Rory Enrique Conde v. State of Florida

CHIEF AFTER THIS CASE ON THE DOCKET, THE COURT WILL TAKE ITS REGULAR 15-MINUTE RECESS AFTER WE HEAR THE CONDE CASE.

MAY IT PLEASE THE COURT. MY NAME IS BENJAMIN WAXMAN. I REPRESENT MR. CONDE. INSTEAD OF TRYING MR. CONDE FOR THIS PREMEDITATED MURDER, THE STATE WAS BENT ON THE PROSECUTING HIM AS THE TAMIA -- TAMIAMI STRANGLER. THE STATE PRESENTED EVIDENCE THAT WAS VIRTUALLY IN DISTINGUISHABLE FROM THE SINGLE-CHARGED HOMICIDE. THROUGHOUT CLOSING ARGUMENT, IT REPEATEDLY REFERRED TO MR. CONDE IN TERMS LIKE THE TAMIAMI STRANGLER AND URGED THE JURY TO CONVICT HIM FOR THIS MURDER, BASED ON THE FACT THAT HE HAD COMMITTED THESE OTHER MURDERS. THE TRIAL JUDGE SIMPLY DID NOT SEE THE TREES FOR THE FOREST.

YOUR ARGUMENT IS BASICALLY THAT THE TRIAL JUDGE ERRED WITH, IN MAKING ITS WILLIAMS RULE DETERMINATION. IS THAT CORRECT?

CORRECT. AND LET ME, I JUST WANT TO TELL THE COURT HOW I THINK THIS HAPPENED. WE HAD A CASE HERE, WHERE THESE SIX MURDERS WERE INITIALLY JOINED BY INDICTMENT. THE COURT, THEN, GRANTED A MOTION TO SEVER. THE COURT, ONCE IT DETERMINED THAT IT WAS GOING TO ALLOW --

MISSOURI MOVED TO RECEIVER?

THE DEFENDANT -- WHO MOVED TO -- MOVED TO SEVER.

WHO MOVED TO SEVER?

THE DEFENDANT MOVED TO SEVER AND THEN, IN THE MIDST OF ALL OF THESE CASES ON APPEAL, I THINK THE COURT FAILED TO RECOGNIZE THAT, UNDER THE GUISE OF WILLIAMS RULE, THE STATE SIMPLY PROSECUTED MR. CONDE BASED ON CHARACTER AND BASED ON THE IMPERMISSIBLE THEORY THAT HE HAD A PROPENSITY TO COMMIT MURDERS.

WOULD YOU COME BACK AND RESTATE MORE CLEARLY WHAT YOU HAVE JUST OUTLINED, AS FAR AS THE PROCEDURE. YOU SAY THAT INITIALLY THE DEFENDANT --

THE SIX --

SEVERED THE SIX CASES INTO SEPARATE CASES AND THAT MOTION WAS GRANTED, CORRECT?

CORRECT.

SO THEY WERE SEVERED INTO SIX DIFFERENT CASES.

CORRECT.

THEN DID YOU SAY SOMETHING ABOUT ON APPEAL?

WHAT HAPPENED NEXT IS THE STATE FILED A MOTION OF INTENT TO INTRODUCE EVIDENCE OF ALL OF THE FIFTH UNCHARGED --

ALL RIGHT. THE CRIMINAL RULE, THE WILLIAMS RULE.

AND THE DEFENDANT MOVED TO EXCLUDE THAT EVIDENCE THAT, THE COURT DENIED THAT MOTION BUT, THEN, GRANTED IT WAS THE DEFENDANT'S MOTION TO CONSOLIDATE.

THE DEFENDANT MOVED TO CONSOLIDATE ALL THE CASES, THEN, AGAIN?

CORRECT, ON THE THEORY, I THINK --

ALL RIGHT. YOU USED THE WORD "APPEAL" IN YOUR ORIGINAL NEARRATION, AND TELL ME ABOUT THAT.

THAT IS THE NEXT STEP. THE STATE THEN TOOK AN INTERLOCUTORY APPEAL TO THE THIRD DCA, AND THE THIRD DCA DETERMINED THAT THE CONSOLIDATION WAS IN ERROR, ESSENTIALLY THAT A DEFENDANT, THAT THESE CASES SHOULD BE SEVERED, AND REINSTITUTED THE SEVERANCE, AND WHAT I AM SUGGESTING IS THAT, IN THE MIDST OF WE HAVE GOT THE TAMIAMI STRANGLER, WE HAVE GOT MR. CONDE FOR ONE MURDER, THEN WE HAVE GOT THE TAMIAMI STRANGLER, AND IN THE END, NO, WE ARE JUST TRYING MR. CONDE FOR ONE MURDER THAT THE TRIAL COURT LOST ITS WAY.

WHAT PRINCIPLE OF LAW WOULD PRU CLUED -- WOULD PRECLUDE USING THESE OTHER CASES AS WILLIAMS RULE, IF THEY HAVE THE SIGNATURE OF THE DEFENDANT?

I AM SORE I THE LAST PART?

IF THEY HAVE THE SIGNATURE OF THE DEFENDANT, WHAT RULE WOULD PRECLUDE USING THESE OTHER CASES AS WILLIAMS RULE?

I THINK THERE IS THREE LIVES OF EXCLUSION OR ANALYSIS THAT THE COURT HAS TO GO THROUGH. THERE IS THE QUESTION OF WHETHER OR NOT THEY HAVE ANY INITIAL RELEVANCE.

RELEVANCY IS THE HALLMARK. YOU AGREE WITH THAT?

CORRECT BUT ULTIMATELY, EVEN IF EVIDENCE IS RELEVANT, IT STILL MAY BE NEEDED TO EXCLUDE IT, BECAUSE THE DANGER OF UNFAIR PREJUDICE OUTWEIGHS THAT RELEVANCE, AND EVEN IF THAT IS NOT THE CASE, AS IN THIS CASE, THOUGH THAT WAS THE CASE HERE, ADDITIONALLY IF THE EVIDENCE IS SO PREVALENT, IF IT IS SO MUCH WHAT THE CASE IS ABOUT THAT IT BECOMES THE FEATURE OF THE CASE, THEN FOR THAT REASON, A SEPARATE REASON, THE EVIDENCE SHOULD HAVE BEEN EXCLUDED.

SO YOU AGREE IT IS YOUR BURDEN TO SHOW THAT THERE WAS UNDUE ATTENTION TO THESE WILLIAMS RULE CASES OR THEY BECAME THE FOCUS OF YOUR MAN'S TRIAL.

CORRECT, AND I THINK THAT THE RECORD IS SO REPLETE WITH THEY HAVE HAD THAT IT IS ABSOLUTELY IMPOSSIBLE TO RECOGNIZE. YOU HAD --

ONCE, ON THAT, IF IT WAS, SINCE THIS DOES MEET AT LEAST, AND YOU CONCEDE THAT THERE ARE SUBSTANTIAL SIMILARITY IN THE VARIOUS OTHER CRIMES, THE ARGUMENT WAS IT SHOULD ALL BE, BECAUSE THERE IS OTHER EVIDENCE OF IDENTITY, ALL OF THE OTHER CRIMES SHOULD BE EXCLUDE, OR WAS THERE ANY ATTEMPT IN THE TRIAL BELOW, TO SAY THIS DETAIL, REALLY, IS TOO INFLAMMATORY. FOR EXAMPLE THAT THE THIRD VICTIM, THAT THERE WAS THE NUMBER THREE ON THE BACK. WAS THERE ANY ATTEMPT TO SAY THERE WAS SOME ASPECTS OF THE OTHER CRIMES THAT, THEMSELVES, WOULD BE SO INFLAMMATORY THAT THOSE SHOULD BE EXCLUDE, OR WAS IT A GENERAL IDEA THAT IT SHOULD BE, NONE OF IT SHOULD COME IN, BECAUSE IT IS ALL COLLECTIVELY TOO INFLAMMATORY?

I THINK THE OBJECTIONS TO THE EVIDENCE GENERALLY WERE STATED AND RESTATED ABUNDANTLY. I THINK AS PART OF THOSE OBJECTIONS, DEFENSE COUNSEL CERTAINLY INCORPORATED THE NOTION THAT, BECAUSE OF ALL OF THE EVIDENCE, THE VOLUME OF EVIDENCE, THAT IT I AM PER MISERABLY WAS BECOMING A FEATURE -- THAT IT IMPERMISSIBLELY WAS BECOMING A FEATURE OF THE CASE.

WAS THERE EVIDENCE IN THE OTHER CRIMES THAT WERE SUBSTANTIALLY SIMILAR THAT WERE SO SPECIFICALLY INFLAMMATORY THAT YOU COULD POINT TO, THAT THE JURY WOULD HAVE BEEN LISTENING TO THAT DETAIL, VERSUS --

I HAVE CERTAINLY ATTEMPTED TO SINGLE OUT CERTAIN EVIDENCE THAT I THINK IS CLEARLY, HAS LITTLE, IF ANY, BEARING ON ANY POTENTIAL RELEVANCE. I MEAN, THE STATE INDICATED THAT, WELL, WE NEED TO PRESENT THIS EVIDENCE FOR IDENTITY. I MEAN, THERE WAS DNA EVIDENCE. THERE WAS FIBER EVIDENCE. THERE WAS BLOOD EVIDENCE. THERE WAS THE CONFESSION. THERE WAS ABSOLUTELY NO NEED TO BRING IN EVIDENCE OF THIS VOLUME OF THIS NATURE, TO ESTABLISH THAT MR. CONDE WAS THE PERPETRATOR OF RHONDA DUNN'S HOMICIDE.

YOU HAVE MADE A GREAT DEAL IN YOUR BRIEF, OUT OF THE VOLUME OF THE EVIDENCE. NOW, YOU LIST THERE WAS EIGHT WITNESSES. THERE WERE NINE WITNESSES. NOW, AS TO THESE VARIOUS MURDERS, WHAT OCCURRED IS, AS I UNDERSTAND THE RECORD, IS THAT ONE WITNESS WAS CALLED, AND THAT WITNESS TESTIFIED AS TO WHAT THAT WITNESS KNEW ABOUT EACH OF THESE MURDERS. ISN'T THAT CORRECT?

THAT'S CORRECT.

AND SO WHEN YOU SAY THAT THERE WERE NINE WITNESSES, THEY DIDN'T CALL THEM NINE SEPARATE TIMES.

NO, AND I DIDN'T, IN ANY WAY, MEAN TO MISLEAD THE COURT. IN FACT, SEVERAL OF THE WITNESSES WERE WITNESSES FOR VARIOUS DIFFERENT HOMICIDES, BUT THE FACT IS THAT, FOR THREE DAYS, IT WAS NOT UNTIL DAY FOUR IN THIS TEN-DAY TRIAL, THERE WAS NO EVIDENCE INTRODUCED BY THE STATE REGARDING THE HOMICIDE OF RHONDA DUNN!

ONE OF THE ISSUES IN THIS CASE WAS PREMEDITATION, CORRECT?

YES.

AND THE, AND ONE OF, AND A FACTOR IN EACH OF THESE WAS STRANGULATION.

CORRECT.

CORRECT. AND ONE OF THE ISSUES WAS THE GENERAL SETTING OF HOW EACH OF THESE INDIVIDUALS WERE RECLOTHED AND PUT BACK OUT AT THE SAME PLACE, CORRECT?

THIS WAS PART OF THE EVIDENCE THAT THE STATE INTRODUCED, YES.

RIGHT. WELL, IT SHOWED CERTAIN IDENTITY, DID IT NOT? OF THE EACH OF THESE MURDERS BEING CONNECTED?

AGAIN, IF THE COURT IS LOOKING INTO THE ISSUE OF MODUS OPERANDI, TO ESTABLISH SOME KIND OF A MODUS OPERANDI, AGAIN THAT, IS NOT AN ULTIMATE FACT IN A CASE LIKE. THAT THE PURPOSE OF INTRODUCING THAT TYPE OF EVIDENCE IS TO SHOW THAT THERE WAS SOME KIND OF SIGNATURE TO IDENTIFY THE DEFENDANT AS THE PERPETRATOR OF THE CHARGED HOMICIDE. AGAIN, I GO BACK TO THE EVIDENCE THAT WE HAD THERE. DNA, FIBER, TIRE PRINT, EVERYTHING

ELSE. WHAT THIS COURT'S JURISPRUDENCE RECOGNIZES IS THAT ALL WILLIAMS RULE EVIDENCE IS INHERENTLY UNFAIRLY PREJUDICIAL, AND ACCORDINGLY, WHAT IS REQUIRED IS THAT THE STATE, WHEN IT USES THIS TYPE OF EVIDENCE, SURGICALLY DEPLOY IT IN A WAY TO FILL WHATEVER PARTICULAR EVIDENTIARY GAP IT HAS. IN THIS CASE, AGAIN, WITH THE VOLUMES OF EVIDENCE, WITH THE DETAILS IT SPARED NO DETAIL, THE STATE, YOU KNOW, USED THE SLEDGEHAMMER TO CRACK AN EGG!

WELL, HOW MUCH, AGAIN, HOW MUCH TIME WAS PUT ON THE WILLIAMS RULE CASES? WHAT PERCENTAGE OF THE ENTIRE TRIAL WOULD YOU SAY IT TOOK UP?

I MEAN, I HAVE TRIED TO CHARACTERIZE IT IN A NUMBER OF DIFFERENT WAYS. AGAIN, I THINK IT IS SIGNIFICANT THAT, FOR THE FIRST THREE DAYS, 30 PERCENT OF A TEN-DAY TRIAL, YOU KNOW, IN TERMS OF THE EVIDENTIARY PORTION, WAS DEVOTED STRICTLY TO EVIDENCE OF UNCHARGED HOMICIDES. IF WE COUNT UP THE NUMBER OF EXHIBITS THAT WERE INTRODUCED --.

WAIT A MINUTE. THE FIRST DAYS OF THIS TRIAL WERE TAKEN UP BY NOTHING EXCEPT WILLIAMS RULE. IS THAT BECAUSE ARE SAY SOMETHING.

CORRECT. CORRECT. BUT I DON'T ASK THE COURT TO NOT ONLY LOOK AT THE QUANTITY. THE COURT NEEDS TO LOOK AT THE QUALITY OF THE EVIDENCE THERE. IS A QUESTION OF WHETHER THIS EVIDENCE TRANSCENDED THE BOUNDS OF RELEVANCE. I MEAN, CERTAINLY ONE COULD ARGUE THAT IT HAD SOME RELEVANCE TO SOME OF THESE ISSUES, BUT REALLY, WHAT WAS THE NECESSITY OF THE STATE INTRODUCING THIS EVIDENCE? WHY DID WE NEED THE DETAILS?

THE DETAIL, THOUGH, GOES BACK TO THIS, THAT, ONCE IT IS RELEVANT, YOU HAVE GOT, FIRST OF ALL, YOU HAVE GOT TO ESTABLISH THAT HE COMMITTED THE OTHER CRIMES. THERE HAS TO BE SOME THRESHOLD THERE THAT IT WAS HIM, SO THAT FIBER DNA, I PRESUME, WOULD ESTABLISH THAT IT IS HIM THAT IS THE PERSON IN EACH ONE, BUT THE SIGNATURE, THE, TO BE ABLE TO ESTABLISH THAT HE IS, IN FACT, THE PERSON THAT COMMITTED THE CRIME CHARGED, THAT IS WHERE SHOWING SUBSTANTIAL SIMILARITY COMES IN. ISN'T THAT WHAT THE, WHAT ALL THAT OTHER EVIDENCE WAS ABOUT WAS TO SHOW THAT EACH OF THE CRIMES WAS SUBSTANTIALLY SIMILAR TO THIS LAST CRIME?

TO WHAT END? TO WHAT END? AND WHAT I HAVE SUGGESTED IS THAT THE STATE SAYS THE PURPOSE OF SIGNATURE-TYPE EVIDENCE IS TO SHOW THAT THE DEFENDANT WAS THE PERPETRATOR OF THE CHARGED HOMICIDE. AND WHAT I AM SAYING IS THAT THE STATE INTRODUCED A MOUNTAIN OF EVIDENCE. THERE WAS NO CONTEST THAT MR. CONDE WAS THE PERPETRATOR OF RHONDA DUNN'S HOMICIDE. THERE WAS NO CONTEST. AND THEY SAID, WELL, MAYBE THERE IS THIS MUCH OF A CONFESSION IT, AND THEN -- OF A CONTEST, AND THEN PROCEEDED FOR DAYS AND DAYS AND DAYS. DID WE REALLY NEED THE EVIDENCE?

BUT GOING BACK TO WHAT JUSTICE WELLS ASKED, THERE WAS AN ISSUE THAT IT WAS WHETHER THIS MURDER OF, WAS PREMEDITATED.

ABSOLUTELY.

SO WHY WOULDN'T THE OTHER, JUST LIKE IN THE GORE CASE, WHY WOULDN'T THE FACT THAT THERE WERE THESE FIVE PRIOR PLANNED MURDERS BE RELEVANT TO THE ABSENCE OF THIS BEING EITHER A MISTAKE OR SOME KIND OF AN EMOTIONAL OUTBURST, TO ESTABLISH THAT?

BECAUSE WHAT THIS COURT'S JURISPRUDENCE SAYS IS THAT THERE COMES A POINT WHERE TOO MUCH IS TOO MUCH. AND IN THIS --

I GUESS THE TOO MUCH, IF A JURY IS HEARING FIBER EVIDENCE OR DNA EVIDENCE THAT, IS HARDLY THE KIND -- I MEAN, THAT MIGHT BE TOO MUCH, BUT THAT IS NOT INFLAMMATORY

STUFF. WHAT I GUESS I WAS ASKING YOU EARLIER, WERE THERE SOME FACTS ABOUT THESE OTHER CRIMES THAT, REALLY, WERE IRRELEVANT TO PREMEDITATION, BEYOND THE PALE OF WHAT YOU NEEDED FOR IDENTITY, AND WERE THOSE SPECIFICALLY OBJECTED TO? I ASKED ABOUT, YOU KNOW, THE NUMBER ON NUMBER THREE, ON THE VICTIM. THAT SEEMS LIKE SOMEWHAT OF AN INFLAMMATORY, IRRELEVANT DETAIL FOR THE CRIME CHARGED. YOU KNOW, IF YOU COULD GIVE US SOME SPECIFICS OTHER THAN THAT YOU KNOW, BECAUSE WE ARE TALKING ABOUT QUALITY, ABOUT WHAT, YOU KNOW, GIVE US FIVE OF THE WORST THINGS THAT CAME OUT THAT HAD NO EARTHLY REASON FOR COMING OUT, IF THE CASE WAS TO BE TRIED ON JUST LAST MURDER?

I THINK SOME OF THE EVIDENCE, FOR INSTANCE, WAS THE DETAILS OF THE PREMORTEM AND POST-MORTEM SEXUAL RELATIONS THAT HE HAD WITH THESE VICTIMS. I DON'T THINK THAT WAS NECESSARY TO DEMONSTRATE PREMEDITATION. IN TERMS OF THE EVIDENTIARY EXHIBITS, THE PHOTOGRAPHS THAT WERE INTRODUCED, THERE WERE, FOR EACH OF THE VICTIM, THERE WERE TEN TO 15 DIFFERENT PHOTOGRAPHS SHOWING BODY POSITIONS. THEY HAD PHOTOGRAPHS FROM THE AUTOPSIES WITH THE EYES PRIDE -- PRYED OPEN TO SHOW SHOW-PETACKIA.

WAS THERE SOMETHING WHERE THE JUDGE WOULD SAY THAT IS TRUE, I AM REALLY NOT GOING TO ALLOW IN, WAS THERE ANY LIMITATION AND DID THE JUDGE EXERCISE ANY DISCRETION IN SAYING WE ARE NOT GOING TO HAVE 60 PHOTOGRAPHS FOR EACH HOMICIDE?

I THINK BASICALLY THE POSITION THAT THE COURT TOOK, FIRST OF ALL, THE INITIAL OBJECTION, IN OTHER WORDS MANY OF THESE OBJECTIONS WERE FILED IN WRITTEN PLEADINGS. THE ATTORNEYS WERE VERY THOROUGH, AND, AGAIN, I THINK THAT THEY SPECIFICALLY INCORPORATED THE NOTION THAT THE VOLUME OF EVIDENCE HERE, THAT IT APPEARS THAT THE STATE INTENDS TO INTRODUCE, WEIGH WAY SURPASSES ANY -- WAY SURPASSES ANY CONCEIVABLE RELEVANCE. AT EACH AND EVERY POINT WHEN PICTURE ONE CAME IN, WE OBJECT. THIS GOES TOO FAR. PICTURE TWO, NO. IN THE BEGINNING THERE WAS THE PRESERVATION OF THE --

DID THE JUDGE LIMIT ANY OF IT?

NO.

IN OTHER WORDS YOU ARE SAYING IF WE LOOK AT THIS TRIAL, THIS WOULD BE NO DIFFERENT THAN IF THE FIVE OTHER CASES HAD BEEN CONSOLIDATED FOR TRIAL. THERE WAS NO DETAIL LEFT ABOUT THOSE OTHER FIVE CRIMES THAT WOULD BE ANY DIFFERENT THAN IF ALL OF THEM HAD BEEN TRIED TOGETHER.

AS I READ THE RECORD, THAT IS PRECISELY, THEY WERE PRESENTED IN AWAY THAT I BELIEVE IS IN DISTINGUISHABLE FROM THE CASE OF RHONDA DUNN. I THINK ONE OF THE EXAMPLES, ONE OF THE THINGS I LOOK AT IS THAT THE WILLIAMS RULE INSTRUCTION THAT THE COURT GAVE SO REPEATEDLY, BECAUSE THERE WAS SO MUCH EVIDENCE, THAT I THINK IT LOSES ALL BEARING, AND THE INSTRUCTION DIDN'T LIMIT THE EVIDENCE TO ANY PARTICULAR PURPOSE. THE JUDGE KIND OF, IN THE SAME MANNER THAT HE ALLOWED IN ALL OF THIS EVIDENCE, SAID, WELL, IT ALL COMES IN TO PROVE MOTIVE, OPPORTUNITY, INTENT, PREPARATION, PLAN, KNOWLEDGE, IDENTITY, ABSENCE OF A MISTAKE OR ACCIDENT. THE WHOLE LITANY OF PURPOSES, MOST OF WHICH HAD ABSOLUTELY NO BEARING IN THIS CASE. AND THAT WAS READ REPEATEDLY TO THE JURY, AND THIS IS, I THINK, EXEMPLIFIES THE MANNER IN WHICH THE STATE WAS PERMITTED TO TRY THIS CASE.

WHAT IS OUR REVIEW CRITERIA HERE? IS IT AN ABUSE OF DISCRETION?

YES. IT IS AN ABUSE OF DISCRETION.

THAT IS A PRETTY HIGH HURDLE.

ABSOLUTELY, AND I THINK --

CAN YOU, YOU ARE SAYING THAT NO REASONABLE JUDGE WOULD HAVE DONE WHAT THIS JUDGE DID, BY LETTING THESE CASES IN TO SHOW A SIGNATURE OR A PATTERN. THIS IS THE WAY THIS DEFENDANT COMMITS HIS CRIMES.

THIS --

HE HAS DONE IT IN THIS CASE. HE DID IT IN THIS CASE, HE DID IT IN THIS CASE, HE DID IT IN THIS CASE. IF THE STATE CHOOSES TO PUT HIS CASE ON THAT WAY -- TO PUT ITS CASE ON THAT WAY IN THAT FASHION, THAT IS THE MOST EFFECTIVE WAY IN THE MIND OF THE STATE TO PUT HIS CASE ON, CAN WE SAY THAT THERE HAS BEEN AN ABUSE OF DISCRETION THERE?

I THINK IF THIS COURT LOOSE TO ITS DECISIONS IN STEVE SON. IF THE COURT LOOSE TO ITS DECISION INS HENRY, THOSE CASES CONSIDERED THE ISSUE OF FEATURE, AND THOSE CASES RECOGNIZE, AS THE COURT SUGGESTS, ISN'T THERE SOME RELEVANCE HERE? SHOULDN'T THE STATE HAVE SOME LEEWAY TO PRESENT SOME OF THE EVIDENCE? AND THOSE CASES SAY ABSOLUTELY YES, BUT NOT EACH AND EVERY SINGLE DETAIL. IN STEVE SON, WE ARE TALKING ABOUT THE ATTEMPTED MURDER OF THE POLICE OFFICER FOUR DAYS AFTERWARDS, AND THIS COURT RECOGNIZED, YES, SOME EVIDENCE BUT NOT ALL OF THE DETAILS.

, SO AGAIN, YOU ARE SAYING THE ERROR THE COURT MADE WAS NOT IN LETTING THE EVIDENCE IN AS WILLIAMS RULE EVIDENCE. IT IS THE PART OF THE CASES WHERE WE SAY YOUR ARGUMENT IS THAT THE REASON THIS IS REVERSIBLE IS BECAUSE IT BECAME A FEATURE, IT WAS TOO MUCH OF IT. IS THAT --

THE ATTACK IS TWOFOLD. ONE IS THAT IN THIS CASE, GIVEN THE VOLUME AND THE QUALITY, THE NATURE OF THE EVIDENCE, THE DANGER OF UNFAIR PREJUDICE OUTWEIGHED THE RELEVANCE.

AND THAT IS THE BALANCING TEST.

CORRECT, AND SECONDLY --

YOU ARE NOT ARGUING THE SECOND, THE BASIC ADMISSION WAS IMPROPER, ARE YOU?

NO. IN OTHER WORDS, I CONCEDE THAT THERE ARGUABLY WAS SOME RELEVANCE. I MEAN, THE TEST FOR RELEVANCE IS VERY --

THERE IS A LOT OF OUR CASES, WE ARE LOOKING AT THE THRESHOLD QUESTION AS TO WHETHER IT SHOULD COME IN AT ALL AND THAT IS NOT WHAT THIS CASE IS ABOUT.

WE ACKNOWLEDGE SOME RELEVANCE. THE DANGER OF UNFAIR PREJUDICE FAR SURPASSED THAT VERY WELL VANS, AND BEYOND THAT -- OF THAT RELEVANCE, AND BEYOND THAT IT BECAME A FEATURE OF THIS ARGUMENT.

THAT IS BASICALLY A 403 ARGUMENT, CORRECT?

CORRECT. THE FEATURE IS A HYBRID 403 ARGUMENT.

AND IN WILLIAMS, WE MADE IT CLEAR THAT THE 403 ARGUMENT WAS THE BROAD DISCRETION OF THE TRIAL COURT.

CORRECT.

AND ISN'T IT A FACTOR IN THIS TYPE OF SITUATION, THAT IT HAS TO BE TAKEN INTO CONSIDERATION THAT, IF THE, IF THIS SIGNATURE WAS ONLY ON ONE OTHER PERSON, THEN THERE WOULD BE LESS EVIDENCE, BUT WHERE THERE IS SIX PEOPLE, IS THAT TO BE KEPT FROM THE JURY?

YES. I THINK THAT THE EVIDENCE COULD HAVE BEEN PRESENTED IN A FAR MORE RESTRAINED WAY. PRESENTED CONFESSION. PRESENT THE CONFESSION THAT, FROM MR. CONDE'S MOUTH, HOW HE DID THESE MURDERS, AND THEN SPRENT ONE PIECE OF EVIDENCE TO SHOW THAT THEY OCCURRED.

ONCE IT BECOMES, SO YOU DON'T OBJECT TO THE FACT THAT THE JURY BE MADE AWARE THAT THIS FELLOW CONFESSED TO SIX MURDERS.

MY BEST CASE SCENARIO AND WHAT I BELIEVE DUE PROCESS SHOULD REQUIRE, IS THAT HE SHOULD HAVE BEEN CHARGED FOR THIS SINGLE MURDER, AND, YES, EVEN HIS CONFESSION TO FIVE ADDITIONAL HOMICIDES, THAT THAT EVIDENCE IS SO POWERFULLY OVERWHELMED THIS JURY THAT THEY SHOULD NOT HAVE HEARD IT, BUT IN THE EVENT THAT THEY WERE TO HEAR SOME EVIDENCE, IF I CONCEDE THAT THERE IS SOME RELEVANCE, THE JURY WAS ALLOWED TO HEAR SOME EVIDENCE THAT HE COMMITTED THESE OTHER MURDERS, THEN, YES, PARE DOWN THE CASE. DON'T PRESENT FIVE EVIDENCE. THEY DON'T NEED THE DNA, THE FIBER, ALL OF THIS EVIDENCE.

CAN I ASK YOU A QUESTION AND LET YOU TAKE A BREATH. THIS COURT'S JURISPRUDENCE, ALSO, HAS DEALT WITH CASES, FOR EXAMPLE OVER IN THE TAMPA AREA, WHERE THERE ARE TWO EVENTS THAT OCCUR, AND THIS COURT HAS HELD THAT IT WAS INSUFFICIENT TO ESTABLISH PREMEDITATION IN A STAININGLATION -- IN A STRANGULATION DURING A SEXUAL ACT, THAT TYPE OF THING. YOU AGREE THAT THERE IS SUCH AUTHORITY OUT THERE.

YES. I HAVE CITED SOME OF THOSE CASES.

WHERE IS THE LINE TO BE DRAWN, IF YOU BRING IN THREE PRIOR EVENTS? IS THAT SUFFICIENT? DO WE HAVE CASE LAW THAT SAYS THAT IS SUFFICIENT, BECAUSE WE HAVE CASE LAW THAT YOU SEEM TO BE HAMMERING UPON, UTILIZING EVIDENCE TO DEMONSTRATE WHAT WAS INVOLVED IN EACH ONE OF THESE THEN BECOMES PREJUDICIAL, AND WHAT IS THE STATE'S SIDE IN SAYING WE HAVE PREMEDITATION, THEY ARE ALL DONE IN THE SAME -- WHERE IS, WHERE ASK DO WE DRAW THE -- WHERE DO WE DRAW THE LINE, AS PARTY OF LINE, AND THAT IS WHAT YOU ARE SAYING IS ABUSE OF DISCRETION AS A MATTER OF LAW, IS THAT CORRECT?

YES.

IS THERE A THIRD, A FOURTH, A FIFTH, WHERE IN THIS CASE COULD YOU DRAW IT FOR ME, PLEASE.

THE COURT COULD HAVE EXERCISED ITS DISCRETION IN A NUMBER OF WAYS. THE COURT COULD HAVE SAID TO THE STATE, YOU HAVE GOT SOME EVIDENCE HERE. UNDENIABLY YOU HAVE GOT SOME HIGHLY PREJUDICIAL EVIDENCE. I AM GOING TO ALLOW YOU TO EITHER PRESENT CONFESSION OR SOME SUMMARY --

DID HE PRESENT THE CONFESSION IN THE PREMEDITATION?

NO. HE DID NOT.

WHY WOULD THE STATE BE LIMITED TO DEMONSTRATE PREMEDITATION AS ONE OF THE ELEMENTS ELEMENTS THAT IS INVOLVED IN THE PROOF HERE?

BECAUSE NONE OF THE ELEMENTS REALLY SHOWED ANYTHING MORE THAN WAS IN THE CONFESSION. IT WAS MORE ADDITIONAL EVIDENCE PILED UPON MORE EVIDENCE, THAT SAID THIS GUY IS THE TAMIAMI STRANGLER, AND THAT IS WHERE I WANT TO TAKE THE COURT NEXT, IS TO THE CLOSING ARGUMENT, BECAUSE THIS CASE WAS NOT ARGUED AS THE HOMICIDE, AS THE MURDER CASE OF RHONDA DUNN. IT WAS ARGUED AS AN ASSASSINATION OF HIS CHARACTER. THE STATE REPEATEDLY, IN CLOSING ARGUMENT, REFERRED TO HIM AS THEIR ATTACKER, THE TAMIAMI STRANGLER, THE KILLER, THE PERSON WHO WENT OUT HUNTING FOR VICTIMS. THOSE ARE NOT THE WORDS OF CHARACTERIZING HIS CONDUCT. THOSE ARE THE WORDS OF CHARACTER ASSASSINATION, AND THAT IS PRECISELY THE LINE THAT WILLIAMS RULES WAS INTENDED TO DRAW. BEYOND THAT, AND WORSE THAN THAT, IS THE PROSECUTION MADE THE PROPENSITY ARGUMENT REPEATEDLY IN CLOSING ARGUMENT, AND THAT IS THE VERY CORE OF WHAT WILLIAMS RULE IS INTENDED TO PROTECT.

ISN'T THAT A SEPARATE ISSUE ON APPEAL IS WHETHER INFLAMMATORY ARGUMENTS AT CLOSING --

IT IS A SEPARATE ISSUE, BUT I THINK IT ALSO GOES TO THE ISSUE OF WHETHER OR NOT THIS EVIDENCE TRANSCENDED THE BOUNDS OF RELEVANCE. WAS IT REALLY JUST USED FOR PREMEDITATION OR INTENT, OR DID THE STATE HAVE SOMETHING ELSE IN MIND, AND I THINK YOU LOOK TO A CLOSING ARGUMENT TO SEE WHAT IS THE STATE REALLY DOING, AND BY THE TIME YOU HAVE GOT THE PROSECUTOR SAYING RORY WAS GOING TO STRANGLE DUNN, AS HE HAD DONE TO FIVE OTHER VICTIMS. HE WAS GOING TO SUFFOCATE HER, JUST LIKE ALL THE OTHERS. DUNN WAS GOING TO END UP DEAD THIS NIGHT, JUST LIKE THE OTHERS! WAS GOING TO KILL DUNN AS HE HAD DONE WITH THE OTHERS. THESE WERE STATEMENTS THAT THE PROSECUTOR MADE THROUGHOUT THE CLOSING ARGUMENT! THESE ARE PROPENSITY ARGUMENTS, AND IT IS THE VERY THEORY THAT IS PROHIBITED BY WILLIAMS RULE EVIDENCE.

LET ME ASK YOU THIS, IF YOU HAD A SERIAL KILLER, AND HE COMMITTED EVERY ONE OF HIS MURDERS IN AN IDENTICAL FASHION, ARE YOU SAYING THAT THE STATE WOULD BE LIMITED TO PUTTING ON THREE? ARE YOU TRYING TO DRAW ARBITRARY FIGURE, SAY, THREE? IF THE STATE SAYS THIS IS THE WAY I WANT TO TRY MY CASE, HE KILLED EIGHT PEOPLE. HE KILLED THEM IN AN IDENTICAL FASHION. THIS IS WHAT I WANT THE JURY TO SEE. I WANT TO PUT ON EVERY ONE OF THOSE EIGHT CASES. IS THAT AN ABUSE OF DISCRETION?

NO. THEN LET THE STATE TRY HIM FOR THE SIX MURDERS. LET HIM INDICT HIM --

NO. THEY WANT TO PUT THEM ON IN YOUR CLIENT'S CASE AS WILL YAMSES RULE.

BUT THE -- AS WILLIAMS RULE.

BUT THE PROBLEM IS THAT THOSE ISSUES WERE NOT BEFORE THE JURY. THE JURY DID NOT HAVE IN FRONT OF IT, WAS THERE PROOF BEYOND A REASONABLE DOUBT THAT HE MURDERED VICTIM ONE, TWO, THREE, FOUR AND FIVE.

YOU ARE GETTING AWAY FROM ANSWERING MY QUESTION. COULD THE STATE PUT THOSE EIGHT PEOPLE ON, IF THAT IS THE WAY THEY CHOSE, THE STATE CHOSE TO TRY THE CASE THAT WAY?

IN THIS --

IS THAT AUTOMATICALLY AN ABUSE OF DISCRETION?

I THINK IT IS AUTOMATICALLY AN ABUSE OF DISCRETION. I THINK THAT THIS, AGAIN, THE STATE FOR THE, TOOTH AND NAIL, TO SEPARATE THESE CASES. WHY NOT BRING THESE CASES TOGETHER, IF YOU ARE TRYING THE TAMIAMI STRANGLER? WHY NOT BRING IN THOSE CHARGES?

WHY NOT BRING IN THE SIX CHARGES? WELL, THE ANSWER IS THAT THE STATE WANTED TO HAVE MULTIPLE BITES AT THE DEATH PENALTY APPLE. IT SAID, WELL, LISTEN. IF WE CAN GET ALL THE EVIDENCE, PREJUDICE THE JURY, WE WILL GET A SHOT AT THIS ONE, AND IF THE JURY REJECTS IT, THEN LET'S GO TO NUMBER TWO AND NUMBER THREE.

CHIEF JUSTICE: YOUR WARNING LIGHT IS ON ABOUT SAVING SOME TIME FOR REBUTTAL, SO YOU HAVE TO MAKE A CHOICE.

THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT. DEBORAH RESCIGNO REPRESENTING THE STATE OF FLORIDA. YOUR HONORS, THE WILLIAMS RULE EVIDENCE WAS VITALLY RELEVANT TO THE STATE PROVING MOTIVE, INTENT, AND PLAN.

WOULD YOU COME BACK INITIALLY, AND WORK US THROUGH THE SEAMING INCONSISTENCY BETWEEN HAVING THESE CHARGES SUFFERED, OKAY, AND THEN, IF I UNDERSTAND IT CORRECTLY, THERE WAS AN APPEAL TAKEN TO THE THIRD DISTRICT?

YOUR HONOR, AS FAR AS I UNDERSTAND, IN THE INDICTMENT CHARGED ALL SIX MURDERS. THE DEFENDANT, THEN, FILED A MOTION TO IS SEVER. THE TRIAL COURT AGREED AND SEVERED. WAY LATER, MANY MONTHS LATER, APPROXIMATELY A YEAR LATER, AT THE WILLIAMS RULE HEARING, THE PRETRIAL HEARING, ONCE IT WAS DETERMINED THAT THE EVIDENCE WOULD BE COMING IN, THE DEFENDANT SAID, THEN, THAT THEY WOULD BE SEEKING TO FILE A MOTION TO CONSOLIDATE. THEY DID THAT. THE STATE OBJECTED TO THE CONSOLIDATION. AND THEN IT WAS --

ON WHAT BASIS?

THE FACT THAT, IF THEY HAD, IF IT WAS MISS JOINDER, THEN YOU COULDN'T, THEN, COME BACK AND CONSOLIDATE THE CRIMES, BECAUSE THEY HAD BEEN SEVERED BECAUSE OF MISS JOINDER, AND THEN YOU COULDN'T COME BACK AND CONSOLIDATE THEM, AND THAT IS THE REASON THAT THE COURT OF APPEAL AFFIRMED THE REFUSAL TO CONSOLIDATE.

SO IT WAS ON A LEGAL TECHNICALITY THAT YOU ARE TALKING ABOUT HERE?

YES.

STILL HELP ME WITH THE PROPOSITION THAT THE SEAMING INCONSISTENCY, IF THERE IS A DECISION THAT THERE HAS TO BE A SEVERANCE OF THESE CHARGES IN ORDER FOR THE DEFENDANT TO HAVE A FAIR TRIAL, THAT ORDINARILY IS BASED ON THE FACT THAT THE DISCLOSURE OF THE SECOND OR THE THIRD OR THE OTHER CHARGES THAT ARE THERE IN THE SAME TRIAL ON THE CHARGES PENDING, WOULD BE UNDULY PREJUDICIAL TO THE DEFENDANT, AND SO HERE WE HAVE THAT SEEMING INCONSISTENCY, BECAUSE WE HAVE A RULING THAT THERE MUST BE A SEVERANCE, THAT THESE CASES CANNOT BE TRIED TOGETHER, BECAUSE IF THEY WERE, THERE WOULD BE UNDUE PREJUDICE TO THE DEFENDANT, AND YET THROUGH THE INTRODUCTION OF THE SAME EVIDENCE IN THE WILLIAMS RULE, YOU HAVE, IN EFFECT, THE CONSOLIDATION OF THE CHARGES. SO REALIZING THERE IS DIFFERENCES IN THE EVIDENCE THAT WOULD BE PRESENTED IN EACH INDIVIDUAL CASE, BUT NEVERTHELESS, HELP WORK ME THROUGH THAT SEEMING INCONSISTENCY THAT THERE IS A LEGAL RULING THAT THERE MUST BE A SEVERANCE, BECAUSE OF UNDUE PREJUDICE, BECAUSE THAT IS WHAT THE RULE SAYS, TO THE DEFENDANT, AND YET THAT ALL THE EVIDENCE ABOUT THE OTHER CASES IS LET IN UNDER THE WILLIAMS RULE. ISN'T, HELP ME. IN OTHER WORDS JUST HELP ME WITH THAT AT THE OUTSET.

YOUR HONOR, WE DON'T SEE AN INCONSISTENCY. THE CAUSES OF ACTION WERE SEVERED UNDER THE RULE OF PROCEDURE FOR MISS JOINDER, BUT REGARDING THE INTROUFX THE EVIDENCE, IT

WAS VITALLY RELEVANT FOR THE STATE TO PROVE PLAN IN THIS CASE.

WHAT IS THE PURPOSE OF SEVERANCE?

THE PURPOSE OF SEVERANCE?

DOESN'T IT SAY IN THE RULE, THAT THE REASON FOR SEVERANCE IS SO THAT THERE WILL NOT BE THIS UNDUE PREJUDICE TO THE DEFENDANT FOR THE DISCLOSURE.

TO BE TRIED.

HAVING THE DISCLOSURE OF THE OTHER CHARGES IN THE SAME TRIAL ON THE SINGLE CHARGE.

BUT THIS WAS NOT, THIS WAS WILLIAMS RULE, LIMITED WILLIAMS RULE EVIDENCE THAT WAS ADMITTED. IT WASN'T THE SAME THING AS HAVING ALL OF THE CRIMES TRIED TOGETHER. THAT IS THE DIFFERENCE.

HOW WASN'T IT?

THAT IS THE DIFFERENCE BETWEEN THE TWO.

THE DEFENDANT MAKES A PRETTY POWERFUL ARGUMENT THAT IT WAS NO DIFFERENCE EXCEPT THAT IT DIDN'T GET TO DEFEND ON THE OTHER FIVE CHARGES, THAT WHAT THE STATE PUT IN WAS EXACTLY THE SAME AS WHAT THEY WOULD HAVE PUT IN, WITHOUT SPARING ANY DETAIL WHATSOEVER, IF THEY HAD ALL BEEN TOGETHER. CAN YOU, WAS, DID THE STATE EXERCISE ANY LIMITATION IN WHAT IT SOUGHT TO INTRODUCE? DID THE JUDGE EXERCISE ANY DISCRETION IN ANY LIMITATION?

YES, HE DID, YOUR HONOR, AND IF YOU LOOK AT THE HEARING, THE PRETRIAL HEARING ON THE WILLIAM RULE, YOU WILL KNOW THAT THE JUDGE WAS VITALLY CONCERNED WITH HOW MUCH OF THIS EVIDENCE OR THE DETAILS OF THIS EVIDENCE THAT WOULD COME IN, AND THE WITNESSES WHO DID COME IN, EVEN THOUGH IN NUMBER THERE WERE A LOT OF WITNESSES, THEIR TESTIMONY WAS LIMITED. THEY WERE ONLY BROUGHT IN TO SAY, YES, I PICKED UP THIS PIECE OF EVIDENCE. I MEAN, THERE WAS NO GREAT DETAIL GONE, AND IT WAS THE MINIMAL A TESTIMONY TO COME IN.

A NARROW PACKAGE.

VERY NARROW AND ONLY JUST TO ESTABLISH THE IDENTITY.

WHAT ABOUT THE FACT THAT YOUR OPPONENT SAYS THAT, IN THE PHOTOGRAPHS AREA, THAT THERE ARE A WHOLE BUNCH OF PHOTOGRAPHS FOR EACH OF THE OTHER VICTIMS?

THE PHOTOGRAPHS WERE ALSO LIMITED, YOUR HONOR. THEY ARE NOT GRU SMCHLT THERE IS NO ALLEGATION OF GRUESOME EVIDENCE. THEY WERE BASICALLY BROUGHT IN TO SHOW THE POSITION OF THE BODY AS THEY WERE FOUND, AND THERE WAS A GENERALLY AUTOPSY PHOTOS, BUT THERE WERE NO GRUESOME PHOTOS BROUGHT IN AND MOST OF THEM WERE NOT EVEN OBJECTED TO AT TRIAL.

WHAT RELEVANCE WOULD BE THE POSITION OF THE BODIES?

I AM SORRY?

WHAT WOULD BE THE WILLIAMS RULE EVIDENCE THERE FOR PURPOSE OF POSITION OF THE BODIES?

JUST CRIME SCENE TECHNICIAN SAYING THAT THEY ARRIVED AT THE SCENE AND THAT IS HOW THE BODIES WERE FOUND, BECAUSE PART OF THE PATTERN OF THE HOMICIDES IN THIS CASE WERE THAT ALL SIX VICTIMS HAD BEEN REDRESSED AND THEIR BODIES WERE DUMPED IN SWALE AREAS LIKE TRASH, SO THE PHOTOGRAPH OF EACH ONE WAS TO SHOW THAT PATTERN, THAT EACH ONE HAD BEEN DUMPED IN THE SWALE AREA.

WHAT ABOUT THIS EVIDENCE THAT, IF I UNDERSTAND IT CORRECTLY, IN SOME OR ALL OF THE CASES, THE VICTIMS WERE SEXUALLY ABUSED AFTER THEY WERE KILLED?

IN SEVERAL OF THE AREAS, YES.

WHAT WAS THE RELEVANCE OF THAT IN THE OTHER CASES FOR THIS CASE?

ALL OF THAT TESTIMONY WAS IN CONDE'S CONFESSION. ALL OF THESE VICTIMS, JUST TO BACK UP A MINUTE, ALL OF THESE VICTIMS SHOW THE SIMILARITY. ALL THE VICTIMS WERE PICKED UP BY MR. CONDE AT THE SAME LOCATION. THEY WERE LURED BACK TO THE SAFETY OF HIS APARTMENT TO SEX. AFTER SEX, THEY WERE ALL MANUALLY STRANGLED. THEN THEY WERE REDRESSED AND THEN DUMPED IN THE SAME RESIDENTIAL NEIGHBORHOOD IN THE SWALES. AND THEY WERE FOUND WITH NO MONEY NEW YORK CITY IDENTIFICATION, NOTHING ON THEM.

-- MONEY, WITH NO MONEY, NO IDENTIFICATION, NOTHING ON THEM.

DO YOU AGREE THAT THE FIRST THREE DAYS OF THIS TRIAL WERE DEVOTED TO THE FACTS OF THE OTHER FIVE MURDERS?

I AM NOT SURE IF I CAN AGREE TO THAT WITHOUT CHECKING THE RECORD, BUT I KNOW THAT THAT, THEY WERE BRINGING THEM IN IN A SEQUENTIAL ORDER, TO PRESENT THE FIRST VICTIM WAS FOUND, DON'T FORGET THAT RHONDA, WHOSE TRIAL THIS WAS, SHE WAS THE LAST ONE MURDERED, SO THEY BEGAN BY BRINGING IN THE WITNESSES WHO DISCOVERED THE FIRST VICTIM THROUGH THE FIFTH VICTIM, AND SO THAT, YOU KNOW, WOULD PROBABLY MAKE SENSE.

NOW, DURING THESE THREE DAYS OF INFORMATION ABOUT THESE FIVE MURDERS, TELL ME WR WHAT WAS NOT INTRODUCED THAT YOU WOULD INTRODUCE AT A TRIAL? JUST TAKE THE FIRST CASE EVEN. WHAT WAS NOT INTRODUCED DURING THE COURSE OF MR. CONDE'S TRIAL, THAT YOU WOULD, THE STATE WOULD NOW BRING IN FOUR A TRIAL OF THAT PARTICULAR MURDER?

I THINK JUST THERE WOULD BE MUCH MORE EXTENSIVE DETAILS THAT WOULD BE INCLUDED AT A TRIAL. I THINK THIS WAS JUST MINIMAL. AS A MATTER OF FACT, TO SHOW THAT, INSTEAD OF BRINGING THE FIVE DIFFERENT, THE FIVE DIFFERENT MEDICAL EXAMINERS WHO HAD DONE THE AUTOPSIES IN THIS CASE, THE STATE BROUGHTON. SO IT HAD THAT MEDICAL EXAMINER JUST REVIEW THEM, AND HE GAVE VERY LIMITED TESTIMONY, JUST BASICALLY SHOWING THAT THE CAUSE OF DEATH, THE NATURE OF THE WOUNDS, AND INJURIES. AND, YOUR HONORS, WHY THIS WAS SO IMPORTANT TO PROVE PLAN, WAS BECAUSE THE DEFENDANT'S DEFENSE WAS THAT THIS WAS SECOND-DEGREE MURDER. WE WERE TRYING A FIRST-DEGREE MURDER CASE, AND THEIR WHOLE DEFENSE WAS THAT IT WAS SECOND-DEGREE, THAT THERE WAS A LACK OF PREMEDITATION. THEY CONTINUED TO ARGUE THAT ON APPEAL, SO WE HAD TO SHOW NOT JUST THAT A CRIME WAS COMMITTED BUT THE DEGREE OF THE CRIME. AND THERE WAS NO BETTER WAY TO THE STATE TO SHOW THAT THAN TO SHOW THAT HE HAD DONE THIS ON FIFTH PRIOR OCCASIONS, WITH THE SAME FACTS SHOWING THAT HE HAD PLANNED, THEN, TO DO THIS TO RHONDA.

WELL, HOW MUCH OF THE DETAIL ABOUT THE FIRST CRIME THAT WAS THE ONE THAT HE WAS A, IT WAS, A MALE THAT HE THOUGHT WAS A FEMALE, WASN'T THERE, HOW MUCH MUCH EMPHASIS WAS BROUGHT TO BEAR AS TO THAT FIRST CRIME, AND IN PARTICULAR AS TO, I THOUGHT THERE WAS SOMETHING EVEN ABOUT WHETHER HE KNEW THAT THE PERSON WAS A MALE BEFORE OR

AFTER SEX.

ACTUALLY THE EMPHASIS ON THAT CRIME WAS REALLY BROUGHT OUT BY THE DEFENDANT, BECAUSE THAT WAS PART OF HIS DEFENSE. HE TRIED TO CLAIM THAT, WHEN HE HAD BEEN DUPED INTO BELIEVING THAT THIS FEMALE WAS A MALE, AND ONCE HE DISCOVERED THAT AFTER HAVING SEXUAL RELATIONS, THAT HE THEN SNAPPED, AND THAT, THEN, EVERY MURDER AFTER THAT WAS SOME SORT OF AN IN INTERNAL COMBUTION OF REMEMBERING THE BETRAYAL OF THAT.

SO YOU ARE SAYING THAT ACTUALLY THE DEFENDANT WAIVED ANY ARGUMENT THAT THESE OTHER CRIMES SHOULDN'T COME IN OR, ONCE THEY CAME IN, HE USED IT IN THAT WAY?

YES. THAT WOULD BE A WAIVER OF HIS, ON THAT, BECAUSE THEY DEFINITELY STRESSED THAT THAT WAS PART OF THEIR DEFENSE THEORY, WAS THAT HE HAD SNAPPED AND THAT IS WHAT, THEN, CAUSED THESE OTHER CRIMES.

THE DEFENSE THEORY IN THIS CASE?

YES.

WAS THAT HIS THERE ANY THIS CASE, THAT HE SNAPPED, AND THAT IS WHY THE DUNN MURDER WAS COMMITTED?

YEAH. HIS --

OR WAS THAT A THEORY FOR THE ACTUAL FIRST SNURD.

HIS THEORY WAS HE SNAPPED -- FIRST MURDER?

HIS THEORY WAS THAT HE SNAPPED AND THAT IS WHATLETTE LED TO THE FIRST MURDER, AND THAT AFTER THAT, AND THIS IS SOMEWHERE IN THE BRIEF, I DON'T REMEMBER THE PAGE NUMBER, AND AFTER THAT, EVERY TIME THAT HE WENT OUT WITH A PROSTITUTE, THAT HE WOULD HAVE THIS SORT OF INTERNAL COMBUTION AND IT WOULD HARKEN HIM BACK TO THE BETRAYAL BY THE FIRST PROSTITUTE, AND THAT IS WHAT WOULD LEAD TO THESE OTHER FIVE PEOPLE BEING MURDERED.

SO NOW ARE YOU SAYING THAT THE DEFENDANT REALLY DIDN'T PRESERVE THE OBJECTION TO THE OTHER CRIME EVIDENCE, BECAUSE THE DEFENDANT WANTED THIS IN, TO SHOW THAT THESE WERE ALL SECOND-DEGREE MURDER OFFENSES?

NO. THEY OBJECTED TO THE WILLIAMS RULE EVIDENCE COMING IN, BUT AS FAR AS THE EXTENSIVENESS IN EMPHASIZING IT, THEY USED THAT AS THEIR THEORY.

ON THE FIRST ONE.

YES. AND REGARDING THE FEATURE ARGUMENT, WHICH YOUR HONOR NOTED IS JUST A LIMITED APPLICATION OF THE BALANCING TEST, PART OF THAT, THE STATE SHOWS THAT THE STRENGTH OF THE EVIDENCE ESTABLISHING THE FACT IS ONE OF THE FACTORS THAT YOU CONSIDER. NOW, DEFENSE COUNSEL POINTED TO THE CONFESSION, BUT THE CONFESSION DIDN'T SAY OR GIVE ANY EVIDENCE OF PREMEDITATION, AND ALSO HE IS CHAEJING THE CONFESSION. HE CHAEJD THE ADMISS-- HE IS CHALLENGEING THE CONFESSION. HE CHALLENGED THE ADMISSIBILITY OF IT BELOW AND HE IS CHALLENGING IT ON APPEAL.

HOW ABOUT THE FEATURE OF THE ARGUMENT AND THE PROSECUTOR IN THE CASE, AND THAT IS THAT YOUR OPPONENT CONTENDS THAT, IN ESSENCE HERE, THIS WAS NOT A TRIAL OF THE

DEFENDANT FOR THIS SINGLE MURDER, THAT IT TURNED INTO A TRIAL OF THE TAMIAMI STRANGLER. AND THAT THAT WAS THE WAY THE CASE WAS PRESENTED, AND THAT WAS THE WAY THE CASE WAS ARGUED TO THE JURY, SO THAT THE EVIDENCE OF THE OTHER CRIMES DID BECOME THE FEATURE OF THIS CASE, AND IN IMPLORING THE JURY TO CONVICT THIS SERIAL KILLER, THE TAM MIAMI STRANGLER?

-- THE TAMIAMI STRANGLER?

THE STATE DISAGREES WITH THAT, YOUR HONOR, AND I NOTE THAT OUT OF ALL OF THE DEFENSE OBJECTIONS THAT DEFENSE COUNSEL HAS BROUGHT UP IN THE ARGUMENTS, THOSE WERE THE ONLY ONES THAT WERE PRESERVED, AND THERE IS NO OBJECTION NOTED HERE.

THERE WERE ONLY THREE OKTSS THAT WERE LODGED?

ONE WAS IN -- ONLY THREE OBJECTIONS THAT WERE LODGED?

ONE WAS IN THE STATE'S OPENING, AND THAT COMMENT WAS, WHEN HE WAS DISCUSSING FIBER EVIDENCE, THAT HE SAID EACH AND ETCH EVERY ONE OF THE VICTIMS -- EACH AND EVERY ONE OF THE VICTIMS OF THE TAMIAMI STRANGLER HAD THESE FIBERS ON THEM. IN THE PURPOSE OF THE PROSECUTOR AND THE ARGUMENT, HE WAS SHOWING WHAT THE EVIDENCE WOULD SHOW, THAT COMMENT.

AND THERE WAS NO REFERENCE TO THE TAMIAMI STRANGLER?

NO. THERE WAS NO REFERENCE TO THE KILLER OR THEIR ATTACKER. THERE WERE NO OBJECTIONS TO THAT.

HOW MANY TIMES, IF WE KNOW, WAS THAT KIND OF PHRASE USED, TAMIAMI STRANGLER? DID THE PROSECUTOR USE THAT THROUGHOUT THE CASE?

NO. I WOULD SAY THROUGHOUT THE CASE, I WOULD SAY LESS THAN FIVE. YOU KNOW, ABOUT FIVE TIMES THAT THAT WAS USED. AND --

AND NEVER AN OBJECTION.

AND IT WASN'T OBJECTED TO, NO.

WHAT ABOUT AT CLOSE SOMETHING.

IN CLOSING, THERE WAS AN OBJECTS TO A REFERENCE TO -- AN OBJECTION TO A REFERENCE TO THE DEFENDANT AS AN ADULT REMEMBER AND AS SOCIOPATH, AND THERE WAS A LIMITED INSTRUCTION GIVEN ON THAT.

SO IF WE ASSUME THAT THERE IS NO OBJECTION AT CLOSING BUT WE, I THINK YOU WOULD AGREE OR THE RECORD SEEMS TO SHOW THAT THE PROSECUTOR SEEMED TO REFER TO THIS AS HE KILLED RHONDA DUNN JUST AS HE HAD KILLED THE OTHERS, AND HE KILLED THIS ONE JUST AS HE HAD KILLED BEFORE. THINGS LIKE THAT. WOULD IT, THEN, BE A FUNDAMENTAL ERROR IN NOT DECLARE A MISTRIAL, WHERE THE PROSECUTOR SEEMS TO BE, AT CLOSING ARGUMENT, NOW, PROSECUTING SIX CASES INSTEAD OF ONE?

NO, YOUR HONOR. OUR POSITION IS THAT THE WILLIAMS RULE EVIDENCE WAS PROPERLY ADMISSIBLE. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BECAUSE IT WAS CLEARLY RELEVANT. IT WAS VITAL TO THE STATE'S CASE TO PROVE MOTIVE.

I AM NOT TALKING ABOUT. THAT I AM TALKING ABOUT THE CLOSINGS ARGUMENT AND WHERE

THE PROSECUTOR SEEMS TO BE, NOW, DESPITE WHAT THE LIMITED PURPOSE OF THE WILLIAMS RULE EVIDENCE, NOW ARGUING THAT THE DEFENDANT HAS KILLED SIX PEOPLE, INCLUDING MS. DUNN BUT NOT LIMITED TO HER, AND DESPITE THE FACT THAT THERE WAS NO OBJECTION, WAS IT FUNDAMENTAL ERROR NOT TO DECLARE A MISTRIAL AT THAT POINT?

THE STATE DISAGREES WITH THAT, BECAUSE FROM MY READING OF THE ARGUMENT, HE WAS MERELY REFERRING TO THE EVIDENCE THAT HAD BEEN INTRODUCED, THE LIMITED WILLIAMS RULE EVIDENCE THAT HAD BEEN INTRODUCED.

IS IT CORRECT HERE THAT, FROM THE, DURING THE VOIR DIRE, THAT BOTH COUNSEL WERE TALKING ABOUT THE FACT THAT THERE WERE SIX MURDERS? I MEAN, THAT STARTED OUT FROM THE VERY BEGINNING OF THIS CASE, CORRECTA?

THAT'S CORRECT. AND THEY WANTED THAT, SO FAR AS THE DEATH-QUALIFYING THE JUFERMENT YES. THAT WAS BROUGHT OUT.

BUT DIDN'T THIS -- DEATH-QUALIFYING THE JURY, YES. THAT WAS BROUGHT OUT.

BUT DIDN'T THIS WHOLE STRANGLER ARGUMENT, DIDN'T THAT REALLY START OUT IN THE OPENING STATEMENT, AND THERE WAS, IN FACT, AN OBJECTION TO HIM TALKING ABOUT THIS TAMIAMI STRANGLER AND THIS FIBER THAT WAS INCLUDED, THAT WAS GOING TO BE PRESENTED IN EVIDENCE? SO THERE WAS, REALLY, AN OBJECTION TO THIS, RIGHT AT THE BEGINNING, WHEN HE STARTS TALKING ABOUT STRANINGT LETTER, WASN'T THERE?

HE -- ABOUT THE STRANGLER, WASN'T THERE?

HE HASN'T ARGUED THAT ON APPEAL.

IN THE OPENING STATEMENT, WASN'T THERE AN OBJECTION TO HIS USE OF THAT TERM?

IN THE GUILT PHASE OPENING? THE ONLY TERM THAT HE HAD OBJECTED TO WAS THE ONE THAT I JUST READ TO THE COURT. EACH AND EVERY OFTEN THE VICTIMS FROM THE TAMIAMI STRANGLER HAD THESE FIBERS ON THEM FROM CARPETING. THAT WAS THE ONLY COMMENT THAT WAS OBJECTED TO.

THIS WAS, IN FACT, MADE IN THE OPENING STATEMENT, TAMIAMI STRANGLER.

OPENING IN THE GUILT PHASE.

DIDN'T THE JUDGE SUSTAIN THE SNOX.

YES. THE JUDGE SUS-- THE OBJECTION?

YES. THE JUDGE SUSTAINED THE OBJECTION BUT I DON'T SEE INDICATED THAT HE GAVE A CURETIVE ON THAT ONE.

HOW MANY TIMES, I MEAN, IF THE JUDGE SUSTAINED THE OBJECTION, THEN AT WHAT POINT IS THE PROSECUTOR SUPPOSED TO KNOW, THEN THAT, IS NOT A TERM THAT THEY ARE SUPPOSED TO USE? I MEAN HOW MANY TIMES DOES SOMEONE HAVE TO KEEP ON --

WELL, THERE WERE NO OTHER REFERENCES TO THE TAMIAMI STRANGLER AFTER THAT, NO OBJECTIONS IN THE OPENING AFTER THAT. BY THE PROSECUTOR.

THERE WERE NO MORE REFERENCES.

NO MORE REFERENCES. SORE I.

THEN IT STARTED AGAIN IN CLOSING.

IN CLOSING, THE ONLY OBJECTED TO COMMENTS WERE ADULT REMEMBER AND SOCIOPATH -- WERE ADULTERER AND SOCIOPATH AND NOT TAMIAMI STRANGLER.

IF THERE WAS AN OBJECTION TO THE PHRASE TAMIAMI STRANGLER AND THE TRIAL COURT SAID OBJECTION SUSTAINED, DON'T USE THAT PHRASE, WHATEVER, I THINK YOU STATED BEFORE THAT THERE WERE, THEN, FIVE OR SIX OTHER TIMES THAT THE PROSECUTOR USED THAT PHRASE. IS THAT CORRECT, AFTER THE JUDGE SUSTAINED THAT OBJECTION?

NO. NOT FROM WHAT I, NOT FROM MY RECOLLECTION OF THE RECORD, YOUR HONOR, ALTHOUGH I AM NOT SURE.

SO THERE WEREN'T, AFTER THE JUDGE SUSTAINED THAT OBJECTION, THERE WERE NO MORE REFERENCES TO THE TAMIAMI STRANGLER BY THE PROSECUTOR?

I DON'T BELIEVE SO. NOT FROM MY RECOLLECTION OF THE RECORD. THERE WAS THE ONLY OTHER OBJECTION IN CLOSING, THEN, WAS TO THOSE REFERENCES AS ADULTER ERROR SOCIOPATH, BUT REGARDING THE LIMITED APPLICATION OF THE FEATURE EVIDENCE FOR THE WILLIAMS RULE, THAT IS PART OF THE BALANCING TEST, AND THE FACTORS THAT HAVE TO BE LOOKED AT THEIR ARE WHAT WAS THIS FACT BEING SERIOUSLY OR VIGOROUSLY DISPUTED BY THE DEFENDANT, AND IT WAS, PREMEDITATION WAS ARGUED BY THE DEFENDANT THROUGHOUT THE TRIAL. IT IS ARGUED ON APPEAL, AND THE WILLIAMS RULE EVIDENCE WAS VITAL TO SHOWING THAT. IT WAS VITAL TO SHOWING THAT, BECAUSE HE HAD DONE THIS FIVE OTHER TIMES, THAT HE HAD A PLAN WHEN HE PICKED UP RHONDA TO MURDER HER.

YOUR OPPOSITION SAYS THAT, WELL, IF YOU LET THIS IN, THEN YOU SHOULD AT LEAST LIMIT IT, AND THEN HE GAVE SOME EXAMPLES OF, WELL, ALLOW THE CONFESSION, AND THEN MAYBE ONE OTHER PIECE OF EVIDENCE ALLOWED.

AGAIN, THE CONFESSION-.

THE QUESTION TO YOU, THOUGH, IS WAS THAT ARGUMENT ADVANCED BY THE DEFENSE AT TRIAL? THAT IS WAS THAT ARGUED TO THE --

NO, I DON'T BELIEVE IT WAS, NOT AT THE WILLIAMS RULE HEARING, AND, ALSO, THE CONFESSION DID NOT CONTAIN DIRECT EVIDENCE OF PREMEDITATION. AS A MATTER OF FACT, THEY HAVE ARGUED THAT IT DIDN'T SHOW PREMEDITATION, THE CONFESSION. SO THE ONLY EVIDENCE THAT THE STATE HAD TO SHOW PREMEDITATION WERE THE WILLIAMS RULE CRIMES, THE FIVE OTHER CRIMES. WE CRIED TOWNSEND AND WUORNOS. THEY WERE BOTH INSTANCES WHERE EVIDENCE OF SIX OTHER HOMICIDES HAD BEEN INTRODUCED AND FOUND TO NOT BE, EVEN THOUGH THERE WAS EXTENSIVE TESTIMONY, FOUND NOT TO BE, NOT TO HAVE BEEN FEATURE EVIDENCE AT THE TRICHLT -- AT THE TRIAL.

DO WE KNOW IF THESE OTHER CASES HAVE BEEN PROSECUTED?

TO DATE?

YES.

I DON'T HAVE ANY KNOWLEDGE OF THAT FROM THE RECORD, YOUR HONOR. AT THE TIME OF THIS TRIAL, THEY WERE NOT PROSECUTED. THAT WAS ONE OF THE REASONS, BECAUSE THERE WASN'T A CONVICTION, THAT WAS ONE OF THE REASONS THAT THE STATE NEEDED TO INTRODUCE THIS TESTIMONY, TO PROVE IT WAS HIM, IN ORDER TO GET THE WILLIAMS RULE EVIDENCE IN. THEY

WOULDN'T HAVE BEEN ALLOWED TO ADMIT WILLIAMS RULE, IF THEY DIDN'T PROVE THAT HE WAS THE ONE WHO COMMITTED THESE FIVE OTHER CRIMES, SO THEY HAD TO PRESENT OTHER TESTIMONY LINKING HIS DNA AND THE FIBER EVIDENCE LINKING HIM TO THEM.

BUT IF HE AGREES IT IS HIM, HIS ARGUMENT IS I DIDN'T PREMEDITATE ANY OF THESE, THEN WOULDN'T, I MEAN I UNDERSTAND THERE MARX WHY, THEN, WOULD THE STATE -- I UNDERSTAND THERE THAT, WHY, THEN, WOULD THE STATE -- IF HE CONCEDED IT IS HIM, WHY WOULD THE STATE THEN NEED TO PUT THAT EVIDENCE IN, VERSUS THE FACTS OF THE CRIME, ITSELF, THE FACT OF TAKING THEM FROM ONE LOCATION TO ANOTHER, STRANGULATION?

HE ADMITTED IT WAS HIM, BUT HE WAS MOVING STRENUOUSLY TO HAVE HIS CONFESSION SUPPRESSED, AND HE HAS EVEN ARGUED THAT ON APPEAL, SO THAT IS A RULING THAT CAN BE REVISITED AT TRIAL, SO THAT, THE STATE COULDN'T REALLY RELY JUST ON THE CONFESSION FOR PREMEDITATION.

FOR THE INFLAMMATORY POINT OF VURX PUTING IN HAIR AND FIBER EVIDENCE WASN'T THE MOST INFLAMMATORY EVIDENCE THAT THE JURY WAS HEARING ABOUT THESE OTHER CRIMES.

NEW YORK CITY AND REALLY WHAT THEY ALL HEARD -- NO, AND REALLY WHAT THEY ALL HEARD, THERE WAS NO EMOTIONAL TESTIMONY THAT CAME IN FOR THESE FIVE WITNESSES THAT COULD HAVE COME IN IN THE TRIAL. THEY HAD JUST POLICE WITNESSES, CRIME SCENE TECHNICIANS, AND MEDICAL EXAMINER, AND THEN AGAIN, REALLY ONLY TO SHOW THAT HE PERPETRATED THESE FIVE OTHER CRIMES AND THAT IS WHAT THEY HAD TO DO TO GET IT IN AS WILLIAMS RUP.

-- RULE.

WHAT OTHER EVIDENCE DID THE STATE PUT ON AS TO THESE OTHER MURDERS?

NONE. THERE WERE NO WITNESSES AT ALL.

THERE WERE NO INDEPENDENT WITNESSES THAT YOU WOULD PUT ON AT TRIAL, IF YOU JUST PUT ON THE WITNESSES FOR THE FIVE OTHERS AS YOU DID FOR THE RHONDA DUNN MURDER?

CONCEIVABLY THEY COULD HAVE PUT ON SOME OTHER TYPE OF WITNESSES THAT THEY DID NOT PUT ON AT OTHER TRIALS, BUT THEY WERE NOT PUT ON HERE. THESE WERE JUST PROFESSIONAL WITNESSES.

SO IF WE SEPARATE AND SAY WHEN A COURT SEVERS A CASE, UNDER RULE 3.152, AND DOES IT IN ORDER TO PROTECT THE DEFENDANT'S CONSTITUTIONAL RIGHTS, AND IN THE INTEREST OF FAIRNESS AND WHATEVER THE RULE SAYS, AND THEN, NOW, THE STATE OPPOSES RECONSOLIDATION, BECAUSE I GUESS THEY SAY, WELL, LISTEN, HE SAID IT WASN'T FAIR FOR US TO TRY IT TOGETHER SO WE WANT TO STICK TO THAT. QUALITATIVELY, IS THERE SOMETHING THAT CAME IN THAT YOU CAN POINT TO THAT CAME IN IN THE DUNN CASE, ABOUT WHERE WERE MORE PICTURES? WAS THERE MORE THAT SHOWS THAT YOU ACTUALLY DID LIMIT WHAT WAS PUT ON IN THE FIVE OTHER CASES?

THERE WERE MORE POLICE OFFICERS THAT CAME IN TO TESTIFY IN THE DUNN CASE. THEY WENT IN TO, THE MEDICAL EXAMINER TESTIFIED AT DUNN, WENT INTO, SHE HAD 30 SEPARATE INJURIES, AND THEY WENT INTO DETAIL ABOUT ALL OF THOSE. THAT WAS NOT DONE IN THE OTHER CASES. THEY, I WOULD JUST SAY THE VOLUME, THE POLICE OFFICERS TESTIFIED MORE EXTENSIVELY REGARDING HER MURDER, AND I WOULD SAY THAT WOULD PRETTY MUCH BE IT, FROM THE RECORD THAT WAS THERE. AGAIN, THE STATE'S MAJOR POINT IS JUST TRIAL COURT DID NOT ABUSE ITS DISCRETION BECAUSE THE WILLIAMS RULE EVIDENCE WAS VITALLY RELEVANT TO PROVING PLAN. PREMEDITATION WAS ATTACKED. THE WILLIAMS RULE EVIDENCE WAS THE BEST

EVIDENCE THAT THE STATE HAD, IN ORDER TO PROVE PREMEDITATION, AND WHICH WAS TO REBUT THE DEFENDANT'S DEFENSE, AND THIS COURT HAS ACKNOWLEDGED IN OTHER CASES, THAT THAT IS A VITAL ELEMENT, AND THAT IN AN EXACT CASE, I KNOW THAT THE ARGUMENT WAS MADE THAT IT DIDN'T BECOME A FEATURE, BECAUSE IT WAS, THE EVIDENCE WAS INTRODUCED TO REBUT THE DEFENSE, AND THIS COURT AGREED IN THAT CASE, AND WE RELY UPON THAT AND WE FEEL THERE IS A SAME SITUATION HERE. THANK YOU.

CHIEF JUSTICE: MR. MARSHAL, HOW MUCH TIME IS LEFT ON REBUTTAL?

3.9. OKAY.

I JUST WANT TO CLARIFY A COUPLE OF POINTS. NUMBER ONE IS THE THERE I HAVE DEFENSE THAT WAS PRESENTED IN CLOSING -- THE THEORY OF DEFENSE THAT WAS PRESENTED IN CLOSING ARGUMENT WAS NOT ANYTHING OTHER THAN THAT THE STATE PROVED TO -- THE STATE FAILED TO PROVE PREMEDITATION, AND THERE WAS EVIDENCE OF THAT.

WAS IS THAT, WHEN YOU WANT TO PROVE PREMEDITATION, HELP ME UNDERSTAND THE DIFFERENCE.

THERE IS A DIFFERENCE, IN THAT THERE IS DIFFERENT MENS REA. THE MENS REA REQUIRED FOR PREMEDITATION IS BEYOND SPECIFIC INTENT. WITH REGARD TO A SECOND-DEGREE MURDER, ONE HAS TO SHOW THAT THIS WAS A CRIME OF PASSION, THAT KIND OF THING, SOMETHING THAT IS IMPORTANT TO CLARIFY, IS THE STATE SAYS THAT THIS WAS, THAT THE DEFENSE WAS THAT THE DEFENDANT SNAPPED, AND THAT THIS WAS THE COMBUTION OF THESE EMOTIONS. WHAT IS IMPORTANT TO, AND I LOOK BACK TO CHECK THIS, IS THAT THAT THEORY WAS THAT WAS ADVANCED IN SENTENCING PHASE NOT AT THE TRIAL, NOT AT THE GUILT PHASE, AND IT WAS PRESENTED BY THE THREE DEFENSE EXPERTS, WHICH THE COURT, WE BELIEVE, IN PERMISSIBLELY REJECTED IN TOTAL, SO THAT WAS NOT THE THEORY THAT WAS PRESENTED.

I DON'T UNDERSTAND WHAT DIFFERENCE YOUR ARGUMENT MAKES, BECAUSE YOU STILL AGREE THAT THE DEFENDANT CLAIMED THERE WAS NO PREMEDITATION.

CORRECT.

SO AS TO THE WILLIAMS RULE EVIDENCE, THE STATE WAS WITHIN ITS RIGHTS TO PRESENT THIS EVIDENCE AS EVIDENCE OF PREMEDITATION. SO I DON'T UNDERSTAND WHERE YOU ARE GOING WITH THAT ARGUMENT.

I JUST THINK THAT THE STATE PRESENTED THAT HE, THAT THE DEFENSE AT TRIAL WAS THAT THIS WAS A SECOND-DEGREE MURDER. AGAIN, I JUST THINK THAT THERE IS A DIFFERENCE. HE SIMPLY ARGUED NOT THAT THIS WAS AFFIRMATIVELY WAS A CRIME OF PASSION AS YOU NEED FOR SECOND-DEGREE MURDER. SIMPLY THAT, WHATEVER IT WAS, THE STATE FAILED TO PROVE PREMEDITATION, AND THEN THERE WAS WEAKNESSES IN ITS EVIDENCE ON THAT POINT, AND IT IS OUR POSITION THAT, BY INUNDATING THE JURY WITH ALL OF THE WILLIAMS RULE EVIDENCE, THAT THE STATE REALLY FAILED TO TAKE THE JURY CLOSER TO THE POINT OF PREMEDITATION, BUT THAT THERE WAS A DIFFERENCE IN THE THEORY THAT WAUFS -- THAT WAS PRESENTED IN SENTENCING.

IT YOUR VIEW THAT, IF THE DEFENDANT CHALLENGES AND MOVES TO SUPPRESS A CONFESSION, THAT THE STATE CANNOT, THEN, USE OTHER EVIDENCE UNDER THE, UNDER PROTECTIVE POSTURE IN A CASE THAT MAYBE THE DEFENDANT WAS RIGHT, MAYBE THAT CONFESSION SHOULD NOT HAVE COME IN, SO IS IT, IS THE STATE REQUIRED TO NOT PUT ON EVIDENCE AND JUST TAKE ITS CHANCES?

I THINK THAT WAS REQUIRED HERE IS FOR THE COURT TO GAUGE THE AMOUNT OF AND THE

NATURE OF THE EVIDENCE THAT WAS INTRODUCED. I MEAN, THIS WAS A CAPITAL MURDER CASE. THESE DEFENSE ATTORNEYS MADE VIRTUALLY EVERY SINGLE OBJECTION THAT WAS OUT THERE, AND CERTAINLY THEY WERE GOING TO OBJECT TO THIS CONFESSION, AND THEY DID. THE TRIAL COURT DENIED THAT. WE HAVE RAISED IT ON APPEAL. I HAVE TO LOOK FORWARD TO THE POTENTIAL OF FEDERAL HABEAS CORPUS RELIEF, AND THAT IS, YOU LOOK AT, I THINK IF YOU LOOK AT WHAT THE EVIDENCE WAS, I MEAN, THIS WAS AN OBJECTION TO AN EMOTION TO SUPPRESS THE CONFESSION.

IF WE GO BACK TO WHETHER THE JUDGE EXERCISED ANY DISCRETION AT ALL AND WE GO TO THE PRETRIAL HEARING, WHERE THE WILLIAMS RULE EVIDENCE WAS SOUGHT TO BE ADMITTED, ARE WE GOING TO FIND THAT THE JUDGE EXERCISED ANY LIMITATION ON WHAT EVIDENCE CAME IN ON THE FIVE OTHER CRIMES?

I CAN'T SAY FOR SURE. I MEAN IT IS A VERY LENGTHY RECORD, AND I DON'T HAVE MY MIND FOCUSED ON THAT NARROW HEARING. I DON'T BELIEVE IT IS THERE, AND I BELIEVE THAT THE BEST EVIDENCE OF THAT IS WHAT WAS PRESENTED. WHEN THE STATE SAYS, WELL, WHAT IS THE COMPARISON WITH THE EVIDENCE ON RHONDA DUNN, THERE WERE ELEVEN WITNESSES FOR HER AS OPPOSED TO SEVEN SEVEN-TO-NINE FOR THE COLLATERAL CRIMES VICTIMS. THE OTHER POINT I WANT TO MAKE --

WAIT. BEFORE YOU MOVE FROM THAT, THOUGH, AS A FOLLOW-UP, IF THE JUDGE DIDN'T JUST SAY,, I AM GOING TO LET THIS IN BUT YOU HAVE GOT TO LIMIT IT BY X, Y AND Z, DID THE DEFENSE, THEN, ONCE KNOWING THE JUDGE WAS GOING TO ALLOW IT IN, ASK TO SAY, JUDGE, WOULD YOU LIMIT THIS SO THAT ONLY X, Y, Z HAPPENS, AS OPPOSED TO ALLOWING ALL OF THESE WITNESSES IN?

I BELIEVE THAT THE DEFENSE FOLLOWED THROUGH IN TRYING TO LIMIT THE AMOUNT OF EVIDENCE. ONE THING I WANT TO STATE TO THE COURT IS WITH REGARD TO THE TAMIAMI STRANGLER, THERE WAS AN OBJECTION TO THAT IN OPENING STATEMENT, AND THOSE REFERENCES, WHETHER IT BE TO THE TAMIAMI STRANGLER, THE STRANGLER, DID PERM MATE OPENING STATEMENTS, CLOSING ARGUMENT, AND I THINK THAT THE COURT NEEDS TO LOOK, TOO, AT THE CLOSING ARGUMENT IN PENALTY PHASE, WHERE THE JURY WAS INSTRUCTED IT WAS NOT PERMITED TO CONSIDER THESE OTHER HOMICIDES AS AGGRAVATORS, AND EVEN THERE, THERE WERE THREE OCCASIONS WHERE THE PROSECUTOR REFERRED TO CONDE AS A SERIAL MURDERER OR SOMEONE WHO KILLED AND KILLED AND KILLED.

YOU DO AGREE THAT, BY EVEN THE TIME OF THE OPENING ARGUMENT, THAT THE JURY HAD BEEN TOLD THAT THERE WERE SIX OTHER MURDERS, CORRECT?

ABSOLUTELY. OVER THE DEFENSE OBJECTION.

AS TO THE WILLIAMS RULE MATTER.

CORRECT. BUT THE QUESTION IS --

THAT THEY HAD BEEN IN THE TAMIAMI AREA. I MEAN, THAT IS SOMETHING THAT WAS GOING ON FROM THE FIRST WORD, ABOUT THIS CASE, RIGHT?

BUT THE PROBLEM HERE IS WHETHER YOU ARE TRYING HIM FOR WHAT HE DID OR FOR WHO HE IS, AND THE WAY MR. CHIEF JUSTICE

WE HAVE TO, I AM AFRAID THAT WE HAVE GONE WELL OVER YOUR TIME. OF COURSE YOU HAVE EXTENSIVE BRIEFING IN THE CASE,, TOO SO THANK YOU BOTH.

THANK YOU, YOUR HONOR.

CHIEF JUSTICE: THE COURT NOW WILL BE IN RECESS FOR 15 MINUTES BEFORE WE HEAR THE LAST CASE ON THIS MORNING'S DOCKET.

MARSHAL: PLEASE RISE.