>> THE NEXT CASE ON OUR DOCKET
TODAY IS BALLARD VERSUS THE
STATE OF FLORIDA.
>> MATE PLEASE THE COURT, I'M --
MAY IT PLEASE THE COURT, I'M
STEVE BOLOTIN, THE CHARGE WAS
FIRST DEGREE MURDER AND IT WAS A
CIRCUMSTANTIAL EVIDENCE CASE AND
THEY HAD... YOU BELIEVE
[INAUDIBLE] AUTUMN NILES WAS --
>> THERE WAS ALSO A CONFESSION
TO A -- TO A CO-INMATE IN THE
JAIL.
>> IF THAT IS GIVING
CREDIBILITY, THERE WAS A
JAILHOUSE SNITCH --
>> THAT IS CIRCUMSTANTIAL
EVIDENCE.
>> THAT IS CORRECT.
THAT'S CORRECT.
I MEAN, THIS IS NOT A PETITION
INDICATION -- I UNDERSTAND IT
THE COURT HAS TO REACH THE
ISSUES OF SUFFICIENCY BUT I DID
NOT ARGUE THAT.
THE STATED HAD TO PROVE AUTUMN
WAS DEAD, MURDERED AND MURDERED
BY ROY BALLARD AND
UNFORTUNATELY, DUE TO THE WAY
THE PROSECUTOR CHOSE TO TRY THE
CASE AND THE TRIAL JUDGE'S
RULINGS, THE CASE EVOLVED INTO A
DIVERSIONARY TRIAL WITHIN A
TRIAL --
>> LET ME ASK YOU THIS BEFORE
YOU GO TOO MUCH FURTHER.
DID THE STATE HAVE TO PROVE THAT
PRIOR TO THE ADMISSION OF THE
STATEMENT ALLEGEDLY MADE BY
MR. BALLARD, DID THE STATE HAVE
TO PROVE THOSE ELEMENTS FIRST?
>> THE STATE HAD TO PROVE THE
MURDER OCCURRED, CORPSE DLEKTY
AND FOR THAT YOU DON'T NEED
LEGALLY SUFFICIENT EVIDENCE, YOU
NEED INDEPENDENT EVIDENCE AND

THAT IS NOT WHAT WE ARE
CHALLENGE -- YOU ARE NOT
CHALLENGING THE CORPSE DLEKTTY.
>> WE ARE CHALLENGING ONE ISSUE
AND ONE ISSUE ONLY, THREE
GROUNDS WHY WHAT OCCURRED, TO
DEATH BALLARD A FAIR TRIAL AND
HAS TO DO WITH THE CREDIBILITY
CASE INVOLVING THE ALLEGATIONS
OF CHILD MOLESTATION INVOLVING
SONNY --
>> IS YOUR ARGUMENT -- I HAVE
SEXTON IN FRONT OF ME, IS YOUR
ARGUMENT THAT NONE OF IT SHOULD
HAVE COME IN OR THAT TOO MUCH OF
IT CAME IN?
>> YOUR HONOR, BOTH OF THOSE.
>> ON THE -- "SOME OF IT SHOULD
HAVE COME IN" WE USE DIFFERENT
WORDS ABOUT, GET THE COMPLETE
PICTURE AND SOME OF THOSE I HAVE
BEEN CONCERNED ABOUT, BUT, HERE,
TO EXPLAIN THE MOTIVE FOR WHY
MR. BALLARD WOULD MURDER THIS
VICTIM, IT IS RELEVANT,
UNDENIABLY, IN MY VIEW, THAT HE
HAD A SEXUALLY INAPPROPRIATE
RELATIONSHIP WITH THE DAUGHTER,
AND CERTAINLY THE WHOLE HISTORY
OF -- THAT HE, YOU KNOW, YOUR
DEFENSE MIGHT BE, NO, ALL HE DID
WAS HAVE THIS -- THE BEST
INTEREST OF HIS DAUGHTER IN MIND
AND HE WAS CONCERNED THE
STEP-DAUGHTER WAS NOT GOING TO
GIVE HER THE RIGHT EDUCATION AND
TO GIVE THE RIGHT PICTURE AT
LEAST SOME OF THE EVIDENCE HAS
TO COME IN.
SO, GIVE ME WHY NONE OF IT
SHOULD HAVE COME IN AND IF IT
SHOULD, WHY TOO MUCH CAME IN.
>> WHY NONE OF IT SHOULD HAVE
COME IN WAS THE THRESHOLD
REQUIREMENT FOR DISMISS
ABILITIES THE STATE HAS TO PROVE

BY CLEAR AND CONVINCING EVIDENCE
THE COLLATERAL CRIME OCCURRED
AND IT WAS COMMITTED BY THE
DEFENDANT.
>> IS THEY THRESHOLD REQUIREMENT
FOR THE -- WHERE IT COMES IN, TO
SHOW MOTIVE?
I BELIEVE SO.
>> BECAUSE I THOUGHT THAT WAS A
WILLIAMS RULE -- THIS SENTENCE
WILLIAMS RULE, ISN'T SIMILAR
CRIMES.
THAT THAT REQUIREMENT, THAT IS,
THAT IT MIGHT HAVE OCCURRED
ISN'T, WHEN IT COMES TO MOTIVE I
HAVEN'T SEEN A CASE THAT TALKS
ABOUT THAT --
>> WELL, WHAT I WOULD HAVE TO
SAY ON THAT, FIRST OF ALL, MAYBE
THIS SHOULD BE THE CASE, BUT,
EARLY ON, THE PROSECUTOR AND THE
JUDGE WERE DISCUSSING WHETHER OR
NOT THIS WAS 404 OR 402.
THE PROSECUTOR THOUGHT IT WAS
404 AND THE JUDGE THOUGHT IT
MIGHT BE 402 BUT THIS PROSECUTOR
WAS IN COMPLETE AGREEMENT THAT
EITHER WAY, THE STATE HAD TO
PROVE A CLEAR AND CONVINCING
EVIDENCE THAT THE CRIME OCCURRED
AND BALLARD DID IT.
>> THAT DOESN'T DETERMINE WHAT
THE LAW IS.
>> I UNDERSTAND.
BUT THERE IS AN ADDITIONAL
REASON WHY THE LAW SHOULD HAVE
APPLIED IN THAT SITUATION, WHICH
IS THAT WE'RE TALKING ABOUT
PROBATIVE VALUE AND PREJUDICE,
WELL, IF BALLARD DIDN'T DO THE
COLLATERAL CRIME THEN IT NOT
ONLY HAS NO PROBATIVE VALUE IT
HAS NEGATIVE PROBATIVE VALUE.
>> WE HAVE THE SEX TOY AND THE
DNA AND, IN THE TRUNK OF THIS
DEFENDANT'S VEHICLE.

>> RIGHT.
AND --
>> IGNORE THAT?
>> NO, CONSIDER THAT ALONG WITH
EVERYTHING ELSE.
>> THE OTHER THING, DIRECT
EVIDENCE FROM THE NEIGHBORS,
KINDS OF THINGS THAT WERE
DIRECTLY OBSERVED, EYEWITNESS AS
TO WHAT WAS -- I GUESS GIN
INAPPROPRIATE.
YOU UNDERSTAND WHAT I AM SAYING.
>> I WILL SAY, ACEVEDO... A
WHOLE LINE OF CASE IS A CITED,
THE TRIAL CANNOT TURN INTO A
CREDIBILITY CONTEST ON THE
COLLATERAL ISSUE THAT IF THERE
IS -- IF -- IN THE -- I WANT TO
SAY THE AUDANO AND...
[INAUDIBLE] THEY WERE
INCONSISTENT STATEMENTS, THEY
WERE INCONSISTENT STATEMENTS
UNDER OATH.
>> IT SEEMS TO ME WE HAVE HERE
NEIGHBORS WHO OBSERVED THINGS,
THE VICTIM HERSELF, WHO MAKES
STATEMENTS ABOUT THE DEFENDANT,
WE HAVE THE SEX TOY AS JUSTICE
LEWIS POINTED OUT.
I REALLY AM AT A LOSS HERE AS TO
WHY IN THE WORLD THIS WAS NOT
RELEVANT TO THIS WHOLE
SITUATION.
>> WELL, SONNY TESTIFIED UNDER
O'-- SHE MADE STATEMENTS UNDER
OATH THAT NO SEXUAL CONTACT
OCCURRED BETWEEN HERSELF AND HER
STEP GRANDFATHER, ROY BALLARD
AND MADE STATEMENTS UNDER OATH,
LATER ON WHEN SHE SAID SEXUAL
CONTACT DID OCCUR BETWEEN HER
AND BALLARD AND IT OCCURRED
ABOUT EVERY WEEK FOR NEARLY THE
ENTIRE TWO-AND-A-HALF YEAR
PERIOD HE WAS LIVING WITH THE
BALLARDS AND THE FALL OF 2005,

WHEN SHE HAD BEEN LIVING THERE,
TWO YEARS, DCF WAS CALLED IN
BECAUSE SHE TOLD HER GRANDMOTHER
AFTER SHE CONFRONTED HER WITH
INAPPROPRIATE BEHAVIOR HE WAS
DISPLAYING, TALKING TO OLDER MEN
ON THE INTERNET AND NOT HAVING
ANY FRIENDS IN HER NEIGHBORHOOD,
AND MAN MANIPULATIVE BEHAVIOR,
SHE TOLD HER GRANDMOTHER, KATHY,
THAT SHE HAD HAD SEX WITH HER
CURRENT, STEPFATHER, JOHN TRAUB
AND ONGOING SEXUAL RELATIONSHIPS
WITH HER FORMER STEPFATHER,
FIRST STEPFATHER, SCOTT NILES,
WHO WAS LATER KILLED IN AN AUTO
ACCIDENT --
>> HOW DOES THAT NEGATE THE FACT
THAT SHE HAD AT LEAST
INAPPROPRIATE CONDUCT WITH THE
DEFENDANT.
>> WHY WOULD SHE NOT IN 2005
WHEN DCF WAS CALLED IN AND SHE'S
MAKING ALLEGATIONS THAT SHE HAD
BEEN MOLESTED BY SCOTT NILES,
AND... [INAUDIBLE] AND WITH THE
FOURTH MAN, IF IT WAS OCCURRING
WITH HER STEP GRANDFATHER WHO HE
WAS LIVING WITH, WHY WOULD SHE
NOT HAVE TOLD HER GRANDMOTHER
AND DCF.
>> WELL, OBVIOUSLY THAT GOES TO
HER CREDIBILITY.
AND, IMPEACHING HER AND I'M
ASSUMING THAT WAS DONE.
THE ISSUE, THOUGH, FOR THE
RELEVANCY WITH THE OTHER
INFORMATION, WAS, THIS WAS
RELIABLE ENOUGH TO COME IN.
AND IT SEEMS TO ME THERE
WOULDN'T EVEN HAVE BEEN ENOUGH
IN THE CASE TO HAVE SEPARATELY
CHARGED HIM -- WOULD HAVE BEEN
ENOUGH TO HAVE SEPARATELILY
CHARGED HIM WITH SEXUAL ABUSE
AND HE COULD HAVE BEEN

CONVICTED, BASED ON HER
TESTIMONY, THE WHAT WAS FOUND IN
THE DRUNK, THE NEIGHBORS'
TESTIMONY.
SO, I HAVE HAD CONCERNS IN OTHER
CASES, AS TO WHETHER IT IS CLEAR
AND CONVINCING EVIDENCE, BUT IT
SEEMS TO ME THE THRESHOLD HAS
BEEN MET.
BUT, ASSUME YOUR ARGUMENT IS, IT
HASN'T BEEN MET, COULD YOU THEN
GO ON TO LET'S ASSUME IT HAS
BEEN MET AND APPLIES.
WHAT IS YOUR REASON THAT --
SECOND REASON IT IS DOESN'T COME
IN.
>> THE SECOND REASON AND THE
THIRD -- SECOND REASON IS 9403,
THE PRECEDENCE GREATLY OUT
WEIGHS THE LIMITED PROBATIVE
VALUE AND THE THIRD REASON, IT
BECAME A FEATURE OF THE CASE --
THE FEATURE OF THE CASE, NOT
MERELY AN INCIDENCE.
>> THE SECOND ONE, SEXTON, WHAT
COULD BE IN EFFECT -- THE
DEFENDANT FATHERED TWO OF THE
CHILDREN, AND, WAS INVOLVED... I
MEAN, THERE WAS SOME PRETTY, YOU
KNOW, WHAT WOULD BE VERY
PREJUDICIAL INFORMATION, YOU
LOOK AT, THE MOTIVE, IF THAT IS
WHAT THE STATE IS SAYING, THIS
IS THE MOTIVE FOR THE CRIME, YOU
CANNOT UNDERSTAND THE CRIME,
WITHOUT IT, BECAUSE IF IT
DOESN'T COME IN AND IT ALLOWS
THE DEFENSE TO SAY, WHY WOULD HE
KILL THE MOTHER, HE HAS SPENT
TWO YEARS OF HIS LIFE HELPING
HIS CHILD, WHILE THE MOTHER WAS
IN A PRISON, I MEAN, THIS IS HIS
-- THE DAUGHTER OF HIS WIFE, IT
WOULD MAKE NO SENSE.
AND, THAT IS A PRETTY GOOD
ARGUMENT, SO TO ME THE JURY IS

NOT TOLD THE WHOLE STORY,
WITHOUT IT.
>> THE MOTIVE IN THIS CASE,
ACCORDING TO THE WHAT THE STATE
ALLEGES IS NOT THAT HE KILLED
AUTUMN SO HE COULD CONTINUE TO
HAVE SEX WITH SONNY.
THE MOTIVE IS TO RETAIN CUSTODY
OF SONY AND THERE IS DISPUTE AS
TO WHY HE AND KATHY WANTED TO
REGAIN CUSTODY OF SONNY.
ONE OF THE -- THE STATE SAYS, SO
HE COULD CONTINUE TO MOLEST HER
AND HE AND KATHY SAY, IT WAS
BECAUSE JOHN TRAUB WAS MOLESTING
HER, BECAUSE HER LIVING
CONDITIONS WERE HORRIBLE --
>> THAT IS FOR THE JURY THEN.
AND HOW DID THE JUDGE -- THE
JUDGE LIMIT ANY OF THE
TESTIMONY?
AND AGAIN, YOU DID THE FEATURE
OF THE E TRIAL, REALLY, THE
TRIAL COURT HAS TO BE THE
MANAGER OF THE TRIAL, AND MAKE
DECISIONS, DID THE TRIAL COURT
LIMIT ANY INFORMATION OR
EVIDENCE AND IF NOT, AT WHAT
POINT, ONCE THE JUDGE SAID IT
WILL BE LET IN, DID THE TRIAL
COUNSEL SAY, WELL, LET IT IN,
BUT, YOU SHOULD LET IN JUST A
LITTLE OF IT AND, SO, WHERE DOES
THE JUDGE ABUSE HIS DISCRETION.
>> OKAY.
THE JUDGE DID NOT LIMIT ANY OF
IT.
DEFENSE COUNSEL DID REMOVE THE
OBJECTION --
>> WAS IT AN OBJECTION TO
EVERYTHING COMING IN OR THE
DEFENSE LAWYER SELECTIVELY SAY,
LET THE NEIGHBORS TESTIFY?
BUT, YOU KNOW, DON'T LET SONNY
TESTIFY?
>> THE DEFENSE'S POSITION WAS

DON'T LET -- HE DID ON SEVERAL
OCCASIONS, PARTICULARLY PRIOR TO
THE DILDO, THE DISCOVERY OF THE
DILDO SAY THIS IS BECOMING THE
FEATURE OF THE TRIAL AND I TOLD
YOU IT WOULD HAPPEN AND IT IS
HAPPENING AND IT IS IMPORTANT TO
NOTE THE JUDGE DIDN'T LIMIT ANY
OF IT, DIDN'T EXCLUDE ANY OF IT.
THE ARGUMENT WAS MADE BY THE
STATE IN ITS BRIEF AND THE
PROSECUTOR BELOW, ESSENTIALLY,
HEY, IF IT BECOMES THE FEATURE
OF THE CASES IT'S NOT MY
FAULT... [INAUDIBLE] ADMITTING
IT, SO, NOW I WANTED TO SAY THAT
THE FOLLOWING THINGS WERE
BROUGHT IN BY THE STATE IN THE
CASE IN CHIEF ON DIRECT
EXAMINATION OF ITS OWN
WITNESSES.
13 WITNESSES TESTIFIED ABOUT
THIS CHILD SEXUAL ABUSE AND THE
COURT RECOGNIZED HOW PREJUDICE
JISHL THAT CAN BE IN --
PREJUDICE JISHL IT CAN BE IN
McCLEAN AND HAMM --
>> THERE IS A POINT WHEN THE
THINGS CAN BECOME A FEATURE OF
THE TRIAL, BUT WHAT I WOULD LIKE
YOU TO TELL ME, AT POINT, WHAT
WITNESSES -- IF YOU CAN REALLY
TOOK IT OVER THE TOP.
>> CERTAINLY SONNY TOOK IT OVER
THE TOP.
I THINK THE TESTIMONY ABOUT --
>> THE VICTIM, THE ALLEGED
VICTIM, HER TESTIMONY?
>> RIGHT.
I THINK -- I WANT TO SAY THE
FOLLOWING THINGS, TO REBUT THE
STATE'S ARGUMENT, WELL THIS IS
THE DEFENSE'S OWN FAULT.
THE DEFENSE MADE IT A FEATURE.
OF ALL THE THINGS BROUGHT IN BY
THE STATE AND THE CASE IN CHIEF

ON THE DIRECT EXAMINATION OF ITS WITNESS, SONY'S INCOURT TESTIMONY OF ACCUSING ROY OF REPEATEDLY MOLESTING HER AND STATEMENTS TO SERGEANT GROSS IN IDENTIFYING ROY AND THE DILDO FOUND IN THE TRUNK AND THE STATEMENTS AND THE DNA ON THE DILDO AND THE NEIGHBORS --
>> GO TO THAT ONE.
SONY'S DNA ON THE DILDO.
YOU SAYING -- I MEAN, THAT ALONE PROBABLY IS -- CERTAINLY PREJUDICIAL AS IT CAN GET AND IS DIRECTLY RELEVANT TO CORROBORATE WHAT SONY SAYS.
I DON'T SEE HOW IT SHOULDN'T COME INTO EVIDENCE.
>> WELL, REL EVENTS TO CORROBORATE WHAT SONNY I SUPPOSE HAS A AGREE OF RELEVANCE.
>> YOU REALLY CAN'T SAY THAT.
I MEAN, WITH A STRAIGHT FACE, JUST THE DILDO.
>> RIGHT.
>> AND DIDN'T CONTAIN ANY DNA, THE FACT THERE WAS A DILDO IN THE VEHICLE MIGHT MEAN -- AND THAT CAME IN I COULD SEE YOUR POINT BUT WHEN IT IS LINKED UP TO THE PERSON WHO SAYS THAT HE WAS SEXUALLY -- SEXUALLY MOLESTING HER, I JUST -- I'M NOT SEEING IT.
>> HE SAID AT ONE POINT HE FOUND IT IN HER DRESSER DRAWERS AND IT IS NOT INCONCEIVABLE, IN THE ENTIRE CONTEXT OF THE CASE, IN TERMS OF SONY'S LIFE HISTORY, AND I'M NOT BLAMING HER, BECAUSE HER LIFE HISTORY STARTED THIS WAY AT AN AGE OF 5 OR PROBABLY EARLIER.
>> [INAUDIBLE].
>> BUT IS NOT IMPOSSIBLE THAT SHE USED IT ON HERSELF.

IT'S NOT EVEN --
>> IF -- YOU SAID THERE WAS A PROBLEM IF SHE TESTIFIED AND IF SHE DIDN'T TESTIFY WOULDN'T WE BE FACED WITH THE ARGUMENT YOU JUST MADE.
WHY DIDN'T SHE SAY ANYTHING TO THE INVESTIGATORS.
>> MY POSITION IS ANY OF THIS IS TOO MUCH.
I AM ARGUING THAT IT BECAME THE FEATURE OF THE CASE BUT NOT BACKING OFF THAT ANY OF IT WAS TOO MUCH.
IN TERMS OF THE RELEVANCY, IT WAS A... AT BEST, YOU KNOW, THE STATE SAYS WE DON'T WANT TO SAY HE WANTED CUSTODY BECAUSE, YOU KNOW, JOHN WAS MOLEST, HER, LIVING IN A DRUG INFESTED NEIGHBORHOOD AND HER MOTHER WITH A 9TH GRADE EDUCATION AND FIRST GRADE READING LEVEL WANTED TO HOMESCHOOL HER.
THIS IS NOT WHAT THE TRIAL IS SUPPOSED TO BE ABOUT.
>> WHY DOESN'T IT SHOW MOTIVE?
>> I'M NOT CLAIMING IT DOESN'T HAVE SOME DEGREE OF RELEVANCY TO SHOW MOTIVE.
I'M SAYING THAT THAT IS GREATLY OUT WEIGHED BY THE ENORMOUS PREJUDICE THAT IS CONTAINED --
>> YOU ARE REALLY MAKING A PREJUDICIAL ARGUMENT.
>> 9403 ARGUMENT AND ALSO, I'M NOT RETREATING FROM THE ARGUMENT THAT WITH ALL OF THE PROBLEMS WITH SONY'S CREDIBILITY.
THE STATE ACKNOWLEDGED TO THE TRIAL JUDGE THERE WERE PROBLEMS WITH SONY'S CREDIBILITY AND THE STATE ACKNOWLEDGED TO THE JURY THERE WERE PROBLEMS WITH SONY'S CREATED ABILITY AND SO, THEY SAY, THEREFORE WE HAVE TO TRUCK

IN ALL OF THE OTHER STUFF.
>> WE HAVE CREDIBILITY ISSUES
ALL THE TIME.
WITH WITNESSES, BUT, IT REALLY
SEEMS TO ME THAT IT IS UP TO THE
TRIER OF FACT, TO MAKE SOME
DECISIONS ABOUT THE CREDIBILITY
OF THE WITNESS.
AND, YES.
SHE ACCUSED A NUMBER OF PEOPLE
OF SEXUALLY MOLESTING HER BUT
THAT DOES NOT NEGATE THE FACT
THAT SHE SAYS THAT THIS
DEFENDANT DID THAT ALSO.
>> WHAT YOU ARE SAYING WOULD BE
ABSOLUTELY RIGHT.
IF AS JUSTICE PARIENTE POINTED
OUT, IF THE STATE CHARGED HIM
WITH MOLESTING SONY AND IF THIS
HAS BEEN A TRIAL FOR MOLESTING
SUNNY, YOU ARE RIGHT.
IT WOULD BE A JURY QUESTION AND
THE PROBLEM IS, THIS IS A TRIAL
FOR ALLEGEDLY MURDERING AUTUMN.
AND, IT BECAME A TRIAL ABOUT
MOLESTING SONNY.
IT BECAME A TRIAL ABOUT SONNY'S
CREDIBILITY.
AND, YOU SAY --
>> BECAUSE IT WAS -- WITHOUT A
BODY IT CERTAINLY SEEMS TO ME IT
REALLY IS IMPORTANT FOR THE
STATE TO TRY AND LINK IT UP BY
DEMONSTRATING THAT THIS
DEFENDANT HAD YOU KNOW, A REAL
MOTIVE TO KILL THE VICTIM.
>> WE HAVE A WEAK CASE AND,
WE'LL MAKE IT STRONGER BY MAKE
THE TRIAL ABOUT SOMETHING ELSE.
>> THAT IS NOT -- THIS IS THE
PROBLEM.
AND I I UNDERSTAND, WHEN
COLLATERAL CRIME EVIDENCE COMES
IN LIKE THIS, AND GOES FROM ONE,
THIS IS A GREAT STEPFATHER
TRYING TO HELP HER GET OUT OF A

DRUG INFESTED NEIGHBORHOOD, AND,
GET AWAY FROM A MOTHER WHO WAS
IN JAIL -- IN AND OUT OF JAIL
AND YOU GO, WOW THIS IS A
SYMPATHETIC GUY AND THEN YOU --
THE JURY FINDS OUT, HE HAS
SYSTEMATICALLY MOLESTING THIS
POOR CHILD.
YES.
IT CHANGES IT.
>> SURE, IT DOES.
>> BUT, THERE IS ALWAYS A
PROBLEM WITH COLLATERAL -- WHEN
COLLATERAL EVIDENCE COMES IN,
WHERE IT WATCH ALREADY A
CONVICTED CRIME.
YOU WILL HAVE TO WEIGH THIS.
BUT, I, AGAIN, YOU ARE SAYING
THERE WERE 13 WITNESSES THAT
TESTIFIED BUT THAT -- ARE YOU
SAYING, IF -- SHOULD LOOK AND
SEE, THE JUDGE LIMIT TO IT FOUR
AND -- THAT'S WHY I'M ASKING
YOU, AND -- IF THE DEFENSE
LAWYER SAID, IF IT COMES IN, I
WOULD ASK IT BE LIMITED TO THESE
TWO WITNESSES, AND THIS
EVIDENCE, BECAUSE OTHERWISE, IT
WILL TAKE OVER THE WHOLE TRIAL.
AND IF THAT WANT DONE, HOW COULD
YOU SAY THE JUDGE ABUSED HIS OR
HER DISCRETION IN ALLOWING IT
IN, AS A THRESHOLD MATTER, SINCE
YOU SAID IT HAD RELEVANCE, AND,
THAT IS WHAT I'M TRYING TO
FIGURE OUT.
WHICH TESTIMONY TOOK IT OVER THE
TOP AND YOU SAY, NO, IT WAS
EVERYTHING AND YOU HAVE TO BE
ABLE TO SAY, IF WE WERE TO GIVE
A NEW TRIAL, WHAT WOULD -- WHICH
PART WOULD WE SAY TOOK IT OVER
THE TOP?
>> WELL, I MEAN, AGAIN, MY
POSITION IS --
YOU SAY IT WAS RELEVANT.

I CONCEDE THAT IT WAS RELEVANT.
>> IN THE WEIGHING OF WHETHER THE PREJUDICE OUT WEIGHS IT, AND IF IT BECOMES A FEATURE OF THE TRIAL, IT IS -- NOT A QUANTITATIVE -- QUALITATIVE AND QUANTITATIVE ANALYSIS AND I'M STILL ASKING, IF SONNY SHOULDN'T HAVE GOTTEN ON THE STAND AND I THINK ALL OF US ARE SAYING, WELL, OF ALL THE PEOPLE, IF ANYTHING WAS GOING TO COME IN, SONY AND ONE OF THE NEIGHBORS SHOULD HAVE COME IN, AND --
>> WHAT I'M SAYING IS I THINK THE NATURE OF THE EVIDENCE, TO BE FRANK, I DON'T THINK THERE IS ANY WAY THAT YOU COULD REMAND IT FOR -- AND SAY, WELL, ONLY A LITTLE BIT OF THIS SHOULD COME IN.
I THINK BECAUSE OF THE 9403 PROBLEM, BECAUSE OF THE CREDIBILITY PROBLEM, AND BECAUSE OF THE OVERWHELMING NATURE OF HOW PREJUDICIAL CHILD SEXUAL ABUSE IS, NONE OF IT SHOULD HAVE COME IN, IN ADDITION, YOU ARE TALKING ABOUT HOW HE MIGHT SEEM LIKE A SYMPATHETIC STEP GRANDFATHER AND IT SHOWS HE'S ACTUALLY A MONSTER IS WHAT THE JURY HEARS AND THAT IS INCREDIBLY --
>> THERE IS PRETTY GOOD EVIDENCE THAT HE WAS THE PERSON THAT KILLED AUTUMN.
AND THEY'LL DECIDE HE KILLED AUTUMN BECAUSE HE MOLESTED THE STEP GRANDDAUGHTER.
I MEAN, HE WAS THE LAST ONE SEEN WITH HER AND, CHANGED HIS STORY ABOUT HOW HE WAS, YOU KNOW, THEY BOUGHT SODAS TOGETHER AND THAT DIDN'T HAPPEN AND HE LEFT WORK AND HAD HIS CELL PHONE RECORDS,

ESTABLISHED THAT HE WAS RIGHT AT
THE SCENE OF THE CRIME, SO,
THERE'S A LOT -- PLUS, HIS
CONFESSION, THERE'S A LOT OF
CIRCUMSTANTIAL AND DIRECT
EVIDENCE, THAT PLACES HIM AS
BEING THE MURDERER.
>> I'M SORRY.
I'M SORRY.
I'M NOT SURE THE CELL PHONE
EVIDENCE DIDN'T PLACE HIM WHERE
THE -- AT THE SCENE OF THE CRIME
AND THEY DON'T KNOW WHERE THE
SCENE OF THE CRIME WAS, AND THE
CELL PHONE WAS PLACED...
[INAUDIBLE].
>> DID THEY HAVE BLOOD EVIDENCE
FOR AUTUMN --
>> THERE WAS BLOOD ON A WALMART
BAG THAT MATCHED HER.
>> WHY DOESN'T IT SLIDE OVER
INTO CRANE, THE CASE WHERE THE
FELLOW NOTHING PLACED HIM THERE
OTHER THAN THEY FEW DROPLETS OF
BLOOD, ON HIS UNDER CLOTHING.
>> YOU KNOW, YOU HAVE TO -- YOU
KNOW, THIS IS A CASE WHERE THE
-- WAS THE EVIDENCE SUFFICIENT?
ABSOLUTELY, I DIDN'T CHALLENGE
THAT.
WAS IT OVERWHELMING IF THAT WAS
THE TEST, CLEARLY NOT THE
PROSECUTOR ACKNOWLEDGED BEFORE
TRIAL.
THIS IS NOT AN OVERWHELMING CASE
AS TO GUILT FOR A VOTER OF
REASONS.
HE ALSO ACKNOWLEDGED IT'S NOT
A... CASE AT THE PENALTY... BUT
CONSIDERING THE GUILT PHASE, TO
WHAT EXTENT THE EVIDENCE
REGARDING SONNY COULD HAVE
AFFECTED THE JURY, YOU HAVE TO
CONSIDER THE DEFENSE WITNESS
WILL MA GRENERT AND THE
NEUROLOGIST AS WELL --

SHE WAS A WITNESS WITH NO AXE TO GRIND AND NO REASON TO WANT TO TESTIFY AND TESTIFIED THAT SHE SEES A WOMAN WHO SHE RECOGNIZED FROM THE FLYERS AS AUTUMN AND IN ADDITION, THE FACT THAT SHE RECOGNIZED HER, ONE OF THE OTHER TWO WOMEN WITH HER CALLS HER AUTUMN AND THAT NAME ISN'T LIKE BRITNEY, NIGHT COMMON NAME THESE DAYS.
SO WILL MA GRENERT SAYS SHOULD I GO TO THE POLICE WITH THIS AND HE SAYS, DON'T BOTHER, THEY HAVE THE VIDEOTAPE AND, THE POLICE CAME TO HER AND SHE HAS NO AXE TO GRIND AND DOESN'T KNOW THEM, DOESN'T WANT TO GET INVOLVED AND KNOWS THE DATE WAS WEDNESDAY, BECAUSE SHE'S OFF SUNDAY, MONDAY, TUESDAY AND STARTS WORK ON WEDNESDAY AND SPOKE TO THE POLICE ON THE 21ST AND THAT MEANS SHE CAME FORWARD BEFORE THAT AND TALKS ABOUT THE IMMEDIATELY PRECEDING WEDNESDAY AND IS A CASE WHERE THE JURY -- YES.
THE EVIDENCE WAS LEGALLY SUFFICIENT BUT IS THIS A CASE, BUT FOR HEARING THE OVERWHELMINGLY PREJUDICIAL EVIDENCE THE JURY MIGHT NOT HAVE ACQUITTED?
ABSOLUTELY NOT.
THEY MAY WELL HAVE ACQUITTED.
>> NOW YOU ARE TALKING ABOUT THE HARMLESS ERROR ANALYSIS.
>> WHICH THE STATE DIDN'T EVEN ARGUE.
>> I DON'T THINK THEY COULD ARGUE THAT, OBVIOUSLY THE TESTIMONY... [INAUDIBLE] I DON'T THINK THERE IS ANY QUESTION ABOUT THAT.
BUT I GUESS, STILL, WE'RE GOING

ON THE ISSUE AS TO WHETHER -- I MEAN, THE FUTURE OF THE TRIAL AND WHETHER THERE WAS A LOT OF OTHER EVIDENCE THAT PLACED HIM AT THE... [INAUDIBLE] IN THIS CASE.
AND YOU SAY THERE IS OTHER EVIDENCE THAT SHOWS HE MIGHT NOT HAVE -- [INAUDIBLE] INTO EVIDENCE.
>> AND I WANTED TO MAKE THE POINT, I THINK YOU BROUGHT OUT ABOUT HOW YOU MIGHT SEEM SYMPATHETIC AND IT COMES IN AND HE DOESN'T SEEM SYMPATHETIC AT ALL.
>> I DID.
>> AUTUMN WAS NOT A SYMPATHETIC VICTIM AND THERE'S A REASON WHY THERE WAS NO VICTIM IMPACT EVIDENCE IN THE CASE.
THIS IS NOT A PERSON THE JURY WOULD HAVE NECESSARILY EMPATHIZED WITH MUCH.
IN HIS CLOSING ARGUMENT THE PROSECUTOR ARGUES, YOU KNOW, BASICALLY ABOUT SONY'S LIFE AND HOW SONNY IS IN A -- AGE 13, IN THE BUSINESS OF PAYING RENT WITH HER BODY.
THIS IS SONNY'S LIFE.
OBJECTION THE CHILD SHOULDN'T HAVE BEEN ABOUT SONNY'S LIFE -- TRIAL SHOULDN'T HAVE BEEN ABOUT HER LIFE, IT SHOULD HAVE BEEN BUT WHAT HAPPENED TO AUTUMN TRAUB.
I WANT TO TURN TO THE RING ISSUE --
>> YOU ARE INTO YOUR REBUTTAL TIME AND YOU HAVE A TOTAL OF FIVE MINUTES AND 46 SECONDS.
>> I'LL STAND ON THE BRIEFS THEN AS TO THE RING ISSUE UNLESS IT COMES UP IN THE STATE'S ARGUMENT AND ON THE PROPORTIONALITY ISSUE

AS WELL.
>> MAY IT PLEASE THE COURT, STEVEN AKE, REPRESENTING THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE OF FLORIDA AND WOULD LIKE TO ADDRESS THE TRIAL COURT'S DISCRETIONARY RULING ADMITTING THE EVIDENCE OF THE SEXUAL ABUSE BY THE APPELLANT TO A STEP GRANDDAUGHTER AND THE STATE POSITION IS OBVIOUSLY IT WAS RELEVANT EVIDENCE UNDER 90.402. AND THE TRIAL COURT PROPERLY DID THE BALANCING TEST OF 90.403 AND FOUND THE PROBATIVE VALUE, NOT SUBSTANTIALLY OUT WEIGHED BY THE DANGER OF UNFAIR PREJUDICE IN THIS CASE.
>> NOW, YOUR OPPONENT ARGUES THERE WERE 13 WITNESSES, WHO TESTIFIED CONCERNING THIS SEXUAL ABUSE.
I CERTAINLY UNDERSTAND THE VICTIM COMING IN AND THE NEIGHBORS WHO WOULD HAVE NO AXE TO GRIND, WHO OBSERVED WHAT THEY SAY THEY OBSERVED BETWEEN THE DEFENDANT AND THE VICTIM AND THE THE DILDO FOUND IN THE TRUNK OF THE DEFENDANT'S CAR.
WHAT BEYOND THAT WAS NECESSARY IN ORDER TO DEMONSTRATE THIS WAS A POSSIBLE MOTIVE FOR THE CRIME?
>> YOUR HONOR ON PAGE 34 AND 35 OF MY ANSWER BRIEF I PUT FORTH THE 13 WITNESSES AND IT WAS 13 OUT OF 40 TOTAL WITNESSES THAT TESTIFIED --
>> HOW MANY.
>> 40.
>> 40 WITNESSES.
>> AND I WOULD SUBMIT AND PUT THE PAGE NUMBERS THEY TOUCHED ON IN THE STATE'S DIRECT EXAMINATION.

MOST WITNESSES WERE RELEVANT TO
OTHER AREAS AND TOUCHED ON THE
SEXUAL ABUSE IN ADDITION TO MUCH
OTHER RELEVANT EVIDENCE THEY HAD
IN THIS CASE.
FOR EXAMPLE, JOHN TRAUB THE
VICTIM'S HUSBAND TESTIFIED AT
LENGTH AS TO ALL KIND OF STUFF
AND BRIEFLY IT WAS LIKE TWO
PAGES MENTIONS THE SEXUAL ABUSE
ALLEGATION.
REALLY, BOILS DOWN TO THE FOUR
NEIGHBORS, THAT WERE EYE
WITNESSES TO THE ABUSE, THE LAW
ENFORCEMENT TESTIMONY REGARDING
THE SEIZURE OF THE DILDO AND THE
DNA TESTING OF THE DILDO, A
NUMBER OF DNA-TYPE PEOPLE
TESTING AND RESULTS AND YOU HAVE
THE STATEMENTS BY THE CHILD
HERSELF, AND VARIOUS STATEMENTS
TO DETECTIVES AND STATE ATTORNEY
INVESTIGATOR AND THE STATEMENTS
FROM -- TESTIMONY FROM THE CHILD
HERSELF AT THE TRIAL.
THOSE WERE BASICALLY -- INMATE
WITNESS ALSO MADE BRIEF MENTION
OF THAT, TOO AND THOSE WERE THE
13 WITNESSES AND ALL OF THOSE
WITNESSES FOR THE MOST PART HAD
OTHER RELEVANT EVIDENCE TO
TESTIFY TO IN THE TRIAL.
BUT THEY STILL TOUCHED ON THIS,
SO THE FACT THAT IT BECAME A
QUOTE-UNQUOTE FEATURE OF THE
TRIAL IS NOT TRUE BASED ON
QUALITATIVE OR QUANTITATIVE
ANALYSIS.
AND YOU LOOK AT EITHER ONE OF
THEM AND IS SIMPLY NOT GOING --
>> DID THE DEFENSE TAKE THE
POSITION IN THE TRIAL ABUSE DID
NOT HAPPEN?
>> YES, YOUR HONOR.
I BELIEVE THAT IS EXACTLY WHAT
THEIR POSITION WAS, THAT THE

CHILD WAS GIVEN INCONSISTENT
STATEMENTS BECAUSE IT DID NOT
HAPPEN.
COUNSEL BRIEFLY SAID SOMETHING
ABOUT THE DILDO BEING FOUND AND
SAID THE DEFENDANT'S STORY WAS
THAT HE FOUND THAT IN SONNY'S
DRESSER AND THAT IS NOT
ACCURATE.
WHAT TOOK PLACE WAS THE
DEFENDANT'S WIFE TESTIFIED AT
TRIAL THAT THAT IS WHAT THE
DEFENDANT TOLD HER AND SHE WAS
IMPEACHED WITH THAT AND THAT SHE
TOLD DETECTIVES IMMEDIATELY
AFTER THE CRIME OCCURRED SHE
DIDN'T KNOW WHERE IT CAME FROM
AND SHE HAD NEVER SEEN IT BEFORE
AND YOU HAVE TO REMEMBER THE LAW
ENFORCEMENT OFFICERS DID A
CONSENTUAL SEARCH OF THE VEHICLE
AT MR. BALLARD'S HOUSE WITH BOTH
MR. BALLARD AND HIS WIFE PRESENT
AND THEY DISCOVERED THE DILDO IN
THE TRUNK OF THE CAR AND AT THAT
TIME THE WIFE SAYS, HEY, ROY,
WHERE DID YOU GET THAT?
AND HE SAYS, IT IS NONE OF YOUR
BUSINESS AND MR. BALLARD DENIED
KNOWING WHERE IT CAME FROM, TO
THE DETECTIVES WHEN HE GAVE THE
STATEMENT AND SAID I DON'T KNOW
WHERE I GOT IT FROM, I FOUND IT
SOMEWHERE AND I WAS GOING TO
THROW IT OUT AND NEVER CLAIMED
HE FOUND IT IN SONY'S DRESSER.
THAT WAS SOMETHING THAT KATHY
BALLARD CAME UP WITH AT THE TIME
OF TRIAL AND WAS IMPEACHED ON
THAT FACT.
.
>> THE DILDO IS STRONG EVIDENCE
BECAUSE IT DOES MATCH UP THE
DNA, IT WAS LINKED TO -- IT WAS
THE STATE'S WHOLE ENTIRE THEORY
OF THE CASE AND THE THEORY OF

PROSECUTION WAS THE MOTIVE FOR THE MURDER AND THE PLANNED -- HE LOST CUSTODY OF THE CHILD IN AUGUST OF '06, MOVED BACK IN WITH HER MOTHER, AND WITHIN A MATTER OF WEEKS, HE WAS -- THEY TRIED TO REGAIN CUSTODY OF HER AND DIDN'T WORK OUT AND WENT TO LOWE'S AND MADE PURCHASE OF THE LEAD PIPE AND BEGAN THE PLANNING --

>> DID HE ALSO PURCHASE A -- AT LOWE'S, THEY FOUND -- HAD SOME OF IT BEEN --

>> YES, IT WAS TORN OFF, AND DIDN'T MAKE A DETERMINATION AS TO HOW MUCH EVIDENCE, BUT THEY SAID IT HAD BEEN TORN OFF AND THERE WAS A BLOOD STAIN FOUND ON THE INSIDE OF THE CARDBOARD SECTION OF THE DUCT TAPE MATCHED UP TO THE VICTIM, AS WELL AS BLOOD STAINS ON THE WALMART BAGS AND THE TRUNK, THERE WERE TWO BLOOD STAINS MATCHED UP TO THE VICTIMS, AND, OF COURSE, THE DUCT TAPE WAS ONLY PURCHASED, TEN DAYS OR SO BEFORE THE MURDER, AND THE VICTIM HAD ABSOLUTELY NO CONNECTION TO THE CAR WHATSOEVER AND IT WAS HARDLY EVER AT BALLARD'S HOUSE, BUT FOR A BRIEF MOMENT THERE IS NO WAY THIS BLOOD GOT ON THERE EXCEPT AT THE TIME OF THE MURDER AND CURIOUSLY, THE APPELLANT SAYS, THAT HE TELLS POLICE, IN HIS STATEMENT HE GOES TO LOWE'S ON SEPTEMBER 2ND AND THE MUR IS ON THE 13TH, HE SAYS I GO TO LOWE'S AND BUY THE LEAD PIPE AND I DON'T KNOW WHY I BOUGHT IT AND I DON'T KNOW WHERE IT IS AT, AND HE DOESN'T KNOW ANYTHING AND HE SAYS, THEN I GRAB THE ROLL OF DUCT TAPE ON THE WAY OUT BECAUSE

I THOUGHT IT WOULD BE USEFUL AT WORK AND THE REASON HE WENT TO LOWE'S WAS TO BUY THE 18 INCH LEAD PIPE THAT HAS NOT BEEN DISCOVERED AND TOLD AN INMATE HE GROUND UP AT HIS WORK AFTER THE MURDER.
>> HE TOLD THE INMATE HE USED THE LEAD PIPE.
>> RIGHT TO KILL THE VICTIM AND GROUND IT UP WITH A MACHINERY AT HIS WORKPLACE.
>> WOULD YOU ADDRESS PROPORTIONALITY AND... THE VERDICT ON... [INAUDIBLE].
>> YES, YOUR HONOR.
>> WHAT WAS -- THERE IS NO AGGRAVATOR OF A PRIOR VIOLENT FELONY.
THEY ALSO DIDN'T SEEM TO MITIGATE -- MITIGATOR OF SIGNIFICANCE... [INAUDIBLE] DO YOU KNOW FROM THE RECORD -- HE'S 65, AT THE TIME OF THE CRIME. WORKING -- WHAT HIS PAST HISTORY HAD BEEN.
>> NO, YOUR HONOR, HE WAIVED PSI IN THE TRIAL -- AND THIS TRIAL COURT MADE MENTION OF THAT.
WE DON'T KNOW WHAT HIS PRIOR CRIMINAL RECORD IS.
>> AND THE STATE DIDN'T UNCOVER PRIOR FELONY CONVICTIONS.
>> NO, THE ONLY AGGRAVATOR IN THE CASE, A WEIGHTY ONE IS THE CCP AGGRAVATOR INTO TELL US, EVALUATE ANY OF THE MITIGATION, A SINGLE AGGRAVATOR CASE.
THE MITIGATION --
>> STATE AND TRIAL JUDGE WAS AWARE OF THE CASE LAW FROM THE COURT THAT SAID IN SINGLE AGGRAVATOR CASES THERE MUST BE LITTLE OR SLIGHT MITIGATION AND THAT IS WHAT THE TRIAL JUDGE FOUND AND THE TRIAL JUDGE FINDS

THREE STATUTORY MITIGATORS, THE MENTAL MITIGATORS AND THE AGE MITIGATOR BUT IF YOU READ THE TRIAL JUDGE'S ORDER, HE REALLY DOESN'T FIND THOSE TWO MITIGATORS, HE FINDS BOTH WERE REBUT BY THE STATE'S EVIDENCE AND NEVERTHELESS, SAYS, I FIND THEM AND GIVE THEM VERY LITTLE WEIGHT.
BUT I THINK IT IS IMPORTANT TO NOTE THAT THERE REALLY IS NOTHING SUBSTANTIAL IN THE MITIGATION BESIDES THE FACT THAT HE IS AN ELDERLY GENTLEMAN THAT HAS HEALTH ISSUES, AND NONE OF THAT WAS LINKED UP IN ANY WAY, SHAPE OR FORM TO THE CRIME IN THIS CASE, THEY TRIEDED TO SAY THAT BECAUSE OF THE STROKE AND SEIZURES THAT HE HAD, THAT HE HAD BRAIN DAMAGE AND CAUSED HIM A LACK OF CONTROL OF HIS IMPULSES, IT WASN'T AN IMPULSIVE CRIME.
>> WHEN DID HE HAVE THE STROKE AND SEIZURES.
>> RIGHT AFTER HE PURCHASED THE LEAD PIPE, THE FOLLOWING DAY, FOLLOWING EVENING, THAT NIGHT WHEN HE WAS IN BED, I BELIEVE THE THIRD GOING ON THE FOURTH, OF SEPTEMBER, THAT HE HAD A NUMBER OF SEIZURES OR STROKES AND WAS SENT TO THE HOSPITAL AND WAS HOSPITALIZED ALMOST A WEEK. AND THEN LET OUT OF THE HOSPITAL ON A FRIDAY.
TOOK THE WEEKEND OFF AND RETURNED TO WORK ON THAT MONDAY AND THE TUESDAY AND WEDNESDAY, MURDER WAS WEDNESDAY, BUT, TUESDAY, TOOK OFF THAT DAY AND DIDN'T TELL HIS WIFE AND WENT AND THE STATE'S THEORY, HE WAS PLOTTING OUT WHERE THE MURDER

WOULD TAKE PLACE.
>> DO THE CELL PHONE RECORDS INDICATE HE WAS IN FACT IN LAKELAND ON THAT TUESDAY, ALSO.
>> TUESDAY, EVENING AT 6:08, I BELIEVE WAS THE TIME HE WAS THERE AND NEVER TOLD HIS WIFE HE LEFT EARLY AND HAD NO REASON TO BE IN THAT SECTION OF NORTH LAKELAND AND AS THE TRIAL JUDGE FOUND, THAT WAS NOT IN ANY WAY, LINKED TO WHERE HE WOULD GO TO AND FROM WORK OR TO THE VICTIM'S RESIDENCE.
IT WAS TOTALLY SEPARATE AND ISOLATED WOODED AREA.
AND THE SAME CELL PHONE TOWER WAS USED THE NEXT DAY, WHEN THE WIFE CALLED ON HER LUNCH BREAK, 11:16, WHERE THE PHONE HIT AGAIN, THE SAME TOWER, AND THAT WAS ON THE WEDNESDAY THE DAY OF THE MURDER WHEN HE WAS SUPPOSEDLY HOME, IS ACCORDING TO HIS STATEMENT, HE TOLD THE DETECTIVES, THAT HE WENT AND PICKED HER UP AND GOT THE SODA AND DROVE AROUND AND WENT HOME AND HE WAS HOME BY 9:00 A.M. AND WHEN HIS WIFE CALLED, AT 11:16, HE PRESUMABLY ACCORDING TO HER WAS AT WORK AND DIDN'T KNOW ANY BETTER AND HE WAS IN NORTH LAKELAND AT THAT TIME.
>> WHAT DOES THE STATE DEATH [INAUDIBLE] PROPORTIONATE SENTENCE.
>> I GOT AWAY FROM THAT, YOUR HONOR.
I WOULD ARGUE, LAMARCA, I HAVEN'T FOUND ANY CASE THAT DEALS DIRECTLY WITH A SINGLE AGGRAVATOR BEING CCP, THE MAJORITY ARE HAC, AND THE SINGLE AGGRAVATOR.
AND HAVEN'T FOUND A SINGLE ONE,

THAT WAS... CCP BUT LAMARCA
CASE
>> WHAT ABOUT SAUNDER --
>> LAMARCA WAS A PRIOR FELONY
CONVICTION.
I'M CONFUSED -- BUTLER IS THE
CASE I WAS THINKING OF.
>> SONGER IS ONE OF THOSE CASE,
A SINGLE CASE WE REDUCED TO LIFE
AND WHAT IS THE DIFFERENCE IN
THE MITIGATION IN THE SONGER
CASE AND IN THIS CASE.
>> I DON'T RECALL OFF THE TOP OF
MY HEAD EXACTLY WHAT WAS IN THE
SONGER CASE AND I DON'T REMEMBER
ALL THE MITIGATION, IN THAT ONE,
BECAUSE THAT IS NOT ONE THAT WAS
REALLY UTILIZED, I THINK THE
TRIAL COURT WAS LOOKING AT
CROOK, WHICH THEY WERE RELYING
ON AND I CONCEDE THE COURT
REVERSES CASE WITH SINGLE
AGGRAVATORS AND THE STANDARD
LANGUAGE THE COURT USES, THERE
CAN BE SLIGHT TO LITTLE
MITIGATION IN ORDER TO AFFIRM A
SINGLE AGGRAVATOR --
>> IN CROOK THERE WAS
SUBSTANTIAL --
>> LET ME GO TO A QUESTION THAT
WILL -- OBVIOUSLY -- A MATTER OF
LAW BUT THIS IS A LINGERING
ISSUE... THE JURY WASN'T TOLD --
OR WAS IT, THEIR VERDICT AS TO
FINDING ONE OR MORE AGGRAVATORS
HAD TO BE UNANIMOUS, IS THAT
RIGHT.
>> THAT'S CORRECT.
>> AND, IS IT THOUGH STATE'S
POSITION BECAUSE DEATH IS THE
MAXIMUM PENALTY FOR FIRST DEGREE
MURDER, THAT IN FLORIDA, RING
DOES NOT APPLY AT ALL.
>> THAT WOULD CERTAINLY BE --
>> IF THAT WAS THE CASE AND THE
PROBLEM AND THE SEE WHAT JUSTICE

SCALIA THINKS ABOUT IT
EVENTUALLY, THE IDEA IS IF EVERY
CASE IN FLORIDA, THE MAXIMUM
PENALTY IS DEATH, THE STATUTE
COULD BE UNCONSTITUTIONAL AS
HAVING TOO MUCH OF A WEB, REALLY
--
>> I THINK THE GUILT PHASE IS
ELIGIBILITY DETERMINE NAYS AND
THE LEGISLATURE SIT UP USING THE
SECOND PHASE AS THE NARROWING
PHASE OF IT AND I THINK IT WOULD
PASS CONSTITUTIONAL MUSTER WITH
THE VIEW THE SUPREME COURT HAD
THEIR CHANCES --
>> THIS CASE, BUTLER, I THINK,
WAS THE ONLY OTHER SINGLE
AGGRAVATOR CASE I KNOW OF IN THE
LAST TEN YEARS WHERE IT WASN'T A
PRIOR --
>> THREE, ACTUALLY, BUTLER, AND
CODAY AND, ABDUL --
>> ABDUL HAD, WHAT WAS THE
AGGRAVATOR THERE.
>> IT WASN'T A SINGLE
AGGRAVATOR, IT WAS HAC AND CCP
AND WHAT WAS REFERRED TO AS A --
NO UNANIMOUS VERDICT BUT ABDUL
WAS A RECENT, I THINK OKAY MAYBE
OF LAST YEAR WHEN THE CART CAME
OUT WITH THAT DECISION.
BUT, AS YOU POINTED OUT, BUTLER,
WHICH WAS SOON AFTER RING WAS A
SINGLE AGGRAVATOR CASE AND THAT
WAS THE HAC CASE I WAS THINKING
OF EARLIER.
BUT IN ALL OF THOSE CASES THE
COURT HAD THE OPPORTUNITY AND
RECEIVED FROM I GUESS --
BOTTOSON AND KING, WHEN RING
CAME OUT, THERE IS NO REASON TO
FIND THE STATUTE
UNCONSTITUTIONAL.
NO FURTHER QUESTIONS I WILL ASK
THE COURT TO AFFIRM THE
CONVICTION AND SENTENCING.

THANK YOU.
>> THE STATE RELIES ON LAMARCA, WHICH IS A CASE WHERE THE SINGLE AGGRAVATOR WAS PRIOR VIOLENT FELONY AND THE COURT MADE A LARGE POINT OF THE FACT THAT THE MURDER IN LAMARCA OCCURRED SHORTLY AFTER HIS RELEASE FROM PRISON.
HE WAS RELEASED FROM PRISON WHERE HE SERVED TIME FOR KIDNAPPING AN ATTEMPTED RAPE AND AND THOSE CRIMES OCCURRED AFTER A STILL PRIOR RELEASE FROM PRISON AND THE INSTANT CASE, BALLARD'S CRIME, ASSUMING -- CONCEDING FOR PURPOSES OF THIS ARGUMENT, I'M NOT CONCEDING AS A MATTER OF FACT.
BUT, THE CRIME OCCURRED A WEEK AFTER HIS RELEASE FROM THE HOSPITAL, WHERE HE SUFFERED A STROKE AFTER HE HAD A HISTORY OF STROKES BUT SUFFERED ANOTHER STROKE AND HE WAS BAKER ACTED, POP A FINDING OF PSYCHOSIS AND YOU CAN'T BAKER ACT SOMEONE BECAUSE THEY REFUSE --
>> WHAT --
>> ISN'T THERE THEN EVIDENCE THAT HE WAS... [INAUDIBLE] AND WENT ABOUT HIS BUSINESS AND THAT EPISODE HE HAD HAD BEEN RESOLVED.
>> NOT REALLY --
>> I UNDERSTAND IT MIGHT BE DISPUTED BUT ISN'T THERE EVIDENCE THAT WOULD SUPPORT --
>> I DON'T BELIEVE THERE IS.
I THINK THAT IS DR. VIAS WHO TESTIFIED -- HE'S NOT A NEUROLOGIST AND ACKNOWLEDGE HE'D DIDN'T DO AN EXAM THE WAY A NEUROLOGIST MIGHT AND SAID HE DIDN'T OBSERVE NEUROLOGICAL DEFICITS AND WAS SHOWN THE

NURSING ASSESSMENT WHICH SHOWED
AT LEAST THREE EXAMPLES OF LEFT
SIDE NEUROLOGICAL DEFICITS AND
ACKNOWLEDGED, I DID OBSERVE ONE
OF THOSE.
>> WHEN WAS THE BAKER ACT IN
RELATIONSHIP TO THE CRIME?
>> WHEN WAS HE BAKER ACTED?
RELATIONSHIP -- HE WENT INTO THE
HOSPITAL ON THE 4TH, BAKER ACTED
I BELIEVE ON THE 4TH OR THE 5tH.
AND THE CRIME OCCURRED ON THE
13TH.
>> EXPLAIN AGAIN WHY HE WAS
BAKER ACTED, HE HAD A STROKE AND
EPILEPTIC SEIZURE, WHAT -- WHY
WAS HE BAKER ACTED .
>> IN PART BECAUSE HE WANTED TO
GO HOME, HE WAS COMBATIVE AND
HAD TO BE TIED DOWN TO HIS BED
AND EVIDENCE HE WAS SAYING STUFF
TO SONNY, HE LOVED HER AND
WANTED TO MARRY HER WHICH
FREAKED HER OUT, WHICH WAS
NOTHING THAT SHE SAID HE HAD
DONE BEFORE AND HE WAS
DISPLAYING IRRATIONALAL
BEHAVIOR.
>> ONCE HE WAS RELEASED AND WENT
HOME ON A FRIDAY, WENT TO WORK
ON THAT MONDAY AND DON'T WE HAVE
EVIDENCE FROM WHERE HE WORKED,
THAT THE GENTLEMAN WHO WAS HIS
SUPERVISOR THAT HE WAS ACTING AS
-- HIS NORMAL SELF EXCEPT FOR
THAT TUESDAY WHEN HE SEEMED
TIRED AND TOLD THEM TO GO HOME.
>> IN ADDITION ON THE FIRST DAY
AFTER WORK HE -- BECAUSE AGAIN
HE DIDN'T SEEM LIKE HIMSELF, HE
WAS GIVEN LIKE PAPERWORK TO DO.
HOW MUCH IS A WORK SUPERVISOR,
IN A METAL SHOP GOING TO KNOW
ABOUT, YOU KNOW, IMPULSE
CONTROL.
AND, WHETHER OR NOT YOU ARE ON

TOO MUCH DILANTIN.
>> THE PROBLEM THERE IS, WHAT HE'S SAYING IS THE JUDGE DIDN'T WEIGH THE MITIGATION, THE MENTAL HEALTH MITIGATION, GAVE IT LIGHT OR NO WEIGHT.
>> HE DIDN'T GIVE IT NO WEIGHT, HE GAVE IT SLIGHT WEIGHT LIKE IN ALAMEDA, BUT THE REBUTTAL DOESN'T REBUT ANYTHING AND I'M NOT ARGUING CREDIBILITY.
I'M TALKING ABOUT THE SCOPE OF THE REBUTTAL.
THE REBUTTAL IN THIS CASE, THE PATHOLOGIST WHO DOESN'T EXAMINE LIVE PATIENTS DOES NOT REBUT ANY SIGNIFICANT PART OF THE DEFENSE'S CASE.
I NEED TO ADJUST THE -- ADDRESS THE RING ISSUE, BRIEFLY.
THEY SAID IT DOES NOT IMPLY TO FLORIDA BECAUSE THE MAXIMUM PRESIDENT IS DEATH AND NUMBER ONE THAT IS WHAT ARIZONA SAID IN RING AND NUMBER 2 IT ISN'T TRUE AND UNDER FEDERAL CONSTITUTIONAL LAW IT IS UNCONSTITUTIONAL TO IMPOSE THE DEATH PENALTY WITHOUT A NARROWING AGGRAVATING FACTOR AND FLORIDA RECOGNIZED THAT AND UNDER ELAM AND BANDA, IT'S NOT AN ADMISSIBLE... WITHOUT AGGRAVATING CIRCUMSTANCE AND CAN BE IN THE GUILT PHASE IF IT IS THE FELONY MURDER AGGRAVATOR OR SOMETHING THAT DOESN'T APPLY BUT THE FINDING OF PRE-MEDITATION IN THE GUILT PHASE DOES NOT SUFFICE BECAUSE THERE ARE FOUR ADDITIONAL ELEMENTS OF CCP SO THERE IS AN ADDITIONAL FINDING, AND UNDER RING, A JURY MUST MAKE THAT FINDING.
THE STATE CITES THREE CASES, BUTLER WAS RAISED BRIEFLY ON A MOTION FOR REHEARING, BEFORE

STEELE, AND CODAY ALSO BEFORE
STEELE IS A THREE-JUDGE OPINION
AND HAS NO PRECEDENT AND IS...
CODAY RECEIVED A PENALTY PHASE
ON OTHER GROUNDS AND COMMITTED
SUICIDE IN PRISON AND ABDUL, IT
COULD HAVE BEEN RAISED IN ABDUL
BUT IT WAS NOT AND THE RING
ISSUE, IT SAYS, PLEASE --
[INAUDIBLE] COURT DOESN'T HAVE
TO -- BOTTISON AND KING, DIDN'T
GARNER A MAJORITY AND HAVE PRIOR
VIOLENT FELONIES AN KING WAS...
[INAUDIBLE] THIS CASE IS NOTHING
LIKE BOTTISON AND KING AND THE
COURT DOESN'T HAVE TO REWRITE
THE STATUTE.
ALL THE COURT HAS TO DO IS
REALIZE THE DEALT PENALTY CANNOT
CONSTITUTIONALLY BE APPLIED
AGAINST ROY BALLARD.
... [INAUDIBLE].
>> LET ME -- BUT ANY OF THESE
SUBSEQUENT CASES HAVE NEVER SAID
THE FINDING BY THE JURY NEEDS TO
BE UNANIMOUS, HAS IT.
>> THE MAJORITY OPINION IN THE
-- PLURALITY, MAJORITY OPINION
IN RING DOESN'T SAY THAT IN SO
MANY WORDS BUT HAS BEEN
INTERPRETED BY COURTS OF OTHER
STATES AND FEDERAL CIRCUITS AS
MEANING THAT.
JUSTICE SCALIA IN HIS CONCURRING
OPINION IN RING DEFINITELY SAYS
THAT AND UNDER FLORIDA LAW THERE
IS NO PRECEDENT OR...
[INAUDIBLE] AND UNDER FEDERAL
LAW... [INAUDIBLE] AND JOHNSON,
SPECIFICALLY EXCLUDE CAPITAL
CASES FOR THE STATUTES THEY WERE
REVIEWING.
THANK YOU.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS, THE COURT WILL NOW
TAKE A 10 MINUTES RECESS.

>> PLEASE RISE.