>> ALL RISE.
>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.
PLEASE BE SEATED.
>> OKAY.
THE LAST CASE ON THE DOCKET TODAY IS SERRANO V. STATE.
WHENEVER YOU'RE READY, COUNSEL.
>> MAY IT PLEASE THE COURT, MARCH SHAH SILVERS ON BEHALF OF NELSON SERRANO.
THE FIRST ISSUE I'D LIKE TO ADDRESS IS THE ISSUE AS TO WHY MR. SERRANO WAS DENIED AN INDIVIDUALIZED AND RELIABLE PENALTY PHASE HEARING.
YOUR HONOR, THE DEFENSE ATTORNEYS HERE TESTIFIED THAT JURORS DON'T CARE ABOUT MITIGATION AND ALSO TESTIFIED AT THE POST-CONVICTION HEARING THAT TALKING TO JUROR ARES ABOUT MITIGATION IS LIKE TALKING TO A WALL.
AND THE RECORD SHOWS THAT COUNSEL WAS NOT PREPARED TO PRESENT THE MITIGATION EVIDENCE AT THE PENALTY PHASE.
THE MITIGATION INVESTIGATOR INTRODUCED HER NOTES OF A FAMILY MEETING THAT WERE TAKEN TWO DAYS AFTER MR. SERRANO WAS CONVICTED, AND SHE TOOK NOTES OF WHAT MR. SERRANO SAID AT THAT TIME.
>> LET ME ASK YOU A QUESTION BEFORE YOU GET TOO FAR INTO THIS.
>> YES.
>> IS THIS A CASE THAT-- HAVE YOU MADE AN ARGUMENT IN YOUR CASE ABOUT ANY RELIEF PURSUANT TO HURST?
>> YES, YOUR HONOR, WE DID FILE A BRIEF ON HURST, AND THE STATE HAS RESPONDED.
>> WHEN WAS THE JUDGMENT OF SENTENCE IN THIS CASE FINAL?
>> WHEN WAS IT-- WHEN WAS THE APPEAL FINAL?
>> YES.

>> I'M--
>> WELL--
>>-- NOT SURE, BUT IT WAS
DEFINITELY POST-RING.
>> IT WAS A POST-RING CASE.
>> YES.
>> YOU RAISED RING IN THE TRIAL
COURT.
>> AND WE RAISED IT IN THE TRIAL
COURT, AND WE RAISED IT ON
APPEAL AS WELL, YOUR HONOR, AND
THIS COURT ADDRESSED IT--
>> AND WAS THERE A SPECIAL
VERDICT IN THIS CASE?
>> NO.
>> THE VOTE ON ALL THREE WERE
9-3?
>> 9-3 ON ALL OF THE
CONVICTIONS.
YES, YOUR HONOR.
>> AND SO IF YOU ARE ENTITLED TO
HURST RELIEF,
THESE ARGUMENTS THEN
BECOME NOT IMPORTANT, CORRECT?
NOT IMPORTANT, BUT YOU WOULD
HAVE A NEW PENALTY PHASE--
>> YES.
>> OKAY.
>> THAT'S CORRECT.
>> OKAY.
>> BUT I DON'T-- SINCE THE
COURT HASN'T ADDRESSED HURST
YET, I DID WANT TO RAISE THE
PENALTY ISSUE BECAUSE I DO THINK
IT'S A VERY SERIOUS ISSUE
BECAUSE I DO THINK IT'S CRYSTAL
CLEAR, HE DIDN'T GO TO ECUADOR
TO GET THE VIDEOTAPE DEPOSITIONS
OF THE WITNESSES UNTIL THE
MIDDLE OF THE SPENCER HEARING.
AND HE JUST DIDN'T HAVE THOSE
WITNESSES AVAILABLE TO TESTIFY.
AND HE ADMITTED IN HIS OWN WORDS
IN THE MIDDLE OF THE SPENCER
HEARING, HE SAID WE HAVE 46
MITIGATION WITNESSES IN ECUADOR
THAT WE STILL NEED TO GO DOWN
THERE AND INTERVIEW, AND 25 OF
THEM ARE CRITICAL WITNESSES.
SO--

>> AND WHAT DID THE JUDGE RULE
ON THAT ISSUE?
>> WHAT DID THE JUDGE RULE?
>> YES.
>> THE JUDGE FOUND THAT HE MADE
A REASONABLE STRATEGIC DECISION
THAT HE WAS GOING TO PRESENT THE
MITIGATION TO THE JUDGE AND NOT
THE JURY SO THE JUDGE MIGHT
OVERRIDE THE JURY'S
RECOMMENDATION.
>> WELL, HE PUT ON-- IT'S NOT
LIKE HE DIDN'T-- WHAT WAS THE
MITIGATION HE PUT ON TO THE
JURY?
>> IT WAS VERY MEAGER.
>> WELL, I GUESS YOU'VE GOT
THREE PEOPLE THAT WERE KILLED,
OKAY?
>> ACTUALLY, IT WAS FOUR.
>> FOUR.
OKAY.
SO YOU'VE GOT THE JURY HAVING
RETURNED UNANIMOUS VERDICTS FOR
FOUR.
THE FACT THAT HE GOT 9-3 JURY
RECOMMENDATION, HE MUST HAVE
FOCUSED ON, WHAT, THAT HE DID
NOT HAVE A PRIOR HISTORY OF--
WHAT WAS IT HE FOCUSED ON BEFORE
THE JURY?
>> ALL HE SAID, YOUR HONOR, WAS
HE HAD ONE WITNESS.
IT TOOK UP EIGHT PAGES OF
TRANSCRIPTS.
SHE SAID HE HAD NO D.R.s IN
PRISON, THERE WAS A STIPULATION
TO HIS AGE--
>> THIS IS MR. NORGUARD WHO
WE'VE SEEN OVER THE YEARS.
>> YES.
>> WHO'S AN EXTREMELY
EXPERIENCED LAWYER WHO TESTIFIES
OFTEN IN OTHER CASES ABOUT
PREPARATION.
IT DOES SEEM STARTLING AT FIRST
BLUSH TO SAY, WELL, WHY WOULD
YOU WAIT TO GO TO ECUADOR TO
TALK TO PEOPLE?
WHAT WAS HIS REASON FOR WAITING?

>> AND IT WAS STARTLING EVEN TO
THE MITIGATION EXPERT.
SHE SAID, HIS INVESTIGATOR SAID
SHE FOUND IT VERY UNUSUAL.
>> WHAT WAS THE REASON HE GAVE?
>> HE SAID THAT HE WANTED TO
PRESENT THE MITIGATION TO THE
JUDGE AND NOT THE JURY--
>> WHY?
>> SO THAT THE JUDGE MIGHT
OVERRIDE THE JURY'S
RECOMMENDATION, AND HE COULD
MAKE AN ARGUMENT THAT THE JURY
HAD NOT HEARD THE MITIGATION.
>> OKAY, WHAT WAS--
>> THAT WAS HIS EXCUSE.
>> OKAY.
WHAT WAS THE ECUADORAN, WHAT
WERE THOSE 46 WITNESSES, WHAT
WERE THEY THERE TO TESTIFY
ABOUT?
>> WELL, IN CONTRAST TO THE
MEAGER MITIGATION PICTURE THAT
WAS PRESENTED, THERE WERE 34
WITNESSES WHO WERE EVENTUALLY
CALLED AT THE SPENCER HEARING,
AND THEY FOR THE FIRST TIME
HUMANIZED MR. SERRANO.
THEY GAVE A VASTLY DIFFERENT
PICTURE FROM WHAT THE JURY
HEARD.
AND AS A MATTER OF FACT, THE
JUDGE FOUND EIGHT SEPARATE
MITIGATING FACTORS BASED ON,
JUST ON WHAT THOSE WITNESSES
SAID.
>> WHAT EXACTLY-- CAN YOU, CAN
YOU CONDENSE THAT INTO A GENERAL
THEME OF WHAT THESE WITNESSES
SAID ABOUT HIM THAT HUMANIZED
HIM?
>> THE MOST IMPORTANT TWO THAT
THE JURY FOUND, THERE WERE EIGHT
TOTAL, I MEAN, THAT THE JUDGE
FOUND WERE THAT HE WAS A MAN
WITH A VERY GOOD SOCIAL HISTORY.
HE WAS WELL SOCIALIZED IN THE
COMMUNITY, HIS CHURCH, HIS
FAMILY, HIS EXTENDED FAMILY AND
THAT--

>> THESE WERE PEOPLE IN ECUADOR.
>> YES.
>> AND HE HAD LIVED IN THE UNITED STATES HOW LONG?
>> HE LIVED IN THE UNITED STATES I'M NOT SURE HOW MANY YEARS BUT QUITE A LONG TIME.
>> BECAUSE HE HAD A BUSINESS IN NEW YORK.
>> YES.
>> THEY MOVED TO FLORIDA.
SO HE WAS HERE FOR QUITE A LONG TIME.
WAS ANY OF THOSE WITNESSES PEOPLE FROM FLORIDA OR FROM NEW YORK WHO HAD BEEN INVOLVED WITH HIM DURING THIS, DURING THIS LENGTHY TIME HE SPENT IN THE UNITED STATES?
>> YOUR HONOR, THERE WERE 30 WITNESSES FROM ECUADOR AND ONLY 4 WITNESSES THAT WERE NOT ECUADORAN.
BUT HE DID LIVE IN ECUADOR AND WENT ALL THE WAY THROUGH COLLEGE IN ECUADOR--
>> HOW OLD WAS HE AT THE TIME OF THE CRIME?
>> HE WAS 59 AT THE TIME OF THE CRIME.
>> AND HE, HE WAS A UNITED STATES CITIZEN, WASN'T HE.
>> HE WAS A UNITED STATES CITIZEN.
>> YOU KNOW, TO ME-- I'M SURE THAT WOULD BE VERY INTERESTING.
THEY'RE CHARACTER WITNESSES, BASICALLY.
THEY SAY THIS IS A GOOD GUY.
BUT THE JURY, I WOULD ASSUME THAT MR. NORGARD WAS LOOKING AND GOING, YOU KNOW, AFTER THEY JUST CONVICTED MY CLIENT OF FOUR MURDERS SORT OF TALKING ABOUT HE'S REALLY A GOOD GUY JUST MAY TURN THIS JURY OFF.
DID HE-- I MEAN, THAT'S HOW I, IF I WERE LOOKING AT THIS, I WOULD SAY-- AND I CERTAINLY WOULDN'T BE PUTTING ON 36

WITNESSES FROM A COUNTRY WHERE
HE HASN'T REALLY LIVED FULL TIME
SINCE COLLEGE TO A JURY IN
CENTRAL FLORIDA.
>> YOUR HONOR, FIRST OF ALL, I
THINK IT WAS A PATENTLY
UNREASONABLE DECISION--
>> WELL, I KNOW YOU THINK THAT,
BUT THE JUDGE DECIDED IT WASN'T,
AND WE LOOK AT, YOU KNOW, DEATH
CASES ALL THE TIME.
AND THE ISSUE IS, IS IT 20/20
HINDSIGHT.
AND I GUESS SINCE JUSTICE QUINCE
ASKED YOU EARLIER, THIS IS, IT
LOOKS LIKE IF WE DECIDE THAT
HURST GIVES YOU RELIEF, YOU CAN
REDO IT THEN, RIGHT?
>> YES.
YES, YOUR HONOR.
>> LET ME ASK, LET ME ASK YOU
AND, AGAIN, I KNOW YOU SEEM TO
WANT TO MAKE AN ARGUMENT, BUT WE
DO HAVE SOME QUESTIONS.
>> I'M HAPPY, HAPPY TO ANSWER
THEM.
>> WHETHER OKAY.
DO YOU AGREE THAT IT IS
REASONABLE FOR A LAWYER IN A
CASE TO HAVE A STRATEGY THAT
SOME MITIGATING CIRCUMSTANCES
ARE BETTER PLACED BEFORE A JUDGE
THAN A JURY?
IS THAT A REASONABLE DECISION?
IS THAT A REASONABLE STRATEGY?
>> I THINK IT'S--
>> WELL, CAN A JUDGE--
>> MAYBE SOME, BUT TO FORGO--
>> WELL, NO, NO, NO, YOU'RE
GETTING AHEAD OF ME.
I KNOW YOU WANT TO ARGUE, BUT
I'M JUST ASKING BECAUSE THIS IS
AN ISSUE THAT HAS BEEN ASKED, A
QUESTION HAS BEEN ASKED
THROUGHOUT THE WHOLE FIRST
ARGUMENTS WHICH YOU WANT TO
CONCENTRATE ON.
>> YES.
>> SO I'M TELLING-- THE
QUESTION I HAVE IS OF ALL THE

ISSUES THAT HAVE BEEN RAISED IN HURST IS WHETHER THE JURY SHOULD WEIGH AGGRAVATORS AND MITIGATORS, AND IF THE JURY'S GOING TO MAKE THAT DECISION, THEN ARE THERE GOING TO BE THINGS THAT LAWYERS MAY NOT WANT TO PRESENT TO THE JURY EVEN THOUGH THE JURY'S GOING TO DO THE WEIGHING THAT WOULD BE MITIGATING?
IN THIS INSTANCE YOU HAVE A VERY EXPERIENCED JUDGE WHO HAS HANDLED NUMEROUS OF THESE CASES. YOU HAVE A VERY EXPERIENCED LAWYER WHO MAY KNOW THE JUDGE, WHO MAY KNOW IN A SENSE THAT HE UNDERSTANDS THE JUDGE'S THINKING BASED ON EXPERIENCE AND PRACTICING BEFORE HIM.
WHY CAN A LAWYER LIKE THAT MAKE A REASONABLE STRATEGIC DISCUSSION THAT SOME OF THESE THINGS THAT YOU THINK SHOULD HAVE BEEN PRESENTED TO THE JURY MIGHT BE A BETTER FIT FOR THE JUDGE TO HEAR, MAY NOT BE A GOOD FIT FOR THE JURY?
WHY CAN'T A LAWYER MAKE THAT DECISION?
>> OKAY.
MY ANSWER WOULD BE IN TWO PARTS.
FIRST, BEFORE HE CAN MAKE ANY DECISION, HE HAS TO DO A THOROUGH INVESTIGATION OF THE DEFENDANT.
AND HE DID NOT DO THAT IN THIS CASE.
AND SECONDLY, IN THE PRE-HURST ENVIRONMENT STILL THE JURY HAD A VERY CRITICAL ROLE--
>> WHAT DID HE MISS?
WHAT OF SIGNIFICANCE DID HE MISS OTHER THAN HE'S A NICE GUY?
>> EVEN NORGARD SAID THE JURY HEARD THE TIP OF THE ICEBERG.
THAT'S A QUOTE.
BECAUSE THIS IS A PERSON WHO HAS, HE SAID HAD DONE MORE SIGNIFICANT WORKS THAN ANY

PERSON HE HAD EVER KNOWN, AND
THIS IS A PERSON WHO WAS CALLED
DIABOLICAL BY THE PROSECUTOR.
AND I JUST WANT TO GIVE YOU SOME
EXAMPLES.
I'M NOT GOING TO TAKE UP A LOT
OF THE COURT'S TIME BECAUSE HAVE
A LOT OF OTHER ISSUES.
>> WELL, IN THIS CASE WE'VE
LOOKED AT THE U.S. SUPREME COURT
CASES WHERE LAWYERS FAILED TO
LOOK AT MEDICAL RECORDS, SCHOOL
RECORDS THAT SHOW SERIOUS
PROBLEMS WITH THE PERSON.
THE MITIGATION HERE IS NOT
PROBLEMS, IT'S ALL POSITIVE.
IS THAT-- AM I CORRECT?
>> YES, BUT--
>> OKAY.
>> THIS COURT-- YES.
>> I UNDERSTAND, OKAY.
>> IT'S NOT PROBLEMS, BUT THIS
COURT HAS SAID IN PARKER--
>> I'M NOT DISPUTING THAT, I'M
JUST ASKING THE QUESTION.
[LAUGHTER]
>> A MAN WHO HAS FINANCIALLY
SUPPORTED MANY PEOPLE WITH
MEDICAL CARE, TAKEN EXTREMELY
GENEROUS WITH HIS TIME, WITH HIS
MONEY, SUPPORTED MANY PEOPLE WHO
CAME TO THIS COUNTRY.
THIS IS A MAN WHO HAD A FRIEND
WHO HE HADN'T SEEN FOR YEARS WHO
HE FOUND OUT HAD CANCER.
HE THEN WENT AND LIVED WITH HIM
AND SUPPORTED HIM.
THIS IS, THAT'S THE KIND OF MAN
HE WAS.
THE PROBLEM IS THAT THE JURY
NEVER HEARD KIND OF MAN HE WAS
HERE.
AND THAT'S THE PROBLEM.
HE WAS NOT HUMANIZED IN ANY WAY.
AND I THINK THAT'S IMPORTANT
BECAUSE IT WAS A 9-3 VOTE, AND
ALL THAT WAS NEEDED WAS THREE
MORE, YOUR HONORS.
AND THEN WHAT WE WOUND UP WITH
WAS 26 EMOTIONAL VICTIM IMPACT

WITNESSES TESTIFYING FOR OVER
TWO HOURS VERSUS THE EIGHT PAGES
THAT WE HAD HERE OF THE MEAGER
MITIGATION TESTIMONY.
AND THERE WAS OVER 675 PAGES OF
MITIGATION TESTIMONY PRESENTED
AT THE SPENCER HEARING THAT FOR
THE FIRST TIME HUMAN USED HIM.
BUT AS IT WASN'T JUST IN THE
PENALTY PHASE THAT COUNSEL
DIDN'T PREPARE, AND THAT'S WHY I
WANTED TO ALSO, IF THE COURT
WOULD PERMIT, DISCUSS SOME OF
THE OTHER ISSUES WHICH WOULD BE
MY FIRST ISSUE, YOUR HONORS,
WOULD BE THE GIGLIO AND THE
INEFFECTIVE CLAIMS CONCERNING
THE EYEWITNESS, JOHN PURVIS.
COUNSEL FAILED TO LISTEN TO THE
TAPE RECORDED STATEMENT OF
MR. PURVIS WHO IS THE PERSON WHO
SAW THE SUSPECT AT THE TIME OF
THE MURDERS AT ERIE.
AND THEY ALSO NEVER DEPOSED HIM.
AND THE FIRST TIME, ACTUALLY,
THEY EVER SAW HIM WAS WHEN HE
WALKED INTO THE COURTROOM.
THEY CLAIMED THAT THEY HAD A
STRATEGIC REASON FOR NOT DOING
SO, AND THAT WAS THAT THEY
DIDN'T WANT TO HARM HIS
CREDIBILITY.
BUT THE FACT IS THAT THEY NEVER
REALLY, THERE WERE THINGS THAT
THEY COULD HAVE BROUGHT OUT IF
THEY WOULD HAVE JUST LISTENED TO
THE TAPE RECORDED STATEMENTS
THAT WOULDN'T HAVE HARMED HIS
CREDIBILITY THAT WOULD HAVE
REALLY HELPED MANY SERRANO.
THIS WAS A PIVOTAL WITNESS IN
THE TRIAL.
ACTUALLY, A LOT ABOUT THAT
WITNESS WAS--
>> WE TALKING ABOUT
MR. PURVIS.
>> YES.
>> AND SO MR. PURVIS WAS THE ONE
WHO SAID HE SAW SOMEONE OUTSIDE
OF THE PLACE WHERE THESE FOUR

PEOPLE, THREE OF THEM KILLED
EXECUTION STYLE--
>> YES.
>>-- AND THE OTHER ONE KILLED,
IT LOOKS LIKE, BECAUSE SHE CAME
UPON THE SCENE.
>> YES.
>> AFTER HE HAD KILLED THE OTHER
THREE.
THEN GAVE A DESCRIPTION OF
SOMEONE WHO MET AND THAT
MR. SERRANO MET THAT
DESCRIPTION.
>> THAT'S THE--
>> AND SO WHAT IS THE PROBLEM
WITH HIS TESTIMONY AGAIN
SPECIFICALLY?
>> OKAY.
SO THE PROBLEM THAT COUNSEL
DIDN'T, FAILED TO BRING OUT A
NUMBER OF THINGS THAT THEY COULD
HAVE BROUGHT OUT ABOUT HIM IF
THEY HAD JUST LISTENED TO--
>> OKAY, WHAT--
>>-- HIS TAPE RECORDED
STATEMENT.
>> OKAY.
>> FIRST, HE MADE A PRE-HYPNOSIS
STATEMENT THAT THE MAN LOOKED
LIKE HE POSSIBLY COULD BE ASIAN.
MR. SERRANO IS HISPANIC.
AND BECAUSE MR. NORGARD DIDN'T
LISTEN TO THAT, HE ENLISTED IT
ON CROSS-EXAMINATION THAT THIS
MAN WAS HISPANIC OF
MEDITERRANEAN DESCENT WITH AN
OLIVE COMPLEXION.
THERE WAS ANOTHER STATEMENT, THE
MAN WAS DEFINITELY LIGHTING A
CIGARETTE USING A LIGHTER, AND
HE TESTIFIED HE WAS POSITIVE,
AND HE EVEN DESCRIBED THE
LIGHTER IN DETAIL.
THIS WAS IN THE PRE-HYPNOSIS
STATEMENT.
BUT WHEN MR. PURVIS TESTIFIED AT
TRIAL, THE PROSECUTOR LED HIM TO
SAY THAT HE REALLY WASN'T SURE
IF HE WAS SMOKING A CIGARETTE.
HE JUST KIND OF HAD HIS HANDS

OVER HIS LAPEL BECAUSE
MR. SERRANO IS A SMOKER.
AND ANOTHER PRE-HYPNOSIS
STATEMENT THAT HE COULD HAVE
BROUGHT OUT WAS THAT MR. PURVIS
DIDN'T SEE MR. , DIDN'T SEE THE
RENTAL CAR THAT WAS SUPPOSEDLY
RENTED BY MR. SHE RAN KNOLL
NEAR-- SERRANO NEAR OR IN THE
PARKING LOT AT THE ERIE
PREMISES, AND MR. NORGARD
TESTIFIED IN RETROSPECT THIS
WOULD HAVE BEEN EVIDENCE AND
ADMITTED HE HAD NOT LISTENED TO
THE TAPE RECORDING OF THE
EYEWITNESS.
AND THE PROSECUTOR VIOLATED
GIGLIO, YOUR HONORS, BECAUSE HE
ELICITED THE MISLEADING
TESTIMONY ABOUT PURVIS NOT
SEEING A CIGARETTE, AND HE
PERMITTED THE TESTIMONY ABOUT
THE SUSPECT BEING HISPANIC WITH
NO POSSIBLE MENTION OF HIM BEING
ASIAN.
AND ALSO THERE WAS THIS ISSUE
ABOUT THE SKETCH, BECAUSE
MR. PURVIS DID A SKETCH.
WE TALKED ABOUT THIS WHEN I WAS
UP HERE FOR DIRECT APPEAL.
AND MR. PURVIS TESTIFIED AT THE
TRIAL THAT THE SKETCH RESEMBLES
THE PERSON BEST YOU COULD
DESCRIBE IT FOR THIS ARTIST.
BUT WE NOW KNOW THIS WAS FALSE
BECAUSE MR. PURVIS DID A SECOND
SKETCH OF THIS PERSON, AND HE
MODIFIED THE FIRST SKETCH
BECAUSE HE RECALLED LATER THAT
THE MAN HAD SOME DIFFERENT
FEATURES THAN HE FIRST THOUGHT.
AND THOSE SKETCHES ARE IN
EVIDENCE, AND IT'S IMPORTANT
BECAUSE THE JURY WAS LEFT WITH
THE IMPRESSION THAT THAT SKETCH
WAS HIS BEST RECOLLECTION OF WHO
THIS MAN LOOKED LIKE WHEN, IN
FACT, IT WAS NOT.
AND THIS WAS NOT OBJECTED TO BY
DEFENSE COUNSEL, AND IT WAS

PURPOSELY ELICITED BY THE
PROSECUTOR.
AND I SUBMIT THAT THIS WAS
PREJUDICIAL BECAUSE EVEN THE
STATE SAID IN THEIR BRIEF ON
DIRECT APPEAL THAT THE FIRST
SKETCH LOOKED, HAD STRIKING
SIMILARITIES TO MR. SERRANO.
AND THIS SKETCH WAS RELIED UPON
BY THE COURT IN THE DIRECT
APPEAL.
ANOTHER ISSUE, YOUR HONORS, THAT
I WANTED TO TALK ABOUT WAS THAT
COUNSEL FAILED TO OBJECT TO
IMPROPER OPINION TESTIMONY BY
THE DETECTIVE THAT THE MOTIVE
WAS NOT ROBBERY.
AND TO THE PROSECUTOR'S
STATEMENT DURING OPENING
STATEMENT THAT THE POLICE DON'T
BELIEVE ROBBERY WAS THE MOTIVE
WHEN, IN FACT, THAT WAS A BIG
DEFENSE AND ARGUED A LOT IN THE
CLOSING ARGUMENT.
AND AS THE COURT NOSES, OPINION
TESTIMONY-- KNOWS, OPINION
TESTIMONY BY THE POLICE THAT
INVADES THE--
>> YOU'RE INTO YOUR REBUTTAL
TIME.
YOU'RE FREE TO CONTINUE, I JUST
WANT TO WARN YOU.
>> AM I INTO MY REBUTTAL TIME?
>> I'M SORRY?
YOU'RE DOWN INTO YOUR REBUTTAL
TIME.
I JUST WANT TO WARN YOU.
>> THANK YOU, YOUR HONOR.
I THINK THAT REALLY HARMED THE
DEFENSE, BECAUSE IT WAS ARGUED
IN CLOSING ARGUMENT, AND THERE
WAS A TON OF EVIDENCE THAT, IN
FACT, YOUR HONORS, ROBBERY WAS
THE MOTIVE.
AND POLICE, AS YOU KNOW, HAVE A
SPECIAL AURA OF TRUSTWORTHINESS.
SO THANK YOU, YOUR HONORS.
>> MAY IT PLEASE THE COURT,
ASSISTANT ATTORNEY GENERAL
STEPHEN AKE ON BEHALF OF THE

STATE OF FLORIDA.
BEGINNING, I GUESS, WITH TALKING ABOUT HURST BECAUSE THIS COURT BROUGHT THAT OUT INITIALLY THAT THIS IS A CASE THAT WAS FINAL IN 2011.
OBVIOUSLY, THE STATE'S BEEN ARGUING FOR QUITE SOME TIME NOW THAT HURST IS NOT RETROACTIVE, SO WE DON'T BELIEVE--
>> WELL, JUST A COUPLE OF FACTS. COUNSEL SAID THAT THE ISSUE WAS RAISED AT TRIAL, IS THAT CORRECT?
>> CORRECT.
AND ON APPEAL.
>> AND ON APPEAL.
>> CORRECT.
>> SO THAT WE KNOW, AND WE CAN FIGURE OUT WHEN THE FINAL--
>> RIGHT.
AND THIS COURT DENIED IT BASED ON CONTEMPORANEOUS CONVICTIONS FOR THE OTHER HOMICIDES.
WE HAD THE FOUR HOMICIDES--
>> WELL, IF WE WOULD ASSUME THAT HURST WOULD APPLY, IS THERE SOMETHING ABOUT THOSE OTHER CONVICTIONS THAT WOULD TAKE IT BEYOND JUST THE FINDING OF ONE AGGRAVATOR UNANIMOUSLY BECAUSE OF THE MULTIPLE MURDERS?
>> CERTAINLY, THE JURY MADE THAT FACTUAL FINDING--
>> I UNDERSTAND, BUT HOW MANY WOULD THAT UNDERSTAND?
WHERE DOES THAT PUT US?
>> THAT SATISFIES ONE OF THE AGGRAVATORS FOUND BY THE JUDGE, THE OTHER WAS CCP--
>> JUST ONE?
>> YES.
THERE'S ONE OTHER AGGRAVATOR THAT WAS FOUND AS TO THE FOURTH VICTIM ONLY, DIANE PATISSO, THAT SHE-- ELIMINATING THE WITNESS BECAUSE SHE CAME IN.
THAT ONE'S FOUND BY THE JUDGE ALSO AS TO THAT ONE MURDER.
>> OKAY.

>> FACTUALLY, AM I CORRECT THAT SHE, WHEN SHE ARRIVED, THE REST OF THE VICTIMS WERE ALREADY DEAD AND SHE JUST FOUND THEM, AND HE WAS THERE--
>> THAT'S MOST LIKELY WHAT HAPPENED, YOUR HONOR.
>> HOW DO WE KNOW THAT? ANYBODY CONFESS?
>> NO, NO, WE DON'T. WE'RE BASING THAT BASED ON THE CRIME SCENE AND HOW IT HAPPENED. WE BELIEVE THAT BASED ON THE LAYOUT OF THE BUILDING THAT SHE WAS COMING INTO THE BUILDING AS THE KILLER WAS LEAVING AND WAS KILLED IN THAT HALLWAY--
>> WOULD A JURY-- GO AHEAD.
>> WAS, AND SHE WAS-- WAS SHE KILLED WITH A DIFFERENT GUN? THERE WAS A .22 AND A .32--
>> RIGHT.
>> THEN THREE EXECUTION-STYLE VICTIMS WERE KILLED WITH THE .22?
>> ALL OF THEM WERE SHOT WITH THE .22 INCLUDING THE FOURTH VICTIM WHO HAD ONE SHOT WITH A .22 AND ONE SHOT WITH A .32.
>> AND WHICH OF THOSE GUNS WAS ALLEGEDLY THE ONE THAT MR. SERRANO HAD IN THE--
>> CEILING?
>>-- CEILING?
>> THE .32, PRESUMABLY, WAS THAT ONE, AND THAT'S WHAT THE STATE ARGUED BASED ON THE MOVED CEILING TILE AND THE FOOTPRINT UNDERNEATH THE SEAT AND THE FACT THAT WITNESSES HAD SEEN HIM HIDING ITEMS IN THAT CEILING TILE.
THE THEORY WAS THAT HE HAD BEEN FIRED FROM THE PARTNERS AND HAD BEEN LOCKED OUT OF THE BUILDING, BASICALLY, AND HAD COME BACK AND RETRIEVED THAT ITEM.
SO THAT WAS EXPLAINED--
>> WAS THE JURY VOTE DIFFERENT FOR THE FOUR VICTIMS?

>> NO, YOUR HONOR.
IT WAS THE SAME.
>> AND WERE THE FINDINGS OF THE
TRIAL COURT ON THE AGGRAVATORS
DIFFERENT FOR THE FOUR VICTIMS?
>> JUST FOR THAT ONE VICTIM.
>> OKAY.
>> ADDITIONAL AGGRAVATOR.
>> WHEN WE REJECTED THE RING
CLAIM, WE SAID WE HAVE
REPEATEDLY REJECTED ARGUMENTS
THAT FLORIDA'S CAPITAL
SENTENCING SCHEME IS
UNCONSTITUTIONAL, AND WE
REFERRED TO BOTTOSON AND KING.
YOU AGREE THAT HURST OVERRULE--
BASICALLY, CAUSED THOSE
DECISIONS TO BE OVERRULED?
>> RIGHT.
>> SO NOW THE QUESTION IS-- AND
HE, UNDER OUR NEW STATUTE, THE
LEGISLATURE PASSED, HE WOULD
RECEIVE LIFE IF THE SAME VERDICT
WAS RENDERED WITH PROPER JURY
INSTRUCTION.
>> WELL--
>> IS THAT RIGHT?
>> IF HE WAS REMANDED BACK FOR A
NEW SENTENCING HERE--
>> NO, NO.
I'M SAYING THE 9-3 UNDER
FLORIDA--
>> RIGHT.
NOW IT'S 10-2.
>>-- WOULD BE A LIFE SENTENCE.
>> IF THE JURY WERE TO COME BACK
TODAY UNDER A 9-3 UNDER THE NEW
STATUTE, YES, THAT'S CORRECT.
>> WE WOULD HEAR THE ISSUE
WHETHER IT'S RETROACTIVE--
>> CORRECT.
>> THE DATE THAT THE FLORIDA
SUPREME COURT-- NOT FLORIDA,
THE U.S. SUPREME COURT
DECIDED THAT RING ACTUALLY,
YOU KNOW, 14 YEARS LATER APPLIED
IN FLORIDA, THAT'S REALLY THE,
GOING TO BE THE, ACCORDING TO
THE STATE, THE DIVIDING LINE,
RIGHT?

ONLY TO DIRECT APPEALS.
>> RIGHT.
FROM THE TIME OF HURST TO THE
NEW CASES, BASICALLY, THAT ARE
HERE.
>> BUT YOU WOULD STILL SAY--
AND, AGAIN, I KNOW NOT YOU, BUT
ALL THE STATE HAS SAID IS THAT
IT JUST NEEDS ONE AGGRAVATOR.
>> RIGHT.
CORRECT.
AND WE HAVE THAT FACTUAL FINDING
HERE WITH THE FOUR HOMICIDES.
>> SO YOU WOULD AGREE THAT ANY
CASE THAT WAS, THAT'S IN THE
PIPELINE WHEN HURST WAS DECIDED
WOULD HAVE THE BENEFIT OF HURST
WHICH IS--
>> RIGHT.
>>-- AN EXTENSION OF RING.
BUT THE CASES WHERE RING WAS
ACTUALLY RAISED AND DISCUSSED
WOULD NOT HAVE THE BENEFIT OF
HURST.
>> RIGHT.
IN CASES THAT ARE FINAL, THAT
ARE FINAL PRIOR TO HURST DON'T
HAVE, IT'S NOT AFFECTED BY IT.
>> AND WHY WOULD THAT BE THE
CASE SINCE, YOU KNOW, MY READING
OF HURST IS HURST IS REALLY JUST
AN EXTENSION OF RING, AND IF YOU
MADE THE RING ARGUMENT, WHY
WOULDN'T YOU GET THE BENEFIT OF
IT?
>> WELL, I THINK YOU HAVE A, THE
WHOLE RETROACTIVITY ARGUMENT
STILL APPLIES AS TO WHAT
HAPPENED AFTER RING CAME OUT
THAT YOU HAVE ALL THESE YEARS
OF-- I DON'T REMEMBER HOW MANY
YEARS THAT IS-- OF THE STATE
RELYING ON THAT.
AND THE REASONS THAT THIS COURT
SET FORTH IN JOHNSON AS TO
RETROACTIVITY, I THINK,
STILL APPLY, I MEAN, EVEN TO
THAT.
YOU STILL HAVE 15 YEARS--
>> [INAUDIBLE]

>> WHAT WAS THAT?
>> AND WHAT REASON IS THAT?
>> THAT, BASICALLY, THE RELIANCE ON THE STATE AND THE UPHEAVAL THAT IS GOING TO CAUSE THE FINALITY OF THE DECISIONS--
>> DO YOU KNOW HOW MANY CASES WE'RE TALKING ABOUT?
>> NO--
>> CASES WHERE--
>> FROM--
>>-- THAT HAVE BEEN FINAL BEFORE HURST WAS DECIDED BUT THAT RING WAS ACTUALLY ARGUED IN THOSE CASES.
>> NO, YOUR HONOR, I CERTAINLY DON'T KNOW THAT.
I DON'T KNOW IF THAT'S BEEN CITED IN ANY OF THE BRIEFS.
I'M NOT SURE--
>> BUT YOU HAVE TO, I MEAN, HERE'S THE ISSUE.
AND WE'RE STRUGGLING--
>> RIGHT.
>> AND APPRECIATE YOUR, YOU KNOW, INDULGENCE ON THIS SINCE ALL THE PENALTY PHASE SORT OF GOES AWAY.
>> RIGHT.
>> PLEASE, WE'LL HAVE YOU GO BACK TO IT.
BUT THE EXTENT OF THE RELIANCE, THE DAY THAT RING WAS DECIDED AND BOTTOSON AND KING WERE POST-CONVICTION CASES, THIS COURT IN SEVEN DIFFERENT DECISIONS WERE PROGNOSTICATING IN DIFFERENT WAYS WHAT RING MEANT, AND THE MAJORITY SETTLED ON, LISTEN, IT'S UP TO THE U.S. SUPREME COURT TO OVERRULE SPAZIANO AND HILDWIN.
NOW YOU HAVE STEELE IN 2006, PLEASE, GO TO UNANIMOUS.
LET'S NOT HAVE THIS DEATH PENALTY IN JEOPARDY.
AND, OF COURSE, SEVERAL OF US SAYING IT'S UNCONSTITUTIONAL.
SO THE CONCERN IS THAT THE U.S. SUPREME COURT SET UP AN

ARBITRARY DATE IN WHICH THEY
DECIDED TO COME OUT WITH HURST,
WHICH ALL THEY'RE DOING IS JUST
REITERATING WHAT THEY SAID IN
RING WHICH IS THAT OUR DEATH
PENALTY STATUTE AS OF RING WAS
UNCONSTITUTIONAL.
SO IT IS DIFFERENT THAN, IN MY
VIEW, THAN ANY OTHER SITUATION
THAT I KNOW ABOUT WHERE IT'S
THAT PERIOD OF TIME FROM WHEN
RING CAME OUT.
AND YOU DON'T SEE ANY REASON FOR
THE EXTENT OF RELIANCE BEING
DIFFERENT AFTER RING THAN BEFORE
RING?
>> I DON'T BELIEVE THERE IS.
I KNOW THIS COURT IS CONCERNED
WITH THAT, AND IT MAY COME OUT
THAT WAY OR OF WHAT HAVE YOU,
BUT I DON'T BELIEVE THAT THERE
IS ANY DIFFERENCE IN IT.
I THINK IT'S AN EXTENSION OF
RING, OBVIOUSLY.
BUT YOU STILL HAVE THE FINALITY
THAT'S NECESSARY IN THE
RETROACTIVE ANALYSIS AS, YOU
KNOW, THIS COURT DETAILED AT
LENGTH IN JOHNSON.
AND I THINK THAT STILL IS
APPLICABLE HERE TODAY.
>> BUT ISN'T, DOESN'T THE
JURISPRUDENCE OF OUR COURT
SUGGEST OR DIRECTLY HOLD THAT IF
A DEFENDANT SUBMITS A
CONSTITUTIONAL POSITION ON, AT
TRIAL AND ON APPEAL AND LATER ON
THE U.S. SUPREME COURT STATES AT
A LATER DATE THAT ONE OF THE
AGGRAVATORS IS UNCONSTITUTIONAL
CONCERN WHICH THAT DEFENDANT HAD
PRESERVED, CASE OVER-- THAT
THAT DEFENDANT STILL GETS THE
BENEFIT BECAUSE THEY HAD
PRESERVED THE ISSUE.
>> I DON'T BELIEVE SO, YOUR
HONOR.
>> JAMES?
YOU DON'T THINK JAMES SAYS THAT
DIRECTLY?

IT'S UNMISTAKABLE WHAT HE SAID.
>> I'M NOT AWARE OF THAT YOUR HONOR.
THAT'S MY UNDERSTANDING OF IT.
>> THE POINT BEING THAT I'M NOT SURE THAT-- WE'RE SORT OF PASSING EACH OTHER ON THE RETROACTIVE DISCUSSION.
>> RIGHT.
>> YOU KNOW, I CAN, I CAN SEE THAT IT'S NOT RETROACTIVE IN CASES WHERE IT'S NOT PRESERVED.
BUT THAT'S THE ACTUAL POINT FOR PRESERVING POSITIONS FOR APPEAL.
AND IT JUST DOESN'T MAKE SENSE TO ME THAT IF A DEFENDANT, A CITIZEN OF FLORIDA HAS RAISED THAT EXACT ARGUMENT.
>> RIGHT.
>> BOTH AT TRIAL AND ON APPEAL, AND BECAUSE WE WERE WRONG, THAT THEY DON'T GET THE BENEFIT OF WHAT THE U.S. SUPREME COURT RULING WOULD BE.
>> WELL, MR. SERRANO DID RAISE IT BELOW AND DID RAISE IT ON APPEAL, AND IT WAS REJECTED.
>> OKAY.
>> IF I CAN, I'D LIKE TO BRIEFLY DISCUSS THE ISSUES THAT WERE RAISED AS TO INEFFECTIVE ASSISTANCE OF PENALTY PHASE COUNSEL, AND I WOULD STATE THAT THIS CASE, JUSTICE PARIENTE HIT THE NAIL ON THE HEAD MR. NORGARD TESTIFIED THAT I HAVE A QUADRUPLE HOMICIDE HERE, AND I KNOW MY MITIGATION WITNESSES IN ECUADOR ARE GOING TO BE, BASICALLY, A GOOD GUY STRATEGY OR A PRESENTATION TO THE JURY, AND THAT'S NOT GOING TO FLY.
I'M GOING TO PURPOSELY HOLD THAT BACK AND SEE WHAT KIND OF RECOMMENDATION I GET AND THEN PRESENT THAT TO THE JUDGE AT THE SPENCER HEARING.
>> SO HOW COULD-- WOULD A REASONABLE ATTORNEY BELIEVE THAT A JUDGE WOULD BE ANY MORE

SYMPATHETIC IN A QUADRUPLE--
WHAT IS IT?
>> QUADRUPLE.
>> QUADRUPLE HOMICIDE TO THAT
KIND OF INFORMATION THAN THE
JURY WOULD BE?
>> YES, I THINK THAT'S VERY
REASONABLE ESPECIALLY GIVEN
SOMEBODY WITH MR. NORGARD'S
EXPERIENCE AND HIS EXPERIENCE
WITH THIS PARTICULAR JUDGE WHO
HE SAID, HE WAS AWARE OF THAT
SHE HAD BASICALLY, DID NOT FAVOR
THE DEATH PENALTY FOR OLDER
DEFENDANTS.
AND IN MR. SERRANO'S CASE, HE
WAS, I BELIEVE HE WAS 68 AT THE
TIME THAT THE PENALTY PHASE WAS
HAPPENING--
>> 58.
>> THAT WAS AT THE TIME OF THE
CRIME.
HE WAS, THE CRIME WAS IN '97,
AND THEN HE WAS SENTENCED--
>> OH, HE WAS 50-SOMETHING IN--
>> 59 IN '97 AND 68 AT THE TIME
OF SENTENCING.
>> OH, OKAY.
>> BUT THAT WAS ONE OF NUMEROUS
FACTORS THAT MR. NORGARD STATED.
HIS OTHERS, BASICALLY, HIS
PREMISE WAS I PRESENTED A LOT OF
THIS GOOD GUY EVIDENCE IN THE
GUILT PHASE, SO THE JURY WAS
ALREADY AWARE OF THIS FOR THE
MOST PART--
>> WHAT KIND OF GOOD GUY, I
MEAN, IT SEEMS AS-- YOUR
OPPONENT SEEMS TO SAY THAT ONE
OF THAT AT ALL WAS ADMITTED--
>> NO, YOUR HONOR.
THE JURY WAS AWARE THAT HE HAD
IMMIGRATED TO THE U.S. AND THAT
HE HAD EMPLOYED A NUMBER OF HIS
FRIENDS AND FAMILY AND THAT HE'D
HELPED THEM OUT AND ASSISTED
THEM.
ALL THAT CAME OUT IN THE GUILT
PHASE.
THAT WAS THE KIND OF INFORMATION

THAT CAME OUT, THAT HE WAS A SUCCESSFUL BUSINESSMAN.
THAT ALL CAME OUT IN THE GUILT PHASE, AND THAT WAS TOUCHED UPON.
AND, BASICALLY, MR. NORGARD SAID I MADE A DECISION TO PRESENT THIS TO THE JUDGE ONLY AT THE SPENCER HEARING.
HE WAS AWARE OF THESE WITNESSES.
HIS MITIGATION SPECIALIST HAD BEEN IN CONTACT WITH THESE WITNESSES OR IN CONTACT WITH THE FAMILY AND HAD PROVIDED A LIST OF THESE WITNESSES--
>> THEY HAD BEEN-- THE MITIGATION SPECIALIST HAD BEEN IN CONTACT WITH THESE PEOPLE PRIOR TO THE PENALTY PHASE?
>> YES.
SHE HAD TWO AND A HALF YEARS BEFOREHAND SHE HAD MADE UP A LIST OF ALL THE WITNESSES FROM FROM SPEAKING WITH MR. SERRANO AND HIS FAMILY HERE LOCALLY IN THE BARTOW AREA THERE THAT SHE HAD COME UP WITH THESE AND SUMMARIZED WHO THEY WERE AND WHAT THEY WOULD SAY AND HAD BEEN IN DISCUSSIONS WITH MR. NORGARD ABOUT THESE WITNESSES.
THE ONLY THING THEY PROVED IS HE DIDN'T ACTUALLY TRAVEL TO ECUADOR BEFORE THE SPENCER HEARING, SO THAT WAS MAINLY LOGISTICS.
>> AFTER THE PENALTY PHASE HE WENT TO ECUADOR.
>> CORRECT.
AND DID VIDEO DEPOSITIONS OF A NUMBER OF WITNESSES.
>> I'M THINKING, AND IT'S NOTHING, YOU KNOW, AGAINST WHAT A FAMILY WANTS TO DO, IS THAT THERE OFTENTIMES ARE THESE FAMILY MEMBERS WHO COME OUT OF SOMETIMES THE WOODWORK, AND NOW THAT THE PERSON'S BEEN CONVICTED AND NOW THEY WANT TO OFFER TESTIMONY.

YOU KNOW, I WOULD THINK
MR. NORGARD MIGHT HAVE BEEN
CONCERNED ABOUT THE
CROSS EXAMINATION THAT THEY--
DID HE MENTION THAT?
>> YEAH, HE DID, HE WAS AFRAID
SOME NEGATIVE INFORMATION MIGHT
COME OUT IF HE PRESENTED THEM
BEFORE THE JURY.
THE OTHER THING THAT HE HAD--
>> DID HE HAVE SPECIFIC NEGATIVE
INFORMATION THAT HE THOUGHT
MIGHT COME OUT?
>> YES.
EXCUSE ME, YOUR HONOR.
YES, THE ALLEGATION OF SEXUAL
ABUSE AGAINST MR. SERRANO'S
DAUGHTER, HE WAS AFRAID ONE OF
THE WITNESSES MAY OPEN THAT
IN--
>> I GUESS WHAT I WAS MORE
THINKING ABOUT IS JUST, LOOK,
YOU HAVE NOT LIVED, YOU HAVE NOT
BEEN WITH THIS PERSON.
>> RIGHT.
>> YES, HE GRADUATED COLLEGE,
HE'S A GREAT GUY, BUT YOU
HAVEN'T BEEN IN CONSTANT CONTACT
OR YOU HAVEN'T-- I DON'T KNOW
IF ALL OF THEM WERE LIKE THAT OR
HOW WOULD YOU GRADE THE
WITNESSES THAT CAME AT THE
SPENCER HEARING?
WERE SOME OF THEM HAD CONSTANT
CONTACT UP UNTIL THE TIME OF THE
CRIME OR WHAT WAS IT?
>> I THINK IT WAS A MIXED BAG.
MR. SERRANO CERTAINLY TRAVELED
BACK TO ECUADOR QUITE OFTEN.
BUT HE HAD BEEN IN THE UNITED
STATES SINCE, I BELIEVE, I WANT
TO SAY '71, SO HE HAD BEEN HERE
FOR A LONG TIME.
BUT THEY WERE EXTENDED FAMILY,
FOR THE MOST PART, AND FRIENDS
AND THAT KIND OF THING.
AND, I MEAN, WE'VE TALKED ABOUT
DEFICIENT PERFORMANCE, BUT WE
HAVEN'T REALLY TOUCHED ON
PREJUDICE.

THE TRIAL JUDGE HEARD ALL.
THIS I MEAN, THEY DIDN'T PRESENT ANYTHING NEW IN THE POST-CONVICTION EVIDENTIARY HEARING THAT WASN'T ALREADY PRESENTED TO THE JUDGE DOWN BELOW.
>> I JUST, I JUST THINK, YOU KNOW, JUST LOOKING AT THE RECORD HERE AND LOOKING AT THE EVIDENCE AND THE ARGUMENTS THAT ARE PRESENTED, THIS CASE RAISES THE CLASSICAL CONFLICT THAT A CRIMINAL DEFENSE LAWYER IS USUALLY FACED WITH.
ONCE THERE'S A CONVICTION, THEN THE FAMILY WANTS TO BRING IN EVERYBODY IN THE WORLD TO TESTIFY WHAT A NICE MAN HE IS.
ON THE OTHER HAND, YOU'RE TALKING ABOUT A NICE MAN WHO HAS BEEN CONVICTED OF EXECUTION-STYLE KILLING FOUR PEOPLE, ONE ONLY JUST WANDERING INTO THE SCENE.
AND THIS IS WHERE DEFENSE LAWYERS HAVE TO MAKE A BALANCING ACT.
WHAT GOOD IS IT GOING TO DO ME TO PRESENT THAT?
THAT PROBABLY WORKS BETTER ON THE JUDGE THAN THE JURY.
THE JURY'S GOING TO WRITE THAT OFF.
>> RIGHT.
>> SO THOSE ARE THE BALANCING THINGS, AND THOSE ARE THE THINGS WE STRUGGLE WITH HERE IN POST-CONVICTION AND THINGS LIKE THAT, BECAUSE THOSE ARE CHOICES THAT SEASONED, EXPERIENCED TRIAL LAWYERS HAVE TO MAKE.
>> RIGHT.
>> AND THAT'S WHY YOU HIRE A SEASONED LAWYER, ONE WHO KNOWS HOW THE JUDGE THINKS, THE PRACTICE IN A PARTICULAR COMMUNITY, THE PRACTICE IN A PARTICULAR AREA, WHAT JURORS IN THAT PARTICULAR AREA MAY THINK.

ALL THOSE THINGS COME INTO PLAY.
AND IT'S JUST, THE MONDAY MORNING QUARTERBACKING IS, IN POST-CONVICTION CASES IS SOMETHING THAT I'VE FOUND ASTONISHING SINCE I'VE BEEN ON THE COURT.
>> RIGHT.
AND THE CASE LAW'S REPLETE WITH THE HINDSIGHT ANALYSIS ISN'T WHAT YOU DO.
I MEAN, YOU'RE MAKING THE SAME ARGUMENTS MR. NORGARD SAID BELOW, HIS STRATEGY AND REASONS FOR DOING IT THIS WAY.
YOU HAD A QUADRUPLE MURDER AND YOU HAD, BASICALLY, GOOD GUY EVIDENCE, AND HE DIDN'T WANT TO PRESENT THAT TO THE JURY, BECAUSE HE THOUGHT THAT WOULD KIND OF HURT HIS CASE BECAUSE HE HAD THIS, YOU KNOW, LINGERING REASONABLE DOUBT THAT HE WAS HOPING WOULD BE AROUND.
SO THOSE ARE VALID STRATEGY REASONS WHICH ARE OKAY, AND THAT'S WHY THE LOWER COURT BELOW DENIED THAT CLAIM.
BRIEFLY TALK ABOUT THE GIGLIO AND PURVIS ISSUE.
MR. PURVIS HAD IDENTIFIED A PERSON THAT HE HAD SEEN OUTSIDE OF ERIE.
BASICALLY, THE TESTIMONY FROM MR. NORGARD WAS HE REALLY LIKED PURVIS' DESCRIPTION OF THIS INDIVIDUAL BECAUSE HE SAID HE WAS 25-30 YEARS OLD AND THAT HE DID NOT WANT TO IMPEACH MR. PURVIS AS TO ALL THESE INCONSISTENCIES.
HE WAS AWARE THAT MR. PURVIS HAD GIVEN A POLICE SKETCH AND GIVEN A DESCRIPTION IMMEDIATELY AFTER THE CRIME, AND THEN IT WAS TWO YEARS LATER THAT HE WAS HYPNOTIZED.
AND MR. NORGARD WAS AWARE THAT NONE OF THAT WOULD BE ADMISSIBLE SO, THEREFORE, HE DIDN'T GO AND

LISTEN TO THE TAPES.
BUT HE WAS GIVEN THE POLICE
REPORTS IN DISCOVERY THAT
DISCUSSED THOSE.
HE WAS AWARE OF THE POLICE
REPORTS WHICH INDICATED THAT
MR. PURVIS HAD SAID THAT HE WAS
ASIAN BECAUSE MR. PURVIS HAD
SAID THE PERSON WAS
MEDITERRANEAN, HISPANIC,
ORIENTAL OR ASIAN.
HE TESTIFIED AT TRIAL THAT HE
WAS MEDITERRANEAN OR HISPANIC,
NON-CAUCASIAN.
DEFENSE COUNSEL WAS, OF COURSE,
AWARE OF THAT BUT DIDN'T WANT TO
BRING IT UP.
THE LIGHTING OF THE CIGARETTE
WAS MR. PURVIS WAS EQUIVOCAL ON
THAT AT ONE POINT IN TIME.
HE WAS BASICALLY, HIS STATEMENT
TO LAW ENFORCEMENT WAS HE
THOUGHT HE WAS LIGHTING A
CIGARETTE, AND THEN RIGHT BEFORE
THE HYPNOSIS HE GAVE MORE
SPECIFIC RECALL THAT HE HAD A
ZIPPO LIGHTER.
AGAIN, THAT'S NOT A MATERIAL
DIFFERENCE.
>> SO IT WOULD NOT REACH THE
PREJUDICE PRONG EVEN IF--
>> NO.
AND I DON'T EVEN KNOW THAT IT'S,
QUOTE-UNQUOTE, FALSE FIRST OFF
BECAUSE IT'S BASICALLY HIS
RECOLLECTION OVER A, ALMOST A
TEN-YEAR PERIOD CHANGING.
AND AT TRIAL HE TESTIFIED THAT
HE ASSUMED HE WAS LIGHTING A
CIGARETTE BASED ON HIS
MANNERISMS, YOU KNOW, HOLDING
HIS LAPEL UP AND HIDING HIS FACE
AND HAND, IT LOOKED LIKE HE WAS
LIGHTING A CIGARETTE.
SO THAT ALL CAME OUT AT TRIAL.
IT JUST WASN'T QUITE AS STRONG
THAT HE HAD A ZIPPO LIGHTER, IS
THE ONLY THING THAT WAS
DIFFERENT THERE.
AND THE LAST ISSUE THAT COUNSEL

RAISED WAS AN IMPROPER OPINION
TESTIMONY THE IAC CLAIM ON THAT,
AND THE TRIAL JUDGE DENIED THAT
AND FOUND THAT COUNSEL WASN'T
DEFICIENT OR THAT HE WASN'T
PREJUDICE BECAUSE COUNSEL
BASICALLY SAID I GOT WHAT I
WANTED OUT OF THAT OFFICER.
HE TESTIFIED THAT A WATCH WAS
STOLEN EVEN THOUGH THERE WASN'T
ANY EVIDENCE.
HE DIDN'T WANT TO OBJECT BECAUSE
IT WOULD JUST ALLOW THE STATE TO
GO AD NAUSEAM AS TO ALL THE
INVESTIGATION AND THINGS INTO
IT, SO HE DIDN'T OBJECT TO IT.
SO IF THERE ARE NO FURTHER
QUESTIONS, THE STATE WILL ASK
THIS COURT TO AFFIRM.
THANK YOU.
>> THANK YOU.
>> I KNOW I ONLY HAVE A BRIEF
TIME, AMOUNT OF TIME, YOUR
HONORS, SO I CAN'T ADDRESS
EVERYTHING.
MOST OF IT IS ADDRESSED IN MY
REPLY BRIEF.
BUT I KNOW THAT THE COURT DID
HAVE SOME QUESTIONS REGARDING
THE ECUADORAN WITNESSES.
IT'S A VERY LONG RECORD.
I WOULD SAY ALMOST ALL OF THOSE
WITNESSES KNEW HIM FROM THE TIME
HE WAS A CHILD ALL THE WAY UP
UNTIL THE TIME OF THIS, THAT THE
CRIMES WERE COMMITTED.
THESE WEREN'T PEOPLE WHO LOST
TOUCH WITH HIM, THEY WERE VERY
CLOSE RELATIVES WHO KNEW HIM
VERY WELL.
>> BUT HE KNEW ABOUT ALL OF
THEM.
>> MR. SERRANO, OF COURSE--
>> NO, NO, MR. NORGARD.
>> ILL LIKE TO-- I WOULD LIKE
TO CORRECT THE RECORD ON THAT.
THE MITIGATION INVESTIGATOR'S
TESTIMONY IS VERY SHORT.
IT DOESN'T TAKE LONG TO READ IT,
AND SHE MAKES IT CRYSTAL CLEAR

THERE THAT NOBODY REALLY TALKED
TO THOSE PEOPLE UNTIL AFTER THE
PENALTY PHASE.
NOBODY.
NOT MR. NORGARD, NOT HER,
NOBODY.
>> SHE DID NOT MAKE A LIST OF
ALL THESE PEOPLE AND SAY,
ESSENTIALLY, WHAT THEY HAD TO
OFFER?
>> THE LIST IS JUST A LIST OF
NAMES THAT SHE MADE WITH
MR. SERRANO AND ADDRESSES.
SHE DIDN'T TALK TO THEM UNTIL
AFTER--
>> WAS THERE ANYTHING ABOUT WHAT
THESE PEOPLE COULD OFFER?
DOES SHE--
>> NOT-- SHE TESTIFIED THAT SHE
DID NOT SPEAK TO THEM AND
NEITHER DID MR. NORGARD UNTIL
AFTER PENALTY PHASE AND THAT SHE
WAS FOLLOWING HIS DIRECTION.
>> WELL, SHE TALKED TO, SHE GOT
THESE NAMES FROM MR. SERRANO.
>> SHE DID GET THE NAMES.
>> SO I WOULD ASSUME MR. SERRANO
WOULD HAVE TOLD HER SOMETHING
ABOUT WHAT HIS RELATIONSHIP WAS
WITH THEM OR WHAT, HOW THEY
COULD BE USEFUL.
IS THAT NOT THE CASE?
>> THIS IS NOTHING IN THE RECORD
AS TO WHAT-- THERE'S NOTHING IN
THE RECORD AS TO WHAT HE TOLD
HER.
BUT SHE DID SAY UNEQUIVOCALLY
THAT SHE HAD NO CONTACT WITH
THEM UNTIL AFTER THE PENALTY
PHASE.
AND I DID WANT TO CORRECT
SOMETHING THAT WAS IN MY
COUNSEL'S BRIEF, AND THAT WAS
THAT HE SAID SHE COMMUNICATED
WITH THOSE ECUADORAN WITNESSES
THROUGH E-MAILS AND PHONE CALLS,
BUT SHE WAS SAYING WHEN SHE
FINALLY GOT AROUND TO SETTING UP
THE TRIP TO GO TO ECUADOR, THEN
SHE HAD COMMUNICATIONS WITH THEM

TO SET UP THE TRIP.
THAT'S THE ONLY TIME SHE HAD
COMMUNICATIONS WITH THEM.
AND, YOUR HONORS, I KNOW I JUST
HAVE A BRIEF PERIOD OF TIME.
I'D LIKE TO SUM UP BY SAYING
THAT THIS WAS A CIRCUMSTANTIAL
CASE AND IN THIS CIRCUMSTANTIAL
CASE IN THE MATTERS WE'VE RAISED
IN THE BRIEF WITH MR. PURVIS
REGARDING A SKETCH THAT WAS
FALSE THAT WAS SHOWN TO THE
JURY, HIS NON-IDENTIFICATION OF
MR. SERRANO'S CAR AT THE ERIE
PARKING LOT, THE FACT THAT HE
POSITIVELY SAID THAT THE PERSON
WAS SMOKING AND THERE WAS PROOF
THAT MR. SERRANO DOES NOT SMOKE,
THAT HE CALLED THE PERSON ASIAN
AND-- THAT WAS STABLING
OUTSIDE-- STANDING TO OUTSIDE,
THE STATE ARGUED THAT
MR. SERRANO HAD LOST HIS
PRESUMPTION OF INNOCENCE.
HE WAS CALLED A DIABOLICAL LIAR
DURING FINAL ARGUMENTS.
THAT THE POLICE AND THE
PROSECUTORS WERE ABLE TO GIVE
THEIR OPINION THAT ROBBERY WAS
THE MOTIVE FOR THIS CRIME
DESPITE THE FACT THAT THAT WAS A
DEFENSE AND THERE WAS ED THAT
THERE WAS A ROBBERY-- EVIDENCE
THAT THERE WAS A ROBBERY HERE.
THE DEFENSE DIDN'T INTRODUCE ANY
EVIDENCE OF MR. SERRANO'S SHOE
SIZE EVEN THOUGH IT WAS A 9, AND
THE SHOE IMPRINT WAS A 7.
AND THEY FAILED TO PUT ON ANY
EVIDENCE ABOUT THE ABILITY TO
ACTUALLY DO THE TRIP WITHIN THE
TIMELINE WHICH IS AN IMPORTANT
PART OF THIS CIRCUMSTANTIAL
CASE, BECAUSE THE STATE HAD
TO--
>> COUNSEL, I THINK YOU NEED TO
WRAP IT UP.
>> I THINK THAT ALL THOSE THINGS
WERE, SHOW THAT IT COULD HAVE
BEEN FAR BETTER DEFENDANT AND

UNDERMINE CONFIDENCE IN THE
OUTCOME, AND I WOULD ASK THE
COURT TO ORDER A NEW TRIAL AND,
CERTAINLY, A NEW SENTENCING.
THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.