William Michael Kopsho v. State of Florida

SC05-763

>> WHENEVER YOU ARE READY
MR. BURDEN.
>> JUSTICE LEWIS,
MY NAME IS GEORGE BURDEN.
I REPRESENT WILLIAM KOPSHO.
I WOULD LIKE TO SAY I COME
FROM GREAT SADNESS.
WE LOST OUR MAYOR LAST NIGHT
TO ILLNESS LONG-TERM
ILLNESS.
MAYOR EVONNE SCARLET GOLDEN.
I WANTED TO PASS THAT ALONG
TO THE COURT.
MR. KOPSHO WAS FOUND GUILTY OF
FIRST-DEGREE MURDER AND
ARMED KIDNAPPING OF HIS WIFE
LYNNE KOPSHO IN THE FACTS
WERE THAT MR. KOPSHO HAD A
DISCUSSION WITH HER ON A
TUESDAY NIGHT WHERE SHE
ADMITTED THE EXTRAMARITAL
AFFAIR.
AT THAT INSTANT HE DECIDED
HE WOULD KILL HER FOR THAT.
>> YOU HAVE THE FACTS DOWN
THEY ARE CONSOLIDATED.
YOU MAY WANT TO SPEND YOUR
TIME DIRECTLY ON THE LEGAL
ISSUE AS ADDED BY THE FACT
THAT YOU THINK MAY BE
NECESSARY TO MAKE SURE WE
UNDERSTAND.
>> I WOULD LIKE TO DISCUSS
JURY SELECTION.
DURING JURY SELECTION THE
ATTORNEY FOR THE APPELLANT -- I
THINK THIS IS VERY
IMPORTANT.
ASKED THE QUESTION, DOES
ANYBODY HAVE THE PROBLEM
WITH THE FACT THAT SOMEONE
MAY NOT HAVE TO TESTIFY?

ONE OF THOSE GROUP QUESTIONS
THAT YOU KNOW, JURORS
REFLECTIVE JURORS SIT THERE
AND JUST DON'T SAY ANYTHING.
NOT JUROR MUNOCK, HE SAID I
HAVE A PROBLEM WITH-- I THINK
A PERSON SHOULD HAVE
TO STAND UP BEFORE GOD AND
ANSWER FOR WHAT HE DID AND
SAY BEFORE A TRIAL WHAT HE
DID WHEN HE IS ACCUSED.
AND HE WAS ASKED, WELL, IS
THAT SOMETHING THAT YOU FEEL
STRONGLY ABOUT --
>> DO YOU AGREE THIS
PARTICULAR JUROR WAS A MIXED
BAG?
>> YES, HE'S VERY RELIGIOUS.
HAD A STRANGE HISTORY OUT OF
STATE.
TWO UNCLE OF HIS HAD
COMMITTED MURDER AND WERE
SERVING TIME FOR IT.
A COUSIN HAD COMMITTED
MURDER IN A DOMESTIC VIOLENT
SETTING.
>> YES.
AND HE HAD SAT ON A JURY IN
WHICH HE HAD CONVICTED BUT
DECIDED THAT IT WAS A -- BUT
IT TURNED OUT THAT THE DNA
PROVES THAT THE PERSON THEY
HAD CONVICTED WAS INNOCENT
AND HE HAD SORT OF A LOT OF
ISSUES.
>> YES, HE DID JUSTICE
WELLS.
>> WERE THOSE ISSUES --
WERE THEY DISCUSSED WITH THE
TRIAL JUDGE?
>> NOT ALL OF THEM.
THE ISSUE OF HIS FEELING
ABOUT MR. KOPSHO HAVING TO
TESTIFY SPECIFICALLY WAS
RAISED AS GROUNDS FOR HIM
NOT BEING ABLE TO BE
PARTIAL.
AND THE JUDGES ANSWER TO
THAT WAS HE ASKED THE
PROSECUTOR "AREN'T YOU GOING
TO PLAY THE CONFESSION?"
>> HE SAID, "WE ARE."
MR. MULINOX WILL HEAR
MR. KOPSHO'S STORY.

HE WON'T TESTIFY BUT HE WILL
HEAR WHEN HE HEARS THE
CONFESSION SO HE'S SATISFIED
THAT HE WILL THEREFORE BE
PARTIAL EVEN THOUGH IT'S
CLEAR ON THE RECORD THAT HE
NEVER EQUIVOCALLY SAID HE
CAN PUT THAT ASIDE EVER.
THE SEQUENCE OF THEN WHAT
OCCURRED HERE -- AS I
UNDERSTAND IT IS THAT THERE
WAS FOLLOWING THAT PART OF
THE QUESTIONING THE JUROR
THE DEFENSE COUNSEL DID ASK
THAT HE BE STRICKEN FOR
CAUSE ON THE BASIS OF THAT
STATEMENT ABOUT THE -- NOT
ACCEPTING THE RIGHT TO
REMAIN SILENT.
>> THAT'S CORRECT,JUSTICE
WELLS.
>> THE TRIAL JUDGE MADE A
STATEMENT THAT HE DID SAY HE
COULD BE IMPARTIAL.
HE DENIED IT AT THAT TIME.
AT THAT POINT DID THE
DEFENSE COUNSEL STILL HAVE
PREEMTRIES.
>> YES?
>> AND WHAT -- MY
RECOLLECTION IS WHAT
OCCURRED WAS THAT THERE WERE
SEVERAL OTHER JURORS THAT
WERE THEN EXCUSED AND
MULLINOX WAS LEFT ON THE
JURY AND THEN THEY WENT ON
THROUGH AND IT GOT DOWN
TOWARD THE END AND HE
WAS -- THERE WAS A BACK
STRIKE ON MULLINOX.
>> THAT'S CORRECT.
NOW AT THAT POINT WAS IT AT
THAT POINT THERE WAS REQUEST
ADDITIONAL PREEMPTORY.
>> YES, THERE WAS.
AND THE JUROR THAT WAS
IDENTIFIED WAS BEAVER?
>> BELET.
>> MR. BELET.
>> AND WAS THERE -- WHAT DID
THE RECORD REFLECT IN
RESPECT TO MR. BELET.
HE WAS ONE OF THOSE JURORS
THAT WE CALL AN AUTOMATIC

VOTE FOR DEATH IF CERTAIN
CIRCUMSTANCES WERE FOLLOWED.
AND MR. BELET SAID IF I
BELIEVE THERE'S
PREMEDITATION IN THE CASE I
WILL VOTE FOR DEATH.
HE WAS A PRO-DEATH JUROR.
BUT HE SAID HE ANSWERED
CORRECTLY IN THE MAGIC
QUESTIONS.
COULD HE FOLLOW THE JURY
INSTRUCTION DESPITE THE
WAY -- DESPITE THE FACT YOU
FEEL THAT WAY.
YES, I CAN.
I WILL DO WHAT THE JUDGE
TELLS ME TO DO.
>> MR. MILLER ASKED -- WHO IS HIS
DEFENSE COUNSEL -- HE SAID ,OKAY,
IN YOUR MIND IF
IT'S PREMEDITATED IT
WARRANTS THE DEATH PENALTY.
ON HIS OWN NOT RESPONSE TO
QUESTION.
UNLESS THERE WERE MITIGATING
CIRCUMSTANCES THAT BROUGHT
THIS ON.
AND THEN MR. MILLER ASKED,
OKAY SUCH AS?
>> MR. BELET RESPONDED, IT MAY
NOT BE A DEATH PENALTY.
IT MAY BE WORTH A LIFE IN
PRISON.
AND THEN THEY GO ON AND TALK
ABOUT WHAT KIND OF
MITIGATING CIRCUMSTANCES.
HE JUST RESPONDS I WOULD
THINK THERE MAY BE PROBLEMS
BETWEEN TWO PEOPLE SERIOUS
PROBLEMS AND HE GOES ON AND
EXPLAINS SOMETHING HE
THOUGHT ABOUT MITIGATING
CIRCUMSTANCES.
SO WAS HE AN
OBJECTIONABLE JUROR
IN ANY WAY?
>> IN THE WAY YOU
CHARACTERIZE IT, HE DID A LOT
TO REHABILITATE HIMSELF.
WHAT I WAS MAKING
COMMENTS I WAS MAKING
REFERENCE TO THE INITIAL
QUESTIONING AND THEN -- THIS
IS WHAT HE ANSWERED.

>> THE INITIAL QUESTION WAS DO YOU BELIEVE THAT THE MURDER -- HE BASICALLY SAYS IF IT'S PREMEDITATED MURDER, THE DEATH PENALTY IS APPROPRIATE.
>> CORRECT.
>> THAT'S A VERY COMMON PERCEPTION AMONG A LOT OF PEOPLE.
>> IS IT NOT?
>> YES, SO THEY GET INTO THE MITIGATING.
HE MADE IT VERY, VERY CLEAR THAT WAS NOT AN ABSOLUTE STATEMENT THAT IN FACT HE WOULD WANT TO CONSIDER MITIGATION; DIDN'T HE?
>> YES. YES, HE DID.
THAT'S CORRECT.
THE -- BUT IN THIS COURT'S RULINGS, WHETHER OR NOT HE WAS AN OBJECTIONABLE JUROR DOESN'T MATTER IF YOU PROPERLY PRESERVE THE ISSUE AND I WILL EXPLAIN.
HE DID ASK FOR THE ADDITIONAL PREEMPTORY AND WAS DENIED IMPROPERLY.
WE ARGUE AND THEN IDENTIFIED SOMEONE IF HE HAD THE PREEMPTORY IF HE HAD REMOVED UNDER THIS COURT JURIPRUDENCE HE IS ENTITLED TO A NEW TRIAL BECAUSE OF THIS ERROR.
IF YOU BELIEVE THE JUROR SHOULD HAVE BEEN REMOVED FOR CAUSE AND I THINK THE RECORD ESTABLISHES THAT, AND IF YOU BELIEVE THAT IT WAS PROPERLY PRESERVED PURSUANT TO TROTTER WHICH I BELIEVE THE RECORD SHOWS --
>> I BELIEVE THAT'S WHERE BUSBY -- BUT I'M NOT SURE THAT WE HAVE BEEN UP UNTIL NOW CONFRONTED WITH -- WHAT APPEARS TO ME TO BE A SITUATION HERE IN WHICH A TRIAL JUDGE CANNOT -- THE TRIAL JUDGE ALMOST HAS TO GRANT THE CAUSE IF IT'S ANYWHERE -- BECAUSE IF YOU TURN AROUND AND THEN SAY X

JUROR, I WOULD PREEMPTORLY
THEN YOU GET ANOTHER
PREEMPTRY AND YOU CAN
REMOVE.
THE TRIAL JUDGE IN ESSENCE --
WHAT THIS COMES DOWN TO IS
THAT THE TRIAL JUDGE HAS TO
GRANT THE CALL.
ISN'T THAT RIGHT?
>> WELL, THAT'S WHAT THE
DEFENCE ARGUES.
THAT'S IN BUSBY.
REALLY THE MAJORITY FEELS
AND WE AGREE THAT PREEMPTRY
AND CAUSE CHALLENGES ARE
DIFFERENT.
PREEMTRIES ARE TO ENSURE
IMPARTIALITY APART FROM
CHALLENGES.
THAT'S WHAT THEY ARE.
AND THAT SYSTEM WAS -- THAT
TOOL WAS DEPRIVED OF
MR. KOPSHO.
>> SO YOU BELIEVE THAT
THERE'S NO BASIS FOR THE
PREEMTRY HAVING A ROLE IN
POSSIBLY CORRECTING OR
PREVENTING JUDGES FROM
MAKING MISTAKES WHEN THERE'S
A CLOSE CASE AS THE U.S.
SUPREME COURT RECOGNIZES.
COULD YOU RESTATE THAT,
JUSTICE?
>> PLEASE.
>> IF IT'S A REAL CLOSE CASE
AND IT'S NOT REAL SURE AND
THE JUDGE MAY NOT KNOW OR
MAYBE EVEN ERROR.
THE U.S. SUPREME COURT SAID
PART OF THE PURPOSE OF THE
PREEMPTRY CHALLENGE IS TO
MAKE SURE THAT ANY SUCH
ERRORS ARE CORRECTED AT THE
TRIAL LEVEL SO YOU DON'T DO
WHAT YOU ARE ASKING FOR HERE
IS HAVING NEW TRIAL WHEN
THERE WAS NO OBJECTIONABLE
JUROR IN EFFECT.
DO YOU AGREE WITH THAT?
>> THAT'S THE U.S. SUPREME
COURT POSITION, YES, SIR.
>> AND YOU DID -- DISAGREE
WITH THAT.
>> YES.

BECAUSE THE JURISPRUDENCE OF THIS STATE RECOGNIZES THAT PARAMOUNT IS AN IMPARTIAL JURY.
THAT IS A FUNDAMENTAL RIGHT AND THEY HAVE CHARACTERIZED PREEMPTRIES AS A FUNDAMENTAL TO MAKE SURE THAT HAPPENS.
AND THE ONLY WAY --
>> PREEMTRIES DO MUCH MORE THAN THAT, DON'T THEY?
THEY ARE DESIGNED SO THAT YOU CAN EXCLUDE SOMEBODY FROM THE PANEL WHO YOU THINK IS NOT GOING TO FAVOR YOUR CLIENT.
REGARDLESS OF -- IT'S DESIGNED TO IMPOSE IMPARTIALITY IN YOUR FAVOR BECAUSE YOU WANT SOMEONE WHO IS PARTIAL TO YOUR CAUSE.
IF YOU DON'T THINK SOMEBODY IS IN YOUR CAUSE YOU COULD BOOT THEM OUT IN PREEMPTRIES.
>> I WOULDN'T USE THOSE WORDS, JUSTICE CANTERO.
I THINK THE OFFICERS OF THE COURT ARE TRYING TO GET AN IMPARTIAL JURY.
>> THAT'S WHAT THE FLORIDA CAUSE CHALLENGES ARE FOR IS TO GET AN IMPARTIAL JURY.
>> YES.
BUT DESPITE THE CHARACTERIZATION OF JUROR BELET OF THIS COURT I WOULD BELIEVE THAT WHEN YOU ARE SITTING THERE AND CONFRONTED WITH IT AND MANY OF THE CASE LAW DISCUSSES THIS.
IT'S NOT ON THE RECORD.
WE'RE LOOKING AT A STERILE RECORD, BUT THERE ARE FACIAL MOVEMENT.
THERE'S THINGS THAT HAPPEN.
WE'RE NOT THERE.
BUT THE ATTORNEYS ARE THERE.
AND THEY ARE FIGHTING FOR THEIR CLIENT AND BECAUSE OF THIS LOOK OR BECAUSE OF THIS SMIRK AND I'VE PICKED JURIES AND SEEN PEOPLE THAT I KNOW

THIS PERSON IS NOT GOING TO BE FAIR NO MATTER WHAT THEY SAY.
AND THEY ARE NOT GOING TO BE ON THIS JURY.
YOU CAN'T MAKE IT A RECORD OF IT BUT YOU HAVE YOUR PREEMPTRIES TO MAKE SURE YOU STILL HAVE THAT FAIR AND IMPARTIAL JURY.
ON THAT POINT, ISN'T IT IMPORTANT, THEN, ON THIS QUESTION OF WHETHER A POOR CAUSE CHALLENGE SHOULD HAVE BEEN GRANTED TO DEFER TO THE TRIAL JUDGE WHO WAS THERE AND SAW THE MANNERISMS AND SAW THE DYNAMICS OF THE COURTROOM WHICH ARE IMPORTANT AS YOU SAID.
THAT WE DEFER TO THE TRIAL JUDGE IN THESE CASES.
>> WELL, I THINK THAT THE MAJORITY DOES NOT SUPPORT THAT VIEW.
AND IT'S NOT IN THIS RECORD, BUT I BELIEVE THIS JUDGE WAS FACED WITH A LACK OF JURORS.
HE WAS OUT OF HIS AREA.
HE WAS A CITRUS COUNTY.
HE WAS NOT IN MARION COUNTY AND I BELIEVE THERE WAS A LACK OF JURORS AND I BELIEVE THAT'S WHY HE ACTED IN THE WAY HE DID.
BUT IT'S NOT IN THE RECORD.
I CAN'T --
[AUDIO DIFFICULTIES]
>> CORRECT.
[AUDIO DIFFICULTIES]
[AUDIO DIFFICULTIES]
[AUDIO DIFFICULTIES]
>> WELL, THE DECISION OF THE JUDGE ISN'T ABUSE OF DISCRETION STANDARD AND HE ABUSED THE DISCRETION BECAUSE ON THE FACE OF THE RECORD JUROR MULLINOX COULDN'T SAY HE COULD SET ASIDE HIS STRONG BELIEFS AND --
>> BUT HE WAS NEVER REALLY ASKED THAT.
>> HE VOLUNTEERED IT.

>> WHAT HE VOLUNTEERED WAS
THAT HE BELIEVED AS I
UNDERSTAND WHAT HE SAID HE
SAYS THAT I BELIEVE THAT A
DEFENDANT OUGHT TO GET ON
THE STAND OR A DEFENDANT
OUGHT TO -- EXPLAIN TO GOD
WHAT ALL HAPPENED.
CORRECT?
>> YES, YES, JUSTICE.
I DON'T RECALL THAT HE WAS
EVER ASKED OR THAT IT WAS
EVER -- THAT HE HAD
VOLUNTEER THAT IF A
DEFENDANT DID NOT DO THAT,
THAT THEN IT WOULD EFFECT
HOW HE WOULD DELIBERATE ON
THE CASE.
>> YOU'RE ABSOLUTELY RIGHT
AS JUSTICE PARIENTE NOTED
THERE WAS NO ATTEMPT BY
EITHER SIDE TO REHABILITATE
THIS PERSON AND ASK THOSE
SORT OF QUESTIONS.
AND THEN YOU HAVE A RECORD
TO KNOW WHETHER THAT WAS THE
CASE.
IT DIDN'T HAPPEN HERE.
AND I SUSPECT IT DIDN'T
HAPPEN HERE BECAUSE THEY
KNEW WHAT THE ANSWER WOULD
BE.
THE MORE YOU DIG WITH THIS
JURORS THE MORE HE WILL DIG
HIMSELF OUT OF THE JURY
POOL.
>> JUSTICE BELL HAS A
QUESTION.
JUSTICE BELL HAS A QUESTION.
>> I DIDN'T WANT TO GET TOO
FAR OFF THIS INDIVIDUAL
JUROR.
I WANTED TO PLACE THIS IN
CONTEXT.
IN THE 50 JUROR OF THE
ORIGINAL PANEL,HOW MANY WERE
CHALLENGED FOR CAUSE AND HOW MUCH -- MANY
OF THOSE WERE GRANTED OR
DENIED?
>> I DON'T KNOW THE ANSWER
TO THAT JUSTICE.
>> 19 CHALLENGE PER CAUSE
AND DISMISS FOR CAUSE?
>> THE JUDGE DID A VERY GOOD

JOB IN ADDRESSING CAUSE
CHALLENGES AND HANDED TO ME
UP TO THAT POINT.
BUT JUROR MULLINOX AND I
BELIEVE IT WAS BECAUSE THEY
WERE LOSING THE NUMBER OF
JURORS THAT THEY NEEDED.
>> WAS THERE ANY OTHER
CHALLENGE PER CAUSE THAT WAS
NOT GRANTED THAT YOU ARE
CONTESTING HERE?
>> NO.
>> SO THE JUDGE MADE IN YOUR
VIEW ONE MISTAKE ON ONE
JUROR?
>> THAT'S CORRECT.
>> AND DEFENSE USED ONE
PREEMPTRY TO CORRECT THAT
OR -- ERROR.
>> THAT'S CORRECT.
>> AND BECAUSE OF THAT WE
HAVE TO HAVE A NEW TRIAL.
>> YOU HAVE TO HAVE IT
BECAUSE HE DID NOT GRANT AN
ADDITIONAL PREEMPTORY CHALLENGE
THAT HE LOST TO CORRECT THE
ERROR.
>> JUSTICE PARIENTE HAD A
QUESTION.
>> YES.
[AUDIO DIFFICULTIES]
YES.
[AUDIO DIFFICULTIES]
>> THAT'S CORRECT.
[AUDIO DIFFICULTIES]
WAS THIS THE JUROR THAT SAID
SOMETHING TO THE EFFECT THAT
SOMEONE IN HIS FAMILY HAD
SHOT OR MURDERED A FEMALE
AND THAT UNDER SIMILAR
CIRCUMSTANCES THAT'S OKAY.
>> YES, SIR.
LET ME MOVE YOU TO CCP.
OKAY. NOW THE TRIAL JUDGE
WROTE AN EXTENSIVE ORDER,
BUT I WOULD LIKE FOR YOU TO
PINPOINT IS THE PART OF CCP
THAT YOU SEE IS THE PROBLEM
HERE.
WE'VE GOT THE PLAN.
AND CARRYING OUT THE GETTING
OF THE GUN WAS VERY
ELABORATE.
TO GET THE GUN HE WENT AND

GOT THE $3,000 OUT OF THE BANK AND HE REMAINED CALM ENOUGH TO GET HIS WIFE INTO THE TRUCK AND THEY WERE PROCEEDING AS IF THEY WERE GOING TO THE BANK.
AND THEN WHEN HE -- IT WAS AFTER THE HE PULLED THE GUN THAT SHE TRIED TO JUMP OUT OF THE TRUCK.
>> WELL DISPLAYED THE GUN.
>> BUT HE SAW IT --
>> WHATEVER WAY.
>> I THINK IT'S IMPORTANT TO THE KIDNAPPING CHARGE, THAT DISTINCTION.
>> BUT HOW IS -- THEN AFTER SHE -- AFTER THE TRUCK GOT STOPPED SHE JUMPED OUT AND HE SHOT HER AT LEAST THREE TIMES, PROBABLY FOUR AND THERE WERE EIGHT DIFFERENT BULLET WOUNDS.
HOW IN THE WORLD IS THAT NOT CCP?
I BELIEVE THAT -- FIRST OF ALL THERE WAS THIS FORMULATION TO KILL HER WAS IMMEDIATE OUT OF PASSION FOR THE INFIDELITY IN THE MARRIAGE.
THAT'S -- THAT'S WHERE IT FORMED.
>> HOW LONG AFTER IT FORMED DID THE MURDER OCCUR?
>> IT WAS TUESDAY NIGHT.
HE COMMITTED THE MURDER FRIDAY MORNING.
>> SO THERE'S THREE DAYS.
>> 2 1/2 DAYS.
IT'S NOT -- YOU'RE NOT ARGUING THIS WAS AN IMPULSIVE MURDER.
>> WELL, IT BEGAN THAT WAY.
AND THIS IS THE THING.
THAT WHEN HE WENT IN THAT VEHICLE AND IF YOU LOOK AT HIS CONFESSION, HE IN HIS HEART WANTED TO MURDER HER FOR WHAT HE DID BUT HE WAS HOPING THAT, THAT WOULDN'T HAPPEN.
THAT MAYBE SHE SAID SOMETHING LIKE I'M SORRY AND

I LOVE YOU.
AND THEN THEY WOULD FORGIVE.
>> HE WAS GOING IN THE OPPOSITE DIRECTION OF THE BANK WITH THE GUN IN THE CAR.
>> THAT'S CORRECT.
>> AND HE HAD PLACED A BB GUN IN PLACE OF THE GUN AT HIS FRIEND'S HOUSE OR SOMETHING.
>> THE JUDGE THE TRIAL JUDGE HERE DETAILED THE ELABORATE PLAN THAT HE -- THERE WAS MORE THAN THAT.
TO AFFECTIONATE THIS SCHEME.
NO QUESTION.
[AUDIO DIFFICULTIES]
>> AN OUT-OF-AREA VISITOR WAS STAYING THERE.
SOMEONE TESTIFIED THAT HE HAD SEXUAL RELATIONS.
HE DENIES THAT.
YES, THAT CAME INTO RECORD IMPROPERLY.
BUT THE THING WAS THAT HAD HE GONE TO THE FOREST AND EXCUTED HER YOU WOULD HAVE A CCP CASE HERE.
BURT THAT'S NOT WHAT HAPPENED.
SHE LEFT THE VEHICLE AND THEN HE -- AND IN THE RAGE OF HER NOT AGAIN DOING HIS BIDDING -- BECAUSE IF YOU REMEMBER, HE WAS IN A PSYCHIATRIC HOSPITAL IN THE FIRST MARRIAGE WHERE HIS WIFE HAD COMMITTED HIS FIRST WIFE HAD COMMITTED INFIDELITY AND ENDED UP IN A PSYCHIATRIC HOSPITAL OVER IT.
HE THEN BATTERED VERY BADLY A WOMAN WHO SAW ANOTHER PERSON THAT DAY AND HE CAME AND CONFRONTED HER.
THIS WAS A MAN WHO WAS NOT OF THE TYPICAL FRAMEWORK WHEN IT COMES TO THIS ISSUE.
>> LET'S EXPLORE THE CONSEQUENCES OF YOUR THEORY.
YOU ARE SAYING THAT SOMEBODY CAN HAVE AN ELABORATE PLAN TO MURDER SOMEBODY BUT IF

THE VICTIM DISCOVERS THE
PLAN BEFORE THE MURDER IS
CARRIED OUT, THEN YOU CAN
NEVER HAVE A CCP BECAUSE NOW
THE PLAN HAS BEEN STYMIED. wE'RE
AT PLAN B NOW. PLAN A
WAS GETTING CARRIED OUT ALL
THIS TIME. BUT NOW WE'RE IN
PLAN B BECAUSE THEY
DISCOVERED IT, SO NOW IT'S NO
LONGER A CCP.
IF THIS WAS A CONTRACT
MURDER AND THIS GENTLEMAN
WAS GOING BY CONTRACT MURDER
THIS PERSON IN THE FOREST
BUT THEY GOT AWAY IN THE CAR
AND THEY MURDERED THEM, THEN
THAT WOULD BE CCP, TOO.
BECAUSE THIS IS AN ACT
MURDER.
THIS PERSON'S SOLE GOAL WAS TO
MURDER THIS PERSON.
>> WHAT'S THE DISTINCTION
HERE?
HERE YOU HAVE A DOMESTIC
SITUATION AS HE SAID IN HIS
OWN CONFESSION, YOU KNOW,
I'M NOT SURE I COULD HAVE
DONE IT OR SOMETHING TO THAT
EFFECT.
BECAUSE I LOVE HER SO MUCH.
AND HAD SHE SAID THE RIGHT
THING I MAY NOT HAVE DONE
THIS.
>> CLEARLY IF HE WOULDN'T
HAVE DONE IT WE WOULDN'T
HAVE CCP.
>> BUT THE FACT THAT HE DID
IT THERE IS CCP IT SEEMS TO
PLEA.
HE CARRIED OUT HIS PLAN
WHETHER THE WAY HE WANTED TO
CARRY IT OUT OR NOT.
>> DON'T WE HAVE CASES, FOR
EXAMPLE, WHERE A PERSON HAS
ELABORATE PLAN TO KILL A.
OKAY.
BUT B GETS IN THE WAY.
MAYBE B -- THERE WAS A CASE
I BELIEVE SECURITY GUARD A
RUNS AWAY AND THE SECURITY
GUARD IN THE COURTHOUSE GETS
SHOT AND KILLED AND WE STILL
FOUND CCP EVEN THOUGH HE

DIDN'T PLAN TO KILL B HE
PLANNED TO KILL A.
ISN'T THAT THE EXACT SAME
TYPE SITUATION?
>> AGAIN, YOU HAVE A PERSON
WHO HAS A MENTAL DEFECT NOT
TO THE RISE OF YOU KNOW
INITIATED THE CRIME BUT OF
SOMEONE WHO SUFFERED THIS
KIND OF THING DOES NOT HAVE
CONTROL OVER THE FACULTIES ANY
LONGER.
IT'S BEEN PROVEN.
[AUDIO DIFFICULTIES]
>> YOU'RE CHARACTERIZATION
IS ACCURATE.
BUT HE FURTHER SAID IN HIS
CONFESSION THAT YOU KNOW, I
LOVE HER SO AND THIS COULD
HAVE GONE DIFFERENT.
SOMETHING TO THAT EFFECT.
[AUDIO DIFFICULTIES]
>> YES.
[AUDIO DIFFICULTIES]
[AUDIO DIFFICULTIES]
THIS WAS AN EMOTIONALLY
ENRAGED PERSON IN A DOMESTIC
VIOLENT SCENARIO.
THAT'S WHAT MAKES THIS
DIFFERENT THAN THE OTHERS.
AND I THINK THAT HAD
SOMETHING GONE DIFFERENT,
THIS MURDER WOULDN'T HAVE
OCCURRED.
HE WAS CHILD-LIKE IN
HIS -- THAT HE'S GOING TO
GET HIS WAY WITH HER AND DO
WHAT HE IS GOING TO DO.
[AUDIO DIFFICULTIES]
>> WELLM THAT WAS ARGUED AT
TRIAL.
BUT IT WAS -- IT WAS NOT
ACCEPTED BY THE TRIAL COURT,
OBVIOUSLY.
>> YOU ARE INTO YOUR
REBUTTAL.
I WOULD LIKE TO SPEAK.
>> GO AHEAD.
>> I WOULD LIKE TO SPEAK TO
THE KIDNAPPING CHARGE.
IN THIS PARTICULAR CASE
THERE WAS A MOTION FOR
JUDGMENT OF ACQUITTAL ON THE
KIDNAPPING BECAUSE THERE WAS

NOT AN ACTUAL -- NOT
ABDUCTION, BUT A CONFINEMENT
OF THIS VICTIM.
AND IN THIS PARTICULAR CASE
AND THERE ARE MANY CASES
LIKE THIS -- WHERE SOMEONE
USES TRICKERY OR SOME OTHER
DEVICE TO GET THEM TO GO
ALONG SOMEWHERE.
AND THEN SOMEWHERE AT SOME
POINT IT DOESN'T GO THE WAY
IT'S SUPPOSED TO.
AND THIS COURT AND THE CASES
THAT ARE CITED BY THE STATE
THERE IS SOMETHING
ADDITIONAL THAT MAKES THIS
PERSON DECONFINED.
THE BOYLE CASE.
THE EVANS CASE.
THERE'S ALWAYS SOME SORT OF
CONFINEMENT.
IN THIS CASE THERE WASN'T.
>> WAS IT THE GRABBING BY
THE HAIR OR THE USE OF THE
WEAPON WITHIN THAT CATEGORY?
>> IF HE HAD DRAWN THE
WEAPON AND SAID IF YOU LEAVE
I'M GOING TO SHOOT YOU,
THAT'S CONFINEMENT.
NONE OF THAT OCCURRED.
>> HOW ABOUT THE HAIR?
>> HE TRIED TO -- SHE
GRABBED THE WHEEL.
>> AND HE TRIED
TO GRAB HER AND WAS
UNSUCCESSFUL.
AND SHE FLED OUT THE
VEHICLE.
SO -- IT'S LIKE THE CASE
FROM THE DISTRICT COURT WE
CITED THE HEADLOCK.
THE HEADLOCK IS NOT
SUFFICIENT.
THIS WAS TRIED UNDER THE
COMMITTED AFTER THE STATUTE
HAD THE AMENDMENT THAT ADDED
THE THREAT PART; CORRECT?
I MEAN THIS --
>> I BELIEVE SO.
>> YES.
LET ME GO TO ONE OTHER
SUBJECT EVEN THOUGH YOU ARE
RUNNING OUT OF TIME.
CRAWFORD WAS NOT ARGUED

HERE; RIGHT?
>> NO, IT WAS NOT.
>> ON YOUR PRIOR THE FELONY.
>> NO.
>> I WILL RESERVE MY TIME.
THANK YOU.
>> I WOULD LIKE TO SPEEK TO
ISSUE 1 FIRST. THE FIRST
ISSUE AND THE TRIAL COURT'S
FINDINGS WERE THAT YOU TALKED
ABOUT ABUSE OF DISCRETION.
YOU HAVE STANDARD OF REMANIFEST
AREA.
THAT'S CITED ON PAGE 28.
WHAT HE SAID AT NO TIME DID HE
INDICATE HE WOULD BE
ANYTHING OTHER THAN FAIR AND
IMPARTIAL.
ACTUALLY HE COUCHED HIS
COMMENT, UNLESS YOU HAVE
EYEWITNESS STATEMENT THAT HE
KILLED SOMEONE I WOULD LIKE
TO HEAR HIS SIDE OF THE
STORY.
IF YOU LOOK AT EVERYTHING
THE JUROR SAID AND THE
RECORD IS RE -- JUROR AND
THE RECORD IS COMPLETE WITH
THE COLLOQUYS BETWEEN JUROR
MULLINOX.

WHAT HE SAID IS NO TIME DID HE
INDICATE THAT HE WOULD BE
ANYTHING OTHER THAN FAIR AND
IMPARTIAL.
ACTUALLY, HE COUCHED HIS
COMMENT BY SAYING UNLESS YOU
HAVE SOME EYEWITNESS STATEMENTS
THAT HE KILLED SOMEONE, I WOULD
LIKE TO HEAR HIS SIDE OF THE
STORY.
SO IF YOU LOOK AT EVERYTHING
THAT JUROR MULL {NAX} SAID AND
THE RECORD IS REPLETE WITH CALL
{QE}S BETWEEN JUROR MULLINAX
JURORS IS THAT HE HAD BEEN ON A
JURY HE HAD CONVICTED AN
INNOCENT MAN AND HE FOUND THAT
OUT THROUGH THE NEWSPAPER
BECAUSE THEY HAD DONE DNA
TESTING AND HE SAID UNLESS THE
STATE HAS SOME EYEWITNESSES,
THEN I WANT TO HEAR HIS SIDE OF
THE STORY.

I WANT TO KNOW WHAT HIS SIDE OF THE STORY IS.
AS FAR AS HIS IMPARTIALITY TO SUPPORT THE JUDGE'S FINDINGS, AT 186 HE SAYS I HAVE NO PRECONCEIVED IDEAS ON THIS CRIME.
AS FAR AS HIS TRAGIC EXPERIENCE I COULD SET ASIDE THOSE TRAGIC EXPERIENCES.
>> DON'T WE EXPECT THOUGH ON WHAT THE TRIAL JUDGE NEEDS TO DO, IF THERE WAS, AND AGAIN, THIS, WE'VE READ THIS FULL VOYEUR DEAR OF THE JURRER AND HE'S ALL OVER THE PLACE AND HE'S SAYING THING I'M NOT EVEN SURE I UNDERSTAND WHAT HE'S TALKING ABOUT WITH HERMAN ON THE ON THE MOUNTAIN YOU KNOW, BUT WHEN IT GETS TO THIS PART, IF THERE WAS AN ISSUEREINFORCED THAT {YOUNDS} THE DEFENDANT DOESN'T HAVE TO TAKE THE STAND, THAT HE'S INNOCENT UNTIL PROVEN GUILTY OUR CASE LAW SAYS THAT IT'S THEN INCUMBENT ON THE TRIAL JUDGE OR THE PROSECUTION, NOT THE DEFENSE TOO, CLARIFY THAT THOSE STATEMENTS WHICH APPEAR TO INDICATE SOMETHING THAT IS I'D REQUIRE HIM TO TAKE THE STAND CLARIFIED.
THE JUDGE DIDN'T DO THAT AND THE PROSECUTION DIDN'T DO IT.
ARE YOU SAYING THAT THESE STATEMENTS THAT MR.^MULLINAX MADE, IS STANDING OUT THERE, IS CONSISTENT WITH A JUROR IN OUR CASE THAT CAN BE FAIR AND IMPARTIAL?
WITHOUT FURTHER CLARIFICATION?

>> BECAUSE IF YOU LOOK AT THE QUESTIONS THAT THE DEFENSE COUNSEL WAS ASKING HIM, ASKING HIM, OKAY, WE ARE TALKING ABOUT A HYPOTHETICAL HERE, YOU KNOW THE JUDGE IS GOING TO TELL YOU THAT THE DEFENDANT DOES NOT HAVE TO TESTIFY BUT DO YOU THINK THAT THAT LAW SHOULD BE DIFFERENT, AND HE SAID, WELL, I WANT TO HEAR HIS SIDE OF THE

STORY.
I'M GOING TO HOLD THE STATE TO THEIR BURDEN OF PROOF.
I CONVICTED AN INNOCENT MAN.
AND I KNOW THE LAW IS NOT THAT WAY, BUT YOU ASK ME HOW I REALLY THINK.
AND HE HAD SAID PREVIOUSLY --
>> WELL MS.^-- THE PROBLEM THAT I'M HAVING IS WITH OVERTON, AND, AND IF WE SET OUT IN OVERTON WHAT THE QUESTION AND ANSWERS WERE BETWEEN THAT JUROR, AND IF WE HAD SET OUT THE QUESTIONS AND ANSWER WITH MULLINAX AND ONE OF THOSE ANSWERS IS UNLESS YOU HAVE AN EYEWITNESS ACCOUNT EVERYTHING ELSE IS {HERS} ACCORDING TO THE WAY I BELIEVE.
HEAR SAY IT'S ALL HEAR SAY UNLESS YOU HAVE A WITNESS WHO SAW HIM DO IT.
THE ONLY TWO PEOPLE WHO KNOWS WHO DID IT IS HIM AND THE PERSON WHO DIED UNLESS HE CAN GIVE AN AACCOUNT THAT IT DID NOT HAPPEN OR A WAY IT HAPPENED.
AND THEN HE WAS ASKED QUESTIONS IN THIS SAME PERIOD OF THE {VOIRD} AS TO WHETHER HE COULD ACCEPT THE LAW AND HE SAID I DON'T KNOW.
>> HE DID SAY -- HE SAID I GUESS SO OR I DON'T KNOW.
NOW, HE HAD PREVIOUSLY SAID THAT ON PAGE 418 AND 419 THAT EVEN IF THE LAW WERE DIFFERENT FROM THE BIBLE, HE WOULD DO WHAT THE JUDGE TOLD HIM.
HE WOULD DO WHAT IS INSTRUCTED.

SO, I MEAN, THERE IS SO MUCH CONVERSATION IN HERE, AND YOU HAVE TO RELY ON THE TRIAL JUDGE'S VANTAGE POINT IN LOOKING AT EVERYTHING THAT HAPPENED AND JUST BECAUSE OF -- TRIAL COUNSEL WRAPS A JUROR AROUND THE AXLE ON AN ISSUE WHEN HE IS CLEARLY SAYING I CONVICTED AN INNOCENT MAN.
I WANT HOW TO HEAR BOTH SIDES

OF THE STORY F. THE STATE
DOESN'T HAVE EYEWITNESSES, IT'S
ALL HEARSAY TO ME.
>> LET ME JUST TO FOLLOW UP ON
THAT.
WE SEE TWO KINDS OF CASES
INVOLVING VOIR DIRE.
ONE IS WHERE SOMEBODY STARTS
SOMEONE DOWN A ROAD LIKE, YOU
KNOW, WELL, DON'T YOU THINK
THAT -- WHAT DO YOU THINK THERE
NEEDS TO BE FOR THE DEATH
PENALTY AND THE JUROR HAS NO
IDEA SO THEY START SAYING
THINGS THAT ARE MAYBE A LITTLE
BIT OFF AND SOMEONE'S GOT TO
GET THEM BACK.
THE PROBLEM IS THAT THIS JUROR
FITS INTO WHAT I SEE AS A
SECOND CATEGORY, SOMEONE WHO'S
LIFE EXPERIENCE MAKES THEM
ALREADY AN -- A JUROR THAT MAY
NOT BE FAIR AND IMPARTIAL TO
EITHER SIDE.
ALL RIGHT?
BECAUSE WE'RE LOOKING AT THE
SYSTEM OF JUSTICE.
HE'S GOT PEOPLE THAT HE THINKS
SHOULD'VE GOT AN GREATER
PENALTY.
SOMEONE THAT DIDN'T.
THIS IS A WALKING CAUSE PERSON.

AND HE NOW THEN SAYS AND THIS
IS FURTHER WHAT I BELIEVE.
AND I DON'T -- I DIDN'T SEE
THIS AS BEING ONE OF THE THINGS
WHERE THE DEFENSE LAWYER IS
TRYING TO LEAD HIM INTO BEING
-- YOU KNOW, IMPARTIAL.
HE WAS ALREADY SAYING ALL THESE
SCREWY THINGS.
SO I'M CONCERNED THAT YOUR
SAYING THAT WELL, WE SHOULD
REALLY CONSIDER THAT BECAUSE HE
ALREADY KNEW THAT HE CONVICTED
AN INNOCENT MAN, HE PROBABLY
WOULD BE FAIRER TO THE
DEFENDANT.
WE JUST DON'T KNOW THAT.
AND ON THIS RECORD, ISN'T THERE
A REASONABLE DOUBT AS TO HIS
ABILITY TO BE FAIR AND
IMPARTIAL?

>> AND THAT'S WHERE -- AND YOU ASKED ABOUT EITHER THE STATE OR THE TRIAL JUDGE REHABILLITATING THE JUROR.
THEY DID NOT PERCEIVE HIM AS BEING IMPARTIAL Y. MEAN, WHEN HE SAID MY COUSIN STABBED HER HUSBAND BECAUSE HE CHEATED ON HER AND I THINK SHE'S JUSTIFIED.
I MEAN, --
>> IS THAT A STATEMENT OF A JUROR THAT IS CAPABLE OF BEING FAIR {SKPIM} PARTIAL THAT HAS THAT VIEW?
>> NO.
HE SPEAKS HIS MIND.
HE'S VERY VERBAL.
HE SAYS EXACTLY WHAT HE'S THINKING BECAUSE THEY'VE TOLD HIM THERE ARE NO RIGHT OR WRONG ANSWERS.
WE'RE GOING TO ASK YOU A BUNCH OF HYPOTHETICALS.
TELL US HOW YOU REALLY FEEL AND THEN WHEN HE DOES THEY GO, WRONG ANSWER.
NO, THERE IS NO WRONG ANSWER.
HE WAS SO OPEN WITH THEM, AND HE HAD ALL THESE INCIDENCES IN HIS FAMILY AND THEY SECOND HIM WELL, CAN YOU SET ASIDE THOSE TRAGIC EXPERIENCES TO SIT ON THE JURY AND HE SAID YES, I CAN.
HE'S, HE SAID, YOU KNOW, AS FAR AS THE DEATH PENALTY, WELL, JESUS DIED FOR US ON THE CROSS.

THAT DOESN'T MEAN THERE CAN'T BE A DEATH PENALTY BUT -- AND HE HAD THESE VERY DEEP RELIGIOUS CONVICTIONS, BUT AS THE JUDGE SAID, HE WAS JUST OPEN.
I MEAN, IF YOU ASK SOMEBODY HOW THEY REALLY THINK AND THEY TELL YOU, THAT DOESN'T MEAN THAT YOU JUDGE HIM AS NOT BEING ABLE TO SIT ON A JURY BECAUSE HE'S HAD A LOT OF LIFE EXPERIENCES.
>> DID YOU ADDRESS, THOUGH, IF YOU TAKE OVERTON, YOU KNOW, OVERTON v. STATE JUST A CASE,

{THATS} THOSE ALL SEEM THAT
THEY ARE JUST, THAT WE'D HAVE
TO -- WOULDN'T WE HAVE TO
OVERRULE THOSE DECISIONS IN
ORDER TO SAY THIS ONE IS
INDICATIVE OF A COLLOQUY OF
SOMEONE WHO COULDN'T BE FAIR
AND IMPARTIAL?
>> NO BECAUSE IF YOU LOOK AT
OVERTON, AND OVERTON WAS THIS
JUROR WAS CLEARLY DID NOT
UNDERSTAND THE PRESUMPTION OF
INNOCENCE.
MR.^MULLINAX CLEARLY DID.
MR.^OVERTON THINK PHYSICAL, IF,
IF YOU DON'T TESTIFY, YOU'RE
HIDING SOMETHING.
HE'S SHIFTING THE BURDEN TO THE
DEFENDANT.
YOU'RE HIDING SOMETHING IF YOU
DON'T TESTIFY.
IF YOU DON'T GET UP AND, AND
TALK THEN YOU'RE NOT INNOCENT.

HE, HE JUST DID NOT UNDERSTAND,
AND WHAT THEY HAD TOLD JUROR
MULLINAX AT THE BEGINNING, YOUR
{RR} PRESUMED INNOCENT AND
EVERYTHING WE TALK ABOUT IS
HYPOTHETICAL.
WELL HE GOT THAT BECAUSE HE HAD
BEEN ON A JURY WHERE HE GOT IT
WRONG AND HE WANTED TO HEAR IT.

AND THAT'S COMPLETELY DIFFERENT
FROM JUROR RUSSELL WHO'S GOING
OH, NO, IF YOU DON'T TESTIFY,
YOU'RE HIDING SOMETHING AND YOU
HAVE TO TESTIFY.
JUROR MULLINAX IS JUST
COMPLETELY HONEST ABOUT HOW HE
FEELS.
YOU KNOW, IF THE STATE DOESN'T
GIVE ME AN EYEWITNESS, IT'S ALL
HEARSAY.
IF WE FIND THAT THE TRIAL JUDGE
ERRED IN NOT GRAND {GRANT}
AGCAUSE CHALLENGE, WILL YOU
ADDRESS WHETHER THE BUZBY
MAJORITY REQUIRES THERE BE A
NEW TRIAL OR IS OLAY NOT THE --
SOMEBODY THAT WOULD BE AN
OBJECTIONABLE JUROR UNDER --
>> YES, AND I URGE THIS COURT

TO RECEDE FROM BUZBY.
THIS IS THE CASE THAT SCREAMS OUT FOR A HARMLESS ERROR ANALYSIS IF YOU FIND THAT THE TRIAL JUDGE ERED IN STRIKING HIM FROM CAUSE Y. -- WHICH LISTS ALL THE CASES FOLLOWING THE MAJORITY RULE NAT WAS ISSUED IN MAY OF THIS YEAR, AND THE ONLY CAY {THAS} DIDN'T FIND WAS A CALIFORNIA CASE.
CALIFORNIA -- EVEN CALIFORNIA NOW HAS GONE WITH THE MAJORITY RULE SO I SUPPLEMENTED WITH BOTH THOSE CASES.
THERE ARE NOW, I THINK, 28 CASES WHICH FOLLOW WITH THIS COURT CALLS THE FEDERAL RULE.
>> ARE THERE ANY, DO WE HAVE ANYTHING IN OUR JURISPRUDENCE IN FLORIDA GO TO MAYBE A DIFFERENT CATEGORY OF SOMEONE WHO IS JUST NOT QUALIFIED TO SIT ON A JURY BUT SOMEHOW THEY GET ON A JURY.
CAN WE APPLY A HARMLESS ERROR ANALYSIS FOR THAT, SOMEONE WHO HAS BEEN CONVICT OFFEND A CRIME FOR SOMETHING LIKE THAT?
CONVICTED FELON BUT THEY END UP SITTING ON A JURY FOR WHATEVER REASON OR, NONCITIZEN.
WHATEVER IT IS.
DO WE HAVE JURISPRUDENCE THAT SAYS WE USE A HARMLESS ERROR ANALYSIS?
>> THE CLOSEST CASE I CAN THINK OF ON THAT IS THE WILLSY CASE WHERE THE JUROR WAS ON PRETRIAL INTERVENTION, JUROR CLARK, AND WE ARGUED THAT JUST RECENTLY, AND BUT {YOURNS} FOUND THAT PRETRIAL INTERVENTION WAS NOT UNDER PROSECUTION.
AND.
>> OKAY.
THE REASON MY CONCERN IS THAT WHEN WE START TALKING ABOUT HARMALIZE ERROR IN MOST SITUATIONS, WE'RE TRYING TO DETERMINE THE IMPACT, WHAT IMPACT IT HAD ON THE CASE AND WE'RE USUALLY TALKING ABOUT MERITS OR SUBSTANCE.

BUT WHEN YOU ARE TALKING ABOUT
THE COMPOSITION OF A JURY,
HISTORICALLY IT'S ALWAYS BEEN
NOT WHETHER A JURY GOTS IT
RIGHT OR WRONG.
THE ISSUE IS DID YOU EVER HAVE
A PROPER JURY TO EVE {BN} GIN
W. NOT THAT YOU HAD, YOU KNOW
AN IMPROPER JURY BUT THEY HAVE
GOT IT RIGHT UNDER THESE FACTS.

WOULD YOU COMMENT ON THAT?
THAT SEEMS TO ME --
>> YES, SIR, AND THAT'S THE
FOCUS OF THE UNITED STATES
SUPREME COURT IN ROSS AND
MARTINEZ-SALAZAR IS THAT YOU
HAVE A CONSTITUTIONAL RIGHT TO
A FAIR AND IMPARTIAL JUROR.
JUROR MULLINAX DID NOT SIT.
JUROR BELAY WAS THE ONE THAT
MR.^TATTY RECOGNIZED AS THE
JUROR.
JUROR BELAY IS THE BEST JUROR
YOU WOULD EVER FIND, AND THIS
-- THAT'S WHY THIS CASE CRIES
OUT FOR, I MEAN, IF YOU CREATE
A FLORIDA CONSTITUTIONAL RULE
TO PREEMPTORY CHALLENGES, LIKE
THE COURT DID IN BUZBY, THEN IF
THE LEGISLATURE INCREASES OR
REDUCEATHIZE AMOUNT OF
PREEMPTORY CHALLENGES IS ARE
THEY ABROGATING A
CONSTITUTIONAL RIGHT?
IF THE LEGISLATURE DECIDED TO
GIVE THE STATE FIVE PREEMPTORY
CHALLENGES RATHER THAN TEN IN A
CAPITAL CASE, ARE WE DENY
ADCONSTITUTIONAL RIGHT?
>>IUM {RR} JUST MAKING SURE.
I'M NOT SURE I GOT AN ANSWER TO
THE QUESTION.
I ASKED YOU WHETHER UNDER BUZBY
WOULD BELAY QUALIFY AS AN
OBJECTIONABLE JURR?
>> HE IS NOT AN OBJECTIONABLE
JUROR.
>> SO WHY ARE YOU ASKING US TO
RECEDE FROM BUZBY IF UNDER
BUZBY THIS WOULDN'T BE A
REVERSAL?
>> BECAUSE THE WAY THEY READ
BUZBY AND MAYBE I'M MISREADING

BUZBY BUT BUZBY SAYS IF YOU STRIKE JUROR MULLINAX FOR CAUSE AND YOU JUMP THROUGH THE RIGHT TECHNICAL HOOPS AND YOU IDENTIFY A URER EVEN IF HE'S NOT OBJECTIONABLE, YOU WIN.
NOW --
>> YOU'RE SAYING THAT IF, THE RULE IN BUZBY IS THAT IF YOU WOULD HAVE BEEN ABLE TO EXERCISE THE PREEMPTORY CHALLENGE ON A JUROR, AND YOU COULDN'T EXERCISE THAT PREEMPTORY CHALLENGE BECAUSE YOU ARE OUT OF CHALLENGES AND THE JUDGE GID DIDN'T GIVE YOU ANOTHER ONE THAT THAT'S -- IT'S NOT A TECHNICAL -- WE WERE HERE YESTERDAY -- IT'S NOT A TECHNICAL HOOP.
THESE ARE ALL DONE BECAUSE THE TRIAL IS A DYNAMIC PROCESS.
SO WOULD BELAY QUALIFY UNDER BUZBY AS A JUROR THAT WAS IDENTIFIED AND WOULD HAVE BEEN STRUCK AS A PREEMPTORY CHALLENGE?
>> HE IDENTIFIED JUROR BELAY AS THE JUROR HE WOULD STRIKE.
>> SO DOES IT SATISFY -- UNDER BUZBY, WOULD THIS THEN BE A REVERSE.
>> YES.
OKAY I JUST WANT -- SO YOU'RE URGING US TO RECEDE FROM BUZBY BUT UNDERSTANDING THEN I JUST WANT -- THAT BELAY THAT HE DID PROPERLY PRESERVE THIS ISSUE UNDER BUZBY?
>> YES, AND WHEN HE IDENTIFIED JUROR BELAY AND HE SAID AND I WOULD LIKE TO SAY THAT I KNOW HE DOESN'T RISE TO THE LEVEL {OFL} A CAUSE CHALLENGE BUT I'M, I'M HAVING TO STRIKE, -- I WOULD IDENTIFY HIM AS MY JUROR TO USE PREEMPTORY AND IF YOU LOOK AND THAT'S WHY BUZBY NEEDS TO BE FIXED BECAUSE IN THIS CASE YOU LOOK AT WHEN HE -- HE ACCEPTED MULLINAX.
HE STRUCK THREE OTHER JURORS AND THEN HE GOES BACK AND HE ASKED FOR A CAUSE CHALLENGE ON

MULL MAX AND -- MULLINAX AND
THE JUDGE SAYS WELL DO YOU WANT
TO {JUS} A PREEMPTORY AND HE
SAYS I GOT TO THINK ABOUT IT.
THEN HE STRIKES ANOTHER JURRER
AND THEN HE GOES BACK TO
MULLINAX AND SAYS NOW I'M GOING
TO USE A PREEMPTORY ON HIM AND
ASK FOR ANOTHER ONE.
THIS IS CLEAR TECHNIICALITY OF
HIM TRYING TO COMPLY WITH THE
BUZBY RULE SO HE CAN GET A NEW
TRIAL.
AND THE ONLY THING THAT HE WAS
DENIED WAS THE RIGHT TO ANOTHER
PREEMPTORY NOT THE RIGHT TO AN
IMPARTIAL JURY.
>> SO WE CAN GET OUR SEMANTICS
STRAIGHT, WHEN WE'RE -- AND
MR.^BIRDSON REFERRING TO AN
OBJECTIONABLE JUROR UNDER
BUZBY.
WE'RE NOT TALKING ABOUT BIAS
JURY -- JUROR.
WE'RE TALKING ABOUT A JUROR
THAT HAS BEEN IDENTIFIED AS
SOMEONE WHO I OBJECT TO SITTING
BECAUSE I WOULD USE MY
PREEMPTORY ON?
CORRECT.
YES, SIR.
YES, SIR.
>> ON THE ISSUE OF BUZBY ON
THIS CASE, IS THE CORRECT THAT
THE JUDGE STRUCK FOR CAUSE 18
OR 19 OTHER JURORS.
>> I WENT BACK AND TRIED TO
COUNT THOSE QUICKLY AND I'M NOT
SURE THAT MY COUNT IS ACCURATE
Y. COUNT THREE THAT HE STRUCK
ON DEFENSE COUNCIL MOTION.
I HAVE ONE ON 462 HE DENIED
STATE CHALLENGE FOR CAUSE AND 1
ON 463 HE DENIED DEFENSE
COUNSEL FOR CAUSE.
THE TEACHER THAT HAD A GRADE
HER FCAT PAPERS.
HE DENIED THAT FOR CAUSE.
>> LET ME SEE IF YOU
UNDERSTAND.
>> SHE HAD TO WHAT?
GRADE FCAT PAPERS?
>> SHE HAD TO GRADE FCAT PAPERS
SO SHE DIZANT WANT TO SIT ON

THE JURY.
AND HE DENIED THAT CHALLENGE.
>> WITH REGARD TO YOUR APPROACH TO PASSING OVER MR.^MULLINAX AND DISCHARGING OTHER JURORS, ARE YOU SUGGESTING THAT THERE IS A PROCEDURAL VIEW THAT ONE SHOULD TAKE THAT IF THAT JUROR IS NOT IDENTIFIED IMMEDIATELY, THAT WE SHOULD TREAT HIM DIFFERENTLY FOR CAUSE CHALLENGE THAT PERSON HAS GIVEN ALL THEIR ANSWERS ARE AND YOU CONTINUE ON WITH VOIR DIRE AND YOU ARE STRIKING OTHER FOLKS AND LOOKING AT THE PANEL AS IT EXISTS THAT WE SHOULD HAVE SOME OTHER PROCEDURAL THAT SOMEHOW THAT'S, THAT'S WAIVED OR CURED BECAUSE YOU ARE LOOKING AT THE ENTIRE PANEL?
ARE YOU MAKING THAT ARGUMENT?
>> UNDER BUZBY HE HAD PRESERVED THIS.
BUT THIS IS THE PERFECT EXAMPLE OF WHY THE BUZBY RULE IS NOT WORKING.
BECAUSE HE LOST SIGHT OF THE FACT THAT HE WAS GOING FOR AN IMPARTIAL JURY, AND HE BECAME FIXATED.
THE TRIAL COUNCIL COUNSEL BECAME FIXATED ON PRESERVING AN ERROR.
>> YOU KNOW THAT'S NOT A --
>> THAT'S -- SO THE ANSWER TO MY QUESTION IS NO, YOU'RE NOT SUGGESTING HOW IT'S DONE IS A FACTOR?
>> UM, I, I, I CANNOT HONESTLY SAY THAT HE DID NOT PRESERVE THIS UNDER -- GIVEN BUZBY.
I CAN SAY THOUGH THAT THIS SHOWS THE EVIL OF THE BUZBY RULE BECAUSE YOU'RE -- YOU ARE NOT WORRIED ABOUT AN IMPARTIAL JURY.
MULLINAX DID WANT SIT.
BELAY IS A PERFECT JURRER AND SO YOU CAN GIVE POINTS TO ANYBODY WITH A PULSE AND SAY I WIN.
>> YOU'VE ANSWERED MY QUESTION.

>> I JUST WANT TO GO BACK TO SOMETHING.
I MEAN, TO, TO INFER THAT THIS DEFENSE LAWYER WAS DOING ANYTHING OTHER THAN TRYING TO PICK A FAIR AND IMPARTIAL JURY FOR HIS CLIENT WITHOUT MORE IN A RECORD I'M VERY CONCERNED ABOUT.
I MEAN TMAY BE THAT BECAUSE HE HAD ONLY FEW PREEMPTORY CHALLENGES LEFT, MAYBE HE WAS HOPING THAT THE STATE WOULD, WOULD STRIKE JUROR MULLINAX.
I MEAN, WE WERE ALL TRIAL LAWYERS.
YOU ARE SAYING WELL THIS GUY IS A MIXED BAG, LET ME SAVE MY, I'VE GOT SOME OTHER PEOPLE THAT I'VE GOT ISSUES WITH THAT DON'T RISE-FOOT LEVEL OF CAUSE BUT I DON'T LIKE THE WAY THEY'VE ANSWER THESE QUESTIONS LET ME STRIKE THE ONES I REALLY HAVE TO GET OFF.
I KNOW I AM GOING TO HAVE TO STRIKE MULLINAX BUT LET ME SEE IF THE STATE IS GOING TO DO THIS.
SO HOW DO WE KNOW ON THIS RECORD THAT WHAT THE JUDGE -- THAT WHAT THIS DEFENSE LAWYER IS TRY THE STATE UP FOR REVERSIBLE ERROR.
>> AND I DIDN'T EVEN MEAN TO INFER THAT.
>> WELL IT SOUNDED LIKE THAT TO ME.
>> AND I APOLOGIZE.
AND I APOLOGIZE TO MR.^MILLER WHO IS A VERY SEASONED TRIAL ATTORNEY AND IF IT SOUNDED LIKE THAT, I DIDN'T MEAN FOR IT TO SOUND LIKE THAT.
I'M JUST SAYING THAT TECHNICALLY THIS IS PRESERVED BUT WHEN YOU ACCEPT A JUR{SKBR} SAY LET ME THINK ABOUT IT AND THEN FOUR JURORS LATER YOU GO BACK AND BACK STRIKE HEM AND THEN IDENTIFY A JUROR LIKE BELAY WHO YOU SAY COULD NOT SIT ON THE JURY AND RECOGNIZE THAT HE DOESN'T RISE TO THE LEVEL OF

A-- OF A CAUSE CHALLENGE.
>> WELL, MS.^, AS A ONE WHO HAS PICKED A LOT OF JURORS, I THINK MR.^MILLER WAS IN A {QAUND}RY AS TO WHETHER HE WANTED MR.^MULLINAX OR DID WANT WANT MR.^MULLINAX UNTIL HIS HAND WAS FORCED, WHICH I WOULD BE IF I WERE LOOKING AT MR.^MULLINAX IN THIS WHOLE {ZEM} SCHEME.
BUT LET ME MOVE ON TO, TO THE CCP, IF YOU WOULD, AND MR.^MR.^BURDEN'S ARGUMENT SEEMS TO ME TO BE THAT THERE WAS A POINT IN TIME WHERE RAGE TOOK OVER.
EVEN THOUGH ADMITTEDLY THIS STARTED OUT AS A PREMEDDITATED PLAN.
THAT THERE WAS STILL -- HE COULD STILL HAVE BEEN TALKED OUT OF IT.
WHAT IS THE STATE'S RESPONSE TO THAT?
>> WELL, THE STATE'S RESPONSE TO THIS IS THAT IT JUST DOESN'T GET MORE PREMEDDITATED THAN THIS.
IF YOU READ HIS STATEMENT, HE PLANNED THIS FOR THREE DAYS.
HE WENT TO THE BANK AND GOT $3,000 SO THAT WHEN HE WENT TO PRISON AFTER KILLING HER, HIS SONS COULD HAVE THAT MONEY TO PUT IN HIS COMMISSARY.
HE STOLE A GUN.
WENT TO WAL-MART.
HE HAD A FRIEND THAT HAD A GUN IN HIS SEAT SO HE GOES TO WAL-MART, GETS A GUN THAT LOOKS LIKE IT, AND REPLACES IT SO HE'S GOT A GUN.
>> WHAT ABOUT THE ASPECT OF THIS THAT ISN'T A PRIOR VIOLENT FELONY?
, THAT IN FACT HE HAD BEAT THE PERSON TO SUCH A {LUFBL} THAT -- BUT THEN HE DID BACK OFF AND TOOK HER TO THE EMERGENCY ROOM.

YOU KNOW I THINK THE PSYCHOLOGIST HAD TESTIFIED PUT SOME WEIGHT ON THAT AS TO WHETHER HE IN FACT WAS IN A

RAGE.
>> WELL THE PSYCHOLOGIST WAS AT THE PENALTY PHASE MITIGATION.
THERE WAS NO KIND OF, YOU KNOW, SICOLOGICAL TESTIMONY THAT HE WAS, YOU KNOW, REACHED A LEVEL OF INSANITY OR ANYTHING ELSE.
THEY DID TRY TO MAKE THIS CASE A SECOND DEGREE MURDER CASE.
BUT THE CONFESSION IS, IT WAS SO PLANNED, SO CALCULATED, HE COULD'VE WALKED AWAY FROM THIS AT ANY TIME.
HE BROUGHT A WEAPON.
HE HID IT FROM HER WHEN SHE MANAGED TO GET OUT OF THE CAR, HE TOOK THE CLIP, PUT IT IN THE GUN, AND CHAMBERED A BULLET, CHASED HER DOWN, SHOT HER ONCE SHE WENT INTO THE FETAL POSITION AND THEN HE AIMED FOR HER HEART.
AND THEN WHEN THAT WASN'T ENOUGH, HE, HE SHOT HER AGAIN.

THE CLOSE CONTACT WOUND RIGHT THROUGH THE STOMACH.
>> GOING TO THE CHASE, WOULD YOU ALSO ADDRESS THE KIDNAPPING?
IS IT YOUR VIEW, YOUR POSITION THAT THE KIDNAPPING WAS COMPLETED DURING THE RIDE OUT TOWARDS THE OCALA NATIONAL FORCEST OR JUST WHAT IS YOUR VIEW?
WHAT IS YOUR POSITION WITH REGARD TO THIS?
>> WELL, FIRST OF ALL, THIS WAS NOT PRESERVED AS TO ANYTHING EXCEPT SHE GOT IN THE CAR VOLUNTARILY.
>> RIGHT.
>> AND --
>> AND AT THAT POINT THERE WOULD NOT BE THE KIDNAPPING, CORRECT?
>> WELL, THAT'S THE QUESTION F.
HE {FRAUJ}ULATELY INDUCED HER TO GET IN THE CAR WITH THE INTENT TO KILL HER.
>> WELL, HAVEN'T WE ALREADY CROSSED THAT BRIDGE THESTEP FATHER TAKING HER TO PUBLIX AND

TOWARDS THE EVERGLADES WE
DIDN'T HAVE ANY EVIDENCE THAT
SHE EXITED THE VEHICLE AND WAS
FOUND DEAD IN THE ROADWAY BUT
THIS COURT HELD THAT KIDNAPPING
COULDN'T BE UPHELD THERE.
>> CORRECT BUT IF YOU LOOK AT
THE ARGUMENT ON JUDGMENT OF
EQUITTAL.
HE DIDN'T --
>> WHAT IS THE --
>> THAT IS THE ONLY ARGUMENT
THAT MADE.
THE KID {NP}ING OCCURRED WHEN
HE PULLED THE GUN OUT AND SHE
TRIED TO GET OUT OF THE CAR AND
GRABBED HER BY THE HAIR AND
WOULD NOT LET HER OUT OF THE
CAR AND THE CAR WAS -- VERY
HEAVILY TRAVELED YARE {SQU} AND
HE'S TRYING TO GET OUT WITH A
GUN RIGHT THERE.
THAT'S KIDNAPPING AND THEN THE
OTHER ISSUE THAT HE SPOKE ABOUT
WAS WE, WE, WE DID CYP
KIDNAPPING, OH, I DID WANT TO
POINT OUT ON CCP A FEW OTHER,
OTHER POINTS THAT HE TOOK HER
TO A -- THAT HE WAS TAKING HER
TO A REMOTE PLACE.
HE HAD TO RELOAD HER GUN.
HE CHASED HER DOWN.
HE KEPT THE BYSTANDERS AWAY
UNTIL HE WAS SURE SHE WAS DEAD.

>> YOU ONLY HAVE A FEW MINUTES
LEFT.
WOULD YOU ADDRESS THE ISSUE OF
PROPORTIONALITY?
>> YOUR OPPONENT DECIDE
ADNUMBER OF OUR CASES WHERE
IT'S, A DOMESTIC SITUATION.
AN EMOTIONAL SITUATION.
AND THAT THIS COURT SETICIDE
THE IMPOSITION OF THE DEATH
PENALTY UNDER THOSE
CIRCUMSTANCES.
>> AND YES, SIR, I THINK THAT
IN THE CASE OF RICHARD LYNCH
FORWARD, FROM 1999, THE COURT
HAS RECEDED FROM THAT DOMESTIC
VIOLENCE EXCEPTION.
>> SO YOU THINK THOSE CASES ARE
NO LONGER GOOD LAW?

THAT THAT ANALYSIS.
>> LYNCH IS VERY GOOD LAW.
>> PARD {SNN}.
>> LYNCH IS VERY GOOD LAW.
LYNCH IS --
>> MY QUESTION IS IS, WHETHER THOSE, YOU SAY PRIOR CASES, ARE THEY STILL GOOD LAW?
>> WELL MOST OF THEM GOT LIFE SENTENCES, SO, I MEAN, THERE WAS A TIME WHEN THIS COURT, WHEN IT WAS A DOMESTIC VIOLENCE SITUATION SAID, WELL, HE WAS UNDER THE INFLUENCE OF EXTREME EMOTIONAL AND SUBSTANTIAL IMPAIRMENT AND THAT'S VERY WEIGHTY.
WE DON'T EVEVEN THAT HERE.
THE DOCTOR DID NOT SAY THAT ANY PROBLEM HE HAD ROSE --
>> MY QUESTION TO YOU REALLY IS SHOULD WE LOOK AT THE CASES THAT HE HAS CITED TO US, AND I'M NOT SURE WHETHER I UNDERSTAND YOUR ANSWER.
EARLIER YOU SAID SOMETHING LIKE THAT WE'VE RECEDED FROM THOSE CASES.
IS THAT, IS THAT WHAT YOU'RE --

>> NO, SIR, YOU'VE RECEDED FROM THE CASES THAT ALLOW THE DOMESTIC VIOLENCE EXCEPTION THAT EVEN CONSIDER THE FACT THAT AS MR.^{PPL} KOPSHO SAID, IT'S MY WIFE, I CAN EXTERMINATE HER.
THE DOMESTIC VIOLENCE EXCEPTION, I MEAN, IF -- IT GOES INTO PLAY ONLY IF THERE WAS MENTAL ABERRATION.
HE DID NOT HAVE ANY STATUTORY MITIGATION.
DR.^McMAN TESTIFIED THAT THAT HEED HE HAS A PROBLEM WITH REJECTION FROM HIS MOTHER AND SO HIS FIVE FAILED MARRIAGES, BUT IT, IT DIDN'T EVEN RISE TO THAT -- HE SAID HE KNEW EXACTLY WHAT HE WAS DOING.
HE PREPLANNED T. NOTHING ROSE TO THE LEVEL OF STATUTORY MITIGATION.
A JUDGE GAVE MODERATE WEIGHT TO

THE FACT THAT HE HAD EMOTIONAL -- THAT HE DID NOT HANDLE REJECTION WELL BUT WE HAVE FOUR VERY STRONG AGGRAVATING CIRCUMSTANCES.
WE HAVE THE PRIOR VIOLENT FELONY, WHICH HE WAS STILL ON PROBATION FOR, SO THAT'S UNDER SENTENCE OF IMPRISONMENT.
WE HAVE DURING A KIDNAPPING AND COLD CALCULATED.
AS TO THE MITIGATION, YOU LOOK AT THE MODERATERATEWEIGHT TO THE EMOTIONAL DISTURBANCE THAT HE HAD FROM REJECTION, HE COOPERATED WITH THE POLICE, HE DID NOT FLEE, HE SHOWED SOME LEVEL OF REMORSE, HE DID NOT HURT THE BYSTANDERS, HE WAS ABANDONED BY HIS {MOERLTH}.
HE WENT TO {ZWRUFBL} DETENTION AT AGE 16, HE WAS A GOOD FATHER AND GOOD WORKER.
WE DON'T HAVE ANY HEAVY DUTY STATUTORY MITIGATORS AND DR.^McMAN SAID.
>> THE RECORD SHOWED HE HAD BEEN MARRIED A NUMBER OF TIMES BEFORE?
>> FIVE.
>> AND WHAT WERE THE AGES, THE AGE OF THE VICTIM AND THE AGE OF THE DEFENDANT IF YOU KNOW?
>> SHE WAS 21 WHEN HE KILLED HER AND HE WAS 47.
AND HE HAD MET HER WHEN SHE WAS 17.
SHE MOVED IN WITH HIM WHEN SHE WAS 18.
BUT AS FAR AS PROPORTIONALITY IS THE CASE HE SITES LIKE FITZPATRICK CRAZY AS A LOON.
HUR ZOG AND DOUGLAS.
THE OTHER CASE WHERES THERE'S THIS EXTREME MENTAL AND -- SEE EVEN THOUGH HE TRIED TO MAKE THIS INTO I WAS SO UPSET ABOUT HER CHEATING WITH ME HE'S LIVING WITH ANOTHER WOMAN.
HE PLANNED THIS FOR THREE DAYS.

I MEAN THIS IS AS CALCULATED AS IT GETS.
AND IF YOU READ HIS -- I MEAN

EVEN TAKING THE MONEY FROM THE BANK.
AND HAVING $3,000 IN HIS WALLET SO WHEN THEY ARREST HIM HE'S GOT MONEY.
>> CAN YOU SPEAK TO THE PRIOR VIOLENT FELONY TESTIMONY OF THE OFFICER?
PARTICULARLY THE STATEMENT OF THE OFFICER THAT HE SAID THAT THE VICTIM SAID SHE COULDN'T COOPERATE BECAUSE HE KILLED ME?

>> AND THERE WAS NO OBJECTION.

>> WELL CAN YOU SPEAK TO THE FUNDAMENTAL AIRR?
>> I MEAN HE BEAT HER UP PRETTY BAD AND SO THE OFFICER TESTIFIED EXACTLY WHAT SHE WOULD'VE TESTIFIED TO, AND THAT'S WHY IT WAS RELEVANT BECAUSE, SEE, THEY ALSO PRESENTED COP SHOW -- KOPSHO'S SIDE.
HE JUST SAID HE HIT HER WITH A TWO BY FOUR AND SHE CAME VOLUNTARILY TO FLORIDA AND HE NEVER SEXUALLY BATTERED HER.
THAT WAS RELEVANT TO THE FACT THAT HE SAID HE WOULD KILL HER.

WHAT HE ACTUALLY HIT HER WITH WAS A SHOT GUN.
>> DO WE KNOW WHETHER THE VICTIM WAS AVAILABLE TO TESTIFY OR -- FROM THE RECORDS STRATEGIC DECISION NOT TO CALL THE VICTIM BECAUSE THE EMOTIONAL ASPECTS?
>> YES, SIR, AND THERE WAS A DISCUSSION WHEN THEY WERE TALKING ABOUT PRESENTING THE DETECTIVES BECAUSE OF ROADS AND THIS COURT'S CASE LAW THAT SAYS IT'S {RARLTH} TO HAVE AN UNIMPASSIONS PERSON NOT THE VICTIM COMING IN TALKING ABOUT THAT.
AND SO IT WAS A STRATEGIC THAT THE STATE ATTORNEY SPECIFICALLY HAD THE DETECTIVE COME BECAUSE THIS COURT HAD SAID IN ROADS WE DON'T WANT THE VICTIMS UP

THERE, YOU KNOW INFLAMING
PASSIONS.
>> THE VICTIM LISTED AS A
POTENTIAL WITNESS BY THE STATE?

>> NO.
>> WAS SHE DEPOSED OR ANYTHING
LIKE THAT?
>> I'M NOT SURE ON THAT.
I JUST -- I'M NOT SURE.
BUT THE ISSUE ON APPEAL WAS
WHETHER OLD CHIEF APPLIED.
AND THAT WASN'T PRESERVED
BELOW.
THEY NEVER SITED OLD CHIEF OR
THAT HE AEROED TO STIPULATE TO
THE PRIOR VIOLENT FELONY SO THE
PHOTOGRAPHS WOULDN'T COME AND
IN THE JUDGE LOOKED AT THE
PHOTOGRAPHS AND HE SAID I DON'T
FIND THESE SO INFLAMMATORY AND
THE WITH MY SIX SECONDS LEFT I
WOULD AFFIRM ASK THAT THE COURT
AFFIRM THE CONVICTION AND
SENTENCES.
>> MR.^BURDEN, REBUT.
>> MAY IT PLEASE THE COURT.
I WOULD LIKE TO SAY THAT THIS
WAS A DEATH RECOMMENDATION BY A
VOTE OF 9-3.
THIS, THE JURY WAS TAINTED BY A
NUMBER OF THINGS BEFORE THEY
RENDERED THEIR RECOMMENDATION.

THEY WERE TAINTED BY THE FACT
THAT A KIDNAPPING CHARGE WAS
BROUGHT BEFORE THEM THATWHERE
{R} I ARGUED DID NOT EXIST.
THERE WAS EVIDENCE OF THE
IMPROPER VIOLENT FELONY.
THE IMPROPER INTRODUCTION,
MAKING THAT A FEATURE OF THE
FELONY PHASE.
THEY MADE A FEATURE OF IT WITH
A WITNESS TESTIFYING TO ALL
THESE THINGS, BRINGING IN
PICTURES.
IT WAS MOST OF THE PENALTY
PHASE.
>> THERE WAS NO -- THERE WAS NO
OBJECTION TO, THERE WAS AN
OBJECTION -- NO OBJECTION TO
THE -- IN ON A STATUTORIERING
-- ON THE HEARSAY BASIS AT

TRIAL, CORRECT?
>> THAT'S CORRECT.
>> NO DRAWFORD OBJECTION.
>> THAT'S CORRECT.
>> BUT THERE WAS THE,
HOOOBJECTED TO THEM NOT
STIPULATING TO IT SO THESE
THINGS WOULD NOT OCCUR.
AND THEN THE, THERE WAS THE
JURY INSTRUCTION ON HACK IN
THIS CASE, WHEN IT CLEARLY WAS
NOT A HACK CASE, AND I THINK
THIS CONFUSES JURIES, AND IT
FURTHER TAINTED --
>> THAT'S ALL RIGHT.
HE'S GOT 30 SECONDS.
>> OKAY.
AND FINALLY, THE INTRODUCTION
OF THE FACT THAT HE HAD --
COULD'VE HAD SEXUAL RELATIONS
WITH SOMEONE STAYING IN HIS
HOUSE, THIS TAINTED THE JURY.
IMPROPERLY.
AND RENDERED THE RECOMMENDATION
TAINTED.
AND IN CONCLUSION, I WOULD SAY
THAT THE DOUGLAS DECISION IS
GOOD LAW.
THAT WAS RENDERED BY THIS COURT
IN 1991, AND THAT IN THE
CONTEXT OF DOMESTIC RELATIONS,
THIS COURT SHOULD AS IN DOUGLAS
FIND THAT THE DEATH SENTENCE
WAS DISPROPORTIONATE AND I
THANK YOU SO MUCH FOR YOUR
TIME.
>> THANK YOU VERY MUCH FOR THE
CANDID RESPONSES TO OUR
QUESTIONS.
AND WE'LL TAKE THE CASE UNDER
ADVISEMENT.
THANK YOU VERY MUCH.
>> COURT WILL STAND IN RESES
UNTIL 9:00 TOMORROW MORNING.