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**William F. Davis v. State of Florida
SC06-1868**

>> NEXT CASE ON THE COURT'S
DOCKET IS DAVIS VERSUS STATE.

.
>> ARE YOU READY TO PROCEED?
>> I'M NADA CAREY HERE ON BEHALF
OF MR. DAVIS, CONVICTED OF FIRST
DEGREE MURDER IN THE DEATH OF
ALICE ALBIN AND LORETTA WREN IN
2003 AND THE TRIAL JUDGE
SENTENCED HIM TO DEATH, FILING
AGGRAVATING FACTORS ANNUAL RUSS
MITIGATING FACTOR AND THE
AGGRAVATORS WERE CCP, WHICH WE
HAD CHALLENGED, AND HAC, PRIOR
VIOLENT FELONIES BASED ON THE
CONTEMPORANEOUS MURDER.
FELONY MURDER, BASED ON
BURGLARY, WHICH WAS REMAINING
SORT OF BURGLARY IN THE CASE AND
THE TRIAL JUDGE ALSO FOUND
NUMEROUS MITIGATING FACTORS
INCLUDING NO PRIOR CRIMINAL
HISTORY, MENTAL AGE OF -- AGE
BASED ON HIS MENTAL AGE OF 15,
16, ORGANIC BRAIN DAMAGE,
CONGENITAL BRAIN DAMAGE, EXTREME
EMOTIONAL DISTURBANCE AT THE
TIME OF THE CRIME, SIGNIFICANT
COGNITIVE AND LEARNING DEFICITS,
WHICH WERE DOCUMENTED SINCE HE
WAS AT A VERY YOUNG AGE,
KINDERGARTEN, LOW BORDERLINE IQ,
SPECIFIC LEARNING DISABILITY
INCLUDING IMPAIRED WORKING
MEMORY TO THE EXTENT THAT IT WAS
AT THE LEVEL AND MENTAL
RETARDATION AND HE WAS UNABLE TO
FINISH -- WENT TO VOCATIONAL
HIGH SCHOOL, LEFT THERE AT AGE
17, AND NEVER GOT HIS GED AND
WHEN HE WAS TESTED BY THE
EXPERTS IN THE CASE, HE WAS
REALLY FUNCTIONING ACADEMICALLY
ABOUT A THIRD GRADE LEVEL AND
REALLY NEVER GOT PAST THIRD
GRADE AS FAR AS READ, WRITING

AND ARITHMETIC, THAT SORT OF THING.

>> THIS IS THE -- AND ARITHMETIC.

>> THERE WERE NO GUILT PHASE ISSUES PRESENTED IN THE APPEAL, IS THAT CORRECT.

>> THAT'S CORRECT.

>> WE ARE HERE ON WHETHER OR NOT THIS IS ONE OF THE LEAST MITIGATED AND MOST AGGRAVATING OF CASES.

SO, THERE SEEMS TO BE A LOT OF ARGUMENT THAT WAS MADE CONCERNING THE COLD, CALCULATED AND PREMEDITATED AGGRAVATING FACTOR HERE AND YOUR ARGUMENT SEEMS TO BREAK DOWN TO BECAUSE HE WAS MENTALLY DEFICIENT AND THAT HE COULD NOT FORM THE NECESSARY HEIGHTENED PREMEDITATION IN ORDER TO -- FOR THE CRIME TO BE COLD, CALCULATED, PREMEDITATED. IS THAT BASICALLY YOUR ARGUMENT ON THIS.

>> WELL, NOT EXACTLY.

OUR ARGUMENT IS NOT SO MUCH THAT HE WAS MENTALLY DEFICIENT AND THEREFORE COULDN'T FORM AN ARGUMENT IT IS MORE THAT THE EVIDENCE DOES NOT SHOW THAT HE DID FORM ANY PREMEDITATION OR AT LEAST THE TYPE OF PREMEDITATION THAT THIS COURT HAS SAID IS REQUIRED FOR CCP.

AND FOR THAT AGGRAVATOR, YOU KNOW, WHAT IS REQUIRED IS SUBSTANTIAL PERIOD OF REFLECTION OR SOME CONTEMPLATION BEFORE COMMITTING THE CRIME AND ALSO, MORE CONTROL, MORE CALCULATION, GENERALLY THERE IS A MOTIVE, THE COURT IS EVEN --

>> THAT IS NOT NECESSARILY THE CASE.

HERE YOU HAVE A SITUATION, FIRST OF ALL, AND I HAVE BEEN -- I'M AN ADVOCATE OF SPECIAL VERDICTS FORMS AND NOW WE HAVE A JURY SAYING THIS IS A PREMEDITATED MURDER, CORRECT, A SPECIAL VERDICT FORM, WHERE THEY FOUND BOTH FELONY MURDER AND

PREMEDITATED MURDER.

>> I CAN'T RECALL BUT WE HAVE NOT CHALLENGED THE SIMPLE PREMEDITATION.

>> BUT HE TAKES, TAKES A KNIFE WITH HIM.

NOW WHETHER SITS THERE 30 MINUTES, AT LEAST HE'S ON THE -- 30 MINUTES, HE'S AT LEAST ON THE FRONT STEP CONTEMPLATING AND AS SOON AS SHE COMES TO THE DOOR, HE STARTS STABBING HER.

THERE IS NOTHING ABOUT -- NOT LIKE THERE IS SOME RAGE REACTION.

IN THAT NOTHING SHE DID PROVOKED THE SITUATION.

AND I'M HAVING, ALTHOUGH, AGAIN, THIS IS, YOU KNOW, WE HAVE TWO DOUBLE-MURDERS BACK-TO-BACK HERE, OF YOUNG MEN AND DIFFERENT MENTAL CONFIGURATIONS.

I'M HAVING A HARD TIME -- IT'S NOT EXECUTION STYLE, BUT SEEING WHY THIS ISN'T HEIGHTENED PREMEDITATION FROM THE POINT OF IT DOESN'T HAVE TO BE DAYS OF PLANNING, BUT THAT HE, OBVIOUSLY -- THERE MAY NOT HAVE BEEN ANY MOTIVE FOR WHY HE KILLED THEM, BUT IT APPEARS HE WAS GOING OVER THERE TO KILL THEM.

WE DON'T KNOW WHY, BUT, YOU KNOW, THAT'S THE ONLY EXPLANATION FOR WHY WHEN THE DOOR OPENS, HE STARTS STABBING.

>> I THINK WHAT THE COURT HAS TO LOOK AT, THOUGH, IN ADDITION TO WHAT HE DID WAS HIS STATE OF MIND AT THE TIME.

>> WELL, WE COULD LOOK AT THAT, BUT WE HAVE, AS WE SAID IN OUR REVIEW OF THE AGGRAVATOR, IF THERE'S COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDING, WE WEIGH IT.

NOW, WHETHER WE GIVE IT A PROPORTIONALITY REVIEW SOME LESS WEIGHT BECAUSE OF IT'S NOT EXECUTION STYLE AND IT'S THE MENTAL MITIGATORS ARE THERE, BUT GIVE ME A CASE THAT SAYS, YOU

KNOW, SINCE THERE'S THESE FACTS TO BASE THE AGGRAVATOR ON, HOW DO WE JUST SAY THAT AGGRAVATOR SHOULD BE STRUCK?

>> WELL, I DON'T THINK THE FACTS SUPPORT CCP, AND I THINK THAT YOU HAVE TO LOOK AT --

>> WELL, LET'S BREAK THE FACTS DOWN.

>> OKAY.

LET ME GIVE YOU THE CONTEXT FOR IT.

IT'S AUGUST 20TH.

HIS MOTHER DROPS HIM OFF AT HOME.

HE TALKS TO HIS ROOMMATES FOR A FEW MINUTES, AND HE GOES IN HIS ROOM.

AROUND MIDNIGHT HE GETS UP, HE WALKS IN THE KITCHEN, HE GETS A KNIFE.

HE WALKS A FEW BLOCKS AWAY TO --

>> DID HE TAKE ANYTHING WITH HIM?

>> THERE'S SOME TESTIMONY ABOUT TAKING A BAG.

THERE'S SOME QUESTION ABOUT THE BAG, BUT HE MAY HAVE TAKEN A BAG --

>> OKAY, BUT THERE IS EVIDENCE IN THE RECORD TO SUPPORT THE FINDING THAT HE TOOK THE BAG.

>> YES.

AND CLEARLY HE TOOK THE KNIFE. THAT'S UNDISPUTED.

>> WHAT DID THE BAG HAVE IN IT?

>> THE BAG HAD NOTHING IN IT.

>> OKAY.

SO IT WAS AN EMPTY BAG --

>> IT WAS AN EMPTY BAG, YES.

BUT CLEARLY HE TOOK THE KNIFE, YES.

NO QUESTION THERE'S SOMETHING GOING ON IN HIS HEAD.

HE WALKS OVER THERE.

HE SAYS HE SITS DOWN FOR ABOUT A MINUTE AND HEARS A VOICE DARING HIM TO DO IT.

THAT'S WHEN HE KNOCKS ON THE DOOR.

HE SPEAKS TO THIS YOUNG WOMAN HE HAS NO ANIMOSITY TOWARDS, NO HOSTILITY TOWARDS, AND THEN HE JUST --

>> HOW FAR WAS THIS TRAILER FROM THE TRAILER HE WAS LIVING IN?

>> IT WAS ABOUT THREE BLOCKS AWAY.

>> SO HE WALKED THREE BLOCKS.

>> YES.

HE HAD SOMETHING IN HIS MIND. BUT THE THING IS WE DON'T KNOW WHAT HIS MIND WAS --

>> DID HE KNOW THESE PEOPLE?

>> HE KNEW THESE PEOPLE.

>> HOW DID HE KNOW THEM?

>> HE HAD HAD A BRIEF RELATIONSHIP WITH THE GIRL'S SISTER, ONE OF THE OTHER DAUGHTERS IN THE FAMILY ABOUT TWO-THREE MONTHS BEFORE THIS, ABOUT A THREE-WEEK RELATIONSHIP.

>> WE DON'T KNOW WHAT WAS IN HIS MIND.

WE ALWAYS DETERMINE INTENT FROM THE SURROUNDING CIRCUMSTANCES. AND WHAT ARE THE SURROUNDING CIRCUMSTANCES HERE?

THERE WAS NO ANIMOSITY -- AS YOU SAID -- BETWEEN THESE PEOPLE, YET HE GOES TO THE KITCHEN.

HIS ROOMMATE SAYS HE HEARD HIM RATTLING IN THE DRAWER.

HE TAKES A KNIFE, HIDES IT, GETS A BAG -- WHICH MAY BE DISPUTED -- AND GOES TO THESE PEOPLE'S HOUSE.

I MEAN, WHAT ARE THE SURROUNDING CIRCUMSTANCES SUPPOSED TO TELL US ABOUT HIS INTENT?

>> WELL, THAT'S ONE PART OF WHAT YOU LOOK AT.

THE OTHER PART OF WHAT YOU NEED TO LOOK AT, I BELIEVE, IS THE EXPERT TESTIMONY THAT WE HAVE ABOUT WHAT WAS GOING ON IN HIS MIND, AND ALL OF THAT TESTIMONY SUGGESTS HE WAS NOT FULLY COGNIZANT AT THE TIME HE COMMITTED THESE CRIMES, THAT HE REALLY DIDN'T KNOW WHAT HE WAS DOING.

IN FACT, HE WAS IN A DISSOCIATED STATE AT THE TIME.

>> THE JURY REJECTED, AND I KNOW THAT TO ME IT'S SIGNIFICANT THAT THE JURY FOUND PREMEDITATED MURDER.

NOW, BECAUSE YOU GET TO
PREMEDITATED, THEY HAVE THEN
REJECTED -- I GUESS, DID THE
INFORMATION THAT YOU TALK ABOUT,
THE DISSOCIATED STATE, DID THAT
COME OUT IN THE [INAUDIBLE]

>> NO.

>> OKAY.

SO THEY'RE PREMEDITATED --

>> ALL OF THE EXPERT TESTIMONY
COMES OUT IN THE PENALTY PHASE,
SO THEY NEVER HEARD THAT.

DR. KROP EXAMINED MR. DAVIS ON
TWO -- FOUR TIMES, FOUR
DIFFERENT TIMES.

AND MR. DAVIS, HE'S NOT A WILY,
MANIPULATIVE GUY.

>> WELL --

>> HE'S A SIMPLE-MINDED
DEFENDANT.

HE DID HIS BEST TO EXPLAIN THIS.

>> DID HE EXPLAIN WHEN THIS
DISSOCIATIVE STATE STARTED?
DID IT START BACK AT THE TIME
THAT HE ACTUALLY GOT THE KNIFE?

I MEAN, THAT PART OF IT -- WHAT
DID HE SAY?

>> WHAT DID WHO SAY?

>> WHAT DID THE EXPERT SAY?

>> DR. KROP.

>> THIS DISSOCIATIVE STATE
STARTED WHEN --

>> I BELIEVE HE SAID WHEN HE
WENT TO GET THE KNIFE.

>> AND WAS THAT TRIGGERED BY
ANYTHING IN PARTICULAR?

I MEAN, JUST ALL OF A SUDDEN HE
WAS IN A DISSOCIATIVE STATE?

>> WELL, YOU KNOW, YES.

BASICALLY, SOME PART OF HIS
MENTAL FACULTIES WERE SEPARATE
FROM THE EXPERIENCE THAT HE WAS
HAVING.

AND THAT'S WHY HE COULDN'T --

>> WHAT EXPERIENCE WAS HE
HAVING?

>> WELL, COMMITTING THESE
MURDERS.

HE WAS NOT FULLY AWARE, FULLY
CONSCIOUS.

IT WAS LIKE WATCHING A MOVIE OR
A DREAM STATE.

>> BUT IT SEEMS TO ME THERE'S
SOME DISCONNECT HERE.

>> WELL, THERE IS A DISCONNECT.
>> WHEN DID THIS DISSOCIATIVE STATE START, AND WAS THERE SOME REASON IT STARTED?

HOW OLD WAS THIS DEFENDANT?

>> HE WAS 20 YEARS OLD.

>> 20 YEARS OLD.

AND SO ALL OF A SUDDEN ON THIS NIGHT AROUND MIDNIGHT HE GOES INTO A DISSOCIATIVE STATE.

WHY?

>> WE DON'T --

>> WHAT?

>> WE DON'T KNOW THAT, YOUR HONOR.

I MEAN, I DON'T THINK THAT WE CAN MAKE SOME, YOU KNOW, MAKE A RATIONAL EXPLANATION FOR SOMETHING THAT REALLY IS IRRATIONAL WHEN THE DEFENDANT HIMSELF HAS NO CLUE WHAT HAPPENED.

WE DO KNOW THAT THIS DEFENDANT, HE WAS DIAGNOSED WITH SEVERE BORDERLINE PERSONALITY DISORDER AND SEVERE COGNITIVE DEFICITS.

AND DR. DUDLEY, WHO WAS A PSYCHIATRIST, EXPLAINED WHAT THAT MEANT.

HE HAD IN ADDITION TO ALL THESE MENTAL OR COGNITIVE PROBLEMS, THE BRAIN DAMAGE, HE HAD EMOTIONAL PROBLEMS FROM A VERY YOUNG AGE.

A LOT OF ANXIETY, A LOT OF DEPRESSION, HE WAS ADHD, HE REALLY JUST WAS A KID WHO WAS ALL OVER THE PLACE FROM A VERY YOUNG AGE.

AND WHEN HE STARTED, WHEN HE REACHED ADOLESCENCE, EARLY ADOLESCENCE, HE STARTED DEVELOPING THESE SORT OF WEIRD THINKING PATTERNS, SORT OF PARAHYPNOTIC-TYPE EXPERIENCE. HE STARTED BELIEVING HIS DREAMS, HE STARTED HEARING VOICES. HE TOLD HIS FATHER THAT HE WAS HEARING THE DEVIL.

SO HE'S PSYCHIATRICALLY DISTURBED BEFORE THIS --

>> NOW, WHERE IS THAT AS FAR AS, OKAY, WHERE IS THAT IN THE RECORD ABOUT HEARING VOICES,

BEING EVALUATED BY A
PSYCHIATRIST BEFORE THIS MURDER?

>> HE WAS NEVER SEEN BY ANYBODY
BEFORE --

>> SO IT'S SELF-REPORTING BY THE
FATHER ABOUT -- AND DID THE
JUDGE, HOW DID THE JUDGE
EVALUATE THAT EVIDENCE?

>> THE JUDGE ACCEPTED
DR. DUDLEY'S TESTIMONY THAT HE
HAD THIS PSYCHIATRIC DISORDER.
BUT THE PROBLEM -- THE JUDGE
MADE SEVERAL ERRORS IN HIS
UNDERSTANDING OF THE MENTAL
MITIGATION, AND ONE OF THE
ERRORS HE MADE IN DISCUSSING
DR. DUDLEY'S TESTIMONY IS THAT I
THINK HE SAID, THE TRIAL JUDGE
IN HIS ORDER SAID THAT
DR. DUDLEY SAID THAT HE HAD THIS
DISORDER HIS WHOLE LIFE.
AND FOR THAT REASON THE TRIAL
JUDGE DIDN'T GIVE IT AS MUCH
WEIGHT.

THE PROBLEM --

>> IT'S EITHER DR. DUDLEY OR
SOMEONE THAT THIS IS, YOU KNOW,
AGAIN, IT'S JUST FERRETED OUT,
THIS IS THE DEFENDANT THAT HAD
NO SIGNIFICANT HISTORY OF PRIOR
CRIMINAL ACTIVITY, BUT HE WAS BY
THE END OF FIFTH GRADE
DISPLAYING ANTISOCIAL BEHAVIOR.
YET THE FAMILY TESTIFIED TO THAT
THIS DEFENDANT HAD A PRETTY GOOD
LIFE.

SO WHAT YOU HAVE HERE IS WE MAY,
THERE MAY BE SOMETHING IN THIS
BACKGROUND, BUT WE DON'T KNOW
WHAT IT IS.

AND SO IT KIND OF WEAKENED, I
THINK, THE JUDGE DID A VERY
THOROUGH JOB OF TRYING TO
EVALUATE THE TESTIMONY, BUT HE
SAID THAT DR. DUDLEY STATED THE
KIND OF BEHAVIOR EXHIBITED BY
THE DEFENDANT AS SET OUT IN
SCHOOL RECORDS IS COMMONLY SEEN
BY PARENTS WHO NEGLECT PARENTING
AND HAVE BEEN ABUSED IN SOME
WAYS, BUT THEY WEREN'T ABLE TO
SAY, WELL, WHAT WAS IT THAT
TRIGGERED IT?

AND I THINK, TO ME, THAT'S A

MISSING LINK.

I'M NOT SAYING YOU COULD HAVE FOUND IT, BUT I QUESTION HOW SEVERE THE DEFENDANT'S PSYCHIATRIC OR MENTAL PROBLEMS WERE WHILE HE WAS GROWING UP AND UP UNTIL THE TIME OF THE MURDER. NOW, COULD YOU HELP ME ON THAT AS TO WHETHER THERE WAS SOMETHING THAT WE'RE MISSING THAT DOES EXPLAIN THAT HE WAS IN THIS STATE THROUGHOUT HIS LIFE AND THEN SOMETHING SNAPPED ON THIS NIGHT?

>> WELL, THERE WAS EVIDENCE OF ABUSE AND NEGLECT, AND THE TRIAL JUDGE DID FIND THAT.

HIS --

>> I'M, YOU KNOW, I'M -- WHEN WE TALK ABUSE AND NEGLECT, SEXUAL ABUSE, PHYSICAL ABUSE, THERE'S NOTHING LIKE THAT.

>> WELL, THERE IS.

THERE IS SOME EVIDENCE HE WAS PHYSICALLY ABUSED AND NEGLECTED, AND SEVERE NEGLECT CAN HAVE THE SAME EFFECT ON AN INDIVIDUAL AS PHYSICAL ABUSE.

IF NO ONE'S AROUND, PARTICULARLY A KID WHO HAS VERY SEVERE ADHD WHICH WAS NEVER TREATED, NEVER TREATED AT ALL.

HE'S IN SCHOOL, MENTALLY HE ABSOLUTELY CANNOT FUNCTION.

THIS IS A LOST KID.

HIS FIRST GRADE TEACHER SAID THIS IS THE UNHAPPIEST CHILD I'VE EVER SEEN.

HE WAS THE SAME WAY IN SIXTH GRADE.

YOU KNOW, HE'S COMPLETELY LOST IN SCHOOL.

I CAN EXPLAIN --

>> WASN'T THERE TESTIMONY THAT HE ACTUALLY FUNCTIONED PRETTY WELL IN THE WORKPLACE?

HE HAD A JOB, HE HAD RELATIONSHIPS WITH PEOPLE, AND THEY --

>> THE LAST --

>> HE WAS FUNCTIONING.

>> WHEN HE LEFT JOB CORP AND HE WAS WORKING AT THE AUTO DETAIL PLACE, YES, HE FUNCTIONED WELL

IN THAT JOB, WASHING CARS.
YOU KNOW, HIS MOTHER STILL TOOK
CARE OF HIM.
HE MOVED OUT WHEN HE WAS, I
THINK, A LITTLE BEFORE THIS
MURDER, 20 YEARS OLD.
HE PAID HIS ROOMMATES \$50 RENT,
HE WAS ABLE TO DO THAT.
BUT I WANT TO GO BACK TO YOUR
QUESTION ABOUT THE PSYCHIATRIC
DISORDER.
HE HAS A PERSONALITY DISORDER,
BORDERLINE PERSONALITY DISORDER.
THIS IS A DISORDER THAT DOESN'T
DEVELOP UNTIL TEENAGE YEARS,
ADOLESCENCE.
THIS IS NOT SOMETHING YOU WOULD
SEE WHEN HE'S A CHILD.
IT'S VERY DIFFERENT FROM A MAJOR
MENTAL HEALTH DISORDER LIKE
SCHIZOPHRENIA, ALTHOUGH
SCHIZOPHRENIA DOESN'T, YOU KNOW,
APPEAR UNTIL LATER EITHER.
BUT THAT'S WHY WE DON'T SEE IT.
ALL OF THIS STUFF IS SUBMERGED.
AND THE TRIAL JUDGE DID -- WHAT
THE TRIAL JUDGE DID, TOO, THAT I
THINK CONFUSED -- MADE IT
DIFFICULT FOR THE TRIAL JUDGE TO
REALLY SEE THE CASE IN ITS
ENTIRETY IS THE TRIAL JUDGE
CONFLATED THE ISSUE OF HIS
DISSOCIATION AND HOW THAT
AFFECTED HIM DURING THE CRIMES,
HOW THAT IMPAIRED HIS JUDGMENT
AND MADE HIM NOT FULLY AWARE OF
WHAT HE WAS DOING AND HIS LATER
BELIEF, DAVIS' LATER BELIEF,
THAT HE'D BEEN POSSESSED BY THE
DEVIL OR AN EVIL SPIRIT AT THE
TIME.
WHEN THE TRIAL JUDGE DISCUSSES
IT IN THIS ORDER, HE ACCEPTS THE
DISSOCIATION, BUT THEN HE MOVES
RIGHT ON TO THE POSSESSION AND
SAYS, WELL, HE WASN'T POSSESSED
AT THE TIME, SO HE DISREGARDED
BOTH THE DISSOCIATION AND THE
POSSESSION.
AND I THINK IT'S VERY CLEAR FROM
THE TESTIMONY OF DR. KROP THAT
THIS DISSOCIATIVE EPISODE MEANT
HE WAS IMPAIRED AT THE TIME, AND
HE WAS UNDER EXTREME DISTRESS AT

THE TIME.

>> HOW PRECISE WAS THE MENTAL HEALTH EVIDENCE IN TERMS OF, FIRST, SAYING THAT HE HAD A MAJOR MENTAL ILLNESS AND THAT THIS OFFENSE WAS ATTRIBUTABLE TO THE MAJOR MENTAL ILLNESS? WAS THERE TESTIMONY TO THAT EFFECT?

>> HE DOESN'T HAVE A MAJOR MENTAL ILLNESS, HE HAS SEVERE BORDERLINE PERSONALITY DISORDER, AND DR. DUDLEY WAS THE ONE WHO DIAGNOSED HIM WITH THAT DISORDER.

DR. KROP DID NOT FIND THAT HE HAD A PERSONALITY -- THEY HAD DIFFERENT DIAGNOSES.

DR. KROP FOUND THAT HE HAD ORGANIC BRAIN DAMAGE.

>> HOW DOES THAT RELATE, THOUGH, TO HIM CALCULATING TO COMMIT THESE CRIMES?

THAT IS, WHERE ARE WE ON THE SCALE?

IT WOULD APPEAR HERE THAT IN A SENSE HE WAS HIS OWN WORST ENEMY INsofar AS THE EVIDENCE AGAINST HIM IN THIS CASE BECAUSE AT ONE POINT, AS I RECALL, HE SAID THAT HE SAT DOWN ON THE PATIO OR ON THE STEPS OR WHATEVER, AND HE HEARD A VOICE DARING HIM TO DO IT.

SO HE SAID THAT HE GOT UP AND DID IT.

I ASSUME THAT WHAT HE'S TALKING ABOUT, THE "IT," IS TO COMMIT THE MURDER.

IS THAT --

>> YES.

>> IS THAT A FAIR INFERENCE, THAT HE WAS DARED TO DO IT, YOU KNOW, BY A VOICE, AND THEN HE PROCEEDED TO DO IT.

THAT IS, TO KILL.

SO ORDINARILY IF WE THEN BACK UP WITH THE CIRCUMSUBSTANTIAL EVIDENCE THAT HAS BEEN ALLUDED TO HERE, AND THEN WE HAVE A PRECISE MOMENT WHEN HE SAYS HIMSELF HE WAS DARED TO DO IT, AND HE WENT AHEAD AND DID IT, THAT'S PRETTY COLD AND

CALCULATING --

>> WELL --

>> -- IN TERMS OF THE LAY
UNDERSTANDING OF THAT.

SO I'M TRYING TO FIGURE OUT
WHERE IT IS IN THE MENTAL HEALTH
EXPLANATION.

>> OKAY.

>> THAT PREVENTS THAT FROM BEING
COLD AND CALCULATED.

>> I'M TRYING TO REMEMBER ALL
THE QUESTIONS IN HERE.

>> OKAY.

>> THE FIRST THING WAS TO
CONNECT THE MENTAL HEALTH WITH
WHAT HE DID.

BORDERLINE PERSONALITY DISORDER,
ONE OF THE SYMPTOMS OF THAT
DISORDER IS THAT THE PERSON CAN
HAVE BRIEF PSYCHIATRIC OR MENTAL
DETERIORATIONS.

THESE ARE TEMPORARY EPISODES,
TEMPORARY PSYCHOTIC EPISODES OR
TEMPORARY DISSOCIATIVE EPISODES.
I THINK THAT EXPLAINS WHAT
HAPPENED HERE.

IT'S VERY MUCH LIKE TONY
ROBERTSON WHO WAS ANOTHER PERSON
WHO COMMITTED A SIMILAR CRIME,
KILLED SOMEONE HE LIKED FOR NO
APPARENT REASON.

THE SECOND THING, YOU'RE TALKING
ABOUT HIM SITTING ON THE STAIRS.

WELL, IF YOU THINK THAT

MR. DAVIS IS LIKE YOU OR ME, IT
LOOKS COLD AND CALCULATED.

BUT HE'S NOT LIKE US.

HE SAT ON THE STAIRS AND HEARD A
VOICE.

HE ALSO TESTIFIED, "I DIDN'T
THINK I WAS GOING TO DO IT."

YOU KNOW, I CAN'T EXPLAIN
EXACTLY WHAT WAS GOING ON IN HIS
MIND, NEITHER COULD DR. KROP.

BUT DR. KROP SAID I DON'T REALLY
KNOW WHAT --

>> DOES THE EVIDENCE SUPPORT
WHAT THE TRIAL COURT FOUND, WHAT
MR. DAVIS DID IMMEDIATELY
FOLLOWING THE STABBING?

THE WIPING DOWN OF THE BLINDS,
THE TAKING, REMOVING THE CLOTHES
THAT HAD THE BLOOD ON THEM, THE
GOING IN THE BATHROOM, ALL OF

THAT?

>> YEAH.

WHAT HE DID AFTERWARDS, AND DR. KROP AGAIN SAID HE WASN'T FULLY COGNIZANT OR THINKING VERY MUCH DURING THE CRIMES, BUT VERY SOON AFTERWARDS HE REALIZED WHAT HE HAD DONE WHICH, TO ME, IS EVIDENCE OF IMPAIRED CAPACITY, AND THAT'S ALSO VERY CONSISTENT WITH THE DISSOCIATED STATE WHICH MEANS HIS CONSCIOUSNESS WAS IMPAIRED.

I JUST DON'T THINK YOU CAN APPLY COLD, CALCULATED, PREMEDITATED EXECUTION-STYLE TYPE MURDER UNDER THOSE CIRCUMSTANCES WHEN HIS MENTAL --

>> MY PROBLEM IS HERE WE HAVE A MAN WHO IN THE MIDDLE OF THE NIGHT GETS UP, GETS A WEAPON, GETS A KNIFE, GETS AN EMPTY BAG. TAKING THE EVIDENCE -- THAT IS IN THE RECORD, THAT WAS THE TRIAL COURT'S FINDING -- GOES DOWN, HESITATES ON THE STEPS. PERSON COMES, HE STABS THE PERSON TO DEATH, GOES IN THE TRAILER.

AND THEN AFTER IT'S ALL OVER HE CLEANS UP THE PLACE IN ORDER TO, SO HIS FINGERPRINTS WON'T BE DETECTED.

I MEAN, DOESN'T SEEM TO ME THAT HE'S A MAN THAT'S IN SOME OUTER SPACE OR DISSOCIATED STATE.

>> I HAVE TO DISAGREE WITH YOU, YOUR HONOR.

HE DOESN'T CLEAN UP TO AVOID BEING CAUGHT PARTICULARLY. THE THINGS THAT --

>> [INAUDIBLE]

>> YEAH.

WELL, THE THINGS THAT HAPPEN AFTERWARDS, ALSO, DON'T MAKE A LOT OF SENSE.

HE MOVES THE BODIES INTO THE LIVING ROOM, HE COVERS THEM WITH A BLANKET.

THAT DOESN'T HIDE HIS IDENTITY AS THE KILLER.

>> WELL, LET'S --

>> HE CLEANS UP.

>> I THINK THAT YOU'RE SPENDING

ALL THIS TIME ON CCP, AND WHAT I WANT TO ASK YOU IS THAT LET'S ASSUME WE UPHOLD THE JUDGE'S FINDING ON CCP.

YOU MAKE AN ADDITIONAL ARGUMENT THAT THIS IS NOT A CASE IN WHICH THE DEATH PENALTY IS WARRANTED. NOW, CAN YOU STILL MAKE THAT CASE ASSUMING THAT CCP IS THERE, OR DOES THIS HINGE ON THE COURT STRIKING CCP?

>> WELL, YEAH, I THINK THE ARGUMENT'S STILL THERE BECAUSE IF THE COURT DECIDES CCP APPLIES TO THIS CASE, THE FACTS OF THE CASE, I MEAN, MY ARGUMENT AS TO WHY IT DOESN'T APPLY IS STILL THERE.

>> CCP CAN BE THERE, BUT THERE'S A BIG DIFFERENCE BETWEEN THE OLD-FASHIONED CCP WHICH IS, YOU KNOW, CONTRACT-STYLE EXECUTION MURDER AND SOMETHING THAT IS JUST A NONSENSICAL LACK OF MOTIVE MURDER LIKE THIS IS.

WE STILL LOOK AT THE CIRCUMSTANCES.

SO WHAT IS YOUR BEST ARGUMENT ON, YOU KNOW, WITH A DOUBLE MURDER HERE HOW THIS IS NOT A CASE IN WHICH THE DEATH PENALTY IS WARRANTED OR AT LEAST PROPORTIONAL TO OTHER CASES?

>> I THINK THE CASE STILL FITS WITHIN THAT GROUP OF CASES THAT THIS COURT HAS HELD ARE NOT THE LEAST MITIGATED OF CASES.

>> YOU KNOW, WE DON'T JUST TAKE AND LOOK AT MITIGATED, WE LOOK AT IT TOGETHER.

YOU'VE GOT CCP, YOU'VE GOT HAC. HE ACTUALLY WASN'T ASKED IN, HE ACTUALLY, YOU KNOW, STABBED --

>> HE STABBED HER AT THE DOORSTEP.

>> -- INTO A HOUSE, A TRAILER, AND SO I'M HAVING A DIFFICULT TIME ALTHOUGH I HAVE TO SAY THE MITIGATION IS PRETTY SIGNIFICANT HOW THIS IS NOT PROPORTIONAL TO OTHER CASES.

CAN YOU GIVE ME SOME CASES IN WHICH YOU THINK THIS IS JUST LIKE THE CASE IN WHICH WE

REDUCED IT TO LIFE?

I KNOW THERE HAVE BEEN SOME RECENT ONES LIKE ALFORD AND OTHERS, BUT I'M TRYING TO SEE IF THIS FITS INTO THOSE CASES. DO YOU HAVE THIS IS JUST LIKE A CASE WHERE WE'VE REDUCED IT TO LIFE?

>> I DID CITE SOME CASES.

THE COURT HAS SAID IT HAS TO BE ONE OF THE MOST AGGRAVATED AND LEAST MITIGATED.

I INTERPRET THAT TO MEAN BOTH OF THOSE HAVE TO BE TRUE.

THIS IS AN AGGRAVATED CASE EVEN IF CCP EXISTS.

HOWEVER, I THINK YOU HAVE TO TAKE INTO ACCOUNT ALL THE AGGRAVATING, ALL THE AGGRAVATING FACTORS RELATE TO THIS ONE INEXPLICABLE, REALLY IRRATIONAL OUTBURST OF VIOLENCE.

ONE CASE, ONE EVENT, AND I THINK THAT'S THE PROPER WAY TO LOOK AT AGGRAVATION.

AS FAR AS THE MITIGATION, I THINK I CITED ROBERTSON, THE 19-YEAR-OLD WHO STRANGLERED TO DEATH A WOMAN WHO HAD BEFRIENDED HIM.

IN THAT CASE THE COURT HAD HAD AND BURGLARY.

THE JUDGE DIDN'T FIND THE MENTAL MITIGATORS IN THAT CASE.

THERE'S ALSO MORGAN.

HE WAS 16, AND I KNOW HE'S A YOUTH, BUT IN THIS CASE WE HAVE SOMEONE FUNCTIONING LIKE A 15 OR 16-YEAR-OLD.

BRAIN DAMAGE, IMPAIRED JUDGMENT, ABUSE, CRIMINAL HISTORY.

HE BLUDGEONED AND STABBED TO DEATH A 60-YEAR-OLD WOMAN.

WE'VE GOT ALMEIDA, THE 20-YEAR-OLD.

THE COURT REDUCED -- THE COURT DISAPPROVED CCP IN THAT CASE DESPITE THE FACT THAT ALMEIDA, HE WAS IN A BAR AND TOOK A DRINK.

HE WAS UNDERAGE, SO HE'S TOLD TO LEAVE.

HE GOES HOME WITH HIS PALS, TALKS TO THEM FOR A WHILE, AND

THEN HE GOES AND GETS A GUN,
SITS OUT IN FRONT OF THE BAR,
WAITS FOR THE MANAGER TO COME
OUT, AND SHOOTS HIM IN THE HEAD.
I DON'T UNDERSTAND HOW THAT CASE
IS NOT CCP, AND THIS CASE IS
CCP, BECAUSE IN THAT CASE THERE
WAS CERTAINLY AS MUCH PLANNING
AND CALCULATION AS THERE WAS IN
THIS CASE.

ANYWAY, ALMEIDA, HE HAD A LOT OF
MENTAL MITIGATION AS WELL.
IN ADDITION, HE HAD A PRIOR
VIOLENT FELONY, HE HAD TWO PRIOR
FIRST-DEGREE MURDERS, AND THE
COURT REDUCED HIS DEATH SENTENCE
TO LIFE IN THAT CASE.

WE'VE GOT PENN WHO, AGAIN,
BLUDGEONED HIS MOTHER TO DEATH
FOR UNKNOWN REASONS.

AGAIN, THAT WAS A HAC MURDER,
AND THEN THERE'S MAULDEN WHICH
IS A SIMILAR CASE BECAUSE
MAULDEN WAS ALSO IN A
DISSOCIATED STATE AT THE TIME HE
KILLED HIS EX-WIFE AND THE MAN
SHE WAS SUPPOSED TO MARRY.
MAULDEN DROVE OVER THERE, HE SAW
THAT THE BOYFRIEND'S CAR WAS
THERE, HE LEFT.

HE WENT AND GOT A GUN, HE CAME
BACK, HE CRAWLED THROUGH A
WINDOW AND SHOT 'EM BOTH IN THE
HEAD.

AND THE EXPERT IN THAT CASE
TESTIFIED THAT HE WAS IN A
DISSOCIATED STATE.

SO I THINK THOSE CASES ARE, NONE
OF THEM IS IDENTICAL, BUT I
THINK THEY FIT WITHIN THAT
FRAMEWORK OF A DEFENDANT WHO IS
EXTREMELY DISTURBED AND IMPAIRED
AT THE TIME WHO HAS NO PRIOR
CRIMINAL HISTORY, IS BRAIN
DAMAGED --

>> YOU COMMENT ON THE NO
CRIMINAL HISTORY, THE JUDGE USED
INCIDENTS THAT OCCURRED AFTER
THE CRIME WHEN HE WAS, AFTER
ARRESTED, TO LESSEN THAT
MITIGATOR.

DO YOU -- IS THAT ERROR?
BECAUSE WE SAID THAT YOU CAN'T
USE SOMETHING THAT HAPPENED

AFTER THE MURDER TO NOT FIND A
PRIOR LACK OF PRIOR SIGNIFICANT
CRIMINAL HISTORY.

>> WELL, THAT'S MY POSITION,
YOUR HONOR.
THE LAW'S PRETTY CLEAR, IT HAS
TO OCCUR AFTERWARDS.

>> YOU ARE WELL INTO YOUR
REBUTTAL.
YOU HAVE A COUPLE OF MINUTES
LEFT IF YOU WANT TO SAVE THOSE.
>> THANK YOU.

>> MR. WHITE?
>> THANK YOU, YOUR HONOR.
STEVE WHITE
REPRESENTING APPELLEE FOR
ATTORNEY GENERAL BOB McCOLLUM.
STATE'S POSITION IS THAT
MR. DAVIS DISPLAYED AND THE
TRIAL COURT FOUND THAT HE
ENGAGED IN RATIONAL BEHAVIOR
BEFORE, DURING, AND AFTER THE
MURDERS OF THE --
>> NOT THAT IT -- IT MAY NOT
MATTER, BUT EXPLAIN THE MOTIVE
FOR THESE MURDERS.

>> WHAT WE KNOW IS THE
RELATIONSHIP OF THE DEFENDANT
WITH AMY WARE, THE PRIOR
RELATIONSHIP.
SHE, TO PUT IT BLUNTLY, DUMPED
HIM, AND HE WAS INITIALLY UPSET
ABOUT IT.

>> AND WHEN WAS, WHEN DID THE
DUMPING OCCUR?

>> IT WAS SOME WEEKS.
IT WAS THE SAME SUMMER, BUT SOME
WEEKS PRIOR TO THE MURDERS.
I THINK THERE WAS SOME CONFLICT
IN TERMS OF THE EXACT PERIOD OF
TIME.

IT COULD BE EITHER WEEKS OR A
MONTH OR TWO.

BUT WE KNOW THIS PRIOR
RELATIONSHIP WITH AMY WARE, WE
KNOW THAT HE TRAVELED 500-600
YARDS.

HE WALKED --

>> NO, I KNOW THAT PART.
I'M ASKING --

>> HE TARGETED THIS TRAILER.
>> HIS MOTHER AND HE HAD DINNER
THAT EVENING, CORRECT?
>> YES, MA'AM.
>> SEEMED NORMAL.
>> YES, MA'AM.
>> GOES HOME, NOT DRINKING OR --
I MEAN, HE'S NOT DRINKING.
>> CORRECT.
>> AT MIDNIGHT NOBODY'S -- HE
HASN'T -- NO ONE'S SAYING THAT
HE HAD BEEN TALKING IN AN
OBSESSIVE WAY FROM THE TIME THIS
WOMAN DUMPED HIM UNTIL THE NIGHT
OF THE MURDERS ABOUT WHAT, HOW
HE HAD TO FIND HER OR WHATEVER,
CORRECT?
>> IN FACT, HE WENT TO WORK THAT
DAY, AND EVERYTHING WAS NORMAL
THAT DAY.
>> SO NOW I'M TRYING TO --
YOU'RE DESCRIBING WHAT HAPPENED,
AND WE KNOW WHAT HAPPENED.
HE GOT GUN -- I MEAN, HE GOT THE
KNIFE, BUT WHAT I'M ASKING YOU
JUST BECAUSE WE'RE LOOKING AT
SOMETHING THAT UNLIKE THIS PRIOR
CASE WHERE YOU'VE GOT SOMEBODY
WHO COMMITS A BURGLARY, ROBBERY,
TAKES PEOPLE OUT AND, YOU KNOW,
SHOOTS THEM EXECUTION STYLE, WE
NOW HAVE A 20-YEAR-OLD WHO'S GOT
NO CRIMINAL HISTORY TO SPEAK OF.
WE'VE GOT, YOU KNOW, THE AGE,
AND WE'VE GOT MENTAL MITIGATORS,
AND HE SEEMINGLY INEXPLICABLY
GOES AND TAKES A KNIFE AND GOES
TO THESE PEOPLE'S HOUSE.
HE'S NOT GETTING INFORMATION
ABOUT WHERE THE GIRLFRIEND IS,
HE JUST STARTS STABBING THEM.
SO WHAT'S THE MOTIVE?
>> WELL, HE ACTUALLY ASKED FOR
THE TELEPHONE NUMBER OF AMY
WARE, AND LORETTA SAYS I DON'T
HAVE IT, I'M NOT GOING TO GIVE
IT TO YOU.
BY THE WAY, THIS WAS A
HOME-INVASION BURGLARY.
>> AND THEN HE STARTS TO, SHE
SAYS I'M NOT GIVING THIS, AND
THEN HE STARTS --
>> STARTS STABBING HER.
HE CHASES HER INTO THE KITCHEN

AND CONTINUES TO STAB HER.
SHE FALLS TO THE FLOOR, THE
MOTHER COMES AROUND THE CORNER,
AND THEN I THINK HIS WORDS WERE,
"I JUST GO TO HER, BASICALLY,
AND START STABBING HER."
BREAKS THE KNIFE, BY THE WAY,
TWO KNIVES.

>> I'M ASKING YOU NOT TO
DESCRIBE WHAT HAPPENED, BECAUSE
WE KNOW IT.

>> RIGHT.

>> I'M ASKING YOU WHY IS
SOMEBODY WHO HAS BEEN SPURNED BY
THE WOMAN SEVERAL WEEKS LATER
WITHOUT ANYTHING PRECIPITATING
IT GOING TO KILL TWO PEOPLE?

>> WELL, THE STATE'S THEORY AT
TRIAL WAS THAT IT WAS A GRUDGE
KILLING.

HOWEVER, THE PROSECUTOR IN ONE
OF HIS ARGUMENTS TRIED TO MAKE
THAT ARGUMENT.

THERE WAS AN OBJECTION AS TO
SPECULATION.

IT WAS SUSTAINED.

BUT WE HAVE THE CIRCUMSTANCES OF
THE PRIOR RELATIONSHIP WITH AMY
WARE, WE HAVE HIM GOING TO THE
TRAILER OF AMY WARE'S SISTER --

>> BUT WHAT DO WE HAVE THAT
DEMONSTRATES THERE WAS SOME
ANIMOSITY AFTER THE BREAKUP?
AS I RECALL, THE ONLY THING WE
HAVE HERE IS THAT AT SOME POINT
SHE CALLED HIM, AND HE DIDN'T
WANT TO TALK TO HER.

BUT WHERE, WHERE'S EVIDENCE THAT
WOULD SUPPORT THERE WAS SOME
GRUDGE BETWEEN THEM?

>> WELL, HE WAS INITIALLY UPSET,
AND, OF COURSE.

WHY DID HE PICK THIS TRAILER?
I KNOW JUSTICE PARIENTE DOESN'T
WANT ME TO TALK ABOUT THE FACTS,
BUT --

>> I DIDN'T SAY -- OBVIOUSLY,
THEY WERE RELATED, SO THERE WAS
SOMETHING TO DO WITH IT, BUT IN
TERMS OF TRYING TO DECIDE THE
MOST -- IT SEEMS IF HE WAS, YOU
KNOW, GOING TO STEAL THINGS --

>> HE WAS GOING THERE TO KILL
THEM.

THERE'S SOME MURDERS THAT JUST DON'T HAVE ANOTHER EXPLANATION OTHER THAN WE KNOW THAT HE DECIDED THAT HE WAS GOING TO KILL THESE PEOPLE WHEN HE WAS AT HIS TRAILER.

WE KNOW THAT HE GOT A KNIFE FOR THAT PURPOSE.

WE KNOW THAT HE GOT A BAG AND AN EXTRA, WORE AN EXTRA PAIR OF CLOTHES BECAUSE HE KNEW HE WAS GOING TO GET BLOODY WHEN HE WENT OVER THERE.

HE TOOK STEP BY STEP, TOOK A LEFT AND A RIGHT 500-600 YARDS TO GET TO THE VICTIMS' TRAILER.

WE KNOW THAT HE PAUSED AT THE DOOR.

WE CAN QUIBBLE ABOUT HOW MANY SECONDS OR MINUTES IT WAS.

WE KNOW AS SOON AS LORETTA CAME TO THE DOOR, HE STARTS STABBING HER.

WE KNOW HE WENT THERE TO KILL THOSE PEOPLE.

WE CAN'T PROVE, WE HAVE NO FIRM EVIDENCE OF ANOTHER MOTIVE BESIDES HE DECIDED THAT HE WAS GOING TO KILL THOSE PEOPLE.

WE KNOW THAT SOMETIME BEFORE THIS HE WATCHES "TEXAS CHAINSAW MASSACRE."

I DON'T KNOW IF THAT'S WHERE HE GOT THE IDEA TO DO SOMETHING GRUESOME LIKE THIS OR NOT.

I MEAN, THERE ARE OTHER GRUESOME MURDERS THAT, BASICALLY, THE PEOPLE DECIDED TO DO A GRUESOME MURDER LIKE IN LARS.

THAT DEFENDANT DECIDED TO DO WITH HIS COLLEAGUE A GRUESOME MURDER.

YOU CAN CALL IT INEXPLICABLE, BUT WHAT WE HAVE HERE UNDER THE FACTS OF THIS CASE IS THAT THIS MAN WAS DETERMINED, DECIDED AND WAS DETERMINED TO KILL THESE VICTIMS.

AND HE DECIDED AT HIS TRAILER, NAVIGATED -- OPPOSING COUNSEL CAN TEST MY TERM OF USING THAT WORD.

ONE'S IN THE FRONT OF THE TRAILER PARK, ONE'S IN THE BACK,

BUT HE HAD TO TAKE A LEFT AND THEN A RIGHT TO GET TO THE VICTIMS' TRAILER.

PASSED OTHER TRAILERS IN BETWEEN.

HE WAS TARGETING THIS TRAILER.

I MEAN, WE CAN INFER IT WAS A GRUDGE THAT HE HAD HELD.

BUT IF HE WAS IN A DISSOCIATIVE STATE OR WHAT HAVE YOU, WHY DID HE PICK THIS, THESE VICTIMS?

AND, OF COURSE, AND GETTING TO THE DISSOCIATIVE STATE, BY THE

WAY, HE TOLD THE -- I THINK IT

WAS KROP, IT COULD HAVE BEEN

DUDLEY, I'M NOT SURE -- BUT HE

TOLD THEM THAT, BASICALLY THAT I

WAS POSSESSED BY AN EVIL SPIRIT.

AND WHEN THE EVIL SPIRIT LEFT

ME, THEN I WAS IN THIS DREAM

STATE LOOKING DOWN ON MYSELF.

>> WELL, LET ME ASK YOU THIS

QUESTION ON THE MITIGATOR OF

NO -- HE WAS 20 YEARS OLD.

>> YES, MA'AM.

>> TELL ME THE DAY, AND IT IS,

YOU KNOW, WORKING, HE HAD HAD

DINNER WITH HIS MOTHER.

WHAT WERE HIS PRIOR -- DID HE

HAVE ANY PRIOR CRIMINAL ACTIVITY

THAT WOULD, YOU KNOW, ANY PRIOR

FELONIES, ANYTHING LIKE THAT?

>> IF I COULD MAKE ONE QUICK POINT,

YOUR HONOR, WE SHOULDN'T LOSE

SIGHT OF THE FACT, TOO, THAT

HE LIED TO COVER HIS TRACKS,

NOT ONLY BURIED THE

KNIVES, CLOTHES IN THE WOODS,

BLOODY CLOTHING, HE LIED TO HIS

ROOMMATE INITIALLY, LIED TO

POLICE.

>> NEXT DAY GOING TO -- REALIZED

SOMETHING HAD HAPPENED, SO SAID TO

HIS ROOMMATE, BETTER GO SEE WHAT

WENT ON HERE.

>> THAT WAS PART OF HIS LIE.

>> I UNDERSTOOD THAT, BUT IT IS

LIKE WHAT DID I DO, NOW I'VE GOT

TO FIGURE SOMETHING OUT.

>> RIGHT.

>> EVEN IF YOU HAVE A BAD

DREAM, YOU KNOW, THE NEXT DAY

YOU ARE TRYING TO SAY -- I GOT

-- I MEAN THAT TO ME IS ALL

PART OF -- THING WHY HE MURDERED THEM, AND WHAT I WANT TO ASK YOU ON THIS MITIGATOR STUFF, TILL THE TIME THIS HAPPENED, I KNOW HE -- BUT DID HE EVER -- JUVENILE SYSTEM.

>> HIS AUNT I THINK, TONI RODRIGUEZ, TESTIFIED THAT HE ATTEMPTED TO SUFFOCATE HER SON, THAT HE HEARD HER, SHE HEARD HER SON UPSTAIRS OR SOMETHING.

>> I AM ASKING IF HE EVER -- [INAUDIBLE]

>> I THINK, THE -- THE STREET SIGN OR STOP SIGN, OR WHATEVER, I THINK HE WAS CHARGED WITH CRIMINAL MISCHIEF, BUT IN TERMS OF A CONVICTION, NO, MA'AM.

>> ANYTHING -- OR ARRESTED FOR ANYTHING VIOLENT?

>> NO, MA'AM.

APPARENTLY THE POLICE WEREN'T CALLED IN THE SUFFOCATION INCIDENT.

THERE IS ALSO --

>> DO YOU KNOW THAT -- THE JUDGE DID NOT -- IN JAIL, TO HELP THE MITIGATOR --

>> WELL, THE STATE HAS THE THREE-PRONGED, MAJOR PRONG IN TERMS OF THAT PARTICULAR ISSUE, I THINK THAT IS ISSUE THREE, ONE IS IT WASN'T PRESERVED.

IN FACT I WOULD ARGUE THAT IT WAS AFFIRMATIVE WAIVER, DEFENSE COUNSEL RAISED THIS MATTER REGARDING THAT MITIGATOR IN HIS OPENING STATEMENT.

>> WHEN LOOKING AT THE PERSONALITY -- THE WHOLE RELATION -- THIS TOWN, NOT LOOKING AT -- MURDER, MITIGATOR.

>> AND THIS PARTICULAR CIRCUMSTANCE ABUSE OF CONCESSION DISCRETION IN TERMS OF WHAT TRIAL COURT CONSIDERED WHEN FINALLY PRESENTED LOOKS AT HESS, SAYS WHAT HESS SAYS ON THE FACE OF IT, IT SAYS YOU CANNOT REJECT THE NO SIGNIFICANT PRIOR CRIMINAL HISTORY, YOU CANNOT REJECT THAT MITIGATOR, BASED

ON INCIDENTS THAT OCCURRED AFTER THE MURDER. AND HE SAID, WELL, I'M NOT CONSIDERING THESE SUBSEQUENT INCIDENTS FOR PURPOSES OF ACCEPTING OR REJECTING THE MITIGATOR, I AM FOCUSING HESS IN THAT REGARD, BUT I WILL CONSIDER THESE THINGS, WHICH, BY THE WAY, AGAIN, DEFENSE COUNSEL HAD ALREADY RAISED IN HIS OPENING STATEMENT, AND ARGUABLY MAKES THE TRIAL COURT DECISION ALL THE MORE REASONABLE IN TERMS OF WEIGHT THE STATE WOULD ARGUE IN CONTEXT OF THESE FACTS WHERE BOTH THESE DEFENSES WERE ALREADY RAISED BY DEFENSE COUNSEL IN PENALTY PHASE OPENING STATEMENT IT WAS REASONABLE FOR THE TRIAL COURT TO CONSIDER IN TERMS OF WEIGHT HE FOLLOWED HESS TO THE LETTER. THE JUDGE IN HIS 83-PAGE ORDER REALLY REASONED BASED ON COMPETENT SUBSTANTIAL EVIDENCE HE CITES IN GREAT DETAIL.

>> DOESN'T THE DISCUSSION, PRIOR TO THE PENALTY PHASE ABOUT THESE INCIDENTS, I MEAN WAS THERE ANY ARGUMENT MADE THAT THESE SHOULD NOT BE USED?

I'M TRYING TO FIGURE OUT WHY THE DEFENSE ATTORNEY WOULD HAVE EVEN MENTIONED THEM, AND OPENING ARGUMENT -- THAT ONLY THING COMES TO MIND THE -- ALREADY SAID WERE BEING USED SO, SOMETIMES, DEFENSE ATTORNEYS WILL THEN MAKE A STATEMENT ABOUT THEM, TO LESSEN THE IMPACT OF IT.

>> IT WAS DISCUSSED SEVERAL TIMES, DURING THE PENALTY PHASE, ONE TIME THE PROSECUTOR WANTED TO CALL THE CORRECTIONAL OFFICERS OUT OF ORDER, AND DEFENSE COUNSEL SAID ONE PERSON, NO, YOU CAN'T DO THAT, THAT IS REBUTTAL, AND I HAVEN'T INTRODUCED ANY EVIDENCE OF THE SIGNIFICANT

CRIMINAL ACTIVITY.

SO BASICALLY

EVEN IF THAT ARGUMENT DEFENSE
COUNSEL WAS CONCEDED THE TRIAL
COURT COULD CONSIDER IT.

AND THERE WERE A COUPLE OF
TIMES LIKE THAT, WHERE
DEFENSE COUNSEL RAISED A
NUMBER OF ARGUMENTS, THAT YOU
CAN'T -- PRESENT THIS EVENT
NOW, DID NOT RAISE THE
HESS ARGUMENT RAISED ON APPEAL.
THAT WAS NOT RAISED UNTIL
AFTER THE CORRECTIONAL
OFFICERS TESTIFIED, AFTER
DEFENSE COUNSEL ALREADY
MENTIONED IN OPENING
STATEMENT IN THE PENALTY PHASE.

>> SO YOUR ANSWER IS NO, THIS
WASN'T PRIOR TO THE PENALTY
PHASE, THIS IS --

>> I HAVE NOT SEEN THAT, NO,
MA'AM.

BUT ESSENTIALLY THE STATE
ARGUMENT IN TERMS OF CCP
REJECTION OF IMPAIRED
SUBSTANTIAL CAPACITY
AS WELL AS PROPORTIONALITY,
TRACKING THE 83-PAGES THE
TRIAL COURT OVER AND OVER
AGAIN RELIED UPON THE FACTS OF
THIS MURDER; THAT IS, THE
DEFENDANT ACTING NORMALLY AT
WORK, THE DEFENDANT EMPLOYER
SAYING THAT HE IS A RELIABLE
EMPLOYEE, THE MOTHER TAKING THE
DEFENDANT HOME, HE LOOKED
NORMAL, THE DEFENDANT -- ARMING
HIMSELF WITH A KNIFE AT HIS
TRAILER, ARMSTRONG HEARING,
GOING THROUGH THE -- GOING, COMING
BACK TRYING TO CONCEAL
HIMSELF, THAT THE DEFENDANT
LYING ABOUT WHAT HE DID, THE
DEFENDANT BRINGING THE CLOTHES
IN THE BAG BECAUSE HE KNEW IT WAS
GOING TO GET BLOODIED, I KNOW I'M
REPEATING MYSELF, THE TRIAL
COURT REPEATED HIMSELF OVER
AND OVER AGAIN IN THE ORDER,
WHERE RELYING UPON
THOSE AND OTHER KEY FACTS
SHOWS THIS MAN HAD A MAP, WE
DON'T KNOW EXACTLY WHAT WAS IN

HIS HEAD IN TERMS OF WHY HE DID THIS, OTHER THAN HE WANTED TO KILL THESE VICTIMS. AND THAT IS EXACTLY WHAT HE DID. AND --

>> THE DEFENDANT HIMSELF TESTIFIED AS TO ONE MINUTE, YOUR HONOR.

>> [INAUDIBLE]

>> THE EXPERT TESTIFIED AT ONE POINT AS TO 30 MINUTES.

AND THEN, LATER ON, HE BACKTRACKED, SAID, WELL THAT IS NOT IN MY NOTES, I REALLY DON'T KNOW.

SO THE TRIAL COURT SAID APPROXIMATELY, I BELIEVE, I DON'T KNOW WHETHER IT WAS APPROXIMATELY BUT THE TRIAL COURT WASN'T HINGING IT ON THE FACT THAT IT WAS EXACTLY TWO OR 30 MINUTES; IT WAS APPROXIMATE.

BUT THE MAIN POINT IS THAT HE PAUSED AT THE -- AT THE THRESHOLD, AND THOUGHT ABOUT IT SOME MORE,

AFTER WALKING AND ZIGZAGGING TO GET THERE, TO THE VICTIMS' TRAILER WITH THE KNIFE IN HIS POCKET, AND THEN HE HID THE KNIFE FROM LORETTA.

WHETHER SHE CAME TO THE DOOR, I MEAN THIS MAN HAD HIS WITS ABOUT HIM.

>> HOW IS IT EVIDENCE THAT HE -- THAT I -- YOU HAD THOSE, THE REST OF THE -- GIRLFRIEND, FROM HIM -- IN OTHER WORDS, WHO OF COURSE, WHAT HE SAID FIRST, BEFORE HE STARTED STABBING, WHERE DOES THAT COME FROM?

>> THAT COMES FROM HIM, IN TERMS OF ASKING LORETTA, I THINK IT WAS THE PHONE NUMBER, I BELIEVE.

>> SO HE SAYS AGAIN HE -- HE COMES OUT OR SHE IS RIGHT AT THE DOORSTEP?

>> SHE COMES -- TO THE DOOR. WE DON'T KNOW EXACTLY WHERE SHE IS IN THE THRESHOLD, BUT HE BARGES IN, STARTS STABBING.

>> ASKING HER --

>> WHEN SHE SAYS I DON'T HAVE IT, I'M NOT GOING TO GIVE IT TO YOU, THAT IS WHEN HE STARTS STABBING, IS THAT -- THE MOTHER APPEARS HE DISABLES LORETTA, MOTHER COMES AROUND THE CORNER, HE GOES TO HER STABBING HER, AFTER HE BREAKS THE KNIFE, IN TERMS OF DETERMINATION TO KILL THESE WOMEN, HE BREAKS THE KNIFE ON BOTH VICTIMS, SO THAT -- THAT MAKES IT CERTAINLY -- HAC HERE, NOBODY DENYING THERE'S AGGRAVATORS.

>> I WOULD ARGUE IT SHOWS DETERMINATION AS WELL.

>> WHAT IS THE -- THERE ARE TWO OTHER FACTORS FACTS TO THIS MURDER, WHAT IS THE SITUATION WHERE THE LITTLE BOY, HE LITTLE BOY --

>> AUBREY.

>> IS IN HIS OWN -- ROOM?

>> YES, MA'AM.

>> AFTER THE MURDERS HE LOOKS IN THERE.

>> YES, MA'AM.

>> AND THEN HE CLOSES THE DOOR.

>> THE TRIAL COURT RELIES UPON TO DEMONSTRATE HE HAD IMPULSE CONTROL.

I MEAN THE TRIAL COURT BASICALLY --

>> HE WAS REALLY -- AGAIN, IF THE MOTIVE WAS IN SOME SICK WAY I'M GOING TO GET BACK AT THE GIRLFRIEND, ALSO REALIZED IN HIS SICK WAY THAT -- THIS IS NOT THE -- SON WAS --

>> THE SON AUBREY WAS THE SON OF ANOTHER ONE OF ALICE'S DAUGHTERS WAS ADOPTED --

>> IS THERE ANY EVIDENCE THAT HE KNEW THE SON?

>> HE KNEW THE SON WAS THERE, ALTHOUGH ANOTHER TIME, WHEN HE IS TALKING TO DETECTIVES, HE SAYS SOMETHING LIKE WELL IF I HAD KNOWN THE SON WAS THERE I WOULDN'T HAVE DONE IT, BUT THEN ANOTHER --

>> IF HE HAD KNOWN THE SON WAS THERE HE WOULDN'T HAVE DONE --

>> RIGHT, YOU HAVE TO -- YOU HAVE TO INTERPRET WHAT HE IS SAYING, BUT WHAT I CARED ABOUT BY IT, WHAT I CARED ABOUT, IF HE KNEW IN ADVANCE THE SON WAS GOING TO BE THERE THAT PARTICULAR TIME HE WOULDN'T HAVE DONE IT.

>> AND WHAT ABOUT THE CLOTHING, DID HE BRING CLOTHING WITH HIM FOR --

>> YES, MA'AM, HE WORE -- AS YOU SAID CLOTHING KHAKI SHORTS POLICE RECOVERED HAD HIS DNA ON THE SHORTS, AND A KNIFE BLADE IN ONE OF THE POCKETS WITH DNA OF ONE OF THE VICTIMS ON IT.

THAT KNIFE, BY THE WAY, MATCHED ANOTHER PART OF A KNIFE IN THE SINK OF THE VICTIM'S TRAILER, AND THEN THAT KNIFE, PART HAD THE DNA OF THE OTHER VICTIM ON IT. AND THE DNA, BY THE WAY, ANALYSIS CAME BACK IN QUADRILLON.

>> THERE IS NOT A QUESTION THIS DEFENDANT DID IT.

>> RIGHT, WELL, IT HELPS EXPLAIN, WHY HE -- WHY HE LIED, I MEAN HE KNEW HE GASHED HIS HAND, HE KNEW HE BLED IN THE TRAILER, THE VICTIM'S TRAILER, AND SO HE MAKES UP THIS STORY ABOUT -- TO ARMSTRONG, AND THEN THE POLICE THAT -- HE TRIES TO EXPLAIN AWAY THE BLOOD THAT HE KNOWS THE POLICE ARE GOING TO FIND IN THE VICTIM'S TRAILER.

I GASHED MY HAND BECAUSE HER EX-BOYFRIEND AND I GOT IN A SCUFFLE, AND I CUT MY HAND WITH THIS BASED ON THE SCUFFLE WITH THE EX-BOYFRIEND, SO I -- I MEAN HE IS TRYING TO -- HE IS TRYING TO EXPLAIN IT, FACTS AWAY THAT HE KNOWS THE POLICE ARE GOING TO GET, SO THAT THE DNA THAT IS IMPORTANT IN TERMS OF EXPLAINING HIS EXPLANATION.

>> DO WE HAVE THE VIDEO OF ALL OF HIS VARIOUS CONFESSIONS TO THE POLICE?

>> WE HAVE TWO VIDEOTAPES, I

THINK STATE'S EXHIBITS 121 AND 122.

>> HOW CLOSE IN TERMS OF THE MURDER --

>> AND THE COURT HAS THEM.

>> HOW CLOSE IN TERMS OF THE MURDER?

>> THEY ARE THE DAY -- MURDER WAS AUGUST 20, AND THE VIDEOS IN THE AFTERNOON, LATE AFTERNOON, EVENING OF THE 21.

>> WHAT DID THOSE VIDEOS SHOW ABOUT HIS AFFECT AT THAT TIME?

>> I WOULD CHARACTERERIZE IT SOMBER.

HE KNOWS THAT HE IS IN A WORLD OF HURT.

I MEAN --

>> DID HE BREAK DOWN?

WOULD HE START CRYING?

>> HE PUTS HIS HAND IN HIS ARMS, ONCE OR TWICE -- THERE ARE A NUMBER OF INAUDIBLES, BECAUSE HE IS SPEAKING VERY SOFTLY, AND MUMBLING SOME, BUT YOU CAN HEAR ENOUGH TO KNOW THAT THIS MAN, HE MAY BE SLOW BUT HE IS NOT AS SLOW AS SOME PEOPLE WOULD LIKE TO HAVE SOME PEOPLE BELIEVE.

BY THE WAY, IN TERMS OF HIS GRADES, HIS GRADES ARE ALL OVER THE MAP, HE HAD SOME B'S AND C's, AN AWARD IN JOB CORPS, SO IN FACT A COUPLE OF RELATIVES TESTIFIED HE THOUGHT HIGH SCHOOL WAS A SOCIAL ACTIVITY, SO I MEAN YOU HAVE ALSO AN INTEREST FACTOR AS WELL AS A COGNITIVE FACTOR IN TERMS OF MENTAL CAPACITY, CERTAINLY GIVEN HIS ATTEMPTED EXPLANATIONS FOR WHAT HE KNEW WAS GOING TO BE THE BLOOD AT THE SCENE, YOU KNOW, HE WAS TRYING TO COVER HIMSELF WHEN HE TRIED TO -- STORY A COUPLE OF TIMES WITH THE POLICE. AND ONE OF THE DETECTIVES KEEPS ASKING WHY DIDN'T YOU CALL THE POLICE.

HE TRIES TO COME UP WITH SOME STORY, I WAS AFRAID, OR HE THREATENED ME, WHAT

HAVE YOU, THEN, THE DETECTIVE

-- DETECTIVE SAYS I DON'T

BELIEVE YOU.

>> in TERMS OF THE OTHER DETECTIVE HE
SAYS DO YOU BELIEVE ME?

THE OTHER DETECTIVE SAYS ABSOLUTELY
NOT, FINALLY HE STARTS --

CONFESSING AFTER THAT VIDEO

TURNED ON, HE SAID HE, DAVIS,
WANTS THE AUDIOTAPE, SO THE POLICE

START TAPING IT ON AUDIOTAPE,
AND UNKNOWN TO THESE DETECTIVES,

ACTUALLY ANOTHER DETECTIVE

STARTED VIDEOTAPING, SO

THERE IS A SEGMENT OF TWO

VIDEOTAPES THE OTHER

DETECTIVE DID, THERE IS

ANOTHER VIDEOTAPE TWO

DETECTIVES DID, AND WHEN THEY

FIND OUT MORE INFORMATION THEY

INTERVIEW HIM AGAIN, HAVE

ADDITIONAL INCRIMINATING

EVIDENCE IN TERMS OF HIS

STATEMENTS, IN TERMS OF

BRINGING THE CLOTHES OVER

THERE, FOR EXAMPLE, THE VIDEOTAPE

HAD ALREADY BEEN TURNED

OFF, THE DETECTIVE TESTIFIED AS

TO THOSE DETAILS, THE STATE

WOULD ASK THE COURT TO AFFIRM THE

SENTENCE AND TRIAL COURT

CAREFULLY CONSIDER THE JURY

RECOMMENDATION, CAREFULLY AND THE

83-EXTENSIVE PAGE ORDER, BASED

THE FINDINGS UPON COMPETENT

SUBSTANTIAL EVIDENCE, WAS

REASONABLE IN WEIGHING THE

AGGRAVATORS, MITIGATORS,

A LOT OF THE MENTAL MITIGATION

AT THE TIME

TRIAL ACTUALLY DID CONSIDER IN

TERMS OF NONSTATUTORY

MITIGATION.

THANK YOU.

>> THANK YOU.

JUST A COUPLE OF THINGS,

I WOULD LIKE TO REFER THE

COURT TO SOME OF THE

DEFENDANT'S STATEMENTS, AGAIN,

I WOULD JUST EMPHASIZE I THINK

IT IS VERY IMPORTANT TO LOOK

AT WHAT MR. DAVIS'S MENTAL

PROCESSES WERE AT THE TIME HE

COMMITTED THIS CRIME, AND HIS

STATEMENTS TO POLICE AND TO THE EXPERTS, AND HIS OWN TRIAL TESTIMONY WERE ABSOLUTELY COMPLETELY CONSISTENT. AND THIS WAS A PERSON WHO HIMSELF DID NOT HAVE A CLUE ABOUT WHY HE DID THIS.

ONE OF HIS STATEMENTS HE SAID -- I THINK THIS WAS TO THE DETECTIVE, HE SAYS IT IS NOT LIKE I WANTED TO DO IT, YOU THINK BECAUSE I DID IT I WANTED TO DO IT, HE IS THINKING I DIDN'T WANT TO DO THIS.

>> WHAT IS THE --

>> I DON'T KNOW WHERE IT FITS IN, BUT HE DIDN'T -- AS MR. WHITE SAYS THIS WASN'T RANDOM, HE DIDN'T GO INTO A -- TRAILER A BLOCK AWAY, AND HE WENT TO THE TRAILER OF HIS EX-GIRLFRIEND.

>> HOW DOES THAT FIGURE INTO WHETHER IT MAKES IT MORE AGGRAVATED OR LESS AGGRAVATED THAN IF IT HAD BEEN A RANDOM I THINK I'M GOING TO JUST -- THE DEVIL TELLS ME TONIGHT I'M GOING TO KILL SOME PEOPLE.

>> THAT IS REALLY A HARD QUESTION.

I DON'T KNOW IF I CAN ANSWER THAT QUESTION. YOU KNOW, THE EVIDENCE -- AMY WARE DIDN'T DUMP HIM, SHE WAS MARRIED.

SHE MOVED BACK TO NORTH CAROLINA.

>> BUT -- HE SELECTED THIS TRAILER TO GO TO.

I JUST -- I'M TRYING TO PROCESS HOW THAT FITS INTO THE ISSUE OF EITHER PROPORTIONALITY, OR -- CERTAINLY, TO ME, IF THERE IS -- BECAUSE HE SELECTED THE TRAILER, SOMEBODY THAT HAS A RELATIONSHIP WITH -- WITH THE IDEA OF GOING THERE WITH A KNIFE, TO KILL THEM.

SO --

>> I MEAN HE KNEW THEM. THAT IS REALLY ALL WE KNOW ABOUT IT. I MEAN I ALL I CAN DO IS SPECULATE ABOUT THAT, I REALLY

-- I REALLY CAN'T ANSWER THAT QUESTION.

IT IS -- I DON'T THINK IT IS THE TYPE OF CASE THAT, YOU KNOW, MY OPPONENT HERE REFERRED TO WHERE HE JUST DECIDED I'M GOING TO KILL SOMEONE BECAUSE I WANT TO KILL SOMEONE.

I DON'T THINK HE WANTED TO KILL SOMEONE.

AT LEAST NOT THE PERSON THAT EXISTED.

HE WENT INTO THE DISASSOCIATIVE STATE OR THE PERSON AFTERWARDS, HE WAS IMMEDIATELY REMORSEFUL WOKE UP THE NEXT DAY VISIONS OF BLOOD, SEEING THE CHILD, AND HE IS THINKING, YOU KNOW, WHAT -- WHO IS THIS?

HE SAYS I REMEMBERED, I RECOGNIZED THE CHILD, THE CHILD WAS MY EX-GIRLFRIEND'S NEPHEW, THAT IS WHEN I KNEW, YOU KNOW, WHERE THIS OCCURRED.

HE DIDN'T EVEN REALLY HAVE A GRASP WHERE IT OCCURRED UNTIL FULLY AWAKE, GOES TO HIS ROOMMATE, SAID WE NEED TO CHECK ON THIS, SAYS I DIDN'T KNOW IF IT WAS TRUE.

AND THEN OF COURSE, WHEN HE SEES THE BODIES HE REALIZED YES, I DID THIS; IMMEDIATELY DECIDES TO LIE ABOUT IT.

SO YOU KNOW, HE WAS VERY TROUBLED BY WHAT HE HAD DONE, I JUST -- I GOT TO GO BACK TO THIS DOESN'T FIT INTO THE COURT'S DEFINITIONS OF CCP. I JUST DON'T SEE IT.

AND THEN I JUST WANT TO CLARIFY ANOTHER QUESTION, THAT THE INCIDENT -- BEHAVIOR AFTER THE MURDER, THE DEFENSE ARGUED I GUESS THEY SAID, THEY CONCEDED THAT WAS RELEVANT TO HOW MR. DAVIS WOULD DO IN PRISON, THAT IS HOW THAT GOT INTO EVIDENCE THERE. THEY ARGUED AT TRIAL THAT IT IS NOT RELEVANT TO THE STATUTORY MITIGATOR.

>> THANK YOU.
YOU ARE WELL BEYOND YOUR REBUTTAL TIME.
>> THANK YOU VERY MUCH.
>> THE COURT WILL BE IN
RECESS FOR TEN MINUTES.
PLEASE RISE.
>> PLEASE RISE.
>> GOOD MORNING.
>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.