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Richard Eugene Hamilton v. State of Florida

GOOD MORNING AGAIN. WE ARE ALL READY ON THE CASE OF HAMILTON VERSUS STATE. COUNSEL'S READY, YOU MAY PROCEED.

MR. FRENCH, MEMBERS OF THIS HONORABLE COURT. MAY IT PLEASE THE COURT. IT IS MY PRIVILEGE TO APPEAR BEFORE YOU AND TO REPRESENT THE CAUSE OF RICHARD HAMILTON. YOUR HONOR, IN APRIL OF 1994, MS. CARMEN GAYHEART'S BODY WAS FOUND IN HAMILTON COUNTY, FLORIDA. THIS FOLLOWED A CHASE THROUGH THE STATE OF MISSISSIPPI. WHEREIN MR. HAMILTON AND HIS CO-DEFENDANT, MR. WAINWRIGHT, WERE ARRESTED. WHILE DRIVING MS. GAYHEART'S AUTOMOBILE AND FOLLOWING A SHOOT-OUT WITH THE POLICE. AS SOON AS THIS HAPPENED, MR. HAMILTON'S FAMILY LEARNED OF THIS, BY WATCHING TELEVISION IN THEIR HOME IN NORTH CAROLINA AND THEY TRAVELED DOWN TO BE WITH HIM. HE WAS THEN HOSPITALIZED WITH INJURIES THAT HE HAD SUSTAINED FROM THE HOOT-OUT AND -- SHOOT-OUT AND THE ACCIDENT. AND HE WAS IN THE PRESENCE OF A NUMBER OF MISSISSIPPI LAW ENFORCEMENT OFFICERS AND LAW ENFORCEMENT OFFICERS FROM THE STATE OF FLORIDA, IN PARTICULAR FROM COLUMBIA AND HAMILTON COUNTY, TRAVELED TO BE THERE AS WELL. THE RECOLLECTION OF MR. HAMILTON'S FAMILY AND AS WELL AS THE TESTIMONY OF MR. HAMILTON IS THAT CERTAIN INDUCEMENTS WERE MADE TO HIM TO GET HIM TO BEGIN TO DISCUSS THIS. AND THE DISCUSSIONS THAT HE HAD WITH THE POLICE OFFICERS THERE LED TO HIS ARREST AND HIS BEING CHARGED WITH THIS CRIME. WHICH IS CERTAINLY A HORRIBLE CRIME. SUBSEQUENTLY, MR. HAMILTON WAS CHARGED IN A FOUR COUNT INDICTMENT OF KIDNAPPING, ARMED ROBBERY, RAPE, AND THE CHARGE OF FIRST DEGREE MURDER. EACH OF THOSE COUNTS ALLEGED THAT THE OFFENSE OCCURRED IN COLUMBIA AND SLASH OR HAMILTON COUNTY, FLORIDA.

COUNSEL, YOU RAISE SEVERAL ISSUES IN YOUR BRIEF. WHICH ONES ARE YOU GOING TO FOCUS ON IN THE ARGUMENT IN THE LIMITED TIME YOU HAVE?

IN THE LIMITED TIME I HAVE. I WAS GOING TO GET QUICKLY THROUGH FACTS. PRAFS, YOU HAVE FIGURED OUT ONE OF THEM WAS GOING TO BE THE VENUE ISSUE. I ALSO WANTED TO DISCUSS THE MITIGATION PHASE ISSUE. AND I WANTED TO TALK ABOUT THE IMPACT OF APPRENDI AND RING ON THIS CASE. AND I ALSO WANTED TO TALK ABOUT THE PROBLEMS THAT WERE ENCOUNTERED WITH THE JURY.

OKAY, YOU HAVE A VERY LIMITED AMOUNT OF TIME. YOU CAN ASSUME THAT WE ARE ALL VERY FAMILIAR WITH THE CIRCUMSTANCES OF THE CASE. IF YOU COULD GO RIGHT TO THE ISSUES AND TRY TO GET DIRECTLY TO THE POINTS THAT YOU THINK ARE IMPORTANT ABOUT THOSE ISSUES.

THANK YOU YOUR HONOR, I WILL DO JUST THAT.

ON YOUR VENUE ISSUE, IS IT YOUR MAIN CONTENTION HERE THAT, THAT VENUE WAS -- SHOULD HAVE AUTOMATICALLY BEEN TRANSFERRED TO COLUMBIA COUNTY AS OPPOSED TO ANY OTHER COUNTIES SINCE COLUMBIA COUNTY WAS MENTIONED IN THE INDICTMENT AND THE AND OR? IS THAT WHAT YOU'RE REALLY CONTENDING HERE?

THANK YOU FOR YOUR QUESTION. AND I'M VERY GLAD TO HAVE A CHANCE TO TALK ABOUT THAT BECAUSE I BELIEVE IN THE BRIEFS, THIS ISSUE HAS BECOME SOMEWHAT OBSCURED. OUR VENUE ISSUE IS NOT THAT THERE WAS EVER A PROBLEM WITH JURISDICTION, WHICH MANY LAWYERS GET THAT CONFUSED. JURISDICTION AND VENUE. THE ISSUE HERE WAS THAT BY USING THE TERM

COLUMBIA AND SLASH OR HAMILTON COUNTY, THE STATE ATTORNEY CHARGING IT THAT WAY EFFECTIVELY GAVE MR. HAMILTON AN OPTION WITH RESPECT TO EACH AND EVERY COUNT OF THE INDICTMENT TO TAKE HIS TRIAL EITHER IN ONE OR THE OTHER OF THE COUNTY. IN OTHER WORDS, HE COULD HAVE SPLIT THE COUNTS OF HIS TRIAL.

AND WHAT DO YOU BASE THAT ON? WHAT CASE LAW OR STATUTE DO YOU CONTEND GIVES HIM THAT RIGHT?

I BASE THIS ON TWO STATUTES, YOUR HONOR, AND THE CASE OF LEON. THE TWO STATUTES -- ACTUALLY THREE STATUTES. THE TWO STATUTES ARE, ONE STATUTE WHICH I BELIEVE IS 910.103 -- PLEASE DON'T HOLD ME TO THE NUMBERS HAVEN'T ONE OF THE STATUTES SUGGESTS OR REQUIRES THAT IF THE STATE IS UNSURE OF THE COUNTY IN WHICH AN OFFENSE TOOK PLACE, THEY MAY CHARGE CONJUNCTIVELY, USING THE TERM OR. AND WHEN THEY CHARGE CON JUKTIVELY USING THE TERM OR -- I BELIEVE THAT'S 910.103. THE DEFENDANT IS VESTED WITH THE OPTION OF PICKING WHICH OF THE TWO COUNTIES THAT HE WISHES TO BE TRIED IN. HOWEVER, IF THE STATE IS AWARE THAT AN OFFENSE IS COMMITTED IN ONE AND PARTS OF THE OFFENSE ARE COMMITTED IN TWO COUNTIES, THEN THE STATE MAY CHARGE AND COLUMBIA AND HAMILTON COUNTY. AND WHEN THEY CHARGE COLUMBIA AND HAMILTON COUNTY BECAUSE THEY KNOW THAT SOME PART OF THE OFFENSE HAS OCCURRED IN BOTH OF THOSE COUNTIES, THEN THE STATE HAS THE CHOICE.

WELL YOU HAVE WRAPPED THIS UP, IF I UNDERSTAND IT CORRECTLY, IN A CLAIM OF INEFFECTIVENESS, RIGHT?

YES, YOUR HONOR.

THIS IS ALL ABOUT A PREDICATE, WHAT IS THE ISSUE NOW AS YOU SEE IT, INEFFECTIVENESS? WHAT ARE YOU CLAIMING?

I'M CLAIMING YOUR HONOR MR. HAMILTON WAS NEVER AWARE THAT THE CONSTITUTION OF THE STATE OF FLORIDA GAVE HIM THIS OPTION. THAT HE COULD SKR -- OBVIOUSLY WAS A MATTER OF GREAT CONCERN TO THE ATTORNEYS AND THE PARTIES BEFOREHAND THAT THEY WERE GOING TO BE TRIED TOGETHER.

WHERE IS THERE OBVIOUSLY WE KNOW THAT DEFENDANT IN CRIMINAL CASES HAVE A LITANY OF RIGHTS. AND ARE YOU SAYING HERE THAT A LAWYER WHO DEFENDS A DEFENDANT REALLY THAT THE FIRST OBLIGATION IS THAT THE LAWYER HAS TO GO IN GREAT DETAIL NOW AS TO EVERY RIGHT PROCEDURAL OR SUBSTANTIVE THAT A CRIMINAL DEFENDANT MIGHT HAVE AND THEN SEEK THE DEFENDANT'S INPUT IN THE DECISION ABOUT EXERCISING ANY OF THOSE RIGHTS AND THAT IS LIKE A PER SE CLAIM OF INEFFECTIVENESS IF THE LAWYER DOESN'T DO THAT?

YOUR HONOR, AS A TRIAL DEFENSE LAWYER, I KNOW HOW HARD THAT WOULD BE AND WHAT A BURDEN THAT WOULD BE. I SUBMIT THAT THAT'S A A ENACT SPECIFIC ISSUE.

TELL US -- WHAT DID THE LAWYER -- LAWYER IN THIS CASE MOVED FOR CHANGE OF VENUE. IS THAT CORRECT?

YES, YOUR HONOR.

HE WAS VERY CONCERNED ABOUT TRYING THIS CASE WHERE THE KIDNAPPING ORIGINALLY OCCURRED, IF I UNDERSTAND IT. WORRYING ABOUT ALL THE PUBLICITY THAT HAD BEEN ENGENDERED IN THE AREA. AND HE WANTED THE CASE AWAY FROM THERE. AND HE ENDED UP BEING SUCCESSFUL IN GETTING IT AWAY FROM ALL OF THAT PUBLICITY. IS THAT CORRECT?

YES, YOUR HONOR.

WHERE DID HE GO WRONG IN TERMS OF HIS TREATMENT OF THIS ISSUE?

WHERE HE WENT WRONG WAS THAT BASED ON THE FACTS OF THIS CASE, WHERE IT WAS KNOWN THAT YOU HAD TWO SEPARATE DEFENDANTS BEING TRIED TOGETHER IN FOUR DIFFERENT HORRIBLE COUNTS BEING TRIED TOGETHER, HE HAD AN ALLEGATION, HE HAD A MEANS OF CHARGING THAT GAVE HIM A SLAM DUNK SEVERANCE. OF COUNTS FROM EACH OTHER AND PERHAPS EVEN LIKELY THIS WOULD HAVE LED TO A SEPARATE TRIAL FROM HIS CO-DEFENDANT.

HOW CAN WE -- IN OTHER WORDS, HOW CAN YOU SAY WITH ANY CERTAINTY THAT THAT IS INDEED WHAT WOULD HAVE OCCURRED HERE? DO YOU HAVE A SIMILAR CASE WHERE CIRCUMSTANCES LIKE THAT EXISTED? BECAUSE HERE WE'RE TALKING, ARE WE NOT, THE FACT THAT THE VICTIM WAS KIDNAPPED IN ONE COUNTY. AND THEN THEY PROCEEDED THROUGH THE NEXT COUNTY AND FURTHER -- IS THAT WHERE THE KILLING OCCURRED?

WELL YOUR HONOR, I BELIEVE WHEN THE TRIAL WAS COMPLETED AND THE EVIDENCE WAS ALL OUT, THE LIKELIHOOD WOULD HAVE BEEN THAT THE MURDER WAS COMMITTED IN HAMILTON COUNTY. THE NORTHERN COUNTY.

BUT YOU HAD A MORE OR LESS A CONTINUOUS SEQUENCE OF EVENTS, IS THAT CORRECT?

YES, YOUR HONOR. BUT I BELIEVE THE CASES SAY WHEN -- EVEN THOUGH YOU HAVE A CONTINUOUS SEQUENCE OF EVENTS, IF ONE CRIME IS WHOLLY COMMITTED IN ONE COUNTY AND ANOTHER CRIME IS WHOLLY COMMITTED IN ANOTHER COUNTY, THEN THOSE -- YOU HAVE SEPARATE VENUES.

THAT'S WHY I'M ASKING YOU IF YOU HAVE ANY CASE LAW, BECAUSE IT SEEMS TO ME THAT MOST OF THE CASE LAW SUGGESTS THAT IF YOU HAVE THAT KIND OF SCENARIO, THAT A TRIAL IN EITHER ONE OF THOSE COUNTIES WOULD BE LAWFUL AND APPROPRIATE UNDER THOSE CIRCUMSTANCES. IS THERE NOT CASE LAW TO THAT EFFECT?

NO, YOUR HONOR I BELIEVE THE CASE LAW IS IN ACCORDANCE WITH MY REPRESENTATION. WHICH IS THAT --.

WHAT'S THE CASE THAT, SIMILAR SITUATION TO THIS WHERE THERE HAS BEEN A KIDNAPPING OF THE VICTIM IN ONE COUNTY, THEN THEY CROSS THE COUNTY LINE AND THE DEATH ACTUALLY OCCURS SAY IN THE NEXT COUNTY, THAT THE CASE SAYS YOU GOT TO ABSOLUTELY TRY 'EM OR THE DEFENDANT HAS THE CHOICE OF THE MURDER TO BE TRIED IN THAT SECOND COUNTY?

YOUR HONOR, I'M NOT AWARE OF ONE WITH SPECIFICALLY INVOLVING KIDNAPPING AND MURDER. ALTHOUGH IT MAY WELL BE THAT THE ONE THAT I HAVE REFERRED TO DOES. I'M AWARE OF CASES WHICH PROVIDE THAT -- WELL LET ME BEGIN BY DISTINGUISHING KIDNAPPING FROM THE OTHERS. KIDNAPPING IS AN OFFENSE IN WHICH ELEMENTS ARE COMMITTED IN BOTH COUNTIES. THE KIDNAPPING BEGINS IN ONE COUNTY AND IT CONTINUES IN TWO OF THE -- INTO THE OTHER COUNTY. THAT'S A 910.105 SITUATION WHERE THE STATE CAN CHARGE CONJUNCTIVELY.

WERE THESE COUNTIES IN THE SAME JUDICIAL CIRCUIT?

YES THEY WERE, YOUR HONOR.

DOES THAT HAVE ANY RELEVANCE TO THE ANALYSIS?

IT DOES NOT. BECAUSE THE FLORIDA CONSTITUTION SPEAKS OF VENUE IN TERMS OF THE COUNTY. AND IT SAYS THAT A DEFENDANT HAS A RIGHT TO BE CHARGED IN THE COUNTY WHEREIN THE OFFENSE WAS COMMITTED. AND THAT'S WHY I'M VERY, VERY CERTAIN OF MY

POSITION THAT IF, EVEN IF -- YOUR HONOR, I SEE I'M INTO MY REBUTTAL TIME ALREADY SO IF I CAN FINISH THIS.

ABSOLUTELY.

IF -- IF AN OFFENSE IS COMMITTED WITH ELEMENTS IN BOTH COUNTIES, THE STATE HAS THEIR OPTION. BUT WHAT I'M REALLY RELYING ON HERE YOUR HONOR IS ABOVE AND BEYOND ALL THAT, I DON'T WANT TO GET HUNG UP WITH JURISDICTION. WHAT I'M TRYING TO SAY IS THAT THE LEON CASE STATES THAT WHEN THE STATE SAYS AND SLASH OR, THE DEFENDANT HAS HIS OPTION.

YOU'RE ARGUING NOW THE TRIAL SHOULD HAVE TAKEN PLACE IN COLUMBIA COUNTY?

I'M ARGUING THAT MR. HAMILTON, HAD HE BEEN AWARE OF THE FACT, THAT HE COULD HAVE SPLIT THIS TRIAL, HE COULD HAVE PICKED --.

WHICH COUNTY SHOULD HE HAVE PICKED?

SEPARATE COUNTIES, YOUR HONOR.

WHICH COUNTY SHOULD HE HAVE PICKED THAT HE DID NOT PICK?

HE COULD HAVE PICKED HAMILTON COUNTY FOR, OR PERHAPS A MURDER CASE AND HE COULD HAVE PICKED THE OTHER COUNTY --.

COLUMBIA COUNTY? DIDN'T HE FILE A MOTION FOR CHANGE OF VENUE FROM HAMILTON COUNTY SPECIFICALLY BECAUSE OF THE ADVERSE PRE-TRIAL PUBLICITY THAT OCCURRED IN THAT COUNTY?

YES, YOUR HONOR BUT THAT MOTION WAS FILED WITHOUT CONSIDERATION OF THE FACT THAT THEY COULD HAVE GOTTEN A SEVERANCE.

LET ME ASK SOMETHING ELSE. AND ISN'T IT TRUE THAT OF THE 22 ARTICLES THAT HE FILED IN SUPPORT OF THE MOTION TO CHANGE VENUE, 13 OF THE ARTICLES WERE FROM THE LAKE CITY REPORTER, WHICH IS BASED IN COLUMBIA COUNTY?

YES, YOUR HONOR, BUT THAT SAME NEWSPAPER IS THE ONE THAT THEY USE IN HAMILTON COUNTY.

SO IF HE HAD MOVED -- SO HE MOVED TO CHANGE VENUE OUTSIDE OF THE TWO OF THOSE COUNTIES, CORRECT? SO IF HE WOULD HAVE ASKED TO MOVE TO COLUMBIA COUNTY, WOULDN'T WE BE HERE ON A 3.850 THING IT WAS INHE DETECTIVE TO CHANGE TO A COUNTY WHERE 13 OF THE ARTICLES HAD BEEN PUBLISHED?

WE MIGHT BE HERE ON A 3.850 BUT I BELIEVE THE ANSWER TO THAT 3050 WOULD HAVE BEEN MUCH CLEARER. THE PROBLEM WE HAVE HERE IS THAT THE OTHER ISSUE INVOLVED IN THIS DETERMINATION IS THE FACT THAT WE HAVE THE TWO DEFENDANTS TRIED TOGETHER AND FOUR HORRIBLE COUNTS TRIED TOGETHER THAT COULD HAVE BEEN SEPARATED.

ALL RIGHT. WE NEED TO CHECK -- HOW MUCH TIME REBUTTAL DID YOU RESERVE?

TEN.

AND HOW MUCH TIME -- ALL RIGHT, SO IT'S YOUR CHOICE OF YOUR USE OF TIME. DO YOU WANT TO PAUSE NOW?

LET ME JUST TRY AND TOUCH ON TWO OTHER ISSUES. BECAUSE THERE HAS BEEN SOME RECENT CASE LAW AND I WANT TO BE SURE AND MENTION IT. ONE OF THE REASONS I WENT INTO THE FACTS BEFOREHAND, I WANTED TO GET TO THE FACT THAT THERE WAS NO PSYCHIATRIST REQUESTING TO SEE MR. HAMILTON UNTIL LESS THAN TWO WEEKS BEFORE THIS CASE WAS ORIGINALLY SET FOR TRIAL.

HOW WAS THIS ISSUE PRESENTED TO THE -- IN THE TRIAL COURT AS FAR AS THIS ISSUE ABOUT THE PSYCHIATRIST? WAS THIS THE CLAIM THAT WAS MADE IN THE TRIAL COURT, THAT IT WAS A TIME ISSUE? THAT IS, THAT THE LAWYER WAITED TOO LONG? OR WAS IT A CLAIM THAT INSTEAD OF REQUESTING A PSYCHIATRIST, THAT HE HAD HIM SEEN BY A PSYCHOLOGIST? OR CONSULTED WITH A PSYCHOLOGIST?

I BELIEVE IT STARTED THAT WAY YOUR HONOR, BUT I BELIEVE THAT THE EVIDENCE FAIRLY EXPANDED TO INCORPORATE THAT BECAUSE IT ENDED UP, THERE WAS ALSO A CLAIM ABOUT AN INADEQUATE MITIGATION PHASE AND THAT'S WHERE THIS PROBLEM ENDS UP.

SO WHEN YOU SAY IT EXPANDED TO THAT, THERE IS A REQUIREMENT UNDER THE RULES OF 3851 TO SET OUT A CLAIM. AND THE STATE POINTS OUT HERE THAT TIME ISSUE WAS NOT SET OUT IN THAT CLAIM. BUT YOU'RE SAYING THE RECORD WOULD REFLECT THAT CLEARLY THIS IS THE CLAIM THAT YOU ARGUED IN THE TRIAL COURT?

YOUR HONOR, I BELIEVE A SEPARATE CLAIM WAS THAT HE WAS INADEQUATELY PREPARED AND DEFENDED IN THE MITIGATION PHASE.

YOU'RE SAYING THE RECORD WILL SUPPORT THAT YOU MADE A CLAIM ABOUT THE TIMELINESS?

I WOULD NOT SAY THE RECORD WOULD SUPPORT THAT I MADE A SPECIFIC, YOU KNOW, THAT I ENUMERATED THAT THIS WAS NOT DONE TIMELY WITH RESPECT TO THE PSYCHIATRIST. I WOULD SAY THE RECORD WOULD REFLECT THAT THE CLAIM WAS MADE THAT HIS MITIGATION PHASE WAS INADEQUATELY PREPARED AND PRESENTED.

WELL THAT'S WHAT I'M HAVING -- ARE YOU CONCEDING THEN THAT YOU DID NOT MAKE A CLAIM WITH REFERENCE TO THE TIMELINESS?

I'M CONCEDING THAT I DIDN'T, I DID NOT STATE THAT PARTICULAR LANGUAGE. BUT I'M ASKING THIS COURT TO PLEASE CONSIDER AS DID THE TRIAL COURT, THAT, THAT THE FACT OF THE PSYCHIATRIST WAS NOT CALLED UNTIL LESS THAN TWO WEEKS BEFORE THE TRIAL BECAME AN ISSUE WITH RESPECT TO THE MITIGATION.

THAT WAS A PSYCHOLOGIST, RIGHT?

PSYCHIATRIST. IT WAS A PSYCHIATRIST, DOCTOR MA TRAY. AND THE PROBLEM HERE, YOUR HONOR, WAS THAT --.

IS THE PSYCHIATRIST THAT TESTIFIED AT THE EVIDENTIARY HEARING TESTIFIED HE FOUND ANY STATUTORY MITIGATERS?

YES HE DID, YOUR HONOR.

HE FOUND STATUTORY MITIGATORS?

WHICH ONE WAS THAT?

WHICH WAS THAT HE HAD PERSONALITY DISORDER.

DID HE ALSO SAY HE WOULD TESTIFY THAT THE DEFENDANT WAS A SOCIOPATH?

YOUR HONOR, THE STATE ASKED HIM IF HE ESSENTIALLY ASKED HIM IF HE AGREED WITH MR. HUNT'S CHARACTERIZATION OF SOCIOPATH AND I BELIEVE HE SAID YES. BUT YOU WILL NEVER FIND DOCTOR MA TRAY EVER SAYING MR. HAMILTON IS A SOCIOPATH.

SO ARE YOU SAYING THAT THE TRIAL COURT'S FINDING AS TO THIS ISSUE IS INCORRECT WHEN HE SAYS DOCTOR MATHER STATED WHILE HE COULD HAVE TESTIFIED TO NON-STATUTORY MITIGATORS SIMILAR TO THOSE FOUND BY THE COURT, NO STATUTORY MITIGATERS EXISTED AND THAT HE COULD HAVE BEEN CROSS-EXAMINED BY THE DEFENDANTS BEING A SOCIOPATH.

OKAY, MAYBE I MISUNDERSTOOD THE QUESTION. HE DID NOT TESTIFY TO THE EXISTENCE OF A STATUTORY. HE TESTIFIED TO THE EXISTENCE OF A NON-STATUTORY MITIGATOR. WHICH IS PERSONALITY DISORDER. AND I APOLOGIZE IF I MISUNDERSTOOD YOUR QUESTION.

SO THAT FINDING IS CORRECT?

THAT FINDING IS CORRECT. HOWEVER, I WOULD DISAGREE WITH THE CHARACTERIZATION BECAUSE DOCTOR MA TRAY, I DON'T THINK YOU WILL EVER FIND DOCTOR MA TRAY UTTERING THE WORD SOTION YO PATH BECAUSE IT IS PROBABLY NOT PART OF HIS VOCABULARY AS A PSYCHIATRIST. YOU WILL FIND HE TESTIFIED MR. HAMILTON SUFFERED FROM PERSONALITY DISORDER, WHICH IS SOMETHING THAT MY CASES POINT OUT IS A RECOGNIZED NON-STATUTORY MITIGATING FACTOR EVEN BY THE UNITED STATES SUPREME COURT.

AND WHAT WERE A THE AGGRAVATING FACTORS FOUND IN THIS CASE?

THERE WERE A NUMBER OF THEM YOUR HONOR. COLD, CALCULATED. THERE WAS THAT THE CRIME WAS COMMITTED IN THE COURSE OF, AND THAT'S ANOTHER ISSUE, THAT IF I HAVE ANY TIME LEFT I WANT TO GET TO. I THINK THEY WERE ALTOGETHER SOME FIVE OR SIX.

THERE WAS A HACK FOUND?

I DON'T BELIEVE THERE WAS HACK. I COULD BE WRONG ABOUT THAT.

IT WAS COMMITTED DURING THE COURSE OF A KIDNAPPING, ROBBERY?

YES.

SEXUAL BATTERY?

YES.

SO IN THE FACE OF ALL THOSE AGGRAVATORS THAT ARE IN THE RECORD AND IN THE FACE OF THE PSYCHIATRISTS, YOUR EXPERT TESTIFYING THAT HE COULD NOT FIND ANY STATUTORY MITIGATORS, HOW DO YOU DEMONSTRATE PREJUDICE?

WELL YOUR HONOR, I DEMONSTRATE PREJUDICE FROM THE FACT THAT HERE IS A YOUNG MAN FACING THE POTENTIAL DEATH PENALTY AND HIS FAMILY, HIS FAMILY IS AMONG THE MOST DYSFUNCTIONAL I HAVE ENCOUNTERED. AND THE DYSFUNCTIONALITY OF HIS FAMILY WAS NEVER BROUGHT TO THE ATTENTION OF DOCTOR MA TRAY PRIOR TO TRIAL. AND THERE WAS NOT A WORD MENTIONED OF THAT DURING HIS MITIGATION PHASE. MR. HAMILTON'S BACKGROUND INCLUDED THE FACT THAT HE WAS PUT ON PAINKILLERS WHEN HE WAS EIGHT OR NINE YEARS OLD BECAUSE OF THE INCIDENT WITH HIS EYE. THAT HE WAS RAISED BY A HOUSEHOLD IN WHICH HIS FATHER WAS ESSENTIALLY NONEXISTENT. AND HIS OLDER BROTHER WAS HIS MALE MENTOR, WHO LED HIM INTO DRUGS AND CRIME.

MAYBE I WASN'T CLEAR WHEN I ASKED ABOUT PREJUDICE WHEN I ASKED YOU, HOW DID HE DEMONSTRATE PREJUDICE, I'M ASKING IN LIGHT OF THE FACT THAT THERE WERE SEVERAL AGGRAVATORS FOUND AND EVEN YOUR EXPERT ACKNOWLEDGED THAT HE COULD NOT FIND A STATUTORY MITIGATOR, WHY SHOULD OUR CONFIDENCE IN THE OUTCOME OF THE PREVIOUS TRIAL BE UNDERMINED?

YOUR HONOR, DESPITE THE FACT THAT NONE OF THIS EVIDENCE WAS PRESENTED TO THIS JURY, THERE WERE STILL TWO JURORS WHO VOTED AGAINST THE DEATH PENALTY. AND IT'S INCOMPREHENSIBLE TO ME AS A LAWYER, WHO PRESENTS THESE KINDS OF DEFENSES, THAT THIS EVIDENCE WAS NEVER PRESENTED TO MR. HAMILTON'S JURY. IT'S ALMOST SELF-OBVIOUS AND THE WIG INS CASE, WHICH IS A VERY RECENT RENDERING OF THE UNITED STATES SUPREME COURT, TALKS ABOUT THE IMPORTANCE OF PREPARING THIS ASPECT OF A MURDER CASE. AND IN THE WIG BEGINS CASE, IT'S A LITTLE BILL DIFFERENT FACTUALLY BECAUSE APPARENTLY IN MARYLAND, IT MAY OR MAY NOT BE A BIFURCATED PROCEEDING. AND MR. WIG BEGINS DEFENSE ATTORNEYS DROPPED THE BALL ON THAT ASPECT OF THE CASE BECAUSE THEY DIDN'T THINK THEY aWERE GOING TO GET A FAVORABLE RULING ON WHETHER IT BE BIFURCATED OR NOT. THAT EXCUSE DOESN'T EXIST IN MR. HAMILTON'S CASE. WE HAVE BIFURCATION AS A MATTER OF LAW HERE. AND THE FACT THAT THIS ASPECT OF HIS CASE WAS NOT PREPARED IS ONE WHICH I PRAY THIS HONORABLE COURT NOT OVERLOOK FOR MR. HAMILTON OR FOR ANYONE.

UNFORTUNATELY YOUR TIME HAS EXPIRED, SO YOU HAVE NO TIME FOR REBUTTAL LEFT. THE GOOD SIDE OF IT IS IT LOOKS LIKE YOU ADDRESSED VIRTUALLY ALL OF THE ISSUES YOU INTENDED TO ADDRESS. SO WE THANK YOU FOR THAT.

THANK YOU YOUR HONOR.

STATE?

MAY IT PLEASE THE COURT, MY NAME IS CURTIS FRENCH, REPRESENTING THE STATE OF FLORIDA IN THIS CAUSE. ALLOW ME TO FIRST ADDRESS THE QUESTION OF MITIGATION AND THE TRIAL COUNSEL'S USE OF DR. MHATRE. LET ME FIRST POINT OUT THAT TRIAL COUNSEL TALKED TO ALL THE MEMBERS OF THE FAMILY BEFORE TRIAL. HE TALKED TO A NUMBER OF MEMBERS OF THE FAMILY IN LAKE CITY IN OCTOBER OF 1994 ABOUT THREE MONTHS AFTER, AFTER THE DEFENDANT WAS ARRESTED. HE LATER IN JANUARY OF 1995 DROVE TO, WENT TO NORTH CAROLINA AND TALKED TO VARIOUS MEMBERS OF THE FAMILY THERE,4%9CLUDING EVERY SINGLE MEMBER OF THE FAMILY THAT TESTIFIED AT THE ORIGINAL PENALTY PHASE AND ALSO THE EVIDENTIARY HEARING PLUS A FEW MORE FAMILY MEMBERS, INCLUDING I BELIEVE A MOTHER-IN-LAW AND STEPMOTHER OR SOMETHING LIKE THAT. BUT AT ANY RATE, HE TALKED TO ALL THESE WITNESSES. HE KNEW WHAT THEY WERE GOING TO SAY. HE PRESENTED THE TESTIMONY OF THREE OF THEM. TRIAL COUNSEL ALSO POINTED OUT IN HIS TESTIMONY AT THE EVIDENTIARY HEARING THAT, THAT THE FAMILY WAS SOMEWHAT INHIBITED IN ITS ABILITY TO TESTIFY ABOUT MITIGATION BECAUSE THE DEFENDANT HAD BEEN INCARS EARTHED EITHER IN JUVENILE LOCK UP OR JAIL OR PRISON PRETTY MUCH OFF AND ON MORE OR LESS CONTINUOUSLY FROM THE TIME HE WAS 12 YEARS OLD. NOTWITHSTANDING THAT DIFFICULTY, AND EVEN GIVEN THAT, THE FAMILY WAS STILL UNCOOPERATIVE, THE MOTHER HAD SOME MENTAL PROBLEMS. AND HE WAS ENABLE TO BRING HER TO TRIAL. THE SISTQ) DIDN'T WANT TO COME TO TRIAL BECAUSE SHE HAD HAD TWO MISCARRIAGES BEFORE AND SHE WAS PREGNANT. SHE WAS AFRAID IF SHE CAME TO THE TRIAL AND TESTIFIED, THE STRESS WOULD CAUSE ANOTHER MISCARRIAGE. THE FATHER DID COME BUT HE WAS SO ANGRY TRIAL COUNSEL DECIDED NOT TO USE HIM. HE DID PRESENT THE TESTIMONY OF THE BROTHER, TIMOTHY HAMILTON, A SECOND COUSIN, DONNY SIMMONS AND ANN BAKER, WHO IS THE MOTHER OF APPARENTLY ONE OF THE DEFENDANT'S PRIOR GIRLFRIENDS. THEY TESTIFIED ABOUT HIS BACKGROUND FROM THIS TESTIMONY, THE TRIAL COURT FOUND NON-STATUTORY MITIGATING, INCLUDING HAMILTON WAS RAISED IN A DRUG RIDDEN CRIME INFESTED NEIGHBORHOOD. HIS MOTHER WAS MENTALLY ILL, HE SUFFERED

VARIOUS CHILDHOOD TRAUMAS, INCLUDING LOSS OF AN EYE IN A BB GUN ACCIDENT. EAST HE'S GOT GOOD WORK HABITS AND HE ASSISTED, HE FOUND -- ASSISTED POLICE IN LOCATING THE VICTIM'S BODY. THE -- NOTHING OF ANY SIGNIFICANCE ADDITIONAL TO THAT HAS BEEN PRESENTED AT THE EVIDENTIARY HEARING. THE SISTER TESTIFIED AT THE EVIDENTIARY HEARING, SHE ACKNOWLEDGED THAT AND BY THE WAY, THE SISTER IS SOME NINE YEARS AND SEVERAL MONTHS YOUNGER THAN THE DEFENDANT. SO THAT, BY THE TIME WHEN THE DEFENDANT FIRST WENT OFF, SHE WAS THREE OR FOUR YEARS OLD AND SHE ACKNOWLEDGED THAT BY THE TIME SHE WAS OLD ENOUGH TO REMEMBER ANYTHING, BASICALLY HER BROTHER WAS GONE. THE FATHER HAD VERY LITTLE TO SAY, ADD IN THE WAY OF MITIGATION. HIS TESTIMONY WAS THAT THE MOTHER WAS A LITTLE MORE STRICT THAN HE WAS. THAT THE DEFENDANT HAD BEEN WHIPPED A COUPLE TIMES, HAD NEVER BEEN BEATEN. THERE WAS NO PHYSICAL ABUSE. THE MOTHER TESTIFIED THAT THERE WERE TWO DEFENDANTS. ONE, SHE CALLED BJ, SHE LIKED BJ AND THE OTHER RICHARD HAMILTON. AND RICHARD HAMILTON WAS VERY BAD.

TRIAL COUNSEL SAID THERE WAS NOTHING MITIGATING ABOUT RICHARD HAMILTON. MOTHER ALSO TESTIFIED AT THE EVIDENTIARY HEARING THAT, AND THIS NEVER CAME OUT AT THE ORIGINAL TRIAL, THAT THE DEFENDANT HAD HIT HIS BROTHER ON THE SHOULDER HARD ENOUGH TO BREAK THE SHOULDER. THAT HE HAD ALSO POINTED A GUN AT HIS BROTHER AND HE HAD PULLED A KNIFE ON HIS MOTHER AND PUT IT TO HER STOMACH AND DREW BLOOD ALTHOUGH THE MOTHER SAID IT WAS ONLY A DROP. AND AS FAR AS THE PSYCHIATRIST, DR. MHATRE. TRIAL COUNSEL HAS BEEN A ATTORNEY, MANY, MANY YEARS, HE'S USED DOCTOR MA TRA, HE TESTIFIED SOMETHING LIKE 75 TO 80 TIMTION. HAD A GOOD WORKING RELATIONSHIP. TRIAL COUNSEL TESTIFIED THAT HE ORDINARILY PRESENTED FAMILY BACKGROUND INFORMATION TO THE PSYCHIATRIST, BUT HE DIDN'T RECALL DOING IT THIS TIME. AND DR. MHATRE TESTIFIED HE DIDN'T HAVE IT BEFORE TIME IT. HOWEVER, DR. MHATRE WAS THE ONLY MENTALITY HEALTH PROFESSIONAL TO TESTIMONY AT POST CONVICTION HEARING. HE TALKEDDED TO THE FAMILY AND HIS CONCLUSION WAS ESSENTIALLY THE SAME. WHILE THE DEFENDANT HAD A DYSFUNCTIONAL FAMILY, AND BY THE WAY, DOCTOR MA TRA POINTED OUT THE FAMILY MEMBERS WERE INCONSISTENT ABOUT WHAT THE DEFENDANT HAD AND HAD NOT EXPERIENCED AND THAT THEIR STAMS TO HIM WAS SOMEWHAT INCONSISTENT. HE THOUGHT MAYBE EITHER SOME OF THE FAMILY MEMBERS WERE EXAGGERATING THE, HOW BAD THE CHILDHOOD WAS OR OTHERS WERE COVERING UP. HE WASN'T SURE. THAT THERE WAS A LOT OF SMOKE. S NEVERTHELESS, HE CONCLUDED THE FAMILY WAS DYSFUNCTIONAL BUT HIS CONCLUSION IS THE SAME. THE ONLY PROBLEM THAT HE, THAT HE FOUND WAS THE DEFENDANT HAS ANTISOCIAL PERSONALITY DISORDER. DR. MHATRE'S OPINION NOW IS THE SAME AS IT WAS BEFORE, AND THAT IS THAT TESTIMONY WOULD HAVE BEEN MORE HAFERMFUL THAN HELPFUL. THE REASON BEING THAT THE CHARACTERISTICS OF ANTISOCIAL PERSONALITY DISORDER ARE DISTASTEFUL TO THE JURY. AND HE HAD TESTIFIED IN ANOTHER CASE AND HAD BEEN CROSS EXAMINED ON IT AT LENGTH ABOUT THAT AND IT BEARS NOTING, FIRST OF ALL, AND LET ME ADD THIS TOO. IN TERMS OF ANTISOCIAL PERSONALITY DISORDER VERSUS SOCIOPATH, ETCETERA. THE SECOND SENTENCE IN THE DEFINITION OF ANTISOCIAL PERSONALITY DISORDER IS, THIS PATTERN HAS ALSO BEEN REFERRED TO AS SIGH YO PAT THICK, SO YOU'RE TALKING ABOUT BASICALLY THE SAME THING. ESSENTIAL FEATURE OF THIS DISORDER IS PERVASIVE PATTERN OF DISREGARD FOR AND VIOLATION OF THE RIGHTS OF OTHERS, INCLUDES SUCH BEHAVIOR AS DESTROYING PROPERTY, HARASSING OTHERS, STEALING, PURSUING ILLEGAL OCCUPATIONS, REPEATED LYING, BEING REGRESSSIVE, FAILING TO PROVIDE SUPPORT, LACK OF EMPATHY TOWARDS OTHERS, CONTEMPT USENESS TOWARDS THE RIGHTS OF OTHERS. AND SO ON AND SO FORTH. TRIAL COUNSEL TESTIFIED THAT JURIES IN HIS EXPERIENCE TEND TO PERCEIVE THIS DISORDER AS MEANNESS AND NOT AS A MITIGATING FACTOR.

WHAT ABOUT THE TIMING ISSUE WITH REFERENCE?

HE -- TRIAL COUNSEL TALKED TO A DR. MHATRE ON I BELIEVE MAY NINTH, WHICH WAS SOME

TWO WEEKS BEFORE THE TRIAL WAS ORIGINALLY SCHEDULED BUT THE TRIAL WAS PUT OFF SO ULTIMATELY TURNED OUT TO BE ABOUT A MONTH AFTER THE EVALUATION. THERE IS NO EVIDENCE IN THIS RECORD AT ALL THAT THE LENGTH OF TIME WAS A FACTOR IN THE QUALITY OF HIS ANALYSIS. AGAIN, I WOULD REMIND THE COURT THAT DR. MHATRE TESTIFIED AT THE EVIDENTIARY HEARING THAT HIS OPINION REMAINED THE SAME, DIAGNOSIS REMAINED THE SAME. HE DID TESTIFY IN HIS OPINION THE FAMILY BACKGROUND INFORMATION WOULD HAVE BEEN MITIGATING. HE COULD HAVE TESTIFIED ABOUT IT IF HE HAD BEEN CALLED. OF COURSE THAT OCCURRED ANYWAY. AIL COULD SAY IS THAT IN TERMS OF, -- HIS TESTIMONY IS HE COULD PERHAPS EXPLAIN THAT HIS ANTISOCIAL PERSONALITY DISORDER MAY HAVE BEEN CONTRIBUTED TO SOME EXTENT BY HIS BACKGROUND INFORMATION. NEVERTHELESS, HIS ULTIMATE DIAGNOSIS REMAINED THE SAME. STATE POINTED OUT ON CROSS-EXAMINATION ONLY REASON THE JURY WOULD HAVE LEARNED ABOUT THE ANTISOCIAL PERSONALITY DISORDER IS IF YOU TESTIFIED TO IT. IF YOU DIDN'T, THERE WAS NOTHING TO EXPLAIN IN THAT REGARD. SO OUR POSITION IS THAT, THAT TRIAL COUNSEL INVESTIGATED, HE PREPARED, HE CONSULTED THIS MENTAL HEALTH EXPERT AND IF THE, HIS OMISSION TO PRESENT THE FAMILY BACKGROUND INFORMATION TO THE PSYCHIATRIST WAS IN ANY WAY DEFICIENT, ABSOLUTELY NO PREJUDICE HAS BEEN DEMONSTRATED. IN TERMS OF THE VENUE ISSUE, THE STATE WOULD CONTEND THAT BASICALLY THERE IS IS NO AUTHORITY WHATEVER TO SUPPORT THE NOTION THAT BECAUSE THE INDICTMENT ALLEGED ONE COUNTY AND OR THE OTHER, THAT THAT SOMEHOW ENTITLED HIM TO A SEVERANCE. AND THE CASE THAT HE CITES, ONE OF THE CASES HE CITES FOR THAT PROPOSITION LEON, THE ISSUE IN THAT CASE WAS WHETHER THE USE OF THE AND OR IS CONJUNCTIVE, WHICH THE STATUTE WOULD A LOU, OR NOT, WHICH THE STATUTE WITH NOT ALLOW. THE COURT SAID IT IS CONJUNCTIVE. ALTHOUGH THEY WERE VERY CRITICAL OF THE GRAMMATICAL ACCEPTABLE OF THE USE OF AND OR. BUT THERE IS NOTHING IN THAT CASE THAT GIVES THE DEFENDANT ANY MORE RIGHTS. THE FACT OF THE MATTER IS, IN THIS CASE, THAT THEY TRY TO SELECT A JURY -- DEFENDANT MOVED FOR A CHANGE OF VENUE, BOTH DEFENDANTS DID. NEITHER ONE WANTED TO BE TRIED IN THAT CIRCUIT AT ALL. NOT IN HAMILTON COUNTY, NOT IN COLUMBIA COUNTY. THEY TRIED TO PICK A JURY IN ONE COUNTY AND WERE ABSOLUTELY UNSUCCESSFUL DOING SO. THE TRIAL JUDGE MOVED FOR CHANGE OF VENUE, MOVED IT TO CLAY COUNTY. AND THE DISCUSSION CONCERNING THAT AFTERWARDS BY THE DEFENSE WELL YOU DIDN'T MOVE IT FAR ENOUGH AWAY BECAUSE CLAY COUNTY IS ONLY THREE COUNTIES OVER. THEY WERE THINKING MORE LIKE PENSACOLA OR SOMETHING. AND THERE IS THE TRIAL JUDGE IN DENYING RELIEF ON THIS POINTED OUT THAT THERE WAS ABSOLUTELY NO REASON TO THINK THAT THEY WOULD HAVE BEEN MORE SUCCESSFUL PICKING A JURY IN ONE COUNTY THAN THE OTHER. I THINK THEY TRIED TO PICK A JURY IN HAMILTON COUNTY --.

WHAT ABOUT -- I GUESS A LOT OF HIS ARGUMENT SEEMS TO BE THAT YOU COULD HAVE SEVERED THESE COUNTS FROM EACH OTHER AND HE COULD HAVE SEVERED THE CO-DEFENDANT'S CASE ALSO. AND IS THERE ANY AUTHORITY FOR THAT PROPOSITION?

I'M NOT AWARE OF ANY. IF I UNDERSTAND HIS ARGUMENT, IT'S BECAUSE WHEN YOU ALLEGE MULTIPLE COUNTIES, THAT THE STATUTE CONSTITUTION I THINK HE CITES BOTH, BUT AT ANY RATE, THERE IS A PROVISION IN THERE FOR THE DEFENDANT HAVING CHOICE AS TO WHICH COUNTY HE'S TRIED IN. AND SO HE'S THINKING WELL ONE DEFENDANT CAN CHOOSE TO BE TRIED IN ONE COUNTY AND OTHER IN ANOTHER COUNTY. AND THAT WOULD AUTOMATICALLY RESULT IN SEVERANCE. I'M NOT AWARE OF ANY CASE AUTHORITY SUPPORTING SOMETHING LIKE THAT. EVEN IF IT DID, THERE IS REALLY NO REALISTIC POSSIBILITY THAT IT A FAIR JURY COULD HAVE BEEN SELECTED IN EITHER COUNTY. BESIDES IT'S CLEAR THAT NEITHER DEFENDANT WANTED TO BE TRIED IN THAT CIRCUIT. THEY WANTED TO BE TRIED SOMEWHERE WHERE THE JURIES WERE NOT CONTAMINATED BY PRE-TRIAL PUBLICITY.

WAS THIS A MOTION TO SEVER THE DEFENDANTS MADE AT ANY POINT?

YES, IT WAS DENIED. AS I RECALL, THAT ISSUE WAS ADDRESSED ON APPEAL. AND DENIED. I'M NOT SURE, LET'S SEE WHAT ELSE WAS ADDRESSED. I WOULD JUST CALL COURT'S ATTENTION TO, ON THE RING ISSUE, IF YOU LOOK AT THE RECORD, THERE IS NOTHING ABOUT ANYTHING HE RAISES TODAY IN RING IN REGARD TO THAT RING ISSUE THAT WAS PRESERVED IN TRIAL. HE DID FILE A MOTION BEFORE TRIAL, TRIAL COUNSEL DID, RAISING CERTAIN COMPLAINTS ABOUT FLORIDA CONSTITUTIONALITY OF THE FLORIDA STATUTES. NONE OF THEM HAVING ANYTHING TO DO WITH ANY RING ISSUES. THEY WERE BASICALLY DIRECTED TOWARDS ALLEGED OVERBREADTH OF CERTAIN AGGRAVATORS AND RESTRICTIONS ON CONSIDERATION OF MITIGATION BY THE JURY.

YOU'RE TALKING ABOUT THE TRIAL, YOU'RE TALKING ABOUT THE LATEST TRIAL. WHAT YEAR WAS THAT? WHEN WAS THAT HELD?

THERE WAS, AS I RECALL.

2001?

EVIDENTIARY HEARING WAS LAST YEAR. OUR ARGUMENT IS THAT IT WASN'T RAISED AT THE ORIGINAL TRIAL, WHICH IT SHOULD HAVE BEEN.

ONLY ONE TRIAL HERE.

YES.

SO THAT WAS SOMETIME BEFORE 1997, WHICH IS THE DATE OF OUR, OUR DIRECT APPEAL CASE, RIGHT?

THAT'S CORRECT. IT PRE-DATED.

AND AT THAT TIME, APPRENDI HADN'T BEEN DECIDED SO HOW DO WE EXPECT DEFENSE COUNSEL TO RAISE THISH?

THE ISSUE DOESN'T DEPEND ON THE CASE HAVING BEEN DECIDED. WE PROVIDED SUPPLEMENTAL AUTHORITY, A CASE OUT OF THE 11TH CIRCUIT, WHOSE NAME ESCAPES ME RIGHT THIS SECOND. BUT THE FACT IS AND OUR POSITION IS THAT THE SIXTH AMENDMENT CLAIM HAS ALWAYS EXISTED. IT'S BEEN RAISED AND LITIGATED BEFORE. THERE WAS NO BAR TO THIS DEFENDANT HAVING RAISED THAT ISSUE. AND AS THE SUPPLEMENTAL AUTHORITY WE PROVIDED EXPLAINS, THE FACT THAT THE CASE HASN'T BEEN DECIDED DOESN'T MEAN THAT IT WASN'T THERE. AS LONG AS IT WAS REASONABLY AVAILABLE TO THE DEFENDANT, AND THIS CLAIM WAS, THEN HE CAN'T WAIT UNTIL, YOU KNOW, SOME EIGHT OR NINE YEARS AFTER TRIAL TO RAISE IT FOR THE FIRST TIME. OUR ADDITIONAL POSITION AND AGAIN, THIS SAME CASE SUPPORTS THAT, WE THINK.

YOU'RE TALKING ABOUT TURNER?

TURNER, OUT OF THE 11TH CIRCUIT, YES, SIR. THANK YOU. OUR ADDITIONAL POSITION IS THAT RING AND APPRENDI ARE SIMPLY NOT RETROACTIVE. THIS IS CASE ON POST CONVICTION NOW THIS. IS A MATTER, RING SIMPLY DOES NOT APPLY TO A CASE THAT'S ALREADY DECIDED, THAT'S ALREADY FINAL. AND FINALLY OF COURSE RING HAS, IS -- RING CLAIM HAS NOT ONLY BEEN REJECTED BY THIS COURT REPEATEDLY AND WITHOUT MERIT GENERALLY BUT IN THIS PARTICULAR CASE, THERE WERE, THE PRIOR FELONY AGGRAVATOR SUPPORTED THE DEATH PENALTY AND THAT BEING THE SHOOTING OF TROOPER LEGGETT AND ALSO TWO PRIOR ARMED ROBBERIES. IN ADDITION THERE WERE CONTEMPORANEOUS CONVICTIONS FOR ARMED ROBBERY, KIDNAPPING AND SEXUAL BATTERY, AND ALL OF THOSE CONVICTIONS FOR ALL OF THOSE FELONIES SIMPLY TAKE THE CASE OUT OF ANY POSSIBLE AMBIT OF RING. IF THERE ARE NO FURTHER QUESTIONS, WE WOULD ASK THE COURT TO AFFIRM.

THANK YOU BOTH VERY MUCH.