

>> THE NEXT CASES CASE NUMBER 2023 0432 MITCHELL VERSUS RACE.

>> GOOD MORNING.

FOR THE RECORD I WILL ARGUE TEN MINUTES AND SEVEN MINUTES IS GIVEN TO ATTORNEY GENERAL AND THEN THREE MINUTES FOR REBUTTAL.

I REPRESENT THE PETITIONER IN THIS CASE WILLIAM MITCHELL.

MY CLIENT REQUEST THE COURT TO REVERSE THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN RACE VERSUS MITCHELL AND HOLD THERE IS PERSONAL JURISDICTION FOR THE RESPONDENT FOR 27 UNDENIABLE VIOLATIONS OF THE FLORIDA SECURITY OF COMMUNICATION.

>> WHY DOESN'T YOUR COMPLAINT ALLEGE THE EXISTENCE OF JURISDICTION UNDER 481936 CAUSING INJURY TO PERSONS OR PROPERTY WITHIN THE STATE ARISING OUT OF AN ACT OR OMISSION BY THE DEFENDANT?

YOU PLEAD ONLY THAT JURISDICTION FLOWS FROM 48.1932 COMMITTING A TORTIOUS ACT WITHIN THE STATE.

CAN YOU HELP ME UNDERSTAND WHY?

I LOOKED AT THE ORIGINAL AND THE OPERATIVE COMPLAINT HERE AND WHY DID YOU NOT JUST ALLEGE THAT THE 27 PHONE CALLS CAUSED INJURY IN THE STATE AND WITH THAT NOT HAVE SETTLED EVERYTHING.

>> IT WOULD HAVE AND I GUESS IF GIVEN THE OPPORTUNITY TO AMEND WE COULD GO AHEAD AND DO THAT BUT THE PRIMARY REASON AT THE TIME WAS THE EXISTENCE OF A FRIEND'S VERSUS FRAN'S CASE WHICH ARE DETERMINED I KNOW WE ARE NOW HERE TO DETERMINE WHETHER FRANZ WAS PROBABLY DECIDED BUT WHEN WE PLEDGED THIS FRONDS WAS THE MOST RECENT STATEMENT THAT HAD COME OUT AND IT SAID IT IS NOW 182 BUT USED TO BE ONE B OF THE LONG ARM STATUTE SAID THAT IT.

FEW EXCEPTIONS OCCURRED HERE IN FLORIDA AND THAT'S ALL YOU NEED.

AND THAT'S WHERE WE ARE GOING.

>> YOUTH SAID TO THAN THE TORTIOUS ACT WAS COMPLETE YOU SAID THEN THE TORTIOUS ACT WAS COMPLETE UPON THE SPEAKING OF THE WORDS EXCEPTED IT WAS COMPLETE IS THAT YOUR ARGUMENT?

>> YES.

OR THAT IT OCCURRED.

I MEAN, THE CASE LAW PARTICULARLY FRONDS BUT STATE VERSUS MOSLEY WHICH WE CITED IN THE BRIEF DETERMINE THE INTERCEPTIONS OCCUR WHERE THE PERSON SPEAKING.

MY CLIENT BY THE WAY IS UNDISPUTED THAT MR. MITCHELL WAS IN FLORIDA FOR ALL OF THE 27 PHONE CALLS.

>> YES BUT ALSO THE OPERATIVE COMPLAINT DOESN'T ALLEGE THAT MR. RACE KNEW THAT.

>> THE OPERATIVE COMPLAINT DOES NOT ALLEGE THAT MR. RAY'S ADMITTED A RESPONSE TO REQUEST FOR ADMISSIONS HE KNEW MY CLIENT WAS A FLORIDA RESIDENT.

>> BUT HE DID DENY THAT HE KNEW HE WAS IN FLORIDA IN THE REQUEST FOR ADMISSION RIGHT.

>> HE DID BUT IT IS NOT NECESSARILY WELL HE HEDGED IT A BIT.

HE DENIED THAT HE KNEW MY CLIENT WAS IN FLORIDA WHEN THE CALLS OCCURRED BUT HE DID SAY HE KNEW MY CLIENT WITH A FLORIDA RESIDENT IT'S NO SECRET MY CLIENT WAS A FLORIDA RESIDENT.

HE IS SOMEWHAT THEIR I SAY A CELEBRITY VIDEO GAMING INDUSTRY AND SO IS MR. RACE OR AT LEAST HE IS TRYING TO BE.

>> PLEASE SPEAK UP OF HAVING TROUBLE HEARING YOU.

>> I'M SORRY.

I'M GETTING OVER HEAD COLD I APOLOGIZE FOR THAT.

BUT BASICALLY THE GIST OF IT IS THAT STATE VERSUS MOSLEY SAYS THE INTERCEPTION OCCURRED WHEN MY CLIENT WAS PHYSICALLY LOCATED AT THE TIME.

WHICH WAS IN FLORIDA AND THERE IS NO REASON TO OVERTURN THAT.

THE CASE IS NEARLY 30 YEARS OLD AND INVOLVES A STATUTORY INTERPRETATION INTERPRETED THE LANGUAGE OF THE FLORIDA SECURITY COMMUNICATIONS ACT SPECIFICALLY THE ORAL THE DEFINITION OF ORAL COMMUNICATION.

I WOULD NOTE THAT THE STATE OF FLORIDA ATTORNEY GENERAL IS SUPPORTING MY CLIENTS POSITION IN THIS CASE.

>> I WANT TO ASK YOU ABOUT THAT.

THIS CITED A FEDERAL CASE THAT TALKED ABOUT SEEM TO ARISE IN CONNECTION WHERE LAW ENFORCEMENT IS A THIRD PARTY THAT IS INTERCEPTING THE CALL AND THE CASES ARE PREMISED ON THE IDEA THAT WHEN LAW ENFORCEMENT DOES IT THEY ARE OBTAINING THE CALL WHERE THEY REDIRECT THE SEMINAL CASE FROM THE SECOND CIRCUIT COURT OF APPEAL UP IN MANHATTAN WHERE IT SAYS YOU REDIRECTING IT FROM WHERE THE CALL IS MADE.

I DON'T KNOW THAT ANALYSIS WHERE OUR COURT IT OMITTS EXCITED TO BE HONEST THE 11<sup>th</sup> CIRCUIT GAZE I DON'T KNOW WHEN IT'S TWO PEOPLE IT TENDED TO BE THE PARTIES TO CALL THAT IN THAT CASE THERE IS NO REDIRECTION OF THE CALL BY IN THIS CASE THE REPORTER AND PERSON WHO IS OUT OF STATE.

I AM NOT REALLY SURE IT MAY MAKE SENSE IN THE LAW ENFORCEMENT THIRD PARTY CONTEXT BUT I DON'T KNOW THAT IT MAKES SENSE IN THIS CONTEXT.

CAN YOU ADDRESS IT?

>> CERTAINLY.

IT WAS THE INTERPRETATION OF THE FLORIDA STATUTE AND I KNOW THIS IS AN ARGUMENT THAT MR. RACE MADE BUT THERE REALLY IS NOTHING AND NO REASON THAT THE LANGUAGE PARTICULARLY THE STATUTORY DEFINITION SAYS INTERCEPTOR ORAL COMMUNICATION OR WIRED COMMUNICATION OR ORAL TRANSFER BEING DETERMINED DIFFERENTLY IN THE CONTEXT OF AN EVIDENT SUPPRESSION CASE.

>> THE STATUTE LANGUAGE ITSELF DOESN'T TELL YOU ANYTHING ABOUT HOW YOU ARE SUPPOSED TO FIGURE OUT THIS KIND OF QUESTION AND WHEN WITHOUT ANY

ANALYSIS OR A PARENT THOUGHT ABOUT HOW IT APPLIED DOESN'T PURPORT TO BE DOING ANY TEXTUAL ANALYSIS THEY JUST SAY SEE U.S. V NELSON OR WHATEVER THE CASE WAS AN USB NELSON IS BASED UPON A SPECIFIC SET OF FACTS ABOUT HOW THE CALL WAS QUOTE UNQUOTE INTERCEPTED I DON'T KNOW THAT WE SHOULD JUST MINDLESSLY EXCEPTED.

>> THAT IS CORRECT.

I DON'T THINK THE COURT SHOULD MINDLESSLY ACCEPT ANYTHING BUT I WOULD NOTE THE VIEW NO ONE IS ASKING THE COURT TO OVERRULE THIS.

MR. RACE IS NOT TAKING THAT POSITION EITHER.

WE KNOW THIS BECAUSE IT'S BEEN AROUND FOR A WHILE AND WE THINK IT DECIDES THE OPINION OR THE OUTCOME BUT IT WAS INTERPRETING THE DEFINITION OF ORAL COMMUNICATION WHICH IS RIGHT THERE IN THE FLORIDA STATUTE AND HAS NOT CHANGED SINCE 1987 OR SINCE 1974 AND IT MAKES SENSE.

IT SAYS ORAL COMMUNICATION ANY ORAL COMMUNICATION UTTERED BY A PERSON EXHIBITING EXPECTATION AS SUCH THE COMMUNICATION IS NOT SUBJECT INTERCEPTION UNDER CIRCUMSTANCES JUSTIFYING SUCH EXPECTATION DOES NOT MEAN ANY PUBLIC COMMUNICATION UTTERED AT A PUBLIC MEETING OR ANY ELECTRONIC COMMUNICATION.

I KNOW IT'S LONG WINDED BUT THE OPERATIVE LANGUAGE IS UTTERED BY A PERSON.

HOW DO YOU ART OR IN ANY PLACE EXCEPT WHERE YOU ACTUALLY ARE.

HOW CAN MY CLIENT MR. MITCHELL ART OR ANYTHING?

>> 48 FOCUSES ON THE ACTIONS OF THE DEFENDANT.

>> CORRECT.

>> I UNDERSTAND THERE IS A SENSE IN WHICH THIS IS A MURKY THING ABOUT WHERE IS THE CONVERSATION OCCURRING AND ANYTHING BUT IF THE WHOLE POINT OF PERSONAL JURISDICTION IS TO FOCUS ON WHAT THE DEFENDANT IS DOING AND THE CONNECTION BETWEEN WHAT THE DEFENDANT DOES AND THE FORUM I MEAN EVERYTHING THE DEFENDANT DID THE RECORDING TO SPEAKING IT WAS ALL IN WHAT STATE?

>> OHIO.

>> THAT IS CORRECT.

HE WAS PHYSICALLY IN OHIO ACCORDING TO THE AFFIDAVIT.

IF I COULD TAKE ONE SECOND BECAUSE YOU RAISED A POINT ABOUT WHETHER OR NOT THE DEFENDANT KNEW MY CLIENT WAS IN FLORIDA.

HE DID SO AS HE POSTED ON FACEBOOK THAT HE WENT THE WEBSITE AND COPY THE FLORIDA STATUTE CHAPTER 934 AND COPIED IT AND SAID IT IS ILLEGAL IN FLORIDA TO RECORD A PHONE CALL AND ALL PARTIES ARE CONSENTING.

I'M PARAPHRASING.

>> I HAVE A QUESTION.

>> YES >> HE WAS LOCATED IN OHIO AT THE TIME BUT FOR THE PURPOSES OF COMMITTING A TORT IN FLORIDA UNDER THE STATUTE IT INTERCEPTS AND THERE IS NO REASON TO DEPART ON THIS INCIDENT BUT SINCE INTERCEPT MEANS THAT HE

INTERCEPTED THE CALL >> STRIKE THAT, SINCE THE LAW IS SUCH THAT WHERE MY CLIENT SPOKE MEANS THE END OF THE CALL WITH INTERCEPT AND FLORIDA MEANING IN OTHER WORDS UNDER MOSLEY AND FRANCE IN THE DEFINITION OF ORAL COMMUNICATION AND OTHER DEFINITIONS OF THE STATUTE BASICALLY RAISING RACE INTERCEPT OF THE CALLS IN FLORIDA IT WAS ENOUGH TO COMMIT A TORTIOUS ACT IN FLORIDA AND STATE THE TORT ALLEGEDLY OCCURRED IN FLORIDA WHICH IS ALL YOU 182.

>> ON THE DUE PROCESS ISSUE HOW SHOULD WE THINK ABOUT THE CASE WHEN IT'S FAIR TO SAY THERE IS A FACTUAL DISPUTE OVER WHETHER HE KNEW AND IF WE ARE REVIEWING THIS THROUGH THE LENS OF THE DEFENDANT RELATIONSHIP AND THEN IT REACHES OUT TO THE STATE THERE IS NO EVIDENTIARY HEARING AS THE TYPICALLY IS IN PERSONAL JURISDICTION CASES.

AND, SO, HOW DO WE ADDRESS THE DUE PROCESS ISSUE WHEN THERE ARE DISPUTED ISSUES AND FACTS FROM A LEGAL STANDPOINT THE ANALYSIS CAN TURN ON WHETHER OR NOT HE KNEW HE WAS CALLING SOMEONE WHO WAS LOCATED IN FLORIDA AND THERE WAS NO RESOLUTION OF THE FACTUAL DISPUTE IN THE TRIAL COURT.

>> THE SHORT ANSWER IS REMAND.

WE CAN HAVE A VENETIAN HEARING.

BASICALLY IT'S NOT IN THE RECORD BUT I CAN GIVE IT BACK EVIDENCE OF WHY IT WASN'T.

THE JUDGE RETIRED WE HAD A NEW JUDGE IT'S COVID.

WE HAD A CASE MANAGEMENT CONFERENCE.

WE HAD A MOTION TO COMPEL JURISDICTIONAL DISCOVERY OF THE TIME.

THE TRIAL JUDGE SAID WE DID NOT NEED IT LET'S GO FORWARD HAVE A HEARING IN ONE WEEK I GOT EVERYTHING BRIEFED AND WE DID IT AND WE DID OVER ZOOM BACK IN 2022.

BUT IF THE COURT THINKS THERE ARE FACTUAL DISPUTES I COULD ADD MORE TO THE RECORD ANYWAY WITH ADDITIONAL CONTEXT BECAUSE I AM VERY CERTAIN THAT THERE ARE ADDITIONAL ELECTRONIC CONTEXTS.

TO ANSWER YOUR HONORS QUESTION REMANDED BACK TO THE TRIAL JUDGE.

>> CAN WE RESOLVE IT WITHOUT REMANDING BACK?

>> YES YOU CAN.

MY CLIENT, THE ONE ISSUE BELIEVE CAN BE SETTLED BY MOSLEY AND OTHER STATUTES AND CASE LAW.

BUT IT IS SUFFICIENT CONTEXT EITHER UNDER THE COLLAR TEST OR SPECIFICALLY UNDER MINIMUM CONTEXT.

WE HAVE 27 UNDENIABLE PHONE CALLS.

SHE HAS RECORDED CALLS OF OTHER FLORIDA RESIDENTS AND THERE IS A SOCIAL MEDIA AND INTERNET MEDIA CAMPAIGN ALL OF WHICH HE HAS BEEN DIRECTING AT MY CLIENT.

FRANKLY, IT IS ONGOING.

IT IS OUTSIDE THE RECORD BUT I CHECKED HIS WALL.

>> WE NEED SOMETHING INDICATING THE PERSON RECORDING THE CALLS AND KNOWS THAT THE PERSON IS IN FLORIDA.

I LIKE THE IDEA OF US WALKING AROUND THE COUNTRY WITH A SPECIAL BUBBLE PROTECTION BECAUSE WE ARE FLORIDIANS BUT I DON'T KNOW THAT WILL WORK.

>> THAT IS CORRECT BUT MY CLIENT WAS IN FLORIDA AND HE IS ENTITLED TO THE PROTECTION OF FLORIDA LAW WHILE HE IS HERE.

HE NEVER LEFT FLORIDA.

WE PUT THE CELL PHONE RECORDS INTO EVIDENCE IF YOU LOOK AT THE CELL PHONE TOWER IT IS HEAVILY REDACTED AND IT'S PART OF THE RECORDS THAT IS HEAVILY REDACTED.

THE CELL PHONE TOWERS ARE ALL IN BROWARD OR ONE OR TWO ARE IN MIAMI DADE.

HE HAS BEEN LIVING HERE FOR 40 TO 50 YEARS.

>> YOU MENTIONED PERHAPS IT WAS SUFFICIENT JURISDICTION BASED ON MINIMUM CONTEXT AND THE FACT THERE ARE 27 PHONE CALLS.

BUT WHAT ABOUT HYPOTHETICALLY IF IT WAS JUST ONE PHONE CALL.

JUST ONE PHONE CALL THAT LASTED 30 SECONDS.

AND THEN PLAYED SOME PLACE ELSE.

>> THERE WOULD STILL BE MINIMUM CONTEXT GIVEN THE OTHER ADDITIONAL ELECTRONIC COMMUNICATIONS BY MR. RACE.

IF YOU HAVE A QUESTION OF IS IT ONE PHONE CALL OF JUST ONE PHONE CALL OF MR. MITCHELL UNDER THE CONTEXT OF THIS CASE.

>> SAY I GOT A CALL FROM OHIO AND SOMEHOW GOT THROUGH TO MY OFFICE AND SOMEONE WANTS TO KNOW HOW COME I RULED ONE WAY OR THE OTHER.

I GUARANTEE THIS CALL WILL TAKE TWO SECONDS.

BUT NEVERTHELESS I STAY AND I HEAR MYSELF ALL OVER THE PLACE SAYING I CANNOT ANSWER THE QUESTION.

AND IS THAT ONE CALL SUFFICIENT FOR ME TO BRING THIS PERSON INTO FLORIDA?

>> IF THERE ARE OTHER MINIMUM CONTEXT, YES.

THERE AREN'T, THEN NO.

IF THIS WAS IN A VACUUM AND IT WAS ONE CALL MR. RACE HAD NO OTHER CONTEXT IN FLORIDA, THE MINIMAL CONTACTS OF THE DUE PROCES TEST WOULD BE MET.

WHICH BY THE WAY IS THE INSTANCE IN EVERY CASE WHEN WE HAVE A CONSTITUTIONAL QUESTION.

THAT'S WHY THE COURT SAID WAY BACK YOU CAN'T NECESSARILY HAVE A BRIGHT LINE RULE FOR EVERY CASE BECAUSE IT'S FACT SPECIFIC IN FACT DEPENDENT.

IN THE SITUATION YOU JUST MENTIONED, JUSTICE LABARGA.

IF THERE WAS ONLY ONE CALL BUT NO CONTEXT BEYOND THAT, IT COULD BE POSSIBLE THAT THERE IS NOT JURISDICTION.

>> BEFORE YOU SIT DOWN I WANT TO MAKE SURE THAT WE ARE CLEAR ON THAT POINT.

YOU THINK YOU COULD COMMIT A TORT IN FLORIDA UNDER THIS HYPOTHETICAL, I.E. BY RECORDING THE 22ND PHONE CALL WHEN YOU ARE NOT, WHEN YOU ARE IN OHIO.

AND WE WOULD STILL HAVE TO DO THE DUE PROCESS INQUIRY.

IS THERE ANY CASE WHERE A COURT HAS SAID EVEN IF WE STIPULATE THE TORT OCCURRED IN THE STATE, I'M NOT SAYING I AGREE WITH THAT.

LET'S TAKE THAT AS A PREMISE.

WE WOULD STILL HAVE TO GO THROUGH THAT OTHER.

THAT ISN'T ENOUGH.

>> THERE IS NO CASE, AT LEAST THAT I LOCATED, IN WHICH THERE IS A STIPULATION THE LONG ARM STATUTE IS MET AND THE ONLY ISSUE IS MINIMUM CONTEXT FOR THE FLORIDA SECURITY ACT.

THERE AREN'T THAT MANY CASES.

>> JUST IN GENERAL, I'M KIND OF SICK I SURPRISED TO HEAR USING WE THINK THE TORT OCCURRED IN FLORIDA AND THERE STILL COULD BE A QUESTION OF WHETHER DUE PROCESS WAS MET.

I UNDERSTAND GOING THROUGH ALL THAT WHEN THE TORT WASN'T OCCURRED IN FLORIDA AND YOU'RE TALKING ABOUT CONTEXT OF WHATEVER.

>> IT'S JUST BECAUSE OF THE HYPOTHETICAL.

AND MAYBE I DIDN'T ANSWER AT THE RIGHT WAY.

IN A VACUUM YOU COULDN'T THEORY HAVE A 1B OR 182 VIOLATION AND NOT MINIMAL CONTEXT.

I DON'T KNOW SPECIFIC FACTS WERE THAT WOULD OCCUR, BUT THAT COULD IN THEORY OCCUR AND THAT'S WHY THE VENETIAN SALAMI TEST IS TWO PARTS.

>> WE HAVE TAKEN YOU OVER YOUR TIME.

>> OKAY.

THANK YOU.

>> THANK YOU YOUR HONORS, ROBERT SHENG FOR THE ATTORNEY GENERAL. AS MY FRIEND APTLY EXPLAINED, THIS CASE IS ABOUT THE FLORIDA COURTS POWER TO VINDICATE AN INTEREST WHICH THIS COURT SAID IS ONE OF THE HIGHEST ORDER IN A FREE AND CIVILIZED SOCIETY.

I WANT TO BRIEFLY BEFORE GOING TO THE STATUTORY ANALYSIS RETURNED TO YOUR QUESTION ABOUT THE KNOWLEDGE PORTION OF THE STATE.

OF DCA SAID THAT MITCHELL WAS IN FLORIDA AT THE TIME OF THE PHONE CALLS AND MITCHELL HAS NEVER DISPUTED THIS ON APPEAL.

THERE ARE RFA AS IT RELATES TO ONE'S PHONE CALL, BUT MY UNDERSTANDING IS THE PROPER WAY THE INDIVIDUAL BELIEVES THERE IS A FACTUAL DISPUTE ABOUT JURISDICTION AS THEY HAVE TO SUBMIT AN AFFIDAVIT DISPUTING THE FACT THAT THEY BELIEVE AREN'T PRESENT.

IF YOU LOOK AT MITCHELL'S OR THE AFFIDAVIT BELOW, YOU NEVER CHALLENGED HE DIDN'T KNOW THAT MITCHELL WAS PRESENT IN FLORIDA.

HE PROCEEDED IN OUR BRIEFING THAT MITCHELL IN FACT OR RACE IN FACT KNEW MITCHELL WAS PRESENT IN FLORIDA.

NOW I UNDERSTAND YOUR SKEPTICISM TURNING TO THE STATUTORY QUESTION ABOUT THE COURT'S DECISION WHICH MARS UBAIDULLAH AND FEDERAL CASE LAW. >> COUNSEL, BEFORE YOU GET TO THE DETAILS, I HAVE A BIG PICTURE QUESTION. CAN YOU EXPLAIN WHAT THE STATE WOULD BE TOO WHAT THE LIMIT IS FOR THE LEGISLATURE TO REGULATE SORT OF BEHAVIOR OR ACTIONS OF PEOPLE OUT OF STATE THAT AFFECT FLORIDIAN CITIZENS?

I MEAN, IS THERE A LIMIT?

IS THERE A POINT AT WHICH WE WOULD SAY THERE'S A JURISDICTIONAL ISSUE. WHERE DOES THE STATE BE THE LINE THERE?

>> RIGHT.

OBVIOUSLY THERE NEEDS TO BE CONSTITUTIONAL HOOK TO PREVENT THE LEGISLATURE FROM PASSING SUCH AN ACT.

I DO THINK WE ARE GOING TO LOCATE THAT IN DUE PROCESS IN THE TRADITIONAL ANALYSIS EITHER MINIMUM CONTEXT OR THE EFFECTS TEST.

I DON'T THINK THERE'S MUCH OF A DISTINCTION HERE BECAUSE THEY SHAKEOUT THE SAME ONE INDIVIDUAL EITHER COMMITS A TORT IN THE STATE.

WE THINK THAT IS SUFFICIENT OR THEY COMMIT AN ACT, AND INTENTIONAL ACTS THAT THEY KNOW WILL CAUSE NEGATIVE HARM IN THAT STATE.

I THINK THAT IS THE LIMIT ON THE STATES POWER.

THERE DOES HAVE TO BE SOME TYPE OF INTERSTATE ACTIVITY.

THE DOES NEED TO BE A GENUINE BONA FIDE HARM IN THE STATE.

THE LEGISLATURE IDENTIFIED THAT HARM AS A HARM TO THE PRIVACY INTEREST OF PEOPLE RESIDING IN THE STATE OF FLORIDA, AND THAT CAN BE SEEN NOT FROM THE FACT THE LEGISLATURE IS SEPARATED OUT IT WOULD SEPARATE TORT, SEPARATE CRIMES OR THE INTENTIONAL INTERCEPTION OF A COMMUNICATION AND THEN THE INTENTIONAL USE OR DISCLOSURE.

EVEN IF THE PERSON NEVER LEARNS ABOUT THE ACT OF INTERSECTION THE LEGISLATURE HAS STILL SAID THAT IS A HARM, THAT IS SOMETHING THAT HARMS A PERSON THE SAME WAY IF A PERSON TRESPASSED ACROSS YOUR PROPERTY TWO WEEKS AGO HE NEVER LEARNED ABOUT IT UNTIL TODAY YOUR PROPERTY INTERESTS ARE STILL HARMED EVEN THOUGH MANY WON'T SUE ABOUT IT BECAUSE YOU DON'T KNOW.

>> THE STATES POSITION WOULD BE FOR EXAMPLE IF I WAS ON A BUSINESS TRIP IN ARGENTINA AND I RECEIVED A PHONE CALL THAT WAS RECORDED WITHOUT MY KNOWLEDGE, I MAY NOT HAVE A CAUSE OF ACTION AND MAYBE I DO HAVE A CAUSE OF ACTION FOR THE INVASION OF MY PRIVACY.

I AM A FLORIDA RESIDENT BUT NOT A FLORIDA.

UPON DISCLOSURE OF IT, PERHAPS I COULD SAY LOOK, I AM LONG-TERM A FLORIDA RESIDENT BECAUSE THE COMMUNICATION WAS INTERCEPTED WHEN I WAS OVERSEAS TO THE DISCLOSURE OF IT FIND TO BE TORTIOUS AND I'M GOING TO SEEK REDRESS UPON MY RETURN TO MIAMI OR WHEREVER I GO.

>> OBVIOUSLY THAT IS SOMETHING WE HAVEN'T BRIEFED HERE.

I THINK IT IS A DIFFERENT CASE, BUT I DON'T THINK THAT WOULD BE SUFFICIENT.

AT THE VERY LEAST I DON'T THINK IT WOULD SAY A CAUSE OF ACTION BECAUSE IN ORDER FOR A COMMUNICATION TO BE TORTIOUSLY USED OR CLOSED IT WOULD HAVE TO FIRST BE UNLAWFULLY INTERCEPTED UNDER THE STATUTE.

I THINK THAT WOULD ONLY OCCUR IF THERE IS SOME NEXUS TO THE STATE OF FLORIDA, WHICH I DON'T BELIEVE WHAT HAPPENED HERE.

>> DISCUSSED THE JUSTICE ASSESS QUESTION ABOUT THE PROTECTIVE BUBBLE. THE LEGISLATURE HAS ENACTED THE SORT OF PRIVACIES FEAR THAT FOLLOWS A FLORIDIAN WHEREVER HE OR SHE REPORTS TO GO WHAT YOUR REMEDIES ARE. I GUESS WHAT I AM HEARING THE STATE SAY IS WE DON'T NEED TO REACH ALL THOSE QUESTIONS.

IN THIS CASE WE KNOW ENOUGH TO SAY THE PROTECTIVE BUBBLE COVERS A FLORIDIAN SITTING IN BROWARD COUNTY UNLESS THERE IS AN AFFIDAVIT FROM THE OTHER SIDE SAYING I DIDN'T KNOW HE WAS IN BROWARD COUNTY, I THOUGHT HE WAS IN IOWA OR SOMETHING.

>> OUR POSITION IS UNDER THE FACTS OF THIS CASE IT IS SUFFICIENT. IS A DIFFERENT CASE AND MAY INVOLVE A DEEPER ANALYSIS IF THERE WERE DIFFERENT THRESHOLDS OF KNOWLEDGE.

WE HAVEN'T BRIEFED THAT CASE WE DON'T HAVE A POSITION ON THAT.

AGAIN, WE ARE NOT SAYING THERE'S THIS PROTECTIVE BUBBLE TO FOLLOW FLORIDA RESIDENTS WHEREVER THEY GO, WE THINK THERE HAS TO BE A NEXUS TO THE TERRITORY OF FLORIDA.

>> IN TERMS OF THE STATUTE, WHETHER YOU'RE TALKING ABOUT 48 OR THE SUBSIDENCE ON RECORDING STATUTE, THE KNOWLEDGE OF BEING IN FLORIDA ISN'T RELEVANT.

WALK INTO THE DID PROCESS ANALYSIS, WHICH PART OF IT IS THAT RELEVANT TO QUICK.

>> I BELIEVE IT IS RELEVANT TO THE MINIMUM CONTACTS INQUIRY.

THERE ARE THREE PARTS RAISING OUT OF THE MINIMUM CONTACTS AND THEN TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE.

I THINK IT FITS MOST CLEARLY IN THE MINIMUM CONTACTS ANALYSIS BECAUSE AGAIN, THE SUPREME COURT SAID THROUGH JUSTICE THOMPSON WALDEN, THE CONNECTION HAS TO BE BETWEEN THE DEFENDANT IN THE FORM PREDICTING, AT LEAST IN THIS CASE, WE ARE SAYING KNOWING THAT YOU ARE ACTING OR CAUSING EFFECTS IN A FORUM IS IS IT SUFFICIENT CONTACT.

>> THE CONTACT IS WHAT IT IS.

THE FOURTH IN THE DECISION BELOW SEEM TO THINK IT WAS MORE MATTER OF FAIRNESS THAT YOU DON'T KNOW WHERE THE PERSON IS WHEN YOU CALL, YOU DON'T KNOW, YOU ARE IN A STATE WHERE IT IS LEGAL.

>> I DO THINK TO THE EXTENT THAT DEFENDANTS HAVE RAISED THE LINE OF CASES, I THINK THAT IS A DIFFERENT TYPE OF DUE PROCESS AND THE ABILITY TO REGULATE CERTAIN EXTRA CONDUCT.

I TAKE YOUR POINT THERE MAY BE FAIRNESS CONCERNS.

I HAVE A HARD TIME LOCATING IT IN THE MULTIFACTOR ANALYSIS THAT THE FEDERAL COURTS HAVE SET OUT AND ANALYZES THE TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE.

I SUPPOSE IT COULD FIT IN THE FORMS INTEREST IN ADJUDICATING THE DISPUTE, BUT IN ANY EVENT WHEREVER IT IS LOCATED WE THINK THE FACT HE KNEW HE WAS ACTING IN FLORIDA IS SUFFICIENT FOR THESE PURPOSES.

>> DO YOU AGREE IT IS NOT ENOUGH TO SHOW THERE WAS A TORT COMMITTED QUOTE UNQUOTE IN FLORIDA?

THAT WE STILL HAVE TO DO THE SEPARATE?

IT SEEMS TO ME IF YOU COMMIT A TORT IN FLORIDA, IF WE ACCEPT THAT PREMISE, WHICH I DON'T.

BUT IF I DID I WOULD THINK THE DUE PROCESS PART WOULD BE A SLAM DUNK. WHAT WOULD BE LEFT TO DO?

>> I CERTAINLY AGREE WITH THAT NOTION.

WE HAVEN'T TEASED OUT THE LIMITS OF THE THEORY SHOULD CERTAINLY IF A PERSON TRYING TO MAIL A BOMB INTO A SAFE AND SAID I DIDN'T KNOW WHERE THE ZIP CODE WAS LOCATED, I DIDN'T KNOW THE PLAINTIFF WAS A FLORIDA BUT WE DON'T THINK THEY WOULD BE ABLE TO GET AROUND PERSONAL JURISDICTION SIMPLY BY SAYING I DIDN'T KNOW IT FOR PURPOSES OF THIS CASE WE BRIEF THE ISSUE ASSUMING A PERSON CALLING INTO THE STATE OF FLORIDA KNEW THAT HE WAS DOING SO HE WOULD IF THERE ARE NO FURTHER QUESTIONS I WILL LEAVE THE REST OF MY TIME TO MY FRIEND.

THANK YOU.

>> GOOD MORNING JUSTICES.

MADE EMPLOYEES THE COURT, JAMES OF THE LOANS LAW FIRM, THIS IS MY PARTNER REBECCA REPRESENTING THE RESPONDENT DAVID RACE.

IF THE PANEL DOESN'T HAVE ANY QUESTIONS RIGHT OFF THE BAT I WOULD LIKE TO.

>> CAN I ASK YOU PROCESS QUESTIONS?

I DON'T MEAN TO BE A FLY IN THE OINTMENT ON THIS, BUT IT SEEMS THIS WAS LITIGATED IN TERMS OF THE TRIAL JUDGE ON THE PREMISE THIS WHOLE THING WAS ABOUT THE STATUTE AND THEN THE FOURTH KIND OF ON ITS OWN DID THIS DUE PROCESS THING AND THEN THEY CERTIFIED A CONFLICT IN A SITUATION WHERE YOU REALLY HAVE TO STRAIN TO FIND A CONFLICT WOULD CERTAINLY INNOCENCE ANYBODY DOING ANY ACTUAL THINKING ABOUT THIS.

WE HAVE HAD RECENT CASES WHERE WHEN THE DCA WENT OFF ON ITS OWN AND DECIDED SOMETHING THAT WASN'T PRESENTED PROPERLY TO THE TRIAL COURT WE SAY WE ARE NOT GOING TO SORT OF TAKE THAT AND RULE ON THE ISSUE.

TO THE EXTENT THIS CASE HERE I GUESS IN THEORY IS AT LEAST PARTLY ABOUT THE DUE PROCESS ISSUE, WHY IS THAT PROPERLY BEFORE US?

>> YOU ARE ABSOLUTELY CORRECT CHIEF JUSTICE NUNEZ.

WHAT HAPPENED WAS AT THE TRIAL LEVEL WE WERE FOCUSED BECAUSE OF A LOT OF THE REASONS MR. STEFAN RAISED, WERE FOCUSED ON THE LONG ARM STATUTE ANALYSIS AND WHETHER A TORT WAS COMMITTED IN FLORIDA.

IN THE WHAT THE FOURTH DCA DID WASN'T BASICALLY BUT THAT ISSUE DID THE DECIDE TO COMMIT DECIDED TO ISSUE A MINIMUM CONTEXT BUT THEN YOU CERTIFIED THE QUESTION WITH HER LONG LONG ARM STATUTE AND THEN THE ESTEEMED COURT ACCEPTED JURISDICTION.

I AGREE WITH YOU.

IN THAT REGARD.

>> WHAT DO WE DO THEN?

BECAUSE YOU LOST.

DO WE LIMIT OURSELVES TO THE STATUTE?

WHAT IS THE RIGHT THING FOR US TO DO AT THIS POINT.

>> I'M NOT SURE WE SHOULD BE HERE BECAUSE THE DCA DECIDED TO MINIMUM CONTACTS AND THAT WAS NOT THE BASIS FOR THE CONFLICT BUT THE CONFLICT WAS WITH RESPECT TO THE FIRST PRONG OF THE LONG ARM STATUTE.

BUT HERE WE ARE.

>> IN OUR ESTEEMED COURTS FOOTNOTE FROM THE.

NOT ONE OF OUR FINEST MOMENTS.

>> I'M NOT SURE I AGREE WITH THAT, CHIEF JUSTICE PER THE FOOTNOTE IS ACCURATE.

SAYS THE PHONE CALL INTO FLORIDA MAY CONSTITUTE A CHORE AND THAT IS A FACTUALLY TRUE STATEMENT.

I THINK THIS INTERCEPTION TOOK ON A LIFE OF ITS OWN, AND I THINK THE COURT ADDRESSED IT PROBABLY BETTER THAN ANYONE ELSE.

IT SAID THE CASES WE RELIED UPON IN COOK.

AND I UNDERSTAND KOCH IT WAS PRONOUNCED COOK DID NOT ANNOUNCE A JURISDICTIONAL ISSUE BUT INVOLVED STATUTORY OF THE TERM INTERCEPTION AND IT STATES USB NELSON THAT I CAN GET INTO AND DISTINGUISHED.

RECORDING IN A DISTANT LOCATION IS INTERCEPTION INSIDE FLORIDA MAY BE APPROPRIATE FOR SOME LEGAL PURPOSES, BUT WE CONCLUDED IS INSUFFICIENT, STANDING ALONE TO SUPPORT A CLAIM THAT A PERSON IN A DISTANT STATE OR COUNTRY COMMITTED A TORTIOUS ACT WITHIN FLORIDA.

>> WHAT SUPPORT DO YOU HAVE, STATE OR FEDERAL, FOR THE PROPOSITION THAT THE TORT OCCURS AT THE LOCUS OF THE RECORDING.

IT SEEMS TO ME THERE IS PRECEDENT STATE AND FEDERAL FOR TWO PROPOSITION BUT ONE THAT OCCURS AT THE PLACE OF ORAL INITIATION.

FIRST PLACE IT IS HEARD AND THEN THERE IS THE FEDERAL PRECEDENT, THE LISTENING POST STUFF ABOUT HOW IT OCCURS SIMULTANEOUSLY FROM A METAPHYSICAL PERSPECTIVE IN BOTH PLACES.

THERE DOESN'T SEEM TO BE ANY CASE LAW SUPPORTING THE PROPOSITION YOU SEEM TO BE ARGUING WHICH IS THE RELEVANT ACT OCCURS WHERE SOMEONE PUSHES THE RECORD BUTTON.

IT SEEMS TO ME THAT STANDS FOR REASONS BECAUSE THERE ARE SO MANY IMPONDERABLES THAT FLOW FROM THAT.

IS IT FROM THE CELL PHONE TOWER, IS IT FROM THE SATELLITE TO WHICH THE CELL PHONE TOWER BEAMS THE COMMUNICATION.

I GUESS MY QUESTION IS WHAT IS YOUR BEST CASE FOR THE PROPOSITION THAT THE INTERCEPTION OCCURRED IN OHIO.

>> I DON'T THINK THERE IS ONE, YOUR HONOR.

I DON'T.

I THINK THE CASE LAW DOES SAY THE INTERCEPTION AS FAR AS THE STATUTORY INTERPRETATION, WHICH IS WHAT THE COURT WAS DEALING WITH, IS IN FLORIDA WHERE THE COMMUNICATION WAS FIRST UTTERED.

BUT I THINK THE DISTINCTION IS IT'S FROM A PRIVACY PERSPECTIVE.

IN THE NELSON CASE THE DISPUTE WAS WHETHER THE WIRETAP ORDER WHICH WAS ISSUED IN ONE DISTRICT APPLIED BECAUSE THE STATE AGENCY WITH THE FEDERAL AGENCY WERE LISTENING IN WERE IN A COUNTY OUTSIDE THE DISTRICT.

AND THAT WAS THE GENESIS OF HOW INTERCEPTION WAS ORIGINALLY DEFINED UNDER NELSON AND BOZO DEALT WITH A CORDLESS PHONE NOTICE CHIEF JUSTICE POINTED OUT EARLIER, THE DISTINCTION IS IN THOSE CASES THE INTERCEPTOR IS A THIRD-PARTY.

IS A RIGHT OF PRIVACY COME THIS COMMUNICATION BETWEEN THE FLORIDA -IN BOTH THOSE CASES THOSE ARE BOTH CRIMINAL CASES, THEY ONLY DEAL WITH FLORIDA RESIDENTS, THEY BOTH INVOLVE THE STATUTORY INTERPRETATION OF INTERCEPTION AND NEITHER ONE OF THEM DEALS WITH JURISDICTION.

FROM A PRIVACY PERSPECTIVE, IF YOU HAVE TWO PARTIES HAVING A PRIVATE CONVERSATION, ONE IS A FLORIDA RESIDENT IN HIM HIS OR HER HOME, THERE'S A REASONABLE EXPECTATION IS NOT GOING TO BE SOME, BIG BROTHER IS NOT GOING TO BE LISTENING IN ON THE CONVERSATION.

BUT IF THERE IS A TWO-PARTY CONVERSATION ONE OF THE PARTICIPANTS IS THE INTERCEPTOR, AND DON'T THINK THERE IS A REASONABLE EXPECTATION THAT THE PERSON WHO IS HEARING THE COMMUNICATIONS WILL THEN RELAY THAT TO SOME OTHER THIRD PERSON SPEAK WELL, IF YOU ARE IN FLORIDA OF WHEN YOU ARE SPEAKING ON THE TELEPHONE.

THERE IS A REASONABLE EXPECTATION YOU ARE NOT GOING TO BE RECORDED UNLESS YOU HAVE GIVEN PERMISSION, RIGHT?

THAT IS WHAT THE LAW IS ABOUT.

>> WELL, I GUESS IF THERE'S A REASONABLE EXPECTATION THAT THE LAW.

>> REASONABLE EXPECTATION WE ASSUME THAT PEOPLE KNOW WHAT THE RATES ARE UNDER THE LAW.

THAT IS PART OF WHAT WE WOULD ASSUME.

AND NUTS, IT JUST SEEMS THERE IS THAT EXPECTATION.

WHEN I GET ON THE PHONE AND I'M TALKING TO SOMEBODY, I ASSUME UNLESS THEY HAVE TOLD ME THEY ARE NOT RECORDING ME.

NOT THAT I WOULD CARE.

>> THAT'S A GOOD POINT.

>> BUT SOME PEOPLE MIGHT KAREN HAVE A RIGHT TO CARE BECAUSE EVA RIGHT UNDER FLORIDA LAW NOT TO BE RECORDED.

>> I ABSOLUTELY AGREE IF THAT IS TRUE FLORIDA RESIDENTS HAVING THE CONVERSATION, BUT FLORIDA IS ONE OF ONLY 11 STATES THAT HAS ALL PARTY CONSENT.

AND OF THE KIDS REASONABLE TO ASSUME.

>> DOES THAT MAKE US CHOPPED LIVER?

I MEAN.

>> OBVIOUSLY THERE IS A RIGHT TO INJURE THE PRIVACY PROTECTION OF FLORIDA RESIDENTS.

YOUR HONOR JUST SAID IT, HE WOULDN'T CARE.

IS AN ACCURATE TRANSCRIPTION OF WHAT YOU SAID.

>> I SAID I MIGHT NOT CARE.

SOME PEOPLE MIGHT.

I CAN UNDERSTAND IT IS NOT UNREASONABLE TO THINK THERE IS SOME SORT OF VIOLATION OF RECORDING A PRIVATE CONVERSATION WHEN THERE IS A RIGHT TO NOT HAVE IT RECORDED WITHOUT BEING TOLD IT'S BEING RECORDED.

>> THE RIGHT IS THE STATUTORY RATE IN THE STATUTE DOESN'T REQUIRE ANY SHOWING OF DAMAGE.

IF YOU'RE GOING TO IMPOSE THE STATUTORY REQUIREMENT.

>> DAMAGE TO YOUR DIGNITY.

>> IN SOME INSTANCES I WOULD RATHER HAVE AN ACCURATE RECORDING OF WHAT I SAID RATHER THAN HAVE THE RECIPIENT, YOU KNOW, NOT ACCURATELY RELAY IT TO 1/3 PARTY.

>> AND I ASKED, IF WE ARE TRYING TO SORT OF DO THIS FOR ME TEXTUAL PERSPECTIVE.

IF YOU READ THE TEXT OF 48 WHATEVER AND YOU THINK THAT THERE ISN'T REALLY A SORT OF CLEAR READING THAT WOULD TELL YOU WHERE THE TORTIOUS ACT IS OCCURRING OR AT LEAST WITH THE DEFENDANT AS PART OF THE TORTIOUS ACT IS OCCURRING.

WHERE DO WE GO TO FIND THE EXTERNAL, WHETHER IT IS CANNONS OR PRINCIPLES OR WHATEVER TO KIND OF INFORM HOW WE SHOULD USE OUR JUDGMENT TO FIGURE OUT THAT.

IT SEEMS LIKE ALTON BYRNE TALKS ABOUT STRICT CONSTRUCTION AND IT SEEMS LIKE HE'S TRYING TO SMUGGLE IN SOME OF THE DUE PROCESS STUFF INTO THE STATUTORY ANALYSIS.

IF WE DON'T THINK IT IS JUST A MATTER OF WHIPPING OUT THE DICTIONARY, HOW TO BE RESOLVED BACK?

>> THERE'S ALSO OVERLAP, RIGHT?

I THINK THERE'S OVERLAP BETWEEN THE TWO PROBLEM AND IN THE SECOND THERE'S OVERLAPS BETWEEN THE EFFECTS TEST, MINIMUM CONTEXT AND NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE, BUT I THINK THE WAY TO LOOK AT IT IS IS MR. RACE REACHING INTO FLORIDA TO COMMIT A TORT?

OR IS HE IN OHIO WITH THE APP ON HIS PHONE DOING THE RECORDING PIVOTED THINK IN THIS CASE OF A CONSTITUTIONAL DUE PROCESS PERSPECTIVE, MR. RACE IS IT REACHING INTO FLORIDA, THE FLORIDA IS REACHING OUT INTO OHIO AND ADMINISTERING THE STATUTE THAT IS EFFECTIVELY PUNITIVE.

>> AM NOT SO SURE ABOUT THE REACHING AND REACHING OUT HE WOULD LET ME ASK YOU THE SAME QUESTION I ASKED YOUR FRIEND ABOUT 48 1936.

DO YOU CONCEDE THE OPERATIVE COMPLAINT ALLEGES THE CAUSATION OF AN INJURY TO PERSON OR PROPERTY WITHIN THE STATE?

BECAUSE IT SEEMS TO ME IF YOU'D DO, WE ARE ARGUING ABOUT WHETHER HE TORTIOUS ACT WAS COMMITTED IN THE STATE AND LET'S JUST PUT THAT ASIDE FOR A MINUTE.

IF THE COMPLAINT ALLEGES INJURY WAS COSTLY PERSON IN THE STATE BY AN ACT OF OMISSION BY THE DEFENDANT OUTSIDE THE STATE, ALL THESE METAPHYSICS GO AWAY.

>> TO SOME EXTENT I WOULD AGREE WITH THAT.

IT DOESN'T ALLEGE THAT BUT IF IT DIDN'T TAKE AND THAT IS TRUE THAT WOULD BE A TORT COMMITTED IN THE STATE, CORRECT?

>> YOU SEE, THERE IS A REASON THE STATUTE SPLITS THE TWO.

THE STATUTE SAYS A TORT WILL GET YOU THERE IN THE STATUTE SAYS SOMETHING ELSE THAT MUST BE DIFFERENT THAN A TORT OR ELSE IT WOULD BE SURPLUSAGE WHAT IT SAYS IS CAUSING INJURY LIKE HIM STANDING ON THE GEORGIA SIDE OF THE FLORIDA GEORGIA LINE AND I THROW A ROCK ACROSS THE LINE.

I MAY OR MAY NOT HAVE CAUSED A TORT.

MAYBE IT WAS THROWING THE ROCK TO A FRIEND AND I MISSED AND HIT SOMEBODY INSTEAD, BUT I COMMITTED AN ACT THAT CAUSED INJURY IN THE STATE OF FLORIDA.

>> THERE YOU GO, RIGHT THERE.

THERE WAS NO INJURY IN THE STATE OF FLORIDA.

>> HEAR THE COMPLAINT ALLEGES AN INJURY IN THE STATE OF FLORIDA.

>> UNDERSTOOD.

>> IT MAKES IT A STATUTORY NO-BRAINER YEARS TO LOOK AT THE DUE PROCESS.

>> I UNDERSTAND.

>> IS THE CHIEF RIGHT?

IS YOUR REFUGE DUE PROCESS BECAUSE BASICALLY THE STATUTE YES THIS COULD HAVE BEEN THE OPERATIVE COMPLAINT COULD HAVE BEEN AMENDED TO STATE SIX INSTEAD OF TWO.

>> UNDER THAT CIRCUMSTANCE I WOULD AGREE WITH YOU.

IT IS THE SECOND PROBLEM ON THE ANALYSIS BECAUSE WE ARE TAKING THE ALLEGATION IS TRUE OBVIOUSLY AT THE MOTION TO DISMISS SPIRIT I WOULD HAVE TO CONCEDE THAT.

>> ARE YOU AWARE OF ANY DUE PROCESS CASE WHERE IT IS EXPECTED THAT THE TORT OCCURRED IN THE STATE WOULD GET TO THE MINIMUM CONTEXT OF WHATEVER, ALL THAT, YOU WOULD STILL SAY HE VIOLATES DUE PROCESS FOR THAT TO BE LITIGATED IN THE STATE WHERE THE TORT OCCURRED?

>> THE CASE LAW IS CLEAR ABOUT THE TWO PRONGS, RIGHT?  
THAT IS KIND OF WHAT THE COURT IN FRANCE DID BUT THEY FOUND THAT THE TORT WAS COMMITTED IN THE STATE AND THEN THEY JUST.

>> I JUST KEEP COMING BACK TO THE SENSE YOU EITHER WIN UNDER STATUTORY THING IN THE DUE PROCESS GOES AWAY OR IF YOU LOSE ALL THE STATUTE, I DON'T SEE HOW YOU COULD LOSE ON THE STATUTE AND SAY EVEN THOUGH THE TORT WAS COMMITTED IN FLORIDA WE CAN'T LITIGATE THE CASE HERE.  
THAT DOESN'T SEEM RIGHT.

>> YOU TOOK THE WORDS OUT OF MY MOUTH WITH THAT'S WHAT I SAID AT THE HEARING IN FRONT OF THE TRIAL COURT AND IT WAS A RIFLE SHOT ARGUMENT WITH RESPECT TO WHETHER THE TORT WAS COMMITTED IN FLORIDA GIVEN THE ALLEGATIONS OF THE COMPLAINT.  
WE DID NOT FOCUS AT THE HEARING AT THE TRIAL COURT ON MINIMUM CONTACTS TO JUSTICE SASSO.

>> WE DIDN'T HAVE AN EVIDENTIARY HEARING.

>> WHEN WE ARE DEALING WITH THIS, WE ARE REALLY LIMITED TO THE STATUTORY ISSUE.  
ENDING, TO GO OFF INTO THE DUE PROCESS WE ARE TALKING ABOUT THINGS THAT REALLY THE PARTIES HERE DID NOT LITIGATE.

>> I AGREE AND TO CHIEF JUSTICES MUNIZ POINT, THE FORCE D.C. WAS BASED ON THE SECOND PRONG, MINIMAL CONTACTS.  
AND SO IT CERTIFIED THE QUESTION WITH RESPECT TO THE FIRST PRONG, BUT THAT WASN'T THE BASIS FOR THE DECISION.

>> USAGE OF DISCHARGE JURISDICTION, THAT'S WHAT YOU WANT US TO DO.  
>> WE ARE HERE.  
>> RESPONDENTS ALWAYS SAY THAT.  
>> I'M HAPPY TO BE HERE, I WANTED TO BE HERE . WANTED THE COURT TO ACCEPT JURISDICTIONS.  
I STRUGGLED WITH THE ISSUE CHIEF JUSTICE MUNIZ RAISED WITH RESPECT TO WHAT IS THE CONFLICT IN TERMS OF HOW THE CASE WAS DECIDED.

>> THE REALITY IS THERE DOESN'T ACTUALLY HAVE TO BE A CONFLICT IF THEY CERTIFY A CONFLICT.  
WE HAVE JURISDICTION.  
ABOUT WHETHER WE WOULD EXERCISE IT OR NOT, BUT THERE ARE NO ONE QUESTIONS WE HAVE JURISDICTION IN THE CASE.

>> AM NOT ARGUING THERE IT WAS RESPONDING TO QUESTIONS.  
AT NO POINT DID I TAKE THE POSITION THAT THIS COURT DOES NOT HAVE JURISDICTION FOR THAT IS NOT MY INTENT.  
>> BUT YOU WOULD TAKE THE DISCHARGE.  
>> ARE YOU OFFERING?  
APPELLEE.

SPOKE TO THE EXTENT THERE IS A DUTY NOT TO REPORT CALLS, DO YOU THINK IN TERMS OF EVALUATING WHETHER A TORT CURRENT IN FLORIDA WE SHOULD FOCUS ON WHETHER THERE WAS A DUTY OWED IN FLORIDA?

OR IS IF THEY OBLIGATION NOT TO RECORD IT WE FOCUS ON OHIO OR DO WE FOCUS ON DUTY IS NOT TO RECORD FLORIDIANS PHONE CALLS IN FLORIDA AND WE FOCUS ON THAT FOR THE PURPOSES OF DETERMINING WHERE A TORT OCCURRED.

>> YOU KNOW, I CAN'T ARGUE WITH HOW INTERPRETATION HAS BEEN DEFINED IN THE CASE.

INTERCEPTION, I'M SORRY.

HOW INTERCEPTION HAS BEEN DEFINED AN INTERCEPTION IS A VIOLATION OF THE STATUTE FOR THAT IS WHY I QUOTED THE COURT IN DISTINGUISHING THE STATUTORY INTERPRETATION OF INTERCEPTION VERSUS THE INTERJURISDICTIONAL ANALYSIS WHICH I THINK IS MORE APPROPRIATE AND OBVIOUSLY THAT DOVETAILS IN THE PRIVACY CONCERNS.

TO ANSWER THE QUESTION, I THINK IT SHOULD BE LIMITED TO FLORIDA RESIDENT SPEAKING WITH A FLORIDA RESIDENT AND UNDER THE CIRCUMSTANCE OF THE INTERCEPTOR BEING 1/3 PARTY.

I'M NOT SURE HOW IT TRANSLATES INTO A TWO-PARTY CONVERSATION WITH THE RECIPIENT OF THE COMMUNICATION COULD TAKE EXTENSIVE NOTES, COULD TAKE ACCURATE NOTES.

TO THE EXTENT THE RECIPIENT NEW SHORTHANDED WAS ABLE TO TRANSCRIBE ACCURATELY THE CONVERSATION IF THE RECIPIENT RELAYED THAT THERE WOULD BE NO VIOLATION OF THE STATUTE AND THERE WOULD BE NO HARM.

>> THIS IS A CRIMINAL STATUTE AND WE HAVE A SECTION 1905 THAT TALKS ABOUT STATE CRIMINAL JURISDICTION IN GENERAL AND IT SAYS A PERSON IS SUBJECT TO PROSECUTION IN THIS DAY FOR AN OFFENSE HE OR SHE COMMITS WHILE EITHER WITHIN OR OUTSIDE THE STATE.

IF THE OFFENSE IS COMMITTED WHOLLY OR PARTLY WITHIN THE STATE AND THEN IT SAYS IN OFFENSES COMMITTED PARTLY WITHIN THE STATE OF THE CONDUCT THAT IS AN ELEMENT OF THE OFFENSE OR THE RESULT IS AN ELEMENT OCCURS IN THE STATE.

AND WONDERING SHOULD THAT INFORM OUR ANALYSIS AT ALL.

>> I THINK THAT WOULD RUN AFOUL OF PLAY FAIR PLAY IN THE SUBSTANTIAL JUSTICE.

IF YOU HAVE SOMEONE SITTING.

>> JUST ON THE STATUTORY PART AS FAR AS WHETHER.

IT SEEMS TO ME THE WHOLE CASE HINGES ON WHETHER WE THINK THE TORT OCCURRED IN FLORIDA OR NOT IN FLORIDA.

>> UNDER THAT READING IN THE CASE LAW THE CONCLUSION IS THE INTERCEPTION FOR THE PROBLEM IS IT'S NOT A TORT, IS A STATUTORY VIOLATION.

>> A TORT IS A CIVIL HARM.

>> THAT IS WHERE YOU AND I DIFFERED.

THERE IS NO HARM.

>> IT'S A VIOLATION OF A LEGALLY PROTECTED INTEREST.  
>> YOU EXCEPT IT IS TORTIOUS, THAT A VIOLATION OF THE STATUTE.  
IF THERE WAS NO DISPUTE YOU WOULD CONSIDER THAT TORTIOUS ACTIVITY OR  
CONDUCT OR WHATEVER.  
>> UNDERSTAND, YES.  
>> IF THERE ARE NO FURTHER QUESTIONS I WILL YIELD THE REST OF MY TIME.  
>> THANK YOU.  
>> THANK YOU YOUR OWNERS.  
I WILL TRY TO MAKE THIS VERY SHORT.  
I DO AGREE WITH WHAT APPEARS TO BE CONSENSUS THAT THIS CASE CAN BE  
DECIDED ON WHETHER OR NOT A TORTIOUS ACT WAS COMMITTED IN FLORIDA  
UNDER THE STATUTE.  
AT THE END OF THE DAY, IT WAS COULD INTERCEPT HAS BEEN DETERMINED BY THE  
CASE LAW.  
ALSO THE OTHER DCA SAYS OCCURRING WHERE MY CLIENT AND SPOKE WHICH WAS  
UNDISPUTEDLY IN FLORIDA.  
>> TELL ME WHY TEXTUALLY, BUT THE CASE LAW ASIDE WHO DO NOT THINK WE  
SHOULD OR WOULD DO THAT WOULD TELL ME WHY TEXTUALLY HOW MY SUPPOSED  
TO KNOW THAT'S WITH THE INTERCEPTION OCCURS IN THE CONTEXT OF THE TWO  
PEOPLE WHO ARE THE INTENDED PARTICIPANTS IN THE CALL.  
>> BECAUSE YOU CAN'T HAVE AN ORAL COMMUNICATION IS DEFINED BY THE  
STATUTE UNLESS IT IS UTTERED BY A PERSON AND OBVIOUSLY A PHONE CALL IS AN  
ORAL COMMUNICATION.  
>> BUT IS AN INTERCEPTION THE KEYWORD.  
>> IN INTERCEPTION, I WOULD AGREE INTERCEPTION, IT DOESN'T SAY IT IN A  
STATUTE.  
>> THAT WAS MY QUESTION.  
IF I AM GOING TO FIND THE ANSWER IN THE STATUTE RATHER THAN IN THE CASE  
LAW, HOW MY SUPPOSED TO KNOW WHERE THE INTERSECTION OCCURS.  
>> HE LOOKED AT THE OTHER DEFINITIONS, PARTICULARLY ORAL COMMUNICATION.  
HOW DO YOU UTTER SOMETHING.  
>> THAT DOESN'T TELL ME WHERE IT IS INTERCEPTED.  
>> IT DOES IN A SENSE.  
>> FIRST OF ALL, IT IS NOT A NATURAL USE OF LANGUAGE TO REFER TO A  
RECORDING A CALL I AM ON IT INTENDED TO BE ON AS AN INTERCEPTION FOR THIS  
IS ALL KIND OF A CONSTRUCT.  
SO TEXTUALLY IS THERE ANYTHING THAT TELLS ME WHERE TO CHRIS BORK ORAL  
COMMUNICATION IS THE DEFINITION OF ORAL TRANSFER.  
THAT IS IN THEIR.  
>> THAT IS HEARING.  
>> YES, BUT IT MEANS A TRANSFER CONTAINING THE HUMAN VOICE AT ANY POINT  
BETWEEN AND INCLUDING THE POINT OF PERCEPTION.  
>> LET ME TAKE A SHOT AT THIS.

I THINK WE'VE BEEN FIXATED ON THE INTERCEPTION AS IT HAPPENED IN OHIO. BUT THE TRUTH OF THE MATTER IS WHAT IS RECORDED AS VOICE COMMUNICATION BETWEEN THE PHONES AS IT IS IN OHIO.

THE TECHNOLOGY IS RECORDING THE ORAL THING THAT IS BEING UTTERED IN FLORIDA.

TO ME THERE'S NO OTHER POINT AT WHICH IT MAKES SENSE TO DRAW THE LINE OTHER THAN THE FIRST PLACE WHERE IT IS HEARD THERE'S NO LOGICALLY SATISFACTORY ALTERNATIVE TO WHERE SOMETHING IS FIRST HEARD BECAUSE WHAT IS RECORDED AS ATLANTA COMMUNICATION.

DOES NOT LIKE IT IS BEING RECORDED BY A TAPE MACHINE IN OHIO, IT'S THE WHOLE COMMUNICATION.

THIS IS ME TALKING TO THIS ISN'T NECESSARILY YOU.

IS THAT WHAT YOU ARE ARGUING THAT ESSENTIALLY THE RECORDING HAPPENED IN FLORIDA BECAUSE THAT IS WHERE THE COMMUNICATION WAS COMPLETE.

WITHOUT FLORIDA THERE IS NO RECORDING.

>> I THINK THAT SUMS IT UP.

>> WHY ISN'T THE RIGHT QUESTION WITH THE DEFENDANT IS DOING.

IT SEEMS LIKE THERE IS THIS HOW DO WE BEST TO PHYSICALLY VIEW THE CONVERSATION WAS HAPPENING IN WHATEVER.

IT SEEMS LIKE THE WHOLE POINT OF THIS AREA OF THE LAW IS TO FOCUS ON WHAT THE DEFENDANT IS DOING AND THE DEFENDANT IS MAKING THE DECISION TO RECORD, HE IS HITTING THE BUTTON.

NONE OF US KNOW WHERE THINGS ARE BOUNCING OFF TOWERS OF WHATEVER. IN TERMS OF EVERYTHING THE DEFENDANT IS AWARE OF, IT'S ALL HAPPENING IN OHIO.

IN TERMS OF THE REPORTING PART OF IT, NOT THE CONVERSATION PART.

>> YOU BE THE PHYSICAL ACT OF THE CELL PHONE APP HE HAD ON HIS PHONE THAT RECORDED EVERY PHONE CALL, THAT WAS IN OHIO ACCORDING TO WHAT HE SAID. HIS PHONE WAS IN OHIO.

BUT THE DEFENDANT, AT LEAST IN THIS CASE HE KNEW MY CLIENT WAS A FLORIDA RESIDENT AND HE HAS RECORDED CALLS, HE RECORDED CALLS WITH OTHER FLORIDA RESIDENTS.

IF YOU WANT TO FOCUS ON WHAT THE DEFENDANT KNEW AND DID, HE HAD A PRETTY GOOD IDEA.

IF HE DIDN'T KNOW OUTRIGHT HE ENDED TARGETED HE WAS TALKATIVE FLORIDA RESIDENT 954 AREA CODE, MY CLIENT WAS FAIRLY WELL KNOWN TO BE A FLORIDA RESIDENT IN THE CONTEXT OF THE GAMING COMMUNITY SO FOR HIM TO SAY HE DIDN'T HAVE ANY IDEA THAT MR. MITCHELL WAS A FLORIDA RESIDENT IS JUST WRONG AND FRANKLY HE IS NOT EVEN TAKING THAT POSITION.

>> YOU CAN HAVE 30 SECONDS TO FINISH UP.

>> FOR THE FOREGOING REASONS WE ASK YOU SQUASH THE DECISION OF THE FOURTH DISTRICT AND REMANDED BACK TO THE TRIAL COURT FOR FURTHER PROCEEDINGS AND ALSO, YOU KNOW THIS DIDN'T COME UP BUT THERE WAS A

SECONDARY ISSUE THAT WAS APPELLATE ATTORNEYS FEES THE STATUTE 934.01 HAS A ONE-WAY STREET FOR A PLAINTIFF.

WE MOVE FOR ATTORNEYS FEES.

>> THIS IS REBUTTAL

>> THAT IS THE GIST OF IT.

WITH THAT, I WILL SIT DOWN.

>> THANK YOU.

WE WILL BE IN RECESS FOR 10 MINUTES.

[RECESS]

>>> FLORIDA SUPREME COURT IS NOW IN SESSION.

PLEASE BE SEATED.

>> THANK YOU.

WE WILL NOW TAKE A CASE NUMBER 2022 â “ 1553 COX VERSUS THE STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT, ROBERT PIERCE ON BEHALF OF MR.

>>> REQUESTING FIVE MINUTES OF REBUTTAL TIME.

>> GOOD MORNING FOR THIS CAPITAL APPEAL STEMS FROM HIS CONVICTION IN 1998 FOR CONVERTER OF A FELONY CORRECTIONAL INSTITUTION AND MOST RECENT PENALTY PHASE OF 2022 AFTER BEING GRANTED HURST RELEASED IN 2023.

THERE WERE SEVEN POINTS IN THE INITIAL BRIEF BUT FOR PURPOSES OF TODAY'S DISCUSSION WILL BE FOCUSING ON THE FIRST THREE.

THE FIRST TWO ARE SIMILAR, THEY STEM FROM THE COURT SCENTING ORDER AND INVOLVE THE COURT'S REJECTION OF A TOTAL OF THREE NON STATUTORY MITIGATING FACTORS.

ONE FOR NOT BEING PROVEN AND TO FORBIDDING COURTS NOT MITIGATING ON THE FACTS OF THE CASE BUT FOR THESE TWO POINTS WE ARE SEEKING A REMEDY OF ANY AGREEMENT FOR THE COURT TO CONSIDER WHAT WE CONSIDER THE ERRONEOUS WILL REJECTED NEGATIVE FACTORS IN THE REAR WORDING ACCORDINGLY FOR .3 WHICH INVOLVES COMMENTS IN CLOSING ARGUMENT WE ARE SEEKING MORE SUBSTANTIAL REMEDY OF AGREEMENT FOR A NEW PENALTY.

REGARDING POINT ONE, WHICH DEALT WITH IT MITIGATED RELATED TO MR. COX- THE COURT DESPITE THE STATE CONCEDING THAT THIS IS PROVEN IN THEIR MEMO BELOW AND DESPITE THE COURT ACKNOWLEDGING THE EXPERT TESTIMONY THE DEFENDANT HAS DEMENTIA, NEVERTHELESS REJECTED IT AS UNPROVEN GOOD AND IT DID SO UNDER THE RATIONALE THAT THERE IS NO EVIDENCE THAT MR. COX SUFFERS FROM THE EARLY SIGNS OF PROGRESSIVE DEMENTIA, BUT THERE ARE TWO PROBLEMS WITH THIS PAPER IS THE MITIGATED ITSELF DOESN'T LIMIT ITSELF TO PROGRESSIVE DEMENTIA.

THE QUESTION OF WHETHER IT WAS STATIC OR PROGRESSIVE DEMENTIA ISN'T DISPOSITIVE WHETHER IT WAS ACTUALLY ABOUT WHETHER THE MITIGATED WAS PROVEN.

SECOND OF ALL, THERE WAS EVIDENCE OF PROGRESSIVE DEMENTIA PER DOCTOR RUBINO TESTIFIED THAT HE COULD, PROGRESSIVE MENTION IS SOMETHING MICHAEL

SIMONS DISEASE WERE AS STATIC AS SOMETHING THAT IS CAUSED BY AN EVENT, LIKE A TRAUMATIC BRAIN INJURY.

>> WAIT A MINUTE, DOESN'T IT SUGGEST PROGRESSIVE DEMENTIA THOUGH WHEN IT SAYS EARLY SIGNS OF DEMENTIA VERSUS A STATIC DEMENTIA THAT SEEMS TO BE MORE LIMITED IN TIME AND YOU'RE LOOKING AT THE EFFECTS FROM THAT?

>> MY READ OF THE MITIGATED IS THE EARLY SIGNS OF DEMENTIA IS REFERRING TO HIS AGE TO THE TESTIMONY WAS ESTABLISHING THIS CONDITION WAS OCCURRING, THE ATROPHY IN HIS BRAIN WAS RESULTED IN HIM BEING OLDER OR RESULT INDICATED AN OLDER GENTLEMAN.

LIKE SOMEONE WHO HAS THE SAME RESULTS, SO IT SHOULD BE EXPECTED TO DO BETTER ON THIS EVEN AT AGE 80 THAT HE IS DOING AT AGE 59 SO I READ THAT IS RELATING TO THE AGE.

EVEN IN THE EVENT THE COURT READS IT THAT WAY, THAT STILL DOESN'T FIX THE PROBLEM THAT THERE WAS EVIDENCE OF PROGRESSIVE DEMENTIA.

AS DOCTOR TESTIFIED, HIS TESTING PUTS THEM IN A RANGE WHERE HE COULD HAVE ALZHEIMER'S DISEASE BUT HE IS DEFINITELY IN A RANGE WHERE HE COULD BE SUFFERING FROM EARLY ALSO MISSED DISEASE, HIS SIGNIFICANT RISK FACTORS OF HIS TESTING HAS GOTTEN WORSE OVER THE YEARS AND HIS TESTING PUTS THEM INTO A RANGE WHERE IF IT WAS A PARKINSON'S PATIENT HE WOULD NOT BE ALLOWED PURITY COULD HAVE CONSENT TO SURGERY.

>> I LOOKED AT ALL THAT TESTIMONY, BUT IF YOU LOOK AT ALL THE CONTEXT IT LOOKS LIKE HE IS EQUIVOCAL ABOUT IT.

I THINK THAT IS WHAT THE TRIAL COURT, ISN'T IT.

>> RESPECTFULLY I WOULD HAVE TO DISAGREE.

>> THE TRIAL COURT FOUND THAT IT WAS EQUIVOCAL.

>> YES THAT WAS EXACTLY WHAT PART OF THIS IS I UNDERSTAND THERE ARE DIFFERENT WAYS TO LOOK AT THESE THINGS TO THE TRIAL COURT IS THE TRIAL COURT PER THE LESSON IS UNREASONABLE AND IT IS NOT EVIDENCE TO SUPPORT WHAT THE TRIAL COURT DOES WE GO WITH THE TRIAL COURT.

WHAT YOU HAD JUST SAID ABOUT THE WAY THIS WAS PLED NOT INDICATING IT WAS ABOUT PROGRESSIVE DEMENTIA, I HEAR YOU.

BUT IT SEEMS LIKE TO ME THE OPPOSITE OF READING IS MORE PERSUASIVE.

I DON'T UNDERSTAND WHY IT WOULD BE PHRASED THE WAY IT WAS IT WAS A TALKING ABOUT ANYTHING OTHER THAN.

I HEARD WHAT YOU SAID.

THE ONLY REASONABLE FOR THE TRIAL COURT TO INTERPRET THE WEIGHT WAS PLED, THE WAY THE TRIAL COURT DID INTERPRET.

TELL ME WHY I AM WRONG.

>> THAT IS A REASONABLE INTERPRETATION OF THAT LANGUAGE.

IS NOT GOING TO SAY THEY WERE UNREASONABLE INTERPRETING IT THAT WAY, HOWEVER, I DON'T THINK THAT FIXES THE PROBLEM THERE WAS EVIDENCE BECAUSE US TESTING PUTS HIM IN THE RANGER HE COULD ALSO BE SUFFERING

FROM OSIRIS DISEASE TO THE COURT'S RATIONALE WAS THERE WAS NO EVIDENCE OF PROGRESSIVE DEMENTIA BUT THERE WAS. EVEN IF WE DISREGARD.

>> DID I HEAR YOU SAY THE WORD COULD.

>> PARTING?

>> DID I HEAR YOU SAY THE WORD COULD?  
HE COULD BE SUFFERING FROM ALZHEIMER'S.

>> YES.

>> COULD DOESN'T CUT IT.  
IF THE PRIVIES.

>> EVERY GOING OFF A REASONABLE READING OF THE LANGUAGE OF THE SUBMITTED MITIGATED, IS EARLY SIGNS OF DEMENTIA WHICH SIGNS OF DEMENTIA LESSON THAT YOU ARE SUGGESTING.

>> IS YOUR ARGUMENT.

I WANT TO MAKE SURE THAT WE HAVE THE ARGUMENT RIGHT THAT THE TRIAL COURT ABUSED AND REJECTING IT VERSUS FAILING TO ADDRESS IT. TALKS ABOUT IS A FAILURE TO ADDRESS WHICH REQUIRES A REMAND TO ADDRESS IT.

I THINK WHAT YOU ARE ARGUING TODAY IS THE TRIAL COURT ABUSES DISCRETION AND REJECTING THE EVIDENCE.

>> THE ARGUMENT SPECIFICALLY IS THE COURT DID NOT HAVE A RATIONAL BASIS FOR REJECTING THE TESTIMONY ESTABLISHING DEMENTIA.

>> THAT IS NOT A FAILURE TO ADDRESS ARGUMENT.

>> NO PRUVIT AND THIS IS WHAT DISTINGUISHES IT.

IT WILL COME UP IN THE SECOND POINT BUT IT IS NOT ABOUT A FAILURE TO ADDRESS, IT'S ABOUT THE PROCEDURAL POSTURE OF THE EVIDENCE BEFORE THE COURT OF WHETHER OR NOT IT IS A DECISION TO FIND IT EITHER UNPROVEN OR LATER POINTS NOT MITIGATING ALL THE FACTS OF THE CASE WAS RATIONALE. I WILL MOVE ON TO POINT TWO.

WHICH DEALS WITH THE MITIGATED RELATING TO HIS IMPULSE CONTROL.

IN REJECTING THIS MITIGATED OR, THE COURT ACKNOWLEDGED MR. COX HAS SUFFERED FROM CONTROL ISSUES THROUGHOUT HIS LIFE BUT STILL CONCLUDED IS NOT MITIGATING ON THE FACTS OF THIS CASE BECAUSE THE ACTIONS LEADING UP TO THE MURDER IN THE COURTS TO SHOW HE COULD HIS IMPULSE IN SPIRIT THERE ARE TWO PROBLEMS WITH THIS RATIONALE FOR THE FIRST IS IT IS TREATING THE CONDITION OF THE DIMINISHED CAPACITY AS THOUGH IT IS A CONDITION THAT IS EITHER ACTING UPON A CERTAIN DAY OR IT IS NOT EVEN IN THE COURT SINCE IN ORDER IT ACKNOWLEDGED THE DIMINISHED CAPACITY.

AS A RELATIVE CAPACITY TO A NORMAL PERSON TO CONTROL THEIR IMPULSES. THE COURT ACKNOWLEDGES THIS IN THEIR SOMETHING ORDER AND THIS IS WHAT DIFFERENTIATES THIS CASE FROM GILL WHICH IS WHAT THE STATE RELIES ON TO SUPPORT THE COURSE REJECTION OF THIS APPEARED IN WE HAVE ALMOST EXACTLY THE SAME THING WHERE THE COURT FINDS A VERY SIMILAR SET EVIDENCE

ESTABLISHING A BRAIN CONDITION THAT CAUSES DIMINISHED CAPACITY BUT IN THE COURT ACTUALLY GAVE THAT SOME WEIGHT.

IT SHOWS THE PROBLEM HERE BRIDWELL THE COURT WOULD HAVE BEEN FREE TO ASSIGN IT, SOME NONZERO AMOUNT IS NOT A RATIONAL IS NOT MITIGATING AT ALL.

>> THE TRIAL COURT ACCEPTED TESTIMONY REACHING THE CONCLUSION, RIGHT?

>> THE STATE IN THE SENSING ORDER HE DID NOT RELY ON THAT TESTIMONY OF THE STATE POINTED THIS OUT IN THE ANSWER BRIEF TO THE COURT RATIONALE WAS BASED PURELY ON HIS VIEW OF THE DEFENDANTS ABILITY WHETHER HE COULD CONTROL HIS IMPULSES THAT DAY OR NOT.

I DON'T THINK IT WAS BASED OFFICE TESTIMONY BUT EVEN IF IT WAS THE PROBLEM WITH THIS TESTIMONY IS IT DOESN'T ACTUALLY ADDRESS THE ROOT OF THIS MITIGATED BECAUSE THE ROOT OF IT IS THE DAMAGE TO THE PORTIONS OF HIS BRAIN THAT AFFECT IMPULSE CONTROL AND THE RESULTING DIMINISHED CAPACITY TO CONTROL THE IMPULSES FROM THAT DAMAGE.

IT'S NOT ABOUT WHETHER OR NOT, WHETHER THE MURDER AS IT JUSTIFIED, WHETHER OR NOT IT WAS AN IMPULSIVE MURDER.

WHETHER OR NOT YOU CATEGORIZE IT AS SOMETHING IMPULSIVE BUT THE MITIGATED IS ABOUT HIS RELATIVE INABILITY TO A NORMAL PERSON TO CONTROL THE IMPULSES THROUGH THE COURT WAS FREE TO ASSIGN A LESSER AMOUNT OF WEIGHT, BUT WHAT IT COULDN'T DO IS REJECT IT IS NOT MITIGATING AT ALL THROUGH THIS IS A RELATIVE DIMINISHED CAPACITY.

>> COUNSEL, LET'S ASSUME THAT THEY ACCEPT YOU.

WHY IS AND IT BUT IT SEEMS LIKE THE COURT CONSIDERED CITING OTHER MITIGATED IS, RIGHT?

SOME OF WHICH OVERLAPPED WITH THAT DEMENTIA DIAGNOSIS, SOME SORT OF COGNITIVE ISSUES.

WHY ISN'T IT HARMLESS.

>> I WANT TO DISTINGUISH TWO THINGS.

THAT PORTION OF WHAT THEY CONSIDERED THE DEMENTIA IS NOT RELATED TO IMPULSE CONTROL AND IN THE SENTENCING ORDER THE ONLY MENTION IS ON THIS POINT OUTSIDE THE MITIGATING.

IMPULSE CONTROL IS ONLY MENTIONED IN ADDRESSING THE NONSTATUTORY MITIGATED.

THE QUESTION OF WHY THIS ISN'T HARMLESS, IT IS THE STATE BURDEN TO PROVE THIS FOR THERE ARE THREE VERY GOOD REASONS WHY THE STATE, WHY CAN BE CONSIDERED HARMLESS.

FIRST IT IS THE HEART OF THE DEFENSE OF BOTH THE DEFENSES THROUGH THE HEART OF THE DEFENSE OR BOTH MITIGATION AND IN CHALLENGING CPP WHICH THE JURY REJECTED SPIRIT IT GOES TO TWO OF THE MOST IMPORTANT THINGS BEFORE THE SENTENCE OR, WHICH IS THE WORTHINESS FOR THE OFFENSE AND THE PRIOR AGGRAVATED BECAUSE THE WAS BOTH THE OFFENSE ITSELF AND THE PRIOR FELONY AGGRAVATED AND IT IS CLEAR FOR THE SENTENCING ORDER THAT THE REASON FOR REJECTING IT IS BASED PURELY ON OFFENSE BUT WITH THE

COURT DID NOT ADDRESS WHETHER IT WOULD TO BE A PRIOR FELONY WHICH WAS THE TWO ACTIVATORS IN FRONT OF IT.

BECAUSE IT IS GOING TO THE CENTRAL QUESTION BEFORE THE SENTENCE OR IN ANY CASE BECAUSE IT IS ALSO GOING TO THE AGGRAVATED THERE.

AND FINALLY IN THE DEFENSES VIEW IT IS OUR IT PRESENTS A CASE WHERE THE DECISION COULD NOT HAVE EASILY BEEN REACHED GIVEN AS I WAS MENTIONING THE LACK AND THE FACT THERE ARE TWO REMAINING ACTIVATORS OVERLAPPED TO A DECENT DEGREE PURITY WAS IMPRISONED FOR THE FELONY OR BECAUSE, HE WAS IN PRISON BECAUSE OF HIS PRIOR VIOLENT FELONY.

BECAUSE OF THAT THOSE THREE THINGS COMBINED TO ME THE RELATIVELY LOW THRESHOLD, WHICH IS A REASONABLE POSSIBILITY THAT OF A LESSER SENTENCE IF THE COURT WERE TO CONSIDER THIS MITIGATED OR.

>> IT SEEMS HARD TO SAY A REASONABLE JUDGE COULD GIVE ITS LIGHTER WEIGHT BUT THEN IT SEEMS LIKE IT WOULD BE A COMPLETELY EMPTY FORMALISTIC EXERCISE FOR US TO SAY YOU HAVE TO DEEM THIS A MITIGATED, BUT IF YOU WANT TO SAY BUT OBVIOUSLY SOMEONE WHO THOUGHT IT WASN'T MITIGATING AT ALL IS IT GOING TO TURN AROUND AND GIVE IT GREAT WEIGHT.

THEY ARE GOING TO STICK A SLIGHT OR A LITTLE LABEL ON IT WE WILL END UP IN THE SAME PLACE.

>> I WOULD HOPE THAT THEY WOULDN'T JUST GO BACK AND RUBBER STAMP THEIR PREVIOUS DECISION WITHOUT RECONSIDERING.

>> I DON'T MEAN THAT IN A PEJORATIVE SENSE, BUT IF THEY BELIEVE, IF THEY BELIEVE IT IS NOT MITIGATING WHAT WE SAY YOU HAVE TO DEEM IT AT LEAST SOMEWHAT MITIGATING.

IF YOU ASSUME THE SAME THOUGHT PROCESS BY A PERSON WHO DID THEIR JOB AND WAS THOUGHTFUL OR WHATEVER COMMIT SEEMS HARD TO BELIEVE THEY WOULD GIVE IT ANYTHING OTHER THAN SLIGHT WEIGHT.

>> I THINK THE PROBLEM WITH THIS SPIRIT LET ME CLARIFY ONE POINT EARLIER BUT WHEN THE COURT COULD US ASSIGNED IT COULD HAVE VERY LITTLE AMOUNT OF WEIGHT BUT COULDN'T ASSIGNED IT TO ZERO WASN'T SUGGESTING THIS WAS A MITIGATED WORTHY APPEARED IN MY VIEW IT'S WORTHY OF A SIGNIFICANT AMOUNT OF WEIGHT AND THE REASON WHY THE REASONABLE LIKELIHOOD OF A LESSER SENTENCE EXISTS IS BECAUSE THE COURT DID NOT CONSIDER.

IT APPEARS TO NOT HAVE FULLY CONSIDERED THE NATURE OF IT SPECIFICALLY BECAUSE HE IS REJECTING IT.

HE IS NOT APPRECIATING THE RELATIVE NATURE OF IT DESPITE ACKNOWLEDGING IT IN THE SENSING ORDER AND EQUALLY AS IMPORTANTLY NEVER ADDRESSED THE NATURE OF IT RELATED TO THE MOST BEFORE IT.

FROM OUR PERSPECTIVE IN THIS POSTURE WE ARE LOOKING AT SAYING THERE IS A REASONABLE LIKELIHOOD SPIRIT IT APPEARS THE COURT DID NOT CONSIDER THIS BASED ON THE RATIONALE WE WERE GIVEN AND SO THE QUESTION IS IS THIS SUFFICIENT ENOUGH TO CREATE THE REASONABLE LIKELIHOOD OF A LESSER SENTENCE AND IT IS LOCUS WITH THE CENTRAL QUESTION BEFORE THE SENTENCE

OR CLEARS THE BAR BY A SIGNIFICANT MARGIN BECAUSE WE HAVE NOT ONLY THE CLOTHES CASE BUT THE FACT THIS IS GOING TO THE QUESTION BEFORE THE SENTENCE OR ON SUCH AN IMPORTANT DECISION ABOUT WHETHER TO IMPOSE THE DEATH PENALTY OR NOT.

>> LASTLY I WANT TO CLOSE BY MAKING A COUPLE OF POINTS REGARDING THE CLOSING ARGUMENTS.

THE STANDARD FOR THIS IS WHETHER OR NOT THE COMMENTS WERE TO TAKE THE RECOMMENDED SENTENCE.

THERE WERE IN THE OBJECTIONS BELOW.

THE STATE HAS CONCEDED THAT THE COMMENTS RELATING TO JUSTICE WERE IMPROPER BUT CONTESTED THE OTHER TWO TYPES OF AREAS THAT WE CHALLENGED.

ONE OF THEM I WILL REFER TO IT AS EASY COMMENTS, THEY POINT OUT SIMILAR COMMENTS WERE HELD IN PROPER BY URBAN.

I THINK THEY ARE CORRECTLY POINTING OUT THAT IN BRATTY THIS COURT REJECTED SIMILAR EASY WAY OUT BECAUSE THE PROSECUTOR DID NOT ACCOMPANY THEM BY MS. ADVISING THE JURY REGARDING A DUTY TO COME BACK WITH A SENSE OF DEATH.

IT'S TRUE THE PROSECUTOR DID NOT DO THAT.

IT IS IMPORTANT TO DISTINGUISH HE DID TIE THE EASY WAY OUT COMMENTS TO A DIFFERENT TYPE OF IMPROPER COMMENT WHICH WAS JUSTICE FOR THE VICTIM.

>> WHEN WE LOOK AT BOTH THESE COMMENTS HE MAKES THEM AT THE BEGINNING OF THE CLOSING ARGUMENT FOR VERY LONG CLOSING ARGUMENT AND IT ENDS WITH THIS EMPHASIS ON THE LAW AND THE FACTS AND THE LIFE SENTENCE WASN'T SUFFICIENT TO DETERMINE THEM IN THE PAST SO WHY WOULD IT BE SUFFICIENT TO TERM NOW.

WOULD HAVE THESE ISOLATED COMMENTS AT THE BEGINNING WHEN YOU'RE LOOKING AT FUNDAMENTAL ERROR DO WE PLACE A SIGNIFICANT EMPHASIS.

YOU CLEARLY VIEW THE ARGUMENTS AS A WHOLE.

YOU HAVE TO LOOK AT THEM AS A WHOLE AND SEE EVERYTHING IN CONTEXT PER THE PROBLEM WITH THESE ERRORS ARE THAT THEY ARE USING THE WEIGHTED THE STATE TO PRESSURE OR AT LEAST INVITE THE JURY TO REACH A REASON OTHER THAN WHAT IN AGGRAVATING FACTORS AGAINST MITIGATING FACTORS.

THAT'S WHY WE BELIEVE IT.

>> ISN'T TYPICALLY WHEN WE WERE SOMETHING IN THE CLOSING ARGUMENT SITUATION THE PERVASIVE CLOSING ARGUMENT AND IT IS A SINCE THE JURY IS LEFT WITH?

IT'S NOT THIS ISOLATED STATEMENT.

IT REALLY RUNS THROUGHOUT THE EMPHASIS OF THE CLOSING ARGUMENT.

>> YES.

THE TREND FOR THESE CASES HAS BEEN TO HAVE A COLLECTION OF A LOT OF IMPROPER CLOSING ARGUMENTS AND TYING THEM TOGETHER AND SAYING THESE CUMULATIVELY AMOUNT TO A FUNDAMENTAL ERROR.

EFFECTIVELY THIS GIVES THE STATE A FREE PASS TO MAKE THESE IMPROPER ARGUMENTS REGARDING JUSTICE FOR THE VICTIM THAT HAVE BEEN HELD IN PROPER SINCE THE FIRST REAGAN ADMINISTRATION.

IT IS BECOME HARMLESS ERROR AT THAT POINT.

THE PROBLEM HERE IS THE INDELIBLE NATURE OF THE PREJUDICE FROM THESE COMMENTS AND INVITING THE JURY ON SUCH AN IMPORTANT DECISION TO MAKE A DECISION ABOUT THE DEATH PENALTY FOR REASONS OTHER THAN THE AGGREGATORS AND LITIGATORS.

>> CAN I ASK A QUESTION ABOUT THE COMMENDABLE SESSION?

I KNOW OUR COURT HAS SAID WITHOUT ANY KIND OF REASONING BACK ENDING IT UP THEY QUESTIONED THESE JUSTICE COMMENTS AND THEY USUALLY TALK ABOUT THE IMPROPRIETY IN TERMS OF IMPROPERLY TRYING TO ELICIT SYMPATHY FOR THE VICTIMS AND EVERYTHING.

BUT JUST WITHOUT COMMENT WITHOUT SURROUNDING EMOTIONAL APPEALS TO READ I DON'T KNOW WHY TALKING ABOUT JUSTICE WOULD BE IMPROPER.

WHEN IT SEEMS LIKE THE WHOLE EXERCISE IS BASICALLY ABOUT JUSTICE!

MY FIRST THOUGHT IS A LANGUAGE FROM CORTONA WHERE IT TALKS ABOUT HOW THE CLOAK, WHEN THE PROSECUTOR IS STANDING THERE WITH A CLOAK OF THE STATES AUTHORITY, GIVES THEM THE ABILITY WITH THE MINIMAL AMOUNT OF WORDS TO CREATE SIGNIFICANT PREJUDICE AND IMPACT ON THE JURY.

I THINK BY MAKING THESE APPEALS TO ANYTHING OUTSIDE OF THE ONLY QUESTION BEFORE THE JURY WHICH IS RELATED TO THE ACTIVATORS AND LITIGATORS, I THINK ONCE WE STRAY FROM THAT OF START BRINGING CONCEPTS LIKE JUSTICE.

>> WHEN THE DEFENDANT IS UP THERE TREND ESTABLISHED LITIGATORS, AREN'T THEY BASICALLY SAYING GIVEN THIS KIND OF MIX OF CIRCUMSTANCES IT WOULD BE UNJUST TO EXECUTE MY CLIENT OR ME.

ISN'T THAT REALLY WHAT THIS IS ALL FOR.

>> I DON'T THINK THEY ARE ARGUING FOR JUSTICE, I THINK THEY ARE ARGUING FOR MERCY AND THEY ARE FUNDAMENTALLY DIFFERENT CONCEPTS.

LIKE SIMILAR COMMENTS FROM THE DEFENSE, DON'T CARRY WITHIN THE SAME PREJUDICE SPEAKING WITH THE STATES AUTHORITY TO A JURY ABOUT HOW JUSTICE IS IMPACTING THEIR DECISION.

I THINK IT INVITES THE, IT'S A KIND IMPROPRIETY THAT SHOULD BE GUIDING CASES ESPECIALLY IN A DEATH CASE SO WITH THAT I WILL RESERVE THE REMAINDER OF MY TIME.

!

MAY IT PLEASE THE COURT, ASSISTANT ATTORNEY GENERAL STEPHEN ON BEHALF OF THE STATE OF FLORIDA APPEARED AS TO THE FIRST ISSUE I WOULD SUBMIT THE COURT PROPERLY DENIED THE NONSTATUTORY MEDICAID OR THAT THE APPELLANT'S OFFICE IN THE EARLY SIGNS OF DEMENTIA.

DOCTOR RUBINO WAS ASKED ON, I BELIEVE IT WAS PAGE 767 OF THE RECORD FOR HIS DIAGNOSIS IN THIS CASE.

HE STARTED A LAUNDRY LIST OF THE VARIOUS THINGS HE DIAGNOSED THE APPELLANT WITH AN DEMENTIA WAS NOT LISTED AS ONE OF THOSE PER THE DEFENSE ATTORNEY QUESTIONING AS TO HIS NEUROCOGNITIVE DISORDER WOULD BE INCLUDED IN THAT.

IT PROBABLY COULD BE.

NOT EQUIVOCAL DIAGNOSIS OF THAT CONDITION HE REALLY TESTIFIED THAT THE RESULTS OF THE MONTRAIL COGNITIVE ASSESSMENT TEST HE GAVE THE APPELLANT PUT THEM IN THE RANGE OF IT.

AGAIN HE DIAGNOSED PURITIES OF THE TEST SCORES WERE CONSISTENT WITH THAT.

BASED ON THAT EVIDENCE AND BELIEF THE TRIAL JUDGE WAS ACTIVE IN HIS DISCRETION IN REJECTING THE NONSTATUTORY MEDICAID ARE BASED ON THE TESTIMONY THAT IT WAS NOT ESTABLISHED BY THE GREATER WEIGHT OF THE EVIDENCE.

EVEN IF THIS COURT WAS TO FIND THAT THE TRIAL JUDGE ERRED, THE COURT DID FIND NUMEROUS OTHER NONSTATUTORY MEDICAID THERE'S RELATED TO APPELLANT'S COGNITIVE FUNCTION THAT WOULD MAKE ANY ERROR HARMLESS BECAUSE WE HAVE FOUND BRAIN DAMAGE, WE FOUND DEFICITS IN HIS EXECUTIVE CONTROL, NUMEROUS ONES RELATED TO HIS ALCOHOL AND DRUG USE AND EFFECTS ON HIS BRAIN INJURIES AND ALL OF THAT.

I DON'T BELIEVE A MEDICAL DIAGNOSIS OF DEMENTIA OR EVEN PROGRESSIVE DEMENTIA, WHICH AGAIN DOCTOR RUBINO SAID HE COULDN'T DIAGNOSE HIM WITH, I DON'T THINK THAT WOULD CHANGE THE SENTENCING CALCULUS IN THIS CASE AND THE JUDGE WOULD'VE SENTENCED TO DEATH EVEN IF HE HAD KNOWN THAT.

I DON'T THINK THERE IS ANY ERROR IN THAT FIRST ISSUE.

ON THE SECOND COMPLAINT THE APPELLANT HAS ABOUT THE MEDICATION WHICH DEALS WITH THE SECOND ONE WHICH IS THAT THE.

>> IMPULSE CONTROL.

>> IMPULSE CONTROL.

THANK YOU.

THE IMPULSE CONTROL, WHAT HAPPENED HERE IS THE TRIAL JUDGE BASED HIS REJECTION OF THIS LITIGATOR.

HE FOUND HE ESTABLISHED HE HAD CONTROLS THROUGHOUT HIS LIFE BUT GIVEN THE FACTS OF THIS CASE AND THE DOCTOR'S TESTIMONY THAT THIS WAS NOT AN IMPULSIVE MURDER, THE TRIAL JUDGE WAS JUSTIFIED IN FINDING OR REJECTING THAT MITIGATION.

THIS COURT HAS UPHOLD OTHER INSTANCES WHERE COURTS HAVE FOUND A REJECTION OF IMPULSE CONTROL IS PROPER GIVEN THE FACTS OF THE MURDER. IN THIS CASE WE HAD THE DEFENDANT PLANNING IT OUT A DAY IN ADVANCE, ANNOUNCING HIS INTENTION TO THE ENTIRE PRISON POT HE WAS HOUSED WITH AND SAYING HE WAS GOING TO GIVE A REWARD.

HE THEN GETS INFORMATION ABOUT WHO MAY HAVE BROKEN INTO HIS LOCKER AND STOLEN HIS MONEY AND HE BASICALLY ORDERS A SHANK FROM ANOTHER

PRISONER, CONCEALS THAT, WAITS UNTIL THE NEXT DAY AT LUNCH TIME WHEN HE REALIZES THERE WILL BE LESS CORRECTIONAL OFFICERS IN THE PRISON YARD WHILE THEY ARE AT THE CAFETERIA HE CALLS OVER THE VICTIM AND BEGINS TO PUMMEL HIM.

NOW, ALAN COX OUTWEIGHED THE VICTIM IN THIS CASE BY ABOUT 100 POUNDS AND BY ALL ACCOUNTS HE DID THIS IN FRONT OF NUMEROUS INMATES AND HAD THE VICTIM IN THE FETAL POSITION BEGGING FOR HELP AND HE SAID THAT NOT GOOD ENOUGH.

THAT HE REACHES INTO HIS POCKET AND STABS HIM THREE TIMES THERE THAT 24 HOUR OR THERE ABOUT 24 HOUR PASSAGE OF TIME SHOWS THIS IS NOT AN IMPULSIVE MURDER IN THE TRIAL COURT PROPERLY REJECTED THAT MITIGATION. AGAIN, EVEN IF THE COURT WERE TO FIND WAS AIR I WOULD SUBMIT IT WOULD BE HARMLESS BUT AS CHIEF JUSTICE POINTED OUT, REMANDED BACK TO THE TRIAL JUDGE DEFINED IN WAY THAT.

SURE HE WOULD NOT GIVE IT MORE THAN SLIGHT WAY OR WHAT HAVE YOU THAT WILL NOT CHANGE HIS ULTIMATE SENTENCE IN THIS CASE GIVEN THE STRONG AGGRAVATION THAT WAS PRESENT IN THIS CASE IN THE MITIGATION.

AS TO THE OTHER ISSUE THAT COUNSEL TALKED ABOUT WHERE THE CLOSING ARGUMENTS BY THE PROSECUTOR THAT WERE NOT OBJECTED TO, OBVIOUSLY IT HAS THE RIGHT TO FUNDAMENTAL ERROR IN THE STATE WOULD SUBMIT REALLY WHAT WE ARE BOILING DOWN TO RAISES TWO PARAGRAPHS OF THE PROSECUTOR AS DISCUSSED.

THE FIRST ONE I DON'T SEE ANYTHING WRONG WITH THAT COMMENT WHATSOEVER. REALLY THE ONLY ISSUE IS THE PROSECUTOR SAYING IS THIS JUSTICE FOR THE VICTIM AND THAT IS VERY INNOCUOUS IN COMMENT HE MADE EARLY ON IN HIS CLOSING ARGUMENT.

IT'S NOT NEAR AS EGREGIOUS THE COURT IS DISCUSSED THAT COMMENT.

I DON'T THINK IT RISES TO THE LEVEL OF FUNDAMENTAL ERROR FOR SURE.

THERE'S NO WAY THAT THE JURY, THAT SINGLE COMMENT WOULD AFFECT THE JURIES RECOMMENDATION IN THIS CASE.

THE STATE WOULD SUBMIT THE APPELLANT HAS NOT SHOWN ANY ERROR IN THIS CASE AND THE COURT SHOULD AFFIRM THE SENTENCE.

THERE ARE NO FURTHER QUESTIONS.

>> THANK YOU.

>> ONE FINAL POINT REGARDING THE HARM IN.2.

THE COURTS REJECTION OF THIS IS NOT MITIGATING FOR THE PROBLEM IS IT ENDS UP RUNNING AFOUL OF THE COURT NOT LISTENING TO THE MITIGATION TO THE QUESTION IF THE COURT AGREES THAT THE IMPULSE CONTROL MEDICAID OR WAS IT WAS REJECTED AS NOT MITIGATING IS SIMPLY WHETHER THIS LITIGATOR, WHICH AGAIN GOES TO THE HEART OF THE DEFENSE, GHOSTED THE QUESTION.

>> DOES IT GO ANYMORE TO THE HEART OF THE DEFENSE OF THE OTHER GATORS COURT DIDN'T BACK FIND THAT ARE SOME OF THE SAME KEY?

>> I WOULDN'T SAY THEY ARE IN THE SAME KEY.

>> THEY GO TO HIS MENTAL STATUS, THEY GO TO HIS BRAIN INJURY FOR EXAMPLE.  
THE COURT FINDS IT AND GIVES IT THE WEIGHT IT DOES.

HELPED ME UNDERSTAND WHAT I'M MISSING.

IT SEEMS TO ME THAT IS BEFORE THE COURT, THE COURT ACKNOWLEDGED IT AND IF  
IT FINDS THIS OTHER MEDICAID OR IS AN ESTABLISHED IT'S STILL HAS HIS OTHER  
BASIS WAIVED BY THE COURT IN DETERMINING ITS ULTIMATE SENTENCE.

>> THE IMPULSE CONTROL LITIGATOR IS FUNDAMENTALLY DIFFERENT THAN THE  
OTHERS IN THE COURTS REASONING FOR REJECTING IT, IT RESTS ON THE IDEA IT IS  
AN ALL OR NOTHING THING.

IT SEEMS CLEAR FROM THE RATIONALE THAT THE COURT DID NOT APPRECIATE THE  
NATURE OF THIS LITIGATOR GIVEN THAT IT IS AFFECTING HIS DIMINISHED CAPACITY.  
IT IS NOT AN ALL OR NOTHING THING.

>> THE BRAIN INJURY IS THE SAME.

I'M NOT HEARING AN ANSWER TO MY QUESTION.

>> I APOLOGIZE.

THE LITIGATOR HERE IS GOING TO THE INJURY AFFECTING THE PORTION OF THE  
BRAIN AFFECTING HIS ABILITY TO CONTROL HIS IMPULSES.

IS A RELATIVE TO A NORMAL PERSON TO CONTROL THOSE IMPULSES AND NOT  
UNMITIGATED WAS SUBMITTED AS BEING BOTH HIS INABILITY TO CONTROL HIS  
IMPULSES AND COMMIT THE OFFENSE AND OF HIS PRIOR VIOLENT FELONY  
OFFENSES BUT EVEN IF THE COURT REJECTS IT AS BEING UNRELATED TO THE  
CURRENT OFFENSE IT WOULD HAVE FIXED THE PROBLEM IN THE ORDER OF THE  
COURT NOT CONSIDERING THE NATURE OF IT RELATED TO THE AGGRAVATED  
BEFORE IT WHICH IS A FELONY.

WITH THAT I REQUEST THIS COURT REVERSE FOR EITHER RECONSIDERATION OF  
THE GREATER SUBMITTED GATORS.

THANK YOU.

>> THANK YOU VERY MUCH.

WE ARE ADJOURNED.