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Anthony Welch v. State of Florida

SC06-698

>> GOOD MORNING COURT IS
BACK IN SESSION PLEASE BE HE
SEATED THE NEXT CASE THIS
MORNING IS WELCH VERSUS
STATE OF FLORIDA,
MR. QUARLES.

>> MAY IT PLEASE THE COURT,
GOOD MORNING I'M CHRIS
QUARREL I REPRESENT -- ANDY
WELCH, IN THIS DIRECT PALE
FROM TWO DEATH SENTENCES IN
BREVARD COUNTY MR. WELCH
PLED GUILTY STRAIGHT UP AND
THEY PROCEEDED TO A PENALTY
PHASE, SO I WANT TO MAKE IT
CLEAR UP FRONT THAT GUILTY
IS NOT AN ISSUE AT ALL, IN
THIS CASE, AND THAT IS
IMPORTANT, TO THE FIRST
POINT.

WHICH I PLAN TO DISCUSS,
ALSO PLAN TO DISCUSS .6,
DEALING WITH PROSECUTORIAL
ARGUMENT IN CLOSING.
THE FIRST ISSUE, INVOLVES
TESTIMONY FROM HEATHER, ANDY
WELCH'S ROOMMATE NOW
CRITICAL ISSUE AT THE
PENALTY PHASE THAT THE
DEGREE OF \$\$WELCH'S IMPAIRMENT
ON THE NIGHT OF THE MURDERS
HE TOLD ME POLICE WHEN HE
CONFESSED THAT HE HAD BEEN
ON A WEEK LONG BENDER,
ALCOHOL, COCAINE AND HE
BOUGHT EIGHT BALL OF COCAINE
THE NIGHT OF THE BURDENS,
AND THE STATE RESPONDED TO
THAT BY TENDING TO MINIMIZE
AS BEST THEY COULD THEY
FOUGHT TOOTH AND NAIL TO
KEEP OUT EVIDENCE, AND CROSS
EXAMINATION MINIMIZE
EVIDENCE I'M NOT SAYING
IMPROPER!!\$\$!!!!!!!!!!!!!!!

IMPROPERLY NECESSARILY BUT THAT WAS THEIR STRATEGY BECAUSE IT WAS THE CRITICAL ISSUE AT TRIAL.

>> STOP RIGHT THERE AND GIVE US AS COMPLETE A PICTURE AS YOU CAN OF THE EVIDENCE OF HIS INTOXICATION AT THE TIME, THAT IS IF IT IS CONTAINED IN HIS STATEMENT.

>> RIGHT.

>> BEYOND HIS BEYOND HIS STATEMENT WHAT -- WHAT DOES THE OTHER SOURCE OF EVIDENCE, IF THERE WAS, MAYBE JUST A STATEMENT TELL US COMPREHENSIVELY WHAT THE OTHER EVIDENCE OF HIS CONDITION ON THAT NIGHT.

>> ALL RIGHT, THE BUILT I WILL BE CANDID AND SAY THAT ADMIT THAT THE BEST EVIDENCE IS FROM HIS STATEMENT. BUT THERE WERE THERE WAS ATTEMPT TO ILLICIT IMPROPER!!\$\$!!!!!!!!!!!!!! IMPROPERLY OBJECTION WAS SUSTAINED WHERE THERE WERE RUMORS OF APPELLANT\$\$'S DRUG USE, ONE WERE OF HIS FRIENDS TESTIFIED OBJECTION SUSTAINED.

>> WASN'T THE BEST EVIDENCE THE THOSE FOLKS WHO INTERACT!!\$\$!!!!!!!!!!!!!! INTERACTED.

>> WELL AS BEST HIS BEST FRIEND SAID THAT HE HAD HE ENCOUNTERED HIM, AND BARS ON WEEKENDS!!\$\$!!!!!!!!!!!!!! WEEKENDS, LOCAL BARS, AND HE WAS APPEARED MORE THAN DRUNK HE APPEARED, TO BE LIKE A ZOMBIE USED THE PHRASE ZOMBIE!!\$\$!!!!!!!!!!!!!! ZOMBIE.

>> THOSE WHO ENCOUNTERED THIS DEFENDANT -- AT OR ABOUT NOT AT EXACTLY AT THE TIME BUT DURING THE 24 HOURS, BEFORE THE EVENT? 24 HOURS BEFORE I DON'T THINK WE HAVE MUCH WE HAVE -- WE HAVE HIM MEETING HIS GIRLFRIEND!!\$\$!!!!!!!!!!!!!! GIRLFRIEND, AFTER THE

MURDERS!!\$\$!!!!!!!!!!!!!!

MURDERS, SEVERAL HOURS AFTER
THE MURDERS, WHERE SHE
DESCRIBED HIM AS PALE
TREMBLING LOOKED LIKE IN A
CAR WRECK HOWEVER SHE SAID I
DIDN'T HE DIDN'T SEEM UNDER
THE INFLUENCES BUT SHE DID
NOTICE THOSE TWO FACTORS.

>> HOW WHAT WAS THE TIME
SPAN BETWEEN THE DEFENDANT,
EVIDENCE OF HIM USING DRUGS,
COCAINE, SPECIFICALLY, OVER
A PERIOD OF TIME, AND THE
ROOMMATE OBSERVATION THAT HE
HAD TURNED DOWN, SEVERAL
OFFERS OF DRUGS?

WHAT KIND OF TIME PERIOD ARE
WE TALKING ABOUT INTO THEY
WERE ROOMMATES TEN WEEKS
BEFORE THE MURDERS, WE THE
INDICATION THAT IS HE WAS
USING THE COCAINE AND AGAIN
IT IS FROM HIS STATEMENT
LEADING UP TO THE MURDERS,
AND IN A SENSE, TRYING TO
GET UP HIS NERVE, IT
APPEARED, TO DO WHAT TO --

>> IN OTHER WORDS, THE LAST
TIME THEY WERE ROOMMATES,
WAS MORE THAN TWO MONTHS
BEFORE THE EVENT.

>> NO THEY WERE ROOMMATES AT
THE TIME OF THE MURDERS, BUT
THEY HAD MOVED HE HAD MOVED
IN ABOUT I BELIEVE, THE
EVIDENCE IS ABOUT TEN WEEKS
THEY HAD BEEN FOR TOTAL --

>> WE KNOW, MANY WERE --
GETTING AHEAD OF YOUR
ARGUMENT HERE, AND I DON'T I
WANT YOU TO MAKE YOUR
ARGUMENT, BUT -- HE
DESCRIBED BEING ON A WEEK
LONG BINGE AND THIS IS AT
THE SAME TIME THAT HE WAS
THE ROOMMATE OF THESE OTHERS!!\$\$!!!!!!!!!!!!!!
OTHERS?

AND WHAT WERE THEIR
OBSERVATIONS OF THE WEEK
LONG BINGE?

>> -- THERE WERE QUESTIONS
SPECIFICALLY -- FOCUSED ON
THAT, WEEK LONG BINGE.

>> DID HE STILL LIVE THERE,
DURING.

>> HE DID, HE DID, BUT I I
MEAN DID SHE HAVE A
BOYFRIEND!!\$\$!!!!!!!!!!!!!!!
BOYFRIEND?

THEY SORT OF LIVED SEPARATE
LIVES!!\$\$!!!!!!!!!!!

LIVES, AND JUST SORT OF
SHARED AN APARTMENT LIKE A
LOT OF YOUNG PEOPLE DO, I'M
SURE THEY WERE IN AND OUT
WITHOUT -- WITHOUT HAVING A
LOT OF INTERACTION, BUT,
THAT WAS ANOTHER POINT OF
THE OBJECTION BY DEFENSE
COUNSEL NOT ONLY WAS IT
IRRELEVANT THERE WAS NO TIME
FRAME GIVEN --

>> WAIT A SECOND, YOU ARE
TRYING TO INTRODUCE EVIDENCE
THAT THIS DEFENDANT WAS BOTH
HIGH ON DRUGS THE NIGHT OF
THE MURDER, THAT HE HAD A
HISTORY OF SEVERAL YEAR
HISTORY OF DRUG ABUSE,
INCLUDING COCAINE USE, AND
YOUR TELLING US THAT IT IS
NOT AT LEAST RELEVANT TO
BOTH MITIGATE THE -- IN
RESPONSE TO ANYTHING IN
MITIGATION!!\$\$!!!!!!!!!!!!!!!
MITIGATION, OF HIS DRUG
HISTORY, OR THE TIME OF THE
CRIME TO SAY THAT HIS
ROOMMATE UP UNTIL THE TIME
OF THE MURDER SAW HIM
REPEATEDLY REFUSE COULD
CONTAIN SEEMS TO ME
SOMETHING THE JURY CAN WEIGH
SAY THERE IS EXPLANATION WHY
HE MIGHT HAVE REFUSED ON
THOSE OCCASIONS STILL ON A
BINGE?

I'M -- I'M HAVING I'M HAVING
TROUBLE SEEING HOW A JUDGE
COULD OR SHOULD KEEP THIS
EVIDENCE OUT.

SOS GIVE -- I'M JUST -- NOT
SEEING IT.

>> ALL RIGHT.

AND THAT IS THAT IS THAT
MAKES IT CLEAR IT HAS A
CERTAIN LOGICAL APPEAL WILL

THAT IS WHAT MAKES IT SO
UNFAIR!!\$\$!!!!!!!!!!!!

UNFAIR.

BECAUSE PEOPLE THINK WELL,
IF HE TURNED DOWN COCAINE --

>> I THINK MAYBE HE JUST
CAN'T WANT TO DEAL WITH
THOSE PEOPLE I DON'T KNOW
WHY THAT NECESSARILY BUT IT
CERTAINLY IS RELEVANT.

>> WELL I COULDN'T THINK IT
IS AND I DON'T THINK IT IS.

>> WHY --

>> WHY ISN'T IT?

>> BECAUSE, JUST BECAUSE YOU
TURN DOWN COCAINE ON PRIOR
OCCASIONS HAS NO RELEVANCE
TO WHETHER OR NOT HE DID
EIGHT BALL OF COCAINE THAT
NIGHT.

>> THE QUESTION WAS
PREDICATED ON YOUR STATEMENT
THAT YOU WERE TRYING TO SHOW
THAT HE HAD A CHRONIC
PROBLEM AND THAT FOR A LONG
PERIOD OF TIME HE HAD BEEN
ABUSING DRUGS, NOW YOU HAD
-- UNEVEN SYSTEM IN GETTING
EVIDENCE IN ABOUT THAT, BUT
SO LET'S STOP AT THAT
PREDICATE FIRST, THAT IS
THAT YOU WERE TRYING TO
ESTABLISH THAT HE HAD A
CHRONIC DRUG AND ABUSE ISSUE
HERE.

>> MORE -- THEREFORE, IF HE
THE WHETHER HE DID HAVE THAT
CHRONIC PROBLEM, WOULD BEN
INFORMED BY PEOPLE AROUND
HIM, THAT SAID YEAH I WAS IN
-- ROOMMATE AND HE WAS HIGH
ON DRUGS ALL THE TIME.

TO THAT WOULD SUPPORT YOUR
SIDE OF IT.

BUT THEN IF IT WAS ROOMMATES
THAT SAID YEAH, HE WAS MY
ROOMMATE FOR A LONG TIME,
AND I NEVER ONCE SAW HIM
HIGH.

SO WHY -- I THINK THE
QUESTION IS IF YOU ARE
TRYING TO SHOW THE CHRONIC
ABUSE OF DRUGS, LEADING UP
THEN TO THE ONE WEEK BINGE,

OR WHATEVER THEN WHY
WOULDN'T I BE PREPT FOR THE
STATE TO COUNTER THAT BY
SAYING, NO, YOU KNOW TO
THESE ROOMMATES, THAT HE
HAD, HE NOT ONLY DIDN'T
EXHIBIT ANY SIGNS OF IT, HE
HAD PLENTY OF OPPORTUNITIES
TO HAVE THE DRUG, AND HE
TURNED IT DOWN IF YOU ARE
TRYING TO SHOW THE ONE YOU
ARE MAKING IT RELEVANT,
OKAY?

BY SAYING, THAT THESE DEATHS
OCCURRED AS THE RESULT OF
HIS ABUSE YOU ARE MAKING
THAT ISSUE RELEVANT.

WHY WOULDN'TED!!\$\$!! BY THE
PERFECTLY PROPER THEN FOR
THE STATE TO REBUT YOUR
CLAIM BY SHOWING THAT HE HAD
ROOMMATES THAT SAID HE
DIDN'T HAVE A PROBLEM?

>> FIRST OF ALL, I'M NOT --
AND IT WAS NOT ATTEMPTED TO
BE PROVEN THAT HE HAD A
NECESSARILY A CHRONIC
COCAINE PROBLEM HE HAD A
CHRONIC DRUG PROBLEM AND THE
ROOMMATES TESTIFIED WE DID
WE DRANK A LOT WE SMOKED
POT, WE DID ECSTASY HE DID
ALL OF THAT, BUT ON A COUPLE
OF OCCASIONS, FOUR TO FIVE,
WE WERE DOING COCAINE AS
WELL!!\$\$!!!!!!

WELL, AND SAID HEY ANDY YOU
WANT SOME AND HE SAID NO
THANKS.

NOT ADAMANTLY NOT I DON'T DO
DRUGS!!\$\$!!!!!!

DRUGS, AND A DURING THE
ARGUMENT, AFTER THE PROFFER
WHERE SHE TESTIFIED THERE
AGAIN BASIS WAS WE DON'T
KNOW WHAT TIME PERIOD THIS
WAS, OBVIOUSLY, YOU CAN
ASSUME IT WAS DURING THE
10-WEEK PERIOD THAT THEY
WERE ROOMMATES, RIGHT BEFORE
THE MURDERS, JUST LOGICALLY,
BUT THEY ALSO SAID RELEVANCE
AND THE HEATHER WAS ON STAND
LISTENING TO ARGUMENTS SAID

JUST BECAUSE HE TURNED IT
DOWN WITH US THAT DOESN'T
MEAN HE DIDN'T DO IT THAT
NIGHT.

OUT OF THE MOUTHS OF
WITNESSES!!\$\$!!!!!!!!!!!!!!!

WITNESSES, TO TO SPEAK --

>> -- JUST SAID ISN'T WE

HAVE THE WHOLE PANOPLY OF
DRUG USE OPEN HERE BY THE
DEFENDANT PRESENTATION OF
THAT, SO WHY ISN'T
EVERYTHING CONCERNING HIS
DRUG USE RELEVANT?

WHETHER HE USED IT OR DIDN'T
USE IT, ALL OF THAT SEEMS TO
BE RELEVANT, BECAUSE YOU THE
DEFENCE HAS MADE HIS USE OF
DRUGS RELEVANT, BECAUSE THEY
ARE USING IT IN MITIGATION.

>> YES, BUT -- THE FACT THAT
HE DIDN'T USE -- THAT HE
REFUSED IT THOSE FEW
OCCASIONS AS JUSTICE OI I
MEAN I'M SORRY -- ELEVATING
PROFESS!!\$\$!!!!!!!!!!!!!!!

PROFESSOR, EARHART SAID THAT
IN HIS BOOK, WHERE I QUOTE,
AND OH, THE REASON THE
REASON THE PROSECUTOR
STARTED LET ME GET TO THAT
FIRST, HE SAYS -- WE ARE
OFFERING THIS BECAUSE WE
BELIEVE THE CIRCUMSTANCES AT
LEAST THERE WAS NO COCAINE
THAT HE WOULD NOT ENGAGE IN
THE YOU'VE COCAINE IT GOES
TO AGGRAVATORS NOT HE
EMOTIONALLY OR MENTAL MALL
INDONESIA, AS PROFESSOR
EARHART SAYS, THAT EVIDENCE
THAT A PERSON HAS ENGAGED IN
A PARTICULAR TYPE OF CONDUCT
IN THE PAST, IS NOT
ADMISSIBLE TO PROOF THAT THE
PERSON ANTHED THIS NEE SAME
WAY ON OCCASION IN QUESTION,
I THINK.

>> ISN'T THAT THE ORDINARY
RULE.

>> YES.

>> THAT IS THAT IF YOU ARE
TRYING TO PROGRESSIVE
POSSESSION!!\$\$!!!!!!!!!!!!!!! PROVE

POSSESSION OF OF COCAINE ON PARTICULAR DATE THAT IS CRIME CHARGING BUT DON'T WE HAVE A DIFFERENT SITUATION HERE, WHERE IT IS THE DEFENDANT HIMSELF THAT IS TRYING TO ESTABLISH THAT PART THE OF HIS MITIGATION IS THAT HE HAS A CHRONIC DRUG PROBLEM, THAT INCLUDES THE USE OF COCAINE?

AND -- SO WE GET A -- A FACT-FINDER THEN, THAT IS MORE FULLY INFORMED, WHAT IS THE ROOMMATE HAD SAID, ON A -- PRIOR OCCASION, HE HAD ACCEPTED COCAINE, WOULD YOU NOT BE WANTING THEN TO USE THAT WOULD ESTABLISH THAT HE HAD A A COCAINE PROBLEM?

>> THEY OUT OF MY HAVE TRIED I BY OBJECTION BY THE STATE WOULD HAVE BEEN PROPERLY SUSTAINED!!\$\$!!!!!!!!!!!!!! SUSTAINED.

>> SO YOU DON'T BELIEVE ANY EVIDENCE OF USE OF DRUGS PRIOR TO THIS STWUL EVENT WOULD HAVE BEEN RELEVANT TO MITIGATION!!\$\$!!!!!!!!!!!!!! MITIGATION?

>> WELL -- MITIGATION IS DIFFERENT, AND I THINK THE RULES OF EVIDENCE APPLY BUT NOT -- NOT AS STRONGLY, BUT IT IS CLEAR THAT IN THIS CASE, WHERE THE STATE IS BASICALLY -- AND HE USED IN CLOSING ARGUMENT IT WAS CREDIBLE ISSUE, AND HE ARGUED IN CLOSING HE SAID YOU HEARD THE TESTIMONY AHEAD -- WHO WOULD KNOW BETTER THAN HER, AND THEN, LO AND BEHOLD, THE!!\$\$!!!!JURY FIVE HOURS DELIBERATING TWO QUESTIONS ONE WHAT IS HE IMPAIRED OR NOT?

I I MEAN, OBVIOUSLY THAT WAS A CRITICAL ISSUE B TO THE JURY!!\$\$!!!!!! JURY.

>> LET ME APPROACH THIS A LITTLE BIT DIFFERENTLY, IT

SEEMS AS THOUGH THIS IS NOT
A QUESTION DID HE HAVE A CUP
OF COFFEE BUT ISN'T IT THE
ADDICTIVE NATURE OF COCAINE
THAT CAME INTO PLAY HERE?
AND CRACK COCAINE AND THOSE
KINDS OF THINGS, AND THE
ISSUE -- AND FOR WHATEVER IT
WAS WORTH OF RELEVANCE, IS
THAT ONE WHO IS ADDICTED TO
HEAVY DRUG USE IS JUST
DOESN'T HAVE TO TURN IT ON
AND OFF ISN'T THAT REALLY
WHERE IT GOES?

AND WASN'T THAT WHAT THIS
WAS DIRECTED TO, THAT YOU
KNOW, COCAINE WAS THERE WAS
AVAILABLE, DID NOT PARTAKE
IN THAT UNDERMINES THIS
PAINTING A PICTURE OF
SOMEONE FOR A JURY IN
MITIGATION!!\$\$!!!!!!!!!!!!!!!
MITIGATION, THAT IT IS A
POOR SOUL ADDICTED HAS
ILLNESS ADDICTED TO COCAINE,
AND THAT PROVIDES MITIGATION
IN CONNECTION WITH THE
PENALTY PHASE?

>> FIRST OF ALL, THERE WAS
NO ADDICTION, ALLEGED
NECESSARILY.

>> COCAINE IS THAT WERE TO
TAKE THIS AS -- A COMMON
JURY WOULDN'T THINK THE
DRUGS ARE ADDICTIVE I GUESS!!\$\$!!!!!!!!!!
GUESS --

>> YES BUT THERE AGAIN
TIMewise -- THAT THE NIGHT
OF THE MURDERS OUT OF MY
HAVE BEEN FIRST TIME HE
FINALLY DID COCAINE.
THAT IS A REAL POSSIBILITY
MAYBE HE I WAS AFRAID OF
COCAINE BEFORE TURNED IT
DOWN, MAKE SURE HE DIDN'T
WONDER -- WANT TO DEVELOP!!\$\$!!!!!!!!!!!!!!

DEVELOPCOMPENSATE HABIT
TURNS IT DON'T YOU MAYBE
DIDN'T WANT OTHER PEOPLE
KNOWING THAT HE DID
COCAINE>> DETESTIFY.

>> NO HE DID NOT.

.
>> STATEMENT TO POLICE HE

HAPPENED, I WAS USING COYING
I HAD BEEN ON WEEK LONG
BINGE.

>> I BELIEVE THAT -- I
BELIEVE TO THAT IS THE CASE,
YES.

>> AND -- AND DID THEY
COMMENT ON WHETHER HE -- HAD
A LONG TIME -- PROBLEM WITH
COCAINE?

>> I DON'T RECALL THAT THAT
WAS LIST -- ELICITED, THEY
CONFIRMED THAT HIS USE OF
COCAINE AND ALCOHOL THAT
NIGHT ACCOUNTED FOR HIS LACK
OF MEMORY ON A LOT OF THE
DETAILS OF THE IN THE HOUSE
THAT NEED IT, HE REMEMBERED
SOME THINGS BUT NOT A LOT,
YOU KNOW HE REMEMBERED
INFLECTING SOME BLOWS HE
DIDN'T REMEMBER WHAT MURDER
WEAPON WAS DIDN'T UNDERSTAND
ALLOW THE BODIES GOT WHERE
THEY WERE, AND THEY SAID
THAT WAS A GENUINE LACK OF
MEMORY BASED ON HIS
CONSUMPTION OF ALCOHOL.

>> DID EXPERTS HAVE ANY
TESTIMONY OTHER THAN THE
SELF-REPORTING OF DEFENDANT
OF THE USE OF COCAINE THAT
NIGHT OR ANY OTHER TIME?

>> I DON'T BELIEVE SO, HE
WAS -- HE WAS KICKED OUT OF
THE MILITARY FOR ALCOHOL
ABUSE.

>> I'M TALKING SPECIFICALLY
ABOUT COCAINE.

>> NO, I DON'T BELIEVE SO,
NO YOUR HONOR.

>> HOW DID THIS -- EXPLAIN
THIS, THE DEFENSE PUT THE
TESTIMONY OF SANDRA WELCH \$\$
WELCH'S SISTER ON WHO
TESTIFIED HE HAD A A COCAINE
USE HISTORY.

>> YOU ARE RIGHT I'M SORRY
SHE DID SAY THAT, I FORGOT,
THAT AND I'M I CAN'T RECALL
RIGHT NOW HOW FAR BACK THAT
WENT.

>> THAT -- THE PROBLEM I
HAVE IS THAT WE ALMOST HAVE

TO GO BACK LOOK AT THIS, AS
TO WOULD I AGREE THAT IF THE
ONLY ISSUE WAS THE NIGHT IN
QUESTION, WOULD YOU HAVE A
PRETTY STRONG ARGUMENT THAT
SOMETHING THAT HAPPENED NOT
IN CLOSE PROXIMITY, A FEW
WEEKS BEFORE A FEW DAYS
BEFORE POLITE NOT BE
RELEVANT YOU WOULD AGREE THE
DAY OF THE DAY AFTER AROUND
THAT TIME, BUT IF THE IF IT
APPEARS THAT THE DEFENDANT
WAS PRESENTING TESTIMONY OF
HIS COCAINE USE HISTORY, NOW
WHETHER THEY WERE PRESENTING
IT AS TO THE SUBSTANTIAL
IMPAIRMENT ON THE NIGHT OR
AS TO GENERALLY A MITIGATION!!\$\$!!!!!!!!!!!!!!!!!!!!
MITIGATION -- I'M NOT CLEAR
ON, AND IT IS THAT IS BUT
YOU ARE NOT CLEAR ON NOW.
>> WELL, I THINK THEY THREW
IT OUT THERE AND WHATEVER
THE JURY WANTED TO DO THEY
DID, ARGUE --
>> IF THEY ARE THROWING IT
OUT THERE THEN IT SEEMS THAT
THE STATE IN REBUTTAL OR IN
CONTRADICTION CAN THROW OUT
THAT HE WAS REFUSING
COCAINE.
>> I MIGHT AGREE WITH IF YOU
THE STATE PRESENTED THE
HEATHER!!\$\$!!!!!!!!!!!!!!
HEATHER'S TESTIMONY IN
REBUTTAL.
BUT THEY DID NOT.
THEY PRESENTED HER TESTIMONY
FIRST IN AGGRAVATION
BASICALLY!!\$\$!!!!!!!!!!!!!!
BASICALLY, TO REFUTE THAT
WHAT THEY NEW WAS COMING
MAYBE, BUT TO THAT WAS THEIR
WHOLE STRATEGY TO MINIMIZE
THE IMPAIRMENT, OF THAT
NIGHT.
THAT IS THEIR WHOLE
STRATEGY, AND THIS WAS AN
IMPROPER UNFAIR WAY TO DO IT
I THINK THIS COURT'S
PERCEPTION IS INDICATIVE OF
THE LODGE APPEAL THAT IT HAS
BUT AS A PROFESSOR SAYS, IT

IS NOT EVIDENCE THAT HE
SOMEBODY DID SOMETHING ONE
DAY, THAT THEY HAVE NOT DONE
PRIOR, IT IS LIKE A A
PROPENSITY TYPE --

>> THE TRIAL JUDGE IN THIS
CASE FOUND BOTH THE BOTH
MENTAL MITIGATION, AND USE
OF DRUGS, AS ALSO A
NONSTATUTORY MITIGATING;
CORRECT?

>> CORRECT.

>> SO IF THE THAT IS THE
CASE, THEN -- THIS SUBJECT
TO A HARMLESS ERROR,
ANALYSIS!!\$!!!!!!!!!!!!!!!

ANALYSIS?

>> NOT WHEN YOU.

TRIAL JUDGE IN FACT FOUND
THESE --

>> NOT WHEN YOU HAVE JURY AS
COSENTENCEER, CLEARLY
CONCERNED, AS EVIDENCED BY
THEIR QUESTION, WAS HE
IMPAIRED OR WAS HE NOT?
THE --

>> A TYPICAL I I MEAN THAT
IS A -- A TYPICAL JURY
QUESTION TO BE ANSWERED BY
THE JURY.

>> RIGHT.

>> THAT IS THE POINT.

>> ALL THE EVIDENCE
PRESENTED AS DECIDE WHETHER
THE MAN WASSISM PAIRED.

>> THAT IS WHAT THE JUDGE
HAD TO TELL THEM OF COURSE
THE JUDGE COULD NOT ANSWER
THE ULTIMATE JURY QUESTION
WAS HE IMPAIRED OR NOT.
BUT THE FACT THAT THEY CAME
BACK WITH THAT QUESTION
IS --

>> IS INDICATIVE OF WHAT?

>> THAT THEY WERE VERY
FOCUSED AND CONCERNED ON THE
DEGREE OF HIS IMPAIRMENT.
AND THIS TESTIMONY FROM THE
-- UNFAIRLY --

>> WOULD THEY HAVE HAD ANY
REASON TO FOCUS ON THE
DEGREE OF IMPAIRMENT AFTER
THE ROOM MATES TESTIMONY?

>> WELL, SURE, THE DEFENSE

SFRENDED EVIDENCE OF
IMPAIRMENT FOR SURE,
PSYCHOLOGICAL AS WELL.

>> IS THERE ANY OTHER
EVIDENCE OF HIM NOT USING
DRUGS TO SOME EXTENT OTHER
THAN THE ROOMMATE'S
TESTIMONY?

>> I DON'T BELIEVE SO.

>> THE GIRLFRIEND TESTIFIED.

>> THE GIRL FRIEND.

>> SHE SAW TWO HOURS LATER,
AND HE DIDN'T APPEAR UNDER
INFLUENCES OF DRUGS.

>> DIDN'T APPEAR UNDER
INFLUENCES BUT LOOKED PALE
TREMBLING LIKE IN A WRECK --

>> YOU AGREE THAT IS --

>> SEMANTICS, YES, I AGREE
IT IS RELEVANT, THAT --

>> WE GOT A TIME FRAME
THERE, AND WE'VE GOT YOU
KNOW, HER OBSERVATION OF HIM
AS IN SO IF WASN'T SOMEONE
ELSE ALSO DURING THE DAY HE
ENCOUNTERED!!\$\$!!!!!!!!!!!!!!
ENCOUNTERED, ISN'T THERE
EVIDENCE.

>> THERE WAS EVIDENCE FROM
THE NEXT-DOOR NEIGHBOR
APPARENTLY SAW HIM APPROACH
THE HOUSE WALK UP TO THE
HOUSE, BOTH THE NIGHT OF THE
MURDERS!!\$\$!!!!!!!!!!!!!!
MURDERS, AND SAID THAT HE
WASN'T STAGGERING HE WASN'T
HE DIDN'T PAIR IN BRIEF FEW
SECONDS THEY SAW HIM WALKING
UP THE DRIVE WAY OF THE
JOHNSONS HOME HE DID NOT
APPEAR IMPAIRED HE DIDN'T
TALK TO HIM, AND YOU KNOW
MENTAL IMPAIRMENT VERSUS SUM!!\$\$!!!!
SUMBLING DRUNK ARE VERY
DIFFERENT THINGS, AT THIS
POINT.

>> YOU INDICATE YOU HAVE
ANOTHER ISSUE WHAT THAT IS
INTO THE NEXTISH I'D LIKE TO
ADDRESS IS .6, WHERE, THE
PROSECUTOR AND HERE AGAIN
REMEMBER GUILT IS NOT AN
ISSUE WE ARE JUST DIVIDING!!\$\$!!!!!!!!!!!!!!DID IING SPEND!!\$\$!!!!!!!!!!
SPENDITY BEGINNING OF

CLOSING ARGUMENT THE
PROSECUTOR SAID JUSTICE
REQUIRES IN THIS CASE
IMPOSITION OF THE DEATH
PENALTY THERE WAS IMMEDIATE
ACTION A SIDE BAR, AND THE
DEFENSE COUNSEL POINTED OUT
THERE IS NO REQUIREMENT THAT
THE JURY EVER VOTE FOR DEATH
EVEN IF THEY FIND THE --
OUTAWAY MITIGATE\$\$!!!!OS JUSTICE OR
ANYTHING ELSE, THE JUDGE HE
ASKED FOR INZRUKION THERE
WAS NO REQUIREMENT FOR THE
DEATH PENALTY UNDER ANY
CIRCUMSTANCES, AND THE
PROSECUTOR SAID I'M JUST
ARGUING AND THE COURT
OVERRULED IT AND SAID, HE IS
JUST ARGUING.

AND PERHAPS -- PERHAPS
REALIZING THAT HE WAS SKIRT!!\$\$!!!!!!!
SKIRTING THE EDGE OF
IMPROPER ARGUMENT THE
PROSECUTOR PROCEEDED AND
SAID, THERE IS NO
REQUIREMENT THAT YOU
RECOMMEND DEATH THE LAW
DOESN'T REQUIRE IT WILL
JUSTICES TIS DEMANDS THERE
IT WAS ANOTHER OBJECTION, SO
THERE IS NO REQUIREMENT ANY
FOR IMPOSITION OF DEATH THAT
IS IMPROPER OVERRULED \$\$
STATE'S AERLTH SAID JUDGE AT
LEAST IT IS AT VERY LEAST
THE \$\$PROSECUTOR'S PERSONAL
OPINION THAT JUSTICE DEMANDS
IT.

>> OVERRULED DENY YOUR
MOTION FOR MISTRIAL MOTION
TO STRIKE RATHER I'M SORRY,
THEN.

>> --
>> YOUR CONTINUED AT THE END
OF THE CLOSING, HE THAT WAS
HIS THEME AT THE END OF HIS
CLOSING AS WELL HE SAYS
JUSTICE, LOOK AT THE
PICTURES YOU LOOK AT
PICTURES OF THE DEFENDANT
WITH HIS FAMILY, AND THAT I
THEY WILL TELL YOU YOUR
HEART DON'T FORGET JOHNSON

HOME, DON'T FORGET QUOTE
DON'T FORGET WHAT HAPPENED
BECAUSE IF YOU DO, WE WON'T
HAVE HAVE JUSTICE HERE.
THANK YOU, JUDGE THAT IS THE
END OF HIS CLOSING, OPEN,
CLOSE.

>> JUST BECAUSE YOU USE THE
WORD ASK THE JUSTICE" DIDN'T
ITSELF CONSTITUTE ERROR DOES
IT USING.

>> I THINK IT DOES.

>> A JUST RESULT IN THIS
CASE THIS --

>> ISN'T IT THAT IT IS THE
ISSUE THAT SOMETHING IS
REQUIRED.

>> YES.

>> -- AND HE DID CORRECT
HIMSELF AND THE JUDGE IN
FACT GIVE A AN INSTRUCTION
THAT SAYS THAT YOU EVEN IF
THE AGGRAVATOR OUTAWAY
MITIGATORS YOU ARE NOT
REQUIRED TO RETURN, A
VERDICT!!\$\$!!!!!!
VERDICT, FOR THE DEATH
PENALTY INTO I THINK THAT
CONTRADOOIBTS THE ARGUMENT
BY THE PROSECUTOR I MEAN IF
JUSTICE IS NOT THE LAW WHAT
IS IT?

I MEAN THAT IS WHAT --
PEOPLE THINK OF, WHEN THEY
HEAR JUSTICE, AND IF HE HAS
BEEN A LITTLE MORE A LITTLE
MORE -- NOT AS NOT AS
EMPHATIC, HE DID SAY, USUAL
RIGHT, HE DID SAY LAW
DOESN'T REQUIRE IT BUT
JUSTICE DEMANDS IT WILL I I
MEAN THAT IS KIND OF --

>> ISN'T IT THAT JUSTICE FOR
THE VICTIMS REALLY THAT WE!!\$\$!!
WE --

>> THAT IS TRUE.

>> IN THE PAST --

>> BOTH OF THOSE.

>> I'M NOT SURE THAT YOU
HAVE THAT CASE HERE, SO HELP
ME THAT IS THAT -- WHEN YOU
START INVOKING YOU KNOW, THE
-- IN ORDER -- YOU KNOW
ALMOST LIKE A --

REVENGEANCE -- THING, THAT
-- YOU HAVE GOT TO CONSIDER
IF YOU HAVE GOT TO DO
JUSTICE FOR MR. SMITH WHO IS
NO LONGER HERE, BUT I'M NOT
SO CERTAIN HOW IS THIS
ARGUMENT LIKE THAT, IT IS
NOT LIKE THAT IS IT.

>> WELL I THINK IT IS.

>> LET'S START WITH THE --
YOU ARE NOT TELLING US THAT
WE ARE GOING TO BAN THE USE
OF THE WORD JUSTICE IN
FLORIDA'S COURTROOMS.

>> NO.

BUT IN THE CONTEXT HE IS
SAYING BECAUSE HE MENTION AS
THE \$DEFENDANT'S FAMILY
AND --

>> HOW ELSE IS A PROSECUTOR
TO MAKE A PER SWAYSIVE
ARCHITECT, FOR THE DELT
PENALTY, IN TERMS OF SUMMING
UP DESCRIBING THE
CIRCUMSTANCES, AND THEN
SAYING I THINK ALL OF THOSE
CIRCUMSTANCES AND THE
JUSTICE OF THE CAUSE DEMANDS
THE DEATH PENALTY IN A
PARTICULAR CASE?

>> ALL RIGHT HE CAN DO THAT.

>> HE CAN ASK FOR -- DEATH
PENALTY OR JUSTICE IN THE
CASE.

>> AND -- YES, AND TODAY'S
JURIES I THINK ARE VERY
WILLING TO IMPOSE DEATH
PENALTY THEY DON'T SEE ANY
OF THIS IN THIS ARGUMENT
INVOKING REVENGE FOR THE
VICTIMS!!\$\$!!!!!!!!!!!!!!
VICTIMS, WHERE IS THAT IN
THIS?

>> WELL, HE SAYS THE WAY HE
SAID IT -- FINISHES WHEN HE
TALKS ABOUT COMPARING THE
PHOTOGRAPHS, OF THE
DEFENDANT, AND HIS FAMILY,
VERSUS THE PHOTOGRAPHS OF
THE JOHNSONS' HOME AND THE
VICTIMS!!\$\$!!!!!!!!!!!!!!
VICTIMS.

I I MEAN HE DIDN'T
SPECIFICALLY MENTION

PHOTOGRAPHS BUT THE HE SAYS
DON'T FORGET WHAT HAPPENED
IN THE JOHNSON HOME, JUSTICE
REQUIRES OR DEMANDS I FORGET
THE LAST THING WAS.

>> ISN'T THAT PART OF THE
EVIDENCE.

>> IT IS.

>> TESTIMONY FROM MEDICAL
EXAMINER PHOTOGRAPHS, TO
HAVE THE EVIDENCE, OF WHAT
OCCURRED ON THIS SNEEVENG
BUT THE WAY HE -- PUTS THOSE
EXTENSIONES TOGETHER,
CLEARLY\$\$\$!!!!IO SENTENCES THE
OTHERING CLEARLY MAKES IT
VICTIM DEMAND JUSTICE I
THINK CLEAR FROM THE RECORD.

>> WITH OUR ASSISTANCEURE IN
REBUTTAL USE YOUR TIME AS
YOU PLEASE.

>> ALL RIGHT, I THINK -- I
WILL SIT DOWN RIGHT NOW,
THANK YOU.

>> OKAY.

>> MAY IT PLEASE THE COURT
BARBARA DAVIS I REPRESENT
THE STATE OF FLORIDA,
REGARDING ISSUE ONE, IF THE
COURT HAS ANY QUESTIONS I'D
BE HAPPY TO ADDRESS.

>> HOW ABOUT THE GENERAL
RULE, THAT IS THAT WE DON'T
ORDINARILY SAY SOMEBODY IS
CHARGED WITH POSSESSION OF
MARIJUANA, OKAY?

YOU DON'T BRING IN A WITNESS
THAT SAID WELL I SAW HIM IN
POSSESSION OF MARIJUANA, TWO
MONTHS OR TEN WEEKS OR
WHATEVER IT WAS BEFORE.

AND, THEREFORE, IPSO FACTO,
HE MUST HAVE BEEN IN
POSSESSION OF THE MARIJUANA
TWO MONTHS LATER.

THAT THAT IS THE LAW THAT
PRFR EARHART IS ALLUDING TO.

AND SIMILAR ON THE FLIP SIDE
OF IT, THAT IS THE DEFENDANT
CAN'T BRING IN EVIDENCE
THAT, WELL, I CAN BRING IN A
WITNESS!!\$\$!!!!!!!!!!!!!!

WITNESS, TO THAT SAID TWO
MONTHS BEFORE HE OFFERED ME

THIS CASE AS YOUR OPPONENT SAYS, THE STATE DIDN'T PRESENT THIS EVIDENCE IN REBUTTAL OF WHAT HE PRESENT!!\$\$!!!!!!!!!!!! PRESENTED, THE STATE PRESENT!!\$\$!!!!!!!!!!!! PRESENTED THIS IN ITS CASE FOR AGGRAVATION.

>> YES, SIR, AND REMEMBER.

>> WELL, HOW CAN THE STATE PRESENT THE CASE FOR AGGRAVATION!!\$\$!!!!!!!!!!!!!! AGGRAVATION, LIKE THIS, WHEN -- DON'T KNOW WHAT THE DEFENDANT IS GOING TO PRESENT, AS MITIGATION.

>> WELL, OF COURSE WE KNOW WHAT THE DEFENDANT IS GOING TO PRESENT BECAUSE HE HAS GOT A MENTAL HEALTH EXPERT LISTED THE WITNESSES FRIENDS WHO WILL TESTIFY ABOUT DRUG ALCOHOL ABUSE, HE LISTED THE SISTER WE KNOW THEY ARE ALL GOING TO TESTIFY ABOUT DRUG ALCOHOL ABUSE.

IN HIS CONFESSION HE SAID HE WAS DOING COCAINE, SO IT IS ENTIRELY PROPER FOR THE STATE TO --

>> CONFESSION, HE ONLY TALKED ABOUT THE USE OF COCAINE>> YES, SIR.

>> -- AT THE TIME, RIGHT?

>> YES.

>> OKAY, SO -- AGAIN, IF THAT IS ALL HE DID WAS TALK ABOUT THE USE OF COCAINE AT THE TIME, THEN UNDER THE EARHART RULE, IT WOULDN'T BE RELEVANT FOR THE STATE TO PRESENT EVIDENCE, THAT WOULD DO MONTHS BEFORE HE DIDN'T USE COCAINE.

>> BUT YOU HAVE -- INTO THIS IS LIKE APPROVE\$\$!!ING A NEGATIVE, THAT -- PROVE\$\$!!ING A NEGATIVE THAT WE ARE GOING TO SHOW EVERY DAY, TO THAT HE DIDN'T USE COCAINE TO REBUT THAT HE DID USE COCAINE ON THE DAY OF THE EVENT.

AND I DON'T I DON'T THINK THAT MAKES SENSE UNDER ANY

THEORY THAT OF EVIDENCE.

>> REMEMBER, THAT THE STATE WAS ALSO SEEKING COLD CALCULATED PREEMPTED!!! CALCULATED PREMED AT ANY RATE ED THE DEFENSE WAS SAYING HE WAS IN A COCAINE INDUCED FRENZY COULD NOT BE COLD CALCULATE THAT HAD HE ONLY PLANS THE ROBBERY AND THEN COCAINE MADE HIM GO OFF, SO IT IS RELEVANT ALSO, TO THE COLD CALCULATED AGGRAVATING CIRCUMSTANCE.

>> THE STATE COULD HAVE PRESENTED EVIDENCE, GOING BACK, IN TIME, OF TIMES WHEN HE DID USE COCAINE -- IN ORDER TO NOW PROGRESSIVE COLD CALCULATING -- IN OTHER WORDS!!\$\$!!!!!!!

WORDS, CCP, SEEMS TO ME NOW YOU HAVE SHIFTED TO SAY THAT, WELL, NOW WE ARE NOT USING TO IT REBUT HIS MITIGATION!!\$\$!!!!!!!!!!!!!!! MITIGATION, WE ARE NOW USING IT TO ESTABLISH CCP.

WHICH IS IT?

>> WELL, YOUR HONOR IT IS RELEVANT TO EVERYTHING, THIS IS THE PENALTY PHASE, AND WE ESTABLISH OUR AGGRAVATORS AND WE REBUT THE MITIGATORS, NOW.

>> CAN YOU ESTABLISH THE CCP THROUGH THE ABSENCE OF COCAINE USE ANY TIME IN THE PAST?

>> THIS WAS -- THIS WAS THE TEN WEEKS PRECEDING IT. AND, REMEMBER, THERE WERE OTHER WITNESSES THAT ALSO TALKED ABOUT HE DRANK ALCOHOL BUT NOT COCAINE, SO -- IF THE STATE SHOULD NOT PRESENTED THIS IN THE CASE-IN-CHIEF AND THEY THIS HAVE PRESENTED IT IN REBUTTAL, I'M I APOLOGIZE BUT THAT EFEVIDENTIARY ERROR HARMLESS, WENT BEFORE THE JURY AT ONE POINT THAT HIS DRUG USE AND ALCOHOL USE WAS

AN ISSUE, THERE WERE THREE OR FOUR DEFENSE WITNESSES THAT TESTIFIED ABOUT THAT USE, TO EXPERTS THAT TESTIFIED ABOUT THAT USE, SO I'M SORRY IF THE STATE WAS OUT OF ORDER.

>> SO ARE YOU SAYING THAT IF WE LOOK AT THE DEFENSE CASE, THAT THE DEFENSE FIRST TRIED TO KEEP THE EVIDENCE THE FACT THAT HE DIDN'T USE COCAINE OUT; CORRECT?

THAT WAS -- THEY -- ATTEMPTED TO KEEP THAT OUT IN THE STATE'S CASE?

>> WELL.

>>; IS THAT CORRECT?

>> WELL -- OBJECTED TO IT.

>> HEATHER WAS TESTIFYING WHEN THE HEATHER WAS THE ROOMMATE WAS TESTIFYING ABOUT HOW WHEN THE DEFENDANT BROUGHT THE ROBBED ITEMS HOME, AND SAID THAT HE HAD STOLEN THESE FROM SOMEONE THAT OUTSIDE OF HIM MONEY, THEN WE THEY GOT TO PORTION OF HER TEST BECAUSE SHE WAS SO TESTIMONY SHE WAS ON THE STAND SHE WAS GOING TO TESTIFY ABOUT HIS COCAINE USE DEFENSE OBJECTED PROFFERED IT THE TRIAL JUDGE ALLOWED IT.

>> SO THE QUESTION THAT I HAVE IS IN THE DEFENSE CASE, DID THEY KIND OF MIX TOGETHER THE HISTORY OF COCAINE USE WITH THE NIGHT IN QUESTION IN ORDER TO ESTABLISH WITHOUT SEPARATING OUT BOTH THE MITT GATOR, OF SUBSTANTIAL IMPAIRMENT, AS WELL AS THE NONSTATUTORY MITT GATOR OF DRUG USE IN.

>> YES.

>> OKAY SO, AND US THE WHAT WE LOOK AT THAT, THEN, THAT -- YOU SEE DIFFERENCE IF THEY DIDN'T DO THAT, THEN, AND THEY WERE ONLY INTRODUCING THE MITT GATOR,

WOULD YOU HAVE HAVE A
DIFFERENT CASE?

I'M SORRY THE STATUTORY MITT
GATOR THAT IS WHAT HE WAS
THE INFLUENCES OF DRUGS ON
THE NIGHT IN QUESTION, WOULD
BE ANOTHER ISSUE THEN, AS TO
WHETHER YOU COULD PUT ON
EVIDENCE THAT IN THE PAST HE
HAD REFUSED COCAINE?

>> I UNDERSTAND THE
QUESTION.

AND I THINK W WE NEED TO
LOOK AT THE FACTS OF THIS
CASE,AND WE KNOW THAT DRUG
ABUSE, IS GOING TO BE A HUGE
ISSUE, BECAUSE WE HAVE
EXPERTS TESTIFYING TO IT, WE
HAVE THREE DEFENSE WITNESSES
TESTIFYING TO HIS CHRONIC
DRUG AND ALCOHOL ABUSE, AND
THE FACT THAT THEY TECHNIQUE
HEATHER'S TESTIMONY ON THAT
ISSUE, OUT OF ORDER, IS THAT
AN ABUSE OF DISCRETION WITH
THE TRIAL JUDGE?

REMEMBER THIS WAS A THREE
WEEK LONG PROCEDURE, SO THE
TRIAL JUDGE PROPERLY
PROFFERED IT SAID I'M GOING
TO ALLOW IT, NOW, AND SHE OF
ITTED!!\$\$!!!!!!!

ITTED, REMEMBER THAT IN THE \$\$
JUDGE'S SENTENCING ORDER THE
JUDGE SAID THAT, ALTHOUGH,
AND I'M BACK ON PAGE 676,
ALTHOUGH HEATHER TESTIFIED
ABOUT THAT HE COULD REFUSE
COCAINE ALSO RELEVANT TO THE
ABILITY TO CONTROL HIS
ACTIONS WHICH IS RELEVANT TO
CCP, ALSO, TO THE MITIGATING
CIRCUMSTANCES OF EXTREME
EMOTIONAL SUBSTANTIALLY
IMPAIRED THE TRIAL JUDGE
ALSO FOUND BUT HEATHER ALSO
TESTIFIED THAT HE DRANK
HEAVILY AND SMOKED
MARIJUANA, SO IF YOU IF YOU
IF YOU WANT TO FIND THAT WE
DID THIS OUT OF ORDER, WE
SHOULD HAVE DONE THIS IN
REBUTTAL!!\$\$!!!!!!!
REBUTTAL, IT IS HARMLESS,

THE CASE WAS VILLET AND GARCIA SAY THAT IF WE DO SOMETHING ANTICIPATESLY IT IS HARMLESS, HOWEVER, THERE THE ISSUE BEFORE THE JURY AND JUDGE WAS THE CHRONIC IT WAS HUGE PART OF THE CASE, IT WAS EXTREME EMOTIONAL SUBSTANTIALLY IMPAIRED A DRUG AND ALCOHOL ABUSE, AS FAR AS THE OTHER TESTIMONY, TO THAT THE JUDGE OUTLINED, IT WAS BRIAN MANCHESTER, THAT AFTER HE GOTTEN OUT OF THE MILITARY IN JUNE AND THEN HE KILLED THEM -- IN DECEMBER, SIX MONTHS LATER, BRIAN HAD SEEN THE DEFENDANT IN 2000, WHICH WAS THE SIX MONTHS BEFORE -- DRANK TO COMPETENCE SMOKED!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!! EXCESSIVE, SMOKED MARIJUANA DID NOT DO COCAINE THE MILITARY RECORD SUMMARIZED THE TEMPERATURE OF DOOLEY WAS TESTIMONY OF DOOLEY NOT IN THE \$JUDGE'S RECORD BUT MR. DOOLEY SAID THAT HE -- HE DRANK, BUT OH, I'M SORRY, MR. DOOLEY WAS THE ONE THAT SAW HIM AFTER THE MURDERS. THAT SAID HE APPEARED LIKE ZOMBIE LIKE HE HIT A BRICK WALL AFTER THE MURDERS, REMEMBER THAT WE HAVE A NEIGHBOR SAW HIM AT 10:30 IN THE MORNING DID NOT APPEAR IMPAIRED WE HAVE THE GIRLFRIEND IS A SAW HIM RIGHT AFTER THE MURDERS DID NOT APPEAR TO BE IMPAIRED, ALSO HAD NEVER SEEN HIM USE COCAINE.

>> -- THE -- MANY TIMES WE SEE THE MENTAL HEALTH EXPERTS TALK ABOUT THE LONGTIME USE OF COCAINE. AND THE IMPORTANCE OF THE LONGTIME USE.

IS THAT WHAT WAS THAT A FEATURE OR NOT NECESSARILY A FEATURE WAS THAT PART OF THE MENTAL HEALTH EXPERTS HERE WHETHER THAT WAS PART OF

TOTALITY OF THIS INDIVIDUAL
OR WAS IT NOT?
I THINK WHOA YOU ARE
HEARING, THAT THERE APPEARS
TO BE A -- A DIFFERENCE, IN
THE LEGAL APPROACH POSSIBLY,
IN THAT IS IF YOU ARE TRYING
TO PROGRESSIVE!!\$\$!!!!!!!!!!!!!!!!!!!!!!APPROVE WHAT DID DID NOT
OCCUR A PARTICULAR DAY MAY
OR MAY NOT HAVE OCCURRED
SOMETIME BEFORE IT IS NOT
VEL RANT OWN THAT THAT IS
THE REASON FOR THE QUESTION.
WAS THIS CASE ONE OF THOSE
JUST A LONGTIME COCAINE USE
AND THAT IMPACT ON THE
INDIVIDUAL, OR WAS IT THE
EARLIER THAT I MENTIONED?

>> IT IS BOTH.
BECAUSE THE EXPERTS
TESTIFIED AS TO THE LONG
TERM IMPACT OF BOTH ALCOHOL,
AND DRUGS, REMEMBER HE TOOK
ECSTASY OCCASIONALLY TOO HE
DID HAVE SOME MENTAL
DISORDERS, HE HAD THAT CAU
WALKI DISEASE AS A CHILD
BIPOLAR SYNDROME, DR. REEVES
AND WOO SAID WHEN OF YOU
MENTAL AB BITRATION CHRONIC
USE OF DRUGS AND ALCOHOL
WILL CHAS EXACERBATE IT.

>> WHOA DID THEY SAY
SPECIFICALLY THOUGH ABOUT
HOW LONG HE HAD BEEN ABUSING
COCAINE, AND WHAT THAT LONG
TERM ABUSE OF COCAINE HOW
THAT AFFECTED HIM?

WHOA DID THE EXPERTS SAY AS
FAR AS HOW FAR BACK HIS USE
OR ARE ABUSE OF COCAINE
WENT?

>> DR. REEVES'S TESTIMONY AT
2074 IN THE RECORD VOLUME
23, AND DR. SAYING TALKS
ABOUT -- BASICALLY ALL
SELF-REPORTING!!\$\$!!!!!!!!!!!!!!!!!!!!!!
SELF-REPORTING, AND HE
TALKED TO THE FAMILY, ABOUT
THE WHEN HE WAS IN HIGH
SCHOOL DRINKING ALCOHOL.

>> SEE, WE ARE WE ARE --
MIXING APPLES, AND THE WHOLE
GROCERY STORE, WHAT I'M

ASKING YOU ABOUT IS COCAINE.
SO LET'S ELIMINATE
EVERYTHING ELSE FOR A MINUTE
PAY FOR MY QUESTION WHEN DID
THE EXPERTS SAY, ABOUT --
THE DURATION OF IN OTHER
WORDS!!\$\$!!!!!!!

WORDS, HOW LONG HE HAD BEEN
ABUSING JUST COCAINE, NOT
ALCOHOL, OR ANY OTHER DRUG,
COCAINE, AND HOW LONG THAT
HISTORY WENT BACK.

AND THEN HOW THAT AFFECTED
HIM.

DID THEY YOU YOU EXCELLENT
ON THAT AT ALL INTO HE --
COMMENT ON THAT HE EXMENTED
WITH COCAINE TW WHEN 12 AND
13 CAME THROUGH THIS SISTER
THE DOCTOR SAYING HE ALSO
TALKED TO HER, SO THEY --
THE DOCTOR SAYING GRAPHED
HIS WHOLE HISTORY HAD ALL
SCHOOL RECORDS TALKED TO THE
FAMILY.

>> SO THIS DOCTOR TESTIFIED
HE HAS BEEN ABUSING COCAINE
ALL THE WAY BACK, TO WHEN HE
WAS A TEENAGER OR BEFORE,
AND CONTINUOUSLY, UP UNTIL
THE TIME OF THESE MURDERS?

>> NOT CONTINUOUSLY, HE HAD
TALKED TO THE SISTER AND THE
SISTER SAID WE ABUSED WHEN
WE WERE 12 AND 13.

AND THEN WHEN THEY MOVED
INTO THE APARTMENT, SHE
LIVED IN THE SAME APARTMENT
COMPLEX!!\$\$!!!!!!!

COMPLEX, AS MR. WELCH, THAT
HE ABUSED OTHER DRUGS BUT
NOT SPECIFICALLY COCAINE
SHOOISHGS THEY HAD KIND OF
GONE THROUGH COCAINE PERIOD
SO, BUT THE COCAINE USE,
HOOD BEEN AN ISSUE, SINCE HE
WAS 12 YEARS OLD, AND HE AND
HIS SISTER EXMENT!!\$\$!!!!!!EXMENTED WITH
IT AFTER THE BROTHER
COMMITTED SUICIDE THE
DEFENDANT WAS 16, IT BAIM AN
ISSUE, AND -- BECAME AN
ISSUE THE SISTER AND
BROTHER, SANDRA AND ANTHONY

THE DEFENDANT, STARTED DOING MORE DRUGS AND COCAINE WAS AN ISSUE AGAIN.

THEN HE WENT INTO THE MILITARY, AND HE WAS DISCHARGED FOR ALCOHOL ABUSE.

AND THEN HE WAS OUT OF THE MILITARY, AND THERE WAS -- SOME -- QUESTIONABLE COCAINE USE, BUT THERE WAS ALCOHOL AND MARIJUANA USE, SO THE WHOLE THING IS THE WHOLE HISTORY STAYS TOGETHER IT WASN'T JUST COCAINE ABUSE IT WAS ALCOHOL ABUSE, IT WAS OTHER DRUG ABUSE, AND, BUT, THE ISSUE HERE, IS THAT HE WAS SAYING, SO IT IS RELEVANT TO THE MITIGATING, THAT HE CAN CONTROL HIMSELF, HE IS NOT AN ADDICT, WHEN YOU SAY COCAINE ABUSE, AND YOU ARE AN ADDICT, THEN YOU, YOU CAN'T REFUSE COCAINE YOU HAVE GOT TO DO HAVE IT ALL THE TIME.

AND THE IT IS --

>> DID EXPERTS COMMENT ON THAT, DID THEY SAY, THAT NO, IT WOULD BE INCONSISTENT WITH THE HISTORY HE HAS GIVEN US, FOR HIM TO HAVE TURNED DOWN COCAINE.

>> ON CROSS-EXAMINATION, OF DR. REEVES SANG I'M PRETTY SURE SHE QUESTION WAS ASKED ABOUT BEING ABLE TO CONTROL COCAINE USE, I KNOW IT WAS IN CLOSING ARGUMENT, A REASONABLE INFERENCE FROM THE EVIDENCE THAT THE DEFENDANT SAID THAT HE WAS UNDER COCAINE, THE INFLUENCE OF COCAINE AT THE TIME OF MURDERS YOU HAD CHRONIC COCAINE USE YET HE IS ABLE TO REFUSE IT.

SO IF THERE IS>> WHEN THERE WAS THE OBJECTION, AND THE PROFFER WAS THE TIMING OF THIS AS BEING NONREBUTTAL, AN ISSUE RAISED BY DEFENSE COUNCIL FOR THE JUDGE TO

CONSIDER?

.

>> I --

>> OR JUST THE QUESTION OF
OBJECT!\$\$!!!!!!!!!!!!

OBJECTING TO IT COMING IN AT
ALL.

>> I I THINK JUST COMING IN
AT ALL INTO SO THEY DIDN'T
SAY JUDGE THAT WE MAY PUT
THAT ON IN ISSUE, THEY HAVE
OPPORTUNITY TO BRING THE
WITNESS BACK NOT PROPER TO
DO IT NOW?

THAT ARGUMENT NEVER TOOK
PLACE FOR DISCUSSION.

>> NO AND AS FAR AS ISSUE
SIX, THE MENTION OF JUSTICE
IN CLOSING ARGUMENT, AGAIN,
IT IS THE JUDGE OVERRULED
THE OBJECTION, STANDARD
ABUSE OF DITION KREGS.

>> -- OF DITION KREGS.

>> THE FIRST ONE SAID
JUSTICE REQUIRES IT, THE
JUDGE OVERRULED THAT
OBJECTION, BUT THAT WAS
SOMETHING THAT WAS IN
ERRONEOUS STATEMENT OF THE
LAW.

THAT JUSTICE REQUIRES IT.

>> WELL.

>> THE LAW DOESN'T REQUIRE
IT SO YOU CAN'T BE TELLING A
JURY TO DO SOMETHING THE LAW
DOESN'T REQUIRE BECAUSE
JUSTICE REQUIRES IT.

>> AND THE PROSECUTOR WAS
VERY CLEAR ON THAT HE SAID
THE ALLOW DOES NOT REQUIRE
IT.

>> THAT WAS AFTER THE -- I
MEAN, FORTUNATELY, THE
PROSECUTOR REALIZING THAT
THAT PROBABLY WASN'T
SMARTEST THING TO SAY,
CORRECTED HIMSELF BUT THE
JUDGE SAID -- HE SUSTAINED
THAT OBJECTION, AND AT THAT
POINT, GIVEN A JURY INSTRUCT!\$\$!!!!!!!!!!!!!!
INSTRUCTION THAT -- THE
JUSTICE THAT THE LAW DOES
NOT REQUIRE THAT YOU IMPOSE
THE DELT PENALTY, EVEN IF

THE AGGRAVATORS OUT WEIGH
MITIGATORS IS THIS THAT
WASN'T ARGUMENT HE WAS JUST
STARTING HIS CLOSING
ARGUMENT AND HE WAS START,!!\$\$!!!!!!!!!!!!
START,ING OUT DOING HIS
INTRODUCTION, AND HE SAID
YOU KNOW, WE GOING TO DO
THIS AND THAT, AND I -- I
SUBMIT THAT JUSTICE REQUIRES
THE IMPOSITION OF THE DEATH
PENALTY, OBJECTION OVERRULED!!\$\$!!!!!!!!!!!!!!!!!!!!
OVERRULED, AND THEN HE
EXPLAINED HIMSELF, OBJECTION!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!\$ OKAY.

>> US THE WHAT WOULD HAVE
BEEN BEEN BETTER IF THE
JUDGE SEND A THE OBJECTION
GIVEN CURETIVE INSTRUCTION
THAN FOR THE PROSECUTOR TO
HAVE TO CORRECT HIMSELF.

>> WELL, OF COURSE, YES AND
THEN WE WOULDN'T HAVE AN
ISSUE ON APPEAL.

>> TO THAT WOULD HAVE BEEN
GOOD.

>> THERE IS REALLY NOTHING
WRONG WITH -- HIS STATEMENT,
AND PARTICULARLY AFTER HE
CLARIFIED IT AND CLEARLY
STATED THE LAW DOES NOT
REQUIRE THE DEATH PENALTY
THE JUDGE INSTRUCTION YOU ON
THE LAW A WEIGHING PROCESS
ON AND ON AND ON INTO YOU
ARE SAYING THE EROR THAT THE
JUDGE MADE IN NOT SUSTAINING
THE OBJECTION WAS HARMLESS,
BECAUSE THE JUDGE THEREAFTER
DID I TELL INSTRUCT THE JURY
PROPERLY, AND THE PROSECUTOR
ALSO CORRECTED HIMSELF.

>> ERROR -- WAS HARMLESS,
LET ME POINT TO THE CASES OF
PARDO!!\$\$!!!!!!!!!!

PARDO, WHERE THIS COURT
POUND NOT IMPROPER COMMENT
TO SAY THE DEFENDANT IS JUST
TRYING TO ESCAPE JUSTICE,
AND THE CASE OF FORD, WHERE
THE COMMENT WAS NOT IMPROPER
PUN!!\$\$!!!!

PUNISHMENT SHOULD FIT THE
CRIME.

>> NOBODY HAS MENTIONED AT

LEAST IN THE ORAL ARGUMENT
ISSUE FIVE, WHERE IN VOIR
DIRE, THE DEFENDANT ASKED
FOR A GENDER NEUTRAL REASON
FOR THE FIRST PEREMPTORY
CHALLENGE THE JUDGE SAID I'M
NOT GOING REQUIRE THAT ON
THE STATE'S FIRST STRIKE.

>> YES.

>> THE -- YOU TALK ABOUT
WANTING US TO REPEAL FROM
MELBOURNE AS THIRD DISTRICT
STATED BUT IF WE DON'T
REPEAL FROM MELBOURNE
DOESN'T THE TIMELY OBJECTION
SHOWING THAT THE PERSON IS A
MEMBER OF A SPECIFIC -- IS A
WOMAN, AND REQUESTS THAT
THEY ASK FOR THE REASON
PROPER TO PRESERVE THIS
OBJECTION?

>> SHOULD I ANSWER THE FIRST
QUESTION?

I AM ASKING THIS COURT TO
REPEAL FROM THE NOTE FIVE IN
MELBOURNE.

AS IT IS INTERPRETED, NOW I
DON'T THINK MELBOURNE THE
FOOTNOTE IN MELBOURNE SAYS
THAT THE COURT HAS THE THAT
JOE HANS ELIMINATED CRIME
UNDER PRIMA FACIE SHAW RACE
OF RACIAL DISCRIMINATION BUT
CITED IN U.S. SUPREME COURT
COURT REAFFIRMS THE
STANDARD, THAT THERE MUST BE
INTENTIONAL DISCRIMINATION
THERE, MUST BE A PRIMA FACIE
CASE THAT THIS STRIKE USED
IN A -- RACIAL
DISCRIMINATORY MANNER, THAT
IS THE WHOLE IMPORT OF AT
ABOUTSON ALL THE CASES THAT
WE HAVE IN NEIL THAT THERE
MUST BE A STRONG LIKELIHOOD
THAT A JUROR IS STRICKEN
BECAUSE OF A DISCRIMINATORY
PURPOSE THE WAY THE DEFENSE
IS READING THAT STATEMENT IN
MELBOURNE IS THAT THE
DEFENSE NO LONGER HAS ANY
BURDEN THAT ALL THEY HAVE TO
SAY IS, MAN, WOMAN,
HISPANIC, SO IN OTHER WORDS,

THERE IS NO INFERENCE
ANYMORE THAT.

>> THEY RAISED THE OBJECTION
THE STATE GIVES A RACE OR
GENDER NEUTRAL REASON THEN
UNDER STEP THREE OF
MELBOURNE IT SHIFTS TO THE
DEFENDANT TO ESTABLISH
WHETHER THE RACE NEUTRAL OR
GENDER NEUTRAL ETHNIC
NEUTRAL REASON IS -- CONTEXT!!\$\$!!!!!!!!!!!!
CONTEXTUAL STILL REMAINS
WITH THE DEFENDANT TO
ESTABLISH IT THE ISSUE IS
WHETHER THE TRIAL COURT IS
GOING TO ASK FOR THAT RACE
NEUTRAL REASON, WHICH IT
SEEMS LIKE ALL OF THE CASES
TALK ABOUT STEP ONE, STEP,
TWO AND STEP THREE, UNDER
STAND, TO THAT THE FIRST
THING IS TO MAKE THE
OBJECTION, AND THEN REQUIRE
THE STATE OR THE DEFENDANT,
BECAUSE THIS IS GOES BOTH
WAYS, TO TENDER A NEUTRAL
REASON ISN'T THAT HOW THE IT
HAS OBTAIN APPLIED SINCE THE
TO THE LAST DECADE>> IN THE
LAST DECADE, WHAT HAPPENS IS
THEY MAKE AN OBJECTION, ON A
RACE ON A SAY THIS IS A MAN,
THIS IS A WOMAN, EVERYBODY
IS A MAN OR A WOMAN.

>> I AGREE THAT THE IDEA
THAT WE MADE IT THAT IF IT
IS A WHITE MAN JUST -- BUT
THAT IS WE HAVE CROSS THAT
HAD BRIDGE, WHICH IS TO SAY
THAT WE WE ARE NOT EVEN
THOUGH, IT STARTED OUT THAT
WE WERE CONCERNED ABOUT
STRIKING BLACKS, WHO HAD
BEEN DISCRIMINATED FOR
YEARS, THE CLASSES, AND I I
MEAN ARE YOU SUGGESTING A
DIFFERENT TEST BE USED WHEN
IT IS GENDER, THAN RACE?

>> NO, BUT EVERYBODY HAS A
RACES ALSO, THE MALE FEMALE!!\$\$!!!!!!!!!!!!
FEMALE --

>> ARE YOU SAYING IS THAT
THERE SHOULD BE A DIFFERENT
INFERENCE I I MEAN, I'M DRD

IN THAT CAN THERE BE A
DIFFERENT TEST UNFORTUNATED
THOOER CONSTITUTION, IF WE
SAY, THAT IF IT IS A BLACK
MALE, OR -- A BLACK WOMAN,
OR A HISPANIC, THAT THAT IS
DIFFERENT THAN IF IT IS A
WHITE MALE, OR -- BECAUSE
THERE THE MAJORITY CLASS
RIGHT NOW?

>> AND -- THIS COURT
REALIZED WOMEN AS A CLASS SO
THAT WOULD BE EQUAL WITH
GENDER EQUALLY WITH RACE
THERE WAN NOTICE NO
DISCRIMINATION THE ISSUE IF
YOU LOOK AT.

>> BUT WHAT I'M ASKING IS
THERE A WAY TO SAY THAT A
DIFFERENT WHEN SOMEONE IS
MOVING TO STRIKE A BLACK,
WHO IS THEY ARE OFTENTIMES
IN THIS STATE BLACKS ON A
PANEL, SO THE IDEA OF THE
FIRST STRIKE OF A BLACK IS
VERY DIFFERENT THAN THE
FIRST STRIKE OF A WHITE
MALE.

BUT, UNDER YOUR PROPOSITION,
IF IT WAS A BLACK THAT WAS
BEING STRUCK, THE HOW WOULD
YOU THEN AND IT IS FIRST
STRIKE WHAT WOULD THE
DEFENDANT HAVE TO DO TO
ESTABLISH A PRIMA FACIE CASE
OF DISCRIMINATION.

>> THERE IS THE RUB, UNDER
MELBOURNE THE WAY THE COURT
HAS READ IT IN IF HOLLIDAY
FRANKIE AND DORSEY, THE
DEFENDANT MASS NO -- NO
BURDEN WHATSOEVER, THERE IS
NO LONGER ANY INFERENCE NOW
LONGER SAY I THINK HE IS
DOING IT BECAUSE OF RACIAL
DISCRIMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!
DISCRIMINATION, ALL YOU HAVE
TO SAY IS I OBJECT, IT IS AN
AFRICAN-AMERICAN THAT SHIFTS
THE BURDEN WITHOUT MOORE, TO
THE JUDGE, TO THE STATE, AND
THAT IS NOT WHAT IS SAID
THAT IS NOT WHAT JOHNSON
SAYS.

>> ALL THEY HAVE TO DO IS
COME UP WITH A RACE NEUTRAL
REASON WHICH COULD BE THAT
THEY ARE WEARING A A GREEN
SHIRT, AND THEN IT IS
SWITCHES BACK TO THE
DEFENDANT, TO ESTABLISH THAT
THERE DISCRIMINATION.

>> AND THAT IS WHERE THIS
CASE COMES IN, IT IS
BECAUSE THIS TRIAL JUDGE NEW
OKAY DEFENSE COUNSEL HAD
ASKED FOR AHAPPEN IN POLL
TANO TO BE EXCUSED SHE
RAISED HAND HAD A HARDSHIP
DIDN'T WANT TO BE THERE, SHE
HOOD SOME TRAINING SESSIONS
TO DO, AND HE DEFENSE
COUNCIL HAS SAID PAGE 125,
LOOK, IF ANYBODY WHO RAISES
THEIR HAND ON CAPITAL CASE
DOESN'T WANT TO BE HERE THEY
SHOULDN'T BE HERE, NOW,
THERE WAS RIGHT THERE, FROM
THE DEFENSE \$COUNSEL'S MOUTH
A RACE NEUTRAL REASON, OR A
GENDER NEUTRAL REASON.

>> MY PROBLEM WITH YOU THIS
IS REALLY THAT THE JUDGE
DECIDED ON THE FACT THIS WAS
THE FIRST PERSON.

>> YES.

>> AND SO -- IF IT IS THE
SECOND PERSON, WHAT -- AND
THE JUDGE GETS A REASON, DO
YOU GO BACK AND THEN, CAN
YOU DO THE SECOND PERSON
BECAUSE YOU KEEP TALKING
ABOUT A PATTERN OF
DISCRIMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!

DISCRIMINATION, AND SO IT
SOUNDS TO ME LIKE YOU HAVE
GOT TO SHOW THAT THERE IS A
-- BUT DO YOU HAVE TO HAVE
THAT KIND OF PATTERN?

I I MEAN, THE FIRST PERSON
YOU COULD BE DISCRIMINATING
AGAINST THE FIRST PERSON,
SO, IF THE IF THE DEFENSE
MAKES THE OBJECTION, AND
SAYS THAT AND WHY NOT THE
RACE NEUTRAL -- WELL IN THIS
CASE, THE GENDER NEUTRAL
REASON?

I'M NOT THE -- FOLLOWING
THIS JUST BECAUSE IT IS THE
FIRST PERSON, BUT THE STATE
HAS NO OBLIGATION --

>> AND THE JUDGE SAID I --
IT IS FIRST STRIKE I'M NOT
GOING TO REQUIRE A REASON
FOR THIS, BECAUSE OF THE
PATTERN NOW REMEMBER, SWAIN
VERSUS ALABAMA THE ONE THAT
SAID PATTERN BAXON SAID WE
DON'T HAVE HAVE A PATTERN IF
THIS CASE -- BUT --

>> EACH JUROR LIKE THE
DEFENDANT IS ENTITLED TO YOU
KNOW A TRIAL, OF HIS PEERS,
A A INJURY BASICALLY HAS THE!!\$\$!!!!!!!!!!!!!!O A
INJURY\$\$!!!!!!IOR HAS THE RIGHT TO BE
ON JURY AB SENT SOME REASON
TO GET THE JUROR OFF THIS
WHOLE NOTION THAT BECAUSE IT
IS THE FIRST JUROR I FIND
TROUBLING!!\$\$!!!!!!!!!!!!!!
TROUBLING.

IF THERE IS IN FACT SOME
REASON THAT THE STATE MADE
SOME POSSIBILITY THAT THE
STATE IS IN FACT USING THE
PEREMPTORY STRIKE IN
DISCRIMINATORY MATTER WHY
NOT EVEN WITH FIRST JUROR
GET ON RECORD DEAL WITH IT
FROM THERE

>> AND THERE IS THAT IS THE
ISSUE RIGHT THERE, THAT THE
DEFENDANT EVEN IF IT IS THE
FIRST JUROR, SHOULD HAVE
THAT HAVE TO TRIGGER A
INQUIRY BY SAYING EVEN IF
THIS IS THE FIRST JUROR I
THINK HE IS EXAMINERINING!!\$\$!!!!!!!!!!!!!!ERCISING
DPAINDZ HER DYM
INCRIMINATETORY MANNER.

>> YOU HAVE ALREADY SAID, IT
HAS BEEN READ THAT MELBOURNE
YOU DIDN'T REQUIRE ,, ,, ,, ,, ,, ,, ,, ,,
S.

>> WOULD BE A GENDER BASED
CHALLENGE WHAT SHE WAS
QUESTIONING AS I READ IT WAS
IS, IS IS THAT SUFFICIENT TO
SIMPLY RECOGNIZE THE OBVIOUS
FACT THAT THIS PERSON'S A
MAN OR A WOMAN.

IN ORDER TO RAISE THIS
OBJECTION.

AND THEN SHE.

>> YES, SHE WILL RULED THE
OBJECTION WAS NOT SUFFICIENT
BECAUSE SHE SAID -- SHE SAID
PATTERN BUT ACTUALLY IT'S
PRIMA FACIE CASE.

THAT THE DEFENDANT HAS TO
HAVE A PRIMA FACIE CASE.

NOW REMEMBER THAT NINE WOMEN
SERVED ON THIS JURY WHEN THE
STATE STRUCK THE SECOND
WOMAN SHE DID REQUIRE, SHE
SAID, OKAY, THAT'S YOUR
SECOND WOMAN, I WANT YOU TO
GIVE ME A REASON.

>> BUT I DON'T THINK JUDGE
RAINWATER SAID, IN THE
TRANSCRIPT I'M READING IT
WAS THE LAWYERS THEY WERE
TALKING ABOUT A PATTERN.
SHE WAS SAYING OR THAT SHE
WAS THE ONLY FEMALE ON THE
JURY, WHICH IS NOT THE CASE
BUT SHE NEVER.

--

>> WAS JUST A WOMAN OF A
BLACK BUT THE SECOND ONE IS
DOESN'T NEED IT.
SEE THAT'S WHERE I I'VE GOT
THE PROBLEM WITH, YOU KNOW,
I, AGAIN, I'M SYMPATHETIC TO
THE IDEA THAT WHEN WE SAID
IT'S MALES OR AS PROTECTED
AS FEMALES THAT WE CUT --
WHEN MAYBE BEYOND WHAT WAS
TRYING -- WHAT WE WERE TRYING
TO DO IN BAS AND THE NEIL
BUT THE -- UNLESS WE ARE
GOING TO GIVE A DIFFERENT
TEST DEPENDENT DEPENDING ON
WHICH GROUP IT IS, IT SEEMS
THAT THIS IS THE SAFEST WAY
TO GO TO PROTECT AGAINST
DISCRIMINATION IN JURIES.
SELECTION.

>> WELL, FIRST OF ALL, WHEN
HE, THE DEFENSE COUNSEL
NEVER WENT BACK AND SAID,
OKAY, NOW HE'S STRICKEN
ANOTHER WOMAN, NOW, JUDGE, I
RENEW MY OBJECTION, MAKE HIM
GIVE ME A REASON FOR THE

FIRST WOMAN'S STRIKE.

>> SEE BECAUSE DEFENSE
COUNSEL -- THIS IS, WHAT
THIS COURT HAS DONE IN
MELBOURNE IS NOT FAIR -- IS
NOT TO FERRET OUT
DISCRIMINATION, IT JUST
PROMOTES GAMESMANSHIP.
SHE'S A WOMAN I WANT REASON.
IF THERE IS NO PRIMA FACIE
BASIS.

IF YOU LOOK AT JOHNSON AND
IT SAYS THERE ARE ALL THESE
DIFFERENT WAYS FROM THE
TOTALITY OF THE
CIRCUMSTANCES TO ESTABLISH A
PRIMA FACIE BASIS, WHICH IS
YOU DEFENSE COUNSEL CREATE
THE INFERENCE THAT HE'S
USING IT IN A DISCRIMINATORY
WAY.

IF THE PROSECUTOR IS
DISCRIMINATING THE WOMEN IN
A DISPARAGING WAY OR
PROSECUTING THEM IN A
HARsher SURE YOU SAY THIS
PROSECUTOR IS DISCRIMINATING
AGAINST THE WOMEN AND HE'S
ASKING THEM HARSH QUESTIONS
AND NOW HE STRUCK A WOMAN SO
BASICALLY THE DANGER OF WHAT
HAS HAPPENED IN THE
ELIMINATION OF SAYING
JOHANN'S ELIMINATED THE
REQUIREMENT OF DEFENSE NOW
HAS NO BURDEN WHATSOEVER.
THERE IS NO --

>> IT'S THE STATE, AGAIN
TGOES BOTH WAYS.
IT'S NOT JUST THE DEFENSE.
THE STATE -- WHATEVER IT IS
GOES.

>> WELL, OF COURSE, OF
COURSE, YES, THAT THE
PROPONENT, THE OPPONENT OF
THE STRIKE CAN JUST SAY IT'S
A MAN, IT'S A WOMAN, AND
THAT'S ENOUGH TO TRIGGER AN
INQUIRY, AND YOU KNOW, IF
YOU LOOK AT ALL THE 47 OTHER
CASES, THE WITBY CASE HAS
BEEN FUNDING -- PENDING IN
FRONT OF THIS COURSE FOR A
YEAR 1/2 ON THIS SAME ISSUE

AND THIS IS THE FOOTNOTE ON BELLBURN SAYING JOHANNNS DID THIS WHEN JOHANNNS DIDN'T DO THIS AT ALL.

IN JOHANNNS THE QUESTION THE PERINANT QUESTION IS WHETHER THERE IS A STRONG LIKELIHOOD A JUROR IS STRUCK BECAUSE OF RACE.

THEY RECOGNIZE THAT AND THEY RECOGNIZE THE AUTHORITY THAT REQUIRES SOME THRESHOLD FOR THE DEFENSE RATHER THAN JUST SAYING IT'S A WOMAN.

I'D ASK THE COURT TO REFER.

>> REBUTTAL?

>> FIRST OF ALL, LET'S -- I SORT OF REFLECTED BACK IN, I DON'T THINK THAT THERE WAS ANY CONTENTION THAT HE HAD AN ADDICTION TO COCAINE. YOU KNOW, DRUG USE, ESPECIALLY ILLEGAL STREET DRUG USE, IS A DOUBLE-EDGED SWORD IN A CAPITAL CASE FOR -- BY A DEFENDANT AND SO THE TRIAL LAWYERS GENERALLY TREAD LIGHTLY BUT THE EVIDENCE THAT WAS PRESENTED TO THE JURY MOSTLY CAME FROM THE EXPERTS, SPECIFICALLY DR. REEVE SAYING WHO SAID THAT THAT THE SUBSTANCE ABUSE ON THE NIGHT OF THE MURDERS WAS -- NIGHT OF THE MURDERS WAS DEFINITELY A FACTOR.

HE HAD A LUTF OTHER PROBLEMS.

HE HAD BIPOLLER, BRAIN DAMAGE, BUT HE DID MENTION THE DEFENDANT'S OWN ADMISSION THAT HE USED ALCOHOL AND COCAINE FOR A WEEK BEFORE THE MURDERS AND I WOULD LIKE TO CORRECT SOMETHING MS. DAVIS POINTED OUT I'M SURE INADVERTLY.

SHANE DUALY HIS BEST FRIEND TESTIFIED THAT IN THE WEEK PRIOR TO THE MURDERS NOT IN THE MURDERS BUT THE WEEK PRIOR TO THE MURDERS NOT TWO DAYS BEFORE THE MURDER, FOUR

DAYS BEFORE, NOT SEVEN DAYS BUT IN THE WEEK PRIOR TO THE MURD RSS, HE SAW HIM AT A BAR, HE APPEARED MORE THAN JUST INTOXICATED, IT WAS, HE USED THE WORD ZOMBIE AND HE SAID IT WAS LIKE TALKING TO A BRICK WALL AND THAT'S AT VOLUME 23 PAGE 2133.

I LOOKED BACK --

>> WHAT DO WE DO THE SISTER'S TESTIMONY?

>> THE SISTER DID TESTIFY THAT SHE AND ANDY ABUSED DRUGGEDS, I'M SORRY OBUSED OCANE IN THE WEEKS BEFORE HER GRADUATION -- ABUSED COCAINE IN THE WEEKS BEFORE HER GRADUATION.

IT WAS NOT CLEAR WHEN IT WAS.

SHE SAID THEY LOST -- THEY WENT THEIR OWN SEPARATE WAYS.

SHE STOPPED DOING DRUGS IN GENERAL, AND SO SHE SORT OF LOST TRACK OF HIS DRUG USE AFTER THAT.

>> WOULD YOU JUST REFRESH OUR RECOLLECTION AS TO -- WHO WERE THE MENTAL HEALTH EXPERTS IN THIS CA?

>> DR. REEVE AND DR. WU WHO DID A PET SCAN SHOWING THE BRAIN DAMAGE.

LOOK AT THAT PAGE, PAGE, SHE DISAGREES, BUT THE RECORD WILL REFLECT.

AND ON.

>> DO YOU WANT TO TOUCH ON THE LAST POINT THAT GENERATED SEVERAL QUESTIONS AND MAYBE YOU COULD, COULD ADDRESS WHAT IS INCLUDED WITH BEING A TOTALITY OF THE CIRCUMSTANCES WHEN THAT FIRST OBJECTION IS TO BE EVALUATED?

DOES ONE TRIAL JUDGE LOOK AND THEY'VE JUST FINISH ADDISCUSSION AND YOU'VE GOT TWO OR THREE PEOPLE THAT SAY WELL I DON'T WANT TO BE HERE.

I'VE GOT THIS TO DO, THIS TO DO, THIS TO DO, AND THAT FIRST ONE UP HAPPENS TO BE ONE OF THOSE PEOPLE.

CAN A TRIAL JUDGE CONSIDER THAT OR IS THAT -- DO WE GO INTO THE, THE MELBOURNE DISCUSSION AFTER THAT?

WHAT'S YOUR YOUR VIEW ON THAT?

>> WELL, I THINK IT'S CAREER AS -- CLEAR AS JUSTICE PARIENTE SAID THAT THE LAW IS WHAT YOU'LL SAID IN MELBOURNE IN THE WAY THAT THE OBJECTION WAS POSED. THAT WAS SUFFICIENT TO APPLY GENDER NEUTRAL REASON. THE PROSECUTOR WAS THE FIRST ONE TO SAY A PATTERN WAS NECESSARY.

>> DO YOU RECALL WHAT THE, WHAT THE, WAS STATED TO BE THE REASON FOR THE OBJECTION IN MELBOURNE?

>> I DO NOT.

I'M SORRY.

>> WELL, IT WAS MORE THAN JUST THAT'S A WOMAN.

CORRECT?

>> I, I, I DON'T -- I'M NOT POSITIVE, BUT --

>> HAVEN'T WE GOTTEN REALLY TO THE THEATER OF THE ABSURDITY OF IF YOU ARE GOING TO SAY THAT IT'S, IT'S, THAT YOU JUST HAVE TO STAND UP AND SAY THAT'S A MAN?

I MEAN, THAT'S KIND OF OBVIOUS TO ALL AND, AND, AND THAT WOULD SET OFF THIS WHOLE CHAIN THAT WE GO OVER THE WATERFALL.

>> AND SOME HAVE SUGGESTED THAT WE DO AWAY WITH PREEMPTORY CHALLENGES -- PREEMPTORY CHALLENGES AND JUST HAVE CAUSE CHALLENGES.

>> WOULD IT BE DIFFERENT HERE IF THE JUDGE IN DENYING THE, THE REQUEST FOR A RACE OR GENDER NEUTRAL REASON HAD SAID NOT THAT I'M NOT -- I'M DENYING -- I'M NOT GOING TO

ASK FOR A RACE NEUTRAL OR
GENDER NEUTRAL REASON
BECAUSE IT'S THE FIRST BUT
MS. NEPAL TONO RAISED HER
HAND WHEN SHE SAID SHE
DIDN'T WANT TO BE HERE.
WOULD THAT HAVE BEEN A
DIFFERENT SITUATION?

>> THAT WOULD BOTHER ME FOR
THE JUDGE BASICALLY STEPPING
IN AND BASICALLY HELPING THE
PROSECUTOR OUT AND COMING UP
WITH A GENDER NEUTRAL
REASON.

>> THAT WOULD HAVE BEEN --
IF THE JUDGE HAD SAID I WANT
ONE AND THE PROSECUTOR SAID
SHE DOESN'T WANT TO BE HERE,
WOULD THAT -- THAT WOULD
HAVE BEEN THE END OF THIS
STORY?

>> PROBABLY.

I CANDIDLY ADMIT THAT.
THAT'S PROBABLY A
JUSTIFIABLE UNDER THE CASE
LAW THERE.

IT DOESN'T TAKE MUCH, YOU
KNOW, IT DOESN'T -- IT ONLY
HAS TO BE A REASON AND
NEUTRAL AND GENUINE
SUPPORTED BY THE RECORD.
IF THE DEFENSE HAD --
PERHAPS THE DEFENSE LAWYER
WOULD'VE HAD AN OBJECTION IN
BEING ABLE TO POINT OUT
SOMETHING THAT WE FROM THE
COLD RECORD CAN'T SEE AND HE
WOULD'VE RESPONDED TO THE
JUDGE'S STATEMENT THAT SHE
RAISED HER HAND AND HE MIGHT
HAVE A -- I DON'T KNOW.

I DON'T.

I CAN'T KNOW.

>> YOU ARE OVER YOUR TIME.
IF YOU CAKE IT TO
CONCLUSION.

>> THANK YOU FOR YOUR
ARGUMENTS AND WE'LL TAKE
YOUR CASE UNDER ADVISEMENT.