>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW IN SESSION.
PLEASE BE SEATED.
>> GOOD MORNING TO BOTH OF YOU. THE LAST CASE THIS WEEK IS CALLOWAY V. STATE OF FLORIDA.
>> GOOD MORNING, MY NAME IS SCOTT SAKIN, I'M A PRIVATE, COURT-APPOINTED COUNSEL HERE ON BEHALF OF THE APPELLANT, TAVARES CALLOWAY.
TAVARES CALLOWAY WAS ARRESTED IN 1998 BY THE MIAMI POLICE DEPARTMENT FOR A SHOOTING WHICH TOOK PLACE IN THE CITY OF MIAMI IN 1997.
MR. CALLOWAY WAS BROUGHT TO THE POLICE HEADQUARTERS UNDER THE GUISE THAT HE WAS BEING ARRESTED DUE TO SOME TRAFFIC INFRACTION MATTERS, BUT IT WAS A BENCH WARRANT.
ONCE MR. CALLOWAY ARRIVED, THE POLICE DEPARTMENT ABOUT 3 P.M., THERE WAS THEN A SERIES OF INTERROGATIONS BY VARIOUS POLICE OFFICERS, POLICE DETECTIVES OVER THE COURSE OF ABOUT 18 HOURS.
DURING THAT TIME FRAME, THERE WERE APPROXIMATELY 10 OR 11 DIFFERENT POLICE OFFICIALS, DETECTIVES WHO INTERROGATED MR. CALLOWAY WHICH RESULTED IN A CONFESSION WHICH OCCURRED THE NEXT DAY BY TAVARES CALLOWAY.
THIS CASE HAD ERROR BEGINNING IN THE VERY BEGINNING OF THE CASE, BEGINNING IN THE JURY SELECTION PROCESS WHICH WENT ON FOR SEVERAL DAYS BEFORE THE COURT.
THE TRIAL COURT LIMITED THE DEFENDANT'S VOIR DIRE QUESTIONING OF PROSPECT I JURORS BY NOT ALLOWING THE DEFENSE TO QUESTION THE JURORS ABOUT SPECIFIC AGGRAVATING AND MITIGATING CIRCUMSTANCES.
SPECIFICALLY, DUE TO THE NUMBER OF DEATHS IN THIS CASE AND DUE

TO THE FACTS OF THE CASE, THE
DEFENSE WAS SEEKING THE QUESTION
OF THE JURORS ABOUT THEIR
THOUGHTS ON THE HEINOUS,
ATROCIOUS AND CRUEL
AGGRAVATOR--
>> LET ME ASK YOU THIS QUESTION:
DO YOU AGREE WITH THE
FUNDAMENTAL PRINCIPLE OF LAW,
AND I KNOW YOU DISAGREE ON THE
ARGUMENTS, BUT ON THE PRINCIPLE
OF LAW THAT WOULD BE APPLIED
HERE, AND THAT IS THAT
LAWYERS-- NEITHER THE STATE,
NOR DEFENSE, NOR PLAINTIFF OR
DEFENDANT IN CIVIL LITIGATION--
CAN ATTEMPT TO USE THE FACTS OF
THE CASE AND FORCE A JUROR OR
ATTEMPT TO HAVE A JUROR COMMIT
TO WHAT JUROR THE VERDICT WOULD
RENDER IN THAT CASE?
>> I DO.
>> OKAY.
SO WE DO HAVE THE FUNDAMENTAL
AGREEMENT ON THE LAW.
AND SO THE QUESTION IS, IS WHAT
THE DEFENSE LAWYER WAS DOING
HERE, DOES IT NOT COME WITHIN
THAT PRINCIPLE?
>> NO.
>> THAT'S THE QUESTION.
>> YES, SIR.
>> OKAY.
>> THE DEFENSE IN THIS CASE WAS
SEEKING-- AND, IN FACT, THE
COURT GAVE INCONSISTENT
INSTRUCTIONS AND MADE
INCONSISTENT RULINGS THROUGHOUT
THE JURY SELECTION IN THE CASE
WHICH ADDS TO THE CONFUSION
ALSO.
AT ONE POINT THE COURT WOULD NOT
ALLOW THE DEFENSE TO ARGUE OR
ASK JURORS IN THE JURY SELECTION
PROCESS REGARDING THE FACT THERE
WERE FIVE HOMICIDES, AND THERE
WAS CONTEMPORANEOUS SHOOTINGS,
HOW THAT WOULD PERHAPS AFFECT
THEM AND THEY STILL CONSIDER ALL
THE EVIDENCE FOR THE PURPOSE OF

WEIGHING THE MITIGATION AND
AGGRAVATION.
THEN THE COURT CHANGED ITS MIND
AND ALLOWED QUESTIONS ABOUT
PECUNIARY GAIN AGGRAVATOR AND
ALSO ASKED QUESTIONS ABOUT THE
NUMBER OF DEATHS.
THEN WHEN THE DEFENSE WANTED TO
ASK THE JURORS QUESTIONS ABOUT
WHETHER THEY'RE WILLING TO
CONSIDER ALL THE MITIGATION IN
THE CASE AND WHETHER THEY'D ALSO
BE WILLING TO CONSIDER THE
HEINOUS, ATROCIOUS, CRUEL AND
COLD, CALCULATED AND
PREMEDITATED, COULD THEY BALANCE
ALL OF THAT IN A DETERMINATION
TO WEIGH WHAT THEIR VERDICT
WOULD BE IN THE PENALTY PHASE?
THE COURT WOULD NOT ALLOW THE
DEFENSE TO ASK THE JURORS IF
THEY WERE JUST WILLING TO DO THE
PROPER BALANCING, IF THEY HEARD
THAT THERE WAS A HAC IN THIS
CASE OR THERE WAS A CCP IN THE
CASE, WOULD THEY STILL BE
WILLING UNDER THOSE
CIRCUMSTANCES TO CONSIDER
WHOEVER MITIGATION-- WHATEVER
MITIGATION THERE WAS IN THE
CASE.
>> DID THE LAWYER MAKE REFERENCE
TO THE FACTS IN THE CASE WHEN
THOSE QUESTIONS WERE PROPOUNDED?
>> THE JURORS ALREADY KNEW FROM
HEARING THE INDICTMENT THAT
THERE WERE FIVE ALLEGED
HOMICIDES.
>> DID-- AGAIN, I'LL ASK YOU
AGAIN--
>> YES, SIR.
>> DID THE DEFENSE COUNSEL
UTILIZE THE FACTS IN THE CASE IN
PROPOUNDING THAT QUESTION?
>> NO.
THE--
>> OKAY.
>> WHAT TOOK PLACE WAS THEY WERE
ASKED THAT IF YOU WERE TO HEAR
THAT THERE IS A HAC-- AND, OF

COURSE, WE SAID WHAT IT WAS--
>> SO HE DID ASK, HE DID PUT THE FACTS IN AND SAID IF YOU WILL HEAR THAT X, Y AND Z, WILL YOU VOTE A, B AND C?
>> NO, SIR.
>> DID NOT DO THAT?
>> ABSOLUTELY NOT.
WE KNEW THEN AND WE KNOW NOW YOU CANNOT GET A COMMITMENT FROM THE JURORS AHEAD OF TIME AS TO HOW THEY'RE GOING TO VOTE.
AT NO TIME WAS THE PRETRYING OF THE JURORS.
THAT DID NOT TAKE PLACE.
WHAT TOOK PLACE WAS ASKING THE JURORS IF THEY WOULD BE WILLING TO CONSIDER THE MITIGATION IN THE CASE IF THEY WERE HERE THAT THERE WAS A HAC AGGRAVATOR OR THERE WAS A CCP AGGRAVATORS AT NO POINT WAS THERE ANYONE TRYING TO GET A COMMITMENT FROM THE JURORS AS TO WHAT THEY WOULD DO BASED UPON CERTAIN FINDINGS THAT THE JURY MAY MAKE IN THE CASE.
AND THAT'S IMPORTANT.
THE STATE CLAIMS IT WAS PRETRYING, IT'S NOT THERE IN THE RECORD.
WHAT'S IN THE RECORD WAS SIMPLY TRYING TO DETERMINE IF THESE JURORS, WHO WERE GOING TO BE SELECTED--
>> WELL, LET ME ASK YOU THIS--
>> YES.
>> ONE OF THE THINGS THAT BROTHERS ME ABOUT EVEN--
BOTHERS ME ABOUT EVEN ASKING A JURY OR EVEN ATTEMPTING TO, AT THAT POINT DO THEY EVEN KNOW WHAT THOSE TERMS MEAN?
>> YES.
THE TERMS ARE DEFINED AS TO WHAT THOSE TERMS ARE GOING TO BE.
ONE OF THE JURORS--
>> WHO DEFINES-- AT WHAT POINT IS THE JUROR TOLD WHAT THOSE TERMS MEAN?
>> IN THIS JURY SELECTION, THEY

WERE DEFINED BY THE ATTORNEYS.
THE ATTORNEYS DEFINED THOSE
TERMS TO THE JURORS USING,
OBVIOUSLY, THE STANDARD JURY
INSTRUCTION ON WHAT WAS THERE.
BECAUSE THE JURORS, OBVIOUSLY,
YOU KNOW, THEY COME IN, THEY
DON'T KNOW WHAT HAC IS OR CCP.
>> I KNOW.
THAT'S WHY IT SEEMS LIKE
BECAUSE, I MEAN, WE'VE TAKEN
YEARS TO EVEN
UNDERSTAND OURSELVES WHAT HAC
MEANS AND CCP, THAN TO ASK A
JUROR, A POTENTIAL JUROR AT THAT
STAGE SEEMS A LITTLE-- BUT--
>> ALL THEY WERE BEING ASKED WAS
IF THEY HEAR EVIDENCE OF HAC OR
CCP, WILL THEY STILL BE WILLING
TO CONSIDER THE OTHER ED THAT
THEY WOULD-- THE OTHER EVIDENCE
THEY WOULD HEAR AND ALSO HEAR
THE MITIGATION?
>> BUT THAT'S, BUT THEY HAVEN'T
BEEN INSTRUCTED ON WHAT THAT
MEANS AT THAT POINT.
THAT'S RIGHT.
SO IT'S KIND OF, IT'S A QUESTION
THAT TO SOME PEOPLE WOULD BE
ALMOST INCOMPREHENSIBLE.
IT'S JUST BY THE VERY NATURE OF
IT COMING IN THIS PROCESS WHERE
IT DOES WHERE WE'VE GOT THESE
HIGHLY TECHNICAL TERMS THAT WE
SOMETIMES DISAGREE ABOUT WHAT
THEY MEAN AMONG OURSELVES, AND
YET YOU'RE GIVEN THIS
HYPOTHETICAL THERE INVOLVING
THESE HIGHLY REFINED LEGAL
TERMS, AND IT JUST SEEMS LIKE
YOU'RE ASKING A LOT OF THE
JURORS.
SO WHY IS THAT, WHY IS MY
PERSPECTIVE ON THAT WRONG?
>> WELL, BECAUSE WE WERE MERELY
SEEKING TO DETERMINE IF THE
JUROR POSSESSED ABILITY TO
FOLLOW THE LAW.
THERE ARE SOME JURORS, HAVING--
YOU READ MANY TRANSCRIPTS--

WHEN THEY HEAR CERTAIN FACTORS
OR THEY HEAR ABOUT CERTAIN FACTS
OF THE CASE, AT THAT POINT
THEY'RE UNWILLING TO CONSIDER
THE MITIGATION.
THEY THINK DEATH SHOULD BE
IMPOSED AT THAT POINT IF THERE
ARE CERTAIN AGGRAVATORS SUCH AS
AN HAC OR A CCP.
WE'RE NOT ASKING JURORS TO
COMMIT ONE WAY OR ANOTHER.
WE JUST WANT TO KNOW CAN THEY
KEEP THEIR EYES OPEN SO THE
ATTORNEYS WILL KNOW THEY'RE
GOING TO CONSIDER ALL OF THE
EVIDENCE THEY MADE IN
MITIGATION.
THE LAWYERS NEED TO--
[INAUDIBLE]
THAT MIGHT CREATE STRONG
PREJUDICIAL FEELINGS AMONG THE
JURORS.
THERE ARE SOME JURORS IF THEY
HEAR THERE IS MORE THAN ONE
MURDER, IF THEY HEAR THERE'S
SOME TYPE OF TORTURE, WHICH
DIDN'T TAKE PLACE, THAT PERHAPS
WAS GOING ON.
AGAIN, WE'RE NOT ASKING THEM TO
SAY HOW THEY WOULD VOTE.
AT NO POINT DID THAT COME UP.
>> WHAT ARE YOU ASKING THEM TO
DO?
IF YOU'RE NOT ASKING THEM HOW
THEY'RE GOING TO VOTE, BY THE
VERY NATURE OF THAT QUESTION,
WHAT ARE YOU ASKING--
>> NO.
WE JUST ASKED IF THEY WERE TO
HEAR THAT THERE MAY BE A HAC OR
A CCP--
>> BUT THERE AGAIN THE PROBLEM
IS THIS IS AT THE BEGINNING OF
THE PROCEDURE.
YOU'RE ASKING THEM TO ABOUT HAC
AND CCP AND THEY HAVEN'T BEEN
INSTRUCTED.
HOW CAN YOU EVEN ASK THEM
WITHOUT GOING INTO THE FACTS OF
THE CASE SO THAT THEY WOULD

KNOW-- HOW COULD THEY BE ASKED
A QUESTION THAT'S SO COMPLEX?
>> WE DID NOT GO INTO THE FACTS
OF CASE AT ALL.
>> HOW COULD YOU EXPECT THEM TO
ANSWER HAD THE JUDGE ALLOWED YOU
TO ASK THE QUESTION?
>> THE SAME WAY WE ASK THEM IF
THEY'RE WILLING TO VOTE DEATH IN
A CASE.
YOU KNOW, IN THESE DEATH PENALTY
CASES THESE JURORS ARE TOLD
EARLY ON IN A VERY CONVOLUTED
PROCESS--
>> THAT'S A KIND OF EASY CONCEPT
TO UNDERSTAND.
>> WELL, THE CONCEPT THAT
THEY'RE PRESUMED INNOCENT BUT
YET WHERE THEY'RE TALKING TO
THEM ABOUT WHAT'S GOING TO
HAPPEN IN THE PENALTY PHASE, THE
JURORS, YOU KNOW, HAS TO BE TOLD
OVER AND OVER AGAIN THIS ONLY
HAPPENS, YOU KNOW, IF YOU'RE
CONVICTED.
JUST LIKE WE SAY, WE ONLY GET TO
THESE AGGRAVATING FACTORS IN THE
EVENT THAT YOU ARE CONVICTED.
SO WHAT OCCURS, WE TELL THEM, WE
TRY TO ASK THEM WHETHER THERE'S
CERTAIN AGGRAVATORS THERE.
IF THEY HEAR THESE AGGRAVATORS,
WILL THERE MINDS BE SO MADE UP
THEY'RE UNWILLING TO CONSIDER
THE MITIGATION IN THE CASE.
THAT'S ALL WE WERE ASKING TO DO.
>> I'M JUST WONDERING, BECAUSE
THE WHOLE QUESTION OF VOIR DIRE
IS ALWAYS SUCH AN OPEN-ENDED IN
STATE COURT, AT LEAST IN
FLORIDA.
AND AS YOU KNOW IN FEDERAL
COURTS VOIR DIRE'S VERY LIMITED,
EVEN IN FEDERAL CASES.
>> YES, SIR.
>> AND THE FEDERAL SYSTEM NOW
HAS THE DEATH PENALTY, AND THEY
JUST TRIED THE DEATH PENALTY IN
MASSACHUSETTS.
I'M SURE YOU'RE AWARE OF.

AND I'M JUST WONDERING HOW
EXTENSIVE VOIR DIRE WAS IN THAT
PARTICULAR CASE WHERE THE
GOVERNMENT IN THE FEDERAL CASE
WAS SEEKING DEATH PENALTY.
HOW MUCH MORE LEEWAY DO FEDERAL
JUDGES ALLOW IN DEATH PENALTY
CASES?
>> THERE ARE SPECIFIC RULES
REGARDING THE FEDERAL DEATH
PENALTY, AND IN THE FEDERAL
DEATH PENALTY IN THAT CASE, IN
THE CASE WE'RE SPEAKING ABOUT,
THE JURORS WERE GIVEN VERY
LENGTHY SURVEYS TO FILL OUT
BEFORE QUESTIONNAIRES, SO ALL
THIS INFORMATION WAS KNOWN TO
THE ATTORNEYS WHO THEN MET WITH
THE JUDGE TO STRIKE PEOPLE WHO
GAVE INAPPROPRIATE ANSWERS
BEFORE THEY EVEN GOT TO THE
COURTROOM.
SO IT WAS VERY EXTENSIVE.
EVEN IN LIGHT OF THAT, I
UNDERSTAND IT TOOK ABOUT A MONTH
TO PICK THE JURY IN THE
MASSACHUSETTS CASE THE COURT'S
TALKING ABOUT.
>> SO THERE WERE SURVEYS AHEAD
OF TIME, QUESTIONNAIRES THE
JURORS ARE GIVEN, AND THEN THE
LAWYERS HAVE AN OPPORTUNITY TO
STRIKE PEOPLE WHO GIVE,
OBVIOUSLY, ANSWERS BASED ON
QUESTIONNAIRES, BUT THERE'S ALSO
AN OPPORTUNITY TO DO VOIR DIRE
IN OPEN COURT.
>> YES.
>> ONCE YOU GET PAST THAT STAGE.
>> YES.
AND THAT'S WHAT TOOK PLACE IN
THAT PARTICULAR CASE IN FEDERAL
COURT.
IN THIS CASE ALL-- THERE WERE
NO QUESTIONNAIRES, SO ALL OF THE
QUESTIONING IS TAKING PLACE IN
THE COURTROOM.
AND YOU'RE RIGHT, THESE JURORS,
THEY DON'T KNOW ANYTHING ABOUT
THIS DEATH PENALTY--

>> WE NOT USING ANY TYPE OF
WRITTEN RESPONSES--
>> NO.
>>-- IN CRIMINAL-- THIS
HAPPENED IN DADE COUNTY, RIGHT?
>> DADE COUNTY.
THERE'S AN-- I'M SORRY.
>> I'M JUST TRYING TO
UNDERSTAND.
WE'VE HAD THEM IN CIVIL, I MEAN,
FOR THE LAST 40 YEARS.
>> THERE'S AN 11-QUESTION OR
14-QUESTION QUESTIONNAIRE.
IT'S ON ONE PIECE OF PAPER WHERE
THE JURORS ARE ASKED THEIR NAME,
THEIR ADDRESS, WHERE THEY LIVE,
THEIR AGE--
>> NOTHING MEANINGFUL, IS WHAT
YOU'RE SAYING.
>> NOTHING ABOUT-- NO.
NOTHING ABOUT ANY LAW, NOTHING
WHATSOEVER.
IT'S BASICALLY BIOGRAPHICAL
INFORMATION.
HAVE THEY BEEN ARRESTED, HAS
THEIR FAMILY BEEN ARRESTED, AND
THAT'S UNIFORM WHETHER IT'S A
THEFT CASE IN DADE COUNTY--
>> WELL, I DON'T WANT YOU TO USE
UP ALL YOUR TIME ON THIS.
>> YES, OKAY.
>> WOULD YOU DIRECT SOME
ATTENTION TO THE FRY HEARING AND
THE ASPECTS, THE THINGS THAT ARE
RELATED TO THE CON EDUCATION IN.
>> YES, I WILL.
>> THIS WENT ON, I MEAN, LIKE 26
HOURS FROM THE TIME THAT IT WAS
THERE--
>> YES, SIR.
>> AND WE'VE HAD SOME LENGTHY
INTERROGATIONS OF THE YOUNG MAN
WHO DISAPPEARED AND THE
DEFENDANT IN THAT CASE WAS AT
THE STATION FOR QUITE A WHILE.
BUT HOW DOES HE ON THE SIGNING
OF MIRANDA AND BEING LEFT ALONE
TO SLEEP THERE, ALL KIND OF
THING.
TOUCH ON THAT.

>> YES, SIR.
IN THIS CASE THE DEFENDANT WAS TAKEN INTO CUSTODY ABOUT 3 P.M.
HE WAS INTERROGATED BY SEVERAL LAW OFFICERS UNTIL ABOUT 5 P.M.
>> WELL, AND HE SIGNED-- AT WHAT POINT DID HE SIGN THE MIRANDA?
>> 3:31 P.M. HE SIGNED THE MIRANDA RIGHTS.
>> ALL RIGHT.
THAT WAS SIGNED PRETTY EARLY ON.
>> YES, SIR.
ONCE THAT WAS DONE, HE WAS THEN INTERROGATED.
DURING THE INTERROGATION, THOUGH, SEVERAL EVENTS TOOK PLACE.
AT ONE POINT, THE POLICE TOLD HIM THEY HAD HIS FINGERPRINTS AT THE-- ALTHOUGH WE MAY NOT LIKE THE LAW, THE LAW ALLOWS LAW ENFORCEMENT TO LIE LIKE CRAZY.
DURING THESE THINGS, CORRECT?
>> YES, SIR.
NONE OF THIS INTERROGATION WAS RECORDED IN ANY WAY UNTIL YOU GOT TO THE PART WHERE THERE WAS ACTUALLY THE CONFESSION WHICH WAS DONE THE NEXT MORNING.
THERE WAS ABOUT A 30 MINUTE STENOGRAPHIC REPORT TAKEN FROM THAT.
ONCE THAT OCCURRED THEN THERE WAS ALSO A REPORT SHOWN TO MR. CALLOWAY, FRAUDULENT POLICE REPORT, SAYING HIS FINGERPRINTS WERE FOUND AT THE SCENE.
THAT ALSO WAS NOT TRUE.
THEN LATER ON THEY BROUGHT IN HIS GIRLFRIEND, DIANE O DEM, TO SPEAK WITH HIM.
HE WAS ALLOWED TO SPEAK WITH HER ON THE TELEPHONE, AND WHEN HE SPOKE WITH HER ON THE TELEPHONE, HE TOLD HER THAT SHE'S IN DANGER, SHE'S BEEN THREATENED, SHE NEEDS TO MOVE-- THREATENED, SHE NEEDS TO MOVE.

HE DIDN'T REPEAT THAT AGAIN,
WHEN HE GOT THERE--
>> DOES IT SAY THAT HE TOLD HER
THAT ON THE PHONE?
I DON'T REMEMBER SEEING THAT.
I REMEMBER HIM SAYING THAT, BUT
THERE WAS NO, NOTHING TO BACK
THAT UP OTHER THAN WHAT HE SAID.
SHE DIDN'T SAY THAT HE TALKED TO
HER ABOUT--
>> WELL, SHE WASN'T ALLOWED TO
TO SAY THAT.
WHAT TOOK PLACE WAS THAT HE SAID
IN HIS TESTIMONY TO THE JURY.
>> RIGHT.
>> SHE, OKAY, THE JUDGE WOULD
NOT ALLOW HER ORE PEAT THAT TO
THE JURY-- HER TO REPEAT THAT
TO THE JURY, AND THE STATE WAS
ALLOWED TO ASK HER, AND WE
MENTIONED THIS ISSUE HERE, THE
STATE WAS ALLOWED TO ASK MS.
ODEM WHETHER HE HAD EVER SAID TO
HER THAT HE HAD BEEN THREATENED.
SO WHAT TOOK PLACE IS SHE SAID,
NO, I WASN'T TOLD THAT AT POLICE
HEADQUARTERS BY MR. CALLOWAY, I
WASN'T TOLD THAT WHILE WE WERE
DOING THE STRANGE DRIVING AROUND
IN THE VAN GOING FOR LUNCH AND
GOING TO VISIT RELATIVES WITH
MR. CALLOWAY, BUT SHE WAS,
INDEED, TOLD THAT ON THE
TELEPHONE BY MR. CALLOWAY.
SO WHEN THE STATE OPENED THE
DOOR TO ASKING WHETHER OR NOT HE
WAS, HE EVER MADE THAT MENTION
TO HER, SHE WASN'T ALLOWED TO
SAY YES ON THE PHONE, BUT NO AT
POLICE HEADQUARTERS AND DRIVING
AROUND THE VAN.
THEY SPOKE THREE TIMES.
MS. ODEM SPOKE TO HIM ON THE
TELEPHONE WHILE HE'S STILL AT
POLICE HEADQUARTERS BEING
INTERROGATED, WHEN SHE WAS
BROUGHT THERE, AND THEY SPOKE
WHEN THEY WERE IN THE VAN.
THE VERY FIRST TIME THEY SPOKE
HE DID TELL HER THAT HE WAS

THREATENED, SHE WAS THREATENED
AND THAT THEY HAD BETTER BE
CAREFUL, SHE HAD BETTER MOVE
OUT.
SO THE STATE WAS ALLOWED TO OPEN
THE DOOR TO CONVERSATION NUMBER
TWO AND THREE, BUT WHEN THE
DEFENSE ATTEMPTED TO BRING IN
THE THREAT FROM THE FIRST TIME,
IT WAS NOT ALLOWED.
AND WE BELIEVE THAT WAS
CERTAINLY ERROR HERE.
AND THEN IT WAS ARGUED ALSO BY
THE STATE IN CLOSING ARGUMENT
WHERE THEY SAID YOU HEARD NO
TESTIMONY ABOUT WHETHER OR NOT
SHE WAS TOLD THAT SHE HAD BEEN
THREATENED.
SO THE STATE MADE THAT VERY
ARGUMENT TO THEM.
BUT BACK TO THE OTHER QUESTION
CONCERNING THE DOCTOR'S
TESTIMONY AND WHETHER OR NOT
WHAT WAS ALLOWED AND WHAT WASN'T
ALLOWED IN.
>> SO WE GO THROUGH, WE HAVE
GOT-- PARDON ME-- WE HAVE THE
MIRANDA WARNINGS, NO ISSUE WITH
THAT.
WE'VE GOT THE LENGTH OF TIME,
AND THEN WE HAVE A CONFESSION.
AND THAT THEN SEGUES INTO FRY
HEARINGS AND WHAT DO YOU HAVE
WITH YOUR EXPERT AND WHAT DO YOU
NEED.
>> OKAY.
WHAT TOOK PLACE IN THIS CASE IS
THE EXPERT WAS GOING TO TESTIFY
CONCERNING THAT THE PHENOMENON
OF FALSE CONFESSION, WHICH THIS
COURT'S FAMILIAR WITH.
AND DURING THE TESTIMONY, THE
TRIAL COURT WOULD NOT ALLOW THE
DOCTOR TO GIVE CERTAIN
INFORMATION TO EXPLAIN TO THE
JURY-- MOTTO GIVE AN OPINION--
NOT TO GIVE AN OPINION WHETHER
HE THOUGHT THE CONFESSION WAS
FALSE OR NOT FALSE.
>> WELL, THE COURT LIMITED THE

ANECDOTAL WHETHER SOMEBODY WAS
ULTIMATELY FOUND GUILTY, NOT
GUILTY, RIGHT?
>> THAT'S CORRECT--
>> SO WHY SHOULD HE BE PERMITTED
TO TESTIFY TO THAT?
>> WE WEREN'T SUGGESTING THAT HE
SHOULD BE.
THAT WAS NOT WHAT WE WERE TRYING
TO DO.
>>
>> I THOUGHT THAT WAS PART OF IT
AS WELL.
>> WE'RE NOT TRYING TO HAVE THE
DOCTOR SAY WHETHER HE THOUGHT
THE CONFESSION WAS A--
>> NO, NO, NO.
USING THE EXAMPLES OF WHEN FALSE
CONFESSIONS AND THEN THE
ULTIMATE OUTCOME IN THOSE CASES.
OTHER INDIVIDUALS, ANECDOTAL
THINGS.
DIDN'T THE TRIAL COURT LIMIT
THAT?
>> YEAH.
THE TRIAL COURT WOULD NOT ALLOW
THE DOCTOR TO TELL HIS
METHODOLOGY IN DETERMINING
WHETHER OR NOT A STATEMENT IS A
FALSE STATEMENT OR FALSE
CONFESSION--
>> DIDN'T HE TESTIFY TO THE
ELEMENTS?
>> THE TRIAL JUDGE WOULD NOT
ALLOW HIM TO DO ANY ANALYSIS.
HE TALKED ABOUT CERTAIN ASPECTS
OF IT, BUT WOULD NOT ALLOW HIM
TO APPLY THOSE FACTS--
>> TO THIS CASE.
>> AND THAT WAS THE PROBLEM--
>> TO GIVE HIS OPINION.
OKAY.
>> SO HE WAS NOT ALLOWED TO GIVE
HIS OPINION.
HE WAS NOT ALLOWED-- AND, IN
FACT, THIS WAS FURTHER
COMPOUNDED.
STATE'S EXPERT WAS ALLOWED TO
DISCUSS THE TESTIMONY OF ANY
WITNESS IN THE CASE.

DR. WELLNER WAS THE EXPERT, HE
TESTIFIED AS TO THE BASIS OF HIS
OPINION.
DR. WELLNER WAS ALLOWED TO
COMMENT ON THE DEFENDANT'S
THEORY, THAT THE DEFENDANT HAS
FOUND THEY WERE IN DANGER.
FOUND THEY COULD BE IN BIGGER
DANGER.
HE WAS ALLOWED TO TESTIFY ABOUT
THE DEFENDANT'S MISDEMEANOR WHEN
HE TESTIFY INSIDE 2009
SUGGESTING IN 2009 DURING THE
TRIAL HE DIDN'T SEEM COMPLIANT.
BUT, OF COURSE, WE KNOW THE
CONFESSION TOOK PLACE BACK IN
1998 WHICH WAS NINE YEARS
EARLIER.
>> WHAT POINT IS THE, IS YOUR
ARGUMENT CONTAINED IN YOUR
BRIEF?
>> NUMBER TWO.
>> POINT TWO IS--
>> YES, SIR.
>>-- I WAS UNDER THE IMPRESSION
THAT WAS A DIFFERENT, THAT WENT
DIRECTLY TO YOUR EXPERT, NOT TO
THE STATE'S EXPERT.
>> IT GOES TO BOTH.
I MENTIONED IN THAT BRIEF
ALSO--
>> AS A SEPARATE POINT, THAT THE
STATE WAS ALLOWED TO PRESENT.
>> NO.
IT WAS ERROR THAT DOCTOR WAS NOT
ALLOWED-- THE TRIAL COURT
ALLOWED--
>> YOU DIDN'T RAISE IT AS A
SEPARATE POINT, IS MY--
>> NO.
>> OKAY.
>> IT'S ALL ONE POINT SETTING
FORTH THE PREJUDICE ABOUT WHAT
TOOK PLACE WHEN THE DOCTOR WAS
NOT ALLOWED TO DISCUSS WHAT TOOK
PLACE.
THERE WERE SOME VERY STRANGE
THINGS IN THIS CASE.
YOU HAD A WITNESS WHO WAS THERE
WHEN THE SHOOTING TOOK PLACE IN

1997 WHO WASN'T DISCLOSED BY THE STATE BECAUSE THE POLICE HID HIM FOR OVER A DECADE.
AND THEN A NOTE WAS SLIPPED TO THE POLICE.
I MEAN, THE IT'S A VERY STRANGE-- IT'S A VERY STRANGE THING WHICH TOOK PLACE DURING THE CONFESSION ASPECT OF THIS CASE AND HOW ALL OF THAT PART OF THE NOTE ENDED UP IN THE DEFENDANT'S STATEMENT.
I MEAN, IT'S LAID OUT THERE IN THE BRIEF.
I WANT TO MOVE ON TO SOME OTHER POINTS HERE, BUT--
>> USE YOUR TIME.
>> OKAY.
IT'S IMPORTANT TO UNDERSTAND HERE THAT THE COURT DID NOT ALLOW THE DOCTOR TO TALK ABOUT THE EVIDENCE, WHAT HE CALLED THE EVIDENCE PLOY THAT WAS USED, HOW HE WAS LINKING A CONFESSION TO LITTLE OR NO PUNISHMENT OR LINKING, CONTINUED DENYING THE STRONG PUNISHMENT.
THE DOCTOR HAD THINGS THAT HE WANTED TO SAY WHICH WOULD HELP THE JURY DECIDE WHETHER OR NOT THE STATEMENT WAS FALSE OR NOT.
IF I CAN MOVE ON, THERE WAS ALSO-- THE STATE WAS ALLOWED TO IMPEACH THE DEFENDANT WITH A COLLATERAL CRIMINAL CONDUCT, AND THAT'S FOUND IN ISSUE NUMBER FOUR.
THE STATE WAS ALLOWED TO DO, THE DEFENDANT TESTIFIED, HE SAID THREE THINGS DURING HIS TESTIMONY CONCERNING A GUN.
HE DID NOT OWN ONE, HE DID NOT KNOW HOW MANY ROUNDS A .45 CALIBER HELD, AND HE USED THE TERM HAMMER TO DESCRIBE A GUN CLIP.
>> HE DIDN'T SUGGEST IN THE PRESENCE OF THE JURY THAT HE DIDN'T KNOW ANYTHING ABOUT GUNS?
>> I TOLD THE COURT WHAT HE

SAID.
THAT'S WHAT THE SAID ABOUT THE GUN WHEN THEY ASKED HIM ABOUT IT.
NOW, WHAT TOOK PLACE THEN, AND THERE WAS A CASE RIGHT ON POINT FROM THE THIRD DISTRICT COURT OF APPEALS OUSLEY V. STATE CITED BY THE DISTRICT IN 2000, CITED IN MY BRIEF, IN WHICH THAT PARTICULAR CASE-- THAT WAS A FIRST-DEGREE MURDER CASE.
ALSO DEFENDANT WAS ASKED WHETHER HE OWNED A GUN.
HE WAS NEVER ASKED ABOUT POSSESSING A GUN.
AND THE STATE WAS ALLOWED TO BRING UP THE FACT THAT HE HAD THESE OTHER CASES OF HAVING A BEGUN WHICH HAD NOTHING TO DO WITH THIS CASE OR ANY OTHER CASES.
IDENTICAL TO WHAT TOOK PLACE HERE.
THE STATE WAS ALLOWED, THEY ASKED IN OUR CASE THAT IN 1996 WERE YOU IN POSSESSION OF A FIREARM THAT WAS A TAURUS .38 CALIBER AUTOMATIC, A TOTALLY DIFFERENT CALIBER WEAPON, A DIFFERENT TYPE OF WEAPON AND WHETHER HE WAS CHARGED WITH CARRYING A CONCEALED FIREARM.
OUR POSITION WAS THE DOOR WAS NOT OWNED TO THAT.
>> BUT DIDN'T HE SAY BASICALLY HE MIXED UP THE TERMS CLIP WITH HAMMER?
>> YES, HE DID.
>> AND WOULDN'T IT BE PERMISSIBLE TO IMPEACH HIM WITH THE FACT THAT HE OWNED A GUN BEFORE AND HE MAY KNOW THE DIFFERENCE BETWEEN A CLIP AND A HAMMER?
>> HE DIDN'T OWN A GUN.
THE QUESTION WAS WHETHER HE OWNED A GUN, NOT WHETHER HE POSSESSED A GUN.
AND YOU SAY, WELL, THAT'S A

FINE DISTINCTION, BUT THAT WAS
THE TOBACCO DISTINCTION IN THE
OUSLEY V. STATE CASE IN WHICH
THEY REVERSED FIRST-DEGREE
MURDER WHICH IS RIGHT ON POINT
WITH OUR CASE HERE.
IT WAS ABOUT OWNING A GUN, AND
THERE IS A DISTINCTION TO BE
MADE THERE.
HAD THEY COME BACK AND ASKED A
DIFFERENT QUESTION.
IT'S A VERY COLLATERAL MATTER.
IT CERTAINLY SHOULD NOT HAVE
BEEN ALLOWED UNDER 403 PREJUDICE
ANALYSIS, IT SHOULD NOT HAVE
BEEN ALLOWED.
>> I MEAN, YOU OWN THE GUN OR
YOU POSSESS THE GUN.
THE QUESTION-- THE REASON IT IS
BEING USED TO IMPEACH FOR IS TO
SHOW THAT HE'S AWARE OF THE
DIFFERENCE BETWEEN A HAMMER AND
A CLIP.
WHAT DIFFERENCE DOES IT MAKE
WHETHER HE OWNS IT OR POSSESSES
IT?
WHY IS THAT DISTINCTION?
>> BY USING THE WRONG TERM, A
HAMMER OR A CLIP, WHICH IS WHAT
TOOK PLACE HERE, HE WAS
CORRECTED ABOUT THAT.
THAT'S NOT OPENING THE DOOR TO A
WHOLE COLLATERAL CRIME WHICH
DOES NOTHING MORE EXCEPT TO SHOW
THAT HE'S A BAD GUY.
AND THAT'S WHAT TOOK PLACE.
THERE WAS ALSO THE ISSUE-- LET
ME GET TO THE PENALTY PHASE
ISSUE.
THERE'S OTHER ISSUE, BUT THE
PENALTY PHASE ISSUE WAS VERY
IMPORTANT.
THE COURT ERRED IN NOT ALLOWING
THE DEFENDANT TO ARGUE THAT THE
STATE FAILED TO PROVE THE
AGGRAVATING CIRCUMSTANCES BEYOND
A REASONABLE DOUBT.
THIS IS A CRITICAL ISSUE IN THIS
CASE.
AS THE COURT KNOWS, THE JURY'S

FINDING HERE WAS 7-5
RECOMMENDATION FOR DEATH ON THE
FIVE VARIOUS HOMICIDES.
AS PART OF THAT, IN THE PENALTY
PHASE OF A CAPITAL CASE, THE
STATE HAS THE BURDEN OF
ESTABLISHING THE AGGRAVATING
CIRCUMSTANCES BEYOND A
REASONABLE DOUBT.
ALTHOUGH THE DEFENDANT IS NOT
ALLOWED TO RELITIGATE THE GUILT
DETERMINATION THROUGH THE
INTRODUCTION OF EVIDENCE WITH
THE PRESENTATION OF ARGUMENTS
SUGGESTING LINGERING DOUBT,
DEFENSE COUNSEL MUST QUESTION
THE EVIDENCE PRESENTED BY THE
STATE TO ESTABLISHING A SATING
FACTORINGS.
AND THIS COURT HAS SAID THAT IN
BERATTI AND ALSO IN WADE V.
STATE.
THE FUNDAMENTAL FAIRNESS AND DUE
PROCESS REQUIRINGS THAT COUNSEL
CHALLENGE THE AGGRAVATING
FACTORS AND HOW THEY'RE PROVEN.
AND THAT'S EXACTLY WHAT WAS
ATTEMPTED TO BE ARGUED HERE IN
THE CLOSING ARGUMENT IN THIS
CASE--
>> AND PENALTY.
>> PENALTY, YES, SIR.
>> AFTER THE JURY HAD ALREADY
MADE THE DETERMINATION OF GUILT
WITH REGARD TO WHETHER THERE
WERE AGGRAVATING AND MITIGATING
FACTORS IN THAT GUILT
DETERMINATION.
>> WELL, IN THE GUILT
DETERMINATION THE JURY FOUND
WHETHER THE STATE HAD PROVEN THE
CASE BEYOND A REASONABLE DOUBT.
>> YES, SIR.
>>-- YES, SIR.
THEY HAD NOT FOUND WHETHER IT
WAS COLD, CALCULATED OR
PREMEDITATED.
THOSE INSTRUCTIONS, AS YOU KNOW,
ARE ENTIRELY DIFFERENT, AND THE
JURY'S NEVER ASKED TO FIND THAT

IN THE GUILT PHASE.
NOW, THE JURY FOUND-- I ASSUME BASED ON HIS CONFESSION-- THERE WAS SUFFICIENT EVIDENCE SOME OF THE EVIDENCE THERE FROM THE CONFESSION THEY FOUND MAYBE WAS CORROBORATED.
THERE WERE FIVE DEAD BODIES, CERTAINLY A MURDER HAD TAKEN PLACE.
WHEN YOU LOOK CAREFULLY AT WHAT HAD BEEN ARGUED IN THE PENALTY PHASE AGAINST THOSE AGGRAVATORS HAD IT BEEN ALLOWED, IT'S VERY, VERY SIGNIFICANT.
FIRST OF ALL, THERE WAS ALL KINDS OF FACTS THAT THE DEFENDANT SAID IN HIS STATEMENT, AND THE ONLY WAY TO FIGURE OUT THESE AGGRAVATORS WAS REALLY BASED ON TWO THINGS.
ONE, WHAT THE DEFENDANT HAD SAID AND, TWO, WHAT THIS WITNESS-- HIS NAME WAS ANTHONY, IT'S SPELLED STRCHAN, WHO HAD BEEN HIDDEN AWAY FOR A DECADE, AND BASED ON WHAT WAS SAID THERE, THE D OH, THAT'S NOT TRUE BECAUSE THEY FOUND 138 FINGERPRINT CARDS CONTAINING 200 FINGERPRINTS.
SOME CARDS HAVE MORE THAN ONE FINGERPRINT.
ON THAT NONE OF THE DEFENDANT'S PRINTS WERE FOUND.
THE CO-DEFENDANT, WHO WAS TRIED SEPARATELY, HIS FINGERPRINTS WERE FOUND.
SO THERE WERE ARGUMENTS TO BE MADE.
ONE PERSON SAID HE LEFT WHEN IT WAS DARK.
THE WITNESS SAID, NO.
AFTER I HEARD THE SHOTS, IT WAS STILL LIGHT OUTSIDE.
THE AMOUNT OF TIME THE DEFENDANT WAS INSIDE THAT APARTMENT IS VERY, VERY IMPORTANT TO FINDING WHETHER OR NOT CCP EXISTED AND WHETHER HAC EXISTED.

BY NOT BEING ALLOWED TO ARGUE
THESE FACTS TO THE JURY AND NOT
BEING ALLOWED TO ARGUE THAT HAC
DOESN'T EXIST AND CCP DID NOT
EXIST WAS A VIOLATION OF DUE
PROCESS AND A VIOLATION OF WHAT
THE ATTORNEY IS SUPPOSED TO DO
IN THE CLOSING ARGUMENT OF THE
PENALTY PHASE.
AND THAT'S WHAT TOOK PLACE HERE.
COURT TIED THE HANDS.
THIS COURT KNOWS THAT THE JURORS
LOOK VERY CAREFULLY.
CCP AND HAC ARE PROBABLY THE TWO
MOST COMPELLING AGGRAVATORS THAT
WE SEE, AND THIS COURT CERTAINLY
TAKES THEM SERIOUSLY.
THE TRIAL COURT DID.
IN HER ORDER, SHE GAVE GREAT
WEIGHT TO HAC AND EXTREMELY
GREAT WEIGHT TO CCP.
>> YOU'RE WAY INTO YOUR
REBUTTAL.
>> OH--
>> YOU'RE FREE TO CONTINUE.
>> NO, NO, I WANT TO SAVE MY
REBUTTAL.
OKAY.
I'M RESERVE THE REMAINDER
OF MY TIME FOR REBUTTAL,
THANK YOU.
>> SANDRA JAGGARD, ASSISTANT
FINISH.
>> WOULD YOU PICK UP WHERE HE
LEFT OFF AND ADDRESS THIS?
>> ON THE COMMENTS AND--
>> RIGHT.
PENALTY PHASE.
>> THE COMMENTS, WHILE HE
SUGGESTS THERE STRAWN HAD A
DIFFERENT STORY ABOUT HOW LONG
THE DEFENDANT'S THERE,
MR. STRAWN'S GUILT PHASE
TESTIMONY WAS I DON'T KNOW HOW
LONG THIS WAS.
I WASN'T PAYING ATTENTION TO
TIME.
YES, I PREVIOUSLY TOLD POLICE
TIME PERIODS, BUT I IMMEDIATELY
REALIZED I COULDN'T SWEAR TO

THEM, AND THEY'RE WRONG, AND I TOOK 'EM ALL BACK.
>> HIS POINT BEING IS THAT THEY LIMITED THE, THE TRIAL JUDGE HERE LIMITED THE DEFENSE TO ARGUING IN THE PENALTY PHASE AND WAS NOT ALLOWED TO PRESENT A FULL ARGUMENT WITH REGARD TO THE AGGRAVATING FACTORS.
>> AND THE PROBLEM HERE IS THAT WHAT THE RECORD ACTUALLY REFLECTS IS THAT BEGINNING AND OPENING STATEMENT, THE DEFENSE WANTED TO RELITIGATE WHETHER THE CONFESSION WAS, IN FACT, A TRUE CONFESSION WHICH IS A DECISION THAT WAS ALREADY MADE AT THE GUILT PHASE.
>> WELL, HE'S NOT ARGUING CONFESSION, WHAT HE'S SAYING IS--
>> HE ACTUALLY TOLD THE JURY IN OPENING THE STATE WOULD NOT BE ABLE TO PROVE A SINGLE AGGRAVATOR DESPITE THE FACT THAT JURY HAD CONVICTED THE DEFENDANT OF FIVE HOMICIDES WHICH PROVES PRIOR VIOLENT FELONY.
THE--
>> BUT IT DOESN'T PROVE THE HAC AND CCP.
>> BUT HE WAS NOT LIMITING THIS ARGUMENT TO THAT, AND HE WAS, IN FACT, WANTING TO RELITIGATE--
>> RELIT, OKAY.
>> WHETHER HE HAD WANTED TO SAY, LOOK AT MR. STRAWN'S TESTIMONY. NOW, MR. STRAWN'S TESTIMONY DOESN'T ACTUALLY HAVE TIME PERIODS IN IT, BUT WANTED TO SAY YOU SHOULDN'T BELIEVE THERE WAS HAC AND CCP.
WHAT HE WANTED TO SAY IS YOU SHOULDN'T BELIEVE THESE AGGRAVATORS EXIST BECAUSE YOU SHOULDN'T BELIEVE THAT CONFESSION.
>> LET ME ASK ON THAT NOTE, ON THE LEGAL POINT, LET'S ASSUME THERE'S A HOMICIDE CASE, AND

IT'S BASED ON PREDICATED,
PREMEDITATED MURDER.
THE JURY FINDS THE DEFENDANT
GUILTY OF FIRST-DEGREE MURDER,
PREMEDITATED MURDER.
>> YES.
>> NOW WE GO TO PENALTY PHASE,
CCP.
>> CCP--
>> WE KNOW THAT PREMEDITATION IN
CCP IS HEIGHTENED.
SO ARE YOU SAYING THEY COULD NOT
ARGUE--
>> I'M NOT SAYING HE COULDN'T
ARGUE THAT THERE WASN'T
HEIGHTENED PREMEDITATION.
WHAT I'M SAYING IS HE CAN'T GO
BACK AND ARGUE YOU SHOULD FIND
MY CONFESSION UNRELIABLE WHEN
THAT WAS THE GUILT PHASE, AND
THE JURY'S ALREADY MADE A
DETERMINATION WHEN THEY
CONVICTED HIM THAT THE
CONFESSION WAS RELIABLE BECAUSE
THAT'S LINGERING DOUBT.
IF YOU WANT TO COME IN IN THE
PENALTY PHASE AND SAY, YES, YOU
FOUND A DECISION THAT IT WAS
PREMEDITATED BUT THIS ISN'T
ENOUGH TO SHOW PREMED-- THE
HEIGHTENED PREMEDITATION
NECESSARY FOR CCP, THAT'S FINE.
BUT WHEN YOU WANT TO GO BACK AND
SAY YOU SHOULD NEVER HAVE
BELIEVED THAT CONFESSION WHICH
YOU'VE ALREADY BELIEVED TO
CONVICT HIM, THAT'S LINGERING
DOUBT, AND THAT'S NOT ALLOW.
AND IT'S VERY CLEAR THAT'S WHAT
WAS HAPPENING WHEN YOU BEGIN
WITH THE OPENING THAT THE
DEFENDANT-- DESPITE THE JURY
HAS ALREADY FOUND IN THE GUILT
PHASE PRIOR VIOLENT FELONY AND
PECUNIARY GAIN.
>> OKAY, SO THE STATE WOULD
AGREE DURING THE PENALTY PHASE
IS THAT THAT'S THE POINT IN TIME
THAT HAC IS TO BE DISCUSSED, AND
THE OTHER AGGRAVATING FACTORS,

IT'S JUST THAT YOU CAN'T TIE
THAT INTO THE CONFESSION--
>> THERE'S--
>>-- UPON WHICH BASED WHICH HAS
ALREADY BEEN DETERMINED?
>> THERE'S A RIGHT WAY AND A
WRONG WAY TO DO IT.
>> JUST MAKING SURE I UNDERSTAND
YOUR ARGUMENT.
>> I'M NOT SUGGESTING IF HE
WANTED TO ARGUE SOMETHING ABOUT
OTHER THAN DON'T BELIEVE THE
CONFESSION--
>> OKAY.
>>-- WHICH IS WHAT HE WAS
ARGUING.
GOING BACK TO THE PRETRYING
DURING VOIR DIRE, I DO NOT
RECALL A SINGLE QUESTION BEING
ASKED ABOUT HAC AND CCP.
WHAT WAS ACTUALLY BEING ASKED--
AND HE WAS, IN FACT, ALLOWED TO
ASK, BOTH SIDES WERE ALLOWED TO
ASK-- IF THE JURY WOULD
AUTOMATICALLY RECOMMEND DEATH,
IF THEY KNEW THERE WERE FIVE
MURDERS.
HE WAS ALSO ALLOWED TO ASK ABOUT
PECUNIARY GAIN AND DURING THE
COURSE OF A FELONY.
WHAT HE ACTUALLY ATTEMPTED TO DO
WAS TO ASK THE JURY WOULD IT BE
MORE DIFFICULT FOR YOU TO
RECOMMEND DEATH IF THE STATE
PROVES THAT THERE WERE FIVE
MURDERS CONVICTED?
IF THE STATE PROVES THERE WERE
FIVE MURDERS CONVICTED, THEY
WERE CONVICTED DURING THE
FELONY.
IF THE STATE PROVES THERE WERE
FIVE MURDERS CONVICTED DURING A
FELONY, WHICH THE MORE
AGGRAVATORS STATE PROVES, THE
MORE DIFFICULT IT SHOULD BE FOR
THE JURY TO RECOMMEND DEATH
BECAUSE THERE'S A WHOLE LOT OF
AGGRAVATION, THE MITIGATION HAS
TO OUTWEIGH.
AND THOSE QUESTIONS ARE

PRETRYING.
THE TRIAL COURT TOLD THEM THE
BEGIN WITH, YOU CAN ASK
QUESTIONS ABOUT LEGAL CONCEPTS,
YOU CAN ASK QUESTIONS ABOUT
HYPOTHETICALS, YOU JUST CAN'T
SIT HERE AND ASK THE JURY WHAT
THEY'RE GOING TO DO.
IN FACT, ONE OF THE QUESTIONS
THAT WAS ASKED IN THIS CASE IS
THE EXACT QUESTION THIS COURT
FOUND TO BE PROPERLY DISALLOWED
AS IMPROPER IN FRANKIE WHICH WAS
WILL YOU FIND THE DEFENDANT'S
AGE MITIGATING.
WILL YOU FIND THE DEFENDANT'S
AGE MITIGATING?
>> OH.
>> TRIAL COURT TOLD THEM THEY
COULD ASK, YOU KNOW, IS THE AGE
SOMETHING YOU WOULD CONSIDER,
AND THEY ACTUALLY RECEIVED
INFORMATION FROM THE JURY ABOUT
THE LEGAL CONCEPTS, WHAT JURORS
MIGHT CONSIDER AGGRAVATING THAT
WOULDN'T BE AGGRAVATION, WHAT
THEY WOULD CONSIDER MITIGATING,
WHAT THEY WOULD WEIGH HEAVILY
THAT WOULD BE AGGRAVATING AND
MITIGATING, THEY JUST WERE
ASKING THE WRONG FORM OF
QUESTIONS.
WITH REGARD TO THE DOCTOR'S
TESTIMONY AND THE-- IT SHOULD
NEVER HAVE BEEN ADMITTED TO
BEGIN WITH BECAUSE THERE WAS
NEVER A FRY HEARING.
AND IN WILLIAMSON, THIS COURT
HELD THAT THIS TYPE OF TESTIMONY
ABOUT INFLUENCING CONTROL THAT
CAUSES SOMEONE TO MAKE A FALSE
STATEMENT HAS TO HAVE A FRY
HEARING.
AND DESPITE BEING PRESENTED WITH
THAT, THE TRIAL COURT REFUSED TO
HAVE A FRY HEARING.
AND WHAT-- THE DOCTOR WAS
ALLOWED TO TESTIFY ABOUT THE
EVIDENCE PLOY.
HE WAS ALLOWED TO TESTIFY ABOUT

ALL THE FACTORS HE BELIEVED GAVE
A FALSE--
>> SORT OF ELEMENTS OF WHAT
CAUSES FALSE CONFESSIONS.
>> AND HIS TESTIMONY WAS, YES,
THERE'S THIS MINIMIZATION,
THERE'S THIS ISOLATION, THERE'S
THIS, THERE'S THAT, THERE'S THE
NEXT THING.
NONE OF THAT ACTUALLY CAUSED A
FALSE CONFESSION.
HIS ENTIRE STATEMENT ABOUT WHAT
ALLEGEDLY CALLED THE FALSE
CONFESSION IN THIS CASE WAS
DETECTIVE-- SERGEANT LAW
OFFERED DEFENDANT A DEAL WHERE
HE WOULD MAKE A FALSE CONFESSION
THAT EVERYONE, THE POLICE AND
THE DEFENSE WOULD KNOW WAS A
FALSE CONFESSION.
THEY WOULD ARREST THE DEFENDANT
AND PUT HIM IN JAIL FOR THREE,
FOUR MONTHS TO SMOKE OUT THE
REAL KILLERS.
AND ONCE THE REAL KILLERS CAME
FORWARD, WE WOULD ALL
ACKNOWLEDGE THIS WAS A FALSE
CONFESSION AND LET THE DEFENDANT
OUT.
DETECTIVE LAW SAYS THAT JUST
NEVER HAPPENED.
SO THIS CAME DOWN TO THE
DOCTOR'S TESTIMONY BASICALLY
BEING I BELIEVE THAT THERE'S A
FACTOR THAT CAUSED A FALSE
CONFESSION BECAUSE I BELIEVE
THAT THE DEFENDANT'S TELLING THE
TRUTH WHEN HE SAYS THE DEAL WAS
OFFERED, AND SERGEANT LAW'S
LYING WHEN HE SAYS THERE WAS NO
DEAL WHICH IS A CLASSIC COMMENT
ON CREDIBILITY OF EVIDENCE AND
IMPROPERLY INVADES THE PROVINCE
OF JURY.
SO THIS EVIDENCE SHOULD NEVER
HAVE BEEN ALLOWED.
WHAT THE TRIAL COURT DIDN'T
ALLOW THE DOCTOR TO TESTIFY
ABOUT, HE ALLOWED THE DOCTOR--
SHE ALLOWED THE DOCTOR TO SAY

THAT HIS METHODOLOGY FOR
EVALUATING WHETHER A CONFESSION
IS FALSE OR NOT INVOLVED LOOKING
AT THE CONFESSION, COMPARING IT
TO THE OTHER EVIDENCE AND
DETERMINING WHETHER THE
CONFESSION CONTAINS
NON-PUBLICLY-AVAILABLE
INFORMATION THAT WASN'T PROVIDED
BY THE POLICE THAT'S INDIFFERENT
DEPENDENTLY VERIFIABLE.
THAT WAS ALLOWED.
HE WAS NOT THEN ALLOWED TO GO
THROUGH HIS VERSION OF WHAT THE
FACTS OF THIS CASE WERE WHICH
WERE LARGELY NOT DRAWN FROM THE
EVIDENCE AND PRESENT A-- AND I
BELIEVE THIS CONFESSION IS FALSE
BECAUSE I BELIEVE ALL THE
INFORMATION WAS PROVIDED BY THE
POLICE.
IT WAS ALL PUBLICLY AVAILABLE,
AND I DON'T BELIEVE IT MATCHES.
AND HE WAS DOING THINGS LIKE
TAKING THE TIME PERIODS
MR. STRAWN'S HAD EXPRESSLY SAID,
YES, I SAID THOSE WORDS, BUT I
WAS WRONG WHICH MEANS THE ONLY
THING THE JURY'S SUPPOSED TO BE
CONSIDERING THAT FOR IS TO
DETERMINE MR. STRAWN'S
CREDIBILITY, NOT A SUBSTANTIVE
EVIDENCE OF THE AMOUNT OF TIME.
WITH REGARD TO MS. ODOM, WHAT
THE STATE-- FIRST OF ALL,
MS. ODOM DOESN'T TALK TO HIM.
THEY TALK ON THE PHONE.
HE THEN CONFESSES, AND THEN SHE
SHOWS UP AT THE POLICE STATION.
HE TALKED ON THE PHONE TO
MS. ODOM AT HER OWN REQUEST, AT
HIS OWN REQUEST WITHOUT THE
POLICE LISTENING IN OR DOING
ANYTHING TO HIM.
MS. ODOM IN HER PRETRIAL
STATEMENT HAD SAID, NO, HE
DIDN'T TELL ME ABOUT ANY
THREATS, AND AT THE END OF THE
STATEMENT SHE SAYS, YEAH, AFTER
HE'S BEEN IN PRISON FOR A WHILE

HE TELLS ME ABOUT THE THREATS.
THAT DAY HE TOLD ME ABOUT BEING FOLLOWED BY THE POLICE.
THE THREATS WERE ALLEGEDLY NOT BY THE POLICE.
THE THREATS ARE BY THE REAL KILLERS.
AND THE POLICE ARE JUST TELLING HIM THE REAL KILLERS ARE AFTER HIM.
SO THIS STATEMENT NEVER CAME UP.
THE STATE MOVED IN LIMINE TO EXCLUDE THIS BECAUSE WE'RE NOW TALKING ABOUT PHONE CONVERSATIONS THAT HAPPENED MONTHS LATER.
THE DEFENSE DOESN'T ARGUE, YOUR HONOR, THESE ARE CONTEMPORARY NEWS CONVERSATIONS.
THEY ACKNOWLEDGE THAT THE ARGUMENT IS IT GOES TO MS. ODOM'S STATE OF MIND, AND THE TRIAL COURT EXCLUDES IT BECAUSE THAT ISN'T RELEVANT.
WHEN WE GET TO THE DAY MS. ODOM IS TESTIFYING, THE STATE REMINDS EVERYONE, YOUR HONOR, WE'VE GRANTED A MOTION IN LIMINE ABOUT WE CAN'T GET INTO THE LATER STATEMENTS TO MS. ODOM, AND THE DEFENSE'S RESPONSE AT THAT POINT IS, YES, WE'LL ABIDE BY IT.
THE STATE DOES ITS DIRECT.
IT NEVER ASKS A THING OF MS. ODOM ABOUT THAT TELEPHONE CONVERSATION AND WHAT WAS IN IT.
AND ITS ONLY QUESTION ABOUT THREATS IS WHEN THEY GET OUT TO THE AUNT'S HOUSE AFTER HE'S GIVEN THE STATEMENT WHILE IT'S BEING TYPED UP.
THE DEFENSE DOESN'T COME SIDEBAR AND SAY, YOUR HONOR, I KNOW YOU GRANTED THIS MOTION IN LIMINE, BUT LET ME RECONSIDER IT.
NO.
WHAT HE DOES IS GETS UP AND STARTS ASKING MS. ODOM, ISN'T IT TRUE YOU MOVED?
NO, I DIDN'T MOVE.

ISN'T IT TRUE THAT YOUR FAMILY MOVED?
NO, I DON'T KNOW THAT THE FAMILY MOVED.
WELL, AND EVENTUALLY HE GETS HER TO SAY THAT SHE STAYED WITH THE FAMILY FOR A COUPLE WEEKS AFTER THE MURDER, AND THEN HE TRIES TO SNEAK IN THROUGH THE BACK DOOR THAT SHE DID THIS BECAUSE OF THREATS EVEN THOUGH SHE'S NEVER FINISH AT THIS POINT SHE SAID IT DIDN'T HAPPEN.
AND THERE'S OBJECTIONS, IT'S SUSTAINED.
THEY KEEP TRYING TO BRING THIS OUT.
AND FINALLY, IT'S SIDEBAR WHEN THEY COME SIDEBAR FOR THE TRIAL COURT TO ADMONISH COUNSEL ABOUT NOT FOLLOWING HER RULING IS WHEN THEY SUDDENLY SAY, OH, YOU KNOW, HE TOLD HER ABOUT THESE THREATS.
WELL, THAT'S NOT WHAT HER STATEMENT SAYS PRETRIAL.
HER STATEMENT SAYS SHE TOLD HIM ABOUT THE POLICE FOLLOWING HER-- HIM.
THE DEFENDANT HIMSELF AT ONE POINT SAYS, YEAH, I TOLD HER ABOUT THREATS, AND THEN HE TURNS AROUND IS AND SAYS, NO, I DIDN'T.
SO TRIAL COURT PROPERLY EXCLUDED THIS AS HEARSAY.
IF THE COURT HAS NO FURTHER QUESTIONS, THE STATE RESPECTFULLY REQUESTS YOU AFFIRM.
>> THANK YOU.
COUNSEL?
>> REGARDING THE ISSUE ON THE LIMITATIONS OF THE CLOSING ARGUMENT IN THE PENALTY PHASE, THE TRIAL COURT DID NOT ALLOW COUNSEL TO ARGUE THE SPECIFICS OF WHY THE STATE DID NOT PROVE THAT HAC WAS NOT PROVEN BEYOND A REASONABLE DOUBT AND THAT CCP WAS NOT PROVEN BEYOND A

REASONABLE DOUBT.
AND THERE WAS NO ARGUMENT OF LINGERING DOUBT THAT THE JURY SHOULDN'T BELIEVE THE STATEMENT, THERE WAS NO ARGUMENT ALLOWED AS TO WHY THOSE TWO AGGRAVATORS WERE NOT PROVEN BECAUSE IN THE TRIAL COURT'S MIND, THEY WERE PROVEN.
AND THERE WAS AMPLE EVIDENCE TO PRESENT TO THE JURY AS TO WHY THOSE TWO AGGRAVATORS WERE NOT PROVEN.
OBVIOUSLY IT WOULD BE--
>> BUT THAT WENT BACK TO THE CONFESSION, IS WHAT THE STATE SAYS.
THAT'S WHY THEY WERE NOT PROVEN, YOU CAN'T TRUST CONFESSION.
>> WELL, NO, THERE'S CERTAIN ASPECTS OF THE CONFESSION WHICH WERE ACTUALLY CONTRADICTED BY--
>> I UNDERSTAND.
BUT IS IT CORRECT THAT IT WAS CONNECTED TO-- THAT'S WHERE THE PRIMARY EVIDENCE CAME FROM.
>> CAME FROM THE STATEMENT, BUT OTHER PARTS OF THE TESTIMONY CONTRADICT WHAT'S CONTAIN INSIDE THAT STATEMENT--
>> SO YOU CAN'T BELIEVE THE STATEMENT AND, THEREFORE, THERE'S NO PROOF OF THOSE TWO TACTS.
>> NO.
THERE'S NOT SUFFICIENT EVIDENCE TO PROVE THAT IT WAS A HEIGHTENED LEVEL OF PREMEDITATION.
THERE'S A WHOLE STORY IN THIS CASE ABOUT LEAVING TO GO GET DUCT TAPE.
THERE WAS NO CORROBORATION OF THAT.
A WHOLE STORY ABOUT GIVING JEWELRY TO SOMEBODY ELSE AND TAKING IT TO A PAWNSHOP.
NO CORROBORATION OF THAT.
THE LENGTH OF TIME IN THE APARTMENT WAS CRITICAL IN ORDER

TO ESTABLISH THE CCP ASPECT OF THIS, AND THERE WAS NO CORROBORATION OF THAT.
AS A MATTER OF FACT, THE POLICE COULDN'T FIND THE EVIDENCE TO CORROBORATE THAT.
THAT CERTAINLY WAS ADEQUATE AND PROPER ARGUMENT TO MAKE IN THE CLOSING PENALTY PHASE TO TELL THE JURY WHY HAC WAS NOT PROVEN AND CCP WAS NOT PROVEN.
THE JURY COULD VERY EASILY FIND THEM QUALITY OF FIRST-DEGREE MURDER.
THAT DOESN'T MEAN THEY HAVE FOUND THE HEIGHTENED LEVEL THAT'S REQUIRED FOR COLD, CALCULATED AND PREMEDITATED, AND FOR HAC IT HAS TO BE HEINOUS, ATROCIOUS AND CRUEL.
WE KNOW THE MEDICAL EXAMINER TESTIFIED THERE WAS NO SUFFERING TO THE PEOPLE WHO WERE KILLED, SOMETHING WE TAKE INTO CONSIDERATION FOR PURPOSE OF HAC.
SO WHEN YOU LOOK AT ALL OF THIS, DO THE NOT-- BECAUSE TRIAL JUDGE THOUGHT THAT THESE AGGRAVATORS WERE THERE AND WERE PROVEN BEYOND A REASONABLE DOUBT DOESN'T MEAN THE JURY WOULD HAVE PROVEN, WOULD HAVE THOUGHT THAT.
AND TO TIE OUR HANDS IN THE CLOSING ARGUMENT OF THE PENALTY PHASE AND NOT ALLOW THESE ARGUMENTS TO TAKE PLACE IS UNHEARD OF AND CERTAINLY IS A VIOLATION OF FUNDAMENTAL FAIRNESS AND DUE PROCESS.
AND, AGAIN, IT WAS A 7-5 RECOMMENDATION.
ONLY ONE MORE JUROR HAD TO BELIEVE THAT THESE WERE NOT PROVEN.
ONE MORE JUROR HAD TO BE IMPRESSED BY THIS.
ONE MORE JUROR HAD TO BE MOVED.
THIS WOULD HAVE BEEN A 6-6 CASE, AND WE WOULDN'T BE HERE.

SO BASED ON THE FORGOING, I
RESPECTFULLY ASK THIS COURT TO
REVERSE AT A MINIMUM, SEND IT
BACK FOR A FAIR PENALTY PHASE
AND AT THE SAME TIME REVERSE
JUDGMENT AND SEND IT BACK FOR A
NEW TRIAL.
THANK YOU VERY MUCH.
>> THANK YOU FOR YOUR ARGUMENTS.
COURT'S IN RECESS.