

>> SUPREME COURT OF FLORIDA NOW  
IN SESSION.

PLEASE BE SEATED.

>> OKAY.

NEXT CASE ON THE DOCKET IS DOTY  
VERSUS STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT.

WILLIAM MCLAIN ON BEHALF OF  
WAYNE C. DOTY.

I AM APPEARING WITH THE COURT'S  
DIRECTIVES IN KLOKOC VERSUS  
STATE.

HE PLEADED BELOW AFTER SAW THE  
DEATH SENTENCE AND WANTED TO  
WAVE THIS APPEAL.

I'M HERE ON MR. DOTY AND THE  
COURT TO PRESENT ISSUES I THINK  
COULD HAVE IMPACTED THE  
SENTENCING RECOMMENDATION FROM  
THE JURY IN THIS CASE.

>> JUST TO BE CLEAR, MR. DOTY  
DOES, AND WE ALLOWED HIM TO FILE  
A SEPARATE BRIEF, SPECIFICALLY  
STATING THAT HE HAS, OF COURSE  
HE CONDUCTED HIS OWN PENALTY

PHASE, THAT HE WANTS TO BE  
EXECUTED ESSENTIALLY?

>> YES, YOUR HONOR.

>> SO, ALL RIGHT, SO,  
UNDERSTANDING THAT THE ISSUES  
YOU'VE RAISED ARE BEING RAISED  
BECAUSE OF OUR REQUIREMENT THAT  
WE DO HAVE A DIRECT APPEAL, DO  
YOU WANT TO JUST, IN YOUR, YOU  
DON'T NEED TO USE ALL THE TIME  
FOCUS ON ANY ONE ISSUE?

>> WELL, I HAVE RAISED, IN  
ADDITION TO ASKING THIS COURT TO  
RECONSIDER RING ISSUES, I'VE  
ALSO RAISED THREE ISSUES I THINK  
COULD HAVE INFLUENCED THE JURY'S  
RECOMMENDATION IN THE CASE.

FIRST ONE, AND I WILL BRIEFLY  
ADDRESS THOSE THREE.

THE FIRST ONE WAS THE TRIAL  
COURT INSTRUCTING THE HAC  
CIRCUMSTANCE.

HE INSTRUCTED THE JURY ON THAT  
CIRCUMSTANCE AND LATER THE COURT  
FOUND IT WAS NOT PROVEN BEYOND A

REASONABLE DOUBT BASED ON  
EVIDENCE THAT THE VICTIM WAS  
PROBABLY CONSCIOUS ANYWHERE FROM  
10 TO 45 SECONDS.

TOTALLY CAUGHT UNAWARES PLACED  
IN CHOKEHOLD, SO UNAWARE OF  
IMPENDING DEATH UNLIKE OTHER  
STRANGULATION CASES THAT COME  
BEFORE THIS COURT.

THERE WASN'T ANYTHING, ALL THE  
EVIDENCE CORROBORATED HE WAS  
VERY QUICKLY RENDERED  
UNCONSCIOUS ACCORDING TO THE  
MEDICAL EXAMINER'S TESTIMONY.

>> WHAT DO YOU SUGGEST THE TRIAL  
COURT DOES IF THE STATE IS  
SEEKING THAT KIND OF AGGRAVATOR  
AND THERE IS ARGUABLY SOME  
EVIDENCE TO SUPPORT THAT?  
ARE YOU SUGGESTING THAT THE  
TRIAL JUDGE NEEDS TO MAKE A  
DETERMINATION ABOUT IT PRIOR TO  
GIVING THE INSTRUCTION?

>> IN THIS CASE, YOUR HONOR, I'M  
SUGGESTING THAT THE FINDINGS OF

THE TRIAL COURT MADE IN THE  
SENTENCING ORDER, WHY HE DID NOT  
FIND THIS AGGRAVATING FACTOR--

>> I KNOW HE DIDN'T FIND IT BUT  
I'M SAYING AT THE POINT WHERE  
YOU'RE GIVING THE JURY  
INSTRUCTION.

>> CORRECT.

>> THE TRIAL JUDGE HASN'T SAID  
OR EVALUATED WHETHER OR NOT THE  
EVIDENCE REALLY SUPPORTS THAT  
AGGRAVATOR OR NOT.

SO IS THAT WHAT HE SHOULD DO  
BEFORE HE GIVES THE INSTRUCTION  
ON IT?

>> I THINK THE INSTRUCTION HAS  
TO BE SUPPORTED BY SOME EVIDENCE  
AND MY SUGGESTION HERE IS THAT  
THE EVIDENCE, AS DELINEATED BY  
THE TRIAL COURT IS THE REASON  
WHY HE DIDN'T FIND THE  
AGGRAVATOR WOULD ALSO SHOW THERE  
WAS INSUFFICIENT EVIDENCE TO  
SUPPORT AN INSTRUCTION.

>> I GUESS, IT IS AN IMPORTANT

ISSUE IN OTHER CASES PERHAPS  
BECAUSE THE QUESTION OF THE  
WHAT'S SUFFICIENT TO INSTRUCT A  
JURY VERSUS WHAT A JUDGE'S  
FINDINGS MIGHT BE.

AND BECAUSE THIS COURT HAS NOT  
ADOPTED ANY RULING THAT, BECAUSE  
THE JURY IS REALLY THE FINDER OF  
FACT OF THE AGGRAVATORS, .

SO WE DON'T KNOW WHAT  
AGGRAVATORS THEY FOUND.

>> CORRECT.

>> BUT THEY COULD PRESUMABLY  
DECIDED THERE WAS EVIDENCE  
BEYOND A REASONABLE DOUBT OF  
HAC.

WE JUST DON'T KNOW.

>> YOU HAVE TWO DIFFERENT  
STANDARDS, I UNDERSTAND THAT.

>> SO ISN'T THERE, WASN'T THERE  
THRESHOLD EVIDENCE TO GO TO THE  
JURY ON HAC?

>> THAT IS THE QUESTION  
PRESENTED AND I SUGGEST IN THIS  
CASE BECAUSE THE EVIDENCE WAS

PRETTY CLEAR THAT THE CON-- THE  
MEDICAL EXAMINER SAID, YOU KNOW,  
UNCONSCIOUSNESS COULD HAVE  
OCCURRED AS QUICKLY AS 10  
SECONDS AFTER THIS CHOKEHOLD WAS  
APPLIED.

IT DEPENDS HOW THE CHOKEHOLD WAS  
APPLIED AND CONSISTENT WITH  
MR. DOTY'S SEVERAL STATEMENTS  
ABOUT THE CRIME, INDICATING IT  
WAS A MATTER OF SECONDS  
BEFORE--

>> WE'VE HAD IN STRANGULATION  
CASES WE HAVE REALLY, WHETHER 15  
SECONDS SEEMS LIKE IT SHOULDN'T  
BE ENOUGH FOR HAC, WE'VE APPLIED  
IT.

SO IT'S NOT, AND ALSO, THIS  
DEFENDANT REPRESENTED HIMSELF.  
SO THERE WAS NO OBJECTION TO THE  
AGGRAVATOR, WAS THERE?

>> NO.

THERE WAS NO OBJECTION.

>> SO IT IS REALLY NOT IT, WOULD  
HAVE TO BE LIKE A FUNDAMENTAL

ERROR ANALYSIS.

>> IN THIS CASE, YEAH.

>> SO THE SECOND ISSUE THAT HE RAISE WHICH IS, YOU TALK ABOUT, THAT THE TRIAL COURT ERRED IN PERMITTING DOTE TO ADMIT EVIDENCE PERTAINING TO HIS FUTURE DANGEROUSNESS.

>> YES.

>> LOOKS LIKE FROM A REVIEW OF THIS TRANSCRIPT WHAT MR. DOTY WAS DOING, IN A VERY INTELLIGENT AND CALCULATED WAY, GIVING THE JURY ALL THE EVIDENCE ABOUT HIMSELF AND SO, I DON'T KNOW HOW, WHEN HE'S BEING PERMITTED TO REPRESENT HIMSELF, HE DECIDE TO OPEN THE DOOR TO PUT IT ON AFTER THE JUDGE BENDS OVER BACKWARDS TO TELL HIM, THIS IS, YOU'RE OPENING THE DOOR, HE GOES, THAT DOOR I WANT TO WALK RIGHT INTO THAT DOOR.

CAN THAT BE REVERSIBLE ERROR?

>> MY SUGGESTION HERE, IS WHEN

YOU HAVE A DEFENDANT, AND HE WENT TO A PENALTY PHASE AND PUT ON ALL THE MITIGATION AND DID EVERYTHING BECAUSE HE WAS AWARE OF THIS COURT'S DECISIONS AND THIS IS FREQUENTLY WHERE A DEFENDANT TYPICALLY WAIVES THE MITIGATION BELOW AND REALIZED THAT WAS FREQUENTLY AN APPEAL, SO HE WAS TRYING TO APPEAL-PROOF THIS BY PRESENTING ALL THE MITIGATION THAT COULD BE PRESENTED.

>> SO REALLY HELPFUL THING TO HAVE SO THAT WE UNDERSTAND THE WHOLE PICTURE OF THIS DEFENDANT.

>> SURE.

MY SUGGESTION IS IN A SITUATION LIKE THAT, THE TRIAL COURT, YOU SHOULD PERHAPS, SHOULD HAVE A DIFFERENT DUTY TO INSURE THAT IMPROPER INFLUENCES AREN'T GOING TO THE JURY, EVEN THOUGH, A DEFENDANT WHO IS SEEKING THE DEATH PENALTY IS TRYING TO PUT

THINGS IN THAT WILL FURTHER  
THAT, BUT THE JUDGE, THE JUDGE  
HAS SOME RESPONSIBILITY I THINK.

>> TO CHIP AWAY FURTHER, WE  
ALREADY CHIPPED AWAY AT HIS  
RIGHT OF SELF-REPRESENTATION AND  
HIS RIGHT OF AUTONOMY IN THESE  
PROCEED SO YOU'RE SUGGESTING WE  
FURTHER CHIP AWAY OF THE  
DEFENDANT'S RIGHT OF  
SELF-REPRESENTATION AND  
AUTONOMY?

>> I'M SUGGESTING THAT IN THESE  
CASES WHERE YOU'RE TALKING ABOUT  
THE SENTENCING RECOMMENDATION  
FROM THE JURY BEING PART OF THE  
SENTENCING PROCESS IN THE CASE,  
THAT IS A JUDICIAL FUNCTION AND  
THAT, IF THE JUDGE IS GOING TO  
RELY, GIVE GREAT WEIGHT TO THE  
SENTENCING RECOMMENDATION AS HE  
DID IN THIS CASE THEN PERHAPS HE  
HAS SOME INHERENT RESPONSIBILITY  
TO INSURE IMPROPER INFLUENCES  
AREN'T COMING TO THE JURY.

THAT IS THE POSITION.

>> REALLY, WITH THE LIEUTENANT,  
AND HARD TO KNOW WHY HE PUT HIM  
ON BUT THEN HE ASKED HIM, THE  
REASON I'M ASKING YOU A  
QUESTION, YOU'RE A PROFESSIONAL.  
IN YOUR PROFESSIONAL OPINION AS  
TO WHAT, WHAT KIND OF WORKER  
WAYS?

I UNDERSTAND YOU'RE A GOOD  
WORKER.

YOU KNOW, THEY HAVE.

SO IT IS SORT OF LIKE HE IS KIND  
OF GIVING THE WHOLE THING WHICH  
IS THAT HE IS, HE'S, HE'S, WAS  
GIVEN THIS TRUSTED POSITION AND  
THAT HE IS A GOOD WORKER BUT  
REALLY AGAIN, IN THIS CASE HE  
HAD ALREADY, HE WAS IN THE  
PRISON FOR WHAT, FOR MURDER?

>> YES.

>> SO AND NOW HE HAS MURDERED  
AGAIN.

DO YOU THINK THE JURY IS NOT  
GOING TO FIGURE AS ONE OF THE

THINGS HE HAS ALREADY MURDERED,  
IF HE WAS NOT GIVEN THE DEATH  
PENALTY HE MIGHT DO THIS AGAIN?

>> AGAIN, YOUR HONOR, I'M--

>> I REALIZE THAT.

>> I'M BRINGING A POSITION  
BEFORE THE COURT OF FUTURE  
DANGEROUSNESS, THAT IS NOT THE  
TYPE OF THING THAT USUALLY COMES  
IN AND IT USUALLY HAS A NEGATIVE  
INFLUENCE ON A JURY AND THAT'S  
AN ISSUE I THINK THIS COURT  
SHOULD LOOK AT IN THE CASE.

THAT IS REALLY WHERE I AM HERE.  
THE THIRD ISSUE, AND AGAIN THERE  
WAS NO OBJECTION TO THIS  
PARTICULAR ISSUE WHERE THE  
MEDICAL EXAMINER ESSENTIALLY  
TESTIFIED TO A GOLDEN RULE  
PROBLEM.

THE PROSECUTOR ASKED THE  
QUESTION, WAS, COULD YOU  
DESCRIBE FOR THE JURY, DOCTOR,  
WHAT A PERSON GOES THROUGH WHILE  
THEY'RE BEING STRANGLERED,

PHYSIOLOGICALLY SPEAKING WHAT--

THE PERSON GOES THROUGH?

THE MEDICAL EXAMINER ASKS THE  
QUESTION BACK TO THE PROSECUTOR.

'TIS PHYSIOLOGICALLY AND NOT  
COGNITIVELY?

>> HIS RESPONSE WAS BOTH.

IN RESPONSE TO THAT, THE MEDICAL  
EXAMINER SAID I THINK ANYONE IN  
THIS ROOM CAN IMAGINE WHAT SORT  
OF EMOTIONS THROUGH A PERSON'S  
MIND IF THEY'RE COGNITIVE AND  
FULLY AWARE WHAT'S GOING ON AND  
THEY KNOW THE SERIOUS EFFECT.

>> THERE WAS NO OBJECTION.

>> THERE IS NO OBJECTION.

>> BECAUSE THE OTHER PART IS, IT  
SEEMS LIKE, I DON'T KNOW THIS IS  
GOLDEN RULE.

MORE LIKE HE IS, HE MAY HAVE  
MISUNDERSTOOD THE QUESTION  
AND HE IS KIND OF SPECULATING  
ABOUT THAT AS OPPOSED TO THE  
AREA OF HIS EXPERTISE.

>> I UNDERSTAND.

>> WE DON'T WANT MEDICAL EXAMINERS, THAT WE WANT THEM TALKING FROM A MEDICAL EXAMINATION, A MEDICAL POINT OF VIEW WHAT SOMEONE WHO IS BEING STRANGLERED GOES THROUGH.

THAT IS REALLY WHAT HE WAS TRYING TO DO HERE.

>> I'M NOT SUGGESTING THAT THE PROSECUTOR WAS TRYING TO ELICIT THIS BUT IT HAPPENED.

IT CAME BEFORE THE JURY AND I'M PRESENTING IT TO THE COURT.

FOR YOUR CONSIDERATION.

>> IF IN A NORMAL CASE, IF NOT IN THIS POSTURE THE COURT WOULD BE ALL OVER THIS STATEMENT AS BEING GOLDEN RULE ARGUMENT.

ANYONE IN THE ROOM, JURORS ARE IN THE ROOM, FULLY IMAGINE?

THAT IS THE LANGUAGE YOU'RE NOT SUPPOSED TO USE.

IMAGINE WHAT IT IS LIKE TO BE IN THE POSITION OF THE DECEASED.

>> THIS IS ANOTHER PIECE OF THE

PUZZLE IF YOU WILL THAT I THINK  
COULD HAVE IMPACTED THE JURY'S  
RECOMMENDATION AND BECAUSE ALL  
THE EVIDENCE WAS PRESENTED,  
MITIGATION WAS PRESENTED, THE  
JUDGE DID GIVE GRATE WEIGHT TO  
THEIR REPUTATION HERE.  
THERE WAS A 10-2 RECOMMENDATION.  
THAT IS ALL I HAVE FOR THE  
COURT.

THANK YOU.

>> MAY IT PLEASE THE COURT.

PATRICK DELANEY, ASSISTANT  
ATTORNEY GENERAL REPRESENTING  
THE STATE OF FLORIDA.

THE APPELLANT, MR. DOTY, WAS  
SERVING A LIFE SENTENCE FOR  
FIRST-DEGREE MURDER WHEN HE  
KILLED THE VICTIM XAVIER  
RODRIGUEZ, IMMEDIATELY  
CONFESSED.

PLED GUILTY, REPRESENTED HIMSELF  
AT PENALTY PHASE, ARGUED FOR HIS  
OWN FUTURE DANGEROUSNESS STATING  
HE WILL KILL AGAIN.

THIS COURT'S CASE LAW IS CLEAR  
THAT A TRIAL COURT JUDGE IS  
REQUIRED TO GIVE ALL AGGRAVATING  
AND MITIGATING JURY INSTRUCTIONS  
WHEN COMPETENT SUBSTANTIAL  
EVIDENCE HAS BEEN PRESENTED  
BEFORE THE COURT.

IN THIS CASE, IN REFERENCE TO  
HAC, WE HAVE EVIDENCE OF THE  
VICTIM BEING STRANGLED DEATH AND  
STABBED.

AND THIS COURT IN OVERTON VERSUS  
STATE STATED THAT DEATH BY  
STRANGULATION CREATE AS PRIMA  
FACIE CASE FOR THE HAC  
INSTRUCTION.

THERE IS NO OTHER EVIDENCE  
BEFORE THE TRIAL COURT OTHER  
THAN THIS EVIDENCE OF DEATH BY  
STRANGULATION.

THEREFORE--

>> DO WE HAVE ANY EVIDENCE IN  
THIS RECORD OF WHAT WENT ON  
IMMEDIATELY PRECEDING THE  
STRANGULATION?

I KNOW IT SAYS HE WAS STRANGLING HIM FROM BEHIND BUT DO WE KNOW IF THEY WERE ARGUING, IF THERE WAS ANYTHING GOING ON PRIOR TO THAT?

>> BEFORE THAT, HOW THE ENTIRE EVENT OCCURS, MR. RODRIGUEZ IS COAXED INTO THE INTERVIEW ROOM. THEY WAGER A BET WITH HIM THAT HE CAN NOT GET OUT OF A SPECIFIC TYPE OF HAND TIED KNOT.

IT WAS CALLED THE COAST GUARD HANDCUFFS.

THEY PLACE HIS HANDS IN THE KNOT, AT THAT POINT ONCE HIS HANDS BOUND, MR. DOTY COMES UP FROM BEHIND MR. RODRIGUEZ AND ATTEMPTS TO PUT HIM IN SLEEPER CHOKEHOLD AS HE DESCRIBES IT.

BY MR. DOTY'S OWN STATEMENTS, HE NEEDED TO LOCK THAT HOLD DOWN.

AND ONCE HE LOCKED THAT HOLD DOWN, IT WAS ABOUT 10 SECONDS WHEN MR. RODRIGUEZ PASSED OUT.

SO IT APPEARS THERE WAS SOME

AMOUNT OF A STRUGGLE ONCE  
MR. DOTY COMES UP BEHIND HIM.  
ONCE MR. RODRIGUEZ'S  
UNCONSCIOUS, THE CODEFENDANT  
LEAVES THE ROOM, MR. DOTY PICKS  
UP A KNIFE AND BEGINS TO STAB  
MR. RODRIGUEZ IN THE ABDOMEN.  
WHEN THE CODEFENDANT COMES BACK  
THEY THEN PLACE A LIGATURE  
AROUND HIS NECK WITH EXTRA  
PIECES BED SHEET TO MAKE SURE HE  
WAS DEAD.

THEY WAITED 15 MINUTES.  
AND WENT DOWNSTAIRS TO THE DUTY  
AT THIS SERGEANT AND THERE WAS A  
BODY UPSTAIRS AND THEY NEEDED TO  
BE HANDCUFFED.

MOVING ON TOWARD THE ARGUMENT  
FOR FUTURE DANGEROUSNESS,  
MR. DOTY EFFECTIVELY WAIVED THIS  
CLAIM BEFORE THE TRIAL COURT.  
AT EACH POINT IN TIME WHEN  
EVIDENCE OF FUTURE DANGEROUSNESS  
COMING BEFORE THE TRIAL COURT  
THE STATE ATTORNEY OBJECTED AND

INFORMED THE TRIAL COURT WHERE  
MR. DOTY APPEARED TO BE GOING.  
THE PROCEEDINGS WERE STOPPED AND  
THE JURY WAS EXCUSED AND  
MR. DOTY WAS INFORMED OF  
THE RIGHT.

MR. DOTY WAS COUNSELED ON  
THE RIGHT.

A RECESS WAS GIVEN FOR MR. DOTY  
TO CONFER WITH THE STANDBY  
COUNSEL.

AND ON THE RECORD MR. DOTY  
EFFECTIVELY AND AFFIRMATIVELY  
CLAIMED ANY CLAIM TO HIS FUTURE  
DANGEROUSNESS.

FINALLY THE GOLDEN RULE  
VIOLATION, WHILE IT IS  
ADMITTEDLY A CLOSE CALL IN THIS  
CIRCUMSTANCE IT'S NO GOLDEN RULE  
VIOLATION OCCURRED IN THIS CASE.

THE COMMENT BY MEDICAL--  
>> MOST OF THE TIME YOU SEE  
THESE IN THE CONTEXT OF A  
PROSECUTOR TELLING THE JURY TO  
IMAGINE, PUT YOURSELF IN

SOMEONE'S PLACE.

DO WE HAVE ANY CASES WHERE IT IS  
A WITNESS WHOSE DONE THAT?

>> YES, THERE IS.

AND I BELIEVE IN THE DEFENSE  
BRIEF, IT MY BEEN WILLIAMSON  
VERSUS STATE HOWEVER I CAN NOT  
BE 100% SURE ON THAT.

THERE IS ONE CASE ARE WITH THE  
PROSECUTOR ASKED A MENTAL HEALTH  
EXPERT DIRECTLY IF HE THOUGHT  
THE DEFENDANT WOULD KILL AGAIN?  
AND THAT WAS DETERMINED TO BE A  
GOLDEN RULE VIOLATION.

THAT IS NOT--

>> WAIT, WAIT.

TALKING ABOUT FUTURE  
DANGEROUSNESS NOW.

>> OH, I'M SORRY.

I APOLOGIZE.

>> THE IMAGINARY SCENARIO, PUT  
YOURSELF IN SOMEONE'S PLACE KIND  
OF THING.

>> YES.

THIS COURT HAS FOUND THAT BUT AS

FAR AS A WITNESS TESTIFYING, NOT  
THAT I HAVE, NOT THEY'VE  
UNCOVERED.

>> SOME IT IS WORSE REALLY, IF A  
WITNESS, ESPECIALLY A MEDICAL  
EXAMINER.

WE DON'T REALLY NEED, THIS DOES  
APPEAR TO BE A GOLDEN RULE  
VIOLATION BUT IT WASN'T OBJECTED  
TO, SO WE GO TO FUNDAMENTAL  
ERROR, RIGHT?

>> WE GO TO FUNDAMENTAL ERROR.

>> WE DON'T WANT TO ENCOURAGE  
THIS KIND OF TESTIMONY TO COME  
IN IN A DEATH CASE.

>> NO, NO.

THE QUESTION ALSO DID NOT  
SUGGEST THE GOLDEN RULE  
VIOLATION.

IT WAS THE STATEMENT BY THE  
MEDICAL EXAMINER.

AND THE NEXT QUESTION WHICH  
TAKES THE MEDICAL EXAMINER  
COMPLETELY TO THE PHYSIOLOGICAL  
ASPECT OF STRANGULATION SHOWS

WHERE THE PROSECUTION WAS AT  
THE--

>> I AGREE WITH YOU.

THE PROSECUTOR WAS NOT TRYING TO  
ELICIT THAT KIND OF TESTIMONY.

>> I WOULD HOPE THOUGH THAT,  
THIS IS AN EXCELLENT TEACHING  
TOOL BECAUSE THIS MEDICAL  
EXAMINER WILL OBVIOUSLY TESTIFY  
AGAIN.

>> PRESUMABLY.

>> AND I WOULD HOPE THAT YOUR  
OFFICE WILL SEND MESSAGE BACK, A  
MESSAGE BACK TO THIS MEDICAL  
EXAMINER OR ANYONE ELSE THAT  
WHEN YOU ARE PERMITTED TO GIVE A  
NARRATIVE, AS IN ANSWER TO A  
QUESTION, THAT YOU NEED TO BE  
CAREFUL ABOUT THIS KIND OF  
THING.

I'M HOPING YOU WILL USE THIS AS  
TEACHING TOOL TO PEOPLE WHO ARE  
EXPECTED TO TESTIFY AGAIN IN  
COURT AS TO WHAT NOT TO SAY.

>> MOST DEFINITELY.

>> BECAUSE THIS WOULD HAVE BEEN,  
HAD THIS BEEN, NOT IN THIS  
POSTURE, THIS CASE WOULD BE  
GOING BACK.

>> UNDERSTAND.

AND THE STATE ATTORNEY WHO TRIED  
THE CASE IS PRESENT TODAY AND IS  
AWARE OF THE COURT'S OPINION.

IF THERE ARE NO FURTHER  
QUESTIONS, THE STATE  
RESPECTFULLY REQUESTS THIS COURT  
AFFIRM MR. DOTY AT THIS'S  
CONVICTION AND SENTENCE.

THANK YOU.

>> JUST WANT TO ADD ONE POINT OF  
FACTUAL CLARIFICATION, JUSTICE  
QUINCE, TO YOUR QUESTION YOU  
ASKED ABOUT WHAT EVIDENCE THERE  
WAS ABOUT WHAT HAPPENED JUST  
PRIOR TO THE STRANGULATION.  
AND IN FACT, THEY DID DO A RUSE  
WITH THE VICTIM IN THIS CASE  
ABOUT TYING HIM BUT INITIALLY,  
ACCORDING TO THE STATEMENTS WE  
HAVE FROM DOTY WHICH THE TRIAL

JUDGE GAVE CREDENCE TO WAS THAT HE CAME UP BEHIND HIM AND PUT HIM INTO A CHOKEHOLD BUT AT THAT POINT, HE SAID, RODRIGUEZ THOUGHT IT WAS PART OF THE JOKE, THAT THEY WERE PULLING ON HIM. AND SO IT WASN'T, THEN HE LOCKED IT DOWN.

AND THE MEDICAL EXAMINER SAID, IT COULD HAVE BEEN AS SHORT AS 10 SECONDS OR, MAYBE AS MUCH AS 45 SECONDS, BUT, BEFORE HE WAS RENDERED UNCONSCIOUS.

HE WAS UNCONSCIOUS AT THE TIME OF THE STABBINGS AND THE LIGATURE WAS APPLIED.

>> BUT HOW CAN WE SAY THAT THE JURY WOULD NOT BE ABLE TO CONCLUDE THAT ONCE HE IS LOCKED DOWN HE IS IN HORROR?

THERE WILL BE A PERIOD OF TIME HERE WHEN HE KNOWS THAT HE IS IN SERIOUS TROUBLE.

BUT I MEAN, I NEGATIVE HAVE BEEN SUBJECTED TO SUCH A THING.

I WON'T GO THROUGH A GOLDEN RULE DISCUSSION OF IT, BUT YOU KNOW, I THINK THE NOTION THAT SOMEHOW THAT IS NOT SOMETHING THAT THE JURY COULD HAVE, ANY RATIONAL JURY COULD HAVE CONCLUDED IS A LITTLE FANCIFUL.

WHY AM I WRONG?

>> I DIDN'T SUGGEST THAT THE JURY COULDN'T CONCLUDE IT.

I'M JUST SAYING THERE HAS BEEN CASE WHERE IS THERE HAS BEEN, AWARENESS OF PENDING DEATH FOR A BRIEF PERIOD OF TIME WHERE THIS COURT HAS CONCLUDED THAT HAC WAS NOT APPLICABLE.

>> I WAS GOING TO SAY, IN THOSE CIRCUMSTANCES I WOULD THINK FIVE SECONDS WILL FEEL LIKE AN ETERNITY.

I MEAN SO.

>> I THINK HE WAS AWARE OF IT.

>> I WANT TO CLARIFY THOSE FACTS.

I THOUGHT THERE WAS SOME

DISTINCTION THERE.

>> THANK YOU.

>> THANK YOU.