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**Charles C. Peterson v. State of Florida**

**SC06-252**

>>> PLEASE RISE.

LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT  
PLEASE BE SEATED.

>> GOOD MORNING, AGAIN, AND THE  
NEXT CASE ON THE CALENDAR IS  
PETERSON VERSUS STATE. MS. NORGARD.

>> MAY IT PLEASE THE COURT.  
MY NAME IS ANDREA NORGARD.  
I REPRESENT MR. PETERSON IN THIS  
CASE AS A SPECIAL APPOINTED  
PUBLIC DEFENDER, AND I JUST  
PREPARED THE APPELLATE BRIEFS IN THIS CASE  
AS WELL -- YOUR HONOR, I  
WOULD RESERVE THREE MINUTES  
FOR REBUTTAL TIME.

I INTEND  
THIS MORNING TO CONFINE THE  
ORAL ARGUMENT PRESENTATION TO  
ISSUES ONE, THE WILLIAMS RULE  
ISSUE, ISSUE FOUR, THE ISSUE  
RELATING TO REMORSE, AND THEN  
IF THERE IS ADDITIONAL TIME OR  
QUESTIONS FROM THE COURT --  
>> WHAT I WOULD LIKE TO ASK --  
ON THIS, WILLIAMS RULE  
EVIDENCE -- THE ATTACK THAT  
WAS MADE BY -- WERE YOU  
TRIAL COUNSEL?

>> I WAS NOT.

>> -- BY TRIAL COUNSEL, NONE --  
THE COLLATERAL CRIMES MET THE  
STRIKINGLY SIMILAR  
REQUIREMENT FOR IDENTITY AND  
WHAT ARE -- THE QUESTION I  
HAVE IS -- IS THIS AN ALL OR  
NOTHING THING I KNOW THE JUDGE  
DID EXCLUDE, THE CRIME THAT HE  
WAS ON PAROLE FOR THE 1981  
ROBBERY. WAS THERE AN ATTEMPT  
TO SAY LISTEN THIS ONE MAY BE  
CLOSED BUT NOT THAT ONE, IN  
TERMS OF YOUR APPROACH BEFORE  
US, IT SEEMS THAT IT IS WELL  
IT ALL CAME IN, AND A FEATURE OF

THE TRIAL AS OPPOSED TO SAYING THIS ONE COMING IN -- WAS THE UNDULY PREJUDICIAL ONE.

>> ARE PROBABLY WHAT OCCURRED THERE WERE ACTUALLY -- A POSSIBILITY OF I BELIEVE SEVEN PRIOR OFFENSES, ONE -- SEVERAL OCCURRING IN 1981, AND THEN SIX OCCURRING WITHIN A YEAR'S TIME -- ROUGHLY RELATED TO THIS DECEMBER 24, '97 OFFENSE, WHAT ENDED UP HAPPENING, TRIAL COUNSEL FILED A MOTION IN LIMINE AFTER THEY HAD RECEIVED STATE'S NOTICE, THIS RULE TO EXCLUDE ALL THOSE PRIOR OFFENSES AT THE HEARING, AND AFTER THE HEARING, THE COURT AGREED THAT THE OFFENSE THAT HE WAS ON PAROLE, FOR WHICH WAS THE ROBBERY OF A GAS STATION, WOULD BE EXCLUDED. ULTIMATELY, EVIDENCE OF THAT OFFENSE DID COME INTO THE PENALTY PHASE, YOU PROBABLY KNOW A LITTLE BIT MORE ABOUT IT, BUT WAS EXCLUDED BY THE TRIAL COURT, THIS FROM CONSIDERATION BY THE JURY, YOU RECALL THE GUILT PHASE THE COURT ALLOWED THE PROSECUTOR OR ESSENTIALLY WOULD HAVE ALLOWED THE STATE TO HAVE INTRODUCED EVIDENCE OF OTHER SIX PRIOR OFFENSES.

HOWEVER, FOR REASONS THAT ARE NOT CLEAR IN THE RECORD THE STATE DID NOT ELECT TO PRESENT EVIDENCE OF ALL SIX, IT CHOSE TO PRESENT EVIDENCE OF THREE.

SO IN THE TESTIMONY THAT WAS PRESENTED TO THE JURY, THE EVIDENCE FROM THE STATE, THERE WAS TESTIMONY OF THREE.

SO TRIAL COUNSEL ATTEMPTED TO KEEP OUT ALL OF THEM THE TRIAL COURT EXCLUDED ONE, AND THEN THE STATE, FOR WHATEVER REASON, CHOSE TO PRESENT ONLY EVIDENCE OF THREE UP FROM THIS COLLATERAL --

>> IN THOSE THREE, THOUGH,

THERE WAS A SEXUAL ASSAULT --  
>> CORRECT.

>> -- IN THE FAMILY STORE.

>> THE FAMILY DOLLAR, YES,  
YOUR HONOR.

>> FAMILY DOLLAR, BUT THE WAY  
THAT THAT CAME IN WAS THAT  
THERE WAS NO EVIDENCE OF -- A  
RAPE, ONLY EVIDENCE THAT DNA  
CAME IN BECAUSE THERE WAS A  
DISCUSSION AND A STIPULATION  
ENTERED INTO THAT THE DNA  
WOULD COME IN, BUT THERE  
WOULDN'T BE ANY EVIDENCE ABOUT  
THE SEXUAL ASSAULT.

>> CORRECT, YOUR HONOR, THE  
TRIAL COURT EXCLUDED EVIDENCE  
FROM THE FAMILY DOLLAR, SAID  
YOU CAN BRING THIS CASE IN AS  
WILLIAMS RULE EVIDENCE, HOWEVER,  
"I WILL NOT ALLOW THE STATE TO  
ALLOW THE VICTIMS IN THAT CASE  
IF THEY ARE CALLED AS" -- TO  
TESTIFY ABOUT THE SEXUAL ASSAULT,  
SUBSEQUENT TO THAT, THEN,  
DEFENSE COUNSEL STIPULATED TO  
EVIDENCE COMING IN THAT  
MR. PETERSON'S DNA WAS PRESENT  
AT THAT SCENE, AND I BELIEVE  
THE JURY WAS SIMPLY  
INFORMED DNA EVIDENCE  
COLLECTED AT THE SCENE OR  
PRESENT AT THE SCENE THAT WAS  
FOUND AT THE SCENE.

THE STATE, HOWEVER, DID PRESENT THE  
EVIDENCE FROM BOTH THE  
STATISTICIAN AND DNA ANALYSIS,  
THROUGH FDLE AS TO WHAT  
THE RESULTS OF THAT DNA  
TESTING WERE, BUT IT WAS  
STIPULATED THAT DNA WAS FOUND.

>> THE ARGUMENTS THAT YOU MADE  
-- NOW GETTING INTO THE  
WILLIAMS -- ARGUMENT, IS THAT  
THE FACT THAT THE DEFENDANT  
HID HIMSELF IN THE PREMISES  
PRIOR TO THE ROBBERIES SO THAT  
HE WAS THEREAFTER CLOSING --  
IS NOT A UNIQUE -- AND I  
HAVE SOME DIFFICULTY WITH  
THAT, THAT IS WHY -- I  
THINK BACK TO THE FIRST  
WILLIAMS CASE --  
>> CORRECT.

>> -- WHERE SOMEONE HID THEMSELVES IN BACK OF AN AUTOMOBILE AND WAITED FOR -- I THINK THOSE WERE THE CIRCUMSTANCES. AND THEN THAT THAT WAS REALLY THE UNIQUE FEATURE OF THAT CASE, THAT IS THAT THEY WERE HIDING IN THE BACK OF THE AUTOMOBILE. SIMILARLY, WHY WOULDN'T THE FACT THAT A ROBBER HIDES HIMSELF IN THE PREMISES, WAITS FOR THE PREMISES TO CLOSE DOWN, AND THEN OPERATES TO COMMIT THE -- THE ROBBERY ON THE REMAINING EMPLOYEES, WHY WOULDN'T THAT BE THE KIND OF UNIQUE CIRCUMSTANCE THAT WOULD GIVE RISE TO THE ADMISSIBILITY OF PRIOR OFFENSES?

>> WELL, I THINK WHAT THE COURT NEEDS TO FOCUS ON IS, OBVIOUSLY, THE BODY OF CASE LAW THAT HAS EXPANDED UPON AND DEVELOPED THE WHOLE GENRE OF WILLIAMS RULE EVIDENCE HAS DRAMATICALLY CHANGED FROM THAT ORIGINATING CASE OF WILLIAMS. AND I BELIEVE THAT IF THE COURT LOOKS AT, FOR EXAMPLE, THE ATWATER CASE AND THE BLACK CASE CITED BOTH BY STATE AND BY MYSELF IN THE INITIAL BRIEF, IN BOTH OF THOSE CASES THE PERPETRATORS HID IN BUSINESSES AFTER CLOSING. AND, CLEARLY, MR. PETERSON WAS NOT RESPONSIBLE FOR EITHER OF THOSE OFFENSES --

>> WHY -- WHY DOESN'T THAT JUST MEAN THAT OTHER ROBBERS -->> CORRECT, OR OTHER PEOPLE THAT CHOOSE TO PERPETRATE -->> M.O., BUT HERE THAT THAT REALLY WAS A UNIQUE FEATURE. AND IT WAS HIS WAY OF -- OF COMMITTING -- IN OTHER WORDS. THAT HE CHOSE TO USE THAT PARTICULAR TACTIC IN COMMITTING THESE ROBBERIES, WHY WAS THE FACT THAT -->> BECAUSE --

>> NOBODY ELSE MIGHT BE A COPYCAT BURGLAR?

>> BECAUSE --

>> COPYCAT, YOU KNOW -- COPYCAT, THE ORIGINAL CAT BURGLAR, WHATEVER PREVENTS THIS FROM BEING A SPECIAL UNIQUE CIRCUMSTANCE THAT THE TRIAL COURT WOULD RECOGNIZE IN ALLOWING EVIDENCE OF THOSE PRIOR OFFENSES TO ESTABLISH THE IDENTITY --

>> BECAUSE I DON'T BELIEVE THE EXISTENCE OF THAT PARTICULAR FACT IS SUFFICIENTLY UNIQUE BUT --

>> WAIT A MINUTE.

IF YOU TAKE

THAT FACT, THOUGH, AND PUT IT WITH OTHER FACTS, I MEAN THE LATEX GLOVES, DIFFERENT THINGS, YOU DO HAVE TO -- DOES EACH PARTICULAR ITEM HAVE TO BE UNIQUE, OR WHEN YOU PUT THEM TOGETHER CAN YOU FIND THE UNIQUENESS?

WE HAVE SEVERAL FACTORS HERE OTHER THAN JUST THE STAYING IN THE STORE, THE ESTABLISHMENT CLOSED.

WHEN YOU PUT THEM

TOGETHER DON'T YOU END UP WITH IDENTITY, A UNIQUE PATTERN GOING ON HERE?

>> TO ANSWER THE COURT'S FIRST QUESTION, YOU HAVE TO LOOK AT EACH CIRCUMSTANCE, THAT IS THE ONLY WAY YOU CAN COMPARE OR CONTRAST EACH ELEMENT OF WHAT THE COURT IS RELYING ON IN ORDER TO RULE --

>> YOU LOOK AT TOTAL --

BECAUSE -- PATTERN --

>> SIMILAR, AND WHAT IS SIMILAR.

>> CORRECT.

>> SO WHAT I HAD ASKED YOU ORIGINALLY -- I'M NOT SURE THAT -- PROBABLY JUST THE WAY THE QUESTIONING WENT, BUT I REALLY, YOU KNOW, WHAT COULD HAPPEN, AND I WANT TO MAKE SURE IT DOESN'T HAPPEN, IS EVEN KIND OF TAKE ALL FOUR AND GO, WELL, HERE

ARE THESE SIMILARITIES.  
BUT WHAT YOU REALLY FIND OUT IS  
THE SIMILARITY ABOUT THE MASK WAS  
ONLY IN TWO, AND THE  
SIMILARITY ON THE STAYING IN  
THE BACK WERE ONLY IN THE  
OTHER TWO.

>> CORRECT.

>> WHAT I WANT TO KNOW WAS  
THE STATE PUT TO TASK TAKING  
EACH ONE BEING OFFERED AND  
COMPARING WITH THE BIG LOTS  
TO SHOW THAT EACH ONE  
INDIVIDUALLY HAD MORE  
IDENTICAL POINTS OF SIMILARITY  
THAN DISSIMILARITY, OR DID YOU  
MAKE AN ARGUMENT THAT I CAN  
UNDERSTAND THE PHAR-MOR MAY  
BE SIMILAR, THE FAMILY DOLLAR  
WASN'T QUITE SIMILAR, BECAUSE  
THERE WAS A RAPE. AND I CAN'T  
ARGUE THAT TO THE JURY, BECAUSE  
THAT WILL MAKE IT PREJUDICIAL BUT  
DISSIMILAR TO A RECORD THAT WOULD  
ALLOW US TO SAY IT COULD BE ERROR,  
FOR ONE, BECAUSE THAT ONE WAS MORE  
DISSIMILAR BECAUSE IT IS  
A COMPARISON NOT WITH EACH  
OTHER, I THINK THAT IS -- TO ME  
AT LEAST THEY DON'T LOOK AT  
FAMILY DOLLAR, PHAR-MOR AND --

>> AND SAY THOSE ARE SIMILAR.  
YOU HAVE GOT TO LOOK AT EACH  
ONE AND COMPARE IT TO THE --

>> SO WHEN WE DO THAT, DON'T  
WE, GOING BACK TO JUSTICE  
QUINCE'S AND JUSTICE  
ANSTEAD'S QUESTION, WE FIND  
THAT MY CONCERN IS WHAT THE  
FAMILY DOLLAR, BUT AS TO THE  
OTHER TWO, THAT IT WOULD SEEM  
THAT THESE ARE MANY UNIQUE  
POINTS OF SIMILARITY BETWEEN  
THE TWO OF THEM, AS JUSTICE  
QUINCE WAS POINTING OUT,  
YOU KNOW, THE MASK, NOT JUST A  
MASK, BUT IT WAS A PARTICULAR  
TYPE OF MASK.

>> RIGHT, AND TO ANSWER THE  
QUESTION BEFORE WE GET INTO --  
YOU KNOW, ENGAGE IN COMPARISON  
OF EACH FAMILY DOLLAR TO A  
CHARGED OFFENSE, PHAR-MOR TO  
CHARGED OFFENSE OR MCCRORY

TO CHARGED OFFENSE  
DEFENSE COUNSEL SOUGHT TO  
CONCLUDE THEM, THE  
TRIAL COURT ALLOWS THE STATE  
TO ADMIT THEM ALL, WITH THE  
TWO EXCEPTIONS OF DELINEATING  
OUT THE SEXUAL BATTERY AND  
DELINEATING OUT THE VERY EARLY --  
THE 1981 OFFENSE.

>> SO YOUR ANSWER, REALLY, TO  
JUSTICE PARIENTE'S QUESTION IS  
DEFENSE COUNSEL DID NOT SAY  
"LOOK, LOOK AT THE PHAR-MOR  
CASE, IT IS DIFFERENT BECAUSE  
X, Y, Z," OR "LOOK AT THE  
MCCRORY CASE, IT IS  
DIFFERENT."

WE DON'T HAVE THAT.

>> WHAT TRIAL COURT HAD --

>> THAT IS EASY, RIGHT, BUT  
THAT SHOULD BE AN EASY  
QUESTION AND I HAVEN'T  
GOTTEN AN ANSWER FROM YOU.

IT IS WAS IT -- PRESERVED  
AS TO EACH INDIVIDUAL --

>> IT WAS DONE BY THE STATE IN  
AN ATTEMPT TO SHOW WHY THEY  
WERE ADMISSIBLE.

THE STATE PART

OF THE RECORD -- I DON'T HAVE THE  
RECORD CITATION PAGE FOR YOU --  
PREPARED ESSENTIALLY A GRAPH  
OR A CHART THAT LISTED OUT  
THE VARIOUS FACTORS OF EACH OF  
THEM, SO THE TRIAL COURT DID  
HAVE BEFORE HIM --

>> YOU ARE SAYING HERE WHY IS

--

>> HERE IS WHY THIS COMES IN.  
DEFENSE CERTAINLY SAID NO  
NUMBER ONE FAMILY DOLLAR  
SHOULD NOT -- SEXUAL ASSAULT  
INVOLVED MAKES IT COMPLETELY  
DIFFERENT, JUST EXCLUDING  
EVIDENCE OF THE SEXUAL  
ASSAULT DOESN'T THEN SOMEHOW --

WE CAN'T JUST EXCLUDE THE  
DIFFERENCES AND THEN CONVERT  
THAT TO BEING AN ADMISSIBLE --

>> THAT ONE, SEEMS TO BE  
A BIG POINT FOR ME.

>> IT IS A BIG POINT FOR ME,  
CERTAINLY DIDN'T SEE -- MAYBE IN  
YOUR BRIEF -- YOU REALLY BREAKING

IT DOWN ON, YOU KNOW, WHETHER ONE SHOULD HAVE BEEN EXCLUDED.

>> MY POSITION IS THAT ALL SHOULD HAVE BEEN EXCLUDED. HOWEVER, IT IS CLEARLY FAMILY DOLLAR.

I DON'T THINK UNDER WILLIAMS RULE ANALYSIS IT IS APPROPRIATE FOR THE TRIAL COURT TO SAY TO KIND OF CHERRY PICK WHAT PARTS OF THE OFFENSE WE'RE GOING TO PULL OUT, NOT LET JURY THE HEAR ABOUT, MAKES THIS A DISSIMILAR OFFENSE AS OPPOSED TO WHAT THINGS WE ARE GOING TO LET THE JURY HEAR.

>> OF COURSE YOU WOULDN'T WANT TO PUT IN THIS DISSIMILAR --

>> --

>> VICTIMS HERE.

>> THE TRIAL COURT DIDN'T DO THAT HERE.

THE TRIAL COURT THE STATE MADE THE STATEMENT THAT, YOU KNOW, WE DON'T WANT TO GET THIS FOCUSED ON THE RAPE.

THEY WERE CONCERNED ABOUT THE EMOTIONAL IMPRESSION ON THE INJURY ABOUT THE RAPE, SO THAT THEY SAID WE'RE NOT INTERESTED IN PUTTING THE RAPE IN.

>> THIS IS A SEPARATE ISSUE FROM --

>> IT WAS NOT CHERRY PICKED BY THE TRIAL JUDGE.

THE TRIAL JUDGE WAS TRYING TO -- FOLLOW WHAT THE PARTIES WERE TALKING ABOUT,

>> THE DEFENSE DID NOT AGREE FAMILY DOLLAR SHOULD COME IN.

THE STATE POSITION WAS IT SHOULD COME IN, ALTHOUGH WE DON'T BELIEVE THAT THE SEXUAL BATTERY PART WOULD BE ADMISSIBLE BECAUSE OF THAT DANGER.

HOWEVER, THE TRIAL COURT SHOULD NOT HAVE EXCLUDED THE FACT THAT THE SEXUAL BATTERY OCCURRED TO FIND FAMILY DOLLAR WAS COMPLETELY

--

>> WOULD YOU AGREE THE JUDGE FOUND THAT IT WAS SUBSTANTIALLY SIMILAR EVEN WITH RAPE, TRIAL COUNSEL AGREED I DON'T WANT THE RAPE IN.

>> CORRECT.

>> LET'S GO BACK TO -- IS THERE A CASE OUT THERE THAT SAYS THAT IF YOU HAVE THESE FIVE POINTS OF SIMILARITY BUT YOU ALSO HAVE ANOTHER CRIME, A MURDER, A RAPE, THAT IT CAN'T BE WILLIAMS RULE?

>> -- THE WILLIAMS RULE CASES, FOR LACK OF A BETTER ANALOGY, ARE LITERALLY ALL OVER THE MAP, AND IF THERE IS A CASE THAT SAYS BECAUSE YOU HAVE GOT FIVE YES, THREE NO, IT IS AUTOMATIC OUT -- AND IS THERE A BRIGHT-LINE RULE?

>> NO, THERE IS NOT, THAT I WAS ABLE TO LOCATE FOR THE COURT. WHAT I CAN TELL YOU, THOUGH, IS WHEN THE COURT ENGAGES IN THE ANALYSIS OF WHEN THE WADES RULE EVIDENCE IS PROPERLY ADMITTED OR NOT, YOU GENERALLY FIND THAT THERE IS AT LEAST ONE PARTICULAR FACT THAT IS COMMON TO ALL THE CASES THAT DOES HAVE THAT ABSOLUTELY UNIQUE ASPECT OF IT, UNLESS YOU ARE ANALYZING CASES WHERE THE BASIS FOR THE ADMISSION OF THE WILLIAMS RULE TESTIMONY IS FOR SOMETHING OTHER THAN IDENTITY OR M.O., SUCH AS -- OR THE CASES WHERE DISSIMILAR COLLATERAL CRIMES ARE ADMITTED BECAUSE THEY ARE INEXTRICABLY INTERTWINED WITH THE OFFENSE THAT IS CURRENTLY BEING TRIED, WHICH IS NOT THE CASE HERE.

>> SO --

>> THAT PROPOSITION --

>> LET ME COME BACK TO MY ORIGINAL QUESTION, WHY -- IS THIS METHOD OF OPERATING REMAINING IN THE STORE TILL AFTER CLOSING, THEN COMMITTING A CRIME, THAT ONE

DOMINATING FEATURE --

>> WELL, ONE OF THE THINGS I THINK THE COURT HAS TO RECOGNIZE IS THAT THAT -- IN MY OPINION, THE FACT THAT THAT PARTICULAR FEATURE IS ROUTINELY USED BY MANY OTHER PERPETRATORS, IN MANY OTHER INSTANCES --

>> WHERE DO YOU GET THE -- WHERE DO YOU GET THE WORD "ROUTINELY"?

THIS ISN'T, I THINK -- PROBABLY BY NOW WE CAN SAY THAT SOMEBODY COMING INTO A 7-ELEVEN LATE AT NIGHT, YOU KNOW, WITH ONLY A SINGLE CLERK THERE, AND PULLING A GUN AND SAYING "GIVE ME ALL THE MONEY", THAT THAT -- YOU KNOW, THAT -- YOU KNOW, SOMETHING HAPPENED AT SOME POINT IN TIME.

>> CORRECT.

>> -- TO SAY THAT IS ROUTINE. I'M HAVING DIFFICULTY.

JUST BECAUSE YOU ARE ABLE TO CITE A COUPLE OF CASES --

>> THAT FOLLOWS ALMOST --

>> -- YOU KNOW, THAT MAKES THIS ROUTINE.

>> BECAUSE WHAT I BELIEVE, YOUR HONOR, AGAIN, YOU HAVE TO HAVE AT LEAST ONE, THAT UNIQUE ONE, ABSOLUTELY UNIQUE FACTOR THAT POINTS LITERALLY INEXPLICABLY TO ANYONE OTHER THAN THIS DEFENDANT AND FOR EXAMPLE, IF WE'RE TALKING ABOUT DISSIMILARTYS, THE McCRORY CASE WAS BURGLARIZED, WAS ROBBED DURING BUSINESS HOURS.

HE DID NOT ENTER THAT STORE AFTER HOURS.

THE STORE WAS OPEN FOR BUSINESS.

HE WASN'T HIDING IN THAT STORE.

>> YOU HAVE THE ORIGINAL WILLIAMS CASE TODAY, I TAKE IT, OF SOMEBODY HIDING IN THE BACK SEAT OF AN AUTOMOBILE, WHAT YOU WOULD, OH, NO, YOU CAN'T HAVE THAT ANYMORE BECAUSE THAT HAS BECOME ROUTINE?

>> I WOULD SAY THAT IS A FACTOR

THAT CAN BE CONSIDERED.  
IT'S ONE POINT THAT CAN BE  
UTILIZED WHEN YOU'RE LOOKING AT  
THE BIG PICTURE BUT I WOULD  
MAINTAIN IN AND OF ITSELF THAT  
SINGLE FACTOR ALONE WOULD NOT  
BE ENOUGH.

>> BUT WE, BUT IT SEEMS TO ME  
THAT THIS THE ARGUMENT LOSES  
CITED OF WHAT THE EVIDENCE  
CODE NOW SAYS ABOUT OTHER CRIME  
EVIDENCE.

AND IT'S VERY SPECIFIC HERE  
THAT WHAT WE'RE DEALING WITH,  
IS REALLY AN ISSUE OF  
RELEVANCE.

AND THAT WE'RE SAYING THAT  
SIMILAR FACT EVIDENCE OF OTHER  
CRIMES IS ADMISSIBLE WHEN  
RELEVANT TO PROVE A MATERIAL  
FACT IN ISSUE.

AND, BUT, IT IS INADMISSIBLE  
WHEN THE EVIDENCE IS RELEVANT  
SOLELY TO PROVE BAD CHARACTER  
OR PROPENSITY.

NOW HERE, WE HAVE EVIDENCE OF  
THE MASK, WE HAVE EVIDENCE OF  
THE VARIOUS FACTORS THAT, THAT  
ARE RELEVANT TO IDENTIFICATION  
OF PERSON WHO COMMITTED ALL OF  
THESE CRIMES.

AND SO THAT, THE TEST REALLY IS  
ANSWERED BY WHAT THE EVIDENCE  
CODE SAYS.

>> THE EVIDENCE CODE READ IN  
CONJUNCTION, I AGREE, THE  
ULTIMATE TEST IS RELEVANCY.  
HOWEVER, THIS COURT HAS BEEN  
VERY CLEAR IN ITS DIRECTIVES  
THAT WHEN THE PURPOSE OR WHEN  
THE RELEVANT POINT THAT THE  
EVIDENCE IS BEING ADMITTED FOR  
IS TO ESTABLISH IDENTITY, THAT,  
THERE STILL MUST BE THAT  
HEIGHTENED SIMILARITY THAT  
INEXTRICABLY POINTS TO THE  
DEFENDANT AS BEING THE  
PERPETRATOR.

SO EVEN THOUGH THE EVIDENCE  
MIGHT BE RELEVANT --

>> WE NEVER SAID, THAT I'M  
AWARE OF, THAT THERE CANNOT BE  
SOME DISSIMILARITIES INVOLVED,  
THAT THERE CANNOT BE SOME OTHER

CRIME INVOLVED IN, AS LONG AS, WHAT WE'RE DEALING WITH ARE SIMILARITIES THAT POINT TOWARD THE IDENTIFICATION OF THE SAME PERSON COMMITTING THESE CRIMES.

>> I WOULD DISAGREE WITH, RESPECTFULLY, YOUR HONOR, WITH THE POSITION THAT EACH OF THESE OFFENSES, IF YOU LOOK AT FAMILY DOLLAR AND COMPARE IT TO THIS OFFENSE, THAT IT IS THAT SIMILAR.

THERE WAS NO SEXUAL BATTERY. THAT OCCURRED IN THIS INSTANCE AS THERE WAS IN FAMILY DOLLAR. IT WAS SIGNIFICANTLY FACTUALLY DIFFERENT SCENARIO.

IN MY OPINION FAMILY DOLLAR SHOULD NOT --

>> I HAVE DISAGREEMENT ABOUT WHAT THE EVIDENCE CODE PROVIDES.

>> CORRECT. IN McCRORY --

>> AND DISQUALIFYING FACTOR BECAUSE THERE WAS A RAPE INVOLVED IN ONE OF THEM, THAT MEANS YOU CANNOT GET THE FACT OF THE ROBBERY IN.

IT SEEMS TO ME THAT WOULD BE AN INCONGRUOUS RULE.

>> WHAT WE HAVE THIS IS IMPORTANT, WE HAVE OUR LATEST CASE IN McCLAIN SAID WE CRIED REQUIRED IDENTICAL POINTS OF SIMILARITY BETWEEN COLLATERAL ACT AND CRIME SO UNUSUAL CHARACTER OR SO UNUSUAL TO POINT TO THE DEFENDANT.

I THINK THE INTERESTING POINT THAT YOU HAVE RAISED IS THAT ROBBERY NOWADAYS ONLY OCCUR IN A VARIETY OF WAYS, AND WHEN YOU READ THE COURT'S CASE OF ROGERS, WINN-DIXIE, FOR A SECOND I THOUGHT, THAT THE COLOR OF THE PERPETRATORS THAT IT WAS ACTUALLY THIS CASE BECAUSE IT IS TALKING ABOUT BEING CHAIN STORE, TOOK PLACE JUST PRIOR TO CLOSING.

THERE WERE NYLON STOCKING MASKS.

WHAT YOU'RE KIND OF SAYING THE DANGER HERE IS THAT REALLY WHEN

YOU GET TO ROBBERIES, OF STORES, THERE'S ONLY GOING TO BE A COUPLE OF WAYS THAT YOU'RE GOING TO COMMIT THESE CRIMES. HOWEVER, THAT BEING SAID, WHAT YOU'VE GOT IN TERMS OF, YOU'RE TRYING TO FIND IDENTITY HERE AND ALL OF THE CRIMES DESCRIBE SOMEBODY THAT IS, AND I WANT YOU TO THIS, THAT IS SIMILAR TO THE DEFENDANT IN TERMS OF HIS HEIGHT, HIS RACE, THE, THERE WAS SOMETHING ABOUT, YOU KNOW, HIS FACIAL FEATURES, PUDGY CHEEKS, USE OF PROFANE LANGUAGE TOWARDS THE EMPLOYEES. USE OF, AGAIN, THEN WE HAVE THE TYPE OF MASK, THE GLOVES, THE TYPE OF GUN, AND, SO IT SEEMS TO ME, IT GETS TO A POINT WHERE THAT, IT BECOMES THE TRIAL JUDGE'S DECISION THEN, ARE THESE POINTS OF SIMILARITY SO SPECIAL THAT IT DOES ALLOW FOR INTRODUCTION INTO EVIDENCE? AND SO I GUESS MY QUESTION TO YOU IS, NOW I MIGHT MAKE A DIFFERENT DECISION IF I WERE THE TRIAL JUDGE. MAYBE I WOULD HAVE KEPT OUT THELY DOLLAR ONE BECAUSE I WOULD BE CONCERNED THAT RAPE IS REALLY VERY DIFFERENT AND MAKES THE WHOLE THING A DIFFERENT TYPE OF CRIME. BUT ISN'T, AT THE POINT THERE IS ENOUGH SIMILARITY, ISN'T THAT THEN, ONCE THEY FOLLOW THE LAW, THE JUDGE, ISN'T THAT THEN A DISCRETION AIRY DECISION BY THE JUDGE TO ALLOW IT IN OR NOT RATHER THAN US DECIDE AS A MATTER OF LAW? THIS ONE HAS EIGHT POINTS OF SIMILARITY, THAT HAS TEN, THAT CAN'T COME IN. PLEASE IF YOU COULD ADDRESS THE ISSUE THAT THE JUDGE SEEMED TO FOLLOW THE LAW. TRIED TO MAKE, DID A VERY CAREFUL ANALYSIS. EXCLUDED ONE AS BEING TOO REMOTE, AND THEREFORE, IT DOESN'T SEEM THAT THE JUDGE

ERRED BASED ON BOTH THE EVIDENCE CODE AND OUR LAW IN LETTING IT IN.

JUST BECAUSE ANOTHER JUDGE MIGHT HAVE SAID ONE DOESN'T COME IN OR IT DOES COME IN. I ALWAYS STRUGGLED WITH THIS BUT ISN'T THAT WHERE THE JUDGE'S DISCRETION COMES IN LOOKING AT THEM ALL AND MAKING THAT JUDGMENT BASED ON WHAT HE OR SHE HEARS?

>> CORRECT, YOUR HONOR, THE STANDARD OF APPELLATE REVIEW THIS WOULD BE ABUSE OF DISCRETION STANDARD.

HOWEVER, EVEN ONCE THE COURT MIGHT DETERMINE THAT THE COLLATERAL OFFENSES BEING SIMILAR OR DISSIMILAR MIGHT MEET THE STANDARD FOR BEING ADMISSIBLE, YOU STILL HAVE TO FALL BACK ON THE QUESTION OF EVEN THOUGH THE EVIDENCE IS RELEVANT, IS IT STILL EXCLUDABLE BECAUSE THE PREJUDICIAL IMPACT OUTWEIGHS ITS PROBATIVE VALUE.

WHICH AGAIN WOULD BE THE SECOND PART OF THIS ARGUMENT.

WE PRIMARILY FOCUSED ON WHETHER OR NOT THESE COLLATERAL OFFENSES ACTUALLY ROSE TO THE LEVEL MEETING A STANDARD FOR ADMISSIBILITY UNDER WILLIAMS BUT WE CAN'T IGNORE THE FACT EVEN RELEVANT EVIDENCE SHOULD BE EXCLUDED FROM CONSIDERATION BY THE JURY WHEN THE PREJUDICIAL IMPACT OF THAT EVIDENCE OUTWEIGHS ITS PROBATIVE VALUE.

AND I THINK THAT WE CAN'T IGNORE THAT EVEN THOUGH THE JUDGE, WE MAY DISAGREE AS TO WHETHER OR NOT JUDGE ABUSED DISCRETION IN FINDING THESE CASES WERE WITHIN THE PER VIEW OF WILLIAMS, AS FAR AS THE SIMILARITIES AS FAR AS IDENTIFICATION.

>> THAT IS ALSO A WEIGHING TEST THAT THE JUDGE PERFORMS AND THE STATE MADE IT EASY WITH THE STIPULATION THAT THE RAPE

WOULDN'T COME IN BECAUSE I THINK THEY RECOGNIZED THAT IF THAT RAPE CAME IN, THEN THAT REALLY WOULD OVERSHADOW ALL THE OTHER EVIDENCE, AND, YOU KNOW, ALTHOUGH, I MEAN THE BOTTOM LINE WAS, THAT, I SUPPOSE HE COULD HAVE STIPULATED THAT HE COMMITTED THESE OTHER CRIMES BECAUSE IN THE END, HE WAS CONVICTED OF THEM, EITHER BY, IT WASN'T CLEAR TO ME WHETHER IT WAS PLEA OF GUILTY OR --

>> I BELIEVE IN ONE THERE WAS ACTUALLY A TRIAL IN THE FAMILY DOLLAR.

I BELIEVE THE OTHERS, I BELIEVE THAT THEY WERE PLEAS IN SOME OF THE OTHER CASES.

>> THEY COULD HAVE SAID, LISTEN WE'LL STIPULATE HE COMMITTED THESE OTHER CRIMES, AND, STOP IT ALL FROM, YOU KNOW, THEY WOULD HAVE JUST THEN COME IN AS TO WHAT TYPE OF CRIMES THEY WERE BUT, I THINK THAT OTHERWISE, THEY PUT ON THE, THE WITNESSES TO SHOW THEY WERE SUBSTANTIALLY SIMILAR AND I DON'T KNOW WHERE, WHERE DID IT GO TOO FAR IN THIS CASE THAT IT WOULD AGAIN BE A ABUSE OF DISCRETION THAT IT BECAME A FEATURE OF THE TRIAL SO THAT, THEY, REALLY WERE CONVICTING BASED ON OTHER CRIMES AS OPPOSED TO THE BIG LOTS CRIME?

>> I BELIEVE IT WENT TOO FAR WHEN THE COURT COMPARED THE RELATIVE STRENGTH OF THE STATE'S CASE IN THE CHARGED OFFENSE WHICH WAS ESSENTIALLY, NO PHYSICAL EVIDENCE. THERE WAS NEVER, NO WEAPON WAS EVER FOUND THAT WAS LINKED TO MR. PETERSON AS BEING THE WEAPON --

>> WHAT YOU'RE SAYING IS, BECAUSE THE OTHER CRIMES HAD STRONGER EVIDENCE, THAT WAS -- THAT'S WHY THEY COME IN. DENYING HE COMMITTED THE CRIME. HE DENIES IT'S HIM. SO THEY WANT TO PROVE IDENTITY.

THEY GET TO PROVE IDENTITY BY STRONGER EVIDENCE THESE OTHER CRIMES WHICH ARE SUBSTANTIALLY SIMILAR WERE COMMITTED BY HIM. THAT'S WHAT, WHY THEY'RE RELEVANT.

SO I THINK THE ARGUMENT THAT THOSE CASES WERE STRONGER DOESN'T HELP YOU.

YES, IT'S PREJUDICIAL BECAUSE ALL EVIDENCE IS PREJUDICIAL BUT THAT'S EXACTLY WHY IT BECOMES RELEVANT TO PROVE IDENTITY.

>> WELL, BUT INSTEAD IN THIS CASE I BELIEVE IF YOU LOOK AT, FOR EXAMPLE, TAKE THE INSTANCE OF THE FACT THAT THERE WAS A WEAPON USED.

AGAIN, IN ANY ROBBERY WITH A FIREARM YOU'RE GOING TO HAVE A FIREARM.

THEN WE HAVE TO START TO LOOK AT WHAT TYPES OF WEAPONS WERE USED.

IS THERE A SIMILARITY BETWEEN THE WEAPON?

>> IN THIS CASE THE GUN CHARGED IN THE OFFENSE AND VERSUS DESCRIPTION OF THE GUNS IN COLLATERAL OFFENSES THERE WERE SIGNIFICANT DIFFERENCES BOTH IN COLOR AND BOTH IN SIZE AND NO WEAPON WAS EVER FOUND THAT CONCLUSIVELY DEMONSTRATED WHICH WEAPON OR THAT A WEAPON OWNED BY MR. PETERSON WAS USED IN THIS ACTUAL HOMICIDE.

>> MISS NORGARD --

>> WHERE THE ERROR OCCURRED --

>> MISS NORGARD, YOU'RE INTO YOUR REBUTTAL.

IF YOU TAKE SOME TIME.

>> I WILL TAKE TEN SECONDS TO FINISH THIS.

WHERE THE ERROR OCCURRED IF YOU CROSS THE LINE USING COLLATERAL CRIMES TO DEMONSTRATE IDENTITY I BELIEVE IT CROSSED INTO PROPENSITY BASED UPON ENORMITY OF EVIDENCE THAT WAS BROUGHT IN TO ESTABLISH THE COLLATERAL OFFENSES.

>> MISS BLANCO.

MAY IT PLEASE THIS HONORABLE

COURT.  
YOUR HONORS, I'M KATHERINE  
BLANCO. I REPRESENT THE STATE OF  
FLORIDA AND APPELLEE IN THIS  
CASE.

FIRST ISSUE RAISED BY THE  
DEFENSE IN THIS CASE --  
>> LET ME ASK YOU THIS.  
WE HEARD A LOT ABOUT THE  
SIMILARITIES AND  
DISSIMILARITIES OF THESE  
OFFENSES BUT, IF ONE OF THE  
THINGS THAT IS ONE OF THE  
THINGS VERY TROUBLING TO ME,  
THIS WILLIAMS RULE EVIDENCE  
TOOK UP SO MUCH OF THIS TRIAL,  
IT SEEMS TO ME THAT YOU KNOW,  
THE MAIN OFFENSE, THE MURDER  
CASE, WE HAVE ABOUT 11  
WITNESSES WHO TESTIFY, WE HAVE  
ABOUT 22 WITNESSES WHO TESTIFY  
TO ALL OF THIS WILLIAMS RULE  
EVIDENCE.

A MAJOR PORTION OF THE SCRIPT  
IS TAKEN UP WITH THIS WILLIAMS  
RULE EVIDENCE.

SO, WHY WASN'T, THIS, REALLY  
BECAME A FEATURE OF THIS TRIAL,  
ALL THIS WILLIAMS RULE  
EVIDENCE?

>> YOUR HONOR, THE FACT THAT  
THERE MAY HAVE BEEN MORE  
SIGNIFICANT NUMBER OF WITNESSES  
IS NOT ITSELF CONTROLLING.  
AND WHEN YOU LOOK AT THE OTHER  
WITNESSES, SOME OF THEM, WHAT I  
WOULD DESCRIBE AS HYBRID  
WITNESSES.

FOR EXAMPLE, OF THAT  
ADDITIONAL, OF THAT 22 THAT  
HAVE BEEN IDENTIFIED BY MISS  
NORGARD, YOU HAVE FOUR POLICE  
OFFICERS WITH RESPECT TO  
TESTIMONY OF EVIDENCE TAKEN  
THAT IMPLICATES THE DEFENDANT,  
FOR EXAMPLE SEARCH WARRANT  
EVIDENCE THAT FINDS THE CUT  
PANTY HOSE.

FINDING OF THE LATEX GLOVES AND  
PANTY HOSE.

FINDING THE CAP STOCKINGS IN  
THE DEFENDANT'S MOTORCYCLE.

>> THESE SAME WITNESSES, ALSO  
TESTIFIED ABOUT THE WILLIAMS

RULE?

>> THEY DID BECAUSE THE SEARCH WARRANT HAD TO DO ALSO WITH PROPERTY THAT WAS TAKEN. YOU KNOW, WHEN THEY ARE IDENTIFYING, FOR EXAMPLE, A SEARCH WITH REGARD TO PHAR-MOR AND THE CONSENT OF THE DEFENDANT'S STORAGE UNIT WHERE THEY RETRIEVED THE BLACK TOMMY HILFIGER SHIRT.

YOU HAVE OVERLAPS.

THEY'RE NOT STRICTLY WILLIAMS RULE.

SOME OF THEM WERE ESSENTIALLY VERY LIMITED TECHNICAL BUT NECESSARY.

>> LET ME ASK YOU THIS.

GO AHEAD, FINISH THAT BECAUSE I WANT TO ASK YOU ABOUT BOTH THE FAMILY DOLLAR AND THE McCRORY.

GO AHEAD AND --

>> CERTAINLY, YOUR HONOR.

THOSE WITNESSES WOULD HAVE EXECUTED THE SEARCH WARRANT AND WOULD HAVE BEEN PRESENT OF TAKING OF THE PHOTOGRAPH OF THE DEFENDANT.

SO WE ARE NOT TALKING ABOUT INFORMATION THAT IS SOMEHOW HEARTWRENCHING OR OUTRAGEOUS OR BECOMES A FOCUS OR A FEATURE OF THIS TRIAL.

THEY WERE, WITH RESPECT TO EACH OF THE CRIMES, YOU HAVE ONE VICTIM IN THE FAMILY DOLLAR WHO TESTIFIES.

YOU HAVE ONE VICTIM IN THE MCCROY'S WHO TESTIFIES.

AND THE ASSISTANT MANAGER AND THE CASHIER IN PHAR-MOR.

WITH RESPECT TO THE CASHIER IT HAS TO DO VERY LIMITED TO JUST BEING TIED UP.

SO IT WAS NOT BELABORED BUT IT WAS NECESSARY.

IT WAS NECESSARY TO ESTABLISH HE IN FACT COMMITTED THESE CRIMES.

AND THEN YOU HAVE --

>> DON'T YOU GET TO A POINT IN THESE KINDS OF CASES WITH ALL OF THIS WILLIAMS RULE EVIDENCE, WHEN, YOU KNOW, THE JURY CAN

SAY TO ITSELF LOOK, THEY HAVE DEMONSTRATED ALL THIS STUFF THAT THIS MAN HAS DONE AND SO, SURELY HE DID THIS ONE TOO? THAT'S THE DANGER YOU GET IN WHEN YOU HAVE SUCH ENORMOUS AMOUNT OF WILLIAMS RULE EVIDENCE THAT COMES IN.

>> WITH ALL DUE RESPECT, YOUR HONOR, I WOULD DISPUTE THAT IT WAS AN ENORMITY OF EVIDENCE. YOU HAVE A TRIAL JUDGE WHO TAKES GREAT PAINS TO ENSURE THAT THE JURY IS INSTRUCTED WITH THE WILLIAMS RULE INSTRUCTION EACH TIME THERE IS EVEN A HYBRID WITNESS THAT IS GOING TO TESTIFY TO JUST, CAREFULLY LIMITED TO THOSE FACTORS.

AND WITH RESPECT TO THE MURDER, THE HOMICIDE IN THIS CASE, YOU HAVE THE FACTS PRESENTED.

THE WAY THAT THE TESTIMONY WAS PRESENTED, YOUR HONOR WAS IN CHRONOLOGICAL ORDER WITH RESPECT TO THE COLLATERAL CRIMES TO THE MURDER OF JOHN CARDOSO ON CHRISTMAS EVE AND WITH RESPECT TO THE REMAINING TWO COLLATERAL CRIMES THAT IS PHAR-MOR AND McCRORY'S.

WHILE I'M THINKING OF MISS NORGARD MENTIONED THIS MORNING, McCRORY WAS DISSIMILAR BECAUSE IT WAS DURING STORE HOURS BUT THE DEFENDANT DID NOT KNOW THAT.

EVEN INQUIRED OF THE ANN WEBER, STORE IS CLOSED RIGHT, BECAUSE THE STORE CLOSED ON SUNDAY AT 6:00.

BUT HE COMES IN AT 6:00 P.M.

BUT IT WAS SATURDAY NIGHT AND THE STORE STAYED OPEN UNTIL 8:00.

HE CERTAINLY THOUGHT THAT STORE WAS CLOSING.

THAT IS NOT DISSIMILARITY.

HE WAITED UNTIL THE STORE CLOSED OR THOUGHT IT WAS CLOSED.

>> WHAT I WANTED TO ASK YOU WAS, OBVIOUSLY IN THIS CASE

THERE WAS MURDERER  
VICTIM AND WE DON'T REALLY  
KNOW, DO WE KNOW WHY THIS  
PARTICULAR VICTIM WAS MURDERED?  
DID THAT COME OUT IN THE CASE  
IN CHIEF?

>> NO ONE WAS PRESENT INSIDE  
THE WHEN THE VICTIM IS KILLED.  
WHAT WE DO KNOW IS THAT, THIS  
IS, A GENTLEMAN, WHO IS 48  
YEARS OLD, VICTIM, JOHN  
CARDOSO, THE STOCK MAN.  
HE IS THE FIRST ONE TO  
ENCOUNTER THE DEFENDANT.  
WHAT DRAWS THE ATTENTION OF THE  
OTHER EMPLOYEES THEY HEAR LIKE  
FIRECRACKERS OR FURNITURE  
BANGING OR SOMETHING.  
THIS DRAWS BOTH KAREN SMITH AND  
MARIA SOTO.

YOU HAVE MR.^CARDOSO, THE  
EVIDENCE SHOWS THAT THE  
TRAJECTORY OF THE BULLET HE IS  
KNEELING IN SUBMISSIVE POSITION  
WHEN HE IS KILLED.

>> THIS SHOOTING OCCURS BEFORE  
HE THEN STARTS HIS ROBBERY?  
IN OTHER WORDS, THE MONEY THAT  
WAS TAKEN --

>> SURE.

>> -- WASN'T TAKEN FROM  
MR.^CARDOSO?

>> NO.

HE WOULD NOT HAVE BEEN --

>> SO WE DON'T REALLY, SO LET  
ME, WE NOW GO TO THE FIRST ONE,  
THE FAMILY DOLLAR.

>> YES, MA'AM.

>> WHAT DID THE JUDGE HEAR  
ABOUT THE SIMILARITIES WITH THE  
FAMILY DOLLAR AND THE BIG LOTS?  
WHAT WERE THE SIMILARITIES?

>> OKAY, YOUR HONOR, FOR THE  
COURT'S BENEFIT, AND I'LL BE  
REFERRING TO THE CHART THAT  
MISS NORGARD REFERRED TO, IT'S  
IN THE, ADDENDUM VOLUME FIVE.  
IT BEGINS AT PAGE 3712, THROUGH  
3715.

IT CHARTS ALL OF THE CRIMES. IT  
CHARTS THE BIG LOTS AND FAMILY  
DOLLAR.

IF YOU WANT ME TO FOCUS JUST ON  
BIG LOTS AND FAMILY DOLLAR.

RIGHT OUT OF THE GATE I WOULD LIKE TO DISPEL ANY NOTION THAT THE FACT THERE WERE RAPES IN THIS CASE IT WAS CRIME OF OPPORTUNITY.

IT WAS A CRIME OF OPPORTUNITY BECAUSE THE DEFENDANT'S GOT THE GUN TO MARY'S HEAD.

MARY PALMISANO'S HEAD.

HER HUSBAND CALLS, ASK IS SOMEONE OUT THERE TO PICK YOU UP.

SHE MISTAKENLY TELLING HIM, NO, I'M GOING HOME.

I'M GOING OUT FRONT.

HE HAS CRIME OF OPPORTUNITY IN THOSE RAPES.

HE HAS TWO WOMEN AT GUNPOINT AND HE IS ABLE TO CAPITALIZE ON THAT MOMENT.

THAT IS THE DISSIMILARITY.

THAT DOES NOT DEFEAT CASE ONE IOTA.

AND THE FACT THAT THERE MAY BE --

>> WEREN'T THERE WOMEN IN ALL THE OTHER ONES?

>> THERE WERE MORE WOMEN AND, WITH RESPECT TO THE CRIME OF OPPORTUNITY, YOU DON'T HAVE THAT SHOWING OF OPPORTUNITY. FOR EXAMPLE, IN THE McCRORY SITUATION, YOU DO HAVE A WOMAN THERE BUT YOU HAVE, HE IS CAUGHT OFF-GUARD BECAUSE HE THINKS THE STORE IS CLOSED BUT IT'S NOT.

SO HE NEEDS TO MOVE FASTER IN THOSE KIND OF CASES.

AND THE FACT THAT CRIME OF OPPORTUNITY OR THERE ARE DISSIMILARITIES BECAUSE OF CIRCUMSTANCES THAT OCCURRED DURING THAT OFFENSE, NO TWO CRIMES ARE GOING TO BE EXACTLY IDENTICAL.

SO IT'S A SIMILARITY WE'RE LOOKING AT.

>> WHAT IS THE SIMILARITIES WITH THE FAMILY DOLLAR?

>> WITH RESPECT TO BIG LOTS AND FAMILY DOLLAR?

YOUR POINT OF ENTRY, YOUR HONOR, AND, IN ALL OF THESE

CRIMES, AND THEN, LET ME DO THE FAMILY DOLLAR, BIG LOTS FIRST. WITH RESPECT TO FAMILY DOLLAR AND BIG LOTS, YOU HAVE BOTH OF THEM ON HOLIDAYS.

SO YOU HAVE, THE TIME THAT IS CHOSEN FOR THE CRIME IS ONE THAT IS GOING TO MAXIMIZE OPPORTUNITY FOR PROFIT AND MINIMIZE THE CAPTURE.

BIG LOTS IS DECEMBER 24th.

FAMILY DOLLAR IS VALENTINE'S DAY.

YOU ALSO HAVE --

>> THE OTHER ONES WERE NOT HOLIDAYS, CORRECT?

>> ACTUALLY YOU HAVE THEM, AUGUST 29th MAY HAVE BEEN, I DON'T KNOW HOW FAR THAT WAS, BUT THERE WEREN'T SPECIFIC HOLIDAYS, NO, YOUR HONOR.

>> MAY 12th.

>> MAY 12th, MOTHER'S DAY SOMEWHERE AROUND THERE. I'M NOT SURE IT WAS ON THAT DAY.

WE HAVE NOT TARGETED IT AS A SPECIFIC HOLIDAY, YOUR HONOR. ONLY TWO WERE ACTUAL HOLIDAYS ARE THE BIG LOTS AND FAMILY DOLLARS.

THAT'S WHEN YOU HAVE, MORE, A MORE LIKELIHOOD OF A GREATER RETURN FOR THE ROBBERS.

YOU ALSO HAVE THE COMMISSION OF THE CRIME AS THE STORE CLOSING HOURS.

BOTH FAMILY DOLLAR AND BIG LOTS.

YOU ALSO HAVE THE POINT OF ENTRY AND DEPARTURE.

WITH RESPECT TO THE POINT OF ENTRY, I MEAN THE HIDING PLACE THEY ARE BOTH, THE BUSINESSES ARE BOTH CLOSED.

BOTH OF THE HIDING PLACES ARE UNTIL THE STORE CLOSED IN THE BACK STOCKROOM AREAS OR AREAS THAT ARE NON-PUBLIC AREAS. YOU EVENTUALLY HAVE THE EXIT LOCATIONS AS WELL, YOUR HONOR.

>> I GUESS, SEE AT THAT POINT, AND I'M, YOU KNOW, NOT TO BE AN EXPERT ON ROBBERIES, BUT WHEN

SOMEBODY COMPLETES A ROBBERY,  
ISN'T GOING OUT THE BACK DOOR  
ABOUT THE ONLY PLACE YOU'RE  
GOING TO GO?

YOU'RE NOT GOING TO GO -- THE  
STORE IS LOCKED.

YOU'RE NOT GOING TO GO OUT THE  
FRONT DOOR.

SO I GUESS I GET TO A, I KNOW  
YOU'RE GOING TO GIVE ME A LOT  
MORE, BUT, SOMETIMES, SOME OF  
THESE THINGS SEEM, AND MAYBE  
JUSTICE ANSTEAD WAS SAYING LIKE  
CLASSIC, 7-ELEVEN ROBBERY WE  
UNFORTUNATELY SEE SO MUCH OF,  
THOSE ARE, THEY ALL SOUND  
SIMILAR.

WE, YOU KNOW, AND WE'VE SEEN  
CASES LIKE THIS WHERE, YOU  
KNOW, IT OCCURS, PEOPLE GO IN  
THE BACK AND THEY'RE KILLED.  
THERE ARE CRACKER BARREL.  
THERE ARE SO MANY UNFORTUNATELY  
OF THIS TYPE OF CRIME THAT  
OCCURS IN THIS STATE AND SOME,  
YOU KNOW, OCCUR AND, YOU KNOW,  
WITH A MURDER.

SO, THOSE, I GUESS CONTINUE  
WITH WHAT ELSE MAKES THIS  
UNIQUE.

>> OKAY.

YOUR HONOR, THERE ARE ACTUALLY  
I THINK PROBABLY 14 CATEGORIES  
OF INSTANCES AS THEY CONTINUE  
TO SIFT DOWN, NARROW IT MUCH  
MORE.

AND THEY MUST BE CONSIDERED  
COLLECTIVELY AND IN THE  
AGGREGATE, NOT TAKING OUT EACH  
DISCRETE.

>> I AGREE WITH THAT.

>> THIS COURT'S OPINIONS IN  
CONDI, ESPECIALLY YOU  
EMPHASIZED THAT STORES ARE  
TARGETED ALL ARE SMALL DISCOUNT  
PHARMACIES.

PRIMARILY THE EMPLOYEES IN  
THERE ARE FEMALE EMPLOYEES.  
SO THAT IS WHAT YOU USUALLY  
WILL SEE.

ALL OF THE CRIMES ARE COMMITTED  
BY A LONE PERPETRATOR SIDE THE  
STORE.

ESSENTIALLY YOU HAVE A ONE-MAN

SHOW INSIDE THE STORE.

THE DESCRIPTION OF THE  
PERPETRATOR IS SIMILAR IN ALL  
CASES.

HE IS DESCRIBED, BLACK MALE,  
WEARING A NYLON STOCKING MASK  
OR SOME TYPE OF THAT OBSCURES  
HIS FEATURES BUT YET HE CAN  
STILL SEE OUT.

THE CHUBBY CHEEKS ARE  
DESCRIBED.

THE HEIGHT AND WEIGHT.

FIVE SEVEN TO FIVE NINE IS THE  
RANGE.

MEDIUM BUILD.

IN ADDITION TO GLOVES, LATEX  
GLOVES ARE DESCRIBED.

ALL INVOLVE A SMALL HANDGUN.

WE DON'T HAVE ANY RIFLES OR  
ANYTHING LIKE THAT.

WE HAVE SMALL HANDGUN WILL FIT  
EASILY INTO SOMEONE PURPORTS TO  
BE CUSTOMER ENTERING STORE  
THAT WILL NOT BE SEEN.

EACH CASE IS ACCOMPANIED BY  
VERY PROFANE THREATS.

FOR EXAMPLE, WITH RESPECT TO  
JUSTICE PARIENTE'S QUESTION,  
BIG LOTS AND FAMILY DOLLAR,  
THREATS INCLUDE REPEAT USE OF  
THE MF TERM.

DON'T LOOK AT ME.

DO WHAT I SAY OR I WILL KILL  
YOU.

CALLING WOMEN BITCHES.

IN FAMILY DOLLAR USE OF THE  
SAME, SHUT THE F UP, PARDON ME,  
YOUR HONOR.

THE TERM OF BITCH AND FORCING  
THEM TO GET DOWN.

SO HE, HE IS USING THE SAME  
THREATS AND TERMINOLOGY, VULGAR  
TERMINOLOGY.

HE DEMANDS TO KNOW WHERE THE  
OTHER EMPLOYEES ARE.

ARE THERE OTHER EMPLOYEES IN  
THE STORE?

HE ASSEMBLES THEM TO A SINGLE  
LOCATION AND FORCES THEM TO LAY  
FACE DOWN EITHER ON THEIR HANDS  
AND KNEE.

DON'T LOOK AT ME.

REPEATED THREATS.

DON'T LOOK AT ME.

TAKES ONE PERSON HOSTAGE IN ORDER TO GET THE MONEY. HE TAKES HOSTAGE IS THE ONE ASSISTANT MANAGER OR ONE WHO HAS KEYS OR ACCESS TO THE MONEY FOR THE SAFE. HE IS LOOKING DEMANDING MORE MONEY, BIG MONEY. SO HE IS NOT SATISFIED INITIALLY WITH THE TILL HE IS GETTING. THE VICTIMS WHEN THE HANDS ARE PLACED BEHIND THEIR BACK, BINDINGS ARE USED FROM THE STORE. THIS IS IMPORTANT, JUSTICE PARIENTE, I DON'T MEAN TO EXCLUDE REST OF THE COURT BUT I'M RESPONDING TO JUSTICE PARIENTE'S QUESTIONS. YOU LEARN THIS IN THE PENALTY PHASE. YOU FIND OUT IN THE '81 CASE HE WAS APPREHENDED IN PART AND IDENTIFIED IN PART BECAUSE OF UNIQUE BINDINGS. HE HAD TORN SHEETS HE USED AS BINDINGS HE BROUGHT WITH HIM. PORTIONS OF THE SHEET WERE FOUND IN HIS CAR. HE IS MUCH MORE SOPHISTICATED IN LATER CASES. HE BRINGS NOTHING THAT LEAVES TRACE EVIDENCE AT THE SCENE. WEARS A MASK AND GLOVES. USES BINDING HE FINDS IN THE STORE. AGAIN THOSE ARE OPPORTUNITIES. FACT THAT SOME MAY BE PLASTIC BINDINGS. FACT THEY MAY BE A ROPE INSIDE THE STORE. FACT THEY MAY BE ELECTRICAL TAPE. THIS IS OPPORTUNITY. HE USES ITEMS FROM INSIDE THE STORE TO BIND THESE VICTIMS. IN ADDITION, TO USING THE HOSTAGE TO COLLECT MONEY HE ALSO, USES ITEMS FROM INSIDE THE STORE IN ORDER TO CARRY THE MONEY OUT THERE. HE DOESN'T BRING HIS OWN DUFFEL BAG.

HE DOESN'T BRING A BACKPACK OR ANYTHING THAT WOULD LEAVE TRACE EVIDENCE.

HE GRABS SOMETHING FROM INSIDE THE STORE.

USUALLY A BOOK BAG, DUFFEL, WHATEVER IS HANDY.

IN ADDITION, WITH RESPECT TO EXITING THE REAR OF THE STORE, WELL THESE TYPE OF TARGET STORES HE FINDS ARE IN STRIP CENTERS, EXODUS OUT THE BACK WHERE IT'S NOT ACCESSABLE TO THE PUBLIC. THAT IS LOCKED EXIT TOO.

HE ALWAYS HAS TO GET ASSURANCES OR GET KEYS FROM PROPRIETOR OR WHOEVER IS IN CHARGE, ASSISTANT MANAGER IN THESE CASES LET HIM OUT THE BACK DOOR AND ASSURE THERE IS NO ALARM ON OR ANYONE HIDING THERE.

WHEN YOU CULL ALL OF THOSE FACTORS TOGETHER, THE FACT THAT THE LOCATIONS STORES THEY'RE ALL TARGETED, ST. PETE, TAMPA AREA, THE TIME OF THE CRIMES. THE SIMILAR USE OF THE PROFANITY, THE THREATS, THE ASSEMBLING EVERYONE TOGETHER, REPEATED THREATS, DON'T LOOK AT ME.

THE USE OF THE NYLON MASK, THE SMALL HANDGUN.

USES ITEMS FROM WITHIN THE STORE TO CARRY THE LOOT, VERY SUCCESSFULLY LIMITED HIS IDENTIFICATION FOR QUITE A WHILE, YOUR HONOR.

SO THOSE ARE ALL THE POINTS IN THE AGGREGATE THAT IDENTIFY THIS PARTICULAR DEFENDANT AS PERPETRATOR IN THESE PARTICULAR CRIMES.

REMEMBER IN FAMILY DOLLAR YOU DON'T HAVE THE, VICTIMS ARE NOT ABLE TO IDENTIFY HIM.

THE STIPULATION THAT IS READ, AND IT'S IN THE RECORD, YOUR HONOR, IN LINE 23, PAGE 991.

THE STIPULATION STATES IN PART, IN FULL MEASURE, THREE PARAGRAPHS YOU ABOUT THE ONE, PARAGRAPH I'M GOING TO ADDRESS

THE COURT'S ATTENTION TO, WAS VERY SANITIZED IN THE SENSE THAT IT WAS NOT DESIGNED IN ANY WAY TO INFLAME THE JURY.

IT SAYS, BIOLOGICAL EVIDENCE CONTAINING THIS IS ALE LANT'S DNA WAS COLLECTED UNDER CIRCUMSTANCE WHICH STATE AND DEFENSE STIPULATE DNA COULD HAVE ONLY BEEN LEFT BY THE ROBBER, HE EMPHASIZE ROBBER, AT THE TIME OF THE CRIME.

YES, THERE WAS DNA EVIDENCE THAT CONCLUSIVELY LINKED THIS DEFENDANT TO THE PERPETRATOR, AS THE ROBBER.

>> THAT WAS STIPULATION CONCERNING THE McCRORY, THE McCRORY ROBBERY?

>> THAT WAS ACTUALLY THE, EXCUSE ME, FAMILY DOLLAR.

>> FAMILY DOLLAR.

RIGHT.

LET ME ASK YOU THIS.

WHAT WAS, WHAT'S THE STATE'S POSITION ON THE EVIDENCE THAT SUPPORTED A FINDING BY THE TRIAL JUDGE THAT THIS WAS A PREMEDITATED MURDER?

>> OKAY, YOUR HONOR, WITH RESPECT TO PREMEDITATION, YOU HAVE THE TRIAL JUDGE, AND IT IS SET OUT IN THE SENTENCING ORDER.

I WILL GRAB THAT BRIEFLY.

MAKE SURE I DON'T MISSTATE IT. ESSENTIALLY IT WAS, YOUR HONOR, YOU HAVE THE DEFENDANT IN A SUBMISSIVE POSITION AT THE TIME OF THE MURDER.

THE DEFENDANT'S HANDS, THERE IS NO TRACE OF ANY GUNSHOT WOUND ON HIS HANDS.

YOU HAVE HIM, TRAJECTORY AGAIN, THIS DEFENDANT IS ONLY LIKE FIVE SIX.

IN ORDER FOR HIM TO MAKE THAT KIND OF SHOT HE WOULD HAVE TO BE STANDING UP ON A LADDER, HE WASN'T KNEELING, AND --

>> FROM THE POWDER BURNS THAT THE GUN WAS WITHIN 12 INCHES.

>> IT WAS A CLOSE SHOT, NOT A CONTACT.

IT WASN'T POINTED UP AGAINST HIM.

IT WASN'T FOR EXAMPLE, IF YOU WOULD SAY OH IT'S CONTACT. MAYBE THERE WAS A STRUGGLE. >> MY QUESTION REALLY, WHAT WOULD CAUSE US TO CONCLUDE BEYOND A REASONABLE DOUBT OR THE TRIAL JUDGE TO CONCLUDE BEYOND A REASONABLE DOUBT THAT IN A SITUATION IN WHICH THE, THIS DEFENDANT WAS POINTING THE GUN AT ALL OF THESE VARIOUS VICTIMS ON THE FOUR ROBBERIES, THAT THIS GUN, THAT THE GUN IN RESPECT TO MR.^CARDOSO DID NOT GO OFF ACCIDENTALLY?

OR WAS, THAT IT WAS, SOMETHING OTHER THAN PREMEDITATED? THAT HE SHOT THIS VICTIM?

>> WELL, YOUR HONOR, I THINK THE DEFENDANT'S STATEMENTS IN ALL OF THESE, DON'T LOOK AT ME OR I'LL KILL YOU OR SHOOT YOU. SO HE MAKES REPEATED THREATS --

>> BUT HE DIDN'T SHOOT ANYBODY. BUT HE NEVER SHOT ANYBODY.

>> HE NEVER SHOT ANYBODY BECAUSE THIS IS THE FIRST TIME, AT LEAST ACCORDING TO THE STATE'S THEORY, THAT THE DEFENDANT MAY HAVE BEEN CAUGHT OFF-GUARD BY A MALE.

YOU HAVE A MALE EMPLOYEE, 48-YEAR-OLD MALE EMPLOYEE. THERE ARE SOME ABRACE SHUNS ON THE RIGHT-HAND SIDE WHICH COULD HAVE BEEN THE RESULT OF WORKING THAT DAY OR COULD HAVE BEEN JUST PRIOR TO THE OFFENSE.

THE STATE ACKNOWLEDGED THAT. BUT THEY SAID BY THE TIME THE FATAL GUNSHOT WOUND IS FIRED AND IN THIS YOU WILL SEE THE COURT ADDRESSING THE LACK OF PREMEDITATION AS NON-STARTER TO CLAIM IN THE TRIAL COURT'S SENTENCING ORDER, THE COURT FINDS AMPLE EVIDENCE OF PREMEDITATION WAS PRESENTED AT TRIAL.

THE TRIAL COURT SAYS, IN PART, THAT THE FATAL GUNSHOT WOUND, AND SHE TALKS ABOUT THE

TRAJECTORY, EXCUSE ME, ENTERED THE UPPER LEFT SHOULDER BELOW THE NECKLINE TRAVELED DOWNWARDS.

CIRCUMSTANTIAL EVIDENCE, PATH OF THE BULLET, DISTANCE FROM WHICH THE GUN WAS FIRED AND FACT THAT THE GUN WAS AIMED AT VITAL AREA STRIKING LUNG, LIVER AND MAJOR BLOOD VESSELS.

SUGGEST MR.^CARDOSO WAS SHOT IN KNEELING POSITION REQUEST HIS TORSO LEANING FROM THE FLOOR WITH THE DEFENDANT STANDING ABOVE HIM AND WHILE MR.^CARDOSO WITH NOT STRUGGLING AND POSED NO IMMEDIATE THREAT, YOUR HONOR.

WITHOUT ALLOWING OTHER EMPLOYEES TO CALL FOR MEDICAL HELP.

THE DEFENDANT REPEATEDLY THREATENED TO KILL VICTIMS WHO DISOBEYED HIS COMMANDS AND HELD A LOADED PISTOL TO VICTIMS HEADS.

ALL THIS EVIDENCE INDICATES THE DEFENDANT WAS PREPARED TO USE LEAD THAT FORCE TO OVERCOME ANY RESISTANCE HE ENCOUNTERED DURING ANY PLANNED COMMISSION OF THE ROBBERY.

THOSE ARE THE CIRCUMSTANCES FOUND BY THE TRIAL COURT.

AND CERTAINLY THE, WE'VE ADDED AT THE END OF OUR BRIEF A SUPPLEMENTAL ISSUE TO SUFFICIENCY OF THE EVIDENCE.

>> LET ME ASK YOU THIS QUESTION BECAUSE, I STILL, DOESN'T MAKE ANY SENSE TO ME, THIS MURDER, ESPECIALLY WITH THE OTHER CASES THAT YOU'VE DESCRIBED, IT DOESN'T LOOK LIKE HE WAS OUT TO MURDER ANYBODY BUT, HE WAS, HE WAS CHARGED WITH ONE COUNT OF FIRST-DEGREE MURDER AND THERE WAS A GENERAL VERDICT.

>> THAT'S CORRECT, YOUR HONOR.

>> CHARGED WITH BOTH FELONY MURDER AS WELL AS PREMEDITATED MURDER?

>> THE JURY WAS INSTRUCTED ON BOTH, YOUR HONOR.

>> CCP WAS NOT --

>> IT WAS NOT DONE, YOUR HONOR.  
YOU HAVE THREE VERY  
AGGRAVATORS.

>> IN TERMS OF OUR DECISION, WE  
DON'T NEED TO MAKE DECISION, OR  
DO WE, WHETHER THIS WAS  
PREMEDITATED OR NOT?

>> NO, NO IT'S NOT NECESSARY  
THE DEFENSE HASN'T EVEN  
CHALLENGED IT ON APPEAL BUT THE  
STATE CERTAINLY BELIEVES THAT  
THE EVIDENCE WAS SUFFICIENT  
UNDER BOTH THEORIES.

THERE HAS BEEN NO ISSUE RAISED  
ON APPEAL BUT I CERTAINLY  
UNDERSTAND THE COURT'S  
INDEPENDENT OBLIGATION TO  
REVIEW SUFFICIENCY.  
BUT YOU HAVE A GENERAL VERDICT  
FORM.

YOU HAVE, AND YOU DON'T HAVE A  
REQUEST FOR THE --

>> DID THE STATE ARGUE FELONY  
MURDER OR PREMEDITATED?

>> STATE ARGUED BOTH.

THE STATE ARGUED BOTH, YOUR  
HONOR.

IT'S OUTLINED IN CLOSING  
ARGUMENTS THE STATE'S THEORY  
WITH RESPECT TO PREMEDITATED.  
CERTAINLY AS I ADDRESSED THIS  
MORNING THE COURT'S FINDING ON  
PREMEDITATION.

IF THERE ARE NO FURTHER  
QUESTIONS I WOULD ASK THE COURT  
TO AFFIRM THE JUDGMENT AND SENTENCE.  
AND THANK YOU VERY MUCH FOR  
THIS OPPORTUNITY TO PRESENT  
ARGUMENT BEFORE YOU THIS  
MORNING.

>> MISS NORGARD, YOU HAVE A  
COUPLE MINUTES LEFT.

>> THANK YOU YOUR HONOR.  
TO GET BACK TO YOUR CONCERN,  
JUSTICE QUINCE, THAT WAS  
EXPRESSED TO STATE, ABOUT, A AT  
WHAT POINT IN TIME DOES THE  
ENORMITY OF COLLATERAL CRIME  
EVIDENCE BECOME SUCH THAT A  
JURY SIMPLY LOOKS AT A CASE AND  
SAYS, WELL, IF HE DID IT AT  
McCRORY'S WHERE THEY HAVE GOT  
HIS DNA AND HE DID IT AT

PHAR-MOR WHERE THEY HAVE HIS FOOTPRINT AND DNA AND IDENTIFICATION BY A GIRLFRIEND, A CLOSE FRIEND, AND, HE DID IT AT FAMILY DOLLAR BECAUSE WE HAVE HIS DNA, SO WE REALLY CAN CONCLUSIVELY LOOK AT ALL THESE AND SAY, DNA, FINGERPRINTS, AND DNA.

WHY SHOULDN'T WE BELIEVE THAT IN THIS CASE, WHERE WE DON'T HAVE ANY DNA, WE DON'T HAVE ANY PHYSICAL EVIDENCE --

>> THERE WAS NO DNA IN THIS PARTICULAR CASE?

>> NO.

THERE WAS NO PHYSICAL EVIDENCE WHATSOEVER THAT CONNECTED MR.^PETERSON TO THE OFFENSE.

THERE WAS NO DNA.

THERE WAS NO SURVEILLANCE PHOTOS.

THERE WERE --

>> BUT THERE WAS AN EYEWITNESS IDENTIFICATION WHICH HAS NOT BEEN RAISED AS A SEPARATE ISSUE ON APPEAL.

TO ME IT LOOKED SOMEWHAT SUGGESTIVE BUT THAT WAS NOT RAISED AS AN ISSUE.

>> IT WAS NOT ARGUED IN THE TRIAL COURT EITHER IN TERMS THERE WAS NOTHING DONE IN THE TRIAL COURT TO MOVE TO SUPPRESS THAT IDENTIFICATION.

I WOULD, RESPECTFULLY DEFER TO THIS COURT'S PREVIOUS RULINGS THAT UNPRESERVED ISSUES WOULD NOT BE APPROPRIATE TO PRESENT IN THE DIRECT APPEAL, EVEN THE STATE CHARACTERIZED THE IDENTIFICATIONS IN THE CHARGED OFFENSE AS TENTATIVE.

OF THE FOUR PEOPLE OR INDIVIDUALS THAT WERE PRESENT AT THAT, TWO COULD NOT IDENTIFY.

ONE GENTLEMAN COULD ONLY POTENTIALLY IDENTIFY MR.^PETERSON, AS HAVING BEEN PRESENT IN THE STORE BEFORE THE INCIDENT HAPPENED.

HE NOT IDENTIFIED, COULD NOT IDENTIFY HIM AS BEING PRESENT

DURING THE ACTUAL ROBBERY AND HOMICIDE.

AND, I BELIEVE, YOUR HONOR, JUSTICE QUINCE, IN THIS CASE YOU HAVE TO LOOK AT WHAT WAS THE STRENGTH OF THE STATE'S EVIDENCE IN THE CHARGED OFFENSE?

IF YOU ABSENTED EVERYTHING THAT CAME IN AS WILLIAMS RULE EVIDENCE.

THE STATE PRESENTED NO FORENSIC EXPERTS IN THE CHARGED OFFENSE. EVERY DNA ANALYSIS, EVERY STATISTICIAN, EVERY FINGERPRINT ANALYST, AND EVERY SHOE PRINT NAN SIFT -- ANALYST, EVERY EXPERT WITNESS TESTIFIED IN THIS CASE TESTIFIED TO COLLATERAL CRIMES.

I WILL NOT DISPUTE THE FACT THAT STATE ABSOLUTELY UNEQUIVOCALLY PROVED MR. PETERSON'S GUILT OF COLLATERAL OFFENSES ONLY PROVING THOSE WITH 22 WITNESSES AND 75% OF THE TRANSCRIPT PAGES DEVOTED TO THAT WERE THEY ABLE TO PROVE BY PROPENSITY THAT MR. PETERSON COMMITTED THIS OFFENSE, REACHING CONCLUSION THAT THE JURY DID, WHEN YOU LOOK AT, AM I WRONG HERE?

>> YOU'RE WELL OVER YOUR TIME, MA'AM.

ONE CONCLUDING STATEMENT.

>> THANK YOU, YOUR HONOR.

>> THANK BOTH OF YOU FOR YOUR ARGUMENTS.