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**Christopher Jones v. State of Florida  
SC04-2231**

>> THE NEXT CASE FOR  
JANUARY 9th IS JONES VERSUS  
THE STATE OF FLORIDA.,,  
>>> MAY IS PLEASE THE COURT.  
RUSSELL AKINS ON BEHALF OF  
CHRISTOPHER JONES IN FT.  
PIERCE FLORIDA, YOUR HONOR,  
THIS CASE INVOLVES THE FIRST-  
DEGREE MURDER AND ROBBERY  
CASE OUT OF OKEECHOBEE,  
FLORIDA, IN WHICH A VERDICT  
OF GUILTY WAS HANDED DOWN AS  
TWO TWO COUNTS AS WELL AS  
POSITION OF THE DEATH  
PENALTY AND THIS APPEAL  
FOLLOWED THROUGH FROM THE  
AUTOMATIC APPEAL  
JURISDICTION OF THIS COURT.  
THERE ARE EVENTUALLY FOUR  
ISSUES BEFORE THE COURT  
TODAY WHICH HAS BEEN BRIEFED  
WHILE THEY ARE FOUR SEPARATE  
ISSUES I WOULD SUGGEST ISSUE  
TWO AND THREE SOMEWHAT MERGE  
IN THAT ISSUE INVOLVES THE  
AGGRAVATOR ISSUE--  
>>> -- TESTIMONY SHOULD NOT  
HAVE BEEN ADMITTED, THEY  
WERE DISCUSSED AND AT SIDE  
BAR PRIOR TO PURSUANT TO  
CONTEMPORANEOUS OBJECTION, IT  
APPEARS FROM THE RECORD TO  
HAVE BEEN AN AGREEMENT TO  
ALLOW A GENERAL STATEMENT  
INTO THE TRIAL PROCEEDING,  
AND THAT AGREEMENT OR  
OBJECTION OR RESOLUTION OF  
THE OBJECTION I THINK WAS  
NOT -- IN MY POSITION WAS NOT  
FOLLOWED AND THE TRIAL --  
>> WHAT I WANT TO GET TO,  
BECAUSE THAT IS STATE OF  
MIND WHATEVER ---  
THE DEFENDANT IS IN THE  
VEHICLE.  
NO QUESTION ABOUT IT.  
AND EDMONDS TESTIFIES THAT

AFTER ALL OF THE CONVERSATION THAT WAS GOING ON, JONES SAID I -- I HOPE THE MAN GOT MONEY BECAUSE I HOPE WE ARE NOT GOING ON A BLANK TRIP AND WE HAVE CASES THAT TALK ABOUT YOU KNOW WHERE INDIVIDUALS ARE IN THE PRESENCE OF ONE ANOTHER, AND THINGS ARE SAID THAT HIM SAYING THAT WHICH IS CLEARLY COMES INTO EVERY DAY I DON'T KNOW HOW ANYTHING ELSE PARTICULARLY MATTERS SO I DON'T KNOW WHEN I'M IS IT HARMLESS?

IS IT AN ADMISSION WHICH COMES OUT AS AN ADMISSION BECAUSE OF THE TO GIVE THE CONTEXT IN WHICH HE WOULD HAVE SAID I HOPE THE MAN GOT MONEY BECAUSE I'M I HOPE WE ARE NOT GOING ON A BLANK TRIP, THAT, BY THAT STATEMENT YOU ALREADY KNOW THAT HE KNOWS HE IS GOING THERE TO AT THE VERY LEAST ROB THIS MAN.

>> YES.

>> WHERE IS EITHER THE ERROR OF THE TRIAL COURT OR IF THERE IS ANY ERROR, WHERE IS THE HARM IN WHAT ELSE GOT ADMITTED?

>> WELL I WOULD SUGGEST THAT THE -- THE ERROR THAT IN THIS THAT IS HARMFUL IS BECAUSE IF YOU ALLOW THESE STATEMENTS -- ESSENTIALLY WHAT YOU HAD -- IN TRIAL LEVEL IS YOU HAD TWO WITNESSES THAT WERE PARTICIPANTS FOR ACTUALLY AT THE SCENE WHICH WERE ROZIER AND THE DEFENDANT JONES.

BY ALLOWING ROZIER TO INCORPORATE STATEMENTS MADE BY TWO ADDITIONAL COCONSPIRATORS OR CODEFENDANTS IN THIS PROCEEDING, YOU ALLOW NOW A CREDIBILITY FINDING BASED ON THREE WITNESSES VERSUS THE TWO PARTICIPANTS THAT ACTUALLY TESTIFIED.

>> SUPPORT THE DEFENDANT'S  
RECORDED STATEMENT GET  
ADMITTED INTO EVERY DAY,  
ALSO.

>> YES, IT DID.

>> AND IS NOT THE SUBSTANCE  
OF HIS RECORDED STATEMENT  
ESSENTIAL UP TO THE POINT  
ABOUT WHO DID THE SHOOTING  
AND THAT KIND OF THING, THE  
SAME AS ROZIER'S  
TESTIMONY AS FAR AS --  
ESSENTIALLY THE DISCUSSION  
OF THE PLAN, OF AN  
AGREEMENT, SCHEME.

>> -- GO AND ROB.

>> LARGO --

>> YOU GET TO THE DIVERGENT  
POINTS AT THE TRUTH.

>> BUT THAT IS NOT --

INSOFAR AS THE STATEMENTS  
WERE MADE BY THE OTHER  
PEOPLE, IT IS REALLY THE  
SAME WHAT IS ROZIER HAD TO  
SAY THAT THE FOUR OF THEM  
AND THE DEFENDANT'S OWN  
WORDS, IN THE RECORDED  
STATEMENT WERE AGREEING TO  
COMMIT THIS ROBBERY.  
IS THAT NOT CORRECT?

>> SO WOULD YOU NOT AGREE  
THAT THE SAME THING CAME IN  
IN HIS RECORDED STATEMENT AS  
WE SAY UP TO THE POINT ABOUT  
WHO DID THE SHOOTING, AND  
THAT STUFF, PART OF IT BUT  
AS FAR AS AS THE DISCUSSION  
TO COMMIT A ROBBERY, IT IS  
THE SAME IS IT NOT?

>> THE DEFENDANT IS  
DESCRIBING THE SAME  
DISCUSSION THAT ROZIER  
DESCRIBES WOULD YOU AGREE  
WITH THAT.

>> YES.

>> SO THERE COULDN'T BE ANY  
HARM COULD THERE INSOFAR AS  
ROZIER REPEATING WHAT THE  
DEFENDANT SAID IN HIS  
STATEMENT UP TO THE POINT AS  
FAR WHOSE DID THE SHOOTING  
COULD THERE

>> IS YOUR -- YOUR QUESTION  
GO TO HIS CUSTODIAL

STATEMENT?

>> RIGHT THE RECORDED STATEMENT THAT WAS AD MYTHED HIS STATEMENT.

>> AGAIN, THE ONLY THE BIG DIFFERENCE I WOULD SUGGEST WAS THAT IS ANY TIME YOU HAVE A CUSTODIAL INTERROGATION YOU GET A SPECIAL JURY INSTRUCTION TO THAT CUSTODIAL INTERROGATION SO YOU HAVE AN ADDITIONAL FACT OF CREDIBILITY WEIGHING THAT GOES ON, WITH THE INHERENT UNRELIABILITY OF CUSTODIAL STATEMENTS.

>> MY OTHER QUESTION IS WHY IS NOT THIS THE CLASSIC COCONSPIRATOR -- EXCEPTION TO THE HEARSAY RULE? THAT IS, PROBABLY THE MOST EXPLICIT CHARACTERIZATION ABOUT WHAT WAS GOING ON IS IN YOUR CLIENT'S RECORDED STATEMENT, AND THAT IS WHEN HE SAYS WE ALL SAT THERE, AND FIGURE HOW THEED WE WERE GOING TO DO IT WE WERE GOING TO COMMIT THE ROBBERY. AND SO IS NOT THIS CLEARLY YOU KNOW BY THE EVIDENCE FROM HIS RECORDED STATEMENT AND THE EVIDENCE FROM ROSIER REALLY ESTABLISH THERE WAS A SIMPLE CONSPIRACY THE COCONSPIRATOR'S EXCEPTION SO LONG AS THE STATEMENTS ARE MADE, FURTHERANCE OF THE CONSPIRACY AGREED UPON WHY WOULDN'T THAT EXCEPTION ALSO APPLY HERE?

>> IN OTHER WORDS I'M TROUBLED BECAUSE THE SAME THING APPEARS IN YOUR CLIENT'S STATEMENT, THE REALLY, SEEMS TO BE VERY LITTLE DISPUTE BETWEEN EVERYBODY IN THIS CASE THAT THIS GROUP WAS GOING THERE YOU KNOW, TO COMMIT A ROBBERY. THE REAL DISPUTE IN THE INDICATION IS CENTERING OVER YOU KNOW THE DEATH THAT

OCCURRED HERE SO -- I'M  
LOOKING AT THE ONE HAND WHY  
IT WOULDN'T BE HARMLESS,  
EVEN IF IT WASN'T, BECAUSE  
THE DEFENDANT'S RECORDED  
STATEMENT IS THERE.

AND THEN ON THE OTHER HAND,  
WHY IT WOULDN'T HAVE BEEN  
ADMISSIBLE ANYWAY UNDER A  
COCONSPIRATOR'S EXCEPTION.

>> WELL, I MEAN I WOULD  
SUGGEST AGAIN FIRST WHY IT  
WOULDN'T BE HARMLESS IS  
BECAUSE YOU ARE ALLOWING  
UNCONFRONTED STATEMENTS TO  
COME IN TO ENHANCE THE  
CREDIBILITY OF THE  
TESTIFYING CO-DEFENDANT SO I  
WOULD SUGGEST AT THAT POINT  
THAT IS ONE HARMFUL ERROR IN  
THE SITUATION.

AFTER THE -- COCONSPIRATOR  
STATEMENT, IT WASN'T  
POSITIVE AS A COCONSPIRATOR  
STATEMENT --

>> YOU ARE AN EXPERIENCED  
CRIMINAL DEFENSE LAWYER, AND  
I WOULD THINK THAT --  
DOESN'T IT LOOK A LOT LIKE  
IT?

>> IT MAY MEET THE EXCEPTION  
FOR COCONSPIRATOR.

>> WELL THAT IS EXACTLY THE  
SITUATION WE HAD IN JERMAINE  
FOSTER.

>> THAT IS CORRECT.

>> AND WHERE THOSE PEOPLE  
GOT TOGETHER, AND IN HAINES  
CITY AND DECIDED TO COMMIT A  
ROBBERY, AND WE SPECIFICALLY  
HELD THAT THOSE WERE AN  
EXCEPTION TO THE HEARSAY.  
RULE, UNDER THE

COCONSPIRATOR, I MEAN I  
DON'T SEE THE DIFFERENCE  
REALLY BETWEEN THIS CASE AND  
YOUR FOSTER -- CASE --

>> I WOULD LIKE TO HEAR YOUR  
ARGUMENT ON THE EVIDENCE  
SUPPORTING THE ARREST --

>> THANK YOU, CLEARLY, THE  
LAW THAT HAS BEEN SO IT IN  
THIS COURT THAT THE ARREST  
AGGRAVAOR WHEN APPLIED TO A

NONLAW ENFORCEMENT OFFICER  
THE COURT IN APPLYING THAT  
AGGRAVATED TEST THAT IT HAS  
TO LAY DOWN, IS IT THE SOLE  
OR DOMINANT REASON FOR THE  
COMMITTING OF THE MURDER.

>> -- IS TO ELIMINATE THE --  
THE WITNESS.

THE COURT AND HAS ALLOWED  
NOT ONLY CASES WHERE THE  
PERSON KNEW THE DEFENDANT,  
YET STILL DID NOT APPLY THE  
AGGRAVATOR, BECAUSE THEY  
WERE OTHER CIRCUMSTANCES  
INVOLVED OR MIGHT HAVE BEEN  
ACTION ON THE PART OF THE  
VICTIM, AND ONE CASE THE ON  
THIS CASE THE TRIAL COURT  
FOUND THERE WAS NO OTHER  
MOTIVE OTHER THAN WITNESS.

>> HE THAT IS CORRECT I  
WOULD SUGGEST THAT THE  
COURT, MISAPPLIED THE FACTS  
THAT ARE IN THE RECORD IN  
ITS FINDING.

THE COURT IN ITS FINDINGS  
WHEN APPLYING THE AGGRAVAOR  
SAID THAT THEY ALL WENT UP  
TO THE TRAILER, USING THE  
WORD "THEY" SPECIFICALLY  
MEANING ALL FOUR PARTICIPANTS.  
MISS CUFF IT IS CLEAR FROM THE  
RECORD WAS THE INDIVIDUAL  
WENT UP TO THE TRAILER  
INITIALLY, AND PARTICIPATED  
IN THIS RECONNAISSANCE  
MISSION SO TO SPEAK SHE THEN  
COMES BACK TO THE CAR WHERE  
THE OTHER THREE ARE STEALING  
THE CAR, SHE I THINK IT IS  
CLEAR WHY ALL PURPOSES OF  
THE RECORD SHE STAYS IN THE  
CAR AT WHILE SENT BACK UP A  
SECOND TIME TO ASK IF HE WAS  
-- TO -- SHE COMES BACK,  
THEY THEN THE THREE OTHER  
PARTICIPANTS GO UP TWO MALE  
INDIVIDUALS, ROZIER AND MY  
CLIENT MR. JONES IN FRONT,  
EXCUSE ME -- TWO MALE  
INDIVIDUALS, IN FRONT WITH  
MISS ROZIER FOLLOWING GO UP  
TO THE DOOR, THE RECORD  
SUGGESTION THAT THEY

PURCHASED OR WERE ABOUT TO PURCHASE SOME BEER WHEN MR. JONES KICKS IN THE DOOR, THERE IS AN INSTANCE WHERE THERE IS PISTOL WHIPPING, AFTER THE PISTOL WHIPPING THEY BEGIN TO TAKE THINGS THEY TAKE THE WALLET, THE OTHER MALE CO-DEFENDANT TAKES THE WALLET FROM VICTIM MR. MINGES.

>> THE OTHER MALE DEFENDANT WAS FROM THE AREA THE TRAIL COURT FOUND HE WAS FROM THE AREA SO THE VICTIM MAY HAVE KNOWN HIM AS WELL AS MISS CUFF --

>> I THINK THE RECORD IS CLEAR THEY KNEW MISS -- COOK, MR. ROZIER WHO IS THE OTHER DEFENDANT, THERE IS THERE IS EVIDENCE THAT HE WAS FROM THE AREA, THE PROBLEM IN APPLYING THE AGGRAVATOR IS CERTAINLY THE COURT CAN USE CIRCUMSTANTIAL EVIDENCE, HOWEVER THE PROBLEM LIES WHEN YOU TAKE THE INFERENCE THAT HAVE TO BE STACKED UPON EMPHASIS TO GET TO THIS CONCLUSION COOK IS THE ONE ALLEGEDLY KNOWN SPECIFICALLY TO THE VICTIM THROUGH FIRE TRANSACTIONS WHERE SHE WAS SUPPOSED TO HAVE BEEN GIVEN A RIDE SO FORTH.

SHE GUESS UP TO THE TRAILER, GOES UP ON RECONNAISSANCE MISSION MAY HAVE GONE UP THE SECOND TIME, THEN SHE IS BACK AT THE CAR, THE RECORD, I WOULD SUGGEST, IS NOT EXACTLY CLEAR AS TO HOW MUCH TIME PASSES BETWEEN HER SECOND RETURN TO THE CAR AND THE OTHER INDIVIDUALS GOING UP TO THE TRAILER.

BUT THE FACT THAT SHE IS NOT PRESENT IN THE TRAILER ONE WOULD HAVE TO INFER AT THAT POINT THAT THE VICTIM WOULD DRAW THE CONCLUSION THAT SHE WAS WITH THE GROUP.

SECONDLY, THEN, YOU'VE GOT TO INFER THEN --

>> SHE GOES BACK AND TELL US THEM HE SAYS DOESN'T -- TELLS HIM HE DOESN'T LIKE THE BLACK -- SOME TO THE DOOR --

>> HE ACTUALLY DOES, SO BUT --

>> RIGHT.

>> -- THAT THE POINT YOU STILL GOT TO MAKE THE INFERENCE THAT HE THE VICTIM THEN WOULD KNOW THAT SHE WAS RELATED TO THE INDIVIDUALS, WOULD YOU HAVE TO THEN INFER ONCE SHE IS IN POLICE CUSTODY THEN THAT SHE IS GOING TO COOPERATE AND IT IS A PERSPECTIVE OF WHAT IS GOING THROUGH THE MIND OF THE SHOOTER.

IS HE GOING THROUGH ALL THESE PERMUTATIONS AT THE TIME HE ACTUALLY SHOOTS? I THINK THE RECORD IS INDICATIVE THE FACT THAT HE DOESN'T HAVE THAT STATE OF MIND.

>> WELL WHEN DID THE ACTUAL SHOOTING TAKE PLACE? I THOUGHT THAT AT LEAST ONE OF THE SHOTS WAS FIRED DURING THE COURSE OF THE STRUGGLE THAT WAS GOING ON HERE, AND SO HELP ME WITH WHEN DID THE ACTUAL SHOOTING OF THE VICTIM TAKE PLACE.

>> DURING A PISTOL WHIPPING AN ERRANT SHOT GOES OFF.

>> THAT IS.

>> HE CLEARLY DOESN'T STRIKE ANY ONE, IT GOES SOMEWHERE IN THE TRAILER WE ARE NOT SURE WHERE.

IT IS THAT THE POINT THAT ROZIER GRABS THE WALLET GOES OUT APPARENTLY SEE IF ANY LIGHTS HAVE COME ON IN THE AREA.

GOES BACK, AND WE GOT TO GET OUT OF HERE TYPE OF SITUATION.

THEN HE LEAVES THE TRAILER

ROZIER LEAVES THE TRAILER  
EDMONDS THEN IS DIRECTED BY  
MR. JONES TO GRAB A TOOLBOX,  
AND A FIREARM THAT IS ON THE  
DOOR AND I THINK THAT ONE  
THING THAT IS VERY  
INDICATIVE OF MR. JONES'  
STATE OF MIND IS AT THE TIME  
ACCORDING TO EXCUSE ME  
ACCORDING TO MISS EDMONDS, HE  
SAYS WHEN HE SAYS THAT ABOUT  
THE GUN, IS TAKE THE GUN SO  
HE CAN'T ARM HIMSELF AND --  
HIMSELF AND IT IS QUOTED IN  
THE RECORD THAT THEY COULD  
ALL GET OUT OKAY.

SO CLEARLY AT THIS POINT,  
WHEN THEY ARE TALKING ABOUT  
EXITING FROM THE COMPLETED  
ROBBERY, CLEARLY AT THAT  
POINT THAT THOSE STATEMENTS  
AND THEN THOSE BEING A SHUS  
ARE INDICATIVE OF STATE OF  
MIND THAT HE WAS NOT INTEND  
TO GO ELIMINATE THE WITNESS.  
BECAUSE HE WAS WORRIED ABOUT  
BEING ABLE TO THE WITNESS  
BEING ABLE TO ARM HIMSELF  
AFTER THEY TRIED TO MAKE  
THEIR ESCAPE.

>> WHAT ABOUT AT THE  
NORMALLY IN THE CASES WHERE  
WE FIND THE SOLE OR DOMINANT  
MOTIVE, THERE IS EVERY DAY  
-- HEAD OF THE AT THE TIME  
THE SHOOTING TAKES PLACE  
THAT THE VICTIM IS ALREADY  
BEEN DISABLED.

-- WASN'T THAT FINDING MADE  
HERE?

AND THAT TO ME I REALIZE IT  
IS A VERY CRITICAL ISSUE,  
BECAUSE AS YOU SAID THE TWO  
WERE CONNECTED I THINK TO --  
REST FALLS YOU HAVE A VERY  
DIFFERENT CASE THAT IS VERY  
IMPORTANT ISSUE FOR YOUR  
CLIENT.

BUT WHAT ABOUT AGAIN IN THE  
CASES WHERE YOU KNOW,  
BECAUSE AS OPPOSED TO THIS  
BEING A ROBBERY GONE BAD SO  
TO SPEAK WHERE THE GUN GOES  
OFF, THERE IS A STRUGGLE, IN

THIS CASE, IS NOT HE  
DISABLED THEN YOUR CLIENT?  
GOES BACK, IN AND SHOOTS  
ABKILLS HIM AT THAT TIME?  
>> MA'AM I DON'T BELIEVE THE  
RECORD IS I DON'T BELIEVE  
THIS IS ANY AFFIRMATIVE  
EVIDENCE THAT HE IS ACTUALLY  
UNCONSCIOUS.  
>> NOT UNCONSCIOUS JUST NOT  
IN A POSITION TO DO  
ANYTHING.  
>> RIGHT.  
IN FACT.  
>> IN OTHER WORDS WHAT OTHER  
MOTIVATION WE GO BACK TO  
THIS.  
THAT THE O'ER THE ROBBERY,  
HAS TAKEN PLACE.  
>> UH-HUH.  
>> SUCCESSFULLY SO TO  
SPEAK THEY ARE  
FREE TO LEAVE.  
WHAT REASON TO COME BACK  
TO KILL HIM.  
>> THERE IS NO EVIDENCE  
THAT HE ACTUALLY CAME BACK  
TO KILL HIM.  
HE THE ACCORDING TO MISS  
EDMONDS, SHE MAKES HER  
STATEMENT THE TRAILER, WITH  
THE -- FIREARM, AND SHE HAS  
I DON'T THINK SEE SHE WAS  
SUPPOSED TO GRAB TOOLBOX  
DIDN'T GRABBED HAMMER  
DROPPED IT MAKING HER ESCAPE  
SHE SAYS AS SHE IS RUNNING  
AWAY SHE HEARS THE POP OF  
THE GUN BUT AS SHE LEFT THE  
-- I BELIEVE THE GUN WAS  
STILL POINTED AT THE VICTIM  
BY MR. JONES.  
AND SHE IS RUNNING, SHE IS  
NOT FACING THE TRAILER AND  
NOT SEEING WHAT IS GOING ON  
SHE HEARS A GUNSHOT, AND  
TURNS AROUND.  
SO SHE DOESN'T ACTUALLY SEE  
WHAT HAPPENED THAT THE  
POINT I BELIEVE THE ONLY  
EVIDENCE AS TO CERTAINLY IT  
IS CLEAR HE IS NOT  
INCAPACITATED BY RESTRAINT  
OR ANYTHING LIKE THAT I

DON'T BELIEVE IS THERE ANY EVIDENCE THAT HE IS UNCONSCIOUS? THE ONLY EVIDENCE WE HAVE REALLY ON POINT ON THAT IS DR. DIGS'S TESTIMONY, AND DR. DIGS' TESTIMONY WAS THAT THE HEAD INJURIES COULD HAVE INCAPACITATED THE DEFENDANT HOWEVER, IT IS NOT CLEAR WHETHER INCAPACITATED MEANS THAT HE WAS STUNNED.

>> DOESN'T THE TRIAL COURT -- DOES THIS IS WHERE THE TRIAL COURT MAKES FINDINGS OF FACT CLEARLY DOUBT WANT THIS TRIAL COURT SPECULATING.

>> CORRECT.

>> THE TRIAL COURT HEARD ALL THE EVIDENCE MAKES CERTAIN FINDINGS OF FACT, THAT AT THAT TIME -- AT THE TIME THAT THEY LEFT, THAT THE ROBBERY ENDED, THE OTHER CODEFENDANTS -- AS EVIDENCE, THERE IS NO EVIDENCE THE DEFENDANT RESISTED ATTEMPT TO DO RESIST, AT THAT POINT, HE SHOOTS THE VICTIM IN THE HEART AT POINT-BLANK RANGE WITH A FIREARM.

NOW THAT IS A FINDING OF FACT.

IS THAT NOT -- DON'T YOU HAVE TO OVERCOME IN TERMS OF OUR STANDARD OF REVIEW THAT THERE IS NO COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THAT FACT, WHICH IS A PRETTY IMPORTANT FACT IN THE AVOID ARREST AGGRAVAOR BEING FOUND OR NOT FOUND.

>> NO I THINK THAT IS CORRECT BUT I DON'T BELIEVE THAT THERE -- THAT IS -- I TOOK ISSUE WITH THE FINDINGS OF FACT, AS JUDGE VAUGHN LAID THEM OUT.

SPECIFICALLY, DO YOU TO THE FACT THAT THERE ARE MANY AREAS IN HIS FINDINGS OF FACT THAT DON'T --

>> I -- THERE MIGHT BE SOME

OTHER THINGS ABOUT WHEN HE  
KNEW THE WHETHER HE KNEW THE  
PHONE WAS THERE WHATEVER BUT  
THIS ONE VICTIM ESSENTIALLY  
INCAPACITATED WOULD YOU  
AGREE THAT IN THE CASES  
WHERE WE EITHER FIND IT OR  
DON'T THAT THAT ISSUE IS A  
PRETTY BIG ONE, THAT IS IN A  
AT THE POINT IN THE SHOOTING  
OCCURRED -- OCCURS THE  
VICTIM IS INCAPACITATED NOT  
UNCONSCIOUS INCAPACITATED.

>> RADIO THE --

>> SO THAT FOR THERE IS NO  
-- AT THE END THERE IS NO  
EVIDENCE THERE WAS VICTIM  
RESIST ORDER ATTEMPT TO DO  
RESIST AS THE OTHERS LEFT  
THE DEFENDANT SHOT THE  
VICTIM IN THE HEART AT  
POINT-BLANK REASON WITH HIS  
FIREARM.

HE HAS NO OTHER MOTIVE, TO  
KILL HIM AT THAT POINT.

THE ROBBERY HAS BEEN  
COMPLETED.

WHY ISN'T THE FINDING THAT  
THE SOLE OR DOMINANT MOTIVE  
FOR THE SHOOTING WAS NOT TO  
AFFECT THE ROBBERY BECAUSE  
THE ROBBIELY HAS BEEN  
EFFECTED BUT TO ELIMINATE  
HIM AS A WITNESS?

WELL.

>> I'M AGAIN I'M -- BECAUSE  
YOU KNOW THIS IS, IT IS A  
BIG ISSUE, SO I DON'T TAKE  
IT LIGHTLY.

BUT I'M STRUGGLING WITH NOT  
UNDERSTANDING HOW UNDER  
THESE SETS OF FACTS IT IS  
NOT SIMILAR TO OUR CASES  
WHERE WE HAVE ALLOWED THE  
AVOID A REST AGGRAVAOR TO  
STAND.

>> I WOULD SUGGEST IN THIS  
CASE, BECAUSE THERE IS NO  
TESTIMONY AS TO THE ACTUAL  
EVENT RIGHT BEFORE THE  
SHOOTING, THAT WE JUST DON'T  
KNOW AT THAT POINT WHETHER  
HE WAS INCAPACITATED  
WHETHER HE HAD BEGUN TO STIR

AND IT IS CLEAR THAT WE  
DON'T KNOW -- THERE IS NO  
EVIDENCE THAT HE WAS  
UNCONSCIOUS WE DON'T KNOW  
BASED ON THE FACT THAT HE  
HAD STRUGGLED AT THE  
BEGINNING WHETHER OR NOT AT  
THIS POINT WHEN THERE IS AND  
THEN AGAIN THIS IS  
ANOTHER --

>> HE HAS NO GUN.

THEY HAVE THREE OTHERS AT  
LEAST HAVE LEFT, OR TWO  
OTHERS WHATEVER IT WAS.  
AND THE ROBBERY HAS BEEN  
COMPLETED.

YOU AGREE THAT THE EVIDENCE  
SHOWS THOSE THINGS.

>> NO GUN --

>> THAT IS CORRECT.

>> NO MEANS REALLY DOING ANY  
HARM TO THE DEFENDANT.

>> NEW ROBBERY HAS BEEN  
COMPLETED, EVERYONE ELSE HAS  
LEFT.

>> THAT IS CORRECT.

>> THERE AGAIN IS A POINT  
THAT IN THE FINDINGS OF FACT  
WE ARE -- WERE INCORRECT  
BECAUSE IT ACTUALLY TALKED  
ABOUT BEING OUTNUMBERED FOUR  
TO ONE, IN FACT MATTER IS BY  
THAT POINT THERE WAS NO OUT  
NUMBERING IT WAS NEVER FOUR  
TO ONE IT WAS THREE TO ONE  
TO BEGIN WITH AT THIS POINT  
WHEN THREE TO ONE, THE  
VICTIM RESISTED AT THE  
ONSET.

THERE IS NO TESTIMONY AS TO  
WHAT ACTUALLY HAPPENED THE  
INSTANCES BEFORE THE GUN WAS  
FIRED.

>> HERE WE KNOWEN AT LEAST  
CIRCUMSTANTIALY, YOU  
TYPICALLY HAVE GUNPOWDER  
RESIDUE WAS THERE ANY  
INDICATION OF ANY GUNPOWDER  
RESIDUE ON HIS HANDS?

OR ON THE VICTIM'S HANDS OR  
JUST RESIDUE RELATED TO THE  
CLOSE IMPACT.

>> THE ONLY RESIDUE IN THE  
RECORD, IS THE TATTOOING

THAT WAS TESTIFIED TO FROM THE CLOSE RANGE SHOT ON HIS HEAD.

>> SO WE HAVE SO THAT IS ENOUGH CIRCUMSTANTIAL EVIDENCE THERE THAT SAYS HE WAS HELPLESS AND THERE WAS A SHOT STRAIGHT TO THE CHEST. AND NO INDICATION OF ANY INJURIES ON THE DEFENDANT, NO OF A STRUGGLE, OR ANYTHING ELSE LIKE THAT. AND IN FACT, WHEN THE LADY LEFT SHE SAID SHE HEARD THE VICTIM SAY OH, MY GOD OR SOMETHING TO THAT EFFECT; RIGHT?

>> THERE -- CORRECT, SHE -- SHE REACTED WITH MY GOD, AND THEN TURNED AROUND.

>> SHE SAID.

>> HE WHAT I'M SAYING SORRY EXCUSE ME WHAT I'M SAYING, SHE I'M TALKING ABOUT MISS EDMONDS, THE -- CODEFENDANT. CLEARLY SHE STATED SHE WAS RUNNING AWAY SHE SAID MY GOD THEN TURNED AROUND.

>> WHAT WAS THE INTERVAL BETWEEN THE TIME THAT SHE TURNED AROUND AND THE SHOOTING?

SHE TURNED AROUND AFTER THE SHOOTING, YOU CAN ONLY -- INFER THAT IT WAS REACTION TO HEARING THE SOUND, I THERE IS NOTHING IN THE RECORD TO MAKE IT EXACTLY CLEAR.

>> SHE GAVE NO INDICATION OF THERE BEING ANY STRUGGLE OR ANYTHING ELSE LIKE THAT THAT.

>> THE ONLY OTHER THING I WOULD SUGGEST IS THERE WERE CLEARLY THERE WERE -- MARKINGS ON THE FLOOR, NOW, WHETHER -- WHETHER OR NOT THE RECORD IS NOT CLEAR AS TO WHETHER OR NOT THOSE WERE BEFORE OR AFTER.

BUT IT IS CLEAR THAT THERE WERE NO EYEWITNESSES OTHER THAN ONLY PERSON THAT THAN

THE PERSON THAT PULLED THE TRIGGER THERE IS NO TESTIMONY FROM HIM AS TO -- BECAUSE HIS VERSION OF FACTS AT TRIAL -- WASN'T EVEN -- >> MISS EDMONDS TESTIFIED UP TO BASICALLY THE MOMENT OF THE SHOOTING.

>> CERTAINLY, CORRECT.

>> AND, AGAIN, I THINK IT IS VERY IMPORTANT, THAT AT THE TIME THAT MISS EDMONDS TALKED ABOUT THIS TAKING THE RIFLE, OUT OF THE TRAILER, THAT IN CONJUNCTION WITH INSTRUCTION TO TAKE THE RIFLE IS GIVEN THIS SHE ATTRIBUTES THIS STATEMENT TO MR. JONES, AND THAT STATEMENT BEING THAT SO WE CAN GET OUT OF HERE, OKAY. SO, YOU KNOW AND THEN WITHIN SECONDS, SHE IS RUNNING OUT OF THE TRAILER, SHE HEARS THE GUNSHOT OH, MY GOD AND TURNS AROUND SO THE STATEMENT THAT HE MAKES FOR HER TO TAKE THE IN CONJUNCTION WITH THE GUN CLEARLY ALSO AN INDICATION THAT AT THAT MOMENT HE IS PLANNING TO TRY TO GET SOME TYPE OF A QUICK ESCAPE, WHERE THE PERSON CAN'T ARM HIM SELF TRACK HIM DOWN.

>> WELL INTO YOUR REBUTTAL IF YOU WANT TO RESERVE HIMSELF EXCUSE ME MAY IT PLEASE THE COURT LISA -- WITH THE ATTORNEY GENERAL'S OFFICE.

>> YOU MIGHT WANT TO PULL THE MICROPHONE UP A LITTLE BIT THERE THERE YOU GO.

>> LISA WITH THE ATTORNEY GENERAL'S OFFICE, AND FOR THE STATE OF FLORIDA. I WILL FOCUS ON THE AVOID A REST AGGRAVATORS IS A SUSPECT THAT IS WHAT IS GOING TO BE CONCERNING THE COURT.

>> LET'S JUST ON THIS FIRST POINT, THE STATE, SEEMS THAT THIS CONSPIRACY

COCONSPIRATOR STATEMENTS,  
WOULD BE A GOODS ALTERNATIVE  
BASIS!!\$\$!!!!!!!

BASIS.

THERE IS YOU WEREN'T  
OBVIOUSLY -- TRAIL COUNSEL  
BUT DOESN'T APPEAR THAT THAT  
WAS EVER ARGUED EITHER THERE  
OR OBJECT APPEAL.

-- OR ON APPEAL AS A AN  
OFFICER OF THE COURT CAN YOU  
TELL US IF YOU SEE A REASON  
WHY THE COCONSPIRATORS  
EXCEPTION TO THE HEARSAY  
RULE SHOULD NOT APPLY I MEAN  
WAS THERE SUFFICIENT  
INDEPENDENT EVIDENCE OF A  
CONSPIRACY!!\$\$!!!!!!!!!!!!!!!  
CONSPIRACY?

>> I AGREE THAT IT SHOULD  
APPLY.

I DON'T KNOW WHY IT WAS NO  
ONE RAISED IT IN THE TRIAL  
COURT.

I WAS NOT THE PERSON WHO  
WROTE THE BRIEF YOUR --

>> SITTING HERE NOW -- FOR  
JUSTICES REALLY WERE PRETTY  
START TO COME UP WITH THAT.

>> EXACTLY.

>> -- LET ME ADDRESS THAT  
THERE WAS NO PREDICATE LAID  
IN FEDERAL COURT THEY CALL  
IT A JAMES PROCEEDINGS BUT  
THERE HAS TO BE PREDICATE  
LAID FOR IN THE INTRODUCTION  
OF COR SPIT TORE STATEMENTS  
THE STATUTE SPECIFICALLY  
SAYS THERE HAS TO BE AN  
INSTRUCTION GIVEN TO THE  
JURY, THAT IN ORDER TO  
CONSIDER THE STATEMENT, THEY  
HAVE TO FIND THE ELEMENTS OF  
CONSPIRACY EVEN THOUGH  
CONSPIRACY DOES NOT HAVE TO  
BE CHARGED.

BUT IN THIS CASE THERE, WAS  
NOT NEETER ANY PREDICATE  
LAID FOR THE INTRODUCTION OF  
COSPIRITOR STATEMENTS AS  
SUCH, AND THERE WAS NO  
INSTRUCTION GIVEN BY THE  
COURT TO THE JURY TO ALLOW  
THEM TO CONSIDER THOSE

STATEMENTS AS REQUIRED BY  
THE STATUTE.

>> THAT IS TRUE.

IT WAS MY READING OF THE  
RECORD, THAT THE --  
PROSECUTOR IN THE TRIAL  
COURT SINCE HE DID NOT  
CHARGE THEM WITH CONSPIRACY  
AS A FOURTH CHARGE DID NOT  
TRY AND BRING THIS IN ON THE  
COCONSPIRATOR CHARGES.  
BUT WAS DOING IT UNDER THE  
STATE OF MIND EXCEPTION,  
BASED ON THE OPENING  
STATEMENTS BY THE DEFENSE  
ATTORNEY WHO SAID THAT  
MR. JONES DID NOT KNOW WHAT  
WAS GOING ON AND SO JUST A  
-- ALONG FOR THE RIDE  
ESSENTIAL, AND --  
ESSENTIALLY IF THE COURT  
LOOKS AT THE RECORD THE  
PROSECUTOR SPECIFICALLY  
CITES THE OPENING STATEMENT  
BY THE DEFENSE, AS TO WHY  
THEY NEED TO BRING IN THIS  
EVERY DAY, TO COUNTER --  
BOTH THE OPENING STATEMENT  
AND MR. JONES' LATER  
TESTIMONY.

SAYING HE HAD NO IDEA WHAT  
WAS GOING ON.

HE WAS JUST SITTING IN THE  
CAR.

AND SO THEREFORE TIE BROUGHT  
IT IN UNDER THE STATE OF  
MIND EXCEPTION.

AND THE STATE INTENDS --  
CONTENDS IT IS STILL A VALID  
STATE OF MIND EXCEPTION  
GIVEN THE FACTS OF THIS  
CASE.

>> WHAT OF YOU IS HIS OWN  
STATEMENT WHICH INDICATES HE  
HEARD EVERYTHING, AND  
KNOWLEDGED IT --

ACKNOWLEDGED IT SO THAT IS  
SORT OF A FRIENDLY QUESTION  
IT SEEMS ONCE YOU HAVE WHAT  
HE SAYS, HE LAYS IT OUT MORE  
THAN ANY OF THE OTHER  
STATEMENTS THAT CAME IN.

.  
>> THE STATEMENTS MISOWED

MOPDZ TESTIFIED TO FOR ROZIER WHO WAS JONES' COUSIN AND COOK, THEY WERE BASICALLY MORE GENERAL STATEMENTS, I WENT THROUGH THE RECORD, AND LOOKED FOR SPECIFIC STATEMENTS, AND SHE ONLY TESTIFIED ABOUT GENERAL STATEMENTS, FROM THOSE TWO PEOPLE.

WITH THE EXCEPTION OF MISS COOK SAYING THAT SHE KNEW THE VICTIM AND THE VICK TILL OWED HER A HUNDRED DOLLARS, BESIDES THAT THE MOST SPECIFIC STATEMENT REGARDING A PLAN TO ROB AND GET MONDAY WAS JONES' COMMENT ABOUT HE HOPE SO THE VICTIM HAS MONEY SO HE IS NOT GOING ON A BLANK TRIP.

.  
>> WITH THE AVOID AREST AGGRAVATE\$!!!!OR I THINK IT IS VERY IMPORTANT FOR THE COURT TO LOOK AT THE TIME LINE OF THIS, THEY GO THESE FOUR INDIVIDUALS GO OVER TO MR. DOMINGUEZ' HOME. ROZIER SENDS IS MR. COOK UP TO DO MINING\$\$US'S HOUSE TO BUY BEER SHE BUYS BEER COALESCE BACK BANDLY BEFORE SHE EVEN GETS BACK IN THE CAR THEY SAY GO BACK AND SEE IF HE WILL SELL TO BLACKS. SHE THEN GOES BACK, TO THE CAR, GETS IN THE CAR AND SAYS HE IS NOT GOING SELL TO BLACKS BUT HE SAYS THEY ARE ALL -- SMIDGES HE AT THAT POINT IN TIME JONES SAYS WELL LET'S DO IT. AND THEY GET OUT OF THE CAR. THAT IS IN MS EDMONDS' TESTIMONY SO THERE IS NOT A SIGNIFICANT BREAK IN TIME IT IS ALMOST IMMEDIATE ACTION. FROM THE TIME MISS COOK LEFT MR. DOMINGUEZ' HOME THE SECOND TIME, TO THE POINT WHERE THESE THREE INDIVIDUALS WENT UP TO HIS DOOR, WAS A MATTER OF

SECONDS.

BECAUSE THEY PARKED RIGHT  
OUTSIDE THE TRAILER HOME.  
AS SOON AS THEY GOT TO THE  
TRAILER HOME, MR. DOMINGUEZ  
TRIED TO SALE BEER MR. !!\$\$!!!!!!  
MR. JONES, WILL NOT LET HIM  
CLOSE THE DOOR, SHOVS HIS  
FOOT INTO THE DOOR TO KEEP  
HIM FROM SHUTTING IT.  
AND STARTS BEATING HIM ON  
THE HEAD WITH THE BUTT OF  
THE GUN THE CORONER  
TESTIFIED THAT MR. DOM IN  
UNITED STATES HAD -- DOM IN!!\$\$!!  
INNUSE HAD SEVEN SEPARATE  
WINDS ALL WHICH PIERCED THE  
SKAM WENT DOWN TO THE BONE  
WE ARE TAKING SEVERELY  
BEATEN!!\$\$!!!!!!!!!!!!  
BEATEN, HE WAS SO SEVERELY  
BEAT!!\$\$!!!!!!  
BEATEN, THAT HE FELL  
IMMEDIATELY TO HIS KNEES,  
AND THEN SAT ON THE FLOOR  
WITH HIS KNEES TO HIS SIDE.  
HE COULD NOT EVEN STAND UP  
BECAUSE HIS LEGS WERE NOT  
UNDER HIM.

>> WHAT ABOUT STATE OF CON  
SHUSNESS HIS CONSCIOUSNESS  
AT THAT TIME?

>> AT THAT TIME, MS EDMONDS  
TESTIFIED THAT DURING THE  
INITIAL BHEETO BEATING THERE  
WAS A STRUGGLE, NOW --  
LOOKING AT THE FOR ENS BIC  
TESTIMONY BY DR. DIGS AS  
WELL AS THE CRIME SCENE  
INVESTIGATOR, THE ONLY THE  
OTHER MARKS BESIDES THE HEAD  
WOUND ON MR. DOMINGUEZ ARE  
THREE MINOR DEFENSIVE WOUNDS  
ON THE LEFT THE LEFT FOREARM  
THE LEFT WRIST.

>> SHE ASKED ABOUT HIS  
CONSCIOUSNESS LEVEL, WOULD  
YOU RESPOND TO THAT.

>> YES, MS EDMONDS THEN  
TESTIFIED THAT HE WAS  
CONSCIOUS!!\$\$!!!!!!!!!!!!!!  
CONSCIOUS, BUT HE WOULD --  
WAS NOT SPEAKING HE WAS  
SITTING ON THE FLOOR LOOKING

AT MR. JONES, LOOKING SAD.  
HE DID NOT MOVE HE JUST SAT  
THERE.

LOOKED, AND LOOKED AT  
MR. JONES, LOOKING SAD.  
WHEN MR. JONES HAD THE GUN  
POINTED AT HIS HEART.

>> WHAT WAS THE WHEFD  
MR. DOMINGUEZ NEW MR. JONES  
OR ANYTHING THAT WOULD LEAD  
MR. JONES TO SAY IF I DON'T  
KILL HIM HE IS GOING TO  
POINT ME OUT?

WELL, THE ONLY THERE IS NO  
DIRECT EVERY DAY THAT MR. !!\$\$!!!!!!  
MR. DOMINGUEZ NEW MR. JONES  
PERSONALLY, THERE IS  
EVIDENCE THAT MR. DO MINING!!\$\$!!!!!!!!!!!!  
MININGUS WAS VERY GOOD  
FRIENDS WITH MISS COOK, WHO  
IS VERY -- FAIRLY -- LINKED  
AGAIN I REFER BACK TO THE  
TIME LINE OF THERE BEING  
JUST A FEW SECONDS BETWEEN  
HER SECOND TRIP THERE, AND  
THEN THESE PEOPLE GOING IN  
THERE.

MR. JONES ACKNOWLEDGED IN  
HIS TESTIMONY THAT HE HAD  
GROWN UP IN OKEECHOBEE, BUT  
THERE IS NO CLEAR EVIDENCE  
SAYING THAT MR. DOMINGUEZ  
RECOGNIZED MR. JONES OR  
MR. ROZIER FROM THE  
NEIGHBORHOOD ALTHOUGH BOTH  
JONES AND ROZIER GREW UP  
WENT TO SCHOOL IN THAT TOWN,  
AND MR. JONES WAS STAR  
FOOTBALL PLAYER.

>> YOUR OPPONENT -- GO.  
>> YOUR, OPPONENT SAID HE  
WAS GOING TO SXROUS PORTION!!\$\$!!!!!!!!!!!!!!  
PORTIONALITY HE DIDN'T QUITE  
GET THERE.

BUT LET ME -- ASK YOU, HOW,  
IS THIS CASE NOT SIMILAR TO  
TERRI IN THAT TERRI THEY THE  
TRIAL COURT DID NOT FIND  
AVOID ARREST, IT WAS ANOTHER  
AGGRAVATES\$!!!OR IN TERRI, IN THAT  
THERE WAS A CONTEMPORARY  
SHOOTING IN TERRI, AND IN  
TERRI THE VICTIM WAS VERY  
SIMILAR TO THIS DEFENDANT IN

THAT THE DEFENDANT THE  
SECOND VICTIM WAS ON HER  
KNEE!!\$\$!!!!!!

KNEES.

WHEN TERRI SHOT HIM.

AND -- AND THIS COURT TERRI  
WAS TWO # ONE YEARS OLD.

-- 21 YEARS OLD THIS

DEFENDANT WAS 21 YEARS OLD,

TERRI THERE WAS NO

SIGNIFICANT MITIGATION, IN

THIS CASE, THERE'S NO

SIGNIFICANT MITIGATION.

HOW ARE THESE CASES

DIFFERENT IN THE SETTING OF

THE ROBBERY.

>> FIRST OF ALL, THE STATE

DOES NOT CONCEDE THAT FACT

THAT THE AVOID ARREST

AGGRAVATE\$\$!!!!OR SHOULD BE

DISMISSED WE BELIEVE THAT

TRIAL COURT.

>> -- EXCEPTING YOU'VE GOT

TWO AGGRAVATORS.

>> BECAUSES THE TOTALITY OF

THE FACTUAL CIRCUMSTANCES IN

THIS CASE ARE SUCH THAT THEY

CLEAR OUTWEIGH THE VERY

MINIMAL MITIGATION, THAT WAS

PUT ON, YOU HAVE A ROBBERY

WHERE A MAN FOR NO REASON

WAS SEVERELY BEATEN, AND

BEATEN TO THE POINT WHERE HE

WAS ON THE FLOOR UNMOVING,

NOT EVEN SPEAKING.

AND THEN YOU HAVE MR. JONES

WHO AT CERTAIN POINT DURING

THE SCENARIO, ASSUMES THE

ROLE OF A RINGLEADER, BY

STANDING THERE HOLDING THE

VICTIM, AT BAY, ON THE

GROUND, AND ORDERING MS

EDMONDS TO TAKE.

>> HE WHAT WERE THE FACTS OF

TERRI DO YOU RECALL?

>> YES, I DO.

>> BUT THE CRUCIAL FACT THAT

I BELIEVE THAT DIFFICULT OF

AITSDZ -- DIFFERENTIATES TER

FRIDAY THIS PARTICULAR CASE

THAT IS THE WITNESS IN TERRI

DID NOT SEE THE ACTUAL

KILLING AND DIDN'T KNOW WHAT

WAS GOING ON.

SO THERE MAY HAVE BEEN A STRUGGLE OR SOMETHING, AND IT IS MY POSITION, THAT IS NOT THE SITUATION HERE. AND THE REASON BEING, IS WHEN MS EDMONDS LEAVES THE HOME OF MR. DOM IN UNITED STATES SHE DOES -- DOMINGUEZ SHE GOES DIRECTLY BY JONES STILL HOLDING THE GUN TO MR. DOMINGUEZ MR. DOMINGUEZ STILL ON THE FLOOR NOT MOVING NOT SAYING ANYTHING SHE GOES OUT THE DOOR AND DOWN JUST TWO OR THREE STEPS THIS IS HER TESTIMONY I BELIEVE IT IS ON 586 TO 588. DOES -- GUESS DOWN TWO TO TLEEP STEPZ SHE -- THREE STEPS HEARS THE SECOND SHOT TURNS AROUND WHEN SHE HEARS THAT SECOND SHOT AND SHE CEASE MR. DOMINGUEZ IN THE SAME POSITION SITTING ON THE GROUND, WITH A GUNSHOT WOUND TO HIS HEART. IT IS MR. DOMINGUEZ WHO SAYS!!\$\$!!!!!! SAYSOI OH, GOD. " AND SLOWLY TILTS OVER TO THE RIGHT, AND COLLAPSES ON THE FLOOR.

>> A PART OF YOUR ARGUMENT HERE YOU TALK ABOUT THE SEVERITY OF THE BEATING, AND YOU KNOW FOR NO REASON, THEY YOU KNOW, BEAT THIS MAN SEVERELY!!\$\$!!!!!!!!!!!!!! SEVERELY, ARE YOU ARGUING THAT THERE SHOULD HAVE BEEN SOME HEINOUS ATROSCIOUS AND CRUEL HERE AND DID THE STATE MAKE AN ARGUMENT THAT THIS MURDER WAS HEINOUS ATROCIOUS AND CRUEL.

>> THE STATE DID NOT SEEK THEING A VAITDOR HIGH ONUS ATROCIOUS AND CRUEL HOWEVER DURING THE -- THE TRIAL COURT PROCEEDINGS, THE COURT THE TRIAL COURT JUDGE DID NOTE THAT BEATING AND THE SEVERITY OF THIS SITUATION. AND DECIDING ON THE DEATH PENALTY.

>> ISN'T THAT I I MEAN I GUS  
THE PROBLEM WHEN WE LOOK AT  
THIS ISSUE DO WE COUNT  
AGGRAVATORS!!\$\$!!!!!!!!!!!!!!!!!!!!  
AGGRAVATORS, VERSUS  
MITIGATORS!!\$\$!!!!!!!!!!!!!!!!!!!!  
MITIGATORS?  
THAT WE SAY WE DON'T WE ARE  
NOT GOING TO BE CONSIDERING  
-- UNCHARGED OR UNFOUND  
AGGRAVATORS SO IN RESPONSE  
TO JUSTICE WELLES' QUESTIONS  
WHY THIS IS AS IS SIMILAR  
FROM TERRY -- DISSIMILAR  
FROM TERRY YOU GO INTO  
CIRCUMSTANCES ABOUT BEATINGS  
THAT REALLY AREN'T PART OF  
THIS RECORD I WOULD LIKE TO  
HAVE YOU GO BACK FOR A  
MOMENT ON THE AVOID A REST  
AGGRAVATORS!!\$\$!!!!!!!!!!!!!!!!!!!!  
AGGRAVATORS, BECAUSE DOES  
THE STATE AGREE THAT IF THE  
AVOID ARREST AGGRAVATE\$\$!!!!OR IS  
STRUCK, THAT THIS IS A  
DIFFICULT CASE TO UPHOLD THE  
DEATH PENALTY?  
>> OH, OF COURSE THE STATE  
DOESN'T CONCEDE THAT.  
HAVING JUST ONE AGGRAVATE\$\$!!!!OR  
DOES MAKE IT -- PERHAPS MORE  
PROBLEMATIC THAN HAVING --  
>> LET'S JUST ASSUME THAT IF  
YOU WOULD, THAT I THINK THEN  
YOU HAVE REALLY A DIFFICULT  
JOB TO UPHOLD IT.  
AND I WOULD LIKE TO GO BACK  
TO AN ANSWER YOU GAVE, TO  
JUSTICE CANTERO, MANY TIMES  
WE SAY THEY KNEW THE PERSON  
40 DOES THE SHOOTING.  
-- PERSON WHO DOES THE  
SHOOTING DON'T WE HAVE TO  
HEAR ALMOST AGAIN, ENGAGE IN  
A LOT OF THE SPECULATION  
THAT WELL MR. DOMINGUEZ  
PROBABLY MADE THE CONNECT!!\$\$!!!!!!!!!!!!  
CONNECTION, BETWEEN MISS  
COOK, AND TWHAEN FOLLOWED,  
THAT -- AND THEN WHAT  
FOLLOWED THAT JONES EVEN  
THOUGH EVERYONE ELSE WAS  
LEAVING MUST HAVE HAD IT IN  
HIS HAVE MIND AT THE TIME

NOT THAT HE CAN IDENTIFY ME  
PROBABLY WOULD IDENTIFY COOK  
COULD FINGER ME SEEMS A LOT  
OF THE HOOPS TO BE GOING  
THROUGH.

IN ORDER -- BECAUSE --  
BECAUSE KNOWING THE -- BEING  
ABLE TO IDENTIFY THE  
PERPETRATOR IS ONE OF THE  
EARMARKS OF AVOID ARREST SO  
LET'S GOING BACK TO THAT, DO  
WE HAVE TO GO REALLY THROUGH  
THAT TO MAKE THAT FINDING,  
THAT WELL HE MUST HAVE HAD  
IN HIS MIND WHEN HE DID THE  
SHOOTING THAT HE COULD --  
THAT THE DEFENDANT THE  
VICTIM WOULD BE ABLE TO  
IDENTIFY COOK WHO THEN WOULD  
HAVE FINGERED THE DEFENDANT?

>>.

>> I THINK THE COURT NEEDS  
TO USE THAT FACT.  
BUT IT IS NOT THE ONLY FACT  
THERE.

FOR EXAMPLE, IN MR. JONES'  
TESTIMONY, HIMSELF, HE  
TESTIFIED THAT HE SAW A  
LIGHT GO ON IN THE \$\$  
NEIGHBOR'S HOUSE AFTER THE  
FIRST SHOT.

MS EDMONDS ALSO TESTIFIED  
THAT TO THE FACT THAT  
ROZIER, JONES' COUSIN RAN  
OUT BELIEVE -- OF THE MOBILE  
HOME TO SEE ABOUT THIS LIGHT  
THAT TURNED ON CAME BACK  
INTO THE HEAD SATISFIED LIST  
GO LET'S GO LET'S GO WE GOT  
TO GET OUT OF HERE, SO JONES  
KNEW THAT THE NEIGHBORS HAD  
HEARD THAT FIRST SHOT, THE  
LIGHTS OF THE NEIGHBORS HAD  
GONE ON, ROZIER SAID WE GOT  
TO GET OUT OF HERE, YOU SEE.

>> TO ME THAT IS NOT --  
THERE CAN'T BE A ROBBERY  
WHERE SOMEBODY IF YOU --  
THAT UNLESS YOU SAY ANY TIME  
THERE IS A ROBBERY THEY  
KILLED THE VICTIM THERE MUST  
BE TO AVOID ARREST IF THE  
ROBBERY IS ALREADY  
COMPLETED -- PEOPLE.

>> FIFRL THIS WASN'T A  
THOUGHT OUT MUCH OF A  
THOUGHTOUT CRIME.  
THE TO TRYING TO FIGURE OUT  
WHAT LOGIC WAS OF EVERYTHING  
IS A LITTLE DIFFICULT, BUT  
TO SAY THAT THAT THERE IS A  
FEAR OF GETTING CAUGHT THAT  
THAT IS WHY THE MURDER  
OCCURRED IT SEEMS LIKE YOU  
COULD SAY THAT IN ANY WITH A  
CRIME EXISTS, ROBBERY,  
BLURRINGRY WHATEVER THEN  
THERE IS A SHOOTING, WE HAVE  
NEVER, JUST SAID THAT IS  
ALONE ENOUGH, TO FIND AVOID  
ARREST THINKS ONE OF THOSE  
REALLY DIFFICULT AGGRAVATORS  
TO FIND IT IS NOT LIKE YOUR  
HHC, OR PRIOR VIOLENT FELONY  
IT IS A MUCH MORE SELECTIVE  
AGGRAVATOR.

WOULD YOU AGREE WITH THAT.

>> ABSOLUTELY.

>> I THINK WE WANT TO WE  
WITH ALL THIS TAKING CARE  
NOT TO SORT OF MAKE JUMPS TO  
SAY WELL, THEY MUST HAVE HAD  
IT IN THEIR MIND, THAT THEY  
DIDN'T WANT TO GETTING  
CAUGHT THAT IS WHY THEY DID  
THE SHOOTING.

>> BUT, THIS COURT HAS TO BE  
AWARE OF THE TRIAL COURT  
MADE A FINDING THAT THERE  
WAS NO OTHER REASON FOR THE  
SHOOTING.

AND THIS CASE IS SIMILAR  
EXACTLY TO THE ROUTELY CASE!!\$\$!!!!!!  
CASIVE WHERE THE DEFENDANT  
DID FOR THE KNOW THE VICTIM  
DIRECTLY HIMSELF, BUT VICTIM  
KNEW THE CO-DEFENDANT JUST  
BRIEFLY.

AND YET BASED ON THE  
TOTALITY OF THE FACTS IN  
THAT CASE THIS COURT UPHELD  
THE AVOID A-- ARREST  
AGGRAVATOR IT IS THE  
TOTALITY OF THE FACTS IN  
THIS CASE THE VICTIM ON THE  
GROUND, NOT RESISTING, WITH  
A GUN TO THE HEART, IT IS A  
SINGLE SHOT.

IT IS NOT LIKE THERE WAS A STRUGGLE AND THE SHOT WENT ANYWHERE ELSE AND NICKED HIM IT WAS A SINGLE SHOT TO THE HEART SHOWING THAT BOTH THE GUN AND THE VICTIM HAD NOT MOVED.

THE ONLY REASON TO DO THAT SHOT WAS TO COMPLIL DOMINGUEZ.

>> IT WAS PART OF I MEAN IT WAS PART OF A ROBBERY; RIGHT?

.  
>> YES, BUT IT.

>> I I MEAN, THE PECUNIARY GAIN AGGRAVATES\$!!!!OR COULD APPLY IT.

>> WILL APPLY ANYWAY, IT IS THE JURY.

>> --

>> YOU SAY THERE IS NO OTHER REASON, I MEAN THE PECUNIARY GAIN WAS A REASON FOR COULD YOU SAY THAT IS REASON FOR THE MURDER.

>> NO.

I DON'T THINK THE ADMINISTERED OCCURRED TO DO THE ROBBERY -- I DON'T THINK MURDER OCCURRED TO DO ROBBERY THE MURDER OCCURRED DURING ROBBERY.

>> THAT IS WHAT HAPPENS A LOT OF THE TIMES, IS THERE IS A ROBBERY A MURDER OCCURS DURING A ROBBERY DOESN'T MEAN THAT YOU ALWAYS FIND AVOID ARREST AGGRAVATORS JUST BECAUSE A MURDER OCCURRED DURING A ROBBERY.

>> THAT IS TRUE BUT IN OTHER CASES FOR EXAMPLE IF THE VICTIM IS STRUGGLING OR TALKING BACK TO THE PERSON, THERE IS -- AN INDICATION THAT STRUGGLE MAY BE GOING ON!!\$!!

ON, OR THAT THE DEFENDANT WAS FREAKING OUT AND IT WAS AN INSTINCTUAL ACTION.

>> WASN'T ORIGINALLY THE AVOID ARREST AGGRAVATES\$!!!!OR REALLY INTEND TO DO APPLY

WHERE YOU SHOOT A POLICEMAN OR SOMEBODY, WHO IS ABOUT TO ARREST YOU YOU ARE TRYING TO AVOID ARREST.

AND TO EXPAND IT TO CERTAIN ON THE CIRCUMSTANCES, MAY BE APPROPRIATE BUT THEN TO EXPAND IT TO ALL AREAS JUST BECAUSE YOU ARE MURDERING THE VICTIM WHO COULD MAYBE POINT YOU OUT SEEMS TO EXPAND TO IT VIRTUALLY ANY CIRCUMSTANCE.

>> WELL, IT WOULD IF -- THIS COURT APPLIED TO IT ANY SORT OF ROBBERY AS JUSTICE -- JUSTICE PARENTRY SAID ANY ROBBERY GONE BAD THAT IS NOT THE SKWAIGS THERE IS CLEAR PRECEDENT BY THIS COURT.

>> HOW DO YOU DISTINGUISH -- A CASE SUCH AS THIS AVOID ARREST AGGRAVATE\$\$!!!!OR APPLIES, FROM ANOTHER ROBBERY, WHERE THE AVOID ARREST AGGRAVATE\$\$!!!!OR SHOULD NOT APPLY?

WHAT'S THE -- DISTINCTION.

>> WHEN OR IN THE THERE WAS RESISTANCE BY THE VICTIM, WHETHER OR NOT THE VICTIM WAS INCAPACITATED OR ROUND -- OR WOUNDED GRIEVOUSLY WOUNDED PREVIOUSLY BY THE DEFENDANT, SO AS TO -- HE COULD OFFER NO RESISTANCE. WHEN OR NOT THE METHOD OF THE KILLING WAS SUCH THAT IT INDICATED A CLEAR DESIRE TO QUICKLY ELIMINATE A WITNESS FOR EXAMPLE IN OTHER CASES, WHEN THE MURDER SLIPPED -- SLIT THE THROAT OF HIS IS BOUND VICTIM, THIS COURT FOUND THE AVOID ARREST AGGRAVATE\$\$!!!!OR SO INDICATIONS OF STRUGGLE WHEN OR NOT THE DEFENDANT CAN BE CONNECTED, UP, WITH THE CRIME, THROUGH HIMSELF, KNOWING THE VICTIM, OR THROUGH THE CO-DEFENDANTS KNOWING THE VICTIM. AND THOSE OTHER AREAS THOSE ARE THE DOCK TRIBAL HALLMARKS OF THE AVOID

ARREST AGGRAVATOR.

>> THANK YOU.

>>!!\$\$!!

>>.

>> AND IN TERMS OF THE  
PROPORTIONALITY!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!  
PROPORTIONALITY.

THE STATE CAN INTENDS THAT  
BASED ON THE TOTALITY OF THE  
FACTS OF THIS CASE, THAT  
EVEN IF THE COURT GETS RID  
OF THE AVOID ARREST  
AGGRAVATE!!\$\$!!!OR WHICH WE HOPE YOU  
DON'T DO, THERE IS STILL  
SUBSTANTIAL EVIDENCE TO  
SUPPORT THE DEATH PENALTY IN  
THIS CASE.

AND STATE ASKS THE COURT TO  
AFFIRM BOTH THE GUILTY AND  
THE -- GUILT AND THE PENALTY!!\$\$!!!!!!!!!!!!!!  
PENALTY.

>> THANK YOU.

>> REBUTTAL?

>> YES, YOU DO?

YES, SIR.

.  
>> ALMOST SIX MINUTES.

>> THANKS.

>> I ASK YOUR THE STATE HOW  
THE STATE WOULD DISTINGUISH  
FOR PO -- PROPORTIONALITY  
PURPOSES TERRI LET ME ASK  
YOU HOW WOULD YOU  
DISTINGUISH FOR  
PROPORTIONALITY PURPOSES  
SLIMY!!\$\$!!!!!!!!!!

SLIMY, SLIMY HAPPENED THE  
CASE THAT HAPPENED DOWN THIS  
BRADENTON WAS IN THE  
HARDWARE STORE, AND SLINY,  
WAS -- PART OF A -- OF A  
ROBBERY.

>> I HAVE TO APOLOGIZE I'M  
NOT FAMILIAR WITH THE  
SPECIFIC FACTS OF.

>> HE LET'S GO TO THE FACT,  
IF AVOID ARREST STATION --  
STAYS, YOU DON'T HAVE MUCH  
IN THE WAY OF MITIGATION  
HERE DO YOU?

>> I WOULD HAVE TO CONCEDE  
THAT, YES, IT IS NOT CLEAR  
ACTUALLY WHEN OR NOT THE  
STATUTORY MITIGATE!!\$\$!!!OR OF NO

SIGNIFICANT CRIMINAL HISTORY  
WAS FOUND OR NOT.

THERE IS AN INDICATION JUDGE  
VAUGHAN DID NOT FIND IT BUT  
THEN THERE IS AN INDICATION  
THAT HE GAVE IT VERY LITTLE  
WEIGHT.

AND THEN THERE WERE SEVERAL  
NONSTATUTORY MITIGATORS THAT  
WERE ALL GIVEN LITTLE OR  
SOME WEIGHT SO, I GUESS,  
YOUR GENERAL STATEMENT WOULD  
BE CORRECT.

>> HOWEVER, GIVEN THAT  
CIRCUMSTANCE, THERE ARE  
SEVERAL CASES THAT MIRROR  
THIS CASE, IN FACT.

>> -- I GUESS TO ME ONE OF  
THE DISTINGUISHING FACTORS  
IS THAT IF THE GUN HAD GONE  
OFF, AND HE WAS KILLED  
DURING THAT STRUGGLE, TO GET  
THE MONEY, IT SEEMS THAT IT  
WOULD FALL INTO OUR CASES  
SAYING THAT IT IS PLOT TO  
PORTION!!\$\$!!!!!!!!!!!!!!

PORTIONATE.

THE FACT YOU AGREE THAT IT  
IS A AT VERY -- VERY LEAST  
THE EVIDENCE DOES SHOE WAS  
INCAPACITATE TO DO TOME SOME  
EXTENT AT THE TIME SINGLE  
GUNSHOT THE OTHERS HAD LEFT  
EVEN THOUGH THE HAC,  
AGGRAVATE!!\$\$!!!!OR IS NOT FOUND IS  
NOT THAT CIRCUMSTANCE  
SOMEHOW, THE DISTINGUISHING,  
BETWEEN SOMEBODY, WHO IS  
DOING A TERRIBLE ACT A  
FELONY OF A ROBBERY, BUT IT  
IS FINISHED, THE ROBBERY IS  
FINISHED!!\$\$!!!!!!!!!!!!!!

FINISHED.

AND THEN A SHOOT OING CURSE,  
THAT WE THEN, THAT IS THE  
THING THAT KIND OF ELEVATES  
IT INTO ANOTHER CLASS OF  
MURDER TO WHICH THE DEATH  
PENALTY IS APPROPRIATELY  
APPLIED!!\$\$!!!!!!!!!!!!!!

APPLIED.

>> BUT FOR THE FACT THAT WE  
HAVE TO ENGAGE IN  
SPECULATION AS TO ACTUALLY

WHAT HAPPENED IN THOSE  
MOMENTS WHEN THE ONLY PEOPLE  
IN THE ROOM ARE THE VICTIM.

>> THE KEY REALLY IS WHETHER  
THIS TRIAL \$COURT'S FINDINGS  
ARE SUPPORTED BY COMPETENT  
SUBSTANTIAL EVIDENCE IF THE  
TRIAL \$COURT'S FINDINGS ARE  
AVOID ARREST AGGRAVATE\$!!!!OR  
STANDS, THEN THIS DOES PUT  
THIS INTO A CASE IN WHICH  
THE DEATH PENALTY PRICE  
PORTION!!\$!!!!!!!!!!!!!!  
PORTIONATE.

>> IT -- IT DOES GIVE YOU  
MORE AN INDICATION THAT THE  
AGGRAVATE\$!!!!OR WAS PROPERLY  
FOUND,AND AGAIN, THIS MAY BE  
A CASE WHERE THE COURT MAY  
CONSIDER BECAUSE OF THE  
THERE ARE SOME OVERT ERRORS  
IN THE \$COURT'S FACTUAL  
RECITATIONS BASED ON THE  
FINDINGS OF THE --  
AGGRAVATOR, OF AVOID ARREST  
AND THIS MAY BE A SITUATION  
WHERE THIS COURT WANTS TO  
SEND THE ORDER BACK FOR  
CLARIFICATION!!\$!!!!!!!!!!!!!!  
CLARIFICATION, TO THE TRIAL  
COURT, BECAUSE IT REALLY  
ISN'T CLEAR WHEN YOU READ  
THAT ORDER WHEN HE WHEN HE  
STARTS TALKING BE WHEN JUDGE  
STARTS TALKING ABOUT NUMBER  
OF PEOPLE HE WAS OUTNUMBERED!!\$!!!!!!!!!!!!!!  
OUTNUMBERED, CLEARLY, THAT  
THE RECORD DOESN'T SUPPORT  
THAT.

BECAUSE IT IS A TIME -- DOES  
-- GUN GOES OFF I THINK  
EVERY VERSION OF EVENTS  
WE'VE GOT IN THE RECORD  
SUGGESTION THAT IT IS A  
ONE-ON-ONE SITUATION.  
AND SO THERE ARE SOME ISSUES  
-- THERE, IT IS NOT CLEAR AS  
TO THE CONVERSATIONS THAT  
WAS HAD EVEN ESTABLISHING  
THE KNOWLEDGE OF MISS COOK  
IT AT ONE POINT COOK HAS  
CONVERSATIONS WITH RZIER  
OUTSIDE THE CAR, THOSE ARE  
NOT CLEAR, AT ALL.

AS TO THE KNOWLEDGE OF MISS COOK HOW MUCH MR. JONES KNEW OTHER THAN THAT THE RECORD DOES TALK ABOUT THE FACT THAT THIS INDIVIDUAL THE VICTIM MAY HAVE REFUSED TO GIVE HER A RIDE AFTER HE HAD PAID SOME MONEY.

THAT SORT OF HAS BEEN EXPANDED TO BE THEY KNEW HIM WELL.

THERE MAY HAVE BEEN SOME INDICATION THAT MONEY WAS LOANED BUT THOSE CONVERSATIONS THERE WERE TWO DIFFERENT CONVERSATIONS THAT SHE HAD.

ONE IN ROZIERs PRESENCE, AND THEN ONE IN PRESENCE OF ALL FOUR, WHERE RZIER COMES BACK TO THE CAR SAYS I THINK I KNOW WHERE WE CAN GET MONEY SO CLEARLY, A CONVERSATION THAT HAPPENS BETWEEN ROZIER AND COOK THAT IS NOT PART OF THE KNOWLEDGE OF THE TWO PEOPLE IN THE CAR ONE OF WHICH PLK JONES.

SO I THINK THAT, AGAIN, CUTS AGAINST THE KNOWLEDGE THAT HE HAD AND THE LEVEL OF KNOWLEDGE THAT HE MIGHT HAVE HAD AS TO THE KNOWLEDGE I KNOW WE ARE SAYING THINGS OVER AND OVER, AS TO THE KNOWLEDGE OF THE VICTIM TO COOK.

WHICH, AGAIN, CUTS AGAINST THE AVOID ARREST AGGRAVATOR, AND AGAIN I STRONGLY SUGGEST THAT THE MOST TELLING PIECE OF EVIDENCE IS MR. JONES' CON TELL ME TRAIN -- CONTEMPORANEOUS STATEMENT TO MISS EDMUNDS WHEN HE IS TELLING HER TO GET THE GUN SO WE CAN GET AWAY, OKAY. CLEARLY, SOMEONE THAT IS INTEND TO GO ELIMINATE A WITNESS TO AVOID ARREST IS NOT WORRIED ABOUT GETTING AWAY OKAY, AND MAKING SURE THAT THE VICTIM THAT YOU ARE INTEND TO GO LEAVE BEHIND IS

GOING TO ARM HIMSELF TO HARM YOU.

AND SO I THINK THAT THOSE ARE -- CIRCUMSTANTIAL FACTORS THAT YOU HAVE GOT TO LOOK AT THAT HAPPENED ALMOST CONTEMPORANEOUSLY TO THE SHOOTING THAT SORT OF GIVE A GLIMPSE INTO THE STATE OF MIND, OF BELIEVE JONES.

YOU HAVE GOT AN ACCIDENTAL GUN DISCHARGE.

AT THE BEGINNING OF THE INCIDENT.

YOU DON'T KNOW WHAT HAPPENED BETWEEN MR. JONES AND THAT VICTIM, IN THOSE MOMENTS, THAT NO ONE WAS LOOKING.

DO YOU HAVE A GUNSHOT WOUND TO THE CHEST BUT YOU HAVE ONLY ONE SINGLE WOUND.

YOU HAVE --

>> WITH THAT YOU HAVE WITH OUR HELP EXHAUSTED YOUR TIME THANK YOU FOR THE

PRESENTATION BOTH OF YOU WE WILL TAKE THE CASE UNDER ADVISEMENT THE COURT WILL STAND IN RECESS.

>> PLEASE RISE.