>> NEXT CASE ON THE COURT'S AGENDA IS PANTOJA V. STATE.
>> MAY IT PLEASE THE COURT? GOOD MORNING, I'M KATHLEEN STOVER.
I'M REPRESENTING THE PETITIONER IN THIS CASE, JUAN PANTOJA.
PANTOJA WAS CONVICTED OF SEXUAL BATTERY ON A CHILD UNDER 12, AND THE QUESTION BEFORE THE COURT IS WHETHER A PRIOR ACCUSATION BY A CHILD AGAINST HER UNCLE WAS ADMISSIBLE TO IMPEACH HER.
THE FIRST DISTRICT COURT OF APPEALS ADDRESSED THIS AS THE DEFENSE ACTING FOR A RULE TO CREATE AN EXCEPTION TO THE EVIDENCE CODE.
WE'RE NOT ASKING FOR A PER SE RULE, AND THE DISTRICT COURT SAYS THAT THIS WENT TO REPUTATION OR PRIOR CONVICTION EVIDENCE.
>> YOU'RE NOT ASKING FOR A PER SE RULE --
>> NO.
>> WHAT ARE YOU ASKING FOR?
>> I'M ASKING FOR THE COURT TO ADMIT THIS EVIDENCE AS MOTIVE TO TESTIFY IN THIS PARTICULAR CASE.
>> YOU SAY PARTICULAR CASE, BUT DOES IT NOT REALLY THEN RESULT IN A PER SE RULE THAT WHEN CLAIMED A VICTIM SUCH AS THIS THAT WE'RE DEALING WITH GETS INVOLVED WITH CONTRARY

STATEMENTS THAT SOMEHOW THAT
COMES IN JUST AS A MATTER OF
LAW?
I MEAN, IT'S REALLY ADDING THAT
AS PART OF THAT PART OF THE
EVIDENCE, ISN'T IT?
I LOOKED AT IT ALL KINDS OF
DIFFERENT WAYS.
IT SAYS, YOU KNOW, THIS IS THE
KIND YOU OUGHT TO KNOW ABOUT,
YET WE'VE GOT EVIDENCE CODES
THAT PROBABLY PRECLUDE THAT.
JUST THIS PARTICULAR CASE,
THAT'S WHY I'M TRYING TO SEE HOW
DO YOU FASHION A RULE THAT JUST
APPLIES TO ONE CASE WHEN YOU'RE
TALKING ABOUT THIS KIND OF
EVIDENCE?
>> LAST WEEK THE U.S. DISTRICT
COURT FROM THE NORTHERN DISTRICT
OF FLORIDA OVERRULED A FIRST
DISTRICT CASE.
WELL, THE PROCEDURE IS A LITTLE
BIT COMPLICATED.
I THINK IT ACTUALLY REACHED
FEDERAL HABEAS BASED ON A CLAIM
OF INEFFECTIVE ASSISTANCE OF
TRIAL COUNSEL.
BUT WHAT THE COURT THERE SAID, I
CITED THAT SUPPLEMENTAL
AUTHORITY BUT NOT UNTIL LAST
THURSDAY, AND THE TWO CASES IT
CITES SAYS YOU APPLY A BALANCING
TEST.
AND SO THIS, THE APPROACH WOULD,
I GUESS, BE THE SAME FOR A CHILD

VICTIM OR AN ADULT VICTIM, BUT
IT MIGHT BE MORE LIKELY TO
BALANCE OUT AGAINST ADMITTING IT
WHEN IT'S AN ADULT VICTIM.
BUT WHEN IT'S A CHILD VICTIM --
>> I THINK WE NEED TO START WITH
THE EVIDENCE CODE.
WHAT PROVISION IN THE EVIDENCE
CODE ARE YOU TRAVELING UNDER?
>> I BELIEVE IT'S 608, BUT IT'S
PROVISION 4 --
>> THE METHOD OF IMPEACHMENT
INCLUDING SHOWING A WITNESS IS
BIASED.
>> YES.
>> AND YOU'RE SAYING THAT THAT
OUGHT TO AS A GENERAL
PROPOSITION A TRIAL COURT NEEDS
TO LOOK AT ANY TIME A WITNESS
HAS MADE AN ALLEGED PRIOR FALSE
ACCUSATION.
>> UNDER SIMILAR CIRCUMSTANCES.
>> WELL, WHERE IS THAT, AND,
THEREFORE, THEY'RE BIASED IN
WHAT -- HOW DOES THAT SHOW BIAS
AS TO THAT PARTICULAR, THE
DEFENDANT THAT NOW THEY'RE
TESTIFYING AGAINST?
>> TWO OF THE CASES THAT WERE
JUST CITED AS SUPPLEMENTAL
AUTHORITY, BAKER'S THE ONE FROM
THE NORTHERN DISTRICT OF
FLORIDA, AND THE OTHER ONE,
REDMOND, WHICH WAS AN OPINION
WRITTEN BY JUDGE POSEN.
>> WE DON'T -- YOU KNOW, WE'RE

HERE.
LET'S STICK WITH FLORIDA LAW.
I HAVEN'T LOOKED AT YOUR
SUPPLEMENTAL AUTHORITY.
BECAUSE THERE'S DIFFERENT RULES
FOR THE FEDERAL EVIDENCE CODE.
>> WELL, BUT THOSE ARE HABEAS
CASES, AND ONE OF THEM IS
SPECIFICALLY APPLYING THE
FLORIDA EVIDENCE.
WELL, IT'S NOT SPECIFICALLY
APPLYING THE FLORIDA EVIDENCE
BECAUSE OF FEDERAL CASES ONLY
DEALING WITH CONFRONTATION
CRIMES, BUT WHAT THEY ILLUSTRATE
IS THAT THE PROHIBITION IS
AGAINST GENERAL EVIDENCE THAT
SOMEONE LIED UNDER SOME OTHER
CONTEXT AND THAT LYING ABOUT A
SEXUAL ATTACK IS IN A DIFFERENT
CATEGORY AND THAT YOU MAY NOT
EXACTLY UNDERSTAND WHAT THE
MOTIVE TO LIE IS, BUT THE
PATTERN --
[INAUDIBLE]
A MOTIVE.
>> NOW WE'RE TALKING ABOUT NOT
BIAS, BUT MOTIVE.
>> WELL --
>> SO ARE YOU THEN TRYING TO GET
IT UNDER NOT 402A, IN FACT,
SIMILAR EVIDENCE TO SHOW
IDENTITY ABSENCE AND MISTAKE
MOTIVE?
>> NO, EVEN THOUGH THE EVIDENCE
CODE SPECIFICALLY SAYS BIAS,

IT'S USUALLY BEEN INTERPRETED
MORE BROADLY TO INCLUDE MOTIVE
TO LIE, PREJUDICE, OTHER
EVIDENCE OF HOSTILITY AGAINST --
>> WELL, WHY WOULDN'T THAT BE A
BETTER -- I MEAN, AGAIN, I'M
TRYING -- SOMEONE'S TRIED TO GET
IT UNDER AN EXCEPTION TO 610.
TODAY I SAW SOMEBODY MENTIONING
609, PAREN 1, CREDIBILITY ATTACK
BY REPETITION OF TRUTHFULNESS,
BUT YOU CAN'T DO THAT BY
EVIDENCE OF SPECIFIC ACTS.
THEN THERE'S BEEN MENTION OF
404, EVIDENCE OF PERTINENT TRAIT
OF CHARACTER.
BUT IF YOU'RE TALKING ABOUT IT
HAS TO BE SIMILAR FACT EVIDENCE
UNDER SIMILAR CIRCUMSTANCES, IT
SOUNDS TO ME LIKE YOU'RE TRYING
TO GET IT UNDER 4042A.
>> JUDGE --
>> I MEAN --
>> WITHOUT THE RULE IN FRONT OF
ME, COULD YOU REMIND ME WHAT'S
AT ISSUE?
>> IT'S WILLIAMS RULE EVIDENCE.
>> WILLIAMS RULE EVIDENCE.
>> SO THE IDEA THEY MUST BE, YOU
KNOW, THEY'RE LYING -- JUST THE
WAY IF YOU COULD GET IN THAT
PRIOR, THAT YOU COULD GET IN THE
PRIOR EVIDENCE THAT ANOTHER
PERSON, THE SAME DEFENDANT HAD
SEXUALLY ABUSED ANOTHER PERSON
UNDER SIMILAR CIRCUMSTANCES --

>> YES.
>> -- WOULD YOU SAY THAT IF THE PERSON HAD ACCUSED SOMEBODY UNDER THE SAME CIRCUMSTANCES OF THE SAME CRIME AND HAD THEN SAID SHE LIED ABOUT IT, THAT THAT'S THE NARROW EXCEPTION THAT YOU'RE SEEKING?
>> [INAUDIBLE]
>> BECAUSE WHEN YOU SAY A --
>> THERE IS A FLORIDA CASE THAT SAYS IT.
GUTIERREZ HAS A CASE THAT CITED IT.
SAYS THAT THERE A TEENAGER WHO HAD ACCUSED HER AUNT AND UNCLE OF SEX CRIMES AGAINST HER, AND THE DISTRICT COURT SAYS THE DEFENSE SHOULD HAVE BEEN ALLOWED TO INTRODUCE EVIDENCE THAT SHE HAD MADE A SIMILAR ACCUSATION AGAINST ANOTHER FAMILY MEMBER IN THE PAST.
AND THEY CHARACTERIZED IT AS THE WILLIAMS RULE.
I GUESS THE REVERSE WILLIAMS RULE COULD BE CHECKED AS A TYPE OF MOTIVE TO LIE.
IT'S -- WILLIAMS RULE SPECIFICALLY MEANS THAT IF YOU ACTED IN A CERTAIN WAY, THEN YOU'RE ACTING IN THE SAME WAY NOW.
BUT THE EVIDENCE IS NOT JUST LYING.
JUST LYING ABOUT ANYTHING

ANYTIME ANYWHERE, IT'S LYING IN
A SPECIFIC CONTEXT OF A SEX
CRIME ACCUSING, IN THIS CASE, A
FAMILY MEMBER OF HAVING
COMMITTED A SEX CRIME.
AND THE RECORD'S NOT COMPLETELY
CLEAR ON THIS, BUT THE CHILD WAS
YOUNG AT THE TIME.
IT'S NOT TRUE THAT SHE HAD ANY
CONTACT WITH ANY OTHER MEN OTHER
THAN HER UNCLE WHO WAS A
TEENAGER AT THE TIME AND
MR. PANTOJA WHO WAS THE MOTHER'S
BOYFRIEND AND ALSO THE FATHER OF
A YOUNGER SIBLING.
>> COULD I ASK YOU ABOUT
PRESERVATION, WHAT WAS ACTUALLY
ARGUED IN THE TRIAL COURT?
IN THE TRIAL COURT, DID COUNSEL
ARGUE THAT THIS EVIDENCE WAS
ADMISSIBLE AS IMPEACHMENT
BECAUSE IT WOULD SHOW THAT THE
WITNESS WAS BIASED?
>> YES.
BIASED OR MOTIVE TO LIE.
>> BUT BIAS --
>> YES.
>> -- WAS SPECIFIC?
>> NOT AS OF CHARACTER WHICH IS
ONE OF THE THINGS THAT JAGGERS
SAID, BUT THAT'S NOT THE ONLY
THING THAT JAGGERS SAID, AND IN
SOME WAYS I FIND THE FIRST
DISTRICT OPINION SORT OF
MISLEADING IN THEY SAY JUDGE
ADMITTED IT AS CHARACTER

EVIDENCE, WHICH THEY DID.
THEY ALSO SAID IT WOULD BE
ADMISSIBLE AS BIAS EVIDENCE,
MOTIVE TO LIE EVIDENCE AND ALSO,
LASTLY, THAT IT WOULD BE
ADMISSIBLE UNDER THE
CONFRONTATION CLAUSE.
>> SO YOU'RE NOT ARGUING
CHARACTER AT ALL HERE.
THAT'S NOT YOUR POSITION.
>> I FIND THAT NOT TO BE A VERY
DEFENSIBLE POSITION.
SO I THINK THAT BIAS, MOTIVE TO
LIE, THE RIGHT TO CROSS-EXAMINE,
AND ONE OF THE THINGS I WANT TO
EMPHASIZE TO THE COURT IS TO
THINK ABOUT TRADITION, THE
DEFENDANT IN THIS CASE.
A CHILD UNDER 12 ACCUSES HIM OF
COMMITTING A SEX ACT.
THE INFORMATION ALLEGED OCCURRED
OVER A YEAR, YOU KNOW, BETWEEN
JUNE OF ONE YEAR AND JUNE OF THE
NEXT YEAR.
THIS MEANS HE CAN'T PROVE IT
DIDN'T HAPPEN.
HE CAN'T HAVE AN ALIBI.
HE LIVED IN THE HOUSEHOLD PART
OF THE TIME.
SO WITH MANY FORMS OF EVIDENCE
THAT MIGHT BE ADMISSIBLE OR
AVAILABLE ARE NOT AVAILABLE
HERE.
HE DID NOT TESTIFY, BUT ONE OF
THE CASES --
[INAUDIBLE]

AND IN MY EXPERIENCE IF YOU CAN'T PROVE BY TESTIMONY AND ALIBI --
[INAUDIBLE]
HIS CREDIBILITY OVER THAT AS A CHILD.
THE THING IS, THE JURY WANTS TO KNOW WHY THE CHILD WOULD LIE.
>> WELL, WHY DOESN'T -- GOES BACK TO JUSTICE POLSTON'S QUESTIONS, WHY DO YOU SAY THE CHARACTER EVIDENCE IS NOT A GOOD HOOK ON THIS?
IT SEEMS TO ME UNDER 90.4052 WHICH IS THE CHARACTER, IT SAYS THAT WHEN THE EVIDENCE OF A CHARACTER OF A PERSON OR A TRAIT OF THAT PERSON'S CHARACTER IS ADMISSIBLE PROOF MAY BE MADE BY TESTIMONY OF THAT PERSON'S REPUTATION, AND THEN IT GOES ON DOWN TO SAY AND YOU CAN USE SPECIFIC INSTANCES ALSO.
SO WHY NOT A CHARACTER TRAIT THAT OF LYING IN THIS INSTANCE?
>> WELL, CHARACTER -- REPUTATION IS STILL GENERAL CHARACTER EVIDENCE.
IF SOMEONE HAD A REPUTATION FOR UNTRUTHFULNESS, IT WOULD BE ADMISSIBLE IN ANY CASE WITHOUT REGARDS TO THE FACTS OF THE CASE.
BUT I THINK THE ESSENCE OF THIS CASE IS THAT IT'S ADMISSIBLE BECAUSE OF THE FACTS OF THE CASE

AND PARTLY IN THIS BALANCING
TEST, IT'S ALSO ADMISSIBLE
PARTLY BECAUSE HE HAS SO FEW
OPTIONS AS TO HOW HE DISPROVES
THAT HE COMMITTED A CRIME
AGAINST THIS CHILD OVER THE
PERIOD OF A YEAR.
>> WELL, THAT'S NECESSITY,
THAT'S NOT AN EXCEPTION TO THE
EVIDENCE CODE UNLESS YOU'RE NOW
RAISING THIS AS A CONSTITUTIONAL
CLAIM.
>> WELL, WE ARE RAISING IT AS A
CONSTITUTIONAL CLAIM ALSO.
AND THE FIRST DISTRICT DECIDED
THIS BOTH ON THE EVIDENCE CODE
AND ALSO REJECTED A
CONFRONTATION CLAUSE.
>> WHAT COURTS HAVE SAID THAT
INABILITY TO CONFRONT A CHILD
VICTIM OF PRIOR ACCUSATIONS
WHICH ARE SUBSEQUENTLY WERE
EITHER RECANTED OR FOUND TO BE
UNTRUTHFUL WOULD DEPRIVE THE
DEFENDANT OF HIS SIXTH AMENDMENT
RIGHTS UNDER THE --
>> THERE ARE THREE CASES THAT
WERE CITED IN THE LAST
SUPPLEMENTAL AUTHORITY, BAKER
FROM THE DISTRICT WHICH INVOLVED
A FLORIDA CASE, OBVIOUSLY, AND
REDMOND AND WHITE V. COPELAND.
THEY ALL INVOLVED CHILD
WITNESSES, AND THEY ALL SAY THAT
EVIDENCE THAT THE CHILD HAD LIED
WAS ADMISSIBLE TO SOME EXTENT TO

IMPEACH THEM, AND IT WAS WHITE THAT SAID THAT YOU MAY NOT EXACTLY UNDERSTAND A CHILD'S MOTIVE, BUT IF YOU HAVE A PATTERN THAT SUGGESTS A MOTIVE AND THAT IS ADMISSIBLE TO IMPEACH THE WITNESS.
>> IS THE SAME RULE APPLICABLE TO CRIMES OF, A RAPE CRIME WITH AN ADULT VICTIM?
>> I BELIEVE THAT THE SAME RULE WOULD APPLY, BUT THE BALANCING TEST MIGHT BALANCE DIFFERENTLY.
>> AND WHAT'S ON THE OTHER SIDE OF THE BALANCE?
>> BALANCE IS SIMILARITY, RELEVANCE, MAYBE CLOSENESS IN TIME.
BECAUSE, LIKE, ONE OF --
>> THAT'S WHY I ASKED.
IT IS SORT OF MORE LIKE REVERSE WILLIAMS RULE THAN IT IS ANYTHING ELSE BECAUSE THOSE ARE THE FIRST THINGS YOU LOOK AT FOR WILLIAMS RULE, SUBSTANTIAL SIMILARITY AND --
>> WELL, SIMILARITIES, SUBSTANTIAL SIMILARITY IS MOST IMPORTANT IN WILLIAMS RULE IF YOU'RE USING IT TO PROVE IDENTITY, AND IDENTITY'S NOT AT ISSUE HERE.
>> BUT THAT ALSO CAN COME IN TO SHOW ABSENCE OF MISTAKE OR MOTIVE.
>> YES.

>> SOME OF THESE CASES INVOLVE A WILLIAMS RULE WITNESS, AND SOME INVOLVE THE VICTIM'S TESTIMONY. SHOULD THERE BE A DIFFERENT RULE FOR DIFFERENT TYPES OF WITNESSES?
>> I DON'T THINK SO, BUT I DON'T THINK THE RULE WOULD BE DIFFERENT, BUT I THINK THAT THE WAY IT BALANCES OUT MIGHT BE DIFFERENT.
IF THE COURT HAS NO OTHER QUESTIONS, THEN I'LL SAVE THE REST OF MY TIME FOR REBUTTAL.
>> THANK YOU.
>> MAY IT PLEASE THE COURT, CHRISTINE GARDENER ON BEHALF OF THE STATE OF FLORIDA, AND I WANTED TO APOLOGIZE TO THE COURT, WE DID NOT REALIZE YOU ALL WOULD BE CLOSED ON FRIDAY. WE FILED A NOTICE OF APPEARANCE TODAY.
THE KEY POINT IN THIS CASE IS THAT YOU DON'T HAVE THE FACTS THAT ARE NECESSARY TO GET THIS IN AS REVERSE WILLIAMS RULE EVIDENCE OR ANYTHING CLOSE TO THAT.
WHAT HAPPENS HERE IS YOU HAVE AN EXPRESS FINDING BY THE TRIAL COURT THAT THE CREDIBILITY OF THE WITNESSES THAT EXPRESSED THAT RECANTATION OCCURRED WAS NOT GOOD.
>> WELL, THAT'S -- BUT BECAUSE

WE ARE HERE ON CERTIFIED
CONFLICT, AND I LOOKED AT THAT
ISSUE, BUT THE 11TH, THE FOURTH
DISTRICT EXPRESSLY SAID IN A
FOOTNOTE THAT THEY WEREN'T GOING
TO CONSIDER THE, THAT, THAT
FINDING -- LET ME JUST MAKE
SURE.
DO YOU AGREE THAT THEY, IN A
FOOTNOTE, THAT THEY, THAT THEY
SAID THAT THEY'RE ENUNCIATING
A -- IN FOOTNOTE TWO, TRIAL
COURT FOUND THE STATEMENT WAS
NOT A RETRACTION, THAT THEY SAID
THE PROPER INTERPRETATION IS NOT
NECESSARY AS WE CONCLUDE THAT
ANY EVIDENCE OF THE VICTIM'S
RECANTATION OF THE ALLEGATIONS
AGAINST T.D. WAS INADMISSIBLE.
IN OTHER WORDS, THE FIRST, YOU
KNOW, WHEN WE DISCHARGED
ROEBUCK, THERE WEREN'T
ACCUSATIONS AGAINST A BROTHER
ABOUT A WHOLE DIFFERENT THING,
BUT HERE -- SO I THINK WE REALLY
HAVE TO CONFRONT THE ISSUE HERE
AND ASSUME THAT THERE IS, THAT
THE FIRST DISTRICT SAYS THIS
STUFF DOESN'T COME IN, THE
SECOND DISTRICT SAYS IT CAN COME
IN AND THEN LOOK AT TO SEE IS IT
A RULE OF EXCLUSION OR A RULE OF
ADMISSIBILITY SOMETIMES AND THEN
WHAT ARE THE SOMETIMES?
SO IS THE STATE ASKING FOR A
BLANKET RULE THAT SAYS THIS

PRIOR LYING STUFF DOESN'T COME IN UNDER ANY EXCEPTION TO THE EVIDENCE CODE OR UNDER THE EVIDENCE CODE?
>> THE EVIDENCE CODE PROVIDES CERTAIN WAYS TO GET CERTAIN THINGS IN.
THE LEGISLATURE HAS NOT SAW FIT TO CRAFT A SPECIFIC EXCEPTION TO DEAL WITH SEX CRIMES OR SEX CRIMES' VICTIMS.
BUT THERE ARE THOSE ALTERNATIVE METHODOLOGIES BY WHICH ONE CAN IMPEACH THAT WITNESS SUCH AS UNDER 945 BY GENERAL REPUTATION FOR UNTRUTHFULNESS, OR YOU COULD EVEN HAVE THE VICTIM'S REPUTATION FOR MAKING UP THESE KINDS OF THINGS.
FOR INSTANCE, IF SHE ACCUSED EVERY MALE THAT CAME INTO THE HOUSEHOLD THREE OR FOUR TIMES, TWO TIMES --
>> BUT IT COULDN'T COVER -- UNDER 4052 ONE OF THE IRONIES IS YOU CAN GET SOMEONE ON TO SAY, WELL, THIS PERSON GENERALLY IS A LIAR, BUT YOU CAN'T THEN IMPEACH THEM WITH SPECIFIC ACTS OF WHEN THEY LIED.
SO THE ONE THAT LOOKS LIKE IT WOULD BE MORE RELEVANT DOESN'T COME IN, JUST THIS GENERAL IDEA THAT THIS CHILD IS NOT A TRUTHFUL PERSON.
>> WELL, IF HE'S NOT TRUTHFUL

AND, IN FACT, IT'S A CAREFUL
LINE TO WALK, BUT THEN YOU ALSO
HAVE THE REVERSE WILLIAMS RULE
KIND OF SCENARIO THAT I WAS
REFERRING TO EARLIER WHERE IF
YOU HAVE A CHILD WHO'S CREATING
CLOSE TO THE SAME STORY OVER AND
OVER AND OVER AGAIN IN CERTAIN
SITUATIONS WHICH IS EXACTLY WHAT
HAPPENED, I THINK IT'S IN WHITE,
THE CHILD THERE DIDN'T LIKE
HAVING, YOU KNOW, MASSIVE
PARENTAL AUTHORITY OVER HER AND
BEING RESTRICTED AND CONFINED TO
THAT SET OF RULES, SO THE RESULT
THAT THAT WAS, THAT CHILD WOULD
THEN MAKE UP A SEX CRIME
ALLEGATION.
HERE WE DON'T HAVE THAT KIND OF
SITUATION.
HERE WE HAVE A CHILD WHO SAYS
HER UNCLE TOUCHED HER
INAPPROPRIATELY.
THE ALLEGATION OF TOUCHING IS
VERY DIFFERENT FROM THE FACTS
AND CIRCUMSTANCES PRESENTED IN
PANTOJA'S CASE.
PANTOJA'S CASE INVOLVED
POTENTIAL PENETRATION IN THE TWO
DIFFERENT VARIETIES, IT INVOLVES
THE PERFORMING OF ORAL SEX, IT
INVOLVES MULTIPLE TYPES OF
INAPPROPRIATE TOUCHING.
>> BUT DON'T --
>> AND MUCH MORE.
>> CORRECT ME IF I'M WRONG, BUT

DON'T BOTH THESE CIRCUMSTANCES,
THAT IS THE CIRCUMSTANCE
INVOLVING THE UNCLE AND THE
CIRCUMSTANCE INVOLVING THE
DEFENDANT HERE, DON'T THEY BOTH
INVOLVE AN ASSERTION BY THE
VICTIM THAT THERE WAS A SEXUAL,
INAPPROPRIATE SEXUAL CONTACT
FOLLOWED BY A RECANTATION OF
THAT ASSERTION?
>> NO.
>> WELL, WHY -- OKAY, TELL ME
WHY THAT'S NOT CORRECT.
>> OKAY.
FIRST OF ALL, WITH RESPECT TO
MR. PANTOJA, THE VICTIM NEVER
MADE A RECANTATION.
>> WAS THERE ANY, WAS THERE ANY
TESTIMONY THAT SHE RECANTED?
>> AGAIN, PANTOJA?
NO.
>> YES.
>> THE ONLY THING YOU HAVE IS
ONE FAILURE TO REVEAL WHEN THE
SOCIAL WORKER ASKS HER.
I WANT TO GO THROUGH WHAT
HAPPENED IN THAT.
THE SOCIAL WORKER, VAN TASSEL,
ASKS HER, YOU KNOW, HAS PANTOJA
OR UNCLE -- WHO'S T.D. -- MESSED
WITH YOU, TOUCHED YOU, SOMETHING
OF THAT GENERAL NATURE.
THE VICTIM TURNS HER HEAD DOWN,
FAILS TO MAKE EYE CONTACT AND
SAYS, "NO."
>> OKAY.

>> THAT'S BEFORE SHE WAS --
>> I UNDERSTAND.
I MEAN, I UNDERSTAND THAT THERE COULD BE ALL KINDS OF QUESTIONS ABOUT WHAT THAT'S WORTH.
BUT SHE DENIED THAT IT HAPPENED IN THAT CONTEXT, ISN'T THAT CORRECT?
>> IT'S A QUESTION OF WHETHER OR NOT IT WAS A DENIAL.
I THINK --
>> BUT THAT'S A FACTUAL QUESTION THAT ULTIMATELY A JURY WOULD WEIGH.
NOW, WHAT ABOUT THE UNCLE?
>> NOW, AGAINST THE UNCLE THE VICTIM IN THIS CASE TOOK THE, TOOK THE STAND AND DURING THE PROFFERS SPECIFICALLY STATED THAT SHE HAD NEVER RECANTED AGAINST THE UNCLE.
BUT THE GRANDMOTHER, WHO'S THE MOTHER OF T.D., AND THE AUNT WHO WAS THE SISTER OF T.D. SAID THAT SHE HAD, IN FACT, RECANTED TO THEM.
AND THAT'S WHERE THE JUDGE MADE THE CREDIBILITY FINDING.
>> IN YOUR BRIEF YOU SAID THERE'S NO RECANTATION.
IS IT YOUR POSITION IN YOUR BRIEF THAT IN ORDER FOR THERE TO BE A RECANTATION, THERE HAS TO BE A RECANTATION IN OPEN COURT?
IS THAT THE ONLY KIND OF RECANTATION THAT COUNTS?

>> YOU HAVE TO HAVE A REVELATION FOLLOWED BY A DENIAL OF THE ACCUSATION, AND HERE WE DIDN'T HAVE A REVELATION AT ALL UNTIL -- I'M GOING TO GET THE DATE WRONG -- HER BIRTHDAY, AND IT WAS SOME DAYS AFTER THE INITIAL INVESTIGATION OF A HOMICIDE IN THE HOUSEHOLD.
SO A WEEK LATER YOU HAVE THE REVELATION TO THE GRANDMOTHER THAT PANTOJA HAD DONE SOMETHING TO HER.
THE GRANDMOTHER REFERRED THAT ON, AND THAT'S WHEN WE GET THE SECOND SOCIAL WORKER OUT THERE.
SHE REVEALS THE SECOND SOCIAL WORKER, WE GET THE SECOND INTERVIEW, AND THAT'S WHEN ALL OF IT COMES OUT, OBVIOUSLY, THE SOCIAL WORKER -- THE SECOND SOCIAL WORKER DID NOT QUESTION HER ABOUT ANY FURTHER DETAILS OF IT.
>> I THINK, THOUGH, THE QUESTION IS THERE WAS EVIDENCE FROM THE GRANDMOTHER AND THE AUNT THAT SHE, THE VICTIM, HAD ADMITTED THAT SHE HAD LIED ABOUT SEXUAL ABUSE BY HER UNCLE.
CORRECT?
>> CORRECT.
AND THEN THE GRANDMOTHER --
>> AND THAT'S WHAT WAS NOT ALLOWED INTO EVIDENCE, AND THE FIRST DISTRICT SAID WITHOUT

REGARD TO WHETHER IT WAS
SIMILAR, THERE IS NO BASIS TO
ADMIT IT AND CERTIFY CONFLICT
WITH JAGGERS WHICH, ALTHOUGH IT
INVOLVED, ACTUALLY INVOLVED
ANOTHER, A WITNESS, A WILLIAMS
RULE WITNESS WHO HAD ALLEGEDLY
MADE A PRIOR FALSE ACCUSATION
AGAINST HER FATHER, SO IT WASN'T
EVEN AGAINST THE SAME PERSON
BECAUSE THIS WAS WILLIAMS RULE
EVIDENCE, AND THAT WAS ALLOWED
AS IMPEACHMENT.
SO THE STATE'S POSITION WOULD BE
THAT WE WOULD HAVE, WE SHOULD
QUASH JAGGERS?
>> CORRECT.
>> OR DISAPPROVE OF IT?
>> CORRECT.
>> HOW ABOUT CLYBURN?
>> I THINK YOU ALSO HAVE TO
QUASH CLYBURN.
>> AND THAT HAS TO DO WITH WHERE
YOU MADE A PRIOR FALSE
ACCUSATION THAT HAD RESULTED IN
IMPRISONMENT AND WASN'T EVEN THE
SAME, THAT'S CLYBURN, RIGHT?
>> I THINK YOU HAVE TO QUASH
CLYBURN TO THE EXTENT IT'D STILL
BE BASED ON THE JAGGERS OPINION.
THAT'S WHERE THE COURT GOT ITS
RATIONALE FROM, SO ITS RATIONALE
WOULD NOW FAIL.
>> AND THEN WILLIAMS FROM 1980
WHICH SAID THE IMPEACHMENT OF
MAIN WITNESS SHOULD HAVE BEEN

ALLOWED AS PRIOR FALSE STATEMENT
TO THE POLICE, THAT ALSO?
>> TO THE EXTENT --
>> WELL, I MEAN, THE FACT THAT
YOU HAVE LIED TO THE POLICE
BEFORE WITH THE STATE SAYING
THAT WOULD NOT COME IN UNDER ANY
EXCEPTION EITHER.
>> NO.
NOT UNLESS, AGAIN, IT FITS WITH
ONE OF THOSE REVERSE WILLIAMS
RULE-TYPE SCENARIOS OR ANOTHER
EXCEPTION THAT I'M JUST NOT
THINKING OF RIGHT NOW WHICH I'M
SURE THERE'S PROBABLY SEVERAL
SOMEONE ELSE COULD COME UP WITH.
BUT THE OTHER KEY IS THAT --
>> DO YOU NOT AGREE THAT THIS IS
SOMETHING, AND I THINK WHY WE'RE
STRUGGLING AND EVEN THE FIRST
DISTRICT, IT SEEMS SO
POTENTIALLY, IT'S SO RELEVANT TO
THE CREDIBILITY OF THIS
PARTICULAR VICTIM.
THAT SHE MAY BE LYING.
AND IT IS, I'VE SAID, THE FIRST
DISTRICT SEEMED TO BE IN THE END
STRUGGLING WITH -- WE ADMIT THIS
COULD BE HIGHLY RELEVANT
EVIDENCE.
DOES THE STATE AGREE THAT THERE
IS THAT IDEA THAT THIS IS NOT
UNDER THE NATURE THAT IT WOULD
BE UNDULY CONFUSING OR
MISLEADING, BUT JUST THAT THE
THERE REALLY ISN'T A PARTICULAR

PLACE FOR THEM IN THE EVIDENCE CODE AND THAT'S WHY IT HAS TO STAY OUT?
>> NO.
QUITE FRANKLY, YOUR HONOR, THE STATE DISAGREES WITH THAT POSITION.
THE POSITION OF THE STATE IS THAT WE DON'T DO MANY TRIALS WITHIN TRIALS, AND WE CERTAINLY DON'T ALLOW IMPEACHMENT UNDER EXTRINSIC EVIDENCE.
FLORIDA DIDN'T COME UP WITH A NEW RULE.
AT COMMON LAW WE DIDN'T DO THIS.
AND IF YOU READ THE FEDERAL CASES THAT HAVE BEEN CITED THROUGHOUT THE BRIEF, YOU'LL SEE THAT IS THE ACTUAL COMMON LAW RULE THAT FLORIDA HAS GONE WITH.
WE DON'T ALLOW THIS TYPE OF TESTIMONY BECAUSE OF PREJUDICE, IT CAN CAUSE CONFUSION OF THE ISSUES.
HERE WE WOULD HAVE TRIED THE CASE AS FOLLOWED: PANTOJA'S CASE WOULD HAVE HAPPENED, THE VICTIM WOULD HAVE MADE ALLEGATIONS, AND THEN WE WOULD HAVE --
>> WELL, UNDER THE FEDERAL RULE OF THE SYSTEM, 608B SPECIFICALLY PERMITS THIS TYPE OF INQUIRY IN SPECIFIC INSTANCES, RIGHT?
>> CORRECT.
>> AND IN THE FIRST DCA CASE THAT'S WHY WE HAVE TO NOT ADMIT

THIS EVIDENCE IS BECAUSE, I MEAN, LOOK, HERE'S THE FEDERAL RULE EVIDENCE HAD ALLOWED THIS SPECIFIC TYPE OF INQUIRY WITH WHERE THE FLORIDA EVIDENCE CODE SPECIFICALLY LOOK AT THAT LANGUAGE AND SAID, NO, WE'RE NOT GOING TO PERMIT THAT.
SO IT'S DIFFERENT.
>> CORRECT.
THE FRAMERS OF THE FLORIDA EVIDENCE CODE IN THE LEGISLATURE SPECIFICALLY REJECTED THAT APPROACH.
I BELIEVE IF YOU GO BACK TO THE ARGUMENT IN ROEBUCK, THERE'S A DISCUSSION ABOUT THE PROFESSOR'S COMMENTARY ON THAT, AND IT HAS BEEN SPECIFICLY REJECTED.
THE OTHER PROBLEM IS WHERE THAT REALLY SHOULD HAVE COME DOWN.
THAT INVOLVED A WILLIAMS RULE WITNESS AND THE QUESTION OF A CREDIBILITY OF A WILLIAMS RULE WITNESS.
AND WHILE THE OPINION ISN'T PARTICULARLY CLEAR ON THE SUBJECT MATTER, PERHAPS THIS WAS NOT TRULY ADMISSIBLE UNDER THE WILLIAMS RULE BECAUSE THEY DIDN'T MEET THE CLEAR AND CONVINCING EVIDENCE STANDARD REQUIRED BEFORE WILLIAMS RULE EVIDENCE COMES INTO PLAY.
>> THAT THE OTHER CRIME HAD ACTUALLY BEEN COMMITTED.

>> CORRECT.
AND THAT'S WHERE A JAGGERS COURT INSTEAD OF GOING IN THE CORRUPTION -- AND, AGAIN, MAY NOT BE FACT IN THE OPINION AS WE HAVE IT NOW TO DO THIS, BUT THE VICTIM WAS A HABITUAL LIAR, THE VICTIM WAS A HABITUAL ACCUSER LIKE WE HAVE IN WHITE, THEN CERTAINLY THAT COLLATERAL CRIMES EVIDENCE SHOULD HAVE NEVER COME IN BECAUSE IT COULDN'T MEET THE CLEAR AND CONVINCING STANDARD UNDER THE WILLIAMS RULE.
WHEN THIS TYPE OF EVIDENCE IS SOUGHT TO BE ADMITTED IN ANOTHER TRIAL, FOR INSTANCE, IN THIS CASE, IT'S THE STATE'S POSITION THAT AT THE VERY LEAST THE DEFENSE WOULD HAVE TO MEET SOME SORT OF CLEAR AND CONVINCING STANDARD LIKE THE WILLIAMS RULE BECAUSE THAT'S THE SAME FOR WILLIAMS RULE EVIDENCE.
THE OTHER POINT I'D LIKE TO MAKE AT THIS POINT IS THAT THE DEFENSE KEPT SAYING MOTIVE, BIAS, MOTIVE, BIAS, MOTIVE, BIAS HANGING ON THE KEY WORDS, BUT WHAT THEY REALLY WANTED TO DO WAS TO INTRODUCE THIS EVIDENCE TO SHOW IF SHE LIED ONE TIME, SHE LIED AGAIN.
SO NO MATTER HOW YOU COLOR IT, IT'S A GENERAL --
>> WHY ISN'T IT A CREDIBILITY

ATTACK THAT IS SPECIFIC TO THE PARTICULAR TYPE OF ACCUSATION IN THAT SHE HAS PREVIOUSLY MADE AN ACCUSATION OF A SEXUAL MOLESTATION AND THEN RECANTED IT?
AND THAT WOULD SEEM TO BE SOMETHING THAT WE SHOW THAT SHE HAS A BIAS OR INCLINATION TOWARD MAKING THOSE KINDS OF CHARGES AND THEN RECANTING.
>> I'LL ANSWER YOUR HONOR'S QUESTION THIS WAY, WE DO NOT ALLOW IN CASES OF THEFT, WE DO NOT ALLOW THE FACT THAT THE PERSON HAS STOLEN FROM THE DOLLAR GENERAL STORE, FROM WALMART AND FROM TARGET TO PROVE THAT HE COMMITTED THE CRIME OF THEFT FROM MACY'S.
THAT'S THE EXACT SAME SCENARIO THAT WE WERE SETTING UP --
>> NO, WE'RE TALKING ABOUT ATTACKING THE CREDIBILITY OF A WITNESS.
THIS ISN'T -- THIS IS, SPECIFICALLY, TO ATTACK THE CREDIBILITY OF A WITNESS, AND WHAT I'M, WHAT -- IF YOU COULD FOCUS ON ME, FOR ME ON DEMONSTRATING WHY THIS EVIDENCE IS NOT EVIDENCE THAT COULD PROPERLY BE USED TO ATTACK THE CREDIBILITY OF A WITNESS -- WHY DOESN'T THIS SHOW SUCH A BIAS?
>> I'M NOT SURE WHAT THE BIAS IS

BECAUSE IT'S NEVER BEEN LAID OUT
IN A LOWER COURT.
THE BIAS, FOR INSTANCE, IN
REDMOND WAS THAT THE VICTIM HAD
TRIED ONE TIME PREVIOUSLY TO GET
HER MOTHER'S ATTENTION WHILE SHE
WAS IN DRUG REHABILITATION AND
MADE THE SAME KINDS OF
ACCUSATIONS THEN.
IN WHITE YOU HAD A SERIES OF
REPEATED ACCUSATIONS THAT SHOWED
NOT ONLY BIAS, BUT MOSTLY
MOTIVE.
IN OTHER WORDS, HOW THE VICTIM
COMES TO MAKE THESE ALLEGATIONS.
YOU HAVE IN A NUMBER OF THOSE
FEDERAL CASES YOU HAVE, FOR
INSTANCE, THINGS WERE DISALLOWED
LIKE THE POTENTIAL FOR ANY KIND
OF FAVORABLE TREATMENT BY THE
GOVERNMENT FOR EVEN A PETTY
CRIME.
I THINK THERE'S A PUBLIC
DRUNKENNESS.
SO YOU HAVE THOSE KINDS OF
THINGS THAT GO TO CREDIBILITY
THAT ARE SPECIFIC AND
PARTICULARIZED ATTACKS ON
CREDIBILITY.
BUT THESE ATTACKS ON CREDIBILITY
THAT ARE REALLY MEANT TO SHOW IF
YOU DID SOMETHING ONE TIME YOU
WOULD DO IT AGAIN, ARE
CONSIDERED TO BE GENERAL
CREDIBILITY ATTACKS, NOT
PARTICULARIZED CREDIBILITY

ATTACKS.
AND I THINK THAT CALLING THEM SOMETHING ELSE DOES NOT CHANGE THE CHARACTER OF THE ATTACK.
>> WOULD THIS STILL HOLD TRUE, I MEAN, DO WE HAVE ONE INSTANCE HERE, PRIOR INSTANCE WHERE THE VICTIM, WHETHER YOU BELIEVE IT OR NOT, RECANTED AT LEAST TO A COUPLE OF PEOPLE, RECANTED HER STATEMENT?
IF THIS HAD HAPPENED A COUPLE OF OTHER TIMES, DOES IT BECOME ADMISSIBLE?
DOES IT BECOME ADMISSIBLE AS A GENERAL CHARACTER KIND OF EVIDENCE AS OPPOSED TO, IN THIS CASE, IT ONLY HAPPENED ONCE SO IT DOESN'T BECOME GENERAL CHARACTER?
>> I'D PREFER TO STAY AWAY FROM THE WORLD "GENERAL" IF YOUR HONOR DOESN'T MIND BECAUSE THAT HAS A CENTRAL MEANING IN THIS CASE, BUT I UNDERSTAND WHAT YOUR HONOR'S ASKING ME AND THAT IS HOW MANY TIMES --
>> YEAH.
HOW MANY TIMES DOES SHE GET TO LIE AND STILL ACCUSE SOMEONE?
>> RIGHT.
AND THAT'S WHERE THE REVERSE WILLIAMS RULE MAKES THIS VERY EASY.
ONE TIME PREVIOUSLY WITH SOME KIND OF SIMILARITY AND EVEN THE

NEW JERSEY CASE THAT WAS SUGGESTED, ROEBUCK, REQUIRES THAT --
>> AND BEING A SEX CRIME DOESN'T MAKE IT PARTICULAR ENOUGH?
>> NO, I DON'T THINK SO.
>> SHE LIED ABOUT SOME KIND OF SEXUAL ABUSE.
>> I DON'T THINK SO BECAUSE IN THIS CASE WHILE THE CHILD ALLEGED AN INAPPROPRIATE TOUCHING, AGAIN, WE DON'T HAVE A FULLY-DEVELOPED RECORD ON WHAT THE QUOTE "INAPPROPRIATE TOUCHING" WAS.
MY UNDERSTANDING WAS IT WAS A TOUCHING OF THE PRIVATE AREA OF THE LITTLE GIRL.
BUT THE FACTS USED TO RATIONALIZE AND EXPLAIN THAT ARE BOTH CONSISTENT WITH --
>> BUT ISN'T THAT, I MEAN, EVEN IF IT'S A DIFFERENT KIND OF SEXUAL ABUSE, ISN'T THAT WHAT CROSS-EXAMINATION IS ALL ABOUT?
IT'S DISTURBING THAT HERE WE HAVE, YOU KNOW, FOR WHATEVER REASON A YOUNG PERSON -- EVEN AN OLDER PERSON, IT SEEMS TO ME WOULD, YOU KNOW, MAKE AN ACCUSATION AGAINST SOMEONE, RECANT IT.
NOW WE HAVE A SIMILAR IN THAT IT IS A SIMILAR SEXUAL CRIME, ACCUSATION AGAINST SOMEONE, BUT WE NEVER GET TO HEAR ABOUT --

>> WELL, AGAIN --
>> -- THE EARLIER ACCUSATIONS.
>> THE ACCUSATIONS IN THIS CASE ARE NOT SUBSTANTIALLY SIMILAR.
>> I'M SAYING IT'S SUBSTANTIALLY SIMILAR IN THAT IT IS A SEX CRIME.
>> I THINK --
>> AND IF WE, LET'S START WITH THAT PROPOSITION, THAT IT'S SUBSTANTIALLY SIMILAR BECAUSE IT'S A SEX CRIME, WHY, WHY SHOULDN'T WE HEAR ABOUT THIS? DO WE HAVE TO WAIT UNTIL THERE IS MULTIPLE EVENTS BEFORE WE CAN HEAR IT?
>> I DON'T THINK YOU HAVE TO WAIT UNTIL THERE'S MULTIPLE EVENTS.
FOR INSTANCE, IF SHE HAD MADE THE EXACT SAME ALLEGATIONS OR SUBSTANTIALLY SIMILAR WITH RESPECT TO T.D., THAT HE HAD FORCED HER TO PERFORM ORAL SEX, THAT HE HAD TOUCHED HER INSIDE AND OUTSIDE, PERFORMED ORAL SEX ON HER AND DONE A NUMBER OF PENETRATION KINDS OF THINGS, THEN I THINK ONE TIME POTENTIALLY COULD BE ENOUGH.
>> THAT WOULD BE UNDER 4042A?
>> YES, YOUR HONOR.
>> WHAT IS -- I'M TRYING TO UNDERSTAND WHAT 4052 ACTUALLY MEANS WHEN IT SAYS CHARACTER EVIDENCE IS ADMISSIBLE WHEN THE

CHARACTER OR TRAIT OF CHARACTER
IS AN ESSENTIAL ELEMENT OF THE
CHARGE OR THE OFFENSE.
WHEN IS CHARACTER AN ESSENTIAL
ELEMENT OF THE CHARGE OR
DEFENSE?
>> WELL, PROFESSOR EARHART HAS
SAID IT HAPPENS VERY SELDOMLY,
BUT A VERY GOOD AND LIKABLE TO
THIS SITUATION KIND OF CRIME
WOULD BE LIKE DEFAMATION.
IT WOULD COME IN IN DEFAMATION
BECAUSE THE TRUTH OF THAT MATTER
IS WHAT IS AT PLAY.
THERE'S CERTAIN OTHER KINDS OF
AUTO ACCIDENTS AND THINGS LIKE
THAT WHERE THE PROFESSOR HAS
SAID 4052 RULE COMES INTO
PLAY --
>> LIKE WHAT?
[INAUDIBLE]
>> I THINK IT'S ENTRUSTING A
MOTOR VEHICLE TO SOMEONE WHO
SHOULDN'T HAVE IT, I THINK, WAS
HIS EXAMPLE ON THAT.
THEN YOU HAVE CASES LIKE WHERE
SELF-DEFENSE --
>> ON CHARACTER EVIDENCE?
>> I DON'T KNOW, YOUR HONOR.
I'D HAVE TO GO BACK.
>> I DON'T SEE WHY CHARACTER
EVIDENCE COULDN'T BE APPLICABLE
IN ANY KIND OF CASE.
I DON'T KNOW WHY WE WOULD
RESTRICT IT TO THE KINDS OF
CASES THAT YOU'RE TALKING ABOUT.

I MEAN, I UNDERSTAND THAT YOU'RE GETTING WHAT YOU'RE SAYING FROM EARHART'S BOOK ABOUT THIS, BUT IT SEEMS TO ME CHARACTER COULD BE AN ISSUE IN ANY KIND OF CASE.
>> IT'S NOT, THAT'S NOT THE KIND OF CHARACTER TO WHICH THE EVIDENCE CODE REFERS.
THE EVIDENCE CODE REFERS TO A SPECIFIC KIND OF CHARACTER, IT REFERS TO THE CHARACTER BEING AN ESSENTIAL ELEMENT THAT MUST BE PROVED.
>> BUT IT ALSO SAYS DEFENSE.
IT DOESN'T SAY JUST AN ELEMENT OF THE CRIME, BUT IT ALSO SAYS IT'S PART OF A DEFENSE.
>> I SEE MY TIME'S EXPIRED, IF I MAY ANSWER YOUR HONOR'S QUESTION.
WE'VE ALLOWED IT IN CASES WHERE YOU HAVE THE VICTIM, WHERE YOU HAVE SELF-DEFENSE AND YOU'RE A VICTIM THAT'S KNOWN TO ACT AGGRESSIVELY IN THE PAST, KNOWN TO CARRY A WEAPON IN THE PAST, THINGS LIKE THAT WHERE IT'S AN ACTUAL ELEMENT OF THE DEFENSE AS OPPOSED TO SOMETHING YOU'RE JUST PUTTING OUT THERE FOR THE JURY.
>> OKAY.
ANY REBUTTAL?
>> YES, YOUR HONOR.
THE QUESTION THE JURY'S ASKING IN A CASE LIKE THIS IS WHY WOULD THE CHILD LIE, OR WHY WOULD THE

CHILD NOT BE A RELIABLE WITNESS?
AND THIS IS NOT A CASE WHERE
THERE IS ANY EXTRINSIC EVIDENCE
THAT ANYTHING HAPPENED.
THE STATE JUST MADE AN ALLUSION
TO THE CHILD ALLEGED AMONG OTHER
THINGS THAT ORAL SEX TOOK PLACE
IN A CAR IN THE PARKING LOT AT
WAL-MART.
AND POLICE OFFICERS LOOKED AT
VIDEOTAPES OF THE PARKING LOT AT
WAL-MART, DIDN'T SEE ANYTHING.
THEY TESTED THE CAR FOR ANYTHING
THAT WOULD REVEAL SEMEN WHICH
THE CHILD INDICATED TOOK PLACE.
THEY DIDN'T FIND ANYTHING.
AND, YES, THEY HAVE A DOCTOR WHO
SAYS THERE'S NO PHYSICAL
EVIDENCE, BUT THAT DOESN'T PROVE
THAT IT DIDN'T HAPPEN.
SO HE HAS VERY LITTLE TO GO ON,
AND THE JURY WANTS TO KNOW WHY A
CHILD WOULD LIE.
AND THE CHILD, ONE OF THE
REASONS WHY YOU DON'T GET TO
INTRODUCE PRIOR EVIDENCE THAT,
THAT A WITNESS LIED IS BECAUSE,
YOU KNOW, THE EXPERTS BELIEVE
THAT THE JURY WOULD HOLD THIS
AGAINST AN ADULT WITNESS TOO
MUCH, THAT THIS WOULD BE SORT OF
AN ATOMIC BOMB OF IMPEACHMENT IF
THEY FIND OUT THAT THE WITNESS
MADE PRIOR FALSE STATEMENTS.
BUT I DON'T THINK THAT YOU HAVE
THE SAME DYNAMIC WHEN YOU HAVE

THE CHILD, WHEN THE WITNESS IS A CHILD.
>> BUT DON'T YOU, I MEAN, NOW WE LOOK AT THIS SPECIFIC CASE, AND ALTHOUGH I SAID WE SHOULDN'T CONSIDER WHY THE JUDGE DECIDED SHOT TO LET IT IN, BUT ONE OF THE REASONS WAS, YOU KNOW, THIS REALLY NOW WILL INVOLVE WHETHER THE GRANDMOTHER AND AUNT OF T.D. WHO WAS NOT THE DEFENDANT IN THIS CASE, WAS AN UNRELATED PERSON, RIGHT?
WAS THE BOYFRIEND OF THE MOTHER?
>> YES.
HE'S NOT A BLOOD RELATIVE, BUT HE WAS A MEMBER OF THE HOUSEHOLD.
>> WAS T.D. A MEMBER OF THE HOUSEHOLD?
>> HE WAS A FREQUENT VISITOR TO THE HOUSE, BUT I DON'T THINK -- WELL, NO, I'M NOT SURE BECAUSE THE MOTHER DID AT ONE TIME -- THE GRANDMOTHER DID LIVE WITH THEM AT ONE TIME.
>> CERTAINLY, I GUESS YOU COULD SAY -- AND THIS IS WHERE IT GETS TO WHERE THE BALANCING IS -- THAT THE GRANDMOTHER AND THE AUNT OF T.D --
>> WELL, HIS MOTHER AND SISTER IS WHO YOU'RE TALKING ABOUT.
THIS IS THE GRANDMOTHER AND THE AUNT OF THE CHILD.
>> OKAY.

HIS MOTHER AND SISTER WOULD HAVE
A MOTIVE TO SAY THAT SHE WAS
UNTRUTHFUL ABOUT A CLAIM OF
SEXUAL ABUSE AGAINST THEIR SON
OR GRANDSON.
SO THEN YOU'D GET INTO THAT
ISSUE ABOUT ATTACKING THE
CREDIBILITY OF THE WITNESSES WHO
WERE SAYING SHE'S NOT CREDIBLE.
>> BUT THE COURT ALSO EXCLUDED
THE EVIDENCE OF MARY JANE VAN
TASSEL WHO'S A HEAD START
COUNSELOR AND WHO JUST HAS NO
MOTIVE TO SAY --
>> SOME EVIDENCE THAT SHE
TESTIFIED TO COME IN?
>> YES.
AND THIS IS SOMETHING THAT I
OVERLOOKED IN MY ORIGINAL
ARGUMENT WHICH IS A VERY
SIGNIFICANT THING.
I'D LIKE TO SAY THAT THE
GRANDMOTHER AND THE AUNT'S
TESTIMONY ARE SORT OF SIMILAR TO
EACH OTHER SO THAT YOU CAN TREAT
THEM AS A UNIT.
BUT MARY JANE VAN TASSEL
TESTIFIED THAT SHE ASKED THE
CHILD WHAT MIGHT OR MIGHT NOT
HAVE BEEN A COMPOUND QUESTION TO
THE EFFECT OF WHETHER PANTOJA OR
THE UNCLE TOUCHED HER, AND THEN
THE CHILD SAID, NO, BUT SHE
LOOKS DOWN IN A WAY -- AND THERE
ARE TEARS IN HER EYES.
AND THE DEFENSE TOOK THE

POSITION THAT -- AND THE JUDGE EXCLUDED THE UNCLE FROM THAT.
SO THE JURY WAS LEFT WITH THE REALLY FALSE IMPRESSION THAT THE CHILD IS SAYING, NO, BUT HER ACTIONS SAY, YES.
SHE WAS TALKING ONLY ABOUT PANTOJA, BUT, IN FACT, IN THE CONTEXT OF WHAT HAPPENED, YOU COULDN'T TELL IF SHE WAS TALKING ABOUT PANTOJA OR THE UNCLE.
THE JURY WAS GIVEN A VERY MISLEADING --
>> WOULDN'T THAT HAVE BEEN HELPFUL TO YOUR CASE?
YOU MIGHT SAY, WELL, MAYBE SHE WAS LYING ABOUT T.D. AND THEN YOU'D HAVE TO GET INTO THE WHOLE THING ABOUT WHO T.D. WAS, AND THAT WOULD BE FAR AFIELD FROM THE CASE.
SO I DON'T KNOW HOW THAT ACTUALLY HURTS YOU IN THAT THE JURY DID HEAR THAT SHE MIGHT HAVE SAID THAT THE SEXUAL ABUSE AGAINST THIS DEFENDANT DID NOT OCCUR.
>> BUT THE STATE WAS SELLING THIS AS HER WORDS SAY, NO, BUT HER ACTIONS SAY, YES.
SO WHEN HER ACTIONS SAY, YES, THE DEFENSE WANTS TO SAY SHE ASKING HER ONLY ABOUT PANTOJA, SHE WAS ALSO ASKING ABOUT THE UNCLE.
WHAT SHE ASKED WAS SOMETHING

LIKE DID PANTOJA OR THE UNCLE DO IT, AND SHE SAYS, NO, BUT SHE LOOKS SAD WHICH VAN TASSEL AND THE STATE ARGUES THAT THIS MEANS IT REALLY MEANT, YES.
YOU KNOW, ANOTHER THING ABOUT THIS WHOLE DYNAMIC IS THAT PANTOJA IS THE MOTHER'S BOYFRIEND.
HE'S SORT OF A STEPPARENT IN THIS SITUATION, AND THERE'S OFTEN CONFLICT BETWEEN CHILDREN AND STEPPARENTS.
SO THAT, AGAIN --
>> HOW OLD WAS THIS DEFENDANT?
>> THE DEFENDANT WAS OVER -- ARE YOU ASKING ABOUT THE FACT THAT HE WAS CONVICTED OF A CRIME OF BEING UNDER 18?
I BELIEVE HE WAS OVER 18, BUT THERE WAS NO EVIDENCE OF OF HIS AGE.
THE JURY, THE JUDGE GAVE THE LESSER --
>> I'M JUST WONDERING THE AGES OF BOTH, THE TWO PEOPLE THAT SHE ACCUSED.
HOW OLD WERE, HOW OLD IS T.D.?
>> I BELIEVE SHE WAS A SOMEWHAT OLDER TEENAGER, AND PANTOJA, I DON'T REMEMBER EXACTLY.
HE WAS IN HIS 20s.
THEY MAY HAVE BEEN AS CLOSE TOGETHER IN AGE AS SEVEN OR EIGHT YEARS.
I BELIEVE THEY DID BOTH LIVE IN

THE SAME HOUSEHOLD FOR SOME PERIOD OF TIME BECAUSE THE UNCLE WAS A TEENAGER.
WE DIDN'T TALK SPECIFICALLY ABOUT WHERE HE LIVES, BUT THE GRANDMOTHER DID TESTIFY THEY ALL LIVED TOGETHER AT ONE POINT AND THAT SHE HAD SOME CONFLICT WITH PANTOJA AND THE CHILD'S MOTHER MOVED OUT WITH THE CHILDREN.
JUSTICE CANADY, YOU ASKED IF IT WASN'T A FACTUAL QUESTION ABOUT WHETHER THE CHILD RECANTED THE ACCUSATION AGAINST PANTOJA OR THE UNCLE FOR THAT MATTER, AND, YES, IT IS.
ANOTHER REASON WHY I THINK THE COURT REALLY SHOULD NOT AFFIRM THIS IS YOU HAVE THIS VERY UNSEEMLY SITUATION WHERE THE TRIAL JUDGE IS EXCLUDING RELEVANT EVIDENCE BECAUSE OF HIS VIEW OF THE CREDIBILITY OF THE WITNESSES.
NOW, IF HE HAD BELIEVED, PRESUMABLY, IF THE JUDGE HAD BELIEVED THE GRANDMOTHER AND THE AUNT, HE WOULD HAVE ADMITTED IT.
HE EXCLUDED IT BECAUSE HE DIDN'T BELIEVE THEM.
BUT THAT IS REALLY A QUESTION FOR THE JURY TO DECIDE, NOT THE JUDGE.
>> AND WITH THAT, YOU HAVE USED ALL OF YOUR TIME ALSO.
THANK YOU BOTH FOR YOUR

ARGUMENTS HERE TODAY.
THE COURT WILL TAKE ITS MORNING
RECESS FOR TEN MINUTES.
>> PLEASE RISE.
SUPREME COURT'S NOW IN RECESS.