DECISION NOT
LETTING THAT REPORT IN.

SETS IT'S INACCURATE TO SAY
TRIAL COUNSEL DIDN'T HAVE
DR. MILLER'S REPORT.

>> DID DR. MILLER DIAGNOSE
HIM WITH SCHIZOPHRENIA.

I HAVEN'T SEEN THE REPORT.
I DON'T BELIEVE SO.

THE DEFENDANT WAS FOUND
INCOMPETENT TO STAND TRIAL
FOR THE 1986 MURDER.

IT'S NOT A MATTER OF RECORD
FOR HOW LONG HE SUBSEQUENTLY

WAS FOUND COMPETENT TO STAND TRIAL FOR THE 1986 MURDER. BOTH DR. BERNARD AND DR. MEYERS FOUND HE WAS COMPETENT TO STAND TRIAL HERE.

ALSO WITHIN THE REPORT THAT --

>> WAS HE UNDER ANY MEDICATION?

>> HE WAS -- MR. JONES WAS APPARENTLY ON MEDICATION. THE EVIDENTIARY HEARING, NO EVIDENCE WAS PUT ON AS TO WHAT HE WAS ON.

WHAT WE KNOW THERE WAS A MOTION BY COUNSEL IN 1996 ASKING THAT AN INSTRUCTION BE GIVEN TO THE JURY THAT THE DEFENDANT WAS ON MEDICATION AND AT THAT TIME TRIAL COUNSEL SET OUT WHAT MEDICATION THEIR CLIENT WAS ON.

BUT COME 1997 WHEN THE DEFENDANT A YEAR AND TWO MONTHS LATER WHEN HE GOES ON TRIAL THERE'S NO EVIDENCE AS TO WHETHER HE WAS STILL ON MEDICATION AND AT THE EVIDENTIARY HEARING NO EVIDENCE WAS PUT ON AS TO WHETHER HE WAS ON MEDICATION OR HOW MUCH.

I WOULD ALSO POINT OUT THAT BOTH DR. MEYERS AND DR. BERNARD WERE AWARE THAT THE DEFENDANT HAS SAID TO ANOTHER INMATE THAT HE EXPRESSED CONCERN ABOUT RECEIVING THE DEATH PENALTY AND THIS IS ON PAGE 49 OF THE RECORD.

IT'S PART OF DR. MEYER'S PSYCHIATRIC EVALUATION. AND HE HAS SAID THAT THIS IS A STATEMENT BY MR. HUTO AND HE SAID THE DEFENDANT WAS CONCERNED ABOUT RECEIVING THE DEATH PENALTY AND WONDERED HOW HE COULD AVOID IT.

HE REPORTED TO MR. HUTO THAT HE NEEDED TO GET ON

MEDICATION AND COULD GO TO THE SECOND FLOOR WHICH WAS THE MEDICAL SECTION OF THE JAIL AND HE ASKED MR. HUTO IF HE THOUGHT THAT WOULD HELP HIM USE AN INSANITY DEFENSE.

THIS INFORMATION IS IN THE PSYCHIATRIC REPORT AND COUNSEL IS CLEARLY AWARE OF IT AND I WOULD SUSPECT THAT HAD DR. CROP TESTIFIED THIS INFORMATION CERTAINLY WOULD HAVE BEEN ABLE TO BRING US IN AND AS WELL AS THE FACT THE ANTISOCIAL PERSONALITY DISORDER INFORMATION.

>> QUESTION ON HIS MENTAL STATE AT THE TIME OF THE MURDER.

A STATUTORY MITIGATOR THAT HE WAS UNDER THE INFLUENCE OF DRUGS AT THE TIME OR IMPAIRED WOULD HAVE BEEN POWERFUL.

OUR DIRECT APPEAL OPINION SAYS FURTHER THERE WAS NO ASSERTION THAT JONES WAS HIGH ON CRACK AT THE TIME OF THE MURDER.

COULD YOU CLARIFY WHETHER THAT'S CORRECT OR INCORRECT STATEMENT AND WHETHER THERE IS SOME DEFICIENCY IN THAT REGARD AS TO HIS MENTAL STATE AT THE TIME OF THE MURDER.

>> THERE WAS NO ABSOLUTELY EVIDENCE THAT THE DEFENDANT WAS ON CRACK AT THE TIME OF THE MURDER.

THERE HAD BEEN EVIDENCE PRESENTED THAT THE DEFENDANT WAS ANXIOUS AT THE TIME HE WAS OBSERVED IN THIS BAR AND THE BAR AND THER HAD TESTIFIED DURING THE GUILT PHASE THAT SHE HAD SEEN THE DEFENDANT.

HE WAS VERY ANXIOUS, ACTING VERY ANXIOUS, HE WAS NOT DRINKING AT THE TIME.

HE JUST HAD WATER.

HE ALSO THEN LATER SEEN AT

THE WALLGREENS THAT THE
VICTIM SUBSEQUENTLY ABDUCTED
FROM THAT PARKING LOT.
WE KNOW HE WAS ABLE TO
DRIVE.

HE WAS ABLE TO GO INTO THE
WALLGREENS.

THERE WAS NO EVIDENCE PUT ON
AND THERE WAS NO EVIDENCE
PUT ON DURING THE
EVIDENTIARY HEARING AS WELL
THAT HE WAS UNDER THE
INFLUENCE.

>> BUT THE TRIAL COURT DID
FIND AND -- MAYBE MR. BRODY
CAN ADDRESS THIS -- THAT
FOUND THAT THE MITIGATING
CIRCUMSTANCE THAT HE WAS A
CRACK ATTIC THE FELONY WAS
COMMITTED WHILE HE WAS UNDER
THE INFLUENCE AND HIS
ADDICTION IMPAIRED HIS
ABILITY TO CONFORM HIS
BEHAVIOR.

TO THE REQUIREMENTS OF THE
LAW.

I'M TRYING TO FIGURE OUT
HOW -- THERE MUST HAVE
BEEN -- GOING BACK TO THE
ORIGINAL TRIAL, THE TRIAL
COURT TOOK THE EXTESTIMONY
THAT WAS PRESENTED ABOUT HIS
COMPULSION TO OBTAIN MONEY
FOR COCAINE AND DID
TRANSLATE IT INTO STATUTORY
MIT GARTH OMIT GATORS;
CORRECT?

>> THERE WAS EVIDENCE HE HAD
BEEN USING CRACK COCAINE
EARLY YESER IN THE DAY.

>> THAT ALL CAME OUT AT THE
ORIGINAL TRIAL.

>> ABSOLUTELY.

>> WHEN THE TRIAL JUDGE
FOUND THE STATUTORY
MITIGATOR AND GAVE THEM SOME
WEIGHT.

>> ABSOLUTELY.

DURING THE EVIDENTIARY
HEARING IT WAS CLEAR THAT AT
FIRST THE WITNESSES WERE
BEING QUESTIONED AS THOUGH
THERE HAD BEEN NO FINDING TO
THE STATUTORY MENTAL MIT

GOTORS AND FROM THE SENTENCING ORDER CLEARLY THE TRIAL COURT DID FIND THAT BASICALLY THIS CLAIM OF INEFFECTIVENESS IS --

>> LET ME ASK YOU THIS ABOUT THE DOCTORS HERE.

THERE SEEMS TO BE SOME SUGGESTION THAT -- WELL, THERE WAS A DOCTOR WHO WAS SUPPOSED TO TESTIFY ABOUT THE EFFECTS OF ADDICTION AND USE OF DRUGS AT THE PENALTY PHASE, BUT HE DID NOT SHOW UP.

>> THAT IS INCORRECT.

>> DREW EDWARDS A DRUG COUNSELOR CAME AND HE TESTIFIED AS TO THE EFFECTS OF COCAINE ADDICTION ON THE BODY, ON THE MIND, FROM WHAT I RECALL HE HAD CHARTS WHO DID NOT TESTIFY WAS A GENTLEMAN.

>> DREW EDWARDS TESTIFIED AT THE --

>> PENALTY PHASE.

>> PENALTY PHASE.

>> AND HE TESTIFIED AS TO THE EFFECTS OF CRACK COCAINE. THE INDIVIDUAL THAT THE DEFENSE HAS REFERRED TO THAT DID NOT TESTIFY IS GENTLEMAN BY THE NAME OF ETON, I BELIEVE, AND HE WAS AT THE TIME STUDYING AT THE UNIVERSITY OF FLORIDA TRIAL COUNSEL'S TESTIMONY DURING THE EVIDENTIARY HEARING WAS THEY WERE NOT GOING TO PUT HIM ON AS AN EXPERT. THEY WERE GOING TO PUT HIM TO TESTIFY AS TO HIS PERSONAL EXPERIENCES THAT HE HAD BEEN A CRACK ATTIC, AND THE DEFENSE HAD WANTED TO SHOW THAT EVEN SOMEONE WHO IS EDUCATED COULD FALL UNDER THE INFLUENCES OF CRACK ADDICTION.

THIS -- THIS CLAIM OF INEFFECTIVENESS REALLY PERTAIN -- THAT COUNSEL DIDN'T DO IT THE WAY COUNSEL

WOULD HERE.

>> NO FURTHER QUESTIONS WE
WOULD ASK THE COURT AFFIRM
THE JUDGE.

THANK YOU.

THANK YOU VERY MUCH.

>> REBUTTAL?

>> MR. BRODY PLEASE PULL THE
MICROPHONE DOWN.

>> THANK YOU.

THE FACT IS THE PROBLEM IS
THEY DID NOT -- COUNSEL DID
NOT PUT ON THE MEDICAL
EXPERT AT THE TRIAL FOR THE
JURY TO HEAR.

THERE -- IN THIS CASE IT WAS
VERY IMPORTANT.

IT WAS THE WHOLE CASE.

>> WHAT ABOUT THE TESTIMONY
OF DREW AA -- EDWARDS?

>> RIGHT.

>> WAS HE DESIGNATED AN
EXPERT ON THIS ISSUE OF
ADDICTION AND USE OF DRUGS?

>> HE WAS A DRUG COUNSELOR.
HIS SCOPE OF WHATEVER
EXPERTISE HE HAD WAS
STRICTLY THAT HE HAD BEEN AN
ATTIC AND COULD TESTIFY WHAT
THE DRUG DID TO HIM.

HE WAS NOT COMPETENT --

>> I THOUGHT THAT WAS THIS
ETO NO N PERSON THAT DIDN'T
TESTIFY WHO WAS GOING TO
TESTIFY ABOUT HIS USE OF
DRUGS AND THE USE ON HIM.
BUT I THOUGHT THAT THE OTHER
PERSON WHO DID TESTIFY WAS
MORE GENERAL ABOUT THE USE
OF DRUGS.

>> WHATEVER THE GENERALITY
DIDN'T EXTENT TO ANY MEDICAL
EXPERTISE WHATSOEVER OR ANY
KNOWLEDGE OF THE FARM
COLOGICAL IMPACT.

HE COULDN'T TESTIFY TO
MR. JONES WAS, IN FACT,
UNDER COCAINE PSYCHOSIS AT
THE TIME OF THE KIDNAPPING.
LIPMAN COULD HAVE PROVIDED
THAT TESTIMONY TO THE JURY.
THAT IN FACT HE WAS UNDER
AND IN FACT.

>> THIS WAS BASED ON HIS

TESTIMONY -- WOULD HAVE BEEN
BASED ON HIS LONG-TERM USE
OF COCAINE OR WAS THERE
EVIDENCE THAT HE WAS USING
OR HAD USED COCAINE AROUND
THE TIME THAT THE MURDER AND
KIDNAPPING ACTUALLY OCCURRED?

>> WELL, DR. LIPMAN

TESTIFIED THAT, YES, HE WAS
UNDER COCAINE PSYCHOSIS AT
THE TIME.

>> MEANING -- BECAUSE OF HIS
LONG-TERM USE --

>> RIGHT, AND THE LONG-TERM
USE MEANING LITERALLY THAT
DAY.

THE COCAINE USE HAD BEEN
REPEATED AND WAS BEING
REPEATED CONSTANTLY
THROUGHOUT THIS TIME.

IT WAS -- HE WAS UNDER THE
INFLUENCE, I THINK.

IT'S SAFE TO SAY AT ALL
TIMES HE WAS -- DURING THIS
PERIOD HE WAS ON A COCAINE
BINGE.

>> DO WE HAVE ANY TESTIMONY
IN THE RECORD ABOUT WHETHER
OR NOT HE HAD A JOB OR ANY
OF THOSE KINDS OF THINGS?

>> OH, YES.

THEY HAD BEEN SHOPLIFTING
FOR YEARS.

SHARE LIFE CONSISTED OF
STEALING TELEVISIONS,
SELLING THPBD AND BUYING
CRACK.

THAT'S ALL THEY DID.

THEY DIDN'T FUNCTION IN ANY
OTHER WAY IN THE SOCIETY.

THEY SLEPT IN MOTELS WHEN
THEY COULD AFFORD IT AND
JUST DID CRACK ALL OF THE
TIME.

IT WAS NOT -- THIS MAN -- IT
WAS NOT IN ANY WAY ANY KIND
OF NORMAL EXISTENCE.

THAT WAS DEVIATED FROM.

IT WAS FULL-SCALE -- IT WAS
FULL SCALE.

BUT MR. HUTO WHO THE STATE
MENTIONED WAS AN INMATE AND
THE STATE HAS CERTAINLY
NOT -- WE PRESENTED A COUPLE

OF INMATES AND ONE WHO
TALKED ABOUT MR. JONES' DRUG
USE IN THE EARLY 80s AND HOW
BAD OF AN ATTIC HE WAS THEN.
AND ALSO ONE WHO SAW
MR. JONES WHEN HE WAS
ARRESTED AND SAID HE WAS
STRUNG OUT AT THE TIME HE
WAS BROUGHT IN.

THIS MAN WHO WAS ALSO AN
ATTIC.

I THINK THE RECORD IS CLEAR
THAT MR. JONES IS A HORRIBLE
ATTIC.

HE HAD HORRIBLE PROBLEMS
WITH DRUGS AND THESE KEEPS
ARE TERRIBLE.

BUT THE JURY WAS NOT TOLD
THE FULL SCOPE OF THE DRUG
USE AND I HOPE THE COURT IS
NOT TRYING TO SET SORT OF AN
AUTOMATIC IF YOU
HIRE -- HAVE SOMEBODY TALK
ABOUT DRUG A LITTLE BIT AND
THAT WILL SATISFY THE
STRICTLAND TEST.

YOU GET A DRUG COUNSELOR,
THIS OR THAT.

THIS REQUIRED THE RECORDS BE
GIVEN TO AN EXPERT ON
COCAINE AND THE JURY NEEDED
TO BE -- IF THERE WAS ANY
WAY TO SAVE THIS MAN'S LIFE
THE JURY NEEDED TO
UNDERSTAND WHAT EXTREME USE
OF COCAINE BEYOND ANY OF OUR
IMAGINATIONS, REALLY WHAT
THAT COULD DO TO A PERSON
AND HOW A PERSON COULD END
UP BEING AN ANIMAL, A
RAT-LIKE ANIMAL RUNNING TO
ATM MACHINES CONSTANTLY
NEEDING TO REPLENISH
HIMSELF.

THAT WAS NOT CONVEYED TO THE
JURY.

THE TRIAL ATTORNEY
UNDERSTOOD THE NEED TO DO
IT.

BUT THEY DID NOT DO IT.

AND THAT WAS SUFFICIENT
PERFORMANCE IN THE PENALTY
PHASE OF THE TRIAL.

HAD THEY DONE IT I

THINK -- THERE'S A
REASONABLE PROBABILITY THAT
THE JURY WOULD HAVE RETURNED
TO LIFE SENTENCE.

>> MR. BRODY THANK YOU VERY
MUCH FOR YOUR PRESENTATION.
WE WILL TAKE THIS CASE UNDER
ADVISEMENT.
THANK YOU VERY MUCH.