Danny Harold Rolling v. State of Florida

WE ARE GOING TO TAKE, NEXT, THE FOURTH CASE, WHICH IS ROLLING VERSUS STATE. MR. HARRISON, YOU MAY PROCEED.

MAY IT PLEASE THE COURT, YOUR HONOR, AND MISS SNURKOWSKI. YOUR HONORS, I WILL MAKE A POINT OF TWO CONCESSIONS AND ASK YOU TO GRANT MR. ROLLING RELIEF, NOTWITHSTANDING THESE TWO CONCESSIONS. FIRST OF ALL, BECAUSE OF MR. ROLLING'S TRIAL LAWYER'S BIZARRE IMPLICATION, FOR THREE YEARS, OF ROLLING'S RIGHT TO BE TRIED IN ALACHUA COUNTY, THAT JUDGE MORRIS WENT OUT OF HIS WAY TO DO HIS BEST TO SEE THAT ROLLING WAS GIVEN A FAIR TRIAL. SECOND, I CONCEDE THAT, BECAUSE OF THE FACT THAT THIS COURT WAS VERY LENIENT OVER THE STRONG OBJECTIONS OF MS.^SNURKOWSKI, IN ALLOWING THE VENUE ISSUE TO EVEN BE CONSIDERED ON DIRECT APPEAL, I AM FACED WITH A PROCEDURAL EFFORT BARRED BEFORE. HAVING MADE THESE CONCESSIONS BEFORE, HOWEVER, I SUBMIT TO YOU THAT NOTWITHSTANDING THEM, I SUBMIT TO THAT YOU ROLLING'S DEFENSE COUNSEL SO MISHANDLED THIS VENUE ISSUE, THAT MR. ROLLING SUFFERED STRICKLAND-STYLE PREJUDICE SO SERIOUS THAT HE MUST BE AFFORDED A NEW PENALTY-PHASE TRIAL, AND THE REASON IS THAT WHAT THIS COURT THOUGHT HAPPENED WITH REGARD TO VENUE DID NOT HAPPEN AND THAT JUDGE MORRIS'S 3.850 DID NOT HAPPEN, WITH REGARD TO THIS VENUE ISSUE. THE TRUTH IS THAT, WELL-PRIOR TO THE TRIAL, ROLLING'S LAWYERS KNEW FULL WELL THAT THERE WAS NO POSSIBLE WAY THAT HE WAS GOING TO GET A FAIR TRIAL IN ALACHUA COUNTY.

MR. HARRISON, CUTTING TO THE CHASE AGAIN, IT SEEMS TO ME THAT THE ARGUMENT HERE THAT CLEARLY SHOULD HAVE BEEN ADVANCED IS THAT THE DEFENSE ATTORNEY KNEW OR SHOULD HAVE KNOWN ABOUT THE EXTENSIVE AND THAT THEY SHOULD HAVE LIKELY AGREED ONE THE DEFENSE COUNSEL AGREED THAT THE ARGUMENT MADE IN THOSE KINDS OF CASES, AND THAT BASED ON THAT, THEY DETERMINED TO KEEP THE TRIAL IN ALACHUA COUNTY. WHY IS THAT NOT A PROPER STRATEGIC DECISION TO MAKE?

BECAUSE IS NOT WHAT HAPPENED, AND EVEN THE LAWYERS DIDN'T BELIEVE THAT.

WHAT DID HAPPEN?

OKAY. HERE IS WHAT DID HAPPEN. THESE LAWYERS KNEW THAT THE PRETRIAL PUBLICITY WAS SO PREJUDICIAL AND SO AGAINST MR. ROLLING, THEY DESCRIBED IT TWO YEARS BEFORE THE TRIAL, AS SO INVIDIOUS AS TO CAUSE VINDICTIVE AND RETRIBUTIVE FEELINGS AMONG THE MEMBERS OF THE ALACHUA COUNTY JURY. THEY KNEW. THEY DIDN'T WANT TO ADMIT IT AT THE 3.850 HEARING, BUT THEY KNEW THAT THERE WAS NO WAY THAT THIS LIBERAL GAINESVILLE COMMUNITY WAS GOING TO GIVE MR. ROLLING A FAIR TRIAL. THE DEFENSE LAWYERS' MEDIA EXPERT, AND DR.^BUCHANAN, DESCRIBED THE PRETRIAL PUBLICITY AS THE GREATEST FEEDING FRENZY THAT HE HAD EVER PERSONALLY OBSERVED. HE SAID THAT HE HAD NEVER EXPERIENCED THIS BEFORE, NOT EVEN WITH THE BUNDY TRIAL. WHAT I AM SAYING TO YOUR HONORS IS THAT THESE LAWYERS JUST DID NOT WANT TO ADMIT TAKE THEY WERE WRONG ABOUT THIS VENUE ISSUE.

WHEN YOU START OUT WITH A PRESUMPTION, ISN'T THERE A DUTY UPON THE DEFENDANT TO SHOW THAT THE LAWYER SHOULD HAVE KNOWN, BECAUSE OF X, Y, Z AND SO FORTH THAT HIS CLIENT COULD NOT GET A FAIR TRIAL. YOU CAN'T START OUT WITH THE PRESUMPTION, BECAUSE THIS IS A HIGH PROFILE CASE AND BECAUSE THERE IS A LOT OF PRETRIAL PUBLICITY, ERGO HE IS

NOT GOING TO BE ABLE TO GET A FAIR TRIAL IN THAT VENUE. YOU CAN'T PROCEED ON THAT ASSUMPTION. YOU ARE NOT ASKING US TO EMBRACE THAT IDEA, ARE YOU?

NO, YOUR HONOR. I AM SAYING THE TRUTH IS THAT THESE LAWYERS NOT ONLY KNEW THERE WAS A GREAT DEAL OF PUBLICITY, BUT THAT IT WAS SO ADVERSE TO THEIR CLIENT, THEY DESCRIBED IT AS INVIDIOUS. ONE OF THE LAWYERS POINTED OUT THAT IN HIS CHURCH, PEOPLE WHO COULD SERVE ON A JURY IN THAT COMMUNITY, WERE AFRAID TO SLEEP IN THEIR OWN HOMES AND WERE SLEEPING IN A CHURCH. WHAT I AM SAYING IS FRANKLY, AND I HATE TO SAY THIS, BUT THESE LAWYERS WENT OUT OF THEIR WAY. THEY FORMED, ORIGINALLY, IN THEIR OPINION THAT, THE CASE SHOULD BE TRIED IN GAINESVILLE, AND THEN THEY WOULDN'T BUDGE FROM THAT. THEY EVEN WENT SO FAR AS BAMBOOZLING DR.^BUCHANAN. THESE LAWYERS, FIRST OF ALL, KEPT FROM DR.^BUCHANAN, THERE WERE TENS OF THOUSANDS OF DOLLARS OF FUNDS FOR USE IN THIS TRIAL. THEY GAVE DR.^BUCHANAN THE IMPRESSION THAT THERE WAS NO MONEY AVAILABLE TO CONDUCT STUDIES, WHICH IS WHAT THESE EXPERTS DO. THAT IS WHAT DR.^BUCHANAN THOUGHT, AND WHEN DR.^BUCHANAN CAME AROUND AND TOLD THESE PEOPLE, AGAIN, THAT THEY HAD BEEN WRONG, THEY PACKED HIM OFF TO PEPPERDINE IN CALIFORNIA.

BUT IF THERE ARE LEGITIMATE REASONS FOR THE DEFENSE COUNSEL WANTING VENUE IN THAT COUNTY, AND THAT IS IN THE RECORD HERE, THAT THIS WAS TRIAL STRATEGY, ARE WE TO SECOND-GUESS AND SAY, WELL, IT TURNED OUT BADLY, AND THERE WAS A LOT OF PRETRIAL PUBLICITY, AND REVERSE IT ON THAT GROUND? ISN'T THAT WHAT YOU ARE REALLY ASKING US TO DO, WHEN, IN FACT, THE RECORD HAS THAT THIS WAS TRIAL STRATEGY. THAT VENUE WAS CONSIDERED, THAT DEFENSE COUNSEL KNEW THAT HE HAD A HARD CASE BEFORE HIM.

YOUR HONOR, I AGREE THAT GREAT DEFERENCE HAS TO BE GIVEN TO DEFENSE COUNSEL, WHEN STRATEGY IS A FACTOR. I AM SAYING TO YOU THERE WAS NO STRATEGY. THIS CASE, THE ROLLING CASE, WAS WORSE THAN THE SITUATION HERE, IN TALLAHASSEE, IN THE BUNDY CASE, AND THESE LAWYERS KNEW IT, AND THEY JUST PRETENDED THAT THAT WAS NOT THE CASE. THEY DID EVERYTHING THEY COULD TO THWART DR.^BUCHANAN'S EFFORTS, AND THEN, AT THE 3.850 HEARING, THEY TRIED DESPERATELY TO JUSTIFY WHAT THEY HAD DONE, FRANKLY IN A WAY THAT WAS SHOCKING. LET ME JUST REFERENCE IN THIS REGARD, THIS HERKOFF REPORT. THE HERKOFF REPORT WAS USED BY ROLLING'S DEFENSE LAWYERS, TO TRY TO EXPLAIN WHY THEY FELT IT WAS A GOOD IDEA TO KEEP THE CASE IN GAINESVILLE, AND ACCORDING TO THESE LAWYERS, THE HERKOFF REPORT INDICATED THAT AFRICAN-AMERICAN PEOPLE JUST WEREN'T AS UPSET ABOUT WHAT ROLLING HAD DONE, SO THEY WOULD KEEP THE CASE IN GAINESVILLE. WELL, WE GOT AHOLD OF THAT HERKOFF REPORT AND WE READ IT FROM PAGE 1 TO THE LAST PAGE, AND IT DOESN'T SAY ANYTHING OF THE KIND, NOT ONE WORD TO THE EFFECT THAT GAINESVILLE WAS A GREAT PLACE BECAUSE AFRICAN-AMERICANS WEREN'T AS UPSET ABOUT THIS AS SOME, AND I CAN'T BELIEVE THEIR LAWYERS, UNDER OATH AT THE HEARING, SAID, YEAH, THAT IS A GOOD IDEA. WE WANTED TO GET AFRICAN-AMERICANS ON THE JURY AND THEREFORE WE WANTED TO KEEP THIS CASE IN GAINESVILLE.

YOU KEEP REFERENCING ABOUT DR.^BUCHANAN SOMEHOW NOT SUPPORTING YOUR POSITION, BUT THERE IS A MEMO FROM MAY 1993 THAT SAYS, NORMALLY WITH THIS KIND OF MEDIA COVERAGE, THE DEFENSE WOULD PROBABLY MOVE FOR A CHANGE OF VENUE. HOWEVER, I STRONGLY AGREE WITH YOUR ANALYSIS, IN SPITE OF THE MEDIA COVERAGE, GAINESVILLE IS AN EXCELLENT PLACE FOR THIS TRIAL, THE TRADITIONAL LIBERAL TREND OF THIS COUNTY, ALONG WITH THE LEVEL OF EDUCATION, JUSTIFIES THIS POSITION. I CAN'T THINK OF A BETTER PLACE, IN ALL OF FLORIDA, TO HEAR THIS PARTICULAR CASE THIS. THIS IS A MEMORANDUM FROM BEFORE THE TRIAL STARTED. HOW, WITH THIS TYPE OF EVIDENCE, CAN YOU SAY THAT IT IS ANYTHING BUT A STRATEGIC DECISION THAT THE DEFENSE COUNSEL MADE, BASED UPON THEIR OWN EXPERT WHO, AT THAT TIME, SUPPORTED THIS DECISION?

YOUR HONOR, IT IS HARD, WHEN EVERYBODY INVOLVED IS, FRANKLY, TRYING TO COVER

THEMSELVES A LITTLE BIT ABOUT MAKING --

BUT THIS IS BEFORE THE TRIAL. THIS ISN'T AFTER THE TRIAL.

WELL, AS DR.^BUCHANAN, ALSO, SAID, NEVERTHELESS, THE DEFENSE WAS CONVINCED THAT THERE WAS NO OTHER PLACE IN FLORIDA MORE OPEN-MINDED THAN GAINESVILLE. HE, THEN, ADDED, IT TURNED OUT THIS DECISION WAS A MISTAKE, AND FRANKLY, AND THIS IS WHAT HE SAYS IS SO IMPORTANT. I THINK WE SHOULD HAVE SPOTTED THE POTENTIAL ERROR, RIGHT AT THE BEGINNING. THE POINT IS, YOUR HONOR --

BUT ISN'T THAT THE HINDSIGHT APPROACH THAT YOU HAVE BEEN HAMMERING AWAY, AS WELL YOU SHOULD, I SUPPOSE, ON THE THINGS IN THE RECORD THAT ARE FAVORABLE TO THE POSITION THAT YOU ARE ADVANCING NOW, BUT DON'T YOU HAVE TO COME TO GRIPS WITH THE EVIDENCE THAT IS IN THE RECORD HERE, INCLUDING THE FACT THAT AN ACTUAL JURY WAS PICKED. YOU KNOW, WE URGE TRIAL JUDGES, AS OPPOSED TO DECIDING A VENUE ISSUE FIRST, BEFORE YOU ATTEMPT A JURY SELECTION, TO GO AND TRY AND PICK A JURY, AND IN THIS CASE, WE HAVE NOT ONLY THE TRIAL COURT FINDING THAT AN IMPARTIAL JURY WAS SEATED, BUT WE, ALSO, HAVE THIS COURT CLEARLY AFFIRMING THAT, AND CONCLUDING THAT A FAIR AND IMPARTIAL JURY WAS ACTUALLY SELECTED HERE, TO TRY AND DECIDE THIS CASE. HOW CAN YOU POSSIBLY OVERCOME THOSE THINGS THAT ARE CONTRARY TO YOUR POSITION HERE, THAT YOU HAVE TO COME TO GRIPS WITH? NOT JUST PROCEDURAL ISSUE ABOUT THE FACT THAT WE ACTUALLY RESOLVED THIS ISSUE ON THE MERITS ON APPEAL, BUT THE FACT THAT, IN THIS RECORD, AS WAS INDICATED BY JUSTICE PARIENTE'S QUESTION, AND BY OTHER EVIDENCE, THAT THERE IS SUBSTANTIAL, IF NOT OVERWHELMING, EVIDENCE TO SUPPORT WHAT THE TRIAL COURT DECIDED TO HEAR, IN FINDING THAT COUNSEL'S CONDUCT DID NOT FALL BELOW THE STRICKLAND STANDARD ON THE VENUE ISSUE. DON'T YOU HAVE TO COME TO GRIPS WITH THAT --

I TRIED MY BEST, AND I UNDERSTAND IT IS A DIFFICULT HURDLE, BUT I THINK WE HAVE DONE IT. WHEN YOU REALLY LOOK AT THAT 3.850 TRANSCRIPT, YOU CAN SEE THAT WE STRIPPED AWAY EVERY BOGUS EXCUSE THAT THESE LAWYERS TRIED TO BASE THIS SO-CALLED STRATEGY APPROACH --

WHERE DOES THE WORD "BOGUS" COME FROM? DID ANY OF THE PEOPLE THAT YOU PUT ON TO TESTIFY OR WHATEVER, CHARACTERIZE WHAT THE LAWYERS WERE DOING HERE, THESE LAWYERS THAT DEVOTED HUNDREDS OF HOURS AND, REALLY, IT APPEARS, THAT THEY JUST HAD A MASSIVE ATTEMPT, HERE, TO TRY TO SAVE THIS MAN'S LIFE.

YES, YOUR HONOR, BUT THEY DIDN'T SEE THE FOREST FOR THE TREES.

WHERE DOES THE "BOGUS" --

BOGUS IS MY WORD, AND I APOLOGIZE, IF I SHOULDN'T HAVE USED IT, BUT LET ME STATE IT AS DR.^BUCHANAN DID. THE DIFFERENCE IN THIS CASE WAS NOT JUST ALL OF THE PRETRIAL PUBLICITY. THIS IS WHAT DR.^BUCHANAN SAID.

IS THIS A HINDSIGHT EVALUATION OR AN EARLIER EVALUATION?

I WILL LET YOUR HONOR DECIDE. THIS WAS HIS TESTIMONY DURING THE TRIAL, DURING THE 3.850 PROCEEDING. HE SAID, THE GAINESVILLE COMMUNITY, THIS IS WHAT IS SO DIFFERENT ABOUT IT, THE GAINESVILLE COMMUNITY WAS REACTING ALMOST LIKE A FAMILY WOULD REACT, BECAUSE THEY HAD EXPERIENCED A FEAR. THEY HAD EXPERIENCED A TRAUMA IN A VERY PERSONAL KIND OF WAY, AND, OF COURSE, THE ANTICS OF MR. ROLLING WERE AGGRAVATING THIS ALL ALONG. THEY WERE VERY ANGRY, AS A COMMUNITY, THIS PERSONAL PROCESSING OF THIS INFORMATION BY A COMMUNITY, THAT IS KIND OF LIKE A FAMILY. MY POINT IS THE DIFFERENCE IS THAT THE JURY THAT SAT ON THIS CASE WAS, IN MANY WAYS, ALSO A VICTIM OF WHAT MR. ROLLING DID,

AND FOR THAT REASON, THIS CASE SHOULD HAVE BEEN TRIED --

IF THIS IS THAT EXPERT'S APPRAISAL, AFTER THE DUST HAS CLEARED AND AFTER HE KNOWS, NOW, THAT A JURY HAS COME BACK WITH A RECOMMENDATION FOR DEATH. THAT IS, IN EFFECT, HINDSIGHT, IS IT NOT, AS OPPOSED TO SOME OF THE STATEMENTS THAT HE MADE IN THE EARLIER REPORT, SAYING THAT HE AGREED WITH THE STRATEGY.

TO SOME EXTENT THAT'S CORRECT, YOUR HONOR, BUT, AGAIN, I HAVE TO TAKE OFF THE GLOVES HERE. FRANKLY, HE ORIGINALLY BELIEVED THAT A VENUE CHANGE WAS IN ORDER. IT WAS THE LAWYERS WHO TOLD HIM DIFFERENT. THEY SAID, YOU KNOW, YOU REALLY DON'T KNOW BECAUSE ARE DOING. THIS IS NOT CALIFORNIA. THIS IS GAINESVILLE. WE LIVED HERE, AND EVERYTHING, YOU KNOW, WILL BE HUNKY-DOREY, IF WE STAY HERE. HE WAS MISLED BY THESE LAWYERS, AND THAT WAS THE POINT AND THAT IS WHY IT MAKES A DIFFERENCE. IF I COULD, YOUR HONOR, DEPENDING ON HOW MUCH TIME I HAVE LEFT, I WOULD LIKE TO RESERVE THE REMAINDER OF THE TIME.

LET ME ASK YOU ONE QUESTION. YOU PUT GREAT STORE OR AT LEAST DISCUSSED THE HERKOFF REPORT. NOW, WASN'T THAT REPORT ACTUALLY RELIED ON FOR THE PROPOSITION THAT, YOU KNOW, YOU MAY HAVE ALL OF THIS EMOTIONAL OUTPOURING OF THE COMMUNITY, AT THE OUTSET OF THIS KIND OF CRIME, BUT OVER A PERIOD OF TIME, AND I BELIEVE THE REPORT REFERS TO 18 MONTHS, THAT THESE EMOTIONAL DISTRESS SORT OF ABATES, AND SO ISN'T THAT SOMETHING THAT SHOULD, IN FACT, COULD BE CONSIDERED, BECAUSE THIS CRIME OCCURRED IN 1990, AND THE ACTUAL PROCEEDINGS OCCURRED, WHAT, IN '94?

THAT'S CORRECT, YOUR HONOR, BUT WHAT WE TRIED TO DO WAS SHOW THAT ACTUALLY THAT WASN'T THE CASE. DAVE DAVIS, THE MAN WHO HANDLED THE APPEAL, NOTED --

BUT THAT IS WHAT THE REPORT INDICATED.

THAT REPORT DOES INDICATE THAT. BUT REMEMBER, THAT IS NOT WHAT THE DEFENSE LAWYERS USED THE REPORT FOR. THEY TRIED TO INDICATE THAT SOMEHOW AFRICAN-AMERICAN PEOPLE WERE NOT AS UPSET WITH WHAT MR. ROLLING IT DONE AS CAUCASIANS AND THAT IS WHAT HIS LAWYER SAID, THAT IS WHY WE WANT TO GET AFRICAN-AMERICANS ON THE JURY. THAT IS RIDICULOUS. THE REPORT DOESN'T SAY ANYTHING LIKE THAT. I AM SAYING THAT THESE LAWYERS TRIED TO MAKE IT APPEAR THAT THERE WAS SOME RATIONAL STRATEGY FOR STAYING IN ALACHUA COUNTY, AND THERE WAS NONE, AND I JUST ASK THAT YOU READ THAT TRANSCRIPT OF THAT 3.850 HEARING CAREFULLY AND THE DOCUMENTS THAT WE SUBMITTED, TO TRY TO MAKE THAT POINT. I RESERVE THE REMAINDER OF MY TIME. THANK YOU. MR.^CHIEF JUSTICE

MISS SNURKOWSKI.

MAY IT PLEASE THE COURT. MY NAME IS CAROL SNURKOWSKI, FROM THE ATTORNEY GENERAL'S OFFICE. ONE OF THE LEAD COUNSELS IN THE CASE, IN REGARD WITH THE 3.850, AND AS TO HIS VIEWS AND WHY HE THOUGHT ALACHUA COUNTY WAS A GOOD PLACE TO STAY, AND I SUMMARIZED THEM IN MY BRIEF, BUT IT WAS HIS EXPERIENCE, BASED ON HAVING A LONG HISTORY OF TRIALS IN ALACHUA COUNTY, THAT THE COUNTY, ITSELF, WAS DEFENSE-ORIENTED, AND THERE WAS A PARTICULAR REPUTATION FOR ALACHUA COUNTY WHICH EXISTS TODAY, THAT, IN FACT, IT IS A MORE LIBERAL COMMUNITY. THAT, IN FACT, LOCAL NEWSPAPERS WERE ALL ADVERSE TO THE IMPOSITION TO THE DEATH PENALTY IN THIS ROLLING CASE AND THERE WERE EDITORIALS WITH REGARD TO THAT. IT LOOKED MORE FAVORABLE IN OTHER PLACES, THAT IT HAD A HIGHLY-EDUCATED COMMUNITY, BECAUSE OF THE GATOR LAND, IT WAS GATOR LAND, OF THE UNIVERSITY OF FLORIDA, AND BECAUSE OF THE VETERANS HOSPITAL AND BECAUSE OF SHANDS TEACHING HOSPITAL, THEY WERE LOOKING FOR MEDICAL PEOPLE, ALSO, THAT MIGHT BE OF ASSISTANCE, BECAUSE IT WAS BELIEVED, BASED ON THEIR EXPERIENCE THAT, PEOPLE WHO HAD EDUCATION AND WHO WORKED IN THE MEDICAL FIELD, HAD MORE

COMPASSION AND HAD MORE UNDERSTANDING AND WERE MORE WILLING TO LISTEN TO MITIGATING EVIDENCE. THERE WAS ISSUES REMAINING THAT, REGARDING THE MITIGATION, BECAUSE, IN FACT, AT THE TIME WE WERE PICKING THE JURY, THERE WAS AT THE PENALTY PHASE, WHICH THIS COURT IS VERY WELL AWARE, AND AT THAT POINT ALL OF THE EVIDENCE WITH REGARD TO THE NATURE OF THE CRIME, WOULD HAVE BEEN KNOWN TO THOSE JURORS, BECAUSE THE STATE WOULD BE ABLE TO PRESENT THOSE FACTORS. NOW, IT WOULDN'T BE AS CLEAR AS IF THE JURORS HAD SAT AT THE GUILT PHASE AND HEARD ALL OF THE FACTS AND CIRCUMSTANCES, AND IN FACT THE STATE ATTORNEY DID CALL THROUGH ITS CASE AND LIMIT THAT PRESENTATION, BUT IN FACT, THE JURY WAS GOING TO KNOW THE NATURE OF THE CRIME, THE NATURE OF THE NUMBER OF VICTIMS, HOW THE VICTIMS DIED. THOSE WERE ALL GOING TO BE FACTORS, WITH REGARD TO WHAT WAS PRESENTED. THERE WAS GOING TO BE PHYSICAL EVIDENCE PRESENTED TO THE JURY, SO THEY KNEW ALL OF. THAT THEY WANTED JURORS WHO COULD REASON THROUGH THAT AND STILL, IN SPITE OF THAT, LOOK AT MITIGATION WITH REGARD TO THE EVIDENCE THAT WAS GOING TO BE PRESENTED WITH REGARD TO ROLLING, WITH REGARD TO HIS HISTORY, HIS BACKGROUND, HIS FAMILY BACKGROUND AND THE THEORY THAT WAS BEING PRESENTED. THE JURY, I MEAN, THERE WOULD BE NO CONTROL OVER WHERE THE CASE IS GOING TO BE SENT, AND SO IF THERE WAS A CHANGE OF VENUE, IT COULD HAVE BEEN ANYWHERE ELSE IN THE STATE, AND THE QUESTION THEN IS WHERE ELSE IN THE STATE WOULD A JURY BE ABLE TO BE SELECTED. THAT WAS ONE OF THEIR CONSIDERATIONS, AND HISTORICALLY PLACES, THERE WAS HISTORICALLY, AS I INDICATED EARLIER, THAT GAINESVILLE HAD BEEN A PLACE WHERE VERY FEW DEATH PENALTIES HAD BEEN IMPOSED.

WAS THERE ANY KIND OF ANALYSIS PRESENTED TO THE TRIAL JUDGE THAT WOULD INDICATE THAT ALACHUA COUNTY WAS, IN FACT, A MORE LIBERAL COUNTY, WHEN IT CAME TO LISTENING TO THE DEFENSE ARGUMENT?

NO. BECAUSE THERE WAS NO MOTION FOR CHANGE OF VENUE MADE UNTIL SIX DAYS UNTIL THE DEATH PENALTY PHASE. HOWEVER, THE RECORD IS REPLETE, I THINK THE TRIAL COURT COUNTED 75 MOTIONS PRETRIAL, THAT DEALT WITH PRETRIAL PUBLICITY, RELEASE OF EVIDENCE, AND THE GRAND JURY. THROUGHOUT ALL THOSE MOTIONS AND ACTIONS BEFORE THE TRIAL COURT PRETRIAL, THERE WAS A COMPLETE REPEAT OF AN ATTEMPT TO SANITIZE THE CASE AND PREVENT INFORMATION FROM GOING OUT TO THE LOCAL COMMUNITY, WITH REGARD TO WHAT THIS CASE WAS ALL ABOUT, IN ORDER TO PRESERVE ALACHUA AS A POSSIBLE VENUE FOR THIS CASE, SO THIS IS A TWO-SIDED PLAN. IT WAS, FIRST OF ALL, CAN WE STAY IN ALACHUA COUNTY, BECAUSE WE ARE GOING TO PROTECT EVERYTHING. WE ARE GOING TO RESTRICT WHAT THE INFORMATION GOING OUT INTO THE COMMUNITY, TO ALLOW FOR POTENTIAL JURORS TO EXIST IN THE ALACHUA COUNTY AREA. BY THE SAME TOKEN, THAT, ALSO, PRESENTED A FACTOR THAT, FOR OTHER PLACES, THE INFORMATION THAT WAS GOING OUT, THEY WERE TRYING TO RESTRICT THE KIND OF INFORMATION THAT WAS GOING OUT, SO WHOEVER MAY HAVE SAT WITH REGARD TO THIS JURY, WOULD HAVE HAD RESTRICTED INFORMATION AS TO THIS, BUT AS TO ARGUING TO THE TRIAL COURT, WHETHER THIS IS A MORE LIBERAL COMMUNITY, THAT WAS ONLY PRESENTED AT THE END, WHEN A MOTION FOR LIMINE WAS PRESENTED TO THE TRIAL COURT, AND THE VIEW WAS, AND IT WAS DONE WITH HINDSIGHT, THAT WE THOUGHT THIS WAS A LIBERAL COMMUNITY. WE THOUGHT THIS COMMUNITY WAS ABLE TO PUT ASIDE THE FEARS AND CIRCUMSTANCES OF THIS MURDER AND FAIRLY PRESENT THIS CASE, BUT NOW WE HAVE COME TO REALIZE, BASED ON THE VOIR DIRE THAT, IN FACT WE DON'T THINK WE CAN. WE DON'T THINK THAT THE JURORS THAT WE ARE FINDING THAT ARE POTENTIAL JURORS, ARE ABLE TO SIT IN JUDGMENT.

WHAT, EXACTLY, WAS PRESENTED TO THE TRIAL JUDGE, TO SAY THAT THESE JURORS THAT THEY WERE NOW, THAT WERE NOW BEING INTERVIEWED, WOULD NOT BE ABLE TO DO THIS?

WELL, THAT IS A PROBLEM, BECAUSE I THINK THAT, THIS CASE HAS BEEN CAST IN TERMS THAT THE POTENTIAL JURORS OR THE JURORS WHO SAT, SOMEHOW WERE NOT FAIR, DID NOT SAY THE RIGHT ANSWER, DID NOT, REALLY, MEAN WHAT THEY IS HE, WHEN THEY SAID -- WHAT THEY SAID,

WHEN THEY SAID THEY COULD PUT ASIDE, ALTHOUGH THEY HAD SOME KNOWLEDGE ABOUT THE CASE, THEY COULD PUT THAT ASIDE AND WEIGH THE AGGRAVATION AND MITIGATION. I THINK THAT THESE JURORS COULD NOT PUT IT ASIDE, BECAUSE THAT WAS THE ARGUMENT PRESENTED, BECAUSE THERE WAS A BELIEF BY THE DEFENSE TEAM, SIX DAYS INTO THE VOIR DIRE THAT, THEY MAY NOT BE ABLE TO GET A JURY TO VOTE FOR LIFE FOR MR. ROLLING.

AT THAT POINT DO WE KNOW HOW MANY POTENTIAL JURORS HAD BEEN DETERMINED OR --

THE PANEL, THERE WERE PEOPLE THAT WERE SEATED ALREADY, AND IN FACT, AS FAR AS BEING POTENTIAL JURORS, SO THE JUROR BOX WAS, HAD SOME PEOPLE IN IT, WITH REGARD TO THE PRESENTATION.

HOW MUCH LONGER DID IT LAST?

I WAS THERE, AND I THINK IT WAS ANOTHER TWO OR THREE DAYS, AND FRANKLY I DON'T RECALL, BUT IT STILL GOES ON, BUT THE POINT IN FACT IS THAT THE JURORS WHO WERE SITTING, AND THE STATE HAS TAKEN GREAT CARE IN TRYING TO PRESENT TO THIS COURT AN ANALYSIS OF THOSE JURORS WHO DID SIT, AND I THINK THAT IS IMPORTANT. I MEAN, WE CAN TALK UNTIL THE COWS COME HOME, HOW BAD THIS COMMUNITY FELT WITH REGARD TO WHAT HAPPENED IN GAINESVILLE, FLORIDA, AND ABSOLUTELY NO DOUBT THAT IMMEDIATELY AFTER THESE MURDERS, THE GAINESVILLE COMMUNITY WAS TERRORIZED. WE HAD PEOPLE TAKING THEIR CHILDREN OUT OF SCHOOL, PEOPLE MOVING, PEOPLE BUYING LOCKS. ALL OF THAT IS PRESENTED IN THIS RECORD. HOWEVER, THE BOTTOM LINE IS THE PENALTY PHASE CAME ALMOST FOUR AND-A-HALF YEARS AFTER THIS OCCURRED, AND AT THAT TIME, BASED ON THE HERKOFF REPORT, WHICH SHOWED AN ATTRITION RATE WITH REGARD TO THE FEAR THAT THE COMMUNITY WOULD TOLERATE, THAT IT HAD BOTTOMED, AND THE FACT THAT SIX OR FIVE OR SIX OF THE JURORS WHO ACTUALLY SAT ON THE TRIAL WEREN'T EVEN LIVING IN GAINESVILLE! THAT, IN FACT, THERE WAS AN OPPORTUNITY, AND BASED ON THE CULLING THROUGH OF POTENTIAL JURORS TO THE ULTIMATE PEOPLE, TWELVE, THAT SAT, THAT THERE WAS AN ABILITY TO SECURE A JURY TO ENTERTAIN THE PENALTY PHASE OF THIS CASE.

EVEN IF THERE WAS A CONSIDERATION IN THE FIRST PRONG OF STRICKLAND, DOESN'T WHAT YOU ARE SAYING, IF IT IS CORRECT, THEN DOESN'T THAT ELIMINATE THE SECOND PRONG?

ABSOLUTELY, AND THE STATE HAS ARGUED TWOFOLD, THAT FIRST OF ALL THE COMMUNITY AND THE ABILITY TO SELECT THE JURY HAS BEEN REVIEWED BY THIS COURT ALREADY. THAT DETERMINATION HAS BEEN MADE THERE. IS NOTHING PRESENTED IN POSTCONVICTION, EITHER THROUGH THE EVIDENTIARY HEARING OR THROUGH THE ALLEGATIONS MADE IN THE PLEADINGS THAT WOULD NEGATE THAT. THERE HAS BEEN A FINDING BY THIS COURT THAT THERE WAS NO NEED FOR A CHANGE OF VENUE, BASED ON THE EVIDENCE PRESENTED, AND THAT WAS INCLUSIVE OF THE SUB, OR OTHER, EVIDENCE THAT WAS NOT PRESENTED TO THE TRIAL COURT BUT WAS PRESENTED TO THIS COURT BY MR. DAVIS IN HIS PRESENTATION ON DIRECT APPEAL, WITH REGARD TO NEWSPAPER ARTICLES. I MEAN, THERE SEEMS TO BE A VIEW THAT THE MORE ARTICLES THAT WE PRESENT, THAT IT MAKES THIS CLAIM OR GIVES NEW LIFE TO THIS CLAIM. WELL, THAT IS NOT SO. THE FACT THAT YOU HAVE REDUNDANCY, WITH REGARD TO THE NUMBER OF ARTICLES THAT WERE PRESENTED, OR YOU DIDN'T FIND EVERY ARTICLE, DOESN'T MEAN, IN FACT, THAT THE END RESULT WAS DIFFERENT, BECAUSE WE HAVE TANGIBLE EVIDENCE TO LOOK TO, AND THAT IS THE JURY THAT SAT, AND TO THE EXTENT THAT WE HAVE COMPLAINTS TODAY, IN THE 3.850, WITH REGARD TO A PARTICULAR JUROR WHO SAT, WHETHER SHE SHOULD OR SHOULD NOT HAVE SAT THAT, GOES BY THE WAYSIDE, TOO, BECAUSE THIS COURT, ON DIRECT APPEAL, HAD THE SAME EVIDENCE, HAD THE SAME RECORD TO REVIEW AND DETERMINE THAT THERE WAS NO BASIS UPON WHICH TO SUGGEST THAT THAT JUROR SHOULD NOT HAVE SAT!

SO, REALLY, OUR OPINION ON DIRECT APPEAL IS DISPOSITIVE OF THE SECOND --

THE STATE WOULD ARGUE ABSOLUTELY THERE, HAS BEEN NO ENCROACHMENT, WITH REGARD TO THE VALUE IDENTITY OF THAT DETERMINATION, AND AS TO WE WENT TO AN EVIDENTIARY HEARING, AND THE STATE HAS COUCHED IT IN TERMS "TO CLOSE ANY ANSWERS", WITH REGARD TO WHY THE LAWYER DID SOMETHING, AND IN FACT, THE STATE CONCEDED THAT THERE SHOULD BE AN EVIDENTIARY HEARING, WITH REGARD TO THE CONFLICT ISSUE AS TO THE REPRESENTATION OF VINSTEAD AND LEWIS. THE STATE HAS ALSO PRESENTED THE ADDITIONAL AUTHORITY THAT THE UNITED STATES SUPREME COURT IN McKENNETH, I BELIEVE IS THE CASE, WHICH PUTS TO BED ANY ISSUES WITH REGARD TO THE CONFLICT ISSUE, BUT AS TO THIS RECORD, THE RECORD REFLECTS THAT NONE OF THE DEFENSE TEAM HAD ANY KNOWLEDGE THAT VINSTEAD AND LEWIS HAD BEEN REPRESENTED BY THAT PUBLIC DEFENDERS OFFICE PREVIOUSLY. THERE WERE RECORDS OF ATTRITION AND BASED ON THE FILES, THERE WAS NO INDICATION OF THAT, AND EVEN MR. KERNS, WHO REPRESENTED MR.VINSTEAD, I BELIEVE, THAT HE DID NOT HAVE INDICATION TO SEE THE MAN AND THE MAN HAD NOT BEEN A CLIENT OF HIS, AND MORE IMPORTANTLY, MR. PARKER, THE PUBLIC DEFENDER, INDICATED THE POLICIES IN HIS OFFICE, THAT IN AND OF ITSELF, HAVING REPRESENTED A CLIENT PREVIOUSLY DID NOT DISQUALIFY THE LAWYERS OR THE OFFICE FROM REPRESENTING SOMEBODY ELSE. THAT THERE WAS NO NEXUS, AND I THINK THAT FALLS WITHIN THE CONFINES OF THE FLORIDA BAR RULES, WITH REGARD TO A CONFLICT OF INTEREST. THE FACT THAT THEY DIDN'T TELL MR. ROLLING, THERE CANNOT BE A DEMONSTRATION THAT ANYTHING HAPPENED THAT IMPACTED THE ABILITY OF HIS DEFENSE OR HOW THE CASE WAS PRESENTED. SO THE STATE WOULD SUBMIT THAT THAT ISSUE IS LAID TO REST, ALSO, BUT GOING BACK TO THE PERFORMANCE, TO SUGGEST, TODAY, AND THAT IS WHAT WE ARE SUGGESTING TODAY, THAT THESE LAWYERS DID NOTHING, IS WRONG! IT IS ABSOLUTELY WRONG. WE KNOW WHAT THEY DID. WE KNOW, THROUGH BARBARA BLOUNT POWELL THAT, THE LAWYERS GOT UP AND TOOK SIDES WITH REGARD TO THE VENUE ISSUE, THE VERY ISSUE THAT WE ARE HERE ON, AND ARGUED IT BEFORE MR. ROLLING AND IT WAS MR. ROLLING THAT HAD THE FINAL SAY, AND THAT THIS GUY WAS BEING PUSHED OVER, WE HAVE IT ON THE RECORD THAT THE DEFENSE COUNSEL SAID WE DID NOT WANT HIM TO PLEAD GUILTY. HE WANTED TO PLEAD GUILTY, AND IN FACT HE DID PLEAD GUILTY. WE TOLD HIM NOT TO TALK TO THE PRESS, NOT TO GO OUT THERE AND MAKE STATEMENTS. WHAT DID HE DO? HE WENT OUT THERE AND HELD A PRESS CONFERENCE, MADE CONFESSIONS, MADE STATEMENTS, TALKED TO FDLE. THESE ARE ALL THINGS THAT MR. ROLLING DID OF HIS OWN ACCORD, OF HIS OWN VOLITION AND OF HIS OWN FREE WILL. HE HAD THE OPPORTUNITY TO SAY, NO, I DON'T WANT MY TRIAL IN ALACHUA COUNTY. HE DID NOT SAY THAT. THEY TALKED TO HIM. HE HEARD BOTH SIDES. HE HEARD THE PROS AND CONS, AND HE MADE A DECISION, AS WELL AS DEFENSE COUNSEL. THAT IS NOT TO SAY THAT ABSOLVES COUNSEL FROM THEIR RESPONSIBILITY OF INFORMING THEIR CLIENT, KNOWINGLY, OF WHAT TRANSPIRED, BUT IT DOES MEAN TO SAY THAT COUNSEL DID THEIR DUTY, WITH REGARD TO MAKING A PRESENTATION. THE FACT THAT ULTIMATELY WE HAVE A WRONG RESULT IN THE EYES OF MR. ROLLING, DOES NOT MEAN THAT ULTIMATELY THOSE LAWYERS RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN THE PERFORMANCE PRONG OF THIS, NOR THAT THEY DID NOT DO WHAT THEY WERE INTENDED OR EXPECTED TO DO. EVEN MR. DAVIS AND CERTAINLY MR. BUCHANAN, WHO WAS THE EXPERT, ADMITTED DOING SURVEYS AND TAKING EVIDENCE WITH REGARD TO POTENTIAL JURORS AND THE SENSE OF THE COMMUNITY, WOULD NOT HAVE HELPED, BECAUSE IT WOULD NOT HAVE REVEALED WHAT APPARENTLY WAS REVEALED DURING THE VOIR DIRE, AND THAT IS THAT THERE WAS STILL ANIMOSITY WITHIN THE COMMUNITY, WITH REGARD TO THIS MURDER, AND THERE SHOULD HAVE BEEN, BUT THAT DOES NOT ANSWER THE QUESTION OF WHETHER THOSE JURORS WHO SAT COULD NOT PUT THEIR VIEWS ASIDE AND FAIRLY LISTEN TO THE EVIDENCE PRESENTED. THE STATE WOULD URGE THIS COURT TO AFFIRM THE TRIAL COURT WAS CORRECT, WITH REGARD TO DENYING ALL RELIEF WITH REGARD TO A CHANGE OF VENUE, COUNSEL RENDERED EFFECTIVE ASSISTANCE OF COUNSEL, AND TO THE SUGGESTION THAT ANYTHING TO THE CONTRARY EXISTS, THE STATE WOULD URGE THAT THIS RECORD DOES NOT BEAR THAT OUT. THANK YOU. MR.^CHIEF JUSTICE

REBUTTAL.

VERY BRIEFLY, YOUR HONOR. LET ME JUST TOUCH ON THE PREJUDICE ISSUE THAT IS RAISED IN OUR BRIEF. WE SUBMIT THAT THE CASE MUST BE REVERSED, BECAUSE JUDGE MORRIS USED THE WRONG LEGAL STANDARD IN EVALUATING THE ISSUE OF PREJUDICE. JUDGE MORRIS SAID, IN HIS ORDER REGARDING PREJUDICE, THAT THE INQUIRY IN A CAPITAL CASE IS, AND I QUOTE, ABSENT THE ERROR, THE SENTENCER WOULD HAVE INCLUDED THAT THE BALANCE OF AGGRAVATING AND MITIGATING CIRCUMSTANCES DID NOT WARRANT DEATH. IN OTHER WORDS, HE SAID THAT WE DID NOT PROVE, DURING THE 3.850 HEARING, THAT HIS DECISION TO IMPOSE THE DEATH PENALTY WOULD HAVE BEEN ANY DIFFERENT. THAT IS NOT THE LAW OF FLORIDA. THAT IS NOT THE TEST FOR PREJUDICE, WHEN VENUE IS THE CLAIMED ISSUE REGARDING INEFFECTIVENESS. IN MEEKS VERSUS MOORE, THE COURT MADE IT CLEAR THAT WHAT THE DEFENDANT MUST SHOW, THAT BUT FOR THE INEFFECTIVENESS, THERE IS A REASONABLE PROBABILITY THAT THE TRIAL COURT WOULD HAVE OR AT LEAST SHOULD HAVE GRANTED THE MOTION FOR CHANGE OF VENUE, AND, AGAIN, I SAY THAT JUDGE MORRIS WAS AN IMMINENTLY FAIR JUDGE. CAN THERE BE ANY DOUBT, IN A CASE LIKE THIS ROLLING CASE, CAN THERE BE ANY DOUBT WHAT JUDGE MORRIS WOULD HAVE DONE, HAD THIS VENUE ISSUE BEEN PRESENTED TO HIM PROPERLY? HE WOULD HAVE PROTECTED MR. ROLLING. HE WOULD HAVE GRANTED A VENUE CHANGE, MOTION THAT WAS PROPERLY PRESENTED, AND ROLLING, THEN, WOULD HAVE HAD A FAIR TRIAL, AND HE MAY WELL HAVE BEEN SENTENCED TO DEATH, BUT IT WOULD HAVE BEEN DONE IN AN ATMOSPHERE OF CALM AND NOT IN THIS CAULDRON OF HATRED, UNDERSTANDABLY CAUSED BY MR. ROLLING, HIMSELF, IN ALACHUA COUNTY, FLORIDA. THANK YOU VERY MUCH. MR.^CHIEF JUSTICE

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE.