State of Florida vs Freddie Lee Williams

NEXT CASE ON THE COURT'S DOCKET IS WILLIAMS VERSUS STATE.

COUNSEL, IT IS MY UNDERSTANDING THAT THE STATE HAS WITHDRAWN ITS NOTICE OF ITS APPEAL.

THAT'S CORRECT, YOUR HONOR.

AND SO, MR. MULLER, YOU WILL PROCEED ON YOUR CROSS APPEAL.

THANK YOU, SIR.

MAY IT PLEASE THE COURT. MY NAME IS CHAN MULLER. I AM A LAWYER FROM WINTER PARK, FLORIDA. I RESPECTFULLY REQUESTED THAT I BE ALLOWED TO SPEAK FOR 13 MINUTES AND RESERVE 17 MINUTES ON APPEAL. THE DEFENDANT TOOK THE STAND AND ADAMANTLY DENIED THAT HE KILLED HIS 17 YOUR WIFE, COMMON LAW WIFE. HE STATED THAT HE HAD COME BACK TO THEIR APARTMENT, THAT SHE STAGGERED TOWARD HIM, BLEEDING, THAT HE CALLED HER NAME, MARY, MARY! HE CALLED THE POLICE, AND IN FRONT OF THE JURY, FROM PAGE 640 OF THE ORIGINAL RECORD, TO ANOTHER 38 PAGES, HE DENIED KILLING MARY ROBINSON, YET IN SPITE OF HIS CLIENT'S DENIALS, HIS LAWYER CAME UP, IN FINAL ARGUMENT. THIS LAWYER HAD OPENING AND CLOSING FINAL, FINAL ARGUMENT. HE TOLD THE JURY THAT HE WAS NOT ATTEMPTING TO INSULT THEIR INTELLIGENCE, AND THEN HE WENT ON TO EXPLAIN, PERHAPS, THIS WAS NOT FIRST-DEGREE, PREMEDITATED MURDER. HE CAME BACK IN THE ACTUAL GUILT-INNOCENCE PHASE, ASKED THE JURY NOT TO BE VINDICTIVE TO HIS CLIENT, TOLD THEM THAT HIS CLIENT WAS IN A LOT OF TROUBLE, AND IF HE DIDN'T TELL THEM THE TRUTH, NOT TO VISIT THAT UPON HIS CLIENT. THEN HE CAN'T CAPPED OFF -- THEN HE CAPPED OFF THE GUILTY PLEA, BY STATING, AFTER THE PROSECUTOR HAD AGO VEST DEGREES I FEEL SHOWN THAT -- AGGRESSIVELY SHOWN THAT IT WAS RIDICULOUS STORY THAT MR. WILLIAMS TOLD, HE STATED, AT PAGE 724 OF THE ORIGINAL RECORD, HE STATED THAT, WHAT HAPPENED IN THE STRUGGLE WAS THAT FREDDIE WAS THERE, TRYING TO HELP MARY. HE SHOT THE GUN OFF. MAYBE IT WAS TO SCARE HER. MAYBE IT WAS TO HURT HER. NOW, THE ISSUE THE NARROW ISSUE BEFORE THIS COURT, IS THIS. ARE, WHETHER OR NOT, UNDER --, WHETHER OR NOT, UNDER THE FLORIDA RULES OF APPELLATE PROCEDURE, 9.140, THE RECORD CONCLUSIVELY SHOWS THAT FREDDIE LEE WILLIAMS IS ENTITLED TO NO RELIEF. THE CASE LAW IN THIS STATE, STATES THAT THE COURT HAS TO ACCEPT ALL OF THE FACTS AS TRUE, IN THE 3.850, WHICH WAS DENIED BY CIRCUIT JUDGE, IN 1980.

SO IN THIS CASE, WE HAD AN EVIDENTIARY HEARING ON THE INEFFECTIVENESS OF COUNSEL DURING THE PENALTY PHASE, NOT THE GUILT PHASE, AND THAT IS WHAT YOU ARE REQUESTING, NOW, A HEARING ON THE INEFFECTIVE INEFFECTIVENESS IN THE GUILT PHASE?

THAT'S CORRECT, JUSTICE QUINCE.

ARE YOU RELYING, AT ALL, ABOUT ANY OF THE EVIDENCE THAT HAS, NOW, COME IN, AND THE PENALTY PHASE INEFFECTIVE ASSISTANCE EVIDENTIARY HEARING, TO SHOW THAT THIS IS WHY IT WOULD HAVE BEEN A GOOD IDEA TO HAVE AN EVIDENCE YAERING -- AN EVIDENTIARY HEARING ON BOTH?

YOUR HONOR, WE DON'T HAVE TO, BECAUSE UNDER RULE 9.1 40ERCK9S --, AS THE COURT IS WELL AWARE OF IN THE 9.140 DECISION, THE STATE SET ASIDE THE DEATH SENTENCE IN FIVE DAYS THAT WE TRIED THIS IN ORANGE COUNTY. WE PRESENTED A LOT OF EVIDENCE THAT WAS AVAILABLE, AT THE TIME, FOR TRIAL COUNSEL, AND WHAT HAD HAPPENED IS THAT JUDGE CYCMANICK HAD DENIED OUR REQUEST FOR AN EVIDENTIARY HEARING ON GUILT-INNOCENCE, AND THEN JUDGE COHEN ONLY HEARD EVIDENCE ON IAC AND SENTENCING.

DID YOU ASK THE NEW JUDGE TO RETHINK THE PRIOR RULING, THAT AS LONG AS YOU WERE HAVING THIS EVIDENTIARY HEARING, THAT YOU COULD, THEN, PROFESSOR THE EVIDENCE ON THE -- PROFFER THE EVIDENCE ON THE GUILT PHASE, AT THE SAME TIME?

YOUR HONOR, I CAN'T SPECIFICALLY REPRESENT TO THE COURT THAT WE DID. THROUGHOUT THIS, WE ARGUED TO THE COURT. IN FACT, IN THE COURT'S ORDER HAD, IN JANUARY OF '99, IF YOU HAVE READ THE 17-PAGE ORDER, JUDGE COHEN POINTED OUT THAT THERE WAS PLENTY OF EVIDENCE AVAILABLE IN 1980. WE WERE ABLE TO SHOW THAT THERE WAS A NETWORK OF LAWYERS, PUBLIC DEFENDERS IN THE STATE OF FLORIDA, THAT SHARED INFORMATION. WE HAD EXPERT TESTIMONY THAT CT SCANS WOULD HAVE SHOWN A SHRINKAGE OF THE CEREBRAL CORTEX IN THE DEFENDANT'S BRAIN BECAUSE OF RODNEY KING-TYPE BEATINGS THAT HE HAD SUFFERED IN THE '60s, BUT TO ANSWER YOUR QUESTION, YOUR HONOR, THE ORDER WAS NOT FINAL. YOU CAN'T TAKE AN INTERLOCUTORY APPEAL ON A FINAL ORDER. WHICH IS WHAT JUDGE CYCMANICK DID. HE FOUND INSUFFICIENT, OUR FIRST CLAIM ON IAC AT GUILT. THEN THE HEARING WAS CONCLUDED BY JUDGE COHEN, AND HE TOOK THE APPEAL -- AND WE TOOK THE APPEAL. WE COULD NOT HAVE APPEALED. THAT I, ALSO, POINT OUT THAT, UNDER THE FLORIDA RULES OF CRIMINAL PROCEDURE, IN DEATH PENALTY CASES, THIS IS UNDER SUBSECTION H OF 9.140, THE COURT SHALL REVIEW THE EVIDENCE, TO DETERMINE IF THE INTEREST OF JUSTICE REQUIRES A NEW TRIAL, WHETHER OR NOT SUFFICIENCY OF THE EVIDENCE IS RAISED ON APPEAL. NOW, I CITE THAT TO THE COURT, IN A CF SENSE, BECAUSE HERE WE DIDN'T HAVE A FINAL ORDER. THIS COURT IS MANDATED TO LOOK AT THE TOTALITY OF CIRCUMSTANCES, AND I RESPECTFULLY SUBMIT TO THE COURT, THAT, IF YOU LOOK AT THE STANDARD IN FLORIDA, AND YOU LOOK AT THE CASE LAW, AND YOU LOOK AT WHAT WAS ALLEGED IN THE 3.8.

CLAIM, IT IS CLEAR -- THE 3.850 CLAIM, IT IS CLEAR THAT THIS WAS ADEQUATELY PRESERVED. THE STATE HAS SET FORTH CERTAIN ARGUMENTS, SUCH AS THAT VOLUNTARY INTOXICATION WOULD NOT HAVE PREVAILED AT THE TRIAL, THAT THIS WAS A TACTICAL DECISION, AND I RESPECTFULLY SUBMIT THAT THAT IS NOT BEFORE THE COURT. THE SOLE ISSUE BEFORE THE COURT IS WHETHER OR NOT THE TRIAL JUDGE COMMITTED ERROR, IN NOT GRANTING THE APPELLANT AN EVIDENTIARY HEARING ON IAC AT GUILT-INNOCENCE. IN THE 3.850, IF YOU JUST LOOK AT THE FOUR CORNERS OF THE 3.850, WE SET FORTH THE FACT THAT THERE WAS NEVER TESTIMONY DEVELOPED, AT THE TRIAL, DEALING WITH THE EFFECTS OF ALCOHOL, THROUGH, EITHER, EXPERTS OR LAY PEOPLE. WE, ALSO, INDICATED THAT, HAD THAT TESTIMONY BEEN PRESENTED, BY THE TRIAL LAWYER, IT WOULD HAVE SHOWN THAT OUR CLIENT HAD ABUSED ALCOHOL SINCE HE WAS A CHILD, AND THAT HE WAS DRUNK AND INTOXICATED AT THE TIME OF THE HOMICIDE. NOW, SEGUE THAT INTO WHAT HIS LAWYER DID TO HIM. THE LAWYER, VIRTUALLY, PRESENTED NOARTIC YOU LABLE DEFENSE. IF -- NO ARTICULABLE DEFENSE. IF YOU LOOK CLOSELY, IN THE CONTEXT OF NIXON VERSUS SINGLETARY, WHICH THIS COURT DECIDED IN JANUARY OF THIS YEAR, THIS IS A CHRONIC CASE, RATHER THAN SINGLETARY, OR RATHER THAN THE STRICKLAND CASE. CHRONIC IS, AS YOU KNOW, WAS DECIDED BY THE UNITED STATES SUPREME COURT, 16 YEARS AGO, ON THE SAME DAY AS STRICKLAND VERSUS WASHINGTON. THIS COURT CITED CHRONIC, IN ITS DECISION GRANTING MR. NIXON A NEW TRIAL, AND WHAT HAPPENED IN NIXON IS THAT THE LAWYER DID HE SAY ESSENTIALLY WHAT THE TRIAL LAWYER DID IN OUR CASE, BY GETTING UP AND, WITHOUT HIS CLIENT'S CONSENT, HE PLEADS HIM GUILTY. MY CLIENT SAID I DIDN'T SHOOT HER. I WASN'T THERE. I CAME IN. I TRIED TO SAVE HER. HIS LAWYER GETS UP, VIRTUALLY CALLS HIM A LIAR, SAYS WE ARE NOT TRYING TO INSULT YOUR INTELLIGENCE, AND THEN HE SHOT HER. THIS IS SQUARELY WITHIN THE NIXON CONCEPT. IT IS

SQUARELY WITHIN HARVEY VERSUS DUGGAR.

BUT NIXON WAS IN AN OPENING STATEMENT, WAS IT NOT?

IT WAS, YOUR HONOR.

THIS IS IN A CLOSING STATEMENT, AFTER ALL OF THE EVIDENCE HAS BEEN IN, AND, IN EFFECT, WAS OFFERED AS AN ALTERNATIVE TO THE JURY.

JUSTICE HARDING, YOU WROTE THAT OPINION, SIR, AND IN THE OPENING PART OF THAT CASE, YOU INDICATED THAT, OF ALL THE RIGHTS THAT A CITIZEN HAS, THE MOST IMPORTANT, AS FAR AS THE TRIAL, IS THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, AND, YES, SIR, IT WAS AN OPENING STATEMENT, BUT I RESPECTFULLY SUBMIT THERE IS NO DISTINCTION, AND THE REASON FOR THAT IS THAT NOBODY HERE WOULD ARGUE THAT CLOSING ARGUMENT IS NOT A CRITICAL STAGE. IN FACT, FLORIDA IS ONE OF THE FEW STATES IN THE UNITED STATES THAT GIVES TRIAL COUNSEL THE ABILITY TO WAIVE CERTAIN TACTICAL CHOICES AND HAVE OPENING SANDWICH THE PROSECUTOR IN AND HAVE CLOSING. THAT IS WHAT THIS TRIAL ATTORNEY DID, BUT WHAT HE DOES, AND YOU HAVE TO LOOK AT THE FOREST THROUGH THE TREES. YOU HAVE TO USE YOUR COMMON SENSE.

YOU ARE NOT ARGUING FOR AN EVIDENTIARY HEARING. YOU ARE ARGUING THAT THIS IS, PER SE, REVERSIBLE.

YOUR HONOR, I AM ARGUING THAT A NEW TRIAL SHOULD BE GRANTED, AND THAT ALTERNATIVELY THIS COURT SHOULD GRANT AN EVIDENTIARY HEARING, BUT, BASED UPON THE CHRONIC STANDARD, BASED UPON THE STANDARD IN STRICKLAND VERSUS WASHINGTON, PREJUDICE IS PRESUMED IN THE RECORD ON THESE FACTS, AND I SUBMIT THAT THE FAIR, JUST THINK TO DO, WOULD BE FOR THIS -- JUST THING TO DO WOULD BE FOR THIS COURT TO AWARD A NEW TRIAL IN THIS COURT ON THE MERITS OR, AT THE VERY LEAST, SEND THIS BACK TO JUDGE COHEN, WHO, ALREADY, SET ASIDE HIS DEATH SENTENCE. JUSTICE WELLS --

IN FAIRNESS, MR. MULLER, WAS CHRONIC ARGUED BEFORE -- BELOW?

NO. IT WAS ARGUED BY ME, BELOW, IN NOVEMBER OF '98, AND THEN FOLLOWED UP ON BY THE COURT, IN ITS ORDER. IF YOU HAVE READ JUDGE COHEN'S ORDER, THE COURT FOUND THAT THIS WAS BASICALLY PER SE PREJUDICE, IN PENALTY. THE STATE TOOK AN APPEAL AND THEN WITHDREW IT.

YOU ARE ARGUING FOR THE GUILT PHASE, NOW, CORRECT?

OH, YES, SIR. NO. A CHRONIC WASN'T EVEN DECIDED.

BUT AFTER IT WAS DECIDED, THIS CASE HAS BEEN IN ORANGE COUNTY ALMOST SINCE YOU AND I BEGAN PRACTICING LAW IN ORANGE COUNTY, AND WAS IT EVER PRESENTED, THAT CASE OUT OF THE U.S. SUPREME COURT, TO THE TRIAL COURT?

WELL, JUDGE, IT WAS PRESENTED TO THE TRIAL COURT, IN THE EVIDENTIARY HEARING. MY FIRM BECAME INVOLVED, IN 1986. MY CLIENT HAD A DEATH WARRANT ON HIM. WE DRAFTED THE 3.850, AND IT WAS AMENDED, AND WE, IN THE 3.8.

, WE ESSENTIALLY HAVE ARGUED PER SE REVERSAL, BUT, JUDGE, WHETHER IT IS CHRONIC OR STRICKLAND, IN STRICKLAND, WE HAVE TO SHOW THAT THERE WAS A DEPARTURE FROM THE NORMATIVE STANDARDS OF PROFESSIONISM, WHICH WE SHOWED AND WHICH JUDGE COHEN AGREED WITH, IN THE PENALTY PHASE.

YOU AGREE WITH WHETHER YOU HAVE TO SHOW PREJUDICE OR NOT.

BETWEEN CHRONIC AND STRICKLAND. AND, JUDGE, CHRONIC IS DESCRIBED, AS YOU KNOW, THAT THE PREDICTIBILITY OF THE OUTCOME IS GREATLY UNDERMINED, AND WHERE WE HAVE THE CUMULATIVE EFFECT, HERE, IN THIS PARTICULAR CASE, WHERE THE ATTORNEY ALLOWED THE PROSECUTOR TO GIVE IMPROPER DEFINITIONS OF PREMEDICATION PREMEDICATIONTATION, WHERE THERE WAS -- PREMEDITATION, WHERE THERE WAS NO REQUEST FOR VOLUNTARY INTOXICATION. IN GARDENER --

LET ME ASK YOU ABOUT THIS VOLUNTARY OR INVOLUNTARY INTOXICATION, BECAUSE I THOUGHT THAT WAS, REALLY, ONE OF THE PRIME REASONS WHY YOU WERE PURSUING A REQUEST FOR EVIDENTIARY HEARING. THAT IF THE DEFENDANT, IF YOU ARE GOING TO CONCEDE THAT HE DID IT, THEN WHAT SHOULD HAVE GONE ALONG WITH THAT WOULD HAVE BEEN A VOLUNTARY INTOXICATION DEFENSE.

IF I WAS TRIAL COUNSEL.

AND THAT THAT WAS WHAT CON INSTITUTED -- CONSTITUTED DEFICIENT PERFORMANCE, NOT THAT HE ADMITTED THAT THE DEFENDANT COMMITTED THIS CRIME, BUT THAT, IN ADMITTING IT, THAT HE DIDN'T, THEN, DEVELOP THE INFORMATION ABOUT VOLUNTARY INTOXICATION. ISN'T THAT --

JUDGE -- NO, MA'AM. IT IS MORE FUNDAMENTAL THAN THAT. THIS RECORD IS DEVOID OF ANY REFERENCE TO THE FACT THAT MR. WILLIAMS WAS EVEN GIVEN A SHOT, BY HIS LAWYER, TO MAKE THE DECISION, AND IN NIXON, AS THE COURT POINTED OUT, AND, I BELIEVE, YOU AND JUSTICE QUINCE AND JUSTICE ANSTEAD JOINED THE MAJORITY, THE ISSUE, THERE, WAS WHETHER OR NOT THE RECORD HAD ANY EVIDENCE IN IT, WHETHER THE DEFENDANT AGREED TO ALLOWING THE TACTICAL DECISION. AND SO WE SAY THAT THE PREJUDICE, HERE, IS THERE IS NOTHING IN THE RECORD, IN THIS COURT, HISTORICALLY, FROM HARVEY THROUGH NIXON, RIGHT UP UNTIL THE PRESENT TIME, IF THERE IS NOTHING IN THE RECORD, THERE, SO, AT THE VERY LEAST, WE NEED AN EVIDENTIARY HEARING, AND WE ARE REQUESTING A NEW TRIAL, AND I AM INTO MY REBUTTAL TIME.

THANK YOU.

SCOTT BROWNE AGAIN. YOUR HONORS, THIS IS NOT --

MR. BROWNE, BEFORE YOU START, I AM CONCERNED, AND WE HAVE -- THE DELAY IN THIS CASE, THIS MOTION WAS FILED IN 1986. THE STATE'S RESPONSE WASN'T FILED UNTIL 1991, AND THERE WASN'T AN ORDER ENTERED UNTIL 1996? IT WAS, LIKE, A TEN-YEAR DELAY? DO YOU HAVE ANY EXPLANATION FOR WHY THE STATE DID NOT FILE A RESPONSE FOR FIVE YEARS, AND THEN, THEN, THERE WASN'T EVEN AN ORDER ENTERED FOR ANOTHER FIVE YEARS. WE ARE TALKING ABOUT TEN YEARS, IN THIS CASE?

THIS WAS NOT THE STATE'S FINEST HOUR. IF YOU LOOK BACK AT THE HISTORY OF THIS CASE, AND THE JUDGE DID A LENGTHY OPENING, EXPLAINING THAT THIS DELAY IS UNACCEPTABLE. THE STATE FINDS IT ABHORRENT, AND THERE ARE STEPS THAT WE HAVE TAKEN, NOW, THE ATTORNEY GENERAL'S OFFICE, WE SEND STATUS LETTERS OUT TO CHECK ON THE CASES THAT REMAIN IN THE CIRCUIT COURT NOW. THOSE STEPS WERE NOT IN PLACE BACK THEN T DISAPPEARED INTO A BLACK HOLE. I CANNOT EXPLAIN IT. I HAVE TRIED. I CAN'T.

I APPRECIATE YOUR CANDOR. THE OTHER QUESTION I HAVE IS, WE HAVE HAD A LOT OF DISPUTES ABOUT WHAT CONSTITUTES A FULLY-PLED MOTION OR WHAT WOULD BE ADEQUATE. IN LOOKING AT THE EXTENT OF THE DETAIL AND THE CLAIMS PRESENTED IN THIS MOTION, CAN THE STATE, REALLY, SAY THAT THERE WASN'T ENOUGH, HERE, TO GIVE AN EVIDENTIARY HEARING ON THE

GUILT PHASE OF THIS?

I DO, YOUR HONOR. FOR THIS REASON. BECAUSE I THINK THE RATIONALE IS CLEAR. WE MIGHT HAVE WANTED A LITTLE MORE DETAIL, BUT THE TRIAL COURT STATED THAT YOU CAN'T SHOW, EITHER THE DEFICIENCY OR THE PREJUDICE PRONG.

YOU CAN SAY THAT THERE SHOULDN'T HAVE BEEN ANYMORE DETAIL IN THE MOTION THAT WAS FILED BY THE DEFENDANT IN THIS CASE.

I THINK, ON VARIOUS ISSUES, THERE SHOULD HAVE BEEN, BECAUSE HE HAS A LAUNDRY LIST OF CLAIMS, LIKE FAILING TO RETAIN GUNPOWDER RESIDUE EXPERT, WITHOUT TELLING THE COURT WHETHER OR NOT HE HAD, EVEN -- IF YOU ARE TALKING ABOUT THE INTOXICATION ISSUE AND WHETHER OR NOT HE CONCEDED HIS CLIENT'S GUILT, I WILL GRANT YOU THAT IS A CLOSE CALL, BUT FOR THE OTHER ALLEGATIONS OF THE MOTION, IT WASN'T EVEN REMOTELY CLOSE.

IF IT WAS ENOUGH TO GIVE AN EVIDENTIARY HEARING ON THE PENALTY PHASE ON THIS SAME ISSUE, WHY ISN'T IT -- WASN'T IT ENOUGH TO GIVE AN EVIDENTIARY HEARING IN THE GUILT PHASE?

I WILL TRY AND EXPLAIN THAT, YOUR HONOR. IT IS CLEAR THE RECORD DOES REFUTE THE CLAIM THAT COUNSEL WAS INEFFECTIVE, BECAUSE COUNSEL DID NOT CONCEDE HIS CLIENT'S GUILT IN CLOSING ARGUMENT. WHAT COUNSDEL IS HE REPEATED HIS -- WHAT COUNSEL DID IS HE REPEATED HIS CLIENT'S DENIAL OF HAVING SHOT MARY ROBINSON. HE REPEATED THAT. BUT HE, ALSO, ARGUED AN ALTERNATIVE THEORY THAT, EVEN IF THE STATE COULD SHOW THAT FREDDIE LEE WILLIAMS DID IT, THEY CAN'T PROVE PREMEDITATION IN THIS CASE.

ISN'T THAT WHY THE FAILURE TO PURSUE EVIDENCE OF HIS INTOXICATION IN THE GUILT PHASE WOULD HAVE BEEN CRITICAL TO THAT, IF THE IDEA WAS THAT HE COULDN'T FORM THE INTENT, AND THAT -- AND THERE WAS EVIDENCE THAT HE WAS DRINKING, BUT THAT WASN'T DEVELOPED. ISN'T THAT WHAT THE EVIDENTIARY HEARING HAD, ALSO --

YOUR HONOR, I DON'T THINK SO. I THINK, IF YOU LOOK AT THE APPELLANT'S OWN TESTIMONY AT TRIAL, HIS TRIAL TESTIMONY, IN HIS STATEMENTS, REMEMBER, HE CALLED THE POLICE. HE HID A GUN, STATING, AND HE ADMITTED THIS AT TRIAL, BECAUSE HE DIDN'T WANT TO ADMIT TO THE HANDGUN. THE POINT DOESN'T HAD LEND THAT HE WAS SO INTOXICATED THAT HE COULDN'T FORM PREMEDITATION IN THIS CASE, AND TRIAL COUNSEL DID FORM THE IDEA THAT YOU MAY CONSIDER THAT ALCOHOL PLAYED A PART IN KIND OF A HEAT OF PASSION ALTERNATIVE SCENARIO, BUT HE NEVER ARGUED, AND THERE WAS NO EVIDENCE TO SUPPORT THE FACT THAT THE APPELLANT WAS SO INTOXICATED THAT HE COULD NOT FORM PREMEDITATED OR FIRST -- SO I CAN UNDERSTAND THE FRUSTRATION, YOUR HONOR, BECAUSE WE ARE LEFT WITH THE ORDER. I THINK THE RATIONALE IS CLEARLY STATED. IT IS CLEAR, FROM THE RECORD, IN THAT THE TRIAL JUDGE INDICATED HE READ THE ENTIRE RECORD. THERE WERE ALTERNATIVE THEORIES ARGUED TO THE JURY, AND ONE WAS ABSOLUTELY LOCKED IN, BY THE APPELLANT'S PRETRIAL STATEMENTS.

THE JUDGE, ALREADY, HAS FOUND, FROM THIS EVIDENCE, A REASONABLE JUROR MIGHT HAVE FOUND THE DEFENDANT WAS LIKELY INTOXICATED AT THE TIME OF THE MURDER AND COULD HAVE WEIGHED DEFENDANT'S INTOXICATED STATE AS A MITIGATING FACTOR, BEFORE IMPOSING THE DEATH PENALTY. WHY DOESN'T THAT SAME EXACT FINDING SHOW THERE NEEDS TO AND EVIDENCE YAERING -- AN EVIDENTIARY HEARING ON THE GUILT PHASE?

BECAUSE WHEN THE TRIAL JUDGE DENIED THE HEARING ON THE GUILT-PHASE ISSUES, HE, OBVIOUSLY, DID NOT HAVE THE BENEFIT OF THE TESTIMONY THAT CAME IN LATER, AND THE STATE CONTENDS THAT IT IS UNFAIR TO GO LOOK AT THE TESTIMONY THAT WAS DEVELOPED LATER. YOU NEED TO LOOK AT WHAT THE TRIAL JUDGE DID, WHEN HE SUMMARILY DENIED THIS.

HE DIDN'T HAVE THE BENEFIT OF THE TESTIMONY, AND, I THINK, THE QUESTION IS SHOULD HE HAVE?

I ADMIT, YOUR HONOR, IT COULD BE A CLOSE CALL, BUT I THINK THE RATIONALE IS CLEAR, AND I HAVE GONE, IN MY BRIEF, AND DISCUSSED WHY THE RATIONALE IS SUPPORTED, AND I DON'T THINK WE NEED TO BE LEGAL TURNING HERE. WE ARE GOING TO GO BACK FOR EVIDENTIARY HEARING? THE RECORD CLEARLY REFUTES HIS ALLEGATIONS. THE RATIONALE MAY NOT HAVE BEEN TOO DETAILED, BUT I THINK IT IS SUPPORTED BY THE RECORD IN THIS CASE, AND ON VOLUNTARY INTOXICATION, IF YOU LOOK AT THE APPELLANT'S OWN TESTIMONY, HE HAD A VERY GOOD RECALL OF WHAT HAPPENED THAT NIGHT, HOW MANY BEERS HE HAD. HE WAS NOT INTOXICATED. I ADMIT, YOUR HONOR, IT COULD BE A CLOSE CALL. THE STATE HAS NOTHING FURTHER.

I HAD RESERVED SEVEN MINUTES, AND I KNOW ON THE LAST QUESTION IT EIGHT INTO IT, SO IF I COULD HAVE SIX. THAT IS THE CLOSEES ADMISSION THAT I HAVE HEARD BY A POPEENT WITH THE AG'S OFFICE. THE ATTORNEY KNOWS THAT THIS IS UNREFUTED THAT THIS SHOULD GO BACK. 9.140, IN A CAPITAL CASE, BECAUSE DEATH IS DIFFERENT, OUR LEGISLATURE, OUR COURTS HAVE SAID, THAT, IN THE INTEREST OF JUSTICE, THE WHOLE RECORD SHALL BE LOOKED AT, AND NO QUESTION THE JUDGE SHOULD HAVE HAD THE EVIDENCE THAT WAS CLEAR. THE --

WAS THERE ANY INTOXICATION EVIDENCE PRESENTED AT THE TRIAL, ANY WITNESSES WHO SAID THEY DRANK WITH HIM OR ANYONE WHO SAW HIM IN AN INTOXICATED CONDITION?

THERE WAS SOME EVIDENCE ON DRINKING. THE PROBLEM IS, JUSTICE QUINCE, IS, IF YOU COME BACK, KIND OF TO THE COMPASS POINT, NORTH, HERE, THE QUESTION IS DOES THE RECORD SHOW ANY EVIDENCE THAT FREDDIE LEE WILLIAMS AUTHORIZED HIS ATTORNEY TO STAND UP, AT PAGE 724, AND SAY HE SHOT THE GUN, WHEN THE DEFENDANT SAID HE DIDN'T DO IT! AND IT IS CLEAR, IF YOU LOOK AT THE CONTEXT OF THAT REBUTTAL ARGUMENT, THIS LAWYER WAS SCRAMBLING, BECAUSE THE PROSECUTOR DID A GREAT JOB IN HIS FINAL, AND HE LAID IT ON HIM. HE CALLED --

EXCUSE ME. I AM SORRY, JUSTICE.

IS THE ANSWER TO THE QUESTION, THEN, THAT THERE WERE NO WITNESSES PRESENTED AT TRIAL, WHO SAID THIS MAN WAS INTOXICATED, OR HAD BEEN DRINKING HEAVILY, OR --

THERE WERE -- CORRECT. RIGHT.

I UNDERSTAND AS TO GUILT.

NO, MA'AM. THERE WEREN'T. THERE WERE IN WITNESSES THAT SAID HE HAD HAD SOMETHING TO DRINK BUT THAT IS 2 IT. THERE WAS NOTHING OF THE MAGNITUDE OF -- BUT THAT IS IT. THERE WAS NOTHING OF THE MAGNITUDE OF WITNESSES THAT WEREN'T CALLED THAT SAID FREDDIE LEE WILLIAMS WAS ENTIRELY INTOXICATED, THAT ENTIRE DAY, AND THAT HIS HISTORY WAS THAT HE DRANK ALL THE TIME, FOR MANY YEARS, PLUS WE HAD MEDICAL TESTIMONY THAT SHOWED THAT THE MMPI, THE WEXLER, AND OBJECTIVE PSYCHOLOGICAL TESTS SHOWED THAT THE NEURO PSYCHES MATCHED, AND WHAT ROBERT THORNTON SAID, IN ORLANDO THAT, THE CLIENT HAD AN ATROPHY I HAD BRAIN THAT WAS -- AN ATROPHY BRAIN THAT WAS CONSISTENT WITH SHEERINGS FROM BEATINGS. -- FROM SHAERINGS IN BEATINGS. WHAT IS PLED IN THE 3.850, JUDGE COHEN HEARD THAT, ALREADY, AND SET ASIDE HIS DEATH SENTENCE, AND THEN WHAT THE STATE DID --

I WAS GOING ONE STEP AT A TIME. OKAY. GO AHEAD.

RIGHT. AND SO WHAT HAPPENED, YOUR HONOR, IN THAT ORDER, THE JUDGE INDICATED THAT

EVIDENCE OF PROFOUND INTOXICATION, OVER HIS LIFETIME, AS AN ADULT, COUPLED WITH SPECIFIC INTOXICATION THE DAY OF THE HOMICIDE, COUPLED WITH MENTAL ILLNESS, MY CLIENT IS NO ANGEL. HE HAD BEEN IN COD A LONG TIME, AND YOU HAVE -- IN D.O.C. A LONG TIME, AND YOU HAVE HIS MEDICAL RECORDS. IN D.O.C., THEY HAD TO GIVE HIM PSYCHO TROP I CAN MEDICATION, BECAUSE -- PSYCHO TROPIC MEDICATION, BECAUSE HE HAD HALL USTORY -- HALLUCINATORY INDICATIONS. THIS ALL CAME OUT AT THE TIME OF TRIAL. AT THE EVIDENTIARY HEARING IN NOVEMBER OF '98, THERE WAS TESTIMONY THAT THIS STATE, IN 1980, HAD A NETWORK OF PUBLIC DEFENDERS THAT SHARED THIS INFORMATION. THERE WERE LIFE OVER DEATH SEMINARS, STARTING IN GREEN COVE SPRINGS, IN 1979, AND YET THE TRIAL ATTORNEY ADMITTED HE DIDN'T GO TO THE SEMINARS AND DIDN'T TAKE ADVANTAGE OF THIS INFORMATION. NOW, OBVIOUSLY THE TRIAL JUDGE, AND IT SAYS IN HIS ORDER, I DO NOT HAVE, BEFORE ME, THE ISSUE OF WHAT A JURY MIGHT HAVE DONE ON THE QUESTION OF VOLUNTARY INTOXICATION.

BUT I GUESS WHAT I AM HAVING TROUBLE WITH YOUR ARGUMENT, TODAY, IS IT DOES SEEM THAT YOU ARE ARGUING TWO INCONSISTENT POSITIONS. ONE IS THAT THE -- THIS DEFENSE COUNSEL SHOULD HAVE CONSULTED HIS CLIENT, BEFORE HE MADE HIS CLOSING ARGUMENT, IN WHICH HE SAID, WELL, IF YOU DON'T BELIEVE THAT HE DIDN'T DO IT, THEN YOU SHOULD CONSIDER THAT HE PROBABLY WAS DIMINISHED IN HIS CAPACITY, AND THE OTHER IS THAT, REALLY, WHAT HE SHOULD HAVE BEEN DOING WAS TRYING TO GET HIS CLIENT TO ADMIT THAT HE HAD COMMITED THIS CRIME, AND THAT WHAT HE WAS INEFFECTIVE AT FAILING TO DO WAS TO HAVE PRESENTED A VERY STRONG VOLUNTARY INTOXICATION DEFENSE. AREN'T THOSE TWO TOTALLY DIFFERENT INCONSISTENT POSITIONS THAT YOU ARE ARGUING TODAY?

JUSTICE PARIENTE, THAT MIGHT BE ANALOGOUS TO ALTERNATIVE PLEAD NOT GUILTY A CIVIL COMPLAINT, BUT I RESPECTFULLY SUBMIT YOU ARE A COUPLE OF JUMPS AHEAD, BECAUSE WHERE WE ARE RIGHT NOW IS THAT THE TRIAL JUDGE DENIED US THE OPPORTUNITY TO PRESENT EVIDENCE ABOUT WHAT WAS PRESENTED TO FREDDIE LEE WILLIAMS AT THE TIME AND WHAT HAPPENED AT THE TIME AND WHAT WAS NOT DEVELOPED. AND HAD THAT BEEN DONE, THEN, IF WE START WITH A CLEAN SLATE, AND MY CLIENT WAS DENIED HIS EFFECTIVE ASSISTANCE OF COUNSEL, AT SIXTH AMENDMENT, THE NEW TRIAL LAWYER, IF WE PICK A JURY, TODAY, CAN MAKE A DECISION ON WHAT TACT IS GOING TO BE PRESENTED, AND WHAT OCCURRED, HERE, IS THAT THE TRIAL LAWYER HE VICE RATED THAT -- EVISCERATED THAT, AT THE EXPENSE OF HIS CLIENT DAN NO WORK.

SO WOULD YOU AGREE, THEN, THAT IF THERE ARE THESE TWO POSSIBLE DEFENSES, ONE OF "I DIDN'T DO IT, I AM TOTALLY INNOCENT", AND THE OTHER IS THAT "I HAVE LONG-TERM ALCOHOL USE. I WAS DRUNK THAT NIGHT. I COULD NOT FORM THE PREMEDITATION TO COMMIT FIRST-DEGREE MURDER." AND THE TRIAL JUDGE, THE TRIAL ATTORNEY DECIDES TO GO WITH THE, AFTER CONSULTATION WITH THE DEFENDANT, DECIDES TO GO WITH THE "I DIDN'T DO IT" DEFENSE, YET YOU STILL HAVE ALL OF THIS EVIDENCE THAT HE HAS LOCK TERM USE OF -- LONG-TERM USE OF ALCOHOL AND YOU DON'T PUT THAT ON, WOULD YOU AGREE, THEN, THAT THERE WOULD NOT BE AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM?

I THINK WHAT I WOULD DO, IF I WAS A TRIAL -- THE SIMPLE ANSWER IS YES. THERE WOULD NOT BE AN IAC CLAIM, IN ALL PROBABILITY, BUT IF I WAS THE TRIAL LAWYER, AND I THINK ANY PRUDENT LAWYER WOULD PROFFER IT OUTSIDE THE PRESENCE OF THE JURY AND MAKE A RECORD, HAVING THE CLIENT EXPLAIN THAT THE LAWYER TOLD HIM HIS ALTERNATIVES, AND, IN FACT, I THINK THIS COURT HAS SET A COURSE ON THAT, IN NIXON, ABOUT IF A TRIAL JUDGE IS CONFRONTED WITH A SITUATION WHERE A LAWYER GETS UP, IN OPENING, AND BASICALLY CONCEDES HIS CLIENT'S GUILT. AS I READ NIXON, THIS COURT HAS ASKED TRIAL JUDGES TO BE THE GATE KEEPERS AND GET COUNSEL AND PUT ON THE RECORD, HEY, DO YOU KNOW WHAT YOU ARE DOING HERE?

MR. MULLER, I THINK YOUR TIME IS UP.

THANK YOU.

MR. MULLER, I BELIEVE YOU STARTED DOWN THIS ROAD, AS A LAWYER FOR THE VOLUNTEER RESOURCE CENTER.

YES, SIR.

AND HAVE STAYED WITH THIS CASE IN THE COURT, AND THE BAR AND THE PEOPLE OF FLORIDA ARE IN YOUR DEBT, FOR YOUR CONTRIBUTIONS TO THE ADMINISTRATION OF JUSTICE IN DOING THAT IS, AND WE APPRECIATE IT VERY MUCH.

THANK YOU, JUDGE.

THE COURT WILL BE IN RECESS FOR 15 MINUTES.

PLEASE RISE.