

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> LAST CASE ON THE COURT'S  
DOCKET FOR THE MORNING IS  
ZOMMER VERSUS STATE.

MR.^BECKER.

>> MAY IT PLEASE THE COURT.

MY NAME IS MICHAEL BECKER. I'M  
ASSISTANT PUBLIC DEFENDER IN  
DAYTONA BEACH, I REPRESENT THE  
DEFENDANT TODD ZOMMER IN A  
APPEAL FOR THIS COURT  
CONVICTION OF FIRST-DEGREE  
MURDER AND SENTENCE OF DEATH.

MR.^ZOMMER WAS CONVICTED OF  
KILLING HIS NEXT DOOR NEIGHBOR.  
WE'VE LIMITED OUR APPEAL TO  
ISSUES CONCERNING THE PROPRIETY  
OF THE SENTENCE.

AS TO THE FINAL ISSUE IN THE  
BRIEF, THE SO-CALLED, RING  
ISSUE, WE HAVE PRESENTED THAT  
TO THIS COURT FOR PURPOSES OF  
PRESERVING IT, RECOGNIZING THAT  
THIS COURT HAS REJECTED IT  
MANY, MANY, MANY, OCCASIONS.

>> THIS CASE HAS A PRIOR  
VIOLENT FELONY.

>> CONTEMPORANEOUS VIOLENT  
FELONY, YES.

>> DOESN'T IT ALSO HAVE A PRIOR  
VIOLENT FELONY?

>> YEAH, I THINK IT DOES.

>> WHICH IS IMPORTANT FOR

PROPORTIONALTY ANALYSIS.

>> EXACTLY.

>> THAT HE WAS A CONVICTED  
FELON OF PRIOR VIOLENT RAPES OR  
PRIOR VIOLENT CRIMES.

>> YES.

JUDGE MORGAN IN THIS CASE FOUND  
THERE WERE FOUR AGGRAVATING  
FACTORS.

PRIOR CONVICTION FOR VIOLENT  
FELONY, WITNESS ELIMINATION,  
HAC AND CCP.

WE'VE ATTACKED CCP AND THE HAC  
AGGRAVATORS.

>> UNDER THE CCP, HELP ME  
UNDERSTAND, IT SEEMS AS THOUGH  
THE BEST THAT YOU REALLY, BEST  
THAT YOU HAVE IS WHERE THE  
TRIAL COURT SAID THIS WAS  
REALLY NOT WELL-PLANNED.  
THIS WAS KIND OF A BUNGLED  
ATTEMPT?

>> I THINK THAT, FAIRLY  
IMPORTANT --

>> WELL, BUT I MEAN YOU GET  
INTO, REALLY, I DON'T KNOW HOW  
IT MUST FEEL FOR A LAWYER TO  
SEE HIS CLIENT ON TV TALKING TO  
A TV REPORTER, BUT, I MEAN THIS  
IS, THERE IS ADMISSION OF THE  
KILLING AND THAT THE WHOLE  
BACKGROUND ON IT.  
SHE SHOULD HAVE-MINDED HER OWN  
BUSINESS.

HE KILLED HER TO SHUT IT UP.  
WENT EVERY OVER THERE FOR THIS

PURPOSE.

HE DIDN'T GO OVER TO SEE THE COLLECTION OF DOLLS, DID HE?

>> AGAIN, WE HAVE, THE FACTS OF THIS CASE BASICALLY COME FROM THE DEFENDANT'S OWN MOUTH.

>> I UNDERSTAND.

>> THREE DIFFERENT STATEMENTS, THE STATEMENT THAT HE MADE TO AN INMATE, A STATEMENT THAT HE MADE TO THE NEWSPAPER, AND THEN HIS TESTIMONY AT TRIAL.

>> BUT YOU DON'T, SINCE YOU HAVE SAID, YOU DON'T ATTACK A VOID ARREST AS A AGGRAVATOR. SO, YOU HAD ALREADY RECEIVED THE \$20. HE LEFT.

HIS PURPOSE IN COMING BACK IS ALREADY THAT THE DOMINANT MOTIVE WAS, HAS BEEN, AVOID ARREST.

DOESN'T THE, NOT JUST WHAT HE HAS TOLD OTHER PEOPLE, ALTHOUGH THAT CERTAINLY ITSELF IS TELLING, BUT IT IS THE VERY FACT THAT HE HAD ALREADY GOTTEN THE MONEY.

>> I THINK IT DEPENDS WHICH OF HIS STATEMENTS YOU BELIEVE.

>> WELL HE, SO --

>> BECAUSE HIS TESTIMONY AT TRIAL DID NOT SAY THAT.

>> SO HOW DO YOU CONCEDE THE AVOID ARREST AGGRAVATOR?

>> WELL, BECAUSE, OKAY, HERE'S HOW THIS COMES INTO PLAY.

IN HIS TESTIMONY AT TRIAL, HE SAYS THAT HE GOT THE MONEY, WENT HOME AND INSTEAD OF GETTING GAS THAT HE ORIGINALLY PLANNED, HE WENT OUT AND BOUGHT MORE DRUGS AND DID DRUGS. WHEN HE GETS HIGH, HE SAYS HE NEEDS TO TALK.

HE WENT BACK OVER THERE.

THEY WERE THEN TALKING AND THEN, THE EVIDENCE SUPPORTS THERE WAS NO FORCED ENTRY AT THAT TIME.

SHE ALLOWED HIM IN.

AND THE EVIDENCE SEEMED TO APPEAR THEY WERE TALKING ABOUT THE DOGS AND EVERYTHING.

AND HE THOUGHT IT WAS CREEPY AND THEN HE SAID TO HER YOU KNOW, DON'T YOU, OR SHE SAID TO HIM, ACCORDING TO HIS TRIAL TESTIMONY, I KNOW WHAT YOU DID.

>> BUT AS WE'RE SITTING HERE NOW TO LOOK AT IT, RECOGNIZING WE DO HAVE DIFFERENT KINDS OF VERSIONS, ARE WE TO LOOK AND SEE, IS THERE ANY STATEMENT OR ANY VERSION OF FACTS THAT ARE DIFFERENT, OR IS OUR JOB REALLY LIMITED TO DETERMINE WHETHER THERE IS COMPETENT EVIDENCE TO SUPPORT THIS FINDING THAT CCP APPLIES?

UPON WHICH SOMEBODY CAN RELY. DO YOU UNDERSTAND?

>> SURE.

>> IT SEEMS AS THOUGH  
PRESENTING THREE DIFFERENT  
VERSIONS THAT SOME HELP IN  
DIFFERENT WAYS DOESN'T ANSWER  
WHAT WE NEED TO ANSWER.  
>> WELL, WHEN YOU'VE GOT A  
TRIAL JUDGE WHO IS PICKING AND  
CHOOSING FROM ALL THREE  
VERSIONS THEN HOW DO WE KNOW --  
>> BUT, WE KNOW WHAT HE FOUND,  
AND WE KNOW, I MEAN, THERE'S A  
RATHER DETAILED ORDER THAT THE  
TRIAL COURT PRODUCED, AND THE  
FACT OF THE MATTER IS, THE  
TRIER OF FACT IS THE ONE THAT  
GETS TO PICK WHICH VERSION THE  
TRIER OF FACT CHOOSES TO  
BELIEVE.  
AND, I JUST, IT SEEMS LIKE  
YOU'RE ASKING US TO  
FUNDAMENTALLY CHANGE THE WAY,  
NOT ONLY DEATH CASES ARE  
HANDLED BUT THE WAY ANY KIND OF  
APPELLATE CASE IS HANDLED.  
>> NO, I'M NOT ASKING THE COURT  
TO DO THAT.  
WHAT I'M ASKING THIS COURT TO  
DO IS LOOK AT THIS RECORD AND  
REALIZE THAT, IN ASSESING  
WHETHER THERE IS COMPETENT  
SUBSTANTIAL EVIDENCE, IF THERE  
IS AS MUCH COMPETENT  
SUBSTANTIAL EVIDENCE TO SUPPORT  
A DIFFERENT CONCLUSION I THINK  
THIS COURT HAS TO ACCEPT THAT.  
>> NO, BUT WHERE IS THE LAW

THAT SUPPORTS THAT?

THAT WOULD BE A FUNDAMENTAL  
CHANGE IN THE LAW.

WOULD IT NOT?

>> NO, I DON'T THINK IT WOULD.

>> YOU MEAN WHEN THERE IS  
COMPETING COMPETENT SUBSTANTIAL  
EVIDENCE AND WE, WOULD DECIDE  
WELL, THERE IS IMBALANCE HERE  
WE DECIDE OR ONE SIDE GETS THE  
BENEFIT OF THE FACT THAT WE  
CONCLUDE THAT THE EVIDENCE IS  
IMBALANCED?

>> I THINK THIS COURT HAS DONE  
IT ON NUMEROUS OCCASIONS, WHEN  
YOU ASSESS, FOR INSTANCE,  
MITIGATING FACTORS, THIS COURT  
HAS MANY, MANY TIMES SAID, WE  
THINK THIS IS A MAJOR FACTOR  
WHEN THE TRIAL COURT SAID, NO  
IT'S NOT.

THAT WAS A FINDING OF FACT THAT  
THIS COURT DISAGREES WITH.

>> HOW DO WE SAY IT IS A MAJOR  
FACTOR?

THEN YOU'RE GETTING INTO THE  
WEIGHT.

IF THERE IS A EVIDENCE TO  
SUPPORT A MITIGATOR, WE SAY  
YES, THE TRIAL COURT NEEDED TO  
PROPERLY FOUND IT OR DIDN'T,  
BUT I DOUBT YOU COULD FIND  
CASES WHERE WE SAID THE TRIAL  
JUDGE SHOULD HAVE GIVEN IT MORE  
WEIGHT? .

>> WHEN YOUR ANALYSIS OF THE

PROPORTIONALITY, THIS COURT SAID, GIVEN OVERWHELMING MITIGATING FACTORS HERE, PARTICULARLY THE MENTAL MITIGATORS, THIS COURT, WE CAN NOT CONCLUDE THAT DEATH IS APPROPRIATE HERE.

THE TRIAL COURT FOUND COMPLETELY DIFFERENT.

>> YOU WERE SAYING BEFORE THAT GOING BACK TO WHAT YOU BELIEVE HAPPENED, THAT WHEN HE WENT BACK THE SECOND TIME TO VISIT HER, THAT SHE APPROACHED OR CONFRONTED HIM WITH THE FACT, I KNOW WHAT YOU DID, AND THAT MAY HAVE PROMPTED HIM TO BEHAVE IN THE WAY IN WHICH HE DID AND THEREFORE IT HEIGHTENED -- IS NOT THERE, I THINK THAT'S WHAT YOU'RE TRYING TO TELL US?

>> YES.

>> WAS THERE OTHER EVIDENCE AS WELL THAT THE REASON HE WENT BACK THERE TO BEGIN WITH THE SECOND TIME WAS BECAUSE HE FELT WHEN HE MET HER THE FIRST TIME SHE RECOGNIZED HIM AS THE ONE WHO STOLE THE BOAT FROM THE NEIGHBOR?

>> YES.

>> AND WHEN HE WENT BACK THE SECOND TIME, PERHAPS THAT WAS HIS INTENT TO KILL HER.

HER STATEMENTS PROMPTED OR, EXPEDITED HIS INTENTIONS, ISN'T

THAT CONSISTENT WITH THE WHOLE STORY?

>> NO, AND THE REASON WHY THE ADDITIONAL FACTORS, IF THERE WAS A PREARRANGED PLAN AND A CAREFULLY DRAWN-OUT PLAN, HE WENT BACK THERE WITHOUT ANY TOOLS TO ACCOMPLISH THIS.

>> NOW THERE'S A DIFFERENCE BETWEEN A PREARRANGED PLAN, AND IT BEING A CAREFUL PLAN. WOULD YOU AGREE?

I MEAN IF IT IS REQUIRED THERE BE A CAREFUL PLAN, THEN WE HAVE CASE LAW THAT HAS DEVIATED FROM THAT, AND YOU KNOW, WHETHER THAT IS, YOU SAY WELL WE DEVIATED IMPROPERLY.

BUT I'VE UNDERSTOOD OUR CASE LAW TO SAY THERE HAS TO BE HEIGHTENED PREMEDITATION IN THAT THEY, AND TO ME IT'S KEY WHETHER HE RETURNED TO THE HOUSE WITH THE INTENT TO KILL HER.

AND I THINK THAT THERE IS COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THAT, BUT WHETHER IT HAS TO BE A CAREFUL, WELL-THOUGHT OUT PLAN, TELL US WHERE OUR CASE LAW HAS REQUIRED THAT, AND HAVE WE, IF IT HAS, AND WE'VE SAID WE DEVIATED FROM THAT CASE LAW?

>> THERE CERTAINLY IS CASE LAW THAT YOU'VE SAID THERE WAS A

CAREFUL PLAN HERE.

YOU KNOW AND MAYBE OVER THE YEARS THAT HAS KIND OF BEEN BLURRED AND USED INTERCHANGEABLY.

>> AREN'T THE CASES WHERE WE SAY THE PROCUREMENT OF THE WEAPON IN ADVANCE IS ONE OF THE SIGNS OF WHETHER IT IS CCP OR PREMEDITATED MURDER?

>> RIGHT.

>> THE ABSENCE OF HAVING THE WEAPON WHEN YOU GO OVER, WHERE YOU ARE INTENDING TO KILL, COULD BE A FACTOR WEIGHING AGAINST THAT HE WAS INTENDING TO KILL HER?

>> YES.

>> BUT IN THIS CASE IT IS NOT THE ONLY FACTOR AND I THINK AS, JUSTICE LABARGA WAS SAYING, THERE IS OTHER EVIDENCE THAT SUPPORTS THE TRIAL COURT'S FINDING THAT HE RETURNED TO THE HOUSE WITH THE INTENT TO KILL HER, WOULD YOU AGREE THERE'S EVIDENCE, COMPETENT SUBSTANTIAL EVIDENCE THAT SUPPORTS THAT FINDING HE RETURNED TO THE HOUSE WITH THE INTENT TO KILL HER?

>> I THINK THERE IS EVIDENCE OF THAT.

>> TO ME, ONCE YOU GET THERE, THAT, BEFORE HE COMES TO THE HOUSE, HE WASN'T COMING THERE, I MEAN, YOUR ARGUMENT WOULD BE

MUCH STRONGER, AND, HIS CASE ON THIS ISSUE WOULD BE MUCH STRONGER IF THIS OCCURRED DURING THE FIRST VISIT, THAT HE GOT THE MONEY, HE REALIZED SHE RECOGNIZED HIM AND HE STARTED TO STRANGLE HER OR DO WHATEVER BUT I THINK THAT FACTOR, FROM MY VIEW, DISTINGUISHES THIS FROM A LOT OF OTHER CASES WHERE THE KILLING OCCURS AFTER THE OTHER INTENT, WHICH MIGHT BE INTENT TO ROB OR SOMETHING, HAS BEEN FORMULATED.

>> AND I UNDERSTAND WHAT THIS COURT IS SAYING.

ANOTHER FACTOR THAT THE TRIAL COURT FOUND IN DETERMINING THIS WAS CCP WAS THAT HE WENT BACK AND MADE IT LOOK LIKE A ROBBERY.

I THINK THAT'S IMPROPER CONSIDERATION BECAUSE AT BEST, THAT WAS AN AFTERTHOUGHT, AND IN FACT THAT WOULD MILITATE AGAINST THE FINDING THAT THIS WAS WELL-THOUGHT OUT BECAUSE WHEN HE LEFT, HE WAVED TO A NEIGHBOR.

WHY WOULD HE RISK THEN GOING BACK KNOWING HE HAD ALREADY BEEN SEEN.

>> HE IS A DRUG ADDICT.

HE DOESN'T, THAT IS THE WHOLE PROBLEM IS THAT, WHETHER CCP WAS INTENDED TO BE USED FOR

MAFIA-STYLE EXECUTION KILLINGS AND WHETHER THAT IS WHAT THE LEGISLATURE INTENDED AND THAT IS WHAT THIS COURT ORIGINALLY INTENDED, THAT IS NOT HOW THE LAW DEVELOPED.

>> RIGHT.

>> IT ALLOWS FOR PEOPLE BOTH MENTALLY ILL, AND DRUG-ADDICTED TO STILL BE ABLE TO HAVE HEIGHTENED PREMEDITATION FOR CCP BE FOUND.

>> I UNDERSTAND THAT.

>> MY PROBLEM ANYWAY IS ASSUMING, ASSUMING I WAS SYMPATHETIC ON YOUR CCP ARGUMENT, HAVING A MUCH GREATER TIME SEEING HOW THIS ANYTHING BUT ALMOST A CLASSIC CASE OF EXTREMELY HEINOUS ATROCIOUS AND CRUEL, AND WHEN YOU HAVE THAT ALONG WITH AVOID ARREST AND PRIOR VIOLENT AND CONTRARY FELONY, YOU'VE GOT SUBSTANTIAL AGGRAVATION.

SO I GUESS THE CCP SEEMS LIKE ALMOST, IN A WAY IT IS NO GREATER THAN AVOID ARREST BUT THIS HAC AND PRIOR VIOLENT FELONY IS, IN MY, YOU KNOW, THE SUBSTANTIAL AGGRAVATION.

>> WELL, AS FAR AS HAC IS CONCERNED, THIS COURT HAS PREVIOUSLY HELD IF A THING IS HAC IF IT IS CHARACTERIZED BY EXTREME AND OUTRAGEOUS

DEPRAVITY AS EXEMPLIFIED BY  
THE DESIRE TO INFLICT A HIGH  
DEGREE OF PAIN.

>> YOU KNOW, WE'VE BEEN DOWN  
THAT RODE OVER THE LAST DECADE  
AND THERE DOES NOT HAVE TO BE  
INTENT TO INFLICT IT.

IT HAS TO HAVE THE EFFECT ON  
THE VICTIM OF BEING EXTREMELY  
HEINOUS, ATROCIOUS AND CRUEL  
AND REPEATEDLY STABBING,  
REPEATED STABBING,  
CONSCIOUSNESS, THE DEFENSIVE  
WOUNDS, THE, AND EVERYTHING  
ELSE THAT WENT ON MAKES THIS AN  
EXTREMELY HEINOUS, ATROCIOUS  
AND CRUEL MURDER.

IT IS NOT HIS INTENT TO INFLICT  
IT ACCORDING TO OUR CASE LAW.

>> WELL, I WOULD RESPECTFULLY  
DISAGREE WITH YOU BECAUSE, AND  
IN LIGHT OF YOUR PREVIOUS  
ARGUMENT OR THE PREVIOUS CASE  
THAT JUST CAME UP, I WAS GOING  
TO SAY THE GOOD NEWS WE'RE JUST  
APPLYING FLORIDA LAW HERE.

BUT THE BAD NEWS FLORIDA LAW IS  
ALL OVER THE BOOKS ON THIS ONE.

>> WAIT A MINUTE, NOT ON THAT  
ISSUE IT IS NOT.

FLORIDA LAW HAS BEEN VERY  
CONSISTENT, AT LEAST FOR 10  
YEARS I'VE BEEN HERE, ALWAYS  
SAID IT CAN BE THE INTENT BUT  
ALSO IS THAT THE INDIFFERENCE  
TO THAT SUFFERING.

>> RIGHT.

>> AND SO THERE'S TWO DIFFERENT ONES.

>> RIGHT.

>> WHERE IS IT INCONSISTENT IN THE LAST 10 YEARS?

I DON'T SEE THAT.

>> BECAUSE YOU HAVE ON OCCASION SAID, FOCUSED ON THE INTENT.

>> NOT IN THE LAST 10 YEARS WE HAVEN'T.

AS LONG AS I'VE BEEN HERE.

THIS IS ARGUMENT DEFENSE HAS RAISED AS LONG AS I'VE BEEN ON THE COURT, BUT AS I UNDERSTOOD IT DAY ONE I STEPPED IN HEAR IS THE OR. NOT THAT YOU HAD TO HAVE INTENT TO DO IT.

I DON'T SEE IT.

GIVE ME A CASE I WILL CERTAINLY HAPPY TO GO READ IT BUT I'M NOT AWARE OF ONE.

>> I GUESS IT IS IN THAT THIS COURT IS STILL CITING THOSE CASES THAT STAND FOR THOSE PROPOSITIONS IN YOUR OPINIONS AND THOSE CASES THAT USE THAT LANGUAGE, YOU'RE STILL CITING THEM.

AND IF YOU'RE STILL CITING THEM FOR THAT PROPOSITION, THEN I'D SAY YOU'RE STILL APPLYING THAT. MAYBE THE FACT THAT THAT PARTICULAR CASE GO WITH THE OTHER INDIFFERENCE BUT YOU'RE STILL CITING THE CASE THAT

STANDS FOR THAT.

>> I DON'T BELIEVE THERE HAS BEEN AN HAC CASE THAT HAS GONE THROUGH HERE IN THE LAST 10 YEARS, WITH THE ARGUMENT, I DIDN'T INTEND TO DO IT HAS NOT BEEN RAISED.

THAT IS A COMMON, A COMMON ARGUMENT AND I JUST OVER AND OVER AGAIN WE KEEP WRITING ON IT.

>> I DON'T THINK IT ISN'T I DIDN'T INTEND TO DO IT.

>> I DIDN'T INTEND THAT TO BE, I DIDN'T INTEND THE VICIOUSNESS, I DIDN'T INTEND THE HARM.

>> BECAUSE THIS COURT STILL SAYS THAT THE KILLING MUST BE CONSCIOUSLESS AND PITYLESS AND UNNECESSARILY TORTUOUS TO THE VICTIM.

>> IF YOU HAD ANY ADVOCATE HAC HAS GONE TOO FAR I WOULD ADVOCATE THAT BUT THIS CASE, IN THE JUDGE'S FINDING HE TALKS ABOUT IT WAS PROLONGED ATTACK. SHE WAS CONSCIOUS AT LEAST DURING MOST OF THE ATTACK UP UNTIL THE DEFENDANT SLIT THE THROAT.

SHE WAS CONSCIOUS WHEN HE WAS HITTING HER ON THE HEAD.

SHE HAD WOUNDS ON BOTH SIDES OF HER HEAD INDICATED MOVEMENT, THAT IS WHAT THE MEDICAL

EXAMINER TESTIFIED.

HE TESTIFIED, HIMSELF, AT TRIAL THAT IT TOOK A PERIOD OF TIME TO KILL MRS. ^ROBINSON AND THAT, QUOTE, THE TIME FRAME ISN'T ASSURE AS PEOPLE ARE MAKING IT SEEM.

HOW DOES --

>> WHAT DOES THE PERIOD OF TIME MEAN?

>> WELL IT DOESN'T -- UNDER OUR CASE LAW, 20, OR 30, OR 40 SECONDS OF BEING TORTURED HAS BEEN ENOUGH UNDER THOSE CASES TO DO WITH STRANGULATION AND, HERE YOU'VE GOT --

>> WE ALSO DON'T KNOW HOW LONG THE VICTIM WAS CONSCIOUS.

WE DON'T KNOW THAT.

>> BUT WE DO KNOW THAT THE DEFENDANT SAID, THAT THE VICTIM WAS ABLE TO GET HER FINGERS UNDER THE CORD.

THAT HE HAD WRAPPED AROUND HER NECK AND THAT HE COULDN'T STRANGLE HER BECAUSE HE WAS PREVENTED BY HER RESISTANCE. SO SHE'S THERE WITH THE CORD, THE COMPUTER CORD, WRAPPED AROUND HER NECK AND TRYING TO STRANGLE HIM.

SHE IS FIGHTING HIM, STRUGGLING WITH HER LIFE WITH HER FINGERS BETWEEN THE NECK AND THE CORD.

>> WELL --

>> THERE'S TESTIMONY TO SUPPORT

THAT, RIGHT?

>> AND HE REPUDIATED THAT TESTIMONY.

>> I UNDERSTAND THAT.

I UNDERSTAND THAT.

>> AT THE TIME HE REPUDIATED IT WHEN HE SAID, IT WAS LONGER THAN PEOPLE ARE SAYING.

WE TAKE THE FINDING HERE.

>> WE HAVE A FINDING THAT THE TRIAL COURT CREDITED A PARTICULAR VERSION OF THE MULTIPLE VERSIONS THAT YOU'RE, THAT THE DEFENDANT GAVE.

THE TRIAL COURT IS THE ONE THAT IS IN THE POSITION TO MAKE THAT JUDGMENT.

>> THE TRIAL COURT CREDITED ALL THREE VERSIONS WHEN IT SUITED HIS PURPOSES.

>> JUST SEEMS TO ME ON THE HAC, THAT WE HAVE TO BE RECEDING FROM MANY CASES OVER A PERIOD OF TIME TO FIND THIS CASE NOT TO BE HAC.

AND FRANKLY, EVEN IF I MIGHT HAVE THOUGHT OTHER CASES WERE, DID NOT HAVE THAT ELEMENT, IS, JUSTICE CANADY JUST GRAPHICALLY DESCRIBED IT, IT HAS ALL THOSE ELEMENTS OF BEING EXACTLY THE INDIFFERENCE, NOT THE ENJOYMENT BUT THE SUFFERING.

IT IS AN IRONIC THING IF MR. ^ZOMMER HAD BEEN A MORE RATIONAL PERSON, HE MIGHT HAVE

COME BACK WITH A GUN AND, YOU KNOW, JUST, PUT A BULLET BEHIND HER HEAD AND, SHE WOULD HAVE DIED INSTANTANEOUSLY.

THAT HAD HAPPENED, THERE WOULD STILL, STILL HAVE THE OTHER AGGRAVATORS.

STILL I THINK --

>> BECAUSE HE USED MOST EFFICIENT MANNER OF KILLING?

>> APPARENTLY IN TERMS OF HAC, YES. BUT WHEN, THEN IT, MAY BE HEIGHTENED PREMEDITATION BUT YOU HAVE THAT IN THIS CASE BECAUSE OF OTHER SITUATIONS.

I MEAN YOU'RE ASKING SOME PHILOSOPHICAL QUESTIONS AS TO HOW HAC IS DEVELOPED AND HOW CCP IS DEVELOPED AND, IF YOU WANT TO MAKE AN ARGUMENT, GEE, HOW COULD WE HAVE GOTTEN TO A POINT WHERE THIS CASE IS PROPORTIONATE, WE CAN HAVE THAT INFORMATION.

BUT, I THINK THAT YOU KNOW, THAT IS WHY I STRESSED SOME OF THESE OTHER AGGRAVATORS IN THIS CASE BECAUSE I THINK WHETHER YOU FIND ONE MIGHT NOT BE THE WAY IT IS CHARACTERIZED OR THE OTHER ONE, YOU STILL HAVE VERY STRONG AGGRAVATION OF, TO, AND, RELATIVELY, AND MIGHT WANT TO GO INTO THIS, THE MITIGATION DOESN'T SEEM TO BE THE KIND OF MITIGATION THAT WE HAVE

RECOGNIZED TO HAVE BEEN  
SUFFICIENT TO OUTWEIGH ALL THE  
AGGRAVATION.

IF YOU MAYBE WANT TO GO INTO --  
>> I WOULD LIKE TO GO INTO THE  
MITIGATION.

WE HAD THE, WITH REGARD TO THE  
TWO STATUTORY MITIGATORS THE  
TRIAL COURT REFUSED TO FIND  
EITHER OF THEM.

AND I UNDERSTAND THE IDEA OF  
GIVING DEFERENCE TO THE TRIAL  
JUDGE WHO MAKES FINDINGS OF  
FACT, HOWEVER, WHEN THOSE FACTS  
ARE NOT BASED ON THE EVIDENCE,  
THIS COURT DOESN'T HAVE TO GIVE  
DEFERENCE TO THOSE FACTS.

AND I THINK THAT'S WHAT WE HAVE  
IN THIS CASE.

WE HAD THREE DOCTORS WHO  
TESTIFIED, DR.^TOOMER,  
DR.^DANZIGER AND DR.^TRESSLER.  
THE TRIAL COURT WENT ALMOST  
PRESUMABLY ON DR.^TRESSLER, IN  
NORMAL SITUATION HE WOULD BE  
FREE TO DO.

HOWEVER YOU HAVE TO LOOK AT THE  
BASIS FOR DR.^TRESSLER'S  
FINDINGS.

DR.^TRESSLER SAID IT IS VERY  
IMPORTANT TO ADMINISTER  
PSYCHOLOGICAL TESTS.

THE DEFENDANT REFUSED TO  
BECAUSE HE HAD ALREADY  
SUBMITTED TO THEM.

YET, EVEN THOUGH THOSE RESULTS

IN THEORY WERE AVAILABLE TO  
DR. ^TRESSLER, THERE'S NO  
INDICATION EVEN CONSULTED THE  
OTHER ONES.

INSTEAD HE WENT AHEAD AND MADE  
HIS DECISIONS BASED ON WHAT HE  
ADMITTED WAS INSUFFICIENT  
EVIDENCE.

>> LET ME ASK YOU THIS.

IT RISES QUITE OFTEN WE HAVE  
MENTAL MITIGATION EVIDENCE THAT  
IS PRESENTED AND OF COURSE THE  
DEFENDANT ALWAYS WANTS THAT  
MENTAL MITIGATING EVIDENCE TO  
BE THE EXTREME MENTAL OR  
EMOTIONAL DISTURBANCE AND THEY  
WANT, I CAN'T CONFORM MY  
CONDUCT TO THE REQUIREMENTS OF  
LAW.

AND OFTEN TRIAL JUDGES MAY NOT  
FIND THAT EXTREME MENTAL  
MITIGATION OR THAT, YOU CAN'T  
CONFORM, BUT THE TRIAL JUDGES  
TAKE THAT MENTAL INFORMATION  
THAT IS OFFERED.

THEY FIND AS IN THIS CASE, THAT  
THERE WAS A MENTAL, THAT, HE  
SUFFERED FROM MENTAL DISORDERS.

THEY FIND THOSE THINGS ABOUT  
THE DYSFUNCTIONAL FAMILY, WHICH  
MAY HAVE CONTRIBUTED TO HIS  
MENTAL PROBLEMS.

AND SO WHEN THE TRIAL JUDGE  
DOES THAT, I FIND IT VERY  
DIFFICULT TO SAY THAT IT, THAT  
THE TRIAL JUDGE SHOULD HAVE

GIVEN IT MORE WEIGHT THAN THE TRIAL JUDGE ACTUALLY DID. IN THIS CIRCUMSTANCES, DIDN'T THE TRIAL JUDGE TAKE INTO CONSIDERATION THE MENTAL INFORMATION THAT WAS OFFERED?

>> I THINK HE ATTEMPTED TO BUT THEN HE, I THINK, MISCONSTRUED SOME OF IT.

>> IN WHAT SENSE?

>> WELL, IN THE SENSE, ONE, FOR EXAMPLE, LET'S GO WITH THE DRUG ABUSE THING WHERE HE SAID, HE FOUND IT DIDN'T PLAY ANY PART IN IT.

THAT JUST, IT GOES AGAINST THE ENTIRE BODY OF EVIDENCE IN THIS CASE.

>> WHY DON'T YOU, IF YOU COULD IN A COUPLE OF MINUTES, EXPLAIN HOW OLD WAS THIS DEFENDANT, AND WHAT WAS THE HISTORY OF HIS DRUG USE IN THE DAYS OR LEADING UP TO THE CRIME AND ON THE DAY OF THE CRIME, AND, WHAT WAS HIS DOCUMENTED HISTORY OF MENTAL ILLNESS, NOT WHAT DOCTORS SAY AFTER THE FACT.

>> SURE.

>> WHAT IS, I'M TRYING TO GET THAT, UNDERSTANDING TO ASSIST IN TRYING TO FIGURE OUT THE PROPORTIONALITY.

>> OKAY.

AS FAR AS HIS DOCUMENTED MENTAL HEALTH THING, AT A VERY EARLY

AGE, I THINK IT WAS 11 OR  
MAYBE EVEN NINE, HE WAS  
COMMITTED TO A PROGRAM UP IN --  
>> CONNECTICUT.

>> CONNECTICUT.

A PROGRAM THAT NORMALLY SOMEONE  
WOULD STAY IN FOR 18 MONTHS.  
HE STAYED THERE FOR FIVE YEARS.  
VERY UNUSUAL.

>> WHAT WAS, DID HE HAVE A  
ACTUAL DIAGNOSIS?

>> NO, HE DIDN'T HAVE A  
DIAGNOSIS BUT THE RECORDS SHOW  
THAT HE WAS PRESCRIBED  
ANTIDEPRESSANTS, AND, OR I'M  
SORRY, ANTI-PYSCHOTIC DRUGS,  
WHICH ARE NOT PRESCRIBED FOR  
MERE CONDUCT PROBLEMS AND  
BEHAVIOR PROBLEMS.

SO, ALTHOUGH THERE WAS NO  
DIAGNOSIS, GIVEN HIS, THE LINE  
OF TREATMENT, I THINK IT IS A  
VALID ASSUMPTION THAT THERE WAS  
AN UNDIAGNOSED MENTAL ILLNESS  
THERE AT THAT POINT.

>> HOW OLD WAS HE AT THE TIME  
OF THIS CRIME?

>> I THINK HE WENT FROM 9 TO 14.

>> HOW OLD AT THE TIME OF THIS  
CRIME?

>> AT THIS CRIME?

I DON'T HAVE IT AT TOP OF MY  
HEAD.

I BELIEVE HE WAS IN HIS 30s.

>> HE WASN'T 18?

>> NO. I THINK HE WAS 30, 32,

SOMETHING LIKE THAT.

>> WHEN WAS THE LAST TIME HE RECEIVED ANY KIND OF TREATMENT FOR THIS UNDIAGNOSED MENTAL ILLNESS YOU REFER TO?

>> HE WAS TREATED IN THE JAIL, ON OCCASION.

>> FOR THIS CRIME OR SOME OTHER CRIME?

>> FOR APPARENTLY A PRIOR ONE BECAUSE HE HAD PRIOR JAIL RECORDS OR JAIL HOSPITALIZATIONS OR JAIL RECORDS OF SOME KIND.

HE HAD NEVER BEEN FORMALLY TREATED IN A HOSPITAL AFTER THAT THOUGH.

>> SO WE HAVE AN ISSUE, THAT'S WHAT WE'RE GOING BACK TO, WHETHER HE CLEARLY HAD A HISTORY OF MENTAL PROBLEMS AND THE DEFENDANT BECAME DESTRUCTIVE AT AGE 3 WHEN HE BEGAN SETTING FIRES.

BUT THE DIAGNOSIS BY HIS EXPERTS ARE A RETROSPECTIVE DIAGNOSIS AS TO WHETHER HE HAD BORDERLINE PERSONALITY DISORDER, OR WHETHER HE HAD ANTISOCIAL PERSONALITY DISORDER AND WHETHER HE WAS BIPOLAR.

SO WE NOW GO TO WHETHER, HOW IT IMPACTED HIS ACTIONS UP, LEADING UP TO THE CRIME FOR WHETHER THE STATUTORY MITIGATOR SHOULD HAVE BEEN APPLIED.

WHAT'S THE EVIDENCE OF, WHAT KIND OF MENTAL DISORDER, HOW HE WAS FUNCTIONING IN THE WEEKS, DAYS, LEADING UP TO THE CRIME?

>> FIRST, DR. ^TRESSLER TESTIFIED, HE WAS THE DOCTOR THAT JUDGE MORGAN RELIED UPON, TESTIFIED, HAD THE DEFENDANT PRESENTED THE SYMPTOMS THAT HE DID AT AGE 9, HE WOULD UNDOUBTEDLY HAVE DIAGNOSED HIM AS BIPOLAR, WITH A BIPOLAR DISEASE.

>> I THINK YOU'RE MISSING MY POINT, I'M WANTING HOW DID HE FUNCTION ON DAY-TO-DAY BASIS FOR THE DAYS OR WEEKS LEADING UP TO THE CRIME AS TO WHETHER --

>> THE DAYS AROUND THE CRIME HE DID A LOT OF DRUGS. THERE WAS EVIDENCE OF IMMENSE DRUG USE.

>> OF WHAT TYPE OF DRUGS?

>> CRYSTAL METH, CRACK COCAINE, MARIJUANA.

>> WHAT TESTED, WHO TESTIFIED?

>> THE VELLAS, THE STATE WITNESS, VELLAS, JOANNE AND HER SON, TESTIFIED THAT HE, THAT THE DEFENDANT RENTED AN APARTMENT OR A HOTEL ROOM AND ALLOWED THEM TO STAY WITH THEM. THE THREE OF THEM DID THESE DRUGS.

AND DEFENDANT WOULD LEAVE FOR A

PERIOD OF TIME WHEN THEY RAN  
OUT OF DRUGS AND RETURN WITH  
MORE DRUGS.

AND THEY TESTIFIED THAT THEY  
DID DRUGS SOLIDLY FOR FIVE  
DAYS.

THERE WAS EVIDENCE THAT THE DAY  
OF THE CRIME HE DID DRUGS IN  
THE APARTMENT, OR IN THE HOUSE  
NEXT TO THE VICTIM, BECAUSE THE  
WOMAN WHO OWNED THE HOUSE CAME  
HOME AND FOUND THE CRACK PIPE  
THERE.

WHEN HE WAS ARRESTED, HE WAS  
ARRESTED WITH A CRACK PIPE.

EVEN DR. ^TRESSLER SAID, WHEN HE  
SAW HIM IN THE JAIL, HE WAS IN  
WHAT APPEARED TO BE A PANIC  
STATE, WHICH WOULD BE  
NECESSARILY BE CONSISTENT WITH  
BIPOLAR, HOWEVER HE DISCOUNTED  
IT BECAUSE HE SAID HE WAS STILL  
UNDER THE INFLUENCES OF DRUGS.  
SO I THINK THE EVIDENCE OF DRUG  
USE IN THIS CASE WAS ABSOLUTELY  
OVERWHELMING.

AND FOR THE TRIAL COURT TO SAY,  
HE DIDN'T SEE ANY CONNECTION,  
JUST, IT'S, IT'S NOT SOMETHING  
I THINK THAT IS WITHIN HIS  
REALM TO DO.

>> OKAY, LET'S SAY THAT WE  
AGREE THERE SHOULD HAVE BEEN  
SOME, SOME STATUTORY MITIGATION  
FOUND BUT AS JUSTICE QUINCE  
SAID THE JUDGE DID CREDIT AND

GIVE IT NON-STATUTORY WEIGHT.  
EVEN IF THAT WERE THE CASE,  
GIVEN THE AGGRAVATORS HOW THIS  
STILL WOULDN'T BE PROPORTIONAL?

>> FOR INSTANCE, DR. DANZIGER  
TESTIFIED THE RELATIONSHIP  
BETWEEN BIPOLAR AND THE DRUG  
USAGE, AND WHAT THAT WOULD DO  
TO THAT.

I MEAN THERE WAS TESTIMONY  
THAT, YOU KNOW, THAT THIS MAKES  
A PERSON PRONE TO MORE VIOLENCE  
ATTACKS AND, YOU KNOW,  
OBVIOUSLY, IMPAIRED JUDGMENT,  
AND THAT.

SO THERE IS A CAUSAL CONNECTION  
BETWEEN THE DRUG USAGE AND THE  
MENTAL ILLNESS HERE.

SO, I DON'T THINK YOU CAN, YOU  
KNOW, DISCONNECT THE TWO.

ALSO WHEN YOU TALK ABOUT THE  
MENTAL MITIGATORS, THIS COURT'S  
CASE LAW SAYS YOU CONSIDER THAT  
IN CONNECTION WITH, WHETHER  
SOMETHING IS HEINOUS, ATROCIOUS  
AND CRUEL BECAUSE THERE IS A  
CAUSAL CONNECTION BETWEEN THOSE  
TWO ISSUES ALSO.

SO, I THINK THAT'S ALSO AN  
IMPORTANT CONSIDERATION HERE  
TOO, IS IF, SOME OF THIS, THAT,  
YOU KNOW, AS THIS COURT HAS  
NOTED, MAY BE CLASSIC HAC,  
MAYBE IT IS NOT GIVEN WHAT HIS  
SITUATION, HIS MENTAL SITUATION  
WAS.

>> AND YOU ARE WELL WITHIN YOUR REBUTTAL TIME, IF YOU WANT TO SAVE ANY TIME?

>> I THINK I PROBABLY WILL THEN.

THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT. ASSISTANT ATTORNEY GENERAL STEPHEN AKE ON BEHALF OF THE STATE OF FLORIDA.

>> WOULD YOU START WITH THE MENTAL PICTURE AND ONE OF THE THINGS THAT CONCERNS ME IS FIRST OF ALL DO WE KNOW HOW OLD HE WAS?

>> 34 AT TIME OF THE CRIME.

VICTIM WAS 77.

>> HE BECAME DESTRUCTIVE AT AGE 3 WHEN HE BEGAN SETTING FIRES, AND OR, A FAIRLY SIGNIFICANT PART OF HIS CHILDHOOD HE WAS, HIS MOTHER WAS NOT ABLE TO CONTROL HIS BEHAVIOR.

HE WAS PLACED IN SOME FACILITY.

>> CORRECT.

>> WHERE HE REMAINED FOR A PERIOD OF YEARS.

HE, WHAT IS THE STATE'S POSITION AS TO WHETHER IT IS THE MOST MITIGATED OF ALL CASES? BUT SEEMS THIS MAN HAS A PRETTY SIGNIFICANT HISTORY OF HAVING HAD MENTAL ILLNESS IN HIS LIFE, AND, DRUG ADDICTION, AND, WHETHER IT, AND THEN, IS THIS CASE WHERE THE NIGHT BEFORE HE

CALLED SOMEBODY --

>> CALLED SOMEBODY FROM THAT  
CONNECTICUT --

>> FROM THE CONNECTICUT  
PROGRAM, I'M LOSING IT.

>> THE CHILDREN'S HOME.

>> A CRY FOR HELP.

SO I'M JUST, ON THE ISSUE OF  
THE NATURE OF THE MITIGATION,  
IT SEEMS THE JUDGE DID GET  
PRETTY SHORT-SHRIFT, WHETHER  
YOU CALL IT APD, ANTISOCIAL  
PERSONALITY DISORDER, OR  
BORDERLINE PERSONALITY  
DISORDER, THIS ISN'T A CASE  
WHERE THIS DIAGNOSIS HOPPED IN  
AFTER THE MURDER.

LOOKS LIKE YOU HAVE A HISTORY  
OF A DEFENDANT --

>> CORRECT.

>> -- THAT WAS REALLY MARGINAL  
IN THIS SOCIETY AND PROBABLY  
HAD A SIGNIFICANT MENTAL  
ILLNESS.

>> I BELIEVE THE COURT REJECTED  
THE SIGNIFICANT MENTAL ILLNESS  
AND LABELED IT ANTISOCIAL  
PERSONALITY BECAUSE THAT IS  
WHAT HE WAS DIAGNOSED BASICALLY  
BY EVERYBODY EXPERT INCLUDING  
DEFENSE EXPERTS.

>> DO WE KNOW WHY HE STARTED  
SETTING FIRES AT AGE 3?

>> I WOULD SUBMIT GOES BACK TO  
HIS ANTISOCIAL PERSONALITY.

>> SOMEBODY BORN WITH A,

STATUTORY --

>> -- PRIOR TO AGE 18 I

UNDERSTAND.

THEY WON'T DIAGNOSE ANTI-SOCIAL  
PERSONALITY BEFORE AGE 18 I

BELIEVE.

THEY CALLED IT CONDUCT DISORDER  
AT THE TIME THAT HE WAS A CHILD  
IS WHAT IT WAS.

BUT, THERE IS EVIDENCE OF HIM  
BEING CRUEL TO ANIMALS, AND  
SETTING FIRES AND THAT KIND OF  
THING.

THERE ARE CERTAINLY ISSUES  
GOING ON WITH THIS CHILD.

HE WAS LEFT AT THE CONNECTICUT,  
I FORGET THE NAME OF IT, THE  
CHILDREN'S HOME, BY HIS MOTHER  
BECAUSE HE WAS A BEHAVIORAL  
PROBLEM.

HE WAS BEING A BULLY AND  
GETTING INTO FIGHTS AND SO  
FORTH LIKE THAT.

BUT THE DIAGNOSIS IN THIS CASE,  
AFTER, YOU KNOW, AFTER ALL THE  
EXPERTS BECOME INVOLVED IN IT  
ARE ANTISOCIAL PERSONALITY.

BASICALLY A SOCIOPATH.

WE HAVE DR. ^TOOMER, RELUCTANTLY  
SAYS, OH, YES MEETS ALL THESE  
CRITERIA BUT I'M NOT GOING TO  
DIAGNOSE HIM THAT IN A CLINICAL  
SENSE BUT HE DID ACKNOWLEDGE  
THAT THE DEFENDANT MET EVERY  
SINGLE CRITERIA.

>> WE TEND TO LOOK AT

ANTISOCIAL PERSONALITY DISORDER  
AS SOMEONE IS JUST A BAD ACTOR  
AND WE KIND OF GIVE IT THIS  
WORD.

A 3-YEAR-OLD, DOESN'T JUST  
SIMPLY, YOU KNOW, ONE THING  
WHAT A 20-YEAR-OLD IS GOING TO  
DO.

BUT A 3-YEAR-OLD DOESN'T SIMPLY  
JUST START SETTING FIRES AND  
CRUEL TO ANIMALS UNLESS EITHER  
THERE IS SOMETHING ALREADY  
WIRED IN THEIR BRAIN THAT IS A  
PSYCHOSIS, AND BIPOLAR USUALLY  
EMERGES WHEN THEY, YOU KNOW, IF  
THEY'RE GOING TO HAVE IT WHEN  
THEY BECOME INTO THE LATE  
TEENS.

SO THERE'S NOTHING IN TERMS OF  
WHAT HAPPENED 0-3 TO IN THIS  
CHILD'S LIFE?

>> THERE IS NOT MUCH  
DEVELOPMENT, ACTUALLY, BEFORE  
AGE, I THINK AROUND NINE THEY  
START GETTING INTO INFORMATION.  
THERE WAS A SINGLE REFERENCE TO  
HIM SETTING SOME TYPE OF FIRE  
AT AGE 3.

THAT WAS REALLY ALL THAT WAS  
DEVELOPED AT THAT YOUNG AGE.  
WE GO INTO MORE I BELIEVE HE  
WAS NINE AND 12 I BELIEVE HIS  
MOTHER ULTIMATELY LEFT HIM WITH  
THIS CONNECTICUT PLACE TO GET  
THERAPY.

BUT THERE'S NOT VERY MUCH

DEVELOPMENT AS TO, IN HIS VERY YOUNG ADOLESCENCE WHAT WAS TAKING PLACE WITH HIM.

BUT, THE TRIAL COURT IN APPLYING THE MENTAL MITIGATION IN THIS CASE CERTAINLY GAVE IT WEIGHT.

HE JUST SIMPLY REJECTED THE DEFENSE EXPERTS IN FAVOR OF THE STATE'S EXPERT.

AND, THERE WAS A DIFFERENCE OF OPINION BETWEEN EACH OF THE THREE EXPERTS AS TO WHAT THE MENTAL ILLNESS WAS, IF THERE WAS ONE, AND, BASICALLY THE STATE'S EXPERT SAID IT WAS ANTISOCIAL PERSONALITY DISORDER WHICH IS SOMETHING THE THING THAT CONTROLS ACTIONS.

THE REASON HE REJECTED DR. DANZIGER'S OPINION OF BIPOLAR WAS BECAUSE HE ANALYZED ALL THE RECORDS FOR, LIKE A 2 1/2 YEAR PERIOD WHILE HE WAS INCARCERATED AND SAID WHEN YOU REMOVE DRUGS OUT OF THE PICTURE THERE IS NOTHING TO SUPPORT THIS BIPOLAR DISORDER DIAGNOSIS.

SO, WHILE HE IS OUTSIDE AND LIVING IN THE REAL WORLD AND USING CRACK COCAINE, THAT IS NOT NECESSARILY MENTAL ILLNESS. THAT'S JUST A TRIGGERING EVENT FOR HIS MANIA AND SO FORTH AND THAT WAS DR. TRESSLER'S OPINION

AND THE TRIAL COURT GAVE WEIGHT TO THAT TESTIMONY AND REJECTED THAT OF DR. ^TOOMER'S AND DANZIGER'S OPINION.

I THINK THAT IS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE IN THIS CASE.

COUNSEL, I WANT TO KIND OF TIE IN THE DRUG USE COUNSEL TALKED ABOUT IN THE DAYS LEADING UP. THERE IS EVIDENCE FROM THE VELLAS, A MOTHER AND SON DUO DOING CRACK COCAINE WITH HIM IN THE DAYS LEADING UP TO THIS MURDER.

THEY MET HIM ON A THURSDAY I BELIEVE AND MURDER TOOK PLACE ON A SATURDAY AND THEY SAID THEY KNEW HIM FIVE DAYS AND WERE DOING CRACK COCAINE WITH HIM.

TESTIMONY WAS THEY WERE ONLY DOING \$100 A DAY AT MOST, BETWEEN THREE PEOPLE WHICH IS NOT EXTENSIVE AMOUNT OF CRACK COCAINE.

ON THE DAY OF THE MURDER THERE IS NO EVIDENCE BEYOND THE DEFENDANT'S OWN TESTIMONY THAT HE WAS USING DRUGS.

AND THAT CAME ABOUT ONLY AT TRIAL.

HE INITIALLY IN TALKING TO THE NEWS REPORTER, DENIED THAT HE WAS HIGH AT THE TIME OF THE MURDER SO.

>> BUT ISN'T -- DR. ^TRESSLER IS

THE JAIL PSYCHIATRIST?

>> NO. HE WAS, DR. ^TRESSLER WAS THE STATE EXPERT.

HE DID REVIEW THE JAIL PSYCHIATRIST RECORDS AND THEY ALSO DIAGNOSED HIM AS ANTISOCIAL.

>> I THOUGHT YOU SAID WHAT IT APPEARED TO BE HE WAS SUFFERING FROM DRUG WITHDRAWAL, NOT THAT IT WAS A MENTAL ILLNESS.

SO, IF --

>> NO. DR. ^TRESSLER WAS OF THE OPINION THAT THE DIAGNOSIS FROM THE OTHER DOCTORS WERE NOT SUPPORTED BECAUSE IT IS NOT A TRUE MENTAL ILLNESS.

ONCE DRUGS WERE REMOVED FROM THE PICTURE, THERE IS NO SUPPORT FOR AN UNDERLYING MENTAL ILLNESS.

>> I WAS GOING TO YOUR ARGUMENT ABOUT HOW MUCH, WHETHER HE WAS DOING SUBSTANTIAL DRUGS OR --

>> OH --

>> LET ME FINISH SO I CAN FINISH MY QUESTION FOR THE RECORD.

UP UNTIL AND INCLUDING THE TIME OF THE MURDER?

>> RIGHT.

ONE OF THE DEFENSE EXPERTS SAW HIM SHORTLY AFTER HIS ARREST AND THOUGHT HE WAS STILL UNDER THE INFLUENCE OF DRUGS.

HE WAS ARRESTED ON TUESDAY

AFTER THE MURDERS.

AND, WAS ARRESTED WITH A CRACK  
PIPE AND SO HE MAY HAVE VERY  
WELL BEEN ON A CRACK BINGE  
AFTER THE MURDER.

BUT AT THE TIME OF THE MURDER  
HE MADE STATEMENTS TO THE NEWS  
REPORTER THAT HE WAS NOT HIGH  
AND QUESTIONED HIM NUMEROUS  
TIMES ABOUT THAT AND HE  
CONTINUED TO DENY IT.

>> LET ME UNDERSTAND THIS.

THE MURDER TOOK PLACE ON A  
SATURDAY?

>> YES, SATURDAY.

>> HE WAS NOT ARRESTED UNTIL --

>> TUESDAY.

>> THREE DAYS LATER.

>> HE WAS ARRESTED TUESDAY  
DRIVING THE VICTIM'S CAR.

ALL DURING THAT TIME HE WAS  
HANGING OUT WITH THE VELLAS.

LIKE I SAID --

>> INCLUDING AFTER THE MURDER?

>> INCLUDING AFTER THE MURDER,  
YES.

THAT'S WHEN HE TOLD -- COUNSEL  
ALSO DISCUSSED HIS NUMEROUS  
STATEMENTS AND CONTRADICTIONS.  
HE TOLD BOTH THE VELLAS ON  
TUESDAY ABOUT WHAT HE HAD DONE.  
AND THERE'S REALLY, THERE ARE A  
NUMBER OF TIMES THAT THE  
DEFENDANT TOLD PEOPLE ABOUT  
WHAT HE HAD DONE AND REALLY NOT  
THAT DIFFERENT FROM ANYTHING

EXCEPT HIS TRIAL TESTIMONY.

AND AS THE TRIAL JUDGE FOUND IN THE SENTENCING ORDER, HE LIED WHEN IT WAS CONVENIENT TO HIM. HE TOLD THE VELLAS WHAT HAPPENED.

HE TOLD HIS FRIEND MATTHEW DRUNKENMILLER WHAT HAPPENED AND TOLD A NEWS REPORTER WHAT HAPPENED.

HE WAS IMPEACHED AT TRIAL WHAT HE TOLD LAW ENFORCEMENT.

HE TOLD A NUMBER OF PEOPLE AND STORY WAS ALWAYS THE SAME.

IT WAS ALWAYS INVOLVING I BORROWED \$20 FROM HER.

I RECOGNIZED HER OR FELT SHE RECOGNIZED ME.

I WENT BACK TO HER HOUSE LATER AND THAT'S WHEN MURDER TOOK PLACE WHEN HE BEAT HER WITH A WOODEN INSTRUMENT UNTIL IT SHATTERED.

WE HAVE ALL THE FACTS THAT GO WITH THAT TO SUPPORT THE FINDING OF CCP AND HAC.

>> IS THIS A CASE --, IS THIS A CASE WHERE HE WENT INTO THE KITCHEN AND HE --

>> DRANK SOME TEA AND GRABBED A KNIFE.

>> WENT TO USE THE RESTROOM?

>> YES.

>> SO DURING ALL THIS TIME, DO WE KNOW WHAT IS HAPPENING TO THE VICTIM?

DO WE KNOW THAT THE VICTIM IS  
STILL ALIVE AT THIS POINT?

>> YES.

>> OKAY.

>> WE KNOW FROM HIS STATEMENTS  
AND FROM THE MEDICAL EXAMINER'S  
TESTIMONY SUPPORTS THAT, THE  
CRIME SCENE, PHOTOGRAPHS AND  
EVERYTHING SUPPORT THAT SHE WAS  
MOVING AROUND.

HE SAYS, BASICALLY THE FIRST  
ATTACK OCCURRED WHEN SHE WAS  
BENDING OVER AND HIT HER WITH A  
UKALIN, A LARGE WOODEN UKULELE  
INSTRUMENT.

THAT SHATTERED AND HIT HER SIX  
TIMES IN THE HEAD.

SHE WAS TALKING TO HIM AFTER  
VERY FIRST STRIKE.

SHE SAID WHAT WAS THAT? IT'S  
YOUR ROOF.

SHE LOOKED UP.

HE HIT HER AGAIN.

WHY ARE YOU DOING THIS?

HE TAUNTING HER, YOU SHOULD BE  
MINDING YOUR OWN BUSINESS AND  
NOT WATCHING WHAT IS GOING ON.

AND THEN HE HITS HER WITH A  
GLASS LAMP.

HE GOES AND GETS TO ANOTHER  
ROOM, GETS A COMPUTER CORD, COMES  
BACK AND TRIES TO STRANGLE  
HER.

AND SHE GETS HER FINGERS UP  
THERE AND PREVENTS THAT.

HE THEN GOES AND URINATES

IN THE BATS ROOM.

HE COMES BACK AND SHE IS  
MOANING ABOUT ON THE GROUND AND  
ROLLING AROUND.

HE STOMPS ON HER AND KICKING  
HER SOME MORE.

ACCORDING TO HIM SHE IS STILL  
APPARENTLY FIGHTING BACK, GREG  
AT GRABBING AT HIM AND MAKING  
NOISES.

HE GOES INTO THE KITCHEN AND HE  
DRINKS SOME TEA AND GRAB AS  
KNIFE IN THE KITCHEN AND COMES  
BACK AND SLICES HER THROAT.

HE TOLD, I BELIEVE IT IS THE  
DRUNKENMILLERS, HE USED HIS  
LEFT HAND INITIALLY TO SLICE  
HER THROAT BECAUSE HE KNEW HE  
WOULDN'T HAVE A PROBLEM WITH  
HIS RIGHT HAND AND WANTED TO  
MAKE IT LOOK LIKE A LEFT-HANDED  
PERSON DONE THE CRIME.

THAT WASN'T SUCCESSFUL SO HE  
SWITCHED TO THE RIGHT HAND.

>> SINCE YOU HAVE SUCH A GOOD  
WORKING KNOWLEDGE OF THE FACTS,  
WHAT WAS THE CALL FROM THE  
NIGHT BEFORE?

WHAT WAS IT THAT HE --

>> THE CALL TO MR.^NEWELL WITH  
THE COKE CUT THING WAS A VOICE  
MESSAGE HE DIDN'T GET IT.

LEFT A VOICE MESSAGE.

I JUST WANTED TO TALK TO YOU,  
I'M HAVING PROBLEMS.

HE TESTIFIED, MR.^ZOMMER

TESTIFIED THAT HE WAS  
BASICALLY, LIFE WAS NOT GOING  
WELL FOR HIM.

HE WAS, UNEMPLOYED AND DOING  
DRUGS AND JUST NOTHING WAS  
GOING WELL IN HIS LIFE.

>> WAS THERE A STATEMENT THAT  
HE HAD HOMICIDAL, HE TOLD HIM  
HE WAS HAVING HOMICIDAL  
THOUGHTS?

>> I DON'T RECALL IF HE LEFT  
THAT ON THE MESSAGE WITH  
MR.^NEWELL OR NOT, YOUR HONOR,  
I'M SORRY, I DON'T RECALL WHAT  
THE EXACT CONVERSATION WAS ON  
THAT PHONE RECORDING, BUT, I  
DON'T THINK THERE WAS, BUT I  
HONESTLY DON'T RECALL.

BUT I DON'T REALLY THINK I  
NEED TO BELABOR THE POINT THERE  
IS EVIDENCE TO SUPPORT THE CCP  
AND HAC IN THIS CASE.

IF THIS COURT HAS ANY FURTHER  
QUESTIONS, I WILL BE CERTAINLY  
HAPPY TO ANSWER THEM BUT I  
BELIEVE THE EVIDENCE CERTAINLY  
SUPPORTS THAT AND THIS COURT  
SHOULD AFFIRM MR.^ZOMMER'S  
CONVICTION.

THANK YOU.

>> MR.^BECKER?

>> JUST WANTED TO MAKE ONE  
QUICK CORRECTION HERE ON THE,  
ON THE DAY OF THE MURDER AS FAR  
AS HIS DRUG USE GOES, A CRACK  
PIPE WAS FOUND AT THE HOUSE

THAT HAD NOT BEEN THERE  
EARLIER.

>> AT WHOSE HOUSE?

>> AT THE HOUSE NEXT DOOR TO  
THE VICTIM, THAT THE DEFENDANT  
SOMETIMES SHARED WITH, LAURA  
SCHMID, WHO, SET UP THE  
ARRANGEMENT TO HAVE THE VICTIM  
LEND MONEY TO THE DEFENDANT IN  
THIS CASE.

SHE CAME HOME AND FOUND A CRACK  
PIPE THAT HAD NOT BEEN THERE  
BEFORE, WHICH SUPPORTS THE IDEA  
THAT HE WENT HOME.

WHEN HE INITIALLY GOT THE \$20,  
WENT OUT AND BOUGHT MORE DRUGS  
AND DID THEM.

ALSO THE VELLAS TESTIFIED THAT  
FOR FIVE DAYS STRAIGHT,  
STARTING TWO DAYS BEFORE, THEY  
DID DRUGS CONSTANTLY.

HE IS THERE WAS, THERE WAS  
EVIDENCE THAT THIS WAS CONSTANT  
DRUG USE, FOR THE FIVE DAYS.

WHEN DR. TRESSLER SAW THE  
DEFENDANT AT THE JAIL, HE  
TESTIFIED THAT HE EXHIBITED  
SIGNS OF BIPOLAR DISEASE, BUT  
HE ATTRIBUTED IT, STILL TO  
BEING UNDER THE INFLUENCE OF  
DRUGS.

AND THIS IS SEVERAL DAYS AFTER  
HE IS ARRESTED.

SO, THE DRUG USAGE IN THIS CASE  
IS IMMENSE.

I DON'T REALLY THINK THAT'S A

QUESTION HERE.

>> HOW LONG, WHAT DOES THE RECORD SHOW ABOUT THE LENGTH OF TIME BETWEEN WHEN THE MURDER WAS COMMITTED AND WHEN THE DEFENDANT WAS APPREHENDED?

>> TWO DAYS.

>> TWO DAYS.

DEPENDING ON WHAT TIME OF DAY.

IT HAPPENED SOMETIME ON

SATURDAY.

HE WAS APPREHENDED TUESDAY

AFTERNOON.

>> THANK YOU.

>> THANK YOU BOTH FOR YOUR ARGUMENTS.

THE COURT WILL NOW BE IN RECESS UNTIL TOMORROW MORNING.

>> PLEASE RISE.

SUPREME COURT IS NOW ADJOURNED.