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**Crosley A. Green v. State of Florida**

**SC05-2265 | SC06-1533**

FINAL

CASE ON THE CALENDAR THIS  
GROWN GREEN VERSUS \$\$\$!!!.

>> GOOD MORNING MY MARK --  
NAME MARC GROUPER WITH CCRR,  
WITH ME IS DAPHNE, WE  
REPRESENT -- CROSLY GREEN  
PALE OF CAPITAL POSTCONVICTION  
PROCEEDING THE LOWER COURT  
GRANT!!\$\$!!!!!!!

GRANTED A NEW PENALTY PHASE  
WITH JURY.

>> ON THE CROSS APPEAL ARE YOU  
GOING TO LOOKS LIKE THIS ARE  
YOU GOING TO -- ADDRESS THE  
CROSS APPEAL IN YOUR FIRST  
PART OF THE ARGUMENT?

>> I THOUGHT I WOULD -- YES, I  
THOUGHT I WOULD ADDRESS -- ALL  
THE ISSUES THAT WE PRESENTED.  
AS BEST I CAN.

ANYWAY, THE COURT DENIED ALSO  
OUR GUILTY PHASE ISSUES AND  
I'M HOPING TO GET SO SOME OF  
THOSE IN THE COURSE OF  
REACHING THE DECISION --  
TO GRANT NEW PENALTY PHASE THE  
COURT ALSO MADE SOME FINDINGS,  
IN PARTICULAR, THAT THE NEW  
YORK -- SHOULD BE TREATED AS A  
CRIME WHICH WE DISAGREE WITH  
WE BELIEVE UNDER THE STATUTORY  
SKEEMZ UNDER AMERICA THAT THE  
NEW YORK -- SHOULD NOT BE  
REGARDED AS A CRIMINAL --

>> THAT IS PRETTY IMPORTANT  
ISSUE, SO, MAYBE YOU CAN  
ADDRESS THAT FIRST, WHICH IS  
THAT THE IN NEW YORK, IT IS  
THIS IT IS YOU THE CONVICTION  
SET ASIDE, IS THAT WHY YOU SAY  
THERE CAN'T BE A PRIOR FELONY  
BECAUSE THE CONVICTION IS  
ACTUALLY SET ASIDE?

>> I'M 9211415B IS THE DEATH  
PENALTY STATUTE IT REQUIRES

THAT THERE BE A PREVIOUS  
CONVICTION!!\$\$!!!!!!!!!!!!!!  
CONVICTION, OF A VIOLENT  
FELONY!!\$\$!!!!!!!!!!!!  
FELONY.

>> HOW IS CONVICTION DEFINED?  
IN STATUTE OR CASE LAW.

>> ACTUALLY IN THE DEATH  
PENALTY STATUTE IT IS NOT.  
THERE IS A DEFINITION IN  
CONNECTION WITH SENTENCING  
GLOIN STATUE THE COURT FAIRLY  
RECENT CASE DID CITE THAT  
STATUTE BUT THE DEFINITIONS IN  
TERMS WITH REGARD TO  
SENTENCING GUIDELINES LIKE THE  
ENTIRE GUIDELINE SKEEMZ  
SPECIFICALLY EXCLUDES CAPITAL  
CASE SENTENCING THAT IS NOT  
HELPFUL!!\$\$!!!!!!!!!!!!

HELPFUL, SO, OUR VIEW IS THAT  
THE STATUTE DOES REQUIRE  
STRICT CONSTRUCTION IN FAVOR  
OF THE DEFENDANT, AND THAT I  
BELIEVE WAS THE BASIS FOR THE  
COURT'S DECISION IN MERCK,  
WHICH FOUND THAT JUVENILE  
DELINQUENCIES IN THAT CASE  
DELINQUENCY I KNOWS FROM  
ANOTHER STATE, COULD NOT BE  
USED IN SUPPORT OF THE VIOLENT  
FELONY ACT --

>> HAVE YOU ACTUALLY LOOKED AT  
THE NEW YORK STATUTE -- NEW  
YORK STATUTE, AND DETERMINED  
IN NEW YORK LAW, TO DETERMINE  
WHAT IS THE EFFECT OF THE TERM  
THAT THE TRIAL JUDGE USES AS I  
RECALL, WITH SOMETHING ABOUT  
VACATING THE CONVICTION.  
YET HE THEN TAKES THE NEXT  
STEP, AND SENDS THE PERSON TO  
SOME KIND OF DETENTION  
FACILITY IF YOU ARE VACATING I  
HAVE TROUBLE UNDERSTANDING HOW  
YOU VACATE THE SENTENCE, YET  
STILL IN ESSENCE INCARCERATE  
THE PERSON.

>> UM-HMM.

>> VACATE THE CONVICTION.

.  
>> OKAY, WELL I CAN TALK ABOUT  
WHAT THE NEW YORK COURTS DO,  
AND WHAT THEY DID IF THIS

CASE, WE HAVE WELL CITED IN THE BRIEFING ARE AND IN THE RECORD OF COURSE, THE TRANSCRIPT OF THE NEW YORK PROCEEDINGS.

OKAY.

.  
>> AND -- CROSLY GREEN WAS ORIGINALLY CHARNLDZ WITH ARMED ROBBERY A FIREARM WENT BEFORE THE COURT THAT THE TIME, HE ENTERED A PLEA, TO WHAT NEW YORK CALLS THIRD DEGREE ROBBERY APPEARS TO BE PARALLEL STATUTE TO FLORIDA'S STRONG-ARM ROBBERY, AND THEN A WEEK LATER HE CAME BACK INTO COURT, AND THE JUDGE MANY IN ACCORDANCE WITH THE NEW YORK SCHEME VACATED THE PRIOR SENTENCE, AND SUBSTITUTED FOR IT YOUTHFUL OFFENDER ACTUALLY I DON'T RECALL WHETHER A SENTENCE OR NOT I THINK JUST VACATED THE CONVICTION, AND SUBSTITUTED FOR THAT YOUTH FULL OFFENDER FINDING, AND -- SENTENCE -- I THINK THIS IMPORTANT HE TOLD HIM, RIGHT ON THE SPOT, THAT THE SIGNIFICANCE OF WHAT HE HAD DONE WAS THAT HE DOES NOT HAVE A CRIMINAL CONVICTION. BUT THE NEW YORK STATUTE, STATUTES!!!!!!!!!!!!!! STATUTES, THE SCHEME ITSELF, IS VERY EXPLICIT, AND THERE IS LOTS OF COMMENTARY THAT I HAVE CITED THAT SAYS SOMEONE WHO IN NEW YORK GOES THROUGH -- IS SUBJECT TO YOUTH FULL OFFENDER FINDING, AS A GROOULTH OFFEND!!!!!!!!!!!!!! OFFENDER FINDING, DOES NOT HAVE A CRIMINAL CONVICTION AT ALL.

>> SO IN OTHER WORDS, WHAT IN NEW YORK, INSTEAD OF YOU HAVE GOT A JUVENILE ADJUDICATIONS YOU HAVE FELONY CONVICTIONS YOUTH FULL OFFENDER FINDINGS? IS THAT THE THREE CATEGORIES.

>> THREE -- I PRESUME THERE IS SOME SORT OF DELINQUENCY FOR THE VERY YOUNG CHILDREN.

>> BUT --

>> I I KNOW FEDERAL LAW COUNTS IT AS ADULT CONVICTION BECAUSE THEY ARE SAYING -- BUT, WHAT DO WE LOOK TO, UNDER NEW YORK, CASES, THAT YOU HAVE CITED, DO THEY CONSIDER THIS FOR ANY PURPOSES IN NEW YORK? AS A PRIOR CONVICTION?

>> IF IN OTHER WORDS, DO WE LOOK TO HOW NEW YORK TREATS IT OR WOULD WE LOOK TO IF IT WERE WERE IN FLORIDA HOW WOULD FLORIDA TREAT IT?

.  
>> I DON'T BELIEVE IT IS EVER TREATED AS AN ADULT CONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!! CONVICTION, IN NEW YORK, EVER. BUT IT MAY WELL BE FACTORED INTO JUST AS FLORIDA DOES UNDER SENTENCESING GUIDELINES AND ON CAPITAL SENTENCING MAY BE FACTORED INTO A SENTENCE LATER ON.

>> IN MERCK WE DEALT WITH IT ON BASIS HOW NORTH CAROLINA -- CORRECT?

>> YES.

>> WOULDN'T THAT BE THE PRECEDENT FOR HOW WE WOULD DEAL WITH IT?

WE WOULD DEAL WITH IT ON THE BASIS OF HOW THE FORUM STATE DEALT WITH IT, IN TRYING TO THEN BRING IT WITHIN THE CONFINES OF WHAT OUR STATUTE SAYS, IS AN AGGREGATOR BY REASON OF THEIR BEING A CONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!! CONVICTION?

ISN'T THAT THAT HE WAY WE DID IT IN MERCK.

>> I'M RELYING ON HE MERCK, YES, THE COURT.

>> SO THEN IT IS REALLY IMPORTANT, TO KNOW THAT EVEN IF NEW YORK IF IT IS A FINDING, WHETHER THEY USE IT TO FOR THE SAME TYPES OF PURPOSES, AS A CONVICTION WOULD BE USED?

>> WELL, I --

>> I MEAN THAT SEEMS TO BE I

MEAN THIS A CRITICAL QUESTION  
BECAUSE I THINK THAT IF THIS  
CONVICTION ISN'T CONSIDERED,  
YOU KNOW, THERE IS DEFINITELY  
HAS TO BE MY VIEWPOINT, I  
AGREE WITH THE JUNG IT WOULD  
HAVE TO BE A NEW PENALTY FACE  
NOW HE DOES IT BASED ON JUST  
THAT IT SHOULD HAVE BEEN  
CHALLENGED, BUT, I THINK  
OBVIOUSLY STRONGER IF IT CAN'T  
BE CONSIDERED AT ALL -- AND SO  
I WOULD THINK THIS IS SORT OF  
THE CRITICAL QUESTION FOR YOU.

>> ACTUALLY IT IS EVEN MORE  
CRITICAL THAN THAT, I WOULD  
LIKE TO GET INTO THE SECOND  
ARGUMENT HABEAS PETITION MY  
VIEW IS THAT THE NEW YORK  
OFFENSE WAS NOT A CONVICTION  
AT ALL IT IS IN THIS  
PARTICULAR CASE, THE ONLY  
BASIS FOR THE VIOLENT FELONY  
AGGRAVATE!!\$\$!!!!!!!!!!!!!!!!!!!!  
AGGRAVATOR, SO IF THE COURT  
WOULD --

>> WHAT WE HAVE TO LOOK AT IF  
WE HAD THIS INFORMATION BACK  
THEN, WOULD WE HAVE TREAT IT  
AS A PRIOR VIOLENT FELONY  
CONVICTION CORRECT.

>> RIGHT.

>> THAT IS WHY I'M ASKING, IN  
TERMS OF THE JUSTICE QUINN  
SAID HE WAS STILL INCARCERATED!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!

INCARCERATED, HE WAS  
INCARCERATED UNDER WHAT YOU  
SAY IS A YOUTH FULL OFFENDER  
FINDING, WHAT DO THE CASES  
THAT HAVE INTERPRETED THAT FOR  
NEW YORK, YOU SAY THEY DO  
TREAT IT FOR EXTENSION  
GUIDELINES AS CONVICTION?

>> I'M NOT COMPLETELY CERTAIN  
OF THAT I HAVE TO SAY BUT I  
KNOW WHAT CASES SAY  
SPECIFICALLY THE ONES THAT I  
FEEL THAT THEY DO, BECAUSE --

>> I I MEAN IN ALL DO YOU  
REPUBLICAN -- DO YOU RESPECT I  
KNOW YOU WORKED VERY HARD IN  
THIS CASE BUT FEELINGS ABOUT  
WHAT THE LAW IS, DOESN'T SEEM  
TO ME, IT SOUNDS LIKE YOU ARE

SAID TO STEPPING THIS ISSUE --  
SIDESTEPPING THIS ISSUE I  
GUESS WE CAN GO BACK AND  
REREED THESE CAUSE TO --  
CASES, TO SEE -- IF THERE IS  
NOT A CLEAR HOLDING ONE WAY OR  
ANOTHER, THEN TELL ME, YOU  
DON'T THINK THERE IS A CLEAR  
HOLDING ONE WAY OR ANOTHER?  
HOW THEY HE TREAT IT FOR  
SENTENCING PURPOSES, FOR  
SUBSEQUENT CRIMES?

>> THE IMPORTANT THING, THE  
IMPORTANT THING, IS THAT ONCE  
A YOUTH FULL OFFENDER ALWAYS A  
YOUTH FULL OFFENDER SUBSEQUENT  
MISCONDUCT DOES NOT CONVERT, A  
GROOULTH OFFENDER FINDING INTO  
A FELONY AT ANY TIME.

SO IT IS -- SIMILAR TO THE  
DELINQUENCY!!\$\$!!!!!!!!!!!!!!!!!!!!  
DELINQUENCY, SITUATION, WHERE  
SUBSEQUENT MISCONDUCT BY THE  
DEFENDANT, WHETHER IT BE  
COMMISSION OF A NEW CRIME, OR  
WHETHER IT BE VIOLATION OF  
SOME OF THE TERM OF -- TERMS  
OF HIS DISPOSITION OR WHATEVER  
IT MAY BE DOES NOT MAKE THAT  
DELINQUENCY INTO AN ADULT  
CRIMINAL OFFENSE.

>> YOUR ARGUING TRIAL COUNCILS  
SHOULD HAVE ARGUED THIS AT  
TRIAL; CORRECT?  
THAT HE SHOULD HAVE ARGUED  
THIS CONVICTION WAS NOT A  
CONVICTION FOR PURPOSES OF THE  
PRIOR VIOLENT FELONY AGGRAVATE!!\$\$!!!!!!!!!!!!!!!!!!!!  
AGGRAVATOR?

>> ACTUALLY NO.  
THAT IS FINDING THAT THE COURT  
MADE ON THE WAY TO THE FINDING  
OF MATERIALITY AND PREJUDICE,  
BECAUSE OF \$\$COUNSEL'S FAILURE  
TO OBTAIN THE NEW YORK FIEFL  
LAW -- SO THE --

>> THE ULTIMATE RESOLUTION OF  
THIS CLAIM THE UMENT CLAIM  
ITSELF IS IN IS INEFFECTIVE  
ASSISTANCE OF COUNSEL IN  
PENALTY PHASE DO YOU TO FLUR  
TO OBTAIN THAT FILE THAT IS  
WHERE COURT DID GRANT RELIEF  
BUT REACHING THAT ISSUE THE

COURT CONSIDERED TERMINATE,  
AND OF COURSE WE WOULD SAY OR  
PREJUDICE!!\$\$!!!!!!!!!!!!!!!  
PREJUDICE, AND WE WOULD ARGUE  
THAT THERE IS GREAT DEAL OF  
PREJUDICE, BECAUSE THE CRIME  
SCHNT FOUR BEEN CONSIDERED AT  
ALL.

>> LET ME ASK YOU ABOUT THE  
PREJUDICE, THERE WERE FOURING  
A THE VAITORS FOUND, THE PRIOR  
VIOLENT FELONY ONE OF THE FOUR  
AGGRAVATORS!!\$\$!!!!!!!!!!!!!!!  
AGGRAVATORS, THE TRIAL COURT  
FOUND NO STATUTORY NO  
NONSTATUTORY MITT GATORS;  
CORRECT?

>> YES.

>> AND ONE OF THE AGGRAVATORS  
WAS THAT THE MURDER WAS  
ESPECIALLY HEINOUS, CRUEL HAC,  
WHICH WE HAVE SAID IS ONE OF  
THE MOST EGREGIOUS --

>> THAT WAS STRUCK ON --

>> WAS THAT STRUCK.

>> YES.

>> THAT WOULD BE -- LEAVE US  
US WITH TWO IF WE AGREED WITH  
YOU -- AS FAR AS PREJUDICE WE  
WOULD HAVE TWO AGGRAVATORS,  
AND NO STATUTORY OR  
NONSTATUTORY MITT GATOR?

>> YES, THERE WAS AN ISSUE  
RAISED UNDER CONTAMINANT BELL!!\$\$!!!!!!

BELLDITION ABOUT THE COURTS --

CAMPBELL DECISION ABOUT THE  
COURT FINDING OF LITIGATION,  
AND ON DIRECT APPEAL WHAT THE  
COURT SAID WAS THAT ON REVIEW  
IT APPEARS THE COURT DID  
CONSIDER NONSTATUTORY  
MITIGATION!!\$\$!!!!!!!!!!!!!!!

MITIGATION, AND WE ALSO, HAVE  
A CLAIM HERE OF COURSE BASED  
ON VERY EXTENSIVE BACKGROUND  
MITIGATION THAT WAS NOT ZROOD  
AT THE TIME OF THE TRIAL BUT  
TO GET TO YOUR QUESTION, IN  
REVIEWABLE -- REVIEWING THE  
DIRECT APPEAL, SITUATION, YES,  
THE COURT THE COURT EXPRESSLY  
AFFIRMED THE DEATH PENALTY  
AFTER STRIKING THE HACK  
AGGRAVATE!!\$\$!!!!!!!!!!!!!!!

AGGRAVATOR, AND EXPRESSLY SAID  
IN VIEW OF THE THREE REMAINING  
AGGRAVATORS!!\$\$!!!!!!!!!!!!!!!!!!!!  
AGGRAVATORS -- I'M ARGUING  
ONE --

>> IN DETERMINING PREJUDICE IF  
IS IN CASE, ASSUMING YOU PROVE  
DEFICIENT PERFORMANCE, WE HAVE  
TO SEE WHETHER IF NOW WE  
STRIKE ANOTHER AGGRAVATE!!\$\$!!!OR THE  
PRIOR VIOLENT FELONY, WHETHER  
WE ARE STILL CONFIDENT DID --  
CONFIDENT IN THE OUTCOME WITH  
TWO AGGRAVATORS, AND NO  
STATUTORY MITIGATION WOULDN'T  
WE HAVE TO LOOK SEE IF THAT IS  
STILL IN THE OUTCOME.

>> IF I UNDERSTAND THE  
QUESTION I DON'T THINK YOU  
NEED TO GO ANYWHERE NEAR THAT  
FAR CERTAINLY THE JUDGE DID  
NOT BECAUSE HE DID NOT AGREE  
THAT THAT THE NEW YORK OFFENSE  
WAS NOT A CRIME AT ALL.  
HE FOUND THAT IT WAS.

BUT HE STILL FOUND PREJUDICE,  
BECAUSE WHAT THE NEW YORK  
TRIAL REVEALED WAS THAT  
ALTHOUGH THE JURY IN THIS  
CASE, WAS TOLD IN NO UNCERTAIN  
TERMS, BY PAROLE FLORIDA  
PAROLE OFFICER RUBIN RIGHT AT  
THE BEGINNING OF THE PENALTY  
PHASE THAT THE OFFENSE FOR  
WHICH CROSLY GREEN WAS ON  
PAROLE WAS QUOTE ROBBERY DASH  
ARMED ROBBERY THERE WAS NO  
QUESTION --

>> CROSS-PURPOSES, I'M  
ASSUMING THAT YOU ARE CORRECT  
THAT THAT PRIOR VIOLENT FELONY  
SHOULD BE STRICKEN, THE  
QUESTION IS WHAT IS THE  
PREJUDICE WHETHER WE ARE STILL  
CONFIDENT IN THE OUTCOME  
BECAUSE HAVING STRICKEN THAT  
AGGRAVATE!!\$\$!!!!!!!!!!!!!!!!!!!!  
AGGRAVATOR, WE ARE STILL LEFT  
WITH TWO AGGRAVATORS AND NO  
STATUTORY MITIGATION, AND,  
THRIVE, HAVE YOU BEEN ABLE TO  
SHOW PREJUDICE, ENOUGH THAT  
OUR CONFIDENCE IN THE OUTCOME  
OF THE TRIAL AND THE DEATH

PENALTY PROCESSING WAS UNDER  
-- PROCEEDING WAS UNDERMINED?

>> UM -- HMMM.

I'M TALKING ABOUT TWO  
DIFFERENT THINGS AS FAR AS  
SHOWING PREJUDICE, BECAUSE OF  
THE DISH SENSEY IN PERFORMANCE  
OF COUNSEL DURING THE PENALTY  
FACE -- PHASE I GUGS WHAT I'M  
CONCERNED ABOUT IS THAT I  
WOULD HAVE TO GO THAT STAR TO  
DEMONSTRATE PREJUDICE WHEREAS  
I THINK THERE IS CLEARLY  
PREJUDICE.

>> WHY DO YOU HAVE -- THE  
COURT IS NOW FACED WITH A  
PROPORTIONALITY ARGUMENT,  
BECAUSE ONE OF THE AGGRAVATORS  
IS STRUCK, SO --

>> LET ME SO A IF I CAN IF IT  
STRUCK COMPLETELY, THE JURY  
WOULDN'T HAVE HEARD ABOUT A  
PRIOR ROBBERY.

>> YES.

>> AND YOU KNOW, WE ALL HAVE  
TO DECIDE HOW SIGNIFICANT THAT  
IS IT SEEMS TO BE WE ARE  
OTHERWISE THE TWO AGGRAVATORS  
HAVE TO ARRIVE OUT OF THIS  
CRIME -- BUT, ON THE SO IF WE  
I THINK YOU HAVE ONE SCENARIO  
IF THE -- SHOULDN'T HAVE HEARD  
IT AT ALL; RIGHT?

BUT IF WE AGREE WITH JUDGE  
JACOBIS, THAT THE IS A CRIME,  
AS A CRIME, BUT THAT THE JURY  
WOULD HAVE RECEIVED THIS  
ADDITIONAL INFORMATION, MY  
CONCERN IS THAT THERE IS A  
MENTION OF ARMED ROBBERY BUT  
THEN IT IS THEY ACTUALLY SAY  
ROBBERY!!\$\$!!!!!!!!!!!!!!

ROBBERY, AND IT WAS ROBBERY.  
AND I'M NOT SURE THERE IS ALL  
THAT MUCH MITIGATION IN THE  
FILE UNLIKE THE YOU KNOW THE  
CASE THAT HE RELIES ON, TO  
HELP YOU OUT ON THAT AS FAR AS  
THE EFFECT ON THE JURY SO  
MAYBE IF YOU COULD CONCENTRATE  
ON JUST JUDGE JACOBIS' FINDING  
OF PREJUDICE AS TO WHAT WOULD  
THE JURY NOW IF WE WERE TO  
HAVE A NEW PENALTY PHASE WHAT

WOULD THEY HEAR ABOUT THIS PARTICULAR ACT?

THEY HEAR A ROBBERY HE WAS CHARGED WITH ARMED ROBBERY THEY WOULD HEAR THERE WAS A ROBBERY!!\$\$!!!!!!!!!!!!!!

ROBBERY.

AND THAT IT WAS WITH A FIREARM!!\$\$!!!!!!!!!!!!!! FIREARM.

RIGHT.

THEY COULD HEAR THE CIRCUMSTANCES OF THAT.

>> YES.

>> ALL RIGHT.

SO TWHAEN WOULD BE THE DIFFERENCE OF WHAT WOULD THEY HEAR THEY WOULD HEAR THAT INSTEAD OF A CONVICTION, HE GOT A YOUTH FULL OFFENDER FINDING, WHICH IN NEW YORK IS -- YOU KNOW, STILL HE STILL GETS INCARCERATED.

>> UM-HMM FIRST OF ALL, THERE IS SOMETHING I -- I HOPE IS CRIST CAL CLEAR --

CRYSTAL-CLEAR THIS ARGUMENT WAS RAISED IN \$\$STATE'S BRIEF THERE WAS AN ARGUMENT REGARDING!!\$\$!!!!!!!!!!!!!! REGARDING, OFFICER \$\$COPPER'S TESTIMONY OFFICER CAME FROM NEW YORK AND ALSO REFERENCES TO SOME REFERENCES TO THE FACT THAT THERE ARE REFERENCES TO ROBBERY!!\$\$!!!!!!!!!!!!!!

ROBBERY, WITHOUT A PEND -- APPENDING THE WORD ARM TO IT AS I SAID THE JURY WAS TOLD UNQUESTIONABLY ARMED ROBBERY THE TRIAL JUDGE FOUND THOSE!!\$\$!!!!ERE WAS ARMED ROBBERY PRESENTENCE INVESTIGATION UNDER PRIOR HISTORY ARMED ROBBERY FIRST PUNISHABLE BY LIFE, ZERO UNDER, THE JUVENILE SECTION OF PRIOR HISTORY, AND JUDGE JACOBIS MADE THAT SAME FINDING JUDGE JACOBIS ALSO TOOK UP ISSUE OF MATERIALITY, EVEN ACKNOWLEDGING THAT NEW YORK OFFENSE WAS A VIOLENT FELONY UNDER FLORIDA LAW.

THE JUDGE STILL FOUND THAT THERE WAS A -- A SIGNIFICANT

DIFFERENCE A SUBSTANTIAL  
DIFFERENCE BETWEEN ARMED  
ROBBERY!!\$\$!!!!!!!!!!!!!!  
ROBBERY, AND A SIMPLE ROBBERY  
AND THE DIFFERENCE I GUESS IN  
LAY TERMS WOULD BE, DO YOU  
HAVE A CRIME OF THE SORT THAT  
HAPPENED HERE, OR DO YOU HAVE  
A JUVENILE PURSE SNATCH.

>> IN THIS CASE BELOW, WHAT  
FACTS OF THE UNDERLYING CRIME  
WERE PRESENTED TO THE JURY OR  
THE JUDGE?

P.

>> WITH REGARD TO THE --  
>> THE NEW YORK OFFENSE, WHOA  
FACTS AS SPECIFICALLY WHAT  
HAPPENED AS SOPPED -- AS  
OPOSED TO SIMPLY BEING PRIOR  
CONVICTION!!\$\$!!!!!!!!!!!!!!  
CONVICTION DID THEY GO INTO  
THE DETAILS OF THE FACTS?

OKAY.

NOT IN GREAT DEAL, AND I'M  
TRYING TO -- I THINK THERE IS  
A BIT OF A DISTINCTION BETWEEN  
WHAT WAS PRESENTED TO THE  
JURY, AND WHAT MAY HAVE BEEN  
PRESENTED LATER BUT, IT WAS A  
GAS STATION, ROBBERY THAT  
OFFICER COPPER WAS CALLED TO,  
I BELIEVE THAT THERE WERE TWO  
INDIVIDUALS, AND THE CROSLY  
GREEN WAS ARRESTED BASED ON  
WHAT THE OFFICER HAD HEARD  
LATER ON THAT EVENING.

AND THEN HE HEARD THAT.  
>> WAS THERE ANY TESTIMONY  
THAT THE DEFENDANT -- TO THE  
GAS STATION I MEAN THE  
SUBSTANCE OF YIPD -- UNDER!!\$\$!!!!!!!!!!  
UNDERLYING GROOIM CRIME AS  
OPOSED TO THE NATURE OF THE  
CRIME THE SUBSTANCE OF THE  
CRIME ITSELF HOW IT WAS  
COMMITTED THAT WASN'T PRESENT!!\$\$!!!!!!!!!!!!!!  
PRESENTED TO THE JURY WAS IT.

>> NO.

NO.

THERE WEREN'T ANY WINS HAD  
PERSONAL KNOWLEDGE THE OM ONE  
HAD THE ONLY ONE THEY CALLED  
IS OFFICER COPPER.

>> QUESTIONING YOU HAVE ALMOST

EXHAUSTED EVEN YOUR REBUTTAL  
TIME I DON'T KNOW HOW YOU WANT  
TO USE YOUR TIME BUT --

>> O BEING.

>> WANTED TO REMIND YOU OF  
THAT.

>> THANK YOU.

-- WELL, ANYWAY, I WANTED TO  
SAY THERE IS A PARALLEL SCHEME  
WITH THE NEW YORK OFFENSE AND  
JUVENILE DELINQUENCY STATUTES  
IN FLORIDA, AND I THINK I WILL  
GO ON AND TALK ABOUT SOMETHING  
ELSE, UNLESS THERE ARE  
ADDITIONAL QUESTIONS, WITH  
REGARD TO THE GUILT FAZE  
ISSUES!!\$\$!!!!!!!

ISSUES, THERE IS A -- PHASE  
ISSUES AN ISSUE OF RECANTING  
WITNESSESES AWAY RAISED THEISH  
OF THREE X5 CARDS INDICATE  
POLICE HALLECK COULD NOT MAKE  
A POSITIVE IDENTIFICATION OF  
ANYONE, AND WE HAVE ALSO,  
THERE WERE SOME -- SUMMARILY  
DENIED INCLUDING CROSS RACE  
IDENTIFICATION ISSUE BELIEVE  
THE COURT ERRED AND ALSO WITH  
REGARD TO -- A CONDUCT ISSUE  
WITH THAT I WILL RESWHAEFISH  
TIME I HAVE.

RESERVE WHAT TIME I HAVE.

.  
>> MISS DAVIS.

>> MAY IT PLEASE THE COURT MY  
NAME BARBARA DAVIS I REPRESENT  
THE STATE OF FLORIDA, FIRST OF  
ALL, ON THE ISSUE ONE, AND THE  
CROSS APPEAL, AT THE TIME OF  
THIS CONVICTION WAS WHICH WAS  
IN 1990 CAMPBELL WAS THE LAW.  
THIS COURT ISSUED ITS DECISION  
DIRECT APPEAL IN 1994, MERCK  
WAS DECIDED IN 1959.

UNDER CAMPBELL, WHICH DEFENSE  
COUNSEL CITED, A JUVENILE  
CONVICTION WAS AD MISS INL AS  
A PRIOR VIOLENT FELONY, UNDER  
MERCK, WHICH CAME OUT AFTER  
THIS CASE, THE JUVENILE  
ADJUDICATION WAS NOT A PRIOR  
VIOLENT FELONY BUT A JUVENILE  
CONVICTION WAS, CROSLEY GREEN  
WAS CONVICTED AT THE AGE OF

18,99TO IN AN ADULT COURT TO AN  
ADULT SANCTION HE CAME TO  
FLORIDA --

>> -- ON THAT.

>> AS AN ADULT.

>> HE -- MAKE SURE, HE WAS AT  
THE TIME OF THE TRIAL, IT WAS  
BELIEVED THAT HE HAD A  
CONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!!  
CONVICTION, OF ROBBERY.

>> YES.

>> DO YOU AGREE, THAT HE  
ACTUALLY THAT THE CONVICTION  
OF ROBBERY WAS VACATED AND THE  
SIGNING OF YOUTH -- FINDING OF  
YOUTH FULL OFFENDER WAS MADE?

>> THIS IS SOMETHING THAT IS  
INDIGENOUS TO NEW YORK.

>> I UNDERSTAND THAT ALL I'M  
ASKING IF YOU AGREE THAT THE  
THAT THAT FACT WHICH IS NOW IN  
THE RECORD WAS NOT IN THE  
RECORD AT THE TIME FOR EITHER  
THE TRIAL COURT OR FOR THIS  
COURT?

>> NO.

BECAUSE THEY REPEATEDLY SAID  
CROSLEY GREEN WAS TREATED AS A  
YOUTH FULL OFFENDER, THE ONLY  
THING THAT COUNSEL DIDN'T  
ARGUE WAS THAT UNDER NEW YORK  
LAW, IT IS DEEMED VACATED  
WHICH DOESN'T MEAN VACATED  
UNDER THE FLORIDA SENSE, IN  
FLORIDA, NEW YORK USES THE  
SAME THING WE DO FOR YOUTH  
FULL OFFENDER CONVICTED IN  
ADULT COURT, AND THEN THE  
SENTENCE, IF HE QUALIFIES  
ASSIST A YOUTH FULL OFFENDER  
IS A YOUTHFUL O FENDER  
SENTENCE.

>> YOUTHFUL OFFENDER SCHEME IN  
FLORIDA AND YOUTHFUL O FENDER  
SCHEME IN NEW YORK ARE TOTALLY  
DIFFERENT ARE THEY NOT.

>> IN THE ONLY DIFFERENCE IN  
NEW YORK IS THEY SAY WE ARE  
GOING TO VACATE IT FOR  
PURPOSES OF CEILING THAT  
RECORD, HOWEVER IF YOU LOOK AT  
THE --

>> YOU SAY THE ONLY  
DIFFERENCE, THAT IS A -- A

HUGE DIFFERENCE, IS IT NOT?  
I WOULD APPRECIATE IT IF YOU  
WOULD TAKE OUR ANALYSIS IN  
MERCK, AS JUSTICE TWILS HAS  
POINTED OUT JUSTICE WELLS  
POINTED OUT IN NESHG WE LOOK  
TO NORTH CAROLINA LAW, HERE WE  
HAVE AN EXPRESS -- FINDING, IN  
ADDITION TO STATUTORY SCHEME  
IN THE CASE LAW FROM NEW YORK,  
THAT SAYS, THERE IS NO  
CONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!!  
CONVICTION.

SO INITIALLY AT LEAST IT LOOKS  
TO ME THAT IF WE APPLY MERCK  
THAT IS THE QUESTION I'M GOING  
ASK YOU TO DO, THAT IF WE  
APPLY MERCK WHERE WE LOOK TO  
NORTH CAROLINA THAT HERE THIS  
AGGRAVATE!!\$\$!!!!!!!!!!!!!!!!!!!!  
AGGRAVATOR, SHOULD NOT HAVE  
BEEN APPLIED.

BECAUSE THERE IS NO PRIOR  
CONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!!  
CONVICTION, IN THIS CASE.

; IS THAT CORRECT?

>> TWO POINTS.

>> NO I JUST WANT -- I WE HAVE  
NO PRIOR CONVICTION DO WE?

>> NO.

THAT IS ABSOLUTELY WRONG, AND  
THE TRIAL JUDGE CITED QUAKE!!\$\$!!!!O  
AND ALL THE NEW YORK CASES IN  
QUEYO BECAUSE THERE IS A  
SERIES OF FEDERAL CASES, WHICH  
USE THE YOUTHFUL OFFENDER  
CONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!!  
CONVICTION, AS AN ADULT  
CONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!!  
CONVICTION, AND IN QUEYO THEY  
TOOK ALL THOSE ARGUMENTS, PUT  
THEM!!\$\$!!!!!!

IN TOGETHER CITED TO NEW YORK  
LAW, AND SAID, HERE IS HOW NEW  
YORK USES A YOUTHED YOUFUL  
OFFENDER CONVICTION, YOU -- IF  
YOU HAVE A YOUTH -- THAT IS  
GIFT, THAT IS YOUR SECOND  
CHANCE.

BUT IF YOU HAVE A SUBSEQUENT  
CRIMINAL HISTORY, YOU CAN USE  
THAT YOUTHFUL OFFENDER  
CONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!!  
CONVICTION, AND HERE ARE THE

NEW YORK CASES IN QUEGO ON  
PAGE 167 TO 168 OF THE  
DECISION!!\$\$!!!!!!!!!!!!!!  
DECISION, I THINK, IT IS  
PEOPLE V. DAVIS, THE COURT CAN  
TAKE INTO CONSIDERATION, THAT  
DEFENDANT FAILED TO LEARN FROM  
THE YOUTHFUL OFFENDER  
ADJUDICATION!!\$\$!!!!!!!!!!!!!!  
ADJUDICATION, AND THE JUDGE  
CAN ACCOUNT A YOUTHFUL OFFEND!!\$\$!!!!!!!!!!  
OFFENDER ADJUDICATION WHEN  
LOOKING AT HIS CRIMINAL  
HISTORY, FOR NEW YORK  
SENTENCING GUIDELINES.  
PEOPLE V. SEAL, ASSUMING  
AFFIRMING THE SENTENCE BASED  
ON THE STORMY HISTORY  
INCLUDING HIS YOUTHFUL OFFEND!!\$\$!!!!!!!!!!  
OFFENDER.

>> CAN I -- BUT IS THERE ANY  
CASE THAT SAYS THAT ONCE THERE  
IS A SUBSEQUENT ACT OF  
MISCONDUCT THE CONVICTION THAT  
WAS VACATED, IS NOW  
REINSTITUTED!!\$\$!!!!!!!!!!!!!!  
REINSTITUTED?

>> SEE, QUEGO ALSO DEALS WITH  
THE FACT IT IS VACATED IT IS  
NOT IT DOESN'T DISAPPEAR.  
IT O HE --

>> IF JUDGE SAYS TO HIM WHICH  
IS AGAIN WHAT THE JURY DIDN'T  
HEAR, IN THAT IN HIS CASE,  
THIS MIGHT BE THIS MAY NOT  
SOUND LIKE A BIG DEAL, BUT  
WHAT THAT DOES IS RELIVE YOU  
OF A CRIMINAL RECORD.  
YOU NOW HAVE NO CRIMINAL  
RECORD, IN SPITE OF THE FACT  
THAT THIS IS A SERIOUS CRIME.

>> AND THAT MAY BE A  
MISSTATEMENT BY THE NEW YORK  
JUDGE!!\$\$!!!!!!!!!!  
JUDGE, AND THAT MAY MAKE THE  
PLEA INVOLUNTARY, BUT, UNDER  
NEW YORK LAW, AND UNDER QUEGO  
AND CASES CITED THEREIN, THERE  
ARE USES FOR THE YOUTHFUL  
OFFENDER IF YOU HAVE  
SUBSEQUENT CRIMES, IF YOU HAVE  
TO REGISTER AS A SUBSEQUENT O  
FENDER!!\$\$!!!!!!!!!!  
FENDER.

NOW, IT IS SEALED FOR ALL INTENTS AND PURPOSES EXCEPT FROM LAW ENFORCEMENT WHEN YOU HAVE SUBSEQUENT CRIMES, WE WERE NOT ABLE TO GET THAT, WHICH DISTINGUISHED THIS CASE FROM ROME PILLA ON ITS FACE LET ME GO BACK TO SNOOESHG I THOUGHT THE RECORD HERE SHOWED THAT POSTCONVICTION COUNSEL WAS ABLE TO GET IT JUST BY -- ASKING THROUGH MAIL, AND GOT THE WHOLE RECORD.

>> NO, SIR THE RECORD SHOWS THAT THEY GOT A COURT ORDER TO RELEYS THE RECORD.

>> I'M SORRY.

>> THE RECORD SHOWS THEY GOT A COURT ORDER TO RELEYS THE RECORD.

SO THEY GOT A COURT ORDER.

>> BUT THE WERE ABLE TO GET A COURT ORDER TO DO IT.

>> THEY GOT A COURT ORDER, YES.

>> YOU SAID THE STATE WAS NOT ABLE TO GET IT?

.  
>> NO, SIR.

>> WHY NOT?

BECAUSE.

>> BECAUSE THE YOUTHFUL OFFEND!!\$\$!!!!!!!!!!  
OFFENDER RECORD IS SEALED.

>> DID THE STATE ASK FOR A COURT ORDER?

>> NO, WE DID NOT.

>> HOWEVER, LET ME TELL YOU WHAT WE GOT WHEN WE GOT THESE RECORDS!!\$\$!!!!!!!!!!!!!!

RECORDS, WHICH IF COUNSEL HAD DONE THAN HAD TO DISCLOSE THIS.

>> IS THE STATEMENT OF THE NEW YORK TRIAL COURT JUDGEP TO THE DEFENDANT UP THERE THAT YOU DO NOT HAVE A CONVICTION AND DO YOU -- THAT YOU ARE NOT CONVICTED YOU DON'T HAVE TO SAY THAT YOU WERE THAT YOUR SLATE IS CLEAN, IS THAT AN INCORRECT STATEMENT OF NEW YORK LAW?

>> IN THAT WAS IN 1976.

AND THE CASES THAT NEW YORK

THAT ARE CITED IN CUEGO THERE IS A 76 CASE, AFFIRMING THE SENTENCE ON THE BASIS OF HIS STORMY HISTORY WITH THE CRIMINAL JUSTICE THAT INCLUDED A YOUTHFUL OFFENDER AJUDD!!\$\$!!!!!!! AJUDDICATION SEX OFFENDER REGISTRATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! REGISTRATION, IT CAN BE CONSIDERED IN PAROLE AND BAIL DETERMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! DETERMINATION.

>> I MEAN THE NEW YORK SENTENCING SCHEME ALSO ALLOWS SOME CONSIDERATION OF JUVENILE ADJUDICATION DOES IT NOT?

.  
>> AND WE --

>> DOES IT NOT?

>> I'M NOT SURE.

I DON'T KNOW.

>> YOU HAVEN'T LOOKED THAT THE?

>> AT NEW YORK WHETHER THEY CONSIDER JUVENILES?

>> RIGHT.

>> IT IF NEW YORK.

>> YOUR CAN ARGUMENT HERE IF I UNDERSTAND IT IS THAT BECAUSE NEW YORK IF THEY SOMEBODY HAS A SUBSEQUENT CONVICTION OF VIOLENT FELONY OR SOMETHING, THAT THE SENTENCING COURT CAN LOOK BACK AND SEE IF THERE WERE ANY YOUTHFUL OFFENDER CASES!!\$\$!!!!!!!

CASES.

>> YES.

AND --

>> JUST ASKING -- UNDER THAT SCHEME CAN THEY ALSO LOOK, SEE IF THIS WERE ANY JUVENILE CASES?

>> I DON'T KNOW.

I DON'T KNOW.

NOW, UNDER OUR SENTENCING GUIDELINES!!\$\$!!!!!!!!!!!!!!!!!!!!!! GUIDELINES, YOU CAN GO BACK THREE YEARS, AND LOOK AT JUVENILE ADJUDICATIONS, UNDER MERCK, WE CAN'T USE AS A PRIOR VIOLENT FELONY A JOOUFSH NILE ADJUDICATION BUT WUK USE A JUVENILE CONVICTION, THERE

TAKES DISTINCTION IN MERCK, IF YOU ARE TREATED AS ADULT EVEN THOUGH A JUVENILE IT IS A PRIOR VIOLENT FELONY, WHICH IS -- ARE YOU -- YOUTHFUL OFFEND!!\$\$!!!!!!!!!! OFFENDER, ALSO IF YOU ARE -- ACTUALLY, MR. GREEN WAS 18, HE WAS AN ADULT HE WAS SENTENCED TO ADULT SANCTIONS, HE CAME TO IN ORDER ON AN ADULT PAROLE. >> WHAT INVESTIGATION DID PRIOR COUNSEL DO OF THE NEW YORK OFFENSE. >> HE -- HE KNEW FROM CROSLY GREEN THAT CROSLY WAS YOUTH!!\$\$!!!!!!!!!! YOUTHFUL OFFENDER THAT HE ADMITTED COMMITS THIS CRIME HE KNEW IT WAS ROBBERY HE KNEW IT WAS PLEA BARGAINED DOWN THE JURY KNEW ALL OF THAT, AND TO SAY THAT THE JURY DIDN'T KNOW THAT -- I MEAN I'VE GOT THE RECORDS RIGHT HERE WE HAVE THE SAME ARGUMENT WITH THE JUDGE AND MR. GRUBER CONCEDED THAT!!\$\$!!!!!! THAT -- >> THE TRIAL JUDGE IN HIS ORDER FINDING THIS AGGRAVATE!!\$!OR, STATED THAT HE HAD A CONVICTION FOR ARMED ROBBERY, IN THE STATE OF NEW YORK. >> NOW. >>; IS THAT CORRECT? >> IN THE ORIGINAL SENTENCING. >>; IS THAT CORRECT? IT SAYS ARMED ROBBERY ONCE AND ROBBERY TWICE. >> I'M SORRY. >> IT SAYS JUDGE ANTON IN ORIGINAL SENTENCING ORDER 1909 SAYS ARMED ROBBERY ONCE AND ROBBERY TWICE. BUT IT WAS CLEAR AT THE HEARING PAGE 2217, IS WHERE IT ALL COMES CLEAR, MR. RUBIN TESTIFIED THAT HE HAD COME TO PAROLE!!\$\$!!!!!!!!!! PAROLE, ON AN COME TO FLORIDA ON PAROLE ARMED ROBBERY CHARGE. MR. COPPER THE POLICE OFFICER SAID HE WAS CHARGED WITH ARMED ROBBERY!!\$\$!!!!!!!!!! ROBBERY, PAGE 2217, IT BECOMES

VERY CLEAR BUT YES THEN HE  
PLEA BARGAINED DOWN AND HE  
PLED --

>> YOUR OPPONENT HAS CITED A  
DETAILED PROBATION OR  
PRESENTENCE REPORT, IN THE NEW  
YORK FILE, WHERE THE NEW YORK  
OFFICIAL CASTS SUBSTANTIAL  
DOUBT EVEN ON THE DEFENDANT'S  
PARTICIPATION IN THE ROBBERY,  
AND SAYS THAT THE CHARGES WERE  
DROPPED AGAINST HIS  
CO-DEFENDANT!!\$\$!!!!!!!!!!!!!!!!!!!!  
CO-DEFENDANT.

>> YES, SIR AND I ASKED.

>> -- IS THAT WOULDN'T THAT  
HAVE SUBSTANGSLY MITIGATED  
THIS AGGRAVATE\$\$!!OR.

>> NO, SIR I INVITE YOU TO  
LOOK AT THIS IT IS IN THE  
RECORD AT PAGE 5910, THIS IS  
ALL STATEMENTS FROM CROSLY  
GREEN SAYING HE IS INNOCENT OF  
THIS CRIME, AND THIS PAROLE  
OFFICER, UP THERE, WHO IS  
TRYING TO GET FLORIDA TO  
ACCEPT PAROLE, IS SAYING  
"CROSLY GREEN TOLD ME THAT HE  
DIDN'T REALLY DO THIS" AND THE  
CO-DEFENDANT CHARGES WERE  
DISMISSED WELL THE  
CO-DEFENDANT CHARGES WERE  
DISMISSED NINE MONTHS BEFORE  
CROSLY GREEN PLED.  
CROSLY GREEN HAD AN ATTORNEY.  
HE ENTERED THIS PLEA I MEAN IF  
HE HAS A PROBLEM WITH HIS NEW  
YORK PLEA NEEDS TO TAKE THAT  
UP WITH NEW YORK, BUT IF YOU  
LOOK AT WHAT THEY HAVE NOW  
GIVEN THE STATE, WHICH WE  
COULDN'T GET BEFORE, IF  
DEFENSE COUNSEL HAD DONE THIS,  
WE WOULD HAVE HAD A FIELD DAY.  
IT SAYS IN HERE, THAT HE IS  
DISSOCIAL THE ICD 10 VERSION  
OF ANTISOCIAL, THAT IS  
SOMETHING MR. PARKER KEPT FROM  
THE JURY BECAUSE HE HAD HIRED  
A MENTAL HEALTH EXPERT WHO  
SAID HE WASN'T AI SOCIAL, HE  
DIDN'T CALL THAT MENTAL HEALTH  
EXPERT, SO --  
>> LET ME ASK YOU A QUESTION

ON THIS, THE JUDGE, THIS IS 65  
PAGE ORDER, THAT THE JUDGE  
ENTERED FOR WAS THIS SOMETHING  
THE JUDGE DRAFT ORDINARY THE  
STATE DRAFTED DRAFTED OR THE  
STATE DRAFTED.

>> THE \$\$JUDGE'S ORDER.

>> POSTCONVICTION.

>> NO JUDGE JACOBIS WROTE  
THAT.

>> IT IS ABOUT MOST THOROUGH  
ORDER I HAVE EVER SEEN A FROM  
A TRIAL JUDGE I'M SURE THAT ON  
ALL THE CLAIMS ONP APPEAL THAT  
WHETHER IT IS RECANTATION, OR  
THE FAILURE TO YOU KNOW, PUT  
ON DOG TRACKING EXPERTS, YOU  
ARE GOING TO SAY THE JUDGE  
MADE ALL THESE FINDINGS, OF  
FACT, NOW ON THE ISSUE ON  
WHICH THE JUDGE GRANTED A NEW  
PENALTY PHASE WHICH IS HE  
FOUND DEFICIENT PERFORMANCE,  
THAT NOW GOES TO PREJUDICE OF  
COURSE PREJUDICE IS SOMETHING  
WE DO A MIXED QUESTION OF FACT  
OR LAW, CAN YOU HELP ME OUT AS  
TO WHAT PART OF THE \$\$JUDGE'S  
ORDER ON THE PREJUDICE THRONG,  
AS FAR AS EFFECT ON JURY WOULD  
BE FINDING THAT WE SHOULD  
ACCEPT GIVE DEFERENCE TO AS  
OPPOSED TO SUBSTITUTE ON OUR  
OWN JUDGMENT SFWHIE LOVE TO  
THE TRIAL \$\$JUDGE'S ORDER IN MY  
BRIEF AT 94 I WILL TELL YOU  
WHERE HE WENT WRONG, THIS IS  
AN INEFFECTIVE ASSISTANCE OF  
COUNCIL CLAIM, MR. PARKER.

>> REMEMBER THIS 1909.

CITED TO THE JUDGE CAMPBELL, I  
DON'T THINK THIS YOUTHFUL  
OFFENDER CONVICTION SHOULD  
COUNT BUT I RECOGNIZE --  
CAMPBELL I THINK IT IS TOO  
REMOTE IN TIME, ON AND ON AND  
ON DID A MOTION IN LIMINE ON  
THE YOUTHFUL OFFENDER THE  
ARMED ROBBERY THING NOW AFTER  
WE SAID THIS IT WAS CLARIFIED  
IT WAS NOT AN ARMED ROBBERY,  
TO THE JURY, THEY NEVER USED  
THE WORD "ROBBERY".

>> I HAVE WORKED!!\$\$!!!!!!!\$\$MARKED EVERY PLACE

IN CLOSING ARGUMENT I CAN READ  
CITES SEVEN PLACES THEY SAID  
"ROB ORY" NEVER "ARMED ROBBERY!!\$\$!!!!!!!!!!!!  
ROBBERY" MENTIONED AFTER THAT  
TIME.

>> YOUR POSITION IS BEFORE THE  
JURY ARMED ROBBERY ONLY  
UTILIZATIONED THAT ONE TIME --

>> IT WAS MR. RUBIN SAID HE  
HAD COME FROM NEW YORK, ON  
PAROLE ON AN ARM ROBBERY  
CHARGE, THE OFFICER COPPER,  
IKOPP!!\$\$!!!!!!!!!!

IKOPPER SAID HE HAD BEEN  
CHARGED WITH ARMED ROBBERY BUT  
PLEA BARGAINED DOWN TO ROBBERY!!\$\$!!!!!!!!!!!!  
ROBBERY, FROM THEN ON, DO YOU  
NOT SEE ARMED ROBBERY, EVER IN  
THE TRANSCRIPT DO YOU SEE  
ROBBERY SEVEN TIMES AT PENALTY  
PHASE, AND -- TWO TIMES AT THE  
SENTENCING PHASE.

>> DID THE STATE ATTORNEY  
ATTEMPT TO ANALOGIZE THAT NEW  
YORK ROBBERY TO MAKE IT  
SIMILAR TO THE ROBBERY THAT  
TOOK PLACE AT THE PART OF!!\$\$!!AS PART  
OF THIS ENTIRE CRIMINAL  
EPISODE!!\$\$!!!!!!!!!!!!  
EPISODE.

>> NOT AT ALL THERE WERE NO  
DETAILS THAT COME, IN REMEMBER  
THIS IS WHAT GISHZ THERE IS  
RON PILLA WE DIDN'T HAVE ANY  
OF THIS PAPERWORK, BUT IF WE  
HAD THE PAPERWORK, THEY HAVE  
GIVEN US, NOW, WE HAVE GOT THE  
VICTIM'S NAME WE'VE GOT THERE  
IS A FIREARM INVOLVED, WE HAVE  
GOT -- ALL THE DETAILS, THAT  
WE COULD NOW PRESENT AND SAY  
HERE IS WHAT HAPPENED, OKAY IT  
WAS PLED DOWN TO A ROBBERY BUT  
HERE IS THE DETAILS.

LET ME TELL YOU WHERE ELSE THE  
JUDGE WENT WRONG.

>> SO THAT WOULD BE BECAUSE  
THAT IS THE PART OF THE FACT!!\$\$!!!!!!  
FACTUAL FINDING THAT YOU SAY  
HE IGNORED, THAT WHAT WHAT  
WOULD BE TELL YOU INCREASED  
PREJUDICE, FROM HAVING THE  
FILE; IS THAT CORRECT.

>> YES, MA'AM, AND PHILOSOPHER

HE -- FIRST OF ALL HE SAID THE JURY WAS TOLD THE JUDGE FOUND THE DEFENDANT HAD BEEN CONVICTED SENT TO PRISON FOR ARMED ROBBERY, WELL, THE JURY WAS TOLD HE HAD BEEN CHARGED WITH ARMED ROBBERY BUT THEN HE PLED TO A PLEASER -- SFLOOERS I GUESS THE PROBLEM I KNOW YOU SAID IN JUDGE ANTON'S ORDER HE SAYS BOTH BUT WHEN HE -- HE HIS SENTENCING ORDER, SAYS AND AGGRAVATING CIRCUMSTANCES, THEY'RE TALKING ABOUT THE PREVIOUS CONVICTION WHEN WOULD IT BE ROBBERY OR KIDNAPPING, IN THIS CASE, DOES THE STATE HOWEVER DID ESTABLISH BEYOND A REASONABLE DOUBT THE DEFENDANT WAS CONVICTED OF ANOTHER ARMED ROBBERY ON JANUARY 26, 1977, IN THE STATE OF NEW YORK, THIS AGGRAVATING CIRCUMSTANCE DOES EXIST.

IF THE JUDGE WHO OF COURSE -- JUDGE ANTON AN EXCELLENT JUDGE WAS UNDER THAT IMPRESSION IT WAS CONVICTION, AND IT WAS FOR ARMED ROBBERY, AREN'T WE TO PRESUME, THAT THE JURY THOUGHT THE SAME THING?

>> NO.  
BECAUSE THE JURY DIDN'T HAVE THE PSI, WHERE THE JUDGE PICKED THAT UP FROM WAS THE PSI SAID THAT IT WAS AN ARMED ROBBERY!!\$\$!!!!!!!!!!!!!!  
ROBBERY, BUT THEN HE HAD BEEN ADJUDICATED -- HE HAD BEEN CONVICTED AS A YOUTHFUL OFFENDER!!\$\$!!!!!!!!!!!!!!  
OFFENDER, THE JURY DIDN'T HAVE ANY OF THAT.

BUT IF YOU LOOK THREE PAGES LATER!!\$\$!!!!!!!!!!  
LATER, JUDGE ANTU.N. IN MITIGATION DEFENSE COUNSEL OFFERED THE FACT HE SAID HE WAS 15 OR 16, HE IS REALLY 18, THAT THE YOUTHFUL OFFENDER, IS MITIGATED THAT CONVICTION, THAT ARMED ROBBERY CONVICTION IS MITIGATED, BECAUSE IT WAS A YOUTHFUL OFFENDER CONVICTION

IT WAS REMOTE IN TIME, HE WAS ONLY 15 OR 16, AND JUDGE ANTON TWICE TALKED IN NEGATION SECTION ABOUT A ROBBERY THIS WAS AFFIRMED ON DIRECT APPEAL, THE ONLY DIN THE -- DOCUMENT IN THE RECORD THAT CAME TO THIS COURT IT SAID IT WAS ROBBERY!!\$\$!!!!!!!!!!!!!!

ROBBERY.

>> AND WHAT DISCLOSED WE SAY IN OUR DIRECT APPEAL OPINION WHEN WE -- THE HAC AGGRAVATES\$!!!OR JUST MENTIONED ANOTHER PRIOR VIOLENT FELL.

>>!!\$\$!!

>>.

>> YES, MA'AM.

>> DON'T SAY ARMED ROBBERY OR ROBBERY!!\$\$!!!!!!!!!!!!!!

ROBBERY.

>> NO JUST A PRIOR VIOLENT FELONY THE ONLY DOCUMENT IN THE RECORD BEFORE THIS COURT THIS RECORD WAS UP HERE ON DIRECT APPEAL THAT IS ONE OF THE PROBLEMS COMING IN ON A COLLATERAL ATTACK, AT THE TIME IT WAS THE LAW WAS CAMPBELL.

SO --

>> I KNOW BUT IF THE COURT HAD AND I'M REALLY CONCERNED ABOUT THIS,P IF THE COURT HAD EVIDENCE THAT THE CONVICTION WAS SET ASIDE, I MEAN -- YOU KNOW, MAYBE MERCK WOULD HAVE COME OUT AT THAT TIME, WE DIDN'T HAVE THAT INFORMATION, ASSUMING THERE WAS A CONVICTION THERE WAS NEVER AN ARGUMENT -- ABOUT.

>> BUT, IN YOUR ASSUMES THAT CONVICTION SET ASIDE I THINK IF YOU READ CUEGO DRISCOLL MATTHEW ADDRESSES ALL THE, AT THEY ARE MAKING IT IS NOT WHAT WE SAY AS VACATE IT IS NOT OUR VACATE.

BACK THE JUDGES ORDER --

>> THE DEFENDANT ACTUALLY -- WHEN HE WAS WHEN THE CONVICTION VACATE HE HAD ACTUALLY SPENT TIME IN FRAIL FOR IT?

.  
>> YES.  
>> THAT CONVICTION.  
>> YES, HE SPENT A YEAR IN  
ADULT JAIL AND THEN WAS  
PAROLED ON ADULT PAROLE, TO  
FLORIDA REGISTERED AS CONVICT!!\$\$!!!!!!!!!!!!  
CONVICTED FELON, AND  
ULTIMATELY VIOLATED THAT  
PAROLE WENT BACK TO JAIL IN  
NEW YORK, AND THEN WAS  
REPLEASEED IN 1980.  
THE CRIME OCCURRED IN 1976.  
SO MANY OF HE -- IT IS AN  
ADULT SANCTION, HE WAS AN  
ADULT, AND UNDER BEING MERCK,  
I THINK, DIGRESSED FROM THAT!!\$\$!!!!!!  
THAT --  
>> IN YOUTHFUL OFFENDER IF YOU  
VIOLATE YOU CAN BE SENTENCED  
TO ADULT NO FLORIDA WHEN HE  
WAS VIOLATED ON THE PAROLE WAS  
HE SANCTIONED AS AN ADULT OR  
WAS IT STILL A YOUTHFUL OFFEND!!\$\$!!!!!!!!!!!!  
OFFENDER SANCTION?  
>> IN -- I DON'T KNOW.  
>> YOU KNOW WHAT I'M SAYING  
HERE.  
>> YES, SIR, IN THE RECORD,  
THERE IS A FOLDER, OF EXHIBIT,  
AND IT IS ALL ONE PAGE NUMBER  
BUT IT HAS GOT ALL THE PAROLE  
DOCUMENTS IF THERE.  
SHOWING THE WARRANT FOR THE  
VIOLATION, AND THE ULTIMATE  
SENTENCE, AND ALL THAT.  
AND I DON'T KNOW IF IT SAYS  
HOW HE WAS SENTENCED.  
>> BUT THAT IS IN THE EXHIBIT,  
IT IS A BROWN FOLDER AND THERE  
IS IT IS A COMPOSITE EXHIBIT  
OF MAYBE 100 PAGES UNDER ONE  
PAGE NUMBER.  
THE --  
>> AND WHERE ELSE THE JUDGE  
ERED.  
>> THE JUDGE COMPARED THIS  
CASE TO ROMPELLO THIS CASE  
DOES NOT COMPAIR TO ROMP!!\$\$!!!!!!  
ROMPEL-L.A. IN ROMAPPELLATE  
ELIMITA STATE WAS GOING TO  
VIEWS \$\$YIM'S TESTIMONY WE  
DIDN'T BRING IN ONE DETAIL OF  
THAT PRIOR ROBBERY WHICH NOW

WE COULD, ALSO IN ROM  
APPELLATE!!\$\$!!!!!!!!!!!!!!!  
APPELLATA, THE TRANSCRIPT WAS  
RIGHT THERE IN THE COURTHOUSE  
THE PROSECUTORS LOOKING AT THE  
TRANSCRIPT HE GO TO GO ADMIT.  
ALSO, IN ROMPEL-L.A. HE HAD  
SERIOUS MENTAL HFLT ISSUES  
THERE WAS MITIGATION IN THE  
PSI, WHAT WE FOUND, IN WHAT  
INFORMATION THEY'VE GIVEN US  
IS HE INDEPENDENCE ANTISOCIAL,  
THERE IS REALLY NO MITIGATION  
THAT WASN'T ALREADY PRESENTED  
AT THE PENALTY PHASE, SO MANY  
I WOULD ASK THIS COURT TO  
AFFIRM THE PARTLY OF THE TRIAL  
JUDGE'S ORDER, THAT AFFIRMS  
THE CONVICTION AND REVERSE THE  
PART THAT FINDS THAT THIS WAS  
IN EFFECT -- INEFFECTIVELESS  
UNDER ROMPELLA.  
THANK YOU.

>> REBUTTAL?

>> THIS NOTION THIS WAS SOME  
SORT OF KNOWLEDGE, OR IN ANY  
WAY THAT DIFFERENCE BETWEEN  
THE DEGREE OF OFFENSES BETWEEN  
A STRONG ARMED ROBBERY AND  
ARMED ROBBERY, THAT WAS --  
BROUGHT UP IN TRIAL COURT BY  
ANYONE ANY TIME SIMPLY  
INCORRECT NOT ONLY CONFLICTS  
WITH THE FINDING BY JUDGE  
ANTON IT COPFLIGHTS WITH FIND  
BIG JUDGE HERE ALSO CONFLICTS  
WITH THE \$\$STATE'S RESPONSE IN  
POSTCONVICTION PROCESSION TO  
OUR ALLEGATION, THAT THERE WAS  
PROSECUTORIAL MISCONDUCT BASED  
ON THE FACT THAT --

>> LET ME LET ME INTERRUPT ASK  
YOU A QUESTION.

ON PAGE 2016, THROUGH 2017 OF  
THE TRANSCRIPT THE QUESTION IS  
ASKED THE OFFICER, NEW YORK  
OFFICER KOPER IS GOING ASK IN  
YOU NEW YORK DO YOU  
DIFFERENTIATE BETWEENED ARMED  
ROBBERY AND SIMPLE ROBBERY HE  
SAYS YES, SIR THEN GOES AND  
SAYS THE CHARGES ARMED ROBBERY  
HE PLED TO ROBBERY, SO THIS  
SEEMS LIKE THE TRANSCRIPT

SPECIFICALLY SAYS THE OPPOSITE  
WHAT YOU JUST STATED.

>> WELL MY READING OF THE  
TRANSCRIPT IT GOES ON FOR A  
ABOUT IT AND THEN HE HAS --  
AND I HEARD THAT HE -- I HEARD  
THAT HE PLED OUT TO ROBBERY.

>> DO YOU DIFFERENTIATE  
BETWEEN ARMED ROBBERY AND  
SIMPLE ROBBERY IN NEW YORK?

>> I --

>> IT -- HE SAYS YES.

>> TALKING ABOUT MAKING  
ARREST, YES, AND HE SAID THAT  
HE ARRESTED CROSLY -- GREENE  
I BELIEVE FOR ARMED ROBBERY.

>> LET ME ASK YOU A -- IF THIS  
WERE GO BACK TO NEW PENALTY  
FACE WOULD YOU RESPOND TO THE  
STATES ARGUMENT THAT THAT  
WOULD BE INFORMATION AVAILABLE  
TO FROM THAT FILE OTHERWISE  
UNAVAILABLE BECAUSE THEY DID  
NOT HAVE ACCESS TO THAT SEALED  
RECORD?

AS FAR AS THE -- PSYCHOLOGICAL  
STATUS OF THE CRIME ET  
CETERA --

>> I WOULD BE HAPPY IF THE  
ENTIRE CONTENTS OF THE FILE  
WENT BEFORE THE JURY YES WHAT  
THEY ARE SAYING IS TRUE, SO  
FAR AS I KNOW, BECAUSE I THINK  
WE WOULD PROBABLY -- INTRODUCE  
THE ENTIRE STATEMENT BY THE VI  
STEPHENSON WHICH INDICATES  
THAT THE OFFENSE ITS VERY THAT  
CROSS AGREEMENT IS PROBABLY  
NOT MAY WELL NOT HAVE BEEN  
GUILTY OF THE OFFENSE AT ALL  
SIMPLY PLED OUT IN ORDER TO  
GET OUT THAT HE WAS A MIGRANT  
WORKER DIDN'T HAVE FAMILY  
THERE, HE COULDN'T MAKE BAIL,  
WHEREAS CO-DEFENDANT THE STATE  
IN NEW YORK, THEY COME IN  
DROPPED CHARGES AGAINSTCO  
DEFT,AND INDICATE THAT THERE  
WAS A PROOF PROBLEM WITH  
REGARD TO CHARGES AGAINST  
CROSLY GREEN HIMSELF.  
SO CHANCES ARE WOULD HE HAVE  
SOUGHT TO INTRODUCE THAT TYPE  
OF INFORMATION AT COURT.

I DON'T KNOW IF THAT ANSWER AS  
THE QUESTION THERE MAY BE SOME  
THAT ISSUES WOULD HAVE TO BE  
ADDRESSED IN --

>> LET ME ASK YOU IS IT TRUE  
THAT MR. PARKER GOT MR. GREEN  
EVALUATED DECIDED NOT TO  
INTRODUCE THAT EVALUATION  
BECAUSE IT HAD ANTISOCIAL  
PERSONALITY OR SIMILAR TYPE  
TRAITS AND THOSE SAME TRAITS  
WOULD HAVE BEEN REVEALED BY  
THE NEW YORK CASE.

>> I DON'T RECALL, NOW, WHAT  
WHETHER THE RECORD REFLECTS  
BHA WAS -- REFLECTS WHAT WAS  
IN THE EVALUATION, TRUE THAT  
HE DID GET EVALUATION DECIDED  
NOT PROCEED IN THAT DIRECTION,  
SFLOOND WHY.

>> THAT IS A REASONABLE  
INSENCE FROM --

>> WITH OUR HELP YOU HAVE NOW  
EXHAUSTED MORE THAN YOUR TIME.  
THAT YOU FOR THE ARGUMENTS WE  
WILL TAKE THE CASE UNDER  
ADVISEMENT  
ADVISEMENT.

>> COURT WILL STAND IN RECESS  
UNTIL 9:00 TOMORROW MORNING.

>> PLEASE RISE.