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Standard Jury Instructions in Criminal Cases

SC07-2324

>> AND THE CASE LAW AS ENUNCIATED BY THIS COURT OR BY DISTRICT COURT OF APPEAL IF THERE IS NO OTHER, IF THERE'S NO DECISION FROM THIS COURT. AND THE DISTRICTS ARE NOT IN CONFLICT, AND WE DO NOT REALLY RESOLVE ISSUES IN REGARD TO OUR CASES IN RULES CASES OR IN INSTRUCTIONS.

WE DO IT ON THE BASIS OF ADVERSARIAL PROCEEDINGS. HERE WE'VE GOT THE TAYLOR CASE WHERE FULLY OR WRONGFULLY, THE TAYLOR CASE IS OUT THERE. AND MY FIRST CONCERN IS HOW CAN WE HAVE AN INSTRUCTION THAT DEVIATES FROM WHAT THIS COURT LAW IS IN TAYLOR?

>> YES, YOUR HONOR.

JUSTICE WELLS, I UNDERSTAND THE CONCERN AND SIGNIFICANCE OF THAT QUESTION.

I WAS ABOUT TO NOTE THAT THE INSTRUCTION BEFORE 1994 DID NOT REFERENCE AN INTENTIONAL KILLING.

AND I BELIEVE THE COURT IN HALL V. STATE, THE DECISION BY THE SECOND DISTRICT, I THINK -- APPROPRIATELY AND CORRECTLY, I THINK -- NOTED THAT IN TAYLOR THIS COURT MADE THE DETERMINATION OF ATTEMPTED MANSLAUGHTER DOES EXIST AS A CRIME BECAUSE MANSLAUGHTER INCLUDED INTENTIONAL KILLINGS, AND, THEREFORE, YOU COULD HAVE AN ATTEMPTED INTENTIONAL KILLING PURSUANT TO TAYLOR.

BUT THE COURT IN HALL NOTED THAT THIS DOES NOT NECESSARILY MEAN THAT VOLUNTARY MANSLAUGHTER, TO USE THAT PHRASE, DOES NOT ALSO INCLUDE INTENTIONAL ACT KILLINGS.

FOR EXAMPLE, IN HALL REVIEW WAS DENIED AND THAT CASE IS FINAL. IN HALL WHICH THE COURT NOTED WOULD BE INCORRECT IF THIS COURT NOTED WOULD BE IN CONFLICT WITH TAYLOR.

I UNDERSTAND YOUR DENIAL IS NOT A DECISION ON THE MERITS, OF COURSE.

>> RIGHT.

>> BUT IN HALL YOU HAD THE SINGLE PUNCH TO THE HEAD OF A PERSON WHO WAS NOT ENGAGED IN COMBAT.

HE WAS NOT LOOKING AT THE DEFENDANT WHEN HE WAS PUNCHED IN THE TEMPLE, OR AT LEAST THERE WAS EVIDENCE TO THAT EFFECT. AND THAT SINGLE PUNCH KILLED HIM.

>> MY CONCERN IS, AND I RECOGNIZE MAY BE IN RETROSPECT, WE SHOULD HAVE TAKEN HALL, BUT WE DIDN'T.

AND I'M CONCERNED WITH WHETHER IF WE ADOPTED THIS INSTRUCTION WHETHER WE'RE GOING TO HAVE AN INSTRUCTION THAT'S IN CONFLICT WITH TAYLOR.

>> YOUR HONOR, WITH ALL DUE DEFERENCE TO THE SERIOUSNESS OF THE QUESTION, I THINK YOU WOULD NOT BECAUSE YOU HAVE THIS INSTRUCTION ESSENTIALLY FROM 1978 UNTIL -- EXCUSE ME, 1970 UNTIL 1994.

>> ARE YOU SAYING, THEN, THIS WOULD JUST RETURN THE INSTRUCTION TO WHAT IT READ PRE-1994?

>> WELL, IT WOULD.

YES, YOUR HONOR, ESSENTIALLY.

>> SO DO WE KNOW WHY -- BECAUSE TAYLOR CAME OUT IN 1993.

>> CORRECT.

>> YOU'RE SAYING FROM 1993 TO 1994 THE INSTRUCTION WAS NOT, YOU KNOW, WAS NOT CONFORMING WITH TAYLOR.

SO IN 1994 WHEN THE CHANGE WAS MADE, IS THERE ANY HISTORY AS TO WHY IT WAS MADE IN 1994? WAS IT TO CONFORM TO TAYLOR?

>> MY READING OF THE HISTORY AND THE NOTES FROM THE COMMITTEE REPORT, IT MAY MENTION TAYLOR, BUT BEFORE I GET TO THAT, I THINK THE FIRST PART OF THE QUESTION IS DID THE INSTRUCTION CONFLICT WITH TAYLOR.

I WOULD SUBMIT FOR THE COURT'S CONSIDERATION THAT IT WOULD NOT.

>> I UNDERSTAND YOU SAID THAT TO JUSTICE WELLS, BUT WHAT I'M CONSIDERING IS THAT AFTER TAYLOR CAME OUT IT WOULD APPEAR THAT WHAT HAPPENED IN 1994 WAS, AND AGAIN, WE TRY TO DO TWO THINGS WHICH IS, I AGREE WITH YOU, WHEREVER WE CAN, REALLY, OUR INSTRUCTIONS DO MIRROR STATUTORY ELEMENTS.

AND I THINK YOU KNOW THAT I'VE BEEN VERY MUCH DESIROUS OF THIS. BUT THIS IS A LITTLE DIFFERENT BECAUSE, AGAIN, WE HAD APPARENTLY A CHANGE TO CONFORM TO, ALSO, TO A CASE, OR DO WE KNOW?

DO WE KNOW WHAT THE HISTORY WAS IN 1994?

>> I THINK MR. KROSSCHELL WILL BE ABLE TO ANSWER THAT MUCH BETTER.

HE MADE COMMENTS TO THIS REPORT IN 1993 IN A VERY HELPFUL REPORT HE MADE TO THE COURT REGARDING WHAT HIS VIEW WAS WHEN THE INSTRUCTION WAS AMENDED IN '92 THAT JUST ADDED THAT THE ACT HAD TO BE INTENTIONAL, WHICH IN MY VIEW IS A CLARIFICATION, BUT A GOOD ONE, THAT THAT OMITTED THE INTENT TO KILL, AND HIS MEMORANDUM TO THE COURT THEN AND NOW HAS BEEN, CERTAINLY, VERY HELPFUL TO ME.

QUITE FRANKLY, THE CASE LAW DATES BACK TO 1900.

TAYLOR SAYS THAT THERE'S, THERE CAN BE ATTEMPTED MANSLAUGHTER BECAUSE MANSLAUGHTER CAN INCLUDE OR DOES INCLUDE INTENTIONAL KILLINGS.

THERE IS NO QUESTION THAT THERE IS A LOT OF CASE LAW ABOUT MANSLAUGHTER CONSTITUTING AN

INTENTIONAL KILLING.

THE STATUTE HAS NEVER REQUIRED THAT TO MY KNOWLEDGE EVER.

>> BUT ISN'T IT REALLY WHEN WE LOOK AT MANSLAUGHTER, AREN'T WE REALLY TALKING ABOUT WHAT NEEDS TO BE INTENTIONAL IS THAT THE ACT THAT WAS, THAT IS INTENTIONAL, OR THE PROCUREMENT OF THE ACT HAS TO BE INTENTIONAL, NOT THAT THE RESULT IS INTENTIONAL?

>> I WOULD ABSOLUTELY AGREE WITH THAT, YOUR HONOR.

IN FACT, I THINK IN REVIEWING ALL THESE CASES NOT JUST TAYLOR, YOUR HONOR, BECAUSE YOU'RE RIGHT, AND PERHAPS I DON'T RECALL EXACTLY IF THAT WAS THE IMPETUS IN 1994, BUT CERTAINLY IT COULD HAVE BEEN.

BUT QUITE FRANKLY, IT WAS ALSO PROBABLY IN REFERENCE TO JONAS'S COMMENTS IN THE '94 COMMITTEE REPORTS TO THE OLDER CASE LAW.

>> SO IF YOU AGREE THAT THE ACT OR THE PROCUREMENT HAS TO BE INTENTIONAL, THEN I HATE TO SEE US CHANGING THE LANGUAGE TO KNOWING CONSCIENTIOUSLY.

BECAUSE WHAT HAPPENS IS THEN YOU END UP WITH MORE CASES TRYING TO FIGURE OUT, WHAT DOES THAT EXACTLY MEAN?

WHAT DOES THE TERM "KNOWING" MEAN?

WHAT DOES THE TERM

"CONSCIENTIOUSLY" MEAN?

SO IT SEEMS TO ME THAT THE, IF THERE NEEDS TO BE ANY AMENDMENT TO THIS, THE BETTER AMENDMENT WOULD BE SOMETHING LIKE, "THE DEFENDANT INTENTIONALLY COMMITTED AN ACT THAT CAUSED THE DEATH," OR "THE DEFENDANT INTENTIONALLY PROCURED AN ACT THAT CAUSED THE DEATH" INSTEAD OF CHANGING THE WHOLE LANGUAGE TO THE "KNOWING" AND "CONSCIENTIOUSLY."

>> WELL, I THINK, YOUR HONOR, I THINK OUR, THE COMMITTEE'S PROPOSED INSTRUCTION DOES SAY

THE DEFENDANT INTENTIONALLY
COMMITTED AN ACT.

>> I THOUGHT IT WAS "KNOWINGLY"
OR "CONSCIENTIOUSLY" COMMITTED
THE ACT.

>> I BELIEVE THE EXACT LANGUAGE
IS, I'LL PULL IT.

>> THE LANGUAGE IS THROUGH THE
WORD "INTENTIONALLY" AND
SUBSTITUTE "KNOWINGLY" OR
"CONSCIOUSLY."

>> YEAH, THAT'S WHAT I THOUGHT.
SO I'M JUST WONDERING WHY WE
NEED TO GET TO THIS OTHER
LANGUAGE WHICH, YOU KNOW, IS
PROBABLY GOING TO JUST CREATE
MORE QUESTIONS AND MORE --

>> WELL, I WOULD NOT DISAGREE --
YOU'RE RIGHT, I'M SORRY.

AND I WOULD NOT DISAGREE WITH
YOU THAT A REVISION REGARDING
"COMMITTED AN INTENTIONAL ACT"
IS ADEQUATE AND CERTAINLY
HELPFUL.

I WANTED TO MAKE TWO POINTS, IF
I COULD MAKE SURE I ANSWER
JUSTICE WELLS' QUESTION.

IT IS TRUE THIS IS A PROPOSAL,
AND THERE IS CASE LAW, AND THIS
DOES PRESENT A VERY SIGNIFICANT
ISSUE.

WHAT I WOULD SUBMIT, YOUR HONOR,
IS THE INSTRUCTION FROM
1970-1994 ESSENTIALLY DID NOT
CREATE PROBLEM.

HALL V. STATE, ESSENTIALLY, THEY
TRIED TO RECONCILE THE CURRENT
INSTRUCTION, BUT THE INSTRUCTION
AS PROPOSED WHETHER IT'S
"KNOWINGLY" OR "CONSCIOUSLY" OR
JUST "COMMITTED AN INTENTIONAL
ACT" IS IN LINE WITH THE WAY
HALL EXAMINED THE MANSLAUGHTER
CRIME.

HOWEVER, WHAT THE PROBLEM IS
REGARDLESS OF HOW THIS COURT
DETERMINES TO APPROACH IT, AND I
AGREE IT'S A VERY SERIOUS MATTER
TO LOOK AT THE INSTRUCTION AND
DETERMINE ARE WE ADJUDICATING AN
ISSUE THAT SHOULD BE BROUGHT
THROUGH THE ADVERSARIAL PROCESS?
BUT IN DEFENSE OF THE PROPOSAL,
I WOULD SUBMIT YOU CAN HAVE A

SITUATION WHERE, QUITE FRANKLY, I NOTED THIS IN A SECOND-DEGREE MURDER CASE FROM THE THIRD IN MY MEMORANDUM, I DON'T SEE HOW A JUROR CAN SEE THE DIFFERENCE BETWEEN INTENTIONALLY KILLING AND PREMEDITATED KILLING. THE SIMILARITIES BETWEEN THE CURRENT INSTRUCTION ON FIRST-DEGREE MURDER AND ON MANSLAUGHTER BY ACT ARE ALMOST IDENTICAL.

AND IT IS CONFUSING, AND I WOULD SUBMIT IT CREATES A SITUATION WHERE YOU CAN POSSIBLY HAVE ARBITRARY RESULTS BECAUSE A JURY, A JUROR WOULD GO BACK AND SAY, WAIT A MINUTE, WE HAVE TO FIND HE INTENTIONALLY KILLED HIM OR HER.

BUT FOR FIRST-DEGREE MURDER, WE HAVE TO FIND PREMEDITATION WHICH CAN BE FORMED, THE COURTS HAVE INSTRUCTED US, IN ANY PARTICULAR AMOUNT OF TIME.

WHAT IS THE DIFFERENCE BETWEEN THE CURRENT INSTRUCTION ON MANSLAUGHTER BY ACT AND FIRST-DEGREE MURDER?

NOW, I UNDERSTAND AND I APPRECIATE THE CASES CITED BY THE OPPOSITION, BECAUSE THEY'RE OUT THERE.

AND THIS COURT AND OTHER COURTS OVER THE LAST 100 YEARS HAVE TRIED TO DRAW THAT DISTINCTION, AND I WOULD SUBMIT TO YOU IT'S ALMOST IMPOSSIBLE TO DRAW A DISTINCTION BETWEEN PREMEDITATION THAT REQUIRES NO FIXED TIME TO FORM AN INTENTIONAL KILLING.

THEREFORE, A JURY CAN GO BACK AND SAY, WELL, WE SEE IT WAS AN INTENTIONAL KILLING --

>> THAT'S WHY YOU NEED TO HAVE THE DIFFERENTIATION BETWEEN THE INTENT TO COMMIT THE ACT VERSUS --

>> EXACTLY, YOUR HONOR. OTHERWISE A JURY HAS NO CLEAR GUIDANCE ON A DIFFERENCE BETWEEN A CRIME PUNISHABLE BY DEATH --

>> AND A SECOND-DEGREE FELONY.

>> SPEAK TO THE CULPABLE
NEGLIGENCE.

>> YES, YOUR HONOR.

THAT PROPOSAL WAS MADE IN PART,
CERTAINLY, THINKING THAT THE
DEFINITION OF CULPABLE
NEGLIGENCE WAS SO CLOSE TO
RECKLESS DISREGARD OF HUMAN LIFE
AND DEPRAVED MIND.

THAT LANGUAGE HAD GOTTEN ADDED
OVER THE YEARS, WAS CONFUSING.
THE COMMITTEE DETERMINED IT
WOULD BE A BETTER DEFINITION OF
CULPABLE NEGLIGENCE TO MAKE IT
CLEAR THAT IT IS GROSS, THAT IT
IS CONDUCT WHICH ENDANGERS
LIVES.

>> WAS THE VOTE THE SAME ON THIS
AS 2A, 2B?

>> I DON'T BELIEVE IT WAS.

AS I RECALL IT WAS NOT AS CLOSE
A VOTE, BUT I BELIEVE IT WAS A
DIFFERENT VOTE.

BUT --

>> THERE AGAIN DON'T WE RUN INTO
THE PROBLEM THIS TIME WITH GREEN
OUT OF THIS COURT WHICH HAS
DEFINED CULPABLE NEGLIGENCE AS
RECKLESS INDIFFERENCE OR GROSSLY
CARELESS DISREGARD OF THE SAFETY
OF OTHERS?

AND ECHOING JUSTICE QUINCE'S
STATEMENT, EVERY TIME WE CHANGE
SOMETHING, WE ARE DOWN THE ROAD
FOR TEN YEARS ON WHAT IT MEANS.

>> YES, YOUR HONOR, BUT THEN
THAT HAS EVOLVED AS THE REPORT,
I THINK VERY APTLY AND ABLY,
NOTED THE EVOLUTION OF THE
CULPABLE NEGLIGENCE INSTRUCTION.

AND AGAIN I THINK THE FOCUS
COULD BE HERE THAT'S HELPFUL TO
THE COURT IS THIS IS NOT AN
INSTRUCTION WHEREBY YOU TELL
TRIAL COURTS THIS IS
AUTOMATICALLY APPROVED, AND
THERE WILL BE NO ERROR IF YOU
GIVE IT.

WE KNOW THAT YOU WARN COURTS
THERE MAY BE SPECIAL
INSTRUCTIONS REQUESTED.

YOU HAVE TO DETERMINE IT, AND IF
THE THEORY OF THE DEFENSE

REQUIRES, YOU MAY HAVE TO GIVE SPECIAL INSTRUCTION.

BUT IN TERMS OF CLARITY AND HOW A JURY CAN FOLLOW THE DIFFERENCE, AGAIN, I THINK THE JUSTIFICATION IS THE DIFFERENCES BETWEEN THE DEGREES OF MURDER, AND THE CULPABLE NEGLIGENCE STANDARD OR THE PROPOSAL THE COMMITTEE MADE IS BETTER, RESPECTFULLY SUBMITTED, TO KEEP THAT DIFFERENT THAN SECOND-DEGREE MURDER.

I WOULD DEFER TO THE COURT'S WISDOM IN TERMS OF --

>> BUT YOU HAVE TO AGREE, I MEAN, WE REALLY HAVE COME TO THE PLACE IN FLORIDA, THE TRIAL JUDGES, IF THERE IS A STANDARD INSTRUCTION THAT COVERS A SUBJECT MATTER AREA, THEY REALLY STEER CLEAR OF SPECIAL JURY INSTRUCTIONS.

I MEAN, WE REALLY HAVE EVOLVED TO THAT POINT.

>> YES, YOUR HONOR, THEY ARE WARY OF THAT.

OUR COURT IN A CASE NOTED IN THE OPPONENT'S COMMENTS, FOR EXAMPLE, REVERSED AND REMANDED WHERE INSTRUCTION ON HEAT OF PASSION WAS NOT GIVEN.

BUT WE CANNOT CRAFT A PERFECT INSTRUCTION.

CERTAINLY THE INSTRUCTION PROPOSED TO YOU ON MANSLAUGHTER BY ACT MAY NOT BE PERFECT.

IN FACT, JUSTICE QUINCE, AS I NOTED, I CERTAINLY APPRECIATE YOUR SUGGESTION, BUT IT'S CLEAR. AND I THANK YOU FOR YOUR TIME.

>> RESPONSE?

>> IN 1990 TOWARD THE END OF MY CAREER AS A PUBLIC DEFENDER I FILED OBJECTION TO THE REPORT FROM THE COMMITTEE ON THE GROUND THAT THE INSTRUCTION ON VOLUNTARY MANSLAUGHTER DID NOT INCLUDE AN ELEMENT OF AN INTENT TO KILL.

THE COMMITTEE AGREED WITH ME AND ADDED THAT ELEMENT TO THE

INSTRUCTION, AND THIS COURT
ADOPTED THAT INSTRUCTION, AND
THAT'S THE WAY IT'S BEEN EVER
SINCE.

>> WHAT IS, THOUGH, AND WE MAY
HAVE CONFLICT WITH THE LAW,
BUT WHAT IS THE DIFFERENCE THAT
THE JURY UNDERSTANDS BETWEEN
FIRST-DEGREE AND PREMEDITATED
MURDER AND MANSLAUGHTER BY ACT?
ISN'T THE DIFFERENCE THAT ONE IS
THE INTENT TO KILL, AND THE
OTHER IS THE INTENT TO DO AN ACT
OR NOT?

GIVE US, YOU KNOW, YOUR, YOUR
VIEW OF THE DIFFERENCE.

SAY THERE ARE NO JURY
INSTRUCTIONS.

YOU'RE JUST ARGUING HERE'S WHY
THEY SHOULD BE GUILTY OF
MANSLAUGHTER, NOT FIRST-DEGREE
MURDER.

>> OKAY, WELL, I HAVE TWO
ANSWERS TO THAT.

THE FIRST ONE IS THAT'S BEEN
LITIGATED REPEATEDLY OVER 100
YEARS, AND THIS COURT AS I'VE
SAID, REPEATEDLY, THERE'S A
DIFFERENCE BETWEEN PREMEDITATION
AND INTENT, SIMPLE INTENT.

>> BUT AREN'T WE REALLY TALKING
ABOUT, FOR EXAMPLE, IF I SAY I
INTENTIONALLY PUNCHED YOU.
I DIDN'T INTEND TO KILL YOU BUT
YOU DO DIE FROM THAT, THAT'S
MANSLAUGHTER.

THAT WOULDN'T BE FIRST-DEGREE
MURDER, WOULD IT?

SO IT'S THE ACT THAT I COMMITTED
OF PUNCHING YOU THAT FORMS THE
BASIS FOR MANSLAUGHTER
PROSECUTION, WOULDN'T IT?

>> WELL, I BELIEVE THE COURT HAS
DECIDED THAT QUESTION.

I MEAN, IN THE CASE I CITED OF
STOKES, THIS COURT SAID, "A
PERSON MUST HAVE A DISTINCT AND
CONSCIOUS INTENT TO KILL TO BE
GUILTY OF MANSLAUGHTER."

>> AND WHERE ARE YOU, WHAT CASE
ARE YOU QUOTING FROM?

>> THAT'S FROM 1907, IT'S A CASE
CALLED STOKES, AND I CITED IT AS

FEDERAL AUTHORITY.

>> WAS THERE A STATUTE AT THAT TIME?

>> THEY'RE TALKING ABOUT THE SAME STATUTORY TEXT.

IT HASN'T --

>> IT HASN'T CHANGED SINCE 1907.

>> IT HAS NOT CHANGED -- PARDON ME?

>> HOW IS MANSLAUGHTER DEFINED IN THE STATUTE?

>> WELL, IT'S SIMPLY "THE ACT OF PROCUREMENT OR CULPABLE NEGLIGENCE," AND THEN SOME OTHER TEXT, BUT THAT'S THE MAIN THING. ALSO HAPPENS TO HAVE "NOT JUST THE VIOLENCE IS EXCUSABLE."

>> BUT IT DOES NOT USE THE WORD "INTENT."

>> NO.

AND IT NEVER HAS.

THE PRIMARY MOTIVE FOR THE COMMITTEE IS THEY WANT TO TRACK THE STATUTE.

BUT, YOU KNOW, THE COMMITTEE ITSELF IS ADDING THE MENS REA BY --

>> THEY'RE PUTTING IN ALSO THE WORD, AS I SEE IT, THEY'RE ALSO PUTTING IN "COMMITTED AN ACT," WHICH IS LANGUAGE THAT WAS NOT IN THE INSTRUCTION BEFORE.

WHAT THEY'RE SAYING IS "KNOWINGLY" OR "CONSCIOUSLY COMMITTED AN ACT," WHICH IS LANGUAGE THAT WAS NOT THERE BEFORE.

THE LANGUAGE THERE BEFORE SAID "INTENTIONALLY CAUSED THE DEATH," AND THERE'S A REAL DIFFERENCE BETWEEN INTENTIONALLY CAUSING THE DEATH AND INTENTIONALLY COMMITTING AN ACT.

>> WELL, THERE IS A REAL DIFFERENCE.

THE FIRST ONE IS CORRECT, AND THE SECOND ONE IS WRONG.

>> SO, AGAIN, I WANT TO UNDERSTAND YOU WITH THE CHANGE IN 1994.

DO YOU AGREE WITH JUDGE THOMAS THAT BEFORE 1994 THE INSTRUCTION DID NOT INCLUDE AN INTENT TO KILL?

>> THAT'S CORRECT.

>> OKAY.

SO WHATEVER WE SAID IN 1907 UP THROUGH 1994 THERE WASN'T AN "INTENT TO KILL" INCLUDED IN THE INSTRUCTION.

>> THE INSTRUCTION DIDN'T, JUST SIMPLY DIDN'T ADDRESS THAT ISSUE.

>> OKAY.

NOW 1994 THIS COURT -- THE ARGUMENT YOU MADE WAS THAT THE STATUTE REQUIRES IT, THE LAW REQUIRES IT, OR WHAT WAS BEFORE THE COURT AS TO WHY WE WERE CONSCIOUS, WE WERE INTENTIONALLY CHANGING THE INSTRUCTIONS? IN 1994?

>> OKAY, WELL, I STATED A LOT OF CASE LAW --

>> WHAT YOU'RE SAYING IS NOTHING HAS CHANGED FROM THIS COURT'S LAW THAT AT THIS POINT WOULD CAUSE US, AT LEAST IN A JURY INSTRUCTION CASE, TO CHANGE IT BACK?

>> CORRECT.

>> AND THERE WAS NO NEW CASE LAW THAT REQUIRED THE CHANGE IN '94 THEN?

THE CHANGE IN '94 WASN'T BASED UPON A RECENT DECISION?

>> I'M SORRY, THE CHANGE IN '94 WAS NOT WHAT?

>> WAS NOT, IT WAS BASED ON OLD LAW, THERE WAS NO NEW CHANGE IN THE LAW THAT CAUSED A CHANGE IN THE OLDER, THE '92 INSTRUCTION?

>> IT WAS A, IT WAS A CORRECTION OF THE OLD INSTRUCTION TO REFLECT WHAT THE LAW WAS.

OKAY.

NOW, I MEAN, I GUESS WE'RE TALKING ABOUT LANGUAGE THAT'S REALLY OLD HERE.

I MEAN, THIS LANGUAGE WAS FIRST ADOPTED IN 1892, AND THE ACT AND PROCUREMENT PART OF IT WAS 1868. AND SO NOWADAYS WE ADOPT A NEW STATUTE, WE PULL IT OVER THE TEXT, AND ANALYZE EACH WORD. WELL, THEY DIDN'T DO THAT 100

YEARS AGO.

>> I DON'T BELIEVE THAT I REALLY UNDERSTOOD YOUR ANSWER TO THE EARLIER QUESTION ABOUT WHAT, THEN, DISTINGUISHES THIS INSTRUCTION?

IF WE KEEP IT THE WAY IT IS, "INTENTIONALLY CAUSED THE DEATH OF THE VICTIM," IF WE KEEP THAT THE WAY IT IS, WHAT REALLY DISTINGUISHES IT FROM FIRST-DEGREE MURDER?

>> WELL, THE ELEMENT OF PREMEDITATION.

AND THEN THE OTHER THING I WOULD SAY IS THAT --

>> AND PREMEDITATION IN FIRST-DEGREE MURDER CONTEXT IS THE INTENT.

>> WELL, I THINK THIS COURT HAS REPEATEDLY STATED THAT PREMEDITATION IS MORE THAN SIMPLE INTENT.

IT'S SAID THAT FOR OVER 100 YEARS.

YOU READ THE CASES OF THE 1900s, THEY STRUGGLED WITH THAT.

THAT'S BEEN THE LAW EVER SINCE.

>> BUT AGAIN, THE FOCUS OF THE STRUGGLE IS THE DIFFERENTIATION BETWEEN INTENT TO CAUSE THE SPECIFIC ACT AS OPPOSED TO THE INTENT TO CAUSE THE DEATH. ISN'T THAT TRUE?

>> YES.

I MEAN, THEY, YOU KNOW, THE CASE THAT I CITED, THEY EXPRESSLY SAID THAT.

YOU KNOW, VOLUNTARY MANSLAUGHTER'S AN INTENTIONAL KILLING IN THE HEAT OF PASSION.

>> IS THE HALL DECISION CONSISTENT WITH THAT CASE LAW?

>> HALL IS WRONG.

>> ON WHAT BASIS?

>> HALL IS WRONG IN THAT YOU DON'T HAVE TO HAVE AN INTENT TO KILL.

IT ALL CONFLICTS WITH BARTON WHICH SAYS YOU DON'T HAVE AN INTENT TO KILL.

>> WELL, WITH -- I'M CONFUSED.

DO YOU AGREE OR DISAGREE THAT THE INTENT FOR MANSLAUGHTER IS THE INTENT TO CAUSE THE ACT AND NOT THE SPECIFIC INTENT TO CAUSE A DEATH?

>> A SPECIFIC INTENT TO CAUSE A DEATH.

I AGREE THAT I SAY IT REQUIRES A SPECIFIC INTENT TO CAUSE A DEATH OR AT LEAST SOMETHING REALLY SERIOUS.

>> HOW'S THAT DIFFERENT FROM PREMEDITATION?

>> WELL --

>> I MEAN, IF IT'S A FULLY-FORMED CONSCIOUS INTENT TO --

>> PREMEDITATION IS AN ACT OF REFLECTION, SOMETHING MORE THAN SIMPLE INTENT.

>> NOT QUITE A FULLY-FORMED CONSCIOUS INTENT?

I'M JUST CONFUSED.

>> I MEAN, I DON'T KNOW HOW TO SAY IT ANY DIFFERENTLY.

PREMEDITATION IS MORE THAN INTENT.

THIS COURT SAID THAT REPEATEDLY.

>> WHEN A JURY'S INSTRUCTED ON THAT DIFFERENTIATION THAT I'M NOT CLEAR ABOUT, ARE THEY GIVEN A DIFFERENT INSTRUCTION FOR THE INTENT ELEMENT IN MANSLAUGHTER?

LET'S SAY IT'S A LESSER-INCLUDED OFFENSE, WHAT'S THE DIFFERENCE IN THE INSTRUCTIONAL AND THE INTENT ELEMENT FROM PREMEDITATION TO FIRST-DEGREE MURDER AND INTENT IN MANSLAUGHTER?

>> THE DIFFERENCE IS THE ELEMENT OF PREMEDITATION.

I DON'T KNOW HOW --

>> SO THE JURY IS NOT INSTRUCTED HOW TO DIFFERENTIATE BETWEEN THE TWO, CORRECT?

>> I BELIEVE THE JURY IS INSTRUCTED ON PREMEDITATION.

I MEAN, WHEN YOU GET A FIRST-DEGREE MURDER CHARGE, YOU DO GET THAT.

>> SO YOU DON'T AGREE THAT

THERE'S A BASIS FOR DISTINCTION IN THE LAW BETWEEN MANSLAUGHTER THAT WE'RE TALKING ABOUT HERE AND PREMEDITATED, FIRST-DEGREE MURDER ON THE BASIS THAT IN THE FORMER, THE MANSLAUGHTER SITUATION, THAT THERE MAY BE AN INTENT TO COMMIT AN ACT WITHOUT AN INTENT TO KILL, BUT IN THE LATTER, THE FIRST-DEGREE MURDER, THERE IS A FULLY-FORMED PREMEDITATED INTENT TO KILL. DO YOU BELIEVE THAT IN BOTH MANSLAUGHTER AND FIRST-DEGREE MURDER THAT THERE IS AN ELEMENT OF AN INTENT TO KILL, IS THAT CORRECT?

>> THAT'S CORRECT.

AND THEN FIRST-DEGREE MURDER HAS AN ADDITIONAL ELEMENT OF PREMEDITATION.

>> YEAH.

SO OTHER THAN THIS RATHER SOPHISTICATED ASPECT THAT I ASSUME THAT WE THINK LAY JURIES ARE GOING TO FIGURE OUT ABOUT HOW LONG YOU HAD THIS INTENT THERE'S REALLY NO DIFFERENCE.

>> I THINK, I THINK THERE IS A DIFFERENCE.

>> YOU'RE TALKING ABOUT THIS FULLY-CONSCIOUS WHATEVER.

ALL THAT IS IS A SORT OF AN OPPORTUNITY THERE THAT IS RATHER MURKY OF HOW LONG YOU'VE HAD THAT INTENT.

ISN'T IT?

WOULD YOU AGREE?

>> IT'S RATHER MURKY, YES.

>> SO HOW IN THE WORLD IS A LAY JURY, IF WE ACCEPT YOUR DEFINITION OF THESE TWO OFFENSES, HOW IN THE WORLD IS A LAY JURY WITH THE INSTRUCTIONS THAT WE HAVE GOING TO UNDERSTAND THIS DISTINCTION?

>> WELL, I THINK A LAY JUROR UNDERSTANDS THE DIFFERENCE BETWEEN INTENDED TO DO SOMETHING AND THINKING ABOUT DOING IT.

>> SO IF WE DISAGREED IN TERMS OF THE DEFINITION OF MANSLAUGHTER AND INSTEAD

EXPLAINED IT IN TERMS THAT JUSTICE QUINCE HAS BEEN TALKING ABOUT AND THAT IS THE COMMISSION OF THE ACT, OKAY, THAT THEN MAY RESULT IN REALLY AN UNINTENTIONAL KILLING, OKAY? THEN THE INSTRUCTIONS WOULD NEED TO BE CHANGED, WOULD THEY NOT? ASSUMING WE DISAGREED, AND WE FELT THAT THE LAW WAS CLEAR ON THAT.

>> I THINK LAW, THE INSTRUCTION WOULD BE CLEAR.

IT SHOULD BE CLARIFIED IF THAT'S WHAT YOU CONCLUDED.

I WANTED TO GET TO THE HEAT OF PASSION.

THAT'S WHAT MANSLAUGHTER IS, VOLUNTARY MANSLAUGHTER IS, HEAT OF PASSION.

THEY SAY EVEN THOUGH YOU MAY HAVE HAD SOME INTENT --

>> WELL, IT'S OBVIOUS THAT THE LAW'S PRETTY MURKY ALL THE WAY AROUND BECAUSE WE HAVE ANOTHER CONCEPT, OF COURSE, IN THE LAW THAT SAYS YOU'RE PRESUMED TO KNOW THE CONSEQUENCES OF ACTS THAT YOU COMMIT INTENTIONALLY. SO IT'S VERY EASY TO GO OFF IN CIRCLES, YOU KNOW, ABOUT THE WHOLE THING.

JUST AS IT IS ON THE OTHER POINT WITH REFERENCE TO MIXING UP WHAT WE DO IN FIRST-DEGREE MURDER SOMETIMES WITH THIS IDEA OF RECKLESS DISREGARD EQUALLING, REALLY, THE CIRCUMSTANCES OF MANSLAUGHTER.

THAT IS THAT IT ALMOST LOOKS LIKE THE QUALIFIER WE USE FOR ALLOWING THE DEATH PENALTY IN BROADENING IT BY THAT RECKLESS DISREGARD ALL THE WAY TO A MANSLAUGHTER OFFENSE.

SO WE'VE GOT A LOT OF MUDDLED SITUATIONS OUT THERE.

HEAVEN HELP THE POOR JURORS THAT HAVE TO DEAL WITH THIS.

AS A COMMENT, NOT A --

>> I BELIEVE THERE ARE SOME FINE DISTINCTIONS TO BE MADE, BUT I'M SIMPLY ATTEMPTING TO SAY WHAT THIS COURT HAS SAID.

>> WITH THAT, YOU'VE ALMOST DOUBLED YOUR TIME, SO LET'S LET MR. DILLINGER HAVE AN OPPORTUNITY WELL BEYOND THE TIME ALLOTTED.
THANK YOU.

>> GOOD MORNING, YOUR HONORS. BOB DILLINGER, PUBLIC DEFENDER FOR THE SIXTH CIRCUIT APPEARING ON BEHALF OF THE PUBLIC DEFENDERS' ASSOCIATION. AND WE ARE ONLY HERE ON THE CULPABLE NEGLIGENCE ASPECT OF THIS ARGUMENT.

THE VERY SIMPLE ASPECT OF IT IS IF --

>> DO YOU AGREE, THEN, WITH THE COMMITTEE THAT THE CHANGE SHOULD BE MADE FOR THE MANSLAUGHTER INSTRUCTIONS?

>> WELL, WITH DUE DEFERENCE TO THE OTHER DEFENSE COUNSEL, JUDGE, OUR BELIEF WITHIN THE ASSOCIATION AND WITH THE APPELLATE LAWYERS WAS IT WAS AN INTENTIONAL ACT THAT RESULTED IN AN UNINTENDED DEATH.

>> SO THAT WE WOULD BE CLARIFYING WHAT THE LAW IS AND MAKING A MEANINGFUL DISTINCTION.

>> THAT'S THE WAY WE VIEWED MANSLAUGHTER.

>> SO YOUR VIEW IS IN ACCORD WITH HALL --

>> THAT WOULD BE IN ACCORD WITH HALL --

>> AS OPPOSED TO --

>> JUDGE THOMAS --

>> DO YOU THINK HALL CONFLICTS WITH TAYLOR?

>> PARDON?

>> DO YOU THINK HALL CONFLICTS WITH TAYLOR?

>> I REALLY DON'T BECAUSE OF THE CONCEPT WITH THE INTENT TO COMMIT MANSLAUGHTER.

THAT IS AN INTENTIONAL TYPE OF ACT WHICH WE DON'T HAVE ANYMORE. SO THEY WERE ANALYZING SOMETHING WITH A DIFFERENT BASELINE.

>> WELL, THEY WERE ALSO LOOKING AT ATTEMPTED MANSLAUGHTER, WHICH

YOU'LL HAVE A DIFFERENT ISSUE
THERE TO ME THAN MANSLAUGHTER,
TRYING TO FIGURE OUT WHERE THE
INTENT IS BECAUSE YOU CAN'T HAVE
AN ATTEMPT OF SOMETHING THAT
DOESN'T HAVE A MENS REA.

>> AND I THINK WE WANT CLEAR
JURY INSTRUCTIONS.

I DON'T VIEW, AND THE
ASSOCIATION DOESN'T VIEW, THE
CULPABLE NEGLIGENCE PART --

>> I JUST WANT TO GO BACK, AND I
KNOW YOU'RE NOT HERE FOR IT,
BECAUSE WE NEED TO DO THE
CORRECT THING.

I COULD SEE THE CLARIFICATION
HELPING A DEFENSE LAWYER TO SAY,
LISTEN, THE ONLY THING HE
INTENDED TO DO WAS PUNCH THE GUY
OUT.

HE DIDN'T INTEND TO KILL HIM.
WE'D ASK YOU TO FIND HIM OR HER
GUILTY OF MANSLAUGHTER, NOT OF
FIRST-DEGREE MURDER.

>> AND IT WOULD BE.
IT MAKES IT VERY DIFFICULT TO
DEAL WITH A CLIENT WHO SAYS, I
JUST PUNCHED HIM.

HE FELL DOWN AND HE DIED.
AND THAT SAYS, I DIDN'T TRY TO
INTENTIONALLY KILL HIM, SO WE
MUST GO TO TRIAL.

>> OKAY.

GO BACK ON THE CULPABLE
NEGLIGENCE.

>> THE OTHER ASPECT, THOUGH, IS
I'M ON CRIMINAL RULES COMMITTEE
AND HAVE BEEN IN THE PAST.
WE NEVER GENERATE OUR OWN RULES,
AND I DIDN'T KNOW WE COULD DO
THAT.

NORMALLY, IT'S EITHER BROUGHT TO
US BY THE COURT, OR AN APPELLATE
OPINION THAT SAYS THIS NEEDS TO
BE LOOKED AT.

I DIDN'T KNOW WE COULD MAKE
UP --

>> WE'D BE DELIGHTED FOR YOU
GUYS TO HELP US OUT FROM TIME TO
TIME.

>> ON THE CULPABLE --

>> SPEAKING FOR ME FROM MY POINT

OF VIEW.

USUALLY WHAT WE DO, WE SEND SOMETHING TO THEM, THEY'RE SPLIT, THEY'RE DEADLOCKED, AND NOTHING EVER CHANGES.

>> THAT DOES SEEM TO HAPPEN AT TIMES.

BUT AS TO THE CULPABLE NEGLIGENCE PART, WE REALLY -- I KNOW THAT JUDGE THOMAS INDICATES THAT JURORS MUST BE CONFUSED. WE HAVE NO RECORD OF SUPPORT FOR THAT, AND THAT'S WHY I THINK IF IT CAME THROUGH THE ADVERSARIAL PROCESS, FILED SPECIAL JURY INSTRUCTIONS, THEY'RE DENIED BECAUSE THE COURT WANTS TO USE THE STANDARDS, THEY CROSS-APPEAL, IT GOES TO THE DCA, AND THE DCA ANALYZES THESE TYPES OF THINGS.

OR IF IT WAS A DEATH CASE, THE SUPREME COURT WOULD DO THAT. I DO THINK IT IS GOOD TO VENT THIS IN AN ADVERSARIAL MANNER. THEY INDICATE, THE COMMITTEE REPORT INDICATES THAT, YOU KNOW, DEPRAVED MIND AND RECKLESS DISREGARD ARE TOO CONFUSING. WE SIMPLY SUBMIT THEY'RE REALLY NOT.

A DEPRAVED MIND, I THINK PEOPLE THINK OF AS A LITTLE BIT MORE THAN RECKLESS DISREGARD. WE DON'T BELIEVE THAT PART SHOULD BE DELETED FROM THE STATUTE.

>> DOESN'T IT SAY, LIKE, THERE SEEMS TO BE A WHOLE LOT IN THERE THAT COULD BE CONFUSED. IS THERE A WAY TO PARE IT DOWN MORE?

WHAT IS, YOU KNOW, RECKLESS HUMAN LIFE EXPOSED TO DANGEROUS EFFECTS OR SUCH AN ENTIRE WANT OF CARE AS TO RAISE A PRESUMPTION OF CONSCIOUS --

>> WELL, I THINK THEY REALLY DO NOT WANT, AND TO GO BACK ALMOST THE COMMON LAW WHERE IF YOU KILLED SOMEBODY REGARDLESS OF IF IT WAS A TOTAL ACCIDENT OR NOT YOU WERE NEGLIGENT, YOU WERE PUNISHED.

AND I THINK THEY STRESS IT OVER
AND OVER AGAIN TO MAKE SURE
WE'RE NOT CONVICTING PEOPLE OF A
CRIME FOR A NEGLIGENT ACT.
AND THAT'S WHY WHEN THEY START
TALKING TO TAKE OUT THE RECKLESS
DISREGARD OF -- THOSE ARE THINGS
THAT, I THINK, A REGULAR JURY
CAN UNDERSTAND.

OR A PRESUMPTION OF A CONSCIOUS
INDIFFERENCE TO THE
CONSEQUENCES.

YOU HIT SOMEBODY, AND YOU DIDN'T
CARE IF THEY FELL DOWN OR NOT.
THOSE TYPE THINGS I THINK
REGULAR JURORS CAN UNDERSTAND
AND UNDERSTAND IT'S MORE THAN
JUST, OOPS.

YOU KNOW?

AND THAT YOU'RE SUDDENLY
CONVICTED OF MANSLAUGHTER.

>> WELL, IS THERE, IN YOUR
EXPERIENCE OUT THERE IN RESPECT
TO THE PRESENT INSTRUCTION,
ARGUMENTS MADE THAT THE, THAT
THE INSTRUCTION DOES NOT FOLLOW
THE CASE LAW?

>> ON THE CULPABLE NEGLIGENCE,
YOUR HONOR, I HAVE NOT HEARD
THAT.

THIS INSTRUCTION'S BEEN THERE
SINCE 1985.

IF IT WAS A PERSON, IT'D BE OLD
ENOUGH TO DRINK BY NOW, AND
THERE HAVEN'T BEEN ANY SERIOUS
LITIGATION OVER THIS OR CONCERN
THAT THIS INSTRUCTION IS
MISLEADING OR BEYOND THE COME
PREHENCE OF --

>> WELL, YOU KNOW, THE PROBLEM,
I GUESS, AND THIS IS MORE A
PHILOSOPHICAL THING, REMEMBER
WHEN THERE WAS AN ATTEMPT TO
CHANGE THE REASONABLE DOUBT
INSTRUCTION, TO MAKE IT
SOMETHING THAT A JURY COULD
UNDERSTAND?

-- OF A CRIME FOR A NEGLIGENT
ACT.

THAT IS WHY WHEN THEY START
TALKING TO TAKE OUT THE
RECKLESS DISREGARD OF HUMAN LIFE
FOR THE SAFETY OF PERSONS EXPOSED TO

DANGEROUS EFFECTS THOSE ARE THINGS THAT I THINK A REGULAR JURY, AN UNDERSTANDING OR PRESUMPTION OF A COPIOUS INDIFFERENCE TO THE CONSEQUENCES, YOU HIT SOMEBODY, DIDN'T CARE IF THEY FELL DOWN OR NOT.

THOSE TYPE THINGS I THINK REGULAR JURORS CAN UNDERSTAND, IT IS MORE THAN JUST WHOOPS, YOU KNOW, AND THAT YOU ARE SUDDENLY CONVICTED OF MANSLAUGHTER.

>> IS THERE IN YOUR EXPERIENCE OUT THERE IN RESPECT TO THE PRESENT INSTRUCTION ARGUMENTS MADE THAT THAT INSTRUCTION DOES NOT FOLLOW THE CASE LAW?
>> ON THE CULPABLE NEGLIGENCE, YOUR HONOR, I HAVE NOT HEARD THAT. THIS INSTRUCTION HAS BEEN THERE SINCE 1985, IF IT WAS A PERSON IT WOULD BE OLD ENOUGH TO DRINK BY NOW.

AND THERE HAVEN'T -- SIMPLY HASN'T BEEN ANY SERIOUS LITIGATION OVER THIS, OR CONCERN THAT THIS INSTRUCTION IS MISLEADING OR BEYOND COMPREHENSION OF --

>> THE PROBLEM I GUESS IS MORE A PHILOSOPHICAL THING.

I REMEMBER WHERE THERE WAS AN ATTEMPT TO CHANGE THE REASONABLE DOUBT INSTRUCTION, TO MAKE IT SOMETHING THAT A JURY COULD UNDERSTAND.

AND IT SEEMED TO ME THAT THE PROPOSAL, I FORGET WHO MADE THE PROPOSAL, MADE REASONABILITY DOUBT MUCH MORE UNDERSTANDABLE.

I REMEMBER JUSTICE WAS HERE, BASICALLY SAYS WHAT SOME OF US THINK -- IT IS IF SOMETHING IS WORKING LET'S NOT CHANGE IT. OTHERWISE WE'LL HAVE A LITIGATION.

SO DON'T WE SOMETIMES HAVE AN OBLIGATION TO MAKE SURE THAT WHAT IS BEING INSTRUCTED ON IS UNDERSTANDABLE TO AN ORDINARY JURY AND USE OUR COMMON SENSE ON THAT?

>> I WOULD AGREE, AND I WOULD --
I'VE BEEN THROUGH SEVERAL
REASONABLE DOUBT INSTRUCTIONS
SINCE 1975 IN MY CAREER, AND
THE THING THAT STANDS OUT ON THE
REASONABLE DOUBT INSTRUCTION IS
YOU DON'T DEFINE IT, YOU SAY WHAT
IT IS NOT,
WHICH -- IS ALWAYS SOMEWHAT OF
INTRIGUING.
REASONABLE DOUBT IS NOT THIS,
IT IS NOT THAT, WE
DON'T EVER SAY THIS.

>> SO THAT MAYBE TO CHANGE IT AGAIN
-- WHAT ABOUT THE LAST LINE
"INDIFFERENCE TO RIGHTS OF OTHERS
AS EQUIVALENT TO INTENTIONAL
VIOLATION OF THE RIGHTS"?

>> THAT WOULD BE CONFUSING.

>> SO THERE MIGHT BE -- THAT IS
WHAT I'M SAYING. THERE MIGHT BE
PARTS OF THAT THAT.
YOUR MAIN CONCERN IS IT PART THAT
TALKS ABOUT RECKLESS DISREGARD
OF HUMAN LIFE OR SAFETY OF THE
PERSON?

>> THAT IS CORRECT, AND I
CLARIFIED WITH JUDGE TERRELL
THIS MORNING, I WAS A LITTLE CONFUSED
AT TIMES, ABOUT THE SECOND
PARAGRAPH.
OF THE CULPABLE NEGLIGENCE, WHETHER
THEY REALLY INTENDED TO DELETE
IT OR NOT, AND I WAS INFORMED
THEY DO.

WE THINK THAT SHOULD STAY IN.

>> YOU KNOW, MY -- I WILL JUST
SAY THIS FOR THE BENEFIT OF
PEOPLE WORKING ON THESE THAT IT
SEEMS TO ME THAT WHERE WE CAN --
THE STANDARD JURY INSTRUCTION REALLY
COMES DOWN TO THE FACT THAT WE
ARE INSTRUCTING THE JURIES AS TO
WHAT THE LAW IS, THE LAW COMES
FROM TWO SOURCES.

ONE, STATUTE, THE SECOND CASE LAW
THAT IS DETERMINING FACTOR AS TO
WHETHER YOU ARE TELLING THE JURY
SOMETHING THAT THE CASES HAVE
HELD OUT THERE, AS LIKE
REASONABLE DOUBT, THAT SORT OF AN
AMORPHOUS THING FLOATS AROUND
FROM CASE TO CASE.
BUT WHEN YOU HAVE GOT SOMETHING

LIKE THIS YOU HAVE GOT TO STICK AS CLOSE AS YOU CAN TO CASE LAW BECAUSE THAT IS WHAT THE LAW IS. >> I FULLY AGREE, THAT I THINK WAS ONE OF THE REASONS WE SAID WE NEEDED TO MAKE SURE WE ALWAYS HAD UP-TO-DATE JURY INSTRUCTIONS BECAUSE WE ARE ON A CYCLE THAT CHANGES THEM MORE FREQUENTLY THAN WEST PRINCETON.

>> ONCE A MONTH.

>> THAT IS WHY I THINK WE WENT TO THE WEB SITE, WHICH I THINK HELPS EVERYBODY.

BUT, CLEARLY, THE JURY INSTRUCTIONS NEED TO BE AN ACCURATE REFLECTION OF THE LAW IN NEUTRAL LANGUAGE.

WE THINK SOME OF THIS MAKES IT A LITTLE LESS NEUTRAL.

AND SOME OF IT MAY BE A BIT -- I DON'T WANT TO SAY MISLEADING -- IT MAY NOT BE AS NEUTRAL AS IT COULD BE.

AND THAT IS PRETTY MUCH IT.

>> THANK YOU VERY MUCH.

>> THANK YOU.

>> COURT REBUTTAL, ANY REBUTTAL?

>> WHAT IS YOUR RESPONSE TO MR. KROSSCHELL'S ARGUMENT TO US?

>> THIS HAS BEEN IN CASE LAW SINCE TIME BEGAN.

>> EXCUSE ME.

MY RESPONSE IS HIS CASE LAW ANALYSIS HAS BEEN VERY HELPFUL, I HAVE READ ALL THOSE CASES, I REREAD MOST OF THEM, I DON'T BELIEVE A JURY CAN DISTINGUISH BETWEEN FIRST-DEGREE MURDER AND MANSLAUGHTER BY ACT, BY THE MYRIAD OF STATEMENTS BY THE COURT REGARDING THE DIFFERENCE, AND I BELIEVE THAT IT IS CLEAR UNDER HALL AND OTHER CASES, LIKE HALL THAT THE ACT, FOR EXAMPLE, OF PUNCHING A DISARMED, UNARMED UNSUSPECTING VICTIM RESULTING IN DEATH IS MANSLAUGHTER, AND AS JUSTICE PARIENTE NOTED, I BELIEVE IT COULD RESULT IN A MISCARRIAGE OF JUSTICE IN THE JURY ROOM IF A JURY DECIDES,

WELL, WE THINK IT MIGHT BE
MANSLAUGHTER.

BUT, LOOK, THAT
REQUIRED INTENTIONAL KILLING.
SHOOT, THAT IS FIRST-DEGREE
MURDER.

YOU COULD HAVE A VERDICT
FOR FIRST-DEGREE MURDER BECAUSE
A JURY DETERMINED IT'S SAME AS
MANSLAUGHTER.

I CANNOT GO THE
OTHER WAY, OBVIOUSLY.
I HAVE STUDIOUSLY READ
THOSE CASES BUT I DO NOT
DISAGREE, AND THAT IS WHY I
APPRECIATE HIS REPORT, THEY ARE
THERE.

BUT I DO BELIEVE A BETTER
INSTRUCTION IF I -- MAY I HAVE A MOMENT,
YOUR HONOR?

IF NOT, THAT IS FINE.

BUT IF YOU WOULD LIKE TO HEAR
THE DEFINITION OF PREMEDITATION.

>> CERTAINLY.

>> IT JUST MIGHT BE
HELPFUL.

>> ENLIGHTEN US.

>> EXCUSE ME?

>> ENLIGHTEN US.

>> WELL, I JUST THOUGHT IT MIGHT BE
HELPFUL THERE WERE SEVERAL
QUESTIONS.

AN ACT INCLUDING, WELL, KILLING
WITH PREMEDITATION IS KILLING
AFTER CONSCIOUSLY DECIDING TO DO
SO, THE DECISION MUST BE PRESENT
IN THE MIND AT THE TIME OF THE
KILLING, THE LAW DOES NOT FIX
THE EXACT PERIOD OF TIME THAT
MUST PASS BETWEEN FORMATION OF
THE PREMEDITATED INTENT TO KILL
AND THE KILLING, THE PERIOD OF
TIME MUST BE LONG ENOUGH TO
ALLOW REFLECTION BY THE DEFENDANT,
THE PREMEDITATED INTENT TO KILL
MUST BE FORMED BEFORE THE
KILLING.

THE QUESTION OF PREMEDITATION
IS A QUESTION OF FACT TO BE
DETERMINED BY YOU.

IT WILL BE SUFFICIENT PROOF OF
PREMEDITATION IF THE
CIRCUMSTANCES OF THE KILLING,
AND THE CONDUCT OF THE ACCUSED

CONVINCE YOU BEYOND A REASONABLE
DOUBT OF THE EXISTENCE OF THE
PREMEDITATION AT THE TIME OF THE
KILLING.

>> THANK YOU VERY MUCH.

WE WILL TAKE THE CASE UNDER ADVISEMENT.

BEFORE WE CONCLUDE, ON A PERSONAL
NOTE, SEPARATE AND APART FROM

THIS CASE, LET ME EXPRESS ON
BEHALF OF THE ENTIRE COURT HOW

PLEASED WE ARE, MR. DILLINGER,

YOU ARE HERE LOOKING WELL.

WE WISH YOU TO STAY WELL.

>> COURT WILL STAND IN RECESS.

>> PLEASE RISE.