

MICHAEL H. HUNT V. STATE OF FLORIDA

>> Marshal: ALL RISE THE FLORIDA SUPREME COURT IS NOW IN SESSION PLEASE BE SEATED.

>> Chief Justice Carlos Muniz: OUR NEXT CASE IS HUNT V.STATE OF FLORIDA CASE NO. 2024-0096.

>> Barbara J. Busharis,Appellant: I'D LIKE TO RESERVE FIVE MINUTES OF MY TIME. THANK YOU YOUR HONORS THIS CASE DOES PRESENT SOME CONSTITUTIONAL ISSUES ABOUT THE CURRENT SENTENCING LAW. I WOULD LIKE TO BEGIN BRIEFLY WITH THE ISSUE OF THE INEXTRICABLY INTERTWINED EVIDENCE SO-CALLED OR EVIDENCE OF MOTIVE THAT WAS PRESENTED AT MR HUNT'S TRIAL. THAT EXCEEDED THE SCOPE OF RELEVANCY AND CREATED UNDUE PREJUDICE BECAUSE HE CHALLENGES HIS CONVICTION ON THAT BASIS. NOT JUST HIS SENTENCE.

THE EVIDENCE IN QUESTION WAS FIRST PUT AT ISSUE BY A NOTICE OF SIMILAR FACT EVIDENCE THAT THE STATE FAILED.

REFERRING TO ACTIONS ALLEGED ACTIONS BEGINNING IN EARLY 2018 AND CONTINUING UP THROUGH THE DATE OF THE CHARGED OFFENSE.

THE STATE SAID THAT THEY WILL WORK NECESSARY TO EXPLAIN THE CONTEXT OF THE CRIME. THE STATE BASICALLY AGREED AND THE DEFENSE AGREED AT THE TRIAL HEARING THAT ALTHOUGH IT FILED A NOTICE OF SIMILAR FACT EVIDENCE THE ACTS WERE NOT SIMILAR FACTS BUT THEY WERE INEXTRICABLY INTERTWINED EVIDENCE. THE PROBLEM WITH THAT IS INEXTRICABLY INTERTWINED EVIDENCE IS EVIDENCE THAT IS IN A SORRY TO EXPLAIN THE CRIME IT IS NOT JUST EVIDENCE THAT IS BACKGROUND DESCRIPTION OF THE RELATIONSHIP BETWEEN THE PARTIES AND THEY CAN EXCEED THE SCOPE OF RELEVANCY WHEN IT GOES TOO FAR AFIELD OF WHAT IS NECESSARY TO EXPLAIN THE CRIME.

>> Justice: DOESN'T IT NOT GO SQUARELY TO MOTIVE.

>> Barbara J. Busharis,Appellant: ABSOLUTELY YOUR HONOR THE EVIDENCE WAS PROPERLY ADMITTED TO MOTIVE.

THAT WAS EVIDENCE THAT MR HUNT WAS IN COURT THAT HE WAS TOLD THAT THERE MIGHT BE AN ACTIVE WARRANT AGAINST THEM I BELIEVE IT IS IN THE RECORD IF THE WORK WAS DESCRIBED AS ONE INVOLVING AN ALLEGED SEXUAL BATTERY OF A MINOR. AND HE LEFT COURT THE STATE'S ENTIRE THEORY OF MOTIVE WAS BASED ON HIS KNOWLEDGE OF THAT WARRANT. THE FACTS RELATING TO THAT WORK NECESSARY TO EXPLAIN MOTIVE. WHAT WAS NOT NECESSARY WAS OVER A YEAR OF DESCRIPTION OF OTHER ACTIVITIES.

>> Justice: HAS DOUBLE-CLICK ON THE WORD NECESSARY I THINK YOUR USING THE WORD NECESSARY TO MEAN INDISPENSABLE WHICH IS ONE MEANING OF THE WORD. AND IF THE CONTEXT OF DETERMINING WHETHER OR NOT EVIDENCE IS RELEVANT THERE IS A DIFFERENT MEANING OF THE WORD NECESSARY THAT WE GENERALLY APPLY WHICH IS THAT IT TENDS TO MAKE IF FACT ISSUE MORE OR LESS TRUE IT IS NECESSARY TO PROVE IT IN THE SENSE IT IS USEFUL TO PREVENT IT IS

SUPPORTIVE OF IT. CAN YOU DIRECT US TO CASE WHERE WE HAVE SAID THAT NECESSARY MEANS WHAT YOU SAY RATHER THAN WHAT I AM DESCRIBING.

>> Barbara J. Busharis, Appellant: I CANNOT THINK OF THAT EXACT PHRASING AT THE MOMENT YOUR HONOR.

ONE OF THE CASES THAT WE CITED WHICH WAS WRIGHT TALKS ABOUT THE NECESSITY OF A SIGNIFICANT LINK IN TIME AND CIRCUMSTANCE AND THAT IS ONE OF THE WAYS THAT THIS COURT AND THE LOWER COURTS HAVE DRAWN A LINE AROUND WHAT IS ACTUALLY NECESSARY TO DESCRIBE A CHARGED OFFENSE VERSUS WHAT IS SIMPLY EVIDENCE THAT DESCRIBES OTHER ALLEGED BAD ACTS OF THE DEFENDANTS PUTS THE DEFENDANT IN A BAD LIGHT. HERE THERE WAS NO SIGNIFICANT LINK IN TIME AND CIRCUMSTANCES BETWEEN ALL OF THE ALLEGED DESCRIPTIONS OF THE TRAFFICKING PROSTITUTION AND THE WARRANT FOR WHICH THAT ALLEGEDLY SUPPLIED THE MOTIVE FOR THE CHARGED OFFENSE.

>> Justice: YOU ARE ARGUING ESSENTIALLY IT WENT FAR.

>> Barbara J. Busharis, Appellant: YES, THE DEFENSE AGREED AT TRIAL AND I'M NOT ARGUING THAT THERE WAS NO RELEVANCE TO THE FACT THAT PO MADE ALLEGATIONS AGAINST MR HUNT.

THAT WENT TO THE STATES THREE OF MOTIVES. BUT GOING INTO HIS RELATIONSHIP WITH HER HIS RELATIONSHIP WITH MS. WEST. HIS ALLEGED BATTERY ON BATTERIES ON MIDWEST INVOLVEMENT IN PROSTITUTION, TRAVELING BACK AND FORTH TO MISSISSIPPI AND NEW ORLEANS FROM FLORIDA, ALL OF THAT WAS EVIDENCE THAT WAS NOT NECESSARY OR LINKED TO THE STATES OF THEORY OF MOTIVE. BUT WHAT IT DID DO WAS IT SUCCEEDED IN PORTRAYING MR HUNT AS SOMEBODY WHO WAS ENGAGED IN A VARIETY OF CRIMINAL ACTIVITIES FOR WHICH HE WAS NOT CHARGED IN THIS CASE.

>> Justice: IN CONTEXT WHAT DO WE MAKE OF THE FACT IT WAS 6/29 WITNESSES THAT MENTIONED IT IT IS MENTIONED BRIEFLY IN THE OPENING AND CLOSING ARGUMENT BRIEFLY IN CONTEXT IN TERMS OF REVERSIBLE ERROR HOW SHOULD WE THINK ABOUT THOSE FACTS.

>> Barbara J. Busharis, Appellant: THE FACT THAT IT WAS MENTIONED THAT FREQUENTLY YOUR HONOR IT WAS MENTIONED AND THE SIGNIFICANT WITNESSES IN THE CASE TALKED ABOUT THAT.

YOU HAD PO, HER BOYFRIEND GABRIEL WHITE.

MS. WEST, ALL WERE QUESTIONED ABOUT THESE BACK-AND-FORTH MOVEMENTS BETWEEN MISSISSIPPI AND NEW ORLEANS.

IT IS NOT ENOUGH TO SAY IT WAS ONLY THIS NUMBER OF WITNESSES BECAUSE SOME OF THE WITNESSES WERE JUST INVESTIGATIVE WITNESSES WOULD NOT HAVE SAID ANYTHING ABOUT THAT PERIOD OF TIME THERE WERE PEOPLE WHO TESTIFIED ABOUT THEIR INVESTIGATION OF THE SHOOTING. ONE OF THE MAIN CHARACTERS IN IT THE STORY THEY ALL TESTIFIED ABOUT THAT PERIOD OF TIME.

I WOULD SAY BASED ON THAT THE EVIDENCE BECAME A FEATURE OF THE STATES CASE. THE EVIDENCE OF THE AGAIN THE TRAVELING BACK AND FORTH TO MISSISSIPPI AND NEW ORLEANS THE TRAFFICKING THE ALLEGED TRAFFICKING OF

PO. AND THE OTHER ACTS ON MISS WEST.

THEY EXCEEDED WHAT WAS RELEVANT TO PROVE THE CHARGED OFFENSE.

SO CREATED REVERSIBLE ERROR.

IF THERE ARE NO FURTHER QUESTIONS ON THAT WOULD LIKE TO MOVE ON TO THE EX POST FACTO.

AND TALK ABOUT WHY APPLYING THE 8-4 AMENDMENTS CREATES AN EX POST FACTO VIOLATION.

UNITED STATES SUPREME COURT CASE LAW GOING ALL THE WAY BACK TO COLDER OF COURSE BUT THEN INCLUDING CASES LIKE DABBER, WEAVER, COLLINS ALL OF THEM MAKE CLEAR IF A LAW SUBJECTS A DEFENDANT TO MORE PUNISHMENT THEN HE WOULD'VE BEEN SUBJECTED TO WHEN HE COMMITTED HIS OFFENSE THAT CREATES AN EX POST FACTO VIOLATION.

>> Justice: CAN YOU EXPLAIN HOW YOU SEE THIS AS PUNISHMENT V. A PROCEDURE TO ENFORCE A PUNISHMENT.

>> Barbara J. Busharis, Appellant: BECAUSE MR HUNT WAS CONVICTED WAS A SENTENCE BASED ON A 10/2 RECOMMENDATION THE JURY DID NOT VOTE UNANIMOUSLY. FOR THE DEATH PENALTY.

UNDER THE PREVIOUS ITERATION OF THE STATUTE THAT WAS IN EFFECT FROM I BELIEVE 2016-2023 HE WOULD'VE BEEN ENTITLED TO A UNANIMOUS DETERMINATION OR RECOMMENDATION AND HE WOULD NOT HAVE BEEN SENTENCED TO DEATH THE COURT WOULD NOT HAVE HAD THAT LIBERTY. IN THAT EFFECT SINCE IT IS ANALOGOUS TO WHAT WE SEE IN SOME OF THE OTHER EX POST FACTO CASES INVOLVING SENTENCES WHERE YOU HAVE A RANGE AND THAT RANGE IS CHANGED BY CHANGES IN THE SENTENCING GUIDELINES.

THE FACT THAT THE ULTIMATE OR MAXIMUM PUNISHMENT FOR A PARTICULAR CRIME HAS NOT CHANGED IS NOT DETERMINATIVE OF WHETHER THERE IS EX POST FACTO VIOLATION WHAT DETERMINES THAT IS WHETHER THIS DEFENDANT OR A DEFENDANT CAN SAY THAT HE AND THOSE SIMILARLY SITUATED ARE BEING PUNISHED MORE HARSHLY. THEN THEY WOULD HAVE IF THE LAW HAD NOT CHANGED.

THERE IS SIMPLY NO QUESTION THAT AN 8/4 VOTE RESULT IN MORE SENTENCES OF DEATH MORE RECOGNITIONS OF DEATH THAN A UNANIMOUS VOTE THAT IS WHY THE LEGISLATURE CHANGED THE LAW BECAUSE THE LEGISLATURE WAS UNHAPPY WITH THE RESULT OF A CASE WHERE NOT ENOUGH PEOPLE VOTED FOR DEATH. THE LEGISLATURE ELIMINATED THE POSSIBILITY THAT ONE TO OR EVEN 4 JURORS ON A CAREFULLY SELECTED DEATH QUALIFIED JURY CAN BASICALLY PREVENT DEATH FROM BEING THE RECOMMENDATION BY DISAGREEING THAT THAT WAS A PROPER PUNISHMENT.

IT IS NOT A QUESTION I KNOW THERE ARE SOME CASES THAT TALK ABOUT USE LANGUAGE LIKE THERE IS NO EX POST FACTO VIOLATION BECAUSE THIS DID NOT CHANGE THE QUANTUM OF PUNISHMENT ATTACHED TO THIS OFFENSE. IF YOU JUST STOP WITH THAT FORMULATION THEN NO CAPITAL CASE WHATEVER INVOLVED IN EX POST FACTO VIOLATION BECAUSE DEATH IS DEATH WE CANNOT RAISE THAT

QUANTUM OF PUNISHMENT. IF THAT IS YOUR STANDARD THERE WILL NEVER BE AN EX POST FACTO VIOLATION IN A CAPITAL CASE.

>> Justice: WHERE DO STOP THE RULE ON THE OPPOSITE AND I THINK YOU ARGUED THAT BECAUSE OF THIS PROCEDURAL CHANGE THERE WILL BE MORE SENTENCES IMPOSED I CAN SEE THAT SAME ARGUMENT PRESENTED IN A HEARSAY EXCEPTION FOR A CHILD VICTIM OR SOMETHING.

WHERE IS THE LINE BETWEEN TYPICALLY THE PROCEDURAL IS NOT EX POST FACTO IN THE QUANTUM OF PUNISHMENT IS EX POST FACTO.

>> Barbara J. Busharis,Appellant: THE DIFFERENCE THERE YOUR HONOR IS THAT A CHANGE IN A HEARSAY EXCEPTION WOULD STILL BE APPLIED IN THE CONTEXT OF AN ENTIRE TRIAL WHERE PRESUMABLY RULES OF EVIDENCE WOULD STILL APPLY THERE WOULD STILL BE SAFEGUARDS IN PLACE LEADING TO THE CONVICTION SUCH THAT THE CONVICTION WOULD COMPLY WITH DUE PROCESS.

HERE WERE MOVING UNANIMITY FROM THE DEATH RECOMMENDATION WHICH WAS DONE SPECIFICALLY TO LEAD TO MORE DEATH RECOMMENDATIONS IS NOT SOMETHING THAT CAN BE REMEDIED IN ANY OTHER WAY.

>> Justice: THE TEST ARTICULATED BY THE US SUPREME COURT IN LINZ V. MATHIS DOES NOT JUST END WITH THE FACT THAT IT MUST DISADVANTAGED THE OFFENDER AFFECTED BY IT BUT IT IS SPECIFIC NATURE OF THE DISADVANTAGE MUST BE I'M QUOTING BY ALTERING THE DEFINITION OF CRIMINAL CONDUCT NOT AT ISSUE HERE, OR INCREASING THE PUNISHMENT FOR THE CRIME, IT SPECIFIC ABOUT THE NATURE OF DISADVANTAGE.

HOW HAS THIS CHANGED INCREASE THE PUNISHMENT FOR THE CRIME.

>> Barbara J. Busharis,Appellant: YOUR HONOR AS IN THE LINZ CASE WHERE THE ISSUE WAS OVERCROWDING CREDITS AND WHETHER SOMEBODY WOULD LOSE THOSE CREDITS RETROACTIVELY. THIS CHANGE IN THE LAW INCREASES THE PUNISHMENT TO WHICH MR HUNT IS BEING SUGGESTED.

>> Justice: HOW DID IT INCREASE THE PUNISHMENT FOR THE CRIME?

>> Barbara J. Busharis,Appellant: THAT GOES BACK TO WHAT I WAS JUST SAYING.

>> Justice: THE PUNISHMENT FOR THE CRIME IN A CAPITAL CASE IS DEATH.

>> Barbara J. Busharis,Appellant: THAT IS RIGHT IF YOU END UP THERE THEN THAT THEY CAN NEVER BE AN EX POST FACTO VIOLATION FOR A CAPITAL CASE BECAUSE.

>> Justice: IS YOUR ARGUMENT US SUPREME COURT WITHOUT AWARE OF THAT WHEN ISSUED LINZ CASE IN 1997.

>> Barbara J. Busharis,Appellant: MY ARGUMENT IS WHEN HE DECIDED THE LINZ CASE IT DID NOT STOP WITH WHAT IS THE ULTIMATE THEORETICAL PUNISHMENT FOR THIS DEFENDANT'S CRIME IT'S LOOKED AT THAT PARTICULAR DEFENDANT AND WHETHER HE WOULD SERVE MORE TIME IN PRISON AS A RESULT OF A RETROACTIVE CHANGE IN THE LAW. THAT IS WHAT THE EX POST FACTO VIOLATION IS.

YOU CANNOT JUST STOP WITH WELL THIS DID NOT INCREASE THE ULTIMATE PENALTY FOR AN OFFENSE THAT CAN BE PUNISHED BY DEATH.

WHAT IS IMPORTANT TO REMEMBER THERE YOUR HONOR THAT SAME OFFENSE IS ALWAYS PUNISHABLE BY LIFE THE LAW IS ALWAYS SATISFIED WITH A LIFE SENTENCE.

JURORS ARE EVEN INSTRUCTED THAT NO MATTER WHAT ELSE THEY HEAR, NOTHING COMPELS THEM TO VOTE FOR DEATH.

LIFE IS ALWAYS AN ACCEPTABLE SENTENCE UNDER THE LAW. WHAT THIS REMOVAL OF UNANIMITY DOES IT MAKES IT MORE LIKELY THAT A DEATH RECOMMENDATION WILL BE IN PLACE THAT WILL SHIFT THE PUNISHMENT FROM LIFE TO DEATH AND THAT IS THE INCREASE IN THE PUNISHMENT THAT CREATES THE EX POST FACTO VIOLATION.

>> Justice: IT SOUNDS LIKE IT INCREASES THE LIKELIHOOD OF IT ALREADY PRESCRIBED PUNISHMENT.

>> Barbara J. Busharis, Appellant: IT IS AN INCREASE IN THE LIKELIHOOD THAT A PARTICULAR THEORETICAL PUNISHMENT WILL BE APPLIED TO AN ACTUAL DEFENDANT.

JUST AS IN THE CASES THE US SUPREME COURT CASES INVOLVING SENTENCING GUIDELINES INVOLVING REDUCTION IN GAIN TIME CREDITS ALL OF THOSE CASES, THEY INVOLVE DEFENDANTS WITH A SENTENCE FOR A PARTICULAR CRIME IN ALL OF THOSE CASES YOU CAN LOOK AT THE DEFENDANTS AND THE SENTENCE OF THIS CRIME AND HERE IS THE PENALTY FOR THIS CRIME. BUT THE EX POST FACTO VIOLATION CAME ABOUT BECAUSE WITH THE LEGISLATURE DID, AND DECREASED THE TIME THAT THOSE DEFENDANTS WOULD SERVE.

AND THEY DID AFTER THE DATE OF THE DEFENDANT'S OFFENSE.

THIS IS A SEPARATE ARGUMENT OF COURSE FROM WHETHER UNANIMITY IS OR SHOULD BE CONSTITUTIONALLY REQUIRED I PUT THAT IN A BRIEF SEPARATELY IN THIS BRIEF. IN THIS ARGUMENT WE ARE TALKING ABOUT THAT WINDOW OF DEFENDANTS WHOSE OFFENSES WERE COMMITTED AFTER FLORIDA ADDED UNANIMITY TO ITS STATUTE AND BEFORE THE LEGISLATURE REMOVED IT. THERE IS ABOUT A SEVEN YEAR WINDOW DURING WHICH UNANIMITY WAS THE LAW OF FLORIDA.

THOSE DEFENDANTS ARE AT RISK AND MR HUNT IS NOT JUST AT RISK IT HAS ALREADY HAPPENED OF BEING SENTENCED TO DEATH WHEN UNDER THE LAW IN PLACE AT THE TIME OF HIS OFFENSE HE COULD NOT HAVE BEEN SENTENCED TO DEATH BASED ON THE SAME RECOMMENDATION.

>> Justice: IF YOU DON'T MIND IF WE CAN PIVOT TO RAMOS.

YOU SORT OF MAKE THE SAME ARGUMENT IN A SLIGHTLY DIFFERENT WAY I'M WONDERING IF THE FACT THAT REMORSE WHICH IS OPTICALLY SUBSEQUENT TO LINZ AND IS RECENT THE FACT THAT RAMOS DOES NOT HAVE CLARIFIED AT ISSUE YOU ARGUING DOES NOT FORECLOSE THE ARGUMENT FOR MAKING MAY BE WONDERING IF YOU CAN ELABORATE ON THE POINT YOU MADE ON PAGE 62 OF YOUR BRIEF ABOUT RAMOS.

>> Barbara J. Busharis, Appellant: YOUR HONOR I BELIEVE THE IMPORTANCE OF RAMOS FOR THIS PART OF MY ARGUMENT IS RAMOS RECOGNIZES THE FACT AND THAT THE VALUE OF UNANIMITY IN JURY DELIBERATIONS.

IT ALSO RECOGNIZES THAT REMOVING UNANIMITY IS A WAY OF SILENCING DISSENTING VOICES.

FOR THAT REASON, THERE IS A DIFFERENCE BETWEEN AN 8/4 VOTE AND AN EIGHT PERSON UNANIMOUS JURY.

>> Justice: OKAY LET'S START AT THE BEGINNING RAMOS IS ABOUT NON-UNANIMOUS VOTE TO CONVICT.

WHY DOES THAT SORT OF DISSENSION BETWEEN THAT CASE AND THIS DISCUSSION SORT OF I DON'T KNOW LIMIT THE FORCE OF YOUR ARGUMENT CAN YOU TELL ME ISN'T THAT SORT OF A BIG DEAL?

>> Barbara J. Busharis, Appellant: FOR THIS PART OF THE ARGUMENT YOUR HONOR I DON'T THINK SO.

IT IS BECAUSE OF THE WAY RAMOS RECOGNIZES THAT REMOVING UNANIMITY SILENCES THE SENSE. THAT TIES INTO THE WAY THAT REMOVING UNANIMITY CREATES AN EX POST FACTO VIOLATION.

BECAUSE IT MAKES IT MORE LIKELY AS IT DID IN THIS CASE THAT DISSENTING VOICES WILL NOT BE HEARD.

THE JURY EVEN IN THE CAPITAL PENALTY PHASE IS SUPPOSED TO BE EXPRESSING THE CONSCIENCE OF THE COMMUNITY.

THE JURY AS I SAID IS INSTRUCTED TO NEVER HAVE TO VOTE FOR DEATH THEY CAN BE UNANIMOUS ALL DAY LONG ON AGGRAVATORS ON GUILT THEY STILL DON'T HAVE TO VOTE FOR DEATH.

I SILENCING ANY OF THAT POTENTIAL DISSENT OVER WHETHER AND TO IS THE APPROPRIATE PUNISHMENT IN A PARTICULAR CASE THIS REMOVAL IS ACTUALLY SUBJECTING DEFENDANTS TO HIGHER THE LIKELIHOOD SUBSTANTIALLY INCREASED RISK OF A DEATH SENTENCE.

>> Justice: HOW ARE YOU DESCRIBING IT AS SILENCED THAT IS WHERE I'M CONFUSED BECAUSE THEY VOTED IN FACT THIS CASE WE KNOW THEIR VOTE TWO PEOPLE SAID NO HOW IS THAT THE JUDGE SEES THAT WHEN IT GOES TO SENTENCING HOW IS THAT SILENCING DISSENT?

>> Barbara J. Busharis, Appellant: IN THE SAME WAY THAT THE COURT TALKED ABOUT IN RAMOS YOUR HONOR.

THE END RESULT MAYBE THEY GET TO VOTE BUT THEY CANNOT PREVENT A DEATH RECOMMENDATION.

IN RAMOS THE ISSUE WAS HELD WHETHER ONE OR TWO PEOPLE CAN PREVENT A CONVICTION.

IT'S A SEPARATE ISSUE WHETHER THAT DISTINCTION CAN BE MADE WHETHER IT IS CONSTITUTIONALLY PROPER TO SAY IT'S OKAY TO HAVE IT UNANIMITY FOR GUILT AND NOT FOR THE DEATH RECOMMENDATION WHAT I'M SAYING IN THE CONTEXT OF AN EX POST FACTO IT'S ESSENTIALLY INCREASES THE LIKELIHOOD THE DEFENDANT SENTENCE DURING THIS WINDOW OF UNANIMITY BUT IN FACT GET A DEATH RECOGNITION INSTEAD OF A LIFE RECOMMENDATION I HOPE THAT ANSWERS YOUR QUESTION.

YES YOUR HONOR.

[UNCLEAR AUDIO] THERE ARE SOME IMPORTANT DISTINCTIONS WITH ALBERT ONE OF THE FIRST THINGS I WOULD SAY WHEN YOU LOOK AT THE ANALYSIS AND DAUBERTIT

STOPS WITH THAT INCREASE IN THE QUANTUM OF PUNISHMENT LANGUAGE.
A MISSION EARLIER.

DAUBERT WAS A CHALLENGE TO THE STATUTE THAT WAS ENACTED AFTER FURMAN
INVALIDATED FLORIDA'S DEATH PENALTY STATUTE.

DAUBERT WAS LOOKING AT AN ENTIRE STATUTORY SCHEME WAS SET IN PLACE
SPECIFICALLY TO ADDRESS CONSTITUTIONAL CONCERNS.

THERE WAS A DEATH PENALTY BEFORE THAT DAUBERT KEPT THE DEATH PENALTY IN
THE CONTEXT OF THAT ANALYSIS THERE WAS NO INCREASE IN THE QUANTUM OF
PUNISHMENT.

DAUBERT WAS ALSO CLEARLY A AMELIORATED BECAUSE IT GRANTED RIGHTS AND
PROTECTIONS THAT DEFENDANTS DO NOT HAVE UNDER THE PREVIOUS LAW.

BUT DAUBERT DID NOT PRESENT ISSUE THAT YOU HAVE HERE. WHICH IS THE LAW
CALLED FOR UNANIMITY IN SENTENCING AND OBJECTION WAS TAKEN AWAY FOR
DEFENSE IN A CERTAIN WINDOW. I DON'T THINK THIS COURT HAS TO OVERRULE
DAUBERT BUT I THINK DAUBERT'S.

I MISSPOKE YOU CAN IGNORE WHAT IT SAYS.

IT DOES NOT CONTROL THE OUTCOME IN THE SENSE THAT DAUBERT SIMPLY DID NOT
ADDRESS THE ISSUE THAT IS BEFORE THE COURT HERE.

>>[UNCLEAR AUDIO].

>> ALTERING THE METHODS BY WHICH THE DEATH PENALTY WOULD BE IMPOSED I
THINK THAT LANGUAGE HAS TO BE READ IN LIGHT OF COLLINS AND SOME OF THE
OTHER CASES THAT COME AFTER THAT. SIMPLY ALTERING THE METHOD OF
IMPOSING THE DEATH PENALTY DOES NOT END AT THE INQUIRY IF WHAT YOU HAVE
DONE SUBSTANTIALLY INCREASES THE RISK THAT A DEFENDANT WILL SERVE A
HIGHER SENTENCE.

SO DAUBERT CAN BE READ IN CONJUNCTION WITH THOSE CASES.

I THINK IT WAS IN.

[LISTING NAMES] THAT THE COURT SAID WE'VE NEVER ACCEPTED THE PROPOSITION
THAT A LAW MUST INCREASE THE MAXIMUM SENTENCE FORWARD A DEFENDANT TO
BE ELIGIBLE TO VIOLATE THE EX POST FACTO CLAUSE. THE INQUIRY IS REALLY IS
THIS DEFENDANT SUBJECT TO HIGHER PUNISHMENT BECAUSE OF A CHANGE IN THE
LAW?

AND FOR THE PEOPLE LIKE MR HUNT IN THIS WINDOW WHOSE CRIMES WERE
COMMITTED WHILE FLORIDA HAD UNANIMITY THAT IS TRUE.

DAUBERT SIMPLY DID NOT ADDRESS THAT ISSUE.

ALSO I DO THINK IT IS SIGNIFICANT THAT DAUBERT WAS ENACTED TO ADDRESS
CONSTITUTIONAL INFIRMITIES IN THE LAW. THE UNANIMITY REQUIREMENT WAS
ABOLISHED BECAUSE THE LEGISLATURE DID NOT LIKE THAT A PARTICULAR
DEFENDANT HAD NOT BEEN SENTENCED TO DEATH. THE MOTIVATION BEHIND THE
CHANGE IN THE LAW WAS ANGER OVER A HIGH-PROFILE CASE A TERRIBLE CASE THE
BACKGROUND OF THE LAW IS SIGNIFICANT I THINK BECAUSE ONE OF THE REASONS
THAT THE 8/4 WAS CHOSEN WAS IT WAS ONE MORE JUROR THEN VOTED NOT TO
IMPOSE DEATH IN THAT CASE.

>> Justice: [UNCLEAR AUDIO] IS IT NOT A MATTER OF WHETHER IT'S IN THE LEGISLATURE'S DISCRETION AND NOT IN THE MOTIVATION.

>> Barbara J. Busharis,Appellant: THE DIVISION IS NOT DETERMINATIVE BECAUSE WE TALK ABOUT EX POST FACTO WHEN YOU GO ALL THE WAY BACK TO THE ROOTS OF THE EX POST FACTO DOCTRINE IN CALDER ONE OF THE REASONS FOR THE DOCTRINE IS TO GUARD AGAINST VINDICTIVE OR PERSONAL OR SPECIFIC CHANGES IN THE LAW.

NOT BEING HAPPY A PARTICULAR DEFENDANT WAS GOING TO BE EXECUTED.

>> Justice: COUNSEL THERE IS MORE TO HISTORY HERE.

THE LEGISLATURE ADOPTED THE REQUIREMENT FOR A UNANIMOUS DECISION BY THE JURY.

IN RESPONSE TO ADDITION FROM THIS COURT.

AM I CORRECT?

>> Barbara J. Busharis,Appellant: YOUR HONOR THIS COURT MADE THE DECISION IN 2020 OF ARMOR CORRECTLY AND THE LEGISLATURE DID NOT ACT UNTIL 2023.

>> Justice Charles Canady: NO NO NO I'M TALKING ABOUT WHEN THEY ORIGINALLY ADOPTED THE REQUIREMENT FOR UNANIMOUS.

THAT WAS IN RESPONSE TO A DECISION FROM THIS COURT.

>> Barbara J. Busharis,Appellant: YES.

>> Justice Charles Canady: SUBSEQUENTLY THE DECISION WAS THAT DECISION WAS OVERRULED. BY THIS COURT.

WHEN YOU'RE LOOKING AT THE SEQUENCE OF EVENTS HERE I THINK THAT PUTS IT IN CONTEXT.

IF I UNDERSTAND THAT THE POINT YOU MADE AT THE OUTSET IN RESPONSE TO MY QUESTION FOCUSED ON THE DELAY IN THE LEGISLATURE.

THE LEGISLATURE DOES NOT ALWAYS ACT WITH LIGHTNING SPEED.

>> Barbara J. Busharis,Appellant: NO AS HEARST SHOWS THE LEGISLATURE CAN BUT IT WAS TO.

>> Justice Charles Canady: UNDER ABSOLUTE NECESSITY. THAT THEY CAN.

I THINK ALL OF THAT CONTEXT HAS TO BE BORNE IN MIND WHEN YOU'RE TRYING TO EVALUATE WHAT THE LEGISLATURE HAS DONE HERE. I'M NOT SURE IF MIXING DIFFERENT FROM YOUR ARGUMENT ON THE LEGAL ISSUE AS JUSTICE SASSO WAS POINTING OUT NOT SURE HOW THAT AFFECTS OUR LEGAL ANALYSIS. IT IS RELEVANT TO UNDERSTANDING WHAT THE LEGISLATURE THE SEQUENCE OF EVENTS IN THAT THE LEGISLATIVE PROCESS.

>> Barbara J. Busharis,Appellant: I DON'T DISAGREE WITH ANY OF THE CONTEXT I THINK TO THE EXTENT IT HAS LEGAL SIGNIFICANCE IT CERTAINLY SUPPORTS THAT THE REMOVAL OF UNANIMITY IS DESIGNED TO INFLICT MORE PUNISHMENT ON DEFENDANTS.

THAT IS WHAT THE PURPOSE.

>> Justice: ISN'T THERE A POINT OF THE WHOLE EX POST FACTO DOCTRINE TO GIVE

RESPECT TO THIS KIND OF BASIC NOTION OF FAIRNESS THAT PEOPLE AT THE TIME THAT THEY ARE DECIDING WHETHER TO ACT THAT THEY KNOW WHAT IS GOING TO BE ILLEGAL AND WHAT THE RANGE OF PUNISHMENT WOULD BE FOR WHAT THEY ARE GOING TO DO?

THIS JUST DOESN'T REALLY GET TO THAT.

>> Barbara J. Busharis, Appellant: RESPECTFULLY YOUR HONOR I DISAGREE. THERE IS A QUALITATIVE DIFFERENCE BETWEEN A UNANIMOUS RECOMMENDATION AND A RECOMMENDATION THAT CAN BE MADE WITH 4 DISSENTING VOTES UNANIMITY HAS A PURPOSE IN DELIBERATIONS.

THE UNANIMITY REQUIREMENT IS WHAT ENSURES THAT THAT VERDICT REFLECTS THE SO-CALLED CONSCIENCE OF THE COMMUNITY.

>> Justice: IT IS NOT A VERDICT AT THAT POINT.

RETURN IT IS VERY VERDICT LIKE YOUR HONOR.

>> Justice: IT IS ESSENTIALLY YOU CAN SEE SOMEONE BEFORE THEY ACT SORT OF DECIDING WHAT IS THE LAW SAY ABOUT THE SEVERITY OF WHAT MIGHT HAPPEN WHAT DO THEY SAY ABOUT THE PUNISHMENT YOU DON'T REALLY IS HARD TO IMAGINE SOMEBODY THINKING IF I CROSS THE HURDLES A AND B I'M LESS LIKELY TO GET A PUNISHMENT I KNOW I'M SUBJECTING MYSELF TO POTENTIALLY BY DOING THIS BECAUSE THERE MAY BE TWO PEOPLE THAT CAN VETO THE DECISION OF THE OTHERS.

>> Barbara J. Busharis, Appellant: THE DEATH PENALTY IS ALREADY RESERVED FROM A SMALL NUMBER OF THE WORST OFFENDERS.

>> Justice: THIS IS NOT CHANGING ANY OF THE ELIGIBILITY CRITERIA.

>> Barbara J. Busharis, Appellant: NO BUT IT IS MAKING MUCH MORE LIKELY THE PEOPLE WHO CROSS THAT ELIGIBILITY THRESHOLD WILL BE SENTENCED TO DEATH UNDER THE NEW STATUTE.

FOR PEOPLE WHOSE CRIMES WERE COMMITTED WHEN UNANIMITY WAS REQUIRED THAT IS A CHANGE.

IN THE LAW THAT AFFECTS THEIR PUNISHMENT. INCREASE AND EX POST FACTO VIOLATION. I SEE I'M GETTING INTO MY TIME MY REBUTTAL TIME IF THERE ARE NO OTHER QUESTIONS I WILL SAVE WHAT IS LEFT.

THANK YOU.

>> Janine D. Robinson, Appellee: GOOD MORNING ON BEHALF OF THE STATE OF FLORIDA QUICKLY AS TO THE FIRST ISSUE INEXTRICABLY INTERTWINED EVIDENCE, JUSTICE SASSO YOU HIT THE NAIL ON THE HEAD WHEN YOU FELT THAT AT ALL OF THE WITNESSES THAT TESTIFIED AT TRIAL ONLY THREE MENTIONED THE TWO ITEMS WHICH THE TRIAL COURT FOUND WERE PROBATIVE AND OUTWEIGHED ANY UNFAIR PREJUDICE AND ARE HIGHLY RELEVANT TO THE STATES THREE OF THE CASE BUT MORE IMPORTANTLY TO MR HUNT'S MOTIVE IN THIS WHOLE ACT WHICH ARGUABLY IS A FACT INTENSIVE SOMEWHAT INTERESTING 1STST MURDER CASE BUT HIS MOTIVATION WAS TWOFOLD IT WAS NOT JUST THE SEXUAL BATTERY ARREST WARRANT HE BECAME AWARE OF ON APRIL 1 WHEN HE WAS IN COURT, TWO DAYS LATER THERE WAS ALSO AN ARREST WARRANT FOR HUMAN TRAFFICKING FOR THE

SAME VICTIM.

PO, WAS THE VICTIM BOTH ARREST WARRANTS HE WAS WELL AWARE OF WHAT WAS GOING ON WHEN HE DECIDED TO FLEE THE JURISDICTION.

BUT AS TO SOME OF THE COMMENTS WITH RESPECT I DO SAY THAT COUNSEL HAS OVERSTATED THE LEVEL AND SCOPE OF THE TESTIMONY.

THAT WAS GIVEN FOR EXAMPLE, GOING BACK AND FORTH BETWEEN CITIES, AND HAVING WHERE'S THE PROSTITUTION TOOK PLACE. THAT IS A MISSTATEMENT OF THE TESTIMONY.

THE BACK-AND-FORTH WAS IN MS. WEST TESTIMONY TALKING ABOUT WHEN THE GROUP THE FOUR OF THEM LEFT AFTER THE HURRICANE BECAUSE THEY HAD NO PLACE TO STAY AND WERE GONE FOR FOUR MONTHS THEY CAME BACK TO CHECK ON MR HUNT'S BUSINESS. NOT GOING BACK AND FORTH FOR THE PURPOSES OF PROSTITUTION.

THAT IS A MISSTATEMENT OF THE TESTIMONY. ALSO IN MS. WEST TESTIMONY SHE DENIED ANY PROSTITUTION TOOK PLACE. WHILE THEY WERE AWAY.

SHE DENIED IT ON THE STAND TWICE ON DIRECT EXAMINATION.

>> Justice: WASN'T THERE NOT A CURATIVE INSTRUCTION FROM THE COURT.

>> Janine D. Robinson,Appellee: IT WAS NOT JUST A CURATIVE INSTRUCTION THE TRIAL JUDGE WAS ON TOP OF THIS ISSUE FROM THE VERY BEGINNING FROM THE HEARING ON THE STATE NOTICE OF THE SIMILAR FACT EVIDENCE WHICH IN AT THE HEARING THE PROSECUTOR SAID WE FILED THIS IN AN ABUNDANCE OF CAUTION WE ARE NOT SAYING IT IS SIMILAR FACT EVIDENCE. BUT THERE WAS A DETAILED HEARING AND THE JUDGE WAS VERY COGNIZANT THAT THIS IS GOING TO BE LIMITED EXTRANEIOUS DETAILS OR SALACIOUS DETAILS WILL NOT BE PERMITTED. THIS WILL NOT BECOME A FEATURE OF THE TRIAL AND THE JUDGE SAID THIS MORE THAN ONCE.

INCLUDING DURING THE TRIAL WHEN THERE WAS A PREEMPTIVE OBJECTION FROM TO SOME OF MS. WEST'S TESTIMONY DEFENSE COUNSEL ONLY OBJECTED TWICE FOR CONTEMPORANEOUS OBJECTIONS. IT WAS SUSTAINED IN PART THIS WAS TO.

>> Justice: AS AN ASIDE DO YOU KNOW ARE THERE ANY OTHER CHARGES IN THE INDICTMENT OTHER THAN MURDER IN THE FIRST.

>> Janine D. Robinson,Appellee: ABSOLUTELY SPIT IN ANY ARGUMENT FROM THE STATE THIS EVIDENCE CAN BE INEXTRICABLY INTERTWINED OR DIRECTLY RELEVANT TO ANY OF THOSE OTHER CHARGES OR DID IT JUST COME IN WITH RESPECT TO THE 1ST^{Â°} MURDER CHARGE.

>> Janine D. Robinson,Appellee: MY RECOLLECTION IT WAS REALLY TO THE MAIN FOCUS WAS MOTIVE AND INTENT TO KILL PO, AND SOME EVIDENCE TO TAKE OUT THE REST OF THE FAMILY.

BECAUSE OF THE ATTEMPTED FIRST-DEGREE MURDER CHARGE AS WELL.

HIS MOTIVE WENT TO THE INEXTRICABLY INTERTWINED EVIDENCE WENT TO A LOT OF THINGS NOT JUST MOTIVE. IT WAS HIS PREMEDITATION IT WAS HIS INTENT. IT WAS TO PUT THIS WHOLE SEMI CONVOLUTED FACT PATTERN INTO SOME MEANINGFUL SCOPE FOR THE JURY TO UNDERSTAND WHAT WAS GOING ON.

THAT IS WHY THERE WAS A LOT OF THIS EVIDENCE IN THE.

MR HUNT'S COUNSEL HAS NOT POINTED OUT WHERE THEY CROSSED THE LINE. DEFENSE COUNSEL OBJECTED WHEN HE FELT APPROPRIATE IN THE TRIAL JUDGE SUSTAINED IN PART AND ALLOWED THE STATE A LITTLE BIT OF LEEWAY NOT MUCH, LIKE I SAID THERE WAS NO DETAILS OF EXACTLY WHERE THE PROSTITUTION TOOK PLACE.

THE RESULTS SALACIOUS INTIMATE DETAILS WHICH ARGUABLY WOULD'VE GONE BEYOND THE BOUNDS OF RELEVANCY. WE DON'T HAVE ANYTHING HERE TO SHOW IT WENT BEYOND THAT. THERE WAS NO ABUSE OF DISCRETION IN ANY OF THE COURT'S CONDUCT THROUGHOUT THE TRIAL. UNLESS ANY OTHER QUESTIONS THAT I WILL MOVE ON.

TO BRIEFLY ADDRESS RAMOS.

AS JUSTICE COURIEL BROUGHT UP.

RAMOS DEALT WITH THE JURY'S GUILTY VERDICT.

NO MORE IN THE LAST THAT IS NOT TO SAY THAT RAMOS IS NOT APPLICABLE.

TO THE GUILT AND PENALTY PHASE IN A CAPITAL TRIAL ABSOLUTELY IS. HOWEVER, IT IS VERY LIMITED THE SCOPE OF PROMISE APPLICATION TO THE PENALTY PHASE IS THE JURY'S FINDING THE FACTUAL FINDING OF AT LEAST ONE AGGRAVATOR WHICH MUST BE UNANIMOUS AND BEYOND A REASONABLE DOUBT. THAT IS THE EXTENT OF WHAT RAMOS APPLIES.

I BELIEVE IS THAT SIMPLE.

ANY FURTHER QUESTIONS.

>> Justice: YOUR FRIEND BANK SHOTS OFF RAMOS TO TALK ABOUT EX POST FACTO MAYBE THAT IS WHERE YOU'RE GOING NEXT.

>> Janine D. Robinson, Appellee: THAT IS WHERE I'M GOING NEXT RAMOS WAS THE EASIEST ONE TO GO INTO.

THERE IS A LOT OF THINGS TO COVER WITH COUNCILS ARGUMENTS AND EX POST FACTO FIRST OF ALL IN ORDER TO BE AN EX POST FACTO VIOLATION OF THE STATUTE OR THE AMENDMENT MUST CHANGE THE DEFINITION OF THE CRIME OR INCREASE THE PUNISHMENT.

THERE ARE TWO OTHER ELEMENTS UNDER CALDER V. BULL WHAT WE ARE FOCUSED ON HERE IS INCREASED PUNISHMENT.

MR HUNT WAS EXPOSED TO A POSSIBLE DEATH SENTENCE THE DAY HE COMMITTED HE WAS INVOLVED WITH THE MURDERS, IN APRIL 2019.

HE WAS STILL SUBJECT TO THE DEATH SENTENCE WHEN HE WAS SENTENCED WHEN HE WENT THROUGH HIS PENALTY PHASE IN SEPTEMBER 2023. WE TALKED ABOUT RETROACTIVITY.

THE STATUTE AMENDMENT WAS ENACTED IN APRIL 2023, MR HUNT PENALTY PHASE DID NOT BEGIN UNTIL FIVE MONTHS LATER IN SEPTEMBER. WE HAVE NO RETROACTIVITY ISSUE.

NOT TO JUSTICE CANADY AND LOVE THAT IT'S A COMMON SENSE DETERMINATION OF WHERE RETROACTIVITY BEGINS. I KNOW YOU'RE GETTING A LITTLE BIT INTO THE SAVINGS CLAUSE IT'S VERY HELPFUL TO UNDERSTAND THE DATE THAT IS APPLICABLE FOR RETROACTIVITY IS PAST THE DATE OF ENACTMENT OF THE

STATUTE. THAT IS WHERE WE ARE IN THIS CASE WE DO NOT HAVE A RETROACTIVITY PROBLEM.

THE SECOND ISSUE IS THE AMENDMENT IS QUINTESSENTIALLY PROCEDURAL. IT DID NOT CHANGE THE DEFINITION OF CRIME. IT DID NOT INCREASE THE PUNISHMENT.

IT MERELY CHANGED AND ALTERED THE MECHANISM BY WHICH THE DEATH PENALTY COULD BE ARRIVED AT.

>> Justice: WHAT IS YOUR RESPONSES TO THE ARGUMENT THAT MECHANISM THAT PENALTY WILL BE IMPOSED IN THIS SPECIFIC CASE.

>> Janine D. Robinson,Appellee: RICHARD MOLLICA PU ANALYSIS.

>> Justice: THAT WAS OPPOSING COUNSEL'S ARGUMENT.

>> Janine D. Robinson,Appellee: THERE IS ABSOLUTELY NO EVIDENCE AND NO INDICATION THAT LOWERING THE RECOMMENDATION WOULD INCREASE THE LIKELIHOOD OF A DEATH SENTENCE. THERE ISN'T ANY I'M NOT SAYING IT DOES NOT INCREASE THE LIKELIHOOD OF A RECOMMENDATION BECAUSE OBVIOUSLY, ON ITS FACE, IT WOULD.

BUT THE LITMUS TEST IS DOES IT INCREASE SUBSTANTIALLY AND SIGNIFICANTLY INCREASE IF WE TALK ABOUT P AND U DOES INCREASE THE LIKELIHOOD OF A DEATH SENTENCE WE WOULD SAY NO WE DON'T KNOW THAT BECAUSE ON A NUMBER OF THINGS THE UNITED STATES SUPREME COURT SAID RECOMMENDATIONS WERE NOT EVEN REQUIRED UNDER THE CONSTITUTION MUCH LESS A UNANIMOUS ONE.

>> Justice: IMAGINE THE LEGISLATURE HAD ENACTED A NEW AGGRAVATOR HAVING TO DO WITH SEX TRAFFICKING.

WOULD THAT BE MORE OR LESS IS THAT CLOSER TO THE LINE?

IT IS ARGUABLY GOING TO MAKE THE PENALTY MORE LIKELY IMPOSED IN THIS CASE. I PRESUME THE STATES POSITION WOULD BE THAT TOO IS PROCEDURAL?

>> Janine D. Robinson,Appellee: IT IS INTERESTING YOU BRING UP THE AGGRAVATORS THAT IS KIND OF AN INTERESTING TOPIC BECAUSE THE US SUPREME COURT HAS OUTSPOKEN ON THE NUMBER OF AGGRAVATORS WITHOUT THE NUMBER OF AGGREGATORS TAKES AWAY ANY OF THE SAFEGUARDS WHETHER A HIGH NUMBER OF AGGREGATORS INCREASES THE LACK OF SAFEGUARDS AND PROTECTIONS FOR THE DEFENDANT.

IN A COUNCILS BRIEFING SHE POINTED TO A HARVARD LAW REVIEW ARTICLE WHICH HAD A STAT IN THEIR 90%, 90% OF STATES THAT HAD 10 OR MORE AGGRAVATORS STATES WITH 10 OR MORE AGGRAVATORS HAD A 90% INCREASE OTHER RECOMMENDATIONS OR DEPTH ESSENCES THIS COURT DOES NOT HAVE THAT DATA. DITTO WEREN'T TALK ABOUT FLORIDA.

>> Justice: IF THAT WERE THE ONLY AGGRAVATOR IN A SPECIFIC DEFENDANT'S CASE THE SUPREME COURT HAS SAID THAT AGGREGATORS ARE DE FACTO ELEMENTS. ESSENTIALLY IT'S A NEW CRIME.

THAT IS A COMPLETELY DIFFERENT ISSUE.

>> Janine D. Robinson,Appellee: IS A TOTALLY DIFFERENT ISSUE WE ARE NOT EVEN TALKING ABOUT THAT I DON'T MEAN TO NOT ANSWER YOUR QUESTION.

>> Justice: I THINK YOU HAVE IT IS A DIFFERENT ISSUE.
THE ANSWER SOUNDS LIKE IT IS CLOSER TO AN EX POST FACTO VIOLATION THAT THIS WILL BE.

>> Janine D. Robinson, Appellee: IT HAS TO BE VALIDATED ON ITS MERITS ON ITS OWN IF AND WHEN IT BECOMES A RIPE ISSUE.

DLBERT ESPECIALLY IN MR HUNT'S CASE CONTROLS.

I KNOW THERE WAS SOME DISCUSSION OF WHETHER IT DOES IN THE LAMOTTA CASE JUSTICE SASSO YOU REFER TO THE LOBOTOMIES OUT OF THE SIXTH DCA THE ONLY SUBSTANTIVE DCA OPINION TALK ABOUT THE 8/4 THE LAMOTTA COURT HELD THAT YES THE AMENDMENT WAS PROCEDURAL IT DID NOT VIOLATE EX POST FACTO APPLYING DAUBERT HOWEVER THEY ALSO LOOKED AT PU THEY REJECTED PU SIGNIFICANT RISK TASK BUT THEY APPLIED IT ANYWAY THEY DID IT IN THE ALTERNATIVE AND STILL FOUND THERE WAS A SUBSTANTIAL RISK. BECAUSE AGAIN PU WAS BASED THE PU COURT HAD TO ITS BENEFIT EMPIRICAL DATA THAT SHOWED UP THE FEDERAL SENTENCING GUIDELINES INCREASES IN PU CASE IT WAS DRAMATIC THE EXPOSURE WAS DOUBLED MR. PU WAS SENTENCED TO DOUBLE WHAT HE WAS ORIGINALLY EXPOSED TO WHEN HE COMMITTED THE CRIME THEREBY MAKING IT A SUBSTANTIVE CHANGE THAT MR. PU WAS EXPOSED TO.

THE PU CASE AND THE FEDERAL SENTENCING GUIDELINES ARE DIFFERENT IN KIND THAN WHAT THE DAUBERT CASE LOOKED AT WHICH WAS FLORIDA SENT IN THE STATUTE.

IT SAID THAT CHANGED NETTING THE AGGRAVATORS AGAIN WAS REALLY JUST ALTERING THE MECHANISM OF HOW A DEATH SENTENCE IS ARRIVED AT.

THE BOTTOM LINE IN THIS CASE IN ANY K'S CAPITAL DEFENDANT HAS TWO BITES AT THE APPLE.

THERE ARE TWO CHANCES OF LIFE. FIRST BEFORE THE JURY, THEN ALSO BEFORE THE JUDGE. BECAUSE THE JUDGE IS THE FINAL ARBITER.

>> Justice: IT SEEMS LIKE A SUBSTANTIAL RISK THING IT SEEMS THAT IS MORE OF A CONCEPTUAL ISSUE AS TO WHETHER THAT SHOULD BE IN THERE OBVIOUSLY THERE IS A HOPE FOR SUBSTANTIAL RISK I'M ASSUMING YOU WOULD NOT CHANGE THE LAW IF YOU WERE NOT HOPING IT WOULD NOT CHANGE THINGS ON THE GROUND?

IT IS OBVIOUSLY A REFLECTION OF THE FACT THESE ARE VERY SERIOUS CRIMES THEY HAD A RULE THAT TIED THE JUDGE'S HANDS AND THEY WANT TO LOOSENED UP FOR POTENTIALLY COMPLETELY VALID REASONS YOU ASSUME THE LEGISLATURE IS HELPING WHEN IT CHANGES THINGS IT WILL PRODUCE FACTS CONSIDERED WITH THE CHANGE.

>> Janine D. Robinson, Appellee: AS WAS MENTIONED EARLIER IS NOT FOR THIS COURT TO BE MIRED IN A SLATE OF INTENT OR POLICY DECISIONS OR MOTIVATIONS OR MORAL ARGUMENTS ABOUT IT THIS COURT IS TO LOOK DOES THIS AMENDMENT VIOLATE THE EX POST FACTO CLAUSE?

OTHER UNITED STATES FLORIDA CONSTITUTION THAT IS WHAT IS BEFORE YOU NOT WHY DID THE LEGISLATURE DO IT OR WHAT LOBBYING HAPPENED TO GET THAT LEGISLATION PUT FORWARD?

I DO WANT TO TOUCH BRIEFLY COUNSEL RAISE THE SAVINGS CLAUSE ISSUED NO SHE DID NOT MENTION IT AS WE STATED IN OUR BRIEF IT WAS NOT PRESERVED BUT IN ANY EVENT SAVINGS CLAUSE SAVINGS STATUTE REQUIRES A PROSPECTIVE APPLICATION OF THE AMENDMENT WHICH AGAIN HAPPENED IN THIS CASE. FIVE MONTHS AFTER THE ENACTMENT OF THE AMENDMENT.

HONESTLY, I BELIEVE THE STATE IS CONCLUDING UNLESS THIS COURT HAS ANY OTHER QUESTIONS.

>> Chief Justice Carlos Muniz: THANK YOU WE APPRECIATE IT.

>> Janine D. Robinson, Appellee: WITH THAT WE ASK YOU TO AFFIRM THE CONVICTION AND UPHOLD THE EFFICACY OF THIS NEW AMENDMENT. THANK YOU.

>> Barbara J. Busharis, Appellant: YOUR HONORS REGARDING THE SAVINGS CLAUSE I WILL JUST POINT TO THE LANGUAGE IN THE SAVINGS CLAUSE REFERS TO A VIOLATION OF THE STATUTE BASED ON ANY ACT OR OMISSION OCCURRING BEFORE THE EFFECTIVE DATE OF THE ACT.

WHICH IS WHAT WE HAVE HERE.

BUT GOING BACK TO THE EX POST FACTO ARGUMENT, WE HAVE DATA WE HAVE ALL THE DAY THAT THIS COURT NEEDS WE HAVE A DEFENDANT WHO WAS SENTENCED TO DEATH WHO RECEIVED LESS THAN UNANIMOUS RECOGNITION AND THEREFORE COULD BE SENTENCED TO DEATH. WHO WOULD NOT HAVE BEEN SENTENCED TO DEATH IF THIS UNANIMITY REQUIREMENT WAS NOT IMPOSED. THAT IS THE PURPOSE OF THE ACT AND THE COURT DOES NOT HAVE TO GET MIRED IN LEGISLATIVE HISTORY BUT THE COURT CAN LOOK TO WHAT IS THE PURPOSE OF THIS ACT? THE REMOVAL OF THE UNANIMITY.

WAS DESIGNED TO BE ABLE TO SENTENCE MORE PEOPLE TO DEATH THAT IS EXACTLY WHAT HE DID IN THIS CASE. FOR THE PEOPLE WHO WERE SENTENCED AND THAT THE WINDOW OF TIME WHEN UNANIMITY WAS THE LAW OF FLORIDA THIS THEY RETROACTIVELY CHANGE IN THE LAW THAT INCREASES THEIR PUNISHMENT AND VIOLATES THE EX POST FACTO CLAUSE

IF THERE ARE NO FURTHER QUESTIONS WE ASK THAT YOU REVERSE THANK YOU.