>> ON OUR DOCKET TODAY, THE CASE OF BROWN V. THE STATE OF FLORIDA.
COUNSEL?
>> DAWN MACREADY FOR LOUISIANA SEWN YA BROWN.
THIS IS FOR DENIAL OF MS. BROWN'S MOTION FOR POST-CONVICTION RELIEF.
I'D LIKE TO BEGIN MY ARGUMENT WITH ISSUE ONE, INEFFECTIVE ASSISTANCE OF COUNSEL AT THE GUILT PHASE OF MS. BROWN'S CAPITAL TRIAL.
>> BASED ON OUR DOCKET TODAY--
[INAUDIBLE]
THE CASE OF BROWN V.--
>> IN EXCHANGE FOR TESTIMONY, THE STATE'S AGREED TO--
[INAUDIBLE CONVERSATIONS]
>> SHE WAS THE ONLY EYEWITNESS TO TESTIFY AT TRIAL AS TO WHAT OCCURRED IN THE WOODED AREA WHEN THE VICTIM WAS SET ON FIRE.
AND IT WAS HER TESTIMONY THAT ALLOWED THE STATE TO ARGUE THAT TINA BROWN WAS MORE CULPABLE AND THAT HE NOT ONLY DESERVED CONVICTION FOR FIRST-DEGREE MURDER, BUT A SENTENCE OF DEATH.
SO AS YOU CAN IMAGINE, IT WAS PARAMOUNT IN THIS CASE TO CHALLENGE HER CREDIBILITY AND HER VERSION OF THE EVENTS THAT OCCURRED THAT NIGHT.
WHEN ASKED ABOUT HIS DEFENSE, TRIAL COUNSEL STATED THAT THIS WAS A PENALTY PHASE CASE, NOT A WHO DUN IT CASE.
SO BY THAT HE MEANT THAT HE WOULD ARGUE THAT HEATHER LEE WAS MORE CULPABLE IN THE GUILT PHASE WHICH WOULD THEN ALLOW HIM TO ARGUE FOR LIFE FOR MS. BROWN'S AS BEING LESS CULPABLE WHEN THEY GOT TO THE PENALTY PHASE.
HOWEVER, TRIAL COUNSEL FAILED TO UTILIZE ALL OF THE EVIDENCE THAT WAS AVAILABLE TO HIM TO SUPPORT THIS DEFENSE, AND BUT FOR THESE

ERRORS BY COUNSEL, THE RESULTS OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT, AND TINA BROWN WOULD HAVE RECEIVED A LIFE SENTENCE.

SO I WOULD LIKE TO GO THROUGH SOME OF THE, WHAT I THINK ARE THE MOST IMPORTANT PIECES OF EVIDENCE THAT TRIAL COUNSEL FAILED TO UTILIZE AND DISCUSS WHY WE BELIEVE THE CIRCUIT COURT ERRED IN THESE INSTANCES.

I'LL START WITH PROBABLY THE MOST BASIC TOOL FOR CROSS-EXAMINATION ON PRIOR CONVICTIONS, AND I'LL TALK BRIEFLY ABOUT THAT.

TRIAL COUNSEL FAILED TO IMPEACH HEATHER LEE WITH HER PRIOR CONVICTIONS.

NOW, AS A YOUNG DEFENSE ATTORNEY OR PUBLIC IF DEFENDER, THE FIRST THING YOU LEARN HOW TO DO IS IMPEACH WITH PRIOR CONVICTIONS BECAUSE SOMETIMES THAT'S ALL YOU HAVE.

AND, FRANKLY, THERE'S NO REASON NOT TO DO SO.

TRIAL COUNSEL WAS PUT ON NOTICE AT A DEPOSITION BY HEATHER LEE'S ATTORNEY THAT SHE HAD AT LEAST ONE PRIOR CONVICTION.

IN FACT, SHE HAD TWO CONVICTIONS FOR FELONIES AND TWO CONVICTIONS FOR CRIMES OF DISHONESTY.

WHEN ASKED ABOUT THIS, TRIAL COUNSEL STATED IT WOULDN'T ARE MADE ANY DIFFERENCE.

AND THE CIRCUIT COURT AGREED AND HELD THAT HEATHER LEE'S PREVIOUS CRIMINAL RECORD WAS INSIGNIFICANT UNDER THE CIRCUMSTANCES.

AND THE CIRCUIT COURT ALSO REASONED THAT THE JURY WAS AWARE THAT MS. LEE HAD PLED TO SECOND-DEGREE MURDER FOR THIS CASE.

SO, ESSENTIALLY, HER PRIOR RECORD DIDN'T MATTER.

>> COUNSEL, IS IT, IS IT EVER A PERMISSIBLE STRATEGIC CHOICE UNDER STRICKLAND TO NOT IMPEACH A COOPERATING WITNESS WITH EVIDENCE OF PRIOR CONVICTIONS?
>> I WOULD SAY THAT'S NOT EVER A REASONABLE STRATEGY, YOUR HONOR, JUST BECAUSE IT'S SO SIMPLE, AND IT'S ONE OF THE THINGS THAT-- IT'S INCLUDED IN THE JURY INSTRUCTIONS, YOUR HONOR.
SO THIS COURT APPROVED THE JURY INSTRUCTIONS AND THOUGHT IT IMPORTANT ENOUGH TO INCLUDE THAT AS ONE OF THE ENUMERATED THINGS TO CONSIDER, THAT JURORS SHOULD CONSIDER WHEN THEY'RE THINKING ABOUT AND RELYING ON OR TRYING TO FIGURE OUT A WITNESS' CREDIBILITY.
SO IS I WOULD SAY THAT IT'S NEVER REASONABLE TO FAIL TO DO THAT.
>> THE PROBLEM IS IN SOME INSTANCES, YOU KNOW, THE DEFENDANT MAY WANT TO TAKE THE STAND AND TESTIFY.
AND THE DEFENDANT HIMSELF OR HERSELF MAY HAVE A SUBSTANTIAL PRIOR CRIMINAL RECORD.
FOR THAT PURPOSE, SOME DEFENSE LAWYERS BASICALLY DON'T GO INTO THE CROSS-EXAMINATION RECORDS OF A WITNESS BECAUSE THE ARGUMENT'S GOING TO BE, WELL, HE'S NOT CREDIBLE.
NEITHER IS THE DEFENDANT BECAUSE HE ALSO THAT A PRIOR-- HAS A PRIOR RECORD.
TO THERE IS A STRATEGIC REASON FOR NOT DOING IT AT THE TIME.
NOT SAYING IT HAPPENED HERE--
>> I THINK THAT'S PRETTY RISKY, YOUR HONOR, TO NOT CROSS A STATE WITNESS ON THEIR PRIOR HOPES THAT THE-- HOPING THAT THE STATE WON'T BRING THEM UP.
I THINK THAT'S PRETTY RISKY ESPECIALLY IN A CAPITAL CASE.

I WOULD ALSO POINT OUT THAT
TRIAL COUNSEL'S JUSTIFICATION,
SAYING IT WOULDN'T HAVE MADE ANY
DIFFERENCE, THIS ISN'T REALLY
ANY STRATEGY.
IT'S INCONSISTENT WITH WHAT HE
ACTUALLY DID AT TRIAL WITH
REGARD TO ANOTHER WITNESS.
SO HE CALLED, THE DEFENSE CALLED
ONE WITNESS, AND WITHIN THE
FIRST COUPLE OF QUESTIONS HE
ASKED HER DO YOU HAVE ANY PRIOR
CONVICTIONS, HOW MANY.
IT'S JUST ILLOGICAL TO THINK
THAT HE THOUGHT IT WAS IMPORTANT
ENOUGH TO BRING OUT THE PRICE OF
HIS OWN DEFENSE WITNESS BUT THEN
NOT CROSS-EXAMINE THE STATE'S
STAR WITNESS WHO WAS TESTIFYING
AGAINST MS. BROWN'S WHO'S THE
CO-DEFENDANT TO NOT, TO NOT
CHALLENGE HER AND CROSS-EXAMINE
HER ON THAT VERY SAME THING.
THAT WAS JUST ILLOGICAL.
AND, AGAIN, THIS IS JUST
SOMETHING SO SIMPLE THAT, YOU
KNOW, WOULDN'T HAVE TAKEN MUCH
TIME THAT HE COULD HAVE DONE.
AND ESPECIALLY SINCE HE SAID
THAT PART OF HIS STRATEGY WAS TO
CALL HEATHER LEE A LIAR.
HE SAID I CALLED HER A LIAR I
DON'T KNOW HOW MANY TIMES DURING
CLOSING.
WELL, THAT DOESN'T MATTER IF YOU
DON'T HAVE ANYTHING TO BACK IT
UP WITH.
AND HAD HE PUT BEFORE THE JURY
THE FACT THAT SHE WAS CONVICTED
OF TWO CRIMES OF DISHONESTY,
THAT WOULD HAVE BEEN SOMETHING
THAT HE COULD HAVE USED TO
SUPPORT THAT ARGUMENT THAT SHE
WASN'T BEING COMPLETELY TRUTHFUL
ABOUT HER INVOLVEMENT IN THE
CASE.
SO NEXT I'D LIKE TO MOVE ON TO
MOTIVE AND BIAS.
AND IN ADDITION TO HEATHER LEE'S
OBVIOUS INTEREST IN THE CASE AS

A CO-DEFENDANT, SHE ALSO HAD A SUBSTANTIAL MOTIVE TO BOTH MURDER THE VICTIM AND TO BLAME TINA BROWN.
AND STARTING WITH THE VICTIM, THE VICTIM WAS SLEEPING WITH HEATHER LEE'S HUSBAND.
AND HEATHER LEE FOUND OUT ABOUT IT.
AND JUST A FEW DAYS BEFORE THE MURDER HEALTH-- HEATHER LEE HAD GOTTEN INTO A PHYSICAL ALTERCATION WITH THE VICTIM BECAUSE SHE'D JUST FOUND OUT.
TRIAL COUNSEL HAD THIS EVIDENCE BEFOREHAND, AND HE FAILED TO USE IT TO SHOW BIAS AND TO SHOW THAT HEATHER LEE HAD A MOTIVE TO MURDER THIS VICTIM.
THE TRIAL COURT FOUND THAT THIS TESTIMONY WOULD HAVE DONE LITTLE TO IMPEACH HEATHER LEE'S TESTIMONY ABOUT BEING REAL CLOSE FRIENDS WITH THE VICTIM.
THIS IS NOT BASED UPON COMPETENT, SUBSTANTIAL EVIDENCE, AND I DISAGREE WITH THAT REASONING THAT IT DIDN'T CONTRADICT HER TESTIMONY OF BEING REAL GOOD FRIENDS.
IT ABSOLUTELY DID.
HOW GOOD OF FRIENDS WERE THEY REALLY IF THE VICTIM WAS SLEEPING WITH HEATHER LEE'S HUSBAND.
AT TRIAL HEATHER LEE PORTRAYED HERSELF AS JUST ANOTHER VICTIM IN THIS CASE.
SHE CLAIMED THAT SHE WAS NOT INVOLVED AND THAT SHE DID NOT PARTICIPATE IN THE MURDER.
AND TO HER SAYING THAT SHE WAS GOOD FRIENDS WITH THE VICTIM, THIS WAS IN ORDER FOR THE JURY TO BELIEVE THAT, YOU KNOW, IF THEY WERE SUCH GOOD FRIENDS, THEN THEY WERE LESS LIKELY TO BELIEVE THAT HEATHER LEE WOULD HAVE PARTICIPATED IN THIS MURDER.

AND THIS EVIDENCE WOULD HAVE
SHOWN THAT THEY WEREN'T ON AS
GOOD TERMS AS HE PORTRAYED IT TO
BE.
MS. BROWN'S WAS PREJUDICED BY THIS
FAILURE TO PRESENT THIS EVIDENCE
BECAUSE THIS IS ALSO SOMETHING
THAT THE JURY SHOULD HAVE BEEN
ABLE TO CONSIDER WHEN WEIGHING
THE EVIDENCE AND DETERMINING THE
CREDIBILITY OF HEATHER LEE.
AND LIKE PRIOR CONDITIONS, THIS
IS SOMETHING THAT'S ENUMERATED
IN THE JURY INSTRUCTIONS TO
CONSIDER; BIAS, MOTIVE, DOES THE
WITNESS HAVE AN INTEREST IN THE
CASE, AND SHE MOST CERTAINLY
DID.
SO IN ADDITION TO THE VICTIM,
SHE ALSO HAD A MOTIVE TO TESTIFY
AGAINST MS. BROWN'S AND TO BLAME
EVERYTHING ON HER, WHICH IS WHAT
SHE DID.
SHE ADMITTED, HEATHER LEE
ADMITTED IN HER DEPOSITION THAT
SHE SUSPECTED MS. BROWN'S HAD BEEN
SLEEPING WITH HER HUSBAND.
AND THE TRIAL COUNSEL FAILED TO
BRING ANY OF THIS INFORMATION
OUT BEFORE THE JURY.
THE CIRCUIT COURT SAID THAT
THERE WAS NO EVIDENCE THAT
HEATHER LEE, QUOTE-UNQUOTE, KNEW
OF THE AFFAIR.
BUT TRIAL COUNSEL STILL COULD
HAVE CROSS-EXAMINED HER ON THIS.
EVEN SUSPECTING THAT SOMEONE'S
HAVING AN A AFFAIR COULD BE A
MOTIVE FOR SOME PEOPLE TO DO
CRAZY THINGS.
HE COULD HAVE ALWAYS CONFIRMED
THAT, YES, THEY WERE HAVING AN A
AFFAIR BECAUSE THAT'S WHAT
DARREN TESTIFIED TO IN HIS
DEPOSITION, AND DARREN WAS
HEATHER LEE'S HUSBAND.
THIS IS SOMETHING THAT SHOULD
HAVE BEEN UP TO THE JURY TO
DECIDE.
THEY SHOULD HAVE HAD THIS

INFORMATION BEFORE THEM TO SEE
THAT HEATHER LEE HAD A
SUBSTANTIAL MOTIVE TO MURDER THE
VICTIM AND TO BLAME EVERYTHING
ON TINA BROWN.
TWO OF THE OTHER-- I'D LIKE TO
TALK ABOUT TWO OF THE
IMPEACHMENT WITNESSES THAT COULD
HAVE BEEN CALLED AT TRIAL THAT
TRIAL COUNSEL FAILED TO
INVESTIGATE AND FAILED TO CALL
AT TRIAL IN SUPPORT OF HIS
DEFENSE.
THEY WOULD HAVE SUPPORTED HIS
DEFENSE THAT HEATHER LEE WAS
MORE CULPABLE AND ASSISTED HIS
ARGUMENT IN THE PENALTY PHASE
FOR LIFE SENTENCE FOR MS. BROWN'S.
I'LL START WITH TERENCE WOODS.
SO TERENCE WOODS GAVE A
DEPOSITION BEFORE TRIAL, AND IN
HIS DEPOSITION HE STATE THAT A
FEW DAYS BEFORE THE MURDER HE
WAS OVER AT THE TRAILER
BELONGING TO HEATHER AND DARREN.
HE HAD KNOWN THEM.
HE WAS OVER THERE, AND WHILE HE
WAS OVER THERE HEATHER LEE WAS
WITH OUTSIDE THE TRAILER
INVOLVED IN A PHYSICAL FIGHT
WITH THE VICTIM OVER THE AFFAIR
BECAUSE SHE HAD JUST FOUND OUT
THAT DARREN HAD BEEN SLEEPING
WITH, WITH THE VICTIM.
AT SOME POINT HEATHER-- TERENCE
WOODS TESTIFIES THAT HEATHER LEE
BARGES INTO THE TRAILER AND
TELLS DARREN IN FRONT OF
TERENCE, "I'M GOING TO KILL
HER."
SHE USED MORE COLORFUL LANGUAGE,
BUT I'M TONE IT-- I'LL TONE IT
DOWN A BIT FOR THIS HEARING X.
THEN A FEW DAYS AFTER THE MURDER
TERENCE WOODS STATED THAT HE WAS
AGAIN BACK AT THE TRAILER WITH
HEATHER AND DARREN, AND HEATHER
LEE TOLD DARREN IN FRONT OF
TERENCE THAT HE WOULDN'T BE
SLEEPING WITH HIS GIRLFRIEND

ANYMORE BECAUSE SHE KILLED HER.
AND SHE ADMITTED THAT SHE POURED
THE GAS ON THE VICTIM AND SET
HER ON FIRE.
THE CIRCUIT COURT ACTUALLY DID
IN THIS INSTANCE FIND THAT TRIAL
COUNSEL WAS DEFICIENT FOR NOT
CALLING TERENCE WOODS AT TRIAL.
THE COURT SAID THAT TRIAL
COUNSEL GAVE NO GOOD REASON FOR
FAILING TO DO SO.
HOWEVER, THE CIRCUIT COURT FOUND
THAT THERE WAS NO PREJUDICE
BECAUSE TESTIMONY REGARDING
HEATHER LEE'S MOTIVE WOULD
NOT HAVE CHANGED THE EVIDENCE
PRESENT THAT TINA BROWN
PARTICIPATED IN THE CRIME.
THIS DOWNPLAYS THE IMPORTANCE OF
HIS TESTIMONY.
NOT ONLY DID HE PROVIDE A MOTIVE
FOR HEATHER LEE TO MURDER THIS
VICTIM, BUT IT WAS ALSO A
CONFESSION.
SHE SAID SHE WAS GOING TO KILL
THE VICTIM.
DAYS LATER AFTER THE VICTIM HAD
BEEN MURDERED, SHE SAID SHE DID
IT AND THAT SHE WAS THE ONE WHO
POURED GAS ON THE VICTIM AND SET
IS HER ON FIRE.
AND IT'S NOT-- IMPORTANTLY,
IT'S NOT A MATTER OF WHETHER
MS. BROWN'S PARTICIPATED IN THE
CRIME, BUT HER RELATIVE
CULPABILITY, RIGHT?
SO THAT WAS THE WHOLE ARGUMENT
AT TRIAL.
THE STATE'S THEORY WAS THAT TINA
BROWN WAS MORE CULPABLE, AND SHE
WAS DESERVING OF THE DEATH
PENALTY.
AND THE DEFENSE WAS THAT, NO,
HEATHER LEE WAS MORE CULPABLE.
SO THAT WAS REALLY THE ISSUE.
SO TO THIS TESTIMONY OF TERENCE
WOODS DEFINITELY WOULD HAVE
ASSISTED TRIAL COUNSEL, WOULD
HAVE SUPPORTED HIS DEFENSE.
HE WANTED TO PUT AS MUCH AS HE

COULD ON HEATHER, WHICH IS WHAT
HE SAID, WHAT BETTER WAY THAN TO
USE HER OWN WORDS AGAINST HER?
THIS IS AN ARGUMENT FOR LIFE FOR
MS. BROWN'S.
THE SECOND WITNESS THAT I'D LIKE
TO TALK ABOUT DARREN LEE.
SO DARREN LEE WAS MARRIED TO
HEATHER AT THE TIME AND IS
ACTUALLY-- AS TO THE SAME
INFORMATION BOTH BEFORE AND
AFTER THE MURDER.
HOWEVER, HE ALSO TESTIFIED ABOUT
A CONVERSATION THAT A HAPPENED
THE NIGHT OF THE MURDER, SO
AFTER THE MURDER HAPPENED,
EXPECT PEOPLE PRESENT WERE
DARREN, HEATHER AND TINA.
SO, AGAIN, THREE PEOPLE, NO
MARITAL PRIVILEGE, AND HEATHER
LEE ADMITTED THAT SHE WAS THE
ONE WHO POURED THE GAS ON THE
VICTIM AND SET HER ON FIRE.
HIS TESTIMONY ALSO WOULD HAVE
SUPPORTED TRIAL COUNSEL'S
DEFENSE.
INEXPLICABLY, TRIAL COUNSEL
STATED THAT HE DIDN'T BELIEVE
THIS TESTIMONY ABOUT HEATHER'S
CONFESSION WOULD HAVE BEEN
USEFUL TO IMPEACH HER
CREDIBILITY.
THIS IS NOT A REASONED
STRATEGY.
IF HIS DEFENSE WAS TO PUT AS
MUCH AS HE COULD ON HEATHER LEE
AND ARGUE THAT SHE WAS MORE
CULPABLE, THEN THIS TESTIMONY
WOULD HAVE SUPPORTED SUCH AN
ARGUMENT.
THERE IS NO REASONABLE TRIAL
ATTORNEY WHO WOULD HAVE
FORFEITED THE USE OF THIS KIND
OF IMPEACHMENT MATERIAL.
THE CIRCUIT COURT HELD THAT
WOULD DARREN, SINCE DARREN NEVER
MADE ANY STATEMENTS TO POLICE
AND NEVER STATED IN HIS
DEPOSITION THAT HEATHER HAD
CONFESSED, THEN TRIAL COUNSEL

COULDN'T BE DEFICIENT FOR
FAILING TO CALL HIM BECAUSE
HE--
[INAUDIBLE]
THIS FINDING IGNORES THE FACT
THAT MS. BROWN'S ALSO ALLEGED THAT
TRIAL COUNSEL WAS INEFFECTIVE
FOR FAILING TO INVESTIGATE
DARREN.
IN THAT INSTANCE TRIAL COURT
FOUND THAT BECAUSE COUNSEL--
FOUND THAT TRIAL COUNSEL WAS NOT
DEFICIENT FOR FAILING TO
INVESTIGATE BECAUSE HE TOOK THE
DEPOSITION, AND THAT WAS
SUFFICIENT.
NONE OF THESE FINDS ARE BASED
UPON COMPETENT, SUBSTANTIAL
EVIDENCE, AND THIS COURT ONLY
HAS TO LOOK TO THE CASE OF
WIGGINS FROM THE UNITED STATES
SUPREME COURT THAT SAYS IN
ASSESSING THE REASONABLENESS OF
AN ATTORNEY'S INVESTIGATION, A
COURT MUST CONSIDER NOT ONLY THE
QUANTUM OF EVIDENCE ALREADY
KNOWN TO COUNSEL, BUT ALSO
WHETHER THE KNOWN EVIDENCE WOULD
LEAD A REASONABLE ATTORNEY TO
INVESTIGATE FURTHER.
SO I'LL EXPLAIN WHAT I MEAN BY
THAT.
AND I NEED THE BACK UP A LITTLE
BIT.
SO DARREN WAS NOT REPRESENTED BY
COUNSEL AT HIS DEPOSITION.
HOWEVER, HEATHER LEE'S ATTORNEY
WAS PRESENT AT THE DEPOSITION,
AND SHE INSTRUCTED HIM NOT TO
ANSWER ANY QUESTIONS REGARDING
WHAT HEATHER LEE MAY HAVE TOLD
HIM.
NOW, A LAYPERSON'S NOT GOING TO
UNDERSTAND THE INTRICACIES OF
MARITAL PRIVILEGE.
AND SO AS A RESULT OF THIS
INSTRUCTION BY HEATHER LEE'S
ATTORNEY, HE DIDN'T ANSWER ANY
SUCH QUESTIONS.
AT SOME POINT AFTER DARREN'S

DEPOSITION, TERENCE WOODS GAVE A DEPOSITION.
AND IN THAT A DEPOSITION, AS I STATED WHEN I WAS DISCUSSING HIS TESTIMONY, HE MADE STATEMENTS ABOUT WHAT HEATHER LEE SAID TO BOTH HIM AND DARREN AT THE SAME TIME.
THIS DEFEATED ANY MARITAL PRIVILEGE, BECAUSE A THIRD PARTY WAS PRESENT.
THIS WOULD HAVE LED ANY REASONABLE ATTORNEY TO INVESTIGATE FURTHER, TO DO A MOTION TO REDEPOSE IN LIGHT OF THE, THIS NEW INFORMATION.
BUT TRIAL COUNSEL FAILED TO DO ANYTHING WITH THIS.
THE FAILURE TO PRESENT A CONFESSION BY A TESTIFYING CO-DEFENDANT CANNOT BE ANY SORT OF REASONABLE STRATEGY.
THIS WOULD HAVE DIRECTLY SUPPORTED HIS EVENTS OF PUTTING AS MUCH AS HE COULD ON HEATHER AND ARGUING THAT SHE WAS MORE CULPABLE.
THE JURY NEVER GOT TO HEAR THIS VERY CRITICAL INFORMATION, POWERFUL INFORMATION THAT HEATHER HAD PLANNED AND THEN DID IT, AND THIS IS IMPORTANT BECAUSE THE STATE ARGUED IN BOTH THE GUILT AND THE PENALTY PHASES--
>> COUNSEL?
COUNSEL--
>> YES, YOUR HONOR.
>> I'LL BRING TO YOUR ATTENTION YOU ARE WELL INTO YOUR REBUTTAL TIME.
YOU'VE-- REBUTTAL TIME.
YOU'VE GOT ABOUT TWO AND A HALF MINUTES LEFT.
>> OKAY, JUDGE--
>> YOU MAY CONTINUE OR FINISH.
>> THANK YOU, YOUR HONOR.
TO FINISH THAT ARGUMENT THAT I WAS MAKING, THE STATE ARGUED IN BOTH THE GUILT PHASE AND THE

PENALTY PHASE CLOSINGS THAT THE PERSON THAT POURED THE GAS, THE PERSON THAT LIT THE VICTIM ON FIRE WAS THE PERSON WHO ACTUALLY KILLED THE VICTIM, AND THAT PERSON, IN THEIR ARGUMENT IT WAS TINA BROWN, THAT PERSON DESERVES A FIRST-DEGREE CONVICTION AND A SENTENCE OF DEATH.
SO THAT'S WHY THIS WAS SO IMPORTANT TO CHALLENGE HEATHER'S CREDIBILITY ABOUT WHO ACTUALLY SET THE VICTIM ON FIRE.
THAT'S WHY THAT WAS SO CRITICAL.
AND SO WITH THAT, I WILL SAVE THE REMAINDER OF MY TIME FOR REBUTTAL.
THANK YOU, YOUR HONOR.
>> COUNSEL?
>> MAY IT PLEASE THE COURSE, THE FACTS OF THIS CASE WOULD HAVE ONLY SUPPORTED ONE DEATH SENTENCE, BUT THAT IS JUST NOT TRUE.
THIS IS A HORRIFIC MURDER, AND THE FACTS OF THIS CASE SUPPORT A DEATH SENTENCE FOR EACH OF THE THREE INDIVIDUALS INVOLVED;
THE APPELLANT, HER DAUGHTER AND HEATHER LEE.
NOW, IT'S TRUE THAT ONLY THE APPELLANT RECEIVE A DEATH SENTENCE, BUT THAT'S BECAUSE SHE WAS THE ONLY ONE WHO WAS ELIGIBLE TO RECEIVE A DEATH SENTENCE.
NOT BECAUSE THE FACTS DIDN'T SUPPORT DEATH FOR THE OTHER TWO INDIVIDUALS, BUT BECAUSE THE LAW DOES NOT.
WHY?
BECAUSE APPELLANT'S DAUGHTER WAS NOT AN ADULT AT THE TIME OF THE MURDER.
DESPITE THE FACT THAT THE APPELLANT'S DAUGHTER WATCHED THE VICTIM BURN ALIVE AND SAY BURN, YOU KNOW WHAT, BURN, THE APPELLANT'S DAUGHTER WAS INELIGIBLE TO RECEIVE A DEATH

SENTENCE NOT BECAUSE OF THE FACTS, BUT BECAUSE SHE WAS A MINOR.
SIMILARLY, HEATHER LEE WAS INELIGIBLE BECAUSE SHE PLED GUILTY TO A LESSER INCLUDED OFFENSE IN A PLEA AGREEMENT WITH THE STATE.
AND THAT SECOND-DEGREE MURDER CONVICTION MADE HER INELIGIBLE FOR A DEATH SENTENCE.
AGAIN, NOT BECAUSE THE FACTS WOULDN'T SUPPORT IT.
IN THIS, IN THE ANSWER BRIEF ON PAGE 80, THE STATE CITES TO THIS COURT'S DECISION IN HENYARD WHICH CLEARLY SUPPORTS THIS DECISION.
SO WHAT ARE THE FACTS OF THIS CASE?
THEY REALLY WEREN'T EXPLORED DURING THE ORAL ARGUMENT BY THE APPELLANT.
BUT IT'S IMPORTANT TO START WITH THE MOTIVE OF APPELLANT.
PRIOR TO THIS MURDER, THE APPELLANT'S DAUGHTER GOT INTO A FIGHT WITH THE VICTIM.
THE VICTIM DEFENDED HERSELF WITH A TASER.
THAT'S AN IMPORTANT FACT, A TASER.
SO A FEW DAYS LATER THE APPELLANT AND THE CO-DEFENDANTS LURED THE VICTIM INTO APPELLANT'S TRAILER.
IT'S THE APPELLANT'S TRAILER, UNDER FALSE PRETENSIONS.
LET'S MAKE UP, LET'S BE FRIENDS AGAIN.
WHEN THE VICTIM ARRIVES, IT IS THE APPELLANT WHO TASES THE VICTIM REPEATEDLY.
AND WE NO THIS BECAUSE IT'S THE APPELLANT'S DNA THAT WAS ON THE TASER.
SO AFTER THE APPELLANT REPEATEDLY TASED THE VICTIM, HE DRAGGED HER TO ANOTHER AREA OF THE HOME AND BEAT HER.

THEY THEN DRAGGED THE VICTIM TO
APPELLANT'S CAR.
AGAIN, IT'S APPELLANT'S CAR, AND
THE VICTIM'S DNA WAS IN
APPELLANT'S CAR.
APPELLANT DROVE THE VICTIM AND
THE OTHER TWO DEFENDANTS TO A
REMOTE LOCATION WHERE WITH THE
APPELLANT DRAGGED THE VICTIM OUT
OF THE CAR.
WHEN THE VICTIM TRIED TO ESCAPE,
THE APPELLANT AND THE
APPELLANT'S DAUGHTER GRAND HER,
SUBDUED HER AND THEN BEAT HER
AND TASED HER AGAIN.
FIRST, THE APPELLANT TASED WHILE
THE APPELLANT'S DAUGHTER BEAT
THE VICTIM WITH A CROW BACK,
THEN THEY SWITCHED WEAPONS SO
THE APPELLANT COULD USE THE
CROWBAR, AND HER DAUGHTER COULD
USE THE TASER.
THEN THE APPELLANT WENT TO HER
CAR, GOT A GAS CAN, CAME BACK,
DOUSED THE VICTIM WITH GASOLINE,
LIT HER ON FIRE.
THESE ARE HORRIFIC FACTS THAT
WOULD SUPPORT A DEATH SENTENCE
FOR ANY DEFENDANT WHO WAS A
PARTICIPANT IN THIS MURDER.
AND WE KNOW THAT IT WAS A
PLANNED MURDER BECAUSE BEFORE
ALL THIS STARTED THE APPELLANT'S
DAUGHTER TOLD HER TEENAGE FRIEND
WE'RE FIXIN' TO KILL ADRIANA.
THERE IS NO DOUBT OF A GROUP
INTENT HERE, AND THERE'S NO
DOUBT AS TO GUILT IN
FIRST-DEGREE MURDER OR
FIRST-DEGREE FELONY MURDER.
AS TRIAL COUNSEL CORRECTLY SAID,
THIS IS NOT A WHO DUN IT CASE.
ADDITIONALLY, THE VICTIM-- THE
APPELLANT CONFESSED TO TWO
DIFFERENT INDIVIDUALS; ONE,
COREY DOYLE WHO WAS IN ESCAMBIA
COUNTY JAIL AT THE SAME TIME AS
THE APPELLANT, AND ALSO PAMELA
VALLEY WHO SAID THE APPELLANT
SOLICITED HER TO FINISH OFF THE

VICTIM WHILE SHE WAS IN THE
HOSPITAL.
THAT CULPABILITY STUFF FOR A--
IS SUFFICIENT FOR A CONVICTION
FOR FIRST-DEGREE MURDER AND YOU
HAVE FOR A DEATH SENTENCE.
DESPITE ANY MISSED OPPORTUNITIES
TO IMPEACH HEATHER LEE.
AND I WOULD NOTE THAT HEATHER
LEE WAS IMPEACHED BY THE
TESTIMONY OF WENDY MOY WHO WAS
AN INMATE AT THE ESCAMBIA COUNTY
JAIL AT THE SAME TIME AS
MS. LEE.
MS. MOY TESTIFIED HEATHER LEE
ADMITTED SHE ADMINISTERED THE
GAS.
THERE'S NO--
>> COUNSEL, I'M SORRY TO
INTERRUPT YOU.
IT SEEMS LIKE THE OTHER SIDE'S
ARGUMENT REALLY TURNS ON NOT SO
MUCH IN THE ABSTRACT AS TO WHAT
THE STATE COULD HAVE ARGUED
ABOUT, YOU KNOW, THE FACT THAT
PARTICIPATING IN ALL THOSE WAYS
WOULD HAVE MADE THE DEFENDANT
CULPABLE ENOUGH TO JUSTIFY THE
DEATH PENALTY TO THAT IT'S TIED
THE MORE TO THE SPECIFIC
ARGUMENTS THAT WERE MADE AND THE
EMPHASIS ON THE FACT THAT IT WAS
THE APPELLANT WHO LIT THE VICTIM
ON FIRE.
COULD YOU ADDRESS JUST HOW MUCH,
YOU KNOW, TO WHAT EXTENT WAS
THAT SPECIFIC REASON, YOU KNOW,
AT THE HEART OF THE ARGUMENT FOR
GIVING A DEATH SENTENCE HERE?
>> WELL, CERTAINLY THE STATE
WANTS TO PUT ITS STRONGEST
ARGUMENT FORTH POSSIBLE, AND THE
EVIDENCE AT TRIAL FROM HEATHER
LEE WAS THAT IT WAS THE
APPELLANT WHO DRAGGED THE VICTIM
OUT OF THE CAR, IT WAS THE
APPELLANT WHO DOUSED THE VICTIM
WITH GAS GASOLINE AND IT WAS THE
APPELLANT WHO HIT THE VICTIM ON
FIRE.

THAT IS SUPPORTED BY THE
EVIDENCE.
BUT WE'RE IN POST-CONVICTION.
THERE'S SIGNIFICANT FINALITY
INTERESTS AT STAKE HERE, AND
THIS IS SIMPLY NOT ENOUGH TO
OVERTURN THE CONVICTION OR THE
DEATH SENTENCE BECAUSE THE WE'VE
OF AGGRAVATION OVERWHELMING.
AGAIN, THEY BURNED THE VICTIM
ALIVE.
AND WHAT A MAKES THIS CASE
UNIQUE IS THAT HERE YOU HAVE THE
VICTIM OF A MURDER WHO
IDENTIFIED THE PEOPLE WHO
MURDERED HER.
THAT DOESN'T HAPPEN VERY OFTEN
IN A MURDER CASE.
>> BUT I THINK THE TEST, THOUGH,
IF, IF YOU ASSUMED-- IF THE
DEFICIENT PERFORMANCE FELL ON
THIS, THEN THE QUESTION BECOMES
IS THERE A REASONABLE
PROBABILITY THAT HAD THE, HAD
THE IMPEACHMENT BEEN DONE OF
HEATHER LEE, THAT THE DEFENDANT
WOULD NOT HAVE GOTTEN A DEATH
SENTENCE.
I MEAN, THAT'S THE LEGAL
QUESTION IN FRONT OF US, RIGHT?
>> IT IS.
AND THERE IS JUST NO
MATERIALITY, THERE'S NO
PREJUDICE POSSIBLE GIVEN THE
FACTS OF THIS CASE.
AND, AGAIN, I'LL GO BACK TO THIS
COURT'S DECISION IN HENYARD ARE
WHERE THERE WAS A DISPUTE ABOUT
WHO WAS THE ACTUAL TRIGGER
PERSON.
BOTH WERE SUBSTANTIALLY INVOLVED
IN THAT CRIME TO INCLUDE
UNDERLYING CRIMES OF CARJACKING
AND RAPE IN THAT CASE.
HERE WE HAVE THE UNDERLYING
CRIME OF THE BATTERY, THE
AGGRAVATED BATTERIES AND THE
KIDNAPPING.
THERE'S JUST TOO MUCH
INVOLVEMENT BY THE APPELLANT.

AGAIN, IT'S HER TRAILER, IT'S
HER CAR, AND WE HAVE APPELLANT'S
TWO CONFESSIONS, TWO SEPARATE
CONFESSION.
AND AS PART OF ONE OF THOSE
CONFESSIONS, SHE SOLICITED
SOMEONE TO FINISH OFF THE
VICTIM.
SO EVEN WITH THE IMPEACHMENT OF,
EVEN WITH ADDITIONAL IMPEACHMENT
BECAUSE HEATHER LEE WAS
IMPEACHED, EVEN WITH ADDITIONAL
IMPEACHMENT, IT WOULD KNOT HAVE
CHANGED THE OUTCOME.
>>I'M SORRY, I'M SORRY, I CAN'T
REMEMBER IN THE RECORD, DID THE
CONFESSIONS SPECIFICALLY INVOLVE
THE DEFENDANT SAYING THAT SHE
WAS THE ONE WHO LIT THE VICTIM
ON FIRE, OR IT MORE GENERALLY
THAT, YOU KNOW, I PARTICIPATED
IN KILLING THIS PERSON?
>> THERE'S SOME SUGGESTION THAT
THE FIRST ONE TO COREY DOLE
MIGHT HAVE BEEN A WE, BUT THE
SECOND ONE WAS MORE OF AN I
BECAUSE THE APPELLANT SOLICITED
PAMELA VALLEY TO FINISH OFF THE
VICTIM.
THERE DOES APPEAR TO BE A WE FOR
ONE AND AN I FOR THE SECOND.
BUT EVEN IF IT'S JUST A WE, AS
THE TRIAL COURT CORRECTLY FOUND,
THERE IS SIGNIFICANT GROUP
INTENT, AND THE TRIAL COURT--
>> JUST TO CLARIFY, YOU WOULD
AGREE THAT IT WAS ONLY HEATHER
LEE WHO SPECIFICALLY SAID AFTER
THE FACT TO WITNESSES THAT SHE
WAS THE ONE WHO LIT THE MATCH
AND BURNED THE VICTIM.
>> RIGHT.
AND THERE WAS A SUGGESTION--
>> BROWN NEVER SAID THAT TO
ANYBODY.
>> NO.
BROWN, BROWN DID CONFESS TO BOTH
COREY DOLE AND TO PAMELA VALLEY.
AND, AGAIN, SHE ASKED PAMELA
VALLEY TO FINISH OFF KILLING THE

VICTIM.
SO, AGAIN, THAT'S SUFFICIENT.
AND THE TRIAL COURT FOUND THERE WAS SUFFICIENT GROUP INTENT HERE GOING BACK TO THE COMMENTS FROM APPELLANT'S DAUGHTER TO THE TEENAGER WHO WAS ALSO PRESENT BEFORE THE ATTACK STARTED WHICH IS WE ARE FIXIN' TO KILL AD RAN THAT.
THAT THE POINT GIVEN EVERYONE'S THERE WASN'T JUST ONE DEATH SENTENCE TO HAND OUT IN THIS CASE.
AND I'LL BRIEFLY TOUCH ON, EACH THOUGH IT WASN'T MENTIONED, THE INEFFECTIVE ASSISTANCE CLAIM FOR THE PENALTY PHASE.
JUST TO HIGHLIGHT THAT ALL OF THE ACE FACTORS, ALL TEN, THERE ARE FACTS IN THIS COURT'S OPINION ON DIRECT APPEAL THAT WOULD SUPPORT ALL TEN ACE FACTORS, AND THERE WAS EVIDENCE TO LINK APPELLANT'S CHILDHOOD AND THERE WASN'T EVIDENCE TO LINK APPELLATE'S CHILDHOOD TRAUMA TO HER DEVELOPMENT.
THERE WAS EVIDENCE TO LINK IT TO HER BRAIN DEVELOPMENT.
AND IN HIS COURT'S OPINION ON DIRECT APPEAL DOCTOR BAILEY TESTIFIED BROWN'S PARENTS PROVIDED INACCURATE FOUNDATION WHICH NEGATIVELY IMPACT BROWN'S DEVELOPMENT.
THERE IS A LINK BETWEEN CHILDHOOD TRAUMA AND THE APPELLANT'S DEVELOPMENT.
IF YOU LOOK AT THE NONSTATUTORY MITIGATION, FOR DRUG ADDICTION HER ENTIRE LIFE AND THE EFFECT OF THE CHRONIC COCAINE USE IMPACTED IT.
THERE WAS A LINK BETWEEN CHILDHOOD TRAUMA AND THE APPELLANT'S DEVELOPMENT AND COCAINE USE AND DEVELOPMENT.
>> THANK YOU.
>> REBUTTAL?

>> YES, YOUR HONOR.
WE HAVE LIMITED TIME AND I WOULD LIKE TO HIT ON THE POINTS COUNSELOR JUST STATED, WHEN HE SAID WHEN THEY WERE IN THE TRAILER INITIALLY, MISS BROWN'S DOLLARS SAID TO MALLORY WE ARE FIXING -- IN HIS BROWN IS NOT ON THE ROOM.
THEY WERE NOT IN A ROOM AND NO EVIDENCE SHE KNEW WHAT THEY WERE FIXING TO DO, NO EVIDENCE OF THAT IN THE RECORD.
>> YOU DON'T DISPUTE, IS YOUR ARGUMENT FOCUSED ON WHAT STATE EMPHASIZED WITH REGARD TO CULPABILITY, GIVEN THESE HORRIFIC FACTS YOUR CLIENT, A REASONABLE PERSON COULD FIND YOUR CLIENT DESERVE THE DEATH PENALTY.
>> THE FOCUS IS ON CULPABILITY.
THERE IS AN IMPORTANT ISSUE.
THIS WASN'T A WHODUNIT CASE BUT PENALTY PHASE.
ALL RESTED ON WHO WAS MORE CULPABLE AND I WOULD POINT OUT IT DOES COME DOWN TO WHO SET THE VICTIM ON FIRE.
THAT IS WHAT THE STATE ARGUED AT THE GUILT PHASE OF THE TRIAL PARKED ON THAT PART.
ALL OF THE EVIDENCE ABOUT WHAT HAPPENED IN THE WOODED AREA, ALL OF THE EVIDENCE ABOUT WHO SET WHO ON FIRE, WHO DID WHAT CAME FROM HEATHERLY WHO HAS A SUBSTANTIAL INTEREST IN THIS CASE AND TRIAL COUNSEL'S PERFORMANCE -
>> WASN'T THE DECLARATION OF THE VICTIMS THAT THEY SET ME ON FIRE?
AND BE SPECIFIC.
>> HEATHER AND TINA DID THIS TO ME.
SHE DIDN'T SPECIFY WHO DID WHAT.
THE ONLY PERSON TO SPECIFY WILL TESTIFY THAT TINA BOARD THE GAS AND SET HER ON FIRE THAT

TESTIMONY CAME FROM HEATHER
ALONE.
THAT IS WHY IT WAS SO IMPORTANT
TO CHALLENGE HER STORY, HER
INCONSISTENT STATEMENTS WITH
PRIOR CONVICTIONS, WITH INTEREST
IN THE CASE IN BIAS AGAINST THE
VICTIM, ALL OF THAT WAS CRITICAL
AND TRIAL COUNSEL'S PERFORMANCE
IS NOT WHAT WAS SUFFICIENT AND
AS A RESULT MISS BROWN WAS
INCREDIBLY PREJUDICED BY HIS
PERFORMANCE AND HAD HE DONE
THESE THINGS, HAD HE IMPEACHED
THE CODE DEFENDANT AGAINST HER,
MISS BROWN WOULD HAVE RECEIVED
LIFE SENTENCE SO I WOULD ASK
THIS COURT TO GRANT RELIEF AND
GRANT MISS BROWN A NEW TRIAL AND
PENALTY PHASE.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENT IN THIS CASE AND THAT
CONCLUDES THIS SESSION.