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**Neil K. Salazar v. State of Florida**

**SC06-1381**

>> ALL RISE.

HEAR YE HEAR YE HEAR YE, THE SUPREME COURT OF FLORIDA IS NOW IN SESSION. ALL THOSE HAVING BUSINESS BEFORE THIS COURT, DRAW NEAR AND GIVE ATTENTION AND YE SHALL BE HEARD. GOD SAVE THE UNITED STATES, THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT.

>> GOOD MORNING.

>> LADIES AND GENTLEMEN, FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING, FRIENDS, WELCOME TO THE FLORIDA SUPREME COURT AND THE ORAL ARGUMENT CALENDAR FOR MONDAY, APRIL 7th, BEFORE WE START LET ME TAKE THE OPPORTUNITY ON BEHALF OF THE COURT TO WELCOME THE STUDENT PARALEGAL ASSOCIATION FROM THE DAYTONA BEACH COLLEGE, AM I SAYING THAT CORRECTLY, STAND AND SAY GOOD MORNING TO YOU. WELCOME, WELCOME TO THE COURT.

THANK YOU FOR BEING HERE. OKAY, THE FIRST CASE ON OUR CALENDAR THIS MORNING IS SALAZAR VERSUS STATE OF FLORIDA. MR. CALDWELL, READY TO PROCEED.

>> YES, SIR.

MR. CHIEF JUSTICE, MAY IT PLEASE THE COURT, GARY CALDWELL ON BEHALF OF NEIL SALAZAR.

I WOULD LIKE TO DISCUSS A FIRST AND SECOND ISSUE IN MY BRIEF AND AS TIME PERMITS, THE THIRD AND THE 5th, WHICH BOTH PERTAIN TO THE COLD, CALCULATED AND PREMEDITATED AGGRAVATING CIRCUMSTANCE.

THE FIRST ISSUE HAS TO DO WITH A STATEMENT WHICH THE PROSECUTOR MADE TO THE JURY IN HIS FINE

ARGUMENT.

THE PROSECUTOR SAID TO THE --  
WAS TALKING ABOUT THE DEAL THAT  
THE STATE HAD MADE WITH THE  
CO-DEFENDANT, JULIUS HATCHER,  
AND SAID TO THE JURY THAT HE  
UNDERSTOOD THAT THE JURY MIGHT

NOT LIKE THE FACT THAT THEY HAD  
MADE THE DEAL -- EXCUSE ME --  
HAD MADE THIS ARRANGEMENT WITH  
HIM BUT IT WAS NECESSARY TO  
PREVENT HIM, MEANING THE  
DEFENDANT, FROM WALKING OUT.

>> WHAT KIND OF OBJECTION WAS  
MADE TO THAT STATEMENT?

>> THE OBJECTION WAS THAT IT WAS  
AN IMPROPER ARGUMENT.

THAT IT WAS OUTSIDE OF THE  
EVIDENCE.

AND THERE WAS A THIRD GROUND  
ALONG THOSE LINES, I'M SORRY, IT  
IS SLIPPING MY MIND NOW.

>> AND NOW YOU ARE -- WHAT IS  
YOUR ARGUMENT ABOUT THIS?

>> MY ARGUMENT IS THAT THE -- IN  
THIS CASE THE JUDGE SUSTAINED  
THE OBJECTION AND FOUND THE  
ARGUMENT IMPROPER BUT TOOK NO  
CORRECTIVE ACTION.

AS A CONSEQUENCE THE STANDARD OF  
REVIEW IS THE PARKER STANDARD.  
WHICH IS DISCUSSED QUITE A LOT  
IN MY INITIAL BRIEF WHICH IS THE

QUESTION AS TO WHETHER THE  
STATE'S ARGUMENT TO THE JURY WAS  
HARMLESS BEYOND A REASONABLE  
DOUBT.

THAT IS, NO REASONABLE JUROR  
COULD HAVE BEEN AFFECTED BY THE  
PROSECUTOR'S --

>> IN THE INSTANCE ALTHOUGH  
THERE WAS AN OBJECTION MADE,  
THERE WAS NO REQUEST FOR A  
CURATIVE INSTRUCTION.

>> THERE WAS A REQUEST.

>> AND WHY DID THE TRIAL JUDGE  
SAY THAT HE WAS NOT GOING TO  
GIVE IT, BECAUSE IT WAS GOING TO  
DRAW MORE ATTENTION TO IT OR  
SOMETHING --

>> YES.

YES.

>> AND WHY ISN'T THAT A PROPER DETERMINATION BY THE TRIAL COURT?  
IT WAS BASICALLY ONE STATEMENT MADE IN THE COURSE OF THIS ARGUMENT AND DO YOU REALLY WANT TO EMPHASIZE THAT KIND OF

STATEMENT?

>> A COUPLE OF ANSWERS TO THAT. ONE IS THAT OBVIOUSLY A JUDGE CAN MAKE THAT ASSESSMENT BUT IF AN ARGUMENT IS SO BAD THAT IT CAN'T BE CURED, HOW CAN YOU SAY THAT IT WAS NOT SO BAD AS TO HAVE AFFECTED THE JURY. THAT IS THE FIRST THING. THE SECOND THING, IN THE PARKER CASE THERE WAS NO REQUEST AT ALL FOR A CURATIVE INSTRUCTION. APPARENTLY. I MEAN, IT DOESN'T APPEAR ANYWHERE IN THE OPINION. IT LOOKS LIKE ALL OF THE DEFENSE ATTORNEY DID WAS OBJECT AND MOVE FOR A MISTRIAL AND THE COURT SAID THE STANDARD IS WHETHER THERE IS NO REASONABLE LIKELIHOOD THAT THE ERROR COULD HAVE AFFECTED THE JURY. OKAY. SO NEXT QUESTION OBVIOUSLY WILL BE, OKAY. HOW COULD THIS HAVE AFFECTED THE

JURY?

AND I SUBMIT TO YOU THE STATE HAS NOT MET ITS BURDEN IN THAT REGARD. IN THE PARKER CASE, THE COURT FOUND THAT THE ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT BECAUSE THE PROSECUTOR RETRACTED THE STATEMENT. IN THAT CASE, SHE, THREE TIMES, SAID THAT WHAT SHE HAD SAID WAS INCORRECT. THEN, SHE CORRECTLY STATED WHAT THE EVIDENCE WAS. AND IN FACT THE ACTUAL EVIDENCE WAS WORSE THAN HOW SHE HAD REPRESENTED IT. SO, THAT ALSO DETRACTED FROM THE HARM.

AND THEN SHE AGAIN RETRACTED THE STATEMENT, IN THE CASE, THE STATE'S CASE ESSENTIALLY RELIED ON THE TESTIMONY OF THESE TWO MEN, MR. CUMMING AND MR. HATCHER AND THE ARGUMENT WENT DIRECTLY TO THE CREDIBILITY OF THESE

WITNESSES.

AND ESPECIALLY MR. HATCHER'S TESTIMONY.

THESE TWO WITNESSES' TESTIMONY CONFLICTED ON FIVE OR SIX IMPORTANT POINTS ABOUT THE CRIMINAL EPISODE.

ALSO CONFLICTED WITH THE TESTIMONY OF THE POLICE.

>> I'M HAVING A HARD TIME UNDERSTANDING HOW THE COMMENT OF #NAME?

CREDIBILITY OF THE WITNESS.

I MEAN, THE JURY KNOWS A DEAL WAS MADE.

THE STATE IS NOW SAYING, WAS THIS IN CLOSING ARGUMENT?

>> YES, MA'AM.

>> THE STATE IS SAYING THAT THAT WAS ONE OF THE REASONS AND THEY WERE TRYING TO MITIGATE THE HARM, THE CREDIBILITY AND HOW DOES THAT STATEMENT ALONE FURTHER AFFECT THE CREDIBILITY?

>> WELL, IT DETRACTS ATTENTION FROM THE WITNESS'S LACK OF

CREDIBILITY.

IT TURNS THE JURY -- IN FINAL ARGUMENT IT'S MY UNDERSTANDING WHAT A LAWYER WANTS TO DO IS GIVE THE JURY A -- MAKE THE JURY WANT TO RULE IN THE ATTORNEY'S FAVOR AND GIVE THE JURY A WAY TO RULE IN THE ATTORNEY'S FAVOR.

HERE, THE PROSECUTOR WAS GIVING THEM A REASON TO WANTED TO RULE IN THE ATTORNEY'S FAVOR.

>> AS SOON AS THEY BEGIN AGAIN THEIR CLOSING ARGUMENT, THE PROSECUTOR SAYS THE FACT THAT THE STATE MADE A DEAL WITH THE MURDERER IS NOT AN ISSUE IN THE CASE AND NOT SOMETHING YOU SHOULD BE CONCERNED WITH AND HE WENT ON.

DIDN'T HE SORT OF, GOING BACK TO THE IDEA ... DID THE JURY HEAR THAT THE JUDGE SUSTAINED THE OBJECTION?

>> NO.

NO.

>> THAT IS THE PROBLEM.

NOT WHETHER THERE WAS A CURATIVE INSTRUCTION, WHETHER IT WAS MADE OR NOT, FROM YOUR POINT, THE FACT THE JURY DOESN'T HEAR THIS AS AN IMPROPER STATEMENT WHILE YOU SAY IT SHOULD BE SUBJECT TO THE HARMLESS ERROR STANDARD.

>> IN PARKER IT WAS SUSTAINED AT THE BENCH, THE OBJECTION WAS SUSTAINED AT THE BENCH AND THE JUDGE DENIED THE MOTION FOR MISTRIAL AT THE BENCH AND NO CURATIVE ACTION IS TAKEN IN FRONT OF THE JURY AND, THEREFORE

--

>> CURATIVE ACTION COULD HAVE BEEN THE JURY SHOULD DISREGARD THAT LAST STATEMENT.

THAT WAS -- WOULD HAVE BEEN ENOUGH.

>> I DON'T THINK SO.

I MEAN --

>> THAT WASN'T EVEN DONE.

>> THAT WASN'T EVEN DONE.

AND I MEAN, I CERTAINLY WOULD

HAVE ARGUED FOR A STRONGER CURATIVE INSTRUCTION THAN THAT.

>> I'M JUST STILL HAVING A HARD TIME, EVEN UNDER THE HARMLESS ERROR STANDARD AS TO WHAT IS -- YES, IT IS IMPROPER BECAUSE IT'S NOT BASED ON FACTS AND EVIDENCE BUT HOW IS IT REALLY -- HOW WOULD IT AFFECT THE JURY VERDICT?

>> WELL --

INTO CREDIBILITY.

BUT WHAT ELSE?

>> I MEAN, THAT IS WHAT THE CASE WAS ALL ABOUT WAS CREDIBILITY. WAS THE CREDIBILITY OF THESE TWO WITNESSES.

THE STATE DIDN'T HAVE ANY PHYSICAL EVIDENCE LINKING THE

DEFENDANT TO THE CRIME.  
THEY DIDN'T HAVE ANY STATEMENT  
OF THE DEFENDANT CONCERNING THE  
CRIME.

ALL THEY HAD WAS TESTIMONY --  
>> BUT EVERY TIME THE STATE  
MAKES A DEAL WITH ONE PARTY TO

THE CRIME OR THE OTHER, THERE IS  
ALWAYS AN ISSUE AS TO, WELL, THE  
STATE HAS TO SAY THIS IS WHY WE  
MADE THE DEAL WITH THIS PERSON  
RATHER THAN THAT PERSON, I MEAN,  
THAT IS JUST -- THE NATURE OF  
WHAT THEY ARE GOING TO EXPLAIN.  
IT STILL DOESN'T -- THE JURY  
STILL KNOWS THAT THAT PERSON --  
TESTIFYING TO THE MOTIVE TO LIE  
BECAUSE THE DEAL -- THEY MADE A  
DEAL WITH HIM SO I'M STILL NOT  
#NAME?

AFFECTS TOR BOLSTERS THE  
CREDIBILITY BY HAVING OFFERED  
THAT REASON.  
I'M NOT -- IS THERE ANY OTHER  
ARGUMENT YOU HAVE AS TO WHY THIS  
WAS --

>> WELL, IT'S NOT SO MUCH  
BOLSTERING THE CREDIBILITY AS  
TURNING THE CREDIBILITY --  
TURNING THE ISSUE AWAY FROM  
CREDIBILITY BY TELLING THE JURY,  
IF YOU DON'T CONVICT THIS  
DEFENDANT, CUMMING WILL BE

KILLED.  
THAT IS WHAT THE LAST STATEMENT  
THE PROSECUTOR MADE, WAS SAYING,  
AT THE TIME OF THE JURY, WAS,  
SOMEBODY IS GOING TO COME BACK  
AND MAKE AN ATTEMPT ON THE LIFE  
OF CUMMING, OR TRY TO FINISH HIM  
OFF.

NOW THAT IS A VERY SERIOUS THING  
TO PUT ON THE MINDS OF THE JURY,  
TO SAY TO THEM, THERE IS A  
POSSIBILITY, IF YOU DON'T  
CONVICT THE DEFENDANT, THAT THIS  
SURVIVING VICTIM IS GOING TO BE  
MURDERED.

AND THE PROSECUTOR SAID TO THE  
JURY, WAS SAYING TO THE JURY,  
THAT'S THE REASON WE DID THAT.  
NOW, HE TOLD THE JURY AFTERWARD,

YOU MENTIONED WHAT HE SAID  
AFTERWARD AND HE SAID TO THE  
JURY AFTERWARD, WAS, WHY WE DID  
THE DEAL IS NOT A CONCERN -- NOT  
AN ISSUE IN THIS CASE BUT HE DID  
NOT RETRACT THE STATEMENT THAT  
THERE COULD BE ANOTHER ATTEMPTS

ON THE LIFE OF RONZE CUMMING.  
THAT WAS LEFT HANGING AND  
DISCUSSED IN POINT TWO THE  
PROSECUTION DEMONSTRATED TO THE  
JURY THAT IT HAD A BOOK OF  
ADDITIONAL EVIDENCE IN THE CASE  
SO THAT THE JURORS COULD THINK,  
WELL, OKAY.

THE STATE MUST KNOW THAT THERE  
IS SOME FURTHER MURDER PLOT  
AFOOT.

TO KILL RONZE CUMMING, OKAY.  
THAT WAS THE FIRST THING THE  
PROSECUTOR SAID WHEN THEY COME  
#NAME?

CONFERENCE AT THE BENCH, WHILE  
THE STATE -- JURORS ARE LEFT  
CONTEMPLATING THIS STATEMENT,  
THERE -- THERE COULD BE ANOTHER  
ATTEMPT ON THE LIFE OF RONZE  
CUMMING, WHAT HE SAYS TO THEM IS  
WHY WE DID THIS IS NOT A  
CONSIDERATION -- NO, THE FACT  
THAT THERE WAS A DEAL IS NOT A  
CONSIDERATION.  
WHICH IS NOT TRUE.

IT IS A CONSIDERATION.  
IT IS A VERY IMPORTANT  
CONSIDERATION, A MATTER OF  
CONSTITUTIONAL LAW.  
THE JURORS MUST BE TOLD ABOUT AN  
INTEREST THE WITNESS HAS, IN  
TESTIFYING.

THEN HE TOLD THE JURY THAT IT IS  
A CONSIDERATION ONLY IF IT  
TOTALLY DESTROYS HIS  
CREDIBILITY, WHICH IS ALSO NOT  
TRUE.

WHAT I'M SAYING IS THIS IS NOT A  
RETRACTION AS THERE WAS IN  
PARKER.

HE'S NOT SAYING WHAT I SAID IS  
NOT TRUE.

SO --

>> ANY OBJECTION TO THOSE

STATEMENTS?

>> NO.

NO.

I MEAN, THEY HAD... NO.

THERE WAS NO OBJECTION TO THOSE STATEMENT.

WHAT I'M SAYING IS THAT IT

WASN'T A RETRACTION, UNDER PARKER, THE PROSECUTOR GOT UP AND SAID, I WAS WRONG, WHAT I SAID, IF THAT'S WHAT I SAID I WAS WRONG.

WHAT I SAID IS CONTRARY TO THE EVIDENCE, HERE'S WHAT THE EVIDENCE IS.

THE PROSECUTOR DIDN'T DO THAT HERE.

THERE WASN'T A RETRACTION.

AS THERE WAS IN THE PARKER CASE.

>> DID THE JURY KNOW THIS JUDGE HAD SUSTAINED THE OBJECTION.

>> NO.

NO.

NO.

THE JAR DIDN'T KNOW THAT, SO FAR AS THEY KNEW IT WAS A PROPER ARGUMENT.

>> INEVITABLY WHEN WE DISCUSS HARMLESS ERROR WE LOOK AT THE ERROR IN THE CASE, CAN YOU GIVE US A THUMBNAIL SKETCH OF THE EVIDENCE HERE, WHERE YOU WOULD ATTEMPT TO CONVINC US THAT THIS

WAS REALIZING, OF COURSE, THE STATE'S BURDEN.

>> RIGHT.

>> BUT, DEMONSTRATE TO US WITH A THUMBNAIL SKETCH, IF YOU CAN, WHY THIS WOULD NOT BE HARMLESS IN THE FACE OF A VERY STRONG EVIDENCE PRESENTED BY THE STATE.

>> OKAY.

>> WHAT WAS THE DEFENSE APPROACH, FIRST OF ALL, ?

>> THE DEFENSE CLAIM WAS THAT THE STATE'S TWO MAIN WITNESSES WERE NOT CREDIBLE.

AND THE -- OBVIOUSLY THE MAIN WITNESS WAS RONZE CUMMING WHOM THE PROSECUTOR SAID, IF YOU DON'T CONVICT THE DEFENDANT HE COULD BE KILLED AGAIN, HE WAS

THE STATE'S MAIN WITNESS AND THE STATE IS OBVIOUSLY GIVING THE JURORS A REASON TO WANT TO ACCEPT HIS VERSION OF THE FACTS. HIS TESTIMONY CONFLICTED DIRECTLY WITH THE TESTIMONY OF JULIUS HATCH, THE STATE'S OTHER

MAIN WITNESS, ON A NUMBER OF CRUCIAL POINTS. SUCH AS, THE ACCOUNT OF HOW RONZE COMING WAS SHOT, ACCORDING TO HIM HATCHER CAME IN AND KICKED HIM DOWN AND SHOT HIM AND HE JUMPED BACK UP AND RONZE -- HATCHER KICKED HIM DOWN AGAIN, AND THAT WAS CONTRARY TO HATCHER'S TESTIMONY ABOUT THAT. HATCHER'S TESTIMONY ABOUT HOW IT WAS THE PEOPLE -- WHAT HAPPENED WHEN THEY CAME INTO THE HOUSE WAS COMPLETELY DIFFERENT FROM HATCHER -- FROM HATCHER AND RONZE CUMMING COMPLETELY DIFFERED ABOUT THAT, ACCORDING TO CUMMING, THE MEN CAME IN AND TALKED WITH HIM FOR 10 MINUTES, STANDING UP, AFTER WHICH THEY WERE BOUND.

WHEREAS HATCHER SAID AS SOON AS THEY CAME IN, HATCHER GOT THEM DOWN ON THE GROUND AND WAS BINDING THEM UP.

>> BUT THERE IS NO REAL CONFLICT

IN THEIR TESTIMONY ABOUT THE -- MR. CUMMING BEING SHOT AND WHO DID IT.

>> WELL, THEY BOTH SAID HATCHER DID IT.

RIGHT.

THE FELLOW HATCHER DID THE SHOOTING.

THEY BOTH SAID THAT THE DEFENDANT WAS THERE.

BUT AS I SAY, THE JURORS COULD LOOK AT THEIR TESTIMONY, AND SAY, WELL, LOOK, THESE PEOPLE AREN'T VERY CREDIBLE BECAUSE THEY CONFLICT ON SO MANY POINTS ABOUT WHAT WAS SAID, AND THE INITIAL REPORT OF RONZE CUMMING AT THE TIME OF THE MURDER WAS, THAT THREE JAMAICAN MALES HAD

COME INTO THE HOUSE, AND THAT WAS HIS INITIAL REPORT. AND WHEN THE POLICE ARRIVED HE SAID THAT AGAIN. AND THEN THE POLICE CONTINUED TO QUESTION HIM. THAT IS WHEN HE COMES UP WITH

THIS NAME NEIL AND HE SAYS THEY NEVER ASKED HIM FOR A LAST NAME AND HE DIDN'T GIVE THEM A LAST NAME BUT THE OFFICER INTERROGATING HIM AT THE SCENE SAYS, I KEPT ASKING HIM, NEIL WHO?

AND SO THE JURORS COULD HAVE LOOKED AT RONZE CUMMING AND SAID, WELL, HE KEEPS GIVING ALL OF THESE STATEMENTS OR CONTRADICTORY, HE DISAGREED WITH TRANSCRIPTS THAT WERE SHOWN TO HIM OF HIS 911 CALL AND THE POLICE STATEMENT SO HIS TESTIMONY WAS VERY, VERY DOUBTFUL.

THE PROSECUTION OBVIOUSLY WANTED TO CREATE SYMPATHY FOR HIM BY SAYING, WELL, LOOK, HE COULD BE KILLED IF YOU DON'T CONVICT THIS NEIL SALAZAR HERE.

THEN MR. HATCHER... I MEAN, MR. HATCHER, HIS TESTIMONY -- I MEAN, NUMBER ONE, OBVIOUSLY IS IMPEACHED BY THE FACT HE MADE A

DEAL WITH THE STATE.

>> IM PERFORMED BY THE FACT THAT WHAT?

>> THAT HEAT MADE A DEAL WITH THE STATE.

THAT IS OBVIOUSLY A MAJOR FACTOR WEIGHING ON HIS CREDIBILITY AND HE'S TRYING TO SAY THAT IT WAS THE DEFENDANT WHO WAS ORDERING HIM TO DO ALL OF THESE THINGS.

>> CAN I --

>> ONE OF THE THINGS THAT BOTHERS ME, EVEN THOUGH THERE MAY HAVE BEEN INCONSISTENCIES IN THESE PEOPLE'S TESTIMONY, IT SEEMS TO ME THAT THE BASIC FACTS WERE THEY SUPPORTED EACH OTHER IN THE BASIC FACTS OF THE CASE, AND THIS JURY REALLY WAS NOT

LEFT ATE WENT, AS I SEE IT, ANY OTHER POSSIBILITIES OF HOW THE CRIME TOOK PLACE. SO, I GUESS IT GOES BACK TO JUST THE QUESTION IS WHY SENTENCE THAT ONE STATEMENT MADE BY THE PROSECUTOR HARMLESS UNDER THE

CIRCUMSTANCES OF THE CASE?

>> WELL, I THINK THE PROSECUTOR #NAME?

THIS?

THE PROSECUTOR SAID THIS BECAUSE HE WAS CONCERNED, OBVIOUSLY, ABOUT HOW THE JURY WAS GOING TO LOOK AT THE CREDIBILITY OF THESE WITNESSES WHO WERE SO IMPEACHED. THE JURY HAD TO FIND BEYOND A REASONABLE DOUBT THAT THEY WERE TRUTHFUL AND -- ON THE PART IN WHICH THEIR TESTIMONIES WERE CONSISTENT WITH EACH OTHER. BUT AS I'M SAYING, THERE WAS AN AWFUL LOT OF INCONSISTENCIES BETWEEN THEIR ACCOUNTS ON MATTERS THAT WOULDN'T JUST BE KIND OF PERIPHERAL KIND OF THINGS, LIKE, YOU KNOW, WHAT COLOR SHIRT DID SOMEBODY HAVE OR SOMETHING LIKE THAT. THESE ARE FACTS CONCERNING THE DIRECT ACTIONS OF ALL OF THE PEOPLE AT THE TIME OF THE MURDER INCLUDING HOW RONZE CUMMING WAS

SHOT.

HE SAID THAT THE WIFE WAS DRAGGED INTO THE OTHER ROOM AND HATCHER SAID, NO, SHE WALKED INTO THE OTHER ROOM. SO THAT THE PROSECUTOR DECIDED, THIS IS WHY HE -- I CAN'T -- WHAT OTHER REASON WOULD HE HAVE TO MAKE THIS ARGUMENT? OTHER THAN HE WAS CONCERNED ABOUT THE CREDIBILITY OF THE WITNESSES AND HOW THE JURY WAS GOING TO LOOK AT THEM. SO, HE MADE A DECISION, OKAY. I CAN TELL THE JURY THAT THEY DON'T -- I UNDERSTAND THEY DON'T LIKE THAT WE MADE THIS ARRANGEMENT WITH MR. HATCHER. NEVERTHELESS, I'M GOING TO TELL

THEM THAT THERE IS GOING TO BE ANOTHER ATTEMPT ON NEIL SALAZAR'S LIFE IF HE WALKS BECAUSE THEY DON'T BELIEVE MR. HATCHER'S ACCOUNT. BECAUSE I THINK THE PROSECUTOR MUST HAVE DECIDED HATCHER WAS A

MORE RELIABLE WITNESS THAN RONZE CUMMING BECAUSE AS I SAY, RONZE CUMMING SAID IT WAS THREE JAMAICAN MALES WHO CAME IN AND FOUR AND KEEP CHANGING HIS STORY ALL THROUGH THE CASE.

>> DO YOU AGREE THE ARGUMENT MADE TO THE TRIAL JUDGE WAS NOT IT IMPACTS THE CREDIBILITY OF THE WITNESS.

THE ARGUMENT WAS THERE WERE FACTS NOT IN EVIDENCE THERE WAS ANY THREAT --

>> RIGHT.

>> ON HIS LIFE AND THE SYMPATHY OF THE JURORS.

>> RIGHT.

RIGHT.

AND THAT IS MY ARGUMENT.

WHEN I TALKED ABOUT CREDIBILITY OF THE WITNESSES, MAYBE I WASN'T ARTICULATING MYSELF VERY CLEARLY AND I APOLOGIZE.

THE POINT I WAS TRYING TO MAKE IS THAT THE CREDIBILITY OF THE WITNESSES HAD BEEN IMPEACHED.

SO HE FELT THAT HE COULD TELL THE JURY, WELL, THERE IS THIS -- THIS POSSIBILITY OF AN ATTEMPT ON THE LIFE OF RONZE COMING AND GIVE THE JURY A REASON TO WANT TO --

>> I GUESS MY POINT IS, DEFENSE COUNCIL DID NOT MAKE THAT ARGUMENT TO THE TRIAL COURT. THE ARGUMENT OF THE DEFENSE COUNSEL WAS IT IS EVIDENCE OF -- FACTS NOT IN EVIDENCE AND SYMPATHY.

>> RIGHT.

RIGHT.

THAT IS MY ARGUMENT ABOUT PREJUDICE.

>> RIGHT.

>> THE ARGUMENT -- THE ARGUMENT

FOR WHY THE STATEMENT IS  
INADMISSIBLE IS THE DEFENSE  
ATTORNEY SAID, THERE IS NO  
EVIDENCE OF THIS.  
ZERO EVIDENCE OF AN ATTEMPT ON  
HIS LIFE.  
THE JUDGE SUSTAINED THE

OBJECTION SO THAT IS NOT THE  
ISSUE.

THE ISSUE, AT THIS POINT, AS I  
UNDERSTAND IT, UNDER PARKER, IS  
WHETHER THERE IS A REASONABLE  
LIKELIHOOD THAT THIS COULD HAVE  
AFFECTED THE JURORS.

>> YOU'RE ABOUT TO GO INTOER  
REBUTTAL TIME, AND IF YOU WANT  
TO ADDRESS ANY OTHER POINTS...

>> LET ME ADDRESS JUST VERY,  
VERY BRIEFLY THE COLD,  
CALCULATED AND PREMEDITATED JURY  
INSTRUCTION WHICH IS THE 5th  
ISSUE WHICH IS ALSO TIED INTO  
THE THIRD ISSUE.

THE CASE LAW IS CONSISTENT AND  
MORE OR LESS OVERWHELMING AND  
THE STATE IN ITS BRIEF AT PAGES  
40 AND 41, QUOTED DIRECTLY FROM  
THE FILL MORE CASE, WHICH SAYS  
THE JURY -- STATE MUST ESTABLISH  
AN INTENT TO KILL BEFORE THE  
FATAL -- BEFORE THE CRIMINAL  
EPISODE BEGAN.

AND THE JURY WAS NOT INSTRUCTED

ON THAT.

NECESSARY ELEMENT OF PROOF.

THE DEFENSE OBJECTED TO THE  
STANDARD INSTRUCTIONS AND THAT  
WAS A VERY LIVE ISSUE IN THIS  
CASE WAS WHETHER THERE WAS AN  
INTENT TO KILL BEFORE THE  
CRIMINAL EPISODE BEGAN.

THE EVIDENCE VERY STRONGLY  
SUGGESTS THAT WHAT HAPPENED WAS  
THAT THE DEFENDANT WENT THERE  
WITH HATCHER AND -- IN ORDER TO  
GET INFORMATION FROM MS. NUTTER  
AND THAT THE -- HE WAS SAYING  
THINGS LIKE, IF I DON'T GET  
INFORMATION, OR IF I DON'T GET  
THE TRUTH, SOMEBODY IS GOING TO  
BE KILLED -- TO BE KILLED  
TONIGHT SO THE MURDERER'S INTENT

WOULD NOT HAVE BEEN FORMED UNTIL AFTER THE ARRIVAL AND I'M ALSO ARGUING POINTS THREE, THAT THE EVIDENCE DOES NOT SUPPORT THE CIRCUMSTANCE, BUT IN PART BECAUSE OF THAT, THE STATE DID NOT PROVE THAT THERE WAS THIS

INTENTS TO KILL BEFORE THE CRIMINAL EPISODE BEGAN.

>> TO THAT POINT, NUMBER 3, THE TRIAL ORDERS IS VERY DETAILED IN THE FACT THAT IT FOUND TO SUPPORT CCP AGGRAVATOR, MORE DETAILED THAN I HAVE SEEN IN I THINK MOST OTHER CASES.

SO, WHEW DON'T THOSE FACTS SUPPORT FINDING THE CCP AGGRAVATOR?

>> WELL, YOU FOUND VERY DETAILED FACTS BUT THE BULK OF THE FACTS THAT HE FOUND WENT TO THE PREPARATION INVOLVED IN THE CRIME ITSELF.

THE BURGLARY TO GET INFORMATION FROM MS. NUTTER.

I MEAN, THE FACT THEY DROVE A LONG DISTANCE DOESN'T SHOW AN ATTEMPT TO -- INTENT TO KILL THEM.

FACT THAT HE BROUGHT A GUN DOESN'T SHOW AN INTENT TO KILL. I MEAN, SURELY, SURELY, WE KNOW THAT THE PEOPLE GO TO DRIVE TO A

BANK WITH A GUN OR WHATEVER, TO ROB A BANK OR GO TO COMMIT A BURGLARY WHILE ARMED OR WHATEVER BUT ONE CANNOT INFER FROM THAT ANY INTENT TO KILL AT ALL.

>> YOU CAN INFER, AND THE COURTS HAVE INFERRED AND WE HAVE UPHELD, THEIR INFERENCE, THAT WHERE THE DEFENDANT HAS AN OPPORTUNITY TO LEAVE THE PREMISES, WITHOUT COMMITTING MURDER AND DOES NOT TAKE ADVANTAGE OF THAT OPPORTUNITY, THEN THAT SUPPORTS THE CCP AGGRAVATOR.

IN OTHER WORDS, THEY ARE THERE FOR A LONG TIME, THEY HAVE A GUN IN THEIR HAND, AND THEY CAN LEAVE BUT THAT YOU DON'T LEAVE.

AND INSTEAD THEY MURDER THE VICTIMS.

THAT SUPPORTS CCP ACCORDING TO OUR CASES.

>> WELL, YOU ALSO HAVE CASES THAT GO THE OTHER WAY. LARGE PART OF MY ARGUMENT IS YOU

HAVE CASES LIKE POWER, WHERE THE MAN HAS THE LITTLE GIRL BOUND AND GAGGED, AND THEN OBVIOUSLY HE COULD HAVE JUST LEFT HER AND HAD TAKEN HER TO A REMOTE LOCATION AND WALKED AWAY BUT, INSTEAD, DECIDED TO MURDER HER. AND AS THE WYETH CASE WHERE THE MAN DRIVES THE WOMAN ALL THE WAY ACROSS THE STATE, SHOOTS HER IN THE DITCH JUST TO SEE HER DIE, AND THE OTHER WYETH CASE WHERE HE HAS THE PEOPLE LOCKED UP IN THE BATHROOM AND SHE HE'S SHOOTING THEM ONE BY ONE AND TELLING THE LAST ONE, LISTEN TO THIS AND YOU'LL HEAR IT COMING AND THE THOMPSON CASE WHERE THEY HAVE THE GIRL IN THE HOTEL ROOM AND THEY SLOWLY BEAT HER AND TORTURE HER TO DEATH OVER AN EXTENDED PERIOD.

THE PROBLEM IS, AS POINTED OUT IN MY BRIEF, CASES GOING EITHER WAY, ON A LOT OF THESE DIFFERENT CIRCUMSTANCES SUCH AS THE ONE

THAT YOU ARE TALKING ABOUT, AND THE SOLUTION THE COURT CAME UP WITH FOR THAT PROBLEM IS THIS ROGERS CASE, OF 1989 WHICH CONTINUES TO BE RECITED IN THE CASES INCLUDING AS I SAID, THE FILL MORE CASE, THERE HAS TO BE PROOF OF INTENT TO KILL BEFORE THE CRIMINAL EPISODE.

THE FATAL INCIDENT BEGAN. AND THAT IS WHAT I SUBMIT TO YOU IS THE PROPER RULE.

>> JUST TO MAKE SURE, WHAT CASE SAYS THAT HE HAD OVER -- YOU ARE SAYING HE HAD THE INTENT TO KILL BEFORE HE LEAVES MIAMI.

>> BEFORE THEY CAME INTO THE HOUSE.

>> AND WHAT CASE SAID THAT THAT

YOU CAN'T HAVE PREMEDITATED  
MURDER, YOU CAN'T HAVE CCP.  
>> YOU CAN'T HAVE CCP.  
AND ROGERS IS THE MAIN CASE ON  
THAT.  
BUT AS I SAY, THERE IS WYATT,  
WHERE HE -- THEY GO INTO THE

PIZZA PARLOR, AND THEY -- I'M  
SORRY.

>> NO, I GUESS I'M JUST, YOU  
KNOW, YOU SAY THAT IT'S AS IF IT  
WERE AN ACCEPTED PROPOSITION  
THAT YOU CAN'T HAVE CCP WITHOUT  
IT HAVING STARTED BEFORE THEY  
CAME INTO THE HOUSE.

AND YOU ARE SAYING ROGERS, THAT  
WOULD SUPPORT THAT.

BUT NOT THE QUESTION OF  
PREMEDITATED MURDER.

>> NOT THE QUESTION OF  
PREMEDITATED MURDER.

NO.

>> AND THE JURY ACTUALLY ON A  
SPECIAL VERDICT FOUND BOTH  
PREMEDITATED MURDER AND FELONY  
MURDER.

>> YEAH.

YEAH.

>> AND THE INSTRUCTION THAT WAS  
GIVEN IS ACTUALLY THE STANDARD  
INSTRUCTION GIVEN FOR CCP?

>> YES, MA'AM.

>> AND YOU WANT IT -- THERE WAS

A REQUEST FOR A SPECIAL --

>> AN OBJECTION TO THE STANDARD  
INSTRUCTION.

>> WAS THERE A REQUEST FOR A  
SPECIAL INSTRUCTION?

>> NO.

NO.

I MEAN, OBVIOUSLY, IT WOULD HAVE  
BEEN TOTALLY FUTILE AND ONCE THE  
JUDGE SAID THIS INSTRUCTION IS  
NOT NECESSARY, YOUR OBJECTION TO  
THE STANDARD INSTRUCTION IS  
WRONG, THE STANDARD -- THE JUDGE  
RULED THE STANDARD INSTRUCTION  
WAS OKAY.

SO AT THAT POINT -- IT WOULD  
HAVE BEEN TOTE EL --

>> THAT DOESN'T ELIMINATE THE  
FACT, WE HAVE SEEN CASES WHERE

THE DEFENDANTS HAVE IN FACT  
OPPOSED A SPECIAL INSTRUCTION  
EVEN THOUGH THE TRIAL JUDGE MAY  
SAY THAT THAT IS THE STANDARD  
INSTRUCTION.

IS PROPER.

I'M TRYING TO GET FROM YOU WHAT

YOU WOULD HAVE PROPOSED IN A  
SPECIAL JURY INSTRUCTION.

>> OH, IT WOULD HAVE SIMPLY  
FOLLOWED THE LANGUAGE.

>> PROPOSED LANGUAGE FROM  
ROGERS, IS THAT RIGHT.

>> RIGHT.

ROGER, FILL MORE, AND I MEAN, IT  
IS -- FILLMORE AND I MEAN, IT IS  
IN THE CASES.

YOU KNOW, IT SAYS, THE  
CALCULATION REQUIRES INTENT TO  
KILL BEFORE THE CRIMINAL EPISODE  
BEGAN.

AND THAT IS -- AS I SAY IS  
QUOTED IN PAGES 40 AND 41 OF THE  
STATE'S BRIEF.

>> YOU SAY THE BRINGING OF THE  
GUN.

THEN THEY BRING DUCT TAPE TO THE  
SCENE ALSO, AND ALL OF THAT, IS  
NOT INDICATIVE OF SOME  
CALCULATION PRIOR TO GETTING TO  
THE SCENE OF THE CRIME?

>> WELL, I'M SAYING TWO THINGS.  
ONE IS, EVEN IF THAT IS SOME

EVIDENCE THE JURY STILL WOULD  
HAVE TO FIND THIS ELEMENT OF  
INTENTS TO KILL.

BEYOND A REASONABLE DOUBT THE  
INTENT TO KILL BEFORE THE  
CRIMINAL EPISODE BEGAN AND THEY  
COULD NOT MAKE THAT FINDING  
WITHOUT AN INSTRUCTION TELLING  
THEM THAT THAT WAS SOMETHING  
THEY HAD TO FIND.

NUMBER 2, I AM SAYING THAT, NO,  
THAT DOESN'T SHOW -- EVEN SHOW  
PREMEDITATION BECAUSE, YOU KNOW,  
THERE ARE LOTS OF CASES WHERE  
PEOPLE COME TO CRIME SCENES WITH  
DUCT TAPE AND GUNS OR WHATEVER  
AND THEY BIND PEOPLE UP AND THEY  
LEAVE.

I MEAN, YOU CAN'T INFER FROM

THAT --

>> AND PUT BAGS OVER THEIR HEADS  
AND DUCT TAPE ON THEIR MOUTHS?  
WITH THE INTENTS 0 ASPHYXIATE?

>> RIGHT, I -- THAT WAS AT THE  
SCENE, YES, SIR.

>> HOW IS THAT CONSISTENT WITH

AN INTENT JUST TO ROB OR  
BURGLAR.

>> OKAY.

THIS IS OBVIOUSLY AFTER THEY'VE  
ARRIVED AT THE SCENE AND MY  
PRINCIPAL ARGUMENT IS THAT THE  
THIS DOES NOT SHOW THE INTENT TO  
KILL BEFORE THEY ARRIVED AT THE  
SCENE.

>> BUT IF THE INTENT WAS TO GET  
INFORMATION AND IF THEY COME AND  
DUCT TAPE MS. NUTTER, AND DUCT  
TAPE HER HEAD AND MOUTH SO I  
ASSUME SHE COULD NOT ARTICULATE,  
RIGHT?

HOW WILL THEY GET ANY  
INFORMATION?

>> WELL, ACCORDING TO RONZE  
CUMMING THEY CAME AND DID THE  
INTERROGATION BEFORE THE DUCT  
TAPE WAS USED.

ACCORDING TO HATCHER, THEY COME  
IN AND THEY BIND THEM UP AND THE  
DEFENDANT IS QUESTIONED ON THAT.  
SO THAT THE TAPE THE MOUTH  
APPARENTLY DOES NOT COME UNTIL

AFTER THE --

>> YOUR POSITION WAS THAT IT IS  
#NAME?

RONZE CUMMING WHEN THEY CAME IN  
THE FIRST ATTEMPT WAS TO  
QUESTION AND PRY INFORMATION OUT  
OF THEM, AND --

>> RIGHT.

>> THEY DIDN'T GET THE  
INFORMATION AND THEN DUCT TAPED.

>> AND THEN THE INTENT WAS  
FRUSTRATED AND THAT IS WHAT THE  
DEFENDANTS' STATEMENTS WERE  
ACCORDING TO BOTH RONZE CUMMING  
AND JULIUS HATCHER.

HE SAID IF I DON'T GET  
INFORMATION, IF NO ONE TELLS ME  
THE TRUTH, SOMEONE IS GOING DIE  
TONIGHT.

SO AGAIN, THAT -- IF YOU LOOK AT THESE FACTS, THESE FACTS, AND YOU COMPARE THESE FACTS WITH CASES SUCH AS THE PERRY CASE, OR THE THOMPSON CASE, OR THE TWO WYATT CASES, WHICH WERE DISCUSSED AT GREAT LENGTH IN THE

INITIAL BRIEF, YOU WILL NOT SEE

#NAME?

STRONGER CASE FOR THE CIRCUMSTANCES IN THOSE CASES. AND I SUBMIT TO YOU, THAT AS I SAID, REGARDLESS, THE JURY UNDER THE CASE LAW IS A SEMINAR FINDING OF INTENT TO KILL BEFORE ARRIVAL AT THIS SCENE.

NOW, REGARDLESS OF WHETHER ONE CAN INFER THAT FROM WHAT THEY BROUGHT TO THE SCENE, THE JURY COULDN'T HAVE MADE THAT FINDING WITH THAT -- BECAUSE UNDER THE INSTRUCTIONS THAT WERE GIVEN, THE JUDGE HEARD -- OVERRULED THE OBJECTION.

>> YOU OBVIOUSLY HAVE USED UP ALL OF YOUR TIME.

I WANT TO BE CERTAIN OF ONE CIRCUMSTANCE, THOUGH, BEFORE YOU SIT DOWN.

AND IT RELATES TO YOUR FIRST POINT.

YOU DO AGREE, DO YOU NOT, THAT WHERE THE RECORD DEMONSTRATES

THAT COUNSEL WENT SIDEBAR WITH THE COURT THAT THE JURY DID NOT HEAR ANY OF THE CONVERSATION THEN BETWEEN THE LAWYERS AND THE JUDGE, AT THAT POINT, IS THAT CORRECT.

>> WELL, I WASN'T THERE BUT I ASSUME -- YES, SIR.

NOTHING IN THE RECORD INDICATES

--

>> THE REASON I'M ASKING THAT IS BECAUSE THE PROSECUTOR DOES GO ON TO SAY THAT HE THINKS HE HAS A RIGHT TO MAKE THESE ARGUMENTS AND ARTICULATES THAT AGAIN A COUPLE OF TIMES.

ACTUALLY IN STRONGER LANGUAGE.

>> MUCH STRONGER LANGUAGE.

>> THE JURY DID NOT HEAR THAT.

>> THAT IS MY UNDERSTANDING,  
RIGHT.

.  
YES, SIR.

>> YOU ARE NOT MAKING THE  
CONTENTIOUS, THAT THE JURY HEARD  
THAT.

>> NO, I'M NOT ARGUING THAT.

NO.

NO.

THANK YOU FOR THAT  
CLARIFICATION.

ALL RIGHT.

I'LL ASK THE COURT TO REVERSE.

>> MS. CAMPBELL?

>> GOOD MORNING, MATE PLEASE THE  
COURT, LESLIE CAMPBELL WITH THE  
ATTORNEY GENERAL'S OFFICE ON  
BEHALF OF THE STATE.

WITH REGARD TO THE FIRST ISSUE,  
THE COURT HAS BEEN TALKING ABOUT  
A STANDARD OF REVIEW WHERE IT IS  
BEYOND A REASONABLE DOUBT, THE  
JULIO STANDARD AND PARKER AND  
THE STATE'S CONTENTIOUS THIS IS  
A DENIAL OF A MISTRIAL AND  
THEREFORE THE STANDARD IS IT HAS  
TO VITIATE, THE STATEMENT HAS TO  
VITIATE THE ENTIRE TRIAL --

>> DID THE JUDGE SUSTAIN THE  
OBJECTION.

>> HE DIDN'T DIDN'T SAY THE WORD  
SUSTAINED BUT MADE IT CLEAR HE

DIDN'T BELIEVE THAT THE  
PROSECUTOR'S ARGUMENT THAT WAS  
PRESENTED DURING THE SIDEBAR WAS  
PROPER AND SHOULD GO FORWARD,  
WHAT HE SAID WITH REGARD TO THE  
STATEMENT THAT WAS PRESENTED TO  
THE JURY WAS THAT HE DIDN'T  
THINK IT WAS ALL THAT BAD, IT  
DIDN'T GO VERY FAR AND THAT IT  
CERTAINLY DIDN'T UNDERMINE THE  
ENTIRE -- THAT'S WHY DENIAL --  
DENIED THE MISTRIAL? THE  
PROBLEM I HAVE AND I HAVE TO  
LOOK BACK AT PARKER IS THAT I  
AGREE THAT IF THE -- THE GENERAL  
RULE APPLIES, IF THE COURT  
SUSTAINS THE OBJECTION AND  
DENIES THE MOTION FOR MISTRIAL,  
THEN -- [INAUDIBLE] THEN IT

WOULD BE -- [INAUDIBLE] AND THE JURY NEVER HEARD THE ARGUMENT WAS IMPROPER.

WHY ISN'T THAT, THEN [INAUDIBLE] FROM THE JURY'S POINT OF VIEW, AS IF THE OBJECTION IS NOT SUSTAINED AND WHY THEN HE DID

NOT REVIEW IT AS FAR AS THE ERROR STANDARD.

>> THE JURY WAS IMMEDIATELY TOLD, THE TRIAL WAS STOPPED. IN MID-SENTENCE AND THE NEXT THING THE JURY HEARD WAS, THAT THAT HAD NOTHING DO WITH THE TRIAL AND SHOULDN'T CONSIDER THE -- THE FACT THAT --

>> HEARD THAT FROM THE PROSECUTOR.

>> FROM THE PROSECUTOR.

>> THE PROSECUTOR ACTUALLY SAID, WHETHER A DEAL WAS MADE OR NOT IN THE OFFICIAL -- OF COURSE IT'S AN ISSUE FOR THEM.

THE ISSUE IS, WHAT WAS IMPROPER WAS THE STATE IN THE CIRCUMSTANCE HAD A REASONABLE CONCERN THAT THERE COULD BE ANOTHER ATTEMPT ON RONZE'S LIFE, AN ATTEMPT TO FINISH HIM.

THAT IS PRETTY YOU KNOW -- LOOKING AT A AGAIN, I MEAN, THAT IS OUTSIDE THE EVIDENCE AND IT'S -- DOESN'T IT SORT OF TAKE AWAY

FROM [INAUDIBLE] NOW YOU'RE SAYING THAT IT'S NOT -- YOU YOU DON'T REVIEW UNDER A HARMLESS ERROR STANDARD BECAUSE THE STATE CORRECTED THE ERROR?

>> I THINK THAT IN THE CASE YOU SHREW IT UNDER THE -- WHETHER VITIATES THE ENTIRE TRIAL.

THE STANDARD IS FOR THE DENIAL OF THE MISTRIAL, THAT THIS IS STANDARD.

>> TRUE, IF THE OBJECTION HAS BEEN SUSTAINED.

>> AND THE OBJECTION WAS SUSTAINED.

ALTHOUGH --

>> YOU SAID YOU WEREN'T SURE WHETHER --

>> NO, THE JUDGE DIDN'T ACTUALLY

SAY THE WORD SUSTAINED BUT CERTAINLY MADE IT CLEAR THAT THAT WAS NOT A PROPER ARGUMENT AND THAT IS THE -- THE STATE WAS NOT TO GO FORWARD AT SIDEBAR. >> LET'S NOT TALK OVER EACH OTHER.

THE JUDGE MADE IT CLEAR AT SIDEBAR IT WAS AN IMPROPER ARGUMENT.

>> THAT'S CORRECT.

>> THE JUDGE NEVER SAID TO THE JURY, THE JUDGE -- DEFENSE OBJECTED.

IN FRONT OF THE JURY.

>> YES.

>> THE JURY NEVER HEARD THE JUDGE SAY THE OBJECTION IS SUSTAINED.

[INAUDIBLE].

>> THAT IS CORRECT.

>> AND YOU STILL SAY WE SHREW THAT UNDER A MIS-- SHOULD REVIEW THAT.

>> I STILL BELIEVE THAT IS HOW YOU SHOULD REVIEW IT BECAUSE IT IS A DENIAL OF A MISTRIAL, IF THE ARGUMENT IS -- THAT THE OBJECTION SHOULD HAVE BEEN -- SOMETHING HAVE BEEN DONE ABOUT THAT OBJECTION, OR SOME OTHER ARGUMENT SHOULD HAVE BEEN MADE TO THE JURY THEN YOU CAN GO TO

THE HARMLESS ERROR STANDARD BUT IN THIS CASE IT WAS A DENIAL OF THE MISTRIAL.

>> MS. CAMPBELL WHY DON'T WE ASSUME THAT WE'RE -- BECAUSE SOME OF US MAY THINK IT -- LET'S ASSUME WE'RE GOING TO DO IT UNDER A HARMLESS ERROR STANDARD. TELL US WHY IT WAS HARMLESS ERROR.

[INAUDIBLE].

>> THERE ARE BASICALLY TWO REASONS.

NUMBER ONE, YOU HAVE TWO PEOPLE, SURVIVING VICTIMS, AS WELL AS MR. HATCHER, DISCUSSING THE CRIME.

AND IN DISCUSSING THE CRIME, YOU HAVE NOT JUST ONE ATTEMPT AT THE

VICTIMS' LIVES, BUT YOU HAVE BASICALLY THREE. YOU HAVE THE INITIAL BINDING, THE DUCT TAPING AND PUTTING THE PLAQUE BAG OVER THE HEADS. WHEN THAT DIDN'T WORK, YOU HAVE MR. SALAZAR TELLING MR. HATCHER,

SLIT THEIR THROATS AND THAT WAS AFTER MR. HATCHER HAD ALREADY TOLD MR. SALAZAR THAT MS. NUTTER WAS DEAD BUT MR. SALAZAR WENT AND TESTED MS. NUTTER HIMSELF, AND FOUND THAT SHE WAS STILL ALIVE AND THEN SAID, SLIT HER THROAT.

AT WHICH POINT, MR. HATCHER SAID, I CANNOT DO THAT.

SO THEN MR. SALAZAR SAYS, FINE, HERE'S THE GUN, AND HE HANDS THE GUN TO MR. HATCHER AND SAYS, NOW I WANT HER SHOT.

AND PUT A PILLOW OVER HER HEAD AND SHOOT HER WHICH HE DOES AND THERE ARE THREE ATTEMPTS AT MS. NUTTER'S LIFE.

OF COURSE THE LAST ONE WAS SUCCESSFUL.

AND THEN, ALSO, YOU HAVE MR. SALAZAR, WHO FROM MIAMI, ALL THE WAY TO OKEECHOBEE, IS BASICALLY SAYING, LOOK I'M GOING TO GET SOME ANSWERS TONIGHT. I INTEND, BASICALLY, TO KILL THE

PERSON WHO WAS DISRUPTED MY DRUG DEALING OPERATION, WHO HAS TALKED TO THE FBI.

>> -- TALKING ABOUT, I HAVE SOME CONCERN, ALL COMES FROM MR. HATCHER, WHO IS THE ADMITTED SHOOTER IN THE CASE.

>> AND MR. CUMMING.

MR. CUMMING, THE SURVIVING VICTIM.

>> BUT --

>> NOT, NOT THAT -- NOT THAT FIRST PART FROM MIAMI.

>> [INAUDIBLE] WHAT HAPPENED UP FROM THE TIME -- [INAUDIBLE] BELIEVE HE, SALAZAR, HAD HATCHER BOUND DOWN IN MIAMI?

AND THAT ALL OF THIS OCCURRED AS OPPOSED TO THE ARGUMENT COULD BE

HATCHER DID THE SHOOTING, THAT HE IS RESPONSIBLE, NOT MR. SALAZAR.

>> YOU ALSO HAVE AT THE HOUSE, MR. SALAZAR MAKING THOSE SAME STATEMENTS, I WANT TO KNOW WHO TALKED TO THE FBI, DID YOU TALK

TO RICO, WITH REGARD TO MY DRUG DEALING BUSINESS?

I AM GOING TO GET ANSWERS TONIGHT.

OR SOMEBODY IS GOING TO DIE TONIGHT.

IN FACT, HE SAID THE SAME THING TO HATCHER, DO WHAT I'M TELLING TO YOU DO OR I'LL LEAVE YOU HERE FOR DEAD AND THIS IS ALL SAID IN FRONT OF THE VICTIMS.

SO, IT IS -- THIS WHAT IS THE JURY HAS TO LOOK AT CLEARLY THEY, THEMSELVES, WHEN THE PROSECUTOR -- WHETHER THE PROSECUTOR SAID ANYTHING OR NOT, CERTAINLY SAW THE INTENT OF MR. SALAZAR, TO SEEK SOME SORT OF REVENGE.

I MEAN, IT WASN'T I'M GOING IN AND BURGLARIZE THE HOUSE AND I #NAME?

BEING HOME AND ALL OF A SUDDEN I HAVE TO DO SOMETHING.

THIS WAS A MAN WHO WAS ANGRY ABOUT THE DISRUPTION OF HIS DRUG

BUSINESS.

AND DECIDED THAT HE WAS GOING TO EXACT SOME REVENGE.

THE JURY COULD HAVE THOUGHT THAT, YOU KNOW, HE CERTAINLY IS GOING TO GIVE HIM WHAT HE HAS ALREADY DONE IN THE HOUSE, THAT HE WOULD CERTAINLY HAVE AN INTENT TO COME BACK AND KEEP ATTEMPTING TO KILL UNTIL HE HAS KILLED.

SO THE ONE STATEMENT IS CLEARLY NOT SOMETHING THAT WOULD HAVE COMPLETELY TURNED THE JURY AROUND.

THEY WERE GOING TO ACQUIT MR. SALAZAR THOUGH THEY HAD ALL OF THE EVIDENCE BEFORE THEM? AND THEN, OH, WELL THE

PROSECUTOR SAYS, YOU KNOW, HE  
MAY COME BACK AND KILL OR  
ATTEMPT TO KILL --

>> SEPARATELY CONSIDER THE  
EFFECT OF THE ARGUMENT ON THE  
PENALTY AS WELL AS THE GUILTY OF  
THE DEFENDANT, IN OTHER WORDS,

THAT USUALLY WE SEE THIS ARISE  
IN THE PENALTY PHASE.

WHERE AN OVERZEALOUS PROSECUTOR  
GOES OVER THE TOP, AND SAYS,  
WELL, THE ONLY WAY TO ENSURE  
THAT A DEFENDANT DOESN'T GET OUT  
AND KILL AGAIN, FOR INSTANCE, IS  
TO GIVE HIM THE DEATH PENALTY.

SO WE HAVE SEEN IT COME UP IN  
THAT CONTEXT SEVERAL TIMES.  
BUT WHAT ABOUT THE POTENTIAL  
IMPACT ON THE PENALTY PHASE HERE  
OF THE STATEMENT LIKE THIS, THAT  
THE JURY HAS NOT BEEN TOLD WHAT  
IS IMPROPER.

>> WELL, FIRST OF ALL, IT WASN'T  
DONE IN THE PENALTY PHASE.  
IT WAS SOMETHING THAT WAS DONE  
IN THE GUILT PHASE AND THEY WERE  
NOT TOLD DIRECTLY THAT IF THEY  
DON'T CONVICT OR IF THEY DON'T  
RECOMMEND DEATH, THAT THIS WILL  
HAPPEN.

IT IS THAT -- THAT WASN'T THE  
ARGUMENT.

IT WENT TO WHETHER OR NOT A DEAL

SHOULD BE MADE TO BRING ON  
ADDITIONAL EVIDENCE.

IT IS THE STATE'S POSITION THAT  
THEY COULD HAVE GOTTEN A  
CONVICTION JUST ON THE SURVIVING  
VICTIM'S TESTIMONY.

BUT THE STATE, THE PROSECUTOR AT  
THAT POINT, WANTED ADDITIONAL  
EVIDENCE FOR THE JURY, SO WITH  
REGARD TO THE PENALTY PHASE  
ALONE, IT DOESN'T IMPACT THAT  
DECISION.

WE HAVE A 12-0 VOTE, UNANIMOUS  
VOTE FOR DEATH.

WE HAVE FOUR AGGRAVATORS, AND IF  
THE JURY RECALLED THE ONE  
COMMENT OUT OF A CLOSING  
ARGUMENT WEEKS BEFORE AND --  
BEFORE THE PENALTY PHASE, IT

WOULD HAVE NO IMPACT.  
IT DIDN'T GO TO WHY YOU SHOULD  
RECOMMEND DEATH OR WHY YOU  
SHOULD RECOMMEND LIFE.  
>> WHY WOULDN'T LOGICALLY GO TO  
THAT?  
IN OTHER WORDS, IF THE STATE IS

ARGUING THAT THE REASON WE MADE  
A DEAL WITH THE NECESSARY DEVIL  
HERE IS BECAUSE WE ARE WORRIED  
THAT IF THIS FELLOW GOES FREE  
HE'LL GO BACK AND KILL THE  
SURVIVING VICTIM THAT HE DIDN'T  
SUCCESSFUL CAUSE TO BE KILLED.  
WHY DO YOU SAY IT LOGICALLY  
DOESN'T GO WITH THAT.

>> IT IS EXTENDING THE --  
EXTENDING THE ARGUMENT FURTHER  
AND THE PROSECUTOR ACTUALLY MADE  
IT.

>> THE PROSECUTOR IS PRETTY  
ARTICULATE.

WHEN HE IS ARGUING HIS CASE TO  
THE JUDGE WHICH YOU WOULD AGREE,  
I ASSUME NONE OF THE SIDEBAR --

>> NONE OF THAT WAS PRESENTED TO  
THE JURY, YOUR HONOR.

>> THE PROSECUTOR IS REALLY  
DIGGING A DEEP HOLE FOR HIMSELF  
AT THAT POINT BECAUSE HE'S  
REALLY PUSHING THE ISSUE BEYOND  
THE PROPER BOUNDS, BUT THE  
RECORD DEMONSTRATES THAT WAS A

SIDEBAR AND YOUR OPPONENT  
DOESN'T CLAIM THAT THAT WAS BEER  
THE -- BEFORE THE JURY.  
BUT THE STANDARD ON HARMLESSNESS  
IS THERE IS NO REASONABLE  
POSSIBILITY THAT THE JURY WOULD  
HAVE CONSIDERED THAT, IN  
CONSIDERING EITHER THE GUILT OR  
WHAT PUNISHMENT TO IMPOSE.  
SO YOU'RE SAYING -- AND THE  
BURDEN IS ON THE STATE TO  
DEMONSTRATE THERE IS NO  
REASONABLE POSSIBILITY, NOT  
PROBABILITY, BUT, POSSIBILITY,  
SO, WHY SHOULDN'T THERE BE A  
POSSIBILITY THAT THE JURY WOULD  
SAY, YOU KNOW, THE PROSECUTOR  
SAID ONE OF THE REASONS THAT  
THEY MADE A DEAL WITH THE OTHER

DEVIL IS SO THIS FELLOW WOULDN'T GO BACK AND DO THAT AND THE ONLY WAY WE CAN BE CONFIDENT OF THAT IS TO GIVE THIS FELLOW THE DEATH PENALTY.

WHY WOULDN'T THAT BE A REASONABLE POSSIBILITY?

>> GIVEN THE JURY INSTRUCTIONS TELL THE JURORS TO LOOK AT AGGRAVATION AND MITIGATION IN THIS CASE AND THE PROSECUTION WAS ARGUING THAT WE HAVE THE FELONY MURDER, WE HAVE A CONTEMPORANEOUS ATTEMPTED MURDER, FELONY MURDER WITH THE BURGLARY AND CON -- CONTEMPORANEOUS ATTEMPTED MURDER AND CCP AND HAC, VERSUS THIS LIMITED MITIGATION OF A DIFFICULT TRIAL CHILDHOOD. THAT WAS THE FOCUS OF THE PENALTY PHASE.

YES.

I AGREE THAT THEY CAN LOOK AT ALL OF THE GUILT PHASE EVIDENCE, ALSO.

BUT, THE FOCUS IS ON THE AGGRAVATION AND THE MITIGATION, AND TO MAKE THE SUPPOSITION THAT THEY WOULD TAKE ONE COMMENT FROM THE PROSECUTOR, THAT HAD BEEN CUT OFF IN MID STATEMENT AND NOT BEEN RETURNED TO OTHER THAN TO

SAY, YOU KNOW, BASICALLY, WHY WE MADE A DEAL HAS NOTHING DO WITH THE CASE, FOR THEM TO FOCUS ON THAT, AS OPPOSED TO ALL OF THE OTHER EVIDENCE AND ALL OF THE OTHER AGGRAVATION AND MITIGATION JUST SENTENCE EITHER A REASONABLE, A POSSIBLE OR A LIKELY SCENARIO.

IT IS BEYOND A REASONABLE DOUBT, A SENTENCE THAT WAS BASED ON THE ADMISSIBLE FACTS, AND A GUILT DECISION THAT WAS BASED ON ADMISSIBLE FACTS.

>> AS I UNDERSTAND, JUSTICE ANSTEAD'S QUESTION IT IS THAT, LET'S ASSUME IT DID NOT AFFECT THE GUILT PHASE, THEN WHY WOULDN'T IT AFFECT THE PENALTY

PHASE AND IF WE ASSUME GUILT ALREADY, ISN'T THE ANSWER TO YOUR QUESTION, THE FACT THAT THE JURY HAS GIVEN INSTRUCTIONS ON EITHER LIFE WITHOUT THE POSSIBILITY OF PAROLE, OR DEATH, WERE THEY GIVEN THAT INSTRUCTION

IN THE CASE.

>> YES.

THEY KNEW WHAT THE SENTENCES COULD BE.

>> SO ONCE YOU DETERMINE GUILT, REGARDLESS OF WHETHER YOU SAY LIFE OR DEATH, THE DEFENDANT WILL NEVER AGAIN BE -- SEE THE LIGHT OF DAY OUTSIDE OF A PRISON COMPOUND.

>> THAT IS CORRECT, YOUR HONOR.

>> SO THERE IS NO POSSIBILITY ONCE YOU DETERMINE GUILT, THAT THE DEFENDANT WILL GO OUT AND FINISH THE JOB ON CUMMING?

>> YES.

>> THAT AND THAT COULD NOT HAVE ENTERED INTO THE CALLOUS --

>> THAT'S CORRECT.

WOULD THE NOT HAVE.

>> WAS THERE -- ONE MINUTE, PLEASE.

>> WAS THERE AN ARGUMENT MADE TO THE TRIAL COURT CONCERNING THE EFFECT THAT THIS STATEMENT MADE TO THE PENALTY PHASE?

WAS THAT ARGUMENT -- ARGUE --

>> I DON'T RECALL THAT ARGUMENT BEING MADE IN THE -- EITHER DURING THE MOTION FOR MISTRIAL OR IN THE PENALTY PHASE.

>> AND LET ME, AS FAR AS WHAT HAPPENED IN THE TRIAL COURT, THE TRIAL COURT I TAKE IT IN THE SIDEBAR AFTER THE OBJECTION WAS MADE, ASKED FOR WHETHER THE PROSECUTOR HAD AUTHORITY FOR MAKING THE STATEMENT.

>> THAT'S CORRECT.

>> AND MADE THE PRESS STATEMENT HE WASN'T GOING TO ALLOW IT.

>> THAT'S CORRECT.

>> BECAUSE THE PROSECUTOR DIDN'T HAVE ANY AUTHORITY --

>> WHICH AT THAT POINT PROMPTED THE DEFENSE COUNSEL TO MAKE A MOTION FOR A MISTRIAL.

>> THAT'S CORRECT.

AND WAS THERE A DISCUSSION AT THAT POINT ABOUT ANY TYPE OF CURATIVE.

>> ONLY TO THE EXTENT THAT THE DEFENSE COUNSEL BELIEVED HE HAD TO ASK FOR A CURATIVE IN ORDER TO PRESERVE IT FOR APPEAL AND HE SAID, BASICALLY HE WAS SAYING, I DON'T WANT TO -- A CURATIVE BUT DOING IT BECAUSE I HAVE TO IN ORDER TO PRESERVE IT FOR THE APPEAL AND THE JUDGE SAID YOU PRESERVE IT FOR APPEAL AND I DON'T SEE WHY WE HAVE TO HIGHLIGHT THIS AND IS TALKING ABOUT, THAT IT REALLY DIDN'T GO FAR, THAT IT DIDN'T VITIATE THE TRIAL EVIDENCE AND THEY WERE GOING TO MUTUAL ON.

>> IT SEEMS FROM THE TRANSCRIPT THAT THE DEFENSE COUNSEL AGREED WITH THE COURT THAT A CURATIVE INSTRUCTION WOULD -- HE SAID I AGREE WITH THE COURT BUT DISAGREE WITH THE APPELLATE POSITION I HAVE TO ASK FOR SOMETHING THAT IS DETRIMENTAL BUT THEY FORCE ME TO DO IT.

>> THAT'S CORRECT.

>> BUT, JUST, BRINGS TO MIND THAT IT'S MORE IMPORTANT THAN MAYBE I REALIZED THE STATEMENT AND THE GUILT PHASE, BECAUSE AS YOU HAVE SAID, ONCE HE'S FOUND GUILTY THERE ARE ONLY TWO OPTIONS, EITHER GOING TO BE LIFE IN PRISON WITHOUT POSSIBILITY OF PAROLE, OR, DEATH.

AND SO, IF THE -- THE FOCUS IS REALLY ON THE GUILT PHASE, IT SAYS, THEN IT BECOMES CRITICAL, EVERY FACTOR THAT THE JURY IS CONSIDERING AS TO WHY THE GUY SHOULD BE FOUND GUILTY.

OF FIRST DEGREE MURDER AND UNDER THOSE CIRCUMSTANCES, WITHOUT THE JUDGE EVER TELLING THE JURY I'M SUSTAINING THE DEFENSE OBJECTION

TO THE STATEMENT WITHOUT SAYING THAT STATEMENT -- WITHOUT THE JURY HAVING ANY INDICATION THAT THAT STATEMENT WAS IMPROPER, CAN WE REALLY SAY THAT THE JURY DID NOT CONSIDER THAT STATEMENT IN ITS DELIBERATIONS.

>> IF YOU JUST TAKE -- IF YOU TAKE OUT EVERYTHING THAT HATCHER TALKED ABOUT AND YOU LOOK.

>> THE SHOOTER.

>> THIS IS THE SHOOTER.

TAKE OUT EVERYTHING THAT HATCHER TALKED ABOUT, AND YOU REST YOUR DECISION JUST ON WHAT CUMMING SAYS, HE SAYS NEIL CAME INTO THE HOUSE, THAT NEIL IS THE PERSON THAT HE WORK WITH DOWN IN FORT LAUDERDALE FOR NINE MONTHS, NEIL IS THIS PERSON --

>> WHEN DID HE SAY THAT? WASN'T HIS ORIGINAL STATEMENT TO THE POLICE MORE AMBIGUOUS THAN THAT?

>> NO, NOT WHEN IT CAME TO THE WORD "NEIL."

NOT WHEN IT CAME TO HOW HE MET NEIL, NOT WHEN IT CAME TO WHERE NEIL LIVED.

NOW, GRANTED, ON THE NIGHT OF THE INCIDENT, WHEN HE HAD TWO BULLETS -- WOUNDS TO THE HEAD AND IS WAITING, HE CAN'T

ARTICULATE EVERYTHING THAT HAPPENED, HE DOESN'T COME UP WITH A LAST NAME BUT HE COMES UP WITH NEIL, AND HE COMES WITH THAT HE LIVED WITH ME AND HE COMES UP WITH, I WORKED WITH HIM AND THEN, A FEW DAYS AFTER THE INCIDENT AND JUST ON THE DAY THAT HE GETS OUT OF THE HOSPITAL, HE SAYS I'VE GOT A VIDEO OF NEIL.

NEIL LIVES MINE HOUSE, WE WENT TO THE BEACH, I HAVE A VIDEO AND HE PRODUCE THIS IS VIDEOTAPE OF NEIL SALAZAR.

SO, AS FAR AS NOT GIVING A LAST NAME, MR. CUMMING GAVE AN AWFUL LOT OF INFORMATION ABOUT WHO THE NEIL WAS.

AND HE NARROWED IT DOWN TO --  
FOR THE POLICE ON THE NIGHT OF  
THE MURDER WHEN HE HAS TWO 38  
CALIBER BULLET WOUNDS TO THE  
HEAD.

>> WE HAVE CUMMING, IS THAT HIS  
LAST NAME --

>> YES.

>> SAYING NEIL IS THIS ONE WHO  
DID THE SHOOTING AND A  
PROSECUTOR IS SAYING, AND IF YOU  
DON'T CONVICT NEIL, MR. CUMMING  
MAY BE KILLED LATER.

>> HE DIDN'T SAY IT IN THAT WAY

--

>> ANOTHER ATTEMPT ON HIS LIFE.  
>> IF THAT WAS -- CERTAINLY FROM  
THE SIDEBAR THAT WAS HIS INTENT  
BUT SAID HE HAD NO EVIDENCE OF  
THAT ADD SIDEBAR.

THE POINT IS --

>> SEE, THE POINT IS, THOUGH,  
THAT THE JURY DID NOT KNOW HE  
HAD NO EVIDENCE OF IT.  
THE JURY DID NOT KNOW THAT THIS  
WAS --

>> THE JURY DIDN'T KNOW THAT HE  
HAD EVIDENCE OF IT AND HE NEVER  
TOLD THE JURY HE HAD EVIDENCE.  
WHAT HE SAY IS, IS IT REASONABLE  
TO THINK UNDER THESE  
CIRCUMSTANCES, WHERE THERE HAD  
BEEN THREE ATTEMPTS ON THIS

MAN'S LIFE, AND NEIL KNOWS THAT  
HE IS NOW NOT KILLED -- HAS NOT  
KILLED HIS INTENDED VICTIM AND  
THE WHOLE PURPOSE OF THAT  
KILLING OR ATTEMPTED KILLING WAS  
FOR REVENGE FOR DISRUPTING HIS  
DRUG BUSINESS, IS IT REASONABLE  
FOR US TO GIVE MR. HATCHER A  
DEAL?

SO THAT WE HAVE ADDITIONAL  
EVIDENCE OF THIS CRIME?  
THAT IS IN ESSENCE WHAT HIS  
ARGUMENT WAS AND DOES THAT GO TO  
THE ACTUAL GUILT, WHEN YOU HAVE  
ALL OF THE EVIDENCE FROM  
MR. CUMMING AS TO THE ACTUAL  
CRIME?

NO.

IT DOESN'T VITIATE IT, IT

DOESN'T IMPACT IT, BEYOND A REASONABLE -- BEYOND A REASONABLE DOUBT THERE IS ABSOLUTELY NO HARM IN THE ONE COMMENT THAT WAS CUT OFF IN MID SENTENCE AND AS IN THE PROSECUTOR WENT ONTO SOMETHING

ELSE.

THE JURY COULD HAVE AT THAT POINT ALSO ASSUMED THAT THIS WASN'T AN ARGUMENT THAT WAS SUPPOSED TO HAVE BEEN MADE. BECAUSE THE PROSECUTOR DIDN'T GO BACK TO IT.

CLEARLY, THIS WAS SOMETHING SAID AT SIDEBAR THAT SAID WE'RE NOT GOING FURTHER WITH THAT ARGUMENT.

IF IT HAD BEEN OVERRULED, CLEARLY THE PROSECUTOR WOULD HAVE SAID SOMETHING FURTHER.

>> WHAT DID THE PROSECUTOR MEAN WHEN HE SAID THAT CLEARLY, IN THE MINDS OF ALL OF US, THIS IS YOU A LEGITIMATE CONCERN, THAT HE MAY COME BACK AND KILL? IS HE INCLUDING THE JURY IN THAT STATEMENT?

>> ARE YOU REFERRING TO THE FIRST PORTION OF --

>> IN THE MINDS OF ALL OF US THIS IS A LEGITIMATE CONCERN.

>> WAS THAT -- BEFORE THE JURY

--

>> THE PROSECUTOR, RIGHT.

>> BEFORE OR AFTER --

>> OBVIOUSLY IT IS A CONCERN, SOMEONE MAY COME BACK AND FINISH THE JOB.

SOMEONE MAY BE SENT TO FINISH THE JOB.

>> THE SIDEBAR.

>> BUT HE'S SAYING IN THE BINGE OF THAT, IN THE MINDS OF ALL OF US, THIS IS A LEGITIMATE CONCERN.

INCLUDING THE JURY, IN THE MINDS OF ALL OF US.

>> IT SEEMS I DON'T SEE THE EXACT SENTENCE WHERE THAT IS DONE AT SIDEBAR, YOUR HONOR.

>> YES.

>> IF IT IS AT SIDEBAR THE JURY HAS ABSOLUTELY NO EVIDENCE OF THAT.

>> BUT HE SEEMS TO BE SAYING THAT IT IS OBVIOUS IN EVERYBODY'S MIND, INCLUDING THE JURY --

>> I DON'T THINK HE'S --

>> A LEGITIMATE CONCERN AND OF COURSE, IF IT WASN'T A LEGITIMATE CONCERN FOR THE JURY BEFORE, YOU WOULD THINK IT WOULD BE AFTER HE MADE IT A CONCERN FOR THE JURY, BY CALLING IT TO THEIR ATTENTION.

>> I DON'T KNOW THAT YOU CAN GO SO FAR AS TO SAY THAT HE WAS SAYING IT IS A LEGITIMATE CONCERN IN THE JURY'S MIND. HE'S TALKING ABOUT, I WOULD ASSUME --

>> HE IS SPEAKING BROADLY, TO EVERYBODY THIS WOULD BE OBVIOUS TO EVERYBODY AND WOULD BE A LEGITIMATE CONCERN.

>> WELL, IF YOU HAVE A DRUG DEALER WHO IS OUT FOR REVENGE AND HAS DRIVEN UP FROM MIAMI, 2, 3, 4 HOURS TO GET TO SOMEONE'S HOME, AND THEN TAKES THE EXTRAORDINARY STEPS OF BRINGING DUCT TAPE, OF TURNING OFF THE LIGHTS, OF UNPLUGGING THE PHONE,

AND THEN MAKING THREE ATTEMPTS ON THE VICTIMS' LIVES --

>> A MINUTE AGO YOU TOLD US THERE IS NO REASONABLE POSSIBILITY THAT THE JURY WOULD CONSIDER THAT FACTOR.

NOW YOU SEEM TO BE SAYING NOT ONLY IS THE STATEMENT OF THE PROSECUTOR A REASON THAT THEY WOULD CONSIDER THAT FACTOR, BUT, THAT ALL OF THE OTHER EVIDENCE IN THE CASE WOULD ALSO CAUSE THE JURY TO -- IS THAT WHAT YOU ARE ARGUING.

>> NO, I'M NOT, YOUR HONOR, THE TOTALITY OF THE EVIDENCE SHOWS THAT THIS, MR. SALAZAR HAS TAKEN EXTRAORDINARY METHODS -- OR STEPS TO TRY AND KIM THESE TWO

PEOPLE.

HE WAS SUCCESSFUL ON ONE AND UNSUCCESSFUL ON THE OTHER. THE MERE STATEMENT THAT MAYBE THERE IS A DEAD, YOU KNOW, IT IS REASONABLE TO ASSUME THAT WE HAVE A GOOD BASIS TO GIVE A

DEAL, IT IS SUCH A MINOR POINT, GIVEN ALL OF THE OTHER EVIDENCE.

>> YOU ARE SAYING, THE --

[INAUDIBLE] HE MAY HAVE SAID AT SOME POINT, TO GO, LISTEN, HE MADE A DEAL WITH THE PERSON, HE WAS THE SHOOTER, THE OTHER GUY WAS THE MASTERMIND, WHO WAS GOING TO DO THIS AND THAT AS FAR AS --

>> THAT IS EVIDENCE -- EVIDENCE IN THE CASE,.

>> THE EVIDENCE STILL CAME IN AND THE JURY LEGITIMATELY [INAUDIBLE] HE, SALAZAR, WANTED BOTH OF THEM DEAD.

>> ABSOLUTELY.

>> CAN YOU ADDRESS THE ISSUE OF THE CPP INSTRUCTION?

ABOUT -- WHEN, OBVIOUSLY THERE HAS TO BE MORE THAN JUST PREMEDITATED INTENT.

DOES THE HEIGHTENED INTENT HAVE TO BEGIN BEFORE THEY GO INTO THE HOUSE.

>> NO.

IT DOESN'T HAVE TO BEGIN WHEN IT WAS IN MIAMI.

IT COULD HAVE OCCURRED IN THE HOUSE.

JUST HAVE TO HAVE EVIDENCE OF HEIGHTENED PREMEDITATION AND IN THIS CASE --

>> NOW, WHAT IS -- DOES ROGERS SAY, THAT SEEMS TO INDICATE --

>> I BELIEVE ROGERS, IT WAS -- THE DEFENDANT, IF I'M RECALLING IT CORRECTLY, THE DEFENDANT BECAME ANGRY OF SOMETHING THAT HAPPENED DURING THE ROBBERY.

AND IT WAS REACTION TO THAT.

HERE, WE DON'T HAVE SOMEONE BECOMING ANGRY BECAUSE OF SOMETHING THAT HAPPENED IN THE HOUSE.

WE HAVE SOMEONE ANGRY COMING INTO THE HOUSE, AND WANTING REVENGE FOR THE DISRUPTION OF HIS DRUG BUSINESS.

WE HAVE SOMEONE SAYING, WHICH CLEARLY SHOWS PREMEDITATION, ESPECIALLY IN THESE

CIRCUMSTANCES, HEIGHTENED PREMEDITATION, IF I DON'T GET ANSWERS SOMEONE WILL DIE TONIGHT.

WHAT ANSWERS DOES HE WANT? HE'S ASKING, ARE YOU THE ONE WHO DISRUPTED MY DRUG BUSINESS?

IF THE VICTIM SAYS YES, WHAT IS HE GOING TO DO?

HE'S GOING TO KILL HER.

IF THE VICTIM SAYS NO, WHAT IS HE GOING TO DO?

HE IS GOING TO KILL HER BECAUSE HE DIDN'T GET THE ANSWER HE WANTED AND WE HAVE EVIDENCE THAT HE WAS GOING TO KILL HER.

BECAUSE SHE SAID NO.

I DIDN'T -- I DIDN'T HAVE

ANYTHING TO DO WITH RICO AND I DIDN'T TALK TO ANYBODY AND STILL

END U. PUTTING A PLASTIC BAG OVER HER HEAD AND DUCT TAPING

HER TO THE POINTS WHERE IF

MS. NUTTER HADN'T BEEN SHOT

WOULD HAVE DIED FROM

ASPHYXIATION AND AS FAR AS

HEIGHTENED PREMEDITATION, WHETHER IT BE THE INITIAL STEPS THAT HE TOOK WITH MR. HATCHER IN MIAMI, AND BRING IN THE DUCT TAPE AND TAKING THREE HOURS TO GET UP THERE, UNPLUGGING THE PHONE, DUCT TAPING THE ARMS AND LEGS OF THESE PEOPLE, WE CERTAINLY HAVE HEIGHTENED PREMEDITATION FROM THE TIME THAT THEY WERE --

>> SO THE REFERENCE TO THE INTENT TO KILL, AS TO -- BEFORE THE CRIMINAL EPISODE BEGAN, MEANING BEFORE THE MURDER? I MEAN, BEFORE THE STEPS THAT THEY WERE TAKING TO MURDER THE PERSON?

AND THAT WOULD MAKE SENSE, WE

THOUGH PREMEDITATION COULD BE INFORMED SECONDS BEFORE, SO...

>> MOMENTS.

>> HERE, THE FACT THAT HE STARTS TO BUT THE BAG OVER THEIR HEAD, HE INTENDS TO -- PUTS THE --

>> DUCT TAPE.

>> HE SAYS IT'S NOT TAKING LONG ENOUGH, SO EVEN IF HE, FOR SOME REASON, THE JUDGE FOUND THAT THE INTENT TO KILL HIGH SCHOOL BEGUN

--

>> MUCH BEFORE THAT.

AND, YOU KNOW, WHEN THE COURT IS TALKING ABOUT CCP AND MAKING A DECISION, ON DIFFERENT CASES, I MEAN, THERE ARE SO MANY DIFFERENT FACTORS THAT ARE CONSIDERED AND IF THE COURT SAYS SOMETHING, OR FOCUSES ON SOMETHING IN ONE CASE, BECAUSE THERE IS EVIDENCE THAT IT OCCURRED, SAY, YOU KNOW, IN MIAMI WHEN THEY HAD TO TAKE A TRIP UP TO OKEECHOBEE, VERSUS JUST IN THE HOUSE, AT OKEECHOBEE, YOU KNOW, IF THE COURT IS FOCUSING ON DIFFERENT THINGS IT DOESN'T LIMIT THE COURTS FOCUSING ON WHAT HAPPENED IN THE HOUSE, WHERE THE EXACT LOCATION OF THE -- OR THE EXACT LOCATION OF THE MURDER LATER ON

AND WHILE THERE MAY BE DIFFERENT REASONS FOR CC PERFORM IN DIFFERENT CASES, IT DOESN'T UNDERMINE THE CASE LAW FOR CCP. IT IS AN INDIVIDUAL -- SOMETHING THAT THE COURT HAS TO LOOK AT INDIVIDUALLY.

SO, UNLESS THERE ARE ANY OTHER QUESTIONS WITH REGARDS TO THIS, THE STATE WOULD ASK THIS COURT AFFIRM BOTH THE CONVICTIONS AND SENTENCE.

THANK YOU.

>> THANK YOU VERY MUCH.