>> THE COURT WILL
NOW MOVE TO THE SECOND CASE ON
OUR DOCKET.
SECOND CASE IS MARTIN VERSUS
THE STATE OF FLORIDA.
>> MAY IT PLEASE BE COURT, I
REPRESENT THE APPELLATE, MISTER
MARTIN.
WE ARE HERE ON I BELIEVE IT
WILL BE ONE ISSUE.
AND POSTCONVICTION THAT CANNOT
HAVE BEEN DISCOVERED BY DO
DILIGENCE BY ANY OF THE PARTIES
AND IN THIS CASE DURING THE
POSTCONVICTION PROCEEDINGS, IT
WAS DISCOVERED THAT ONE OF THE
JURORS THAT SERVED IN THIS
CAPITAL CASE WAS ADJUDICATED,
DELINQUENT FOR SEXUAL BATTERY
WHEN HE WAS 17 FOR A GIRL OR A
CHILD --
>> HOW WAS THAT DISCOVERED
POSTCONVICTION PROCEEDINGS?
WHEN COUNCIL RECEIVED THE
PROSECUTOR'S FILE?
>> DEFENSE COUNSEL DISCOVERED
THAT THE JUROR CONCEALED A DUI
CHARGE.
I FILED BE 38-50 BASED ON THAT
AND THE MOTION TO INTERVIEW THE
JURY WHICH IS GRANTED BY THE
TRIAL COURT.
RIGHT FOR THE DEPOSITION THE
STATE ATTORNEY'S OFFICE
PROVIDED THAT ADJUDICATION TO
US.
THE PROSECUTOR IN THIS CASE WE
ARE NOT ENTITLED TO THAT.
JUVENILE RECORDS ARE SEALED,
JUSTICES UNDERSTAND THAT.
AFTER MUCH QUESTIONS BY MYSELF
TO THE JUROR I ASKED IF THERE'S
ANYTHING HE WAS HOLDING BACK.
HE SAID HE WAS A VICTIM WHERE
HIS GRANDFATHER WAS MURDERED BY
HIS GRANDMOTHER AND ADMITTED IT
WAS A GRUESOME CRIME.
I MADE IT A POINT TO PUT IT IN
THE RECORD SO THIS COURT WOULD
UNDERSTAND AND HE WAS EMOTIONAL

TO THIS DAY AND THIS CRIME
OCCURRED IN 1977 OR 78.
>> LET ME ASK SOMETHING MORE
FUNDAMENTAL.
THE NATURE OF YOUR CLAIM IS A
DIRECT CLAIM, IT ISN'T AN
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM.
IT IS A DIRECT CLAIM THE JURY
ENGAGED IN MISCONDUCT BY NOT
DISCLOSING CERTAIN THINGS
REQUIRED TO BE DISCLOSED, AND
--
>> THAT IS A FAIR --
>> SO IS IT NEWLY DISCOVERED
EVIDENCE?
IS THE CLAIMING NEWLY
DISCOVERED EVIDENCE CLAIM OR
STANDALONE JURY MISCONDUCT
CLAIM?
THAT IS WHAT I HAVE A HARD TIME
UNDERSTANDING.
>> WE FRAMED AND THE NEWLY
DISCOVERED EVIDENCE.
IF YOU LOOK AT THE CASE LAW
FROM THE UNITED STATES SUPREME
COURT --
>> THE NATURE OF THE CLAIM
FIRST.
>> IT IS NOT UGLY DISCOVERED
EVIDENCE CLAIM AS WELL AS AN
EFFECTIVE CLAIM FOR DUI.
DEFENSE COUNSEL MIGHT NOT
DISCOVER THE DUI.
>> CASE LAW REQUIRES ACTUAL
BIAS.
>> I WOULD SAY YES.
>> UNDER THE NEWLY DISCOVERED
EVIDENCE CLAIM.
>> THAT IS CORRECT.
>> YOU ARE SAYING JONES DOES
NOT APPLY.
>> IT DOES NOT BECAUSE OF THE
LITANY OF CASES THAT DISCUSSED
DELAROSA IN THESE PROCEDURAL
CONTEXTS.
>> NEWLY DISCOVERED EVIDENCE
CLAIMS -- IT IS A NEW TRIAL
MOTION, MANY ON A DIRECT APPEAL
CONTEXT.

>> MANY UNDER THE 3850 CONTEXT
AND I WILL CITE --
>> THE NEWLY DISCOVERED
EVIDENCE CLAIMS.
>> IT IS CHARACTERIZED IS NEWLY
DISCOVERED EVIDENCE CLAIM THAT
CAME OUT IN 2016.
AND BIGELOW DISCOVERED AT
TRIAL.
JOHNSTON WAS USING DELAROSA FOR
AN INEFFECTIVE ASSISTANCE
COUNSEL CLAIM.
AND 3850.
>> THAT DOESN'T ANSWER THE
QUESTION I HAVE.
LET'S OPERATE ON NEWLY
DISCOVERED EVIDENCE, IT ISN'T
AN INDEPENDENT CLAIM AND A WAY
TO GET AROUND PROCEDURAL AND
TIME BARS.
IT IS AN EXCEPTION FILING TWO
YEARS OR OTHER THINGS OUT
THERE.
THE UNDERLYING CLAIM, 3850
WOULD LITIGATE.
WHAT DOES 3850 LITIGATE?
WHAT ARE WE TRYING TO DO, WHAT
RIGHTS INDICATING.
>> A FAIR AND IMPARTIAL TRIAL
IN DENIAL OF RIGHTS, OR SIX --
>> CONSTITUTIONAL RIGHTS.
IT SAYS THAT IN 3050 ITSELF.
A VIOLATION OF THE CONSTITUTION
AND LAWS OF THE STATE OF
FLORIDA.
MCDONOUGH -- LET ME ASK YOU, IS
MCDONOUGH UNDER FEDERAL LAW IS
A PERIMETER RE-CHALLENGE.
THE FEDERAL CONSTITUTION
REQUIRES STATES HAVE PERIMETER
RECHARGES.
>> I BELIEVE SO.
>> IT IS NOT A CONSTITUTIONAL
RIGHT.
DOES MCDONOUGH RELY ON
CONSTITUTIONAL AMENDMENT OR
RULE OF LAW.
>> IT IS A VERY SHORT OPINION.
>> WHAT DOES IT CITE TO?
>> I FIND IT CITED TO THE SIX.

>> I READ IT FAIRLY RECENTLY
AND IT SAYS IT MENTIONS A FAIR
TRIAL.
WHAT IT DOES TALK ABOUT HIS
FEDERAL STATUTE THAT GOVERNS
CERTAIN THINGS AND A RULE OF
CIVIL PROCEDURE THAT GOVERNS
JURY SELECTION.
>> GIVEN THAT HISTORY HOW COULD
WE -- WHAT WRITER WE
VINDICATING, FEDERAL LAW
DOESN'T HAVE PERIMETER
RE-CHALLENGES, RELYING ON A
RULE OF CONSTITUTIONAL --
DOESN'T SET A CONSTITUTIONAL
RULE BUT INTERPRETS FEDERAL
RULES AND STATUTES, NEW
EVIDENCE WE HAVE HERE HOW IS IT
DIRECTED AT SOMETHING A
COLLATERAL ATTACK COULD GIVE
YOU RELIEF ON?
>> DOESN'T NEED TO BE A FEDERAL
RIGHT WE ARE VINDICATING.
>> AS A MATTER OF STATE LAW WE
SEEM TO HAVE SET THE TESTING
ACTUAL BIAS.
>> THE COUNCIL CLAIMS
CARETELLY.
>> WE AVOIDED IN ANOTHER
CONTEXTS?
>> THAT WAS A DIFFERENT
SCENARIO.
THE FEDERAL COURT ANSWERS THE
QUESTION FOR ME.
>> I AM NOT SURE IT DOES.
THE DISTRICT COURT JUDGE TRIED
TO INTO THE QUESTION AND MADE
ASSUMPTIONS THIS WAS A MATTER
OF FEDERAL CONSTITUTIONAL LAW.
AND WE APPLY FEDERAL
CONSTITUTIONAL LAW.
I STARTED QUESTIONING WHERE I
DID.
WHERE DOES IT SET ANY
CONSTITUTIONAL STANDARD AND
WHERE IS THERE ANY
CONSTITUTIONAL STANDARD FOR HOW
PERIMETER RECHALLENGES NEED TO
BE CONDUCTED OTHER THAN BASED
ON RACE OR GENDER ISSUES.

>> UNDER MCDONOUGH IT DOES NOT.
>> I HAVE TROUBLE UNDERSTANDING HOW FEDERAL DISTRICT COURT HAS ANY RIGHT TO CRITICIZE THE WAY WE INTERPRETED FEDERAL OR STATE LAW WHEN THERE SEEMS TO BE NO FEDERAL LAW THAT IS APPLICABLE IN THE COLLATERAL CONTEXT.
>> NOT SPEAKING FOR FEDERAL COURT JUDGE, NEED TO BRING IT TO THE COURT'S ATTENTION BECAUSE IT FOUND IT IS AN UNREASONABLE DECISION.
IT CITED THE SIXTH AMENDMENT JURY MISCONDUCT ISSUE.
THAT IS WHAT THE CASE IS GOING ON.
THAT IS THE ARGUMENT HERE.
IT IS A FACT SPECIFIC CASE DEALING WITH ASSISTANCE OF COUNSEL FOR FAILING TO CAUSE CHALLENGES.
WE HAVE A DIFFERENT SCENARIO HERE.
>> YOU HAVE A DIFFERENT SCENARIO BECAUSE OF THE CLAIM THAT I UNDERSTAND LITIGATING UNDER EFFECTIVE ASSISTANCE, IT MADE SENSE TO ME.
WE APPLY SOME FEDERAL STANDARD THAT BASED ON FEDERAL STATUTE AND CONSTITUTIONAL ROLE THAT DOESN'T HAVE ANY APPLICATION TO WHAT WE DO IN FLORIDA.
I HAVE TROUBLE UNDERSTANDING HOW IT MUST BE APPLIED AS A MATTER OF CONSTITUTIONAL LAW TO THE OTHER SUCH THAT WE HAVE TO VACATE A CONVICTION.
>> THIS IS WHAT THE COURT HAS BEEN USING, 95 OPINION.
>> THAT IS UNDER DIRECT APPEAL IN DIFFERENT CONTEXTS BUT WHEN YOU TAKE IT IN THE COLLATERAL CONTEXT I'M HAVING TROUBLE UNDERSTANDING HOW AS A MATTER OF FEDERAL LAW WE ARE BOUND AND REQUIRED.
UNDER OUR CASE LAW WE ARE REQUIRED TO FIND OUT AND I WANT

TO HEAR THAT ARGUMENT.
MCDONOUGH REQUIRES AS A MATTER OF FEDERAL LAW, THE FEDERAL CONSTITUTION TO VACATE ACTUAL BIASED FINDING.
>> IT IS A MISCONDUCT ISSUE ENTITLED TO A FAIR AND IMPARTIAL TRIAL AND ALTHOUGH THE COURT IS NOT COMING OUT AND SAYING YOU ARE CONSTITUTIONALLY ENTITLED TO A PERIMETER RE-CHALLENGE BUT IT RENDERS PERIMETER RECHALLENGES AND PROCEDURAL DUE PROCESS ISSUES HOLLOW.
>> THE EVIDENTIARY FINDING, THESE THINGS HAPPEN, THEY DO NOT AFFECT IN ANY WAY THE JURORS DELIBERATION AND TESTIFIED TO THAT.
THERE APPEARS TO BE A GOOD FAITH REASON THE JUROR ANSWERED AS HE DID, HE COULDN'T HEAR CERTAIN QUESTIONS AND THE TRIAL COURT CREDITS THAT.
HOW IS THEIR UNFAIRNESS IN THE TRIAL IN THE GENERAL SENSE?
>> MAY I POINT OUT THE CREDIBILITY ISSUE?
IT LOOKED LIKE THE TRIAL COURT ONLY MENTION THE JURAT CREDIBILITY ISSUE TO THE DUI AND DID NOT COVER THE CREDIBLE ISSUE TO THE OTHER ONE.
ALSO AT THAT POINT THE TRIAL COURT LEAVES OUT THERE ARE NUMEROUS QUESTIONS ASKED OF THIS PANEL, FOUR ROSE OF PEOPLE ASKED THE SAME QUESTION AND THE RESPONSES.
THE COURT DID NOT MENTION JUSTICE LUCAS.
IN THAT DEPOSITION THE JURY IS STILL CONCEALED THAT HIS UNCLE WAS INVOLVED IN THAT MURDER OF HIS GRANDFATHER.
WE WENT BACK TO OUR FIRM AND GOT THE NAME OF THE VICTIM AND LOOKED IT UP AND THE UNCLE WAS INVOLVED AND WE ASKED AT THE

EVIDENTIARY HEARING WHY DID YOU
FAIL TO DISCLOSE THIS?
STILL EMOTIONAL AND MICHAEL
TOLD ME ON HIS DEATHBED HE
WASN'T INVOLVED.
THAT IS NOT A GENUINE ANSWER.
>> HIS UNCLE PROFESSED HIS
UNCLE WAS INVOLVED.
>> HE PROFESSED HIS INNOCENCE
BUT SOMEBODY -- LISTEN TO THE
LAST CASE.
DOES THAT MEAN YOU DON'T
CONCEAL IT WHEN HE HAS AN
ADJUDICATION?
THAT IS THE ISSUE.
>> CAN I ASK A MORE MUNDANE
QUESTION?
YOU TALK ABOUT THE 1-YEAR
DEADLINE.
IF IT LET YOU DOWN THE PATH OF
DISCOVERING THIS INFORMATION,
THE DUI ARREST WHICH CAUSED YOU
TO FILE A MOTION TO INTERVIEW.
WHY COULDN'T THAT HAVE
HAPPENED?
WHY COULDN'T YOU HAVE KNOWN
WITHIN THE YEAR DEADLINE?
>> THE OTHER --
>> THE THING THAT CAUSED YOU TO
GO DOWN THIS PATH WAS A MATTER
OF PUBLIC RECORD WITH DILIGENCE
YOU COULD HAVE UNCOVERED WITHIN
THE FIRST YEAR AND FOLLOWED
MOTION FOR THE INTERVIEW ETC..
>> WE DID.
THE DUI ISSUE WAS FILED, FRAMED
AS A NEWLY DISCOVERED
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM.
AND OTHER ISSUES, WE COULD NOT
FIND OUT --
>> IT DIDN'T HAPPEN.
YOU DIDN'T ATTEMPT TO INTERVIEW
THE JUROR.
>> WE CANNOT INTERVIEW WITHOUT
FILING A MOTION.
>> YOU DIDN'T FILE A MOTION IN
THE FIRST YEAR.
>> WHAT HAPPENED IS WE FILE THE
ASSISTANCE CLAIM AND HAVE TO

WAIT UNTIL THE EVIDENTIARY HEARING ON THIS ISSUE.
THE TRIAL COURT SUMMARILY DENIED ALL CLAIMS EXCEPT THE DEATH PENALTY CASE UNDER HURST.
THE JUDGE GRANTED OUR JUROR DUI ISSUE AND THAT IS WHEN WE HAD THE EVIDENTIARY HEARING.
THE MOTION TO THE POSE, TO ESSENTIALLY PUT THE JUROR UP ON THE STANDS OR DEPOTS HIM TO FIND OUT WHAT HE WILL SAY ON THE STAND.
THE JUDGE GRANTED THAT MOTION AND PROVIDED US WITH THAT MATERIAL.
THEY CANNOT FIND THAT MATERIAL WITHOUT THE STATE ORIGINALLY GIVING IT TO US WITH A DEPOSITION 5 DAYS BEFORE THE DEPOSITION ABOUT THE SEXUAL BATTERY.
IT WAS IMPOSSIBLE AND GRANDFATHER AND GRANDMOTHER'S NAME IS DIFFERENT FROM THE JUROR'S NAME.
AND THOSE ISSUES WOULD NOT HAVE BEEN DISCOVERED BY DEFENSE COUNSEL.
THE STATE AND ENSURE MURDER.
>> THE COURTS PRIOR OPINIONS, THE FIRST DCA CASE UNDER MITCHELL USED A VARIATION OF IT BECAUSE DELAROSA CAME OUT IN 1995 AND MITCHELL IN THE FIRST DCA WAS 1985 CASE, THEY WERE BANKING ON WHAT I ASSUME IS THE MCDONOUGH OPINION AND THEY WENT OVER THE CONTEXT, THE DEFENSE COUNSEL WAS DULY DILIGENT AND THEY GRANTED A NEW TRIAL AND THE STATE IS NOT CONTENDING WE MEET THOSE ELEMENTS AND THAT IS THE PROBLEM HERE.
WHY IS THIS SO EASY?
BECAUSE UNDER DELAROSA WE NEED THOSE ELEMENTS.
THIS IS RELEVANT MATERIAL ALL DAY LONG BECAUSE THE JUROR IS

EMOTIONALLY SCARRED AND THE
VICTIM OF MURDER AND HE'S GOING
TO BE ASKED TO BE FAIR AND
IMPARTIAL TO ANOTHER HOMICIDE
CASE WHEN THERE WAS A GRUESOME
DEATH AND --
>> WHAT SHOULD WE MAKE OF THE
FACT THAT WHEN YOU HAD THE
OPPORTUNITY AT THIS HEARING TO
TALK WITH COUNSEL EVEN THOUGH
YOU KEPT TRYING TO GET HIM TO
SAY HE WOULD HAVE USED THE
PERIMETER RECHALLENGE ON THIS
JUROR THEY ARE GOING BACK TO
THE DISHONESTY ISSUE BUT THE
QUESTION IS IF THE QUESTIONS
HAVE BEEN ANSWERED CORRECTLY,
WHAT WOULD THE LAWYER HAVE
DONE.
DESPITE PAINFULLY TRYING TO GET
HIM TO SAY HE WOULD STRIKE THE
JURY HE NEVER DID.
>> HE STRUCK THE JUROR FOR
CAUSE.
AND IF THE --
>> AND --
>> HE NEVER SWORE TO CLOSE THE
LOOP.
>> HE NEVER GAVE THE ANSWER HE
WANTED HIM TO GIVE.
>> I THINK HE DID.
HE JUST DIDN'T SEE IT CLEARLY
ENOUGH.
WHETHER THE JUROR WAS DECEIVING
WHEN HE HEARD THESE QUESTIONS
AND THE DOOR DIDN'T HEAR THE
QUESTIONS EVEN THOUGH THEY WERE
ASKED SEVERAL TIMES.
>> YOU ARE IN YOUR REBUTTAL
TIME.
YOU MAY CONTINUE.
>> I WILL WAIT.
>> MAY IT PLEASE THE COURT.
ASSISTANT ATTORNEY GENERAL
CHARMAINE WILLSAPS.
I WANT TO TALK ABOUT WHETHER
THIS WAS DISCOVERABLE.
BOTH PRIOR LITIGATION AND
JURORS PRIOR CONVICTIONS ARE
DISCOVERABLE AT TRIAL.

IT IS VERY EASY, THIS TRIAL WAS IN 2009.
>> YOU AGREE THAT JUVENILE RECORDS ARE SEALED.
>> ABSOLUTELY.
MY ARGUMENT IS LIMITED TO THE DUI CONVICTION.
I CAN SEE AS I DID DOWN BELOW THAT BOTH JUVENILE RECORDS AND GRANDFATHER'S MURDER, NOBODY COULD FIND THOSE BUT THE DUI CONVICTION.
ATTORNEYS CAN FIND THAT.
ARE YOU HAVE TO DO IS RUN BACKGROUNDS ON THE JURY'S.
THOSE ISSUES SHOULD BE REQUIRED TO BE BASED ON DIRECT ABUSE.
>> THAT WAS FILED IN A YEAR, AS AN INEFFECTIVE ASSISTANCE CLAIM.
>> I AM MORE THAN WILLING BUT IN TERMS OF DISCOVERABLE, TRIAL ATTORNEY, DEFENSE ATTORNEY COULD HAVE RUN A BACKGROUND CHECK.
>> SOUNDS LIKE YOU AGREE THERE WAS INEFFECTIVE ASSISTANCE.
>> I'M SAYING THERE WAS NOT.
I THINK THEY DON'T RUN THEM FOR A REASON.
I THINK IT IS STRATEGIC.
INEFFECTIVENESS, YOU NEED BOTH DEFICIENT PERFORMANCE AND PREJUDICE.
IF YOU DO IT THAT WAY THESE ARE DISCOVERABLE.
YOU CAN DO IT DURING TRIAL.
I WOULD ALSO TELL YOU THE TRIAL JUDGE FAILED.
HE WOULD NOT HAVE USED A PEREMPTORY DEFENSE COUNSEL BECAUSE HE DID NOT STRIKE ANOTHER JUROR WHO DID HAVE A DUI CONVICTION.
I HAD A FINDING BY TRIAL COURT BASED ON DUI CONVICTION.
>> DUI CONVICTION, TRIAL LAWYER'S STANDPOINT, FROM WHAT I SEE HERE, THE FACT THAT HIS GRANDFATHER HAD BEEN MURDERED

AND HE WAS EMOTIONAL ABOUT IT
AND YOU ARE DEALING WITH THE
SAME ISSUE IN THIS PARTICULAR
CASE.
THAT WOULD BE THE ONE I WOULD
THINK A TRIAL LAWYER HAD HE OR
SHE KNOWN ABOUT IT MAY HAVE
RAISED SOME CONCERNS AND CAUSED
THE PERIMETER HE CHALLENGE TO
DENY THE PERIMETER HE CHALLENGE
AND THAT IS YOU ADMITTED WAS
NOT DISCOVERABLE UNLESS THE
JUROR TOLD EVERYBODY.
>> HE CAN'T BE DEFICIENT.
>> YOU ARE STICKING TO ANOTHER
CASE.
THEY SIT ON CONVICTIONS ALL THE
TIME.
>> EXACTLY.
THE DUI PART TO ME THERE IS NO
INEFFECTIVENESS.
THE STANDARD WAS INEFFECTIVE.
>> YOU DON'T CAUSE A NEWLY
DISCOVERED DELAROSA BECAUSE
NEWLY DISCOVERED IS AN
EXCEPTION TO EVEN THE ONE YEAR
TIME, NEWLY DISCOVERED EVIDENCE
CLAIMS 20 YEARS LATER AND WE
ILLUMINATE THAT TO ONE THING.
THERE IS ONE TEST FOR NEWLY
DISCOVERED EVIDENCE THAT IS
JONES.
THAT GOES TO THE --
>> WE SEEM TO HAVE DONE IT IN
THIS CONTEXT MANY TIMES.
>> ISOLATED SIX WHERE YOU
APPLIED CARROTS AWAY.
YOU WERE AT ONE POINT THE COURT
WAS DOING BOTH BUT THIS COURT'S
RECENT CASE LAW IS APPLYING
CARATELLY ONLY.
THERE ARE ONLY 7 CASES.
>> HAS THIS COURT EVER APPLIED
8 DELAROSA STANDARD TO VIOLATE
A CLAIM LIKE THIS ONE?
WE WOULD HAVE TO RECEDE FROM
THOSE CASES.
>> SOMETIMES YOU DID IT IN THE
ALTERNATIVE.
HE WOULD DO CARETELLY AND THEN

DELAROSA.
I DON'T THINK YOU HAVE TO
RECEDE FROM THOSE CASES.
>> IF WE WERE TO EMPLOY
DELAROSA WITH THE STATE LOSE ON
THIS CASE?
>> IT WAS NOT MATERIAL BECAUSE
THE TRIAL COURT BELIEVED THE
DEFENDANT AND WAS NOT BIASED
AND BELIEVED IN WHAT HE SAID.
>> IT GOES TO ACTUAL BIAS BUT
THE MATERIALITY QUESTION IS NOT
WHETHER IT AFFECTS THE JURY BUT
WHETHER THE ATTORNEY WOULD HAVE
EXERCISED THE PERIMETER
RECHALLENGE BASED ON THAT
INFORMATION.
IS THERE EVIDENCE IN THE RECORD
TO SUPPORT THE ATTORNEY WOULD
NOT HAVE EXERCISED THE
PERIMETER RECHALLENGE IF HE HAD
KNOWN ABOUT THE JUVENILE
BATTERY CONVICTION AND MURDER
OF THE GRANDFATHER?
>> I WILL HAVE TO DO THEM ONE
AT A TIME.
THERE IS EVIDENCE ABOUT THE DUI
AND ANOTHER JUROR SAT AND DID
NOT STRIKE.
THE JUVENILE CONVICTION IF
ANYTHING REMEMBER WHAT THIS
DEFENDANT SAID.
HE HAD LITTLE ILL WILL AGAINST
THE STATE.
IT IS NOT ACTUAL BIAS.
ACTUAL BIAS AGAINST THE
DEFENDANT.
>> WHAT ABOUT BEING THE VICTIM
OF A MURDER.
>> THAT TO ME WAS SO LONG AGO
HE SAID IT DIDN'T AFFECT -- WE
NEVER SPECIFICALLY ASK ABOUT
THE GRANDFATHER.
THE TRIAL COURT FOUND HIM IS
NOT ACTUAL BIAS.
>> BECAUSE OF THE TIME WHEN IT
HAPPENED TO THE TIME OF THE
TRIAL?
>> AND HOW OLD THE DEFENDANT
WAS.

WE ARE NOT SURE WHERE THE CRIME
OCCURRED.
LATE 70s, HE SEEMS 10 OR UNDER.
WHAT HE HEARD WAS HEARSAY.
HE TESTIFIED HE DID NOT AFFECT
HIS VERDICT AT ALL AND IT SEEMS
IT WAS A PLEA.
WHAT HE WAS UPSET ABOUT WAS HIS
GRANDMOTHER ONLY SPENT 5 YEARS
IN JAIL.
IF IT WAS A RESULT OF A PLEA
THAT IS THE STATE AGAIN.
EVERY ONE OF THESE BOILS DOWN
TO I DON'T THINK THERE WAS ANY
BIAS.
>> IF WE WERE TO APPLY DELAROSA
WE WOULD REJECT THE CLAIM?
OR WE WOULD AFFIRM A REJECTION
OF THE CLAIM?
>> HE WOULD NOT FIND ACTUAL
BIAS.
DELAROSA NEEDS TO BE LIMITED
NOT JUST TO DIRECT APPEALS BUT
OBJECTION.
YOU SHOULD DO MCDONOUGH ON
THOSE TRIAL MOTIONS ARE ACTUAL
BIAS THAT SHOULD BE THE
STANDARD.
>> SINCE MCDONOUGH DOESN'T SAY
ANYTHING ABOUT ACTUAL BIAS.
>> AS LONG AS WE ARE TALKING
ABOUT CONSTITUTIONAL AND JURIES
THE ONLY CONSTITUTIONAL LIMIT
ON THESE ALLEGATIONS IS
RODRIGUEZ VERSUS COLORADO,
LIMITED TO ALLEGATIONS JURORS
ENGAGED IN RACIAL BIAS.
THAT IS THE CONSTITUTIONAL
LIMIT HERE.
SO CONSTITUTIONALLY THE ONLY
ISSUE WOULD BE THE UNITED
STATES SUPREME COURT REQUIRES
TO PUNISH A HOLE IN LORD
MANSFIELD'S ROLE, HERE THE
DEFENDANT WAS WHITE, THE VICTIM
WAS WHITE, THE JUROR IN
QUESTION WAS WHITE.
THERE IS NO ALLEGATION OF
RACIAL BIAS SO
CONSTITUTIONALLY, RODRIGUEZ

DOES NOT APPLY.
THAT IS THE ONLY CONSTITUTIONAL LIMIT I KNOW THAT THE UNITED STATES SUPREME COURT SAID STATES MUST DO.
IT INVOLVED COLORADO AND THEY EVEN CALLED THEIR 606 BE AND THE SUPREME COURT HELD THAT BECAUSE IT WAS AN ALLEGATION OF RACIAL BIAS IT MUST BE EXPLORED AND YOU MUST CONSIDER IT AND THAT IS THE ONLY CONSTITUTIONAL LIMIT.
IF WE TALK ABOUT CONSTITUTION THERE IS NO DOUBT THIS CLAIM WOULDN'T EVEN NECESSARILY HAVE TO BE EXPLORED UNDER THE CONSTITUTION.
IT IS NOT A RACIAL ALLEGATION OF BIAS.
THAT IS THE ONLY LIMIT I KNOW CONSTITUTIONALLY.
SO DELAROSA SHOULD BE LIMITED TO WHEN YOU OBJECT.
YOU SHOULD HAVE TO OBJECT BOTH TO LITIGATION WHICH IS WHAT MOST DELAROSA THINGS ARE BASED ON IN THE JUROR'S CRIMINAL HISTORY ARE READILY AVAILABLE.
YOU SHOULD HAVE TO OBJECT AT TRIAL CONTEMPORANEOUSLY AND BY CONTEMPORANEOUSLY I MEAN BEFORE THE JURY GOES BACK FOR DELIBERATIONS.
YOU HAVE THE ENTIRE TRIAL TO RUN SOMETHING THAT TAKES MORE THAN AN HOUR TO RUN.
BOTH OF THOSE SHOULD HAVE TO BE BROUGHT BEFORE THE COURT.
DELAROSA SHOULD ONLY BE RAISED AS THE JUDGE, AFTER I BROUGHT IT TO HIS ATTENTION, DID NOT SEND THE ALTERNATE BACK UNDER RULE 3.575, CIVIL 31.530 BE SHOULD BE EXTRANEOUS, THINGS THAT ARE DIFFICULT TO FIND, RACIAL ALLEGATIONS AND THAT KIND OF THING.
THOSE SHOULD BE POST TRIAL.
THEY ARE TOO EASY TO FIND FOR

PRIOR LITIGATION UNCLE HISTORY.
I WOULD LIKE TO TALK ABOUT BOYD
IN THIS SENSE.
THE DISTRICT COURT'S ORDER TALK
ABOUT TWO JEWELERS.
THEY HAD NUMEROUS PRIOR
FELONIES.
AND THEY HAD A MISDEMEANOR, NOT
DISCLOSED.
AND THEY DID NOT HAVE AN
EVIDENTIARY EVERY HEARING.
AND THE MISDEMEANOR CONVICTION.
AND THE MISDEMEANOR AND FELONY
JUROR.
>> THE CRITICISM OF THE
DISTRICT COURT JUDGE, THE TRIAL
COURT FINDING NO BIAS WITHOUT
CONDUCTING AN EVIDENTIARY EVERY
HEARING.
THAT'S WHAT THE DISTRICT COURT,
THE TRIAL COURT BASED ON THE
RECORD BEFORE IT MADE A FINDING
OF NO ACTUAL BIAS APPLIED AS
THE STANDARD AND THERE WAS NO
EVIDENTIARY HEARING TO SUPPORT
THAT.
WE HAVE AN EVIDENTIARY HEARING
AND THE TRIAL COURT FOUND NO
ACTUAL BIAS.
AND SOMEHOW MCDONOUGH SET THE
CONSTITUTIONAL ROLE THAT WAS
INCORRECTLY APPLIED BY US AND
THERE WAS A HEARING, FINDING OF
NO ACTUAL BIAS AND WE ARE
OUTSIDE THAT CRITIQUE.
>> THAT IS THE JUROR WHO WAS --
THE FEDERAL DISTRICT JUDGE DID
NOT DO THAT ON THE MISDEMEANOR.
THERE WAS NO EVIDENTIARY EVERY
HEARING, THERE HAS NEVER BEEN
AN EVIDENTIARY HEARING.
>> DISTRICT FEDERAL COURT HELD
A BASIS FOR A COST CHALLENGE,
THERE IS NO EVIDENTIARY EVERY
HEARING ON THE SECOND
MISDEMEANOR AND THIS CASE IS
MORE LIKE THE SECOND JUROR.
THERE ARE NO FELONIES INVOLVED.
>> THAT WASN'T THE CLAIM
BROUGHT THAT HE WAS A STATUTORY

ONLY IN ELIGIBLE DOOR.
THE COMPLETERS HAD I KNOWN THIS INFORMATION, HAD HE NOT LIED I WOULD HAVE STRUCK WITH THE PERIMETER RECHALLENGE NOT THAT I WAS DEPRIVED OF MY COST CHALLENGE.
WHICH WITH A DIFFERENT CLAIM.
>> VERY DIFFERENT CLAIM AND THE FEDERAL DISTRICT COURT ITSELF WAS DEALING WITH TWO DIFFERENT JURORS AND DID NOT HOLD EVIDENTIARY HEARING ON THE SECONDARY AND THIS IS A MISDEMEANOR.
A 17-YEAR-OLD MISDEMEANOR AND THE ADJUDICATION WAS APPROXIMATELY 20 YEARS, 24 YEARS BEFORE THIS TRIAL.
OBVIOUSLY WE ARE GOING TO TRY TO GET BOYD STRAIGHT AND THE CARATELLY CIRCUIT STRAIGHT, THE 11TH CIRCUIT DOES THE SAME THING OF HAVING A HIGHER STANDARD.
THE SUPREME COURT, THE 11TH CIRCUIT, PURVIS VERSUS CROSBY WHICH WAS SUPPLEMENTED WAS CITED IN CARATELLY WORKS.
IT CREATES A HIGHER STANDARD REGARDING INEFFECTIVENESS.
BECAUSE OF FINALITY AND PROCEDURAL BARS, AND CITING PURVIS AND OTHER THINGS, CITING IT TWICE AND ADOPT A HIGHER STANDARD FOR POST CONVICTION.
YEARS LATER THE UNITED STATES SUPREME COURT, WEAVER VERSUS MASSACHUSETTS DOES THE SAME THING, BOTH DUE TO INTERESTS AND FINALITY AND INTERESTS ABOUT PROCEDURAL BARS.
WHAT YOU ARE GOING TO DO IF YOU RECOGNIZE NEWLY DISCOVERED EVIDENCE OF DELAROSA, THIS IS AN INITIAL POST CONVICTION.
NEWLY DISCOVERED EVIDENCE IS RAISED IN THE CONTEXT OF DECADES AFTER THE TRIAL AND IF YOU HAVE NEWLY DISCOVERED

EVIDENCE OF DELAROSA, YOU CAN LITIGATE JURORS 30 YEARS AFTER THE TRIAL.
SO THE PROBLEM WITH NEWLY DISCOVERED EVIDENCE IS IT IS AN EXCEPTION TO EVERYTHING, AND IT IS FINE TO DO THAT BUT IN ONE CONTEXT AND ONE CONTEXT ONLY, INNOCENCE OF CRIME OR INNOCENCE OF PENALTY.
A CASE AGAINST THE DEFENDANT OR THE PENALTY.
IF YOU HAVE NEWLY DISCOVERED EVIDENCE THAT RELATES TO THE CASE, THE STRENGTH AGAINST THE DEFENDANT, MAY YOU BRING THAT 20 YEARS LATER WITHOUT ANY TIME BARS, YOU MAY UNDER NEWLY DISCOVERED EVIDENCE BUT BECAUSE NEWLY DISCOVERED EVIDENCE, WE ARE DOING THAT BECAUSE WE WANT CLAIMS OF INNOCENCE OR INNOCENCE OF THE DEATH PENALTY AND WE LISTEN TO 20 OR 30 YEARS LATER BUT DELAROSA SHOULDN'T BE THE STANDARD IN POSTCONVICTION.
I DON'T THINK IT SHOULD BE THE STANDARD, YOU SHOULD HAVE TO PRESERVE THAT AT TRIAL.
IT SHOULDN'T BE THE STANDARD ON DIRECT APPEAL IF NOT PRESERVE BUT IF YOU MOVED TO POSTCONVICTION THIS NEEDS TO BE LIMITED TO INEFFECTIVE ASSISTANCE, NEWLY DISCOVERED EVIDENCE CLAIMS NEED TO BE LIMITED TO THE EVIDENCE AGAINST THE DEFENDANT REGARDING HEALTH OR SENTENCE.
SO I WOULD LIKE TO END WITH THE JUROR DID REPEATEDLY TESTIFY NONE OF THIS, HE HELD NONE OF THIS AGAINST THE DEFENDANT AND THE STATE DOESN'T BELIEVE THERE WAS ANY BIAS BUT IF THERE WAS IT IS VERY CLEAR THAT THE JUROR HELD ILL WILL AGAINST THE STATE, NOT THE DEFENDANT.
ACTUAL EVIDENCE MUST BE AGAINST THE DEFENDANT.

IT IS CARATELLY THAT APPLIES.
DOES THE STATE ASK YOU TO
CLARIFY?
GIVEN BY THE 11TH CIRCUIT IN
THEIR CASE LAW, AND BECAUSE IT
IS POSTCONVICTION YOU MUST
RAISE IT AS INEFFECTIVE COUNSEL
CLAIM AND CARATELLY DOES URGE
YOU TO CLARIFY THAT.
IF THERE ARE NO FURTHER
QUESTIONS WE ASK THAT YOU
AFFIRM THE TRIAL COURT'S DENIAL
OF POSTCONVICTION AND THANK YOU
FOR YOUR TIME.
>> JUSTICES OF THE COURT
RECOGNIZE THE FATAL FLAW IN
THAT ARGUMENT.
THE STATEMENT OF THE THREE
TIMES.
DELAROSA SHOULD PRESERVE A
DEROSA ISSUE AT TRIAL OR
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM SHOULD CONTROL
BUT HOW CAN ONE BE INEFFECTIVE
IF THEY DID NOT KNOW OF THESE
DISCLOSURES.
DISCOUNT -- COUNCIL CANNOT FIND
OUT ABOUT THE MURDER AND
DEFENSE COUNSEL CAN'T FIND OUT
ABOUT THE RAPE CONVICTIONS.
HOW CAN CARATELLY APPLY TO A
FACTUAL SCENARIO LIKE THIS WHEN
IT WAS LITERALLY IMPOSSIBLE AND
CONCEDED BY ALL PARTIES THIS
COULD NOT HAVE BEEN DISCOVERED
UNTIL POSTCONVICTION AND MORE
IMPORTANTLY UNTIL THE JUROR
DISCLOSED IT?
>> IT IS PART OF CARATELLY THAT
REQUIRES BIAS.
IT IS A MAJOR DIRECT APPEALS
BUT IF WE REVERSE AND USE
COLLATERAL POWERS TO VACATE A
CONVICTION, THEY SHOULD SHOW
SOME EFFECT ON THE JURY.
THAT IS THE THOUGHT PROCESS
BEHIND THIS.
WHY SHOULD THE PRINCIPLE THAT
APPLIES THROUGHOUT MANY OTHER
JURY ISSUES BY THIS COURT

INCLUDING INAPPROPRIATE SEATING
OF JURORS, FAILURE TO STRIKE
FOR CAUSE, SHOULD HAVE STRIKE
AND FOR CAUSE BUT WHY NOT APPLY
IN THIS CONTEXT?
>> MCDONOUGH AND DELAROSA AND
THE CASES THAT USE THEM FROM
THIS COURT SAY WE HAVE TO APPLY
IT THIS WAY.
>> AS A GENERAL RULE YOU AGREE
FINALITY BECOMES MORE IMPORTANT
THE FURTHER AWAY YOU ARE FROM
THE TRIAL?
WITNESSES ARE GONE, YOU CAN'T
NECESSARILY RETRY A TASTE,
FINALITY BECOMES FARTHER AWAY,
YOU AGREE WITH THAT?
>> I'M AN ADVOCATE OF FINALITY
MYSELF.
MUCH TOO PEOPLE'S DIFFERENT
OPINION.
THE PROBLEMS ARISE, WE'VE SEEN
IT IN WRONGFUL CONVICTION CASES
AND DNA CASES ESPECIALLY
CAPITAL CASES.
WE NEED TO HAVE AN OPPORTUNITY
TO LITIGATE AN ISSUE.
>> WHY HAVE A STANDARD THAT
DIDN'T REQUIRE YOU TO SHOW THAT
IT MADE A DIFFERENCE?
ACTUAL BIAS OR SIMILAR STANDARD
WHEN TALKING ABOUT CLAIMS THAT
CAN BE BROUGHT IS MISS MILSAP
SAID 10 OR 11 YEARS, NEWLY
DISCOVERED EVIDENCE, THE
FINALITY COMPONENT WOULD SEEM
TO COMPEL A STANDARD THAT
REQUIRES THAT YOU SHOW IT MADE
A DIFFERENCE.
I DON'T KNOW WHY THAT WOULDN'T
BE TRUE.
>> MY ANSWER HAS TO BE THAT
FINALITY TAKE SECOND TO 6TH
AMENDMENT RIGHT TO HAVE A FAIR
AND IMPARTIAL TRIAL.
>> THERE IS NO SIXTH AMENDMENT
RIGHT TO A PEREMPTORY
CHALLENGE.
>> CORRECT.
THE SALESMAN WRITES THE

MISCONDUCT THAT OCCURRED.
THAT IS THE ARGUMENT WE PUT IN THE BRIEF THE WE RELY ON CASES FROM THE FLORIDA SUPREME COURT AND AVOIDS INTERPRETATION OF THE SIXTH AMENDMENT ISSUE.
IT RENDERS HOLLOW THESE COST CHALLENGES.
WHEN YOU ALLOW A JURY TO BE ON HERE.
INTENTIONALLY OR NOT INTENTIONALLY, I WOULD ARGUE INTENTIONALLY BASED ON PRIOR ARGUMENTS, CONCEALED SOME VERY DAMNING ISSUES ABOUT HIMSELF AND IF YOU READ HIS EVIDENTIARY HEARING TESTIMONY MENTIONS I DIDN'T BELIEVE MISTER MARTIN WHEN HE GOT ON THE STAND AND HIS GRANDMOTHER POSED A SELF-DEFENSE CASE TO MURDER OF HIS GRANDFATHER THAT WAS FOUND TO BE WRONG OR FRIVOLOUS OR FALSE SO IT IS VERY INTERESTING DICHOTOMY WHEN YOU ARE TRYING TO SAY ALL THESE THINGS SOMEHOW DON'T MEAN ANYTHING BECAUSE THE JUROR GAVE HIM A FAIR TRIAL AND I THINK BIAS APPLIES GIVEN ALL THE THINGS THAT HAPPEN AND THE JURORS CONTINUED DECEPTION INTO POSTCONVICTION AND WITHOUT DOING RESEARCH WE WOULD NEVER HAVE KNOWN ABOUT THE UNCLE.
>> YOUR TIME IS EXPIRED, TAKE ANOTHER 30 SECONDS TO SUM UP.
>> I WOULD ARGUE THE STANDARD IS CLEAR.
NEWLY DISCOVERED EVIDENCE HAS TO APPLY IN THIS CASE BECAUSE DEFENSE COUNSEL COULD NOT HAVE FOUND OUT ABOUT THIS.
OUTSIDE THIS REVIEW I WOULD ASK BASED ON THE SIMPLE THREE PRONGS THAT WE CLEARLY NEEDED TO ASK THE STATE TO REBUT THAT.
I DID NOT HEAR AN ANSWER BECAUSE IT IS MATERIAL, IT WAS CONCEALED AND DEFENSE COUNSEL SAID HE WOULD CHALLENGE CAUSE

AND I WOULD ASK TO REVERSE.
>> THANK YOU BOTH FOR YOUR ARGUMENT.
THE COURT WILL STAND IN RECESS FOR 10 MINUTES.