

ALL RISE.

>> THE SUPREME COURT OF  
FLORIDA IS NOW IN SESSION.  
PLEASE BE SEATED.

>> THE LAST CASE FOR THE DAY  
IS MATARRANZ VERSUS STATE OF  
FLORIDA.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, MY  
NAME IS ROBERT KALTER,  
ASSISTANT PUBLIC DEFENDER  
APPEARING ON BEHALF OF THE  
PETITIONER.

THE ISSUE THIS COURT MUST  
RESOLVE IN THIS APPEAL IS WHAT  
IS AN APPELLANT COURT'S ROLE  
TO SUPPORT A CONCLUSION OF A  
TRIAL JUDGE THAT A JURY CAN BE  
FAIR.

THE COURT CONCLUDED THAT AS  
LONG AS THERE IS ANYTHING IN  
THE RECORD TO SUPPORT THE  
TRIAL JUDGE'S DETERMINATION  
THAT A JUROR CAN BE FOUND  
IMPARTIAL, THE COURT MUST  
ACCEPT THIS DETERMINATION N.  
REACHING THIS CONCLUSION.

THE THIRD DISTRICT RELIED UPON  
PARTIAL CASE LANGUAGE FROM  
THIS COURT'S CASE IN BUSBY V  
STATE, WHICH RECOGNIZES THAT A  
TRIAL JUDGE IS IN FACT IN A  
BETTER POSITION TO DETERMINE  
WHETHER A JUROR CAN BE FOUND  
IMPARTIAL.

I BELIEVE WHERE THE THIRD  
DISTRICT COURT OF APPEALS  
DECISION GOES AWRY IS HOW DOES  
THIS COURT OR AN APPELLANT  
COURT DETERMINE WHEN IT LOOKS  
AT ALL THE RESPONSES GIVEN BY A  
JUROR, NOT JUST ISOLATED  
RESPONSES, IS THERE A  
REASONABLE DOUBT ABOUT THAT  
JUROR'S ABILITY TO BE FOUND  
IMPARTIAL?

>> I CONSIDER THIS ONE OF THE MOST IMPORTANT CASES TO COME BEFORE THE COURT IN A NUMBER OF YEARS BECAUSE THIS IS ONE THAT TOUCHES UPON THE VALIDITY OF OUR ENTIRE SYSTEM, AND I HOPE YOU BOTH UNDERSTAND THE IMPORTANCE, IN MY MIND, THAT SOMEHOW WE AND OTHER APPELLATE COURTS HAVE ALLOWED THIS TO SORT OF DIFFUSE AND I'VE NOTED FOR A LONG, LONG TIME, EVEN BEFORE I CAME TO THIS COURT, YOU CAN FIND AN APPELLANT DECISION TO SUPPORT YOUR VIEW IN THIS AREA.

JUST BASICALLY ON THE SAME FACTS GOING DIFFERENT WAYS. SO I SEE THIS AS REALLY THE NEED FOR A STANDARD, BOTH FROM A STATE'S PERSPECTIVE AND FROM A DEFENDANT'S TO VALIDATE OUR SYSTEM.

BECAUSE IF WE DON'T BEGIN WITH A VALID JURY, THEN THE QUESTION IS NOT WHETHER THEY GOT IT RIGHT.

THE QUESTION IS DO WE EVER HAVE A VALID PANEL.

AND SO I'D LIKE YOU TO ARTICULATE FOR ME THE STANDARD, THE STANDARD THAT ONE OUGHT TO USE TO EVALUATE WHAT'S GOING ON.

AND LET ME THROW INTO THE MIX JUST A LITTLE BIT ON† I MEAN, THERE'S ONE KIND OF QUESTION.

WHAT DO YOU THINK ABOUT THE DEATH PENALTY?

I MEAN, THAT'S SORT OF AN OPENENDED QUESTION.

NOT MANY PEOPLE KNOW ABOUT IT.

ON THE OTHER SIDE IS A RESPONSE, MY CHILD WAS MURDERED.

I DON'T THINK I CAN BE FAIR.  
AND IT SEEMS TO ME THAT THOSE  
ARE TWO SITUATIONS, YOU  
RESPOND I DON'T LIKE THE DEATH  
PENALTY OR I DO, WHERE YOU'RE  
SETTING FORTH SOME PRETTY  
STRONG OPINIONS, YET ONE MAY  
BE MORE SUSCEPTIBLE TO  
DISCUSSION THAN THE OTHER.

WHAT IS THE STANDARD?

WE SEEM TO HAVE BEEN UNABLE TO  
ARTICULATE A VERY GOOD  
STANDARD FOR ALL TRIAL JUDGES  
AND JUSTICE LABARGA HAS  
ENCOUNTERED, EVERY TRANSCRIPT  
YOU LOOK AT YOU ENCOUNTER THIS  
KIND OF THING, BUT WHAT'S THE  
CLARITY OF STANDARD SO WE  
DON'T CONFUSE IT MORE?

>> I THINK THAT GETS ANSWERED  
IN SEVERAL WAYS.

I THINK THIS COURT MADE IT  
VERY CLEAR WHAT THE STANDARD  
WAS, BUT I THINK WE START OFF  
WITH THE PREMISE THAT I THINK  
YOUR HONOR HAS RECOGNIZED,  
WHICH IS WE START OFF WITH THE  
PREMISE THAT WE'RE ENTITLED TO  
A JUROR THAT'S FAIR AND  
IMPARTIAL.

AND AS WE GO DOWN THAT  
STANDARD, WE START QUESTIONING  
JURORS, LIKE THE TRIAL JUDGE  
DID IN THIS CASE.

THIS IS A FASCINATING CASE TO  
CLARIFY THE STANDARD BECAUSE  
THIS CASE ESTABLISHES SO  
CLEARLY WHAT HAS GONE WRONG IN  
THE THIRD DISTRICT COURT OF  
APPEALS.

THE TRIAL JUDGE IN THE  
BEGINNING OF VOIR DIRE IN THIS  
CASE TELLS THE JURY WE WANT TO  
KNOW UPFRONT ARE THERE ANY  
JURORS THAT HAVE A BIAS.

THERE'S NOTHING WRONG WITH A

BIAS, BUT WE NEED TO KNOW THAT.

AND THEN THE JUDGE GOES TO EXPLAIN ONE OF THE WAYS WE KNOW THERE'S A BIAS, IS THERE SOMETHING ABOUT THE CHARGES IN THIS CASE THAT WOULD PREVENT YOU FROM BEING A FAIR AND IMPARTIAL JUROR?

THE JUDGE THEN GOES TO THE ENTIRE PANEL, IS THE FACT THAT THE DEFENDANT WAS CHARGED WITH BURGLARY IN THIS CASE MEAN YOU CAN'T BE IMPARTIAL?

THE JUROR SAID YES.

IF THERE IS A REASONABLE DOUBT ABOUT A JUROR'S ABILITY TO BE FAIR AND IMPARTIAL, THAT JUROR MUST BE EXCUSED FOR CAUSE.

>> THEN YOU GET INTO THE (INAUDIBLE) HAVE A RIGHT TO REHABILITATE THAT.

>> CORRECT.

>> SO WHERE DO WE ALLOW THAT IN ONE INSTANCE I HAD ON SELECTING A JURY IN A FIRST DEGREE MURDER CASE (INAUDIBLE) WOMAN WAS STRANGLER, AND WHEN THE PANEL'S BROUGHT INTO THE COURTROOM, AS SOON AS I TOLD THE JURY WHAT THE CHARGE WAS, THIS ONE GENTLEMAN IN THE BACK RAISED HIS HAND.

CAN I SEE YOU.

HE COMES UP TO THE BENCH AND HE TELLS ME 15, 20 YEARS AGO IN UPSTATE NEW YORK WHEN I LIVED UP THERE MY 17 YEAR OLD DAUGHTER WAS KIDNAPPED, RAPED, STRANGLER, MURDERED.

JUDGE AND HE'S SHAKING.

HE'S CRYING AT THE BENCH.

PLEASE, I DON'T WANT TO.

THE FACT THAT I'M HERE NOW IS BOTHERING ME.

WELL, DEFENSE COUNSEL WANTED

HIM EXCUSED.

AND I SENT HIM BACK.

AND THEN THE PROSECUTOR SAYS,  
JUDGE, I HAVE A RIGHT TO  
ATTEMPT TO REHABILITATE THAT  
WITNESS.

I MEAN, IN THAT KIND OF  
INSTANCE, WHERE YOU HAVE THIS  
ACTUAL, PERSONAL EXPERIENCE,  
DO THE JUDGES SAY, NO, THIS IS  
ENOUGH REASONABLE DOUBT, NO  
REHABILITATION INVOLVED AND  
IT'S OVER, IT'S EXCUSED, AS  
OPPOSED TO SOME GENERAL  
EXPERIENCE, WHERE TYPICAL  
DEFENSE LAWYER† NOT TYPICAL,  
BUT MANY DEFENSE LAWYERS, THEY  
GET UP AND THE FIRST QUESTIONS  
OUT OF THEIR MOUTH, MRS. †SO  
AND SO, ARE YOU GOING TO  
REQUIRE MY CLIENT TO TESTIFY  
AND EXPLAIN WHAT HAPPENED IN  
THIS CASE BEFORE YOU CAN VOTE  
TO FIND HIM NOT GUILTY?  
WITHOUT EXPLAINING ANYTHING  
ELSE, EVERYBODY SAYS YES.  
SEE?

IN THAT TYPE OF SITUATION,  
THAT GENERAL CONCEPT, SOMEONE  
NEEDS TO COME BACK UP AND  
ATTEMPT TO EXPLAIN TO THE  
JUROR.

BUT YOU SEE THE DIFFERENCE?  
SHOULD THERE NOT BE A  
SITUATION WHERE A JUDGE CAN  
JUST SAY NO REHABILITATION,  
THIS IS ENOUGH, I'M NOT GOING  
TO PUT THIS GUY THROUGH HIS  
QUESTIONING, HE'S GONE.

>> IT WOULD BE OUR CONTENTION  
THAT THERE ARE TWO LINES OF  
CASES AND I THINK THIS COURT'S  
QUESTIONS HAVE RECOGNIZED  
THOSE TWO LINES OF QUESTIONS.  
WHEN A JUROR COMES UP AND SAYS  
I CAN'T BE FAIR OR AS THIS

JUROR SAYS, I WILL LEAN  
TOWARDS THE STATE, OR AS THIS  
JUROR SAID, I KNOW MYSELF.  
I CAN'T GIVE THE DEFENDANT A  
FAIR TRIAL.

WHAT IS THE PURPOSE OF  
REHABILITATION?

THIS JUROR HASN'T MADE A  
MISTAKE LIKE THE PROSECUTOR  
TRIED TO INSTRUCT THE JUROR IN  
THIS CASE.

AT A CERTAIN POINT DURING THIS  
ATTEMPTED REHABILITATION, THE  
PROSECUTOR GOES TO THE JURY,  
YOU'RE NOT ALLOWED TO LEAN.

WELL, IT IS OUR POSITION, YES,  
SHE WAS ALLOWED TO LEAN.

SHE WASN'T ALLOWED TO BE ON  
THIS JURY, BUT SHE WAS ALLOWED  
SHE WAS CANDIDLY TELLING  
EVERYBODY IN THIS COURTROOM  
YOU HAVE THE WRONG JUROR FOR  
THIS CASE.

I WAS THE VICTIM OF A BURGLARY  
WHEN I WAS EIGHT YEARS OLD.  
MY CHRISTMAS PRESENTS WERE  
STOLEN.

I AM BEGGING YOU, I CANNOT SIT  
ON THIS JURY.

>> AGAIN, I UNDERSTAND THAT.  
HOW WOULD YOU DESCRIBE THE TWO  
DIFFERENT LINE THAT YOU'RE  
SEEING, HOW WOULD YOU ALL  
DESCRIBE THAT, SO THIS IS A  
WORKABLE SYSTEM THAT CAN BE  
FOLLOWED, THAT IS  
UNDERSTANDABLE?

HOW WOULD YOU DESCRIBE THOSE?

>> I WOULD DESCRIBE IT THERE'S  
ONE SITUATION LIKE THIS COURT  
RECOGNIZED IN JOHNSON, WHERE  
WHEN A JUROR COMES IN, I  
BELIEVE THAT THE† IT'S A  
LEGAL QUESTION.

I BELIEVE THAT THE DEATH  
PENALTY GETS APPLIED IN ALL

CASES.

THE TRIAL JUDGE, NO, IT DOESN'T.

THERE ARE MITIGATING, AGGRAVATING CIRCUMSTANCES. QUESTIONS WHERE JURORS ARE CONFUSED ABOUT THE LAW, THEY CAN BE REHABILITATED.

WHEN A JUROR THINKS THAT THE BURDEN OF PROOF IN A CRIMINAL CASE IS THE SAME AS THE BURDEN OF PROOF IN A CIVIL CASE, A JUDGE GOES, HOLD ON, THAT'S NOT THE LAW.

AND A JUROR SAYS, OKAY, IF THAT'S NOT THE LAW, I CAN ACCEPT THAT.

I THOUGHT DEFENDANTS HAD TO TESTIFY IN A CASE.

I NEVER KNEW THE DEFENDANT DIDN'T HAVE TO TESTIFY IN A CASE.

A JUDGE TELLS TO A JUROR A DEFENDANT DOESN'T HAVE TO TESTIFY IN A CASE.

THE COURT THEN IS IN A POSITION TO SAY I BELIEVE THE JUROR.

THE JUROR SAID THEY CAN FOLLOW THE LAW.

IT IS OUR CONTENTION, LIKE IN THE JUDGE'S CASE, WHEN A JUROR SAYS I CANNOT BE A FAIR AND IMPARTIAL JUROR, THERE CAN BE NO REHABILITATION.

WHEN SHOULD THE LINE BE DRAWN? AT WHAT POINT IN THIS CASE WAS THE REHABILITATION USELESS?

I WOULD SAY ORIGINALLY WHEN THE JUDGE SAID TO THE JURY DO YOU THINK YOU CAN BE† WHO WOULD BE UNFAIR IN THIS CASE, THE JUROR RAISED THEIR HAND, I WOULD SAY THE JUDGE HAD THE RIGHT TO ASK ONE OR TWO MORE QUESTIONS, WHICH IS WHAT

HAPPENED IN THIS CASE.

THE JUDGE THEN WENT TO THE JUROR, YOU SAID YOU COULDN'T BE FAIR.

EXPLAIN TO ME WHAT HAPPENED.

THE JUROR SAYS I WAS THE VICTIM OF A BURGLARY.

IT WAS CHRISTMASTIME AND I'M GOING TO HOLD A GRUDGE AGAINST THE DEFENDANT.

THE JUROR THEN SAID I DON'T THINK I COULD BE FAIR TOWARD THIS DEFENDANT.

THE JUDGE IN MY OPINION PROBABLY SHOULD HAVE STOPPED RIGHT THERE.

THERE COULD BE NO REHABILITATION.

BUT THE JUDGE SAID ONE STEP FURTHER.

I UNDERSTAND YOU MAY HOLD A GRUDGE, BUT DO YOU UNDERSTAND YOU SHOULDN'T HOLD A GRUDGE AGAINST PEOPLE WHO ARE INNOCENT?

THE JUROR SAID I UNDERSTAND THAT, BUT I CAN'T GUARANTEE YOU THAT I WON'T HOLD A PREJUDICE FOR THE DEFENDANT AND SHE INDICATED RIGHT POINTING TO THE DEFENDANT OR INDICATING TO THE DEFENDANT MY PREJUDICE WOULD BE AGAINST HIM.

>> LET ME FAST FORWARD YOU TO THE PEREMPTORY CHALLENGE EXCHANGE THERE.

THERE WAS A LIST OF JURORS THAT THE DEFENSE SAID SHOULD HAVE BEEN STRICKEN FOR CAUSE, BUT WERE NOT.

THIS PARTICULAR JUROR WAS NOT ON THAT LIST, RIGHT?

>> CORRECT.

>> SO DID THAT LIST HAVE TO BE GIVEN TO THE JUDGE?



>> NO.

WHAT† THE STATE'S TAKEN A POSITION, I BELIEVE, THAT SOMEHOW WE'VE WAIVED THIS. AND WHAT THIS COURT NEEDS TO LOOK AT IS TROTTER V STATE WHICH SETS OUT THE ENTIRE PROCEDURE.

>> WELL, MY CONCERN IS THIS. THE LIST DID NOT HAVE TO BE GIVEN IN THE FIRST PLACE, RIGHT?

>> CORRECT.

>> SO† BUT YET A LIST WAS GIVEN.

>> AND SHOULD WE BE BOUND BY IF WE GIVE A†

>> SO THE WHOLE IDEA BEHIND THIS PROCESS IS TO BE ABLE TO GIVE THE COURT NOTICE AND OPPORTUNITY TO CORRECT ANY PARTICULAR PROBLEMS THAT MAY EXIST AND TO STRAIGHTEN THE THING OUT SO WE'RE NOT HERE LATER IN AN APPELLANT COURT TRYING TO REDO THE WHOLE THING.

>> CORRECT.

>> WAS IT A PRIOR WITH GIVING A LIST THAT WASN'T REQUIRED WITH THIS JUROR NOT ON THERE, DID IT SOMEHOW INDICATE TO THE TRIAL JUDGE THAT WHATEVER PROBLEM THAT MAY HAVE EXISTED THEY MUST BE OKAY WITH NOW. I'M JUST GOING TO† I DON'T HAVE THAT AS AN ISSUE TO DEAL WITH IN THIS PARTICULAR TRIAL. IT'S SOMEWHAT OF A UNIQUE SET OF CIRCUMSTANCES, IT SEEMS TO ME, IN THIS CASE BECAUSE OF THE DEFENSE GIVING THEM A LIST THAT WASN'T REQUIRED.

>> I DON'T THINK THE FAILURE TO GIVE A CORRECT LIST WAIVES ANYTHING.

IF WE LOOK AT THE PROCEDURE THAT'S LAID OUT IN TROTTER, THERE ARE BASICALLY TWO REQUIREMENTS IN TROTTER. ONE IS PRESERVATION. YOU MOVE TO CHALLENGE YOUR JUROR FOR CAUSE. YOU GIVE THE JUDGE THE REASON WHICH IS EXACTLY WHAT HAPPENS AND AT THE END YOU RENEW YOUR OBJECTION. THAT'S THE PRESERVATION PART OF TROTTER. THE SECOND PART OF TROTTER IS THAT YOU HAVE TO ESTABLISH PREJUDICE, WHICH IS WHERE THE PROBLEM TOOK PLACE IN THIS POINT. THE SECOND PART OF TROTTER IS YOU'RE FINISHED WITH JURY SELECTION. YOU NEED NOW TO ESTABLISH THAT YOU'VE EXHAUSTED ALL YOUR PEREMPTORY CHALLENGE, YOU NEED ANOTHER PEREMPTORY CHALLENGE AND THERE'S AN OBJECTIONABLE JUROR ON THE PANEL. AT THIS STAGE HE ASKED FOR ADDITIONAL PEREMPTORY CHALLENGES. THE JUDGE IMMEDIATELY SAID NO, I'M NOT GIVING YOU ADDITIONAL PEREMPTORY CHALLENGES. DEFENSE COUNSEL IDENTIFIED A JUROR HE WOULD STRIKE. IT IS OUR POSITION THAT WHEN DEFENSE COUNSEL FAILED TO INCLUDE ONE OF THE JURORS FOR CHALLENGE FOR CAUSE, IT WAS HARMLESS. IT HAD NO EFFECT ON ANYTHING. THIS WASN'T THE TIME OF THE PROCEDURE WHERE THE TRIAL JUDGE REVIEWS THE CHALLENGES FOR CAUSE. >> WELL, YOU INDICATED HARM,

SO WHY IS THIS HARMLESS ERROR  
HERE?

THIS PARTICULAR JUROR DID NOT  
SERVE ON THE JURY, AND BY THE  
DEFENSE ACTIONS OF NOT NAMING  
THIS PARTICULAR JUROR, IT  
WOULD SEEM TO INDICATE TO THE  
TRIAL JUDGE NOTHING TO BE DONE  
HERE.

SO EVEN ACCEPTING THAT THIS  
PARTICULAR JUROR PERHAPS  
SHOULD HAVE BEEN STRICKEN  
BECAUSE A PEREMPTORY STRIKE  
WAS USED, DID NOT SERVE, WHY  
IS THIS NOT HARMLESS ERROR  
UNDER THE FAIRLY UNIQUE  
CIRCUMSTANCES OF THIS CASE?

>> BECAUSE YOU HAVE TO KEEP IN  
MIND THAT RIGHT BEFORE WE WERE  
LISTING ALL† THE PURPOSE OF  
AN OBJECTION IN TERMS OF  
HARMLESS AND WAIVERS, WAS THE  
TRIAL JUDGE PUT ON NOTICE OF  
WHAT OUR OBJECTION WAS.

THERE WAS A LENGTHY ARGUMENT  
RIGHT BEFORE THIS ABOUT THIS  
JUROR SHOULD NOT BE ON THIS  
JURY.

THERE WAS† I DON'T THINK  
THERE'S ANY WAY TO LOOK AT  
THIS RECORD TO SAY THAT WE ARE  
GIVING UP OUR ARGUMENT AS TO  
THAT JUROR.

THIS COURT HAS NEVER REQUIRED  
THAT YOU RELIES THE JURORS.  
AS A MATTER OF FACT, AT THE  
ENDS OF VOIR DIRE, THE LAW  
DOESN'T REQUIRE YOU RELIES ALL  
THE JURORS.

>> I UNDERSTAND THAT.

>> SO TO SAY THAT BECAUSE  
DEFENSE COUNSEL MADE A MISTAKE  
AND FAILED TO INCLUDE A JUROR  
THAT HE AT LENGTH ARGUED ABOUT

>> LET ME ASK YOU THIS,

COUNSEL.

DID† DEFENSE COUNSEL DID ASK  
THE TRIAL COURT FOR ADDITIONAL  
PEREMPTORIES.

>> CORRECT.

>> AND THAT WAS DENIED.

>> DENIED.

>> SO YOUR ARGUMENT, I WOULD  
THINK, WOULD BE THAT HE  
EXERCISED A PEREMPTORY  
CHALLENGE HE DIDN'T WANT TO  
EXERCISE, PERHAPS† AND MAYBE  
KEPT THIS WOMAN ON THE PANEL,  
A LESSER EVIL THAN SOMEONE  
ELSE THAT HE WANTED TO  
EXERCISE.

IN OTHER WORDS, WHAT I'M  
SAYING IS HAS SHE BEEN EXCUSED  
FOR CAUSE, AS YOU ARE†

>> I WOULD HAVE AN EXTRA  
PEREMPTORY.

>> TO EXCUSE SOMEONE ELSE HE  
WANTED TO EXCLUDE AS WELL.

>> CORRECT.

>> THAT'S THE PREJUDICE YOU'RE  
TALKING ABOUT.

>> WHERE WE LISTED ALL THE  
JURORS, THE ONLY THING  
RELEVANT AT THIS POINT OF THE  
PROCEDURE IS TO PUT THE COURT  
ON NOTICE THAT WE NEED EXTRA  
PEREMPTORY CHALLENGES AND  
THERE ARE OBJECTIONABLE  
JURORS.

>> YOU HAVE TO POINT OUT THOSE  
OBJECTIONABLE JURORS.

>> EXCUSE ME?

>> YOU HAVE TO USE THE  
PEREMPTORY CHALLENGE AND NOW  
THERE'S STILL† AND IT SHOULD  
HAVE BEEN A CHALLENGE BECAUSE,  
THAT'S YOUR ARGUMENT, THAT  
THIS LADY SHOULD HAVE BEEN  
STRICKEN FOR CAUSE.

YOU USE THE PEREMPTORY  
CHALLENGE ON HER.

AND NOW YOU HAVE A JUROR WHO IS STILL OBJECTIONABLE TO YOU AND YOU HAVE NO MORE PEREMPTORY CHALLENGES. DON'T YOU HAVE TO POINT OUT THE JURORS THAT ARE STILL OBJECTIONABLE?

>> YES, WHICH WAS DONE HERE.

>> OH.

OKAY.

>> WE IDENTIFIED ALL THOSE. THE ISSUE HERE IS THAT WHEN WE RENAMED THE JURORS FOR CHALLENGE FOR CAUSE, WE LEFT A JUROR OUT.

WE POINTED TO ALL THE OBJECTIONABLE† JURORS.

>> BUT YOU LEFT THE JUROR WITHOUT BECAUSE YOU WERE NO LONGER THERE.

>> NO.

THE LAWYER MADE A MISTAKE. HE MADE A MISTAKE.

THERE'S NO OTHER WAY TO GET AROUND THAT. HE NEEDED TO LIST SIX JURORS.

HE LISTED FIVE.

IT'S OUR POSITION THAT IT'S IRRELEVANT TO WHAT HAPPENED THERE.

MORE IMPORTANTLY, I THINK THIS CASE DOES CREATE A VERY, VERY IMPORTANT CASE BECAUSE WHAT THE THIRD DISTRICT COURT OF APPEALS HAS DONE IN THIS CASE AND IS DOING IN SUBSEQUENT CASES WHICH IS CITED BY THE STATE IS THEY PICK OUT AN ISOLATED COMMENT BY A JUROR. EVENTUALLY THIS JUROR SAID THAT THEY COULD BE FAIR. HOW DID SHE SAY THEY COULD BE FAIR?

ACCORDING TO THE TRIAL JUDGE, THE JUROR ACCORDING TO THE JUDGE CONCLUDED THAT THIS

JUROR WAS EMBARRASSED BY HER  
RESPONSES THE PREVIOUS DAY.  
AND I WOULD SAY THAT THE JUROR  
WAS EMBARRASSED ABOUT WHAT?  
THE JUROR HAD COME INTO COURT  
AND TOLD THIS JURY AND LAWYERS  
FROM THE BEGINNING, I DON'T  
THINK I COULD BE A FAIR AND  
IMPARTIAL JUROR, OVER AND OVER  
AND OVER AGAIN.

SIX TIMES.

I CANNOT BE A FAIR AND  
IMPARTIAL JUROR.

AND I WOULD SAY TO THE COURT  
IF THE COURT'S LOOKING FOR A  
BRIGHT LINE TEST, IT'S WHEN A  
JUROR SAYS SOMETHING FROM  
THEIR HEART, NOT SOMETHING  
FROM THEIR BRAIN WHERE THEY  
DON'T UNDERSTAND THE LAW.

WHEN A JURY COMES IN AND  
BASICALLY BEGS A COURT, THIS  
IS THE WRONG CASE.

WHEN I WAS EIGHT YEARS OLD AT  
CHRISTMAS, HE WAS BURGLARIZED.  
IF I WAS THE DEFENDANT, I  
WOULD NOT WANT ME TO BE ON  
THIS JURY.

THINK WHAT THE JUROR SAID.  
THE JUROR SAID KNOWING ME, I  
WOULD LEAN TOWARDS THE STATE.  
AND WHAT THIS COURT HAS ALWAYS  
RECOGNIZED, WHICH WE NEED TO  
GET TO THE BOTTOM WHEN WE  
REALLY WANT TO UNDERSTAND THIS  
CASE, THIS IS ABOUT HAVING THE  
RIGHT TO A FAIR AND IMPARTIAL  
JUROR.

>> YOU'RE IN YOUR REBUTTAL  
TIME.

>> I'LL RESERVE THE REMAINDER  
OF TIME FOR REBUTTAL.

THANK YOU.

>> GOOD MORNING.

MAY IT PLEASE THE COURT,

DOUGLAS GLAID, COUNSEL ON BEHALF OF THE STATE OF FLORIDA RESPONDENT HERE.

THE STATE ADMITS THAT THE DISTRICT COURT OF APPEALS HERE CORRECTLY DECIDED THIS ISSUE, IS FULLY CONSISTENT WITH ESTABLISHED CASE LAW FROM THIS COURT AND IN ACCORD WITH THE APPROPRIATE APPELLANT STANDARD OF REVIEW, WHICH WAS MANIFEST ERROR, WHICH THIS COURT HAS STATED IS TANTAMOUNT TO ABUSE OF DISCRETION.

>> WELL, YOU KNOW, I RESPECTFULLY† I THINK THAT WE HAVE SEEN ENOUGH CONFUSION IN THIS AREA THAT IF WE CAN'T DO BETTER THAN JUST AN ABUSE OF DISCRETION† AND THAT'S NOT REALLY TELLING MANY PEOPLE MANY THINGS.

IT SEEMS TO ME WE OUGHT TO HAVE SOME CONSISTENCY IN THIS AREA.

AND IF† IT'S ALMOST LIKE WHAT'S HAPPENED IN DOMESTIC OTHER THAN WHAT'S BEEN CODIFIED STATUTORILY, IT GETS TO THE POINT THAT YOU HAVE NO RULES OF LAW.

IT'S WHATEVER COMES OUT OF THE AIR BECAUSE YOU CAN COME UP WITH SOME THEORY THAT, WELL, SOME PERSON, REASONABLE PERSON, COULD COME TO THIS CONCLUSION.

COUNSEL HAS SUGGESTED THAT THERE'S TWO TYPES OF CASES. DO YOU SEE THAT TYPE OF CIRCUMSTANCE EXISTING IN OUR JURISPRUDENCE, THAT THERE ARE SOME CASES THAT REHABILITATION ARE NOT DESIGNED FOR, STATE OR DEFENSE, AND OTHER CASES WHERE

REHABILITATION OR DISCUSSION  
NEEDS TO BE HAD WITH A JUROR?  
DO YOU SEE THAT OR DO YOU  
THINK THERE'S NO SUCH THING AS  
YOU LOOK AT THE LAW IN THIS  
AREA?

>> NO, YOUR HONOR.

IT DEPENDS ON THE FACTS OF  
EACH CASE.

>> I'VE GOT A PROBLEM WITH  
THAT.

THERE'S NO STABILITY IN THE  
LAW IF IT'S WHATEVER WHIM  
COMES UP WHATEVER DAY.

>> WELL, JUDGE, THE ABUSE OF  
DISCRETION STANDARD HAS SERVED  
THE APPELLATE COURTS WELL.

>> I RESPECTFULLY DISAGREE  
WITH THAT BECAUSE I'VE BEEN  
DOING THIS OVER 40 YEARS NOW  
AND I CAN FIND A CASE  
SOMEWHERE FROM AN APPELLATE  
COURT ON IDENTICAL FACTS THAT  
ONE TIME WILL AFFIRM AND ONE  
TIME WILL REVERSE.

IT JUST SEEMS TO ME THAT OUR  
TRIAL JUDGES, OUR TRIAL  
LAWYERS, FLORIDIANS DESERVE A  
LITTLE MORE STABILITY IN THIS  
AREA.

MAYBE I'M WRONG.

MAYBE I'M JUST ABSOLUTELY  
WRONG.

>> NO.

IF I CAN HELP YOU OUT A LITTLE  
BIT, I THINK WHAT I'VE NOTICED  
IN THE LAW IS WHERE THERE IS A  
FIXED OPINION† IF YOU LOOK  
AT THE CASES THAT WERE CITED  
FOR CONFLICT HERE, SINGER,  
HAMILTON, OVERTON, EACH OF  
THOSE CASES YOU'LL SEE IT'S  
LIKE A FIXED OPINION AS TO  
GUILT, FIXED OPINION ABOUT THE  
DEFENDANT'S CASE BECAUSE THEY  
READ PRIOR T.V., NEWSPAPER.



>> OKAY.

ALL RIGHT.

I ACCEPT THAT.

>> SO WHAT WE HAVE IS ABIDING STATE OF EQUIVOCATION, IF YOU WILL.

>> WHEN YOU SAY FIXED OPINION, I CAN ACCEPT THAT.

>> CORRECT.

>> DOES IT MAKE A DIFFERENCE AS TO WHAT THAT FIXED OPINION IS BASED ON?

HE'S SUGGESTED THAT SOME THINGS ARE BASED UPON MISCONCEPTIONS, YOU KNOW, THAT PEOPLE REALLY DON'T UNDERSTAND OUR DEATH PENALTY STATUTE AND THEY MAY BE† MAKE WHAT APPEARS TO BE A FIXED STATEMENT, I'M AGAINST THE DEATH PENALTY, BUT THEY DON'T UNDERSTAND IT.

OR I'M IN FAVOR OF IT, BUT IT CAN'T BE IMPOSED JUST BECAUSE THERE'S A MURDER CONVICTION. YOU SEE WHAT I'M SAYING?

>> YES, YOUR HONOR.

IT DOES MAKE A DIFFERENCE.

>> HOW WOULD YOU DESCRIBE THAT DIFFERENCE WHEN IT COMES TO WHAT THE FIXED OPINION IS BASED ON?

DOES THAT MAKE A DIFFERENCE?

OR SHOULD IT MAKE A DIFFERENCE IN THE LAW?

>> I THINK WHAT I'M SAYING, IT'S TOUGH BECAUSE THERE'S SO MANY DIFFERENT FACTS AND SO MANY DIFFERENT THINGS THAT A JUROR CAN SAY.

WE DON'T KNOW WHAT A JUROR CAN SAY.

I THINK THAT'S WHY WE HAVE TO GIVE DISCRETION.

>> WHAT ELSE NEEDS TO BE SAID WHEN YOU HAVE A JUROR TELLING

YOU THIS IS A BURGLARY CASE, I  
JUST FOUND THAT OUT.

WHEN I WAS EIGHT SOMEBODY  
WALKED INTO MY HOUSE, STOLE MY  
CHRISTMAS GIFTS, AND I CAN'T  
BE FAIR IN A BURGLARY CASE.

I MEAN, WHY CAN'T A JUDGE HAVE  
SAID, CAUSE, GOODBYE.

BRING SOMEBODY ELSE.

WHY IS THERE A NEED TO  
REHABILITATE THAT JUROR?

AND LET ME TALK ABOUT THE  
REHABILITATION.

THE REHABILITATION HERE WAS  
DONE BY THE JUDGE.

AND, YOU KNOW, I GOT TO TELL  
YOU, MY WIFE WAS A JUROR  
EARLIER THIS YEAR, PALM BEACH  
COUNTY, AND SHE† HER AND I  
HAVE BEEN MARRIED SINCE I GOT  
OUT OF LAW SCHOOL.

SHE'S BEEN WITH ME THROUGHOUT  
MY ENTIRE YEAR.

SHE KNOWS ALL THE JUDGES, HAS  
WATCHED TRIALS, FAMILIAR WITH  
THE COURTHOUSE SETTING.

SHE'S NOT A LAWYER.

AND THE JUDGE IN THE  
PARTICULAR CASE IS A PERSONAL  
FRIEND.

SO IF ANYONE SHOULD BE  
COMFORTABLE IN THAT COURTROOM,  
IT WOULD BE MY WIFE.

NOW, YOU HAVE SOMEONE WHO'S  
NOT A LAWYER WHO DOESN'T HAVE  
THAT KIND OF FAMILIARITY WITH  
THE COURTROOM AND THE JUDGE,  
REGULAR PERSON FROM THE  
STREET, AS A JUROR, THERE'S  
THIS GUY WEARING THE ROBE AND  
SHE'S SITTING WITH A PANEL OF  
30 PEOPLE AND THE JUDGE IS  
TELLING HER† LEADING HER  
INTO BELIEVING IN THIS  
PARTICULAR CASE† PRETTY MUCH  
LEADING HER INTO BEING FAIR,

TALKING HER INTO BEING FAIR.  
WHAT DO YOU THINK A JUROR IS  
GOING TO SAY?

YES, OF COURSE, JUDGE, I CAN  
FOLLOW THE LAW.

THAT'S SUPPOSED TO BE  
DETERMINATIVE?

>> WELL, I DON'T THINK THAT'S  
WHAT HAPPENED HERE, THOUGH.

>> LOOK AT† I'M LOOKING AT  
IT.

>> IF YOU LOOK AT THE WHOLE†  
BUT THE SECOND DAY, JUDGE, ALL  
WE HAVE ON THE SECOND DAY IS A  
TOTAL, POSITIVE, UNQUALIFIED  
ANSWERS BY THE JUROR.

>> WAS THERE A DEARTH OF JURORS  
THERE OR SOMETHING?

WHY DID WE HAVE TO GO ANOTHER  
DAY TO DETERMINE WHETHER OR  
NOT ONE JUROR SHOULD BE  
EXCUSED FOR CAUSE?

>> YOUR HONOR, I THINK THAT'S  
JUST HOW IT HAPPENED.

THE JUROR'S FIRST TIME IN  
ANSWERING THE QUESTION WAS ON  
PAGE 155 OF THE TRANSCRIPT,  
WHICH IS LIKE LATER IN THE  
DAY, AND THEN IT JUST SO  
HAPPENED THAT THEY WERE  
RECESSING FOR THE NIGHT AND  
THEY CAME BACK THE NEXT  
MORNING.

>> THOUGHT ABOUT IT.

>> IT'S JUST THE WAY THE  
TIMING WENT.

>> I JUST HAVE A† AGAIN,  
HAVING BEEN (INAUDIBLE) FOR A  
LONG TIME, ALWAYS HAD  
(INAUDIBLE) FOR THIS WHOLE  
IDEA THAT A PERSON CAN SAY ALL  
THESE THINGS AND RAISE ALL  
THESE CONCERNS ABOUT FAIRNESS  
AND HOW HE OR SHE COULD BE  
FAIR OR NOT.

SUDDENLY BECAUSE AFTER A

DEFENSE LAWYER AND PERHAPS  
EVEN THE JUDGE OR THE  
PROSECUTOR AND THE JUDGE,  
DEPENDING ON WHICH SIDE THE  
JUROR IS TALKING ABOUT, TALK  
TO HER OR HIM AND SUDDENLY THE  
JUROR SAYS, OKAY, YEAH, I CAN  
FOLLOW THE LAW.

YES, I CAN BE FAIR.

AND THAT'S SUPPOSED TO BE THE  
END OF IT.

WE'RE SUPPOSED TO DISREGARD  
EVERYTHING ELSE.

I DON'T KNOW WE'RE GETTING THE  
TYPE OF JUROR THAT  
(INAUDIBLE).

>> I THINK WE HAVE TO LEAVE  
THE DISCRETION WITH THE TRIAL  
COURTS.

OBVIOUSLY, THE TRIAL JUDGES,  
THEY HAVE UNDER THE CONDA  
DECISION, YOU SAID THEY HAVE  
GREAT DISCRETION IN MANIFEST  
ERROR.

IT SEEMS LIKE THERE'S AN EXTRA  
DISCRETION BEING VESTED IN THE  
TRIAL COURTS WHEN IT COMES TO  
CAUSE CHALLENGES.

>> ISN'T THAT ULTIMATELY  
BECAUSE† AT LEAST TO THE  
EXTENT THAT THE JUROR  
ULTIMATELY PROFESSES AN  
ABILITY TO BE UNBIASED, THAT  
IT'S A CREDIBILITY  
DETERMINATION THAT THE TRIAL  
COURT IS MAKING ABOUT THAT  
ULTIMATE PROFESSION OF A LACK  
OF BIAS.

NOW, I UNDERSTAND WHY PEOPLE  
MIGHT BE SKEPTICAL ABOUT THAT  
IN THE CONTEXT WHERE SOMEONE  
STARTS OFF, COMES OUT OF THE  
GATE SAYING I'M GOING TO BE  
BIASED.

BUT IT SEEMS LIKE IF ANYTHING,  
THAT WOULD POINT TO SOME KIND

OF RULES ABOUT CERTAIN  
CIRCUMSTANCES THAT ACTUALLY  
PRECLUDE ANY ATTEMPT TO  
REHABILITATE THE WITNESS.  
YOU JUST KIND OF CUT IT OFF.  
IF YOU SAY SOMETHING THAT  
FALLS IN A CERTAIN CATEGORY,  
YOU GET CUT OFF, SO THE JUDGE  
THEN ISN'T CALLED ON TO MAKE A  
CREDIBILITY DETERMINATION.  
I THINK WE MUST PRESUME THAT  
THE TRIAL JUDGE HERE WAS  
CONVINCED BASED ON THE WHOLE  
SEQUENCE OF EVENTS, THAT THIS  
JUROR COULD AND WOULD BE FAIR.  
I MEAN, THERE'S NOT THE  
TRIAL JUDGE DOESN'T WANT AN  
UNFAIR JUROR.

SO THAT† BUT IN ALLOWING THE  
REHABILITATION THAT WE GET THE  
TRIAL JUDGE IN THAT KIND OF  
SITUATION.

I DON'T† DO YOU HAVE SOME  
RESPONSE TO THAT?

>> WELL, YOUR HONOR, THE CASES  
DO† TO FOLLOW UP, THE CASES  
DO SUGGEST A JUDGE SHOULD  
INQUIRE.

THE CASES SAY† YOU KNOW,  
THERE'S NO CASE THAT SAYS THE  
JUDGE HAS TO STOP AND JUST  
EXCUSE.

>> I UNDERSTAND THAT.  
BUT BASED ON SOME OF THE  
CONCERNS HERE, I WONDER IF†  
DO YOU THINK THAT THAT IS AN  
ADEQUATE FRAMEWORK OR COULD  
THERE BE SOME ADVANTAGE TO  
HAVING SOME RULES ABOUT  
CERTAIN TYPES OF STATEMENTS  
THAT ARE CATEGORICALLY THE END  
OF THE DISCUSSION?

NOW, IF YOU THINK THAT'S A BAD  
IDEA, TELL ME.

I'M NOT† DON'T MISUNDERSTAND  
ME.

I'M NOT SAYING I NECESSARILY THINK THAT'S THE WAY TO GO, BUT I'VE HEARD SUGGESTIONS MAYBE THAT WOULD BE THE WAY TO GO AND I WONDER WHAT YOU THINK ABOUT THAT.

>> WELL, JUDGE, THIS IS NOT THE CASE.

I MEAN, WHAT WAS SAID HERE BY THIS JUROR AS THE CRIME VICTIM, SHE WAS SOMEWHAT EDUCATED, AS JURORS ARE, IN THE JURY SELECTION PROCESS, ABOUT HER ROLE AS FAR AS THE PRESUMPTION OF INNOCENCE AND A LOT OF JURORS DON'T KNOW COMING IN.

THEY DON'T REALLY KNOW THE SYSTEM ABOUT WHAT THE BURDENS ARE.

THEY'RE HIT WITH ALL THIS†

>> THAT'S NOT THE ISSUE IN THIS CASE, WHETHER SHE UNDERSTOOD LEGALLY WHAT SHE WAS SUPPOSED TO DO.

YOU KNOW, WHAT REALLY IS OF CONCERN TO ME IS THAT† IS WHAT THE PROSECUTOR DID HERE. AND AFTER SHE SAID ANY NUMBER OF TIMES THAT SHE COULD NOT BE FAIR BECAUSE OF THE BURGLARY THAT HAD TAKEN PLACE IN HER LIFE, WHEN THE PROSECUTOR GETS UP, THE PROSECUTOR STARTS ASKING HER A SERIES OF QUESTIONS ABOUT WHETHER IF SHE COULD KEEP AN OPEN MIND AND LISTEN TO THE LAW AND THEN SHE ENDED UP SAYING, YES, I THINK I COULD.

WELL, THEN THE PROSECUTOR GOES BACK AND SAYS, WELL, YOU CAN'T SAY I THINK.

HE SAYS SPECIFICALLY.

YOU CAN'T SAY "I THINK."

AND SO WHAT DOES SHE DO?

SHE TURNS AROUND AND THEN SAYS YES, WITHOUT THE "I THINK I COULD."

THAT JUST SEEMS TO ME THAT WE THAT SHE'S BEEN LED INTO MAKING THIS KIND OF STATEMENT. DESPITE ALL THE DEFERENCE AND EVERYTHING THAT YOU MIGHT WANT TO GIVE A TRIAL JUDGE, HOW IN THE WORLD DO YOU HAVE CONFIDENCE THAT THIS IS WHAT SHE REALLY FEELS AFTER SHE'S TOLD THAT SHE'S GOT TO TAKE THE QUALIFYING† IN ESSENCE, SHE'S TOLD, YOU GOT TO TAKE THAT QUALIFYING LANGUAGE AWAY FROM THAT ANSWER.

>> WELL, JUDGE, I THINK WE HAVE TO LOOK AT OTHER STATEMENTS SHE MADE AND THE FACT THAT DEFENSE† EVEN IN RESPONSE TO DEFENSE COUNSEL'S QUESTIONS, SHE SAID THAT SHE KNEW SHE CAN† SHE CAN† I KNOW I CAN DO IT.

>> AND THE DEFENSE COUNSEL'S QUESTIONS ARE AFTER THE STATE HAS ALREADY TOLD HER WHAT SHE NEEDS TO SAY, CORRECT?

>> WELL, JUDGE, I JUST THINK OVERALL†

>> I'M ASKING YOU, ISN'T THAT THE CASE?

DEFENSE COUNSEL'S QUESTIONS COMES AFTER THE STATE HAS TOLD HER, IN ESSENCE, YOU CAN'T PUT ANY QUALIFIERS ON YOUR "YES."

>> JUDGE, I DON'T THINK THAT EXACTLY HAPPENED LIKE THAT. I THINK THE MOST IMPORTANT THING IS ON THE SECOND DAY SHE MAKES UNQUALIFIED RESPONSES TO THE STATE'S QUESTIONS, AND THE

MOST IMPORTANT THING, WHICH DOESN'T SHOW ANY KIND OF LEADING OR SUGGESTIVE ANSWER

>> THIS IS THE DAY AFTER SHE'S ALREADY TOLD ABOUT THE QUALIFIER.

>> BUT THIS QUESTION DOESN'T REALLY LEND ITSELF FOR THAT KIND OF ANSWER BECAUSE DEFENSE COUNSEL IN THE CONTEXT IT WAS ASKED, DEFENSE COUNSEL MERELY ASKED HER, AS WE ARE SITTING HERE TODAY, HAVE YOU BEEN THINKING ABOUT WHAT WE TALKED ABOUT YESTERDAY?

IT WAS JUST AN OPENENDED QUESTION, NONLEADING, AND THIS JUROR VOLUNTEERED TOTALLY ON HER OWN, MADE THIS STATEMENT. "AND I'VE TALKED ABOUT IT AND I HAVE MORE OPEN MIND ABOUT IT AND I GAVE A THOUGHT AND I HAVE OPEN MIND AND THAT ANYTHING THAT HAPPENS TO ME IN THE PAST HAS NOTHING TO DO WITH THIS CASE."

THIS WAS BASED UPON REFLECTION.

IT WAS NOT BASED UPON HER EMBARRASSMENT.

AND THE TRIAL COURT FOUND THAT.

IN ITS ORDER I CITE ON PAGE 2 OF MY BRIEF, I QUOTE FROM THE TRIAL COURT'S RULING ON THE CAUSE CHALLENGE, AND THE JUDGE

IT SAYS BASED ON HER Demeanor, I BELIEVE FROM REFLECTION† AND THE JUDGE ALSO MENTIONS THAT SHE WAS† THINKS SHE WAS EMBARRASSED, BUT EVEN IF SHE WAS SOMEWHAT EMBARRASSED, THAT DOESN'T MAKE IT ANY LESS TRUTHFUL AND CANDID AND SINCERE.



>> I HAVE A REALLY STRONG,  
STRONG CONCERN ABOUT THAT  
STATEMENT, BECAUSE IF ANYTHING  
WE OUGHT NOT TO HAVE†  
WHETHER IT'S IN FAVOR OF A  
DEFENDANT OR IN FAVOR OF THE  
STATE, SOMEONE BEING ASHAMED  
OR EMBARRASSED INTO ANSWERING  
THE WAY THE COURT OR A LAWYER  
WANTS THEM TO ANSWER.  
MY CONCERN IS HOW DO WE  
ELIMINATE OR ASSURE OURSELVES  
THAT IT'S NOT THE PRODUCT OF  
SHAME OR EMBARRASSMENT?  
THAT'S WHAT IT SEEMS TO ME  
OUGHT TO BE THE STANDARD.  
AND JUSTICE CANADY MAKES SOME  
WONDERFUL POINTS.  
MAYBE WE CAN'T GET TO REALLY  
AN IDEAL.  
MAYBE WE'RE AS GOOD AS WE CAN  
BE NOW.  
BUT I'M TROUBLED ABOUT A  
SYSTEM OF JUSTICE THAT IS  
BASED UPON THOSE WHO DECIDE  
BEING SHAMED OR EMBARRASSED  
INTO BEING ABLE TO SIT.  
THAT TO ME IS PROBLEMATIC.  
I WOULD LIKE† IF YOU COULD  
HELP ME FIND A WAY TO†

>> PRESSING PEOPLE INTO WHAT  
THEY DON'T BELIEVE JUST TO  
VERBALIZE IT TO SIT ON A JURY.  
BECAUSE THIS CUTS BOTH WAYS,  
MY FRIEND.  
I MEAN, THIS IS† I MEAN, THE  
STATE'S GOING TO BE AS  
IMPACTED BY THIS AND THAT SAME  
RULE OF LAW IS GOING TO HAVE  
TO APPLY WITH REGARD TO THE  
STATE AS IT WOULD TO ANY  
DEFENSE COUNSEL RAISING AN  
ISSUE ON THIS.  
YOU CAN GET A PERSON THAT† I  
CAN GIVE YOU A HYPOTHETICAL

THAT WOULD CURL YOUR HAIR AND YOU'D HAVE TO LET THAT PERSON SIT EVEN THOUGH THEY DESPISE THE STATE, THEY CONSIDER THEMSELVES A SOVEREIGN CITIZEN, NOT BOUND BY ANYTHING, BUT, OH, YEAH, OH, YEAH, I CAN BE FAIR.

THERE'S SOMETHING WRONG WITH A SYSTEM THAT THAT'S THE BEST WE CAN DO.

I'M SEARCHING FOR YOU TO HELP ME FIND†

>> JUDGE, I DO THINK THAT THE STATE† WHAT WE HAVE IS A GOOD SYSTEM AS FAR AS THE ABUSE OF DISCRETION AND ALL THE CASE LAW† SPEAKING OF MANIFEST ERROR AND, YOU KNOW, GIVING DEFERENCE TO THE TRIAL COURT, AS TO THE REASONABLE DOUBT STANDARD, THAT DEFENSE IS ESPOUSING HERE, IT'S REALLY NOT FOR APPEAL.

THAT'S BASICALLY WHAT THE DEFENSE IS SAYING HERE, THAT THE APPELLATE COURT SHOULD USE A REASONABLE DOUBT STANDARD AND THAT'S MORE† LEFT MORE APPROPRIATELY FOR THE TRIAL JUDGE.

THAT'S WHAT THE CASE OF SINGER, WHAT YOUR HONORS DECIDED IN SINGER, YOU DIRECTED THAT LANGUAGE TO THE TRIAL JUDGE, THAT IF THE TRIAL JUDGE HAD ANY REASONABLE DOUBT ABOUT A JUROR'S COMPETENCY, THEN THAT ANSWERS YOUR QUESTION.

IF THIS JUDGE HAD ANY REASONABLE DOUBT ABOUT JUROR SOBOLIS†

>> IT'S REALLY INTERESTING THAT YOU MENTION THAT BECAUSE IN FEDERAL COURT, THIS JUROR

WOULD HAVE BEEN GONE BECAUSE  
TYPICALLY DEFENSE COUNSEL OR  
PROSECUTORS DON'T GET TO  
QUESTION JURORS IN VOIR DIRE.  
ONE OF MY GOOD FRIENDS GIVES  
EACH SIDE 15 MINUTES FOR VOIR  
DIRE.

THIS JUROR SAID I DON'T THINK  
I COULD BE FAIR AGAINST MR.  
MATARRANZ BECAUSE I HOLD THAT  
GRUDGE.

THAT JOB WOULD HAVE BEEN GONE.  
JUSTICE IS DONE IN FEDERAL  
COURT.

SO†

>> WELL†

>> IT JUST SEEMS TO ME,  
COUNSEL† AND I KNOW YOU'RE  
DOING A GREAT JOB AND THIS IS  
A TOUGH ISSUE AND WE'RE ALL  
ENGAGED IN THIS AND I DON'T  
WANT YOU TO THINK THAT WE'RE  
PICKING ON YOU.

I DO WANT TO DISCUSS THIS.  
BUT IT JUST SEEMS TO ME THAT  
AT THE VERY BEGINNING WHEN  
MISS†SOBOLIS SAID I DON'T  
THINK I COULD BE FAIR AGAINST  
MR.†MATARRANZ BECAUSE I HOLD  
THAT GRUDGE, I JUST DON'T KNOW  
WHERE YOU CAN GO FROM THERE  
OTHER THAN TALK HER INTO BEING  
FAIR.

I JUST DON'T KNOW WHERE YOU  
CAN GO FROM THERE.

THAT'S A CONCERN I THINK ALL  
OF US HAVE.

ARE WE GOING TO EMBARRASS  
SOMEBODY OR SHE'S GOING TO  
FEEL BAD OR SHE'S GOING TO  
HEAR THE REST OF THE JURORS  
SAY I COULD BE FAIR AND SHE'S  
GOING TO BE IN THAT SITUATION  
WHERE SHE'S GOING TO SAY  
SOMETHING SHE DOESN'T MEAN.

>> I THINK WE HAVE TO FOLLOW

OUR CASE LAW AND WHAT OUR CASE  
LAW SAYS†

>> BUT, AGAIN, IT LOOKS LIKE  
OUR CASE LAW IS GOING LOTS OF  
DIFFERENT WAYS.

I WAS HOPING MAYBE OUT OF THIS  
ONE THAT MAYBE WE COULD FIND  
SOME STABILITY.

MAYBE WE CAN.

IT MAY BE THAT WE'RE JUST AS  
GOOD AS WE CAN BE.

BUT OUR SOCIETY PLACES GREAT  
VALUE ON THE VIRTUE OF BEING  
NONBIASED, GREAT, GREAT, GREAT  
VALIDITY ON THAT.

AND TO FORCE SOMEONE IN THE  
PRESENCE OF 50 OR 60 OTHER  
PEOPLE TO NOT GIVE INTO THAT,  
TO ME IT'S ALMOST BEYOND HUMAN  
REASON.

I JUST DON'T UNDERSTAND WHEN A  
PERSON† A MAN SUCH AS  
YOURSELF WOULD STAND UP AND  
SAY, I CAN'T BE FAIR BECAUSE  
MY CHILD WAS MURDERED AND THEN  
AFTER SOMEONE BROWBEATING  
YOU, MAKING YOU FEEL  
EMBARRASSED THAT YOU OUGHT TO  
BE A FAIR STATEMENT, THAT YOUR  
STATEMENT AT THE END OF THE  
DAY, YES, I CAN BE FAIR MORE  
TRULY REPRESENTS WHAT YOU  
THINK THAN YOUR FIRST  
STATEMENT THAT WAS YOUR  
RESPONSE TO IT.

WHO YOU ARE RESPONSE.

>> WELL, JUDGE, I THINK WE  
HAVE TO GIVE DISCRETION TO THE  
TRIAL JUDGE WHO DID I BELIEVE  
A GOOD JOB HERE AS FAR AS  
SAYING THAT† AND SHE VIEWED  
THE Demeanor.

SHE SAID THIS WAS BASED ON  
REFLECTION.

THIS IS NOT BASED ON  
EMBARRASSMENT.

THAT'S WHAT BASICALLY THE TRIAL JUDGE† IF YOU READ THE RULING, THE TRIAL JUDGE HELD HERE.

IT'S NOT FOR US AT THE APPELLATE LEVEL NOW TO SAY SHE WAS EMBARRASSED AND THAT'S WHY SHE TESTIFIED OR GAVE HER STATEMENTS AS SHE DID.

THAT'S FOR THE TRIAL JUDGE. THE TRIAL JUDGE CAN LOOK AT SARCASM, WHICH WE CAN'T SEE, EMBARRASSMENT.

THAT'S WHY FOR THIS UNIQUE AREA, AND WE'RE TALKING ABOUT LAY PEOPLE WERE QUESTIONING JURORS†

>> I THINK ONE OF THE PROBLEMS IS WE WOULD HAVE NEVER GOTTEN TO THAT SECOND DAY IF WE HAD SOME KIND OF RULE, SUCH AS JUSTICE LABARGA MAY BE SUGGESTING, THAT IF A JUROR DEFINITELY STATES THEY'RE BIASED BASED ON SOME EXPERIENCE THAT THEY'VE HAD IN THEIR LIFE, IF WE EXCUSE THEM FOR CAUSE AT THAT POINT, WE WOULD HAVE NEVER GOTTEN TO THE SECOND DAY, WHETHER SHE WAS REFLECTING OR WHETHER SHE WAS EMBARRASSED OR WHATEVER, WOULD NEVER EVEN BECOME A QUESTION BECAUSE SHE WOULD HAVE NOT BEEN THERE THE SECOND DAY.

>> I UNDERSTAND.

I JUST THINK THE STATE FEELS IT WOULD BE TOO QUICK.

A LOT OF JURORS.

I'VE TRIED CASES† JUSTICE LEWIS, YOU MENTIONED ABOUT TRYING CASES.

AND I'VE TRIED OVER 50 JUROR TRIALS.

THERE'S LOTS OF CRIME VICTIMS, YOU KNOW.

AND I'M SURE JUSTICE LABARGA  
I'M SORRY.

ALL A JUROR HAS TO SAY IS I  
CAN'T BE FAIR.

JUST GO BASICALLY I'M A CRIME  
VICTIM.

>> AND ALSO WE HAVE TO I'M  
COGNIZANT OF THE FACT THAT  
WHATEVER WE RULE IN THIS CASE  
IT MAY ALSO GO RIGHT INTO THE  
CIVIL AREA.

AND IF YOU THINK VOIR DIRE ARE  
LENGTHY AND COMPLICATED AND  
DETAILED IN CRIMINAL CASES,  
YOU OUGHT TO SEE A MEDICAL  
MALPRACTICE CASE.

I HAD ONE THAT WENT ON FOR A  
WEEK.

AND I GONE THROUGH LIKE 400  
JURORS BECAUSE OF LAWYERS  
ASKING THESE QUESTIONS.

SO WHATEVER WE SAY HERE TODAY,  
TRANSLATES INTO THAT FIELD AS  
WELL.

>> RIGHT.

>> SO WE HAVE TO BE COGNIZANT  
OF THAT FACT.

>> AS THIS COURT SAID, ON  
APPEAL THE QUESTION IS NOT  
WHETHER A REVIEWING COURT  
MIGHT DISAGREE WITH THE TRIAL  
COURT'S FINDING, BUT WHETHER  
THE FINDINGS ARE FAIRLY  
SUPPORTED BY THE RECORD.  
THAT PRINCIPLE HAS BEEN  
REPEATEDLY STATED BY THIS  
COURT.

AND DEFINING THE TRIAL COURT'S  
RULING IS SUPPORTED BY  
REASONABLE FINDINGS AND FACTS  
IN THE RECORD.

SO THEREFORE THE STATE WOULD  
ASK THAT THIS COURT NOT  
DISTURB THE DISTRICT COURT OF  
APPEALS' RULING.

THANK YOU.

>> THANK YOU.

>> I'LL TRY TO SPEAK FAST, BUT THIS IS AN INTERESTING ISSUE GOING IN BOTH DIRECTIONS.

FIRST OF ALL, THE FOURTH DISTRICT COURT OF APPEALS, THERE JUSTICE FARMER PROPOSED TO DO EXACTLY WHAT THIS COURT IS DOING.

THERE ARE CERTAIN COMMENTS MADE BY JURORS THAT THERE IS NO REHABILITATION.

WHAT'S REMARKABLE ABOUT THIS CASE, THIS IS THE PERFECT CASE BECAUSE IT ALL COMES TOGETHER IN THIS CASE.

WE NUMBER ONE SEE A JUROR SAYING AT THE BEGINNING, I CAN'T BE FAIR, I CAN'T BE FAIR, I CAN'T BE FAIR, POINTING TO A DEFENDANT. I'LL HOLD MY JUDGMENT AGAINST HIM.

YOU THEN HAVE A PROSECUTOR. NOW THE REHABILITATION STARTS. KEEP IN MIND WHAT THIS COURT HELD IN JOHNSON V REYNOLDS. YOU HAVE TO BE REALLY SUSPECT OF REHABILITATION.

BUT WHAT HAPPENS IN THIS CASE? THE PROSECUTOR TELLS THE JUROR, YOU ARE NOT ALLOWED TO LEAN.

IT WAS ONLY AFTER THE PROSECUTOR TELLS THE JUROR THAT SHE WAS NOT ALLOWED TO LEAN WAS THE FIRST TIME AT ANY TIME THAT THIS JUROR INDICATE SHE CAN BE FAIR.

OUR POSITION IS THIS JUROR WAS ALLOWED TO LEAN.

SHE HAD EVERY RIGHT TO LEAN. SHE CAME IN COURT AND SHE WAS TELLING EVERYBODY THE TRUTH.

I CAN'T BE A FAIR JUROR IN

THIS CASE.

SO, NUMBER ONE, WE WOULD TAKE THE POSITION THAT IN CERTAIN CASES WHEN A JUROR SAYS SHE CAN'T BE FAIR, THERE IS NO REHABILITATION.

>> BE CAREFUL WHAT YOU ASK FOR.

>> IT MAY GO THE OTHER WAY.

>> IN MANY INSTANCES YOU GOT PEOPLE COME IN, MY NEPHEW WAS ARRESTED, I DON'T THINK I COULD BE FAIR TO THE STATE.

>> BUT IF THE COURT IS LOOKING FOR A BRIGHT LINE, THE LINE GETS DRAWN WHEN WE'RE TALKING ABOUT EMOTIONAL RESPONSES FROM A JURY AS COMPARED TO LEGAL ANALYSIS.

HOWEVER, IF THE COURT WANTS TO KEEP THE OLD LAW, WHICH IT WOULD WORK IN THIS CASE EQUALLY THE SAME, BECAUSE WHAT THIS COURT HAS FAR BACK AS SINGER, TWO BASIC CONCEPTS: CLOSE CASES MUST BE RESOLVED IN FAVOR OF THE DEFENDANT AND, TWO, IF THERE'S ANY REASONABLE DOUBT ABOUT A JUROR'S ABILITY TO BE FAIR AND IMPARTIAL, THEY MUST BE STRICKEN FOR CAUSE AND THAT'S MANIFEST ERROR.

WHY DID THIS COURT HOLD THAT? BECAUSE BACK IN SINGER THIS COURT RECOGNIZED THERE'S SOMETHING WRONG IF A COURT OF APPEALS CAN ALLOW A JUROR LIKE THIS TO SERVE ON A JURY.

THIS JUROR SAID SHE CAN'T BE FAIR SIX SEPARATE TIMES.

HOW COULD ANY PERSON HAVE ANY CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM IF A JUROR LIKE THIS IS ALLOWED TO SERVE ON A JURY?

>> BEFORE YOU FINISH, WOULD



YOU RESPOND TO JUSTICE  
CANADY'S QUESTION, WHICH WAS A  
GREAT QUESTION, BEFORE YOU SIT  
DOWN?

DO YOU RECALL WHAT HE WAS  
ASKING?

>> I THINK WHAT JUSTICE CANADY  
WAS GETTING TO IS ARE THERE  
CERTAIN TIMES WHERE THERE  
SHOULD BE NO REHABILITATION.

>> NO.

NO.

I DON'T THINK THAT'S WHAT†  
HE WAS SAYING YOU HAVE THIS  
DISCRETION THAT HAS TO BE  
IMPOSED, THAT YOU'VE GOT THE  
OVERLAYING VIEW OF A JUDGE,  
DETERMINING CREDIBILITY AND IN  
OTHER AREAS OF THE LAW, THAT  
WE ALLOW ROOM FOR THAT TRIAL  
JUDGE TO MAKE SOME OF THOSE  
DECISIONS AND THEN THE  
APPELLATE STANDARD IS NOT ONE  
OF MICROMANAGING WHAT  
HAPPENED.

>> CORRECTS.

AND I THINK WHAT THIS COURT†

>> AS I UNDERSTAND.

I DON'T MEAN TO†

>> THE OTHER PART OF THE  
QUESTION IS HOW DO WE ALLOW  
DISCRETION† HOW DO WE CREATE  
A RULE THAT ALLOWS DISCRETION  
BUT PREVENTS WHAT HAPPENED IN  
THIS CASE?

IT IS OUR POSITION THAT IF A  
RULE ALLOWS WHAT HAPPENS IN  
THIS CASE, THE RULE AS NOT  
WORKING.

THIS COURT HAS SPECIFICALLY  
HELD THAT JUST BECAUSE A JUDGE  
HAS DISCRETION DOESN'T MEAN AN  
APPELLATE COURT CAN'T REVIEW  
THAT DISCRETION.

SO IF I WAS FORCED TO GIVE A

>> WHEN WE REVIEW IT, THE QUESTION WE ASK OURSELVES WAS WHETHER WE HAVE OR WOULD HAVE A REASONABLE DOUBT ABOUT THE ABILITY OF THE JUROR TO SERVE OR THE QUESTION WE WOULD ASK OUR APPELLATE REVIEW FUNCTION, WHETHER ANY REASONABLE JUDGE WOULD DECIDE BEYOND A REASONABLE DOUBT THAT THIS COULD BE A FAIR JUROR.

>> AND I KNOW I'M OUT OF TIME. I THINK THE EASIEST WAY TO DESCRIBE THAT IS IF THIS COURT GOES BACK TO THE OVERTON CASE, IT'S A CASE WHERE A JUROR BACK AND FORTH CHANGES HIS MIND BACK AND FORTH, AND THIS COURT REVERSES.

ALL DURING THE OVERTON CASE THE JUROR SAID I WILL GIVE THE DEFENDANT A FAIR TRIAL.

I WOULD TESTIFY IF IT WAS UP TO ME, BUT I WOULD GIVE THE DEFENDANT A FAIR TRIAL.

UNDER THE THIRD DISTRICT'S ANALYSIS IF IT'S ALLOWED TO STAND TODAY, YOU PICK AND CHOOSE FOUR TIMES, THE JUROR SAID I WILL GIVE THE DEFENDANT A FAIR TRIAL.

IF THERE'S SOMETHING IN THE RECORD WHERE THE JUROR SAYS I GIVE A DEFENDANT A FAIR TRIAL, UNDER THE THIRD DISTRICT'S ANALYSIS, THE GAME'S OVER.

IF THAT WAS THE ANALYSIS IN OVERTON, OVERTON WOULD HAVE LOST BECAUSE AT THE ENDS OVERTON SAID I WILL GIVE THE DEFENDANT A FAIR TRIAL.

THIS COURT LOOKED AT ALL OF THE CIRCUMSTANCES, AND IN THIS CASE, WHEN THE COURT LOOKS AT ALL OF THE CIRCUMSTANCES, THERE IS NO COURT ANYWHERE

THAT COULD HAVE CONCLUDED THAT  
THIS JUROR COULD HAVE BEEN  
FAIR AND IMPARTIAL.

SHE TOLD EVERYBODY SHE CAN'T.  
SHE WAS THE ONLY ONE WHO SAID  
I KNOW MYSELF.

I CAN'T BE FAIR.

HOW COULD ANY OTHER COURT LOOK  
WHAT ARE WE GOING TO SAY?

YOU WEREN'T TELLING THE TRUTH?

THIS JUROR WAS NOT A FAIR AND  
IMPARTIAL JUROR AND IT IS OUR

CONTENTION THAT THIS COURT,  
NUMBER ONE, SHOULD CONSIDER

CREATING A CASE† CREATING

LAW THAT PREVENTS JURORS FROM  
BEING REHABILITATED WHEN THEY

SAY THEY CAN'T BE FAIR.

THANK YOU.

>> THANK YOU FOR YOUR  
ARGUMENTS.

THE COURT IS ADJOURNED.

>> ALL RISE.