NEXT CASE ON OUR DOCKET WILL
BE DELHALL VERSUS THE STATE OF
FLORIDA.
>> COUNSEL, YOU MAY PROCEED.
>> GOOD MORNING, MAY IT PLEASE
THE COURT, MELANIE SMITH ON
BEHALF OF WADADA DELHALL.
WE REQUEST THE COURT REVERSE HIS
CONVICTION TO BE SENTENCED TO
DEATH.
HE WAS CONVICTED OF KILLING... A
STATE WITNESS WHO WAS TO TESTIFY
AND HIS BROTHER, KILLED GILBERT
BENNETT, ALSO KNOWN AS RICHIE-B
AND THERE WERE NO EYE WITNESSES
TO MR. McCRAE'S MURDER AND NO
FORENSIC EVIDENCE IMPLICATING
WADADA IN THE CRIME AND THE
CIRCUMSTANTIAL EVIDENCE THE
STATE REQUIRED THE CONCESSION TO
PERSUADE WITHOUT A JURY TO
CONVICT HIM AND, REFERRING TO --
[INAUDIBLE].
THE TRIAL COURT DENIED WITHOUT A
PRETRIAL MOTION, WHICH HE

RETRACTED AND SUBMITTED TO THE
STATE TO REPEATEDLY ATTACK AND
DESTROY WITHOUT HIS CREDIBILITY
AND CHARACTER AND CONTINUALLY
MISLEAD AND... FREQUENTLILY
IGNORING THE COURT'S...
[INAUDIBLE].
TODAY I INTEND TO ADDRESS CLAIMS
1 AND 2 AND... [INAUDIBLE]
REQUEST REBUTTAL TIME
THE TRIAL COURT PERMITTED THE
STATE TO PRESENT EVIDENCE, OVER
OBJECTIONS AND FILED A NOTICE OF
INTENT TO PRESENT THAT AS
EVIDENCE, SPECIFICALLY, ALL THE
FACTS AND CIRCUMSTANCES, IN THE
MURDER.
AND THE TRIAL COURT CONDUCT AID
HEARING AT THE TRIAL AND ARGUED
BECAUSE HE RETRACTED HIS
CONFESSION... [INAUDIBLE] RECORD
112, 83, THE STATE -- APPROVED
CONFESSIONS... AGGRAVATOR
ELIMINATING THE WITNESS AND TO
SHOW MOTIVE.

THE DEFENSE ARGUED THEY SHOWED
IT RELEVANT BUT ALL THE FACTS,
IF ADMISSIBLE MIGHT MAKE THE
BENNETT MURDER A FEATURE OF THE
CASE AND RULED THAT IT WOULD
PERMIT THE STATE TO INTRODUCE
ONLY EVIDENCE FROM THE BENNETT
MURDER, TO SHOW MOTIVE.
AND, WARNED THE STATE NOT TO
CROSS THE LINE.
WHEN THE STATE NOT ONLY CROSSED
THE LINE BUT REMOVED IT, AS IT
CALLED FOUR WITNESSES TO
TESTIFY, ABOUT THE MURDER, SO
DID A PHOTOGRAPH OF THE BLOODY
TORSO, TO THE JURY, THE TRIAL
COURT IMPROPERLY PERMITTED THE
STATE TO PRESENT IRRELEVANT
EVIDENCE, THAT DID NOT SHOW
MOTIVE, PERMITTED THE STATE TO
PRESENT EXTENSIVE EVIDENCE, THAT
DID NOT SHOW MOTIVE AND
PERMITTED THE STATE TO MAKE THE
BENNETT MURDER A FEATURE OF THE
TRIAL.

>> WHAT EXACTLY ARE YOU SAYING

WAS INTRODUCED THAT WAS

IRRELEVANT TO THIS CASE?

>> IN THIS CASE THERE WAS

TESTIMONY ABOUT THE CRIME SCENE,

FOUR DIFFERENT OFFICERS

TESTIFIED, FINGER PRINT

EVIDENCE, ADMITTED, THERE WAS

THAT PICTURE, THE BLOODY TORSO,

HIS BODY, THE STATE CONSTANTLY

TALKED ABOUT THE BENNETT CASE.

WHEN YOU HEAR THE ARGUMENT TODAY

YOU WILL WONDER, ARE WE TALKING

ABOUT MR. MCCRAE'S MURDER OR

GILBERT BENNETT'S MURDER.

>> WHY WOULD THE FINGERPRINTS

NOT BE RELEVANT, NOT BE

ADMISSIBLE IN THE TRIAL?

>> THANK YOU, JUSTICE LEWIS.

OUR ARGUMENT IS, IS THAT THIS

SO-CALLED COLLATERAL EVIDENCE

THAT THE STATE WAS PERMITTED TO

INTRODUCE TO WADADA'S JURY I

MEAN, WE'RE ASKING WHAT ACTUALLY

SHOWED THAT WADADA HAD MOTIVE TO

KILL MR. McCRAE.

THAT WAS THE TRIAL COURT'S

DECISION.

HOW DO FINGERPRINTS SHOW MET IF?

-- MOTIVE.

>> WOULD IT NOT PLACE HIS

BROTHER THERE AT THE TIME OF

WHAT IS GOING ON?

ISN'T THAT THE PURPOSE FOR

ALLOWING THAT IN?

>> THAT MAY BE THE PURPOSE BUT

THE PURPOSE FOR THE TRIAL COURT

TO ALLOW EVIDENCE TO COME IN WAS

TO SHOW MOTIVE --

>> I UNDERSTAND, BUT YOU HAVE TO

SHOW -- WOULD YOU NOT.

>> DELHALL WAS THERE --

>> WOULD YOU NOT NEED TO SHOW

AND PART OF THE MOTIVE, I WAS

READING THERE AND, AS A TRIAL

LAWYER WHAT WOULD I NEEDED TO

SHOW TO SHOW A JURY --

>> THIS WAS --

>> THAT A BROTHER WAS INVOLVED,

THAT DID SOMETHING BAD, AND

THERE IS A WITNESS TO IT, AND,

THEN, DID SOMETHING ABOUT IT.

WHAT I NEED TO SHOW --

>> RIGHT, AT THE HEARING THE

JUDGE TALKED ABOUT THIS, WHAT DO

WE NEED TO SHOW?

THE DEFENSE ARGUED THAT THE

DEFENSE NEEDED TO SHOW, NUMBER

ONE, WADADA'S BROTHER WAS

ARRESTED FOR BENNETT'S MURDER

WHICH THE DEFENSE CONCEDED.

NUMBER 2, MR. McCRAE WAS GOING

TO TESTIFY AGAINST HIM AND THEY

CONCEDED THAT AS WELL AND THAT

IS ALL IN THE HEARING ON THIS

NOTICE OF INTENT AND NUMBER 3,

AND THIS IS WHERE WE DID NOT

CONCEDE, AT TRIAL, THAT WADADA

KNEW THAT MR. McCRAE'S IDENTITY,

HIS NAME, AND, HIS INTENTION TO

TESTIFY.

THIS IS THE CONTESTED ISSUE,

THAT REQUIRES SOME MAY BE

EVIDENCE OUT THERE TO SHOW

MOTIVE.

THE OTHER TWO, THE STATE,

REMEMBER THE STATE WAS ALLOWED

TO ADMIT THE AFFIDAVIT.

SO, CLEARLY, EVERYBODY KNEW THAT

MR. McCRAE WAS A WITNESS.

TO TESTIFY AGAINST...

[INAUDIBLE].

>> MY QUESTION -- THANK YOU.

YOU CAN SEE MY... IN THE... ONE

OF THE ARGUMENTS, IN MANY CASES

WHERE IT BECOMES A FEATURE OF A

TRIAL IS THEY ARE TRYING TO GET

IN EVIDENCE OF ANOTHER CRIME

THAT THE DEFENDANT HIMSELF

COMMITTED.

>> RIGHT, RANDOLPH VERSUS STATE.

>> HERE WE HAVE A SITUATION

WHERE, OTHER THAN THE COMMENTS

THAT YOU HAVE IN ISSUE ONE WHICH

IS INDEPENDENTLY AN ISSUE, I

UNDERSTAND, THE STATE WASN'T

ALLEGING THAT WADADA WAS

INVOLVED IN THE BENNETT MURDER.

SO, THEREFORE, THE ISSUE OF

PREJUDICE TO WADADA IS DIFFERENT

THAN IF WADADA AND HIS BROTHER
WERE ACTUALLY COMMITTING THIS
OTHER MURDER AND SO, I HAVE, IN
TERMS -- I'M NOT SURE AND I'D
ASK THE QUESTION, YOU KNOW, WHAT
WOULD A PICTURE OF THE BLOODY
BODY, FOR EXAMPLE, SEEMS TO ME,
TO BE -- DOESN'T GO TO ANYTHING.
>> DOESN'T GO TO ANYTHING.
>> TO ESTABLISH, BUT, SINCE THE
STATE WASN'T ATTEMPTING TO SHOW
THAT HE WAS INVOLVED IN THE
MURDER HOW DOES IT REALLY
PREJUDICE WADADA IF THERE WAS
SOME ERROR WITH REGARD TO HOW
MUCH CAME IN.
>> THANK YOU.
THE -- DURING THE SAME HEARING,
WHERE THEY WERE TALKING ABOUT
WHAT WAS NEEDED TO ESTABLISH
MOTIVE, THEY TOLD THE JUDGE
DIRECTLY WE BELIEVE WADADA WAS
INVOLVED IN THE BENNETT MURDER
AND THE STATE -- TRIAL COURT
SAYS, TO THE DEFENSE --

>> INVOLVED IN THE BENNETT

MURDER, RIGHT?

>> CORRECT.

>> WHAT IN ALL OF THIS EVIDENCE,

EVEN DEMONSTRATED THAT?

>> THAT IS THE POINT.

>> THAT IS WHAT THE STATE WAS

TRYING TO DO, SEEMS TO ME, THERE

WASN'T ANY EVIDENCE THAT SAID

WADADA WAS INVOLVED IN THIS.

>> THAT'S THE POINT.

THERE WAS NO EVIDENCE.

>> WE GO BACK TO JUSTICE

PARIENTE'S QUESTION, THOUGH, IF

THERE IS NO EVIDENCE THAT WADADA

WAS IN FACT INVOLVED IN THE

BENNETT MURDER, WHERE IS THE

PREJUDICE.

>> THE PREJUDICE IS THAT -- YOU

HAVE TO ALMOST THINK THE REASON

I'M STARTING WITH 2, THINK OF

THIS AS A CRESCENDO.

IN 2 THEY ARE TALKING ABOUT THE

BENNETT MURDER A LOT, OPENING,

CLOSING, DIFFERENT WITNESS

PHOTOGRAPHS AND SO FORTH AND

ISSUE ONE IS CRITICAL, WE CAN

MOVE TO THAT.

I WANT TO MENTION ACCORDING TO

CASE LAW, WE REALLY WANT TO BE

CLEAR THAT ANY COLLATERAL

EVIDENCE THAT COMES IN HAS TO BE

EVIDENCE THAT THE DEFENDANT

COMMITTED THE CRIME.

>> OKAY.

BUT...

>> OKAY.

>> HERE IS WHERE YOU COULD TIE

IT IN AND IT WOULD BECOME

PROBLEMATIC.

THE STATE WANTS TO PUT IT IN FOR

MOTIVE FOR THE CURRENT MURDER.

>> McCRAE'S MURDER, RIGHT.

>> AND THEY PUT IN ALL OF THIS

EVIDENCE AND NONE OF IT SHOWS

THAT THE DEFENDANT WAS INVOLVED

IN THAT MURDER.

BUT THEY WANT TO IMPLY IT.

AND, SO, THAT IS WHY YOU WOULD

SAY THAT THE CROSS-EXAMINATION

IS YOUR ISSUE ONE, BECOMES SO

INSIDIOUS BECAUSE THE STATE --

IS YOUR ARGUMENT THE STATE WAS

TRYING TO DO THROUGH THE BACK

DOOR THAT -- WHAT THEY COULDN'T

DO THROUGH THE FRONT DOOR?

WHICH IS PROVE -- YOU KNOW,

IMPLY TO THE JURY THAT IT WAS

MORE THAN JUST THAT HE WANTED

McCRAE OUT BECAUSE HIS BROTHER

WAS INVOLVED BUT BECAUSE HE KNEW

THAT HE WAS ALSO INVOLVED IN THE

MURDER.

>> THAT'S CORRECT.

THIS IS WHAT HAPPENED --

>> IS THAT -- YOUR ARGUMENT.

>> YES.

JUDGE.

>> OTHERWISE IF HE HAS NOTHING

TO DO WITH THE MURDER AND THE

JURY IS CLEAR ABOUT THAT IT

REALLY MAY BE MARGINALLY

RELEVANT BUT NOT PREJUDICIAL.

ON THE OTHER HAND, IF THEY PUT

ALL THE EVIDENCE IN, HOW

TERRIBLE THE MURDER WAS, AND THE
IMPLICATION IS NOT ONLY DID HE
HELP -- WANT TO HELP HIS BROTHER
BUT HE WAS HELPING HIMSELF, THEY
ARE DOING THROUGH THE BACK DOOR
WHAT THEY CAN'T THROUGH THE
FRONT DOOR.
>> AND THIS TRIAL COURT ASSURED
DEFENSE DURING THE HEARING HIS
PREDICTION THE STATE WAS DOING
JUST THAT, IT WAS GOING TO
ASSERT OR ACCUSE WADADA OF BEING
INVOLVED IN THE THE BENNETT
MURDER, THE TRIAL COURT SAID NO.
THEY BILL NOT BE ALLOWED TO DO
THAT BUT, YOU KNOW THEN WHAT
HAPPENED?
IS THE STATE ACCUSED WADADA OF
KILLING RICHIE-B.
YOU KILLED RICHIE-B.
IT IS NOT AN INDEFINITE YOU, SEE
YOU LATER, BROTHER --
>> DURING CROSS-EXAMINATION.
>> THIS IS CROSS-EXAMINATION,
TALKING TO MR. DELHALL, WADADA.

IT IS NOT -- AND THERE WAS NO

OPEN DOOR CREATED FOR THIS

OPPORTUNITY.

THE --

>> EVEN IF WE AGREE WITH YOU,

THAT WAS A REFERENCE TO THE

DEFENDANT, IN THE BROADER

CONTEXT, WASN'T IT CLEAR THAT

THE FOCUS WAS ON THE FACT THAT

THE BROTHER COMMITTED THE

MURDER, AND, NOT THE DEFENDANT.

AND, THEN, THIS IS -- YOU LOOK

AT IN THE BROADER CONTEXT, LOOKS

A LITTLE DIFFERENT THAN IF YOU

LOOK AT IT IN STARK ISOLATION...

>> UNFORTUNATELY, DEFENSE -- THE

DEFENDANTS AND, YOU KNOW, WE

DON'T HAVE -- WE ARE FOCUSED ON

THE DEFENDANT.

>> WE DO HAVE A BROADER -- LOOK

AT WHETHER THE -- THERE WAS AN

ERROR, WHETHER IT WAS HARMLESS

BEYOND A REASONABLE DOUBT WE

HAVE TO LOOK AT THE BROADER

CONTEXT AND CAN'T LOOK AT IT IN

ISOLATION.

>> I UNDERSTAND WHAT YOUR HONOR

SAID.

WHAT I WAS THINKING ABOUT WAS

THIS TIRADE.

HE MENTIONED THE WORD "YOU" FIVE

TIMES AND IT WASN'T, YOU KNOW,

AN IMPLICATION OR AN INNUENDO.

IT WAS AN ASSERTION AND

ACCUSATION AND LET ME TALK ABOUT

THE STATE'S USE OF RODRIGO TO

OPEN UP THE DOOR.

IN THAT CASE THE JUDGE WEIGHED

THE EVIDENCE.

PROBATIVE VERSUS PREJUDICIAL

AND, LOOKED TO SEE HOW FAR THE

DOOR WAS OPEN.

IN THE CASE, WADADA'S CASE, WHAT

HAPPENED WAS THE JUDGE SAID,

THAT DIDN'T HAPPEN.

HE JUST DIDN'T HEAR IT.

>> ISN'T THAT ALSO SOMETHING...

AN INTERESTING COMMENT, BECAUSE

IT KIND OF GOES BOTH WAYS.

WE HAVE THE STARK TRANSCRIPT AND

WHEN YOU LOOK AT THE STARK

TRANSCRIPT IT SAYS YOU DIDN'T

FIND CONROY TURNER AND SO YOU

KILLED RICHE-B, HIS BEST FRIEND,

SO THAT LOOKS AWFUL AND

OBVIOUSLY THE DEFENSE LAWYER,

OBJECTED IMMEDIATELY BUT THEN

HIS CLIENT WENT ON AND HE

DIDN'T... AND THERE WAS ANOTHER

OBJECTION.

SO, I THINK THAT IS WHY THE

BROADER CONTEXT OF THE

CROSS-EXAMINATION -- LET ME

FINISH, BECOMES IMPORTANT

BECAUSE TO US, IT JUMPS OUT OF

THE PAGE, SORT OF LIKE ONE OF

THOSE -- THE GOLDEN RULE

ARGUMENTS WHERE SOMEONE USES

"YOU" AND REALLY IN CONTEXT IT

IS NOT A BIG DEAL AND I'M NOT

MINIMIZING THAT, NECESSARILY BUT

OTHER THAN THAT

CROSS-EXAMINATION DID THE STATE

RETURN TO THAT IN THE

EXAMINATION OF ANY WITNESS ABOUT

THE BENNETT MURDER OR IN CLOSING

ARGUMENT?

IS THERE ANY IMPLICATION BY THE

STATE IN CLOSING ARGUMENT OR

THROUGH ANY OTHER WITNESS THAT

THIS DEFENDANT, WADADA, WAS

INVOLVED IN THE BENNETT MURDER.

>> ONCE IT ACCUSED HIM AND USED

THE WORD "YOU" IT IS VERY CLEAR.

>> I THINK THAT IS EASY --

>> BUT, HERE'S WHY IT'S NOT

EASY.

>> NO?

>> WHY -- DID NOT BRING IT UP, I

DON'T BELIEVE, IN THE CLOSING,

THEY DID NOT BRING IT UP AGAIN,

BECAUSE THERE WAS A MOTION FOR A

MISTRIAL AND THE JUDGE DENIED

IT.

AND THIS IS WHAT IS TROUBLING --

>> I WANT TO -- CAN WE JUST --

I'M SURE IT WASN'T IN CLOSING

BECAUSE YOU ARE A GOOD LAWYER

AND YOU WOULD HAVE BROUGHT IT TO

OUR ATTENTION SO THIS IS WHY WE

GET BACK TO THE QUESTION THAT IF
IT IS ERROR, IT WAS OBJECTED TO,
WASN'T IMMEDIATELY BROUGHT TO
THE JUDGE'S ATTENTION AND SO THE
QUESTION IS, UNDER THE HARMLESS
ERROR STANDARD, HOW WITH YOU
ARGUE THAT IT IS NOT HARMLESS
BEYOND A REASONABLE DOUBT?
AND I REALIZE IT IS THE STATE
ASSESS BURDEN TO PROVE IT BUT
YOUR BEST TAKE ON THAT.
>> JUDGE, JUSTICE PARIENTE THE
TRIAL COURT WAS ON NOTICE.
THE STATE ASSERTED IT DURING THE
HEARING AND DEFENSE PREDICTED IT
WOULD HAPPEN.
BUT, WHEN THE STATEMENTS WERE
MADE THE JUDGE DIDN'T HEAR THEM
AND THEN, DENIED THE MOTION,
DIDN'T WEIGH ANY EVIDENCE,
DIDN'T SEE IF IT WAS PROBATIVE
OR NOT, OR PREJUDICIAL.
THERE WAS NO ANALYSIS AND SO THE
--
>> DID ANYONE ASK FOR -- I GUESS

BECAUSE HE WAS DENYING THE

MOTION FOR MISTRIAL, WAS THE

JURY EVER INSTRUCTED THAT THE

PURPOSE OF THE EVIDENCE OF THE

BENNETT MURDER WAS TO SHOW

MOTIVE, AND THAT -- AND WAS THE

JURY GIVEN ANY CLEAR STATEMENT

AT THE REQUEST OF THE DEFENDANT

THAT THERE IS -- THE STATE IS

NOT ALLEGING THAT THIS DEFENDANT

WAS INVOLVED IN THAT MURDER.

>> NO, JUST PARIENTE NOT IN MY

THOROUGH READING OF THE RECORD

--

>> I'M SORRY.

SO -- AND I REALIZE YOU SAY THE

DEFENDANT IS SUPPOSED TO DO ALL

THESE THINGS BUT I'M ASSUMING

THE DEFENDANT DID NOT ASK FOR

THAT.

>> NO, JUSTICE PARIENTE.

>> THE REMAINDER OF THE

EVIDENCE, CONCERNING THE BENNETT

MURDER, POINTED TO NEGIS -- IS

THAT HOW YOU PRONOUNCE HIS NAME

-- AS BEING THE PERSON ARRESTED
FOR COMMITTING THE MURDER AND
CONVICTED FOR COMMITTING THE
MURDER AND SO THE ENTIRE
EVIDENCE FOR THAT 1998 POINTED
IN THE DIRECTION OF THE BROTHER
AND THE ONLY REFERENCE MADE IN
RELATION TO HAVE ANY INVOLVEMENT
ON THE PART OF YOUR CLIENT IN
THIS CASE WAS THE PROSECUTOR'S
ONE QUESTION, DURING
CROSS-EXAMINATION.
>> IT WASN'T A QUESTION,
JUSTICE.
IT WAS A... IT WAS NOT A
QUESTION, IT WAS A STATEMENT,
MADE FIVE TIMES, USED THE WORD
"YOU" FIVE TIMES AND IF YOU WERE
THERE YOU WOULD HAVE HEARD THE
SCREAMING AND THE -- LATER IN,
IT WASN'T IN CLOSING BUT THEY
DID VERY CLEARLY IN CLOSING MORE
THAN 30 TIMES, USE NONSTATUTORY
AGGRAVATORS TO DISCUSS WADADA'S
FUTURE DANGEROUSNESS, HE CAN'T

BE FIXED, HIS WHOLE FAMILY IS NO
GOOD AND WE'LL HEAR ABOUT THAT
IN A SECOND.
IN THE CASE --
>> ALL OF THAT EVIDENCE WAS, OF
COURSE, INDEPENDENT OF YOUR
CLIENT'S WRITTEN CONFESSION.
I KNOW YOU ARE CHALLENGING IT
AND HE LATER RECOUNTED BUT YOUR
CLIENT'S WRITTEN CONFESSION THAT
HE DID THE KILLING AND DID IT TO
PROTECT HIS BROTHER.
>> THE STATE, BECAUSE WADADA
RETRACTED HIS CONFESSION, STATED
DURING THE HEARING THAT IT
NEEDED TO PROVE THE BENNETT
MURDER AND NEEDED TO PROVE
MOTIVE, AND AGAIN, TRIAL COURT
WAS VERY CLEAR THAT YOU ARE NOT
-- THE STATE WAS NOT GOING TO
ACCUSE HIM OF BEING INVOLVED IN
THE MURDER.
AND, THE STATE AGAIN --
>> ARE YOU TELLING ME IN ALL OF
THIS EVIDENCE THE BENNETT MURDER

CAME IN, THAT THE JUDGE NEVER --

JURY WAS NEVER GIVEN AN

INSTRUCTION AS TO WHY IT WAS

COMING IN, COMING INTO PROVE

MOTIVE AND NOT TO PROVE THAT THE

DEFENDANT HAD ANYTHING TO DO

WITH IT?

I MEAN, THE NORMAL -- I MEAN,

NORMALLY, WHEN COLLATERAL CRIME

EVIDENCE COMES IN, THERE IS A

STANDARD INSTRUCTION AND --

>> IT WASN'T COLLATERAL CRIME.

REMEMBER, THE DEFENDANT DIDN'T

COMMIT THIS CRIME.

SO, IT WASN'T... IF YOU ARE

TALKING ABOUT WILLIAMS RULE

EVIDENCE IT WAS NOT WILLIAMS

RULE, IT WASN'T SIMILAR BAD

ACTS.

>> HOW WAS THE JURY TO

UNDERSTAND WHY WAS BEING

OFFERED?

>> THE STATE'S THEORY WAS THAT

THIS WAS THE BENNETT MURDER WAS

THE MOTIVE AND HAD TO ATTACK HIS

CREDIBILITY, HIS CHARACTER AND
PUT INTO EVIDENCE BAD ACTS, A --
ACCUSE HIM OF ANOTHER MURDER AND
YOU CAN'T BELIEVE THAT HIS
CONFESSION WOULD BE FALSE, YOU
HAVE TO BELIEVE HIS CONFESSION,
BECAUSE LOOK AT WHAT I BAD GUY
HE NICE ANOTHER VIEW, IS IT
REASONABLE TO VIEW THAT, HERE'S
THE EVIDENCE AND THAT IS WHY THE
CONFESSION IS TRUE?
IS THAT NOT A REASONABLE
INTERPRETATION.
>> THAT IS CERTAINLY THE STATE'S
VIEW AND THEY WENT TO GREAT
STENTS TO A GREAT EXTENT MAKING
THE BENNETT MURDER A FEATURE OF
THE CASE AND ACCUSING WADADA TO
MAKE THAT POINT.
>> BUT, YOU DO AGREE, FROM
READING THE BRIEFS AND,
UNDERSTANDING THIS, IT WAS ONLY
IN THE SERIES OF QUESTIONS ON
CROSS-EXAMINATION, WHERE THIS
HAPPENED, IS THAT --

>> THE ACCUSATION OF THE BENNETT

MURDER.

>> RIGHT.

AND THROUGH NO OTHER WITNESS AND

NO OTHER STATEMENTS DURING THE

TRIAL.

>> EXACTLY.

THEY HAD NO EVIDENCE TO SUPPORT

THIS ASSERTION, AND THIS TIRADE

THEY PUT --

>> THE RELEVANCY OF THE BODY?

THE BLOODY BODY TO BE?

WHAT DO YOU UNDERSTAND IT TO BE.

>> WELL THE STATE AGAIN WANTED

TO SHOCK...

>> INCORRECT.

>> REMEMBER I SAID, WE HAVE

BASICALLY THE -- WHAT INFORMS

AND GUIDES THIS APPEAL IS THE

FACT THAT THEY WERE -- THE STATE

NEEDED TO ATTACK AND DESTROY HIS

CHARACTER, WITHOUT HIS CHARACTER

AND CREDIBILITY, THEY NEEDED TO

IN FLAME THE JURORS' PASSIONS

AND MISLEAD THE JURY, AND,

OBVIOUSLY, BECAUSE THEY COULDN'T

-- THEY WERE GOING TO IGNORE --

THE ANNOUNCEMENT OF THIS COURT

IN --

>> EXCUSE ME.

WAS THE PHOTOGRAPH DISCUSSED,

OBJECTIONS MADE TO THE

PHOTOGRAPH.

>> YES, JUDGE.

>> AND WHAT DO YOU UNDERSTAND

THE ARGUMENTS TO BE?

>> YES, SIR.

IRRELEVANT.

IRRELEVANT.

IRRELEVANT TESTIMONY.

IRRELEVANT EVIDENCE.

THAT AGAIN, THERE WAS NOTHING

THAT TIED WADADA TO THE BENNETT

MURDER.

>> AND DID THE STATE MAKE NO

STATEMENT WHATSOEVER IN RESPONSE

TO THAT?

>> I MEAN, THERE WAS SO MUCH OF

THE EVIDENCE... YOU KNOW, WHEN

THE DEFENSE CONTINUALLY

OBJECTED, AND IT DID, AND MAYBE

MISSED OPPORTUNITIES TO OBJECT,

BUT WHEN IT DID OBJECT, THE

TRIAL COURT TOLD THE STATE,

CONTINUE.

AND IT BASICALLY ADMITTED OR

DISMISSED THE DEFENSE OBJECTIONS

AS INTERRUPTIONS.

STATE CONTINUE, STATE CONTINUE.

>> YOU MAY CONTINUE BUT YOU HAVE

A TOTAL OF A LITTLE LESS THAN

9-AND-A-HALF MINUTES.

>> ISSUE FIVE IS VERY IMPORTANT

IN OUR CASE.

>> MAY I TAKE FIVE MINUTES NOW

AND SAVE FIVE MINUTES FOR

REBUTTAL.

THAT WOULD BE ALL RIGHT?

>> YOU DON'T HAVE THAT.

YOU HAVE NINE MINUTES.

>> OKAY.

FOUR AND FIVE.

CLAIM 5, DOESN'T ADDRESS IN THE

SWORN TESTIMONY, AND, THE TRIAL

WAS NOT HARMLESS.

AND, NOW, PRETRIAL, THE DEFENSE

FILED A LOTION IN LIMINE TO

EXCLUDE STATEMENTS, TO THE

OFFICER AND THE COURT CAN GET

BACK TO THE HEARING, STATE

ASSERTED ALTERNATIVE THEORIES TO

ADMIT THE HEARSAY THAT HIS

STATEMENTS WERE QUALIFIED AS

EXCITED UTTERANCES --

>> YOU HAVE A LIMITED AMOUNT OF

TIME.

LET ME ASK THE QUESTION.

WHAT IS -- IS IT YOUR POSITION

WITH RESPECT TO THE CRAWFORD

ISSUE, IF IT WAS... PRESERVED --

>> I'D LIKE TO ADDRESS THAT,

YOUR HONOR.

>> FROM THE U.S. SUPREME COURT.

WE UNDERSTAND WHAT YOU ARE

ARGUING.

BUT WHY ISN'T BRYANT --

>> ANALOGY IN THE LOPEZ CASES.

IN THE BRYANT CASE...

>> IN THE BRYANT -- BRYANT WILL

PROBABLY.

>> IN THE BRYANT CASE THE
SUPREME COURT DECIDE, YOU KNOW
WHAT THEY DECIDED, SO I DON'T
HAVE TO... THE CASE EXPANDS THE
DEFINITION OF EMERGENCY TO
INCLUDE FACTS, THAT PROOF THE
STATEMENT, THE TESTIMONY, IF A
PERPETRATOR IS DISARMED OR
SURRENDERS, APPREHENDED OR
FLEES, LITTLE PROSPECT OPPOSING
THE THREAT TO THE PUBLIC AND THE
ARGUMENT IS SHORT AND IN THIS
CASE THERE IS NO EVIDENCE THAT
THE SHOOTER WAS A THREAT TO THE
PUBLIC, LAW ENFORCEMENT ON THE
SCENE DID NOT TESTIFY THEY WERE
AFRAID OR THAT MR. McCRAE WAS IN
ANY DANGER, FOR EXAMPLE, NO GUNS
WERE DRAWN AND THEY WERE NOT
ASKING, WHERE IS THE SHOOTER.
OBJECTIVELY, EXAMINING
MR. McCRAE'S PURPORTED STATEMENT
IT WAS MADE TO IDENTIFY HIS
SHOOTER, UNDERSTANDING THAT HE
WOULD BE CAUGHT AND PROCESS

CUTE.

THERE IS NO EVIDENCE THAT HE WAS

STILL IN DANGER.

>> THE SAME THING HAPPENED IN

BRYANT.

THERE, THE SHOOTING OCCURRED, 20

MINUTES EARLIER, IN ANOTHER

LOCATION.

THE VICTIM DROVE HIMSELF TO A

GAS STATION, WHERE THE POLICE

FOUND HIM.

SO, THERE WAS NO DANGER IN THAT

CASE, EITHER, OF THE SHOOTER

BEING AROUND AND, WHEN ASKED --

WHEN HE ASKED THE VICTIM, WHAT

HAPPENED AND WHO SHOT HIM, AND

WHERE THE SHOOTING HAD OCCURRED

THE VICTIM TOLD HIM, HE HAD SHOT

HIM.

HOW IS THAT DIFFERENT IN THIS

CASE?

IF ANYTHING, THIS CASE IS LESS

EGREGIOUS.

>> MY READING OF BRYANT, THE

VICTIM DYING, BUT HE WAS ABLE TO

LEAVE THE SCENE, AND, IN DOING

SO, HE WAS SHOT AT BRYANT'S

HOUSE AND AFTER RECOGNIZING THAT

NAME, AFTER HE KNOCKED ON THE

DOOR AND HAD SOME SORT OF

CONVERSATION, AND, IN BRYANT,

THERE WAS AN ONGOING DANGER THAT

AS HE LEFT, BRYANT PROBABLY SAW

THEY HADN'T KILLED HIM.

AND, THAT MAYBE HE WAS GOING TO

BE COMING AFTER HIM.

AND, THERE WAS DISCUSSION ABOUT

WHERE IS THE SHOOTER.

AND, WHAT, YOU KNOW, WHAT IS

HAPPENING.

THIS CASE, AS WELL AS IN LOPEZ,

IT IS ABOUT WHAT HAPPENED.

IT IS ABOUT WHAT HAPPENED.

AND, NOT WHAT WAS HAPPENING...

>> THE BRYANT COURT LOOKED AT A

NUMBER OF FACTORS.

AND, THE EMERGENCY -- ONGOING

EMERGENCY WAS ONE FACTOR.

AND, THE OTHER FACTORY THEY

LOOKED AT IN DETERMINING WHAT

THE TESTIMONY IS THE FORMALITY

OR INFORMALITY OF THE

QUESTIONING.

AND ALSO LOOKED AT... IN THAT

CASE, ALL THE FACTORS SEEM TO BE

APPLICABLE IN THE PARTICULAR

CASE, IT WAS AN INFORMAL

INTERROGATION AT THE SCENE, AND

TRYING TO FIGURE OUT WHAT

HAPPENED.

AND, THERE WAS A GUN INVOLVED,

AND, THEY DIDN'T KNOW WHO THE

SHOOTER WAS.

>> AT FIRST READING, JUSTICE, I

AGREE.

IT LOOKS VERY, VERY SIMILAR.

BUT, THEN YOU LOOK AT... IN

DELHALL'S CASE, FOR FIVE

OFFICERS, WHO GOT THE REPORT,

AND THEY WERE PRETTY MUCH THE

SAME REPORT.

FIVE OFFICERS HEARD ABOUT THE

SHOOTING.

IN OUR CASE THERE WAS ONE.

IN THE BRYANT CASE THE -- THE --

>> WHAT AM I MISSING?

I DON'T UNDERSTAND THE

DISTINCTION.

FIVE OFFICERS COMPARED TO ONE.

DOES THAT MAKE A DIFFERENCE?

>> CORROBORATING.

CORROBORATING, JUSTICE LEWIS.

>> OKAY.

>> CORROBORATION AND PEOPLE WHO

HAVE HEARD THE... AND THIS IS

EQUALLY IMPORTANT, IN THE BRYANT

CASE, THE DECLARANT WAS ABLE TO

NAME THE SHOOTER, SAY WHERE HE

WAS AT AND SAY WHAT HAPPENED.

IN THIS CASE, THE BROTHER OF THE

GUY WHO SHOT THE MAN WHO OWNED

THE BUSINESS... I MEAN, IT IS

ALMOST INCREDULOUS ALTHOUGH WE

AREN'T ARGUING WHETHER HE

ACTUALLY MADE THE STATEMENT BUT

HE DOESN'T KNOW THE GUY OF --

>> HE'S WOUNDED -- HE'S WOUND

AND MAYBE THAT ADDS TO THE IDEA

THAT IT WAS EXCITED AND...

>> IT WAS ADMITTED AS AND

EXCITED UTTERANCE, THAT IS NOT

THE ISSUE.

THE ISSUE IS WHETHER IT WAS

TESTIMONY --

>> WHETHER IT WAS PRESERVED

UNDER A -- THERE WAS NO

CRAWFORD, THERE WAS NO 6TH

AMENDMENT OBJECTION, WAS THERE?

>> YES.

JUDGE, DURING THE HEARING,

SPECIFICALLY THE STATE --

TERRY... SAID IT WOULD BE A

VIOLATION UNDER CRAWFORD AND WE

ARE SAYING IT IS PRESERVED

BECAUSE CRAWFORD IS MORE

SPECIFIC TO THE CONFRONTATION

CLAUSE THAN THE BROADER SCOPE

AND IF YOU WOULD HAVE SAID

CONFRONTATIONAL CLAUSE, 6TH

AMENDMENT.

THIS IS VERY SPECIFIC BY SAYING

CRAWFORD AND WE ARE ARGUING THAT

AS PRESERVED.

>> YOU ARE NOW DOWN TO A TOTAL

OF THREE MINUTES.

>> I TAKE THE OTHER THING ABOUT

THE BRYANT CASE, THAT IS

DISTINGUISHED FROM OUR CASE, IS

THAT THE -- COVINGTON AND THE

BRYANT CASE, DID NOT INDICATE

ANY POSSIBLE MOTIVE FOR THE

SHOOTING.

I THINK IN THE CASE, THE BROTHER

OF THE GUY WHO SHOT THE MAN WHO

OWNED THE BUSINESS BEFORE, THAT

IS GOING TO INDICATE SOME

MOTIVE.

THAT IS -- THAT GOES TO

TESTIMONY, CHARACTER.

I'LL SAY --

>> SOUNDS LIKE IDENTITY TO ME.

YOU DON'T KNOW SOMEONE'S NAME

BUT YOU KNOW WHO A THAT ARE,

BASICALLY, IN A COMMUNITY, AND,

THAT IS IDENTIFYING INFORMATION.

NOT NECESSARILY... OTHER

INFORMATION, BUT, I GUESS YOU --

REASONABLE PEOPLE COULD DIFFER.

>> MAY IT PLEASE THE COURT,

MEREDITH... I'D LIKE TO START

WITH THE NOTION THAT THE BENNETT
MURDER BECAME A FEATURE OF THE
TRIAL AND JUSTICE PARIENTE WE
HAVE TO REMEMBER THE ISSUE WAS
RAISED AS A CLAIM THAT THE TRIAL
JUDGE ABUSED HIS DISCRETION IN
FAILING TO... THE STANDARD IS
NOT HARMLESS ERROR, EVEN IF WE
ASSUME ERROR WHICH THERE IS NOT,
THE STANDARD IS, DID THIS SO
VITIATE THE TRIAL --
>> ARE WE NOW TALKING ABOUT THE
COMMENTS FROM ISSUE ONE?
GIVE US THE CONTEXT FOR ISSUE 2
AND, DIRECT YOURSELF TO THE IDEA
THAT YOU AGREE THE BENNETT
MURDER WAS COMING IN FOR MOTIVE,
THAT THE STATE WAS NOT TRYING TO
SHOW AND CERTAINLY, THAT THIS
DEFENDANT WAS INVOLVED WITH THE
BENNETT MURDER, CORRECT?
>> THAT'S CORRECT THE STATE'S
THEORY WAS NEGIS IS THE ONE WHO
KILLED MR. BENNETT.
>> SO WHAT WOULD BE -- LET'S

TAKE IT AS JUST ONE PIECE OF

EVIDENCE.

THE BLOODY -- PICTURE OF THE

BLOODY BODY.

WHAT IS... WAS THAT INTRODUCED,

WHY WAS THAT INTRODUCED, AND,

WAS IT PROPERLY OBJECTED TO,

AND, WHY WOULD THAT BE RELEVANT

TO SHOW MOTIVE?

>> THE -- IT WAS RELEVANT TO

SHOW MOTIVE -- WELL, IT WAS

RELEVANT TO SHOW MOTIVE BECAUSE

IT WAS RELEVANT TO SHOW THE WAY

MR. BENNETT WAS KILLED, RICHE-B,

IT WAS --

>> OKAY.

I'M -- WHY, IF YOU ARE NOT

TRYING TO SHOW THAT DELHALL HAD

ANYTHING TO DO WITH THE BENNETT

MURDER, BUT YOU ARE -- ARE YOU

TRYING TO SAY THAT THAT VICTIM

LOOKED LIKE MR. McCRAE, WHICH

WOULD BE THEN AGAIN BACK-DOORING

IT?

>> THE EVIDENCE OF THE BENNETT

MURDER WAS CLEARLY THE MOTIVE

FOR THE MURDER OF MR. --

>> I'M ASKING ONE ISSUE.

LET'S START WITH THE PHOTOGRAPH.

>> THE PHOTOGRAPH WAS ONE OF

EVIDENCE THAT THE MURDER

OCCURRED, IT WAS THE STATE

SOUGHT THE DEATH PENALTY OR IT

WAS CONTEMPLATING SEEKING THE

DEATH PENALTY, IT WAS A -- TO

SHOW THE MURDER OCCURRED.

I MEAN, THIS WAS -- IT WAS THE

STATE NEEDED TO SHOW --

>> WAS HE CONVICTED BY THE TIME

-- WAS THE BROTHER CONVICTED --

>> THREE YEARS LATER AND BY THE

TIME OF TRIAL, YES.

BUT THE TIME OF THE MURDER, NO.

>> SO, BASICALLY, THEY -- THE

FACT -- THERE IS NO QUESTION

THAT THEY WERE TRYING TO SAY,

WELL, MAYBE THE BROTHER DIDN'T

ACTUALLY KILL THIS DEFENDANT?

I MEAN, THAT WAS... HE WAS

CONVICTED OF IT.

SO, AGAIN, TELL ME, EXPLAIN

AGAIN, WHY, IF... IF YOU ARE

AREN'T TRYING TO SHOW THAT HE

KNEW HOW THE DEFENDANT WAS --

HOW THE OTHER VICTIM WAS KILLED,

WHAT IS THE PURPOSE OF SHOWING A

PICTURE OF A BLOODIED VICTIM,

OTHER THAN TO RAISE THIS ISSUE

OF THERE BEING SORT OF A

DANGEROUS FAMILY THAT KILLS

PEOPLE?

>> YOUR HONOR, THE PHOTOGRAPH

WAS JUST ONE PIECE OF EVIDENCE,

TO DEMONSTRATE THAT RICHIE-B WAS

MURDERED, BY NEGIS DELHALL AND

THAT WAS ONE PIECE OF EVIDENCE

TO DEMONSTRATE THE MURDER --

>> LET ME ASK YOU THIS... WAS

THE DEFENSE -- THE DEFENDANT'S

DEFENSE, I GUESS, I DIDN'T KILL

MR. McCRAE AND I DID NOT KNOW

ANYTHING ABOUT THE BENNETT

MURDER?

WAS THAT... THE DEFENSE IN THIS

CASE?

>> YES.

JUSTICE QUINCE, THAT WAS THE

DEFENSE, I DIDN'T KILL HIM, I

DIDN'T KNOW ANYTHING ABOUT THE

BENNETT MURDER.

THE STATE'S THEORY WAS, THAT

WADADA GAINED INFORMATION ABOUT

THE BENNETT MURDER AND WE HAVE

TO REMEMBER THERE WAS VERY

LITTLE EVIDENCE TO LINK NEGIS TO

THE BENNETT MURDER AND THERE WAS

ONE FINGERPRINT --

>> WAS THE BROTHER IN JAIL FOR

THE BENNETT MURDER AT THE TIME

McCRAE WAS KILLED.

>> YES, NEGIS WAS IN JAIL AND

THE EVIDENCE WAS THAT WADADA

VISITED NEGIS IN JAIL, TWO DAYS

BEFORE THE MURDER OF MR. McCRAE

AND THAT THERE WAS A DOCKET

SOUNDING CLOSE IN TIME TO THAT

MURDER.

SO, THE NOTION WAS --

>> I GUESS -- I DON'T THINK THEY

ARE CONTESTING THAT SOME

EVIDENCE OF THE BENNETT MURDER
COULD COME IN TO SHOW MOTIVE,
AND I THINK THE MOST SIGNIFICANT
ONE IS THE -- YOU KNOW,
AFFIDAVIT OF McCRAE, THE ARTHUR
HEARING WHERE HE'S NOW
IDENTIFYING SOMEBODY, AND -- AS
THE SHOOTER.
AND, THEN, SOMEWHERE EITHER AT
THAT TIME OR AFTER IT, HE FINDS
OUT THIS IS THE SOLE EYEWITNESS
AND SO THE FOCUS IS ON WHETHER
McCRAE, IF THERE IS ONLY A
FINGERPRINT, YOU SAY THERE IS
ONLY A FINGERPRINT AND I'M STILL
MAYBE AT A LOSS OF WHERE THE
BLOODY BODY COMES IN TO SHOW
WHAT DELHALL, WHICH IS WHAT YOU
WANT TO DO, IS SHOW WHAT DELHALL
KNEW WHAT WAS IN HIS MIND, WHEN
HE WAS -- WENT TO KILL McCRAE
AND IF THERE WAS NO IMPLICATION
THAT HE KNEW HOW THE -- BENNETT
WAS KILLED OR THAT... AND, YOU
KNOW, I DON'T UNDERSTAND THAT,

AND, WAS IT, AGAIN, IT WAS

OBJECTED TO, I GUESS YOU AGREE.

>> YES.

>> AND THE JUDGE SAID IT IS

RELEVANT BECAUSE... WHAT?

>> I DON'T RECALL THE JUDGE'S

SPECIFIC RULING ON WHY HE DEEMED

IT RELEVANT BUT ONE OF THE

FACTORS IN THIS CASE WAS THAT IT

WAS A MURDER FOR WHICH THE STATE

WAS SEEKING DEATH AND DURING THE

VISIT ON NOVEMBER 27TH, TWO DAYS

BEFORE THE MURDER, WHEN NEGIS

AND WADADA VISITED IN JAIL, WAS

THE NOTION THAT NEGIS COMMITTED

THIS MURDER FOR WHICH THE STATE

WAS GOING TO SEEK THE DEATH

PENALTY AND THAT CONCERN ABOUT

THE DEALT PENALTY WHICH --

>> CAN YOU HELP US UNDERSTAND

HOW THE PHOTOGRAPH WENT TO ONE

OF THE AGGRAVATING FACTORS IN

THAT PRIOR MURDER?

>> ONLY, WELL, IT WAS AN

EXECUTION-STYLE MURDER AND

CERTAINLY WAS EVIDENCE OF CCP, I

THINK.

>> CCP IS NOT JUST THE TORSO, IT

IS A PLAN, CALCULATION, IT IS

NOT JUST SHOWING THAT SOMEONE

HAS BULLET HOLES IN THEM.

>> ONE PIECE OF EVIDENCE.

YOU ARE RIGHT.

IT MAY NOT BE A COMPLETE PICTURE

AND JUSTICE LEWIS, I UNDERSTAND

-- I THINK JUSTICE PARIENTE YOU

SAID EVEN IF THE PHOTOGRAPH WAS

ADMITTED IN ERROR, IT WAS NEGIS

WHO WAS ACCUSED OF THE KILLING,

NOT WADADA AND ANY NOTION, THERE

IS ANY NOTION THAT THAT WAS

PREJUDICIAL, REVERSIBLE ERROR I

THINK IS REFUTED BY THAT.

WHEN YOU LOOK -- THE STATE

CALLED 18 WITNESSES IN THIS

CASE.

ONE TESTIFIED SOLELY ABOUT THE

BENNETT MURDER AND HE WAS A

FINGERPRINT GUY AND ONLY FOUR

TESTIFIED -- FOUR TESTIFIED

ABOUT BOTH MURDERS, IN OTHER
WORDS, FOUR WITNESSES WHO WERE
CALLED TESTIFIED ABOUT BOTH
MURDERS.
AND THE OTHER 13 ONLY TESTIFIED
ABOUT THE McCRAE MURDERS AND THE
EVIDENCE AND RECORD CLEARLY
REFUTES ANY NOTION IT WAS A
FEATURE OF THE TRIAL AND, SO, I
THINK THAT EVEN IF THE COURT
SAYS, WELL THE PHOTOGRAPH WENT
TOO FAR, THE ISSUE, STATE HAD
ALWAYS CONTENDED THAT NEGIS WAS
THE KILLER.
NOW, THAT SORT OF DOVETAILS INTO
THE FIRST ISSUE AND I THINK WHAT
YOU HAVE IN SIGHS RELATION OF
THE NOTION, PROSECUTOR USED
"YOU" FIVE TIMES AND ET CETERA,
IS, THE -- TAKING THE COMMENT
OUT OF CONE TEXT BECAUSE THE
QUESTION WAS, DID THE PROSECUTOR
THEREAFTER, AFTER THE QUESTION
WHICH WERE AGAIN REVIEWING FOR
ABUSE OF DISCRETION, WHETHER A

MISTRIAL SHOULD BEGIN, BECAUSE

OF THE ONE QUESTION, DID THE

PROSECUTOR THEREAFTER ACCUSE

WADADA OF KILLING AND THE ANSWER

IS NO.

DURING CLOSING ARGUMENT FOR

INSTANCE, ONE OF THE FIRST

THINGS THAT SHE SAID WAS, NEGIS

KILLED GILBERT BENNETT.

>> YOU SAY IT IS UNDER AN ABUSE

OF DISCRETION.

BUT THE FIRST TIME THERE IS AN

OBJECTION THE JUDGE DOESN'T RULE

IMMEDIATELY BECAUSE HIS CLIENT

ANSWERS, AND THE SECOND TIME,

THOUGH, HE SAYS SO SOMEONE

CARED... [INAUDIBLE] HE SAID I

HAVE A MOTION TO MAKE AND THE

JUNE, WHAT HE SAID WAS, THERE IS

NO -- YOU KNOW, HE'S INDICATING

MY CLIENT WAS INVOLVED IN

ANOTHER HOMICIDE AND NEVER SAID

THAT.

AND I BELIEVE SHE DIDN'T, IS

THAT THE MOTION?

THAT IS THE MOTION, I'M GOING TO
HAVE A CONTINUING OBJECTION, TO
ANYTHING ABOUT MY CLIENT, BEING
INVOLVED IN ANY HOMICIDE AND THE
JUDGE DIDN'T EVEN RECOGNIZE THAT
-- WHAT WAS BEING SAID, NOW,
EITHER THAT IS BECAUSE IT IS
LIKE A GOLDEN RULE, WHERE YOU AS
-- "YOU" IS USED IN A WAY THAT
IS NOT CONVEYING IT BUT LOOKS
LIKE IT DOES ON THE PAGE?
IS THAT WHAT YOU ARE SAYING --
>> YOU HIT THE NAIL ON THE HEAD
AND THE COMMENT WAS SO
INNOCUOUS, HE DIDN'T THINK HE
ACCUSED HIM OF THE MURDER AND
LET ME TELL YOU WHY.
SURROUNDING THOSE QUESTIONS, AT
PAGE 2252, OF THE TRIAL
TRANSCRIPT, THE QUESTION WAS,
NOW, THE STATE'S THEORY, YOU
KNOW, THE STATE'S THEORY WAS,
THE BENNETT MURDER WAS A DRUG
KILLING AND THAT THAT WAS A
REASON WHY, YOU KNOW?

CONROY TURNER RIPPED OFF NEGIS

DELHALL AND MEMBERS OF HIS GROUP

AND, OF COURSE, THE DEFENDANT

DURING HIS OWN TESTIMONY

ADMITTED ASSOCIATION WITH THE

GROUP, BUT, THE -- THAT WAS A

THEORY AND, SO, AFTER HE SAID --

SHE SAID -- SHE'S TALKING ABOUT

THE GROUP.

THE GROUP INCLUDING NEGIS AND

WADADA, COULDN'T FIND CONROY

TURNER AND YOU KILLED RICHIE-B,

HIS BEST FRIEND AND RIGHT AFTER

THIS, SHE SAID AFTER YOUR

BROTHER TOOK THE CONTRACT TO

KILL HIM AND AFTER YOUR BROTHER

KILLED HIM, THE QUESTION, NO.

YOUR BROTHER KILLED HIM, RIGHT

THERE IN THAT AUTO SHOP, THAT

DAY WITH THE SHIRT OFF, SHOWING

HIS TATTOOS, SOMETHING YOU DON'T

HAVE, RIGHT?

THAT IS WHY THEY KNEW IT WAS

YOUR BROTHER, AND NOT YOU?

SO, IN CONTEXT, WHEN YOU LOOK AT

THAT...

>> WHAT IS THE PURPOSE OF THOSE

QUESTIONS?

IF THE IMPLICATION -- I WHAT IS

THE RELEVANCE OF THE

CROSS-EXAMINATION?

>> THE RELEVANCE OF THE

CROSS-EXAMINATION...

>> HE WASN'T TRYING TO SAY HE

KILLED BENNETT, WAS HE, HE KNEW

IT WAS YOUR BROTHER AND NOT YOU.

WHAT IS IT GOING TO.

>> GOING BACK TO THE ISSUE OF

MOTIVE, THE STATE'S MOTIVE

WAS... I SUGGEST TO YOU, I REALLY

THINK IT'S ONE THING.

FLESH IT OUT MAY MAKE IT MORE.

BUT IT'S AN EXCUSE.

ONCE AGAIN, SHE COMPLETELY

IGNORED THE COURTS.

LET'S JUST STOP THERE.

THEN LATER ON SHE TELLS THE

JURY, YOU FOLLOW THE LAW, YOU

SAID YOU CAN DO IT.

HE IS DANGEROUS.

OBJECTION, I HAVE A MOTION.

OKAY, OKAY, OKAY, SAYS THE

JUDGE.

I HAVE A MOTION.

THE COURT: OBJECTION SUSTAINED.

GO AHEAD.

THE PROSECUTOR: HIS PREVIOUS

CRIMES OF VIOLENCE SHOWS HE'S

DANGEROUS.

COMPLETELY IGNORED THE JUDGE'S

RULING.

THEN IT GOES ON.

HERE'S THE JUDGE: YOU KEEP

SAYING THE WORD, DON'T DO THAT,

PLEASE.

I HAVE A MOTION, SAYS THE

COUNSEL.

THE COURT: PLEASE DON'T DO IT.

NEXT THING, THE VIOLENCE SPEAKS

FOR ITSELF.

IT JUST SEEMS TO ME LIKE IT'S A

FREE-FOR-ALL.

ARE WE GOING TO IGNORE THE

JUDGE'S RULING AND JUST SAY

WHATEVER YOU WANT TO SAY?

SHOULD WE HAVE TO GO TO THE BAR

WITH THIS?

WHY DO WE HAVE TO DO THAT?

>> I UNDERSTAND YOUR POINT,

JUSTICE LABARGA, BUT AGAIN, I

WOULD ASK YOU TO LOOK AT THE

ENTIRE CONTEXT OF THE CLOSING

ARGUMENT, I THINK --

>> BUT, SEE, WE KEEP DOING THAT

IN CASE AFTER CASE AFTER CASE,

AND I DON'T MEAN TO TAKE IT OUT

ON YOU.

YOU'RE THE MESSENGER, AND YOU'RE

DOING THE BEST YOU CAN WITH WHAT

YOU'VE GOT.

BUT IT SEEMS TO ME IN A LOT OF

THESE HOMICIDE CASES,

PROSECUTORS KEEP DOING THIS.

AND I GUESS THE BELIEF IS THE

EVIDENCE IS SO STRONG THEY'RE

JUST GOING TO HOLD IT TO BE

HARMLESS ERROR OR WHATEVER, AND

WE GET AWAY WITH IT.

BUT IT KEEPS HAPPENING, AND WE

KEEP MENTIONING IN OPINION AFTER

OPINION TO STOP DOING THIS.

YET IT KEEPS HAPPENING.

SO WHAT IS IT THAT THIS COURT

NEEDS TO DO TO STOP THIS?

>> WELL, UM, YOUR HONOR, I THINK

THE COURT HAS DONE WELL TO

EXPLAIN WHAT THE PARAMETERS OF

CLOSING ARGUMENTS WERE.

AND, YOU KNOW, HAD -- AND I

DON'T THINK THAT, UM, IF IT HAD

BEEN MADE --

[INAUDIBLE]

I WOULDN'T HAVE SAID EVERYTHING

THE PROSECUTOR SAID.

BUT I THINK IF YOU LOOK IN

CONTEXT, I MEAN, THE PRIOR

VIOLENT FELONY IS AN AGGRAVATOR,

AND HE HAD TWO PRIOR VIOLENT

FELONY CONVICTIONS, AND I THINK

WHAT THE, YOU KNOW, THERE'S AN

ESCALATION OF VIOLENCE, AND I

THINK IF YOU LOOK IN CONTEXT,

THE PROSECUTOR'S ARGUMENT WAS

CENTERED ON TWO THINGS; THE FACT

THAT THERE WAS AN ESCALATING

VIOLENCE, AND HE'D BEEN PUT ON
PROBATION TWICE AND STILL WAS
VIOLATING THE LAW UP UNTIL --
[INAUDIBLE]
AND IN CONTEXT THAT'S WHAT SHE
WAS TALKING ABOUT.
ALSO IN THIS CONTEXT SHE WAS
TALKING ABOUT THAT THE JURY
SHOULD NOT PUT GREAT WEIGHT OR
PUT LITTLE WEIGHT AT ALL ON THE
MITIGATION BECAUSE THE ONLY
MITIGATION IN THIS CASE WAS,
ESSENTIALLY, THERE WAS NO MENTAL
ILLNESS, NO BRAIN DAMAGE, NO
MENTAL MITIGATION WHATSOEVER PUT
ON.
THE ONLY EVIDENCE WAS THAT HIS
PARENTS WERE DRUG DEALERS, AND
AT AGE 18 HIS MOTHER -- WHO
TESTIFIED SHE HID HER VOCATION
FROM HER CHILDREN -- AT 18 SHE
WENT TO JAIL FOR DRUG DEALING
AND THEN WAS DEPORTED AND THAT
HE ASSUMED RESPONSIBILITY FOR
HIS BROTHERS.

>> AND BY THE WAY, I DON'T MEAN

TO TAKE IT OUT ON YOU.

YOU'RE A GOOD LAWYER, AND I

ALWAYS ENJOY YOUR ARGUMENTS,

AND --

[INAUDIBLE]

SO I DON'T MEAN TO SHOOT YOU.

BUT I JUST, I JUST READ THIS

TRANSCRIPT, AND THE FACT THAT I

READ THIS TRANSCRIPT IT SEEMS TO

BE OCCURRING OVER AND OVER

AGAIN.

AND NEEDLESSLY.

AND THEN YOU HAVE TO STAND HERE

AND ARGUE ABOUT THOSE THINGS.

BUT IT JUST SEEMS TO ME THAT

WE'RE PAST THE STAGE OF ASKING

AND INSTRUCTING LAWYERS NOT TO

DO THIS, AND THERE OUGHT TO BE

SOMETHING WE CAN DO, MAYBE FILE

A GRIEVANCE WITH THE BAR.

>> WELL, ALL I WOULD SAY, YOUR

HONOR, IS WHEN YOU LOOK, WHEN

YOU LOOK AT IT IN THE CONTEXT IS

THAT THIS DEFENDANT DOES NOT

DESERVE A NEW PENALTY PHASE

BECAUSE OF THAT ARGUMENT.

SO IF YOU WANT TO TALK ABOUT HOW

THE PROSECUTION SHOULDN'T MAKE

THESE ARGUMENTS, I MEAN, SHE

DIDN'T MAKE THE SAME MERCY

ARGUMENT, YOU MUST RECOMMEND

DEATH, AND WE DON'T SEEK THE

DEATH PENALTY IN EVERY CASE.

WHAT I'M SAYING IS, YOUR HONOR,

IN THIS CASE THIS SHOULD NOT

WARRANT A PENALTY PHASE WHEN YOU

LOOK AT IT IN CONTEXT.

>> HOW ABOUT BROOKS?

BROOKS WAS SORT OF THE

CULMINATION OF ARGUMENTS THAT

CAME OUT OF THE SAME OFFICE.

AND THEY TENDED TO ADDRESS

MITIGATION THE SAME WAY OVER AND

OVER AND OVER UNTIL BROOKS IN

THIS COURT LAID OUT SOME

PARAMETERS.

WHY DOES THIS ARGUMENT NOT

VIOLATE THE PARAMETERS THAT THIS

COURT ESTABLISHED IN BROOKS?

>> BECAUSE THE PROSECUTOR DID
NOT MAKE THE SPECIFIC ARGUMENT
THAT YOU CONDEMNED IN BROOKS --
[INAUDIBLE]
AND WHILE THE PROSECUTOR'S
ARGUMENT MAY HAVE HAD AN
EMOTIONAL FLOW IN CONTEXT, SHE
WAS TALKING, SHE WAS DISCUSSING
A SPECIFIC AGGRAVATOR, THE
VIOLENT FELONY AGGRAVATOR AND
HOW HIS VIOLENCE HAD ESCALATED.
AND ALSO THE FACT SHE WAS
ARGUING THAT THE JURY SHOULD
GIVE LITTLE WEIGHT TO HIS
MITIGATION BECAUSE --
>> SHE DIDN'T USE THOSE WORDS.
>> SHE USED -- SHE TALKED
ABOUT --
>> THOSE WERE NOT THE WORDS, I
MEAN, YOU HAVE TO AGREE WITH
THAT.
EXCUSES, EXCUSES, EXCUSES, AND
IT SEEMS TO ME THAT'S WHAT THIS
COURT HAS SAID IN DISCUSSING
MITIGATION, THAT IT NEEDS TO BE

DISCUSSED ON A LEGAL BASIS, NOT

ON SOMETHING THAT'S EMOTIONAL

AND DENIGRATING WHAT WE AND THE

U.S. SUPREME COURT HAVE SAID,

THAT YOU CAN PUT THIS EVIDENCE

ON, AND IF YOU DON'T CONSIDER

IT, IT'S REVERSIBLE ERROR.

SO --

>> WELL --

>> -- THAT'S WHAT SORT OF

CREATES A PROBLEM.

>> AGAIN, I WOULD ASK THIS COURT

TO, AGAIN, PUT IT IN CONTEXT.

WHEN SHE WAS DISCUSSING THE

LAWFULLY-ADMITTED AGGRAVATORS

AND THE FACT -- AND THE

PROSECUTOR IS AUTHORIZED, OF

COURSE, JUST TO ARGUE THAT THE

JURY SHOULD PUT LITTLE WEIGHT ON

MITIGATION.

AND I'M NOT SAYING --

>> BUT, YOU KNOW, THE PROBLEM

BECOMES ON THE ONE HAND WE'VE

ALWAYS SAID THAT FUTURE

DANGEROUSNESS IS NOT AN

AGGRAVATOR, RIGHT?

BUT WHAT SHE DOES IS SHE USES

HIS PRIOR RECORD AND THIS CRIME

TO REALLY WHEN YOU LOOK DEEP

INTO IT AND SHE ACTUALLY USES

THE TERM, "DANGEROUS," DOESN'T

SHE?

>> CERTAINLY.

>> AND SO SHE -- I CAN

UNDERSTAND THE DEFENSE ARGUMENT

THAT SHE IS PUTTING THIS ALL

TOGETHER AND SAYING THIS IS A

REALLY DANGEROUS PERSON AND,

THEREFORE, DON'T EVEN LOOK AT

THIS MITIGATION EVIDENCE BECAUSE

WE NEED TO PUT HIM AWAY BECAUSE

HE'S JUST A DANGEROUS PERSON.

>> SHE DID NOT TELL THE JURY TO

IGNORE THE MITIGATION EVIDENCE.

BUT, AGAIN, THIS -- YES, FUTURE

DANGEROUSNESS IS CLEARLY NOT

RELEVANT, AND IT'S NOT

PERMISSIBLE.

SHE DID NOT ARGUE THAT THE JURY,

YOU SHOULD PUT HIM TO DEATH

BECAUSE HE GETS IN A PRISON,

HE'S GOING TO KILL PEOPLE.

>> YOU DON'T HAVE TO ALWAYS USE

THE EXACT WORDS THAT, OKAY, GET

THAT AND LET'S PUT IN, LET'S

GIVE HIM THE DEATH PENALTY.

BUT BECAUSE HE'S, YOU KNOW, HE'S

GOING TO COMMIT CRIMES IN THE

FUTURE.

BUT THE WAY SHE PHRASED THIS IS,

IN MY ESTIMATION, VERY

PROBLEMATIC.

>> YOU KNOW, I THINK THE

QUESTION IS THE IMPACT ON THE

JURY, YOU KNOW?

AND THE -- WHEN SHE TALKED ABOUT

HE'S DANGEROUS, WHAT IT WAS A

DISCUSSION OF IN CONTEXT WAS THE

FACT THAT HE HAD BEEN GIVEN,

HE'D BEEN PUT ON PROBATION AND

GIVEN OPPORTUNITIES, AND HE

HADN'T -- HE HAD JUST ESCALATED

THIS VIOLENCE.

YOU KNOW, I THINK IT'S LOGICAL.

THAT'S WHY PRIOR VIOLENT FELONY

IS AN AGGRAVATOR.

>> HOW ABOUT, THOUGH, AND I

THINK WHEN JUSTICE LABARGA ASKED

YOU ABOUT THE PROSECUTOR,

DOESN'T THIS DOVETAIL INTO

SEVERAL THINGS THAT THE

PROSECUTOR ACTUALLY DID

INCLUDING THE FACT THAT WHEN THE

DEFENDANT HAD TAKEN THE STAND

AND SAID, NO, HE WAS NOT PRESENT

AT THE TIME OF THE ARTHUR

HEARING, HE WAS IN JAIL, THE

JUDGE, THE PROSECUTOR SAID, CAN

YOU PROVE IT?

OBVIOUSLY, THE PROSECUTOR KNOWS

WHETHER SOMEONE'S IN JAIL OR

NOT, AND HE GOES, YEAH, I CAN

PROVE IT.

HERE IT IS.

THIS PROSECUTOR, THE JUDGE

DOESN'T DO A PROPER RICHARDSON

HEARING.

THE JUDGE SAYS THAT IT WAS NOT

DISCLOSED, BUT THEY DIDN'T TALK

ABOUT WHETHER IT WAS WILLFUL AND

WHETHER THERE WAS SUBSTANTIAL

PREJUDICE.

BUT NOW WE HAVE A DEFENDANT WHO

SAYS, I WAS IN JAIL, AND THE

PROSECUTOR'S NOT EVEN ALLOWING

HIM TO BE ABLE TO VERIFY THAT,

SO HE'S SORT OF SHOWING THE JURY

THIS GUY ISN'T BEING TRUTHFUL IN

WHAT HE'S SAYING.

THEN YOU HAVE, AGAIN, THIS IDEA

THAT WHY IS THAT OTHER BLOODY

BODY COMING IN TO EVIDENCE?

I'M ASSUMING THE McCRAY BODY

CAME INTO EVIDENCE.

>> CERTAINLY.

>> AND SO NOW YOU HAVE THE IMAGE

IN THIS JURY'S MIND OF HIS

BROTHER AND THAT MURDER, AND

IT'S SORT OF OUT THERE.

AND THEN YOU HAVE THE

IMPLICATION IN ISSUE ONE THAT

YOU ALL KILLED THIS GUY, YOU

DIDN'T COUNT ON THERE BEING A

WITNESS.

ALL IN THIS -- AND THEY CARRY

THAT INTO THE PENALTY PHASE
WHERE HE'S TALKING ABOUT WHAT A
DANGEROUS, OR SHE'S TALKING
ABOUT WHAT A DANGEROUS GUY THERE
IS.
AND YOU WOULD AGREE, WE'VE GOT
TO LOOK AT IF THERE'S ERRORS.
WE'VE GOT TO LOOK AT THEM
CUMULATIVELY TO SEE IF THERE ARE
ERRORS, AND THEY WERE PRESERVED
WHETHER IT'S HARMLESS BEYOND A
REASONABLE DOUBT.
AND IT MAY NOT HAVE BEEN, IT MAY
HAVE BEEN HARMLESS BEYOND A
REASONABLE DOUBT OR THE GUILT
PHASE.
BUT THEN THE QUESTION IS, DO WE
CARRY THAT OVER AND LOOK AT
WHETHER CUMULATIVELY THOSE
ERRORS WERE HARMLESS BEYOND A
REASONABLE DOUBT FOR THE PENALTY
PHASE LEAVING THE JURY WITH THE
IMPRESSION, WELL, IF THIS
MURDERER WAS DOING IT TO HELP
HIS BROTHER, BUT YOU KNOW WHAT?

HE WAS PROBABLY INVOLVED IN THAT

OTHER MURDER ANYWAY BECAUSE HE'S

A DANGEROUS KIND OF GUY.

>> WELL, LET ME TAKE EACH OF

THOSE THINGS SEPARATELY.

FIRST OF ALL, ON THE BOOKING

REPORT, NOW, I THINK THE RECORD

DOESN'T SUPPORT THE NOTION.

THE PROSECUTOR SAID, CAN YOU

PROVE IT?

I DON'T THINK THAT'S WHAT -- THE

DEFENDANT SAID HE HAD RECORDS

SUPPORTING THAT HE WAS IN JAIL,

AND YOU HAVE THOSE WITH YOU

TODAY, ETC.

NOW, FIRST OF ALL, THE RECORD AT

ISSUE WAS, APPARENTLY, JUST SOME

SORT OF BOOKING REPORT.

IT HAD NO CERTIFICATION OF THE

CUSTODIAN, IT HAD NO SEAL.

IT WAS DISCLOSED AT THE LAST

MINUTE, AND THE DEFENSE COUNSEL

ADMITTED THAT HE FAILED TO

DISCLOSE IT, SO I DON'T THINK

THE ISSUE OF WILLFULNESS IS

THERE.

HIS ARGUMENT WAS, WELL, NUMBER

ONE, YOU KNOW, I CAN USE IT TO

REFRESH HIS MEMORY, AND THE

JUDGE SAYS YOU DON'T NEED TO DO

THAT.

BUT HE ADMITTED HE DIDN'T

DISCLOSE IT.

SO THE, AND THE FACT IS THAT,

UM, THIS HAD BEEN ONE OF SEVERAL

TIMES WHEN THE DEFENSE --

[INAUDIBLE]

THE DOCUMENT WAS

UNAUTHENTICATED, THERE WAS NO --

YOU KNOW, THE DEFENSE'S RESPONSE

TO THAT AND TO THE JUDGE'S

INQUIRY WAS, WELL, I'LL JUST

WANT TO CONTINUE IT SO I CAN

SUBPOENA THE CUSTODIAN.

WELL, THE CUSTODIAN WAS

UNIDENTIFIED, AND THE COURT --

THE TRIAL WAS DUE THE NEXT DAY,

AND THE JUDGE WAS GOING TO BE

UNAVAILABLE.

>> BUT THE RICHARDSON RULE

REQUIRES EXCLUSION AS THE LAST

POSSIBLE --

[INAUDIBLE]

>> I AGREE WITH YOU.

>> IN THE RECORD HERE, AND WE

READ IT VERY CAREFULLY, THE

JUDGE DID NOT EXPLORE ANY OTHER

LEADS THAT MITIGATE THE

PREJUDICE THE CLAIMANT HAD.

>> I DISAGREE, JUSTICE LABARGA,

BECAUSE HERE'S WHAT HAPPENED.

HAD I KNOWN THEY HAD THESE

RECORDS, I WOULDN'T HAVE ASKED

THE QUESTION ABOUT THE RECORDS.

SO I THINK IT ESTABLISHED

PROCEDURAL PREJUDICE.

THE ONLY REMEDY THAT THE DEFENSE

ASKED FOR WAS THE CONTINUANCE ON

UNIDENTIFIED RECORDS TO GET THEM

INTO EVIDENCE.

THAT WAS THE ONLY REMEDY THEY

ASKED FOR.

AND THEN --

[INAUDIBLE CONVERSATIONS]

IF I COULD --

>> OKAY, I'M SORRY.

>> THE JUDGE ALLOWED THE DEFENSE COUNSEL ON REDIRECT TO SHOW HIM THE BOOKING REPORT AND SAY, ISN'T THIS DOCUMENT THAT I SHOWED YOU TO REFRESH YOUR MEMORY ABOUT HOW YOU WERE IN JAIL?

YES, IT WAS.

SO THE JURY SAW THIS PIECE OF PAPER.

THEY SAW HIM HAND THE PAPER TO THE DEFENDANT AND SAY, ISN'T THIS BOOKING REPORT OR ISN'T THIS DOCUMENT THAT I SHOWED YOU TO REFRESH YOUR MEMORY THAT, INDEED, YOU WERE IN JAIL DURING THE HEARING?

SO THE JUDGE ALLOWED THAT, AND I THINK THAT'S PROBABLY WHY HE DID ALLOW THAT.

ALSO THE FACT IS THE STATE'S THEORY WAS NOT THAT HE WAS AT THE ARTHUR HEARING.

THE STATE'S THEORY WAS THAT THE

DAY AFTER THE ARTHUR HEARING HE

MET WITH PAUL --

[INAUDIBLE]

WHO WAS DEFENSE COUNSEL AND

RECEIVED INFORMATION FROM HIM

AND/OR SOMEONE PRESENT AT THE

ARTHUR HEARINGS THAT

MR. McCRAY WAS THE WITNESS.

AND, IN FACT, WHAT WAS SAID

DURING THE CONFESSION.

>> LET ME GO BACK TO THE CROSS

EXAMINATION BY THE PROSECUTOR.

IF HE HAD PROOF WITH HIM THAT

DAY THAT HE WAS INCARCERATED ON

SEPTEMBER 6TH.

SO IF THE STATE WAS MAKING THIS

A BIG DEAL WHEN HE THEN SAID,

YES, HE HAS THE PROOF, THEN THE

PROSECUTOR'S OBJECTION OBJECTING

TO IT, THE PROSECUTOR, THE JUDGE

ASKED THE PROSECUTOR TO DISPUTE

THE FACT.

AGAIN, THIS IS A PROSECUTOR WITH

THE STATE TRYING TO SEEK

JUSTICE, NOT TO WIN EVERY POINT.

AND SO MY QUESTION ABOUT IT
REALLY WENT IN THE BROADER
CONTEXT OF WHAT THIS PROSECUTOR
WAS TRYING TO DO REGARDING
WADADA BOTH IN THE GUILT PHASE
AND IN THE PENALTY PHASE.
AND SOMETIMES THINGS ARE DONE,
AND YOU LOOK AT THEM ALL
CUMULATIVELY, AND YOU SAY YOU'RE
TRYING TO MAKE THIS GUY OUT TO
BE A LIAR, YOU'RE TRYING TO
IMPLY THAT HE WAS INVOLVED IN
THIS OTHER MURDER, AND NOW
YOU'RE GOING TO DOVETAIL THAT IN
TO THE PENALTY PHASE.
CERTAINLY, THE GUILT, THERE'S
CERTAINLY WEIGHT ENOUGH IN THE
GUILT PHASE.
AS FAR AS THE PENALTY PHASE,
IT'S, YOU KNOW, IT'S CERTAINLY
PROPORTIONATE, YOU KNOW, WITH
THE JUDGE, WITH THE AGGRAVATORS.
THE QUESTION WAS, WAS THE JURY
GOING TO GIVE THE DEATH PENALTY?
AND WAS --

>> 8-4.

>> 8-4, SO IT'S NOT LIKE, YOU

KNOW, AGAIN, THIS IS NOT A HUGE

VOTE FOR DEATH.

AND SO THAT'S WHY YOU LOOK AT

THIS AND SAY, WELL, THIS IS A

JURY, THESE THINGS HAVE HAD AN

EFFECT ON THE JURY IN

RECOMMENDING DEATH RATHER THAN

LIFE.

>> WELL, I THINK OF THE ARGUMENT

ABOUT THIS BOOKING REPORT IS

THAT THE ERROR IS THAT IT

UNDERMINES DELHALL'S CREDIBILITY

BECAUSE, ALLEGEDLY, HIS

CREDIBILITY IS ON THE LINE

BECAUSE OF HIS CONFESSION.

BUT, YOU KNOW, THE THING IS THAT

IF YOU, IF THAT'S THE ERROR THAT

IT UNDERMINED HIS CREDIBILITY

AND THIS WAS A HE SAID/SHE SAID,

YOU KNOW, HE MADE THE

CONFESSION, NO, I DIDN'T, AND

WHATEVER CONFESSION I MADE WAS

FALSE, THE THING THAT GOT

MR. DELHALL WAS TWO GUNS.

MR. DELHALL WAS THE FIRST PERSON

TO TELL THE POLICE THAT HE USED

TWO GUNS.

THE STATE FOUND, THE POLICE

FOUND 11 SHELL CASINGS AT THE

SCENE.

WELL, OF COURSE, WE KNOW SHELL

CASINGS ARE ONLY COMING OUT OF

AN AUTOMATIC.

WADADA TOLD THE POLICE THAT HE

USED TWO GUNS, A .38 AND A .9

MM.

AND BALLISTICS, WHICH WERE

EXAMINED AFTER THE FIRST OF THE

YEAR, THE REPORT CAME BACK THAT

THERE WERE TWO GUNS USED BECAUSE

THERE WERE TWO DIFFERENT KINDS

OF BULLET FRAGMENTS USED.

NOBODY KNEW THAT.

THAT IS WHAT CAUGHT WADADA.

AND SO ANY NOTION THAT THERE WAS

A SHOT AT HIS CREDIBILITY BEING

BELIEVED BY THE JURY --

>> I GUESS THAT'S WHAT MAKES

THIS WHOLE THING SO SAD AND

DOVETAILS INTO WHAT JUSTICE

LABARGA IS SAYING.

YOU HAVE THE CONFESSION, AND YOU

HAVE THE BULLETS, AND THEN YOU

SORT OF WONDER WHAT ELSE THE

PROSECUTION WAS DOING WITH OTHER

EVIDENCE THAT CAME SOMEWHAT AT

LEAST IN THIS APPEAL TO BE

EITHER THE SIDE SHOW OR BEING

USED FOR SOME OTHER PURPOSE.

SO I AGREE WITH YOU, THERE'S

GUILT THERE.

CERTAINLY, NO ONE'S MAKING AN

ARGUMENT THAT HE SHOULD BE

ACQUITTED OF THIS MURDER.

BUT THE CONCERN IS WHETHER HE

GOT A FAIR TRIAL, AND I THINK

THAT'S WHAT WE'RE TALKING ABOUT

THIS MORNING.

>> WELL, AGAIN, YOU KNOW, WHEN

YOU -- ANY NOTION THAT THE

BENNETT MURDER WAS A FEATURE OF

THE TRIAL, I THINK, IS

ABSOLUTELY REFUTED BY THE FACT

THAT OUT OF THE 18 WITNESSES,
ONLY ONE TESTIFIED ABOUT THE
BENNETT MURDER AND FOUR
TESTIFIED ABOUT BOTH AND 13
TESTIFIED ONLY ABOUT THE
McCRAY MURDER.
AND I THINK THIS COURT HAS
ADEQUATELY RECOGNIZED THAT THE
BRYANT CASE CONTROLS THE ISSUE
OF THE DYING DECLARATION.
AND UNLIKE LOPEZ WHERE THE
PERPETRATOR WAS STILL AT THE
SCENE AND THE GUN WAS SECURED,
JUST LIKE IN BRYANT, THE
PERPETRATOR WAS AT LARGE, THERE
WAS A GUN, THE VICTIM WAS
GRIEVOUSLY WOUNDED WITH 15
GUNSHOTS TO HIS BODY, WAS
DISCOVERED BY THE MEDICAL
EXAMINER.
AND THE CONCERN WAS TO GET THE
SHOOTER TO PROTECT, UM -- AND,
IN FACT, ALSO EVEN ANOTHER
DISTINGUISHER OR, IF I COULD
JUST FINISH MY SENTENCE, IS THAT

THE AREA -- WADADA HAD SHOT,
COME BACK AND SHOT TWICE, SHOT
ONCE BEFORE HE GOT IN THE CAR
AND THEN AFTER HE GOT IN THE CAR
ACCORDING TO WADADA TO MAKE THE
WITNESSES --
[INAUDIBLE]
SO I THINK THE BRYANT CASE
CLEARLY CONTROLS THE ISSUE
BECAUSE THEY'RE ADMITTING IT WAS
PROPERLY ADMITTED --
[INAUDIBLE]
IN FACT, I THINK IT WOULD HAVE
BEEN PROPERLY ADMITTED AS A
DYING DECLARATION BUT THAT THE
PROFFERED ISSUE IS GOVERNED BY
THE BRYANT CASE.
SO WE WOULD ASK THAT THIS COURT
IN REVIEWING THE RECORD AS A
WHOLE AFFIRM THE CONVICTION AND
SENTENCE TO DEATH.
>> LET ME ADDRESS A COUPLE OF
ISSUES.
IN CLAIM TEN OF SUMMARIZED
CLAIM, THE STATE PRESENTED MORE

THAN 30 NONSTATUTORY

AGGRAVATORS.

MENTIONED "DANGEROUS" 16 TIMES.

THE BRIEFS MENTION --

>> CITE THE CASE HOW MANY TIMES?

>> 16.

THE, UM, WHAT I WANT TO SAY TO

YOU IS THIS: THE STATE LITERALLY

SCARED THIS JURY TO DEATH.

THE REASON I'M SAYING IT IS

BECAUSE THIS BRIEF CANNOT

ADDRESS, DOES NOT ADDRESS, YOU

CAN'T HEAR THE HORRIFIC IMPACT

THAT THE PROSECUTOR HAD ON

WADADA'S JURY.

THE RECORD DOES NOT, CANNOT

REFLECT HOW TERRIFIED THE JURY

MUST HAVE BEEN BEEN AND HOW

THEY --

[INAUDIBLE]

THE PROSECUTOR REPEATEDLY,

SCREAMED OUT, SCREAMED OUT

WARNINGS THAT WADADA WAS

DANGEROUS, THAT HE WILL BE

DANGEROUS AND THAT HE COULD NOT

BE --

[INAUDIBLE]

>> WHEN YOU USE THOSE KINDS OF

TERMS, ARE YOU TALKING

LITERALLY, OR IS THIS A --

>> I WAS THERE, JUSTICE.

>> WAS THE PROSECUTOR ACTUALLY

SCREAMING --

>> SCREAMING.

>> SO YOU'RE TALKING LITERALLY.

>> LOOK AT THE VIDEOTAPES OF

THESE, AND YOU'LL SEE HOW

UNBELIEVABLE SOME OF THESE

ARGUMENTS COME OUT.

>> ARE THE VIDEOTAPES IN

EVIDENCE?

I MEAN, ARE THE VIDEOTAPES FOR

THIS RECORD?

>> I DON'T THINK -- I DON'T EVEN

KNOW IF THERE ARE VIDEOTAPES.

>> OH, I THOUGHT YOU SAID --

>> SOMEDAY THE COURT MAY HAVE

VIDEOTAPES TO --

>> WE CAN'T, THERE'S NO

OBJECTION TO SCREAMING, WE CAN'T

TAKE THAT INTO ACCOUNT.

YOU KNOW THAT.

>> OKAY.

WHAT I NEED THIS -- WHAT THIS

PANEL NEEDS TO HEAR IS THAT THEY

LITERALLY SCARED WADADA'S JURY

TO DEATH BY URGING JURORS TO

IMAGINE HOW HE'S GOING TO AFFECT

OTHER PEOPLE.

RECORD 139, THE TRANSCRIPT 560.

THIS CLEARLY GOES TO FUTURE

DANGEROUSNESS.

AND THESE ERRORS ARE NOT

HARMLESS, IF I COULD -- MY TIME

IS UP.

I WANT TO THANK THIS PANEL TODAY

FOR ALLOWING ME TO PRESENT THIS

ARGUMENT AND REQUEST THAT

MR. DELHALL'S CONVICTION BE

REVERSED AND THAT HE BE GRANTED

A NEW TRIAL, OR IN THE

ALTERNATIVE, REMAND THIS CASE

FOR A NEW --

[INAUDIBLE]

HEARING.

THANK YOU.

>> ALL RIGHT.

WE THANK BOTH OF YOU FOR YOUR

ARGUMENTS.

THE COURT WILL NOW TAKE A

TEN-MINUTE RECESS.

>> ALL RISE.