>>> THE NEXT CASE ON THE
DOCKET THIS MORNING IS
KNIGHT VERSUS STATE.
>> MORNING.
>> YOU MAY PROCEED.
>> MAY IT PLEASE THE COURT.
MY NAME IS ED WEISS.
I'M HERE ON BEHALF OF THE
PETITIONER, JONATHAN KNIGHT.
MR. KNIGHT WAS CHARGED IN
CIRCUIT COURT OF ORANGE COUNTY,
FLORIDA, WITH POSSESSION OF
CANNABIS OVER 20 GRAMS AND
POSSESSION OF CANNABIS WITH
INTENT TO SELL.
HE WENT TO TRIAL.
THE JURY FOUND HIM NOT GUILTY OF
POSSESSION OF CANNABIS WITH
INTENT TO SELL BUT GUILTY OF
POSSESSION OF CANNABIS OVER
20 GRAMS.
>> HERE IS MY, FIRST OF ALL, IN
EVERY CONSTRUCTIVE POSSESSION
CASE THE ISSUE WHETHER THERE IS
INTENT--
>> INTENT IS NOT AN ISSUE IN
POSSESSION.
>> IT WILL ALWAYS BE
CIRCUMSTANTIAL.
>> KNOWLEDGE, CORRECT.
>> SO YOU'RE NOT ARGUING THAT IN
ANY CASE WHETHER IT'S A
CONSTRUCTIVE POSSESSION CASE, A
MURDER CASE, A, ANY CASE, THAT
WHERE THE INTENT IS NOT, THAT
THE DEFENDANT CONFESSED, THAT
THE SPECIAL, LET'S JUST, THAT
THE SPECIAL STANDARD OF
CIRCUMSTANTIAL EVIDENCE WOULD
APPLY FOR THE, ON APPELLATE
REVIEW?
>> I WOULD DISAGREE.
>> MAYBE SURE BUT I THINK THAT
DO YOU KNOW OTHER THAN A
CONFESSION CASE WHERE IT
WOULDN'T BE PROVED BY
CIRCUMSTANTIAL EVIDENCE?
>> NO, I DON'T.
I-- NO.
BUT THE DIFFERENCE IS INTENT IS

NOT KNOWLEDGE.
INTENT IS DIFFERENT, I WOULD NOT PUT INTENT WITH THE SAME CATEGORY AS KNOWLEDGE.
>> THE PROBLEM, THIS IS AN ATKINS TYPE OF CASE, SO THE ISSUE OF WHETHER THEY KNEW OF THE, WAS IT MARIJUANA?
>> THIS WAS MARIJUANA, YES.
>> MARIJUANA OR THEY KNEW THERE WAS SOMETHING IN THEIR BAG.
>> NOT ABOUT WHETHER THEY KNEW IT WAS ACTUAL MARIJUANA.
IT IS KNOWLEDGE IN THE CASE WHETHER THEY KNEW IT EXISTED IN THE BAG.
>> I UNDERSTAND THAT.
SO, THE, SO YOU'RE SAYING THERE WAS, SO, KNOWLEDGE WOULD STILL BE CIRCUMSTANTIAL?
OKAY?
>> WITHOUT CONFESSION, YES.
>> SO I JUST DON'T SEE HOW YOU IN THESE CASES YOUR, YOUR RULE WOULD BE OR YOU'RE ADVOCATING FOR A RULE THAT IT WOULD ALWAYS BE A SPECIAL STANDARD OF REVIEW FOR CONSTRUCTIVE POSSESSION CASES?
>> CORRECT.
AND I THINK THAT'S ALSO IN THERE--
>> BUT DO YOU SEE THAT IN ANY LINE OF OUR CASES THAT WE'VE EVER SAID THAT?
>> I DON'T THINK THIS COURT HAS EVER HAD THE OPPORTUNITY TO ADDRESS THAT ISSUE.
AND IF YOU LOOK AT, IF YOU LOOK AT THE WAY THE JURY WAS INSTRUCTED WITH POSSESSION, WHEN THEY'RE TOLD IT IS CONSTRUCTIVE POSSESSION IT CAN NOT BE INFERRED.
SO RIGHT AWAY YOU'RE SAYING IT CAN NOT BE INFERRED.
YOU HAVE TO PROVE IT THROUGH OTHER MEANS AND IT IS ALMOST ALWAYS GOING TO BE WITHOUT AN ADMISSION, IT IS GOING TO BE A

CIRCUMSTANTIAL EVIDENCE CASE
BECAUSE IT CAN NOT BE, YOU DON'T
HAVE DIRECT EVIDENCE.
>> YOU'RE SAYING IN EVERY CASE,
AGAIN, I'M TRYING TO UNDERSTAND.
JUDGE LAWSON SAID IF THIS
SPECIAL STANDARD OF APPELLATE
REVIEW APPLIED, YOUR DEFENDANT,
YOUR CLIENT WOULD GO FREE?
>> THAT IS CORRECT AND THAT IS
WHAT OTHER COURTS HAVE TOLD FOR
YEARS.
>> I DON'T EVEN SEE THAT HOW
THAT WOULD HAPPEN HERE, EVEN
UNDER SPECIAL STANDARD.
I MEAN THE ISSUE IS, THE JURY
HAD TO DECIDE WHETHER THE, THAT
THE REASONABLE INFERENCE, WHICH
WAS WHILE, YOUR CLIENT WAS OUT
OF THE CAR, THAT THE PERSON NEXT
TO HIM, LOOK THE MARIJUANA THAT
WAS PRESUMABLY ON HIS PERSON--
>> MR. HARRIS.
>> AND SHOVED IT INTO THE
SUITCASE, CORRECT.
>> CORRECT.
>> SO WHY ISN'T THAT JUST A JURY
QUESTION AS TO WHETHER THAT WAS
A REASONABLE HYPOTHESIS OF
INNOCENCE?
>> BECAUSE AS THIS COURT HAS
HELD IN THE PAST, IT IS A GATE
KEEPING FUNCTION.
IF THE STATE PRESENTS EVIDENCE
AND THE DEFENSE PRESENTS A
REASONABLE HYPOTHESIS OF
INNOCENCE AS THIS COURT HELD
RECENTLY IN DOUST THE TRIAL
COURT, THE STATE HAS TO REBUT
THAT HYPOTHESIS IF THE STATE
FAILS IN THAT BURDEN IT'S A
GATE-KEEPING FUNCTION.
>> HOW MUCH MARIJUANA, CAN YOU
GIVE ME A PHYSICAL IDEA WHAT
HE-- MARIJUANA ISN'T LIKE
COCAINE.
IT MUST HAVE BEEN GOOD DEAL OF
MARIJUANA.
>> 24 GRAMS--
>> NOT GRAMS.

WAS IT GRAMS.
>> IT WAS GRAMS.
>> SO THAT IS LITTLE?
>> I ACTUALLY, NEVER USED SO I
DON'T KNOW BUT MY UNDERSTANDING
TALKING TO OTHERS LESS THAN A
SANDWICH BAG.
>> [INAUDIBLE]
>> MY UNDERSTANDING IS IT IS
LESS THAN A SANDWICH BAG.
>> THAT IS ENOUGH FOR TO BE--
>> FELONY.
>> FELONY IS 20 GRAMS, RIGHT?
>> ANYTHING OVER 20 GRAMS.
BARELY INTO THE FELONY REALM.
>> WOULDN'T BE THAT HARD YOU'RE
SAYING TO PUT A BAG INTO THE
SUITCASE?
>> NO.
WE'RE TALKING SECONDS.
I KNOW THE FIFTH DISTRICT TRIED
TO MAKE IT SOUND LIKE IT IS NOT
A LONG TIME BUT HONESTLY, THE
DOG WASN'T--
>> ALL COULD HAVE FACTUAL
QUESTIONS.
>> ABSOLUTELY.
>> I'M NOT SURE WHETHER IT IS IN
THE RECORD OR NOT BUT WAS THERE
ANY TESTIMONY ABOUT WHETHER OR
NOT THE SUITCASE, NOW, AS I
UNDERSTAND IT, THE SUITCASE WAS
IN THE BACK SEAT.
THIS WAS THE, MR. KNIGHT IS THE
DRIVER OF THE CAR?
>> CORRECT.
MR. KNIGHT IS THE DRIVER.
IT IS NOT HIS CAR.
THE SUITCASE WAS IN THE BACK
SEAT.
SAT NEXT TO MR. HARRIS.
>> HAD HIS NAME ON IT?
>> THAT IS DISPUTED BUT YES.
>> WHAT, IS THERE ANY TESTIMONY
IN THE RECORD AS TO WHETHER OR
NOT THE SUITCASE WAS LOCKED?
>> NO, THERE WAS NOT.
THERE WAS NO TESTIMONY WHETHER
IT WAS ZIPPED, LOCKED, CLOSED,
OPEN, NOTHING.

>> BUT THE POLICE SAID THAT
THEY, AFTER THE DOG ALERTED,
THAT THEY SEARCHED THE CAR AND
FOUND THE MARIJUANA IN THE
SUITCASE.
>> CORRECT.
>> NOW ANOTHER QUESTION.
IS THERE ANY TESTIMONY ABOUT
WHERE IN THE SUITCASE IT WAS
FOUND?
>> THAT WAS ABOUT TO STATE.
THERE IS NO TESTIMONY AS TO
WHERE IT WAS FOUND.
NO TESTIMONY IT WAS AT THE TOP,
BOTTOM, INSIDE ANOTHER BAG,
INSIDE OF A PAIR OF UNDERWEAR.
WHAT WAS TESTIFIED TOILETRY AND
UNDERGARMENT BAG IS MY
RECOLLECTION.
NO TESTIMONY WHERE IT WAS
LOCATED, WHAT KIND OF BAG, IT
WAS IN, IF I REMEMBER CORRECTLY
WAS NOT TESTIFIED TO EITHER.
>> CERTAINLY NO TESTIMONY ABOUT
ANY FINGERPRINTS ON ANY BAG?
>> NO.
CORRECT, NO FINGERPRINT
TESTIMONY AND I THINK ALSO
NOTABLE THERE IS TESTIMONY,
THERE IS NO OTHER PARAPHERNALIA.
THERE IS NO SCALES.
NO ROLLING PAPER.
NO INDIVIDUAL BAGGIES.
IT WAS JUST A BAG OF CANNABIS.
>> DID MR. KNIGHT DENIED HE
OWNED THE SUITCASE?
>> HE DID.
>> WAS THERE EVIDENCE THAT WOULD
CONTRADICT THAT?
>> I BELIEVE THERE WAS A NAME
TAG ON IT THE STATE BROUGHT OUT
WAS HIS NAME TAG ON THE
SUITCASE.
>> WELL DOESN'T THAT, DOESN'T
THAT, CALL INTO QUESTION HIS
CREDIBILITY?
AND ISN'T THAT A MATTER THAT THE
JURY MIGHT WEIGH RATHER HEAVILY
IN CONSIDERING WHETHER THERE WAS
A REASONABLE HYPOTHESIS OF

INNOCENCE BASED ON THE
DEFENDANT'S TESTIMONY?
>> I THINK, I THINK THE
DIFFERENCE IS, A JURY HAS THAT
QUESTION BUT THE COURT HAS TO
APPLY A GATE-KEEPING WHICH IS
THE LEGAL ASPECT.
>> WELL THAT GETS YOU TO THIS
LARGER QUESTION HERE OF HOW WE
OR ANY APPELLATE COURT CAN BE
APPLYING A DIFFERENT STANDARD
THAN WE INSTRUCT THE JURY TO
APPLY IN MAKING ITS DECISION.
THAT SEEMS LIKE, JUST A VERY,
ABERRANT PROCEDURE TO FOLLOW.
FOR US TO JUDGE WHAT A JURY HAS
DONE BY A STANDARD OTHER THAN
THE STANDARD THE JURY IS
INSTRUCTED TO FOLLOW.
>> COURT DOES IT ON EVERY
JUDGMENT OF ACQUITTAL.
THE STANDARD OF APPEAL ON DIRECT
EVIDENCE CASE IS IN THE LIGHT
MOST FAVORABLE TO THE CASE.
ALL INFERENCES AND FACTS TAKEN
IN FAVOR OF THE STATE.
THE JURY--
>> THE QUESTION THAT APPELLATE
COURTS CONSIDER WHEN THEY'RE
DETERMINING WHETHER THE EVIDENCE
WAS SUFFICIENT TO SUPPORT A
CONVICTION IS WHETHER ANY
RATIONAL JUROR COULD HAVE
CONVICTED BASED ON THAT
EVIDENCE.
ISN'T THAT CORRECT?
>> YES, YOUR HONOR.
>> BUT HERE IT IS A TOTALLY
DIFFERENT STANDARD.
UNDER THE REASONABLE HYPOTHESIS
OF INNOCENCE, ISN'T THAT
CORRECT?
>> YOU APPLIED THE GATE-KEEPING
FUNCTION WHICH IS, HAS THE STATE
REBUTTED THE HYPOTHESIS.
>> WHY IS THE GATE-KEEPING
FUNCTION, WHAT IS THE PRINCIPLED
BASIS FOR SAYING THAT THE
GATE-KEEPING FUNCTION SHOULD
APPLY HERE IN A DIFFERENT WAY

THAN IT APPLIES TO ANY OTHER
CIRCUMSTANCE WHERE, WHERE THE
REASONABLE HYPOTHESIS OF
INNOCENCE RULE DOESN'T COME INTO
PLAY?
>> BECAUSE IN A DIRECT EVIDENCE
CASE YOU DON'T HAVE A CONVICTION
BASED ON CIRCUMSTANTIAL
EVIDENCE.
YOU HAVE EYEWITNESSES THAT CAN
SAY--
>> THAT IS TAUTOLOGICAL.
I UNDERSTAND THAT IS THE BASIS
FOR IT.
BUT WHAT IS THE PRINCIPLED
REASON WE SHOULD TREAT THOSE TWO
DIFFERENT CATEGORIES
DIFFERENTLY?
IS IT BECAUSE, THAT
CIRCUMSTANTIAL EVIDENCE IS
INHERENTLY LESS RELIABLE THAN
DIRECT EVIDENCE?
>> I BELIEVE IT IS.
>> WELL--
>> WE RESTATE THAT IN THE BRIEF.
>> I THINK THAT IS AN
EMPIRICALLY VERY QUESTIONABLE.
>> WELL THIS COURT IN DOUST
STATED, I QUOTED IT IN THE
BRIEF, GIVE ME JUST A MOMENT.
THIS COURT IN DOUGS SAID
ACTUALLY EXCLUSION OF THE
HYPOTHESIS OF INNOCENCE WHICH
CLOSED THE CIRCUMSTANTIAL
EVIDENCE WHICH FORCED PROVE
SUFFICIENT TO CONVICT.
EVEN THIS COURT IN DOWKES, A
YEAR AGO, A MACHINE SENTENCED TO
DEATH THE SAID EXCLUSION OF THE
HYPOTHESIS WHICH ALLOWS
CIRCUMSTANTIAL EVIDENCE TO BE
STRONG ENOUGH TO BE A
CONVICTION.
>> I STILL GO BACK TO THIS IS A
CONDUCTIVE POSSESSION CASE WHICH
EXISTS THE ISSUE WHETHER HE HAD
CONSTRUCTIVE EVIDENCE.
>> CORRECT.
>> THAT IS IT WAS HIS SUITCASE?
>> THAT WAS ONLY EVIDENCE IT WAS

HIS SUITCASE, THE TAG.
>> THAT IS DIRECT EVIDENCE.
>> CORRECT.
>> OKAY.
ISN'T UNDER THE STATUTE, ONCE HE IS CONSTRUCTIVE POSSESSION, DOESN'T THE STATUTE ITSELF, THAT IS WHY I SEE THIS MAYBE DIFFERENT FROM MURDER OR OTHER CASES, ALLOW THERE TO BE AN INFERENCE THAT HE KNEW WHAT WAS IN THE SUITCASE?
>> NOT IN-- NOT IN A CONSTRUCTIVE POSSESSION CASE BECAUSE IN ACTUAL, YES, IF HE WAS HOLDING THE BAG, YES, THERE WOULD BE AN INFERENCE.
BUT BECAUSE HE WAS NOT IN ACTUAL POSSESSION WHICH THE STATE CONCEDED BELOW, ONCE IT IS A CONSTRUCTIVE POSSESSION, THAT UNDER THE STATUTE IT DOESN'T EXIST.
YOU DIDN'T HAVE TO LIKE AN ACTUAL POSSESSION YOU DIDN'T HAVE TO -- THE BURDEN DIDN'T SHIFT.
>> CORRECT.
>> BECAUSE THIS IS A CONSTRUCTIVE POSSESSION CASE THERE ARE TWO ELEMENTS THE STATE HAS TO APPROVE A.
ONCE YOU HAVE THE DRUGS YOU HAVE THE DRUGS.
THE ELEMENT THE STATE HAS TO PROVE IN CONSTRUCTIVE POSSESSION IS YOU HAVE TO HAVE DOMINION IN CONTROL.
IN A LOT OF CASES WHAT YOU SEE IS THAT THEY MAY NOT HAVE THE DRUGS IN THEIR HANDS, UNDER THE SEAT WHERE THEY ARE SITTING THOSE KINDS OF THINGS.
IN THIS CASE WE HAVE A DEFENDANT DRIVING THE CAR AND THE SUITCASE ON THE BACK SEAT.
AND SO THE STATE HAS GOT TO FIRST OF ALL APPROVE DOMINION AND CONTROL.
IN ADDITION TO THE SECOND PART,

KNOWLEDGE THAT THE DRUG IS
CORRECT.
HOW DID THE STATE IN THIS
INSTANCE PROVE DOMINION AND
CONTROL.
>> THE NAME TAG ON THE BACK.
THAT IS THE ONLY THING THE
DEFENSE DID NOT CONTEST.
>> DOMINION AND CONTROL MEAN
ACCESS TO IT?
>> IT HAS TO BE IN REACH.
WHETHER OR NOT I WOULD AGREE
DOMINION CONTROL EXISTS IN THIS
CASE IS IRRELEVANT THAT THE
DEFENSE DID CONCEDE DIRECTION
AND CONTROL AND GUARDIAN
KNOWLEDGE.
>> THE DEFENSE CONCEDED DOMINION
AND CONTROL?
>> CORRECT.
THEY DID NOT ARGUE AS PART OF
THE JUDGMENT.
WHERE WAS THE NAME FOUND?
ON A NAME TAG AND I DON'T RECALL
TESTIMONY AS TO WHERE THE NAME
WAS ON THE SUITCASE.
THEY JUST ATTACHED.
I DON'T RECALL THAT BEING
TESTIFIED TO.
>> IF THEY CONCEDED DOMINION AND
CONTROL AND THIS WAS A
CONSTRUCTIVE POSITION CASE AND I
AM STILL WONDERING HOW DOES THE
SPECIAL STANDARD ASSUMING WE
KEEP IT OR DON'T KEEP IT,
DOESN'T SEE THAT APPLIES IF
THERE IS ONE ELEMENT OF THE
CRIME.
UNDERSTAND IT IS THE MAJOR
ELEMENT YOU HAVE TO REBUT, BUT
IT IS THAN ANY DIFFERENT THAN
JUST THE STANDARD FOR JUDGMENT
OF ACQUITTAL AND APPELLATE
REVIEW, I AM HAVING TROUBLE WITH
THAT BECAUSE AS I SAID AT THE
OUTSET EVERY CONSTRUCTIVE
POSITION CASE WOULD HAVE THE
KNOWLEDGE AS BEING
CIRCUMSTANTIAL.
>> WITHOUT ADMISSION I WOULD

AGREE.
>> YOU AGREED THIS COURT, LAWSON THINKS WE HAVE ADOPTED THAT, WE NEVER HAD ONE ELEMENT THAT WAS CIRCUMSTANTIAL, A SPECIAL STANDARD APPLIES.
>> YOU HAVE NOT COME OUT AND SAID THAT.
MIGHT COUNTER RAISING EVERY HOMICIDE CASE THE FIRST ELEMENT OF HOMICIDE IS THE VICTIM IS DEAD AND YET THIS COURT HAS ROUTINELY APPLIED CIRCUMSTANTIAL EVIDENCE STANDARD.
>> THE ISSUE IS NOT THAT THE VICTIM IS DEAD BUT THE DESCENDANT KILLED THE PERSON.
>> I WOULD DISAGREE.
>> MAYBE THAT IS THE PROBLEM, CIRCUMSTANTIAL EVIDENCE EVEN IN MURDER CASES THERE IS SOME CON AS JUDGE LOSS AND SHOWED IN HIS OPINION WE HAVEN'T BEEN ENTIRELY CONSISTENT AS FAR AS WHAT STANDARD WE APPLY AND WE RARELY EVER REVERSE THAT THAT CASE BASED ON EVEN IF WE APPLIED A SPECIAL STANDARD.
>> IT WAS REVERSED BECAUSE YOU FOUND THE LACKING DNA EVIDENCE DIDN'T LEAK WAS LEFT TO HIM BEING PERPETRATOR OF THE CRIME AT THE TIME THE MURDER OCCURRED AND IT WAS PURELY AN IDENTITY JAZZ THAT HAPPEN.
>> YOU DISAGREE THAT IN A MURDER CASE OF THE VICTIM IS DEAD IS ONE OF THE ELEMENTS AND THEREFORE WE WOULD NEVER APPLY AS CIRCUMSTANTIAL --
>> IF YOU SAY IT HAS TO BE ALL ELEMENTS, NOBODY IS EVER FOUND IS THE ONLY TIME I CAN THINK OF.
I WANT TO MAKE ONE POINT ON MY REBUTTAL, WHAT IT RETAIN A SPECIAL STANDARD ISN'T ACTUALLY WHAT THE CONFLICT WAS BASED ON AND THIS COURT CAN REJECT THAT ISSUE BECAUSE THE CONFLICT WAS ONLY BASED ON WHETHER THERE WAS

CIRCUMSTANTIAL EVIDENCE AND I
WOULD LIKE TO RESERVE THE
REMAINING OF MY TIME FOR
REBUTTAL.
>> MAY IT PLEASE THE COURT I
WOULD LIKE TO ADDRESS THE BIG
PICTURE ISSUE BECAUSE IT IS
IMPORTANT AND LET ME START WITH
JUSTICE KENNEDY'S QUESTION WHERE
DID THIS COME FROM?
A FUNDAMENTAL DISTRUST OF
CIRCUMSTANTIAL EVIDENCE AND THAT
CAME FROM AGES AGO,
CIRCUMSTANTIAL EVIDENCE WAS KIND
OF SHAKY.
WE FOUND A HAIR AT THE SCENE
THAT WAS CONSISTENT WITH A
CAUCASIAN PERSON.
THAT WAS CIRCUMSTANTIAL EVIDENCE
MANY YEARS AGO WHEN THIS CAME
INTO BEING.
NOW CIRCUMSTANTIAL EVIDENCE IS
WE FOUND DNA ON THE MURDER
WEAPON, ONE IN QUADRILLION
PEOPLE HAVE THE SAME DNA.
THERE IS NO REASON TO HAVE THE
DISTRUST OF CIRCUMSTANTIAL
EVIDENCE ANYMORE AND THAT IS THE
WHOLE BASIS FOR APPLYING A
SPECIAL STANDARD OF REVIEW AND
WHEN YOU GET RID OF THE
RATIONALE ALL THAT LEADS TO IS
CONFUSION.
>> PART OF THE RATIONALE ALSO
THAT YOU HAVE THE SPECIAL
CIRCUMSTANCE, CIRCUMSTANTIAL
EVIDENCE STANDARD BASICALLY SO
THAT THE APPELLATE COURT AND
SUPREME COURT OR WHENEVER COURT
IS REVIEWING IT IS THE
GATEKEEPER SO WHEN YOU HAVE
CIRCUMSTANTIAL EVIDENCE ONE OF
THE THINGS YOU BY DOING IS IN
FURRING AND THEN YOU GET ANOTHER
PIECE AND YOU ARE IN FURRING
SOMETHING ELSE SO YOU END UP
WITH INFERENCES ON TOP OF
ENTRANCES AND ISN'T THAT ONE OF
THE REASONS WHY YOU NEED SOME
KIND OF THE KEEPING.

AND YOU HAVE NOTHING BUT
CIRCUMSTANTIAL EVIDENCE.
>> ALMOST NO CASES HAVE NOTHING
BUT CIRCUMSTANTIAL EVIDENCE SO
THAT HAS LED TO SOME CONFUSION.
>> TALK ABOUT MR. CRANE, WE HAVE
A CASE WHERE WE SAID THE CASE
WAS CIRCUMSTANTIAL EVIDENCE
CASE.
AND EVERY ELEMENT WAS WITHOUT A
BODY.
EVEN WITH THAT THOSE
CIRCUMSTANCES POINTED TO MR.
CRANE AND NO ONE ELSE AS BEING
THE PERPETRATOR.
>> THE STATE ISN'T QUESTIONING
THE IMPORTANCE OF LOOKING AT
SUFFICIENCY OF THE EVIDENCE.
WHAT WE ARE ARGUING IS WE
SHOULDN'T BE ASKING A WEIRD
QUESTION, IS IT WHOLLY
CIRCUMSTANTIAL OR PARTIALLY
CIRCUMSTANTIAL, IS IT
REASONABLE?
>> TALKING ABOUT BEING WHOLLY
CIRCUMSTANTIAL.
AND ONE PARTICULAR ELEMENT IS
CIRCUMSTANTIAL SHOULD THERE BE A
CIRCUMSTANTIAL EVIDENCE, WE
TALKED ABOUT PROOF OF THE
DEFENDANT'S BUILT AS WHOLLY
CIRCUMSTANTIAL.
>> THAT IS WHAT THIS COURT HAS
SAID.
IT SAID IT IN CASES OF DIRECT
EVIDENCE, REDDICK CASES WITH THE
BODY, THEY HAVE TO SHOW THE
VICTIM WAS DEAD AND THAT IS
DIRECT EVIDENCE THE PERSON WHO
DID THE AUTOPSY TESTIFIES.
>> THAT'S ISN'T DIRECT EVIDENCE.
>> IS DIRECT EVIDENCE OF AN
ELEMENT THE STATE HAS TO SHOW.
>> IN THIS CASE THEY TESTED IT
AND IT WAS MARIJUANA.
>> THAT IS DIRECT EVIDENCE.
>> WHY DON'T YOU ACCEPT WHAT I
SAID WHICH WAS THAT INTENT IS
ALWAYS GOING TO BE
CIRCUMSTANTIAL.

>> I ACCEPT THAT.
>> IN THIS CASE BECAUSE DOMINION AND CONTROL, THE SUITCASE, THEY DIDN'T CONTEST THAT --
>> BUT THEY DID.
>> THEY CONCEDED IT.
>> THEY CONCEDED DOMINION AND CONTROL.
THE FACT THAT IT WAS HIS SUITCASE AND WE USE THAT TO INFER KNOWLEDGE BECAUSE I KNOW WHAT IS IN MY BAG.
THAT IS THE COMMON IN FRANCE.
>> THEREFORE IN THIS CASE IS NOT WHOLLY CIRCUMSTANTIAL NOT BECAUSE IT WAS MARIJUANA BUT BECAUSE IT WAS HIS SUITCASE AND THE INFERENCES WHETHER HE KNEW THE MARIJUANA IN THERE WAS THE INFERENCE, THAT IS CIRCUMSTANTIAL.
AND THAT WOULD BE 100% OF THE.
I DON'T THINK WE CAN EVER APPLY THAT SPECIAL STANDARD TO CONSTRUCTIVE POSSESSION CASES.
>> DON'T KNOW IF THIS COURT HAS, THERE ARE NOT A LOT OF SUPREME COURT CONSTRUCTIVE POSITION CASES.
THEY DON'T GET UP HERE, DISTRICT COURTS HAVE.
>> THAT CONFLICT, YOU ARE ASKING, AND I REALIZE WE SHOULD JUST COMPLETELY FERRO OUT THE WHOLE SPECIAL STANDARDS.
FOR THIS CASE, WHY NOT CLARIFY IN POSSESSION CASES, IF THERE IS -- IS NOT THE ONE ELEMENT OF KNOWLEDGE THAT HAS TO BE DIRECT BECAUSE IT WOULD ONLY BE A CONFESSION CASE AND I WOULD CLARIFY THAT I DON'T THINK A VICTIM BEING DEAD IS THE ELEMENT THAT IS DIRECT EVIDENCE.
I THINK IT IS IN MANY CASES, AN EYEWITNESS, A CONFESSION, JAILHOUSE SNITCH, THOSE ARE DIRECT EVIDENCE.
WHEN YOU HAVE A FINGERPRINT IT IS CIRCUMSTANTIAL BECAUSE YOU DO

NOT KNOW WHEN THE PURPOSE --
FINGERPRINT WAS PUT ON.
>> I SUBMIT THAT STANDARD IS SO
FUZZY IS ALMOST IMPOSSIBLE TO
APPLY.
THE COURT HAS SAID IT HAS TO BE
FULLY CIRCUMSTANTIAL, THE
DISTRICT COURTS TAKE THAT AS
WELL, THE CONTESTED ELEMENT IS
CIRCUMSTANTIAL SO WE ARE GOING
TO APPLY SPECIAL STANDARD OF
REVIEW AND VARIES NO LOGICAL
REASON WHY THEY SHOULDN'T.
>> THE PROBLEM IS CONSTRUCTIVE
POSITION CASES IS A REAL CONCERN
AS TO WHETHER SOMEBODY IS BEING
CONVICTED OF A CRIME THAT THERE
IS REALLY REASONABLE DOUBT
BECAUSE IF I AM UNDERSTANDING
CORRECTLY, YES, IT WAS HIS
SUITCASE BUT I THOUGHT WAS A
LARGER QUANTITY.
IT IS THE BAGGY APPARENTLY.
THE STATE NEVER ESTABLISHED
WHETHER IT WAS ON TOP OF THE
BAG, FOUND OR UNDERNEATH THE
BOTTOM.
>> THEY JUST SAID IT WAS IN THE
BAG.
>> THEY DID NOT SAY WHERE THE
BAG HE WAS, WHETHER IT WAS
TUCKED UNDER.
>> DOES IT MATTER WHERE IT WAS?
I CAN STICK SOMETHING IN THE
BOTTOM OF MY BAG PRETTY QUICKLY
AS ON THE TOP.
>> WHAT WAS THE NAME?
CHAD MURPHY?
WASN'T IN THE BACK SEAT, WE
WOULDN'T BE TALKING ABOUT THIS.
>> WE DON'T KNOW WHAT WE WOULD
BE TALKING ABOUT.
MAYBE HE WOULD SAY THIS WAS PUT
IN MY BAG BEFORE I LEFT FOR
ORLANDO.
>> SOMEBODY SITTING IN THE BACK
SEAT BESIDE THE BAG THERE WAS A
TIME WHEN THE POLICE AND THE
DOGS WERE AROUND THE BAG AND
THIS GUY HARRIS COULD HAVE HAD

MARIJUANA.
>> HE COULD HAVE.
>> HE MIGHT BE SEARCHED.
>> HE COULD HAVE.
>> THAT IS WHAT THIS IS ABOUT.
>> THAT WAS THE HYPOTHESIS.
THAT IS THE HYPOTHESIS OF
INNOCENCE.
THERE'S NO EVIDENCE HE DID THAT.
THEY DIDN'T CALL ANYBODY TO SAVE
AT.
THE OTHER GUY IN THE CAR WITH
HIM WHEN THE POLICE WERE OUT
WITH THE DEFENDANT DIDN'T
TESTIFY, NOBODY ASKED ABOUT IT,
THERE'S NO EVIDENCE.
IT IS AN ARGUMENT.
IT IS AN ARGUMENT THE JURY
REJECTED AS A MATTER OF FACT.
A SAW THE DEFENDANT TESTIFY,
THEY SAW HIM SAYING THAT WAS NOT
THE BAG, THEY SAW HIS WITNESS
SAY IT WAS IN THE TITLE WHOLE
TIME THE POLICE WERE THERE, THEY
SAW THAT, THE JURY EVALUATED AND
FOUND IT WAS NOT REASONABLE.
WE BELIEVE THE STATE PROVED HE
KNEW THAT WAS HIS BAT AND IT WAS
HIS BAG, ON APPEAL THE DISTRICT
IS COURSE TO SECOND GUESS THAT.
THEY DID NOT SEE THE DEFENDANT
TESTIFIED.
THE JURY FOUND AS A MATTER OF
FACT THAT THIS WAS HIS BAG, THE
STANDARD OF REVIEW, WE CONCLUDE
AS A MATTER OF LAW HE WAS
TESTIFYING CORRECTLY AND WE
BELIEVE ON A COLD RECORD WHEN WE
DON'T KNOW WHAT HE LOOKED LIKE
AND THAT IS THE PROBLEM WITH
THIS STANDARD.
IT REQUIRES THE COURT TO
SECOND-GUESS AND I UNDERSTAND
THE NECESSITY FOR THAT.
>> THE QUESTION DOESN'T REALLY
ASK, IS THIS REALLY A WHOLLY
CIRCUMSTANTIAL EVIDENCE CASE
ESPECIALLY CONSIDERING THAT THE
DEFENDANTS IS NOT ARGUING THE
DOMINION THE CONTROL ASPECT OF

IT.
ARGUING SIMPLY EAT THIS
SUBSTANTIAL, THE CIRCUMSTANTIAL
EVIDENCE OF HIS KNOWLEDGE.
MAKES IT IS SUBSTANTIAL EVIDENCE
CASE.
>> IS PROVEN BY CIRCUMSTANTIAL
EVIDENCE.
>> WE HAVEN'T A CIRCUMSTANTIAL
EVIDENCE CASE.
>> THAT IS THE PROBLEM, WHAT IS
A WHOLLY CIRCUMSTANTIAL EVIDENCE
CASE?
A DEAD BODY WITH DIRECT EVIDENCE
IS NOT WHOLLY CIRCUMSTANTIAL.
IF YOU DEFINE AS ALL THE
ELEMENTS PROVE BY CIRCUMSTANTIAL
EVIDENCE.
>> BUY WHETHER OR NOT ALL THE
EVIDENCE OF THE DEFENDANT'S
GUILT IS WHOLLY CIRCUMSTANTIAL
EVIDENCE.
>> WE HAVE TO SHOW HOW THE
VICTIMS DIED, THAT THE VICTIM
WAS MURDERED AT.
THAT IS TESTIFIED BY DIRECT
EVIDENCE.
THE MEDICAL EXAMINER, THEIR HEAD
WAS BLUDGEONED IN.
>> IT WAS DONE -- IT WAS A
HOMICIDE.
SUICIDE OR ACCIDENTS.
THAT DOESN'T NECESSARILY SHOW
THE DEFENDANT'S BUILT OF A
HOMICIDE AND THAT IS FULL WAY I
ALWAYS LOOKED AT WHAT THOSE
CASES SAY, IF THE EVIDENCE OF
THE DEFENDANT'S BUILT, THE
DEFENDANT COMMITTED THE CRIME,
IS WHOLLY CIRCUMSTANTIAL, THAT
IS WHEN THE STANDARD IS
APPLICABLE.
>> IS CONFUSING IN THIS SENSE
THAT THE STATE HAS TO PROVE
THESE ELEMENTS.
THESE CONTESTED ELEMENTS AND WE
ALWAYS DEFINED THE STATUS OF
ELEMENTS.
>> IS IT THAT CONFUSING?
ON THE ONE HAND THE CRIME

OCCURRED.
>> WHO COMMITTED THE CRIME?
IS THAT THOSE TWO THINGS
CONFUSING?
>> IT DEPENDS ON PARTICULAR
FACTS, IF THE COURT WERE TO
NARROW THIS IT IS ONLY WHEN THE
DEFENDANTS AS THE PERPETRATOR,
THAT WOULD BE HELPFUL I WOULD
SUBMIT.
THERE ARE ARGUMENTS ABOUT THAT
TOO, THE ONLY STANDARD, WE ARE
APPLYING THE SPECIAL STANDARD OF
REVIEW BECAUSE THERE'S A LOT OF
DISAGREEMENT WITH HIS DIRECT
EVIDENCE AND WHAT IS
CIRCUMSTANTIAL EVIDENCE.
AND DIRECT EVIDENCE IS THE FIND
AND CIRCUMSTANTIAL EVIDENCE YET
IT SEEMS LIKE THAT HAPPENS
BECAUSE WE HAVE IS THIS RUMPS OF
CIRCUMSTANTIAL EVIDENCE, WE HAVE
GOOD EVIDENCE, IT IS ILLOGICAL.
>> TO CHANGE THE LAW IN MURDER
CASES IN CONSTRUCTIVE POSITION
CASE AND I KEEP ON THINKING AT
LEAST FOR THIS CASE, WE CAN
NARROW IT TO CONSTRUCTIVE
POSSESSION CASES.
THAT IS WHERE THE DISTRICT
COURTS OF APPEAL ARE IN
CONFUSION ABOUT THE ISSUE IS NOT
WHO COMMITTED THE CRIME, AND THE
ELEMENT IS BOTH DOMINION AND
CONTROL AND KNOWLEDGE AND
THEREFORE IT IS NOT WHOLLY
CIRCUMSTANTIAL.
THE ISSUE OF WHETHER IN ANOTHER
CASE WHEAT DEFINED DNA AS
CIRCUMSTANTIAL OR DIRECT, LET'S
LEAVE IT TO THESE CASES.
WE DON'T USUALLY CHANGE
EVERYTHING IN ONE TYPE OF CASE,
BUT YOU ARE TRYING TO ARGUE FOR
A BROADER CHANGE IN THE LAW AND
I AM CONCERNED ABOUT THAT.
>> I UNDERSTAND THE CONCERN.
IT IS NOT JUST CONSTRUCTIVE
POSITION THAT IS A PROBLEM.
THIS COURSE, IT IN A

CONSTRUCTIVE POSITION CASE IS
NOT WHOLLY CIRCUMSTANTIAL
BECAUSE KNOWLEDGE FALLS UNDER
THE DEFINITION OF CIRCUMSTANTIAL
SO WE WILL CREATE AN EXCEPTION
TO THAT.
IF WE CREATE AN EXCEPTION FOR
KNOWLEDGE IN THIS CASE IT SEEMS
TO ME IT WOULD NATURALLY FLOW
THERE IS AN EXCEPTION FOR
INTENTIONAL CASES.
JUST BECAUSE INTENT IS
CIRCUMSTANTIAL.
>> DID NOT HAVE HIS NAME ON IT,
DIDN'T HAVE ANYTHING THAT
INDICATED IT WAS HIS SUITCASE
AND IT WAS FOUND IN THERE AND
THEY WERE TRYING TO TAG THIS
DEFENDANT WITH IT YOU WOULD HAVE
A WHOLLY CIRCUMSTANTIAL EVIDENCE
CASE.
>> WE WOULD HAVE A WEAK CASE.
WE WOULD SOLVE THE WRECKED
ELEMENTS WHICH IS CANADA'S BUT
TAKING THAT OUT AND SAYING IT
HAS TO BE THE DEFENDANT
COMMITTED THE CRIME WE WOULD
HAVE A WEAK CASE.
WOULD THAT BE CIRCUMSTANTIAL?
YES.
IT IS CIRCUMSTANTIAL ANYWAY
BECAUSE WE DON'T HAVE TO PROVE
THE DEFENDANT'S NAME WAS ON THE
LUGGAGE.
WE HAVE TO PROVE THE EXERCISE
DOMINION AND CONTROL LAND ONE OF
THE WAYS WE PROVE THAT IS
SHOWING WHAT WAS HIS.
AFFECTED HIS NAME WAS ON IT.
>> SEEMS TO ME THERE WAS A
DIFFERENT STORY ALTOGETHER.
YOU WOULD HAVE TO GO IN AND SAY
THESE ARE HIS CLOSE IN THE
SUITCASE OR SOMETHING ELSE
WITHOUT A TAG YOU WOULD HAVE TO
PROVE SOMETHING ELSE TO SHOW HE
HAD --
>> THAT WAS -- HE HAD --
>> IT WAS IN THE BACK SEAT.
HE IS THE DRIVER, IT IS IN THE

BACK SEAT, THERE IS SOMEONE IN
THE BACK SEAT NEXT TO THE
SUITCASE AND SO DO WE EVEN HAVE
THE SAME CASE IF HIS NAME HAD
NOT BEEN ON THE SUITCASE?
>> WE HAVE THE SAME CASE IN THE
SENSE WE WOULD HAVE TO PROVE
INFERENCES FROM WHICH THE JURY
CAN CONCLUDE THAT HE HAD
DOMINION AND CONTROL.
HE HAD PROXIMITY BUT IN A JOINT
CONSTRUCTIVE POSITION CASES THAT
ISN'T ENOUGH SO WE HAVE TO SHOW
HIS TEE SHIRT WAS IN THERE AND
HAD HIS NAME ON IT OR THE
LUGGAGE TAG HAD HIS NAME ON IT
BUT THAT IS NOT A FACT THAT
ISSUE, IT IS USED TO INFER THAT
IT WAS HIS WHICH SHOWS KNOWLEDGE
AND DOMINION AND CONTROL.
THE LUGGAGE TAG ISN'T DIRECT
EVIDENCE, IT IS CIRCUMSTANTIAL
EVIDENCE.
>> SEEMS TO ME THE PROBLEM GOING
BACK TO THE REASONABLE
HYPOTHESIS OF INNOCENCE, THE
STATE NEVER DID INTRODUCE ALL
THE CLOTHES IN THE BAG WERE HIS,
THE MARIJUANA WAS FOUND, WHAT IT
LOOKED LIKE, AT THE BOTTOM OF
THE SUITCASE, THE TOP OF THE
SUITCASE WITH THE SUITCASE WAS
ZIPPED, DID IT REQUIRE A ZIPPER
WHICH GETS STUCK, DOES IT POP
WITH HOW DO YOU OPEN THE
SUITCASE?
IT IS SORT OF ALL OF THAT, THERE
IS NO EVIDENCE OF THAT.
>> THAT IS CIRCUMSTANTIAL
EVIDENCE, BETTER CIRCUMSTANTIAL
EVIDENCE THAT WE HAVE BUT STILL
CIRCUMSTANTIAL SO WE STILL HAVE
THIS ODD STANDARD OF REVIEW
WHERE WE LOOK AT IT SUSPICIOUSLY
BECAUSE OF ITS CATEGORY INSTEAD
OF ITS STRENGTH AND THAT IS WHAT
JUDGE LAWSON WAS GETTING AT WHY
WE NEED TO GET RID OF THIS
STANDARD.
HE POINTED OUT HOW THIS LED TO

CONTRADICTORY RESULTS IN
DIFFERENT CASES AND IT IS BASED
ON THAT DISTRUST OF
CIRCUMSTANTIAL EVIDENCE THAT IT
IS NO LONGER VALID, AS SOCIAL
SCIENCES ESTABLISHED EYEWITNESS
TESTIMONY WHICH IS THE
QUINTESSENTIAL DIRECT EVIDENCE,
THAT IS NOT THE GREAT EVIDENCE
WE USED TO THINK IT WAS EITHER.
WHEN THE INNOCENCE PROJECT COMES
IN THEY COME IN WITH DNA
EVIDENCE AND THE RETURN
CONVENTIONS BASED ON EYEWITNESS
TESTIMONY YET THE VERY BASIS OF
THE STANDARD OF REUSE AS
CIRCUMSTANTIAL EVIDENCE HE'S BAD
DIRECT EVIDENCE IS GOOD AND WE
NOW KNOW IT IS NOT THE CATEGORY
OF THE EVIDENCE, BUT THE
STRENGTH OF THE EVIDENCE.
LET ME ILLUSTRATE IF SOMEONE
COMES IN, THE DEFENDANT RAPED ME
AND THE POLICE, SAID I NEVER
SEEN THAT WOMAN IN MY LIFE, THAT
IS THE DIRECT EVIDENCE CASE, HE
SAID SHE SAID, THE JURY DECIDES
ON APPEAL BE DEFERRED TO THE
JURY'S DECISION BECAUSE THEY
HAVE TO SEE THE TESTIMONY AS WE
SHOULD DEFER TO THEM.
WE CAN SEE THAT ON A COLD RECORD
OR JUDGE CREDIBILITY BUT PUT A
MASK ON THE DEFENDANT AND ADD IN
DNA EVIDENCE AND ALL OF A SUDDEN
YOU HAVE A CIRCUMSTANTIAL
EVIDENCE CASE AND WE VIEW THAT
WITH SUSPICION AND SAY WE ARE
GOING TO START SECOND-GUESSING
THE JURY AND THE EXTENT TO WHICH
WE DO THAT, WHO DECIDES WHAT IS
REASONABLE, SOMETIMES THE COURT
FINDS SOMETHING REASONABLE AS A
MATTER OF WHAT LIKE THE JURY
REJECTED, IN A DISTRICT COURTS,
THERE IS A REASONABLE HYPOTHESIS
THAT THIS HARRIS GOT THE
MARIJUANA IN THE SUITCASE.
OTHER COURTS APPLY
CIRCUMSTANTIAL EVIDENCE REVIEWED

STRICTLY, THAT IS REASONABLE.
>> HERE IS A PROBLEM, SOME COURTS, THEY FIND IT HARMLESS, A DON'T REALLY HAVE EVEN THE JUDGES TRIED TO DO THEIR BEST, HAVE FAIRNESS IN CRIMINAL LAW, VERY IMPORTANT, JUDGES ALLOWED IN WILLIAM'S RULE EVIDENCE AND SOME DON'T, SAID DON'T HAVE PERFECT JUSTICE.
WE TRY OUR BEDS TO LOOK AT THINGS AND YOU MAY BE CORRECT.
AND THE EYEWITNESS TESTIMONY IS WEAK AND WE ARE NOT BEING CONSISTENT.
I APPRECIATE YOUR OBSERVATIONS OF THEIR AND WE NEEDED GREATER REVIEW OF THAT AREA.
THE QUESTION THAT I HAVE IS WE ARE AN OUT LIAR IN NOT HAVING A JURY INSTRUCTION, AND NOT HAVING AN APPELLATE REVIEW.
THERE ARE MANY STATES, THE JURY INSTRUCTION AND THE STANDARD OF REVIEW.
WE ARE BACKTRACKING AND HAVING JURY INSTRUCTIONS SO THE JURY AND APPELLATE COURTS ARE ON THE SAME WAVE LENGTH.
>> AT LEAST THAT WOULD BE CONSISTENT BUT LET'S LOOK AT THE JURY INSTRUCTION THEY PUT FORTH IN NEW HAMPSHIRE.
I WE GOING TO HAVE THAT?
WE HAVE AN OF THE CONFUSING JURY INSTRUCTIONS WITHOUT ADDING MORE AND FLORIDA IS AN OUT LIAR IN THE SENSE THAT WE ARE THE ONLY STATE THAT DOESN'T GIVE THE JURY INSTRUCTION BUT REVIEWS IT ON APPEAL IN A DIFFERENT MANNER AND THAT DOESN'T MAKE SENSE.
>> UNDER ACTIONS WE ARE THE ONLY OUT LIARS STATE THAT ALLOWS CONVICTIONS WITH THAT KNOWLEDGE.
>> WE ARE NOW LIVE IN DIFFERENT WAYS.
>> IN A LOT OF AREAS.
>> IN THIS PARTICULAR CASE EVEN COURTS THAT HAVE THE JURY

INSTRUCTIONS THERE A TEN STATES
THAT DON'T HAVE THE INSTRUCTION
AND REVIEW THE SAME WAY ALL
THESE CASES IN DIRECT FIELD, BUT
IN THE FEDERAL COURTS THEY DON'T
HAVE THE JURY INSTRUCTION
BECAUSE IT IS CONFUSING AND NOT
NECESSARY AND THEY REVIEW THE
CONVICTIONS THIS A MAN THAT IS
THE BETTER RELENTED IS TIME TO
STOP BEING AN ALLY IN THIS
PARTICULAR AREA BECAUSE IT LEADS
TO CONFUSION.
>> I WOULD LIKE TO ADDRESS
SOMETHING JUSTICE PERRY BROUGHT
UP, HOW DO WE KNOW IT IS HIS
DRUGS?
I DON'T KNOW WHEN DO PROCESS
DEVOLVE INTO A DEFENDANT HAVING
A BURDEN AT TRIAL.
IT IS THE STATE'S BURDEN OF
PROOF NOT THE DEFENDANT'S AND
WHEN A REASONABLE HYPOTHESIS OF
INNOCENCE IS PRESENTED IS THE
STATE'S BURDEN TO ESTABLISH.
THE DEFENDANT DOESN'T HAVE TO
CALL CHAD HARRIS TO SAVE THOSE
OF MINE, 8 IS THE STATE'S PERSON
TO CALL CHAD HARRIS AND SAY
THOSE ARE NOT MY DRUGS.
>> LIKE THOSE RULES ADMITTED THE
CONTROL WHICH IS SURPRISING
BECAUSE THEY GO TO THE
CONVENIENCE STORE AND THERE WAS
AN OPPORTUNITY FOR SOMEBODY ELSE
TO HAVE CONTROL.
>> ABSOLUTELY AND I WOULD NOT
HAVE CONCEDED DOMINION AND
CONTROLLING THIS CASE BECAUSE OF
THAT.
>> NOT AS HARD FOR THE STATE TO
PROVE.
>> EVEN WITH HIM, CONCEDING
DOMINION CONTROL, THEY HAVE TO
PROVE KNOWLEDGE.
TO USE YOUR KNOWLEDGE WITH
HOMICIDE OF WE KNOW A CRIME
OCCURRED BUT DON'T KNOW WHO DID
IT WE KNOW SOMEONE POSSESSED THE
DRUGS BUT DON'T KNOW WHO DID IT.

YOU PROVE IT THROUGH THE
KNOWLEDGE AND AGAIN I WOULD
REAFFIRM KNOWLEDGE IS DIFFERENT
FROM IN TENT.
THERE NOT THE SAME THING.
>> I AM HAVING TROUBLE
UNDERSTANDING AGAIN A PRINCIPAL
BASIS FOR SAYING WE HAVE A
DIFFERENT RULE WITH RESPECT TO
KNOWLEDGE AND WE HAVE WITH
RESPECT TO INTENT.
THERE CAN BE CIRCUMSTANCES WHERE
THE DEFENDANT WILL MAKE
STATEMENTS, SUBMISSIONS
CONCERNING STATE OF MIND BUT IN
THE ABSENCE OF THAT, THESE
THINGS ARE ON EQUAL FOOTING.
I DON'T UNDERSTAND WHY THEY
WOULD NOT BE.
>> THE INTENT TO DO SOMETHING IS
DIFFERENT FROM KNOWING SOMETHING
EXISTS.
>> IN TERMS OF HOW YOU PROVE
WHAT IS IN SOMEONE'S MIND I
DON'T UNDERSTAND WHY THE RULES
WOULD BE DIFFERENT.
I CAN'T FATHOM IT.
HELP ME UNDERSTAND.
>> THERE IS A DIFFERENCE WHEN
YOU HAVE A SITUATION.
>> YOU ARE SAYING IS DIFFERENT
BECAUSE IT IS DIFFERENT.
I WOULD LIKE A LITTLE MORE TO
HELP ME UNDERSTAND WHY, WHAT IT
IS ABOUT KNOWLEDGE THAT IS IN
SOMEBODY'S MIND THAT IS
DIFFERENT FROM ANY INTENT IN
SOMEONE'S MIND THAT WOULD MAKE
IT THE WAY WE EVALUATE THE PROOF
OF IT DIFFERENT.
>> I UNDERSTAND YOUR QUESTION.
>> WHEN YOU LOOK BACK ON THE
CASE LAW ABOUT INTENT, INTENT
BEING A STATE OF MIND IS PROVEN
BY CIRCUMSTANTIAL EVIDENCE AND
SO WHEN YOU ARE TALKING ABOUT
SOMEONE'S STATE OF MIND, IT IS
GOING TO HAVE TO BE PROVED
UNLESS THE PERSON CONFESSES, YOU
ARE GOING TO HAVE TO PROVE THAT

BY CIRCUMSTANTIAL EVIDENCE.
>> THAT IS CORRECT.
>> WOULDN'T YOU AGREE THAT KNOWLEDGE IT IS A STATE OF MIND?
>> KNOWLEDGE IS VERY SIMILAR IN INTENT UNLESS THEY HAVE A CONFESSION.
WILL ALWAYS BE CIRCUMSTANTIAL.
>> THEN YOU WOULD AGREE THAT THE KNOWLEDGE PORTION IS IN FACT, IS GOING TO BE PROVEN BY CIRCUMSTANTIAL EVIDENCE.
>> WITHOUT A CONFESSION EVERY TIME I AGREE WITH FAT AND I KNOW SOMEONE WHO BROUGHT A BURGLARY WITH A FINGERPRINT.
IF WE ABOLISH CIRCUMSTANTIAL EVIDENCE SOMEONE WALKING DOWN A STREET DECIDES TO LIVE IN A WINDOW AND PUT THEIR HAND ON THE WINDOW AND SAYS I DON'T WANT TO GO IN THE STORE AND THE STORE'S BURGLAR RISE LATER THAT NIGHT AND THEY FIND BROKEN SHARDS OF GLASS OF THE PERSON WHO JUST WINDOW SHOPPING EARLIER IN THE DAY.
>> IT JUDGMENT OF ACQUITTAL OR ON APPEAL, SUFFICIENCY OF EVIDENCE WOULD BE AN ACQUITTAL.
>> I DISAGREE.
>> I AM SORRY YOU DISAGREE BUT THAT IS WHAT MISS GARY VANLANDINGHAM -- DID -- WHAT MS. DAVENPORT IS SAYING.
THE TESTIMONY IS DIRECT BUT DNA IS CIRCUMSTANTIAL WHEN DNA IS PROBABLY MORE RELIABLE THAN EYEWITNESS IDENTIFICATION.
>> IF WE ARE GETTING TO THE POINT THAT WE ARE NOW SECOND-GUESSING EYEWITNESS TESTIMONY, ALL THE MORE REASON TO MAINTAIN A HIGHER BURDEN IF EYEWITNESS TESTIMONY IS QUESTIONABLE CIRCUMSTANTIAL EVIDENCE IS USUALLY BASED ON EYEWITNESS TESTIMONY.
IF WE ARE NOT GOING TO TRUST EYEWITNESS TESTIMONY, WHY SHOULD

WE BELIEVE THE CIRCUMSTANCES
BASED ON THE SAME PERSON'S
TESTIMONY?
IF WE QUESTION THEIR
IDENTIFICATION WE SHOULD FURTHER
QUESTION INFERENCES BASED UPON
THEIR TESTIMONY JUST AS MUCH.
>> THERE IS DIRECT EVIDENCE THAT
YOUR TIME IS UP.
RECESS FOR TEN MINUTES.