>> HILTON V. THE STATE.
COUNSEL FOR THE APPELLANT.
>> THANK YOU, MR. CHIEF JUSTICE.
IF IT PLEASE THE COURT, MEMBERS
OF THE COURT, MY NAME IS ALEX
MORRIS.
I REPRESENT GARY MICHAEL HILTON.
I BELIEVE THE COURT IS SOMEWHAT
FACTUALLY FAMILIAR, BUT BRIEFLY,
MR. HILTON WAS INDICTED FOR
MURDER IN 2008.
THE MATTER PROCEEDED TO TRIAL IN
FLORIDA OF 2011.
MR. HILTON WAS CONVICTED DURING
THE GUILT PHASE, AND AT THE
CONCLUSION OF THE PENALTY PHASE,
THE JURY UNANIMOUSLY RECOMMENDED
THAT THE COURT IMPOSE A SENTENCE
OF DEATH.
MR. HILTON TOOK DIRECT APPEAL TO
THIS COURT.
HIS CONVICTION WAS AFFIRMED.
HE FILED THE POST-CONVICTION
BEFORE THE TRIAL COURT.
WE PROCEEDED TO AN EVIDENTIARY
HEARING, AND THE TRIAL COURT
DENIED THE CLAIMS THAT
MR. HILTON PRESENTED, AND THIS
APPEAL FOLLOWS.
IT'S DIFFICULT FOR ME TO, I
GUESS IN A LOT OF CIRCUMSTANCES
IT'S EASIER TO ADDRESS CLAIMS BY
GOING SIMPLY THROUGH THE NUMBERS
IN TERMS OF AS THE CLAIMS ARE
PRESENTED.
HOWEVER, MANY OF THE CLAIMS IN
MR. HILTON'S CASE OVERLAP.
THEY'RE INTERTWINED WITH ONE
ANOTHER.
I WILL START WITH THE FIRST
CLAIM.
MR. HILTON'S POSITION, OUR
POSITION IS THAT THE TRIAL COURT
ERRED IN DENYING HIS CLAIM OF
INEFFECTIVE ASSISTANCE OF
COUNSEL.
MR. HILTON WAS DENIED EFFECTIVE
ASSISTANCE OF COUNSEL BASED ON
HIS COUNSEL'S PERFORMANCE OR
LACK THEREOF DURING THE PENALTY

PHASE.
MORE SPECIFICALLY IN A MORE GENERAL WAY OF EXPLAINING IT TO THE COURT IS THAT A LIFE STORY OF MR. HILTON WAS NEVER TOLD.
THE MOST ANALOGOUS CASE THAT I CAN DRAW THIS COURT'S ATTENTION TO IS THE PARKER DECISION THAT THIS COURT RENDERED, I BELIEVE IT WAS IN 2009 IF I'M NOT MISTAKEN.
THERE THE DEFENSE PRESENTED, I BELIEVE IT WAS FOUR EXPERT WITNESSES, AS WELL AS ELEVEN LAY WITNESSES, IF I'M NOT MISTAKEN.
BUT THOSE WITNESSES DID NOT SERVE OR SPEAK TO MR. HILTON'S CIRCUMSTANCES FROM A VERY YOUNG AGE ALL THE WAY TO THE POINT OF WHEN THESE CIRCUMSTANCES HAPPENED.
THERE WAS A GENERAL GLOSS OF THESE WERE THE CIRCUMSTANCES THAT HAPPENED, BUT THEY WEREN'T-- LAYERS OF THE ONION WERE NOT PEELED BACK, IF YOU WILL.
I CAN DRAW THE COURT'S ATTENTION TO THE FACT THAT THE JURY WAS NEVER INFORMED ABOUT THE FACT THAT MR. HILTON'S FATHER ACTUALLY HAD REMARKABLY SIMILAR CIRCUMSTANCES IN TERMS OF MENTAL HEALTH AND SUBSTANCE ABUSE ISSUES.
THE ARGUMENT THEN WOULD HAVE BEEN VERY CLEAR TO THE JURY TO DEMONSTRATE THAT MR. HILTON SUFFERED FROM DEFECTS THAT WERE NOT HIS RESPONSIBILITY, BUT WERE OF THE ORIGIN OF HIS FAMILY OR HIS GENES, IF YOU WILL, HIS MAKEUP.
AND GOING FROM THERE, AT A VERY YOUNG AGE MR. HILTON, HIS MOTHER WAS NURTURING INITIALLY BUT THEN REJECTED MR. HILTON AS SHE REMARRIED.
THE GENTLEMAN THAT SHE REMARRIED WAS A VERY DANGEROUS PERSON.

THIS ROSE TO A LEVEL THAT
MR. HILTON ACTUALLY SHOT THE
GENTLEMAN AT A VERY YOUNG AGE.
MR. HILTON WAS PLACED IN WHAT
FORMERLY USED TO BE REFERRED TO
AS HRS, AND HE WAS PLACED IN
HOUSING WITH VARIOUS DIFFERENT
PEOPLE.
THERE ARE ALLEGATIONS OF HIM
HAVING BEEN SEXUALLY ABUSED AT A
YOUNG AGE.
THOSE ARE CORROBORATED BY OTHER
INDIVIDUALS.
ROY CAVE WOULD HAVE BEEN THE
WITNESS THAT WOULD HAVE BEEN
ABLE TO TESTIFY TO THAT.
WE THEN GET TO MR. HILTON'S TEEN
YEARS WHERE HE'S 17 YEARS OF
AGE.
HE IS ENTERING INTO THE
MILITARY.
HE HAS A RELATIVELY SHORT
MILITARY CAREER BECAUSE HE
BEGINS TO START MANIFESTING
MAJOR MENTAL HEALTH ISSUES.
THERE ARE MULTIPLE DIFFERENT
RELATIONSHIPS THAT MR. HILTON
HAD AND WITH VARYING DEGREES OF
SUCCESS OR FAILURE, BUT HE DID
ESTABLISH RELATIONSHIPS BY WAY
OF, EXAMPLE, WITH THE DAUGHTER
OF ONE OF THOSE SPOUSES, HER
GIRLFRIEND.
THAT WAS AN EXCELLENT
RELATIONSHIP AND A POSITIVE
RELATIONSHIP.
THERE WAS A LENGTHY DRUG HISTORY
STARTING AT A VERY YOUNG AGE,
MULTIPLE DIFFERENT SUBSTANCE
ABUSE ISSUES RELATED TO DRUGS AS
WELL AS ALCOHOL.
THEN WE GET TO THE POINT IN TIME
CHRONOLOGICALLY PRIOR TO THE
HOMICIDE, OR I'LL SAY HOMICIDES
PLURAL, IN TERMS OF MR. HILTON'S
INSTABILITY IN ATLANTA, GEORGIA,
AND THE SURROUNDING AREAS AND
HIM MANIFESTING ERRATIC
BEHAVIOR.
AND WITNESSES WERE AVAILABLE AND

ABLE TO BE CALLED IN THAT
REGARD.
MR. HILTON WAS WRONGFULLY AND
INAPPROPRIATELY PRESCRIBED TWO
DIFFERENT DRUGS, RITALIN AND--
[INAUDIBLE]
AND CONTEMPORANEOUS WITH THE
WRONGFUL PRESCRIPTION OF THE
MEDICATIONS IS WHEN HE SEE
MR. HILTON HAVING A BREAKING
POINT OR DETACHMENT FROM WHAT
ONE MIGHT CONSIDER NORMAL
BEHAVIORS.
>> [INAUDIBLE]
>> YES, SIR.
>> IF I COULD INTERRUPT YOU FOR
JUST A SECOND.
GOING BACK TO THE AVAILABLE
EVIDENCE OR AVAILABLE HISTORY OF
MR. HILTON'S GROWING UP,
APPARENTLY THE ARGUMENT HAS BEEN
MADE HERE THAT THE DEFENSE IN
THIS CASE, THEY WERE NOT WORKING
WELL TOGETHER AND THERE WAS A
LOT OF DISARRAY IN THE
PRESENTATION.
AND APPARENTLY THE ATTORNEY WHO
WAS IN CHARGE OF THE PENALTY
PHASE WAS, TOOK THE DECISION
THAT HE'S NOT VERY GOOD WITH LAY
PEOPLE.
HE WAS BETTER WITH EXPERTS.
SO HIS STRATEGY HERE WAS
BASICALLY JUST TO CALL EXPERTS
AND NOT SO MANY LAY PEOPLE.
IN DOING SO, HOWEVER, THIS LADY
BY THE NAME OF BETTY FUENTES WHO
WAS A MITIGATION EXPERT,
APPARENTLY SHE HAD PUT TOGETHER
A WELL-DEVELOPED CASE FOR MR.
HILTON'S EARLY YEARS AS FAR AS
ABUSE.
I THINK HE SHOT HIS STEPFATHER.
IT WAS JUST A HORRENDOUS EARLY
CHILDHOOD.
SO I GUESS THE QUESTION I HAVE
FOR YOU IS WE KNOW THE LAW THAT
COUNSELS, ATTORNEYS ARE ENTITLED
TO COME UP WITH THEIR OWN
STRATEGY AS TO HOW TO PRESENT

TESTIMONY.
HOWEVER, THAT STRATEGY HAS TO BE
REASONABLE STRATEGY.
AND DO YOU FEEL THAT THE
STRATEGY TO PURSUE JUST EXPERTS
IN THIS CASE MAKE IT INTENSIVE,
EXPERT-INTENSIVE AS OPPOSED TO
PRESENTING WITNESSES TO A
PERSON'S BACKGROUND, WAS THAT A
REASONABLE STRATEGY?
THAT'S MY QUESTION.
>> WELL, I CAN ANSWER THE
COURT'S QUESTION IN TWO WAYS,
JUSTICE.
FIRST AND FOREMOST, NO, I DO NOT
THINK THAT IT WAS A REASONABLE
STRATEGY.
BUT I THINK THAT THIS COURT'S
CASE LAW AS WELL AS THE UNITED
STATES SUPREME COURT'S CASE LAW
IS CLEAR IN THAT IT'S NOT
NECESSARILY MY ROLE TO CRITICIZE
STRATEGIES, AND IT'S NOT
NECESSARILY THE COURT'S ROLE.
BUT THE QUESTION BECOMES WHETHER
THERE WAS A STRATEGY OR NOT.
AND IN THIS CIRCUMSTANCE, I
DON'T THINK THAT THERE WAS.
AND YOU HIT ON A VERY IMPORTANT
ISSUE, THAT THERE WAS GREAT
DISARRAY AND DYSFUNCTION AMONG
TRIAL COUNSEL.
MS. FUENTES HAD DONE AN ENORMOUS
AMOUNT OF WORK IN PREPARING
MITIGATION WITNESSES,
CULTIVATING EVIDENCE THAT COULD
BE PRESENTED TO THE JURY SO A
LIFE STORY COULD BE TOLD.
MR. FREEDMAN, BECAUSE OF THE
DYSFUNCTION OF THE DEFENSE TEAM,
MR. FREEDMAN-- WHO HAD NOT
HANDLED A PENALTY PHASE
PREVIOUSLY-- MADE THE DECISION,
AND THE RECORD SUPPORTS THIS
DECISION FROM OTHER WITNESSES
THAT MR. FREEDMAN WASN'T VERY
GOOD WITH LAY WITNESSES, AND SO
HE DECIDED TO STREAMLINE
EVERYTHING AND SIMPLY ATTEMPT TO
PRESENT THINGS THROUGH THE

EXPERTS.
NO, I DO NOT THINK THAT THAT WAS
A SOUND STRATEGY BECAUSE IT
NEGLECTED TO TELL THE ACTUAL
LIFE STORY OF MR. HILTON AND PUT
SOME TANGENTIAL VALUE AND
HUMANITY THAT WAS ASSOCIATED
WITH THE FACTS THAT THE EXPERTS
HAD THEORETICALLY CONSIDERED.
AND IN THIS CIRCUMSTANCE, IT'S
CLEAR THAT THE EXPERTS DIDN'T
HAVE THE BENEFIT OF CONSIDERING
ALL OF THAT INFORMATION OR THAT
EVIDENCE.
>> WELL, THE PLAN WAS-- GOING
BACK TO THE DISARRAY THAT WAS
GOING ON, APPARENTLY THE ELECTED
PUBLIC DEFENDER IN THIS CASE
ASSIGNED, IT GOT SO BAD THAT SHE
ASSIGNED THE CASE 90 DAYS BEFORE
TRIAL AND ASSIGNED MR. FREEDMAN
TO DO THE PENALTY PHASE.
AND HE WAS NOT QUALIFIED.
I SAY QUALIFICATION IN THE SENSE
THAT HE'D NEVER DONE ONE BEFORE
AS HE IS REQUIRED TO HAVE DONE.
AND ALSO ASSIGNED THE GUILT
PHASE TO MS. SUBER.
AND THOSE TWO WERE APPARENTLY
NOT WORKING-- ONE WAS WORKING
ON GUILT, THE OTHER WAS WORKING
ON PENALTY, AND THEY WERE NOT
CONNECTING WITH EACH OTHER.
SO GOING FROM THAT AS A STARTER,
THEY DO NOT PRESENT TO THE JURY
THIS PERSON'S BACKGROUND WHICH
WAS EXTENSIVE AS FAR AS ABUSE
AND THAT TYPE OF THING.
I'M JUST WONDERING, YOU KNOW,
WHETHER OR NOT THERE COULD BE
ANY POSSIBLE REASONABLE STRATEGY
FOR NOT PURSUING LAY WITNESSES
TO COME AND TESTIFY ABOUT HIS
VIEWS AND ALL THOSE THINGS IN
EARLY CHILDHOOD IN EXCHANGE FOR
EXPERT TESTIMONY.
>> I THINK, DISCONCERTINGLY,
THERE WASN'T A STRATEGY.
AS THE EVIDENCE FROM THE
EVIDENTIARY HEARING DEMONSTRATES

TO THE COURT, THESE PEOPLE
COULDN'T EVEN TALK WITH EACH
OTHER.
THE DEFENSE TEAM WAS SO
DYSFUNCTIONAL.
THE GUILT PHASE LAWYER,
MS. SUBER, WAS NOT COMMUNICATING
WITH THE PENALTY PHASE LAWYER,
MR. FREEDMAN.
NEITHER ONE OF THEM HAD ANY IDEA
WHAT THE OTHER WAS GOING TO
PRESENT.
THERE WAS NO COMMONALITY OF
THEME.
MR. FREEDMAN CAME INTO IT AT THE
11TH HOUR.
IT'S ONE THING TO TRY A GRAND
THEFT MOTOR VEHICLE CASE AND
RECEIVE IT 90 DAYS PRIOR TO
TRIAL.
IT'S AN ALTOGETHER DIFFERENT
THING TO RECEIVE A DEATH PENALTY
CASE OF THIS COMPLEXITY, THIS
MAGNITUDE 90 DAYS PRIOR TO TRIAL
AND BE ABLE TO BE ADEQUATELY
PREPARED FOR THE PENALTY PHASE
AND THE PRESENTATION OF
WITNESSES.
AND THE EVIDENCE THAT WAS
PRESENTED AT THE EVIDENTIARY
HEARING WAS THAT COUNSEL IN THE
PENALTY PHASE ACTUALLY DISCARDED
OR IRRITATED WITNESSES OR
ENFLAMED THE SENSES OF WITNESSES
AND SIMPLY UNILATERALLY MADE
DETERMINATIONS OF NOT CALLING
WITNESSES.
AND BY WAY OF EXAMPLE, IF WE
LOOK AT DR. DELCHER WHO WAS
PRESENTED DURING THE EVIDENTIARY
HEARING, HE IS THE GENTLEMAN WHO
WRONGFULLY PRESCRIBED MR. HILTON
EFEXIR AS WELL AS RITALIN.
HE WAS SUSPENDED FROM THE
PRACTICE OF MEDICINE IN GEORGIA.
THE JURY LEARNED BRIEF TIDBITS
OF THAT INFORMATION.
BUT IN SOME WAY, SHAPE OR FORM,
PENALTY PHASE COUNSEL DECIDED
NOT TO CALL DR. DELCHER BECAUSE

THEY NOW CHARACTERIZE IT AS
BEING STRATEGIC, THAT HE COULD
POTENTIALLY SAW SOMETHING BAD OR
POOR AGAINST MR. HILTON.
BUT IF THE COURT TAKES A LOOK AT
THE TESTIMONY OF DR. DELCHER,
DR. DELCHER'S TESTIMONY WAS
ACTUALLY VERY INFORMATIVE IN
TERMS OF DESCRIBING NOT ONLY HIS
ROLE AND OBSERVATIONS IN
MR. HILTON'S DEMISE AND HOW
RAPIDLY THAT OCCURRED, BUT IT
PROVIDED SUBSTANTIVE AND
TANGENTIAL INFORMATION FOR THE
JURY'S CONSIDERATION OF A
MEDICAL DOCTOR POTENTIALLY BEING
COMPLICIT IN MR. HILTON'S
DEMISE.
SO I'VE GOT TO AGREE WITH YOU,
JUSTICE LABARGA, IN THE SENSE
THAT THERE WAS ABSOLUTE CHAOS
AMONG THE DEFENSE TEAM.
>> COUNSEL, LET ME ASK YOU THIS,
WHAT OTHER WITNESSES WERE
PRESENTED AT THE EVIDENTIARY
HEARING THAT ARE RELEVANT TO
THIS ISSUE YOU'RE RAISING ABOUT
THE FAILURE TO EXPLAIN THE LIFE
STORY OF MR. HILTON?
>> WELL, FIRST, DR. ROY CAMP,
WHO WAS THE-- HE'S A MILITARY
PSYCHIATRIST-- PRESENTED
EVIDENCE IN TERMS OF THE
CHRONOLOGY AND EXPLANATION OF
HOW MR. HILTON WAS SEPARATED
FROM THE MILITARY.
SECONDARILY, DR. DELCHER WAS
AVAILABLE.
AND THEN THROUGH STIPULATION OF
THE PARTY'S EVIDENCE WAS ENTERED
IN TERMS OF DECLARATIONS AND
STATEMENTS THAT PROVIDED THE
CHRONOLOGY.
MS. FUENTES TESTIFIED AT THE
EVIDENTIARY HEARING WITH RESPECT
TO THE SOME 300 INDIVIDUALS THAT
WERE INTERVIEWED.
AND I DON'T SUGGEST TO THE
COURT, CHIEF JUSTICE, THAT THERE
SHOULD BE AN EXPECTATION THAT

ALL 300 WITNESSES WERE GOING TO
BE CALLED.
>> WELL, LET'S GET BACK TO THIS,
WHICH OF THE LAY WITNESSES DO
YOU BELIEVE THAT COUNSEL WAS
DERELICT IN NOT PRESENTING THEIR
TESTIMONY AT TRIAL WERE
PRESENTED AT THE EVIDENTIARY
HEARING?
>> LET ME GIVE YOU A COUPLE OF
EXAMPLES.
THE FIRST EXAMPLE THAT I CAN
PROVIDE FOR THE COURT IS ROY
CAVE ACTUALLY TESTIFIED AND TOOK
THE WITNESS STAND IN THE PENALTY
PHASE IN MR. HILTON'S.
>> THAT'S NOT MY QUESTION.
>> OKAY.
>> I UNDERSTAND YOU MAY WANT
TO-- IF I UNDERSTOOD PART OF
YOUR, AT LEAST A SIGNIFICANT
PART OF YOUR ARGUMENT IS THAT
THE COUNSEL FAILED TO PUT ON LAY
WITNESSES THAT SHOULD HAVE BEEN
PUT ON IF THEY'D BEEN DOING THE
JOB THAT THEY SHOULD DO TO
EXPLAIN MR. HILTON'S LIFE STORY.
NOW, I'M ASKING YOU WHICH OF
THOSE WITNESSES WERE PRESENTED
AT THE EVIDENTIARY HEARING.
>> BEYOND DR. DELCHER AND
DR. CAMP, THE ANSWER TO THE
COURT IN TERMS OF LAY WITNESS
TESTIMONY IS THERE IS NOT
TESTIMONY FROM THEM.
HOWEVER, THERE ARE DECLARATIONS
IN EVIDENCE FROM THEM.
>> THANK YOU.
>> YES, SIR.
FROM THERE--
>> COUNSEL, I'M SORRY.
WE HAVE HELPED YOU MOVE INTO
YOUR REBUTTAL TIME.
YOU JUST NEED TO BE AWARE THAT
YOU NOW HAVE ONLY A LITTLE OVER
THREE AND A HALF MINUTES OF YOUR
REBUTTAL TIME LEFT.
>> FAIR ENOUGH.
I'LL WRAP UP WITH THIS.
THE DEFECTS IN THE DEFENSE,

THEIR LACK OF PREPARATION, THE DISCORD, DISHARMONY, LEFT MR. HILTON IN A CIRCUMSTANCE WHERE HE DID NOT RECEIVE ACCURATE REPRESENTATION AND EFFECTIVE REPRESENTATION IN THE PENALTY PHASE.
AND AS A RESULT, IT IS OUR POSITION THAT THE COURT, THAT THE TRIAL COURT ERRED IN DENYING HIS CLAIMS, AND THIS COURT SHOULD REVERSE FOR A NEW PENALTY PHASE.
AND THEN I'LL RESERVE THE REMAINDER OF THE TIME, YOUR HONOR.
>>COUNSEL FOR THE STATE.
>> MORNING.
MAY IT PLEASE THE COURT, MICHAEL KENNETT FOR THE STATE OF FLORIDA.
THIS IS THE APPEAL OF THE DENIAL OF THE INITIAL MOTION FOR POST-CONVICTION RELIEF IN MR. HILTON'S CASE.
I'LL START BY SAYING THE EVIDENCE OF GUILT IN THIS CASE WAS OVERWHELMING, AND THE EVIDENCE OF AGGRAVATION IN THIS CASE WAS OVERWHELMING.
WHAT DOES THAT MEAN?
THAT MEANS IT'S ALMOST IMPOSSIBLE FOR THE APPELLANT OR PETITIONER, DEPENDING UPON WHETHER IT'S THE ALLEGATION OF INEFFECTIVENESS OF TRIAL COUNSEL OR APPELLATE COUNSEL, WOULD HAVE A VERY HARD TIME ESTABLISHING PREJUDICE UNDER STRICKLAND.
THAT ALSO MEANS THAT WHEN YOU EVALUATE PERFORMANCE OF APPELLATE COUNSEL, IT'D BE VERY HARD TO SHOW THAT AN UNPRESERVED CLAIM WAS FUNDAMENTAL.
IT ALSO MAKES IT HARD TO SHOW THAT IT WAS HARMLESS, OVERWHELMING EVIDENCE OF GUILT, AND THAT MAKES A BIG DIFFERENCE IN THE POST-CONVICTION CLAIM HERE.

TO TOUCH ON WHAT CHIEF JUSTICE
CANADY MENTIONED AND WHAT THE
TRIAL COURT EXPLICITLY SAID,
NONE OF IT WOULD HAVE MADE A
DIFFERENCE IN TRIAL.
THAT'S A CORRECT RULING.
THE APPELLANT SUFFICIENTLY
CHALLENGED THAT RULING ON
APPEAL.
WITH REGARD TO THE CLAIM FOR THE
PENALTY PHASE, THE APPELLANT
ARGUES THAT THE LEAD COUNSEL FOR
THE PENALTY PHASE, MR. FREEDMAN,
DIDN'T DO ENOUGH TO TELL THE
LIFE STORY OF MR. HILTON.
THE TRIAL COURT FOUND OTHERWISE.
THE TRIAL COURT FOUND THAT
THE-- WHATEVER ADDITIONAL
EVIDENCE WAS PRESENTED AT THE
EVIDENTIARY HEARING WAS
CUMULATIVE LARGELY TO WHAT WAS
SHOWN AT TRIAL, AND MR. FREEDMAN
TESTIFIED THAT HE WAS WELL AWARE
OF THE FACT THAT THE STATE WOULD
TRY TO PORTRAY MR. HILTON AS A
PSYCHOPATH.
AND SO HE HAD A STRATEGY OF
TRYING TO MINIMIZE THE
OPPORTUNITIES OR MINIMIZE THE
RISKS FOR THE STATE TO BE ABLE
TO DO THAT.
AND THAT IS WHY HE CHOSE TO USE
EXPERT WITNESSES, BECAUSE HE
DIDN'T WANT TO OPEN THE DOOR TO
OTHER BEHAVIORS DURING
MR. HILTON'S LIFE THAT COULD
SUPPORT AN ANTI-SOCIAL
PERSONALITY DISORDER.
EVEN HIS SERVICE IN THE MILITARY
COULD BE CONTESTED LIKE THAT.
IF YOU LOOK AT IT, HE WANTS TO
ARGUE A MENTAL DEFECT, BUT IT
COULD ALSO BE CONSISTENT WITH
ANTI-SOCIAL PERSONALITY
DISORDER.
DEFENSE WANTS TO--
[INAUDIBLE]
AND THE STATE SAYS, NO, THIS GUY
IS JUST A PSYCHOPATH.
AND SO SOMEONE IN THE MILITARY,

MAYBE IT WAS EXCITING AT FIRST,
AND THEN IT'S NOT EXCITING
ANYMORE.
AND WHAT DR. CAMP TESTIFIED TO
IS THAT MR. HILTON TOOK THE EASY
WAY OUT.
OKAY, I'VE GOT A PERSONALITY
DISORDER, I WANT TO LEAVE NOW.
IT'S NOT FUN ANYMORE.
THE DRUG USE COULD HAVE BEEN
CONSISTENT WITH ANTI-PERSONALITY
DISORDER.
[INAUDIBLE]
HIS WHOLE LIFE.
SO, AGAIN, NOTHING WAS TESTIFIED
TO AT THE EVIDENTIARY HEARING
WHERE IT MADE A DIFFERENCE.
AND AS FAR AS DR. DELCHER GOES,
MRS. FUENTES AND MR. FREEDMAN
BOTH UNDERSTOOD BEFORE TRIAL
THAT DR. DELCHER THOUGHT
MR. HILTON WAS DANGEROUS.
SO, YES, THERE COULD HAVE BEEN
SOME POSITIVES THAT CAME OUT FOR
THE DEFENSE BY CALLING
DR. DELCHER, BUT AT THE SAME
TIME TO HAVE A DEFENSE WITNESS
SAY RIGHT BEFORE THESE MURDERS
TOOK PLACE I WAS AFRAID OF THIS
GUY AND EVEN AT THE EVIDENTIARY
HEARING FOR POST-CONVICTION
DR. DELCHER SAID HE WOULDN'T
TRUST ANYTHING APPELLANT SAID
NOW.
>> MR. KENNETT, CAN I-- CAN WE
HEAR FROM YOU YOUR ASSESSMENT OF
THE STATE'S COMPLIANCE WITH THE
APPLICABLE RULES OF PROCEDURE
WITH RESPECT TO PROVIDING A LIST
OF DESIGNATED WITNESSES,
DOCUMENT FOR THE GEORGIA CASE
AND WHETHER THE TIMELINESS OR
UNTIMELINESS OF ITS COMPLIANCE
WITH THOSE RESULTED IN A
SUBSTANTIAL DISADVANTAGE TO THE
DEFENSE IN THIS CASE?
>> MY FIRST RESPONSE IS TO SAY
THAT WOULD BE MORE OF A DIRECT
APPEAL ISSUE NOT A
POST-CONVICTION ISSUE.

BUT I UNDERSTAND YOUR GOOD
QUESTION.
AND AS IT RELATES TO THE IAC
CLAIM, PERHAPS, OR THE GUILT
PHASE.
AND THE TRIAL COURT IN THIS CASE
SAID IN THE POST-CONVICTION
ORDER THAT IT WOULDN'T HAVE MADE
A DIFFERENCE, THAT MS. SUBER
ACTED PROFESSIONALLY.
SHE OBJECTED WHEN THE STATE
CALLED A WITNESS.
THE TRIAL COURT GAVE DEFENSE
COUNSEL AN OPPORTUNITY TO--
[INAUDIBLE]
BUT EVEN IF SHE HAD BEEN AWARE
OF THE TESTIMONY BEFOREHAND, SHE
COULDN'T HAVE DONE ANYTHING TO
CHANGE IT.
IT WAS AN ADMISSION BY A
PARTY--
[INAUDIBLE]
ADMISSION BY MR. HILTON WHEN HE
WAS IN JAIL AWAITING TRIAL THAT
WAS TO A FELLOW INMATE BUT
OVERHEARD BY A CORRECTIONAL
OFFICER.
SO ADDITIONAL TIME WOULDN'T HAVE
CHANGED ANYTHING, AND THE
EVIDENCE OF GUILT WAS
OVERWHELMING IN THE CASE.
THE APPELLANT TRIES TO ARGUE
THAT THAT SOMEHOW, THAT CHANGED
THE THEME FOR THE DEFENSE DURING
THE GUILT PHASE, AND THAT'S JUST
NOT TRUE.
FIRST OFF, THE DEFENSE'S HANDS
WERE TIED BECAUSE MR. HILTON
SAID UNEQUIVOCALLY IF THEY'RE
NOT GOING TO GIVE ME A LIFE
SENTENCE, I WANT TO FIGHT
EVERYTHING.
I WANT TO MAKE THEM PAY FOR
EVERYTHING.
AND SO THAT'S WHAT DEFENSE
COUNSEL DID.
IT WASN'T AN INNOCENCE DEFENSE,
AND IT WASN'T A CIRCUMSTANTIAL
DEFENSE, IT WAS A REASONABLE
DOUBT DEFENSE OR AN ADVERSARIAL

TESTING OF THE STATE'S CASE.
AND IF YOU LOOK AT THE OPENING STATEMENT OF MS. SUBER AT TRIAL, SHE SAID THERE IS DIRECT EVIDENCE IN THIS CASE, AND SHE SAID THERE'S ALSO CIRCUMSTANTIAL EVIDENCE IN THIS CASE.
AND THIS BEING DURING HER OPENING STATEMENT WAS, PAY ATTENTION.
PAY ATTENTION.
IT WAS A REASONABLE DOUBT THEME.
SO IT ISN'T LIKE IF THE STATE HAD DISCLOSED THE WITNESS PRIOR THAT THE DEFENSE STRATEGY WOULD HAVE BEEN DIFFERENT.
AND THE APPELLANT FAILS TO SHOW OR ARTICULATE WHAT A BETTER STRATEGY WOULD HAVE BEEN PARTICULARLY WHEN THE DEFENDANT HIMSELF WANTED TO FIGHT EVERYTHING.
SO, YES, THAT IS AN IMPORTANT ISSUE IN THE CASE.
BUT, AGAIN, IT DIDN'T MATTER.
NONE OF THE EVIDENCE PRESENTED AT THE EVIDENTIARY HEARING WOULD HAVE MADE A DIFFERENCE AT TRIAL.
>> LET ME, LET ME, LET ME ASK YOU A QUESTION ON THAT BECAUSE I'VE HEARD YOU ARGUE THAT A NUMBER OF TIMES.
AND YOU DO HAVE SOME WEIGHTY AGGRAVATORS.
YOU'VE GOT HAC, YOU'VE GOT CCP, YOU'VE GOT A PRIOR VIOLENT FELONY, YOU'VE GOT IN THE COURSE OF A KIDNAPPING, AND YOU'VE GOT TO AVOID ARREST.
THOSE ARE WEIGHTY AGGRAVATORS.
BUT, YOU KNOW, BEFORE WE HAD THE UNANIMITY REQUIREMENT DEFINITELY IN JURIES.
I USED TO SEE CASES JUST AS STRONG COMING BACK WITH 8-4 JURY RECOMMENDATIONS, 10-2 WITH THE SAME AGGRAVATORS.
AND THE CASE HAD BEEN JUST AS HEINOUS AND AS ATROCIOUS AS THIS ONE AS TO WHAT HAPPENED TO THE

POOR VICTIM.
BUT YOU SAW, I SAW-- YOU'VE
SEEN THOSE.
YOU ASK YOURSELF HOW CAN A JURY
COME BACK WITH ANYTHING LESS
THAN A 12-0.
YET YOU SEE 8-4, 10-2 AND LESS
THAN THAT.
THERE'S NO SUCH THING AS A
LOCKED CASE.
SO, YOU KNOW, ANYTHING INVOLVING
CAUSED A PERSON TO BEHAVE IN A
CERTAIN WAY BECAUSE OF WHAT
HAPPENED TO THEM EARLY OR
ANYTHING LIKE THAT, THAT HAS AN
IMPACT ON JURORS' VOTES ON THE
DEATH PENALTY.
AS FAR AS GUILT IS CONCERNED,
THAT'S A DIFFERENT MATTER.
DON'T YOU AGREE?
>> YES AND NO.
IT'S ALWAYS A DOUBLE-EDGED
SWORD.
AND THAT'S WHY I SAID EARLIER
THAT THERE'S ALWAYS THIS DEBATE
DURING THE PENALTY PHASE.
IS IT THAT THE DEFENDANT HAS A
SEVERE DEFECT, OR IS HE JUST A
PSYCHOPATH?
THE DEFENSE WANTED TO SHOW THAT
HE HAD SCHIZO-OFFENSIVE
DISORDER.
BUT THE STATE SAID, NO, NO, HE'S
A PSYCHOPATH.
LET'S LOOK AT THE AGGRAVATION.
CCP.
HE HUNTED PEOPLE.
HE TARGETED PEOPLE BASED UPON
THEIR LOCATIONS.
HE CHOSE NATIONAL FORESTS,
HIKING TRAILS.
AND THOSE ARE THE FACTS OF THIS
CASE.
AND THE FACTS OF THE GEORGIA
CASE, THEY'RE STRIKINGLY
SIMILAR.
HE TARGETED WOMEN WHO WERE BY
THEMSELVES ON HIKING TRAILS.
THAT'S CCP.
LET'S TALK ABOUT HAC.

HE KEPT THEM ALIVE FOR DAYS.
BOTH IN THE FLORIDA CASE, THIS CASE, AND IN THE GEORGIA CASE, HE KEPT HIS VICTIM ALIVE FOR AT LEAST FOUR DAYS.
AND IN THIS CASE THE VICTIM WAS WELL AWARE OF THE FACT THAT HER LIFE WAS IN DANGER.
SHE KEPT TRYING OVER AND OVER AGAIN TO GET MR. HILTON TO CONVERT TO CHRISTIANITY.
THAT WAS HER ONE ATTEMPT, HER BEST ATTEMPT, AT SAVING HER OWN LIFE.
AND SHE WAS KEPT ALIVE FOR AT LEAST FOUR DAYS IN THE WOODS.
HE KEPT HER ALIVE SO HE COULD USE HER ATM CARD TO PULL AS MUCH MONEY OUT OF HER ACCOUNT AS POSSIBLE.
WE HAVE A PURE VIOLENT FELONY CONVICTION.
WITHIN 30 DAYS HE DID THE EXACT SAME THING.
ONCE IN FLORIDA, ONCE IN GEORGIA.
HE CUT THEIR HEADS OFF AND HAD SEX WITH THEIR BODIES.
HE KIDNAPPED THEM.
I UNDERSTAND YOUR COMMENT--
[INAUDIBLE]
BUT, AGAIN, I GO BACK TO WHAT THE TRIAL COURT SAID, NOTHING THAT WAS PRESENTED AT THE EVIDENTIARY HEARING WOULD HAVE MADE A DIFFERENCE IN THIS CASE.
BECAUSE, AGAIN, HE HUNTED PEOPLE FOR FUN, AND HE KILLED THEM.
I, IT'S PERFECTLY REASONABLE FOR A JURY TO SAY 12-0.
IT'S NOT A SURPRISE.
I UNDERSTAND YOUR QUESTION IN OTHER CASES, BUT WE NEVER KNOW THE MAKEUP OF JURIES, WE NEVER KNOW THE MOTIVATIONS.
SO WE HAVE TO LOOK AT THE EVIDENCE FROM A RATIONAL PERSPECTIVE.
AND IN EXAMINING THE PREJUDICE IN STRICKLAND, AND IF YOU DO

THAT IN THIS CASE, CLEARLY
NOTHING PRESENTED AT THE
EVIDENTIARY HEARING--
[INAUDIBLE]
ABSENT ANY QUESTIONS, THE STATE
WOULD ASK THIS COURT AFFIRM THE
DENIAL OF APPELLANT'S
POST-CONVICTION NOTICE AS WELL
AS DENY THE--
[INAUDIBLE]
>> THANK YOU, COUNSEL.
REBUTTAL.
>> THANK YOU, MR. CHIEF JUSTICE.
JUST BACK TO JUSTICE COURIEL'S
QUESTION, IN TERMS OF THE LATE
DISCLOSURE ISSUE, I DON'T THINK
THE TIMELINESS OF THE DISCLOSURE
ACTUALLY IS THE MAIN ISSUE.
I THINK THAT THE MAIN ISSUE IS
THAT DEFENSE COUNSEL, CONTRARY
TO WHAT THE STATE ARGUES IN
TERMS OF THERE BEING DIRECT
EVIDENCE AND CIRCUMSTANTIAL,
DURING THE GUILT PHASE THE TRIAL
LAWYER PRESENTED MATTERS AS IF
IT WAS A CIRCUMSTANTIAL EVIDENCE
CASE UNAWARE OF THE FACT THAT
MR. HILTON HAD MADE A STATEMENT
AGAINST BEST INTERESTS THAT WAS
OVERHEARD BY A GUARD AT THE LEON
COUNTY JAIL.
THAT CAME ALMOST AT THE TAIL END
OF THE GUILT PHASE.
SO ALL THE WHILE THERE'S
ARGUMENT OF IT JUST BEING A
CIRCUMSTANTIAL EVIDENCE CASE AND
NOT A DIRECT EVIDENCE CASE UNTIL
THE BOMBSHELL DROPS.
WELL, THE POINT REALLY BEHIND
THAT IS THE DYSFUNCTION OF THE
PREPARATION.
THE RECORD FROM THE EVIDENTIARY
HEARING IS REPLETE WITH WHAT THE
DISORGANIZATION OF THE ACTUAL
DOCUMENTS WAS, WHO WAS IN CHARGE
OF PARTICULAR WITNESSES.
AND SO TO MISS OR NOT BE AWARE
OF THE FACT THAT A WITNESS IS
GOING TO TESTIFY THAT MR. HILTON
MADE STATEMENTS AGAINST

INTERESTS IS A DIFFICULT ONE TO OVERCOME, NO DOUBT.
ALSO TO JUSTICE LABARGA'S QUESTION ON THE 8-4, 10-2, I THINK IT'S A LITTLE DISINGENUOUS FOR THE STATE TO ARGUE, OH, IT'S A 12-0 VOTE AND NOTHING WOULD HAVE HELPED.
WELL, THAT'S NOT TRUE BECAUSE THAT INFORMATION WAS NOT PRESENTED TO THE JURY FOR THEIR CONSIDERATION, AND HAD IT BEEN PRESENTED FOR THE JURY'S CONSIDERATION, WE MAY WELL HAVE AN ALTOGETHER DIFFERENT RECOMMENDATION FROM THE JURY.
AND SO IN THE ABSENCE OF THAT INFORMATION BEING PRESENTED, THAT IS ABSOLUTELY WHY THERE'S A 12-0 RECOMMENDATION.
WITH ALL OF THOSE THINGS SAID, I WOULD AGAIN REQUEST THAT MR. HILTON'S CASE BE REVERSED AND REMANDED FOR A NEW PENALTY PHASE.
I WOULD STAND ON THE ARGUMENTS AS PRESENTED IN THE PETITION FOR WRIT OF HABEAS CORPUS AS THEY'RE PRESENTED IN THAT, IN THAT BRIEF.
I APPRECIATE EVERY, EACH OF YOUR TIME.
>> WELL, THANK YOU, COUNSEL.
WE THANK BOTH OF YOU FOR YOUR ARGUMENTS IN THIS CASE TODAY.
THAT'S THE LAST CASE ON TODAY'S DOCKET.
SO THE COURT WILL NOW STAND IN RECESS UNTIL TOMORROW'S SESSION OF COURT.