>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
PLEASE BE SEATED.
>> LAST CASE ON THE DOCKET IS
NOCK v. STATE.
>> GOOD MORNING.
IAN ZELDIN ON BEHALF OF GABRIEL
NOCK, THE PETITIONER.
THIS CASE CONCERNS THE
APPLICATION OF THE RULE OF
COMPLETENESS OR WHEN ONE OPENS A
DOOR WHAT HAPPENS BECAUSE
OPENING THE DOOR THE RULE OF
COMPLETENESS IS ESSENTIALLY THE
SAME THING.
IN THIS CASE YOU HAD A STATEMENT
MADE BY MR. NOCK TO A DETECTIVE.
THAT STATEMENT WAS RECORDED, AS
WAS AUDIO AND VIDEO RECORDED.
THAT STATEMENT WAS A PIECE OF
EVIDENCE IN OF ITSELF.
THE STATE CHOSE TO OMIT THAT
EVIDENCE BY MEANS OF ORAL
TESTIMONY OF THE WITNESS OR THE
EARWITNESS TO THE STATEMENT AND
IN THE PROCESS EDITED THE
STATEMENT, SLIGHTED THE
STATEMENT, SHADED THE STATEMENT,
MADE THE STATEMENT NOT EXACTLY
WHAT MR. NOCK SAID AND OMITTED
MATERIAL PORTIONS WHICH CHANGED
THE CONTEXT OR THE MEANING OF
WHAT MR. NOCK SAID SURE.
>> YOU KNOW WE HAVE CASE LAW--
THAT A JUDGE HELD BOUND BY.
I, IT ME,.
[INAUDIBLE]
THIS EXCULPATORY PART OF THE
STATEMENT IN AND ONE WHERE THERE
WOULD BE A FINDING WHICH-- AT A
CRITICAL PART OF THE DEFENDANT'S
ANSWER.
SEVERAL PARTS IN THAT.
IT IS JUST THE CASE LAW
DISTINGUISH BETWEEN THOSE TWO,
THAT IS, ONE WHERE JUST LIKE IT
IS THE PART WHERE IT IS
EXCULPATORY AND SAY-- VERSUS
WHERE THEY, THE STATE-- THE

VIDEO, RELIES ON A DETECTIVE, I
THINK IT WAS THAT, AND THEN
FORCING THE DEFENDANT TO HAVE TO
SAY, WASN'T IT LIKE THIS?
THERE IS A DISTINCTION AND.
>> I THINK THE CASE LAW IS A
MIXED BAG.
I THINK SOME OF THE CASES, THE
COURT REACHES CONCLUSIONS VERY
CONCLUSORY--
>> WHERE IS THE CASE, OTHER THAN
FOSTER WHICH REALLY DOESN'T SAY
ANYTHING--
>> I SWEARINGEN OUT OF THE FIFTH
DISTRICT COURT OF APPEAL COMES
CLOSEST TO THAT, WHERE THE COURT
WITHOUT NECESSARILY
ARTICULATING WHAT
MISSTATEMENTS WERE OR THE
MISREPRESENTATIONS WERE STATED
BASICALLY THAT, THAT A PARTY
OPPONENT CAN NOT CHANGE OR PUT
IN A STATEMENT OF THE, OF A
DEFENDANT AND IN SO DOING MAKE
IT AS IF THE DEFENDANT SAID
SOMETHING ELSE.
AND THAT THEY'RE NOT GOING TO
STAND FOR IT.
NOW--
>> IT SEEMS TO ME LIKE IN THIS
PARTICULAR CASE THAT THE
PROSECUTOR MADE A STRATEGIC
DECISION TO HAVE THE DETECTIVE
TESTIFY ABOUT THE STATEMENT MADE
BY THE DEFENDANT RATHER THAN
PLAY THE TAPE, CORRECT?
>> I AGREE, IT WAS SET UP AS AN
IMPEACHMENT TRAP.
>> THAT IS TRUE, AND THAT MAY
HAVE BEEN PART OF A STRATEGY BUT
WOULDN'T THAT, ASSUMING, THAT
HAPPENS A LOT WHERE PROSECUTORS
DECIDE, I WILL HAVE THE
DETECTIVE TESTIFY AS TO WHAT HE
SAID AND OBVIOUSLY BACK IN THE
OLD DAYS, YOU KNOW, WHEN YOU HAD
OPENING AND CLOSING, DEPENDING
ON EVIDENCE THAT YOU PUT IN,
THEN THE PROSECUTOR AND THE
DEFENSE WILL COME IN AND PUT IN

THE TAPE, THEN I WILL HAVE
CLOSING BUT THOSE DAYS ARE GONE
NOW.
SO WHAT IS, WHAT IS THE REASON
IN THIS CASE HE DID NOT PLAY THE
TAPE OF THE STATEMENT, THE
CONFESSION?
WHAT WAS IN IT HE THOUGHT WOULD
NOT BE ADVANTAGEOUS TO THE
STATE.
>> THE CORRECT CONTEXT AND
CONTENT WHAT THE DEFENDANT SAID
TO THE DETECTIVE.
THAT IS WHAT THE PROSECUTOR
DIDN'T WANT IN AND SUCH AS, THE
BIGGEST OMISSION, THE BIGGEST
PROBLEM IS CONCERNING WHAT
HAPPENED AFTER THE CONSENSUAL
ROUND OF SEX AND EROTIC ASPHYXIA
IN THE BEDROOM.
THERE WAS NOTHING WRONG WITH THE
DETECTIVE'S TESTIMONY CONCERNING
THAT.
IT HAPPENED AFTER COOKIES AND
ICE CREAM, WHAT HAPPENED THEN?
WHERE THE DETECTIVE TESTIFIED IN
A MANNER THAT MADE IT SOUND AS
IF MR. NOCK JUST CHOKED THE GUY
TO DEATH.
AS OPPOSED TO THE COMPLETE
STATEMENT IN CONTEXT, IS
RELEVANT THAT MR. ELLISON SAID,
LET'S DO IT AGAIN.
THEY HAD FUN IN THE BEDROOM.
LET'S DO IT AGAIN.
I'M PARAPHRASING.
I DON'T MEAN-- BUT I MY POINT
IS HE ASKED THE VICTIM, ASKED TO
ENGAGE IN THIS CONDUCT AGAIN.
NOT BY-- YOU READ, OR THE
TRANSCRIPT OF HOW HE EXPLAINS,
HE DIDN'T EVEN KNOW WHAT HE WAS
DOING.
HE IS CALLING IT WRESTLING
MOVES.
REALLY WASN'T WRESTLING.
IT WAS EROTIC ASPHYXIA.
THIS IS HOW MR. ELLISON ENJOYED
SEX APPARENTLY.
ONE OF HIS FRIENDS TESTIFIED

THAT HE HAD TROUBLE SWALLOWING
SOLID FOOD.
GIVES YOU PAUSE, YOU HAVE TO
WONDER WHY.
NEVERTHELESS THE POINT IS, THE
PROSECUTOR SET THIS UP IN ORDER
TO THEN IMPEACH THE DEFENDANT
WITH NINE PRIOR CONVICTIONS FOR
FELONIES AND CRIMES OF
DISHONESTY AND THEN ARGUE, WE
PUT IN, YOU KNOW, THEY PUT IN
HIS STATEMENT, PLEASE, BUT DON'T
BELIEVE THIS ACCIDENT THING.
>> DID THE JUDGE FEEL BOUND BY
KACZMAR?
>> APPARENTLY.
>> THE THING, THE ONE YOU GIVE
CERTAIN ONES, THE ONE THAT
SEEMED TO ME TO BE THE EASIEST
TO MENTION IS WHERE HE SHOOK HIS
HEAD AND SAID HE WASN'T SUPPOSED
TO DIE.
IT WASN'T SUPPOSED TO HAPPEN
THAT WAY.
HE BEGAN TO GIVE MORE DETAILS
AND THEN WHAT YOU, HE-- THE
CROSS-EXAMINATION IS, MR. NOCK'S
REPLY, IT WASN'T SUPPOSED TO
HAPPEN, HE STOPPED BREATHING,
YES.
AND THEN HE IS NOW, THE
DETECTIVES, YEAH, SPECIFICALLY
REMEMBER SAYING IT WASN'T
SUPPOSED TO HAPPEN THAT WAY.
SO, BECAUSE HE DOESN'T HAVE THE
VIDEO WHERE IT IS AN ACCURATE,
EXACTLY ACCURATE, THE DETECTIVES
IS GOING I DON'T REMEMBER THAT
PART.
THAT WASN'T HELPFUL TO ME.
I REMEMBER THE PART THAT
INCULPATED.
BUT HERE IS MY QUESTION, HOW DO
YOU FASHION A RULE OF LAW, YOU
SAID A SWEARINGEN CASE, WHERE
THE JUDGE MAKES A DETERMINATION
WHAT IS BEING OFFERED BY THE
DEFENDANT ISN'T JUST AN
EXCULPATORY PART BUT IS
ABSOLUTELY, THAT THE ACTUAL

STATEMENT IS BEING MADE IS
INCOMPLETE ITSELF BECAUSE THERE
WAS SOME ADDITIONAL STATEMENT
MADE?
>> I THINK YOU NEED A SERIES OF
ANALYSIS.
I THINK THERE HAS TO BE-- FIRST
OF ALL, YOU HAVE TO DETERMINE
WHAT THE DEFENDANT ACTUALLY
SAID, WHICH IS EASY BECAUSE IT
IS RECORDED.
THEN YOU HAVE TO DETERMINE IF
WHAT WAS PRESENTED WAS
MISLEADING.
AND THEN YOU HAVE TO DETERMINE
WHAT THE DEFENDANT SEEKS TO ADD
IS RELEVANT IN THAT IT PROVES OR
DISPROVES AN ESSENTIAL ELEMENT
OF THE STATE'S CASE, OR, AN
ELEMENT OF A DEFENSE.
>> I THOUGHT YOU WERE ARGUING
THEY SHOULD HAVE HAD TO PUT THE
VIDEOTAPE IN.
>> NO.
THAT WAS NOT ARGUED BELOW IN THE
FOURTH.
>> OKAY.
>> THAT WAS NOT-- NOW THE
DEFENSE MADE THAT ARGUMENT
INITIALLY PRETRIAL BUT THE
ARGUMENT EVOLVED TO WHERE,
DURING THE TRIAL ITSELF I
BELIEVE, I THINK THE PAGES ARE
LIKE 1431 TO 1439, SOMEWHERE IN
THERE, IN THE MIDST OF THE
CROSS-EXAMINATION OF THE
DETECTIVE OR RIGHT BEFORE THE
CROSS-EXAMINATION THE DETECTIVE,
THE DEFENSE LAWYER AT TRIAL WAS
SAYING, JUDGE, THIS WAS, THIS
WAS MISLEADING.
I KNOW YOU'RE, I KNOW YOU'RE
GOING, YOU HAVE ALREADY RULED
THAT IF I BRING THINGS OUT ON
CROSS-EXAMINATION, I AM OPEN UP
TO IMPEACHMENT AND HE SOUGHT TO
CHANGE THE RULING AT THAT POINT
TO ALLOW HIM TO DO IT ON
CROSS-EXAMINATION.
SO THERE WAS A CHANGE OF THE

ARGUMENT.
YES, SIR?
>> YOUR ARGUMENT SEEMS TO ASSUME THAT 90.108-1 HAS APPLICABILITY HERE.
I'M CURIOUS WHY, WE'RE TALKING ABOUT LIVE TESTIMONY, NOT A WRITTEN STATEMENT OR A VIDEO WAS BEING PRESENTED?
>> THIS COURT SAYS IT CAN'T APPLY.
IT SAID SO IN REESE.
I BELIEVE IT SAID SO IN CALLAWAY.
BUT BESIDES THE FACT--
>> AREN'T THOSE CASES MOST RECENTLY READ AS REALLY APPLYING ANALOGOUS PRINCIPLE?
BECAUSE YOU CAN'T APPLY THAT STATUTE TO A CIRCUMSTANCE WHERE THE STATE HAS NOT BROUGHT IN A PORTION OF A WRITTEN STATEMENT OR A RECORDED STATEMENT?
IF THEY HAVE DONE THAT, THEN THE DEFENSE CAN SAY, YOU GOT TO BRING THE REST OF IT IN.
THE WAY THE CASES HAVE DEALT WITH IT UNDER THIS ANALOGOUS PRINCIPLE YOU CAN BRING IT IN ON CROSS-EXAMINATION, ISN'T THAT CORRECT?
>> YES BUT TO ANSWER YOUR QUESTION THIS IS NOT AND A ANALOGOUS SITUATION.
IN THIS CASE THERE WAS A WRITING AND A RECORDING, A RECORDING.
THERE WAS A RECORDING.
THAT RECORDING IS A PIECE OF EVIDENCE, NO DIFFERENT AS A PHOTOGRAPH--
>> WAS IT ADMITTED IN? WAS IT ADMITTED?
NOT IN EVIDENCE?
>> IT WAS ADMITTED BY A DIFFERENT MEDIUM.
IT WAS NOT ADMITTED-- NO, SERIOUSLY.
YOU HAVE--
>> YOU HAVE A PIECE OF PAPER.
>> YES.

>> IT, TO ME IT IS EITHER
ADMITTED OR NOT.
IF I TESTIFY TO WHAT IT SAYS,
HOW AM I ADMITTING IT BY
DIFFERENT-- EITHER I ADMITTED
PIECE OF PAPER OR NOT.
>> OUT OF THE COURT STATEMENT
WAS ACTUALLY RECORDED.
YOU KNOW WHAT IS ON IT.
HERE IS THE FLIP SIDE, IF YOU
HAVE A PIECE OF PAPER WITH
WRITING, SUCH AS A REPORT BY A
DETECTIVE WHO IS INVESTIGATING A
SHOOTING AND THE DEFENDANT TELLS
THE DETECTIVE DURING THE
INVESTIGATION, I SHOT, YES, I
SHOT THE VICTIM BECAUSE HE
YELLED AT ME, I'M GOING TO KILL
YOU, AND HE WAS REACHING INTO
HIS POCKET, AND IT LOOKED AS
SHOW HE WAS GOING TO PULL OUT A
GUN, SO I SHOT HIM IN THE
TRADITIONAL SELF-DEFENSE,
DEFENSE.
THE DETECTIVE IN THE TRIAL,
DIDN'T READ OFF THE REPORT
OR THE RECORDING IN THE STATION.
DEFENDANT, WHAT THE DEFENDANT
TELEPHONE YOU?
HE SHOT THE MAN.
THANK YOU VERY MUCH.
NO FURTHER QUESTIONS.
THE DEFENDANT IS A CONVICTED
FELON.
SO ON CROSS-EXAMINATION--
>> LET ME STOP YOU.
DOES THE STATUTE APPLY TO THAT
TESTIMONY?
>> IT SHOULD BECAUSE IT IS
RECORDED.
IT IS A PIECE OF EVIDENCE.
I MEAN YOU DON'T LET PROPONENTS
OF EVIDENCE ADMIT, TAKE OFF
TATTOOS OFF A PHOTO.
YOU CAN'T DRAW A MUSTACHE ON A
PHOTO.
>> THE STATUTE SAYS WHEN A
WRITING OR RECORDED STATEMENT OR
PART THEREOF IS INTRODUCED BY A
PARTY.

OKAY.
THE HYPOTHETICAL YOU DID, YOU JUST GAVE WAS THERE A WRITING OR RECORDED STATEMENT INTRODUCED BY A PARTY?
>> YES, THERE WAS PAUSE--
BECAUSE IT WAS FROM AN OUT OF COURT STATEMENT THAT WAS RECORDED.
WHY SEPARATE THE TWO?
THIS IS FORM OVER SUBSTANCE.
THIS IS, I MEAN THERE IS--
>> WHAT CASES DO YOU HAVE THAT INTERPRETED THIS STATUTE THAT WAY?
>> I HOPE THIS ONE DOES, YOUR HONOR.
>> SO IS THAT SAYING NONE?
>> WELL I HAVE FOSTER ON THE SAME PRINCIPLE.
>> WELL--
>> YOU'RE OPENING THE DOOR AND THIS COURT HAS CALLED IT OPENING THE DOOR BY MISLEADING--
>> FOSTER DOESN'T HAVE STATUTORY ANALYSIS OF THE TEXT OF THIS STATUTE WE'VE BEEN TALKING ABOUT, DOES IT?
>> IT DOES NOT HAVE THE STATUTORY ANALYSIS NO.
>> DO YOU HAVE A CASE THAT HAS A STATUTORY ANALYSIS OF THE TEXT?
>> NO, I DO NOT.
>> SO YOU'RE ACTUALLY READING INTO THE STATUTE INSTEAD OF SAYING THE RECORDING, EVEN THE CONTENTS OF THE RECORDING?
YOUR ARGUMENT IS, IF ANY PART OF THE CONTENTS OF THE RECORDED STATEMENT IS BEING OFFERED INTO EVIDENCE, THEN THE RECORDING ITSELF IS AS GOOD AS BEING OFFERED INTO EVIDENCE?
>> YEAH.
IT IS JUST A DIFFERENT MANNER OF PRESENTING THE EVIDENCE.
>> OKAY.
>> BUT DON'T YOU, IN ORDER FOR TO US SAY THAT THE STATUTE HAS THAT, DOESN'T THE STATUTE HAVE

TO HAVE THE WORDING, CONTENTS IN THERE?
I'M JUST WONDER IF WE HAVE TO READ SOMETHING INTO THE STATUTE IN ORDER TO ACCEPT YOUR ARGUMENT?
SOME OTHER WORD INTO THE STATUTE?
>> BUT THEN, WHAT, THEN THE ALTERNATIVE?
IF YOU DON'T READ IT THAT WAY, YOU WOULD BE, YOU WOULD BE SETTING UP A SITUATION LIKE THE FOURTH DISTRICT DID THAT WOULD ALLOW PROSECUTORS TO--
>> I UNDERSTAND YOUR ARGUMENT COMPLETELY.
THE PROSECUTOR ENDS UP HAVING IT BOTH WAYS.
HE DOESN'T HAVE TO PUT IN THE RECORDING BUT HE GETS TO PUT IN A PORTION OF WHAT WAS SAID.
AND IF THE DEFENSE WANTS TO PUT IN ALL OF WHAT IS SAID OR EVEN, PUT IT INTO CONTEXT, WHAT IS SAID, THEN THE DEFENDANT LOSES HIS OPPORTUNITY-- HE GETS TO BE IMPEACHED WITH THESE PRIOR FELONIES.
SO THE PROSECUTOR ENDS UP HAVING IT BOTH WAYS, THOSE PORTIONS THAT THEY WANT AND THEN I AM--
IMPEACHING THE DEFENDANT IF HE DEFENDANT WANTS TO ELUCIDATE ON THOSE STATEMENTS?
>> I DON'T THINK IT'S A HUGE LEAP TO TERM THE STATUTE AS I SUGGEST.
>> IF WE INTERPRET THE STATUTE THE WAY YOU'RE SUGGESTING, AND WE ACTUALLY FOLLOW WHAT THE TEXT OF THE STATUTE SAYS, THEN WE WOULD, THEN THE PARTY WHO HAD ORIGINALLY BROUGHT THE STATEMENT IN WOULD BE THE PARTY THAT WOULD HAVE TO BRING IN THE REST OF IT?
RIGHT?
IT IS, THE STRUCTURE OF THE STATUTE SEEMS TO ME JUST CAN NOT FIT YOUR INTERPRETATION BECAUSE

THE STRUCTURE OF THE STATUTE IS,
THE CONTEXT HERE IS FOCUSED ON A
RECORDED, A WRITTEN STATEMENT,
SOMETHING THAT CAN COME IN, A
PIECE OF PAPER, OR A RECORDED
STATEMENT, SOMETHING THAT CAN
AGAIN BE SHOWN TO THE JURY?
IT IS NOT TESTIMONY OF A WITNESS
THAT IS BEFORE THE JURY.
IT DOESN'T, THE STATUTE IN THE
WAY IT IS FRAMED DOES NOT WORK
IN THAT CONTEXT, TELL ME WHY I'M
WRONG ABOUT THAT?
>> THERE IS MORE THAN ONE WAY TO
ADMIT THE BALANCE OF--
>> THERE IS ONE WAY THAT THE
STATUTE SAYS IT COMES IN AND IT
SAYS THAT YOU REQUIRE THE PARTY
WHO HAD BROUGHT IT IN ORIGINALLY
TO BRING IN THE REST IT, RIGHT?
>> CORRECT.
THE PROBLEM IS, MR. NOCK IS
ENTITLED TO SOME TYPE OF RELIEF
HERE BECAUSE WHETHER IT WAS, THE
STATE OPENED THE DOOR ARE OR
WHETHER THE RULE OF COMPLETENESS
REQUIRED THE BALANCE TO BE PUT
IN, OPENED THE DOOR AS IN THE
PLUSSER CASE, WHAT THE
PROSECUTOR DID WAS DECEPTIVE AND
CONTRARY TO AMERICAN JERUSALEM
PRUDENCE THAT COURTS REWARD
DECEPTION.
AND THAT IS WHAT THE FOURTH
DISTRICT COURT OF APPEAL DID.
THEY SAID, OKAY, ACROSS THE
BOARD IT IS ORAL, THEREFORE IT
IS NOT WRITTEN, THEREFORE IT
DOESN'T COME IN, GO AWAY.
BUT THERE MUST BE A MIDDLE
GROUND.
EITHER INTERPRET THE RULE OF
COMPLETENESS AS THE CONTENT OF
THE STATEMENT.
THESE STATUTES WERE ENACTED IN
THE 1970S BEFORE INTERROGATIONS
WERE UNIVERSALLY RECORDED AND--
>> THERE WERE CERTAINLY WRITTEN
AND RECORDED STATEMENTS AT THE
TIME BECAUSE--

>> SURE THERE WERE.
>> THE WHOLE RULE IS BASED ON THE EXISTENCE OF SUCH THINGS.
>> YES THERE WAS, BUT IT IS MUCH MORE PREVALENT NOW AND, YOU KNOW, THE STATE SAYS THAT MR. NOCK COULD HAVE PUT IN THE RECORDING IN HIS CASE IN CHIEF, THAT WOULD HAVE HAD THE SAME RESULT.
HE WOULD HAVE BEEN ELICITING EVIDENCE AND HE WOULD ALSO HAVE BEEN IMPEACHED.
IT IS NOT JUST, THIS CASE IS NOT JUST WHAT HE COULD GET IN AND WHAT HE CAN'T GET INTO.
THE CASE DOES NOT CONCERN UNFETTERED, OPEN CROSS-EXAMINATION.
IT'S THE CONSEQUENCE OF THAT EXAMINATION.
AND TO HAVE JUST THIS GENERAL RULE, YOU ELICIT WHAT WASN'T PUT, THEREFORE YOU'RE OPEN TO 98.06 IMPEACHMENT.
>> YOU'RE INTO YOUR REBUTTAL.
>> I WILL RESERVE THE REST.
>> WE'LL ALLOW TO YOU CONTINUE.
>> THANK YOU, YOUR HONOR.
>> GOOD MORNING.
DON ROGERS, ASSISTANT ATTORNEY GENERAL FOR THE STATE OF FLORIDA.
THE RULE OF COMPLETENESS, THE STATUTORY RULE OF COMPLETENESS, 90.108 DOESN'T APPLY HERE.
THERE WASN'T A WRITTEN OR RECORDED STATEMENT.
THE GENERAL DOCTRINE OF RULE OF COMPLETENESS WAS FOLLOWED HERE.
THE DEFENSE HAD FULL OPPORTUNITY TO CROSS-EXAMINE DETECTIVE RIVERA REGARDING ANY ASPECT OF THE STATEMENT THAT MR. NOCK MADE TO DETECTIVE RIVERA.
>> IS THERE A DIFFERENCE, YES, AT THE RISK, AND, WHAT CAME TO BE OF HIM BEING IMPEACHED WITH HIS NINE PRIOR VIOLENT FELONIES.
CAN THE STATE, YOU KNOW, YOU

MIGHT SAY THIS WASN'T
INTENTIONAL, BUT HAVE A
DETECTIVE, THERE WAS A FULL
VIDEO RECORDING OF EXACTLY WHAT
THE DEFENDANT SAID, HAVE A
DETECTIVE GET UP AND GIVE HIS
RECOLLECTION OF WHAT WAS, HE
THOUGHT WAS SAID AND THEN, IF
IT'S, HE'S LEFT OUT A CRITICAL
PART OF AN ANSWER AND THAT'S ALL
THEY'RE TRYING TO ELICIT ON
CROSS BE, HAVING TO BE EXPOSED
TO THIS, YOU GET IMPEACHED
COMPLETELY?
AND THAT IS MY CONCERN.
I KNOW, WE'VE KNOWN EACH OTHER A
LONG TIME.
>> YES.
>> I KNOW YOU UNDERSTAND THAT
THERE ARE, THIS IS A
CIRCUMSTANCE THAT CAN BE, IT
SEEMS TO ME MISUSED AND SO, WHAT
IS YOUR ANSWER THERE?
MAYBE THIS ISN'T, MAYBE THAT
DIDN'T HAPPEN HERE BUT HOW DO
WE, HOW DO WE DEAL WITH WHAT HAS
TO BE A PATENTLY UNFAIR
SITUATION?
>> JUSTICE PARIENTE, WHAT YOU'RE
ASKING IS WHY DIDN'T THE STATE
PLAY THE TAPE?
AND THERE IS A LOT OF REASONS
WHY BECAUSE HERE, DURING THE
FIRST HOUR 1/2 TO TWO HOURS OF
THE TAPE MR. NOCK WAS TELLING
LIES TO THE DETECTIVE AND THE
DETECTIVE KNEW IT BECAUSE THE
TAPE STATEMENT OCCURRED SIX
DAYS-
>> NO, I DIDN'T ASK THAT.
OF THE AT THE POINT WHERE LEAVES
OUT PART OF AN ANSWER THAT IS
READILY VERIFIABLE IN A RECORDED
STATEMENT AND THE, AND THE
DEFENSE SEEKS TO SAY, DIDN'T HE
SAY HE STOPPED BREATHING AND
THAT ALL OF SUDDEN OPENS THE
DOOR TO HIS PRIOR VIOLENT--
THAT IS MY CONCERN.
I UNDERSTAND THAT THERE WAS AN

HOUR 1/2 WHERE HE DENIED IT, BUT
THEN FOR THE REST OF THE TIME,
HE WAS CONSISTENT IN SAYING YOU
KNOW, AGAIN, THIS WAS AN
ACCIDENT.
UPSTAIRS EVERYTHING WAS FINE.
THE VICTIM WAS COMPLETELY
CLOTHED, SO, WHEN HE WAS FOUND.
SO SHARE SUPPORT FOR WHAT
THIS-- THERE IS SUPPORT FOR
WHAT THE DEFENDANT WAS SAYING TO
THE POLICE OFFICER.
I'M NOT SAYING THEY HAD TO PLAY
THE TAPE.
I'M SAYING IF THEY'RE MISS
REPRESENTING OR BEING INCOMPLETE
ABOUT WHAT THE DEFENDANT'S IS,
WHY DOES THAT OPEN THE DOOR TO
THE DEFENDANT BEING IMPEACHED
AND DOESN'T THAT GIVE THE STATE
AN INCENTIVE TO BE INCOMPLETE ON
A DIRECT EXAMINATION?
>> I WAS GETTING AT THAT THAT'S
ONE OF REASONS THE STATE DIDN'T
WANT TO PLAY THE ENTIRE TAPE.
THE TAPE WAS HOURS LONG.
WOULD IT CHANGE THE ENTIRE FLOW
OF TRIAL TO PLAY SIX OR EIGHT
HOURS OF THIS TAPE?
>> WAIT, MAYBE WE'RE BOTH
HEARING DIFFERENT THINGS.
I'M ASKING YOU, JUST TAKE THE
ONE EXAMPLE.
>> RIGHT.
>> THE STATEMENT IS MADE.
HE SAID THAT.
WHATEVER THAT WAS, IT WASN'T
SUPPOSED TO HAPPEN.
BUT--
>> THAT WAS BROUGHT OUT THROUGH
THE DETECTIVE'S DIRECT
TESTIMONY.
>> WAIT, LET ME-- THE COMPLETE
ANSWER WAS HE STOPPED BREATHING
AND THAT IS WHAT IS ASKED ON
CROSS-EXAMINATION.
JUST LET'S SAY THAT'S ALL
THEY'RE SAYING, YOU WERE NOT
COMPLETE IN YOUR ANSWER BECAUSE
YOU'RE RECALLING SOMETHING FROM

YOUR RECOLLECTION WHEN THE
VIDEOTAPE CLEARLY SAYS WHAT THE
DEFENDANT SAID?
>> THE VIDEOTAPE CLEARLY SHOWED
WHAT THE DEFENDANT SAID BUT HERE
THE STATE DECIDED NOT TO ADMIT
IT.
>> IF THE STATE HAD INTRODUCED
THE ENTIRE TAPE, WOULD HAVE
INCLUDED EXCULPATORY STATEMENTS
AT ISSUE HERE, WOULD THE STATE
BE-- [INAUDIBLE]
>> THAT IS NOT QUESTION NOT
BEFORE THIS COURT BECAUSE IT
DIDN'T GO HERE.
THAT IS AN OPEN QUESTION.
>> SEEMS TO ME EITHER WAY THE
CONVICTIONS ARE COMING IN?
>> IF YOU LOOK AT THE WORDING OF
THE STATUTE, 96.10, 98.06 I
WOULD AGREE WITH YOU, THAT IS
NOT AT ISSUE IN THIS COURT IN
THIS PARTICULAR CASE.
>> THE ISSUE HERE HE IS
SAYING-- WHAT I'M GETTING FROM
THIS IS THAT SOMEHOW THE STATE
MANIPULATED THE EVIDENCE TO GET
THOSE NINE CONVICTIONS IN?
>> THAT IS NOT TRUE.
>> IT MAY NOT BE TRUE WHAT I'M
SAYING IS, THEY CHOSE NOT TO
INTRODUCE THE TAPE AND INSTEAD
FORCED THE DEFENDANT TO BRING
OUT THE EXCULPATORY STATEMENTS
DURING CROSS-EXAMINATION, AND
THEN BY DOING SO THE-- WAS
INADMISSIBLE.
>> EXCULPATORY STATEMENTS
POSITIONER OF THEM WERE BROUGHT
OUT THROUGH THE DIRECT TESTIMONY
OF DETECTIVE RIVERA.
DURING THE CROSS-EXAMINATION, 80
PAGES OF CROSS-EXAMINATION, WHAT
HAPPENED THAT THE DEFENDANT WAS
ESSENTIALLY TESTIFYING.
HE WAS TESTIFYING BECAUSE HE WAS
BRINGING OUT EVERY POSSIBLE
EXCULPATORY STATEMENT HE MADE TO
THE POLICE OFFICER DURING THIS
LONG INTERROGATION.

>> FOURTH DCA SAYS HERE THE
DEFENSE COUNSEL BROUGHT OUT THE
EXCULPATORY PORTION STATEMENTS
DURING CROSS-EXAMINATION OF THE
DETECTIVE.
WASN'T JUST DIRECT.
>> IT WAS ON BOTH, YOU'RE
CORRECT.
>> I MEAN KIND OF A FRIENDLY
QUESTION TO YOU.
I'M JUST SAYING THAT EVEN IF THE
TAPE HAD BEEN PLAYED AS THE
DEFENDANT WISHED IT HAD BEEN
PLAYED THOSE EXCULPATORY
STATEMENTS WOULD HAVE COME OUT
ON THE TAPE.
>> YES.
>> THEN IMPEACHMENT WOULD HAVE
BEEN PROPER.
EITHER WAY IMPEACHMENT WAS GOING
TO TAKE PLACE.
>> I BELIEVE YOU'RE CORRECT.
>> TO REACH A RESULT DIFFERENT
FROM THAT, WOULDN'T WE HAVE TO
RECEDE FROM MOORE?
>> YES, YOU WOULD.
>> IN THESE KIND OF SITUATIONS
SEEMS TO ME THE ONLY WAY THE
DEFENDANT RESERVE THE RIGHT NOT
TO BE IMPEACHED, NOT
CROSS-EXAMINE A DETECTIVE?
IF A DETECTIVE IS ON THE STAND
AND TESTIFIES TO A PORTION OF
WHAT THE DEFENDANT SAYS, BUT
DOESN'T COMPLETE IT, THE ONLY
REMEDY FOR THE DEFENDANT IS NOT
QUESTION THE DETECTIVE,
ESSENTIALLY--
>> THAT IS A EXACTLY WHAT
HAPPENED IN KACZMAR ON TWO
OCCASIONS.
>> YOU DON'T SEE A DIFFERENCE
BETWEEN, AND AGAIN, BETWEEN IT
BEING JUST EXCULPATORY, I'M
INNOCENT, I'M INNOCENT, VERSUS A
INCOMPLETE ANSWER TO WHAT THE
DEFENDANT SAID?
NOW YOU DON'T SEE THAT SHOULD BE
ANY DIFFERENT?
>> I DON'T.

I REALLY DON'T.
WITH NO FURTHER QUESTIONS THE STATE WOULD ASK THAT YOU AFFIRM THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL AND, AND, QUASH THE OPINION IN FOSTER.
THANK YOU.
>> KACZMAR DOES NOT HAVE TO BE REVERSED BECAUSE IN KACZMAR IT WAS ISSUE OF WHAT THE, THERE WAS RELEVANCY PROBLEM.
THERE WAS TWO, THERE IS TWO PORTIONS IN KACZMAR.
ONE, WAS WHERE HE, HIS LAWYER WANTED, WAS GOING TO CROSS-EXAMINE THE DETECTIVE TO ELICIT THAT MR. KACZMAR NEVER SAID HE STARTED, DENIED THAT HE STARTED THE FIRE BUT MR. KACZMAR HAD ALREADY SAID IN DIRECT, APPARENTLY, IF YOU TAKE THE OTHER CASE TOGETHER, THAT HE DIDN'T EVEN KNOW ABOUT THE FIRE OR THE MURDER.
SO RELEVANCE DOES HIS DENIAL HAVE, NUMBER ONE?
NUMBER TWO, THE, THE I AM INNOCENT, FIRST OF ALL WHAT WAS PUT IN WAS NOT MISLEADING.
THERE WAS NO REASON TO CORRECT IT AND THAT IS WHAT THE RULE OF COMPLETION OR OPENING THE DOOR UNDER THE FOSTER CASE CONCERNS.
IF THERE IS NO MISLEADING NATURE OF WHAT WAS ADMITTED, YOU DON'T GET TO ADMIT THE REST OR ELSE YOU'RE SUBJECT TO IMPEACHMENT.
SO KACZMAR IS DISTINGUISHABLE.
THE SAME THING WITH YANOS IS DISTINGUISHABLE, THE FOURTH DCA CASE.
BECAUSE IN YANOS HE WANTED TO ELICIT, AFTER HE SAID I DID IT, I KIDNAPPED HER, I DID THIS TO HER, I DID THAT TO HER, HE WANT, I REALLY LOVED HER, I WANTED TO GET BACK TOGETHER.
THERE IS NO RELEVANCY IS REMORSE.

REMORSE IS A SENTENCING ISSUE.
IT IS NOT A GUILT PHASE ISSUE.
THERE WAS NOTHING GOING ON
THERE.
>> GO BACK TO KACZMAR, I'M
READING FROM THE OPINION, THE
STATE REDACTED KACZMAR'S
STATEMENTS HE WAS FRAMING
MAUDLIN BECAUSE HE WAS INNOCENT.
>> THEY TOOK THAT OUT, YES.
>> AND THEN THEY, WANTED TO GET
THAT IN, THE DEFENSE WANTED TO
GET THAT IN.
AND BUT THE BASIC RULING HERE,
OKAY, YOU CAN GET IT IN.
SEEMS TO ME THAT EXCULPATORY AND
IT MAKES IT WHAT WAS, AND IT
MAKES THE OTHER STATEMENT AT
THAT CAME IN INCOMPLETE AND
MISLEADING IN SOME SENSE BECAUSE
IT DOESN'T HAVE THE QUALIFIER
ABOUT THE PURPOSE AND IT SEEMS
TO ME THAT, I JUST, I DON'T
UNDERSTAND HOW YOU DISTINGUISH
THIS BECAUSE WHAT WE DECIDED
HERE IN THIS CASE, YOU CAN BRING
IT IN, IF YOU BRING IT IN, YOU
WILL BE SUBJECT TO THE
IMPEACHMENT OF THE HEARSAY
DECLARANT WHO IS, WHO IS
SPEAKING WHEN IT IS BROUGHT IN?
ISN'T THAT CORRECT?
>> THAT'S WHAT, THAT'S WHAT THE
COURT SAID HOWEVER--
>> I'M STRUGGLING HOW, I'M NOT,
MAYBE I'M MISSING SOMETHING HERE
BUT JUST SEEMS LIKE TO ME THAT
CORE PRINCIPLE, IS AT ISSUE
HERE, AND WE ARE-- I UNDERSTAND
THE ARGUMENT.
I MEAN I UNDERSTAND THE
EQUITABLE ARGUMENT THAT, THAT
YOU'RE MAKING, THAT WAS BEHIND
THE DECISION IN THE SECOND
DISTRICT.
I'M NOT, I DON'T DENIGRATE THAT
ARGUMENT BUT IT, I DON'T SEE HOW
WE REACH THAT CONCLUSION IN YOUR
FAVOR IN A WAY THAT CAN BE
CONSISTENT WITH KACZMAR OR

HUGGINS FOR THAT MATTER?
>> HUGGINS, THERE WAS NOTHING MISLEADING ABOUT THE STATEMENT AT ALL.
HUGGINS IS OPPOSITE TO THE FACTS IN THIS CASE.
THERE WAS, THERE WAS NOTHING MISLEADING.
THE DEFENDANT JUST WANTED TO GET THE STATEMENT.
SO, YEAH, YOU'RE EXPOSED TO IMPEACHMENT.
IN KACZMAR I AM INNOCENT IS LEGAL CONCLUSION.
THAT IS DECISION FOR THE JURY TO DECIDE, NOT FOR THE DEFENDANT TO DECLARE.
THE JURY IS SUPPOSED TO INNOCENT.
>> ARE YOU ARGUING, I AM INNOCENT IS NOT EXCULPATORY?
>> IT NOISE IF IT WAS, I DIDN'T DO IT, THAT IS SOMETHING ELSE.
I AM INNOCENT IS A JURY QUESTION.
ON TOP OF THAT, THIS WAS ADMITTED IN KACZMAR, THAT STATEMENT WAS ADMITTED TO SHOW CONSCIOUSNESS OF GUILT.
>> YOU'RE SAYING IT IS REALLY IMPROPER TESTIMONY FOR A DEFENDANT TO SAY, I AM INNOCENT?
>> YEAH.
>> SOMEHOW THAT IS IMPROPER.
>> USUALLY OBJECTIONS WILL BE SUSTAINED.
DEFENDANT GETS ON THE STAND.
I AM INNOCENT, THANK YOU VERY MUCH.
IT DIDN'T PROVE OR DISPROVE ANYTHING.
IT IS JUST, THIS IS DETERMINATION FOR THE JURY.
I AM INNOCENT.
DOESN'T MEAN ANYTHING.
>> [INAUDIBLE]
>> THAT'S RELEVANT.
BUT I AM INNOCENT ISN'T.
AND AS FAR AS THE --
>> WE'RE OUT OF TIME.

>> OUT OF TIME?
>> [INAUDIBLE]
>> YOU ARE?
>> OH.
>> THANK YOU.
THANK YOU FOR YOUR ARGUMENT.
WE'RE IN RECESS.