

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE, THE
SUPREME COURT OF FLORIDA'S NOW
IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR.

GIVE ATTENTION, YOU SHALL BE
HEARD.

GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA, THIS
HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.

>> GOOD MORNING, AND WELCOME TO
THIS SESSION OF FLORIDA SUPREME
COURT.

THE FIRST CASE ON TODAY'S DOCKET
IS JOSEPH V. THE STATE OF
FLORIDA.
COUNSEL?

>> GOOD MORNING, MR. CHIEF
JUSTICE, HONORABLE JUSTICES,
COUNSEL.

MY NAME IS FRED SUSANECK, I
REPRESENT MR. JOSEPH HERE.
FEELS A LITTLE STRANGE TO BE IN
THE COURTROOM.

>> WE CAN RELATE.

>> LAST TIME I WAS SITTING AT MY
DINING ROOM TABLE FOR THE
SENTENCING IN MR. JOSEPH'S CASE.
I'M GOING TO ADDRESS, ACTUALLY,
JUST TWO OF THE ISSUES HERE.

I THINK THE BRIEFS PRETTY MUCH
COVER MOST ALL OF IT, AND I'M
NOT GOING TO STAND HERE AND GO
OVER EVERYTHING AGAIN.
THE FIRST ISSUE I WANT TO
ADDRESS IS ISSUE NUMBER 1 WHERE
THE COURT DID NOT EXCLUDE THE
TESTIMONY OF THE WITNESS WHO WAS
LISTED BY THE STATE AT LAST
MINUTE.

AND WHEN I SAY THE LAST MINUTE,
I DON'T MEAN A WEEK BEFORE
TRIAL, I DON'T MEAN TWO DAYS
BEFORE TRIAL.

THIS WITNESS WAS LISTED AS WE
WERE PICKING THE JURY.

THE WITNESS DID THE EVALUATION
THAT THE STATE HAD EVIDENCE
WHILE WE WERE PICKING THE JURY.

AND THIS WITNESS WAS DISCLOSED TO US AS WE WERE PICKING THE JURY.

THE DEPOSITION OF HIM WAS DONE AS WE WERE PICKING THE JURY. AT HIS DEPOSITION HE WAS LISTED AS A FIREARMS TOOL MARK EXPERT. HIS DEPOSITION WAS TAKEN AS THE RECORD WOULD REFLECT, AND IT BECAME CLEAR THAT THE DEFENSE NEEDED A WITNESS TO REBUT HIM OR AT LEAST TELL US WHETHER OR NOT WHAT HE WAS SAYING WAS TRUE.

I WENT THROUGH THE JAC REQUIREMENTS OF HAVING AN ORDER DONE AND US LOOKING FOR AN EXPERT WHICH WAS BEING DONE BY OTHER PEOPLE BECAUSE I WAS IN THE COURTROOM PICKING THE JURY WITH CO-COUNSEL.

IT BECAME CLEAR BY THE INVESTIGATION THAT MY INVESTIGATOR DID THAT WE DIDN'T NEED A FIREARM EXPERT, WE NEEDED A TOOL MARK EXPERT.

THERE'S A DIFFERENCE.

A TOOL MARK EXPERT IS VERY, VERY SPECIALIZED, AND THERE ARE NONE. THERE ARE NONE IN FLORIDA THAT WE COULD FIND ON SUCH SHORT NOTICE.

THE ONE WE HAD HAD MOVED TO TENNESSEE OR SOMEWHERE AND SAID HE WASN'T EVER COMING BACK TO THE STATE OF FLORIDA.

I DID RESEARCH, I INVESTIGATED AND GOT INFORMATION ON TOOL MARK EXPERTS.

WE COULD NOT FIND ONE.

THIS WAS ALL PRESENTED TO THE COURT.

SOME OF THE RESEARCH IS IN THE RECORD WHICH WAS PRESENTED TO THE COURT THAT THIS TOOL MARK EXPERT WHICH THE STATE APPARENTLY NEEDED FOR THIS CASE, OTHERWISE THEY WOULD NOT HAVE DONE IT AT THE LAST MINUTE, WOULD NOT HAVE PRESENTED IT.

THERE SEEMED TO BE SOME CONCERN ON THEIR PART AS TO WHETHER OR NOT THEY HAD ENOUGH EVIDENCE TO SHOW WHICH WEAPON WAS USED, THAT THERE WAS ONLY ONE WEAPON USED

AND WHO USED THE WEAPON AS NO WEAPON WAS RECOVERED.

A MOTION WAS FILED AND ARGUED BEFORE THE JUDGE, THE TRIAL COURT JUDGE IN THIS CASE, ASKING FOR THIS WITNESS TO BE EXCLUDED AS IT WAS DISCLOSED ON SUCH SHORT NOTICE.

HE HELD A RICHARDSON HEARING AND FOUND, IN FACT, A RICHARDSON VIOLATION HAD OCCURRED.

THIS WAS A DISCOVERY VIOLATION.

>> MR. SUSANECK--

>> YES.

[NO AUDIO]

>> [INAUDIBLE]

>> THAT'S CORRECT, YOUR HONOR.

>> BUT THE ARGUMENT'S GOING TO BE THAT YOU WERE GIVEN AN OPPORTUNITY TO HIRE AN EXPERT--

[INAUDIBLE]

PRACTICALITY OF A TRIAL LAWYER TRYING A CASE--

[INAUDIBLE]

TAKING THE JURY, BEING CONCERNED ABOUT EVERYTHING THAT GOES ON DURING A TRIAL WHICH IS A LOT, AND AT THE SAME TIME YOU'RE SUPPOSED TO SOMEHOW BE LOOKING FOR SOMEONE, AN EXPERT, TO BE ABLE TO IMPEACH THE STATE'S EXPERT.

WHAT PREJUDICE GOES-- OTHER THAN JUST THE FACT THAT THEY WERE GIVEN THE LAST MINUTE, HOW DOES THAT AFFECT YOUR ABILITY TO PROPERLY DEFEND A DEFENDANT IN COURT?

>> YOUR HONOR, IT AFFECTS MY ABILITY TO PROPERLY DEFEND A DEFENDANT IN COURT IN THAT THE STATE IS NOW PRESENTING EVIDENCE THAT I DID NOT HAVE A CHANCE TO THOROUGHLY INVESTIGATE USING MY EXPERT TO FIND OUT WHETHER OR NOT THAT EVIDENCE IS PROPER, WHETHER OR NOT THE EVIDENCE SHOWS WHAT THEY SAY IT DOES, WHETHER OR NOT THERE'S ANOTHER EXPERT OUT THERE WHO WOULD CONTRADICT THIS EXPERT, WHETHER OR NOT OTHER TESTS CAN BE DONE TO THIS.

THESE ARE ALL QUESTIONS THAT

WOULD BE DONE BY A TRIAL DEFENSE ATTORNEY AND QUESTIONS I WOULD DO HAD THEY SUBMITTED A WITNESS TO ME.

THEY DID NOT.

AND WHEN THE COURT ASKS HOW IS THERE THIS ERROR, AND THE COURT'S CORRECT, I WAS QUITE OCCUPIED ON OTHER THINGS FOR TRIAL.

THIS ERROR IS COMPOUNDED-- AND IS, BY THE WAY, I DO FIND IT INTERESTING THAT I WAS ASKED IF I'D LIKE TO USE THEIR EXPERT ON MY BEHALF WHICH I TURNED DOWN BECAUSE IT WAS THEIR EXPERT, AND I NEEDED MY EXPERT TO TELL ME WHAT HE WAS DOING WAS RIGHT. BUT THE ERROR IS COMPOUNDED, AND THAT WAS PART OF MY ARGUMENT THAT I WAS GOING TO GET INTO. FURTHER INTO THE TRIAL THE JUDGE DENIED AND SAID WE'RE MOVING ON. SHE WANTED TO GET THE TRIAL MOVING.

THEY CALLED THEIR WITNESS EVENTUALLY AT THE END OF THE TRIAL, AND I WAS CROSS-EXAMINING HIM.

DURING MY TIME WHENEVER I COULD AND WHATEVER MY INVESTIGATOR COULD DO, I WAS READING AND STUDYING WHAT TOOL MARK EXPERTS DO, WHAT TOOL MARK EXPERTS ARE NEEDED FOR, WHAT KIND OF EVALUATION, WHAT KIND OF TESTS THEY DO.

AND I WAS THOROUGHLY CROSS-EXAMINING THEIR WITNESS. I FORGOT HIS NAME AT THIS POINT.

>> FELIX.

>> WHAT?

>> I THINK HIS LAST NAME WAS FELIX?

>> YES, I THINK SO.

I WAS CROSS-EXAMINING HIM IN GREAT DETAIL AND ASKING HIM QUESTIONS, AND IT WAS GETTING TO THE POINT WHERE HE WAS SAYING, YEAH, OTHER EXPERTS COULD DIFFER WITH ME.

AS A MATTER OF FACT, ON PAGE 1,650 OF THE TRANSCRIPT, I BELIEVE, IS WHERE IT STARTED TO

SAY, YES, OTHER PEOPLE COULD DISAGREE WITH ME, THERE'S OTHER TESTS THAT COULD BE DONE, MY METHOD MAY NOT BE THE WAY OTHER PEOPLE DO, THERE CAN BE CONTRARY OPINIONS.

IT WAS AT THAT POINT ON PAGE 1,654 OF THE TRANSCRIPT ON HER OWN WITHOUT ANY OBJECTION FROM THE STATE, THE TRIAL COURT CUT ME OFF, SAID NO MORE QUESTIONING, WE'RE DONE WITH THIS WITNESS.

THERE WAS CLEARLY MORE QUESTIONING.

AND THAT'S RELEVANT BECAUSE, AS YESTERDAY IN THE SIEVERS CASE, JUDGE LAWSON ASKED A QUESTION OF THE DEFENSE ATTORNEY WHEN YOU WERE TALKING ABOUT THE, I THINK IT WAS A TWO-HOUR VIDEOTAPE, WASN'T THAT VIDEOTAPE THOROUGHLY QUESTIONED ABOUT, THOROUGHLY CROSS-EXAMINED, CROSS-EXAMINATION WAS DONE ON THAT, AND YOU GOT EVERY QUESTION ASKED, EVERY ANSWER THAT YOU WANTED ON THAT, YOU DIDN'T NEED THAT TAPE?

IN THIS SITUATION, NO, I DIDN'T.

I WAS CUT OFF, MY CROSS-EXAMINATION, SO I DID NOT GET TO THOROUGHLY CROSS-EXAMINE THEIR WITNESS BECAUSE THE JUDGE CUT ME OFF ON HER OWN MOTION.

>> COUNSEL, HELP ME UNDERSTAND THE EXACT RELEVANCE OF THIS INFORMATION.

I MEAN, AM I CORRECT IN UNDERSTANDING YOU DON'T HAVE THE GUN--

>> NO.

THAT'S CORRECT, YES.

>> SO WHAT IS-- THIS IS NOT MATCHING A PARTICULAR GUN TO THESE CASINGS, CORRECT?

>> THAT'S CORRECT.

>> SO THIS IS ALL ABOUT WHETHER ONE WEAPON AS OPPOSED TO MORE THAN ONE WEAPON--

>> THAT'S CORRECT.

>>-- WAS USED.

WELL, HELP ME UNDERSTAND HOW THAT FITS IN WITH YOUR THEORY OF

THE CASE AND THE REST OF WHAT WAS PRESENTED.

I MEAN, WE KNOW WE'VE GOT EVIDENCE CAME IN, AND I KNOW YOU CONTEST IT, BUT EVIDENCE CAME IN THAT YOUR CLIENT WAS THE SHOOTER.

CORRECT?

>> THERE WAS EVIDENCE TO THAT EFFECT.

>> FROM TWO PEOPLE, RIGHT?

>> WITNESSES WHICH WE HAD OBJECTED TO--

>> I UNDERSTAND, I UNDERSTAND. THAT'S A SEPARATE ISSUE.

>> YES.

>> BUT ASSUMING YOU DON'T WIN ON THAT, ON CONTESTING THAT, I'M TRYING TO FIGURE OUT HOW THIS REALLY MAKES ANY DIFFERENCE AND HOW THIS FITS INTO YOUR THEORY OF THE CASE.

>> IT MAKES A DIFFERENCE IN THAT THE STATE'S THEORY WAS THAT THERE WAS ONE SHOOTER, ONE GUN, AND ALL THIS MULTITUDE OF AMMUNITION, SLUGS, CASINGS THAT WAS ALL OVER THE PLACE CAME FROM ONE GUN.

THEY PUT THIS WITNESS ON TO TESTIFY ERRONEOUSLY THAT ONLY ONE GUN WAS USED TO LEAVE AN IMPRESSION WITH THE JURY THAT ONLY ONE GUN WAS USED, THAT THIS TOOL MARK EXPERT CAME IN AND SAID ALL THESE CASINGS, ALL THESE SHELLS, ALL OF THESE CARTRIDGES, ALL OF THESE SLUGS-- NONE OF WHICH WERE TESTED AGAINST EACH OTHER-- ALL CAME FROM ONE GUN.

THEY WANTED TO LEAVE THE IMPRESSION WITH THE JURY THAT ONLY ONE GUN WAS USED.

THAT'S WHY THEY CALLED THIS WITNESS.

AND THEIR WITNESS DEPRIVED ME OF GETTING THE ABILITY TO COME IN AND SAY, NO, THERE MIGHT HAVE BEEN TWO GUNS.

SO THIS IS WHAT IT WAS DONE FOR. THAT'S HOW IT'S RELEVANT, THAT'S HOW IT'S NOT HARMLESS, YOU KNOW? AS JUDGE MUNIZ SAID YESTERDAY,

YOU ASKED WHETHER OR NOT THE JURY HAD ALL THE EVIDENCE, THEY COULD CONSIDER IT AND DISREGARD WHAT THEY DIDN'T WANT.

IN MY CASE THEY DIDN'T.

THE JUDGE CUT ME OFF

MID-SENTENCE ON HER OWN MOTION AND LEFT THE IMPRESSION WITH THE JURY AS A RESULT OF ME STOPPING IN THE MIDDLE THAT THERE WAS ONE GUN, ALL THESE CARTRIDGES, AND THERE WAS A MULTITUDE OF CARTRIDGES CAME FROM ONE GUN. AND IF, THEREFORE, THERE WAS ONE SHOOTER, ONE GUN--

>> WELL, I STRUGGLE A LITTLE BIT WITH THE ASSUMPTION THAT MORE THAN ONE GUN WOULD NECESSARILY MEAN MORE THAN ONE SHOOTER. IT IS CERTAINLY KNOWN TO OCCUR THAT A SINGLE PERSON WILL USE MORE THAN ONE WEAPON.

>> BUT AS YOUR HONOR POINTED OUT, NONE OF THE WITNESSES SAID THERE WAS MULTIPLE WEAPONS.

>> WELL, BUT NONE OF THE WITNESSES SAID THERE WAS ANYBODY ELSE THERE, AND NONE OF THE WITNESSES SAID ANYBODY DID IT OTHER THAN YOUR CLIENT.

>> THAT'S WHY THEY NEED TO HAVE ALL OF THE EVIDENCE IN FRONT OF THEM TO MAKE THAT DECISION. YOUR HONOR, THERE WAS A MULTITUDE OF CARTRIDGES, MORE CARTRIDGES THAN-- AND MORE SHELLS THAN COULD HAVE COME FROM ONE GUN POSSIBLY.

SO THAT'S WHY IT'S RELEVANT.

THAT'S WHY--

>> SOMETIMES PEOPLE RELOAD.

I MEAN, I JUST-- THIS IS JUST-- THERE SEEM TO BE ASSUMPTIONS HERE THAT JUST KIND OF FLY IN THE FACE OF COMMON EXPERIENCE AND REALITY.

>> WELL, ASSUMPTIONS ARE MADE WHEN YOU'RE PRESENTING EVIDENCE, AND THE JURY MAKES A DECISION WHEN THEY'VE HEARD ALL THE EVIDENCE.

THE PROBLEM HERE IS YOU ARE SADDLED WITH CERTAIN ASSUMPTIONS BECAUSE THE STATE PRESENTED A

WITNESS AT THE LAST MOMENT, AND THE COURT CUT OFF THE CROSS-EXAMINATION.

SO I'M HARD PRESSED TO SAY, OH, YEAH, I'M MAKING THIS ASSUMPTION THAT THERE MIGHT HAVE BEEN MULTIPLE SHOOTERS AND I HAVE NO EVIDENCE, BUT YOU HAVE NO EVIDENCE BECAUSE THE STATE PRESENTED A WITNESS THAT YOU COULDN'T REBUT AND THE COURT WOULDN'T LET YOU REBUT.

SO, YEAH-- YES, YOUR HONOR, THERE MAY BE ASSUMPTIONS, BUT THAT'S WHY YOU SHOULD BE ALLOWED TO PRESENT ALL OF THE EVIDENCE.

>> I MEAN, TO A CERTAIN EXTENT, I MEAN, IF YOUR DEFENSE SAYS THERE WAS MORE THAN ONE SHOOTER, MORE THAN ONE GUN, I MEAN, ISN'T IT INCUMBENT UPON YOU BEFORE TRIAL TO COME UP WITH SOME KIND OF EVIDENCE AND TO BE ABLE TO PRESENT EVIDENCE TO THAT EFFECT? OR BE PREPARED?

>> IT'S INCUMBENT UPON ME TO PRESENT EVIDENCE, IF NECESSARY, TO DISPROVE THE STATE'S CASE. AT THAT POINT THERE WERE A MULTITUDE OF SHELLS, THERE WERE A MULTITUDE OF-- THEY WERE COMING IN DIFFERENT DIRECTIONS, THEY WERE FOUND IN DIFFERENT PLACES.

THAT CAN BE DONE BY ARGUING THE EVIDENCE AS WAS TALKED ABOUT YESTERDAY IN THE SIEVERS CASE AND ARGUED THAT THE EVIDENCE WASN'T THERE.

>> I'M NOT SUGGESTING YOU HAVE THE BURDEN OF PROOF. OBVIOUSLY, YOU DO NOT. BUT TO BE ABLE TO PROPERLY EXAMINE AND TEST THE STATE'S CASE, IT SEEMS LIKE THERE'S A CERTAIN AMOUNT YOU'D BE PREPARED TO GO WITHOUT WAITING ON THE STATE'S CASE.

>> AS THE STATE SAID AT ONE POINT IN THE TRANSCRIPT, THE DEFENDANT WENT DOWN, THE DEFENSE ATTORNEY WENT DOWN AND VIEWED ALL OF THE EVIDENCE. I DIDN'T VIEW ALL OF THE

EVIDENCE.

I KNEW THE EVIDENCE THEY HAD.

I KNEW THE HOLES IN THEIR CASE.

IT'S NOT INCUMBENT ON ME TO--

>> I THINK WHAT THE QUESTION'S LEADING TO IS AT SOME JUNCTURE YOU HAD AN OBLIGATION TO EXPLAIN TO THE JUDGE HOW THIS LATE NOTICE AFFECTS YOUR DEFENSE THAT YOU HAVE PLANNED.

AT SOME POINT IN TIME I THINK DURING THE RICHARDSON INQUIRY, WHICH WAS DONE AFTER JEOPARDY WAS ATTACHED, I THINK THE JUDGE ASKED YOU TELL ME HOW THIS AFFECTS YOUR DEFENSE.

AND I THINK THAT'S THE TIME WHEN YOU'VE GOT TO TELL THE JUDGE, OKAY, JUDGE, THIS IS MAJOR STUFF.

I MEAN, I PLAN TO GO THIS WAY. NOW THE GUY'S EXPERT SAYS HE'S GOING THAT WAY, AND I HAVE NO ABILITY OR TIME TO HIRE SOMEONE TO COME IN AND POSSIBLY CONTRADICT THAT.

SO DID YOU TELL THE JUDGE WHAT YOUR THEORY OF THE CASE WAS AND AND HOW THIS AFFECTED YOUR DEFENSE?

>> I BELIEVE I TOLD THE COURT THAT I NEEDED AN EXPERT ON, TO EVALUATE THE EVIDENCE, LOOK AT THE EVIDENCE AND SEE IF AND HOW IT WOULD CHANGE.

ONCE AGAIN, I CAN'T TELL THE COURT HOW IT WOULD CHANGE MY APPROACH IF I DON'T KNOW WHAT THE WITNESSES ARE GOING TO TELL ME.

AND IT'S AT THAT POINT THE JUDGE SAYS, WELL, JUST USE THEIR EXPERT.

YOUR HONOR, THE ANSWER IS UNTIL THE CHANGE MY PREPARATION OF THEIR EXPERT, IF MY EXPERT CAME AND SAID HE WAS NOT GIVING ME THE CORRECT INFORMATION.

YOU CAN'T VERY WELL TELL AN ATTORNEY, WELL, HOW WOULD THIS EVIDENCE THAT THEY JUST GAVE YOU THAT YOU DON'T KNOW WHAT THE EVIDENCE IS AFFECT YOUR CASE? I CAN'T TELL THE COURT OTHER

THAN I NEED MY EXPERT TO TELL ME
IF THEIR EXPERT WILL DO
SOMETHING DIFFERENT SO THAT IT
POSSIBLY CHANGES MY CASE.
>> WELL, BUT ISN'T IT TRUE
THOUGH THAT THE PURPOSE OF AN
EXPERT THAT YOU WOULD HAVE
CALLED ON TOOL MARK ISSUES WOULD
HAVE BEEN TO REBUT THE STATE'S
EXPERT ON TOOL MARK ISSUES,
RIGHT?
>> WELL, POSSIBLY IT COULD HAVE
BEEN TO REBUT IT NOT ONLY WOULD
IT HAVE BEEN TO REBUT HIM, BUT
IT COULD ALSO BE TO PUT IN
ADDITIONAL EVIDENCE--
>> THAT, HOWEVER, SOUNDS LIKE A
DIFFERENT PROBLEM.
THAT-- NOW WE'RE IN THE, NOW
WE'RE IN THE COUNTRY OF THINGS
YOU MIGHT HAVE NOTICED UP,
THINGS YOU MIGHT HAVE DONE.
I'M SAYING THAT AS A THOUGHT
EXPERIMENT LET'S ASSUME THAT THE
STATE'S TOOL MARK EXPERT IS
FULLY REBUTTED AS A MATTER OF
LOGIC.
>> YES.
>> EVERY WORD THAT PERSON
TESTIFIED IS--
>> OKAY.
>> HELP ME UNDERSTAND HOW THE
THEORY OF DEFENSE CHANGES THEN.
I SHARE THE CHIEF'S QUESTION
ABOUT HOW EVEN IF THERE IS NO
EVIDENCE IN THE RECORD THAT IT
IS A SINGLE WEAPON, RIGHT?
LET'S JUST ASSUME THAT THE STATE
PUTS ON NO EVIDENCE ABOUT HOW
MANY WEAPONS ARE INVOLVED,
RELIES ON THE TESTIMONY OF THE
TWO EYEWITNESSES, THE CASINGS
WHERE THEY ARE, SLUGS WHERE THEY
ARE, PUTS ON NO EVIDENCE THAT
IT'S ALL FROM ONE GUN, HELP ME
UNDERSTAND HOW YOUR THEORY OF
THE CASE CHANGES.
>> HOW-- WHEN YOUR HONOR SAYS
IT'S FULLY REBUTTED AS JUSTICE
MUNIZ SAID YESTERDAY, IT'S FOR
THE JURY TO DECIDE WHETHER OR
NOT TO ACCEPT IT OR REFUTE IT.
I DON'T KNOW IF IT'S FULLY
REBUTTED, YOU DON'T KNOW IF IT'S

FULLY REBUTTED.

THE JURY IS THE ONLY ONE THAT
CAN DETERMINE--

>> I KNOW.

BUT I'M ASKING, AGAIN, THIS IS
SORT OF A THOUGHT EXERCISE.
LET'S ASSUME THAT TESTIMONY
DROPS OUT.

ASSUME THEY NEVER CALLED THE
TOOL MARK EXPERT.

ASSUME THIS PROBLEM NEVER AROSE.
WHAT I'M TRYING TO UNDERSTAND IS
THE IMPACT ON DEFENSE.

I'M TRYING TO UNDERSTAND HOW IT
CHANGES YOUR POSITION, HOW IT
ULTIMATELY PREJUDICES
MR. JOSEPH.

>> WELL, AT THAT POINT WE DON'T
KNOW HOW THE TRIAL'S GOING TO
GO, BUT WHAT WE DO KNOW IS
THERE'S GOING TO BE A WITNESS
THAT SAYS THERE'S ALL THESE
CASINGS CAME FROM ONE PLACE, ALL
THESE-- SO ARGUMENT CAN BE MADE
RELYING ON THE EVIDENCE THAT
THERE IS A POSSIBILITY OF MORE
THAN ONE SHOOTER BY LOOKING AT
WHERE THE CARTRIDGES ARE, WHERE
THE SHELLS ARE, HOW THEY'RE
DISTRIBUTED.

THAT WOULD BE FOR THE JURY TO
DECIDE WHETHER OR NOT THE STATE
PROVED THAT THERE WAS ONLY ONE
GUN AND ONE SHOOTER WHICH IS WHY
THEY BROUGHT THIS WITNESS UP AT
THE LAST MOMENT.

THEY KNEW THAT THAT WAS THE
PROBLEM.

THAT'S HOW IT CHANGES.

IF THAT WITNESS ISN'T THERE AT
ALL, THE ARGUMENT CAN BE MADE
THAT, IN FACT, THEY DID NOT
PROVE THE DISTRIBUTION OF THESE
SHELLS IN THE HOUSE, OUT OF
HOUSE, HOW MANY SHOTS CAME OUT
OF THAT GUN, ALL THOSE THINGS.
WAS IT RELOADED, COULD IT HAVE
BEEN RELOADED.

ALL THOSE THINGS ARE NOT FOR THE
STATE TO STAND UP DURING CLOSING
AND SAY MY WITNESS SAID THIS
AND, THEREFORE, THAT'S IT.
AND I HAD NO WITNESS TO BRING IN
TO DISPUTE THAT.

AND BACK TO THE REFUTED QUESTION, ONCE IT'S REFUTED ANY TRIAL ATTORNEY KNOWS THAT A JURY LISTENS TO EXPERT WITNESSES MORE THAN THEY'RE SUPPOSED TO. NO MATTER HOW MANY JURY INSTRUCTIONS YOU GIVE THEM THAT SAY THEY'RE NOT ANYTHING MORE THAN AN EXPERT, YOU GIVE THEM AS MUCH CREDENCE AS YOU THINK AN EXPERT NEEDS, THEY'RE GOING TO SAY THEIR EXPERT SAID THIS. AND WE DIDN'T HAVE AN EXPERT.

I COULDN'T BRING, ONCE REFUTED, YOU'VE GOT TO GO BEYOND THAT TO SAY, HEY, THIS IS WHAT CAN BE AND WASN'T.

ANY OTHER QUESTIONS ON THAT ISSUE?

YOUR HONOR, I'D LIKE TO ADDRESS-- THE NEXT ISSUE I WANTED TO ADDRESS WAS ISSUE 14. IT'S PHASE TWO, I BELIEVE REFERRING TO THE JURY INSTRUCTIONS AND THE, AND THE JURY NOT FOLLOWING THE JURY INSTRUCTIONS ON MITIGATING FACTORS.

THE JURY JUST DIDN'T LISTEN TO THE COURT'S INSTRUCTIONS ON MITIGATING FACTORS.

THEY CAME BACK WITH A VERDICT RECOMMENDING DEATH, I BELIEVE, WITHIN TWO HOURS.

JUDGE, THE TRIAL COURT IN HER SENTENCING ORDER FOUND SEVERAL MITIGATING FACTORS EXISTED.

SHE DID SAY SHE WASN'T GOING TO GIVE THEM MUCH EVIDENCE OR ANY EVIDENCE AT ALL, BUT SHE FOUND THEY EXISTED.

THIS JURY FOUND THAT NOT A SINGLE, SOLITARY MITIGATING CIRCUMSTANCE EXISTED IN ANY FASHION.

IT'S CLEAR THEY DIDN'T LISTEN TO THE COURT'S INSTRUCTIONS ON WHAT A MITIGATING FACTOR IS AND WHAT A MITIGATING FACTOR ISN'T AND WHETHER THEY SHOULD GIVE IT ANY WEIGHT.

THEY GAVE NONE ANY WEIGHT. JUDGE-- THE TRIAL COURT JUDGE

GAVE SOME OF THEM WEIGHT.
IT'S MR. JOSEPH'S POSITION THAT
THEY DIDN'T CARE WHAT THE
MITIGATING FACTORS WERE, DIDN'T
LISTEN TO WHAT THE MITIGATING
FACTORS WERE.

AS A MATTER OF FACT, A COUPLE
ISSUES WHICH I TALK ABOUT IN MY
BRIEF REGARDING HEINOUS,
ATROCIOUS AND CRUEL, COLD,
CALCULATED AND PREMEDITATED
WHERE THE JUDGE LET IN
IRRELEVANT EVIDENCE AND EVIDENCE
ABOUT REQUIRED STATEMENTS MADE
BY MY CLIENT WHICH I BELIEVE
ALSO AFFECTED THE JURY'S
INSTRUCTIONS, AND I BELIEVE
THOSE ARE CLEARLY BRIEFED AND
IT'S IN THE BRIEF ON THOSE.
BUT THEY DIDN'T LISTEN TO THE
COURT'S INSTRUCTIONS, AND WHEN A
JUDGE DID HER SENTENCING ORDER,
SHE DID.

AND SHE'S FOUND THAT THERE WERE
MITIGATING FACTORS.

MY POSITION IS HAD THE JURY
LISTENED TO THE COURT'S
INSTRUCTION, FOLLOWED THE
COURT'S INSTRUCTIONS REGARDING
THE MITIGATING FACTORS AND FOUND
THAT SOME EXISTED BUT THEY
WEREN'T GIVING THEM ANY WEIGHT,
IT COULD HAVE CHANGED ONE
JUROR'S OPINION.

THAT'S ALL YOU NEED TO PREVENT A
DEATH SENTENCE.

SO IT'S MY POSITION THAT THEY
DID NOT LISTEN TO THE
INSTRUCTIONS, AND THIS IS SHOWN
BY THE FACT THAT THE JUDGE IN
EVALUATING THE SAME EVIDENCE
FOUND THAT THERE WERE MITIGATING
FACTORS.

FOR THOSE REASONS I BELIEVE THAT
THE DEATH SENTENCE SHOULD BE
OVERTURNED.

>> COUNSEL, YOU ARE IN YOUR
REBUTTAL TIME.

>> I UNDERSTAND.

>> YOU CAN KEEP GOING.

>> I UNDERSTAND.

YOUR HONOR, IN JUST A FEW SHORT
MINUTES I HAVE-- I SEE I HAVE
EIGHT MINUTES LEFT-- THE ONLY

OTHER THING I'D LIKE TO TALK ABOUT IS PROPORTIONALITY. NOW, I KNOW THIS COURT HAS SAID THERE IS NO PROPORTIONALITY, BUT AT THIS POINT I'D JUST LIKE TO GIVE A NOD TO PROPORTIONALITY AND ASK THE COURT TO RECONSIDER JUDGE LABARGA'S DISSENTING OPINION.

THIS IS NOT ONE OF THE MOST HEINOUS, ATROCIOUS AND CRUEL OR COLD AND CALCULATED HOMICIDES THAT HAVE OCCURRED IN THE STATE OF FLORIDA.

IT'S BAD, BUT IT ISN'T WORTH THE DEATH PENALTY, AND I THANK YOU FOR YOUR TIME AND ATTENTION. THANK YOU, YOUR HONORS.

>> COUNSEL?

>> THANK YOU.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT, RHONDA GIGER ON BEHALF OF THE STATE OF FLORIDA.

I GUESS I'LL JUST JUMP INTO ISSUE 1 AND ADDRESS SOME OF COUNSEL'S COMMENTS WANT TO THAT.

>> LET ME JUST ASK-- START YOU OFF.

THE MURDERS IN THIS CASE OCCURRED ON DECEMBER 28TH, 2017.

>> CORRECT.

>> THE DEFENDANT WAS INDICTED A MONTH AND A DAY LATER, JANUARY 18TH, 2018.

THIS CASE WENT TO-- JURY SELECTION BEGAN ON FEBRUARY-- [INAUDIBLE]

AND ON FEBRUARY 23, TWO YEARS AND A LITTLE MORE THAN A MONTH AFTER THE INDICTMENT, THE PROSECUTOR COMES IN DURING JURY SELECTION WITH AN AMENDED WITNESS LIST PROVIDING THEM WITH AN EXPERT WITNESS OF ALL THINGS. NOW, IF I'M READING THE PROSECUTOR'S EXPLANATION TO THE JUDGE THROUGH THE RICHARDSON INQUIRY AS TO WHY THAT HAPPENED AND SHE, LIKE A GOOD PROSECUTOR-- OR HE-- WENT TO VISIT HER, THE DETECTIVE AS ANYONE WHO'S DONE HOMICIDE CASES WOULD KNOW TO DO AND GO OVER ALL

THE EVIDENCE.

AND THEY'RE GOING OVER THE EXHIBITS AND GOING OVER THE CASINGS, GOING OVER EVERYTHING. AND AT THE END OF THE DISCUSSION ON THE CASINGS, THE PROSECUTOR ASKED WHERE'S MY EXPERT REPORT ON THESE CASINGS IN THE BALLISTICS REPORT.

AND THE LEAD DETECTIVE SAYS THERE ISN'T ONE BECAUSE ONE WASN'T DONE.

NOW, THIS IS THE PALM BEACH COUNTY SHERIFF'S OFFICE WHICH HAS THIS HUMONGOUS BUDGET, AND THEY HAD THEIR OWN LABS. THEY DON'T HAVE TO SAY-- SO STRINGS WERE PULLED AND SOMEHOW THE POLICE DEPARTMENT GOT IT DONE THAT DAY AND, LO AND BEHOLD, THE NEXT DAY THIS WAS A REPORT.

AND THAT'S WHEN COUNSEL GOT-- IS THAT PRETTY MUCH THE LOWDOWN OF WHAT HAPPENED?

>> I THINK MAYBE WE'RE OFF BY ONE DAY, BUT, YES, THAT'S PRETTY MUCH.

I THINK JURY SELECTION BEGAN ON THE 14TH AND THE WITNESSES WERE DISCLOSED ON THE 13TH.

BUT, YES, PRETTY MUCH.

>> THAT'S PRETTY MUCH WHAT HAPPENED.

>> YES.

>> OBVIOUSLY, IT WAS INADVERTENT, IT WASN'T ANYTHING INTENTIONAL, IT'S JUST THINGS HAPPEN.

SO TELL ME THEN HOW IS IT A BALLISTICS REPORT FROM AN EXPERT IS AN IMPORTANT ISSUE IN A TRIAL.

AND THIS CASE WAS COMPLETELY CIRCUMSTANTIAL.

NO ONE TESTIFIED THEY SAW THE DEFENDANT ACTUALLY SHOOT THE PERSON, AM I CORRECT?

PEOPLE HEARD THE SHOTS--

>> I GUESS IF YOU TAKE COUNSEL'S ARGUMENT THAT THE IDENTIFICATION WAS NOT SUBSTANTIVE EVIDENCE, THEN I WOULD AGREE WITH YOU. BUT MY ARGUMENT IS THAT THAT IS

SUBSTANTIVE EVIDENCE.

SO, YES, WE DO HAVE TWO
EYEWITNESSES TO THE SHOOTER.

>> OKAY.

SO, ANYWAY, YOU HAVE THESE
CASINGS IN THERE, AND THEIR
THEORY OF THE CASE, YOU KNOW, AS
MAYBE A LONG SHOT OR NOT WAS
THAT PERHAPS SOMEONE ELSE WAS
INVOLVED IN THE SHOOTING.

AND, AGAIN, THAT MAY BE A LONG
SHOT, BUT IT'S THEIR THEORY OF
THE CASE.

HOW IS IT NOT PREJUDICED FOR
THEM TO BE, YOU KNOW, STRUGGLING
TO GO OUT THERE AND FIND AN
EXPERT TO COME IN AND TESTIFY
WHILE HE'S TRYING TO PICK A JURY
IN A FIRST-DEGREE MURDER CASE
WHERE THE STATE'S SEEKING THE
DEATH PENALTY?

>> WELL, I THINK WE HAVE TO
COVER A COUPLE OF ISSUES, FIRST
OF ALL.

SO I THINK WE KNOW IT WAS
INADVERTENT.

I DON'T THINK THERE'S ANY
DISPUTE ON THAT.

AND THE JUDGE GAVE COUNSEL EVERY
OPPORTUNITY TO EXPLAIN THAT
PREJUDICE TO HIM.

SHE GAVE HIM AN OPPORTUNITY TO
DISPUTE WHAT SHE SAID ABOUT HER,
WHAT THE DEFENSE WAS.

AND I THINK HER EXACT WORDS WITH
RESPECT TO HIS THEORY OF THE
DEFENSE IS, ISN'T IT YOUR
DEFENSE IT WASN'T MY GUY?
ONE GUN OR FIVE GUNS DOESN'T
MATTER IF YOUR DEFENSE IS IT
WASN'T MY GUY.

HE DIDN'T HAVE A THEORY OF HIS
DEFENSE, SO-- AND HE WAS GIVEN
EVERY OPPORTUNITY TO SAY THAT.

YEAH, MY THEORY IS THERE WAS
ANOTHER PERSON THERE.

MY THEORY IS ALIBI.

HE DIDN'T DO ANY OF THOSE
THINGS.

AND I THINK WHAT WE HAVE TO LOOK
AT IS WHETHER OR NOT HIS DEFENSE
WAS EQUALLY AS VIABLE WITH THE
ADMISSION OF THIS EVIDENCE AS IT
WAS WITHOUT THE EVIDENCE.

AND THE FACT IS, IS IT DIDN'T
CHANGE ANYTHING.

HIS DEFENSE WAS STILL IT ISN'T
MY GUY NO MATTER HOW MANY
WEAPONS THERE ARE.

AND EVEN IF HE THINKS HE COULD
HAVE SOMEHOW SHOWN-- WHICH I
DON'T AGREE WITH HIS
CATEGORIZATION OF OMAR FELIX'S
TESTIMONY.

OMAR FELIX FLAT OUT SAID I WOULD
EXPECT ANOTHER EXPERT TO COME TO
THE SAME CONCLUSION THAT I DID
WITH RESPECT TO THESE NINE
CASINGS COMING FROM THE SAME
FIREARM.

SO WHETHER OR NOT ANOTHER EXPERT
WOULD HAVE SAID THE SAME THING
OR SAID SOMETHING DIFFERENT,
THAT DOESN'T IN ANY WAY IMPACT
HIS DEFENSE.

AND I THINK ANOTHER THING THAT
WE'D HAVE TO SHIFT TO SLIGHTLY
IS THAT EXCLUSION OF EVIDENCE IS
NOT A FAVORABLE REMEDY.

EXCLUSION OF EVIDENCE IS THE
LAST RESORT.

AND SO IF WE'RE GOING TO BACK UP
FROM THAT AND SAY THIS WAS
DISCLOSED PRETRIAL AND I THINK
IF YOU LOOK AT THE CASE LAW IN
GENERAL WHEN COURTS HAVE FOUND
PREJUDICE AND HAVE SAID THAT THE
JUDGE CONDUCTED THE RICHARD
RULING INCORRECTLY, IT'S WHEN
THIS EVIDENCE WAS DISCLOSED
AFTER THE TRIAL STARTED.

SO THE DEFENSE HAS ALREADY
COMMITTED TO SOMETHING.

THE STATE WON'T BE OFFERING ANY
FINGERPRINT OR DNA EVIDENCE.

OH, SHOOT, WE HAVE THAT
EVIDENCE.

>> QUESTION I HAVE IS HERE
TYPICALLY THE REMEDY WHEN
SOMETHING LIKE THIS HAPPENS
RIGHT BEFORE TRIAL, ONE REMEDY
IS TO GRANT A CONTINUANCE.

>> SURE, YES.

>> WE'LL DO THIS CASE SIX MONTHS
FROM NOW--

>> HE WAS OFFERED THAT.

>> BUT THE JUDGE DIDN'T DEAL
WITH THE RICHARDSON UNTIL AFTER

THE JURY WAS SWORN.
SO WHAT ARE YOU GOING TO DO,
SEND PEOPLE HOME FOR THREE OR
FOUR MONTHS AND BRING THEM BACK?
>> SHE DID DISCUSS THE TIMING
THROUGHOUT THIS, AND I AGREE IT
WOULD HAVE BEEN IDEAL IF THEY
WOULD HAVE HANDLED IT AT THE
VERY BEGINNING--
>> IF YOU TOOK THE CONTINUANCE
OPTION OFF THE TABLE ONCE THE
JURY WAS SWORN--
>> WELL, SHE TOOK A LENGTHY
CONTINUANCE OFF THE TABLE.
BUT AGAIN, SHE SPECIFICALLY SAID
I WILL GIVE YOU TIME TO FIND
SOMEONE.
THAT IS A QUOTE.
I WILL GIVE YOU TIME TO FIND
SOMEONE.
AND I THINK THIS SORT OF PLAYS
INTO COUNSEL'S ARGUMENT THAT
THERE ARE NO TOOL MARKS IN
FLORIDA OR ANYWHERE.
THERE AREN'T ANY, NO AMOUNT OF
TIME IS GOING TO GIVE YOU A TOOL
MARK EXPERT.
SO THAT BECOMES A LITTLE BIT OFF
THE TABLE AS WELL.
IT'S A LITTLE BIT IRRELEVANT.
BUT OMAR FELIX IS A FIREARMS
EXPERT.
HE'S NOT A TOOL MARK EXPERT.
HE SPECIFICALLY SAID THAT A TOOL
MARK EXPERT IS AN UMBRELLA TERM
THAT WILL COVER ANYTHING, ANY
TOOL THAT MAKES A MARK ON ANY
OBJECT IS A TOOL MARK.
SO NOBODY'S GOING TO BE JUST A
TOOL MARK EXPERT.
YOU HAVE TO NARROW THAT DOWN.
YOU HAVE TO FUNNEL THAT DOWN TO
BE-- AND SO HE'S A FIREARMS
EXPERT.
SO HE KNOWS HOW TO IDENTIFY THE
TOOL MARKS THAT COME ABOUT WITH
THE USE OF A FIREARM.
SO, I MEAN, I THINK THAT'S
DISPUTABLE AS WELL THAT HE
NEEDED A TOOL MARK EXPERT.
THERE'S NO SUCH THING.
YOU HAVE TO WINNOW THAT DOWN.
HE NEEDED A FIREARMS EXPERT, AND
THERE ARE MANY OF THOSE.

LOOKING AT THAT TWOFOLD, IF HE NEEDED A FIREARMS EXPERT, THERE ARE PLENTY OF THOSE AND HE, IN FACT, HAD ONE, AND HE COULD HAVE FOUND ANOTHER ONE.

THE TRIAL COURT SAID WE WILL MAKE ACCOMMODATIONS.

I MEAN, THAT IS A QUOTE.

WE WILL MAKE ACCOMMODATIONS FOR YOU.

AND SHE SAID I CAN'T IMAGINE YOU CAN'T FIND ONE IN TWO WEEKS.

HE HAD A TWO WEEK PERIOD TO DO SO.

SO ALL OF THAT FAILS.

HE CAN'T FIND ONE.

IT'S INCUMBENT ON THEM, AT HIM AT SOME POINT TO SAY I NEED SOME TIME.

SHE COULD HAVE ADJOURNED FOR FIVE DAYS.

THAT HAPPENS.

TRIAL COURTS TAKE BREAKS, ADMONISH THE JURORS NOT TO DO ANYTHING IN THE INTEREST OF FAIRNESS.

BUT THE FACT OF THE MATTER HERE IS THE TRIAL COURT HELD AN APPROPRIATE RICHARDSON HEARING, SHE MADE THE PROPER

DETERMINATIONS, SHE CAME UP WITH A REMEDY TO THAT VIOLATION, SHE OFFERED HIM TIME, AND SHE ALSO OFFERED HIM THE OPPORTUNITY TO SHOW WHAT THE PREJUDICE WAS.

AND HE WAS UNABLE TO DO THAT.

AND I REALLY THINK YOU HAVE TO LOOK AT THE FACT THAT SINCE THE DEFENSE THEORY OF DEFENDING ITSELF IS JUST AS VIABLE WITH THE EVIDENCE AS IT WAS WITHOUT THE EVIDENCE, THAT IT DOESN'T MATTER.

IT'S-- IN THE END IT DIDN'T CHANGE ANYTHING FOR HIM.

SO, YOU KNOW, I THINK LOOKING AT IT THAT WAY, YOU HAVE TO SAY SHE FASHIONED A REMEDY.

HE MAY NOT HAVE LIKED IT, BUT SHE GAVE HIM THAT OPPORTUNITY.

SHE SAID SHE'D GIVE HIM TIME, SHE SAID SHE AUTHORIZED THE EXPERT.

HE DIDN'T ASK FOR ANY MORE TIME

WHEN IT CAME TIME FOR TRIAL, AND HE DID-- OMAR FELIX TESTIFIED I THINK IT WAS ON A FRIDAY. HE HADN'T EVEN BEGUN HIS CASE YET.

SO, AGAIN, I UNDERSTAND THE TRIAL, THE TIMING.

HE SHOULDN'T BE INTERVIEWING WITNESSES AFTER TRIAL.

I'M NOT ARGUING THAT.

I'M ARGUING THAT FROM THE TIME THIS WAS DISCLOSED UNTIL TIME HE WOULD HAVE HAD TO PRESENT HIS CASE, HE HAD AT THAT POINT THE JUDGE DETERMINED HE WOULD HAVE HAD ABOUT TWO WEEKS TO GET THAT, TO MAKE THAT HAPPEN.

SO BECAUSE HE DIDN'T LIKE HER REMEDY DOESN'T MEAN THAT IT'S NOT APPROPRIATE.

IT JUST MEANS HE DIDN'T LIKE IT.

DID I ANSWER YOUR QUESTION?

>> SURE.

[LAUGHTER]

THANK YOU.

>> SURE.

AND, YOU KNOW, I GUESS I WOULD AGREE WITH COUNSEL ON ONE THING, THAT THE JURY SHOULD HAVE ALL THE EVIDENCE IN FRONT OF THEM.

AND AGAIN, REMEMBERING THAT EXCLUSION OF THIS IS AN ABSOLUTE LAST RESORT, EXCLUSION OF EVIDENCE IS NOT LOOKED UPON FAVORABLY ESPECIALLY WHEN IT'S DISCLOSED BEFORE THE TRIAL TECHNICALLY BEGAN.

YOU KNOW, ADMITTEDLY THE RICHARDSON HEARING WAS CONDUCTED AFTER THE TRIAL BEGAN, BUT THE DISCLOSURE OCCURRED THE DAY BEFORE TRIAL.

HE DIDN'T ASK FOR A CONTINUANCE THEN EITHER.

NOT SAYING IT WOULD HAVE BEEN GRANT BECAUSE THEY OBVIOUSLY HAD THE JURY PRETTY MUCH READY TO GO, BUT HE DIDN'T ASK FOR A CONTINUANCE.

AND IF THIS WAS, IF THIS WAS SUCH A HUGE IMPACT ON HIS DEFENSE, SURELY HE WOULD HAVE DONE SO AND HE DID NOT.

SO I THINK LOOKING AT THIS FROM

THE STANDARD OF ABUSE OF DISCRETION, YOU HAVE TO SAY THAT THE JUDGE ABUSED HER DISCRETION IN FASHIONING THIS REMEDY AND NOT EXCLUDING THE EVIDENCE.

AND I JUST, I DON'T THINK IT GETS TO THAT.

I DON'T THINK IT GETS TO THAT LEVEL.

MOVING-- ANY QUESTIONS ON THAT OR SHOULD I MOVE TO COUNSEL'S NEXT ISSUE?

MOVING TO HIS NEXT ISSUE WHICH IS ISSUE NUMBER 14 ABOUT THE JURY NOT FOLLOWING THE LAW, I THINK THAT THAT'S, THAT'S PRESUMPTUOUS.

WE HAVE NO EVIDENCE OTHER THAN THEY DIDN'T FIND MITIGATORS THAT THEY DIDN'T FOLLOW THE LAW. AND ALL THE JURY HAS TO DO IS CONSIDER THE MITIGATORS, WHICH THEY DID.

THEY DON'T-- THEY WERE PRESENTED, BUT THE JURY ISN'T REQUIRED TO FIND THEM PROVEN SIMPLY BECAUSE THE DEFENSE PRESENTED THEM.

AND WHEN YOU LOOK AT THE WITNESS TESTIMONY AND A LOT OF THE WITNESS TESTIMONY THAT CAME IN THROUGH THE FAMILY MEMBERS THAT HAD ALREADY TESTIFIED IN THE TRIAL, AND I THINK WE CAN ALL GLEAN A LOT FROM THE TRANSCRIPTS IF YOU LOOKED AT THOSE ABOUT THE ATTITUDE AND THE Demeanor OF THOSE WITNESSES AT TRIAL.

ONE, THE JUDGE WENT SO FAR AS TO SAY HE HAD COMMITTED A FRAUD UPON THE COURT.

THESE ARE THE SAME WITNESSES THAT TESTIFIED IN MITIGATION. THE JURY FOUND THEM TO BE ESSENTIALLY NOT CREDIBLE WITH THEIR TESTIMONY THAT THEY OFFERED DURING TRIAL.

SO THE FACT THAT THEY REJECTED THAT EVIDENCE IN MITIGATION IS, THAT'S, THAT'S THEIR OPTION.

THEY CAN DO THAT.

THAT'S WHY THE JUDGE WHO HAS THE PROFESSIONAL, EXPERT EYE, THAT'S SAFEGUARD.

SHE ALSO SAT THERE, REVIEWED IT,
AND SHE DID FIND MITIGATORS.
SO THE FACT THAT THE JURY DIDN'T
FIND THEM REALLY IS HARMLESS.
AND THAT'S, THAT'S WITHIN THE
PURVIEW OF THEIR DETERMINATION.
THEY'RE ALLOWED TO NOT FIND
THOSE IF THEY DON'T FIND THEY
WERE PROPERLY PRESENTED.
THAT'S WHAT THEY GET TO DO.
THAT'S THEIR JOB.
SO ABSENT HIM SAYING THEY DIDN'T
FOLLOW THE RULES, JUST THAT
CLAIM WITHOUT ANY PROOF, WE JUST
DON'T KNOW.
WE DON'T KNOW WHAT THEY DO.
WE HAVE TO PRESUME THEY FOLLOWED
THE RULES.
THEY WERE GIVEN THOSE, THEY ARE
PRESUMED TO FOLLOW THE RULES AND
THE INSTRUCTION GIVEN BY THE
COURT.
AND THE FACT THAT HE DIDN'T
PROVE THE MITIGATORS DOESN'T
MEAN THAT THEY DIDN'T DO THE
THEIR JOB.
SO, I MEAN, HONESTLY, I DON'T
THINK THERE'S ANY EVIDENCE IN
THE RECORD THAT THE JURY DID
NOT, DID NOT FOLLOW THE RULES
WITH RESPECT, WITH RESPECT TO
THE MITIGATORS.
I WILL THROW THIS BACK TO YOU IF
ANYBODY HAS ANY QUESTIONS ON THE
13 ISSUES.
SURE.
[NO AUDIO]
>> AGGRAVATOR?
>> I CAN'T TO BOTH VICTIMS.
>> BOTH.
>> YEAH.
SO I THINK LOOKING AT THE
EVIDENCE WITH RESPECT TO, I'LL
START WITH, I'LL START WITH
COLADA.
WE HAVE TO-- WAS IT NOT AN
EMOTIONAL, FRENZIED, PANIC OR
FIT OF RAGE.
AND HONESTLY, YOU COULD APPLY
THIS TO BOTH.
YOU HAVE TO REMEMBER THAT HE,
THE DEFENDANT, CAME HOME FROM
WORK-- WELL, FIRST, LET'S BACK
UP JUST A LITTLE BIT.

I THINK WE HAVE TO BACK UP TO THE THREAT THAT CAME IN THAT HAPPENED TWO DAYS BEFORE CHRISTMAS THAT MS. TARVER TESTIFIED THAT THE DEFENDANT SAID KYRA HAS ONE MORE CHANCE TO MAKE ME MAD OR BOTHER KAMARI AND, YOU KNOW, ESSENTIALLY, SHE HAS ONE MORE CHANCE.

SO THAT, THEN ON CHRISTMAS DAY SOMEBODY SEES HIM WITH A WEAPON. SO AT SOME POINT HE'S PROCURED A WEAPON, A GUN.

SO WE HAVE A THREAT, TWO DAYS LATER WE HAVE HIM OBTAINING A FIREARM, AND THEN THREE DAYS LATER WE HAVE THIS INCIDENT.

MOVING TO THE DAY OF THE MURDERS, THE KIDS HAD HAD THIS LITTLE DISPUTE EARLIER IN THE MORNING BEFORE LUNCH.

THERE WERE TEXT MESSAGES THAT WENT BACK AND FORTH ABOUT THAT, TEXT MESSAGES BETWEEN MR. JOSEPH AND COLADA, THE ULTIMATE VICTIM, PHONE CALLS, CONVERSATIONS BETWEEN COLADA AND MS. DENSON ABOUT WHAT HAD HAPPENED.

EVIDENCE THAT HE WAS, HE-- THE APPELLANT, MR. JOSEPH-- WAS, GOT INTO AN ALTERCATION, A VERBAL ALTERCATION WITH HIS MOM ABOUT THIS.

SO ALL OF THESE THINGS LEADING UP TO IT WE HAVE, FIRST OF ALL, WE HAVE, FIRST OF ALL WE HAVE PREVIOUS INCIDENTS BETWEEN THE KIDS.

WE HAVE A THREAT THAT IF IT HAPPENS AGAIN, SOMETHING'S GOING TO HAPPEN.

SHE HAS ONE MORE CHANCE TO, SHE HAS ONE MORE CHANCE TO DO SOMETHING TO KAMARI.

WE HAVE HIM OBTAINING A WEAPON, WE HAVE HIM ARRIVING HOME FROM WORK THAT DAY KNOWING THAT THIS INCIDENT HAS OCCURRED, THAT THE THING HE SAID YOU HAVE ONE MORE CHANCE, IT HAS HAPPENED.

HE GOES INTO HIS BEDROOM, HE HAS TIME TO REFLECT, HE HAS TIME TO CONTEMPLATE THIS.

HIS MOTHER SAYS HE WAS READING

THE BIBLE, BUT NO MATTER WHAT HE'S IN HIS BEDROOM, AND HE GETS HIS WEAPON, AND HE CONFRONTS COLADA ABOUT THIS INCIDENT BETWEEN THEIR TWO KIDS. WE KNOW THAT THIS HAPPENED. SO WE KNOW THAT HE PLANNED THIS. WE KNOW IT WASN'T A RAGE, WE KNOW IT WASN'T A FRENZY FOR A LOT OF REASONS. FIRST OF ALL, HE SHOT HER FIVE TIMES. AND WE KNOW SHE LIVED THROUGH AT LEAST ONE OF THOSE SHOTS, BUT MOST LIKELY THE FIRST FOUR. BECAUSE SHE WAS CRYING FOR HELP. HE COULD HAVE STOPPED. HE COULD HAVE STOPPED RIGHT THEN. HE DIDN'T HAVE TO CONTINUE BUT HE DID. HE ULTIMATELY FIRED THE FATAL SHOT WITH HER. SO THERE'S DEFINITELY NOT A PANIC OR FIT OF RAGE. THIS IS VERY, VERY CALCULATED. AND I THINK WE CAN LOOK AT IT THAT IT HAD TO BE CALCULATED ALSO BECAUSE THERE WERE NINE PEOPLE IN THAT HOUSE, AND THE ONLY TWO THAT WERE INJURED WERE THE ONES THAT WERE THE OBJECT OF HIS AGGRESSION, THE OBJECT OF HIS ATTENTION. AND THERE WAS NO IMMEDIATE PROVOCATION THERE. WHEN HE CONFRONTED COLADA, HE WAS ARMED. HE HAD THAT GUN. SO IT'S NOT LIKE HE WENT UP TO HER AND SAID, HEY, CAN WE TALK ABOUT THE KIDS. HE WENT UP TO HER AND CONFRONTED HER WITH A WEAPON. AND WHEN THAT DISCUSSION CONTINUED ON, HE SHOT HER. >> YOU HAVE A MUCH STRONGER, I THINK, PREMEDITATION ARGUMENT FOR THE CHILD AS HE CHASED AFTER HER. THAT'S NOT A PROBLEM. THE FIRST ONE, SEEMS LIKE THERE WAS AN ARGUMENT AND ALL OF A SUDDEN HE STARTED SHOOTING.

>> WELL, AND I THINK, I THINK THAT IT WAS REFERENCED AS AN ARGUMENT A, BUT I THINK AT BEST YOU CAN CALL IT A CONFRONTATION. WHAT WE KNOW IS THAT COLADA HAD SORT OF STAYED AWAY. SHE WAS IN HER BEDROOM, AND SHE WAS DOING LAUNDRY. SHE WAS KIND OF AWAY FROM THE WHOLE FAMILY ACTIVITY, AND WE KNOW SHE DIDN'T HAVE A GUN. SO OBVIOUSLY WHEN THERE WAS THIS CONFRONTATION, AND I THINK THAT THAT MEANS SOMETHING BECAUSE COLADA DIDN'T INITIATE THIS. WE KNOW THAT WHEN THERE WAS THIS CONFRONTATION, HE BROUGHT A GUN TO THAT FIGHT. AND HE WAS ONE THAT WAS MAD. SHE WASN'T. SO I THINK MAYBE CALLING IT AN ARGUMENT, MAYBE IT DOESN'T MATTER, BUT HE WENT LOOKING FOR THAT WITH HER. BUT I THINK THE BIG THING IS THAT HE COULD HAVE STOPPED. IT WAS-- HE MADE HIS INTENTIONS CLEAR. HE CALCULATED THIS FROM THE BEGINNING. HE SAID I'M GOING TO DO SOMETHING, THIS HAPPENS ONE MORE TIME, AND IT HAPPENED ONE MORE TIME. MOVING TO KYRA, WHICH I AGREE WITH YOU, YOU KNOW, IN ORDER TO GET OUT OF THIS HOUSE SHE HAD TO RUN BY, SHE HAD TO RUN BY THIS INCIDENT. SHE HAD TO KNOW WHAT WAS HAPPENING. AND, YOU KNOW, I THINK THIS IS A BIG POINT TOO, AS HE'S CHASING HER DOWN, HIS BROTHER TACKLES HIM. SO HE'S TACKLED. HE MAINTAINS HIS FIREARM. HE DOESN'T SHOOT HIS BROTHER. NOBODY ELSE GETS INJURED IN THIS FRACAS WHERE THE BROTHER'S TRYING TO SAVE KYRA, BUT WHAT HE DOES DO IS GET UP, EXTRICATE HIMSELF FROM THIS, KEEP HIS WEAPON AND CONTINUE TO HUNT HER

DOWN.

HE HAD EVERY OPPORTUNITY TO STOP, HE HAD EVERY OPPORTUNITY TO SAY I JUST GOT TACKLED, WHAT AM I DOING?

BUT HE DIDN'T BECAUSE HE WAS ON A MISSION.

HE HAD SAID I'M GOING TO DO THIS IF THIS HAPPENS.

THIS HAPPENED AND HE DID WHAT HE PROMISED.

SO, I MEAN, I THINK THAT, I THINK THAT-- I KNOW SHOOTING DEATHS OFTEN ARE NOT LOOKED AT THIS WAY, BUT IT'S-- HE PROMISED WHAT HE WAS GOING TO DO, AND HE DID IT.

>> THE TROUBLE I HAVE WITH THAT SUMMATION OF THE ARGUMENT IS THAT THE SAME COULD BE SAID OF OUR DECISION IN RICHARDSON V. STATE, 1992, AND OTHERS WHERE SOME OF THE FACTS YOU PUT TOGETHER, AN ARGUMENT, OBTAINING A FIREARM, CONFRONTATION, WE'VE HELD DO NOT ALONE GET US TO A COLD, CALCULATED AND PREMEDITATED SHOWING.

NOW, I AGREE YOU SAID MORE THAN THE SUMMATION, AND WHAT YOU'VE SAID IN ADDITION TO THE SUMMATION, I THINK, DOES SOME OF THE LIFTING FOR YOU.

BUT I GUESS MY-- THE QUESTION I'M STILL LEFT WITH IS CAN YOU IDENTIFY WHAT SPECIFICALLY TAKES US BEYOND JUST FINDING A GUN, HAVING A DISPUTE WITH SOMEONE AND USING IT?

BECAUSE I THINK THAT RULE DOES PROVE TOO MUCH.

>> WELL, HE DIDN'T HAVE A DISPUTE, FIRST OF ALL, WITH COLADA.

REMEMBER, HIS ISSUE WAS WITH THE CHILDREN.

SO, YOU KNOW, I-- HE ARMED HIMSELF IN ADVANCE, WE KNOW THAT.

WE KNOW HE GOT THIS WEAPON DAYS BEFORE, SO HE HAD ADVANCE PROCUREMENT OF THIS FIREARM.

THERE WAS NO RESISTANCE FROM THE VICTIMS, NONE.

THEY WERE, EVERYTHING WE KNOW
THEY WERE JUST INNOCENT PEOPLE
IN THEIR OWN HOME.

WE HAVE NO PROVOCATION FROM
EITHER VICTIM, CLEARLY.

WE ALL KNOW THAT.

IT WAS, ESSENTIALLY, AN
EXECUTION-STYLE KILLING.

THERE WAS NO, THERE WAS NO REAL
EMOTION INVOLVED IN THIS.

SO, I MEAN, I THINK ESPECIALLY
AS IT WAS POINTED OUT MOVING TO
KYRA, IT DOESN'T SEEM LIKE IT
COULD BE ANY MORE PLANNED OUT
WITH HER.

AND SO, YOU KNOW, BECAUSE SHE
WAS THE OBJECT OF THIS THREAT.

SHE WAS THE REASON THAT THIS
THREAT CAME ABOUT.

BUT I THINK THAT THAT TIME FRAME
MAKES IT ADVANCED PREMEDITATION.

THAT TIME FRAME FROM THE 23RD
WHERE HE MAKES THIS THREAT AND
THEN THE 25TH WHERE WE KNOW HE
HAS A WEAPON, AND THEN ON THE
28TH HE MAKES SURE HE HAS THIS
WEAPON WHEN HE INITIATES THIS
CONFRONTATION WITH COLADA WHO
DID NOTHING OTHER THAN BEG FOR
HER LIFE, I JUST-- AND, YOU
KNOW WHAT?

EVEN IF WE TAKE IT AWAY WITH
COLADA, EVEN IF WE TAKE IT AWAY
WITH HER, WE STILL HAVE EIGHT
OTHER AGGRAVATORS.

SO IN THE BIG PICTURE IT DOESN'T
REALLY CHANGE ANYTHING.

I MEAN, THAT WOULD BE MY
ARGUMENT.

>> RIGHT.

I MEAN, OF COURSE, WE HAVE TO,
YOU KNOW, MAKE SURE WE ADOPT THE
CORRECT RULE WITH THE MITIGATOR,
SO I JUST WANT TO UNDERSTAND THE
STATE'S ARGUMENT.

I THINK I DO.

>> RIGHT.

I WOULD LOOK AT CAMPBELL WHERE,
YOU KNOW, THAT SPECIFICALLY SAYS
ADVANCED PROCUREMENT OF THE
WEAPON, LACK OF RESISTANCE OR
PROVOCATION OF THE VICTIM,
KILLING, EXECUTION-STYLE
KILLING, YOU KNOW, IT TRACKS

THOSE FACTS HERE WHERE, YOU KNOW, WE KNOW THAT HE MADE A PROMISE IF THIS HAPPENS, I-- SHE HAS ONE MORE CHANCE, AND HE KEPT THAT PROMISE.

>> BUT THIS AGGRAVATOR SEEMS LIKE IT'S THE ONE MOST CONSISTENTLY IN OUR CASE--

[INAUDIBLE]
KIND OF DEBATABLE.

>> YEAH, I AGREE.

>> WHAT DO YOU CONSIDER SORT OF THE CORE OF WHAT THIS FACTOR IS GETTING AT?

>> WELL, I THINK LOOKING AT, I MEAN, WE KNOW IT HAS TO BE HEIGHTENED PREMEDITATION, NOT JUST PREMEDITATION--

>> IT'S, I MEAN, IT'S THE COLD-- IT'S UNCLEAR SORT OF WHAT WORK THESE DIFFERENT WORDS ARE DOING, YOU KNOW, COLD, CALCULATED, I MEAN, YOU KNOW, THE BASELINE FOR WHAT YOU NEED FOR PREMEDITATION IS SO LOW THAT IT JUST SEEMS LIKE WE CONSTANTLY IN OUR CASES KIND OF STRUGGLE TO GIVE-- TO MAKE THIS A TRUE AGGRAVATOR.

>> SURE.

AND THERE'S CROSSOVER TOO. OBVIOUSLY, SOME OF THE FACTS ARE GOING TO APPLY TO ALL THREE OF THEM.

YOU KNOW, IS IT COLD? IF SOMEBODY'S LYING THERE BEGGING, SOMEBODY YOU LIVE WITH, SOMEBODY WHO INVITES YOU INTO THEIR HOME IS BEGGING FOR THEIR LIFE?

YEAH, I WOULD SAY THAT'S COLD. HUNTING DOWN AN 11-YEAR-OLD CHILD?

I WOULD SAY THAT'S COLD. I MEAN, I THINK THE BIGGER ONE HERE IS IF YOU ACCEPT THE FIVE DAYS IS PREMEDITATION, AND, YOU KNOW, I THINK IT IS.

>> I GUESS IT'S THE FIVE, I GUESS WHAT ARGUABLY MAKES IT TRICKIER IS THAT YOU DID HAVE THIS KIND OF, YOU KNOW, IT SEEMS TRIVIAL, OBVIOUSLY--

>> SURE.

>>-- TO SOMEONE WHO WASN'T INVOLVED, BUT YOU DID HAVE THIS PROVOCATION.

IT WASN'T LIKE YOU HAD, YOU KNOW, ON DAY ONE THERE'S A PLAN TO KILL AND THEN YOU SIT THERE AND WAIT AND CARRY IT OUT FIVE DAYS LATER.

I MEAN, THERE WAS THIS INCIDENT THAT OCCURRED.

I MEAN, AT THE END OF THE DAY I THINK AS JUSTICE CUIEL WAS SAYING, THE RELEVANCE IN THIS CASE FOR US IS MORE ARTICULATING THE RULE.

IT'S NOT SOMETHING THAT WOULD, YOU KNOW, HAVE A MATERIAL EFFECT ON THE OUTCOME HERE.

>> RIGHT.

IF WE LOOK AT JUST GENERAL PREMEDITATION, WE ALL KNOW THAT CAN HAPPEN JUST AN INSTANT BEFORE THE CRIME IS COMMITTED. SO THIS PREMEDITATION, EVEN IF IT WAS HOURS BEFORE, IT'S STILL ADVANCED.

I MEAN--

>> I GUESS THOUGH THAT GETS TO THE WHOLE ISSUE OF WHAT AGGRAVATORS ARE FOR.

I MEAN, IF THE POINT OF THE AGGRAVATORS IN THE CONTEXT OF THE OVERALL DEATH PENALTY SCHEME IS TO KIND OF SEPARATE, YOU KNOW, THE WORST MURDERS FROM-- IT SEEMS, IT'S HORRIBLE TO EVEN TALK ABOUT MURDERS AS BEING, YOU KNOW--

>> I DO KNOW.

>> SO JUST, YOU KNOW, GETTING OVER THE SORT OF MINIMAL BASELINE FOR PREMEDITATION AS A MATTER OF SEMANTICS, OBVIOUSLY, I KNOW IT MIGHT TO THAT, BUT WHETHER IT SATISFIES WHAT AN AGGRAVATOR IS SUPPOSED TO DO IS KIND OF A SEPARATE QUESTION.

>> I THINK WHEN YOU HAVE THIS KIND OF PREMEDITATION DIRECTED AT AN 11-YEAR-OLD CHILD, I THINK IT GETS OVER IT.

>> OBVIOUSLY, YOU HAVE GOT THE HAC HERE TOO--

>> YES.

>>-- WHICH RELATES TO THAT.

>> YES.

AND AGAIN, THAT'S WHY I POINTED IT OUT, EVEN IF YOU TAKE IT AWAY FROM THE FIRST WITNESS, YOU STILL HAVE EIGHT OTHERS TO FALL BACK ON.

BUT MY ARGUMENT REMAINS EXACTLY THE SAME.

IT SATISFIES BOTH OF THOSE, HEINOUS, ATROCIOUS AND CRUEL AND COLD, CALCULATED AND PREMEDITATED.

ANY OTHER QUESTIONS YOU WOULD LIKE ME TO ADDRESS?

ANY OF THE OTHER 13 ISSUES?

NO?

THE STATE THEN RESPECTFULLY REQUESTS THAT THIS COURT UPHOLD THE APPELLANT'S JUDGMENTS AND SENTENCES FROM THE LOWER COURT.

THANK YOU.

>> REBUTTAL.

>> YES, YOUR HONOR.

I'D LIKE TO ADDRESS JUST A FEW THINGS.

THE LAST ONE THAT, WELL, WE HAD EIGHT OTHER AGGRAVATORS, LET'S NOT WORRY ABOUT THE ONE THAT WE SHOULD HAVE NEVER INSTRUCTED THE JURY ON AND THE JURY HEARD INSTRUCTIONS THAT MADE THE DEFENDANT OUT TO BE SOMETHING WORSE THAN HE WAS.

SO THAT'S WHY YOU DON'T GIVE JURY INSTRUCTIONS TO JURORS THAT DON'T PERTAIN TO THE CASE.

THAT'S WHY YOU HAVE AN INSTRUCTION CONFERENCE, AND I'LL STICK WITH ON MY-- I'LL REST ON THE BRIEF AND THE REST OF THAT.

BUT THE ARGUMENT THAT, NO, IT'S OKAY BECAUSE WE HAVE ALL THE OTHER STUFF, IT TAINTS THE JURY.

>> NO, BUT I MEAN, COUNSEL, TO BE FAIR, SHE MADE A PRETTY COMPELLING ARGUMENT ABOUT WHY IT WOULD SATISFY THE TEST.

AND SHE'S OBVIOUSLY JUST SORT OF SAYING AS ANYONE WOULD THAT EVEN IF THE COURT DISAGREED WITH HER, THAT IT WOULDN'T HAVE AFFECTED THE OUTCOME.

I MEAN, DO YOU WANT TO RESPOND

TO WHAT SHE SAID ABOUT--

>> MY POSITION IS WE DON'T KNOW
IF IT WOULD AFFECT THE OUTCOME
OF--

>> NO, BUT CAN YOU RESPOND TO
WHY THE COLD, CALCULATED AND
PREMEDITATED WASN'T THAT GIVEN
THE FACTORS--

>> I BELIEVE IT WAS IMPROPERLY
GIVEN, AND IS I WOULD REST ON
WHAT I SAID IN MY BRIEF
REGARDING THAT, YOUR HONOR.
AND AS TO THE GUN, WE KNOW
LITTLE OR NOTHING ABOUT THE GUN.

THE TIME FRAME THAT THE STATE
HAS LAID OUT I DON'T BELIEVE IS
BACKED UP BY THE RECORD.

THE GUN WAS NEVER RECOVERED, WE
DON'T KNOW WHERE THE GUN CAME
FOR, WHERE THE GUN WENT.

SO I WOULD SAY THAT PLAYS
AGAINST HER ARGUMENT THAT THIS
WAS ALL A PREMEDITATION.

AND AS TO THE STATEMENT THAT WAS
MADE TWO DAYS EARLIER BY AN

ADULT TO A CHILD THAT YOU HAVE
ONE MORE CHANCE, HE DIDN'T SAY
I'M GOING TO KILL YOU, YOU NEED
TO DO THIS, YOU NEED TO DO THAT.

ANY ADULT WHO SAID TO A CHILD
YOU'VE GOT ONE MORE CHANCE OR
YOU NEED TO BEHAVE, THAT
STATEMENT SHOULD NEVER HAVE COME
IN.

IT WAS IRRELEVANT TO THIS CASE,
AND I'LL REST ON MY BRIEF AS TO
WHY, BUT IT SHOULD HAVE NEVER
COME INTO THIS CASE.

EXCUSE ME FOR REMOVING MY
GLASSES, I CAN'T SEE BOTH-- A
REVIEW OF THIS WHOLE TRANSCRIPT,
IT MAKES IT CLEAR THAT THE TRIAL
JUDGE WAS MOVING ON WITH THIS
TRIAL.

SHE DIDN'T SAY SHE WAS GOING TO
SLOW IT DOWN FOR ME TO GO FIND
AN EXPERT, SHE DIDN'T SAY
THAT-- SHE DID SAY I COULD USE
THEIR EXPERT.

I NEVER SAID THERE WERE NO
EXPERTS THAT WERE AVAILABLE.
THERE WEREN'T EXPERTS THAT I
COULD FIND AT THAT POINT.

I WAS COURT APPOINTED TO THIS

CASE WHICH MEANT I HAVE TO GO BY THE JAC.

AS JUDGE LABARGA POINTED OUT, THE SHERIFF'S OFFICE ON THE OTHER HAND HAS THIS BUDGET AND THEY CAN DO WHATEVER THEY WANT. I HAVE TO GET PERMISSION.

I HAVE TO FIND A WITNESS WHO'S WILLING TO DO IT UNDER THE COST OF THE JAC.

SO, NO, THIS WASN'T JUST A, HEY, HE COULD GO IN TWO WEEKS AND FIND SOMEBODY.

THERE WAS NO WITNESSES AVAILABLE UNDER THE TIME FRAME THAT THE JUDGE PUT IN PLACE HERE.

IT WAS REAL CLEAR THE JUDGE, THE TRIAL JUDGE WAS MOVING ALONG WITH THIS TRIAL.

AND LAST THING TO ADDRESS IS THE STATE KEEPS SAYING THAT EXCLUSION IS THE LEAST REMEDY WE SHOULD DO.

EXCLUSION IS FROWNED UPON. WE SHOULD NEVER DO EXCLUSION. WELL, THAT'S WHAT THE STATE KNOWS THE LAW IS.

SO IF THE STATE KNOWS THAT'S WHAT THE LAW AND YOU PRESENT A WITNESS AT THE LAST MINUTE KNOWING THAT THE COURT'S NOT GOING TO EXCLUDE THE WITNESS, IT GIVES THE STATE A BENEFIT FOR KNOWING THAT THE WITNESS ISN'T GOING TO BE EXCLUDED.

AS JUDGE LABARGA POINTED OUT, THIS RICHARDSON HEARING TOOK PLACE AFTER THE JURY HAD BEEN SWORN.

THIS WITNESS SHOULD HAVE BEEN EXCLUDED.

IT WAS COMPOUNDED, THE ERROR, BY NOT PERMITTING A FULL EXAMINATION OF HIS TESTIMONY BY THE JUDGE ON HER OWN MOTION CUTTING IT OFF.

THIS WAS NOT HARMLESS ERROR. THE COURT SHOULD OVERTURN THIS CONVICTION, OVERTURN THE DEATH SENTENCE AND RETURN THIS FOR A RETRIAL.

THANK YOU, YOUR HONORS. THANK YOU FOR YOUR TIME AND ATTENTION.

>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS IN THIS CASE TODAY.