# James Delano Winkles v. State of Florida

CHIEF JUSTICE: ALL RIGHT. THE NEXT CASE ON THE CALENDAR , IS WINNING ELSE VERSUS THE STATE OF FLORIDA. IS AND I WOULD LIKE TO WELCOME THE CADETS FROM THROUGHOUT THE STATE OF FLORIDA AND ESCORTED BY SERGEANT DAN TUTIN OF THE JACKSONVILLE SHERIFFS DEPARTMENT, AND THIS IS THESECOND YEAR THAT THIS CORPS IS VISITING THE FLORIDASUPREME COURT.WE WELCOME YOU, AND WE WISH YOU VERY WELL IN YOUR NEW CAREERS.

MAY IT PLEASE THE COURT . I AM PAUL HELM FROM THE PUBLIC DEFENDERS OFFICE IN BARTOW. I REPRESENT MR . JAMES WINKLES.MR. WINKLES PLED GUILTY TO TWO MURDERS AND WAS SENTENCED TO DEATH FOR EACH OF THE MURDERS.

WHAT ISSUES DID HE PRESERVE? I HAVE A LITTLE BIT O F CONFUSION , ABOUT HOW THIS WAS HANDLED, IN TERMS OF IF THERE WERE OUTSTANDING ISSUES. CAN YOU , DO YOU UNDERSTAND MY QUESTION?

YES , YOUR HONOR.

HELP ME WITH THAT .

COUNSEL INITIALLY , IN ENTERING THE PLEA PLA E , FORGOT T O STATE HIS RESERVATION OF THE ISSUES. AT THE END OF THE PLEA HEARING , HE TOLD THE COURT THAT, AND THE WAIVER OF THE PENALTY PHASE , AND STATING THAT THE DENIAL OF DECLARING OF THE FLORIDA DEATH PENALTY STATUTE UNCONSTITUTIONAL. THE JUDGE RESPONDED THAT , YES , THAT AND ALL OTHER PRIOR ISSUES IN THE CASE , WERE PRESERVED .

WELL , HOW CAN , ON THE ONE HAND, I ASSUME THAT YOU AREAT LEAST AS TO THE RING CLAIM , THAT THEY DID MAKE A RING CLAIM AND YOU ARE MAKING ONE ON APPEAL, HOWDOES THE DEFENDANT PRESERVE A RING CLAIM , WHILE ON THE OTHER HAND, WAIVING THE RIGHT TO A JURY TRIAL IN THE PENALTY PHASE .

YOUR HONOR, THE WAIVER WAS NOT MADE , UNTIL AFTER THE COURT HAD DENIED THE RING CLAIM , SO HAD THERE BEEN A JURY TRIAL FOR THE PENALTY PHASE , THERE WOULD HAVE BEEN , THE JURY TRIAL WOULD NOT HAVE COMPORT ED WITH THE REQUIREMENTS OF RING . THE WAIVER OF THE JURY TRIAL WAS MADE , CONDITIONAL UPON PRESERVATION OF THE ISSUE , THAT MR . WINKLES WAS ENTITLED TO HAVE A JURY DETERMINE WHAT THE AGGRAVATING CIRCUMSTANCES WERE.

BUT I AM HAVING TROUBLE WITH , IF , I MEAN , WE DO ALLOW A LOT OF ISSUES TO BE PRESERVED, SUCH AS A MOTION TO SUPPRESS, IF , YOU KNOW , SOMEONE PLEADS, BUT HERE , HE DECIDED, WELL , IF HE CAN'THAVE THE JURY DETERMINE THE AGGRAVATING FACTORS, HE DOESN'T WANT A JURY AT ALL , AND I DON'T

HOW MEANINGFUL , WOULD , FROM HIS, THE POINT IS THAT HE HAD A CONSTITUTIONAL RIGHT TO HAVE THE JURY DECIDE WHETHER THE STATE HAD PROVEN ANY AGGRAVATING CIRCUMSTANCES IN THE CASE. THE COURT DENIED THE MOTION IN WHICH HE ASSERTED THAT RIGHT. THE COURT WOULD NOT HAVE PERMITTED THAT QUESTION TO GO TO THE JURY. THERE WOULD NOT HAVE

BEEN A SPECIFIC JURY FINDING OF ANY AGGRAVATING CIRCUMSTANCES.

WELL THAT, IS THE POINT, IS THAT YOU ARE SAYING THAT THE JUDGE INITIALLY WAS NOTGOING TO PERMIT A SPECIAL ENTERING ON TORY-TYPE A SPECIAL INTERROGATORY -TYPE VERDICT FORM , BUT THAT IS NOT THE QUESTION, IS IT? IF THERE IS ANYTHING IN RING THAT FACIALLY STATES THAT YOU HAVE TO HAVE A SPECIAL INTERROGATORY VERDICT FORM? I UNDERSTAND THAT IT SAYS THAT THE JURY MUST DECIDE THE FACTS FOR THE IMPOSITION OF THE PENALTY , BUT COULDYOU POINT ME TO ANY LANGUAGE IN RING THAT , SAYS THAT YOU HAVE TO HAVE A SPECIAL INTERROGATORY VERDICT FORM TO DO THAT .

THAT IS NOT, THAT IS NOT THE LANGUAGE USED IN RING , BUT THE SPECIFIC LANGUAGE IS

I HIM FAMILIAR WITH THE LANGUAGE AS TO THAT, BUT I HAVEN'T FOUND THE SPECIAL INTERROGATORY VERDICT LANGUAGE, AND I HAVE READ IT 100 TIMES , TRYING TO UNDERSTAND WHAT IT MEANS.

WELL , YOUR HONOR

YOU ARE SAYING YOU CAN'T HAVE

I HIM SAYING THE JURY HAS TO MAKE THE FINDINGS OF FACT. THE JURY HAS TO FIND THAT THE AGGRAVATING CIRCUMSTANCE WAS PROVEN, AND WITHOUT A SPECIAL VERDICT FORM , SAYING THIS AGGRAVATING CIRCUMSTANCE HAS BEEN PROVEN BEYOND A REASONABLE DOUBT , THAT HAS NOT HAPPENED .

IT IS IMPOSSIBLE TO DO THAT , WITHOUT THE FORM .

EXACTLY, YOUR HONOR.

THIS CASE , THE INDICTMENT CHARGED MORE THAN JUST MURDER, CORRECT?

NO , YOUR HONOR T CHARGED TWO COUNTS OF FIRST-DEGREE MURDER, PERIOD .

OKAY. THERE WAS, THE JUDGE DID FIND A PRIOR VIOLENT FELONY .

YES . HE FOUND , BASED BOTH ON THE CONTEMPORANEOUS PLEA TO THE OTHER COUNT BUT, ALSO, ON THE BASIS OF PRIOR VIOLENT ACTS. THERE WAS , I BELIEVE A N ATTEMPTED ROBBERY CASE FROM THE '60s , AND THERE WAS A PRIOR KIDNAPING CASE , I N WHICH MR. WINKLES WAS CONVICTED I N 1983, I BELIEVE.

AND THIS COURT HAS HELD , IN LITERALLY DOZENS O F CASES , BY NOW, IN THE SHORT TIME AFTER RING , THAT , WHERE THERE IS A FINDING OF A PRIOR VIOLENT FELONY , EVEN IF RING DOES APPLY IN FLORIDA , WHICH W E HAVEN'T DECIDED , IT WOULD NOT BE VIOLATED. HAVEN'T WE HELD THAT?

O F COURSE , YOUR HONOR . DO RESPECT THIS COURT IS WRONG.

SO WE WOULD HAVE TO RECEDE, FROM LITERALLY , DOZENS OF CASES , TO RULE I N YOUR FAVOR ON THIS ISSUE. I JUST WANT TO MAKE I T CLEAR WHAT

YOUR HONOR, I RAISED TWO ISSUES IN THIS CASE. BOTH OF THEM HAVE BEEN REPEATEDLY DECIDED AGAINST THE DEFENSE BY THIS COURT. I WOULD RESPECTFULLY YOUSUBMIT THAT, IN RULING ON BOTH ISSUES , BOTH THE NECESSITY FOR JURY FINDINGS OF AGGRAVATORS , AND THE NECESSITY FOR GIVING SPECIFIC NOTICE IN THE INDICTMENT OF WHAT AGGRAVATING CIRCUMSTANCES THE STATE INTENDS TO RELY IN SEEKING THE DEATH PENALTY. I

RESPECTFULLY SUBMIT THAT THIS COURT HAS WRONGLY DECIDED THOSE ISSUES , DOZENS OF TIMES , AND I AM ASKING YOU TO RECEDE . QUITE HONESTLY

THERE IS NO LANGUAGE IN RING, CORRECT, THAT SAYS THAT YOU MUST CHARGE THOSE IN THE INDICTMENT, CORRECT?

THAT'S TRUE , YOUR HONOR , AND IN APPRENDI IT SAYSTHAT. I POINTED THAT OUT IN MY BRIEF. THE ARGUMENT ON THE NEED TO ALLEGE AGGRAVATING CIRCUMSTANCES, IS NOT BASED ON RING. IT IS NOT BASED ON APPRENDI. IT IS BASED O N THE CONSTITUTIONAL RIGHT , UNDERTHE SIXTH AND 14th AMENDMENTS AND UNDER SIMILAR PROVISIONS I N THE FLORIDA CONSTITUTION , THAT A CRIMINAL DEFENDANT HAS A CONSTITUTIONAL RIGHT TO SPECIFIC AND PARTICULAR IZED NOTICE OF THE CHARGES AGAINST WHICH HE MUST DEFEND . THE FACT

ON THE FELONY MURDER BASIS , YOU DON'T EVEN HAVE TO PLEAD TO THE FELONY ANDIN FLORIDA, YOU CAN EVEN REDUCE DOWN , APPARENTLY, THETYPE O F FELONY THAT HAS BEEN CHARGED.

WITH ALL DUE RESPECT , YOUR HONOR, I BELIEVE THOSE DECISIONS ARE WRONG.

YEAH. OKAY. AND NOW HOW ABOUT THE PRIOR VIOLENT FELONY? CERTAINLY RING SAYS THAT THE PRIOR VIOLENT FELONY NEED NOT BE FOUND BY THE JURY , CORRECT?

THAT IS CORRECT. WHAT RING REQUIRES, THAT ALL AGGRAVATING CIRCUMSTANCES BE FOUND BY A JURY AND NOT BY THE JUDGE , AND THE U.S. SUPREME COURT , IN SULLIVAN VERSUS LAN, A RULED THAT T O VERSUS LOUISIANA , RULED THAT TO VIOLATE A DEFENDANT'S RIGHT T O A JURY TRIAL IS STRUCTURAL ERRORWHICH CAN NEVER BE HARMLESS.

IN TERMS O F THE, IN FLORIDA YOU GOT THE PROVING OF THE AGGRAVATING CIRCUMSTANCES, AND THEN WE LOOK AT THE MITIGATING CIRCUMSTANCES . IT SEEMS THAT THE DEFENDANT, IN THIS CASE, IS IN AN IN !!!!IN-BETWEEN MOHAMMED AND SOMEPLACE ELSE , THAT IS THAT IT LOOKS LIKE HE REALLY WASN'T, DIDN'T WANT , I MEAN , HE CONFESSED TO THESE CRIMES. HE CAME FORTH AFTER SAYING THAT HE WAS HAVING NIGHTMARES WHILE HE WAS IN PRISON.

IN POINT OF FACT , THESE WERE TWO VERY OLD MURDERSTHAT HAD NOT BEEN SOLVED. HE HAD BEEN A SUSPECT , BUT HE HAD NEVER BEEN CHARGEDWITH THEM.

THE DEFENDANT AND THE DEFENDANT DIDN'T SHOW U P A T THE SPENCER HEARING. WHAT I AM TRYING IT T O UNDERSTAND IS WHAT MITIGATION WAS PRESENTED T O THE JUDGE .

NOT MUCH.

AND WHY, WELL , IS THAT BECAUSE, DID THE DEFENDANTWAIVE MITIGATION , OR WAS IT, AND YOU ARE NOT RAISING A MOHAMMED ISSUE. THAT IS THAT PROPER PROCEDURE WASN'T FOLLOWED HERE TO ASCERTAIN WHETHERTHERE WAS MITIGATION , BUT TO ME THAT IS A MORE SUBSTANTIAL QUESTION.

YOUR HONOR , HE DID NOT WAIVE MITIGATION . SOME EVIDENCE OF MITIGATION WAS PRESENTED . BUT I T WAS NOT , BUT I WOULD AGREE THAT THE DEFENSE DID A VERY POOR JOB OF PRESENTING EVIDENCE OF MITIGATION . AND THAT WILL HAVE TO WAIT FOR FUTURE PROCEEDINGS , ASSUMING WE LOSE THIS APPEAL .

NOW , ON THE , IF , AGAIN , AND I THINK YOU ANSWERED THEQUESTION, NOT ONLY WERE THERE PRIOR VIOLENT FELONIES THAT, IS PRIOR TO THE , OR ASIDE FROM THESE TWO MURDERS.

YES.

BUT IF HE HAD NOT WAIVED HIS RIGHT TO, IF HE HAD NOT PLED GUILTY , THE JURY WOULD HAVE FOUND , THEY WOULD HAVE HAD SPECIAL INTERING ONTORIES, S O TO SPEAK - - INTERING ONTORIES, SO TO SPEAK , FOR FIND WHETHER HE WAS GUILTY OF THE TWO MURDERS , CORRECT?

YES. A CONTEMPORANEOUS JURY CONVICTION FOR CAPITAL FELONY.

SO , AGAIN , YOU DON'T THINK , NO MATTER I N ANY CIRCUMSTANCE, THAT IF RING WERE TO REQUIRE THERE BE FINED INGS ON AGGRAVATING CIRCUMSTANCES , THAT THERE COULD EVER BE A HARMLESS-ERROR ANALYSIS .

WELL , YOUR HONOR , THE OPINION IN LOUISIANA , I N SULLIVAN VERSUS LOUISIANA , I BELIEVE WRITTEN BY JUSTICE SCALIA, AND IT VERY EXPRESSLY SAYS THAT , WHEN THERE IS A VIOLATION AFTER DEFENDANT'S RIGHT TO A JURY TRIAL THAT, THAT IS STRUCTURAL ERROR THAT CANNEVER BE HELD HARMLESS.

THAT IS THE SAME JUSTICE SCALIA THAT WROTE SUMMER LIEN?

YES, MA'AM , BUT PUTTING THAT ASIDE , UNDER TRADITIONAL FLORIDA SUPREME COURT ANALYSIS OF WHAT HAPPENS WHEN YOU HAVE INVALID FINDINGS OF AGGRAVATING CIRCUMSTANCES , IN A WEIGHING STATE SUCH AS FLORIDA , IN STRINGER VERSUS BLACK , THE COURT SAID THAT THE REVIEWING COURT CANNOT ASSUME THAT, THE CONSIDERATION OF INVALID AGGRAVATING CIRCUMSTANCES IS HARM LESS, AND WOULD WOULDREQUIRE A CONSTITUTIONAL HARMLESS-ERROR ANALYSIS , AND UNDER CONSTITUTIONAL HARMLESS-ERROR ANALYSIS , THE QUESTION IS WHETHER THE ERROR BY THE COURT , AFFECT ED THE RESULT.

THIS IS WHERE WE GET BACK TO

WHAT I AM TRYING TO SAY IS THAT THE FINDINGS OF THREE OUT O F FOUR AGGRAVATING , INVALID AGGRAVATING CIRCUMSTANCES , WEIGHING THREE , GIVING GREAT WEIGHT TO THREE CONSTITUTIONALLY INVALID AGGRAVATING CIRCUMSTANCES , AS OPPOSED TO ONLY ONE VALID AGGRAVATING CIRCUMSTANCE , WOULD NECESSARILY RESULT IN THE FINDING THAT THE ERROR WAS HARMFUL .

IF HE HADN'T WAIVED HIS RIGHT TO A JURY TRIAL , THE JURY WOULD HAVE BEEN INSTRUCTED ON EACH OF THESE AGGRAVATING CIRCUMSTANCES , CORRECT? IT WOULD HAVE BEEN - -

THEY WOULD HAVE BEEN INSTRUCTED ON THEM BUT THEY WOULD NOT HAVE MADE ANY EXPRESS FINDING.

I HAPPEN TO AGREE THAT , WHETHER RING REQUIRES IT OR NOT, JURIES SHOULD, IT WOULD BE A GOOD IDEA FOR OUR REVIEW IF THEY MADE THOSE FINDINGS , BUT I AM STILL , THE QUESTION THAT JUSTICE LEWIS ASKED, I S , IS IT , EVEN IF RING APPLIED, WOULD THAT BE A CONSTITUTIONAL MANDATETHAT THEY WOULD HAVE TO FIND EACH AND EVERY AGGRAVATING CIRCUMSTANCE THAT

I BELIEVE THAT IS WHAT RING EXPRESSLY SAYS. IT SAYS AGGRAVATING CIRCUMSTANCES , PLURAL , NECESSARY FOR THE IMPOSITION OF THE DEATH PENALTY.

SO IT , MAYBE THE U.S. SUPREME COURT WILL TAKE THIS CASE AND HELP US ALL ANSWER THOSE QUESTIONS.

YOU SHOULD CONSIDER THAT THERE ARE DEATH PENALTY STATUTES IN PLACES LIKE CALIFORNIA AND THE UNITED STATES DEATH PENALTY STATUTE , THAT HAS A COMPLETELY DIFFERENT KIND OF PROCEEDING THAN FLORIDA HAS , WHERE THE STATE IS REQUIRED T O ALLEGE , INITIALLY IN THE INDICTMENT , A SPECIAL CIRCUMSTANCE , AN AGGRAVATING

CIRCUMSTANCE , T O ELEVATE THE CRIME FROM SIMPLE MURDER TO CAPITAL MURDER , AND IN THE GUILT PHASE OF THE TRIAL , THE JURY MAKES A FINDING A S TO WHETHER OR NOT THAT SPECIAL CIRCUMSTANCE HAS BEEN PROVEN. AFTER THAT , AGGRAVATING CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES ARE SEPARATELY CONSIDERED IN DETERMINING THE APPROPRIATE SENTENCE , BUT THE ONLY ONE OF THE AGGRAVATING CIRCUMSTANCES, THE ONE ALLEGED IN THE INDICTMENT AS TO THE SPECIAL CIRCUMSTANCE TO QUALIFY THE CASE AS A CAPITAL MURDER , ONLY ONE IS NECESSARY TO GETTO THE POINT WHERE DEATH BECOMES A POSSIBLE PENALTY N A STATE LIKE FLORIDA , WHERE WE DON'T HAVE THAT SPECIAL SEPARATE STEP , WHERE ALL YOU HAVE IS A FINDING OF GUILT ON THE BASIC CHARGE O F FIRST-DEGREE MURDER , AND THEN YOU PRESENT EVIDENCE OF ALL AGGRAVATING CIRCUMSTANCES , AND FINDINGS ARE MADE AS TO WHETHER THOSE CIRCUMSTANCES HAVE BEEN PROVEN, AND THEN YOU HAVE T O WEIGH THE CUMULATIVE EFFECT OF ALL OF THE AGGRAVATING CIRCUMSTANCES THAT ARE FOUND , AGAINST ALL THE MITIGATING CIRCUMSTANCES , BECAUSE THIS IS A DIFFERENT SYSTEM FROM THAT USED IN CALIFORNIA OR UNDER THE

YOU ARE TALKING ABOUTJURY SENTENCING , AREN'T YOU? THE SUPREME COURT HAS SPECIFICALLY SAID IN RING TAX THAT WE ARE NOT REQUIRING JURY SENTENCING. IT IS STILL UP TO THE JUDGETO FIND

FINAL DECISION ON WHAT SENTENCE TO IMPOSE , IS UP TO THE JUDGE. BUT WHAT RING EXPRESSLY REQUIRES , I S THAT ALL AGGRAVATING CIRCUMSTANCES NECESSARY FOR IMPOSITION O F THE DEATH PENALTY AND IN FLORIDA , THAT IS ANY AND ALL AGGRAVATING CIRCUMSTANCES THAT APPLY , HAVE TO BE FOUND BY THE JURY, AND THEY CANNOT BE FOUND BY THE JUDGE.

THE SUPREME COURT HAS ALSO SAID, AT LEAST AS TO APPRENDI, I BELIEVE , IF NOT ALSO AS TO RING , THAT AS TO APPRENDI , IT IS NOT HARMFUL ERROR.IT IS NOT STRUCTURAL ERROR , TO HOLD NOT FOR THE JURY NOT TO FIND ALL THE FACTS NECESSARY TO SENTENCING.

WELL - -

HASN'T IT

THEY HAVEN'T RULED ON THAT WITH REGARDS TO RING.

I UNDERSTAND , BUT A S TO APPRENDI, HAVE THEY NOT SAID THAT IT IS NOT PER SE REVERSIBLE, FOR THE JURY NOT TO FIND THE FACTS NECESSARY FOR SENTENCING.

THE HONEST ANSWER IS I DON'T KNOW, YOUR HONOR, BUT EVEN IF THEY HAVE SAID THAT , LIKE I SAID, IF YOU APPLY TRADITIONAL CONSTITUTIONAL HARMLESS-ERROR ANALYSIS , WHEN YOU HAVE THREE INVALID CONSTITUTIONALLY INVALID , AGGRAVATING CIRCUMSTANCES, WHICH ARE ACCORDED GREAT WEIGHT

IS THAT WHAT WE HAVE HERE?

THEY ARE IN VALID, IN THAT THEY ARE NOT FOUND BY THE JURY.

I THINK , ISN'T THAT KIND OF A CIRCULAR ARGUMENT? THEY HAVE TO BE FOUND BY A JURY, AND

IN ORDER TO B E VALID, THEY HAVE TO BE FOUND BY A JURY. THAT IS THE WHOLE POINT OF RING!

EVEN WHEN YOU WAIVE , I THINK THE WHOLE POINT HERE IS THAT HE WAIVED THE JURY , SO HOW CAN YOU

HE DIDN'T WAIVE THE JURY, UNTIL HE WAS TOLD THAT THE JURY WOULD NOT MAKE FINDINGS OF AGGRAVATING CIRCUMSTANCES. AND HE WAS

I THINK THEY HAVE A BETTER CASE HERE, I MEAN , WOULDN'T YOU HAVE A BETTER CASE HERE, IF HE HAD SIMPLY GONE ON THROUGH THE PROCESS AND THEN YOU MAKE YOUR ARGUMENT THAT I HAD A JURY THERE.YOU DIDN'T ALLOW THE JURY T O MAKE WHAT YOU CONSIDER TO BE THE PROPER FINDINGS , BUT TO SAY THAT IN THE CONTEXT OF HAVING WAIVED IT

YOUR HONOR , THE COURT , THE TRIAL COURT , IN THE PROCESS OF ACCEPTING THE PLEA, SEND THE RESERVATION . IF THIS COURT WERE TO FIND THAT THE ISSUE I S NOT PROPERLY PRESERVED, THEN WHAT YOU SHOULD D O I S REMAND THIS CASE TO THE TRIAL COURT , TO PROVIDE MR . WINKLES THE OPPORTUNITY TO WITHDRAW HIS PLEA.

SHOULDN'T HE FILE A MOTION TO DO SO?

HE DIDN'T , HE HAD NO REASON TO FILE A MOTION TO WITHDRAW THE PLEA , BECAUSE HE WAS ASSURED BY THE TRIAL COURT THAT HIS ISSUE WAS PRESERVED.

I AM SAYING I F WE , IF HE DOES NOT HAVE RELIEF NOW , , DOES HE HAVE THAT OPPORTUNITY?

I AM SORRY. I DIDN'T UNDERSTAND.

I AM SAYING, IF WE IN FACT , DENY HIM RELIEF, CAN HE, IN FACT , FILE A MOTION TO WITHDRAW HIS PLEA?

WELL , HE WOULD HAVE TO GO BACK AND FILE A MOTION TO VACATE THE JUDGMENT AND SENTENCE, PURSUANT T O 3.851, I BELIEVE .

CHIEF JUSTICE: ARE THERE ANY OTHER ISSUES THAT YOUARE GOING TO

THERE ARE ONLY THE TWO ISSUES IN THE CASE, YOUR HONOR.

CHIEF JUSTICE: THANK YOU VERY MUCH.

WOULD YOU HELP ME. I WANT TO MAKE SURE I UNDERSTAND. RING HAS SOME KIND OF EXCEPTION FOR PRIOR VIOLENT FELONIES.

YES, YOUR HONOR.

WOULD YOU EXPLAIN TO ME , AGAIN , IF YOU HAVE ALREADY DONE SO, I WANT TO MAKE SURE THAT I UNDERSTAND EXACTLY BECAUSE ARE SAYING, HOW DOES THAT EXCEPTION WORK? HOW DOES IT APPLY?

THE , THE ONLY THING THAT RING REQUIRES , IS JURY FINDINGS OF AGGRAVATING CIRCUMSTANCES. THE EXCEPTION IS THAT THE JUDGE CAN FIND AN AGGRAVATING CIRCUMSTANCE , BASED UPON THE DEFENDANT'S PRIOR RECORD. SO I AM CONCEDING THAT , UNDER RING , THE JUDGE'S FINDING OF THE PRIOR VIOLENT FELONY AGGRAVATING CIRCUMSTANCE, IS VALID , BUT I AM SAYING THAT , ONE , I BELIEVE IT I S STRUCTURAL ERROR TO DENY HIM A JURY TRIAL ON THE ISSUE OF THE AGGRAVATING CIRCUMSTANCES , SO THAT THE ERROR CANNOT BE HARMLESS IN DENYING IT.

THE OTHER ONES.

AND IN THE ALTERNATIVE , THAT IT IS NOT HARMLESS ERROR , BECAUSE THE JUDGE GAVE GREAT WEIGHT TO THREE AGGRAVATING CIRCUMSTANCESTHAT ARE CONSTITUTIONALLY INVALID , BECAUSE THEY WERE NOT FOUND BY A JURY.

I UNDERSTAND IN THIS CASE, BUT, SO YOU ARE SAYING THAT RING HAS AN EXCEPTION FOR PRIOR VIOLENT FELONIES , THAT NEED NOT BE FOUND BY A JURY, BUT THAT IS ONLY ONE FACTOR,SO THEREFORE THAT IS JUST A THROW AWAY , BECAUSEEVERYTHING ELSE TO GET TO A DEATH PENALTY , MUST HAVE THESE OTHER AGGRAVATORS. THAT IS YOUR ARGUMENT.

YES. WELL , THIS COURT HAS REPEATEDLY RULED THAT A SINGLE AGGRAVATING CIRCUMSTANCE WILL NOT SUPPORT A DEATH SENTENCE IN FLORIDA , UNLESS THERE IS LITTLE OR NOTHING IN MITIGATION, AND I WOULDPOINT OUT THAT, WHILE NOT MUCH WAS PRESENTED IN THE WAY OF MITIGATION , THE COURT GAVE CONSIDERABLE WEIGHT TO THE MITIGATING CIRCUMSTANCE THAT, BY CONFESSING TO THESE COLD CASE , UNSOLVED MURDERS AND COOPERATING WITH THE POLICE IN THEIR SUBSEQUENT INVESTIGATION AFTER HIS CONFESSION , THAT THAT WAS A MITIGATING CIRCUMSTANCE ENTITLED TO CONSIDERABLE WEIGHT, AND I THINK THAT TAKES IT OUT OF THE CATEGORY OF THE CASES WHERE THERE IS LITTLE O R NOTHING IN MITIGATION .

YOU SAID A NUMBER OF TIMES, THAT THREE OF THESE WERE CIRCUMSTANCES THAT WERE NOT FOUND BY THE JURY. NOW , AS I REMEMBER , HE WAS , HE WAS TO AVOID A KIDNAPING , CORRECT?

IT WAS COMMITTED DURING THE COURSE AFTER KIDNAPING BUT KIDNAPING WAS NOT CHARGED IN THE INDICTMENT. HE WOULD NOT HAVE BEEN TRIEDFOR THAT AND HE HAS NEVER BEEN FOUND GUILTY OF THAT , EXCEPT AS AN AGGRAVATING CIRCUMSTANCE.

WHAT WAS THE OTHER ONE?

AVOID ARREST AND COLD, CALCULATED AND PREMEDITATED , AND COLD, CALCULATED AND PREMEDITATED, AS THIS COURT HAS REPEATEDLY NOTED, IS ONE OF THE MOST WEIGHTY OF AGGRAVATING CIRCUMSTANCES , SO YOU HAVE THIS AGGRAVATING CIRCUMSTANCE FOUND ONLY BY THE JUDGE , THAT IS EXTREMELY AGGRAVATING .

IT IS ALSO EXTREMELY AGGRAVATING THAT THERE WERE TWO MURDERS AND ONE MURDER FURNISHED THE PRIOR VIOLENT FELONY AGGRAVATOR FOR THE OTHER.THAT IS PRETTY AGGRAVATING , RIGHT?

YES, YOUR HONOR, BUT THERE HASN'T BEEN A PROPER ANALYSIS OF THE AGGRAVATING AND MITIGATING CIRCUMSTANCESIN THIS CASE , BECAUSE THERE HAS NEVER BEEN A PROPER TRIAL ON THE AGGRAVATING CIRCUMSTANCES, BECAUSE THE COURT DENIED THE MOTION TO DECLARE THE DEATH PENALTY STATUTE UNCONSTITUTIONAL. THE COURT SHOULD HAVE GRANTED THE MOTION T O THE EXTENT THAT IT REQUIRED SPECIFIC FINDINGS OF FACT , AS TO EACH O F THE FOUR PROPOSED AGGRAVATING CIRCUMSTANCES . AND HAD THE COURT GRANTED THE MOTION IN THAT MANNER , THERE WOULD NOT HAVE BEEN A WAIVER OF THE JURY TRIAL FOR THE PENALTY PHASE , AND YOUWOULDN'T BE QUESTIONING WHETHER THERE IS A PROPER PRESERVATION.

SO THE ARGUMENT IS , ABSENT A FINDING OF A FACIAL UNCONSTITUTIONALITY OF THE STATUTE UNDER RING , YOU HAVE NO ARGUMENT, BECAUSE IT WAS WAIVED . WE HAVE TO DETERMINE THAT THE STATUTE IS FACIALLY UNCONSTITUTIONAL.

YES, YOUR HONOR.

OTHERWISE THE WAIVER

YES , YOUR HONOR , THAT IS EXACTLY CORRECT, AND IT IS ALSO A CORRECT LEGAL PROPOSITION.I DO NOT SEE HOW THE UNITED STATES SUPREME COURT COULD POSSIBLY UPHOLD THE FLORIDA CAPITAL SENTENCING STATUTE , UNDER RING , WITHOUT REVERSING ITSELF AND

REVERSING RING ! THANK YOU .

THANK YOU .

GOOD MORNING, YOUR HONORS. I AM CAROL DITTMAR REPRESENTING THE STATE OF FLORIDA . THIS WAS A MOTION THAT CHALLENGED THE FACIAL CONSTITUTIONALITY OF THE STATUTE, AND THAT MOTION WAS FILED AND DENIED AND THIS PLEA WAS ENTERED, ABOUT A MONTH PRIOR TO RING ACTUALLY COMING OUT . SO AT THE TIME THEY HAD THE DISCUSSION, THEY KNEW THAT THEY HAD THE APPRENDI. THEY KNEW THAT CERT HAD BEEN ACCEPTED IN RING. THEY KNEW THAT THE KING AND BOTTOSON EXECUTIONS HAD BEEN STAYED AT THAT POINT , ANDTHERE WAS A CONCERN THAT FLORIDA'S STATUTE WAS GOINGTO B E ENTIRELY THROWN OUT BY THE RING DECISION. THAT IS WHAT WAS PRESERVED, AND THAT IS WHAT MR. WINKLES WANTED. HE DIDN'T WANT TO BE THE ONLY PERSON LEFT ON DEATH ROW IF EVERYBODY ELSE GOT OFF UNDER RING. HE PRESERVED THAT ISSUE. HE CLEARLY HAD N O QUESTION OF HAVING A JURY MAKING ANY FINDINGS OR MAKING ANY REAL PARTICIPATION.

YOU ARE SAYING IF WE HAD FOUND I T FACIALLY UNCONSTITUTIONAL, THEN ALL DEATH, MAYBE THE RELIEF WOULD HAVE BEEN ALL DEATHPENALTIES WOULD HAVE BEEN VACATED.

YES , YOUR HONOR. YES , YOUR HONOR.

THAT ALWAYS PUTS IT INTO BETTER PERSPECTIVE , AT LEASTFROM THE OUR POINT OF VIEW. THANK.

THAT, AND THEN , OF COURSE , THE SENTENCING WAS HELD LATER , WAS HELD SOMETIME LATER , BECAUSE THERE WAS EXTENSIVE INVESTIGATION INTO MITIGATION. THE RECORD REFLECTS THERE WAS A MITIGATION SPECIALIST HIRED. I KNOW YOU ARE CONCERNED ABOUT MOHAMMED AND IT REALLY WASN'T PRESENT IN THIS RECORD, BECAUSE THE DEFENSENEVER ATTEMPTED TO WAIVE THE DEATH PENALTY PENALTY. IS. THERE WAS NEVER AN ATTEMPT TO CHALLENGE IT.

THE MITIGATION WASN'T PRESENTED TO THE JUDGE?

THERE WERE FUNDS , AND MITIGATION SPECIALIST WASHIRED TO INVESTIGATE, ANDTHE REPRESENTATIONS AND THE MOTION TOSS IN OCCUR EXPENSES TO THAT MITIGATION SPECIALIST.

FROM OUR RECORD , IT LOOKS LIKE THERE IS SCANT MITIGATION PRESENTED.

THERE IS SCANT MITIGATION.

IS THERE A BACKGROUND CHECK DONE OF HIM? WAS HIS PARENTS , HIS SIBLINGS , ANYONE IN THE COMMUNITY , I KNOW HE HAD BEEN IN JAIL FOR SOME TIME , BUT WAS THERE ANY OF THAT, THAT WENT ON IN THIS CASE? I MEAN, IT IS VERY RARE THAT WE SEE A RECORD WITH NO ONE , NO FAMILY MEMBERS TESTIFYING , AND NO MENTAL HEALTH EXPERT TESTIFYING , AND THOSE KINDSOF THINGS , S O WHAT DID THEY DO? WHY WAS NOTHING PRESENTED?

WE DON'T HAVE THAT DEVELOPED IN THIS RECORD. WE HAVE MR . WINKLES TESTIFYING IN HIS OWN BEHALF IN MITIGATION , AND OFFERING HIS REMORSE , HIS COOPERATION , GIVING HIS STATEMENT TO THE COURT. ONE OF THE FACTORS THAT

IS THAT IN THE PENALTY PHASE?

YES. AT THE SENTENCING HEARING. THERE WAS A SENTENCING HEARING BEFORE THE JUDGE, AND AT THAT TIME MR . WINKLES TESTIFIED.

REFRESH OUR MEMORY, YOU KNOW , AS FAR AS HOW OLD WAS HE WHEN HE WAS I AM

PRICHBLINGD , AND THEN WHEN HE WAS I AM PRICHED, AND THEN HOW LONG WAS WHEN HE WAS IMPRISONED , AND THEN HOW LONG WAS HE INOTHER WORDS , GIVE US A LITTLE BIOGRAPHICAL , CHRONOLOGICAL.

SURE. WHAT HAPPENED WAS HE WASBORN IN 1940 , AND AS FAR AS THESE CRIMES, THE FIRST ONE OCCURRED IN SEPTEMBER O F 1980, THAT THE FIRST VICTIM ELIZABETH GRAHAM WAS ABDUCTED . IT WAS OCTOBER 1981 THAT THE SECOND VICTIM WAS A BDUCTED , MARGO DELAMOND. IT WAS IN MARCH OF 1982 THAT THE SEMINOLE COUNTY WOMANWHO WAS ABDUCTED , WAS ABLE TO ESCAPE FROM HIS CAR.

HE WAS CONVICTED OF , RIGHT?

YES. THAT WAS IN 1982 , AND THAT WAS WHAT HE WAS CONVICTED AND RECEIVED THE LIFE SENTENCE ON , WHICH IS WHAT HE WAS SERVING. IT WAS IN 1998, SO ROUGHLY, I THINK , 15 YEARS OR 16 YEARS AFTER HIS SENTENCING , THAT H E APPROACHED THE PRISON OFFICIALS AND SAID THAT HE HAD INFORMATION ABOUT PINELLAS COUNTY CRIMES THAT HE WANTED TO DISCUSS.

WHAT WAS THE PICTURE OF HIS LIFE FROM 1940, UP UNTIL HIS IMPRISONMENT FOR THE KIDNAPING IN ORLANDO, DO WE HAVE THAT?

WELL , WE REALLY DON'T HAVE THAT INFORMATION. THE PSI HAS SOME INDICATION ABOUT SOME LEGAL PROBLEMS THAT HE HAD DURING THAT TIME,BUT IT IS REALLY , AGAIN , JUST NOT DEVELOPED IN THIS RECORD, AND HE DIDN'T

PRETTY SKETCHY.

HE DID NOT OFFER THAT , ANYTHING ABOUT HIS BACKGROUND AT THE TIME WHEN HE TESTIFIED AT SENTENCING. HE HAD ASKED THE COURT TO CONSIDER THE FACT THAT HIS MOTHER DIED WHEN HE WAS YOUNG , BUT H E DIDN'T TESTIFY ABOUT THAT, AND HE DIDN'T EVEN REALLY PROVIDE INFORMATION TO THE COURT WITH ANY INFORMATION ABOUT WHETHER HIS MOTHER REALLY DID DIE. HE WAS APPARENTLY RAISED BY A GRANDMOTHER AND AN AUNT. AT LEAST A S HE TESTIFIED ABOUT THIS CRIME HE TOOK THE FIRST VICTIM BACK TO THE HOUSE WHERE HE LIVED, WHICH IS WHERE HIS GRANDMOTHER AND AUNT WERE LIVING AT THE TIME. BY THE TIME A YEAR LATER, HE SAID, THE SECOND MURDER , SAID THEY DIDN'T HAVE THAT HOUSE ANYMORE. HE WAS GOING TO A VACANT HOUSE NEXT DOOR, BUT HE REALLY DOESN'T TALK ABOUT THEM IN TERMS OF HAVING A PARENTAL INFLUENCE ON HIM OR HOW HE GOT TO THIS POINT. WE KNOW THAT HE WAS MARRIED. HE HAD A YOUNG SON, BECAUSEHE SAYS THAT , WITH THE FIRST VICTIM , THAT HE HAD THE FIRST VICTIM WAS AN EMPLOYEE OF ACCOMPANY CALLED PAMPER POODLE, THAT WENT OUT AND DID MOBILE DOG GROOMING SERVICES, AND HE HAD ACTUALLY FIRST STARTED THINKING THAT HE WAS GOING TO , AS HE SAID , HUNT THESE VICTIMS , BECAUSE HE MET A WOMAN AT A CONVENIENCE STORE , WHEN , AND HE SAYS THAT HEWAS THERE WITH HIS FOUR-YEAR-OLD SON AND HE MET HER AND SHE WORKED FOR PAMPER POODLE, AND HE WAS THINKING THAT THIS WAS THE VICTIM THAT HE WAS CALLINGOUT , SO YOU HAVE THE INDICATION HE HAD A SON. HE HAD A MARRIAGE.

LET ME CUT THROUGH HERE , AS FAR AS THE STATE DOESN'T CHALLENGE HIS RIGHT TO RAISETHE ISSUES THAT HE HAS RAISED HERE , I S THAT

IT APPEARS THAT THE ISSUE ABOUT THE FACIAL CONSTITUTIONALITY OF THE STATUTE, WAS PRESERVED , WHEN HE ENTERED HIS PLEA. SO I DON'T KNOW THAT HE HAS STANDING, BECAUSE HE TURNS AROUND AND WAIVES THAT , BUT IT WAS PRESERVED AT THE TIME OF HIS PLEA , SO WE DID NOT ARGUE THAT HE DOESN'T HAVE A RIGHT TO LITIGATE IT AT THIS POINT , BECAUSE I THINK IT WAS UNDERSTOOD WE ENTEREDHIS PLEA, THAT IF THE STATUTE WAS FOUND TO BE FACIALLY UNCONSTITUTIONAL,THAT HE WOULD SEEK RELIEF FROM THAT.

WE ARE USED TO SEEING THESE PLEAS, YOU KNOW, IN THE CONTEXT OF DISPOSITIVENESS, AND THAT IS LIKE A MOTION TO SUPPRESS.

YES.

THAT IS ALL OF THEEVIDENCE THAT THE STATE HAS , THEN THERE IS USUALLY A CONCESSION , THAT IF YOU TAKE AWAY THE DRUGS OR THE WHATEVER KIND OF THING , WOULD YOU AGREE THAT THE , HIS MOTION TO DECLARE THE STATUTE UNCONSTITUTIONAL , WOULD BE DISPOSITIVE ?

WELL , AT THE TIME THAT

I AM JUST REALLY TRYING TO SEE WHETHER THE STATE WANTS US TO TREAT THIS ON THE BASIS OF LACK OF PRESERVATION AND WAIVER , OR TO TREAT THESE ISSUES . YOU KNOW, I GUESS PART OF WHAT I AM LOOKING AT HERE IS DO WE START A CIRCULAR PROCESS HERE AND THEN HE CLAIMS THEN MY PLEA WAS INVOLUNTARY, BECAUSE I DID RELY ON AT THE VERY END , ON THE JUDGE SAYING I AM GOING TO ACKNOWLEDGE TAKE YOU ACKNOWLEDGE THAT YOU PRESERVED ALL OF THIS.

I THINK HE DID RELY ON THAT , AND I THINK HIS CLAIM AS TO THE FACIAL CONSTITUTIONALITY OF THESTATUTE , I THINK, PROPERLY BEFORE THIS COURT , BECAUSE THAT , AT THE TIME

ARE THERE ISSUES THAT HE IS RAISING NOW , THAT YOU FEEL HE HAS NOT PROPERLY PRESERVED AND THAT H E WAIVED ?

WELL , I THINK H E

BECAUSE HERE I AM TRYING TO , TO SEE WHETHER WE ARE GOING TO END UP IN THAT CIRCLE.

RIGHT.

YOU KNOW, OR WE CAN DECIDE THEM AT THIS LEVEL, BASED ON THE STATE'S AGREEMENT THAT HE HAS PRESERVED THOSE.

I THINK HE HAS PRESERVED THEM . I DON'T KNOW THAT

YOU ARE

IT IS CONFUSION , BECAUSEFIRST OF ALL HE IS ARGUING THE FAILURE TO HAVE JURY FINDINGS RENDERS THESE CLEARLY VALID AGGRAVATING FACTORS TO BE CONSTITUTIONALLY INVALID , AND I THINK THAT WOULD B E INVITED ERROR , BECAUSE HE IS THE ONE THAT WAIVED THAT .

BUT THE STATE I S NOT URGING US TO FIND THAT HE HAS NOT PRESERVED THESECLAIMS AND THAT H E WAIVED THEM BY ENTERING A PLEA. YOU ARE NOT MAKING THAT

NO , YOUR HONOR. I THINK YOU CAN GO AHEAD AND RESOLVE IT ON THI S RECORD. I THINK THAT

ON THE MERITS.

ON THE MERITS. I THINK THAT THE STATUTE CLEARLY IS CONSTITUTIONAL , AS THIS COURT HAS RECOGNIZED MANY TIMES. AS FAR AS THE SUGGESTION THAT RING SAYS THAT A JURY MUST FIND ALL AGGRAVATING FACTORS, THAT IS NOT WHAT RING SAYS. RING SAYS THE JURY HAS TO CONVICT A DEFENDANT OF A DEATH -ELIGIBLE OFFENSE. IT IS THE CONVICTION. IT IS NOT THE SENTENCING . AND IN THIS CASE , YOU ALSO HAVE, THAT I THINK IS IMPORTANT TO LOOK AT WHEN YOU ARE LOOKING AT THE OFFENSE THAT HE WAS CONVICTED OF , HE ENTERED A GUILTY

PLEA , TWO GUILTY PLEAS, WITH A FACTUAL BASISTHAT WAS BEFORE THE COURT , WHICH AGREES THAT THESE WERE MURDERS THAT WERE COMMITTED DURING THE COURSE OF KIDNAPINGS, THAT THEY WERE CLEARLY PREMEDITATED. HE TALKED ABOUT HOW H E DECIDED THE DAY BEFORE THAT HE WAS GOING TO KILL THEM , BASED ON HE WAS AWARE THAT THEY HAD AN IDEA WHERE THEY WERE, AND HE WAS DOING IT BECAUSE HE DIDN'T WANT TO GET I N TROUBLE SO YOU HAVE THE AVOID ARREST. ALL OF THAT IS WITHIN THE FACTUAL BASIS THAT HE PLED TO, SO HE CLEARLY PLED TO CAPITAL MURDER , A AGGRAVATED CRIME.

NOW, LET ME CLARIFY THAT. WAS THERE A WRITTEN STATEMENT OF FACTS OR ORAL STATEMENT?

THERE WAS AN ORAL STATEMENT OF FACTS AT THE TIME OF THE PLEA.

ANT DEFENDANT WAS IN THE COURTROOM WHEN THOSE ORAL FACTS WERE ACTUALLY MADE?

YES, SIR.

I T WAS PLEADED NO CONTEST OR GUILTY?

GUILTY.

SO THAT HIS ADMISSION OF FACTS AS ALLEGED BY THE STATE.

YES, SIR.

AND THE STATE GOES THROUGH THE DETAILED FACTUAL BASIS.

YES, YOUR HONOR. I BELIEVE IT IS EIGHT OR NINE PAGES OF TRANSCRIPT AT THE PLEA HEARING, WHERE THE STATE SETS FORTH THE FACTUAL BASIS FOR EACH VICTIM . AND AS FAR AS THE MITIGATION , AGAIN , THERE IS INDICATION IN THE RECORD, THAT MITIGATION WAS BEING INVESTIGATED, BUT THE RECORD IS JUST NOT DEVELOPED, AND THE COURT DID GIVE SOME WEIGHT CONSIDERABLE WEIGHT, TO THE FACT THAT H E COOPERATED WITH LAW ENFORCEMENT , AND ASSISTED IN DOING THIS . ALSO WEIGHT TO THE FACT THAT HE HAD THE OTHER SENTENCESTHAT HE WAS GOING TO BE DYING IN PRISON, ONE WAY OR THE OTHER.

HOW DO YOU, IN GOING BACK TO THIS RING ANALYSIS , YOU HAVE A FUNDAMENTAL DIFFERENCE , AND YOUR OPPONENT SAYS THAT THE PRIOR VIOLENT FELONY , IS NOT , IN AND OF ITSELF , SUFFICIENT FOR THE IMPOSITION O F A DEATH PENALTY. SO WHAT HE IS SAYING IS THAT THE FACTS UPON WHICH YOU ENHANCE TWO REACH A DEATH PENALTY, MUST BE FOUND BY A JURY. WHAT IS WRONG WITH THAT ANALYSIS?

WELL , FIRST OF ALL , I AM NOT SURE WHY A PRIOR VIOLENT FELONY CONVICTION IN AND OF ITSELF, WOULD NOT BE SUFFICIENT, WHEN YOU DON'THAVE ANY MITIGATION THAT IS GOING TO OUTWEIGH THE PRIOR VIOLENT FELONY CONVICTION.

THAT IS ONE BASIS. NOW, IF WE ASSUME THAT JUST THAT ONE BASIS IS NOT ENOUGH,WHAT IS YOUR RESPONSE?

I FORGOT THE REST OF QUESTION.

WHAT HE IS SAYING IS THAT THE JURY HAS TO FIND EACH O F THOSE FACTS , AND YOU ARE SAY ING THAT RING REQUIRES JUST ONE FINDING TO MAKE YOU DEATH-ELIGIBLE , SO

NOT EVEN THAT.I THINK WHAT THIS COURT HAS HELD IS THAT YOU ARE DEATH-ELIGIBLE UPON CONVICTION FOR FIRST-DEGREE MURDER IN FLORIDA , AND THAT IS WHAT RING, YOU KNOW,

RING IS CONCERNED WITH DEATH ELIGIBILITY , THAN IS THE ISSUE , AND DEATH ELIGIBILITY IN FLORIDA, OCCURRING OCCURS AT THE TIME OF THE CONVICTION.

WE HAVE SAID IT , PEOPLE HAVE SAID IT IN DIFFERENT WAYS. IT IS A PROBLEM WITH THAT ARGUMENT

I UNDERSTAND PEOPLE HAVE DIFFERENT OPINIONS ABOUT THAT.

- - IS THAT WITH DEATH !!!!!!!!!!DEATH-ELIGIBLE, DON'T WE GETTO AN EIGHTH AMENDMENT PROBLEM AND GO IN A CIRCLE?

SURE.

EVEN IF YOU TAKE JUSTICE SHAW'S CONCURRENCE I N BOTTOSON , WITH WHICH I AGREED, THAT IT WOULD , IF YOU HAD ONE ADDITIONAL ELEMENT , IT WOULD PUT YOU IN THE DEATH ELIGIBILITY, NOT MEANING THAT YOU WOULD NECESSARILY , THE DEATH PENALTY WOULD BE IMPOSED .

ABSOLUTELY.

HERE WE WOULD HAVE THE PRIOR VIOLENT FELONIES .

WE CERTAINLY DO. WE CERTAINLY DO, AND IT IS SUPPORTED NOT ONLY BY THE CONTEMPORANEOUS MURDER THAT HE IS ALSO PLEADING TO. IT IS SUPPORTED BY THE ORLANDO CONVICTIONS AND, ALSO , ANOTHER PRIOR , I BELIEVE , ROBBERY , TO THAT TIME , S O THERE WERE MULTIPLE BASES FOR FINDING THE PRIOR VIOLENT NECESSARILY ANY - - VIOLENT FELONY CONVICTION AND ON THESE FACTS , SO ON THIS BASIS I WOULD LIKE THIS COURT TO CONFIRM WHAT THE JUDGE HAS IMPOSED THE SENTENCE .

BRIEFLY I WOULD LIKE TO POINT OUT THAT , REALLY , THE ONLY DIFFERENCE BETWEEN THE ARIZONA STATUTE THAT WAS HELD UNCONSTITUTIONAL IN RING AND THE FLORIDA STATUTE , IS THAT , UNDER THE ARIZONA STATUTE , THERE IS NO JURY TO HEAR EVIDENCE OF AGGRAVATING AND MITIGATING CIRCUMSTANCES , AND NO JURY TO MAKE A DEATH OR LIFE RECOMMENDATION . OTHER THAN THAT, THE STATUTES ARE VIRTUALLY IDENTICAL .

WELL , I KNOW WE DON'T WANT TO GET INTO AN ARGUMENT ABOUT IT, A DEBATE ON OUR VARIOUS OPINIONS IN THE MATTER , BUT ANOTHER DISTINCTION IS THAT THE UNITED STATES SUPREME COURT HELD THE ARIZONA STATUTE UNCONSTITUTIONAL, AND THE UNITED STATES SUPREME COURT HAS HELD THE FLORIDA STATUTE TO BE CONSTITUTIONAL.

YOUR HONOR , THE UNITED STATES SUPREME COURT HELD , IN HILDWIN VERSUS FLORIDA , IT IS THE ONLY ONE OF THE FLORIDA CASES WHERE THEY EXPRESSLY SAID THAT THE SIXTH AMENDMENT DOES NOT REQUIRE JURY FINDINGS OF AGGRAVATING CIRCUMSTANCES . THAT OPINION WAS THE BASIS FOR UPHOLDING THE ARIZONA STATUTE, IN WALTON VERSUS ARIZONA. WHEN THE COURT EXPRESSLY OVERRULED WALTON , THEY NECESSARILY OVERRULED THE RULE THAT WALTON WAS BASED UPON. THEY OVERRULED HILDWIN . BESIDES WHICH HILDWIN WASBASED ON A PENNSYLVANIA CASE THAT WAS OVERRULED BY APPRENDI.

DID THEY MENTION HILDWIN IN RING?

THEY DID NOT EX-EXPRESSLY MENTION IT , BUT WHEN COULD CAN I ASK YOU A QUESTION?

YES.

HASN'T THE U.S. SUPREME COURT SAID THAT WHEN WE HAVE RULED ON A MATTER IN CASE A

AND IN CASE B , WE RULE ON SOMETHING ELSE THAT APPEARS TO OVERRULE CASE A BUT DOESN'T SAY ANYTHING, THAT YOU SHOULD RELY ON CASE A UNTIL WE EXPRESSLY OVERRULE IT?

YOUR HONOR THAT , IS A MISINTERPRETATION OF THAT RULE. IT IS , I T DEPENDS ON THERE BEING TWO SEPARATE LINES OF CASES . THE U.S. SUPREME COURT , I N ANALYZING DEATH PENALTYCASES , DOESN'T SAY WE HAVE ONE LINE OF CASES FOR FLORIDA AND ONE LINE OF CASES FOR ARIZONA , AND ANOTHER LINE OF CASES FOR CALIFORNIA . IF HE IS SAY IF THE SAME PRINCIPLE

OUR SCHEME IS DIFFERENT FROM ARIZONA'S , ISN'T IT? WE HAVE A DIFFERENT SCHEME,WE HAVE A HYBRID , VERSUS ARIZONA DOESN'T.

THE ONLY DIFFERENCE IS THE PRESENCE OR ABSENCE OF THE JURY. IN TERMS OF HOW THE AGGRAVATING CIRCUMSTANCES, THE ARIZONA STATUTE SPECIFIES THAT FIRST-DEGREE MURDER , HOWEVER THEY DEFINE IT , IS PUNISHMENT ABLE BY IS PUNISHABLE BY LIFE OR DEATH. IT SPECIFIES THAT YOU DECIDE WHETHER TO IMPOSE LIFE OR DEATH BY PRESENTING AGGRAVATING AND MITIGATING CIRCUMSTANCES AND HAVING A JUDGE MAKE FINDING S OF FACT AS TO WHICH CIRCUMSTANCES WERE PROVEN, AND THEN WEIGHING THOSE FINDINGS AND DETERMINING THE PROPER SENTENCE. THE ONLY DIFFERENCE IS THE ABSENCE OF THE JURY .

CHIEF JUSTICE: I THINKOUR OPINION , SOME OF US HAVE POINTED THAT OUT , THE U.S. SUPREME COURT HAS NOT SEEN FIT TO TAKE ANY OF THE CASES THAT HAVE , AND MAYBE THEY WILL TAKE THIS ONE.

WELL .

CHIEF JUSTICE: I MEAN , I CAN'T , WE HAVE BEEN , YOUKNOW , WE HAVE BEEN OVER THIS MANY TIMES, AND THIS IS A DIRECT APPEAL . UNFORTUNATE LY, THIS DOES HAVE THE SITUATION WHERE IT IS PRESERVED BUT , REALLY , THERE IS NOTHING MUCH YOU CAN HANG YOUR HAT O N , SO , AGAIN , REALIZING WHERE THE POSTURE WAS , I CAN UNDERSTAND WHY, NOW, THIS HAPPENED. YOU KNOW, YOU ARE SITTING THERE IN JUNE , THINKING EVERY CASE WAS GOING TO BE THROWN OUT. YOU WOULDN'T WANT TO NOT BE ON THAT BANDWAGON .

WE DO KNOW ONE THING FROM SUMMER LIEN SUMMERLIN AND THAT IS THAT RING BE DIRECTLY APPLIED , BUT THE ABSENCE OF THIS CASE THAT IS NOT FINAL YET, RING APPLIES.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL TAKE ITS MORNING RECESS OF 15 MINUTES.

MARSHAL: PLEASE RISE.