

>> PLEASE RISE.

HEAR YE HEAR YE HEAR YE, THE
SUPREME COURT OF FLORIDA IS NOW
IN SESSION, ALL WHO HAVE CAUSE
TO PLEA, DRAW NEAR, GIVE
ATTENTION AND YOU SHALL BE
HEARD.

GOD SAVE THESE UNITED STATES,
THIS GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.

>> GOOD MORNING, AND WELCOME TO
THE FLORIDA SUPREME COURT.
THE FIRST CASE ON THE COURT'S
CALENDAR THIS MORNING IS ABDOOL
VERSUS STATE, ARE THE PARTIES
READY TO PROCEED.

>> YES, YOUR HONOR.

>> YOU MAY PROCEED.

>> GOOD MORNING, MAY IT PLEASE
THE COURT, I'M JAMES WULCHAK.
SEATED AT TABLE WITH ME, IS
CO-COUNSEL MEGAN COLLINS, AND,
WE ARE FROM THE PUBLIC
DEFENDER'S OFFICE IN DAYTONA
BEACH AND WE RECOMMEND THE
APPELLANT, DANE ABDOOL AND IN
THE DIRECT APPEAL FROM HIS
CONVICTION FOR FIRST DEGREE
MURDER AND THE RESULTANT
SENTENCE OF DEATH.

WE'D LIKE TO FOCUS THIS MORNING
BECAUSE TIME IS LIMITED ON TWO
OF THE ISSUES IN OUR BRIEF,
ISSUE NUMBER TWO, REGARDING THE
OPINION EVIDENCE OF THE POLICE
DETECTIVE IN THE GUILT PHASE OF
THE TRIAL, AND ISSUE NUMBER 7
REGARDING THE PROPRIETY OF THE
SENTENCE OF DEATH.

A BRIEF STATEMENT OF FACTS
REGARDING THESE ISSUES --
>> WE'VE READ ALL THE BRIEFS ON
THAT.

DOES THE MANNER IN WHICH THE
ISSUE OF THIS POLICE OFFICERS
TALKING -- THIS IS NOT AN
ACCIDENT, THAT KIND OF THING,
DOES IT CHANGE THE DYNAMICS OR
THE CHEMISTRY OF THE LAW?
THAT IS APPLICABLE -- WE
CERTAINLY ALL KNOW THE POLICE
OFFICERS CANNOT COME IN AND
TESTIFY AS TO THE GUILT OR
INNOCENCE OF SOMEONE BUT DOES IT
CHANGE IT BECAUSE OF THE FILM OF
THE INTERROGATION?

WHERE DO WE GO WITH THAT.

>> WE'D SUBMIT, THAT IF THE
COURT WERE TO AFFIRM IN THIS
CASE, THEN, THE PROSECUTION
WOULD BE FREE AS THE DETECTIVE
TESTIFIED IT IS A COMMON
INTERROGATION TACTIC TO
SYMPATHIZE WITH THE DEFENDANT
AND TELL HIM YOU BELIEVE HIM AND
ALL OF THAT AND THE STATE IS
SAYING IT WAS NECESSARY TO SHOW
IT TO THE JURY, HE WAS SAYING
THAT TO GET THE DEFENDANT TO
TALK AND HE REALLY DIDN'T
BELIEVE THAT.

BUT, IF THE COURT WERE TO AFFIRM
IN VIRTUALLY EVERY CASE WHERE
THERE IS A CONFESSION AND THE
POLICE DETECTIVES ARE -- OR
OFFICERS USE THE FORM OF
INTERROGATION IT WOULD OPEN THE
DOOR TO ALLOW THE POLICE
OFFICERS TO GIVE THEIR OPINION
REGARDING THE ULTIMATE ISSUE
HERE, THE BELIEVABILITY OF THE

DEFENDANT OR THE DEFENDANT'S
ACTUAL GUILT OR INNOCENCE, IN
THIS CASE.

IN THIS CASE, THE SOLE ISSUE AT
TRIAL, THE DEFENDANT ADMITTED,
YOU KNOW, HAVING AN ARGUMENT
WITH MS... ADMITTED POURING
GASOLINE ON HER AND TAPING HER
WITH DUCT TAPE IN AN ATTEMPT TO
SCARE HER TO END THE
RELATIONSHIP, AND, TO... THE
SOLE ISSUE WHAT'S THE INTENT OF
THE DEFENDANT, WAS HE DOING IT
TO SCARE HER OR INTENTIONALLY
SET FIRE TO --

>> IF WE ACTUALLY AGREE THAT
THERE MAY HAVE BEEN SOME ERROR,
BECAUSE, AS YOU SAY, THE ISSUE
HERE REALLY WAS WHETHER THIS WAS
ACCIDENTAL OR WHETHER OR NOT IT
WAS PREMEDITATED, CORRECT?
AND IF WE AGREE WITH YOU THAT
THE OFFICER SHOULD NOT HAVE BEEN
ALLOWED TO MAKE THE STATEMENT,
WHERE DOES THAT GET US?

I MEAN, THERE IS A LOT OF
EVIDENCE, THAT I WOULD SUBMIT,
IN THIS CASE, THAT DEMONSTRATES
PREMEDITATION.

SO IN THAT STATEMENT, REALLY, WE
-- YOU SAY THE STATEMENT WAS
REALLY HARMLESS AND IN THE...

>> I RESPECTFULLY DISAGREE WITH
YOUR HONOR ON THIS.

YES, THERE WAS EVIDENCE THAT HE
INTENTIONALLY PURCHASED THE GAS
CAN, THE DUCT TAPE AND
INTENTIONALLY POURED IT ON HER
BUT, AS THE ISSUE WAS WHETHER HE
WAS TRYING TO --

>> YOU POUR GASOLINE ON SOMEONE,
YOU HAVE A FIRE AND YOU PUT IT

ON THEM, AND THAT IS NOT
PREMEDITATION.

>> THE TESTIMONY NEVER SHOWED
THAT HE ACTUALLY PUT IT ON HER.
HIS STATEMENT WAS THAT HE LIT
THE LIGHTER AFTER POURING IT ON
HER IN ORDER TO SCARE HER, HIS
GLOVE CAUGHT ON FIRE, THE FIRE
MARSHALL, CONTRARY TO WHAT THE
COURT'S SENTENCING ORDER SAYS,
AGREED WITH THE DEFENSE
ATTORNEY, THAT THE SCENARIO, THE
DEFENDANT HAD PRESENTED, OF
POURING GASOLINE, HAPHAZARDLY,
LIGHTING IT, CATCHING A GLOVE ON
FIRE, AND THEN...BY GOING LIKE
THIS, COULD HAVE IGNITED --

>> HAPHAZARD THAT HE TOOK THE
HOSE OFF OF THE FIRE CAN SO THAT
THE GAS -- GAS CAN AND I WOULD
ASSUME THAT WAS SO YOU COULD
THROW THE GAS MORE FREELY AS
OPPOSED TO HAVING IT COME OUT OF
THE HOSE ISN'T THAT A --

>> IT IS INTENTIONAL HE Poured
THE GASOLINE ON HER BUT THERE IS
NOTHING, EVEN AS I SAID, THE
FIRE MARSHAL AGREED THAT THE
DEFENDANT'S SCENARIO WAS
ENTIRELY POSSIBLE.

HE COULD NOT RULE THAT OUT.

>> LET'S GO BACK TO WHETHER IT
WAS -- ABOUT WHETHER IT WAS
ERROR, AND, THAT IS TO ALLOW THE
DETECTIVE TO BE QUESTIONED ABOUT
STATING WHETHER HE THOUGHT IT
WAS AN ACCIDENT OR NOT.

THE WAY THE TAPE READ, COULD THE
DEFENDANT HAVE ARGUED THAT THE
DETECTIVE THOUGHT IT WAS AN
ACCIDENT?

>> PERHAPS, BUT THE STATE THEN

COULD HAVE ARGUED THIS IS A
TECHNIQUE THAT HE WAS USING, AS
YOU CAN SEE, FROM IT.

>> IF THE DEFENDANT HAD CROSS
EXAMINED THE DETECTIVE ON THAT
BASIS, WOULD YOU AGREE AT THAT
POINT --

>> YES.

IF THE DEFENDANT OPENED THE DOOR
HERE, I WOULD AGREE, THAT, YOU
KNOW, YOU OPEN THE DOOR, YOU
INVITE THE COMMENT ON IT.
BUT, HERE IT IS THE STATE'S OWN
EVIDENCE.

THE STATE CHOSE TO PRESENT THIS
TO THE JURY.

THEY COULD HAVE EXCISED PORTIONS
OF THE CONFESSION, BUT THEY
CHOSE NOT TO.

AND, BY PRESENTING THIS, THEY,
THEMSELVES, WERE THE ONES THAT
OPENED THE DOOR TO THEIR
NECESSITY OF BRINGING OUT
FURTHER OPINION TESTIMONY.

>> AND IN THE QUESTIONING, WOULD
IT HAVE BEEN -- IN YOUR VIEW,
COULD THEY HAVE CLARIFIED TO
SAY, WHEN YOU WERE SAYING TO
MR. ABDUOL THAT IT WAS AN
ACCIDENT, WHY WOULD YOU SAY
THAT?

AND, IF -- THEY HAD JUST LEFT IT
WITH -- IT WAS PART OF MY
INTERROGATION TECHNIQUE, WOULD
THAT HAVE BEEN...

>> PERHAPS THAT WOULD HAVE BEEN
BETTER, BUT, THAT IS NOT THE
SITUATION THAT WE'RE HERE WITH.

>> SO, THE STATEMENT...GAMMILL,
WHETHER DUDS.

>> THAT IS AN OPINION STATEMENT.

>> DID THEY USE THAT -- RELY ON

THAT IN ANY WAY.

>> I DON'T BELIEVE THIS
BELABORED IT BUT THE HARM WAS
DONE CASE LAW SHOWS JURORS TEND
TO BELIEVE LAW ENFORCEMENT
OFFICERS, MORE, AND, THE CASE OF
MARTINEZ AND OTHER CASES WE
CITED .

>> MARTINEZ... I MEAN, IN TERMS
OF WHAT WAS SAID IN MARTINEZ, I
KNOW YOU ARE NOT...
SUBSTANTIALLY MORE DEFINITE
ABOUT SAYING THAT HE WAS A RISK
IF NOBODY HAD THE DOUBT HE WAS
GUILTY IS A FAIRLY DIFFERENT
TYPE OF OPINION TESTIMONY.
BUT, YOU ARE NOT GOING TO AGREE
WITH THAT BUT I MEAN, I SEE THAT
AS QUALITATIVE.

>> HERE WE SAY IT IS THE SAME
THING, HE'S SAYING, NO, I DON'T
BELIEVE IT WAS AN ACCIDENT.

>> BUT HE DOESN'T COME OUT THEN
-- AGAIN, IN TERMS OF ASSESSING
THE HARM AND THEN SAY I THOUGHT
IT WAS -- YOU KNOW, I THOUGHT IT
WAS INTENTIONAL BECAUSE OF THIS.
THEY DON'T FOLLOW UP WITH...

>> NO.

BUT, AGAIN, WE SUBMIT THAT THAT
WAS ENOUGH RIGHT THERE, JURORS
CAN...

>> DIDN'T TWO OTHER WITNESSES
TESTIFY THAT YOUR CLIENT...

[INAUDIBLE]... AND THE BABY,
SHOULD A BABY BE BORN.

>> THERE WAS TESTIMONY REGARDING
THAT, TWO OF THE PEOPLE HAD BEEN
ARRESTED AND THEY USED THIS TO
GET OUT OF THE CHARGE.

ONE OF THEM SPECIFICALLY,
THOUGH, SAID, HE WAS WITH THE --

ONE PERSON SAID, KILLED.
THE OTHER ONE WHO WAS WITH HIM
AT THE TIME, SAID, NO, HE WANTED
US TO GET RID OF THE BABY.
THIRD WITNESS SAID THAT SHE HAD
HEARD THAT THE DEFENDANT WANTED
THEM TO PUNCH HER IN THE STOMACH
TO CAUSE A MISCARRIAGE FOR THIS
ALLEGED PREGNANCY.
AND WE'D ALSO SUBMIT TWO OTHER
CASES, RUTH AND TOWN OF WEST
PALM BEACH, CITED IN THE BRIEF,
ARE CLOSE TO THIS, IN RUTH,
OPINION OF THE POLICE DETECTIVE
WAS THAT THIS AIRPLANE WAS USED
TO SMUGGLE DRUGS AND IN -- TOWN
OF WEST PALM BEACH, THE CIVIL
CASE THE ISSUE WAS WHETHER THE
BENEFITS ARE REAL AND
SUBSTANTIAL AND THE WITNESS WAS
ALLOWED TO TESTIFY, NOT THAT
THIS WAS SOME BIG BENEFIT, BUT,
WAS ALLOWED TO PARTICULARLY
TESTIFY THAT IT WAS REAL AND
SUBSTANTIAL, AND, THE COURTS
HELD THAT THIS WAS ERROR, THIS
WAS IMPROPER OPINION TESTIMONY
AND AGAIN THE FIRE MARSHAL DID
SAY IT WAS INTENTIONAL FIRE BUT
ON CROSS-EXAMINATION HE
CLARIFIED THAT, BY SAYING WHAT
HE MEANT WAS, THAT IT WAS THE
USE OF AN ACCELERANT AND THERE
WAS NO ACT OF GOD LIKE A
LIGHTNING STRIKE, THAT WAS THE
POINT OF ORIGIN OF THE FIRE,
AND, AGAIN, HE DID ADMIT THAT
THE DEFENDANT'S ACCOUNT IS NOT
EXCLUDED BY THE EVIDENCE, AND,
COULD BE WHAT HAPPENED.

>> IT SEEMS TO ME, THE EVIDENCE
HERE ALSO INDICATES THAT HE WAS

WATCHING HER... AND DROVE AWAY AND DID NOTHING TO TRY TO PUT THE FIRE -- IF HE ACCIDENTALLY SET THE FIRE, ONE WOULD THINK THAT HE WOULD AT LEAST TRY TO PUT IT OUT, MAYBE CALL A FIRE DEPARTMENT, DO SOMETHING LIKE THAT BUT HE WATCHED HER AS SHE WAS BURNING AND THEN LEFT.

>> THE EVIDENCE ALSO SHOWS THE DEFENDANT HIMSELF SET HIMSELF ON FIRE.

HIS ARM WAS BURNT, HIS LEG WAS BURN, HE DROVE OFF AND HAD TO STOP DONE THE ROAD TO CONTINUE PUTTING HIMSELF OUT, AND, COUPLED WITH THE TESTIMONY DURING THE PENALTY PHASE OF THE DEFENDANT'S MENTAL AND EMOTIONAL DISABILITIES, HIS IMMATURITY, IN THE CASE, WHICH THIS JUDGE SPECIFICALLY FOUND IN THE AGE MITIGATOR THAT IF HE HAD BEEN MATURE AS A 19-YEAR-OLD RATHER THAN A 10 TO 14-YEAR-OLD, THIS NEVER WOULD HAVE HAPPENED, HE WOULD HAVE HAD ANOTHER WAY OF SOLVING HIS PROBLEMS.

>> DIDN'T HE STOP TO GET HIS CAR WASHED.

>> YES, THAT WAS AFTER THE FACT. HE WAS VERY CONCERNED ABOUT HIS FAMILY.

HIS FAMILY THINKING THAT HE HAD GOTTEN SOME GIRL PREGNANT. HE WAS CONCERNED ABOUT THAT. BUT THAT WAS AFTER HE HAD DRIVEN AWAY, HE REAL LIFE AFTERWARDS, HE SAID, THAT HE SHOULD HAVE DONE MORE, BUT HE DIDN'T AND WE SUBMIT THAT WAS BECAUSE OF HIS

--

>>... [INAUDIBLE] SOMEWHERE ALONG THE LINE, HE PULLED INTO A 7-ELEVEN OR CONVENIENCE STORE WITH THE VICTIM IN THE CAR AND GOES IN AND BUYS A CAN OF GASOLINE AND DUCT TAPE AND PERHAPS EVEN A LIGHTER. GETS BACK IN TO THE CAR AND GETS GAS INTO THE TANK AND DRIVES TO A EXCLUDED AREA, TAKES IT OUT OF THE CAR, DUCT TAPES HER AND DOUSES HER WITH GASOLINE AND LIGHTS UP THE LIGHTER. AT SOME POINT IT IS YOUR CONTENTIOUS THAT HE WAS GOING TO SAY, OKAY I'M BACKING OFF. I JUST WANTED TO SCARE YOU, HE WAS GOING TO STOP. WHEN WAS THAT GOING TO HAPPEN. >> APPARENTLY AFTER HE LIT THE LIGHTER AND -- BUT IT CAUGHT HIM ON FIRE. AND THEN IN TURN CAUGHT HER ON FIRE. HE INDICATED THAT HE WAS MERELY TRYING TO SCARE HER WITH THIS, HE WANTED TO BREAK OFF THEIR RELATIONSHIP, THAT SHE WOULDN'T WOULDN'T LET HIM BREAK OFF AND HE INTENDED TO SCARE HER BUT WE SUBMIT THE ACTUAL IGNITION WAS AN ACCIDENT. >> ISN'T THAT JUST THE MOST... INCREDIBLE STORY IMAGINABLE? NO, YOUR HONOR. >> PEOPLE BREAK OFF RELATIONSHIPS ALL THE TIME WITHOUT HAVING SOME OF -- SCHEME IN WHICH THEY WRAP SOMEONE INDUCT TAPE, DOUSE THEM WITH GASOLINE, AND PRESENT THEM WITH A FIRE.

>> AGAIN, THE MENTAL AND EMOTIONAL MAKEUP AS TESTIFIED TO BY ALL OF THE EXPERTS, EVEN THE STATE'S EXPERT, SAID, HE HAD A LONGSTANDING MENTAL AND EMOTIONAL DISTURBANCE, WHICH CONTRIBUTED TO THIS PROBLEM.

>> THAT GOES TO WHETHER THE DEATH PENALTY IS PROPORTIONATE. BUT, GOING BACK TO WHAT YOU ARE HEARING FROM THE JUSTICES, IS A SORT OF A SKEPTICISM FOUNDED IN THE ACTUAL EVIDENCE, THAT ANY REASONABLE JURY COULD FIND -- HAVE FOUND THAT THIS WAS AN ACCIDENT.

AND, NOW, WHAT WE GO TO, SINCE WE KNOW HARMLESS ERROR DOESN'T HAVE TO DO WITH WHETHER IT IS OVERWHELMING EVIDENCE, BUT THE EFFECT OF THE SOMEONE STATEMENT ON THE TRIER OF FACT, I WOULD JUST GO BACK AND THEN, I THINK WE HAVE PROBABLY EXHAUSTED THIS SUBJECT, IS THAT WITH THE STATE NOT HAVING USED THE STATEMENT IN CLOSING ARGUMENT, WITH IT NOT BEING WHAT HE -- WITH IT BEING USED TO EXPLAIN WHY HE MIGHT HAVE SAID THAT DURING THE INTERROGATION, AND, I DON'T SEE HOW A REASONABLE JURY COULD HAVE POSSIBLY BEEN AFFECTED BY THAT STATEMENT.

AND I THINK THAT IS REALLY WHAT WE HAVE TO FOCUS ON.

TOGETHER WITH ALL OF THE OTHER EVIDENCE.

AND, YOU KNOW, I JUST...

>> WE SUBMIT THAT AGAIN, THIS WAS A LAW ENFORCEMENT OFFICER, THAT JURORS TYPICALLY GIVE GREAT

WEIGHT TO.

>> DID YOU HAVE ANY EXPERT TO SAY THAT IT WAS LIKELY THAT THIS WAS -- COULD HAVE BEEN AN ACCIDENT?

IN OTHER WORDS --

>> THE STATE'S OWN FIRE MARSHAL, SAID THAT, YOUR HONOR, I BELIEVE AT PAGES 300 THROUGH 302.

THE TRANSCRIPT, VOLUME 9.

HE ADMITS, ADMITS THE DEFENDANT'S VERSION IS ENTIRELY CONSISTENT WITH THE FACTS.

THIS TYPE OF SCARING MAY SEEM EXTREME TO US --

>> I WAS UNDER THE IMPRESSION THAT THERE WAS SOME DISCUSSION WITH REGARD TO, THIS WAS OUT IN THE OPEN, AND THAT THE VAPORS AND FUME WOULD DISSIPATE AND WOULD NOT OCCUR SPONTANEOUSLY AS THEY WOULD IF IT WAS IN A CONFINED --

>> THE FIRE MARSHAL SAID IT COULD BE WITHIN A FOOT AND WHEN THE GLOVE GOT LIT ON FIRE, IT IS ENTIRELY POSSIBLE THE FUMES, HE WAS WITHIN ONE FOOT, AGAIN THE FIRE MARSHAL, EXPERT SAID IT WAS ENTIRELY CONSISTENT, IT'S AN EXCESSIVE METHOD OF SCARING HER AND I AGREE WITH THAT BUT IT IS A TECHNIQUE KNOWN FOR TERRORISTS, THEY SAY WE'LL LIGHT YOU ON FIRE AND SO IT DOES HAPPEN.

>> THE WORST STATEMENT WAS WHEN YOU QUESTIONED HIM, DID YOU BELIEVE IT WAS AN ACCIDENT? NO, NO MA'AM.

HE WAS TALKING ABOUT WHAT HIS STATE OF MIND WAS, DURING THE

INTERROGATION, NOT WHAT HIS
OPINION WAS, AS TO WHETHER IT
WAS AN ACCIDENT.

AND, IT WAS AT ONE STATEMENT,
AND IT WASN'T USED AGAIN IN
CLOSING ARGUMENT.

I THINK YOU HAVE A HARD TIME --
>> AGAIN, THE TRIER OF FACT WAS
TOLD BY A LAW ENFORCEMENT
OFFICER, DON'T BELIEVE THE
DEFENDANT.

I DON'T BELIEVE HIM.

I DON'T BELIEVE IT WAS AN
ACCIDENT.

THE CASE LAW SHOWS THE TRIERS OF
FACT ARE BEING DIRECTED TO
ARRIVE AT A CONCLUSION, WHICH
THEY SHOULD BE FREE TO DETERMINE
INDEPENDENTLY, FROM THE FACTS
PRESENTED AND NOT HAVE THIS IN
PROMISER EXPERT TESTIMONY.

>> HE'S ASKING THE DETECTIVES ON
THE STATEMENT THAT IT WAS A
ACCIDENT, NOT THE DEFENDANT...

>> AGAIN, BECAUSE THE STATE
PRESENTED THAT EVIDENCE, NOT THE
DEFENSE, THE DEFENSE DIDN'T OPEN
THE DOOR, THE STATE DID.

THEY WERE THE ONES THAT MADE THE
NECESSITY, WHEN THEY COULD HAVE
EXCISED THAT FROM THE STATEMENT
FROM THE CONFESSION ALTOGETHER,
AND WE WOULDN'T HAVE HAD THIS
PROBLEM.

TURNING TO POINT NUMBER 7, THE
DEFENDANT'S DEATH SENTENCE WAS
IMPROPER AND IT WAS BASED ON
CRITICAL FACTUAL ERRORS IN THE
SENTENCING ORDER, WHERE
SUBSTANTIAL MITIGATION EXISTS,
AND WHERE ONE AGGRAVATOR WAS NOT
PROVEN BEYOND A REASONABLE DOUBT

RENDERING THE DEATH SENTENCE
DISPROPORTIONATE.

>> IN TERMS OF MITIGATION,
CLEARLY, THE EVALUATION FOR ME
OF THE EXTREME EMOTIONAL
DISTRESS MITIGATOR IS SOMETHING
IMPORTANT TO LOOK AT.

NOW, THE JUDGE IN HER SENTENCING
ORDER, SAID THAT ALL OF THE
EXPERTS AGREED THAT NONE OF THE
DIAGNOSE SEES CAUSED OR
CONTRIBUTED TO THE MURDER.

AND THEN FOUND THAT
DR. TRESSLER'S TESTIMONY WAS
MORE CREDIBLE AND GAVE IT -- THE
MITIGATOR LITTLE WEIGHT.

CAN YOU -- CAN YOU ASSERT THAT
THAT --

>> TOTALLY, TOTALLY WRONG, YOUR
HONOR.

DR. TRESSLER, THE STATE'S OWN
EXPERT, COULD NOT SAY FOR
CERTAIN THAT THE DEFENDANT'S
DISORDERS DID NOT INFLUENCE HIS
CONDUCT.

>> LET'S GO TO WHAT THE POSITIVE
IS, WHAT DID YOUR EXPERT, WHAT
IS THE TESTIMONY THAT YOU SAY
REALLY SHOWS THAT THIS IS -- WAS
A CASE OF AN EXTREME EMOTIONAL
DISTURBANCE HAVING BEEN A FACTOR
IN CAUSING THIS CRIME.

>> FIRST OF ALL, DR. TRESSLER,
AGAIN, THE STATE'S OWN EXPERT,
SERVED AND I QUOTE, THE
DEFENDANT HAS A LONGSTANDING
DISTURBANCE WHICH INTERFERES
WITH HIS INABILITY TO FUNCTION
IN CERTAIN AREAS OF LIFE, AND HE
HAS A HARD TIME OPERATING WITHIN
THE STANDARDS OF SOCIETY.

>> HOW DOES THAT... WHAT FACTS

IN THIS -- THE DEFENDANT'S
BACKGROUND ACTUALLY SUPPORT EVEN
THOSE STATEMENTS?

IN OTHER WORDS, HE WAS -- HE
DIDN'T GRADUATE FROM HIGH SCHOOL
BUT HE WAS HOLDING DOWN TWO
JOBS, AND HE WAS CARRYING ON TWO
DIFFERENT RELATIONSHIPS, HE WAS
WORKING AT HIS FATHER'S
BUSINESS, HE HAD AN IQ THAT
WAS...

>> LOW AVERAGE.

>> WELL, WAS MUCH BETTER THAN...

>> YES.

>>... THAT WE SEE.

>> ALL OF THE EXPERTS AGREED
THAT HE HAD MENTAL AND EMOTIONAL
DISABILITIES WHICH CAUSED HIM TO
FUNCTION SOME SAY AS LOW AS
TEN-AND-A-HALF YEARS OLD AND
OTHER S SAID BETWEEN 12 AND 14
YEARS OLD.

>> WHAT IS THE FACTUAL BASIS FOR
THOSE STATEMENTS?

>> THE TESTS THAT WERE DONE ON
THE DEFENDANT.

THE SCHOOL RECORDS, SHOWING THAT
HE HAD DISABILITIES GROWING UP,
AND IN SCHOOL.

>> I MEAN, LEARNING
DISABILITIES?

WHAT KIND OF DISABILITIES.

>> LEARNING DISABILITIES, MENTAL
AND EMOTIONAL... THAT IS WHAT
I'M TRYING TO ASK.

UNTIL THE DATE OF THIS TERRIBLE
CRIME, HOW DID THOSE MENTAL OR
EMOTIONAL DISABILITIES MANIFEST
THEMSELVES.

>> THEY MANIFESTED -- HIMSELF
MAINLY IN HIS SCHOOL SETTING AND
SOCIAL AN INTERPERSONAL

RELATIONSHIPS.

>> HOW?

GIVE ME TWO -- ONE OR TWO
CONCRETE EXAMPLES SO THAT WE
DON'T JUST HAVE AN EXPERT SAYING
SOMETHING CAUSED IT OR SOMETHING
DIDN'T.

OF HOW HIS -- HE DID NOT
FUNCTION IN A WAY THAT, WHEN HIS
-- WHEN HE WAS SUBJECT TO
SOMETHING VERY STRESSFUL, THAT
HE WOULD LOSE IT.

>> THEY -- BASED ON THEIR -- THE
DATA THAT THE DOCTORS ACQUIRED
FROM WITNESSES, FROM SCHOOL
RECORDS, THEY ALL SAID THAT WHEN
FACED WITH AN EMOTIONALLY HIGHLY
CHARGED SITUATION SUCH AS
OCCURRED HERE, DANE WOULD HAVE
DIFFICULTY OPERATING NORMALLY --

>> YOU ARE GIVING ME A
CONCLUSION.

AND I REALIZE THAT THAT IS ALL
YOU HAVE TO DO BUT IN TERMS OF
IT, FOR BEING A CASE WHERE YOU
CAN TAKE THIS -- THE TERRIBLY
AGGRAVATED CRIME IN TERMS OF THE
CIRCUMSTANCES, IF WE UPHOLD HAC
AND CCT AND YOU HAVE -- HAC, YOU
HAVE A 19-YEAR-OLD, WHO DOES NOT
HAVE A PRIOR HISTORY OF CRIMES,
WHICH IS BOTH -- YOU KNOW, CUTS
BOTH WAYS, BECAUSE HE DOESN'T.
THAT IS GOOD.

BUT, IT IS ALSO A QUESTION, HOW
COME NOW HE ACTS OUT.

AND YOU'VE GOT AGE AS A
MITIGATOR.

BUT, I'M LOOKING AT THIS ONE,
THE EXTREME EMOTIONAL
DISTURBANCE.

AND I'M NOT SATISFIED JUST TO

HEAR CONCLUSIONS.

I WANT TO UNDERSTAND WHAT IT IS IN TERMS OF THE DIAGNOSIS OR THE CIRCUMSTANCES THAT WOULD SHOW THAT HE HAD THE KIND OF PERSONALITY DISORDER THAT WOULD HAVE CAUSED THIS IRRATIONAL DECISION TO BE MADE AND, YOU KNOW, WAS OPERATING AT THE TIME OF THE CRIME.

>> AGAIN, ALL OF THE EXPERTS TESTIFIED BASED ON THE FACTS OF THE DEFENDANT GROWING UP, THAT HE HAD AN IMPULSE CONTROL DISORDER, HE WAS UNABLE TO RESIST IMPULSES...

>> THE FACT OF HIS GROWING UP. WHAT WAS -- WHAT WAS WRONG OR WHAT DO YOU SAY WAS DYSFUNCTIONAL, OR UNUSUAL OR SOMETHING ABOUT HIS GROWING UP?

>> HE HAD EMOTIONAL ISSUES WHERE HE COULD NOT COPE WITH CERTAIN TYPES OF SITUATIONS.

AND --

>> CAN YOU GIVE US ONE -- THAT IS WHAT I'M ASKING YOU.

IS THERE -- WHAT DID THOUGH EXPERT RELY ON TO SHOW, BASED ON SCHOOL RECORDS, THAT HE WAS A BEHAVIOR PROBLEM, THAT HE HAD TO BE TAKEN OUT OF SCHOOL?

>> ACTUALLY HE WASN'T A BEHAVIOR PROBLEM IN SCHOOL.

THE RECORDS SHOW THAT HE TRIED, TRIED, TRIED AS HARD AS HE POSSIBLY COULD AND GOT PERFECT ATTENDANCE FOR BEING AT SCHOOL BUT BECAUSE OF HIS MENTAL, EMOTIONAL CAPACITIES HE WAS NOT ABLE TO LEARN, AND THE DOCTORS CORRELATED THAT TO HIS ASPECTS

OF LIFE THAT HE WAS NOT ABLE TO DEAL WITH STRESS AND HIGHLY EMOTIONALLY CHARGED SITUATIONS. THERE ARE SPECIFIC EXAMPLES WHERE THE FAMILY HAD TO HAVE HIM BAKER ACTED.

WHEN HE RETURNED FROM VISITING HIS FATHER IN TRINIDAD, HIS BIOLOGICAL FATHER ALSO HAD SOME MENTAL DISABILITIES.

HE... HE WAS BAKER ACTED.

HE WAS RELEASED, HE LIVED WITH HIS UNCLE FOR A WHILE, WAS ALLOWED TO RETURN HOME.

HE CRIED INCESSANTLY OVER THIS.

HE HAD EMOTIONAL PROBLEMS.

THE DR. GOLD, ESPECIALLY, CORRELATED TO HIS LIFE.

IS THAT THE --

>> THAT IS REALLY A PRETTY STRAIGHTFORWARD QUESTION.

AND AGAIN, IT IS -- THE RECORD DOES NOT CONTAIN THE MATERIAL.

DID HE HIT PEOPLE?

DID HE RUN OVER THEM WITH MOTOR VEHICLES?

>> NO.

>> OKAY, SO THE RECORD DOESN'T CONTAIN THOSE, IT CONTAINS THE CONCLUSIONS OF THE EXPERTS, IS THAT A BETTER WAY TO APPROACH IT.

>> AND ALL THE EXPERTS.

>> I UNDERSTAND THAT.

>> IF THERE WAS AN EXPERT THAT SAID, NO, HE HAS NO MENTAL -- DIDN'T AFFECT HIM, THEN Y BUT ALL THE EXPERTS AGREED CONTRARY TO WHAT THE TRIAL COURT --

>> THE ONLY THING WE HAVE THEN IN THIS RECORD, HOW THAT TRANSLATED, WAS THAT HE WAS

BAKER ACTED ON ONE OCCASION.

IS THAT --

>> AND HIS GUILTIES IN SCHOOL
WITH LEARNING.

THE FACT THAT HIS BROTHER WAS
EXTREMELY SMART AND HE HAD TO
DEAL WITH BEING COMPARED TO HIM
ALL THE TIME.

AND, THE STRESS THAT THAT CAUSED
HIM.

AS TESTIFIED TO BY DR. GOLD AND
THE TRIAL COURT FOUND AGE TO BE
A MITIGATING CIRCUMSTANCES BUT
GAVE IT MODERATE WEIGHT, IN BELL
VERSUS STATE, THIS COURT'S
DECISION, THE COURT MUST AFFORD
AGE FULL WEIGHT, IT SAYS, UNLESS
THERE IS A SHOWING OF UNUSUAL
MATURITY.

HERE, THE TRIAL COURT'S ORDER
SPECIFICALLY SHOWS THE EXACT
OPPOSITE.

THAT HE HAD A LACK OF MATURITY.
AND... IMMATURE.

>> WHAT SCHOOL -- YOU SAID WE
HAVE TO GIVE IT FULL WEIGHT.

WHAT DOES THAT MEAN?

>> THAT WAS THE COURT'S
LANGUAGE.

>> MODERATE.

>> NO, MODERATE IS NOT FULL
WEIGHT, THAT IS MIDDLE OF THE
ROAD WEIGHT HERE --

>> SO ARE YOU SAYING WE NEED TO
GIVE IT GREAT WEIGHT.

>> YES.

I SUBMIT --

>> THAT IS WHAT YOU INTERPRET
FULL WEIGHT TO BE.

>> SYNONYMS IN THAT REGARD.

IT IS CERTAINLY NOT MODERATE
WEIGHT AND THE JUDGE'S OWN ORDER

SUPPORTS IT SHOULD HAVE BEEN GIVEN GREAT WEIGHT WHEN HE SPECIFICALLY SAYS IF THE DEFENDANT HASN'T SUFFERED FROM THIS IMMATURITY, THIS WOULDN'T HAVE HAPPENED.

WE SUBMIT THAT, YOU KNOW, HE WAS BARELY AGE QUALIFIED UNDER ROPER VERSUS SIMMONS, BUT WHEN COUPLED WITH HIS INTELLECTUAL AND MENTAL AND EMOTIONAL IMMATURITY IT IS A STRONG MITIGATION THAT BELL SAYS, THE COURT, TRIAL COURT MUST GIVE FULL WEIGHT TO AND HERE THE TRIAL COURT DID NOT DISCOUNTED IT, GIVING IT MODERATE WEIGHT.

WE SUBMIT THAT THIS COURT SHOULD REVERSE THE CONVICTION, REMAND FOR A NEW TRIAL, AND, VACATE THE DEATH SENTENCE.

THANK YOU.

>> THANK YOU.

>> MEREDITH CHARBULA, ASSISTANT ATTORNEY GENERAL FOR THE APPELLEE IN THIS CASE, I'D LIKE, IF I COULD, TAKE UP THE LAST ISSUE THAT THE APPELLANT BROUGHT UP.

I'D LIKE TO DIRECT A COUPLE OF THINGS.

FIRST OF ALL, NOT ALL THE EXPERTS SAID THAT MR. ABDOOL HAD IMPULSE CONTROL DISORDER.

IN FACT DR. TRESSLER SAID SPECIFICALLY HE SAW NO EVIDENCE OF AN IMPULSE CONTROL DISORDER IN ABDOOL.

HE ALSO OPINED, CONTRARY TO DR. GOLD THERE WAS NO EVIDENCE OF PSYCHOTIC EXCLUSIONS AND DR. GOLD DOESN'T DO DIAGNOSE

SEES BECAUSE THEY CHANGE ALL THE TIME, BUT THAT HE HAD PSYCHOTIC DELUSIONS BECAUSE HE REPORTED THAT HE DROVE LAMBORGHENIS AND FERRARIS, IN HIS FATHER'S AUCTION BUSINESS SO DR. TRESSLER, WHO BY THE WAY THE TRIAL COURT FOUND MORE CREDIBLE

--

EVERY TIME THE JUDGE SAYS THERE'S NO RELATIONSHIP BETWEEN THE FACTS AND THE CRIME, THE JUDGE GIVES THAT MITIGATOR -- I THINK THAT IF YOU GO ON THIS IDEA THAT IF IT'S NOT RELATED WE'RE GOING TO GIVE IT THE WAITING PERIOD FOR ATTENTION DEFICIT DISORDER.

I HAVEN'T LOOKED UP THE SCHOOL RECORDS TO KNOW WHAT I REALLY MEAN IN THE CONTEXT OF THIS CASE, BUT THE JUDGE SAID THIS COURT FINDS US TO BE A MITIGATING HER.

BEING AS OF THE SENTENCING ORDER GO BACK TO THE STATUTORY VINDICATION AND THAT'S WHAT'S DONE REPEATEDLY IN THE SENTENCING ORDER.

AND MY CONCERN IS THAT WHAT DO THE NONSTATUTORY MITIGATION NOT BEING WEIGHED IN A WAY THAT WE CAN TRULY EVALUATE IT.

AND I'M ALSO -- JUST IN TERMS OF PROPORTIONALITY ANALYSIS HERE, THE DEFENDANT -- THERE IS A POINT ABOUT THE FACT THAT HE'S 19 AND HE IS FUNCTIONING AT A 12 TO 14-YEAR-OLD RANGE, THAT SHOULD HAVE GIVEN GREATER WEIGHT

AND WHETHER THAT CHANGES THE EQUATION I DON'T KNOW, BUT WE ARE REALLY FOR 19 NOW, SOMEONE 19 OR 18 WILL BE REALLY WHAT 17-YEAR-OLD MIGHT'VE BEEN BEFORE ROPER.

THE AGE MITIGATOR IS SOMETHING TO CONSIDER.

IN OTHER WORDS, I WOULD ASK THIS DIFFERENTLY.

IF WE CONCLUDE THAT MITIGATOR SHOULD HAVE BEEN GIVEN GREAT WEIGHT, WHAT DOES THAT DO TO THE PROPORTIONALITY ANALYSIS?

>> I THINK IT DOES NOTHING BECAUSE YOU SEE BECAUSE YOU SEE THE TRIAL COURSE THAT IF HE WAS MORE EMOTIONALLY MATURE THAT SHE MAY HAVE MADE DECISIONS.

SHE GAVE HIM MODERATE WEIGHT, BUT IT'S CLEAR SHE CAN DO IN TERMS OF THAT IF HE WOULD'VE BEEN MORE WHICH WERE SHE WOULD'VE MADE BETTER DECISIONS.

YOU KNOW, DR. TRESSLER REJECTED THE NOTION THAT HE WAS 12 OR 14.

HIS EMOTIONAL AGE IS REALLY NOT VERY SCIENTIFIC BUT HE DID AGREE HE WAS EMOTIONALLY IMMATURE.

BUT HERE WE HAVE A DEFENDANT WHO WAS HOLDING TWO JOBS, HAS HIS OWN APARTMENT ALSO WASN'T THERE FOR LONG BEFORE FOR THE MURDER.

HE HAS A CREDIT CARD, DRIVES A CAR, OPERATING IN EVERY WAY LIKE AN ADULT.

HE WENT TO TRADE SCHOOL AND LEARNED A TRADE.

SO WE SEE HIM OPERATING AS AN ADULT IN SOCIETY.

AND SO, I THINK THAT'S -- SO I DON'T THINK THEY'VE SOME OF THE

TRIAL COURT CONCLUDED WAS THE AGE MITIGATOR THAT IT WOULD'VE MADE A A DIFFERENCE IN THIS CASE.

BECAUSE I THINK SHE CLEARLY CONSIDERED THE DEFENDANT'S AGE AND HIS EMOTIONAL IMMATURITY.

>> AT THE TRIAL COURT DIDN'T SAY THAT I'M GOING TO FIND THIS MITIGATOR NOT TO HAVE GREAT WEIGHT BECAUSE EVEN THOUGH SOME OF THAT HE'S FUNCTIONING AS A 12 TO 14-YEAR-OLD, I FIND THAT HE HAD THE MATURITY OF AN ADULT. SO YOU DON'T HAVE THAT AS A FINDING FROM THE TRIAL COURT. IN FACT FROM THE TRIAL COURT SAYS THE OPPOSITE.

IT'S LIKELY HE'D BEEN MORE MATURE HAD THIS TERRIBLE CRIME WOULD NEVER HAVE OCCURRED. AND THAT'S WHAT SHE ENDS UP SAYING.

>> RIGHT, BUT I THINK ELSEWHERE SHE TALKS ABOUT HIS JOB PERFORMANCE.

BUT I THINK THAT WHEN YOU SEE THAT LANGUAGE, YOU SEE HOW THE TRIAL COURT DID CONSIDER THAT FACT FOR AN ADULT HE IS THIS COURT DIRECTED ABOUT WHICH OF COURSE HE HAS NEVER DIRECTED TRIAL COURT TO GIVE PARTICULAR WEIGHT TO A MITIGATOR, THAT THAT WOULD'VE MADE A DIFFERENCE IN THIS CASE.

>> IN THE WHOLE 19 YEARS OF THIS DEFENDANT'S LIFE, WAS THE SON TOTALLY OUT OF CHARACTER WITH THE WAY HE'S LIVED HIS LIFE?

>> APPARENTLY.

AND EVEN DR. TRESSLER SAID IT

SEEMED TO BE ANOTHER RATION.
>> AND THE PLANNING OF THAT WHICH DOES GIVE RISE TO THE CCP STARTED TWO HOURS BEFORE -- I MEAN, AS FAR AS THE PURCHASE OF THE GASOLINE AND THE DUCT TAPE?
>> CORRECT.
BUT HE PREVIOUSLY ASKED JULIAN PENICK TO KILL AMELIA FOR HER -- FOR HIM.
>> WHAT WAS SAID AND WHAT WERE THE CIRCUMSTANCES?
LIKE IT WAS SOME MONTHS BEFORE THE MURDER AND HE SAID THAT HE HAD BEEN APPOINTED WITH MR. ABDOOL, HE HAD NO IDEA WHY SHE WOULD BE APPROACHING HIM TO DO THIS AND HE TURNED THEM DOWN. AND ABDOOL SAID HE WOULD FIND SOMEONE ELSE.
HE ALSO TOLD LOLIDO THAT HE WANTED TO KILL AMELIA BECAUSE SHE HAD VANDALIZED HIS CAR AND HIS MOTHER'S PLACE, WHICH THERE WAS NO EVIDENCE OF.
AND THAT TOOK PLACE SOMETIME BEFORE THE MURDER.
AND WHEN CONFRONTED WITH THE FACT THAT HE WAS ARRESTED FOR THE MURDER BY A FRIEND, AMANDA INMAN, SHE TOLD HER THAT A PERSON CAN ONLY GO SO FAR, CAN ONLY BE PUSHED SO MUCH AND YES WE HAVE THE ACTUAL -- IN THE RECORD DOESN'T HELP WHEN HE ACTUALLY PLANNED IT.
WE DO KNOW THAT HE BOUGHT THE DUCT TAPE, THE GAS CAN AND THE GAS EN ROUTE TO THE KILL SITE.
WE DO KNOW THAT.
>> IF WE DIDN'T HAVE CCP, WE WOULD HAVE A WHOLE DIFFERENT

OCCASION.

SO I'M ACCEPTING THAT THERE IS
CCP.

BUT THE CASE IS THAT THE KEY TO
USE THIS FOR COMPARING FOR A
PERSONALITY ARE TO ME SO FAR
DIFFERENT.

I MEAN, THE CASES OF WAY WHICH
INVOLVES THE 30-YEAR-OLD MAN WHO
KILLED HIS MOTHER, HIS WIFE AND
HIS DAUGHTER AND HAD A PRIOR
VIOLENT FELONY, AND AN OLDER MAN
WHO KILLED HIS WIFE AND TWO
CHILDREN.

WHAT IS IN TERMS OF LOOKING UP
THIS OTHER YOUNG DEFENDANT WHO
HAD NO PRIOR HISTORY OF CRIMINAL
ACTIVITY WITH EACH BEEN GIVEN AT
LEAST MODERATE WEIGHT DO WE
HAVE -- WHAT IS THE CLOSEST CASE
IN PROPORTIONALITY THAT WE HAVE?

>> WELL, I CITED TO A SCORE TO
ROBERTSON AND EVEN THE DEFENDANT
WAS 29 YEARS OLD HE HAD FRONTAL
LOBE DAMAGE AND HE WAS UNDER THE
INFLUENCE OF AT THE TIME.

AND I BELIEVE THIS COURT HAS
UPHELD THE DEATH SENTENCE IN
CASES WHERE THE DEFENDANT'S
RATHER YOUNG.

I BELIEVE HE WAS 20.

>> AGAIN, NOT TO UNDERMINE
ANYTHING BUT ROONEY WAS THE ONE
WITH THE TWO DEATHS WHERE THEY
CAME IN THE HOME INVASION AND
SHOT THE COUPLE AND THE BED AND
LIT THE TRAILER ON FIRE.

>> AND I'M SURE THERE WAS A
PREMIERE AGAIN.

>> RIGHT, IT WAS A HOME
INVASION ROBBERY.

>> LET'S GO BACK TO THE

SENTENCING BECAUSE ONE OF THE THINGS ABOUT THE TESTING ORDER, THE TRIAL JUDGE WITH ALL OF THESE MITIGATING CIRCUMSTANCES AND QUITE OFTEN WE SEE AND THE SENTENCING ORDERS THAT SOME OF THESE THINGS LIKE THE DEVELOPMENTAL DELAY AND OTHER THINGS ABOUT HIS ARE USUALLY LUMPED IN WITH THE EMOTIONAL DISTURBANCE AND WITH NOT BEING ABLE TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW.

SO QUITE OFTEN WE SEE ALL THESE THINGS SHE'S TAKEN OUT AND PUT IN, YOU KNOW, I SEPARATE NONSTATUTORY LITIGATORS LUMPED IN WITH THE STATUTORY MENTAL MITIGATORS.

WHAT ABOUT THE STATE-OF-THE-ART CASELAW IS TO WHETHER OR NOT THAT IT'S APPROPRIATE?

I MEAN, IF SHE HAD TAKEN OFF THESE THINGS AND PUT THEM ACTUALLY WITH THE STATUTORY MITIGATOR'S?

>> WELL, I THINK THAT, YOU KNOW, JURIES ARE KNOWN AND STRIKE THAT THEY MUST GIVE MORE WEIGHT TO STATUTORY MITIGATOR SEMINAR NONSTATUTORY LITIGATORS.

AND IF THE TRIAL COURT FOUND DR. TRESSLER IS MORE CREDIBLE THAN DR. GOLD THAT EITHER STATUTORY IMPLIED IN THIS CASE. I THINK WHICH ASSUMES THE TRIAL JUDGE SENTENCING ORDER TO SEPARATE NONSTATUTORY MITIGATOR WHICH I THINK I FOUND A LOT OF THEM DUPLICATE IF THAT WAS REQUESTED TO BE CONSIDERED BY THE DEFENSE SHE GAVE

CONSIDERATION THAT THEN GAVE SOME WEIGHT TO, EVEN THOUGH FOR INSTANCE DR. TRESSLER TESTIFIED THERE WAS NO -- THE PERSONALITY DISORDER DO NOT CAUSE THE OFFENSE.

I THINK YOU DESCRIBE THE PERSONALITY DISORDERS THAT THE BEHAVIOR IS WHAT DENOTES THE PERSONALITY DISORDERS, NOT THE PERSONALITY DISORDER THAT CAUSES THE BEHAVIOR.

6

AND HE EXPLAINED THAT.

I THINK WHAT YOU HAVE IS A TRIAL JUDGE HAS BEEN VERY CAREFUL ABOUT CONSIDERING EVERY POSSIBLE NONSTATUTORY MITIGATOR AND MITIGATOR SUGGESTED BY THE DEFENSE AND GIVING THE DEFENDANT EVERY POSSIBLE BENEFITS OF DOUBT, EVEN WHEN --

>> WHAT IF ANYTHING DOES SHE DO WITH THE FACT THAT HE HAD BEEN BAKER ACT.

COULD YOU TELL US UNDER WHAT CIRCUMSTANCES THAT OCCURRED? THEY STAYED IN FOR THOSE THREE DAYS OR WHATEVER IT IS THAT YOU NORMALLY STAY UNDER AND THEY'RE PERFECTLY FUNCTIONAL.

SO I'M NOT SURE WHAT WERE THE CIRCUMSTANCES?

>> I CAN TELL YOU JUSTICE QUINCE WHAT HAPPENED IS HE REBELLED AGAINST HIS MOTHER RULES.

I MEAN, HIS PARENTS WERE DEVOUT AND RELIGIOUS.

THEY RAISED THEM IN A HOME WITH RULES AND STRUCTURE AND NO ALCOHOL, NO RUNNING AROUND.

AND HE REBELLED AGAINST HIS SPIRITS ROSE AND HE RAN AWAY AND

LEFT HIS MOTHER'S HOME, GIVING HER AN INDICATION HE WAS PLANNING ON RUNNING AWAY. HIS MOTHER CALLED THE POLICE. HE WENT OUT AND SCOOPED HIM AN UPCOMING PRODUCT HOME AND HE MADE IT TO THE EFFECT THAT IT'S JUST BETTER I'M NOT HERE. AND THE POLICE TOOK THAT AS A SUICIDAL THREAT. THEY TOOK HIM INTO LAKEVIEW, HAD HIM EVALUATED. HE WAS RELEASED IN LESS THAN 24 HOURS WITH NO FOLLOW-UP COUNSELING. HIS MOTHER NEVER THOUGHT HE WAS SUICIDAL.

7

THERE WAS A PRECAUTIONARY MEASURE TAKEN BY THE POLICE WHEN HE MADE THAT STATEMENT. HE WENT ONE TIME TO LIVE WITH HIS UNCLE BECAUSE HE FOCUSED CLIENT BY HIS MOTHER'S RULES. SO THAT WAS A SITUATION. THERE WAS NEVER ANY INDICATION THAT WAS A RESULT OF MENTAL ILLNESS. IT WAS BASICALLY A PROPHYLACTIC MEASURE TAKEN BY THE POLICE WHEN HE MADE THE STATEMENT THAT IN THE POLICE OFFICERS VIEW THE MOTHER'S VIEW THAT THERE WAS A SUICIDAL THREAT AND SO THAT'S WHAT THE BAKER ACT -- HE DIDN'T STAY 24 HOURS. >> I KNOW YOU'RE GOING TO SAY THAT HIS DISTINCTION BOTH AT THE CASE THAT TO ME COMES CLOSE IS THIS THE CASE FOR THOUGH THE STATE AND THERE WAS A PRETTY TERRIBLE CRIME AND LOOKING BACK AT IT IT WAS A 17-YEAR-OLD BUT

THE MAJORITY DID NOT RAISE ITS
DECISION IN THAT CASE ON JUST
THE MERE FACT THAT HE WAS 17.
HOW WOULD YOU DISTINGUISH BELL?

>> I'M SORRY, YOUR HONOR, I
DON'T RECALL THE FACTS.

I THINK THAT MAY HAVE BEEN --

>> TWO ORAL ARGUMENTS IN A
PERFECT KNOWLEDGE OF THE RECORD
I THINK YOU'RE BRIEF ACTUALLY
MAY HAVE --

>> I APOLOGIZE I SIMPLY CAN'T
REMEMBER THE FACTS RIGHT OFF THE
TOP OF MY HEAD.

BUT I THINK WHAT WE SEE HERE IS
VERY CAREFUL PLANNING OF THE
DEFENDANT, HIS FRUSTRATION AT
MS. SOOKDEO.

I MIGHT MOVE ON TO THE POLICE
OFFICER'S TESTIMONY, I THINK
THAT WHAT HAVE HERE -- I AGREE
AND ACKNOWLEDGE AND AGREE TO THE
QUESTIONING OF THE PROSECUTOR
COULD HAVE BEEN A LITTLE BIT
MORE VAGUE AND MAY NOTICE THAT
YOU SEEM TO GO ALONG WITH THE
DEFENDANT IN MANY AREAS OF THIS
INTERVIEW.

WHAT WAS THAT ALL ABOUT MIGHT'VE
BEEN A BETTER QUESTION.

BUT WHAT YOU HAVE HERE IS COMING
IN THOUGH, THE OFFICER DID NOT
APPLY THIS IS FIRST-DEGREE
MURDER.

I THINK THIS IS A SECOND DEGREE
MURDER.

HE WAS ASKING A QUESTION
SPECIFICALLY ABOUT I NOTICE YOU
WANT TO BOND WITH THE DEFENDANT
IN SEVERAL TIMES THAT YOU AGREED
IT WAS AN ACCIDENT, YOU KNOW,
WHAT IS IT ABOUT?

HE SAID THAT'S AN INTERVIEW
TECHNIQUE.

>> IT'S REALLY THE FIRST COMMENT
WHEN YOU WERE GOING ALONG AND
SAYING IT WAS AN ACCIDENT, DID
YOU BELIEVE IT WAS AN ACCIDENT?
THAT'S REALLY THE ONE I GUESS
THEY ARE HANGING THEIR HAT ON,
NOT SOME CONCESSION AT THE OTHER
COMMENTS WOULD HAVE BEEN.

HE SEEMED FORTHRIGHT ABOUT IS
WHO WOULD BE BETTER TO ASK IT AT
ALL TO SAY WHAT THEY WERE MAKING
COMMENTS, NOT WHAT YOU BELIEVE.

>> CORRECT AND IT COULD'VE BEEN
MORE ARTFULLY DONE ABSOLUTELY.
I THINK WHAT YOU HAVE TO LOOK AT
IS I THINK IN LOOKING AT IT, YOU
CAN SEE IT NOW BECAUSE HAD THE
QUESTION I'VE BEEN ASKED, THEN
CERTAINLY GIVEN THE DEFENDANT'S
DEFENSE DURING CLOSING
ARGUMENTS, THE DEFENSE WOULD'VE
BEEN -- LOOK, EVEN THE POLICE
OFFICER THOUGHT IT WAS AN
ACCIDENT.

HE SAID IT SEVERAL TIMES ON THE
TAPE.

AND IT'S OKAY TO COME BACK AS
WELL.

THE STATE COULD HAVE SAID WELL
IT'S REASONABLE TO INFER THAT
THAT WAS AN INTERVIEW TECHNIQUE.

BUT WITHOUT THE ACTUAL EVIDENCE
OF THAT, IT'S ONLY AN INFERENCE.
WITH THE EVIDENCE OF THAT IT'S
IN EVIDENCE BY THAT.

WHEN IT OUT BY THE DEFENSE TO
PROSECUTION DID NOT GET UPON
CLOSING OF THING WE KNOW THIS
WASN'T AN ACCIDENT BECAUSE WE
HAVE DETECTIVE JUAN BAILEY SAYS

THE FIRE INTENTIONALLY SET AND WE ALSO HAVE DETECTIVE GAMMILL WHO TESTIFIED IT WAS AN ACCIDENT.

AND SO, WHAT WE HAVE IS EXPLAINING WHY THE DEFENDANT OR POLICE OFFICER USED THAT PARTICULAR INTERVIEW TECHNIQUE. I DID NOT ASK FOR ANY KIND OF LIMITING INSTRUCTION ON THAT POINT AND MAYBE PROBABLY FOR TACTICAL REASON HE DIDN'T WANT TO EXERCISE IT.

BUT ALSO -- SO WE HAVE THE STATEMENT ARGUING THAT DURING CLOSING ARGUMENT.

AND SO, I THINK WHEN YOU LOOK AT THE FACT THAT DETECTIVE BAILEY TESTIFIED WITHOUT OBJECTION, THIS WAS A FIRE INTENTIONALLY SET AND YOU HAVE THE QUESTIONING IN THE CONTEXT OF THIS BEING USED AS AN INTERVIEW TECHNIQUE AS OPPOSED TO AN OPINION.

NO REASONABLE JUROR WOULD'VE PUT WAY TO IF THAT WAS OPINION AND HE DIDN'T OPINE IT WAS PERMITTED OF MURDER OR ANY KIND OF PARTICULAR CURRENT.

HE ONLY SAID IT WASN'T AN ACCIDENT AND CONTEXT EXPLAINED THAT WITH THIS INTERVIEW TECHNIQUE.

SO I WOULD SAY THAT THERE WAS NO ERROR OR CERTAINLY ANY ERROR AND THAT WAS HARMLESS ERROR.

ABSENT ANY OTHER QUESTIONS COME UP WITH DAVID ASKED THAT THIS COURT AFFIRMED MR. ABDOOL'S CONVICTION AND SENTENCE TO DEATH.

>> THANK YOU.

REBUTTLE?

>> THANK YOU, YOUR HONOR.

MAY I PLEASE THE COURT?

SPECIFICS THAT WERE MENTIONED DURING THE PENALTY PHASE CONCERNING THE DEFENDANTS MENTAL AND EMOTIONAL DISABILITIES, PAGE 1111 AT THE TIME OF THE CRIME, HIS INTELLECTUAL LEVEL WAS THE EQUIVALENT OF A 12-YEAR-OLD CHILD, SOCIALLY 15-YEAR-OLD REGARDING THE FACT HE HAD JOBS AND A CAR.

>> WHO IS MAKING THESE STATEMENTS?

>> THIS WAS DR. GOLD AND SHE'S THE ONE THAT DID ALL THE SOCIAL INTERVIEWING AND REVIEWING DIRECTOR.

DR. TRESSLER ONLY SPENT TWO AND HALF HOURS.

>> ARE THE RECORDS AND EVIDENCE EVERYTHING WE NEED TO LOOK AT TO SEE WHAT THE OPINIONS ARE BASED ON?

>> NO, THE TEST RESULTS AND WHATNOT WERE PROVIDED TO THE STATES EXPERTS, BUT THEY ARE NOT PART OF THE RECORD FROM MY UNDERSTANDING.

REGARDING THE FACT THAT HE HELD TWO JOBS AND HAD CARS IN A TIME TO TECH SCHOOL, THE TESTIMONY WAS HE DIDN'T UNDERSTAND HOW CARS WORK.

HE JUST THOUGHT THAT THEY WERE COOL AND FAST AND SLEEK.

HE REALLY DIDN'T DO THE WELDING PROPERLY.

THERE WERE DEVELOPMENTAL DISORDERS WERE PERVASIVE.

HE WAS YOUNGER IN EVERY WAY THAN

PEOPLE HIS OWN AGE.

THIS WAS ACROSS THE BOARD OF THE PSYCHOLOGISTS AND EDUCATIONAL SPECIALIST REVIEWS.

ROPER TALKS ABOUT THE REASON WE DON'T EXECUTE JUVENILES IS BECAUSE OF THEIR IMMATURITY AT THE TIME OF THE CRIME.

11

HERE THE DEFENDANT CLEARLY THINKS LIKE A 12-YEAR-OLD RATHER THAN AN ADULT.

YES HE HAD A CREDIT CARD AND AN APARTMENT.

HE WAS ONLY OUT ON HIS OWN FOR ABOUT TWO WEEKS AND THESE WERE PROVIDED TO HIS PARENTS.

SO HE WAS ACTUALLY ON HIS OWN. HE DIDN'T HAVE THAT LEVEL OF MATURITY.

HE HAS SEPARATION ANXIETY DISORDER WHERE HE WAS VERY, VERY DEPENDENT ON OTHERS AND IT WOULD UPSET HIM IF HE WAS SEPARATED FROM THEM.

AGAIN, AS JUSTICE PARIENTE MENTIONED, THE TRIAL COURT GOES INTO REGARDING THE MENTAL MITIGATION CIRCUMSTANCES, THE DEFENDANT KNEW RIGHT FROM WRONG, TOTALLY IRRELEVANT TO MENTAL MITIGATOR IS HERE.

THAT GOES OF COURSE TO INSANITY OR GUILT AND INNOCENCE OR GUILTY OR NOT GUILTY AND HAS NOTHING TO DO WITH THE MENTAL MITIGATOR'S. THE STATEMENTS TO PRIOR PEOPLE, YOU KNOW, WANTED TO KILL OR CAUSE A MISCARRIAGE -- THIS HAPPEN IN THE FALL OF 2004 WHICH WAS FOUR MONTHS TO SIX MONTHS PRIOR TO THIS CRIME.

SO APPARENTLY SHE WAS FOUR WEEKS

PREGNANT FOR ABOUT SIX MONTHS.
SO THOSE STATEMENTS JUST DON'T
GEL WITH WHAT WENT ON HERE.

>> I DO QUESTION THAT SOMETHING
IN THE RECORD THAT SHE HAD BEEN
PREGNANT ON ONE POINT, HAD AN
ABORTION WAS PREGNANT AGAIN.

>> THERE WAS ALSO TESTIMONY THE
DEFENDANT WAS NEVER TOLD ABOUT
IT.

>> I THOUGHT IN THE TESTIMONY OR
SOMETHING IN THE RECORD
INDICATES THAT THIS WAS
SUPPOSEDLY A SECOND PREGNANCY.
THAT'S NOT TRUE?

>> YES, THERE WAS TESTIMONY THAT
APPEARED THERE WAS ALSO
TESTIMONY THE DEFENDANT WASN'T
AWARE OF THAT ALLEGED PREGNANCY.
SHE HAD TOLD THAT TO A FRIEND OR
COUSIN I BELIEVE.

SO THAT COULDN'T HAVE PROVIDED
THE IMPETUS FOR THE STATEMENT.
THIS STATEMENT REGARDING THIS
STATEMENT OF THE POLICE OFFICER,
THEY SAY THAT REASONABLE JURISTS
WITH AND WITHOUT THIS
CLARIFICATION, WITHOUT THIS
QUESTION AND ANSWER AN OPINION
THAT THESE REASONABLE JURORS
WOULD THINK THAT THIS WAS AN
ACCIDENT SO THEY NEEDED TO
PRESENT THIS.

BUT THEY SAY THE SAME REASONABLE
JURORS WOULD NOT BELIEVE THAT
THAT WAS THE DETECTIVE'S OPINION
AND THEY SHOULD FOLLOW IT, BUT
IT WAS JUST A CLARIFICATION.

SO THEY CAN'T HAVE IT BOTH WAYS
ON THAT.

WE SUBMIT THAT ESPECIALLY
BECAUSE OF HIS AGE COUPLED WITH

HIS MENTAL AND EMOTIONAL ISSUES
THAT THIS IS NOT A CASE THAT
CRIES OUT FOR THE DEATH
SENTENCE.

THANK YOU.

>> THANK YOU BOTH FOR YOUR
ARGUMENTS HERE TODAY.