

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

>> Chief Justice Carlos Muniz: GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT OUR FIRST CASE TODAY IS BRIGHT V. STATE OF FLORIDA AND BRIGHT V. SECRETARY, DEPT. OF CORRECTIONS CASE NO. SC2023-1735 AND SC2024-0876.

>> Elizabeth Spiaggi, Appellant: GOOD MORNING MY NAME IS ELIZABETH SPIAGGI ON BEHALF OF THE APPELLANT/PETITIONER

>> Chief Justice Carlos Muniz: I APOLOGIZE CAN YOU RAISE THAT AND SPEAK UP.

>> Elizabeth Spiaggi, Appellant: ABSOLUTELY, IS THAT BETTER? MR. BRIGHT WENT THROUGH A PRIOR POST CONVICTION PROCEEDING AFTER HIS 2009 TRIAL HE WAS GRANTED A NEW PENALTY PHASE AND WE ARE HERE ON THE APPEAL OF THE DENIAL OF RELIEF FOR THAT PENALTY PHASE IN POST CONVICTION FRIENDS ADDITIONALLY WE HAVE MR. BRIGHT HABEAS WHICH ADDRESSES ISSUES FROM THE PENALTY PHASE AND SOME ISSUES FROM HIS 2009 TRIAL I WOULD LIKE TO FOCUS FIRST ON THE INEFFECTIVE ASSISTANCE CLAIM RELATING TO TRIAL COUNSEL'S INVESTIGATION OF MITIGATION. FIRSTLY DEALING WITH HER FAILURE TO INVESTIGATE MR. BRIGHT'S MILITARY CAREER.

TRIAL COUNSEL TESTIFIED THAT SHE NEVER LOOKED INTO CALLING FOLKS WHO HAD SERVED IN THE MARINES WITH MR. BRIGHT AND NEVER IDENTIFIED THIS AS AN AREA OF INQUIRY FOR HER INVESTIGATOR.

THE VETERANS WHO TESTIFIED AT THE EVIDENTIARY HEARING WHO HAD SERVED WITH MR. BRIGHT PAINTED A COMPELLING PICTURE OF THE DILIGENT HARD-WORKING SELFLESS MARINE.

THEY TALK ABOUT THE STRESS OF THAT PARTICULAR MOF THE MILITARY OCCUPATIONAL SPECIALTY THEY EXPLAINED THAT IN KEEPING THESE AIRCRAFT RUNNING THE PILOTS LIVES DEPENDED ON THEM AND THAT THEY WERE UNDER A LOT OF PRESSURE TO SORT OF KEEP AN AVAILABLE NUMBER OF HARRIERS AIRCRAFT HE WORKED ON SPECIFICALLY UP AND RUNNING

THEY TALKED ABOUT THE PHYSICALLY GRUELING CONDITIONS IN CHERRY POINT NORTH CAROLINA AND HUME ARIZONA AS WELL AS ON THE CARRIERS WHEN THEY WERE AT SEA.

AT SEA.

>> Justice: CAN YOU POINT PARTICULAR TO WHAT EFFECT THIS MIGHT'VE HAD.

>> Elizabeth Spiaggi, Appellant: THE JURY DID NOT HEAR ANYTHING ABOUT MR. BRIGHT'S DAY-TO-DAY DOINGS IN THE MILITARY THEY DID NOT HEAR HOW STRESSFUL THIS PARTICULAR OCCUPATIONAL SPECIALTY WAS.

THERE WAS REALLY NO HUMANIZING OF THAT MILITARY SERVICE IN THE PRESENTATION THAT WAS DONE.

THEY HAD A FELLOW COLLEAGUE ANOTHER ATTORNEY READ MR. BRIGHT'S MILITARY

RECORDS TO THE JURY.

THE JURY REALLY DID NOT GET A SENSE OF WHAT HE WAS DOING IN THE DAY TODAY. OR HEAR FROM OTHER PEOPLE WHO HAD SERVED WITH HIM I THINK IT IS VERY IMPORTANT BECAUSE THERE WAS SORT OF A MISCONCEPTION THAT IF YOU'RE NOT ACTIVELY DEPLOYED IN COMBAT THE MILITARY SERVICE IS NOT THAT STRESSFUL. I THINK THEIR TESTIMONY AFTER THAT AND SORT OF CORRECTED THAT IDEA THAT EVEN IN MAINTAINING THESE AIRCRAFT'S THERE WERE CASUALTIES IN TRAINING AND THE MECHANICS WERE SENT TO PICK UP THE PIECES OF THE PLANE.

>> Justice: WHAT KIND OF MITIGATION DO YOU THINK THIS RESULTED IN.

>> Elizabeth Spiaggi,Appellant: AS IT WAS MR. BRIGHT THE SENTENCING COURT GAVE LITTLE WEIGHT TO MR. BRIGHT MILITARY CAREER.

>> Justice: WE ALREADY REVIEWED THAT THE ORIGINAL TIME IN 2020.

>> Elizabeth Spiaggi,Appellant: AT THAT POINT YOU DO NOT KNOW WHAT TESTIMONY WAS MISSING.

>> Justice: IN 2020 THERE WAS A LITTLE WEIGHT GIVEN TO MILITARY SERVICE CORRECT.

>> Elizabeth Spiaggi,Appellant: CORRECT

>> Justice: WE SAID THAT WOULD HAVE NOT OUTWEIGHED THE AGGRAVATING FACTORS.

>> Elizabeth Spiaggi,Appellant: WHAT I'M SAYING I THINK IT DESERVES A LOT MORE THAN A LITTLE WEIGHT I THINK THAT FINDING IS AN ANOMALY ESPECIALLY WHEN YOU HEAR ABOUT HOW DANGEROUS HIS SERVICE WAS AND HOW RESPECTED HE WAS BY HIS FELLOW MARINES. FOR HIS WORK AND HIS WILLINGNESS TO HELP THEM.

>> Justice: IT SOUNDS TO ME YOU'RE CONCEDED YOU WANT TO REWEIGH THE EVIDENCE.

>> Elizabeth Spiaggi,Appellant: I AM SAYING THERE IS NOT SUBSTANTIAL COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE CIRCUIT COURT'S FINDING IN AT THIS INSTANCE.

THE CIRCUIT COURT FOUND THAT TRIAL COUNSEL HAD MADE A REASONABLE STRATEGIC DECISION IN PRESENTING A WITNESS WHO DO NOT KNOW MUCH ABOUT MR. BRIGHT'S MILITARY CAREER.

I THINK JUST IN SORT OF SAYING THAT TO YOU YOU CAN SEE HOW ILLOGICAL THAT IS.

>> Justice: WASN'T SHE CONCERNED THAT THERE WERE THINGS THAT HAPPENED OTHER THINGS THAT HAPPENED AT THAT TIME THAT WOULD OPEN THE DOOR FOR ALL OF THOSE QUESTIONS TO COME OUT AS WELL?

>> Elizabeth Spiaggi,Appellant: I THINK WHAT WE SAW AT THE EVIDENTIARY HEARING IS ACTUALLY NONE OF THESE WITNESSES KNEW MUCH ABOUT BRIGHT'S TRANSGRESSIONS THEY WERE NOT PART OF THE BIGGER PICTURE OF HIS MILITARY CAREER I THINK IT ACTUALLY WOULD'VE REFOCUSSED THE PRESENTATION ON WHAT HE ACTUALLY DID RATHER THAN ALLOWING THE STATE TO MAKE COMPLETELY UNFOUNDED ARGUMENTS ABOUT HIS CAREER THERE WERE THE ONE EXAMPLE I THINK THE STATE ARGUED THAT MR. BRIGHT WAS SLEEPING IN THE PLACE WHERE

THEY WORKED ON THE PLANES.

AT THE EVIDENTIARY HEARING IT CAME OUT THAT THE WRITE UP FOR HIM SLEEPING WAS FOR WHEN HE WAS IN THE DORM MONITORING OTHER PEOPLE WHO LIVED ON BASE IN THE DORM. I THINK THAT'S A BIG DISTINCTION BETWEEN WHAT THE PROSECUTOR'S ARGUMENT AND THE PICTURE THAT THE PROSECUTOR IS TRYING TO PAINT VERSUS HIS ACTUAL SERVICE.

AND BY RELYING ON JUST THE RECORDS SHE WASN'T ABLE TO SORT OF CORRECT AND COUNTER THAT DEPICTION.

SHE HERSELF HAD SEEN DID NOT HAVE A THOROUGH UNDERSTANDING OF THOSE RECORDS BECAUSE THAT PARTICULAR WRITE UP IT WAS RIGHT THERE SHE RELIED SOLELY ON THE COLLEAGUE TO TESTIFY AND HELP HER PREPARE. I THINK WHAT WE PLED SHE REALLY NEEDED SOMEBODY TO HELP HER GATHER THESE FIRST-PERSON WITNESSES WOULD SERVED WITH HIM AND HAD ACTUAL TESTIMONY ABOUT WHAT MR. BRIGHT HAD DONE WITH THEM.

IF SHE HAD HAD AN EXPERT TO HELP HER ORGANIZE THOSE AND TO SORT OF BETTER UNDERSTAND THE RECORDS IT WOULD'VE RESULTED IN A DIFFERENCE AMOUNT OF WEIGHT THAT WAS GIVEN TO THIS MILITARY SERVICE.

>> Justice: DO YOU CONSIDER THIS YOUR STRONGEST CLAIM?

>> Elizabeth Spiaggi,Appellant: I THINK THAT THE FAILURE TO INVESTIGATE MITIGATION IS THE STRONGEST CLAIM. I THINK THE OTHER PART OF THAT IS ALSO GIVING THE JURY SOME CONTEXT OF WHAT HAPPENED IN THE GUILT PHASE OF THIS. THIS IS SORT OF TYPICAL IN A PENALTY PHASE THAT THEY WILL EDUCATE THE JURY ON BASIC FACTS OF THE CRIME.

IT REALLY DIDN'T EVEN HAPPEN HERE. WE ALSO ALLEGE THAT SHE SHOULD HAVE CALLED TWO OF THE STATE WITNESSES FROM THE GUILT PHASE MR. BRIAN WILLIAMS AND MR. BENJAMIN LUNDY WHO FOR ONE THINK THEY PROVIDED ADDITIONAL MITIGATION TESTIMONY ABOUT AGAIN WHAT DILIGENT HARD WORKER MR. BRIGHT WAS NOW CLIENT ASKED FOR THEM SPECIFICALLY BECAUSE THEY KNEW THAT HE WAS THE BEST AT HIS JOB AND HE WOULD TAKE GREAT CARE IN HIS WORK.

BUT THEY ALSO KNEW ABOUT THE CIRCUMSTANCES THAT WERE GOING ON IN MR. BRIGHT'S HOUSE.

THEY HAD TESTIFIED IN THE ORIGINAL TRIAL FOR THE STATE, THAT THE VICTIMS WERE SELLING DRUGS OUT OF MR. BRIGHT'S HOME AND KEEPING FIREARMS THERE.

>> Justice: THIS GOES TO THE ENTIRE STRATEGY THAT THE COUNSEL TESTIFIED TO CORRECT THAT SHE MADE A VERY INTENTIONAL CHOICE THAT THEY WERE NOT GOING TO VICTIM BLAME.

>> Elizabeth Spiaggi,Appellant: I DON'T THINK IT IS VICTIM BLAMING I THINK THE JURORS ARE LOOKING AT WHAT I WILL ADMIT ARE REALLY GRUESOME PICTURES AND THE NEED TO UNDERSTAND HOW THESE EVENTS OCCURRED. THEY NEED TO BE PUT INTO CONTEXT OF THE CRIME.

>> Justice: THE STRATEGY WAS I THINK A 16-YEAR-OLD IS THAT RIGHT.

>> Elizabeth Spiaggi,Appellant: I BELIEVE ONE 17-YEAR-OLD AND A 19-YEAR-OLD.

>> Justice: A 17-YEAR-OLD 19-YEAR-OLD WAS MURDERED SHE SAID AS A STRATEGY I'M NOT GOING TO GO TO ANY OF THEIR POTENTIAL MISDEEDS AND BLAME THEM. I THINK A BETTER STRATEGY IS TO SORT OF PLEAD FOR MERCY AND FOLLOW THAT PATH. EVERY SINGLE THING THAT YOU ARE GOOD IN YOUR BRIEF THE FIVE POINTS, GOES TO THE ISSUE. WHY DO YOU THINK THAT WAS AN INEFFECTIVE STRATEGY.

>> Elizabeth Spiaggi, Appellant: I BELIEVE THERE WAS A LOT OF TALK FROM THE COURT ABOUT VICTIM BLAMING. WHAT TRIAL COUNSEL TESTIFIED TO WAS I WANTED THIS JURY TO KNOW THAT I RESPECTED THE PIRATE JURY'S VERDICT TO ME, I CAN'T MAKE A LOT OF SENSE OUT OF THAT.

YOU ARE NOT GOING TO YOU ARE NOT TELLING THE NEW JURY THAT HE IS NOT GUILTY.

YOU ARE SIMPLY PROVIDING BACKGROUND I THINK HER OTHER IT IS ALSO ABOUT GIVING SOME INSIGHT INTO MR. BRIGHT'S FEAR OF THE VICTIMS WHICH IS SOMETHING THAT THE JURY IS ABSOLUTELY ALLOWED TO CONSIDER. THEY ARE INSTRUCTED TO CONSIDER THE CIRCUMSTANCES OF THE CRIME. I THINK SHE DID A REAL DISSERVICE TO MR. BRIGHT IN I REALIZE IT IS A CAREFUL BALANCING ACT TO NOT VILLAINIZE THE VICTIMS, BUT AT THE SAME TIME YOU HAVE TO PROVIDE SOME INSIGHT INTO WHAT WAS GOING ON IN THE HOUSE.

THAT MR. BRIGHT WAS BEING THREATENED THAT HE HAD CONTACTED LAW ENFORCEMENT THAT THIS WAS AN ESCALATING SITUATION IN HIS OWN TO TRY TO GET THESE GUYS OUT OF THERE TO STOP RUNNING BASICALLY A DRUG HOUSE OUT OF HIS HOME.

THE FOLKS WHO WORKED WITH THEM WOULD HAVE TESTIFIED IN THE ORIGINAL TRIAL AS STATE WITNESSES IN THE GUILT PHASE, THAT HIS DEMEANOR WAS CHANGING HE HAD THIS MOUNTING ANXIETY OVER THESE GUYS BEING IN HIS HOME. I BELIEVE HIS SISTER TESTIFIED TO HIS CHILDHOOD STUTTER REOCCURRING. EVERYONE SORT OF PAINTED THIS PICTURE OF MR. BRIGHT REALLY AT THE MERCY OF THESE TWO GUYS WHO HAD SORT OF TAKEN OVER HIS HOME.

I THINK I WOULD LIKE TO ADDRESS AN ISSUE FROM THE STATE HABEAS THAT BEING THE IMPROPER PROSECUTION PROSECUTORIAL ARGUMENT WAS MADE THAT THE JURY SHOULD SHOW BRIGHT THE SAME MERCY SHOULD THE VICTIMS THIS WAS A VERY CLEARLY PRESERVED

ERROR AND THAT COUNSEL FILED A MOTION IN LIMINE.

IN ORDER TO FORBID THE PROSECUTOR FROM MAKING THIS TYPE OF ARGUMENT THE MOTION IN LIMINE WAS GRANTED AN ORDER WAS ISSUED THAT HE COULD NOT MAKE THESE ARGUMENTS HE MADE THEM SHE OBJECTED THE JUDGE OVERRULED THE OBJECTION AND LATER ACKNOWLEDGED THIS WAS THE ISSUE FROM A MOTION IN LIMINE .

IT WAS A PRESERVED ERROR IT WAS NOT RAISED ON APPEAL. I THINK THIS PRETTY SQUARELY FITS THE INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL IT IS A PRESERVED ERA THAT IS MERITORIOUS THIS COURT HAS REVERSED BEFORE ON THIS ARGUMENT . THERE IS A GOOD AMOUNT OF CASE LAW FORBIDDING THIS TYPE

OF ARGUMENT.

>> Justice: DO YOU HAVE A CASE IN WHICH WE REVERSED ON THAT ALONE?

>> Elizabeth Spiaggi,Appellant: I DON'T THINK YOU WOULD BE REVERSING ON THAT ALONE BECAUSE ON DIRECT APPEAL SHE RAISED THE APPELLATE ON DIRECT APPEAL THE APPELLATE COUNSEL RAISED OTHER INAPPROPRIATE ARGUMENTS THAT WERE MADE BY.

[LISTING NAMES] I THINK THE OTHER ARGUMENTS WERE NOT PRESERVED SO APPELLATE COUNSEL WAS ARGUING FUNDAMENTAL ERROR.

WHEN YOU COMBINE THAT WITH THE PRESERVED ERROR OF THE SAME MERCY ARGUMENT YOU CERTAINLY REVERSED ON SAME MERCY IN ADDITION TO.

>> Justice: DIDN'T WE ALREADY FIND THERE IS AN ERROR ALREADY AFFIRMED.

[UNCLEAR AUDIO]

>> Elizabeth Spiaggi,Appellant: NO IT WAS NOT RAISED ON DIRECT APPEAL THAT WAS THE CLAIM APPELLATE COUNSEL WAS INEFFECTIVE.

>> Justice: THE OTHER ISSUES.

>> Elizabeth Spiaggi,Appellant: I'M TALKING ABOUT TOGETHER DOING A CUMULATIVE ANALYSIS IT WAS INEFFECTIVE OF COUNSEL NOT TO RAISE IT WITH THE OTHER IMPROPER ARGUMENTS.

>> Justice: I'M SORRY WHICH OF THE 17 ISSUES YOU RAISE IS THE SAME MERCY COMMENT.

>> Elizabeth Spiaggi,Appellant: THIS IS THE PROSECUTORIAL ARGUMENT WAS RAISED IN A STATE HABEAS.

>> Justice: OF THE 17 ISSUES IN YOUR BRIEF WHICH ONE IS THE SAME MERCY ARGUMENT.

>> Elizabeth Spiaggi,Appellant: I DON'T BELIEVE WE RAISED IN A BRIEF.

>> Justice: WHY ARE WE TALKING ABOUT IT.

>> Elizabeth Spiaggi,Appellant: I'M ALSO HERE ON HIS STATE HABEAS.

>> Justice: IS IT WRITTEN THAT AS WELL.

>> Elizabeth Spiaggi,Appellant: YES SIR.

>> Justice: I THINK THIS GOES TO A LARGER POINT HELP US SORT THE WHEAT FROM THE CHAFF.

>> Elizabeth Spiaggi,Appellant: I THINK WHAT NEEDS TO HAPPEN IS THAT PROSECUTORS THEY NEED TO BE TAKEN GIVEN SOME GUIDANCE BECAUSE THIS IS A VERY CLEARLY IMPERMISSIBLE ARGUMENT I'M NOT GOING TO IGNORE.

>> Justice: PLEASE DON'T CHANGE THE SUBJECT.

>> Elizabeth Spiaggi,Appellant: I AM NOT TRYING TO CHANGE THE SUBJECT I FEEL IT WOULD BE INEFFECTIVE IF I RAISED IF I DID NOT RAISE WHAT ARE MERITORIOUS ARGUMENTS? WE HAVE A DUTY TO BRING THESE CLAIMS IN STATE COURT AND MAKE SURE THEY ARE RULED ON IF THEY HAVE MERIT WHICH A LARGE NUMBER OF THESE DO.

>> Justice: CAN YOU POINT US TO THE ONE YOU BELIEVE HAS MOST MERIT.

>> Elizabeth Spiaggi,Appellant: I THINK WE ARE TALKING ABOUT IT CLEARLY.

>> Justice: THE SAME MERCY ARGUMENT, IF YOU ARE GOING TO PICK THE BASIS FOR REVERSAL HERE YOU WOULD REST YOUR CASE ON THE SAME MERCY ARGUMENT?

>> Elizabeth Spiaggi,Appellant: I THINK IT IS DISPOSITIVE FOR THE PENALTY PHASE AND THAT IT WAS CLEARLY INEFFECTIVE OF APPELLATE COUNSEL NOT TO RAISE THE PRESERVED ERROR UNDER PREVAILING NORMS APPELLATE COUNSEL SHOULD RAISE SHOULD RAISE CLAIMS THAT HAVE ALREADY BEEN DETERMINED BY THIS COURT IN THE SENSE THAT IT'S ALREADY BEEN RULED OUT A LOT THAT YOU CANNOT MAKE THIS ARGUMENT.

>> Justice: I GUESS WHERE IS THE PREJUDICE IF WE DON'T REVERSE THAT ALONE? AND WHERE WILL THE PREJUDICE FACTOR FALL.

>> Elizabeth Spiaggi,Appellant: I THINK WHAT WE HAVE HERE WE HAVE TRIAL COUNSEL NOT PRESENTING A VERY FULL PICTURE OF MITIGATION SHE DID NOT INVESTIGATE THEN WE HAVE IN ADDITION THE PROSECUTION MAKING IMPERMISSIBLE ARGUMENTS ALL IN ALL IS VERY DAMNING FOR MR. BRIGHT

I SEE I AM INTO MY REBUTTAL,
I WILL SAVE THE REST OF MY ARGUMENTS FOR THAT.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Jason W.Rodriguez,Appellee: MAY IT PLEASE THE COURT MY NAME IS JASON W.RODRIGUEZ. IN MY TIME BEFORE THE COURT I WILL EXPLAIN BY THIS COURT SHOULD AFFIRM THE DENIAL OF POSTCONVICTION RELIEF AND DENY BRIGHT'S STATE HABEAS PETITION.

I WANT TO BEGIN WHERE WE BEGAN WITH MR. BRIGHT WHICH WAS THE MILITARY MITIGATION CLAIM WHAT IS VERY CLEAR BOTH BASED ON THE TRIAL COURT POSTCONVICTION COURT'S FINDINGS AND COUNSEL'S TESTIMONY IS THAT COUNSEL KNEW THERE WAS A LOT OF BAD IN THOSE MILITARY RECORDS AND MADE A STRATEGIC DECISION I'VE GOT ONE BUT NO WITNESS THEY CAN PRESENT A GOOD CASE TO THE JURY I KNOW HIM HE'S A FORMER MARINE JAG OFFICER HE COMES ACROSS VERY WELL HE SPEAKS VERY CLEARLY I WANT HIM TO BE THE ONE TO PRESENT ALL OF THIS MILITARY MITIGATION TO THE JURY RATHER THAN TRYING TO GO AND FIND OTHER INDIVIDUALS THAT MIGHT END UP WANDERING INTO TERRITORY THAT I DON'T WANT TO TOUCH. SOME OF THE MILITARY WITNESSES DOWN BELOW DID KNOW SOME OF BRIGHT'S ISSUE INCLUDING ABOUT COURT-MARTIAL DRINKING AND THINGS OF THAT NATURE.

COUNSEL MADE A REASONABLE STRATEGIC DECISION WE DON'T AND POSTCONVICTION NITPICK EVERYTHING COUNSEL DOES.

IS IT REASONABLE FOR AN ATTORNEY TO DO THAT THAT IS REASONABLE TRIAL STRATEGY?

REGARDING THE CONTEXT OF THE HOUSE WE CAN COME TO ANOTHER VERY REASONABLE TRIAL STRATEGY. THE STATE'S POSITION IS NOT THAT NO ATTORNEY EVER COULD CHOOSE TO TAKE THE ROAD POSTCONVICTION COUNSEL SUGGESTED IT IS A REASONABLE ATTORNEY COULD CHOOSE NOT TO TAKE THAT STRATEGY. WHEN WE ARE TALKING ABOUT IN MY RECOLLECTION IT'S A 16-YEAR-OLD AND A

20-YEAR-OLD. THAT STRATEGY IS INCREDIBLY REASONABLE AND COUNSEL AFFIRMATIVELY TRY TO EXCLUDE EVIDENCE OF THE YOUNGER VICTIMS AGE AND WAS UNSUCCESSFUL IN DOING SO. COUNSEL KNEW SHE HAD A PROBLEM ON HER HANDS AND WANT TO AVOID ANYTHING AT ALL THAT WAS GOING TO LOOK LIKE SHE WAS BLAMING THE YOUNG VICTIMS FOR THEIR DEATH.

>> Justice Charles Canady: LET ME ASK YOU ABOUT THAT ABOUT THE TRIAL COUNSEL SPECIFICALLY SAY INDICATING IN THE EVIDENTIARY HEARING THAT SHE WAS PURSUING A STRATEGY THAT INVOLVED AVOIDING BLAMING THE VICTIM.

>> Jason W.Rodriguez,Appellee: THIS IS THE QUOTE I HAVE TO LOOK AT MY NOTES SHE SAID "IT WOULD BE A BAD MOVE TO BLAME THE VICTIMS" THAT'S ONE OF THE THINGS SHE SAID SHE SAID I'M ASKING FOR MERCY FOR MR. BRIGHT WHO DID TERRIBLE THINGS I DIDN'T THINK IT WOULD BE A GOOD IDEA TO GO THE OPPOSITE WAY WITH THE VICTIMS AND MAKE IT SOUND LIKE THEY WERE RESPONSIBLE FOR THEIR DEATHS. HER TESTIMONY ON THAT ISSUE IS VERY CLEAR.

IN THE RECORD I THINK IT MOSTLY COMES OUT IN THE STATES CROSS-EXAMINATION WHERE SHE'S ASKED THOSE SPECIFIC QUESTIONS.

IT IS VERY CLEAR THAT IS EXACTLY WHAT SHE WAS DOING.

MOVING TO THE SAME MERCY ISSUE VERY BRIEFLY, ONE, THIS COURT HAS SAID IN. [LISTING NAMES] IT DOES NOT REVERSE ON THE SAME MERCY COMMENT ALONE. BY AND LARGE THE COMMENTS THAT WERE RAISED PROSECUTORIAL COMMENTS RAISED ON DIRECT APPEAL AT THIS COURT FOUND THERE WAS NO ERROR IN THEM WITH ONE EXCEPTION.

THE ONE EXCEPTION WAS THAT THE MITIGATION. THE PROSECUTOR IN CLOSING SAID MITIGATION HAD TO BE PROVEN TO A REASONABLE CERTAINTY. THAT IS THE ONLY COMMENT THAT I'M AWARE OF THAT THIS COURT FOUND ANY ERROR IN AT ALL AND IT SAID IT WAS ENTIRELY CLEARED UP BY THE JURY INSTRUCTIONS THE PROSECUTOR MADE A ONE-OFF OFFHAND COMMENT AND THE JURY INSTRUCTIONS WERE ENTIRELY CLEARING THAT UP. IN THAT CIRCUMSTANCE WHEN WE ARE COMBINING WHAT IS KIND OF A HAVE SAME MERCY COMMENT WITH TOTALLY CLEARED UP BY THE JURY INSTRUCTION COMMENT WE ARE REALLY IN THE SAME POSITION AS.

[LISTING NAMES] WHERE SAME MERCY STANDING ALONE WOULD NOT BE REVERSIBLE ERROR. THE STATE ARGUED IN ITS BRIEF DISCOURSE RECEIVED FROM THE SAME MERCY CASE LAW BASED ON PUBLIC THE MAJORITY VIEW OF THE COURTS INCLUDING FROM ELEVENTH CIRCUIT THAT SAID THIS IS REALLY A TOTALLY PROPER COMMENT THAT WHEN A DEFENSE COUNSEL IS ABLE TO GET UP AND ARGUE YOU SHOULD SHOW MERCY ON MY CLIENT THE STATE IS ABLE TO REBUT THAT POSITION BY SHOWING THE SAME MERCY HE SHOWED TO THE VICTIMS AND REMINDING THE JURY THE MERCY TO THE DEFENDANT IS THAT THE ONLY THING THAT'S ON THE TABLE BUT WE LOOK AT THE VICTIMS AS WELL.

THAT IS THE MAJORITY VIEW INCLUDING THE VIEW HELD BY THE ELEVENTH CIRCUIT. YOUR HONORS IF YOU HAVE NO MORE QUESTIONS I KNOW ISSUE 12.

[LISTING NAMES] WAS RAISED. IF THE COURT DOES NOT HAVE ANY QUESTIONS I WILL

STAND ON MY BRIEF.

THANK YOU YOUR HONORS.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Elizabeth Spiaggi, Appellant: I WILL TRY NOT TO BELABOR ANY OF MY PREVIOUS POINTS AS FOR STRATEGIC DECISIONS IN ORDER TO MAKE AN INFORMED STRATEGIC DECISION NOT TO INVESTIGATE THE CASE.

BEFORE SHE CANNOT DECIDE WITHOUT TALKING TO PEOPLE WHO SERVED WITH MR. BRIGHT THAT WOULD BE BETTER FOR THEM NOT TO TESTIFY THAT IS NOT AN INFORMED DECISION BASED ON HER INVESTIGATION.

THE SAME IS TRUE I WOULD SAY OF THE CONTEXTUALIZING THE CRIME.

HER COCOUNSEL TESTIFIED THAT THEY DID NOT LOOK INTO THIS AREA. HER WORK PRODUCT SHOWS SHE DID NOT RESEARCH WHETHER SHE COULD CONTEXTUALIZE THE CRIME. EVEN THAT DECISION SHE WAS NOT AN INFORMED DECISION BASED ON RESEARCH.

I WOULD ALSO AS FAR AS THE MILITARY EDUCATION WOULD POINT THIS COURT TO PORTER, WHERE THE US SUPREME COURT SPECIFICALLY HELD THAT EVEN IF THERE ARE TRANSGRESSIONS IN SOMEONE'S MILITARY SERVICE YOU HAVE TO PRESENT THAT FULL PICTURE BECAUSE EVEN WITH THE TRANSGRESSIONS THERE IS SORT OF OVERSHADOWED BY THE SERVICE TO OUR COUNTRY.

I WOULD POINT OUT THAT IMPORTER THE TRANSGRESSIONS WERE PRETTY BIG I THINK HE WAS AWOL FOR SIX MONTHS

LESSER SO IN MR. BRIGHT'S CASE.

IN CLOSING I WOULD SAY THAT TRIAL COUNSEL'S TESTIMONY ABOUT HER STRATEGIES IS CONTRADICTED AND UNDERCUT BY HER COCOUNSEL HER INVESTIGATOR, AND THE RECORD FROM THE PENALTY PHASE ITSELF. I WOULD ASK THIS COURT TO REVERSE THE CIRCUIT COURT'S DENIAL OF POSTCONVICTION RELIEF AS WELL GRANT A NEW APPEAL OF THE FULL TRIAL BASED ON ISSUES RAISED IN THE STATE HABEAS THANK YOU.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH.