

>> THE LAST CASE ON THE COURT'S
AGENDA IS CARABALLO VERSUS
STATE OF FLORIDA.

CARABALLO.

DOUBLE L.

>> MAY IT PLEASE THE COURT.

ANDREW STANTON, ASSISTANT
PUBLIC DEFENDER HERE AND THE
APPELLANT VICTOR CARABALLO.

IF THE COURT WILL PERMIT I
WOULD LIKE TO ADDRESS TWO
ISSUES HERE TODAY, THE FOURTH
AMENDMENT ISSUE AND IMPROPER
ARGUMENT IN THE PENALTY PHASE.
WITH REGARD TO THE FOURTH
AMENDMENT ISSUE, THERE ARE
REALLY TWO, THREE THINGS THE
COURT.

ONE IS WHETHER OR NOT THE
EVIDENCE GAINED BY THE FOURTH
AMENDMENT VIOLATION COULD BE
HARMLESS WHEN IT WAS ARGUED
EXTENSIVELY BY THE STATE AND
WHERE IT WAS THE ONLY PHYSICAL
EVIDENCE LINKING THE DEFENDANT
TO THE CRIME.

BEYOND THAT --

>> ENTRY INTO THE APARTMENT?

>> YES.

>> I'M TRYING TO UNDERSTAND
THAT ARGUMENT.

YOU HAVE TO CROSS THAT
THRESHOLD FIRST, DO YOU NOT, TO
GET TO, NO, TO GET TO A FOURTH
AMENDMENT ISSUE.

>> YES.

>> YOU HAVE TO --

>> TWO REMAINING ISSUES RAISED BY THAT.

>> THE FIRST THRESHOLD IS THE QUESTION ARE YOU SAYING YOU HAVE TO HAVE A COURT ORDER OF EVICTION AS A PREDICATE BEFORE THAT APARTMENT BUILDING COULD SAY THAT THAT PROPERTY BELONGED TO THEM AND THAT THIS PERSON HAD NO INTEREST AT ALL IN BEING THERE?

HE WAS LIKE A TRESPASSER AND BROKEN INTO IT?

>> WELL, IN ORDER TO TREAT HIM LIKE A TRESPASSER WHO HAD BROKEN INTO IT, YES, THEY WOULD HAVE NEEDED AN ORDER OF EVICTION UNDER THESE CIRCUMSTANCES. THERE IS NO BASIS OF FINDING OF ABANDONMENT.

>> WHAT IF WE HAVE A VACANT HOUSE OUT THERE, I OWN A VACANT HOUSE.

IT HAPPENS TO BE VACANT NOW. IF SOMEBODY BREAKS INTO IT AND THEY'RE IN THERE AND THEY HAVE SOME CONTRABAND IN THERE AND THE PLACE KNOW THAT THIS IS, I'VE TOLD THEM NOBODY IS SUPPOSED TO BE IN THAT. AND THEY GO AND THEY GO INTO THAT HOUSE.

IS WHOEVER IS IN THERE PROTECTED UNDER THE FOURTH AMENDMENT EVEN THOUGH THEY'RE

IN MY HOME ILLEGALLY AND HAVE
NO INTEREST IN BEING THERE?

>> CLEARLY NOT.

BUT IT IS COMPLETELY DIFFERENT
SITUATION.

>> WHY IS IT DIFFERENT?

BECAUSE HERE THEY HAD CHANGED
THE LOCK.

HAD NOT.

>> YES, THEY HAD.

>> AND APPARENTLY SOMEONE ELSE
CHANGED THE APARTMENT COMPLEX'S
LOCK.

AND THEY GO TO IT AND
MAINTENANCE MAN IS THERE WITH
THEM AND SAYS, THERE IS NOT
SUPPOSED TO BE ANYBODY IN HERE.

>> WELL, AT THIS POINT, VICTOR
WAS A LEASEHOLDER WHO WAS IN
POSSESSION OF THE APARTMENT
WITH A KEY GIVE BACK TO HIM BY
THE APARTMENT COMPLEX.

>> FOR A SPECIFIC PURPOSE?

>> WELL THEY EXPECTED HIM TO
MOVE HIS STUFF OUT.

WHAT HE SAID WAS THAT HE
INTENDED TO MOVE HIS STUFF OUT.
HE WOULD BE MOVING HIS STUFF
OUT.

HE DIDN'T SAY, AND I'M OUT OF
HERE TODAY. HE --

>> ISN'T THAT WHAT THEY
UNDERSTOOD, THAT HE WAS OUT OF
THERE?

AND THAT THEY HAD GONE IN THERE
AND NOBODY HAD BEEN IN THERE

APPARENTLY. SOME DEBRIS.
JUST SEEMS LIKE TO ME THERE IS
A PRETTY, PRETTY STEEP HILL TO
CLIMB HERE TO SHOW THAT THE
POLICE WEREN'T REASONABLE IN
RELYING ON WHAT THE MANAGEMENT
OF THIS APARTMENT COMPLEX TOLD
THEM ABOUT THE STATUS OF THE
APARTMENT.
NOW YOU CAN GET INTO THE FINE
DISTINCTIONS ABOUT, WELL, WAS
HE LEGALLY EVICTED YET, BUT,
ISN'T THE QUESTION HERE,
WHETHER THE LEASE BASED
UNREASONABLY IN RELYING ON THE
REPRESENTATIONS MADE TO THEM BY
THE MANAGEMENT OF THE APARTMENT
COMPLEX?
>> WELL THERE ARE TWO DISTINCT
ISSUES.
ONE OF STANDING, ABANDONMENT
AND THE OTHER OF REASONABLE
RELIANCE ON THE APPARENT
AUTHORITY.
WITH REGARD TO THE RELIANCE ON
THE APPARENT AUTHORITY, WHAT
THE POLICE KNEW, I WOULD
CONCEDE THEY WERE RELYING ON
APPARENT AUTHORITY WHEN THEY
WENT TO THE DOOR.
SO FAR AS THEY MISS CORA HAD
TOLD THEM, ACCORDING TO AGENT
KOTEEN HE HAD BEEN EVICTED.
MISS CORA SAID HE WAS UNDER
EVICTION PROCEEDINGS.
AGENT KOTEEN SAID WHAT SHE

BELIEVED, BY THE TIME SHE GETS TO THE DOOR, THERE IS APPARENT AUTHORITY.

SOMEBODY HAPPENS AFTER THAT. THEY GO INTO THE APARTMENT AND WHAT DO THEY FIND?

THEY FIND THE LEASEHOLDER. THEY GET LICENSE, VICTOR CARABALLO WHOSE NAME IS ON THE LEASE.

THEY FIND HIM IN POSSESSION OF PROPERTY.

THEY FIND LOTS OF HIS PROPERTY. SEVERAL WITNESSES SAID IT WAS CLEARLY OCCUPIED.

THERE WAS FOOD.

THERE WERE THINGS IN THE CABINETS.

THERE WAS A BED ROLL.

THINGS IN THE CLOSETS.

CLEARLY OCCUPIED.

>> GOING BACK TO THE LEASEHOLDER, TO THE APARTMENT COMPLEX, ON APRIL 5th, MR. ^WEST, I GUESS HE IS THE MAINTENANCE GUY, WENT OVER AND PLACED A THREE-DAY NOTICE ON THE DOOR.

>> YES.

>> AND ON THE 10th, THE NOTICE HAD EXPIRED AND WEST WENT INTO THE APARTMENT AND DID A WALK-THROUGH.

>> YES.

>> AND EVERYTHING WAS GONE. NO CLOTHES, NO TOILET, NO FOOD,

NOTHING.

EVERYTHING WAS GONE.

THAT IS WHEN HE CHANGED THE
LOCK.

NOW THE DAY BEFORE THE MURDER,
THAT'S WHEN MR. CARABALLO CAME
AND SAID, I STILL GOT MY WASHER
AND DRYER IN THERE, I NEED TO
GET THEM OUT.

SO THEY GAVE HIM THE KEYS.

HERE ARE THE KEYS.

GET YOUR WASHER AND DRYER.

AND OF COURSE THE NEXT DAY,
THESE THINGS HAPPENED.

ON THE 28th, THE DAY AFTER THE
MURDER, THAT'S WHEN THE POLICE
CAME, AND FOUND PLYWOOD BEHIND
THE DOOR WITH SOME KIND OF
HYDRAULIC JACK BLOCKING THE
DOOR AND SUDDENLY THERE WAS
CARABALLO.

BUT AS FAR AS THE APARTMENT
COMPLEX WAS CONCERNED, AS OF
APRIL 10th, HE HAD ABANDONED.
HE LEFT.

THEY COULD HAVE GONE IN,
PAINTED APARTMENT, REPLACED THE
RUGS DO ALL THOSE THINGS
APARTMENT COMPLEXES DO TO GET
IT READY FOR THE NEXT TENANT.
ARE YOU SAYING THEY DO ALL THAT
BECAUSE THERE HASN'T BEEN AN
ORDER FROM THE COURT HE COULD
HAVE MOVED BACK IN AGAIN UNTIL
HE WAS EVICTED?

>> WHAT I'M SAYING THEY LOCKED

HIM OUT ON THE 10th.

THEY DID NOT TALK TO HIM ABOUT THIS, EVEN THOUGH, MISS CORA SAYS SHE HAD SEEN HIM AROUND THE COMPLEX A NUMBER OF TIMES DURING THAT PERIOD.

IT CLEAR FROM THE RECORD THAT HE CONTINUED TO, AT MINIMUM TAKE AN INTEREST AS TO OCCUPANCY OF THAT APARTMENT BECAUSE HE SAYS HE WAS SERVED WITH THE NOTICE OF THE EVICTION COMPLAINT ON THE 17th.

THE SERVICE APPARENTLY, ACCORDING TO THEIR LAWYER WAS THE 18th.

THIS ISN'T SOMEBODY WHO JUST GOT OUT AND LEFT.

SO, WHETHER OR NOT THEY WERE LETTING HIM IN AT THAT STAGE HE, AT SOME POINT SAID YOU KNOW WHAT?

I'M NOT GETTING IN.

I CAN'T PAY THE RENT I NEED TO GET BACK INTO THIS APARTMENT. HE SAYS, AND, BASICALLY SEEMED TO BELIEVE HE STILL HAS HIS PROPERTY THERE AND HE INTENDS TO MOVE OUT.

HE DOES NOT SAY I'M OUT OF HERE.

I'LL BE BACK IN FIVE MINUTES.

HE DOES NOT RETURN THOSE KEYS. NOBODY SAYS, HEY, WHAT THE HECK.

SENT STEVE WEST UP THERE WHY HE

HASN'T GIVEN THE KEYS BACK.

HE IS CLEARLY OCCUPYING.

HE HAD A RIGHT TO STAND ON HIS
RIGHT TO BE THERE.

>> IN TERMS OF OUR STANDARD OF
REVIEW, WE REVIEW FOURTH
AMENDMENT ISSUES GENERALLY,
OVERALL LAW, MIXTURE OF FACT
AND LAW BUT THE TRIAL COURTS
FINDING OF ABANDONMENT WHICH IS
A FACTUAL ISSUE, ISN'T THAT A
FINDING THAT WE MUST GIVE
DEFERENCE TO IF IT'S SUPPORT
THE BY COMPETENT SUBSTANTIAL
EVIDENCE?

IN OTHER WORDS, YOU MIGHT BE
ABLE TO ARGUE WITH WITH FEW
DIFFERENT VARIATIONS ANOTHER
SIDE OF IT TRIAL JUDGE.

BUT SHOULDN'T WE GIVE THAT
FINDING OF FACT DEFERENCE AS
WELL AS THE OTHER, AND YOU
AGREE WAS AN ALTERNATIVE GROUND
WHICH WAS THE APPARENT AGENCY
OF MISS CORA TO GAIN ACCESS?

SO WHAT'S YOUR ARGUMENT ABOUT
OUR REVIEWING THIS DE NOVO AS
IF WE WERE THE FACT FINDER?

>> THE COURT WILL DEFER TO
JUDGE THOMAS'S FINDINGS OF
FACT.

WE DISAGREE THOUGH THAT
ABANDONMENT AS SUCH IS MERELY A
FACTUAL FINDING AS LEGAL
CONCLUSION AS TO WHETHER OR NOT
HE ABANDONED HIS RIGHTS IN THAT

APARTMENT.

I'M ASKING THE COURT TO REVIEW THAT CONCLUSION.

THE EVIDENCE THAT THE JUDGE RELIED ON DOES NOT SUPPORT THE CONCLUSION OF ABANDONMENT.

AND COURTS HAVE NOT SAID, WELL, HE SAID AS A MATTER OF FACT THAT IT ABANDONED, SO WE'RE NOT GOING TO REVIEW THAT.

IN MORSE FOR INSTANCE, THE COURT WAS SAYING THE TRIAL COURT FOUND ABANDONMENT OR APPARENT AUTHORITY.

>> LET ME, THE FACT THEN TO ME BESIDES AN EVICTION NOTICE, HE HAD TO REQUEST A KEY TO GO BACK AND REMOVE HIS APPLIANCES. HOW IS IN TERMS OF WHETHER HE WAS ACTUALLY, THIS IS HIS APARTMENT, THAT IS INCONSISTENT.

WITH EVERYTHING ELSE THAT JUSTICE LABARGA SAID.

THAT ONE JUST SORT OF STICKS OUT WHETHER HE HAD A THOUGHT THAT HE WAS STILL ABLE TO BE TO THERE.

HE DIDN'T SAY, HEY, I NEED A KEY BECAUSE YOU CHANGED THE LOCK.

I'M NOT GETTING OUT OF HERE UNTIL YOU ACTUALLY EVICT ME.

HE HAD A VERY PURPOSE THAT HE REQUESTED THE KEY TO BE GET THE REST OF HIS BELONGINGS.

>> HE HAD INTENTION OF MOVING OF OUT.

IF WE LOOK WHAT MISS CORA SAID, SHE SAID THAT ON THAT DAY SHE UNDERSTOOD HE WAS PROBABLY MOVING OUT, NOT THAT HE HAD MOVED OUT AND WAS RETRIEVING THINGS.

SHE AGREED BECAUSE HE WAS UNDER EVICTION PROCEEDINGS, THAT HE HAD ABANDONED, THAT IN FACT HE WAS A TENANT AT THAT MOMENT WHEN THEY ENTERED THE APARTMENT. THIS ISN'T ME.

THIS IS THE --

>> THIS IS ALL, YOU KNOW, WE CAN GO BACK AND FORTH FOR A LONG TIME ON THIS, BUT AT THE TIME HE REQUESTED A KEY, IT WAS BECAUSE HE DID NOT HAVE ACCESS TO THAT APARTMENT, RIGHT?

>> THAT'S RIGHT.

>> AND HE HAD IN FACT MOVED, THE REST OF HIS BELONGS OUT OF THAT APARTMENT, CORRECT?

>> SO IT WOULD APPEAR.

ALTHOUGH HE CERTAINLY HAD A LOT OF BELONGS THERE WHEN HE ENTERED THE APARTMENT.

>> IT DOESN'T TAKE LONG TO BRING IN A FEW TOILETRIES AND A KNOW, BED, ROLLING BED.

>> IT WAS A LITTLE MORE.

>> AT THAT POINT THERE HAD BEEN DISCUSSION THAT HE HAD MOVED EVERYTHING ELSE OUT OF HIS

APARTMENT.

THAT CERTAINLY GIVES MANAGEMENT
THE BELIEF THAT HE IS IN FACT
MOVING OUT.

WHETHER THEY FINISHED WITH THE
EVICTION PROCEEDINGS OR NOT.

AND SO, IF THE TRIAL JUDGE
MAKING THOSE FINDINGS, EVEN IF
WE HAVE TO MAKE THE DECISION
ABOUT ABANDONMENT, DON'T THOSE
FACTS SUPPORT THAT HE HAD IN
FACT ABANDONED THIS APARTMENT?

I MEAN I COULD ENVISION THE
FACT THAT THE DAY BEFORE THE
MURDER, HE DECIDES THAT OH, LET
ME GO GET THIS KEY AND WHEN I
COME BACK FROM THIS LITTLE
JOYRIDE I'LL COME AND SQUAT IN
THIS APARTMENT.

I MEAN, I JUST DON'T SEE WHERE
WE CAN IN FACT SAY, THIS MAN
HAD NOT ABANDONED THIS
APARTMENT.

>> WELL, IF NOTHING ELSE, THE
LANDLORDS HERE HAD ACSEDED TO
HIM COMING BACK INTO IT.

WHETHER THEY WANT HIM TO GET --

>> ASCEDDED THAT FOR A SPECIFIC
PURPOSE BECAUSE HE SAID I WANT
TO GET MY WASHER AND DRYER,
DIDN'T HE?

>> HE SAID I NEED TO GET SOME
THINGS.

MY DUFFEL BAG AND MY WASHER AND
DRYER AND I AM IN THE PROCESS
OF MOVING OUT.

HE DID NOT SAY HE HAD MOVED
OUT.

>> DIDN'T THEY KNOCK ON THE
DOOR PRIOR TO ENTERING?

>> THEY DID KNOCK ON IT.

>> AND KNOCKED SEVERAL TIMES
AND STARTED TO KICKING AND HE
DIDN'T RESPOND.

>> THEY DID EVENTUALLY THE DOOR
DOWN.

>> HE DIDN'T RESPOND TO THE
DOOR.

>> HE DID NOT RESPOND TO THE
KNOCKING, NO.

>> AS OF APRIL 10th, WHEN
MR.^WEST CONDUCTED THE WALK-THROUGH
AND FOUND NOTHING THERE --

>> YES.

>> AND CAME BACK AND TOLD THE
MANAGER, HE'S GONE, THERE IS NO
ONE THERE.

AS OF THAT DAY, WOULD
MANAGEMENT BEEN ABLE TO RENT
THE APARTMENT TO SOMEONE ELSE
HAD THERE BEEN ANOTHER TENANT
WAITING, THERE IS WAITING LIST
FOR THIS APARTMENT.

HAD THERE BEEN A TENANT WAITING
AT THAT POINT IN TIME COULD SHE
HAVE RENTED APARTMENT OUT TO
SOMEONE ELSE?

>> MAYBE THEY COULD HAVE.

THE POINT IS, THAT IS NOT WHAT
THEY DID.

INDEED THEY AT THAT POINT
PROCEEDED WITH EVICTION

PROCEEDING.

THEY DIDN'T HAVE TO DO THAT.

>> DID HE HAVE, MONTH TO MONTH
LEASE?

>> HE HAD A LEASE FOR TEN
MONTHS.

>> TEN MONTHS.

>> AND IT HAD EXPIRED?

>> NO. THE PROBLEM
HE WAS HAVING WITH NON-PAYMENT.

>> SO, THE ISSUE ABOUT WHAT
JUSTICE, BUT BY THE TWO OF THEM
AGREEING THAT HE MOVED, TOOK
ALL HIS BELONGINGS OUT, HE
UNDERSTOOD HE HAD NO LONGER HAD
A RIGHT TO BE THERE?

>> WELL --

>> WHY ELSE WOULD HE MOVE?
IF HE IS FIGHTING EVICTION
PROCEEDINGS HE WOULDN'T MOVE
HIS STUFF OUT.

>> THEY CHANGED LOCK.

DIDN'T THEY CHANGE THE LOCK?

>> THEY LOCKED HIM OUT AFTER
THREE-DAY NOTICE WAS UP.
HE MAY OR MAY NOT HAVE
UNDERSTOOD WHAT HIS PRICE WAS
AT THAT POINT.

BUT I THINK IT WAS SIGNIFICANT
HE WAS IN FACT IN POSSESSION OF
THE COMPLAINT SERVICE AT THE
TIME THEY FOUND HIM.

>> BUT ISN'T IMPORTANT WHAT THE
POLICEMEN THOUGHT?

>> AS I SAID I THINK THERE ARE
TWO DISTINCT ISSUES.

WHETHER OR NOT YOU CAN FIND IT
IN FACT ABANDONED.

WHETHER OR NOT THERE WAS
APPARENT AUTHORITY.

THAT WAS ADDRESSED IN THAT
EARLIER RESPONSE TO JUSTICE
CANADY'S QUESTION.

IN TERMS OF APPARENT AUTHORITY,
JUSTICE, SPECIAL AGENT KOTEEN
GETS TO THE FRONT DOOR.

I AGREE, SHE HAD APPARENT
AUTHORITY.

BUT ONCE THAT DOOR IS OPEN,
THEY FIND VICTOR INSIDE,
POSSESSIONS ALL AROUND HIM.
HE'S THE ONE WITH NAME ON
LEASE.

HE IS THE ONE HOLDING NOTICE HE
HAS UNTIL THE 26th TO RESPOND
AND HE DOESN'T HAVE TO
LEAVE UNTIL GET AN ORDER
EVICTING HIM.

AT THAT POINT IT BECOMES MORE
THAN A LITTLE AMBIGUOUS WHETHER
OR NOT HE HAS BEEN --

>> HE SAYS THAT TO THE POLICE?
YOU'RE SAYING THAT HE SAYS TO
THE POLICE, I HAVE A RIGHT TO
BE HERE UNTIL THE 26th?

>> NO. HE DOES NOT.

>> I THOUGHT YOU SAID HE
COULDN'T READ?

>> HE NEEDED HELP READING.

>> HOW COULD HE SAY THAT TO THE
POLICE?

>> BUT IT WOULD BE INCONSISTENT

FOR SOMEONE WHO THOUGHT THEY WERE OUT OF THERE, HAD NO RIGHT TO BE THERE TO BE INTERESTED IN WHAT THE SERVICE SAID.

>> HE THOUGHT HE WAS BEING ARRESTED FOR TRESPASSING, RIGHT?

>> HE SAID THAT AFTER SEVERAL HOURS OF BEING HELD IN THE APARTMENT BY PEOPLE --

>> HE BARRICADED HIMSELF IN, AND HE KNEW, YOU KNOW, HE THOUGHT THAT IS WHAT, THAT HE WAS WHERE HE WASN'T SUPPOSED TO BE.

>> THE POLICE FOUND THE LOCK THAT WEST HAD PLACED ON THE DOOR, A BLUE LOCK.

>> CALLING IT A BLUE LOCK.

>> THEY FOUND IT ON THE DRAWER IN THE KITCHEN.

AND THERE WAS ANOTHER LOCK ON THERE.

OBVIOUSLY PLACED THERE BY MR. CARABALLO.

>> YES.

ASSERTING HIS EXPECTATION OF PRIVACY IN BEING THERE.

WHETHER OR NOT THE COURT THINK THAT WAS FOR SOME NEFARIOUS PURPOSE, IF HE HAD LEGITIMATE EXPECTATION OF PRIVACY THEY HAD NOT ABANDONED.

>> WOULD IT BE IRRATIONAL OR UNREASONABLE FOR OFFICERS WALKING IN, AS WAS DESCRIBED HE

DIDN'T HAVE FURNITURE
EVERYWHERE, TVs, BEDROOM
FURNITURE.

SUITCASE AND BED ROLL AND
TOILETRIES AND FOOD.

>> CHAIRS.

>> ISN'T THAT BASICALLY WHAT A
SQUATTER, JUST TAKING UP
RESIDENCE?

EVERYTHING THAT IS DESCRIBED
THAT THEY FOUND WAS CONSISTENT
WITH, AND THE DOOR, HE
BARRICADED THE DOOR AND THE
JACK, JUST SEEMS TO ME THAT IT
IS PLACING UNREASONABLE TWIST
ON THESE FACTORS TO SAY THAT
THIS FELLOW IS THERE WITH A, AS
A TENANT.

>> I WOULD JUST SUBMIT THIS IS
DIFFERENT FROM THE MAN
SQUATTING IN YOUR HOUSE.

>> OKAY.

>> HE HAD A LEASE ON THIS
HOUSE.

>> REASON TO BE THERE?

>> I COULD ADDRESS, REALLY
CRUCIAL TO ADDRESS IN THIS CASE
THE CLOSING ARGUMENT
PARTICULARLY IN THE PENALTY
PHASE.

>> LET ME ASK YOU BEFORE YOU
BEGIN, WAS THE PROSECUTOR IN
THIS CASE THE SAME PROSECUTOR
IN THE CONDE CASE WE JUST
HEARD?

>> I DON'T KNOW THE ANSWER TO

THAT.

I'M SURE OPPOSING COUNSEL DID.

>> DO YOU PRACTICE IN MIAMI?

>> I DO.

>> THIS ARGUMENT CHANGES WHITE TO BLACK.

DOES EVERY PROSECUTOR USE THAT?

I WAS IN THE CONDE CASE AND I'VE SEEN ARGUMENT MADE BEFORE BY THIS PROSECUTOR IN OTHER CASES.

IS THAT A PROSECUTOR ARGUMENT IN MIAMI?

I WAS IN PALM BEACH COUNTY.

>> IF THIS PERSON, ABRAHAM LAZEAR, MADE SAME POINT AS IN OTHER CASES.

WELL, LAWYERS ARE PEOPLE WHO LIE TO YOU AND FOLLOWED UP IMMEDIATELY.

I'M NOT HERE TO MISLEAD YOU.

>> HAVE WE CONDEMNED THAT ARGUMENT?

>> THE COURT HAS CONDEMNED ARGUMENTS THAT THE DEFENSE COUNSEL IS THERE TO LIE TO YOU OR MISLEAD YOU.

NOT THIS PARTICULAR BLACK AND WHITE ENTER ARGUMENT.

>> GRAHAM ARGUMENT AS IN --

>> THAT INVOKES RELIGIOUS AUTHORITY WAS REFERENCE TO SEVEN DEADLY SINS.

>> I'M WONDERING ABOUT.

OF COURSE THE QUESTION ABOUT, SOME IS OBJECTED TO, SOME IS

NOT.

WE HAVE BEEN COMING DOWN
STRONGER IF WE'VE ALREADY
CONDEMNED AN ARGUMENT.
THIS LAWYER, THIS PROSECUTOR
SEEMS, ENAMORED WITH USING
COLORFUL ARGUMENTS.
AND WE'VE BEEN SEEING LESS
THAT.

WE'VE BEEN SEEING, YOU KNOW, SO,
ARE ANY OF THESE ARGUMENTS THAT
YOU'RE RAISING NOW ARGUMENTS
THAT WE HAVE ALREADY CONDEMNED?
>> YES, YOUR HONOR.

FOR INSTANCE, JUST LAST WEEK,
IN HEYWARD, THE COURT CONDEMNED
COMPARISON OF THE DEFENDANT TO
THE VICTIM IN TERMS OF USING
THE MITIGATING EVIDENCE OF A
HORRIBLE CHILDHOOD, WHICH
MR. CARABALLO HAD.

THE CHOICES HERE, COMPARE IT TO
THE CHOICE THAT IS THE VICTIM
MADE.

THE VICTIM HAD A HARD LIFE,
WHICH HE CERTAINLY DID, AND
YET SHE DIDN'T TURN INTO A
MURDERER.

SHE TURNED INTO A RESPONSIBLE
YOUNG CHILD.

SHE MADE THE RIGHT CHOICES.

LAST WEEK, THIS COURT SAID THAT
IS NOT THE KIND OF ARGUMENT YOU
CAN MAKE.

>> GOLDEN RULE SEEMS TO BE ONE
OF THE REAL GLARING KIND OF

ISSUES HERE WHERE HE SAID,
SOMETHING TO THE EFFECT, HAVING
THE JURORS PLACE THEMSELVES IN
THE POSITION OF THE VICTIM,
WHICH WAS SORT OF A VERY
TRAGIC.

>> HE SAYS, TOOK OUT A
STOPWATCH, AND HE SAYS
I'M GOING TO RUN IT FOR 60 SECONDS.
I WANT, I'M QUOTING.

I WANT YOU TO THINK ABOUT WHAT
15 OF THOSE MINUTES MUST HAVE
BEEN LIKE FOR ANA.

AND YOU DECIDE WHETHER OR NOT
IT WAS CRUEL TO MAKE HER SUFFER
LIKE THAT?

>> RIGHT. THAT'S EXACTLY WHAT HE SAID.

>> HE IS SEASONED PROSECUTOR.
NOT JUST SOMEONE OUT OF LAW
SCHOOL GOT CAUGHT UP IN THE
HEAT OF ARGUMENT.

>> HE IS A SEASONED PROSECUTOR
AND I SUBMIT THIS WAS A
PROSECUTOR DOING EXACTLY WHAT
HE WAS DOING WITH THESE
IMPROPER ARGUMENTS.

HE KNEW MITIGATION IN THIS CASE
WAS NOT UNSUBSTANTIAL.

THIS WAS SOMEONE WHO WAS NOT
THE SHOOTER.

WHO HAD BEEN BAKER-ACTED TWO
WEEKS BEFORE THE OFFENSE.

WHO HAD OTHER SUBSTANTIAL
MENTAL HEALTH MITIGATION.

HIS FAMILY HAD RAPED.

THE HIS MOTHER PROTECTED

RAPIST.

BEEN BEATEN THROUGHOUT HIS
CHILDHOOD AND DISPLAYED MENTAL
HEALTH ISSUES THERE.

HIS MOTHER KEPT HIM IN A LOCKED
ROOM.

AND THE POINT THAT THE
PROSECUTOR WAS MAKING, EACH
TIME WAS TO KNOCK DOWN THE THAT
MITIGATION.

HE TELLS THEM, YOU KNOW WHAT?
YOU KNOW WHAT?

HIS MENTAL HEALTH MITIGATION,
THAT IS A REASON TO KILL HIM.

AND PUT THIS WORD IN THE
DOCTOR'S MOUTH, DOCTOR, WOULD
YOU SAY HE IS DAMAGED BEYOND
REPAIR?

THE DOCTOR SAID, DEFENSE
DOCTOR, YES, YES, YOU COULD SAY
THAT.

THEN HE ARGUES, DAMAGED
BEYOND REPAIR.

WHAT IS THE RIGHT PUNISHMENT
FOR SOMEBODY WHO IS DAMAGED
BEYOND REPAIR WHO THE DOCTOR
SAYS WAS IN THE SAME MENTAL
STATE AS THAT NIGHT, SIX MONTHS
LATER? WHAT IS THE RIGHT
PUNISHMENT FOR THAT PERSON?
CLEARLY ARGUING FUTURE
DANGEROUSNESS.

IF HE WAS THAT WAY THE NIGHT
THIS HAPPENED, HE WILL
BE THAT WAY IN SIX MONTHS.

THIS IS SOMEONE WHO IS A

KILLER.

>> I LIKE TO ASK YOU ON THE, ON THE ISSUE OF THE PENALTY PHASE, DO YOU HAVE, THERE WAS AN ARGUMENT MADE ABOUT THE USE OF DR.^GARCIA.

>> YES.

>> ARE YOU ARGUING, HE WAS A COMPETENT, HE HAD BEEN HIRED, OR APPOINTED FOR COMPETENCY, AND THEN THE STATE ASKED TO USE HIM ON REBUTTAL.

IT IS APPROPRIATE, YOU'RE NOT SUGGESTING THAT IT WASN'T APPROPRIATE TO USE HIM FOR REBUTTAL, ARE YOU?

>> I, IN ANOTHER ARGUMENT I SAY THAT IT IS INCONSISTENT WITH THE RULE OF CRIMINAL PROCEDURE. WHAT I THINK IS --

>> SO THEN WHAT IS YOUR ARGUMENT ON ERROR WITH REGARD TO DR.^GARCIA?

>> WELL, MY ERROR THERE IS THAT IN FACT WHEN THE DEFENSE WAS USING THE LEGITIMATE RIGHT OF CROSS-EXAMINATION WITH THIS DOCTOR, POINTING OUT SIMPLY THAT HIS SCOPE OF EXAMINATION OF VICTOR, HIS KNOWLEDGE OF THE RECORD, WASN'T AS GREAT AS THE DEFENSE DOCTORS.

AS IT TURNS OUT NOT AS GREAT AS THE STATE'S OTHER EXPERT. THAT WAS A LEGITIMATE EXERCISE OF CROSS-EXAMINATION.

THE STATE'S RESPONSE?

WHY THE DISTRACTION OBJECTION?

NOW, IN ADDITION TO.

>> SUCCINCTLY TELL ME, I KNOW
WHAT THE RULE SAYS, BUT, YOU
SAID THE REPORT.

WHAT IS THE LAW ABOUT, CAN YOU,
ABOUT CALLING THAT PERSON AS AN
EXPERT FOR THE STATE OR THE
DEFENSE, OR AS THE STATE AS
THEY DID THERE?

YOU AGREE THAT IT IS PROPER TO
ALLOW THE PERSON TO TESTIFY AS
LONG AS THEY DON'T TESTIFY THAT
THEY WERE TESTIFYING AS, ON
COMPETENCY?

>> WELL, IN PARKER THIS COURT
SAID, IF THEY DON'T TELL YOU
THAT THEREFORE, THEY'RE
COMPETENT -- WHAT THE COURT WAS
BASICALLY SAYING IN PARKER IS
YOU CAN'T BAR THE STATE FROM
USING EXPERT WHO ALREADY
EVALUATED HIM FOR COMPETENCY.
THAT EXPERT HAD BEEN
REAPPOINTED FOR THE PURPOSE OF
THE STATE'S PENALTY PHASE CASE.
AND DIDN'T SAY ANYTHING ABOUT
BEING COMPETENCY EXPERT.

>> DID THIS DOCTOR ONLY, WAS
ONLY USED FOR COMPETENCY?

>> HE HAD PREVIOUSLY ONLY BEEN
USED FOR COMPETENCY.

WAS NOT APPOINTED TO DO ANY
OTHER EVALUATION.

>> IS YOUR ARGUMENT HE

SHOULDN'T HAVE BEEN CALLED AT ALL?
HAVE YOU MADE THAT ARGUMENT?
>> I HAVE MADE THAT ARGUMENT AS TO THE RULE ARGUMENT.
I DON'T THINK IT IS RELEVANT TO THE CLOSING ARGUMENT.
>> ONCE YOU GOT HIM ON THERE AND YOU'RE TRYING TO CROSS-EXAMINE HIM, SO IT IS A LIMITED EXAMINATION, IT'S LIKE THE DEFENSE LAWYER IS BETWEEN A ROCK AND A HARD PLACE AND SO IS THE STATE BECAUSE HE WAS ONLY USED FOR COMPETENCY.
THAT IS WHY HE DID SOMETHING LIMITED.
SO YOU'RE KIND OF PUTTING SOMETHING OVER ON THE JURY NOT TO EXPLAIN THE WHOLE PICTURE.
>> I DON'T THINK ANYBODY IS PUTTING ANYTHING OVER THE JURY AT LEAST ON THE DEFENSE SIDE ON THIS.
I THINK IT IS LEGITIMATE USE OF CROSS-EXAMINATION. THEY --
>> NO, I AGREE.
>> IN THIS RECORD --
>> PROSECUTOR, PROSECUTOR IS THE ONE THAT CALLED HIM, WAS HE NOT?
>> YES.
>> AND HE, HIS ONLY EXAMINATION HAD TO DO WITH COMPETENCY.
>> THAT'S RIGHT.
>> SO WHAT, ANY OTHER QUESTIONS

ASKED HE WOULDN'T KNOW?

>> THAT'S RIGHT.

>> FINE.

>> WHEN YOU COMPARE THAT --

>> I THINK THAT IS WHY SHE IS SAYING, THE DEFENSE HAD TO ASK SOME QUESTIONS TO SHOW THAT HE WASN'T THERE FOR ANY OTHER REASON BECAUSE HE ALREADY OBJECTED THIS DOCTOR HAD --

>> BUT THE CHRONOLOGY OF EVENTS WAS THAT THE DEFENSE OBJECTED TO DR.^GARCIA TESTIFYING TO BEGIN WITH.

>> THAT'S CORRECT.

>> BECAUSE HE INFORMED THE, ALL HE DID WAS DID A COMPETENCY TO PROCEED EVALUATION.

AND THE COURT ALLOWED HIM TO TESTIFY.

AND WHAT HAPPENED HIS, DURING THE DIRECT EXAMINATION, THE PROSECUTOR WAS ABLE TO KEEP DR.^GARCIA IN LINE.

BUT DURING CROSS, THE QUESTION WAS, DO YOU THINK THAT IT IS, VERY IMPORTANT TO THE ISSUES OF MENTAL ILLNESS IF YOU'RE GOING TO RENDER AN OPINION ABOUT THAT?

AND THE DOCTOR BLURTED OUT, YES IT IS, BUT I WAS ASKED TO GIVE AN OPINION REGARDING COMPETENCY.

DEFENSE COUNSEL GETS UP TO OBJECT.

AND BASICALLY JUST MOVED TO
THE NEXT QUESTION BEFORE THE
COURT HAD A CHANCE TO RULE ON
IT.

BUT WHAT CONCERNS ME IS,
KNOWING THE PARAMETERS OF THE
RULE, THEN ON REDIRECT, THE
PROSECUTOR GETS UP AND SAYS,
DR. GARCIA WAS ASKED TO
CLARIFY.

NOW HE WASN'T APPOINTED TO
EVALUATE CAR BALL LOW FOR
MENTAL RETARDATION BUT RATHER
FORSY.

THEN HE ASKED GARCIA TO EXPLAIN
WHAT A COMPETENCY EVALUATION IS
AND WENT RIGHT INTO IT, DEEPLY
INTO IT WHICH MAKES ME ASK WHY?

>> I THINK IT WAS PART OF THE
STATE'S CAMPAIGN TO SHOW THAT
HIS EXPERTS WERE MORE RELIABLE
BECAUSE THEY WERE ACTUALLY THE
COURT'S EXPERTS.

THIS DOCTOR HAD BEEN APPOINTED
BY THE COURT, NOT SELECTED BY
THE STATE, IN ORDER TO DO THIS
COMPETENCY.

>> IN ALL OTHER CASES WHERE WE
ALLOWED THIS KIND OF EXPERT
THEY HAD BEEN REAPPOINTED.

>> I THINK THERE IS ONLY ONE.

I THINK IT IS PARKER AND IN
THAT CASE THE COURT MENTIONS
ITS A REAPPOINTMENT.

MY TIME IS SHORT.

I THINK I'M INTO REBUTTAL IF I

CAN POINT TO A COUPLE OTHER
FACTORS IN THE CLOSING
ARGUMENT.

THE FACT THAT THEY POINTED TO
THE REMAINDER OF THE BAD
BACKGROUND MITIGATION.

THEY SAY, YOU KNOW WHAT?
TERRIBLE TERRIBLE THING THE
DEFENSE DID HERE.

THEY CALLED THE DEFENDANT'S
FAMILY TO TELL YOU ALL THESE
TERRIBLE THINGS ABOUT HIS
CHILDHOOD.

THAT IS NOT APPROPRIATE COMMENT
ON THE MITIGATION.

THAT IS TELLING THEM, GEE, ADD
IT TO THE LIST OF VICTOR'S
CRIMES THAT HE MADE HIS FAMILY
GO THROUGH THIS IN AN ATTEMPT
TO NOT BE SENTENCED TO DEATH.

THAT IS WITH THE VARIOUS PARTS
OF THE MISUSE OF THE VICTIM
IMPACT THEY ARE SAYING, YOU
KNOW, HE COULD HAVE BEEN MORE
LIKE THE VICTIM.

DIRECT COMPARISONS WHAT THIS
COURT CONDEMNED JUST LAST WEEK.

I THINK I WILL KEEP THREE
MINUTES FOR REBUTTAL, IF I MAY.

>> THANK YOU.

>> MAY IT PLEASE THE COURT.

SANDRA JAGGARD, ASSISTANT
ATTORNEY GENERAL ON BEHALF OF
THE STATE.

>> BEFORE YOU ENGAGE IN YOUR
ORAL OR PRESENTATION OR

RESPONSE,

FIRST OF ALL I HAVE A COUPLE
QUESTIONS.

HOW OLD THE DEFENDANT?

>> HE WAS 34 AT THE TIME OF THE
CRIME.

>> HIS BROTHER IS --

>> OLDER.

>> DO WE KNOW HOW OLD?

AND LEBRON, MR.^LEBRON?

>> HE IS I BELIEVE ABOUT THE
SAME AGE.

HIS BROTHER AND MR.^LEBRON ARE
STILL PENDING TRIAL.

>> THE CONCERN, SOMEHOW WHEN WE
SEE FOUR OR FIVE HERE MAYBE
THREE OR FOUR CODEFENDANTS WE
KNOW WE'RE GOING TO BE SEEING
THESE FOR MANY YEARS TO COME.
THE JUDGE FOUND IN THIS CASE
THAT, YOU KNOW HE WAS
DEFINITELY A SIGNIFICANT PLAYER
IN THIS.

JUDGE DID AN EXCELLENT
SENTENCING ORDER GIVING ALL
MITIGATION VERY SERIOUS
CONSIDERATION.

THIS IS --

>> TOO MUCH.

>> VERY MENTALLY ILL DEFENDANT.

BUT HE ALSO SAID SOMETHING
ABOUT HE, AND HE MAY BE LESS
CULPABLE THAN LEBRON.

THAT IS WHAT THE TRIAL COURT
FOUND.

NOW THIS IS JUST, THINKING

AHEAD.

IF LEBRON IS FOUND TO BE
GUILTY, AND, DOES NOT RECEIVE
THE DEATH SENTENCE, AND THIS,
CARABALLO WILL HAVE A
POST-CONVICTION NEWLY
DISCOVERED EVIDENCE, CORRECT,
ON PROPORTIONALTY?

>> UNDER THIS COURT'S SCOTT
CASE LAW, YES.

BUT WE'RE NOT THERE YET.

>> I UNDERSTAND THAT.

>> HE DOESN'T HAVE A LIFE
SENTENCE.

AND IT WILL DEPEND WHAT
HAPPENS IN THAT CASE WHAT
HAPPENS WITH REGARD TO THAT
CLAIM.

>> WOULD YOU ADDRESS THE
CLOSING ARGUMENTS.

BECAUSE THERE IS SOME CONCERNS
HERE.

THE GOLDEN RULE AND THE STOP
WATCH.

>> WELL --

>> I'M PROBABLY ONE OF THE MOST
LENIENT ALLOWING ARGUMENTS OF
COUNSEL AFTER BEING IN THE
TRENCHES BUT THAT REALLY, THE
GOLDEN RULE FOR ANY KIND OF
CASE AND PARTICULARLY WITH OUR
CASE LAW.

SAYING DON'T DO THAT.

>> FIRST OF ALL, THERE WERE NO
OBJECTIONS.

>> I UNDERSTAND.

>> TO THE COMMENTS AT ALL.
IT WOULD HAVE TO LIE RIGHT TO
THE LEVEL OF FUNDAMENTAL ERROR.
THIS IS VERY AGGRAVATING CASE.
SO, IT'S THE STATE'S POSITION
THESE COMMENTS DID NOT DEPRIVE
HIM OF A FAIR TRIAL.

>> HERE IS MY CONCERN ON THAT.
IT IS MY CONCERN AS A TRIAL
ALWAYS, AND IT WAS ALWAYS MY
CONCERN AS A PROSECUTOR,
BECAUSE I ALWAYS THOUGHT THAT
PROSECUTORS HAVE AN OBLIGATION
TO PROTECT THEIR CONVICTIONS
AND PROTECT THEIR RECORDS, YOU
HAVE A CASE HERE WHERE THE
DEFENDANT IS FOUND TO BE IN
POSSESSION, AT LEAST IN THE
APARTMENT HE WAS IN, OF ITEMS,
PERSONAL ITEMS BELONGING TO THE
VICTIMS IN THIS CASE, BOTH OF
THEM.

>> YES, SIR.

>> HE CONFESSES NOT ONLY ON
VIDEOTAPE TO THE POLICE, HE
GIVES A PRESS CONFERENCE TO A
SPANISH NEWS STATION, AND THAT
IS PRESENTED TO THE JURY.
WRITES A LETTER TO THE
PROSECUTOR WHERE HE CONFESSES.
I MEAN, THIS IS ABOUT AS LOCKED
A CASE AS ANY MURDER CASE I
HAVE EVER SEEN.
AND THEN HE GOT SIX OF THE
WEIGHTIEST AGGRAVATORS,
FOR THE DEATH PENALTY INVOLVED.

SO WOULD A SEASONED PROSECUTOR,
WHO HAS BEEN, I STARTED
PROSECUTING IN 1982 AND HE HAD
BEEN AROUND FOR SOMETIME THEN.
WOULD GET UP AND MAKE AN
ARGUMENT LIKE THAT?
BECAUSE IF THAT IS NOT GOLDEN
RULE, WHAT IS?
>> HE WAS NOT ASKING THEM TO
PLACE THEMSELVES IN THE
POSITION OF THE JURY.
HE WAS ASKING THEM TO CONSIDER
THE VICTIM'S SUFFERING.
HHC IN THIS CASE IS BASED ON
VICTIM'S SUFFERING.
BASED ON 2 1/2 HOURS SHE SPENT
IN THE CAR AND PARTICULARLY 15
MINUTES SHE SPENDS IN THE CAR
AFTER NELSON IS STABBED AND
LEFT ON THE SIDE OF THE ROAD.
HE WAS POINTING OUT WHETHER
YOU'RE DOING SOMETHING, FUN, 15
MINUTES CAN BE A REALLY SHORT
PERIOD OF TIME AND WHEN YOU'RE
IN A SITUATION LIKE THIS, 15
MINUTES CAN DRAG AND CAN BE
INCREDIBLY CRUEL.
>> I WANT YOU TO THINK WHAT 15
OF THOSE MINUTES MUST HAVE BEEN
LIKE FOR ANA.
>> FOR ANA.
>> AND YOU DECIDE --
>> PLACING THEM IN PLACE OF THE
VICTIM.
THAT IS EXACTLY WHAT GOLDEN
RULE IS.

>> HE IS ASKING THEM TO
CONSIDER WHAT SUFFERING IS LIKE
FOR THE VICTIM WHICH IS POINT
OF HHC IN THIS CASE.

HE IS NOT ASKING THEMSELVES TO
PLACE THEMSELVES IN THE PLACE
OF THE VICTIM AND FEEL THE
SUFFERING THEMSELVES.

IMAGINE WHAT THAT SUFFICIENT
MUST HAVE BEEN LIKE.

HE IS ASKING THEM TO CONSIDER A
FACT THAT IS FACT THAT SUPPORTS
HHC IN THIS CASE.

IT IS AN AGGRAVATOR.

IT IS FOUND A WEIGHTY
AGGRAVATOR AND PROPER TO ASK
THE JURY TO CONSIDER THAT
AGGRAVATOR.

>> EARLIER YOU ARGUED THAT
GIVEN THE AGGRAVATORS IN THIS
CASE AND GIVEN THE EVIDENCE IN
THIS CASE YOU THOUGHT IT DIDN'T
RISE TO THE LEVEL OF
FUNDAMENTAL.

AND MY CONCERN, AND I'VE BEEN
ON THE COURT FOR EIGHT MONTHS
AND I HAVE DONE A BUNCH OF
THESE DEATH CASES I'VE BEEN
HERE, ALL OF THEM SEEM TO HAVE
THIS IMPROPER ARGUMENT
COMPONENT TO IT.

IT SEEMS TO ME THAT THERE IS
THIS MIND SET OUT THERE IN THE
STATE ATTORNEY'S OFFICES WHERE
WHEN YOU HAVE A STRONG CASE,
WITH STRONG AGGRAVATORS, YOU

CAN DO WHATEVER YOU WANT
BECAUSE THE COURT IS GOING TO
FIND IT TO BE HARMLESS.

IS THAT WHAT IS GOING ON?

>> WE'RE NOT EVEN DEALING WITH
HARMLESS BECAUSE THERE IS NO
OBJECTION TO ANY OF THESE
COMMENTS.

SO YOU HAVE TO GET UP TO
FUNDAMENTAL ERROR.

OR --

>> WE COULD, I HAVE A LOT OF
PROBLEMS WITH THE
PENALTY PHASE CLOSING
ARGUMENTS AND THE GUILT PHASE
CLOSING ARGUMENTS BUT I WOULD
LIKE TO ASK YOU JUST TO TALK
ABOUT DR.^GARCIA.

WHAT, DR.^GARCIA IN THIS CASE
WAS, ONLY HAD EXAMINED THE
DEFENDANT FOR COMPETENCY.

>> HE HAD BEEN SENTENCED TO DO
A COMPETENCY EVALUATION.
HE HAD SPOKEN TO THE DEFENDANT.
THE DEFENDANT HAD DESCRIBED
SYMPTOMS TO HIM THAT WERE
INCREDIBLE.

AND HE HAD GIVEN THEM A
MALINGERING TEST AND THE
DEFENDANT HAD BEEN FOUND TO
MALINGERING.

>> FOUND COMPETENT TO PROCEED.

>> YES.

>> NOW DID THE STATE ASK HE BE
REAPPOINTED FOR THE PURPOSE OF
THE PENALTY PHASE?

>> NO, MA'AM, THEY DID NOT.

>> SO TELL ME, WHAT CASE SAYS THAT A, BASED WITH THE RULE BEING WHAT IT IS, AND I'M JUST NOT AS FAMILIAR WITH THIS, NOT HAVING SEEN THIS PARTICULAR THING COME UP, AT LEAST I REMEMBER, THAT ALLOWS THE STATE TO THEN CALL AN EXPERT WHO WAS ONLY TO TESTIFY FOR, I MEAN, APPOINTED FOR COMPETENCY AND THEREFORE, THE DEFENDANT HAS A RIGHT FOR THAT REPORT NOT TO BE ADMITTED INTO EVIDENCE. AND TO JUST PICK AND CHOOSE WHAT PART OF THE THEY'RE GOING TO BE PUTTING ON, PUT THEN, GET IN THE BACK DOOR, WHAT YOU CAN'T GET. ISN'T THAT PROHIBITED BY THE RULES? IF IT IS NOT, WHAT CASE SAYS IT ALLOWED WHERE THEY'RE NOT REAPPOINTED?

>> THERE ISN'T ONE.

>> THERE IS NOT ONE?

>> THE ONLY ONE WE HAVE IS PHILLIPS.

IN PHILLIPS THE RESULT OF THE CONCEPT OPENING THE DOOR BY PRESENTING THE MENTAL HEALTH MITIGATION.

AND HERE ALL THE STATE WAS ATTEMPTING TO SHOW --

>> PHILLIPS WAS A POST-CONVICTION CASE, CORRECT.

>> YES, MA'AM.

THAT COUNSEL WAS INEFFECTIVE
FOR NOT RAISING THAT ON APPEAL.

>> I THOUGHT IN PHILLIPS,
THAT --

>> EXPERT HAD BEEN REAPPOINTED.

>> HE WAS REAPPOINTED.

IS THAT CORRECT?

>> YES, MA'AM.

>> WHICH DID NOT HAPPEN HERE.

>> THAT DID NOT HAPPEN HERE.

>> LET'S NOT TALK OVER EACH
OTHER.

IN PHILLIPS WHICH WAS A
POST-CONVICTION CASE, THE
EXPERT WAS REAPPOINTED AT THE
REQUEST OF THE STATE, FOR THE
PENALTY PHASE.

CORRECT?

>> YES.

>> OKAY.

AND THAT WAS, THAT IS A
DISTINCTION AS, SOMEWHAT OF A
DISTINCTION IN THIS CASE.

YOU TRUTHFULLY CAN NOT TELL US
THERE IS ANOTHER CASE THAT
ALLOWS THIS.

>> I TOLD YOU ABOUT THE PHILLIPS
CASE.

THERE WAS CONCEPT OF OPENING
THE DOOR IN PHILLIPS WHERE YOU
WERE PRESENTING THIS TESTIMONY
TO REBUT THE MENTAL HEALTH
EXAMINATION THE DEFENSE HAD
DONE.

RULE COMES FROM FEDERAL CASE
LAW NOT ALLOWING YOU TO,

THE STATE HAVE SOMEONE FORCIBLY
EVALUATED AND NOT OPEN THE
DOOR TO THEIR MENTAL STATE AND
THEN PRESENT THE COMPETENCY
EVALUATION AGAINST THE
DEFENDANT.

WHEN THE DEFENDANT OPENS THE
DOOR UNDER FEDERAL CASE LAW THE
STATE IS ALLOWED TO USE THE
INFORMATION.

>> THEY DIDN'T, SO NOW YOU'RE
SAYING THERE SHOULD BE A RULE
THAT ANY TIME THE DEFENDANT
PUTS ON MENTAL HEALTH
TESTIMONY, THE STATE CAN CALL
COMPETENCY EXPERT?

>> FOR THE LIMITED PURPOSE
HERE.

JUST SIMPLY TO SAY THE MAN WAS
MALINGERING.

HE DIDN'T GET INTO OPINIONS
ABOUT COMPETENCE.

>> BUT THE DEFENDANT SAYS
CROSS-EXAMINING HAS TO ASK
QUESTIONS LIKE, YOU DIDN'T
REVIEW REPORTS, YOU DIDN'T DO A
FULL EXAMINATION, AND THEN THE
GUY BLURTS OUT, YEAH, I WAS
ONLY EXAMINING FOR COMPETENCY.
I CAN'T BLAME THE EXPERT.

BUT YOU'RE GIVING THE JURY A HALF
OF A VIEW OF THIS.

I MEAN THE STATE CERTAINLY
HAS THE ABILITY TO, AND THEY DO
IT ALL THE TIME TO REAPPOINT,
GET SOMEONE, REAPPOINTED IF

THAT IS WHAT THEY NEED.

>> I WOULD CERTAINLY APPRECIATED IF THEY WOULD HAVE DONE THAT.

THE STATE'S OTHER POSITION OF COURSE IS THIS IS HARMLESS ERROR BECAUSE YOU DO HAVE A VERY AGGRAVATING CASE HERE. AND YOU HAD THE MENTAL HEALTH MITIGATION THAT WAS PRESENTED. IT WAS MAINLY ATTACKED NOT SO MUCH ON DR. ^GARCIA'S TESTIMONY OR ANYTHING TO DO WITH HIS COMPETENCY BUT ON THE INHERENT NATURE OF THE TESTIMONY ITSELF.

>> CAN I ASK YOU, IT IS OBVIOUSLY AN AGGRAVATING CASE AND THE SURVIVING VICTIM CAN'T IDENTIFY ANYBODY IN THIS.

THIS IS A DEFENDANT WHO WAS THE, AT LEAST FROM HIS LAST MENTAL HEALTH EVALUATION WAS APRIL 10th, '02. THIS OCCURRED ON APRIL 27.

DOES THE STATE TAKE POSITION -- WHOSE IDEA WAS IT TO GO FROM ORLANDO TO MIAMI? WHOSE CAR WAS IT, FOR EXAMPLE?

>> IT WAS A CAR RENTED TO CESAR MENA.

>> HIS BROTHER, CARABALLO WENT ALONG.

WE'RE GOING DOWN TO MIAMI TO GO TO A DISCOTHEQUE?

>> THAT IS THE DEFENDANT'S CONFESSION.

WE WENT DOWN TO GO TO A
DISCOTHEQUE.

>> WHOSE GUN IS IT?

>> MENA.

>> MENA'S GUN.

IS THERE ANY EVIDENCE WE KNOW
OF BEFORE THE GUN WAS TAKEN OUT
THAT THIS DEFENDANT KNEW THE
GUN WAS THERE?

>> WE HAVE HIS LAST LETTER IN
WHICH HE ADMITS BEFORE THEY
KIDNAPPED THEY HAD SEEN THE GUN
AND THEY HAD TALKED ABOUT
ROBBING PEOPLE.

>> AS FAR AS HE WAS, A FRONT,
HE WAS THE FRONT SEAT
PASSENGER?

>> WELL, WE, WHILE THE,
SURVIVING VICTIM CAN NOT, DID
NOT SEE FACES WE HAVE THE
DEFENDANT WHO ADMITS, MENA IS
DRIVING.

HE STARTS OUT IN THE FRONT PASSENGER
SEAT.

WE HAVE LEBRON ON ONE SIDE OF
ANA.

NELSON NEXT TO ANA ORIGINALLY.
HECTOR ON THE OTHER SIDE AND
CHICO --

>> I'M NOT SAYING THIS IS NOT
AN AGGRAVATED CASE.

I'M TRYING TO FIGURE OUT WHERE
THIS MENTALLY ILL DEFENDANT WHO
IS, THERE WITH FOUR OR THE
PEOPLE FITS INTO THE WHOLE
PICTURE.

BECAUSE WHAT YOU WERE SORT OF SAYING IT DOESN'T MATTER ABOUT GARCIA THIS IS SUCH AN AGGRAVATED CASE NO JURY WOULD EVER HAVE DONE ANYTHING BUT IMPOSE DEATH.

>> SO HE STARTS OUT IN THE FRONT PASSENGER SEAT.

AFTER THEY HAVE, THEY START RAPING ANA, MR. ^LEBRON STARTS RAPING ANA, HE TRADES AND, NELSON, WHO IS THERE ON THE SEAT AND IN THE FLOOR RIGHT IN FRONT OF THEM FEEL THEM MOVING. FEELS THEM MOVE HER OVER, WHO HECTOR, SEATED ON OTHER SIDE COULD RAPE HER.

HE IS STEPPED ON BY THE DEFENDANT AS HE MOVES INTO THE BACK AND SOUNDS OF RAPING.

LEBRON GOES INTO THE FRONT SEAT AND SOUNDS OF THE RAPING CONTINUE.

WE THEN HAVE THE SURVIVING VICTIM --

>> ARE YOU SAYING THIS DEFENDANT MOVED INTO THE BACK OF THE CAR?

>> HE MOVES INTO THE BACK SEAT OF THE CAR.

>> TO PARTICIPATE IN THE RAPE.

>> TO PARTICIPATE IN THE RAPING.

>> HE SAID IN THE LETTER THAT HE SENT TO THE PROSECUTOR, THAT HE WENT BACK THERE AND,

SUPPOSEDLY DID NOT PENETRATE THE VICTIM BECAUSE HIS BROTHER HAD SEX WITH HER BEFORE AND HE HAD AIDS.

HE JUST GRATIFIED HIMSELF ON HER.

>> THAT IS WHAT HE SAID.

>> THERE IS EVIDENCE OF SOMETHING ELSE?

>> THE VIIVING VICTIM SAYS THAT HE HEARD THE GUY GO BACK AND THE RAPE CONTINUED.

SO THERE IS EVIDENCE OF SOMETHING ELSE.

>> GUNS ARE CONCERNED, IN THE, VIDEOTAPE WE SAW, OF THE INTERVIEW HE GAVE TO THE SPANISH STATION --

>> YES.

>> HE DESCRIBES SPECIFICALLY WHERE THE GUN WAS LOCATED THE VICTIM, WHICH WAS CONSISTENT WITH THE FINDINGS OF THE MEDICAL EXAMINER.

>> YES, SIR.

>> AND INCONSISTENT WITH HIS STATEMENT HE DID NOT SEE HER SHOT.

>> WELL VERY, BECAUSE THE SHOOTING OCCURS OFF THE SIDE, I-95 IN A WOODY AREA NEXT TO A RETAINING WALL THAT WAS SO DARK THAT AN OFFICER COULDN'T FIND THE BODY IN DAYLIGHT UNTIL HE WALKED UP THERE, SHOWN A FLASHLIGHT, PUSHED ASIDE A

BRANCH AND SHINED A FLASHLIGHT
IN.

IN ORDER TO SEE THE EXACT ANGLE
OF BULLET, VICTOR CARABALLO HAD
TO GO DOWN THERE AND BE IN THE
CLUMP TREES IN THE MIDDLE OF
THE NIGHT WHEN THE MURDER
OCCURS.

HE IS IDENTIFIED BY NELSON ONE
OF THE TWO PEOPLE TAKING HIM
OUT OF THE CAR AND ADMITS TO BE
INVOLVED IN THE STABBING OF
NELSON.

I DIDN'T DO THE STABBING,
LEBRON DID BUT I KICKED HIM
WHILE WE WERE OUT THERE.

HE IS VERY INVOLVED, THIS
ALLEGED, THIS PERSON WHO THE
TRIAL COURT FOUND TO BE
MENTALLY ILL WAS VERY INVOLVED
AND VERY PRINCIPLED IN THESE
MURDERS AND THE STATE, CROSS
APPEAL TRIAL COURT CONCERN NOT
FINDING CCP AFTER HE KNEW THE
VICTIM WAS GOING TO BE MURDERED
AND THAT HE HAD TO HAVE BEEN
DOWN THERE FROM THE VIDEO
CONFESSION AT THE SCENE OF THE
MURDER.

AND THE TRIAL COURT REJECTED
CCP WELL, YOU KNOW HE IS A
PRINCIPAL BUT UNDER THIS
COURT'S CASE LAW YOU DON'T TO
BE THE SHOOTER TO HAVE CCP
APPLY IF YOU'RE A PART OF PLAN.
THE TRIAL COURT OWN FINDINGS

MAKE HIM A OF THE PLAN.

>> LET ME ASK YOU THIS.

GET BACK TO DR.^GARCIA.

WHAT IS THE PURPOSE OF THE RULE THAT TALKS ABOUT NOT HAVING THE PERSON, THE MENTAL HEALTH EXPERT WHO DOES COMPETENCY TO TESTIFY FOR, WHAT ARE THE REASONS.

>> TO IMPLEMENT THE U.S.

SUPREME COURT CASE LAW ON HAVING A DEFENDANT FORCIBLY EVALUATED FOR COMPETENCY AND THEN HAVING THE STATE WITHOUT THE DEFENDANT PUTTING HIS MENTAL STATE AT ISSUE, THAT EVIDENCE BEFORE THE JURY IN PENALTY PHASE.

THE CASE IS CALLED ESTELLE VERSUS MAGUIRE.

>> SO IN THAT CASE WAS THE DEFENDANT, DEFENDANT NEVER RAISED ANY KIND OF MENTAL HEALTH ISSUE?

>> NO.

THE, IT IS TEXAS AND THE STATE USED IT TO PROVE FUTURE DANGEROUSNESS WITHOUT HIM PLACING HIS MENTAL STATE AT ISSUE.

>> YOU HAVE SOMEONE VERY INVOLVED IN A VERY AGGRAVATED CASE.

WE ALSO HAVE THE CROSS APPEAL ABOUT THE TRIAL COURT REJECTING OR FINDING NOT SIGNIFICANT

CRIMINAL HISTORY MITIGATOR.

>> LET'S GO BACKWARD TO CCP FOR
A SECOND.

>> OKAY.

>> WASN'T THE JUDGING NOT
GIVING CCP WAS THAT THE
HEIGHTENED PREMEDITATION
REQUIRED FOR IT WASN'T HERE
ISN'T THAT --

>> HE DID NOT FIND THAT THE
HEIGHTENED PREMEDITATION DIDN'T
EXIST.

HE FOUND THIS DEFENDANT WAS NOT
THE SHOOTER AND HE WAS A
PRINCIPLE AND THEREFORE, I'M
NOT GOING TO FIND CCP IF HE HAD
FOUND, MY OPPONENT SUGGESTS THE
MENTAL EVIDENCE NEGATES IT IF
HE HAD FOUND IT WE WOULDN'T BE
HERE ON CROSS APPEAL.

THAT IS NOT WHAT HE FOUND.

DOING WHAT HE DID HE MISAPPLIED
THE LAW AND THE STATE WOULD ASK
YOU PUT CCP.

WITH REGARD TO NO SIGNIFICANT
CRIMINAL HISTORY, THE DEFENSE
HIMSELF PRESENTED EVIDENCE THAT
HE HAD BEEN IN ROBBERIES,
BURGLARIES, CAR THEFTS, ARMED
DRUG DEALING.

THAT HE HAD TO FLEE PUERTO RICO
OVER THE ARMED DRUG DEALING
AND, CAR SCAM WHERE HE FIXED UP
A CAR.

SOLD IT TO SOMEONE.

AND THEN STOLE IT BACK AND

SOLD IT TO SOMEONE ELSE.

>> SO WE'RE IN A POSITION IT SEEMS THAT WE'RE GOING TO FIND YOU WANT US TO ELIMINATE A MITIGATING CIRCUMSTANCE BASED ON THE, THE TESTIMONY PRESENTED BY THE DEFENDANT?

ALMOST LIKE THE DEFENDANT IS, TESTIFYING AGAINST HIMSELF?

>> WELL, AND, WHEN YOU HAVE UNREED FACTUAL TESTIMONY, WHICH CERTAINLY THE STATE DIDN'T REBUT THAT EVIDENCE --

>> DOESN'T THE STATE USUALLY, IF THEY WANT TO PUT ON, I MEAN ISN'T IT UP TO THE STATE TO PUT ON THIS, THE EVIDENCE?

>> USUALLY, YOU HAVE A DEFENDANT WHO ASKS FOR NOT SIGNIFICANT CRIMINAL HISTORY. WHAT HAPPENED IN THIS CASE IS THAT THIS EVIDENCE GETS PRESENTED THROUGH THE DEFENDANT'S MENTAL HEALTH EXPERTS HOW HE HAS ALWAYS BEEN A CRIMINAL.

HE ALWAYS HAD THESE PROBLEMS WITH CRIME.

HE HAS BEEN DOING THIS SINCE HE WAS A YOUNG KID, BEING A CRIMINAL.

AS PART OF THEIR CLAIM THAT THIS SOMEHOW SHOWS ADAPTIVE FUNCTIONING DEFICITS.

WHEN IT COMES TIME FOR THE STATE GIVES JUDGE STANDARD JURY

INSTRUCTION GIVES LANGUAGE,
HOW, WHILE YOU CAN CONSIDER
EVIDENCE OF OTHER CRIMINAL
ACTIVITY AS REBUTTAL TO THIS
MITIGATION YOU CAN NOT CONSIDER
IT AS AGGRAVATION.

THE DEFENSE OBJECTS TO THAT
PARAGRAPH BUT ASKS FOR IT.

TRIAL COURT SAYS, OKAY, I WILL
TAKE THAT PARAGRAPH OUT.

THE STATE THEN OBJECTS TO DOING
THAT AND THE DEFENSE SAYS, THAT
IS NOT THE LAW.

THE STATE HAS TO PRESENT --

>> I MEAN, THE JUDGE GIVES IT
LITTLE WEIGHT.

AFTER, WHAT IS, I MEAN, YOU
DON'T TAKE ISSUE WITH THE
JUDGE'S EVALUATION, THIS DAY
MR. CARABALLO REMAINS ACTIVELY
PSYCHOTIC AND
SEVERELY EMOTIONALLY DISTURBED.

THIS COURT ASSIGNS MITIGATION
FACTOR GREAT WEIGHT.

THE ONLY WAY THIS DEFENDANT IN
TERMS OF HAC EITHER WITH
THIS JUDGE OR WITH THIS JURY
WOULD BE TO MAKE SURE THAT THE
MENTAL HEALTH MITIGATION THAT
SURELY EXISTS IN THIS CASE,
THAT HE, IT WAS ACCURATELY
PRESENTED, AND, SO I GUESS WHAT
I'M ASKING, ON THIS THING ON
THE CRIMINAL ACTIVITY, IF THE
JUDGE GAVE IT LITTLE WEIGHT OR,
DIDN'T WEIGH IT, --

>> IT CHANGES THE BALANCE OF AGGRAVATORS AND MITIGATORS FROM NOW ON.

WHEN WE GO ON POSTCON, WHEN WE TAKE AWAY MITIGATION AND THEN WHEN WE'RE DOING --

>> LITTLE WEIGHT ONE BEING MUCH HAPPENING WITH LITTLE WEIGHT.

>> I UNDERSTAND.

AND AS, BUT YOU HAVE AN EXTREMELY AGGRAVATED CASE.

YOU HAVE MITIGATION YOU HAVE.

THERE WAS THE ISSUE ABOUT THE INVALID IQ SCORE AND THE STATE PRESENTED EVIDENCE ABOUT HOW HIS PERFORMANCE ON THE I.Q.

TEST WAS JUST COMPLETELY INCREDIBLE.

SO, DR. ^GARCIA IS MERELY

CUMULATIVE WHAT IS

APPROPRIATELY PRESENTED AND IN

THIS CASE THE STATE WOULD

RESPECTFULLY REQUEST THAT YOU FIND THAT HARMLESS.

>> DON'T GET ME WRONG.

I'M NOT HERE TO SHOOT THE MESSENGER.

YOU CITED -- THERE IN A RECENT

OPINION IN HEYWARD WE NOTED AT

END THERE WAS IMPROPER COMMENT AND IMPROPER COMPARISON.

>> YES.

>> AND WE NOTE IT AS WE HAVE IN COUNTLESS OTHER OPINIONS.

WE FEEL COMPELLED TO ONCE AGAIN

VOICE OUR DISAPPROVAL OF THIS

TYPE OF PROSECUTE REAL COMMENTS
COMPARING LIFE OF CHOICES TO
VICTIMS.

ALTHOUGH IT WAS SPECIFIC AS TO
THAT CASE, WE HAVE BEEN QUITE
VOCAL IN PRIOR OPINIONS ABOUT
THE WHOLE BUSINESS OF
PROSCUTORIAL MISCONDUCT DURING
CLOSING ARGUMENTS AND THEN
HAVING TO HOLD THEM HARMLESS.
SO THE QUESTION I HAVE FOR YOU
IS, HOW MANY MORE OF THESE
CASES AND HOW MANY MORE OF
THESE CASES DO WE HAVE TO STAY
STOP DOING THAT.

>> FIRST OF ALL IT IS NOT
HARMLESS ERROR, IT IS
FUNDAMENTAL ERROR.
THERE IS NO OBJECTION.

>> I UNDERSTAND THAT.
THE COMMENT IS STILL THERE.

>> BELIEVE ME.

I ALREADY HAD A GOOD TALKING TO
WITH THE PROSECUTORS NOT DOING
IT IN THE NEXT DEFENDANT.

>> SEEMS TO ME, IN GORE,
REMEMBER MANY YEARS AGO WE SAID
NO, WHEN WE REFERRED TO BROOKS.
NO, WE REVERSED.

AND, JUST, THIS IS AGAIN, AS
JUSTICE LABARGA SAID, NOT
KILLING THE MESSENGER.

SEEMS LIKE IT IS CREEPING BACK
IN, INTO THIS ARGUMENT.

>> I UNDERSTAND.

AND, YES, IT IS THE SAME

PROSECUTOR AND HE HAS RETIRED.
SO WE WON'T HAVE HIM DOING THIS
ANYMORE.

IT'S NOT FUNDAMENTAL ERROR IN
THIS CASE.

THIS IS THE STATE'S POSITION.

THERE WAS NO OBJECTION TO THE
COMMENTS COMPARING THE VICTIMS.

AND IN HEYWARD ITSELF YOU FOUND
IT WASN'T FUNDAMENTAL ERROR.

IF THE COURT HAS NO FURTHER
QUESTIONS?

>> THANK YOU.

>> CAN I ASK ONE QUESTION OUT
OF CURIOSITY?

THIS PRESS CONFERENCE THAT YOUR
CLIENT TO THE SPANISH STATION,
HE HAD COUNSEL AT THE TIME?

>> HE HAD COUNSEL.

HE DID IT WITHOUT THE KNOWLEDGE
OR CONSENT OF COUNSEL AS YOU
MIGHT IMAGINE.

>> I'M WONDERING, WASN'T
COUNSEL SITTING NEXT TO HIM AT
THE TIME?

>> NO. NO.

NOR WERE THEY THERE WHEN HE
WROTE THE LETTER TO --

>> FALLS UNDER THE CATEGORY
YOU'RE GOING TO HAVE BAD DAY AS
A LAWYER, YOU WATCH TV AND
THERE IS YOUR CLIENT.

>> I THINK IT WOULD COUNT FOR
THAT.

JUST QUICKLY, RESPOND, AND, AS
TO THE GOLDEN RULE, I THINK

EVERYBODY HERE UNDERSTANDS THAT
THE, STATE SAYS WELL, IF THERE
IS HAC THEN YOU CAN DO IT IN
ESSENCE.

THE COURT COULD CALL, COULD
CALL TO THE ATTENTION THAT
SOMEONE SUFFERING FOR A LONG
TIME, SAYING YOU IMAGINE
YOURSELF IN THE PLACE OF BEING
THAT PERSON FOR SUFFERING FOR A
LONG TIME.

>> DO YOU RECALL A CASE, AND I
DIDN'T SEE IT HERE, WHERE
SOMEBODY DID USE A CLOCK,
MAYBE, IT WAS, WHETHER WE
CONDEMNED THAT OR NOT?

>> THE COURT LITERALLY SAID,
THEY SAID WHY DON'T YOU GO BACK
IF YOU HAVE GOT A WATCH, SIT
FOR A MINUTE AND THINK ABOUT
IT.

THERE THE COURT SAID ON A A
POSTCONVICTION CASE THIS IS
CLOSE CASE BUT IT IS NOT
PREJUDICIAL.

>> WHAT CASE IS THAT?

>> DAVIS.

TWO DAVIS'S IN THAT SECTION OF
THEMENT.

>> THAT WAS POSTCONVICTION.

>> IT WAS A POSTCONVICTION
CASE.

THERE IS BIG DIFFERENCE BETWEEN
SAYING THIS IS THE REASON IT IS
HAC NO, YOU, PRETEND YOU'RE
THAT PERSON.

IT IS --

>> I UNDERSTAND THAT.

BUT, IN CONSIDERING WHETHER
THERE IS HAC, THAT DOES DEPEND
ON THE SUBJECTIVE EXPERIENCE TO
CERTAIN EXTENT OF THE VICTIM,
RIGHT?

>> YES, YOUR HONOR.

>> TO THE EXTENT THAT THE
JURY'S GOT TO CONSIDER THE
SUBJECTIVE EXPERIENCE OF THE
VICTIM, IT SEEMS LIKE AN APPEAL
TO DO THAT IS A LITTLE
DIFFERENT THAN SAYING, PUT
YOURSELF IN YOUR SHOES AND
CONSIDER HOW YOU WOULD HAVE
FELT.

NOW OBVIOUSLY THAT'S DIFFERENT.

BUT, THERE SEEMS TO BE KIND OF
A FINE LINE HERE, BUT I THINK
THAT THERE ARE, THERE'S A
POSSIBILITY OF TAKING THIS
GOLDEN RULE PRINCIPLE SO FAR,
THAT REALLY, THE, STATE WOULD
NOT BE IN A POSITION TO MAKE AN
APPEAL TO THE JURORS TO
CONSIDER THAT EXPERIENCE OF THE
VICTIM.

WHICH SEEMS TO ME TO BE
INCONSISTENT WITH WHAT HAC IS.

>> I SUGGESTED HOW THE STATE
MIGHT DO IT.

AND THIS COURT'S DECISION SAYS
CONSISTENTLY SAID THAT THIS
KIND OF ARGUMENT IS A GOLDEN
RULE ARGUMENT.

THE ONLY THING MISSING FROM THIS ONE TO BE IDENTICAL TO CASES LIKE DAVIS, IS THE WORD, IMAGINE, WHICH THE COURT HAS FOCUSED ON.

BUT HERE THE PROSECUTOR FORCED THEM TO IMAGINE.

WITH REGARD TO THIS BEING A STRONG CASE, THERE WAS CERTAINLY A LOTS OF AGGRAVATION BUT BUT THE MITIGATION HERE WAS STRONG AND MEANINGFUL.

IT WAS SOMEBODY BAKER-ACTED FIVE TIMES IN YEAR LEADING UP TO JUST BEFORE THIS HAPPENED.

WHEN YOU TELL THE JURORS THAT THEY HAVE A DUTY TO RETURN A DEATH VERDICT AND MITIGATION IS DUE TO DANGEROUSNESS YOU HAVE FUNDAMENTAL ERROR.

UNDER RUIZ, ERROR THAT CAN BE CONSIDERED PRESERVED ERROR.

>> THANK YOU, MR. STANTON AND MISS JAGGARD FOR YOUR ARGUMENTS HERE TODAY.

WE APPRECIATE IT.

THE COURT IS NOW IN RECESS UNTIL 9:00 TOMORROW MORNING.

>> PLEASE RISE.

SUPREME COURT IS NOW ADJOURNED.