>> ALL RISE.
>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.
PLEASE BE SEATED.
>> BEFORE WE PROCEED WITH OUR NEXT CASE WE HAVE STUDENTS HERE FROM THE TRINITY SCHOOL OF CHILDREN.
AM I CORRECT?
AND WHAT GRADE LEVEL DO WE HAVE HERE?
7th GRADE?
SO WE HAVE 7th GRADERS BEFORE THIS MORNING.
SO YOU MUST HAVE A BIG 7th GRADE CLASS.
GREAT.
AND WE HAVE TEACHERS?
CAN YOU STAND UP PLEASE.
SO THERE IS TWO OF YOU THIS TIME.
THIS MORNING THERE WAS JUST ONE.
TERRIFIC.
WHERE IT TRINITY SCHOOL AT?
>> TAMPA.
>> FINE.
YOU CAME, I TAKE IT MORE THAN ONE BUS?
>> TWO BUSES.
>> WHEN DID YOU GET HERE?
[INAUDIBLE]
>> HAVE YOU BEEN ACROSS THE STREET TO THE LEGISLATURE YET?
THIS IS YOUR SECOND STOP.
ALL RIGHT.
WELL, THANK YOU.
WE ALSO HAVE A GROUP FROM FLORIDA STATE UNIVERSITY, AM I CORRECT?
CAN YOU STAND UP PLEASE.
ONE OF YOU CAN TELL US WHAT IS IT THAT, WHAT YOUR GROUP IS?
>> [INAUDIBLE].
>> FRATERNITY FOR CRIMINAL JUSTICE?
GOODNESS.
WELL, THANK YOU.
OKAY.
NOW WE HAVE THE CASE OF SCALOORE VERSUS STATE OF FLORIDA.

I'M SORRY, I MISPRONOUNCED IT
OKAFOR.
>> MAY IT PLEASE THE COURT.
MY NAME IS VALARIE LINNEN, AND I
REPRESENT THE DEFENDANT BESSMAN
OKAFOR.
THERE ARE 10 ISSUES BEFORE THE
COURT.
I LIKE TO JUMP TO THE MOST
OBVIOUS AND THE HURST ERROR AND
LACK OF UNANIMITY.
IN THIS CASE THE VERDICT, THE
JURY RECOMMENDATION WAS 11-1 IN
FAVOR OF A SENTENCE TO DEATH.
IT WAS NOT UNANIMOUS AND THE
TRIAL COURT MADE THE FINDINGS OF
FACT RATHER THAN THE JURY MAKING
THOSE FINDINGS.
UNDER THIS COURT'S DECISION IN
HURST, THAT REQUIRES
RESENTENCING.
THE ERROR WAS NOT HARMLESS
BECAUSE THERE WAS AT LEAST ONE
JUROR THAT FOUND THE AGGRAVATION
EITHER HADN'T BEEN ESTABLISHED
BEYOND A REASONABLE DOUBT, THAT
THE AGGRAVATION DID NOT OUTWEIGH
THE MITIGATION.
MITIGATION WAS ABSENT BUT THE
AGGRAVATORS WERE INSUFFICIENT OR
THERE IS THE CHANCE THIS JUROR
JUST DECIDED THAT JUSTICE WAS
BEST SERVED WITH MERCY.
SO IT CAN NOT BE SAID THAT THIS
JURY RECOMMENDATION WAS HARMLESS
BEYOND A REASONABLE DOUBT.
I UNDERSTAND THIS COURT'S
EXISTING PRECEDENT IN DAVIS
VERSUS STATE.
WOULD I ASK THE COURT TO REVISIT
THAT BECAUSE IT'S IMPOSSIBLE TO
KNOW, THERE WERE FOUR
AGGRAVATORS IN THIS CASE.
IT'S IMPOSSIBLE TO KNOW WHETHER
OR NOT ALL 12 JURORS AGREED ON
ALL FOUR AGGRAVATORS.
SO I WOULD ASK THE COURT TO
REVISIT THAT.
ESPECIALLY IN LIGHT OF THE
EXCESSIVE AND IMPERMISSIBLE

IMPACT TESTIMONY THAT WAS
PRESENTED IN THIS CASE.
THE GUILT PHASE IS VIRTUALLY
ERROR-FREE.
THERE WAS ONLY ONE DISCERNIBLE
ERROR.
THE PENALTY PHASE IS WHERE THE
ERRORS AROSE.
>> WHY DO YOU BELIEVE THAT THE
IMPACT EVIDENCE WAS EXCESSIVE?
I MEAN, HOW MANY WITNESSES
ACTUALLY TESTIFIED?
>> SIX, YOUR HONOR.
>> AND SO, DO WE HAVE CASE LAW
THAT SAYS THAT BECAUSE SIX
WITNESSES TESTIFIED THAT THAT IS
EXCESSIVE?
>> NO, YOUR HONOR.
THIS COURT'S CONSISTENTLY UPHELD
THREE.
THIS COURT HAS GONE AS FAR AS
FOUR.
THIS COURT NEVER UPHELD SIX
VICTIM IMPACT WITNESS.
>> HAS THERE BEEN A CASE WHERE
IT HAS BEEN QUESTIONED AND WE
SAID, SIX WAS TOO MANY?
>> NOT TO MY KNOWLEDGE, YOUR
HONOR.
AND IT WASN'T JUST THE SHEER
NUMBER OF THE VICTIM IMPACT
WITNESSES BUT IT WAS THE
SUBSTANCE OF THEIR TESTIMONY AS
WELL.
SO TO BE CLEAR, THE ONLY ISSUES
DURING THE PENALTY PHASE ARE
AGGRAVATION, MITIGATION, AND
MERCY.
SO VICTIM IMPACT TESTIMONY IN
THIS CASE, AT LEAST ACCEPTING
THE STATE'S THEORY OF THE CASE
IS TRUE, MR. OKAFOR DID NOT KNOW
THE VICTIM OR BRIEFLY
ENCOUNTERED THE VICTIM BEFORE
THE MURDER.
HE DIDN'T KNOW ANYTHING ABOUT
THE VICTIM IMPACT TESTIMONY THAT
WAS PERMITTED.
IT DOESN'T HAVE ANYTHING TO DO
WITH HIS BLAME WORTHY INSIST OR

HIS CULPABILITY.
THE PROBLEM IS COMPOUNDED WHERE THE JURY IS ONLY INSTRUCTED THAT THIS TESTIMONY CAN NOT BE CONSIDERED AS AGGRAVATION.
THEY'RE NOT INSTRUCTED HOW THEY CAN CONSIDER IT AND WHAT WEIGHT TO GIVE IT.
IF IT IS NOT AGGRAVATION, IT IS NOT MITIGATION CERTAINLY.
>> THIS ISSUE OF WHAT HAPPENS OR WHY VICTIM IMPACT TESTIMONY IS ALLOWED, THE STATUTE ALLOWS IT.
THE U.S. SUPREME COURT HAS UPHELD IT.
MY CONCERN, YOU SAY SIX IS TOO MANY, IT IS REALLY-- BUT YOU SAID REALLY WHAT WAS SAID, BUT BEFORE WE COULD, I MEAN IF WE REVERSE ON HURST BUT BEFORE WE WOULD REVERSE ON A VICTIM IMPACT ISSUE, DON'T YOU HAVE TO POINT TO SOME SPECIFIC TESTIMONY OR IF IT WAS A LETTER OR WHATEVER, THAT YOU OBJECTED TO AHEAD OF TIME AND THEREFORE WE HAVE SOMETHING TO REVIEW?
BECAUSE OTHERWISE TO SAY WELL, THREE COULD BE EXCESSIVE IF, DEPENDING, WERE INAPPROPRIATE DEPENDING WHAT THE STATEMENTS WERE.
WHAT IS IT, SINCE, I DON'T THINK THAT WE'RE LOOKING TO CHANGE THE LAW ON VICTIM IMPACT TESTIMONY, WHAT IS, WHAT ARE THE SPECIFIC STATEMENTS THAT YOU WERE OBJECTED TO BEFOREHAND THAT WENT BEYOND WHAT IS PERMISSIBLE VICTIM IMPACT TESTIMONY?
>> WELL, CERTAINLY REFERRING TO MR. OKAFOR AS THE GANGSTER "SCARFACE" FROM THE POPULAR MOVIE AND CALLING HIM A EVIL OR WANNABE GANGSTER.
THAT WAS CERTAINLY IMPERMISSIBLE.
>> THAT WAS IN THE TESTIMONY OF ONE OF THE WITNESSES.
>> ONE OF THE WITNESSES.

>> WAS THAT OBJECTED TO?
>> IT WAS NOT.
I WOULD ARGUE TO THE COURT THAT REACHES THE LEVEL OF FUNDAMENTAL ERROR BECAUSE OF THE PREJUDICIAL NATURE OF IT.
THEN ON TOP OF THAT, ANOTHER WITNESS, NOW THE ONLY VICTIM AT ISSUE DURING THE PENALTY PHASE WAS THE DECEASED VICTIM.
ANOTHER WITNESS WAS PERMITTED TO TESTIFY OVER OBJECTION.
THERE WAS AN OBJECTION TO THAT, THAT HE THOUGHT ABOUT HIS SON AND HE WOULD NEVER SEE HIS SON AGAIN.
THE JURY HEARD ALL OF THIS.
THE ONLY TWO STATEMENTS, THOSE TWO STATEMENTS WERE CLEARLY IMPERMISSIBLE, BUT THE ONLY TWO PIECES OF EVIDENCE DURING THIS WHOLE PENALTY PHASE THAT WENT TO THE PAIN AND SUFFERING OF THE VICTIM WERE THE DECEASED VICTIM LOOKED FORWARD TO TESTIFYING AGAINST MR. OKAFOR IN THE YOU KNOW LYING CRIMINAL TRIAL AND THAT HIS BREATHING QUICKENED JUST PRIOR TO HIS DEATH.
THOSE WERE ONLY TWO STATEMENTS.
EVERYTHING ELSE PRESENTED DURING THE PENALTY PHASE WAS VICTIM IMPACT TESTIMONY.
SO WITHOUT LOOKING AT IT, YOU KNOW, COME PART MENTALLY OR IN A VACUUM, THIS ONE STATEMENT, THIS ONE STATEMENT, LOOKING AT IT COLLECTIVELY, SIX WITNESSES IN THIS PENALTY PHASE AND ONLY TWO SHORT STATEMENTS ABOUT WHAT THE VICTIM SUFFERED JUST PRIOR TO HIS DEATH.
THAT DEPRIVED MR. OKAFOR OF A FUNDAMENTALLY FAIR PROCEEDING AND DUE PROCESS OF LAW BUT THEN, SO THAT WAS THE PENALTY PHASE.
THE ERROR WAS COMPOUNDED DURING THE SPENCER HEARING.
SO TO BE CLEAR, THE TRIAL JUDGE HAD ALREADY SAT THROUGH THE

PENALTY PHASE AND HE HEARD THOSE
SIX VICTIM IMPACT WITNESSES.
THEN THE STATE PRESENTED AN
ADDITIONAL THREE MORE WITNESSES
AND THEY RECOMMENDED A SENTENCE
OF DEATH SEVEN TIMES.
THE STATUTE CLEARLY PROHIBITS
THAT AND THOSE WERE OBJECTED TO
BUT SEVEN TIMES THEY RECOMMENDED
A SENTENCE OF DEATH.
THE VICTIM'S MOTHER SPECULATED
THAT MR. OKAFOR WOULD COMMIT
MORE CRIMES IF HE WAS SENTENCED
TO LIFE IMPRISONMENT.
SHE CHARACTERIZED HIM AS EVIL
MAN AND GAVE BIBLICAL
JUSTIFICATIONS FOR HIS EXCUSE.
THE VICTIM'S FATHER ALSO
TESTIFIED.
WHILE HIS ANGER IS CERTAINLY
UNDERSTANDABLE, THREATENING
MR. OKAFOR WITH TORTURE AND
SAYING, SEE YOU IN 10 YEARS,
YOU'RE DEAD, WHICH APPARENTLY,
THAT IS WHAT CAUSED THE ERUPTION
IN THE COURTROOM.
THAT WAS CLEAR IMPERMISSIBLE.
>> THIS WAS NOT BEFORE THE JURY?
>> NOT BEFORE THE JURY.
>> THIS WAS AT THE SPENCER
HEARING?
>> THE SPENCER HEARING BEFORE
THE JUDGE.
I HEARD THIS COURT SAY IT
BEFORE, SERVED TO NOTHING BUT
MR. OKAFOR IN THE CROSS-HAIRS OF
A DEATH SENTENCE.
VICTIM IMPACT TESTIMONY NOT JUST
BEFORE THE JURY BUT BEFORE THE
JUDGE HIM IS WAS CLEARLY
IMPERMISSIBLE AND DEPRIVED
MR. OKAFOR OF A FAIR PROCEEDING.
>> ALL THIS WOULD BE MOOT IF YOU
IN FACT, IF MR. OKAFOR IS
ENTITLED TO A NEW PENALTY PHASE?
>> YES, YOUR HONOR.
AND THAT IS UNDER THIS COURT'S
PRECEDENT.
I WOULD ASK GOING BACK, BECAUSE
IF WE ARE GOING TO GO BACK FOR A

NEW PENALTY PHASE, THAT THERE BE
SOME DIRECTION FROM THE COURT
ABOUT THIS VICTIM IMPACT
EVIDENCE.
NOW THE GUILT PHASE WAS
VIRTUALLY-- LET ME TURN TO THE
HEINOUS, ATROCIOUS AND CRUEL
AGGRAVATOR.
THAT WAS OBJECTED TO IN THIS
CASE.
IT WAS NOT SUPPORTED BY THE
EVIDENCE.
SO TO BE CLEAR, ALL MURDERS AS
THIS COURT HAS SAID ARE HEINOUS,
ATROCIOUS AND CRUEL BUT THE HAC
AGGRAVATOR APPLIES TO THOSE
ESPECIALLY HEINOUS, ATROCIOUS
AND CRUEL.
>> THERE WAS MULTIPLE GUNSHOTS
IN THIS CASE.
SO WAS THE VICTIM STILL ALIVE
WHEN THE FIRST SHOT WAS FIRED?
>> THE MEDICAL EXAMINER WAS NOT
ABLE TO SAY.
ONE OF THE EYEWITNESSES
TESTIFIED THAT THE VICTIM
STOPPED BREATHING AFTER THE
FIRST SHOT.
SO HE WAS BREATHING HEAVILY
UNTIL THAT FIRST SHOT AND THEN
HE STOPPED BREATHING.
>> DON'T MEAN THE FIRST SHOT TO
HIM, BUT THE FIRST SHOT FIRED AT
ALL IN THAT DAY?
>> IF I REMEMBER--
>> BECAUSE I THOUGHT, IT WAS
LIKE A STRAY SHOT FIRST?
>> YES, YOUR HONOR.
IT DID APPEAR THAT WAY.
I THINK I'M SPEAKING FROM THE,
I'M NOT CLEAR.
LET ME SAY THAT.
>> I DIDN'T HEAR, IT APPEARED
WHAT WAY?
>> THERE WAS A STRAY SHOT FIRED
AT SOME POINT DURING THE EVENTS
THAT HAPPENED.
>> THE INITIAL SHOT I THOUGHT.
>> THE INITIAL SHOT I BELIEVE
APPEARED TO BE.

THEY RETREATED TO A COFFEE
TABLE.
AS WHETHER THE VICTIM DIED AFTER
THE FIRST SHOT OR THE SECOND
SHOT IT APPEARED HE DIED AFTER
THE FIRST SHOT OR APPEARED LOST
CONSCIOUSNESS.
>> CLEARLY FROM HAC STANDPOINT
WE LOOK AT IT FROM THE
STANDPOINT THE VICTIMS WERE
GOING THROUGH AS OPPOSED TO CCP
AS WE LOOK AT THE STANDPOINT
WHAT THE DEFENDANT WAS THINKING.
LOOKING AT THE VICTIM'S
STANDPOINT, THE TESTIMONY WAS
THAT REMINGTON AND BREANNA
TESTIFIED ALL THREE OF THEM WERE
ALL FORCED TO LAY DOWN ON THE
FLOOR AND BREANNA TESTIFIED THAT
ONE OF THE GUNMAN SAID, SOMEONE
IS GOING TO DIE TONIGHT.
THAT WOULD HAVE CAUSED EVERYONE
OF THEM HAVE A DEGREE OF
APPREHENSION LAYING FACE DOWN ON
THE FLOOR AND THESE GUYS HAVE
GUNS.
THEN THEY ASKED, WHEN SOMEONE
ASKED, DID YOU MISS AFTER THE
FIRST SHOT?
AND THEN ALEXIS BREATHING.
BREANNA, ALEX'S BREATHING WAS
REALLY HEAVY.
WHEN THE SHORT WAS FIRED AROUND
THE QUESTION WAS ASKED, DID YOU
MISS, HIS BREATHING GOT EVEN
HEAVIER.
I MEAN, YOU KNOW, WHAT IS GOING
ON THROUGH SOMEONE'S MIND I
DON'T THINK FOR HAC PURPOSES IS
MEASURED BY HOW MANY SECONDS OR
HOW MANY MINUTES PEOPLE ENDURED
THAT KIND OF ANTICIPATION BUT
WHAT THE ANTICIPATION WAS IT
SEEMS TO ME, THAT UNDER THESE
CIRCUMSTANCES IS NOT THE TYPICAL
CASE WHERE SOMEONE GETS SHOT AND
IT IS OVER WITH.
THESE PEOPLE KNEW IT WAS COMING.
SO HOW IS HAC NOT APPLICABLE IN
SUCH CIRCUMSTANCES?

>> YOUR HONOR, THE AMOUNT OF TIME IS JUST ONE ISSUE THE COURT LOOKED TO IN THE PAST TO DETERMINE HAC AND IN THIS CASE IT, ALL OF THE EVENTS IN QUESTION HERE APPEAR TO HAVE HAPPENED WITHIN AN HOUR AND SIX MINUTES.
STARTING AT THE DEFENDANT'S HOME, GOING TO THE GAS STATION, EXCHANGING CARS, EXCHANGING CELL PHONES, GASES UP CAR, GOING TO THE VICTIMS HOME AND COMMITTING MURDERS AND GOING BACK TO THE HOUSE AND ALL HAPPENED IN AN HOUR.
HAPPENED VERY QUICKLY.
THAT WAS ONLY ONE.
BRIENNA CAMPOS, TESTIFIED WHEN THEY LAID THEM DOWN ON THE FLOOR, LIKE LAST TIME, PREVIOUS HOME-INVASION ROBBERY.
I'M PARAPHRASING, THAT SHE DIDN'T BELIEVE THEY WERE SERIOUS THAT THEY WOULD HURT THEM BECAUSE THEY DIDN'T HURT THEM THE LAST TIME.
CERTAINLY AFTER THE FIRST STRAY SHOT WAS FIRED THAT WOULD HAVE CHANGED.
IF WE LOOK AT IT COLLECTIVELY THE FACT THAT THE GUNMAN ATTEMPTED TO MURDER THE DECEASED VICTIM HERE TO A GUNSHOT TO THE HEAD.
AS HEINOUS AND ATROCIOUS AND CRUEL AS THAT SOUNDS, HE, BY DOING SO DID NOT INTEND TO PROLONG PAIN AND SUFFERING FOR THIS VICTIM.
>> THAT IS [INAUDIBLE] LOOK AT IT FROM WHAT THE DEFENDANT--
>> CORRECT.
>> DON'T WE ALREADY HAVE CASE, MULTIPLE CASES THAT CROSSED THIS BRIDGE?
WE HAVE THE CASE WHERE A COUPLE OF SISTERS LIVED TOGETHER.
YOUNG MAN KILLS ONE OF THEM AND

UPHELD HAC WITH REGARD TO-- AND
THE VICTIMS THAT WERE REQUIRED
TO LIE ON THE FLOOR AND--
[INAUDIBLE].
SO I DON'T THAT UNDERSTAND.
YOU START GETTING INTO WHAT THE
DEFENDANT THOUGHT YOU'RE CHASING
A RABBIT.
>> OKAY.
>> I THINK YOU BETTER GET BACK
INTO WHETHER PEOPLE STATED IT
CORRECTLY-- [INAUDIBLE]
>> I UNDERSTAND, YOUR HONOR.
THESE VICTIMS ALSO WERE NOT
TORTURED.
SO THIS COURT CERTAINLY SEEN
PLENTY OF CASES WHERE VICTIMS
WERE TORTURED AND UPHELD THE
HAC.
>> ONLY ISSUE HERE IS SINCE, IF
THERE WASN'T A HURST ISSUE IT IS
PRETTY HARD TO ARGUE THIS,
ASSUMING IT WAS IMPROPERLY FOUND
THAT IT WOULD BE HARMLESS ERROR
OTHER AGGRAVATION, THE ATTEMPTED
MURDERS OF THE OTHER TWO VICTIMS
MAKES, IN MY VIEW A VERY HEAVILY
AGGRAVATED CRIME.
THE ONLY ISSUE IS WHETHER, WHEN
IT IS GOING BACK WHETHER THERE
IS SUFFICIENT EVIDENCE FOR THAT
AGGRAVATOR TO GO TO THE JURY,
RIGHT?
>> CORRECT, YOUR HONOR.
>> SO, DO YOU HAVE ANY OTHER
PENALTY, ANY OTHER POINT?
>> NO.
JUST THAT IT TOOK PLACE QUICKLY.
THAT THE VICTIM DID NOT ENDURE
PROLONGED PAIN AND SUFFERING.
HE WASN'T TORTURED.
THAT REALLY ESTABLISHES AT THAT
WAS NOT ESPECIALLY HEINOUS
ATROCIOUS AND CRUEL.
ALL MURDERS ARE HEINOUS, A
ATROCIOUS AND CRUEL BUT NOT
ESPECIALLY.
WITH ALL THE OTHER CASES THAT
THE COURT CONSIDERED FOR THE HAC
AGGRAVATOR.

ASIDE FROM THAT THE GUILT PHASE
WAS VIRTUALLY-- LET ME DEAL
WITH THAT QUICKLY.
DURING THE GUILT PHASE THERE WAS
A MAGAZINE CLIP THAT WAS FOR A
HIGH-POWERED RIFLE, .22 CALIBER
RIFLE THAT WAS ADMITTED INTO
EVIDENCE.
THAT WAS THE ONLY ERROR I WAS
ABLE TO DISCERN DURING THE
PENALTY PHASE.
EXCUSE ME, DURING THE GUILT
PHASE.
THIS--
>> EVEN IF THAT WAS ERROR I'M
HAVING A HARD TIME UNDERSTANDING
HOW IT WOULD PREJUDICE YOUR
CLIENT WHEN THE TESTIMONY WAS
THAT HIGH CAPACITY MAGAZINE
BELONGED TO WALLACE?
>> YOUR HONOR, THERE WAS SOME--
FIRST AND FOREMOST THERE WAS A
VERY LITTLE TANGIBLE EVIDENCE
PRESENTED TO THE JURY IN THIS
TRIAL.
SO JURY--
>> THERE WAS VERY LITTLE-- KEEP
YOUR VOICE UP A LITTLE BIT WHAT?
>> VERY LITTLE TANGIBLE EVIDENCE
PRESENTED TO JURY AT THIS TRIAL.
EVIDENCE THAT THE JURY COULD
LOOK AND EXAMINE AND SOMETIMES
THEY'RE ALLOWED TO PASS IT
AROUND.
IN THIS CASE, THIS WAS IT.
THERE WERE A COUPLE OF
PROJECTILES RETRIEVED FROM THE
SCENE.
AND WHAT-- THERE WERE NO
FIREARMS RETRIEVED IN THIS CASE
FOR ANY OF THE CODEFENDANTS.
SO THE PROJECTILES FOUND AT
SCENE OF THE CRIME WERE 38
CALIBER.
MR. OKAFOR DIDN'T CARRY THIS
RIFLE.
HE REALLY DIDN'T FIRE THIS
RIFLE.
IT WAS REALLY I RECALL RELEVANT
TO THE PROCEEDINGS AT HAND.

MAYBE TO THE DEFT BUT NOT IN
OKAFOR.
THE JURY DIDN'T SEE A LOT OF
EVIDENCE, IT WAS A LOT OF
TESTIMONY BUT NOT A LOT OF
EVIDENCE, THAT COMPOUNDED THE
PREJUDICIAL ERROR HERE.
NOW IN THE SENTENCING ORDER, THE
TRIAL COURT REQUIRED A NEXUS.
>> SO IS YOUR RULE ANYTIME
PHYSICAL EVIDENCE IS
INAPPROPRIATELY ADMITTED IN A
LOW PHYSICAL EVIDENCE CASE IT IS
HARMFUL.
>> NO, YOUR HONOR.
IT IS CERTAINLY ON CASE-BY-CASE
BASIS, LOOKING AT ALL THE FACTS
AND CIRCUMSTANCES OF THE CASE
HERE.
NOW TURNING TO THAT SENTENCING
ORDER.
>> WHAT WAS IT, WHAT WAS THE
REASON THE STATE OFFERED--
THERE WAS A CODEFENDANT TRIED IN
THE SAME CASE?
>> NO.
THE CODEFENDANT WAS TRIED
SEPARATELY.
THAT IS WHY IT BECOMES EVEN MORE
IRRELEVANT BECAUSE IT DIDN'T
HAVE ANYTHING TO DO WITH
MR. OKAFOR'S ACTIONS T WAS
ADMITTED, I BELIEVE THE TRIAL
COURT ADMITTED IT ON THE
BASIS-- I MIGHT BE MISSPEAKING
HERE, THAT IT SHOWED MR. OKAFOR
WAS WITH SOMEONE WHO POSSESS AD
.22 CALIBER RIFLE.
>> YOU'RE NOT ARGUING THAT AS
GUILT PHASE ERROR?
>> YES, THERE WAS DURING THE
GUILT PHASE.
>> I THOUGHT YOU WERE SAYING
THERE WAS NO GUILT--
>> VIRTUALLY ERROR-FREE.
ONLY DISCERNIBLE ERROR DURING
THE GUILT PHASE.
THE MAJORITY CAME DURING THE
PENALTY PHASE.
GOING BACK TO THE PENALTY PHASE,

THE SENTENCING ORDER REQUIRED A
NEXUS, A CAUSATION ON NINE OF
THE 14 OFFERED MITIGATING TO
FACTORS.
INDEED THE TRIAL COURT SAYS
CAUSE.
THIS DID NOT CAUSE HIS CONDUCT
IN QUESTION SEVERAL TIMES.
SO I UNDERSTAND THIS COURT HAS
HELD THAT A NEXUS CAN NOT BE
REQUIRED BUT THAT IS TRIAL COURT
CAN EXPLAIN OR PUT IT INTO
CONTEXT THE MITIGATION OFFERED.
THIS WENT BEYOND THAT BECAUSE
THE TRIAL COURT REPEATEDLY SAID
CAUSE.
THE ONLY OTHER ERROR IN THE CASE
WAS DURING JURY SELECTION.
I BELIEVE THAT WAS ADEQUATELY
BRIEFED, UNLESS THE COURT HAS
QUESTIONS ABOUT THAT JURY
SELECTION ISSUE.
AS ALWAYS I ASK THIS COURT TO
REVISIT ITS POSITION WHETHER THE
DEATH PENALTY COMPLIES WITH THE
EVOLVING STANDARD OF DECENCY
UNDER THE EIGHTH AMENDMENT.
IF THERE ARE NO FURTHER
QUESTIONS FROM THE COURT I WOULD
LIKE TO RESERVE MY TIME FOR
REBUTTAL.
THANK YOU.
>> MAY IT PLEASE THE COURT.
MY NAME IS VIVIAN SINGLETON.
I'M WITH THE ATTORNEY GENERAL'S
OFFICE.
>> LET ME ASK YOU THIS.
GIVEN THE EVIDENCE IN THIS CASE,
WHAT WAS THE PURPOSE OF
INTRODUCING THAT CLIP THAT
CLEARLY WAS IRRELEVANT IN THIS
CASE?
WHY THROW THAT THING IN THERE?
>> I'M SORRY.
THE PURPOSE IN INTRODUCING THE
CLIP FROM THE MAGAZINE, NO THE
TO SHOW IT WAS USED TO KILL
MR. ZALDIVAR.
THAT WAS NOT THE STATE'S PURPOSE
IN DOING SO.

THE PURPOSE WAS IDENTIFYING ONE
OF THE COCONSPIRATORS WITH
MR. OKAFOR AT THE HOME.
MR. REMINGTON CAMPOS, ONE OF THE
VICTIMS IN THE HOME, TESTIFIED
ONE OF THE GUN MAN HE SAW WAS
TALL, HAD LONG DREAD CAN LOCKS
AND WAS CARRYING A AK-47.
THE PURPOSE OF INTRODUCING THE
MAGAZINE CLIP WAS TO SHOW IT
COULD HAVE ACTUALLY BEEN
SOMETHING THAT COULD HAVE BEEN A
PART OF THE WEAPON THAT CARRIED
BY MR. EMANUEL WALLACE, ONE OF
THE CODEFENDANTS WITH
MR. OKAFOR.
>> THAT DOESN'T REALLY ANSWER
THE QUESTION.
HOW DOES THAT TEND TO IMPLICATE
THE DEFENDANT IN THE MURDER?
I MEAN THEY DIDN'T-- HE WAS,
THE CIRCUMSTANTIAL EVIDENCE IN
THIS CASE IS MOST OF IT IS
BECAUSE OF SOME OF THE
STATEMENTS HE MADE, RIGHT?
THAT WOULD INDICATE THIS WAS
SOMEBODY--
>> YES.
>> THIS WAS A MURDER MOTIVATED
BY KILLING THE PERSON OR PERSONS
THAT WERE GOING TO TESTIFY
AGAINST HIM, CORRECT?
>> THAT'S CORRECT.
>> SO HOW DOES THE FACT THAT,
BECAUSE IT COULD BE SOMEBODY
ELSE.
IT MIGHT NOT HAVE BEEN HIM.
MAYBE HE HIRED SOMEBODY.
HOW DOES THAT TEND TO SUPPORT
THAT HE WAS, THAT THE DEFENDANT
THAT FIRED THE SHOTS?
>> WELL, IT WASN'T INTRODUCED TO
SHOW THAT MR. OKAFOR HAD
COMMITTED THE CRIME.
IT WAS BEING INTRODUCED ONLY TO
CORROBORATE THE TESTIMONY OF
REMINGTON CAMPOS WHO TESTIFIED
THAT HE SAW A GUNMAN CARRYING AN
AK-47.
THAT WAS THE ONLY PURPOSE IN IT.

>> WHAT WAS THE MURDER WEAPON
FOR THE VICTIM IN THIS CASE?
>> WE DON'T KNOW SPECIFICALLY
WHAT TYPE OF WEAPON IT WAS.
>> WAS IT, WAS IT AN ASSAULT
RIFLE?
>> IT WAS NOT.
IT WAS NOT.
IT WAS NOT AN ASSAULT RIFLE.
>> WAS IT A HANDGUN?
>> IT WAS REVOLVER.
THE FIREARMS EXPERT TESTIFIED TO
WHAT TYPE OF BULLETS THAT WERE
USED.
THE BULLETS WERE .38 CALIBER,
.57 CALIBER, 9MM.
SHE TESTIFIED THOSE COULD BE IN
A REVOLVER.
>> EVEN OOH THEN THE OPPOSING
COUNSEL SAYS SHE THREW THAT OUT,
STRIKES ME THE IMAGE OF A AK-47,
WAS IT CONTESTED BY THE--
BECAUSE THAT CAME OUT, RIGHT,
THE TESTIMONY THAT ONE OF
CODEFENDANTS HAD AN AK-47.
WAS, DID THEY CHALLENGE THAT
TESTIMONY AND SO THAT'S HOW IT
CAME INTO RELIABILITY OF THE
WITNESS'S TESTIMONY?
>> THE DEFENSE DID CHALLENGE THE
ADMISSION OF IT.
THE COURT CORRECTLY GRANTED THE
ADMISSION OF IT.
LIKE I SAID EARLIER, IT WAS NOT
BEING USED TO SHOW THAT WAS THE
MURDER WEAPON.
>> WHAT WAS THE GROUNDS FOR THE
DEFENSE'S CHALLENGE TO IT?
>> I DON'T-- PROBABLY
RELEVANCE.
I DON'T HAVE THAT WITH ME IN
FRONT OF ME RIGHT NOW BUT I'M
SURE IT WAS RELEVANCE.
>> COULD I ASK YOU THIS?
WAS THERE ANYTHING IN THE RECORD
THAT ESTABLISHES THAT THE CLIP
IN HE QUESTION WOULD BE OPERABLE
IN A AK-47?
>> THAT WAS NOT ESTABLISHED.
THE FIREARMS EXPERT WAS ASKED

ABOUT WHETHER OR NOT THAT
MAGAZINE COULD FIT INTO A RIFLE.
SHE SAID THAT IT COULD.
SHE WAS NOT SPECIFICALLY ASKED
ABOUT AN AK-47.
>> WAS THERE AN OBJECTION ON
THAT BASIS?
>> I CAN NOT RECALL, I'M SORRY.
>> WAS IT, SO AGAIN, I JUST,
WHERE DID THEY FIND THIS
MAGAZINE?
>> IT WAS FOUND IN THE HOME THAT
MR. EMANUEL WALLACE, ONE OF THE
CODEFENDANTS WHERE HE LIVED.
ONE OF THEM WAS FOUND INSIDE OF
A DUFFLE BAG.
ONE WAS FOUND INSIDE OF A DESK
DRAWER.
>> AND NO CONNECTION TO THE, IT
WAS NOT AN AK-47 THOUGH?
>> I'M SORRY?
>> THIS WASN'T TO BE USED IN AN
AK-47?
>> WELL IT WAS A MAGAZINE THAT
COULD BE USED IN A RIFLE BUT THE
FIREARMS EXPERT WAS NOT
SPECIFICALLY ASKED ABOUT AN
AK-47.
>> DID THE, DID THE STATE IN
CLOSING, IN THE GUILT PHASE USE
THAT, THE EVIDENCE OF THE AK-47
OR THIS MAGAZINE IN ANY WAY TO
ARGUE GUILT OF MR. OKAFOR?
>> I CAN NOT RECALL EVERYTHING
FROM THE CLOSING ARGUMENTS, I'M
SORRY.
I'M SURE THEY PROBABLY
MENTIONED--
>> HERE IS THE PROBLEM.
AGAIN YOU'RE UP HERE ARGUING A
DEATH CASE AND IF IT IS ERROR,
THEN I WOULD ASSUME THAT THE
STATE WOULD ARGUE IT IS HARMLESS
ERROR, RIGHT?
>> YES.
>> BUT IF YOU DON'T, WE DON'T
KNOW HOW IT IS USED IN CLOSING
ARGUMENT OR WE DON'T KNOW
WHETHER THE PROPER OBJECTION WAS
MADE, WE HAVE TO GO BACK

OURSELVES AND LOOK AT THE
RECORD, RIGHT?
>> WELL, YOUR HONOR, THIS ISSUE
IS BRIEFED PRETTY EXTENSIVELY BY
MYSELF AND OPPOSING COUNSEL.
I'M ALMOST POSITIVE THAT THE
OBJECTION WAS RELEVANCE AND IN
REGARDS TO WHETHER OR NOT THERE
WAS ANY ERROR, IF THERE WAS
ERROR IT, WAS HARMLESS
BECAUSE--
>> YOU SEE THAT IS WHERE WE
GET-- WELL, IT WASN'T HIS GUN,
IS THAT WHY IT IS HARMLESS?
>> YES, MA'AM.
>> BECAUSE THEY DIDN'T TIE IT TO
MR. OKAFOR?
>> THEY DID NOT TIE IT TO
MR. OKAFOR.
>> THAT IS SORT OF WHAT MAKES IT
SOMEWHAT QUESTION OF RELEVANCE?
>> WELL THE RELEVANCE IS TO ADD
COLLABORATION TO MR. REMINGTON
CAMPOS'S TESTIMONY IN REGARDS TO
HE WHO HE SAW AND DESCRIPTION OF
THE PERSON HE SAW, THAT HE WAS
CARRYING THAT TYPE OF WEAPON.
LIKE I SAID EARLIER, IF THERE
WAS ANY ERROR AT ALL, IT WAS
HARMLESS.
THERE WAS PLENTY OF EVIDENCE
THAT SHOWED MR. OKAFOR WAS THE
TRIGGERMAN.
HE WAS THE INSTIGATOR OF THE
CRIME.
HE IS ONLY ONE THAT HAD MOTIVE
TO KILL WITNESSES TO PRIOR
ROBBERY AND BURGLARY HAD
OCCURRED.
EVEN IF THIS MAGAZINE HAD NOT
BEEN ADMITTED, MR. OKAFOR COULD
STILL HAVE BEEN CONVICTED.
THE ADMISSION OF THAT MAGAZINE
DIDN'T ADD TO HIS CONVICTION AT
ALL.
IF THERE WAS ANY ERROR IN
ADMITTING IT THE ERROR WOULD BE
HARMLESS.
IF THERE ARE NO MORE QUESTIONS
ABOUT THE MAGAZINE ISSUE.

I WANT TO MOVE ON TO THE HURST ISSUE.
ANY HURST ISSUE IN THIS CASE IS HARMLESS AS WELL.
THE JURY DID FIND TWO OF THE AGGRAVATORS.
THE JURY FOUND, JURY FOUND THE PRIOR VIOLENT FELONY AGGRAVATOR WAS PROVEN BECAUSE THEY CONVICTED HIM OF TWO CONTEMPORANEOUS FELONIES.
THEY CONVICTED HIM ON TWO COUNTS MUCH ATTEMPTED FIRST-DEGREE MURDER AND ALSO CONVICTED HIM OF ARMED BURGLARY OF A DWELLING WITH EXPLOSIVES.
IN ADDITION MR. OKAFOR HAD PRIOR VIOLENT FELONY CONVICTIONS FROM THE PRIOR ROBBERY, BURGLARY OCCURRED AT THE HOME A FEW MONTHS PRIOR TO THIS MURDER.
HE ALSO HAD AN AGGRAVATED ASSAULT CONVICTION FROM 2005.
THE JURY ALSO CONVICTED, FOUND HIM, FOUND THE AGGRAVATOR, CAPITAL TWO FELONY WHILE COMMITTING A BURGLARY.
WE KNOW THE JURY FOUND THAT AGGRAVATOR BECAUSE THEY UNANIMOUSLY FOUND HIM GUILTY OF ARMED BURGLARY.
NOW THE REMAINING AGGRAVATORS WE DON'T KNOW THAT THE JURY FOUND, HOWEVER, A RATIONAL JURY WOULD HAVE FOUND THAT THE REMAINING AGGRAVATORS THAT THE TRIAL COURT FOUND WERE PROVEN.
A RATIONAL JURY WOULD HAVE FOUND THOSE PROVEN UNANIMOUSLY AS WELL.
IF WE LOOK AT THIS FROM OBJECTIVE STANDARD, WE WOULD LOOK AT WHETHER OR NOT THE CCP WAS FOUND, FOR EXAMPLE.
THERE WAS PLENTY OF EVIDENCE THAT MR. OKAFOR PLANNED THIS MURDER.
THERE WAS EVIDENCE OF HIM TEXTING HIS FRIENDS TRYING TO MAKE SURE HE HAD WEAPONS.

HE ASKED HIS GIRLFRIEND AND ONE
OF HIS FRIEND TO ACT AS A
LOOKOUT.
HE ASKED A FRIEND THE DAY BEFORE
THE MURDER, THE DAY BEFORE THE
MURDER TO GET HIM A HOODIE AND
SOME RUBBER GLOVES.
THAT HE NEEDED THOSE THAT NIGHT.
HE AFTER THE MURDER OCCURRED HE
ERASED TEXT MESSAGES IN REGARDS
TO THE MURDER.
THERE WAS ALSO AN INTERNET
SEARCH THAT WAS DONE ON HIS
PHONE THE DAY BEFORE THE MURDER
IN WHICH THE SEARCH WAS, HOW DO
YOU REMOVE GUNSHOT RESIDUE?
A RATIONAL JURY HAD BEEN TOLD
THEY HAD TO UNANIMOUSLY FIND
THIS AGGRAVATOR WAS PROVEN WOULD
HAVE FOUND THAT THE CCP
AGGRAVATOR WAS PROVEN.
IN REGARDS TO AVOID ARREST
AGGRAVATOR THERE IS ALSO
SUBSTANTIAL EVIDENCE THAT THE
JURY WOULD HAVE FOUND THAT THAT
WAS PROVEN AS WELL.
MR. OKAFOR TOLD SEVERAL OF HIS
FRIEND HIS ATTORNEY TOLD HIM
THAT THE WITNESSES WERE GOING TO
SHOW UP FOR TRIAL.
HE ALSO TOLD HIS FRIENDS THAT,
THAT THEY COULD NOT SHOW UP.
HE DID NOT WANT THEM TO SHOW UP.
WHEN HE WAS INSIDE THE HOUSE,
BRIENNA CAMPOS TESTIFIED THAT
THE PERSON THAT PULLED HER FROM
HER BED, HE WAS THE PERSON WHO
DID ALL THE, WHO ASKED ALL THE
QUESTIONS WHEN ALL THREE VICTIMS
WERE LYING ON THE FLOOR IN THE
LIVING ROOM.
SHE TESTIFIED THAT THAT PERSON
ASKED, IS THIS HOUSE THAT WAS
ROBBED?
THAT PERSON ALSO ASKED WHERE THE
OTHER TWO?
THAT IS IN REFERENCE TO THE TWO
PEOPLE THERE FOR THE ROBBERY
THAT OCCURRED IN MAY BUT WAS NOT
THERE FOR THE ROBBERY, AND

MURDER THAT OCCURRED IN
SEPTEMBER.
AND WHEN SHE SAID THAT THOSE TWO
PEOPLE WERE NOT AT HOME, THAT
GUNMAN SAID, THAT WE COULD WAIT.
THERE ARE ONLY TWO PEOPLE WHO
WOULD WANT TO GET RID OF THE
WITNESSES TO THE PRIOR ROBBERY
AND BURGLARY.
ONE OF THOSE WAS BESSMAN OKAFOR.
THE OTHER WITNESS WAS IN JAIL
BECAUSE HE DID NOT MAKE BOND.
SO A RATIONAL JURY WOULD HAVE
UNANIMOUSLY FOUND IF THE JURY
HAD BEEN INSTRUCTED TO DO SO
THAT THE AVOID ARREST AGGRAVATOR
WAS PROVEN.
IN REGARDS TO HAC A RATIONAL
JURY WOULD HAVE ALSO FOUND THAT
AGGRAVATOR WAS PROVEN AS WELL.
MR. ZALDIVAR HEARD THE GUN MAN
SAY, SOMEONE IS GOING TO GET
SHOT TONIGHT.
HE ALSO HEARD BREANNA GET SHOT.
HE WOULD HAVE ANTICIPATED HIS
DEATH.
REMINGTON CAMPOS TESTIFIED THAT
AFTER BREANNA WAS SHOT THAT ALEX
STARTED BREATHING HEAVILY AND HE
WAS BRACING HIMSELF.
THIS COURT HAS FOUND IN OTHER
CASES THAT THE HAC AGGRAVATOR
WAS PROVEN IN CASES IN WHICH THE
VICTIMS WERE ACUTELY AWARE OF
THEIR IMPENDING DEATHS.
ONE OF THE CASES I CITED IN MY
BRIEF WAS FARINA v. STATE
WHERE THE VICTIM WAS UPSET
DURING THE ROBBERY.
HANDS TIED BEHIND BACK AND
CONSCIOUS WHEN TWO COWORKERS
WERE SHOT WHEN SHE WAS SHOT IN
THE HEAD.
A RATIONAL JURY WOULD HAVE FOUND
THE HAC AGGRAVATOR WAS PROVEN AS
WELL.
THE STATE PRESENTED COMPELLING
EVIDENCE THAT A REASONABLE JURY
WOULD HAVE UNANIMOUSLY FOUND
EACH THE AGGRAVATORS PROVEN

BEYOND A REASONABLE DOUBT.
THAT EACH OF THE AGGRAVATORS
WERE SUFFICIENT.
THE MITIGATION, THERE WAS NO
STATUTORY MITIGATION IN THIS
CASE.
THERE WERE 11 NON-STATUTORY
MITIGATIONS OF THE MOST SERIOUS
OF WHICH WAS THAT MR. OKAFOR WAS
SEXUALLY ABUSED AS A CHILD.
WHILE THAT IS SIGNIFICANT
MITIGATOR, THE AGGRAVATION IN
THIS CASE WAS OVERWHELMING.
SO A RATIONAL JURY WOULD HAVE
FOUND IF THEY CONSIDERED ALL THE
AGGRAVATORS AND CONSIDERED THE
LIMITED MITIGATION THEY WOULD
HAVE FOUND THAT THE AGGRAVATORS
OUTWEIGHED THE MITIGATORS.
A RATIONAL JURY ALSO WOULD HAVE
FOUND THAT DEATH WAS THE
APPROPRIATE SENTENCE IN THIS
CASE.
MR. OKAFOR KILLED A WITNESS TO A
CRIME.
THIS CASE GOES TO THE HEART OF
THE CRIMINAL JUSTICE SYSTEM.
AND IN CLOSING, ON THIS ISSUE, A
RATIONAL JURY IF THEY HAD BEEN
INSTRUCTED THEY HAD, THAT THEY
WOULD HAVE TO FIND UNANIMITY,
THAT JURY WOULD HAVE DONE SO.
I WANT TO GO ON TO THE ISSUES
REGARDING THE VICTIM IMPACT
STATEMENTS.
ONE OF THE ISSUES THAT OPPOSES
COUNSEL REFERENCE WAS BRIENNA
CAMPOS' REFERENCES TO MR. OKAFOR
AS A WANNABE GANGSTER.
THERE WAS NO OBJECTION TO THAT
STATEMENT.
SO FUNDAMENTAL ERROR WOULD HAVE
TO BE PROVEN.
>> YOU AGREE THAT WOULD BE AN
IMPROPER STATEMENT?
>> IT WOULD BE, IT WOULD BE BUT
ONLY REFERENCED IN ONE PAGE OF
13 PAGES OF HER TESTIMONY.
MOST OF HER TESTIMONY ACTUALLY
FOCUSED ON THE LIFE OF ALEX

ZALDIVAR.
>> DID THEY, THE STATE WANT TO PUT ON MORE THAN THE SIX VICTIM IMPACT WITNESSES?
>> I DON'T SEE ANY REFERENCE IN THE REGARD THEY WANTED TO DO MORE THAN SIX.
>> WAS THERE ANY ATTEMPT TO LIMIT THE NUMBER OF VICTIM IMPACT WITNESSES?
>> I BELIEVE THERE MIGHT HAVE BEEN A MOTION FILED BY THE DEFENSE.
I CAN NOT SAY FOR SURE.
THE REFERENCE TO MR. OKAFOR AS A WANNABE GANGSTER DID NOT BECOME A FEATURE IT OF THE TRIAL.
SO FUNDAMENTAL ERROR WAS NOT PROVEN IN THAT CASE.
AND IN REGARDS TO REMINGTON'S TESTIMONY AND IN REGARDS TO HIS SON, THAT WAS MENTIONED JUST BRIEFLY.
THAT ALSO DID NOT BECOME A FEATURE OF THE CASE AS WELL.
AND IN REGARDS TO THE ARGUMENT ABOUT, THIS ISSUE 3, THE DUE PROCESS VIOLATION WITH THE SIX VICTIM WITNESSES, THAT ARGUMENT WAS WAIVED BECAUSE THE DEFENDANTS PROPOSED JURY INSTRUCTION DURING THE PENALTY PHASE INCLUDED THE VICTIM IMPACT STATEMENT INSTRUCTION FROM THE STANDARD INSTRUCTIONS.
SO THE DEFENSE HAS WAIVED THAT ARGUMENT.
HOWEVER THERE IS NO LIMIT ON THE NUMBER OF VICTIM IMPACT STATEMENTS THAT CAN BE MADE.
THIS COURT HAS NEVER DRAWN A BRIGHT LINE AS TO THE NUMBER OF PERMISSIBLE WITNESSES THAT THE STATE MAY PRESENT.
IN REGARDS TO THE ARGUMENTS, IN REGARDS TO THE VICTIM IMPACT STATEMENTS THAT WERE MADE DURING THE SPENCER HEARING, THOSE STATEMENTS WERE MADE OUTSIDE THE PRESENCE OF THE JURY.

THEY WERE ONLY MADE IN THE PRESENCE OF THE COURT.
SO THERE IS NO RISK THAT THE JURY WAS AFFECTED BY THOSE STATEMENTS AT ALL.
AND THE TRIAL COURT, SINCE HE HEARS CASES ON A REGULAR BASIS HE KNOWS WHAT TO CONSIDER, WHAT NOT TO CONSIDER, SO HE WOULD HAVE TAKEN THAT INTO CONSIDERATION.
AND THE LAST ONE, THE LAST THINGS I WANT TO MENTION IS THE TRIAL, OPPOSING COUNSEL'S REFERENCE TO THE NEXUS BETWEEN THE MITIGATING EVIDENCE AND THE CONDUCT AT ISSUE.
ALTHOUGH THE TRIAL COURT MAY HAVE USED THE WORD, LOOKING AT THE CAUSATION IN THE SENTENCING ORDER, THE COURT WAS SIMPLY TAKING THE EVIDENCE, PUTTING THE MITIGATION EVIDENCE IN CONTEXT.
FOR EXAMPLE, ONE OF THE MITIGATORS THAT WAS PROPOSED BY THE DEFENSE WAS THAT MR. OKAFOR HAD LOST A CHILD.
THAT ONE OF HIS CHILDREN HAD DIED BEFORE.
THERE WAS NO TESTIMONY IN REGARDS TO WHAT RELATIONSHIP HE HAD WITH THAT CHILD, HOW OFTEN HE SAW THAT CHILD AND THE COURT REFERENCED THAT IN HIS SENTENCING ORDER.
SO HE SIMPLY WAS TAKING THE MITIGATION IN CONTEXT.
HE WAS NOT STATING THAT CAUSATION WAS REQUIRED.
>> DID THAT CHILD DIE BEFORE OR AFTER THIS CRIME?
>> I'M SORRY?
>> DID THE CHILD, MR. OKAFOR'S CHILD, DID HE DIE, DID THE CHILD DIE BEFORE OR AFTER THIS CRIME?
>> THE RECORD DID NOT SAY.
IT SIMPLY STATED HE HAD A CHILD THAT DIED.
I CAN NOT RECALL IF HE GAVE THE ACTUAL DATE OR NOT THAT I DON'T

RECALL AT ALL.
AND THEN THE LAST ISSUE I WANTED TO TOUCH UPON WAS THE EXCLUSION OF PROSPECTIVE JUROR FULL PER 105.
THE RELEVANT INQUIRY WHETHER THE JUROR CAN PERFORM THE DUTIES ACCORDING TO THE COURT'S INSTRUCTIONS AND JUROR AS OATH.
WHEN THE JURY MEMBER WAS QUESTIONED HE NEVER ONCE SAID HE COULD IMPOSE THE DEATH PENALTY.
WHEN HE WAS ASKED BY THE PROSECUTOR, WHEN ASKED BY THE TRIAL COURT, IF HE FOUND THE EVIDENCE SUPPORTED THE DEATH PENALTY COULD HE VOTE FOR DEATH.
HIS ANSWER WAS, I HONESTLY DON'T KNOW.
HE WAS ASKED THAT AGAIN.
HE RESPONDED AGAIN, I WON'T KNOW UNTIL I FACE THAT.
AND HE STATED MORE THAN ONE TIME THAT HE JUST DID NOT KNOW.
HE NEVER COULD SAY THAT HE COULD IMPOSE THE DEATH PENALTY AND SO THE STATE ASKED FOR A CAUSE CHALLENGE BECAUSE THE JUROR PANEL MEMBER WAS JUST NEVER FIRM ON WHETHER OR NOT HE COULD VOTE FOR DEATH IF THE EVIDENCE SUPPORTED IT.
I CITED SEVERAL CASES.
JOHNSON v. STATE, CONTE V. STATE, IN WHICH THIS COURT DETERMINED WHEN A JURY PANEL MEMBER CAN NOT GIVE A YES OR NO ANSWER WHETHER THEY CAN VOTE FOR DEATH THAT A CAUSE CHALLENGE WAS PROPER.
THE TRIAL COURT WAS CORRECT IN GRANTING THE STATE'S CAUSE CHALLENGE ON THIS ISSUE.
IF THERE ARE NO MORE QUESTIONS, I ASK THAT YOU AFFIRM THE CONVICTION AND THE SENTENCE.
>> MAY IT PLEASE THE COURT.
IF I COULD CLARIFY A COUPLE OF ISSUES QUICKLY.
ONE OF THE CHILDREN DIED CAN

JUST BEFORE THE TRIAL SO AFTER
THE MURDER.
>> JUST BEFORE THE TRIAL BUT
AFTER THE MURDER.
>> ONE CHILD DIED BEFORE THAT
AFTER AN ORGAN TRANSPLANT.
AS FOR THE WAIVER ISSUE,
ACTUALLY THE DEFENSE COUNSEL
MOVED TO LIMIT THE VICTIM IMPACT
TESTIMONY ON AUGUST 27th,
2015.
THAT WOULD HAVE BEEN PRIOR TO
THE SPENCER HEARING.
>> TO LIMIT IT IN WHAT WAY?
>> TO RESERVE IT TO THE SPENCER
HEARING.
>> EXCUSE ME.
>> TO RESERVE IT FOR THE SPENCER
HEARING RATHER THAN THE PENALTY
PHASE.
THAT WAS ON AUGUST 25th.
>> BUT NOT TO LIMIT THE NUMBER
OF WITNESSES?
>> CORRECT.
THAT'S CORRECT, YOUR HONOR.
AND THEN, SO THE WAIVER
ARGUMENT, DEFENSE COUNSEL FILED
HIS PROPOSED JURY INSTRUCTIONS
AFTER THE TRIAL COURT ALREADY
MADE THE RULING ON THAT.
SO THE TRIAL COURT RULED ON
AUGUST 27th, 2015, FIVE DAYS
LATER, ON SEPTEMBER 1st, HE
FILED HIS PROPOSED INSTRUCTIONS
WITH THAT VICTIM IMPACT
INSTRUCTION IN IT.
AS FOR THE "SCARFACE" COMMENT TO
THE JURY, IT IS NOT THE LENGTH
OF THE COMMENT.
IT IS THE IMPACT OF THE COMMENT
ON THE JURY.
THAT IS THE STANDARD THAT THIS
COURT HAS ALWAYS APPLIED TO
ERRORS SUCH AS THIS.
AN ERROR OF THIS MAGNITUDE WHERE
IT'S NOT JUST A PASSING
REFERENCE, IT IS, SHOULDN'T SAY
IT BRIEFLY.
SHE WENT IN DEPTH BIT.
>> BACK TO THE ISSUE OF THE GUN,

THE MAGAZINE, WAS THAT USED BY
THE STATE IN CLOSING ARGUMENT?
>> STATE IN CLOSING ARGUMENT
ADMITTED MR. OKAFOR DID NOT USE
IT.
>> THEY DID.
AND WHAT WAS THE OBJECTION MADE
BY THE DEFENSE LAWYER TO ITS
ADMISSION?
>> IT WAS MADE ON FOR RELEVANCE
AND THAT'S AT PAGE 3010 OF THE
TRANSCRIPT.
SO IT WAS A RELEVANCE OBJECTION.
>> THE WAY IT WAS BRIEFED, AND I
HAVEN'T LOOKED AT THE RECORD,
BUT DETECTIVE MORECI?
>> CORRECT.
>> TESTIFIED WHEN HE EXECUTED
THE SEARCH WARRANT AT WALLACE'S
HOME HE FOUND FIREARM RELATED
MATERIAL, AND THAT WAS THE
HIGH-CAPACITY MAGAZINE.
THERE WAS AN OBJECTION TO THE
TESTIMONY AT THAT POINT WHICH IS
THE RELEVANCE OBJECTION YOU'RE
MAKING.
>> YES, YOUR HONOR.
>> THE TRIAL JUDGE, AS I RECALL,
NOTED THAT THE, THAT THERE WAS A
CALL FROM OKAFOR TO WALLACE,
RIGHT BEFORE THE MURDERS.
THAT WALLACE FIT THE DESCRIPTION
OF THE SECOND PERSON INVOLVED IN
THE CRIME.
THAT WALLACE WAS CARRYING A
RIFLE AND THAT THE JUDGE ALLOWED
THE TESTIMONY SUBJECT TO THE
STATE LATER TYING IT UP AND
TYING THE MAGAZINE TO A RIFLE
WHICH FIT THE DESCRIPTION THAT
OKAFOR, AND OVERRULED THE
OBJECTION, IS THAT CORRECT?
>> CORRECT, YOUR HONOR.
>> NOW YOU ARE OBJECTING TO
ADMISSION OF THE EVIDENCE WHICH
DIDN'T OCCUR AT THAT TIME.
YOUR OBJECTION AT THE TIME WAS
TO THE TESTIMONY.
THERE IS NO INDICATION IN THE
BRIEFING THAT THERE WAS EVER AN

OBJECTION LATER WHEN THE STATE
HAD THE FIREARMS EXPERT ON THE
STAND AND WHEN THE MAGAZINE WAS
INTRODUCED INTO EVIDENCE OF WAS
THERE AN OBJECTION TO THE
INTRODUCTION INTO EVIDENCE OF
THE CAPACITY MAGAZINE YOU'RE NOW
ARGUING ABOUT?
>> OFF THE TOP OF MY HEAD I
DON'T KNOW WHETHER THERE WAS AN
OBJECTION WHEN THE FIREARMS
EXPERT ACTUALLY TESTIFIED.
I CAN TELL YOU THIS.
THAT ONE EVER THE WITNESSES,
REMINGTON CAMPOS, DESCRIBED
HIMSELF AS A FIREARMS
AFICIONADO AND HE DESCRIBED THE
WEAPON.
>> I MEAN YOU WOULD AGREE THAT
OBJECTION TO TESTIMONY THAT WAS
ALLOWED SUBJECT TO LATER LINKING
UP WOULD NOT PRESERVE AN
OBJECTION TO ADMISSION OF THE
EVIDENCE LATER?
IF THE STATE THEN MOVED THAT
EVIDENCE INTO ADMISSION, AND
THERE WAS NO OBJECTION STATED OR
FIRMLY STATED NO OBJECTION, THE
PRIOR OBJECTION WOULDN'T
PRESERVE THE ISSUE WITH RESPECT
TO THE PHYSICAL EVIDENCE THAT
WAS ADMITTED AT TRIAL?
>> I'M NOT SURE I DO AGREE WITH
THAT?
>> REALLY.
>> I'M SPECULATING I DON'T KNOW
WHETHER OR NOT THERE WAS ACTUAL
OBJECTION.
>> THE RELEVANCE OBJECTION TO
TESTIMONY SOMEHOW EQUATES TO A
LATER ADMISSION TO EVIDENCE?
>> SURE.
SO, IN THE MIDDLE OF A TRIAL,
FROM TRIAL ATTORNEY'S STANDPOINT
YOU ALREADY ARGUED TO THE JUDGE
THIS FIREARM IS NOT RELEVANT.
IT DOESN'T MATCH THE BALLISTICS.
DOESN'T MATCH THE DESCRIPTION OF
WHAT THE EYEWITNESS GAVE.
I WOULD SAY THAT IS ENOUGH TO

PRESERVE IT BEFORE THIS COURT.
TO PRESERVE THE ERROR FOR
APPEAL.
>> I MEAN THEN THE FIREARMS
EXPERT GETS ON AND DESCRIBES IT
IS A RIFLE AND THE WALLACE WAS
CARRYING A RIFLE.
I MEAN, IF THERE IS NO OBJECTION
WHEN IT IS INTRODUCED AFTER THAT
TYING UP TESTIMONY, YOU'RE
ARGUING THAT THE TYING UP
TESTIMONY WASN'T SUFFICIENT TO
ACTUALLY TIE IT UP.
>> CORRECT, YEAH, THAT'S THE
ARGUMENT.
HE ARGUED OR HE TESTIFIED IT WAS
AN AK-47 TYPE ASSAULT RIFLE.
THIS CLIP MATCHED A .22 RIFLE.
SO NOT NECESSARILY THE SAME
THING.
GOING BACK QUICKLY, TO, TO THE
ERROR OF ADMITTING THAT CLIP.
IT JUST CONFUSES THE JURY.
IT'S NOT RELEVANT.
IT CONFUSES THEM ABOUT THE
ISSUES BEFORE THEM.
THERE IS PLENTY OF CASE LAW IN
THIS STATE ABOUT, IF THE FIREARM
IS NOT USED AS PART OF THE
CRIME, OR IF IT CAN'T BE
CONCLUSIVELY LINKED TO DEFT IT
IS NOT RELEVANT AND IN THIS CASE
IT WAS PREJUDICIAL.
YOUR HONORS, IF THERE ARE NO
FURTHER QUESTIONS FROM THE COURT
I WOULD ASK THE COURT TO REVERSE
THE GUILT PHASE AND PENALTY
PHASE.
THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.