

>> Sergeant: THE FLORIDA SUPREME COURT IS NOW IN SESSION PLEASE BE SEATED.

>> Chief Justice Carlos Muniz: OUR SECOND AND LAST CASE TODAY IS JOHNSON V. STATE OF FLORIDA. NUMBER SC2023-0055

>> Steven Bolotin, Appellant: MAY IT PLEASE THE COURT. I'M STEVEN BOLOTIN REPRESENTING THE APPELLANT TYRONE JOHNSON.

MY INTENTION IS TO ARGUE THE SECOND INTERROGATION VIDEO WHICH IS 95% DETECTIVES [LISTING NAMES] AND 5% TYRONE JOHNSON SAYING THE SAME THING HE SAID ALL ALONG. ALSO INTENDED TO ARGUE THE BROTHOR THAT WENT ROGUE THEN WAS PREVENTED FROM RECANTING BY THE STATES HEAVY-HANDED COERCIVE THREAT OF PERJURY PROSECUTION. IF TIME PERMITS WHICH I DOUBT IF TIME PERMITS I MAY ARGUE THE TRIAL COURT'S LEGAL ERROR IN MISUSE OF TWO IMPORTANT MITIGATING FACTORS TO DENIGRATE ONE ANOTHER IN THIS CASE THE PROSECUTOR SET THE TABLE AT TRIAL. FOR THE SECOND INTERROGATION VIDEO IN HIS OPENING STATEMENT TO THE JURY.

HE TELLS HIM YOU WILL HEAR WHAT JOHNSON SAID HAPPENED IT ALL HAPPENED IN A BEDROOM BUT YOU WILL FIND IS NOT A VERY RELIABLE. THE NARRATOR.

HE TELLS THE JURY.

[LISTING NAMES] GIVE EVERY OPPORTUNITY TO EXPLAIN WHAT HAPPENED AND HE SAYS NO NO IT ALL HAPPENED IN THE MASTER BEDROOM.

HOWEVER THE PROSECUTOR TELLS THE JURY FORESHADOWING WHAT THEY WOULD HEAR FROM DETECTIVE.

[LISTING NAMES] ON THE SECOND VIDEOTAPE OPENING ARGUMENT EVIDENCE DOES NOT LIE LADIES AND GENTLEMEN.

INDIVIDUAL CAN SAY WHATEVER THEY WANT TO SAY BUT THE EVIDENCE DOES NOT LIE. MOMENTS LATER FOR MORE INFERENCES THE EVIDENCE DOES NOT LIE LADIES AND GENTLEMEN.

THEN WHEN THE SECOND VIDEO.

>> Justice Charles Canady: YOU ARE QUOTING THE PROSECUTOR.

>> Steven Bolotin, Appellant: I AM QUOTING THE PROSECUTOR TALKING TO THE JURY.

>> Justice Charles Canady: ON THIS ISSUE IT'S ABOUT WHAT IS IN THE INTERROGATION WHAT IS THE WORST THING THAT THE OFFICER SAID FROM YOUR PERSPECTIVE THE MOST HARMFUL THING OR THE MOST INAPPROPRIATE THING THAT THE OFFICER SAID IN THE INTERROGATION?

>> Steven Bolotin, Appellant: I DON'T THINK THE OFFICER SAID ANYTHING INAPPROPRIATE IN THE INTERROGATION . AS MY OPPONENT POINTS OUT THIS IS STANDARD OPERATING PROCEDURE FOR AN INTERROGATION . THE PROBLEM WAS NOT WHAT THE OFFICER SAID THE PROBLEM WAS GETTING IT IN OVER THE DEFENSE OBJECTION OVER THE JURY THAND ALL JURY HEARD WAS THE STEADY DRUM BEAT OF WHAT THE OFFICER SAID.

>> Justice Charles Canady: WHAT DID THE OFFICER SAY THAT WAS THE BASIS FOR THAT.

>> Steven Bolotin, Appellant: WHAT THE OFFICER SAID WAS THE BASIS FOR THIS THERE

IS ALSO EVIDENCE TO SHOW THE YOUNG MAN MORE THAN LIKELY TO GET AWAY IT APPEARS WHAT YOU WERE TELLING ME DOES NOT MAKE SENSE IF WHAT YOU TELL ME DOES NOT MAKE SENSE WITH THE SCENE BECAUSE THE THING IS THIS I HAVE BEEN DOING THIS JOB A LONG TIME, I KNOW THAT THE EVIDENCE WILL NEVER LIE TO ME BUT PEOPLE WILL TRY TO MINIMIZE OR TRY TO MAKE THEMSELVES OUT TO BE SOMETHING THAT THEY ARE NOT. I HOPE IT MATCHES YOUR STORY WHAT I'M BEING TOLD RIGHT NOW IT DOES.

YOU HAVE A SITUATION WHERE SHIT WENT BAD OR DO YOU THINK TYRONE IS MANIPULATING ANYTHING AND HE MURDERS HIS GIRLFRIEND AND HE CHASED HIS 10-YEAR-OLD SON BROUGHT HIM IN THE HOUSE KILLED HIM AND DUMPED HIS BODY NEXT TO HIS MOTHER WE NEED YOU TO TELL US WHAT HAPPENED YOU KNOW SOMETHING HAPPENED HOW DID YOU GET TO RISER?

TYRONE I WILL HAVE TO DISAGREE WITH YOU THERE. IT IS VERY POSSIBLE YOU COULD HAVE MOVED FROM THE MASTER BEDROOM TO THE.

[LISTING NAMES] BECAUSE I WAS SCARED AND TRIED TO GET AWAY FROM YOU.

THERE IS ONLY ONE EXPLANATION FOR THE SHELL CASINGS AND THE BULLET HOLES IN HIS ROOM. MAYBE WHAT YOU WERE TELLING ME AND WHAT I MORE THAN LIKELY WILL BE ABLE TO PROVE ARE TWO VERY DIFFERENT THINGS. TYRONE I AM NOT OUT TO GET YOU OR ANYTHING I JUST WANT TO TELL ME THE TRUTH. THEN BASICALLY THIS IS YOUR STORY AND YOUR STICKING TO IT?

OKAY WHAT YOU GET BACK FOR TYRONE IS THE 5% I DON'T KNOW SO I DIDN'T GO INTO ROOM EVERYTHING HAPPENED IN THE BEDROOM AND A LOT OF WHAT FOLLOWED WAS INAUDIBLE, INAUDIBLE, INAUDIBLE. AGAIN JUSTICE CANADY I AM NOT CONTENDING THAT THE OFFICER.. I'VE SEEN MANY MANY INTERROGATIONS JUST LIKE THIS AND SOME CASES WORSE WHERE THEY WERE COERCIVE. IF TYRONE JOHNSON HAD DONE.

>> Justice Charles Canady: YOU HAVE STATEMENTS LIKE WE KNOW TODAY. THERE IS NOTHING DIRECT LIKE THAT THEY DANCE AROUND IT BUT THERE IS NOTHING THAT SAYS WE KNOW THAT YOU WENT INTO THE BEDROOM AND MURDERED.

>> Steven Bolotin,Appellant: I WOULD HAVE TO RESPECTFULLY DISAGREE.

>> Justice Charles Canady: YOU THINK IT IS THE EQUIVALENT OF THAT

>> Steven Bolotin,Appellant: I READ THIS AS YOU WENT IN THE BEDROOM THE EVIDENCE SHOWS US HE WENT TO THE BEDROOM.

>> Justice Charles Canady: THE EVIDENCE DOES SHOW THAT PRETTY OVERWHELMING.

>> Steven Bolotin,Appellant: OVERWHELMING EVIDENCE IS NOT THE TEST HERE WHAT I WANT TO GET TO HERE IS THE PROSECUTOR KNEW THIS WOULD HAVE AN IMPACT ON THE JURY OTHERWISE HE WOULD NOT HAVE DONE IT.

>> Justice Charles Canady: ISN'T THE REAL IMPACT ON THE JURY THE BLOOD UNDER THE BED AND THE BULLETS.

>> Steven Bolotin,Appellant: THEN WHY INTRODUCE THE SECOND VIDEOTAPE I DID A NOTICE OF SUPPLEMENTAL AUTHORITY UNDER 1919 CASE IT'S CALLED STATE V. GUNN CITED AGAIN 1968 OLD CASE BUT I THINK IT IS STILL GOOD LAW AND CONSIDER THE.

[LISTING NAMES] STANDARD AS REAFFIRMED TIME AND TIME AGAIN SAYS OVERWHELMING EVIDENCE IS NOT THE TEST. THE TEST IS COULD THIS HAVE HAD AN IMPACT ON THE JURY'S DELIBERATIONS COULD THE PROSECUTOR KNOW IT WOULD HAVE AN IMPACT ON THE JURY OR WOULD NOT HAVE FOUGHT SO HARD TO INTRODUCE.

>> Justice John Couriel: THE ARGUMENT IS WHAT HAD THE IMPACT ON THE JURY LET'S BE SPECIFIC IT IS NOT THE VIDEO.

YOU HAVE THE SHORT THE WOOD HAD THE INAPPROPRIATE IMPACT ON THE JURY'S DELIBERATION IS WHAT THE OFFICERS SAID IN THE VIDEO. ISN'T IT TRUE THOUGH THAT THE STATE HAD EVERY REASON TO INTRODUCE YOUR CLIENTS DENIAL AS EVIDENCE OF YOUR CLIENTS EVASION AND STATE OF MIND ABOUT THE MURDER?

>> Steven Bolotin,Appellant: THEY ALREADY INTRODUCED THAT THE FIRST PART OF THE VIDEO.

>> Justice John Couriel: THAT IS AN ARGUMENT ABOUT THE POTENTIAL CUMULATIVE NATURE OF THIS EVIDENCE. IT DOES NOT GO TO THE PREJUDICE OF IT. ALL THE COURT NEEDS TO DO IN ORDER FOR US TO SUSTAIN ITS EVIDENTIARY DECISION IS NOT ABUSE ITS DISCRETION. I CAN IMAGINE A COURT IN ITS DISCRETION FINDING THAT YOUR CLIENTS DENIAL WAS RELEVANT EVIDENCE ABOUT STATE OF MIND. AND HOW HE IS DEALING WITH THE EVIDENCE THAT HE IS CONFRONTED WITH AND THEREFORE IS NOT AN ABUSE OF DISCRETION AND IT ISN'T ABOUT WHAT THE LAW ENFORCEMENT OFFICERS WERE PEPPERING HIM WITH?

HELP ME UNDERSTAND HOW THIS CONSTITUTES THE EGREGIOUS CASE OF BOLSTERING LAW ENFORCEMENT'S STORY BY PUTTING THEM IN A POSITION WHERE THEY ARE NARRATING A THESIS NARRATING A THEORY OF THE CRIME AND THE VIDEO WHICH I AGREE WITH YOU LIKE IN THE JACKSON CASE.

IT IS PROBLEMATIC. HERE I JUST DON'T SEE IT THAT YOU HAVE IT UNLESS I'M MISSING SOMETHING I HAVE NOT RECOUNTED IN MY QUESTION TO YOU.

>> Steven Bolotin,Appellant: I THINK THIS IS A LOT LIKE THE JACKSON CASE SAVE FOR THE FACT THAT.

[LISTING NAMES] IN THIS CASE SAID WHEN I SAW.

[LISTING NAMES] THE JACKSON CASE IT SCARED ME TO DEATH.

I LEARNED TWO THINGS IN DEATH PENALTY JUDGE SCHOOL. A WISE JUDGE SAID TO US THE JUDGE SHOULD NOT GET OUT OF HIS LANE AND DO THINGS HE IS NOT AUTHORIZED TO DO. BUT ON THE OTHER HAND HE ALSO TOLD US MUCH CANNOT BE CURED BUT JURY INSTRUCTION FROM THE JURY INSTRUCTION IF YOU LOOK AT THE PREAMBLE TO THE JURY INSTRUCTION WHAT IT IS FOR IT IS FOR WHEN SOMETHING COMES IN THAT IS ADMISSIBLE FOR ONE PURPOSE INADMISSIBLE FOR ANOTHER PURPOSE THE OFFICER'S OPINIONS OF GUILT OR CREDIBILITY NEVER IN THIS CASE IS ADMISSIBLE FOR THAT PURPOSE.

>> Justice John Couriel: WERE NOT PROFFERING AN OPINION ABOUT GUILT THIS IS AN INTERROGATION AND THEY ARE CONFRONTING HIM IT IS NOT LIKELY RECALLED AS EXPERT WITNESSES.

>> Steven Bolotin,Appellant: I SAID RIGHT OFF THE OFFICERS DID NOT DO ANYTHING

WRONG WHAT IS WRONG IS INTRODUCING THIS UNNECESSARILY AND PREJUDICE SURELY BEFORE THE JURY. WHAT THIS COMES DOWN TO IT ALLOWS THE STATE TO CROSS-EXAMINATION BY THE OFFICERS. OF A DEFENDANT WHO DID NOT TESTIFY. THE STATE DID NOT GET TO DO CROSS-EXAMINATION WHAT THEY DID THEY DID A CLOSING ARGUMENT THAT WAS ABSOLUTELY FORESHADOWED BY WHAT THE OFFICERS DID HERE.

THE OFFICERS ARE SAYING WHAT YOU'RE TELLING US DOES NOT MATCH WITH THE SCENE . THAT IS THE PROSECUTOR'S CLOSING ARGUMENT. WHAT HE TOLD YOU IN THE FIRST VIDEO. IT DOES NOT MATCH WITH THE SCENE. THAT IS A PROBLEM I'M NOT ARGUING SUFFICIENCY OF THE EVIDENCE HERE. I WOULD NOT HAVE ARGUED SUFFICIENCY OF THE EVIDENCE EVEN IN THIS CASE BEFORE BUSH. WHAT I'M GOING TO SAY THIS PREDISPOSED THE JURY CERTAINLY IN THE OPENING ARGUMENT CERTAINLY WHEN THEY INTRODUCE THE SECOND VIDEOTAPE PREDISPOSED THEM TO BELIEVE THE STATE VIEW OF THE CASE.

NOW YOU CAN SAY WHY DO WE HAVE A TRIAL HERE BECAUSE THE EVIDENCE WAS OVERWHELMING OF PHYSICAL EVIDENCE MAYBE IT WAS NOT AS OVERWHELMING AS ALL THAT. IT IS PROBLEMATIC TO BE SURE. BUT THERE ARE FOR EXAMPLE I MEAN UNDER THE STATE THEORY STEPHANIE WAS SHOT THREE TIMES.

RICKY WAS SHOT SIX TIMES. ACCORDING TO THE STATE THEORY RICKY WAS SHOT ONLY TWICE IN HIS BEDROOM.

TWO CASINGS WERE FOUND IN HIS BEDROOM ONE SOMEHOW GET KICKED OUT TO THE PORCH WHERE NOBODY SAYS ANY SHOOTING OCCURRED SIX CARTRIDGE CASES ARE FOUND IN THE MASTER BEDROOM.

THAT RAISES THE QUESTION IF RICKY IS A SHOT NUMBER FOUR TIMES IN THE MASTER BEDROOM INCLUDING SOME PRETTY SERIOUS PLACES HOW IS IT THAT THERE IS ONLY BLOOD UNDER THE BED.

>> Justice John Couriel: THERE IS NOT THERE IS ALSO A POOL OF VOMIT.

>> Steven Bolotin,Appellant: THERE IS A POOL OF VOMIT THAT WAS NEVER TESTED THERE WAS NO DNA WHEN IT GOT THERE NOTHING ABOUT IT YES THERE IS A POOL OF VOMIT YES THE POOL OF VOMIT IS A PROBLEM.

>> Justice John Couriel: I DON'T THINK YOU WANT TO ARGUE SUFFICIENCY OF THE EVIDENCE.

>> Steven Bolotin,Appellant: I AM NOT THE EVIDENCE IS ABSOLUTELY SUFFICIENT. I'M ARGUING THAT NUMBER ONE THE STANDARD IS NOT OVERWHELMING EVIDENCE NUMBER TWO EVIDENCE MAY NOT BE AS OVERWHELMING AS EVERYBODY SEEMS TO THINK. I DON'T KNOW WHY THERE WOULD NOT BE BLOOD FOR EXAMPLE A BLOOD TRAIL IN THE LIVING ROOM THAT HAD TO BE CROSSED TWICE BY RICKY TO GET INTO THE BEDROOM THEN SUPPOSEDLY IF JOHNSON IS DRAGGING OR CARRYING THE BODY BACK THERE SHOULD BE BLOOD FROM THAT EITHER ON HIS CLOTHES. I AM JUST SAYING THAT THE DEFENSES ARGUMENT AND THIS WAS AT TRIAL THIS WASN'T JUST IN CHAMBER WHERE YOU STATE HE'S GUILTY IT DOESN'T MATTER WHAT THE STATE DOES.

THE DEFENSES ARGUMENT IS THE CRIME SCENE WAS COMPROMISED AND YOU

CANNOT BE TOTALLY GOING BY THAT.

THE JURY HAD A RIGHT TO CONSIDER THAT. I'M SAYING BY PREDISPOSING THE JURY WITH DETECTIVE.

[LISTING NAMES] THEY THOUGHT JOHNSON'S STATEMENT EXPLANATION WHAT HAPPENED WAS RIDICULOUS.

THEY WERE PREDISPOSED TO THINK THAT EVEN BEFORE THEY HEAR SOME OF THE PHYSICAL EVIDENCE BEFORE THEY HEAR THE PROSECUTOR'S CLOSING ARGUMENT. THIS IS LARGELY THE JACKSON CASE.

THE JURY INSTRUCTION LIKE I SAID THE JURY INSTRUCTION WOULD HAVE BEEN FINE IF THE PURPOSE OF THE JURY INSTRUCTION IS FOR WHEN LIKE IN A CASE LIKE BUSH WHERE THE INTERROGATION WOULD BE ADMISSIBLE BUT YOU CAUTION THE JURY DON'T CONSIDER THE OFFICERS OPINIONS FOR THEIR TRUTH ONLY FOR THEIR REACTIONS RELEVANT RESPONSES FROM THE DEFENDANTS. THAT IS FINE IF THE DEFENDANT GIVES SIGNIFICANT RELEVANT RESPONSES . THEY WERE TRYING TO GET A CONFESSION HERE AS TO PREMEDITATION. THEY WERE TRYING TO GET A CONFESSION AS TO TYRONE WHEN INTO RICKY'S ROOM HAD THEY GOTTEN THAT THIS INTERROGATION VIDEO WOULD'VE BEEN FINE IF THEY GOT ANYTHING CLOSE TO THAT THIS INTERROGATION VIDEO WOULD'VE BEEN OKAY. BUT I SAID THE SECOND DCA CALLED.

[LISTING NAMES] THEY SAID THE TRIAL JUDGE SAID IN.

[LISTING NAMES] YOU ARE RIGHT THIS VIDEO I AM SEEING HERE IS 95% DETECTIVE.

[LISTING NAMES] AND 5%.

[LISTING NAMES] SAYING THE SAME THING SHE SAID ALL ALONG. THAT IS WHAT WE HAVE HERE THAT IS WHY THIS WAS HARMFUL AND REVERSIBLE ERROR AGAIN I DON'T THINK THE STATE SHOULD BE HEARD TO BASICALLY SAVE ON THE TRIAL LEVEL TO FIGHT TO GET SOMETHING IN PRISON WE NEED TO GET THE SAME THEN COME HERE ON APPEAL AND SAY WE DID NOT NEED THAT ANYWAY. THAT IS I THINK IT'S OKAY TO STACK THE DECK AND SAY LOOK HOW EASILY WE WON THE HAND. IT IS LIKE SAYING THE STRONGER THE PROSECUTION THINKS IT'S CASES THE MORE ERROR CAN BE INJECTED INTO THE TRIAL. I THINK THIS CASE NEEDS TO BE REVERSED FOR A NEW TRIAL.

ON THAT BASIS ALONE.

I WANT TO GET INTO WHAT A CALL IN THAT THE BRIEF THE AL JOHNSON FIASCO.

THE STATE'S ARGUMENT THEY WENT INTO THEIR BRIEF IS KIND OF MORE DETAILED LESS SUPERFICIAL ON OTHER ISSUES.

ON THIS ISSUE IT IS LIKE FOR A FIVE-PAGE ARGUMENT AND THAT OMISSION ANY OF THE FOLLOWING THINGS. EMAIL PERJURY, THREAT. WEBB V. TEXAS THEY DON'T MENTION ANY OF THE WEB V. TEXAS DUE PROCESS CASE LAW THEY DON'T SAY IT IS WRONG THEY DON'T TRY TO DISTINGUISH THEY JUST SAY IS NOT HERE. THE WHOLE ENTIRE ARGUMENT IS NOTHING TO SEE HERE FOLKS THERE'S NOTHING WE CAN DO ABOUT THIS. THEY ARE TREATING THE ARGUMENT THAT WE JUST GET TESTIMONY FROM A WITNESS TO WHAT MORE DO YOU EXPECT?

THAT DIDN'T GO THE WAY THE ONE IF THAT WAS THE ISSUE NUMBER ONE, WOULD

NOT BE UP HERE ARGUING THAT BUT THAT IS NOT THE ISSUE.

THE ISSUE IS THAT AL CLEARLY HAD SEVERE MISGIVINGS ABOUT HIS JURY TESTIMONY. AND HE INDICATED THAT HE WANTED HE DOESN'T USE THE WORD RECENT BUT HE WAS TO TELL THE WHOLE TRUTH HE WANTS TO PAINT A TRUE PICTURE OF HIS FAMILY'S DARKEST AND MORE INTIMATE MOMENTS.

IT IS CLEAR HE WANTS TO REDEEM HIMSELF FOR A PERFORMANCE HE SAID HE LEFT THE COURTROOM FEEL PERSONALLY DEFEATED.

HE'S TALKING ABOUT THE FAMILY PRESSURES OF TYRONE AND STEPHANIE THEY WERE WHAT I WOULD CALL THEY HAD RELATIVES IN COMMENT . THEY WERE ALL FAMILY.

AL WAS OVERWHELMED BY THE PRESENCE OF FAMILY BY HAVING TO DENIGRATE HIS BELOVED GRANDMOTHER IN FRONT OF HIS CHILDREN.

>> Justice John Couriel: CAN I INTERRUPT YOU FOR ONE SECOND BEFORE WE GET TOO MUCH FURTHER DOWN THIS RABBIT HOLE DO YOU AGREE WE ARE TALKING FUNDAMENTALLY HERE REVIEWING THE AL JOHNSON WHATEVER IT AMOUNTS TO DOESN'T NEED TO AMOUNT OF FUNDAMENTAL ERROR TELL ME HOW IT IS PRESERVED BECAUSE IF YOU WILL SAVE A MOTION FOR A NEW TRIAL I DON'T THINK I DON'T SEE AN OBJECTION THAT SAVES THIS UNLESS TELL ME IF I'M WRONG.

>> Steven Bolotin,Appellant: I THINK YOU HAVE TO CONSIDER THE TIME AND I DO THINK THIS IS FUNDAMENTAL ERROR.

>> Justice John Couriel: YOUR ARGUMENT SHOULD I TAKE FROM YOUR ARGUMENT THAT IT DOES CONSTITUTE FUNDAMENTAL ERROR A CONFESSION AND WE SHOULD BE REVIEWING IT MORE FUNDAMENTAL ERROR

>> Steven Bolotin,Appellant: NO YOUR HONOR WANT TO GET TO THAT.

>> Justice John Couriel: I WANT TO HEAR THAT PART FIRST.

>> Steven Bolotin,Appellant: I WILL DO THAT PART FIRST THE SEQUENCE OF EVENTS HERE IS AL TESTIFIES IN JURY PENALTY PHASE BASICALLY CONTRARY IT CONVERTS HIMSELF INTO A STATE WITNESS IS NOT LIKE HE WOULD'VE PROVIDED ADDITIONAL COOPERATION FOR [LISTING NAMES]. HE PUT HIMSELF IN CONFLICT WITH. [LISTING NAMES] HE TESTIFIED BEFORE.

[LISTING NAMES] HE WAS A PRIMARY SOURCE AS OPPOSED TO OR PAID A SECONDARY SOURCE. HE WAS DEVASTATING ABSOLUTELY DEVASTATING TO THIS JURY PENALTY PHASE CAUSED TYRONE ALMOST CERTAINLY THE ONE VOTE WOULD'VE NEEDED FOR THE 1, 2, OR 3 VOTES TO PREVENT A DEATH SENTENCE. PRIOR TO THE SPENCER HEARING WHICH WAS SCHEDULED FOR I BELIEVE EARLY MAY AL SPEAKS WITH

[LISTING NAMES] THE DEFENSE ATTORNEY ON THE PHONE HE'S GOT REAL MISGIVINGS ABOUT.

>> Justice John Couriel: I'M SORRY COUNSEL I'M REALLY LOOKING FORWARD TO AN ANSWER TO MY QUESTION ARE YOU CONCEDED THAT THE APPLICABLE STANDARD OF REVIEW FOR THIS IS FUNDAMENTAL ERROR OR NOT AND IF YOUR ANSWER IS NO. TELL ME HOW THIS WAS PRESERVED.

>> Steven Bolotin,Appellant: HOW IT WAS PRESERVED AFTER THE PERJURY THREAT,

THE ERROR DOES NOT BECOME THE DUE PROCESS ERROR UNTIL AL TESTIFIES THAT WE DID. THE SEQUENCE OF EVENT WHICH IS IMPORTANT HERE YOU'VE GOT THE EMAIL IN APRIL THE SPENCER HEARING WAS POSTPONED YOU HAVE GOT A MOTION FOR A NEW TRIAL BEING FILED IN JUNE WHICH TALKS ABOUT AL'S TESTIMONY IS NOT SPECIFICALLY REFER TO THE PERJURY THREAT THEN YOU GET THE SPENCER HEARING RALL DOES WHAT HE DOES THEN THE HEARING ON THE MOTION FOR A NEW TRIAL IN SEPTEMBER.

THEN THE DEFENSE ARGUES AMONGST OTHER THINGS THAT THE PERJURY THREAT COURSE AL.

>> Justice John Couriel: YOU THINK THAT CONSTITUTES A CONTEMPORANEOUS OBJECTION THAT PRESERVES THE MATTER SPECIAL I DON'T THINK IT HAS TO CONSTITUTE A CONTEMPORANEOUS OBJECTION DOES NOT LIKE A TRIAL WHERE THE JUDGE HAS AN OPPORTUNITY TO CURE IT AND NOT ARGUE WE GET A NEW SPENCER HEARING I'M NOT ARGUING THAT THIS SHOULD GO BACK FOR RESENTENCING BY THE JUDGE THE DAMAGE WAS ALREADY DONE. AL IF THE DEFENSE COUNSEL COULD HE ABJECT AT THE TIME OF AL'S TESTIMONY AT THE SPENCER HEARING IN JULY?

HE COULD HAVE BUT IT MAKES NO DIFFERENCE IN TERMS OF SANDBAGGING OR ANYTHING LIKE THAT BECAUSE THE ISSUE WAS WE NEED A NEW PENALTY TRIAL. HE DOES THAT IN SEPTEMBER AT THE HEARING ON THE MOTION FOR NEW TRIAL RATHER THAN A SPENCER HEARING ITSELF IF I WAS ARGUING HE SHOULD GET A NEW SPENCER HEARING I THINK YOU MIGHT HAVE A POINT LACK OF CONTEMPORANEOUS OF THE OBJECTION MAY HAVE BEEN A PROBLEM. BUT IN THIS CIRCUMSTANCE I DON'T THINK IT IS IF THE COURT THINKS IT IS THEN I WOULD FALL BACK ON THE FORCE FUNDAMENTAL ERROR BECAUSE THIS IN WEBB V. TEXAS AND ALL IT'S PROGENY IS DUE PROCESS ERROR IN THE CASES.

>> Justice Charles Canady: RELATED TO THIS DESCRIBE THE CIRCUMSTANCES IN WHICH WHAT YOU CHARACTERIZE AS THE PERJURY THREAT WAS MADE WHO HEARD THAT THREAT.

>> Steven Bolotin,Appellant: WHO HEARD THE THREAT AT THE TIME IT WAS MADE OR WHO HEARD IT EVENTUALLY AT THE TIME IT WAS MADE.

>> Justice Charles Canady: WHAT DOES THE RECORD SHOW ABOUT WHO HEARD IT AT ANY TIME.

>> Steven Bolotin,Appellant: THE RECORD SHOWS THAT THE PERJURY THREAT WAS MADE AT A HEARING JUST BEFORE THE SPENCER HEARING WAS SCHEDULED TO OCCUR.

[LISTING NAMES] THE DEFENSE ATTORNEY GOES IN AND SAYS I SHOWED THE STATE THIS EMAIL I THINK WE MIGHT HAVE A PROBLEM. THE STATE THEN SAYS IF HE TESTIFIES ANY DIFFERENT THAN WHAT HE TESTIFIED AT THE PENALTY PHASE.

>> Justice Charles Canady: DOES THE RECORD SHOW THAT THE WITNESS WAS PRESENT WHEN THAT WAS DISCUSSED.

>> Steven Bolotin,Appellant: NO THE RECORD SHOWS THE WITNESS WAS NOT PRESENT BUT THE RECORD ALSO SHOWS IT WAS IMMEDIATELY DECIDED WE'VE GOT TO

APPOINT COUNSEL FOR THE WITNESS TO ADVISE HIM. LET THE RECORD SHOW THAT WHEN HE COMES BACK TO TESTIFY HE HAS BEEN CALLING AROUND TRYING TO FIND AN ATTORNEY BUT HE HAS BEEN UNABLE TO GET ONE AND HE CAN'T AFFORD ONE SO THEY APPOINT REGIONAL COUNSEL ORIGINAL THEY APPOINT THE PUBLIC DEFENDER WHICH OBVIOUSLY THERE IS A CONFLICT THEN THERE IS CONFLICT WITH THE REGIONAL COUNCIL.

WHO IS ALREADY THERE. THE REGIONAL COUNSEL THERE IS A 20 MINUTE RECESS FOR REGIONAL COUNSEL TO CONSULT WITH AL. THEN AL COMES BACK AND CONTRARY TO HIS EMAIL HE IS TESTIFYING THAT EVERYTHING HE SAYS AT THE PENALTY PHASE WAS EXACTLY TRUE AND DEFENSE COUNSEL HAS MISCHARACTERIZED THE EMAIL. HE WAS ABSOLUTELY ENRAGED AT DEFENSE COUNSEL TO THE POINT WHERE HE GETS DECLARED A HOSTILE WITNESS WHEN THIS DEFENSE COUNSEL AT THE STATE'S SUGGESTION INTRODUCES THE AMOUNT OF EVIDENCE AL SAYS I NEED TO TALK TO MY LAWYER AGAIN THE JUDGE SAYS OKAY AND SAYS TALK TO YOUR LAWYER AGAIN HE'S TALKING TO HIS LAWYER TWICE. DO I HAVE ANYTHING ON THE RECORD THAT SPECIFICALLY IN THE TRANSCRIPT WAS SOMEBODY TELLING AL YOU WILL GET CHARGED WITH PERJURY IF YOU DO THIS: I DON'T HAVE THAT BUT IT DEFIES ALL IMAGINATION THIS.

>> Justice Charles Canady: YOUR THEORY IS AMOUNT HIS LAWYER IS THE THE STATE AGENT IN THE COERCING HIM.

>> Steven Bolotin,Appellant: HE WOULD NOT HAVE HAD HAD A LAWYER IF THE STATE COURSE HIM.

>> Justice John Couriel: DID YOU NOT JUST SAY EARLIER WHAT YOU'RE SAYING THE PROBLEM IS WHAT HAPPENED AT THE PENALTY PHASE IN FRONT OF THE JURY?  
[UNCLEAR AUDIO]

>> Steven Bolotin,Appellant: THE PERJURY THREAT HAS EVERYTHING TO DO.

>> Justice John Couriel: I THOUGHT YOU SAID THE PERJURY THREAT HAPPENED BEFORE THE SPENCER HEARING.

>> Steven Bolotin,Appellant: THAT IS CORRECT.

>> Justice John Couriel: THE JURY PART IS DONE.

>> Steven Bolotin,Appellant: THERE WAS A MOTION FOR A NEW TRIAL BASED ON WHAT AL HAD DONE. IF AL HAD BEEN ABLE IF HE HAD NOT BEEN COERCED OFF THE STAND IN THIS CASE WAS COERCED LOCKED INTO HIS PREVIOUS TESTIMONY. OTHERWISE HE WAS LOOKING AT A SECOND-DEGREE FELONY AND PRESENT TIME. HAD HE NOT BEEN COERCED THE JUDGE VERY WELL MIGHT HAVE DECIDED THAT WHAT HE DID IN THE PENALTY PHASE COMPROMISED THE RELIABILITY OF THE PENALTY PHASE AND PROBABLY WOULD'VE GRANTED THE MOTION FOR A NEW TRIAL IN THE PENALTY PHASE. I THINK THAT BELIEF IS BOLSTERED BY THE FACT THAT IN THE SENTENCING ORDER THE JUDGE BELIEVED.

[LISTING NAMES] AS TO THE HISTORY OF ABUSE AND EVERYTHING LIKE THAT. THERE IS NOTHING IN THE SENTENCING ORDER THAT INDICATED HE BELIEVED AL'S TESTIMONY BEFORE THE JURY. THE STATE SAYS THERE IS NO PROBLEM BECAUSE THE JUDGE SENTENCING ORDER WAS FINE. THAT'S WHY I DID NOT ARGUE THERE

SHOULD BE A JUDGING RESENTENCING WHY THERE SHOULD BE A NEW SPENCER HEARING THERE SHOULD BE NO PENALTY TRIAL EITHER BECAUSE IT WAS PRESERVED OR IT IS A FUNDAMENTAL DUE PROCESS ISSUE. I THINK VERY IMPORTANT THING THAT SHOULD NOT BE OVERLOOKED IS THE PROSECUTOR DID NOT SAY I AM NOT GOING TO TOLERATE AL TESTIFYING DIFFERENT THAN HE DID IN THE PENALTY PHASE BECAUSE HE WILL BE PERJURING HIMSELF I BELIEVE WHAT HE SAID IN THE PENALTY PHASE WAS TRUE. THE PROSECUTOR SAYS WELL NOW WE DON'T KNOW WHICH VERSION IS TRUE WAS HE LYING THEN OR WAS HE LYING NOW? I DON'T KNOW SO LET'S LOCK HIM INTO HIS TESTIMONY. THAT IS A HUGE HUGE PROBLEM WITH THE RELIABILITY OF THIS JURY PENALTY VERDICT PARTICULARLY IN LIGHT OF THE FACT THAT IT REQUIRES UNANIMITY.

IF I HAVE ANY TIME LEFT I WILL MOVE ON TO THE SENTENCING ORDER ISSUE WHERE THE JUDGE USES THIS IS NOT AN ABUSE OF DISCRETION THIS IS A LEGAL PROBLEM WHERE HE DIMINISHES THE WEIGHT OF THE IMPAIRED CAPACITY MITIGATOR BECAUSE JOHNSON HAD AN EXEMPLARY CRIME FREE LIFE PRIOR TO THAT. AND HE DIMINISHES THE WEIGHT OF THE NO PRIOR HISTORY MITIGATOR BY ANY RELEVANT REFERENCE TO A CASE THAT SAYS BASED ON THE CIRCUMSTANCES OF THE CASE. I WILL DIMINISH THE WEIGHT OF IT.

OF THE NO PRIOR HISTORY MITIGATOR. THE STATE LED HIM DOWN THAT PATH BY ARGUING IN THEIR SENTENCING MEMO THAT THE TWO MITIGATING OUR EXCLUSIVE IF NOT THERE COMPLEMENT) WOULD CITE THE NEWEST BEVEL CASE THE 2023 BEVEL CASE FOR THE PROPOSITION THAT FOR THE IMPAIRED CAPACITY MITIGATOR THE DEFENDANT'S CAPACITY DOES NOT HAVE TO BE IMPAIRED THROUGHOUT HIS ENTIRE LIFE. IT FOCUSES ON HIS BEHAVIOR AT THE TIME OF THE CRIME AND DEVIANCE HERE IS REALLY PRETTY COMPELLING. THAT TYRONE JOHNSON'S LIFE WAS UNRAVELING . HE HAD A TOUGH LIFE ANYWAY INJURIES FROM THE MILITARY AND HIS OTHER PROBLEMS IN THE LAST TWO YEARS BEFORE THIS CRIME HIS LIFE WAS UNRAVELING HE WAS A CORRECTED HE WAS AT THE VA ALL KINDS OF PROBLEMS. THEN HIS SON COMMITTED SUICIDE.

THIS ULTIMATELY WHAT TRIGGERED THIS MURDER BY A GUY WHO HAS NO SIGNIFICANT PRIOR HISTORY OF CRIMINAL BEHAVIOR WHAT TRIGGERED THIS MURDER IS HIS GIRLFRIEND WHO HAD AT LEAST BEEN DRINKING A LITTLE BIT THERE IS A DISPUTE OVER WHAT TO WATCH WHETHER TO WATCH A FOOTBALL GAME ON TV AND SHE SAYS I CAN SEE WHERE SON KILLED HIMSELF LIKE A BITCH BECAUSE YOU ARE BITCH.

THAT IS SOMEBODY WHOSE MENTAL STATE IS ALREADY UNRAVELING ANYWAY THAT IS A CRUEL HORRENDOUS THING TO SAY. NOT A JUSTIFICATION FOR MURDER BUT CERTAINLY SOMETHING THAT COULD TRIGGER A MURDER AND SOMEBODY WHOSE CAPACITY WAS IMPAIRED THE DOCTOR.

[LISTING NAMES] SAYS WAS CLEARLY WAS IT WAS UNRAVELING AND THEN THE DAM BROKE WITH THAT. WHAT THE JUDGE SAYS ON DIMENSIONING THAT IMPORTANT MITIGATOR ONE OF THE MORE IMPORTANT ONES FLORIDA LAW IS I'M ONLY GOING TO GIVE THIS SLIGHT WEIGHT BECAUSE OF HIS HISTORY OF NOT COMMITTING CRIMES

AND BECAUSE OF HIS HISTORY OF HOLDING GOOD JOBS WITH THE COURT SYSTEM IN SOUTH CAROLINA HIS EXEMPLARY MILITARY SERVICE WHATEVER. ALL OF THESE GOOD THINGS ARE THE REASONABLE DENIGRATE THE CAPACITY. THEN HE TURNS RUN ON THE NO PRIOR HISTORY MITIGATOR HE SAYS I WILL GIVE THIS LESS WEIGHT BECAUSE OF THE CIRCUMSTANCES OF THE CRIME. AND HE CITES A CASE CALLED RAMIREZ. HE SAYS NOTHING ABOUT WHAT THE CIRCUMSTANCES OF THE CRIME SHOULD DIMINISH THE NO PRIOR HISTORY MITIGATOR THE SKY HAS LIVED 40+ YEARS WITHOUT COMMITTING CRIMES THAT SHOULD INCREASE THE IMPORTANCE OF THE NO PRIOR HISTORY MITIGATOR WE SET THIS RAMIREZ CASE WITHOUT EXPLAINING IN ANY WAY HOW THIS TRIGGERED EXPLOSION OF VIOLENCE WHAT ABOUT THE CIRCUMSTANCES OF THIS CRIME?

IN PARTICULAR IT DENIGRATES THE NO PRIOR HISTORY MITIGATOR. WHEN YOU LOOK AT RAMIREZ RAMIREZ DOES NOT SAVE THE CIRCUMSTANCES OF THE CHARGED CRIME RAMIREZ IS TALKING ABOUT THE CIRCUMSTANCES OF A PRIOR CRIME WHICH THE JUDGE ACTUALLY USED IN RAMIREZ TO DIMINISH THE WEIGHT AND AT THIS COURT SAID THERE WAS ABUSE OF DISCRETION BECAUSE THE PRIOR CRIME WAS RELATIVELY MINOR BECAUSE I STILL HE STOLE 10 BUCKS FROM THE TRUCK DASHBOARD OR SOMETHING LIKE THAT. THE JUDGE IN RAMIREZ THE CIRCUMSTANCES OF THE CRIME THAT IS KIND OF MEANINGLESS THAT'S AN ABUSE OF DISCRETION. HERE IT WAS AN ABUSE OF DISCRETION TO LEGALLY MISUNDERSTAND 2 IMPORTANT MITIGATING FACTORS BASED ON SOME THEORY THAT THEY ARE MUTUALLY EXCLUSIVE FOR THE CANCEL EACH OTHER OUT. AS HE SAID THE STATE LED HIM DOWN THAT PATH.

IT IS NOT A QUESTION JUSTICE LABARGA ASKED THE QUESTION IN THE LAST ORAL ARGUMENT TO THE EFFECT OF WHY DID THE JUDGE GIVE ONLY GREAT WEIGHT TO CCP WHEN YOU GIVE VERY GREAT WEIGHT TO THREE OTHER MITIGATORS AND THE CCP SEEMS LIKE A PRETTY BIG ONE WHITE DID HE ONLY GIVE IT GREAT WEIGHT INSTEAD OF VERY GREAT WEIGHT AND COUNSEL FOR THE STATE SAID BASICALLY I DON'T KNOW.

COULD'VE GIVEN IT VERY GREAT WEIGHT BUT HE GAVE IT GREAT WEIGHT. AND WE KNOW WHAT THE JUDGE DIMINISHED THE WEIGHT OF THOSE 2 MITIGATING FACTORS NO DOOR BASED ON A MISUNDERSTANDING OF THE LAW TO RESERVE THE REST OF MY TIME FOR REBUTTAL.

>> Chief Justice Carlos Muniz: THANK YOU.

>> Christina Z. Pacheco, Appellee: CHRISTINA Z. PACHECO REPRESENTING THE APPELLEE, THE STATE OF FLORIDA. I WILL ADDRESS THE ARGUMENTS AS COUNSEL HAS DONE SO IN THAT ORDER UNLESS THE COURT DIRECTS ME OTHERWISE.

JUSTICE COURIEL WHAT YOU SAID REGARDING THE SECOND INTERVIEW THAT THE IMPACT IS WHAT IS ON WITH WHAT THE OFFICER SAID IS EXACTLY CORRECT THAT IS WHAT THIS COURT HAS ALWAYS LOOKED AT . WHAT THE OFFICER SAID IN THIS COURT'S JACKSON OPINION IT IS FOCUSED ON WHETHER THE INTERVIEWING OFFICER OR DETECTIVE MAKES A STATEMENT THAT ADDRESSES THE DEFENDANT'S CREDIBILITY OR GUILT.

THAT IS WHAT IS IMPROPER . THE STATEMENT THAT GOES TO THE GUILT OR CREDIBILITY. IN JACKSON, THERE WERE REPEATED STATEMENTS. WHY DID YOU KILL HER?

I KNOW YOU DID IT. YOU KNOW IN YOUR HEART YOU DID IT. THERE IS NO DOUBT IN MY MIND THAT YOU DID IT. THERE IS NO DOUBT AND IT GOES ON AND ON AS TO STATEMENTS THAT THE DEFENDANT WAS GUILTY.

AS MY COLLEAGUE CONCEDES LAW ENFORCEMENT DID NOTHING OF THAT NATURE HERE HE SAID THEY DID NOT SAY ANYTHING INAPPROPRIATE. THEY DID NOT DO ANYTHING WRONG. WE DON'T HAVE A JACKSON ISSUE WE DON'T HAVE AN ISSUE WHEN THE INTERVIEWING DETECTIVES ARE NOT MAKING A STATEMENT AS JUSTICE CANADY SAID THERE WAS NOTHING DIRECT. FOR THAT REASON THERE IS NO ERROR. THIS IS MORE IN LINE WITH THE BUSH CASE WHERE THE DETECTIVES CONFRONTED THE DEFENDANT WITH THE EVIDENCE AGAINST HIM AND GIVE HIM AN OPPORTUNITY TO RESPOND.

THAT IS EXACTLY WHAT THE DETECTIVES DID. THEY SAID THERE IS A BIG DIFFERENCE BETWEEN SAYING HERE IS WHAT THE EVIDENCE SAYS OR HERE IS WHAT THE EVIDENCES TELL US YOUR STORY . WHAT YOU'RE SAYING IS NOT LINING UP.

THEN YOU ARE LYING WE KNOW YOU'RE LYING.

IN BUSH, THE DETECTIVES ACTUALLY MISLED THE DEFENDANT INSOFAR AS THEY PRESENTED EVIDENCE THAT WAS NOT ACTUALLY TRUE. THE DETECTIVES TALKED ABOUT NASA CHANGING A VIDEO AND TRY TO GET THE DEFENDANT TO MAKE STATEMENTS AND PERMITTING STATEMENTS IN THIS COURT FOUND THAT THERE WAS NO ERROR IN THAT CASE HERE WE HAVE THE DEFENDANT SAYING TRUTH I'M SORRY THE DETECTIVES SAYING TRUTHFUL STATEMENTS AS TO WHAT THE EVIDENCE ACTUALLY SHOWS AND THAT THE DEFENDANT IN PRESENTING THE DEFENDANT WITH THOSE THAT EVIDENCE.

MR. BOLOTIN HAD SAID THAT HE MADE A COMMENT AS TO THE STATE WILLING WE DID NOT NEED THE EVIDENCE SO IT DOESN'T MATTER THAT IS NOT WHAT WE ARE ARGUING WHAT WE HAD EVER ARGUED. WE ARE ENTITLED TO THE EVIDENCE WE WERE ENTITLED TO THE EVIDENCE IT WAS RELEVANT TO OUR CASE.

THE DEFENDANT MADE RELEVANT INCREMENTING RESPONSES REGARDING COMMITTING THE CRIME . MURDERING DID NOT SAY MURDER BUT HE ADMITTED TO SHOOTING BOTH VICTIMS . HE ADMITTED HE WAS THE ONLY ONE IN THE HOUSE WITH THE GUN. THERE WAS NO ONE ELSE THERE OTHER THAN THE TWO VICTIMS . HE WAS THE ONLY ONE THAT HAD THE GUN . EMITTED THERE WAS OR WOULD'VE BEEN NO REASON FOR THE CHILD RICKY TO HAVE ANY BULLET HOLES IN HIS ROOM.

THAT RICKY DID NOT HAVE THE GUN BEFORE.

HE ADMITTED TO THE TIMEFRAME WHICH WAS IMPORTANT TO THE STATES CASE BECAUSE HE PRESENTED HIMSELF AS HE DID HAVE AN INJURY THERE IS NO DOUBT TO THAT . HE PRESENTED HIMSELF AS INCAPABLE OF GOING INTO THE VICTIM'S ROOM WERE CHASING HIM BECAUSE OF HIS INJURY ALTHOUGH DURING THE SECOND INTERVIEW HE SAID HE LEFT THE APARTMENT AND THERE WAS KIND OF

LIKE A SUN ROOM OUTSIDE OF THE DOOR LEFT THE ENTIRE APARTMENT AND HE WENT DOWN TO THE FRONT GATE OF THE APARTMENT COMPLEX LOOKING FOR SOMEONE TO HELP HIM. THEN HE TURNED AROUND AND WENT HE REALIZED AT THAT TIME BECAUSE HIS PHONE HAD BEEN TURNED OFF HE REALIZED THERE WAS A HOUSE PHONE THEN WENT BACK INTO THE APARTMENT AND USED THE HOUSE PHONE TO CALL 911. HE ACCORDING TO HIS STATEMENT IN HIS SECOND INTERVIEW HE SAID HE DID ALL THAT WHEN HE WENT TO THE GATE AND BACK IN UNDER ONE MINUTE WHICH WAS IMPORTANT FOR THE STATE TO SHOW IF YOU CAN HOP ON 1 FOOT THAT FAST THEN CLEARLY WAS CAPABLE OF GETTING TO THE DEFENDANT OR TO THE VICTIM'S ROOM.

WHAT ALSO WAS IMPORTANT FOR THE STATES REASON FOR ADMITTING THE SECOND RECORDING WAS EVEN THOUGH WE DID HAVE THE FIRST RECORDING IT IS VERY DIFFICULT TO UNDERSTAND THE DEFENDANT DURING THE FIRST RECORDING IT WAS TAKEN RIGHT AFTER HE WAS ARRESTED AND HE WAS VERY UPSET AT TIMES. IT WAS JUST HARD TO EVEN HEAR WHAT HE WAS SAYING. SOMETIME IT PASSED BETWEEN THE FIRST AND SECOND RECORDINGS.

HIS CLOTHES HAS BEEN PROCESSED YET CALMED DOWN A BIT IT WAS MUCH EASIER TO UNDERSTAND WHAT HE WAS SAYING DURING THE SECOND RECORDING THAT ALSO MADE IT IMPORTANT FOR THE STATES CASE AND IN ADDITION TO JUST SEEING HIS REACTIONS WHEN HE WAS PRESENTED WITH THE EVIDENCE . HIS EXPLANATION OR LACK OF EXPLANATION AS TO WHY THERE WAS BLOOD IN THE CHILD'S ROOM WHILE THEY WERE TWO SHELL CASINGS WHY THERE WERE TWO BULLET HOLES UNDER HIS BED?

THE IMPORTANT PART ABOUT THE BED IS THE BULLET HOLES WERE NOT VISIBLE AS JUST LOOKING AT THE CRIME SCENE AFTER THE MURDERS.

THERE WERE TOYS AND CLUTTER UNDER THE BED.

IT WAS NOT UNTIL LAW ENFORCEMENT MOVED THE BED AWAY FROM THE WALL WERE THOSE TWO BULLET HOLES VISIBLE.

THE DEFENDANT WOULD NOT HAVE KNOWN PROBABLY DID NOT REALIZE THERE WERE BULLET HOLES IN THE WALL. THERE WERE NO OTHER BULLET HOLES IN THE ENTIRE APARTMENT.

THOSE WERE THE ONLY 2. TO SEE HIM GETTING CONFRONTED WITH THAT EVIDENCE AS TO EXPLAIN WHY THERE IS BULLET HOLES IN THE WALL?

IT WAS VERY IMPORTANT FOR THE STATES CASE TO BE ABLE TO SHOW THAT.

THERE WAS CLEARLY NO ABUSE OF DISCRETION.

IN ADMITTING THE RECORDING.

EVEN IF THIS COURT WERE TO FIND THAT THERE WAS IT WOULD BE HARMLESS GIVEN IT WAS LESS THAN 14 MINUTES IN LENGTH.

THERE WAS A JURY INSTRUCTION PROVIDED.

IT WAS UNCONTESTED THE DEFENDANT KILLED THE VICTIMS IN THAT THE BUSH CASE THERE WERE 4 VIDEOS.

EVEN IN THE SEPARATIST THIS COURT FOUND THERE WAS NO FUNDAMENTAL ERROR WHEN OFFICERS WERE TELLING THE DEFENDANT TELL ME THE TRUTH DON'T LIE TO

ME.

SO CLEARLY THERE WOULD BE NO HARM LESS OR HARMFUL ERROR IN THIS CASE WHEN THE STATEMENTS DID NOT RISE TO ANY LEVEL OF PREJUDICE LIKE IN THE SHEPHERD CASE OR JACKSON CASE.

THE AL JOHNSON ISSUE WHAT IS A BIT PUZZLING ABOUT MY COLLEAGUE'S ARGUMENT IS HE SAYING THAT HE IS NOT ASKING FOR A NEW SPENCER HEARING HE IS NOT ASKING HE IS NOT ASKING FOR A NEW SPENCER HEARING HE'S ONLY ASKING FOR A NEW PENALTY PHASE IN FRONT OF THE JURY.

BUT YET THE ISSUE THAT WAS BEFORE THE JURY WAS JUST THAT AL JOHNSON DOES NOT TESTIFY HOW THEY WANTED HIM TO.

THE FOCUS ON THE EMAIL AND WHAT HE CALLS THE PERJURY THREAT THAT HAPPENED AFTER THE JURY PENALTY PHASE.

IF ONLY WHAT HE'S ASKING FOR IS THE PENALTY PHASE I THINK THIS COURT LOOKS AT YOU ARE NOT ENTITLED TO A NEW TRIAL BECAUSE THE WITNESS DOES NOT TESTIFY HOW YOU WANT THEM TO OR EXPECT THEM TO . IF THAT WERE THE CASE WOULD HAVE BEEN TRIALS EVERY DAY. IT IS VERY COMMON FOR WITNESSES TO CHANGE MAYBE NOT BE AS FORCEFUL OR DIRECT IN TERMS OF THEIR TESTIMONY THEN OR WHEN THEY WERE COMFORTABLY IN AT THE OFFICE DISCUSSING A CASE.

>> I THINK AS I UNDERSTAND THE DEFENSES POINT HE MADE A STATEMENT IN THIS PENALTY PHASE THAT HE THEN LATER INDICATED MIGHT HAVE BEEN INCORRECT. THAT WAS ONE OF THE BASIS FOR A MOTION FOR NEW TRIAL WHICH WAS PENDING AT THE TIME OF THE SPENCER HEARING. THEN WHEN THEY WENT IN THERE WERE ALL THESE ISSUES SURROUNDING PERJURY. THE COURT FELT IT NECESSARY FOR HIM TO HAVE HIS OWN COUNSEL.

AT WHAT POINT SHOULD THIS ISSUE HAVE COME UP I THINK YOU ARE ARGUING IS NOT EVEN A PRESERVED ISSUE. WHEN SHOULD THE OBJECTION HAVE BEEN MADE TO MAKE THIS A PROPER ISSUE?

IT IS A BIT OF A COUPLE GET A TIMELINE.

>> Christina Z. Pacheco, Appellee: IT IS TO ME IT SEEMS LIKE WE HAVE TWO SEPARATE THE JURY PENALTY PHASE AND THE SPENCER HEARING.

IF WE WOULD JUST LOOKING UP THE JURY PENALTY PHASE TO ME THAT IS YOU DON'T GET A NEW TRIAL BECAUSE IT WITNESS TESTIFIED DIFFERENTLY. IF HE IS ARGUING IT'S A SUBSTANTIVE DUE PROCESS VIOLATION BASED ON THIS EMAIL AND WHAT HAPPENED AT THE SPENCER HEARING . IN MY OPINION, THAT IS A DIFFERENT STANDARD . HE DID FILE A MOTION FOR A NEW TRIAL BUT IT WAS BIT DIFFERENT THAN THIS INDEPENDENT DUE PROCESS VIOLATION . IN MY VIEW IT IS NOT PRESERVED BUT EVEN IF WHETHER IT IS REVIEWED UNDER THE ABUSE OF DISCRETION STANDARD OR THE FUNDAMENTAL ERROR STANDARD HE IS NOT ENTITLED TO RELIEF ON THAT BASIS. I THINK IT IS IMPORTANT TO LOOK AT THE REASON . FIRST THE EMAIL DOES NOT STATE ALLIED DURING MY PENALTY PHASE TESTIMONY I WANT TO TESTIFY AGAIN.

AS AL JOHNSON EXPLAINS HE SENT THIS EMAIL TO PUT HIS EMOTIONS AND HIS FEELINGS DOWN PERSON NEVER SAID I LIED.

AND THE STATE NEVER PERCEIVED IT THAT WAY AT THIS DATA SET ON THE RECORD I DISAGREE WITH DEFENSE COUNSEL'S CHARACTERIZATION OF THIS EMAIL BEING BELIED.

DURING THE SPENCER HEARING AL JOHNSON EVEN SAID MY TRIAL TESTIMONY HAS BEEN MISCHARACTERIZED AND MY EMAIL HAS BEEN MISCHARACTERIZED.

IF WE'RE LOOKING AT THIS DUE PROCESS CLAIM, I BELIEVE JUSTICE CANADY POINTED OUT THAT THERE WAS NEVER AL JOHNSON, WAS NEVER AROUND WHEN THIS DEPOSIT PERJURY THREAT WAS MADE WHAT THE STATE SAID IF YOU WILL HAVE HIM COME BACK TO THE SPENCER HEARING AND SAY THAT HE LIED ON THE STAND DURING A DEATH PENALTY CASE, WE ARE GOING TO LOOK INTO THAT AND THAT IS PERJURY. IF HE WILL COME IN NEAR AND SAY THAT HE LIED. AT THE NEXT HEARING THE PROSECUTOR SAYS WELL HAD A CHANCE TO TALK TO MR. WARREN AND WE ARE NOT SURE WHAT HE'S GOING TO TESTIFY TO. IT REALLY DEPENDS ON HOW HE TESTIFIES. EVEN THE JUDGE UNDERSTOOD IF HE IS SAYING ADMITTING TO SOME OF THESE ACTS OF ABUSE BUT NOT LABELING IT AS ABUSE, THAT IS MORE OF A SUBJECTIVE VIEW. BECAUSE AL JOHNSON WAS ADMITTING TO A LOT OF THE ACTS FOR INSTANCE HE SAID HIS GRANDMOTHER SPANKED HIM IN THE COUNTRY THEY CALLED IT A BEATING. SHE USED A BLACKSTRAP BUT THEN HE SAID IT WAS NOT ABUSE IT DID NOT RISE TO THE LEVEL OF ABUSE.

THE COURT ACKNOWLEDGED IF HE IS JUST GIVING MORE INFORMATION NOT SAYING THAT HE'S LYING THEN THERE PROBABLY IS NOT A PERJURY CHARGE FOR.

>> Justice John Couriel: AS I UNDERSTAND THIS KEY MOMENT IN THE TESTIMONY IS THE THING ABOUT THE WEIRD WEDDING DAY REFERENCE AND HE BACKS OFF OF THAT.

AND SAYS I DON'T REMEMBER ANYTHING ABOUT WHATEVER IT WAS THE THING THAT TIED IN WITH THE MEETING ON THE WEDDING DAY OF AT THEIR MOTHER.

>> Christina Z. Pacheco,Appellee: YES.

>> Justice John Couriel: THERE IS ANOTHER ELEMENT THAT NEITHER SIDE HAS RAISED THAT IS THE DR. [LISTING NAMES] TESTIMONY GOES IN AND OBJECTED TO.

AT MOST AL JOHNSON'S TESTIMONY WOULD HAVE BEEN CORROBORATIVE OF. [LISTING NAMES] STATEMENT AFTER 14 HOURS WITH THE DEFENDANT THAT SHE COULD SAY THAT HE GAVE HER PLENTY OF EVIDENCE THAT HE HAD A CHILDHOOD FULL OF ABUSE.

AT THE END OF THE DAY WE ARE HAVING A VERY INTERESTING ARGUMENT ABOUT THIS SORT OF PER ISSUE ABOUT AL JOHNSON'S TESTIMONY WANT TO BRING US BACK TO THE WEIGHT LIKE WHAT IT WOULD'VE PROVEN IT WOULD'VE CORROBORATED WHAT THE JURY HEARD ANYWAY AM I WRONG ABOUT THAT.

>> Christina Z. Pacheco,Appellee: NO YOUR HONOR.

[LISTING NAMES] TESTIFIED IN DETAIL AS TO THE WHAT THE ABUSE SUFFERED BY AL AND TYRONE JOHNSON AND HE SAID THAT BOTH TYRONE AND AL TOLD HIM ABOUT THE ABUSE AND IT WAS ALSO CONFIRMED IT WAS MULTIGENERATIONAL AND HE WENT OVER EVERYONE IN THE FAMILY. THERE WERE AUNTS THE FATHER VARIOUS PEOPLE TALK ABOUT THE GRANDMOTHER AND HER INFAMOUS BLACKSTRAP.

AND THE JURY HEARD ALL THAT.

I BELIEVE THAT IF WE'RE LOOKING AT THIS IN TERMS OF PERHAPS IF AL WOULD'VE TESTIFIED DIFFERENTLY AT THE SPENCER HEARING AID REALLY WOULD NOT HAVE MATTERED IN TERMS OF THE ABUSE. THE JUDGE CERTAINLY HAD THE EMAIL. ADD BOTH TESTIMONIES THE JUDGES FUNCTION IS TO BE ABLE TO LOOK AT ALL THIS AND GIVE IT APPROPRIATE WEIGHT AND NOT BE MISLED OR CONFUSED ABOUT ANY DIFFERENCE IN TESTIMONY.

THE JUDGE CREDITED.

[LISTING NAMES]'S TESTIMONY THROUGHOUT HIS SENTENCING ORDER.

I THINK IT WOULD BE IMPROPER TO SAY THAT THERE WOULD BE ANY SORT OF CONFUSION OR MISLEADING BASED ON IF AL WOULD'VE GIVEN MORE INFORMATION ABOUT THE ABUSE.

THE IMPAIRED CAPACITY MITIGATOR IN THE JUDGE'S SENTENCING ORDER THERE WAS NO LEGAL ERROR WITH THE JUDGE'S ANALYSIS OF THAT MITIGATING CIRCUMSTANCE. WHAT HAPPENED IS.

[LISTING NAMES] TESTIFIED THAT THE DEFENDANT'S ABILITY TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED AND HE SAID BECAUSE OF TWO REASONS. THE DEFENDANTS ADVERSE CHILDHOOD AND THE LONG-STANDING DEPRESSION THAT HE SUFFERED FROM.

[LISTING NAMES] TESTIFIED IN DETAIL AS TO ALL OF THESE ADVERSE CHILDHOOD FACTS.

THERE WERE OVER NINE CASES OF THE TRANSCRIPT WERE RIGHT AFTER HE TALKED ABOUT THIS MITIGATOR HE WENT ON FOR NINE PAGES EXPLAINING THESE ADVERSE CHILDHOOD SITUATIONS.

THEN HE WENT INTO THE DEPRESSION. BUT AS HE WAS TALKING ABOUT THE DEPRESSION, HE KEPT REVERTING BACK TO THESE ADVERSE CHILDHOOD EXPERIENCES. HE EVEN SAID IT ON PAGE 3171 OF THE TRANSCRIPT I KNOW I KEEP REPEATING THESE ADVERSE CHILDHOOD EXPERIENCES AS HE'S TALKING ABOUT THE DEPRESSION. RELIEF FOCUS OF THAT MITIGATOR WITH THESE ADVERSE CHILDHOOD EXPERIENCES. WHEN THE COURT IN ITS SENTENCING ORDER WAS ASSESSING IT THE COURT CREDITED.

[LISTING NAMES] TESTIMONY SAID THAT THE MITIGATION HAS BEEN ESTABLISHED BUT IN LIGHT OF THE FACT THAT HE WAS FOCUSED ON THE ADVERSE CHILDHOOD EXPENSES THE COURT FOUND YOU HAD THESE EXPENSES WHICH WERE ABLE TO CONDUCT YOURSELF ACCORDINGLY THROUGHOUT YOUR LIFE WITH YOUR VARIOUS JOBS AND IN THE MITIGATOR THAT'S WHY HE ONLY GAVE THE MITIGATOR OF SLIGHT WEIGHT. SO GIVEN THE RELIANCE ON THE EXPERT'S TESTIMONY THERE CAN BE NO LEGAL ERROR AS.

[LISTING NAMES] HAS ALLEGED NOR ANY ABUSE OF DISCRETION WITH THE NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL HISTORY.

MITIGATOR THAT WAS AN ERROR WITH REGARD TO THE JUDGE SAYING GIVEN THAT THIS WAS A DOUBLE MURDER WE AGREED THAT THAT WAS AN ERROR THE PROBLEM

FOR NOT THAT IT WAS ERROR BUT WAS INCORRECT FOR THE JUDGE TO DELIBERATE THE PROBLEM WITH THE ARGUMENT IS THE JUDGE STILL FOUND THAT THAT MITIGATION HAD BEEN ESTABLISHED AND ASSIGNED IT MODERATE WEIGHT. I DON'T THINK WE CAN SAY THAT NO REASONABLE JUDGE WOULD HAVE ASSIGNED THAT MITIGATOR MODERATE WEIGHT BUT IF THIS COURT WERE TO FIND SO ANY ERROR WOULD BE HARMLESS GIVEN THE SIGNIFICANT AGGRAVATION IN THIS CASE HAC, THE VICTIM BEING UNDER 12.

I'M DRAWING A BLANK. [LAUGHTER]

>> Justice John Couriel: I THINK WILL APPRECIATE THE STATES CONFESSION.

>> Christina Z. Pacheco,Appellee: AND OBVIOUSLY THE CONTEMPORANEOUS MURDER OF STEPHANIE.

I THINK IF WE WERE ADD MORE WEIGHT GREAT WEIGHT TO THAT MITIGATING CIRCUMSTANCES IT WOULD NOT HAVE ANY IMPACT ON THE JUDGE'S SENTENCE THE JUDGE FOUND THAT THE AGGRAVATORS HEAVILY OUTWEIGHED THE MITIGATING CIRCUMSTANCES PRESENTED. I THINK THIS COURT CAN CONFIDENTLY SAY THAT ANY ERROR THERE WOULD BE HARMLESS BEYOND A REASONABLE DOUBT.

WHEN THE JUDGE SENTENCED THE DEFENDANT I THINK THE JUDGE EXPLAIN I HAVE PREPARED A 21 PAGE ORDER WITH MY FINDINGS I WILL NOT READ IT ALL TO YOU BUT SUFFICE IT TO SAY THAT A PRECIOUS CHILD IS DEAD. THE MURDER WAS HEINOUS ATROCIOUS AND CRUEL. IT WAS DONE AFTER YOU MURDERED HIS MOTHER STEPHANIE. FOR THAT COUNT I SENTENCE YOU TO DEATH.

I THINK ANY ADDITIONAL MITIGATION HERE OR ANY ADDITIONAL WEIGHT WOULD NOT HAVE IMPACTED THE COURT'S ULTIMATE SENTENCING . IN THE STATE WOULD IF THERE ARE NO FURTHER QUESTIONS RESPECTFULLY REQUEST THAT THIS COURT AFFIRM THE DEFENDANT'S CONVICTION AND SENTENCES. THANK YOU.

>> Steven Bolotin,Appellant: I WILL HAVE TO GO OUT OF ORDER JUSTICE COURIEL YOUR POINT THAT AT MOST AL JOHNSON'S TESTIMONY HAD HE TESTIFIED DIFFERENTLY WOULD'VE CORROBORATED.

[LISTING NAMES] WOULD HAVE TO TAKE STRONG ISSUE WITH THAT PROGRAM IF AL HAD JUST GOTTEN IN A WRECK ON HIS WAY TO THE COURT NOT TESTIFIED AT ALL THEN YOU CAN MAYBE SAY HIS FEBRILE TESTIMONY WOULD'VE GOTTEN CORROBORATED WITH WHAT.

[LISTING NAMES] SAID BUT WHAT THIS DID IT PUT HIM IN CONFLICT WITH.

[LISTING NAMES] BEFORE.

[LISTING NAMES] EVEN TESTIFIED.

>> Justice John Couriel: UNDERSTAND EVEN HAD HE TESTIFIED THE WAY HE WANTED HAD HE TESTIFIED THE WAY IT IS BEEN PROFFERED TO THE COURT ENTERED THE COURT BELOW THAT HE TESTIFIED IN THE PREP SESSIONS THAT THAT WOULD'VE CORROBORATED.

[LISTING NAMES] TESTIMONY.

>> Steven Bolotin,Appellant: YES BUT I THINK IT MIGHT BE A BETTER POINT TO SAY THAT.

[LISTING NAMES] WOULD'VE CORROBORATED HIM BECAUSE.

[LISTING NAMES] OF THE INFORMATION.

>> Justice John Couriel: GET IT I GUESS MY POINT IS THE JURY HEARD THE EVIDENCE THAT IS THE THING.

>> Steven Bolotin, Appellant: THE JURY HEARD CONFLICTING EVIDENCE THE JURY HEARD TWO WITNESSES CALLED BY THE DEFENSE THE PRIMARY SOURCE SAID GET A GREAT CHILDHOOD NO ABUSE PRINTS IN THE SECONDARY SOURCE SAID THAT IS NOT WHAT YOU SAID BEFORE.

WHO ARE THE JURORS COMFORTABLY TO BE SOME BELIEVE AL MAY BE SIMPLY.

[LISTING NAMES] WHO KNOWS.

THE POINT IS.

[LISTING NAMES]'S TESTIMONY WHICH WAS CRUCIAL TO JOHNSON MANY MANY WAYS WAS UNDERMINED BUT WHAT AL DID.

THE STATE SAYS THE PERJURY THAT OCCURRED AFTER THE JURY PENALTY PHASE THAT IS TRIPLE WHAT HAPPENED IS AL LOCKED INTO REPEATING HISTORY TESTIMONY WHICH THE PROSECUTOR CANNOT EVEN SAY THAT HE BELIEVED WAS TRUE WOULD ASK THE COURT TO LOOK AT PARTICULARLY THE MOHAMMED CASE OF THIS COURT THE.

[LISTING NAMES] COURT WHICH THIS COURT CITES CRABTREE MICHIGAN AND.

[LISTING NAMES] OF NEW JERSEY. THE STATE SAYS AL NEVER SENT IN THE MAIL THAT I LIED. THAT IS TRUE AL IS VERY SELF PROTECTIVE GOTTEN UP LEADS THROUGH THE PAGES. HE DID NOT SAY I LIED WHEN HE SAID WHAT THE OPPORTUNITY TO TELL THE TRUTH BUT WHEN HE HAD THE OPPORTUNITY TO TELL THE TRUTH BECAUSE OF THIS PERJURY THREAT IT IS CLEAR IT'S LIKE I MIGHT GO TO PRISON FOR 15 YEARS AND MAKE IT CHARGED WITH PERJURY PAREN AND HIS HOSTILITY COME THROUGH THE PAGES.

THE STATE SAID SOMETHING I THINK THEY SAID THEY WENT BACK AND TALKED TO MR. WARREN AND MR. WARREN SAID WE WILL LOOK INTO THIS I DIDN'T SAY THAT. WHAT I SAID WAS THE PROSECUTOR AT THE ONE HEARING AT THE HEARING BEFORE WHEN THAT HEARING WAS GOING TO TAKE PLACE SAID WE WILL CHARGE YOU WITH PERJURY IF HE SAYS ANYTHING DIFFERENT MATERIALLY DIFFERENT THAN HE SAID IN THE PENALTY PHASE I KNOW I HAVE TO TALK TO MR. WARREN I'M SURE MR. WARREN WILL SAY GO FOR IT.

>> Chief Justice Carlos Muniz: I'M SORRY TO INTERRUPT YOU CAN HAVE 30 SECONDS TO FINISH UP.

>> Steven Bolotin, Appellant: I WILL STAY IN THE SUBJECT THE STATE SAYS WHETHER ABUSE OCCURRED WHETHER YOU WANT TO CALL IT ABUSE IS SUBJECTIVE. I DON'T THINK IT IS SUBJECTIVE IF YOU TALK ABOUT BEING FORCED TO STRIP NAKED HUMILIATED, WHIPPED WITH ELECTRICAL CORDS, LAMP CORDS, BLACK STRAPS AS OPPOSED TO MY GRANDMOTHER WAS A FINE CHRISTIAN WOMAN WHO NEVER DID ANYTHING WRONG AND SHE TAUGHT US TO LOVE EACH OTHER AND THERE WAS NO ABUSE.

THAT IS NOT SUBJECTIVE THAT IS BLACK AND WHITE I WILL WRAP IT UP.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH. WE ARE ADJOURNED.

>> Marshal: ALL RISE.