Thomas D. Woodel v. State of Florida

SC05-1336

GOOD MORNING.
>> GOOD MORNING.
THE COURT IS BACK IN
SESSION.
PLEASE BE SEATED.
THE LAST CASE ON THE
CALENDAR THIS MORNING IS
WOODEL VERSUS THE STATE
OF FLORIDA.
MR. MOELLER, ARE YOU
READY TO PROCEED?
>> THANK YOU.
MAY IT PLEASE THE COURT.
I AM ROBERT MOELLER WITH
THE 10th JUDICIAL SIR
KET HERE ON BEHALF OF
THE APPELLANT THOMAS
WOODEL.
THIS CASE IS BEFORE THE
COURT FOR THE SECOND
TIME, PREVIOUSLY
CONVICTED AND SENTENCED
TO TWO SENTENCES OF
DEATH FOR THE MURDERS OF
BERNICE AND CLIFFORD
MOODY.
THIS COURT OVERTURNED
HIS SENTENCES DUE TO THE
FAILURE OF THE INITIAL
TRIAL COURT TO
ADEQUATELY CONSIDER THE
MITIGATING CIRCUMSTANCES
AND WENT BACK DOWN THE
TRIAL JUDGE DETERMINED
THAT A WHOLE NEW
SENTENCING PROCEEDING
BEFORE A JURY SHOULD BE
HELD IN THAT NEW
PROCEEDING THE JURY
RECOMMENDED A LIFE
SENTENCE FOR THE KILLING
OF CLIFFORD MOODY AND
RETURNED A 75 DEATH
RECOMMENDATION TO THE

KILLING OF BERNICE MOODY
AND THE TRIAL COURT
FOLLOWED THE
RECOMMENDATIONS
SENTENCING MR. WOODEL TO
LIFE FOR THE CLIFFORD
MOODY KILLING AND TO
DEATH FOR THE BERNICE
MOODY KILLING.
>> WHAT IS SHE GOING TO
ARGUE?
>> WELL, IF I HAVE TIME,
I WOULD LIKE TO HIT ALL
ISSUES.
THE FIRST ISSUE DEALS
WITH THE EXCUSEAL OF TWO
POTENTIAL JURORS ON THE
BASIS THEY WERE WERE NOT
SUFFICIENTLY FLUENT IN
ENGLISH TO PARTICIPATE
IN THE PROCEEDINGS.
>> YOU CONTEST THAT
WHETHER OR NOT WITHOUT
INTERPRETER THEY
WOULDN'T HAVE BEEN ABLE
TO PARTICIPATE FULLY IN
THE TRIAL?
>> AS FAR AS THE RECORD
INDICATES, IF THERE WAS
AN INTERPRETER, THEY
WOULD HAVE BEEN ABLE TO.
>> WITHOUT AN
INTERPRETER.
>> OH, WITHOUT AN
INTERPRETER.
THE RECORD APPEARS TO
REFLECT THEY COULD NOT
ADEQUATELY UNDERSTAND
WITHOUT INTERPRETER.
>> WHAT WAS THE EVIDENCE
AS TO WHETHER OR NOT
THERE WAS AN INTERPRETER
AVAILABLE FOR THE TRIAL?
>> JUST SOME COMMENTS
THAT THE JUDGE MADE THAT
THEY DID NOT HAVE AN
INTERPRETER AVAILABLE
FOR THE JURY SELECTION
PROCESS.
WHETHER THEY COULD HAVE
FOUND ONE EVENTUALLY,
THE RECORD DOESN'T
REFLECT THAT.
> IT SEEMS TO ME, THE

BIG, AGAIN, THERE IS A LOT, A VERY FASCINATING ISSUE, I AM NOT SURE IT IS REVERSIBLE ISSUE, YOU ARE NOT MAKING THE ARGUMENT THAT IN ORDER TO VINDICATE BOTH THE JURORS AND YOUR CLIENT THREW RIGHTS THAT THERE IS A RIGHT TO HAVE IN TERP OPERATOR IN THE JURY DELIBERATIONS AS THERE IS FOR THOSE WHO ARE HEARING IMPAIRED? ARE YOU MAKING THAT ARGUMENT?
>> WELL, WE ARE EVENTUALLY MAKING THAT ARGUMENT, YES.
OUR ARGUMENT IS TWOFOLD, REALLY, THAT EXCLUSION OF THE JURORS SLIGHTED THE CROSS SECTION REQUIREMENT, THE CROSS SECTION REQUIREMENT OF THE 6th AMENDMENT AN VIOLATION.
>> THE ONLY WAY -- THE ONLY WAY LORENZO WOULD BE WRONG, REVERSED BECAUSE THERE WAS AN INTERPRETER IN THE JURY ROOM YOU WOULD SAY THERE IS A RIGHT TO HAVE AN INTERPRETER IN THE JURY ROOM OF THE LANGUAGE THAT THE PERSON IS PRIMARY LANGUAGE?
>> YES.
IN DELORENZO.
>> THAT IS YOUR ARGUE.
>> YES.
>> IN DELORENZO, I WOULD POINT OUT, THERE WAS A DEFENSE OBJECTION TO HAVING THE IN TERP OPERATOR IN THE JURY ROOM, WE'RE SAYING THE INTERPRETER SHOULD HAVE BEEN ALLOWED AND THE -- WE ALSO POINT OUT THAT BETWEEN THE FACT THAT DEAF OR HARD OF HEARING ARE PERMITTED TO HAVE

INTERPRETER EVEN IN THE DELIBERATION ROOM.
WE CITE ADLAH REVIEW ARGUMENT IN THE BRIEF THAT DISCUSSES THAT ISSUE AT SOME EXTENT AND THE CONTEXT OF EQUAL PROTECTION.
>> WHAT WAS THE EVIDENCE AS TO WHAT BACKGROUND THESE JURORS WERE FROM? ARE THESE HISPANIC JURORS?
YOU YES, I BELIEVE THEY WERE.
>> WHAT EVIDENCE DID YOU PROVIDE THAT THERE WERE, WHAT HISPANIC JURORS WERE LEFT IN THE VOIR DIRE AFTER THEY WERE EXCUSED FOR CAUSE.
DON'T YOU HAVE TO SHOW THAT IN ORDER TO DEMONSTRATE THAT THE VOIR DIRE DID NOT HAVE AN ADEQUATE CROSS SECTION THAT THERE WERE INSUFFICIENT OR NO HISPANICS LEFT ON THE PANEL?
I DON'T THAT I BY CROSS SECTION, YOU MEAN WE NEED SOME JURORS WHO DON'T KNOW ENGLISH, YOU WHAT MEAN IS, WE NEED JURORS WHO ARE HISPANIC, ASIAN, WHATEVER THEY REFLECT THE COMMUNITY IN WHICH THEY LIVE AND I AM SURE YOU CAN FIND HISPANICS THAT DO SPEAK ENGLISH, DON'T NEED AN INTERPRETER.
SO DOESN'T YOUR CLAIM FAIL JUST ON THE BASIS THAT YOU HAVE HAVEN'T IDENTIFIED THE FACT THAT THERE WERE NO OTHER HISPANICS AVAILABLE TO SERVE?
>> WELL, CERTAINLY CONCEDE THAT THE RECORD IS NOT AS DEVELOPED AS WELL AS IT COULD HAVE

BEEN.
>> THAT OBJECTION WAS NOT MADE TO THE TRIAL COURT ETHER?
>> WHICH OBJECTION?
>> THE OBJECTION ON THE BASIS THAT THE VOIR DIRE DR NOT CONTAIN THE AMOUNT OF UNDERSERVED CLIENTS AS? WELL, OBJECTION EVENTUALLY WAS THAT EX COLLUSION OF THESE POTENTIAL JURORS WOULD DEPRIVE MR. WOODEL UNDER THE 6th AMENDMENT.
>> THAT IS AN ATTACK ON THE VOIR DIRE, CORRECT? UNDER THE U.S. SUPREME COURT HOLDING AS TO CROSS SECTION?
YEAH, EVENTUALLY, THAT IS CORRECT.
GAIN, THE RECORD IS NOT AS DEVELOPED AS I WOULD HAVE LIKED IN THIS REGARD.
>> ISN'T THAT -- MY CONCERN ABOUT THE CONSTITUTIONAL IMPLICATIONS IS THAT ON THE FEDERAL STATUTE THERE IS ACTUALLY A CRAWLFICATION FOR PROFICIENCY IN THE ENGLISH LANGUAGE, TO MY KNOWLEDGE, AND HER NAN DEZ MAY WONDER WHERE THEY GO ON IT, BUT THAT STATUTE NEVER BEEN ATTACKED WITH BEING UNCONSTITUTIONAL.
>> YEAH, I DON'T KNOW WHETHER IT HAS BEEN OR NOT.
I KNOW THAT IN FLORIDA, WE DON'T HAVE A SIMILAR REQUIREMENT.
I COULDN'T FIND.
I UNDERSTAND THAT.
INSTEAD OF SAYING THE JURORS HAD A RIGHT TO SERVE BECAUSE, EVEN THOUGH THEY COULD NOT SPEAK ENGLISH, WE GET

BACK TO JUSTICE
CANTERA'S QUESTION, IS
THAT, I AM SURE YOU
AGREE, THE FAIR CROSS
SECTION COULDN'T BE FAIR
CROSS SECTION OF THOSE
JURORS THAT DON'T
UNDERSTAND THE ENGLISH
LANGUAGE.
>> WELL, THAT IS
CORRECT.
IT IS A FAIR CROSS
SECTION OF THE TEN TIRE
COMMUNITY, THAT IS
CORRECT.
>> BUT AS I WAS SAYING,
HE DON'T HAVE A
REQUIREMENT IN FLORIDA
THAT THE JURORS MUST BE
PROFISH SENT IN ENGLISH.
YOU COULDN'T FINE
ANYWHERE THIS A JUR
JUROR WOULD BE
DISQUALIFIED BECAUSE HE
IS NOT FLUENT ON THE
ENGLISH LANGUAGE.
>> IT SEEMS TO ME THE
MORE COMPELLING ONE THAN
THE CONSTITIAL TUINGAL
ISSUE, THAT IS SIMPLY A
PLY THAT THE STATUTE
SAYS JURORS SHALL BE
EXCUSED FOR CAUSE ONLY
FOR THE FOLLOWING
REASONS AND THAT IS NOT
ONE OF THEM.
>> THAT IS RIGHT.
>> THE STATE TORY
ARGUMENT NOT A
CONSTITUTIONAL ONE.
>> IT COULD BE.
WE COULD MENTION THAT,
WE HAVE MENTIONED THAN
THE BRIEFS.
>> AGAIN, THAT WAS NOT
MENTIONED TO THE TRIAL
JUDGE?
>> NOT SPECIFICALLY, NO.
UNFORTUNATELY, IT WAS.
>> SOMEHOW I WOULD HAVE
A FEELING THAT THOSE
DEFENDANTS STATE MIGHT
HAVE A PROBLEM WITH
HAVING, YOU KNOW, A

FOREIGN LANGUAGE
INTERPRETER IN THE JURY
ROOM DELIBERATING.
THAT IS SOMETHING TO
STUDY IN THE FUTURE.
>> RIGHT.
THAT IT WOULD BE UNCAN
CONSTITUTIONAL IN SOME
WAY NOT TO ALLOW AN
INTERPRETER INTO THE
JURY ROOM.
AND YOU ARE SAYING THAT
ARGUMENT WAS NO SPAT
SPECIFICALLY MADE,
CORRECT.
>> WELL, THERE WAS A
REFERENCE THAT AN
INTERPRETER WOULD NOT BE
ALLOWED INTO THE JURY
ROOM.
WAS THIS PART OF HIS
ARGUMENT, YES.
>> THE DEFENSE COUNCIL
DID NOT THEN ARGUE THAT
THE CONSTAY TUGSAL RIGHT
TO HAVE A FAIR CROSS
SECTION WOULD INCLUDE
THE RIGHT FOR A
NON-ENGLISH-SPEAKING
JUROR TO HAVE AN
INTERPRETER IN THE JURY
ROOM.
I THINK THAT WAS EM
COMPASSED IN THE
ARGUMENT THAT THE
DEFENSE COUNSEL DID
MAKE, YES.
>> WELL, CAN YOU
IDENTIFY FOR ME WHERE HE
MADE THE SPECIFIC
ARGUMENT THAT IT WOULD
BE UNCONSTITUTIONAL NOT
TO ALLOW THE INTERPRETER
IN THE JURY ROOM?
BECAUSE FROM MY
UNDERSTANDING, ALL HE
SAID WAS, YES, WE
UNDERSTAND, THE
INTERPRETER WOULD NOT BE
ALLOWED TO GO INTO THE
JURY ROOM?
>> WELL, I THINK, THAT
IS PART OF THE ARGUMENT
REGARDING THE FAIR CROSS

SECTION, IF YOU, IF
THESE JURORS COULD SERVE
IF IN DERP OPERATOR WAS
PERMITTED TO GO INTO THE
JURY ROOM WITH THEM.
I THINK THAT WAS PART OF
HIS ARGUMENT.
>> ON THE CROSS SECTION
ARGUMENT, AND I
UNDERSTAND THOSE CASES
THAT TALK ABOUT, YOU
KNOW, THE DEFENDANT WHO
IS, YOU KNOW, THE ONE
CHARGED, YOU HAVE TO
HAVE AN INTERPRETER
THERE IF YOU NEED IT,
SWNS WHO NEEDS
INTERPRETATION LIKE THAT,
BUT BEYOND THAT, WHY, IF
THIS IS NOT, IF THIS IS
INTO THE VIOLATION OF A
FAIR CROSS SECTION, IS
THERE ANY OTHER RIGHT
THAT IS BEING VIOLATED
IF A JUROR WHO DOES NOT
SPEAK ENGLISH IS NOT
ALLOWED ON THE JURY.
I MEAN, WE DO HAVE, YOU
KNOW, THE CONSTITUTIONAL
AMENDMENT THAT TALKS
ABOUT ENGLISH BEING
OFFICIAL LANGUAGE OF THE
STATE OF FLORIDA, THOSE
KIND OF ISSUES, SO IS
THERE SOMETHING ELSE
THAT{_ IS BEING VIOLATED
IF, IF THESE JURORS ARE
NOT ALOUD TO SIT?
>> WELL, THE EQUAL
PROTECTION CLAUSE, WE
HAVE RAISED, THAT WOULD
GO TO THE RIGHT OF THE
JURORS TO SIT ON THE
JURY AND AGAIN, WE
POINTED OUT THE FACT
THAT WITH POTENTIAL
JUROR, HARD OF HEARING
JUROR, THEY ARE ALLOWED
TO HAVE INTERPRETEROR IN
THE DELIBERATION WITH
WITH THEM.
>> BUT IF THE FEDERAL
STATUTE WHICH SAYS, YOU
KNOW, THAT JURORS MUST

BE PROFICIENT IN ENGLISH
IS NOT A VIE LAFTION
EQUAL PROTEST, THEN
SIMPLY BECAUSE WE DON'T
HAVE A STATUTE THAT IS
WHY IT IS A VIOLATION OF
EQUAL PROTECTION?
>> WELL, IT COULD BE A
VIOLATION OF FLORIDA'S
CONSTITUTIONAL
PROVISIONS, THE PARALLEL
OF THE UNITED STATES'
CONSTITUTION, AGAIN, WE
DON'T, IN FLORIDA, WE
DON'T HAVE THAT
REQUIREMENT FOR ENGLISH
SPEAKER, BUT WE HAVE
CONSTITUTIONAL
GUARANTEES IN THE
FLORIDA CONSTITUTION AS
WELL, THAT IS WHY IF THE
COURT CAN'T REACH THIS
ISSUE OR DOESN'T WANT TO
DECIDE ON A FEDERAL
BASIS, WE ARE ASKING IT
USE THE STATE
CONSTITUTIONAL IN ORDER
TO RESOLVE ISSUE.
>> STATE CONSTITUTIONAL
PROVISIONS THAT SAY
WHAT?
>> THAT THE GUARANTEE
RIGHT TO JURY TRIAL AN
EQUAL PROTECTION.
>> YOU KNOW, AND
PROBABLY, YOU PROBABLY
NEED TO GET ON WITH OUR
OTHER ARGUMENT, I AM
THINKING OF ALL SORTS OF
ISSUES, SIGN INTERPRETER,
FOR WHOEVER IS HEARING
IMPAIRED, I AM NOT SURE
HOW AS A PRACTICAL
MATTER, YOU WOULD HAVE
INTERPRETERS FOR EVERY
JUROR THAT COULDN'T
SPEAK ENGLISH, WHATEVER
THEIR LANGUAGE WAS
SPEAKING IN TERP
OPERATING AT THE SAME
TIME YOU MIGHT EVEN BE
HAVING A WITNESS
SPEAKING AND IN TRERP
INTERPRETING, HAVE YOU

REVIEWED THAT?
>> WELL, THAT IS OUTSIDE THE SCOPE OF WHAT I AM PREPARED TO ADDRESS.
, IF THERE WOULD BE CERTAIN PRACTICAL PROBLEMS THAT WOULD ARISE, BUT WE HAVE, WHEN YOU HAVE A CRITICAL WITNESS THAT DOESN'T SPEAK ENGLISH, YOU HAVE TO HAVE INTERPRETER FOR HIM NO MATTER HOW MANY MIGHT BE ALL SPEAKING DIFFERENT LANGUAGES SO CERTAINLY THERE WOULD BE CERTAIN PRACTICAL PROBLEMS OF WHAT HAS TO BE RESOLVED.
>> IF I COULD, I WOULD LIKE TO MOVE ON NOW THE SECOND ISSUE HAVING TO TO DEAL WITH IMPROPER TESTIMONY FROM STATE WITNESS ARTHUR WHITE, HE WAS GENTLEMEN THAT SERVED TIME IN THE PI NAL LESS COUNTY JAIL WITH THE DEFENDANT AND HIS TESTIMONY IN PART DEALT WITH STATEMENTS THE DEFENDANT MADE TO HIM WHILE THEY WERE IN JAIL AND THE STATEMENTS WERE HIGHLY PREJUDICEY TO THE FACT HE ADMITTED TO FONDLED BERNICE MOODY, THE REASON THIS SHOULD HAVE BEEN NOT ALLOWED BECAUSE IT WAS IR REL VANT TO ANY ISSUES IN THE CASE, THERE WAS NO ALLEGATION OF ANY KIND OF A SEXUAL ASSAULT.
>> THERE WAS -- THE STATE WAS SEEKING AGGRAVATOR, RIGHT?
>> YES.
>> WHY WERE NOT THE CIRCUMSTANCES AROUND DEATH OF THIS LADY NOT BE RELEVANT?
>> WELL, I THINK THE HAC

WAS BASED MORE ON THE MANNER OF THE KILLING WHETHER THAN THE THIS PARTICULAR ACT, THE STATE DIDN'T RELY UPON THIS AT ALL, IT SHOULDN'T HAVE COME IN. IT WAS CERTAINLY INFLAMMATORY.
>> THE STATE DIDN'T RELY ON UT.
HOW IS IT ERROR?
>> WELL, BECAUSE THE JURY HEARD IT.
THEY MAY HAVE CONSIDERED IT.
>> NO, IT WAS NOT OBJECTED TO.
>> THAT NOW WE HAVE TO DECIDE WHAT IT GOES TO THE ESSENCE OF THE TRIAL SO A JURY VERDICT COULD MOT HAVE BEEN OBTAINED WITHOUT IT.
HOW IS THAT THE CASE WHEN THE STATE DIDN'T RELY ON IT?
>> WELL, BECAUSE WE DON'T KNOW IF THE KRUR RY RELIED ON IT OR NOT.
IT IS TRUE THE STATE DIDN'T RELY UPON IT.
THE JURORS MAY HAVE.
THIS WAS A 7-5 DEATH RECK PENDATION, IF ONE JUROR WAS SWAYED OR INFLUENCED BY THIS TESTIMONY, IT WOULD EFFECT.
>> THE RECORD THAT THE VICTIM'S CLOTHES HAD BEEN REMOVED BY THIS DEFENDANT, CORRECT?
>> YES.
I THINK SHE WAS FOUND WEARING EITHER JUST SHOES OR JUST SOCKS, THERE WAS SOME DISCREPANCIES.
>> HER UNDERWEAR TIED IN A KNOT.
>> THAT IS WHAT HE SAID.
YES, THAT IS CORRECT.
>> THAT WAS PART OF THE

THE OVERALL EVIDENCE?
>> YES, IT WAS.
>> OKAY.
I WOULD LIKE TO MOVE ON TO ISSUE 3 WHICH HAS TO DO WITH THE SUFFICIENCY OF THE EVIDENCE TO SUPPORT THE AGGRAVATING CIRCUMSTANCE THAT BERNICE MOODY WAS TAR PICKCALLY VULNERABLE TO ADVANCED AGE OR DISICT.
>> WE UPHELD THIS WHEN HE WAS HERE BEFORE, CORRECT?
>> YES, YOU DID.
I THINK AT THIS TIME IS APPROPRIATE TO RERAISE IT, THOUGH, ON THE SLATE PRINCIPAL, ALSO THE FACT THAT THE EVIDENCE WAS A LITTLE BIT DIFFERENT IN THIS TIME AROUND IT WAS SIMILAR, BUT IS WAS NOT EXACTLY THE SAME AS THE FIRST PENALTY TRIAL.
>> THIS LADY WAS 75 YEARS OLD, RIGHT?
>> 74, ACTUALLY.
>> HOW OLD WAS YOUR DEFENDANT?
>> HE WAS 26.
>> AND SO IN THE FACT THAT HERE WAS 74-YEAR-OLD LADY AND A 26-YEAR-OLD GUY, I MEAN, ISN'T THAT IN OF ITSELF SORT OF SUFFICIENT TO SHOW ADVANCED AGE, AND HE COULD TAKE ADVANTAGE OF HER BECAUSE OF HER AGE AND HIS YOUTH, RELATIVE YOUTH?
>> WELL, FIRST OF ALL, THERE WAS NOT ANY EVIDENCE THAT HE TARGETED THESE PEOPLE BECAUSE THEY WERE ELDERLY.
I WOULD LIKE TO MAKE THAT POINT.
>> WAS THAT A NECESSARY ELEMENT?
>> WELL, I DON'T THINK

IT IS NECESSARY ELEMENT,
BUT IT IS CERTAINLY GOES
TO THE WEIGHT THAT
SHOULD BE ACCORDED THIS
CIRCUMSTANCE I BELIEVE,
BUT AS FAR AS, I DON'T
THINK THERE IS A PER SE
RULE THAT AT A CERTAIN
AGE, THIS WOULD APPLY,
THE COURT HAS REJECTED
THAT THAT THERE IS A
CERTAIN AGE WHERE THIS
WOULD APPLY.
>> THERE ARE MEDICAL
EVIDENCE HERE, THOUGH,
THIS INDIVIDUAL HAVE
SOME ARM INJURIES?
>> RIGHT.
ESSENTIALLY THE EVIDENCE
WAS THAT SHE HAD HURT
HER ARM SOME MONTHS
BEFORE THE HOMICIDE, IT
WAS NOT CLOSE IN TIME TO
THE HOMICIDE.
I BELIEVE THE INJURY
HAPPENED ON THE SPRING
AND THE HOMICIDE
OCCURRED AT THE END OF
DECEMBER,,,,,,,,,,,,
WAS FROM THE, HER RELATIVES
WHO SAID THAT ALTHOUGH THIS
INJURY HAD OCCURRED, AND YES
IT WAS FAIRLY SERIOUS AT THE
TIME, AGAIN, IT WAS MONTHS
BEFORE THE HOMICIDE AND SHE
HAD PRETTY MUCH RECOVERED
FROM IT, AND SHE WAS ABLE TO
DO MANY, MANY THINGS.
>> WEREN'T ALL THOSE SAME
ARGUMENTS AVAILABLE IN THE
PREVIOUS APPEAL?
>> RIGHT, AND THEY WERE MADE,
AND BUT I JUST, THE
EVIDENCE, THE EVIDENCE WAS
SIMILAR BUT I, TO ME IT SEMD
MUCH WEAKER THIS TIME AROUND
ON THESH WITH REGARD TO HER
DISABILITY IN HER ARM
INJURY.
JUST, MOVING ON BRIEFLY TO
THE, WHETHER THE DEATH
SENTENCE IS JUSTIFIED IN
THIS CASE, I'D LIKE TO POINT
OUT FIRST OF ALL THAT

MR. WOODEL HAS NO HISTORY OF VIOLENCE WHATSOEVER.
THIS COMMITTING OF ACTS SUCH AS THIS WAS TOTALLY OUT OF CHARACTER FOR THE DEFENDANT TO COMMIT.
AND IT SEEMS THAT HIS INTOXICATION ON THE NIGHT OF THE HOMICIDES PLAYED A SIGNIFICANT ROLE IN THIS AND MAY HAVE LED UP TO THE KILLINGS.
ALSO, HE HAS DISPLAYED QUITE A BIT OF REMORSE FOR WHAT HAPPENED THAT, THAT NIGHT OR EARLY MORNING, AND AS THE TESTIMONY SHOWED, HE HAD AN EXTREME TREMELY NEGLECTED AND ABUSED CHILDHOOD RESULTING IN CHRONIC DEPRESSION AND LOW SELF-ESTEEM AS WE SAW FROM THE TESTIMONY OF HIS RELATIVES, PARTICULARLY HIS SISTER BOBBIE WOODEL IN THE TESTIMONY OF DR. --
>> -- CONCERN IN THE WEIGHT THAT SHOULD'VE BEEN GIVEN TO THE MITIGATING EVIDENCE, OR THIS A PROPORTIONALITY ARGUMENT?
>> PROPORTIONALITY ARGUMENT, ESSENTIALLY.
ALSO, HE WAS CHILD OF DEAF PARENTS AND DR. D TALKED ABOUT THE PROBLEMS THAT THAT CAUSED ESSENTIALLY HIM, MR. WOODEL NOT FITTING INTO EITHER THE HEARING WORLD OR THE DEAF WORLD.
AND THE PROBLEMS WITH SOCIALIZATION IT CAUSED WHEN HE WENT OUT ON HIS OWN.
ALSO, AGAIN, WE ARE ATTACKING ONE OF THE AGGRAVATING CIRCUMSTANCES AS NOT BEING SUFFICIENT OR OR NOT BEING ADEQUATELY PROVEN AND THE COURT FOUND A NUMBER OF STATUTORY AND NONSTATUTORY MITIGATING CIRCUMSTANCES.
I WON'T GOTHER TO GO THROUGH THEM ALL.

THEY'RE IN THE RECORD FOFK
BUT -- OF COURSE BUT THE
COURT FOUND FOUR STATUTORY
MITIGATING CIRCUMSTANCES AS
WELL AS, WELL, A TOTAL OF 14
CIRCUMSTANCES STATUTORY AND
NONSTATUTORY ALTOGETHER.
AND JUST BRIEFLY TO MENTION
THE -- SOME OF THE CASES
THAT ARE CITED BY THE CASE
AND IT'S BRIEF WITH REGARD
TO THE SENTENCE AND WHETHER
IT WAS PROPORTIONAL OR NOT,
ALL OR MOST OF THE CASES
CITED BY THE STATE CAN BE
DISTINGUISHED IN MANY OF
THEM THE DEFENDANT HAD A
PRIOR CONVICTION FOR SOME
OTHER TYPE OF VIOLENCE OR
THE CRIMES WERE MORE
TORTUROUS TO THE VICTIMS
THAN THE CRIMES IN THIS
INSTANCE.
OR ELSE THE, THE MITIGATION
WAS WEAK -- MEEKER, WEAKER,
I'M SORRY THAN IT WAS IN
THIS.
SO MOST FW NOT ALL OF THE
CASES CITED BY THE STATE ON
THE PENALTY ASPECT CAN BE
DISTINGUISHED FROM THIS
CASE.
>> WHAT CASE WOULD YOU RELY
ON?
>> WELL, I HAVEN'T REALLY
BEEN ABLE TO FIND ANY THAT
WAS VERY CLOSE TO THIS ONE,.
ESSENTIALLY, OUR ARGUMENT IS
BASED ON THE, THE
CIRCUMSTANCES OF THIS CASE
AND THE, THE STRENGTH OF THE
MITIGATING EVIDENCE.
THANK YOU.
>> GOOD MORNING, YOUR
HONORS.
MAY IT PLEASE THE COURT I'M
CAROL DITTMAR FROM THE TOERJ'S
OFFICE REPRESENTING IT
APPELLEE IN THIS CASE, THE
STATE OF FLORIDA.
WITH REGARD TO THE FIRST
ISSUE ON THE EXCUSABLE OF
THE NOB -- EXCUSEAL OF THE
NON-ENGLISH-SPEAKING JURORS

IT IS AN INTEREST ISSUE BUT UNFORTUNATELY IT WAS NOT PRESERVED FOR APPELLATE REVIEW UNDER ANY CLAIM.
THERE WAS NOIEST IF THE FOR THE COURT TO TAKE ANY ACTION.
THERE WAS NO RULING BY THE TRIAL COURT BELOW.
I THINK THE ARGUMENT HAS MORPH UNDER TO THIS WELL MAYBE THE PROHIBITION AGAINST AN INTERPRETER IN THE JURY ROOM MAY RAISE SOME CONSTITUTIONAL CONCERNS.
THAT ARGUMENT REALLY WAS NEVER PRESENTED BELOW, AND REALLY IS NOT PRESENTED IN THE BRIEF.
THERE IS A SUGGESTION THAT THAT THAT'S WHAT EVERYBODY WAS UNHAPPY ABOUT HERE.
BUT THERE'S NO ACTUAL COURT RULING FOR THIS COURT TO EVEN CONSIDER.
THE TWO CLAIMS THAT HAVE BEEN MADE, THE FAIR CROSS SECTION CLAIM IS VERY WELL DEVELOPED IN CASE LAW WHAT A DEFENDANT MUST ESTABLISH TO BE ABLE TO PROVE A VIOLATION OF THE FAIR CROSS SECTION REQUIREMENT.
FIRST OF ALL, THEY HAVE TO IDENTIFY A DISTINCT CLASS, WHICH HAVEN'T EVEN BEEN DONE HERE.
I GUESS THE CLASS WOULD BE PEOPLE WHO DO NOT SPEAK ENGLISH WELL ENOUGH TO PARTICIPATE IN DELIBERATIONS WITHOUT AN INTERPRETER, WHICH IS HARD TO WORK WITH AS, AS AN ACTUAL DISTINCT CLASS.
THEY ALSO HAVE TO STATISTICALLY SHOW THAT CLASS WAS UNDERREPRESENTED IN THE VENEER, AND THAT'S BASED ON SYSTEMIC DISCRIMINATION IS A CAUSE OF THAT UNDERREPRESENTATION.
WE HAVE TO HAVE THE STATISTICS THAT SHOW HOW

COMMON THIS IS IN THE COMMUNITY AND COMPARE IT --
>> ARE YOU ARGUING IN, IN A PLACE LIKE MIAMI WHERE EVERYBODY KNOWS THERE ARE HISPANICS ARE A, IF NOT A MAJORITY A VERY SUBSTANTIAL MINORITY AND THE, ONE OF THE -- THE STATE IS TRYING TO EXCUSE FOR CAUSE OR A HISPANIC JUROR AND THERE'S NO HISPANIC JURORS LEFT IN THE VENEER.
THE DEFENSE HAS TO PROVE, HAS TO COME IN AND SHOW HERE ARE THE STATISTICS FOR THE NUMBER OF HISPANICS IN DADE COUNTY AND THE VENEER IS NOW UNDERREPRESENTED.
>> YES FOR A -- THIS COURT HAS LOOKED AT I KNOW IN THE GORDON CASE YOU LOOKED AT T. OBVIOUSLY THE DUREN CASE OUT OF THE U.S. SUPREME COURT SAYS THAT'S HOW YOU MAKE A FAIR CROSS SECTION CLAIM.
YOU GO TO YOUR TRIAL COURT AND YOU SAY HERE ARE ALL OF OUR STATISTICS.
THIS IS OUR COMMUNITY.
THIS IS HOW MUCH THE DISTINCT CLASS IS PRESENT IN THE COMMUNITY.
THIS IS THE AVERAGE VENEER AND HOW THEY ARE UNDERREPRESENTED IN WHAT THE FEDERAL CASES SAY GENERALLY YOU HAVE TO HAVE AT LEAST A 10% DISPARITY IN REPRESENTATION TO EVEN MAKE A PRIMA FACIE CASE SO IT IS A VERY, A STATISTICALLY ORIENTED TYPE OF ARGUMENT AND OBVIOUSLY WE DON'T HAVE ANY FACTS IN THIS RECORD TO EVEN DEVELOP THE CLAIM.
>> THAT WOULD BE DIFFERENT THAN A SITUATION WHERE ALL HISPANICS THAT WERE CALLED HAD TO, IN THIS PARTICULAR TRIAL, HAD SOME DIFFICULTY UNDERSTANDING ENGLISH, AND AT THAT POINT, THEN YOU'D HAVE TO LOOK AT IF THE

PROSECUTOR STRUCK ALL THOSE JURORS.
NOT FOR CAUSE BECAUSE THERE'S NO CAUSE PROVISION.
BUT PREEMPTRARILY WHETHER UNDER HERNANDEZ THAT WOULD BE, AND YOU ENDED UP WITH NO HISPANICS ON THE JURY ALTHOUGH OF COURSE THE ASSUMPTION THAT EVERYBODY -- YOU KNOW, THERE WAS OBVIOUSLY FLUENT IN ENGLISH WOULD THAT BE A DIFFERENT CLAIM?
THAT WOULD BE A SYSTEMIC EXCLUSION OF A CLASS AND A QUESTION OF WHETHER IT'S APPROPRIATE UNDER THE -- IS THAT A DIFFERENT ISSUE?
>> YES, THE EQUAL PROTECTION IS A COMPLETELY DIFFERENT ISSUE FROM THE FAIR CROSS SECTION.
>> OKAY.
SO YOU DON'T THINK -- NOW WERE THEY RAISING, DO YOU NOT SEE THEM AS RAISING BOTH OR IS, THEY WERE ONLY RAISING FAIR CROSS SECTION?
>> THEY USED THE WORDS FAIR CROSS SECTION IN THE, IN THE ACTUAL COMMENT TO THE COURT.
ALTHOUGH AGAIN IT'S REALLY NOT EVEN AN OBJECTION.
THE ACTUAL COMMENT THAT WAS MADE, AND THIS WAS AFTER THE JURY, AFTER THE DEFENSE HAS ACCEPTED THE JURY, THE STATE HAS ACCEPTED THE JURY, THE COURT SAYS, OKAY, YOU KNOW, AND, AND STARTS TO GO ON AND DEFENSE COUNSEL SAYS THE ONLY OBJECTION I WOULD LIKE TO RENEW IS I JUST WANTED TO RENEW ONE OBJECTION.
IT HAD TO DO WITH THE NECESSITY OF HAVING TO ELIMINATE HISPANIC JURORS BECAUSE OF THE, I DON'T KNOW, EVEN WHAT YOU CALL IT, BUT THE PROBLEM THAT WE CAN HAVE AN INTERPRETER FOR JURY SELECTION BUT WE CAN'T HAVE THEM FOR JURY DELIBERATION,

WHICH MAKES NO SENSE.
>> I THINK THAT'S, IS, HE'S PUT -- I MEAN THE PROBLEM WAS YOU HAD THE FOURTH DISTRICT CASE OUT THERE.
>> RIGHT.
>> THAT SAYS YOU CAN'T BRING --
>> YOU CAN'T DO THAT.
>> SO YOU ESSENTIALLY, WHAT THE JUDGE AND THE PROS-- AND THE DEFENSE LAWYER REALIZED IS THAT THEY HAVE THIS CASE THERE BUT IT SEEMS TO ME THAT THEY DID PRESERVE THE ARGUMENT THAT IS UNCONSTITUTIONAL TO NOT HAVE AN INTERPRETER IN THE JURY ROOM BECAUSE THAT'S THE ONLY WAY THAT YOU'RE GOING TO BE ABLE TO PRESERVE THE RIGHT OF NONFLUENT JURORS, WHETHER THEY'RE HISPANIC, HAITIAN, ANY, YOU KNOW, FROM BEING ABLE TO SIT ON A JURY JUST LIKE WE DO FOR HEARING IMPAIRED SITUATIONS.
>> WELL, IF HE'S CHALLENGING THE FACIAL VALIDITY OF THE STATUTE, THEN AT SOME POINT SOMEBODY SHOULD'VE SAID, YOUR HONOR, THE STATUTE'S UNCONSTITUTIONAL.
THAT SHOULD'VE BEEN THE CLAIM.
>> WHAT STATUTE'S THAT?
>> WELL, THE STATUTE THAT -- THERE'S A STATUTE THAT PERMITS AN INTERPRETER FOR DEAF SPEAKING --
>> IT DOESN'T -- THERE'S NO STATUTE THAT SAYS THERE SHALL NOT BE AN INTERPRETER FOR NON-ENGLISH SPEAKER.
>> NO, IT'S NOT WRITTEN IN THE NEGATIVE.
>> IN FACT, UNLIKE THE FEDERAL STATUTE HAS BEEN POINTED OUT, WE HAVE NO REQUIREMENT THAT THE JUROR BE PROFICIENT IN ENGLISH IN ORDER TO SERVE.
>> THAT'S CORRECT.
THAT'S NOT WIN AS -- WRITTEN

AS A STATUTORY
DISQUALNICATION.
>> I GUESS THE COMPLICATING
FACTOR, THE WAY THAT THIS
COMES TO US IS IS THIS A
CHALLENGE FOR CAUSE?
WAS THIS JUROR REMOVED FOR
CAUSE?
>> WELL, AND, YOU KNOW, THE
JUDGE DOESN'T USE THE WORDS
FOR CAUSE.
THE JUDGE BASICALLY, WITH
THE FIRST, WHEN THE FIRST
JUROR COMES UP AND IT, AND
IT'S AN ISSUE WITH THE FIRST
JUROR, THEY CAN'T EVEN TALK
TO THE JUROR TO BE ABLE TO
KNOW WHAT'S GOING ON.
AND FORTUNATELY, THE DEFENSE
ATTORNEY SPOKE SPANISH, NOT
TO THIS, NOT WHEN IT FIRST
HAPPENED, BUT TO THE SECOND
JUROR.
THE DEFENSE ATTORNEY WAS
ABLE TO ASK DO YOU SPEAK
WELL ENOUGH TO BE ABLE TO
PARTICIPATE?
IF WE HAD AN INTERPRETER
THROUGH THE TRIAL, COULD YOU
GO INTO DELIBERATIONS
WITHOUT AN INTERPRETER, AND
THE JUROR SAID NO, THEY
COULDN'T DO THAT.
>> WELL THE PROBLEM --
>> SO THE JUDGE DISMISSES
THE JURORS AND SENDS THEM
HOME.
SHE DOESN'T SAY, YOU KNOW,
I'M EXERCISE AGCAUSE
CHALLENGE.
THEY DON'T REALLY PUT IT IN
THOSE TERMS.
WHAT THEY SAY IS WE CAN'T
REALLY ACCOMMODATE YOU.
>> AND THE PROBLEM OF COURSE
IS WRITING AN OPINION OUT OF
THIS COURT.
AS TO WHAT THE NATURE OF
THIS OBJECTION WAS.
OR WHETHER THERE WAS AN
OBJECTION.
BUT IF WE ASSUME THERE WAS,
THERE ARE ONLY TWO KINDS OF
WAYS TO REMOVE PROSPECTIVE

JURORS.
ONES EITHER PEREMPTORILY AND THE OTHER IS FOR CAUSE AND THE STATUTE THAT PROVIDES THAT YOU REMOVE SOMEONE FOR CAUSE --
>> WELL, I THINK --
>> -- -- THE BASIS.
>> WELL A TRIAL JUDGE HAS INHERENT AUTHORITY TO MAKE DETERMINATION PHYSICAL SOMEONE JUST HAS A PARTICULAR HARDSHIP THAT MAYBE ISN'T REFLECTED TO, TO TAKE THAT INTO ACCOUNT.
AND CERTAINLY THERE, THERE'S A LOT OF THINGS DISCUSSED PRELIMMINARILY THAT A TRIAL COURT MAY DECIDE THIS PERSON DOESN'T WANT TO SERVE ON THE JURY AND HAS A REASON NOT TO BE REQUIRED TO SERVE ON THE JURY.
AND THAT REALLY HASN'T BEEN PRESENTED AS, AS A PROBLEM IN THIS CASE.
THE, YOU KNOW, WHAT HAPPENED IS THEY WERE, THEY WERE SENT ON THEIR WAY.
AND THERE WASN'T, THERE WASN'T, THERE WASN'T A REQUEST BY THE DEFENSE THAT, WAIT, WE NEED TO ASK THESE PEOPLE MORE QUESTIONS.
WE NEED TO TRY TO BRING THEM IN.
WE NEED TO GET AN INTERPRETER.
NONE OF THOSE REQUESTS FOR ANY KINDS KIND OF EFRTSS WERE MADE SO THE TRIAL JUDGE DIDN'T REALLY HAVE ANY WAY TO FIX THE SITUATION.
>> AND THIS WAS NOT A CHALLENGE FOR CAUSE BY THE STATE?
>> NO.
IT WAS NOT A CHALLENGE FOR CAUSE BY THE STATE.
SOMETHING THAT CAME INDEPENDENTLY TO THE ATTENTION OF THE TRIAL JUDGE AND SO SHE WAS JUST TAKING IT, AND THEN I GUESS THE

SECOND JUROR APPARENTLY APPROACHED SOMEHOW, SOME JUROR SERVICES PERSON OR SOMEBODY, ONE OF THE COURT STAFF, AND --.
>> SO WHAT HAPPENS -- UNDER WHAT AUTHORITY DOES A JUDGE EXCUSE JURORS FROM SERVING ON A JURY BECAUSE THEY MAY HAVE A, A, A PARENT THAT THEY HAVE TO TAKE CARE OF ON A FULL-TIME BASIS OR SOME OTHER HARDSHIP THEY CAN'T GET OUT OF WORK BECAUSE IT'S THEIR LIVELIHOOD.
THOSE KINDS OF THINGS.
IS THAT A STATUTE OR IS THAT JUST THE JUDGE'S INHERENT AUTHORITY.
>> I THINK THE JUDGE JUST HAS INHERENT AUTHORITY TO MAKE SOME DECISIONS THAT ARE NECESSARY FOR THE INTEGRITY OF THE TRIAL, TO PROTECT THE JURY PROCESS, AND I THINK THIS IS PART AND PARCEL OF ALL OF THAT.
I DON'T THINK THE STATUTE IS INTENDED TO BE ENTIRELY COMPREHENSIVE WITH, WITH REGARD TO THERE MAY BE OTHER THINGS COME UP AND YOU HAVE TO GIVE A TRIAL COURT DISCRETION TO DEAL WITH THINGS AS THEY COME UP.
>> WELL THE STATUTE SPEAKS ABOUT CHALLENGE FOR CAUSE, WHICH I INFER TO MEAN A PARTY CHALLENGING A JUROR FOR CAUSE.
AS OPPOSED TO A JUDGE EXERCISING INHERENT AUTHORITY DUE TO THE HARDSHIPS OF SERVING ON THE JURY.
>> AND IF REALLY, YOU KNOW, AS THIM CAME UP, IT WASN'T A PARTICULAR CHALLENGE, IT WAS JUST SOMETHING THAT THE TRIAL COURT WAS DEALING WITH ON HER OWN, BUT I THINK TRIAL COURTS HAVE THAT DISCRETION AND THEN IN FACT THIS COURT IN THE KUTZ CASE

KIND OF CONSIDERED THE FLIPSIDE OF IT BECAUSE IN COOK YOU HAD A TRIAL JUDGE WHO MADE A DETERMINATION THAT JURORS COULD ACTUALLY SPOKE ENGLISH WELL ENOUGH TO SERVE ON THE JUROR AND IN THAT CASE THE DEFENSE HAD REQUEST ADCAUSE CHALLENGE AND WHEN THAT WAS DENIED AFTER THE THE TRIAL COURT MADE THIS DETERMINATION THAT THESE JURORS COULD SIT, THAT WAS DENIED, AND THE DEFENSE HAD TO EXECUTION THEM PREEMPTATORILY AND WHEN THE ISSUE CAME UP TO THIS COURT THE ARGUMENT WAS THE TRIAL JUDGE SHOULD'VE EXECUTIONED THEM FOR CAUSE AND THIS COURT SAID NO, YOU KNOW, THE COURT CONDUCT ADPROPERLY INQUIRY AND MADE A DETERMINATION, MADE A FACTUAL FINDING THAT THEY HAD THE ABILITY TO SERVE AND COULD SIT AS JURORS, AND I THINK YOU READ INTO THAT, IF THE COURT HAD COME TO THE OPPOSITE CONCLUSION, CERTAINLY THE CAUSE CHALLENGE SHOULD'VE BEEN GRANTED.

>> WELL, IT SOUNDS TO ME LIKE WE HAVE SOME PROBLEM IN THE MAKING HERE; AND WHETHER WE RESOLVE IT, YOU KNOW, IN THE -- IN THIS CASE, BECAUSE, YOU KNOW, IF THE LAW REMAINS THAT AN INTERPRETER CAN'T GO BACK INTO THE JURY ROOM FOR SOMEONE WHO IS NON-ENGLISH-SPEAKING THEN THAT IS THE SAME POINT, IT SHOULD -- IT WOULD BE THE SAME ISSUE FOR A DEAF PERSONING A HEARING IMPAIRED PERSON AND IT LOOKS LIKE THAT'S ALREADY BEEN PROVIDED FOR.

SO AT THIS POINT ATRIAL JUDGE WOULD HAVE SNOW OPTION BUT TO EXECUTION -- WOULD HAVE NO OPTION BUT TO EXCUSE

THAT JUROR BECAUSE THE LAW OUT THERE SAYS THAT, THE INTERPRETER CAN'T COME BACK IN THE JURY ROOM.
SO HOW WOULD -- IF YOU WERE LOOKING AT THIS PROSPECTIVELY, AND THIS IS GOING TO COME UP ALL THE TIME, HOW WOULD YOU RESOLVE IT.
>> WELL, I THINK IT'S A POLICY DETERMINATION THAT YOU CAN HAVE THE -- ASK THE LEGISLATURER TO MAKE IF YOU WANT SOMEBODY, IF YOU WANT THEM TO AMEND THEIR STATUTE ON DISQUALIFICATION SO IT'S AS THE FEDERAL STATUTE DOES, TAKES THIS INTO ACCOUNT THAT MAYBE ONE WAY TO RESOLVE THE ISSUE.
>> IN OTHER WORDS, NOT -- YOU WOULD SAY THAT NOT EVEN ALLOW -- REQUIRE -- HAVE PROFICIENCY IN ENGLISH AS A REQUIREMENT.
>> I THINK THAT'S CERTAINLY SOMETHING YOU CAN DO.
IT'S WHAT THE FEDERALS HAVE DONE AND I THINK ALSO RECOGNIZING THE TRIAL COURT HAS SOME DISCRETION TO BE ABLE TO MAKE THESE DETERMINATIONS.
>> HAVE YOU UNCOVERED A CASE IN WHICH THE APPELLATE COURTS HAVE DEALT WITH THIS STATUTE ON DEAFNESS AND THE DEAF?
>> NO, I HAVE NOT.
>> OTHER THAN I, YOU KNOW, OBVIOUSLY IT WAS DISCUSSEDDED HERE.
THE, THE OTHER CASE, THERE'S THE FOURTH DISTRICT CASE THAT YOU'RE AWARE OF.
THERE'S ALSO A SECOND DISTRICT CASE, WHICH IS VERY SIMILAR MORALES, WHICH IS VERY SIMILAR TO WHAT HAPPENED IN THIS CASE, WHERE THE SECOND DISTRICT SAID, WELL, YOU KNOW, WE UNDERSTAND UNDER THE FOURTH

DISTRICT THE JUDGE'S HANDS
WERE TIED IN THE SAME SOURCE
OF -- SORT OF THING THAT YOU
HAD POTENTIAL JURORS WHO
WERE EXCUSED AND I DON'T
KNOW IF THEY USED THE CAUSE
LANGUAGE OR, OR HOW IT WAS,
BUT THE SECOND DISTRICT
UPHELD THE TRIAL JUDGE'S
ACTIONS IN THAT CASE AND,
AND THIS IS THE SAME
SCENARIO.
>> YOU KNOW, IT STRIKES ME,
AGAIN, AND THAT'S GOING TO
BE SOMETHING THAT AGAIN
COMING UP BECAUSE YOU KNOW A,
ALTHOUGH THERE, WE'VE
CERTAINLY NOW HAVE RECENT
ISSUES ABOUT ATTORNEYS
APPEARING IN COURT, THE
WHOLE ISSUE OF EVALUATING
THE CREDIBILITY OF A WITNESS
BASED ON THE WAY THEY SPEAK
IS REALLY ELIMINATED IF
SOMEBODY IS HEARING IMPAIRED
OR IF YOU'RE HEARING A
CONFESSION.
AND SO I DON'T KNOW HOW THAT
IS ACTUALLY WORKING OUT ON
THE DAY-TO-DAY BASIS.
AND WHETHER THERE'S A
DISTINCTION BETWEEN SOMEONE
HEARING IMPAIRED OR SEEING
IMPAIRED AND VERSUSES, YOU
KNOW, OTHER, OTHER
DISABILITIES.
>> AND OBVIOUSLY, WE DON'T
REALLY HAVE THE RECORD
DEVELOPED IN THIS CASE TO,
TO REALLY FLUSH THAT OUT AND,
OR TO BE ABLE TO MAKE A, A
REASONABLE JUDGMENT ABOUT
THE WAY IT SHOULD BE HANDLED,
SO.
>> YOU'RE GOING TO TOUCH ON
THE OTHER ISSUES?
>> YES, I AM.
THE SECOND ISSUE WITH REGARD
TO, THE INMATE, MR. WHITE,
THERE WAS NO OBJECTION TO
HIS TESTIMONY TO HIS COMMENT
THAT, THAT WOODEL ADMITTED
TO FONDLING THE DEFENDANT --
I'M SORRY, THE VICTIM, AND I

REALLY THINK THAT THERE
COULD BE A STRATEGIC REASON.
I THINK YOU HAVE TO BE
CAREFUL ABOUT FUNDAMENTAL
ERROR, ESPECIALLY WHEN THERE
COULD BE A GOOD REASON FOR
THE DEFENSE ATTORNEY NOT
OBJECTING.
YOU HAVE A CRIME SCENE WITH
A NUDE WOMAN WHERE HER NIGHT
CLOTHES HAVE BEEN RIPPED OFF
HER, HER UNDERWEAR IS CUT
OFF AND TIE UNDER TO A KNOT
AND I THINK THE DEFENSE
ATTORNEY MAY WELL HAVE BEEN
THINKING AND THE JURY MAY
SPECULATE SOMETHING MUCH
WORSE HAS HAPPENED AND IF
THEY HEAR THIS IS THE WORST
THING THAT HAPPENED, THAT
MAY NOT BE SO, SO DAMAGING
TO THE DEFENSE.
BUT AT ANY RATE, FOR
WHATEVER REASON, THERE IS NO
OBJECTION.
THE COMMENT WAS, WAS A BRIEF
COMMENT THAT IN, IN THE
NARRATIVE OF DESCRIBING
EVERYTHING THAT WOODEL HAD
ADMITTED TO MR. WHITE --
>> THE STATE NEVER
EMPHASIZED THAT?
>> THE STATE DID NOT
EMPHASIZE IT IN CLOSING
ARGUMENT.
IT WAS NOT -- YOU KNOW, WE
SAID, I THINK IT'S CLEARLY
RELEVANT TO HEINOUS,
ATROCIOUS, AND CRUEL BECAUSE
I THINK IT'S PART OF THE
PAIN AND THE TERROR THAT WAS
SUFFERED BY THE VICTIM SO I
THINK IT IS PROPERLY
CONSIDERED.
I THINK IT'S RELEVANT FOR
THAT PURPOSE.
I ALSO THINK ITS RELEVANT TO
INTERPRET MANY OF THE
DEFENDANT'S STATEMENTS,
WHICH THEY HEARD NOT ONLY
FROM HIS CONFESSION, HIS
STATEMENTS TO DR. D.
HE ALSO TESTIFIED, AND HE
TESTIFIED THAT HE REMEMBERED

TAKING HER CLOTHES OFF AND
HE COULDN'T REMEMBER WHY.
AND I THINK THAT HELPS FOCUS
A LOT OF HIS STATEMENTS WITH
THE JURY OTHERWISE HEARD.
>> DID THE TRIAL JUDGE USE
AT ALL IN THE SENTENCING
ORDER?
>> NO, I DON'T BELIEVE SO,
JUST REALLY FOCUSING,
OBVIOUSLY WE HAD MULTIPLE
STAB WOUNDS, REPEATED
ATTACKS, VERY BRUTAL ATTACK,
AND IT WAS JUST, IT WAS PART
OF THE CIRCUMSTANCES OF THE
CRIME.
IT CERTAINLY --
>> YOU WOULD ARGUE THAT IT'S
NOT ERROR AND IT'S CERTAINLY
NOT FUNDAMENTAL ERROR?
>> THAT'S CORRECT, YOUR
HONOR.
AND I THINK THAT CERTAINLY
THIS IS SOMETHING THAT THE
JURORS MAY HAVE REACHED THIS
CONCLUSION ANYWAY BASED ON,
ON JUST THE CRIME SCENE.
BASED ON WHAT THEY KNEW
ABOUT THE CRIME SCENE.
SO IT'S REALLY NOT DAMAGING.
IT CERTAINLY DOESN'T VITIATE
THE FAIRNESS OF THE TRIAL OR
GO TO THE HEART OF THE
PROCEEDINGS T. WASN'T
ANYTHING SURPRISING.
MR. WHITE HAD MADE THE SAME
TESTIMONY IN THE FIRST, IN
THE FIRST TRIAL.
SO IT WASN'T ANYTHING THAT
CAUGHT THE DEFENSE OFF GUARD
OR, OR THAT THEY WEREN'T
EXPECTING AND THEY COULD'VE
OBJECTED.
>> ON THE ISSUE OF THIS AGE
VULNERABILITY, AND I THINK
AS I GET OLDER I'M SENSITIVE
TO WHAT ADVANCED AGE OR NOT,
--
>> YOU'RE NOT THERE YET.
>> IT'S PARTICULARLY
VULNERABLE.
AND SO AGE ALONE -- AND I
KNOW WE PROBABLY ALREADY
TOUCHOND IT BUT AS I LOOKED

AT IT, SHE'S 74 AND SHE
REALLY WAS DOING WELL AND
NOT, HOW WAS SHE
PARTICULARLY VULNERABLE TO,
TO ADVANCE AGE OR
DISABILITY?
>> WELL, SHE DID OBVIOUSLY
HAVE THE INJURY TO THE ARM
AND I HAVE TO DISAGREE WITH
MR. MOELLER ABOUT THE
STRENGTH OF THAT TESTIMONY
AT THE RESENTENCING.
SHE HAD VERY LIMITED
MOBILITY IN THAT ARM, AND IF
YOU, YOU KNOW, LOOK AT THE
MEDICAL EXAMINERSER' TESTIFY,
MOST OF HER DEFENSIVE WOUNDS
ARE IN HER OTHER ARM.
SHE IS USING HER OTHER ARM
TO FIGHT THEM OFF AND SHE
DID NOT HAVE THE USE OF HER
DAMAGED ARM.
THAT WAS VERY
WELL-ESTABLISHED.
THE TESTIMONY WAS VERY
SIMILAR ON THIS ISSUE,
SIMILAR TO WHAT YOU
CONSIDERED THE FIRST TIME
AROUND IN SUPPORTING THE
FINDINGS THE TRIAL COURT HAD
MADE.
IN FACT, WHEN THEY WERE
HAVING THE CHARGE CONFERENCE
AND THIS INSTRUCTION WAS
BEING DISCUSSED AND THE
DEFENSE WAS OBJECTING SAYING
THE EVIDENCE WASN'T
SUFFICIENT, JUDGE ROBERTS
HAD THIS COURT'S OPINION
FROM THE FIRST TRIAL AND
LOOKED AT THE FACTORS THAT
THIS COURT DISCUSSED AND
SAID, WELL, YOU KNOW, THEY
TALK HERE ABOUT THE
DISPARATE AGES.
DO YOU DISPUTE THAT?
NO, THE DEFENSE DIDN'T
DISPUTE THAT.
WELL, THEY TALK ABOUT THE
DAMAGE TO THE ARM?
YOU KNOW, DO YOU DISPUTE
THAT?
NO, WE DON'T DISPUTE THAT SO
SHE ACTUALLY AT THE CHARGE

CONFERENCE WENT THROUGH THE
FACTS AS THEY WERE DISCUSSED
BY THIS COURT IN UPHOLDING
THAT FACTOR LAST TIME AROUND
AND THE DEFENSE COULD NOT
CONTEST THAT ALL OF THOSE
HAD BEEN PROVEN AGAIN AT THE
RESENTENCING, THAT THERE WAS
INDEPENDENT EVIDENCE
ADMITTED BELOW AND VERY
SIMILAR TO THE TESTIMONY
THAT THIS COURT CONSIDERED
THE FIRST TIME AROUND WHEN
IN SUPPORTING THAT FACTOR.
SO I THINK WE DO HAVE PRETTY
MUCH THE SAME AND CERTAINLY
WE HAVE THE COMPETENCE
SUBSTANTIAL -- COMPETENT
SUBSTANTIAL EVIDENCE THAT
THIS COURT NOTED LAST TIME
IN UPHOLDING THE FACTOR.
I THINK THE RESULT NEEDS TO
BE THE SAME THIS TIME
AROUND.
REALLY THAT'S A QUESTION FOR
THE TRIER OF FACT AND ALL
THIS COURT WILL DO IS REVIEW
FOR SUBSTANTIAL COMPETENT
EVIDENCE AND BECAUSE WE HAVE
THAT EVIDENCE IN THIS RECORD,
THERE'S NO BASIS TO
INTERFERE WITH FINDING THAT
FACTOR.
>> ON PROPORTIONALITY, I
THINK THE DEFENSE IS VERY
CANDID ABOUT NOT BEING ABLE
TO FIND A FACTUALLY SIMILAR
CASE.
THIS COURT HAS NEVER
REVERSED TO MY KNOWLEDGE
THAT I COULD FIND A DOUBLE
MURDER OF AN ELDERLY,
ELDERLY COUPLE.
WHILE THEY WEREN'T IN THEIR
HOME.
THEY WERE CERTAINLY IN A
HOME THAT THEY OWNED
PREPARING IT, GETTING READY
ON THOSE WHEN YOU HAVE SUCH
A BRUTAL AND EXTENDED
ATTACK.
THIS WASN'T SOMETHING THAT
WAS QUICK.
IT WAS A VERY, THERE WERE

REPEATED, REPEATED ACTS OF AGGRESSION TOWARDS ESPECIALLY MRS. MOODY AND ALSO MR. MOODY AND THEN HE WOULD GO BACK AND CLEAN THE KNIFE OFF IN THE SINK AND THEN, YOU KNOW, STILL, STOP ON THE WAY OUT SO IT WAS AN EXTENDED ATTACK.
VERY BRUTAL.
AND REALLY NO SIGNIFICANT MITIGATION THAT YOU CAN WEIGH AGAINST IT.
THE TRIAL JUDGE DID GIVE WEIGHT, SOME WEIGHT TO STATUTORY MITIGATION, INCLUDING THE SUBSTANTIAL IMPAIRMENT.
SHE BASED THAT ON THE FACT THAT HE HAD BEEN DRINKING ALTHOUGH DR. D TESTIFIED IN THIS CASE CASE,, DR. D'S TESTIMONY WAS NOT USED AS A BASIS TO SUPPORT EITHER OF THE MENTAL MITIGATORS.
HE DID NOT FIND SUBSTANTIAL IMPAIRMENT OR EXTREME DISTURBANCE.
HE WASN'T EVEN ASKED ABOUT IT.
THE JUDGE CONCLUDES THERE WAS EXTREME DISTURBANCE BASED ON MR. WOODEL'S TESTIMONY THAT HE WAS LONELY, THAT HE LIKED BEING AROUND PEOPLE, THAT THE BEST HE COULD DO TO TRY AND EXPLAIN WHY THIS HAD HAPPENED WAS BECAUSE HIS GIRLFRIEND THAT HE LIVED WITH, HIS SISTER THAT HE LIVED WITH WERE BOTH OUT OF TOWN.
HE WAS GOING HOME TO AN EMPTY TRAILER AND HE LIKED BEING AROUND PEOPLE AND, AND HE WAS MAD THAT NOBODY WAS HOME THAT NIGHT.
AND, YOU KNOW, THAT'S THE TESTIMONY THAT, THAT SUPPORTS THE, THE MITIGATOR THAT WAS FOUND FOR EXTREME DISTURBANCE.
SO IT'S NOT LIKE A CASE WHERE YOU REALLY HAVE

SOMEONE WHO HAS A MEANTAL ILLNESS AMENTAL DISERED ORDER, SOME EXTREME MENTAL OR EMOTIONAL DISTURBANCE THAT A MENTAL HEALTH EXPERT PUTS IN CONTEXT SO YOU REALLY DON'T HAVE ANY SUBSTANTIAL MITIGATION HERE.
CERTAINLY MR. WOODEL HAD A DIFFICULT CHILDHOOD AS A LOT OF PEOPLE DO.
THERE'S REALLY NOTHING, NOTHING ABOUT IT THAT, THAT IS MORE COMPELLING THAN MANY OTHER CASES WHERE THIS COURT HAS UPHELD THE DEATH PENALTY.
SO IF YOUR HONORS HAVE NO FURTHER QUESTIONS I WOULD ASK YOU TO AFFIRM THE DEATH SENTENCE IMPOSED.
THANK YOU.
>> YOU'VE USED YOUR TIME BUT I WILL GIVE YOU TWO MINUTES FOR A VERY SHORT REBUTTAL.
>> I JUST WANTED TO CALL THE COURT'S ATTENTION TO THE PARTS OF THE RECORD WHERE DEFENSE COUNSEL OBJECTED TO THE EXCLUSION OF THE SPANISH SPEAKING JURORS IN QUESTION.
FIRST OBJECTION AFTER THE SECOND JURD JUROR
MR. CASANOVA WAS EXCUSED.
THIS CAN BE FOUND IN VOLUME 8, PAGES 993 THROUGH 994.
WHERE DEFENSE COUNSEL IS SAYING THAT HIS OBJECTION IS A CONSTITUTIONAL OBJECTION.
HE SAYS THIS IS NOW THE SECOND JUROR OF HISPANIC DEFENSE THAT WE HAVE LOST BECAUSE OF THE LANGUAGE BARRIER AND BASED OFRNT LAW THAT AN INTRP RRER IS NOT ALLOWED IN THE JURY DELIBERATION ROOM THEN HE MAKE AS VERY SIMILAR OBJECTION WHEN THE JURY IS ACTUALLY BEING, THE JURY SELECTION IS BEING FINALIZED IN VOLUME 9.
PAGE, PAGES 1158 THROUGH 1159.

SO I JUST WANT TO CALL THE COURT'S ATTENTION TO WHERE THE OBJECTIONS WERE MADE. THANK YOU.
>> THANK YOU VERY MUCH. WE'LL TAKE THE CASE UNDER ADVISEMENT.
THE COURT WILL STAND IN RECESS UNTIL 9:00 TOMORROW MORNING.
>> ALL RISE