Warfield Raymond Wike v. State of Florida

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS WIKE VERSUS STATE. MR. HARRISON.

MAY IT PLEASE THE COURT. YOUR HONOR, I AM BAYA HARRISON, COURT-APPOINTED REGISTRY COUNSEL FOR WARFIELD WIKE, THE APPELLANT. WIKE APPEALS TO THIS COURT FROM THE SEPTEMBER 27, 2000 ORDER RENDERED BY THE TRIAL COURT, DENYING HIS MOTION TO VACATE HIS JUDGMENTS OF GUILT AND DEATH SENTENCE, AFTER A 3.850 HEARING. YOUR HONOR, THIS IS THE FOURTH TIME THIS CASE WILL HAVE BEEN BEFORE THIS COURT, SO I AM GOING TO CUT RIGHT TO THE CHASE. I KNOW THAT YOU ARE VERY FAMILIAR WITH THE FACTS. SUFFICE IT TO SAY THAT, IN '89, WIKE WAS FOUND BY A SANTA ROSA JURY, TO HAVE ABDUCTED TWO YOUNG GIRLS AROUND MIDNIGHT ON SEPTEMBER 21, 1988, OR SHORTLY THEREAFTER, TAKEN THEM IN HIS CAR OUT TO AN ISOLATED LOCATION, SEXUALLY BATTERED BOTH CHILDREN, KILLED ONE OF THE GIRLS WITH A SHARP INSTRUMENT AND ALMOST KILLED THE OTHER WITH A SHARP INSTRUMENT. THE GUILTY VERDICTS WERE AFFIRMED BY THIS COURT ON THE FIRST APPEAL, BUT THE DEATH SENTENCE WAS REVERSED. THEN WE WENT BACK FOR A SECOND PENALTY PHASE TRIAL. WIKE WAS, AGAIN, SENTENCED TO DEATH, BUT THAT DEATH SENTENCE WAS REVERSED, AS WELL, BASED UPON A PROCEDURAL ERROR. IN THE THIRD 1995 PENALTY-PHASE TRIAL, WIKE WAS SENTENCED TO DEATH ONCE AGAIN, AND THAT DEATH SENTENCE WAS AFFIRMED BY THIS COURT. I WAS APPOINTED. WE FILED A 15-COUNT POSTCONVICTION MOTION, WHICH, AFTER AN EVIDENTIARY HEARING ON CERTAIN OF THE COUNTS, WAS DENIED BY THE TRIAL COURT, AND THIS APPEAL FOLLOWS.

MY UNDERSTANDING IS THAT YOU ARE NOT APPEALING ANY OF THE COURT'S DECISIONS NOT TO GIVE AN EVIDENTIARY HEARING ON CERTAIN CLAIMS, CORRECT?

WE LOOKED VERY HARD. THERE WAS A PRACTICAL CONSIDERATION HERE.

I WANT TO MAKE SURE, ALSO ON THE FIRST CLAIM FOR THE CHANGE OF VENUE, ALTHOUGH YOU, THE EVIDENTIARY HEARING, YOU ARGUED THERE WAS INEFFECTIVE ASSISTANCE IN NOT MOVING FOR CHANGE OF VENUE, BOTH AT THE GUILT PHASE, AS WELL AS THE SECOND PENALTY PHASE. ON APPEAL YOU ARE ONLY ARGUING AN ERRONEOUS FINDING OF THE TRIAL COURT ON THE INEFFECTIVE ASSISTANCE OF THE GUILT.

THAT'S CORRECT, YOUR HONOR, BECAUSE FRANKLY WE LOOKED AT THE RECORD, AND THERE JUST WASN'T ENOUGH WITH REGARD TO THE FINAL PENALTY-PHASE TRIALS.

ON THAT POINT, SINCE WE ARE HERE NOT ON THE APPEAL OF AN ISSUE OF A DENIAL OF A CHANGE OF VENUE BUT WHETHER COUNSEL WAS INEFFECTIVE FOR NOT MOVING FOR CHANGE OF VENUE, HOW DO YOU GET AROUND THE TESTIMONY OF THE ORIGINAL TRIAL COUNSEL AND THE TRIAL COURT FINDING IN THIS CASE THAT THE DEFENDANT, YOU KNOW, THEY WERE PREPARED TO FILE A MOTION FOR CHANGE OF VENUE, BUT THAT THE DEFENDANT TOLD THEM NOT TO DO IT, AND THAT THEY RESPECTED THOSE WISHES. THIS IS EXPERIENCED COUNSEL, WHO WAS OTHERWISE GOING TO DO. THAT HOW DO YOU GET AROUND THAT, AND THEN SECOND OF ALL, HOW DO YOU PROVE THE PREJUDICE PRONG?

YOUR HONOR, RESPECTFULLY, TRIAL COUNSEL, WHO IS NOW A CIRCUIT JUDGE, WE FEEL, WAS MISTAKEN. HE WAS JUST WRONG. MR. WIKE HAD NO REASON TO WANT THAT CASE TRIED IN SANTA ROSA COUNTY. THERE WAS A TREMENDOUS AMOUNT OF PRETRIAL PUBLICITY. HE HAD

EVERY REASON TO WANT TO FIGHT THAT ISSUE, AND HE ADAMANTLY DENIED WHAT HIS TRIAL COUNSEL SAID.

WELL, AS SOON THAT, THOUGH, AND AGAIN, SINCE WE HAVE HAD AN EVIDENTIARY HEARING, ISN'T THAT UP TO THE TRIAL COURT, TO WEIGH THE CREDIBILITY OF THE WITNESSES IN MAKING A DECISION ON CREDIBILITY, AND DON'T WE HAVE TO DEFER TO THOSE FACTUAL FINDINGS?

I THINK YOU CERTAINLY HAVE TO GIVE DEFERENCE, YOUR HONOR, TO THE TRIAL COURT. HOWEVER, THE ANSWER THAT HIS TRIAL COUNSEL GAVE WAS JUST TOO PAT. THIS ISSUE OF THIS MATTER OF VENUE IS SOMETHING THAT EVERY TRIAL LAWYER HAS GOT TO TAKE VERY, VERY SERIOUSLY. THERE WAS NOTHING, NOTHING DOCUMENTED IN TRIAL COUNSEL'S FILE, TO INDICATE THAT WIKE HAD, IN FACT, WAIVED THIS. THE ANSWER, RESPECTFULLY, IS JUST TOO PAT.

WHEN YOU SAY JUST TOO PAT, IS THERE NOT EVIDENCE OF THE COLLECTION OF THAT INFORMATION, OF VIDEOS THAT ARE IN THERE? I WAS UNDER THE IMPRESSION THAT THERE WERE, ALSO, NOTES OF MEETINGS WITH THE CLIENT.

THOSE NOTES NEVER MADE IT INTO THE RECORD IN THIS CASE AT ALL, YOUR HONOR, AND, YES, THAT IS THE POINT. THE TRIAL LAWYER ADMITTED THAT THERE WAS THIS VERY, VERY HOSTILE ENVIRONMENT IN SANTA ROSA COUNTY. HE TALKED ABOUT HOW CONSERVATIVE THE COUNTY WAS AND HOW PEOPLE WERE PRO DEATH PENALTY ALL OVER THE PLACE, YET HE NEVER BOTHERED EVEN TO FILE THE MOTION, AND THERE IS NO INDICATION IN THE RECORD OF ANY NOTES OR ANYTHING OF THAT NATURE TO THE EFFECT THE TRIAL COUNSEL REALLY TRIED, EVEN IF WIKE ORIGINALLY SAID, YEAH, I WANT TO STAY HERE, THERE IS NO INDICATION IN THE RECORD TO DO WHAT I SUBMIT IS A TRIAL LAWYER, IN A SITUATION LIKE THIS, HAS GOT TO DO. THE TRIAL LAWYER CAN'T SAY, OKAY IF YOU WANT TO TRY THE CASE HERE THAT IS FINE. WE WILL JUST BE --

WHAT WILL WE DO, ON THE OTHER HAND, IF THE TRIAL COUNSEL HAD INSISTED, AGAINST THE WISHES OF THE DEFENDANT, TO MOVE IT TO ANOTHER VENUE, AND THERE WAS A CONVICTION THERE? WOULDN'T WE BE HERE WITH THE ARGUMENT THAT IT SHOULD HAVE BEEN TRIED?

YES, YOUR HONOR, I AGREE WITH. THAT I HAVE TO CONCEDE THAT, BUT I THINK THIS IS ALMOST LIKE A NIX ONE ISSUE. I THINK, IN A SITUATION LIKE THIS, SO THAT ISSUES LIKE THIS DON'T KEEP COMING UP, THERE SHOULD HAVE BEEN SOMETHING ON THE RECORD TO THE EFFECT, BY THE TRIAL JUDGE, MR. WIKE, ARE YOU SURE YOU WANT TO TRY THIS CASE HERE, IN SANTA ROSA COUNTY? THE PROSECUTOR HAS BEEN OUT ON THE STREET, SAYING HOW HORRIBLE THIS MURDER WAS. THERE IS A REPORT IN THE PENSACOLA PAPER SAYING THAT THIS IS THE WORST MURDER IN THE HISTORY OF SANTA ROSA COUNTY.

HOW DID WE DEVELOP THAT RULE? THIS IS POSTCONVICTION. WE ARE TALKING ABOUT WHETHER THE DEFENSE COUNSEL, WHO WE KNOW THAT HE PREPARED FOR A POTENTIAL MOTION FOR CHANGE OF VENUE, THIS ISN'T SOMEBODY THAT WAS JUST CARELESS AND JUST OVERLOOKED IT AND NOW IS TRYING TO RAGSLIZE IT. YOU ARE ASKING US TO ANNOUNCE A -- RATIONALIZE IT. YOU ARE ASKING US, IN POST CONVICTION RULING, THAT DEFENSE COUNSEL WAS INEFFECTIVE FOR HIS LACK OF ASSISTANCE.

I AM SAYING THERE WAS NOTHING TO DOCUMENT WHAT TRIAL COUNSEL SAID, THAT, OX WELL, THIS IS NOT A PROBLEM -- THAT O. WELL, THIS IS NOT A -- THAT O WELL, IT THIS IS NOT A PROBLEM BECAUSE MY CLIENT WAIVED HIS RIGHTS. THERE IS NO LETTER TO MR. WIKE. I AM HERE IN MY OFFICE AND YOU ARE THERE IN THE JAIL. ARE YOU SURE YOU WANT TO DO THIS?

AS I UNDERSTAND IT, DEFENSE COUNSEL WAS ACTUALLY LOOKING AT HIS PUBLIC DEFENDER RECORD AND ACTUALLY WENT THROUGH SEVERAL DATES, WHERE THIS MOTION FOR CHANGE OF VENUE WAS ACTUALLY TALKED ABOUT IN HIS NOTES. WE DON'T HAVE ANYTHING THAT REFUTES

THAT, DO WE?

NO, BUT THOSE NOTES WERE NOT PLACED IN THE RECORD IN THIS PARTICULAR CASE, AND, AGAIN --

DOES IT HAVE TO BE?

WELL, I DON'T THINK IT ABSOLUTELY HAS TO BE, BUT IT CERTAINLY CASTS DOUBT ON WHETHER OR NOT THIS ACTUALLY HAPPENED. I WANT TO SAY THIS, TOO. IF --

LET ME ASK YOU THIS. WAS THAT DOUBT EXAMINED IN THE CROSS-EXAMINATION?

WE TRIED. WE TOOK, THE JUDGE, JUDGE TERRELL, TRIAL COUNSEL, APPEARED BY TELEPHONE, AND, YES, I THINK THERE WAS AN EFFORT TO ATTACK THAT ISSUE, BUT ARE, YOU KNOW, IT IS HARD TO CROSS-EXAMINE A CIRCUIT JUDGE, BUT WE DID THE BEST WE COULD, AND I AM JUST SAYING FOR EXAMPLE, IF YOU LOOK CAREFULLY AT THIS RECORD, WHAT YOU SEE DURING THAT EVIDENTIARY HEARING, AND I SAY THIS RESPECTFULLY, IS THE DEFENSE TEAM GOING OUT OFIES WAY, GOING OUT OF ITS -- OUT OF ITS WAY, GOING OUT OF ITS WAY TO JUSTIFY, NOT DOING A LOT OF THINGS FOR MR. WIKE THAT THEY SHOULD HAVE DONE. FOR EXAMPLE, THE INVESTIGATOR, REALLY, HURTS WHAT I AM GOING TO GET TO NEXT, WHICH IS AN ALIBI DEFENSE, BY SAYING THAT THE ALIBI OF WHAT WAS AT A DIFFERENT TIME THAN JUDGE TERRELL ACTUALLY TALKED ABOUT, IN OTHER WORDS WHAT, THEY TAPE-RECORDED. WHEN DEFENSE COUNSEL OR DEFENSE INVESTIGATORS WENT TO MEET WITH MR. WIKE, THEY TAPE-RECORDED THAT MEETING. WHY? THEY WERE PROTECTING THEMSELVES FROM THE SITUATION WHERE WE ARE HERE TODAY. ALL I AM SAYING IS IT IS JUST, IT IS VERY DIFFICULT, WHEN YOU TRY TO DEFEND A PERSON IN A CASE LIKE THIS, AND YOU HAVE DEFENSE COUNSEL WHO ARE GOING OUT OF THEIR WAY. IT LOOKS LIKE TO PROTECT THEMSELVES MORE THAN THEY ARE PROTECTING THE CLIENT.

BUT ISN'T THAT A CONCERN OF EVERYBODY, INCLUDING THE COURT, THAT THIS MIGHT BE A HOSTILE VENUE, AND DIDN'T THE COURT GO OUT OF ITS WAY TO, IN THIS INSTANCE, SEE IF PEOPLE HAD HEARD ABOUT IT, HOW PUBLICIZED IT WAS? WASN'T THIS GONE INTO IN SOME DETAIL IN THIS TRIAL, JUST FOR THAT VERY REASON?

YOUR HONOR, I HAVE TO ADMIT DURING VOIR DIRE, THERE WAS A FAIR EFFORT BY THE TRIAL COURT TO EXAMINE THE PROSPECTIVE JURORS, TO SAY -- TO SEE THAT THEY WERE NOT GOING TO BE PREJUDICED TO MR. WIKE, BUT YOU KNOW WHAT YOU FIND IN THESE CASES IS --

WITH THAT CONCESSION, WHAT DO YOU SUGGEST THE TRIAL COUNSEL CAN DO IN THIS INSTANCE, IF HIS CLIENT IS TELLING HIM THIS IS WHERE I WANT TO BE TRIED. THE JUDGE HAS LOOKED INTO IT, AND TRIED TO SEE THAT IT IS AN IMPARTIAL VENUE, AND THE CLIENT IS INSISTING THIS IS WHERE I WANT TO BE TRIED. HOW CAN COUNSEL BE FAULTED?

RESPECTFULLY, YOUR HONOR, FIRST OF ALL, TRIAL COUNSEL ADMITTED THAT THIS WAS A VERY BAD PLACE FOR MR. WIKE TO BE TRIED, AND WHAT I DON'T SEE, AND I DON'T THINK COUNSEL, OPPOSING COUNSEL CAN SHOW, ANY EFFORT TO DISSUADE MR. WIKE FROM THAT OR ANY SUBSTANTIATION, ANY CORROBORATION OF MR. WIKE'S SUPPOSED INSISTENCE THAT THE CASE BE TRIED IN SANTA ROSA COUNTY.

BUT JUSTICE SHAW IS BRINGING UP THE SECOND PRONG. LET'S ASSUME THAT THERE IS INEFFECTIVENESS, JUST FOR THE SAKE OF THIS ARGUMENT, THIS QUESTION. YOU STILL HAVE TO FULFILL THE PREJUDICE PRONG, WHICH IS, GOES BACK TO, IN FACT, WHETHER, AT LEAST IN THIS CASE, THERE IS PROOF THAT THEY WERE, THAT THEY COULD NOT SEEK A FAIR AND IMPARTIAL JURY, THAT THEY DIDN'T SEEK A -- THAT THEY DIDN'T SEAT A FAIR AND IMPARTIAL JURY, AND THAT THIS GUILT PHASE IS UNRELIABLE, DUE TO THE ERRORS OF TRIAL COUNSEL. THAT IS A PRETTY HEAVY BURDEN YOU HAVE.

WELL, ACTUALLY I DON'T THINK IT IS, YOUR HONOR, BECAUSE I DO THINK THE TRIAL COURT BELOW, IN OUR POSTCONVICTION HEARING, WAS WRONG ABOUT PREJUDICE. WHAT IS THE PROPER TEST FOR PREJUDICE, WHERE THE ISSUE IS INEFFECTIVE ASSISTANCE OF COUNSEL, FOR TAIL YOUR TO SEEK -- FOR FAILURE TO SEEK A VENUE CHANGE. I THINK THE ELEVENTH CIRCUIT, IN MEEKS VERSUS MOORE, DEMONSTRATED THAT IT IS NOT AN OUTCOME DETERMINATIVE TEST. IN OTHER WORDS YOU DON'T LOOK, YOU DON'T SAY, WELL, IF THEY HAD JUST CHANGED VENUE, THAT MR. WIKE WOULD NOT HAVE BEEN CONVICTED AND HE WOULD NOT HAVE BEEN SENTENCED TO DEATH. THE QUESTION IS AND THE QUESTION SHOULD BE, IF HIS LAWYER HAD FILED A STRONG MOTION, HAD GOTTEN IN THERE AND PUT ON WITNESSES AND PUT THESE 50 AFFIDAVITS INTO EVIDENCE AND PUT THESE UP IN ARTICLES AND TELEVISION REPORTS IN THERE, WOULD, IS THERE A REASONABLE LIKELIHOOD THAT THE TRIAL JUDGE WOULD HAVE GRANTED THAT VENUE CHANGE MOTION, AND I THINK IT IS CLEAR THAT THAT IS EXACTLY WHAT WOULD HAVE HAPPENED, SO ON THAT BASIS, WE ASK YOU TO REVERSE ON THE SCENE EW ISSUE. -- ON THE VENUE ISSUE USE.

BUT YOU ARE SAYING IT IS A LESS STRENUOUS TEST THAN, SAY, IF A MOTION HAD BEEN FILED FOR A CHANGE OF MOTION VENN -- FOR A CHANGE OF VENUE, THE JUDGE WOULD HAVE DENIED IT. IF IT WENT UP ON APPEAL, WHAT WOULD HAVE BEEN SHOWN TO ESTABLISH A CHANGE OF VENUE ISSUE?

I THINK THE ISSUE IS, SHOULD THE TRIAL, IF THE ISSUE HAD BEEN PROPERLY PRESENTED AND ARGUED, THAT IS WHAT THE LAWYER IS THERE FOR.

IF THE JUDGE DENIED IT AND WENT UP ON HIS APPEAL, WHICH IS WHAT THE JUDGE DID IN THIS CASE, WHAT WOULD HAVE BEEN THE STANDARD TO REVERSE THE JUDGE ON DENYING THE MOTION?

I THINK IT WOULD HAVE BEEN A DISCRETIONARY --

BASED ON WHETHER, IN FACT, A FAIR AND IMPARTIAL JURY HAD BEEN SELECTED.

YES.

AND DO YOU HAVE ANY, IS THERE ANY ARGUMENT THAT THE JURY, IN THIS CASE, IS NOT A FAIR AND IMPARTIAL JURY?

I THINK THAT IT IS QUITE QUESTIONABLE. I THINK, OF THE 75 VENIRE PEOPLE 45 PEOPLE KNEW ABOUT THE CASE. AND WHEN YOU REALLY LOOK AT THE RECORD, IT DOESN'T APPEAR THAT THESE JURORS WERE REALLY ASKED HARD QUESTIONS ABOUT THEIR FEELINGS, AND THE PROBLEM IN THESE CASES IS THAT THESE VENIRE PEOPLE GET INTO A PATTERN. YOU KNOW, THEY WILL NOD THEIR HEAD AND SAY, YES, I AM NOT GOING TO BE PREJUDICED AND SURE I CAN BE FAIR, WHEN JUDGE TERRELL, HIMSELF, SAID THAT THIS WAS A VERY CONSERVATIVE, PRO-DEATH-PENALTY, ANTI-WIKE COUNTY, I MEAN, THESE PEOPLE WERE UNDERSTANDABLY UPSET ABOUT WHAT THE NEWSPAPER SAID WAS THE WORST MURDER, WORST HOMICIDE IN THE HISTORY OF SANTA ROSA COUNTY. I AM GOING TO GET SHORT ON MY TIME. LET ME JUST GO TO THE ALIBI WITNESS ISSUE, IF I COULD, VERY, VERY BRIEFLY. I WILL CONCEDE THAT MY FIRST ATTEMPT TO REALLY TRY TO SCORE POINTS IN THE COURT BELOW DID NOT WORK, BECAUSE ACTUALLY WORKING WITH THE STATE, WE FOUND MR. WIKE'S, WHAT HE THOUGHT WAS HIS KEY ALIBI WITNESS. THE WOMAN THAT HE WAS SUPPOSEDLY WITH UP UNTIL SIX OR 7:00 A.M. IN THE MORNING, WE LOCATED HER AFTER 11 YEARS OF REMARKABLE, BUT SHE DID NOT HONESTLY HELP MR. WIKE. IN FACT SHE SAID NO WAY, THAT SHE WAS NOT WITH HIM IN THOSE EARLY-MORNING HOURS OF THE 22d. HOWEVER, IF YOU REALLY LOOK AT THE RECORD, YOU WILL SEE THAT DEFENSE COUNSEL DIDN'T CALL ANY ALIBI WITNESSES, NOT ONE ALIBI WITNESS, AND MR. WIKE HAD AN ALIBI, AT LEAST UP UNTIL ABOUT 1:15 A.M., ON THE NIGHT OF SEPTEMBER, PARDON

ME, IN THE EARLY-MORNING HOURS OF SEPTEMBER 22, BECAUSE HE HAD BEEN AT A BIKER BAR, THE SILVER EAGLE SALOON, UP UNTIL ABOUT 1:15, BUT WHAT TRIAL COUNSEL DID WAS TRIAL COUNSEL CONCENTRATED NOT ON THE TIME THE CHILDREN WERE ABDUCTED BUT ON THE TIME THAT THEY WERE FOUND. IN OTHER WORDS THEY WERE FOUND, ADMITTEDLY, FIVE OR 6:00 A.M. ON THE 22d, BUT THEY WERE ABDUCTED RING ACCORDING TO JUDGE TERRELL, HIMSELF, AROUND MIDNIGHT OF THE 21st OR SHORTLY THEREAFTER. THIS IS WHAT JUDGE TERRELL TESTIFIED TO DURING THE EVIDENTIARY HEARING. HE SAID THE RELEVANT TIME FRAME IN THIS CASE WAS AFTER MIDNIGHT, AND IN THE HOURS OF THE AFTER-MIDNIGHT, 1 A.M., SOMEWHERE IN THAT TIME FRAME. WELL, WIKE HAD AN ALIBI FOR THAT TIME. HE WAS AT THIS BIKER BAR, AND DEFENSE COUNSEL NEVER CALLED TAMMY OSBORNE, AND WE KNOW, AND I WILL BE THE FIRST TO ADMIT, BECAUSE I KNOW OPPOSING COUNSEL IS GOING TO TALK ABOUT IT, I WILL DEGREE THAT THERE WAS A -- I WILL AGREE THAT THERE WAS A LOT OF FORENSIC SCIENTIFIC EVIDENCE AGAINST WIKE. I CONCEDE THAT. BUT WE ALL KNOW THAT, WHEN YOU HAVE GOT AN ALIBI, THE JURORS ARE IMPRESSED BY THIS AND RESPECTFULLY, THERE IS A DISTINCT POSSIBILITY --

IN THE RECORD IS THAT THEY TRIED TO GET SOME WITNESSES, BUT THE WITNESSES THAT THEY TALKED TO WERE NOT FAVORABLY INCLINED TOWARDS THIS DEFENDANT. DID I READ THAT --

NO, JUSTICE SHAW, YOU ARE RIGHT. THEY WERE UNFAVORABLE TO WIKE IN THAT THEY DIDN'T LIKE WIKE. I WILL BE THE FIRST TO CONCEDE HE IS NOT LIKEABLE. THEY ALL WOULD HAVE GRUDGINGLY TESTIFIED, YOU KNOW, THAT HE WAS KIND OF A JERK AND ALL OF THIS. HOWEVER, THEY DID ESTABLISH A CONSISTENT ALIBI FROM ABOUT EIGHT O'CLOCK P.M. ON THE 22d TO 1:-- ON THE 21st, RATHER, UNTIL 1:15 A.M. ON THE 22d, SO THE MAN HAD AN ALIBI. YOUR HONOR, I DON'T KNOW HOW MUCH TIME -- MR. CHIEF JUSTICE: YOU ARE WELL INTO YOUR REBUTTAL TIME.

THANK AND I WILL SAVE THE REST OF MY TIME FOR REBUTTAL. THANK YOU VERY MUCH.

MAY IT PLEASE THE COURT. I AM CURTIS FRENCH, REPRESENTING THE STATE OF FLORIDA IN THIS CASE. ADDRESSING VENUE FIRST, I THINK IT IS PRETTY CLEAR THAT TRIAL COUNSEL WAS NOT INEFFECTIVE IN THIS CASE, IN THE CIRCUMSTANCES OF THIS CASE, IN NOT OPPOSING WIKE'S INSISTENCE ON BEING TRIED IN SANTA ROSA COUNTY. IT SHOULD BE UNDERSTOOD HERE THAT THE QUESTION IS NOT NECESSARILY SO MUCH WHO ABSOLUTELY HAS THE FINAL SAY ON THESE VENUE QUESTIONS BUT WHAT WOULD A REASONABLE ATTORNEY HAVE DONE IN THE CIRCUMSTANCES OF THIS CASE? COUNSEL HAD A CLIENT WHO IS UNCOOPERATIVE, TO SAY THE LEAST. I DON'T KNOW WHY COUNSEL WOULD HAVE INSISTED ON MOVING FOR A CHANGE OF VENUE AND DESTROYING WHATEVER RAPPORT THEY MIGHT HAVE HAD WITH THIS CLIENT, WHEN, IN FACT, THE CHANGE OF VENUE WOULD NOT HAVE BEEN SUCCESSFUL ANYWAY, AS THE TRIAL COURT FOUND. IF YOU REVIEW THE VOIR DIRE EXAMINATION IN THE PRETRIAL PUBLICITY THAT WAS INTRODUCED IN THE 3.850 HEARING, FIRST OF ALL THERE WERE, I THINK, SOMETHING LIKE SEVEN UP IN ARTICLES RIGHT ABOUT THE TIME OF THE CRIME, TWO OR THREE VIDEO NEWS REPORTS, AGAIN, IN THE SAME TIME PERIOD. THE TRIAL OCCURRED SOME EIGHT TO NINE MONTHS LATER. THERE IS VIRTUALLY NO PUBLICITY BETWEEN, WITHIN A FEW DAYS OF THE CRIME AND THE TRIAL EIGHT TO NINE MONTHS LATER. THERE WAS, HAS BEEN NO SHOWING OF ANY MEDIA SATURATION, AS WOULD GIVE RISE TO A PER SE COMMUNITY BIAS. THE VOIR DIRE EXAMINATION, ITSELF, CERTAINLY DOES NOT SHOW PERVASIVE COMMUNITY BIAS. AS A MATTER OF FACT, OUT OF SOMETHING, I THINK, LIKE 72 JURORS THAT WERE EXAMINED, ONLY SIX WERE EXCUSED BECAUSE THEY HAD BEEN SUFFICIENTLY EXPOSED TO PREJUDICE, PUBLICITY AND SO FORTH AND HAD AN OPINION ABOUT THE DAYSs CASE.

WE SHOULDN'T -- ABOUT THE CASE.

WE SHOULDN'T, AS FAR AS THIS CASE, DECIDE WHETHER THERE SHOULD HAVE BEEN A MOTION FOR CHANGE OF VENUE OR NOT FILED OR WHAT THE TRIAL COURT, MAYBE SOME TRIAL COURTS WOULD HAVE GRANTED A MOTION FOR CHANGE OF VENUE. WHEN YOU HAVE ONE OF THESE

CASES WHICH ARE REALLY TRIAL CASES, AND THERE ARE SEVERAL ISSUES IN THE CASE WHICH ARE LIKE. THAT THE PRESENCE AT THE CRITICAL PHASE. WHAT IS THE BEST CASE THAT TELLS US, LIKE, IF THE ISSUE IS NOT MOVING FOR A CHANGE OF VENUE, HOW, UNDER THE STRICKLAND, WHAT ARE WE -- I KNOW THE GENERAL TEST, BUT WHAT IS THE SPECIFIC ISSUE THAT WE LOOK AT HERE, WHETHER IT WOULD HAVE BEEN GRANTED? WHETHER IT WAS, WHETHER A FAIR AND IMPARTIAL JURY WAS, IN FACT, SEATED? HOW DO WE EVALUATE THE SECOND PRONG?

I THINK THOSE ARE INTERRELATED. I THINK, CERTAINLY, HE HAS TO SHOW THAT, HAD HE MOVED FOR A CHANGE OF VENUE, CHANGE OF VENUE WOULD HAVE BEEN GRANTED. I THINK IT WOULD HAVE AT LEAST BEEN THE LEAST OF HIS SHOWING, OR --.

THAT IS A SPECULATIVE THING AS TO WHAT A TRIAL JUDGE WOULD HAVE DONE AT THAT TIME WITH THE EVIDENCE. MAYBE A JUDGE WOULD HAVE OR WOULDN'T HAVE.

IT SEEMS TO ME THAT YOU WOULD LOOK AT THE VOIR DIRE EXAMINATION AND MAKE THAT DETERMINATION THE SAME WAY THE TRIAL JUDGE WOULD. I THINK THAT THE BURDEN IS ON HIM TO PROVE THAT OR TO PROVE THAT A FAIR AND IMPARTIAL JURY WASN'T SEATED. HE HASN'T PROVED EITHER ONE OF THOSE THINGS. THE BURDEN IS ON HIM TO PROVE. THAT HE HASN'T PROVED EITHER ONE.

WHAT IS THE RESULT OF THE MEEKS CASE?

VIS-A-VIS THE 13th CIRCUIT CASE TO BE DECIDED? I CAN'T TELL YOU WHAT HE SAID. THE SAME POINT.

WHAT --

I THINK THAT CASE DOES SAY THAT HE DOESN'T HAVE TO PROVE THAT, HAD VENUE BEEN CHANGED, HE WOULD HAVE BEEN ACQUITTED. THAT IS THE POSSIBILITY.

HE HAVE DOESN'T AGREE WITH THAT?

I AGREE THAT IS WHAT MEEK SAYS.

STRICKLAND IS A REASONABLE PROBABILITY.

STRICKLAND SAYS THAT, YES.

STRICKLAND SAYS UNDERLYING RESPONSIBILITY IN THE PROCEEDINGS.

I DON'T THINK HE HAS DONE. THAT I DON'T THINK HE HAS SHOWN DEFICIENT ATTORNEY PERFORMANCE, AND HE HAS THE BURDEN TO PROVE BOTH THOSE THINGS, SO IF YOU HAVE A PROBLEM WITH PREJUDICE, THEN YOU CAN DECIDE THIS CASE ON THE DEFICIENT ATTORNEY PERFORMANCE. I THINK EVERY REASONABLE ATTORNEY IN THE CIRCUMSTANCES OF THIS CASE, WOULD NOT HAVE FILED IN THE FACE OF HIS CLIENT'S INSIST ANSWER ON TRYING IT, FOR WHATEVER -- INSIST TANS ON TRYING IT FOR WHATEVER REASONS IN SANTA ROSA COUNTY, AND I DON'T THINK THAT HE SHOWED ENTITLEMENT TO A CHANGE OF VENUE OR CHANGE OF VENUE, ANYWAY, AND HAD HE DONE THAT, I DON'T THINK IT WILL BE AN ISSUE. THE ALIBI CLAIM, THE ALIBI WITNESS, PART OF THE PROBLEM WITH MR. WEIGNESS WAS PRESENTED BY DEFENSE COUNSEL AT TO WHAT THE WITNESSES ACTUALLY SAID AND WHAT MR. WIKE THOUGHT THEY WOULD SAY ARE TWO DIFFERENT THINGS. IN HIS TESTIMONY AT THE 3.850 HEARING, WIKE IDENTIFIES NINE WITNESSES THAT HE CLAIMS SHOULD HAVE BEEN PRESENTED. ONLY TWO OF THEM TESTIFIED AT THIS HEARING. ANGIE TALK WAS ONE AND SHE DID NOT -- ANGIE FAUCK WAS ONE, AND SHE DID NOT TESTIFY TO WHAT HE THOUGHT SHE WOULD BE SAYING. HE TESTIFIED THAT HE WAS UNFAMILIAR WITH THE ALLENTOWN AREA. WHAT SHE TESTIFIED TO WAS THAT,

AFTER WIKE DID A GOOD DEED FOR HER SHE INVITED HIM TO A COOKOUT IN THE POINT BAKER AREA AND GAVE HIM DIRECTIONS AND SHE COULD NOT SAY WHETHER HE WOULD HAVE KNOWN OR WAS UNFAMILIAR WITH THE ALLENTOWN AREA. I DON'T KNOW WHAT DIFFERENCE IT WOULD MAKE ANYWAY. AS FOR THE OTHER SEVEN WITNESSES I WOULD SUGGEST THAT THE BURDEN WOULD HAVE BEEN ON MR. WIKE TO PRESENT THOSE WITNESSES, AND TO ESTABLISH THAT, IN FACT, THOSE WITNESSES WOULD HAVE SAID WHAT HE SAYS THEY WOULD SAY, BUT EVEN IF YOU ASSUME THAT THEY WOULD SAY THAT, THEY DON'T HELP HIM. ONLY TWO OF THOSE WITNESSES, OF THOSE SEVEN WITNESSES PUT HIM ANYWHERE THAT EVENING. SOME OF THE OTHERS INCLUDE, FOR EXAMPLE, TOMMY OSBORNE, WHO WAS SUPPOSEDLY SAY THAT WIKE HAD LOST A KNIFE IN A POKER GAME A FEW NIGHTS BEFORE THE MURDER. ANOTHER WITNESS WOULD HAVE SAID, DALLAS SMITH WOULD HAVE SAID, PRESUMABLY, THAT WIKE HAD DROPPED OFF A CAMERA THE EVENING BEFORE THE MURDER. I AM NOT SURE HOW THAT HELPS HIM HIM. TWO WITNESSES COULD PLACE HIM IN BARS OR AT A GAS STATION AT ELEVEN OR TWELVE P.M..

WHAT ABOUT THE WITNESS HE SAYS THAT WOULD HAVE PLACED HIM AT PARTICULAR PLACE AT 1:15?

ACTUALLY THAT IS NOT ONE OF THE WITNESSES WIKE IDENTIFYED IN HIS TESTIMONY. HOWEVER, DEFENSE INVESTIGATOR MARTIN TESTIFIED THAT I BELIEVE HE TALKED TO TAMMY OSBORNE AT THE SALOON AND HE WAS THERE AT 1:15. I AM SURE HE WAS THERE AT 1:15. THE PROBLEM IS HE CANNOT EXPLAIN WE, THE DEFENSE COUNSEL COULD FIND WITNESSES THAT COULD PUT HIM AT VARIOUS BARS THAT EVENING UP UNTIL ABOUT ONE TO 1:15. THEY DON'T HAVE ANY WITNESSES FOR WHERE HE WAS AFTER THAT, AND THAT, AS JUDGE TERRELL NOTED, WAS THE CRITICAL TIME.

WELL, WHAT DOES THE EVIDENCE DEMONSTRATE IS THE TIME THAT THE YOUNG GIRLS WERE ABDUCTED?

THE EVIDENCE DOES NOT DEMONSTRATE WHEN THEY WERE ABDUCTED. WE DON'T KNOW. THEY WERE BOTH ASLEEP WHEN THEY WERE ABDUCTED. THEY ARE APPARENTLY SOUND SLEEPERS AND AS A MATTER OF FACT THEY WERE PUT TO BED THAT NIGHT WITH THEIR CLOTHES ON, SO THAT THE NEXT MORNING THEY COULD GET UP AND GO RIGHT STRAIGHT TO THE SCHOOL BUS. THE SURVIVING VICTIM TESTIFIED THAT SHE WOKE UP IN THE DEFENDANT'S CAR. SHE DIDN'T KNOW EXACTLY WHAT TIME IT WAS. HE REASSURED HER AND SHE WENT BACK TO SLEEP AND WOKE UP AGAIN AT THE SCENE OF THE CRIME. THE VICTIM'S MOTHER SLEPT THROUGH THE ENTIRE KIDNAPING. SHE KNEW NOTHING ABOUT IT UNTIL THE NEXT MORNING, WHEN THE POLICE CALLED HER AND SAID WE HAVE A PROBLEM HERE WITH YOUR LITTLE GIRLS, AND SHE SAID THEY ARE IN THE NEXT ROOM SLEEPING AND SHE WENT IN THERE AND THEY WERE NOT. SO WE DON'T KNOW EXACTLY WHAT TIME THEY DISAPPEARED. WE DO KNOW THAT, ACCORDING TO MOSES BALDRY, WHO CAME UPON WIKE ON THE DAM ROAD NEAR THE ALLENTOWN AREA, THAT WIKE TOLD HIM HE HAD BEEN THERE SINCE 2:00 A.M.. I WOULD SUGGEST THAT THE TIME OF THE ABDUCTION WAS BETWEEN 1:15 AND 2:00 A.M., AND REMEMBER THIS BAR THAT HE WAS AT AT 1:15 TO 2:00 A.M. IS ONLY THREE OR FOUR MILES FROM THE RESIDENCE, SO IT WOULD ONLY TAKE A FEW MINUTES TO GO THERE AND PICK THEM UP AND AGAIN GET OUT TO THE SCENE OR WHATEVER. WHETHER HE GOT THERE AT EXACTLY TWO O'CLOCK OR NOT, I DON'T KNOW BUT THE PROBLEM IS THAT HE HAS NO ALIBI. THE ALIBI THAT HE CLAIMS THAT HE HAD, WHICH WAS THAT HE WAS WITH ANGIE FAULCK AND SPENT THE NIGHT WITH HER IS NOT SUBSTANTIATED BY HER TESTIMONY. IF WE ASK WAS TRIAL COUNSEL INEFFECTIVE FOR FAILING TO PRODUCE WITNESSES WHO COULD ACCOUNT FOR HIS WHEREABOUTS UP TO 1 A.M. AND THEREAFTER, I WOULD SAY NO AND HE HAS NOT DEMONSTRATED PREJUDICE, EITHER, BECAUSE IN FACT HE HAS NO ALIBI. I, ALSO, POINT OUT THAT INVESTIGATOR MARTIN TESTIFIED ABOUT ALL THIS, AT THE OUTSET, WIKE HAD NO MEMORY OF ANYTHING HAPPENING AFTER 1:00 A.M. HE ONLY CAME UP WITH THE SCENIC HILLS BAR MUCH LATER, AFTER THEY HAD FOUND OUT, THROUGH THEIR OWN INVESTIGATION AND THROUGH DISCOVERY PROVIDED BY THE STATE AND THEN, ALL OF A

SUDDEN HE IS THERE AND CLAIMED THAT HE HAD PASSED OUT ON THE PORCH OF THE SCENIC HILLS BAR, AND THEY WENT TO THE SCENIC HILLS BAR AND FOUND THAT THEY DON'T LET PEOPLE STAY PASSED OUT. THEY WOULD HAVE HIM HAULED OFF, AND HIS CLAIM THAT, WHILE HE WAS PASSED OUT SOMEBODY TOOK HIS CAR AND BROUGHT IT BACK, BECAUSE CLEARLY HIS CAR WAS USED IN THIS CRIME. AND HE WAS IN THE CAR UP UNTIL 1:00 A.M. HE WAS, ALSO, IN IT AT 6:00 A.M. AND HIS WHOLE THEREY IS KIND OF HARD TO BELIEVE ANYWAY, AND THEN HIS OTHER THEORY ABOUT ANGIE FALCK WAS THAT SHE WAS AT ONE BAR AND HE DROVE TO THE OTHER BAR AND PICKED HER UP AND LEFT ONE CAR THERE. THE PEOPLE AT SCENIC HILLS SAY THEY DON'T ALLOW CARS TO BE LEFT THERE, ANYWAY. HE SAID WHILE I WAS GONE, WHILE I WAS THERE, SOMEBODY STOLE IT AND COMMITTED THIS CRIME AND BROUGHT IT BACK, BUT IT DOESN'T EXPLAIN HOW HE GOT HIS BLOODY FINGERPRINTS ON THE TRUNK LID OF THAT CAR AND ALL OF THE OTHER EVIDENCE IN THE CASE. I WANT TO ADDRESS THE CONEY ISSUE JUST BRIEFLY. I UNDERSTAND THAT THE CONEY ISSUE, THIS IS NOT THE SECOND APPEAL ON THE CONEY ISSUE. THIS IS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, SO THE FIRST QUESTION IS, WAS TRIAL COUNSEL DEFICIENT FOR FAILING TO INSIST THAT THIS DEFENDANT, WHO THEY WERE CONCERNED THROUGHOUT THE ENTIRE RESENTENCING, FINAL RESENTENCING PROCEEDINGS, THAT HE WAS GOING TO HAVE SOME KIND OF OUTBURST DURING THE PROCEEDINGS, ALERTED THE COURT TO THAT POSSIBILITY. THE COURT HAD BROUGHT IN VIDEO CAMERAS TO VIDEOTAPE AN OUTBURST IF IT OCCURRED, JUST TO SHOW THE APPELLATE COURTS WHAT THEY WERE DEALING WITH. THE QUESTION WAS, WAS TRIAL COUNSEL DEFICIENT FOR FAILING TO INSIST THAT THIS DEFENDANT TRAMP UP TO THE BENCH EVERYDAY -- EVERY TIME THERE WAS A BENCH CONFERENCE, AND THE SECOND QUESTION WAS, WAS HIS ABSENCE AT THE BENCH CONFERENCE PREJUDICIAL AND THE TRIAL JUDGE FOUND THAT IT WAS NOT PREJUDICIAL BECAUSE ONLY LEGAL QUESTIONED WERE DISCUSSED. I THINK THE QUESTION OF PREJUDICIAL, WE RELY ON THE CONE CONEY FRET WELL. UNDER LOCKHART V FRET WELL, THE COURT MAKING THIS DETERMINATION UNDER STRICKLAND MAY NOT BE MAKING A CONSIDERATION OF A DECISION IT MAY KNOW TO BE CURRENTLY INHERENT UNDER GOVERNING LAW, EVEN IF WAS MERITORIOUS AT THE TIME OF ITS POSITION. IT IS NOT, UNDER LOCKHART V FRET WELL. WE ASK THAT THIS COURT AFFIRM.

AS FAR AS THE PREJUDICE, THEY MADE SOME OTHER CLAIMS ABOUT PRESENCE AT OTHER STAGES. I GUESS FOR THE PURPOSE OF THIS APPEAL, THE RECORD DOES SHOW THAT THE DEFENDANT WAS ABSENT FROM THE BENCH CONFERENCES FOR THE CONEY ISSUE, BUT WHAT IS YOUR POSITION AS TO WHETHER IT AFFIRMATIVELY SHOWS HIS PRESENCE OR ABSENCE AT THOSE OTHER --

THE RECORD AFFIRMATIVELY SHOWS THAT HE WAS AT THE ARRAIGNMENT.

THAT HE WAS PRESENT AT THE ARRAIGNMENT.

AT THE ARRAIGNMENT. IT AFFIRMATIVELY SHOWS THAT HE WAS PRESENT AT THE, LET'S SEE, THE RECORD DOESN'T AFFIRMATIVELY SHOW THAT HE IS PRESENT DURING THE FIRST AND SECOND DAYS OF TRIAL, AT THE VERY OUTSET, ALTHOUGH HE CERTAINLY WAS LATER. HOWEVER, JUDGE TERRELL TESTIFIED THAT, HAD HE NOT BEEN PRESENT AT THOSE TIMES HE WOULD HAVE OBJECTED. THE TRIAL JUDGE FOUND THAT, TAKING THAT INTO CONSIDERATION, THE ONLY REASONABLE INFERENCE WAS THAT HE WAS THERE. THERE WERE DOCKET CALLS THAT HE MAY OR MAY NOT HAVE BEEN AT, BUT THE ONLY THINGS DISCUSSED AT THOSE TWO PRETRIAL DOCKET CALLS WAS SCHEDULING, SO ANY ABSENCE WAS NOT PREJUDICIAL. THE ONLY, HIS STRONGEST ISSUE, IF THERE IS SUCH A THING, WOULD BE THAT THERE WAS APPARENTLY AN IN-CHAMBERS CONFERENCE PRIOR TO THE JURY SELECTION, AT WHICH DEFENSE COUNSEL HAD TWO ISSUES IT WANTED TO DISCUSS. ONE WAS WHETHER OR NOT THEY COULD HAVE WIKE SIT SOMEWHERE BESIDES AT THE DEFENSE TABLE, AND THEIR IDEA WAS WE WANT TO MAKE SURE THE WITNESSES IDENTIFY WIKE NOT JUST BECAUSE THEY KNOW HIM BUT BECAUSE HE IS SITTING AT DEFENSE TABLE. THE JUDGE REQUESTED, DENIED RULING ON THOSE ISSUES, AND THE ONLY

SHOWING IN THE RECORD WAS THAT HE WAS NOT. HOWEVER, THE TRIAL COURT FOUND PREJUDICIAL IN THE 3.850 PROCEEDING. THE TRIAL COURT RELIED ON GARCIA V STATE, A VERY SIMILAR KIND OF THING, IN WHICH THERE WAS AN IN-CHAMBERS CONFERENCE. THERE WERE SEVEN OR EIGHT ISSUES RAISED THERE. THE COURT ONLY RULED ON ONE OF THEM AND RESERVED RULING ON THE REST OF THEM, AND THEY WERE ONLY LEGAL ISSUES, AT WHICH THE DEFENDANT'S INPUT WOULD NOT HAVE HELPED ANYWAY. DOES THAT ANSWER YOUR -- THANK YOU. MR. CHIEF JUSTICE: THANK YOU, MR. FRENCH. MR. HARRISON, REBUTTAL.

I WILL CONCLUDE VERY BRIEFLY, YOUR HONOR. JUST ONE POINT ON THE VENUE ISSUE. I JUST WANT TO POINT OUT THAT, REMEMBER THE ISSUE IS NOT MR. WIKE. THE ISSUE IS HIS COUNSEL. AND THERE SHOULD BE A VERY, VERY HIGH STANDARD OF CARE, WHEN DEALING WITH CRUCIAL ISSUES LIKE VENUE. A VERY, VERY HIGH STANDARD OF CARE, AND IF WE SAY THAT WIKE LOSES THE VENUE ISSUE, BECAUSE JUDGE TERRELL SAYS HE WAIVED IT AND WANTED TO STAY THERE, AND HEAR IS THIS BAD PERSON, MR. WIKE, SAID TO THE CONTRARY, THERE FOR WE ARE NOT GOING TO BELIEVE WIKE, THAT IS NOT GOING TO ACCOMPLISH THE PURPOSE OF MAKING SURE ABOUT THE RELIABILITY OF THE ULTIMATE DECISION.

BUT DOESN'T -- I GUESS THE THING THAT I UNDERSTAND IS, IF THERE WAS NO EVIDENCE OF THE TRIAL COUNSEL HAVING PREPARED FOR A MOTION FOR CHANGE OF VENUE TO JUST GET UP AND SAY I DISCUSSED IT WITH THE CLIENT. THE CLIENT DIDN'T WANT TO DO IT. BUT HERE, WHERE THE CREDIBILITY IS CONCERNED, HERE IS A LAWYER THAT HAS PREPARED FOR IT, AND IN TERMS OF, THEN, HIS MOTIVE TO NOT PRESENT IT, IT IS A QUESTION OF YOUR SAYING, WELL, HE SHOULD HAVE DONE MORE WITH THIS CLIENT, TO CONVINCE HIM THAT HIS CLIENT WAS WRONG IN HIS THINKING, AND THAT GETS DOWN TO SORT OF TRYING TO MICROMANAGE ATTORNEY-CLIENT RELATIONSHIPS, WHICH I DON'T SEE HOW STRICKLAND IS DESIGNED TO ADDRESS THAT TYPE OF SITUATION.

I THINK A TRIAL LAWYER IN THE CASE LIKE THIS, IS BOUND, LIKE IN THE NIXON CASE, NOT TO LET HIS CLIENT COMMIT LEGAL SUICIDE. I THINK A LAWYER HAS TO BE STRONG AND AGGRESSIVE, AND TRIAL COUNSEL HAD AN OBLIGATION TO TRY TO TALK WIKE OUT OF THIS POSITION, IF, IN FACT, WIKE WAS TAKING THAT POSITION, BUT I AM, ALSO, SAYING IT IS THE LAWYER THAT HAS TO BE EVALUATED HERE, AND THERE IS NOT ONE LETTER FROM HIM TO WICOR BACK OR ANYTHING LIKE THAT, TO SUBSTANTIATE THIS CLAIM THAT OH, WELL, THIS IS A MOOT ISSUE, BECAUSE WIKE WAIVED IT. I THINK I HAVE USED UP MY TIME AND I THANK YOU VERY MUCH. MR. CHIEF JUSTICE: THANK YOU, COUNSEL. THANK YOU FOR YOUR ASSISTANCE IN THIS CASE.