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Jerone Hunter v. State of Florida

SC06-1963

THE NEXT CASE ON THE CALENDAR IS
HUNTER V. STATE.
YOU HAVE THE NEXT TWO CASES.

>> [INAUDIBLE]

>> MAY IT PLEASE THE COURT, I'M
RYAN TRUSKOSKI, AND I REPRESENT
MR. HUNTER.

THE LARGE CASE, THERE ARE A LOT
OF ISSUES.

>> ARE YOU GOING TO DIRECT OUR
ATTENTION SPECIFICALLY?

BECAUSE THERE ARE A NUMBER OF
ISSUES HERE.

>> I WOULD LIKE TO START WITH A
VERY FUNDAMENTAL CONCEPT I DON'T
THINK THIS COURT HAS EVER
ADDRESSED, AND THAT IS THE
EXTENT OF PROTECTIONS OF
FLORIDA'S DUE PROCESS CLAUSE AS
COMPARED TO THE FEDERAL DUE
PROCESS CLAUSE.

>> COUNSEL, I HAVE AN UNDERLYING
CONCERN HERE, AND THAT IS THAT
AS YOU SAID YOU'RE STARTING OFF
WITH A VERY BROAD CONCEPT.

YOU ALSO ARE COUNSEL IN THE NEXT
CASE THAT WE HAVE ON THE DOCKET
THIS MORNING, AND AFTER READING
THE BRIEFS IN THIS CASE, I MUST
ADMIT THAT I HAVE SOME CONCERN
THAT THE BRIEFS IN THE TWO CASES
LOOK AN AWFUL LOT ALIKE IN TERMS
OF APPLYING THESE RATHER BROAD
AND SOMEWHAT VAGUE CONCEPTS OF
DUE PROCESS AND OTHER CONCEPTS.
HOW DID YOU COME TO IDENTIFY THE
SAME ISSUE IN THESE TWO CASES?

>> BECAUSE IT'S NOT LIMITED JUST
TO THESE TWO CASES.

>> IS THAT JUST A PURE
COINCIDENCE, OR IS THIS AN
APPROACH THAT YOU BELIEVE IS
APPROPRIATE IN DEATH PENALTY
CASES?

>> I BELIEVE IT'S AN APPROPRIATE

IN EVERY CRIMINAL CASE BECAUSE I DON'T THINK THAT FLORIDA'S DUE PROCESS CLAUSE HAS BEEN DEFINED. >> HOW DID, WHAT WERE -- WHAT WE'RE USED TO SEEING AS THE DIRECT REVIEW COURT WOULD BE IN THE POSITION OF REVIEWING OTHER CRIMINAL CASES ON DIRECT APPEAL. IS SOME CLAIM OF A SPECIFIC ERROR OF THE TRIAL JUDGE AND THEN TRIAL JUDGES HAVE TO MAKE DECISIONS, OBVIOUSLY, WHETHER IT'S ADMITTING EVIDENCE OR RULING ON MOTIONS OR WHATEVER. SO WHAT SPECIFIC ERROR OF THE TRIAL COURT ARE YOU POINTING TO HERE IN TALKING ABOUT THIS BROAD CONCEPT OF STATE DUE PROCESS?

>> WELL, IN THE BRIEF I RAISE NUMEROUS CLAIMS OF -- >> WELL, NUMEROUS CLAIMS, YOU SEE, DOESN'T HELP US. WHAT ARE YOU CLAIMING WE SHOULD REVERSE THE TRIAL JUDGE ON UNDER THIS CONCEPT OF STATE DUE PROCESS?

>> WITHIN EACH ARGUMENT SECTION I DID IDENTIFY WHERE THERE WAS A DUE PROCESS.

>> WELL, TELL ME NOW. IS IT A DENIAL OF A MOTION? WAS IT THE ADMISSION OF SOME EVIDENCE?

WHAT RULING OF THE TRIAL JUDGE IS IT THAT YOU'RE CLAIMING WAS ERRANT?

>> THE DENIAL OF THE MOTION TO SUPPRESS, THE FAILURE TO DECLARE A MISTRIAL WHEN CO-DEFENDANT CANNON REFUSED TO TESTIFY.

>> SO YOU'RE GROUPING A WHOLE BUNCH OF RULINGS OF THE TRIAL JUDGE UNDER THIS SAME ISSUE?

>> I DIDN'T DO IT AS A SHOTGUN APPROACH, I MEAN --

>> IT LOOKS LIKE A SHOTGUN APPROACH, WITH ALL DUE REVERENCE HERE TO YOUR ARGUMENT.

ARE YOU CLAIMING UNDER THIS ARGUMENT THAT THE JUDGE ERRED IN A LARGE NUMBER OF RULINGS?

>> YES.

>> AND IN THOSE RULINGS THE JUDGE WAS SPECIFICALLY ASKED TO INVOKE FLORIDA'S DUE PROCESS CLAUSE APPROPRIATELY, AND THE JUDGE REFUSED TO DO SO OR ERRONEOUSLY DIDN'T DO SO OR WHAT?

>> YES.

HE WAS EITHER TOLD DUE PROCESS IN GENERAL OR CITED CASE LAW.

>> [INAUDIBLE] FLORIDA DUE PROCESS?

>> SOME OF THE ARGUMENTS DIDN'T SPECIFY WHETHER IT WAS FLORIDA OR FEDERAL DUE PROCESS.

>> YOU GO AHEAD.

>> OKAY.

WELL, THE ISSUE OF WHETHER I'M BEING GENERAL ONLY APPLIES TO WHETHER THIS TERM IS APPROPRIATELY DEFINED.

WHAT I'M TRYING TO ESTABLISH AND WHAT THIS COURT HAS NEVER HELD IS REALLY IS FLORIDA'S DUE PROCESS CLAUSE MORE PROTECTIVE THAN THE FEDERAL?

I DON'T THINK THIS COURT HAS EVER ADDRESSED THAT.

SO ONCE WE GET, ONCE WE GET THERE, THEN, YOU KNOW, WHAT ARE THE EFFECTS OF THE RULING?

>> I THINK WHAT YOU HAVE TO DO IS TELL US SPECIFICALLY IN A PARTICULAR ISSUE WHY THE FLORIDA DUE PROCESS CLAUSE WOULD HAVE RENDERED YOUR CHILD RELIEF WHEREAS UNDER THE FEDERAL DUE PROCESS CLAUSE HE WOULD NOT HAVE BEEN GRANTED RELIEF.

I MEAN, YOU'VE GOT TO BE MORE SPECIFIC ABOUT WHAT IT IS THAT YOU REALLY WANT AND WHY IT WAS [INAUDIBLE]

>> WELL, IN EACH ARGUMENT SECTION --

>> WELL, THEN LET'S GET TO EACH ARGUMENT THEN.

>> OKAY.

WELL, THAT'S FINE.

ONE OF THE ISSUES IS THE INSERTION OF THE AND/OR JURY

INSTRUCTION, YOU KNOW, I BELIEVE THAT IN FLORIDA -- THE CO-DEFENDANT SALAS' CASE THE FIFTH DISTRICT COURT OF APPEAL ALREADY ADDRESSED THIS, AND WITH REGARD TO SALAS, IT WAS HELD NOT TO BE REVERSIBLE ERROR, BUT I'M ARGUING THAT FOR SURE UNDER THE --

>> HAVE WE NOT ADDRESSED THAT ISSUE VERY RECENTLY?

>> YOU HAVE.

AND THE QUESTION WILL BECOME, IN THIS CASE, WAS --

>> THERE WAS A PRINCIPLE INSTRUCTION GIVEN IN THIS CASE, CORRECT?

>> YES.

>> OKAY.

AND THAT WAS WHAT WE DECIDED IN --

>> THAT RECENT CASE.

>> I MEAN, YOUR POSITION IS MUCH LIKE THAT IN THAT IT WOULD HAVE TO BE FUNDAMENTAL ERROR.

>> THIS WAS PRESERVED, SO IT WOULDN'T BE FUNDAMENTAL ERROR.

>> OKAY.

>> BUT IT WOULD BE WHETHER IT WAS HARMFUL ERROR.

>> OKAY.

>> WHY DON'T WE, THERE'S A -- I'D LIKE FOR YOU TO ADDRESS SPECIFICALLY THE ISSUE OF [INAUDIBLE] MR. HUNTER WAS 18 YEARS OLD AT THE TIME, WAS TRIED WITH BOTH -- AND VICTORINO? IS THAT CORRECT?

>> THAT IS CORRECT.

>> ALL RIGHT.

AND WAS A MOTION FOR SEVERANCE FILED AS TO HUNTER?

>> IT WAS.

>> ALL RIGHT.

AND TELL ME HOW DID THE TRIAL COURT VIEW THIS DISCRETION IN DENYING THE SEVERANCE?

>> THERE'S A CASE OFF THE THE FIRST DCA, WHICH I CITED ON PAGE 37 OF MY BRIEF, WHICH SAYS ANY TIME A CO-DEFENDANT IS GOING TO ACCUSE ANOTHER CO-DEFENDANT OF COMMITTING A CRIME, THAT A

SEVERANCE SHOULD BE GRANTED.
AND IN MY BRIEF AS WELL THE
TRIAL COURT DID RENDER A LENGTHY
ORDER TRYING TO ADDRESS ISSUES
ABOUT STATEMENTS FROM
CO-DEFENDANTS IMPLICATING OTHER
CO-DEFENDANTS AND TRIED TO
REMEDY THE FACT THAT ANOTHER
CO-DEFENDANT COULDN'T
CROSS-EXAMINE ON THOSE ISSUES.

>> WELL, WHAT WAS HUNTER'S
DEFENSE?

WAS HUNTER'S DEFENSE THAT
VICTORINO DID IT?

>> HUNTER'S DEFENSE WAS THAT
ESSENTIALLY HE WAS UNDER THE
DOMINATION OF VICTORINO AND
DIDN'T HAVE A CHOICE.

>> WHAT WAS VICTORINO'S DEFENSE?

>> I BELIEVE IT WAS THAT HE
DIDN'T DO IT.

I CAN'T CONFIRM THAT.

>> I MEAN, IT SEEMS TO ME OF ALL
THE ISSUES THAT THAT ACTUALLY
HAS THE MOST POTENTIAL TO
TROUBLE ME BECAUSE ALTHOUGH IT
DOES LOOK LIKE THE JURY MADE
INDIVIDUALIZED SENTENCING
DECISIONS, IT'S THE SAME JURY,
WAS THE STATE SEEKING DEATH
AGAINST ALL THREE DEFENDANTS?

>> YES.

>> AND THE SAME JURY, DID THEY
HEAR THE PENALTY PHASE FOR ALL
THREE DEFENDANTS?

>> YES.

>> AND THEY GAVE, THEY
RECOMMENDED LIFE FOR SALAS?

>> CORRECT.

>> AND THEN DEATH FOR VICTORINO
AND --

WERE THE PENALTY PHASES ALL
SEPARATE?

>> NO, THEY WEREN'T, AND I'VE
ALSO CLAIMED THAT AS ERROR AS
WELL.

THE GUILT PHASE SHOULD HAVE BEEN
SEPARATE AND FOR SURE --

>> THE PENALTY PHASE, THEY HAD
SEPARATE PENALTY PHASES FOR EACH
CO-DEFENDANT, BUT BEFORE THE
SAME JURY, CORRECT?

>> I MAY HAVE MADE A MISTAKE ON.

THAT I THINK YOUR HONOR IS RIGHT ON THAT.

I WOULD HAVE TO DOUBLE CHECK. IT WAS FOR SURE WITH THE SAME JURY, BUT I CAN'T REMEMBER IF THEY WERE ALL DONE AT THE SAME TIME OR NOT.

I CAN'T REMEMBER THAT RIGHT NOW AS I STAND HERE.

>> THIS COULD BE A PRETTY BIG ISSUE BECAUSE, YOU KNOW, I THINK THAT YOU MIGHT HAVE A POINT IN TERMS OF WHO'S MORE CULPABLE. YOU'VE GOT MR. VICTORINO, HOW OLD WAS HE?

>> HE WAS THE OLDEST OF THE GROUP, I'M NOT SURE, IN HIS 20s --

>> BIG GUY?

>> BIG GUY, DOMINATING GUY, VIOLENT FELON.

AS THE TRIAL COURT FOUND, MY CLIENT WAS UNDER SUBSTANTIAL DOMINATION.

>> MR. HUNTER WAS A, IS HE STILL IN SCHOOL?

>> I DON'T RECALL IF HE WAS IN SCHOOL OR NOT.

>> YOU KNOW, THIS IS WHERE I GET TROUBLED, OKAY?

WE'RE TALKING ABOUT A LIFE OR DEATH OF AN 18-YEAR-OLD, AND AS YOU MADE COMMENT, HE'S THE YOUNGEST PERSON ON DEATH ROW. WOULD SEEM TO ME THAT EVERY ASPECT OF THIS MENTAL MITIGATION, THE MITIGATION IN THIS CASE TO SHOW WHERE HE WAS, HOW HE HAD NO CRIMINAL BACKGROUND BEFORE AND HOW MAYBE THE JURY COULD HAVE JUST, YOU KNOW, SORT OF JUST IN A FELL SWOOP KIND OF PUT HIM WOULD BE THE CRUX OF WHAT YOU WANT US TO BE FOCUSING ON.

SO WHEN YOU'RE SAYING YOU'RE NOT SURE WHETHER HE WAS IN SCHOOL OR NOT, IS THAT BECAUSE IT WASN'T MENTIONED IN THE TRIAL?

>> I JUST DON'T RECALL AS I STAND HERE.

WHEN THE CRIMES WERE COMMITTED, IT WAS ABOUT TWO MONTHS AFTER

HIS 18TH BIRTHDAY.

HE HAS THE EMOTIONAL AGE OF A CHILD BASED ON HIS FAMILY HISTORY OF MENTAL ILLNESS, HE'S A PARANOID SCHIZOPHRENIC, HE HEARS VOICES, AND BASICALLY WE WOULD NOT BE HERE TODAY IF THERE WAS NO TROY VICTORINO.

THAT'S WHAT THE TRIAL COURT ESSENTIALLY HELD.

>> SO WHAT POINT ON APPEAL IS THAT?

IS THAT AN ISSUE THAT GOES TO -- AND I GO BACK ON SEVERANCE. YOU'RE SAYING TO ME, I'M SURE WE'RE GOING TO HEAR THE CONTRARY FROM MR. NUNNELLEY THAT YOU WERE NOT ABLE TO EFFECTIVELY POINT THE FINGER AT VICTORINO BECAUSE HE WAS THERE AS A CO-DEFENDANT, AND HE WAS, HE HAD AN INCONSISTENT DEFENSE?

WAS THAT THE ISSUE RAISED AS TO WHY THESE CASES SHOULD BE SEVERED, AND WHAT'S YOUR BEST CASE ON THE TRIAL COURT ABUSING ITS DISCRETION?

>> THAT IS OUR ARGUMENT, AND THE CASE I HAVE CITED IN MY BRIEF, WELL PROBABLY THE BEST ONE IS ROE V. STATE, THE FIRST DCA ON PAGE 37 IN THE CITE THERE IS.

AND WITH REGARD TO THE CIRCUMSTANCES WE JUST DISCUSSED ABOUT HIS BEING SO YOUNG, YOU KNOW, THAT ALSO RELATES TO WHETHER DEATH IS A PROPORTIONATE SENTENCE, WHETHER THE TRIAL COURT PROPERLY FOUND THAT THE AGGRAVATION OUTWEIGHS THE MITIGATION --

>> VICTORINO'S GOTTEN THE DEATH PENALTY, SO IT'S NOT A SITUATION WHERE YOU WOULD BE SAYING THAT THE MORE CULPABLE GOT A LIGHT SENTENCE.

SO YOU'VE GOT AND THE JUDGE HAS RECOGNIZED AND FOUND AS MITIGATION THAT THE -- DID HE FIND AS MITIGATION THAT YOUR CLIENT WAS UNDER SUBSTANTIAL DOMINATION OF VICTORINO?

>> CORRECT.

THAT WAS FILED.

>> OKAY.

SO THAT WAS FOUND, BUT THEN YOU
HAVE THE SIX DEATHS IN THIS
CASE.

CORRECT?

>> CORRECT.

>> AND YOUR CLIENT WAS
RESPONSIBLE DIRECTLY FOR HOW
MANY OF THE DEAD?

>> FOUR.

>> SO HOW, AGAIN, I MEAN, THAT'S
ABOUT THE MOST AGGRAVATED OF
AGGRAVATED OF CRIMES.

>> THAT IS THE MOST AGGRAVATED.
SO THEN THE QUESTION WOULD BE AS
THE STANDARD IS FOR
PROPORTIONALITY, IT HAS TO BE
ONE OF THE LEAST MITIGATED.

>> [INAUDIBLE] IT HAS TO BE, YOU
HAVE TO SHOW THAT THE MITIGATION
OUTWEIGHS THE AGGRAVATION, AND I
DON'T -- OR VICE VERSA THAT THE
AGGRAVATION OUTWEIGHS THE
MITIGATION.

WHEN YOU HAVE, IF YOU HAD ONE
DEATH, BUT FOUR DEATHS AND
ACTUALLY SIX DEATH THAT IS
OCCURRED WITH THE PRECONCEIVED
PLAN, AND YOUR CLIENT KNEW
BEFORE HE WENT IN THAT THE
INTENT WAS NOT TO TERRORIZE
THESE PEOPLE, BUT TO KILL THEM,
CORRECT?

>> THAT IS WHAT THE STATE
PROVED.

MY CLIENT'S POSITION WAS THAT HE
JUST WANTED TO HURT THEM AND NOT
KILL ANYONE.

BUT THAT IS THE STATE'S CASE.
WHAT WAS THE UNDERLYING QUESTION
THERE?

>> THE UNDERLYING QUESTION IS
HOW ISN'T THIS PROPORTIONAL?

>> BECAUSE EVEN THOUGH THERE
WERE FOUR, SIX DEATHS, THE
MITIGATION IS SO SUBSTANTIAL IN
THAT LITERALLY MY CLIENT WAS
UNDER THE DOMINATION OF
VICTORINO DUE TO HIS ABSOLUTE
MENTAL HEALTH ISSUES, HIS YOUNG
AGE --

>> WHAT DO THE EDUCATIONAL
RECORDS DEMONSTRATE TO US IN

THIS CASE AS YOU WOULD SAY YOUR BEST POSITION?

DOES IT SHOW HE WAS TALKING TO HIMSELF IN CLASSES, COULDN'T PASS A CLASS, ALL THOSE THINGS? GOING BACK TO JUSTICE PARIENTE'S QUESTION ABOUT SCHOOLING.

>> I MEAN, HE DEFINITELY HEARD VOICES, HE HAD A DEAD TWIN BROTHER WHO DIED WHEN HE WAS --

>> TALK ABOUT EDUCATIONAL RECORDS, ACADEMIC PERFORMANCE. WHAT WAS HE DOING IN SCHOOL? WHAT'S HIS LIFE LIKE?

>> I DON'T, I DON'T REMEMBER THE SCHOOL RECORDS AS I STAND HERE. IN THAT REGARD I KNOW HE HAD AN IQ TEST DONE THAT WAS LOW NORMAL.

>> WHERE DID HE GO TO SCHOOL, AND DID HE GRADUATE FROM HIGH SCHOOL?

WHAT WAS THE HIGHEST GRADE THAT HE COMPLETED?

>> I JUST DON'T KNOW THAT AS I STAND HERE.

I APOLOGIZE.

>> ARE THESE THE FIRST DEATH PENALTY CASES THAT YOU'VE HANDLED ON APPEAL?

>> NO.

>> OKAY.

WELL, I DON'T RECALL SEEING YOU BEFORE IN THE COURTROOM. BUT YOU'VE BEEN BEFORE US BEFORE?

>> I HAVE.

>> HOW MANY DEATH CASES HAVE YOU HANDLED ON APPEAL?

>> I HAVE PROBABLY ABOUT TEN RIGHT NOW OR MAYBE --

>> HOW MANY HAVE YOU HANDLED THAT HAVE WENT TO DECISIONS BY THIS COURT?

>> MAYBE TWO OR THREE?

>> AND WHAT ARE THE NAMES OF THOSE CASES?

>> WELL, THERE WAS McLEAN, I'M SORRY, BOBBY -- V. STATE, I'M NOT SURE.

I WOULD HAVE TO LOOK AT THE COURT'S ONLINE DOCKET.

JAMES FORD.

>> WHAT WAS OUR DECISION IN THAT CASE?

>> IT AFFIRMED THE SENTENCE.

>> [INAUDIBLE]

>> ON THIS I AM PRIVATE COURT-APPOINTED COUNSEL.

>> [INAUDIBLE]

>> RIGHT.

I RESERVE THE REST OF MY TIME.

>> THANK YOU.

>> BEFORE YOU SIT DOWN I WOULD LIKE TO ADDRESS YOUR -- IN YOUR -- DUE PROCESS ARGUMENT YOU SAY THAT THESE OTHER ISSUES THAT YOU HAVE RAISED WOULD HAVE BEEN A FACT SCIENTIFICALLY, I GUESS YOUR CLIENT, TO THAT EXTENT, WOULD YOU EXPLAIN, YOUR -- YOUR -- MOTION TO SUPPRESS ARGUMENT.

IF I UNDERSTAND, YOUR ARGUMENT IS THAT WHEN YOUR CLIENT SAYS, THAT IS ALL I HAVE TO SAY THAT YOU ARE BASICALLY SAYING THAT HE IS NOW -- HIS -- AND THAT POLICE OFFICERS DO NOT SCRUPULOUSLY HONOR THAT REQUEST I'D LIKE TO HEAR YOUR ARGUMENT ON THAT ISSUE.

>> MAYBE, MAYBE I WAS WRONG, TO -- ISN'T THE I'M -- WHAT I'M

--

>> YOU WERE WRONG ABOUT --

>> IN THE SENSE THAT I'M NOT SURE THAT PLAYS TO THE FIFTH AMENDMENT RIGHT-TO-REMAIN-SILENT ISSUE.

IT MAY WELL -- I WILL ANSWER THAT QUESTION, AND THAT IS THAT THIS COURT WOULD NOT HAVE TO BE BOUND BY U.S.

CONSTITUTIONAL LAW IN ADDRESSING WHETHER, YOU KNOW, THE MANDATE ISSUES OR IN THIS CASE WHETHER THE RIGHT TO REMAIN SILENT WAS HONORED --

>> ANSWERING HER QUESTION.

>> I'M PROCEEDING TO ANSWER HER QUESTION.

>> SHE IS ASKING YOU, ABOUT THAT CONFESSION. CAN YOU

ANSWER THAT QUESTION?

>> WELL, JUST THAT FLORIDA SHOULD PROVIDE MORE SAFEGUARDS IN THAT AREA.

>> ARE YOU WITHDRAWING THAT ISSUE THEN?

>> NO.

>> YOU SAID THAT YOU -- WERE WRONG ABOUT THAT.

>> KIND OF.

>> WHAT DO YOU MEAN BY YOU WERE WRONG?

>> MY DUE PROCESS ARGUMENT WOULDN'T APPLY LIKE TO 6TH AMENDMENT INVOCATION OF COUNSEL, AND THAT IS KIND OF WHERE I WAS GOING WITH THAT.

>> PLEASE -- TRY TO ANSWER THE QUESTION IF YOU CAN -- SHE IS ASKING ABOUT THE CONFESSION, AND --

>> YES, WITHOUT ANY DUE PROCESS CONSIDERATION TELL US -- YOUR BEST ARGUMENT AS TO WHY JUST TAKING IT BY YOUR CLIENT -- THE FACT -- RIGHT TO REMAIN SILENT AND THAT THE POLICE --

[INAUDIBLE]

>> HE MADE -- I DON'T RECALL IF HE TRIED TO LEAVE OR NOT. I JUST CAN'T RECALL THE --

>> YOU ARE CLAIMING WHEN HE SAID "THAT IS IT" HE WAS CUTTING OFF THE INTERVIEW?

>> I'M SORRY?

>> ARE YOU CLAIMING THAT WHEN HE SAID "THAT'S IT" THAT HE WAS CUTTING OFF THE INTERVIEW AND DIDN'T WANT TO ANSWER ANY FURTHER QUESTIONS?

>> WELL, I THINK THAT IS ONE OF THE STATEMENTS, SO -- YES.

>> ISN'T THAT IN CONTEXT -- "THAT IS IT" TO NOT MEAN HE WAS CUTTING OFF THE

INTERVIEW, HE WAS TALKING ABOUT SOMETHING ELSE?

>> THAT PROBABLY WOULD BE THE INFERENCE MOST FAVORABLE TO THE STATE ON THAT SUPPORTING THE JUDGE'S RULING, I THINK I HAVE ANSWERED THE QUESTION AS BEST AS I COULD.

WE'RE GOING BACK TO -- BASICALLY, IN THE SUPPRESSION ISSUE THE STATE, THE LAW ENFORCEMENT YOU COULD LEAVE ANY TIME YOU WANT, NO PROBLEM, YOU ARE FREE TO LEAVE.

BUT AFTER THAT, EVERY LITTLE THING THEY DID WAS CONTRARY TO THAT, THE STATEMENTS, EVERYTHING CALCULATED SO HE COULDN'T THINK HE WAS FREE TO LEAVE THAT IS THE CRUX OF THAT ARGUMENT.

>> THANK YOU.

>> MAY IT PLEASE THE COURT I REPRESENT THE STATE OF FLORIDA.

>> WOULD YOU ADDRESS JUSTICE PARIENTE'S QUESTION OPPOSING COUNSEL ABOUT THIS CONFOUNDING MAN'S BACKGROUND, HIGH SCHOOL RECORDS, THOSE KINDS OF THINGS.

>> I WILL DO THE BEST I CAN, JUDGE.

MY UNDERSTANDING THEY -- MY RECOLLECTION OF THIS DEFENDANT'S BACKGROUND I BELIEVE HE GRADUATED FROM HIGH SCHOOL, PRETTY SURE IT WAS PINE RIDGE HIGH SCHOOL HE ATTENDED WHICH IS THE HIGH SCHOOL IN THE DELTONA AREA, WHERE THESE MURDERS TOOK PLACE.

THE DEFENDANT HAD ATTENDED HIGH SCHOOL WITH TWO OF THE VICTIMS.

OF MICHELLE AND JONATHAN GLEESON, BOTH WHOM HE KNEW FROM HIGH SCHOOL I BELIEVE HE GRADUATED FROM HIGH SCHOOL, I REMEMBER -- NOT SURE THIS IS IN THE RECORD.

I DON'T WANT TO GO OUTSIDE OF IT MR. HUNTER WAS A PRETTY GOOD WRESTLER IN HIGH SCHOOL, NOT SURE WHERE I KNOW THAT FROM AS I STAND HERE THIS MORNING.

>> HOW ABOUT ACADEMICS IS THAT IN THE RECORD?

>> I DON'T REMEMBER SEEING ONE WAY OR THE OTHER. MY UNDERSTANDING, AND I BELIEVE FROM THE -- IT IS A FAIR INFERENCE FROM THE SENTENCING ORDER NOTHING PARTICULARLY OUTSTANDING OR STRIKING ABOUT HIS ACADEMICS.

HE HAD A LOW AVERAGE IQ FULL SCALE -- ONE, WHICH IS NINE POINTS BELOW AVERAGE, THAT IS MY BEST RECOLLECTION OF IT, I DON'T KNOW, REMEMBER FROM THE PENALTY PHASE HIS ACADEMICS, A FOCUS OF THE PENALTY PHASE.

THE FACT OF THE MATTER IN MR. HUNTER'S CASE THIS CASE AS FAR AS HUNTER IS CONCERNED, IS ABOUT PENALTY, ALWAYS WAS, ALWAYS HAS BEEN.

MR. HUNTER NEVER DENIED HIS INVOLVEMENT, PARTICIPATION. HIS STATEMENT THAT WAS TAKEN THE DAY I BELIEVE THE DAY AFTER AND, YOU KNOW, I APOLOGIZE IF I FLIP-FLOP FOR BLENDING SOMETHING FROM VICTORINO BUT TIED TOGETHER VICTORINO COMING THIS WAY, TOO.

>> ISN'T THAT ISSUE WHETHER OR NOT BECAUSE OF ALL OF THIS TIME IN BLENDING FROM THESE -- DEFENDANTS THAT THERE SHOULD HAVE BEEN A -- AND IN MY MIND ALSO PLAYS INTO THIS ISSUE IN THE END AND BORE ON -- HERE WE HAVE THREE PEOPLE, BASICALLY, YOU KNOW, POINTING FINGERS AT EACH OTHER, AND THEN, WITH THE JURY GIVEN THIS AND/OR INSTRUCTION,

THIS TO ME THAT IS SOMETHING THAT YOU NEED TO ADDRESS AND STRAIGHTEN OUT WITH US.

>> LET ME TRY TO GET INTO THAT ONE PACKAGE, FOR YOU JUSTICE, IF I CAN.

THIS CASE IS NOT UNLIKE THE NEXT CASE I HAVE THIS WEEK WHICH IS ALSO HUNTER, ON THURSDAY.

BOTH OF THESE CASES INVOLVE DEFENDANTS CONSEQUENTLY IN VOLUSIA COUNTY WHO -- WERE INVOLVED WENT THROUGH JOINT TRIALS. THE FACTS OF THIS CASE, WERE PRESENTED IN SUCH A -- FACTS AS ONE READS THE RECORD TO DIFFERENTIATE AND DISTINGUISH BETWEEN THE VARIOUS DEFENDANTS, AND THEIR DEGREES OF CULPABILITY.

>> IF I UNDERSTOOD IT THE STATEMENT IMPLICATED MR. HUNTER HE SAYS MR. HUNTER WENT IN WITH A BAT, DEMANDED HIS PROPERTY AND STARTED HITTING, WENT TO ANOTHER VICTIM, TO ANOTHER VICTIM, DURING THE COURSE OF THE MOTION TO SEVER THERE WAS A HEARING ON THE MOTION TO SEVER -- WHAT WAS WHAT WAS BROUGHT OUT THAT THESE STATEMENTS WERE GOING TO COME IN; CORRECT?

>> YES, MA'AM, BUT --

>> SO WHY BASED ON THE FACT THAT WE ARE GOING TO HAVE -- DEFENDANTS POINTING AT EACH OTHER, AT -- MOTION TO -- THAT IS WHAT I WANT --

>> BECAUSE THAT IS NOT THE WAY THE STATE TRIED THE CASE, THIS IS NOT A CASE WHERE THE STATE AUTHENTICATED THE CD OR VIDEOTAPE OR AUDIOTAPE OF A STATEMENT AND HIT THE PLAY BUTTON, THEY DIDN'T PUT IN THE TAPE-RECORDED STATEMENTS, THE STATEMENTS OF THE INDIVIDUAL DEFENDANTS, WHEN

JUST TWO OF THEM BECAUSE VICTORINO AT ALL TIMES SAID HE DIDN'T DO IT, DON'T KNOW ANYTHING ABOUT IT, CAME IN THROUGH THE QUESTIONING OFFICER AND WAS EXPRESSLY LIMITED TO WHAT HUNTER SAID ABOUT HUNTER'S VIOLATION, OR INVOLVEMENT WHAT SALAS SAID ABOUT --

>> LET ME UNDERSTAND SOMETHING, IF VICTORINO IS SAYING I WASN'T THERE I DIDN'T DO IT, AND THE DEFENSE OF HUNTER IS THAT I ACTED UNDER DOMINATION OF VICTORINO, ISN'T THAT IN ITSELF MAYBE WE WILL HEAR IT FROM THE VICTORINO CASE, INCONSISTENT DEFENSE THAT PREJUDICE BOTH HUNTER AND VICTORINO?

>> THAT WAS THE PENALTY PHASE ISSUE, THAT WAS AT THE PENALTY PHASE.

>> IN THE GUILT PHASE, HUNTER'S DEFENSE WAS WHAT?

>> HUNTER BASICALLY ADMITTED HE DID IT.

THE GUILT STAGE, HUNTER DID NOT MOUNT A SERIOUS CONCERTED DEFENSE.

>> DIDN'T HE TESTIFY?

>> YES, MA'AM, HE DID TESTIFY AND I'M --

>> WHAT DID HE SAY IN TESTIMONY?

>> ADMITTED HIS INVOLVEMENT.

>> DID HE IMPLICATE VICTORINO?

>> YES, MA'AM.

>> DID HE IMPLICATE --

>> YES.

>> THIS WAS AFTER HUNTER GOT ON THE STAND IN HIS OWN OBVIOUSLY THE STATE DID NOT CALL HIM.

HUNTER GOT ON THE STAND AND CHOSE TO GO FAR BEYOND WHAT CAME IN THROUGH THE STATEMENTS GIVEN TO LAW ENFORCEMENT.

>> LET ME UNDERSTAND WHAT YOU ARE SAYING THE STATE'S

CASE-IN-CHIEF, THE STATE DID NOT PUT ON ANY EVIDENCE THAT WAS CONTRARY -- IMPLICATED VICTORINO OR --

>> NO, MA'AM, ABSOLUTELY NOT.

>> -- HAD NOT ANY EVIDENCE THAT VICTORINO IMPLICATED HUNTER, OR -- SALAS, SALAS THE -- NOT EVIDENCE THAT HE IMPLICATED HUNTER OR VICTORINO.

>> NOT IN THE STATE'S CASE-IN-CHIEF NO, MA'AM.

IT WAS TRIED IN A COMPARTMENTALIZED FASHION, I WOULD SUGGEST THAT IT WAS THE APPROPRIATE WAY TO HANDLE THIS CASE, AS WAS IT APPROPRIATE TO HAVE A SINGLE JURY, FOR THE PENALTY STAGE OF THIS CASE.

>> LET ME ASK ONE QUESTION ON THAT.

-- BACK ON THE ENDALL -- INSTRUCTION ISSUE NUMBER EIGHT, ON THE CONVICTION OF HUNTER FOR THE ABUSE OF THE -- GONZALEZ, WHAT TESTIMONY WAS THERE THAT ALSO WOULD SUPPORT HIS ABUSE AT THAT TIME?

>> THERE WAS TESTIMONY AS I RECALL JUSTICE BELL, ABOUT SOME -- I BELIEVE STABBING OR CUTTING OF THAT BODY I'M HONESTLY HAVING A HARD TIME KEEPING IT ALL STRAIGHT WITH THIS MANY VICTIMS AND THIS MANY DIFFERENT NAMES.

>> I REALIZE IT IS HARD ENOUGH TO -- I THINK -- -- I WAS CONCERNED ABOUT GONZALEZ.

>> SPECIFICALLY OFF THE TOP

--

>> -- WHEN HE CAME IN.

>> YES, SIR, GLEESON -- GLEESON, AS I -- AS I UNDERSTAND THE EVIDENCE WAS SEATED CLOSE TO THE FRONT DOOR IN A RECLINER, SLEEPING IN THE LIVING ROOM.

APPARENTLY, MR. HUNTER, IF I'M NOT MIXING VICTIMS'

NAMES UP, KNEW MR. GLEESON FROM HIGH SCHOOL MR. GONZALEZ DID NOT LIVE IN THIS RESIDENCE, WAS -- THE TESTIMONY SHOWS HE WAS GOING TO BE PICKED UP BY A COWORKER EARLY THE FOLLOWING MORNING TO GO TO A JOB, I BELIEVE A PAINTING CONTRACTOR.

MR. GONZALEZ QUITE SIMPLY WAS IN THE WRONG PLACE AT THE WRONG TIME.

>> MR. GONZALEZ, LIKE A SECOND VICTIM IN THIS -- THAT MR. HUNTER ASSAULTED.
>> YES, MA'AM, I BELIEVE THAT IS CORRECT.

>> WHERE WAS THE -- WHERE WAS THE DEAD BODY YOU KNOW -- KIND OF INCIDENT, DID HE GO BACK TO LOOK AT THE BODY AFTER THE DEATH?

>> LET ME FLIP BACK INTO MY BRIEF JUST A MINUTE, JUDGE.

>> ABUSE OF THE DEAD BODY IN THAT CASE WOULD BE EXCESS BEATING POSTMORTEM BEATING OF THE DEFENDANT.

>> MEDICAL EXAMINER SAID THE VICTIM DIED -- SUFFERED BLOWS WITH -- INFLICTED POSTMORTEM?

>> YES, MA'AM.

>> WE HAVE SUBSTANTIAL PREMORTEM AND POST -- EXCUSE ME PREMORTEM AND POSTMORTEM INJURIES INFLICTED ON MR. GONZALEZ, PAGE 78 OF MY BRIEF IS WHERE THE TRIAL JUDGE SUMMARIZES THE MEDICAL EXAMINER'S TESTIMONY AS TO THAT VICTIM. I BELIEVE ANOTHER QUESTION, OR WAS THERE -- MAYBE I WAS THINKING THERE WAS SOMETHING ELSE I NEEDED TO CLEAN UP OR ADDRESS.

>> TWO QUESTIONS WERE ASKED OF YOU ON, I THINK BY JUSTICE QUINCE.

YOU'VE BEEN TALKING ABOUT THE FIRST ONE.

THE SECOND ONE HAD TO DO WITH

THE AND/OR, SO JUST TO --

>> I DID REMEMBER --

JUSTICE, IT GOES ON, THOUGH

OH --

>> YOU ARE RIGHT THERE, YOU

KNEW THERE WAS ANOTHER

QUESTION.

>> COULDN'T REMEMBER WHAT IT
WAS.

>> APPRECIATE THAT.

>> GARZON IS OUT OF THIS

COURT, DEALT WITH AND/OR

INSTRUCTION, ONE OF THOSE

THINGS I KNOW I HAVE TOLD

YOU ALL THIS BEFORE I WISH

HE HADN'T DONE IT.

THERE IS A WAY IT COULD HAVE BEEN --

PERHAPS DONE BETTER.

JUSTICE CANTERO I BELIEVE IN GARZON

ARGUMENTS PRETTY WELL

SPELLED OUT WHAT THE TRIAL

JUDGES OUGHT TO DO.

THE FACT

OF THE MATTER IS IN THIS

PARTICULAR CASE IT IS NOT

FUNDAMENTAL ERROR WHEN YOU

STACK UP THE PRINCIPAL

INSTRUCTION, THE --

>> FUNDAMENTAL ERROR CASE OR

--

>> NO.

>> I'M SAYING WASN'T THERE

AN OBJECTION MADE?

>> THERE WAS AN OBJECTION.

ASSUMING THAT IT WAS

SUFFICIENT, THE OBJECTION BY

THE DEFENDANTS TO THIS

PARTICULAR ISSUE GOT

SOMEWHAT CONFUSED.

>> WELL --

>> I WILL -- I

WILL AGREE THAT HE PRESERVED

IT.

>> --

>> SO THEN, WE ARE TALKING

ABOUT A HARMLESS ERROR NOW, A

LITTLE BIT DIFFERENT FROM

GARZON, AS I RECALL.

>> -- AND IN THIS CASE, WHEN

YOU HAVE THE PRINCIPAL

INSTRUCTION, GIVE THE

INSTRUCTIONS, GIVEN THAT EACH

DEFENDANT IN FACT --IF I CAN

FIND THE PAGE IN MY BRIEF I

CAN CITE THE COURT DIRECTLY TO IT, BUT THE COURT INSTRUCTED THE JURY SPECIFICALLY THAT YOU DON'T CONVICT ONE DEFENDANT BASED ON SOMETHING ANOTHER DEFENDANT DID, UNDER THESE PARTICULAR FACTS, THAT WOULD BE AT VOLUME 41, 3966 THROUGH 67 IS WHERE THE TRIAL JUDGE INSTRUCTED THE JURY SPECIFICALLY ABOUT SEPARATE CRIMES AS TO EACH DEFENDANT. YOU HAVE IN THIS PARTICULAR CASE INDIVIDUALIZED JURY FINDINGS, AS TO EACH DEFENDANT.

AND THAT'S -- THAT'S WHY I ATTACHED THE SENTENCING AWARD TO MY BRIEF.

ONE OF THE REASONS I ATTACHED IT ON PAGE ONE AND PAGE TWO FOOTNOTE ONE AND TWO, JUDGE PARSONS GAVE US A NICE MATRIX OF WHAT EACH DEFENDANT WAS CONVICTED FOR, WHAT EACH DEFENDANT WAS NOT CONVICTED FOR, WHAT THE JURY VOTE WAS, DEATH VERSUS LIFE AS TO EACH DEFENDANT AND EACH PARTICULAR VICTIM. AND WHEN YOU LOOK AT THIS SENTENCING ORDER AND THIS BREAKDOWN CERTAINLY UNDISPUTED, AS TO WHAT THE JURY DID WITH RESPECT TO EACH COUNT OF THIS INDICTMENT THERE IS ABSOLUTELY NO DOUBT WHEN YOU COUPLE THAT WITH EVIDENCE, THE INSTRUCTIONS THE JURY WAS GIVEN, PUTTING THE AND/OR CONJUNCTION IN ANY OF THE JURY INSTRUCTIONS IN ANY WAY SUBSTANTIALLY AFFECTED MR. HUNTER'S RIGHTS.

>> GO BACK TO THE STEPSON ISSUE.

THE STANDARD IS ABUSE OF DISCRETION. IN TERMS OF THE ISSUE ON THE STATEMENT DOES -- IS NOT A PROBLEM, WHAT OTHER CASES

TALK ABOUT ANTAGONISTIC DEFENSE, UNDER WHAT CIRCUMSTANCES DOES ANTAGONISTIC DEFENSE REQUIRE A SEVERANCE?

>> I'M NOT NECESSARILY CERTAIN THAT WE HAVE ANTAGONISTIC DEFENSE IN THIS CASE.

>> LET'S ASSUME THAT I WOULD SAY THAT SOMEBODY SAYING THEY ARE NOT THERE, AND ANOTHER PERSON SAYING THAT -- A-- DOMINATOR, KING -- INCONSISTENT ANTAGONISTIC DEFENSE, LET'S ASSUME THAT WHAT IS THE STANDARD ON -- WHETHER IT SHOULD BE GRANTED.

>> THE STANDARD, OF COURSE, AT THE START IS ABUSE OF DISCRETION -- BASED ON I BELIEVE FOUR DCA CASES. WHAT YOU HAVE IN THIS CASE -- AND JUSTICE PARIENTE, LET ME BACK UP BY SAYING I'M NOT -- I DON'T RECALL THE ANTAGONISTIC DEFENSE THEORY HAVING BEEN RAISED AS A BASIS FOR GRANTING THE MOTION TO SEVER, I DON'T RECALL THAT BEING THE ARGUMENT.

>> ARE YOU SAYING THEY ARE GOING TO -- AT -- ISN'T THAT EQUIVALENT ANTAGONISTIC DEFENSE?

>> WELL IT WAS FRAMED AND IT WENT TO THE TRIAL JUDGE, BASED ON A BUTON BASED CLAIM.

>> DOESN'T THE RULE ITSELF, INDICATE THAT IF THERE IS ANY RISK OF AN UNFAIR TRIAL, THAT A SEVERANCE SHOULD BE GRANTED?

>> YES, SIR, THAT IS -- YES, SIR, IT DOES. THAT IS WHAT THE TRIAL COURT IN THIS CASE DEALT WITH, IN LENGTHY ORDER I SUBMIT IN MY BRIEF --

>> -- DID SAY THE ONLY RISK THEY TALKED ABOUT WERE THE RISKS ABOUT THE STATEMENTS, THEY DIDN'T TALK ABOUT IF WE

LOOK AT THE MOTION TO SEVERE
WE ARE NOT GOING TO SEE
ANYTHING ABOUT THE DANGER OF
CONFUSION, PREJUDICE HIS *DOOR
GOING TO BE POINTING FINGERS
I JUST NEED TO KNOW THAT
WHAT WE'RE REALLY DEALING HERE
WITH A VERY -- TO ME A VERY
SIGNIFICANT ISSUE, OBVIOUSLY
VERY TRAGIC, SIGNIFICANT
CASE, STILL HAS A DEATH
PENALTY FOR A VERY YOUNG
DEFENDANT WITH NO HISTORY OF
CRIMINAL BEHAVIOR, AND SO I
JUST WANT TO MAKE SURE THAT
WE'VE GOT ALL BASES
COVERED AS WE LOOK AT THIS
CASE.

>> THE TRIAL COURT'S ORDER,
AND THAT IS WHAT I'VE GOT TO
GO BACK TO, BECAUSE I DON'T --
LIKE I SAID, I DON'T REMEMBER
SEEING AN ANTAGONISTIC
DEFENSE ARGUMENT BEING MADE
BELOW.

THE TRIAL COURT'S ORDER, WHICH IS
WHAT SUMMARIZES
PAGE 62 IN MY BRIEF, JUSTICE
PARIENTE THE FOCUS OF THAT,
THE FOCUS WAS STATE HOW
YOU ARE GOING TO DEAL WITH
THESE STATEMENTS, FROM THESE
DEFENDANTS?

AND THE STATE DID THAT, AND
JUDGE PARSON EXPLAINS IT BY
PRESENTING THE TESTIMONY
FROM THE OFFICER THAT TOOK
THE STATEMENTS, RATHER THAN
ATTEMPTING TO PUT IN THE
RECORDED STATEMENTS.

>> THAT WAS WHERE IT WAS
GOING, THAT IS WHAT WE
WERE FOCUSING ON, AND I WOULD
SUGGEST THAT AT THE END.

>> WASN'T THAT, THOUGH -- WHAT'S
SORT OF TROUBLING ME WASN'T THAT
NEGATED BY THE STATE'S
APPROACH TO THE CASE?
IN OTHER WORDS, FROM THE OUTSET,
THE STATE MAKING AN OPENING
STATEMENT TYING ALL OF THIS
TOGETHER?

AND, OF COURSE, I
MEAN IT IS A NATURAL THING.

I'M NOT -- BUT DOESN'T THAT, IN ESSENCE, NEGATE ANY OF THESE ATTEMPTS TO TRY TO NARROWLY PRESENT THESE THINGS, BECAUSE THE STATE IS DOING ALL THIS IN THE CONTEXT OF GIVING THE JURY A COMPLETE PICTURE HERE OF THIS HORRENDOUS CRIME AND THEN PRESENTING THE PIECES.

BUT CLEARLY THE JURY WAS SEEING THE BIG PICTURE ALL THE TIME, YOU KNOW, INCLUDING BEING TOLD BY AND/OR, YOU KNOW, IN THE INSTRUCTIONS, BUT I'M HAVING TROUBLE WITH THE EFFICACY OF ISOLATING THESE THINGS WITH THESE STATEMENTS.

WHEN YOU ARE TRYING THEM ALL TOGETHER, AND THE STATE'S NATURAL APPROACH, IT IS NOT -- IN A SENSE, I CAN'T FAULT THE STATE, BECAUSE THEY HAVE BEEN ALLOWED TO TRY CASES TOGETHER GIVING THE JURY AT ALL TIMES THE BIG PICTURE.

DIDN'T THAT HAVE REALLY AN EFFECT OF NEGATING ANY ATTEMPT TO ISOLATE THESE CASES BEFORE THIS SAME JURY? HOW COULD A JURY ISOLATE THESE STATEMENTS AND THEN THE CASE WHEN IT'S THE SAME JURY AND THEY ARE TRYING ALL OF THESE DEFENDANTS, AND THE PROSECUTOR IS GIVING THEM THE BIG PICTURE OR --

>> JUDGE, LET ME PUT IT THIS WAY, AND I'M -- I'VE GOT A LITTLE BIT OF TIME HERE, I CAN TALK FOR A WHILE.

>> YOU KNOW, THIS ISN'T -- ISN'T YOUR FAULT.

I'M JUST SAYING THAT IT IS --

>> WHAT YOU HAVE WHEN YOU READ THIS RECORD, THE STATE SPENT A FAIR AMOUNT OF TIME ESTABLISHING MOTIVE.

WE DON'T NORMALLY DO THAT. IN THIS CASE MOTIVE WAS IMPORTANT, THE UNDERLYING MOTIVE BEHIND THESE MURDERS, THE STATE'S PRESENTATION OF THESE CASES WAS FOCUSED AS TO EACH

PARTICULAR DEFENDANT.
NOW I DON'T MEAN -- I DON'T
WANT TO SAY THE STATE HELD
UP A SIGN, SAID, JURY WE ARE
TALKING ABOUT VICTORINO, NOW
JURY WE ARE TALKING ABOUT
HUNTER, NOW, EACH TIME THEY
DID IT, BUT THEY MADE IT VERY
PLAIN AND VERY CLEAR IN
THEIR PRESENTATION OF
EVIDENCE WHICH EVIDENCE
PERTAINED TO WHICH
DEFENDANT.

FOR EXAMPLE, WITH
MR. HUNTER'S, IN MR. HUNTER'S
CASE, IT WAS DNA EVIDENCE,
GENETIC MATERIAL, FROM I
BELIEVE TWO OF THE VICTIMS,
FOUND ON HIS SHOELACES.
THE STATE WAS VERY CLEAR IN
ITS PRESENTATION OF THE DNA
TESTIMONY, WHO WE'RE TALKING
ABOUT.

BECAUSE MY RECOLLECTION OR
MY MEMORY IS THAT THERE IS
ANOTHER GROUP OF DNA
EVIDENCE AS TO
MR. VICTORINO, WHEN I READ
THIS TRANSCRIPT TO WRITE
THIS BRIEF I WASN'T READING
ALL THAT MUCH FOR WHAT WAS
GOING ON IN THE VICTORINO
COMPONENT OF THIS CASE.
THAT IS, YOU KNOW, PROBABLY NEXT
YEAR.

BUT, BE THAT AS IT MAY, THE
STATE'S CASE, THE WAY IT
WAS PRESENTED WAS PARSING
OUT WHICH DEFENDANT WHICH
EVIDENCE PERTAINED TO.

I WOULD SUGGEST THAT THE
TRIAL COURT DID NOT ABUSE
ITS DISCRETION IN ALLOWING
THESE CASES TO BE TRIED
TOGETHER.

KEEP IN MIND, THAT AT THE
BEGINNING, WE HAD THE FOURTH
DEFENDANT IN THERE, TOO,
KEMP, WHO PLED OUT.

SO --
>> WOULD YOU COMMENT ON THE
ISSUE THAT THE DEFENSE
COUNSEL AT TRIAL RAISED THAT
THE STATE WAS CLAIMING

WITH THE MAIN DEFENDANT, IF I CAN REFER TO TORINO IN THIS CASE, IN HIS CASE THEY WERE MAKING HIM OUT TO BE THE ULTIMATE BAD GUY, RINGLEADER, WHATEVER. NOW THEY ARE TRYING TO DO THAT SAME THING WITH MY CLIENT IN THIS TRIAL.

WAS THAT ARGUMENT ADVANCED BY DEFENSE COUNSEL?

>> I THINK I SEE THAT IN THE BRIEF SOMEWHERE IN THE APPELLATE'S BRIEF.

>> I'M NOT SURE WHAT I WILL SAY, AND THE WAY I WILL ANSWER IT --

>> THIS DEFENDANT, WAS THIS THE YOUNGEST DEFENDANT? AND HE DIDN'T HAVE ANY PRIOR CRIMINAL RECORD?

>> HE DIDN'T HAVE ANY PRIOR -- EXCUSE ME.

HE HAD NO PRIOR CRIMINAL RECORD. HOW -- SALAS AND CANNON WERE ALL ABOUT THE SAME AGE

--

>> 18, 19 ALONG IN THERE, I'M NOT SURE IF HUNTER WAS ABSOLUTELY CHRONOLOGICALLY THE YOUNGEST OR NOT.

I BELIEVE HE PROBABLY IS, BUT I DON'T KNOW THAT FOR CERTAIN. THERE -- MY -- AGAIN, I WILL ADMIT THAT MY WAY OF VIEWING THEM HAS ALWAYS BEEN THAT THEY WERE ABOUT THE SAME AGE, AND I KIND OF --

>> YOU DON'T RECALL THAT ARGUMENT BY TRIAL COUNSEL?

>> I DON'T RECALL THAT ARGUMENT, AND --

>> THAT IS ALL RIGHT.

>> EVEN IF HE DID, THE TRIAL JUDGE DIDN'T BUY THAT IN THE SENTENCING ORDER AND, AGAIN, I HAVE SET OUT SOME ORDER IN MY BRIEF --

>> DID HE BUY THAT, MR. HUNTER WAS UNDER THIS SUBSTANTIAL DOMINATION OF MR. VICTORINO?

>> YES, MA'AM, HE DID, HE GAVE SOME WEIGHT TO IT, HE TALKED ABOUT IT FOR THREE

PAGES.

THE COURT SAID -- LET ME --

>> WHEN YOU SAID THE JUDGE DIDN'T BUY IT, WHAT WERE YOU REFERRING TO?

>> I WAS REFERRING TO THE STATEMENT BY THE TRIAL COURT THAT IT IS DOUBTFUL TO THIS COURT -- THAT REFERRING TO THE MURDERS WOULD HAVE EVER OCCURRED WITHOUT MR. VICTORINO'S INFLUENCE.

>> THAT IS WHAT I WAS REFERRING TO WHEN I SAID THAT, AND THEN GOES ON --

>> THE JUDGE SAID THAT?

>> YES, MA'AM.

>> THERE IS NO QUESTION THAT VICTORINO WAS THE RINGLEADER.

>> VICTORINO WAS THE DRIVING FORCE BEHIND THIS.

MR. HUNTER, AS THE TRIAL COURT FOUND WAS NOT A RECALCITRANT PARTICIPANT ONCE HE DECIDED TO SIGN ON FOR WHAT WAS GOING ON, AND WHAT WAS GOING ON AMOUNTED TO A S.W.A.T. TEAM TYPE ASSAULT ON THIS HOUSE, CLEAR THESE -- FOUR DEFENDANTS LINED UP OUTSIDE THE DOOR IN A STACK LIKE A S.W.A.T. TEAM USES, AND MR. VICTORINO KICKED THE DOOR IN, AND MR. HUNTER WAS THE FIRST ONE IN THE DOOR. HUNTER WAS A FULL AND ACTIVE PARTICIPANT IN THIS CRIME AND I WOULD HONESTY SAY I HAD AN AWFUL LOT OF TROUBLE FINDING OTHER CASES THAT WENT TO THE PROPORTIONALITY ISSUE, BECAUSE I REALLY HAD A HARD TIME FINDING ANY THAT ARE THIS BAD.

>> THE EVIDENCE WAS THAT THEY HAD ALL BEEN PREASSIGNED VICTIMS?

>> THEY HAD BEEN PREASSIGNED POSITIONS IN THE HOUSE.

OR PLACES TO GO WITHIN THE HOUSE.

>> NOT PARTICULAR VICTIMS?

>> NOT PARTICULAR VICTIMS.

>> WELL, VICTORINO WANTED

TWO PARTICULAR VICTIMS ALL FOR HIMSELF, AND THOSE ARE THE TWO THAT MR. HUNTER DID NOT GIVE A DEATH RECOMMENDATION FOR AS I UNDERSTAND THE CRIME SCENE, AND THE WAY IT PLAYED IN THE HOUSE, HUNTER WENT IN AND THE FIRST PERSON HE ASSAULTED WAS JONATHAN GLEASON WHO WAS IN THE RECLINER IN THE LIVING ROOM NEAR THE FRONT DOOR.

MR. VICTORINO, AS I'M REMEMBERING IT, ENTERED BEHIND HUNTER AND BROKE OFF TO THE RIGHT AS HE ENTERED THE DOOR, GOING INTO THE MASTER BEDROOM TO KILL AARON BALLINGER.

>> WHAT WAS -- SALAS DID NOT KILL ANY VICTIMS?

IN OTHER WORDS, I'M TRYING TO UNDERSTAND THE JURY -- DID THEY GAVE LIFE RECOMMENDATION, THEY GAVE -- EXCUSE ME -- A LIFE RECOMMENDATION, CONVICTED -- I BELIEVE EIGHT COUNTS CONTAINED IN THE INDICTMENT, HUNTER WAS CONVICTED OF 11 COUNTS OUT OF THE INDICTMENT.

>> HE WAS, BUT JUST WAS ALSO, WAS PERPETRATOR.

>> YES, MA'AM, SALAS WAS IN THE HOUSE AS WAS CANNON.

>> ALL FOUR OF THESE MEN WERE INSIDE THE HOUSE.

>> HOW DID THE JURY IN TERMS OF WHAT WOULD HAVE GIVEN THEM PAUSE, IN TERMS OF SALAS -- FINDING HIM LIBEL, FOR THE DEATH PENALTY?

>> THE JURY, AND I DON'T REMEMBER THE MITIGATION, THE JURY MUST HAVE -- OBVIOUSLY, DID NOT CONVICT SALAS OF AS MANY SEPARATE OFFENSES AS IT DID VICTORINO AND HUNTER. HUNTER HAS THE MOST CONVICTIONS. VICTORINO HAS ONE --

>> WHAT IS THE RACE OF THESE -- THE VICTIMS, AND THIS

DEFENDANT, AND THE
CODEFENDANTS?

>> MR. VICTORINO IS EITHER
BLACK OR HISPANIC, I'M NOT
SURE HOW HE IS LISTED ON THE
CORRECTIONS WEB SITE.

THERE HAS BEEN SOME ALLEGATION
HE'S A LEADER IN THE LATIN KINGS GANG.
THAT WAS NOT ESTABLISHED AT
TRIAL, THERE WAS NO ATTEMPT MADE TO
DO SO.

MR. HUNTER IS AFRICAN-AMERICAN.
MR. SALAS, HUNTER CAUCASIAN.
MR. SALAS MAY HAVE HISPANIC HERITAGE.
I DON'T KNOW THE ANSWER TO
THAT QUESTION.

>> THERE IS SOME EVIDENCE
THAT VICTORINO PICKED
MR. HUNTER BECAUSE HE WAS
AFRICAN-AMERICAN?

>> -- ARE VICTIMS --

>> -- ALL WHITE, WERE
ALL -- HISPANIC --

>> I DIDN'T HEAR YOU.

>> I BELIEVE TWO OR
MAYBE THREE OF THE VICTIMS
WERE HISPANIC, THE REST OF
THEM WERE WHITE, CAUCASIAN
THEY ALL CAUCASIAN AS
FAR AS THAT WOULD GO, I
SUPPOSE, MR. HUNTER AND
MR. VICTORINO WERE -- KIND
OF --

HUNTER, WENT IN, AND THE FIRST
PERSON, HE ASSAULTED WAS
JONATHAN GLEASON, WHO WAS, IN
THE RECLINER IN THE LIVING ROOM
NEAR THE FRONT DOOR.

MR. VICTORINO, AS I'M
REMEMBERING IT, ENTERED BEHIND
HUNTER AND BROKE OFF TO THE
RIGHT, AS I ENTERED THE DOOR
GOING INTO THE MASTER BEDROOM
TO KILL ERIN BELANGER.

>> SALAS DID NOT KILL ANY OF
THE VICTIMS?

DID THEY GIVE SALAS A LIFE
RECOMMENDATION?

>> THEY GAVE SALAS A LIFE
RECOMMENDATION.

SALAS WAS CONVICTED OF THE
EIGHT OF THE COUNTS CONTAINED
IN THE INDICTMENT.

HUNTER WAS CONVICTED OF 11 COUNTS
OUT OF THE INDICTMENT.

>> BUT SALAS WAS ALSO, WAS A
PERPETRATOR?

>> YES, MA'AM.

SALAS WAS IN THE HOUSE AS WAS
CANNON.

ALL FOUR OF THESE MEN WERE
INSIDE THE HOUSE.

>> HOW DID THE JURY, IN TERMS
OF THE, WHAT WOULD HAVE GIVEN
THEM PAUSE IN TERMS OF SALAS
AND NOT ALSO FINDING HIM LIABLE
FOR THE DEATH PENALTY?

>> JURY, AND I DON'T REMEMBER
THE SALAS MITIGATION.

THE JURY OBVIOUSLY DID NOT
CONVICT SALAS AS MANY OFFENSES
AS IT DID VICTORINO AND HUNTER.
HUNTER HAS MOST CONVICTIONS.
VICTORINO HAS ONE LESS.

>> WHAT IS THE RACE OF THE
VICTIMS AND OF THIS DEFENDANT
AND THE CODEFENDANTS?

>> MR.^VICTORINO IS EITHER
BLACK OR HISPANIC.

I'M NOT SURE HOW HE IS LISTED
ON DEPARTMENT OF CORRECTIONS
WEB SITE.

THERE HAS BEEN SOME ALLEGATION
HE IS A LEADER IN THE LATIN
KINGS GANG.

THAT WAS NOT ESTABLISHED AT
TRIAL.

NO ATTEMPT MADE TO DO SO.

MR.^HUNTER IS AFRICAN-AMERICAN.
MR.^SALAS AND MR.^CANNON ARE
BOTH CAUCASIAN.

MR.^SALAS MAY HAVE HISPANIC
HERITAGE.

I DON'T KNOW THE ANSWER TO THAT
QUESTION.

>> THERE SOME EVIDENCE THAT
VICTORINO, PICKED MR.^HUNTER
BECAUSE HE WAS
AFRICAN-AMERICAN?

>> NO.

>> NO?

>> HUNTER --

>> AND THE VICTIMS --

>> THE VICTIMS WERE EITHER ALL
WHITE OR ALL HISPANIC.

>> I DIDN'T HEAR YOU?.

>> THE I BELIEVE TWO OR MAYBE

THREE OF THE VICTIMS WERE
HISPANIC.

THE REST OF THEM WERE WHITE.
CAUCASIAN.

THEY ARE ALL CAUCASIAN
AS FAR AS THAT WOULD GO.

MR.^HUNTER AND MR.^VICTORINO
WERE, TO PUT IT KIND OF
BLUNTLY, RUNNING BUDDIES.

THEY HAD BEEN HANGING TOGETHER
FOR A WHILE.

THEY WERE FRIENDS.

THEY WERE BUDDIES.

THEY HAD KNOWN EACH OTHER FOR A
WHILE.

SALAS AND CANNON KIND OF CAME
INTO THIS, LATE IN THE DAY.

IT WAS HUNTER AND VICTORINO
THAT HAD --

>> RUNNING TOGETHER?

>> YES, MA'AM.

HUNTER AND VICTORINO WERE THE
TWO THAT HAD THE REAL MOTIVE
BEHIND THIS AS FAR AS, WE'RE
GOING TO DO THIS TO GET OUR
THINGS BACK THAT THESE PEOPLE
TOOK AWAY FROM US WHEN THEY
KICKED US OUT OF THE HOUSE WE
SQUATTED IN.

CANNON AND SALAS WERE SORT OF
BROUGHT INTO IT KIND OF TAGGING
ALONG IF YOU WILL.

CANNON HAD A CAR.

>> DID MR.^SALAS ENGAGE IN THE
BEATINGS TO THE EXTENT OF THE
OTHER TWO?

>> I DON'T BELIEVE SO.

>> DIFFERENCE IN NATURE OF THE
PARTICIPATION?

>> YES, SIR.

DIFFERENCE IN THE EXTENT OF
PARTICIPATION, I BELIEVE THERE
WAS A DIFFERENCE IN THE
MITIGATION PRESENTED.

I DON'T REMEMBER THAT.

>> I JUST WANT TO MAKE SURE,
BUT HE DEFINITELY BEAT AND
KILLED SOME OF THE VICTIMS?

MR.^SALAS?

>> WHETHER SALAS ACTUALLY
STRUCK A FATAL BLOW I CAN'T
TELL YOU OFF THE TOP OF MY
HEAD.

HE WAS INVOLVED SWINGING A BAT

INSIDE THE HOUSE.

YOU I CAN TELL YOU THAT.

OF COURSE --

>> THEY HAD ALL HAD BATS.

>> YES, MA'AM.

THEY HAD ALL ALUMINUM BASEBALL
BATS.

>> THERE WAS BLOOD OR NOT BLOOD
ON ALL OF THEM OR SOME KIND OF
GENETIC MATERIAL?

>> THE BATS WERE FOUND IN A
RETENTION POND.

SO THEY HAD BEEN SITTING IN THE
WAR, -- WATER, I BELIEVE THERE
WAS SOME GENETIC MATERIAL OF
SOME SORT LIMITED VALUE FOUND
ON ONE OF THE BATS.

BUT, FOR THE MOST PART, IT WAS
NOTHING, SIGNIFICANT GAINED AS
FAR AS TECHNICAL EVIDENCE FROM
THE BATS BECAUSE THEY WERE
RECOVERED OUT OF WATER.

>> WAS THERE MATERIAL ON THE
BOOTS AND MATERIAL ON THE
SHOESTRINGS?

>> YES, SIR.

THERE WAS GENETIC MATERIAL ON
THE SHOELACES AND I BELIEVE
ALSO ON THE TONGUE OF HUNTER'S
SNEAKERS.

VICTORINO'S BOOTS THAT'S
ANOTHER ISSUE, SEPARATE BUT OF
COURSE YES THERE WAS IN THAT AS
WELL I BELIEVE.

JUSTICE CANTERO.

>> SALAS, I THOUGHT HE
ORIGINALLY PLED GUILTY?

HE TESTIFIED AS HE SAID HE WAS
NOT GUILTY.

>> THAT'S CANNON.

>> THAT'S CANNON?

>> THAT'S CANNON, YES, SIR.

>> BUT HIS GUILTY PLEA WAS
STILL ENFORCED?

>> LAST I HEARD.

I HAVE NOT SEEN ANYTHING OR AM
UNAWARE OF ANYTHING COMING IN
ABOUT MR.^CANNON, I KNOW HE HAD
SOUGHT AND MOVED TO WITHDRAW
HIS GUILTY PLEA.

THAT MOTION WAS DENIED.

AND I HAVE NOT BEEN AWARE OF
ANYTHING HAPPENING SINCE THEN.

NOT TO SAY THAT IT HASN'T.

BUT IF IT HAS I DON'T KNOW
ABOUT IT.

>> UNLESS THERE ARE OTHER
QUESTIONS YOU'VE NOW UTILIZED
ALL OF YOUR TIME.

>> THANK YOU, YOUR HONOR.
I ASK THAT THE CONVICTION AND
SENTENCES BE AFFIRMED.

>> REBUTTAL.

>> I HAVE NOTHING FURTHER
UNLESS THERE IS ANY QUESTIONS?

>> THE COURT WILL TAKE ITS
MORNING RECESS.

TAKE THIS CASE UNDER
ADVISEMENT.

>> PLEASE RISE.