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## State of Florida v. Leon Robinson

THE NEXT CASE IS STATE VERSUS ROBINSON. MR. CARNEY, GOOD MORNING. COUNSEL JUST A MINUTE THERE. ALL RIGHT. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. JAMES CARNEY FOR THE STATE OF FLORIDA, APPELLANT. THE EVIDENCE AT TRIAL IN THIS CASE SHOWED THAT THE VICTIM'S MOTHER STOPPED AT AN AUTOMOBILE PARTS STORE TO PURCHASE POWER STEERING FLUID, BECAUSE HER CAR WAS HAVING PROBLEMS. HER DAUGHTER WAS IN THE CAR SEAT IN THE REAR OF THE CAR. THE MOTHER BRIEFLY ENTERED THE FRONT OF THE STORE, BUT THEN SHE CAME BACK OUT, WHEN SHE REALIZED SHE DIDN'T HAVE ENOUGH MONEY. SHE, THEN, OPENED THE HOOD OF THE CAR, TO SEE HOW BADLY THE FLUID WAS LEAKING FROM THE CAR. THE DEFENDANT AND HIS ACCOMPLICE, PRENTICE CONSTANTLY WERE WATCHING AND THEY WERE AWARE THAT THE CHILD WAS IN THE CAR, AND THEY DECIDED THAT THEY WERE GOING TO TAKE THE CAR. THEREAFTER CONSTANTLY KNOCKED THE VICTIM'S MOTHER DOWN. APPELLEE CLOSED THE CAR'S HOOD AND THE TWO MEN DROVE AWAY.

WERE THEY AWARE THAT THE CHILD WAS IN THE CAR?

YES, THEY WERE. YES, THAT IS NOT DISPUTED.

COUNSEL, IT IS NOT DISPUTED, EITHER, THAT THERE WAS NO SEXUAL ASSAULT ON THE CHILD.

THERE IS NO EVIDENCE OF ANY SEXUAL ASSAULT ON THE CHILD.

IS THAT CORRECT? AND THE GOVERNMENT AGREES THAT THERE IS NO HINT OF ANY SEXUAL ASSAULT ON THE CHILD. CORRECT?

CORRECT.

SO CAN YOU EXPLAIN THE RATIONALE BASIS FOR HAVING SOMEBODY REGISTER THAT IS UNDISPUTELY NOT A SEXUAL PREDATOR, TO HAVE TO REGISTER AS A SEXUAL PREDATOR.

FIRST OF ALL, I WOULD DISAGREE THAT HE IS NOT A SEXUAL PREDATOR.

HE HAS NOT COMMITTED ANY SEXUAL OFFENSE ON THIS CHILD.

YES.

CORRECT?

YES, BUT IS HE A SEXUAL PREDATOR, AS DEFINED IF -- DEFINED IN THE STATUTE.

WHAT IS THE RATIONALE BASIS AS DEFINING SOMEBODY AS WHO IS A SEXUAL PREDATOR WHO HAS NOT COMMITTED A SEXUAL OFFENSE. WOULD YOU DEFINE SOMEBODY AS A MURDERER WHO COMMITTED A BATTERY?

ACTUALLY ALONG THAT SAME LINES, THAT THE LEGISLATURE DOES HAVE A VERY BROAD POWER TO DEFINE THE TERMS IN THE STATUTES. KIND OF GOING ALONG WITH WHAT YOU SAID, JUSTICE, UNDER THE MURDER STATUTE, SOMEONE COULD DECIDE THEY WERE GOING TO ROB A BANNING

WITH SOMEONE ELSE. -- A BANK WITH SOMEONE ELSE. THEY KNOW THE BANK ROBBERY IS GOING TO TAKE PLACE. EXCUSE ME. THEY ARE JUST GOING TO BE THE DRIVER. THEY PARTICIPATE, BUT THEY KNOW THAT THE OTHER GUY IS GOING TO COMMIT A ROBBERY AND HE IS GOING TO BE ARMED. HIS ACCOMPLICE GOES INTO THE BANK. SOMEONE ENDS UP GETTING SHOT. THE GUY WHO WAS JUST DRIVING THE CAR AND HAD NO INTENTION THAT ANYBODY GET HURT, DIDN'T WANT ANYBODY TO GET HURT, IS LABELED A MURDERER. SO I THINK THAT THE LEGISLATURE, AGAIN, HAS BROAD POW% IN DEFINING TERMS. -- BROAD POWER IN DEFINING TERMS.

HOW ABOUT ANSWERING JUSTICE CANTERO'S QUESTION, AND I THINK HIS QUESTION WAS WHETHER OR NOT THE LEGISLATURE, IN THAT BROAD AUTHORITY THAT THEY HAVE, COULD LABEL A PERSON A MURDERER WHO JUST COMMITTED A SIMPLE BATTERY. IN OTHER WORDS, I THINK THAT WAS THE QUESTION THAT WAS ASKED, AND SO I REALIZE THAT YOU HAVE GIVEN A DIFFERENT HYPOTHETICAL OR EXAMPLE, BUT HOW ABOUT RESPONDING TO THAT QUESTION: SIMPLE BATTERY. YOU ARE NOW CATAGORIZED AS A MURDERER.

IF THAT IS HOW THE MURDER STATUTE WAS DEFINED, I DON'T SEE A PROBLEM WITH IT.

IN OTHER WORDS THE LEGISLATURE -- ALL RIGHT. I TAKE IT, UNDER THE SEXUAL PREDATOR DESIGNATION, SOMEBODY COULD BE CONVICTED OF CARELESS DRIVING, SEXUAL PREDATOR, AND THE LEGISLATURE, I GUESS THE LEGISLATURE THEN, UNDER YOUR VIEW OF IT, COULD VIRTUALLY DO ANYTHING, INSOFAR AS CATAGORIZING PEOPLE FOR THINGS THAT DON'T APPEAR, YOU WOULD AGREE, DO YOU NOT, THAT SOMEBODY THAT WAS CONVICTED OF CARELESS DRIVING WOULD NOT SEEM TO FIT UNDER A SEXUAL PREDATOR CATEGORY, AND THAT THAT IS A SIGNIFICANT THING TO DO TO SOMEBODY, IS TO CATEGORIZE THEM AS A SEXUAL PREDATOR, WOULD YOU YOU NOT?

I WOULD AGREE THAT IS A MORE EXTREME CASE THAN WE HAVE HERE.

BUT WOULD YOU DEFINE THAT THE LEGISLATURE COULD CATEGORIZE THEM?

I GUESS IF THAT IS WHAT THEY DECIDE TO DO.

THE PURPOSE BEHIND, WHAT DO YOU THINK OF THE LEGISLATIVE PURPOSE BEHIND THE SEXUAL PREDATOR LAW?

TO PROTECT CHILDREN.

I BEG YOUR PARDON?

TO PROTECT CHILDREN FROM PREDATORS.

IS IT TO, DO YOU THINK THE PURPOSE MIGHT BE TO NOTIFY THE PUBLIC OR PUT THE PUBLIC ON NOTICE THAT THIS PARTICULAR PERSON IS, PERHAPS, A SEXUAL DEVIANT OR PREDATOR, RELATIVE TO CHILDREN SHALL? -- TO CHILDREN?

YES.

WELL, WHEN YOU APPLY THE RATIONALE BASIS TEST OR RATIONAL RELATIONSHIP TEST, HOW DOES THAT FIT INTO THAT, WHERE YOU HAVE A CRIME HERE THAT HAS NO SEXUAL COMPONENT TO IT IT? HOW DO YOU APPLY THE RATIONALE RELATIONSHIP TEST -- THE RELATIONAL RELATIONSHIP TEST AND MAKE IT CONFORM?

FIRST OF ALL, I DON'T KNOW THAT YOU CAN GET THAT FAR, BECAUSE I DON'T KNOW THAT THE DEFENDANT HAS SHOWN ANY VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

HE HAD NOTHING, DO YOU AGREE THAT THERE IS NOT A SEXUAL COMPONENT IN THE CRIME HERE?

YES, YOU BUT I DON'T AGREE THAT STIG MATTIZATION HAS THE FOURTH DEFINED IT, IS A VIOLATION OF SOMEONE'S CONSTITUTIONAL RIGHTS.

BUT YOU ARE LABELING SOMEONE A SEXUAL PREDATOR FOR THE REST OF HIS LIFE, THAT HAS DONE NOTHING THAT FITS HIM IN THAT CATEGORY. YOU DON'T SEE ANYTHING WRONG WITH THAT?

I AM NOT SAYING IT IS PERHAPS A TORT, BUT I DON'T THINK IT IS A VIOLATION OF SOMEONE'S CONSTITUTIONAL RIGHTS JUST TO DO THAT.

LET ME APPROACH THE QUESTION FROM THIS DIRECTION. DOES THE STATE AGREE THAT, IN THE CONSTITUTIONAL ANALYSIS OF THIS STATUTE, THAT THE RATIONALE -- THAT THE RATIONAL BASIS TEST APPLIES? DOES RATIONAL BASIS HAVE ANYTHING TO DO WITH IT?

FIRST OF ALL, GETTING BACK TO WHERE I STARTED, I DON'T THINK YOU GET THAT FAR, BECAUSE I DON'T THINK HE HAS SHOWN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

SO THE, FROM WHAT I CAN GLEAN, THOUGH IT IS NOT TOTALLY CLEAR IN THE DISTRICT COURT OPINION, THAT THIS, THAT THE ANALYSIS THAT THE DISTRICT COURT MADE WAS ON AN EQUAL PROTECTION BASIS. WOULD YOU AGREE WITH

I THINK IT IS DUE PROCESS.

UNDER EITHER A DUE PROCESS OR A RATIONAL BASIS, IF YOU ARE GOING TO MAKE THE ANALOGY OF THAT KIND OF A STATUTE UNDER ATTACK, WHAT DO YOU SEE THE STEPS THAT THE COURT WOULD GO THROUGH TO DO THAT?

IF YOU WANT TO MAKE THAT KIND OF ANALYSIS, I THINK THAT THE LEGISLATURE COULD HAVE CONCLUDED THAT THE DIFFICULTY, I MEAN THE STATE DID STIPULATE IN THIS CASE THAT THERE WAS NO SEXUAL ACTIVITY. I HONESTLY DON'T KNOW HOW THEY KNEW THAT, BUT WE DID STIPULATE TO THAT, BUT WE DIDN'T STIPULATE THAT THERE WAS NO SEXUAL MOTIVE BEHIND THE CRIME, AND I THINK, PERHAPS, THAT IS THE POINT. THE DEFENDANT IN THIS CASE, HE CREATED THE SITUATION BY TAKING THE CHILD AWAY FROM THE MOTHER, WHERE IT IS VIRTUALLY IMPOSSIBLE FOR THE STATE TO SHOW WHETHER OR NOT THERE WAS ANY SEXUAL MOTIVE OR INVOLVEMENT.

THE STATUTE, THOUGH, DOESN'T SAY HERE IS SOME OTHER CRIMES THAT DON'T APPEAR TO BE SEXUAL THAT ARE GOING TO BE INCLUDED HERE, IF THE STATE CAN DEMONSTRATE THAT THERE WAS SOME SEXUAL MOTIVE, THAT THAT IS NOT THE SCHEME OF THE STATUTE, IS IT?

NO.

I AM NOT SURE I AM UNDERSTANDING, WHEN YOU SAY THE DEFENDANT HASN'T SHOWN THAT HIS CONSTITUTIONAL RIGHTS ARE VIOLATED, ARE YOU TALKING ABOUT THE CONSEQUENCES OF THE STATUTE? THAT IS OF BEING LABELED AS A SEXUAL PREDATOR THAT, THAT IS NOT ENOUGH OF A DEPRIVATION AFTER LIBERTY INTEREST OR SOME OTHER INTEREST FOR THE DEFENDANT, REALLY, THEN, TO SORT OF HAVING STANDING TO CHALLENGE? IS THAT --

YES. YES.

OKAY, WELL, HELP US WITH THAT, THEN, BECAUSE OBVIOUSLY YOU ARE --

THAT IS SOMETHING YOU CAN ADDRESS UNDER TORT LAW, BUT I AM NOT AWARE OF ANY --

YOU ARE GOING TO HAVE A SCALE OF, I SUPPOSE, WHAT THE STATE DOES TO YOU AS A CONSEQUENCE, AND NUMBER ONE WOULD BE WE JUST HAD A DEATH-PENALTY CASE HERE, WHERE THE STATE SAYS THAT, UNDER CERTAIN CIRCUMSTANCES, WE ARE GOING TO TAKE YOUR LIFE, AND OBVIOUSLY THAT IS A PRETTY SERIOUS CONSEQUENCE. DOWN AT THE OTHER END, MAYBE, ARE WE ARE GOING TO PUT AN OFFICIAL LABEL ON YOU. THAT IS THAT WE ARE GOING TO CATEGORIZE YOU AS A CONVICTED FELON OR SOMETHING, YOU KNOW, SO WHY ISN'T THAT A SUFFICIENT LIBERTY INTEREST --

I THINK AT MOST THAT WOULD BE DEFAMATION, AND THAT IS NOT -- THAT IS NOT A VIOLATION OF SOMEONE'S CONSTITUTIONAL RIGHTS.

BUT I HEARD YOU SAY, IN RESPONSE TO JUSTICE WELLS'S QUESTION, THAT THE RATIONAL BASIS THAT IS STATUTE WOULDN'T, THAT A STATE PASSED, CAN'T EVEN BE SUBJECTED TO THE RATIONAL BASIS TEST, BECAUSE REGISTRATION IS NOT A CONSTITUTIONAL DEPRIVATION, BUT THE ARGUMENT THAT REGISTRATION IS A CONSTITUTIONAL DEPRIVATION, THAT IS WHETHER IT IS STIGMA OR STIGMA PLUS, THAT IS A SEPARATE ARGUMENT, UNDER THE SUBSTANTIVE DUE PROCESS, BUT THE FIRST ARGUMENT, AND THE ARGUMENT THAT I AM NOT HEARING THAT YOU HAVE ADDRESSED FULLY, IS THAT UNDER, COULD EVERY STATUTE THE STATE PASSES, IS SUBJECT TO THE RATIONAL BASIS TEST. THAT IS THE LOWEST LEVEL OF SCRUTINY. CORRECT? YOU YOU ARE NOT SAYING THAT SOMEHOW, THE STATE IS IMMUNE FROM THE RATIONAL BASIS TEST, IN THIS OR ANY OTHER CASE. THE ONLY QUESTION IS MAYBE WHETHER IT SHOULD HAVE A HIGHER LEVEL OF SCRUTINY, IF A GREATER CONSTITUTIONAL RIGHT IS INVOLVED.

IF YOU WANT TO APPLY THE RATIONAL BASIS TEST, AS I SAID BEFORE, I THINK THAT THE STATE COULD, AGAIN, THE DEFENDANT IN THIS CASE --

IS THAT -- WHAT TEST WOULD YOU APPLY, IF YOU YOU DON'T APPLY THE RATIONAL BASIS TEST? YOU SEE SAY IF YOU WANT TO APPLY. WHAT OTHER TEST WOULD YOU APPLY?

WELL, I JUST DON'T THINK THERE IS A CONSTITUTIONAL VIOLATION IN THIS CASE, BECAUSE THE DEFENDANT IS CLEARLY A SEXUAL PREDATOR, AS DEFINED UNDER THE STATUTE.

YOU YOU MADE THE STATEMENT PREVIOUSLY, THE DEFENDANT PUT HIMSELF IN THAT POSITION. WHAT DO YOU REALLY MEAN BY THAT? HE PUT HIMSELF IN THE POSITION OF BEING A SEXUAL PREDATOR?

HE WAS AWARE, AT THE TIME THAT HE COMMITTED THE CRIME, WHICH IS A VERY SERIOUS CRIME, IT IS NOT LIKE BEING A BAD DRIVER OR SOMETHING LIKE THAT, THAT IF HE COMMITTED THIS CRIME, HE WOULD BE LABELED A SEXUAL PREDATOR.

HE PUT HIMSELF IN A POSITION OF STEALING CAR.

HE KIDNAPPED A CHILD.

BEG YOUR PARDON?

HE KIDNAPPED A CHILD.

OKAY. HE KIDNAPPED A CHILD. WHAT DOES THAT HAVE TO DO WITH HIM BEING A SEXUAL PREDATOR?

THAT IS ONE OF THE ENUMERATED OFFENSES UNDER THE STATUTE.

BUT THE ARGUMENT HERE ISN'T THAT THE STATUTE ISN'T CONSTITUTIONALLY VAGUE. WE ARE NOT TALKING ABOUT THAT NOTICE. SO FIRST OF ALL, YOUR ARGUMENT IS THAT THIS PARTICULAR STATUTE IS REALLY A NOTHING. THAT IS IT IS NOT EVEN STIGMA OR STIGMA PLUS, AND WE ARE NOW, IF WE ARE GOING TO GET INTO THAT, WE ARE ADDRESSING SOMETHING THAT I DON'T REALLY SEE HAS EVEN BEEN ADDRESSED IN THIS DISTRICT COURT OPINION, WHETHER THIS, THE SEXUAL PREDATOR STATUTE IS STIGMA, STIGMA PLUS, FOR THE PURPOSE OF THE DUE PROCESS CLAUSE. DO YOU AGREE IS NOT WHAT --

YES, I AGREE WITH THAT.

BUT HOW ARE WE NOW, AND IN FACT THE STATUTE, NOT ONLY DOES IT REQUIRE REGISTRATION, BUT THERE ARE, IT REQUIRES NOTIFICATION, PUBLICATION, AND IT PREVENTS INDIVIDUALS FROM BEING ABLE TO HOLD SPECIFIED POSITIONS OF EMPLOYMENT. -- OF EMPLOYMENT. ISN'T THAT ALL PART OF THE SEXUAL PREDATOR REGISTRATION ACT?

WHEN YOU ARE TALKING ABOUT UNCONSTITUTIONAL, AS APPLIED TO THIS DEFENDANT, HE IS SERVING A LIFE SENTENCE, SO I DON'T THINK ANY OF THAT IS RELEVANT IN THIS CASE.

ISN'T THE PROBLEM -- IS PERTINENT IN THIS CASE.

ISN'T THE PROBLEM THAT, BEYOND A RATIONAL BASIS, THAT IT CREATES FOR ALL DEFENDANTS, AN IRREBUTTABLE PRESUMPTION THAT THEY ARE TO BE DECIDING -- PRESUMPTION THAT THEY WILL BE TO BE DESIGNATED AS A SEXUAL PREDATOR, WITHOUT BEING ABLE TO PUT ON EVIDENCE THAT, TO ESTABLISH THAT IN A PARTICULAR CASE, THERE IS NO SEXUAL COMPONENT TO THAT. ISN'T THAT A BASIC PROBLEM WITH THIS STATUTE?

I DON'T AGREE THAT IT IS AN IRREBUTTABLE PRESUMPTION. I THINK IT IS JUST A RULE OF SUBSTANTIVE LAW. YOU ARE ON NOTICE THAT, IF YOU COMMIT THIS CRIME, THIS IS WHAT WILL HAPPEN TO YOU.

DOES THE DEFENDANT HAVE ANY OPPORTUNITY TO BE ABLE TO PRESENT EVIDENCE THAT HE OR SHE, A THAT THERE IS NO SEXUAL COMPONENT, THAT THIS WAS -- COMPONENT, THAT THIS WAS, THAT THERE IS, IS THERE ANY OPPORTUNITY WITHIN THE STATUTORY FRAMEWORK TO DO THAT?

WELL, I MEAN, HE COULD TRY TO DO IT WHEN HE WAS BEING DESIGNATED, BUT I DON'T THINK IT IS RELEVANT, BECAUSE --

THE STATUTE DOESN'T PROVIDE THE MECHANISM, DOES IT?

NO.

THAT IS REBUTTABLE, ISN'T IT? IN OTHER WORDS LET'S SAY THAT HE DID PUT ON EVIDENCE AND IT DEMONSTRATED OVERWHELMINGLY THAT THERE WAS ABSOLUTELY NO SEXUAL CONTEXT. THAT WOULDN'T MAKE ANY DIFFERENCE UNDER THE STATUTE, IS THAT CORRECT?

AS A PRACTICAL MATTER, ESPECIALLY IN THIS CASE, I DON'T SEE HOW THAT COULD EVER BE DONE. AGAIN --

NO. I AM SAYING THAT ASSUMING THAT IT WAS DONE AND THAT THE JUDGE SAID, WELL, I WILL GIVE YOU A HEARING ON IT AND THEY HAD A HEARING, AND 8 MILLION PEOPLE CAME AND TESTIFIED THERE WERE NO POSSIBLE SEXUAL CONNOTATION TO THIS CRIME, IT WOULDN'T MAKE ANY DIFFERENCE, UNDER THE STATUTE, RIGHT?

RIGHT.

IN OTHER WORDS HE WOULD STILL BE LABELED.

RIGHT.

ALL RIGHT.

BUT WOULD IT MAKE ANY DIFFERENCE UNDER THE STATUTE, IF THIS DEFENDANT DID NOT KNOW THAT CHILD WAS IN THE CAR, AT THE TIME THAT THEY CARJACKED?

WELL, IF THAT MEANT HE DIDN'T GET CONVICTED OF KIDNAPING, HE WOULDN'T BE DECLARED A SEXUAL PREDATOR.

THE CHILD WAS IN THE CAR AND HE MOVED THE CHILD FROM ONE PLACE TO THE OTHER, SO IT WOULDN'T MAKE ANY DIFFERENCE.

IF HE WAS NOT AWARE THAT THE CHILD WAS IN THE CAR, I AM NOT SURE THE EXACT REQUIREMENTS IN TERMS OF INTENT OF THE KIDNAPING STATUTE, BUT OBVIOUSLY IF HE WASN'T CONVICTED OF KIDNAPING BECAUSE HE WASN'T AWARE THAT THE CHILD WAS IN THE CAR, HE WOULDN'T BE DECLARED A SEXUAL PREDATOR.

CHIEF JUSTICE: LET ME WARN YOU ABOUT YOUR REBUTTAL TIME.

IN THIS CASE, DIDN'T HE DROP THE CHILD OFF VOLUNTARILY, HIMSELF?

WELL, WE DON'T KNOW EXACTLY WHAT HAPPENED. THE CHILD WAS FOUND 45 MINUTES LATER, SEVERAL MILES AWAY, ON A SIDEWALK.

BUT HE DIDN'T MOLEST THE CHILD. HE DID PUT THE CHILD OUT OF THE CAR.

THE STATE STIPULATED THERE IS NO EVIDENCE OF SEXUAL ACTIVITY. I DON'T KNOW WHAT HAPPENED DURING THAT TIME, AND I THINK THAT IS PART OF THE POINT OF THE STATUTE IS THAT WE DON'T KNOW. HE CREATED --

WHY WAS THERE A STIPULATION, IF, IN OTHER WORDS I AM HAVING DIFFICULTY WITH, ON THE ONE HAND YOU ARE SAYING WE DON'T KNOW, BUT WE STIPULATED THAT THERE WAS NOTHING. SO WHAT, ISN'T THAT AN INCONSISTENT POSITION FOR THE STATE TO TAKE? WE HAVE GOT TO PLAY IT, ONE WAY OR THE OTHER. IF WE ARE GOING TO STIPULATE THERE WAS NOTHING SEXUAL ABOUT THIS, THEN WE ARE BOUND BY THAT STIPULATION, ARE WE NOT?

I DON'T THINK, WE DIDN'T STIPULATE THERE WAS NOTHING SEXUAL ABOUT IT. WE STIPULATED THERE WAS NO --

TELL ME WHAT THE STIPULATION WAS.

THAT THERE WAS NO SEXUAL ACTIVITY.

THAT WAS THE STIPULATION. AND ARE YOU SAYING BUT WE DON'T REALLY NO -- WE DON'T REALLY KNOW?

WE DON'T KNOW IF THERE WAS A SEXUAL MOTIVE BEHIND THE CRIME. WE DO KNOW THAT THERE WAS MR. CHIEF JUSTICE

YOU ARE INTO YOUR REBUTTAL NOW, IF YOU WANT TO PAUSE RIGHT NOW AND SAVE THAT. -- IF YOU WANT TO PAUSE RIGHT NOW AND SAVE THAT.

GOOD MORNING, JUSTICES. I AM IAN SELDIN OF THE PUBLIC DEFENDERS OFFICE.

YOU ARE MAKING THIS AS AN IMPLIED ATTACK NOT A STIPULATION, SO YOU WOULD AGREE THAT THERE IS A RATIONAL BASIS, FROM WHICH THE LEGISLATURE COULD DETERMINE THAT KIDNAPING OF A MINOR WAS A CRIME, IF WAS DONE BUT NOT APPARENT, THAT WOULD, IN THE INTEREST OF PROTECTING CHILDREN, BE SOMETHING THAT THE LEGISLATURE COULD DO, IN LABELING THE PERSON THAT KIDNAPPED A MINOR A SEXUAL PREDATOR.

BASED UPON THE RATIONAL RELATIONSHIP TEST, AND THAT ALL THE LEGISLATURE NEEDS IS A CONCEIVABLE IDEA THAT IT, WISHES TO USE ITS POLICE POWER TO RESOLVE, YES. IT IS FACIALLY CONSTITUTIONAL.

AND IN THIS CASE, ISN'T THERE EVIDENCE OR DIDN'T THE STATE PRESENT EVIDENCE THAT THERE WERE STATISTICS SHOWING THAT TWO-THIRDS OF ALL CHILDREN OBDEDUCTED BY NONFAMILY MEMBERS ARE SEXUALLY ASSAULTED, AND THAT 96 PERCENT OF SEX CRIMES AGAINST CHILDREN ARE NOT REPORTED, AND THEREFORE BECAUSE OF THE CHILD'S TRAUMA, FEAR, OR AGE, THE CHILD MAY BE UNWILLING OR UNABLE TO COMMUNICATE THE FACT THAT HE OR SHE HAS BEEN SEXUALLY EXPLOITED, AND ESPECIALLY IN A CASE LIKE THIS, WE HAVE AN INFANT THAT IS NOT GOING TO BE ABLE TO TELL ANYBODY THAT IT HAS BEEN SEXUALLY ASSAULTED, THAT THE LEGISLATURE HAD A RATIONAL BASIS FOR SAYING, ONCE YOU COMMIT A KIDNAPING ON A CHILD, WE ARE GOING TO LABEL YOU AS A SEXUAL PREDATOR, BECAUSE IN 96 PERCENT OF THE CASES, WE ARE NOT GOING TO BE ABLE TO DETERMINE WHETHER YOU ARE OR NOT.

I ACKNOWLEDGE THAT THEY ARGUE THE STATISTICS. THE STATISTICS CAN AND DO SUPPORT A FACIAL ANALYSIS, UNDER THE RATIONAL RELATIONSHIP TEST. NOTWITHSTANDING, THERE ON THE, MR. ROBINSON STILL HAS THE ABILITY TO CHALLENGE AS APPLIED. NOTWITHSTANDING WHAT THE STATISTICS SHOW, THERE ARE OTHER AVENUES UPON WHICH EVIDENCE OF SEXUAL CONDUCT CAN BE SHOWN THERE. IS PHYSICAL EVIDENCE, WHETHER OR NOT THE CHILD'S CLOTHING WAS DISTURBED. IN THIS PARTICULAR CASE --

LET ME ASK YOU, IN AN AS-APPLIED CHALLENGE, THEN --

YES.

-- IF WE ACCEPT THAT THIS STATUTE IS FACIALLY CONSTITUTIONAL, THEN MY CONCERN ABOUT THE AS-APPLIED CHALLENGE IS WHERE DOES THE LINE DRAWING BEGIN? IS IT BECAUSE THIS CHILD WAS ONLY KEPT FOR 45 MINUTES, OR IF THERE HAS TO BE SOME PROOF OF SEXUAL COMPONENT, WHAT IS THE LEVEL OF THAT? TOUCHING?

IT IS NOT -- THE LINE DRAWING IS ON THE FACIAL ISSUE. THE LINE DRAWING IS THE LEGISLATURE'S, WE ARE DRY DRAUING THE LINE HERE, LIKE IN THE MASSACHUSETTS -- THE -- WE ARE DRAWING THE LINE HERE, LIKE IN THE MASSACHUSETTS, THE POLICE OFFICER, MASSACHUSETTS BOARD OF RETIREMENT VERSUS MIRAGA. THEY CUT A LINE. 50 YEARS OLD, YOU CAN NO LONGER BE AN ACTIVE MASSACHUSETTS STATE TONIGHTER -- MASSACHUSETTS STATE TROOPER. THAT IS THE LINE DRAWING. BUT AS APPLIED, YOU ARE TAKING PAST FACTS NOT FUTURE EVENTS, AND THE TROOPER COULD NOT MAKE IT AS A CHALLENGE, BECAUSE HE IS SAYING WHEN I AM 50, I WILL BE HEALTHY ENOUGH TO BE A POLICE OFFICER. THE SAME GOES WITH THE OTHER CASES THAT THE STATE CITED.

IT SEEMS TO ME THAT THE MASSACHUSETTS DISTRICT COURT CASE, I UNDERSTAND THAT --

YOU HAVE GOT TO DRAW A LINE.

-- BUT WHAT THE PROBLEM IS THAT, WHEN YOU COME OUT ON AN AS-APPLIED DIRECTION, YOU HAVE GOT TO HAVE SOME BASIS UPON WHICH YOU ARE GOING TO SAY IT DOESN'T APPLY TO HIM,

AND THEN, AND THE REASON FOR THAT IS BECAUSE IT DOESN'T HAVE A SEXUAL COMPONENT?

IN THIS PARTICULAR CASE THAT, IS THE FACTS, BECAUSE YOU LOOK TO THE LEGISLATIVE INTENT. THE LINE IS DRAWN BY THE LEGISLATURE. THEY AN ESTABLISH WHERE THE CUT OFF IS. BUT WHEN YOU ARE MAKING AN AS-APPLIED CHALLENGE, YOU ARE SAYING, BUT THIS IS THE REASON, BUT IF YOU LOOK AT WHAT HAS HAPPENED, THIS DOES NOT APPLY TO ME. AND IN KEEPING WITH THE SPIRIT OF WHAT DUE PROCESS IS, FUNDAMENTAL FAIRNESS, AND ACKNOWLEDGING THAT, ON FACIAL CHALLENGES, COURTS HAVE SAID THERE IS GOING TO BE INJUSTICE, BUT WHEN YOU HAVE A CASE WHERE IF THE -- A CASE WHERE THE, THAT THE PURPOSE OF THE LAW CANNOT BE SERVED BY THE LAW, ITSELF, THAT IS INJUSTICE, TOO!

WHY ISN'T --

THAT IS NOT FUNDAMENTALLY FAIR.

WHY ISN'T THE PROBLEM HERE, FIRST OF ALL DO YOU AGREE THAT WE HAVE GOT TO LOOK AT WHAT IS THE STIGMA OR STIGMA PLUS, AT ALL, IN THE REGISTRATION REQUIREMENT? DOES THAT HAVE ANYTHING, IN OTHER WORDS THE NATURE OF WHAT WOULD HAPPEN TO THIS DEFENDANT AS A RESULT OF BEING LABELED AS A SEXUAL PREDATOR, IS THAT AT ALL A FACTOR IN THE CONSTITUTIONAL ANALYSIS, IN THIS CASE?

IN TERMS OF STANDING?

NO, NOT IN TERMS OF STANDING. IN TERMS OF LOOKING AT WHAT THE STATE CAN AND CAN'T DO TO PEOPLE CONVICTED OF CERTAIN TYPES OF CRIMES.

WELL, OF COURSE. IT IS, IT HAS BEEN HELD TO BE A REGULATION, BUT EVEN REGULATORY LAWS REQUIRE THAT THERE IS DUE PROCESS.

BUT, OKAY, SO THEREFORE, IT IS REQUIRED DUE PROCESS IN WHAT WAY? I GUESS WHAT -- DID YOU EVER MAKE THE ARGUMENT THAT THE PROBLEM IS THAT THERE IS THIS IRREBUTTABLE PRESUMPTION OF SOMEONE BEING DESIGNATED AS A SEXUAL PREDATOR, WITHOUT THEIR BEING AN OPPORTUNITY TO DISPROVE THAT?

YES, I DID.

WHAT IS THAT, IS THAT A SUBSTANTIVE OR A PROCEDURAL DUE PROCESS ARGUMENT?

I THINK IT IS A HYBRID. IT IS A HYBRID OF SUBSTANCE AND PROCEDURAL, IN THAT THE STATUTE DENIES THE PERSON A MEANINGFUL OPPORTUNITY TO BE HEARD.

THEREFORE, THAT IS NOT, THAT IS DIFFERENT THAN AN AS-APPLIED CHALLENGE TO THE REGULATORY SCHEME, ISN'T IT?

THAT WAS ARGUED BECAUSE IT WAS ARGUED BELOW. THAT WAS, THAT ARGUMENT, THE IRREBUTTABLE PRESUMPTION, WAS ARGUED BEFORE THE FOURTH DISTRICT. THE FOURTH DISTRICT OPINION TOOK A DIFFERENT ANGLE. THAT, THE AS-APPLIED --

THE EFFECTIVE AN AS-APPLIED CHALLENGE WOULD BE TO SAY THAT, AS APPLIED TO THE FACTS OF THIS CASE, THIS PERSON SHOULDN'T HAVE BEEN LABELED WITH THIS STIGMA OR STIGMA PLUS. I AM TRYING TO UNDERSTAND WHERE THE DIFFERENCE, YOU KNOW, WHERE, HOW YOU REALLY HAVE AN AS ---MAYBE I AM HAVING TROUBLE WITH THIS AS AS-APPLIED CHALLENGE, AS OPPOSED TO THE --

-- FACIAL.

NOT THE FACIAL, NO, BECAUSE YOU HAVE SAID THAT IT IS RATIONAL BASIS, TO THE PROCEDURAL DUE PROCESS PROBLEMS OF NOT BEING ABLE TO ESTABLISH THAT YOU DO NOT FIT INTO THIS CATEGORY AND THAT THE PURPOSES TO BE SERVED BY THIS WOULD NOT BE SERVED BY LABELING YOU FOREVER AS A SEXUAL PREDATOR.

IT IS AN EITHER/OR SITUATION. EITHER IT IS UNCONSTITUTIONAL AS APPLIED TO MR. ROBINSON, BECAUSE THERE, THE EVIDENCE SUBJECTIVELY, ACTUALLY NOT, IT IS ALMOST ADOLF TAIL, RATHER THAN EITHER -- A DOVETAIL, RATHER THAN EITHER/OR, BECAUSE THERE IS NO EVIDENCE OF SEX. THERE IS A STIPULATION. WHETHER THERE IS SEXUAL MOTIVATIONS OR WHETHER THIS -- THERE IS IDEATIONS, THAT IS SPLITTING HAIRS.

MY PROBLEM IS THIS, THAT THE LEGISLATURE, SAY YOU TAKE A CONVICTED FELON. HE CAN'T CARRY ON GUN RIGHT AFTER HE GETS OUT.

CORRECT.

THERE ARE LOTS OF FELONIES THAT INVOLVE, HAVE NOT ONE BIT TO DO WITH WHETHER SOMEBODY IS, YOU KNOW, WAS, THE CRIME INVOLVED VIOLENCE, OR CONVICTED FELONS CAN'T VOTE. THERE IS NOTHING ABOUT WHETHER THEY, THOSE PEOPLE WOULD MAKE GOOD CITIZENS OR NOT VOTING. WHAT IS DIFFERENT ABOUT THE SEXUAL PREDATOR RECOMMENDING STATION THAT MAKES IT SUBJECT TO SOME TYPE OF AN ATTACK DIFFERENT FROM HOW YOU WOULD SAY THOSE OTHER STIGMAS OR RESTRICTIONS THAT OCCUR AS A RESULT OF YOUR STATUS OF JUST BEING A CONVICTED FELON.

AS A CONVICTED FELON, BEING DENIED ADDITIONAL RIGHTS THAT OTHER PEOPLE HAVE FOR WHAT THEY ACTUALLY DID. MR. ROBINSON IS BEING LABELED A SEXUAL PREDATOR FOR SOMEBODY SOMETHING HE DIDN'T DO.

MAYBE WE CAN -- FOR SOMETHING HE DIDN'T DO.

MAYBE WE CAN, LET'S SETTLE SOMETHING FOR WHATEVER WE CAN. IF SOMETHING IS APPLIED AS A CONSTITUTIONAL ATTACK, WHAT BASIS IS IT?

AS THE FOURTH DISTRICT WROTE, THAT IT DIDN'T APPLY TO MR. ROBINSON, BECAUSE THERE WAS, THAT THE LEGITIMATE GOVERNMENTAL INTEREST AND NOTIFICATION OF THE PUBLIC REGARDING PEOPLE WHO COMMIT SEXUAL CRIMES, COULD NOT BE FULFILLED BY LABELING OR DESIGNATING MR. ROBINSON AS A SEXUAL PREDATOR, PURSE UNITE TO --

-- PURSUANT TO THE --

IS THAT A VIOLATION OF THE DUE PROCESS.

YES. ACTUALLY TO BE QUITE HONEST, I DON'T KNOW IF IT IS, BUT THE FOURTH DISTRICT DID NOT ELABORATE WHICH, BUT THE ANALYSIS IS THE SAME, CITED BY BOTH PARTIES IN THIS CASE. SOME OF IT HAS TO DO WITH EQUAL PROTECTION AND OTHERS HAVE TO DO WITH DUE PROCESS, BUT AS APPLIED, IT IS THE SAME ANALYSIS.

WOULD YOU HELP ME WITH THE PRESUMPTION OF THIS DEAL. I AM REALLY TROUBLED BY THAT, BECAUSE IN MOST INSTANCES WHERE I HAVE SEEN THAT CHALLENGE ASSERTED OR DISCUSSED, IT IS A STATUTORY SCHEME THAT STATES IF CERTAIN THINGS, THE EFFECTS OCCURS, WE ARE GOING TO PRESUME, AND THEN IT SAYS WE ARE GOING TO PRESUME WHY, AND IT SHOULD BE IN THE REBUTTABLE OR CONCLUSORY PRESUMPTION, BECAUSE IT SEEMS TO ME IF WE APPLY THAT KIND OF TEST OR ANALYSIS HERE, IT WOULD APPLY TO EVERY STATUTE IN WHICH THERE IS A LINE DRAWN, AND THAT BRINGS YOU WITHIN OR WITHOUT, AND I AM HAVING JUST A REAL DIFFICULTY SEEING HOW THAT ARGUMENT HAS ANY APPLICATION AT ALL IN THOSE KINDS OF

STATUTES THAT ARE DRAW A GO LINE. THAT IS NOT TO SAY THE LINE IS IN THE RIGHT OR WRONG PLACE, BUT, AGAIN, TO TRY TO APPLY THAT PRESUMPTION KIND OF CONSTITUTIONAL ANALYSIS TO A LINE DRAWING STATUTE, I AM HAVING REAL DIFFICULTY. COULD YOU PLEASE HELP ME WITH THAT.

YEAH. AS FAR AS THE ARGUMENT REGARDING IRREBUTTABLE PRESUMPTION GOES, IT IS JUST THAT THIS STATUTE SAYS, UPON CONVICTION, THE COURT SHALL DESIGNATE. WELL, THERE IS NO OPPORTUNITY TO SAY ESPECIALLY IN MR. ROBINSON'S CASE, I DID NOT HAVE, AND THERE IS NO SEXUAL COMPONENT OF THE CRIME. I DID NOT COMMIT A SEX ACT, AND THE EVIDENCE DOESN'T SUPPORT A FINDING AFTER SEX ACT, AND ON TOP OF IT ALL, THE STATE STIPULATED THERE WAS NO SEX, AND THE JUDGE IS SAYING I CAN'T, THE LAW SAYS I CAN'T HEAR YOU. NOW, AS FAR AS THIS STATUTE IS CONCERNED, EVERY OTHER ENUMERATED HE HAVE OFFENSE, OTHER THAN -- ENUMERATED OFFENSE, OTHER THAN KIDNAPING AND FALSE IMPRISONMENT, HAS A SEXUAL COMPONENT, AND BY WAY OF AN EXAMPLE, THERE IS A PROVISION FOR, WELL, THE KIDNAPING PROVISION. THE KIDNAPING STATUTE OF MR. ROBINSON CONVICTED UNDER, ALLOWS, YOU KNOW, IF INDIVIDUAL CONCEALS OR BASICALLY IF YOU HAVE A BABY-SITTER WHO IS A LITTLE SNIP OF A PERSON AND STICKS THE KID IN THE CLOSET TO TERRORIZE THE KID AND KEEPS HIM THERE FOR SEVERAL HOURS AND THE PARENTS COME HOME AND SEE WHAT HAPPENED AND LET THE KID OUT OF THE CLOSET, THAT IS KIDNAPING. THAT IS PRIMA FACIE KIDNAPING, UNDER THE STATUTE. WELL, ALL HER INTENT WAS JUST TO MAKE THAT KID GO CRAZY BECAUSE THE BABY-SITTER, FOR WHATEVER REASON, BUT THAT BABY-SITTER WILL BE A SEXUAL PREDATOR, UNDER THE STATUTE, WITHOUT SAYING THERE WAS NO SEX. I AM JUST A MEAN PERSON. I WANTED TO TERRORIZE THE KID. I DIDN'T WANT ANYTHING ELSE TO HAPPEN TO THAT CHILD. BUT THAT BABY-SITTER BECOMES A SEXUAL PREDATOR, WITHOUT THE ABILITY TO SAY THERE WAS NO SEXUAL COMPONENT. THERE WAS NO SEXUAL MOTIVATION.

WHEN THE SAME THING APPLIES THAT, IF YOU CARRY A KNIFE IN YOUR POCKET AND YOU ARE MAYBE NOT GOING TO USE IT BUT THEN YOU ARE CAUGHT WHEN YOU DO IT AND YOU COMMIT ANOTHER CRIME, YOU DRAW A LINE AND SAY, NO, THEN YOU HAVE GOT THE, WITH A WEAPON KIND OF SITUATION.

AN OPPORTUNITY TO BE HEARD.

BUT YOU STILL HAVE THE WEAPON. BUT YOU ARE, AGAIN, SAYING I AM NOT GOING TO USE IT, SO THE PRESUMPTION, ANY TIME YOU DRAW A LINE --

BUT YOU HAVE AN OPPORTUNITY TO BE HEARD, TO SAY, WELL, I WASN'T GOING TO USE IT, AND HAVE A TRIER OF FACT MAKE A DETERMINATION.

BUT THE PROBLEM THAT I AM STRUGGLING WITH, IT SEEMS TO ME THAT THAT IS A CIRCULAR TYPE OF SITUATION. IF YOU, IF YOU ANING DEGREE THAT THE LEGISLATURE THAT, THERE IS A, COULD HAVE BEEP A RATIONAL BASIS -- COULD HAVE BEEN A RATIONAL BASIS FOR SAYING THAT YOU KIDNAP A MINOR, THAT YOU ARE A SEXUAL PREDATOR, THEN THERE IS A RATIONAL BASIS FOR HAVING, TO BE A, YOUR SEXUAL PREDATOR WITHOUT PROVING A SEXUAL COMPONENT. AND IF YOU CAN DO THAT, THEN THE MANDATORY PRESUMPTION DOESN'T MAKE ANY DIFFERENCE!

BUT THAT IGNORES THE FACT THAT YOU DO, INDIVIDUALS DO HAVE AS-APPLIED CHALLENGES. THAT IS IT IS A LOWER STANDARD. IT IS FACT-DRIVEN, AND THE CASE CITED, THAT I CITED, THE BRUTELL CASE, DEALT WITH THE APPLICATION OF A HITE AMENDMENT TO FEDERALLY-FUNDED INSURANCE, WHERE THE COURT IN THAT CASE SAID, NO, THE HITE AMENDMENT IS CONSTITUTIONAL. NO. IT DOES DOESN'T, YOU KNOW, THE, IT DEPRIVES FUNDING FOR ABORTIONS. BUT IF, UNLESS IT IS THE HEALTH OF THE MOTHER IS THREATENED, BUT IN THIS CASE, THE WOMAN HAD, WAS DIAGNOSED WITH AN ANASYPHALIC FETUS. THE FETUS HAD NO BRAIN. THE INTENT OF THE HITE AMENDMENT WAS TO ENCOURAGE LIFE, AND HERE WAS A CHILD GOING TO

BE BORN WITHOUT LIFE OR NO PROSPECT OF LIFE, AND THEY FOUND, AS APPLIED, WHILE THE HITE AMENDMENT IS PERFECTLY CONSTITUTIONAL, AS APPLIED TO THIS REGULATION, FEDERAL REGULATION, IT WAS UNCONSTITUTIONAL.

BUT WHEN I HEAR YOU SAY OPPORTUNITY TO BE HEARD, WHEN I, THOSE, THAT PHRASE, OPPORTUNITY TO BE HEARD, IS ABOUT AS FAR FROM THE RATIONAL RELATIONSHIP TEST THAT I KNOW. WELL, IT IS STILL WITHIN THE FOURTEENTH AMENDMENT, BUT IT HAPPENS TO BE CALLED PROCEDURAL DUE PROCESS. THAT ISSUE IS, AS I UNDERSTAND IT, IS UP BEFORE THE UNITED STATES SUPREME COURT, AS TO WHETHER THESE SEXUAL PREDATOR REGISTRATION STATUTES, ISN'T THAT OFTEN THE ARGUMENTS THAT ARE BEING --

THAT IS A DIFFERENT STATUTE. THOSE ARE THE MEETING ANN'S LAW VOFT -- THE MEETING HAS NOT'S LAW INVOLVE WHEN -- THE MEETING HAS NOT'S LAW AUTOMATICALLY -- THE MEGAN'S LAW REGULATION AUTOMATICALLY KICKS IN. IT IS WHEN YOU ARE PRIVILEGED -- THIS IS A DESIGNATION BY A TRIAL COURT. THIS IS A DIFFERENT TYPE OF LAW. IT IS A DIFFERENT TYPE OF PROCEDURE AND IT IS A DIFFERENT TYPE OF CONSEQUENCE. THE, WELL, THIS IS ALSO PART OF THE MEETING HAS NOT'S LAW -- OF THE MEETING HAS NOT'S LAW, AND -- THE MEGAN'S LAW. THE OPPORTUNITY TO BE CHALLENGED. THIS IS AN AFFIRMATION BY A TRIAL COURT. THEY HAD THIS HEARING, AND THE STATE SAID HE HAS BEEN CONVICTED. HERE IS THE CERTIFIED COPY OF THE CONVICTION. AND THE JUDGE SAID OKAY. YOU ARE A SEXUAL PREDATOR. WELL, IF YOU ARE GOING TO HAVE A HEARING, I MEAN, HAND-IN-HAND, YOU SHOULD HAVE AN OPPORTUNITY TO BE HEARD. BUT THE STATUTE DOESN'T DEPRIVE IT.

NOW, DID YOU RAISE, THAT, AGAIN, TO ME, WHETHER IT IS THE SAME OR DIFFERENT FROM WHAT IS BEFORE THE UNITED STATES SUPREME COURT, WHEN YOU SAY THAT SOMEONE SHOULD HAVE A HEARING BEFORE THEY ARE DESIGNATED AS A SEXUAL PREDATOR, THAT IS WHAT THIS STATUTE USED TO SAY --

THE STATUTE PROVIDES A HEARING.

BUT IT PROVIDES, IT DOESN'T ALLOW SOMEBODY TO REBUT, SO YOU ARE SAYING THERE WAS NO MEANINGFUL OPPORTUNITY TO BE HEARD, AND THAT IS A CHALLENGE THAT THE STATUTE IS DEFECTIVE, AS A MATTER OF PROCEDURAL DUE PROCESS. IS THAT YOUR ARGUMENT AT THE TRIAL COURT LEVEL?

WELL, THERE WAS, WELL, THIS CAME THROUGH THE TRIAL COURT LEVEL ON A 3800 B-2 MOTION. THAT WAS DEFINED BY LAW AND I CHARACTERIZED IT DIFFERENTLY, BUT THAT IS THE SUBSTANCE OF THE ARGUMENT, THAT THERE WAS NO DUE PROCESS BECAUSE THERE WAS NO OPPORTUNITY TO BE HEARD, AND THAT WAS WHAT WAS BRIEFED AS THE SECOND ISSUE.

WOULD YOU ADDRESS THE STANDING ISSUE. I AM HAVING TROUBLE DETERMINING WHERE THE INJURY, IN FACT, IS, WHERE THE DEFENDANT HERE IS SPENDING TWO LIFE TERMS IN PRISON.

THE STANDING ISSUE IS, THERE IS MULTILEVEL. THE STATUTE, ITSELF, PROVIDES THAT THE DEPARTMENT OF CORRECTIONS IS TO REALM SISTER THOSE PEOPLE IN THE -- IS TO REGISTER THOSE PEOPLE IN THE DOC, AND THEY ARE SUPPOSED TO PUT THEIR NAMES OUT ON THE INTERNET TO SAY THAT THEY ARE SEXUAL PREDATORS AND THEY ARE IN PRISON, SO THE LAW PROVIDES FOR THE STATUTE TO KICK IN. IT JUST DOESN'T --

BUT HOW IS THE DEFENDANT IN THIS CASE HARMED BY THAT DESIGNATION, WHERE HE IS SPENDING TWO LIFE TERMS IN PRISON? HE IS NOT IN THE COMMUNITY, WHERE PEOPLE ARE SHUNING HIM OR REFUSING TO TALK TO HIM OR NOT LETTING HIM REGISTER IN THEIR CHURCH. HE IS IN PRISON FOR TWO LIFE TERMS.

WELL, THE STATUTE DOES STILL APPLY TO HIM. SECONDLY, THIS IS A SCENARIO EVEN THAT

WOULD APPLY TO OTHER PEOPLE. IT IS LIKELY TO RECUR, SO THIS COURT DOES HAVE THE ABILITY TO REVIEW THIS ISSUE.

CHIEF JUSTICE: I AM AFRAID WE HAVE USED ALL OF OUR TIME WITH YOUR QUESTIONS. THANK YOU.

THANK YOU VERY MUCH.

CHIEF JUSTICE: COUNSEL, YOU STILL HAVE SEVERAL MINUTES.

AS TO THE IRREBUTTABLE PRESUMPTION ARGUMENT, I DON'T BELIEVE THAT THAT WAS TIMELY MADE IN THE TRIAL COURT. IT WAS MADE IN THE 3800 MOTION, SO OBVIOUSLY THIS IS A SENTENCE, SO I DON'T THINK THAT CLAIM WAS PRESERVED, AS FAR AS THAT GOES. UNDER A RATIONAL RELATIONSHIP TEST, AGAIN I THINK THE LEGISLATURE COULD HAVE CONCLUDED THAT THE DEFENDANT IN THIS CASE CREATED THE SITUATION. HE TOOK THE CHILD AWAY FROM ANY WITNESSES, INCLUDING HER MOTHER, ANYBODY WHO COULD SAY EXACTLY WHAT WAS GOING ON. AGAIN, THE STATE DID STIPULATE THERE WAS NO SEXUAL ACTIVITY, BUT IT DIDN'T STIPULATE OR COULDN'T STIPULATE THAT THERE WAS A SEXUAL MOTIVE BEHIND THE CRIME, AND AGAIN THE DEFENDANT TOOK A CHILD AWAY. WE DON'T KNOW WHAT HIS MOTIVES WERE, AND THAT --

IS THAT WHY YOU THINK, IS THAT YOUR ARGUMENT FOR WHY THIS STATUTE IS NOT UNCONSTITUTIONAL, AS APPLIED TO THIS DEFENDANT?

YES. YES. I THINK THE LEGISLATURE, YES, BECAUSE --

WE DON'T KNOW WHAT HIS MOTIVE IS?

WE DON'T KNOW WHAT HIS MOTIVE WAS, AND THE LEGISLATURE --

THE STATUTE PRESUMES A MOTIVE FOR THE DEFENDANT?

THE STATUTE, I THINK THE LEGISLATURE COULD HAVE CONCLUDED THAT IT IS, YOU KNOW, AGAIN THE DEFENDANT CREATED THE SITUATION. HE IS THE ONE THAT TOOK THE CHILD AWAY FROM ANY WITNESSES, ANYBODY THAT, YOU KNOW, COULD KNOW WHAT WAS GOING ON WHEN THE DEFENDANT HAD THE CHILD, AND THAT THE DIFFICULTY IN DETERMINING --

SO YOU ARE SAYING THAT WE READ INTO THE STATUTE THAT, WHEN THERE IS A KIDNAPING AND WHEN THERE IS A CHILD INVOLVED, THERE IS A SEXUAL MOTIVE.

I AM SAYING, AND I AM NOT NECESSARILY SAYING. THAT I AM SAYING THAT THE LEGISLATURE, IF YOU WANT TO APPLY RATIONAL BASIS TEST, THE LEGISLATURE COULD HAVE CONCLUDED THAT, THAT THE DIFFICULT ANY DETERMINING WHAT HAPPENED, WARRANTED THE APPLICATION, THE SEXUAL LABEL TO THE DEFENDANT.

BUT THE STATE HAS STIPULATED IN THIS IN STABS, THAT -- IN THIS INSTANCE, THAT THERE WAS NO --

WE STICHTED THAT THERE WAS NO SEXUAL -- WE STIPULATEED THAT THERE WAS NO SEXUAL ACTIVITY. WE DIDN'T STIPULATE THAT THERE WAS NO MOTIVE.

HOW DOES, HE DOESN'T GET TO PROVE THAT THERE WASN'T ANY SEXUAL MOTIVE.

THAT IS, I THINK THAT IS, MAYBE THAT IS THE POINT, IS THAT YOU KNOW, SO YOU HAVE A HEARING ON A MATTER. YOU BRING, THE DEFENDANT WAS ALONE WITH THE CHILD. AGAIN, HE

CREATED THE SITUATION. YOU BRING HIM IN AND HE SAYS, YOU KNOW, THIS GUY IS A CAREER CRIMINAL, TEN FELONY CONVICTIONS OR WHATEVER, UNDISPUTEABLY A CONVICTED CHILD KIDNAPER, AND HE SAYS NO, THERE WAS NO SEXUAL MOTIVE BEHIND WITH I DID. I MEAN, I DON'T THINK THAT KIND OF A HEARING WOULD PRODUCE ANY KIND OF RELIABLE RESULT ANYWAY, SO -

SO YOU ARE STILL LEFT WITH THE FACT THAT, BECAUSE HE KIDNAPPED A CHILD, THERE IS.

PARDON ME?

YOU ARE STILL LEFT, SO YOU ARE, WHAT YOU ARE LEFT WITH IS THE FACT THAT, BECAUSE OF THE KIDNAPING INVOLVED A CHILD, THAT IS THERE A POSSIBLE SEXUAL MOTIVE.

YES. YES. BUT IF YOU WANT TO DO A RATIONAL RELATIONSHIP TEST. AND --

WHAT ABOUT THE BABY-SITTER HYPOTHETICAL?

WELL, THIS IS AN AS-APPLIED CHALLENGE, IF THE PUBLIC DEFENDER COMES UP WITH A BABY-SITTER. HE IS WELCOME TO CHALLENGE THAT CASE.

CHIEF JUSTICE: OKAY. I AM AFRAID OUR TIME IS GONE. THANK YOU, BOTH, VERY MUCH. THE COURT WILL TAKE ITS 15-MINUTE RECESS BEFORE WE HEAR THE LAST CASE. THE COURT WILL STAND IN RECESS.