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Gary Ray Bowles vs State of Florida

IN 196, '97 AND REVERSED IF FOR RESENTENCING. WE WENT TO THE COURT IN DUVAL COUNTY AND MR. BOWLES WAS HAD A NEW SENTENCING HEARING AND WAS RESENSED TO DEATH. THE FACTS IN THE CASE TO REREFRESH YOUR MEMORY, MR. BOWLES HAS BEEN A HOMELESS PERSON FOR MOST OF HIS HIVE, AND 1994 WAS ON THE STREETS OF JACKSONVILLE, WHEN WALTER JAMAL HINTON APPROACHED HIM AND HIRED HIM TO HELP MOVE SOME FURNITURE AND, IN RETURN, LET HIM LIVE IN HIS TRAILER WITH HIM FOR A COUPLE OF WEEKS, AND THAT WORKED OUT FOR A WHILE. EVENTUALLY MR. HINT ONE KICKED HIM OUT OF THE TRAILER AND MR. BOWLES WAS ARRESTED AND EVENTUALLY, TWO WEEKS LATER, WORKED HIMSELF BACK INTO HIS GOOD GRAZES, AND A COUPLE OF WEEKS LATER, MR. BOWLES AND MR. HINTON WERE DRINKING AND HAVING A PARTY AND THEY WERE DRINKING AND TOOK MR. SMITH TO A TRAIN STATION. THEY WERE DRINKING ON THE WAY THERE. THEY CAME BACK. MR. HINTON WENT INTO THE BEDROOM OF HIS TRAILER AND WENT TO SLEEP. BOWLES SAT, I GUESS, IN THE LIVING ROOM AREA, AND DRANK AT LEAST FOUR MORE QUARTZ OF BEER. BY THIS TIME HE WAS TOTALLY GOOD. RICK SMITH SAID THAT, WHEN HE HAD SEEN HIM ON THE WAY TO THE TRAIN STATION, HE WAS TOTALLY GONE, AS FAR AS BEING TRUNK. STILL HE DRANK FOUR MORE QUARTZ AND SOMETHING SNAPPED, ACCORDING TO BOWLES, AND HE WENT OUT AND GOT A 40 OR 50 POUND ROCK AND SAT IT ON THE TABLE AND APPARENTLY THOUGHT FOR A MINUTE OR TWO AND THEN WENT IN AND SMASHED MR. HINTON'S HEAD AND FRACTURED THE CHEEKBONE OR THE HEAD, AND MR. HINTON APPARENTLY WAS STUNED BY IT, AND APPARENTLY THERE WAS A STRUGGLE OF SOME SORT, DURING WHICH THE STRUGGLE, MR. HINTON WAS STRANGLERED, AND THERE WERE SOME RAGS AND TOILET PAPER STUCK DOWN MR. HINTON'S THROAT. BOWLES TOOK MR. HINTON'S CAR AND MAY HAVE TAKEN THE WATCH AT THAT TIME AND CAME BACK A COUPLE OF DAYS LATER.

I DON'T MEAN TO INTERRUPT, BUT WE, REALLY, ARE FAMILIAR WITH -- FROM IS SUCH A LIMITED AMOUNT OF TIME.

I APPRECIATE THAT. I HAVE RAISED TWELVE ISSUES. IN THIS LIMITED TIME I DON'T PLAN ON RAISING ALL TWELVE ISSUES, BUT I DO WANT TO TALK ABOUT THE HA KRA. AGGRAVATOR. -- THE HAC AGGRAVATOR. THE COURT FOUND THAT IT APPLIED HERE, BECAUSE IN THIS COURT, THE STRANGULATION WAS ALMOST A PRIMA FACIE CASE OF HAC, BUT THERE ARE ALWAYS EXCEPTIONS TO THE RULES, AND IN THIS CASE THE EXCEPTION IS THAT, IN HAC, THERE HAS TO BE SOME SORT OF PHYSICAL TORTURE. THERE OBVIOUSLY HAS TO BE SOME MENTAL SUFFERING ON THE PART OF THE VICTIM. IN THIS CASE MR. HINTON WAS ASLEEP DURING THE ATTACK. HE DROPPED THIS ROCK ON HIM. HE WAS STUNED, ACCORDING TO THE MEDICAL EXAMINER. HE HAD PROBABLY BEEN DRINKING. THERE WAS A BLOOD ALCOHOL -- HE HAD SOME BLOOD IN HIS -- SOME ALCOHOL IN HIS BLOOD. HE WAS ALMOST IMMEDIATELY STRANGLERED TO DEATH. THE MEDICAL EXAMINER SAYS HE WOULD HAVE LOST CONSCIOUSNESS WITHIN 30 OR 40 SECONDS.

I REALIZE IT IS ORDINARILY ASKED OF YOUR OPEN ONT -- OPPONENT, YOUR COLLEAGUE THERE, BUT WILL YOU TELL US WHAT IS THE STRONGEST INDICATION IN THE RECORD THAT INDICATES THAT THE VICTIM WAS CON STEWS -- CONSCIOUS AND DID CONSCIOUSLY STRUGGLE.

YES.

COULD YOU TELL US WHAT THE STRONGEST SCENARIO, REALIZING, AS I SAY, THAT I ORDINARILY WOULD BE ASKING YOUR OPPONENT.

I THINK THE STRONGEST EVIDENCE IS SIMPLY THAT THERE WAS SOME SORT OF STRUGGLE. THERE WAS SOME CRACKED RIBS, AND I THINK SOME SCRAPING PROBABLY CAME FROM THE ROCK, BUT I THINK THE STRONGEST EVIDENCE IS THE COMBINATION OF THE FEEBLE STRUGGLE AND THE CRACKED RIBS. I CHARACTERIZE IT AS A FEEBLE STRUGGLE. THAT IS BOWLES SAID IT WAS. BUT THERE WAS SOME APPARENT STRUGGLE INDICATING SOME CONSCIOUSNESS ON THE PART OF THE VICTIM IN THIS CASE.

BOWLES SAID THAT IN A STATEMENT.

YES. THAT HE STRUGGLED. HE CHARACTERIZED IT AS A FEEBLE STRUGGLE. YOU HAVE GOT TO RECALL, AGAIN, THAT THE MAN WAS ASLEEP AT THE TIME. THE ROCK THAT FRACTURED HIS HEAD WOULD HAVE, ACCORDING TO THE MEDICAL EXAMINER, HAVE STUNED HIM, AND THEN HE WAS ALMOST IMMEDIATELY RENDERED UNCONSCIOUS BY THE STRANGULATION.

THAT IS VERY SIMILAR TO WHITT ONE, A CASE OUT HERE, IN PENSACOLA IT WAS A KNIFE CASE, BUT BOTH OF THEM HAD BEEN HEAVILY DRINKING, AND THERE WAS SIGNS OF SOME LIMITED STRUGGLE, THOUGH, AND --

WAS THE WITNESS ASLEEP?

YEAH. HE WAS ASLEEP, BUT HE WOKE UP WHEN THE -- WHEN HE CAME AFTER HIS MONEY, THEY, BOTH, HAD BEEN DRINKING TOGETHER, SORT OF THE SAME CASE AS HERE. ALSO WE HAVE GOT GUZMAN. 4.

THE THING THAT I AM PRESSES ME ABOUT THIS CASE IS THE FACT THAT HE WAS ASLEEP. AND THAT THERE IS, REALLY, NO EVIDENCE -- HE MAY HAVE BEEN -- WE START MAKING NOT IDIOTIC OR HARROW SPLITTING DECISIONS ABOUT WHETHER HE WAS CONSCIOUS OR UNCONSCIOUS. HE SEEMED NOT TO HAVE BEEN CONSCIOUS OF HIS IMPENDING DEATH, AND THAT IS APPARENTLY WHAT YOU ARE LOOKING AT, FOR ANY SIGNIFICANT PERIOD OF TIME. THE MEDICAL EXAMINER SAID HE WOULD HAVE LOST CONSCIOUSNESS WITHIN 30 TO 45 SECONDS, SOMETHING LIKE. THAT THAT IS NOT A VERY LONG PERIOD OF TIME. ON TOP OF THAT LAYER IT THAT HE WAS ASLEEP AT THE TIME AND HE WAS STUNNED BY THE ROCK. HE SIMPLY DOESN'T HAVE THAT AWARENESS AND COULD NOT HAVE HAD THAT AWARENESS FOR ANY SIGNIFICANT PERIOD OF TIME, AND THAT IS WHY, I THINK, YOU HAVE FOUND THAT THE STRANGULATIONS ARE, ALMOST, PER SE, HAC, SIMPLY BECAUSE THE VICTIM IS THERE. KNOWS THAT DEATH IS COMING FOR A PERIOD OF TIME.

MR. DAVIS, IF WEINGDZ STRIKE THAT AGGRAVATOR, WOULD THE RESULT BE ANY DIFFERENT?

YOUR HONOR, WHEN I THINK OF AGGRAVATED DEATH PENALTY, WHAT AGGRAVATOR THAT COMES TO MIND, WHEN YOU DEFINE DEATH PENALTY CASES, IS HAC. WHEN YOU STRIKE THAT, IT IS THE DEFINING POSTER CHILD FOR AGGRAVATED DEATH PENALTY.

WHAT ABOUT PRIOR MURDERS?

I THINK OBVIOUSLY THOSE ARE THE WEIGHTY AGGRAVATORS THERE, BUT WHEN YOU START LOOKING AT A GUGLIO OF WHETHER THERE WAS A STRUGGLE, I DON'T KNOW.

THERE WERE FOUR SERIOUS PRIOR CRIMES WITH VIOLENCE. ONE FIRST-DEGREE MURDER.

I THINK THERE WAS TWO FIRST-DEGREE MURDERS.

IN NASSAU COUNTY. ANOTHER IN VOLUSIA COUNTY. ROBBERY. AND SEXUAL BATTERY.

THAT'S CORRECT.

AND I JUST WONDER HOW YOU WOULD WRITE AN OPINION TO SAY THAT STRIKING HAC WOULD, REALLY, MAKE ANY DIFFERENCE IN THE OUTCOME?

YOU DO IT SIMPLY BECAUSE THAT IS ONE OF THE -- LIKE I SAID, THE HAC AGGRAVATOR, ALMOST BY ITSELF, DEFINES, I THINK IN THE COMMON MAN'S VIEWPOINT, WHAT IS -- WHEN YOU LOOK AT VOIR DIRE, THEY ARE ALWAYS TALKING ABOUT THE HEINOUSNESS OF THE MURDERS.

BUT WE DEALT, YESTERDAY, WITH AN EXECUTION-STYLE MURDER, AND IF SOMEBODY COLDLY CALCULATEDLY AND PREMEDITATEDLY GOES OUT AND PERFORMS AN EXECUTION AND SHOOTS SOMEONE THAT DOES NOT KNOW THEY ARE DYING, IN THE BACK OF THE HEAD, THAT IS NOT HAC, BUT THAT WOULD -- THAT IS PRETTY HEAVY.

I AM NOT SAYING IT IS GOING TO BE AN EASY JOB. WE CAN SAY, WELL, THERE IS NO OTHER AGGRAVATORS. THIS IS A DIFFICULT CASE FROM MY PERSPECTIVE. I HAVE GOT TWO PRIOR MURDERS, AND I HAVE RAISED THAT PROBLEM IN ANOTHER ISSUE I DON'T PLAN ON DISCUSSING THIS MORNING.

ARE YOU CHALLENGING THE CCP AGGRAVATOR FIND SOMETHING.

NO.

SO, THEN, ON TOP OF ASSUMING WE WOULD STRIKE HAC, YOU HAVE GOT THE CCP, WHICH IS A PRETTY WEIGHTY AGGRAVATOR, AND INSTEAD OF HAVING A CONTEMPORANEOUS FELONY, YOU HAVE GOT LEGITIMATELY, PRIOR VIOLENT FELONIES, INCLUDING ONES THAT HE SERVED TIME FOR.

LIKE I SAY, I DON'T -- IT IS NOT ONE OF THESE CASES WHERE YOU CAN JUST SAY, WELL, GEE WHIZ, WE KNOCK OUT HAC AND THE RESULT BECOMES OBVIOUS, BUT I THINK WHEN YOU START LOOKING UNDER THE HARMLESS ERROR STANDARD THAT YOU HAVE TO APPLY TO GILIO, BEYOND A REASONABLE DOUBT, YOU HAVE TO SAY I AM NOT SURE AND SCRATCH YOUR HEAD, AND TO ERR ON THE SIDE OF CAUTION, SEND IT BACK.

WHAT IS YOUR POSITION ON THE DEFENDANT AND THE DRINKING AND THE NIGHT IN QUESTION, AND FROM THERE I AM, REALLY, GOING TO YOUR ISSUE SEVEN, WHERE YOU SAID THE TRIAL COURTERRED BY GIVING -- COURT ERRED BY GIVING LITTLE OR NO WEIGHT TO THAT EXING IT WAITING CIRCUMSTANCE -- EXTENUATING CIRCUMSTANCE.

WHEN THEY GOT BACK TO THE TRAILER --

HE CONFESSED TO ALL OF THE CRIMES. HE WAS ARRESTED FOR THIS CRIME AND THEN HE CONFESSED AND PLED GUILTY TO ALL THREE MURDERS?

I BELIEVE HE CONFESSED. I BELIEVE, YES, HE CONFESSED TO THE OTHER TWO PRIOR MURDERS. I BELIEVE HE CONFESSED TO THOSE, SO TO GET BACK TO YOUR QUESTION, HE SAID THAT, AFTER HE GOT BACK TO THE TRAILER, HE DRANK FOUR QUARTZ. RICK SMITH SAID THAT, ON THE NIGHT OF THE MURDER AT THE TRAIN STATION, THEY WERE BASICALLY HAVING A PARTY AND DRINKING AND SMOKING SOME MARIJUANA, AND THAT BOWLES WAS, ON A SCALE OF ONE TO TEN, WITH TEN BEING TOTALLY GONE, BOWLES WAS TOTALLY GONE.

HOW DO YOU SQUARE THAT WITH YOU ARE NOT CHALLENGE GOT CCP AGGRAVATOR?

MAYBE I SHOULD HAVE, BUT I WAS LOOKING AT A LOT OF THE OTHER-THEY LIGHT OF THE OTHER PRIOR MURDERS, THAT THIS IS WHAT --

IN OTHER WORDS IF HE IS SO DRUNK THAT HE DOESN'T KNOW WHAT HE IS DOING, HE CAN'T BE

ABLE TO PLAN WHAT HE DID, BUT WE KNOW THAT HE WAS ABLE TO GO OUT AND GET THE --

-- ROCK.

-- GET THE ROCK AND, ALSO, COVER AND DO ALL OF THIS THAT HE DID AFTERWARDS, IMMEDIATELY AFTERWARDS.

WELL, MAYBE IN HINDSIGHT, I SHOULD HAVE RAISED THAT ARGUMENT THAT IT WASN'T, ALSO, CCP, BUT AT THE TIME I HAVE GOT OTHER ISSUES THAT I WOULD RATHER TALK ABOUT, RATHER THAN WHY I DIDN'T RAISE THE ISSUE, BUT IF YOU WANT TO MAKE THE ARGUMENT FOR ME, I WILL LET YOU GO AHEAD.

I WANT TO BE CERTAIN OF WHAT HIS MENTAL STATE WAS.

THE COMBINATION OF THINGS. CHILD ABUSE THAT HE SUFFERED. TWENTY YEARS ON THE STREET. HIS BASICALLY HOMELESS STATUS RAISED, CREATED WITH HIM AN EXGENT NECESSITY, AN EMERGENCY NECESSITY, CRISIS, IS A BETTER WORD TO USE, THAT HINTON KNEW HE WAS GOING TO BE BACK ON THE STREETS. WHATEVER IT IS, THIS ALCOHOLISM TRIGGERED SOMETHING WITHIN HIM THAT CAUSED THIS EXPLOSION THAT CAUSED HIM TO GO OUT AND KILL THIS PERSON.

HOW LONG DID HE STAY THERE, AT THE PLACE AFTER THIS INCIDENT AFTER HIS DEATH?

HE APPARENTLY LEFT AND CAME BACK. I AM NOT -- I CAN'T REMEMBER WHETHER IT WAS THE SAME DAY OR THE NEXT DAY. HE STAYED THERE, I THINK, ABOUT TWO DAYS. HE BROUGHT ANOTHER HOMELESS WOMAN, JENNIFER MOYE, WHO, I THINK, WAS SUFFERING FROM PLEURACY AND THEY STAYED THERE AND GOT OUT OF THE WEATHER AND SO THEY LEFT AND HE RETURNED SOMETIME LATER. IT SHOWS THE KIND OF WEIRD, WHACKED-OUT, SORT OF MENTAL STATUS THAT HE COMES BACK TO THE CRIME SCENE, KNOWING THAT HINTON HAS GOT RELATIVES IN THE AREA AND, IN FACT, I THINK IT WAS HIS SISTER AND BRINL THAT FOUND THE BODY. -- BROTHER-IN-LAW THAT FOUND THE BODY.

WAS THERE MENTAL MITIGATION HERE?

MENTAL ONLY TO THE EXTENT OF HIS ALCOHOLISM AND THE ABUSE AS A CHILD. THEY PUT ON TESTIMONY BY HIS MOTHER AND BROTHER OF BEING BEAT UP DAILY FOR FOUR OR FIVE YEARS.

BUT NO MENTAL MITIGATION?

NO EXPERT. NO. SO TO GET BACK TO -- LET ME TRANSITION, BECAUSE I THINK, JUSTICE PARIENTE, YOU KIND OF MOVED IT INTO THE OTHER AREA THAT I WANT TO TALK ABOUT, IS THE MENTAL MITIGATION, IS THE TRIAL COURT WAS FACED WITH THE EVIDENCE OF THE ALCOHOLISM AND SIMPLY BLEW IT OFF. HIS WORDS WERE, THE TRIAL JUDGE'S WORDS, IN THE SENTENCING ARGUMENT, WAS IT WAS JUST A VENT BUT POOR EXCUSE, BECAUSE EVERY TIME HE GETS IN TROUBLE WITH THE LAW, HE SAYS I WAS DRUNK. THAT IS THE NATURE OF ALCOHOLISM. IT IS SOMETHING YOU DON'T RUN AWAY FROM THE. IT TAGS YOU THE REST OF YOUR LIFE, UNTIL OR UNLESS YOU RECOVER FROM IT, BUT BOWLES, IN OVER TWENTY YEARS, THE GUY WAS 34 AT THE TIME, AND HE HAD RUN AWAY FROM HOME WHEN HE WAS 13 AND HAS NOT BEEN BACK SINCE, EXCEPT FOR OCCASIONALLY, BUT FOR TWENTY YEARS, EVERYBODY WHO HAS SEEN HIM HAS SEEN HIM AS AN ALCOHOLIC, AND ON THE NIGHT OF THE MURDER, HE IS DRINKING INCREDIBLE AMOUNTS OF BEER, AND THE JUDGE SAYS, WELL THAT, IS TOO BAD.

NOT TO DIMINISH IT, BUT THE MAJOR EVIDENCE IS WHAT HE WAS -- HIS INTAKE OF ALCOHOL WAS A SELF-REPORT.

THAT IS THE INTERESTING THING. NO. THAT IS THERE. BUT, ALSO, YOU HAVE THIS RICK SMITH, WHO TESTIFIES THAT, ON THE NIGHT OF THE MURDER, OR WITHIN HOURS OF IT, WE WERE -- HINTON, BOWLS AND I, THAT IS RICK SMITH, WERE AT HINTON'S TRAILER, AND WE WERE SMOKING MARIJUANA AND DRINKING BEERS, AND BOWLES, THE DEFENSE COUNSEL, SPECIFICALLY ASKED HIM, ON A SCALE OF ONE TO TEN, WHERE WAS HE, AND HE SAID, NO, HE WAS SIMPLY GONE. THAT IS NOT SELF-SERVING TESTIMONY. MOREOVER YOU HAVE JENNIFER MOYE, WHO TESTIFIED THAT AFTER THE MURDER, EVERY TIME SHE SAW HIM, HE WAS DRINKING, AND THEN YOU HAVE THE TESTIMONY FROM GARY BOWLES --

DIDN'T THEY TAKE HIM EARLIER IN THE AFTERNOON TO THE TRAIN STATION?

YES. I THINK THERE WAS --

IN FACT, DIDN'T BOWLES DRIVE TO THE TRAIN STATION WITH THEM?

I DON'T BELIEVE HE DROVE. BECAUSE I BELIEVE THE TESTIMONY SAID HE WAS IN THE BACKSEAT OF THE CAR.

BUT WENT TO THE TRAIN STATION. THEN THEY CAME BACK.

RIGHT.

AND THEN THEY WERE THERE, BACK AT THE TRAILER, FOR A WHILE, AND THEN HINTON WENT TO SLEEP.

AS I RECALL, THEY CAME BACK FROM THE TRAIN STATION. HINTON IMMEDIATELY WENT TO HIS ROOM AND WENT TO SLEEP.

AND BOWLES WAS SETTING OUTSIDE.

DRINKING. WELL, NOT --

OUT WHERE THE ROCK WAS?

NO. HE WAS SITTING IN THE TRAILER. I THINK THE LIVING ROOM. THE TRAILER. JUST A KITCHEN AND BEDROOM OR LIVING ROOM AREAS TEND TO MERGE. BUT I THINK HE WAS SITTING OUT IN THAT AREA OUT THERE, DRINKING MORE BEER. HE SAID HE DRANK AT LEAST FOUR MORE QUARTZ OF BEER, AND THEN THAT IS WHEN HE HAD THIS -- HE SAID HE SNAPPED AND WENT OUT AND GOT THIS ROCK, SO I THINK YOU ARE TRYING TO IMPLY THERE WAS A SEVERAL HOUR GAP. NO, THERE WASN'T A SEVERAL HOUR GAP.

BETWEEN THE TRAIN STATION?

YEAH. IT SOUNDED LIKE --

IT HAS BEEN A WHILE SINCE I READ THE RECORD.

MY RECOLLECTION IS THEY WERE PARTYING. IN FACT THEY WERE STILL DRINKING AND PARTYING ON THE WAY TO THE TRAIN STATION. THEY CAME BACK AND HINTON WENT TO SLEEP, AND THEN THIS WHOLE THING HAPPENED FAIRLY QUICKLY. YOUR HONOR, MY REBUTTAL TIME IS PRETTY MUCH -- I AM GOING INTO MY REBUTTAL TIME, BUT I THINK THOSE ARE THE ISSUES. IT WASN'T HEINOUS, ATROCIOUS AND CRUEL. THERE WAS, ALSO, A JURY INSTRUCTED THERE THAT THIS COURT HAS LOOKED AT, BEFORE, AND I THINK YOU NEED TO LOOK AT IT, AGAIN, OR I WOULD ASK YOU TO, MITIGATION ON THE PART OF THE COURTS.

AS TO WHAT?

BOWLES SAID THAT, IF YOU ARE GOING TO FIND THIS HEINOUS, ATROCIOUS AND CRUEL, YOU HAVE GOT TO FIND THAT THIS HE INTENDED IT TO BE HEINOUS, ATROCIOUS AND CRUEL. I THINK MY BRIEF TALKS ABOUT WHY THAT WAS WRONG, BUT I WOULD URGE THIS COURT AND I REALIZE THIS IS A DIFFICULT CASE. WELL, FROM MY PERSPECTIVE IT IS A DIFFICULT CASE, BUT WHEN YOU HAVE GOT TWO PRIOR MURDERS, TO NOT FIND EVERYTHING HARMLESS. IF YOU CAN AGREE WITH ME, FIND ALL HARMLESS. THIS COURT IS TAKING DEATH PENALTY STUFF SERIOUSLY, AS I HEARD IN THE LAST ARGUMENT. THIS COURT IS TAKING THE DEATH PENALTY SERIOUSLY, AND IF YOU SHOULD ERR, ERR ON BEHALF OF THE DEFENDANT AND LET HIM GO BACK TO THE COURT AND I ASK THIS COURT TO REMAND FOR A NEW SENTENCING HEARING.

THANK YOU, MR. DAVIS. MR. FRENCH.

MAY IT PLEASE THE COURT. CURTIS FRENCH, REPRESENTING THE STATE OF FLORIDA IN THIS CASE. JUST TO ANSWER A QUESTION THAT WAS ASKED EARLIER, I BELIEVE THAT THE PARTIES, THE VICTIM AND THE DEFENDANT AND RICK SMITH ROAD BACK TO THE TRAIN STATION, SOMETHING LIKE, AND GOT THERE ABOUT 7:30 P.M. THE VICTIM WAS DRIVING. RICK SMITH TESTIFIED THAT HE WAS DRIVING, BECAUSE HE WASN'T DRINKING. ACCORDING TO THE DEFENDANT'S STATEMENT AFTER THEY GOT BACK, HE STAYED UP, DRINKING A QUART OF MAGNUM BEER, NOT FOUR QUARTZ, I THINK, WAS HIS -- FOUR QUARTINGSING, I THINK WAS HIS -- QUARTING, I THINK WAS HIS STATEMENT. WE DON'T KNOW WHAT TIME THE MURDER OCCURRED. THE TRIP TO THE TRAIN STATION WAS WEDNESDAY EVENING. THE BODY WASN'T ACTUALLY FOUND UNTIL SUNDAY. THE DEFENDANT WAS SEEN DRIVING THE VICTIM'S CAR ON FRIDAY AND THEN AGAIN ON SATURDAY, SO I THINK IT IS A FAIR ASSUMPTION THAT IT HAPPENED SOMETIME WEDNESDAY NIGHT, WHETHER IT WAS IMMEDIATELY AFTER THE TRAIN TRIP OR SOMETIME AFTER, IT IS HARD TO SAY.

BUT WHAT WAS -- WHAT DID SMITH SAY ABOUT BOEMS BOWLES'S MEANT -- ABOUT BOWLES'S MENTAL STATE?

SAID HE WAS DRUNK. ASKED, ON A SCALE OF ONE TO TEN, HOW DRUNK WAS HE? HE SAID TEN. ON CROSS-EXAMINATION, HE TESTIFIED THAT, WELL, HE WAS DRUNK, BUT HE STILL COULD CARRY ON A CONVERSATION AND KNEW WHAT WAS GOING ON. HE KNEW WHERE THEY WERE GOING AND SO FORTH. THE TRIAL JUDGE ADDRESSED INTOXICATION AND, CERTAINLY, I THINK THE EVIDENCE IS UNDISPUTED THAT HE WAS DRINKING, TO SOME EXTENT, THAT EVENING, AND THE JUDGE FOUND THAT HE HAD CONSUMED ALCOHOL BUT THE JUDGE, BASICALLY, REVIEWED THE EVIDENCE CONCERNING HIS PURPOSEFUL ACTIVITY THIS EVENING, AND FOUND THAT HAD, IN VIEW OF THE PURPOSEFUL ACTION, THAT HE WAS NOT SIGNIFICANTLY INFLUENCED BY HIS CONSUMPTION OF ALCOHOL. AS FAR AS THE HAC AGGRAVATOR IS CONCERNED, ALTHOUGH THE DEFENDANT, IN HIS STATEMENT, DID SAY WHAT HE CHARACTERIZED THE STRUGGLE, HE SAID THIS. JAY FELL OFF THE FOOT OF THE BED. I CHOKED HIM WITH MY ARM. JAY WAS STRUGGLING A LITTLE. HOWEVER, DURING THIS STRUGGLE, THE VICTIM SUFFERED FIVE BROKEN RIBS, AND HE HAD VARIOUS SCRAPES AND ABRASIONS. THE DEFENDANT, IN HIS SENTENCING MEMORANDUM ACKNOWLEDGED THAT THERE HAD BEEN A GREAT STRUGGLE. I THINK THE EVIDENCE CLEARLY INDICATES THAT IT WAS. THE MEDICAL EXAMINER TESTIFIED THAT, ALTHOUGH WHEN THE DEFENDANT DROPPED A 40-POUND STONE ON THE VICTIM'S HEAD, THAT IT CRACKED HIS SKULL, THAT THERE WAS NO CORRESPONDING INJURY TO THE BRAIN, THAT IT WOULD NOT HAVE RENDERED THE VICTIM UNCONSCIOUS. THAT HE MAY HAVE BEEN STUNNED FOR A SECOND. SHE TESTIFIED THAT, IF THE VICTIM DID NOT STRUGGLE AT ALL, THAT IT WOULD TAKE A MINIMUM OF 30 TO 45 SECONDS TO STRANGLE SOMEONE INTO UNCONSCIOUSNESS. WITH THE STRUGGLE, THE -- IT WOULD HAVE TAKEN MUCH LONGER. IT WAS MUCH MORE DIFFICULT --

DID THE MEDICAL EXAMINER START WITH THE PROPOSITION THAT THE VICTIM WAS ASLEEP, WHEN THE VICTIM WAS STRUCK? IN OTHER WORDS WHAT WE ARE TALKING ABOUT, WHAT WE

ARE DISCUSSING, HERE, IS THIS ISSUE ABOUT CONSCIOUSNESS, YOU KNOW, SO AS I ASKED YOUR COLLEAGUE, I AM INTERESTED IN WHAT THE EVIDENCE, AND THIS IS WHAT YOU ARE FOCUSING ON NOW, DID THE MEDICAL EXAMINER START WITH THE PROPOSITION THAT THE VICTIM WAS ASLEEP, WHEN, INITIALLY STRUCK?

I DON'T THINK THE MEDICAL EXAMINER WOULD HAVE ANY WAY OF KNOWING THAT THE VICTIM WAS ASLEEP. THE DEFENDANT --

THAT IS -- WAS THE EVIDENCE, ALL, THAT THE VICTIM WAS ASLEEP WHEN HE WAS INITIALLY STRUCK, OR WAS THERE EVIDENCE TO THE CONTRARY?

THE ONLY THING THAT I AM AWARE OF IS THAT THE STATEMENT OF THE DEFENDANT SAID THAT, WHEN WE GOT BACK FROM THE TRAIN STATION THAT, JAY WENT TO BED AND I STAYED UP AND DRANK A QUART OF MAGNUM BEER. HE STATED HE WENT OUT AND PICKED UP THE BLOCK AND WENT INTO JAY'S ROOM. HE WAS SLEEPING. WE DON'T KNOW THAT HE WAS TRULY ASLEEP. I DON'T KNOW THAT THE DEFENDANT, HIMSELF, KNOWS WHETHER HE WAS TRULY SOUND ASLEEP. THE MEDICAL EXAMINER TESTIFIED THAT THE STONE WOULD NOT HAVE KNOCKED HIM UNCONSCIOUS, AND I THINK THERE IS CERTAINLY --

WHAT IF HE IS NOT ALREADY UNCONSCIOUS, AND THAT IS WHY WE ARE TALKING ABOUT ARE WE AWARE THAT THE MEDICAL EXAMINER DISCUSSED -- WAS THERE ANY CROSS-EXAMINATION OF THAT?

ABOUT WHETHER OR NOT THE VICTIM WAS ASLEEP AT THE TIME, NOT THAT I RECALL. I DON'T THINK THE MEDICAL EXAMINER EXPRESSED AN OPINION ABOUT THAT. I MIGHT BE WRONG, BUT I DON'T RECALL THAT. I BELIEVE THAT I WOULD HAVE PUT THAT IN MY BRIEF, IF IT HAD BEEN THERE.

YOU SEE WHAT I AM STRUGGLING WITH, THE IDEA THAT THE ONLY EVIDENCE THAT THE VICTIM WAS ASLEEP, AND THEN THE NEXT THING THAT HAPPENS IS THAT HE IS STRUCK BY A 40-POUND ROCK, I GUESS YOUR INITIAL REACTION TO THAT WOULD BE, WELL, IF HE WASN'T ASLEEP BEFORE --

HE WOKE UP AND HE STRUGGLED.

WELL, THAT IS WHAT I -- WHAT IS THE -- WHAT ARE THE -- IF I CAN USE THE WORD STRONGEST, THE STRONGEST INDICATIONS IN THE STATEMENT BY THE DEFENDANT, HIMSELF, THAT THE VICTIM DID, IN OTHER WORDS, AFTER BEING STRUCK, THAT THE VICTIM WOKE UP AND STARTED STRUGGLING WITH THE ON--

THE DEFENDANT'S -- WITH THE --

THE DEFENDANT'S OWN STATEMENT IS THAT HE WAS STRUGGLING. I ASSUME THAT HE HAD TO WAKE UP TO STRUGGLE. THE DEFENDANT, HIMSELF, MAY HAVE CHARACTERIZED IT AS IT AS A LITTLE STRUGGLE, BUT THE EVIDENCE IS THAT IT WAS A VIGOROUS STRUGGLE, AND I DON'T UNDERSTAND HOW YOU WOULD BREAK FIVE RIBS, IF YOU WEREN'T STRUGGLING MIGHTLY TO KEEP FROM BEING STRANGLER.

WERE THERE OTHER MARKS?

THERE WERE VARIOUS ABRASIONS AND SCRAPES ON THE FACE AND ABOUT HIS BODY THAT LOOKED LIKE DEFENSIVE WOUNDS.

AND THAT WAS TESTIFIED TO BY THE --

-- MEDICAL EXAMINER.

-- MEDICAL EXAMINER. THESE WERE NOT NECESSARILY SCRAPES AND ABRASIONS THAT WERE CREATED BY THE CONCRETE BLOCK?

THE -- THERE IS NO EVIDENCE THAT THE CONCRETE BLOCK WAS USED IN ANY OTHER MANNER EXCEPT TO INITIALLY DROP IT ON HIS HEAD.

DID THE MEDICAL EXAMINER --

ONE TIME.

DID THE MEDICAL EXAMINER CHARACTERIZE THESE OTHER INJURIES AS DEFENSIVE INJURIES, WHICH ORDINARILY WE PLACE THOSE IN THE CONSCIOUSNESS CATEGORY, OF SOMEBODY CONSCIOUSLY TRYING TO WARD OFF, AND DID THE MEDICAL EXAMINER --

MY MEMORY IS THAT SHE DID. I AM NOT ABSOLUTELY POSITIVE OF THAT.

IN TERMS OF THE -- WHEN WE THINK ABOUT A HEINOUS, ATROCIOUS AND CRUEL AGGRAVATOR AND TRYING TO MAKE SURE THAT WE DON'T MAKE THIS AGGRAVATOR JUST GENERALLY APPLYING, ALMOST, ACROSS THE BOARD, YOU THINK OF CASES WHERE PEOPLE ARE TORTURED AND CERTAINLY WE HAVE HAD SOME TERRIBLE DEATH CASES WHERE THAT OCCURS, REALIZING THAT WE HAVE NOT SET A REQUIREMENT THAT THE DEFENDANT INTENDS TO INFLECT THIS HIGH DEGREE OF PAIN OR TORTURE, ISN'T THERE SOME INDICATION NRCKTS LAW THAT, THERE HAS GOT TO BE AT LEAST A LEVEL, WHERE THE DEFENDANT, HIMSELF, HAS THIS UTTER INDIFFERENCE TO WHETHER THEY ARE SUFFERING, SO THAT IF, IN A SITUATION YOU ARE ATTACKING SOMEONE AND THEY FIGHT BACK AND, YOU KNOW, IN AN ESSENTIAL STRUGGLE, YOU, THEN, END UP KILLING THEM WITHIN A MATTER OF A MINUTE OR TWO, THAT THAT IS, REALLY, NOT THE HEINOUS, ATROCIOUS OR CRUEL AGGRAVATOR SITUATION, OR DO YOU SEE NO RELATIONSHIP, I GUESS, TO --

I WOULDN'T SAY I SEE NO RELATIONSHIP. I THINK THIS CASE IS HEINOUS, ATROCIOUS AND CRUEL. IN THAT HE WAS IN DIFFERENT.

YOU DON'T SEE THIS AS A CLASSIC CASE OF HEINOUS, ATROCIOUS AND CRUEL AGGRAVATOR?

I MOST CERTAINLY DO.

WE HAVE GOT CCP HERE. WE HAVE GOT EVERYTHING ELSE IN THE WORLD. I JUST, CERTAINLY, WONDER WHETHER HAC --

THIS ISN'T THE FIRST TIME THAT THIS DEFENDANT USED THIS HMO TO KILL SOMEBODY. IN YOU LOOK AT THE TWO OTHER MURDERS THAT HE PLEADED TO, HE, IN EACH OF THE CASES, DROPPED SOMETHING HEAVY ON THEIR HEAD AND THEN STUCK A RAG DOWN THEIR THROAT. I DON'T THINK THE DEFENDANT --

THAT IS IN FIGHTING THE CCP AGGRAVATOR.

I THINK, ALSO, IN APPLYING HAC, HE KNEW FROM EXPERIENCE THAT THAT ROCK WASN'T GOING TO KILL HIM. HE DIDN'T EXPECT IT TO KILL HIM, AND THEN HE STRANGLER HIM. THERE WAS STRING STRANGLING IN ALL THREE -- THERE WAS STRANGLING IN ALL THREE OF THOSE MURDERS, TOO. THE MEDICAL EXAMINER TESTIFIED THAT, WHEN YOU MANUALLY STRANGLE SOMEBODY INTO CONSCIOUSNESS, IF YOU WALK OFF, AND WHAT HAPPENS IS THE AUTOMATIC RESPIRATORY SYSTEM OR WHATEVER YOU CALL, IT THE VICTIM WILL SPONTANEOUSLY START BREATHING, AGAIN, AND EVENTUALLY WILL COME BACK TO CONSCIOUSNESS, SO WHAT HAPPENS

THE WAY YOU STRANGLE SOMEBODY INTO UNCONSCIOUSNESS AND YOU KEEP THAT FROM HAPPENING IS YOU STUFF TOILET PAPER AND THEN A RAG INTO THE THROAT, AS FAR AS HE COULD GET HIS FINGER, AND HE DID THIS. ALL THREE OF THESE MURDERS OCCURRED IN THE SAME YEAR, BUT ONE IN FEBRUARY AND ONE SOMETIME IN THE MIDDLE OF 9 YEAR, AND THIS OCCURRED SOMETIME IN NOVEMBER OF THE YEAR.

SO WE CAN TAKE THE MO IN THE OTHER MURDERS, NOT ONLY DO THEY SUPPORT CCP, HERE, BUT, ALSO, HAC. IS THAT YOUR POSITION?

THAT IS MY POSITION. I BELIEVE THE TRIAL JUDGE --

I KNOW HE MENTIONED IT, AS FAR AS CCP.

I THOUGHT THAT HE DID, BUT I WOULD HAVE TO GO BACK AND REVIEW THAT, TO BE ABSOLUTELY SURE. CONCERNING DR. CARUSO'S TESTIMONY ABOUT THE INJURIES AND SO FORTH, SHE TESTIFIED IT WAS CONSISTENT WITH THE VICTIM HAVING, FIRST, BEEN HIT ON THE HEAD WITH A STEPPING STONE AND THEN HAVING STRUGGLED WITH HIS ASSAILANT AND THEN HAVING BEEN MANUALLY STRANGLER. WE INSIST THAT IT IS HAC, AND THEN IF NOT, THEN CCP AND THE PRIOR VIOLENT FELONY AGGRAVATOR, INCLUDING TWO PREVIOUS MURDERS. WE HAVE GOT THE FACT THAT, IN 1982, HE SEVERELY BEAT HIS GIRLFRIEND THAT HE WAS LIVING WITH, BEAT HER SO BAD THAT, THERE WAS NOT ONLY BLOOD ON THE BED AND BLOOD IN THE BATHROOM, BUT THERE WAS BLOOD ON THE WALLS, FIVE FEET HIGH ABOVE THE BED.

HOW OLD WAS HE, AT THE TIME OF THIS MURDER?

HE WAS BORN JANUARY OF 1962, SO AT THE TIME OF THIS MURDER, HE WOULD HAVE BEEN ABOUT 32. ALMOST 33. THERE HAS BEEN SOME MENTION ABOUT HIS BEING HOMELESS. THAT IS CERTAINLY PART OF THE TIME THAT I GUESS HE WAS. AT THE SAME TIME, IT SHOULD BE NOTED THAT, IN 1982, HE GOT A SIX-YEAR SENTENCE. I AM NOT SURE HOW MUCH OF THAT HE ACTUALLY SERVED, BUT THEN HE WAS CONVICTED, AGAIN, IN '91, AND GOT FOUR YEARS TO SERVE, FOLLOWED BY ANOTHER SIX YEARS OF PROBATION, SO AT LEAST A GOOD BIT OF THAT TIME, HE WAS IN PRISON, AND HE WAS NOT OF HOMELESS.

DO WE KNOW ABOUT HIS EDUCATION OR EMPLOYMENT RECORD OR WHAT --

WE KNOW VIRTUALLY NOTHING ABOUT THIS DEFENDANT, EXCEPT ABOUT THE CRIMES THAT HE HAS COMMITTED SINCE HE WAS 12 OR 13 OR 13 OR 14 YEARS OLD, WHEN HE LEFT HOME, AND WHAT HAPPENED WAS THAT HIS FATHER DIED BEFORE HE WAS BORN. HIS MOTHER REMARRIED. HIS CHILDHOOD WAS APPARENTLY FINE, UNTIL HE WAS 7 OR 8 YEARS OLD, AND THEN THAT STEPFATHER BECAME ABUSIVE. EVENTUALLY THE MOTHER DIVORCED THAT STEPFATHER AND THEN GOT INVOLVED WITH A SECOND MAN THAT I AM NOT SURE SHE WAS MARRIED TO HIM AT THAT TIME BUT AT LEAST EVENTUALLY MARRIED HIM. AT ANY RATE, THE DEFENDANT AND HIS BROTHER AND ONE OTHER PERSON BEAT THIS SECOND STEPFATHER SEVERELY, AND ONE OF THEM, I AM NOT ABSOLUTELY SURE WHO, HIT HIM ON THE HEAD WITH THE ROCK, COINCIDENTALLY ENOUGH. BUT THEN HE LEFT HOME. AND AFTER THAT, WE ARE NOT SURE WHAT HAPPENED. THERE IS, REALLY, NO EVIDENCE, AND THE TRIAL JUDGE DIDN'T GIVE ANY MITIGATING WEIGHT TO THE CIRCUMSTANCES AFTER HE LEFT HOME, SIMPLY BECAUSE THERE WAS NO EVIDENCE ABOUT WHAT HE HAD BEEN DOING OR WHERE HE HAD BEEN, AND I DON'T KNOW IF HE WAS HOMELESS OR IF HE HAD A JOB OR WHAT. I JUST DON'T KNOW, BECAUSE IT IS NOT IN THE RECORD. THERE IS NO MENTAL HEALTH MITIGATION IN THIS CASE. THERE IS NO PSYCHOLOGISTS OR PSYCHIATRISTS TESTIFIED. THERE IS NO EVIDENCE THAT HE IS MENTALLY IMPAIRED. EITHER INTELLECTUALLY OR EMOTIONALLY OR THAT HE HAS ANY SERIOUS PERSONALITY DISORDERS.

WAS HE PRESENTENCE INVESTIGATION DONE?

THERE WAS NO PSI. THE DEFENDANT WAIVED THAT. THE JUDGE --

THERE WAS AN EXPRESS WAIVER OF THAT?

EXPRESS WAIVER OF THAT. IT IS IN THE RECORD. A WRITTEN WAIVER. THE JUDGE REVIEWED -- THE JUDGE FOUND, AS MITIGATING, THAT HE HAD AN ABUSIVE CHILDHOOD. ALSO THAT HE WAS AN ALCOHOLIC AND, ALSO, THAT HE HAD BEEN DRINKING AT THE TIME OF THE MURDER, BUT HE -- WHERE DID THE INFORMATION COME FROM, AS FAR AS THIS FACT THAT HE WAS DISCIPLINED BY ABUSIVE STEPFATHER AND THAT HE DIDN'T COMPLETE MORE THAN --

HIS MOTHER TESTIFIED AND HIS BROTHER, FRANK, I BELIEVE, TESTIFIED.

BUT HIS MOTHER HADN'T SEEN HIM IN 20 YEARS?

I THINK THERE HAD BEEN SOME CONTACT. I AM NOT SURE SHE HAD ACTUALLY SEEN HIM, BUT SHE KNEW THAT, IN '82 OR SO, THAT HE HAD BEEN IN PRISON, AND I THINK THERE WAS SOME SORT OF COMMUNICATION.

WHAT WAS THE STATEMENT THAT SAYS HE WAS ABANDONED BY HIS MOTHER, WHO CHOSE AN ABUSIVE STEPFATHER OVER HIM?

THAT WAS AFTER HE BEAT HIS STEPFATHER, HE AND THE OTHERS BEAT UP HIS STEPFATHER, AND AT THAT TIME HE TOLD HIS MOTHER TO CHOOSE HIM OR CHOOSE, I THINK HIS NAME WAS CHET, AND SHE CHOSE CHET, AND SO THE DEFENDANT LEFT.

HE WAS HOW OLD AT THAT TIME?

13 OR 14. AND, AGAIN, THE JUDGE FOUND THAT IN MITIGATION. BUT HE FOUND THAT THE AGGRAVATION IN THIS CASE GREATLY OUT WEIGHED THAT. HE FOUND THAT HE REJECTED THE EXTREME EMOTIONAL DISTURBANCE MITIGATOR, BECAUSE, HE SAID, THE ONLY EVIDENCE IS THAT IS THAT HE IS A ALCOHOLIC, AND THE JUDGE DIDN'T THINK THAT, BY ITSELF, WAS ENOUGH TO ESTABLISH THAT MITIGATOR. THERE WAS NO TESTIMONY CONNECTING HIS STATUS AS AN ALCOHOLIC WITH ANY EXTREME EMOTIONAL DISTURBANCE, AT THE TIME OF THE MURDER. THE JUDGE, ALSO, ACKNOWLEDGED THAT THE DEFENDANT HAD BEEN DRINKING HEAVILY THE WEDNESDAY EVENING. BUT FOUND THAT, ALTHOUGH THE DEFENDANT WAS UNDER THE INFLUENCE OF DRUGS AND ALCOHOL AT THE TIME OF THE MURDER, THE EVIDENCE DOES NOT SUSTAIN A FINDING THAT HIS ABILITY TO APPRECIATE THE CRIMINAL OF HIS ACTS WAS SUBSTANTIALLY DIMINISHED. THE JUDGE REVIEWED THE PURPOSEFUL ACTION THAT HE HAD TAKEN, IN THIS CASE, FROM GETTING A STEPPING STONE AND GOING IN THERE AND THE TESTIMONY OF THE WASHCLOTH AND HIDING HIS BODY IN THE BATHROOM AND CLOSING THE DOOR AND STAYING THERE AND DRIVING HIS CAR FOR A COUPLE OF DAYS AND SO ON AND SO FORTH, AND THE JUDGE SAYS THIS DOES NOT SHOW THAT THE DEFENDANT WAS FUNCTIONALLY AND SUBSTANTIALLY IMPAIRED IN THESE ACTS. IT SHOWS THAT HE WAS MINIMALLY AFFECTED BY DRUGS AND ALCOHOL, DESPITE HIS EXTENSIVE USE. THEN HE GAVE SIGNIFICANT WEIGHT TO HIS ABUSIVE CHILDHOOD. SOME WEIGHT TO HIS HISTORY OF ALCOHOLISM, AND IN THE ABSENCE OF A TRUE FATHER, A LITTLE WEIGHT TO SOME OTHER THINGS, AND FOUND THAT THE AGGRAVATING CIRCUMSTANCES IN THIS CASE GREATLY OUT WEIGHED THE MITIGATION. WE ASK THAT THE SENTENCE BE AFFIRMED. THANK YOU.

REBUTTAL?

AS TO A COUPLE OF THE THINGS HERE, MY READING OF THE RECORD IS THAT HE SAID HE DRANK FOUR QUARTZ NOT JUST SIMPLY A QUART. I HAVE GOT SOME RECORD CITES IN THE BRIEF, YOU CAN REFER TO THIS THERE. AS TO THE STRUGGLE, WE DON'T KNOW WHEN THE RIBS WERE

BROKEN, WHETHER IT WAS BEFORE DEATH OR AFTER DEATH. ALL WE KNOW IS THAT THE RIBS WERE BROKEN AND THERE WAS SOME SCRAPES AND STUFF LIKE. THAT I SUSPECT THE SCRAPES CAME, PROBABLY, FROM THIS ROCK THAT WAS AFTER HE HIT HIM WITH THE ROCK, HE PROBABLY SCRAPED HIMSELF ON THAT.

THE MEDICAL EXAMINER COULDN'T TELL OR DIDN'T, ABOUT WHETHER THE RIBS WERE BROKEN BEFORE OR AFTER?

NO. SHE NEVER GAVE OPINED OR GAVE AN OPINION ABOUT THAT.

WAS ROBBERY THE APPARENT MOTIVE FOR THIS CRIME, OR WHAT DOES THE RECORD TELL US ABOUT THAT?

WELL, THE RECORD DOESN'T REALLY SAY. HE TOOK -- HE SAID HE NEEDED MONEY, AND WHEN HE COULDN'T FIND ANY, HE JUST LEFT. I DON'T BELIEVE HE WAS CHARGED WITH OR CONVICTED OF ROBBERY IN THIS CASE. TO BE HONEST, I CAN'T REMEMBER, BUT THE JUDGE DID FIND PECUNIARY GAIN HERE, AND I THINK I HAVE ARGUED THAT IT WASN'T THERE, ALSO. AS TO THE DEFENSIVE WOUNDS, I DON'T RECALL ANY EVIDENCE IN THE -- FROM THE MEDICAL EXAMINER, SAYING THAT THERE WERE DEFENSIVE WOUNDS. IF THERE HAD BEEN, I PROBABLY WOULD SNOT HAVE RAISED THE HAC, BECAUSE IT WOULD HAVE SURELY SHOWN SOME --

ANY SPECULATION AS TO HOW THE FIVE BROKEN RIBS OCCURRED?

HE MAY HAVE BEEN SITTING ON TOP OF HIM. BROKEN THAT WAY. NO. I CAN SPECULATE. YEAH. BUT HE MAY HAVE DROPPED THE ROCK ON HIM, AGAIN, OR KICKED HIM OR SOMETHING LIKE THAT, BUT, AGAIN, WE DON'T KNOW IF IT WAS BEFORE OR AFTER DEATH.

WERE ALL THE SCRAPES ABOUT THE HEAD AND THE FACE?

NO. I THINK THERE WERE SOME ON HIS ARMS AS WELL.

DIDN'T HE TELL THE FBI AGENT THAT, WHEN HE KILLED HIM, HE WANTED MONEY?

YES.

AND I THINK THAT --

THE INTERESTING THING ABOUT IT WAS THAT HE TOOK THE GUY'S -- HE TOOK MR. HINTON'S CAR AND THEN JUST KIND OF ABANDONED IT. I MEAN, IF HE WAS GOING TO TAKE THE CAR AND MONEY AND ALL OF THIS, YOU WOULD THINK THAT HE WOULD HAVE FLED THE AREA, BUT HE DIDN'T. LET'S SEE. JUSTICE PARIENTE, YOU ARE BASICALLY ASKING CAN WE WILLIAMS RULE IN THE OTHER MURDERS, TO SHOW HAC. I THINK THAT IS KIND OF A SUMMARY OF OF WHAT YOU ARE TRYING TO SAY. THE OTHER MURDER, ONE OF THE MURDERS WAS NOT DROPPING A ROCK ON HIS HEAD. THEY WERE, TWO MEN GOT INTO A FIGHT, SLAPPING FIGHT. THE VICTIM CAME AT HIM WITH A KNIFE. BOWLES TOOK THE KNIFE AWAY AND THEN THE VICTIM CAME AT HIM WITH A SHOTGUN, AND BOWLES TAKES THAT AWAY AND THEN KILLS HIM. SO I THINK THE SIMILARITIES ARE DIFFERENT OR THERE ARE MORE DISVARTS -- DISSIMILARITIES. ALSO, IF YOU ARE GOING TO LET THE STATE BRING IN WILLIAMS-RULE TYPE EVIDENCE, THEN I THINK YOU OUGHT TO BE ABLE TO ARGUE THAT THE WILLIAMS RULE EVIDENCE WAS DISSIMILAR. THE PURPOSE OF THE WILLIAMS RULE EVIDENCE IS TO SHOW INTENT. IF THE STATE CAN SHOW INTENT, THE DEFENSE OUGHT TO BE ABLE TO SHOW A LACK OF INTENT. THAT IS WHERE THIS ONE ARGUMENT ON THE JURY INSTRUCTION GOES. THANK YOU VERY MUCH.

THANK, MR. DAVIS. THE COURT WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.□