

>> Marshal: ALL RISE

THE FLORIDA SUPREME COURT IS NOW IN SESSION.

PLEASE BE SEATED.

>> Chief Justice Carlos Muniz: OKAY OUR NEXT CASE IS WOLF v. STATE OF FLORIDA, CASE NO. 2023-1077.

>> Appellant: GOOD MORNING MAY IT PLEASE THE COURT MY NAME IS ANDREW STANTON AND I AM AN ASSISTANT PUBLIC DEFENDER AND I AM HERE TO SPEAK ON BEHALF OF STEVEN WOLF.

THE FIRST ISSUE IS VENUE.

THE STATE'S TRIAL THEORY WAS SPECULATIVE AND THE STATES THEORY HERE ON APPEAL IS CONTRARY TO THE FACT.

IF THE COURT WILL INDULGE ME I WANT TO GO THROUGH THE TIMELINE A LITTLE BIT BECAUSE I DON'T THINK I DID A NUCLEAR GOOD JOB IN THE BRIEF AND I WILL EXPLAIN THAT.

THE VAN ARRIVED AT TACO CUT AT 1:19.

DETECTIVE ALVAREZ SAID THE TRIP WOULD TAKE A HALF-HOUR TO 2 HOURS.

AT 2:00 THE FIRST OFFICER ON THE SCENE OFFICER ALL GUANO TOUCHES THE BODY AND FINDS IT COLD TO THE TOUCH AND RIGOR HAS SET IN.

AND CRUCIALLY THIS TESTIMONY THE BODY WAS MOVED BETWEEN 5:00 AND 6:00 AND HERE IS WHAT THE DOCTOR THERE SAYS.

>> Justice: THIS IS THE AFTERNOON?

IF YOU CAN GIVE A.M. OR P.M. THAT WILL BE CLEAR.

>> Appellant: I APOLOGIZE.

IT IS 11 AM.

AND NOW I HAVE GOTTEN US TO 5 PM.

WHEN THE OFFICER TOUCHED THE BODY AND FOUND IT COLD WAS IT 2 PM.

NOT THAT LONG AFTER MISS OSBORNE'S BODY WAS LEFT THERE.

SO THE BODY IS MOVED BETWEEN 5:00 AND 6:00.

AND THE OBSERVATION OR TESTIMONY IS THIS.

THIS IS IN QUESTION BY THE STATE.

TALKING ABOUT RIGOR MORTIS HAD SET BY THAT POINT.

THE STATE SAYS THIS USUALLY TAKES ANYWHERE FROM 4 TO 6 HOURS BEFORE IT SETS, CORRECT?

ACTUALLY IT IS LONGER.

GENERALLY SPEAKING THE LIVER IS FIXED ABOUT 12-ISH HOURS BUT YOU ARE TOLD WHEN IT WAS OLDER THAT THEY WERE ACTUALLY FIXING.

IT WOULD PUT US MORE TOWARDS 12 HOURS OR A GREATER TIMEFRAME.

SO THAT WOULD PUT US AS THE STATE ARGUED BELOW MORE TOWARDS 5 AM OR 6 AM.

NOW THE STATE HERE ON APPEAL TELLS US -WELL, WE CAN ESTABLISH VENUE HOW?

MR. WOLF SAID THAT MISS OSBORNE WAS KILLED ON THE DRIVE DOWN FROM

FLORIDA CITY EVEN THOUGH IT IS CONTRARY TO THE MEDICAL EVIDENCE.  
BUT NO ONE, HERE OR THERE BELIEVES THAT STATEMENT.  
THE STATEMENT WAS SHE WAS KILLED BY SOMEONE ELSE IN THE BACK OF HIS VAN  
AS HE MADE THIS DRIVE ABOUT NEARLY AS FAST AS YOU COULD BETWEEN THE TWO  
POINTS.

THE STATE SAID WELL, HE SAID IT AND IT MUST BE THE FACT THAT MR. WOLF  
COMMITTED THESE CRIMES IN THE TINY SPACE OF TIME THAT WAS LEFT BETWEEN  
FLORIDA CITY.

>> Justice: FORGIVE ME LET'S JUST SAY WE AGREED WITH EVERYTHING YOU'VE SAID  
IS IN THE STATES BURDEN TO PRESENT SOME COMFORTABLE EVIDENCE SO THE  
STATE COULD CONFER THAT MONROE COUNTY WAS THIS AREA WHERE THE CRIME  
WAS COMMITTED:

>> Appellant: IS BEEN FRAMED A NUMBER OF WAYS.  
IT'S BEEN CALLED A PREPONDERANCE OF EVIDENCE.

>> Justice: WELL THAT'S A DIFFERENT STANDARD.

MY POINT IS, IF WE HAVE A TEST ON VENUE THEN OKAY YOU CAN DIRECT US TO ALL  
SORTS OF EVIDENCE IN THE RECORD THE BRAKES IN YOUR FAVOR BUT THAT'S NOT  
THE QUESTION BEFORE US.

THE QUESTION IS THEIR COMPETENT SUBSTANTIAL EVIDENCE WHERE THE STATE  
COULD MAKE THE INFERENCE?

YOU HAVE TO ESTABLISH THERE'S NO COMPETENT SUBSTANTIAL EVIDENCE.  
SO LET ME HEAR YOU ON THAT.

>> Appellant: ON THE TEST THERE ARE SEVERAL WAYS IT'S BEEN EXPRESSED.  
THERE IS NO EVIDENCE WHATSOEVER THAT THIS OCCURRED IN MONROE COUNTY.  
WE KNOW FROM THE MEDICAL EVIDENCE IT COULD NOT HAVE OCCURRED BETWEEN  
THE TIME THAT THE VAN LEFT FLORIDA CITY AND THE TIME IT ARRIVED.  
CONTRARY TO THE MEDICAL EVIDENCE AND CONTRARY TO EVERYTHING THAT WE  
KNOW AND THE STATEMENT DOESN'T GET THEM ANYWHERE BECAUSE IT IS  
CONTRARY TO THE EVIDENCE.

THE EVIDENCE WE BELIEVE RATHER THAN THE STATEMENT THAT EVERYONE  
REJECTS AND IS INCONSISTENT WITH OTHER PARTS OF THE EVIDENCE.

AND THE STATE IN FURTHER SUPPORT OF THAT SAYS WELL, THE BODY WAS FOUND  
IN MONROE THE BLOOD CLOTHES WERE FOUND IN MONROE BUT THAT DOESN'T ADD  
ANYTHING TO THE QUESTION OF WHERE THE BODY WAS AT THE TIME THAT MISS  
OSBORNE WAS KILLED.

WE KNOW THE FACT THAT THE BLOOD CLOTHES WERE DISPOSED AFTER THE BODY  
WAS DUMPED IS THE ONE THING THAT IS CONSISTENT WITH WHAT MR. WOLF SAID AT  
THE POINT THE BODY WAS OUT OF THERE YOU NEED TO CLEAN UP THE VAN AND  
THE BLOODIED CLOTHING AND LEFT AS CONFIRMED BY THE STATES EVIDENCE AT A  
NUMBER OF PLACES AFTER HE WAS IN MONROE COUNTY.

>> Justice: YOUR THEORY IS THAT SHE WENT ON A RIDE WITH HIM TO DADE COUNTY?

>> Appellant: THAT WAS THE STATES THEORY AT TRIAL.

SHE GOT TO DADE COUNTY ONE WAY OR ANOTHER AND I'M HAPPY TO ARGUE THE

STATES THEORY BELOW.

>> Justice: HE MURDERED HER IN DADE COUNTY AND BROUGHT THE BODY BACK AND DUMPED THE BODY IN THE NEIGHBORHOOD WHERE SHE APPARENTLY LIVED?

>> Appellant: WE DON'T KNOW HOW CLOSE SHE LIVED.

>> Justice: IS AN IT YOUR TESTIMONY THAT A HOMELESS PERSON HAUNTED THAT AREA?

>> Appellant: THE FISHERMAN SAID HE HAD SEEN HER AT THE GAS STATION SOMETIME IN MONROE COUNTY, THE TRANSCRIPTS ARE EVERYBODY KNOWS WHERE EVERYTHING IS AND YOU ARE LEFT TO SPECULATE A LITTLE BIT.

BUT AT THE GAS STATION, WHO KNOWS HOW CLOSE THAT WAS.

IT WASN'T THAT FAR AWAY AND HE HAD SEEN HER. HE WAS A HOMELESS PERSON AND HE HAD SEEN HER OUT AT THAT GAS STATION AND I BELIEVE HE SAID DRINKING. WE HAVE NO DESTINATION BUT SOMEWHERE AROUND THERE.

I DON'T THINK THAT HE WAS BRINGING HER BACK TO WHERE HE FOUND HER.

ONE THING IS THE BODY WAS IN DADE COUNTY AT SOME POINT BEFORE THE VAN LEFT.

ALIVE OR DEAD MISS OSBORNE IS IN THAT VAN.

NO ONE WOULD DISPUTE THAT.

THERE'S NO ACCOUNT THAT THE DISPUTES THAT.

SO WE ARE LEFT IF WE ACCEPT THE MEDICAL TESTIMONY AND REJECT THE IDEA THAT SHE WAS KILLED ON THE TRIP DOWN IN A POSSIBLE TIMEFRAME BOTH ON MEDICAL TESTIMONY AND THE TRAVEL AND WAS SOMEHOW COLD A SHORT TIME LATER, IF WE REJECT THAT VERY WE ARE LEFT WITH THE TRIAL THEORY THE THEORY THAT THE STATE ACTUALLY WENT UNDER AND WENT BEFORE THE JURY AND THAT WAS MR. WOLF PICKED HER UP AND OTHERWISE ENCOUNTER HER IN MONROE COUNTY AND THAT HE NECESSARILY MURDERED HER IN MONROE COUNTY BEFORE GOING TO DADE COUNTY.

NOW THAT IS SPECULATION.

WE HAVE NO IDEA WHERE THAT OCCURRED BETWEEN MONROE COUNTY AND DADE COUNTY.

THERE'S NO REASON TO SAY IT'S ONE SIDE OF THE BORDER OR ANOTHER.

I THINK THE STATE WOULD LIKE THIS TO BE STATE SIMMONS A CASE OUT OF THIS COURT I BELIEVE THAT HAS A VERSION OF THE STANDARD HIGHLIGHT BETTER THAN THE STANDARD PRESUMPTION.

THE EVIDENCE SHOWED THAT THE VICTIM IN THAT CASE WAS TESSLER AND WAS SEEN LEANING OUT OF THE CAR IN I FORGET WHICH COUNTY.

LAKE COUNTY SCREAMING FOR HELP AND HER BODY WAS FOUND IN LAKE COUNTY TWO DAYS LATER.

IN THE COURT SAID WELL, THERE'S NO INDICATION WHATSOEVER THAT SHE WAS EVER ANYWHERE ELSE.

BUT THAT'S NOT THIS CASE.

WE KNOW THAT SHE WAS SOMEWHERE ELSE.

WE KNOW THAT SHE WAS IN DADE COUNTY.

THE STATE KNOWS THAT, THE STATE KNOWS THAT HERE IN THE STATE KNEW IT BELOW AND YOU ALL KNOW THAT.

>> Justice: IT SAYS WHILE IT IS POSSIBLE THE MURDER COULD HAVE OCCURRED SOMEWHERE ELSE IT IS REASONABLE TO INFER.

SO I DON'T THINK THAT THIS IS AS FIRM AS YOU ARE SAYING THAT NO ONE SAW HER ANYWHERE ELSE.

IT IS POSSIBLE.

IT SAYS WHILE IT IS POSSIBLE.

>> Appellant: BUT THERE WAS THE EVIDENCE.

WAS IT POSSIBLE?

SURE.

BUT WE DON'T KNOW WHAT HAPPENED IN THREE DAYS.

HERE IT IS POSSIBLE.

WE HAVE AN OPEN QUESTION.

IS IT POSSIBLE IT HAPPENED IN MONROE?

YES.

IS IT POSSIBLE IT HAPPENED IN DADE COUNTY YES.

DO WE HAVE ANYTHING OTHER THAN SPECULATION TO SAY?

>> Justice: IF WE ARE GOING OFF OF SIMMONS WE HAVE TO SAY THE JURY WAS UNREASONABLE, TOO.

IT IS SIMILAR TO THE COMPETENCE OF SUBSTANTIAL EVIDENCE.

>> Appellant: IT WAS UNREASONABLE UNDER THESE FACTS TO CONCLUDE THAT THEY WERE IN ONE PLACE OR ANOTHER.

THERE WAS NO BASIS WHETHER IT IS COMPETENT, SUFFICIENT EVIDENCE WHETHER IT IS A PREPONDERANCE OR A VIOLENT PRESUMPTION THE EVIDENCE HAS TO ESTABLISH THEM IN HERE THE EVIDENCE WAS COMPLETELY OF KNOCK STICK AS TO WHAT HAPPENED.

AND ON MY SENTENCE THERE WAS A REASON TO THINK SHE WAS SOMEWHERE ELSE.

AT SOME POINT THE BORDER WAS CROSSED AND YOU CAN ONLY SPECULATE WELL, HE MUST HAVE MURDERED HER IN MONROE COUNTY.

OR HE MUST HAVE MURDERED HER IN DADE COUNTY OR MURDERED HER UNDER SOUND ROAD AND BEEN IN BOTH.

OR HAD THE OPTION OF BOTH AND SPEAKING OF THE OPTION OF BOTH, THE STATE AND THIS ISN'T A SITUATION WHERE IT'S UNFAIR TO THE STATE WERE THEN YOU CANNOT BE DETERMINED WHERE THE STATE HAS UNDER THE CONSTITUTION THE RIGHT TO CHARGE IT DISJUNCTIVELY.

THEY CAN SAY YOU WERE IN DADE OR MONROE WHEN THIS HAPPENS AND THAT WOULD BE SUFFICIENT BUT THAT GIVES THE DEFENDANT ALSO THE CONSTITUTIONAL RIGHT TO PICK WHICH OF THOSE JURISDICTIONS AND IT IS CLEAR THAT THE STATE DID NOT WANT THAT.

THE STATE DID NOT WANT THIS BEING TRIED IN DADE COUNTY.

THE STATE WANTED IT CHARGED IN MONROE COUNTY.

THOSE OF US WHO SPENT SOME TIME THERE ALL KNOW THAT MONROE COUNTY IS THE LONGEST SMALL TOWN IN AMERICA.  
AS THEY SAY PEOPLE ALL KNOW THE LANDMARKS AND IT'S HARD TO TALK ABOUT WHAT THEY ARE DISCUSSING FROM IN A TRANSCRIPT.  
I WOULDN'T WANT TO TRY A MURDER LIKE THIS IN A SMALL TOWN.  
I WANT TO TRY IT IN A BIG CITY.  
AND YOU CAN BET BASED ON WHAT WE SEE THEM BASED ON THE STRANGE DECISION TO NOT CHARGE IT DISJUNCTIVELY THE STATE DESPERATELY WANTED TO TRY IT IN MONROE.  
CAN I JUST POINT OUT THAT SOME OF THE ARGUMENTS, THE STATE ARGUED THAT SHE WAS DEAD AT 5 AM HOURS AND HOURS BEFORE SHE WAS DEAD NEAR LONG KEY.  
AND THEY SAID THERE IS NO EVIDENCE TO SAY IT TO THE CONTRARY.  
THAT IS NOT THE TEST.  
THEY HAVE TO SAVE SOME EVIDENCE GOING ONE WAY OR ANOTHER.  
MAYBE I WILL ADDRESS KENNY NEXT.  
THE STATE STRUCK JUROR KENNY BECAUSE SHE WAS A JUROR WHO HAD PROBLEMS WITH THE DEATH PENALTY.  
BUT SHE SAID SHE WAS OPEN TO IT.  
THE JUDGE CONCLUDED; I THINK SHE HAD AN ABSOLUTE PREJUDICE AGAINST THE DEATH PENALTY.  
THIS IS HOW THE JUDGE DESCRIBED WHAT THE DUTY OF THE JUROR WAS.  
THAT JURORS NEED TO BE OPEN TO BOTH SIDES IF YOU ARE GOING TO BE ON THE JURY AND REPEATEDLY WHAT JUROR KENNY SAID IS I CAN LISTEN TO BOTH SIDES.  
SHE SAID THAT SHE WAS OPEN TO BOTH SIDES SIX TIMES.  
EXCUSE ME ON PAGE 249 SHE SAID SHE OPPOSED THE DEATH PENALTY BUT I AM OPEN.  
SAME PAGE.  
SHE SAID SHE WOULD LISTEN TO BOTH SIDES.  
SHE WASN'T SAYING SHE COULDN'T IMPOSE IT AND WOULD LISTEN TO BOTH SIDES.  
SHE WAS ASKED IF SHE WAS RELUCTANT AND SHE SAID SHE WOULD LISTEN TO THE EVIDENCE BUT NOT AN EYE FOR AN EYE.  
AND ON 261 SHE SAID I WANT TO HEAR FROM BOTH SIDES.  
AND ASKED AGAIN ABOUT WHETHER SHE COULD IMPOSE THE DEATH GUILTY SHE SAID I HAVE SEEN SOME CASES WHERE I THOUGHT IT MADE SENSE AND I ASKED AGAIN IF SHE COULD CONSIDER THE DEATH PENALTY AS AN APPROPRIATE PENALTY AND SHE SAID YES.  
AND AGAIN, THE LAST THING SHE SAID WHEN ASKED ABOUT THIS IS I COULD CONSIDER.  
NOW THE CONSTITUTION SAYS YOU CAN'T EXCLUDE SOMEBODY JUST BECAUSE THEY DON'T THE DEATH PENALTY.  
BECAUSE THAT GIVES YOU A VERY SKEWED PANEL.  
AND LOTS OF PEOPLE THINK THAT THE DEATH PENALTY IS A BAD IDEA AND SOME

PEOPLE THINK THAT IT IS CONTRARY TO THEIR MORALS.

THIS IS SOMEONE WHO THOUGHT IT WAS A BAD IDEA BECAUSE THERE WAS RISK AND BECAUSE THERE WAS EXPENSE.

I BELIEVE MAYBE YOU KNOW IT BETTER THERE ARE PLENTY OF JUDGES IN THIS STATE WHO FEEL PRETTY MUCH THE SAME WAY BUT ARE WILLING AND ABLE IN AN APPROPRIATE CASE TO ISSUE A DEATH SENTENCE.

THE STATE SAID WELL, THE STATE SEEMS TO PLACE SOME VALUE ON THE FACT THAT SHE WAS SAYING THAT IT WAS BASED ON THINGS THAT SHE HAD SEEN AND HEARD AND HAD CONCERN FOR HER EXPENSE.

BUT I DON'T SEE HOW IT IS HARDER TO SET ASIDE THOSE THINGS BASED ON WHAT YOU HAVE HEARD THEN YOUR RELIGIOUS OR MORAL VALUES.

AND THEY SAY IF THEY ARE ABLE TO SET ASIDE RELIGIOUS CONCERNS THEY CAN SERVE.

AND THIS COURT HAS SAID THAT JURORS WHO SAY THINGS LIKE CHANDLER MIGHT GO TOWARDS LIFE OR LEAN TOWARDS LIFE AND FARINA I HAVE MIXED FEELINGS I TRIED TO GIVE THE STATE A FAIR CHANCE AND AT THE GUILD STATED SHE WOULD TRY TO DO WHAT'S RIGHT.

>> Justice: IN THIS WHOLE EXTENDED DISCUSSION WITH THIS PROSPECTIVE JUROR, THERE IS A EQUIVOCATION AFTER EQUIVOCATION EXPRESSION OF RELUCTANCE AFTER EXPRESSION OF RELUCTANCE.

THERE IS A THEME GOING THROUGH IT.

SHE WILL SAY OF COURSE I HAVE AN OPEN MIND AND THINGS LIKE THAT BUT IT IS ACCOMPANIED BY ALL OF THESE SORT OF REPEATED EXPRESSIONS THAT COULD BE CHARACTERIZED AS RELUCTANT.

AND UNCERTAINTY AND DOUBT ABOUT THE DEATH PENALTY.

THAT YOU KNOW, WE'VE GOT TO DECIDE THAT THE JUDGE USED HIS DISCRETION HERE AND NORMALLY IS A CREDIBILITY HE'S GOT TO DECIDE THE ISSUE BASED ON HIS JUDGMENT ABOUT WHAT SHE IS SAYING AND THIS IS NOT ONE WHERE THERE IS NOTHING -IT'S HARD FOR ME TO SEE THAT THERE'S NOTHING HERE THAT SUPPORTS WHAT THE JUDGE DECIDED.

I UNDERSTAND YOU ARE FOCUSING ON THINGS THAT MIGHT POINT THEM THE OTHER WAY BUT IF YOU LOOK AT THE WHOLE CONTEXT IT SEEMS LIKE THERE'S QUITE A BIT THERE THAT THE JUDGE CAN BE USED TO SUPPORT THE JUDGE'S EXERCISE OF DISCRETION.

>> Appellant: I THINK THERE'S TWO POINTS THERE THAT I WOULD LIKE TO ADDRESS ONE IS THE ABUSE OF DISCRETION AND I KNOW THE STANDARD I AM UP AGAINST. BUT THE CONCLUSION THAT SHE HAD AN ABSOLUTE PREJUDICE AGAINST THE DEATH PENALTY THAT IS THE BASIS THAT SHE WAS STRUCK ON AND THAT IS WHAT IS NOT SUPPORTED ON THE RECORD.

TAKE ME TO QUESTION NUMBER 2. SHE JUST EQUIVOCATING?

NO, SHE WAS EXPRESSING THAT BEING HONEST WITH THE COURT, THEY WANT TO KNOW WHAT HER OPINIONS ON THE DEATH PENALTY ARE AND SHE GAVE THEM TO THEM BUT ASKED AGAIN AND AGAIN COULD YOU DO IT SHE SAID YES.

AND IN MANY CASES YOU HAVE A JUROR IN ALL.

>> Justice: THE STATE ASKED HER STATE SAYS THE CONCERN I HAVE IS WHETHER YOU HAVE AN INTEREST IN THIS AREA HAVING LISTEN TO PODCASTS AND OTHER PEOPLE'S OPINION.

SHE TALKED ABOUT AT ALL REPORTS OF THESE AND AS YOU SAY BOTCHED EXECUTIONS TAKING PLACE AND WHETHER THAT WOULD CAUSE YOU TO BE RELUCTANT TO IMPOSE THE DEATH PENALTY IF YOU OTHERWISE TILT IT WAS APPROPRIATE BASED ON THE EVIDENCE AND INSTRUCTIONS BUT THE JUDGE GAVE YOU.

SHE THEN SAYS I WOULD LISTEN TO THE EVIDENCE.

I CAN'T TELL YOU FOR SURE.

BUT I AM NOT THE TYPE OF PERSON WOULD SAY AN EYE FOR AN EYE OR A TOOTH FOR A TOOTH.

I JUST, WHAT YOU SAY ABOUT THAT?

>> Appellant: THE QUESTION THAT WE ARE ASKING IS CAN I TELL YOU FOR SURE THAT I AM GOING TO GIVE YOU A DEATH VERDICT AND SHE CAN'T.

SHE SAYS I WOULD HAVE TO LISTEN TO THE TESTIMONY.

>> Justice: THAT IS NOT THE QUESTION.

I READ YOU THE QUESTION.

YOU ARE SAYING HE WAS ASKING HER CAN YOU BE SURE YOU WOULD GIVE A DEATH VERDICT?

COUNSEL?

DID YOU HEAR WHAT I READ?

DO YOU THINK I AM MISREPRESENTING WHAT HE SAID?

>> Justice: I DON'T SEE HOW YOUR CHARACTERIZATION OF THAT VERSE IS THE TEXT OF WHAT I READ FROM THE TRANSCRIPT.

>> Appellant: WE DISAGREE.

>> Justice: OH, WE DO.

YOU SHOULD READ IN THE TEXT IN THE TRANSCRIPT FOR ME THE TEXT THAT SUPPORTS YOUR CHARACTERIZATION OF THE QUESTION.

>> Appellant: I DON'T HAVE THAT TRANSCRIPT IN FRONT OF ME.

>> Justice: WE WILL MOVE ON.

>> Appellant: AT THE END OF THE DAY SHE DID LISTEN IN AND SEE IF SHE COULD GIVE A VERDICT.

IF YOU LOOK AT BRIAN'S WHAT YOU NEED IN MOST COURT CASES YOU CAN SAY I WILL FOLLOW THE LAW AND I WILL WAY.

AND OF COURSE IF YOU LOOK AT DIVINE E WE HAVE SOMEONE WHO SAID AUTOMATICALLY THE DEATH PENALTY AND THEN WAS BROUGHT BACK TO SAY I WILL OF COURSE FOLLOW THE LAW BUT THEN SAID WELL IN THE CASE OF PREMEDITATION IT IS DEATH.

AUTOMATICALLY.

I KNOW THAT THAT WAS A PLURALITY OPINION AND I THINK I HAVE THE TWO SIDES OF THE PLURALITY AND THAT IS AN INDICATION OF WHAT THE COURT IS PREPARED TO

ACCEPT.

>> Justice: COUNSEL COULD I ASK THAT YOU MOVE THE ADJUSTMENT FOR THE HAC AGGRAVATE HER?

>> Appellant: AS IS BEFORE THE JURY?

>> Justice: YES.

>> Appellant: THE PROOF WAS INSUFFICIENT FOR THIS REASON. THE TEXT IS THAT SHE WOULD HAVE BEEN UNCONSCIOUS WHEN THESE TERRIBLE THINGS WERE DONE TO HER.

>> Justice: IT SEEMS LIKE YOU WENT BACK AND FORTH.

>> Appellant: I DID IN TERMS OF WHAT HE SAID IN VALL DEAR.

MY CONTENTION IS THAT WHAT HE SAID I CANNOT SAY TO A MEDICAL CERTAINTY IF SHE WAS CONSCIOUS OR NOT.

AND HE DID GO A LITTLE FURTHER AFTER THE VOLUNTEER AND SAID SHE WOULD HAVE BEEN CONSCIOUS FOR SOME PART OF THE EXPERIENCE.

I DON'T KNOW WHAT THAT MEANS AND NEITHER DOES THE COURT WHAT HE MEANS BY EXPERIENCE.

WE CERTAINLY DON'T KNOW SOME PART IS.

IF I HAVE ANSWERED THE COURTS QUESTION I THINK I AM WELL INTO MY REBUTTAL.

>> Justice: THANK YOU.

>> Appellee: MAY IT PLEASE THE COURT, MICHAEL MERVINE ON BEHALF OF THE STATE OF FLORIDA. I WILL BEGIN WITH VENUE THE STATE PRESENTED EVIDENCE IN WHICH A JURY CAN REASONABLY CONFER THAT THIS CRIME OCCURRED IN MONROE COUNTY.

AND AS TO REPEAT THE COUNSEL FOR APPELLANT, THE VICTIM'S BODY WAS FOUND IN MONROE COUNTY AND SHE WAS A RESIDENT OF MONROE COUNTY.

THE DEFENDANT WAS A RESIDENT OF MONROE COUNTY.

HE DUMPED PROPERTY IN MONROE COUNTY AND HE WASHED HIS HANDS IN MONROE COUNTY.

THERE IS NO EVIDENCE THAT SHE WAS EVER IN MIAMI-DADE COUNTY.

FURTHER, THE DEFENDANT STATED THAT SHE DIED IN EAST LA MIRADA MONROE COUNTY.

ALTHOUGH MANY PORTIONS OF HIS STATEMENT THE STATE WILL ADMIT IS NOT CREDIBLE MAYBE ALL OF IT BUT THE PRIOR CAN LOOK AT TESTIMONY AND SAY I BELIEVE ALL OF THIS WITNESS'S TESTIMONY, NONE OF THIS WITNESS'S TESTIMONY OR A PORTION OF IT.

AND FOR PURPOSES OF SUFFICIENCY OF EVIDENCE AND FINDINGS THERE IS IN FACT SUFFICIENT EVIDENCE TO ESTABLISH.

>> Justice: TYPICALLY IT IS ESTABLISHED BY THE PROSECUTOR ASKING A WITNESS ON THE STAND DID THIS HAPPEN IN MONROE COUNTY, FLORIDA AND THE ANSWER IS YES.

BUT HOW IS VENUE PRESENTED IN THIS CASE TO THE JURY?

>> Appellee: THE PARTIES TO BE ELATED THAT THE BODY WAS FOUND IN MONROE COUNTY AND ALL OF THE OTHER EVIDENCE.

AN OFFICER WAS NOT ASKED EXCLUSIVELY.

>> Justice: RIGHT YOU DID NOT HAVE THAT DIRECT.

ALL YOU HAVE IS A STIPULATION THAT A DEAD BODY WAS IN MONROE COUNTY.  
SO AS FAR AS WHERE THE ACTUAL MURDER TOOK PLACE YOU HAVE TO CONNECT  
SOME DOTS?

>> Appellee: YES CORRECT.

AND ON APPELLATE REVIEW WE TAKE ALL THE EVIDENCE AND INFERENCES ON  
SUPPORT OF THE JUDGMENT.

THE REASONABLE INFERENCES IN THIS CASE I WOULD SUBMIT SUPPORT THE  
CONCLUSION THAT THIS CRIME OCCURRED IN MONROE COUNTY.

AS TO THE CHALLENGE TO THE PERSON MISS KIM, THERE'S A REASONABLE DOUBT  
WHETHER SHE CAN BE A FAIR AND IMPARTIAL JURY IN THIS CASE.

THE JUDGE ASKED THE PANEL AS A WHOLE DO ANY OF YOU FEEL YOU DO NOT HAVE  
THE CORRECT CHARACTERISTICS OF DEATH QUALIFIED JUROR AND HE DEFINES  
INFORMALLY WHAT THAT WAS.

SHE RAISED HER HAND AND SHE SAID YES.

THERE WAS LATER QUESTIONING OF HER AND I THINK HER RESPONSE WAS NEVER  
SAY NEVER.

IT WAS FAR FROM A DEFINITIVE YES.

SHE VACILLATED.

SHE WENT BACK AND FORTH.

SHE DID EXPRESS THAT IN THIS CASE I WOULD BE CONCERNED IF HE WERE  
SENTENCED TO DEATH.

THAT SENTENCE OR THE EXECUTION MIGHT BE BOTCHED.

SO THAT VACILLATION ALONE WAS SUFFICIENT TO RAISE A REASONABLE DOUBT AND  
THERE WAS NO DISCRETION IN THE REQUIREMENT.

AND FINALLY AS TO THE SUFFICIENCY OF THE EVIDENCE FOR THE HCE AGGRAVATE  
HER THERE WAS EVIDENCE THAT THE VICTIM WAS CONSCIOUS AND AWARE OF AT  
LEAST PORTIONS OF THIS CRIME.

SHE HAD MARKS ON HER NECK WHICH WERE CONSISTENT WITH BEING CHOKED  
WITH A LIGATURE.

THE MEDICAL EXAMINER TESTIFIED THAT SHE WOULD HAVE AT LEAST TAKEN 45  
SECONDS TO LOSE CONSCIOUSNESS AFTER THAT BEGAN.

THIS COURT HAS STATED THAT THE STRANGULATION OF A CONSCIOUS VICTIM IS  
SUFFICIENT IN SOME CASES TO SUPPORT THAT AGGRAVATE HER.

ALSO -

>> Justice: COUNSEL CAN I ASK YOU IS THERE ANYTHING ELSE IN THE EVIDENCE THAT  
POINTS TO THE REASON THAT SHE WOULD HAVE LOST CONSCIOUSNESS?  
HAS THAT DEVELOPED?

>> Appellee: I DON'T THINK IT WAS.

SHE DID SUFFER CATASTROPHIC LEADING THAT I DON'T KNOW IF THERE WAS A  
CONNECTION BETWEEN THAT AND LOSS OF CONSCIOUSNESS.

>> Justice: THERE IS NO EVIDENCE THAT SHE WAS HIT ON THE HEAD OR EVIDENCE

THAT WOULD HAVE RENDERED HER UNCONSCIOUS BEFORE SHE WAS STRANGLERED OR BEFORE THE DEVASTATING INJURIES WERE INFLICTED ON HER BY THE DEFENDANT.

>> Appellee: NO YOUR HONOR.

IN ADDITION THE MEDICAL EXAMINER RESPONDED THAT SHE HAD ABRASIONS ON HER WRIST AS WELL AS LACERATIONS AND HEMORRHAGES TO HER MOUTH. BOTH OF WHICH WERE STRUCK SILLY SIGNS OF A STRUGGLE SO THERE WAS EVIDENCE THAT THERE WAS A STRUGGLE AND THE MEDICAL EXAMINER TESTIFIED THAT THESE INJURIES TOOK PLACE OR WERE INFLICTED WITHIN A CLOSE PROXIMITY OF ONE ANOTHER.

SO BASED UPON THAT EVIDENCE THE STATE SUBMITS THAT THERE WAS COMPETENT SUBSTANTIAL EVIDENCE THAT THE AGGRAVATE HER WAS PRESENT.

IF THE COURT HAS NO FURTHER QUESTIONS WE WOULD ASK THAT A FIRM THE JUDGMENT AND SENTENCE.

>> Justice: CAN WE CIRCLE BACK ON THE VENUE?

I THINK THE COUNCIL SAID THAT THE STATE'S THEORY IS THAT SHE WAS IN DADE AND THEN CAME BACK AT SOME POINT AND YOU SAID THERE WAS NO EVIDENCE THAT SHE WAS IN DADE CAN YOU CLARIFY THAT?

>> Appellee: THERE WAS NO EVIDENCE THAT SHE WAS IN DADE COUNTY.

THE STATE DID MAKE EVIDENCE THAT THEY WERE ATTEMPTING TO EXPLAIN A CONCLUSION THAT RIGOR MORTIS WAS SET AT 5 PM.

HOWEVER, THE EVIDENCE WAS FAR LESS STRONG AND FAR LESS CLEAR AS TO WHEN THE BODY WAS FOUND, WHEN RIGOR MORTIS HAD SET IN.

FOR EXAMPLE THE RESPONDING OFFICER STATED THAT HE NOTICED LIBERTY BEGINNING TO BE OBSERVED IN HER BREAST AND THAT WAS SOMETIME AFTER 2 PM HERE THE MEDICAL EXAMINER TESTIFIED THAT THE AMOUNT OF TIME IT TAKES FOR LIVIDITY TO OCCUR VARIES WITH EACH PERSON AND THAT IS DEPENDENT UPON THE AMOUNT OF LIQUID WITHIN THEIR BODY.

THERE WAS NO REAL TESTIMONY AS TO WHEN HER BODY WAS MOVED AND OF COURSE WE ARE LOOKING AT THE EVIDENCE FOR COMPETENCY SUBSTANTIAL EVIDENCE AND NOT NECESSARILY THE STATE ARGUMENT.

>> Justice: THANKS.

>> Appellee: THANKS VERY MUCH.

>> Appellant: I WANT TO ADDRESS SOME FACTUAL QUESTIONS THAT HAVE COME UP DURING THE STATE'S ARGUMENT.

THE STATE SAYS MS. OSBORNE WAS A RESIDENT OF MONROE COUNTY AND THAT IS FAR FROM CLEAR AT THE TIME.

SHE WAS HOMELESS IN MONROE COUNTY AND HOMELESSNESS IS A SAD CONDITION AND MANY PEOPLE ARE ITINERANT IN THOSE CIRCUMSTANCES BUT I ACCEPT THAT SHE WAS STAYING IN MONROE COUNTY DURING THAT TIME.

THAT RESIDENCY DOES NOT ESTABLISH WHERE THE CRIME IS.

IT MIGHT HELP SUGGEST THE THEORY THAT THE STATE ARGUED BELOW THAT MR. WOLF PICKED HER UP AND AT SOME POINT ALONG THE WAY DECIDED TO KILL HER

BUT WE DON'T KNOW WHERE ALONG THE WAY.

RESIDENT HE DOESN'T SPEAK TO THAT AT ALL.

THE STATE SAYS THERE'S ABSOLUTELY NO EVIDENCE THAT SHE WAS IN DADE COUNTY WILL UNDER THAT THEORY THE STATE IS SAYING SHE WASN'T IN THE VAN WHEN IT LEFT FLORIDA CITY VERY MUCH CONTRARY TO THE POSITION AT TRIAL. HE PICKED HER UP IN THE ONE HOUR OR 2 HOURS OR ONE HOUR 50 MINUTES AND THEN COMMITTED THESE CRIMES.

AND THEN WENT TO.

[INDISCERNIBLE] BUT THE STATE SAID THAT IS WHERE THE BODY WAS FOUND BUT IT IS JUST LIKE RESIDENCY.

THE WHOLE QUESTION WE HAVE IS WHAT IS THE VENUE FOR THE CRIME AND NOT WHERE MS. OSBORNE'S BODY WAS FOUND.

THE STATE ALSO POINTS TO THE RIGOR MORTIS QUESTION SAYING WELL, THE POLICE TESTIMONY IS CONTRARY BUT IT IS NOT.

THERE WAS TESTIMONY AS THE STATE THAT THERE WAS SIGNS OF RIGOR AT THE BEGINNING.

AND THAT IS WHAT THE DOCTOR SAID HAPPEN.

HE SAID IT CAN START ALMOST IMMEDIATELY.

RIGOR MORTIS IS THE SETTLING OF THE BLOOD WITHIN THE BODY AFTER SOMEBODY DIES.

BUT IT DOES NOT SET UNTIL MUCH LATER.

IT SETS BEYOND 6 HOURS CLOSER TO THE 12 HOURS.

AND IT IS BASED ON THE TESTIMONY WHICH WAS NOT UNDERCUT BY THE POLICE OFFICERS TESTIMONY THAT WE KNOW SHE MUST HAVE DIED LONG BEFORE THE VAN ENTERED MONROE COUNTY.

IN WORKING ON THE PRINCIPLE THAT YOU DON'T HAVE TO KEEP TALKING IF YOU HAVE NOTHING ELSE TO SAY I WILL ASK THE COURT TO REVERSE AND DEMAND FOR A NEW TRIAL IN A PROPER VENUE OR IN THE ALTERNATIVE A NEW PENALTY PHASE.

>> THANK YOU.