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OF THE STATE OF CALIFORNIA

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Deputy

THE PEOPLE OF THE STATE)
 OF CALIFORNIA,)
)
 Respondent,)
)
 v.)
)
 JEAN PIERRE RICES,)
)
 Appellant.)
 _____)

S175851
 San Diego County Case No.
 SCE266581

APPELLANT'S OPENING BRIEF

Appeal From The Judgment Of The Superior Court
 Of The State Of California, San Diego County

Honorable Lantz Lewis, Judge

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DEATH PENALTY

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INTRODUCTION

Along with Anthony Miller, appellant Jean Pierre Rices was charged with murder arising out of the March 1, 2006 shooting deaths of two employees at the Granada Liquor Store in El Cajon, California. The state sought death against Rices alone. Prior to trial, Rices pled guilty to murder. Thus, his jury would have only one decision to make: should Jean Pierre Rices live or die?

Both Rices and Miller are black. Because the shootings had received extensive coverage in the local media -- including nearly 100 newspaper articles with numerous references to evidence that would never come before the jury -- the parties prepared a detailed questionnaire to assess the views of prospective jurors. The results were stark.

“They Should KILL Them NIGGA’S”

“He needs to fry.”

“In my opinion these two guys should be hanged on the courthouse lawn! Also the hanging should be shown on every network T.V. station in the world.”

The statements of prospective jurors appear to have reflected the views of the local population at large. As one resident of the county candidly told a newscaster:

“They should hang him here, in front of the liquor store. This way, he never do it again.”

Defense counsel sought a change of venue. That motion was denied. Although the jury was solely deciding whether Mr. Rices would live or die, the court then refused to strike several jurors who candidly admitted their view that “black[s] . . . are more likely to be violent” than whites. Moreover, despite the fact that a substantial part of the defense case in mitigation involved presenting evidence regarding Mr. Rices’s difficult childhood and upbringing, the court also refused to strike several jurors who conceded they would not “consider the defendant’s childhood and upbringing” in deciding whether he would live or die. Finally, although the state gave notice it would rely on other crimes evidence in asking the jury to impose death, the trial court refused to permit defense counsel to ask *any* voir dire questions at all about this critical area and whether prospective jurors could hear evidence of this nature and still consider life as an option.

As discussed more fully below, although defense counsel did all in his power to mitigate the court’s errors -- objecting, using peremptory challenges when he could and preparing both oral and written motions for additional challenges when his allotment of peremptory challenges was exhausted -- the jury selection and voir dire process in this case posed significant hurdles to a fair penalty phase. But these were not the only hurdles.

Because the state was not seeking death against Miller, the court empaneled two juries to hear the case. The Miller jury would decide whether Miller was guilty. The Rices jury would decide whether Rices would live or die. The parties agreed on a procedure where (1) the two juries would sit together to hear the state's case about the crime itself, (2) the Rices jury would be discharged for Miller's defense case and (3) the Rices jury alone would reconvene to hear aggravating and mitigating evidence in connection with Rices's penalty phase. Inexplicably, despite the logic of this procedure, the Rices jury was re-convened early to hear Miller testify in his own defense.

This testimony was devastating to Mr. Rices. Unbeknownst to the defense, Miller had been interviewed by police and the prosecutor for several hours. Prior to trial, the court permitted the state to suppress this interview after the prosecutor promised that Miller would "not be called as a witness by the People." When Miller *was* called as a witness in front of the Rices jury, defense counsel -- completely unaware of what Miller told police during this secret interview -- did not object. Miller then testified that Rices forced him to commit the crime. In addition, the state was then able to introduce Miller's statements to police that Rices shot both victims as they were begging for their lives. When counsel for Mr. Rices finally objected and asked that the Rices jury be excused, the trial court asked "why is this objection coming in now" and overruled the objection. In urging the jury to impose death, the prosecutor repeatedly relied on Miller's testimony.

But even taken together, the jury selection and suppression of evidence issues referenced above -- which impacted Mr. Rices's ability to obtain a fair jury as well as his ability to confront aggravation -- were not the only hurdles to a reliable penalty phase verdict. Mr. Rices's right to conflict free counsel -- and counsel's own ability to make conflict free decisions about mitigation -- was also compromised.

When the state initially brought charges against Mr. Rices -- and when private defense counsel was appointed to represent Mr. Rices -- the charges were not capital. It was not until eight months later that the state decided to seek death against Mr. Rices. Because Rices was indigent, the state appointed private counsel to represent him. The court and counsel agreed on a flat fee for the case.

Because the case against Mr. Rices was now capital, the agency that had recommended private counsel advised the trial court that in its view although appointed counsel was qualified to handle a non-capital murder case, he was not qualified to handle a capital case. Defense counsel disagreed and the trial court appointed "independent counsel" to advise Mr. Rices of his options. This was entirely appropriate.

Unfortunately, however, and apparently unbeknownst to the court, the "independent counsel" it selected to advise Mr. Rices was *not* independent at all. In fact,

the lawyer it selected to advise Mr. Rices actually represented a witness who had come forward *against* Mr. Rices. Mr. Rices asked the court several times why the independent lawyer appointed to advise him had represented a cooperating witness in the case. The trial court made no inquiry into the potential conflict at all. Instead, it simply accepted Mr. Rices's decision -- made with the advice of this "independent" lawyer -- to continue with defense counsel.

But there is more. In the many months Mr. Rices was incarcerated in county jail awaiting his penalty phase, he began to experience severe mental health issues, hearing voices telling him to kill. Mr. Rices told appointed counsel about these issues and asked for help in obtaining psychiatric services. Later, when Mr. Rices attacked a jail officer -- an attack used as evidence in aggravation by the state -- counsel had to make a difficult decision.

On the one hand he could serve as a percipient mitigation witness to help explain the mental health circumstances under which the jail attack took place. If counsel did this, however, under the rules of professional conduct he could no longer represent Mr. Rices. Alternatively, counsel could continue to represent Mr. Rices, but then he could not serve as a mitigation witness. As discussed more fully below -- and through no fault of his own -- given the flat fee financial arrangement between the county and appointed