Willie Seth Crain, Jr. v. State of Florida

THE LAST CASE ON THE COURT'S DOCKET THIS MORNING IS CRAIN VERSUS STATE. GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS PAUL HELM, AND I REPRESENT THE APPELLANT IN THIS CASE WILLIE CRAIN. MR. CRAIN WAS INDICTED FOR THE FIRST-DEGREE PREMEDITATED MURDER AND KIDNAPING WITH INTENT TO COMMIT OR FACILITATE A HOMICIDE, OF AMANDA VICTORIA BROWN.

THE INTENT TO TERRORIZE OR INFLICT BODILY HARM WAS THE FIRST TIME THAT EVER CAME UP AS ANOTHER THEORY FOR THE KIDNAPING, WAS IN THE JURY INSTRUCTIONS, OR HAD THAT BEEN DISCUSSED DURING THE PROGRESS OF THE CASE?

I DON'T BELIEVE THAT IT WAS EVER DISCUSSED DURING THE PROCESS, DURING THE PROGRESS OF THE CASE. I THINK THAT, FROM WHAT I COULD TELL FROM THE ACTUAL RECORD, WAS THAT THE STATE HAD INCLUDEDED THAT AS AN ALTERNATIVE ELEMENT, INTENT ELEMENT OF KIDNAPING, IN ITS PROPOSED JURY INSTRUCTIONS ON FELONY MURDER.

WHY --

-- AND DEFENSE COUNSEL EVIDENTLY OVERLOOKED WHAT HAD HAPPENED BECAUSE HE DID NOT OBJECT TO IT.

WHAT IS WRONG WITH THAT? IN OTHER WORDS, WHAT IS WRONG WITH THE FACT THAT --

DUE PROCESS OF LAW, ACCORDING TO THE UNITED STATES SUPREME COURT, REQUIRES PROOF BEYOND A REASONABLE DOUBT OF EVERY FACT NECESSARY TO CONSTITUTE THE CRIME CHARGED. FURTHER, IT IS A VIOLATION OF DUE PROCESS, ACCORDING TO THE UNITED STATES SUPREME COURT, TO CONVICT THE DEFENDANT OF A CRIME THAT IS NOT CHARGED. QUITE SIMPLY, THE GRAND JURY NEVER CHARGED MR. CRAIN WITH A KIDNAPING WITH INTENT TO INFLICT BODILY HARM. BECAUSE HE WAS NEVER SO CHARGED, IT WAS A VIOLATION OF DUE PROCESS AND FUNDAMENTAL ERROR, FOR THE TRIAL COURT TO GIVE THAT INSTRUCTION.

ISN'T IT SORT OF INHERENT IN A KIDNAPING WITH INTENT TO COMMIT HOMICIDE, THAT THERE IS INTENT TO COMMIT BODILY HARM?

YOUR HONOR, IT IS NOT A LESSER-INCLUDED OFFENSE. BOTH OF THOSE ARE TWO ALTERNATIVE STATUTORY ELEMENTS OF THE INTENT, TO PROVE THE SAME STATUTORY CRIME. WHEN THE STATE ELECTS TO CHARGE OR WHEN THE GRAND JURY ELECTS TO CHARGE IN THE INDICTMENT, A PARTICULAR FORM OF SPECIFIC INTENT FOR KIDNAPING, THE LAW OF THIS STATE REQUIRES AND THE LAW OF THE UNITED STATES, REQUIRES THE STATE TO PROVE THE INTENT THAT IS ALLEGED.

SO YOU ARE SAYING EVEN IF, ONCE THEY INDICT ODD THAT BASIS, THAT THE STATE WAS HAMSTRUNG FROM THERE ON IN, IN PROVING ANY OTHER KIND OF SPECIFIC INTENT FOR KIDNAP SOMETHING.

EXACTLY, YOUR HONOR.

BECAUSE, AND SO IF THIS CASE, BY SOME CHANCE THE, WE WOULD REVERSE ON THE JURY

INSTRUCTIONS, THEY COULDN'T RECHARGE ON KIDNAPING WITH INTENT TO COMMIT BODILY HARM?

THEY COULD GO BACK TO THE GRAND JURY, TO GET AN AMENDED INDICTMENT TO CHARGE A DIFFERENT FORM OF KIDNAPING.

PROCEED WITH YOUR ARGUMENT.

COULD THE INDICTMENT HAVE BEEN AMENDED AT TRIAL? COULD THE STATE HAVE MOVED --

THE STATE CANNOT AMEND -- I AM SORRY, YOUR HONOR. THE STATE --

BASED ON WHAT, WHY WASN'T THAT PRESENTED, COULD THERE HAVE BEEN A REQUEST FOR AMENDMENT.

NO, YOUR HONOR. ONLY THE GRAND JURY HAS THE AUTHORITY TO AMEND AN INDICTMENT. THE STATE CANNOT DO SO.

LET'S GO, THEN, TO, THE PREMEDITATED, YOU KNOW, YOUR ARGUMENT OF THE PREMEDITATION IS THERE IS NOT ENOUGH FACTS TO SHOW THIS WAS PREMEDITATED MURDER. COULD YOU GIVE US THE FACTS IN THE LIGHT MOST FAVORABLE TO THE STATE, THAT SHOWS THAT THIS WAS A PREMEDITATED MURDER.

THERE AREN'T ANY.

SO GIVE ME THE FACTS, OBVIOUSLY THE STATE, THERE AREN'T ANY?

THERE ARE NO FACTS THAT ESTABLISH, THAT ARE PROBATIVE OF WILLIE CRAIN'S INTENT PRESENTED BY THE STATE. FIRST, LET'S LOOK AT THE LARRY AND HOLTON CRITERIA THAT HAVE BEEN ESTABLISHED FOR PROVING PREMEDITATION THROUGH CIRCUMSTANTIAL EVIDENCE. THE THING THAT IS ARE CONSIDERED ARE, FIRST, THE NATURE OF THE WEAPON. THERE IS NO EVIDENCE THAT ANY WEAPON WHATSOEVER WAS USED. WE SIMPLY HAVE NO KNOWLEDGE OF WHETHER ANY WEAPON WAS USED. THE SECOND IS THE PRESENCE OR ABSENCE OF ADEQUATE PROVOCATION. WE HAVE ABSOLUTELY NO EVIDENCE PRESENTED BY THE STATE, AS TO WHETHER OR NOT THERE WAS ANY PROVOCATION AT THE TIME OF THE KILLING.

YOU DON'T, WAIT, FROM A CIRCUMSTANCES OF THE CASE, THIS IS A 52-YEAR-OLD MAN AND A SEVEN-YEAR-OLD GIRL. WHAT KIND OF PROVOCATION COULD THERE POSSIBLY BE TO CAUSE SOMEBODY TO KILL A SEVEN-YEAR-OLD GIRL?

I AM NOT SAYING THAT THERE COULD BE ANY ADEQUATE PROVOCATION TO PROMPT MR. CRAIN TO KILL AMANDA BROWN. WHAT I AM SAYING IS THAT, GIVEN THE CRITERIA THAT THIS COURT HAS SET FORTH FOR FINDING, A FINDING OF PREMEDITATION, THAT THE STATE SIMPLY PRESENTED NO EVIDENCE AS TO ANY OF THOSE CRITERIA.

WHAT ABOUT THE FACT THAT SHOWS A STRUGGLE WITH THE SEVEN-YEAR-OLD, THE SCRATCHES ON MR. CRAIN.

THE SCRATCHES DO NOT PROVE THAT THERE WAS A STRUGGLE BETWEEN MR. CRAIN AND AMANDA BROWN. THE STATE'S WITNESS, THE MEDICAL EXAMINER WHO EXAMINED THE PHOTOGRAPHS OF THE SCRATCHES, ALTHOUGH HE DIDN'T EXAMINE MR. CRAIN, HIMSELF, TESTIFIED THAT HE COULD NOT DETERMINE TO ANY DEGREE, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, WHAT CAUSED ANY OF THOSE SCRATCHES.

I THOUGHT HE TESTIFIED THEY WERE RECENT SCRATCHES.

HE TESTIFIED THAT THEY WERE RECENT.

AND THEY WERE NOT CONSISTENT WITH SOMEBODY THAT WAS CRABING, THAT THEY WERE NOT THAT TYPE --.

THAT IS WRONG, YOUR HONOR. HE TESTIFIED THAT EVERY SINGLE SCRATCH THAT HE SAW IN THOSE PHOTOGRAPHS COULD BE CONSISTENT WITH BEING CAUSED BY AN INANIMATE OBJECT SUCH AS A CRAB TRAP, WIRE MESH, TREE BRANCHES. EVERY SINGLE SCRATCH, HE SAID, COULD HAVE BEEN CAUSED THAT WAY. HE ALSO SAID THAT MOST BUT NOT ALL OF THE SCRATCHES COULD HAVE BEEN CAUSED BY HUMAN FINGERNAILS, BUT HIS ULTIMATE CONCLUSION WAS THAT HE COULD NOT DETERMINE, WITH ANY DEGREE OF MEDICAL CERTAINTY, WHAT WAS THE CAUSE OF THE SCRATCHES.

YOUR ARGUMENT HERE, YOU HAVE CONCEDED THAT THERE IS ENOUGH TO SHOW THAT MR. CRAIN KILLED THE VICTIM, SO WHAT IS THE, I GUESS THE OTHER EXPLANATION AS TO WHY IT IS NOT PREMEDITATED? WHAT IS THE SCENARIO IN THE LIGHT MOST FAVORABLE, THEN YOU SAY THAT THE STATE CAN'T REBUT, AS TO WHAT A MORE, AS LIKELY OCCURRED IN THIS CASE? WE KNOW HE TAKES THE CHILD.

YOUR HONOR, YOUR HONOR, I AM SORRY. BUT FIRST STATE'S OBLIGATION IS TO PRESENT CIRCUMSTANTIAL EVIDENCE FROM WHICH THE JURY COULD INFER, BEYOND A REASONABLE DOUBT, THAT WILLIE CRAIN INTENDED TO KILL AMANDA BROWN. THE STATE PRESENTED NO SUCH EVIDENCE. THERE IS NOT ONE IOTA OF EVIDENCE IN THE RECORD BEFORE THIS COURT OF WILLIE CRAIN'S INTENT! IN COULAN VERSUS STATE, THIS COURT RULED THAT, IN THE TOTAL ABSENCE OF ANY PROOF OF PREMEDITATED INTENT, THIS COURT COULD NOT SUSTAIN A PREMEDITATED MURDER CONVICTION, AND IN MR. CRAIN'S CASE, IT CARRIES OVER A STEP FURTHER, BECAUSE THE ONLY ALLEGED, THE ONLY CHARGE UNDERLYING FELONY FOR FELONY MURDER IS KIDNAPING WITH THE INTENT TO COMMIT OR FACILITATE A WHOM -- A HOMICIDE. IT IS INHERENT IN THE NATURE OF THAT CHARGE THAT, THE STATE MUST PROVE THAT HE INTENDED TO COMMIT OR FACILITATE A HOMICIDE. IT IS INHERENT IN THE NATURE OF THAT CHARGE, THAT THE STATE HAS TO PROVE THAT HE INTENDED TO KILL AMANDA BROWN OR SOMEONE ELSE.

SO THE WAY IT WAS CHARGED, YOU ARE SAYING THAT THE KIDNAPING INTENT AND THE PREMEDITATED INTENT ARE IDENTICAL. THAT THERE WOULD BE NO REASON FOR THE ALTERNATIVE OF FELONY MURDER IN THIS CASE, BECAUSE THE INTENT IS ONE AND THE SAME.

WELL, PREMEDITATION ACTUALLY REQUIRES MORE THAN JUST MERE INTENT TO KILL, BUT WHAT I AM SAYING IS THAT THE CASE, THE STATE'S EVIDENCE IS SO DEFECTIVE THAT IT DOESN'T EVEN ESTABLISH THE INTENT TO KILL, AND THAT MAKES THE STATE'S EVIDENCE INADEQUATE TO PROPHETS OF THE CHARGES FILED IN THE INDICTMENT.

I GUESS WHAT I WAS TRYING TO ASK, IS THE CIRCUMSTANCES ARE SUCH THAT WE HAVE GOT A 52-YEAR-OLD MAN THAT IS LAST SEEN BY THE MOTHER OF THE VICTIM, LYING DOWN NEXT TO THE CHILD. WE HAVE A VEHICLE THAT IS RUNNING AT 2:30 IN THE MORNING, FOR ABOUT FIVE MINUTES, OUTSIDE THE HOUSE. WE, THEN, WHEN SHE WAKES UP IN THE MORNING, THE MOTHER, THERE IS, THE CHILD IS NOT THERE. WE HAVE AMANDA'S BLOOD ON THE VICTIM'S BOXER SHORTS.

, WHICH BY THE WAY, YOUR HONOR, ESTABLISHES IDENTITY OF THE PERPETRATOR, BUT IT DOES NOT ESTABLISH INTENT.

BEAR WITH ME, BECAUSE I AM SURE WE WILL HEAR SOME OF THIS FROM THE STATE. THIS IS THEIR FACTS. WE THEN HAVE, IN THE BATHROOM, I AGREE WITH YOU THERE IS NOT EVIDENCE OF LARGE AMOUNTS OF BLOOD BUT EVIDENCE OF BLOOD BEING THERE, AND A LOT OF BLEACH THAT WAS USED FOR FOUR HOURS. NOW, HE KILLED HER, LET'S ASSUME HE KILLED HER IN THE HOUSE.

YES.

THERE FOR HE EITHER, HE KILLED HER BECAUSE, WHAT WAS, WHAT WOULD BE THE ARGUMENT, AS TO HE KILLED HER ACCIDENTALLY? IS THAT THE, THAT IS THE OTHER --

HE COULD HAVE KILLED HER RECKLESSLY WITH A DEPRAVED MIND. HE COULD HAVE KILLED HER NEGLIGENTLY, FOR A MANSLAUGHTER. HE COULD HAVE KILLED HER DURING THE COMMISSION OF SOME FELONY OTHER THAN THE CHARGED FELONY MURDER, SO THAT YOU WOULD HAVE A THIRD-DEGREE FELONY MURDER. THE POINT IS THAT, WHEN YOU TAKE EACH OF THE POINTS OF EVIDENCE THAT THE STATE HAS POINTED OUT AS THEY CLAIM THAT TAKEN TOGETHER, ALL THE EVIDENCE MUST ESTABLISH PREMEDITATION.

YOUR ARGUMENT WOULD ESSENTIALLY, THOUGH, NEGATE ANY REASONABLE HYPOTHESIS THAT COULD BE DRAWN, AS TO SECOND-DEGREE MURDER OR MANSLAUGHTER, BECAUSE OF THE SAME FALLACY, WOULD IT NOT?

NO, YOUR HONOR, BECAUSE SECOND-DEGREE MURDER AND MANSLAUGHTER AND THIRD-DEGREE MURDER DO NOT REQUIRE AN INTENT TO KILL.

I UNDERSTAND THAT, BUT HOW COULD YOU, FROM THE BASIS SINCE THERE IS NO BODY, YOU COULD JUST ASSUME THAT THERE WAS A HOMICIDE. HOW WOULD YOU DRAW THE CONCLUSION, FROM THIS EVIDENCE, THAT FOLLOWING YOUR LINE OF REASONING, THAT THERE WOULD HAVE BEEN A RECKLESS INDIFFERENCE?

YOUR HONOR, FIRST OF ALL, I AM CONCEDING THAT THERE IS SUFFICIENT EVIDENCE OF AMANDA BROWN'S DEATH, BECAUSE OF THIS COURT'S PRECEDENCE ON THE SUBJECT. WHEN A PERSON DISAPPEARS WITHOUT REASONABLE EXPLANATION, THIS COURT HAS FOUND SUFFICIENT EVIDENCE OF DEATH. HERE, IN ADDITION TO THE FACT OF HER DISAPPEARANCE, THERE IS EVIDENCE THAT TENDS TO ESTABLISH THAT WILLIE CRAIN WAS INVOLVED IN HER DISAPPEARANCE, BECAUSE OF THE BLOODSTAIN EVIDENCE. HOWEVER, THE BLOODSTAIN EVIDENCE DOES NOT ESTABLISH MR. CRAIN'S INTENT. THE FACT THAT AMANDA DISAPPEARED AND HE IS MOST LIKELY RESPONSIBLE FOR THAT DISAPPEARANCE DOES NOT PROVE HIS INTENT. HE MAY, YOUR HONOR,, THIS IS GOING OUT, IF I MAY STEP OUTSIDE THE EVIDENCE PRESENTED DURING THE GUILT PHASE OF TRIAL FOR A MOMENT, DURING THE PENALTY PHASE OF THE TRIAL, THE STATE PRESENTED EVIDENCE THAT MR. CRAIN, IN THE PAST, HAD COMMITTED FIVE ACTS OF SEXUAL BATTERY ON YOUNG GIRLS. AND HE HAD BEEN CONVICTED AND SENTENCED FOR THAT. I WOULD SUGGEST THAT EVIDENCE, FROM THE PENALTY PHASE, MAY SUGGEST THAT HIS ACTUAL MOTIVE, IF, IN FACT, HE KIDNAPPED AMANDA BROWN, WAS TO HAVE SOME SEXUAL CONTACT WITH HER.

BUT THAT WAS NOT PRESENTED IN THE GUILT PHASE.

NO, SIR, IT WASN'T PRESENTED IN THE GUILT PHASE.

SO WHAT I AM TRYING TO UNDERSTAND IS THE BASIS FOR A STATEMENT THAT YOU COULDN'T, I DON'T SAY THAT YOU REALLY MADE THE STATEMENT, BUT IF YOU CANNOT INFER INTENT FROM THESE FACTS, HOW CAN YOU INFER RECKLESS INDIFFERENCE?

I AM SAYING YOU COULD NOT INFER INTENT TO KILL, YOUR HONOR, WHICH IS NECESSARY FOR THE KIDNAPING ALLEGED AND IT IS NECESSARY FOR PREMEDITATION.

CHIEF JUSTICE: I THINK JUSTICE WELLS IS ALSO ASKING, IF I MAY, THAT WHAT WOULD BE THE HIGHEST DEFENSE, IN YOUR VIEW UNDER THIS PROOF, THEN, THE DEFENDANT COULD HAVE BEEN -- THE HIGHEST OFFENSE IN YOUR VIEW UNDER THIS PROOF, THEN, THE DEFENDANT COULD HAVE BEEN CHARGED?

ON THE MURDER CHARGE, BECAUSE SECOND-DEGREE MURDER DOES NOT REQUIRE PROOF OF INTENT TO KILL BUT MERELY REQUIRES A RECKLESS DISREGARD AND DEPRAVITY OF MIND, THAT HE COULD HAVE BEEN CONVICTED OF SECOND-DEGREE MURDER.

WHAT EVIDENCE IS THERE OF RECKLESS DISREGARD THAT IS NOT THERE FOR INTENT TO KILL? I THINK THAT IS WHAT JUSTICE WELLS WAS TRYING TO GET THROUGH.

WELL, YOUR HONOR, I THINK WHAT YOU ARE SUGGESTING IS THAT, BECAUSE, IF YOU ACCEPT MY ARGUMENT, THAT THERE IS NO PROOF OF AN INTENT TO KILL, THEN IT MAY BE THAT I AM CONCEDING TOO MUCH IN SAYING THAT HE COULD BE CONVICTED OF SECOND-DEGREE MURDER. MAYBE HE, MAYBE THE STATE HASN'T PROVED THAT HE IS GUILTY OF ANY DEGREE OF MOM SIDE. FOR ALL WE KNOW, THE -- OF HOMICIDE. FOR ALL WE KNOW, THE KILLING WAS ENTIRELY ACCIDENTAL, BECAUSE WE DO NOT KNOW THE NATURE AND THE MANNER OF THE INJURIES INFLICTED. WE DO NOT KNOW HOW AMANDA BROWN WAS KILLED. IN FACT, THE TRIAL JUDGE, HERSELF, IN HER FINDINGS OF FACT ON THE KIDNAPING AGGRAVATING FACTOR IN THE PENALTY PHASE, FOUND THAT THERE IS NO WAY TO KNOW EXACTLY WHAT HAPPENED TO AMANDA BROWN! AND THAT IS THE TRUTH THAT SUMS UP THE TOTALITY OF THE EVIDENCE IN THIS CASE. WE DON'T KNOW WHAT HAPPENED TO AMANDA BROWN, AND THE STATE HAS NOT PROVEN WHAT HAPPENED TO HER.

SO YOU DON'T HAVE A MANSLAUGHTER OR A THIRD-DEGREE MURDER OR ANY FORM OF HOMICIDE THAT IS PROVEN HERE, UNDER THAT THEORY. WOULD YOU?

I THOUGHT YOU HAD CONCEDED.

IN MY ARGUMENT IN MY BRIEF, I WAS WILLING TO CONCEDE THAT HE COULD BE FOUND GUILTY OF SECOND-DEGREE MURDER OR MANSLAUGHTER OR A THIRD-DEGREE FELONY MURDER. BECAUSE NONE OF THOSE FORMS OF HOMICIDE REQUIRE AN INTENT TO KILL. THE ONLY THING THAT I AM ARGUING THAT THE STATE HASN'T PROVEN IS INTENT TO KILL! AND THEY SIMPLY DIDN'T DO IT. THEY PRESENTED A LOT OF EVIDENCE THAT ESTABLISHED THAT AMANDA BROWN DISAPPEARED. THEY PRESENTED EVIDENCE TO TIE MR. CRAIN TO HER DISAPPEARANCE, SO THAT HE IS MOST LIKELY THE PERPETRATOR OF WHAT HAPPENED. WHAT THEY DIDN'T, AND THEY PROVED THAT AMANDA BROWN BLED, BECAUSE OF THE BLOODSTAIN EVIDENCE.

LET'S JUST TAKE IT, GO BACK AGAIN, IN TERMS OF WHAT WE DO KNOW ABOUT THE CIRCUMSTANCES OF THE DEATH. IF ANYTHING. AND THIS IS WHAT, THERE IS SCRATCHES ON CRAIN'S ARMS AND THERE IS BLOOD IN THE BATHROOM THAT IS AMANDA'S. NOW, GIVEN THAT, IS IT, IS THAT WHY YOUR CON SECTION IS NOT -- IS THAT WHY YOUR CONSTE AT ANY TIME ION IS THAT, NOT, GIVEN THAT CIRCUMSTANCE, THAT -- THAT HE DID TAKE AMANDA BACK TO WATCH THE REST OF TITANIC AND SHE HAD A SEIZURE AND JUST DIED, AND THAT WAS WHAT HAPPENED. I MEAN, IS IT --

I AM NOT ARGUING FOR THAT AS A REASONABLE HYPOTHESIS OF INNOCENCE.

WHY NOT? WHY NOT, BASED ON WHAT FACTS GIVE US THE KNOWLEDGE THAT THAT COULDN'T HAVE HAPPENED, EQUALLY, ON AN EQUAL FOOTING FOR A HYPOTHESIS THAT IT WAS A DEPRAVED MIND, WHICH YOU ARE ARGUING FOR? IT IS THE BLOOD AND THE SCRATCHES?

THE BLOOD EVIDENCE INDICATES -- THERE WAS TESTIMONY FROM MRS. HARTMAN, AMANDA'S MOTHER, AND SYLVIA BROWN, HER STEPMOTHER, AND FROM A CHILDHOOD ACQUAINTANCE IN THE NEIGHBORHOOD, THAT SHE WAS NOT BLEEDING ON THE DAY THAT SHE DISAPPEARED. THEREFORE, I GUESS I PRESUME THAT SOME INJURY OCCURRED TO HER THAT CAUSED HER TO BLEED, IN MR. CRAIN'S BATHROOM AND TO GET THE BLOOD ON HIS SHORTS, BUT WE DON'T KNOW THE NATURE AND CAUSE OF THAT JURY, WHICH IS WHY WE CANNOT INFER, FROM THE EXISTENCE

OF THE JURY, -- OF FROM THE EXISTENCE OF THE INJURY, THAT THERE WAS AN INTENT TO KILL.

WOULD THE AMOUNT OF BLOOD, DO WE KNOW HOW MUCH BLOOD WE ARE TALKING ABOUT ESTABLISHED? THE TESTIMONY OF HER HAVING A LOOSE TOOTH OR SOMETHING THAT HE WANTED TO PULL OUT, CRAIN WANTED TO PULL OUT.

WELL, MR. CRAIN TESTIFIED THAT HE THOUGHT THAT THAT WAS WHERE THE BLOOD CAME FROM, YES, BUT, MRS. HARTMAN TESTIFIED THAT, WHILE THE TOOTH WAS LOOSE, IT WAS NOT BLEEDING. AND, BUT THE POINT IS THAT NO MATTER WHAT QUANTITY OF BLOOD MAY HAVE BEEN IN MR. CRAIN'S BATHROOM, AND WE CAN'T KNOW THAT THERE WAS ANYMORE THAN THE FEW SMALL STAINS THAT WERE ACTUALLY DISCOVERED, BECAUSE LUMINAL REACTS TO BLEACH AND THAT COULD EXPLAIN WHY THE WALLS AND THE TUB AND EVERYTHING GLOWED, WAS IT WAS SIMPLY REACTING TO THE LARGE AMOUNT OF BLEACH THAT HAD TO HAVE BEEN PRESENT BECAUSE THE STRONG ODOR OF BLEACH IN THE BATHROOM.

LET ME ASK YOU, AS FAR AS A REASONABLE INFERENCE, HE ADMITTED THAT HE SPENT FOUR HOURS CLEANING THE BATHROOM FROM 1:30 TO 5:30 IN THE MORNING. THERE WAS, AS YOU SAID, A LARGE AMOUNT OF BLEACH ALL THROUGHOUT THE BATHROOM. WHY ISN'T IT A REASONABLE INFERENCE THAT THERE WAS, IN FACT, A LARGE AMOUNT OF BLOOD, AND THAT HE JUST SIMPLY MISSED THE TWO OR THREE PLACES THAT THE STATE, BECAUSE HE TOOK FOUR HOURS CLEANING THE WHOLE BATHROOM WITH BLEACH IN THE MIDDLE OF THE NIGHT?

YOUR HONOR, BECAUSE, ONE, THE FACT THAT HE CLEANED HIS BATHROOM WITH BLEACH DOES NOT PROVE THAT THERE WAS A LARGE AMOUNT OF BLOOD TO BE CLEANED UP. BUT ANY AMOUNT OF BLOOD IN THE BATHROOM WOULD NOT ESTABLISH HIS INTENT TO KILL AMANDA BROWN. IF HE ACCIDENTALLY INJURED HER, IF HE INJURED HER WITHOUT INTENT TO KILL BUT INTENTIONALLY INJURED HER, SHE MAY HAVE BLED EXTENSIVELY. AND THAT, BUT THAT DOESN'T MEAN THAT HE INTENDED TO KILL HER, AT THE TIME THAT SHE WAS INJURED IN SUCH A MANNER THAT CAUSED HER TO BLEED.

BUT THE WAY YOU OUTLINED THIS, IT REALLY DOESN'T DEMONSTRATOR DOES IT, THAT HE EVEN ENTERED HER. -- THAT HE EVEN INJURED HER. I MEAN, THERE WAS BLOOD.

SHE COULD HAVE INJURED HERSELF, FOR ALL WE KNOW FROM THE EVIDENCE.

SO IT GOES BACK TO, YOU KNOW, IT SOUNDS LIKE WHAT YOU ARE REALLY SAYING, ALTHOUGH YOU HAVE CONCEDED, THAT THERE IS NO EVIDENCE OF ANY KIND OF HOMICIDE HERE OR ANY DEGREE OF KILLING.

THAT IS ACTUALLY TRUE, YOUR HONOR.

LET ME ASK, MR. HELM, WOULD YOU AGREE THAT THERE IS A SUFFICIENT EVIDENCE HERE, TO CONCLUDE THAT THERE WAS AN ABDUCTION?

AN ABDUCTION? YES.

OKAY. THEN --

BUT AN ABDUCTION WITHOUT A SPECIFIC INTENT IS ONLY FALSE IMPRISONMENT.

BUT IF THE, WOULD THE AMOUNT OF BLOOD, IF THIS, IF, OTHER THAN THE PROBLEM THAT YOU POINTED OUT WAS THE INDICTMENT, THAT WITH THE ABDUCTION AND THE BLOOD, AND THE FACT THAT THE AGE OF THE CHILD, WOULD THAT BE SUFFICIENT TO HAVE A PRIMA FACIE CASE OF KIDNAPING?

WITH WHAT INTENT, YOUR HONOR?

WELL, WITH THE INTENT TO TERRORIZE, WITH THE BLOOD.

THAT WOULD BE A VERY CLOSE QUESTION. BUT IT IS NOT A QUESTION A THIS -- IT IS NOT A QUESTION THIS COURT NEEDS TO ANSWER, BECAUSE IN FACT MR. CRAIN WAS NEVER CHARGED WITH THAT INTENT.

I UNDERSTAND.

AND IT WOULD BE A VIOLATION OF DUE PROCESS TO CONVICT HIM OF A CRIME NOT CHARGED. IT IS REALLY THAT SIMPLE. IF THE COURT -- OH, I WOULD LIKE TO BRIEFLY ADDRESS THE RING ISSUE THAT WAS RAISED, BECAUSE THE RING ISSUE IN THIS CASE IS APPARENTLY VERY SIMILAR TO THE RING ISSUE IN THE PRIOR CASE.

BUT YOU HAD A 12-0 JURY VERDICT ON THE --

ON THE KIDNAPING.

ON THE JURY RECOMMENDATION.

YES. BUT --

I WANT TO KNOW HOW THAT IS SIMILAR. THAT MEANS YOU HAD AN UNANIMOUS VERDICT ON THE SENTENCE OF DEATH.

YOUR HONOR --

SORRY. GO AHEAD.

WHAT I WAS GOING TO POINT OUT WAS THAT THE PROBLEM IN MR. CRAIN'S CASE WITH THE, IS THE DEATH PENALTY STATUTE, ITSELF. THE STATUTE, ITSELF, IS UNCONSTITUTIONAL, BECAUSE IT DOES NOT REQUIRE WHAT RING REQUIRES. THE STATUTE DOES NOT REQUIRE THE JURY TO MAKE A FINDING BEYOND A REASONABLE DOUBT, OF ANY ONE SPECIFIC AGGRAVATING CIRCUMSTANCE, AND BECAUSE IT IS A STATUTE, ITSELF THAT, IS UNCONSTITUTIONAL, MR. CRAIN CANNOT BE EXECUTED PURSUANT TO THAT STATUTE.

CHIEF JUSTICE: THANK YOU. STATE.

GOOD MORNING. SCOTT BROWNE FOR THE STATE OF FLORIDA. YOUR HONORS, THERE IS NO REASONABLE INNOCENT EXPLANATION FOR AMANDA'S BLOOD TO BE FOUND IN APPELLANT'S BATHROOM.

WHY DON'T YOU FIRST TELL US ALL OF THE EVIDENCE THAT YOU SUBMIT CAN LEAD US TO AGREE THAT THIS IS A PREMEDITATED MURDER CASE.

OKAY, YOUR HONOR. I WILL START WITH HE LEFT HIS TRUCK RUNNING FOR AT LEAST FIVE MINUTES. THAT IS THE TIME PERIOD IN WHICH HE IS CHECKING AT 2:30 IN THE MORNING, WHETHER OR NOT EC --.

TRUCK RUNNING. -- WHETHER OR NOT EC --.

TRUCK RUNNING. BECAUSE AS I REMEMBER THE MOTHER'S TESTIMONY, SHE SAID THEY ALL CAME INTO THE HOUSE AND THE DAUGHTER WENT IN AND TOOK A SHOWER AND THEY DID HER HAIR AND SHE LAID DOWN WITH THE DAUGHTER AND THEN HE CAME INTO THE ROOM, ALSO. I DON'T RECALL ANYTHING ABOUT WHETHER, WHEN THEY LEFT THE TRUCK, THE TRUCK WAS LEFT

RUNNING OR DID HE GO OUT AT 2:30 IN THE MORNING AND START IT AND GO BACK IN AND PICK THE CHILD UP? I AM AM NOT SURE HOW THE TRUCK RUNNING REALLY FITS.

YOUR HONOR, THERE IS NO TESTIMONY THAT HE LEFT THE TRUCK RUNNING. IN FACT, THE NEIGHBOR, AT ABOUT 2:30, MICHELLE ROGERS IS THE ONLY ONE THAT PLACED IT AT ABOUT 2:FOR IN THE MORNING, BUT TWO NEIGHBORS HEARD THAT TRUCK RUNNING AND OBSERVED THE ENGINE RUNNING FOR FIVE MINUTES.

HOW DOES THAT TRUCK RUNNING SHOWS A PRECONCEIVED PLAN, PERHAPS, TO TAKE AMANDA FROM THE HOUSE?

YOUR HONOR, I THINK IT SHOWS THAT THIS WASN'T A SPUR OF THE MOMENT TAKING, THAT HE WENT, GOT THE TRUCK READY, BROUGHT IT AROUND, AND ONCE THIS 52-YEAR-OLD --

BUT THEN IF KIDNAPING HAD BEEN PROPERLY CHARGED, YOU HAVE A PLANNED KIDNAPING. HOW DO YOU HAVE A PLANED MURDER FROM TAKING SOMEBODY AT NIGHT FROM THE HOUSE?

YOUR HONOR, THIS IS A 52-YEAR-OLD MAN TAKING A SEVEN-YEAR-OLD CHILD FROM HER MOTHER'S BED. WHEN HE MADE THAT DECISION TO CROSS THE LINE AND TAKE HER, I SUBMIT TO YOU THAT AMANDA WAS NEVER COMING BACK AND APPELLANT WAS MAKING THAT PLAN.

JUSTICE SHAW HAS A QUESTION.

HOW DO YOU RESPOND TO THE ARGUMENT THAT CRAIN CANNOT BE CONVICTED OF A CRIME THAT WAS NOT CHARGED BY THE GRAND JURY? DO YOU AGREE WITH THAT?

NO, YOUR HONOR, NOT AT ALL. HE WASN'T CONVICTED OF A CRIME WITH WHICH HE WAS NOT CHARGED. FIRST OF ALL, THE INSTRUCTION THAT HE IS COMPLAINING ABOUT WAS THE FELONY MURDER INSTRUCTION. IN OTHER WORDS,, THERE WAS A FELONY MURDER INSTRUCTION OF FIRST-DEGREE, PREMEDITATED MURDER INSTRUCTION AND THEN THERE IS A KIDNAPING INSTRUCTION ON A SEPARATE COUNT. NOW, OLT KIDNAPING INSTRUCTION, IT -- ON THE KIDNAPING INSTRUCTION, THE TRIAL COURT INSTRUCTED EXACTLY AS CHARGED, WITH INTENT TO EITHER COMMIT A HOMICIDE OR TO FACILITATE THE COMMISSION OF A HOMICIDE.

DO YOU AGREE, I GUESS, GOING BACK TO THIS, BECAUSE THIS SEEMS LIKE A VERY GOOD CASE FOR KIDNAPING WITH INTENT TO TERRORIZE OR INFLICT BODILY HARM AND WE WOULDN'T BE ALL-AROUND, BUT THE STATE DIDN'T CHARGE IT.

IT COULD HAVE BEEN CHARGED DIFFERENTLY. CORRECT.

GOING BACK, IS THAT SOMETHING, THE STATE IS NOT ARGUING THAT WE COULD SOMEHOW FOUND THIS -- FIND THIS TO BE A KIDNAPING WITH INTENT TO TERRORIZE AND THAT THAT WOULD BE OKAY?

I SUBMIT TO YOU THAT IT COULD BE INTENT FOR FELONY MURDER TO COMMIT BODILY HARM AND HERE IS WHY I SAY. THAT NUMBER ONE --

UNDER THE INDICTMENT IN THIS CASE?

UNDER THE INDICTMENT IN THIS CASE, AND THE REASON I SAY THAT, YOUR HONOR, IS THE STATE CRIED A NUMBER OF CASES WHERE THE STATE IS NOT EVEN REQUIRED, UNDER FELONY MURDER THEORY, TO CHARGE UNDER LYING FELONY. UNDER FELONY MURDER IT IS A CRIME TO COMMIT A MURDER IN THE COURSE OF ANY KIDNAPING. ANY KIDNAPING MEANS JUST THAT.

WHEN DOES THE DEFENDANT KNOW THAT WAS THE FORM OF KIDNAPING THE STATE WAS GOING

TO RELY ON TO ARGUE TO THE JURY?

WELL, YOUR HONOR, HE KNEW. HE READ THE INSTRUCTIONS. THE DEFENSE ATTORNEY HAD NO OBJECTION TO IT, AND ALSO, YOU ARE ON NOTICE, YOUR HONOR, TO DEFEND AGAINST BODILY HARM IN THIS CASE, WHEN THEY CHARGE INTENT TO KIDNAP WITH INTENT --

I DIDN'T GET THAT. IS THAT THE STATE'S ARGUMENT? THAT IS THAT SOMEHOW THAT THIS REALLY, THE FELONY MURDER KIDNAPING, REALLY WAS ONE THAT WAS AN INTENT TO COMMIT BODILY HARM ALL ALONG, AND --

NO, YOUR HONOR. THAT, BEFORE THIS COURT SAYING THERE IS AMPLE EVIDENCE OF PREMEDITATION IN THIS RECORD. I AM GOING TO ADDRESS THAT, BUT I WILL SAY THIS COURT SHOULD NOT REVERSE A CASE BASED UPON AN INSTRUCTION ISSUE, AN INSTRUCTION THAT WAS LEGALLY CORRECT, ENTIRELY PROPER AND NOT OBJECTED TO AT TRIAL.

BUT AGAIN, CAN WE GO BACK TO YOU HAVE GIVEN US, YOU SAY THERE ARE CASES THAT YOU DON'T HAVE TO SPECIFY.

THERE ARE, YOUR HONOR.

WHAT IF YOU DO, IF THERE IS A DIFFERENCE THAT IT WAS SPECIFIED IN THE INDICTMENT, AS APPARENTLY IT WAS HERE, IS THAT TREATED DIFFERENTLY?

I DIDN'T FIND THAT, BUT IF THAT WERE THE CASE, IT WOULD AND CASE OF FUNDAMENTAL ERROR, SO IF THIS COURT WERE TO ARTICULATE A RULE BASED, TO SPECULATE, AND WE DON'T KNOW WHAT THE JURY FOUND. THE JURY FOUND ONLY WITH THE CHARGED INTENT, EITHER TO COMMIT OR FACILITATE A HOMICIDE. AND THE JURY FOUND HIM GUILTY. AND WE PRESUME THAT THE JURY FOLLOWED INSTRUCTIONS.

HOW DO WE KNOW THAT THE JURY DIDN'T CONSIDER THAT HE COMMITTED FELONY MURDER BY KIDNAPING WITH INTENT TO INFLICT BODILY HARM?

IF THE JURY DID, AND I AM SAYING, NO, THERE WAS AMPLE EVIDENCE AGAIN OF PREMEDITATION. HOWEVER, EVEN IF THE JURY DID, IT IS A LEGALLY-CORRECT CHARGE. FELONY MURDER, WE COULD GO IN A IN WITH A MURDER CHARGE AND -- WE COULD GO IN WITH A MURDER CHARGE AND NOT EVEN TELL YOU WHAT THE FELONY IS. UNDER KIDNAPING, THERE IS PRIOR CASE LAW --

WHAT IS THE INTENT THAT THE STATE ACTUALLY ARGUED BEFORE THE JURY?

IT WAS TO COMMIT OR FACILITATE HOMICIDE. THAT IS THE ONE ARGUED TO THE JURY. THAT IS THE INTENT THAT THE JURY ACTUALLY CONVICT ODD IN THIS CASE.

SO YOU DON'T THINK THAT, THAT WAS THE ARGUMENT THAT WAS MADE, THAT WAS THE CHARGE THAT WAS MADE, BUT THEN YOU END UP TELLING THE JURY THAT, WELL, IN ESSENCE, IF YOU DON'T BELIEVE THAT THERE WAS A HOMICIDE, BUT BODILY HARM WAS INFLICTED, THEN YOU HAVE FELONY MURDER ON THAT BASIS.

WELL, YEAH, IF YOU HAD THE INTENT TO EITHER COMMIT HOMICIDE OR BODILY HARM, BUT AGAIN THERE IS NO PREJUDICE HERE. IF YOU ARE TALKING ABOUT FUNDAMENTAL ERROR, I COULD GET UP HERE AND TELL YOU FIVE REASONS WHY IT CAN'T BE, AND AGAIN THE DEFENDANT WAS ON NOTICE TO DEFENDANT AGAINST BODILY HARM. HOMICIDE IS A SERIOUS FORM OF BODILY HARM. THERE IS NO PREJUDICE TO THE DEFENDANT: IT IS UNOBJECTED-TO INSTRUCTION.

COULD THE STATE HAVE CHARGED KIDNAPING WITH THE INTENT TO COMMIT MURDER, GO

THROUGH THE TRIAL, AND THEN ARGUE TO THE JURY THAT WE ARE NOT SURE IF WE HAVE PROVEN KIDNAPING WITH INTENT TO COMMIT MURDER, BUT WE KNOW WE HAVE PROVEN KIDNAPING WITH INTENT TO TERRORIZE, SO YOU CAN FIND IT ON ALTERNATIVE THERE IS?

THAT IS A CLOSER QUESTION. IT WOULD, THAT MIGHT BE A MORE DIFFICULT QUESTION. I SUBMIT PROBABLY YES.

BUT UNDER MR. HELM'S DUE PROCESS REQUIREMENT, SO THAT IS REALLY WHERE --

IF THERE ARE TWO REALLY CLOSELY-RELATED INTENTS, AND THERE HIS CASE MILLS THAT HE CITED AND THAT THERE WAS AN INTENT THAT WAS NOT CHARGED AND NOT EVEN ARGUED TO THE JURY, AND I BELIEVE IT WAS THE THIRD DISTRICT SAID THAT IS NOT PROPER, BUT IF YOU HAVE TWO CLOSELY-RELATED INTENTS, THAT, I THINK, WOULD BE OKAY, BUT AGAIN THAT ISN'T THE CASE HERE. WE HAVE --

GET US BACK TO THE STRONGEST PIECE OF EVIDENCE THAT YOU HAVE THERE, TO, FROM WHICH THERE COULD BE AN INFERENCE OF INTENT.

YOUR HONOR, THE STATE'S VERY COMPELLING BLOOD EVIDENCE. REMEMBER IN THIS CASE, THAT YOU HAVE TWO STAINS ON THE TOILET SEAT. ONE WAS ONLY AMANDA'S BLOOD. ONE WAS CONSISTENT WITH A COMBINATION OF AMANDA AND APPELLANT'S BLOOD. YOU HAVE ANOTHER TISSUE DOWN IN THE TOILET BOWL, WHICH IS, AGAIN, A COMBINATION OF BLOOD. THIS TELLS US THAT THEY WERE BOTH BLEEDING AT THE SAME TIME. THERE WAS A STRUGGLE IN THAT BATHROOM, AND HERE AGAIN, WE DON'T, THE STATE IS ENTITLED TO EVERY FAVORABLE INFERENCE FROM THE RECORD. NOW, THE DEFENDANT OPINES THAT MAYBE HE WAS JUST CLEANING THE BATHROOM AND THE BLEACH? YOU CAN'T INFER ANYTHING FROM THAT? WRONG. YOU KNOW WHAT WE CAN INFER FROM THAT? THERE WAS A BLOODBATH IN THAT BATHROOM. WHEN IT WAS SPRAYED WITH LUMINAL, IT LIT UP LIKE A CHRISTMAS TREE AND IT WAS VERY TRARINGT TARGETED -- AND IT WAS VERY TARGETED CLEANING. THERE IS EVIDENCE TO SHOW THAT THERE WAS AN ATTEMPT BY DEFENDANT TO CLEAN UP A MUCH LARGER SPILL OF BLOOD. FIRST OF ALL, WHEN ASKED ABOUT THE BLEACH SMELL IN HIS BATHROOM WHICH WAS OVERPOWERING WHEN DETECTIVE BRACKET ENTERED THAT BATHROOM, THE DEFENDANT IN HIS FIRST STATEMENT TO POLICE SAID I SPILLED A LITTLE BLEACH ON THE FLOOR. I DON'T LIKE BLEACH. I HAD TO CLEAN IT UP. HE CHANGES HIS STORY. LATER ON IN THAT VERY STATEMENT, HE GOES WELL, I DECIDED TO CLEAN MY BATHROOM LIKE I NORMALLY DO, WITH BLEACH. HE WAS CONFRONTED WITH THAT INCONSISTENCY, AND HE BECAME BELLIGERENT AND ACCUSED THE DETECTIVES OF A FRAME UP, SO YOU HAVE EVERY REASON NOT TO BELIEVE APPELLANT'S SELF-SERVING STATEMENT THAT HE WAS CLEANING THE BATHROOM. IT MAKES FOR SENSE IN THIS CASE TO -- IT MAKES NO SENSE IN THIS CASE TO CLEAN THE BATHROOM FOR FOUR HOURS.

LET'S SAY ABOUT THE CLEANING AND THE BLOODBATH IN THE BATHROOM, HOW DOES THAT DEMONSTRATE PREMEDITATION.

YOUR HONOR, WE ALWAYS INFER PREMEDITATION FROM THE CIRCUMSTANCES. THERE IS A RARE CASE WHERE THE DEFENDANT COMES IN AND SAYS I WITH MALISSA FORE THOUGHT DETERMINED TO END THIS INDIVIDUAL'S LIFE. THEY DON'T DO. THAT WE HAVE TO RELY ON THE CIRCUMSTANCES. THE CIRCUMSTANCES IN THIS CASE ARE VERY POWERFUL. THEY SHOW THAT A HEALTHY SEVEN-YEAR-OLD GIRL WAS BLEEDING AND A GREAT DEAL OF BLOOD WAS SHED. NOW, IF YOU LOOK AT THIS LIKE A PUZZLE, THERE MAY BE A COUPLE OF PIECES MISSING. WE DON'T KNOW WHAT IMPLEMENT HE USED BUT THERE WAS A TREMENDOUS BLOOD LETTING IN THAT BATHROOM, AND WE KNOW THAT SEVEN-YEAR-OLD GIRLS WHO ARE HEALTHY AND WHO ARE NOT BLEEDING, THAT DOESN'T JUST HAPPEN.

COULD YOU HAVE, BASED ON THE ARGUMENT THAT THIS INTENT STARTED AT THE TIME THAT HE TOOK THE CHILD FROM THE HOUSE, IF YOU WOULD BE ARGUING THAT THERE COULD HAVE BEEN

CCP FOUND.

POSSIBLY AND DEPENDING ON THE --

WAS THAT EVER ARGUED?

NO. THAT WAS NEVER ARGUED OR INTENDED.

WHY WOULDN'T THAT, IF IT STARTED BACK THEN --

IF I MAY ARGUE, THE DEFENDANT WENT BACK TO THE PENALTY PHASE FOR A MOMENT, AND CCP WASN'T CHARGED, BUT THE PENALTY PHASE, IF YOU EVEN LOOK AT THAT, SHOWS THAT HE HAD BEEN CERTAINLY MOLESTED CHILDREN HIS WHOLE LIFE AND HE WENT TO PRISON FOR THAT.

WE CAN'T LOOK AT THAT IN THE GUILT PHASE.

DEFENDANT'S COUNSEL DID, WENT BACK. I COULD MAKE AN ARGUMENT FOR CCP. I AM NOT DOING THAT HERE. IT WASN'T FOUND AS AN AGGRAVATOR.

SO HOW FAR DOES THE PREMEDITATION HAVE TO GO, IF IT DOESN'T HAVE TO GO AS FAR BACK AS THE CAR OR AS FAR BACK AS THE BEGINNING OF THE EVENING, HOW FAR BACK DOES THE INTENT HAVE TO GO?

PREMEDITATION, YOUR HONOR, IS REALLY JUST A MOMENT'S REFLECTION, JUST LONG ENOUGH TO DETERMINE YOU HAVE TO MURDER SOMEONE. AND HERE IS ANOTHER INDICATION OF PREMEDITATION. I THINK I MISSED THIS IN MY BRIEF. WHERE DID THIS ATTACK TAKE PLACE IN APPELLANT'S HOME? IT DIDN'T TAKE PLACE IN THE LIVING ROOM, NOT HIS BEDROOM WITH HIS 100 CABLE CHANNELS. HE TOOK HER TO THE BATHROOM, AND WHY DID HE DO THAT? BECAUSE THE CLEANUP IS SO MUCH EASIER.

IS THERE ANY INDICATION OF ANY STRUGGLE OR ANYTHING IN HIS BEDROOM OR ANY OTHER PART OF THE APARTMENT?

NO.

THAT WAS COMBED, NO FINGERPRINTS, NO --

NO.

I GUESS IT COULD HAVE BEEN FINGERPRINTS BECAUSE SHE WAS THERE EARLIER.

YES. THERE WAS NO OTHER BLOOD EVIDENCE, SO HE TOOK HER RIGHT TO THE BATHROOM. HE MURDERED HER THERE AND THAT IS EVIDENCE OF PREMEDITATION. WHY PICK THE BATHROOM?

AN ACCIDENTAL KILLING IN THE BATHROOM. WHY COULDN'T SOMEHOW SHE HIT HER HEAD ON THE TOILET BOWL OR WHAT HAVE YOU?

YOUR HONOR, I WILL PUT IT TO THIS COURT THIS WAY.

THAT WOULD ACCOUNT FOR THE BLOOD?

YOUR HONOR --

AND THE DEFENDANT PANICKED AND THE BODY DISAPPEARED?

WELL, WE DON'T HAVE ANY EVIDENCE OF THAT, YOUR HONOR, BECAUSE THE DEFENDANT RELIED

ON A THEORY AT TRIAL AND NOW HE IS TRYING THEORY B THAT, WELL, IT COULD HAVE BEEN HEAT OF PASSION. HE LOST CONTROL, A 52-YEAR-OLD MAN WITH A SEVEN-YEAR-OLD CHILD.

I RECOGNIZE THAT THAT IS IMPROBABLE, BUT MY POINT IS THAT WHAT WE ARE DEALING IN IS SPECULATION, PURE SPECULATION, ISN'T IT, AS TO WHAT HAPPENED?

NO, YOU ARE NOT. I SUBMIT, YOUR HONOR, WE ARE NOT. A HUGE AMOUNT OF BLOOD LETTING. THE ONLY PIECE WE ARE MISSING IS WHAT HUGE TOOL HE USED TO CAUSE THE BLOOD LETTING, AND AGAIN THE APPELLANT IS ASKING THIS COURT WHAT WE ALWAYS WARNED JURIES GENT AGAINST.

WHAT CAUSED THE BLOOD LETTING?

THE WALLS IN THE BATHROOM, ALONG THE TOILET AND THE RUG. WE KNOW THAT HE SPENT FOUR HOURS, JUSTICE PARIENTE, CLEANING THAT BATHROOM.

WHAT CAUSED THE BLOOD LETTING?

I WOULD SUBMIT A REASONABLE INFERENCE WOULD BE A SHARP INSTRUMENT. NOT HIS FINGERNAILS. BLOOD WAS SPURTING AROUND THE TOILET AREA. WE KNOW THAT AGAIN, THIS IS A MINOR PIECE OF THAT PUZZLE THAT WE DON'T HAVE BECAUSE HE WANTED TO GET AWAY WITH THIS CRIME, AND HE COMMITTED IT IN A WAY TO MAKE IT MORE DIFFICULT FOR THE STATE TO PROSECUTE HIM, BUT HE LEFT ENOUGH EVIDENCE BEYOND FOR THE STATE TO PROVE PREMEDITATED MURDER, AND I SUBMIT TO YOU THAT THE ONLY REASONABLE VIEW OF THE EVIDENCE IN THIS CASE IS THAT CONSISTENT WITH PREMEDITATION, AND, AGAIN, THE APPELLANT IS ASKING THIS COURT TO DO WHAT WE WARNED JURIES AGAINST, DECIDING A CASE BASED ON FANCIFUL DOUBT, SPECULATIVE DOUBT, FORCED DOUBT. THIS COURT SHOULD NOT DO IT.

IF WE ACCEPT THE FACT THAT THERE WAS A GREAT DEAL OF BLOOD, WE STILL DON'T KNOW WHAT CAUSED IT, DO WE?

I SUBMIT TO YOU, YOUR HONOR, IT WAS AN INSTRUMENT, A GREAT DEAL OF BLOOD ISN'T COMING FROM HANDS PROBABLY. REMEMBER THE WALLS OF THE BATHROOM, AND WE KNOW IT IS A VERY TARGETED CLEANUP. THE TUB HE SPENT HOURS, MOST OF THE WHOLE BOTTLE OF BLEACH. HE TOOK THE CARPET --

WHAT WAS THE STATE'S PROOF IN THIS CASE? WHAT DID THE STATE HAVE TO PROVE, TO MAKE ITS CASE HERE?

THAT, FOR PREMEDITATED MURDER, YOUR HONOR, THAT HE HAD A MOMENT'S THOUGHT ABOUT KILLING AMANDA, AND I SUBMIT TO YOU THAT HE THOUGHT ABOUT IT. HE PLANNED IT, AND HE EXECUTED IT. HE TOOK HER TO THE BATHROOM, WHERE HE KNEW THE CLEANUP WAS EASY AND HE MURDERED HER THERE AND WE KNOW THAT AMANDA STRUGGLED WITH HIM AND STRUGGLED ON FOR HER LIFE, BECAUSE HE HAS SCRATCHES ON THE BACK OF HIS ARMS, AND HERE IS WHY THE STATE IS ENTITLEED TO EVERY FAVORABLE INFERENCE ALONG THE WAY IN AN INFERENCE CASE. THE ONLY INFERENCE TO BE GAINED BY THOSE SCRATCHES ON APPELLANT'S ARMS ARE THAT AMANDA STRUGGLED AND INFLICTED THOSE. DR. VEGA TESTIFIED THAT THE SPACING OF THE INJURIES WERE VERY CONSISTENT WITH THE FINGERNAILS OF A SEVEN-YEAR-OLD CHILD, AND THAT IS AMANDA FIGHTING THE APPELLANT, AND WE KNOW THE APPELLANT WAS BLEEDING AND WE KNOW THAT THOSE INJURIES WERE INFLICTED BETWEEN TWO HOURS AND A DAY, UP TO, AT THE MOST, TWO DAYS.

IT SEEMS TO ME THAT WE HAVE, HERE, MORE THAN JUST INFERENCES. WE HAVE INFERENCES ON INFERENCES. I MEAN, FIRST OF ALL, WE HAVE TO INFER THAT HE TOOK HER IMMEDIATELY TO THE BATHROOM AND THEN WE HAVE TO INFER HE DID WHAT TO HER, ONCE HE HE GOT HER INTO THE

BATHROOM? I AM HAVING A REAL PROBLEM WITH ALL OF THE THINGS THAT WE HAVE TO INFER HERE.

YOUR HONOR, WE CAN, EACH INFERENCE IS REASONABLE AND FOUNDED ON THE EVIDENCE. TWO INFERENCES CAN FLOW FROM ONE PIECE OF EVIDENCE IN THIS CASE. TO ME, TO DECIDE THIS CASE, BASED ON SOMETHING THAT WASN'T PRESENTED, LIKE SHE WAS, WELL, HE COULD HAVE, YOU KNOW, CHOKED HER DURING ROUGH SEX, A SEVEN-YEAR-OLD GIRL. THAT IS WRONG. THAT WASN'T PRESENTED AT TRIAL. THE STATE IS ONLY REQUIRED TO REBUT A REASONABLE HYPOTHESIS OF INNOCENCE. WE DON'T HAVE ANYTHING TO CONCLUDE THAT THIS WAS ANYTHING OTHER THAN APPELLANT'S INTENDED DESTRUCTION OF AMANDA BROWN.

YOU HAVE AN OBLIGATION, THOUGH, TO PRESENT SUFFICIENT CIRCUMSTANCES.

UP FRONT. PRIMA FACIE.

SO NOW LET'S JUST GO BACK TO THE QUESTION OF IT SOUNS TO ME LIKE YOUR STRONGEST -- IT SOUNDS TO ME LIKE YOUR STRONGEST STATEMENT HERE IS ABOUT THE LARGE AMOUNT OF BLOOD, AND I GUESS THE QUESTION THAT IS BEING ASKED IN DIFFERENT WAYS, IS WHAT ELSE ABOUT THE CIRCUMSTANCES THAT SAYS ASSUMING WE CAN SAY THERE IS A LARGE AMOUNT OF BLOOD BECAUSE OF THE LARGE AMOUNT OF BLEACH IN TARGETED AREAS, AND THE USE, AND CLEANING THE RUG AND THEN THE BLOOD THAT WAS FOUND, WHAT IS, WHY IS THAT INFERENTIALLY SHOWING THAT THIS WAS A PLANNED ATTACK, AS OPPOSED TO SOME KIND OF A RAGE REACTION OR SOMETHING THAT WOULD BE, THAT MR. HELM HAD INITIALLY CONCEDED EQUAL TO SECOND-DEGREE MURDER, AS OPPOSE ODD TO FIRST-DEGREE MURDER?

WELL, YOUR HONOR, IT, BECAUSE THERE WAS NO EVIDENCE OF A RAGE REACTION FROM THE APPELLANT. IF THE APPELLANT KNEW THAT, HE COULD HAVE PRESENTED THAT THEORY. HE DIDN'T. WHAT WE DO KNOW IS A LARGE AMOUNT OF BLOOD IS NOT SPILLED. THE LOGICAL INFERENCE, THE ONLY LOGICAL INFERENCE IS A TREMENDOUS BLOOD LETTING WHICH OCCURRED IN THAT BATHROOM DOESN'T ACCIDENTALLY HAPPEN. HE WASN'T PLAYING WITH A KNIFE AND ACCIDENTALLY NICKED HER.

NOW, LET'S GET BACK TO DOES THE STATE HAVE TO SHOW, TO GET TO THE JURY THAT, IT IS THE ONLY LOGICAL INFERENCE, OR, IS IT AT LEAST MORE THAN 50 PERCENT OF AN ADEQUATE INFERENCE?

I CITED SOME CASES. WE DON'T HAVE TO SHOW THAT IT IS THE ONLY LOGICAL INFERENCE. IF THAT WAS THE BURDEN PLACED ON THE STATE, VERY FEW CIRCUMSTANTIAL EVIDENCE CASES WOULD EVER GO TO THE JURY. WE ARE ONLY REQUIRED TO PRESENT A PRIMA FACIE CASE, INCONSISTENT WITH INNOCENCE H THAT IS IT.

TELL ME ABOUT THE TARGETED CLEANING. YOU SAID, WHERE, THE BLEACH IS NOT ALL OVER THE BATHROOM BUT JUST, TELL US WHERE WAS THE BLEACH?

NO, YOUR HONOR. IT IS INTERESTING, BECAUSE HE SPENT ALL THIS TIME CLEANING HIS BATHROOM BUT HIS SINK WAS DIRTY. HE DIDN'T BOTHER TO CLEAN THE TOILET. WHAT HE DID CLEANUP WAS THE AREA AROUND THE TOILET, TOOK THE RUGS UP, PUT THEM IN THE LAUNDRY, USED BLEACH IN THE LAUNDRY AND TOOK TWO CARPETS OUT OF THERE. THE BATHROOM TUB AND THE -- THE BATHTUB AND THE WALLS LIT UP LIKE A CHRISTMAS TREE, UNDER LUMINAL, SO WE KNOW IT WAS VERY TARGETED. HE SPENT A LOT OF TIME IN THAT BATHROOM CLEANING UP AND AGAIN, YOU CAN'T RELY ON THE APPELLANT'S STATEMENT THAT HE WAS CLEANING THE BATHROOM AS HE NORMALLY DOES, BECAUSE HE CONTRADICTED HIMSELF DURING HIS FIRST INTERVIEW.

YOU ARE SAYING NOT ALL OF THE BATHROOM WAS CLEANED.

NO. IT DOESN'T MAKE SENSE. THE STATE INTRODUCED A PICTURE OF THE SINK, AND THAT WASN'T CLEANED. HE DIDN'T CLEAN THE TOILET OBVIOUSLY, THANK GOODNESS, BECAUSE AMANDA'S BLOOD IS FOUND THEIR.

THERE WASN'T LUMINAL IN THE TOILET?

I THINK THE TESTIMONY WAS EVERYTHING, ESPECIALLY RIGHT AROUND THE TOILET, LIT UP. THE TUB, THE WALLS AROUND THE TUB LIT UP, AND IF I CAN GET BACK, AND THEN HE TOOK THE CARPETING OUT. I MEAN, WHAT ARE WE TO CONCLUDE FROM THAT? THAT HE IS JUST CLEANING HIS BATHROOM? AS HE NORMALLY DOES? NO. THE JURY WAS NOT REQUIRED.

I THOUGHT MR. HELM SEEMED TO CONCEDE THAT SHE PROBABLY DIED IN THE BATHROOM.

YES, HE DID.

AND WE ARE STILL GOING BACK TO THIS QUESTION OF WHETHER THERE IS ENOUGH TO SHOW THAT SOMEWHERE BEFORE THE ATTACK, THE FINAL ATTACK STARTED, THAT THERE WAS AN INTENT TO KILL. NOW, THERE IS EVIDENCE OF A STRUGGLE. WE HAVE HAD CASES THAT SAY A STRUGGLE IS CONSISTENT WITH PREMEDITATION, ABSENCE OF STRUGGLE IS CONSISTENT WITH PREMEDITATION. WHAT IS THE, HOW DO WE USE THE EVIDENCE OF A STRUGGLE IN THIS CASE TO ESTABLISH --

YOUR HONOR, STRUGGLE CASES, I HAVE LOOKED AT THOSE AND HAVEN'T FOUND ONE INVOLVING A CHILD. THIS IS A 52-YEAR-OLD MAN AND A 42-YEAR-OLD CHILD.

42 POUND.

4 POUND. I AM SORRY. YES -- 42 POUND. I AM SORRY. YES. AND THE STRUGGLE CASES, LIKE THE APPELLANT CITED, THEY ARE ALL DRINKING AND THERE IS A PROVOCATION. THE DEFENDANT THINKS THAT THE VICTIM WAS THREATENING HIM. YOU DON'T HAVE THAT HERE. AGAIN, WHAT, THE ONLY EVIDENCE YOU DO HAVE IS CONSISTENT WITH THE APPELLANT MURDERING AMANDA BROWN AND TAKING STEPS, IMMENSE STEPS TO GET AWAY WITH IT, TO DESTROY HER BODY, AND HE DID. HE SUCCESSFULLY DISPOSED OF HER BODY.

CAN YOU PROVE THE PREMEDITATION BY THE ATTEMPT TO CONCEAL THE EVIDENCE OF THE HOMICIDE?

NOT SOLELY, YOUR HONOR, NO. NOT SOLELY, AND THIS COURT HAS, CANDIDLY THIS COURT HAS SAID THAT CONCEALMENT ALONE, AND I AM NOT FOCUSING ON CONCEALMENT. I AM FOCUSING ON THE BLOOD EVIDENCE, BUT, AGAIN, YOU HAVE A CASE OF A 52-YEAR-OLD MAN TAKING A 7-YEAR-OLD CHILD. WHAT WAS HE GOING TO DO? BRING HER BACK IN THE MORNING? TAKE LOWER TO SCHOOL? NO. HE WAS GOING -- TAKE HER TO SCHOOL? NO. HE WAS GOING TO MURDER HER. THE MOMENT HE DECIDED HE WAS GOING TO TAKE HER, AMANDA'S DEATH SENTENCE WAS SIGNED RIGHT THEN AND THERE, BY WILLIE CRAIN. AND AGAIN IF I CAN FINISH UP ON THE SCRATCHES, THE APPELLANT, WHEN ASKED ABOUT THE SCRATCHES IN HIS FIRST INTERVIEW BY THE POLICEEST, DIDN'T HAVE AN ANSWER. THEY GO -- BY THE POLICE, HE DIDN'T HAVE AN ANSWER. THEY GO SHOW ME HOW YOU GOT THOSE SCRATCHES FROM CRABING. HE WAITED TWO MINUTES. ACTUALLY HOW DID YOU GET THOSE SCRATCHES. HE WAITED TWO MINUTES BEFORE RESPONDING AND HE GOES UH, CRABING, AND THEN WHEN DETECTIVE BRACKET ASKED HIM HOW DID YOU GET THOSE SCRATCHES ON YOUR ARM ON THE BACK FROM CRABING? HE WOULDN'T DO IT. HE COULDN'T DO IT, AND HE BECAME UPSET AGAIN, AND WE KNOW THOSE SCRATCHES WERE VERY RECENT, SO IF HE HAD JUST GOTTEN THOSE SCRATCHES CRABING, HE COULD HAVE DEMONSTRATED BUT HE DIDN'T, AND IT IS MORE LIKELY THAT IS AMANDA TELLING US WHO MURDERED HER.

BUT THE BOTTOM LINE WAS THE TESTIMONY RELATIVE TO THE SCRATCHES FROM THE EXPERTS IS THAT IT WAS INCONCLUSIVE.

I WOULDN'T SAY. THAT ANOTHER TESTIMONY WAS IT COULD HAVE COME FROM THE CRAB TRABS OR -- CRAB TRAPS OR SOMETHING ELSE INANIMATE OR IT COULD HAVE COME FROM SCRATCH SCRATCHES FROM A.M. AND.

YOUR HONOR, LOOK AT THE SPACE AND I ENCOURAGE THIS COURT TO LOOK AT THOSE PHOTOS, EXHIBITS 30-TO-34 AND LOOK AT THE SPACES OF THOSE AND THE MEDICAL EXAMINER SAID SOME OF THESE ARE MORE LIKELY TO BE SCRATCH MARKS BECAUSE OF THE SPACING. THEY ARE GRASPING-TYPE INJURIES. SOME WERE PUNCTURE WOUNDS.

WHAT IS THE EXPERT?

THAT IS WHAT HE SAID.

WHAT WAS THE BOTTOM LINE OF THE EXPERT'S TESTIMONY.

SOME OF THEM WERE MORE CONSISTENT WITH A TWIG BUT SOME WERE MORE CONSISTENT WITH THE HAND, AND AGAIN IF YOU ARE ASKING THE STATE WHY ARE YOU ENTITLE ODD TO THAT INFERENCE, BY LAW THE STATE IS ENTITLED TO THAT FAVORABLE INFERENCE IN FAVOR OF THE VERDICT, AND I SUBMIT TO YOU THAT THAT IS CLEARLY, THOSE SCRATCH MARKS THAT HE HAD NO EXPLANATION FOR INITIALLY, THAT IS AMANDA. THAT IS AMANDA FIGHTING.

LET'S ASSUME YOU ARE CORRECT AND THOSE ARE AMANDA SCRATCHES AND LET'S ASSUME FURTHER, THAT THERE IS EVIDENCE AFTER STRUGGLE. ISN'T IT JUST AS CONSISTENT WITH SECOND-DEGREE MURDER AS FIRST-DEGREE MURDER?

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I SUBMIT AGAIN NO, BECAUSE YOU HAVE GOT A 42 POUND GIRL. DID HE LOSE IT? AGAIN YOU HAVE GOT THE BLOOD EVIDENCE. IF WE DON'T HAVE ANY EVIDENCE THAT HE CLEANED UP THE BATHROOM AND JUST A COUPLE OF DROPS OF BLOOD, WE COULD GO MAYBE HE HIT HER A COUPLE OF TIMES ON THE HEAD AND THEN WENT AND DISPOSED OF THE BODY BUT WE DON'T HAVE THAT. WE KNOW THAT HE SPENT A HECK AFTER LOT OF TIME CLEANING UP EVIDENCE IN THE BATHROOM AND THAT WAS CLEANING UP BLOOD EVIDENCE AND UNFORTUNATELY WHAT WAS FOUND ON HIS BOAT AND THIS GOES TO CONCEALMENT BE NOT PREMEDITATION, BUT EVERY PIECE FITS HERE. WE -- HE WENT OUT CRABING IN THE MORNING AND BEFORE DAYLIGHT AND BEFORE THE TIME HE NORMALLY DOES AND DISPOSES OF AMANDA'S BODY IN THE BAY AND HE KNOWS HE INTENDS TO DO IT AND WHAT ELSE DOES HE GET RID OF? HE GETS RID OF HIS CLOTHES, BECAUSE CRABER DARLINGTON INDICATES THAT WHEN HE CAME OUT IN HIS BOAT HE WAS WEARING DRESS CLOTHES, A TWO-TONED MAROON DRESS SHIRT AND DRESS SLACKS. THOSE ARE NOT THE KIND OF CLOTHES THAT YOU WEAR CRABING.

ARE THOSE THE KIND OF CLOTHES THAT HE WAS WEARING?

THE MOTHER, HE -- WE KNOW HE WAS WEARING DRESS SLACKS AND THAT IS CONSISTENT WITH WHAT THE CRABER DARLINGTON SAID. WE KNOW THAT HE WAS WEARING DRESS SHIRT.

WAS THERE EVIDENCE OF BLOOD FOUND ON THE BOXER SHORTS?

YES, YOUR HONOR. FOUND ON THE BOXER SHORTS THAT MR. CRAIN WAS WEARING WHEN HE WAS FISHING TO CRAPS. -- FOR CRABS. IN OTHER WORDS GETTING RID OF AMANDA'S BODY AND HE CHANGED OUT ON THE BOAT. THEY WERE NEVER FOUND, AND WAS WEARING DRESS LOAFERS, AND THE CRABERS SAID THEY HAD NEVER SEEN WILLIE CRAIN GO OUTDRESSED LIKE HE IS GOING

TO A NIGHTCLUB WHEN CRABING, BUT LESS THAN TWO HOURS LATER TO POLICE HE CHANGED HIS CLOTHES, INTERVIEWED BY POLICE, AND HE IS WEARING A T-SHIRT.

ISN'T IT REASONABLE TO INFER THAT WHAT HE WAS DOING FROM 6:30 IN THE MORNING TO WHEN HE WAS FOUND IS DISPOSING OF THE VICTIM'S BODY?

YES, YOUR HONOR.

HOW DOES THAT MAKE IT MORE LIKELY THAT THIS WAS A PREMEDITATED THAN A SECOND-DEGREE MURDER?

YOUR HONOR, BECAUSE HE GETS RID OF HIS CLOTHES. WHAT IS ON THE CLOTHES? BLOOD. THE STATE SUBMITS A LOT OF BLOOD.

BUT ANYBODY THAT WOULD BE, HAVE DONE SOMETHING, A MURDER, BUT THEN DECIDES THAT THEY ARE NOT GOING TO 'FESS UP BUT GOING TO GET RID OF THE BODY, THAT DOESN'T ELEVATE A SECOND-DEGREE MURDER TO A PREMEDITATED MURDER.

YOUR HONOR, HOW DO YOU GET A LARGE AMOUNT OF BLOOFD SPILLED? DOESN'T ACCIDENTALLY HAPPEN. IT DOESN'T ACCIDENTALLY HAPPEN. SHE IS A SEVEN-YEAR-OLD HEALTHY GIRL. THERE IS BLOOD ALL OVER THAT BATHROOM. IT LIT UP.

IT SEEMS TO ME THAT THE TWO ISSUES THAT WE NEED TO FOCUS ON WOULD BE THE ISSUE OF THE BLOOD IN THE BATHROOM AND THE SCRATCHES.

YES, YOUR HONOR.

TO CHANGE THIS FROM SECOND-DEGREE TO FIRST-DEGREE.

WELL, YOUR HONOR, WE DON'T HAVE TO CHANGE IT. IT WAS FIRST-DEGREE. THAT IS WHAT THE JURY FOUND. THAT IS WHAT THE JUDGE FOUND. THAT IS WHAT HE IS GUILTY OF. YES. WE ASK THAT YOU AFFIRM THAT CONVICTION. THERE IS ENOUGH EVIDENCE HERE. IT IS CIRCUMSTANTIAL BUT IN MOST CASES PREMEDITATION MUST BE ESTABLISHED THROUGH CIRCUMSTANTIAL EVIDENCE. AND I WILL BRIEFLY ADDRESS THE APRENDI ISSUE OF, IN THE EVENT THAT RING HAS SOME APPLICATION TO FLORIDA LAW AND THE STATE IS NOT SUBMITING THAT IT HAS ANY. THERE WAS A 12-0 JUSTICE PARIENTE, THERE WAS A 12-0 VOTE HERE. YOU HAVE PRIOR VIOLENT FELONY CONVICTIONS. YOU HAVE FIVE COUNTS OF SEXUAL BATTERY. YOU HAVE ONE COUNT OF AGGRAVATED CHILD ABUSE, AND YOU ALSO HAVE THE VICTIM WAS UNDER THE AGE OF TWELVE. THE AGGRAVATORS WERE EITHER NECESSARILY FOUND BY THE JURY, AS IN KIDNAPING OR PRIOR VIOLENT FELONIES, YOU HAD JURY TRIALS IN THAT CASE. RING IS NOT IMPLICATED, AND IN THE CASE OF THE FINAL AGGRAVATOR, THE CHILD UNDER TWELVE, IT IS UNDISPUTED, IT WAS FOUND. IT WASN'T DISPUTED AT TRIAL.

COUNSEL, WITH REGARD TO THE CLEANUP, WHERE WOULD YOU DIRECT THAT WE LOOK FOR THE PHYSICAL EVIDENCE, AND I HAVE NOT SEEN THE PHOTOGRAPHS. DO WE HAVE PHOTOGRAPHS OF THE BATHROOM?

YES, YOUR HONOR.

AND DOES THE LUMINAL SHOW IN THE PHOTOGRAPHS?

NO. WE HAVE THE EVIDENCE OF LUMINAL. WE HAVE THE TESTIMONY FROM DETECTIVE HUNT THERE THAT SPECIFIES THE AREAS THAT LIT UP.

SO WE HAVE TO SPECIFICALLY GO TO HIS TESTIMONY.

YES, YOUR HONOR.

AND THAT IS THE ONLY PLACE THAT WE WOULD NEED TO DO GO FOR THAT ASPECT. -- NEED TO GO FOR THAT ASPECT.

YES, YOUR HONOR, AND AGAIN THE DNA WAS UNCHALLENGED. THE BLOOD EVIDENCE IS COMPELLING IN THIS CASE, AND THE STATE ASKS THAT THIS COURT AFFIRM MR. CRAIN'S MURDER AND KIDNAPING CONVICTIONS, AS WELL AS THE RESULTING DEATH SENTENCE. THANK YOU.

CHIEF JUSTICE: MR. HELM.

MAY IT PLEASE THE COURT. I HAVE A FEW ADDITIONAL COMMENTS ABOUT THE STATE'S BLOOD EVIDENCE. NOW, WHAT THE OFFICER WHO SPRAYED THE ALUM NATURAL TESTIFIED AND WHAT THE STATE'S FDLE DNA EXPERT TESTIFIED IS THAT ALUM NATURAL REACTS THE -- IS THAT LUMINAL REACTS THE SAME WAY TO BLOOD OR TO BLEACH. IT GLOWS. NOW, AS, THE DETECTIVE BRACKET TESTIFIED THAT THERE WAS A VERY STRONG ODOR OF BLEACH IN THAT BATHROOM. WHEN THERE IS A VERY STRONG ODOR OF BLEACH, THAT IS BECAUSE BLEACH IS A VERY VOLATILE LIQUID. IT EVAPORATES READILY INTO THE AIR, AND WHEN IT EVAPORATES THAT, PUTS DROPLETS OF BLEACH THROUGHOUT THE AIR. THE DROPLETS OF BLEACH SETTLE ON VEILABLE SURFACES. NOW -- ON AVAILABLE SURFACES. NOW, THE --

AND THAT IS TESTIFIED TO BY THE PERSON, THE LUMINAL EXPERT?

THERE IS NO EVIDENCE OF THIS IN THE RECORD. THE EVIDENCE IS THAT LUNIMAL GLOWS IN REACTION TO BLEACH. I AM SAYING IT IS A MATTER OF COMMON KNOWLEDGE AND BASIC SCIENTIFIC PRINCIPLE THAT BLEACH READILY VAP RISES, AND WHEN IT DOES SO, IT SETTLES ON SURFACES. IF YOU HAVE -- VAP RISES, IT SETTLES ON SURFACES. IF YOU HAVE CLEANED YOUR OWN BATHROOM, THAT IS TRUE.

WE HAVE THE TESTIMONY THAT HE WAS BLEACHING HIS BATHROOM FOR FOUR HOURS IN THE MIDDLE OF THE NIGHT.

YES, YOUR HONOR.

SO WE KNOW FROM HIS TESTIMONY THAT IT TOOK FOUR HOURS FOR HIM TO BLEACH HIS BATHROOM, AND WE CAN INFER THAT IT DOESN'T TAKE FOUR HOURS TO BLEACH ONE PART OF THE FLOOR IN THE BATHROOM THAT, HE MUST HAVE BEEN BLEACHING THE ENTIRE BATHROOM.

YES, THAT IS TRUE BUT THAT DOESN'T PROVE THAT THERE WAS BLOOD ANYWHERE IN THE BATHROOM.

WE CAN ASSUME THAT HE BLEACHED THOSE WALLS, BECAUSE HE TESTIFIED HE SPENT FOUR HOURS BLEACHING.

YOUR HONOR, I WILL GLADLY CONCEDE THAT HE BLEACHED THE WALLS. THAT DOESN'T PROVE THAT THERE WAS BLOOD ON THERE BEFORE HE BLEACHED THEM, BUT BESIDES THAT, WHAT IS MOST IMPORTANT TO NOTICE ABOUT THE BLOOD EVIDENCE IS THAT EVEN IF THERE WAS A BLOODBATH IN THE BATHROOM, AS THE STATE CON SENDS TENDZ -- AS THE STATE CONTENDS, THAT DOESN'T PROVE THAT IT WAS A PREMEDITATED KILLING OR THAT THERE WAS ANY INTENT TO KILL. IT, HE, IT COULD BE THAT MR. CRAIN ABDUCTED AMANDA BROWN, WITH THE INTENT TO BE WITH HER, TO, PERHAPS, FONDLE HER, PERHAPS TO GO FURTHER. IF HE DID SO, AND SHE STRUGGLED AND RECESSED AND SCRATCHED HIS ARMS, AS THE STATE CONTENDS, THEN HE MAY HAVE OVERREACTED TO THAT PROVOCATION, THE SCRATCHING OF HER ARMS, TO INFLICT, WITHOUT INTENDING TO DO SO, FATAL INJURIES UPON HER.

HOW DO YOU EXPLAIN, HOW DO YOU REBUT THE STATE'S ARGUMENT THAT THE INTENT OF PREMEDITATION CAN BE FORMED IN A MOMENT? IT DIDN'T HAVE TO GO AS FAR BACK AS THE CAR RUNNING. IT DIDN'T REALLY HAVE TO GO AS FAR BACK AS THE LIVING ROOM OR BEDROOM. IT COULD HAVE BEEN FORMED RIGHT THERE IN THAT BATHROOM.

YOUR HONOR, THAT IS ALWAYS TRUE. THAT IS ALWAYS TRUE, THAT THE INTENT CAN BE FORMED IN THE MOMENT OF THE KILLING. BUT THAT DOESN'T MEAN THAT, IN EVERY CASE WHERE SOMEONE IS KILLED, THAT THE STATE HAS PROVEN THAT IT WAS PREMEDITATED KILLING. THERE, THIS COURT HAS REVERSED NUMEROUS CASES BECAUSE THE STATE FAILED TO PROVE THE INTENT TO KILL.

LET'S SEE, IF WE HAD --

THIS ISN'T ONE OF THOSE CASES.

IF WE HAVE BLOOD, LET'S GO BACK AND WE ARE IN THE BATHROOM AND THERE IS A LOT OF BLOOD, AND HE HAS BROUGHT THIS CHILD INTO THE BATHROOM, WHAT TYPE OF KILLING OCCURS WITH A LOT OF BLOOD? YOU CAN'T, I MEAN, IT IS NOT A STRANGULATION. HE CAN'T, WITH HIS BARE HANDS, PRODUCE A GREAT DEAL OF BLOOD. THERE HAS GOT TO BE WOUNDS THAT CAUSE BLEEDING. THERE HAS TO BE AN INSTRUMENT.

YOUR HONOR, I BELIEVE ONE OF YOU SUGGESTED EARLIER IN THE ARGUMENT, THAT SHE COULD HAVE FALLEN AND HIT HER HEAD AGAINST SOMETHING HARD IN THE BATHROOM. THAT COULD BREAK HER SCALP OPEN AND CAUSE EXTENSIVE BLEEDING. THERE ARE ANY NUMBER OF WAYS THAT A PERSON CAN BE MADE TO BLEED.

ONCE YOU GET TO THAT THEN YOU ARE TALKING ABOUT THAT THIS KILLING COULD JUST AS EASILY HAVE BEEN ACCIDENTAL AS SECOND-DEGREE.

THE POINT IS THAT NO MATTER HOW MUCH BLOOD THERE WAS, THE PRESENCE OF BLOOD IN ANY AMOUNT, DOES NOT ESTABLISH AN INTENT TO KILL! IT IS ALSO CONSISTENT WITH THE DEPRAVED MIND KILLING. IT IS ALSO CONSISTENT WITH NEGLIGENT MANSLAUGHTER. IT IS CONSISTENT WITH AN ACCIDENT. IT IS CONSISTENT WITH ANY NUMBER OF SCENARIOS, AND THE STATE'S BURDEN IS TO PROVE BEYOND A REASONABLE DOUBT, THAT MR. CRAIN INTENDED TO KILL AMANDA BROWN, AND I REITERATE NO MATTER, HE HAS LONG LISTS OF EVIDENCE IN HIS BRIEF THAT HE CLAIMS ALL TAKEN TOGETHER, CONTRIBUTES TO ESTABLISH PREMEDITATION. WHAT I AM SAYING IS THAT, IF YOU LOOK AT EACH ITEM OF EVIDENCE SUGGESTED BY THE STATE TO ESTABLISH PREMEDITATION, THAT EACH INDIVIDUAL ITEM OF EVIDENCE DOES NOT ESTABLISH PREMEDITATION. EACH IS CONSISTENT WITH ANY KIND OF KILLING.

ALL THE CIRCUMSTANCES, WE DON'T JUST ISOLATE AND SAY THIS ONE DOESN'T, ALL THE CIRCUMSTANCES?

YOUR HONOR, I BELIEVE THIS COURT HAS RECOGNIZED THE PRINCIPLE THAT ZERO PLUS ZERO PLUS ZERO DOES NOT EQUAL ONE. YOU CAN'T GET TO PREMEDITATION BY ADDING TOGETHER CIRCUMSTANCES THAT DON'T ESTABLISH PREMEDITATION. THE CIRCUMSTANCES HAVE TO ESTABLISH PREMEDITATION.

LET ME ASK MY QUESTION, PLEASE.

YES, YOUR HONOR.

HE HAD BLOOD ON HIS BOXER SHORTS. WHAT IS THE INNOCENT EXPLANATION OF BLOOD ON THE BOXER SHORTS.

INNOCENT EXPLANATION? WE DON'T NEED AN INNOCENT EXPLANATION.

WHAT IS THE REASONABLE HYPOTHESIS OF INNOCENCE WITH BLOOD ON THE BOXER SHORTS?

THAT SHE DIED BY SOME MANNER OTHER THAN A PREMEDITATED KILLING, AND THAT BLED IN THE PROCESS AND THAT IS THE BLOOD GOT ON HIS BOXER SHORTS.

CHIEF JUSTICE: ALL RIGHT. WE HAVE TO END ON THAT.

MY TIME IS UP.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL NOW STAND IN RECESS.