

NEXT CASE IS TURNER VERSUS STATE OF FLORIDA.

>> MAY IT PLEASE THIS COURT, I'M GEORGE BURDEN, I REPRESENT JAMES TURNER.

MR. TURNER WAS CONVICTED OF FIRST DEGREE MURDER, ATTEMPTED FIRST DEGREE MURDER, OTHER UNDERLYING FELONIES AND SENTENCED TO DEATH.

WE ARE HERE TO CHALLENGE THE DETERMINATION BY THE TRIAL COURT, THAT THIS MURDER OF RENEE HOWARD WAS DONE IN A COLD, AL CALCULATED, PREMEDITATED MANNER AND WOULD LIKE TO ADDRESS PROPORTIONALITY TODAY.

IN THE SENTENCING ORDER, DONE BY THE TRIAL COURT, THE REASON WHY THE TRIAL JUDGE FOUND THAT THIS MURDER WAS DONE IN A COLD AND CALCULATED PREMEDITATED MANNER WAS THAT PRIOR TO THE MURDER, MR. TURNER WAS LURKING AROUND THE COMFORT INN.

HE KNEW THE ROOM THE VICTIM WAS IN, AND KNEW WHERE THE TRUCK THE VICTIM OWNED WAS PARKED.

THE TRIAL COURT ALLEGED THAT MR. TURNER CHOSE THIS VICTIM CAREFULLY, AND ENTERED THE ROOM WITH A KNIFE, WITH READY -- READY TO KILL, TOOK THE KEYS IN THE TRUCK --

>> YOU KNOW, THAT IS VERY INTERESTING, THE FACTS THAT ARE ALLEGED, THAT HE KNEW WHAT ROOM THEY WERE IN AND WHO THE TRUCK WAS AND CHOSE THEM VERY CAREFULLY.

BUT, OTHER THAN THE FACT THAT IT ACTUALLY HAPPENED, WHAT ACTUALLY

SUPPORTS THOSE CONCLUSIONS?

>> NOTHING.

THE ONLY THING THAT YOU CAN SAY
THAT THIS WAS CCP WAS THE FACT
THAT HE WENT INTO THE ROOM
ARMED.

OTHER THAN THAT --

>> HE WENT IN AND IMMEDIATELY
BEGAN THE BLOW.

HOW DOES THAT FIT INTO THE
ANALYSIS?

AS I LOOK AT IT, THEN HE COMES
BACK AGAIN AFTER CHASING THE
OTHER LADY IN THE ROOM.

>> YEAH --

>> DISCUSS THOSE.

>> SURE.

THE WAY I INTERPRETED THE
ACTIONS WAS THAT THE KNIFING WAS
TO MAKE NEITHER OF THE PEOPLE A
THREAT TO HIM, AND I THINK THAT
THE ATTACK BACK ON MS. HOWARD
THAT ULTIMATELY ENDED IN HER
DEATH WAS BECAUSE SHE WAS GOING
TO FLEE.

HE WENT BACK TO HER, BECAUSE SHE
WAS GETTING UP TO FLEE THE
APARTMENT.

>> THIS IS NOT A CASE WHERE HE
CAME INTO THE ROOM WITH A KNIFE,
AND BRANDISHED THE KNIFE AND
SAID GIVE ME THE KEYS TO THE
TRUCK.

WHICH IS APPARENTLY -- HE HAD
ALSO ADMITTED THAT HE HAD
PLANNED TO STEAL THE TRUCK,
RIGHT.

>> YES.

HE DID.

>> OKAY.

SO, BRANDISHING THE KNIFE,
SAYING GIVE ME THE KEYS TO THE

TRUCK AND HE CAME IN AND IMMEDIATELY COMMENCED STABBING THE VICTIM.

ISN'T THAT CORRECT.

>> WELL, THAT IS WHAT THE CIRCUMSTANTIAL EVIDENCE SHOWS, THERE IS NO DIRECT EVIDENCE OF THAT.

BECAUSE, THE OTHER EYEWITNESS DIDN'T SEE WHAT INITIALLY HAPPENED.

>> I THOUGHT SHE SAW IN THE MIRROR, A FLASH OF LIGHT AND HEARD THE HITTING AND DIDN'T KNOW HE HAD A KNIFE BUT I MEAN, IS THAT NOT DIRECT EVIDENCE, THERE WAS A KNIFE IN HIS HAND.

>> YOU CAN SAY IT HAPPENED FAIRLY QUICKLY BECAUSE OF THE TIME LIMIT BUT SHE DIDN'T WITNESS THE INITIAL ATTACK OF THE VICTIM IN THIS CASE.

>> BUT IT IS CLEAR, THERE -- THE DEMAND FOR THE KEYS TO THE TRUCK, AND THAT THIS ASSAULT, THE PHYSICAL ASSAULT ON THE VICTIM WAS WHAT HAPPENED WHEN HE CAME IN TO THE ROOM.

THERE IS NOTHING THAT WOULD POSSIBLY SUPPORT ANY OTHER UNDERSTANDING OF WHAT HAPPENED, IS THERE?

>> WELL, YES, BUT WAS IT WITH THE INTENT TO KILL? THAT IS WHAT WE DON'T KNOW.

>> [INAUDIBLE].

>> I DON'T KNOW WHERE THE INITIAL BLOWS WERE.

>> HOW MANY TIMES DID HE STAB HER.

>> 15 TIMES.

>> NO VERBAL COMMAND TO -- DON'T

MOVE... JUST WALKED -- HE SAID NOTHING, DID HE NOT?

>> WE DON'T KNOW, SHE WAS AT THE SINK --

>> AND, YOU COULD HEAR IT, SHE COULD HEAR IT.

>> SHE WASN'T CLEAR, IT IS A GAP IN EVIDENCE BUT IT IS FAIR TO CONCLUDED, JUST CANADY, IT WAS A FAIR CONCLUSION UPON HIS ENTRANCE INTO THE ROOM AND WHETHER OR NOT HE INTENDED TO KILL, THOUGH, YOU CANNOT INFER THAT, BECAUSE, FRANKLY, I DON'T BELIEVE THE INITIAL ATTACK ON MS. HOWARD OR THE OTHER VICTIM, WERE DEADLY ATTACKS.

I THINK HE WENT BACK AND STABBED THE VICTIM SEVERAL TIMES AFTER SHE TRIED TO FLEE THE ROOM.

>> GO BACK TO THIS... YOUR STATEMENT, THAT THERE IS [INAUDIBLE] THE TESTIMONY OF THE EMPLOYEES OF THE MOTEL, THEY HAD SEEN HIM AROUND FOR A COUPLE OF DAYS AND HE ASKED ONE FOR A TOWEL AND SO ON.

>> YES.

THE EVIDENCE IS OVERWHELMING THAT HE WAS LURKING AROUND THE COMFORT INN.

>> AND YOU SAID EARLIER THERE WAS NO EVIDENCE.

>> BUT THAT IS NOT EVIDENCE OF CCP, THAT IS EVIDENCE TO SUPPORT THE PREMEDITATION OF THE BURGLARY OR THE STEALING OF THE TRUCK AND THAT IS WHAT ALL OF THESE THINGS, ANALOGOUS TO THE GERALD CASE WHERE ALL OF THE EVIDENCE THAT THE TRIAL COURT RELIED ON IN THE VERY LENGTHY

ORDER, IS JUST -- SUPPORTS
PREMEDITATION FOR A ROBBERY.
>> IF WE WERE TO ACCEPT THE CCP
WAS NOT PROPERLY FOUND, WOULD
YOU AGREE THAT OUR CASE LAW AS
FAR AS... THAT WE LOOK AND
PERFORM A... AES.

>> THE ATTORNEY GENERAL ARGUED
THAT.

>> AND I AM HAVING A HARD TIME
UNDERSTANDING IN THIS CASE, CCP,
IS THE ONLY AGGRAVATOR THAT YOU
ATTACK, WHY THIS WOULD NOT BE
HARMLESS BEYOND A REASONABLE
DOUBT.

WE HAVE... GAIN AND YOU HAVE...
[INAUDIBLE] AND THAT HE WAS
UNDER A SENTENCE OF
IMPRISONMENT, YOU HAVE THE
CONTEMPORANEOUS FELONY TO THE
OTHER VICTIM.

AND, I THINK THERE MIGHT BE ONE
OTHER, BUT, BASICALLY, YOU
ALMOST HAVE EVERY OTHER
AGGRAVATOR HERE, AND TELL ME,
YOU KNOW, IN THESE CASES, WHERE
IT COULD BE CCP, MAYBE
HEIGHTENED PREMEDITATION.
HOW IS THAT ONE FACTOR IN THIS
CASE, GIVEN THE TOTALITY OF ALL
OF THOSE OTHER CIRCUMSTANCES NOT
HARMLESS?

>> THE REASON IS THIS:
THE TRIAL COURT IN THEIR
DELIBERATIONS ON THE MATTER
ADDRESSED THE STATUTORY
MITIGATION THAT WAS FOUND HERE
AND THERE WERE TWO, BOTH WEIGHTY
STATUTORY MENTAL MITIGATORS WERE
FOUND.

BUT THE JUDGE DIDN'T -- ONLY
GAVE THEM MODERATE WEIGHT AND

DID SO, IN WHAT I VIEW AS NOT A VERY COHERENT WAY AND I'LL EXPLAIN.

SHE CONCLUDED THAT THE EMOTIONAL DISTURBANCE MITIGATING FACTOR WAS GIVEN LESS WEIGHT FOR THE MURDER BUT GIVEN GREAT WEIGHT FOR HIS FLEEING OF SOUTH CAROLINA AND THAT MAKES NO SENSE.

>> LET'S TALK ABOUT THE AGGRAVATORS, FIRST OF ALL, THE JUDGE SHOULD WEIGH ALL OF THE AGGRAVATORS BUT WE ALSO USE OUR OWN JUDGMENT IN LOOKING AT THIS, THE FACT THAT HE WAS UNDER A SENTENCE OF IMPRISONMENT AND FLED IN ORDER TO, YOU KNOW, I GUESS START HIS DRUG HABIT UP, THE FACT THAT THERE WAS A CONTEMPORANEOUS FELONY OF ANOTHER PERSON AND SO ALTHOUGH WE DON'T HAVE A DOUBLE-MURDER WE HAVE A HOMICIDE, AND A -- ANOTHER CRIME.

WE HAVE THE MOTIVE UNQUESTIONABLY WAS FOR FINANCIAL GAIN.

AND, YOU HAVE... THE WAY THAT SHE WAS IN FACT MURDERED. AND I'M NOT SURE I UNDERSTAND THE FACT THAT HE MAY HAVE OR SHE GAVE CCP SIGNIFICANT WEIGHT, HOW -- I MEAN, OUR REVIEW IS WHETHER, FOR THE JUDGE AND THE JURY, THIS AGGRAVATOR WOULD BE HARMLESS BEYOND A REASONABLE DOUBT, WITH A -- WOULD THE DEATH PENALTY STILL HAVE BEEN IMPOSED AND IT SEEMS TO ME IT'S A ONE-OR 2-AGGRAVATOR CASE, THIS IS FIVE OTHER AGGRAVATORS.

>> THE REASON IS STARE DECISIS,
THE COURT IN GERALDS SENT THE
ANALOGOUS CASE BACK FOR
RESENTENCING WHEN THEY FOUND CCP
WAS NOT THERE AND IN GERALDS, IT
WAS FELONY MURDER, CCP,
HEINOUS... AND FELONY OFFENDER
AND THERE WAS NO STATUTORY
MITIGATION IN GERALDS AND ANY
NONSTATUTORY MITIGATION IN
GERALDS YET IT WASN'T FOUND TO
BE HARMLESS ERROR, NOT HAVING
CCP, BUT, IT WASN'T -- THE
DISPROPORTIONALITY WAS NOT DONE,
THEY SENT IT BACK FOR
RESENTENCING BECAUSE CCP IS A
WEIGHTY AGGRAVATOR.

>> WHEN WE STATE IS A WEIGHTY
AGGRAVATOR, WHEN YOU HAVE AN
EXECUTION-STYLE KILLING IT MAY
BECOME A VERY WEIGHTY AGGRAVATOR
BUT WHEN YOU HAVE A SITUATION
WHERE THE JUDGE HAS DONE --
JUDGES ON THE COURT ARE TRYING
TO FIGURE OUT, WELL, DID IT
CROSS THE LINE?

WAS HE INTENDING TO KILL HER
BEFORE HE ENTERED THE ROOM, OR
DID HE INTEND TO BURGLARIZE AND
ROB THEM, AND, PROBABLY, THERE
IS ENOUGH EVIDENCE THAT HE
INTENDED TO KILL, SO YOU CAN SEE
HE WAS OUT THERE LURKING AND
WE'LL FIND CCP, BUT, SAYING THAT
DOESN'T MEAN THAT IN THIS CASE,
IT IS THE MOST WEIGHTY OF THE
AGGRAVATORS, SO, YOU KNOW, WE
SAY SOMETHING, WE STILL HAVE TO
LOOK AT COMMON SENSE ABOUT WHAT
MAKES THE CRIME SO AGGRAVATED.
AND, I THINK I HAVE RECITED THE
PARTS OTHER THAN CCP THAT, TO

ME, MAKE IT A SIGNIFICANTLY AGGRAVATED CRIME, I'LL HAVE TO LOOK AT GERALDS FROM 1992, BUT, IT IS THIS CASE WE ARE LACK AT AND WE CAN'T JUST COUNT AGGRAVATORS AND SAY, IN THAT CASE WE SAID HARMLESS AND THIS CASE WE DIDN'T, AND LOOKING AT THE CASE, AND MAKING SURE THAT, IN THIS CASE, THAT MR. TURNER WAS STILL -- WOULD STILL HAVE BEEN SUBJECT TO THE DEATH PENALTY AND RECEIVED IT WITHOUT ANOTHER JUDGE HAVING SAID, NO, I DON'T THINK THERE IS CCP -- CAN NOT FIND.

>> AM I MAKING MYSELF -- AND YOU CANNOT LOOK JUST AT PRECEDENT LIKE GERALDS.

>> BUT YOU HAVE TO OVERRULE IT NOT TO SEND IT BACK FOR RESENTENCING, BECAUSE GERALDS IS EXACTLY THE SAME HERE.

NOW, THERE ARE CASES THAT HAVE HAPPENED SINCE GERALDS, AND BUZIA IS A PERFECT EXAMPLE IF IT WAS DECIDED BY THE COURT, GERALDS WOULD HAVE BEEN DECIDED DIFFERENT, BECAUSE IN GERALDS HE BOUNDED THE VICTIM 20 MINUTES BEFORE HE SLAUGHTERED HER WITH THE KNIFE, LIKE IN THE CASE, SHE WAS BOUND 20 MINUTES BEFORE AND SO, MR. GERALDS HAD THE OPPORTUNITY TO LEAVE.

RATHER THAN KILL HER.

THAT IS WHAT BUZIA STANDS FOR NOW, AND I WOULD AGREE WITH THAT DECISION BUT YOU FOUND CCP IN BUZIA, BECAUSE, INSTEAD OF TAKING A HAMMER TO THE VICTIM HE COULD HAVE LEFT AND ACHIEVED HIS

GOALS OF HIS ROBBERY.

SO, BUZIA WASN'T EXISTING AT THE TIME GERALDS WAS DECIDED AND THAT WAS NEW LAW AND YOU DEFINED THAT GERALDS, YOU HAVE TO FIND THAT THAT IS NO LONGER GOOD LAW IN FLORIDA TO NOT SEND IT BACK FOR RESENTENCING BECAUSE THE MITIGATION IN THIS CASE IS FAR MORE SUBSTANTIAL, ALMOST AS SUBSTANTIAL AS ALMEIDA, AND IN ALMEIDA HE MURDERED TWO PEOPLE, TWO PROSTITUTES AND TWO WEEKS LATER HE'S THROWN OUT OF A A BAR FOR A SECOND TIME FOR BEING UNDER AGE AND COMES BACK THAT NIGHT WITH A GUN AND A PLAN TO KILL, THE PERSON THAT THREW HIM OUT.

AND YOU STRUCK CCP IN ALMEIDA AND THE COURT PROPORTIONATELY, SENTENCED TO LIFE AND DIDN'T PUT IT BACK TO RESENTENCING BASED ON PROPORTIONALITY AND HE KILLED TWO PEOPLE PRIOR.

BUT, I WILL SAY THIS, IN ALMEIDA, THE MITIGATION IS A LITTLE MORE SUBSTANTIAL AND IN ALMEIDA, HE WAS BORN IN THE U.S. BUT WAS RETURNED TO BRAZIL WITH HIS FATHER, AND HE SUBSEQUENTLY MARRIED A YOUNG WOMAN IN BRAZIL AND SHE ABUSED THE YOUNG BOY.

>> IN THIS CASE THOUGH THE TRIAL JUDGE FOUND A NUMBER OF MITIGATING CIRCUMSTANCES IT REALLY SEEMS TO ME THAT, YOU KNOW, A LOT OF -- HE WAS A HARD WORKER AND WORKED AS A CARPENTER AND HE WAS A TRUSTEE IN SOUTH CAROLINA, BUT OF COURSE, HE ABUSED THAT TRUST.

BY STEALING A VEHICLE AND LEAVING.

AND THAT HE USED DRUGS AT A YOUNG AGE, AND HE HAD FAMILY PROBLEMS, AND THOSE KINDS OF THINGS, AND, ALTHOUGH THE -- THERE WERE MENTAL MITIGATIONS FOUND, CORRECT.

>> YES.

>> WHAT WAS THE SUBSTANCE OF THAT MITIGATION?

I MEAN, THIS JUST DOESN'T SEEM LIKE ONE OF THE MOST MITIGATED CASES.

IN MY ESTIMATION.

>> WELL, THE... AND I THINK BECAUSE IN THE CASE, FOR EXAMPLE, YOU DIDN'T HAVE THE KIND OF EVIDENCE, OF THE RELATIONSHIP THAT MR. TURNER HAD WITH HIS MOTHER THAT YOU HAVE WITH THE STEPMOTHER IN ALMEIDA, I SUSPECT THE MITIGATION IN THIS CASE IS AS COMPELLING AS ALMEIDA BUT THERE ARE GAPS IN THE INFORMATION.

THE MOTHER WOULD NOT COOPERATE. SHE WAS NOT QUESTIONED IN THIS CASE.

AND, SHE WAS A --

>> BUT WE HAVE WHAT WE HAVE.

>> CORRECT.

BUT WHAT WE DO HAVE IS, HE IS JUST OVER THE MENTAL RETARDED TESTING, HE'S VERY LOW COGNITIVE INTELLECTUAL FUNCTIONING.

>> WHAT WAS IS... 79.

>> 79 IQ.

HE HAD... HAS BRAIN DAMAGE FROM THE FRONTAL LOBE THAT IMPACTS HIS ABILITY TO HAVE IMPULSE CONTROL, AND REASONING, DR. KROP

MADE A POINT, WHAT KIND OF MAN WHO WILL BE RELEASED FROM PRISON IN A MATTER OF WEEKS, LEAVES, AFTER DOING COCAINE FOR DAYS IN PRISON.

AND LEAVES LIKE THAT?

THAT SHOWS THE JUDGMENT THAT HE HAS, AND IT WAS A RECURRING THEME IN HIS LIFE.

HE WANTED STABILITY OF A RELATIONSHIP IN HIS LIFE HE DIDN'T GET FROM HIS MOTHER AND EVERY TIME THAT FELL APART HE WENT INTO -- HAD ATTEMPTED SUICIDES, HE WOULD CUT HIMSELF, THIS WAS A VERY EMOTIONALLY DISTURBED PERSON.

VERY EMOTIONALLY DISTURBED AND THE ACTION THAT HE TOOK WAS CONSISTENT WITH WHAT HE HAD DONE HIS WHOLE LIFE, OF SUBSTANCE ABUSE, ALCOHOL, COCAINE, METHAMPHETEMINE, IN THIS CASE, BOTH OF THOSE, HE STILL HAD COCAINE IN HIS SYSTEM AT THE TIME HE WAS BLOOD TESTED AFTER THIS CASE.

THERE IS NO QUESTION HE WAS UNDER THE -- COCAINE.

BUT, IN ALMEIDA, WITH ALL OF THAT STATUTORY AGGRAVATION, IN THAT CASE, WHAT THIS COURT FOCUSED ON WAS THE FACT THAT HE HAD THIS TERRIBLE CHILDHOOD JUST LIKE MR. TURNER HAD, BUT, HE WAS ALSO, JUST GOING THROUGH A TERRIBLE DIVORCE.

AND, WHAT DO WE HAVE HERE WITH MR. TURNER?

HE'S FOUND OUT THAT HIS WIFE IS SEEING HER EX-HUSBAND.

AND THAT JUST PUT HIM INTO A

SOLEMN DEPRESSION, THAT HE
INGESTED DRUGS AND TOOK OFF.
AND AT THE TIME HE WAS
DISORIENTED ACCORDING TO HIS OWN
LAWYER.

>> WHEN HE LEFT SOUTH CAROLINA.

>> THAT'S CORRECT.

>> AND THERE IS NO EVIDENCE THE
-- THAT ADDRESSES THAT WHILE
HE'S IN THE ST. AUGUSTINE AREA,
2 OR 3 DAYS AFTER, ALL THAT
OCCUR, IS THERE?

>> WELL, ALL WE KNOW WAS THAT HE
SAID GOOD MORNING, PLEASANTRIES
TO ONE OF THE HOTEL WORKERS THAT
MORNING THAT IS THE STENTS WE
KNOW, BUT, AFTERWARD, WE KNOW
THAT WHEN CHASED BY THE POLICE
HE ATTEMPTED --

>> I WAS GOING TO ASK.

HOW MUCH CAN WE -- WHAT DO OUR
CASES TELL US WE CAN DO WITH THE
INFORMATION, POST-CRIME DURING
THAT ESCAPE?

BECAUSE IT IS PRETTY BIZARRE SET
OF FACTS.

>> ABSOLUTELY.

ABSOLUTELY.

WELL, ALMEIDA GAVE A FULL
CONFESSION AND SAID, YOU KNOW, I
JUST DECIDED TO KILL THE DUDE,
AND A CONFESSION --

>> THAT IS NOT BIZARRE BEHAVIOR,
I'M TALKING ABOUT THE CAR WHERE
THE GUY ENDED UP CHASING THE LAW
ENFORCEMENT, APPARENTLY.

>> WELL, WHAT IS BIZARRE ABOUT
THE CASE WAS, THAT WHEN HE WAS
ARRESTED, HE DIDN'T SAY HIS NAME
WAS JAMES TURNER, HE SAID HIS
NAME WAS RICK.

AND THEN, AFTER FURTHER

QUESTIONING, IT WAS RICK WHO WAS WITH HIM THAT DID THIS.

IT IS... AND NONE OF THE PEOPLE WE'VE EXAMINED HAVE BEEN ABLE TO EXPLAIN THE BIZARRE ASPECT OF THE CASE.

THAT I'M RICK.

AND I'M NOT JAMES TURNER AND THEN TO THIS DAY, HE SAYS JAMES TURNER DIDN'T DO THE CRIME, RICK DID THE CRIME.

AND, NO ONE HAS BEEN ABLE TO DO THAT, IN FACT THE TRIAL JUDGE, TRIED TO USE THAT TO DIMINISH THE STATUTORY MENTAL MITIGATION THAT HE WAS BEING A LIAR.

>> HE WAS EXAMINED BY MENTAL HEALTH SUPER, CORRECT AND NONE OF THEM -- I MEAN, YOU SOUND LIKE YOU ARE TRYING TO TALK ABOUT SOME KIND OF SPLIT PERSONALITY KIND OF THING AND NONE OF THEM CAME UP WITH ANY OF THAT KIND OF DIAGNOSE, DID THEY?

>> THEY DID NOT.

IT ACTUALLY WASN'T REALLY EXPLAINED.

IT WAS -- ALTHOUGH THERE WAS THIS --

>> QUITE OFTEN, DEFENDANTS SAY SOMEONE ELSE DID, CORRECT?

>> ALL THE TIME.

ALL THE TIME.

>> AND THEY USE SOMEBODY ELSE'S NAME, IF THEY ARE AN ESCAPED CONVICT, DO THEY NOT.

>> YES, EXACTLY.

EXACTLY.

WITH THE OVERWHELMING EVIDENCE, IN THIS CASE, AND THE EVIDENCE IS OVERWHELMING, HOW HE COULD SAY THAT IT WASN'T HIM, IS

BIZARRE IN ITSELF.

>> HOW WOULD YOU DESCRIBE THE WEAPON UTILIZED HERE.

>> I DON'T BELIEVE IT WAS RECOVERED.

>> I MEAN -- I THINK THAT IS PROBABLY TRUE.

THEY THREW IT INTO THE RIVER -- HE THREW IT INTO THE RIVER OR WHATEVER, BUT WAS THERE A DESCRIPTION ANYWHERE IN THE RECORD.

>> NO, THE SURVIVOR, IN FACT, DIDN'T REALIZE SHE WAS STABBED WHEN SHE WENT INTO THE BATHROOM AND CLOSED THE DOOR UNTIL SHE SAW THE WOUND WHICH IS, YOU KNOW, IT MIGHT NOT HAVE BEEN A VERY VERY, BIG KNIFE, BUT IT WAS A KNIFE.

BUT, I FELT THAT, THAT WAS INTERESTING, HE DIDN'T REALIZE THAT WAS THAT -- STABBED WHEN HE RAN OFF FROM THE ROOM AND I FIND IT ALSO PUZZLING ABOUT THE CASE, AFTER DOING THIS, HE DOESN'T TRY TO BREAK INTO THE ROOM, TO KILL THE OTHER PERSON, ELIMINATE HER AS A WITNESS OR DO ANYTHING, IN FACT, HE BRINGS THE CHILD INTO HER AND CONVERSES WITH HER AS -- AS IF NOTHING HAPPENED.

>> DOESN'T THAT LEAD THE OTHER DIRECTION AND GAVE MONEY BACK UNDER THE DOOR, AND JUST TOOK THE CAR, I MEAN, DOESN'T IT GIVE HIM MORE OF A COLD AND CALCULATED APPROACH, THAN A FRENZY, THAT WOULD NEGATE THE CCP?

>> I THINK IT IS FRENZY -- FRENZY IS THE WAY HE WENT BACK

AND ATTACKED THE WOMAN AND
MURDERED HER.
WHEN YOU STAB SOMEONE THAT MANY
TIMES, AND IT IS -- THAT IS
FRENZY.

>> THE DISCUSSION, OF MS. RAYBON
APPEARED TO BE VERY COHERENT AND
SAID THIS IS ALL THE MINE HAVE
AND SHE PASSED CARDS AND THAT
WAS NOT AT ALL -- I DIDN'T SEE
ANY EVIDENCE OF THAT BEING A
FRENZIED THING, AND IT WAS --
THERE WAS QUIETNESS AND THEN THE
THUMPING BEGINS.

>> AND THE TOWEL OVER YOUR FACE
SO YOU CANNOT SEE ME.

>> IT WAS BIZARRE.

IT WAS BIZARRE, THE WAY THAT
OCCURRED.

TOTALLY BIZARRE, AND THAT IS HOW
HE EXPLAINS IT WASN'T HIM,
BECAUSE, THIS IS INTERN THAT DID
ALL OF THESE THINGS AND RICK WAS
THIS PERSON THAT DID ALL OF THAT
AND KIND OF TIES INTO THIS STORY
THAT HE WEAVES ABOUT THE EVENTS,
THAT ARE FRANKLY BIZARRE.

BUT, AGAIN, I WANT TO EMPHASIZE
THAT IF GERALDS IS STILL GOOD
LAW IN THE STATE IT SHOULD BE
SENT BACK FOR RESENTENCING
WITHOUT CCP.

AND, LET THE JURY DECIDE.

AGAIN, THIS WAS A 10-2 DECISION,
AS HORRENDOUS AS THE MURDER WAS,
IT STILL WAS A 10-2 DEATH
JUDGMENT AND WASN'T UNANIMOUS.

>> AND GERALDS WHAT WAS THE
[INAUDIBLE].

>> IT WAS EITHER 7-5 OR 10-1,
11-1.

I DON'T REMEMBER WHICH, SEVERAL

--

>> THERE IS A DIFFERENCE THERE.

>> YES.

THERE IS.

>>... ANALYSIS.

>> I APOLOGIZE, I DON'T HAVE
THAT INFORMATION.

WITH THE RECOMMENDATION -- WHAT
THE RECOMMENDATION OF GERALDS
WAS.

>> BUT YOU SAID WE WOULD UPHOLD
THE TRIAL COURT UNDER BUZIA.

>> WITH THE BUZIA DECISION,
MR. BUZIA WAS ANALOGOUS IN THIS
CASE IN ANYWAYS AND HE WAS ALSO
IN A COCAINE BINGE.

THE DIFFERENCE BETWEEN BUZIA AND
MR. TURNER IS MR. BUZIA WAS
ACTUALLY RAISED IN A LIFE OF
PRIVILEGE AND DIDN'T HAVE A
TOUGH CHILDHOOD.

BUT, ACTUALLY BECAME A SUBSTANCE
ABUSER AND SPIRALLED DOWN IN
LIFE, AND DURING THIS BINGE, HE
COMMITTED THESE CRIMES AND WENT
WITH A CHECK TO THE BANK IN A
DAZE THE NEXT DAY STILL IN THIS
COCAINE BINGE.

AND THIS COURT FOCUSED ON CCP,
THAT MR. BUZIA COULD HAVE LEFT
ACHIEVING HIS GOALS BUT REMAINED
AND KILLED MR. KIRSCH I BELIEVE
HIS NAME WAS RATHER THAN JUST
LEAVE.

>> YOU SAY IN THAT CASE AND THE
GERALDS CASE ARE INCONSISTENT
WITH EACH OTHER?

>> YES.

BECAUSE --

>> SEVERAL OTHERS, THOUGH, IF
IBAR AND I CAN THINK OF SEVERAL
WHERE THAT HAS BEEN SORT OF THE

DETERMINING FACTOR IS THEY HAD THE OPPORTUNITY TO WALK AWAY, AND YET RETURNED AND FINISHED HIM OFF AND THAT IS THE -- A SIGNIFICANT FACT AS I RECALL IN A NUMBER OF CASES.

>> RIGHT.

AND I THINK THAT IS WHAT HAPPENED IN GERALDS.

HE COULD HAVE LEFT THE PERSON BOUND IN THE CHAIR AND LEFT AND ACHIEVED HIS BURGLARY CALLS, THAT HE HAD PLANNED, THERE WAS NO DOUBT IN EVIDENCE THAT HE HAD PLANNED THE BURGLARY FOR AT LEAST A WEEK.

BUT, THE PERSON WAS HOME WHEN HE DID IT.

AND THEN, THE REST IS WHEN IT OCCURRED.

SO, I DO WANT TO EMPHASIZE, WITH THE MITIGATION IN THIS CASE, IS THAT, YOU KNOW, HE WAS BORED -- THIS GENTLEMAN, FUNCTIONING ON A BORDERLINE RANGE, OF FUNCTIONING, HE ALMOST IS MENTALLY RETARDED AND COULDN'T SAY THAT, BECAUSE HE TESTED A LITTLE BETTER.

BUT, THIS IS NOT LIKE THE OTHER CASES, GERALDS, WITH NO MITIGATION, AND, BUZIA NOT AS MUCH MITIGATION, AND THIS MITIGATION IS SUBSTANTIAL.

HE HAD... AND THE USE OF DRUGS IN THIS CASE, THEY TRIED WITH DR. MANDOKI TO MAKE A DEFENSE OF INSANITY BASED UPON DRUG INTOXICATION AND THE TRIAL COURT LIMITED THE EVIDENCE AND SO THAT DEFENSE WAS NOT MADE.

BUT...

>> HAVE YOU APPEALED THE JUDGE'S RULING ABOUT LIMITING EVIDENCE?

>> NO, I DID NOT.

BECAUSE, THE RULINGS IN THIS COURT ARE REplete THAT THAT WOULDN'T BE AN EFFECTIVE APPELLATE ISSUE.

IS THAT WHEN YOU DO DRUGS LIKE THAT, UNDER YOUR OWN VY LITIGATION FOR DAYS ON YOUR OWN IT CANNOT BE USED ON THE ISSUE OF INSANITY.

THAT IS WHAT THIS COURT HAS HELD.

AND, THE JUDGE WAS JUST FOLLOWING THE LAW.

SO, IT WAS NOT RAISED ON APPEAL. BUT, IT WAS SOMETHING THAT THEY WANTED TO DO, AND I THINK IT IS SIGNIFICANT, THAT DR. MANDOKI AND ALSO, DR. BLOOMFIELD, THAT THE USE OF METHAMPHETEMINES AND COCAINE OVER THE DAYS LIKE HE DID IT, THE -- THESE PEOPLE BECOME LIKE ZOMBIES.

AND, THEY ARE NOT... ALTHOUGH THE EXPERTS ALL FOUND HIM SANE, AND THAT IS ANOTHER REASON WHY -- THEY ACTUALLY FOUND HE WAS SANE AT THE TIME.

BUT HE HAD A DIMINISHED CAPACITY FROM THE DRUG USE THAT HE DID.

>> AND THE TRIAL JUDGE FOUND THAT HE... [INAUDIBLE] APPRECIATED THE CRIMINALITY, BOTH STATUTORY MITIGATORS.

>> AND... BUT -- AND THEN AT THE SAME TIME, BECAUSE THAT IS ANALOGOUS TO ALMEIDA, BUT ALMEIDA IS DISTINGUISHED, BECAUSE MR. ALMEIDA, IT WAS IMPULSIVE KILLING AND I DON'T

SEE HOW YOU DISTINGUISH ALMEIDA,
IN THIS CASE.

AS FAR AS THE CCP COMPONENT.

I DON'T SEE HOW THEY ARE
DISTINGUISHED.

AND, THAT IS THE PROBLEM WE
HAVE, STANDING HERE LOOKING AT
THE CASE LAW.

AND APPLYING THESE FACT.

THAT THERE ARE CASES OUT THERE,
THAT I FEEL YOU HAVE TO
DISTINGUISH IF YOU ARE GOING TO
DO SOMETHING DIFFERENTLY.

>> YOU THINK WE HAVE TO LOOK AT
BUZIA, GERALDS, ALMEIDA TO MAKE
SENSE OF IT AND MAYBE -- MAYBE
MS. DAVIS CAN HELP US --

>> I DON'T WANT YOU TO LOOK AT
BUZIA, QUITE FRANKLY.

>> WE APPRECIATE YOU BROUGHT IT
TO OUR ATTENTION.

>> THANK YOU.

>> PLEASE THE COURT, MY NAME IS
BARBARA DAVIS AND I REPRESENT
THE STATE OF FLORIDA.

I WOULD LIKE TO BEGIN WEATHER
THE GERALDS CASE WHAT THE JURY
RECOMMENDATION SAYS, IT JUST
SAYS THE JURY RECOMMENDED DEATH
AND THE IMPORTANT PART OF
GERALDS IS PAGE 1161 THE COURT
STATES THAT THERE IS ONE ISSUE
WHICH REQUIRES REVERSAL OF THE
PENALTY PHASE AND THAT ISSUE IS
THAT THE STATE PRESENTED A LOT
OF EVIDENCE OF PRIOR
CONVICTIONS.

THEY -- THE COURT GOES ON FOR
THREE OR SO PAGES DESCRIBING HOW
EGREGIOUS THE CONDUCT WAS AND IT
IS GOING TO BE VEERED FOR A NEW
PENALTY PHASE, ON PAGE 1163, THE

COURT STATES, BECAUSE WE ARE REMANDING FOR A NEW PENALTY PHASE IT IS A NECESSARY -- UNNECESSARY TO ADDRESS THE OTHER ISSUES, HOWEVER, IN ORDER TO AVOID FUTURE PROBLEMS, WE ARE GOING TO ADDRESS THE TWO AGGRAVATING CIRCUMSTANCES, THE COURT THEN DIRECTED THE TRIAL JUDGE THAT CCP AND WITNESS ELIMINATION DID NOT EXIST, AND SHOULD NOT BE PRESENTED AT THE RESENTENCING.

WHICH WAS BASED ON THE STATE PRESENTING PRIOR VIOLENT FELONIES IN GERALDS.

I WOULD ALSO LIKE TO POINT OUT

--

>> WAIT.

SO I WILL -- WE CAN REREAD GERALDS ON OUR OWN, IT REVERSED BECAUSE OF IMPROPER EVIDENCE ON THE PRIOR VIOLENT FELONIES.

>> YES.

THE FIRST ISSUE ON THE PENALTY PHASE WAS THAT THE TRIAL COURT ERRED IN PERMITTING THE PROSECUTOR TO USE REFERENCES TO GERALDS PRIOR CONVICTIONS TO IMPEACH MITIGATION WITNESSES AND TO PAGES LATER THE AIR -- ERRING WAS TWOFOLD AND MOST EGREGIOUS WAS THE STATE'S QUESTION REGARDING GERALDS 8 PRIOR FELONY CONVICTIONS AND THE COURT WENT ON TO SAY THAT WHEN A PERSON IS SENTENCED TO DEATH IT MUST BE BASED ON THE CONVICTION FOR WHICH HE IS SITTING, AND THAT THE STATE IMPROPERLY USED THESE TO IMPEACH MITIGATION WITNESS AND THEN THE STRIKING OF CCP IN

WITNESS ELIMINATION WAS INCIDENTAL BECAUSE THE COURT HAD ALREADY SAID THAT REQUIRES THE NEW PENALTY PHASE, AND, BY THE WAY, TRIAL JUDGE, THE STATE CAN'T DO CCP AND WITNESS ELIMINATION WHEN IT COMES TO THAT.

>> IS CCP IN GERALDS FINDING THAT IT WAS ERROR?

IS THAT AT ODDS WITH THE MORE RECENT CASE LAW OF THIS COURT AND... IN CASES SUCH AS THAT.

>> IN GERALDS WHAT HAPPENED IS, AND THIS HAS BEEN THE COURT'S DECISION, AT 1163.

THIS COURT STATED THAT THE VICTIM -- THE FACT THAT THE VICTIM WAS FIRST BOUND RATHER THAN IMMEDIATELY KILLED SHOWS THE HOMICIDE WAS NOT PLANNED AND IN THIS CASE WE HAVE THE OPPOSITE, IMMEDIATE STABBING AS HE ENTERS THE DOOR.

THERE WAS EVIDENCE OF A STRUGGLE.

PRIOR TO THE KILLING.

FOURTH, THE KNIFE WAS A WEAPON OF OPPORTUNITY.

SO, THIS IS EXACTLY AN OPPOSITE AND GERALDS IS OPPOSITE --

>> IT SOUNDS LIKE IT IS AT ODDS WITH BUZIA, SOMEONE IS BOUND AND COMES BACK AND ACTUALLY KILLS THEM, HAVEN'T WE HELD MORE RECENTLY THAT THAT ACTUALLY SHOWS HEIGHTnd PREMEDITATION.

>> IT CAN.

HOWEVER, UNDER THE FACTS OF GERALDS CASE WHERE THE VICTIM WAS STRUGGLING -- THE VICTIM PROVOKED HIM AND IF YOU COMPARE

GERALDS CASE TO OUR CASE, OURS IS PRECISELY WITH IN THE HOLDING OF GERALDS CASE BECAUSE THE DEFENDANT COMES THROUGH THE DOOR WITH THE KNIFE IN HIS HAND AND IMMEDIATELY -- AND BY THE WAY, STACIA RAYBON'S TESTIMONY IS VOLUME 16, PAGES 773 AND MY ANSWER BRIEF, 14 TO 16, STACIA RAYBON THE LITTLE GIRL THAT SURVIVED SAW EVERYTHING, SHE SAW HIM, SAW A FLASH OF LIGHT AND TURNED AND SAW HIM HIT RENEE HOWARD TWICE IN THE STOMACH WITH A FORCE THAT DOUBLED HER AND SHE SCREAMED, HE SAW HER, AND CAME AFTER HER.

AND HE HIT HER WITH THE KNIFE, WITH A FORCE, SHE WENT DOWN AND TRIED TO COVER HER FACE AND HE HIT HER WITH A FORCE, SO STRONG, AND -- TO BREAK HER ELBOW WHEN HE STABBED HER IN THE ELBOW AND WENT FOR HER STOMACH AND AT THIS POINT RENEE HOWARD, WHO WAS CRUMPLED OVER AND WAS HOLDING ON TO THE BED, TRYING TO GET TO THE DOOR, HE SEES HER TRYING TO GET TO THE DOOR, HE ABANDONS STACIA AND RUNS OVER TO RENEE AND STARTS STABBING HER, AND REPEATEDLY.

IT WAS NOT A FRENZIED ATTACK. HE WAS GOING FOR THE JUGULAR. AND, HE EVENTUALLY GOT HER RIGHT IN THE CAROTID ARTERY, AND HE WAS HITTING HER WITH SUCH A FORCE --

>> AND I APPRECIATE THAT IT SOUNDS -- I THINK THE KEY OF COMING IN WITH THE KNIFE, MIGHT BE LIKE AS IF HE CAME IN WITH A

GUN AND STARTED SHOOTING.
SOUNDS LIKE IT IS A PLANNED
ATTACK BUT IF HIS INTENT WAS TO
COME INTO KILL WHOEVER WAS IN
THE ROOM, ISN'T THAT
INCONSISTENT WITH WHAT HAPPENED
WITH MS. -- THE VICTIM RAYBON?
THE 18-YEAR-OLD?

AS FAR AS HIS INTENT WAS TO JUST
COME IN, AND KILL WHOEVER WAS
THERE, AND THEN TAKE THE MONEY?
AND THAT IS JUST -- I'M JUST
ASKING.

IT IS JUST REALLY MORE OF A --
AN OVERALL QUESTION ABOUT
WHETHER, YOU KNOW, A CCP HOW
IMPORTANT THIS IS, IN THE
OVERALL SCHEME OF THIS, WHAT
MAKES IT SUCH A TERRIBLE MURDER.
BUT, HELP ME ON THAT ASPECT
OF... AND I UNDERSTAND A LOT OF
THESE MURDERS, IT IS NOT A
CAREFUL PLAN BUT FOR CCP AND SAY
HIT END PREMEDITATION YOU WOULD
EXPECT HE WOULD HAVE THEN SET
OUT TO KILL BOTH PEOPLE IN THE
ROOM.

WHICH... AT THAT TIME.

>> IF STACIA RAYBON HAD NOT
GOTTEN LUCKY AND BEEN ABLE TO,
SHE HAPPENED TO BE IN THE RIGHT
PLACE TO GET AWAY FROM HIM, SHE
WAS STANDING AT THE SINK, WHEN
HE TURNED TO FINISH OFF RENEE
HOWARD SHE GOT INTO THE BATHROOM
AND SLAMMED THE DOOR AND LOCKED
IT AND BRACED HERSELF AGAINST
THE DOOR.

HE TRIED TO GET INTO THE
BATHROOM AFTER HER, AND SHE HAD
HER FEET, ONE LEG AGAINST THE
BATHTUB THAT AND OTHER BRACING

AGAINST THE DOOR TO KEEP HIM OUT.

>> DIDN'T HE AT SOME POINT HAVE HER OPEN THE DOOR SO HE COULD GIVE HER ONE -- HER CHILD.

>> AND THIS NEGATES FRENZY.

AT THIS POINT, WE HAVE THREE BABIES IN THE ROOM, IF HE HAD WANTED TO JUST TAKE THE TRUCK, HE COULD HAVE WALKED IN AND SAID, HERE'S A KNIFE, GIVE ME THE KEYS, DON'T CALL ANYBODY, OR, YOU KNOW, I'LL COME BACK. THEY HAVE THREE BABIES, THE TWO PETITE WOMEN IN THERE AGAINST HIM AND A HUGE PHYSICAL MAN AND I MEAN, A 33-YEAR-OLD CARPENTER, 6 FEET TALL AND COMES THROUGH THE DOOR WITH THE INTENT TO KILL BOTH OF THEM AND STACIA MANAGED TO GET INTO THE BATHROOM BY A STROKE OF LUCK AND HE TRIED TO GET IN AFTER HER AND REALIZED, HE WILL NOT GET HER, SHE'S BRACED IN THERE. AND SO THEN, HE STARTED NEGOTIATING WITH HER. NOW, THIS NEGATES FRENZY, HE'S ASKING FOR CREDIT CARDS AND MONEY.

>> AND SUGGESTS WHAT HE WAS AFTER, TO ME, WAS MONEY FOR HIS HABIT, NOT -- I MEAN, NOT TO KILL THE TWO PEOPLE THAT WERE IN THERE, WITH THEIR CHILDREN.

>> WELL, NO THERE IS A DIFFERENCE.

YOU ARE GOING TO KILL THEM, TO GET THIS MONEY.

IF HE HAD WANTED TO JUST GET THE MONEY, HE WOULD HAVE GONE IN, AND HELD THEM AT KNIFE POINT,

AND SAID, GIVE ME YOUR MONEY AND
CAR KEYS, LIKE EVERY OTHER
ROBBERY THAT OCCURS.

ROBBERS DON'T COME INTO A
CONVENIENCE STORE AND START
STABBING PEOPLE.

THEY COME IN AND THEY GO GIVE ME
THE MONEY, I HAVE A GUN -- NIGHT
IS NOT RATIONAL BEHAVIOR, IF
WHAT YOUR GOAL IS TO GET THE
MONEY, WE COULD GO ON
PHILOSOPHICALLY AS TO WHETHER
THIS IS A PRODUCT OF HIM BEING
ON THE COCAINE BINGE, I WANT TO
UNDERSTAND, I GUESS, WHAT WE'D
BE HOLDING IS THAT COMING IN
AFTER HAVING WATCHED THE ROOM
FOR A PERIOD OF TIME, AND COMING
RIGHT IN, WITH THE KNIFE, SHOWS
THERE MUST HAVE BEEN HEIGHTnd
PRE-MEDITATION AND THAT IS WHAT
WE SHOULD FOCUS ON.

>> AND IF YOU LOOK AT THE TRIAL
JUDGE'S SENTENCING HERE --
ORDER, SHE DID A COMPREHENSIVE
ORDER ON THIS, PAGE 13 OF HER
ORDER, WHEN HE ENTERED THE ROOM,
HEAP HIS WEAPON IN A -- IN A
READY-TO-STAB POSITION, AS RENEE
HOWARD -- STABBED HER MULTIPLE
TIMES TO ENSURE SHE'D DIE AND
WHEN SHE WAS DIED AND REALIZED
STACIA WAS NOT A THERE THE SHE
TOOK THE KEYS TO THE TRUCK AND
LEFT AND WHEN HE REALIZED, AND
THEN, ANOTHER SECTION WHEN HE
REALIZED SHE WAS... HE ABANDONED
THE ATTACK ON MS. RAYBON AND
TURNED HIS SIGHTS ON HER AND
DIDN'T STOP UNTIL HE KILLED HER,
THIS WAS NOT A FRENZIED ATTACK,
HE WAS TRYING TO KILL HER AND

SHE WAS FIGHTING BACK AND HIS INTENT WAS CLEARLY TO KILL HER.

>> I THINK THAT IS -- THE JURY FINDS PREMEDITATED MURDER.

>> OH, YES.

>> PREMEDITATED MUR.

-- MURDER, THAT IS NOTE ISSUE.

I WAS KIND OF THINKING ABOUT, WHEN WE SAY CCP HAS SIGNIFICANT WEIGHT, ONE OF THE WEIGHTIEST OF THE AGGRAVATORS AND WHEN I LOOK AT THIS CASE WHAT MAKES IT SO WEIGHTY IS EVERYTHING ELSE THAT COMES TOGETHER, THE TWO VICTIMS, THE HAC, HOW HE, YOU KNOW, MURDERED HIS... THE FOUR OF HIS VICTIMS AND TAKING OF THE MONEY AND BEING UNDER SENTENCE OF IMPRISONMENT, WALKING AWAY, SO MANY OTHER THINGS IN THIS CASE, THAT WHEN WE SOMETIMES SAY, WELL, CCP IS THE WEIGHTIEST AND THE JURY, THAT IS WHY IT WOULD BE HARMFUL, WE HAVE TO LOOK AT THE FACTS, AND TO ME THERE ARE A LOT OF OTHER WEIGHTY AGGRAVATORS.

>> AND I WOULD POINT OUT, WHEN I SAID, WHEN YOU SAID, WAS HE CONVICTED OF PREMEDITATED MURDER, THE JURY VERDICT WAS NOT SPECIFIC PREMEDITATED FELONY, IT WAS AS CHARGED IN THE INDICTMENT, THEY CONVICTED HIM, ATTEMPTED MURDER AND THAT HE HAD THE INTENT TO MURDER HER AND ON THE HARMLESS ERROR, THE TRIAL JUDGE'S ORDER, PAGE 24, FINDS WITHOUT CCP, THEY ARGUED THAT BELOW, EVEN WITHOUT CCP, SHE WOULD UPHOLD THE DEATH SENTENCE AND ALREADY MADE THIS FINDING,

PAGE 24 OF HER ORDER.

>> I THINK I HAVE -- ONE OTHER POINT.

THE TRIAL JUDGE DOES DISTINGUISH ALMEIDA RIGHT THERE IN HER ORDER, PAGE 14.

>> I THOUGHT OF ANOTHER ASPECT OF THIS CASE, ALSO MAKES IT AGGRAVATED, WHICH IS THE AGGRAVATE ASSAULT ON THE DEPUTY.

>> YES.

>> AND THERE IS ANOTHER FELONY HERE, THAT OCCURRED.

>> YES.

AND AS TO PROPORTIONALITY, I THINK THE CASE IS CITED IN THE -- CASES IN THE BRIEF ARE ILLUSTRATIVE AND ALSO POINT OUT THERE WERE HEALTH EXPERTS AND THE TRIAL JUDGE MADE COMPREHENSIVE FINDINGS ON THE MITIGATING CIRCUMSTANCES AND FOUND NO EVIDENCE OF BRAIN DAMAGE.

HE WAS ABLE TO FUNCTION WELL, WHILE INCARCERATED, IN FACT, HE WAS SUCH A MODEL INMATE THEY LET HIM GO HOME ON WEEKENDS, AND THEY DROPPED HIM OFF AT THE FIRE STATION TO WASH THE FIRE TRUCKS AND PICK THEM UP.

HE HAD COMPLETE ACCESS TO THE SHERIFFS OFFICE, ENOUGH SO HE COULD TAKE THE KEYS AND OPEN THE FENCE AND DRIVE OUT WITH THE SHERIFFS VEHICLES.

SO, THIS IS NOT SOMEBODY THAT IS, YOU KNOW, LIKE MR. FITZPATRICK WHO WAS CRAZY AS A LOON.

IT IS -- AS FAR AS THE STATEMENT THAT MR. BURDEN SAID THAT WAS

WEIRD ABOUT THE EXTREME EMOTIONAL, AS FAR THAT'S ESCAPE, THE HOMICIDE, ON PAGE 16 OF THE TRIAL COURT'S ORDER, THAT THE JUDGE SAID, ALTHOUGH THE COCAINE USE AND THE DISTRAUGHT OVER HIS WIFE, MAY BE RELEVANT, IT MAY HAVE BEEN ESTABLISHED IN RELATION TO THE ESCAPE, IT IS LESS SO WITH REGARD TO THE HOMICIDE.

AND THAT IS WHY SHE GAVE IT LESS WEIGHT.

THE ORDER CAREFULLY ASSESSES EACH ASPECT OF MITIGATION THAT WAS PRESENTED, AND, WAYS THAT -- WEIGHS IT WITH A THOROUGH DISCUSSION.

IF THERE ARE NO FURTHER QUESTIONS I WOULD ASK THE COURT TO AFFIRM THE CONVICTION AND SENTENCE OF DEATH.

>> THANK YOU.

REBUTTAL?

>> IF THERE ARE ANY IF YOUR QUESTIONS I'LL TAKE THEM.

>> YES.

I WANT TO MAKE SURE HERE, ON THE GERALDS CASE, IS MS. DAVIS CASE IT DID NOT ANALYZE AND SAY... FOUND CCP IT IS NOT HARMLESS ERROR, GOING ALONG WITH ALL THE OTHER EVIDENCE.

>> THE CHARACTERIZATION SHE MADE ABOUT THE PRIOR CONVICTION, MR. GERALDS HAD A LENGTHY CRIMINAL HISTORY AND THAT WAS BROUGHT OUT IN THE TRIAL.

>> IF WE ARE GOING TO BE UP HERE TRYING TO HAVE AN INTELLIGENT DISCOURSE, TO REPRESENT A CASE SAYS SOMETHING AND REALLY, WE'LL

GO BACK AND LOOK AT IT.

IT DOESN'T HELP IN THE ADVOCACY PROCESS, BECAUSE, THEN WE KNOW, OH, THAT IS NOT THE SAME, AND SO I'M CONCERNED.

>> THIS COURT SAID THEY WERE GOING TO -- THEY SAID THAT THEY CANNOT FIND BEYOND A REASONABLE DOUBT THAT THIS HARMFUL ACTIONS BY THE PROSECUTOR REQUIRES A RESENTENCING.

BUT, WHEN YOU DO RESENTENCE, BY THE WAY, CCP WAS IMPROPERLY FOUND.

>> BUT ISN'T THAT A WHOLE DIFFERENT ISSUE AS TO WHETHER WE WOULD HAVE FOUND -- NOW IT IS GOING BACK, WHY GO BACK WITH SOMETHING THAT MIGHT BE IN ERROR?

THAT IS DIFFERENT.

>> I DISAGREE, BECAUSE IT WASN'T A ONE-LINE SENTENCE IN GERALDS. IT WENT THROUGH --

>> BUT IS THERE ANY SUGGESTION IN THE GERALDS OPINION THE CCP WAS PART OF THE HARMLESS ERROR ANALYSIS.

>> IT WASN'T MENTIONED IN THAT REGARD.

>> DIDN'T YOU REPRESENT THAT TO US?

THAT IT WAS?

>> I REPRESENTED THAT YOU HAVE TO OVERTURN GERALDS IN ORDER NOT TO GIVE THE MAN A RESENTENCING.

THAT IS WHAT I STATED AND I STILL BELIEVE THAT.

BECAUSE THEY FOUND THAT CCP WAS IMPROPER IN GERALDS ON VERY, VERY ANALOGOUS CASE.

>> BUT I GUESS THE REAL ISSUE

IS, IF YOU DIDN'T HAVE THE OTHER PORTION OF IT ABOUT IMPROPERLY GOING THROUGH THE MAN'S CRIMINAL BACKGROUND, WOULD THIS COURT HAVE IN FACT IN GERALDS SAID, BECAUSE CCP WAS IMPROPERLY FOUND, HE'S ENTITLED TO A NEW SENTENCING PROCEEDING, AND DOES GERALDS MAKE ANY KIND OF STATEMENT --

>> THERE IS NO STATUTORY MITIGATION WHATSOEVER. THERE IS NOT EVEN ANY MITIGATION IN GERALDS.

AND THIS IS FULL OF MITIGATION, SO THAT IS THE DIFFERENCE AS TO WHY.

>> BUT THE QUESTION STILL IS, IN GERALDS, WAS THERE ANY HINT THAT EVEN WITHOUT THESE OTHER THINGS, WE WOULD HAVE SENTENCE THAT CASE BACK, FOR A RESENTENCING, BASED ON THE FACTS THAT CCP WAS IMPROPERLY FOUND, BECAUSE THAT IS THE IMPRESSION WE WERE GIVEN FROM YOUR ORIGINAL...

>> I STAND BY IT.

I DIDN'T TRY TO MISLEAD THE COURT.

I THINK THAT THE -- BOTH AGGRAVATING FACTORS WEREN'T PROPER IN GERALDS AND WOULD HAVE SENT IT BACK ON THOSE TWO REASONS ALONE, HAD NOT THIS OTHER THING WITH THE PROSECUTOR OCCURRED.

>> WE DIDN'T HOLD THAT. YOU ARE SPECULATING WHAT WE WOULD HAVE DONE AND IT IS JUST -- WE'LL READ IT AND I JUST CAUTION -- FROM MY POINT OF VIEW, YOU KNOW, REPRESENTING

WHAT IS IN A CASE IS ONE THING,
WHAT IS IN A RECORD AND MAYBE
THERE IS A MISCONSTRUCTION, BUT
WHEN I ASKED YOU ABOUT THE
HARMLESS ERROR, YOU SAID YOU
CANNOT DO A HARMLESS ERROR
ANALYSIS HERE, BECAUSE OF
GERALDS.

THAT IS WHAT YOU TOLD ME.

>> AND I BELIEVE THAT.

>> WELL, I'LL LOOK BACK AT
GERALDS AND WE'LL SEE IF THAT IS
THE CASE.

>> THANK YOU.

>> ALL RIGHT, THANK YOU.