Guy Richard Gamble v. State of Florida

A A CONFLICT PROBLEM INVOLVING THE PUBLIC DEFENDER'S OFFICE IN LAKE COUNTY. THE RECORD OF THIS TRIAL IS NOT CLEAR, AND BECAUSE IT IS HABEAS, IT WAS NOT AN ISSUE SUBJECT TO EVIDENTIARY TESTIMONY, ABOUT HOW THE CIRCUIT COURTS OR CIRCUIT COURT IN LAKE COUNTY BROUGHT THESE MATTERS TO BEAR, BUT NEVERTHELESS, PRESS REPORTS AND WHAT HAVE YOU REFLECT THAT ALL CAPITAL CASES PENDING AT THAT TIME WERE HAVING THE COURTS CONSIDER WHETHER OR NOT THE RELATIONSHIPS BETWEEN PUBLIC DEFENDER AND CO-COUNSEL WERE DELETERIOUS TO THE DEFENDANT.

THIS IS A FERETTA CLAIM THAT YOU HAVE RAISED IN THE HABEAS PETITION.

THAT'S CORRECT.

DID MR. GAMBLE, AT ANY POINT, CLAIM THAT HIS COUNSEL WAS INCOMPETENT FOR ANY REASON?

NOT INCOMPETENT, JUSTICE QUINCE, AND AS THE QUOTED PORTION OF THE HEARING THAT I PUT IN THE HABEAS BRIEF, SHOWS, IS THAT THE COURT ANNOUNCED THAT IT WOULD BE A GOOD TIME FOR HIM TO CONSIDER WHETHER OR NOT MR. GAMBLE SIGNED A WRITTEN CONSENT FORM THAT THE PUBLIC DEFENDER'S OFFICE WAS INSTRUCTED TO OBTAIN FROM ALL THEIR CLIENTS. AND MR. --

HE DID NOT WANT TO SIGN THAT WAIVER FORM, BUT HE HAD NO REAL REASON WHY OR WHY NOT.

WELL, THAT IS RIGHT, AND I THINK THE BEST READING OF THE BRIEF TIEING THAT TO ADDRESS MR. GAMBLE, HIMSELF, WAS THAT MR. GAMBLE WAS TAKING IT, IF THIS IS NOT A PROBLEM, IF THIS IS NOT A CONFLICT OR A POTENTIAL FOR A PROBLEM, THEN WHY IN THE WORLD IS MY OWN LAWYER COMING TO ME TO SIGN THIS FORM TO WAIVE ALL MY RIGHTS? THE IMPORTANT THING ABOUT THAT HEARING, JUSTICE QUINCE, IS THAT MR. NACKE, HIMSELF, INDICATED THAT, WHEN MR. GAMBLE REFUSED TO SIGN THE CONSENT AND WAIVER FORM, HE WAS SAYING, HE TOLD THE COURT THAT MR. GAMBLE WANTED TO SUBSTITUTE COUNSEL. WHEN THE ADDRESS, WHEN THE COURT ADDRESSED MR. GAMBLE, HE, ALSO, SAID THAT HE WANTED THE COURT TO CONSIDER SUBSTITUTE COUNSEL, AND AS THIS COURT'S REPEATEDLY, OR IN A REPEATED FASHION, SAID IN THE HARDWICK V STATE CASE, FERETTA SAYS THAT, WHEN A PERSON, A DEFENDANT IS RAISING THE ISSUE OF GETTING SUBSTITUTE COUNSEL, HE IS TALKING ABOUT THE NOTION OF SELF REPRESENTATION, AND FERETTA SAYS IT IS FUNDAMENTAL ERROR FOR THE COURT NOT TO MAKE INQUIRY ABOUT WHETHER MR. GAMBLE KNOWINGLY AND INTELLIGENTLY WAS WAIVING THAT RIGHT. AND THIS COURT SAID, IN HARDWICK, IT IS PARTICULARLY SO, WHEN IT IS NOT THAT THE DEFENDANT IS UP THERE SAYING THAT I WANT TO REPRESENT MYSELF BUT I WANT SUBSTITUTE COUNSEL. AND THIS COURT, THE TRIAL COURT ONLY LOOKED AT, AND TOOK TESTIMONY FROM THE VARIOUS LAWYERS AND INVOLVED PERSONNEL, AND NEVER GOT TO THE NELSON CRITERIA, NEVER TOLD MR. GAMBLE IN THE RECORD AND IT DOESN'T SHOW HE KNEW IT FROM HIS LAWYER, THAT HE HAD THE RIGHT TO SELF REPRESENTATION, AND AS THE COURT IN HARDWICK, ADOPTING THE NELSON --

WAS THE ISSUE REALLY BEING PRESENTED IN THAT CONTEXT, HOWEVER?

WELL, AGAIN, THE RECORD IS UNCLEAR ABOUT HOW, WHETHER OR NOT THESE FOUR-WAY RELATIONSHIPS, AMONG THE MEMBERS OF THE TWO DIFFERENT CODEFENDANTS' COUNSEL, WAS CAUSING A POTENTIAL OR WHAT. IT IS CLEAR, AS THIS COURT RECALLS, THAT, ON DIRECT APPEAL, YOU APPROVED THE FACT THAT MR. LOVE, THE CODEFENDANT, PLEA BARGAINED FOR A LIFE SENTENCE AT THE CONCLUSION OF THE PENALTY PHASE, BUT BEFORE MR. GAMBLE GOT SENTENCED, SO I THINK THE ONLY IMPLICATION YOU CAN READ FROM A CASE LIKE THIS, WHERE IT TOOK COUNSEL, BOTH COUNSEL, OR BOTH COUNSEL FOR BOTH DEFENDANTS, A YEAR AND-A-HALF AFTER ALL FOUR PERSONS INVOLVED WITH THIS CRIME, GAVE CONFESSIONS AND STATEMENTS IN MULTIPLE FORM, TO THE POLICE WITHIN WEEKS OF THE HOMICIDE, THAT THEY WERE TRYING TO FIND OUT OR TRYING TO WAIT OUT THE OTHER, TO SEE WHO WAS GOING TO GO TO TRIAL FIRST. AND MR. GAMBLE LOST, AND IN TERMS OF THIS SEQUENCE, SO WHETHER OR NOT THE ISSUE CAME UP IN THE COURT IS AWARE FROM THE RECORD AT TRIAL OR PRETRIAL, THAT ALL OF THESE ATTORNEYS SAID OH, NO, OUR RELATIONSHIP, THE ONE CHIEF ASSISTANT WAS DATING ONE OF THE CO-COUNSEL AND HAD SOME KIND OF RELATIONSHIP I DON'T WANT THIS LAWYER BECAUSE HE'S NOT COMING TO SEE ME OR HE IS NOT DOING A GOOD JOB. HE HASN'T INTERVIEWED THE WITNESSES THAT I GAVE HIM. HE IS HE GOT A LIT TAN ANY OF COMPLAINTS ABOUT THE PERFORMANCE OF HIS LAWYER. SO IS THIS REALLY THE CONTEXT THAT THIS ISSUE WAS PRESENTED IN IN THIS CASE, AND IS OUR MANDATE WITH REFERENCE TO THIS BROAD I CHOIRY REALLY TRIGGERED BY RAISING THIS ISSUE ABOUT THIS POTENTIAL CONFLICT THAT SEEMS TO BE RESOLVED? HELP ME WITH THAT.

I BELIEVE THAT THE READING OF FRET TAKE V CALIFORNIA AND HARD WICK SAYS WHATEVER EVEN NARROW CIRCUMSTANCES THAT A DEFENDANT IS ASKING FOR SUBSTITUTED COURT APPOINTED COUNSEL, THAT THE INQUIRY INTO THE KNOWING INTELLIGENTNESS OF THE RIGHT OF SELF-REPRESENTATION HAS TO BE DONE AND AS THIS COURT SAID IN HARD WICK, IT'S FUNDAMENTAL ERROR FOR THE COURT NOT TO REACH THAT CRITERIA. AGAIN MR. MATTHEW HIMSELF IN THE INTRODUCTION TO THE COURT OF MR. GAMBLE'S FAILURE OR AT LEAST REFUSAL TO SIGN THAT CONSENT FORM WANTED SUBSTITUTE COUNSEL. AND MR. GAMBLE DID TOO.

IN THESE KINDS OF SITUATIONS, DON'T YOU HAVE TO START WITH TRIAL, THE TRIAL JUDGE DETERMINING WHETHER OR NOT THERE IS REALLY CAUSE TO, TO DISCHARGE COUNSEL?

WELL, AGAIN BECAUSE AGAIN THERE WAS NO MOTION TO WITHDRAW FILED BY EITHER MR. GAMBLE -- HE DIDN'T KNOW ABOUT THE SITUATION, THAT THE COURT'S IN LAKE COUNTY WERE GOING THROUGH THIS WITH DIFFERENT DEFENDANTS. UNTIL MR. NACKE, HIS ATTORNEY CAME TO THE JAIL WITH THIS FORM. SO THE IDEA IS, IF MR. GAMBLE HAD IT TOGETHER ENOUGH TO DO SOMETHING, HE MIGHT HAVE BEEN ABLE SURELY TO FILE SOMETHING. BUT THIS CAME ON THE COURT'S CALENDAR BY THE COURT'S OWN INSTRUCTIONS AFTER THE MOTION CALENDAR WAS CALLED TO ORDER, SAYING THAT BEFORE WE GET TO ALL THESE OTHER PRE-TRIAL MOTIONS, LET'S TAKE CARE OF THIS CONFLICT THING RIGHT NOW.

SO WHAT SUBSTANTIVE BASIS WAS EVER PRESENTED TO THE TRIAL COURT THAT WOULD GIVE RISE TO A SERIOUS QUESTION WHETHER OR NOT THERE WAS A NEED TO SUBSTITUTE COUNSEL?

WELL, AGAIN, --.

OTHER THAN POTENTIALITYITYS?

I BELIEVE ALTHOUGH MY BRIEF DOESN'T SAY, BUT THE STATUTE AT THAT TIME, MAY HAVE SAID THAT ANY TIME THE PUBLIC DEFENDER HAS A CONFLICT, REMEMBER, THERE IS A TIME FRAME THAT BEFORE THE PUBLIC DEFENDER DIDN'T EVEN HAVE TO DISCLOSE WHAT THE CONFLICT WAS. AND IN THIS ONE, THE TRIAL JUDGE, AS THE RECORD SHOWS, WENT RIGHT TO THE MERITS, IF YOU WILL, BUT HE DIDN'T GO INTO ANY DETAILS.

DID THE PUBLIC DEFENDERS EVER FILE A MOTION TO BE SUBSTITUTED BECAUSE IT DECLARED IT

HAD A CONFLICT?

NO, NO.

DID THE DEFENDANT EVER FILE A MOTION TO SUBSTITUTE COUNSEL AFTER THIS HEARING?

NO. AND THAT'S MY POINT. I THINK THIS IS A VERY UNIQUE -- CERTAINLY IT'S A UNIQUE SITUATION IN TERMS OF A MAJOR CONFLICT WHERE, AGAIN THE PUBLIC DEFENDER SAYS HE WAS INSTRUCTED TO TAKE THIS CONSENT FORM TO HIS CLIENT, WHO KNOWS IF THAT WAS BY HIS BOSS OR BY THE CHIEF JUDGE IN LAKE COUNTY?

SO IS IT ACCURATE THEN TO SAY THAT NEITHER YOU NOR THE PUBLIC DEFENDERS HAS EVER COME FORWARD THAT THERE IS AN ACTUAL CONFLICT? THERE WAS JUST POTENTIAL YALTY OF A CONFLICT.

BECAUSE IT WAS A HABEAS ISSUE THAT WASN'T RAISED ON DIRECT APEERBLTION IT WAS NOT A TOPIC FOR ANY TESTIMONY IN THE EVIDENTIARY HEARING ON THE RULE 3850 MOTION. IN MY POINT --.

WHAT WOULD HAVE -- WHAT MORE, ASSUMING APPELLATE COUNSEL HAD BROUGHT THIS IN THE FORM OF AN ISSUE ON DIRECT APPEAL, WHAT MORE WOULD THIS COURT HAVE HAD ON DIRECT APPEAL THAN WHAT IT HAS NOW?

THE FAILURE OF THE JUDGE TO DO AN INQUIRY TO MAKE SURE MR. GAMBLE, NURX NUMBER ONE HE HAD --.

THAT'S EXACTLY WHAT WE HAVE IN THIS HABEAS ISSUE, CORRECT? I MEAN WE DON'T -- WE WOULD NOT HAVE HAD ANY MORE EVIDENCE, YOU KEEP SAYING THERE WAS NO EVIDENTIARY HEARING.

I AGREE WITH YOU.

ON DIRECT APPEAL WE WOULD NOT HAVE HAD ANY MORE EVIDENCE EITHER.

THAT'S CORRECT, JUSTICE QUIN. AND AGAIN, THE KEY IS THAT MR. NACKE TOLD THE COURT AT THAT HEARING THAT MR. GAMBLE WANTED SUBSTITUTE COUNSEL AND MR. GAMBLE SAID THOSE WORDS HIMSELF. SO WHAT IN THE WORLD ELSE COULD HAVE MADE THE JUDGE THINK FOR RECEIPT TAKE AND NELSON THAN THAT?

THE OTHER INSTANCE OF INEFFECTIVENESS ASSISTANT COUNSEL --.

WHEN YOU TALK ABOUT WHAT HE SAID, WHAT MR. GAMBLE ACTUALLY SAID, HE STARTS OUT BY SAYING HE REALLY DOESN'T KNOW OF ANY REASONS WHY THIS PROBLEM CAME UP UNTIL THEY BROUGHT THIS FORM TO HIM. SO THEN EVEN AFTER HE MAKES SOME STATEMENT ABOUT WHETHER THE JUDGE MIGHT WANT TO LOOK AT SUBSTITUTE COUNSEL, THE JUDGE THEN FOLLOWS UP, DOESN'T HE, AND SAY WELL, HE STARTS WITH THAT FIRST PART OF NELSON, WHICH SAYS YOU GOT TO HAVE SOME CAUSE FOR DISCHARGING COUNSEL. SO HE DOES IN FACT TALK TO HIM ABOUT CAUSE FOR DISCHARGING COUNSEL, DOESN'T HE? WELL, YES JUSTICE QUINCE BUT I WOULD SAY THAT INQUIRY BY THE COURT EVEN THAT COMPONENT OF THE COURT WAS PRETTY PERFUNCTORY. IN OTHER WORDS, THE JUDGE WASN'T ASKING ALL KINDS OF POTENTIAL THING, ABOUT AGAIN THE NOTION OF WHICH DEFENDANT WAS GOING TO GO TO TRIAL FIRST. OR ANY IN NUMBER OF OTHER THINGS. OF COURSE MR. GAMBLE DIDN'T KNOW ANY OF THESE PARTIES. WOULDN'T HAVE ANY FACTUAL KNOWLEDGE HIMSELF.

WELL -- NEVER MIND.

AGAIN, GOING BACK TO THE TRIAL, MY BRIEFS POINT OUT AS WELL AS MR. NUNNELLEY'S IN TERMS OF THE FACT, THIS WAS ONE OF THE MANY CASES WE SEA NATURALLY OF THE FIRST TIME LEAVE SHARE TAKING A CAPITAL CASE TO TRIAL BY HIMSELF. BUT THIS CASE HAD THE UNIQUE COMPONENTS OF HAVING SECOND CHAIR COMING IN TO DO PENALTY PHASE ONLY THREE DAYS AFTER SIX MONTH BAR SUSPENSION. THE PREVIOUS PENALTY PHASE ATTORNEY LEADING -- LEAVING THE PUBLIC DEFENDER THREE MONTHS BEFORE START OF TRIAL. AND AGAIN, AS I TRIED TO POINT OUT IN THE BRIEFS, IT WAS FELONY MURDER IN THE ALTERNATIVE TO PRE-MED TATED FIRST DEGREE MURDER. AND TRIAL COUNSEL MADE ALL KINDS OF CONCESSIONS AND CONTRADICTORY CONCESSIONS BETWEEN THE TWO OF THEM ABOUT WHETHER OR NOT THIS WAS A ROBBERY, A PLANNED ROBBERY OR DIFFERENT SCHEME THAN THE STRANGLING SCHEME MR. GAMBLE HIMSELF. BUT GOING TO THE CCP, COLD CALCULATED PRE-MED TATED INSTRUCTION, I POINT OUT IN THE PREVIOUS THAT TRIAL COUNSEL DID ANTICIPATE THE CHANGE IN THE LAW WHICH CONTRADICTS THE RULING THAT JUDGE SINGLETARY MADE AT THE CONCLUSION OF THE EVIDENTIARY IN DENYING A HEARING ON THIS PARTICULAR CLAIM, BECAUSE SPECIFICALLY MR. NACKE FILED TO THE POINT PRE-TRIAL MOTION THAT SAID, OR THE CCP INSTRUCTION WAS CONSTITUTIONALLY INFIRM BECAUSE IT WAS VAGUE FOR NON-DEFINING THE CRITERIA AS CAME OUT IN JACKSON. THIS COURT RULED ON DIRECT APPEAL THAT TRIAL COUNSEL DID NOT PRESERVE THE ISSUE AND THEREFORE WOULD NOT GET A NEW SENTENCING HEARING BECAUSE TRIAL COUNSEL FAILED TO MAKE THIS SPECIFIC OBJECTION LATER ON IN THE TRIAL AGAINST THAT INSTRUCTION. WHAT HE DID IS HE ARGUED THAT THE FACTS WERE INSUFFICIENT TO SUPPORT CCP, SO THIS COURT SAID THAT CLAIM IS PROCEDURALLY BARRED. WELL WHAT IT IS, IS INEFFECTIVENESS ASSISTANCE OF COUNSEL, WHICH CAUSED THE PREJUDICE OF LOSING, AND HAVING BARRED A CLAIM THAT WOULD HAVE GOTTEN HIM A NEW SENTENCING PHASE BECAUSE PRE-TRIAL HE DID FILE SPECIFIC CLAIM, MY FOOTNOTE POINTS OUT THAT BACK THEN THE LIFE OVER DEATH SEMINARS WERE TEACHING ALL PUBLIC DEFENDERS, IF YOU WILL, THAT EVEN MANY, MANY, HALF A DOZEN RING CLAIMS WERE FILED IN THE, IN MATERIAL 90'S ALSO. SO HE WAS INEFFECTIVE AND WE DON'T HAVE A EVIDENTIARY HEARING TO EXPLAIN WHAT STRATEGY HE WOULD FILE A PRE-TRIAL MOTION THAT SAYS THE INSTRUCTION FOR CCP IS CONSTITUTIONALLY INFIRM, THAT LATER ON WAS THIS A TACTIC OR A REASON WHY HE SAID WELL IT IS JUST THE INSUFFICIENCY OF THE EVIDENCE THAT MAKES CCP NOT APPLY. WE ARGUE THAT THE COURT SHOULD'VE GRANTED US AN EVIDENTIARY HEARING TO SEE IF, BY ANY CHANCE THERE WAS ACCEPTABLE OR REASONABLE TACTICAL REASON WHY CLIENT -- WHY COUNSEL DID THAT AND WE WOULD ARGUE THAT HIS INEXPERIENCE WAS THE CAUSE OF ALL OF THAT AND INCLUDING THE CONTRADICTORY CONCESSIONS BETWEEN GUILT AND PENALTY PHASE.

THE MARSHAL HAS REMINDED US WE ARE INTO REBUTTAL SO THANK YOU VERY MUCH.

GOOD MORNING. MAY IT PLEASE THE COURT KEN NUNNELLEY, I REPRESENT THE STATE OF FLORIDA IN THIS PROCEEDING.

HOW ABOUT PICKING RIGHT UP ON THE LAST ISSUE ADDRESSED, IF I UNDERSTAND THE ARGUMENT, IT IS THAT THE FILED A CLAIM HERE ARGUING THAT COUNSEL WAS INEFFECTIVE AND THEY HAVE DEMONSTRATED THAT BEFORE TRIAL HIS ATTACK THE CCP, INSTRUCTION. BUT THEN HE FAILED TO FOLLOW THROUGH AND AT TRIAL, AS WE REQUIRE, THAT YOU HAVE TO RENEW THAT OBJECTION BEFORE THE INSTRUCTION IS GIVEN, SO WHY NOT ON ITS FACE DOESN'T THAT MERIT AN EVIDENTIARY HEARING? IF HE'S CORRECT ABOUT THAT.

I'M NOT SURE ABOUT EXACTLY, TO GO AT THAT QUESTION IN THE MOST CONCISE FASHION BECAUSE IT IS KIND OF A DUEL TRACK RESPONSE. THE SHORT ANSWER, THE BOTTOM LINE AND AS THIS COURT KNOWS, I WILL NOT EVER CONCEDE ANYTHING, EVEN IF ONE ASSUMES DEFICIENT PERFORMANCE ON THE PART OF COUNSEL IN NOT JUMPING UP AND DOWN, RAISING AN OBJECTION TO THE CCP JURY INSTRUCTION, HE STILL FAILS UNDER STRICKLAND BECAUSE HE CANNOT SHOW PREJUDICE. WE DON'T HAVE TO HAVE AN EVIDENTIARY HEARING WHEN THIS COURT HAS ALREADY SAID THE CCP AGGRAVATER APPLIES.

BUT ISN'T THERE A PROBLEM THAT'S COMPOUNDEDDED BY RING, WHICH IS THAT WHAT WE SAID WAS THAT THERE WAS SUFFICIENT EVIDENCE OF THE TRIAL JUDGE TO FIND CCP. BECAUSE IN THIS CASE WE DON'T KNOW WHAT AGGRAVATERS THE JURY DECIDED AND IF IT HAD BEEN RAISED, IF THE CCP INSTRUCTION HAD BEEN RAISED AND PRESERVED UNDER THE JACKSON SERIES OF CASES, THERE WOULD HAVE BEEN A REVERSAL FOR A NEW TRIAL, WOULDN'T THERE HAVE BEEN?

NOT NECESSARILY IF IT'S CCP, UNDER ANY DEFINITION OF THAT AGO GRATER, THERE IS NO REVERSAL WARRANTED BECAUSE OF THE DEFICIENCY IN THE JURY INSTRUCTION. IF THE AGGRAVATING CIRCUMSTANCE APPLIES.

SO YOU MEAN THE ONLY TIME WE REVERSED CASES INVOLVING UNCONSTITUTIONALLY INFIRM JURY INSTRUCTIONS IS IF THERE WAS NO EVIDENCE FOR THE JURY TO FIND CCP?

MAYBE I'M NOT FOLLOWING YOUR QUESTION.

IN THIS CASE, THIS INSTRUCTION WAS CONSTITUTIONALLY INFIRM, CORRECT?

YES, MA'AM. IT WAS --.

PRESERVED BY A PROPER OBJECTION, WOULD THIS COURT HAVE REVERSED FOR A NEW TRIAL BECAUSE OF THE INADEQUATE CONSTITUTIONALLY INADEQUATE JURY INSTRUCTION?

I DON'T BELIEVE THIS COURT WOULD HAVE DONE SO, YOUR HONOR. IT'S --.

WHAT ARE THE FACTS?

JUSTICE ANSTEAD, I REMEMBER THAT YOU AND I HAD A VERY SPECIFIC EXCHANGE ABOUT THE FACTS OF THE COLD CALCULATED AND PRE-MED TATED AGGRAVATING FACTOR WHICH WERE IN ESSENCE THAT THIS MURDER WAS REHEARSED OVER A PERIOD OF SIX DAYS PRIOR TO THE ULTIMATE KILLING OF THE DEFENDANT IN THIS CASE BY BEATING HIM ABOUT THE HEAD WITH A CLAW HAMMER AND CHOKING HIM WITH A ROPE. IN FACT MR. GAMBLE HAD HIS GIRLFRIEND SIT AT THE DINING ROOM TABLE OR KITCHEN TABLE, WHICHEVER ONE IT WAS, DOESN'T REALLY MATTER AND PRETEND SHE WAS WRITING OUT A RENT RECEIPT. AND WHILE SHE WAS DOING THIS, HE PRACTICED APPROACHING HER FROM BEHIND AND GAR ROTTING HER WITH A WINDOW CORD. THIS WENT ON FOR A PERIOD OF TIME AND OF THE REHEAR ALWAYS AND PART YOU AND I TALKED ABOUT JUSTICE ANSTEAD WAS THE CHANGE IN THE MURDER WEAPON, BECAUSE WHEN THEY GOT DOWN TO THE VICTIM'S WORKSHOP, IN HIS GARAGE, THE VICTIM IN THIS CASE WAS THE LANDLORD OF THE TWO DEFENDANTS, THE TWO DEFENDANTS QUIT THEIR JOBS, THEY HAD BEEN PLANK ON LEAVING TOWN SOME PERIOD OF TIME, THEY TOLD THE GIRLFRIENDS TO PACK UP OUR THINGS, WE ARE FIXING TO LEAVE. THEY SCURRIED AROUND, GATHERED UP SOME MONEY, WENT OVER TO THEIR LANDLORD IN HIS WORKSHOP AND SAID, GEE MR. SO AND SO, HERE IS OUR RENT MONEY BUT WE NEED A RECEIPT. SO HAES TO GO UPSTAIRS, WHILE HE'S UP STAIRS THEY FIND A CLAW HAMMER AND BEAT HIM TO DEATH WHEN HE COMES BACK AND TURNS HIS BADGE ON THEM. BASED ON THOSE FACT AND EXTENSIVE EVIDENCE AT TRIAL SET OUT IN THE DIRECT APPEAL DECISION, OF THE PRE-MEDTATION, COLDNESS AND CALCULATION OF THIS MURDER, THIS COURT FOUND THIS CASE WAS COLD CALCULATED AND PRE-MED TATED YARD. I WOULD SUGGEST UNDER THESE DEFENDANTS BASED UPON ANY DEFICIENCY IN THE JURY INSTRUCTION, EVEN IF IT HAD BEEN PRESERVED. DO I NOT HOWEVER CONCEDE THE TRIAL COUNSEL SHOULD HAVE PRESSED THAT ISSUE EVEN FURTHER. THIS COURT HAS NEVER REQUIRED COUNSEL TO BE ABLE TO FORESEE THE FUTURE AND PREDICT WHAT THE LAW IS GOING TO BE. NOW I KNOW I HAVE ARGUED IN PAST CASES THAT APPRENDI ISSUES -- EXCUSE ME, AT KIDS ISSUES HAVE BEEN AROUND A LONG TIME BECAUSE WE SEEING THOSE CLAIMS BACK IN 1989. AND THAT'S TRUE. BUT AS THE COURT'S ALSO SAID WHILE THE ABILITY TO BE INNOVATIVE IS ASSET TO A TRIAL LAWYER, IT IS NOT A REQUIREMENT TO RENDER EFFECTIVE ASSISTANCE OF COUNSEL. AND I

WOULD SUBMIT THAT UNDER THESE FACTS, AND I WOULD POINT THE CASE AGAIN, COURT TO A CASE AGAIN I CITED IN A FOOTNOTE, PITS VERSUS COOK OUT OF THE 11TH CIRCUIT COURT OF APPEALS, WHICH WAS A BATSON CASE, WHICH OF COURSE IS THE NEIL SLAPPY COUNTERPART, THE 11TH CIRCUIT WENT ON TO HOLD EXACTLY THE SAME THING THIS COURT HAS ALWAYS HELD, THAT COUNSEL IS NOT REQUIRED TO PREDICT CHANGES IN THE LAW. IF MY MEMORY SERVES, THERE MAY HAVE BEEN EVEN BEEN A BATSON SORT OF OBJECTION SOMEBODY POINT IN THIS. I CAN'T REMEMBER, BEEN A LONG TIME SANS THAT CASE CAME THROUGH.

DID COUNSEL IN THIS CASE FILE A PRE-TRIAL MOTION WHICH IN YOUR LANGUAGE WOULD HAVE ANTICIPATED THE FUTURE? THAT IS, THAT CHALLENGE, THE CONSTITUTIONALITY OF THE CCP INSTRUCTION?

I BELIEVE IT WAS THE STANDARD PRE-TRIAL MOTIONS THAT THEY ALWAYS FILED JUSTICE ANSTEAD.

WHETHER IT WAS A STANDARD OR NOT.

IT ARGUABLY WOULD HAVE CHALLENGED THE CONSTITUTIONALITY OF THE JURY INSTRUCTION. BUT AT THE SAME TIME WE COME BACK TO THE POINT THAT THERE IS NO A REQUIREMENT THAT HE FOLLOW-UP ON THAT. HE FAILED, I WOULD PRESUME, WE DIDN'T HAVE EVIDENTIARY HEARING AND I DON'T AGAIN AGREE WE NEED TO HAVE ONE, AND I DON'T WANT TO INVENT STRATEGY FOR THESE GENTLEMEN, BUT I WOULD SUGGEST THAT HE HAD TO MAKE SOME -- HE HAD TO MAKE AN ARGUMENT THAT HE THOUGHT WAS GOING TO WIN AND IF YOU GOT TO CHOOSE -- I WOULD SUGGEST IT IS REASONABLE TO PRESS THE ARGUMENT THAT WE JUDGE, WE DON'T HAVE THE EVIDENCE TO SUPPORT THAT AGGRAVATER, STATE DOESN'T GET THAT ONE BECAUSE THEY HAVEN'T PROVEN IT AS OPPOSED TO MAKING AN ARGUMENT THAT THE CASE HAS A ALREADY REJECTED AN B CONTRARY TO CASE LAW OUT OF THIS COURT.

CAN I ASK YOU, ABOUT THE RING ISSUE. ON DIRECT APPEAL, THEY RAISED ISSUE AS TO FLORIDA'S DEATH PENALTY STATUTE BEING UNCONSTITUTIONAL AND WE REJECTED THAT. IN THIS CASE, YOU HAVE GOT A, THE AGGRAVATERS WERE COLD CALCULATED AND CCP AND PEA KUN NAER GAIN.

THAT'S CORRECT, YOUR HONOR.

WHAT'S YOUR POSITION ON THE RING ISSUE? IN OTHER WORDS, IF THERE IS NO -- I DON'T KNOW IF THERE IS PRESERVATION ISSUE, I DON'T KNOW HOW THEY RAISED IT BACK IN 1995. BUT WHAT'S YOUR POSITION AS TO WHY RING WOULDN'T REQUIRE RELIEF?

WELL FIRST OF ALL MY POSITION IS THAT THE RING CLAIM IS PROCEDURALLY BARRED BECAUSE IT WAS NOT PRORBL RAISED IN A TIMELY FASHION TO PRESERVE IT.

WHEN WOULD YOU HAVE RAISED IT?

THE RING CLAIM WOULD HAVE HAD TO HAVE BEEN RAISED TO BE PRESERVED, I WOULD SUPPOSE -- I WOULD PRESUME PRE-TRIAL.

BEFORE RING?

IN ORDER TO PRESERVE IT, YES, MA'AM.

BUT THEY APPARENTLY DID FILE A MOTION TO HAVE FLORIDA'S STATUTE DECLARED UNCONSTITUTIONAL AND WE REJECTED THAT IN DIRECT APPEAL.

THAT IS CORRECT, YOUR HONOR. BUT A MOTION DECLARED THE STATUTE UNCONSTITUTIONAL

ON ONE GROUND, DOES NOT NECESSARILY PRESERVE PROPERLY A RING CLAIM, WHICH WOULD BE BASED UPON THE SPECIFIC ASPECTS OR THE SPECIFIC CAL CULL LUS IF YOU WILL FOUND IN RING. AND THAT CLAIM WAS NOT PRESENTED.

SO THEY DIDN'T ASK FOR THE JUDGE TO HAVE JURY FINDINGS ON THE AGGRAVATERS?

I DON'T BELIEVE THEY DID, YOUR HONOR. AND I WOULD SUGGEST THAT PRESERVATION IS THE THRESHOLD ISSUE WITH RESPECT TO A RING APPRENDI CLAIM AS OPPOSED TO ANY OTHER CONSIDERATIONS, SUCH AS RETROACTIVITY. IF IT IS NOT PRESERVED, WE DON'T GET TO THE RETRO ACTIVITY COMPONENT, AS THE 11TH CIRCUIT COURT OF APPEALS HAS NOTED IN A SIMILAR CONTEXT VERY RECENTLY IN THE CASE OF UNITED STATES VERSUS ARDLEY. SECONDLY, WITH RESPECT TO RING, SINCE MY OPPONENT DID NOT ARGUE IT, I DO NOT WISH TO SPEND MUCH TIME UPON THE CLAIM. HOWEVER, WE DO HAVE THE NON-APPRENDI RING AGGRAVATER OF PE KUHN NAER GAIN THAT DOES TAKE THIS CASE OUTSIDE THE REACH OF RING UNDER ANY CIRCUMSTANCES. THIS COURT HAS HELD, AS CONSISTENTLY REJECTED RING APPRENDI CLAIMS AND THERE IS NO REASON IT SHOULD DO DIFFERENTLY IN THIS CASE.

I'M SORRY YOU SAID PEA KUHN NAER GAIN AGGRAVATER IS BASED UPON THE ROBBERY FOR WHICH MR. GAMBLE WAS CONVICTED SEPARATELY IN THIS SAME TRIAL.

AND WHAT WAS THE FIRST DEGREE MURDER CONVICTION BASED ON?

FIRST DEGREE MURDER WAS BASED UPON THE ROBBERY AS WELL.

IN OTHER WORDS, WAS -- THERE WASN'T SEPARATE VERDICT TO SHOW WHETHER HE WAS GUILTY OF PRE-MED TATED FIRST DEGREE MURDER?

MR. GAMBLE WAS CONVICTED OF CONSPIRACY TO COMMIT ARMED ROBBERY AND FIRST DEGREE MURDER ALL ARISING OUT OF THE SAME CRIMINAL INCIDENT. THERE WAS NO SEPARATE VERDICT DENO, MA'AM INTERESTED OR DIFFERENTIATED BETWEEN PRE-MED TATED MURDER OR FELONY MURDER.

WOULD YOU TOUCH ON THE CONFLICT ISSUE OR THE NELSON?

YES, YOUR HONOR, IF I COULD GO BACK TO HIT A COUPLE HIGH POINTS I WANT THE COURT TO BE SURE OF, CO-COUNSEL IN THIS CASE, MR. HUGH LEE WAS NOT UNDER A SIX MONTH SUSPENSION. MR. LEE WAS SUSPENDED FOR 60 DAYS. AND I BELIEVE THE TESTIMONY IN THE PROCEEDING WAS THAT HE TOOK 30 DAYS OFF AND THEN WORKED AS AN INVESTIGATOR SLASH PARALEGAL, SLASH DOING WHATEVER NEEDED BEING DONE SORT OF PERSON FOR THE REMAINING 30 DAYS, LEADING UP TO MR. GAMBLE'S TRIAL. THAT HIS SUSPENSION EXPIRED OR WHATEVER THE WORDS USED FOR SUCH THINGS, PRIOR TO THE COMMENCEMENT OF MR. GAMBLE'S TRIAL AND HE WAS FULLY INVOLVED NEW MEXICO GAMBLE'S TRIAL AS AN ATTORNEY. MR. LEE OBVIOUSLY SUFFERED NO DETRIMENTAL EFFECTS TO HIS CAREER AS A RESULT OF THAT SUSPENSION BECAUSE HE IS NOW THE CHIEF ASSISTANT PUBLIC DEFEND NEAR THE FIFTH CIRCUIT. MR. LEE AT THE TIME OF THIS TRIAL TESTIFIED THAT, OR RATHER AT THE EVIDENTIARY HEARING TESTIFIED THAT AT THE TIME OF THIS TRIAL, HE HAD TRIED AT LEAST THREE CAPITAL MURDER CASES AND BEEN TRYING FELONY CASES FOR YEARS. LEAD COUNSEL, MARK NACKE, WHO AT THE TIME OF THIS TRIAL AND PRESENTLY WAS WITH THE PUBLIC DEFENDER'S OFFICE IN THE FIFTH JUDICIAL CIRCUIT, HAD TRIED, AND THIS IS ONE OF THOSE THINGS I HAVE BEEN WRESTLING WITH HOW TO PRESENT, MR. NACKE REPRESENTED ALONG WITH CO-COUNSEL, WILLIAM FREDERICK HAP. THIS COURT I KNOW IS FAMILIAR WITH MR. HAP. WE HAVE A EVIDENTIARY HEARING IN THIS CASE NEXT WEEK. BUT THE HAP CASE MISS TRAPPED -- MISTRIED THE FIRST TIME. SO BOTTOM LINE, MR. NACKE TRIED TWO ONE CASE TWO TIMES. BUT THE SHORT ANSWER IS, THESE ARE NOT DEFENSE ATTORNEYS WHO WALKED INTO A CAPITAL TRIAL AND DIDN'T HAVE A CLUE WHAT THEY WERE DOING. THEY WERE EXTREMELY EXPERIENCED PENALTY DEFENSE ATTORNEYS. THEY HAD BOTH TRIED

CAPITAL MURDER CASES IN THE PAST. I BELIEVE BETWEEN THE TWO OF THEM, THEY HAD TESTIFIED AND I BELIEVE THE EVIDENCE AT THE EVIDENTIARY HEARING WOULD BEAR ME OUT, THEY TESTIFIED AWFUL LOT MAJOR FELONY TRIALS. WITH RESPECT TO THE CONFLICT NELSON FERRET TAKE, WHATEVER WE WANT TO CALL IT CLAIM, AND I AM NOT SURE IF WE ARE ARGUING THE HABEAS OR NOT, I WOULD SUGGEST THAT --.

THIS COUNSEL SAYS HE WAS ARGUING THIS UNDER THE HABEAS.

THAT'S WAY THOUGHT. I KEPT TRYING TO FIGURE IT OUT AND IT LOOKS -- I'M NOT SURE THAT THIS IS A HABEAS CLAIM. IT APPEARS TO BE MORE OF A TRIAL RELATED CLAIM THAN SOMETHING RAISED BEFORE.

HE IS SAYING APPELLATE COUNSEL EXAMINING THE RECORD, THAT THIS SHOULD'VE JUMPED OUT AT HIM. AND THAT HE SHOULD'VE RAISED IT. HE GETS TO COMMENT ON THAT AGAIN WHEN GETS UP. BUT ASSUME THAT, WHAT DOES THE RECORD SHOW US ABOUT THIS TERMS OF THE NEED TO HAVE A NELSON FARETTA TYPE INQUIRY BASED ON THIS ISSUE ABOUT CONFLICT?

WELL, THE HEARING ON THE CONFLICT IS APPENDED TO MY RESPONSE TO THE HABEAS PETITION. AND I BURDEN TO THE COURT WITH ALL 17 PAGES OF IT. IT APPEARS, -- DOESN'T APPEAR, THE RECORD SHOWS THAT THIS ISSUE OF THE CONFLICT WAS BROUGHT TO THE COURT'S ATTENTION AT THE INSTRUCTION OF THE THEN CHIEF ASSISTANT PUBLIC DEFENDER T MICHAEL JOHNSON, WHO IS NOW A CIRCUIT JUDGE IN LAKE COUNTY. APPARENTLY JUDGE JOHNSON WAS DATING OR IN SOME SORT OF A RELATIONSHIP WITH ONE OF THE CONFLICT ATTORNEYS WHO REPRESENTED THE CO-DEFENDANT MICHAEL LOVE IN THIS CASE, AND THE OTHER CONFLICT ATTORNEY, WHO WAS REPRESENTING MICHAEL LOVE IN THIS CASE, WAS MARRIED TO AN ASSISTANT -- ANOTHER ASSISTANT PUBLIC DEFENDER. BOTH OF THE CONFLICT ATTORNEYS WERE NON-PUBLIC DEFENDER PERSONNEL. THE -- LET ME SEE IF I CAN TRY TO REMEMBER THIS. KIND OF GETS CONFUSING. THE WIFE OF THE CONFLICT ATTORNEY WHO WAS IN THE PUBLIC DEFENDER'S OFFICE WAS BASED OUT OF BUSHNELL, WHICH IS IN SUMTER COUNTY. THIS CASE WAS TRIED IN ALL ACTIONNESS THIS CASE TOOK PLACE IN LAKE COUNTY. JUDGE JOHNSON, ACCORDING TO THE RECORD, DIRECTED THE PUBLIC DEFENDER'S OFFICE, THROUGH MARK NACKE TO BRING THIS TO THE COURT'S ATTENTION THROUGH A MOTION TO WITHDRAW. AND APPARENTLY THEY CHOSE THAT VEHICLE AS A MEANS TO GET THIS MATTER IN FRONT OF THE COURT AND GET IT RESOLVED ONCE AND FOR ALL SO IT DOESN'T COME BACK LIKE IT HAS NOW. AND WHAT THEY DID, THEY HAD, ACTUALLY HAD, TOOK TESTIMONY, AND MR. NACKE TESTIFIED OR MR. NACKE'S ARGUMENT WAS THAT THE PUBLIC DEFENDER'S POSITION WAS THERE IS NO CONFLICT, QUOTING FROM PAGE 1872 OF THE RECORD, IT HAS BEEN OUR POSITION FROM THE OUTSET OF THIS REQUEST THAT THERE WAS NO CONFLICT -- CONFLICT, THERE WAS NO ETHICAL DUTY FOR US TO OBTAIN THIS CONSENT OR WAIVER, PAREN THET TICKLY THE CONSENT OR WAIVER THAT MR. GAMBLE REFUSED TO SIGN IS WHAT BROUGHT THIS ABOUT, WITH THE FILING OF THE MOTION ITSELF. AND HE GOES ON TO SAY WE HAVE MAINTAINED ALL ALONG THERE IS NO CONFLICT, WE HAD NO DUTY TO GET A CONSENT OR WAIVER. ON AND ON. THE BOTTOM LINE TO THIS IS, THIS IS NOT A FARETTA CLAIM. THERE IS NO REQUEST FOR SELF-REPRESENTATION. THERE IS NO UNEQUIVOCAL REQUEST FOR SELF-REPRESENTATION. CERTAINLY THERE CAN'T BE IF THERE WAS NO REQUEST AT ALL. THERE IS NOTHING IN THIS RECORD THAT WOULD HAVE ALERTED APPELLATE COUNSEL OR SUGGESTED TO APPELLATE COUNSEL THAT THERE WAS AN ISSUE TO BE RAISED BECAUSE THERE ISN'T AN ISSUE TO BE RAISED. IT'S ONE OF THOSE THAT'S SOMEWHAT DIFFICULT TO QUANTIFY, BUT THERE SIMPLY IS NO CLAIM. THE ISSUE WAS ADDRESSED, IT WAS LITIGATED BEFORE THE COURT. THE COURT DETERMINED THAT THERE WAS NO CONFLICT. AND I WOULD POINT OUT IN THE COURSE OF THE TESTIMONY AT THE HEARING, AT LEAST ONE OF THE INDIVIDUALS INVOLVED, I BELIEVE ONE OF THE CONFLICT ATTORNEYS THAT ACTUALLY GONE AS FAR AS GETTING AN OPINION FROM THE FLORIDA BAR THAT THERE WAS NO CONFLICT. SO THIS IS -- I WOULD SUBMIT RESPECTFULLY TO MY BROTHER AT THE BAR, MUCH ADO ABOUT NOTHING. I DON'T KNOW WHERE THE ARGUMENT COMES THAT EACH SIDE WAS TRYING TO WAIT OUT THE OTHER TO SEE WHO WOULD GO TO TRIAL

FIRST. I DON'T KNOW WHERE THAT CAME FROM. I HAVE NO IDEA. THE TESTIMONY AT THE EVIDENTIARY HEARING BY MARK NACKE AND HUGH LEE WAS THAT THIS CASE MOVED THROUGH THE PRE-TRIAL, OR PRE-TRIAL PREPARATION STAGE AS DO MOST CAPITAL CASES AND TAKE A WHILE TO GET TO TRIAL. AND I DON'T THINK THAT THAT'S ANYTHING THAT CERTAINLY SUPPORTED BY THE RECORD. BEYOND THAT, UNLESS THE COURT HAS FURTHER QUESTIONS, I WOULD RESPECT ANY SUBMIT THAT THE COURT SHOULD DENY HABEAS RELIEF AND AFFIRM THE DENIAL OF THE RULE 3.850 MOTION.

THANK YOU.

COUNSEL?

MR. MARSHAL, HOW MUCH TIME?

FIRST I THINK COUNSEL CORRECTED ME WHEN I MISSTATED THE LENGTH OF MR. HUGH LEE'S BAR SUSPENSION. BEFORE TRIAL I DID NOT INTEND TO MISLEAD THE COURT WHEN I SAID IT WAS SIX MONTHS INSTEAD OF THE 60 DAYS. I DO DISAGREE WITH COUNSEL WHEN HE SAYS THAT MR. GAMBLE'S REQUEST FOR SUBSTITUTE COUNSEL AND MR. NACKE'S INFORMING THE TRIAL COURT THAT HE WANTED SUBSTITUTE COUNSEL IS MAKING A MOUNTAIN OF A MOLE HILL OR WHAT HAVE YOU. IT DOES DESERVE SIGNIFICANT RESPONSE FROM THE COURT BECAUSE OF THE DICTATES OF FARETTA. HE WAS SAYING IF THIS CONFLICT ISSUE DOESN'T HAVE THE POTENTIAL FOR BEING A PROBLEM, THEN WHY ARE YOU BRINGING THIS FORM FOR ME TO SIGN? AND WHY ARE WE HAVING A HEARING BECAUSE I REFUSE TO SIGN THE FORM? I ARGUE THAT IT WAS IMPROPER, WITHOUT GIVING INDEPENDENT COUNSEL TO MR. GAMBLE, TO RULE ON EXISTING CONFLICT AT THAT TIME WITH NO WARNING, NO HEARING NOTICE OR ANYTHING. WHAT HE SHOULD'VE DONE --.

BUT THAT REALLY DOESN'T FIT WITHIN NELSON, DOES IT?

NO, YOU'RE CORRECT. AND JUSTICE WELLS, I THINK THIS IS AWFULLY UNIQUE SITUATION IN TERMS OF A DEFEND APPEARING JUST TWO WEEKS BEFORE TRIAL AND SAYING WELL I WANT SUBSTITUTE TRIAL BECAUSE SOMETHING JUST DOESN'T SEEM RIGHT HERE. BUT THE LOGIC I THINK IS STRONG BECAUSE MR. GAMBLE IS SAYING WELL WHAT'S NOT RIGHT IS, MY LAWYER BRINGS ME A WAIVER FORM TO SAY THAT ALL THESE RELATIONSHIPS DON'T MATTER AND HE WANTS ME TO SIGN IT AND NOW THE JUDGE IS HEARING THE ISSUE BECAUSE I REFUSE TO SIGN THAT WAIVER FORM. UNDER FARETTA, AND UNDER, AS NOTED, UNDER HARD WICK, PARTICULARLY SO WHEN A DEFEND REQUESTS SUBSTITUTE COUNSEL, THE JUDGE IS SUPPOSED TO JUMP IN TO THE INQUIRY ABOUT KNOWING INTELLIGENT WAIVERS FOR SELF-REPRESENTATION. AND THEN THE SECOND COMPONENT, WHERE NELSON KICKS IN AND SAYS WELL, IF YOU FIRE, OR RELEASE YOUR PUBLIC DEFENDER, YOU DON'T NECESSARILY GET TO COURT APPOINT SUBSTITUTE COUNSEL, THAT IS WHY THE IMPORTANCE OF NELSON COMES INTO THIS. THAT WOULD HAVE GIVEN ON DIRECT APPEAL A FUNDAMENTAL ERROR ISSUE THAT WAS OMITTED BY THE APPELLATE COUNSEL. GOING BACK TO THE OTHER ISSUES, AGAIN, WHILE DEFERENCE TO JUDGE JOHNSON, HE AS MY REPLY BRIEF I BELIEVE POINTS OUT, AT THAT CONFLICT HEARING, SWORE UNDER OATH THAT HIS INVOLVEMENT WITH M GAMBLE'S CASE WAS LIMITED TO COVERING DEPOSITIONS FOR ONE AFTERNOON. AT THE EVIDENTIARY HEARING TWO SUMMERS AGO, DIFFERENT TRIAL COUNSEL INDICATED THAT THEY CONSULTED JUDGE JOHNSON REPEATEDLY DURING THAT YEAR AND A HALF. AND AS I SUGGEST IN MY REPLY BRIEF, ONE ATTORNEY OR ANOTHER'S SWORN TESTIMONY ABOUT HOW MUCH ASSISTANCE THIS ROOKIE CAPITAL ATTORNEY DOING HIS FIRST GUILT PHASE TRIAL ALL BY HIMSELF, WHEN HE ONLY SAT IN, HE ONLY OBSERVED ONE OTHER TRIAL AS SECOND CHAIR. AT THAT CONFLICT HEARING, JUDGE JOHNSON IS SAYING I WASN'T INVOLVED WITH THIS CASE, I NEVER TALKED ABOUT IT. I ONLY COVERED DEPO'S ONE AFTERNOON. AND YET AT THE EVIDENTIARY THEY'RE SAYING THEY HAD REPEATED ASSISTANCE AND BRAINSTORMING AND WHAT HAVE YOU. AND I'M SUGGESTING TO YOU, AS I DID

IN MY BRIEF, IS THAT SOMEWHERE THAT CONTRADICTS OF HOW MUCH HELP MR. NACKE HAD HAS TO REFLECT ON THE CREDIBILITY OF WHAT HIS TESTIMONY WAS ABOUT STRATEGY AS HE EXPLAINED IT TO THE COURT AT THE EVIDENTIARY.

THANK YOU VERY MUCH. THANK YOU ALL VERY MUCH.