Michael Gordon Reynolds v. State of Florida

MARSHAL: PLEASE RISE . HEAR YE.HEAR YE.HEAR YE.THE SUPREME COURT OF THE GREATSTATE OF FLORIDA IS NOW INSESSION.ALL WHO HAVE CA USE TO P LEA , DRAW NEAR, G IVE ATTENT ION A NDYOU SHALL BE HEARD. GOD S AVE T HESE UNI TED STATES , THIS GREAT STATE OF FLORIDA AND THIS HONORABLE COUR T. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT.PLEASE BE SEATED.

CHIEF JUSTIC E: I AM ELEVATED, TODAY , MAR SHAL , WAY HIGHER THAN I USUALLY HIM. I F EEL VE RY TALL . I HAVE GOT TO GET T HESECHAIRS. THESE ARE RELATIVELY NEW CHAIRS, AND WE ST ILL HAVEN'T GOTTEN, O KAY . WELCOME TO THE FLORIDA SUPREMECOURT.THE FIRST CA SE ON THIS MORNING'S DOCKET IS REYNOLDS VERSUS STATE OF FLORI DA. IT LOOK S L IKE THE PAR TIES ARE READY, AND YOU MAY PROC EED.

THANK YOU, YOUR HO NOR. MAY IT PL EASE THE COURT. MY NAME IS J AMES WULCHA K , ASSISTANT PUBLIC DEFEND ER F ROM DAYTONA BEACH, FLORIDA, AND W E REPRESENT THE AELLANT , MICHAEL GO RDON REYNOL DS, A NDTHIS IS DIRECT AP PEAL FROM CONVICTIONS FOR SECOND-DEGREEMURDER, BURGLA RY AND TWO COUNTS OF FIRST-DE GREE MURDER , WHICH RESU LTED IN TWO DEATH SENTENCES. WE WOULD LIKE TO, THIS MORNING , DISCUSS IS SUES O NE , AS IT RELATES TO THE GUILT PHASE OF THE T RIAL, AND THEN ADDRES S THE PENALTY PHASE IN I SSUESEVEN, AND WE WOULD LIK E TO REST ON THE BRIEFS ON THE REMAINING ISSUES. THE F ACTS BRIEFLY, REGARDING THOSE ISSUES , DAN NY PRIVET , ROBIN AND CHRISTINA RA ZOR WERE FOUND DEAD IN 199 8. PRIVET HAD BEEN HIT W ITH A CONCRETE BLOCK OVER THE H EA D WHILE OUTSIDE OF THE CAM PER TRAILER WHERE THEY WERE LI VING , QUITE SOME DISTANCE AWAY FROM IT.

LET ME ASK. I THINK WE ARE FAMILIAR WITH THE FACT S IN THIS CASE BU T AS YOU PRES ENT THIS ISSUE , WAS THE DEPOSITION OF PRATT EVER TAKEN?

T H OUGH -- NO , I DO NOT BELIEVE IT WAS. THEY WERE UNABLE TO LOCATE HIM UNTIL SOME TIME RECENTLY. PRIOR TO THE TRIA L, WHEN AN INVESTIGATOR WORKING WITH T HEDEFENSE, HE ARD FROM , I BELIEVE IT WAS A RE LATIVE O F PRATT. HE WAS AARENTLY LIVING I N HIS CAR, AND HE A GREED ONL Y TOMEET WITH THIS INVESTIGATOR AT THE AIRPORT, WHERE HE SAID HE WOULD VOLUNTARILY COME TO FLORIDA TO TESTIFY, WHEN THE INVESTIGATOR SHOWED UP THERE , HE GOT UP SET A B OUT SECURITY PROCEEDINGS AND DIDN'T WA NT TO COME BACK TO FLORIDA , AND DID NOT RETURN WITH HER, AND THEN IMMEDIATELY LEFT THE AREA AND COULD NOT BE FOUND AGAIN.

WAS THERE ANY CONNECTION BETWEEN PRATT AND THE ACTUA L CRIME SCEN E? I NO TICED THA T THERE WERE SOME FINGERPRINTS THAT WERE LI FTED , BUT WERE PRATT'S FINGERPRINTS LIFTED?

THERE WAS AN UNIDENTIFIED PALM PRIN T THAT WAS LIFTED AND NEVER MADE A MA TCH OF.THERE WAS AN UNIDENTIFIED FOOTPRINT AT THE SC ENE INSIDE THE TRAI LER, THAT DI DN'T MA TCH THE DEFEND ANT.

BUT TH ERE WAS NOTHING THAT WAS IDENTIFIED.

YES. PRATT'S BE LONG INGS , HIS D NA, BLOOD SA MPLE S WERE NEVER SUBMITTED FOR COMPARISON , O NEOF THE MANY FAULTS THAT WERE EVIDENT FROM THE RECORD , WITH THE INVESTIGATION THAT TOOK PLACE OV ER A FIVE-YEAR P E RIOD. VARIOUS IT EMS OF DNA , WHERE --

WELL , PRAT T HAD A RECORD, SO THE PRINTS WOULD HAVE B EEN AVAILABLE FROM PRIOR ARRE STS.

BUT THERE WAS TESTIMONY THEY WERE NEVER COMPARED, YOUR HONOR.

OKAY.

HOW ABOUT THE DNA EVIDENCE? THERE WAS NO DNA EV IDENCE THAT WAS NOT ATTACHED , WAS THERE?

THERE WAS DNA EVI DENCE THAT WAS DISCO VERED . ACCORDING TO THE ST ATE'S EXPERT WITNESSES , THERE WERE DIFFERENT MEASUREMENTS . THERE WERE DIFFERENT WHIELS PRESENT THAT WOULD EXCLUDE THE DEFENDANT. HOWEVER , EVERY TIME THEY CAMEUP WITH AN INCONSISTENT RESULT, A DIFFERENT ALIEL, A DIFFERENT MEASUREMENT, A DIFFERENT BAND, THE STATE'S WITNESSES WOULD SAY THIS IS INCONCLUSIVE. THIS IS CAUSED BY LIMITATIONS OF IT IS DNA -- OF THE DNA PROCESS, SO WE ARE GOING TO DISREGARD THE BANDS THAT DO N' T MATCH THE DEF ENDANT.

CHIEF JUST ICE: AS FAR AS THE EVIDENTIARY R ULING , THE JUDGE DID AGREE WITH YOU T HAT YOU HAD MADE REASON ABLE EFFORTS TO LOCATE MR. PRATT AND HAD BEEN UNSUCCESSFUL .

YES .

CHIEF JUSTICE: AND HE DID ALLOW IN CERTAIN PARTS OF MR . PRATT'S STAT EMENT.

ESSE NTIALLY IT WAS ONE PORTION OF THE STATEMENT WHERE MR. PRATT HAD AD MITTED TO THE POLICE, WHEN HE WAS INTERVIEWED BY THE P OLICE , THAT HE DID HAVE A MO TIVE FOR THE CASE. HE AND HIS GIRLFR IEND WERE QUITE UPSET THAT THE PRIVETT S WERE BEHIND IN THEIR RENT. HE HAD MADE PREVIOUS THREATS TO THEM WITH A GUN , D RIVING BY THE NIGHT BEFORE THE KI LLING , WITH THE GUN.

CHIEF JUSTICE: THAT IS PRETTY POWERFUL EVIDENCE THAT CAME IN, TH AT YOU COULD, THE DEFENSE COULD US E TO AR GUE TO THE JU RY.

CORRECT, YOUR HONOR .

CHIEF JUSTICE: NOW, LET'S TALK , THEN , ABOUT WHERE T HETRIAL COURT, WH AT IS YOUR ARGUMENT, AND I , W HAT I AM , WHAT I AM TRYING TO UNDERSTAND IS YOUR ARG UMENT IS THAT THE OTHER PARTS WERE NOT HEA RSAY , BECAUSE THEY WEREN'T BEING ADMITTED TO THE TRUT H. IS THAT --

CORRECT, YOUR HONOR .

CHIEF JUST ICE: AND I GUESS MY , MA YBE I T AL MOST G O ES TO THE SECOND PART OF IT. IF YOU HAD THIS POW ERFUL EVIDENCE THAT CAME IN T HAT SAID THAT HE HAD A MOTIVE , AND THIS O THER PART OF THE STATEMENT THAT YOU WANTED T O GET IN WOULD NOT BE IN THERE TO, FOR THE TRUTH OF THE MATTER, AND HOW COULD THAT BE , HOW COULD THAT B E HAR MFUL ERROR, EVEN IF THERE WERE CERTAIN PARTS OF IT THAT MAYBE SHOULD HAVE COM E IN UNDER ONE THEORY OR ANOT HER?

IT , AS YOU INDICATE , OUR ARGUMENT IS T HREE FOLD ESSENTIALLY. ONE , IT WAS NOT HEAR SAY. TWO, IF IT WAS HEARSAY, THE ENTIRE STATEMENT WAS A STATEMENT AG AINST PE NAL INTERESTS AND THE E NTIRE STATEMENT SHOULD COME IN , AND , THREE , EVEN IF IT DIDN'T F ITWITHIN THE EXCEPTION TO THE HEARSAY, IT SHOULD COME IN UNDER CONSTITUTIONAL PRINCIPLES.

CHIEF JUSTICE: BUT USUA LLY A DEFENDANT IS TRYING TO A DMITSOMETHING FOR THE TRUTH OF THE MATTER, BE CAUSE THE TRUTH OFTHE MATTER WOULD BE THAT THIS MAN WAS THE PERPETRATER OF THE CRIME.

PRECISELY .

CHIEF JUSTICE: SO YOUR FIRST ISSUE BEING THAT IT WASN'T HEARSAY, FIRST OF ALL , SO LE T'S JUST ASSU ME, EVEN THOUGH I AM NOT S URE THAT WAS EVEN PROPERLY PRESE RVED, H OW, IF IT CAME IN AND THE JUDGE SAID THAT THIS IS NOT BEING ADMITTED FOR THE TRUTH OF THE MATTER, HOW COULD THE FA ILURE TO ADMI T IT , BE HAR MFUL ERROR?

THE FAILURE TO ADMIT IT WAS HARMFUL , BECAUSE THE EN TIRE STATEMENT , THESE MATT ERS SHOWED THAT PRATT K NEW THE METHOD AND MANNER OF THE KILLING , WHEN THAT INFORMATION HAD NOT BEEN RELEAS ED TO THE PUBLIC.

CHIEF JUSTICE: THEN I T WOULD BE , IF IT WAS FOR THAT REASON, THEN IT WOULD BE ADMITED FOR THE TRUTH --

I KNOW. BECAUSE HE SAID SOMEBO DY E LSE STABBED THEM, SO , OF COUR SE, THE DEFENSE WASN'T AGR EEING THAT SOMEBODY ELSE STABBEDTHEM. THEY WERE SA YING THAT PRATT STABBED THEM, AND HE , ONLY THE AUTHORITIES AND ONLY THE ACTUAL KILLER WOULD KNOW HOWTHE VICTIMS WERE TR EATED , THE MANNER OF THE KILLING , T HAT THEY WERE STABBED.

WAS IT WHAT HE SAID OR WHAT SOMEBODY HAD SAID TO HIM IN HIS STATEMENT. WAS HE REFER RING TO HIS KNOWLEDGE , OR WAS HE REL YING WHAT DEBBIE HAD SAID TO HIM -- RELAYING WHAT DEBBIE HAD SAID TO HIM?

I BELIEVE THAT IT WAS HIS KNOWLEDGE THAT, HE KN EW.

CA N YOU CITE ME WHAT P AGE OF THE INTERVIEW WE ARE TALKING ABOUT.

I APOLOGIZE. HE WAS SAYING THAT SOME PER SON NAMED DEB BIE , WHO WE ONLY HAVE A FIRST NAME FOR , INDICATEDTHAT HE WAS TOLD THIS BY HER, THAT THEY HAD BEEN STABBED. AND THAT IS PAGE 19 1.

SO HOW DOES THAT H EL P YOUR CASE AT ALL? IF ALL HE IS DOING IS RELAY IN G SOMEBODY ELSE'S INFORMATION TO HIM?

IT IS INFORM ATION THAT WASN'T AVAILABLE TO THE PUBL IC, THE FACT THAT HE SAID IT WAS FROM DEBB IE. A GAIN, WE ARE NOT OF FERING THAT AS PROOF OF THE MATTER BUT JUST FACT THAT HE KNEW THIS. WHETHER DEBBIE EVER EX ISTED , WE DON'T KNOW.

SO IF ANY THING , IT WOULD TEND TO PROVE THAT DEBBIE COMMITTED THE M URDER NOT THATHE DID.

THE FACT THAT HE KNEW THERE HAD BEEN A STABBING . HE ATTRIBUTED TO SOM EBODY ELSE . WHETHER THAT IS TRU E OR NOT W E DON'T KNOW, BUT THE FACT T HAT HE KNEW THAT INFORMATION WHEN THAT INFORMATION WAS NOT K NOWNTO THE PU BLIC , ONLY TO T HEAUTHORITIES AND ONLY TO THE KILLER, IS HI GHLY RELEVANT AS SOMETHING --

BUT THAT HA S TO INFER THAT DEBBIE DIDN'T TELL HIM THAT OR THAT DEBBIE, SOME HOW , WAS THE ONE THAT KNEW THAT. I MEAN , YOU CAN'T GET A WAY FROM THOSE INFERE NCES , CAN YOU?

YOU CAN GET AWAY WITH THE FACT THAT PRATT WAS THE ONE WHO TOLD AUTHORITIES THAT HE KNEW, FROM SOMEHOW , THAT THESE PEOPLE HAD BEEN STABBED.

WELL, IF, I N FACT , YOU SAY JOE " X" TOLD ME THAT THE C ARRAN THE RED LI GHT , NOW , DOESN'T THAT , RE ALLY, I M EAN,WHAT YOU ARE DEAL ING WITH IS SORT OF HEARSAY ON HEARSAY , BECAUSE WHAT WE ARE DEPE NDING UPON IS WHETHER JOE I S RELIABLE OR NOT .

NO. WELL, WE ARE , AGAIN, NOT G OINGTO THE TRUTH OF THE MATTER ASSERTED, AND THAT WOULD BE THE RELIABILITY.

CHIEF JUSTICE: THAT IS USUALLY, THOU GH, AN ARG UMENT THE STATE LIKES TO M A KE.

I UNDERSTAND , YOUR HONOR. UH-HUH.

CHIEF JUSTICE: YOU ARE REALLY USING IT FOR THE TRUTH OF THE MATTER , AND I THINK --

THE FACT THAT HE TRIED TO ESTABLISH AN ALIB I FOR T HETIME OF THE KILL INGS. OF COURSE IT WASN'T OFFERE D TO PROVE THE TRUTH OF THE MATTER ASSERTED, THAT HE HA D AN ALIBI FOR THE TIME OF THE KILLIN GS , BUT IT WAS OF FERED TO SHOW THAT HE KNEW THE TIME FR AME OF THE KILLINGS , WHEN , A GAIN , THAT INFORMATION WAS NOT KNOWNTO THE PUBLIC, ONLY KNOW N TO THE MEDI CAL EXAM INER, T HEAUTHORITIES AND TO THE A CTUAL KILLER, SO, AGAIN, WE SUBMIT IT IS NOT HEARSAY . IT WAS NOT USED TO PROVE T HETRUTH OF THE MATTER ASS ERTED BUT WAS PROVED , OFFE RED T O PROVE THAT HE HAD, THAT HE MADE THESE STATEMENTS, J UST THAT HE MADE THESE STATEMENTS.

WHY, WHEN YOU CONSIDER T HEFACT THAT THE REAL IMP ORTANT PORTIONS OF HIS STATEMENT THAT CAME IN ARE , REALLY, WHAT THE DEFENSE NE EDED T O MAKE THEIR ARGUMENT, THAT THIS MAN WAS PROBABLY IMPLICATED SOMEHOW IN THIS MURDER, THEN WHY ISN'T THE FACT THAT THE OTHER PORTION OF THE STATEMENT WHIC H, REALLY, ENDS UP BEING SOMEHOW OF DO UBLE HEARSAY HERE , WHY ISN'T THAT HARM LESS , THE FACT THAT THOSE PORTIONS OF THE STATEMENT DID NOT COME IN, WHEN THE REAL RELEVANT PORTIONS SE EM TO HAVE COME IN TO EVIDENCE .

WE WOULD SUBMIT , AS THE ATTORNEYS DID BELOW , THAT THE ENTIRE STATEMENT SHOULD BE ADMITTED, THE ENT IRE , WHET HER IT WAS NOT HEARSAY OR WHETHER IT WAS UNDER THE HEARSAY EXCEPTION STATEMENT AGAINST PENAL INTERESTS, IT --

LET'S ASSUM E THAT IT REALLY IS HEARSAY.

OKAY.

AND THE FACT THAT THIS DEFENDANT REPE ATS SOME INFORMATION THAT WAS GIVEN TO HIM. HOW WAS THAT AGAINST HIS PENAL INTERESTS?

THE FACT THAT HE KNEW FROM SOME SOURCE , H OW HE KNEW WE DISPUTE, BUT HE KNEW THE TIME OF THE KILLING. HE KNEW THE MANNER OF THE KILLING. IT TENDED TO EX POSE HIM TO GREATER LIABILITY AND TE NDED TO EXCULPATE THE DEFEND ANT. IT DOESN'T HAVE T O NECESSARILY EXCULPATE. IT IS EN OUGH IF IT TE NDS T O EXCULPATE .

HOW DOES IT GO TO THE TIME FACTOR?

PA RDON ME?

THE STATEMENT THAT WAS EXCLUDED, HOW DOES THAT G O TO THE TIME FACTOR?

THE TIME FACTOR W ASIMPORTANT.HE SAID , WELL, I WAS WITH MY GIRLFRIEND, NIC OLE , DURING THIS TIME FRAME , WHEN THE TIM E FRAME OF THE KILLINGS HAD NOT BEEN MADE PUBLIC .

DIDN'T SHE , ALSO , VERIFY THAT AT SOME PO INT , SAY THAT, YES, SHE WAS WITH HIM?

AT TRIAL SHE SAID, NO , I WASN'T WITH HIM THAT NI GHT. AND THEN ON F URTHER EXAMINATION, BY DEFENSE COUNSEL , SHE ADMITTED, WELL , I MAY HAVE TOLD THE POLIC E THATI WAS WITH HIM THAT NIGHT , AND IF I TOLD THE POLICE THAT, THEN THAT IS TRUE. I WAS WITH HIM . IT IS IMPORTANT THAT THE ADMISSIBILITY EXTEND TO THE ENTIRE STATEMENT , TO SHOW THE CONTEXT, TO SHOW THE SUBJ ECT MATTER --

HOW DOES THIS GO TO CONTEXT?I MEAN, YOU HAVE THIS WHOLE , VIRTUALLY THE EN TIRE STATEMENT IN. THIS IS VERY , VERY LI MITED , ALMOS T ONE SENTENCE THAT HAS BEEN PU LLED OUT.

THERE WAS QUITE A BIT PULLED OUT, YOUR HONOR. THERE WERE VERY FEW PORTIONS ADMITTED. THE ONLY PORTIONS THAT WERE DIRECTLY RELATED TO THE THREATS THAT HAD BEEN MADE AND THE BACK R E NT, BUT AS T O H ISKNOWLEDGE OF THE MANNER OF KILLINGS, HIS KNOW LEDGE OF THE TIME OF THE KILLINGS , THOSE DIDN'T COME OUT , AND THOSE WOULD HAVE BEEN IMPO RTANT F ORDEFENSE COUNSEL TO ARGU E TO THE JURY , LOO K AT THE ENTIRE CONTEXT OF THIS. THE POLICE WERE INTERE STED IN THIS PERSON. THEY GOT HIM TO COU P WITH AN ALIBI FOR THIS TIME FRAME -- TO COME UP WITH AN ALIBI FOR THIS TIME FRAME, WHEN THE POLICE DIDN'T TELL HIM THE TIME FRAME FOR THE KILLING. THE FACT THAT THIS IS WHERE DENY PR IVETT WOULD HAVE BEEN URINATING, AND THAT IS W HEREHE WAS KILLED , SOMETH ING THAT ALSO WOULD HAVE BEEN UNKNOW N TO THE G E NERAL PUBLI C. AS JUSTICE WE LLS SAID IN HIS CONCURRING OP INION WITH BRO OKS , ACKNOWLEDGING THE STATEMENT THAT INDIVIDUALLY , THEMSELVES, ARE INDIVIDUALLY IN CRIMINALTORY SHOULD BE ADMISSIBLE. IT SUGGESTS THAT. THAT FL ORIDA T A KES A MORE REASONABLE, BROADER AROACH. THE WHOLE STATEMENT IS ADMISSIBLE, BECAUSE IT G IVES THE WHOLE CONTEXT AND THE CIRCUMSTANCES UNDER WHIC H IT WAS GI VEN. WE SUBMIT THAT THE ENTIRE STATEMENT, ALL OF THE CONTEXT THERE IN AND ALL OF THE STATEMENTS, THE GIVE AND TA KE, THE EXCHANGE WITH THE POLICE OFFICERS WHO WERE TRYING T O FIND A SUSP ECT I N THE CA SE, I S IMPORTANT FOR THE DEFENSE ATTORNEY TO BE ABLE TO A RGUETO THE JURY, LOOK , THIS G UY , PRATT, HAD KNOWLEDGE OF THE KILLINGS WHEN THEY OCCURRED, HOW THEY OCCURR ED, THAT WAS UNKNOWN TO THE PUBLIC.

WH EN WAS THE STATEMENT MADE , IN RELATIONSHIP TO THE MURDERS?

IT WAS MADE RELAT IVELY SHORTLY AFTER THE MURDERS , YOUR HONOR.

MEANING D AYS, HO URS?

I BELIEVE IT WAS DA YS.

IT WAS THE NEXT DAY. ACTUALLY IT W AS ON JULY THE 23thd , 10:30 A.M. THAT IS WHAT THE STATEMENT S AYS, CORRECT?

CORRECT .

THE DEFENSE AT TRIA L WAS THAT IT WAS PRATT?

YES, YOUR HONOR.

CHIEF JUSTICE: SO WERE THE POLICE QUESTIONED DURING THE TRIAL AS TO WHY PRATT WAS EXCLUDED AS A SUSPECT?

THEY TALKED ABOUT HOW HE WAS INTERVIEWED AND STUFF , BUT THEN THEY JUST KIND O F DROP PED HIM AS A SUSP ECT AND IT WAS NEVER INDI CATED WHY.

CHIEF JUSTICE: AGAIN, AS WE WERE ASKING EARLIER , THERE WAS ABSOLUTELY NO PHYS ICAL EVIDENCE THAT POI NTED T O PRATT AS THE PERPETRATOR , WHEREASTHERE WAS SIGNIF ICANT PHYSI CAL EVIDENCE, WAS THERE NOT , THAT POINTED TO REYNOLDS. IT WASN'T SOME THING JUST ARBITRARY THAT THE POLICE DID.

THAT EVIDENCE WAS DEVELOPED OVER A FIVE-Y EAR PER IOD, BEFORE THE CASE ULTIMATELY WENT TO TRIAL , AND THE - -

CHIEF JUSTICE: CHIEF WELL , WHENEVER IT WAS DEVELOPED , ANSWER, AS WE EXPL ORED EA RLIER , THERE WAS NO PHYSICAL EVIDENCE THAT PRATT, WHO MUST BE BEEN AN EARLY SUSPECT FOR THE POLICE, WAS LI NKED TO THE CRIME SCENE .

AGAIN, THEY DID NOT SUBMIT ANY OF PRATT OR NICOLE'S OR THE OTHER , COMBS , THEY DID NOT SUBMIT ANY OF THEIR BLOOD SAMPLES, ANY OF THEIR HAIR SAMPLES , ANY OF THEIR PALM , FOOTPRINT SA MPLES FOR COMPARISON. THE ONLY THING THEY DID WITH MR. PRATT WAS THEY WEREN'T TO -- WENT TO HIS HOUSE AND LOOKED AR OUND AND DIDN'T FIND ANYTHING THERE.

WERE THERE ANY MARKINGS ON HIM? ANY CL AW , SCRATCH MARKS?

IT D OES NOT AEAR T HAT THERE WERE.THE DEFENDANT'S SCRATCH MARKS HE EXPLAINED IS HAVING STUMBLED HAVING COME DOWN H ISSTEPS EARLY IN THE MORNING , TAKING HIS DO G FOR A WA LK. THE PHYSICAL EVIDENCE CORROBORATED HIS STATEMENT, THAT THERE HAD BEEN A BU RR. THERE WAS A NOT CH ON THE SCREEN DOOR FRAME.

I THOUGHT THE ME DICAL EXAMINER SAID THAT WAS INCONSISTENT. AM I INCO RRECT IN THAT RECOLLECTION?

I AM SORR Y. INCONSISTENT?

INCONS ISTENT WITH H ISDESCRIPTION OF HOW HE W ASINJURED?

HE SPECUL ATED THAT HIS HAND WOULD HAVE HAD TO HAVE BEE N A CERTAIN WAY , UPSIDE DOWN RATHER THAN LIKE THIS, FOR IT TO HAVE OCCURRED. THAT WAS PURE SPECULATION AND OUTSIDE OF HIS SCOPE OF EXPERTISE , I BE LIEVE , YOURHONOR. THERE WAS PHYSICAL EVIDENCETHAT THERE WAS, IN FACT, A NOTCH IN THE SCR EEN DOOR. THERE WAS A BURR FOUND IN THE BUSHES BE SIDE THE ST EPS LEADING OUT OF THE TRAI LER THAT WAS CON SISTENT WITH THAT , DESPITE THE SPECULATION OF THE MEDICAL EX AMINER .

CHIEF JUSTICE: WHAT WAS THE ARGUMENT, SPECIFICALLY THE TRIAL COUNSEL TRIED TO GET IN THE ENTIRE STATEMENT. IS THAT CORRECT?

CORRECT, YOUR HONOR.

CHIEF JUSTICE: DID THEY TRY TO GET THE EN TIRE STATEMENT IN AS BEING NOT HEARSAY, OR A S AN ADMISSION AGAINST INTER ESTS ? WHAT WAS THE ARGU MENT MADE TO THE TRIAL COURT?

I BELIEVE THEY TRIED TO ADMIT THE ENTIRE STATEMENT. THEY DID SPECIFICALLY STATE TO THE

COURT THEY WEREN'T OFFERING IT FOR THE TR UTH OF THE MATTER , SIR, THEY WEREN'T VOUCHING FOR THE TRUTH OF WHAT PRATT WAS SA YING, THAT HE DIDN'T DO IT , OF CO URSE , BUT THEN THEY DID TALK ABOUT HEARSAY BEING A STATEMENT AGAINST PENAL INTERESTS .

CHIEF JUSTICE: I THOU GHT THE ONLY PORTION OF PRATT'S STATEMENT THAT REYNOLDS ASSERTED WAS NOT HEARSAY WAS A STATEMENT THAT PR IVETT , HIMSELF, STABBED R OBIN AND CHRISTINA.

YES .

CHIEF JUSTICE: SO THE ARGUMENT , SO THAT WAS THE O NLY PORTION. SO WHAT WAS THE ARGUMENT AS TO THE RE ST?

THE ENTIRE STATEMENT WAS A STATEMENT AGAINST PENAL INTERESTS AND SHOULD COME IN UNDER THAT EXCEPTION NOT JUST LIMITED PORTI ON.

CHIEF JUSTICE: WHAT DID THE TRIAL COURT DETERMINE AS TO THE PORTIONS YOU ARE NOW SAYING SHOULD HAVE BEEN --

THE TRIAL COURT DETERM INED THEY WERE NOT STATEMENTS AGAINST PENAL INTERESTS. THEY DID NOT INCOME EIGHT -- INCULPATE PRATT OR EXCULPATE THE DEFENDANT.

CHIEF JUSTICE: SO HOW DO W E NOW, BASED ON THAT , ALY A DISCRETION STANDARD O R ALY DE NOVO , LO OKING AT THEM , BECAUSE WHAT IS THE POSI TION, THE STANDARD?

THE CASE LAW I S , I BELIEVE , DISCRETION FOR ADMISSIBILITY OR NONADMISSIBILITY OF EVIDENCE, BUT WE SUBMIT THAT THE FACTS ARE NOT IN DISP UT E AND THEN THE QUE STION OF LA W SHOULD BE DETERMINED ON A DE NOVO REVI EW TO THE TRIAL JU DG E , DID HE FOLLOW THE CORRECT LAW? HE SAID ONLY THE INDI VIDUAL INCRIMINATING STA TEMENTS WITHIN THE ENTIRE STA TEMENTWOULD BE ADMISSIBLE AS A STATEMENT AGAINST PENAL INTERESTS.WE SUBMIT - -

CHIEF JUSTICE: CH IEF RATHER THAN, NOW , THE DOUBLE HEARSAY , THAT IN OTHER WORDS IF HE IS RELATING WHAT SOMEONE ELSE TOLD HIM, THEN YOU HAVE GOT A PROBLEM WITH THAT NOT BEING AN ADMISSION AGAINST INTERESTS .

AGAIN, THE MAN NER OF KILL ING , WE SUBMIT , WAS NOT HEARSAY , NOT OFFERED TO PROVE THE TRUTH OF THE MATTER , SIR , THAT PARTICULAR ONE .

YOU HAVE D E VOTED AL MOST ALL OF YOUR TIME TO THIS PARTICULAR ISSUE AND YOU INDICATED THAT YOU WA NTED TO TALK ON THE --

THANK YOU, YOUR HONOR. IT IS CLEAR FROM THE RECORD THAT THE DEFENSE ATTORNEY TRIED TO GET IN THE ENTIRE STATEMENT , AND IT WAS ONLY WHEN THE JUDGE SAID , NO , THE ENTIRE STATEMENT ISN'T COMING IN ON PAGE 23 62 OF THE RECORD. THE DEFENSE ATTORN EY SAYS, N OW, IF THE COURT SAYS "NO" TO THE HOLD, THEN W E WILL TALK ABOUT OTHER POSITION S.IT WAS A FALL-BACK ATTEMPT AND NOT AN EFFORT TO GET IN THE STATEMENT.WE SUBMIT THE DEATH PENALTY WAS NOT WARRANTED HERE AND IT WAS ERROR TO IMP OSE . AGGRAVATING CIRCUMSTANCES, OF COURSE, MUST BE PRO VEN BEYOND A REASONABLE DOUBT BY COMPETENT SUBSTINKS SUBSTANTIAL EVIDENCE. -- SUBSTA NTIAL EVIDENCE. HERE THE JUDGE FOUND THAT THE CASE LAW L ED TO AN ARREST AND THE CASE LAW, WHEN IT LE ADS TO A DEFENDANT, M UST BE V ERY STRONG AND SUBSTANTIALEVIDENCE, WHICH IS TOTA LLY LACKING H ERE.

WHAT DOES THE STATUS OF THE DIRECT TESTIMONY CAME FROM A CELLMATE THAT HE TO LD THE CELLMATE HE WAS NOT GO ING TO LEAVE ANY WITNESSES BE HIND , HECOULD NOT , AND

THAT HE HAD REGRET ABOUT THE CHILD, AND THAT IS THE NATURE OF THAT .

YES. THAT IS THE ENTIRE B ASIS FOR THIS FINDING. AND THAT WAS TOTALLY IMPEACHED BY A DISINT ERESTED THIRD P ARTYWHO IS , A LSO , AN INMATE IN THE SAME INSTITUTION , WHERE THIS JAILHOUSE SNITCH WAS TESTIFYING THAT DAY IN COURT AND CAME BACK TO HIS JAIL CELL AND TOLD HIS CE LLMATE , YOU KNOW, HE NEVER TOLD ME THAT. I JUST MADE IT UP BECAUSE ITHINK THE G UY IS A SIT . SO -- A SH IT , SO I WAN TED TO GET HIM --

LE T'S ASSUME YOU WOULD B E CORRECT ON THAT , SO T HAT WOULD, THEN , LEAVE THE HAC AND ALSO LEAVE THE PRIOR VIO LENT FELONY.

CORRECT. CORRECT , YOUR HONOR.

AND THOSE TWO WOULD NOT , THEN, AS YOUR ARGUMENT , WOULD NOT SUORT.

YES .

IN L IGHT OF THE SUBSTA NTIAL NONSTATUTORY MITIGA TING CIRCUMSTANCES HERE, EVE N THOUGH REYNOLDS DIDN'T WANT TO PUT ANY OF THE FAMILY THROUGH THE PENALTY PHASE OF THE TRIAL AND ATTEMP TED TO WAIVE IT AND DIDN'T WISH TO PR ESENT ANY MITIGATING TESTIMONY , WE SUBMIT THAT THE PSI AND THE SPENCER HEARING DID PRE SENT SUBSTANTIAL MITI GATING CIRCUMSTANCES. THE TRIAL JUDGE , IT IS INTERESTING TO NOTE IN DISCUSSING WHETHER HE WAS GOING TO WAIVE THE SENT ENCING JURY, SPECIF ICALLY MENTIONED , QUOTE, I GO STRI CTLY BY STATUTORY MITIGATING FACT ORS , AND SO THAT IS THE WA Y IT IS . FOUND AT R -3499 OF THE -- RECORD. WE SUBMIT THAT THE TRIAL JUDGE DID LO CKET AND DID NOT GIVE SERIOUS CONSIDERATION TO THAT --

WAS THAT BY WAY OF MITIGATION?

HE WAS TALKING AB OUT WHAT SHE SHOULD ARGUE TO THE JURY AS OOSED TO JUST ARGUING TO HIM. ONE OF THE ISSUES D ISCUSSED WAS RE SIDUAL DOUBT.

WAS THAT NOT WITH RE GARD TO DISCU SSION, THERE IS SOME ISSUE OF WAIV ING THE ENTIRE JURY PROCESS. IT WAS IN THAT CONTEXT, WAS IT NOT?

CORRECT BUT THE JUDGE MADE THE B OLD STATEMENT, I GO STRICTLY BY STATUTORY MITIGATING FACTORS , WHICH WE DON'T FE EL THIS COURT CAN AND SHOULD IG NORE. IT IS PARTICULARLY TE LLING .

DO N'T WE HAVE, THEN, A N ORDER WHERE THE JUDGE COMES IN AND RECOGNIZES THE REQUIREMENTS OF MOHAMMED AND STATES I CANNOT GIVE GREAT WEIGHT TO THIS BECAUS E OF THE CASE LAW?

WE SUBMIT HE PAID LIPSERVICE TO THOSE BUT HIS REAL RATIONAL WAS FO UND IN THIS -- RATIONALE WAS FOUND IN THIS STATEMENT. HE FOUND THE NONMIT IGATING STATUTORY THAT WAS PRES ENTED. HOWEVER , WIT HOUT ANY EXPLANATION IN VIOL ATION OF THIS COURT'S RULINGS IN CAMPBELL, DIDN'T EXPL AIN WHY HE GAVE CE RTAIN WEIGHT T O THE NONSTATUTORY MITIGATION , WHY HE GAVE LITTLE WEIGHT TO IT. HE ME RELY LISTS THEM AND SAYS I GIVE IT LITTLE WEI GHT, GIVING US NO GUID ANCE .

WAS IT SAID I N NUMEROUS CASES THAT THE WEIGH T, THAT W E ARE NOT GOING TO LOOK BEHIND THE WEIGHT THAT A TRIAL JUDGEGIVES IN MITIGATING. WE SIMPLY LOOK AT WHETHER OR NOT THE MITIGATING WAS REALLY ESTABLISHED BY THE GR EATER WEIGHT OF THE EVIDENCE , ONCE THAT IS DETERMINED , THE WEIGHT THAT IS GIVEN TO THAT MITIGATOR IS, REALLY , UP TO THE TRIAL JUDGE.

THAT IS CORRECT , IF THE TRIAL JUDGE UNDER TA KES THE CORRECT PROCEDURES HERE , AND ANALYZES THESE MITIGATING CIRCUMSTANCES AND SAYS W HYTHEY WERE ONLY GIVEN LITTLE WEIGHT. HERE HE DIDN'T DO THAT. HE MERELY LISTED THEM. WE CONTEND THAT NOT ONLY THE AVOIDANCE OF ARREST , STATUTORY AGGRAVATORS SHOULD GO. ALSO HEIN OUS ATROCIOUS AND CRUEL SHOULD BE THROWN OUT , BECAUSE THE MEDICAL EX AMINER TESTIFIED THAT THEY WERE RENDERED UNCONS CIOUS RELATIVELY QUICKLY.

HOW ABOUT, IS THAT A FAIR CHARACTERIZATION OF THE, FOR THE MOTHER , THE DEATH OF THE MOTHER HERE? AS I GO THROUG H AND I READ THIS, IT SEEM S AS THO UGH THERE WAS A PRE TTY BRUTAL , THE RE WAS A BEATING.

SHE WAS STAB BED AND SHE WAS HIT O VER THE HEAD WITH --

MAY I FINISH MY QUESTION.

I AM SO RRY .

THAT THERE WERE DEFENSIVE STAB WOUNDS AND MULTIPLE STAB WOUNDS. THAT IS MY RECOLL ECTION. W HERE IS THAT WRONG?

THE MEDICAL EXA MINER COULD NOT TESTIFY TO THE SE QUENCE OF EVENTS AND SAID SHE WOULD HAVE LOST CONSCIOUSNESS UPON BEING OVER THE HEAD WITH THE CONCRETE BLOCK. THERE WERE SOME DEFENSIVE WOUNDS SHE HAD. SHE HAD SOME DEFENSIVE WOUNDS. CHRISTINA THERE WERE NO DEFENSIVE WOUNDS. THERE WAS ONLY ONE CONT USION TO HER HAND WH ICH C OULDPOSSIBLY BE CHARACTERIZED AS A TYPE OF DEFENSIVE WOUND. HER DEATH WAS CAUSED BY A SINGLE STAB WOUND.

LE T'S GO B ACK TO RO BIN THOUGH. THERE WAS SOME THING THAT THE MEDICAL EXAM INER TESTIFIED TO WHICH WE OFTEN DO NOT SEE IN THESE CASES, TESTIFIED THAT ROBIN HAD MUL TIPLE SUPERFICIAL WOUNDS THAT WERE CONSIS TENT WITH TO RMENT WOUNDS , NOT INTENDED TO CAUSE SERIOUSINJURY BUT TO CAUSE AGGRAVATION AND SCARE THE VICTIM. THAT IS PRETTY SIGNIFIC ANT.

THERE WAS TESTIMONY TO THAT. WE SUBMIT THAT IS PURE SPECULATION.HERE IS WHAT THE MEDICAL EXPERT TESTIFIED TO. HE SAID THE WOUNDS WERE EITHER BY THE DISTANCE OF THE KNIFE AND ATTACKER FR OM THE VICT IM OR TO POS SIBLY , POSSIBLY, AND HE SAID POSSIBLY T WICE , OR TO POSSIBLY, POSSIBLY SC ARE THE VICTIM. WE SUBMIT T HAT IS PURE SPECULATION, IS NOT SUBSTANTIAL , COMPETENT EVIDENCE THAT HAS TO B E PRESENT IN ORDER TO FIND THE CIRCUMSTANCE BEYOND A REASONABLE DOUBT.

HOW MA NY OF THOSE WERE THERE?

PAR DO N ME?

HOW MANY OF T HOSE W ERE THERE?

THERE WAS ONLY ONE , I BELIEVE , TO HER HAN D OR HER ARM.

THE TORMENT?

TORMENT WOUNDS. HE TALKED ABOUT OTHER DEFENSIVE WOUNDS, OTHER BLOWS THAT WERE RENDERED.

WHY IS IT NOT CONS ISTENT WITH OUR CASE L AW THAT, WHEN YOU HAVE A MULTIPLE STABBING AND YOU HAVE THIS KIND O F SCENE , YOU HAVE TWO PEOP LE THAT ARE WITHIN JUST FE ET OF

EACH OTHER , FRANCIS, FOR EXAMPLE, THAT THAT WOULD -- FRIENDS, FOR EXAMPLE , T HAT THAT WOULD NOT -- FRA NCES , FOR EXAMPLE , THAT THAT WOULD N OTCITE, AT LEAST WITH RE GARD T O THE MOTHER.

WE SAID TWO DEATHS I N C LOSE PROXIMITY TO THE OTHE R, DOES NOT NECESSARILY MAKE IT HEINOUS , ATRO CIOUS AND CRU EL. AGAIN THE MEDICAL EXAMINER TESTIFIED THEY WOULD HAVE LOST UNCONSCIOUS NESS RELATI VELY QUICKLY, EITHER FROM THE STAB WOUND OR FROM BEING HI T ON THE HEAD HEAD WITH A CONC RETE BLOCK, IN THE CASE OF ROBI N. WE SUBMIT THERE IS NOT COMPETENT, SUBSTANTIALEVIDENCE TO SUORT THIS. THIS COURT NEVER ISSUED A RULING THAT THE IT STABBING WAS HAC -- THAT THE STABBING WAS NOT HAC , AND WE SUBMIT IT IS NOT.

WE HAVE IN MANY CASES SAID THAT STAB WOUNDS SU ORT HAC. HAVE WE NOT SAID THAT IN M ANY CASES?

YES , YOU HAVE , YOUR HONOR , BUT IN THIS CASE IT IS NOT A PER SE R ULE AND WE SUBMIT THAT THEY LOST CONS CIOUSNESS VERY QUICKLY. WE SUBMIT THERE SHOULD BE ENOUGH EVIDENCE FOR A NEW TRIAL OR FOR THE IMPOSITION O F A LIFE SE NTENCE. THANK Y OU.

CHIEF JUSTIC E: MS. DA VIS.

MAY IT PLEASE THE COURT. MY NAME IS BARB ARA DAV IS. I REPRESENT THE STATE OF FLORIDA , ADDRESSING ISSUE ONE, THE STATEMENT OF JUSTIN PRATT.THIS COURT ORD ERED B OTH THE REDACTED STATEMENT AND THE FULL STATEMENT, SO THAT HAS ITS OWN LITTLE RECORD , AND THE NUMBERS THAT ARE QU OTED ARE FROM THAT SEPARATE RECORD . THE JUDGE, WHEN THIS ISSUE CAME UP , HE WENT THROUGH PAGE BY PAGE, AND FIRS T OF ALL , L ETME MAKE IT C LEAR THAT THE STATE IS NOT CONC EDING THAT HE WAS UNAVAILABLE OR THAT THEY FOLLOWED THE PROPER PROCED URES OR THAT ANY OF THIS SHOULD HAVE COME IN. BUT THE JUDGE FOUND HIM UNAVAILABLE , WENT THROUGH THE STATEMENT WITH DEFENSE COU NSEL AND THE ST ATE , PAGE BY PAGE, AND THEY IRONED OUT EXA CTLY WHAT SHOULD COME IN . NOW, THE PARTS THAT CAME IN, THE JUDGE RU LED , WERE RELEVANT, AND THEY COULD BE SE LF INCRIMINATING, GIVEN THE CIRCUMSTANCES . THE PARTS THAT DEFENSE COUN SEL IS COMPLAINING ABOUT AND THE PARTS THAT YOU CAN EX CISE F ROM THE RECORD, BE CAUSE DEFENSE COUNSEL ACTUALLY SAID I DON'T NEED PAGES 9-THROUGH-11. I DON'T NEED PAGES 18-TO-34. SO THERE ARE BASI CALLY THREE FACTS THAT WE ARE TALKING ABOUT.

CHIEF JUSTICE: BEFO RE WE GET TO THAT , DO YOU AGREE THAT THE DEFENSE LAWYER , AS WAS FIRST REPRESENTED HERE , FIRST TRIED TO GET THE WH OLE STATEMENT IN, AND THEN ONLY AFTER THE JU DGE SAID I AM NOT GOING TO ADMIT THE WHOLE STATEMENT , WENT, THEN, TO WHAT PARTS.

YES. YES. THE THING IS THIS IS ALL HEARSAY, AND IT IS NOT RELEVANT . SO IN ITS ENTI RETY , THERE IS, THEY ARE TALKING ABOUT OTHER PEOPLE. THEY ARE TALKING ABOUT WHO DOES COCAINE IN THE COMMUNITY. THEY ARE TALKING ABOUT HOW PRATT GETS TO WORK AND BACK ON A BICY CLE BEC AUSE HE DOESN'THAVE A DR IVERS LICE NSE. IT HAS NOTHING TO DO WITH THIS CASE, BUT THE COURT VERY CAREFULLY WENT THROUGH T HEPARTS THAT COULD BE INCRIMINATING, THAT GAVE THEM THE BENE FIT OF THE DO UBT , SO THERE IS THE THREE FAC TS THAT THEY ARE COMPLAINING ABOUT.

LET ME A SK YOU THE WORD "STATEMENT" IN THE RULE, IN 90.804-2-C. IT SAYS A STATEMENT WHICH WAS FAR CONTRARY TO PECUNIARY INTERESTS , ET C ETERA . THERE ARE V ARIOUS DEAF N ATIONS -- DEFINI TIONS OF STATEMENT T COULD BE A SENTENCE OR I T COULD BE A S TATEMENT TO POLICE WHICH IS SE VERAL PAGES LONG , SO I THINK ONE INTERPRETATION OF THE RULE IS IF Y OUINTRODUCE A STATEMENT , YOU INTRODUCE THE ENTIRE THING. YOU CAN'T PARSE IT OUT. ANOTHER CASE IS YOU TAKE I T SENTENCE BY SENTENCE. HAVE WE EVER INTERP

RETED T HAT WORD IN THE RULE?

I THINK IN THE CASE OF BROOKS , THIS COURT STATED THAT THE SEPARATE INDIVIDUAL STATEMENTS COULD COME IN. I MEAN, E ACH S E CTION OF T HIS IS A STATEMENT. THEY GO THROUGH MANY, MANY SUBJECTS. I MEAN, IF THE POLICE OF FICER SAID, OK AY, THANK YOU VERY MUCH. TOOK A FIVE -MINUTE BRE AK AND STARTED OVER, WOULD THAT SEPARATE THEM AS STATEMENTS ? THERE ARE SEV ERAL --

YOU ARE TALKING ABOUT A STATEMENT AGAINST INTERE STS. DON'T YOU HAVE TO, A NDSOMEBODY IS MAKING A HALF- HOUR STATEMENT TO THE POLICE , D ON'TYOU HAVE TO TAKE EVERYTHING IN CONTEXT WITHIN OTHER SENT ENCES BEFORE AND AFTER, TO DETERMINE WHETHER IT WAS ACT UALLY WITHIN OR OUTSIDE THE PECUNIARY INTERESTS OF THE PERSON?

IF YOU DID , THEN NO NE OF THIS WOULD COME I N , BECAUSE WHETHER YOU PUT IT INTO CONTEXT, NONE OF THIS IS A STATEMENT AGAINST INTERESTS. WHAT I AM SAYING IS THE DEFENSE G OT A WINDFALL ON THIS. THE JUDGE LeLETT E THEM PUT SECTIONS OF THIS -- THE JUDGE LET THEM PUT SECTIONS OF THIS IN. WHEN YOU LOOK AT THE CONT EXT , THEY AS KED JUSTIN PRAT T, PAGE 186 OF OUR RECORD, WHAT WERE YOU DOING TUESDAY? I WAS WORKING . WHAT ABOUT IN THE EVENING? AND THEY GO AND K EEP ASKING HIM, OKAY , ON THAT PAGE 186-TO-187, A FTER MIDNIGHT , SO THEY LEAD HIM INTO THE T IME. HE IS NOT SUDDENLY KNO WING , OH, I HAVE GOT TO MAKE AN ALIBI BET WEEN MIDNIG HT AND 7:00 A. M.. NICOLE DID LEAVE HIS APARTMENTAT 7:00 A.M. , AND AT TRI AL THERE WAS A NEIGHBOR WHO SAW HER LEAVE AT 7:00 A.M. , A NDTHAT IS JUST TR UTH. THAT IS WHAT HAENED. HE WASN'T CON TRIFING AN AL IB I LIKE THEY SAY - - CON TRIFINGAN ALIBI , LIKE THEY SAY .

CHIEF JUSTICE: JUSTICE LEWIS.

IF YOU LOOK AT THE ENTIRE STATEMENT, THE REAL C RUX OF THE INFORMATION CAME -- THE REAL CRUX OF THE STATEMENT CAME FROM THE NOTES, CAME FROM THE INFORMATION, THAT IS THE CONTEXT , AND THEN THE R EST OF IT IS ELA BORATION, IT NOT?

THAT WAS NOT AGAINST HIS INTERESTS. IT WAS ALLEN COM BS WHO MADE THE THREAT AFTER THE WHO ARE SHOE GAME MONT HS BEFORE AND ALLEN COMBS WHO D ROVE BY THE HOUSE BRANDISHING THE G UNS , IN HIS OWN WORDS , AND JUSTIN MAY HAVE BEEN IN THE BACKSEAT AT THE WHO ARE SHOE GAME . THERE WERE -- IN THE HORSESHOE GAME. THERE WERE TWO PEOPLE IN THE CAR WHEN HE DROV E BY THE TRAILER. IT COULD HAVE BEEN JUSTIN COMBS , SO WE DON'T KNOW. THE PART THAT WAS AGAINST HIS INTERESTS OR POSSIBLY AGAINSTHIS INT RESTS WAS THAT HE PUT A NOTE ON THE TR AILER ABOUT A WEEK OUT, THAT SAID I NEED MY MONEY BACK AND IF YOU DON'T , WE ARE GOING TO HAVE TO GO TO WAR WITH CONVENTIONAL WEA PONS . THEY WERE FRIEN DS. DEBBIE TOLD THIS, AND HE SAID WHEN JUSTIN STABBED RO BIN AND CHRISTINA, IT WAS DA NNY THAT STABBED PR IVETT NOT PRATT . DEB KAY AND TOLD HIM THAT PRIVETT HAD STABBED ROBIN AND CHRISTINA. HE WAS IN TEARS , ALL OF THEM WERE IN THE BAR SO BBING , A NDBY THE WAY , GLORIA --

HELP ME PUT THAT IN CONTEXT, WHEN THE JUDGE IS RULING O N THIS AND GOING THROUGH THIS STATEMENT, BECAUSE IN PRATT 'S STATEMENT, HE TALKS ABOUT DEBBIE PATINA , WHO I S NICOLE'S FRIEND? AARENTLY THEY ARE FRIE NDS , AND PRATT SAYS THAT HE HAD GONE TO HARRY'S BAR , TIN LIZZIE 'S , DEBBIE'S GEORGES, AND THEN HE WAS UP SET AND ON THE PHONE AND HE CAME IN. THERE WAS A WHOLE SERIES OF B ARS THAT HE WENT TO AND THE STATEMENT BY DEBBIE. WHEN THE TRIAL JUDGE IS PRESENTING THIS, WAS THERE EVER ANY FOLLOW-U P, TO SEE AS TO THE CREDIBILIT Y OF THOSE STATEMENTS , i. e. THERE WAS NO EVIDENCE HE WENT TO THE BARS , NO EVIDENCE DEBBIE EVER SAID THIS? OR WAS THERE?

THIS DIDN'T COME IN , BECAUSE THE JUDGE TOLD THE DEFENSE, LOOK , IF YOU WANT THESE

STATEMENTS FROM DEBBIE IN, YOU NEE D TO BRING DEBBIE IN, AND DEFENSE COUNSEL SAID I AGREE, SO THIS PART , SEE , W HEN THEY WERE GOING THROUGH IT , DEFENSE COUNSEL SAID , NO , T HIS PART IS NOT RELEVANT AND T HIS PART IS N OT VERY WELL V ANITY , AND I AG REE WITH THE JUDGE -- IS NOT RELE VANT , AND I A GREEW ITH THE JUDGE NOW, THAT THIS IS DOUBLE HEARSAY , AND THAT IF ANYBODY TESTIFIES TO THIS , IT SHOULD BE DEBBIE . DEFENSE COUNSEL , I AGREE.

DID DEBBIE TESTIFY?

NO. NO.

CHIEF JUSTICE: SO LET'S GO TO THE PART. WHICH PART OF THE STATEMENT, THEN, TO GET TO SORT OF THE CRUX OF THIS IS , THE PART THAT NOW DEFENSE IS NOW SAYING REALLY WOULD HAVE HELPED, BECAUSE IT WAS INFORMAT ION THAT ONLY SOME BODY THAT HAD SKMITED THE CRIME WOULD -- COMMITTED THE CRIME WOULD BE LIKELY TO K NOW.

THE STABBING PART , THAT DEBBIE HAD TOLD PRATT.

CHIEF JUSTICE: COUL D YOU DIRECT US IN THE RECORD EXACTLY WHERE WE ARE --

1 91 , W HERE DEBBIE CAME IN AND TOLD ME. AND , A LSO , IN THE RECORD , WHEN GLORIA Le C HANCE TESTIF IED , HER HUSBAND RICH ARD , AND I THINK THIS IS IN REYNOLD'S STATEMENT THAT, RICHARD HAD TOLD HIM THAT PRIVETT HAD STABBED ROBIN AND CH RISTINA , SO IT WAS KIN D OF WHEN THIS HAENED, AND THIS WAS ABOUT THIS INTERVIEW , WAS ABOUT 18 HOURS AFTER THE EVENT, SO IT WAS, YOU KNOW , ORIGINALLY EVERYBODY THOUGHT THAT THE FATHER HAD KI LLED THE CH ILD AND THE MOTHER, IS WHAT HAD HAENED . AND THEN AFTER THAT , I DON'T KNOW WHEN THEY FOUND OUT WHAT THE TRUTH WAS. AND THE OTHER THING ABOUT KNOWING WHERE MR . PRIV ETT WOULD URINATE ON THE TREE, THAT IS PAGE 214 , AND THE POLICE LED HIM INTO THAT AND SAID DO YOU KNOW WHERE EVERYBODY GOES TO THE BATHROOM? YOU HAVE BEEN OUT THERE PLAYING WHO ARE SHOES. WELL, -- P LAYING HORSE SHO ES. WELL, THEY HAD NO PLUMBING I N THE HORSE NE CK , THE GO OSE NECK CAMPER, AND THEY SAID YOU GO INTO THE WOODS UN LESS THE KIDS ARE AROUND AND THEN YOU GO INTO ONE OF THE MO BILE HOPESTHEY WERE FINISHING. THAT IS PAGE 214 , AND THEN THEY WENT THROUGH AND ASKED HIM CAN YOU TELL US WHERE YOU WOULD GO, A ND DO YOU KNOW HOW MR. PRIVETT URINATES AND T HEY GO THROUGH THIS WHOLE THING , WHICH IS COMPLETELY IRRELEVANT .

CHIEF JUSTICE: WHEN HE G AVE THE STATEMENT, DID HE KNOW THAT PRIVETT WAS DEA D?

I AM NOT S U RE. BECAUSE THE ONLY THING HE SAYSIN HERE , IS THAT WHAT HE KN EW WAS THAT PRIVET HAD KILLED ROBIN AND CHRISTINA.

CHIEF JUSTICE: AND THAT W ASSOMETHING THAT YOU SAY WAS GENERALLY THOUGHT TO BE THE CASE IN THE COMM UNITY THE DAY AFTER?

YES, BECAUSE GL ORIA Le CHANCE TESTIFIED ABOUT RIC HARD TELLING THAT TO REY NOLDS , ANDI THINK THAT IS ACTUALLY IN REYNOLDS'S STATEMENT.

ON ACTUALLY THE SECOND PAGE OF THE INTERVIEW , ONE OF THE INTERVIEWERS IS SAYING OK AY, THIS IS IN REFERENCE TO THE HOMICIDE YESTERDAY OF DANNY PRIVETT , ROBIN AND CHRI STINA RAZOR.

SO AT THAT PO INT HE WOULD HAVE KNOWN, A T THAT POINT THAT MR. PRIVETT , AND THE ONLY THING HE SAID WAS , WELL , WHAT HE HAD HEARD WAS THAT MR . PRIVETT KILLED CHRIS TINA AND ROBIN .

CHIEF JUSTICE: BUT IT DOESN'T REALLY SAY ANYTHING THAT WOULD IN COME EIGHT HIM IN THE DEATH OF -- THAT WOULD INCULPATE HIM IN THE DEATH OF PRIVET, BECAUSE HE TALKS ABOUT PRIVET KILLING THE TWO INSI DE THE TRAILER.

YES. AND THE THE ORY OF DEFENSE WAS KIND OF THAT IT WAS ALLEN COMBS, N ICOLE EDWA RDS AND JUSTIN PRATT THAT DID THIS AND THAT IT WOULD HAVE TA KEN TWO PEOPLE TO DO ALL OF THIS, BECAUSE THERE WAS SO M UCH DAMAGE IN THE TRAILER AND ROBIN HAD FOR THE SO HARD TH ATIT WOULD HAVE TAKEN TWO PE OPLE , SO THEY WERE TRYI NG TO FO CUS IT ON THOSE THREE, AND COMBS HAD MADE THRE ATS , MAYBE W ITH OR MAYBE WITH OUT A G UN. THAT WAS NEVER CLE ARED UP AS TO THE DAY BEFORE , WHE TH ERTHERE WAS A GUN , WHEN HE DR OVE BY AND SAID HE WAS GOING TO SHOOT DANNY R AY . AND THEN THE OTHER PART OF THE DEFENSE WAS THAT , AL L OF THE EVIDENCE POIN TING TO MR . REYNOLDS, WAS UNRELIABLE. SO THEY WERE , THEY KIND OF HAD THE STRAW MAN OVER HERE , EITHER ALLEN OR NI COLE OR JUSTIN OR ALL THREE , AND THEN AS COUNSEL SAID , THAT THEY WERE NEVER , THEIR DNA AND FINGERPRINTS WERE NEVER TESTED. WELL, AS SOON AS THIS INTERVIEW WAS OVER, THEY WENT AND SEARCHED PRATT'S HO USE. THEY SEAR CHED EVER YTHING. HE WAS EXCL UDED AS A WITNESS. THEY CHECKED OUT HIS ALIBI , AND THE THINGS IN HERE WHERE HE STANDS UP, HE SHO WS H ISSHIRT, HE SAYS , Y EAH , LE T'S GO TO MY HOUSE. I WA NT TO YOU CL EAR ME AS SOON AS POSSIBLE.HE WAS A GOOD FRIE ND OF MI NE. I CRIED. THAT IS NOT EXA CTLY HELPFUL TO THE DEFENSE AND THEY AGREED T O KEEP THOSE PARTS OUT. THE ONLY PARTS THAT T HEY COMPLAINED ABOUT WERE PAGES 8 , 12 AND TWO LINES O N 35 OF THE STATEMENT, AND I HAVE GONE THROUGH THOSE . NOW, AS --

WOULD YOU PUT THIS IN CONTEXT WITH, CERTAINLY WITH THE SHIFTING OF RESPONSIBILITY FOR THIS EVENT , TO THOSE OTHERS , WHAT DI RECT TESTIMONY CAME IN IN AD DITION TO , FROM THE STATEMENT, CAME IN WITH REGARD TO THAT, TO SHIFT THE BLAME? THERE IS OTHER TESTIMONY, OTHER EVIDENCE FROM WITNESSE S?

DANNY -- DAN IEL , THE DAUGHTER THAT WAS OUT THAT CAME -- DANI ELLE , THE DAUGHTER THAT WAS OUT THAT CAME BACK , SHE TESTIFIED, WAS THE ONE THAT BASI CALLY TALKED ABOUT ALLEN COMBS AND THE THREATS AT THE HORSESHOE G AME.THAT WAS SIX MONTHS EAR LIER . ERNIE RASH WAS THE ONE THAT TESTIFIED ABOUT MICH AEL REYNOLDS HAVING THE ARGUMENT OVER THE B OAT TRAI LER , ANDTHAT WAS ABOUT THREE OR F OUR WEEKS OUT, AND THEN DANIELLE TESTIFIED ABOUT THE ALLEN COMBS DR IVING BY THE DAY BEFORE AND SAYING, YELL ING "I AM GOING TO SHOOT YOU."

THIS STATEMENT IS IN CONTROVERSY WITH REGARD TO THIS PRIOR RUNNING CONFLICT?

YES , AND THERE WERE ARGUMENTS WITH SEVERAL PEO PLE. THEY JUST P INED IT DO WN T O THIS. -- THEY JUST PI NNED IT DOWN TO THIS. NOW, AS FAR AS THE , GOI NG TO THE AGGRAVATING AND MITI GATING CIRCUMSTANCES, THE JUDGE HAD A VERY, VERY COMPLEX OR DER , AND THE STATEMENT THAT H E MADE THAT THEY ARE POINTING TO ABOUT, I ONLY GO BY THE STATUTORY MITIGATING CIRCUMSTANCES , THAT, HE DIDN'T SAY THAT, THAT WAS DURING THE DISCUSSION OF RESI DUAL DOU BT , 3498 AND 349 9, AND HE , THEY WANTED TO PR ESENT EVIDENCE OF RESIDUAL DOUBT, AND HE SAID , YOU KNOW WHAT? THE CASE LA W IS THAT THERE SHOULD BE NO RES IDUAL DOUB T. THERE ARE CER TAIN STATUTORY, I GO STRICTLY BY STATUTORY FACTORS, AND SO THAT I S THE WAY IT IS. HE WASN'T TALKING ABOUT I AM NOT GOING TO CONSIDER NONSTATUTORY MITIGATING CIRCUMSTANCES. HE WAS SAYING I GO BY T HESTATUTE AND THE CASE LAW , AND THE CASE LAW SAYS THAT THERE IS NO ROOM FOR RESI DUAL DOU BTIN THE PENALTY PHASE AND IN MY CONSIDERATION.

IT SEEMS TO ME THAT AS I READ THE SENTENCING ORDER AT PAGE 326 , THAT THE JUDGE DOES GO THROUGH SEV ERAL MITIGATING CIRCUMSTANCES THAT THE JUDGE HAD FOUND , AND MANY O R E VEN MOST OF THOSE ARE NONSTATUTORY MITIGATING CIRCUM STANCES .

YES, SIR. THEY WERE ALL NON STATUTORY MITIGATING CIRCUMSTANCES , AND HE DID A COM PREHENSIVEANALYSIS OF EACH ONE. HE DISCUSSED THE EVIDENCE THAT WAS PRESENTED . FOR INSTANCE , ON THE , HE WOULD SURVIVE VERY WELL IN PRISON. HE SAID , WELL , YES , HE WOULD IN FACT , MAYBE TOO WELL , BECAUSE HE IS A GANG MEMBER AND HAS ALL OF THESE RA CIST AT THAT TI ME.

ING S ALL -- ALL OF THESE RACIST TATTOES ALL OVER HIM , BUT HE WOULDN'T GIVE T HAT GREAT WEIGHT. HE COOPERATED WITH LAW ENFORCEMENT.HE COOPERATED , GAVE VIDEOTAPED STATEMENT , HOWEVER , DONE ACCIDENT I FEEL. CONTAINED FALSE - - -- DONE DECEPTIVELY. CONTAINED FALSE -- HE CLEARLY DISCUSSED EVERYTHING. AS FAR AS THE NONSTATUTORY MITIGATION, HE GAVE IT WEI GHT. HE WEIGHED THOSE , AND THE ONLY THING THAT HE SAID THAT , YOU KNOW, WE DON 'T RECOGNIZE RESIDUAL DOUBT. THERE IS A CASE IN THE UNITED STATES SUPREME COURT, NOW , THAT THEY , THEY TOOK CERTIORARI ON. IT IS AN OREGON CASE CA LLED GUZAK , WITH REGARD TO WHETH ER THE DEFENDANT HAS THE RIGHT T O PRESENT RESIDUAL DOUBT. THE JUDGE FOLL OWED THE CASE LAW AND SAID I AM A WARE O F RESIDUAL DOUBT. YOU HAVE PRESENTED IT. I HAVE ALLOWED THE STATEMENTS IN, BUT I AM NOT G OING T O CONSIDER THAT .

WOULD YOU ADDRESS THE AGGRAVATION, THE AVOID-AR REST AGGRAVATOR. WE HAD TESTIMONY FROM THE JAILHOUSE IN MATE THAT HE SAID THAT I COULDN'T LEAVE ANY WITNESSES, BUT THEN WASN'T THERE SOME OTHER TESTIMONY FROM SOME OTHER JAILHOUSE PERSON, THAT THIS PE RSON MADE THIS UP , SO HOW ARE WE TO, D IDTHE JIM CONSIDER THAT OR WAS THERE A CREDIBILITY CHOI CETHAT WAS MADE HERE -- DID THE JUDGE CONSIDER THAT , OR WAS THERE A CREDIBILITY SOURCE THAT WAS MADE HERE, OR HOW ARE WE TO CONSID ER THE TWO STATEMENTS ABOUT WHETHER OR NOT THE DEFEND ANT ACTU ALLY SAID HE COUL DN'T LEAV E A WITNESS?

ALL OF THE ABOVE. THERE WAS A CREDIBILITY CHOICE. THERE WAS ADDITIONAL EVIDENCE OF AVOID AR REST. HE MADE VERY COMPLETE FINDINGS ON THIS .

WHAT ADDI TIONAL EVIDENCE,OTHER THAN THE FACT THAT HE KNEW THESE PEOP LE . WE ALL KNOW THAT. AND THAT HE MADE THE STATEMENT TO , ALLEGE DLY MADE THE STATEMENT TO THE JAIL HOUSE PERSON, THAT I COULDN'T LEAVE ANY WITNESSES.

OK AY. FIRST OF ALL , THE JAIL HOUSE , DARRELL COURT ANY , THERE WAS A LETTER SHOWING THAT T HEY WERE VERY GOOD FRIENDS AND THEY HAD A VERY GOOD RAORT . AND COURT ANY. THE JAILHOUSE PER SON THAT SAID WITH MY RECORD , I CAN'T L EAVEANY WITNESSES. I DO REGRET DOING THE LI TTLE GIRL. NOW, THERE WAS AN OTHER INMATE THAT CAME I N N AMED SCIANTA , WHO HAD THE SAME ATTORNEY A S MR. REYNOLDS WHO , CAME IN AND SAID THAT MR. COURT ANY WAS MAKING THIS ALL UP, BECAUSE HE THOUGHT MR. REYNOLDS WAS A CREEP, WAS ACT UALLY WAS T HEWORD HE USED , BUT , SO , THAT WAS THE ONLY IMPEACHMENT , AND THEN THE STATE BROUGHT IN T HELETTER, SHOWING THAT REYNOLDS AND COURT ANY DID HAVE THISKIND OF OPEN RELATIONSHIP.

CHIEF JUSTICE: LE T'S GO TO , YOU SAID THAT THERE WAS OTHER EVIDENCE. I THINK THIS IS REALLY A PRE TTY SHAKEY AGGRAV ATOR IN THIS CASE, BECAUSE YOU HAVE GOT SOMEBODY WHO SURREPTITIOUSLY MURDERED OUTSIDE. WAS IT AT NIGHT?

IT WAS BETWEEN 11:00 P. M. AND 7:00 A .M.

CHIEF JUSTICE: OKAY AND WAS THERE ANY EVIDENCE THAT, WH ENHE DID THIS OUTSIDE , EVIDENCE THAT EITHER THE LIT TLE GI RL OR THE MOTHER WITNESSED WHAT WAS GOING ON OUTSIDE?

NOT DIRECTLY, BUT HERE IS WHAT THE JUDGE FOUND.

CHIEF JUSTICE: I GU ESS, BECAUSE , LET M E FI NISH , USUALLY , THEN YOU HAVE THIS , THAT HE WOULD HAVE GONE INT O THE TRAI LER AND MURDERED B OT H OF THEM , AND YOU, ALSO , A NDSORT OF TO ME IT WOR KS AGAINST IT, MU RDERS THE MOTHER IN A PARTICULARLY HE INOUS , ATROCIOUS AND CRUEL WAY , WH ICH DOESN'T ALWAYS MEAN THAT IT , IT IS CONTRADICT ORY TO AVOID ARREST, BUT IF WHAT YOU A REDOING IS SAYING I HAVE GO T TO GET RID OF THESE, BECAUSE IT HAS TO BE THE PRIME RE ASON F O R THE MURDER NOT AN ANS WER LARRYREASON, I AM -- NOT AN ANSWER ILL ARI REASON - - NOT AN ANCILLARY REASON, I AM TR YING TO FIGURE OUT HOW THIS FI TS INTO THE JAILHOUSE SNIT CH'S TESTIMONY, SO EXP LAIN HOW THE OTHER CIRCUMSTANCES WOULD REALLY SHOW BY COMP ETENT , SUBSTANTIAL EVIDENCE THAT THISWAS THE PRIMARY DOM INANT MOTIVE FOR THE MURDER OF THE OTHER TWO VICTIMS.

OKAY AND HERE IS WHAT THE TRIAL COURT'S ORDER S AYS.FIRST OF ALL THEY KNEW H IM. SECONDLY HE HAD NEVER BEEN IN THE TRAILER, SO THERE WAS NO REASON FOR HIM TO BE IN THE TRAILER. THIRD, WHERE PRIVETT WAS KILLED WAS AT A DISTANCE FROM THE TRAILER THAT IF THEY HAD NOT KNOWN WHO THE PE RSON WAS , IT WOULD NOT BE A PROBLEM , AND , BECAUSE - -

CHIEF JUSTICE: CHIEF BUT WHY DID HE KILL PRIVETT?

PRIVETT , HE WAS CONVICTED OF SECOND-DEGREE MURDER ONTHAT, SO THE JURY MUST H AVE FOUND THAT IT WAS JUST A RECKLESS DISREGARD. HE SAW HIM OUT THERE, PICKED UP A CONC RETE BL OC K AND SLAED HIM ON THE HEAD WITH IT.

THERE WAS NO PREVIOUS HISTORY BETWEE N THE TWO?

OVER THE BOAT TRAILER . AND THEN THEY HAD KIND OF APOLOGIZED AND , BUT YOU SEE , THEY LIVE IN PROXIMITY .

CHIEF JUSTICE: SO WHAT HE USES TO MURDER PRIVETT IS THE CONCRETE BLOC K?

CONCRETE BLOCK.

CHIEF JUSTICE: SO WHERE WAS THE KNIFE OR THE OTHER MURDERS WHERE HE HAD , AGAIN , TO BREAK INTO THE TRAILER. DID HE HAVE TO B REAK IN?

HE TOOK RESPECT THERE WAS ANOTHER PIECE OF CONCRETE BLOCK WHICH HAD PRIVETT'SBLOOD AND ROBI N' S BLOOD, WHICH WAS ON THE COUCH IN THE TRAILER, S O THEN HE WOULD HAVE HAD TO GO AND GET INTO THE TRAILER, AND THE J UDGE FOUND THE ONLY REASON HE HAD FOR GOING INTO THAT TRAILER IS BECAUSE HE KNEW ROBIN COULD IDENTIFY HIM .

AS HAVING KILLED DANNY.

DANNY.

AND WE KNOW THAT FROM WHAT ? THAT IS THE WHOLE , THAT IS THE PROBLEM WE ARE HAVING HERE.

RIGHT.

WHAT EVIDENCE IS THERE THAT ROBIN KNEW THAT MR . REYNOLDS HAD KILLED DANNY?

THERE ARE , WELL , THERE IS NO DIRECT STATEMENTS , BUT THE JUDGE FOUND THAT WAS THE

ONLY REASON H E POSS IBLY COULD HAVE HAD , BEC AUSE HE COULD HAVE KILLED DANNY RAY AND LEFT .

DO WE KNOW THAT DANNY W ASKILLED BEFORE THE OTHER TWO?

BECAUSE HIS BLOOD IS ON THE CONCRETE BLOCK THAT IS IN THE TRAILER.

AND WE K NOW THAT THIS OCCURRED AT NIG HT.

YE S.

AND THIS WAS SOME DIS TANCE FROM THE TRAILER.

YES.

AND SO YOU SEE , WHERE IS THE CONNECTION THAT ROBIN AND THE LITTLE GIRL ACTUALLY WOULD HAVE SEEN HIM KILL DANNY?

WHAT THE TR IA L JUDGE FOUND IS THAT IT WAS AT SU CH A DISTANCE THAT , IF HE WAS AN UNKNOWN PERSON , THEY WOULDN'T KNOW WHO IT WAS , BUT BE ING A KNOWN PERSON --

BUT HE COMES IN , AND, AGAIN , YOUR TESTIMON Y IS THIS IS A PARTICULARLY VI CIOUS KILLING OF ROBIN , THIS TO RMENT WOUNDS , THAT IS NOT CONSISTENT WITH JUST SAYING , GEE , I HAVE GOTTO GET RID O F THIS PER SON. IT IS, AS WE KNOW WITH MANY OF THESE TERRIBLE, TER RIBLE MURDERS , YOU NEVER Q UITEUNDERSTAND WHY SOME THING HAENS , BUT MA YB E HE JUST HAD A VENDETTA FOR THE WHOLE FAMILY, AND ON CE HE GOT ONE OF THEM, HE IS GOING TO GET THEOTHER TWO , WHICH IS , YOU KNOW , WOULD BE CONSISTENT , AND DO I T IN A PARTICULARLY CRUEL W AY, BUT I DON'T SEE HOW THAT IS, YOU KNOW, AGAIN YOU HAVE THE STATEMENT OF THE JAILHOUSE SNITCH, AND WE ARE HERE , THINKING YOU HAD TWO OTHER STRONG AGGRAVATORS IN THIS CASE. YOU HAVE GOT HAC AND PRIOR VIOLENT FELONY AS T O ROBIN.

AND THE CHILD U NDER 1 2 AS TO CHR ISTINA .

CHIEF JUSTICE: RIGHT , AND I AM GOING TO AS K YOU ABOU T THE HAC AS TO THE CH ILD , BUT YOU KNOW, IT MAY BE SOMETHING THAT IS HARMLESS BEYOND AREASONABLE DOUBT, BECAUSE WHENTHIS JAILHOUSE SN ITCH FIVE YEARS LATER, SAYS SOMET HING O R RECANTS, AND THAT IS THE ONLY EVIDENCE WE HAVE TO RELY ON , WE, THEN, HAVE WHAT WE OF TEN SEE IN THESE POSTCONVICTION CASES.THAT IS WHY I JUST WANT T O MAKE SURE THAT I DON'T SEE THE OTHER CIRCUMSTANCES AS BEING , REALLY, VERY ST RONG . IT SEEMS TO ME THE STATEMENT, IF IT IS, THE JUDGE FOUND IT CREDIBLE , THAT WE CAN UPHOLD IT BASED ON JUST THAT STATEMENT .

AND I F THIS COURT DOES FIND THAT AVOID-ARREST WAS NOT ESTABLISHED AND SOME OTHER FACTORS THAT THE JUDGE FACTORED IN , WERE ALSO THAT REYNOLDS KNEW THAT ROBIN KNEW WHO HE WAS AND DISLIKED H IMAND SHE WOULD CA LL THE POLI CE, SO THE JUDGE'S REASONING WAS , OKAY , IT WAS AT A DISTANCE WHERE AN UNKNOWN PERSON COULD HAVE JUST LEF T. HOWEVER , BECAUSE ROBIN WOULDN'T RECOGNIZE HIM, HOWEVER , ROBIN MUST HAVE SEEN THAT PERSON , BECAUSE HE KNEW SHE WOULD RECOGN IZE HIM AND WOULD CALL THE POL ICE, AND THAT IS WHAT THE TRIAL COURT FOUND IN HIS ORDER. HE, ALSO, FOUND A PARTICULAR CREDIBILITY AS TO MR. COURTANY , BECAUSE OF THE -- AS T O MR . COURTNEY , BECAUSE OF THE REYNOLDS AND BECAUSE MR . SCIANTA WAS ALSO REPRESENTEDBY THE SAME ATTORNEY.

WHAT WAS THIS LETTER WITH REGARD T O COURTN EY, THAT COURTNEY ALSO ASKED HIM TO PERFORM AN ACT.

HE WANTED T O TELL THE DOC OFFICERS THAT HE DID NOT LIKE HIM. HE WAS A PU NK OR A PI MP OR SOMETHING, HE WAN TE D TO PASS A MESSAGE TO ONE OF THE DOC OFFICERS. IT WAS A TWO-P AGE LETTERTALKING ABOUT THE FOOD AND MONEY AND THINGS, AND THEN HE SAYS, DUDE , TELL SOME , WHO I S A CORRECTIONS OFFICER , I S HE A PUNK OR , PASS A MESSAGE ON , AND IT WAS SOMEBO DY REYNOLDS PARTICULARLY DIDN'T LIKE.

CHIEF JUSTICE: DO WE, THE HAC SEEMS PRE TTY SUBSTANTIAL AS T O ROBIN.

YES.

COULD YOU EXPLAIN THE HAC AS TO THE LITTLE GIRL.

AS TO THE LITTLE GIRL , SHE AND YOU HAVE THE EXHIBITS. THE EXHIBITS SHOW THAT SHE HAD CUTS AND CONTUSIONS ON HER MOUTH AND LI PS O N HER HEAD , AND ON HER BA CK OF HER HANDS, WHICH THE ME DICAL EXAMI NER SAID LOOKED LIKE DEFEN SIVE WOUNDS. WE HAVE A STAB WOUND TO THE CHEST, A STAB WOUND TO THE SHOULDER. THOSE WOULD HAVE BE EN , SHE ULTIMATELY BLED OUT FR OM TH OSE .

CHIEF JUSTICE: WHAT DID THEMEDICAL EXAMINER SAY AS TO HOWLONG SHE WOULD HAVE RETAINED CONSCIOUSNESS? WAS THERE A FEW SE CONDS, MINUTE, WHAT IS THE TESTIMONYON THAT?

I DON'T KNOW. BUT I AM NOT SURE IF SHE G AVE A TIME FRAME. I THIN K, THOU GH, WHEN SOMEBODY IS BLEEDING OUT LIKE THAT, I T IS NOT VERY LONG. HOWEVER , THE JUDGE FOUND, IN THE ORDER , THAT CHRI STINA WAS PROBABLY, IF CHRIS -- IF CHRISTINA WAS STILL AL IV E WHILE HER MOT HER WAS FI GHTING FOR HER , WHICH WAS THE MOST PLAUSIBLE SITUATION, SHE WAS AWARE OF HER POLITE AND ALL OF THE ANGUISH THAT WENT WITH THAT.

CHIEF JUSTICE: SO WE DON'T KNOW WHICH ONE WAS STABBEDFIRST ?

NO.NO. AND YOU CO ULDN'T TELL IT.

CHIEF JUSTICE: A S MALL TRAILER BUT WHERE WERE THEY BOTH FOUND, WERE THEY RIGHTNEXT TO ONE AN OTHER?

YES. CHRISTINA WAS ON THE COUCH AND ROBIN WAS LYING ON THE FLO OR.

CHIEF JUSTICE: WAS IT, DID IT AEAR THAT THEY WERE ASLEEP AT THE TIME ?

IT AE ARED THAT CHRISTINAWOULD HAVE BEEN, BECAUSE SHE ALWAYS SLEPT WITH A RUG RATS BLANKET. AND IT A EARED THAT ROBIN , ROBIN WAS F ULLY DRES SED. SHE HAD ON A T-SH IRT AND SHORTS, SO IT AE ARED THAT SHE MAY HAVE BEEN A WAKE O R WAS AWAKENED. BUT THE CHILD HAD ON A NIGHTGOWN AND THE RUGRATSBLANKET WAS RIGHT NEXT TO HER ON THE FLOOR, WHICH SHE AL WAYS SLEPT WITH .

BUT THERE IS REALLY N O EVIDENCE, ONE WA Y OR THE OTHER AS YOU COME TO THIS, IS THERE,WITH REGARD TO THAT ? CIRCUMSTANCE.

NO. THEY COULD NOT PUT THE SCENARIO TOGETHER , AND T HE JUDGE SAID IF THE CHILD HAD T O WATCH THE MOTHER DIE , KN OWING THAT SHE WAS NEXT , THEN THE MENTAL ANGUISH , AND LIKE THE FRANCIS CASE , WHERE TWO PEO PLE ARE KILLED IN FRONT OF EACH OTHER.

BUT W ASN'T THERE MORE IN FRANCIS? IT SEEMS LIKE THERE IS SOME SPECULATION AT LEAST TOO CHRISTINA. IF SHE HAD BEEN ASLEEP, ABOUT WHAT, AND IF SHE , THAT IS WHY I WAS INTERE STED IN KNOWINGWHAT THE MEDICAL EXAM INER SPECIFICALLY SAID ABOUT WHETHER SHE

WOULD HAVE LOST CONSCIOUSNESS IMMEDIAT ELY OR NOT . SO YOU DON'T REMEMBER THAT TESTIMONY.

NO. I JUST DON'T KNOW IF T HEY TALKED ABOUT THAT .

CHIEF JUSTICE: U SUALLY THAT IS PRET TY SIGNIFICANT IN T HESECASES, ALTHOUGH WE DO US UALLY, WITH MULT IPLE STAB WOUNDS , THERE IS USU ALLY A PRESUMPTIONOF HAC IN THE CASES , AND T HIS IS, I G UESS IF THERE IS TWO WOUNDS FOR CHRISTINA , RIGHT?

AND THE JUDGE MIGHT SHED SOME LIGHT ON THAT AS TO KRISTIN. -- AS TO CHRISTINE. AND HE DO ESN'T SAY HOW LONG SHE WAS CONSCIOUS . HE JUST SAYS WHE N SHE WAS BEING ATTACKED , IT IS NO T KNOWN WHETHER THE MOM WASSTILL ALIVE . YES. SO I DON'T KNOW ABOUT THE TIME . UNLESS THERE ARE AN Y OTHER QUESTIONS, I WILL RELY ON THE BRIEFS.

CHIEF JUSTICE: AGAIN, WHAT DID THE STATE ADV ANCE A S TOTHE THE ORY AS TO WHY HE CAME OVER THAT N IGHT AND MURDERED PRIVETT?

THE MAIN M URDER WAS REVENGE . I MEAN THE MAIN MOT IVE WAS REVENGE. THE FESTERING THAT HE H ADTAKEN THAT BOAT TRAILER FROM HIM .

CHIEF JUSTICE: BUT OBVIOUSLY THE JURY DIDN'T BUY THAT BECAUSE THEY FOUND HIM GUILTY ONLY OF SECOND-DEGREE MURDER.

WHAT HAENED IS HIS C ARWAS SEEN IN THE AREA, AND DANNY RAY WAS SITT ING ON T HEHOOD OF THE CAR AND THEY HEA RD LOUD VOICES, SO I THINK THEY COULD HAVE THOUGHT THAT IT WAS JUST A CONTINUATION OF AN ARGUMENT, AND HE FOLLOWED HIM OVER, AND GOT HIM ON THE HEAD BUT AT E LEVEN O'CLOCK , PRIVETT WAS ON REYNOLDS'S CAR, AND THERE WERE LOUD CASES VOI Z, SO I THINK THE -- LOUD VOI CES , SO I THINK THE JURY PROBABLY FOUND THAT THIS A R GUMENT T HAT THEY WERE HAVING, CONTINUED ON , AND SO YOU KNOW, THE FAC TS OF IT THAT HE JUST BASHED HIM IN THE HEAD FROM THE BACK, WITH THE CONCRETE , WAS MORE THE RESULT OF AN ARGUMENT .

WOULD YOU TAKE A COUPLE OF MOMENTS , AT LEAST RESPOND TO COUNSEL'S POSITION WITH REGARD TO HE PAINTS THE PICTURE OF A MEDICAL EXAMINER THAT IS INCOMPETENT, DOESN'T KNOW W HAT THEY ARE DOING. SPECULATION IS THE W O RD THAT HE USES. WOULD YOU AD DRESS THO SE. HE SAID THAT PURE SPECULATION ABOUT THE HAND INJU RY, THEN THEY FOUND THE BA RB OR BURB , WHATEVER THE PI ECE WAS ON T HEDOOR, DOWN B Y THE DOOR , THAT EXPLAINED AWAY ALL OF THE OTHER, WHAT HE IS INFERRING , AT LEAST , ALL OF THE O THERBLOOD EVIDENCE FROM THE PEOPLE INSIDE. WOULD YOU RESPOND TO THOSE.

THAT WOULD BE, BOTH THE MEDICAL EXAMINER AND THE NUR SE THAT TREATED HIM.

OKAY.

IT WAS A VERY DEEP W OUNDTHAT WAS ON THE FLEX OR PART OF THE -- ON THE FLEXOR PART OF THE HAND AND HE IS RIGHT-HANDED AND THEN THERE WERE CUTS ACROSS HERE. THE MEDICAL EXAMINER EXAMINED THE BUR R AND SAID THAT YOU KNOW, THAT COULD NOT HAVE HAENED THAT WAY BECAUSE HIS HAND WOULD HAVE HAD TO HAVE BEEN UPSIDE DOWN TO CUT IT WITH A HUGE AMOUNT OF FORCE. IT IS MORE CONSISTENT WITH A KNIFE WOUND , CUT TING IN , AND HE HAD HIT ROBIN IN BOTH THE RIBS AND THE VERTEBRAE , WHICH WOULD CAUSE THE KNIFE TO SLIP , AND THERE WAS, ALSO , SLI AGE , AND YOU CAN SEE IT IN T HEEXHIBITS, THERE IS ALSO A SLIAGE WOUND HERE , AND A CUT , AND A CUT THAT DEEP COULD NOT HAVE BEEN DONE BY THE BURR. THAT WAS THE MEDICAL EXAMINER TESTIMONY.

HOW ABOUT THE BLOOD INSIDE ?

THE BLOOD INSIDE THE TRAILER?

YES .

HIS BLOOD WAS ALL OVER THE TRAILER.

COUNSE L SAYS THAT IT IS SPECULATION, THAT EVERY TIME HE CAME UP AND CROSS-EXAMINED AND THIS OTHER BLOOD, OTHER MARKERS, THAT THERE IS A PROBLEM WITH THAT, AND HE MADE THAT ARGUMENT , SO YOU DON'T CARE TO RESPOND TO THAT , I - -

OH, NO , I WOULD LOVE T O RESPOND TO THAT. THERE WAS VERY, THE DEFENSE ATTORNEY WERE CROSS-EXAMINING , AND THERE ARE TWO T Y PES OF DNA TESTING THAT WAS DONE , WAS THE RFLP, WHICH IS WHAT WAS BEING USED AT THE TIME, AND THEN THIS CASE TOOK FIVE YEARS , SO THERE WERE ONLY TH REE IT EMS TESTED BY THE R FLP , AND THEIR TESTIMONY IS THAT THAT, THOSE TEST RESULTS ARE WITHIN THE MARGIN OF E RROR , AND ALL OF THESE ALLE GATION HOW T HEY COULDN'T GET A COMPLETE MATCH SO THEY RAN OVER AND GOT H ISBLOOD AND MADE IT MATCH UP. THAT IS SHRE WD LY -- THAT IS ABSOLUTELY WRONG. IF YOU LOOK AT THE TESTIMONY OF DA VID BEAR , WHO -- DAVID BEHR, WHO DID THE RFLP , THAT WAS ABSOLUTELY W RONG AND THEY MATCHED. THE RUGR ATS BLAN KET , THE PILLOW AND THE S WITCH P LATE , AND THE OTHER ITEMS DIDN'T HAVE ENOUGH SA MPLE FOR RFLP. DURING THIS TIME , AR OUND 20 00 , STR TESTING BECAME AVAILABLE AND WAS WHAT WAS USED , SO EVERYTHING WAS RETE STED WITH THE STR TESTING, EXCE PT FOR THE RUGRATS BLANKET AND THE PILLOW, BUT THE WOOD OVER THE MOULDING, OVER THE AIR CONDITIONER WHICH HAD HIS BLOOD SPATTER, AND THE STA INS ON THE SWITCH PLATE , THE STATES STAINS OUT OF THE TRAILER -- THE STAINS OUT OF TRALTER, WHICH L E ROY PARKER SAID - - THE TRAILER, WHICH LEROY PARKER SAID, AND WHO IS BLOOD SPA TTER, SAID THAT THOSE SPLATTERED OUT OF THE TRAILER. THOSE WERE ALL HIS DN A. HIS DNA WAS ON SEVEN ITEMS INSIDE THE TRAILER , WHICH INCLUDES THE ONE OUTSIDE THE TRAILER, AND THEN THERE WAS NUCLEAR TESTING ON THE PU BIC HAIR WHICH WAS FOUND ON THE PILLOW, SO WHAT HE I S TALKINGABOUT IS THE CROSS-EXAMINATION OF DAVID BEHR , MATC HING UP ALIELS, AND THAT WAS TWO OF THE ITEMS , AND IT WAS JUST THIS HYPER TECH NICAL , AND DAVID BEHR SAID , NO , THIS IS WITHIN THE PARAM ETERS . THEY ARE A CERTIFIED L AB. IT IS W ITHIN THE PARAME TERS , AND PLUS PRETTY MUCH EVERYTHING WAS STR TESTED , AND CHARLES BADGER DID THAT.

CHIEF JUSTIC E: THANK YOU VERY MUCH , MS. DAVIS .

THANK.

CHIEF JUSTICE: REBUTTAL.

VERY BRIEFLY, YOUR HONO R. JUST A COUPLE OF THIN GS I WANT TO POINT OUT REGA RDING THE AVOID-ARREST AGGRAVATOR . CASE LAW FROM THIS COURT INDICATES THAT IT IS NOT ENOUGH, JUST TO HAVE A SPECULATION, BECAUSE THE DEFENDANT KN EW THE VIC TIMS OR THE VICTIMS' FAMILY.

CHIEF JUSTICE: YOU HAVE GOT HERE THE JAIL HOUSE SNI TCH, I F THE JUDGE FINDS THAT THIS JAILHOUSE PERSON IS CRED IBLE , HOW DO WE SECOND-GUESS CREDIBILITY?

WE SUGGEST THAT, BECAUSE OF THE NATURE OF IT IT WAS NOT PROVEN BEYOND A REASONABLEDOUBT T DID NOT RISE TO SUBSTANTIAL COMPETENT EVIDENCE REGARD THAT , Y OUR HONOR.

CHIEF JUSTICE: BUT WE WOULD HAVE TO DISREGARD THE JUDG E'S FINDING THAT THIS PERSON WAS NOT , WAS CREDIB LE. WE WOULD HAVE TO SAY WE DON'T AGREE.

BASED ON THE EVIDENCE, YES. WE FEEL THAT IT DID NOT RISE TO THAT, DID NOT PR OVE I T BEYOND A REASONABLE DOUBT AS IT MUST B E HERE. DANIELLE DID NOT --

THE JUDGE DID FIND IN THE SENTENCING OR DER , DID RE FER TO COURTNEY'S TESTIMONY AND DID RELY 'THAT TESTIMONY IN DETERMINING THE AGGRAVATOR.

YES, YOUR HONOR.

SO AARE NTLY THE JUDGE GAVE COURTNEY CREDIBILITY. HOW DO WE REW EIGH THAT NO W ON AEAL?

THIS COURT HAS THE D UTY TO DETERMINE WHETHER THE JUDGE'SFINDINGS WERE COMP ETENT , SUBSTANTIAL EVIDENCE . WE SUBMIT --

WE HAVE TO TAKE COURTN EY AS CREDIBLE BECAUSE THAT IS WHAT THE JUDGE DID , SO WE HAVE TO ASSUME THAT COURTNEY WAS TRUTHFUL WHEN HE TESTIFIED , AND ISN'T THAT COMPETENT SUBSTANTIAL EVIDENCE TO PRO VE THE AGGRAV ATOR.

WE SUB MIT IT IS NOT BECAUSE THE IMPEACHMENT TOTALLYDESTROYED ANY CREDIBIL ITY OF IT AND WE SUBMIT THAT AS A MATTER OF LAW. THE FACT THAT THE STATE MENTIONED THAT THE DEFENDANT , THIS WAS THE DEFENDANT'S CAR, THAT ON THE NIGHT OF MURDER THAT THEY WERE SEEN SITTING ON , THAT IS SPECULATION, ALSO. THE ONE NEIGHBOR SAID I T MAY , MIGHT HAVE BEEN THE DEFENDANT'S CAR. IT LOOKED LIKE IT.THERE WERE THREE PE OPLE THERE. THEY WERE ALL TAL KING LOU DLY. I KNOW PRIVETT , AND I KNOW THE DEF ENDANT REYNOLDS. I RECOGNIZED PRIVETT'S VOICE. I HEARD THE OTHER TWO VOICES. I DID NOT RECOGNIZE THOSE AS BEING EITHER OF THOSE VO ICES , BEING REYNOLDS . WE SUBMIT THAT --

COUL D NOT OR I DID NOT .

HE SAID --

THE TESTIMONY WAS THAT I T COULD NOT OR DID NOT?

I AM SO RRY . I DON'T SEE THE DIFFER ENCE BETWEEN THE TW O. I COULD NOT IDENTIFY HIM A S ONE OF PEOPLE THERE. ALTHOUGH I KNEW , I KNOW HIS VOICE AND WOULD BE ABLE TO RECOGNIZE IT, IS WHAT HE SAID. THE MEDICAL EXAMINER , REGARDING THE BURR ON THE SIDE OF THE DOOR , HE DID SAY THAT THE BURR WAS SOF T AND COULD NOT HAVE CAUSED THIS IN JURY , UNLESS GREAT FORCE WAS ALIED.A MAN FA LLING DO WN THE STEPS , HAVING HIS WE IGHT BEH IND IT , WE SUBMIT, WOULD BE GR EAT FORCE, AND THAT WOULD SU ORT THAT.

WAS THERE ANY BLOOD TAKEN FROM THE BURR?

NO.

WHEN YOU LOOK , SO --

THEY DID NOT , YOUR HONOR.

WAS THE BURR IN EVIDENC E?

I --

BY THE DEFENSE?

I KNOW THAT THE PO LICE RECOVERED THE BURR. I DO NOT RECALL WHETHER IT WAS SUBMITTED.

IS THIS IN CROSS-EXAMINATION OF THE STATE'S WITNESS?

I KNOW AT THE SPENCER HEARING, THE DEFENDANT, HIMSELF , ADDRES SED THE C OURTPRO SE AND SOUGHT TO HAVE THE DOOR FRAME BROUG HT IN, SO HE COULD DEMONSTR ATE --

ONE SIMPLE QUESTION. THE JURY, I AS SUME , THEY HAD THE TESTIMONY FROM THE EX PERT ABOUT A KNIFE HAVING CAUSE D THE WOUND IN THE HAND. IF THE BURR WAS IN EVIDENCE , IT COULD HAVE BEEN PRESENTED TO THE STAT E'S EXPERT , THE MEDICAL EXAMINER OR THE DO CTOR , THE EMERGENCY ROO M.

HE DID EXAMINE THE DOOR AND THE BURR. I DON'T KNOW WHETHER IT WAS ADMITTED INTO EVIDENCE BUT THE TESTIMONY WAS HE DID EXAMINEIT, BUT HE SAID IT COULD HAVE BEEN CAUSED I F GREAT FORCE WAS ALIED AND WE SUBMIT THERE WAS GREAT FORCE ALIED WHEN HE FELL DOWN THE STAIRS A NDTHE LANDLORD TESTIFIED THAT SHE FELL DOWN THOSE STAIRS BEFORE AS WELL , SO, AND THE STATE MAKES GREAT ME NTION THAT THE STATE SPECULATION AND THE MEDICAL EXAMINER SPECULATIONIS THAT HE CUT HIS HAND WHILEIN THE ACT OF STAB BING THE VICTIM. IF THAT WAS THE CASE, WHY WASN'T THE DEFENDAN T'S BLOOD GROUND FOUND ON ANY OF THE VICTIMS? IF HE CUT HIMSELF IN THE AF KT STABBING, THERE SHOULD HAVE BEEN BLOOD FOUND ON THE VICTIMS. WE SUBMIT THIS COURT S HOULD REVERSE. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. WE WILL TAKE THE MATTER INTO CONSIDERATION AND