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**Pinkney Carter v. State of Florida**  
**SC06-156**

THE NEXT CASE ON OUR CALENDAR THIS MORNING IS CARTER VERSUS STATE OF  
# MOURN MY NAME IS --  
DAVIS REPRESENTATIVE\$ING  
CONSIDERED ATER IN THIS CASE OUT OF DUVAL COUNTY TROPS  
TRIPLE MURDER OF MISS, LIZ  
READ HER DAUGHTER COURTNEY  
SMITH AND HER CURRENT  
BOYFRIEND GLEN PAFFORD --  
CHIP CARTER, FREAKING  
BRIEFLY THAT CARTER READ HAD A WERE LIVING TOGETHER LIVED TOGETHER SEVERAL YEARS,  
JACKSONVILLE, SHE HAD FOUR  
CHILDREN THEY ENJOYED BEING  
TOGETHER, TRYING TOO BUILD A FAMILY HERE, BROCK UP GOT  
BACK TELL A COUPLE OF TIMES  
IN FALL 26001 FINALLY OUT IN BUT  
NOT FINALLY BUT BROKE UP  
AGAIN THEN BY JANUARY OF  
2002 SHY HAD FALLEN BACK --  
ABOUT THREE MONTHS BEHIND  
MORTGAGE, CARTER CAME IN,  
AND WHICH ISSUES ARE YOU  
GOING --  
I'M SORRY, WHAT ISSUES.  
I'M LOOKING AT THE --  
BURGLARY ASSING A ELEVATE\$\$OR,  
UNDER NEW STATUTORY  
DEFINITION  
DEFINITION, THOSE ONLY TWO I WANT TO ADDRESS THIS  
MORNING. BUT, IN ANY EVENT, BY  
JANUARY OF OF 2002, CARTER,  
HAD MOVED BACK IN PAID OFF  
THE BACK -- MORTGAGE  
PAYMENTS, AND THINGS SEEMED  
GOING PRETTY WELL, IN FACT,  
BY MAY OF 2002, HE HAD GIVEN HER A RING THEY HAD GONE ON  
A BOAT CRUISE GOING TO GET  
MARRIED  
MARRIED --  
LET'S, IS HE GOING GET  
TO -- WHY DON'T WE, JURY --  
FOUND PREMEDITATED.  
MURDERS --  
YES THAT IS CORRECT.  
THEY FOUND BOTH.  
RIGHT.  
AS TO PREMEDITATED AS TO  
-- WHAT IN THE FACTS IN

x

FAVOR -- LIGHT FAVORABLE TO  
THE STATE -- HEIGHTENED  
PREMEDITATION  
PREMEDITATION.  
RIGHT.  
GIVE US THE FACTS THAT  
THE JURY AND THE JUDGE COULD HAVE RELIED ON, TO FIND THAT THERE WAS A HEIGHTENED --  
PREMEDITATION.  
PREMEDITATION.  
YES FIRST OF ALL THE TEST IS MORE THAN SIMPLY HEIGHTEN  
HEIGHTENED PREMEDITATION  
ALSO THE COLE -- COLD  
CALCULATED PREMEDITATED BUT  
AS TO HEIGHTENED  
PREMEDITATION YOU ARE  
LOOKING FOR A CAREFUL PLAN,  
AND I SUPPOSE THE EVIDENCE  
OF A CAREFUL PLAN, WOULD  
HAVE BEEN THAT -- SOME DAYS  
OR WEEKS BEFORE HE SORT OF  
BEEN AROUND THAT AREA WITH  
CASED THE JOINT SORT OF  
THING LOOKING AT TELEPHONE  
POLES LOOKING AT THE HOUSE,  
AND THEN ON THE NIGHT OF THE MURDER I SUPPOSE IF YOU WANT TO LOOK AT SOME OTHER  
FACTS  
WOULD IT HAVE SUPPORTED HE  
BROUGHT THE GUN TO THE --  
AND IS SEE, WHAT --  
GIVING THE FACTS, WHAT  
CONCERNS ME ABOUT WHY THIS  
ISN'T -- THE WAS SOMETHING  
WHERE THEY WERE ON AGAIN/OFF AGAIN THEN ON AGAIN, AND HE  
WALKS  
WALKS, IN AND HE FINDS THE  
--  
--  
START TO HAVE -- HE --  
BUT HERE, HE KNEW THAT SHE  
WAS WITH THIS OTHER PERSON,  
AND SO FOR WEEKS BEFORE, HE  
KNOWS IT STAMING  
STALKING HERE, ACQUIRES A SHOTGUN.  
  
AS A 22 CALIBER GUN.  
  
-- WASN'T SHOTGUN.  
NO A 22 A GUN HE BOUGHT  
25 YEARS EARLIER, HE FWHATS  
AIR FORCE, AND -- HE WAS IN  
AIR FORCE CHARACTERIZING AS  
STLKING HE WAS SEEN TWICE IN THE NEIGHBORHOOD LOOKING  
AROUND THE HOUSE LOOKING AT  
HOUSE THIS IS A -- YOU HAVE

TO -- THIS CIRCUMSTANCES  
EVIDENCE CASE.

YOUR POSITION AT TRIAL,  
OR THE \$DEFENDANT'S POSITION  
WAS THAT WHEN HE WALKED INTO THE HOUSE, HE JUST WANTED TO GET SOME ANSWER HE IS  
DID  
NOT HAVE INTENT TO KILL.  
THAT IS CORRECT HE  
BROUGHT THE --  
HOWEVER HE WALKED INTO  
THE HOUSE WITH THIS FINGER  
ON THE TRIGGER, OF THE  
RIFLE, AND HE SHOT ALL THREE DEFENDANTS, PRETTY MUCH  
CERTIFY AT ITEM IN THE HEAD  
-- SEE ARE AUTUMN IN THE  
HEAD A COUPLE OF SECONDS  
ENTERING THE HOUSE.  
YES, I THINK THAT IS --  
THAT IS WHAT IS HAPPENING  
BUT --  
SO ISN'T THAT EVIDENCE  
THERE OF -- CO-- COLD  
CALCULATED PREMEDITATED  
DIDN'T THE JURY DECIDE THAT  
ISSUE AGAINST YOUR CLIENT,  
BY FIRST BY FIND PROCEEDING  
MEDITATION  
MEDITATION.  
WELL, YOU TAKE IT TAKES  
MORE THAN PREMEDITATION TO  
FIND A CC --  
UNDERSTAND THAT, BUT, AS  
FAR AS YOUR CLIENT'S  
POSITION, THAT WHEN HE  
WALKED INTO THE HOUSE, HE  
DIDN'T HAVE AN INTENT TO  
COMMIT ADMINISTERED.

NO HE DID -- COMMIT  
MURDER.

NO HE DID NOT.

SEEMED THE JURY SEEMED TO DECIDE THAT ISSUE AGAINST  
YOUR CLIENT.

WITHIN SECONDS HE STARTED SHOOTING.

WHAT HAPPENS THE REASON I SAY THAT IS BECAUSE IT IS  
MORE THAN -- IT IS -- MORE

THAN WALKS IN STARTS

SHOOTING PEOPLE, WHAT

HAPPENS IS HE WALKS IN TO

THE HOUSE HIDING THE GUN I

THOIN SIDE OF HIS LEG, SO A

A NEITHER PAFFORD NOR MISS

REED SAW THE GUN, SO AS SOON AS THEY GET INSIDE THE HOUSE SHE SEES IT GRABS,

x  
STRUGGLING OVER THIS GUN,  
AND THE GUN GOES OFF AND  
HITS THE -- COURT NIGH  
DAUGHTER, SHE WILL DIE  
COUPLE OF DAYS A LIFT LATER  
HE QUICKLY KILLS TWO SHOTS.  
SO THIS ISN'T A SITUATION WHERE THE DEFENDANT WALKED  
IN THE HOUSE THEY GOT INTO A DISCUSSION THEY GOT INTO AN  
ARGUMENT, AND THE INJUREY  
COULD HAVE DECIDED WELL, HE  
MAY HAVE FORMED THAT INTENT  
IN THE MOMENT AS JURY  
INSTRUCTION SAYS DOUBT NEED  
A LONG TIME TO FORM THE  
INTENT  
INTENT.  
RIGHT.

AND THE JURY SAY IN THAT  
MOMENT WHILE THEY WERE --  
ARGUING HE COULD HAVE FORMED THE INTENT TO KILL. IT IS OBVIOUSLY IT OCCURRED, WITHIN  
SECONDS, OR OF HIM  
ENTERING THE HOUSE.  
BY THE I THINK THAT IS  
WHAT JURY IS SAYING HE MAY  
NOT HAVE HAD INTENT WHEN HE  
CAME IN BUT WHEN HE GOT IN  
THERE THAT CONSCIOUS AND AT  
LEAST PREMEDITATION FOUND  
GUILTY OF FIRST-DEGREE  
MURDER, BUT THAT IS NOT --  
YOU REQUIRE MORE IF YOU ARE  
GOING TO -- PLY CCPING A  
ELEVATE  
ELEVATOR.Â Â YOU SAY THAT THE -- APPLY  
CCPING A ELEVATE\$SOR.  
YOU ARE SAYING -- THE  
STATE COULD RELY ON, YOU  
AGREE, THERE ARE FACTS THAT  
SHOW THAT HE WAS CASING --  
WAS IN THE NEIGHBORHOOD,  
THAT HE WAS LOOKING AROUND,  
SO IS THAT SOMETHING THAT  
THE JUDGE AND THE JURY COULD USE TO DETERMINE THAT HE WAS CONTEMPLATE\$SING KILLING  
AT LEAST  
BECAUSE I DON'T THINK CC.  
LIFE RECOMMENDATION.

AS TO THE GIRL.  
YOUNG GIRL.  
YES.

BUT AT LEAST AS THE TWO  
OTHER -- THE GIRLFRIEND, AND GIRL FRIEND AND THE  
BOYFRIEND

x  
BOYFRIEND.  
RIGHT.  
FIND HEIGHTENED  
PREMEDITATION  
PREMEDITATION.

WELL, YOU KNOW AGAIN I GO BACK TO THE CIRCUMSTANTIAL  
EVIDENCE CASE IT IS SOME  
EVIDENCE WHEN YOU STARTU  
BUILDING CASE TO REBUT --  
CIRCUMSTANTIAL EVIDENCE,  
HE AGREES THAT HE SHOT THEM.  
YES.

ALL RIGHT WHEN I THINK OF CIRCUMSTANTIAL A QUESTIONS  
SOMEONE ELSE OR --

RIGHT.  
IT IS A NO QUESTION THAT  
HE KILLED THESE THREE  
PEOPLE.

THERE IS NO QUESTION AT  
ALL.

THE OTHER PART THAT  
CONCERNS ME IS THAT ABOUT  
THE COLD AND CALCULATED YOU  
MAKE AS ARGUMENT A YOU ARE  
NOT RACESING

YOU ARE NOT  
RAISING IN ARGUMENT  
VOLUNTARY INTOXICATION.  
O NOT THAT I I WOULD LOVE TRIETZ BUT YOU HAVE DECIDED  
IT.

THERE ALSO IS NO ATTEMPT  
TO ARGUE, OR ASK THE JUDGE  
TO INSTRUCT ON THE UNDER THE INFLUENCE OF OF EXTREMELY  
MENTAL99EMOTIONAL  
DISTURBANCE.

RIGHTED.  
THAT WOULD BE STRONGER  
CASE IF THAT IF THERE HAD  
BEEN IN EVIDENCE THE RECORD  
OF HIM BEING DRUNK,P  
DISTRAUGHT WHATEVER THAT YOU MIGHT NEGATE THE COLD OR  
CALCULATED. BUT THAT MITT GATOR NOT EVEN BEING SOUGHT INSTRUCTED ON,  
OR ANYTHING ABOUT IT, I  
THINK THAT WEAKENS YOUR --  
YOU KNOW THE ISSUE OF HE  
COMES IN THERE, WITH A  
SINGLE INTENT, AND IT IS AS  
JUSTICE CANTERO SAYS HIS  
INTENT WAS TO YOU KNOW  
CONFRONT AND TRY TO WORK  
THIS OUT.

COME BACK TO ME -- HE --  
ACTIONS BELIEVE THAT IS WHAT  
HAPPENED.  
THERE IS MORE TO IT, HAS  
TO THE STATUTORY MIDDLE  
MITIGATORS THOSE WEREN'T YOU ARE CORRECT THEY WERE NOT  
REQUESTED BUT THERE WAS  
EVIDENCE, UNCONTROVERTED  
EVIDENCE ON THE NIGHT OF THE MURDER HE HAD TAKEN SOME  
ANTIDEPRESSANTS THAT MISREAD HAD GIVEN TO HIM ALSO MISS  
REED HAD GIVEN HIM A  
CONSIDERABLE ALCOHOL HADN'T  
GOTTEN SLEEP FOR 30 YEARS 30 HOURS.  
THE OTHER FACTS INVOLVED  
BECAUSE CCP ANALYSIS IS VERY -- FACT INTENSIVE.  
YES, IT IS  
THERE ARE SOME -- TELL  
THEM CALLS, MADE --  
TELEPHONE CALLS MADE ON THE  
SNEEVENG WHAT HAD.  
TO THE PROPERTY AND THEN  
COME BACK, WHAT ARE.  
WELL THEY MADE MADE A  
DATE, TWO DAYS EARLIER, TO  
HAVE A DATE THAT EVENING  
TUESDAY 22 OF JULY SHE STOOD HIM UP. SHE IS, HE IS GOES HOME SAYS WHAT IT IS GOING ON  
HERE I  
NEED SOME ANSWERS HE STARTS  
TAKING THE --  
ANTIDEPRESSANTS  
ANTIDEPRESSANTS, ALCOHOL,  
AND AGAIN HE HADN'T HAD  
SLEEP 30 HOURS, AND THEN HE  
CALLS  
CALLS, ABOUT 11:30 CALLS  
OVER IN THE SON MISS REED'S  
SON SAYS SHE IS NOT HERE HE  
KNEW SHE WAS HE HAD DRIVEN  
BY SEEN PAFFORD'S.  
HE HAD BEEN THERE EARLY  
THAT SAME EVEN.  
DRIVEN BY HADN'T GONE  
INSIDE.  
MADE TELEPHONE CALLS TO  
THE HOUSE THAT EVENING.

RIGHT.  
OKAY. WHAT ARE THE OTHER FACTS  
THAT IS WHERE WE ARE GOING  
ON THIS, WHAT JUSTICE  
PARIENTE ASKED WHAT ARE THE  
FACTS  
FACTS, THAT WOULD SHOW SOME

CALCULATIONS SOME PLANNING  
ON THIS.

WELL, I MEAN THAT I THINK THAT IS ABOUT IT, AND --  
TAKING THE GUN, CAN ALSO BE  
-- BUILT NOT MY JOB TO  
SUPPORT THIS, I'M HERE TIE  
THINK A IT.

I THINK IT IS YOUR JOB AS CANDOR TO ADMIT WHAT THE  
FACTS ARE IN THE CASE SO  
THAT YOU CAN ADDRESS THEM  
SAY WHY THEY ARE OR ARE NOT.

IN A SENSE THAT GOES BACK TO ONE OF MY ARGUMENTS IT IS REALLY NOT MY JOB SHOULD  
HAVE BEEN TRIAL \$COURT'S TO  
LAY WLUT AFFECTS FOUND THAT  
SPURFRTED AS UNDER COURT'S  
ANALYST IN JACKSON WHY THIS  
COLT -- COLD IT DIDN'T DO  
THAT WE ARE SITTING THERE\$SURE  
HAVING TO ASK ME THEY  
QUESTION IMHAVING TO DO  
ESTRANGE TO DO TRY AND  
SUPPORT THIS I SHOULD NOT  
HAVE TO DO THAT SHOULD BE  
ABLE TO SAY FROM THE \$\$JUDGE'S ORDER SAY THIS WHAT YOU KNOW THIS HE FOUND IT COLD  
SNEESHGS SUPPORTS --  
RIGHT HE DIDN'T DO THAT,  
TOO SO SO THAT IS LET'S GET  
BEYOND THAT,\$\$.

SO WE DO HAVE TO TAKE THE FACTS IN THE LIGHT MOST  
FAVORABLE OF THE \$\$JUDGE'S  
CONCLUSION THAT CCP EXISTED.

YOU GOT A CONCLUSION YES  
THAT IS CORRECT, I WILL  
GRANT,

THAT YOU BUT EVEN

WHEN YOU LOOK AT, THAT YOU

-- YOU DON'T HAVE THOSE

FACTS TO SHOW THAT WAS COLD, CALCULATED PREMEDITATED AS

THIS COURT DEFINED IT IN

JACKSON, YOU HAVE -- THIS

WASN'T AN EXECUTION STYLE

MURDER WENT IN VERY QUICKLY, THIS THING WHOLE SCENARIO

THAT I HAD, CHANCED ON

EXEXPLODE

EXEXPLODED ON HIM SHE GRABS

THE WEAPONS STRUGGLING OVER

IT THAT IS NOT PART OF A

PLAN, HE WENT IN THERE TO

GET ANSWERS REGARDING THEIR

RELATIONSHIP

RELATIONSHIP, AND THAT IS

REALLY ALL THAT HAPPENED

AMPLE HE INTENDED TO HAPPEN.

WE HAD DIAZ VERSUS STATE, WHERE IT WAS KIND OF SIMILAR CIRCUMSTANCES, AND -- CCP

WAS FOUND IN THAT CASE.  
RIGHT WHAT HAPPENED IN  
DIAZ, IS WEEKS I NAIN OR SO  
BEFORE THE MURDER DIAZ GOES  
TO PAWN SLOP OR GUN DEALER  
TRIES TO BUY A GUN THEY  
WON'T SELL IT TO HIM BECAUSE AS THE WAITE THREE DAYS THAT YOU WILL HE GETS UPSET  
ABOUT IT IMPATIENT TO GET THIS,  
AND HE --BLIZE THE GUN  
SPECIFICALLY TO KILL HIS  
GIRLFRIEND ENDS UP KILLING  
HER FATHER, AND THIS CASE,  
WE DON'T HAVE HAVE THAT SORT OF THING, CARTER TAKES THE  
GUN I LIKE I SAID, HE OWNED  
FOR 25 YEARS, HE KEPT IN HIS TRUCK -- JUST BY, GRATUITY I CHARACTERIZE  
CHARACTERIZE CHARACTERIZE IT GRABS THIS GUN IN THERE, WE  
DON'T HAVE THIS.  
-- FOR TO YOUITY GRABS -- FOR UT TYE I'M NOT SURE ANY  
GRABBING OF A GUN CAN BE  
CONSIDERED FORTUITN.  
WERE A IS FORTUITOUS THE  
GUN IN THE UK\$\$TRUCK.  
GOING INTO A HOUSE WHY  
DRAB THE GUN IN A TRUCK GO  
INTO A HOUSE.  
BECAUSE HE WANTED TO HE  
WANTED TO GET SOME ANSWERS  
FROM --  
YOU NEED A RIFLE TO GET  
INTO THE TRUCK.

SHE HE WANTED TO MAKER  
SHE WOULD GIVE HIM THAT  
PLAYING HOT AND A COLD ONE\$\$O  
DAY ON.  
YOU GO IN HOURS KNOCK ON  
DOOR HAVE A ARGUMENT DOESN'T MEAN YOU CARE RIFLE INSIDE  
IT.  
MEANS WASN'T TO DO GET  
THE ANSWERS WAS GOING TO USE THIS GUN, TO ENFORCE HIS  
DESIRE TO GET -- THAT IS I  
MEAN I WOULDN'T DO IT YOU  
WOULDN'T DO IT BUT, THAT IS  
NOTE TOTALLY OUT OF CONTEXT.  
SOMEBODY HAS DELIBERATE  
HEIGHTENED PREMEDITATION TO  
KNIT MURDER WOULD DO IT.  
YES THEY WOULD.  
BUT, ALSO, THEY -- SOME  
PEOPLE WOULDN'T. I MEAN THAT IS THAT IS WHY I GET BACK TO CIRCUMSTANTIAL  
NATURE OF THIS CASE, BECAUSE IF WHY IF HE IS GOING TO DO  
THAT WHY DIDN'T HE START  
SHOOTING HER RIGHT IN THE  
DOORSTEP WHEN HE FIRST SEES

HER.  
YOU SAID HE SHE STRUGGLED WITH GUN TRIED TO GET  
UNIVERSITY OUT.  
ONLY OF A THEY GET INSIDE HE MET HER ON THE OUTSIDE  
WITH WERE PAFFORD GOING I'LL HAVE HIM WOULD HAVE SHOT HIM RIGHT THERE SHOT BOTH  
RIGHT  
THERE.Â Â YOU SAID THE FACTS SHOW  
THAT HE HAD IT HAVE ITTEN  
HIDDEN BEHIND HIM NOBODY  
COULD SEE HE HAD A GUN.  
INDICATES THAT HE WAS NOT INTENDEDING TO USE THE GUN  
FOR MURDER.

HE DIDN'T WANT ANYBODY TO KNOW THAT HE HAD A GUN OR  
ELSE THEY WOULDN'T LET HIM  
INSIDE THE HOUSE.  
IF HE WAS GOING TO DO  
COLD CALCULATED WHY WAIT TO  
GET INSIDE.  
OUTSIDE -- I HAVE, THIS  
CONCERN, LET'S SAY WE AGREE  
WITH YOU, THAT HE STRIKES -- THIS IS, THREE MURDERS, ALL  
RIGHT, NOT ONE MURDER.

THREE MURDERS.

SO THERE ARE  
CONTEMPORANEOUS FELONIES.

RIGHT DURING THE COURSE  
OF THE -- TWO AGGRAVATION,  
IS THAT WHAT YOU ARE MOVING  
TO\$\$ TO.  
NOT SUGGESTING -- IN THE  
COURT, THAT HE KILLED THREE  
PEOPLE, IN A PREMEDITATED  
WAY, HOW IS THAT IN TERMS OF WITH AND NO STATUTORY  
MITIGATION  
MITIGATION, HOW WOULD  
FINDING THE CCPING A  
ELEVATORS WE DON'T KNOW --\$\$ --ING A ELEVATORS -- WE  
DON'T KNOW WHAT THE JURY  
WHICH AGGRAVATOR THEY FOUND  
THEY CLEARLY THOUGHT MORE  
HEIGHTENED SOMETHING WAS  
DIFFERENT AS TO THE YOU  
KNOW.

RIGHT.

-- VICTIMS, I DON'T REAL  
I HAVE A PROBLEM EVEN IF WE  
WERE TO STRIKE CCON THROUGH  
WOULDN'T BE HARMLESS ERROR

BEYOND A REASONABLE DOUBT  
THINK THAT THE STILL ENOUGH  
FOR THE JURY TO BE  
INSTRUCTED ON IT.  
RIGHT.

AND YOU HAVE GOT IF IT  
SWOOIJS MURDER CASE -- IF IT WAS SINGLE MURDER CASE I  
THINK THE BURGLARY WOULD  
START TO TURN INTOOG -- BUT  
A CONTEMPORANEOUS  
FIRST-DEGREE MURDER  
CONVICTION DO YOU NOT SEE  
THAT AS BEING THE FURTHER  
HEIGHT HE THINK THAT YOU  
JUST DON'T -- HEIGHT HE  
THINK

THINK, AGAIN WHUCH IF HE  
KILLED TEN PEOPLE IN THERE  
SOME POINT, DOESN'T MATTER,  
WHAT THE OTHER CIRCUMSTANCES ARE, THE CONTEMPORANEOUS  
FELONIES ARE SO AGGRAVATED,  
THAT YOU DO NOT SAY THAT  
THEY THERE CAN BE -- UNLESS  
AGAIN -- MENTAL A STATUTORY  
MITT GATOR.

THE PROBLEM, THE PROBLEM  
THAT WE HAVE WITH THE CASE  
IS, SUPPOSE, IS YOU HAVE TWO YOU HAVE THREE MRDZ, TWO  
DEATH RECOMMENDATIONINGS AS  
TO THE CHILD -- COURTNEY  
THERE IS A -- LIFE --  
CONDITION THE TWOING A  
ELEVATORS APPLIED DURING THE COURSE OF THE BURGLARY, AND  
CONTEMPORANEOUS MURDERS, THE JURY.

-- THAT'S WHAT HOW CAN  
ONLY KILLING THREE PEOPLE  
INCLUDING A DEFENSELESS  
CHILD BE ONLY THREE MURDERS?  
WELL THE JURY RECOMMENDED LIFE,\$\$ --  
BECAUSE THAT TO ME SHOWS  
THE JURY THAT OBVIOUSLY  
THOUGHT AS TO THIS GIRL, THE DAUGHTER, THAT IT WAS NOT  
HEIGHTENED HE DIDN'T GO IN  
THERE PLANNING TO KILL THE  
DAUGHTER, HE PLANNED WENT IN THERE PLANNING TO KILL HIS  
EX-GIRLFRIEND AND THE  
BOYFRIEND THAT IS -- A VERY  
INTELLIGENT DIFFERENTIATION  
OF THE CASES.

WELL, FIRST OF ALL, THEY  
FOUND HIM GUILTY,  
PREMEDITATION ALL THE THREE  
MRDZ HE MRDZ THE JURY NOT

x  
INSTRUCTED ON CCP -- AS TO  
DAUGHTER.  
TO FURTHER REASON WHY  
THEY WOULD HAVE TO\$NOT FOUND  
DEATH PENALTY AS TO --  
YOU ARE SAYING IF WE  
STRIKE THE CCP THEN YOU  
STILL HAVE --  
YOU ARE SAYING THEY  
WEREN'T INSTRUCTED AS TO THE CONTEMPORANEOUS MURDER.  
THEY WERE, THE JURY WAS  
INSTRUCTED AS TO ALL THREE  
MRDZ CONTEMPORANEOUS, THREE  
ACTUALLY HAVE TWO LESS THE  
TWO OTHER.  
YOU ARE SAYING CAN'T BE  
HARM  
HARMLESS, BECAUSE THEY DID  
INSTRUCT --  
DAUGHTER AND SHE WAS --  
AND, YES, AND THAT'S WHAT I'M SAYING.

WHAT DO WE DO WITH THE  
TRIAL OUT FOR FINDING THAT  
SPECIFIC FINDING THAT ANY OF THE CONSIDERED AGGRAVATING  
CIRCUMSTANCES STANDING A  
LONE WOULD BE SUFFICIENT TO  
OUTWEIGH THE MITIGATING?  
HOW, I HAVE READ, THAT  
AND I SAY HOW CAN HE THAT  
SAY  
SAY? WHEN THE JURY FOUND TWO --  
HAD TO -- THOSE ARE TWO --  
THOSE TWO STATUSING A  
ELEVATE\$ORS  
ELEVATORS, CONTEMPORANEOUS  
MURDER BURGLARY APPLIED TO  
ALL THREE HOW CAN HE HAVE  
SAID THAT WHEN THE JURY  
COMES BACK WITH A LIFE  
RELIGIOUS, HAVING CLEARLY -- RECOMMENDATION  
RECOMMENDATION, CLEARLY  
FOUND REJECTEDING A ELEVATE  
ELEVATOR, AS TO COURT  
DMOOINT SEE.  
JURY WOULD SAY A NATURAL  
PERSON IF THEY DIDN'T INTEND TO KILL, AND THEY DID HAVE  
THE STRUGGLE AND  
ACCIDENTALLY SHOT COURTNEY  
THE FIRST RESPONSE WOULD BE  
DROP THE GUN SAY OH, MY GOD  
CALL AN AMBULANCE.

RIGHT INSTEAD TURNING

AROUND AND SHOOTING IN THE  
 HEAD, TWICE TO ON --  
 BUT THEY FOUND  
 PREMEDITATED  
 PREMEDITATED, AND AS TO ALL  
 THREE OF THEM. OKAY, SO, I MEAN SO WHAT  
 JURY IS SAYING, WE FIND  
 THESE TWOING A ELEVATE\$SOR OWES  
 OWESING A ELEVATORS, DURING  
 BURGLARY AND TWO MRDZ WE  
 FIND NOT STRONG ENOUGH TO  
 OUT WEIGHT MITIGATION  
 PRESENTED SO HOW THE JUDGE  
 CAN TURN AROUND AND HE CAN  
 SAY, I FIND ANY ONE OF THEM  
 WOULD HAVE JUSTIFIED DEATH  
 WHEN IN FACT THE JURY WRY  
 REJECTED AT LEAST TWO OF  
 THEM TOGETHER, I JUST IT  
 JUST DOESN'T MAKE SENSE I  
 JUST DON'T THINK THE JUDGE  
 CLEARLY WAS ANYTHING ABOUT  
 HIS ORDER, WHEN HE WROTE  
 THAT.

LET ME GO -- IF I CAN, GO ON TO THE -- COURT FOUND  
 THAT HE YOU COMMITTED,  
 MURDER DURING THE COURSE OF  
 A BURGLARY, AND THE BURGLARY  
 BURGLARY, DEFINITION THE  
 COURT GAVE THE ONE AFTER THE LEGISLATURE AMENDMENTED THE  
 BURGLARY DEFINITION TO  
 REMOVE CONSENSE AT A DEFENSE  
 DEFENSE.

THE JURY FOUND THAT ALSO.  
 THEY FOUND -- WELL, WHAT  
 IS INTERESTING HE WAS NOT  
 CHARGED BURGLARY BUT THEY  
 WERE INSTRUCTED ON BURGLARY  
 FOUNDER IT SPECIFIC VERDICT  
 AND HE WAS ALSO INSTRUCTED  
 IN THE EE.

DISCUSSED THAT IN THE  
 CASE SUCH AS -- NOT HAVING  
 HAVING --  
 RIGHT, RIGHT, RIGHT THERE IS NO PROBLEM WITH THAT IT  
 IS I DON'T THAT IS NOT AN  
 ISSUE HERE BUT WHATITAS WHAT IS AN ISSUE WHEN THE JURY.  
 CRANE.

WHAT THE JURY DID COURT  
 DID IS -- TOLD THE JURY THEY CAN CONSIDER IT AS  
 AGGRAVATOR, WHETHER THE  
 LEGISLATURE BASICALLY  
 REMOVED CONSENT AS DEFENSE

TO BURGLARY SO WIDENED THE  
NET OF WHO CAN BE ELIGIBLE  
FOR A DEATH SENTENCE THAT  
THE INSTRUCTION THAT THIS -- I GUESS ANTIDELGADO INSTRUCT  
INSTRUCTION -- STATUTE --  
DOES NOTWITHSTAND99TH  
AMENDMENT WITH CONSTITUTION  
SCRUTINY  
SCRUTINY.  
EVEN BEFORE WE DECIDED  
DELGADO  
DELGADO, AND IF THERE WAS  
THIS EXPANSIVE DEFINITION OF BURGLARY WE NEVER HELD THAT, THEREFORE  
THEREFORE, THE STATUTE IS  
UNCONSTITUTIONAL BECAUSE IT  
FAILS TO NARROW THE  
CIRCUMSTANCES.

THAT IS CORRECT, WHAT YOU DID, AND MAKING HAS BEEN  
MADE, WELL NOT THIS SPECIFIC ARGUMENT BUT THE ARGUMENT  
OVER THE YEARS IF YOU COMMIT A CERTAIN FELONY A ROBBERY  
BURGLARY AND DURING COURT  
YOU COMMIT A MURDER, THEN  
YOU ARE AUTOMATICALLY  
ELIGIBLE FOR DEATH SENTENCE  
THINK THAT IS WHAT YOU ARE  
GETTING AT UNDERSTAND YOU  
SAID NO, IT DOESN'T BECAUSE  
THE NUMBER OF FELONIES WHICH YOU SAY IT BLANCO IS NUMBER  
OF FELONIES MAKE YOU  
ELIGIBLE FOR DEATH SMALLER  
THAN MAKES YOU HE WILL  
ZBROISHL FELONY MURDERO  
FELONY MURDER JIS TIS ANSTED DISSENT IT HAD FROM THAT  
SAYING WE NEED TO LOOK  
ATMOSPHERE SPECIFIC FACTORS  
AS TO SPECIFIC CRIMES THAT  
MAKE THAT IS ROBBERY  
BURGLARY MORE AGGRAVATED. WHAT I'M SAYING WE DON'T  
HAVE EITHER SITUATION HERE  
PROBE CLOSE TO YOUR DISSENTS JUSTICE ANSTEAD, WE HAVE THE FLIP SWLIED -- LEGISLATURE  
HAS TAKEN THE COMMON LAW OR  
THE DEFINITION OF BURGLARY  
HAVE FOR YEARS, THEN REMOVE  
REMOVED, A ELEMENT OR A  
DEFENSE  
DEFENSE, AND NOW HAS WIDENED THIS NET WHICH GOES  
CONTEMPORARY TO --  
IF THE -- CONTRARY  
IF FACTS AS FOLLOWS THE  
DEFENDANT WAS INVITE BODY  
SHE HOUSE,ED A INVIAED INTO  
THE HOUSE THEY DISTANT HAD DINNER  
TOGETHER SUDDENLY HE PULLS

UTILIZE GUN SHATTERS AS TO  
THEING TO FIND BURGLARY IN  
THOSE SAY, AN AG AGGRAVATOR  
FOR FELONY MURDER OR  
PREDICATE OR FELONY MURDER  
YOU MAY HAVE A POINT SAY WE  
ARE MAKING A MURDER A FELONY MURDER SOMETHING THAT THERE  
IS NO BURGLARY OTHER THAN  
THE FACT THAT HE STARTED  
SHOOTING, WE DON'T HAVE HAVE THAT SITUATION, HAVE HERE.  
WELL -- I THINK WE DO. THE TO GET INSTRUCTION,  
TOUGH PRESENT EVIDENCE HIS  
TESTIMONY WAS SHE  
ESSENTIALLY INVITED HIM IN  
THERE WERE, AGAIN -- REED ON THE PORCH OUTSIDE SAYING  
GOOD TONIGHT TO HIM HE COMES UP START TALKING, SHE KIND  
OF OF OPENS STANDING ON DOOR OPENS UP AS TO INVITING HIM  
IN, BY HER ACTIONS, AND SO  
THAT IS WHAT WE ARE SAYING  
THERE IS EVIDENCE OF CONSENT  
CONSENT --  
THEY ARGUE THAT -- HE TO  
THE JURY THAT IT IT DIDN'T  
MATTER WHO WAS INVITEED IN  
OR NOT --.

WELL HE COULDN'T ARGUE -- BECAUSE THEY -- BEFORE TRIAL REQUESTED THAT -- THAT --  
WHAT IS THE STATE ARGUE? DID THE STATE ARGUE IT  
DIDN'T MATTER WHETHER HE WAS ASKED HAVE IN OR NOT IT  
WOULD STILL BE BURGLARY  
I DON'T RECALL EXACTLY  
WHAT THEY ARGUED IT WASN'T  
AN ISSUE.

THIS IS THE BIG THING FOR ME, BECAUSE KNOW I AGREE  
WITH -- EVIL JUSTICE ANSTED  
WAS REFERRING, TO HERE YOU  
HAVE GOT A A SPECIAL VERDICT  
VERDICT, I'M THANKFUL WE  
HAVE IN THIS CASE --  
PREMEDITATED AND FELONY  
MURDER SO WE DON'T MIND  
THERE WAS AUTOMATIC  
AGGRAVATOR, AGAIN TAKE  
JUSTICE -- MINETHETICAL TO  
THE NEXT LEVEL -- SOMEBODY,  
THEY START ARGUING, AND  
THERE IS A HEATED, LIKE WAS  
IN SECOND DEGREE BUT BECAUSE THEY ARE IN THE HOUSE, NOW  
FELONY MURDER AND THAT IS  
THE ONLY AGGRAVATOR, THE  
PERSON GETS DEATH PENALTY  
THAT IS NOT THE CASE SO YOU  
HAVE TO -- BE ABLE TO SHOW  
THAT AS APPLIES TO THIS CASE IT IS UNCONSTITUTIONAL.  
I'M A LITTLE BIT

x  
UNCERTAIN WHY IT IS NOT  
ANYWAYS THIS CASE BECAUSE --  
BECAUSE YOU HAVE GOT  
PREMEDITATION IN ADDITION TO BURGLARY  
BURGLARY, AND YOU ALSO HAVE  
HAVE CCP, SO YOU HAVE GOT,  
AND YOU HAVE GOT  
CONTEMPORANEOUS FELONIES SO  
IT IS NOT AN AUTOMATIC --  
DIDN'T AUTOMATICALLY GET TO  
THE DESK CASE --  
NO BUT IT CERTAIN BECOMES  
BECOMES, OKAY I SEE WHAT YOU ARE SAYING I THINK I SEE  
WHAT YOU ARE SAYING.  
TAKE OUT CCP.

I UNDERSTAND, OKAY. .  
ONE PERSON IN THE  
HOUSE -- AS AT A FIGHT  
ERUPTS  
ERUPTS, AND A GUN GETS OUT,  
AND -- IT IS -- THERE IS AN  
ACCIDENTAL SHOOTING UNDER  
YOU KNOW.  
I UNDERSTAND.

FELONY MURDER.  
WELL THAT WOULD CERTAINLY PRESENT A CLEARER CASE --  
VERY CLEAR IS, MEAN A  
GOOD CASE.  
BUT WE STILL HAVE THE  
JURY CONSIDERING THIS  
AGGRAVATOR, AS TO ALL THREE  
MURDERS  
MURDERS, SO WHAT I THINK  
WHAT WE ARE GETTING TO IS IT HARMLESS ERROR, DOES IT --  
I'M HOPEFULLY I'M HEARING  
FROM A YOU, THAT YOU AGREE  
THAT THIS INSTRUCTION, THE  
DEFINITION OF BURGLARY TOO  
BROAD NOW THE QUESTION.  
WHETHER I AGREE OR NOT  
THE LEGISLATURE DOES --  
NO, IT DOES MATTER WHAT  
YOU AGREE BECAUSE YOU ARE  
THE ONES PASSING ON THE 8TH  
AMENDMENT CONSTITUTIONALITY  
OF THE STATUTE, DOES LITTLE DOES IT GENUINE  
GENUINELY NARROW CLASS OF  
PEOPLE ELIGIBLE --  
IN THIS CASE I THINK  
THERE WAS A DISPUTE EVEN AS  
TO WHETHER THERE WERE -- HE  
WAS FLETOR NOT THAT IS WHY I ASKED LET IN ARE NOT.

EVEN IF HE WAS LET IN,  
DOES HIS STATE OF MIND HIS  
INTENT IN COMING IN, COME  
INTO PLAY HERE? IF HE CAME IN EVEN THOUGH  
SHE OPENED THE DOOR HE CAME  
IN, WITH INTENT TO COMMIT A  
FELONY TO KILL THEM DOES IT  
MATTER THAT IS STILL  
BURGLARY  
BURGLARY?  
BOY, THAT IS A GOOD ONE. AND BURGLARY, BREAK THERE -- BREAK AND ENTER WITH INTENT  
TO KNIT A CRIME, I THINK  
THAT -- COMMIT A CRIME WHERE DEFENSE COUNSEL WOULD RICK  
IF ALLOWED TO ARGUE THAT,  
CONSENT WAS DEFENSE HE COULD HAVE MADE STRONG ARGUMENT WE WENT IN THERE, THIS I  
THINK  
GOES BACK TO WHAT JUSTICE  
CAN TAR -- CONDITION CANTERO GETTING AT I WENT IN THE THE TO RESOLVE QUESTION  
RESOLVE  
RELATIONSHIP THE INTENT --  
MUCH MORE MUDDIED COULD HAVE ARGUED, THAT THIS WAS NOT IN FACT A FELONY --  
I JUST CAME IN TO -- HE  
CLARIFY THE RELATIONSHIP.  
CLARIFY ALL OF THIS,  
SEEMS TO BE MITIGATED BY THE NIENGD HE HAD PREMEDITATED  
PREMEDITATED -- DESIGN TO  
KILL.  
WELL, AGAIN -- AGAIN,  
WHAT -- PREMEDITATION IS  
EASY THING TO DEVELOP, I  
MEAN, THE INSTRUCTION SAYS  
YOU HAVE CONSCIOUS INTENT TO KILL THEY START STRUGGLING  
OVER GUN COULD HAVE FORMED  
-- PREMEDITATION THEN THESE  
-- QUESTIONS THAT THE TRIAL  
LAWYERS COULD HAVE ARGUED. BUT WITHOUT THIS -- WHETHER  
YOU TAKE OUT THAT LIMITING  
OR THAT DEFFENSIVE CONSENTS, AGAIN WE GO BACK TO THE  
WHOLE PROBLEM OF THIS THING  
WIDENS OUT YOU START  
CATCHING A BUNCH PEOPLE THAT PERHAPS --  
OTHER COMPLICATIONS WITH  
THE FACTS THAT ARE --  
REALLY, STATESIDE --  
CIRCUMSTANCES, I UNDERSTAND  
THAT REALLY SHE TERMINATED  
THIS RELATIONSHIP, AND SHE  
HAD ANOTHER PERSON, IN HER  
LIFE, NOW SHE HAD RETURNED  
THE RING, APPARENTLY, HE WAS STL KING HER, HARASSING HER,  
AND IN TERMS OF THE PHONE  
CALLS  
CALLS, HE HAD CALLED EARLIER TO 11:30 NOW THIS HAPPENED  
IN WEE HOURS OF THE MORNING

DID IT NOT?  
NOT ANY -- CALL THAT I'M  
COMING OVER WHAT TIME IN THE MORNING WAS IT.

IT WAS 11:30 HE GETS  
PHONE CALL.  
I KNOW ABOUT 11:30 WHAT  
TIME WAS IT HE SHOWED UP.

I THINK TO GET IN HIS  
TRUCK RIGHT THEN DROVE OVER, I THINK --  
IT WAS NOT REALITY --  
I GET O OH, NO I THINK HE GOT IN TRUCK NEW THAT WAS  
WRONG.

DID KNOW WHAT TIME IT WAS  
WAS? -- DO WE KNOW.  
I DON'T KNOW.

WE KNOW THAT HE CALLED AT 11:30.  
SHE INVITED HIM IN DID  
SHE KNOW HE WAS HIDING A 22  
RIFLE.

NO, THE ONLY EVIDENCE  
COMES FROM HIM WHAT HE SAYS  
IS BECAUSE IT WAS DARK, AND  
-- IT WAS DARK LIGHT, IN THE PORCH  
PORCH, HE HID THE GUN SHE  
THEY DIDN'T SEE THE GUN  
UNTIL SHE GOT INSIDE AS SOON AS THEY GET INSIDE SHE SEIZE THE GUN -- SEES THE GUN  
STRUGGLE DEVELOPS.  
SEES THE GUN SAYS COME\$\$O  
IN.

NO SO ARE AFTER THE --  
DOESN'T THAT NEGATE ANY --  
CONCERN, THE FACT THAT HE  
WAS HIRINGED -- A RIFLE AT  
THE TIME, THAT HE CONFRONTED  
CONFRONTED --  
I THINK CONSENT ON THE  
PART OF THE VICTIM IN THIS  
CASE.  
REALLY ASSUMED SHE WOULD  
HAVE INVITED HIM IN -- IF HE HADDED IF HE WAS HOLDING A  
RIFLE HERE FOR --  
AGAIN IS, THINK THE  
CONSENT IS A CONSENT ON THE  
PART OF THE VICTIM, AS SHE  
SEES IT AT THE TIME. SHE LET HIM IN. THERE IS NO -- THERE IS  
REALLY NO QUESTION THAT SHE  
LET HIM IN. WILLINGLY, AND NOW -- YOU  
KNOW, I THAT I GOES BACK TO  
REAL WHAT THE DELGADO --

WHERE DID THE EVIDENCE  
COME FROM THAT SHE LET HIM  
IN?  
COMES FROM HIS TESTIMONY  
-- ON --  
HIS TESTIMONY IS WHEN HE  
CAME UP AFTER OUTSIDE DIDN'T -- GETTING READY TO LEAVE HE SAYS SOMETHING TO THE  
EFFECT WELL SHOULD I LEAVE, OR WHAT  
WHATEVER.  
PAFFORD SAYING, THAT  
PAFFORD IS SAYING, THAT --  
SPECIFICALLY  
SPECIFICALLY -- LINE 17,  
PAGES 1532 TO 33 IT IS HIS  
TESTIMONY THAT -- SHE SAYS,  
MR. PAFFORD SAYS DO YOU WANT ME TO LEAVE, OR STAY OR I'M  
SORRY DO YOU WANT ME TO SAY  
LIZ SAID NO I WANT BOTH OF  
YOU TO LEAVE I TOLD HER I'M  
NOT LEAVING TILL I GET  
ANSWER SHE'S ALREADY OPENED  
THAT IT IS THE DOOR, BUT  
OPENED IT MORE FOR ME TO  
COME IN I'M NOT SURE IF SHE  
OPENED FOR MR. PAFFORD TOO  
BUT I KNOW CAME IN THAT  
TESTIMONY WHAT I'M SAYING  
SHOWS HER CONSENT TO FOR HIM TO COME INSIDE.  
WITHOUT KNOWING THAT HE  
WAS CONCEILING RIFLE THEY  
THINK YOU CAN SAY SAME ABOUT DELGADO  
DELGADO, I MEAN, DELGADO  
SAME THING, BUT I'M LET ME  
BACK UP -- YOU SAID THE  
RELATIONSHIP WAS OFF, IT WAS OFF-AGAIN-ON-AGAIN  
OFF-AGAIN-ON-AGAIN, TWO DAYS BEFORE HAND THEY GOT  
TOGETHER, THEY HAD -- HAD A  
GOOD TIME, TWO DAYS BEFORE,  
SHE HAD GIVEN HIM --  
PRESENTS THEY PLANNED -- TO  
HAVE A DATE, ON -- TUESDAY,  
THAT IS WHAT SHE STOOD HIM  
UP SO IT IS IT IS YOU SAY HE WAS STALKING HER LIKE THAT  
NO HE WAS TRYING OH,  
GET  
HIS RELATIONSHIP CLEARED UP. AND -- AND --  
-- TALKING TO HER?  
WELL YOU HAVE THOSE TWO  
INCIDENTS LOOKING AT  
TELEPHONE POLE, NO STLKING  
IN CRIMINAL SENSE I DON'T  
THINK SO --  
LET ME ASK A QUESTION.  
YOU HAVE --

UNDERSTAND.

IF YOU RESPOND VERY  
DIRECTLY TO JUSTICE \$BELL'S  
QUESTION.

ONE QUICK QUESTION THE  
AGGRAVATED CIRCUMSTANCE  
STATUTE 921 NARROWS THE  
CLASS OF FELONIES TO NINE  
FELONIES  
FELONIES, OUT OF ALL  
FELONIES  
FELONIES.

RIGHT.

IN OTHER MARROW NARROW  
THAN 78.

OI THAN 278.

THAT IS RATIONALE OF  
BLANCO.

WHY WOULD THAT NOT APPLY.

BECAUSE IN -- BURGLARY

ONE OF THOSE NINES, THE

LEGISLATURE HAS DONE IS GONE BACK REDEFINED BURGLARY,

FROM THE WAY IT WAS DEFINED

IN 1972, WHEN THAT STATUTE

WAS CREATED, TO -- NOW, TAKE OUT THE DEFENSE CONSENT TO

BROADENS CLASS OF PEOPLE

THAT CAN BE CAPTURED BY

BAUERING

BAUERINGRY, THAT COULD IT

NOT HAVE BEEN CAPTURED UNDER OLD DEFINITION, THANK YOU.

MOURN AY IT PLEASE THE COURT,

I'M GOING TO TALK ABOUT

EXACT SAME THREE ISSUES,

CCP, AND THE BURGLARY

AGGRAVATORS.

YOUR OPPOSING COUNSEL

TELLS THIS NOTHING MORE THAN A LOVER POT SPAT GONE AWRY

THERE IS NO CCP HERE, WHY

THERE IS CCAPPROXIMATE? -- CCP.

THIS COURT HAS REJECTED

MULTIPLE TIMES THE ARGUMENT

THAT SOMETHING CANNOT BE

COLD JUST BECAUSE IT

INVOLVES A DOMESTIC DISPUTE, YOU HAVE REJECTED IN DENNIS

REJECTED THAT IN SAKORUSKI

HE TAKING AN ARGUMENT THIS

HOW TAKE HIS ARGUMENT WHAT

IT ME GAITS IS COLD --

NEGATES IS COLD ELEMENT OF

THE CCP.

ORDINARILY AND IN A

NUMBER OF CASES, HAS AT THE  
OTHER COURT SAID THAT THE HEAT OF OF PASSION, REAL NEGATES  
-- REALLY NEGATES THE COLD  
THE CLASSICAL I WILL  
EXTRADITION OF THE CCP --  
THE CLASSICAL I WILL  
EXTRADITION OF THE --  
ILLUSTRATION CCP EXECUTION  
STYLE KILLING, WHEREAS THE  
DOMESTIC PASSIONATE AND SO,  
LOTS OF CASES OUT OF THIS  
COURT THERE ARE NOT THAT  
SAYS THAT THE PASSION IN THE HEAT OF PASSION, REALLY  
NEGATES THE COLDNESS SO I  
WOULD APPRECIATE IT IN  
CONJUNCTION WITH THE TRYING  
DEMONSTRATE THE SUPPORT FOR  
THE -- YOU ALSO ADDRESSED  
THE HARMLESS ERROR ASPECT,  
OF IT --  
YES -- DO I BELIEVE IT IS HARM  
HARMLESS, EVEN ON THE CCP, I  
REALIZE CCP IS ONE OF THE COURT'S STRONGEST  
AGGRAVATORS. BUT PRIOR VIOLENT FELONY  
WHEN THE PRIOR DEVELOP  
NO OTHER FELONY I KNOW THIS  
WAS CONTEMPORANEOUS BUT TWO  
OF THEM WHEN THE PRIOR  
FELONY IS A MURDER IT IS TWO MURDERS THAT ONE IS  
OVERWHELMING  
OVERWHELMINGLY STRONG  
AGGRAVATORS AS WELL,  
AND  
THIS.  
THE ONLY -- WAY THAT --  
THE -- OTHER, MURDERS, ARE  
REALLY FACTORED IN HERE; IS  
THAT CORRECT?  
YES YOUR HONOR, YES, THAT IS THE ONLY WAY THEY ARE  
FACTORED IN HERE. YES AND THAT'S ONE OF THE  
REASONS I THINK THE TRIAL  
JUDGE SAID THAT PITCH ABOUT  
THE TRIAL THE JUDGE'S ORDER SAYS ANY ONE OF THE AGGRAVATORS  
WOULD BE SUFFICIENT I THINK  
HE DID MAINTAIN IT.

THAT IT IS -- THREE  
TESTS.

YES, YES, WE HAVE THREE  
VICTIMS HERE, ALL RIGHT, SO  
-- I -- SO DO I THINK THE  
CCP EVEN IF STRIKE WON BE  
HARMLESS BUT, TO MY

KNOWLEDGE, YOUR HONOR, THE  
FIRST OF ALL, THE TRIAL \$\$ JUDGE'S ORDER HERE WHAT HE  
ALSO SEEMS SAYING THE TRIAL  
JUDGE DIDN'T GO JACKSON  
FACTOR BY FA JACK ZWRON  
FACTOR DIDN'T SAY THE FACTS  
FIND COLD THE FACTED FIND  
CALCULATED, HE THE FACTS I  
FIND TO BE, HEIGHTENED PREED ME DEDICATION, BUT YOUR  
HONOR -- PREMEDITATION HE  
HAS FIVE CAGING ON EACH  
VICTIM HE PUTS ALL THE FACTS TOGETHER, HE -- IN SUPPORT  
HE HAS PAGES AND PAGES IN  
SUPPORT OF THE CCP FINDING.  
JUSTICE CANTERO SAYS  
WEAVE TO START OUT -- WE  
HAVE TO START OUT IF TRYING  
TO VIEW THE FACTS MOST IN  
FAVOR OF WHATEVER CONCLUSION OF THE TRIAL COURT JUDGE  
CLEARLY WE'VE GOT  
CIRCUMSTANCES WHERE CARRYING A LOADED RIFLE IN, IN ORDER  
TO HAVE THIS CONFRONTATION,  
ABOUT ASKING HER SOMETHING  
THAT FACTORS INTO ANY  
FINDING OF PREMEDITATION,  
ISN'T IT JUST MORE OR LESS,  
CONCEDEED IN THIS CASE THAT  
THIS WAS A CRIME OF PASSION, THAT STARTED WITH YOU KNOW  
THE -- FIGHT OVER THE GUN -- THIS IS WHAT IS DRIVING THIS PERSON, AND THAT HE CANNOT  
-- GIVE UP THIS WOMAN AND  
THE THAT IS WHY HE THERE IS. THAT IS WHY I GO BACK TO OUR CASES, THAT SAID THATTE HEAT  
OF PASSION NEGATES THE  
COLDNESS THE LEGISLATURE WAS TALKING ABOUT WITH THE  
EXECUTION STYLE THE MOB  
SENDS SOMEBODY OUT THAT IS  
WHAT THEY DO. IS THAT THEY JUST COLDLY --  
EXECUTE SOMEBODY. THIS SEEM TO BE AT THE  
OPPOSITE END AS FAR AS THAT  
PARTICULAR FARC DOESN'T  
NEGATE -- FACTOR DOESN'T  
NEGATE HARMLESS ERROR ASPECT OF IT CERTAINLY HAS BEARING  
ON THE DETERMININGS OF  
COLDNESS DOES IT NOT?  
WELL, YES THIS WAS NOT A  
THIS WAS NOT A KILLING FOR  
HIRE. SO IT CERTAINLY WAS NOT IN  
THAT IN THAT CATEGORY OF  
COURT --  
EXECUTION STYLE.  
NO, WELL -- WELL IN  
TERMED OF -- NO. BUT IN TERM OF SHOTS, 22  
RIFLE, SHOTS TO THE HEAD,  
ONE TO THE 16-YEAR-OLD, TWO  
TO THE SIDE OF THE HEAD OF

THE MOTHER, THREE --  
STRUGGLED OVER THE  
WEAPONS WEAPON HIS INITIAL INTOEBT CONFRONT HIS LOVER WITH -- BREAK UP  
WITH HIM.

I HE OI THAT WAS HIS  
TESTIMONY, I DON'T THINK THE JURY HAD TO BELIEVE, THAT  
AND I DON'T THINK THEY DID. I THINK THAT IT IS MUCH MORE LIKELY THAT THEY VIEWED THIS  
THAT YOU DO NOT GET ANSWERS  
WEATHER WITH A 22 RIFLE, AND INCIDENTALLY IT IS VERY  
INCONSISTENT TO SAY YOU ARE  
TAKING THE GUN INTO THE  
HOUSE. TO GET ANSWERS, BUT NOT  
SHOWING IT TO HER.

HE --  
THERE IS TESTIMONY ABOUT  
THE NATURE OF THIS RIFLE, AS TO WHETHER IT HAD TO BE  
COCKED FIRST BEFORE IT WAS  
SHOT WHICH WOULD INDICATE  
THAT HE HAD IT LOADED AND  
COCKED WITH HIS FINGER ON  
THE TRIGGER WHEN HE ENTERED  
THE HOUSE.

THE TESTIMONY WAS IT WAS  
VERY LONG OR 22 RIFLE, THAT  
HE PUT, BY HIS SIDE, WHAT WE  
KNOW ABOUT THE RIFLE IS THAT THE IT IS A SEMIAUTOMATIC,  
OUR, GUN EXPERT OF ITTED  
FIREARMS EXPERT OF ITTED THE TRIGGER HAD TO BE PULLED  
WITH -- TESTIFIED THE  
TRIGGER HAD TO BE PULLED A  
22 RIFLE THAT HAD ONE ROUND  
IN THE CHAMBER, AND THE  
MAGAZINE THE HOLDS 16, SO  
YOU CAN, BUT DO YOU HAVE TO  
PULL THE TRIGGER, IN  
BETWEEN, AND AIM, REMEMBER  
WHERE THESE VICTIMS.

THE FIRST BULLET IN THE  
CHAMBER FIRST BEFORE YOU CAN START SHOOTING LIKE TOUGH DO IN SOME, LIKE IN A  
SHOTGUN

FOR EXAMPLE YOU HAVE TO --  
ROUND OF CHAMBER.

THAT -- I DO NOT KNOW  
THAT MYSELF AND THERE WAS NO TESTIMONY, AS TO HOW THAT  
ONE ROUND GOT IN THERE. WE DO KNOW, WE RECOVERED  
THIS FROM THE RIO GRANDE,

THERE WERE 11 ROUNDS  
REMAING IN THE MAGAZINE. SO, IN TERMED OF -- IN -- HE SHOT, SIX ROUNDS AT THE  
HOUSE SO WE ACCOUNTED FOR  
ALL THE BULLETS, AS WELL.

THERE IS ARGUMENT MADE,  
THAT CONSIDERING COLD  
CALCULATED, AND PREMEDITATED  
PREMEDITATED, THAT ACTIONS

AFTERWARDS

AFTERWARDS, ALTHOUGH, AGAIN, AFTER SHOWS THAT THIS WAS NOT SOME -- SPUR OF THE MOMENT -- COOLY GOES OR WAS THAT ARGUED AS PART OF CCP? THE CIRCUMSTANCES, THE COURT VICTIM INTENTIONAL PREMEDITATE YOU HAD PLAN, MURDER.

YES WUT BE USED IT MORE AT THE FRONT END IN THE SENSE THAT HE IS IN THE BACKYARD BACKYARD, OF THE NEIGHBOR, WE THOUGHT THIS WAS THIS WAS TRULY PLAN, YOU KNOW STALKING HE IS DOING MORE THAN STALKING SCOPING OUT HIGHEST LIVES IN CHRISTIAN THE NEIGHBOR THAT LIVED BEHIND THERE TESTIFIED HE SAW HIM, IN THE BACKYARD. HE I MEAN, AGAIN THAT IS I GUESS LOOKING AT LIGHT MOST FAVORABLE TO WHOM THINK THINKING THAT HERE IS YOU KNOW, A DEFENDANT, WHO HAS WHO LOVES THIS PERSON, WHO HAS -- YOU KNOW, HELPED HER BUY THE HOUSE, HELPED HER OUT, AND MIKE, GOODES FROM MOVE MOVING ON, AND SO, GOING TO SEE WHAT IS GOING ON IS THE GUY THERE, AND UP THERE, I DON'T KNOW THAT IT NECESSARILY NECESSARILY, MEANS THAT HE WAS STALKING HOW HE COULD KILL HER THEY AGREE WITH THAT YOUR HONOR UNDERSTAND WHY I THINK THE STALKING BEING THE BACKYARD SO IMPORTANT, HIS OWN TESTIMONY, WAS NO, I WASN'T THERE THERE, AT THAT TIME, BECAUSE, SHE WOULD HAVE BEEN AT WORK, HE IS NOT LOOKING AT WHETHER SHE IS THERE WITH HER NEW LOVER HE IS LOOKING AT WHAT HE KNOWS TO BE AN EMPTY HOUSE, THERE YOU GO ARE THAT YOU COULDING? IF HE KNOWS THE HOUSE DOES HE NEED CHECK IT OUT AT ALL. HE NEEDS TO KNOW WHERE HE CAN GET AWAY FROM HE MAY KNOW THE INSIDE OF THE HOUSE.

BUT -- THE HOUSE.  
HOW DELEAVE THE HOUSE  
THROUGH THE FRONT DOOR.

YES.

I MEAN,  
YOU KNOW, I  
THINK THAT THE OTHER  
QUESTION I HAVE FOR YOU, IN  
TERMED OF SENTENCING ORDER,  
THAT IS FIRST OF ALL WE KNOW THE JURY WRY, RETURNS A LIFE RELIGIOUS,\$\$ LIFE  
RECOMMENDATION AS TO  
SHOOTING OF THE DAUGHTER  
THEN RETURNED EIGHT -- FOUR  
FOR THE MURDER OF ELIZABETH  
REED AND -- PAFFORD, NOW  
WITHOUT KNOWING THE FINDINGS  
FINDINGS, WHICH, WE DON'T  
KNOW, WHAT EXPLAINS A  
DIFFERENT JURY  
RECOMMENDATION AS TO PAFFORD THAN AS TO REED.  
FIRST WOULD I LIKE TO  
EXPLAIN, THAT THE STATE DID  
NOT EVEN SEEK CCP. WE HAD A MYTHED IN CLOSING  
THE -- ADMITTED, TO THE  
DAUGHTER WE HAD A MYTHED IN  
CLOSING THIS IS 23 -- AT  
PAGE 2858, PROSECUTOR  
SPEAKING IN CLOSING, PENALTY PHASE, SAID OPENLY ADMITS  
THAT CARTER DID NOT GO OVER  
THERE TO KILL THE DAUGHTER.  
THAT HE WENT OVER TO KILL BOTH  
BOTH.

BOTH OF THEM.

BOTH OF THEM, SO IS THERE ANYTHING THAT WOULD EXPLAIN  
THE DIFFERENCE, THAT AS TO  
-- GLENN AND ELIZABETH REED  
OTHER THAN HE REALLY,  
ANYTHING AT ALL IN TERMS OF  
AGGRAVATORS?  
SOME FACTS MR. PAFFORD IS SHOT, THREE TIMES, VERSUS  
TWICE BUT IN A REALLY, I  
WOULD HAVE TO SPECULATE, AS  
TO THAT APPROXIMATE.  
WOULD I LIKE TO ASK ONE  
OTHER QUESTION ON  
AGGRAVATOR, YOU -- GREAT  
WAYS TO -- BURGLARY  
AGGRAVATOR, MAY NOT MAKE ANY DIFFERENCE IN THIS CASE, IF  
CCP, AND MULTIPLE -- MY  
CONCERN IS, WHY WOULD IT BE

THAT THE MURDER THAT  
OCCURRED  
OCCURRED, IF IT OCCURRED ON  
THE FRONT PORCH, WOULDN'T BE BURGLARY  
BURGLARY, WOULDN'T BE AN  
AGGRAVATOR, THAT WOULD HE BE GIVEN GREAT WEIGHT BUT  
BECAUSE HE GOES INSIDE ALL  
OF THE SUDDEN THAT WOULD BE  
ONE OF THE MURDERS THAT  
WOULD BE THE MOST YOU KNOW,  
DESERVING OF AGGRAVATOR,  
THAT COULD MAKE YOU ELIGIBLE FOR THE DEATH PENALTY?  
YOUR HONOR THAT IS THE  
CRIME OF.

THERE IS ONLY ONE --  
MURDER HERE, OF MISS REED IT OCCURRED  
OCCURRED, ON THE FRONT PORCH  
PORCH, AND IT WAS NO CCP, IT HAD, NOTHING AGGRAVATING,  
ASSUMING ALL EQUALLY BUT IF  
HE WALKED INSIDE SHOT HER  
NOW, YOU HAVE BURGLARY IF  
THAT OCCURRED DOES THAT  
RAISE QUESTIONS ABOUT --  
CONSTITUTIONALITY OF THE  
DEATH PENALTY IN THAT  
CIRCUMSTANCE.

WELL, YOUR HONOR I DON'T  
KNOW WHEN THIS COURT WOULD  
-- WOULD AFFIRM ON THE  
SINGLE AGGRAVATOR, WITH THAT AGGRAVATOR BEING BURGLARY LET ME ADDRESS THE  
FINANCIAL  
THING I SEE YOUR QUESTION  
GOES YOUR HONOR THAT IS THE  
CRIME OF BURGLARY IT IS  
WORSE TO COMMIT A CRIME  
INSIDE SOMEBODY'S HOUSE THAN OUTSIDE ON THEIR DOORSTEP,  
THAT IS EXACTLY WHAT  
LEGISLATURE IS PROTECTING.

CAN I ASK ,, ABOUT THE STATUTE. THIS MURDER OCCURRED IN 1998 I BELIEVE?  
NO.

I'M SORRY. IT WAS --

THIS IS 2002. JULY 24th, 2002. THAT IS --

NO QUESTION THAT THE REVISED STATUTE FROM 2001 WOULD APPLY?

ABSOLUTELY, YOUR HONOR. NO MATTER, THERE ARE DIFFERENT DATES FOR DELGADO WINDOW,  
PICK ANY ONE OF THEM THIS CRIME OCCURRED AFTER THE WINDOW CLOSED. OKAY? THERE WAS  
THE FEBRUARY 1 DATE IN THE AMENDED STATUTE. FEBRUARY 1, 2000, TWO YEARS BEFORE THIS  
CRIME, OVER TWO YEARS BEFORE THIS CRIME. THE EFFECTIVE DATE WAS MAY 2001. I'VE SEEN A  
JULY 1, JULY 21st DATE. NO MATTER WHAT DATE YOU THINK THE DELGADO OPENS OR CLOSED  
THIS CRIME OCCURRED AFTER IT. AND THAT STATUTE WAS IN EFFECT.

YOU WOULD AGREE IT WOULD BE AT LEAST PROBLEMATIC IF THE, THIS HAD OCCURRED BEFORE  
2001 WHEN AT LEAST ACCORDING TO OUR INTERPRETATION DELGADO IT'S A DIFFERENT STATUTE,  
WOULD BE, PERHAPS PROBLEMATIC TO APPLY A STATUTE THAT HAD BEEN AMENDED AFTER THE  
OFFENSE?

YES. NOT IN THIS PARTICULAR CASE THOUGH, YOUR HONOR.

RIGHT.

UNDERSTAND HOW MUCH, WE THINK THAT EVEN, I THINK I WOULD WIN EVEN UNDER DELGADO, YOUR HONOR. HE, FIRST OF ALL THE PROSECUTOR DID MAKE AN ARGUMENT THAT THE STRUGGLE INSIDE THE HOUSE, NEGATED CONSENT. YOUR HONOR, IT ISN'T LIKE -- IN DELGADO HE HAD PERMISSION, EXPLICIT PERMISSION TO ENTER THE HOUSE SO. IT'S A DIFFERENT FACTSSES THAT WE HAVE HERE.

RIGHT. AND I THINK HE DID NOT HAVE PERMISSION TO COME INTO THIS HOUSE. UNDERSTAND WHAT HAPPENED OUTSIDE. THIS IS ACCORDING TO HIS TESTIMONY. OKAY? SHE ASKED THEM BOTH TO LEAVE. SHE WANTS THEM BOTH TO LEAVE LEAVE. HE FLATLY REFUSES TO DO SO. I AM NOT LEAVING UNTIL I GET ANSWERS. HE OPENLY ADMITS IN HIS TRIAL TESTIMONY THAT THE REASON SHE WENT BACK INSIDE SHE WAS CONCERNED WITH THE NEIGHBORS. I DON'T THINK THAT'S CONSENT, YOUR HONOR. SO, I DON'T THINK HE HAD CONSENT TO ENTER. THEN ONCE THEY'RE STRUGGLING WITH THE GUN, YOUR HONOR I UNDERSTAND SOME OF THIS COURT'S CONCERN IN SOME OF THE OTHER DELGADO, SITTING THERE EATING DINNER KIND OF HYPOS. WE'VE GOT A 22 RIFLE BEING STRUGGLE HE HAD WITH. EVEN IF YOU THINK, HE DID NOT HAVE CONSENT TO ENTER THIS HOUSE. HE FORCED HIS WAY IN. IT WAS UNDER DURESS. SHE HAD THE CHOICE WAKING UP LATE AT NIGHT HER CHILDREN OR THE NEIGHBORS OR LETING HIM IN. THAT IS NOT REAL CONSENT. EVEN IF YOU LOOK AT IT, ONCE YOU GET IN, YOUR HONOR, THAT IS THE THAT'S THE WHOLE REASON, THE LEGISLATURE HAS TROUBLE WITH THE DELGADO REASON. WHEN SOMEBODY LETS YOU IN AND YOU START STRUGGLING WITH A GUN THAT YOU BOUGHT INSIDE, A .22 RIFLE. YES, CONSENT HAS BEEN REVOKED.

LET ME ASK YOU, A QUESTION, WHEN BLANK WERE DECIDED THE LAW WAS DIFFERENT AFTER DELGADO, CORRECT AS FAR AS WHEN THE BURGLARY CONSENT ISSUE? MY QUESTION IS DO WE NEED TO GET IN THE DELGADO SITUATION AT ALL?

NO.

WE DECIDED IN ISSUE IN BLANCO AND WHITE WHEN THE LAW AT THAT TIME WAS WITH IT IS AT TIME THIS CRIME WAS COMMITTED.

YES, YOUR HONOR. WE ARE MONTHS AND YEARS AFTER THE DELGADO LEGISLATIVE AMENDMENT HAS COME IN. OKAY? BECAUSE THIS IS 2002.

BLANCO WAS '83 AND '81 AND IN '83 AND '81 THIS CONSENT ISSUE RAISED BY DELGADO WAS NOT PRESENT?

YES, YES, YOUR HONOR. SO THE TIME OF THIS CRIME IS WAY PAST ANY DELGADO ISSUE. DELGADO HAS BEEN, COMPLETELY SHUT, MONTHS, IF NOT YEARS BEFORE. OKAY?

I SEE WHAT YOU'RE SAYING. I TEND TO AGREE WITH THIS IS THAT, DELGADO IS ATTEMPTING TO REMOVE THE EVIL OF SAYING, WELL THE CONSENT, OF COURSE NO ONE CONSENTS TO HAVE A CRIME COMMITTED AGAINST THEM BUT HERE, SEPARATELY, THERE WAS, THERE'S REALLY NOT GOOD EVIDENCE THAT THERE WAS A KNOWING CONSENT TO ENTER. AS JUSTICE QUINCE SAID EARLIER IT APPEARS HE WAS COMING IN, HE WAS COMING IN TO COMMIT SOME CRIME. IT MIGHT NOT HAVE BEEN MURDER BUT IT WAS, HE WAS GOING TO USE A GUN TO INTIMIDATE AND THAT SEEMS TO BE, AN INTENT TO CRITA CRIME NOT JUST REMAINING IN BUT --

YES. HE ENTERED WITH THAT INTENT BY HIS OWN TESTIMONY. HIS OWN TESTIMONY WAS I WAS GOING TO GET ANSWERS AND I WAS GOING TO POINT THIS GUN TO GET THEM. WHEN YOU POINT A GUN TO GET ANSWER THAT IS UNDER THE LAW OF FLORIDA, AGGRAVATED ASSAULT WITH A DEADLY WEAPON. SO HE ENTERED, HIS INTENT WAS ENTERING THIS HOUSE WITH A .22 RIFLE BY HIS SIDE TO GET ANSWERS. THAT IS ENTERING WITH THE INTENT TO COMMIT AGGRAVATED ASSAULT.

THEN YOU'RE CONCEDING THEN THERE IS NO CCP IF THAT'S WHAT YOU SAY IS THE EVIDENCE IN THIS CASE?

OH NO I'M NOT CONCEDING.

YOU SAY HE ENEARHT ITED WITH THE ENINTENT THAT GET ANSWER. THAT IS NOT CCP.

THAT'S HIS TESTIMONY.

YOU STILL HAVEN'T TOLD US WHY THIS IS PASSION. IN CON SIGHS, DIRECT WAY.

WE BELIEVE HE WAS STALKING, HE WAS CASING THE HOUSE.

WHAT SUPPORTS THAT?

THE NEIGHBORS TESTIMONY, TWO WEEKS BEFORE. WE HAVE A NEIGHBOR, CHRISTIAN CARTER, THE, THEY ARE, BACK, BACKYARD NEIGHBORS AND, HE SAW THE DEFENDANT, HERE, IN THE BACKYARD.

ONLY ONE TIME?

YES. ONE TIME IS WHEN HE TESTIFIES.

ENTIRE EVIDENCE OF STALKING?

NO.

WHAT ELSE?

WE HAVE ANOTHER NEIGHBOR, WHO MR. BOOTH, WHO TESTIFIES, NOW HE CANNOT IDENTIFY THAT IT'S THE DEFENDANT BUT HE'S IDENTIFYING MORE THE TRUCK. A RED DODGE TRUCK. WHO IS ALSO IN THE NEIGHBORHOOD AROUND THIS TIME AS WELL. MOREOVER, YOUR HONOR, THE DEFENDANT ADMITS, HE IS, HIS MEETING THIS WOMAN AT ABC, HER SON TESTIFIES AT TRIAL THAT HE SAW THE DEFENDANT, FOLLOWING THE MOM AROUND THE ABC LIQUOR STORE. OKAY? SO WE HAVE MULTIPLE WITNESSES TESTIFYING TO BOTH STALKING AND CASING-LIKE BEHAVIOR BEFORE THE CRIME, ALL RIGHT? ON THE DAY OF THE CRIME, AT 9:00 HE DRIVES BY. THIS HOUSE. HE, THIS IS HIS OWN TESTIMONY, SEES, THE, CARS OUTSIDE. KNOWS MR. PAFFORD IS OVER THERE HE KNOWS HIS CAR, HIS TRUCK. MR. PAFFORD HAS A TRUCK. HE KNOWS MRS. REED IS HOME BECAUSE. HE GOES BACK TO HIS HOUSE. HAS THREE OR FOUR WHISKEYS COUPLE OF PILLS. CALLS EXACTLY AT 11:24 TO SPEAK TO MISREAD. HER SON RICK SMITH, ANSWERS THE PHONE, MOM IS NOT HERE. HE KNOWS THAT TO BE A LIE. OKAY? NOW THE BROTHER, ALSO TESTIFIES, DEFENDANT'S BROTHER TESTIFIES FOR THE STATE IN THE GUILT PHASE, AND HE SAYS, MY BROTHER DOES NOT HAVE A GUN RACK IN HIS CAR. HE NORMALLY KEEPS HIS GUNS AT MOM'S HOUSE.

SO THERE IS EVIDENCE IT WAS NOT ALREADY, JUST IN THE CAR, READY, REACHABLE?

RIGHT.

OKAY.

KEEP GOING.

BROTHER ALSO TESTIFIES ONLY TIME HE HAS SEEN GUNS IN THE DEFENDANT'S CAR IS WHEN THE DEFENDANT IS GOING HUNTING. SO THE STATE'S THEORY HERE IS THAT HE WENT BACK TO GET THIS GUN. ALL RIGHT? AND THIS GUN WAS NOT IN THE CAR. NOW THE DEFENDANT'S TESTIMONY, IT WAS THAT IT WAS. BUT WE THINK THE BROTHER'S TESTIMONY REBUTS THAT.

-- EVIDENCE THERE THEN. OKAY. KEEP GOING.

OKAY. THEN, THIS HAPPENS AT 11:24. HE GETS HIS GUN. HE DRIVES OVER TO THE, TO THE HOUSE. IT'S, 12:30 AT NIGHT. SO IT'S ABOUT AN HOUR AFTER THE PHONE CALL. HE, REALLY THE NEXT MORNING, JULY 24th. HE, BY HIS OWN TESTIMONY, GETS OUT. HAS TO BRING THAT GUN WITH HIM. THIS, OUR FIREARMS EXPERT SAYS THIS WAS A VERY LONG, GUN, OKAY? HE SAYS HE HIDES IT BY HIS RIGHT SIDE, ALL RIGHT? AND HE IS GOING IN TO GET ANSWERS. ALL RIGHT. SO HE IS GOING IN, THAT KNOW, REMEMBER HE LIVED THERE, AND OPENLY ADMITTED ON THE STAND HE KNOWS THOSE FOUR CHILDREN WILL BE IN THAT HOUSE AT 12:30 AT NIGHT. OKAY? SO HE IS ALSO GOING IN, TO GET ANSWERS, WITH A GUN. WHICH, OBVIOUSLY THE STATE DOESN'T EVEN THINK YOU CAN DO THAT. BUT HE IS GOING IN THERE, IN A HOUSE, WITH FOUR CHILDREN. 16-YEAR-OLD. 14-YEAR-OLD. AN 8-YEAR-OLD AND A 6-YEAR-OLD. OKAY, WHO WERE GOING TO BE IN THAT HOUSE AND GOING TO BE ASLEEP BY HIS OWN TESTIMONY. AND ARE LIKELY TO BE INJURED WHEN YOU START FIRING A, 16-ROUND MAGAZINE.

THAT DOESN'T ESTABLISH CCP BECAUSE SOMEONE ELSE MAY BE INJURED DOES IT?

I THINK IT ESTABLISHES AN INTENT. ALL RIGHT? YOUR HONOR, WHAT I'M REALLY RELYING ON WHAT THE TRIAL COURT. THERE IS NOTHING WRONG WITH THE TRIAL COURT'S FINDINGS HERE. ALL HE IS REALLY SAYING HE DOESN'T GO JACKSON FACT BY JACKSON FACTOR, OKAY? BUT THE TRIAL COURT HAS, PAGES, AS TO EACH VICTIM. FIVE-PAGES AS TO GLENN PAFFORD. FIVE PAGES AS TO LIZ REED WHY HE IS IMPOSING THIS. HE HASN'T SAID THERE IS SOMETHING -- THIS IS NOT EVEN A DENTIST LIKE CASE WHERE THERE IS SOME FACT THAT IS INACCURATE OR MISSING OR ANYTHING LIKE THAT. YOUR HONOR, THE ONLY THING I COULD REALLY, REALLY DO WOULD BE JUST LITERALLY READ IT TO YOU BECAUSE THERE IS JUST NOTHING WRONG THERE, ALL RIGHT? SO, THE STATE, I ONLY ANSWERED JUSTICE AN STAED'S QUESTION ABOUT CCP BECAUSE I DO

THINK IN THIS PARTICULAR CASE FOR ONCE, WHAT IS TRADITIONALLY CONSIDERED ONE OF THE STRONGEST AGGRAVATORS, EVEN IF STRICKEN, IS HARMLESS BECAUSE THE PRIOR VIOLENT FELONY IN THIS CASE INVOLVES A MURDER OF MULTIPLE PEOPLE. OKAY? SO THAT'S ONLY REASON I HOPPED THE HARMLESS. THERE IS NO ERROR AS TO THE JUDGE'S FINDING AS TO CCP. AS TO EITHER ONE OF THE VICTIMS. WITH ASK YOU TO AFFIRM THE JUDGMENT AND DEATH SENTENCE.

YOU KNOW, IF CCP WAS SUCH A STRONG THING, DRIVING THIS MAN, WHY DIDN'T THE JURY FIND IT, WHY DIDN'T THE PROSECUTOR ASK FOR IT AS TO COURTNEY? HE DOESN'T EVEN ASK FOR. THE JURY DOESN'T FIND IT.

BECAUSE HE DOESN'T GO OVER WITH THE INTENT TO KILL?

WELL, IF HE HAS GOT THE GUN IN HIS CAR PLANNING ALL THIS STUFF AND PREMEDITATE HE HADLY KILLS COURTNEY --

PREMEDITATION AS WE KNOW ONLY HAS TO -- A MINUTE OR SECOND BEFORE, SO IT DOESN'T TAKE A --

BUT, IT JUST, STRIKES ME THAT, THERE'S, NOT, THE PREMEDITATION, HEIGHTENED PREMEDITATION TO GO OVER THERE AND KILL. HE WANTS THE ANSWERS AND HE DOESN'T -- AREN'T THREE DEATHS, DEVASTATINGLY --

OH IT'S HARD, YEAH.

TO DISTINGUISH THIS CASE FROM OTHER CASES WHERE, THREE, DEATHS INVOLVED. ONLY WAY THAT THEY'RE ACCOUNTED FOR IS IN THE AGGRAVATOR OF PRIOR VIOLENT FELONY.

WELL IF THAT'S THE CASE WHY DO THEY RECOMMEND LIFE FOR COURTNEY? I MEAN THAT'S THE PROBLEM YOU'VE GOT, I AGREE, THREE DEATHS SO --

THAT NOT QUESTION YOU BRING TO US. THE QUESTION HERE IS WHETHER OR NOT THE DEATH PENALTY CAN BE SUSTAINED FOR ONE OF THE OTHER DEATHS, NOT, NOT WHETHER OR NOT THE RECOMMENDATION AS TO LIFE, CAN BE SUSTAINED. WHETHER THE RECOMMENDATION FOR OF DEATH, THE SENTENCE OF DEATH --

WHAT I'M SAYING IS YOU CANNOT IGNORE THE LIFE RECOMMENDATION WHEN YOU START LOOKING AT THE DEATH RECOMMENDATION BY THE JURY. THANK YOU VERY MUCH.

THANK YOU VERY MUCH.Â