

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.

Jackie Cornelius Williams v. State of Florida

SC06-594

>> HEAR YE, HEAR YE, HEAR YE.

>> THE SUPREME COURT OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION, AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND HONORABLE COURT. LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA. PLEASE BE SEATED.

>> OKAY THE FIRST CASE ON OUR CALENDAR FOR DECEMBER 6th IS WILLIAMS VERSUS STATE OF FLORIDA.

MAY IT PLEASE THE COURT MY NAME THE PWEB PWRA BRUCKHEIMER AND I'M HERE REPRESENTING MR. WILLIAMS. MR. WILLIAMS WAS CONVICTED -- WAS CHARGED WITH SEX BATTERY WITH FORCE THE VICTIM, THERE WAS A GREAT DEAL OF PROBLEMS WITH HER CREDIBILITY.

THE JURY REJECT -- AND THAT WAS YOU KNOW THE ENTIRE DEFENSE WAS THAT IT WASN'T WITH FORCE.

IT WAS CONSENSUAL AND THAT SHE WAS MAKING UP THE ENTIRE RAPE AND BEATING.

>> HOW OLD WAS SHE?

>> SHE WAS 15.

[INAUDIBLE]

THERE SHOULD BE, OF COURSE, HE DID SAY THAT SHE HAD LIED TO HIM ABOUT HER AGE.

NOW, EVEN THOUGH LACK OF CONSENT IS NO DEFENSE, AND I DON'T BELIEVE THAT YOU KNOW

HER LYING ABOUT HER AGE MAY NOT BE ILL LEAGUE -- A LEGAL DEFENSE, WE STILL HAVE THE IDEA OF THE LESSERS.

AND THE JURY PARDON POWER AND THE IDEA THAT WE HAVE A VICTIM HERE WHO IS LESS THAN SYMPATHETIC TO THE JURY.

[INAUDIBLE]

TO WHAT?

LEWD AND LASCIVIOUS, YES, THAT WAS PRACTICALLY THE ONLY ISSUE BEING RAISED WAS THE FACT THAT LEWD AND LASCIVIOUS SHOULD NOT BE PART OF THIS TRIAL AND ALL THE OLD CASE LAW SAID THAT, BUT ALL THE OLD CASE LAW WAS BASED ON THE PRE1999 STATUTE.

>> WHAT IS THE BASIS OF THE OBJECTION?

WHAT WAS -- SPECIFICALLY DID HE SAY THE REASON WAS HE COULDN'T HAVE LEWD AND LASCIVIOUS.

>> THAT IT JUST -- THE CASE LAW SAID IT DIDN'T APPLY.

IT WASN'T IN THE JURY INSTRUCTIONS, YOU KNOW LIKE UNLESSER.

UNLESSERS.

AND -- UNDER SPACE LESSER.

>> THE STATUTE HAD CHANGED IN 1999.

AND THIS IS SEVERAL YEARS LATER.

AND NOTHING HAS CHANGED THERE'S BEEN NO CHANGE IN THE CASE LAW.

THERE'S BEEN NO CHANGE IN THE STANDARD JURY INSTRUCTIONS.

[INAUDIBLE]

TO DEAL WITH IT.

STPHAUB TPHAUB --

[INAUDIBLE]

OH, YES.

I HAVE LOOKED AT THE LESSER OF LEWD AND LASCIVIOUS UPSIDE DOWN, SIDEWAYS AND LEGALLY I CAN'T SEE A REASON NOW THAT EXISTS THAT WOULD NOT MAKE IT A LESSER

PROVIDED THAT THE INFORMATION ALLEGED ALL THE NECESSARY ESSENTIAL, WHICH IT DID IN THIS CASE.

>> AND WAS THE PROOF AT TRIAL SUFFICIENT?

>> OH, YES.

SHRAOE SAID SHE WAS 15. HOWEVER, EVERYONE WAS SO BUSY LOOKING AT LEWD AND LASCIVIOUS AND SEX BATTERY WITH FORCE THAT NOBODY WAS PAYING MUCH ATTENTION TO THE OTHER MANDATORY -- THIS IS A -- LEWD AND LASCIVIOUS WOULD BE A PERMISSIVE. SEX BATTERY WITH OUT FORCE WAS LISTED AS A MANDATORY, NECESSARY LESSER UNDER THE JURY INSTRUCTIONS.

THE JUDGE HAD NO ALTERNATIVE BUT TO GIVE THAT.

[INAUDIBLE]

I STILL THINK IT'S A BAD IDEA.

BUT I HAVE NO LEGAL ARGUMENT OTHER THAN THE FACT THAT LOOK WHAT IT'S DONE.

IF YOU START BLENDING LEWD AND LASCIVIOUS SECTION 800 WITH CHAPTER 800 WITH CHAPTER 795 WE WIND UP WITH THIS PROBLEM THAT WE NOW HAVE.

WE'RE PROBABLY LOOKING AT OTHER PROBLEMS, TOO.

BUT I HAVE NEVER IN MY HISTORY EVER SEEN TWO LESSERS GIVEN OF SAME VALUE.

>> WHAT PROHIBITS THAT?

>> OTHER THAN THE FACT THAT THE WHOLE HISTORY HAS BEEN OF DESCENDING ORDER AND THAT THE JURY IS TOLD THAT IT'S A DESCENDING ORDER AND TO FIND THE DEFENDANT GUILT OF THE CRIME --

>> THEY ARE REALLY TOLD THIS IS OF DESCENDING ORDER OR ARE THEY SIMPLY TOLD THAT THEY ARE TO CONVICT THE DEFENDANT OF THE GREATEST TENSE DEFENSE THAT THE STATE HAS PROVEN?

>> WELL, LET ME SEE I KNOW I
HAVE IT IN MY BRIEF.

LET'S SEE.

BUT IT'S KIND OF LIKE THE
IDEA BEING THAT YES, YOU'RE
SUPPOSED TO CONVICT OF THE
MOST -- THE HIGHEST OFFENSE
FOR WHICH THERE IS PROOF.

>> RIGHT.

>> BUT THEY ARE TOLD --

>> WITH THE I -- THE WAY IT
GENERALLY READS IS MAIN
CHARGE IS SEXUAL BATTERY
FORCE IF YOU ARE NOT
CONVINCED THE STATE PROVED
ALL THE ELEMENTS THERE ARE
LESSERS THEN THEY LIST THE
LESSERS.

>> RIGHT.

>> WERE THE TWO LESSERS
LISTED SEQUENTLY IN THE
VERDICT FORM?

>> IT'S ON PAGE 13 IN THE
BRIEFS.

>> THEY WERE LISTED
SEQUENTLY.

SEX BALLOTRY WITH FORCE,
LEWD AND LASCIVIOUS, SEX
BATTERY WITHOUT FORCE.

>> WHAT WAS THE INSTRUCTION?

>> BATTERY.

AND THE INSTRUCTION WAS THEY
MUST RETURN THE VERDICT FOR
THE HIGHEST OFFENSE WHICH
HAS BEEN PROVEN BEYOND A
REASONABLE AND ONLY ONE
VERDICT MAY BE RETURNED --

>> WHEN THEY

TRANSITION -- WHEN THE JUDGE
WAS GIVEN THE INSTRUCTION
AND GIVEN THE INSTRUCTIONS
ON THE TWO LESSER HERE, WAS
THERE -- DID HE SAY THE NEXT
LEDERER INCLUDED OFFENSE IS
AFTER THE L AND L.

>> I WILL HAVE TO GET THE
EXACT LANGUAGE.

BUT I WILL LOOK FOR THAT.

>> IT WASN'T EXPLAINED TO
THE JURY THAT THE DIFFERENCE
BETWEEN THE TWO IS THE CON
ENTITY IS NOT REQUIRED TO BE
PROVEN.

ONE --

>> NO.

I MEAN, ARE GIVEN THAT'S AN ELEMENT. THEY ARE NOT TOLD THESE ARE TWO EQUAL SECOND DEGREE OFFENSES.

>> CAN -- THEY WERE NEVER EXPLAINED BY THE JUDGE OR THE COUNSEL?

>> NO.

>> AND IT REALLY WASN'T EVEN ADDRESSED BY THE SECOND DISTRICT EVEN THOUGH THEY HAD SERIOUS PROBLEMS AND CERTIFIED THIS QUESTION. NOBODY WAS REALLY LOOKING DOWN.

EVERYBODY IS LOOKING UP AT LEWD AND LASCIVIOUS AND SEX BATTERY.

SO YOUR POSITION IS --

>> WE VERY MUCH APPRECIATE YOUR CANDOR.

THAT'S ALL I HAVE LEFT.

>> THAN ON SORT OF AN ANELLECTUAL BASIS THAT YOU ARE BRINGING THAT YOU HAVE REALLY NO LEGAL BASIS TO CHALLENGE THIS.

ARE YOU, HOWEVER -- ARE YOU CONTENDING THAT THE JURY IS MISLED BY THE INSTRUCTIONS THAT ARE ACTUALLY --

>> YES.

>> AND THERE SHOULD REALLY BE SOME OTHER WAY OF PRESENTING THIS TO A JURY EVEN THOUGH YOUR ARE CONCEDING THAT IT SHOULD BE LEGALLY OR CAN BE LEGALLY NOW WITH THE CHANGE IN THE STATUTE THAT THERE SHOULD BE A DIFFERENT INSTRUCTION GIVEN TO THE JURY AND IF THAT IS YOUR CONTENTION, UH-HUH.

>> HOW WOULD YOU HAVE THE JURY APPRISED?

WOULD IT BE SOMETHING LIKE IF YOU FIND A -- AN OFFENSE OF EQUAL OR LESSER?

>> I THINK -- MY VERDICT FORM WOULD NOT LOOK LIKE THE VERDICT FORM DOES.

IT WOULD HAVE TO BE LIKE A FAMILY TREE VERDICT FORM IF I WERE GOING TO CLEARLY TELL THE JURY THAT THEY ARE NOT DEALING WITH LESSERS.

THEY ARE DEALING WITH TWO CRIMES OF EQUAL VALUE.

>> WELL, IS THERE, THOUGH, A CONNOTATION, PERHAPS THAT THERE -- THERE'S LESS OF A STIGMA ATTACHED TO BEING CONVICTED OF THE LEWD AND LASCIVIOUS AS OPPOSED TO THE SEXUAL BATTERY?

>> WELL, THE IF THE JURY BOUGHT AT -- THAT AT ALL. THEY WERE MISLED INTO THINKING THAT.

AND CLEARLY -- LIKE I SAID THERE WAS PROBLEMS WITH THIS VICTIM.

HAD THEY BEEN TOLD THAT IT'S REALLY SEX BATTERY WITH FORCE, LEWD AND LASCIVIOUS CONDUCT AND SIMPLE BATTERY WITHOUT THAT SEX BATTERY WITHOUT FORCE IN BETWEEN, PERHAPS MAYBE THEY WOULD HAVE THOUGHT HARDER ABOUT SIMPLE BATTERY.

>> HOW DO WE RECONCILE THAT WITH THE DECISION OF THIS COURT SOME YEARS AGO TO RETREAT FROM TELLING THE JURY ABOUT PENALTY?

>> YOU CAN'T.

PENALTIES HAVE BECOME MORE AND MORE IMPORTANT. NOW THEY ARE DECIDING WHETHER OR NOT FIREARMS WERE USED.

THEY MAY NOT BE TOLD THERE'S A 3-YEAR MINIMUM MANDATORY GOING ALONG WITH IT.

BUT THE MORE WE HAVE TO IMPOSE THIS KIND OF INFORMATION TO THE JURY, THE MORE THEY WILL BE TOLD.

>> WELL AT ONE TIME WE HAD A RULE ACTUALLY THAT --

>> AND THAT WAS BEFORE RING --

>> AND THIS COURT YOU KNOW WITHDRAW THAT RULE AND WENT

BACK TO THE POSITION THAT JURIES SHOULD NOT BE APPRISED.

>> I DON'T SEE HOW WE CAN -- YOU KNOW KEEP THAT IN LIGHT OF THE FACT THAT PENALTIES ARE GETTING HARSHER.

THEY ARE BEING BASED ON FACTS NOT BEING, YOU KNOW THAT JUDGES USED TO MAKE FINDING OF BUT NOW THE U.S. SUPREME COURT RULED THE JURY HAS TO MAKE THE FINDING. MORE AND MORE THE JURY IS BEING INVOLVED IN EVERY DETAIL, WHICH IMPACTS ON SENTENCE.

>> I UNDERSTAND YOUR ARGUMENT THEN IT'S THAT IF A DEFENDANT IS CHARGED WITH A FIRST-DEGREE FELONY, THE LESSER INCLUDED OFFENSE IS ONLY BE AT MOST ONE SECOND-DEGREE FELONY, ONE-THIRD-DEGREE FELONY.

>> I WOULD LIKE THAT. BUT THAT'S ESSENTIALLY YOUR ARGUMENT.

>> RIGHT.

>> BECAUSE ACCORDING YOU YOU CAN'T HAVE TWO SECOND DEGREE FELONIAS LESSER INCLUDED OFFENSES BECAUSE THE PUNISHMENT IS THE SAME AND DAY ARE NOT NECESSARILY THE SAME.

>> JUSTICE QUINCE ASKED IF I KNEW ANYTHING TO PREVENT IT. I'VE NEVER SEEN IT BEFORE. BUT OTHER THAN THE JURY CONCEPT POWER I KNOW OF NO LEAGUE A REASON TO PREVENT IT.

HOWEVER, I DO HAVE THE LANGUAGE OF SANDERS AND BOTH OPPOSING COUNSEL AND MY -- HIGH SELF SUBMITTED THIS SUPPLEMENTAL AUTHORITY. THIS COURT CAME OUT WITH THE OPINION OCTOBER 26th IT HAS -- HAD TO DO WITH LESSER, BUT THE LESSER WINDING UP AT THE SAME PUNISHMENT AT THE

OTHER.
NONE OF THAT REALLY APPLIES.
HOWEVER, TOWARD IT IS VERY
END THIS COURT SAID THE
CHARGED CRIME SHOULD BE
FOLLOWED ON THE VERDICT FORM
BY THE DETERMINED
LESSER-INCLUDED OFFENSES IN
DESCENDING ORDER BY DEGREE
OF OFFENSE.

>> THAT SEEMS TO ME --

>> THERE SHOULD ONLY BE ONE
OF EACH.

>> IF YOU HAVE A SECOND
DEGREE 1/3 DEGREE
THERE -- THEY WOULD BE IN
DESCENDING ORDER.

WHAT IF A DEFENDANT
REQUESTED -- WHAT IF THE
DEFENDANT IS CHARGED WITH
FIRST-DEGREE MURDER AND
COUNSEL WANTS TO GIVE THE
JURY EVERY OPPORTUNITY TO
CONVICT ON SOMETHING OTHER
THAN FIRST-DEGREE MURDER AND
SAYS PLEASE PUT FIVE
SECOND-DEGREE FELONIES ON
THERE.

BECAUSE I WANT TO GIVE THEM
AN OPPORTUNITY TO CONVICT A
SECOND-DEGREE FELONY AND
YOUR ARGUMENT THE JUDGE
COULDN'T DO IT.

>> MY ARGUMENT IS I'VE NEVER
SEEN IT DONE.

I'VE NEVER SEEN IT ARGUED
FOR.

AND I'VE DONE THIS FOR A
LONG TIME.

[INAUDIBLE]

THEY ARE FOCUSED ON LEWD AND
LASCIVIOUS BEING A LESSER OF
SEX BATTERY.

HE DIDN'T WANT IT THERE AS
WELL.

AS FAR AS THE IDEA BEING
THAT GIVES UP EVERYTHING, I
DON'T THINK SO.

I REALLY THINK --

>> I WASN'T THERE
ARGUMENT --

[INAUDIBLE]

>> THAT WASN'T MENTIONED.
AND IT WASN'T MADE TO THE

SECOND DEGREE EITHER.

[AUDIO DIFFICULTIES]

[AUDIO DIFFICULTIES]

>> WELL, I --

[AUDIO DIFFICULTIES]

>> THAT'S WHY I'M BRINGING
UP THE JURY PARDON POWER.
I MEAN THE IDEA BEING THEY
WERE MISLED AND TOLD THERE
WAS A DESCENDING ORDER.
THEN IT GOES TO THE SAME
POINT --

[AUDIO DIFFICULTIES]

>> AND CONSENT POSSIBLY
BEING THAT THE
DISTINGUISHING FACTOR.
THEY DID NOT BELIEVE HER.
BUT, YOU KNOW IF ALL THEY
HAD BETWEEN THEM AND SIMPLE
BATTERY WAS NOTHING, THEY
MIGHT HAVE FELT STRONGLY
ENOUGH THAT THIS GIRL HAD
LIED ABOUT HER AGE AND LIED
ABOUT EVERYTHING ELSE THAT
THEY WERE GOING TO TENDER
MERCY WITH JUSTICE AND COME
DOWN WITH SOMETHING LESSER.

[AUDIO DIFFICULTIES]

RIGHT.

AND ALL I'M SAYING THAT IF
WE HAD TAKEN SEXUAL BATTERY
OUT OF THERE, THE ONE
WITHOUT VIOLENCE SO THAT
DIDN'T STAND BETWEEN LEWD
AND LASCIVIOUS AND SIMPLE
BATTERY, POSSIBLY MAYBE THE
JURY WOULD HAVE
GONE -- LOOKED AT THAT MORE
CLOSELY.

I'M JUST SAYING THAT IN THE
LINE OF LESSERS NECESSARY
LESSERS, WHEN THE COURTS DO
NOT GIVE THE NEXT STEP DOWN,
THIS COURT HAS CONSTANTLY
HELD THAT, THAT'S PER SE
REVERSIBLE ERROR WITHOUT
REGARD TO HARMLESSNESS.
AND I'M SAYING THAT BY
HAVING TWO EQUAL ONES LISTED
PERPENDICULARLY, THAT THE
DEFENDANT WAS DENIED THAT
RIGHT.

HE WAS DENIED BEING TOLD THE
NEXT NECESSARY LESSER DOWN

WAS SIMPLE BATTERY.

>> WHAT SHOULD BE FOCUS IN THESE KINDS OF CASES?

IT SEEMS TO ME WE'RE FOCUSING ON WHETHER THE LESSER INCLUDED OFFENSES ALL NEED TO BE LESSER TO EACH OTHER AS OPPOSED TO WHETHER ALL OF THE OFFENSES WHICH ARE LISTED AFTER THE MAIN OFFENSE HAVE TO BE LESSER TO THE MAIN OFFENSE.

ISN'T THAT WHAT THE FOCUS REALLY SHOULD BE ON, WHETHER THESE LISTED OFFENSES REALLY ARE LESSER TO THE CHARGED OFFENSE?

>> PERSONALLY I THINK THAT GIVES THE STATE TOO MANY BITES AT THE SAME PL. HOWEVER, AS A DEFENSE ATTORNEY.

>> ALSO GIVES YOUR OPPORTUNITIES MORE OPPORTUNITIES NOT TO BE CONVICTED OF THE MAIN OFFENSE.

>> MAIN OFFENSE, TRUE. HERE THEY WERE GIVEN TWO TKEBGD-SEG FELONIES AS AN OPTION WHICH MAKES NO DIFFERENCE.

THE CRIME HE WAS CONVICTED OF THE PENALTY WAS GOING TO BE THE SAME.

>> WOULD YOUR ARGUMENT BE THE SAME IF THE SEXUAL BATTERY WITHOUT VIOLENCE HAD BEEN LISTED AS THE SECOND OFFENSE HERE AND LEWD AND LASCIVIOUS WAS THE THIRD ONE.

>> CLEARLY I WOULD HAVE MY LEG SHOT FROM UNDERNEATH ME.

>> IN YOUR REBUTTAL NOW -->> I'M TRYING TO SAVE A FEW MONTHS.

JUSTICE ANSTEAD HAS A QUESTION.

>> IF WE ACCEPTED THE WORSE FOR YOUR CLIENT IF WE STATE DID WHAT THEY COULD DO WHICH IS CHARGE IN THE ALTERNATIVE, CHARGE COUNT 1 TO SEXUAL

BATTERY WITH A FORCE AND
THEN LEWD AND LASCIVIOUS
SEPARATE; CORRECT?

>> RIGHT.

I GAVE THAT OPTION LIKE
DEALING IN STOLEN PROPERTY
AND GRAND THEFT.

YOU COULD EITHER COME WITH
TWO SEPARATE CHARGES OR AT
THE VERY LEAST THE JURY
NEEDS TO BE TOLD THAT THESE
ARE NOT DESCENDING ORDERS.
THAT'S -- THAT THESE ARE TWO
EQUALLY.

>> DOESN'T THAT PLACE YOUR
CLIENT IN A WORSE SITUATION?

>> LIKE DOUBLE JEOPARDY.

I THINK LIKE GRAND
THEFT -- IT WOULD BE NICE IN
THE STATUTE SAID SO.

I THINK THERE WOULD BE A
DOUBLE JEOPARDY ISSUE IF
THEY WERE CONVICTED OF BOTH
SO THEREFORE ONLY ONE COULD
STAND.

I DON'T THINK THE STATE HAS
ANY PROBLEM WITH THE FACT
THAT THIS WOULD BE DOUBLE
JEOPARDY TO HAVE CONVICTED
HIM OF BOTH COUNTS IN THIS
CASE.

THE ONLY OTHER THING I WANT
TO POINT OUT FOR YOUR
CONSIDERATION AND I DID SHOW
OPPOSING COUNSEL THIS CASE
THIS MORNING I WAS LOOKING
FOR THE OLD CASES THAT
TALKED ABOUT ROBBERY WITH A
WEAPON VERSUS ROBBERY WITH A
GUN AND HOW YOU ARE
ABSOLUTELY ENTITLED TO THAT.
IT'S PER SE REVERSIBLE AND I
CAME ACROSS THE SANDERS CASE
THIS COURT ISSUE ON OCTOBER
12th.

IT HAS -- IT'S AN UPDATE ON
THAT KIND OF THING.

IT DEALS WITH 3.850s.

BUT AND HOW IT DOESN'T APPLY
THERE.

BUT THE REALITY IS IT DOES
HAVE A GOOD DISCUSSION ON
JURY PARDON POWER.

THANK YOU.

THANK YOU.

>> MAY IT PLEASE THE COURT.
MY NAME THE MARILYN BECCUE
AND I REPRESENT THE STATE OF
FLORIDA IN THE STATE
POSITION UNDER THE FACTS OF
THIS CASE THAT TRIAL COURT
DID NOT ERROR IN INSTRUCTING
THE JURIA PERMISSION SEUF
INCLUDED OVEN OF LEWD AND
LASCIVIOUS AND TO ADDRESS
SKWREFT BELLS QUESTION
EARLIER THE STATE COULD HAVE
CHARGED TWO SEPARATE
OFFENSES COULD HAVE CHARGED
COUNT ONE, SEXUAL BATTERY
WITH FORCE AND VIOLENCE,
COUNT 2, LEWD AND LASCIVIOUS
BATTERY AND I DO DISAGREE
WITH COUNSEL THAT THAT WOULD
BE DOUBLE JEOPARDY.
I WOULD NOT BE DOUBLE
JEOPARDY FOR THEM TO DO
THAT.

BECAUSE EACH OFFENSE
CONTAINED AN ELEMENT THAT
THE OTHER DOES NOT.

[AUDIO DIFFICULTIES]

>> NO.

[AUDIO DIFFICULTIES]

>> MANY ROBINSON I BELIEVE
THE FACTS WERE THERE WAS
ONLY EVIDENCE OF ONE
PENETRATION.
THERE WASN'T AND THEY WERE
TALKING ABOUT LEWD AND
LASCIVIOUS CONDUCT.
IT'S DIFFICULT TO DETERMINE
IN ROBINSON WHETHER THEY
WERE TALKING ABOUT LEWD AND
LASCIVIOUS BATTERY OR LEWD
AND LASCIVIOUS MOLESTATION
OR THOSE KINDS OF THINGS.
SO YOU KNOW, UNDER A STRICT
ANALYSIS THERE WOULDN'T BE
DOUBLE JEOPARDY BECAUSE OF
THE ELEMENT

[INAUDIBLE]

NO IT ISN'T.

THAT'S WHY THE STATE OPTED
TO CHARGE IT THIS WAY, ONE
REASON BECAUSE I BELIEVE
THEY REALLY TRULY BELIEVE
THAT THE CRIME THAT WAS

COMMITTED WAS THE SEXUAL BATTERY WITH FORCE OF VIOLENCE AND BUT THEY DID NOT RECOGNIZE THAT THE VICTIM'S AGE WOULD LEAD TO A LESSER INCLUDED OFFENSE IF THEY CHARGED IT PROPERLY.

[AUDIO DIFFICULTIES]

>> RIGHT.

[AUDIO DIFFICULTIES]

[AUDIO DIFFICULTIES]

>> I DON'T THINK SO BECAUSE THE JURY IS INSTRUCTED THERE ARE LESSER INCLUDED OFFENSES AND THEY SHOULD BE FIND FOR THE HIGHEST OFFENSE THAT THEY SEE THE FACTS FOR.

AND IN THIS CASE THERE WAS NO DISPUTE ABOUT THE LEWD AND LASCIVIOUS BATTERY. HE TESTIFIED THAT HE HAD SEX WITH HER AND THAT SHE WAS 15 ALTHOUGH HE SAID HE DON'T KNOW SHE WAS 15.

I DON'T THINK THAT IMPACTED JURY'S VERDICT IN THIS CASE.

[AUDIO DIFFICULTIES]

[AUDIO DIFFICULTIES]

>> NO, BECAUSE IF THEY ARE INSTRUCTED THEY SHOULD FIND THEM GUILTY OF THE SIGH -- HIGHEST OFFENSE THAT IS PROVED.

THEY ARE LOOKING AT THE ELEMENT THAT ARE ALLEGED AND THE FACTS THAT ARE SHOWN IN TRIAL.

THEY ARE NOT REALLY BEING TOLD THAT NECESSARILY HE WILL GET A LESSER PUNISHMENT AS YOU GO DEFENDING DOWN.

[INAUDIBLE]

>> WELL IT'S AN EQUAL OFFENSE BECAUSE THEY ARE BOTH SECOND DEGREE FELONY. IT'S A LESSER OFFENSE THAN THE CHARGED OFFENSE WHICH I THINK IS WHAT JUSTICE QUINCE WAS POINTING OUT THAT THEY --

[AUDIO DIFFICULTIES]

[AUDIO DIFFICULTIES]

>> I DON'T KNOW IT WOULD MAKE THAT MUCH OF A

DIFFERENCE.

I DON'T THINK THE JURY ARE REALLY SAYING OKAY I'M GOING TO CONVICT OF THIS, BECAUSE IT'S A HIGHER CRIME.

IT'S LISTED FIRST.

I'M GOING TO CONVICT FOR WHAT I BELIEVE THE FACTS SHOW.

AND IN THIS CASE --

[AUDIO DIFFICULTIES]

RIGHT.

RIGHT.

[AUDIO DIFFICULTIES]

THEY ARE ALSO INSTRUCTED A THAT SHEA -- THEY SHOULDN'T BE CONCERNED ABOUT WHAT THE ULTIMATE COURT -- PUNISHMENT SHOULD BE.

THEIR JOB IS TO DETERMINE THE LAW AND A APPLY THEM TO THE FACTS.

IN DOING SO I DON'T SEE THERE'S PREJUDICE WHEN YOU HAVE TWO OFFENSES THAT ARE THE SAME DEGREE BECAUSE YOU HAVE TO ASSUME THAT THE JURY IS SAYING, I'M GOING TO FIND THEM GUILT OF WHAT THE FACTS SHOW HE'S GUILT OF AND NOT TAKE THAT CONSIDERATION OF WHAT'S THE HIGHEST OR THE LOWEST OVER THE FACT THAT THEY BELIEVE THAT THIS WAS CRIME THAT WAS ACTUALLY PROVEN.

>> WOULD THERE BE ANY PROBLEM WITH PUTTING SAY ON THE VERDICT FORM THE DEGREE OF EACH OFFENSE?

>> I -- OFF THE TOP OF MY HEAD I CAN'T THINK OF A PROBLEM WITH THAT.

THAT MIGHT BE MORE CONFUSING TO THE JURY BECAUSE THEY ARE ALSO BEING TOLD NOT TO WORRY ABOUT WHAT THE ULTIMATE PUNISHMENT WILL BE.

>> ISN'T THE PRACTICE NORMALLY WHEN INFORMATION IS GIVEN TO THE JURY IF THEY RED -- REDACT --

>> FOR THE SAME REASON WE DON'T WANT THEM TO WORRY

ABOUT THE PUNISHMENT.
WE WANT THEM CONCERNED WITH
WHAT THE FACTS SHOW.
SO THAT MIGHT BE A PROBLEM
BECAUSE YOU WOULD BE THEN
ADDING THIS OTHER ELEMENT OF,
WELL, GEE I DON'T KNOW IF I
WANT HIM CONVICTED OF FIRST
DEGREE OR SECOND DEGREE
FELONY WHEN THAT'S NOT
SUPPOSED TO BE THEIR ROLE IN
THE PROCESS.

THEIR ROLE IS TO LISTEN TO
THE FACTS AND DETERMINE
GUILT IF ANY.

>> IF YOU DON'T HAVE ANY
FURTHER QUESTIONS, THANK
YOU.

REBUTTE L.

-- REBUTTAL.

I DID FIND THE PAGES WITH
THE JURY INSTRUCTIONS.
AND IT PRETTY MUCH TRACKS
FORWARD RULE CRIMINAL
PROCEDURE 3.940 WHICH STATES
WHEN LESSER INCLUDED CRIMES
OR ATTEMPTS IN CONSIDERING
THE EVIDENCE YOU SHOULD
CONSIDER THE POSSIBILITY
THAT ALTHOUGH THE EVIDENCE
MAY NOT CONVINCEN YOU THAT
THE DEFENDANT COMMITTED THE
MAIN CRIMES OF WHICH HE IS
ACCUSED THERE MAY BE
EVIDENCE THAT HE COMMITTED
OTHER ACTS THAT WOULD
CONSTITUTE A LESSER OFFENSE.
AND IF IN THAT OTHER SANDERS
CASE THIS COURT BASICALLY
SAYS THAT IS WHAT EMPHASIZES
THE JURY PARDON POWER.
AND OF COURSE THE STATE SAID
THAT -- THEIR ARGUMENT WAS
IT DOESN'T.

BUT THIS COURT HAS MADE THE
FINDING THAT IT DOES.

AND IN THOSE PRIOR CASES TO
NOT --

>> IT SEEMS TO ME THAT ALL
THAT YOU REALLY HAVE TO DO
IS GIVE JURY AN OPPORTUNITY
TO EXERCISE ITS PARTON
POWER.

IN THIS CASE THE JURY WAS

GIVEN THREE LESSER OFFENSES
TO THE MAIN OFFENSE.

THEY COULD EXERCISE THEIR
PARDON POWER.

RIGHT.

>> AND THE CIRCUMSTANCE --

>> THEY WERE GIVEN THEM IN
SUCH A WAY THAT THE THIRD
ONE DOWN -- THAT THE SEX
BATTERY WITHOUT VIOLENCE
STOOD IN BETWEEN LEWD AND
LASCIVIOUS AND SIMPLE
BATTERY AND UNDER THE RULES
SIMPLE BATTERY WOULD HAVE
BEEN A NECESSARY LESSER FOR
LEWD AND LASCIVIOUS CONDUCT.
IT WOULD -- IT WOULD NOT
HAVE HAD ANYTHING IN BETWEEN
IT.

THEY SHOULD NOT HAVE BEEN
TOLD THAT THESE WERE LESSERS
WHEN THEY WERE NOT.

AND THAT'S -- THAT'S WHERE
I'M COMING UP WITH MY PER SE
EVIDENCE.

>> THEY WERE REALLY LESSER
TO THE MAIN OFFENSE BUT
MAYBE NOT LESSERS TO EACH
OTHER.

>> RIGHT.

>> THANK YOU VERY MUCH.
WE WILL TAKE THE CASE UNDER
ADVISEMENT.

THANK YOU VERY MUCH.