Fred Anderson, Jr. v. State of Florida

ANDERSON VERSUS STATE. IF COUNSEL IS READY, YOU MAY PROCEED. GOOD MORNING.

GOOD MORNING. THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS JIM WULCHAK, ASSISTANT PUBLIC DEFENDER FROM DAYTONA BEACH, AND TOGETHER WITH GEORGE BURTON, ALSO FROM MY OFFICE, WHO AUTHORITYED THE BRIEFS IN THIS CASE, WE REPRESENT THE APPELLANT FRED ANDERSON JR., IN THIS CASE FROM HIS CONVICTION OF FIRST-DEGREE MURDER, ATTEMPTED FIRST-DEGREE MURDER, ARMED ROBBERY AND THEFT OF A FIREARM, AND HIS RESULTING DEATH SENTENCE. WE WOULD LIKE, TODAY, TO FOCUS MAINLY ON THE SENTENCING DETERMINATION HERE AND A BRIEF RECITATION OF THE FACTS RELEVANT TO THAT. EXCUSE ME. THIS WAS A BANK ROBBERY THAT THE DEFENDANT UNDERTOOK, SIMPLY BECAUSE HE WAS IN A BIND. HIS, HE WAS CARING FOR HIS INVALID MOTHER, WHO WAS DISABLED. HER HOUSE WAS IN FORECLOSURE, AND HE WAS ON PROBATION FOR A NONVIOLENT FELONY, FROM VOLUSIA COUNTY, THIRD-DEGREE GRAND THEFT, IN WHICH HE OWED OVER $4,000 IN RESTITUTION STILL. HIS COMMUNITY CONTROL WAS VIOLATED, BECAUSE OF A FAILURE TO PAY THAT, AND HE WAS ORDERED TO REPORT TO THE PROBATION RESTITUTION CENTER, WHERE HE WOULD NOT BE ABLE TO LIVE WITH HIS MOM AND CARE FOR HER. SO HE ESSENTIALLY, YOU KNOW, DID PLAN, SEVERAL DAYS IN ADVANCE, HOW HE WAS GOING TO OBTAIN MONEY. HE WAS IN A BIND. HE DIDN'T HAVE A CAR. HE DIDN'T HAVE A JOB. HE NEEDED TO PAY THIS RESTITUTION, SO HE PLANNED TO COMMIT A BANK ROBBERY. THERE WAS LOTS OF EVIDENCE OF PLANNING THE ROBBERY THAT TOOK PLACE OVER TWO OR THREE DAYS, BUT WE SUBMIT THERE WAS NO EVIDENCE OF HEIGHTENED PREPLANNING TO KILL. THE SURVIVING VICTIM WAS UNCLEAR OF THE DETAILS OF THE OFFENSE. SHE DIDN'T REMEMBER THE SEQUENCE OF EVENTS, FOR EXAMPLE WHEN SHE WAS SHOT, WHEN THE OTHER VICTIM WAS SHOT, WHETHER IT WAS BEFORE OR AFTER A CUSTOMER CAME INTO THE BANK AND INQUIRED WHETHER THE BANK WAS OPEN. SHE DOESN'T EVEN REMEMBER BEING SHOT. SHE ONLY SAW SOME BLACK OBJECT, SHE SAID, COMING TOWARD HER HEAD HEAD.

WHO TESTIFIED TO THE STATEMENTS MADE BY THE DEFENDANT DEFENDANT? WHICH OF YOU WANTS TO GO FIRST?

THAT WAS THE SURVIVING VICTIM YOUR HONOR.

HE HAD TWO VICTIMS THERE, AND AS YOU SAY, ONE ENDED UP BEING AN ATTEMPTED MURDER.

YES.

AND ONE ENDED UP BEING A MURDER.

IT WAS THE SURVIVING VICTIM, WHO, AS I SAID, ADMITTEDLY WAS VERY UNCLEAR ON DETAILS, AND THAT WAS THE ONLY TESTIMONY. THERE WAS ANOTHER BANK CUSTOMER.

WAS THERE ANY IMPEACHMENT OF THAT TESTIMONY? WAS THERE ANY SUGGESTION THAT SHE WAS WRONG?

YES, YES, YOUR HONOR.

WHAT WAS THAT?

THE STATE'S OWN EVIDENCE IT CONFLICTS WITH. THE STATE PRESENTED TESTIMONY FROM A BANK CUSTOMER, WHO CAME INTO THE BANK WITH HER TWO CHILDREN. SHE OBSERVED THE DEFENDANT AND THE TWO WOMEN IN THE VAULT. SHE HEARD WOMEN'S VOICES TALKING NEVER HEARD THE DEFENDANT SAY ANYTHING, ONLY HEARD ONE OF THE VICTIMS SAY PLEASE DON'T, PLEASE DON'T, AND THEN SHE HEARD THE SHOTS, AND SHE LEFT AND CALLED THE POLICE.

HOW IS THAT, I AM NOT SURE I UNDERSTAND THAT TO BE IMPEACHMENT OF WHAT THE VICTIM HAD TO SAY. PLEASE DON'T, PLEASE DON'T! I ASSUME THAT THAT WOULD BE PLEASE DON'T, PLEASE DON'T SHOOT ME!

HE WAS POINTING THE GUN AT THEM. HE WAS TELLING THEM TO SHUT UP AND NOT TO CREATE ANY DISTURBANCE WHATSOEVER, AND THIS WOMAN WHO CAME INTO THE BANK WAS WITNESS TO IT AS WELL, AND SHE SAID THE MAN NEVER SAID ANYTHING. THAT CONTRADICTS THE STATE'S POSITION. WE SUBMIT THERE IS NO COMPETENT --

DIDN'T THE DEFENDANT SAY HE SAID SOMETHING? DOESN'T THAT CONTRADICT THE DEFENDANT, ALSO? BE QUIET, DON'T DO ANYTHING, OR WORDS TO THAT EFFECT, SO SHE ACTUALLY JUST DIDN'T HEAR, IT SEEMS TO ME, ALL OF WHAT WAS GOING ON.

APPARENTLY THE GUN WAS GOING OFF AS THE DEFENDANT WAS SAYING SHUT UP. SO THE GUN COULD HAVE DROWNED THAT OUT.

BUT THOSE ISSUES END UP BEING SOMETHING FOR THE FACT FINDERS. OBVIOUSLY THE GUILT PHASE BUT, ALSO, AT THE PENALTY PHASE.

RIGHT. THERE HAS TO BE SUBSTANTIAL COMPETENT EVIDENCE TO SUPPORT IT.

WHAT ABOUT THE EVIDENCE IN ADDITION TO THAT, IF I UNDERSTAND IT CORRECTLY? THAT THE, HOW MANY SHOTS WERE FIRED INTO THE TWO VICTIMS?

THERE WERE TEN SHOTS FIRED, ONE SHOT WAS FIRED WHEN THE DEFENDANT CAME INTO THE BANK WITH THE GUN, JUST TO SHOW THAT HE HAD A GUN.

ONE WEAPON, AS I UNDERSTAND IT --

PARDON ME?

THE ONE WEAPON HAD TO BE INDIVIDUALLY COCKED TO FIRE EACH SHOT. IS THAT CORRECT?

IT WAS TESTIFIED THAT IT WAS A SINGLE-ACTION REVOLVER. NOW, WHETHER YOU CAN HOLD THE TRIGGER AND JUST FAN IT LIKE YOU HAVE SEEN IN COWBOY MOVIES, YOU KNOW, THAT IS A POSSIBILITY WITH A SINGLE-ACTION REVOLVER.

ISN'T THAT, THOUGH, AGAIN, EVIDENCE THAT A FACT FINDER COULD CONCLUDE THAT THERE WAS CONSIDERABLE DELIBERATION?

THIS COURT HAS HELD REPEATEDLY MULTIPLE GUNSHOT WOUNDS, MULTIPLE INJURIES DO NOT NECESSARILY MAKE THIS FACTOR PRESENT.

OF COURSE NOT NECESSARILY, YOU KNOW, MAY WELL BE THE KEY HERE, BUT DON'T YOU END UP, WHAT WAS THE REASONING OF THE TRIAL COURT JUDGE, IN TERMS OF FINDING THAT THERE WAS HEIGHTENED PREMEDITATION?

MAINLY, I BELIEVE, HE WENT ON FOR A PAGE OR TWO, TALKING ABOUT THE PLANNING OF THE ROBBERY, THE FACT THAT THE DEFENDANT WENT IN THERE.

DID HE TALK ABOUT THESE FACTORS OF THE NECESSITY TO CONGRESS THE GUN INDIVIDUALLY EACH TIME -- TO CONGRESS THE -- TO COCK THE GUN EACH TIME OR THE STATEMENTS MADE BY THE DEFENDANT?

HOWEVER, WE SUBMIT THAT THERE WAS NOT COMPETENT SUBSTANTIAL EVIDENCE FOR THE FACT FINDER, AND, AGAIN, YOU HAVE TO DECIDE WHO THE FACT FINDER IS. I KNOW THAT YOU HAD THE ARGUMENT LAST WEEK, AND I DON'T PRESUME TO SAY THAT I AM MORE AFTER EXPERT THAN THE FOLKS WHO WERE HERE LAST WEEK.

HERE IS MY CONCERN. I AM FINDING IT DIFFICULT IN THIS RECORD, TO FIND ANY EVIDENCE THAT THIS WAS WHAT HAS BEEN TERMED, FOR INSTANCE, A ROBBERY GONE BAD. THAT IS A PANIC, YOU KNOW, THAT SOMETHING HAPPENS WHILE A CLERK IN A 7 ELEVEN IS BEING ROBBED AND A DEFENDANT RUNS OUT OR SOMEBODY ATTEMPTS TO SEIZE HIM OR WHOEVER THE DEFENDANT IS, THERE IS NO EVIDENCE IN THIS RECORD THAT THIS IS THAT KIND OF A SHOOTING, IS THERE? WITH TEN SHOTS AND WITH THE EVIDENCE THAT THE FACT FINDER COULD FIND INDICATED THE DELIBERATENESS HERE?

IOUS, AGAIN, THE MERE FINDING THAT THERE WERE MULTIPLE GUNSHOTS, MUM MUL TIP HE WILL STAB WOUNDS IN OTHER -- MULTIPLE STAB WOUNDS IN OTHER CASES, DOESN'T MAKE IT COLD, CALCULATED AND PREMEDITATED. IT HAS TO BE HEIGHTENED PREMEDITATION. IT HAS TO BE PLANNING TO KILL, AND THERE WAS NO EVIDENCE HERE OF PLANNING TO KILL.

DOES THE FACT THAT HE BROUGHT TWO WEAPONS TO THE SCENE ADD TO THAT HEIGHTENED PREMEDITATION?

NO, YOUR HONOR. I DON'T THINK SO. THERE ARE OTHER CASES, ALSO, WHERE A DEFENDANT HAD ARMED HIMSELF PRIOR TO COMMITTING --

BUT WE ARE --

-- A CRIME.

BUT WE ARE TALKING ABOUT THESE OTHER FACTORS. MAYBE YOU HAVE A CASE WHERE JUST ARMING YOURSELF IS NOT AN ENOUGH. THERE MAY BE A CASE THAT SAYS JUST MULTIPLE STABS OR MULTIPLE SHOTS ARE NOT ENOUGH, BUT WHEN YOU START COMBINING THESE THINGS THAT MAY NOT BE ENOUGH, IN AND OF THEMSELVES, DO YOU GET TO --

RESPECTFULLY I WOULD --

-- SOME POINT OF PREMEDITATION?

RESPECTFULLY, I WOULD SAY WHEN THERE ARE MULTIPLE SHOTS OR MULTIPLE STAB WOUNDS, THE DEFENDANT DID ARM HIMSELF, PRIOR TO THE OFFENSE HAPPENING.

AND NO PROVOCATION.

DID THE DEFENDANT, HIMSELF, GIVE ANY EVIDENCE THAT THIS WAS A PANIC SHOOTING OR --

YES, YOUR HONOR. HE DOESN'T EVEN REMEMBER, OTHER THAN THE ADDITIONAL SHOT, THE GUN GOING OFF WHEN HE WAS YELLING AT THE WOMEN TO SHUT UP. OTHER THAN THAT --

WHAT SEPARATES THIS FROM, REALLY, AN EXECUTION-STYLE KILLING? YOU HAVE GOT TWO, IF I UNDERSTAND IT, THE EVIDENCE OF TWO PASSIVE VICTIMS. ARE THEY LYING ON THE GROUND OR WHAT --

NO. THEY WERE STANDING UP, YOUR HONOR, EMPTYING.

TWO PASSIVE VICTIMS. THERE IS NO EVIDENCE THAT THE VICTIMS DID ANYTHING TO ATTACK THE DEFENDANT OR IS THERE? OKAY. SO DON'T WE HAVE TWO PASSIVE VICTIMS THAT ARE SIMPLY SHOT TEN TIMES?

WEnrcoN9n1 HAVE TWO VICTIMS
WHOlp3f3f3f3f3f!PUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUUU
SEEING A CONSTRUCT HERE, UNDER THIS EVIDENCE, THAT SOMEHOW THIS WAS A, THE PANIC REACTION TO --

THE VICTIMS, THE TESTIMONY WAS, WERE INCAPACTATED UPON THE FIRST SHOT, AND THE DEFENDANT DOESN'T REMEMBER FIRING THE ADDITIONAL SHOTS, SO WE BASICALLY HAVE A SITUATION WHERE IT APPEARS THAT HE FREAKED OUT FROM THE SITUATION AND JUST STARTED FIRING, FIRING AND FIRING AND FIRING. THERE WAS, ALSO, TESTIMONY --

WAS THERE ANY PSYCHOLOGICAL EVIDENCE THAT SUPPORTS WHAT YOU ARE SAYING, WHICH IS THAT, GIVEN THIS DEFENDANT'S PERSONALITY, THAT HE WOULD HAVE, THAT WOULD HAVE --

THERE IS NO PSYCHOLOGICAL EXPERTS CALLED, BUT THERE WERE A MULTITUDE OF ACQUAINTANCES OF THE DEFENDANT, FORMER EMPLOYERS OF THE DEFENDANT, THAT TESTIFIED THIS IS JUST SO OUT OF CHARACTER FOR HIM. SOMETHING MUST HAVE HAPPENED.

THE WHOLE THING WAS OUT OF CHARACTER. THAT IS HE PLANNED A ROBBERY --

HE HAD BEEN CONVICTED AFTER THEFT BEFORE, SO HE HAD ENGAGED IN NONVIOLENT CRIME BEFORE. THERE WAS, ALSO, TESTIMONY PRESENTED AT TRIAL REGARDING THE BLOOD SPLATTER EVIDENCE, FROM THE CRIME SCENE DEPUTY, AND THIS WAS THE ONLY EVIDENCE, ONLY OTHER EVIDENCE THERE WAS ABOUT ADDITIONAL BLUNT FORCE TRAUMA. FRED FARLEY CAUDILL WAS A DEPUTY THAT ATTENDED A ONE-HOUR COURSE ON BLOOD SPLATTER INVESTIGATION. HE HAD NO BACKGROUND, NO KNOWLEDGE OF THE MATHEMATICAL PRINCIPLES ON WHICH THE BLOOD SPLATTER EVIDENCE WAS BASED.

WHAT DID HIS TESTIMONY ACTUALLY ADD TO THE OVERALL CASE HERE?

IT WAS PRESENTED DURING THE GUILT PHASE OF THE TRIAL, YOUR HONOR, BUT IT DIRECTLY RELATED TO COLD, CALCULATED AND PREMEDITATED, THE FINDING OF BLUNT FORCE TRAUMA, THE BLOOD BEING SPLATTERED IN A CERTAIN WAY, THAT HE TESTIFIED TO, AND IT WAS USED IN SUPPORT OF COLD, CALCULATED AND PREMEDITATED ARGUMENT.

SO IS YOUR ARGUMENT, THEN, THAT IF WE, IN FACT, FIND THAT THIS GUY WAS NOT, HE WAS NOT QUALIFIED, THIS EVIDENCE SHOULD NOT HAVE COME IN, IT ONLY AFFECTS THE PENALTY PORTION OF THIS TRIAL?

THAT'S CORRECT, YOUR HONOR. THAT'S CORRECT. AND IN THIS CASE, YOU KNOW, HIS AT ENDING A COURSE ON -- HIS ATTENDING A COURSE ON BLOOD SPLATTER WOULD BE LIKE ME. I HAVE ATTENDED CONFERENCES ON DNA AND FETAL ALCOHOL SYNDROME. JUST BECAUSE I HAVE ATTENDED DOESN'T QUALIFY ME AS A DNA MATCHING EXPERT AND DOESN'T QUALIFY ME AS A NEUROPSYCHOLOGIST. THIS IS ESSENTIALLY ALL THAT HE HAD.

YOU SAID BLUNT FORGET FRAUM TRAUMA. -- BLUNT FORCE TRAUM A WASN'T THE STATE'S TESTIMONY THAT, IN ADDITION TO SHOOTING THE VICTIMS THAT THEY WERE KNOCKED OVER THE HEAD?

THAT'S CORRECT.

HOW WAS THAT?

IT APPEARS THAT THEY WERE PISTOL-WHIPPED. HOWEVER, THERE WAS NO EVIDENCE OF BLOOD OR SKIN OR MAKEUP OR ANYTHING ON THE GUNS, THEMSELVES THEMSELVES.

DOES THE JUDGE MENTION THAT IN THE JUDGE'S EVALUATION OF THE CCP?

I DO NOT BELIEVE HE DID, YOUR HONOR, BUT IT WAS SUBMITTED TO THE JURY. AND, AGAIN, WE DON'T KNOW WHAT THE JURY FOUND. WE DON'T KNOW WHETHER THE JURY FOUND COLD, CALCULATED AND PREMEDITATED OR NOT. WHICH BRINGS US TO, ESSENTIALLY, THE RING VERSUS ARIZONA ARGUMENT AND AGAIN I DON'T PRESUME TO BE AS EXPERT AS THE FOLKS WHO WERE UP HERE LAST WEEK ARGUING, BUT I WOULD LIKE TO ADJUST A COUPLE THINGS. WALTON, APRENDI AND HILTON IN FLORIDA SAY THAT AT EMINGTS TO -- THAT ATTEMPTS TO ESTABLISH THE FLORIDA SENTENCING SCHEME THE SAME AS ARIZONA, THEY ARE THE SAME. THAT IS WHAT WE HAVE ALWAYS SAID AND NOW THE STATE DOES A COMPLETE 180-DEGREE TURN AROUND AND SAYS FLORIDA IS NOT AT ALL LIKE ARIZONA. HOWEVER, WALTON, HILDE AND APRENDI SAY IT WAS EXACTLY LIKE ARIZONA. ARIZONA ONLY ALLOWS THE LOWER COURT TO APPLY THAT RATIONALE.

I TAKE IT THERE ARE NO RINGS IN THE TRIAL COURT BELOW. IS THAT CORRECT?

YES, YOUR HONOR, THERE WAS. WE SUBMIT --

TELL ME ABOUT THAT.

THE DEFENDANT REQUESTED THAT SPECIFIC JURY INTERROGATORIES BE THERE, SO WE WOULD KNOW WHICH AGGRAVATING CIRCUMSTANCES THEY FOUND. THAT WAS REJIKT SECRETARYED. -- THAT WAS REJECTED.

IN OTHER WORDS ON THE AUTHORITY OF APRENDI?

YES. WELL, I BELIEVE SO, UNDER WALTON AND APRENDI. YES.

I AM TALKING ABOUT IN THE TRIAL COURT, DID THE DEFENDANT'S COUNSEL CITE APRENDI?

NO, HE DID NOT CITE APRENDI. BUT HE STILL MADE THE SAME ARGUMENT.

THERE WAS A REQUEST FOR AN INTERROGATORY-TYPE VERDICT FOR THE JURY TO MAKE FACT FINDINGS AS TO THE AGGRAVATORS?

YES. THERE WAS REQUEST FOR ADVANCE NOTICE OF THE AGGRAVATING CIRCUMSTANCES, WHICH WE CONTEND IS ALSO REQUIRED UNDER RING AND APRENDI.

WHAT ABOUT THE JURY INSTRUCTION? WAS THERE AN OBJECTION TO THE STANDARD JURY INSTRUCTION AND REQUEST THAT THE JURY BE TOLD THAT THEY WERE THE FACT FINDER ON THE AGGRAVATOR?

I BELIEVE THERE WERE SEVERAL OBJECTIONS TO THE STANDARD JURY INSTRUCTIONS. I DON'T RECALL SPECIFICALLY THAT PARTICULAR ONE. I AM SORRY, YOUR HONOR. SINCE THE BASIS FOR APPROVING THE FLORIDA STATUTE AGAINST AN APRENDI CLAIM, THIS COURT AND OTHERS BASE THEIR APPROVAL ON WALTON, AND WALTON IS NOW GONE, SO SINCE THE BASIS FOR THIS COURT'S APPROVAL OF THE SENTENCING SCHEME, THE UNITED STATES APPROVAL, THE SUPREME COURT APPROVAL OF THE SENTENCING SCHEME IN FLORIDA IS GONE, THEN THE APPROVAL SHOULD BE GONE, TOO AND WE SUBMIT THAT THE SUPREME COURT OF THE UNITED STATES ALLOWS LOWER COURTS TO DECIDE CASES WHERE THEY HAVE RULED ON AN ISSUE, AND THEY LEAVE IT TO THE LOWER COURTS TO DECIDE HOW IT APPLIES IN THEIR JURISDICTION JURISDICTION. THE STATE HAS ALWAYS ARGUED STATE'S RIGHTS, STATE'S RIGHTS. THE STATE COURT SHOULD BE GIVEN THE FIRST OPPORTUNITY TO RULE ON THESE ISSUES. NOW, AGAIN, THEY HAVE DONE A COMPLETE 180, AND THEY ARE SAYING, WELL, THE U.S. SUPREME COURT HAS RULED THAT FLORIDA'S CAPITAL SENTENCING SCHEME IS CONSTITUTIONAL, SO YOU GUYS CAN'T RULE ON THIS. WE SUBMIT YOU CAN. THAT THE SUPREME COURT, THE U.S. SUPREME COURT DOES ALLOW LOWER JURISDICTIONS TO DECIDE HOW THEIR CASES APPLY IN THEIR PARTICULAR JURISDICTIONS. WE WOULD, ALSO, ARGUE THAT THE DEFENDANT'S DEATH SENTENCE IS DISPROPORTIONATE. IN COMPARISON TO OTHER CASES, IT SHOWS, AS I SAID, THE TRIAL JUDGE FOUND --

LET ME ASK YOU THIS, BEFORE YOU GET AWAY FROM APRENDI AND RING. IN THIS CASE, THE JURY VERDICT, THE JURY'S RECOMMENDATION WAS A 12-TO-0 RECOMMENDATION FOR THE DEATH PENALTY.

THAT'S CORRECT.

AND WE, ALSO, HAVE IN THIS SITUATION, OTHER THAN COLD, CALCULATED, WE HAVE PECUNIARY GAIN, WHICH IS SOMETHING THAT WOULD HAVE BEEN DETERMINED, ACTUALLY, IN THE GUILT PORTION OF THIS TRIAL, BECAUSE YOU KNOW, IT WAS A ROBBERY AND ROBBERY WAS IN FACT, FOUND, AND WE HAVE HIS PRIOR RECORD AND BEING ON PROBATION OR COMMUNITY CONTROL.

THAT'S CORRECT.

AND WE, ALSO, HAVE HIS CONVICTION OF A VIOLENT FELONY CONTEMPORANEOUS WITH THIS, AND SO DO THOSE TWO FACT ON, THE FACT THAT IT WAS A 12-0 DETERMINATION, AND THESE OTHER THREE AGGRAVATING FACTORS ARE BASICALLY A GIVEN, DOES THAT MAKE ANY DIFFERENCE IN YOUR APRENDI AND RING ARGUMENT?

NO, YOUR HONOR, BECAUSE THE JURY WASN'T PROPERLY INSTRUCTED ON WHAT THEIR FUNCTION WAS. FIRST OF ALL, AND SECONDLY, WE DON'T KNOW WHICH AGGRAVATING CIRCUMSTANCES THE JURY FOUND, EVEN THOUGH THERE WAS A CONVICTION FOR ROBBERY AT THE TIME AND THE U.S. SUPREME COURT IN RING, IN A FOOTNOTE, SAYS WE DON'T ADDRESS THIS ISSUE ESSENTIALLY, IN THAT CASE. IN RING THERE WAS, ALSO, A CONTEMPORANEOUS CONVICTION FOR ROBBERY.

WE DO KNOW THAT, IN THIS CASE THE JURY HAD TO HAVE FOUND AN AGGRAVATING CIRCUMSTANCES AND ALL OF THEM, AND THAT THEY ALL, IN FACT, FOUND THAT THE MITIGATING CIRCUMSTANCES DID NOT OUTWEIGH THE AGGRAVATING CIRCUMSTANCES, BY THEIR 12-TO-0 VERDICT.

WE DO NOT KNOW WHICH AGGRAVATING CIRCUMSTANCES THEY FOUND, WHETHER THEY ALL AGREED ON THEM. JUST BECAUSE THERE WAS A ROBBERY WHICH THEY FOUND HIM GUILTY OF DURING THE GUILT PHASE, DOESN'T NECESSARILY MEAN, AS MR. BURTON ARGUED IN THE BRIEF ON THIS POINT, THE ROBBERY WAS COMPLETED. THE PECUNIARY GAIN HAD ALREADY HAPPENED.

CHIEF JUSTICE: WE ARE WELL INTO YOUR REBUTTAL TIME, IF YOU WANT TO SAVE SOME TIME.

WE SUBMIT THAT THIS COURT SHOULD REVERSE AND REMAPPED FOR A LIFE SENTENCE. THANK YOU. -- AND REMAND FOR A LIFE SENTENCE. THANK YOU.

MAY IT PLEASE THE COURT. I AM KEN NUNNELLEY. I REPRESENT THE STATE OF FLORIDA IN THIS APPEAL. I WILL CONFINE MY REMARKS TO ADDRESSING THOSE ISSUES RAISED ONLY BY THE DEFENDANT IN HIS OPENING ARGUMENT. WITH RESPECT TO THE COLD, CALCULATED AND PREMEDITATED AGGRAVATING CIRCUMSTANCE, THE SENTENCING COURT DID NOT BRUSH OVER THE ISSUE, I THINK IS A FAIR WAY TO CHARACTERIZE IT. THREE PAGES' WORTH OF SENTENCING ORDER ARE DEVOTED TO DISCUSSING WHY THIS MURDER IS COLD, CALCULATED AND PREMEDITATED, WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION. THE DEFENDANT, AND IF I COULD GIVE A LITTLE BIT OF THE GENESIS OF WHAT LED TO THIS MURDER, THE DEFENDANT WAS CONVICTED OF GRAND THEFT IN 1994, FOR STEALING $4,000 FROM BETHUNE-COOKMAN COLLEGE IN VOLUSIA COUNTY. HE WAS PLACED ON PROBATION, IN ORDER TO MAKE RESTITUTION. HE VIOLATED THE PROBATION IN 1997 AND WAS SENTENCED TO COMMUNITY CONTROL.

WAS IT, DOES THE RECORD SHOW HOW HE VIOLATED IT?

HE WASN'T PAYING RESTITUTION, YOUR HONOR. HE WAS NOT PAYING HIS RESTITUTION. THAT IS WHAT HE GOT VIOLATED FOR. I AM GETTING THERE. TRUST ME. I AM GETTING THERE.

THE RECORD SHOW HIS EDUCATION BY THE WAY?

THE RECORD INDICATES THAT MR. ANDERSON HAD COMPLETED HIS COURSE OF STUDY AT BETHUNE-COOKMAN COLLEGE BUT HAD NOT GRADUATED, BECAUSE HE HAD NOT DEFENDED HIS SENIOR PAPER, WHATEVER THAT MEANS. I AM NOT SURE WHAT THAT MEANS, BUT HE HAD FINISHED HIS COURSE WORK.

SO HE HAD APPARENTLY COMPLETED FOUR YEARS OF COLLEGE?

APPARENTLY SO, JUDGE. I THINK HE WAS THERE SIX YEARS, SO HE HAD APPARENTLY COMPLETED ALL STEPS EXCEPT THE FINAL BOARDS OR WHATEVER YOU CALL THEM AND I THINK HE MAY HAVE ACTUALLY BEEN ON ACADEMIC PROBATION, BUT NONETHELESS HE WAS REAL CLOSE TO GRADUATING. HE VIOLATED HIS PROBATION IN '97 WAS PLACED ON COMMUNITY CONTROL, AND THEY VIOLATED HIM AGAIN IN MARCH OF 1999: ON MARCH 15, AND TOLD HIM TO REPORT TO THE PROBATION AND RESTITUTION CENTER WHICH IS A CUSTODIAL FACILITY, ON MARCH 19.

SO HE DIDN'T MAKE ANY PAYMENTS OVER THE THREE OR FOUR YEAR PERIOD, ON THE $4,000.

I THINK HE PAID $93.15.

THE ONLY REASON I ASK, IT IS PROBABLY INCIDENTAL, BUT SINCE YOU BROUGHT IT UP IS I HAD ALWAYS THOUGHT THAT THERE COULDN'T BE SOMEONE VIOLATED FOR NOT PAYING RESTITUTION, IF THEY DIDN'T HAVE THE ABILITY TO PAY THAT AMOUNT THAT, YOU COULDN'T BE INCARCERATED, AND HERE IT IS A SCHEME WHERE HE WAS TOLD HE WAS GOING TO BE INCARCERATED, BECAUSE HE DIDN'T PAY HIS RESTITUTION?

HE HAD PAID ONLY SOME, OVER HOWEVER MANY YEARS, FIVE YEARS, FOUR AND-A-HALF YEARS. THE DEFENDANT, ON MARCH 19, I BELIEVE IT WAS, WHICH IS A FRIDAY, CONTACTED HIS PROBATION OFFICER AND TOLD HER THAT HE WOULD HAVE THE MONEY TO PAY OFF HIS RESTITUTION THE NEXT DAY. THE DEFENDANT STOLE A 22 CALIBER LONG RIFLE REVOLVER FROM A FRIEND OF HIS. THIS IS THE SINGLE-ACTION REVOLVER, AND I WILL COME BACK TO THAT IN A MOMENT. HE WENT TO THE UNITED SOUTHERN BANK IN MOUNT DORA, FLORIDA, AND PRESENTED HIMSELF WITH A STORY OF BEING A STUDENT AT VALENCIA COMMUNITY COLLEGE, WHICH IS A TWO-YEAR COLLEGE IN CENTRAL FLORIDA, STUDYING BANKING AND FINANCE, AND HIS TESTIMONY OR HIS STORY TO THE BANK PERSONNEL WAS THAT HE WAS INTERVIEWING BANKS BECAUSE HE WAS WRITING A PAPER. HE WAS, HE SPOKE WITH SOMEONE WHOM HE KNEW, WHO REFERRED HIM TO THE HEAD TELLER, WHO WAS MARISSA SCOTT. SHE IS THE SURVIVING VICTIM WHO IS A QUADRIPLEGIC. MS. SCOTT, IN TURN, REFERRED THE DEFENDANT TO THE BRANCH MANAGER. THE BRANCH MANAGER, AT THE TIME THAT THE DEFENDANT PRESENTED HIMSELF TO THE BANK, WAS OCCUPIED WITH

SOME OTHER BANKING BUSINESS, SO MR. ANDERSON HUNG OUT FOR A WHILE. HE FOUND HIMSELF, EVENTUALLY FOUND HIMSELF SPEAKING WITH THE BRANCH MANAGER IN THE BRANCH MANAGER'S OFFICE. AND COINCIDENTALLY ENOUGH, THIS IS WHERE THE SECURITY TAPE VCR MACHINE IS LOCATED. THE BANK MANAGER, THE BRANCH MANAGER LATER TESTIFIED THAT MR. ANDERSON SHOWED AN INORDINATE AMOUNT OF INTEREST IN THE SECURITY SYSTEM. THE NEXT DAY, THE DEFENDANT OBTAINED A SECOND WEAPON, BY TAKING IT OUT OF A DRAWER IN HIS MOTHER'S HOUSE, NOW, WHETHER OR NOT THIS IS STEALING THAT WEAPON OR NOT, THAT IS IMMATERIAL. THAT WEAPON --

WAS HE LIVING WITH HIS MOTHER?

YES, MA'AM.

WHAT DOES THE RECORD SHOW, JUST ABOUT FROM 1994 TO THE TIME OF THIS MURDER, DID HE, WAS HE EMPLOYED? WAS HE WORKING? DID HE, WAS HIS MOTHER SUPPORTING HIM? WAS HE HELPING HIS MOTHER OUT?

HE WAS DOING ALL OF THE ABOVE. HE WAS APPARENTLY EMPLOYED SPORADICALLY. HE HAS THE ABILITY TO EARN, TO WORK AND EARN A LIVING BUT DID NOT SEEM TO TAKE ADVANTAGE OF THAT OPPORTUNITY. AGAIN, HE OBTAINS A SECOND WEAPON FROM HIS MOTHER'S RESIDENCE, WHERE HE, ALSO, RESIDES. HIS MOM HAS BORROWED, IS OFF IN A BORROWED CAR DOING SOMETHING OR SHE IS GONE SOMEWHERE, AND THAT, AGAIN, IS NOT REALLY MATERIAL TO THE ISSUE BEFORE THE COURT. THIS WEAPON IS A DOUBLE-ACTION REVOLVER, 22 SHORT CALIBER, TWO DIFFERENT WEAPONS THAT FIRE TWO DIFFERENT SORTS OF PROJECT HE CAN TILES AND FUNCTION IN TWO DIFFERENT FASHIONS. THE DEFENDANT TAKES THE CAR THAT HAS BEEN LOANED TO HIS MOTHER. SHE IS, LIKE I SAID, SOMEWHERE AWAY FROM THE HOUSE. GOES BY WAL-MART AND BUYS DONUTS AND JUICE TO APPEAR AS A THANK YOU GESTURE, TO THESE TWO TELLERS WHO WERE WORKING AT THE BANK ON FRIDAY AND HAD HELPED HIM OUT WITH HIS PAPER. HE SHOWS UP AT THE BANK, CONTINUES WITH THAT STORY THAT HE IS WRITING THE PAPER, HANGS AROUND A LITTLE WHILE LONGER, SEES SOMEBODY THAT HE KNOWS IN THE AREA, WHO KNOWS HIM FROM CHURCH. SHORTLY BEFORE THE BANK CLOSED, AT ABOUT 20 MINUTES UNTIL TWELVE THE DEFENDANT EXCUSES HIMSELF FROM THE BANK, AGAIN THANKING THE TWO VICTIMS. HE SAYS HE IS GOING TO HIS CAR TO GET HIS BUSINESS CARD, AND I DID FORGET TO MENTION THAT, SOMEWHERE ALONG THE WAY IN HERE, THE DEFENDANT HAS ACTUALLY ASKED A BANK EMPLOYEE, AND MY MEMORY FAILS WHO IT WAS, TO WRITE HIM A NOTE FOR HIS PROFESSOR THAT HE HAD BEEN THERE AND DONE THIS INTERVIEW WITH THE BANK PERSONNEL. THE DEFENDANT COMES BACK IN, WELL, I SKIPPED OVER SOMETHING. MARISSA SCOTT, THE SURVIVING VICTIM AND HEAD TELLER OF THIS BRANCH BANK, HAS BECOME APPREHENSIVE ABOUT THIS INDIVIDUAL AND HAS DECIDED TO LOCK THE DOORS TO THE BANK AND SHUT DOWN EARLY, BECAUSE SHE IS CONCERNED ABOUT THIS MAN. BEFORE SHE GETS TO THE DOOR TO LOCK IT, THE DEFENDANT COMES IN WITH A HANDGUN, ORDERS THEM BACK TELLS THEM TO STEP AWAY FROM THEIR WINDOWS, DON'T SET OFF ANY ALARMS, BACK IN THE VAULT, PUT THE MONEY IN THIS TRASH BAG, AND I FORGOT TO MENTION THAT, THE DAY BEFORE THE DEFENDANT HAD GONE TO ANOTHER BANK, I BELIEVE IT WAS A COLONIAL BANK IN UMATILLA, FLORIDA, WHICH IS 20 MILES AWAY OR SO FROM MOUNT DORA AND PICKED UP INFORMATION ABOUT OPENING AN ACCOUNT WITH COLONIAL BANK. HIS INTENT BEING TO DEPOSIT THE PROCEEDS FROM HIS BANK ROBBERY IN THIS OTHER BANK AND THEREBY BE ABLE TO PAY OFF HIS COURT-ORDERED RESTITUTION. THE TELLERS DID EXACTLY WHAT THE DEFENDANT TOLD THEM TO DO. THEY UNLOADED ABOUT $70,000 IN CASH INTO A TRASH BAG LINER FOR THE DEFENDANT, AND THEN THE DEFENDANT SAYS WHO WANTS TO DIE FIRST? AT THIS POINT, HE FIRES TEN SHOTS FROM TWO WEAPONS INSIDE THE CONFINES OF A BANK VAULT, AND HITS HIS TARGETS NINE OF THOSE TIMES. BULLETS FROM BOTH WEAPONS, WHICH CAN BE DISTINGUISHED UPON ANALYSIS, WERE FOUND IN THE BODY OF HEATHER YOUNG.

WERE ALL THE SHOTS, HOW MANY SHOTS WERE FIRED AT THE VICTIM THAT DIED?

I BELIEVE IT WAS SEVEN.

WERE THEY SCATTERED AROUND THE BODY, OR WERE THEY ALL PRETTY DIRECTED, JUST AS FAR AS UNDERSTANDING WHETHER THIS SUPPORTS A VERY --

HEAD AND TORSO, YOUR HONOR.

HEAD AND TORSO, TORSO BEING --

CHEST.

SO NOT ALL SCATTERED AROUND.

NO, MA'AM. NOT ALL SCATTERED AROUND. THE SURVIVING VICTIM WAS SHOT IN THE NECK. SHE WAS HIT IN THE ARM, AND SHE WAS -- SHE WAS SHOT IN THE NECK, SHOT IN THE ARM AND HAD BLUNT FORCE TRAUMA TO THE HEAD.

HOW FAR, WHAT WAS THE BALLISTICS, AS FAR AS HOW FAR AWAY HE WAS, WHEN HE FIRED THE SHOTS?

I DON'T BELIEVE THEY COULD DETERMINE EXACTLY THE RANGE, BUT BECAUSE THESE ARE .22 CALIBER WEAPONS, WHICH ARE SMALL CALIBER WEAPONS, THAT IS NOT AN UNEXPECTED RESULT. APPARENTLY A 22 CALIBER PISTOL DOES NOT BLOW THAT MUCH POWDER OUT, WHERE YOU CAN EASILY MAKE THAT DETERMINATION, AND JUSTICE PARIENTE, YOU MENTIONED THIS IN MY OPPONENT'S OPENING ARGUMENTS, THE DEFENDANT HAD TWO WEAPONS. ONE OF THOSE IS A DOUBLE-ACTION REVOLVER. THAT IS THE SHORT CALIBER WEAPON THAT WAS TAKEN FROM HIS MOTHER'S RESIDENCE. THAT WEAPON FIRES EVERY TIME ONE PULLS THE TRIGGER. HOWEVER, THERE IS NO EVIDENCE, NO INDICATION, NO SUGGESTION THAT THAT PARTICULAR PISTOL HAS AN INORDINATELY LIGHT TRIGGER PULL. I DO NOT RECALL THAT THERE WAS TESTIMONY FROM THE FIREARMS AND MARK TRIGGER MARK EXAMINER ABOUT WHAT THAT WEAPON WAS, BUT THAT WAS IN WORKING ORDER. THAT WEAPON WAS FIRED FOUR TIMES. THE OTHER WEAPON THAT WAS FIRED SIX TIMES IS THE 22 LONG RIFLE CALIBER THAT WAS STOLEN FROM ONE OF MR. ANDERSON'S FRIENDS.

DOES THAT WEAPON JUST HOLD SIX BULL SNETS.

YES, MA'AM. YES, MA'AM. BOTH -- BULLETS?

YES, MA'AM. YES, MA'AM. BOTH ARE SIX-SHOT WEAPONS. BOTH WERE FULLY LOADED.

WAS THERE TESTIMONY AS TO WHETHER HE DID THE LOADING OR WHETHER THEY WERE LOADING WHEN HE TOOK THE WEAPON?

THEY WERE APPARENTLY ALREADY LOADED FOR HIM.

BUT HE TESTIFIED THAT HE DIDN'T KNOW WHETHER THEY WERE LOADED OR NOT?

JUSTICE PARIENTE, HE TEST FEED THAT HE DIDN'T KNOW THEY WERE -- HE TESTIFIED THAT HE DIDN'T KNOW THEY WERE LOADED, BUT I WOULD SUGGEST THAT HE PROBABLY PIGURED IT OUT, AFTER HE PULLED THE TRIGGER THE FIRST TIME, AND THE SINGLE-ACTION REVOLVER, PARTICULARLY, REQUIRES TWO THINGS, REQUIRES THE PERSON FIRING THAT WEAPON TO DO TWO THINGS. HE HAS TO PULL THE HAMMER BACHMANULELY, WITH HIS THUMB, EVERY TIME -- HAMMER BACK, MANUALLY, WITH HIS THUMB, AND THEN HE HAS TO PULL THE TRIGGER. A SINGLE-ACTION REVOLVER, THAT IS, AS THIS ONE WAS, IN GOOD MECHANICAL ORDER, DOES NOT GO OFF BY ITSELF T DOESN'T GO OFF, UNLESS THE -- OFF BY ITSELF. IT DOESN'T GO OFF, UNLESS THE PERSON HOLDING IT MEANS FOR IT TO, AND THAT IS WHAT WE HAVE HERE.

WAS THAT ONE USED FIRST, OR DO WE KNOW THAT INFORMATION?

THE DEFENDANT SAYS THAT HE USED THE DOUBLE-ACTION REVOLVER, THE 22 SHORT THAT HE TOOK FROM HIS MOTHER, FIRST. WHY HE SHOT THAT WEAPON FOUR TIMES AND CHANGED WEAPONS, I DO NOT KNOW. NOBODY KNOWS. IT IS NOT IN THE RECORD. THE FACT REMAINS, HOWEVER, THAT THIS DEFENDANT ARMED HIMSELF WITH NOT ONE BUT TWO WEAPONS AND PUT TWO COMPLYING VICTIMS BACK IN THE BANK VAULT, WHERE HE COULD CONTROL THEM, AND THEN EXECUTED ONE OF THEM AND TRIED TO EXECUTE THE OTHER. WHETHER THEY WERE KNEELING, STANDING, OR LYING ON THE FLOOR DOESN'T MAKE ANY DIFFERENCE. THIS WAS AN EXECUTION, AND THAT IS ALL IT CAN BE DESCRIBED AS. THIS MURDER IS COLD, CALCULATED, AND PREMEDITATED, UNDER ANY POSSIBLE DEFINITION OF THAT AGGRAVATING CIRCUMSTANCE. IT IS VIRTUALLY IDENTICAL TO THE CARD CASE AND TO THE FARINA CASE. FARINA, THE COURT WILL RECALL, INVOLVED FOUR VICTIMS WHO WERE HERDED INTO THE COOLER OF A TACO BELL, ALL OF THEM, SAVE ONE, WERE SHOT. ONE OF THEM DIED. THE ONE THAT WASN'T SHOT, WAS NOT SHOT SIMPLY BECAUSE THE WEAPON MALFUNCTIONED. THIS WEAPON, THESE WEAPONS IN THIS CASE DID NOT MALFUNCTION. I WOULD, ALSO, AGAIN, TO ADDRESS THE ISSUE OF THE BLUNT FORCE TRAUMA THAT WAS DISCUSSED PREVIOUSLY, BLOOD FROM THE SURVIVING VICTIM WAS FOUND AND IDENTIFIED, THROUGH DNA MATCHING AS BEING ON MR. ANDERSON'S SHOES AND TROUSERS. THE SURVIVING VICTIM, ALSO, TESTIFIED THAT SHE REMEMBERED A DARK OBJECT COMING AT HER HEAD, AFTER SHE WAS DOWN, AND THE SUGGESTION IS THAT THAT WAS PROBABLY THE BANK VCR.

MR. NUNNELLEY, WOULD YOU ADDRESS A LITTLE BIT, NOW THAT YOU HAVE MOVED TO THAT AREA, THE QUALIFICATIONS OF THE EXPERT. I REALIZE THAT THERE IS A GREAT DEAL OF DISCRETION WITH THE TRIAL JUDGE, BUT HAVE WE GONE THAT FAR IN FLORIDA, THAT A 40-HOUR CLASS IS SUFFICIENT TO PERMIT THIS KIND OF TECHNICAL TESTIMONY?

WELL, YOUR HONOR, THE, IT IS MORE THAN JUST A 40-HOUR CLASS, TO START WITH. THIS INDIVIDUAL WAS, ALSO, INSTRUCTING ON BLOOD SPATTER, AND I MEAN NO DISRESPECT, BUT BLOOD SPATTER ANALYSIS IS NOT EXACTLY ROCKET SCIENCE. JUDITH BUNKER, WHOM THIS COURT IS FAMILIAR WITH FROM THE CORRELL CASE AND OTHER CASES, IT ULTIMATELY TURNED OUT HER QUALIFICATIONS WERE SOMEWHAT QUESTIONABLE, BUT THAT NEVERTHELESS WAS A MATTER FOR CROSS-EXAMINATION, AS OPPOSED TO EXCLUSION OF THE TESTIMONY. THIS, THE BLOOD SPATTER WITNESS, AND I WILL BE PERFECTLY HONEST WITH YOU, HAD NEVER TESTIFIED BEFORE, BUT THE REASON HE HAD NEVER TESTIFIED BEFORE IS BECAUSE NONE OF THE CASES IN WHICH HE HAD CONDUCTED BLOOD SPATTER ANALYSIS HAD GONE TO TRIAL, AND I WOULD SUGGEST THAT THE FACT THAT THIS IS THE FIRST TIME HE TESTIFIED IS NOT A SIGNIFICANT FACTOR, BECAUSE EVERY EXPERT HAS TO TESTIFY FIRST SOMEWHERE.

BUT RECOGNIZING THAT, HOW ABOUT THE EDUCATIONAL BACKGROUND?

THE EDUCATIONAL BACKGROUND, IF ONE IS, I AM TRYING TO THING OF HOW TO DESCRIBE IT, IF ONE IS APPLYING BLOOD SPATTER ANALYSIS TO A CRIME SCENE, IS A DIFFERENT MATTER FROM DEVELOPING THE SCIENCE, IF YOU WILL, OF BLOOD SPATTER ANALYSIS. SOMEONE WHO, AND I GUESS WHAT I AM SAYING IS YOU DON'T HAVE TO BE ABLE TO GENERATE THE TABLES THAT THESE PEOPLE USE IN CONDUCTING BLOOD SPATTER ANALYSIS, AS I UNDERSTAND IT, IN ORDER TO USE THE TABLES. THE FACT THAT THIS MAN DOESN'T HAVE AN EXTENSIVE MATH BACKGROUND DOES NOT MEAN THAT HE IS UNABLE TO USE THE INFORMATION THAT HAS BEEN DEVELOPED BY OTHERS AND APPLY IT TO WHAT HE OBSERVES. AM I MAKING SENSE?

YEAH, BUT THE THING THAT I AM TROUBLED WITH CERTAINLY, IS THE COMBINATION OF NOT ONLY THAT, THE SCIENTIFIC BACKGROUND, BUT THE LIMITED 40 HOURS. I MEAN, CERTAINLY WE HAVE GONE IN OUR CAREERS FROM VIRTUALLY NO EXPERTS TO NOW EXPERTS IN EVERYTHING, AND I AM WONDERING HOW FAR HAVE WE GONE. MAYBE WE ARE THERE. BUT --

I DON'T BELIEVE THAT THERE IS TESTIMONY IN THE RECORD, JUSTICE LEWIS, ABOUT WHAT THE STANDARD TRAINING COURSE FOR A BLOOD SPATTER EXPERT IS. I BELIEVE, IF I CAN, YOU KNOW, REMEMBER FROM MANY YEARS AGO, WHAT THE FACTS WERE IN CORRELL, I DON'T BELIEVE, I AM NOT SURE THAT JUDITH BUNKER HAD AS MUCH TRAINING AS THIS MAN, TO BE HONEST WITH YOU. I SIMPLY DON'T REMEMBER. I DO NOT BELIEVE, AND THERE IS NO TESTIMONY IN THE RECORD THAT, THIS IS NOT THE STANDARD TRAINING COURSE THAT THEY CONDUCT, AND I RECOGNIZE 40 HOURS IS GENERALLY CONSIDERED ONE WORKWEEK, FIVE DAYS, EIGHT HOURS A DAY, BUT AT THE SAME TIME WE HAVE TO LOOK AT WHAT WE ARE, WHAT THE ANALYSIS IS, AND IN FACT, IN THE FINAL ANALYSIS OF THE LEGAL ISSUE, EVEN IF THIS DEPUTY SHOULD NOT HAVE BEEN QUALIFIED AS AN EXPERT, IT DOESN'T CHANGE ANYTHING. THE EVIDENCE OF THIS MAN'S GUILT WAS ABSOLUTELY OVERWHELMING, BECAUSE HE WAS CAUGHT IN THE BANK WITH $70,000 IN A TRASH BAG UNDER ONE ARM, AND THE SECURITY VCR IN THE OTHER.

BUT DOES IT CHANGE ANY OF THE PENALTY PHASE?

NO, YOUR HONOR. IT IS NOT EVEN MENTIONED IN THE SENTENCING ORDER. IN THE CONTEXT OF COLD, CALCULATED AND PREMEDITATED AGGRAVATING FACTOR, NO, SIR, IT DOESN'T MAKE ANY DIFFERENCE AT ALL, BECAUSE IT APPLIES, AS I RECALL IT, TO THE VICTIM WHO SURVIVED.

HOW DID THE DEFENDANT, HOW DID THE STATE USE IT, IN ARGUING TO THE JURY THAT, BECAUSE I WOULD ASSUME THE DEFENSE ARGUED THIS WAS PANIC SHOOTING, WHICH YOU HAVE DESCRIBED WHY THAT IS REFUTED, AT LEAST FOR OUR PURPOSES, BUT HOW DID THE STATE USE THE ADDITIONAL BLOOD SPLATTER EVIDENCE TO ARGUE TO THE JURY, IN SUPPORT OF CCP?

I DON'T BELIEVE THAT THEY DID DID.

SO WHAT WAS THE PURPOSE, THEN OF THE EXPERT?

IT GOES TO THE SURVIVING VICTIM.

WHY DID THE STATE PUT THE EXPERT --

BECAUSE HE, THE THEORY, JUSTICE PARIENTE, AS I UNDERSTAND IT, AND THE CASE WITH THE SURVIVING VICTIM IS NOT AT ISSUE HERE, AS FAR AS YOU KNOW, SEEKING RELIEF FROM THAT CONVICTION. AS I RECALL IT, AND AS I REMEMBER THAT PART OF THE RECORD THE ISSUE OR THE RELEVANCE OF THAT EVIDENCE WAS THE BLUNT FORCE TRAUMA TO THE HEAD OF THE SURVIVING VICTIM. IF I RECALL IT. AND I MAY, I WILL DEFER TO WHAT THE RECORD SAYS, BUT --

WASN'T THERE, ALSO, SOME TESTIMONY THAT THERE WAS SOME KIND OF BLUNT TRAUMA ON THE MURDER VICTIM, ALSO? I MEAN THE IMPLICATION BEING THAT THIS MAN HAD NOT ONLY SHOT BOTH OF THEM BUT HAD, ALSO, IN SOME SENSE, BLUDGEONED EACH ONE OF THEM?

I WOULD DEFER TO THE RECORD ON THAT, JUSTICE QUINCE. I DON'T REMEMBER, ONE WAY OR THE OTHER. THE ONE THING I WOULD POINT OUT, WITH RESPECT OR GO FURTHER WITH RESPECT TO THE BLOOD EVIDENCE, WE HAVE TWO PEOPLE, BOTH OF WHOM ARE SERIOUSLY WOUNDED, BLEEDING RATHER HEAVILY IN A CONFINED SPACE, AND YOU HAVE RESUSCITATE I HAVE EFFORTS BEING CONDUCTED ON BOTH OF THOSE VICTIMS, AND ONE OF THE THINGS THAT THE DEFENDANT ARGUED WAS THAT WE DON'T KNOW HOW MUCH OF THIS BLOOD IS FROM WHAT THE PARAMEDICS WERE DOING. PERHAPS WE COULD HAVE DONE WITHOUT IT, WITHOUT THE BLOOD SPATTER EVIDENCE.

WAS IT STILL IN THE VAULT, WHEN -- WAS HE STILL IN THE VAULT WHEN THE RESUSCITATION ATTEMPTS WERE GOING ON?

NO, MA'AM. HE HAD BEEN REMOVED FROM THE BANK BY THAT POINT. AND KEEP IN MIND, THIS DEFENDANT CONFESSED ON THE SPOT.

HE WENT TO GET THIS, THE VCR, OR THE WHOLE CAMERA, AND THEN HE THE POLICE JUST RESPONDED WITHIN MINUTES, AND HE DIDN'T EVEN HAVE A CHANCE TO LEAVE THE --

NO, MA'AM. HE HAD, WHAT HE HAD DONE, ANOTHER EMPLOYEE OF THE BANK, AND THIS IS IN A LITTLE STRIP MALL IN MOUNT DORA, IS WHERE THIS BANK IS. ANOTHER EMPLOYEE HAD WALKED IN THE BANK WITH HER KIDS, AND I GUESS SHE WAS GOING TO VISIT WITH THE TWO TELLERS THAT SHE KNEW, AND SHE HEARD PLEASE DON'T PLEASE DON'T! COMING FROM THE AREA OF THE VAULT. I BELIEVE SHE MAY HAVE SEEN THE DEFENDANT'S BACK. I AM NOT SURE ABOUT THAT. ONE WAY OR THE OTHER. AND THEN SHE HEARD GUNSHOTS, AND SHE RAN NEXT DOOR TO PUBLIX, WHERE LAW ENFORCEMENT WAS CALLED. LAW ENFORCEMENT WAS ON THE SCENE IN APPARENTLY ABOUT A MINUTE, AND WHEN THEY, WHEN THE FIRST TWO OFFICERS LOOKED INTO THE BANK FOR THE FIRST TIME, THEY SAW THE DEFENDANT TRYING TO PULL A CORD GOING TO THE VCR OUT OF THE WALL.

FROM A PLACE OTHER THAN, HE HAD LEFT THE VAULT.

YES YES, MA'AM. HE HAD GONE BACK TO THE BRANCH MANAGER'S OFFICE.

THE BRANCH MANAGER WASN'T THERE.

NO, MA'AM. THE BRANCH MANAGER WAS NOT THERE AND APPARENTLY THIS IS LIKE A HOME VCR, ONLY IT HAS SECURITY FEATURES TO IT, AND IT IS SORT OF A FREEZE FRAME SORT OF AFFAIR. IT IS NOT A CONTINUOUS RUNNING TAPE LIKE A MOVIE FROM BLOCKBUSTER. APPARENTLY IT IS A SNAPSHOT FRAME, EVERY SECOND OR SO, THAT HE HAD IN HIS POSSESSION, AND THE CASE OF THIS VCR WAS BEAT UP UP.

WAS THERE ANY KIND OF BLOOD OR ANYTHING FOUND ON THE VCR? IT SEEMS THE STATE'S THEORY WAS THAT WAS THE WEAPON THAT WAS, OR THE ITEM THAT WAS USED TO INDUCE THE BLUNT TRAUMA, SO WAS THERE ANY BLOOD OR HAIR OR SKIN OR ANYTHING FOUND ON IT?

I DON'T BELIEVE THERE WAS. I DON'T RECALL SPECIFICALLY, BUT AGAIN, THE VCR AND THE BLUDGEON BLUDGEONING OR BLUNT FORCE TRAUMA OR ANYTHING OF THAT NATURE IS NOT RELEVANT TO CCP. CCP IS SUPPORTED ON THE FACTS OF THIS CASE, WHETHER OR NOT THE DEFENDANT TRIED TO FINISH HIS VICTIMS OFF, BY BEATING THEM TO DEATH WITH A VCR.

BUT THAT IS WHAT THE STATE'S THEORY WAS, THAT HE WENT BACK AFTER HE PULLED OUT THE VCR, AND WENT BACK TO THE VAULT AND STARTED TO SMASH THEM WITH A VCR?

HE ADMITS GOING BACK TO THE VAULT WITH A VCR UNDER HIS ARM. HE ADMITS TO HAVING DROPPED THE VCR IN THE BANK VAULT, AND MARISSA SCOTT REMEMBERS AND TESTIFIED TO SEEING A BLACK OBJECT COMING TOWARD HER FACE. SO WHETHER HE DROPPED IT ON HER OR WHETHER HE BEAT HER WITH IT, WE MAY NEVER KNOW. BUT AS FAR AS THE CREDIBILITY DETERMINATION TO SUPPORT THE CCP AGGRAVATING FACTOR, THOSE ARE MATTERS FOR THE TRIAL COURT. THEY HAVE BEEN RESOLVED, AND THE COLD, CALCULATED AND PREMEDITATED AGGRAVATING CIRCUMSTANCE IS WELL-SUPPORTED IN THIS CASE. WITH RESPECT TO THE RING, APRENDI, OR APRENDI, RING ISSUE, THE STATE WILL RELY ON THE ARGUMENT MADE IN IT'S BRIEF AND ON THE ARGUMENT MADE IN THE CASE ALREADY SUBMITTED TO THIS COURT, AND FURTHER POINT OUT THAT NO APRENDI-BASED CLAIM WAS RAISED IN THE TRIAL COURT, EVEN THOUGH APRENDI HAD BEEN DECIDED PRIOR TO THIS CASE BEING TRIED.

DID THE DEFENDANT REQUEST SPECIFIC JURY INTERROGATORIES ON THE AGGRAVATORS?

I BELIEVE HE DID REQUEST SPECIFIC JURY VERDICTS. HE DID NOT REQUEST THOSE JURY VERDICTS, UNDER THE AUTHORITY OF APRENDI AND THE TRIAL COURT IS NOT REQUIRED AND NOT EXPECTED TO INVENT ISSUES FOR THE DEFENDANT. THE DEFENDANT IS THE MASTER OF HIS OWN CASE. HE RAISED THE TRADITIONAL ISSUES THAT THIS COURT HAS SEEN IN HUNTER, FOTOPOULOS, AND SOME OF THE OTHER CASES, BUT DID NOT ARGUE THAT, UNDER APRENDI, HE WAS ENTITLED TO THOSE ISSUES, AND I WOULD SUBMIT THAT THAT IS A PROCEDURAL DEFAULT, AS FAR AS THOSE ISSUES ARE CONCERNED. IF THE COURT HAS NO FURTHER QUESTIONS, I HAVE NO FURTHER COMMENTS AND WOULD ASK THE COURT TO AFFIRM THE CONVICTIONS AND DEATH SENTENCE.

CHIEF JUSTICE: THANK YOU. COUNSEL.

MAY IT PLEASE THE COURT. JUST BRIEFLY ON REBUTTAL, A COUPLE POINTS I WOULD LIKE TO MAKE. AGAIN, WE ARE NOT DISPUTING WITH THE STATE, THAT THERE WAS A LOT OF PLANNING ON THE ROBBERY. THE STATE SPENT A LOT OF TIME GOING THROUGH THE FACTS OF THE CASE. ALL THAT WAS RELEVANT TO SHOW WAS PLANNING FOR THE ROBBERY, NOT PLANNING FOR THE KILLING. THERE WAS A QUESTION OF HOW CLOSE THE GUN WAS. THERE WAS TESTIMONY FROM THE, EITHER THE MEDICAL EXAMINER OR THE FIREARMS EXAMINER, THAT THERE WAS NO SCORCHING OR ANYTHING TO THE HEAD, WHICH MEANS THE GUN WAS NOT TOUCHING THE VICTIM. I BELIEVE THE MEDICAL EXAMINER TESTIFIED THAT IT IS GENERAL RULE OF THUMB THAT IT IS PROBABLY AROUND EIGHT INCHES AWAY. THAT WAS ONLY FOR THE ONE SHOT. THE OTHER SHOTS, THERE WAS NO GUNPOWDER RESIDUE FOUND, SO IT WAS OPINED THAT THOSE SHOTS WERE FURTHER AWAY THAN THE EIGHT INCHES. THE FIREARM EXAMINER, I BELIEVE, DID TESTIFY THAT, IF THE HAMMER WAS COCKED, THAT IT WOULD BE A LOT LESS PRESSURE TO CAUSE IT TO GO OFF, AND RATHER THAN HAVING TO PULL VERY HARD IN A DOUBLE-ACTION SITUATION, AND --

HOW MANY SHOTS WERE FIRED IN ALL?

IN ALL, THERE WERE, I BELIEVE TEN SHOTS FIRED, NINE OF WHICH STRUCK THE VICTIMS, IN ONE PLACE OR ANOTHER. THE STATE MAKES A GOOD POINT, I THINK, SAYING WHY DID THE DEFENDANT CHANGE GUNS, IN ALL THE BULLETS HADN'T BEEN FIRED FROM THE EASIER DOUBLE-ACTION REVOLVER? WHY DID HE DROP THAT GUN AND PICK UP THE OTHER GUN? HE DOESN'T KNOW. HE DOESN'T REMEMBER. BUT IT IS CLEAR HE WASN'T THINKING. IF HE HAD BEEN THINKING ABOUT THIS, HE WOULD HAVE EMPTIED THE REVOLVER THAT WAS EASIER TO SHOOT, NOT GONE FOR THE OTHER ONE.

THERE WAS TESTIMONY THAT THERE WAS OTHER ROUNDS LEFT IN THAT PARTICULAR GUN?

YES, YES, YOUR HONOR.

COULD YOU ANSWER THIS, ASSUMING THIS PANIC THEORY, THEN HOW DO YOU, WHAT IS THE EXPLANATION AS TO AFTER HE TOOK THE VCR OUT, GOING BACK AND DOING SOMETHING FURTHER WITH THE VICTIMS?

WE DON'T KNOW WHAT WAS DONE FURTHER. THE DEFENDANT TESTIFIED, YES, HE TOOK THE VCR BACK THERE. THE POLICE CAME. HE DROPPED THE VCR WHEN THE POLICE CAME, I BELIEVE WAS THE TESTIMONY. THE VICTIM WHO DID DIE, ALSO HAD BLUNT FORCE TRAUMA TO HER FORWARD, TWO BLUNT FORCE TRAUMAS. THERE WAS MEDICAL TESTIMONY OR TESTIMONY THAT AT LEAST ONE OF THE VICTIMS HAD FALLEN AND STRUCK THE COUNTERIN THERE, CAUSING A TOOTH TO CHIP, AND THE MEDICAL EXAMINER SAID BLUNT FORCE TRAUMA. IT COULD BE CAUSED BY A FLAT OBJECT. COULD BE CAUSED BY HER MERELY STRIKING HER HEAD AS SHE WAS FALLING. THE STATE CITES CARD AND FARINA AND SAYS THEY ARE VIRTUALLY IDENTICAL. I WOULD SUBMIT THEY ARE DISTINGUISHABLE. IN CARD, AFTER INJURING THE VICTIM THERE, HER FINGERS WERE SEVERED AND THERE WAS BLOOD FOUND AT THE SCENE. THE DEFENDANT IN CARD, TOOK THE VICTIM TO A REMOTE AREA, HAD A STRUGGLE WITH HER, RIPPED HER BLOUSE, AND SLIT HER THROAT. THAT IS THE ADDITIONAL HEIGHTENED, PREMEDITATION, THE TAKING THE VICTIM FROM THE SCENE. IT OBVIOUSLY WASN'T A PANIC ATTACK. FARINA, SIMILARLY THERE WAS TESTIMONY IN FARINA. ONE OF THE DEFENDANTS SAID IT WAS JEFFREY'S CALL, WHETHER TO KILL THE VICTIMS OR NOT. OBVIOUSLY THEY HAD A PLAN TO KILL THE VICTIMS THERE, WHICH IS NOT PRESENT IN THE INSTANT CASE. REGARDING THE BLOOD SPLATTER EXPERT, HIS TAKING ONE 40-HOUR COURSE DOES NOT MAKE HIM AN EXPERT. THIS COURT HAS HELD, IN DNA ANALYSIS THAT, THE DNA EXPERTS, THEY DON'T HAVE TO FULLY UNDERSTAND THE PROCESS AND EVERYTHING, BUT THEY HAVE TO HAVE A BASIC UNDERSTANDING OF THE PRINCIPLES ON WHICH THAT DNA ANALYSIS IS BASED. I BELIEVE IT WAS IN THE MAYNARD CASE, THIS COURT DISAPPEAR PROVED DNA ANALYSIS, BECAUSE THE EXPERT WASN'T --

WHY WOULD IT BE REVERSEABLE ERROR, UNDER THE FACTS OF THIS CASE? YOU SAID IT DOESN'T GO TO THE GUILT PHASE.

THAT'S CORRECT. THE DEFENDANT ADMITTED HIS GUILT ESSENTIALLY, AT THE GUILT PHASE OF THE TRIAL.

SO HOW DID IT HARM THE DEFENDANT IN THE PENALTY?

IT COULD HAVE BEEN USED BY THE JURY. AS THIS COURT HAS SAID, SCIENTIFIC EVIDENCE IS VERY IMPORTANT FOR JURIES, AND IT COULD HAVE BEEN USED BY THEM IN FINDING THE COLD, CALCULATED AND PREMEDITATED AGGRAVATING CIRCUMSTANCE.

WAS THAT HOW THE STATE USED IT?

THE STATE PRESENTED IT, AND THEY REALLY DIDN'T ARGUE IT TOO MUCH, BUT THEY PRESENTED IT TO THE JURY, AND IT WAS THERE FOR THE JURY TO USE. HIS, THE BLOOD SPLATTER EXPERT, YOU KNOW, SAYING HE HAD A 40-HOUR COURSE, AND THAT MAKES HIM QUALIFIED, I MEAN, HE MIGHT AS WE WILL SAY LIKE, IN THE TELEVISION COMMERCIAL THAT MAYBE YOU HAVE SEEN, I AM NOT A CERTIFIED BLOOD SPLATTER EXPERT BUT I STAYED AT A HOLIDAY INN EXPRESS LAST NIGHT. HA THAT IS ESSENTIALLY WHAT YOU HAVE HERE. YOU HAVE ONE COURSE -- THAT IS ESSENTIALLY WHAT YOU HAVE HERE. YOU HAVE ONE COURSE THAT HE TOOK IN 1993 AND THAT IS ABOUT IT AND NO UNDERSTANDING OF THE PRINCE PELTS -- OF THE PRINCIPLES UPON WHICH IT WAS BASED. ALSO WE PRESERVE THE RING ARGUMENT. THE DEFENDANT MADE SPECIFIC REQUEST FOR DETAILED JURY FINDINGS OF WHICH AGGRAVATING CIRCUMSTANCES THEY FOUND. HE ARGUED THAT IT VIOLATED THE SIXTH AMENDMENT. I DON'T KNOW THAT THERE IS A REQUIREMENT THAT SAYS THAT YOU HAVE TO CITE EVERY SINGLE CASE THAT MAY BE ON POINT, AND UNFORTUNATELY THE DEFENSE ATTORNEY OVERLOOKED THE APRENDI DECISION AND DIDN'T ARGUE IT. PERHAPS BECAUSE IT WAS SAID, IN APRENDI, AND CORRECTLY THAT, IT DIDN'T APPLY TO CAPITAL SENTENCING CONTEXT, BUT HE STILL ARGUED THE SIXTH AMENDMENT CLAIM. HE, ALSO, ARGUED UNDER THE FLORIDA STATE CONSTITUTION, WHICH I SUBMIT THIS COURT CAN FOLLOW ON THAT. WE SUBMIT THAT THE CASE SHOULD BE REVERSED AND REMANDED FOR A LIFE SENTENCE. THANK YOU.

CHIEF JUSTICE: THANK YOU BOTH VERY MUCH. THE COURT WILL STAND IN RECESS FOR 15 MINUTES BEFORE WE HEAR THE LAST TWO CASES.

MARSHAL: PLEASE RISE.