Jonathan Huey Lawrence v. State of Florida

SC06-352 | SC06-1152

THE NEXT CASE OF THE
CALENDAR IS LAWRENCE v.
STATE.
>> GOOD MORNING JUSTICE
LEWIS AND MEMBERS OF THE
COURT.
I'M MIKE RETER AND I
REPRESENT MR. LAWRENCE IN
HIS POSTCONVICTION DENIAL.
I WOULD LIKE TO SPEAK TO
THREE CLAIMS.
CLAIM TWO REGARDING THE FACT
THAT HIS DEFENSE AND NEXT
CLAIM 1 --
>> I'M SORRY?
>> THE FACT THAT HE HAD A
DEFENSE.
TO THE CHARGE.
AND CLAIM 1 IN MIND TO HEAR
THE CAUSE BECAUSE THEY'RE
INTERRELATED.
STARTING WITH CLAIM 2,
MR. LAWRENCE STATED
EMPHATICALLY AT THE TIME OF
HIS ARREST AND UP THROUGH
TODAY HE DID NOT SHOOT
MS. ROBINSON, HE DID NOT --
HE WAS NOT INVOLVED IN THE
PARTICIPATION OF IT, NOR DID
HE KNOW THAT MR. ROBINS WAS
GOING TO KILL MS. ROBINSON.
UNDER THE LAW, IF TAKEN AS
TRUE, THAT IS A DEFENSE TO
PRINCIPAL AS AN INDEPENDENT
PACT OF THE COCONSPIRATOR.
THE COURT IN ITS ORDER
STATES THAT TESTIMONY OF THE
-- ONE OF THE DEFENSE
COUNSELS, AT PAGE 11 SAYS
MR. KILL DENIED TELLING THE
DEFENDANT THERE WAS NO
DEFENSE.
INSTEAD, HE TESTIFIED HE
PROBABLY TOLD THE DEFENDANT

THAT HE DID NOT THINK THEY
WOULD WIN AT TRIAL.
THAT IS CONTRADICTORY TO
MR. KILLM'S OWN TAPED
STATEMENT WHERE HE IS ON
VIDEO TELLING THE CLIENT
THAT HE HAS NO LEGAL DEFENSE
AND IN FACT IS GUILTY.
THE STATE ALSO TOLD HIM IN
THAT SAME VIDEO THAT HE HAD
NO LEGAL DEFENSE.
IN THE COURT'S ORDER, THE
COURT MADE A SPECIFIC
FINDING WITH REGARD TO THE
DEFENSE SAYING AS SUCH, THE
COURT FINTSDS THAT THE
DEFENDANT -- FINDS THAT THE
DEFENDANT HAS FAILED TO
ESTABLISH THAT BEING
INFORMED OF SUCH A DEFENSE
WOULD'VE ALTERED THE OUTCOME
OF THE CASE OR WOULD HAVE
SUCCEEDED AT TRIAL.
THERE ARE THREE ASPECTS TO
THAT PARTICULAR FINDING.
ONE IS THE LANGUAGE IMPLIES
OR AT LEAST SUGGESTS THAT
NUMBER ONE, HE WAS NOT
INFORMED.
THE SECOND THING IT
SUGGESTICIZE THAT IN FACT,
HE HAD A DEFENSE IF TAKEN AS
TRUE.
HOWEVER, THE COURT DID NOT
FOLLOW THE DICTATES OF THIS
COURT IN GROSSNER, WHICH SET
OUT FOUR STANDARDS THAT ARE
SUPPOSED TO BE UTILIZED WHEN
ASSESS AGCLAIM OF
INEFFECTIVE ASSISTANCE OF
COUNSEL WITH FAILURE TO
INFORM A DEFENSE.
THOSE PARTICULAR STANDARDS
ARE: CIRCUMSTANTIAL
SURROUNDING THE PLEA, THE
GOVERNMENT -- STRENGTH OF
THE GOVERNMENT'S CASE OR
SUCCESS OF THE ARGUMENT AT
DEFENSE OF TRIAL, THE
COLLOQUY BETWEEN THE
DEFENDANT AND THE COURT, AND
DIFFERENCE BETWEEN THE
SENTENCE FROM THE PLEA
VERSUS THAT GOING TO TRIAL.

NONE OF THOSE ISSUES WERE DISCUSSED BY THE COURT EXCEPT THE CLAUSE WHICH THIS COURT SPECIFICALLY SAID IS NOT THE TEST AND WHICH WAS AFFIRMED AGAIN IN THE SECOND DCA CITING TO GROES RNER THE FACT THAT HE MIGHT HAVE BEEN SUCCESSFUL IS NOT THE TEST.
>> MS. GROSSNER BROUGHT TO THE COURT'S ATTENTION?
>> IT WAS WRITTEN ARGUMENT BEFORE, AFTER THE EVIDENTIARY HEARING BOTH SIDES DID AND GROSSMAN WAS CITED TO THE COURT.
THE DIFFERENCES BETWEEN THIS CASE AND GROSSNER IS EVEN MORE PROFOUND IN THIS CASE.
IN GROSSNER, THE DEFENDANT RECEIVED BENEFIT OF THE PLEA IN GETTING A LESSER SENTENCE AND MIGHT'VE GOTTEN WHEN HE WENT TO TRIAL, DEATH SENTENCE.
SECONDLY, SHE WAS IN FACT THE KILLER WHO ACTUALLY DID THE SHOOTING.
IN THIS PARTICULAR CASE -- AND PLUS, THERE WERE WITNESSES THAT WERE ACTUALLY GOING TO TESTIFY IN GROSSNER THAT THE PERSON DID NOT LOOK INTOXICATED AND EVEN SHE SAID TO THE POLICE OFFICER I CAN DRIVE A CAR, WAS NOT THAT INTOXICATED AND THE DEFENSE IN THAT CASE WAS INTOXICATION.
IN THIS PARTICULAR CASE, MY CLIENT IS UNDISPUTED WAS NOT THE SHOOTER.
SECONDLY, THERE WERE NO EYEWITNESSES TO THE OFFENSE OTHER THAN THE TWO DEFENDANTS, THIRDRY, HE HAD DISCLAIMED HAVING ANY KNOWLEDGE AT ALL.
NOW, THERE WAS CIRCUMSTANTIAL EVIDENCE WHICH WOULD HAVE REFUTED THAT, BUT THE BOTTOM LINE IS THAT THERE HAVE BEEN MANY PUBLIC CASE OTHER PROFILE

CASES WHERE THERE HAS BEEN
OVERWHELMING EVIDENCE THAT
THE PUBLIC HAS BEEN AWARE OF
AND THE JURY STILL COMES
BACK NOT GUILTY.
THE FACT THAT THE COUNSEL
SAID THEY WOULDN'T BELIEVE
HIM OR IT WOULDN'T GO TO
TRIAL IS IN THE THE QUESTION
OF -- THEY ACKNOWLEDGED THE
REQUIREMENT AT EVIDENTIARY
HEARING.
>> SO WHAT IS THEIR
EXPLANATION FOR WHAT THEY
TOLD HIM IN THE VIDEOTAPE
AND WHAT THEY UNDERSTOOD TO
BE A POSSIBLE VIABLE
DEFENSE?
WHAT WAS THEIR EXPLANATION?
>> THEY INDICATED THAT, WELL,
THEY INDICATINGED IN THE
TAPE THAT THERE WAS NO LEGAL
DEFENSE, PERIOD.
AT TRIAL, THEY, MR. CANE
INDICATED THAT ONE, HIS
CLAIMS, HE DIDN'T BELIEVE
HIM NOR DID HE THINK THE
JURY WOULD BELIEVE HIM.
BUT THIS IS EXPLAINED TO MYSELF
AND THE COURT AS TO THEIR
UNDERSTANDING, NOT TO THE
DEFENDANT.
HE INDICATED THAT THERE WAS
SOME ACTS HE HAD INVOLVED
DOING THAT SHE IN HER
PERCEPTION WOULD ESTABLISHED
AT GUILTM.
BUT THAT'S WHAT SHE TOLD
HIM.
THAT'S WHAT SHE TOLD THE
COURT AND MYSELF.
SHE DIDN'T TELL THE
DEFENDANT THOSE FACTS.
>> WELL, ISN'T THE STANDARD
WHETHER TWO-PRONG, THE
SECOND STANDARD WOULD BE NOT
WHETHER THE DEFENSE WOULD
HAVE PRODUCED AN ACQUITTAL.
THE PERSON PLED GUILTY.
THE STANDARD IS WHETHER THE
DEFENDANT WOULD HAVE PLED
GUILTY IF HE HAD KNOWN ABOUT
THE DEFENSE.
AND IN TERMS OF THE

CREDIBILITY OF WHETHER OR
NOT A DEFENDANT WOULD PLEAD
GUILTY ANYWAY, TRIAL JUDGE
CAN EVALUATE WHETHER HOW
VIABLE THE DEFENSE ACTUALLY
IS.
SO.
>> I AGREE.
>> SO HOW DO YOU TAKE THE
SECOND PRONG, WHICH IS HE
SHOULD'VE BEEN INFORMED OF
THAT HE COULD'VE HAD A
DEFENSE OF NOT BEING A
PRINCIPAL BUT THEN THEY
COULD ALSO SAY BUT, YOU KNOW
WHAT?
YOU HAVE GOT THESE NOTES
THAT YOU WROTE IN YOUR OWN
HANDWRITING ARE GOING TO
PROBABLY NAIL YOU.
WE THINK YOU HAVE -- SO HOW
DO YOU ESTABLISH OR -- AND
THE TRIAL JUDGE HAS ALREADY
MADE A DECISION THAT THE, HE
WOULD'VE PLED GUILTY ANYWAY.
>> NO, THAT'S THE WHOLE
POINT.
I WAS GOING TO GET TO THE
OTHER PRONG.
HE WOULD NOT HAVE -- AS A
MATTER OF FACT --
>> DID THE TRIAL JUDGE MAKE
A FINDING OWN THAT.
>> NO.
THE COURT ALREADY DEALT WITH
THE PRONG AS FAR AS MAKING
THE STATEMENT THAT IT
PROBABLY WOULDN'T HAVE MADE
A DIFFERENCE.
HOWEVER, I BELIEVE
DIFFERENCE IN THIS CASE
VERSUS GROESNER.
IN THIS HE DEPLIED AN
DEFICIENCY THAT HE WASN'T
INFORMED OF THE DEFENSE AND
THAT IT WAS A DEFENSE.
BUT INDICATED THAT IT
PROBABLY WOULDN'T HAVE MADE
A DIFFERENCE.
HOWEVER, ONLY IN THE OUTCOME
IN THE CASE.
NOT TO HIS PLEADING GUILTY.
IN THIS CASE, THE PLEA TOOK
PLACE AFTER THE JURY HAD

ALREADY IN EMPANELED.
HE TOLD HIM I AM NOT
PLEADING GUILTY WHICH WAS
ACKNOWLEDGED.
BY THE DAY OF THE PLEA AFTER
THE JURY HAD BEEN EMPANELED
DURING THE TIME OF THIS
VIDEO, HE WOULDN'T PLEAD
GUILTY.
MY TESTIMONY, MS. GARDNER
WHICH WAS HIS SISTER, HAD TO
GO OUTSIDE THE COURTROOM,
WHICH IS WHERE THE VIDEO
TOOK PLACE TO GET THE MOTHER
TO TAKE HIM BACK IN TO
CONVINCE HIM TO PLEAD GUILTY
BECAUSE HE WOULDN'T DO T. SO
EVEN IN HIS EVALUATIONS IN
DISCUSSING WHY DID UPLEAD
GUILTY, BECAUSE THEY TOLD ME
THAT THERE WASN'T ANYTHING
THEY COULD DO FOR ME ON THE
GUILT PHASE AND THEY WOULD
SAVE MY LIFE IF I PLED
GUILTY.
HE HAD MAINTAINED THAT
COMPLETELY THROUGHOUT.
HE HAD NO INTENTION OF
PLEADING GUILTY.
>> I THOUGHT THAT THERE WAS
A DISCUSSION.
THAT THERE WAS NO GUARANTEE
THAT IF HE -- I THOUGHT
THERE WAS EVIDENCE OF THAT
IN THIS RECORD.
THAT IF THERE IS A PLEA,
THAT THIS IS NOT A
GUARANTEED DEAL, THIS IS NOT
A BARGAIN THAT YOU HAVE A
LIFE SENTENCE OR SOMETHING
LESS THAN LIFE.
I THOUGHT THAT THAT WAS VERY
CLEAR IN THE EVIDENCE.
>> WELL, I THINK --
>> FROM THOSE LAWYERS, WAS
IT NOT?
>> THERE WAS -- OKAY.
IF YOU GO THROUGH THE
TRANSCRIPT OF THE TAPE YOU
WILL SEE ONE STATEMENT.
MY COUNSEL, IN READING FROM
THE QUESTIONS THAT WERE
GOING TO BE ASKED BY THE
COURT BY THE DEFENDANT

STATING THAT DL -IT WILL BE
DETERMINED WHETHER YOU GET
LIFE OR DEATH.
>> THAT'S IN COLLOQUY.
>> THAT'S IN THE COLLOQUY
BETWEEN --
>> WELL -IS NOT IN THE
TESTIMONY OF THE LAWYERS
THAT WE DIDN'T MAKE THE
PROMISE S. THAT NOT IN THE
TESTIMONY?
>> THEY MAKE THE STATEMENT
THAT WE DID NOT SPECIFICALLY
PROMISE HIM THAT HE WAS
GOING TO GET LIFE HOWEVER
YOU HAVE TO CONSIDER A
NUMBER OF THINGS.
>> DR. CROWN WHO WENT WITH
MR. KILIAN TO THEMOTOR PG
HOUSE PREVIOUS TO THE PLEA
AND HIS INTERPRETATION OF
THE STATEMENT TO HER BY
MR. KILIAN WAS WE GUARANTEE
YOU, WE PROMISE YOU IF HE
PLEASE GUILTY, HE IS GOING
TO GET THE DEATH PENALTY.
IF HE GOES TO TILE HE WILL
GET THE DEATH PENALTY.
BUT SPHHE PLEASE GUILTY HE
WILL GET LIFE.
HERE IS A -- UNINTERESTED
PARTICIPATE --
>> HE TESTIFIES THAT THEY
TOLD HIM SOMETHING
DIFFERENT.
>> THAT'S CORRECT.
>> OKAY.
>> THE CLIENT ALSO TESTIFIEDS,
THE SISTER TESTIFIES, SHE
WAS THERE AT THE
CONVERSATION.
THAT WAS HER IMPRESSION FROM
MR. KILLIUM THAT THE
IMPRESSION THAT --
>> NOW YOU HAVE SWITCHED.
NOW YOU'VE SWITCHED FROM
YOUR FIRST ISSUE, WHICH WAS
FAILURE TO ADVISE OF A, OF A
DEFENSE TO A PROMISE OF
LIFE.
AND I DON'T THINK, FRANKLY,
WITH WHAT THE TRIAL JUDGE
SAID IN THE COLLOQUY AND THE,
THE FINDINGS THAT THEY MADE

THAT THERE WAS ANY
MISREPRESENTATION ON THAT.
BUYOU -- BUT YOU STILL STICK
TO THIS ISSUE THAT IT'S
UNCORRESPONDENTVERTED THAT
THEY DIDN'T TELL HIM OF A
DEFENSE THAT THEY NOW ADVIT
-- UNCONTROVERTIBLE THAT
THEY DIDN'T INFORM HIM OF A
DEFENSE THAT WAS LEGALLY
VIABLE.
>> BOTH OF THEM ACKNOWLEDGED
THEY HAD NO RECLECTION OF
EVER TELLING HIM HE HAD A
DEFENSE.
AND THAT'S EVEN SUPPORTED BY
THEM ON VIDEO.
>> DIFFERENT FROM THE ISSUE
ABOUT WHETHER THERE US WAA
TRAUMS OR -- -- THERE WAS A
PROMISE OR A BELIEF THAT HE
WOULD GET LIFE IF HE BLED
GUILTY.
>> I WAS ANSWERING JUSTICE
LEWIS'S QUESTION.
>> THAT'S BECAUSE CLEARLY
PEOPLE ARE NOT GOING -- IF
THERE IS NO ADVANTAGE, IF
THERE IS NOT A POSSIBILITY
THAT THEY MIGHT GET LIFE IS
REALLY NO INVENTIVE TO
PLEASE GUILTY.
>> WHICH WAS THE BASIS FOR
THE OTHER -- THERE IS NO
DIFFERENCE BETWEEN WHAT HE
WOULD GET POTENTIALLY FROM
EITHER PLEADING GUILTY OR
GOING TO TRY.
AND -- TRIAL.
AND HE HAD MAINTAINED HE
WANTED TRIAL ALL THE WAY
AFTER JURY WAS EMPANELED.
IT WAS ONLY BASED ON THE
FACT OF THE VIDEO AS YOU
REVIEW IT WHERE HE IS TOLD
BY BOTH COUNSEL THAT THERE
IS NO LEGAL DEFENSE, THERE
IS NOTHING I CAN DO FOR YOU
OTHER THAN POTENTIALLY SAVE
YOUR LIFE.
>> THE TRIAL JUDGE IN THE
TRIAL JUDGE'S ORDER AFTER
THE EVIDENTIARY HEARING
FOUND THAT MR. KILIAN DENIED

TELLING THE DEFENDANT THAT
THERE WAS NO DEFENSE.
CORRECT?
I MEAN THAT'S THE TRIAL
JUDGE'S FINDING.
>> THAT'S CORRECT, WHICH IS
IN OPPOSITE TO WHAT ACTUALLY
HAPPENED IF YOU REVIEW THE
TAPE.
>> NOW WHAT YOU ARE SAYING
IS THAT THE, THE TAPE, THAT
THE LAWYER IS SAYING THAT
THERE, IS NO LEGAL DEFENSE.
>> CORRECT.
>> OKAY.
AND THE, WHAT YOU'RE SAYING
THAT THE LEGAL DEFENSE THAT
SHOULD'VE BEEN DISCUSSED WAS
HIS DENIAL OF VARIOUS FACTS.
>> CORRECT.
>> AND THAT'S THE SOLE
SUBSTANCE OF WHAT YOU'RE
CONTENDING WITHIN A LEGAL
DEFENSE.
>> THAT IN EFFECT IS
UNDISPUTED HE DID NOT SHOOT
GENITORFER ROBINSON.
THAT'S UN-- JENNIFER
ROBBSON.
THAT'S UNDISPUTED FACT.
>> THAT CAME OUT IN THE
TESTIMONY.
THAT'S PART OF THE CASE.
>> THAT'S CORRECT.
>> THAT ROGERS DID THE
SHOOTING.
I MEAN, THAT'S -- THAT'S
SOMETHING THAT CAME OUT OF
THE CASE.
SO THAT, THAT WAS NOT, I'M
FAILING TO UNDERSTAND HOW
THAT IS THE LEGAL DEFENSE
THAT YOU'RE TALKING ABOUT.
>> WELL, OBVIOUSLY, WITH
REGARD TO ANY LEGAL DEFENSE,
IF I'M SAYING SOMEBODY
POINTS A GUN AT ME AND I
FIRE IN RETURN, AND I, AND
NO ONE'S THERE BUT ME --
>> THAT'S NOT WHAT -- THE
SITUATION HERE IS THAT HE
WAS, IT WAS CHARGED AS A
PRINCIPAL TO THE SHOOTING.
>> CORRECT.

>> CORRECT.
AND WHAT YOU'RE CONTENDING IS THE DEFENSE THAT HE SHOULD'VE BEEN ADVISED OF WAS I DIDN'T DO IT.
>> NO, HE SHOULD'VE BEEN ADVISED THAT BASED UPON WHAT YOUR, YOU HAVE STATED IN YOUR STATEMENTS TO THE POLICE AND WHAT YOU ARE MAINTAINING IS THAT YOU DID NOT KNOW THAT HE WAS GOING TO SHOOT JENNIFER ROBINSON, THAT YOU DIDN'T -- IN FACT NOT SHOOT ROBINSON AND YOU DID NOT PARTICIPATE IN THE PLANNING OF THIS.
IF THE JURY BELIEVES YOU, YOU WILL BE FOUND NOT GUILTY.
THAT'S THE WHOLE QUESTION ON ANY DEFENSE.
THE CREDIBILITY TO THE JURY.
HE WAS NOT INFORMED OF THAT.
HE WAS TOLD HE WAS GUILTY IN FACT BY HIS OWN LAWYER.
>> AGAIN, IN TERMS OF EVALUATING IT, SOMETHING CAN BE, QUOTE, A DEFENSE, YOU KNOW, NOT, NOT EVERY GUILTY PLEA WHERE SOMEONE IS GOING TO BE 100%, 100 TIMES FOUND GUILTY OUT OF 100 TIMES, BUT THEY WERE FACED WITH THAT THESE NOTES THAT LAWRENCE HAD WRITTEN IN HIS OWN HANDWRITING.
>> AND THE CO-DEFENDANT AS WELL.
>> AND WHAT?
>> IT INCUMBENT JUST LAWRENCE.
THE HANDWRITING EXPERT INDICATED THAT BOTH HAD WRITTEN THE NOTES.
>> BUT THERE IS NO QUESTION THAT LAWRENCE HAD WRITTEN THEM.
AND THOSE ESTABLISH MORE THAN ENOUGH EVIDENCE THAT HE'S A PRINCIPAL.
>> IT GOES TOOLOGIST EVIDENCE WITH REGARD TO THE TESTIMONY THAT WAS ON RECORD

IS THAT LAWRENCE ALWAYS WROTE THINGS DOWN, THAT HE AND ROGERS HAD FANTASY WRITINGS OF DOING CRIMES BEFORE AND HAVE NOT CARRIED THEM OUT AND THROWN THEM AWAY.
>> AND IT WAS NOT -- NOT ONLY WASN'T THERE ENOUGH EVIDENCE, THERE WAS NOT ONLY ENOUGH EVIDENCE TO FIND HIM GUILTY BUT TO FIND HIM EVEN THOUGH HE'S NOT THE SHOOTER GUILTY AND HEIGHTENED RESPONSIBILITY BASED ON CCP.
>> THAT'S ASSUMING YOU BELIEVE THAT THOSE WRITINGS WERE IN FACT A PLANNING OF THIS PARTICULAR CRIME.
REMEMBER --
>> IT WASN'T JUST THE WRITINGS?
>> I'M SORRY?
>> THE WRITINGS WEREN'T THE ONLY EVIDENCE OF HIS PARTICIPATION PRIOR TO THE CRIME.
>> PRIOR TO THE CRIME?
>> HE BOUGHT THE GUN AS WELL, DIDN'T HE.
>> HE HAD THAT GUN PURCHASED WELL BEFORE THIS.
>> IT WAS HIS GUN.
>> IT WAS, WHICH MR. ROGERS HAD TAKEN POSSESSION OF FOR ALMOST THREE OR FOUR WEEKS BEFORE THESE EVENTS AND HAD MAINTAINED POSSESSION OF T..
>> AND WAS THERE ALSO SOME EVIDENCE THAT HE HAD MATERIALS ON, ON GUNS AND KILLING OR WAS THAT ROGERS?
>> UM --
>> THERE WERE BOOKS.
>> THERE WERE A NUMBER OF THINGS FOUND IN A LOT OF DIFFERENT PLACES THAT WERE NEVER DISCOVERED WHERE THEY CAME FROM.
THAT CAME BACK AT ANOTHER DATE.
IT WAS PRESENTED AT THE TO THE JUDGE AT THE SENTENCING CASE.

THERE WAS A BARN IN THE BACK
THAT WAS OWNED BY THE FAM
TALE.
THERE WERE A LOT OF THINGS
BACK THERE SO IT DIDN'T
NECESSARILY ESTABLISH IT WAS
HIS.
WITH REGARD TO -- BUT THE
TEST IS A FOUR-PRONG TEST.
I AGREE THAT THIS COURT HAS
STATED WITH REGARD TO THE
SUFFICIENCY OF THE DEFENSE
IS A WEIGHTED FACTOR BUT YOU
NEED TO CONSIDER THE OTHER
PRONGS AS WELL, AND HE HAD
MAINTAINED IT THAT HE DID
NOT WANT TO PLEAD GUILTY
UNTIL HE WAS TOLD BY HIS
ATTORNEYS THAT HE WAS GUILTY
AND THEY COULDN'T DO
ANYTHING FOR HIM AND FAILED
TO INFORM HIM THAT IF HE HAD
BEEN BELIEVED, HE WOULD'VE
BEEN FOUND NOT GUILTY.
ONE MORE THING, IN THE BRIEF
OF THE STATE, THEY ARGUE,
THE WILLIAMS RULE.
WILLIAMS RULE DIDN'T APPLY
HERE FOR TWO REASONS.
ONE, THEY ACKNOWLEDGE THAT
THERE WAS NO 10-DAY NOTICE,
AND THE JURY HAD ALREADY
BEEN EMPANELED, AND THEY SAY
HOWEVER IT COULD'VE BEEN
REBUTLED.
THAT ONLY ASSUMES HIS GOING
TO BE A WITNESS IN THE CASE
F. HE DOESN'T TESTIFY,
THERE'S NO REBUTTAL OR IS
THERE ANY IMPEACHMENT.
>> IF HE DOESN'T TESTIFY,
THERE IS NO DEFENSE.
>> NO, BECAUSE THE STATE
INTRODUCED THE STATEMENTS
THE BASIS OF WHICH THEY
DIDN'T WANT IT TO HAVE THIS
EXPLANATION PUT OF HIS
STATEMENTS PUT EVERY IN IT.
WITH REGARD TO THE CLAIM 1,
WHEN NUMBER 9, IS THE COURT,
QUESTION BECOMES WHETHER
JONES IS A CRITERIA
NECESSARY FOR THE COURT IN
ITS ORDER TO MAKE A

DETERMINATION.
AS TO WHETHER RETROSPECTIVE ADVANTAGE COULD HAVE BEEN HAD.
THE TRIAL COURTS ARGUE THE FACT THAT COUNSEL CONCLUDED, I'M USING THE WORD WITH QUOTES, CONCLUDED THAT THERE WAS NO DIFFERENCE BETWEEN NO SIGNIFICANT DIFFERENCE IN HIS ABILITIES TO UNDERSTAND, YOU KNOW, TO HELP HIM OUT IN A CASE THAT THERE WAS NO DIFFERENCE FROM THE TIME OF 1998 EVALUATIONS AND AT THE TIME OF THE TRIAL.
AND THEREFORE, COUNSEL HAD FAILED TO CARRY THE BURDEN OF ESTABLISHING THAT HE WAS INCOMPETENT AT THE TIME HE ENTERED THE PLEA OR AT THE PENALTY PHASE.
HOWEVER, THE COURT TOTALLY IGNORES AND FAILS TO MENTION ANY FACTS THAT SUPPORTED THE DEFENSE'S CONCLUSION.
FOR EXAMPLE, MR. KILIAN HAD TESTIFIED THAT AT THE EVDENGSERARY HEARING.
HE SAID WHEN I DID TALK TO HIM, AS IT WAS DESCRIBED TO ME, HE SEEMED TO UNDERSTAND, HE SEEMED TO KNOW WHAT WAS GOING ON.
HE SEEMED TO INDICATE THERE WERE HALLUCINATIONS REPORTED TO THE COURT DURING THE PENALTY PHASE SHE WASN'T EVE TLN.
HE WAS STANDING OVER BY THE JURY BOX AND HE DIDN'T EVEN HEAR WHAT WAS GOING ON.
IT WAS MS. STICK WHO HAD ALL OF THE OR MOST OF THE CONTACT CONTACT WITH MR. LAWRENCE.
THE COURT SAYS IN ITS ORDER THAT COUNSEL DIDN'T SEE ANY DIFFERENCES.
WELL, THERE WERE SIGNIFICANT DIFFERENCES BECAUSE NUMBER 1, MS. STICK WASN'T THE ATTORNEY OF RECORD WHEN THE ORIGINAL EVALUATION TOOK

PLACE.
IT WAS MR. LOVELESS.
HE FOLLOWED.
HE FILED ALL THE MOTIONS
EXCEPT 1.
AND THE ONE MOTION FILED BY
MS. STICK WAS THE MOTION
WHERE SHE STATED HER
CONCERNS FOR HIS COMPETENCY.
SHE EVEN TESTIFIED AT THE
EVIDENTIARY HEARING THAT HE
WAS HAVING HALLUCINATIONS
WHILE SHE WAS VISITING HIM
IN JAIL AND DURING THE
PENALTY PHASE.
STILL FAILS TO ASK THE COURT
FOR A EVALUATION HEARING.
HE WAS HAVING MEMORY LOSS
AND HE DIDN'T UNDERSTAND THE
WORDS THEY WERE SAYING.
HE WAS HAVING DIFFICULTY IN
UNDERSTANDING YES AND NO
QUESTIONS, YET STILL DOES
NOT BRING TO THE COURT'S
ATTENTION HER CONCERN FOR AN
EVALUATION.
AT THE EVIDENTIARY HEARING.
JUSTICE BELL SAID THAT HAD
MR. KILIAN EXPLAINED THE
NEED FOR A HEARING ON
COMPETENCY HE WAS CONSIDERED
IT.
THE COUNSEL FAILED TO ASK
THE COURT FOR COMPETENCY AND
EVALUATION.
THE STATE SUGGESTS THIS IS A
PRERNLY BROUGHT ISSUE WHEN
IN FACT THEY ARE SEPARATE.
I AM ARGUING THE COUNSEL WAS
IN EFFECTIVE --
>> THATTER DIFFERENT NOT AT
THE TIME OF THE PLEA BUTDURAL
THE --DERING DURING THE --
DURING THE PENALTY BE.
>> BOTH.
>> BUT IF THEY WERE
INEEFFECTIVE FOR NOT ASKING
FOR A COMPETENCY EVALUATION
IN THE PENALTY PHASE, THEN
WHAT IS THE STANDARD FOR
PREJUDICE UNDER STRICKLAND,
DON'T YOU HAVE TO SHOW THAT
THAT UNDERMINESURE
CONFIDENCE THAT EVEN THOUGH

HE WASN'TIBLE TO PARTICIPATE
FULLY THAT SOMEHOW IF HE HAD
BEEN, THERE WOULD'VE BEEN
ANOTHER PENALTY PHASE
WOULD'VE BEEN DEFENDANT?
>> YOU CAN PRESUME PREJUDICE
WITH REGARD TO PRESENT?
>> NOT SO FAR AS INEFFECTIVE
BUT HE WAS IN EFFECT
INCOMPETENCE!!ITANT AND COUNCIL
FAILED THAT HE RAISED THE
FACT OF AN EFFECTIVENESS TO
ASK FOR AN EVALUATION.
AS FAR AS HIM BEING
INCOMPETENT, I SUGGEST THAT
IT IS PRESUMED PREJUDICE.
AS FAR AS COUNCIL FAILING TO
RAISE HIS PREJUDICE IS THE
FACT THAT MS. STICK
TESTIFIED THAT SHE BELIEVES
REPRESENTING TO FAIL TO ASK
FOR COMPETENCY EVALUATION,
-- TO REPRESENT HIM.
THE COURT IN ITS STATEMENT
SAYING THAT WE FAILED TO
PROVE OR CARRY THE BURDEN OF
ESTABLISHING HE WAS
INCOMPETENCE DOESN'T SET OUT
WHAT THE STANDARD OF PROOF
S. HOWEVER, ON THE BUSH.
HABEAS PETITION IF WE FAIL.
IS A PREPONDERANCE OF THE
EVIDENCE STANDARD.
I HAVE GOTTEN A PETITION
FROM COURT AND THEY SAID IN
ADDITION TO DR. WOOD
TESTIFYING, NUMBER 1, HE HAD
EXAMINED LAWRENCE EITHER ONE
OR TWO DAYS AFTER THE PLEA.
AS THEY TESTIFIED.
-- SATURDAY OR SUNDAY.
>> YOU ARE WELL OVER YOUR
TIME.
IF YOU BRING THIS LAST
THOUGHT TO A --
>> HE TALKED TO THEM, HE
TESTIFIED ON MONDAY AND HE
WAS TOLD AS WAS DR. CROWN BY
MR. KILL NM THAT
MR. LAWRENCE WAS
HALLUCKINATING.
BOTH OF THEM TOLD THE
LAWYERS HE NEEDS TO BE
EEVAULATEUED.

BUT THEY SAID THAT WAS
ALREADY SHUT WE CAN'T DO
ANYTHING ABOUT IT.
AND THEY BOTH INDICATED TO
HIM THEY FELT THEY WERE
BETTING GOING FORWARD WITH
THE CASE BECAUSE OF THE
MITIGATION RATHER THAN TO
DEAL WITH THE COMPETENCY.
AND I THINK THAT WAS
INCORRECT.
>> THANK YOU, MR. REITER.
MS. MILLSAPS?
>> MAY IT PLEASE THE COURT,
SHAR MAIN MILLSAPS
REPRESENTING THE STATE.
I'M GOING TO TALK ABOUT THE
SAME THREE ISSUES THAT HE
DID.
OKAY, WHAT HAPPENS ON THE
TAPE IS MS. STIT.
THERE ARE TWO COUNSEL THERE.
MS. STIT SAYS, AND I QUOTE,
YOU HAVE NO REAL LEGAL
DEFENSE.
NOW, NO REAL LEGAL DEFENSE
CAN MEAN TWO THINGS.
STATE THINKS SHE'S RIGHT
EITHER WAY.
BUT LEGAL DEFENSE MEANS
THERE'S JUST NOT A DEFENSE
TO THIS AS A MATTER OF LAW,
AND REAL DEFENSE MEANS ONE
THAT A JURY WOULDN'T BUY.
OKAY?
ONE IS A PRACTICAL AND ONE
IS AN ABSTRACT LEGAL
DEFENSE.
>> IT SEEMS TO ME THE JUDGE
DIDN'T FOLLOW GRAUSNER.
IT SEEMS TO ME THE JUDGE DID
NOT GO THROUGH THE PRONGS OF
GRASSNER AND GO THROUGH THE
CHREBLT OF THE DEFENDANT'S
CLAIM.
HAD LEE KNOWN OF THE DEFENSE
HE NOW HAS HE WOULD NOT HAVE
PLED GUILTY AND GONE TO
TRIAL.
THE JUDGE SEEMS TO APPLY A
PRE-GRASSNER TEST.
WAS THIS A VIABLE TEST.
IN GROSSNER WE REJECTED.
>> UM, BUT I THINK HE NEVER

GETS -- I THINK THE JUDGE
BOUGHT -- REMEMBER, WE DID
EXTENSIVE POSTEVIDENTIARY
HEARING MEMORANDUMS OF LAW
AND I THINK HE BOUGHT THE
STATE'S POSITION THAT THAT
ADVISE WAS CORRECT.
GROSSNER DEPENDS ON THERE
BEING A DEFENSE.
JUST THAT YOU DID WANT
INFORM --
>> COUNSEL SAYS THE DEFENSE
IS --
>> THERE IS NO DEFENSE HERE.
>> THE COUNSEL SAYS THE
DEFENSE, AND ADDRESS IT,
THAT HE INSISTED THAT HE DID
NOT DO THE SHOOTING.
HE DID NOT DO THE SHOOTING.
THAT HE DIDN'T KNOW THERE
WAS GOING TO BE ANY
SHOOTINGS.
SO GO THROUGH THE ELEMENTS.
JUST SAYING THE CONCLUSION.
>> NOT BEING THE ACTUAL
SHOOTER IS NOT A DEFENSE TO
FIRST-DEGREE MURDER.
THAT'S -- ESPECIALLY, NOT
ONLY WAS HE CHARGED TO ENTER
A PLEA AS PRINCIPAL TO
FIRST-DEGREE MURDER, BUT HE
WAS CHARGED AND ENTERED A
PLEA WITH CONSPEARACY TO
COMMIT MURDER.
YOU DON'T EVEN HAVE TO BE
THERE TO BE GUILTY OF
CONSPIRACY TO COMMIT MURDER,
AND HE WAS THERE.
NOT BEING THE ACTUAL
SHOOTER.
FIRST OF ALL, THE JURY WAS
-- THAT FACT, THE STATE WENT
YOU ALL THIS TRIAL WITH THAT
FACT.
WE NEVER DISPUTED THAT HE
WAS, WAS THE, WAS THE ACTUAL
SHOOTER.
HERE ARE THE CO-DEFENDANT'S
THE ACTUAL SHOOTER HERE.
SO THAT WAS ALL PUT IN FRONT
OF THE JURY.
THAT'S NOT A LEGAL DEFENSE.
>> KEEP GOING.
>> AND THEN THE SECOND, HIS

SECOND MAIN ARGUMENT IS WHAT
HE'S REALLY ARGUING IS LACK
OF KNOWLEDGE.
YES, I WAS THERE, WHICH HE
ADMITS IN HIS OWN STATEMENT.
YES, I WAS THERE, BUT I
DIDN'T KNOW THAT ROGERS WAS
GOING TO BE THE, WAS GOING
TO SHOOT THIS YOUNG LADY.
WELL, THAT IS REBUTTED ALL
KINDS OF WAYS.
FIRST OF ALL, LACK OF
KNOWLEDGE, IF THAT'S WHAT
THAT REALLY S THAT'S A LACK
OF KNOWLEDGE DEFENSE.
I DIDN'T KNOW THAT THE
CO-DEFENDANT WAS GOING TO
SHOOT HER.
YOU CANNOT PRESENT SUCH A
DEFENSE, AND THIS GETS INTO
MORE THAN INTO THE REAL THAN
INTO THE LEGAL PART OF T. NO
JURY ISN'T GOING TO BUY THAT
YOU DIDN'T KNOW YOUR
CO-DEFENDANT WAS GOING TO
KILL SOMEBODY WHEN YOU HAD
PREVIOUSLY, WHEN HE HAD
PREVIOUSLY SHOT ONE PERSON
AND THE TWO OF YOU TOGETHER
HAD STABBED ANOTHER PERSON.
THIS WAS THE THIRD, THE
FIRST ONE WAS AN ATTEMPTED
MURDER, LUCKILY, THAT VICTIM
LIVED.
ALL RIGHT?
ROGERS HAD SHOT THAT PERSON
JUST LIKE HE SHOOTS THIS
GIRL.
40 DAYS BEFORE THIS CRIME.
AND THE SECOND ONE, THEY
BOTH TAKE JUSTIN LIVINGSTON
OUT AND STAB HIM.
NOW, YOU CANNOT BE IN CRIME
MURDER NUMBER THREE, AND SAY
YOU HAVE NO IDEA THIS WAS
GOING TO HAPPEN.
NOT TO MENTION THE FACT,
THESE NOTES, THIS IS NOT A
TO DO LIST LIKE PICK UP
BREAD AT PUB LIX.
THIS, THIS, THIS TO DO LIST
IS, IS A, IS A, IS A LIST OF
HOW TO COMMIT A MURDER.
>> COULD YOU PLEASE JUST

COME BACK TO THIS ISSUE,
WHICH IS IT SEEMS THAT YOU,
YOU KNOW, YOU ARE ARGUING
THE MAYORESS, BUT DID THE --
MERITS, BUT DID THE JUDGE
EVALUATE THE, THIS CLAIM
BASED ON GROSSNER?
>> NO, YOUR HONOR, BECAUSE I
THINK HE FOUND THERE WAS NO
DEFENSE SO I DON'T HAVE TO
DO THE GROSSNER ANALSIS.
GROSSNER IS WHEN THERE IS A
DEFENSE AND YOU DIDN'T TELL
THE DEFENDANT ABOUT THE
LEGALLY VIABLE DEFENSE.
>> WELL, AGAIN, LEGALLY
VERSUS --, THE LEGAL DEFENSE
IS I'M NOT THE PRINCIPLE.
THAT DEFENSE COULD BE MADE
AND ARGUED.
YOU SAY, WELL THEY WON'T WIN
100 OUT OF 100 TIMES, IN
OTHER WORDS, WHAT IS IF THAT
IF THE PERSON SAYS WELL IF I
THOUGHT I HAD ANY SHOT, ANY
SHOT IN THE WORLD OF BEING
FOUND NOT GUILTY AS A
PRINCIPAL, I WOULD NOT HAVE
PLED GUILTY?
>> BUT THE PROBLEM WITH THAT
IS IF YOU REMEMBER, HE TOOK
TESTIMONY FROM CO-DEFENDANT
KILLM.
AND KILLIUM SAID I TRIED NOT
TO SPEAK IN ABSOLUTES.
YOUR HONOR, STIT ADDRESSED
-- WE HAVE COUNSEL --
>> I THINK YOU SAID --
CO-DEFENDANT.
I THINK YOU MEANT
CO-COUNSEL.
>> COCOUNSEL, OKAY.
KILLIUM TESTIFIED AT THIS
EVIDENTIARY HEARING AND SAID
I DIDN'T SAY IN ABSOLUTES.
YES, OF COURSE, HE SAID IF
THE JURY BELIEVED YOU.
OUR PROBLEM WAS WE DIDN'T
THINK THE JURY WAS GOING TO
BELIEVE YOU.
HE NEVER SAID IF THE JURY
THOUGHT YOU WERE NEVER
INVOLVED A L. WHAT HE SAID
IS WE DON'T THINK YOU'LL BUY

THAT.
THAT IS IN FACT ACCURATE ADVICE.
THE PROBLEM WITH GROSSNER IS ADMITTED ADVICE.
WE DON'T HAVE THAT HERE.
OAN LEGAL BASIS, HE DOESN'T HAVE A DEFENSE AND IF HE GOES THROUGH THAT LACK OF KNOWLEDGE THE STATE WILL RULE THESE IN.
THE STATUTES SAYS WE CAN DO IT AS IMPEACH.
NO NOTESIS REQUIRED IF IMPEACHMENT OR REBUTTAL.
THIS WOULD BE REBUTTAL.
IT WOULDN'T EVEN MATTER IF LAWRENCE TESTIFIED.
THE PRIME MURDERS WOULD COME IN AND THE TO DO LIST WOULD COME IN.
THE STATE HAS A PHOTOGRAPH OF THIS DEFENDANT WITH BODY PARTS OF THE VICTIM, HOLDING UP HER CALF.
YOUR HONOR, THAT TEST DOESN'T EVEN PAST THE LAST ET CETERA TEST.
THAT'S ALL KILLIUM TOLD HIM.
THAT'S ACCURATE, ALL RIGHT?
THAT'S --
>> SO YOU'RE SAYING INN WITH GRASS GROSSNER, THE THRESHOLD ISSUE IS WHETHER THE COUNSEL'S PRIOR ADVICE WAS INCORRECT.
>> YES, I THINK YOU HAVE TO START WITH THAT.
>> HE HAS TO BE WRONG, HE HAS TO SAY NO LEGAL ON BOTH PRONGS.
LET'S DO IT ON BOTH.
HE HAS TO SAY THERE IS NO SUCH DEFENSE.
WHEN IN FACT, THERE IS ONE.
>> IN GROESNER.
>> AND WE'RE SAYING NO.
AND THEN HE HAS TO SAY, OH, JURY WOULD, WOULD BELIEVE THAT.
AND JURY WOULD NOT.
YOU HAVE TO BE WRONG SOMEWHERE.
THERE HAS TO BE SOME

MISADVICE SOMEWHERE.
>> AND GROSSNER, AS I RECALL, CONCERNED ONLY THE PREJUDICE PRONG.
THERE WAS AN ASSUMPTION IN GROSSNER BECAUSE THE TRIAL COURT HAD NOT CONSIDERED THE DEFICIENT PERFORMANCE PROC, SO THE A-- PRONG, SO THE PRESUMPTION WAS COUNSEL WAS DEFISHANCE.
NOW WE GO TO PREJUDICE, AND GROSSNER CONSIDERED PREJUDICE.
BUT EVEN UNDERPHROSIS GROSSNER, EVEN IF THERE IS NO MISADVICE THERE CAN'T BE NO MISADVICE.
>> WE NEVER GET PAST PRONG 1, DEFICIENT PERFORMANCE.
YOU MUST HAVE SOME MISADVICE.
YOU MUST HAVE COUNSEL SAYING SOMETHING WRONG.
EITHER LEGALLY OR IN TERMS OF, IN TERMS OF THE, THE LIKELIHOOD OF SUCCEEDING IN FRONT OF THE JURY.
YOU HAVE TO HAVE THAT FIRST PRONG.
AND IBGROSSNER, YOU DIDN'T HAVE THAT.
NOW, YOU WENT ON IN GROSSNER AND SAID PLEASE DON'T DO THAT TOO US AGAIN.
WE WANT YOU ANALYZING THOSE PRONGS.
>> I THINK IT SEEMED TO THE COURT, THE MAJORITY SAID, IT SEEMS LIKE THIS MAY NOT HAVE BEEN DEFICIENT PERFORMANCE IN THE FIRST PLACE BUZZ BUT WE HAVE TO ASSUME THAT IT WAS BECAUSE THE TRIAL COURT DIDN'T CONSIDER THAT PRONG.
>> YES, THE TRIAL COURT HAD SKIPPED OVER THAT PRONG AND WHAT I AM SAYING HERE IS GROSSNER DOESN'T REALLY APPLY BECAUSE THE WAY I READ THE JUDGE'S ORDER, NOW, YOUR HONOR, I DO ADMIT THERE IS SOME LANGUAGE IN THERE ABOUT THE TRIAL COMING OUT THE

WRONG WAY SO I'M NOT SURE HE KNEW OF THAT.
HE DID DO THAT.
BUT I DON'T THINK GROSSNER APPLIES BECAUSE YOU HAVE TO, THE STATE IS ARGUING WE NEVER GET MAST PRONG ONE IN TERMS OF THE ANALYSIS.
THERE IS NO PREJUDICE EITHER, AND I AM HAPPY TO DISCUSS THAT, BUT THE FIRST PRONG IS DEFICIENT PERFORMANCE AND YOU HAVE TO HAVE SOME MISADVICE.
>> WELL, AGAIN, ON THE PREJUDICE PRONG, THOUGH, IT'S NOT WHETHER HE WOULD HAVE BEEN FOUND NOT GUILTY. IT'S WHETHER HE WOULD HAVE GIVEN UP HIS RIGHT TO GO TO TRIAL.
>> YES.
>> IT'S PRETTY DIFFERENT. YOU KNOW, BECAUSE WE VALUE EVERYBODY'S RIGHT TO GO TO TRIAL.
AND SO IF A DEFENDANT IS GIVING UP THAT RIGHT, EVEN IF WE DON'T THINK THAT'S OFFENSE IS -- THAT DEFENSE IS THAT GIF THE DEFENDANT DIDN'T KNOW ABOUT THAT DEFENDANT OR THERE WAS MISADVICE, THEN YOU LOOK AT WOULD THAT DEFENDANT HAVE PLED GUILTY.
DO YOU AGREE WITH THAT THAT'S HOW YOU EVALUATE PREJUDICE UNDER THE, BASED ON OUR DECISION IN GROSSNER?
>> YES,IAGRY WITH THAT.
NOW, LET ME QUOTE YOU EXACTLY WHAT THE TRIAL COURT DID BECAUSE WHY HE DID SORT OF MESS UP THAT, HE DID IT IN THE ALTERNATIVE, AND THE OTHER PRONG OF HIS ANALYSIS IS RIGHT.
AS SUCH, THE COURT FINDS THAT THE DEFENDANT HAS FAILED TO ESTABLISH THAT BEING INFORMED OF SUCH A DEFENSE WOULD HAVE ALTERED THE OUTCOME OF THE CASE.

I TAKE THAT PART TO MEAN HE
STILL WOULD'VE PLED ANYWAY.
OR WOULD'VE SUCCEEDED AT
TRIAL.
NOW STATE ACKNOWLEDGES THAT
SUCCEEDED AT TRIAL PART IS,
IS NOT CORRECT.
BUT I'M FAMILIAR -- I'M NOT
EVEN -- I DON'T THINK HE
EVEN DID THE PREJUDICE.
HE DID HALF THE PREJUDICE
INCORRECTLY, YOUR HONOR.
HE DID THIS PART JUST FINE.
OKAY?
THE DEFENDANT, IF I TELL YOU,
WELL, YES, WE CAN GET UP
THERE.
AND YOU CAN SAY TO THE JURY
-- REMEMBER, KILLIUM, THIS
IS NOT A NORMAL CASE, YOUR
HONOR.
PRIOR TO THE PLEA HERE, THEY
VIDEOTAPED THEIR ADVICE TO
THEIR CLIENTS.
YOU CAN LITERALLY WATCH WHAT
COUNSEL SAID TO HIS CLIENT
ABOUT WHY HE SHOULD ENTER
THIS PLEA.
AND WHAT, WHAT THEY WERE
SAYING WAS IT WOULD
UNDERMINE OUR CREDIBILITY
WHEN WE GO TO THEIR -- THEIR
WHOLE FOCUS HERE WAS LIFE,
AND THEY THOUGHT THEY HAD A
REALLY GOOD CHANCE AT LIFE
BECAUSE THIS DEFENDANT
SUFFERS FROM, FROM SOME
EMOTIONAL DISTURBANCES AND
ILLNESSES.
AND WE DON'T WANT TO BE
PUTTING IN FRONT OF THE JURY
THIS BOGUS DEFENSE DURING
THE GUILT PHASE WHEN WE HAVE
THIS REALLY GOOD DEFENSE, TO,
DEATH, THROUGH OUR
PSYCHOLOGICAL AND MENTAL
HEALTH EXPERTS.
WE -- AND THEY LAID THIS ALL
OUT.
NOW, YOUR HONOR, FIRST OF
ALL, YOU ARE GOING TO HAVE
TO HAVE TO FIND SOMETHING
WRONG WITH WHAT THAT ADVICE
WAS.

YOU CAN PLAY IT ON YOUR
VIDEOTAPE, AND BEFORE YOU
GET ANYWHERE NEAR GROSSNER,
YOU ARE GOING TO HAVE SOME
MISADS VICE.
YOU ARE GOING TO HAVE TO SAY
WHAT HE SAYS ON THAT TAPE,
AND IT'S NOT LIKE NORMAL
WHEN WE'RE JUST RELYING ON
HIS TESTIMONY, ALTHOUGH
THAT'S OBVIOUSLY BE GOOD
ENOUGH.
YOU CAN LITERALLY PLAY THE
VIDEOTAPE.
THERE IS NOTHING WRONG WITH
THE ADVICE GIVEN HERE.
THEY WERE RIGHT ABOUT THAT.
SO THE ADVICE WOULD'VE
STAYED THE SAME.
>> I JUST DON'T SEE WHERE
THE COURT CONCLUDED THAT
THERE WAS NO DEFICIENT
PERFORMANCE.
>> WELL, YEAH, I THINK, HE
DOES YOUR HONOR.
AND HERE'S WHERE I THINK HE
DOES.
FIRST OF ALL, HE SAYS
KILLIUM NEVER TOLD HIM NO,
HE SAID THAT THEY DIDN'T
THINK THEY WOULD WIN AT
TRIAL, BUT I DIDN'T LEAVE
HIM WITHOUT ANY HOPE.
I MEAN, I TRY NOT TO DEAL IN
ABSOLUTES.
I TAKE THAT TO BE ON THE, ON
THE DEFICIENT PERFORMANCE
PRONG.
AND BESIDES, YOUR HONOR,
THAT ARGUMENT WAS BEFORE THE
TRIAL COURT.
THAT'S THE STATE'S POSITION,
AND THAT'S BEEN THE STATE'S
POSITION.
THERE IS NO DEFICIENT
PERFORMANCE HERE.
WE JUST HAVEN'T GOTTEN ANY
MISADVICE.
AND I DON'T THINK, NOWHERE
IN HERE DOES THE JUDGE
DISAGREE WITH ME HERE AND
THINK WE HAVE MISADVICE.
SO, NOW, ON THE PLEA BEING
VOLUNTARY AND THE PENALTY

PHASE, LET'S NOT THROW THOSE TWO TOGETHER.
THOSE ARE TWO DIFFERENT CLAIMS, ALL RIGHT?
WHETHER THE PLEA IS INVOLUNTARY, YES, HE MAY RAISE THAT.
THERE'S CASE LAW FROM THIS COURT THAT YOU CAN DO THAT IN POSTCONVICTION.
WHEN HE MAY NOT LET IT RELITIGATE IS WHAT YOU ALL ALREADY HAVE ADDRESSED IN DETAIL IN THE DIRECT APPEAL, AND THAT'S WHETHER COUNCIL WAS IN, INEFFICIENT FOR, INEEFFECTIVE FOR THOUGHT REQUESTING A COMPETENCY HEARING DURING THE PENALTY PHASE.
YOU ALL HAVE ALREADY GONE THROUGH THAT.
YOU MAY NOT JUST WRAP AN INEFFECTIVENESS AROUND THAT.
YOU ALL HAVE ALREADY REACHED THE MERIT.
YOU ALL HAVE ALREADY DETERMINED HERE IS THAT LAWRENCE WAS UNCOMFORTABLE HEARING EVIDENCE AND HE WANTED TO BE EXCUSED FROM THE COURTROOM SO THAT JUST PRECLUDES ANY FINDING OF PREJUDICE ON THAT.
AND I THINK THAT'S ALL BARRED.
NOW, YES HE MAY RAISE WHETHER HIS PLEA WAS VOLUNTARY, BUT LET ME GET A FACT, A CRITICAL EXACT STRAIGHT HERE AS BEING OMITTED FROM THE PRESENTATION THAT I THINK YOU ALL NEED TO UNDERSTAND.
COCOUNCIL COUNSEL HERE, MS. STIT WAS ALSO CO-COUNSEL IN ONE OF THE OTHER PRIOR MURDERS AND SHE, YOU CAN LITERALLY SEE HER NAME.
ONE OF THE DOCTOR'S REPORT WAS LITERALLY SENT TO MS. STIT.
UNDERSTAND SHE DID HAVE A COMPETENCY EVALUATION OF

THIS DEFENDANT DONE IN THE
CO-DEFENDANT -- IN THE OTHER
CASE.
NOT THE CODEFENDANT'S CASE,
IN THE PRIOR MURDER CASE,
ALL RIGHT?
AND THAT IS DIRECTED TOWARD,
TO HER.
SHE IS ALREADY KNOWS WHAT A
MENTAL HEALTH PROFESSIONAL
TINKS ABOUT HER CLIENT.
SHE KNOWS THAT FROM THE
OTHER CASE.
YOU CANNINATE DO THIS IN
ISOLATION.
SHE WAS CO-COUNSEL IN BOTH
CASES AND EVERYTHING SHE
KNEW ABOUT LAWRENCE --
>> WHAT TIME FRAME ARE WE
TALKING ABOUT HERE?
I KNOW THAT THE PREVIOUS
EPISODE WAS ABOUT 40 DAYS
BEFORE THIS CRIME WAS
COMMITTED.
WHEN WAS AN EVALUATION DONE
OF THIS DEFENDANT?
>>.
>> THE EVALUATION I AM
TALKING ABOUT WITH HER NAME
ON IT WERE IN OCTOBER OF
1998.
>> WHEN DID HE PLEA.
>>> MARCH OF 2000.
MARCH OF 2000.
MARCH 24th OF 2000.
ABOUT A YEAR.5.
BUT THEY BOTH TO TESTIFIED
THEY SOUGHT FROM THAT
COMPETENCY, THERE WERE TWO
COMPETENCY EVALUATIONS.
DR. BINGHAM AND DR. LAWRENCE.
ONE OF THEM IS LITERALLY
ADDRESSED TO HER.
THEY BOTH TESTIFIED.
BOTH COUNSELS SAID THEY SAW
NO DETERIORATION IN HIS
MENTAL STATE THROUGHOUT THAT
YEAR, YEAR AND A HALF
PERIOD.
THEY TESTIFIED THEY NEVER
SAW A DETERIORATION IN THAT
STATE.
AND THAT WAS THE MAIN REASON
WHY THEY DIDN'T ASK FOR A

SECOND -- WELL, ACTUALLY
ATHIRD COMPETENCY
EVALUATION.
BECAUSE IT WOULD'VE BEEN THE
THIRD.
BECAUSE THEY SAW NO
DETERIORATION.
HE WAS JUST AS, AS MENTALLY
ALERT AS HE HAD BEEN BEFORE.
SO HERE, I KNOW WHAT, WHAT
DR. S WILL SAY ABOUT HIS
MENTAL STATE HERE.
I SEE NO DETERIORATION.
THERE'S NO REASON FOR ME TO,
TO ASK FOR ANOTHER ONE.
STATE'S POSITION IS THAT THE
PLEA WAS, WAS VOLUNTARY.
YOU DO NOT HAVE TO BE
MENTALLY HEALTHY TO ENTER A
GUILTY PLEA.
THERE IS AN EXTENSIVE PLEA
COLLOQUY, AND THAT'S HOW
THIS COURT DESCRIBES THE
PLEA COLLOQUY IN THE DIRECT
APPEAL.
IT'S 50 PAGES.
WHAT'S MORE, PRIOR TO THAT,
WE LITERALLY HAVE A
VIDEOTAPE OF THIS
DEFENDANT'S MENTAL STATE.
THAT VIDEO WAS TAKEN JUST
EARLIER IN THE MORNING FROM
THE PLEA.
IT'S THE SAME.
JAIRTS COUPLE OF HOURS
BEFORE THE -- IT'S JUST A
COUPLE OF HOURS BEFORE THE
PLEA IN THIS CASE.
YOU CAN LITERALLY WATCH THE
DEFENDANT'S MENTAL STATE.
THEREFORE --
>> I'M JUST, I'M HAVING, I
JUST WANT TO MAKE SURE
YOU'VE, THIS IS WHAT YOU'VE
SAID.
YOU SAID OUR CASE LAW SAYS
YOU CAN RAISE THE COMPETENCY
OF SOMEONE TO ENTER A GUILTY
PLEA POSTCONVICTION, BUT YOU
CAN'T RAISE THE ISSUE OF
WHETHER COUNSEL WAS
INEFFECTIVE FOR FAILING TO
REQUEST A COMPETENCY
EVALUATION IN A PENALTY

PHASE POSTCONVICTION.
>> YES, OF COURSE, YOU COULD.
YOUR HONOR, IT'S JUST IN THIS PARTICULAR CASE, YOU ADDRESS THAT DIRECT ISSUE ON DIRECT APPEAL.
>> I HAVE TO LOOK BACK AT IT, IT WAS THAT THE TRIAL JUDGE HAD NO INDEPENDENT RESPONSIBILITY TO HAVE ORDERED A COMPETENCY EVOLGS.
BUT -- EVALUATION.
BUT WE COULDN'TPABLYY GET INTO THE MINDS OF WHAT THE TRIAL COUNSEL HAD THOUGHT OR KNEW IN A DIRECT APPEAL AS FAR AS THE WHETHER THEY WERE INEFFECTIVE IN NOT ASKING FOR A COMPETENCY EVALUATION.
>> YOUR HONOR, YOU MADE A CUBCLUSION IN THE DIRECT APPEAL THAT THE ONLY THING THAT LAWRENCE WAS SUFFERING FROM WAS HE DID -- HE WAS UNCONSTABLE.
QUOTE, UNQUOTE.
>> WELL, THEN FOR THAT REASON, IF WE ARE, AND I THINK THAT'S SORT OF THE BETTER ARGUMENT HERE, WHICH IS YOU STILL HAVE TO, TO GET THROUGH AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, YOU FIRST HAVE TO FIND THAT THEY WERE INEFFECTIVE IN NOT ASKING FOR THERE COMPETENCY EVALUATION, BUT SECOND, THEY WOULD HAVE TO BE SOME DETERMINATION THAT HE WAS IN FACT INCOMPETENCE!!ITANT AND THEY CAN'T GET OVER THAT FROM HERE BASED ON THIS RECORD.
>> EXACTLY.
THAT'S WHAT I'M SAYING.
AND I'M ALSO, ALL MY --
>> ON THE NEW RECORD, THEY CAN'T GET -- THEY STILL DON'T HAVE ENOUGH TO SHOW THAT HE WAS INCOMPETENT.
>> NO, YOUR HONOR.
IT GETS WORSE IN POSTCONVICTION.

WE NOW, THE STATE DID NOT
PRESENT ITS OWN MENTAL
EXPERT AT THE PENALTY PHASE.
WE DID NOW.
OUR MENTAL EXPERTS NOW
TESTIFY THAT THE DEFENDANT
IS MALINGERING, ALL RIGHT?
>> ISN'T THAT THE BETTER --
ISN'T IT BETTER IPSTHE CASE
TO SAY THAT THERE WAS NO
EVIDENCE THAT HE WAS IN FACT
INCOMPETENT AT THE TIME OF
THE PENALTY PHASE, NOTHING
NEW HAS BEEN PRESENTED?
>> YOU CAN DO IT THAT WAY,
BUT, YOUR HONOR, THE STATE
THINGS THERE'S ALSO NO
DEFICIENT PERFORMANCE.
SHE HAS A MENTAL HEALTH
EVALUATION.
>> YOU THINK WE CAN'T EVEN
GO THERE, THAT IT'S
PROCEDURALLY BARRED?
>> I'M JUST CONCERNED WITH
THE PROCEDURAL BAR APPROACH
ON THIS CLAIM.
>> BUT, YOUR HONOR, WHEN
YOU'VE ALREADY REACHED THE
MAYORESS AND FOUND IT
MERITLESS FOR A REASON,
THAT'S GOING TO BE ALMOST
IMPOSSIBLE FOR SOMEBODY TO
PROVE PREJUDICE.
I'M NOT ISAY FIGURE THEY
HADN'T RAISED IT ON DIRECT
APPEAL, THIS CASE WOULD BE
PRERNLALLY BARRED.
NO TWOULDN'TMENT B. BL BUT
WHEN YOU HAVE DONE IT IN THE
DIRECT APPEAL AND HAVE
ALREADY MADE A FINDING THAT
LAWRENCE WAS JUST
UNCOMFORTABLE, NOT
INCOMPETENT.
UNCOMFORTABLE HEARING THIS
EVIDENCE, YOU'RE GOING TO BE
-- IT'S GOING TO BE
IMPOSSIBLE TO FIND
PREJUDICE.
SO, YEAH, STATE DOES THINK
IT'S PROCEDURALLY BARRED.
DON'T -- I DON'T THINK YOU
COULD NOT ALWAYS, YOUR HONOR,
BUT IN THIS CASE, AND CASES

LIKE IT, WHEN YOU HAVE
REACHED THE MERITS TO THAT
EXTENT, YOU CANNOT JUST WRAP
AN INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM, ESPECIALLY
ONE WHERE YOU DIDN'T GET ANY
DEFICIENT PERFORMANCE AND
LITIGATED IN POSTCONVICTION
WHAT YOU HAVE ALREADY
LITIGATED IN DIRECT APPEAL.
>> YOU HAVE USED UP YOUR
TIME.
MR. REITER YOU HAVE
EXHAUSTED YOUR TIME.
I'LL GIVE YOU A MINUTE, TWO
MINUTES.
>> TWO THINGS.
ONE, WE MUST BE READING A
DIFFERENT CASE ON GROSSNER.
THERE IS NO STATEMENT IN
GROSSMER.
MISADVICE.
LET ME READ TO THE COURT
WHAT PRINCIPAL SAID.
>> THE POINT IS GROSSNER
CONCERNED THE PREJUDICE
PRONG, CORRECT?
>> YES IT WAS SENT BACK
BECAUSE THIS COURT SAID THAT
IS THE PROBLEM WITH NOT
DEALING WITH BOTH DEFICIENCY
--
>> THE COURT SAID YOU CAN
YOU CAN CONSIDER THE WEIGHT
OF THE DEFENSE, WHICH WAS
INTOXICATION DEFENSE WHICH
HE WASN'T INFORMED OF.
>> BUT THERE WAS NO
DETERMINATION EITHER IN THE
TRIAL COURT OR IN THIS COURT
OF THE DEFICIENT PERFORMANCE
PRONG, THAT IS, THE COUNSEL
IN THAT CASE HAD TESTIFIED I
DIDN'T ADVISE HIM BECAUSE IN
OUR COUNSELLY, THE -- COUNTY,
THE VOLUNTARY INTOXICATION
COUNT JUST DOESN'T WORK.
WE COULDN'T COUNT THAT
BECAUSE THE TRIAL COURT HAD
NOT CONSIDERED IT.
>> THAT'S CORRECT.
HOWEVER, IF YOU LOOK IN THIS
CASE I INTERPRETED SAYING IT
WAS INDISHANT PERFORMANCE

WHEN HE SAID THE COURT FINDS
THE DEFENDANT HAS FAILED TO
ESTABLISH THAT BEING
INFORMED OF SUCH DEFENSE
WOULD'VE ALTERED THE OUTCOME
OF THAT CASE, OR SUCKEDED AT
TRIAL.
I INTERPRET THAT AS TO
SAYING WELL THE FACT THAT HE
WAS NOT INFORMED AND THE
FACT THAT IT WAS A DEFENSE
WAS DEFICIENT PERFORMANCE.
THAT'S HOW I INTERPRET.
COURT MAY INTERPRET
OTHERWISE.
THE FACT ARE SIMILAR AND
MORE EGREGIOUS HERE.
WHERE A WITH REGARD TO THE
PENALTY PHASE, AND BY THE
WAY, THE STATE IS WRONG WITH
REGARD TO THE DEFENSE AND
THEY ARE READING IT ON.
PRINCIPLES -- BY THE
STANDARD JURY INSTRUCTIONS.
THE DEFENDANT HAD CRIMINAL
INTENT THAT THE ACT WAS DONE
AND DID SOME ACT OR SAID
SOME WORD WHICH INTENDED TO
OR CAUSED ENCOURAGED OR
ASSIST OR ADVISE THE OTHER
PERSONS OR PERSONS
ATTEMPTING TO COMMIT THE
CRIME.
HE DENIED THAT.
THAT'S DEFENSE.
IT GOES TO CREDIBILITY.
NOT WITH WHETHER OR NOT THAT
DEFENSE IS LEGAL OR NOT.
IT IS.
AS FAR AS THE CLAIM 2 AND 1
AND 9, --
>> YOU HAVE NOW EXHAUSTED
YOUR TIME EVEN AS EXTENDED
SO --
>> IF I MIGHT MAKE ONE FINAL
--
>> THANK YOU VERY MUCH.
WE HAVE COVERED IT.
WE'LL TAKE THE CASE UNDER
ADVISEMENT.
THE COURT WILL STAND IN
ADJOURNMENT UNTIL 9:00
TOMORROW MORNING.
>> PLEASE RISE.

THE COURT IS NOW ADJOURNED.