

>> ALL RISE.
>> SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
PLEASE BE SEATED.
>> WE NOW TAKE UP THE THIRD CASE
ON TODAY'S DOCKET, CRAVEN V. THE
STATE OF FLORIDA.
COUNSEL?

>> [INAUDIBLE]
I WOULD LIKE TO FOCUS MY
ARGUMENT ON ISSUE TWO.
[INAUDIBLE]
DEATH PENALTY IF PREMEDITATION
WAS PROVEN.
>> COUNSEL, DIDN'T HE-- WE'VE
SEEN OTHER CASES WHERE PEOPLE
WERE UNEQUIVOCALLY, YOU KNOW,
COUNSEL WOULD TRY TO
REHABILITATE THEM.
BUT THE INITIAL STATEMENT WAS
SOMETHING PRETTY EMPHATIC ABOUT
IF IT'S PREMEDITATED, THEN THE
PERSON DESERVES DEATH.
IN THIS CASE IT SEEMED LIKE THE
JUROR IMMEDIATELY TALKED ABOUT,
YOU KNOW, HE TALKED ABOUT
PREMEDITATION AGAINST DEATH.
AND THEN HE SAID, YOU KNOW, IF
THERE WERE THINGS ABOUT THE
PERSON'S BACKGROUND OR
MITIGATING FACTORS, HE ALMOST
BROUGHT THAT UP HIMSELF RIGHT
AWAY.

AND THIS DOESN'T STRIKE ME AS
YOUR TYPICAL SITUATION WHERE A
JUROR STARTS OFF AT A CERTAIN
LEVEL AND THEN HAS TO BE, YOU
KNOW, BROUGHT BACK BY COUNSEL.

>> [INAUDIBLE]
CHALLENGES--
[INAUDIBLE]
A PREEMPTORY CHALLENGE.
I THINK AT LEAST THE QUESTION
FOR ME--

>> I THINK AT LEAST THE
QUESTION, FOR ME, IS READING IN
CONTEXT WHAT THE TRIAL COURT
SAID.

IT SEEMED LIKE IT WAS MAKING A
GEN-- IN THE SENSE YOU HAVE

YOUR REASON THAT'S GIVEN.
BUT IT SEEMED TO ME THAT I READ
WHAT THE TRIAL COURT WAS SAYING
WAS THAT THE TRIAL COURT ITSELF,
HAVING OBSERVED WHAT THE JUROR
SAID IN CONTEXT, THAT HE
ESSENTIALLY DIDN'T CREDIT-- IT
WASN'T THAT HE WAS TREATING IT
AS A DE FACTO CAUSE CHALLENGE,
BUT THAT HE ESSENTIALLY DIDN'T
CREDIT THE REASON BECAUSE THE
COURT HAD TAKEN INTO
CONSIDERATION WHAT THE COURT HAD
SAID.

ESSENTIALLY, IMPLICITLY WAS
SAYING IT'S A PRETEXTUAL REASON
THAT WAS BEING GIVEN.

>> I UNDERSTAND WHAT YOU'RE
SAYING.

HOWEVER, AS--

[INAUDIBLE]

THE STATE DID NOT RAISE--

[INAUDIBLE]

NEITHER DID THE TRIAL JUDGE
MENTION THAT THE REASON GIVEN
WAS--

[INAUDIBLE]

ON PREEMPTORY CHALLENGE--

[INAUDIBLE]

NOT WHETHER IT WAS FACTUALLY
CORRECT.

>> THERE WAS A PRIOR JUROR, IF I
REMEMBER CORRECTLY, WHO WAS
FAIRLY ADAMANT AT FIRST THAT
PREMEDITATION WOULD EQUATE WITH
THE DEATH SENTENCE IN HERMINE,
CORRECT?

>> [INAUDIBLE]

>> AND WITH RESPECT TO THAT
JUROR, SHE WAS REHABILITATED.
AND THERE WAS A CAUSE CHALLENGE
THAT WAS DENIED, CORRECT?

>> [INAUDIBLE]

THAT ONE WAS GRANTED.

[INAUDIBLE]

TALKING ABOUT FEMALE JUROR
JOHNSON?

>> I THOUGHT THERE WAS ONE THAT
SAID SOMETHING THAT INDICATED
THERE WAS A, THAT IF THE MURDER

WAS PREMEDITATED, THEY WOULD
TEND TO VOTE FOR DEATH.
THERE WAS A CAUSE CHALLENGE THAT
WAS DENIED, AND THEN THERE WAS
NO PREEMPTORY EXERCISE WITH
RESPECT TO THAT JUROR.
AM I MISREMEMBERING THE RECORD?
>> [INAUDIBLE]
BUT THE STATE DID NOT ARGUE--
[INAUDIBLE]
>> WAS THAT, WAS THAT JUROR
FOREHAND?
>> I THINK, YES, SIR.
THE STATE DID NOT RAISE THE
ARGUMENT AT TRIAL ABOUT--
[INAUDIBLE]
CHALLENGE SO I DON'T SEE HOW YOU
CAN-- THAT WASN'T RAISED
EITHER AT TRIAL OR AT--
[INAUDIBLE]
>> COUNSEL, IF YOU SET ASIDE OUR
PRECEDENT ON THIS AND JUST LOOK
AT IT KIND OF FRESH, WHY-- EVEN
IF WE ASSUME THAT THERE WAS AN
ERROR HERE, WHY WOULD THIS NOT
BE SUBJECT TO HARMLESS ERROR
REVIEW?
>> BECAUSE--
[INAUDIBLE]
>> BUT IN THIS CASE THOUGH, THE
PREMISE IS THAT THE JUROR WAS
NOT-- THAT A CAUSE CHALLENGE
WOULDN'T HAVE BEEN WARRANTED.
AND IS SO WHAT'S THE PREJUDICE?
WHAT'S THE HARM?
>> [INAUDIBLE]
>> THERE WAS NOT A
CONSTITUTIONAL RIGHT TO
PREEMPTORIES THOUGH, RIGHT?
>> [INAUDIBLE]
EACH SIDE CAN CHALLENGE
JURORS--
[INAUDIBLE]
THE BURDEN OF PROOF TO PROVE
PRETENSE.
[INAUDIBLE]
BUT ARGUE THAT--
[INAUDIBLE]
FOR A NEW TRIAL.
[INAUDIBLE]

I REALIZE--

[INAUDIBLE]

IF THERE ARE NO REMAINING
QUESTIONS--

[INAUDIBLE]

>> GOOD MORNING, MAY IT PLEASE
THE COURT, MICHAEL KENNETT FOR
THE STATE OF FLORIDA.

THIS IS A PRISON MURDER
COMMITTED BY AN INMATE WHO HAD
SERVED LESS THAN ONE YEAR OF A
LIFE SENTENCE FOR A FIRST-DEGREE
MURDER HE PREVIOUSLY COMMITTED.
THERE'S NO QUESTION THAT THE
APPELLANT IS THE ONE WHO
COMMITTED THIS MURDER.

THERE ARE MULTIPLE CONFESSIONS.
HE WAS THE ONLY ONE WHO HAD THE
OPPORTUNITY TO KILL HIS CELL
MATE, AND THERE'S DNA EVIDENCE
THAT CONFIRMS HE IS THE KILLER.

>> GO INTO THE PREEMPTORY
CHALLENGE ISSUE.

THE JUROR BASICALLY INITIALLY
SAID THAT IT WAS PREMEDITATED,
IT IS ALMOST AUTOMATIC DEATH
PENALTY.

I'M, MAYBE I'M OVERSTATING IT,
BUT THE GIST OF WHAT HE WAS
SAYING IS THAT.

ISN'T THAT-- WE'RE NOT TALKING
ABOUT A CAUSE CHALLENGE.

THE JUROR COULD HAVE BEEN
REHABILITATED, AND A CAUSE
CHALLENGE COULD HAVE BEEN
DENIED.

WE'RE TALKING ABOUT WHETHER THE
DEFENSE COUNSEL HAD A REASONABLE
FEAR THAT THIS JUROR WOULD NOT
BE FAIR.

ISN'T THAT, WASN'T THAT ENOUGH
FOR A PREEMPTORY CHALLENGE?

>> NO, IT'S NOT.

>> WHAT ELSE?

>> THE ISSUE-- WITH REGARD TO
ISSUE TWO, THE REAL ISSUE OF
ISSUE TWO IS STEP THREE OF THE
MELBOURNE INQUIRY, AND THAT IS
THE GENUINENESS INQUIRY THAT THE
TRIAL COURT MADE BASED UPON THE

ARGUMENT OF THE STATE.
AND IF YOU LOOK AT WHAT HAPPENED
IN THIS CASE, STEP ONE OF THE
MELBOURNE INQUIRY THE STATE IS
TO OPPONENT OF THE CHALLENGE.
THE DEFENSE IS THE PROPONENT OF
THE CHALLENGE.
THE STATE SAYS, HEY, WE HAVE A
CONCERN HERE.
WE'D LIKE TO SEE A RACE-NEUTRAL
REASON FOR THIS.
JUROR FORD, THE JUROR IN
QUESTION, IS AFRICAN-AMERICAN.
THERE ARE NOT JUST RACIAL
UNDERTONES TO THIS CASE, BUT
THERE ARE SIGNIFICANT RACIAL
OVERTONES.
THE DEFENDANT SAID HE WANTED TO
COMMIT A RACE RIOT.
HE WANTED TO KILL HIS
AFRICAN-AMERICAN CELL MATE IN
PART TO INITIATE A RACE RIOT IN
PRISON.
CLEAR RACIAL OVERTONES IN THIS
CASE.
SO THE STATE SATISFIES STEP ONE
OF THE MELBOURNE INQUIRY.
WE PROCEED TO STEP TWO, BURDEN
OF PRODUCTION SHIFTS TO THE
DEFENSE.
THE DEFENSE SAYS, WELL, HERE'S
OUR RACE-NEUTRAL REASON.
HE HAS--
[INAUDIBLE]
NOW WE GO TO STEP THREE.
WHAT'S INTERESTING ABOUT THAT
RESPONSE IS IT CAUGHT THE
COURT'S ATTENTION.
AND WHEN THE COURT SAYS, WELL,
YOU DIDN'T RAISE A CHALLENGE FOR
CAUSE YESTERDAY, THE COURT
WASN'T CONFLATING CHALLENGES FOR
CAUSE WITH PREEMPTORY--
>> LET'S GO BACK.
YOU SAID THAT THE DEFENSE SAID
THAT THE JUROR HAD AN INFLEXIBLE
ATTITUDE TOWARD THE DEATH
PENALTY.
>> I PARAPHRASED, JUSTICE
CANADY.

>> WELL, THAT IS A PARAPHRASE, BECAUSE WHAT HE SAID WAS-- WHAT COUNSEL ACTUALLY SAID, HE WAS ONE OF THOSE WHO, THOUGH REHABILITATED TO SAY HE COULD CONSIDER LIFE OR DEATH, HE WAS ONE OF THOSE WHOSE ORIGINAL IMPULSE WAS, IF IT WAS FOUND TO BE PREMEDITATED, THEN IT WOULD BE THE DEATH PENALTY.

THAT'S MY CONCERN WITH HIM. ISN'T THAT STATEMENT BY COUNSEL A STATEMENT THAT IS ABSOLUTELY SUPPORTED BY THE RECORD?

>> NO, BECAUSE IT IS NOT FACTUALLY ACCURATE.

AND THAT IS--

>> HOW IS IT INACCURATE?

>> IT'S TOO STRONG OF A CHARACTERIZATION OF JUSTICE FORD'S INITIAL RESPONSE.

AND THE PROSECUTOR POINTED OUT THE DIFFERENCES BETWEEN JUROR FORD AND JUROR GLISSEN, AND THEY WERE BACK TO BACK JURORS.

JUROR GLISSEN DID--

>> WELL, JUROR FORD SAID, WELL, IF IT'S DESERVED, FOR INSTANCE, IF HE HAD PREMEDITATED, YES.

THE DEATH PENALTY.

I'M STRUGGLING TO SEE HOW WHAT COUNSEL SAID ABOUT THAT IS NOT ACCURATE.

>> OKAY.

WELL--

>> I MEAN, I'M READING IT HERE.

>> RIGHT.

>> WE HAVE THE BENEFIT OF THE TRANSCRIPT.

>> WE DO, AND SO LET'S-- THAT INITIAL RESPONSE, THOUGH, IS TWO SENTENCES.

IT'S NOT JUST ONE SENTENCE.

HE DIDN'T-- JUROR FORD DIDN'T JUST SAY IF IT'S PREMEDITATED, THEN DEATH.

HE ALSO TALKED ABOUT MITIGATION WHEN HE TALKED ABOUT INFLUENCE. BUT IF WE PICK APART THE FIRST SENTENCE, CHIEF JUSTICE CANADY,

HE DIDN'T JUST SAY PREMEDITATED.
HE-- ACTUALLY, FOR SOMEONE WHO
HAS NO LEGAL EXPERIENCE, JUROR
FORD GAVE A PRETTY GOOD,
ACCURATE DEFINITION OF THE LAW
IN FLORIDA.

HE SAYS WELL, IF-- THAT WORD
"IF," IT'S CONDITIONAL-- IF IT
IS DESERVED.

WHAT HE'S ESSENTIALLY SAYING,
THAT IN HIS MIND DEATH IS NOT
AUTOMATIC--

>> HE SAID IF IT IS DESERVED,
FOR INSTANCE--

>> RIGHT.

>> IF HE HAD PREMEDITATED, JUST
DID IT, YES.

THE DEATH PENALTY.

OKAY?

SO HE'S GIVING PREMEDITATED,
"JUST DID IT," AS AN EXAMPLE OF
WHAT IS, IF IT'S DESERVED.

I THINK THAT THAT'S THE ONLY
FAIR WAY YOU CAN READ THAT.

>> HE'S SAYING, HE'S SAYING CCP.
BECAUSE IF YOU LOOK, HE DIDN'T
JUST SAY PREMEDITATED, HE SAID
"JUST DID IT."

FOR SOMEONE WITH NO LEGAL
EXPERIENCE, A PRETTY GOOD
DEFINITION FOR COLD.

IT'S UNPROVOKED, HE JUST DID IT
VERY COLDLY, VERY CALMLY.

SO WHAT JUROR FORD IS SAYING IS
IF-- THE DEFAULT IS NOT DEATH.

HE'S ESSENTIALLY SAYING THE
DEFAULT IS LIFE.

IT HAS TO BE DESERVED.

FOR EXAMPLE, IF THERE IS CCP.
THAT IS A VERY GOOD LAYMAN'S
DEFINITION--

>> WELL, I DON'T KNOW.

YOU'RE EQUATING COLD,
CALCULATED, PREMEDITATED WITH
JUST DID IT--

[LAUGHTER]

THAT SEEMS TO ME TO BE A BIT OF
A STRETCH.

>> BUT IF WE LOOK AT THE
DEFINITION OF COLD, CALCULATED,

PREMEDITATED, IT'S NOT A
STRETCH.
IT'S AN UNPROVOKED MURDER.
IT'S DONE COLDLY, CALMLY,
WITHOUT ANY RESISTANCE FROM THE
VICTIM.

JUST DID IT.

AGAIN, HE--

>> WHEN I, WHEN I READ THIS, I
JUST WONDER IF THE COURT, THE
TRIAL COURT WAS CONFUSING A
PREEMPTORY CHALLENGE WITH A FOR
CAUSE CHALLENGE.

BECAUSE IT'S-- AND THE COURT
EVEN SAYS, WELL, WHAT WOULD GIVE
YOU PAUSE TODAY THAT WASN'T
THERE YESTERDAY AS THOUGH
THERE'S A SUGGESTION THERE THAT
IF A FOR CAUSE CHALLENGE IS NOT
MADE, THEN SOMEHOW IT'S
INAPPROPRIATE TO HAVE A
PREEMPTORY CHALLENGE OR THAT
SOMEHOW THERE'S SOMETHING
SINISTER OR PRETEXTUAL ABOUT A
PREEMPTORY CHALLENGE IF THERE'S
NOT BEEN A FOR CAUSE CHALLENGE.
IS THAT WHAT THE LAW IS?

>> NO.

BUT, AGAIN, IT IS PART OF THE
TOTALITY OF THE CIRCUMSTANCES
THAT GOES INTO STEP THREE WHICH
IS THE TRIAL COURT MAKING AN
ANALYSIS OF WHETHER OR NOT THE
PROFFERED REASON IS GENUINE OR
NOT.

AND SO TO GO TO A POINT THAT
JUSTICE LAWSON MADE--

>> DO WE, WHAT IN ANYTHING THAT
THE TRIAL COURT SAID DO WE
ACTUALLY SEE ANY INDICATION THAT
THE TRIAL COURT WAS FOCUSED ON
GENUINENESS?

>> WELL, NO MAGIC WORDS ARE
REQUIRED.

HAYES CLEARLY SAYS THAT.
BUT HE REFERS TO HIS NOTES AND
SAYS, YOU KNOW, MY NOTES DON'T
SUPPORT WHAT YOU JUST SAID.
WHICH LET'S DRAW A CONTRAST TO
ANOTHER JUROR AND PERHAPS,

JUSTICE LAWSON, YOU'RE REFERRING TO JUROR SIMMS.

FORD DOES NOT MENTION JUROR SIMMS, BUT PAGE 433 OF THE RECORD.

JUROR SIMMS: FIRST ANSWER, I'M A FIRM BELIEVER IN THE DEATH PENALTY.

THAT WAS HIS EXPRESSION.

THERE ARE TWO SIMMS; I'M REFERRING TO MR. SIMMS, JUROR 35.

HIS FIRST ANSWER, I'M A FIRM BELIEVER IN THE DEATH PENALTY. HE'S ASKED DOES THAT MEAN IT'S AUTOMATIC, AND HE SAYS, NO. NOW, THE DEFENSE DID FILE A CHALLENGE FOR CAUSE AS TO JUROR SIMMS WHICH THE TRIAL COURT DENIED BECAUSE THE JUROR HAD BEEN REHABILITATED.

AND WHAT THE COURT DOES, HE REFERS TO HIS NOTES.

HE SAYS-- THIS IS ON PAGE 457 OF THE RECORD.

MY NOTES REFLECT THAT WHILE HE DID INITIALLY SAY A FIRM BELIEVER IN THE DEATH PENALTY, HE DID, IN FACT, SAY NOT AUTOMATIC.

AND THAT WAS-- HE WAS NOT DISSUADED FROM BOTH OF THOSE POSITIONS DESPITE COUNSEL'S QUESTIONING.

SO I'LL DENY THE CHALLENGE FOR CAUSE AS TO SIMMS.

NOW, IT'S INTERESTING TO NOTE THAT WHILE A CHALLENGE FOR CAUSE WAS LODGED AGAINST SIMMS THE PREVIOUS DAY, THERE WAS NO PREEMPTORY.

NOW, WE DON'T KNOW, CLEARLY, WHAT THE RACIAL BACKGROUND IS OF JUROR SIMMS.

BUT THAT GOES TO THE TRIAL COURT'S CONCERN ABOUT IS THAT ANSWER THAT YOU JUST GAVE ME REALLY GENUINE, BECAUSE YOU DID LODGE A CHALLENGE FOR CAUSE FOR SIMMS, BUT THERE'S NO PREEMPTORY

TODAY.

AND IF I TAKE YOU AT FACE VALUE,
WHY DIDN'T YOU DO THE SAME
THING?

IF YOU ARE REALLY CONCERNED
ABOUT THIS PARTICULAR JUROR
HAVING AN INFLEXIBLE ATTITUDE,
WHY DIDN'T YOU CHALLENGE HIM
YESTERDAY LIKE YOU DID JUROR
SIMMS.

AND THAT GOES TO, AGAIN, THE
TRIAL COURT'S GENUINENESS
DETERMINATION.

THE TRIAL COURT WAS THE ONE WHO
WAS THERE THROUGHOUT THE ENTIRE
VOIR DIRE PROCEEDINGS, HE WAS
THE ONE WHO WAS ABLE TO WATCH
THE DEMEANOR NOT JUST OF THE
POTENTIAL JURORS, BUT OF COUNSEL
AS WELL.

WE SHOULD DEFER TO THAT
DETERMINATION.

THERE'S NO INDICATION THAT HIS
DECISION WAS CLEARLY ERRONEOUS.

>> COULD YOU ADDRESS THE
HARMLESS ERROR ISSUE?

I UNDERSTAND WHAT OUR PRECEDENT
IS, BUT JUST TAKING IT KIND
OF-- TAKING A FRESH LOOK AT IT.

>> YOU RAISE AN EXCELLENT POINT
BECAUSE AS TO APPELLANT, THERE
IS NO CONSTITUTIONAL VIOLATION
HERE.

POTENTIALLY, THERE COULD BE A
CONSTITUTIONAL VIOLATION
INVOLVING A PREEMPTORY
CHALLENGE, BUT NOT IN THIS CASE.
IF--

>> BUT THERE CAN BE HARMFUL
ERROR THAT IS NOT A
CONSTITUTIONAL VIOLATION.

>> YES.

>> CORRECT?

>> CORRECT, BUT THERE'S NO
EVIDENCE THAT THIS JUROR WAS
BIASED FOR OR AGAINST.

>> WELL, OKAY.

ARE YOU SAYING THAT BASICALLY ON
A TRIAL LEVEL WE OUGHT TO TREAT
IT THE WAY WE DO ON

POST-CONVICTION?

>> THERE'S SOME VALUE IN THAT BECAUSE WHAT'S-- WHY OVERTURN A CONVICTION WHERE THERE IS OVERWHELMING EVIDENCE OF APPELLANT'S GUILT?

THERE IS NO QUESTION THAT THE APPELLANT COMMITTED THIS OFFENSE.

THE WHOLE ISSUE WAS MENTAL STATE AND MITIGATION.

BUT WE HAVE FOUR VERY POWERFUL AGGRAVATORS IN THIS CASE.

HE'S SERVING A LIFE SENTENCE WHEN HE COMMITS THE MURDER.

WE HAVE PRIOR CAPITAL FELONY, THE OTHER MURDER, HAC AND CRP. THE HAC IS HORRENDOUS IN THIS CASE.

THE VICTIM WAS ATTACKED WHEN HE WAS ASLEEP.

AT LEAST A DOZEN STAB WOUNDS TO THE UPPER BODY WITH ANOTHER 18 SUPERFICIAL WOUNDS.

HE CHOKED AND DROWNED ON HIS OWN BLOOD.

AN INMATE TWO CELLS DOWN HEARD HIM CRYING FOR HELP.

THERE'S CLEAR HAC, CCP.

HE PLANNED THIS MURDER OUT.

HE CALLED HIS MOM AND SAID

YOU'VE GOT TO COME VISIT ME THIS SATURDAY, BECAUSE IF YOU DON'T, IT'S GOING TO BE SEVERAL YEARS.

>> WHAT ABOUT COUNSEL SAID IT ONLY TAKES ONE JUROR TO REQUIRE A LIFE SENTENCE.

>> TOO SPECULATIVE.

IF YOU LOOK AT WHAT THE STANDARD IS, THE STANDARD IS WHAT WOULD A RATIONAL JURY DO, RIGHT?

AND IF THE EVIDENCE IS OVERWHELMING, WHAT WOULD A RATIONAL JUROR DO IN THIS CASE? CONVICT AND SENTENCE TO DEATH.

THAT IS THE STANDARD.

IT SHOULD BE THE STANDARD.

IT'S A FEDERAL STANDARD, WHAT IS A RATIONAL JUROR GOING TO DO.

>> WELL, I MEAN, FUNDAMENTALLY,

I MEAN, WE START FROM THE
PREMISE THAT THIS ISN'T A BIASED
JUROR.

>> RIGHT.

>> YOU KNOW, RIGHT?

I MEAN, ONE BIASED JUROR WOULD
BE A PROBLEM, BUT IN THIS CASE
WE'RE TALKING ABOUT A JUROR WHO,
BY DEFINITION BECAUSE THE CAUSE
ISSUE HAS BEEN TAKEN OFF THE
TABLE, THERE'S NO, THERE'S NO
BIAS ISSUE.

>> AND THERE'S NO CONSTITUTIONAL
VIOLATION IN THIS CASE AS TO THE
DEFENDANT.

THERE COULD BE.

AND IN SOME CASES WITH THE
PREEMPTORY CHALLENGE, THERE
COULD BE A CONSTITUTIONAL
IMPLICATION.

IF, FOR EXAMPLE, THE DEFENDANT
IS A MEMBER OF A MINORITY AND
THE STATE IS ATTEMPTING TO
PREEMPTORY CHALLENGE A MEMBER OF
A MINORITY, AND THAT WOULD BE
THE ONLY PERSON ON THE JURY
POOL.

AND IT WAS FOR A PRETEXTUAL
REASON, YES, THERE COULD BE A
REASON FOR THAT DEFENDANT.

BUT THERE'S NO CONSTITUTIONAL
IMPLICATION FOR THIS DEFENDANT
IN THIS CASE.

SO AGAIN, WHAT'S THE HARM, WHAT
IS THE HARM IN THIS CASE?

THERE IS NO HARM.

BECAUSE ANY RATIONAL JUROR WOULD
HAVE FOUND THIS PARTICULAR
DEFENDANT GUILTY AND WOULD HAVE
SENTENCED HIM TO DEATH.

IT'S A PRISON MURDER.

IT'S A GRUESOME MURDER.

THERE ARE NO QUESTIONS ABOUT ANY
OF THE AGGRAVATORS.

AND, AGAIN, BACK TO YOUR POINT
OF WHAT IS THE REMEDY, THERE
SHOULD BE SOME HARM IN THIS CASE
AND THERE'S NOT.

BECAUSE THERE'S NO HARM, THERE
SHOULD BE NO OVERTURNING THE

CONVICTION AND THE SENTENCE.
AND BACK TO YOUR POINT, I THINK,
CHIEF JUSTICE CANADY, THAT THE
TRIAL COURT DID NOT CONFLATE
PREEMPTORY CHALLENGES WITH
CHALLENGES FOR CAUSE.
HE WAS PROBING THE GENUINENESS
OF THE ANSWER GIVEN BY THE
DEFENSE.

ARE THERE ANY OTHER QUESTIONS
ABOUT ANY OTHER ISSUES RAISED IN
THIS CASE?

THERE WERE SEVERAL ISSUES
RAISED.

I'VE BRIEFLY TOUCHED ON
SUFFICIENCY, HAC, CCP.
PROPORTIONALITY IS NOT AN ISSUE
IN THIS CASE.

THERE WERE ALSO ISSUES RAISED
REGARDING THE COMPETENCY TO
PROCEED PRO SE, WHETHER THE
EVIDENCE OF THE PRIOR FELONY
MURDER WAS RELEVANT DURING
SENTENCING.

IT WAS AS PART OF THE JURORS'
FUNCTION.

HOW CAN THE JUROR WEIGH
AGGRAVATORS VERSUS MITIGATORS IF
IT CAN'T KNOW THE FACTS
SURROUNDING A PRIOR MURDER.

THE STATE ASKS THIS COURT AFFIRM
BOTH THE JUDGMENT OF CONVICTION
AND SENTENCE IN THIS CASE.

THERE REALLY IS NO HARM, THERE
IS NO CONSTITUTIONAL VIOLATION,
THERE'S NO BASIS FOR REVERSAL.

>> FIRST OF ALL, THERE IS HARM
BECAUSE THE FACTS OF THE CASE IS
NOT--

[INAUDIBLE]

THE ISSUE IS ABOUT MY CLIENT'S
RIGHT TO A FAIR TRIAL.

[INAUDIBLE]

ARGUMENT ABOUT THE
AGGRAVATORS--

[INAUDIBLE]

THE JURY IS TASKED WITH WEIGHING
AGGRAVATORS VERSUS MITIGATORS.

THERE MIGHT BE SEVERAL--

[INAUDIBLE]

NEVERTHELESS, THAT DOES NOT--
[INAUDIBLE]
ON THIS ISSUE.
[INAUDIBLE]
THIS COURT HAS RECOGNIZED THAT
IT CAN BE A RUBBER STAMP ON THE
TRIAL COURT--
[INAUDIBLE]
AS TO THE ERRONEOUS STANDARD, IF
THE TRIAL COURT BASED ITS
DECISION ON--
[INAUDIBLE]
AND THIS COURT CANNOT--
[INAUDIBLE]
THE OTHER POINT I WOULD MAKE
IS--
[INAUDIBLE]
THERE WAS NO ARGUMENT AT TRIAL
COURT ON THE--
[INAUDIBLE]
JUROR SIMMS.
[INAUDIBLE]
NEVER RAISED AND THAT IS--
[INAUDIBLE]
DENIED THE PREEMPTORY CHALLENGE.
WE WOULD ASK THIS COURT TO
REVERSE AND REMAND FOR A NEW
TRIAL.
ANY QUESTIONS?
THANK YOU.
>> WE THANK YOU FOR YOUR
ARGUMENTS.