>> GOOD MORNING,
JUSTICES, COUNSEL.
I'M NANCY RYAN REPRESENTING
DONALD WILLIAMS.
THIS IS ANOTHER APPEAL FROM A
MURDER CONVICTION AND DEATH
SENTENCE.
THIS IS A CASE WHERE REAL AND
SERIOUS PROBLEMS TOOK PLACE
DURING THE GUILT PHASE.
IT'S MY CONTENTION THAT SOME OF
THOSE ERRORS IN THE GUILT PHASE
AFFECTED THE PENALTY PHASE AS
WELL AND THAT EVEN IF THIS COURT
DOES AFFIRM THE CONVICTION, IT
SHOULD REVERSE THE SENTENCE.
BUT FIRST AND FOREMOST, THAT IS,
AS IS MY CONTENTION, THAT A NEW
TRIAL SHOULD RESULT IN THIS
CASE.
THE DEFENDANT REPRESENTED
HIMSELF.
HE FIRED HIS PUBLIC DEFENDER,
REPRESENTED HIMSELF FOR THE LAST
SIX MONTHS OF TRIAL PREPARATION
AND THE FIRST SIX DAYS OF THE
GUILT PHASE.
THERE WAS NO, ZERO, NO
DISCUSSION OF HAVING STAND-BY
COUNSEL IN THE COURTROOM AT ANY
TIME.
>> I WANT TO JUST ADDRESS THAT
ISSUE.
THE, WHEN INITIALLY-- FIRST OF
ALL, THE PUBLIC DEFENDERS HAVE
BEEN REPRESENTING HIM FOR TWO
YEARS BEFORE THE INITIAL TRIAL.
>> YES, YOUR HONOR.
>> THE DEFENSE ASKED FOR A
CONTINUANCE BACK IN THE EARLY
PART OF THE YEAR BECAUSE THEY
SAID WE'RE TRYING TO EVALUATE
THE INSANITY DEFENSE, RIGHT?
AND THEY THEN, THEY GOT THAT
CONTINUANCE.
SO AT THE POINT-- AND THEN HE
DID ASK TO REPRESENT HIMSELF.
THE JUDGE FIRST FOUND THAT HE
WAS NOT COMPETENT THE REPRESENT
HIMSELF, BUT THEN THEY ALL CAME

BACK AND SAID, NO, FIND HIM
SOMEBODY, AND WE'LL REEVALUATE,
AND SOMEONE SAID, NO, HE COULD
REPRESENT HIMSELF.
SO NOW WE'RE INTO A SITUATION
WHERE THE JUDGE DECIDES HE CAN
REPRESENT HIMSELF, BUT EVERYBODY
KNOWS THAT IN THESE CASES
SOMETIMES THESE DEFENDANTS GO
BACK AND FORTH, YOU KNOW?
THEY WANT TO REPRESENT
THEMSELVES, AND THEY DON'T.
WHOSE OBLIGATION, BECAUSE I--
USUALLY WE SEE THESE CASES WITH
STAND-BY COUNSEL, SOMEBODY
THAT'S WATCHING, YOU KNOW, THE
TRIAL, WHERE-- WHOSE OBLIGATION
IS IT TO INSURE THAT A DEFENDANT
WHO IS REPRESENTING HIMSELF, OR
IS THERE, HAS STAND-BY COUNSEL?
>> I THINK THAT WOULD BE
INCUMBENT ON THE COURT, YOUR
HONOR.
>> BUT WHY SHOULDN'T, DIDN'T
THE-- DIDN'T THE PUBLIC
DEFENDERS SAY WE'RE STAYING IN
HERE TO MONITOR THIS?
>> OH, I CAN'T AGREE WITH YOU
THERE, HONOR.
THE PUBLIC DEFENDER, WHEN WE GET
OFF THE CASE, WE ARE OFF THAT
CASE.
THE BOX IS IN THE HALL, WE ARE
OUT THE DOOR.
THERE IS SO MUCH MORE TO DO, WE
ARE DONE.
>> WASN'T THE PROBLEM HERE THAT
THE DEFENDANT WANTED TO LIST THE
PUBLIC DEFENDERS AS WITNESSES?
>> HE DID SO LIST THEM, YOUR
HONOR.
>> A LITTLE BIT OF A PROBLEM
WITH HAVING PEOPLE AS STAND-BY
COME WHEN THEY ARE GOING TO BE
CALLED, POTENTIALLY CALLED AS
WITNESS.
FOR WHATEVER PURPOSE, I DON'T
KNOW.
BUT ISN'T THAT PART OF THE
CONTEXT HERE?

>> VERY MUCH SO, YOUR HONOR.
THE DEFENSE COUNSEL WERE BOTH,
BOTH THE GUILT PHASE COUNSEL AND
THE PENALTY PHASE COUNSEL WERE
LISTED AS WITNESSES.
>> AND THE JUDGE ON AN ISSUE,
AGAIN, THIS IS THE PROBLEM WITH
SOMEBODY THAT'S REPRESENTING
THEMSELF ON SOMETHING THAT,
CERTAINLY, BUDGET GOING TO BE
TESTIMONY-- WASN'T GOING TO BE
TESTIMONY THAT COULD HAVE BEEN
ALLOWED IN FRONT OF A JURY, THE
JUDGE ULTIMATELY SAID YOU CAN'T
CALL YOUR OWN COUNSEL.
SO LET'S GO TO THEN SIX DAYS IN,
HE THEN-- AFTER HE HAS NOW PUT
ON AN INSANITY DEFENSE, HE'S
ALREADY, RIGHT?
HE'S REPRESENTING HIMSELF--
>> HE'S IN THE MIDDLE OF PUTTING
ON AN EFFORT AT AN INSANITY
DEFENSE.
>> RIGHT.
WHICH ADMITS THE CRIME, RIGHT?
AN INSANITY DEFENSE ADMITS I DID
IT, BUT I WAS INSANE.
>> IN LAW, YES.
ON THE FACTS OF THIS CASE, NO.
THE DEFENDANT NEVER A, IT'S
CLEAR FROM THE RECORD, HE NEVER
UNDERSTOOD HOW THE LAW APPLIED
TO HIS CASE.
>> OKAY.
SO WHEN THE DEFENSE LAWYERS GET
BACK ON, THEY WANT A MISTRIAL,
OKAY?
THEY WANT, THEY DON'T JUST WANT
A CONTINUANCE, THEY FIRST SAY WE
NEED A MISTRIAL WHICH THERE,
YOU'RE NOT SAYING THE JUDGE
SHOULD HAVE GRANTED A MISTRIAL.
>>I DON'T THINK THAT THINGS
EVER GOT TO THE POINT WHERE A
MISTRIAL WAS NECESSARY.
I THINK AN ADEQUATE CONTINUANCE
COULD HAVE SOLVED THE PROBLEM.
>> BUT WHY IS-- HERE IS THE
PROBLEM.
WHY DOES SOMEBODY WHO HAS BEEN

TOLD THE HAZARDS OF REPRESENTING
THEMSELVES AND THEN DECIDES SIX
DAYS IN NOW I WANT A LAWYER
AGAIN GET TO HAVE JUST A
CONTINUANCE FOR HOW LONG?
SEVERAL MONTHS?
A WEEK?
WHAT WERE THEY ASKING FOR?
>> THEY ASKED, THEY WERE TRYING
TO GET EVERYTHING THEY COULD.
THEY WANTED, THEY ASKED FOR A
MISTRIAL, THEY ASKED FOR SEVERAL
WEEKS, BUT I THINK A WEEK WOULD
HAVE BEEN ADEQUATE.
>> OKAY.
A WEEK WOULD HAVE BEEN ADEQUATE.
SO THEY GOT-- THIS WAS DONE ON
A WEDNESDAY.
>> YES.
>> THEY GOT 'TIL MONDAY.
>> CORRECT.
>> OKAY.
THEY COME BACK ON THAT MONDAY,
AND THEY SAY WE'VE NOW LISTENED
AS BEST WE COULD TO ALL THIS
TESTIMONY, AND IT SOUNDS LIKE
THE PREJUDICE ISSUE BOILS DOWN
TO THAT THERE WAS A APRIL 2013
DNA, SOMETHING THAT THEY WEREN'T
AWARE OF, A SECOND DNA TEST--
>> YES, YOUR HONOR.
YES, YOUR HONOR.
WHEN DEFENSE COUNSEL CAME IN ON
MONDAY MORNING, HE SAID I'VE
BEEN ABLE TO LISTEN TO MOST OF
IT.
IT'S ALL I'VE BEEN ABLE TO DO,
AND I DIDN'T HEAR THE DNA
EXPERT'S TESTIMONY.
>> OKAY.
AND THEN AT THAT POINT AND I
HATE-- I KNOW THIS IS TOUGH FOR
THE PUBLIC DEFENDER.
I'M NOT TRYING TO SLAM THEM.
BUT THEY DIDN'T-- DID THEY SAY,
LISTEN, WE JUST NEED TO HEAR--
BECAUSE I DON'T KNOW HOW LONG
THAT TESTIMONY WAS-- WE JUST
NEED NOW ANOTHER HALF A DAY, WE
JUST NEED A TRANSCRIPT OF THE

DNA EXPERT SO WE CAN UNDERSTAND
WHAT HE SAID OR DIDN'T SAY.
>> HE DID NOT SAY THAT
SPECIFICALLY, YOUR HONOR.
>> OKAY.
SO NOW IT STARTS AGAIN, AND THEY
DON'T THINK THEY'RE GOING TO
DISPUTE THE DNA.
THEY GO AND PUT ON TWO OR THREE
WITNESSES THAT I'M ASSUMING THE
DEFENDANT TOLD THEM TO PUT ON OR
THAT HAVE, THAT SAY SOMETHING
LIKE HE'S, WELL, MAYBE HE WASN'T
THERE?
I MEAN, WHAT WOULD THE PURPOSE
OF THE ADDITIONAL WITNESSES--
WHAT WERE THE PURPOSE OF THE
ADDITIONAL WITNESSES THEY PUT
ON?
>> THE DEFENDANT, THE DEFENSE
COUNSEL PUT ON AFTER HE GOT IN?
>> YES.
>> THEY CALLED-- IT WAS
DIFFICULT TO TELL.
AND I THINK THAT SUPPORTS MY
ARGUMENT, YOUR HONOR, BECAUSE
DEFENSE COUNSEL WAS JUST NOT
PREPARED TO GO.
HE CALLED THREE WITNESSES.
ONE WAS A POLICE OFFICER WHO WAS
NOT COOPERATING AND WHO ONLY
WOULD HAVE TESTIFIED THAT THE
DEFENDANT WENT SOMEWHERE ELSE
EITHER WITH THE VICTIM OR WITH
THE VICTIM'S BODY BEFORE POLK
COUNTY WHERE HE ABANDONED THE
BODY.
IT HAD-- I DON'T, I HONEST
DON'T SEE WHAT THE RELEVANCE WAS
THERE.
>> BUT YOU CAN'T-- AGAIN, NOW
WE DON'T KNOW WHETHER THE
DEFENDANT SAID THIS IS WHO I
WANT YOU TO CALL.
BUT AGAIN, THESE WERE LAWYERS
THAT WERE READY EXCEPT FOR
TRYING TO EVALUATE THE INSANITY
DEFENSE TO TRY THIS CASE SIX
MONTHS BEFORE EXCEPT FOR
THEY WANTED TO UNDERSTAND

WHETHER THEY HAD A VIABLE
INSANITY DEFENSE.
THEY ALREADY KNEW, THIS
DEFENDANT HAD ALREADY GONE
PUBLIC, AND THEN HE-- SAYING
THAT HE AND THIS, THE VICTIM HAD
BEEN KIDNAPPED BY A THIRD
PERSON, RIGHT?
I MEAN, AND THEN HE RECANTED
THAT.
SO WE'RE DEALING WITH A
DEFENDANT WHO'S HIS OWN WORST
ENEMY.
AND I GET, I GUESS, MY
FRUSTRATION WITH THESE CASES IS
THAT DEFENDANTS ARE TOLD THE
HAZARDS OF SELF-REPRESENTATION,
AND THEN THEY COME UP HERE, AND
THEY WANT TO FIND-- AND, AGAIN,
I APPRECIATE YOU DOING YOUR
JOB-- THEY WANT TO FIND
SOMETHING THE TRIAL COURT DID
THAT IS, ENTITLES THEM TO A
WHOLE NEW TRIAL, WHOLE NEW BITE
AT THE APPLE WHEN THIS GUY MAY
GO BACK AND SAY NOW I WANT TO
REPRESENT MYSELF.
SO I'M VERY SKEPTICAL ABOUT
THAT.
BUT LET'S JUST GO TO THE ONE
AREA, PREJUDICE.
SO YOU SAY THEY DIDN'T REALLY
KNOW WHAT THE TESTIMONY OF THE
DNA EXPERT WAS.
>> CORRECT.
>> OKAY.
NOW, WHAT IS, WHAT DID THAT HAVE
TO DO WITH THE EVIDENCE IN THE
GUILT PHASE AND WHAT THEY MIGHT
HAVE PUT ON IN THEIR CASE IN
CHIEF?
DO THEY SAY, WELL, WE WERE GOING
TO GET-- IF WE HAD KNOWN ABOUT
THIS, WE WOULD HAVE GOTTEN OUR
OWN DNA EXPERT TO EXPLAIN THAT
THIS DNA REALLY DOESN'T SHOW HE
WAS THERE?
>> THE PROBLEM IS NOT SO MUCH
WITH THE EVIDENCE AS WITH THE
ARGUMENT.

IN HIS FINAL CLOSING, COUNSEL
FOR THE STATE LET GO A BOMBSHELL
AND ANNOUNCED THAT-- OR MORE OR
LESS ANNOUNCED THAT IN HIS
BELIEF THE VICTIM WAS OR MIGHT
WELL HAVE BEEN SEXUALLY
INTERFERED WITH BEFORE HER
DEMISE.
>> ALL RIGHT.
NOW, LET'S JUST-- ABOUT THAT.
FIRST OF ALL, AS YOU SAY, IT
WASN'T OBJECTED TO.
SO THEY ARE SAYING, WELL, WE
REALLY DIDN'T KNOW WHAT THE DNA
SHOWED.
BUT THEY KNEW THAT THIS VICTIM,
WHO WAS 81 YEARS OLD, WAS FOUND
NUDE EXCEPT FOR SOCKS.
>> CORRECT.
>> WHAT IS-- AND WE KNOW THAT
THERE IS DNA THAT PUTS THEM
TOGETHER.
NOW, AND THERE'S SEMEN, BUT THE
DEFENDANT PROPERLY
CROSS-EXAMINED THE EXPERT TO
SAY, WELL, CAN'T SEMEN BE IN
UNDERPANTS OF-- RIGHT?
HE WAS ABLE TO ACTUALLY SAY THAT
AND CROSS-EXAMINE THE DNA
EXPERT.
>> YES, YOUR HONOR, THAT'S
CORRECT.
IT WASN'T TOGETHER ON THE
UNDERPANTS.
THE UNDERPANTS LAY AROUND IN A
CAR WITH CLOTH SEATS FOR SEVERAL
DAYS WHILE THE DEFENDANT WAS
LIVING OUT OF THE VICTIM'S CAR.
THERE WAS SEMEN ON THE
DEFENDANT'S OWN BRIEFS.
THERE WERE HAIR, A HAIR AND SOME
SKIN CELLS OF THE VICTIM'S--
>> SO THERE COULD HAVE BEEN, IT
COULD HAVE BEEN ANOTHER REASON
THE DNA GOT CONNECTED.
BUT AS TO THE ISSUE, ARE YOU
ARGUING THAT IT WAS FUNDAMENTAL
ERROR FOR THEM TO ARGUE IN GUILT
ABOUT AN UNCHARGED CRIME OF
SEXUAL BATTERY?

>> THAT IS ISSUE FOUR IN THE BRIEFS, THE PROSECUTORIAL MISCONDUCT ARGUMENT IS A FUNDAMENTAL ERROR ARGUMENT.
BUT AS IT RELATES TO THE CONTINUANCE, MY ARGUMENT AS TO THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING ADEQUATE CONTINUANCE IN THAT DEFENSE COUNSEL CAME IN AND SAID I DON'T KNOW WHAT HAPPENED DURING THE DNA WITNESS' TESTIMONY.
>> HE DIDN'T-- YOU KNOW, AGAIN, AND I-- THERE REALLY ISN'T THAT RECORD TO SAY I COULDN'T HEAR HIM, I NEED TO HAVE JUST 'TIL THE NEXT MORNING TO GET AN ACCURATE TRANSCRIPT OF WHAT THIS EXPERT SAID.
>> WELL, YOUR HONOR, HE DID SAY THE FIRST HALF, BUT NOT THE SECOND HALF.
IF I MAY MOVE ON, I BELIEVE THAT THERE WAS-- THE PREJUDICE IN CLOSING WAS THAT COUNSEL DIDN'T NOTICE, A, THAT ASSUMPTION, THAT CONCLUSION THAT THE VICTIM WAS SEXUALLY INTERFERED WITH IS IN NO WAY SUPPORTED BY THE EVIDENCE THAT WAS DISCLOSED AFTER WE WERE OUT OF THE CASE OR BY THE WITNESS TESTIMONY THAT TOOK PLACE WHILE WE WERE OFF STAGE AND COULDN'T HEAR.
>> COULDN'T YOU ARGUE ANYWAY, I MEAN, COULDN'T YOU OBJECT ON THE BASIS THAT IT'S AN UNCHARGED CRIME TO THE EXTENT THAT THEY INFER OR ARGUE THAT THERE WAS A SEXUAL BATTERY?
>> THAT ARGUMENT WAS MADE BETWEEN THE GUILT AND PENALTY PHASES.
>> OKAY.
BUT, I MEAN, NOW WE'RE LOOKING TO WHETHER FUNDAMENTAL ERROR, DOES IT GO TO THE ESSENCE OF THIS CASE.
WOULD YOU CONCEDE THAT IN THIS CASE-- AND I DON'T LIKE TO USE

THE WORD CONCEDE, WOULD YOU
AGREE THAT THE EVIDENCE AGAINST
THIS DEFENDANT ON HIM BEING THE
ONE THAT KIDNAPPED AND BRUTALLY
MURDERED THIS VICTIM AND LEFT
HER DEAD AND LEFT HER UNCLOTHED
DEAD IS, THAT THE ISSUE OF
WHETHER THERE WAS-- AS TO
GUILT, THAT THERE WAS ALSO AN
INFERENCE THAT THERE WAS A
SEXUAL BATTERY IS REALLY NOT--
HOW COULD THAT BE FUNDAMENTAL
ERROR?
>> I CANNOT AGREE WITH YOU THAT
THERE WAS EVIDENCE OF A BRUTAL
MURDER.
THERE WERE DRY BONES.
THERE WAS NO EVIDENCE WHAT
HAPPENED TO HER.
SHE COULD HAVE UNDERGONE A
MERCIFUL DEMISE WITHOUT ANY
VIOLENCE OF ANY KIND BEING
UNDERTAKEN IN THE CASE.
>> HOW'D SHE GET UNDER THE
TIRES?
>> SHE--
>> SHE CRAWLED UNDER THE TIRES?
>> SHE DID NOT CRAWL UNDER THE
TIRES, YOUR HONOR.
SHE WAS DEAD WHEN SHE WAS
ABANDONED, YOUR HONOR.
WE DO NOT HAVE EVIDENCE OF A
BRUTAL MURDER OR OF A SEX
BATTERY.
>> AND I HATE TO KEEP ON GOING
TO THE PERSON, SHE BEING NUDE,
BUT WITHOUT ANY OTHER ARGUMENT,
WHAT IS THE POSSIBLE REASON THAT
A-- HOW OLD IS THE DEFENDANT
HERE?
>> HOW OLD IS HE?
HE WAS ABOUT 50.
52, I BELIEVE.
>> OKAY.
WHY WOULD A 81-YEAR-OLD WHO IS
FULLY CLOTHED AT THE TIME OF HER
ABDUCTION BE NUDE?
>> YOUR HONOR, THE JEWELRY WAS
GONE AS WELL, THE CLOTHING, THE
PURSE, THE WALLET WERE GONE AS

WELL.
I SUBMIT TO YOU ANY IDENTIFYING ASPECT OF THE BODY WAS WHAT WAS REMOVED.
I SUBMIT TO YOU THAT IS A REASONABLE EXPLANATION FOR THE NEAR NUDITY OF THE BODY.
I'D ALSO LIKE TO ARGUE THAT THE MISTRIALS ASKED FOR DURING REBUTTAL ONCE COUNSEL WAS BACK IN THE CASE SHOULD HAVE BEEN GRANTED.
AGAIN, MY BURDEN IS TO SHOW THERE WAS AN ABUSE OF DISCRETION--
>> NOW, ON THOSE THREE, THOSE ARE ON THE CRIMINAL, THAT HE HAS CRIMINAL CONDUCT?
>> CORRECT.
>> BUT ON EACH OF THOSE WHEN THE, AND I, YOU KNOW, I DON'T-- WHEN THE STATE, ITS WITNESSES SAID, MADE THESE REFERENCES TO OTHER CRIMINAL ACTS OR HAVING AN INTERVIEW IN THE DEPARTMENT OF CORRECTIONS, DEFENDANT OBJECTED ON TWO OF THE THREE OCCASIONS.
THE TRIAL COURT PROVIDED A CURATIVE INSTRUCTION TO THE JURY, AND THE THIRD TIME THE DEFENDANT SAID I DON'T WANT THE CURATIVE INSTRUCTION.
THE, AND AS THE STATE POINTS OUT IN ITS BRIEF, IN HIS OWN CASE THEY KNEW HE HAD SOME CRIMINAL HISTORY, CORRECT?
>> YES, YOUR HONOR.
THEY KNEW HE HAD SOME CRIMINAL HISTORY.
THEY KNEW HE HAD BEEN ON TRIAL FOR AT LEAST ONE MISDEMEANOR, AND THEY KNEW HE HAD BEEN TO PRISON AT LEAST ONCE.
WHAT THEY KNEW AT THE END OF REBUTTAL WAS HE WAS IN PRISON FOR EIGHT OF THE NINE YEARS PRECEDING THIS CRIME AND THAT-- AND THEY HEARD THE COMMENT FROM ARE THE JAIL EMPLOYEE THAT HE HAS A LENGTHY CRIMINAL HISTORY

WHICH IS NOT EVEN TRUE, YOUR HONOR.
IT'S NOT EVEN TRUE.
HE HAS ONE FELONY AND NO MISDEMEANORS ON HIS SCORE SHEET WHICH REFLECTS WHAT COUNSEL, DEFENSE COUNSEL SAID AT THE TIME AT SIDEBAR.
>> AND THE JUDGE RECOGNIZED THOSE WERE ALL INAPPROPRIATE, THOSE WERE, YOU KNOW, THIS IS A PROBLEM ESPECIALLY IN THE GUILT PHASE WHEN THEY BRING UP ANTISOCIAL PERSONALITY DISORDER AND THEN THEY MENTION, WELL, THERE'S GOT TO BE A CRIMINAL HISTORY.
BUT THE JUDGE RECOGNIZED THAT AND INSTRUCTED THE JURY.
SO I'M HAVING TROUBLE FINDING THAT IT ACTUALLY WHETHER IT'S ERROR AND WE WISH THIS, YOU KNOW, STATE NEEDED TO BETTER INSTRUCT ITS WITNESSES, BUT IT WAS NOT HOW DOES IT CONSTITUTE A-- THAT HE ABUSED HIS DISCRETION, THE JUDGE, IN REFUSING TO GRANT A MISTRIAL?
>> IN THAT THE CURATIVE INSTRUCTIONS WERE NOT EFFECTIVE.
THE FIRST CURATIVE INSTRUCTION SAID TO DISREGARD THE LAST ANSWER OF THE WITNESS, BUT THE LAST ANSWER OF THE WITNESS WAS SOMETHING TO DO WITH BAKER ACT.
THE WITNESS HAD MOVED ON FOR ONE-- COUNSEL HAD MOVED ON FROM ONE QUESTION AND ANSWER BEFORE THE MOTION FOR MISTRIAL WAS HEARD.
SO I SUBMIT THAT ONE WAS INEFFECTIVE.
I THINK JUDGES ARE PROBABLY VERY LITERAL WHEN THEY'RE TOLD TO DISREGARD THE LAST ANSWER, I THINK THEY DISREGARD THE LAST ANSWER.
THE SECOND CURATIVE WAS LIKEWISE INEFFECTIVE FOR THE REASON THE THIRD DCA ANNOUNCED IN THE

MALCOLM CASE WHICH IS THAT
YOU'VE GOT PRESUMPTIVE ERROR
WHEN YOU HEAR SOMETHING LIKE THE
DEFENDANT HAS A LENGTHY HISTORY,
YOU'VE GOT AN INSTRUCTION TO
DON'T THINK OF THAT IS OF
LEGENDARY INEFFECTIVENESS.
SO AS TO THE MISTRIAL, I WOULD
SUBMIT WE DO HAVE AN ABUSE OF
DISCRETION SHOWN IN LIGHT OF THE
PRESUMPTIVE HARM, AND
PARTICULARLY IN LIGHT OF THE
FACT HE DOES NOT EVEN HAVE, MY
CLIENT DOES NOT EVEN HAVE A
LENGTHY CRIMINAL HISTORY.
LIKE TO ADDRESS, ALSO,
DR. WOLF'S TESTIMONY.
THIS IS, AGAIN, I HAVE A HIGH
BURDEN.
THIS IS A FUNDAMENTAL ERROR
ISSUE.
THERE WAS NO OBJECTION.
THIS TOOK PLACE WHILE THE
DEFENDANT WAS REPRESENTING
HIMSELF.
DR. WOLF'S CAME OUT AND
TESTIFIED THAT SHE COULDN'T TELL
THE CAUSE OF DEATH, BUT SHE WAS
CERTAINLY SURE THAT IT
WAS A HOMICIDE.
I SUBMIT THAT AMOUNTS TO
FUNDAMENTAL ERROR.
I'M RELYING ON THIS COURT'S
OPINION IN GREGANIS, THAT WAS A
CASE WHERE DEFENSE COUNSEL HAD
TRIED TO GET AN EXPERT, PSYCH
EXPERT TO COME IN AND SAY THIS
IS A SECOND-DEGREE MURDER, AND
THIS COURT SAID, NO, THAT'S FOR
THE JURY.
I'M ALSO RELYING ON THE GEORGIA
CASE FROM 1992, MAXWELL V.
STATE.
THAT'S A CASE QUITE SIMILAR TO
THIS ONE.
THE REMAINS WERE DRY BONES.
THERE WAS REALLY NO EVIDENCE
WHAT THE CAUSE OF DEATH MAY HAVE
BEEN, AND THE FLORIDA-- I'M
SORRY, THE GEORGIA SUPREME COURT

REVERSED THE CONVICTION.
NOW HERE I'VE GOT A FUNDAMENTAL ERROR BURDEN, BUT THE STATE HAS NOT ARGUED IN ITS BRIEF THAT THAT ERROR, THAT THIS ERROR COULD HAVE BEEN HARMLESS.
I SUBMIT IT COULDN'T BE HARMLESS BECAUSE THAT'S WHAT, THAT COULD BE WHAT GOT THE JURY OVER THE CAUSATION HURDLE SINCE THERE WAS NO PROOF OF THE CAUSE OF DEATH.
THE JURY HAD TO INFER THAT WHAT IT SAW ON THE PUBLIC'S VIDEOTAPES WAS THE START OF A KIDNAP/ROBBERY, AND THEN THEY ADDITIONALLY HAD TO INFER THAT MS. PATRICK'S DEATH WOULD NOT HAVE ENSUED BUT FOR THE KIDNAP/ROBBERY.
THAT'S WHAT THE JURY SHOULD HAVE BEEN THINKING--
>> HOW LONG, HOW LONG AFTER THE CRIME DID THE, WAS THE VICTIM'S BODY FOUND?
>> SIX DAYS, I BELIEVE, OR FIVE.
>> AND THERE WAS NO, THERE WAS-- EVERYTHING HAD DETERIORATED?
THERE WAS NO-- YOU SAID THEY WERE JUST BONES?
>> BONES AND FINGERNAILS, YOUR HONOR.
>> WOW.
>> AND AS IN THE GEORGIA CASE. THIS IS VERY UNLIKE THE CASES I'VE DISTINGUISHED IN THE BRIEF, THE UNFORTUNATELY VICTIM ENDED UP IN HER, THE SEPTIC TANK SHE SHARED WITH HER HUSBAND, HUCK IS THE CASE WHERE THE YOUNG WOMAN ENDED UP TAPED UP IN THE INDIAN RIVER.
IN BOTH OF THOSE CASES, THE PATHOLOGIST WAS ABLE TO-- ONLY TESTIFIED THAT THE MANNER OF DEATH WAS HOMICIDE BY PROCESS OF ELIMINATION.
BUT THOSE MEDICAL EXAMINERS IN THOSE CASES HAD BODIES.
THEY HAD TOX SCREENS.

THEY HAD NO EVIDENCE THERE WAS NO POISON, THAT THERE WAS NO INSECT BITE, NO SNAKEBITE, NO PHYSICAL DAMAGE.
AND SO-- BUT THE MEDICAL EXAMINERS IN BOTH OF THOSE CASES WERE ALLOWED BY THE APPELLATE COURTS TO GO ON AND SAY, WELL, THE MANNER OF DEATH WAS HOMICIDE SINCE IT WAS ALMOST CERTAINLY-- GIVEN THE CIRCUMSTANCES, THIS HAD TO BE A STRANGULATION HOMICIDE BY PROCESS OF ELIMINATION.
THAT'S NOT POSSIBLE IN THIS CASE AS IT WAS NOT POSSIBLE IN THE GEORGIA CASE, SO I SUBMIT THAT THAT AMOUNTS TO FUNDAMENTAL ERROR AS DOES THE PROSECUTORIAL MISCONDUCT.
THE SEEDS WERE PLANTED IN VOIR DIRE.
AGAIN, THERE WAS NO OBJECTION.
THIS IS ANOTHER FUNDAMENTAL ERROR POINT.
IN VOIR DIRE THE PROSECUTOR TOLD THE JURY WAS CHOSEN FROM IN PENALTY PHASE YOU WILL HEAR MORE NOT ONLY ABOUT THE DEFENDANT, BUT ABOUT THE CRIME ITSELF.
I SUBMIT TO YOU THAT'S ONLY PROPER IN A CASE WHERE THERE'S A LEGITIMATE HEINOUS, ATROCIOUS AND CRUEL ARGUMENT BECAUSE OTHERWISE THERE ISN'T ANYTHING ELSE THEY OUGHT TO HEAR ABOUT THE CRIME ITSELF.
IT ALL COMES IN AT GUILT PHASE.
ALSO IN VOIR DIRE THE PROSECUTOR ASKED FOR JUSTICE FOR A LITTLE OLD LADY.
IN PENALTY PHASE HE ASKED THE JURORS DO THE RIGHT THING EVEN WHEN IT'S NOT THE EASY THING.
BOTH THOSE ARGUMENTS THIS COURT HAS HELD ARE INAPPROPRIATE.
AND IN FINAL GUILT PHASE CLOSING, AS WE DISCUSSED BEFORE, WE HAVE THE CONJECTURE THAT THE VICTIM WAS, IN FACT, RAPED.

HERE I'M RELYING ON THIS COURT'S
HUFF CASE.
HUFF IS THE CASE WHERE THE
DEFENDANT WAS SEEN IN A CAR WITH
HIS PARENTS RIGHT BEFORE THEY
GOT MISSING, HE WAS SEEN ALONE
IN THE CAR RIGHT AFTER THEY WENT
MISSING.
THE PARENTS WERE BOTH BEATEN ON
THE BACK OF THE HEAD, AND NOT
SATISFIED WITH THAT PROOF, THE
STATE ARGUED IN CLOSING LOOK AT
THE SIGNATURE ON SOME DOCUMENT.
IT MIGHT HAVE BEEN A WILL, A
TRUST OF SOME KIND.
THE PROSECUTOR CONJECTURED IN
CLOSING THAT THE DEFENDANT HAD A
MOTIVE IN THAT HE HAD FORGED
THIS DOCUMENT THAT WAS OF GREAT
FINANCIAL SIGNIFICANCE TO HIM.
AND THIS COURT REVERSED.
THIS COURT SAID THAT IT WAS
BEYOND INAPPROPRIATE TO WAIT
UNTIL FINAL CLOSING TO ARGUE
THAT AN UNCHARGED CRIME TOOK
PLACE.
AND, UNFORTUNATELY, I THINK IN
THIS CASE IT WAS NOT UNTIL WELL
INTO THE PENALTY PHASE THAT THE
JUDGE REALIZED HOW BADLY WRONG
THINGS HAD GONE WITH THAT
ARGUMENT.
HE FINALLY IN PENALTY PHASE
CLOSING GRANTED AN OBJECTION AND
SAID, STATE, YOU WOULD HAVE
CHARGED THE RAPE IF YOU THOUGHT
YOU COULD HAVE PROVED IT.
BUT I SUBMIT IT WAS TOO LITTLE,
TOO LATE AND THAT FUNDAMENTAL
ERROR DID ENSUE.
AS I'VE ARGUED IN THE BRIEF,
CASES BROUGHT ON BEHALF OF THE
STATE OF FLORIDA SHOULD BE
CONDUCTED WITH DIGNITY WORTHY OF
THAT CLIENT-- THAT'S A QUOTE
FROM JUDGEMENT CROSS OF THE--
JUDGE CROSS OF THE FOURTH DCA.
I'M NOT GOING TO ARGUE--
>> BUT, WAIT A SECOND.
IS THIS THE CASE THAT HAS

SPECIAL INTERROGATORIES?
>> YES.
EVERYTHING BUT UNANIMITY.
WE GOT EVERYTHING.
>> WELL, YOU HAVE UNANIMITY ON SEVERAL OF THE AGGRAVATORS, CORRECT?
>> CORRECT.
FOUR OF THE FIVE.
YES, YOUR HONOR.
I WOULD JUST ASK THIS COURT TO HOLD THIS MANNER IN ABEYANCE, AND I'D ASK TO RESERVE MY REMAINING TIME.
>> MAY IT PLEASE THE COURT, I'M SUZANNE BECHARD FROM THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE OF FLORIDA.
AS FAR AS ISSUE ONE IS CONCERNED, THAT IS THE ISSUE INVOLVING THE REQUEST FOR A CONTINUANCE.
THERE IS ONE FACTUAL MATTER THAT I WOULD LIKE TO CLEAR UP, AND THAT IS THAT WHEN THE COUNSEL--
FIRST OF ALL, IT WAS ON A WEDNESDAY MORNING THAT MR. WILLIAMS DECIDED HE WANTED COUNSEL APPOINTED AGAIN.
THE COURT GAVE A CONTINUANCE UNTIL MONDAY.
AND WHEN COURT RECONVENED AND APPELLANT ASKED FOR ANOTHER CONTINUANCE, A SECOND CONTINUANCE, HE DIDN'T SAY THAT HE HAD TROUBLE HEARING ALL OF THIS DNA EXPERT'S TESTIMONY.
THIS WAS MR. AMIR.
HE INDICATED SPECIFICALLY THAT HE HAD TROUBLE HEARING THE RECALL TESTIMONY.
THE STATE HAD RECALLED MR. AMIR, AND EVERYONE AGREED THAT HE COULD APPEAR BY TELEPHONE.
AND SO THAT WAS SPECIFICALLY--
THAT'S THE FACTUAL MATTER THAT I WANT TO POINT OUT, IS THAT THAT WAS THE ONE THING THAT HE CLAIMED, THAT HE SAID HE COULDN'T HEAR.

HE ALSO, WHEN THE COUNSEL WAS
REAPPOINTED IN THIS CASE--
>> WELL, WAS THERE SOMETHING
DIFFERENT IN THE-- JUST TO TRY
TO UNDERSTAND THIS IN CONTEXT,
WAS THERE SOMETHING DIFFERENT IN
THE RECALL TESTIMONY THAN IN HIS
ACTUAL TESTIMONY?
>> THE RECALL TESTIMONY WAS
SIMPLY, AS I RECALL, IT HAD TO
DO WITH HOW ONE EXTRACTS DNA
EVIDENCE FROM VAGINAL SHE
CESSIONS-- SECRETIONS.
AND, IN FACT, MR. WILLIAMS
HIMSELF QUESTIONED MR. AMIR
ABOUT THAT CLOSELY, AND IT TURNS
OUT ONE DOES THAT THROUGH END
FILIAL CELLS.
SO THAT WAS THE SUBSTANCE OF
WHAT HE SAID HE COULDN'T
UNDERSTAND.
IT WAS THE RECALL TESTIMONY HE
SPECIFICALLY SAID HE COULDN'T
UNDERSTAND FROM THE RECORDING.
NOW, WHAT ELSE HE HAD, HE HAD
MR. BOWEN, WHO HAD BEEN
APPOINTED THROUGH THE JAC AS
MR. WILLIAMS' INVESTIGATOR TO
HELP HIM GET UP TO SPEED,
COUNSEL TO GET UP TO SPEED.
>> WAS MR. BOWEN THERE DURING
THE TRIAL?
MR. BOWEN-- I'M ASSUMING THAT
HE WAS.
I CAN'T SAY FOR CERTAIN.
WE DO THOUGH THAT MR. BOWEN WAS
OF HELP TO MR. WILLIAMS DURING
THIS SIX MONTHS OR SO THAT HE
WAS REPRESENTING HIMSELF.
AND WHEN-- A LITTLE BIT OF THE,
A RELATIVELY SMALL AMOUNT OF THE
DISCOVERY WAS TAKING PLACE.
I DO WANT TO POINT OUT THAT, YOU
KNOW, OF ALL THE THINGS THAT
HE-- THE ONLY SPECIFIC THING
THAT COUNSEL SAID THAT HE
COULDN'T GLEAN FROM THIS
RECORDED TESTIMONY WAS THE
RECALL TESTIMONY OF MR. AMIR.
>> WELL, DID THE-- LET'S GET TO

WHETHER, AND THIS SORT OF GOES
INTO THE PENALTY PHASE AND
WHETHER THE STATE WAS PERMITTED
TO ARGUE THAT THIS, THERE WAS AN
ATTEMPTED OR ACTUAL SEXUAL
BATTERY.
JUST LET ME ASK YOU, IT'S
CERTAINLY WE KNOW SEXUAL BATTERY
WAS NOT CHARGED.
>> THAT'S CORRECT.
>> OKAY.
WHAT IS THE LEEWAY THAT A
PROSECUTOR HAS IN ARGUING TO THE
JURY THAT THERE WAS A SEXUAL
BATTERY IF THEY'RE NOT GOING TO
BE USING IT AS THE PREDICATE
FELONY FOR FELONY MURDER, WHICH
I GUESS THEY WEREN'T.
>> CORRECT.
>> THE JURY WAS NOT INSTRUCTED
ON SEXUAL BATTERY.
>> THAT'S CORRECT.
>> OR ATTEMPTED SEXUAL BATTERY.
SO WHAT IS-- HOW MUCH DO THEY
GET TO ARGUE?
I MEAN, CERTAINLY THE JURY KNOWS
SHE IS UNCLOTHED, AND THEN THE
ISSUE OF THE DNA.
DOES THE DNA, IT CERTAINLY SHOWS
THAT THEY WERE TOGETHER--
>> THAT'S CORRECT.
>>-- AND HE-- SO THE
KIDNAPPING.
BUT WHAT DOES IT DO AS FAR AS TO
INFER SEXUAL ACTIVITY?
CERTAINLY, THE STATE WAS TRYING
TO SHOW THAT IF THERE'S SEMEN.
YOU THINK THAT--
>> THE STATE WOULD SUBMIT THAT,
FIRST OF ALL, BOTH THE
PROSECUTION AND THE DEFENSE HAVE
WIDE LATITUDE IN ARGUING
WHATEVER IS IN EVIDENCE.
AND THIS WAS RELEVANT AS PART OF
AN INSEPARABLE PART OF THIS
CRIMINAL EPISODE, THAT ALL OF
THIS EVIDENCE WAS THERE.
NOW--
>> BUT I'M ASKING YOU, WHAT DOES
IT MEAN?

WHAT DID THAT DNA EVIDENCE MEAN?
AS FAR AS WHAT THEY CAN ARGUE TO THE JURY.
>> WELL, IN THE GUILT PHASE THE DNA EVIDENCE HAD TO DO WITH, I'M SORRY, IN THE-- THERE WAS A COMPLAINT THAT THIS WAS DONE DURING THE GUILT PHASE, THAT THIS WAS, YOU KNOW, A, THIS WAS ARGUED.
AND IN THAT INSTANCE, THIS GOES PARTLY TOWARDS JUST IDENTIFICATION, YOU KNOW?
GRANTED, HIS DEFENSE WAS INSANITY, BUT HE ALSO HAD THROWN IN THERE THAT THERE WAS SOMEBODY ELSE INVOLVED, THAT THERE, YOU KNOW, MAYBE HE DIDN'T DO IT AND WHAT NOT.
IT WAS KIND OF A WEAK INSANITY DEFENSE.
SO THIS REALLY GOES TOWARD SHOWING, AS DEFENSE BROUGHT OUT HIMSELF, THAT, YOU KNOW, THEY WERE TOGETHER IN THIS CAR.
ALSO IT'S JUST PART OF THIS WHOLE EPISODE.
AND AS THE PROSECUTOR POINTED OUT AS WELL, ONE OF THE WAYS TO PROVE KIDNAPPING WHICH WAS CHARGED IS TO PROVE THAT THIS PERSON WAS, THEY HAD THE INTENT TO TERRORIZE THIS PERSON.
SO ALL OF THAT WAS ON THE TABLE AT THIS POINT.
AND I WOULD SUBMIT THAT IN LIGHT OF ALL OF THE EVIDENCE IN THIS CASE EVEN IF THIS WAS ERROR, IT CERTAINLY WAS NOT FUNDAMENTAL ERROR.
IT DIDN'T RISE TO THE LEVEL OF FUNDAMENTAL ERROR WHICH MEANS THAT A VERDICT OF GUILTY COULD NOT HAVE BEEN SUSTAINED WITHOUT THE ASSISTANCE OF THIS ALLEGED ERROR.
NOW GOING TO-- AGAIN, AS FAR AS ISSUE ONE IS CONCERNED, I WOULD JUST POINT OUT THAT, WELL, ISSUE TWO, I'M SORRY.

ISSUE TWO WAS THE MEDICAL
EXAMINER.
THE MEDICAL EXAMINERS TESTIFIED
THAT THE MANNER, THEY COULDN'T
DEDUCE THE CAUSE OF DEATH, BUT
THAT THE MANNER OF DEATH WAS
HOMICIDE.
MEDICAL EXAMINERS MAY RENDER AN
OPINION BASED ON THE PROCESS OF
ELIMINATION.
AND THAT'S WHAT THE TESTIMONY
WAS IN THIS CASE.
THE EVIDENCE DID NOT INDICATE
THAT THIS WAS A SUICIDE.
THE MEDICAL EXAMINER LOOKED AT
THE AUTOPSY, THE MEDICAL
EXAMINER LOOKED AT--
>> WELL, WHAT WAS THERE IN THE
AUTOPSY-- AND, AGAIN, AS
OPPOSED SO TO SAYING-- SHE HAD
THE MEDICAL RECORDS.
>> SHE HAD THE MEDICAL RECORDS.
>> AGAIN, I WOULD SAY THAT
WITHOUT EVEN THE MEDICAL
EXAMINER YOU'D SAY THIS ISN'T
JUST A, THAT SHE DIED OF A HEART
ATTACK AND THEN HE TRIED TO HIDE
THE BODY.
BUT WHAT IS, WHAT WAS THE
EXPERTISE OF THE MEDICAL
EXAMINER TO BE ABLE TO SAY IT
WAS A HOMICIDE?
WHAT DID THEY RELY ON IN THE
AUTOPSY OR THE MEDICAL RECORDS
THAT WOULD PUT THE MEDICAL
EXAMINER IN A POSITION DIFFERENT
THAN THE JURY?
>> I THINK THAT WHAT THEY RELIED
ON AS FAR AS HER EXPERTISE IS
CONCERNED WAS THE AUTOPSY--
>> AND WHAT DID THE AUTOPSY
SHOW?
>> WELL, THE AUTOPSY SHOWED THAT
SHE, YOU KNOW, DIDN'T HAVE ANY,
YOU KNOW, THERE WASN'T ANYTHING
REALLY CLEAR FROM HER BONES.
THERE WAS BONES AND A LITTLE BIT
OF SKIN LEFT, THAT THERE WASN'T
ANYTHING REALLY CLEAR FROM HER
BONES ABOUT WHAT HAD HAPPENED.

>> SO HOW DOES THAT HELP TO
DETERMINE THE CAUSE?
>> I THINK THE MOST HELPFUL PART
OF THIS IS THAT REQUIRED HER
EXPERTISE WAS THE REVIEW OF HER
MEDICAL RECORDS WHICH SHOWED
THAT SHE, AS AN 81-YEAR-OLD
GOES, WAS IN QUITE GOOD HEALTH
AND THAT IT'S NOT LIKELY THAT
SHE DIED OF ANYTHING, YOU
KNOW--
>> I MEAN, ISN'T THE BOTTOM LINE
HERE IT'S REALLY, WHATEVER IT
IS, IT'S HARMLESS ERROR.
THE JURY ON ITS OWN, COULDN'T
THEY DETERMINE HERE THAT WITH
HER BEING KIDNAPPED IN GOOD
HEALTH AND BEING FOUND NUDE
UNDER TIRES THAT THIS WASN'T
SOMEBODY THAT DIED OF NATURAL
CAUSES.
>> WELL--
>> I MEAN, THAT'S SORT OF A
FRIENDLY QUESTION TO YOU, BUT I
REALLY DON'T KNOW-- SHE COULD
HAVE AT 81 WHEN SHE SAW, WHEN
SHE REALIZED SHE WAS BEING
KIDNAPPED, SHE COULD HAVE, I
MEAN, IT COULD HAVE BEEN THAT
SHE HAD A HEART ATTACK AND DIED.
>> WELL, THERE WAS ALSO BLOOD IN
THE TRUNK OF HER CAR.
HER BLOOD IN THE TRUNK OF HER
CAR.
>> SO YOU HAVE THAT.
IS THAT WHAT THE MEDICAL
EXAMINER RELIED ON?
>> WELL, THE MEDICAL EXAMINER
RELIED ON ALL OF THIS.
THE MEDICAL EXAMINER RELIED ON
ALL THE REPORTS AND ALL OF, YOU
KNOW, THE AUTOPSY, THE MEDICAL
BACKGROUND, ALL OF THE VARIOUS
REPORTS INCLUDING, YOU KNOW, THE
STATEMENTS THAT WERE MADE.
AND I UNDERSTAND THE COURT'S
QUESTION, BUT AGAIN, THIS IS--
THIS WAS NOT OBJECTED TO.
IN ORDER FOR THIS TO BE
REVERSIBLE, THE DEFENDANT WOULD

HAVE TO SHOW THAT A VERDICT OF GUILTY COULDN'T HAVE BEEN SUSTAINED WITHOUT THIS TESTIMONY.
AND THE DEFENSE WAS INSANITY.
THE DEFENSE WAS NOT I DIDN'T DO IT, THE DEFENSE WAS NOT SOMEBODY ELSE DID IT, IT WAS INSANITY.
SO THE STATE WOULD SUBMIT THAT THIS IS NOT IN ANY WAY FUNDAMENTAL ERROR.
>> IS THAT WHAT THE DEFENSE LAWYER ARGUED IN CLOSING ARGUMENT, INSANITY?
OR WHAT WAS, WHAT DID THEY TRY TO ARGUE, YOU KNOW, IN GUILT?
BECAUSE IT SAYS THAT THEY ARGUE SHE COULD HAVE DIED OF SOME NATURAL CAUSE, RIGHT?
>> WELL, YOU KNOW, I THINK THAT THE WAY MR. WILLIAMS HAD PHRASED THIS WHEN HE GAVE HIS OPENING STATEMENT WAS HE SAID, YOU KNOW, I MAY HAVE DONE IT WHEN I LASHED OUT AT HER, AND I JUST DON'T KNOW BECAUSE I'M TOO IMPAIRED TO KNOW.
HE ALSO SAID AND MAYBE, YOU KNOW, MAYBE I DIDN'T DO IT.
AND HE DIDN'T-- HE NEVER REALLY ADMITTED THAT HE DID DO IT.
BUT I THINK AN INSANITY DEFENSE DOES ADMIT THAT, YOU KNOW, HE DID DO IT BUT THAT HE'S NOT RESPONSIBLE FOR IT.
AS FAR AS THE CLOSING ARGUMENT IS CONCERNED, I THINK THAT THEY PROBABLY DID THE BEST THEY COULD WITH WHAT THEY HAD TO WORK WITH GIVEN THE FACT THAT HE'D BEEN REPRESENTING HIMSELF.
>> NOW, ON THE PENALTY PHASE THERE WERE TWO ARGUMENTS, I JUST WANT YOU TO ADDRESS.
ONE IS THE PRIOR VIOLENT FELONY WAS A PRIOR KIDNAPPING.
BUT THERE ALSO WAS PRETTY GRUESOME RAPE ASSOCIATED WITH THAT PRIOR VIOLENT FELONY, BUT THAT HE WASN'T CONVICTED OF.

IS THAT A-- I KNOW WE'VE SAID
THAT, CERTAINLY, THE VICTIM CAN
TESTIFY AS TO THE DETAILS OF A
PRIOR VIOLENT FELONY, SO YOU CAN
WEIGH IT.
BUT DID THE JUDGE HAVE
DISCRETION TO LIMIT THE
TESTIMONY TO THE KIDNAPPING AND
EXCLUDE IF THE JUDGE HAD DECIDED
SHOULD SOMEBODY ARGUE IT THAT
THE UNCHARGED AND UNCONVICTED
SEXUAL BATTERY SHOULD NOT--
WOULD BE UNDULY PREJUDICIAL IN
THE PENALTY PHASE SINCE IN THIS
CASE, AGAIN, A SEXUAL BATTERY
WASN'T CHARGED?
>> I THINK THE COURT DID WEIGH
IT AND DETERMINED THAT IT WAS
NOT UNDULY PREJUDICIAL.
IT'S PART OF THE ENTIRE SCENARIO
HERE OF WHAT HAPPENED TO THIS
OTHER VICTIM.
HE WAS, IN FACT, CHARGED WITH
SEXUAL BATTERY, AND A DEAL WAS
REACHED WHEREBY HE WOULD PLEA,
AND HE PLED ONLY TO CARJACKING.
BUT IN THIS INSTANCE, THE
JURY-- AND THIS WAS IN THE
PENALTY PHASE, YOU KNOW?
THE JURY WAS ENTITLED, THIS ALL
GOES TO HIS CHARACTER, AND
EVERYTHING IN THE BACKGROUND
THAT THEY'RE ENTITLED TO
CONSIDER.
AND I DON'T THINK THAT THERE WAS
ANY ERROR IN ALLOWING ESPECIALLY
UNDER THIS COURT'S PRECEDENT, IN
ALLOWING THE PROSECUTION TO
PRESENT EVIDENCE OF EVERYTHING
THAT HAPPENED TO THAT VICTIM.
THIS IS NOT LIKE THE CASES THAT
ARE RELIED ON-- RHODES IS
RELIED ON BY THE DEFENSE HERE
FOR THIS.
AND IN THAT SITUATION, THE STATE
PRESENTED ONLY AN AUDIO
STATEMENT OF THE PRIOR VICTIM
AND NOT JUST THE FACTS OF WHAT
HAPPENED LIKE IN THIS INSTANCE
WHERE IT WAS JUST THE FACTS OF

WHAT HAPPENED.
THAT VICTIM IN RHODES TALKED ABOUT ALL OF HER EMOTIONAL TRAUMA AND EMPHASIZED THAT.
AND THAT IS NOT WHAT HAPPENED IN THIS CASE.
>> OKAY.
AND THEN ON THE SECOND ISSUE THAT WHEN THE, ABOUT CLOSING, WHEN THE STATE, THE JUDGE SAID I'M NOT GOING TO INSTRUCT ON HAC, CORRECT?
>> IT'S--
>> NOT GOING TO INSTRUCT THE JURY ON HAC.
>> THE PARTIES, THE STATE AGREED AHEAD OF TIME THAT CCP DIDN'T APPLY, BUT THEY WERE STILL DISCUSSING HAC.
>> OKAY, THEN WHAT--
>> IT WAS ONLY AFTER ARGUMENTS THAT THE COURT SAID HAC DOESN'T APPLY, AND I THINK I'M REMEMBERING THAT CORRECT.
CORRECTLY.
>> AND SO WHEN THEY ARGUED ABOUT HER FEAR OF BEING RAPED BEFORE SHE DIED.
>> AND THESE, AND THE PROSECUTOR, AND THEY'RE COMPLAINING THAT THE PROSECUTOR USED MR. WILLIAMS' OWN STATEMENTS ABOUT HER LAST MOMENTS AND HER FEARS, AND SO THIS ALL WENT TO HER FEAR.
AND THE PROSECUTOR HAD AGREED NOT TO USE THE TERMS HAC, BUT IT WAS STILL ON THE TABLE.
AND PART OF THAT WAS TO, YOU KNOW, SHOW THE WHOLE CONTEXT OF THIS.
>> WELL, I KNOW WHEN SOMEONE SAYS THE WHOLE-- BUT DOES IT GO TO KIDNAPPING?
>> WELL, IT GOES TO IMPROVE THE INTENT--
>> TO TERRORIZE.
BECAUSE I THINK WHEN YOU THROW IN IT GOES TO THE WHOLE EVERYTHING, YOU WANT TO MAKE

SURE WHAT THAT EVERYTHING IS IN
A PARTICULAR CASE.
>> RIGHT.
>> ESPECIALLY WHEN AS BAD AS
THIS IS, YOU ADD ON A POTENTIAL
RAPE OF A 81-YEAR-OLD, AND THAT
KIND OF JUST TAKES IT TO ONE
MORE LEVEL OF HORRIBLENESS,
RIGHT?
SO IT'S NOT AN INSIGNIFICANT--
IT'S SIGNIFICANT, AND I JUST AM
ALWAYS CONCERNED THE STATE, WHEN
THEY CAN'T PROVE IT, BUT THEY
GET IT IN SOME OTHER WAY THAT WE
MAKE SURE THAT DOESN'T
TAINT THE JURY VERDICT AND
RECOMMENDATION OF DEATH, YOU
KNOW?
BECAUSE THEY DON'T-- THE JUDGE
DOESN'T USE IT IN HIS SENTENCING
ORDER, DOES HE?
>> NO.
>> SO HE UNDERSTOOD THAT IT WAS
NOT PART OF IT.
SO THEN WE HAVE THE JURY HEARING
IT.
WAS THAT OBJECTED TO, THAT PART
OF CLOSING ARGUMENT?
>> THAT PART OF THE CLOSING
ARGUMENT DURING-- AS I RECALL,
IT WAS.
>> OKAY.
AND THAT'S WHEN THE JUDGE
FINALLY SAID, PLEASE, THIS ISN'T
A CHARGED OFFENSE, SO LIMIT WHAT
YOU'RE SAYING?
>> RIGHT.
RIGHT.
AND AGAIN, THIS IS ONE OF THOSE
SITUATIONS WHERE THIS WAS PART
OF, YOU KNOW, THIS WAS PART OF
THE KIDNAPPING.
THE INTENT TO TERRORIZE HER WAS
PART OF THE KIDNAPPING.
HIS OWN WORDS ABOUT HER LAST
MOMENTS IS ALL PART OF THE FEAR
THAT SHE WAS, YOU KNOW, UNDER.
AND JUST BECAUSE HE HAD
REPUDIATED THOSE REMARKS THAT HE
MADE, THAT DOESN'T MEAN THEY

WEREN'T ADMISSIBLE.
>> HERE'S MY ONLY FINAL OBSERVATION AND I'M SURE YOU'RE FAMILIAR WITH THE DECADE OF HILDWIN WHERE THE JURY WAS BASICALLY ARGUING RAPE, AND THEN THE DNA LATER SHOWED SOMETHING ELSE.
YOU KNOW, THIS IS SUCH A STRONG CASE FOR THE PROSECUTION.
I MEAN, THEY GOT HIM LEAVING, THEY GOT HIS DNA, YOU KNOW, MIXTURE, THEY'VE GOT THE VIDEOTAPES, THEY GOT HIM ADMITTING IT.
ADDING THAT ON WHEN IT'S UNCHARGED JUST GETS YOU INTO A POTENTIAL DANGER--
>> WELL, I WOULD SUBMIT--
>>-- FOR SUBSEQUENT.
>>-- THIS IS WHAT SHOWS IT WOULD BE HARMLESS, IF IT WERE ERROR.
WHEN YOU LOOK AT, WHEN YOU'RE CONSIDERING THE HARMLESS ERROR ANALYSIS, YOU LOOK AT NOT JUST THE ADMISSIBLE EVIDENCE WHICH, AS YOU POINTED OUT, WAS EXTREMELY STRONG, BUT YOU ALSO LOOK AT THE ALLEGEDLY INADMISSIBLE, AND STATE IS NOT CONCEDING THIS WAS INADMISSIBLE.
WE WOULD, YOU KNOW, STRONGLY STATE THAT IT WAS ADMISSIBLE.
BUT WHEN YOU LOOK AT THOSE, YOU HAVE TO DETERMINE, YOU KNOW, IT'S THE STATE'S POSITION THAT THIS, THAT BEYOND A REASONABLE DOUBT THIS DIDN'T CONTRIBUTE TO THE RECOMMENDATION.
BECAUSE EVERYTHING ELSE ABOUT THIS WAS SO STRONG.
YOU HAD THE, YOU HAD FIVE AGGRAVATORS.
FIVE AGGRAVATORS, FOUR OF WHICH WERE FOUND BY A VOTE OF 12-0 BY THE JURY.
ON FELONY PROBATION AT THE TIME OF THE CRIME, THE PRIOR VIOLENT FELONY CONVICTION, I COULD GO

THROUGH THE LITANY, BUT THE
COURT'S AWARE OF ALL OF THOSE.
>> WHY DID THE STATE AGREE TO
THE SPECIAL INTERROGATORIES IN
THIS CASE?
>> WHY DID THE STATE AGREE?
>> YES.
>> ARE I DON'T KNOW WHY THE
STATE AGREED.
>> DO YOU THINK THIS IS, IS THIS
A CASE WE SHOULD AWAIT HEARST, A
HEARST RESULT?
>> NO.
>> BECAUSE WHY?
>> BECAUSE THIS IS NOT A
SITUATION-- THIS IS A SITUATION
WHERE YOU DO HAVE THE SPECIAL
INTERROGATORIES, AND YOU HAVE A
12-0 VOTE FOR THE PRIOR VIOLENT
FELONY CONVICTION, YOU HAVE A
120-0 VOTE FOR THE IN THE COURSE
OF A KIDNAPPING CONVICTION, THAT
AGGRAVATOR.
SO I WOULD SUBMIT THAT, NO, THIS
IS NOT ONE OF THOSE CASES THAT
SHOULD AWAIT THE OUTCOME OF
HEARST, BECAUSE IT WOULDN'T BE
APPLICABLE IN THIS CASE.
IF THERE ARE NO FURTHER
QUESTIONS, THE STATE WOULD ASK
THIS COURT TO AFFIRM.
THANK YOU.
>> AS TO THE GUILT PHASE, AS TO
THE OBJECTION MADE REGARDING THE
DNA EVIDENCE, YOUR HONOR, I
MAY-- YOUR HONORS, I MAY HAVE
MISSED IF DEFENSE COUNSEL DID
MAKE THE VERY LIMITED OBJECTION
THAT WE HEARD ABOUT JUST NOW.
I MAY HAVE MISSED THAT.
ALL I CAN TELL YOU FROM MY NOTES
IS THAT THE ANSWER WILL BE FOUND
AT PAGES 1594-1621.
IF, IN FACT, THERE WAS THAT
LIMITED OBJECTION MADE, I
APOLOGIZE.
I CERTAINLY HAD NO INTENTION OF
MISLEADING THE COURT.
BUT I SUBMIT TO YOU THAT THE
ISSUE IS STILL A GOOD ONE.

THIS IS, I UNDERSTAND THE FRUSTRATION EXPRESSED EARLIER ABOUT CLIENTS WHO FIRST WANT ONE THING AND THEN THE OTHER, BUT THIS IS IN NO WAY A CASE LIKE THE JONES CASE THAT THE STATE RELIED ON SO HEAVILY IN ITS BRIEF.

IN JONES THE DEFENDANT SAID, WELL, I CAN'T WORK WITH LAWYER Z, BUT I CAN WORK WITH LAWYER H, AND THEN HE NEVER EVEN WOULD SHOW HIS FILE TO LAWYER H, SO THEN THE JUDGE SAID I'M DONE WITH LAWYER H, I'M DONE WITH LAWYER W IN, AND LAWYER W SAID CAN I GET A CONTINUANCE, PLEASE, ON THE DAY OF TRIAL.

AND DEFENSE HAD THE NERVE TO ARGUE IN THIS COURT THAT THAT CONTINUANCE SHOULD HAVE BEEN GRANTED WHEN THE DEFENDANT WAS CLEARLY, YOU KNOW, JUST TWISTING EVERYBODY AROUND TO TRY TO GAIN SOME PROCEDURAL ADVANTAGE.

I SUBMIT TO YOU THAT WHEN YOU READ THE WHOLE RECORD OF THIS CASE, THIS IS IN NO WAY SUCH A CASE.

THE LAST DAY BEFORE THE DEFENDANT FOLDED HIS TENT, HE KEPT TRYING TO GET IN HEARSAY, AND IT WAS-- ADMITTED HE NEVER UNDERSTOOD THE HEARSAY RULE FROM THE JUMP AND AT ONE POINT SAID, JUDGE, I'M DROWNING HERE.

I SUBMIT TO YOU THIS IS NOT THE PORTRAIT OF A MANIPULATED TRIAL SO MUCH AS IT IS A FAILED BUT SINCERE EFFORT TO REPRESENT HIMSELF.

AS TO THE MEDICAL EXAMINER'S TESTIMONY, I AGREE WITH THE SUGGESTION THAT THERE WAS NO MEDICAL KNOWLEDGE NECESSARY FOR THAT TESTIMONY.

THE ONLY DOCTOR-LIKE THING THAT DR. WOLF'S SAID WAS THAT, WELL, I LOOKED AT THESE RECORDS, AND ALL THEY DIAGNOSE IS

HYPERTENSION AND OSTEOPOROSIS.
I SUBMIT TO YOU THAT IS NOT,
THIS IS NOT A CASE WHERE THE
DOCTOR SHOULD HAVE BEEN ALLOWED
TO GIVE ANY OPINION AT ALL.
AS TO THE PRIOR VIOLENT FELONY
BROUGHT UP, I SUBMIT THAT THE
COURT DID GO TOO FAR AND THAT
THIS CASE IS MORE LIKE RHODES
THAN THE STATE WOULD HAVE YOU
BELIEVE.
HERE WE HAD NOT ONLY-- WE
DIDN'T HAVE DISPASSIONATE
TESTIMONY, I WOULDN'T SAY, FROM
DARLA BLACKWELL, THE PRIOR
VICTIM.
WE HAD A PHOTO OF HER BLEEDING
FEET, THE INJURIES HE INCURRED
WHEN SHE LEAPED FROM THE MOVING
CAR.
WE HAD HER TESTIMONY THAT SHE
COULDN'T BE IN THE SAME
COURTROOM WITH THE DEFENDANT IS
THE ONLY REASON SHE AGREED TO A
PLEA OF A LESSER OFFENSE.
I SUBMIT TO YOU THAT THERE WAS
SEXUAL INTERFERENCE IN THIS
CASE, THAT THERE WAS, IN FACT,
AN ABUSE OF DISCRETION IN THE
PENALTY PHASE.
ALSO AS TO THE PENALTY PHASE, I
BELIEVE THAT WE DO HAVE A
PROBLEM WITH TAINTING OF THE
JURY.
THIS WAS A 9-3 DEATH ALTHOUGH
THREE OF THE FOUR AGGRAVATORS
WERE FOLLOWED, THIS WAS A 9-3
RECOMMENDATION.
THERE WAS MENTAL HEALTH-RELATED
MITIGATION.
THE JUDGE DID FIND THAT THE
DEFENDANT HAD DIFFICULTY
CONTROLLING HIS CONDUCT IN THE
PENALTY PHASE.
YOU NOT ONLY HAD THE PROSECUTOR
SAYING DO THE RIGHT THING NOT
ONLY IF IT'S NOT EASE-- EVEN IF
IT'S NOT EASY, BUT THE EXTENSIVE
CRIMINAL HISTORY.
THIS COURT REVERSED IN GERALDS,

THE CASE I'VE CITED IN THE BRIEFS, BECAUSE FOR NO VERY GOOD REASON THE STATE INTRODUCED IN THE GUILT PHASE THE TESTIMONY THAT THE DEFENDANT HAD EIGHT PRIOR UNSPECIFIED CONVICTIONS, AND THIS COURT HELD THAT WAS A SIGNIFICANT PROBLEM FOR THE PENALTY PHASE ALTHOUGH NOT THE GUILT PHASE IN LIGHT OF THE HEAVY PROOF IN THE GERALDS CASE. SO I WOULD ASK THIS COURT EVEN IF IT DOES AFFIRM THE CONVICTION TO REVERSE THE CONVICTION ON THESE GROUNDS.
THANK YOU.
>> THANK YOU.
THANK YOU FOR YOUR ARGUMENTS.
COURT'S IN RECESS UNTIL TOMORROW AT 9:00.