Dana Williamson v. State of Florida

SC07-564 | SC07-1787

GOOD MORNING, FRIENDS,
WELCOME TO THE FLORIDA SUPREME COURT ON THE ORAL ARGUMENT CALENDAR FOR TUESDAY, APRIL 8th.
THE FIRST CASE UP THIS MORNING IS WILLIAMSON VERSUS STATE OF FLORIDA.
READY TO PROCEED?
OKAY.
KEVIN KULIK ON BEHALF OF MR. WILLIAMSON.
BASICALLY, IN THIS CASE, THIS WAS A CASE THAT OCCURRED -- ACTUALLY OCCURRED IN 1988, AND SORT OF A CASE, TYPICAL OF THAT ERA AND THERE'S NOT A LOT OF FORENSIC EVIDENCE OR ANYTHING LIKE THAT AND, IN 1988, THE CASE WAS TRIED IN BROWARD COUNTY, FLORIDA, IT WAS KIND OF A SENSATIONAL CASE AT THE TIME, THE WAY THE HOMICIDES OCCUR WAS, VERY BRUTAL.
AND ESSENTIALLY THAT SORT OF FLAVORED THE ENTIRE PROCEEDINGS AND CASE.
WHAT POINTS ARE YOU GOING TO ARGUE HERE?
WE ARE FAMILIAR WITH THE PROCEDURAL POINTS OF THIS.
I'M PREFACING MY OVERALL ARGUMENT HOW THE TRIAL OCCURRED AND HAD A PROBLEMS ABOUT HOW THE TRIAL OCCURRED AND THE MAIN ISSUE I GUESS UNDER THE COURT'S CONSIDERATION THIS IS GRAY ISSUE.
AND I GUESS I'LL SWITCH NOW AND START WITH THAT.
ESSENTIALLY THIS IS A CASE IN THE STATE VERSUS GRAY CASE, THE FLORIDA SUPREME COURT BASICALLY HELD THAT --
WELL --
CERTAINLY, CERTAINLY, HERE, YOU

HAVE OTHER AGGRAVATION, OTHER
THAN JUST THE ATTEMPTED FELONY
MURDER.
I MEAN, YOU HAVE SIGNIFICANT
AGGRAVATION ON THE PRIOR VIOLENT
FELONY THAT WE IN OUR DIRECT
APPEAL HELD WAS PROPERLY
PRESENTED IN THE GUILT PHASE.
AS TO THE BEATING TO DEATH OF A
CHILD, AND -- EARLIER, AND
BEATING OF ANOTHER CHILD.
WITH A BASEBALL BAT.
NOW, SO YOU HAVE THREE OTHER
AGGRAVATED ASSAULTS, A
KIDNAPPING, BURGLARY.
SO I DON'T SEE HOW GRAY REALLY
GETS YOU VERY FAR.
OTHER THAN YOU GET REVERSAL.
ON --
I WOULD FIRST ARGUE THAT
MR. RODNEY WILLIAMSON, THE
DEFENDANTS'S BROTHER, HAD FOR
THE EXACT SAME REASON --
WELL, THERE WAS -- THERE WAS
NOT A -- IN THAT REVERSAL, IT
WAS REVERSED ON THE JURY
VERDICT.
COMBINED ATTEMPTED FELONY MURDER
AND PREMEDITATED MURDER.
THAT'S NOT RAISED HERE.
THAT WAS THE REASON THE 4th
DISTRICT REVERSED THAT CASE.
WELL, MY ARGUMENT BASICALLY
IS THAT THIS COURT HAS ACTUALLY
SEVERAL TIMES RULED THE OPPOSITE
OF THE WAY JUSTICE WELLS HAS
SUGGESTED, ESSENTIALLY, IF THERE
ARE MULTIPLE GROUNDS FOR A -- AN
AGGRAVATION AND SOME OF THE
GROUNDS FOR AGGRAVATION ARE
LATER DETERMINED TO BE
NONEXISTENT CRIMES, I WOULD
SUBMIT IN THIS CASE THAT THREE
ATTEMPTED FIRST DEGREE MURDERS
WHICH ARE NOT -- NONCONSISTENT
CRIMES FOR THE PURPOSES OF THE
CASE IS A SIGNIFICANT FACTOR FOR
THE JURY AND THE JURY
INSTRUCTIONS IN THIS CASE
ACTUALLY READ THAT IF YOU FIND
THAT HOMICIDES OCCURRED AS A
RESULT OF -- IN THE COURSE OF
THESE OTHER UNDERLYING FELONIES,
ATTEMPTED MURDER AND THE OTHER

ATTEMPTED FIRST DEGREE MURDERS
IN THIS CASE WERE SEVERE
FACTUALLY TO THE JURY, A
ONE-AND-A-HALF-YEAR-OLD CHILD
SHOT IN THE BACK OF THE HEAD AND
SEEMED TO BE AN ATTEMPT TO
ELIMINATE THE WITNESSES IN THE
CASE, PEOPLE WHO BASICALLY
DIDN'T DO ANYTHING WRONG WERE
SHOT IN THE BACK OF THE HEAD BUT
SURVIVED, BECAUSE IT WAS A .22,
NOT A FIREARM TO CAUSE --
LET ME, IF I COULD, STEER YOU
SINCE YOU HAVE A LIMITED AMOUNT
OF TIME TO AN ISSUE THAT IS OF
CONCERN TO ME AND THIS IS THE
ISSUE OF THE FAILURE TO OBJECT
TO THE DOCTOR'S TESTIMONY.
AND WHAT I AM CONCERNED ABOUT
THERE FROM YOUR STANDPOINT IS
WITH IT THE EVIDENCE THAT WAS IN
THE RECORD FROM O'BRIEN, THIS
PRIOR VIOLENT FELONY, THE
BEATING TO DEATH OF THE CHILD
AND THEN, THE -- SEVERELY
INJURING ANOTHER CHILD, HOW IS
THAT EVIDENCE PREJUDICIAL?
IT WASN'T VERY -- THEY
EMPHASIZED IN THE CLOSING
ARGUMENT IN THIS CASE -- WE
DIDN'T EVEN MENTION IN OUR
DIRECT APPEAL.
I UNDERSTAND.
I THINK THE MAIN THING ABOUT
THIS CASE AND YES, THEY
CONSIDERED THE DOCTOR'S
TESTIMONY IN CONTEXT.
IS THAT THE STATE KNEW GOING IN
THAT BASICALLY IT WAS A ONE
WITNESS CASE AND HAD MR. PANOYAN
WHO HAD -- A FLIPPED
CO-DEFENDANT --
WELL, COULD ANYONE ELSE
IDENTIFY WILLIAMSON?
IN OTHER WORDS, OBVIOUSLY THE
SURVIVING HUSBAND WAS ABLE TO
TESTIFY TO WHAT HAPPENED.
BUT WAS THE -- YOUR CLIENT OR
THE DEFENDANT IN THIS CASE,
WHOEVER WAS THE PERPETRATOR, WAS
MASTERING THE WHOLE INCIDENT?
SO ARE YOU SAYING THAT --
NO ONE.
NO ONE OTHER THAN --

NO ONE OTHER THAN MR. PANOYAN WHORES ACTUALLY CHARGED WITH THE CRIME AND IM PRISONED, IN JAIL 18 MONTHS.
NO ONE ELSE COULD HAVE IDENTIFIED MR. WILLIAMSON.
THAT'S CASE PROGRESSED, MR. PANOYAN ESSENTIALLY MADE THE CASE, ONCE HE AGREED TO BE AND IN FORM MANTLE TO THE GOVERNMENT.
THE ONLY OTHER THING THE GOVERNMENT COULD DO WAS FIND THREE OTHER PEOPLE IN JAIL WITH MR. WILLIAMSON, AND THEY ALSO TESTIFIED THAT WHILE HE WAS IN MY CELL HE TOLD ME THIS AND THAT.
ONE OF THOSE -- ONE OF THOSE WITNESSES, O'BRIEN, SAID THAT RODNEY WILLIAMSON, THAT HIS BROTHER HAD IMPLICATED RODNEY WILLIAMSON, AND RODNEY WILLIAMSON DID NOT TESTIFY IN THIS CASE, CORRECT?
THAT'S CORRECT.
BUT THERE WAS IN THE RECORD THAT HE WAS THERE BY REASON OF WHAT WILLIAMSON TOLD O'BRIEN.
WELL, THERE IS ALSO ANOTHER BROTHER, VERNON WILLIAMSON WHO WAS A SUSPECT IN THE CASE AND MR. WILLIAMSON HIMSELF, DANA WILLIAMSON, MY CLIENT, MADE COMMENTS INDICATING THAT HE THOUGHT THAT MAYBE RODNEY AND HIS BROTHER, VERNON, HAD BEEN INVOLVED IN THIS BUT NOT HIM BUT, ESSENTIALLY, THE NATURE OF THE CASE IS THAT THEY HAD THE ONE WITNESS, MR. PANOYAN WHO WAS IN ON THE CRIME AND MADE A STATEMENT SAYING HE DIDN'T KNOW WHO COMMITTED THE CRIME AND HE WAS INNOCENT AND HOGTIED DURING IT AND THEY FLIPPED HIM AND SAID DANA WILLIAMSON COMMITTED THE CRIME AND THAT IS BASICALLY THE ENTIRE CASE, NO FORENSIC EVIDENCE TO SUPPORT THE STATEMENT AND HAD THE OTHER THREE JAIL INMATES TESTIFYING BUT IT IS THE KIND OF CASE THAT IS WEAK --

I WANT TO ASK YOU --
AND THE DOCTOR WAS --
YOU DO HAVE THAT, YOU DO HAVE
THE HAT.
THE GOVERNMENT'S WHOLE CASE
IS BASICALLY DESIGNED TO BOLSTER
THE TESTIMONY OF CHARLES
PANOYAN.
AND IT IS A WEAK --
YOU ARE ARGUING FOR AN
EVIDENTIARY HEARING, YOU AREN'T
SAYING AT THIS POINT WE SHOULD
GRANT A NEW TRIAL.
ON THE -- THE GRAY ISSUE I
WOULD SUBMIT THE WHOLE CASE IS
SUBJECT TO REVERSAL.
ON THE PENALTY -- YOU ARE
ARGUING FOR REVERSAL ON THE
PENALTY PHASE.
ON THE GRAY ISSUE, I WOULD
ALSO ARGUE THE GUILT PHASE.
THE COMMISSION WAS FOR FIRST
DEGREE MURDER, PREMEDITATED OR
FELONY MURDER, ONE OF THE
UNDERLYING FELONY WAS ATTEMPTED
FIRST DEGREE MURDER WHICH IS
DETERMINED TO BE A NONEXISTENT
OFFENSE FOR PURPOSES OF THIS
CASE SO IF THE JURY IN THEORY
FOUND MR. WILLIAMSON GUILTY OF
FIRST DEGREE MURDER AS A FELONY
MURDER WITH ATTEMPTED FIRST
DEGREE FELONY MURDER WHICH DOES
NOT EXIST THE -- AS THE
UNDERLYING FELONY OF COURSE THE
ENTIRE WAYS WOOF TO BE REVERSED.
WHAT ABOUT THE OTHER FELONIES
THAT WERE FOUND.
KIDNAPPINGS, EXTORTIONS
AND...
THE COURT HAS MULTIPLE TIMES
DECIDED IF YOU HAVE OTHER FELONY
CONVICTIONS, BUT ALSO
NONEXISTENT OFFENSES ESSENTIALLY
THE COURT HAS TO SUBSTITUTE
ITSELF FOR THE FACT-FINDING
FUNCTION OF THE JURY TO DECIDE
WHICH ONE THE JURY ACTUALLY
RELIED UPON, IN THE CASE, THE
WILLIAMSON CASE, THE ATTEMPTED
FIRST DEGREE MURDER CONVICTIONS
EVEN THOUGH THEY HAVE BEEN
DETERMINED TO BE NONEXISTENT
WERE VERY SEVERE CASES, AND IF

THE JURY DETERMINED THAT, YOU KNOW, THE SHOOTING THE CHILD IN THE BACK OF THE HEAD WAS SO HEINOUS, THAT THAT IS THE UNDERLYING FELONY WE'LL FIND HIM GUILTY OF FIRST DEGREE MURDER FOR, FIRST DEGREE FELONY MURDER.
YOU ARE SAYING THE JURY WAS INSTRUCTED ON FIRST DEGREE MEL FUNNY MURDER AND THE BASIS OF IT WAS -- FIRST DEGREE FELONY MURDER AND THE BASIS WAS FIRST DEGREE MURDER AND KIDNAPPING AND THE OTHER FELONIES, THAT WERE -- YES.
THERE WERE ALTERNATE THEORIES FOR EVERY COUNT.
FOR THE 1st DEGREE.
IT COULD BE EITHER PREMEDITATION OR FELONY MURDER AND FOR ALL OF THE ATTEMPTED 1st DEGREE MURDERS, IT WAS PREMEDITATED, ATTEMPTED OR -- BUT I'M TALKING ABOUT THE 1st DEGREE MURDER CONVICTION ITSELF.
THE JURY WAS INSTRUCTED ON PREMEDITATED MURDER, CORRECT.
THAT'S CORRECT.
THE JURY WAS INSTRUCTED ON FELONY MURDER.
CORRECT.
AND THE FELONIES THAT THEY WERE INSTRUCTED ON WERE WHAT?
BASICALLY ALL OF THE OTHER FELONIES IN THE CASE.
I'M LOOKING AT TWO -- LOOKING AT -- IT SAYS THE CAPITAL -- NONEXISTENCE ONES.
THE SENTENCING ORDER SAYS THE CAPITAL FELONY WAS COMMITTED WHILE THE DEFENDANT WAS ENGAGED IN AND LISTS THE CRIMES BUT IT STARTS WITH ROBBERY.
SEXUAL BATTERY, ARSON, BURGLARY, KIDNAPPING, AND DOES NOT TALK ABOUT ATTEMPTED 1st DEGREE MURDER.
NEVERTHELESS, THE JURY INSTRUCTION ACTUALLY EXPLAINED FELONY MURDER AND THE OTHER UNDERLYING FELONIES --
AND THE QUESTION WAS, AND THAT INSTRUCTION INCLUDED ATTEMPTED MURDER?

ON THE OTHER?
I'M NOT SURE SPECIFICALLY INCLUDED IT BUT GAVE THE DEFINITIONS OF THE OTHER -- OF THE OTHER UNDERLYING --
THAT WOULD BE PRETTY IMPORTANT.
I MEAN, WE ARE RIGHT HERE AND YOU MIGHT HAVE A POINT, IT WOULD SEEM TO ME ON THE CRITICAL POINT.
WHICH IS WHAT WAS THE JURY INSTRUCTED ON.
YOU WOULD BE ABLE TO TELL US, WHETHER THE -- BECAUSE THERE WAS NO SEXUAL BATTERY IN THE CASE, WAS THERE?
NO.
ALL RIGHT, SO IT WASN'T SOME -- LET'S ASSUME IT WAS A CUSTOMIZED JERRY INSTRUCTION.
DID THE JURY INSTRUCTION INCLUDE #NAME?
INCLUDE ATTEMPTED 1st DEGREE MURDER?
FELONY MURDER?
ATTEMPTED FELONY MURDER.
YOU MEAN FOR THE GUILT PHASE?
THAT IS WHAT -- I GUESS THAT IS WHAT WE ARE TALK ABOUT WHEN I SAID IT WOULD REQUIRE A NEW PENALTY PHASE AND YOU SAID, NO, IT WOULD REQUIRE A NEW GUILT PHASE ON THE GRAY ISSUE BECAUSE THE JURY WAS INSTRUCTED IN A GENERAL AND RETURNED A GENERAL VERDICT ON 1st DEGREE MURDER AND THAT IS PRETTY IMPORTANT RIGHT NOW.
I THINK IT IS IMPORTANT.
WE CAN FIND THIS IN THE RECORD, YOU WOULD AGREE IF THEY WERE INSTRUCT ON KIDNAPPING OR ROBBERY, THEN AS THE UNDERLYING FELONIES, THAT --
IT WOULD NOT -- I AGREE WITH THAT.
IT WOULD NOT APPLY TO THE GUILT PHASE OF THE TRIAL.
OKAY.
I WANT TO -- THIS IS JUST AS A GENERAL OBSERVATION OR QUESTION, DID YOU RAISE IN YOUR -- LOOKS LIKE LOOKING OVER ALL OF THE

GUILT PHASE ISSUES THAT YOU
RAISED, THEY ARE ALL ISSUES THAT
YOU COULD LOOK AT THE TRANSCRIPT
OF THE TRIAL AND SAY, THE LAWYER
SHOULDN'T HAVE DONE THIS,
SHOULDN'T HAVE DONE THAT.
I DON'T SEE ANYTHING IN A CASE
WHERE YOU ARE SAYING, 20, NOW 20
YEARS OLD AND IT IS KIND OF A --
YOU SAY A WEAK CASE, ANYTHING
THAT SHOWS THAT THE GOVERNMENT,
THE STATE DIDN'T -- FAILED TO
PRODUCE FAVORABLE EVIDENCE.
THERE ARE OTHER WITNESSES NOW
THAT COULD HAVE PLACED YOUR
CLIENT SOMEPLACE ELSE, AT ALL.
WERE ANY CLAIMS LIKE THAT RAISED
AND DENIED WITHOUT AN
EVIDENTIARY HEARING OR ARE THESE
ALL CLAIMS SOMEONE COULD READ
THE RECORD AND SAY WELL, THE
LAWYER SHOULD HAVE OBJECTED TO
THIS OR SHOULD HAVE DONE THAT?
THE ONLY POSSIBLE PIECE OF
FORENSIC EVIDENCE IN THIS CASE
WAS A STRAW HAT FOUND UNDERNEATH
ONE OF THE BODIES THAT DANA
WILLIAMSON AT ONE POINT MADE A
STATEMENT SAYING THAT HE HAD
ONCE HAD A SIMILAR HAT AND WE IN
ANOTHER PROCEEDING ACTUALLY
DEMANDED DNA TESTING OF THE
INSIDE RIM OF THE HAT SINCE
NOWADAYS WE HAVE THE ABILITY TO
TEST SUCH A THING AND THEY FOUND
NO USABLE EVIDENCE.
THAT WAS THE ONLY THING WE COULD
TRY AND DO IN THIS CASE, THE
ONLY PIECE OF EVIDENCE THAT
WOULD HAVE RE--
BUT THERE IS NO INDICATION
THAT THERE ARE OTHER SUSPECTS
THAT REALLY WERE THE REAL
PERPETRATORS HERE?
CLEARLY IT WASN'T A CRIME THAT
WAS DONE BY ONE PERSON.
AS I STATED, MY CLIENT HAD
ORIGINALLY MADE STATEMENTS
IMPLICATING HIS OWN BROTHERS.
MR. PANOYAN HAD HIS OWN REASONS
FOR INCULPATING DANA WILLIAMSON
AS OPPOSED TO VERNON OR RODNEY.
WHAT IS THE STATUS OF THEIR
BROTHERS, THEIR CONVICTIONS.

RODNEY WILLIAMSON WAS REVERSE
AND WHAT HAPPENED AFTER THAT I'M
NOT SURE.
YOU KNOW, I ASSUME HE HAD
ANOTHER PENALTY PHASE AND I
THINK GOT LIFE.
AND VERNON?
VERNON NEVER CHARGED.
JUST THE TWO, JUST RODNEY.
RIGHT.
AND THE TESTIMONY FROM
O'BRIEN WAS -- THAT'S WHAT THE
TESTIMONY FROM O'BRIEN WAS
ABOUT.
MY PROBLEM WITH THE WAY THE
TRIAL WAS CONDUCTED WAS
BASICALLY IT WAS THE STATE'S
ENTIRE INTENT EVEN DURING THE
JURY SELECTION WAS TO BOLSTER
THE TESTIMONY OF THEIR WITNESS,
THEY ACTUALLY ASKED A QUESTION
OF THE WHOLE JURY PANEL, HAVE
YOU EVER BEEN BETWEEN A ROCK AND
A HARD PLACE?
YOU KNOW, THE DEFENSE DIDN'T SAY
ANYTHING, I GUESS THEY WONDERED
WHY IS HE ASKING THAT AND HE
SORT OF WENT DOWN THE WHOLE
GROUP OF JURORS AND SAID, HAVE
YOU EVER BEEN BETWEEN A ROCK AND
A HARD PLACE AND YOU KNOW THAT
PHRASE MEANS, YOU KNOW WHAT IT
MEANS IN RELATION TO YOUR OWN
CHILDREN, YOU KNOW, WHAT IF YOU
GOT INTO A SITUATION WHERE YOU
HAD TO MAKE A CHOICE BETWEEN
DOING SOMETHING HORRIBLE AND
SAVING ONE OF YOUR CHILDREN,
THAT KIND OF THING AND SEEMED
OUT OF CONTEXT AT THE TIME THE
PROSECUTOR DID IT BUT, THEN,
QUICKLY, IN HIS OPENING
STATEMENT, HE SAID THE PERSON
THAT I WAS REFERRING TO IS --
INJURY SELECTION WHEN I SAID
HAVE YOU EVER BEEN BETWEEN A
ROCK AND A HARD PLACE WAS
CHARLES PANOYAN AND HE WAS,
ATTEMPTED TO PLACE THE JURY IN A
#NAME?
THROUGHOUT THE TRIAL AND THAT IS
WHY HE CALLED THE DOCTOR AND THE
DOCTOR TESTIFIED WITHOUT ANY
SCIENTIFIC BASIS --

YOU ARE ARGUING THIS IS A
VIOLATION OF THE GOLDEN RULE BUT
SEEMS LIKE THE CASES I'VE READ
AT LEAST AS FAR AS THE GOLDEN
RUMOR IS TO PUT YOURSELF IN THE
VICTIM'S SHOES.
AND PANOYAN WAS NOT THE VICTIM
HERE, ARE THERE ANY CASES THAT
SAY IT CAN RELATE TO OTHER
WITNESSES AS WELL?
WELL, THE PROSECUTOR'S CASE
WAS TO MAKE MR. --
I UNDERSTAND THAT.
IS THERE ANY OTHER CASE WHERE WE
HAVE SAID IT CAN RELATE TO A
WITNESS, WHERE THE PROSECUTOR
MAKES THE WITNESS LIKE THE
VICTIM?
THE CASES ARE, I WOULD SAY,
NOT THAT SPECIFIC.
THEY ARE VERY SPECIFIC.
USUALLY THE VICTIM THAT YOU ARE
PUTTING -- LOOKING AT.
THEY ARE SAYING, PUT YOURSELF IN
THE SHOES OF VICTIM.
SO IS THERE ANY CASE WHERE WE'VE
SAID THERE IS A VIOLATION OF THE
E GOLDEN RULE WHERE THEY DON'T
SAY, PUT YOURSELF IN THE
VICTIM'S SHOES.
NOT THAT I'M AWARE OF BUT
MR. PANOYAN TESTIFIED HE WAS
THREATEN WITH HIS LIFE AND THAT
HIS FAMILY WOULD BE ATTACKED AND
HIS SON WOULD BE CASTRATED AND
DAUGHTER WOULD BE RAPED IF HE
EVER TOLD ANYBODY ABOUT THIS AND
HE SAID HE WAS HOGTIED DURING
THE COURSE OF THE ROBBERIES.
AND, YOU KNOW, AND THIS STATE
ASSERTED THROUGHOUT THE CASE
THAT THAT WAS TRUE.
SO IF HE IS A -- IF THAT DOESN'T
MAKE HIM A VICTIM.
HE'S A WITNESS.
I MEAN, THAT IS WHERE HE SAID
IT.
IS THERE CASE LAW IN FLORIDA
THAT ADDRESSES WITNESS --
VICTIM AND --
ALL OF THE OTHER FELONIES AND
ROBBERIES --
NOT THE SUBJECT OF THIS
TRIAL.

ACTUALLY, NO.
I MEAN, THE DEFENSES WERE THE ROBBERY -- HE WAS THE VICTIM IN THE CASE.
YOU ARE WELL INTO YOUR REBUTTAL TIME, YOU WANT TO SAVE A LITTLE TIME FOR THAT, SO...
OKAY.
MAY IT PLEASE THE COURT, LISA MARIE LERNER. I BELIEVE THE JURY WAS INSTRUCTED ON THE FELONY MURDER ON THE ROBBERY AND ARMED BURGLARY THAT'S UNDERLYING FELONIES.
AND THE STATE ATTORNEY'S CLOSING ARGUMENT HE USED THE ROBBERY CHARGES AND THE ARMED BURGLARY FOR THE FELONY MURDER FOR BOTH DONNA DECKER'S DEATH AS WELL AS THE THREE ATTEMPTED --
YOU SAY I BELIEVE BUT THE RECORD WILL SUPPORT THAT THOSE WERE THE ONLY TWO UNDERLYING FELONIES THAT THE JURY WAS INSTRUCTED ON?
I THINK SO, YES.
HOWEVER, IF THE JURY WAS INSTRUCTED ON FELONY MURDER, AND ATTEMPTED FELONY MURDER WAS USED AS A POSSIBLE UNDERLYING FELONY, FOR THE FELONY MURDER, THAT THAT WOULD BE REVERSIBLE ERROR.
FOR THE ENTIRE TRIAL?
OR JUST FOR --
1st DEGREE MURDER.
NO.
I DON'T BELIEVE IT WOULD.
BECAUSE THERE WERE ADDITIONAL UNDERLYING FELONIES.
YOU HAD NUMEROUS COUNTS OF ROBBERY, ARMED BURGLARY, YOU ALSO HAD THE EXTORTION --
BUT THAT'S DEFENSE POINTS OUT THERE IS CASE LAW THAT INDICATES THAT IF ONE OF THOSE POSSIBLE THEORIES AND WE DON'T HAVE A SPECIAL VERDICT FORM HERE, TO KNOW WHAT FELONY MURDER -- IF FELONY MURDER WAS FOUND AND UNDER WHAT CIRCUMSTANCES, IF ONE OF THE UNDERLYING FELONIES THAT WAS USED WAS NONEXISTENT CRIME, THEN DON'T YOU HAVE TO REVERSE BECAUSE WE HAVE NO IDEA OF

WHETHER OR NOT THE JURY ACTUALLY
USED THAT AS THE BASIS FOR THE
FELONY MURDER.
FELONY MURDER.
WELL, NO, I DON'T THINK YOU
DO.
BECAUSE AS I SAID YOU HAVE THE
OTHER FELONIES.
AND THE WAY THAT THE STATE
PRESENTED ITS CASE IN CLOSING,
THEY FOCUSED SOLELY ON THE
ROBBERY AND ARMED BURGLARY.
WE -- YOU KNOW, IF THE RECORD
SUPPORTS YOU WE DON'T HAVE TO GO
FURTHER BUT THERE ARE CASES THAT
WE ARE -- WE HAVE, AFTER WE
CHANGED THE DEFINITION OF
BURGLARY IF THERE IS A LEGALLY
INSUFFICIENT THEORY, THAT THE
JURY COULD HAVE CONVICTED ON,
AND THE GENERAL VERDICT FORM, I
BELIEVE, THAT THE CASE LAW SAYS
YOU HAVE TO REVERSE BUT IF YOU
ARE RIGHT, YOU HAVE TO GET TO
THAT AS TO THE GUILT PHASE, SO,
LET'S -- I MEAN, WE'LL -- THE
RECORD WILL SHOW IT OR NOT.
AND I'M ASSUMING IF IT WASN'T
BROUGHT TO OUR ATTENTION THAT
YOU ARE PROBABLY RIGHT ON THIS
PARTICULAR POINT.
I'M CONCERNED ABOUT -- THIS IS A
SUMMARY DENIAL OF ALL CLAIMS AND
I THINK AS TO MOST OF THEM, THEY
ARE EITHER NOT ERROR OR YOU CAN
#NAME?
AM CONCERNED ABOUT THIS DOCTOR'S
TESTIMONY.
AND WHY THERE SHOULDN'T BE AN
EVIDENTIARY HEARING AND JUST AT
LEAST TELL YOU FROM MY POINT OF
VIEW, MR. PANOYAN, OBVIOUSLY IS
A CRITICAL WITNESS.
THE STATE THOUGHT HE WAS A
CRITICAL WITNESS.
AND WE'VE BEEN SUPPLIED AND READ
THE DOCTOR'S TESTIMONY IN FULL,
AND IT APPEARS THAT ESSENTIALLY
WHAT WE DID WAS BOLSTER THE
TESTIMONY OF THE WITNESS BY
COMING UP WITH THE THEORY OF --
HE ACTED AS SOMEBODY THAT HAD A
CREDIBLE THREAT AND THAT IS WHAT
SOMEBODY WOULD DO.

I AM -- IN THE REPLY BRIEF THEY
POINTED OUT MANY CASES WHERE THE
DOCTOR IN OTHER STATES HAS NOT
BEEN ABLE TO TESTIFY TO THIS
KIND OF PATTERN EVIDENCE.
AT THE VERY LEAST, IT WOULD SEEM
THAT AN EVIDENTIARY HEARING
WOULD BE WARRANTED TO FIND OUT
WHY THE LAWYER DIDN'T EVEN VOIR
DIRE THE WITNESS.
MADE NO ATTEMPT TO EXCLUDE HIS
TESTIMONY, AND, YOU KNOW, REALLY
UNDERSTAND THE WHOLE CONCEPT IN
WHICH THIS AROSE.
AND CAN YOU EXPLAIN TO ME WHY WE
SHOULDN'T REVERSE FOR AN
EVIDENTIARY HEARING ON THAT
POINT, BECAUSE I'M SOMEWHAT
CONCERNED THAT ALTHOUGH IT
WASN'T MENTIONED IN DIRECT
APPEAL, IT IS PRETTY POWERFUL
TESTIMONY, THE DOCTOR HAD, ABOUT
THE EFFECT OF YOU KNOW WHY
SOMEBODY ONE COME FORWARD IF
THEY HAD THIS KIND OF THREAT AND
PLUS HE EVEN INTERVIEWED THE
WITNESS, SO HE DIDN'T -- YOU
KNOW, SO, AGAIN HE WAS SORT OF
BOLSTERING THE WITNESS BY SAYING
THIS WAS A CREDIBLE THREAT.
SO IF YOU COULD AT LEAST EXPLAIN
WHY SUMMARY DENIAL IS WARRANTED,
OR WHY WE SHOULDN'T BASED ON OUR
CASE LAW AT LEAST ALLOW AN
EVIDENTIARY HEARING ON THIS
POINT.
WELL, INITIALLY, THE MOVING
PAPERS ARE 3850 SAID THAT THE
ATTORNEY WAS DECISIONED FOR NOT
VOIR DIRING HOWEVER THEY DID NOT
BRING OUT IN THE PAPERS ANY
ASPECTS THAT HE COULD HAVE
BROUGHT UP DURING VOIR DIRE.
THE INFORMATION THAT WAS IN THE
REPLY BRIEF WAS NOT BEFORE THE
TRIAL COURT.
IT WAS NOT IN THE ORIGINAL 3850.
MORE AS THE COURT IS AWARE WAS
IT IN THE ORIGINAL APPELLATE
BRIEF HERE.
THE FIRST TIME THAT INFORMATION
APPEARED IN THIS CASE, IS IN
THAT REPLY REEF BRIEF.
THE TRIAL COURT HAD NONE OF THAT

INFORMATION.
AT THE TRIAL, THE DEFENSE ATTORNEY HAD THE DOCTOR'S CD, HE HAD HIS REPORT ON HIS INTERVIEW WITH PANOYAN AND HAD SPOKEN WITH THE EXPERTS --
BUT HE TALKED TO HIM APPARENTLY FOR ABOUT 10 MINUTES, BEFORE HE WENT ON THE STAND.
DEFENSE COUNSEL DID.
AND THIS DOCTOR HAD A BACHELOR'S DEGREE IN PSYCHOLOGY.
A Ph.D. IN SOCIOLOGY.
HE HAD NEVER BEEN A TREATING PSYCHOLOGIST.
HE HAD DONE MERELY STUDIES OF VARIOUS TYPES OF CONFESSIONS AND #NAME?
THAT, HOWEVER, CERTAINLY, AN OBJECTION SHOULD HAVE BEEN MADE AS TO WHAT IS A SOCIOLOGIST DOING TESTIFYING AS TO THE FEAR BY AN INDIVIDUAL UNDER THREAT?
WELL, I PRECISELY DISAGREE.
I DON'T THINK THE DOCTOR TESTIFIED ABOUT THE FEAR.
THE CORE OF HIS TESTIMONY WAS BASED ON HIS EXPERIENCE AS A PSYCHOLOGIST, BE IT AN UNDERGRADUATE DEGREE IN SOCIOLOGY DEGREE.
HE WAS A PROFESSOR OF PSYCHOLOGY AT THE UNIVERSITY OF CALIFORNIA --
HE WAS A PROFESSOR OF SOCIOLOGY.
AT BERKELEY AND HE ALSO HAD BEEN QUALIFIED AS AN EXPERT IN OVER 25 TRIALS AS AN EXPERT IN THE AREA OF INFLUENCING CONTROL.
AND IT WAS THAT AREA THE DOCTOR WAS TESTIFYING AND HIS TESTIMONY WAS --
DID THE RECORD INDICATE WHETHER THE DOCTOR'S TESTIMONY HAD EVER BEEN FRYE TESTED IN FLORIDA.
THE TRIAL RECORD, NO.
AND AND CLEARLY AT THAT POINT IN TIME FLANNAGAN WAS OUT THERE.
AND FLANNAGAN SAID THAT IF THERE IS A MIXTURE EVEN OF PURE OPINION TESTIMONY WHICH HAD TO BE A CLINICAL STUDY, AND PROFILE

TESTIMONY YOU NEEDED IT FRYE TESTED AND PROBABLY WASN'T ADMISSIBLE.
WELL, I DON'T BELIEVE THAT THE DOCTOR TESTIFIED HE SAID A PROFILE OR A SYNDROME.
IT WAS NOT LIKE A CHILD SEXUAL ABUSE CASE WHERE THEY SAID THE CHILD IS DOING X, Y AND Z AND PROVED THAT HE WAS MOLESTED.
WHAT YOU ARE SAYING, THOUGH, WITH OUR QUESTIONS, IS SOMETHING THAT JUST LEAPS OUT FROM THE RECORD HERE.
THAT IS, IN TERMS OF, WE GO BACK TO THE CASES WHERE WE HAVE HELD THAT ONE WITNESS REALLY CANNOT COMMENT ON THE TRUTHFULNESS OR THE CREDIBILITY OF ANOTHER WITNESS, YOU KNOW, DIRECTLY.
THERE MAY BE SOME CHARACTER EVIDENCE OR SOMETHING LIKE THAT.
AND SO, THIS IS REALLY JUMPING OUT TO ALL OF US THAT YOU KNOW, WHAT IS GOING ON HERE?
ARE WE GOING TO END UP IN OUR CRIMINAL COURTS WITH EXPERT WITNESSES NOW LIKE THIS PERSON THAT COME IN AND SAY, WELL, I HAVE LOOKED AT THE TESTIMONY OF THE POLICE INFORMANT OR OF THE PRISONER THAT WAS IN THE OTHER CELL, OR OF THE WITNESS TO THESE EVENTS, AND EVERYTHING, AND IN ESSENCE, TELL A JURY THAT I THINK THAT PERSON IS TELLING THE TRUTH.
THAT UNDER THOSE CIRCUMSTANCES #NAME?
REALLY JUMPING OUT AT US IN TERMS OF THE DEFENSE LAWYER REALLY NOT DOING ANYTHING THAT #NAME?
THEN, WHAT WE HAVE IS THERE IS NO HEARING HERE, YOU KNOW, THE TWO -- TO EXPLORE ALL OF THIS AND WHAT WAS GOING ON WITH THE DEFENSE LAWYER OR WHATEVER.
SO, YOU KNOW, ESSENTIALLY WHAT WE HAVE IS A DENIAL WITHOUT ANY EXPLORATION IN AN AREA THAT IS A VERY QUESTIONABLE -- VERY QUESTIONABLE IN TERMS OF THE ADMISSIBILITY OF THIS KIND OF

EVIDENCE.
THAT IT IS A VERY DANGEROUS ROAD THAT WE APPEAR TO BE TRAVELING AND RECOGNIZING, YOU KNOW, NOTHING ON DIRECT APPEAL AND ALL OF THAT, AND WHICH MAY WELL LEAD TO A DENIAL OF THE CLAIM ON THE MERIT, YOU KNOW, IF IT IS EXPLORED PROPERLY.
YOU KNOW, THAT THE -- WHATEVER IS GOING ON HERE... BUT I THINK YOU CAN HEAR OUR CONCERN THAT WITHOUT ANY -- AS OPPOSED TO -- WE'RE NOT SUPPOSED TO HAVE THESE CASES WHERE WE HAVE GOT TO DO ALL THE WORK IN ORDER TO SUSTAIN A JUDGE'S SUMMARY DENIAL.
SO WHERE ARE WE GOING WITH TESTIMONY LIKE THIS?
IS THIS FELLOW GOING TO TESTIFY IN THE NEXT CRIMINAL TRIAL AND SAY THE WITNESSES ARE ALL TELLING THE TRUTH THAT TESTIFY FOR THE STATE?
WELL, FIRST OF ALL, I DON'T THINK HE DID TESTIFY THAT PANOYAN WAS CREDIBLE.
I THINK THIS IS CLOSER TO -- CREDIBLE.
I THINK IT IS CLOSER TO RAMIREZ WHERE THE COURT DISCUSSED WHETHER OR NOT EVIDENCE COULD COME IN, THE DEFENSE USES -- WHETHER OR NOT KNIFE EVIDENCE COME IN AND SAY, THIS PARTICULAR KNIFE MADE THIS PARTICULAR WOUND.
AND THE CORE SAID YOU CAN'T DO THAT.
YOU NEED A FRYE HEARING.
I DON'T SEE HOW THAT COULD POSSIBLY BE -- WE'RE TALKING ABOUT APPLES AND ORANGES HERE.
YOU KNOW, OBJECTIVE OR WHAT IS PERCEIVED TO BE OBJECTIVE PHYSICAL EVIDENCE OF SOMETHING THAT PEOPLE CAN -- AS OPPOSED TO THE CIRCUMSTANCES SURROUNDING A WITNESS WHO OBVIOUSLY, YOU KNOW, PERHAPS -- OBVIOUSLY FOR VERY GOOD, LEGITIMATE REASONS, YOU KNOW, HAS NOT COME FORTH BEFORE, AND NOW IS THE -- YOU KNOW, THE KEY WITNESS IN THE CASE.

HAVING AN EXPERT WITNESS,
REALLY, TAKE ALL THESE
CIRCUMSTANCES AND SORT OF SAY,
WELL, THAT IS ALL RIGHT.
IT IS UNDERSTANDABLE.
YES, THEY DO ALL THE TIME AND
IN RAMIREZ SAID IN THAT CASE, IF
THE EXPERT IN THE CASE SAID THE
WOUND IS CONSISTENT WITH BEING
MADE BY THE KNIFE IT IS OKAY.
AND THAT HAPPENS ALL THE TIME
BUT IT HAPPENS WITH THE DEFENSE.
WE HAVE DEFENDANTS GETTING UP
THERE, SAYING, YOU KNOW, THE
DEMONS WERE CHASING ME AND,
THEREFORE, I DID X, Y AND Z.
LET ME ASK THE QUESTION FROM
A SLIGHTLY DIFFERENT ANGLE.
WHY DO WE NEED AN EXPERT TO TELL
US THAT IF YOU THREATEN TO KILL
SOMEBODY'S FAMILY HE IS MORE
LIKELY TO DO WHAT YOU WANT?
EVEN IF IT IS ILLEGAL?
BECAUSE IT GOES TO PANOYAN'S
ENTIRE SERIES OF ACTIONS OVER A
TWO TO THREE-YEAR PERIOD AND IT
WASN'T A SITUATION WHERE THE
STATE DIDN'T HAVE A WITNESS THAT
DIDN'T COME FORWARD FOR A MONTH
OR TWO.
HE DIDN'T COME FORWARD FOR
TWO-AND-A-HALF YEARS.
AND THE REASON HE DIDN'T COME
FORWARD WAS BECAUSE THE
DEFENDANT THREATENED TO
MUTILATE, TO KILL HIS FAMILY AND
SO WHY DO WE NEED AN EXPERT TO
TELL US THAT IF YOU HAVE THREATS
AGAINST SOMEBODY'S FAMILY, HE IS
MORE LIKELY NOT TO TESTIFY
AGAINST YOU IN ORDER TO PROTECT
HIS FAMILY?
WELL, THAT'S TRUE OF MANY
EXPERT WITNESSES.
WHETHER OR NOT THE WITNESS IS
TESTIFYING TO AN ISSUE THAT THE
JURY ULTIMATELY HAS TO DECIDE,
DOESN'T MEAN THAT THE EXPERT
CAN'T ASSIST THE JURY IN
ANALYZING THE EVIDENCE.
BUT APPARENTLY THE PROSECUTOR
IN THIS CASE DIDN'T THINK THIS
DOCTOR'S TESTIMONY WAS ALL THAT
IMPORTANT IN THAT HE MENTIONED

IT IN THREE LINES THAT I HAVE FOUND AND -- IN HIS CLOSING ARGUMENT.
THAT'S TRUE.
AND FOCUS ON THE EXPERT.
THE EXPERT TESTIFIED, AND IT WAS A SINGLE PART OF THE TRIAL, THE TRIAL LEFT -- HAD 45 WITNESSES AND --
THAT IS WHAT IS DISTURBING TO ME IS WHY THE STATE WOULD TAKE THAT TYPE OF RISK IN A CASE LIKE THIS.
BUT LET ME ASK YOU TO ADDRESS THE PREJUDICE PRONG.
WE ASSUMED SOUP THAT THIS WAS AT LEAST THERE AT LEAST SHOULD BE AN EXPLANATION BY THE LAWYER AS TO WHY THERE WAS NO OBJECTION BUT WE HAVE EXAMINED THE PREJUDICE.
YES.
AND I DO NOT BELIEVE THAT THE DEFENSE HAS MET THE PREJUDICE PRONG.
AS YOU POINTED OUT, THIS TESTIMONY WAS NOT RELIED ON SUBSTANTIALLY IN CLOSING ARGUMENTS.
ADDITION, THE STATE PUT ON A NUMBER OF OTHER WITNESSES THAT I WON'T SAY BOLSTER BUT SUBSTANTIATE PANOYAN'S FEAR.
THEY PUT ON THE SECURITY GUARD WHO TESTIFIED THAT PANOYAN WENT TO THE SHOPPING CENTER IMMEDIATELY SAID, WHAT HAPPENED, WAS SHAKING, WAS SCARED, ASKED THE MAN TO CALL THE POLICE.
CALLED HIS WIFE, TWO EMPLOYEES OFFICERS WHO TALKED TO PANOYAN THAT NIGHT SAYING HE WAS AFRAID FOR HIS CHILDREN.
SENT POLICE OVER TO HIS HOUSE.
AND A NUMBER OF OTHER WITNESSES WHO FOLLOWED PANOYAN'S ACTIONS.
LET ME --
THIS IS MY CONCERN AGAIN, WE ARE TALKING ABOUT WHETHER AN EVIDENTIARY HEARING SHOULD BE HAD ON THIS, NOT WHETHER ULTIMATELY PREJUDICE WOULD BE FOUND.
THERE IS ALSO A LOT THAT WOULD

BE CONSISTENT WITH SOMEBODY WHO PARTICIPATED IN THE CRIME AND THEN FOR WHATEVER HIS OWN REASONS WERE, SET UP THE STRAW MAN TO BLAME THIS ON, EVEN THOUGH OTHER PEOPLE WERE INVOLVED.
THAT WOULD BE THE DEFENDANT'S THEORY.
AND AS I READ THE DOCTOR'S TESTIMONY, TO ME IT IS VERY CHILLING TESTIMONY IN TWO WAYS, FIRST OF ALL, HE INTERVIEWED PANOYAN.
SO, HE'S KIND OF ANOTHER PERSON THERE, THAT IS ADDING TO LIKE ANOTHER WITNESS FOR PANOYAN AND ALTHOUGH YOU SAY THAT HE DIDN'T COMMENT ON THE CREDIBILITY OF PANOYAN, IF YOU GO TO THE RECORD AT 2233, HE GOES THROUGH IN REVIEWING THE HISTORY OF THE EXPERIENCE IN CONNECTION WITH THE INVASION, THE DEATH, HE IS ONE WHO WAS FOR BETTER WORD THAN TERRORIZED, SOMEONE ACTING IN RESPONSE TO A CREDIBLE THREAT.
NOT ONLY TO HIMSELF, BUT FAMILY AND HE GOES THROUGH THAT AND THEN, HE SPENDS THE REST OF HIS TESTIMONY GIVING THESE HORRIBLE EXAMPLES OF PEOPLE WHO HAVE BEEN KIDNAPPED, TORTURED, FOR YEARS ON END, WHICH I CERTAINLY NOBODY IN THE CLOSING ARGUMENT COULD USE THAT.
SO, EVEN THOUGH THE DEFENSE -- I MEAN, I'M SORRY.
THE STATE DOESN'T REFER TO HIM EXTENSIVELY, I DON'T KNOW HOW YOU WIPE THAT OUT OF THE JURY'S MINE, AND CERTAINLY IT WAS CHILLING TESTIMONY TO ME, AND SO THAT IS WHY I THINK -- I'M ASKING WHY WE SHOULDN'T HAVE AN EVIDENTIARY HEARING TO KIND OF SEE, WELL, IN THE REAL WORLD OF THIS TRIAL, WAS THIS A BLIP OR WAS IT SOMETHING, ONCE YOU HEAR IT, AS A JUROR, YOU KNOW, IT IS GOING TO HAVE AN IMPACT?
WELL, I UNDERSTAND YOUR CONCERN BUT I DO SAY THAT IF WE LOOK AT THE RECORD THAT WE HAVE

FROM THE TRIAL, IT IS A
BLIP.
WE HAD PANOYAN HIMSELF
TESTIFYING TO THESE HORRIBLE
THREATS AND HE DETAILED THEM AND
THIS WAS PANOYAN TESTIFYING
ABOUT THREATS THAT HE SAID
WILLIAMSON MADE.
AND WE HAVE THE FACTS OF THE
CASE ITSELF.
SO ANYTHING --
BUT, IF YOU DON'T BELIEVE --
IT IS GOING TO RISE AND FALL,
THIS CASE, ESSENTIALLY RISES AND
FALLS ON PANOYAN.
SO, AGAIN, WHAT WE HAVE HERE IS
AN EXPERT WITNESS WITH
QUALIFICATIONS THAT HAVE NOT
BEEN FRYE TESTED AS FAR AS
WHETHER HIS HERE TO IS HAVE BEEN
GENERALLY ACCEPTED, BOLSTERING
THE ONLY WITNESS THAT CAN PUT
THE, YOU KNOW, NOOSE ON THE
DEFENDANT.
AND THERE IS NO WAY TO GET
AROUND THAT.
NOT LIKE THERE ARE THREE OTHER
EYE WITNESSES THAT SAY THAT WHAT
PANOYAN SAID HAPPENED HAPPENED.
THAT IS WHY CONCERN.
I UNDERSTAND, BUT THE
DOCTOR'S TESTIMONY WAS NOT THAT
PANOYAN FIT INTO A PROFILE OR A
#NAME?
HE SAID BASED ON HIS ACTIONS,
AND MY EXPERIENCE DEALING WITH
PEOPLE, IN DIFFICULT SITUATIONS,
HIS ACTIONS WERE CONSISTENT WITH
SOMEONE WHO WAS THREATENED.
THAT IS PURE EXPERT OPINION
TESTIMONY.
THAT DOES NOT NEED A FRYE
HEARING.
AND SECONDARILY, AGAIN, I GO
BACK TO THE ENTIRE RECORD.
THERE WERE AT LEAST FIVE OTHER
WITNESSES WHO TESTIFIED ABOUT
PANOYAN BEING THREATENED.
BECAUSE PANOYAN TOLD HIM AT THE
TIME HE WAS BEING THREATENED.
HIS CHILDREN WERE THREATENED.
AND SO, TAKEN AS A WHOLE, I
DON'T BELIEVE THE DEFENSE CAN
SHOW PREJUDICE IN THIS, EVEN TO

HAVE AN EVIDENTIARY HEARING.
AND FINALLY I WANTED TO POINT OUT TO THE COURT THAT THERE WERE TWO ADDITIONAL ITEMS OF EVIDENCE THAT DID LINK DANA WILLIAMSON TO THE CRIME.
THERE WAS THE HAT, WHICH MR. WILLIAMSON SAID WAS -- THE DETECTIVE SHOWED IT TO HIM, YES, THAT IS MY HAT AND THEN BACKED OFF A LITTLE BIT AND SAID, WELL, IT LOOKS JUST LIKE MY HAT AND HE SAID AND HE SAID HIS BROTHER, VERNON, MUST HAVE PLACED IT WITH THE DEAD BODY TO SET HIM UP AND WE HAVE WILLIAMSON ACKNOWLEDGING THE HAT THAT WAS FOUND UNDER MRS. DECKER'S BODY, IN THE LOCKED CLOSET AS HIS HAT.
ADDITION, THERE WAS A NINJA BELTED WHICH THE STATE PROVED THAT HIS BROTHER, RODNEY, PARTICIPATED IN THIS CRIME, ORDERED A COUPLE MONTHS BEFORE FROM THE VERY DISTINCT MANUFACTURER.
THE MANUFACTURER'S LABEL WAS ON THE BELT.
CENTS THEY HAD THE PROOF THEY BOUGHT IT A COUPLE MONTHS BEFORE AND IT WAS FOUND IN PANOYAN'S TRUCK AND SO THERE IS SOME -- MAY NOT BE OVERWHELMING BUT THERE IS ADDITIONAL EVIDENCE LINKING MR. WILLIAMSON AS BEING THE PERPETRATOR OF THE CRIME BESIDES O'BRIEN AND PANOYAN.
AND ON THE GRAY ISSUE, ON THE -- I ASK THE COURT ON THE 3850, THE GRAY DOES NOT APPLY, YOU HAVE FOUND IT IS NOT RETROACTIVE AND ON THE HABEAS IT WAS A PIPELINE CASE, BUT THE COURT SHOULD JUST, IF YOU ARE GOING DO IT, OVERTURN ONLY THE THREE ATTEMPTED MURDER CONVICTIONS.
AND SEND THEM BACK FOR RETRIAL.
BUT, LEAVE THE ADDITIONAL FELONIES AND THE 1st DEGREE MURDER AS IT IS.
THANK YOU VERY MUCH.
REBUTTAL?
THE REASON THE DOCTOR'S TESTIMONY IS CRITICAL IS BECAUSE

THE CASE RISES AND FALLS ON THE TESTIMONY OF WITNESS PANOYAN. AND ESSENTIALLY THE GOVERNMENT HAS TO PROVE THE CASE BASED UPON A FLIPPED CO-DEFENDANT AN EVERYTHING IN THEIR CASE WAS DESIGNED TO BOLSTER THE WITNESS.
TO THE -- CAN I ASK YOU A QUESTION?
TO THE EXTENT AS I ASKED THE QUESTION OF THE STATE THAT THIS IS SOMETHING WITHIN THE COMMON KNOWLEDGE, REALLY OF JURORS OF EVERYBODY THAT IF YOU ARE -- THEY THREATEN YOUR FAMILY YOU WILL FOLLOW DIRECTIONS.
WHY DOES THAT NOT MAKE IT THEN, NOT PREJUDICIAL BECAUSE HE'S NOT OFFERING ANY MORE EVIDENCE THAN THE JURY CAN ALREADY INFER BY COMMON SENSE?
I'M SAYING IN A CASE LIKE THIS ALMOST EVERYTHING IS PREJUDICIAL BECAUSE WHAT THE GOVERNMENT IS TRYING TO DO WITH ALL OF THESE ARGUMENTS, ARGUING CREDIBILITY AND WHY THE WITNESS IS CREDIBLE AND HAVING A WITNESS TESTIFY ABOUT WHY THE WITNESS IS CREDIBLE IS THEY WANT TO CHANGE THE BURDEN OF PROOF FROM -- BUT YOU HAVE TO -- YOU HAVE TO AGREE THAT THE GOVERNMENT DID NOT ARGUE THE DOCTOR IN CLOSING ARGUMENT.
I MEAN, HE WAS OR THE OF A FLASH.
FOUR WEEK TRIAL HERE AND AS I SAY, I THINK THERE ARE THREE LINES IN THE CLOSING ARGUMENT THAT MENTION THE DOCTOR, AND HE WAS NOT MENTIONED AT ALL IN THE OPENING STATEMENT.
INSTEAD THE PROSECUTOR LINKED IS A ARGUMENT AND TRIED TO PLACE THE JURY IN THE SHOES OF THE VICTIM, MR. PANOYAN IN HIS OPINION AND THE DOCTOR -- AND THEY FOUND THE WITNESS WAS UNDER CREDIBLE THREAT AND USED -- THAT WAS USED TO DESCRIBE THE TYPE OF THREAT FOR AN OPINION.
IN THAT HE WAS SAYING IF CREDIBLE, I UNDERSTAND -- ISN'T

THAT A FAIR COMMENT --
THE PROSECUTOR LINKS THAT
WORD WITH HIS OWN ARGUMENT,
ABOUT BELIEVABLE THREATS.
YOU KNOW, I MEAN, HE WE WAS IT
THROUGHOUT AND -- WEAVES IT
THROUGHOUT AND FILES CHARGES
BECAUSE IT IS WARRANTED AND
MAKES AN ARGUMENT TO THE JURY
ABOUT HOW A BABY --
THAT REALLY WAS FOR -- WAIT A
MINUTE.
IN THE CASE --
LET HIM ANSWER THE QUESTION.
IN FAIRNESS, WHERE HE MADE
THE -- WE FILED IT BECAUSE THEY
ARE WARRANTED, WERE LISTING
THESE OTHER FELONIES.
THAT WERE FILED.
ISN'T THAT A FAIR READING OF THE
ORAL ARGUMENT.
I IT WOULD HAVE SAY THAT, YOU
KNOW, I'VE TRIED SEVERAL CASES
AGAINST THIS PARTICULAR
PROSECUTOR MYSELF PERSONALLY
AND, YOU KNOW, HE'S VERY ABLE --
A VERY ABLE PERSON.
BUT I MEAN --.
I'M BUILDING HIM UP TOO MUCH,
MAYBE --
AND I'M READING IT.
READING IT.
I ALSO NOTE IN RESPONSE --
RESPECT TO THE GRAY ISSUE THAT
IN OUR DIRECT APPEAL, OPINION,
THAT WE SAY THAT THE CAPITAL
FELONY WAS COMMITTED WHILE
WILLIAMSON WAS ENGAGED OR
ACCOMPLISHING THE COMMISSION OR
ATTEMPT TO COMMIT BURGLARY,
ROBBERY, AND KIDNAPPING, WE DID
NOT REFER TO ATTEMPTED FELONY
MURDER MORE DOES THE SENTENCING
ORDER.
SO DOESN'T THAT -- ISN'T THAT
PRETTY MUCH ON POINT.
ON THAT ISSUE.
YES.
CHIEF, MAY I ASK ONE
QUESTION?
AND PLEASE BE DIRECT WITH
YOUR OUT -- WE ARE OUT OF TIME,
SO....
I'M SORRY, I HAD TROUBLE

GETTING TO YOU.
LET ME ASK ONE QUESTION.
HYPOTHETICALLY, PUT YOURSELF IN THE OTHER FOOT, IF PANOYAN HAD BEEN CHARGED BY THE STATE IN THE CASE AND HAD ATTEMPTED PRESENT THE TESTIMONY OF THE DOCTOR, TO MAKE THE ARGUMENT THAT HE WAS UNDER THIS THREAT, WOULD THE SAME ARGUMENT APPLY, THE TESTIMONY WOULD NOT BE ADMISSIBLE?
I WOULD SAY YES.
I MEAN, ESSENTIALLY, THE DOCTOR'S TESTIMONY DOESN'T MEET ANY SCIENTIFIC STANDARDS OR EVIDENCE CODE STANDARDS AND FAILS UNDER, BASICALLY, EVERY POSSIBLE TEST.
HE NEVER TESTIFIED ABOUT THE SPECIFIC EXPERTISE THAT HE HAD.
DO YOU AGREE HE WASN'T TESTIFYING TO -- SUFFERING FROM A PARTICULAR SYNDROME?
I AGREE TO THAT.
HE JUST SAID, YOU KNOW, THE LANGUAGE IS IN MY BRIEF, THERE IS A PATTERN, THE PATTERN, THE WITNESS SHOWS IS THAT HE WAS UNDER A CREDIBLE THREAT.
I MEAN,, YOU KNOW, I THINK THE ENTIRE PURPOSE OF THE TESTIMONY WAS FOR THE WITNESS TO ESSENTIALLY VOUCH FOR IT.
THIS WOULD BE SOMEWHAT SIMILAR TO THE EARLIER CASES -- SOMEWHAT SIMILAR TO THE CASES ON DOMESTIC VIOLENCE, PEOPLE CLAIMING THEY WERE VICTIMS OF DOMESTIC VIOLENCE AN EXPLAINED THEIR CRIMINAL BEHAVIOR AS A RESPONSE TO BEING A VICTIM OF DOMESTIC VIOLENCE.
CRIMINAL CASES AN DOMESTIC VIOLENCE I AGREE, THAT TYPE OF TESTIMONY SHOULD NOT BE ADMISSIBLE.
THE JURY SHOULD BE THE ONES TO LOOK AT THE WITNESS AND DECIDE WHETHER OR NOT THEY ARE CREDIBLE.
AND AT WHAT LEVEL.
THE PROSECUTOR THROUGHOUT ALL OF THIS CHANGED THE BURDEN OF PROOF

FROM BEYOND A REASONABLE DOUBT
TO WHETHER YOU HAVE A GUT
FEELING ABOUT WHETHER YOU
BELIEVE THE WITNESSES WHICH IS
NOT E THIS BURDEN OF PROOF IN
THE CASE AND THAT THIS IS KIND
OF CASE HE HAS AND I UNDERSTAND
WHY HE -- HE'S DOING IT AND I
WAS A PROSECUTOR BEFORE MYSELF
AND THIS CASE IS, YOU KNOW, A
VERY WEAK CASE BASED UPON THE
PANOYAN TESTIMONY AND I WOULD
SUBMIT THAT EVERY PIECE OF
TESTIMONY, ESPECIALLY TESTIMONY
IN THE NATURE OF THE DOCTOR --
WITH THAT, YOU BOTH HAVE USED
YOUR TIME, PLUS ADDITIONAL TIME.
THANK YOU.
THANK YOU VERY MUCH, TAKE THE
CASE UNDER ADVISEMENT.