Eric Martinez v. State of Florida

SC06-1597

THE NEXT CASE ON OUR
CALENDAR THIS MORNING IS
MARTINEZ v. STATE.
>> GOOD MORNING, YOUR
HONORS.
MAY IT PLEASE THE COURT I'M
ROBERT GODFREY REPRESENTING
ERIC MARTINEZ.
JUSTIFIABLE USE OF DEADLY
FORCE WAS FUNDAMENTAL ERROR.
MR. MARTINEZ WAS CHARGED
WITH ATTEMPTED PREMEDITATED
MURDER OF HIS GIRLFRIEND.
HE TESTIFIED AT TRIAL.
HIS TESTIMONY WAS THAT HE
WAS LYING DOWN IN BED ABOUT
TO GO TO SLEEP WHEN --
>> WE ARE THOROUGHLY
FAMILIAR WITH THOSE ASPECTS.
SO I THINK MAYBE IF YOU USE
YOUR TIME, YOU HAVE VERY
LIMITED TIME, TO GO INTO
DIRECTLY THE ISSUE AS A, THE
FAILURE TO INSTRUCT ON AN
AFFIRMATIVE DEFENSE.
IS THAT PER SE?
FUNDAMENTAL ERROR?
>> THIS IS NOT A SERIES TO
INSTRUCT.
IT WAS AN ERRONEOUS
INSTRUCTION.
>> ERRONEOUS INSTRUCTION YOU
SAY ON AN AFFIRMATIVE
DEFENSE PER SE FUNDAMENTM L
ERROR?
>> IT IS IN THIS CASE, YOUR
HONOR, FOR SEVERAL REASONS.
IT WAS PERTINENT MATERIAL TO
WHAT THE JURY HAD TO
CONSIDER IN ORDER TO
CONVICT.
IT MADE THE STATE -- IT MADE
THE ABILITY OF THE STATE TO
OBTAIN A CONVICTION EASIER

BECAUSE THE LAW IN
SELF-DEFENSE IS CLEAR THAT
ONCE ANY EVIDENCE IS
SELF-DEFENSE IS INTRODUCED
IT THEN BECOMES THE BURDEN
OF THE STATE TO DISPROVE
BEYOND A REASONABLE DOUBT
THAT SELF-DEFENSE OCCURRED
SO THIS INSTRUCTION BY
TAKING AWAY THE ISSUE FROM
THE JURY MADE IT EASIER TO
OBTAIN A CONVICTION.
IT ALSO DENIED MR. MARTINEZ
DUE PROCESS BECAUSE IT TOOK
AWAY HIS ONLY COMPLETE
DEFENSE IN THE CASE.
>> THAT ONLY THE CASE WHERE
IT'S A COMPLETE DEFENSE?
>> WELL, IN THIS CASE, IT IS
A COMPLETE DEFENSE, YOUR
HONOR.
IT WAS THE ONLY COMPLETE
DEFENSE.
>> THAT'S WHAT THE QUESTION
S. IS IT A PER SE RULE THAT
YOU'RE URGING ONLY WHEN IT
IS A COMPLETE DEFENSE
BECAUSE WE ARE TALKING ABOUT
AFFIRMATIVE DEFENSES AND
THEN, IS THAT FUNDAMENTAL
ERROR AND WHEN AND IF SO?
>> I THINK IT IS WHEN IT,
WHEN IT DOES ALL THESE
THINGS, WHEN TAKES -- WHEN
TAMAKES IT EASIER TO TAKE
THE CONVICTION, WHEN IT
TAKES AWAY THE COMPLETE
DEFENSE --
>> WELL THEN THAT WOULD NOT
BE A PER SE SITUATION.
>> I AM NOT ARGUING --
>> THAT IS MY CASE.
>> I AM NOT ARGUING PER SE,
YOUR HONOR.
I MEAN, I KNOW THE CASE IS
FOR EXAMPLE IN HOLIDAY ON
THIS COURT FOUND ERRONEOUS
INSTRKDS IN THOSE CASES WAS
NOT FUNDAMENTAL ERROR
BECAUSE IT DIDN'T TAKE AWAY
THE DEFENSE IT JUST SIMPLY
SHIFTED THE BURDEN ON TO THE
DEFENDANT.
THIS CASE IS DIFFERENT FROM

THOSE CASES BECAUSE THE
DEFENSE WAS COMPLETELY TAKEN
AWAY.
>> IT'S YOUR POSITION THAT
THIS INSTRUCTION PREVENTED
THE JURY FROM PROPERLY
CONSIDERING THE
SELF-DEFENSE?
IS THAT --
>> COMPLETELY, YOUR HONOR.
>> AND WOULD YOU, WALK US
THROUGH WHY THAT'S TRUE.
>> SURE.
THERE IS ONLY ONE FORCIBLE
FELONY ALLEGED HERE THE
ATTEMPTED PREMEDITATED
MURDER DURING WHEN AN --
WHICH AN AGGRAVATED BATTERY
WAS COMMITTED.
THE DEFENSE TOLD THE JURY
THAT IT WAS A DEFENSE IF THE
INJURY TO MS. REO WAS FROM
THE JUSTIFIABLE USE OF FORCE
BUT THEN THE INSTRUCTION
WENT ON TO SAY THET THE
JUICE OF FORCE IS NOT JOYABLE
IF I FIND ERIC MAR TEEN US
EZWAS ATTEMPTING TO KID
MURDER OR AGGRAVATED
BATTERY.
THIS WAS THE ACT HE SOUGHT
TO JUSTIFY WITH SELF-DEFENSE
BUT THE ACT PRECLUDED THE
JURY FROM FINDING
SELF-DEFENSE.
>> LET ME ASK YOU A QUESTION
WHILE YOU ARE WALKING
THROUGH THAT.
IS IT A CHARBGED FELONY OR
ONE THAT IS JUST THERE BUT
IS NOT CHARGED?
IS THAT A POSSIBILITY?
>> I THINK THAT IS A
POSSIBILITY, YOUR HONOR.
>> WHAT IS THE LAW IF THAT'S
THE CASE?
>> THE LAW WOULD BE IF IT
WAS ALLEGED, I MEAN, I THINK,
IF I CAN BORROW AN EXAMPLE
THAT'S RECENTLY BEEN IN THE
NEWS, SOMEBODY BREAKINIZE TO
A HOUSE COMMIT AGBURGLARLY
AND THE HOMEOWNER PICKS --
HEARS THEM PICKED UP A

MACHETE TO FIND OUT WHAT'S GOING ON AND THE BURGLAR SHOOTS HIM AND THE BURGLAR CHARGES SELF-DEFENSE AND THE ONLY CHARGE FOR WHATEVER REASON IS THE MURDER BUT NOT BURGLARY I THINK THAT THE INSTRUCTION SD COULD BE PROPERLY GIVEN THAT, YOU KNOW, THE USE OF FORCE IS JUSTIFIABLE IF YOU FIND THAT HE WAS COMMITTING A BURGLARLY.
EVEN THOUGH IT'S NOT CHARGED.
>> WELL, LET ME ASK YOU ON THE PREMEDITATION, THE, THE JURY FOUND PREMEDITATED MURDER.
DID IT NOT?
>> THAT'S CORRECT, YOUR HONOR.
>> AND WHY DOESN'T THE FINDING OF PREMEDITATED MURDER NEGATE A SELF-DEFENSE SECRETARY DONALD RUMSFELD?
>> OKAY.
FIRST OF ALL, THERE ARE A COUPLE OF CASES THAT ARE -- IS ONE WHERE, AND I THINK ZIMMERMAN IS THE OTHER ONE WHERE THE PERSON WAS CHARGED AND CONVICTED OF PREMEDITATED MURDER.
THE REASON, YOUR HONOR S THAT YOU CAN HAVE A SITUATION WHERE A PREMEDITATED MURDSER FULLY CONSISTENT WITH SELF-DEFENSE.
FOR EXAMPLE, IF YOU HAVE AN ELDERLY WOMAN IN A CORNER AND SHE'S, A MAN IS APPROACHING HER WITH A KNIFE SAYING I'M GOING TO KILL YOU, SHE MAY REALIZE THAT I DON'T HAVE TIME TO RUN AWAY.
I DON'T HAVE THE ABILITY TO RUN AWAY.
BUT LUCKILY I HAVE A GUN IN MY BRA SO I BETTER PULL IT OUT AND SHOOT HIM OR ELSE I AM GOING TO BE KILLED.
THAT WOULD BE A ATTEMPTED

PREMEDITATED KILLING FULLY
CONSISTENT AND DONE FOR
SELF-DEFENSE.
>> I'D HAVE TO THINK ABOUT
THAT.
I'M NOT SURE I AGREE.
I'M NOT SURE I DISAGREE.
>> OKAY.
>> YOU'VE THOUGHT ABOUT IT.
>> THAT'S THE BEST EXAMPLE I
CAN COME UP WITH YOUR HONOR,.
>> IT'S A GOOD EXAMPLE.
IT'S ONE I THINK THAT ROOMY
FOCUSES IN ON WHETHER
PREMEDITATION CAN NEGATE.
>> I WOULD POINT OUT TWO
CASES.
WHERE THE PERSON WAS CHARGED
WITH AND CONVICTED OF
ATTEMPTED PREMEDITATED
MURDER OR PREMEDITATED
MURDER JUST LIKE HERE.
GOING BACK TO THE
INSTRUCTION, AFTER THE JURY
WAS TOLD THAT, IF YOU FIND
-- THE USE OF FORCE IS NOT
JUSTIFIABLE, IF YOU FIND
THAT HE WAS COMMITTING
ATTEMPTED MURDER OR
AGGRAVATED BATTERY AT THE
END OF THE INSTRUCTION THE
JURY WAS TOLD THAT IF FROM
THE EVIDENCE YOU HAVE A
REASONABLE DOUBT ON THE
QUESTION OF WHETHER OR NOT
THE DEFENDANT WAS JUSTIFIED
IN USE OF FORCE YOU WOULD
FIND -- YOU SHOULD FIND THE
DEFENDANT NOT GUILTY BUT
THEY COULDN'T FIND THAT BAH
OF THIS INSTRUCTION.
RATHER WHAT HAPPENS IS THE
LAST PART OF THE INSTRUCTION
IF FROM THE EVIDENCE YOU ARE
CONVINCED THE DEFENDANT WAS
NOT JUSTIFIED IN THE USE OF
FORCE YOU WOULD FIND HIM
GUILTY IF ALL OF THE
ELEMENTS WERE FOUND.
THE JURY FROM THIS
INSTRUCTION COULD NOT BE
CONVINCED FROM THEFT EFDS
THAT HE WAS JUSTIFIED IN THE
USE OF FORCE BECAUSE THE

JURY WAS TOLD THE USE OF
FORCE WAS NOT JUSTIFIED.
>> SO WHAT HAS DEVELOPICIDE
THAT WE DO HAVE STATUTE THAT
TALKS IN TERMS OF THAT IT'S
NOT JUSTIFIED UNDER CERTAIN
CIRCUMSTANCES.
>> CORRECT.
>> YET WE HAVE WHAT THIS IS
FOUND IT'S WAY INTO THE
STANDARD JURY INSTRUCTIONS,
IS THAT'S WHAT'S HAPPENED?
ALTHOUGH, IN ISOLATION YOU
LOOK AT IT AND IT MAY PAIR
THET STATUTE AS YOU READ
THEM TOGETHER THAT, THEY'RE
CIRCIALER AND THAT IS THAT
BECAUSE OF OUR STANDARD JURY
INSTRUCTION THAT IS WHAT I
AM TRYING TO DETERMINE, HOW
DO WE FIND OURSELVES WHERE
WE ARE TODAY?
>> I THINK WHAT HAPPENED,
YOUR HONOR, AND THIS IS
SPECULATION ON MY PART S
THAT THE, THAT THE STATUTE
AND THE INSTRUCTION ARE
SUPPOSED TO BE WHEN THERE'S
ANOTHER FELONY ALLEGED.
AND THAT WHEN YOU HAVE ONLY
ONE TELL FELONY ALLEGED THAT
THE SECOND PART OF THE
INSTRUCTION, WHICH IS THAT
THE USE OF FORCE IS NOT
JUSTIFIABLE.
IF YOU FIND THAT THE
DEFENDANT INITIALLY PROVOKED
USE OF FORCE AGAINST HIMSELF
IS WHAT SHOULD BE GIVEN.
I THINK THE PROBLEM IS THAT
THE TWO WERE CONFLATED.
>> OKAY.
>> SO BASICALLY, WHATS ARE
HAPPENING, WHEN THE
INSTRUCTIONS ARE GIVEN, THE
FORCIBLE FELONY EXCEPTION IS,
IS ESSENTIALLY SWALLOWING UP
THE DEFENSE ITSELF OF
SELF-DEFENSE.
>> THAT'S RIGHT, YOUR HONOR.
>> ALL RIGHT.
NOW LET'S JUST GET BACK TO
THOUGH, THAT CERTAINLY AND
IF THIS WAS THE CASE WHERE

THERE HAD BEEN AN OBJECTION MADE GIVING IT AND THE JUDGE GAVE IT, I THINK THAT, THAT SINCE -- HARD PRESSED TO SAY THAT THAT WAS, SHE ACTUALLY, HER POSITION IS IT'S JUSTIFIABLE TO GIVE THE INSTRUCTION BUT LET'S JUST ASSUME THAT WE WOULD AGREE THAT THAT WOULD BE ERROR TO HAVE GIVEN IT.
NOW WE GET TO THE QUESTION AS TO WHETHER IT IS FUNDAMENTAL ERROR, AND YOU HAVE A VERY, VERY FAMILIAR WITH THE CASE LAW AND I THINK YOU PROBABLY ANSWERED JUSTICE ANSTEAD'S QUESTION ON IT, BUT WHY, WHY WOULD YOU COMPARE IN THIS CASE AGAIN WHEN YOU HAVE OTHER DEFENSES THAT ARE STRONGER DEFENSES, THAT THIS SAYS DEPRIVED THIS DEFENDANT -- THAT THIS DEPRIVED THE DEFENDANT OF A FAIR TRIAL ESSENTIALLY THAT REACHES DOWN WHEN THERE ARE STILL OTHER DEFENSES AND IT WASN'T HIS MAIN DEFENSE WHY IN THIS CASE WOULD IT BE FUNDAMENTAL ERROR.
>> WELL, LET ME DEAL WITH THE OTHER DEFENSES FIRST.
THE OPINION BELOW US SAYS VOLUNTARY INTOXICATION WAS A DEFENSE.
IN FACT, THE JURY WAS INSTRUCTED THAT VOLUNTARY INTOXICATION WAS NOT A DEFENSE AND DURING THE.
VOLUNTARY INTOXICATION IS NOT A DEFENSE.
AND WHEN YOU HAVE A SELF-DEFENSE CASE, THE NATURE OF THE SELF-DEFENSE IS I ADMIT THAT THE EVENTS HAPPENED BUT THERE'S A REASON FOR IT.
UNDER THESE CIRCUMSTANCES, EXCEPT FOR VERY RARE CASES, THE ONLY OTHER DEFENSE POSSIBLE IS IF YOU FIND ME GUILTY, FIND ME GUILTY OF A

LESSER OFFENSE AND THAT WAS
THE ONLY OTHER REAL DEFENSE
THAT WAS ADVANCED HERE.
THAT APPEARS TO BE THE CASE
IN SEVERAL OTHER CASES HAVE
DEALT WITH THIS ISSUE, FOR
EXAMPLE, IN BARNS, THE
DEFENSE DEFENDANT WAS
CHARGED WITH ATTEMPTED
FIRST-DEGREE MURDER AND
CHARGED WITH ATTEMPTED
SECOND-DEGREE MURDER SAME
THING WITH CART AND WILL
QLMS.
IN FLIN FROM THE SECOND
DISTRICT THIS YEAR, THE
PRIMARY DEFENSE WAS
SOMETHING ELSE.
SO I MEAN, IT DOESN'T APPEAR
THAT THE FACT THAT OTHER
DEFENSES ARE AVAILABLE OR
PERHAPS THEY'RE ADVANCICIDE
RELEVANT TO THIS.
WHAT'S RELEVANT IS THE
FUNDAMENTAL NATURE OF THE
ERROR, AND THAT DOESN'T
CHANGE JUST BECAUSE THERE
REPORT LESSER DEFENSES
AVAILABLE.
ONE OF THE LESSER DEFENSES
AVAILABLE.
>> DO YOU DISGRY WITH THE
THIRD DISTRICT'S
CHARACTERIZATION THAT THIS
IS THE THROWAWAY DEFENSE?
>> ABSOLUTELY, YOUR HONOR.
I MEAN, IT'S VERY CLEAR FROM
MR. MARTINEZ'S TESTIMONY
THAT HE WAS ARGUING THAT HE
HAD NO CHOICE.
HE COULDN'T GET AWAY.
HIS, HIS GIRLFRIEND CAME AT
HIM, STABBING AT HIM SEVERAL
TIMES.
HE HAD NO CHOICE BUT TO
DEFEND HIMSELF.
DEFENSE COUNSEL MADE THE
ARGUMENT BOTH IN OPENING
STATEMENT THAT THE BEST CASE
SCENARIO IS THAT YOU WILL
FIND HIM NOT GUILTY BECAUSE
HE REACTED IN SELF IT WAS.
IN CLOSING ARGUMENT DEFENSE
COUNCIL AGAIN RAISED THE

ISSUE YOU MAY BELIEVE HE
ACTED IN SELF-DEFENSE.
HE ACTED IN PROCESS.
HE REACTED TO THE DEMEANER
ON THE STAND.
OBVIOUSLY THE DEMEANOR OF
THE VICTIM HOW THEY ANSWER
THE QUESTIONS HOW THEY LOOK
WHEN THEY ANSWER THE
QUESTIONS IS NOT SOMETHING
THAT CAN BE REVIEWED FROM
FROM A TRANSCRIPT.
IF THIS IS A QUESTION YOU
ONLY HAVE TO LOOK AT THE
PROSECUTOR'S FINAL ARGUMENT
BEGAN BY, BY TELLING THE
JURY THAT VOLUNTARY
INTOXICATION IS NOT A
DEFENSE.
HE THEN SPENT FOUR PAGES,
292 TO 295 OF THE TRANSCRIPT
EXPLAINING TO THE JURY WHY
HE THOUGHT THAT SELF-DEFENSE
WAS NOT, SHOULD NOT BE FOUND
HERE AND PARTICULARLY
IMPORTANT, WHAT HE TOLD THE
JURY WAS THAT THE RELEVANT
PART OF THE INSTRUCTION THEY
SHOULD LOOK AT IS THE VERY
PART THAT'S ERRONEOUS HERE.
IT IS CLEARLY A DISPUTED,
ISSUE, YOUR HONOR.
IT WAS NOT A THROWAWAY
DEFENSE.
>> WHEN WE TALK IN TERMS OF
A DISPUTED ISSUE, DO WE, THE
THIRD DISTRICT SAYS WE LOOK
TO THE STRENGTH OF THAT
DISPUTE.
DO YOUGRY WITH THAT.
>> I DISAGREE WITH IT
TOTALLY.
WHAT ALL THE COURTS HAVE
DONE IS CORRECT.
WAS THERE EVIDENCE OF
SELF-DEFENSE?
WAS IT IN DISPUTE?
IF THAT'S THE CASE, THEN
THIS INSTRUCTION IS IN
FUNDAMENTAL AIRER.
>> SO ALL THREE OF THE BASES
THEY USE TO REJECT
FUNDAMENTAL ERROR YOU ASSERT
ARE ERRONEOUS.

>> THAT'S CORRECT.
FOURTH DISTRICT, THERE THE COURT HELD THE JURY INSTRUCTION DOES NOT CONSTITUTE FUNDAMENTAL AERROR IF THE EVIDENCE DEDUCED AT TRIAL DO NOT SUPPORT SELF-DEFENSE.
HIXEN, FOUND THAT AFTER REVIEW OF THE ENTIRE RECORD ON APPEAL THE FAILURE TO OBJECT TO THE ERRONEOUS INSTRUCTION WAS NOT FUNDAMENTAL ERROR BECAUSE HIXEN WAS NOT ENTITLED TO HAVE SFL DEFENSE INSTRUCTION AT TRIAL.
AND FINALLY I POINT TO THE RECENT CASE FROM FIFTH DISTRICT BARNES WHERE THE STATE WAS REPRESENTED BY US POSING COUNSEL HERE.
IN THAT CASE THE STATE'S ARGUMENT WAS THE ERRONEOUS INSTRUCTION DOES NOT CAUSE FUNDAMENTAL ERROR IF THE EVIDENCE PRODUCED AT TRIAL DOES NOT SUPPORT SELF-DEFENSE INSTRUCTION.
THAT'S WHAT YOU SHOULD DO IS SEE IF THERE WAS EVIDENCE, TO SEE IF THERE WAS.
>> THAT'S ONLY WHERE IT'S A COMPLETE DEFENSE?
FOR AN AFFIRMATIVE DEFENSE?
>> WELL, ON IN THIS CASE, I DON'T THINK YOU HAVE TO DECIDE THAT BECAUSE IT IS THE ONLY COMPLETE DEFENSE.
>> JUSTICE QUINCE, I'M SORRY.
>> SO IS YOUR ARGUMENT REALLY THAT CASE LAW SUPPORTS THAT IT IS ALWAYS FUNDAMENTAL ERROR IF YOU HAVEN'T HAD AN OBJECTION SO IT'S FUNDAMENTAL ERROR UNDER THESE KINDS OF CIRCUMSTANCES ALWAYS?
I MEAN, I'M NOT SURE OF WHEN YOU, YOU GET TO THE, TO THE FUNDAMENTAL ERROR PART.
WE HAVE A RULE THAT SAYS THAT THE DEFENDANT IS

SUPPOSED TO OBJECT TO THE
GIVING OR THE FAILURE TO
GIVE A JURY INSTRUCTION.
CORRECT?
>> CORRECT.
>> THIS DEFENDANT DID NOT
OBJECT TO THIS PARTICULAR
JURY INSTRUCTION.
AND SO UNDER WHAT
CIRCUMSTANCES DO YOU FIND
THAT IT IS FUNDAMENTAL
ERROR?
ONLY WHEN THERE IS NO OTHER
DEFENSE?
OR NO OTHER COMPLETE DEFENSE
AS JUSTICE LEWIS SAYS OR, OR
WHAT?
>> WELL, CERTAINLY, I
WOULDN'T SAY WHEN THERE'S NO
OTHER DEFENSE, YOUR HONOR.
IT IS NOT THAT STRICT.
WHEN THERE IS -- WHEN THIS
IS A COMPLETE DEFENSE AND
WHEN IT'S DISPUTED, AND WHEN
IT MAKES THE, THE ERRONEOUS
INSTRUCTION MAKES THE
CONVICTION EASIER FOR THE
STATE TO OBTAIN, I WOULD
ARGUE THAT THAT'S
FUNDAMENTAL ERROR.
THIS IS ONLY ONE OF MORE
THAN 70 CASES THAT HAVE
DECIDED THIS ISSUE WHERE
SIMILARLY DEFENDANT COUNSEL
HAS NOT OBJECTED AND
FUNDAMENTAL ERROR HAS BEEN
FOUND.
THIS IS THE ONLY CASE WHERE
FUNDAMENTAL AIRER WAS NOT
FOUND.
THIS IS THE OUT LIAR CASE ON
THIS ISSUE.
>> LET ME ASK YOU A QUESTION
AND GOING BACK TO YOUR
HYPOTHETICAL FOR ME.
IN THAT CASE,,,,,,,
""HE KILLED HER TO DEFEND
""HIMSELF.
""HE IS SAYING IT IS
""SELF-DEFENSE.
""I WASN'T REALLY GOING TO
""KILL HER.
""I TOOK OUT A KNIFE AND
""TOLD HER I WAS GOING TO,

""BUT SHE TOOK OUT A GUN
""ON ME AND THEN I HAD TO
""KILL HER, WOULD THAT
""DEFENSE BE AVAILABLE TO
""HIM?
""IF HE ASSERTS SELF
""DEFENSE, COULD THAT
""INSTRUCTION BE GIVE NOON
""THE SECOND PART OF THE
""INSTRUCTION WILL COVER
""THAT AND USE OF FORCE
""LIKELY TO CAUSE DEATH IS
""NOT JUST FINAL IF YOU
""FINE THE DEFENDANT
""PROVOKED THE USE OF
""FORCE AGAINST HIMSELF.
"">> WAS THAT INSTRUCTION
""GIVEN IN THE CASE?
"">> IT WAS, YOUR HONOR.
"">> ARE YOU SAYING THAT
""INSTRUCTION WAS?
"">> THAT INSTRUCTION IS
""NOT AT SHURB AT ALL
""BECAUSE THE TESTIMONY
""WAS NOT LIKE THAT.
"">> IN JUSTIN CANTERO'S
""SCENARIO, THERE WOULD BE
""SEPARATE?
"">> I DIDN'T CATCH THE
""QUESTION.
"">> WOULD THERE BE
""INITIAL ASSAULT?
""WHEN THE GUN WAS HELD,
""AND SAID, I AM GOING TO
""KILL YOU, WOULD THAT BE
""A SEPARATE ACT FROM THE
""LATER MURDERS?
"">> IT ARGUABLE COULD BE,
""YES, YOUR HONOR.
""IT IS COVERED IN THE
""SECOND DESCRIPTION.
"">> ANY ARGUMENT HERE
""THAT THE INSTRUCTION WAS
""APPROPRIATE?
""THAT THE INSTRUCTION WAS
""APPROPRIATE?
"">> YES.
"">> I AM SURE OPPOSING
""COUNSEL WILL ARGUE
""OTHERWISE.
""IT SEEMS CLEAR THAT THEY
""HAVE CONSIDERED THE
""ISSUE THAT WHEN YOU ARE
""ONLY CHARGED WITH

""FORCIBLE FELONY, YOUR
""DEFENSE IS I HAD TO
""COMMIT THOSE ACTS ON THE
""RIGHT TO DEFEND MYSELF,
""IT IS CONFUSION, IT
""NEGATES.
"">> I AM EN VITIONING A
""SCENARIO, THERE MAY OR
""MAY NOT HAVE BEEN
""EVIDENCE.
""A SCEN NOIR YO LIKE THE
""HYPOTHETICAL WE HAVE
""BEEN TALKING ABOUT,
""WHERE THERE IS EVIDENCE
""INTRODUCED THAT THE
""DEFENDANT WAS THE
""INITIAL AGGRESSOR AND HE
""IS ARGUING SELF-DEFENSE
""BECAUSE IT IS A
""CREDIBILITY ISSUE OF
""WHETHER HE WAS THE
""INITIAL AGGRESSOR OR
""NOT.
""IF HE WAS THE INITIAL
""AGGRESSOR, AND IT SEEMS
""TO ME, SUCH AN
""INSTRUCTION MAY BE
""APPROPRIATE.
"">> FIT WAS, THEN THE
""JURY WOULD FIND THE
""SECOND PART APPLIES.
""THE RECENT ONE ADDRESSES
""THIS.
""THIS STATE IS CORE RICT
""TO NOTE THAT THE STATUTE
""INTENDED TO PREVENT
""DEFENDANTS FROM
""ASSERTING SELF-DEFENSE
""WHEN THEY EN CAGE IN
""ACTS THE PORTION OF THE
""FELONY DEALING WITH
""PROVOCATION AN RETREAT
""WHICH US THE SECOND PART
""OF THE EXCEPTION IS
""ACCEPTABLE FOR
""ACCOMPLISHING THAT
""PURPOSE BUT ISSUE HERE
""IS THE, IS WHAT HAPPENS
""WHEN THE JURY BELIEVES
""THE DEFENSE SELF-DEFENSE,
""BUT PRECLUDE FROM THE
""INSTRUCTION.
"">> YOU ARE MOVING INTO
""REBUTTAL, IF YOU WOULD

""LIKE TO SAVE TIME?
""YOU CAN USE IT AS YOU
""WISH.
"">> THAT WOULD BE GREAT.
""THANK YOU VERY MUCH.
"">> MAY IT PLEASE THE
""COURT, MY NAME IS
""KRISTEN DAVENPORT.
"">> HOLD ON.
""THERE YOU GO.
"">> MY NAME IS KRIST
""DAVENPORT.
""I REP REPRESENT THE
""STATE OF FLORIDA.
""FIRST OF ALL, THE CASES
""THAT ARE FINDING IT TO
""BE CIRCULAR ARE
""MISREADING IT.
""THIS IS, THIS IS AN
""EXCEPTION TO
""SELF-DEFENSE THAT IS
""WRITTEN INTO THE STATUTE
""AND TO USE THE OLD LADY
""BEING ATTACKED BY THE
""DEFENDANT, LET ME
""EXPLAIN WHY THIS IS
""IMPORTANT INSTRUCTION.
""OR AN IMPORTANT
""EXCEPTION.
""SOMEBODY IS COMING,
""LET'S SAY INSTEAD OF THE
""OLD LADY BE AWARE, THE
""PERSON COMES TO THE
""HOUSE, SHE SLEEPS WITH
""HER GUN IN THE HAN
""BECAUSE SHE IS REALLY
""PARANOID, SO THE
""DEFENDANT COMES INTO HER
""HOUR, MIND YOU, AFTER
""THE, AFTER THE ENACTMENT
""TO THE SELF DEFENSE,
""THEY DON'T HAVE TO
""RETREAT ANYMORE, SO THE
""DEFENDANT IS IN HER
""HOUSE, HE IS COMING IN
""TO KILL HER.
""SHE IS NOT AWARE OF IT.
""SHE IS NOT PROVOKED TO
""PULL THE GUN.
""SHE JUST HAS A GUN.
""AS HE IS COMING TOWARD
""HER, HER EYES GO OPEN.
""HE SHOOTS HER.
""OKAY.

""THE ONLY REASON HE CAN'T
""CLAIM SELF-DEFENSE IN
""THAT SITUATION IS
""BECAUSE LEGISLATURE HAS
""SAID THAT SOMEBODY IS
""COME COMMITTING A
""FORCIBLY FELONY DOESN'T
""GET TO USE DEFENCE.
""S THAT YOU THE ONLY WITH
""A REASON HE CAN'T USE IT
""THERE.
""IT IS IMPORTANT TO NOT
""EVIS RATE THIS EXCEPTION.
""WHICH IS WHAT THEY ARE
""DOING.
"">> WHAT IF HE HADN'T
""BROKEN INTO THE HOME?
"">> THERE IS A SEPARATE
""FELONY INVOLVED.
""WHAT IF HE WAS A GUEST
""OF THE HOME, HAPPENED TO
""WALK INTO THE BEDROOM?
"">> HE KAY, WAS WALKING
""IN THERE TO KILL HER
""THOUGH.
"">> HE JUST WALKS INTO
""THE ROOM.
""SHE SHOOTS HIM.
"">> HE WAS NOT AWARE,
""THAT SHE SLEEPS A GUN,
""HE IS NOT A BURGLARY, HE
""IS ATTEMPTED MURDERER,
""HE DECIDED HE IS GOING
""TO KILL HER.
""HE CAN GO IN THERE WITH
""A GUN, THE ONLY REASON
""HE CAN'T CLAIM
""SELF-DEFENSE BECAUSE HE
""CAN SAY, WELL, SHE HAD A
""GUN, SO I HAD TO DEFEND
""MYSELF, HE WAS
""COMMITTING AN ATTEMPTED
""MURDER AT THE POINT.
"">> UNDER YOUR ARGUMENT,
""THERE IS NO SELF-DEFENSE
""ANY TIME YOU ARE CHARGED
""WITH COMMITTING A
""FORCIBLE FELONY.
""A MYMENT IS, THE LEDGE
""SLAUR DEFINED THE
""PERIMETERS OF
""SELF-DEFENSE.
""FUR IN THE ROSS ZFS
""COMMITTING FORCIBLE

""FELONY, YOU DON'T GET TO
""CLAIM SELF-DEFENSE.
"">> THAT IS WHERE IT
""BECOMES CIRCULAR.
""ARE YOU COMMITTING AS
""PART OF YOURSELF
""DEFENSE?
""OR ARE ARE YOU ENGAGED
""IN IT BEFORE THE OTHER
""ACTS AROSE?
""THAT IS WHAT, THAT IS
""WHERE IT BECOMES
""CIRCULAR ARGUMENT.
"">> WELL, THERE IS
""NOTHING SR.! CIRCULAR
""THOUGH, IT IS A TIMING
""ARGUMENT.
""THE JURY HAS TO DECIDE
""WHETHER HE WAS
""COMMITTING THE OFFENSE.
"">> BUT IN THAT
""INSTRUCTION DOESN'T TELL
""THEM AT THE TIMING, DOES
""IT?
""IT DOESN'T REALLY SAY.
"">> A COMMON
""UNDERSTANDING OF THE
""INSTRUCTION BECAUSE --
"">> I DON'T KNOW.
""AS YOU START READING
""THEM, IT TELLS BUT A
""FORCIBLE FELONY.
""IT SAYS BUT ABOUT IT IS
""NOT A DEFENSE IF YOU ARE
""COMMITTING A FORCIBLE
""FELONY.
"">> RIGHT.
"">> IT DOESN'T SAY IF YOU
""ARE ENGAGED AT THE TIME.
""WHAT I AM SAYING IS, I
""UNDERSTAND WHAT YOU ARE
""SAYING, BUT YOU IT
""APPEARS THE WORDING IN
""CONTEXT WITHOUT SOME
""MORE, A FEW MORE WORDS
""IS WHAT THE COURTS ARE
""SAYING MAKES IT
""MISLEADING, NOT THE
""CONCEPT.
"">> RIGHT.
""BUT THE CONCEPT, FIRST
""OF ALL, THE LANGUAGE OF
""THE STATUTE, EVERYBODY
""UNDERSTANDS WHAT THE

""STATUTE MEANS, IF YOU
""JUST READ IT.
""IF I CAN REFORETHE
""PROSECUTOR'S CLOSING
""ARGUMENT IN THE CASE.
""HE READS THAT PORTION OF
""THE SELF-DEFENSE
""INSTRUCTION, THEN, HE
""SAYS, IN OTHER WORDS, IF
""THE DEFENDANT WAS
""COMMITTING AN ATTEMPTED
""MURDER AGAINST THE
""VICTIM, ENGAGING IN A
""BATTERY, YOU CAN'T NOW
""SAY, HE ORBS YEAH, I HAD
""TO USE DEADLY FORCE,
""BECAUSE SHE ATTACKED ME
""WITH A DEADLY WEAPON, HE
""EXPLAINS IT PERFECTLY,
""THAT IS WHAT THE
""INSTRUCTION IS DESIGNED
""TO PREVENT.
""HE DOESN'T GET TO USE
""SELF-DEFENSE THEN.
"">> YOU ARE SAYING THE
""ARGUMENT CURES THE
""OBSTRUCTION THEN.
"">> I AM SAYING IT MAKES
""IT, FIRST OF ALL, NOT
""FUNDAMENTALER RR, IN
""ORDER TO FIND THAT THE
""JURY, THAT THIS IS
""CIRCULAR, THE JURY
""COULDN'T UNDERSTAND IT.
""YOU HAVE TO ASSUME, THE
""JURY, FIRST OF ALL,
""DOESN'T HAVE A REMOTE
""UNDERSTANDING OF
""SELF-DEFENSE.
""I DON'T THINK THAT IS
""TRUE.
""I THINK THAT IS A COMMON
""SENSE KIND OF A THING.
""SECOND OF ALL, YOU HAVE
""TO ASHUM THE JURY TOOK
""THE ONE SENTENCE,
""DECIDED THAT, BECAUSE IF
""IT IS CIRCULAR, WHAT IT
""MEANS IS, IF HE WAS
""COMMITTING THE OFFENSE,
""AND YOU CAN'T USE
""SELF-DEFENSE, THAT IS
""HOW THEY ARE
""INTERPRETING ATE AS

""CIRCULAR, THE JURY HAS
""TO SAY, EVERYTHING THAT
""THE PARTIES ARGUED, ALL
""MY UNDERSTANDING OF SELF
""DEFINS OUT THE WINDOW
""BECAUSE THIS ONE
""SENTENCE DOES, THIS IS
""DEFENSE THAT IS NEVER
""APPLICABLE.
""THAT IS WHAT YOU HAVE TO
""READ IT AS.
""I DON'T THINK THE JURY
""WOULD DO THAT.
"">> THAT IS WHAT YOU READ
""FROM THE STATE
""ATTORNEY'S ARGUMENT.
""THAT IF YOU WERE
""CHARGED, WHAT YOUR
""ARGUMENT SEEMS TO
""FINALLY BREAK DOWN TO IS
""THAT IF YOU WERE CHARGED
""WITH ATTEMPTED MURDER OR
""AGGRAVATED BATTERY,
""SELF-DEFENSE IS NEVER A
""DEFENSE FOR YOU?
""THAT SEEMS TO BE EXACTLY
""WHAT YOU JUST READ FROM
""THE PROSECUTOR'S ARGUE.
"">> NOT AT ALL.
""WHAT IT IS IS, IF YOU
""WERE COMMITTING IT, YOU
""CAN'T CLAIM SELF-DEFENSE.
""IF I GO IN THERE TO KILL
""THE OLD LADY, I DON'T
""GET TO CLAIM
""SELF-DEFENSE BECAUSE SHE
""HAS GUN, SHA IS
""LEGISLATIVE
""DETERMINATION THAT WE
""DON'T WANT CRIMINALS TO
""BE ABLE TO CLAIM
""SELF-DEFENSE SO THEY CAN
""COMPLETE THEIR CRIMES.
"">> THE SAME CLOSING
""ARGUMENT, TELL THE JURY,
""THAT IF YOU BELIEVE THE
""DEFENDANT, THAT HE WAS
""ATTACKED FIRST AND THAT
""HE WAS ONLY ACTING IN
""REACTION TO BEING
""ATTACKED THEN YOU SHOULD
""FIND FOR HIM AND FIND IT
""WAS SELF-DEFENSE.
"">> WELL, WHAT THE --

""WHAT THE ARGUMENT WAS
""AGAINST SELF-DEFENSE IN
""THIS CASE WAS THAT HE
""HAD TO A DUTY TO
""RETREAT.
""SO EVEN IF THIS LITTLE
""WOMAN, HE SAYS THIS.
"">> THE CASE OF A LITTLE
""WOMAN HERE WE'RE ARGUING
""ABOUT, YOU ARE TAKING IT
""HYPOTHETICAL AND USING
""THAT AS A THE FOCUS,
""WHILE WE ARE TRYING TO
""DEAL WITH A DAYS WE
""ACTUALLY HAVE.
""THE PROSECUTOR DID NOT
""EVER TELL THE JURY THAT
""IF YOU BELIEVE HIS
""VERSIONS OF THE EVENTS,
""THEN YOU SHOULD FIND HE
""ACTED IN SELF-DEFENSE.
""NOW, WHAT I AM ASKING
""YOU, THOUGH, AS THE
""PROSECUTOR HERE, TODAY,
""OKAY, IF THE JURY WERE
""TO ACCEPT HIS VERSION OF
""EVENTS THEN, WOULD HE BE
""ENTITLED TO BE ACQUITTED
""UNDER HIS DEFENSE OF
""SELF-DEFENSE?
"">> NOT WHEN YOU LOOK AT
""THE TESTIMONY COMPLETELY
""AND HERE IS WHY BECAUSE
""AT THE END OF THE
""TESTIMONY, ONE OF HER
""WOUNDS WAS REFERRED AS
""TO A SUCKING CHEST
""WOUND, IN HER BACK, THAT
""HE STABBED HER SO HARD,
""IT WENT ALL THE WAY
""THROUGH INTO HER LUNG,
""AND WHEN THE, WHEN THE
""PROSECUTOR
""CROSS-EXAMINED THE
""DEFENDANT ABOUT THAT,
""SAID WAS THAT WOUND IN
""SELF-DEFENSE?
""ON THE DEFENDANT SAID,
""NO, I CAN'T SAY THAT.
""BUT WE WERE STRUGGLING.
""WE WERE DRUNK.
""EVERYBODY WAS BAD.
""THAT IS WHAT THE TEXT
""PLAN NATION FOR THAT

""WAS.
""
>> YOU ARE ENDING UP
""SAYING, THOUGH, ON THE
""FACTS OF THIS CASE,
""THEN, THAT IN EFFECT, HE
""DIDN'T HAVE A
""SELF-DEFENSE.
""YOU KNOW, BUT OUR LAW
""IS, THAT IF HE PRESENTS
""ANY EVIDENCE AS TO THIS
""DEFENSE THEN HE IS
""ENTITLED TO PROPER
""INSTRUCTIONS, IT DOESN'T
""TURN ON WHETHER OR NOT
""YOU WOULD SAY, WELL, IT
""DOESN'T BECOME CREDIBLE,
""YOU KNOW, BECAUSE OF THE
""WOUND, YOU KNOW, THAT WE
""MIGHT ACCEPT THAT, YOU
""KNOW AS MEMBERS OF THE
""JURY OR WHATEVER, SO THE
""DIFFICULTY I AM HAVING
""IS THAT IF INDEED THE
""PROSECUTOR IS REALLY
""SAYING, THERE IS NO
""SELF-DEFENSE HERE
""BECAUSE THE WAY THE
""STATUTE PROVIDES, THEN
""HAVEN'T WE IN EFFECT
""THEN ELIMINATED UNDER
""THESE INSTRUCTIONS HIS
""RIGHT TO HAVE THE
""SELF-DEFENSE PRESENTED
""TO THE JURY AND FAIRLY
""CONSIDERED?
""I AM HAVING DIFFICULTY
""UND SHALL THE WAY YOU
""ARE STREWING THE STATUTE
""THAT HE WOULD EVER GET
""THAT OPPORTUNITY.
""
>> IF THE PROSECUTOR HAD
""ARGUED AS DISTRICT
""COURTS HAVE FOUND THIS
""INSTRUCTION TO BE READ,
""IF THE PROSECUTOR HAS
""SAID, LOOK, HE HAS
""ADMITTED HE STABBED HER
""AN ONCE HE ADMITS THAT
""HE STABBED HER, HE CAN'T
""CLAIM SELF-DEFENSE
""BECAUSE HE WAS
""COMMITTING A FELONY.
""HE COMMITTED A FELONY SO
""HE CAN'T CLAIM

""SELF-DEFENSE.
""S THAT YOU THE CIRCULAR
""PART OF THIS
""INSTRUCTION.
""THAT IS NOT WHAT THE
""PROSECUTOR ARGUED.
""WHAT THE PROSECUTOR
""ARGUED WAS HOW THIS
""REALLY APPLIED WHICH IS
""IF HE WAS COMMITTING IT
""AT THE TIME SELF-DEFENSE
""AROSE.
"">> THAT I WHY I ASKED
""BUT THE OTHER SIDE.
"">> RIGHT.
"">> IF THE PROSECUTOR
""SAID, BUT ON THE OTHER
""HAND.
"">> RIGHT.
"">> DO YOU BELIEVE HIM?
""HE DIDN'T DO ANYTHING
""UNTIL HIS LIFE WAS
""THREATENED AND HE WAS
""ATTACKED, THEN YOU
""SHOULD CONSIDER HIS
""SELF-DEFENSE?
"">> WELL, WHAT HE SAID
""WAS, HIS VERSION OF
""EVENTS IS NOT CREDIBLE
""BECAUSE HE HAD A SMALL
""CUT ON THE PINKY.
"">> NOW, THAT GUESS TO
""THE EVALUATION OF THE
""DEFENSE.
""NOW, DOES THE LAW OF
""FLORIDA SAY THAT JUDGES
""ARE SUPPOSED TO
""EEVALUATE THE
""CREDIBILITY OF THE
""TESTIMONY IN DETERMINING
""WHETHER TO GIVE AN
""INSTRUCTION IF
"">> NO.
"">> BUT I MAY AGREE WITH
""YOU.
""I UNDERSTAND THESE
""THINGS ARE ALL PART OF
""THIS CASE.
""THEY GO TO REFUTING THAT
""DEFENSE, BUT THAT IS
""WHAT WE MUST TALK ABOUT?
""DON'T WE NEED TO TALK
""ABOUT THE LEGAL BASES
""NOT WHETHER THE FACTS

""WHETHER WE AGREE OR NOT.
"">> WE ARE NOT CONTENDING
""HE WAS NOT ENTITLED TO
""SELF-DEFENSE.
""WHEN HE GOT UP THERE AND
""SAID HE STABBED ME
""FIRST, HE WAS ENTITLED
""TO SELF DEFENSE, YOU
""ONLY NEED EVIDENCE, WE
""HAVE IT HERE.
""HE WAS ENTITLED TO
""SELF-DEFENSE
""INSTRUCTION.
""WHAT MY ARGUMENT IS, THE
""WAY THE COURTS ARE
""CONSTREWING THIS ONE
""SENTENCE IN A FOUR-PAGE
""SELF-DEFENSE INSTRUCTION
""IS CONTRARY TO COMMON
""SENSE.
""NOT HOW THE INSTRUCTION
""IS READ.
""IT IS NOT HOUT HOW THE
""PROSECUTOR EXPLAINED IT.
""IT IS READING SOMETHING
""IN THAT A JURY ISN'T
""GOING TO DO BECAUSE THE
""JURY IS ISN'T GOING TO
""SAY, I HAVE A FOUR PAGE
""SELF-DEFENSE IN STLAUX
""EVERYBODY IS TALKING
""ABOUT, THE DUTY TO
""RETREAT, WHERE THE
""WOUNDS WERE COME PRABL,
""THE YOU SIZE DIFFERENCE
""THOSE ASPECTS, BUT, HEY,
""THERE IS A SENTENCE IN
""HERE THAT SAYS HE DON'T
""GET IT IF HE COMMITTED
""THE CRIME.
"">> WHAT IS DIFFERENCE
""BETWEEN YOU USING THIS
""DEEP WOUND, OKAY, AS AN
""INDICATION OF WHAT HIS
""INTENT WAS, AND
""CROSS-EXAMINATION OF
""HIM, REALLY WHAT IS THE
""DIFFERENCE BETWEEN THAT
""AND, OF COURSE, THERE IS
""A TERRIBLE DIFFERENCE,
""YOU KNOW, BUT WHAT IS
""DIFFERENCE BETWEEN THAT
""AND IF AS YOUR OPPONENT
""SAYS WHEN HE IS POSING

""WHAT COULD OCCUR HERE
""THAT THE DEFENDANT HAS A
""GUN BUT HE DECIDES, I
""HAVE GOT TO PULL THE
""TRIGGER OF THE GUN IN
""ORDER TO DEFEND MYSELF,
""NOW, YOU DON'T HAVE ANY
""DEEPER WOUND THAN YOU DO
""OF A BULLET GOING
""THROUGH, SO I AM HAVING
""DIFFICULTY WITH THE
""ARGUMENT THAT IN EFFECT
""BY INFLICTING SUCH
""HEINOUS WOUNDS, SUCH A
""MORTAL WOUND, THAT YOU
""LOSE THIS RIGHT OF
""SELF-DEFENSE AND NOW YOU
""ARE COMMITTING THE
""FORCIBLE FELONY, YOU
""KNOW, THAT IS INVOLVED
""HERE, THAT THAT WOULD
""ALWAYS BE THE CASE IN
""THE HYPOTHETICAL THAT
""YOUR OPPONENT HAS
""PROPOSED TO US, THAT IS
""SOMEBODY DECIDES THAT MY
""ONLY CHOICE IS IN ORDER
""FOR ME TO BE PREVENTED
""FROM BEING MORTALLY
""WOUNDED IS I GOT TO PULL
""THE TRIGGER.
""BUT ISN'T THAT STILL A
""VALID SELF-DEFENSE?
"">> LET ME, LET ME GO
""BACKING TO THE WOUND.
""THE WOUB IS NOT MAKE IT
""SO HE DOESN'T GET A
""SELF-DEFENSE
""INSTRUCTION.
""IT MAKES IT AN
""INCREDIBLE DEFENSE
""BECAUSE HE ADMIT ON THE
""STANTIAL YEAH, THAT
""PARTICULAR WOUND WAS NOT
""IN SELF-DEFENSE.
""HE TILL GETS IT BECAUSE
""OF THE OTHER SYSTEM.
""BUT LET'S SAY THAT
""INSTEAD OF ALL THESE
""STABBINGS, ALL WE HADS
""WITH A GUNSHOT.
""HIS TESTIMONY IS, I WAS
""SLEEPING, SHE CAME UP TO
""ME, TRIED TO KILL ME

""WITH HER SCISSOR, SO I
""HAD TO KILL HER.
""OKAY.
""IF THAT TESTIMONY IS
""BELIEVED THEY SHOULD
""ACQUIT HIM.
""THE INSTRUCTIONS TELL
""HIM THAT.
""BUT WHAT CAN'T HAPPEN IF
""THE VICTIM'S TESTIMONY
""IS BELIEVED, I WAS THE
""ONE WHO WAS SLEEPY, HE
""CAME UP AND STARTED
""CHOKING ME, SO I WENT
""AFTER HIM WITH A
""SCISSORS WHICH IS
""PROBABLY WHAT HAPPENED.
""HE SHOT ME.
""HE DOESN'T GET TO CLAIM
""SELF-DEFENSE THEN
""BECAUSE HE WAS
""COMMITTING ATTEMPTED
""MURDER WHEN HIS
""JUSTIFICATION AROSE.
"">> I DISAGREE WITH THAT.
"">> I AM SORRY.
"">> ISN'T THAT A PROBLEM
""THEN WITH THE
""INSTRUCTION?
""BECAUSE YOU ARE ARE
""REALLY MAKING YOUR
""ARGUMENT BASED ON
""TIMING.
""YOU BELIEVE SOMEONE
""ASKED BUT THAT EARLIER.
"">> RIGHT.
"">> BUT THIS INSTRUCTION
""IS NOT A TIMING
""INSTRUCTION.
""IT DID NOT SAY THAT IF
""HE WAS ATTEMPTING TO
""COMMIT, COMMITING OR
""ESCAPING FROM THE
""COMMISSION OF THE
""ATTEMPTED MURDER OR
""AGGRAVATED BATTERY THAT
""HE STARTED FIRST OR SOME
""LANGUAGE TO THAT EFFECT,
""SO IF YOU, THIS
""LANGUAGE, THIS STATUTE
""DOESN'T, THIS
""INSTRUCTION DOESN'T SAY
""THAT, AND SO, YOU ARE
""READING INTO THIS

""INSTRUCTION THAT KIND OF
""LANGUAGE IT SEEMS TO ME.
">> WHAT THE
""UNINSTRUCTION SAYS IS
""JUSTIFYCATION IS NOT
""AVAILABLE IF HE WAS
""COMMITTING AN ATTEMPTED
""MURDER, WAS COMMITING
""AND THE PROSECUTOR --
">> SO THE TEXT -- YOU
""EXPLAINED THAT.
""I THINK BY SAYING WAS
""KOMENT MITTING THAT
""IMPLIES THE TIMING WHEN
""THE NEXT UNINSTRUCTION
""TALKS ABOUT TIMING.
""IN A COMMON SENSE
""UNDERSTANDING.
">> WHY IS IT AT ALL
""NECESSARY IF YOU HAVE
""THE CHARGED OFFENSE YOU
""HAVE THE INSTRUCTION,
""USE OF FORCE, DEFENSE OF
""PERSON WHICH SAYS YOU
""CAN DEFEND YOURSELF
""AGAINST THE USE OF
""FORCE, EVEN DEADLY FORCE
""IF NECESSARY IF.
""AND IT STOPS THERE.
""DOESN'T THAT MAKE IT
""ABSOLUTELY CLEAR TO THE
""JURY WHAT THEY HAVE TO
""DETERMINE?
">> NO.
""AN HERE IS WHY.
""THIS IS AN EXCEPTION.
""FOR THE PERSON WHO IS
""GOING IN TO MURD ARE THE
""OLD LADY AND SEE SHE HAS
""A GUN, OH, GOOD, NOW I
""CAN CLAIM SELF-DEFENSE.
">> THAT GOES BACK TO THE
""OPENING ARGUMENT, THAT
""IS JUST COMMON SENSE.
">> RIGHT.
">> EVERYBODY HAS THAT
""COMMON SENSE.
""THAT THAT WOULD NOT BE
""SELF-DEFENSE.
">> BUT IT WOULDN'T BE
""SELF-DEFENSE BECAUSE OF
""THIS SECTION OF THE
""STATUTE.
""ORDINARILY, IF I AM

""WALKING THROUGH A
""BEDROOM ON THE WAY TO
""GET A CLASS GLASS OF
""WATER, I SEE HER WITH A
""GUN, SHE POINTS IT AS
""SHE IS OPENING HER EYE,
""I THINK I WOULD BE
""JUSTIFIED IN USING
""DEADLY FORCE IF I WAS
""AFRAID SHE WAS COMING AT
""ME.
""THE REASON I AM NOT
""BECAUSE THE LEGISLATURE
""SAID IF I WINT IN THERE
""TO KILL HER, I DON'T GET
""TO USE SELF-DEFENSE
""BECAUSE I WAS COMMITTING
""A CRIME WHEN
""JUSTIFICATION AROSE.
"">> YOUR ARGUMENT IS ONCE
""THE STATE IN ITS
""INVESTIGATION OF THE
""FACTS BELIEVES THAT A
""PREMEDICATED, IN THE
""CASE, OFFENSE OCCURRED,
""YOU HAD NO SELF-DEFENSE?
"">> THAT IS WHAT THE
""STATUTE SAYS.
""ONCE YOU -- THE JURY HAS
""TO EVALUATE THAT.
"">> IF THE JURY BELIEVES
""HIM, NOT THE STATE, LIKE
""YOU SAID EARLIER, UNDER
""THESE STATUTE IN THE
""INSTRUCTION OF THE JURY
""MAY AND SHOULD ACQUIT.
"">> EXACTLY.
""IF THE JURY BELIEVES
""HIM.
""HE WAS NOT COMMITTING AN
""ATTEMPTED MURDER WHEN
""SHE WAS COMING AT HIM.
""HE CAN DEFEND HIMSELF.
""I THE PROBLEM IS, IF HE
""CAME AT HER FIRST AND
""THEN ALL OF THE SUDDEN,
""HE GETS TO DEFEND
""HIMSELF.
""HE IS ALREADY COMMITTING
""A CRIME, THAT IS WHAT
""THE LEGISLATURE HAS
""SAID.
""A CRIMINAL DOESN'T GET
""TO USE THAT RIGHT EVEN

""THOUGH YOU WERE INNOCENT
""AT THAT POINT, WOULD GET
""TO DEFEND YOURSELF.
"">> MY CONCERN IS,
""EVERYTHING YOU ARE
""SAYING NOW SEEMS
""LODGEABLE CALL,
""EVERYTHING YOU YOU'RE
""POSING COUNSEL ARGUED
""SEEMED LOGICAL.
""EVERY SINGLE DISTRICT
""COURT INCLUDING THE
""THIRD DISTRICT SAID THIS
""WOULD BE, THIS IS
""ERRONEOUS INSTRUCTION AS
""IT IS GIVEN.
""IT IS TRACKING THE
""LANGUAGE OF THE STATUTE,
""BUT IT IS CONFUSING
""PEOPLE BECAUSE IT
""DOESN'T GIVE THE JURY
""THAT EXPLANATION, AT
""LEAST ALL OF THE
""APPELLATE COURTS AND
""DOZENS OF JUDGES HAVE
""INTERPRETED IT IN THE
""WAY THAT IT WOULD BE
""ERRONEOUS INSTRUCTION,
""SO I GUESS WHEN YOU SAY
""COMMON SENSE AND THAT
""OBVIOUSLY WE ALL MIGHT
""NOT USE COMMON SENSE, IT
""MEANS ALL OF THE JUDGESS
""HAVE JUST GOT IT WRONG
""AND HOW THEY ARE READING
""THIS EXCEPTION.
"">> RIGHT.
"">> AND LET ME SAY, I AM
""HAVING A LITTLE TROUBLE
""WITH THAT.
"">> WELL, THAT IS WHY WE
""HAVE SUPREME COURT IS TO
""CORRECT THEM WHEN THEY
""ARE ALL WRONG.
"">> I WOULD LIKE TO YOU
""ADDRESS THE FUNDAMENTAL
""ASPECT.
"">> I WOULD LIKE TO.
""IF I COULD JUST ANSWER
""THE QUESTION.
""THIS STARTED WITH GILES
""THE CASE IN THE AREA.
""WHAT HAPPENED WAS THE
""VICTIM, THE BAR FIGHT,

""THE VICTIM STARTED IT,
""THE DEFENDANT ESCALATED
""IT BY USING A BRICK WHEN
""THE VICTIM WAS THROWING
""A BEER BOTTLE.
""IF YOU LOOK AT THE FACTS
""OF THAT CASE.
""IN THAT SITUATION, WHERE
""THERE IS NO EVIDENCE
""THAT THE EXCEPTION
""APPLIES TO NEGATE
""SELF-DEFENSE, THAT THE
""DEFENDANT WAS AGGRESSOR,
""THE DEFENDANT WAS
""COMMITTING A FORCIBLY
""FELONY WHEN SELF DEFENSE
""AROSE, THERE IS NO
""EVIDENCE OF THAT IN
""GILES BECAUSE THE VICTIM
""STARTED IT, THERE IN
""THAT SITUATION, IT
""PROBABLY IS CONFUSING
""BECAUSE YOU ARE GIVING
""AN EXCEPTION THAT NOBODY
""EVEN POSSIBLY THIS IS IS
""APPLICABLE.
""IF THAT MAKES SENSE.
""THERE IS LANGUAGE,
""THOUGH, THE DISTRICT
""COURT TOOK THAT LAN
""LANGUAGE AN RAN WITH IT.
""WE WOULD SUBMIT THEY ARE
""INCORRECT, NOW, I
""SUBMIT, I DID
""SUPPLEMENTAL AUTHORITY
""WITH JUDGE ROSSEN'S
""POSITION, THAT IS A
""BETTER INSTRUCTION ON
""THIS, THE WAY THAT THE
""COURT, IT HAS BEEN FIX
""SO FAR WITH THE
""INDEPENDENT FORCIBLE
""FELONY, YOU DON'T GET
""ONE FREE FELONY UNDER
""THE STATUTE.
""THE STATUTE DOESN'T SAY
""ANYTHING ABOUT NEEDING
""TWO, THE WAY IT HAS BEEN
""FIXED SO FAR, IT IS
""STILL CONFUSING AND IS
""INCORRECT.
""I WOULD URGE THE COURT
""TO LOOK AT THAT
""INSTRUCTION.

""THAT IS A BETTER WAY TO
""PHRASE THIS.
""SO GOING TO FUNDAMENTAL
""ERROR, THIS COURT HAS
""NEVER FOUND FUNDAMENTAL
""ERROR IN INSTRUCTION ON
""AN AFFIRMATIVE DEFENSE.
""NEVER.
""IT HAS TO BE OBJECTED
""TO.
""AND IF I COULD JUST READ
""FROM THE COURT'S
""LANGUAGE IN THIS CASE,
""FAILURE TO GIVE
""INSTRUCTION UNNECESSARY
""TO PROVE ESSENTIAL
""ELEMENT OF THE CRIME
""CHARGED IS NOT FUND LTAL
""ERROR, THIS IS
""AFFIRMATIVE DEFENSE.
""NOT SOMETHING WE HAD TO
""PROVE TO ESTABLISH THE
""GUILT OF DEFENDANT.
"">> THIS IS DIFFERENT
""THAN SOME OF THERS THAT
""THE STATE MUST OVERCOME.
""THE AFFIRMATIVE DEFENSE,
""ONCE THAT EVIDENCE IS
""PRESENTED.
""SO IT IS CLOSER IN
""NATURE, IT MAY NOT BE,
""CERTAINLY IS NOT DIRECT
""LRJTS ABOUT IT IS
""CHLORER, IT IS HYBRID,
""IT IS CLOSER TO THAT,
""THAT IS JUST SOMETHING
""THAT TOTALLY THEN THAT
""THE DEFENDANT HAS A
""BURDEN TO ESTABLISH AND
""THE STATE HAS NOTHING.
"">> WELL, IT IS
""COMPARABLE TO ENTRAPMENT
""WHERE THIS STATE, WHERE
""THE DEFENDANT COMES
""FORWARD WITH EVIDENCE,
""WE STILL BEAR THE
""ULTIMATE BURDEN TO PROVE
""HE WAS PREDISPOSED TO
""COMMIT THE CRIME OR
""INSANITY, THE DEFENSE
""COMES FORWARD WITH
""EVIDENCE, WE STILL,
""SMITH, FOR THE BURDEN
""TON PROVE HE WAS SANE,

""AN AFFIRMATIVE DEFENSE
""REQUIRES THE DEFENSE TO
""ACTUALLY COME UP, THAT
""IS WHY IT IS CALLED
""AFFIRMATIVE.
""THEY HAVE TO COME UP
""WITH SOMETHING, THEN, IT
""IS OUR BURDEN TO DEFEAT
""THE DEFENSE, THAT
""DOESN'T MEAN IT IS
""DISPUTED ESSENTIAL
""ELEMENT THAT WE HAVE TO
""PROVE.
""IN THE AFFIRMATIVE
""DEFENSE INSTRUCTION
""AREA, WE SUBMIT THAT IT
""CAN'T FUNDAMENTAL ERROR
""JUST AS A MATTER OF
""POLICY, THE DEFENDANT
""CAN'T SIT ON THE RIGHT
""AN SAY, OH, WE GOT THIS
""BAD INSTRUCTION OUT
""THERE, AND, THE TRIAL
""COURT IN THE CASE WITH
""ALL THE LAW OUT IN THERE
""THE DISTRICT COURT, IF
""HE HAD OBJECTED THIS
""INSTRUCTION, TRIED TO
""FIX IT, HE PROBABLY
""WOULD HAVE BEEN
""INEFFECTIVE THE WAY IT
""WENT NOW, IF HE GET AS
""FREE BITE AT THE APPLE
""BECAUSE IT IS REVERSIBLE
""IN ALL OF THE CASES.
""> DO YOU AGREE THE THREE
""ELEMENTS OF THE THIRD
""DISTRICT PICKED OUT ARE
""REALLY NOT THE ONES USED
""FOR THOSE THINGS THAT
""ARE FUNDAMENTAL ERROR IN
""THE PAST?
"">> I AM SORRY, I DON'T
""UNDERSTAND THE QUESTION.
"">> THE THIRD DISTRICT IS
""SAYING, WELL, THIS IS
""REALLY NOT A VERY GOOD
""DEFENSE THAT THOSE KINDS
""OF THINGS, I FORGET THE
""REASONS WHY.
""DO YOU AGREE THOSE CAME
""OUT OF LEFT FIELD,
""DIDN'T THEY?
""WELL, FUNDAMENTAL ERROR

""HAS TO BE HARMFUL.
""FOR IT TO BE FOUND
""FUNDAMENTAL ERROR.
""THEY LOOKED AT THE FACTS
""OF THIS CASE AND SAID
""THIS IS NOT HARMFUL.
""IT IS REFUTED BY THE
""TESTIMONY.
""IT IS COMPLETELY INED
""KRBL.
""THE REAL ISSUE WAS
""WHETHER YOU KNOW THERE
""WAS PREMEDITATION.
""THAT WAS THE REAL ISSUE
""THIS CASE.
"">> IN DETERMINING
""WHETHER ERROR IS
""HARMFUL, YOU DON'T LOOK
""AT CREDIBILITY, DO YOU?
"">> WELL, I THINK, IF THE
""DEFENDANT SOMETHING
""COMPLETELY INCREDIBLE, I
""THINK YOU CAN CONSIDER
""THE EVERWOMENING
""EVIDENCE OF GUILT, YES.
""WHEN THE DEFENDANT SAY,
""YEAH, THAT WOUND, YEAH.
"">> OVERWHELMING EVIDENCE
""OF GIMENT IS ONE THING,
""MAYBE THERE WAS A
""CONFESSION, MAYBE
""FINGERPRINTS, ALL OF
""THAT, BUT IT APPEARS TO
""BE A HE SAID, SHE SAID
""KIND OF A THING.
""BUT THE DEFENDANT'S OWN
""TESTIMONY ADDED TO THE
""OVERWHELMING GUILT
""BECAUSE HE EVEN SAID,
""YEAH, THAT WOUND, SHE
""DIDN'T DO THAT HERSELF.
""THAT WASN'T IN
""SELF-DEFENSE.
""WE WERE STRUGGLING.
""I MEAN, HIS TESTIMONY IF
""YOU LOOK AT THAT, I
""THINK IT DOES GO TO
""OVERWHELMING EVIDENCE.
"">> WE WERE STRUGGLING
""COULD BE READ AS A PART
""OF HIS WHOLE
""SELF-DEFENSE ARGUMENT.
""I MEAN, YOU ARE READING
""IT ONE WAY WHICH COULD

""BE A PERFECTLY
""LEGITIMATE READING, BUT
""YOU COULD ALSO READ THAT
""STATEMENT AS TO SAY, YOU
""KNOW, THIS WOUND WAS
""INFLICTED BECAUSE WE
""WERE STRUGGLING.
"">> I THINK WHEN THE
""QUESTION IS, ARE YOU
""CONFENDING THIS WOUND
""WAS IN SELF DEFENSE, HIS
""ANSWER IS NO.
""I THINK THAT THERE IS
""ONLY ONE WAY TO READ
""THAT.
""I THINK WHAT THE COURT
""DID WAS ENGAGE IN A
""FINDING IF THIS WAS
""HARMFUL ERROR, UNDER
""FPLTALER ERROR HAS TO BE
""HARMFUL.
""IT IS NOT FUNDAMENTAL IF
""IT IS NOT HARMFUL.
""IT WAS ENTIRELY FOR THE
""COURT TO ENGAGE IN THE
""ANALYSIS, BUT THE
""POSITION IS THAT THE
""COURT SHOULD GO FURTHER
""AN SAY, YOU CAN'T HAVE
""FUNDAMENTAL ERROR IN A
""DEFENSE BECAUSE THERE IS
""A BURNED ON THE
""DEFENDANT AND YOU CAN'T
""PUT THE STATE ABE
""POSITION WHERE TRIAL
""COUNSEL DOES A BETTER
""JOB BY NOT OBJECT
""BECAUSE YOU GET IT
""AUTOMATICALLY REVERSED
""ON APPEAL FWURX HAVE
""OBJECTED THEY COULD HAVE
""FIXED IT, YOU KNOW, THAT
""WOULD HAVE BEEN IN
""EFFECTIVE.
"">> THERE WAS NOTHING
""WRONG WITH IT.
""THERE WAS NOTHING REALLY
""TO, IF I CORRECT?
"">> THAT IS MY FIRST
""ARGUMENT, YES.
""AND I WOULD URGE THIS
""COURT TO READ THE
""JUDGE'S OPINION IN GRAND
""BURY, I THINK IT SETS IT

""OUT WELL.
""THE PROSECUTOR EXPLAINED
""IT HERE.
""I MEAN, EVERYBODY KNEW
""WHAT THIS WAS.
"">> WE CAN'T GO TO THE
""JURY INSTRUCTION INTO
""WHAT A PARTY MAY ARGUE
""ABOUT IT.
""MAY GO TO HIGHLIGHT IT,
""THE LAWYER CAN'T CORRECT
""AN INCORRECT
""INSTRUCTION.
""JUST ARGUMENT.
""YOU AGREE WITH THAT?
"">> RIGHT.
""I THINK WHEN YOU LOOK AT
""HOW HE EXPLAINED IT
""HERE, IT GOES TO WHETHER
""OR NOT THE UNINSTRUCTION
""IS CIRCULAR, TO READ IT
""AS CIRK CUE ALSO, A YOU
""HAVE TO READ IT AS
""JUSTIFICATION IS NOT
""AVAILABLE EVER BECAUSE
""HE COMMITTED THE CRIME
""AND THAT BASE NOT WHAT
""THE INSTRUCTION SAYS.
""WE SUBMIT THAT A
""REASONABLE JURY WOULDN'T
""READ IT THAT WAY.
"">> WITH OUR HELP, YOU
""HAVE GONE OVER ARE OVER
""YOUR TIME.
""WE THANK YOU FOR HELPING
""US UNDERSTAND THE
""PROBLEM.
""REBULTAL -- REBUTTAL?
"">> YES, THANK YOU.
""I THINK I HAVE FOUR
""POINTS TO MAKE.
""FIRST, AS IF AS THE
""TESTIMONY BY MR. MAR TUN
""NERXZ HE DOES NOT ADMIT
""THAT THE WOUND, HE DOES
""NOTED A HIT THAT THE
""WOUND WAS NOT IN
""SELF-DEFENSE.
""HE TELLS THE PROSECUTOR
""ON CROSS EXAM NATION, I
""DON'T KNOW HOW IT
""HAPPENED.
""HE SAID IT PROBABLY
""HAPPENED WHEN HE SLIPPED

""ON THE BLOOD THAT WAS ON
""THE FOR THAT.
""SIMILARLY, NEVER
""TESTIFIED SHE WENT UP TO
""HIM WITH SCISSORS.
"">> I DON'T KNOW IF THIS
""IS ONE OF THE FOUR
""POINT, BUT ONE OF MY
""CONCERNS IS THE ATTORNEY
""GENERAL'S ARGUMENT THIS
""IS NOT REALLY CIRCULAR
""AT ALL WHAT IT IS
""INTENDED TO DO IS
""REGARDLESS OF THAT OTHER
""SUBSECTION WHERE THE
""DEFENDANT WAS THE
""AGGRESSOR, IF, IF HE WAS
""ATTEMPTING TO COMMIT
""MURDER, BEFORE HE HAD
""THE ATTEMPT TO
""SELF-DEFENSE, THEN THE
""DEFENSE IS NOT
""AVAILABLE.
""AND IF THE JURY BELIEVED
""THAT HE INITIALLY TRIED
""TO KILL THE VICTIM, BUT
""THE VICTIM THEN TRIED TO
""DEFEND HERSELF, HE
""DEFENDED HIMSELF FROM
""HER, THEN THE DEFENSE IS
""NOT AVAILABLE.
"">> THAT SIMPLY IS NOT AN
""ISSUE.
""I UNDERSTAND THE FACTS,
""BUT ISN'T THE, ISN'T
""THAT WHAT THE STATUTES
""IS DESIGNED TO DO.
"">> I THINK THAT WE CAN'T
""GO BY THE JURY -- WE
""CAN'T HOPE THAT THE JURY
""UNDERSTANDS THE
""INSTRUCTION IN A
""PARTICULAR WAY, WE HAVE
""TO LOOK AT THE
""INSTRUCTION THAT WAS
""ACTUALLY READ.
""A JURY OBEYED THE
""LANGUAGE OF THE
""INSTRUCTION, THEN IT WAS
""REQUIRED TO FIND THE
""VERY THOUGHT TO BE
""JUSTIFIED IN
""SELF-DEFENSE COULD NOT
""BE CONSIDERED

""SELF-DEFENSE.
"">> WELL SHOULD WE AMEND
""THE JURY INSTRUCTION
""THEN TO ACCURATELY
""REFLECT THE PURPOSE
""BEHIND THE STATUTE?
"">> THAT MAY BE SOMETHING
""THE COURT WOULD WANT TO
""CONSIDER.
"">> DO YOU AGREE THEN,
""BECAUSE I SEE THIS GRAND
""BURY SCENARIO, WE QUICKLY
""LOOK AED AT WHAT THE
""JUDGE RECOMMENDED, IN
""FACT, IF SOMEONE IS
""ATTEMPTING TO COMMIT THE
""MURDER BEFORE THE VICTIM
""STARTS TO DO WHATEVER HE
""OR SHE IS, THEN, THAT IS
""WHEN THAT EXCEPTION DOES
""COME IN, DO YOU AGREE
""WITH THAT?
"">> I THINK HE ATTEMPTED
""TO ADDRESS THE TIMING
""ISSUE.
"">> HAD TO I DRESS THE
""TIMING ISSUE.
"">> HAVING THE COURT BEEN
""WRONG IN SAYING THAT IF
""ONLY A SINGLE FELONY IS
""CHARGED THAT IT CAN'T
""EXCEPTION THE DOESN'T
""APPLY.
"">> I AM SORRY, CUE
""REPEAT?
"">> TO THE EXTENT THE
""APPELLANT COURT SAID, IF
""YOU HAVE ONE FORCE OF
""FELONY CHARGED, THAT THE
""INSTRUCTION SHOULDN'T BE
""GIVE CONDITION, THAT IS
""NOT CORRECT?
"">> I THINK IT IS
""CORRECT, YOUR HONOR.
""I THOUGHT YOU AGREED THE
""AGGRESSION STARTED BY
""THE DEFENDANT BEFORE THE
""VICTIMS DID WHATEVER HE
""OR SHE WAS DOING THAT IT
""HAD EXCEPTION WOULD
""APPLY?
"">> THE AGGRESSOR STARTED
""BEFORE, THEN HE PROVOKED
""THE USE OF FORCE AGAINST

""THEM WHICH IS COVERED BY
""THE SECOND PART.
""THAT IS THE QUESTION FOR
""THE JURY.
""IF, IF THE VICTIM'S
""VERSION IS BELIEVED,
""THEN HE ANRBLY PROVOKED
""THE USE OF FORCE AGAINST
""HIM, SO THE SECOND PART
""OF THE EXCEPTION COMES
""INTO PLAY.
"">> IS THERE ANOTHER
""INSTRUCTION THAT COVERS
""THAT, THAT WHEN THE
""DEFENDANT IS ACTUALLY
""THE AGGRESSOR, MY
""PROBLEM IS, THIS, THIS
""INSTRUCTION DOESN'T SEEM
""TO COVER THAT.
""IS THERE ANOTHER
""INSTRUCTION THAT
""ACTUALLY COVERS IF THE
""DEFENDANT IS THE ONE WHO
""IS AGGRESSOR?
"">> IT IS THE SECOND PART
""OF THE INSTRUCTION THAT
""THE JURY INSTRUCTED THE
""USE OF FORCE LIKELY TO
""CAUSE DEATH OR GREAT
""BODILY HARM IS NOT
""JUSTABLE IF YOU FIND
""NUMBER ONE THAT
""MR. MARTINEZ WAS
""ATTEMPTING TO COMMIT OR
""COMMITTING ATTEMPTED
""MURDER.
"">> NUMBER ONE OF THE
""STATUTE.
"">> THEN, NUMBER TWO, OR
""IF MR. MARTINEZ
""INITIALLY PROVOKED THE
""USE OF FORCE AGAINST
""HIM.
"">> EXACTLY.
"">> THE OTHER POINT I
""WANTED TO MAKE, LET'S
""SEE, CREDIBILITY IS
""CLEARLY AN ISSUE FOR THE
""JURY.
""I CAN'T COMMENT ON THE
""STRENGTH OF THE CASE
""HERE BECAUSE I WASN'T IN
""THE COURTROOM.
""BUT FOR EXAMPLE, THE

""MERE FACT THAT THE
""SELF-DEFENSE CLAIM IS
""IRRELEVANT, THERE
""REMAINS ERROR NO MAT ARE
""HOW THE DEFENDANT
""CLAIMED SELF-DEFENSE.
""THE FUNLTEDAL NATURE, I
""QUOTE FROM HIDE GRY THE
""4th DISTRICT 200 5, IT
""SAYS IT BETTER THAN I
""CAN.
""MISLEADING IN STRUCTION
""TO A YURI AS TO THE LAW
""CONCERNING A LEGAL
""DEFENSE IS FUNDAMENTAL
""ERROR WHERE IT MAJORS
""CONVICTION EASIER FOR
""THE STATE.
""I ASK YOU REVERSE AND
""GIVE MR. MARTINEZ A NEW
""TRIAL.
"">> WITH OUR HELP, YOU
""HAVE USED YOUR TIME PLUS
""MORE.
""WE THANK YOU BOTH FOR
""ENLIGHTENING US.
""WE'LL TAKE IT UNDER
""ADVISEMENT.
""THE COURT WILL TAKE THE
""MORNING RECESS.
"">> ALL RISE.
""THE COURT STANDS
""RECESSED.