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Clemente Javier Aquirre-Jarquin

SC06-1550

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> WE HAVE OUR LAST CASE ON THE

CALENDAR FOR TODAY.

MR. QUARLES, ARE YOU READY TO

PROCEED?

>> YES, YOUR HONOR.

MAY IT PLEASE THE COURT.

I'M CHRIS QUARLES FROM DAYTONA

BEACH AND I REPRESENT, CLEMENTE

JAVIER AQUIRRE-JARQUIN.

THIS APPEAL FOR THE DEATH

SENTENCE AND IMPOSED FOR

MURDER OF HIS TWO NEIGHBORS,

CHERYL WILLIAMS AND HER MOTHER,

CAROL BAREIS.

THEY WERE FOUND STABBED IN

THEIR MOBILE HOME ON THE

MORNING OF JUNE 17th, 2004.

SUSPICION FELL ON

AQUIRRE-JARQUIN, AN ILLEGAL

IMMIGRANT WHO LIVED NEXT DOOR.

ULTIMATELY THE
APPELLANT TOLD POLICE HE HAD
GONE NEXT DOOR AND FOUND THE
WOMAN ALREADY STABBED TO DEATH
AND HE DID NOT CALL THE POLICE
BECAUSE OF HIS ILLEGAL STATUS.

THE FIRST POINT I WANT TO
ADDRESS THIS MORNING, DEALS
WITH THE TRIAL COURT'S
ERRONEOUS ADVICE THAT LED TO
THE DENIAL OF THE APPELLANT'S
RIGHT TO REPRESENT HIMSELF
PURSUANT TO FARETTA VERSUS
CALIFORNIA.

THROUGHOUT THE PRETRIAL
PROCEEDINGS WHICH WERE ABOUT
TWO YEARS, STARTING ABOUT A
YEAR BEFORE TRIAL,
MR. AQUIRRE-JARQUIN CONTINUALLY
EXPRESSED DISATTACKS
DISSATISFACTION WITH HIS COURT
APPOINTED COUNSEL.

THESE COMPLAINTS REVOLVED
AROUND THE DELAY IN THE TRIAL.
REFUSAL OF THE LAWYERS TO FILE
A DEMAND FOR SPEEDY TRIAL WHICH
HE WANTED.

ACCESS TO DISCOVERY MATERIALS

THAT HE WANTED TO GO OVER.
AND, THE LAWYER'S PESSIMISM
ABOUT THE GUILT INNOCENCE
PHASE.

>> WAS THERE ANY QUESTION HERE
ABOUT MR.^YOUR CLIENT'S
PROFICIENCY WITH ENGLISH?

>> IT IS NOT, IT WAS NOT HIS
FIRST LANGUAGE.

THE JUDGE DID FOCUS ON THAT,
AMONG OTHER THINGS.

AND, DISSUADING HIM FROM
REPRESENTING HIMSELF.

IN FACT --

>> WE KNOW HE WENT THROUGH THIS
THREE TIMES.

IT IS REALLY THE LAST TIME THAT
YOU HAVE A QUESTION WITH.

SO, IF YOU COULD JUST, TELL US
EXACTLY WHAT THAT ISSUE IS.

>> APPROXIMATELY THREE MONTHS
PRIOR TO TRIAL THEY HAD A THIRD
NELSON HEARING WHEN HE
ANNOUNCED THAT HE WANTED TO
FIRE HIS COURT APPOINTED
LAWYERS, THE JUDGE, --

>> IT WAS SAME KIND OF
ALLEGATIONS THAT WERE MADE?
THAT --

>> YES, HE WAS MORE FOCUSED ON THE FINAL TIME OF THE LAWYERS ASSESSMENT OF HIS CHANCES AT GUILT-INNOCENCE PHASE WHICH, THE LAWYER HAD TOLD HIM THAT WE HAVE NO CHANCE.

AND THEN THERE WAS AN INQUIRY BY THE JUDGE AND I THINK I THINK HE MIGHT HAVE GIVEN A PERCENTAGE OF 5%, BUT THAT WAS JUST HIS PROFESSIONAL ASSESSMENT.

AND THE, MR.^AQUIRRE-JARQUIN DID NOT LIKE THAT.

HE SAID, WELL HE IS ALREADY TOLD ME WE'RE GOING TO LOSE AT THE FIRST PHASE.

I DON'T WANT THAT.

I WILL CHOOSE TO REPRESENT MYSELF RATHER THAN HAVE SOMEBODY ADMITS DEFEAT BEFORE WE EVEN START.

SO THE JUDGE PROCEEDED TO GO THROUGH THE COLIQUY.

>> LET ME JUST MAKE SURE.

YOU'RE NOT ALLEGING ANY ERROR WITH REGARD TO THE FIRST, WAS THERE THREE, THREE NELSON

HEARINGS?

>> NOT AT ALL.

>> SO NOW WE'RE, JUST ON

FARETTA?

>> YES.

THE JUDGE EXPLAINED THE

PITFALLS OF SEPARATED

REPRESENTATION.

IN DOING SO HE MISSTATED THE

DEFENDANT'S TRUE POSITION.

HE SAID, SPECIFICALLY IN THE

RECORD, YOU UNDERSTAND THAT YOU

WILL NOT BE ABLE TO HAVE DIRECT

ACCESS TO THE PROSECUTING

ATTORNEY IN THIS CASE FOR THE

PURPOSE OF DISCUSSING WHAT

EVIDENCE MIGHT BE PRESENTED, OR

TO NEGOTIATE A RESOLUTION IN

THIS CASE?

IT TAKES A LAWYER TO DO THAT.

>> HOW IS THAT INACCURATE?

>> IT DOESN'T TAKE A LAWYER TO

DO THAT.

>> LET'S SAY YOUR CLIENT IS

REPRESENTING HIMSELF.

AND HE CALLS THE PROSECUTOR.

THE PROSECUTOR DOESN'T TAKE HIS

CALL.

YOU GOT DISCOVERY DISPUTE.

FILE A MOTION.

THE PLEA OFFER WILL BE A
LETTER.

HERE IS MY PLEA OFFER.

TAKE IT OR LEAVE IT.

THERE WILL BE NO QUID PRO QUO.

PROSECUTOR REFUSES TO TAKE HIS
CALLS.

HOW IS THAT INACCURATE.

>> BECAUSE, BECAUSE WHAT THE
PROPER COLIQUY WOULD HAVE BEEN,
AS IS SET FORTH IN RULE 3.111

(D) 2 AND 3.

YOU UNDERSTAND YOUR ACCESS TO
THE STATE ATTORNEY PROSECUTING
YOU WILL BE SEVERELY REDUCED AS
COMPARED TO A LAWYER, WHO COULD
EASILY CONTACT THE STATE
ATTORNEY?

>> BUT ISN'T THAT REALLY WHAT
WAS SAID HERE?

BECAUSE THE WHOLE FOCUS OF THIS
IS THAT YOU WILL NOT BE ABLE TO
HAVE DIRECT ACCESS TO THE
PROSECUTING ATTORNEY?

AND EVERYTHING THAT FOLLOWS
FROM THAT, I THINK HAS TO
REASONABLY BE IN THE

CONTEXT.

TO HAVE DIRECT ACCESS, I THINK
THE JUDGE WAS SUGGESTING, YOU
NEED A LAWYER TO DO THAT.
BECAUSE YOU CAN'T, YOU ONLY
GOING TO HAVE THE KIND OF
INTERCHANGE AND THE DIRECT
ACCESS, BETWEEN A DEFENDANT AND
THE PROSECUTOR THAT YOU WOULD
HAVE BETWEEN A DEFENSE LAWYER
AND THE PROSECUTOR.

AND I UNDERSTAND, IN THIS A
LITTLE BIT OF A GRASP HERE AT,
AT A SOMETHING THAT DOESN'T
EXACTLY TRACK THE RULE EVEN, OR
THE RECOMMENDED COLIQUY BUT
THAT, ESSENTIALLY CONVEYS THE
MESSAGE THAT NEEDS TO BE
CONVEYED?

AND PARTICULARLY WHEN, HAD HE
BEEN ADVISED OF THIS BEFORE?

>> I DON'T BELIEVE HE HAD BEEN
ADVISED OF THIS PARTICULAR
ASPECT.

>> OKAY.

>> WE HADN'T GOTTEN THAT FAR.
HE USUALLY, IN THE PRIOR TWO
NELSON HEARINGS THE JUDGE GAVE
HIM, SAID, WELL YOU CAN EITHER

HIRE YOUR OWN LAWYER, REPRESENT
YOURSELF OR STICK WITH THESE
GUYS.

>> ANSWER THE QUESTION THOUGH.

I'M HAVING, A HARD TIME,
UNDERSTANDING WHAT IS
MISLEADING ABOUT IT.

BECAUSE HE USED WORD, YOU DON'T
HAVE DIRECT ACCESS.

IS THAT TRUE?

AND IT WAS IN THE CONTEXT OF
EVERYTHING THAT HE TOLD MR.^THE
DEFENDANT, I DON'T SEE HOW, I
MEAN I GUESS YOU HAVE TO
ESTABLISH THAT SOMETHING IS IN
THE COLIQUY THAT LED YOUR
CLIENT, BECAUSE OF THAT, HE
DIDN'T EXERCISE HIS RIGHT TO
SELF-REPRESENTATION AND HE
WOULDN'T OTHERWISE, IS THAT
WHAT YOU HAVE TO SAY?

>> THAT'S CORRECT.

>> I DON'T SEE HOW IN THE
CONTEXT OF THE ENTIRE COLIQUY
THE JUDGE EATON CONVEYED, HOW
THE STATEMENT IS EITHER
INACCURATE OR WHAT MISLED HIM
AS TO HIS DISADVANTAGES WHICH

ARE MANY OF SOMEONE
REPRESENTING THEMSELVES IN THE
DEATH CASE?

>> FIRST OF ALL, I THINK THAT,
IF YOU LOOK AT THE CONTEXT OF
THE TRANSCRIPT, RIGHT AFTER HE
SAID THAT, FIRST OF ALL, THAT
IS WRONG.

HE, IT SAYS YOU WILL NOT HAVE
DIRECT ACCESS TO THE
PROSECUTING ATTORNEY.

>> IF YOU THINK THAT IS WRONG,
THAT HE WOULD HAVE DIRECT
ACCESS?

>> HE WOULD CALL COLLECT FROM
THE JAIL, I KNOW LOTS OF
LAWYERS THAT COMPLAIN ABOUT NOT
BEING ABLE TO GET PROSECUTORS
ON THE PHONE TRYING TO WORK
SOMETHING OUT PRETRIAL OR GET
DISCOVERY.

THEY HAVE DIFFICULTY AS WELL.
SO THERE IS REALLY NO
DIFFERENCE.

>> IS THERE ANY RULE THAT
REQUIRES A PROSECUTOR TO TAKE A
PRO SE DEFENDANT'S CALL?

>> I KNOW OF NO SUCH RULE.
IT WOULD BEHOOVE HIM TO DO SO

BECAUSE, I THINK OTHERWISE,
ONCE THEY GET IN COURT, IF THE
DEFENDANT IS PRO SE, HE IS
GOING TO SAY, WELL, YOUR HONOR,
I TRIED TO GET AHOLD OF THE
PROSECUTOR TO GET THIS
DISCOVERY, OR TO FIND OUT
SOMETHING AND, HE WOULDN'T TAKE
MY CALL.

IT WILL SLOW THINGS DOWN.

>> ON THE OTHER HAND, THE
PROSECUTOR MAY NOT TAKE THE
CALL OUT OF FEAR THAT WHATEVER
IS SAID DURING THE CALL MAY BE
MISREPRESENTED BY THE DEFENDANT
LATER ON IN COURT.

ANYTHING YOU GOT TO SAY TO ME,
SAY IT IN OPEN COURT.

IF YOU HAVE DISCOVERY DISPUTE,
YOU WANT PICTURES, WANT THE
POLICE REPORT, WANT THE DNA
REPORT, FILE THE MOTION.

>> YOU COULD SAY THE SAME THING
TO ANOTHER LAWYER.

>> EXACTLY.

>> SO WHAT IS THE DIFFERENCE.

>> THERE IS NONE.

>> THAT'S WHY HE, THE JUDGE

SHOULDN'T HAVE MISLED THE
DEFENDANT INTO THE TRUE NATURE
OF HIS, WHERE HE STOOD WITH
THIS.

>> DO YOU CONTEND THEN THAT THE
STANDARD INSTRUCTION IS
INACCURATE?

>> NO.

>> SAYS, DO YOU UNDERSTAND YOUR
ACCESS TO THE STATE ATTORNEY
WHO IS PROSECUTING YOU WILL BE
SEVERELY REDUCED.

HOW IS THAT DIFFERENT?

>> I THINK IT IS VERY
DIFFERENT.

AND ESPECIALLY BECAUSE HE ADDS,
IT TAKES A LAWYER TO DO THAT
LIKE YOU CAN'T TALK TO THE
PROSECUTOR.

ONLY A LAWYER CAN TALK TO A
PROSECUTOR AND RIGHT
AFTER THE --

>> CAN'T THAT BE UNDERSTOOD
AS ONLY
A LAWYER CAN HAVE DIRECT
ACCESS?

>> ARGUABLY, ARGUABLY.
BUT THEN AFTER THE JUDGE
SAYS THE LITTLE SEGMENT,

CONCLUDES IT TAKES A LAWYER TO
DO THAT.

THE DEFENDANT SAYS ON THE
RECORD, SO, I WON'T GET ANY
INFORMATION.

RATHER THAN STOPPING IT AND
CLARIFYING THAT, THE JUDGE
PROCEEDS THROUGH THE REST OF
THE COLIQUY.

DOESN'T SAY, OH, NO, I DIDN'T
MEAN THAT.

YOU MIGHT GET SOME DISCOVERY.

YOU MIGHT GET INFORMATION.

YOU MIGHT GET A RETURN PHONE
CALL PRO FROM PROSECUTOR, MIGHT
ACCEPT YOUR PHONE CALL AND GIVE
YOU DISCOVERY.

>> JUDGE EATON CLARIFIES FOR
THE DEFENDANT, NO, I DIDN'T SAY
YOU'RE NOT GOING TO GET
DISCOVERY.

>> NO, HE DIDN'T SAY THAT.

>> I THOUGHT YOU SAID --

>> NO, HE DID NOT DO THAT.

>> [INAUDIBLE].

>> THE DEFENDANT SAYS, SO I
WON'T GET ANY INFORMATION?
THE COURT.

FINALLY, IF YOU ARE CONVICTED,
HE JUST ROLLS THROUGH THE
COLIQUY.

DOESN'T STOP AND CLARIFY THAT
HE DOESN'T STOP AND CORRECT
THAT MISSTATEMENT AND
MISUNDERSTANDING BY THE
DEFENDANT.

FINALLY IF YOU'RE CONVICTED
YOU'RE NOT GOING TO BE ABLE TO
CLAIM ON APPEAL YOUR LACK OF
LEGAL KNOWLEDGE OR SKILL
CONSTITUTES A BASIS FOR A NEW
TRIAL.

IN OTHER WORDS, YOU CAN'T ARGUE
THAT YOU RECEIVED INEFFECTIVE
ASSISTANCE OF COUNSEL.

HE JUST PROCEEDS WITH THE
COLIQUY, AND NEVER CORRECTS THE
DEFENDANT'S MISUNDERSTANDING,
AND IT IS CLEAR THAT THE
DEFENDANT THINKS IF HE IS PRO
SE, HE WILL NOT GET ANY
DISCOVERY WHATSOEVER.

THAT IS AT PAGE 587 THROUGH 588
AT VOLUME 11.

AND, YOU CAN ALMOST HEAR THE
SURRENDER IN HIS VOICE EVEN
THOUGH IT IS A COLD RECORD, A

PRINTED PAGE.

AND HE AFTER THE JUDGE GOES ON
THROUGH AND SAYS, YOU KNOW, YOU
REALLY DON'T WANT TO DO THIS,
HE CONCLUDES AND HE SAYS, THE
DEFENDANT SAYS, THERE IS NOT AN
OPTION.

HE HAS BEEN GIVEN A HOBSON'S
CHOICE.

IF YOU REPRESENT YOUR CHOICE,
YOU WILL NOT GET ANY DISCOVERY,
NO INFORMATION.

IT TAKES A LAWYER TO DO THAT.

READ IN CONTEXT IT IS
ABUNDANTLY CLEAR HE WAS
MISLED.

>> YOU THINK THE RECENT
SUPREME COURT OF INDIANA VERSUS
EDWARDS HAS EFFECT OFFER
JURISPRUDENCE ON FARETTA?

>> I DON'T THINK IT HAS ANY
APPLICATION IN THIS CASE.
THEY HELD IN THAT CASE, IN
CERTAIN SITUATIONS A, STATE,
CAN, COMPEL A DEFENDANT TO BE
REPRESENTED BY COUNSEL.

WHERE THEIR MENTAL STATUS IS IN
DOUBT, I LOOKED AT THAT CASE

WHEN IT CAME OUT.

THOUGHT ABOUT ITS APPLICATION
TO THIS AND, THEY BASICALLY SAY
IT IS NOT A VIOLATION OF THE
FEDERAL CONSTITUTION FOR THE
STATES TO REQUIRE A DEFENDANT
TO BE REPRESENTED BY COUNSEL IN
CERTAIN EXTREME SITUATIONS.

THERE'S NOT INDICATION THAT THE
APPELLANT IN THIS CASE HAS GOT
A MENTAL PROBLEM THAT EXTREME
AS THE INDIANA CASE.

HE, I MEAN, JUDGES, I MEAN I
DON'T LIKE TO DEAL WITH PRO SE
RECORDS ON APPEAL.

I JUST FINISHED ONE.

THEY'RE A NIGHTMARE.

JUDGES DON'T LIKE TO DEAL WITH
PRO SE CLIENTS, DEFENDANTS.

I DON'T BLAME THEM ONE BIT.

IT IS A REAL PAIN BUT, THEY
HAVE A RIGHT TO REPRESENT
THEMSELVES.

IT DOESN'T MATTER HOW SMART
THEY ARE.

DOESN'T MATTER HOW CONVERSEANT
OR UNCONVERSEANT IN THE LAW
THEY ARE, THEY HAVE A RIGHT
UNDER OUR CONSTITUTION TO

REPRESENT THEMSELVES, EVEN
THOUGH IT IS A FOOLISH CHOICE,
ALMOST ALWAYS.
BECAUSE OF THE MISADVICE HERE
AND PLEASE LOOK AT THAT SECTION
IN THE RECORD, IN CONTEXT, IN
TOTO, AND I THINK IT IS REALLY
CLEAR THAT WAS
MR. AQUIRRE-JARQUIN'S
UNDERSTANDING, AND JUSTIFIABLY
SO, HE WAS MISLED.
THE JUDGE SHOULD HAVE STOPPED
RIGHT THERE AND CLARIFIED IT.
INSTEAD HE ROLLED ON THROUGH
THE REST OF THE COLIQUY.
I DON'T THINK THERE WAS ANY ILL
INTENT ON HIS PART.
I THINK HE WAS TRYING TO HELP
THE DEFENDANT, UNDERSTANDABLY
SO.
IN DOING SO HE
DENIED HIM A FUNDAMENTAL
CONSTITUTIONAL RIGHT.
AND, ANOTHER U.S. SUPREME COURT
CASE FAIRLY RECENTLY, UNITED
STATES VERSUS GONZALEZ LOPEZ,
IN 2006, REITERATED THE RIGHT
TO COUNSEL OF CHOICE.

IN THAT CASE IT INVOLVED THE
IMPROPER DISQUALIFICATION OF A
LAWYER OF ONE'S CHOICE, AND
EVEN THOUGH HE SUBSEQUENTLY WAS
REPRESENTED BY ANOTHER LAWYER,
AND THEY DIDN'T HAVE ANY, ANY,
THERE WAS NO ARGUMENT THAT HE
RECEIVED AN UNFAIR TRIAL.

ONLY HE DID NOT GET TO BE TRIED
WITH THE LAWYER OF HIS CHOICE
REPRESENTING HIM.

AND THEY SAID THAT WAS
STRUCTURAL CONSTITUTIONAL
ERROR.

>> CAN I, ON YOUR ISSUE FIVE
WHICH HAS TO DO WITH THE
TESTIMONY OF THE --

[INAUDIBLE]

>> YES, MA'AM.

>> [INAUDIBLE]

DID THE JURY, DID THE JUDGE
GIVE A INSTRUCTION TO THE JURY
THAT IT SHOULD BE TESTIMONY OF
SAMANTHA WILLIAMS TO THE, TO BE
CONSIDERED ONLY ON THE LIMITED
ISSUE OF LACK OF CONSENT?
IN OTHER WORDS, SAMANTHA
WILLIAMS, WHEN SHE TESTIFIED,
WAS HER TESTIMONY LIMITED AS TO

THAT INCIDENT THAT OCCURRED
SEVERAL MONTHS BEFORE?

>> I MAY BE WRONG BUT I DON'T
RECALL ANY LIMITING INSTRUCTION
GIVEN BY THE JUDGE.

>> AND DID THE DEFENSE LAWYER,
SEEMS TO ME, AS I READ WHAT YOU
SAID, IS, IT SAYS THAT, YOU
KNOW, SHE TALKED ABOUT TELLING
HIM TO LEAVE.

HE ESCORTED HIM OUT THE FRONT
DOOR AND TOLD HIM HE WAS NOT TO
ENTER THE RESIDENCE WITHOUT
PERMISSION.

THAT'S ONE THING.

THEN SHE ALSO TESTIFIED SHE HAD
BEEN AROUND HIM WHEN HE WAS
DRINKING AND USING COCAINE AND
BECOME PUSHY AND TOWARDS ME AND
FLIRTATIOUS TRYING TO COME ON
TO ME, MADE ME UNCOMFORTABLE.

WAS THERE ANY ATTEMPT TO
SEPARATE WHAT MIGHT BE HOSTILE
REBUTTAL ISSUE OF CONSENT, TO
SOMETHING THAT IS, I CAN'T
IMAGINE BEING RELEVANT TO
ANYTHING THAT WAS AN ISSUE IN
THE CASE?

DID THE DEFENSE LAWYER TRY TO
DISTINGUISH BETWEEN THAT PART
OF THE SAMANTHA WILLIAMS
TESTIMONY?

>> I DON'T RECALL THAT HE DID.
WHAT THEY DID, WHAT THE JUDGE
DID KEEP OUT, THERE WAS A BIG
ARGUMENT ABOUT THIS TESTIMONY
FROM SAMANTHA, AND AS WELL AS,
WHAT HER MOTHER HAD TOLD HER
ABOUT A WEEK BEFORE THE MURDERS
THAT SHE HAD TOLD THE APPELLANT
NOT TO COME OVER TO THE HOUSE
ANYMORE.

HE WASN'T WELCOME.

THAT WAS A WEEK BEFORE.

THE JUDGE SAID, THAT IS HEARSAY
ON HEARSAY SO TO SPEAK.

HE KEPT THAT OUT.

BUT HE ALLOWED SAMANTHA TO
TESTIFY TO THAT.

SEVEN MONTHS PRIOR TO

THE MURDERS SHE WOKE UP, FOUND THE
APPELLANT IN HER BEDROOM IN THE
MIDDLE OF THE NIGHT.

HE WAS ORDERED OUT AND NOT WELCOME
IN HER HOUSE.

COUPLE TIMES HE CAME OVER ON
SOCIAL OCCASIONS AND EVERYTHING

WAS OKAY.

SO THAT THERE WAS ARGUMENT
THAT WAS COMPLETELY IRRELEVANT
TO ANY ISSUE AND IT WAS ANY
SLIGHT PROBATIVE VALUE WAS
OUTWEIGHED BY THE SEVERE
PREJUDICE WHICH, I CAN SEE A
JURY HEARING THAT, AND, AS FAR
AS THE SPECIFICS OF HIS
INVOLVEMENT WITH SAMANTHA OR
ATTEMPTS TO ROMANCE HER SO TO
SPEAK, I DON'T RECALL THAT
BEING OBJECTED TO, SPECIFICALLY
ON A SEPARATE GROUND.

I'D ALSO LIKE TO ADDRESS THIS
MORNING THE JUROR, THE JURY
SELECTION ISSUE.

THERE WAS A CAUSE CHALLENGE
DURING JURY SELECTION OF JUROR
MORSE, WHO CLEARLY BELIEVED
DEATH WAS THE APPROPRIATE
PENALTY IN ALL FIRST-DEGREE
MURDERS.

PROSECUTION AS PART OF THEIR
VOIR DIRE, I WILL GIVE YOU FIVE
SCENARIOS, OVER HERE WAS THE
CLASSIC --

>> CLEARLY, ALTHOUGH THE STATE

TAKES ISSUE WITH THAT, DENIES
THE COST CHALLENGE AND SAID,
WELL, SHE DIDN'T SAY SHE
WOULDN'T CONSIDER, BUT IT'S
REALLY CLEAR TO ME -- I THINK,
FROM ALL OF HER ANSWERS -- THAT
SHE WAS PRETTY MUCH AUTOMATIC
DEATH FOR ALL FIRST-DEGREE
MURDER.

THE DEFENSE USED A PREEMPTORY.
WELL, AFTER THE TENTH PREEMPTORY
CHALLENGE THEY WERE DONE.

THEY WERE ALL USED UP, AND JUROR
WEINBERG, I BELIEVE, WAS THE
12TH PERSON PUT IN THE BOX.

AND WHEN THAT HAPPENED, THE
DEFENSE SAID, WHOA, WE'RE OUT OF
PREEMPTORIES, AREN'T WE?

AND THE JUDGE SAID, I BELIEVE
YOU ARE.

AND IT'S CLEAR THAT WEINBERG IS
NOT A VERY GOOD JUROR FOR THE
DEFENSE.

AND SO I THINK IT'S CLEAR THAT
THE DEFENSE COUNSEL WANTED TO
USE A PREEMPTORY ON WEINBERG
BECAUSE HE WAS THE LAST PERSON
PUT IN THE BOX --

>> I GUESS THE QUESTION IS, DID

THE DEFENSE ATTORNEY SAY, I WILL
USE THIS ADDITIONAL CHALLENGE ON
JUROR WEINBERG?

>> HE DID NOT SPECIFICALLY SAY
THAT, NO, BUT I THINK IT'S CLEAR
FROM THE RECORD THAT THAT'S WHAT
HE WANTED TO DO.

>> AND HOW WAS IT CLEAR?

>> BECAUSE JUST THE
CIRCUMSTANCES OF, OKAY, THEY GO
THROUGH AND IT'S YOUR TURN, AND
THEN THEY -- WEINBERG GETS IN
THE BOX, AND HE DOESN'T SAY
YOU'RE RIGHT, I'LL ADMIT, BUT
WHY ELSE WOULD HE ASK FOR A
PREEMPTORY?

>> HE SPECIFICALLY SAYS, JUDGE,
IT APPEARS WE HAVE NO ADDITIONAL
CHALLENGES.

>> RIGHT, AND HE ASKS FOR MORE,
WHICH IS WHAT HE'S SUPPOSED TO
DO.

NOW, ADMITTEDLY HE DIDN'T SAY IF
I HAVE MORE, NOW YOU'VE DENIED
ME MORE, I WOULD USE THAT ONE ON
WEINBERG, BUT I THINK IF YOU
READ THE RECORD IN TOTAL, IT'S
VERY CLEAR --

>> AND WEINBERG, HE WOULD HAVE USED HIM BECAUSE OF WHAT?

>> PARDON?

>> HE WOULD HAVE USED THAT CHALLENGE ON WEINBERG BECAUSE --

>> BECAUSE WEINBERG SELECTED THE SECOND MOST EXTREME POSITION ON CAPITAL PUNISHMENT.

I WOULD VOTE FOR DEATH IN MOST FIRST-DEGREE MURDERS.

NOT ALL, BUT MOST.

REMEMBER THE FIVE EXAMPLES THAT I GAVE YOU THAT THE PROSECUTION WAS SUPPOSING?

SHE FOUND THE PUNISHMENT APPROPRIATE ALTHOUGH NOT FOR ALL BUT WOULD RETURN A VERDICT, SHE HAD NO JURY EXPERIENCE, HAD VERY LITTLE CONTACT WITH THE CRIMINAL JUSTICE SYSTEM WHICH IS NOT [INAUDIBLE] AND SHE'D NEVER VISITED JAIL OR PRISON DESPITE THE FACT THAT SHE'D HAD TWO RELATIVES --

>> AND THIS IS WHAT THE DEFENSE ATTORNEY SAID?

>> THIS IS WHAT I GLEANED FROM THE RECORD.

ADDITIONALLY, SHE HAD SEEN A

NEWSPAPER ARTICLE ABOUT THE CASE
ON THE MORNING OF JURY
SELECTION, AND HE WAS NOT A
REGISTERED VOTER.

ALTHOUGH NOT RISING TO THE LEVEL
OF A CAUSE CHALLENGE, CLASSIC
REASONS FOR A DEFENSE LAWYER TO
WANT TO GET -- THE FIRST REASON
BEING THE BEST, THE SECOND MOST
EXTREME POSITION TOWARD DEATH.

>> ON THAT NOTE, YOU KNOW, SHE
SAYS WHEN SHE WAS ASKED HER
BELIEF ON THE DEATH PENALTY,
AND, YOU KNOW, I DON'T ALWAYS
DISTINGUISH IN CASES BETWEEN
OPEN-ENDED CASES TO JURORS OF
WHAT DO YOU THINK ABOUT THIS AND
WHAT DO YOU THINK ABOUT THAT.

FIRST IS YOU HAD A RELATIVE
KILLED, AND NOW WHAT DO YOU
THINK ABOUT THE DEATH PENALTY?

[INAUDIBLE] SHE SAID SHE
BELIEVED IN IT, AND I THINK
PROBABLY THERE WOULD BE A WHOLE
LOT OF PEOPLE WHO WOULD SAY
THAT.

THEN SHE WAS QUESTIONED FURTHER,
AND SHE SAID IF SHE WAS ON THE

JURY, SHE WOULD HAVE TO CONSIDER
ALL THE POSSIBILITIES.

>> YOU'RE TALKING ABOUT JUROR
MORSE.

WE WERE TALKING ABOUT WEINBERG.

>> I GUESS WHAT I WANT TO GO
BACK TO IS -- BECAUSE IF IT'S
NOT ERRONEOUS TO HAVE DENIED THE
MOTION TO STRIKE, THEN THERE'S
NO WORRY ABOUT --

>> TRUE, TRUE.

>> I JUST WANTED TO GO BACK --

>> I GIVE YOU THAT.

>> -- ASSUMING THAT, YOU KNOW,
SHE SHOULD HAVE BEEN STRICKEN
FOR CAUSE, BUT I DON'T KNOW WHY
THAT'S THE CASE.

>> OKAY.

WELL, A JUROR MUST BE EXCUSED
FOR CAUSE IF ANY REASONABLE
DOUBT EXISTS TO WHETHER THE
JUROR POSSESSES -- HE'D ALREADY
GIVEN UP ON HER, I THINK,
CLEARLY.

SHE SAID, SHE SAYS -- AS I SAID,
SHE WAS AUTOMATIC DEATH FOR ALL
FIRST-DEGREE MURDERS, AND THE
PROSECUTOR ASKED IF SHE COULD
THINK OF A SINGLE CIRCUMSTANCE

WHERE SHE WOULD NOT RECOMMEND
THE DEATH PENALTY, AND SHE SAID
IT WOULD HAVE TO BE A LOT OF
MITIGATING CIRCUMSTANCES FOR ME
NOT TO FEEL THAT WAY.

AND SUBSEQUENTLY, THE PROSECUTOR
SAYS, YOU'RE PRETTY MUCH IN
FAVOR OF THE DEATH PENALTY?

YES, SIR.

IT WOULD TAKE AN EXTREME
CIRCUMSTANCE.

NOTHING YOU'VE HEARD HERE TODAY
HAS CHANGED THAT POSITION?

NO, SIR.

AND SHE ALSO SAYS LATER ON, SHE
PIPES UP WHEN THE DEFENSE IS
DOING THEIR VOIR DIRE WHEN HE
WAS ASKING ABOUT LIFE WITHOUT
PAROLE, HOW DO YOU FEEL ABOUT
THAT?

COULD YOU ACCEPT THAT AS AN
ALTERNATE PENALTY, AND SHE
RAISES HER HAND AND SAYS,
SOMETIMES THEY GET LIFE AND
THEY'RE OUT IN 25, 30 YEARS, BUT
THEY'RE OUT BACK ON THE STREETS.

AND HE TRIES TO EXPLAIN LIFE
WITHOUT PAROLE WHICH IS

DIFFICULT TO DO WITH A JURY
BECAUSE THEY DON'T BELIEVE IT,
AND THEN HE HONED IN AND SAID
THE CLOSEST -- HE FOCUSED ON THE
CLOSEST SHE CAME TO BEING
REHABILITATED, AND IT WAS BY
DEFENSE COUNSEL, IRONICALLY.
SAID, YOU GENERALLY BELIEVE IN
THE DEATH PENALTY?

YES, I DO.

BE FAIR TO SAY IT'S A STRONG
BELIEF?

YES.

ONE OF THE THINGS I THOUGHT I
HEARD YOU SAY IT WOULD TAKE A
LOT OF MITIGATION, PROSECUTOR
ASKED ME THAT.

I DON'T WANT TO PUT WORDS IN
MOUTH.

AND THEN HE SAYS, SO IT'D BE
FAIR TO SAY DEFENSE IN THE
SECOND PHASE WOULD HAVE AN
UPHILL BATTLE WITH YOU, YOU'D
LEAN TOWARD THE DEATH PENALTY?
IT WOULD BE AN UPHILL BATTLE,
SHE SAYS.

OKAY, I'M NOT SAYING THAT'S
GOING TO HAPPEN --

>> COULD I ASK A PRELIMINARY

QUESTION?

I'M A LITTLE CONFUSED.

WAS THE NAME, THE NAME OF
PROSPECTIVE JUROR MORSE USED AT
THE TIME THIS QUESTION OCCURRED
WITH REGARD TO WEINBERG?

>> NO.

>> WOULDN'T THAT BE NECESSARY?

>> WELL, WHAT HAPPENED WAS IT
TURNS OUT THAT NOBODY COULD
REMEMBER WHICH CAUSE CHALLENGE,
WHICH JUROR WAS --

>> WELL, I MEAN, ISN'T THAT WHAT
A DEFENSE LAWYER -- I MEAN, AS
I'M LOOKING AT THIS, I'M SEEING
THAT THEY MENTIONED A PERSON,
AND THEN THE STATE SAID, NO,
THAT IT WASN'T MS. ROBINSON
BECAUSE THE STATE STRUCK HER.
AND THEN THERE'S A DISCUSSION,
THERE'S A JUROR THAT WE MOVE FOR
CHALLENGE FOR CAUSE, AND I
BELIEVE WE ENDED UP USING A
PREEMPTORY, AND THEN THERE'S
NEVER, I MEAN, IT'S NEVER
MENTIONED.

>> HER NAME IS NOT MENTIONED.

INITIALLY, THE DEFENSE LAWYER IS

CONFUSED ABOUT THE NAME, AND
THEN THE STATE ATTORNEY GETS
CONFUSED ABOUT THE NAME, AND
YOU'RE RIGHT.

THEY NEVER COME COME UP WITH THE
RIGHT NAME.

>> ISN'T THAT ESSENTIAL?

I MEAN, THEN IF YOU DON'T HAVE
THAT, YOU COULD GO BACK IN
AND -- ARE YOU SAYING THAT THIS
RECORD WILL CONCLUSIVELY
DEMONSTRATE TO US THAT THERE WAS
NO OTHER JURY OR CHALLENGE FOR
CAUSE THAT WAS DENIED FOR WHICH
THEN THE DEFENSE HAD TO USE A
PREEMPTORY?

BECAUSE THAT'S THE ONLY WAY YOU
COULD LIMIT THIS TO MORSE, SEEMS
TO ME.

IS THAT WHAT YOU'RE SAYING?

>> IT MAY BE THE ONLY ONE.

I KNOW THAT, I KNOW THAT IT WAS
CERTAINLY THE STRONGEST ONE.

>> WELL, I --

>> AND IT MAY BE THE ONLY ONE.
AND I APOLOGIZE, I DON'T KNOW
FOR SURE.

>> WELL, ISN'T THAT ESSENTIAL,
TO BE ABLE TO MAKE A VALID

ARGUMENT THAT THIS IS THE JUROR
WE'RE ALL TALKING ABOUT?

>> UNFORTUNATELY, I THINK UNDER
THE JURISPRUDENCE OF THIS COURT
MAYBE -- WHICH I THINK IS WRONG
BECAUSE, RESPECTFULLY, BECAUSE I
THINK YOU'RE REQUIRING WAY TOO
MUCH OF TRIAL LAWYERS IN THE
HEAT OF A TRIAL TO KEEP TRACK
OF -- HE SAYS, HE SAYS WHEN --
AFTER ALL THE CONFUSION THEY
NAME ABOUT THREE JURORS, NO,
THAT WAS MINE, THAT WAS YOURS.
THEY WERE ULTIMATELY STRUCK FOR
CAUSE.

THE DEFENSE LAWYER SAYS, THERE
WAS A JUROR, YOUR HONOR.

I JUST NEED TO TAKE A MOMENT.

I BELIEVE WE ENDED UP USING
PREEMPTORY ON HER --

>> AND WAS THERE A PAUSE?

>> PARDON?

>> WAS THERE A PAUSE IN THE
PROCEEDINGS?

>> YES.

>> THEN WHAT DID THE DEFENSE
ATTORNEY SAY?

>> THEN HE SAYS ARE WE AT 12

NOW?

YES, I THOUGHT SO.

BUT THEN HE INCLUDES MS.

WEINBERG, ANOTHER INDICATION

THEY DON'T LIKE MS. WEINBERG,

YES, AND THEN THEY PAUSED

AGAIN --

>> THEY PAUSED SEVERAL TIMES --

>> YES, AND THEY NEVER DID COME

UP WITH THE RIGHT NAME.

HE SAYS, JUDGE, I APOLOGIZE FOR

TAKING THE TIME, I JUST, I HAVE

A MEMORY OF SOMEBODY THAT --

WE'VE BEEN THROUGH A LOT OF

PEOPLE.

I HAVE A MEMORY OF SOMEBODY THAT

DENIED OUR CHALLENGE, WE STRUCK

THAT JUROR, AND I'M JUST TRYING

TO LOOK BACK IN MY NOTES, SEE IF

I CAN REMEMBER WHO THAT WAS

BECAUSE --

>> BUT BASED ON THAT HOW CAN THE

JUDGE POSSIBLY, HOW CAN WE SAY

BASED ON WHAT WAS PRESENTED TO

THE JUDGE THAT THE JUDGE ERRED?

>> THE JUDGE SHOULD NOT HAVE

DENIED THE ORIGINAL CAUSE

CHALLENGE.

THAT ISSUE WAS PRESENTED TO THE

JUDGE BY SAYING, JUDGE, THIS
JUROR IS CHALLENGEABLE FOR
CAUSE.

THEY DISAGREED, SO THAT ISSUE
WAS PRESENTED TO THE JUDGE.

>> WELL, BUT THAT'S NOT THE WAY
THE LAW IS SET UP.

>> I THINK THE LAW'S BEING
HYPERTECHNICAL IF THAT'S THE
CASE.

IT'S CLEAR THAT JUROR MORSE
SHOULD HAVE BEEN GRANTED -- THIS
CAUSED CHALLENGE SHOULD HAVE
BEEN GRANTED, AND WHEN THEY
ASKED FOR ADDITIONAL
PREEMPTORIES, IT'S CLEAR THEY
WANTED TO EXCUSE MS. WEINBERG,
AND THEY HAD NO --

>> I DON'T KNOW, YOU WERE ABOUT
TO TELL ME THE PART [INAUDIBLE]
NO MATTER WHAT, JUROR MORSE WAS
NOT IMPROPERLY STRICKEN OR
IMPROPERLY DENIED CAUSE, THEN
THIS WHOLE THING BECOMES EVEN
MORE TENUOUS.

>> RIGHT.

>> AND I THOUGHT -- I ASKED YOU
AT THE END ABOUT WHAT SHE DID

SAY IN RESPONSE TO DEFENSE, SHE
WOULD HAVE TO CONSIDER ALL THE
POSSIBILITIES.

SO YOU WERE ABOUT GETTING TO
THAT PART OF IT, ISN'T THAT SO?
YOU KNOW, WHY ISN'T THAT
SUFFICIENT REHABILITATION THAT
SHE WOULDN'T VOTE FOR THE DEATH
PENALTY UNDER ALL CIRCUMSTANCES?

>> BECAUSE JUST THE BOLD
STATEMENT THAT -- TAKING ALL OF
HER ANSWERS IN TOTAL, UPHILL
BATTLE, AUTOMATIC DEATH FOR ALL
FIRST-DEGREE MURDER CASES, THE
ONLY THING SHE SAYS THAT
ARGUABLY, ARGUABLY GETS AWAY
FROM THAT IS WHEN DEFENSE
COUNSEL, UNFORTUNATELY DEFENSE
COUNSEL, SAYS WOULD YOU STILL BE
ABLE TO CONSIDER A
RECOMMENDATION FOR LIFE OR FOR
YOU WOULD IT BE DEATH?

MS. MORSE, WELL, YOU HAVE TO
CONSIDER ALL POSSIBILITIES.

RIGHT?

THAT'S FAIR, OKAY, BUT IT WOULD
BE DIFFICULT?

IT WOULD BE DIFFICULT.

I THINK THAT ESTABLISHES A

REASONABLE DOUBT THAT SHE CAN BE
FAIR ON PENALTY.

>> YOU'RE WELL INTO YOUR
REBUTTAL IF YOU WANT TO SAVE
YOUR TIME.

>> THANK YOU.

>> MS. DAVIS?

>> MAY IT PLEASE THE COURT, MY
NAME IS BARBARA DAVIS.

I REPRESENT THE STATE OF
FLORIDA.

AS FAR AS IF I CAN GO BACKWARDS
ON THE JUROR MORSE ISSUE, IF
THIS COURT LOOKS AT PAGES
679-688 OF THE RECORD, THE
REASON THEY WANTED AN ADDITIONAL
PREEMPTORY IS SO THEY COULD
STRIKE MS. GLENNA ROBINSON, AND
THAT'S ON PAGE 679.

THEN THEY GO TO AND THE JUDGE
SAYS, WE'RE AT 12 NOW.

THEY WANT TO MAKE SURE IT
INCLUDES MS. WEINBERG.

WE DON'T KNOW WHETHER THEY WERE
SAYING SHE'S OBJECTIONABLE, OR
WE WANT TO MAKE SURE SHE'S ON
THE JURY.

THIS WHOLE CLAIM JUST CALLS FOR

SO MUCH SPECULATION.

AND THEN THEY GO THROUGH, AND
THEY SAY, NO, MS. ROBINSON WAS
ALREADY STRICKEN FOR CAUSE, AND
THE DEFENSE ATTORNEY SAYS, WELL,
LET ME, LET ME LOOK AT MY NOTES.

I'M CONSIDERING ASKING FOR AN
ADDITIONAL CHALLENGE.

AND THAT'S ON PAGE 680.

THEN HE CHECKS HIS NOTES, AND HE
HAS -- NO, I DON'T HAVE ANY
ADDITIONAL CHALLENGES.

AND THEY ACCEPT THE JURY.

SO, I MEAN, WHEN YOU ARE RAISING
A CLAIM, YOU HAVE TO EXHAUST
YOUR PREEMPTORIES, IDENTIFY THE
SPECIFIC JUROR THAT SHOULD HAVE
BEEN CHALLENGED BEFORE CAUSE,
AND IDENTIFY THE SPECIFIC JUROR
THAT IS OBJECTIONABLE.

HE DID NOT IDENTIFY JUROR MORSE,
HE DID NOT IDENTIFY JUROR
WEINBERG AS THE ONE HE WOULD
EXERCISE HIS PREEMPTORY ON, AND
I ALSO SUPPLEMENTED WITH ANOTHER
CASE, JOYNER, BECAUSE EVEN
THOUGH AT ONE POINT IN THE
COLLOQUY THE JUDGE, JUDGE EATON,
ASKED IS THERE, ARE THERE ANY

FURTHER MOTIONS, AND DEFENSE
COUNSEL SAID, NO, BUT I WANT
TO -- I DON'T -- I WANT TO MAKE
SURE THAT I'M NOT ACCEPTING THE
JURY WITHOUT MOTIONS.

HOWEVER, TEN PAGES LATER WHEN
THE JURY IS SWORN, HE ACCEPTS
THE JURY.

AND IN THE JOYNER CASE, ALMOST
THE SAME SITUATION HAPPENED
WHERE THEY HAD MADE MOTIONS AND
THEN THEY HAD PRESERVED THOSE
MOTIONS, AND YET RIGHT BEFORE
THE JURY WAS SWORN, THEY
ACCEPTED THE JURY.

AND THEY -- ACCEPTING THE JURY
IS ON PAGE 693.

SO THIS ISSUE IS NOT
PRESERVED -- I MEAN, WHEN
MR. QUARLES SAYS THAT YOU EXPECT
TOO MUCH OF DEFENSE ATTORNEYS,
WELL, YOU CAN'T EXPECT TOO MUCH
OF JUDGES EITHER.

IF SOMEBODY IS NOT FOLLOWING THE
RULES AND NOT IDENTIFYING FOR
THAT JUDGE WHO SHOULD HAVE BEEN
STRICKEN FOR CAUSE AND WHO THE
OBJECTIONABLE JUROR IS THAT HE

NEEDS AN ADDITIONAL PREEMPTORY
ON, THEN THERE'S NO ISSUE.
AS FAR AS ISSUE NUMBER FIVE
WHICH WAS THE SAMANTHA WILLIAMS
TESTIMONY, JUDGE EATON FOUND --
NOW, REMEMBER, THE STATE FILED A
NOTICE OF WILLIAMS RULE EVIDENCE
IN AN ABUNDANCE OF CAUTION.
THE STATE DID NOT OFFER THIS FOR
WILLIAMS RULE.
IT WAS OFFERED FOR THE BURGLARY
CHARGE.

>> OKAY, SO LET ME --

>> [INAUDIBLE]

>> ON THE BURGLARY CHARGE, THEY
WANTED TO REBUT AN AFFIRMATIVE
DEFENSE OF CONSENT?

>> AS JUDGE EATON HELD, PAGE
694, THIS PUTS THE -- THIS
TESTIMONY PUTS THE DEFENDANT ON
NOTICE HE IS NOT WELCOME, AND
ONE OF THE ELEMENTS OF BURGLARY
IS ENTERING WITHOUT PERMISSION.

>> AND I, OKAY, LET'S JUST
ASSUME THAT SAYING THAT HE WAS
IN THE HOUSE AND TOLD TO LEAVE
AND NOT TO COME BACK, WHAT IS
THE POTENTIAL RELEVANCE TO A
BURGLARY CHARGE AS TO THE

TESTIMONY I WAS ASKING

MR. QUARLES ABOUT, THAT HE WAS,
HE HAD BEEN AROUND HIM WHEN HE'S
DRINKING, USING COCAINE, HE
WOULD BECOME PUSHY, FLIRTATIOUS,
TRYING TO COME ON TO ME, MADE ME
FEEL UNCOMFORTABLE?

YOU KNOW, IT MAY BE HARMLESS
ERROR BEYOND A REASONABLE DOUBT,
BUT FOR THE LIFE OF ME I'M
TRYING TO FIGURE OUT HOW THAT
WOULD GO TO ANYTHING OTHER THAN
IMPUGN HIS CHARACTER.

SO IS THERE SOME OTHER PURPOSE
THAT TESTIMONY WAS BEING
OFFERED?

>> I DO NOT RECALL THAT
TESTIMONY, AND IF YOU COULD TELL
ME THE PAGE OF THE RECORD --

>> I HAVE IT AS BEING VOLUME
1478.

>> PAGE 7 -- MY NUMBERS ARE IN
THE --

>> WELL, THERE MAY BE 778.

>> 778?

>> YOU'RE NOT, I'M NOT GOING TO
HAVE YOU -- YOU'RE NOT FAMILIAR
WITH THAT PORTION OF THE RECORD.

IF THAT CAME IN --

>> I JUST DON'T RECALL HER

SAYING THAT.

>> [INAUDIBLE]

>> IN THE TESTIMONY.

BECAUSE THERE WAS A PROFFER

AHEAD OF TIME --

>> BUT THE ARGUMENT THAT WAS
BEING MADE WAS NOT ABOUT THAT
PARTICULAR PART OF HER
STATEMENT.

>> NO.

>> I THOUGHT THE ARGUMENT THE
DEFENSE WAS MAKING REALLY HAD TO
DO WITH THE PART ABOUT HER, HIM
HAVING COME THERE SEVEN MONTHS
BEFORE, AND SHE SAW HIM AND PUT
HIM OUT.

>> YES.

>> AND SO I'M JUST WONDERING IF
THERE WAS ANY FOCUS PLACED ON
THE PART OF THAT OTHER PART OF
THE STATEMENT.

>> NO.

AND I --

>> [INAUDIBLE]

>> I JUST REVIEWED THE RECORD OF
HER TESTIMONY, AND I DO NOT FIND
THAT IN THE RECORD.

>> THAT WOULD SOLVE THE PROBLEM.

>> AND ON MY PAGE 778, IT'S
TALKING ABOUT THE LAYOUT OF THE
HOUSE.

AND I DID JUST REVIEW IT, BUT IN
ANY CASE, EVEN IF THAT HAD COME
IN AS JUSTICE QUINCE SAID,
THAT'S NOT THE ISSUE THEY
RAISED.

THE ISSUE THEY RAISED WAS THAT
SHE WAS ABLE TO TALK ABOUT THAT
INCIDENT AT ALL, AND JUDGE EATON
SAID, WELL, THAT'S, AS THE STATE
HAD ARGUED, NOT EVEN WILLIAMS
RULE.

BUT THEY DID GIVE THE TEN DAYS'
NOTICE JUST IN CASE IT WAS, YOU
KNOW, THEY WERE -- HE KNEW THEY
WERE GOING TO ARGUE IT'S
WILLIAMS RULE.

SO HE FILED THE NOTICE OF THE
WILLIAMS RULE EVIDENCE.

BUT AS JUDGE EATON HELD, IT'S
DIRECTLY RELEVANT TO ONE OF THE
ELEMENTS THE STATE HAS TO PROVE
AND CONSENT WAS, IN FACT, THE
ISSUE.

>> LET ME ASK YOU THIS, DOESN'T

THE STATUTE PROVIDE THAT
REMAINING IN A DWELLING TO
COMMIT OR ATTEMPT TO COMMIT A
FORCIBLE FELONY IS BURGLARY
NOTWITHSTANDING A LICENSED OR
INVITED ENTRY?

>> YES.

IT IS.

BUT REMEMBER, WE DID NOT HAVE
TESTIMONY FROM -- BECAUSE THE
TWO VICTIMS WERE DEAD, AND THERE
WAS NO OTHER WITNESS.

SO THE ONLY TESTIMONY THAT WAS
PRESENTED IS HE SAID THAT HE WAS
AN INVITEE ON SEVERAL
CIRCUMSTANCES.

AND THAT HE WAS WELCOME AT THE
HOUSE AND CONSENT WAS AN ISSUE.

AND --

>> BUT IF HE COMMITTED A
FORCIBLE FELONY, THAT BECOMES
IRRELEVANT, DOESN'T IT, UNDER
THE STATUTE?

>> WELL --

>> HOW HE CAME IN, WHETHER HE
CAME IN INVITED, UNINVITED MAKES
NO DIFFERENCE IF HE COMMITS A
FORCIBLE FELONY.

>> AND THE, WELL, ENTERING

SURREPTITIOUSLY --

>> THIS IS A POST-DELGADO CASE.

>> YES.

YES.

THERE WAS A PLAUSIBILITY OF EVIDENCE

BECAUSE HIS STATEMENTS BEFORE,

THERE WAS -- WE DIDN'T HAVE THE

SURREPTITIOUSLY REMAINING

WITHIN.

>> WELL, YOU DIDN'T NEED IT.

>> EXACTLY.

>> THE STATUTE THAT'S APPLICABLE

HERE, THAT'S GONE.

>> YES, YES.

>> I GUESS THAT GOES BACK TO THE

RELEVANCE OF WHATEVER SHE SAID

FROM SEVEN MONTHS BEFORE, WOULD

THEY BE SAYING THAT -- I MEAN,

HE SAID, I DIDN'T DO IT, AND I

WENT IN TO, YOU KNOW, GET A BEER

OR SOMETHING.

SO HOW IS THE ISSUE THAT HE

WASN'T SUPPOSED TO COME IN

UNINVITED, HOW DOES THAT REBUT

ANYTHING THAT THE DEFENDANT WAS

SAYING?

>> BECAUSE HIS --

>> [INAUDIBLE] BURGLARY CHARGE?

>> HIS DEFENSE WAS THAT HE WAS ALLOWED TO GO IN THERE AND HE DID, IN FACT, GO IN THERE AFTERWARDS AND CHECKED AROUND THE HOUSE.

>> DID THIS TESTIMONY COME OUT ON REBUTTAL, AFTER HE TESTIFIED?

>> NO, THIS CAME IN THE STATE'S CASE.

BUT IN THE OPENING STATEMENT, DEFENSE HAD LAID OUT THAT HE WAS ALLOWED TO COME INTO THE HOUSE, AND HE DID, IN FACT, COME INTO THE HOUSE, JUST WALKED RIGHT IN. AND HIS STORY WAS THAT HE FOUND CHERYL WILLIAMS IN FRONT OF THE DOOR AND THAT HE WAS ALLOWED TO BE IN THE HOUSE, SO HE JUST WALKED AROUND TO SEE WHAT WAS GOING ON IN THERE.

>> HOW DO WE -- WHAT WAS THE SPECIFIC, WHAT WAS THE SPECIFIC ARGUMENT THAT THE DEFENSE MADE IN SUPPORT OF EXCLUDING THIS, THIS YOUNG LADY'S TESTIMONY?

>> THAT IT WAS MORE PREJUDICIAL THAN PROBATIVE, AND THE JUDGE DID, IN FACT, EXCLUDE THE HEARSAY AND THAT THE MOTHER'S

TESTIMONY WAS HEARSAY BECAUSE
THE WEEK BEFORE THE MURDER
CHERYL WILLIAMS HAD ALSO TOLD
HIM NOT TO COME IN.

>> THERE WAS NO ARGUMENT ABOUT
THIS CONSENT NOT BEING AN ISSUE.

>> THE STATE ARGUED ABOUT --

>> THE DEFENSE DID NOT POINT OUT
WHAT I JUST POINTED OUT?

>> NO, THEY DID NOT.

I'M SORRY.

>> HOW DO WE DEAL WITH THE
FACT -- THE DEFENDANT DID TAKE
THE STAND IN THIS TRIAL, RIGHT?

>> YES.

>> AND HE ADMITTED THAT WHAT
SAMANTHA SAID WAS TRUE.

>> YES.

>> AND HE WENT EVEN FURTHER AND
SAID THAT HE HAD BEEN WARNED
ABOUT THIS AT OTHER OCCASIONS.

>> YES.

SO THAT WOULD BE MY NEXT
ARGUMENT, THAT IT'S CUMULATIVE
TO HIS TESTIMONY AND ANY ERROR
WOULD BE HARMLESS BECAUSE THERE
JARQUIN TESTIFIED THAT, YES, HE
HAD BEEN TOLD BY SAMANTHA SEVEN

MONTHS EARLIER NOT TO COME IN,
AND SINCE THAT TIME HE HAD BEEN
WARNED YET AGAIN.

>> SO THAT'S ALWAYS THE ARGUMENT
THAT HE MAY NOT HAVE TAKEN THE
STAND IF THAT EVIDENCE HAD NOT
COME IN.

>> AND THAT'S JUST KIND OF
SPECULATION BECAUSE YOU HAVE TO
REMEMBER HE HAD -- THE KNIFE WAS
BETWEEN THE TWO HOUSES, HE HAD
THEIR DNA ALL OVER HIS CLOTHING
WHICH WAS FOUND ON THE ROOF OF
HIS SHED, HIS BOXER SHORTS WERE
IN THE TRAILER WHERE HE TOOK A
SHOWER WITH THEIR DNA ALL OVER
HIM, HIS SHOE PRINTS WERE ALL
OVER THE HOUSE WITH THEIR DNA
ALL OVER THE SHOES, AGAIN, SO
THERE WAS A LOT OF EXPLAINING TO
DO.

AND HE HAD TAKEN THE POSITION
BEFORE WE WENT TO TRIAL IN HIS
SECOND STATEMENT TO THE POLICE
THAT, I HAD GONE IN THE HOUSE,
FOUND MS. WILLIAMS IN FRONT OF
THE DOOR, WANDERED AROUND, AND
THEN I PICKED UP THE KNIFE TO --
BECAUSE AFTER HE HAD WANDERED

AROUND, HE WAS AFRAID THERE
MIGHT BE SOMEBODY IN THERE -- SO
HE PICKED UP THE KNIFE BECAUSE
HE WAS AFRAID FOR HIS LIFE AND
TOOK IT OUTSIDE AND THREW IT ON
THE GROUND.

SO HE HAD A LOT OF EXPLAINING TO
DO ABOUT WHY THERE WERE 69
FOOTPRINTS OF HIS ALL OVER THE
HOUSE.

>> WAS HE, WAS THERE A LIMITED
INSTRUCTION [INAUDIBLE]

>> NO.

I DID NOT RECALL THAT, AND I
JUST CHECKED THE RECORD, AND I
CAN PRETTY MUCH SAY IT WAS NOT.
BECAUSE THE JUDGE DIDN'T SAY
THIS WILLIAMS RULE.

>> [INAUDIBLE] ALSO WOULD HAVE,
THE JUDGE COULD HAVE RULED THAT
[INAUDIBLE] IN OTHER WORDS, IN
ADDITION TO [INAUDIBLE] THE
JUDGE HAD RULED IT WASN'T
RELEVANT OR PREJUDICIAL VALUE
OUTWEIGHED, IT COULD HAVE BEEN
LIMITED IN WHAT THEY HAD BEEN
ASKING, RIGHT?

I MEAN, JUST OPENING THE DOOR

[INAUDIBLE] LETS THEM ASK

EVERYTHING THEY MIGHT WANT TO

ASK ABOUT --

>> WELL, BUT, I MEAN, THAT'S

JUST KIND OF SPECULATING ABOUT

WHAT HE WOULD OR WOULDN'T HAVE

DONE BECAUSE WHEN

MR. AQUIRRE-JARQUIN TESTIFIED,

HE HAD MADE PREVIOUS STATEMENTS,

AND THEN HE MADE A COMPLETELY

INCONSISTENT STATEMENT AT TRIAL.

SO AT THAT POINT HE GAVE THREE

DIFFERENT VERSIONS.

HIS TRIAL VERSION WAS THE THIRD

AND MOST COMPLETE.

BUT HE HAD NOT TOLD THIS CERTAIN

ELEMENT THAT HE WAS SAYING AT

TRIAL THAT WOULD EXPLAIN HIS

SHOE PRINTS, AND HE HAD NOT TOLD

THAT BEFORE.

HIS MIDDLE STORY, HIS SECOND

STORY, WAS THAT HE WAS ALLOWED

TO GO IN.

HE WENT IN, HE WANDERED AROUND,

HE SAW THEM BOTH DEAD, AND HE

LEFT BECAUSE HE WAS AFRAID OF

BEING DEPORTED.

WHEN WE GO TO TRIAL, WE'VE GOT A

COMPLETELY MORE COMPLETE STORY

ABOUT HOW THE BLOOD WOULD HAVE
GOTTEN ON HIS SHORTS, ALL THOSE
THINGS.

SO EVEN IF THE JUDGE HAD SAID
YOU CAN'T CROSS-EXAMINE ON THIS,
ONCE HE OPENED THE DOOR TO THAT
CONSENT ISSUE OF COMING IN, HE
COULD HAVE BEEN IMPEACHED BY
THAT STATEMENT OR IN REBUTTAL.

AND THE BOTTOM LINE IS THAT IT'S
CLEARLY HARMLESS ERROR, BECAUSE
I THINK AS JUSTICE KENNEDY JUST
POINTED OUT, HIM EVEN BEING IN
THAT HOUSE AND ATTACKING --

BECAUSE, NOW REMEMBER,
MS. WILLIAMS WAS ATTACKED RIGHT
AT THE FRONT DOOR.

SO THAT BLOOD SPATTER AND THE
SHOE PRINT SHOWS THAT.

SO, YOU KNOW, GOING OVER THERE
WITH A KNIFE, ATTACKING HER AT
THE FRONT DOOR, THERE'S
BURGLARY.

SO IF THE FACTS OF THIS CASE
EVEN IF THAT TESTIMONY WERE
TAKEN OUT, IT WOULDN'T CHANGE
ANYTHING.

>> I GUESS THE WAY I THOUGHT OF

IT ONLY, AND I'LL HAVE TO LOOK
BACK, IS THAT CLEARLY THIS IS A
HORRIBLE CRIME, AND YOU'VE GOT
ESPECIALLY THE VICTIM, THE
GRANDMOTHER WHO'S PARALYZED --
JUST BEYOND BELIEF.

BUT SOMEHOW YOU LOOK AT THE
DEFENDANT AND THINK, WELL, DID
HE JUST LOSE IT?

BUT THE THOUGHT OF HIM KIND OF
BEING THIS CREEPY PERSON THAT,
YOU KNOW, CAME INTO SOMEONE'S
BEDROOM AT NIGHT AND WAS
STANDING OVER THEM, IT JUST PUTS
A DIFFERENT, YOU KNOW, IN MY
MIND IT SORT OF ADDS TO
SOMETHING.

YOU KNOW, LIKE, I THINK OF A
JUROR, THAT WOULD HAVE -- YOU
KNOW, I DON'T KNOW THAT IT WOULD
HAVE CHANGED MY MIND ONE WAY OR
ANOTHER, BUT, OH, MY GOD, ON TOP
OF EVERYTHING ELSE HE'S A
PERVERT.

SO THAT'S WHAT I WAS CONCERNED
ABOUT, YOU KNOW, BECAUSE IT WAS
AT NIGHT, IN HER BEDROOM,
THERE'S NO SEXUAL ELEMENT TO
THESE CRIMES, CORRECT?

>> YES.

NO.

>> AND THAT WAS MY CONCERN.

>> WELL, AND THE CREEPY

DEFENDANT THING, HE TESTIFIED

THAT THEY WERE KIND OF FRIENDS,

THAT THEY WOULD PARTY TOGETHER,

THAT SHE WOULD INVITE HIM OVER.

AND REMEMBER, THAT'S THE FIRST

AND ONLY TIME THE JURY KNEW THAT

ANYTHING HAD HAPPENED.

SHE WALKS HIM TO THE DOOR, TELLS

HIM TO GO, TALKS TO HIM THE NEXT

DAY, AND THEY CONTINUE

SOCIALIZING AS FAR AS THE JURY

KNEW.

BECAUSE THEY DIDN'T KNOW THAT

THEN LATER ON THE MOM TOLD HIM,

DON'T GET, DON'T COME IN THIS

HOUSE ANYMORE.

SO, YOU KNOW, YOU CAN'T SAY THE

CREEPY DEFENDANT AND SAMANTHA

WAS ALL, LIKE, THOUGHT HE WAS A

PERVERT AND ALL BECAUSE THE JURY

JUST DIDN'T KNOW THAT.

AND THE SECTION THAT YOU READ

ABOUT THAT I JUST DON'T KNOW

WHERE THAT CAME FROM.

IF I CAN DISCUSS THE, NUMBER
ONE, THE FARETTA ISSUE AND JUST
WANT TO POINT OUT THAT WHEN YOU
LOOK AT THE ENTIRE COLLOQUY AND
COMPARE THAT WITH THE MODEL
COLLOQUY, LOOKING AT THIS IN
CONTEXT, NOW, THE JUDGE WENT
THROUGH, AND FARETTA IS A
SAFEGUARD FOR THE DEFENDANT.

HE MUST KNOW THE DISADVANTAGES
OF REPRESENTING HIMSELF.

THE JUDGE WENT THROUGH EVERY
SINGLE ADVANTAGE.

YOU DON'T SPEAK ENGLISH.

HOW ARE YOU GOING TO SELECT A
JURY?

A LAWYER CAN DO SO MANY THINGS
THAT YOU CAN'T DO, AND HE GOES,
AND THE RECORD 583-587, HE GOES
THROUGH IN DETAIL.

HE'S GOING TO HAVE ACCESS TO
WITNESSES.

HE'S GOING TO HAVE DIRECT ACCESS
TO THE PROSECUTOR.

YOU CAN'T HAVE DIRECT ACCESS TO
THE PROSECUTOR.

HE -- YOU MAY NOT HAVE ACCESS TO
THE LAW LIBRARY.

>> HOW DO YOU RESPOND TO THE

OPPOSING COUNSEL'S FOCUS ON THE COMMENT OF THE DEFENDANT, AND I CAN'T QUOTE IT EXACTLY, BUT I PARAPHRASE: SO I WON'T BE ABLE TO GET ANY INFORMATION THAT CAME AFTER THE JUDGE MADE THE STATEMENT ABOUT NOT HAVING DIRECT ACCESS TO COUNSEL TO THE PROSECUTOR, ONLY A LAWYER CAN DO THAT?

DOESN'T THAT AT LEAST ARGUABLY SHOW THAT THE DEFENDANT HAD A MISUNDERSTANDING ABOUT, ABOUT WHAT WAS GOING ON AND WHAT HE WOULDN'T -- BECAUSE HE WOULD BE ABLE TO GET SOME INFORMATION, OBVIOUSLY.

>> AND THAT'S ABSOLUTELY CORRECT ADVICE.

THAT THE DEFENDANT WILL NOT HAVE DIRECT ACCESS TO THE PROSECUTOR --

>> I UNDERSTAND THAT, BUT I'M TALKING ABOUT WHAT THE DEFENDANT SAID ABOUT NOT HAVING ACCESS TO INFORMATION.

DOESN'T THAT MANIFEST, OR WHY WOULDN'T THAT AT LEAST ARGUABLY

MANIFEST A MISUNDERSTANDING ON
THE PART OF THE DEFENDANT ABOUT
WHAT HAD JUST BEEN TOLD THAT
WOULD HAVE TRIGGERED SOME
OBLIGATION FOR THE JUDGE TO
CLARIFY?

>> WELL, AND THAT'S WHY THE
STANDARD OF USE OF DISCRETION.
YOU HAVE TO REMEMBER JUDGE EATON
IS STANDING RIGHT THERE, LOOKING
AT HIM, SEEING IF HE
UNDERSTANDS.

OF COURSE, THEY'RE TALKING
THROUGH AN INTERPRETER, BUT HE
AT NO POINT SAID, WELL, IF I
CAN'T GET DISCOVERY, THEN I HAVE
TO HAVE AN ATTORNEY.
HIS CONCERN WAS GETTING A FASTER
TRIAL AND THAT HIS ATTORNEYS
WERE PREPARING FOR A PENALTY
PHASE WHEN HE DIDN'T THINK HE
WAS GUILTY.

AND THE REASON THEY HAD TO DELAY
UNTIL FEBRUARY IS BECAUSE THEY
HAD JUST THEN GOTTEN IN CONTACT
WITH SOME OF THE FAMILY MEMBERS
FOR THEIR EXPERT TO TALK TO.
SO HIS MAIN CONCERN WAS NOT, I
MEAN --

>> AT THIS POINT WHAT WAS THE
STATE OF THE DISCOVERY?

>> IT WAS FINISHED.

AND DEFENSE COUNSEL SAID, WE ARE
READY FOR TRIAL RIGHT NOW
BECAUSE THE JUDGE DID A FULL
NELSON HEARING BEFORE THE
FARETTA HEARING.

WE'RE READY FOR TRIAL RIGHT NOW,
BUT WE ARE NOT READY FOR THE
PENALTY PHASE.

WE HAVE TO DO ALL THIS
MITIGATION.

MR. AGUIRRE-JARQUIN HAD BEEN TO
OPEN UP, THEY HAD JUST MET WITH
ONE OF THE SISTERS AND ANOTHER
SISTER HAD SHOWN UP.

THEY WERE WITH THE SISTERS TO
GET THE FAMILY BACKGROUND, AND
AS YOU SEE, THEY DID PRESENT A
FULL MITIGATION PHASE.

THEY GOT THREE STATUTORY
AGGRAVATING CIRCUMSTANCES.

SO THAT WAS THE CONCERN RIGHT
THEN WAS THE TIMING OF IT.

AND HE WAS NOT CONCERNED ABOUT
DISCOVERY.

THE PRIOR NELSON HEARINGS WHICH

WERE IN FEBRUARY, YES, BUT IN
NOVEMBER IT WAS THEY'RE READY TO
GO TO TRIAL, I WANT TO GO TO
TRIAL, I DON'T THINK WE NEED --

>> AND IS IT CORRECT THERE HAD
NEVER BEEN A PRIOR FARETTA
HEARING?

>> NO, SIR.

THE OTHER TWO WERE JUST NELSON
HEARINGS.

THE JUDGE EXPLAINED WHAT
ATTORNEYS HAVE TO DO, AND HE
SAID, WELL, THEN I WILL STAY
WITH THE ATTORNEYS.

AND THE PROBLEM WITH THIS IS
THAT THIS IS -- YOU CANNOT TAKE
THIS ENTIRE COLLOQUY AND SAY
BECAUSE HE SAYS SO I WON'T GET
ANY INFORMATION.

THAT MEANS THAT HE KEPT HIS
ATTORNEY BECAUSE HE THOUGHT HE
WASN'T GOING TO GET DISCOVERY.

AND HE SAID BECAUSE LATER ON ON
THE NEXT PAGE HE SAYS, HE'S
ASKING THE JUDGE AFTER THE
LAWYERS CAN DO THIS, THEY CAN DO
THIS, THEY CAN DO THIS, THESE
ARE THINGS YOU CANNOT DO FOR
YOURSELF.

HE ASKS THE JUDGE, YOU RECOMMEND
I SHOULD CONTINUE WITH THE
LAWYERS?

AND JUDGE EATON SAYS, I
ABSOLUTELY DO.

AND HE SAYS, OKAY, I JUST WANT
IT ON THE RECORD THAT HE SAID
WE'RE GOING TO LOSE.

HE TOLD ME -- AND I'VE BEEN HERE
THREE TIMES TO GET RID OF HIM.
THAT WAS HIS MAIN CONCERN.

IT WASN'T, I'M GOING TO KEEP HIM
BECAUSE I CAN'T GET DISCOVERY.

HIS CONCERN WAS THAT HE DIDN'T
REALLY GET A GRASP ON WHY THIS
HAD TO BE DELAYED FOR HIM TO
INVESTIGATE PENALTY PHASE AND
TELL THEM, LOOK, IF WE LOSE THIS
TRIAL AND THERE'S MAYBE A 95
PERCENT CHANCE, WE HAVE TO
PREPARE FOR THE PENALTY PHASE.

>> BUT WHAT YOU'RE REALLY SAYING
IS IF YOU LOOK AT EVERYTHING IN
CONTEXT IS THAT HE WANTED
ANOTHER ATTORNEY.

IT WASN'T THAT HE REALLY WANTED
TO REPRESENT HIMSELF.

>> WELL, THE THRUST WAS NOT THAT

HE KEPT AN ATTORNEY BECAUSE HE
COULDN'T GET DISCOVERY, THE
THRUST WAS --

>> BUT HE WANTED SOMEONE THAT
WAS ON HIS SIDE, AND HE FELT
THAT HIS ATTORNEY WAS NOT ON HIS
SIDE.

>> HE WANTED SOMEBODY TO TELL
HIM HE WAS GOING TO WIN, AND
THERE'S NO DEFENSE ATTORNEY IN
THE WORLD THAT'S GOING TO TELL A
CLIENT, YEAH, YOU'RE GOING TO
WIN BECAUSE YOU KNOW WHAT
HAPPENS?

WE GET ON INEFFECTIVE
ASSISTANCE, AND HIS CLIENT SAYS
HE TOLD ME WE WERE GOING TO WIN,
AND HERE WE ARE.

IT IS THE DEFENSE ATTORNEY'S JOB
TO GIVE YOU A REALISTIC PICTURE
OF WHAT COULD BE THE RESULT.
AND THERE'S A LOT OF EVIDENCE
AGAINST YOU.

I MEAN, THE JUDGE WAS SO
COMPLETELY PATIENT THROUGH THE
ENTIRE THING.

THAT ONE STATEMENT TAKEN OUT OF
CONTEXT, AND PARTICULARLY WHEN
YOU READ SUBSEQUENT TO THAT AND

IT SHOWS THAT HIS TRUE CONCERN
WAS, HE SAYS WE'RE GONNA LOSE.
AND I WOULD JUST FOR THE OTHER
ISSUES I WILL --

>> I WOULD LIKE TO DISCUSS ONE
WITH YOU.

>> YES, SIR.

>> IF WE MAY.

THE ISSUE OF WITNESS
ELIMINATION.

>> YES, SIR.

>> AND AS I UNDERSTAND OUR WHOLE
CAPITAL SENTENCING STATUTE THAT
ITS VERY CONSTITUTIONAL VALIDITY
IS DEPENDENT UPON THESE FACTORS
AND THE APPLICATION OF THOSE SO
THAT THE DEATH PENALTY IS NOT
AUTOMATIC, AND THERE'S A WAY TO
DIFFERENTIATE AND THAT KIND OF
THING.

IS THAT YOUR UNDERSTANDING OF
HOW THESE THINGS WORK TOGETHER?

>> YES, SIR.

ARE YOU CONCERNED ABOUT THE --

>> NO, I'M NOT CONCERNED ABOUT
THE RING, I'M TRYING TO GET TO
THE POINT WITH REGARD TO WITNESS
ELIMINATION WITH REGARD TO

CAROL.

BECAUSE WE ARE, WE'RE SEEMINGLY
RECEIVING MORE AND MORE
ARGUMENTS THAT THIS PARTICULAR
AGGRAVATOR IS APPLICABLE WHEN
THERE'S SOME CASE LAW THAT
SUGGESTS WHEN THAT IS THE SOLE
AND DOMINANT MOTIVE OR IT'S
POLICE OFFICERS, THOSE KINDS OF
THINGS.

WHAT DO YOU SEE THE EVIDENCE IN
THIS CASE WITH REGARD TO THAT
MURDER OF CAROL THAT PRODUCES
OUT OF ALL OTHER MURDERS?

BECAUSE, I MEAN, I THINK
CERTAINLY COMMON SENSE SORT OF
SUGGESTS TO US THAT PEOPLE ARE
KILLED AT TIMES SO THAT THEY
WON'T BE CAUGHT.

I MEAN, THAT'S JUST SORT OF
THINGS THAT HAPPEN.

WHAT IS IT ABOUT CAROL HERE AND
THOSE CIRCUMSTANCES THAT YOU SAY
MAKE THIS WITNESS ELIMINATION
AGGRAVATOR APPLICABLE?

AND I MAY AGREE THAT MAYBE IT'S
HARMLESS ANYONE, BUT I THINK WE
NEED TO HAVE AN UNDERSTANDING
WHAT THAT AGGRAVATOR IS ABOUT.

WHAT DO YOU SAY WITH REGARD TO
CAROL HERE AND ITS APPLICATION?

>> WELL, IT ABSOLUTELY APPLIES
HERE.

SHE KNEW HIM.

HE CAME IN WITHOUT ANY DISGUISE.

HE HAD ABSOLUTELY NO MOTIVE TO
KILL HER EXCEPT THAT SHE COULD
HEAR AND SEE EXACTLY WHAT WAS
GOING ON.

NOW, REMEMBER, THIS ORDEAL WITH
CHERYL AND HE WENT ON 129 STAB
WOUNDS, DOZENS AND DOZENS OF
DEFENSIVE WOUNDS ALL OVER THE
HOUSE, HER CRAWLING, HER KICKING
AT HIM WITH THE KNIFE.

AND AT SOME POINT CAROL HAD
GOTTEN OFF THE COUCH WHERE SHE
SLEPT AND WAS IN THE WHEELCHAIR
AND COULD HEAR AND SEE THIS.

SHE'S DISABLED.

SHE'S PARALYZED.

SHE'S NO THREAT TO HIM AT ALL.

>> RIGHT.

>> THERE WAS NO REASON

WHATSOEVER, AND WE KNOW THAT SHE
WAS STILL [INAUDIBLE] BECAUSE
THE MEDICAL EXAMINER TESTIFIED

THAT THE BLOOD ON THE KNIFE --

>> RIGHT.

>> -- HERS WAS SECOND AND THEN
CHERYL'S WAS FURTHER UP, SO HERS
WOULD HAVE -- SO WE KNOW THAT IT
WAS SECOND.

WE KNOW SHE WITNESSED THIS, WHAT
THE MEDICAL EXAMINER TESTIFIED
AS MORE PAIN THAN ANY HUMAN
SHOULD HAVE TO ENDURE.

>> AND YOU'RE ARGUING
[INAUDIBLE] NO ONE CHALLENGES
HAC AS TO THE SECOND VICTIM, BUT
MY FURTHER CONCERN AND MAYBE
IT'S JUST A FOLLOW-UP, WE HAVE
SOMETHING WITH THIS CASE THAT
CERTAINLY BECOMES CLASSIC WHERE
WE DON'T HAVE INDIVIDUAL
INTERROGATORIES.

THE JURY WAS INSTRUCTED ON CCP,
BUT THE JUDGE DOESN'T FIND CCP.
THEY WEREN'T INSTRUCTED ON
WITNESS ELIMINATION, BUT THEN
THE JUDGE FINDS IT.

AND THE JUDGE SEEMS TO BE
SAYING, WELL, I'M SUPPOSED TO
GIVE THE JURY RECOMMENDATIONS,
BUT HERE WE HAVE AN AGGRAVATOR
THAT IS AN [INAUDIBLE] AND

I'M -- I THINK THAT JUDGE EATON IS EXPRESSING HIS CONCERN THAT THERE'S NOT CONGRUITY BETWEEN HE'S SUPPOSED TO FOLLOW THE JURY RECOMMENDATION, BUT YET HE'S MAKING FINDING ON AGGRAVATORS THAT AREN'T SUBMITTED TO THE JURY OR SUBMITTED TO THE JURY, AND HE'S VARYING IT.

SO IT'S SORT OF AN EXTENSION IN A DIFFERENT WAY OF -- MY CONCERN ON THE WITNESS ELIMINATION IS HE DIDN'T THINK ENOUGH OF IT TO INSTRUCT THE JURY, SO THE JURY DIDN'T CONSIDER IT.

ALL OF A SUDDEN HE DECIDES AFTER, WELL, I THINK I'M GOING TO FIND IT.

ISN'T THERE A PROBLEM IN A SENTENCING SCHEME IF A JUDGE AFTER THE FACT CAN COME UP WITH AN AGGRAVATOR THAT THE JURY COULD NOT HAVE FOUND BECAUSE THEY WEREN'T INSTRUCTED ON IT AND THEN GIVE THAT JURY RECOMMENDATION [INAUDIBLE]

>> WELL, AS JUDGE EATON SAID, YES, HE, HE EXPRESSED HIS IDEAS

ABOUT THAT, BUT THE LAW IS --

>> HE EXPRESSED GREAT

FRUSTRATION, AND HOW DOES HE

GIVE A JURY RECOMMENDATION GREAT

WEIGHT IF HE DOESN'T KNOW WHAT

AGGRAVATORS THEY FOUND --

[INAUDIBLE]

>> AND IF YOU READ THE

SENTENCING ORDER, HE EXPRESSED A

FEW OF HIS ISSUES IN THERE.

HOWEVER, THE LAW IS THAT THE

JUDGE CAN CONSIDER THAT, AND AS

YOU SAID -- SO THEY WERE

INSTRUCTED ON CCP, AND THE JUDGE

DIDN'T FIND IT, BUT HE DID FIND

AVOID ARREST.

THE FACTS OF THE CRIME WERE

BEFORE THEM, AND IT'S NOT A

WEIGHING AND ACCOUNTING, IT'S

THE COMPLETE OVERVIEW OF THIS

CRIME.

>> BUT ON THE WITNESS

ELIMINATION YOU SAID IT MUST BE

ELIMINATION BECAUSE SHE SAW THE

MURDER OF CHERYL.

BUT THERE'S NO MOTIVE FOR THE

MURDER OF CHERYL.

I MEAN, WHY ISN'T IT JUST AS

LOGICAL THAT HE CAME IN WITH THE

IDEA OF JUST, I DON'T KNOW WHAT
HE WAS GOING TO DO, BUT THEN
THEY WERE BOTH IN THERE.

MAYBE HE WAS LOOKING FOR BEER,
AND HE GOES, HE JUST GOES CRAZY,
AND HE KILLS THEM BOTH.

BUT HE KILLS ONE FIRST AND THEN
KILLS, YOU KNOW, THE SECOND
VICTIM SECOND.

BUT THERE'S NO MOTIVE FOR WHY HE
EVEN KILLED CHERYL, SO WHY WOULD
IT BE A FINDING THAT THE
DOMINANT MOTIVE FOR CAROL HAD TO
BE SHE WAS A WITNESS TO THE
MURDER OF CHERYL AS AS OPPOSED
TO IT WAS JUST TWO SENSELESS
MURDERS?

>> THERE'S NO INDICATION OF THAT
HE WENT OVER THERE TO KILL
CAROL.

THE ONLY REASON FOR KILLING
CAROL WAS BECAUSE SHE WAS A
WITNESS TO WHAT HAPPENED WITH
CHERYL.

REMEMBER, HE CAME OVER THERE
WITH A HUGE KNIFE.

>> [INAUDIBLE] CAME OVER WITH --
WHY HE WENT OVER THERE.

>> HE SAID HE WENT TO GET A
BEER.

>> BUT THE STATE'S THEORY.
WHY DID HE GO OVER -- DID HE GO
OVER THERE TO TRY TO KILL BOTH
THE PEOPLE IN THIS --

>> NO.
NO, THE STATE'S THEORY WAS THAT
HE WAS AFRAID OF BEING DEPORTED,
HE WENT OVER THERE TO EITHER
THREATEN THEM OR WHATEVER HE WAS
DOING.

IT'S NOT CLEAR WHAT THE MOTIVE
IS, BUT --

>> SO IF WE DON'T KNOW, I GUESS
THAT'S THE -- IF WE DON'T KNOW
WHAT THE MOTIVE IS, HOW CAN WE
SAY THAT THE SOLE OR DOMINANT
MOTIVE FOR THE SECOND VICTIM HAD
TO BE WITNESS ELIMINATION?

>> JUST BECAUSE OF THAT --

>> [INAUDIBLE]

>> EVERY TIME THERE'S A WITNESS
REMAINING, THEY DIDN'T WANT A
WITNESS.

WELL, THAT'S PROBABLY TRUE OF
MOST MURDERS, AND THAT'S NOT
REALLY WHAT THAT AGGRAVATOR WAS
SUPPOSED TO BE DESIGNED FOR.

>> BUT IN THIS CASE, SEE,
WHATEVER HIS MOTIVE WAS, WHEN
CHERYL MET HIM AT THE DOOR, HE
WAS ARMED AND READY FOR HER.
HE WAS INTENDING TO TAKE
WHATEVER HE WANTED BY FORCE.
CAROL WAS NOT A THREAT TO HIM.
THERE WAS NO REASON HE COULDN'T
HAVE LEFT THAT SCENE WITH
WHATEVER HE WANTED --

>> DID HE TAKE THINGS FROM
THE --

>> NO.

AFTER ALL THIS, WHO WOULD?
HE HAS THIS KNOCKDOWN, DRAG OUT,
VIOLENT FIGHT WITH CHERYL ABOUT
WHATEVER HE WANTED TO DO OVER
THERE --

>> BUT THAT'S THE -- AND ISN'T
THERE -- SO THE ANSWER TO
JUSTICE [INAUDIBLE] IS THE
REASON THE FINDING IS SUPPORTED
BY [INAUDIBLE] IS BECAUSE SHE
WAS THE SECOND VICTIM AND
WITNESSED THE FIRST MURDER, AND
WOULD THAT BE THE REASON WHY
HE'S GOT TO FIND SOLE AND
DOMINANT MOTIVE?

>> BECAUSE THERE IS NO OTHER
MOTIVE.

SHE KNEW HIM, HE GOES IN THERE,
SHE KNOWS HE'S IN THERE BECAUSE
HE WALKED THROUGH THE HOUSE.
HE WOULD HAVE SEEN HER.

I MEAN, SHE WOULD HAVE SEEN HIM.

WHAT'S HE GOING TO DO WHEN HE
COMES UPON HER AND THERE'S
GRANDMA AWAKE AND IN THE
WHEELCHAIR?

AND HE VERY PURPOSELY TAKES AND
SAYS, OH.

ONE TIME STRAIGHT SEVERS THE
HEART.

AND SO, I MEAN, YOU LOOK AT THIS
CASE AND THERE IS NO OTHER
MOTIVE EXCEPT THAT SHE SAW IT.

IF THERE'S NO FURTHER
QUESTIONS -- DID I ANSWER YOUR
QUESTION?

>> NO, NO, I THINK YOU DID.

YOU UNDERSTAND THE CONCERN IS
THAT IF WE START EXPANDING THESE
TO THE POINT THAT WE OURSELVES
UNDO THE CAPITAL PUNISHMENT
STATUTE BY OUR INTERPRETATION,
IT JUST SEEMS STRANGE TO ME THAT
THE STATE WOULD BE ARGUING TO

EXTEND IT TO THE POINT THAT THAT
MAY AT SOME TIME BECOME AN
ISSUE.

BUT, NO, YOU ANSWERED IT
COMPLETELY.

>> AND I THINK THIS CASE IS NOT
AN EXTENSION.

THIS CASE IS PRETTY OBVIOUS WHAT
HAPPENED.

I'D ASK THE COURT TO AFFIRM THE
TRIAL JUDGE.

THANK YOU.

>> THANK YOU, MS. DAVIS.

MR. QUARLES.

>> [INAUDIBLE] ACCEPT THE JURY
ON PAGE 684 AS COUNSEL POINTED
OUT, THAT APPEARS TO BE THE
JURY, YOUR HONOR.

WE DID NOT WANT TO BE SEEN AS
ACCEPTING THE JURY -- I THINK
THAT'S PRESERVED ENOUGH.

I DON'T -- APPARENTLY, HE MIGHT
HAVE SAID LATER ON, YOU KNOW, I
ACCEPT THE JURY, BUT HE
REGISTERED HIS OBJECTION.

AND ALTHOUGH HE DIDN'T -- I
SUBMIT THAT HE DID NOT AGREE, HE
DIDN'T IDENTIFY JUROR MORSE, THE

CAUSE CHALLENGE ERRONEOUSLY
DENIED BY THE JUDGE, DID NOT
IDENTIFY HER BY NAME, HE DID
IDENTIFY HER BY POINTING OUT
THERE WAS A JUROR.

HE DESCRIBED IT COMPLETELY.

HE DESCRIBED WHAT HAPPENED.

YOU DENIED MY MOTION, MY CAUSE
CHALLENGE, AND YOU SHOULD NOT
HAVE, JUDGE.

THAT'S THE ONE, I CAN'T COME UP
WITH HER NAME, I'VE TRIED,
NOBODY COULD.

I DON'T RECALL ON THE WITNESS
ELIMINATION, I DON'T RECALL THE
MEDICAL EXAMINER -- MAYBE I'M
WRONG, I DON'T RECALL THE
MEDICAL EXAMINER BEING ABLE TO
SAY WHO WAS KILLED FIRST.

IN FACT, THAT WAS A BIG POINT OF
CONTENTION.

THE JUDGE WAS ON THE PROSECUTOR
THROUGHOUT THE TRIAL SAYING, HOW
CAN YOU SAY IT'S CCP?

YOU DON'T EVEN KNOW WHO WAS
KILLED FIRST?

>> WELL, I THOUGHT THE INFERENCE
WAS FROM THE PLACEMENT OF THE
BLOOD THAT THE BLOOD WAS UP ON

THE HANDLE OR FURTHER UP WITH
REGARD TO THE FIRST VICTIM, AND
THEN THERE WAS BLOOD ON THE
BLADE WITH REGARD TO CAROL'S --
>> THAT MIGHT HAVE BEEN THE
INFERENCE, BUT I DON'T THINK IT
WAS CONCLUSIVE EITHER WAY.
I THINK ON CROSS THEY CHALLENGED
THAT FINDING, THAT TESTIMONY.
IF HE EVEN WAS ABLE TO SAY THAT.
AND YOU'RE RIGHT, THERE WAS NO,
THERE WAS NO MOTIVE EVER PROVEN.
WE DON'T KNOW WHAT WENT ON THAT
NIGHT, WE DON'T KNOW WHY HE WAS
THERE, WE DON'T KNOW THE
SEQUENCE OF EVENTS, IT'S PURE
SPECULATION TO FIND IT WAS
WITNESS ELIMINATION AS THE JUDGE
WROTE IN HIS FINDINGS.
HE SAID IT WAS CONSTITUTIONALLY
SUSPECT TO FIND AN AGGRAVATING
FACTOR THAT WAS NOT SUBMITTED TO
THE JURY.
AND NOT ONLY DID HE FIND IT, BUT
HE GAVE IT GREAT WEIGHT.
RIGHT THERE IN HIS FINDINGS, A
FACTOR THAT WAS NOT SUBMITTED TO
THE JURY.

AND I THINK THAT IS

CONSTITUTIONALLY INFIRM.

>> THANK YOU, MR. QUARLES.

AND THANK YOU, MS. DAVIS.

>> THANK YOU.

>> THE COURT WILL NOW BE IN

RECESS UNTIL TOMORROW MORNING.

>> PLEASE RISE.

SUPREME COURT IS NOW ADJOURNED.