

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Troy Victorino v. State of Florida

SC06-2090

THE NEXT CASE ON THE COURT'S

AGENDA IS VICTORINO VERSUS STATE.

>> ARE YOU READY TO PROCEED?

>> GOOD MORNING CHIEF JUSTICE,

GOOD MORNING JUSTICES.

MY NAME IS JEFF DOWDY AND I'M

HERE WITH MY LAW PARTNER.

WE ARE HERE ON BEHALF OF THE

APPELLATE, TROY VICTORINO.

THERE IS A COMPANION CASE IN

THIS CASE PREVIOUSLY DECIDED BY

THE COURT.

AS FOR THE INITIAL EFFECTS OF

THE CASE, MR. VICTORINO WAS

CONVICTED OF KILLING SIX PEOPLE

AND THE DEATH PENALTY WAS

IMPOSED.

IN AUGUST OF 2004, ABOUT HALFWAY

THROUGH THE CASE, WE HAD A

MOTION TO SEVER AND THAT IS ONE

OF THE ISSUES I WOULD LIKE TO

BRING UP.

WE HAVE A MOTION TO SEVER.

THE STATE ATTORNEY AT THAT TIME
OPPOSED THE MOTION TO SEVER BY
THE GROUNDS THAT THEY RAISED
STATEMENTS BY ALL THREE
CODEFENDANTS AT THE TIME.
THEY ARGUED THAT THE STATEMENTS
WERE NOT INTRODUCED, HOWEVER,
THEY WOULD OFFER TESTIMONY OF
THE OFFICERS, TESTIFYING AS TO
WHAT THEY WERE TOLD AND WE WOULD
BE ABLE TO CROSS-EXAMINE THOSE
OFFICERS.

THE SECOND ARGUMENT THAT WAS
ADVANCED BY THE PROSECUTION WAS
THAT IT WOULD BE AN
INCONVENIENCE TO THE FAMILIES.

THERE WERE SIX VICTIMS IN THIS
CASE AND THE PROSECUTION ARGUED
THAT WOULD BE AN INCONVENIENCE
TO HAVE FOUR SEPARATE TRIALS AT
THAT TIME.

THE THIRD, AND MOST IMPORTANT
ARGUMENT THAT WAS ADVANCED, WAS
THE ANTAGONISTIC DEFENSES IN THE
CASE.

ESSENTIALLY, WHAT HAD HAPPENED
DURING THE TRIAL WAS, AT FIRST,
WE HAD THE MOTION TO SEVER AND

WE ARGUED THAT THE ANTAGONISTIC
DEFENSES WERE ALL SEPARATE.

>> MR. CANNON--

>> MR. CANNON PLED GUILTY TO
LIFE.

WE WANTED--

[INAUDIBLE]

HIS ATTORNEY OPENED UP THE TRIAL
BY USING DOMINATION IN HIS
OPENING STATEMENT.

AT THAT TIME, ON BEHALF OF MR.

VICTORINO, MOVED FOR A MISTRIAL.

ANTAGONISTIC DEFENSE IS ONE

THING, BUT WHEN YOU TAKE IT TO

THE LEVEL, WE ARE NOT JUST

BLAMING EACH OTHER BUT WHAT WE

ARE SAYING IS THEY WERE USING

ILLEGAL DEFENSE.

IT IS NOT A DEFENSE TO

FIRST-DEGREE PREMEDITATED

MURDER.

THAT WAS THE PROBLEM THAT WE

HAD.

WE STARTED OFF THE TRIAL IN

DELAND AND WERE UNABLE TO PICK A

JURY AND IT WAS MOVED TO

ST. AUGUSTINE.

WHEN WE GOT THERE, THEY DID THE

OPENING STATEMENT, SAID THEY

WERE GOING TO USE THE DOMINATION
ADDRESS.

WE MOVED FOR A MISTRIAL AND IT
WAS DENIED BY THE COURT.

>> AS YOU KNOW WE HAVE REFERRED
TO-- AND ONE OF THE ISSUES IN
MR. HUNTER'S BRIEF IS SEVERANCE.

CAN YOU EXPLAIN HOW YOUR
SITUATION, YOUR CLIENT'S
SITUATION IS DIFFERENT FROM--

[INAUDIBLE]

THEY SEEMED TO ALLOW IT, SO HOW
IS IT DIFFERENT?

>> YES MAAM.

WE WERE DIFFERENT BECAUSE
MR. HUNTER TESTIFIED ON HIS OWN
BEHALF.

WHAT HE TESTIFIED TO IS THAT
MR. VICTORINO INDUCED HIM TO DO
IT, AND HE HAD NO CHOICE.

HE USED THE DEFENSE THAT MR.
VICTORINO WAS DOMINATING OVER
HIM.

MR. SALAS DID THE SAME THING.
HE ALSO TESTIFIED, AND WHEN HE
TESTIFIED, HE ALSO TESTIFIED
THAT MR. VICTORINO DOMINATED
OVER HIM AND FORCED HIM TO DO

THESE THINGS.

MR. VICTORINO TESTIFIED, AND HE DENIED ANYTHING.

HE IS THE ALIBI DEFENSE, SO THIS IS NOT ONLY AN ANTAGONISTIC DEFENSE CASE, HE SAID THAT WE WERE IN DOMINATION AND TO REDRESS.

WE KNOW THAT IS ADMISSIBLE OF THE STATUTORY MITIGATOR, BUT IT IS NOT A DEFENSE IN THE GUILT PHASE AND THAT WAS THE PROBLEM.

>> DID YOU APPEAL SEPARATELY, MAKING STATEMENTS ABOUT DOMINATION?

>> YES WE DID.

THAT WAS ISSUE NUMBER THREE IN STAGE 51 OF MY BRIEF.

>> IT IS SEPARATE BUT WHAT YOU ARE SAYING, EVEN IF IT WASN'T SEPARATE, THAT WAS NOT A PERMISSIBLE ARGUMENT?

YOU HAVE NOT RAISED IT AS THE MISTRIAL, THAT THEY WENT BEYOND WHAT WAS REALLY PERMISSIBLE?

>> I BELIEVE WE DID YOUR HONOR.

WE DID ARGUE THAT WE MOVE, NUMEROUS TIMES, FOR MISTRAL BASED ON THAT.

ALSO, DURING THE CHARGE

CONFERENCE FOR THE JURY

INSTRUCTION--

>> YOU HAD TO APPEAL SEPARATELY

FOR A DENIAL FOR MISTRIAL?

[INAUDIBLE]

>> CORRECT YOUR HONOR.

I BELIEVE IT COVERS THAT ISSUE.

I WOULD FORWARD THAT IS THEIR

ARGUMENT.

DURING THE CHARGING CONFERENCE,

ATTORNEYS FOR SALAS AND HUNTER

REQUESTED THE DOMINATION ADDRESS

THE JURY INSTRUCTION, WHICH THE

TRIAL COURT DENIED, AND AGAIN WE

MOVED FOR A MISTRIAL.

THE SECOND ISSUE THAT CAME UP

WAS, WHEN MR. CANNON TESTIFIED.

MR. CANNON TESTIFIED--

HE DIDN'T REALLY TESTIFY.

WHAT HE DID WAS MAKE A STATEMENT

TO THE COURT AND JURY THAT HE

WAS NOT GUILTY AND MR. VICTORINO

MADE HIM DO THIS.

AT THAT TIME, WE MOVED FOR A

MISTRIAL AND DURING

CROSS-EXAMINATION, MY

CO-COUNSEL, MR. NIELSEN, MR.

CANNON REFUSED TO TESTIFY.

HE REFUSED TO ANSWER ANY

QUESTIONS.

AT THAT TIME, WE MOVED FOR A

MISTRIAL AND THAT WAS DENIED BY

THE COURT.

ESSENTIALLY, WHAT WE ARE SAYING

IS THAT, FOR THIS LONG TRIAL,

SIX WEEKS, NOT ONLY DID

MR. VICTORINO HAVE TO DEFEND

AGAINST THE PROSECUTION, HE HAD

TO DEFEND AGAINST JERONE HUNTER

AND MICHAEL SALAS AND INCLUDING

AN ARGUMENT BY MR. CANNON, WHICH

WAS MAKING A SPEECH AND NOT

BEING ABLE TO ANSWER ANY

QUESTIONS.

[INAUDIBLE]

>> I WOULD SAY BOTH SIDES HAVE

CITED IN MCCRAY V. STATE, THE

ANTAGONISTIC DEFENSES ARE NOT,

ARE OKAY IF THEY ARE GOING TO

BLAME EACH OTHER.

IF WE HAVE A SITUATION WHERE THE

DEFENDANTS ARE BLAMING EACH

OTHER, THAT IS ONE THING, BUT TO

TAKE A STEP ABOVE AND SAY THAT

WE ARE ACTING UNDER THE

DOMINATION INTEREST OF ANOTHER--

>> IT IS NOT ADDRESSED IN THE
CASE.

>> IT IS NOT, BUT WHEN THE TRIAL
COURT'S RULING FOR A SEPARATE
MOTION, MCCRAY V. STATE, YOU CAN
HAVE ANTAGONISTIC DEFENSES AND
STILL DENY THE MOTION TO SEVER.

WHEN THE COURT WAS PUT ON
NOTICE, THAT WAS NOT GOING TO BE
THE CASE.

THEY WERE GOING TO USE AN
ILLEGAL DEFENSE, WHICH THEY WERE
ABLE TO DO.

>> I AM TRYING TO UNDERSTAND WHY
THAT IS NOT INCLUDED IN THE
ANTAGONISTIC DEFENSES.

IT SEEMS TO ME MR.SALAS AND
MR. HUNTER PRETTY MUCH ADMIT
THAT THEY WERE THERE AT THE
SCENE AND PARTICIPATED IN SOME
PART TO WHAT WENT ON, SO WHY
ISN'T THIS WHOLE NOTION THAT
THEY DID THIS BECAUSE
MR. VICTORINO WAS THE OLDER ONE
OF THE GROUP, AND WAS
ESSENTIALLY DOMINATING THEM, WHY
IS THAT ALL CONSUMED IN THEIR
STATEMENTS AND DISCUSSION, THAT

THEY DID, IN FACT, PARTICIPATE

AND THIS IS WHY?

>> THEIR TESTIMONY EXACTLY WAS

THAT NOT ONLY DID THEY

PARTICIPATE, BUT THEY WERE

FORCED TO PARTICIPATE.

THEIR TESTIMONY WAS THAT

MR. VICTORINO FORCED THEM.

THEY HAD NO CHOICE.

THEY WERE NOT ABLE TO BACK OUT.

ONE OF THE POSSIBLE

CO-CONSPIRATORS TESTIFIED THAT

THERE WAS A MEETING BEFORE THIS

HAPPENED ON THE MORNING OF THE

HOMICIDES.

>> SO, IS THAT TESTIMONY AT

LEAST IN SOME WAY RELEVANT TO

THE ISSUE OF WHETHER OR NOT THEY

HAD THE REQUISITE INTENT TO

ACTUALLY COMMIT FIRST-DEGREE

MURDER?

>> YES, I WOULD AGREE WITH THAT.

OUR ISSUE IS THAT THEY UTILIZED

A DEFENSE THAT VICTORINO WAS

FORCING THEM, AND THAT IS NOT AN

ELEMENT OF FIRST-DEGREE

PREMEDITATED MURDER.

>> I GUESS MY QUESTION IS, IS IT

A PART OF-- YOU KNOW, IF IT IS

PREMEDITATED MURDER, YOU HAVE TO
HAVE THE INTENT TO COMMIT THE
ACT, SO IS THAT RELEVANT?

I THINK YOU JUST SAID IT IS
RELEVANT TO THE ISSUE OF THEIR
INTENT.

>> IT IS RELEVANT.

WHEN CANNON TESTIFIED, HE SAID,
"WE DID NOT HAVE THE INTENTION
TO KILL ANYBODY."

WHEN SALAS TESTIFIED AND HUNTER
TESTIFIED, THEY CONCURRED,
SAYING, WE DID NOT HAVE THE
INTENT TO KILL ANYONE.

>> OUR CASES LAY STRESS IN THIS
AREA AND HUNTER-- ON THE FACT
THAT ALL OF THESE DEFENSES
TESTIFIED.

THEY WERE ALL SUBJECT TO
CROSS-EXAMINATION.

>> EXCEPT FOR MR. CANNON?

>> RIGHT, AND SO THE PEOPLE WE
WERE TALKING ABOUT IN HUNTER--
IT STRIKES ME THAT WHAT WE SAID
IN HUNTER HAS TO APPLY TO
VICTORINO AS TO THE FACT THAT,
EVEN THOUGH THERE WERE
INCONSISTENCIES IN THE MANNER IN

WHICH THEY PRESENTED THEIR
DEFENSES, SINCE THEY WERE
SUBJECT TO CROSS-EXAMINATION,
THAT THAT IS WHAT OUR CASE LAW
DICTATES IS NOT ERROR.

>> HOWEVER JUSTICE, WITH ALL DUE
RESPECT, THE PROBLEM IS, IS THAT
THEY WENT A STEP FURTHER AND
ARGUED THAT THEY WERE FORCED TO
DO IT.

THAT IS NOT PART OF THE JURY
INSTRUCTIONS FOR THE GUILT
PHASE, AND WHEN THEY TESTIFIED--
SALAS TESTIFIED-- AND WHEN
HUNTER TESTIFIED, THEY EXPLAINED
TO THE JURY THAT THEY DIDN'T
WANT TO KILL ANYBODY AND
VICTORINO FORCED THEM TO.

>> IT SEEMS TO ME THAT THE
QUESTION OF WHETHER THE
DEFENDANT--
SEVER THE TRIAL-- THE DIFFERENCE
IS WHETHER THERE WAS AN ARGUMENT
MADE THAT IT WAS IMPERMISSIBLE
IN THE GUILT PHASE IN THERE FOR
THE JUDGE IS ALLOWING THEM TO
MAKE THOSE ARGUMENTS FOR A
MISTRIAL.

I DON'T SEE HOW THAT IS ASSUMED.

THOSE ARE TWO SEPARATE ISSUES.

WHETHER SOMETHING WAS ARGUED OR
ADMITTED.

UNDER THAT, EVEN IF THERE WAS A
SEPARATE TRIAL AND HUNTER CAME
AND TESTIFIED, UNLESS WE SAY IT
IS WRONG, THEY WOULD STILL BE
ABLE TO TESTIFY THAT VICTORINO
DOMINATED.

I AM MISSING-- DON'T YOU WANT TO
MAKE A SEPARATE ARGUMENT FOR THE
JUDGE FAILING TO GRANT A
MISTRIAL?

WOULD YOU SAY IT IS
IMPERMISSIBLE OR ARGUABLE?

>> I SUBMIT THE TRIAL JUDGE DID
REFUSE TO GRANT THE SEVERANCE.

WE HAD THE SAME JURY FOR SIX
WEEKS THAT HEARD THIS DEFENSE.

>> DID YOU MOVE FOR A MISTRIAL
WHEN THAT CAME IN?

>> ABSOLUTELY.

WE MOVED FOR A MISTRIAL PROBABLY
TWO DOZEN TIMES DURING THE SIX
WEEKS OF TRIAL.

>> YOU MOVED FOR MISTRIAL
SPECIFICALLY ON THE GROUND THAT
YOU'VE JUST BEEN TALKING ABOUT?

>> THAT IS CORRECT.

IF IT WAS A SEPARATE TRIAL, HAD
HUNTER AND SALAS HAD THEIR
TRIAL, THEY COULD HAVE USED THE
ANTAGONISTIC DEFENSE AND BLAMED
VICTORINO.

THAT IS ONE THING, BUT TO JOIN
MR. VICTORINO WITH THE SAME JURY
THAT WOULD HEAR THE ILLEGAL
DEFENSE, THAT IS WHAT WE ARE
SAYING DENIED MR. VICTORINO A
FAIR TRIAL.

--

STATE CUT A DEAL WITH THE OTHER
TWO OR THREE DEFENDANTS.
LIFE, YOU TESTIFY AGAINST
VICTORINO.

WHY WOULD THEY NOT BE PERMITTED
TO TESTIFY AGAINST
MR. VICTORINO IN HIS TRIAL.

WE NEVER INTENDED TO GO IN
THERE AND KILL HIM?

HOW IS THAT NOT ADMISSIBLE IN
VICTORINO'S TRIAL UNDER THOSE
CIRCUMSTANCES.

>> I AGREE WITH THE JUSTICE.

YOU CAN, YOUR HONOR, ARGUE
THAT.

HOWEVER, I DON'T KNOW HOW IT

WOULD BE RELEVANT AGAINST
VICTORINO.

IN OTHER WORDS --

>> VICTORINO IS SAYING HE
WASN'T EVEN THERE.

>> CORRECTS.

THAT IS WHAT HAPPENED WITH
CANNON.

>> SO HUNTER TESTIFIES, HE WAS
THERE BUT PUT THE ONE PUT THE
WHOLE THING TOGETHER.

HOW IS THAT NOT RELEVANT?

>> I WOULD SUBMIT THAT BECAUSE
WE WERE IN FRONT OF THE SAME
JURY.

>> YOU'RE SAYING THAT'S WHY
MADE IT LIKE YOU WERE TRIPLE
WHAMMIED SO TO SPEAK?

>> YES, MA'AM.

>> ECHOES BACK TO THE FACT WHAT
YOU'RE REALLY ARGUING THAT THE
NATURE OF THE, IT WAS NOT, THAT
WE'VE GOT TO THE CREATE SOME
CATEGORIES.

YOU SAY, THIS IS BECAUSE OF THE
SHEER OVERWHELMING NATURE OF
ALL THE OTHER EVIDENCE AGAINST
VICTORINO, THAT HE COULDN'T

DEFEND AGAINST, THAT IT WAS A
FUNDAMENTALLY UNFAIR TRIAL?
I MEAN THAT, TELLING ME MCCRAY
IS YOUR BEST CASE ON IT AND YOU
DON'T HAVE A CASE WHERE TRIAL
COURT ABUSED DISCRETION WITH --

>> IN MY RESEARCH I DID NOT
COME ACROSS A STATE THAT HAD
THOSE SET OF FACTS.

THIS WAS VERY UNUSUAL CASE.

>> YOU CAN SEE THERE IS NOT
BRUTON ISSUE HERE.

>> THERE WAS A BRUTON ISSUE
IN THE BEGINNING, HOWEVER THE
TRIAL COURT FASHIONED A REMEDY.

>> SO THERE'S NOT A BRUTON
ISSUE?

>> THERE WAS NOT A BRUTON
ISSUE, THAT'S CORRECT.

>> ARE THERE ANY OTHER ISSUES
THAT YOU --

>> THE OTHER ISSUE WOULD BE THE
ROBERT CANNON ISSUE.

THIS IS WHERE MR.^CANNON
TESTIFIED, WELL, HE DIDN'T
TESTIFY.

HE GAVE A STATEMENT.

HE SAID, I'M INNOCENT.

I'M DOING THIS IN THE NAME OF

THE LORD.

I AM PREPARED TO DIE.

UNDER CROSS --

>> MR.^CANNON WAS THE OTHER

CODEFENDANT WHO PLED OUT.

>> THAT'S CORRECT.

HE PLED HIS CHARGE AND WAS

SENTENCED TO LIFE.

>> WAS HE A TEENAGER?

>> HE WAS A TEENAGER.

>> UNDER 18?

>> NO.

I BELIEVE HE WAS 19, 19 OR 20.

>> SO THE STATE CALLED HIM AS A

WITNESS AND WAS ALLOWED TO HAVE

HIM BECOME A HOSTILE WITNESS?

>> HE WAS DECLARED A HOSTILE

WITNESS BY THE TRIAL COURT AND

DIRECTED TO ANSWER QUESTIONS

FROM THE PROSECUTION.

HE REFUSED TO ANSWER ANY

QUESTIONS.

HOWEVER HE DID MAKE A STATEMENT

SAYING THAT MR.^VICTORINO MADE

THEM ALL DO IT AND THEY DIDN'T

HAVE INTENT TO KILL ANYONE.

>> THAT WAS HIS TESTIMONY.

ON CROSS-EXAMINATION WHAT

HAPPENED?

I ASSUME YOUR ARGUMENT IS THAT
IT WAS IMPROPER TO CALL HIM
BECAUSE THE STATE KNEW HE WAS
NOT GOING TO ANSWER THE
DEFENDANT'S QUESTIONS OR WHAT?

>> THAT WAS ONE ISSUE THAT WAS
BROUGHT UP.

AND EVERYONE JOINED IN AND
MOVED FOR A MISTRIAL.

HOWEVER, WE MOVED AT THAT
POINT, BEFORE THE MOTION FOR
MISTRIAL BASED UPON HIM
REFUSING TO ANSWER.

THAT'S WHAT WE MOVED FOR A
MISTRIAL FOR.

AS SOON AS HE GOT DONE GIVING
HIS SPEECH.

THERE WAS A LOT OF COMMOTION IN
THE COURTROOM.

THERE WAS OBVIOUSLY SHOCK.
HE WAS ESCORTED OUT OF THE
COURTROOM.

EVERYBODY JOINED IN, YOUR HONOR
WE WANT TO MOVE FOR A MISTRIAL.

>> BASED ON WHAT?

>> HIM REFUSING TO ANSWER ANY
QUESTIONS UNDER
CROSS-EXAMINATION.

WE'RE DIFFERENT FROM MR.^HUNTER
IN THIS RESPECT.

MR.^HUNTER'S TRIAL COUNSEL DID
NOT ATTEMPT TO ASK ANY
QUESTIONS.

THE JUDGE ASKED HIM, DO YOU
HAVE ANY QUESTIONS?

HE SAID, NO, SIR.

THE ONLY ONE THAT ATTEMPTED TO
CROSS EXAMINE MR.^HUNTER WAS
MR.^NIELSEN.

THAT WAS ONE OF THE ISSUES
RAISED.

WE FEEL WE WERE PREJUDICED
UNDER THAT ISSUE ALSO.

AGAIN WE MOVED FOR MISTRIAL
WHICH WAS DENIED.

>> YOUR POSITION YOU WERE
DEPRIVED OF RIGHT TO
CROSS-EXAMINE A WITNESS WHO
TESTIFIED, CORRECT.

>> YES, SIR.

>> RELATED TO YOUR CLIENT?

>> THAT IS CORRECT.

>> AND YOU MAINTAIN THAT YOU
DID IN FACT FILE A MOTION, MAKE
A MOTION FOR MISTRIAL AT THAT
POINT?

>> WE MAINTAIN THAT, YOUR HONOR.

AND IN THE TRIAL TRANSCRIPT, THERE IS A LINE, IT IS IN VOLUME 30, I BELIEVE IT IS PAGE 1939 OR 1940.

THERE IS QUOTE FROM MR.NIELSEN.

YOUR HONOR, AT THIS TIME --

THEN INAUDIBLE THERE IS NOTHING THERE.

I WAS SAYING, I WAS, TRIAL COUNSEL IN THIS CASE.

THERE WAS A LOT OF COMMOTION THAT HAPPENED WHEN MR.^CANNON, THIS IS PACKED COURTROOM.

I DON'T BELIEVE THE COURT REPORTER TRANSCRIBED OR WAS UNABLE TO TRANSCRIBE IT BECAUSE OF THE COMMOTION.

WE ADAMANTLY MOVED FOR A MISTRIAL AT THAT TIME.

>> BUT THE RECORD DOESN'T --

>> THE RECORD JUST SHOWS MR. NIELSEN.

DOESN'T SAY WHAT HE SAID.

I CAN REPRESENT TO YOU I KNOW

WE MOVED FOR MISTRIAL.

WHETHER THE OTHER CODEFENDANTS

JOINED IN I DON'T KNOW.

THERE WAS A LOT OF COMMOTION
WHEN THAT HAPPENED.

>> COULD YOU, ON THE, ASSUMING
THERE IS ERROR, THE STATE SAYS --

[INAUDIBLE]

WHAT IS YOUR ARGUMENT?

>> OH I BELIEVE IT WAS VERY
HARMFUL.

ONCE AGAIN THIS WAS IN FRONT.

JURY.

WAS ONCE AGAIN TOLD BY A FOURTH
CODEFENDANT THAT VICTORINO
FORCED THEM TO DO IT.

IT WAS TOTALLY UNFAIR TO US NOT
TO BE ABLE TO GIVE FULL AND
MEANINGFUL CROSS-EXAMINATION OF
MR. CANNON.

>> YOU DO ADMIT, THERE WERE TWO
OTHERS WHO MADE THE SAME
STATEMENT, BASICALLY.

>> CANNON, CANNON ONLY
TESTIFIED APPROXIMATELY 30
MINUTES.

THE OTHER TWO DEFENDANTS, THEY
WERE HALF DAY TESTIMONY.

AND, EVEN WITH BRANDON GRAHAM,
WHO WAS UNINDICTED
CO-CONSPIRATOR, HIS TESTIMONY

WAS HALF A DAY.

ONCE AGAIN HE ALSO BLAMED

MR.^VICTORINO.

>> SO, I MEAN, ASSUMING THAT

THERE IS NO PROBLEM WITH THE

TESTIMONY OF ALL OF THOSE

OTHERS, IN THIS, SEEMS TO ME,

THAT, WE REALLY WOULD HAVE THE

HARMLESS ERROR SITUATION HERE,

AS FAR AS MR.^CANNON'S BRIEF

TESTIMONY IS CONCERNED,

WOULDN'T WE?

SINCE WE HAVE, THREE OTHERS,

WHO AT LENGTH, WENT INTO

MR.^VICTORINO'S PARTICIPATION

AND DOMINATION AND, IN THIS

CASE?

>> I WOULD, I WOULD SUBMIT

COLLECTIVELY, BETWEEN SALAS,

AND HUNTER TESTIFYING,

MR.^BRANDON GRAHAM TESTIFYING

AND CANNON, SO-CALLED

TESTIMONY, COLLECTIVELY THEY

DENIED MR.^VICTORINO A FAIR

TRIAL IN THIS MATTER.

>> ONE OF THE, IT IS ALWAYS,

SAY NOT A FAIR TRIAL.

THERE IS LOT OF EVIDENCE

AGAINST YOUR CLIENT.

>> YES, MA'AM.

>> AND I CAN SEE ON CANNON IT DOES SEEM THERE IS SOMETHING THAT IS BASICALLY UNFAIR ABOUT WHAT HAPPENED, WE'LL HAVE TO THINK IT OUT BUT I GUESS IF YOU TOOK, WANT TO MAKE SURE IF I UNDERSTAND.

YOU GOT HUNTER AND SALAS TESTIFYING AS WELL AS GRAHAM, AND DNA EVIDENCE, WHY, CAN YOU TELL ME WHY IT IS NOT HARMLESS THE ERROR REGARDING CANNON?

>> I WOULDN'T HAVE A DISTINCTIVE ANSWER FOR THAT. I WOULD JUST HAVE TO SUBMIT ONCE AGAIN, THAT ALL OF THESE PEOPLE COLLECTIVELY, BLAMING MR. VICTORINO.

>> IT IS HARD, SOMETIMES WE SAY THAT MIGHT BE IN ERROR AND WE'LL LOOK AT IT.

I AGREE IF WE FIND FIVE ERRORS IT IS CUMULATIVELY.

>> CORRECT.

>> YOU DON'T HAVE, I KIND OF AGREE BECAUSE, YOU DON'T BUY THE FACT THAT -- AT TRIAL --

[INAUDIBLE]

>> YES.

JUSTICE, I WOULD CONCEDE THERE WAS,
AMPLE DNA EVIDENCE.

THERE WAS MOTIONS TO SUPPRESS
DONE IN THIS MATTER.

THERE WAS --

>> IT IS NOT OVERWHELMING DNA
EVIDENCE.

>> I'M NOT SAYING OVERWHELMING.

>> SOMETHING WE CAN SAY
HARMLESS AND REASONABLE DOUBT

IN THIS CASE YOU ARE SAYING

I -- [INAUDIBLE]

>> I WOULD JUST SAY ONCE AGAIN,
COLLECTIVELY I WOULD BELIEVE IT
IS UNFAIR.

>> I'M SOMEWHAT, I WAS
CONCERNED WITH HUNTER.

SEEMS -- THREE DEFENDANTS

TOGETHER AND --

[INAUDIBLE]

BUT I WAS IMPRESSED THAT, WHEN
THE JURY FINALLY CAME DOWN TO
PENALTY PHASE, THAT THEY REALLY
MADE DISTINCTION THAT WHO
MURDERED WHICH VICTIM -- SALAS.

HOW DO WE EVALUATE THAT?

IT SEEMS ALTHOUGH ONE OF THE

ISSUES IS SEVERANCE IN THE
CONFUSION, IF YOU LOOK AT THE
ACTUAL JURY VERDICT, IT SEEMS
THEY WERE CLEARLY ABLE TO MAKE
THEIR REASONED DISTINCTION
BETWEEN CULPABILITY OF EACH OF
THESE DEFENDANTS FOR THE DEATHS
OF THESE PEOPLE.

>> YES, YOUR HONOR.

IN THE PENALTY PHASE ONCE AGAIN
THEY WERE ARGUING DOMINATION
AND DURESS.

YOU CAN SEE IT.

WE RAISED ISSUE ON JURY
INSTRUCTION AND DECIDED BY THE
COURT.

YOU CAN'T TELL YOU ABOUT THE
VOTE BECAUSE MR. ^VICTORINO WAS
FOUND NOT GUILTY OF SOME
COUNTS.

IN FACT HE WAS GIVEN A,
RECOMMENDED A LIFE SENTENCE IN
TWO OF THE SIX MURDERS.

>> SO ISN'T THAT PROOF THAT THE
JURY WASN'T CONFUSED, THAT IT
WASN'T UNDULY PREJUDICIAL?
THEY WERE ABLE TO MAKE REASONED
THINKING -- DIDN'T JUST TAKE

VICTORINO AND SAY HE WAS GUILTY
OF EVERYTHING?

HOW DO WE WEIGH --

>> WELL --.

>> -- WHAT THE JURY ACTUALLY DID
IN TERMS OF LOOKING AT WHETHER
THE -- [INAUDIBLE]

>> YES, MA'AM.

I THINK THE ANSWER TO THAT,
WHAT STICKS OUT IS THAT MICHAEL
SALAS WAS GIVEN A LIFE
RECOMMENDATION BY THE JURY AND
WAS SENTENCED TO LIFE ON ALL
SIX COUNTS.

AND, PHYSICALLY, AT THE TRIAL,
MR.^VICTORINO IS A VERY LARGE
MAN.

HE IS ABOUT 6'7", 300 POUNDS.
EIGHT YEARS OLDER THAN ALL THE
REST

>> HOW OLD WAS HE?

>> AT TIME OF THE MURDERS
MR.^VICTORINO WAS 26 YEARS OLD.

>> HOW OLD WAS SALAS?

>> SALAS WAS 18 AND CANNON WAS
19.

THEY HAD ONLY KNOWN
MR.^VICTORINO FOR THREE DAYS.

HUNTER WAS 18.

FOOTBALL STAR, GRADUATED HIGH SCHOOL AND WAS BASICALLY HOMELESS.

MR.^VICTORINO TOOK HIM IN.

MR.^VICTORINO AND MR.^HUNTER BECAME FRIENDS.

THEY WERE ONLY FRIENDS THREE TO FOUR MONTHS.

MR.^VICTORINO, HAD DOMINATION, FATHERLY, FOR LACK OF A BETTER WORD.

A DOMINATING ON MR.^HUNTER.

THEY LIVED TOGETHER.

THEY ONLY MET.

>> WHAT HELPS YOUR CLIENTS?

>> IT DOESN'T HELP MY CLIENT.

I'M SAYING, YOU CANDLE LYNN

EIGHT THE LIFE RECOMMENDATION FOR SALAS BECAUSE FOR SIX WEEKS SALAS ARGUED THAT, I WAS UNDER THE DOMINATION OF MR.^VICTORINO WHO I ONLY MET FOR TWO OR THREE DAYS.

SAME THING WITH CANNON.

CANNON WAS OFFERED A PLEA NEGOTIATION WHERE HE RECEIVED A LIFE SENTENCE AND SO WAS SALAS.

WHAT I'M SAYING, FOR SIX WEEKS

YOU'RE ARGUING THIS PERSON
DOMINATED YOU AND THEN YOU GET
A LIFE SENTENCE.

SO THAT'S WHY I THINK IT MIGHT
HAVE HAD EFFECT ON THE JURY.
HOWEVER YOU ARE CORRECT THAT
THEY DID, MAKE SEPARATE
VERDICTS.

IT WAS VERY, DETAILED.
THE VOTES.

>> REALLY SEEMS STRANGE,
HOWEVER, THAT MR.^HUNTER, WHO
LIVED WITH HIM, WHO HAD, HE MAY
HAVE HAD TIME TO DOMINATE, WAS,
THEY DIDN'T BUY THAT AS FAR AS
MR.^HUNTER WAS CONCERNED, HE,
WAS CONVICTED ALSO.

>> THERE WERE SOME FACTS IN THE
CASE THAT CAME OUT FROM
MR.^HUNTER WHERE ONE OF THE
LAST VICTIMS WAS FOUND IN A
CLOSET.

>> WITH THAT YOU'RE INTO YOUR
REBUTTAL.

>> OH, I'M SORRY.

>> ONE MORE QUESTION.

MR.^VICTORINO WAS 6' 7.

>> 6'7", 300 POUNDS.

HE IS VERY BIG PERSON.

>> IF YOU LIKE TO SAVE THE REST
OF YOUR TIME FOR REBUTTAL.

>> YES, MA'AM, THANK YOU.

>> MR.^NUNNELLEY.

>> MAY IT PLEASE THE COURT.

I'M KEN NUNNELLEY.

I REPRESENT THE STATE OF
FLORIDA IN THIS PROCEEDING.

I GUESS, IF SEVERANCE IS GOOD
AS PLACE TO START AS ANY UNLESS
THE COURT HAS SPECIFIC
QUESTIONS IS.

LET ME JUST SAY THIS.

AS TO BOTH ISSUES THAT DEFENSE
COUNSEL HAS ARGUED TODAY, IT
SEEMS THAT HUNTER IS
DISPOSITIVE OF BOTH.

>> DOESN'T IT, AND AGAIN, AT
SOME POINT, AS YOU I NOW
RECALL, OR YOU RECALLED THE
ORAL ARGUMENT --

>> LONG TIME AGO, JUSTICE
PARIENTE, I'M NOT SURE I DO.

>> IT SEEMS THAT YOU'VE GOT,
VICTORINO REALLY GET AS TRIPLE
WHAMMY SO TO SPEAK, THAT
EVERYBODY IS, BLAMING
VICTORINO.

NOW, SOUNDS LIKE THERE IS GOOD REASON TO DO THAT BUT AT TRIAL WHERE HE IS TRYING TO DEFEND HIS, DEFEND AGAINST THE STATE, HOW IS IT THAT THE AT SOME POINT, THERE WERE TEN DEFENDANTS AND, THEY ALL SAY I DIDN'T DO IT BUT THIS GUY DID IT?

AT SOME POINT YOU SAY THIS IS SO, YOU KNOW, EVERYBODY'S GANGING UP THAT IT IS JUST FUNDAMENTALLY UNFAIR? IN OTHER WORDS, JUST TO SAY, WHETHER HUNTER IS DISPOSITIVE OR NOT, ISN'T IT DIFFERENT HERE BECAUSE BOTH OF THE CODEFENDANTS AND CANNON, THEY ALL ARE BLAMING VICTORINO WHO IS NOT BLAMING THEM, SAYING I WASN'T THERE?

>> IT WASN'T JUST THE CODEFENDANTS WHO WERE POINTING THE FINGER AT MR.^VICTORINO AS BEING THE DRIVING FORCE BEHIND THESE MURDERS.

THE TESTIMONY AND EVIDENCE THAT COMES FROM OTHER WITNESSES WAS, THAT VICTORINO AND TO A

SLIGHTLY LESSER DEGREE, HUNTER,
WERE THE TWO PEOPLE WHO WERE,
JUST MOVED INTO THE HOUSE ON
FORT SMITH BOULEVARD.

I MAY BE GETTING THE STREETS
MIXED UP.

I DON'T KNOW THIS AREA.

WAS OWNED BY VICTIM ERIN
BELANGER'S GRANDMOTHER.

YOU KNOW THE FACTS. I WILL
SHORTEN AS MUCH AS I CAN.

ULTIMATELY ITEMS OF PROPERTY
BELONGING TO HUNTER AND
VICTORINO WERE TAKEN OUT OF THE
FORT SMITH HOUSE.

THAT LED --

>> I DON'T, MY QUESTION REALLY
IS, WHY ISN'T IT DIFFERENT FROM
HUNTER?

I REALIZE THE FACTS WERE --
JOINT TRIAL, BECAUSE EVERYBODY
IS POINTING THE FINGER AT
VICTORINO?

AND SO, AS, -- SAID, WASN'T
JUST THE STATE PROSECUTING
VICTORINO, IT WAS SALAS, IT WAS
HUNTER, IT WAS CANNON.
FROM THERE ON, THAT HE

ESSENTIALLY HAD NO CHANCE GIVEN
THE JOINT TRIAL ?

>> JUSTICE PARIENTE, LET ME,
LET ME MAKE SURE I KNOW, THAT
I'VE GOT THE QUESTION STRAIGHT.
I'M REALLY, REALLY CONFUSED
ABOUT WHAT WHERE WE'RE GOING OR
WHERE DEFENSE COUNSEL IS GOING.

>> IF YOU SAY, IF YOU DON'T
UNDERSTAND MY QUESTION THAT IS
FINE.

MY QUESTION IS YOU SAID, YOU
SAID, HUNTER IS DISPOSITIVE OF
THIS ISSUE.

>> TO THE ISSUE, AS FAR AS,
AS FAR AS THE CLAIM THAT
ANTAGONISTIC DEFENSES ARE A
BASIS FOR SEVEN RECOGNIZE, YES,
HUNTER IS DISPOSITIVE OF IT.

TO THE EXTENT THERE IS SOME
OTHER ISSUE OUT THERE THAT HAS
BEEN ARGUED TODAY, THAT ISSUE
IS NOT IN THE BRIEF AND I CAN'T
RESPOND TO IT.

IT IS JUST NOT THAT SIMPLE.

I CAN NOT RESPOND TO A CLAIM
MR. ^DOWDY STOOD UP AND ARGUED
TO YOU ALL TEN MINUTES NOT IN
HIS BRIEF.

THERE IS NO CLAIM THAT THE
DOMINATION ISSUE SUPPORTS A
BASIS FOR A MISTRIAL.

THAT CLAIM IS NOT BRIEFED.

AND --

>> THAT IS WHAT HE WAS ARGUING,
MR. ^NUNNELLEY.

EXCUSE ME, PART OF THIS
ARGUMENT WAS THAT THE NATURE OF
THE DEFENSE OF THE CODEFENDANTS
WAS A STEP ABOVE JUST A DEFENSE
AND BECAUSE OF THAT, THAT THE
MISTRIAL AND THE SEVERANCE
ISSUE ARE SOMEWHAT INTERRELATED
BUT I THINK IT GOES TO THE
SEVERANCE I AGREE WITH YOU ON
THAT.

ADDRESS IT ON THE SEVERANCE, AS
JUSTICE PARIENTE IS ASKING TO
YOU DO, IN A SITUATION WHERE
YOU HAVE MULTIPLE DEFENDANTS
HERE, HUNTER, AT A DEFENSE IS
NOT THE SAME AS VICTORINO, AND
I THINK WHAT SHE IS TRYING TO
GET YOU TO DO TO RESPOND
BECAUSE VICTORINO IN THIS CASE,
YOU HAVE TO I THINK AGREE THAT
HE KIND OF STOOD OUT IN THIS

GROUP OF THREE, HUNTER MAY
ANSWER, I DON'T KNOW BUT I
THINK THAT'S WHERE SHE IS
GOING.

IF YOU CAN ANSWER THAT I THINK
IT WOULD BE REALLY HELPFUL.

>> THERE IS PROBABLY A POINT
OUT THERE WHERE ANTAGONISTIC
DEFENSES COULD BE ERROR.

THERE IS SOMEPLACE, SOMEWHERE
OUT THERE THAT ISSUE PROBABLY
EXISTS.

HOPEFULLY WE'LL NEVER SEE IT
BECAUSE IT IS NOT IN THIS CASE.

THE POINT IS AND WHERE I'M
GOING, I'M TRYING TO AGAIN, AND
Y'ALL, I PROMISE I'M NOT TRYING
TO EVADE THE QUESTION, BUT,

THIS MISTRIAL COMPONENT THAT
CAME UP IN ORAL ARGUMENT,

RAISED FOR THE FIRST TIME HERE,
IF, IF THE CLAIM IS THAT JUDGE

PARSONS ABUSED HIS DISCRETION
FOR NOT GRANTING A MISTRIAL

SOMETIME MID-TRIAL BASED UPON THE
ILLEGAL, IN QUOTATION MARKS,

DEFENSE OF DOMINATION AND

DURESS, THAT CLAIM'S NOT IN THE

BRIEF.

THE FACT IS --

>> BACK TO THE SEVERANCE

PLEASE.

OKAY?

>> THAT'S WHERE I'M TRYING TO

GO.

>> THAT'S WHAT THIS LAWYER JUST

ARGUED TO US ALL MORNING THIS

IS A DIFFERENT, A DIFFERENT

CREATURE.

AND THAT'S ALL.

IT IS NOT THAT, ASSUME THAT WE

AGREE WITH YOU THAT THERE'S NOT

A SEPARATE ARGUMENT ABSENT THE

SEVERANCE WITH REGARD TO THE

MISTRIAL BUT HE PRESERVED IT AT

EACH STEP ASKING A MISTRIAL

AFTER HAVING REQUESTED A

SEVERANCE OF JUST ADDRESS IT

FROM WHERE THE QUESTION WAS

TAKING US, PLEASE.

REALLY WANT TO GET THROUGH

THIS.

>> THE STARTING POINT WOULD BE

McCRAE THAT THIS COURT RELIED

ON IN HUNTER.

I'LL QUOTE WHAT THIS COURT

SAID.

I'LL QUOTE WHAT THIS COURT
QUOTED FROM McCRAY IN ITS
HUNTER DECISION.

IF THE DEFENDANTS ENGAGE IN A
SWEARING MATCH AS TO WHO DID
WHAT, THE JURY SHOULD RESOLVE
THE CONFLICTS AND DETERMINE THE
TRUTH OF THE MATTER.

THE DEFENDANTS ARE CONFRONTING
EACH OTHER AND ARE SUBJECT TO
CROSS-EXAMINATION UPON
TESTIFYING.

THUS AFFORDING THE JURY ACCESS
TO ALL RELEVANT FACTS.

AND I WOULD SUBMIT, THAT, IN
THIS TRIAL, THAT IS EXACTLY
WHAT HAPPENED.

I WOULD POINT OUT THAT THE
DEFENSES OF, I HAVE TROUBLE
CALLING IT A DEFENSE, BUT, AND
WHETHER IT REALLY RISES TO THE
LEVEL OF BEING A TRUE DEFENSE
ARGUMENT AS OPPOSED TO SOME
KIND OF SOMETHING HE IS TRYING
TO SLIP IN THERE, IS, DEBATABLE
I SUPPOSE.

THE RECORD IS GOING TO SPEAK
FOR ITSELF ON THAT CERTAINLY
BUT, YOU HAVE EVIDENCE BEFORE

HUNTER AND SALAS GOT ON THE
STAND THAT SAYS, VICTORINO IS
THE ONE WHO WAS PLANNING THIS
ATTACK ON THE TELFORD LANE
HOME.

THAT COMES IN FROM A COUPLE OF
WITNESSES, GRAHAM, I BELIEVE
AND SEEMS LIKE CRADDOCK IF I'M
NOT MISTAKEN.

THAT EVIDENCE ABOUT VICTORINO
GIVING INFORMATION TO HIS, THE
REST OF THE ASSAULT TEAM, IF
YOU WILL, ABOUT THE LAYOUT OF
THE HOUSE AND WHO WAS GOING TO
DO WHAT AND HOW THEY WERE GOING
TO ENTER THIS DWELLING, THAT
WAS IN THERE A LONG TIME BEFORE
SALAS AND HUNTER GOT ON THE
WITNESS STAND AND SAID THAT.

>> LET ME ASK THIS.

LET'S SAY THAT THERE WERE FIVE
OR SIX PEOPLE -- [INAUDIBLE]
FIVE OR SIX PEOPLE HIDING IN
THAT HOUSE SOMEPLACE THAT
SURVIVED THIS, THAT WEREN'T
DISCOVERED, SAW THE WHOLE
THING.

>> OKAY.

>> IS THERE ANYTHING THAT WOULD PRECLUDE THE STATE FROM CALLING EACH AND EVERYONE OF THOSE WITNESSES TO COME IN AND TESTIFY, I SAW THE WHOLE THING, THEY CAME IN, MOMENT THEY LEFT AND IT WAS VICTORINO WHO WAS DIRECTING TRAFFIC, HE WAS ONE ORDERING PEOPLE TO DO THIS, IF THE KIDS LOOK SCARED THEY DID BECAUSE HE TOLD THEM TO DO IT IS THERE ANYTHING THAT PRECLUDES THAT TESTIMONY?

>> ABSOLUTELY NOT.

>> WHAT IS DIFFERENT BETWEEN THAT AND HAVING CODEFENDANTS COME IN AND TESTIFY TO THE SAME THING.

>> I SEE NO DIFFERENCE LEGALLY. I CAN NOT SEE AND DO NOT UNDERSTAND THERE TO BE LEGAL DIFFERENCE BETWEEN THE TWO. THE FACT SOMEBODY IS CHARGED TO A CRIME MAY BE SUBJECT TO IMPEACHMENT MAY NOT BE A BAD WITNESS.

>> CORRECT.

IF THEY ARE IMPEACHED THEY HAVE TO DEAL WITH WHATEVER.

>> SURE.

FUNDAMENTALLY THERE REALLY
ISN'T NO DIFFERENCE IF THEY HAD
TWO SURVIVORS, THREE SURVIVORS,
HOW MANY, COULD ALL COME IN AND
SAY THE SAME THING.

WOULDN'T MAKE ANY DIFFERENCE AT
ALL.

THIS IS NOT REALLY ANY
DIFFERENT THAN THAT.

WITH RESPECT TO, TO THE KANG
NONE, MISTRIAL, ISSUE, I WOULD
SUGGEST, NEVER GOT TO DO THIS
BEFORE, I WOULD SUGGEST THAT
HUNTER AGAIN CONTROLS THE
ISSUE.

THE CLAIM THAT THERE WAS A
MISTRIAL MADE BEFORE SALAS MADE
HIS MISTRIAL, IN OTHER WORDS
ABOUT THE COMMOTION IN THE
COURTROOM AND ALL THAT, THAT IS
NOT IN THE RECORD.

I CAN'T RESPOND TO SOMETHING
THAT IS NOT IN THE RECORD.

THERE WAS NO ATTEMPT MADE TO
CORRECT THE RECORD, OR ANYTHING
ELSE UNDER THE APPLICABLE RULES
OF APPELLATE PROCEDURE.

AND THAT LEAVES US, WITH, NO
MOTION FOR MISTRIAL AT THE TIME
OF CANNON'S TESTIMONY BY
MR. VICTORINO.

IT LEAVES NOTHING BUT WHAT WE
HAD IN HUNTER, WHICH WAS,
SALAS, MAKING HIS MOTION FOR
MISTRIAL THE FOLLOWING MORNING.

LET'S PUT THIS IN PERSPECTIVE.
CANNON TESTIFIES, I BELIEVE HE
IS THE FIRST OR SECOND WITNESS,
ONE MORNING.

THE NEXT MORNING, MR. SALAS
RENEWS HIS MOTION FOR MISTRIAL,
AND ADDS, AS A BASIS FOR IT,
THAT, THE STATE KNEW THAT
CANNON WAS GOING TO TESTIFY,
GOING TO INVOKE HIS FIFTH
AMENDMENT RIGHTS AND NOT
TESTIFY AND STATE WAS PLAYING
DIRTY.

THERE IS RULE THAT PROHIBITS
STATE, PARTY FROM CALLING A
WITNESS THAT THEY KNOW WILL
INVOKE THEIR FIFTH AMENDMENT
PRIVILEGE.

HOWEVER THAT IS THE ISSUE.

AND THAT ISSUE DOES NOT
PRESERVE A CLAIM THAT IS RAISED

IN THE BRIEF.

AND AGAIN, IT'S SQUARELY,
SQUARELY ON HUNTER, BECAUSE
THIS ERROR IS NOT PRESERVED.
THERE WAS NO TIMELY MOTION FOR
A MISTRIAL.

SALAS'S MOTION CAME TOO LATE.
AND I WOULD SUGGEST, THAT THIS
ISSUE, HAS NO MORE MERIT IN
THIS CASE, THAN DID IT IN
MR.^HUNTER'S CASE.

CERTAINLY NOT AN ABUSE OF
DISCRETION ON THE PART OF THE
TRIAL JUDGE.

I KNOW I HAVEN'T USED VERY MUCH
TIME AND I KNOW THERE ARE 18
ISSUES THAT ARE CONTAINED IN
THE BRIEF.

IF THE COURT HAS ANY FURTHER
QUESTIONS I WILL BE MORE THAN
HAPPY TO UNDERTAKE TO ANSWER
THEM THE BEST I CAN.

AND WITH THAT, I THE STATE
STANDS ON ITS BRIEF AND WOULD
ASK THE COURT TO AFFIRM THE
CONVICTION AND DEATH SENTENCES.

THANK YOU.

>> THANK YOU, MR.^NUNNELLEY.

MR. ^DOWDY.

>> BRIEFLY, YOUR HONORS.

I WOULD LIKE

TO ADDRESS TWO OF THE ISSUES

RAISED.

THE QUESTION WAS, IN TRIAL,

WHAT WOULD PREVENT THESE

CODEFENDANTS FROM COMING IN AND

TESTIFYING THAT VICTORINO MADE

THEM DO IT?

WE SAW VICTORINO DID THIS,

VICTORINO DID THAT.

THERE IS NOTHING, THERE IS

NOTHING THAT WOULD PRECLUDE

THEM FROM DOING THAT.

HOWEVER, WE'RE NOT TALKING

ABOUT WITNESSES IN THIS CASE.

WE'RE TALKING ABOUT

CODEFENDANTS.

WE'RE TALKING ABOUT

CODEFENDANTS TAKING THE WITNESS

STAND AND TESTIFYING AS TO

THAT.

THAT IS WHAT OUR ARGUMENT IS.

THAT IS ILLEGAL DEFENSE TO

FIRST DEGREE PREMEDITATED

MURDER.

THAT IS THE BIG DISTINCTION.

THEY ARE NOT WITNESSES, THEY

ARE CODEFENDANTS.

THE SECOND ISSUE IS, IS ABOUT
CANNON.

CANNON AS WAS JUST SAID WAS ONE
OF THE FIRST WITNESSES.

HE WAS I BELIEVE THE SECOND
WITNESS IN THE CASE.

HAD HE NOT TESTIFIED AND GAVE
THIS RAMBLING SPEECH, WHO'S TO
SAY THAT HUNTER AND SALAS WOULD
NOT HAVE TESTIFIED?

WE DON'T KNOW.

>> COUNSEL, ISN'T, THE STATE
CORRECT THOUGH, THAT, WITH
REGARD TO THE RECORD AND WHAT
THE RECORD MUST SHOW, THAT WE
HAVE PROCEDURES AND RULES, BY
WHICH RECORDS ARE CORRECTED
AND, THEY ARE FILLED IN?

SO I MEAN, ISN'T THE STATE
CORRECT ON THIS, THAT WE DON'T
HAVE A RECORD THAT WE'RE
WORKING WITH THAT'S BEEN
CORRECTED OR ATTEMPTED TO BE
CORRECTED AND WE JUST REALLY
HAVE ARGUMENTS AS TO WHAT
HAPPENED, AND, I'M NOT SURE WE
REALLY OPERATE ON THAT.

>> JUSTICE, AS, PROSECUTION

JUST SAID, THE NEXT DAY

MR. ^SALAS RENEWED HIS MOTION

FOR MISTRIAL.

THAT MISTRIAL WAS DONE.

WE WERE INVOLVED IN THAT MOTION

FOR MISTRIAL.

IF YOU READ CANNON'S TESTIMONY,

YOU WILL SEE, AND IT IS VOLUME

30, WE DID MOVE FOR A MISTRIAL,

AND THE RECORD DOES SPEAK FOR

ITSELF.

>> WHAT PAGE IS THAT?

>> I'M GOING TO SAY PAGE 1941.

>> WHAT IS THE PART WHERE YOU

SAID THAT JUST NAMES, YOU OR

THE OTHER ATTORNEY, AND THERE

IS NOTHING --

>> THAT IS THE PART WHERE THERE

WAS COMMOTION.

THERE WAS ARGUMENT AFTER THAT.

>> THAT'S WHAT YOU WERE SAYING.

YOU WERE SAYING THAT'S WHERE

YOU MADE YOUR MOTION FOR

MISTRIAL.

>> CORRECT.

BUT FOLLOWING THAT, YOU WILL

READ ON, WHERE, SALAS'S

ATTORNEY ALSO DID IT.

MR. HUNTER'S ATTORNEY NEVER
JOINED IN FOR WHATEVER REASON.
I'M NOT HERE ON HIS BEHALF.
BUT IT IS IN THE RECORD.
TO MY BEST OF MY RECOLLECTION,
I RESEARCHED THIS AND
INADVERTENTLY FORGOT TO BRING
THE VOLUME WITH ME.
VOLUME 30.

>> VOLUME 30, 1941?

>> I BELIEVE SO, YES, SIR.

THANK YOU.

>> THANK YOU BOTH FOR YOUR
ARGUMENTS.

THE COURT WILL NOW BE IN RECESS
FOR TEN MINUTES.

>> PLEASE RISE.