>> THE STATE OF FLORIDA VERSUS
BESSMAN OKAFOR.
>> MY NAME IS DORIS MEACHAM
WITH THE STATE OF FLORIDA.
I REPRESENT A MATTER BEFORE
YOU, BESSMAN IS ALSO ONE
OF THE DOZENS OF DEFENDANTS
WHOSE DEATH PENALTY SENTENCES
WERE VACATED PURSUANT TO HURST.
BESSMAN OKAFOR WAS CONVICTED OF
FIRST-DEGREE MURDER, TWO COUNTS
OF ATTEMPTED MURDER AND ARMED
BURGLARY, THE VOTE CAME BACK
11-1 OR THE DEATH SENTENCE.
ON DIRECT APPEAL THE COURT
AFFIRMED HIS CONVICTION OF
VACATED HIS DEATH SENTENCE
BECAUSE IT WAS NOT UNANIMOUS
PURSUANT TO HURST.
THE STATE FILED MOTION BEFORE
THE HEARING WHICH WAS DENIED
AND MANDATE WAS ISSUED IN MAY
OF 2017.
BESSMAN OKAFOR HAS YET TO BE
SENTENCED IN THE POOL DECISION
THAT CANNOT PROMPTED THE STATE
TO FILE A MOTION TO REINSTATE
HIS DEATH SENTENCE.
BESSMAN OKAFOR WAS ONE OF FOUR
MOTIONS TO REINSTATE THE DEATH
SENTENCE IN WHICH A MANDATE HAD
BEEN ISSUED.
THE THREE OTHER CASES CURRENTLY
PENDING BEFORE THE COURT SMITH,
WILLIAMS AND BELCHER AND THOSE
CASES THE TRIAL COURT JUDGE DID
GRANT THE STATE'S MOTION TO
REINSTATE CITING BRENNER,
MARSHALL, OWENS, MORE ALICE,
STATING THE INTERVENING CHANGE
IN THE LAW AND CONTROLLING LAW
CHANGED THE MANDATE AND NO
LONGER MADE IT VALID AND THEY
WERE BOUND TO FOLLOW THE NEW
LAW IN POOL AND BASED ON THE
NEW LAW IN POOL BESSMAN OKAFOR
IS NOT ENTITLED TO A RECENT AND
SEE.
PULL ELIMINATED THE JURY
RECOMMENDATION AND OTHERWISE

MEETS THE REQUIREMENTS SET OUT
IN POOL WITH --
>> LET ME ASK YOU THIS WAS WISE
AT THE NEW LAW OF THE STATUTE
THAT THE LEGISLATURE ADOPT?
THE LAW THAT GOVERNS NOW HAS
POINTED OUT THE JUSTICES IN THE
LAST CASE, GOULD ESTABLISHES
CONSTITUTIONAL LAW, BUT AS FAR
AS WHAT IS ACTUALLY REQUIRED IN
THE DEATH CASES NOW, THE
STATUTE ESTABLISHES -- GOES
BEYOND WHAT POOLE REQUIRES.
>> THE STATE'S POSITION IS
RIGHT NOW THE LOWER COURT HAS A
MANDATE OR POSTCONVICTION ORDER
WHICH STATES BECAUSE OF HURST
WHICH WAS AT THE TIME THE LAW
OF THE CASE THE DEFENDANTS WERE
ENTITLED TO A RECENT AND SING.
WHAT WE ARE ARGUING IS THE LAW
OF THE CASE IS NO LONGER
CONTROLLING.
IT IS NOT HURST BUT POOLE.
IN EXCEPTIONAL CIRCUMSTANCES
THE COURT MAY DEVIATE FROM THE
MANDATE BECAUSE THERE'S BEEN AN
INTERVENING CHANGE IN THE LAW
WHICH CHANGES THE DECISION THAT
WAS MADE IN THAT MANDATE.
WHAT WE ARE LOOKING AT NOW IS
THE FACT THAT AS HIS MANDATE
STATED HE IS ENTITLED TO HURST
RELIEF BECAUSE THAT IS THE LAW
OF THE CASE AT THAT TIME.
HE IS NOT ENTITLED TO HURST
RELIEF IN 2020.
WE ARE NOT ARGUING THE STATUTE
IS INCORRECT, IT IS, WHAT WE
ARE ARGUING IS THERE ARE
EXCEPTIONAL CIRCUMSTANCES IN
THIS CASE WHICH REQUIRE THE
TRIAL JUDGE TO RECONSIDER THE
MANDATE BEFORE THEM, TO
CONSIDER -
>> TRIAL COURT'S DON'T
RECONSIDER MANDATES.
>> WE ISSUE MANDATES, A
STATUTORY PERIOD IN WHICH WE
CAN RECALL THE MANDATE.

>> WHY ISN'T THIS EFFECTIVELY
RECALL THE MANDATE.
IT IS THE SAME RESULT.
AND SO YOU ARE ASKING US TO DO
SOMETHING IF WE GET THE SAME
RESULT WE WOULD BE PROHIBITED
FROM DOING IF THEY RECALLED THE
MANDATE?
>> THEY WOULD DO IS DONE
BEFORE.
THE LOWER COURT JUDGES THAT
GRANTED THE MOTION TO REINSTATE
CITED SEVERAL CASES THAT STAND
FOR THAT PREPOSITION.
WE CHANGED THE LAW OF THE CASE
BASED ON EXTENUATING
CIRCUMSTANCES.
THIS COURT DID JUST THAT.
THE DEFENDANT'S CASE WAS
REMANDED BACK DOWN.
HIS CONVICTION WAS VACATED.
>> IT SEEMS THE DIFFERENCE
THERE IS THE NEW LAW THEN WAS
THE DECISION THAT WE HAD MADE,
OKAY?
BUT IN OH WHEN I DON'T SEE HOW
YOU GET AROUND WHAT NO ONE
REQUIRED WHICH WAS A NEW TRIAL.
APPLYING THE NEW LAW, THAT IS
WHAT WILL HAPPEN.
THERE'S A NEW PROCEEDING
APPLYING THE NEW LAW.
I DON'T SEE HOW YOU MUCH
COMFORT IN OH ONE.
>> THEY VACATED HIS CONVICTION
BECAUSE OF THE ADMISSIBILITY,
THEY WERE NOT SUPPOSED TO DO
THAT AT THAT TIME.
BEFORE HIS TRIAL TOOK PLACE
THERE WAS AN INTERVENING CHANGE
IN THE LAW BY THE US SUPREME
COURT IN DS.
BEFORE GOING FORWARD WITH THE
TRIAL THIS APPLY THE NEW
INTERVENING CHANGE IN THE LAW
WHICH BASICALLY INVALIDATED THE
MANDATE.
THE DECISION IN OWEN, THE --
THEY CHANGED THE LAW OF THE
CASE, THE RULE OF LAW WOULD NO

LONGER BE OWEN.
>> THE STATE DID NOT GET THE REMEDY THAT THEY SOUGHT.
THE EARLIER -- REINSTATED.
>> THE COURT DECIDED THEY SAID THEY WILL NOT GO THAT FAR, A NEW TRIAL, THE LAW THAT WOULD GOVERN IS THE NEW LAW THAT IS ESTABLISHED IN THE COURT CASE.
I DON'T SEE THAT PROVIDE ANY REFUGE FOR YOU.
YOU GOT TO JUMP OVER THE DISTINCTION HERE THAT THE NEW LAW IS BE STATUTE AND HAS BEEN AMENDED BY THE LEGISLATURE.
FURTHERMORE YOU GET OVER THE FACT THE COURT REQUIRED A NEW TRIAL.
>> THE STATE WAS ASKING FOR TWO REMEDIES, THE NEW LAW WOULD BE APPLIED TO THE CONFESSION GOING FORWARD AND DID NOT REINSTATE CONVICTION.
IT WAS CONVICTED ON APPEAL, THAT IS A DIFFERENT ISSUE.
HE MANDATES -- HE WAS ENTITLED TO RESENTENCING PURSUANT AT THE TIME THAT WAS FIRST.
WE APPLY THE LAW IN POOLE RATHER THAN HURST AND IF YOU APPLY THE RULING POOLE TO BESSMAN OKAFOR'S CASE IS NOT ENTITLED TO RESENTENCING.
'S PENALTY PHASE WAS CONSTITUTIONAL.
EVERYTHING WAS MET.
IF YOU APPLY POOLE TO THE FACT OF HIS CASE THERE IS NO LONGER A NEED TO RESENTENCING THEM.
AND REINSTATING A CONVICTION, WE UNDERSTAND THAT IS MORE THAN OH ONE WITH ASKING FOR.
>> REINSTATING A DEATH SENTENCE IS DRAMATIC, WOULDN'T YOU SAY.
>> NOT WHEN IT WAS CONSTITUTIONALLY REACHED.
>> YOUR LOGIC APPLIED TO 1 WOULD RESULT IN NO NEW TRIAL BECAUSE IT WAS NOT UNCONSTITUTIONAL.

COULD HAVE SAID THERE WAS A CONVICTION.
>> WE ARE ASKING THE TRIAL COURT HAVE DISCRETION FOR THE MANDATE AND APPLY THE NEW LAW, THAT WAS ANOTHER CASE, IT WAS A BOYCOTT, YOU ARE SUPPOSED TO PAY TAXES ON GAINS FROM THAT SALE.
THIS COURT SAID YOU ARE LIABLE TO THAT, REMANDED FOR FURTHER PROCEEDINGS LIKE THIS CASE WAS REMANDED FOR FURTHER PROCEEDINGS.
PRIOR TO THE PROCEEDINGS GOING FORWARD THERE WAS AN INTERVENING CHANGE IN THE LAW WHICH INVALIDATED THAT MANDATE, WAS NOT LIABLE FOR THOSE TAXES.
THIS COURT SAID BECAUSE OF EXCEPTIONAL CIRCUMSTANCES END OF CASE WITH INTERVENING CHANGE IN THE LAW BY THE US SUPREME COURT, YOU APPLY THE FACT OF THAT NEW LAW, HE WAS NO LONGER LIABLE.
THAT WAS ANOTHER INSTANCE, THE COURT CONSIDERED THE FACT THAT AN INTERVENING CHANGE IN THE LAW INVALIDATED THE PREMISE OF THAT MANDATE.
CHANGING THE LAW AS IT STANDS, NO LONGER ENTITLED TO RELIEF.
ANOTHER CASE IS MORE OUT -- MORALES, IT WAS REMANDED THROUGH SENTENCING TO TAKE PLACE CORRECTLY.
THERE WAS AN ISSUE WITH THE SENTENCING ORDER THAT WAS DONE.
PRIOR TO HIM BEING RESENTENCED, AN INTERVENING CHANGE IN THE LAW, THE COURT DID NOT ENFORCE THE MANDATE BASED ON INTERVENING CHANGING LAW.
WE ARE ASKING THE SAME PREMISE TO HAPPEN HERE FOR THESE MANDATES THAT ARE NO LONGER VALID BASED ON THE LAW, BASED ON HURST TO BE REVIEWED AGAIN TO SEE IF THEY FIT THE

REQUIREMENTS OF POOLE.
>> COULD YOU ADDRESS THE JURISDICTIONAL ISSUE?
I WORRY ABOUT THE PRECEDENT WE WOULD BE SETTING BY EXTENDING THE CRYSTAL CASE LAW ON THE PETITION, I'M HAVING A HARD TIME SEEING HOW WE HAVE THE JURISDICTION WHAT THEY ARE ASKING US TO DO IN THE FIRST PLACE.
>> THIS COURT HAS EXCLUSIVE JURISDICTION OVER DEATH PENALTY CASES.
AND WHAT THIS CASE IS ABOUT.
WITHOUT TRYING TO PRESERVE THIS COURT'S ULTIMATE JURISDICTION, NOT ONLY IN BESSMAN OKAFOR'S CASE THAT ALL THE CASES THAT ARE PENDING RESENTENCING PURSUANT TO HURST AND THERE ARE MANY.
>> ARE YOU PRESERVING OUR JURISDICTION WHEN WE LOST JURISDICTION OVER THIS CASE WHEN THE MANDATE, A COUPLE -- HOWEVER MANY YEARS IT WAS?
>> IT HASN'T LOST IT, IT IS PENDING RESENTENCING.
UNTIL HE RECEIVED A DIFFERENT SENTENCES MAINTAINS JURISDICTION ACCORDING TO THE CASE LAW, HE HAS NOT BEEN RESENTENCED, THAT IS ANOTHER REASON TO LOOK AT WHETHER WE SHOULD CHANGE THE LAW OF THE CASE WHETHER THE TRIAL COURTS ARE ALLOWED TO DEVIATE.
THIS CASE IS STILL PENDING.
HE HAS NOT BELIEVED ANY HURST RELIEF, THERE IS NO FINALITY INTERESTS DESTROYED IN THIS CASE.
HE HAS NOT BEEN RESENTENCED AND FOR THE COURTS TO BLINDLY EXECUTE A MANDATE KNOWING THAT'S NOT THE LAW OF FLORIDA ANY LONGER IS NOT JUSTICE.
YOU MADE A CONCURRENT OPINION IN THIS CASE ON DIRECT APPEAL.

AT THIS TIME HURST IS THE LAW
IN FLORIDA WHETHER I LIKE IT OR
NOT AND I GIVE HURST RELIEF,
THAT IS WHAT A FAITHFUL
APPLICATION OF FLORIDA LAW IS
NEEDED.
JUST AS YOU ARE SUPPOSED TO
FOLLOW CURRENT LAW, SO ARE THE
LOWER COURTS, IT IS A FAITHFUL
APPLICATION OF THE LAW AS IT
STANDS NOW.
AT THIS TIME HURST IS NO LONGER
THE RULING FLORIDA.
>> YOU ARE ASKING US TO VIOLATE
THE LAW AND IGNORING THE
STATUTE, RUNS OUT AFTER A
CERTAIN TIME.
>> I UNDERSTAND FOR CASES
PENDING RIGHT NOW, THE ONLY
REASON BESSMAN OKAFOR IS BEING
RESENTENCED, THIS COURT RECEDED
THE LAW IN POOLE, WE ARE ASKING
THESE REMAINING CASES TO
CONTINUE THAT IN THE LAW.
THERE IS NO CONSTITUTIONAL
BASIS TO GO FORWARD WITH
RESENTENCING WHEN THEY ARE
ALREADY CONSTITUTIONAL.
THAT IS A DIFFERENT POSTURE
WITH THESE CASES.
>> YOU ARE NOW IN YOUR REBUTTAL
TIME.
>> I RESERVE MY TIME.
>> WE ASKED THE COUNCIL TO
PROCEED.
12%.
AND THIS WILL BEGIN.
>> YOU MAY PROCEED.
>> THANK YOU, YOUR HONOR.
THIS COURT SAID ALMOST END
INCLUDING THE COURT'S POWER TO
CORRECT INCONSISTENCIES.
THE REASON FOR THIS FORMS THE
BEDROCK OF ANGLO-AMERICAN
JURISPRUDENCE.
THERE MUST BE A END TO
LITIGATION, PUBLIC POLICY AND
THE INTEREST OF INDIVIDUAL
LITIGANTS.
THAT IS WHAT THE COURT SAID,

STATE FARM, THE PRINCIPAL WAS
ESTABLISHED IN HIS 1892 LEAVITT
DECISION.
IT IS INDISTINGUISHABLE FROM
THIS CASE.
THE PRIOR DECISION REVERSED
OWEN'S CONVICTIONS, TRIAL BUT
IS NO LONGER SUBJECT TO
REHEARING EVEN THOUGH THE BASIS
FOR THE REVERSAL HAD BEEN
ELIMINATED BY SUPREME COURT
OPINION.
FLORIDA LEGISLATURE IS NOT
SPOKEN DEFINITIVELY BUT THE
2013 ADOPTION WITH 43.44,
INCORPORATED INTO 9.34.
IT IS THREE SENTENCES.
FIRST AND APPELLATE COURT,
JUSTICE OF THE CASE REQUIRE
REVISED REFORM OR MODIFY ITS
OWN OPINIONS FOR THE PURPOSE OF
MAKING THE SAME ACCORD WITH
JUSTICE.
ACCORDINGLY AND APPELLATE COURT
MAY RECALL ITS OWN MANDATE FOR
THE PURPOSE OF ALLOWING IT TO
EXERCISE JURISDICTIONAL POWER
AND PROPER CASE AND ESTABLISH A
TIME LIMIT.
IT MAY NOT BE RECALL MORE THAN
120 DAYS AFTER EXPEDITION.
IT IS 120 DAYS AFTER THE
MANDATE.
>> THAT WAS NOT BRIEFED IN THIS
CASE.
IT IS ENTIRELY SUBSTANTIVE.
IT REGULATES THAT POWER, A BIG
STATUTES IN WHICH PROCEDURAL
ASPECTS.
IT IS ADOPTED AS A RULE.
IT IS IN BOTH STATUTE AND THE
RULE.
EVERY CIVIL PRACTITIONER THAT
PREVAILS ON THE ROUND OF
APPEAL, FACED WITH THE QUESTION
OF WHEN THIS WILL BE OVER.
CAN IT CLOSE ON THE CONTRACT
ARE FINANCING OR POURING
CONCRETE.
IT IS TAKEN INTO CONSIDERATION

ANSWERING THAT QUESTION.
FROM 1890 TO THE ISSUANCE OF MANDATE OF EXPIRATION OF RECALL PERIOD WHETHER IT IS TERM OF COURT OR 121 DAYS MEANING THE APPELLATE COURT DECISION IS IMMUTABLY FINAL UNLESS OVERTURNED BY A HIGHER COURT.
A POSITIONERS BY THE STATE WOULD OVERTURN 120 YEARS OF PRECEDENT ILLUMINATE CERTAINTY THAT MANDATE ISSUANCE AND EXPIRATION OF THE RECALL PERIOD EQUALS FINALITY.
NOW DECISION WOULD BE TRULY FINAL.
THIS IS A DRAMATIC EXAMPLE OF A POST MANDATE CHANGE IN THE LAW BUT THE STATUS PROPOSED RULE COULD NOT DEAL WITH SUCH DRAMATIC CHANGES.
THOSE WHO SPEND CONSIDERABLE PERIODS PORTIONS OF THE DAY ON WEST LAW, SEEING PHRASES LIKE ABROGATED IN PART OR OVERRULED IN PART BY A QUESTIONS BY, THE COMMON LAW IS FOOD AND ORGANIC, RESOURCEFUL LAWYERS UNDER THE REGIME PROPOSED BY THE STATE WOULD BE ABLE TO TAKE ADVANTAGE OF ANY CHANGE IN THE LAW.
THERE WOULD BE NO FINALITY OF THE DECISION.
WE ARE UNWILLING TO GO THAT FAR.
REPORTS SHOULD NOT GO THAT FAR, WITH WASHINGTON VERSUS STATE IT IS STILL TRUE.
THE JUDGMENT WAS ENTERED, HAS LONG SINCE PASSED AND THE RECALL OF JUDGMENT THIS CAN BE DONE NOW, IT CAN BE DONE 20 YEARS FROM THIS TIME AND NO SIGN WHEN MITIGATIONS WITH THESE.
THE EXERCISE OF SUCH POWER IF IT EXISTED AT ALL WOULD BE THE MOST UPROOTING AND DANGEROUS ACT EVER EXERCISED BY ANY COURT THAT EXISTS.

THANK YOU.
>> THANK YOU.
>> THE STANDARD, TO MISTER BURNHAM, PREPARING FOR RESENTENCING SCHEDULED MARCH 9TH WHEN THIS PETITION -- BEFORE, THE COURT STAFF. PLANNING WITH THE HARD WAY AND AS DIFFICULT AS IT IS I DON'T UNDERSTAND THE SOLUTION THAT IS ACHIEVED BY YOUR STAFF THAT DID A REMARKABLE JOB.
>> WOULD YOU CONCEDE IN THE UNDERLYING CRIMINAL CASE DOESN'T MEET THE TEST FOR A FINAL ORDER IN THAT IT LEAVES ADDITIONAL JUDICIAL LABOR. A COUPLE CASES NOT DONE UNTIL THE SENTENCE IS ENTERED. THEY TREATED DIFFERENTLY THAN THAT AND LEGAL PRECEDENT. IT IS NOT FINAL.
>> A NEW CAPITAL SENTENCING PROCEEDING.
>> THIS TYPE, WE COULD HAVE JUST AS EASILY HAD A PROCEDURE, WE COULD HAVE SAID THE POSTCONVICTION IS A CONTINUATION OF THE CRIMINAL CASE, IN ORDER THAT SENSES SIDE A SENTENCES NON-FINAL ORDER AND NOT APPEALABLE. IT IS FINAL BECAUSE THAT IS WHAT WE LABELED IT. IT IS NOT LEGALLY INCORRECT ABOUT LABELING THIS AS A NONFINAL ORDER IN ALLOWING OR NOT ALLOWING, WE COULD HAVE GONE THAT ROUTE. JUDICIAL LABOR IN THIS, LOCATIONS OF THE SENTENCES IMPOSED.
>> THIS IS CORRECT. WHATEVER THE RULES ARE ON 38-50 MAY APPLY OR NOT APPLY BUT IN TERMS OF DIRECT APPEAL IT IS FINAL AND THIS JUDGMENT IS WRONG, YOU GET A NEW SENTENCING PROCEDURE AND A TIME-LAPSE FOR CONSIDERATION OF THAT.

AND WHAT HE IS ENTITLED TO NOW.
THE COURT HAS SAID SEVERAL
TIMES, WE ARE NOT WILLING TO GO
THAT FAR, TO ACHIEVE WHAT WAS
MENTIONED EARLIER IN THAT
ARGUMENT.
GOING FURTHER IN OH ONE --
OWEN, OUR DECISION WAS TO
REVERSE THE CONVICTION FOR A
NEW TRIAL, A FINAL DECISION, NO
LONGER SUBJECT TO REHEARING.
OWEN STANDS IN THE POSITION TO
ONE CHARGED WITH MURDER THAT
DOES NOT END IN TRIAL.
BESSMAN OKAFOR STAND IN THE
SAME POSITION AS SOMEONE NOT
CONVICTED OF MURDER.
JUST AS IT WOULD BE THE CASE OF
THE ADMISSIBILITY FOR WHAT WAS
SUBJECT TO NEW RULES.
OWEN'S CONVICTION -- WE ARE IN
THE SAME POSITION THAT IT
SHOULD CONTROL.
IT WAS APPROPRIATE HERE, THE
FIRST IS THE DECISION IN HURST
VERSUS STATE WAS
UNCONSTITUTIONAL UNLESS IT IS
FLOYD.
NO CITATION IN MARBURY VERSUS
MADISON FOR THE PETITION, AN
ACT OF CONGRESS WHERE IT IS
VOID.
TO SAY WHAT THE LAW IS IN THIS
PLACE, I DISAGREE WITH IT, IT
IS UNCONSTITUTIONAL WHAT THAT
COURT DID, NOWHERE IN POOLE IN
ANY LANGUAGE, IN THE ISSUE.
WHEN I THINK IT WAS JUST NUNEZ
SAID I'M WORRIED ABOUT
PRECEDENT THE STATE ARGUES FOR
JURISDICTIONS, 11 AND 12
PETITION BUT WHAT THE CASE
ACTUALLY SAYS IS LITIGANTS THAT
ONCE BATTLED THE COURT'S
DECISION SHOULD BE REQUIRED
MORE WITHOUT GOOD REASON FOR IT
AGAIN.
THIS IS WITHOUT PRECEDENT,
PERHAPS THE GOOD SENSE OF WHICH
THE JUDGE SPOKE COMES TO

ACCOUNTING THE RELATIVE
UNSEEMLY MISS OF COURTS
ALTERING THE RULING OF SAME
LITIGANTS THAT WOULD REFLECT
THE MEMBERSHIP OF THE TRIAL.
IN 35 YEARS IT HAS BEEN CALLED
A LOT OF THINGS, BRAVE, JUSTICE
SEEKING, PREDICTABLE, UNIFORM,
AND WITH THE SUPPORT DOWN THIS
PATH TO BE UNSEEMLY AND SOME
MEMBERS OF THE COURT FEEL THE
SAME.
WITH PRACTICALITIES ILLUSTRATED
BY THIS PHASE, WHAT THE COURTS
WOULD DO, THE COURT IS AWARE OF
ARGUMENT 3 IN THE PETITION.
THE DEATH PENALTY CANNOT BE
ARBITRARY, 33 INMATES THAT GOT
HURST WERE SENTENCED, DON'T GET
HURST RELIEF AND WE GET A
SENTENCE, EVERY LAWYER OR
PROSECUTOR I HAVE EVER SPOKEN
TO SAID HURST RELIEF GRANTED
NEW SENTENCING PROCEDURES.
THE FIRST RELIEF, 33, 35
INMATES HAVE BEEN RESENTENCED
BASED ON THAT AND THE COMMENT
SNATCHED THE SAME RIGHT TO
RELIEVE IN THIS CASE IS
ARBITRARY AND THE ARBITRARINESS
IS REFLECTED IN THIS SPACE AND
IMPORT CALENDARS.
THE RESPONDENT WAS ACCORDED A
RETURN, THE ATTORNEYS AND
REQUIRED HIM TO WITHDRAW.
THE COUNCIL HAD BEEN THERE AND
WE COULD BE IN THE 36 AND COULD
BE THE 35, IT IS AN ARBITRARY
THING WHEN THIS SPACE MOVES
FORWARD.
IN ORANGE COUNTY, THERE WAS A
RULING ONLY ONE CASE TO BE
TRIED PER MONTH BECAUSE OF
PERSONNEL AND IT COULD BE HURST
RESENTENCING OR BRAND-NEW CASE
SO IT IS STACKED UP.
SO THE INABILITY TO PROVIDE
COUNSEL ON A CONSISTENT BASIS
MAY BE STATE ABLE TO THIS
MOTION.

SO IT IS NOT ONLY ARBITRARY,
SORT OF A WHIPSAW WAY TO GO
ABOUT THE REPRESENTATION OR
WHERE THE ARGUMENT PRESIDED
THAT.
I WANT TO TALK A LITTLE BIT
ABOUT POOLE AND SOME OF THE
PROBLEMS THAT RELY ON IT TO MY
CLIENT.
>> THAT I INTERRUPT AND ASK A
QUESTION?
WITH RESPECT TO THAT ON PAGE 14
OF YOUR RESPONSE YOU SAY THAT
POOLE IS IRRECONCILABLE WITH
THE REQUIREMENT THAT THE
ULTIMATE DECISION TO IMPOSE A
SENTENCE OF DEATH RATHER THAN
LIFE MUST BE MADE BY UNANIMOUS
JURY AND I'M INTERESTED IN THAT
ASSERTION OF THE LEGAL
PRINCIPLE WITH NO CITATION
WHATSOEVER, WHERE DO YOU FIND A
CASE THAT SAYS THE EIGHTH
AMENDMENT REQUIRES THE ULTIMATE
DECISION TO IMPOSE A SENTENCE
OF DEATH MUST BE MADE BY
UNANIMOUS VERDICT?
>> I'M ARGUING --
>> I'M NOT ASKING FOR YOUR
ARGUMENT.
THIS IS AN ASSERTION OF WHAT
THE LAW IS AND I'M ASKING WHERE
YOU GOT THAT FROM.
I HAVEN'T FOUND A CASE THAT
SAYS THAT.
>> UNANIMOUS RESENTENCING IS A
FUNDAMENTAL NECESSITY.
IS THAT WHERE WE ARE?
>> YES.
>> WE ALSO --
>> YOU WOULD CONCEDE THAT IS
INCONSISTENT WITH UNITED STATES
SUPREME COURT PRECEDENT WITH
MCKINNEY VERSUS ARIZONA.
>> TYPICALLY SAID THE EVOLVING
STANDARDS OF DECENCY REACTED TO
THE DECENT THAT EXPLAINED THE
STANDARDS, JUSTICE LAWSON --
THE CONCURRING OPINION WITH AN
OUTLIER, YOUR DECISION RELIES -

WITH HURST VERSUS FLORIDA THE
LOGIC HAS WASHED AWAY THE TOP
LINE, TIME AND SUBSEQUENT CASES
WASHED IT AWAY.
FUZZY OTTO --FAZIANO IS
DODDERING --
>> THE FLORIDA CONSTITUTION
DOESN'T ALLOW US TO GET AHEAD
OF THE UNITED STATES SUPREME
COURT IN DETERMINING WHAT
STANDARDS OF DECENCY REQUIRED.
YOU AGREE WITH THAT?
>> IT IS EARLY IN POOLE.
>> THAT IS WHAT THE
CONSTITUTION SAYS.
WOULD YOU AGREE?
>> YES.
>> THE US SUPREME COURT HASN'T
OVERRULED THAT PRINCIPLE, ITS
HISTORY SENTENCING IS NOT
REQUIRED IN THE EIGHTH
AMENDMENT CASE IN CAPITAL
CASES, CORRECT?
>> UNDER THE EIGHTH AMENDMENT
THAT IS CORRECT BUT YOU ALSO
LOOKS AT ALABAMA WITH JUSTICE
STEVENS DISSENTING.
AND REYNOLDS VERSUS FLORIDA
WITH BREYER, JUSTICE BREYER,
AND SONJA SOTOMAYOR, THE
NUMBERS ARE ADDING UP AND I'M
JUST SAYING I OVERSTATED THE
ARGUMENT.
POOLE, THERE WAS VERY LITTLE
JUROR INVOLVEMENT AT ALL IN
CERTAIN CIRCUMSTANCES
ESPECIALLY WHEN THERE WAS A
PRIOR STATUS FOR REQUIREMENTS
FOR PRIOR CONVICTIONS.
ONE OF THE BIGGEST PROBLEMS
THAT WILL BE FACED IN THE
FLORIDA STATUTE IS THE JURY
CONTINUES TO BE TOLD YOUR
DECISION IN THIS CASE DOESN'T
CONTROL SENTENCING.
IN THIS PARTICULAR PHASE THE
JURY WAS TOLD THAT AND THE JURY
WAS TOLD TO EXPECT A PRIOR
VIOLENT ELEMENT THROUGH
INNOCENCE, DON'T WORRY ABOUT

THE FINDINGS, THE SENTENCING
GETS THAT YOU ALREADY FOUND
THIS, THE JURY PLAYED NO IN
THIS CASE AT ALL.
THE LIMITATION OF THE JURY.
THIS IS A CASE ABOUT FINALITY
OF JUDGMENT AND IN PARTICULAR
WHERE PROSECUTORS GET SPECIAL
PRIVILEGE TO RELITIGATE THE
MANDATE.
15 SECONDS FOR QUESTIONS, IF
NOT -
>> THANK YOU, COUNCIL.
REBUTTAL.
>> BESSMAN OKAFOR'S DEATH
SENTENCE IS CONSTITUTIONAL.
HIS PENALTY PROCEEDING WAS
CONSTITUTIONAL.
THE REASON IT WAS VACATED IS
THE JURY CAME BACK WITH 11-1
AND IT WAS NOT UNANIMOUS.
ACCORDING TO POOLE HIS DEATH
SENTENCE IS CONSTITUTIONAL.
HE ASKED LOWER COURTS TO GO
FORWARD WITH THE RESENTENCING
THAT IS NO LONGER NECESSARY IS
NOT JUSTICE.
HURST WAS A RADICAL DEPARTURE
FROM YEARS OF SETTLED FLORIDA
LAW.
POOLE HAS REGAINED THAT
STABILITY IN STATING A JURY
DOES NOT HAVE TO COME BACK WITH
UNANIMOUS DECISION.
THERE IS CASE LAW THAT
RESPONDENT DID NOT ACKNOWLEDGE,
WHICH WAS MORE ROW -- MORALES
WITH THE FACT IN THIS CASE.
IN MARSHALL, DID NOT ENFORCE
THE MANDATE FOR INTERVENING
LAW.
THEY STATED THE MANIFEST
INJUSTICE EXCEPTIONS, THE LAW
OF THE CASE IN A DECISION BY
HIGHER COURT AND PERMITTED THE
TRIAL COURT, WITH THE
RESENTENCING.
EVEN THOUGH THERE IS A MANDATE
IN PLACE.
THAT IS WHAT WE HAVE HERE.

THERE ARE COSTLY RESENTENCING
BASED ON POOLE.
IT WAS ISSUED INCORRECTLY.
YOU SEE BASED ON THE STATE AND
LAW IN HURST, WE ARE ASKING
LOWER COURTS TO HAVE DISCRETION
TO DEVIATE THE MANDATES, TO NOT
ENFORCE THE MANDATE.
IF THERE ARE NO FURTHER
QUESTIONS, YOU ACCEPT THE
PETITION BECAUSE THERE IS NO
ADEQUATE REMEDY, TO PREVENT
RESENTENCING AS WELL AS OTHER
CASES PENDING RESENTENCING
PURSUING TO HURST WHETHER IT IS
A PRIOR CONVICTION ORDER, THANK
YOU.
>> WE THANK BOTH SIDES FOR YOUR
ARGUMENTS AND THAT WILL
CONCLUDE TODAY'S SESSION OF
COURT.