

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

>> LAST CASE ON THE COURT'S
DOCKET FOR TODAY IS MCGIRTH V.
STATE.

>> MAY IT PLEASE THE COURT, I'M
CHRIS ANDERSON FOR THE
APPELLANT, RENALDO MCGIRTH.
I'M HANDLING THIS FOR THE
REGIONAL COUNSEL FOR THE FIFTH
APPELLATE CIRCUIT.

YOUR HONOR, THIS CASE INVOLVES
THE MURDER OF A RETIRED COUPLE
IN THE VILLAGES, LOCKED-GATE
COMMUNITY IN OCALA.

I'M REPRESENTING A YOUNG MAN WHO
WAS --

>> PLEASE SPEAK INTO THE MIC.

>> I'M SORRY.

IS THAT BETTER?

>> YES.

>> THANK YOU.

I'M REPRESENTING A YOUNG MAN,
RENALDO MCGIRTH, WHO WAS JUST
THREE MONTHS PAST HIS 18TH
BIRTHDAY AT THE TIME THE SUBJECT
MURDER.

AND, IN FACT, AS WE STAND HERE
HE'S THE YOUNGEST INMATE RIGHT
NOW ON FLORIDA'S DEATH ROW.
HIS CO-DEFENDANT, ROBERTS WHO'S
20 AT THE TIME OF THE CRIMES,
ENDED UP WITH A LIFE SENTENCE.

SO --

>> HE WAS NOT CONVICTED OF FIRST

DEGREE?

>> CORRECT.

HE WAS CONVICTED OF THE LESSER
MANSLAUGHTER AND ATTEMPTED
VOLUNTARY MANSLAUGHTER
HE GOT THE 20-YEAR -- ACTUALLY,
HE GOT THE 20-YEAR SENTENCE,
ROBERTS DID, ON THE ROBBERY WITH
THE FIREARM.

>> YOU, I MEAN, ALTHOUGH WE
REVIEW EVERY SENTENCE FOR
PROPORTIONALITY, YOU DIDN'T
CHALLENGE PROPORTIONALITY, DID
YOU?

>> NO, I DIDN'T, YOUR HONOR.
IN FACT, I DIDN'T CITE OR PUT
ANYTHING NEW IN MY ARGUMENTS, I
JUST MENTIONED THIS BRIEFLY IN
THE OFF CHANCE THIS COURT
DECIDES TO REVERSE ITSELF.
THIS MIGHT BE A GOOD CASE TO DO
IT -- ALL OF THE ARGUMENTS IN
THIS CASE THIS COURT HAS ALREADY
HEARD IN OTHER CASES AND HAS
DENIED, BUT THAT'S NOT THE POINT
OF MY -- THE MAIN THING I REALLY
WANTED TO ARGUE HERE IN ORAL
ARGUMENT WAS THAT I PREFER TO
ARGUE IF THE COURT WILL ALLOW ME
PROBLEMS WITH EQUATING THE
DEFENDANTS TO THE 9/11
TERRORISTS.
THE ERRONEOUS JURY INSTRUCTION
THAT BLURRED THE DISTINCTION
BETWEEN THE CONSCIOUS INTENT
NEEDED TO BE A PRINCIPLE OF THE

CRIME AND A PREMEDITATED INTENT
FOR FIRST-DEGREE MURDER.

>> NOW, AS FAR AS THE WORLD
TRADE CENTER REMARK IS
CONCERNED, I MEAN, THIS WAS ONE
REMARK MADE DURING THE COURSE OF
AN ARGUMENT IN THE PENALTY
PHASE, CORRECT?

>> CORRECT, YOUR HONOR.

>> AND BASICALLY, THE PROSECUTOR
REALLY WASN'T ANALOGIZING HIM TO
THE WORLD TRADE CENTER PEOPLE,
BUT THE PROSECUTOR WAS REALLY
SAYING THAT TO MITIGATE HIS
CRIME WOULD BE LIKE LETTING THEM
OFF THE HOOK, CORRECT?

>> WELL, ACTUALLY WHAT THE
PROSECUTOR DID WAS A SIMILIE, IF
WE'RE GOING TO BE TECHNICAL.
WHAT THE PROSECUTOR ARGUED WAS
THAT TO ALLOW THESE DEFENDANTS
AND MY CLIENT IN PARTICULAR TO
ESCAPE PUNISHMENT OR CULPABILITY
BECAUSE THE VICTIM'S DAUGHTER,
SHEILA MILLER, ORCHESTRATED THE
CRIMES WOULD BE LIKE GIVING THE
9/11 TERRORISTS A FREE PASS
BECAUSE --

>> THIS IS ACTUALLY --

[INAUDIBLE]

THE 9/11 PILOTS?

>> I THINK IT WAS, YOUR HONOR,
THE 9/11 PILOTS OR --

>> -- EXCUSE BECAUSE THEY WERE
FOLLOWING ORDERS THERE OBAMA.
OR WHATEVER IT IS, OSAMA.

>> YES, YOUR HONOR.

A SIMILE.

IT WOULD BE LIKE GIVING --

>> YEAH.

BUT THEY DIDN'T USE THE WORD
"TERRORISTS," BUT USE THE FIRST
WORD, THE FIRST NAME OF WHOEVER
WORDED IT TO THE PILOTS.

>> YES, YOUR HONOR.

>> NOW, THROUGHOUT THE CASE THE
DEFENSE HAD MADE THE DAUGHTER,
SHEILA MILLER -- IS THAT HER
NAME?

>> YES, YOUR HONOR.

>> THERE WAS AN UNDERLYING
ARGUMENT THAT SHEILA MILLER HAD
ORCHESTRATED THIS, THIS
INCIDENT.

>> YES, YOUR HONOR, AND I WOULD
ARGUE THE STATS AFFORD IT.

THE JURY DID NOT FIND ANY OF THE
DEFENDANTS GUILTY OF KIDNAPPING
SHEILA MILLER, AND THAT WAS A
REAL BIG PART OF THE
PROSECUTOR'S CASE, THAT SHEILA
MILLER WAS ACTUALLY KIDNAPPED.

AND, OF COURSE, THOSE JURY
INSTRUCTIONS AND THAT OFFENSE
WAS SUBMITTED TO THE JURY.

>> BUT IN A PENALTY PHASE --

>> YES, SIR.

>> -- THE ARGUMENT WAS MADE, YOU
KNOW, BASICALLY WHY SHOULD YOUR
CLIENT GET THE DEATH PENALTY
WHEN THIS MAY HAVE BEEN
ORCHESTRATED BY SHEILA?

THAT WAS MORE OR LESS THE
UNDERLYING THEME, WASN'T IT?

>> I DIDN'T READ IT THAT WAY,
YOUR HONOR.

THE WAY I READ THAT ARGUMENT WAS
THAT THE STATE'S CASE IS THAT
SHEILA MILLER WAS A VICTIM JUST
LIKE HER PARENTS AND, IN FACT,
NONE OF THE FACTS SUPPORT THAT.
THAT'S NOT WHAT HAPPENED.

I THINK THAT WAS BROUGHT UP TO
INDICATE THAT THE JURORS REALLY
DO NOT KNOW WHAT HAPPENED
BECAUSE THERE WERE NO CREDIBLE
WITNESSES IN THIS CASE.

>> WELL, YOU KNOW, I'M GOING
TO -- LET'S ASSUME IT WAS
PROPERLY OBJECTED TO, THE
OBJECTION WAS OVERRULED AND THEN
THERE WAS A MOTION FOR MISTRIAL.
LET'S ASSUME THAT THE OBJECTION
SHOULD HAVE BEEN SUSTAINED
BECAUSE, YOU KNOW, TRYING TO
INVOKE 9/11 HAS A VISCERAL
REACTION.

IT WAS SORT OF MAYBE OVER THE
TOP.

IN THE CONTEXT OF THIS WHOLE
CASE AND THE PENALTY PHASE AND
REALLY WHERE THE ISSUE OF SHEILA
BEING EVEN IF SHE WAS A
MASTERMIND WHICH THERE WASN'T
DIRECT EVIDENCE OF THAT, BUT
LET'S ASSUME THAT SHE REALLY
PLAYED A PART IN THIS WHICH IS
LOGICAL WHAT, I MEAN, THAT WOULD

BE LOGICAL IF THERE WAS ANY
DIRECT EVIDENCE TO SUPPORT IT.
HOW IS IT NOT HARMLESS ERROR
BEYOND A REASONABLE DOUBT
CONSIDERING -- AND THIS WE HAVE
TO CONSIDER -- THAT THERE ARE
FIVE AGGRAVATING FACTORS HERE?
WE'VE GOT THE DEATH OF A, OF ONE
PERSON SHOT LITERALLY IN COLD
BLOOD, LEFT, YOU KNOW, CRAWLING
AND THEN SHOT AGAIN BY HIM, THE
ATTEMPTED SHOOTING OF ANOTHER
AND THEN HAC AND LET'S, YOU
KNOW, CCP, AVOID ARREST, HOW
COULD THAT ONE REMARK WHERE
THERE ISN'T REALLY OTHER
IMPROPER REMARKS THAT YOU
BROUGHT TO OUR ATTENTION COULD
BE NOT CONSIDERED HARMLESS ERROR
BEYOND A REASONABLE DOUBT?
>> THIS WAS A CASE IN WHICH THE
DEATH RECOMMENDATION WAS NOT
UNANIMOUS.
>> WELL, IT WAS 11-1, I MEAN, IT
WAS FAIRLY CLOSE.
AS CLOSE AS YOU CAN GET.
IT WASN'T A 7-5 -- AND, I MEAN,
I KNOW THAT SOMETIMES GOES ONE
WAY OR ANOTHER, BUT IT IS, IT'S
A PRETTY STRONG RECOMMENDATION.
>> WELL, IT IS WHAT IT IS, AND I
HAVE TO WORK WITH WHAT I'VE GOT,
YOUR HONOR, BUT I WILL SAY THIS.
IF YOU CAN GET ONE JUROR HOLDING
OUT LIKE THAT, PERHAPS MORE
COULD HAVE --

>> I DON'T SEE, AND I'M A -- I
DON'T LIKE GRATUITOUS CLOSING
ARGUMENTS THAT ARE UNNECESSARY.
THE STATE DOESN'T NEED TO DO
THESE THINGS.
SOMEONE GETS CARRIED AWAY MAYBE
OR -- BUT IN THE CONTEXT OF THE
WHOLE JURY ARGUMENT AND THE
WHOLE PENALTY PHASE I JUST HAVE
A HARD TIME SAYING THAT HARMFUL
ERROR OCCURRED BASED ON THIS ONE
STATEMENT.
NOW, IF YOU HAD A NOTE THAT WAS
PEPPERED WITH IT, WENT BACK AND
USED OTHER IMPROPER ARGUMENTS, I
THINK YOU'VE GOT A HARD ROAD ON
THAT ONE.
I MEAN, JUST SINCE WE UNDERSTAND
IT, YOU MIGHT WANT TO GO ON TO
YOUR OTHER ARGUMENTS.
>> SURE.
YOUR HONOR, MY SECOND ARGUMENT
IS THE CONSCIOUS INTENT JURY
INSTRUCTION.
IN THIS CASE THE JURORS ASKED
THE JUDGE IN A NOTE WHETHER THE
CONSCIOUS INTENT NEEDED FOR
PRINCIPLE CULPABILITY IS THE
SAME AS A PREMEDITATED INTENT
NEEDED FOR FIRST-DEGREE MURDER.
AND THE JUDGE, AGAINST THE
OBJECTIONS OF BOTH THE
PROSECUTOR AND THE DEFENSE
ATTORNEY, WENT AHEAD ANYWAY AND
SAID, NO, IT'S -- AND I'M, I'M
DEFINING IT A LITTLE BETTER, BUT

ESSENTIALLY WHAT THE JUDGE SAID WAS, NO, IT'S NOT THE SAME, THE TIME DOES NOT, THE LAW DOES NOT FIX THE TIME REQUIRED FOR CONSCIOUS INTELLIGENT.

AND THE PROBLEM WITH THAT, YOUR HONOR, IS THAT IT BLURS THE DISTINCTION BETWEEN THE INTENT NEEDED FOR PRINCIPLE CULPABILITY WHICH MAKES A DEFENDANT RESPONSIBLE FOR AN ACT COMMITTED BY ONE OF HIS COCONSPIRATORS AND THE INTENT NEEDED FOR FIRST-DEGREE MURDER.

>> THAT WAS ACTUALLY INCORRECT. WAS THERE SOMETHING INCORRECT IN THE TRIAL JUDGE'S RESPONSE TO THE JURY'S QUESTION?

>> NO.

BUT THIS IS WHERE THE MISLEADING RISK OCCURRED.

BY DEFINING IT IN THE SAME TERMS AS PREMEDITATED FIRST-DEGREE MURDER INTENT, THERE WAS A REAL RISK THAT THE JURORS WOULD FIND THAT, WOULD MIX THE TWO TYPES OF INTENT UP.

IN OTHER WORDS, WAS THERE AN OBJECTION MADE AT THAT POINT, WHEN THE TRIAL JUDGE SAID, NO, AND THERE'S NO SET TIME FOR CONSCIOUS INTENT, DID THE DEFENSE ATTORNEY THEN OBJECT?

>> NO.

THEY OBJECTED, YOUR HONOR, TO THE JUDGE GIVING ANY FURTHER

DESCRIPTION, ANY RESPONSE OTHER THAN JUST WHAT'S ALREADY IN THE JURY INSTRUCTIONS.

AND SO I TRY TO THINK OF AN ANALOGY, BUT IT WOULD -- AND SINCE I DO A LOT OF CRIMINAL LAW, THIS IS THE BEST I COULD COME UP WITH.

IT WOULD BE LIKE JURORS WHO'D NEVER SEEN AN AXE ASKING IF AN AXE IS THE SAME THING AS A KNIFE, AND THE JUDGE TELLING THEM, NO, AN AXE CONSISTS OF A METAL, SHARP BLADE ATTACHED TO A HANDLE, AND THE JURORS GO BACK TO THE JURY ROOM THINKING, WELL, THEY'RE DIFFERENT, BUT THEY'RE REALLY THE SAME.

AND THAT'S WHERE I THINK THE DANGER IS.

THE DANGER HERE IS THE JURORS MIGHT FEEL THAT, WELL, IF MY CLIENT INTENDED --

>> ARE YOU SAYING THAT THE JURY INSTRUCTION THAT SAYS WHAT PREMEDITATION IS USES THE SAME LANGUAGE THAT THE JUDGE REUSED IN SAYING NO CONSCIOUS INTENT, THERE'S NO TIME LIMIT SET FOR CONSCIOUS INTENT, IS THAT YOUR ARGUMENT?

>> YES, YOUR HONOR.

IT TRACKED THE SAME LANGUAGE USED TO DESCRIBE A DIFFERENT INTENT, THE INTENT FOR FIRST-DEGREE MURDER WHICH --

>> IS THAT WHAT THE JURORS
ASKED?

DIDN'T THEY ASK YOU, IS IT THE
SAME?

>> YES.

>> DID THEY ASK THE TIME PERIOD?
WASN'T THERE ALSO ANOTHER ASPECT
TO THAT, TO THE QUESTION THE
JURORS ASKED?

WHAT WAS THE QUESTION THAT THE
JURORS GAVE THE JUDGE?

>> IS THE INTENT -- I'M
PARAPHRASING -- IS THE INTENT --

>> I HAVE IT HERE.

>> CONSCIOUS INTENT --

>> IS CONSCIOUS INTENT THE SAME
AS PREMEDITATION IN THAT COULD
OCCUR A FEW SECONDS BEFORE THE
CRIME WAS COMMITTED.

>> SO THE QUESTION ASKED THE
SAME THING.

>> YES, BUT INSTEAD OF SAYING
THE CONSCIOUS INTENT NEEDED FOR
PRINCIPLE LIABILITY IS AN INTENT
TO SEE THE CRIME COMMITTED AND
FURTHER INTENT, INSTEAD OF
SAYING THAT THE JUDGE --

>> THAT'S NOT WHAT THEY ASKED.
THEY ASKED ABOUT THE TIME,
DIDN'T THEY?

DID THE JUDGE RESPOND CORRECTLY
TO THE QUESTION THEY POSED?

>> YES --

>> WHAT YOU'RE SAYING, YOU
NEEDED MORE.

THEY HAVE TO GIVE, DID DEFENSE

COUNSEL MAKE THAT PARTICULAR
OBJECTION AND GIVE IT ADDITIONAL
LANGUAGE?

>> NOT AFTER THE JUDGE SAID
THAT, YOUR HONOR.

NO, NO.

>> I'M HAVING TROUBLE
UNDERSTANDING WHAT YOU THOUGHT
THE JURY WAS LED TO BELIEVE THAT
WAS AN ACCIDENT.

YOU'RE SAYING THE STATEMENT ON
ITS FACE IS NOT INCORRECT, YOU
SAY THE JURY WAS MISLED.

WHAT WERE THEY LED TO BELIEVE
THAT WAS INACCURATE THAT WAS
ADVERSE TO YOUR CLIENT?

>> THE JUDGE FAILED TO
DISTINGUISH THE DIFFERENCE
BETWEEN PRINCIPLE INTENT.

>> YEAH, BUT FOCUS ON MY
QUESTION.

WHAT WAS THE JURY LED TO BELIEVE
THAT WAS INACCURATE AND THAT WAS
ADVERSE TO YOUR CLIENT?

CAN YOU ARTICULATE THAT?

>> I THOUGHT I HAD, BUT I'LL TRY
AGAIN.

I'M SORRY.

I THINK THAT THE JURY WAS LED TO
BELIEVE THAT THE CONSCIOUS
INTENT NEEDED FOR PRINCIPLE
LIABILITY IS THE SAME AS THE
INTENT NEEDED FOR FIRST-DEGREE
MURDER.

>> WASN'T THAT BETTER FOR YOUR
CLIENT?

IN OTHER WORDS, PREMEDITATED MURDER IS A HIGHER STANDARD THAN JUST, THAN PROBABLY CONSCIOUS INTENT.

SO I DON'T KNOW HOW THAT WOULD HURT YOUR CLIENT ESPECIALLY HERE WHERE THE JURY ALSO FOUND THAT YOUR CLIENT IS THE ONE THAT SINCE THE PRINCIPLE INSTRUCTION THEY HAD TO FIND LIABILITY, FIRST-DEGREE MURDER BASED ON HIS OWN INDEPENDENT ACT BECAUSE THEY FOUND HE'S THE ONE WITH THE FIREARM, HE'S THE ONE THAT FIRED IT, AND LEAST THE ONE THAT KILLED THE TWO OR ATTEMPTED TO KILL AND KILLED THE OTHER PERSON.

SO MAYBE THE CO-DEFENDANT MIGHT HAVE AN OBJECTION, BUT THEN HE GOT CONVICTED OF A LESSER CHARGE ANYWAY.

SO I DON'T SEE -- I GUESS I AM HAVING TROUBLE.

IF YOU HAVE THIS, ON HOW THIS WOULD PREJUDICE YOUR CLIENT IF FOR SOME REASON THE JURY THOUGHT CONSCIOUS INTENT WASN'T AS HIGH OF INTENT AS PREMEDITATED INTENT.

AND I MAY BE GETTING THIS -- DO YOU UNDERSTAND MY QUESTION?

>> YES, I DO, YOUR HONOR, AND I THOUGHT ABOUT THE SAME THING MYSELF.

IN A WAY IT SEEMS LIKE IT'S A

TOUGHER INTENT THAT THEY'RE IMPOSING, AND MIGHT THAT NOT PROTECT MY CLIENT?

>> RIGHT.

>> BUT -- AND THE MORE I THOUGHT ABOUT IT, THE MORE I REALIZED THAT BY DEFINING INTENT FOR PRINCIPLE LIABILITY IN THE SAME TERMS AS INTENT FOR FIRST-DEGREE PREMEDITATED MURDER MIGHT CAUSE JURORS TO IMPLY THE INTENT FROM ONE TO THE OTHER AND VICE VERSA. PERHAPS THAT MIGHT CAUSE THE JURORS TO GIVE HOUSTON THE LIGHTER MANSLAUGHTER SENTENCE INSTEAD OF --

>> I'M MISSING SOMETHING.

YOU'RE SAYING WORDS, BUT THEY'RE NOT, THERE'S A DISCONNECT HERE. AS I HEARD OR AS I READ WHAT THE TRIAL JUDGE SAID IS, NO, THEY'RE NOT THE SAME.

AND THEN NOW YOU'RE STANDING BEFORE US TELLING US THAT THAT'S WHAT THE JURY THOUGHT WHEN THE JUDGE TOLD THEM SPECIFICALLY THEY ARE NOT THE SAME.

ISN'T THAT WHAT THE JUDGE TOLD THEM?

>> THE JUDGE DID TELL THEM THE SAME BUT HE WENT ON DEFINE IT IN TERMS OF THE LAW.

>> TO ME, I THOUGHT YOU, JUSTICE PARIENTE JUST READ IT. HE TOLD THEM THAT THE TIME

PERIOD IS NOT THE SAME BECAUSE
NORMAL JURY INSTRUCTIONS TALK
ABOUT THE PREMEDITATION AS IN
TERMS OF TIME.

IT COULD BE, CAN BE FORMED.
VERY SHORTLY.

>> YES, YOUR HONOR.

>> HE TOLD THEM NO, IT'S NOT
THE SAME.

SO I'M TRYING TO UNDERSTAND HOW
YOU ARE NOW ARGUING WHAT HE
SAID TO THEM TOLD THEM IT WAS
THE SAME?

>> WELL, THAT'S WHY I TRIED TO
USE THAT AXE AND KNIFE ANALOGY.

>> HE DIDN'T SAY AXE AND KNIFE.

HE SAID THE WORDS HE SAID.

I'M TRYING, UNLESS I'M MISSING
IT SOMEHOW.

>> RIGHT.

MY ARGUMENT, YOUR HONOR, IS
THAT INSTEAD OF TRYING TO TELL
THE DIFFERENCE THE DIFFERENCE
BETWEEN AND TRYING TO
DISTINGUISH THE PREMEDITATED
INTENT FOR FIRST-DEGREE MURDER
WITH TIME FOR REFLECTION,
TRYING TO DISTINGUISH THAT FROM
THE INTENT --

>> THAT WAS NOT THEIR QUESTION,
CORRECT.

>> THAT WASN'T THEIR QUESTION.

>> THE DEFENSE COUNSEL NEVER
ASKED FOR A INSTRUCTION
DISTINGUISHING.

>> CORRECT. THAT IS TRUE.

>> I'M TRYING, SEEMS TO ME THIS TRIAL JUDGE COULD HAVE GOTTEN INTO A LOT OF PROBLEMS HAD HE OR SHE JUST GONE RIGHT INTO DISTINGUISHING, ANSWERING A QUESTION THAT JURORS NEVER ASKED AND NEITHER THE PARTIES DIDN'T PRESENT AN INSTRUCTION ON.

I DON'T KNOW HOW YOU FAULT THE TRIAL JUDGE FOR NOT DOING SOMETHING NOBODY ASKED HIM OR HER TO DO WHEN WHAT HE OR SHE DID WAS CORRECT.

I'M TRYING TO UNDERSTAND YOUR ARGUMENT. I REALLY AM.

>> BEST I CAN DO, YOUR HONOR, GO BACK TO WHAT I SAID A MOMENT AGO WHICH WAS BOTH LAWYERS SENSED THERE WAS TROUBLE AND ASKED THE JUDGE NOT TO INSTRUCT THE JURY NOT TO RESPOND AT ALL TO THAT REQUEST.

>> BUT ONLY BECAUSE THEY SAID STANDARD JURY INSTRUCTION COVERED IT.

WAS THIS DEFENDANT, WAS THERE A SPECIAL VERDICT ON PREMEDITATED VERSUS FELONY MURDER?

>> NO, YOUR HONOR.

>> SO EVEN UNDER, IF THERE'S SOME ERROR HERE, CERTAINLY DOESN'T AFFECT ANY CONVICTION FOR FELONY MURDER?

DOES IT?

>> WELL, I, NO, BUT, I THINK IT

WOULD CERTAINLY AFFECT THE
JURORS LIFE DEATH DECISION
LATER ON.

>> WHAT --

>> YOUR HONOR I SEE THE
QUIZZICAL LOOK.

>> BECAUSE I DIDN'T KNOW, AGAIN
I'M STILL HAVING TROUBLE HOW IT
WOULD HAVE HARMED YOU IF IT'S
NOT AN INCORRECT STATEMENT OF
LAW AND IF THE WORST IS THAT
THEY THOUGHT THERE WAS A HIGHER
LEVEL OF CONSCIOUS INTENT THAN
THERE WAS FOR PREMEDITATION.
SO, WE'RE KIND OF GOING AROUND
THE SAME CIRCLE HERE.

>> WELL, THE EVIDENCE AS TO WHO
SHOT THE FATAL BULLET IN THIS
CASE IS REALLY WEAK.

NOW IF YOU LOOK, AT FIRST BLUSH
IT LOOKS STRONG.

BECAUSE, WHAT YOU HAVE ARE
HOUSTON'S TESTIMONY AND YOU
HAVE SHEILA MILLER'S TESTIMONY
ABOUT RENALDO MCGIRTH
SHOOTING THE FIRST BULLET TO
MISS MILLER'S HEAD.

>> THAT FINDING HAS NOTHING TO
DO WITH CONSCIOUS INTENT AND
PREMEDITATED INTENT.

ARE YOU TRYING TO LINK THAT UP?
THAT THEY WOULD HAVE FIND, MORE
LIKELY THEY WOULD FIND EVEN
THOUGH THIS IS AN INSTRUCTION
GIVEN ABOUT BOTH DEFENDANTS,
THAT THEY WOULD MORE LIKELY

HAVE FOUND YOUR CLIENT GUILTY
OF HAVING BEEN THE SHOOTER
BASED ON THIS INSTRUCTION?
>> POSSIBLY. COULD HAVE,
IT COULD HAVE CONFUSED THEM.
HERE'S WHY, YOUR HONOR.
>> WHY WOULDN'T IT BE CONFUSED
TO THE CODEFENDANT WHO THEY
DIDN'T FIND GUILTY OF
FIRST-DEGREE MURDER?
>> WELL, THERE'S NO INDEPENDENT
TESTIMONY THAT I CAN SEE, AND
I'VE OUTLINED THIS AND I
LOOKING AT MY NOTES, NOBODY
SAY, -- SAW THE SECOND, NOBODY
SAW THE BULLET TO THE BACK OF
MR.^MILLER'S HEAD.
MR.^MILLER FELT IT.
THERE WERE NO WITNESSES SAY,
YEAH, I SAW WHO SHOT HIM IN THE
BACK OF THE HEAD.
WE DON'T REALLY KNOW WHO SHOT
HIM IN THE BACK OF THE HEAD
HAD. THERE ARE NO INDEPENDENT
WITNESSES WENT FORWARD AND
YEAH, I SAW MR.^MCGIRTH SHOOT
THE FATAL BULLET INTO THE BACK
OF MRS.^MILLER'S HEAD.
WE DON'T HAVE THAT.
SO MY CONCERN THAT LITTLE
THINGS LIKE 9/11 TERRORIST,
LIKE, A JURY INSTRUCTION THAT
BLURS THE DISTINCTION BETWEEN
THE INTENT NEEDED FOR
FIRST-DEGREE MURDER AND INTENT
NEEDED FOR MERE PRINCIPLE

CULPABILITY MIGHT HAVE MADE A DIFFERENCE.

>> LET'S, THE ONE THAT YOU, SO IS THAT, THAT BASICALLY YOUR ARGUMENT AS TO THAT POINT?

>> YES, YOUR HONOR.

>> THE ONE I AM INTERESTED IN HEARING YOU TALK ABOUT IS THE PRIOR BAD ACTS.

THAT IS THE PRIOR RELATIONSHIP WITH SHEILA BASED ON DRUGS.

WHICH WAS, CERTAINLY SOMETHING THAT WOULD HAVE DISTINGUISHED MCGIRTH FROM THE CODEFENDANT.

WAS THAT, THERE WAS NOTICE OF INTENT TO PUT THAT EVIDENCE IN AHEAD OF TIME BUT WASN'T THAT ALSO ELICITED BY ROBERTS, CODEFENDANT'S COUNSEL?

THEY WANTED THAT EVIDENCE IN? THE CODEFENDANT'S?

>> I DON'T KNOW.

I CAN'T SPEAK FOR CODEFENDANT ROBERTS, YOUR HONOR.

I DON'T KNOW.

>> NO.

I THOUGHT THAT'S HOW, THIS WAS THE ESSENCE OF THE, WHAT THE CODEFENDANT WANTED TO DO, WHICH WAS TO CROSS-EXAMINE SHEILA ABOUT THE RELATIONSHIP SHE HAD WITH MCGIRTH, PROBABLY TO LESSEN HIS CULPABILITY.

AM I WRONG ABOUT THAT?

>> HONESTLY, YOUR HONOR, YOU KNOW, SO FOCUSED ON

REPRESENTATION OF MCGIRTH I WAS NOT FOCUSED ON THE CODEFENDANT.

>> THE REASON BEING IT IS THE DEFENDANT ELICITING IT AND YOU'RE NOT MAKING AN ARGUMENT THAT THE TRIAL SHOULD HAVE BEEN SEVERED BECAUSE THERE WAS AN UNDULY PREJUDICIAL IN ALLOWING THIS EVIDENCE IN, IF THIS WAS THE CODEFENDANT THAT WANTED IT IN.

AND IT ME IT SEEMS LIKE THAT'S A, THAT'S A FACTOR WHETHER THAT EVIDENCE WAS ADMISSIBLE SINCE IT WAS FAIR CROSS-EXAMINATION OF SHEILA BY THE CODEFENDANT. THAT IS WHO ELICITED IT.

>> I DON'T KNOW, YOUR HONOR. AGAIN, I THINK WHERE THE TRIAL COURT WENT WRONG WAS, ALLOWING IT AT ALL.

THERE WAS A BIG MOTION IN LIMINE ON THIS.

THERE REALLY IS ANY EVIDENCE OF THIS DRUGS IS PROBATIVE.

>> SHOWS THE CONTEXT THE WAY THESE CIRCUMSTANCES DEVELOPED. AND EVENTS LED UP TO THE CRIMES COMMITTED AGAINST THE VICTIMS.

>> WELL --

>> OR THAT STORY AND ANY, ANY PREJUDICE FROM IT SEEMS TO BE RATHER SMALL IN THE CONTEXT WE'RE LOOKING AT.

NOT THAT THERE IS ANY UNFAIR PREJUDICE, ANY PREJUDICE FROM

IT SEEMS MINUSCULE.

AM I WRONG?

>> YOUR HONOR, FIRST OF ALL,

THE EVIDENCE IS THAT SHEILA
KNEW MCGIRTH BEFOREHAND.

THEY HAD A FALLING OUT.

AND RENALDO WENT TO THE
SECURITY GATE OR GOT BUZZED
INTO THE MILLERS RESIDENCE IN
THIS LOCKED GATED COMMUNITY.

WHAT THE JUDGE SAID IN THE
SENTENCING ORDER SHE CAME
OSTENSIBLY TO REKINDLE AN OLD
FRIENDSHIP, SHEILA.

MCGIRTH KNEW EACH OTHER
BEFOREHAND.

SO REALLY WE KNOW SHE GOT INTO
THE HOUSE.

THE EVIDENCE IS THAT, EXCUSE
ME, WE KNOW THAT MCGIRTH AND
HOUSTON AND ROBERTS GOT INTO
THE HOUSE UNDER THIS PRETEXT OF
A FRIENDSHIP WITH SHEILA.

THERE WAS NO METER OR NO POINT,
NO ISSUE DRUGS WOULD PROVE
RELEVANCE TO ANYTHING CHARGED
IN THIS CASE.

IN OTHER WORDS IT WAS ENOUGH TO
SAY SHE WAS LET IN AS AN OLD
FRIEND AND THEY DIDN'T COME IN
TO DO THAT THEY CAME IN TO ROB
THE MILLERS.

SO I WOULD ARGUE THAT ALL OF
THIS EVIDENCE OF THEM DEALING
DRUGS TOGETHER, OF THEM IN THE
GETAWAY VAN, HAVING SHEILA, AS

SHEILA CLAIMED TRY TO BUY DRUGS
HAD NOTHING TO DO WITH THE
CRIMES THAT WERE CHARGED.
NONE OF IT WAS INEXORABLY
INTERTWINED.

>> I AM AS I LOOK AT THIS, IT
WAS DEFINITELY THAT THE, THAT
ROBERTS, COUNSELOR ROBERTS
EXPLAINED THE RELATIONSHIP WITH
MCGIRTH BECAUSE HE ANTICIPATED
THAT HOUSTON WOULD TESTIFY THAT
THREE MEN WERE GOING TO -- CAME
THE AFTERNOON OF THE CRIME.
AND, THAT'S, COUNSEL FOR
ROBERTS ARGUED THAT EXPOSING
THE NATURE OF RELATIONSHIP
WOULD HELP HIS CLIENT BECAUSE
HE ANTICIPATED SHEILA'S
TESTIMONY TO REVEAL HER BELIEF
THAT THE BLACK BAG MCGIRTH
BROUGHT WITH HIM TO THE MILLER
HOME CONTAINED EITHER COCAINE
OR MARIJUANA.
SO, IT WOULD EXPLAIN THE NATURE
OF THEIR RELATIONSHIP, THAT IS,
BETWEEN SHEILA AND MCGIRTH,
WOULD EXPLAIN WHY SHEILA WAS SO
HAPPY TO SEE MCGIRTH AND WHY
SHE, WAS, HAPPY TO SEE THIS
BLACK BAG THAT SHE ASSUMED HAD
DRUGS IN IT.
DOESN'T THAT, ISN'T THAT WHAT
THE RELEVANCE IS, TO THIS
CRIME?

>> I DON'T THINK SO, YOUR
HONOR. NO. I DON'T REALLY THINK

WHETHER SHE WAS HAPPY OR NOT.
THEY'RE OLD FRIENDS.
SHE TESTIFIED THEY HAD A
FALLING OUT.
SHE THOUGHT THEY WERE, HE WAS
COMING BACK TO MAKE UP.
>> SO SHE HADN'T TESTIFIED SHE
THOUGHT ANYTHING ABOUT HE WAS
THERE TO SELL HER DRUGS?
>> YES, YOUR HONOR.
>> COCAINE?
DID SHEILA TESTIFY TO THAT?
>> I KNOW THERE WAS TESTIMONY
THAT THEY HAD BOUGHT DRUGS,
THEY DEALT DRUGS TOGETHER.
THEY HAD MEN EACH OTHER THROUGH
DRUG DEALING.
THAT'S WHAT SHE SAID.
THAT CAME OUT.
>> YOU'RE SAYING THAT SHOULDN'T
HAVE COME OUT?
>> NOT AT ALL.
SHE ALSO SAID THEY WERE
FRIENDS.
IT WAS ENOUGH TO SAY, YOU KNOW,
KNOWN EACH OTHER BEFORE, THEY
WERE FRIENDS.
WHICH IS TRUE.
WHICH IS NOT FALSE.
SHE LET THEM IN.
AND THERE'S, THE TRIAL
TRANSCRIPT INDICATED THEY
EMBRACED EACH OTHER LIKE OLD
FRIENDS ONCE THEY CAME IN.
SO, YES, THEY WERE OLD FRIENDS
THAT USED DRUGS TOGETHER AND

DEALT DRUGS TOGETHER.

THEY DIDN'T HAVE TO BRING ANY
OF THAT INTO THIS MURDER CASE.

>> YOU ARE WELL INTO YOUR
REBUTTAL, I LIKE BEFORE YOU SIT
DOWN TO ADDRESS THE AVOID
ARREST AGGRAVATOR.

WE'VE BEEN HAVING SOME, IT IS
YOUR ARGUMENT THIS WAS NOT THE
SOLE OR DOMINANT MOTIVE IN THIS
CASE OR?

>> CORRECT, YOUR HONOR.

>> AND WHY NOT?

>> OKAY.

NOBODY, FIRST OF ALL, THERE IS
NO EVIDENCE THAT THIS WAS A GUN
AGAINST THE HEAD TYPE EXECUTION
MURDER.

IN FACT, THE MEDICAL EXAMINER
TESTIFIED THAT THE GUN TO
MRS.^MILLER'S HEAD WAS A FOOT
OR MORE AWAY.

THIS SHOOT BE HAPPENED --

>> IN FAIRNESS HERE, THIS WAS A
SHOT, THAT WAS SHOT AFTER SHE
HAD ALREADY BEEN SHOT IN THE
CHEST AND WAS DOWN SUFFERING
FROM THE FIRST WOUND, ISN'T
THAT CORRECT?

>> WE DON'T KNOW THAT, YOUR
HONOR. NOBODY SAW IT.

NO LIVING WITNESS SAW THE FATAL
SHOT TO HER HEAD.

THAT IS SPECULATION.

>> BUT WE KNOW SHE WAS, WE HAVE
TESTIMONY THAT SHOWS SHE WAS

SHOT IN THE CHEST FIRST, DON'T WE?
>> YES.
>> WELL --
>> THAT WASN'T A MURDERING SHOT.
>> I UNDERSTAND THAT.
BUT THE, WE KNOW THAT SHE WAS SHOT IN THE CHEST BEFORE SHE WAS SHOT IN THE HEAD.
AND WE KNOW THAT SHE WAS SHOT IN THE HEAD, RIGHT?
>> YES. BUT WE DON'T KNOW -- SHE COULD HAVE BEEN RESISTING. AS INDICATED.
>> AGREED.
>> FIRST SHOT OCCURRED AS SHE WAS RISING TO GO TO THE DOOR. MCGIRTH WAS STANDING BY THE DOOR.
SHE SAID, I GOT --, ROSE UP MOVED TOWARDS THE DOOR TOWARDS MCGIRTH AND GOT SHOT IN THE CHEST.
NOT IN THE HEAD EXECUTION-STYLE IN THE CHEST.
SOMETIME LATER ON SHE GOT SHOT IN THE CHEST.
WE DON'T KNOW BY WHO.
BY THE WAY, HOUSTON, ONE OF THE KEY WITNESSES AGAINST MY CLIENT CLAIMED HE WAS OUTSIDE, LIED TO THE POLICE.
YEAH I WAS LYING TO THE POLICE. I WAS ACTUALLY INSIDE AND ROBERT WAS OUTSIDE WAITING IN

THE VAN.

SHEILA IS CONVICTED FELON.

SHE IS A DRUG ADDICT.

NONE OF THESE PEOPLE HAD ANY
BELIEFABILITY.

THE PROSECUTOR NEVER ASKED
ANYBODY, DID YOU SEE WHO SHOT
THE FATAL SHOT?

NOW THERE WAS SOME TESTIMONY,
HOUSTON SAID, HE LOOKED AND HE
SAW HIM STANDING OVER SOMEBODY.
THEN HE TURNED TO GO OUTSIDE.

HE HEARD A SHOT.

NOBODY ASKED HOUSTON, DID YOU
LOOK BACK AND SEE IF IT WAS
MCGIRTH STANDING OVER HER AND
SHOT THE FATAL SHOT.

>> WHO ELSE WAS THERE.

>> I DON'T KNOW, YOUR HONOR.

>> THE EVIDENCE SAYS THIS IS
ALL ONLY PEOPLE THERE, WASN'T
IT?

>> YES, SIR.

BUT THE PROSECUTOR NEVER ASKED
WHO ELSE WAS THERE.

>> WHO WAS IN WHAT ROOM AT THE
TIME OF THE FATAL SHOOTING?

NOBODY EVEN ASKED IT.

>> ALSO, DURING THE CHASE, WHEN
THE POLICE ARE CHASING THE VAN,
DIDN'T MR. ^MCGIRTH INSTRUCT
HOUSTON TO SHOOT SHEILA BECAUSE
SHE HAS SEEN US?

>> ACCORDING TO SHEILA AND
PERHAPS ACCORDING TO HOUSTON.
BUT ALSO THEY BOTH SAY THAT

WHEN, WHEN ROBERTS AND HOUSTON
SUGGESTED THAT MCGIRTH SHOOT
THE POLICE OFFICER, THAT THEY
FELT -- THAT MCGIRTH SAID NO.
SO, IT'S REALLY ALL
SPECULATION.

I THINK WHAT HAPPENED, YOUR
HONOR, IS THAT I THINK, AND I
THINK, THE RECORD WILL BEAR
THIS OUT, THE JUDGE LOOKED AT
VERDICT THAT FOUND MCGIRTH
GUILTY OF MURDERING DIANE
MILLER.

AND, SORT OF, ADDED OR SOMEHOW
ASSUMED THAT THE JURY FOUND
THAT MCGIRTH HAD THE GUN IN HIS
HAND, WAS THE SHOOTER BUT THERE
WAS NO SPECIAL VERDICT.

THERE'S REALLY NO EYEWITNESS TO
THAT.

>> WITH THAT, YOU HAVE USED
YOUR TIME. THANK YOU.

WE'LL GIVE YOU A MINUTE FOR
REBUTTAL.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT.

MY NAME IS BARBARA DAVIS.

I REPRESENT THE STATE OF
FLORIDA.

AS FAR AS I'LL JUST ADDRESS THE
ISSUES BACKWARDS.

AS FAR AS THE AVOID ARREST, THE
FATHER WAS IN THE ROOM WHEN THE
MOTHER WAS SHOT.

AND HE SAID HE FELT HIS WIFE
LAYING AT HIS FEET AND HE FELT,

HE SAW A FLASH OF LIGHT.
FELT PAIN IN HIS HEAD.
AND THEN, HE HEARD ANOTHER
GUNSHOT WHICH WOULD HAVE BEEN
THE SHOT TO DIANA'S HEAD.
ROBERT WAS OUTSIDE IN THE VAN.
HOUSTON WAS IN THE STANDING A
THE DOOR.
SHEILA WAS IN THE VAN.
THE FINDINGS --

>> WHAT WERE THE FINDINGS ABOUT
WHO SHOT HIM AND HIS WIFE?

>> HE COULDN'T RECOGNIZE
ANYBODY. THE FATHER HAD A STROKE.
WAS DISABLED ON HIS RIGHT SIDE
AND COULDN'T HEAR WELL OUT OF
HIS RIGHT EAR.

HE WAS 68 YEARS OLD.
BUT HE COULD NOT DISTINGUISH
BETWEEN THE THREE CODEFENDANTS.
HOWEVER, WE DO KNOW THAT
MCGIRTH WAS ONLY ONE IN THE
HOUSE.

THAT HE HAD GONE TO ASSIST
PUTTING SHEILA IN THE VAN AND
HAD COME BACK INTO SHOOT THE
TWO VICTIMS.

>> THIS WAS TESTIMONY OF
HOUSTON?

>> BOTH SHEILA AND HOUSTON.
AND, THE JUDGE'S FINDINGS
INCLUDE NOT ONLY THAT THIS WAS
THE ONLY REASON TO HAVE KILLED
THEM BECAUSE THEY COULD BOTH
IDENTIFY HIM.

BUT, ALSO THAT, HE LATER TOLD

HOUSTON, WHEN THEY WERE BEING
CHASED BY THE POLICE, QUICK,
KILL SHEILA, BECAUSE SHE CAN
IDENTIFY US.

THERE WAS NO NEED TO GO BACK
AND SHOOT BOTH VICTIMS IN THE
HEAD, EXCEPT, TO AVOID ARREST.

>> HOW MANY, MORE THAN ONE
FIREARM INVOLVED?

>> JUST ONE FIREARM.

MCGIRTH HAD THE FIREARM THE
ENTIRE TIME.

AND I WOULD LIKE TO POINT OUT
THE DISTINCTION BETWEEN THE TWO
DEFENDANTS WHO WERE TRIED IN
THIS CASE.

THE JURY WHO RESOLVED ISSUES OF
CREDIBILITY, FOUND THAT

MR.^MCGIRTH HAD THE FIREARM,
NOT ONLY THE ATTEMPTED MURDER,
THE ROBBERY, BUT THE MURDER.

MR.^ROBERTS, WHO WAS THE
CODEFENDANT, THEY FOUND HE WAS
A PRINCIPLE TO THE ROBBERY BUT
NO FIREARM.

MANSLAUGHTER, NO FIREARM.

ATTEMPTED MANSLAUGHTER, NO
FIREARM.

HE GOT ATTEMPTED MANSLAUGHTER
FOR THE FATHER.

THAT DECISION, THERE'S A
PUBLISHED DECISION ON THAT OUT
OF THE FIFTH DISTRICT COURT OF
APPEAL.

I HAVE SUPPLEMENTAL WITH THAT.

THAT JUST CAME IN TODAY.

THE CODEFENDANTS ISSUE ON APPEAL WAS HE WANTED THE INDEPENDENT ACT INSTRUCTION, MR. ^ROBERTS BECAUSE HE WAS IN THE VAN AT THE TIME THAT THE, MR. ^MCGIRTH SHOT THE VICTIMS IN THE HEAD.

>> WHAT IS THE STATUS OF HOUSTON?

>> HOUSTON, HE HAD MADE A PLEA DEAL WITH THE STATE RIGHT BEFORE TRIAL.

HE SAID HE WAS NOT GOING TO TAKE THE DEAL.

IT WAS 25 TO 40 YEARS.

HE WAS NOT GOING TO TAKE THE DEAL.

HE WAS ALLOWED TO RENEGE ON THE DEAL.

HE WAS GOING TO GO TO TRIAL, UNDERSTANDING THAT HE WAS GOING TO FACE A LIFE SENTENCE.

TEN MONTHS LATER, AFTER BEING SET FOR TRIAL, NOT SET FOR TRIAL, WHATEVER, HE ENTERED A PLEA.

REMEMBER HOUSTON WAS ONLY 16. AT THE TIME.

SO HE ENTERED A PLEA, KIND OF AN OPEN PLEA.

THE STATE CAPPED IT AT 40 YEARS.

AND THE JUDGE ALLOWED HIM TO PRESENT A LOT OF MITIGATION, ULTIMATELY SENTENCED HIM TO 20 YEARS.

THAT WAS ALSO APPEALED TO THE
FIFTH DCA.

IT WAS ANDERS BRIEF.

AS FAR AS, I'M GOING TO START
BACK AT BEGINNING NOW.

THE 9/11 COMMENT, THAT WAS IN
THE PENALTY PHASE.

AS FAR AS, THE QUESTION ABOUT
WAS THEORY OF DEFENSE THAT
SHEILA DID THIS?

IF YOU LOOK AT MCGIRTH'S
ATTORNEY'S CLOSING ARGUMENT AT
2941 TO 44, THAT WAS THEIR
THEORY IN THE SENSE THAT SHEILA
KILLED HER PARENTS BECAUSE SHE
WANTED THEIR MONEY.

SHE WOULD INHERIT A MILLION
DOLLARS IN INSURANCE.

>> DO YOU AGREE AT ALL THIS WAS
AN IMPROPER COMMENT?

WE KNOW THAT IN THIS DAY AND
AGE WHENEVER YOU RAISE THE
SPECTER OF 9/11

OR THE WORLD TRADE CENTER, THAT
THERE'S A VISCERAL REACTION.

SO DO YOU BELIEVE THIS WAS AN
IMPROPER COMMENT?

>> IT WAS AN INARTFUL COMMENT
BUT IT'S NOT REALLY IMPROPER.

WE'RE NINE YEARS --

>> HOW INARTFUL?

I MEAN HE SAYS THE WORLD TRADE
CENTER IS LIKE LETING OSAMA,
YOU KNOW, GET AWAY WITH
SOMETHING.

>> REMEMBER THAT, SHEILA IS

OSAMA.

THIS WAS, PROSECUTOR KNEW THAT
DEFENSE COUNSEL, BOTH DEFENSE
COUNSEL WAS GOING TO COME IN
HERE AND BLAME IT ON SHEILA.

THAT WAS THE WHOLE THING OF THE
TRIAL.

THIS IS ALL SHEILA'S FAULT.

SHE SHOT HER PARENTS.

AND, SO, HE WAS, THIS IS
PENALTY PHASE.

HE GETS ONE ARGUMENT.

HE WAS SAYING YOU'RE GOING TO
HEAR THEM TRY TO BLAME IT ALL
ON SHEILA.

IT'S SHEILA'S FAULT.

WE'RE NOT GUILTY.

THAT WOULD BE LIKE GIVING THE
TWO PILOTS A PASS BECAUSE OSAMA
ORDERED THEM TO DO IT.

THAT'S HE SAID.

THE JUDGE STOPPED IT.

LEAVE IT ALONE.

>> HE OVERRULED THE OBJECTION.

I THINK WHAT JUSTICE QUINCE IS
ASKING YOU, WE'VE GOT TO LOOK
AND MAKE SURE, IF THIS IS A
PROPER COMMENT, AND THIS CAN
BE, YOU KNOW, TED BUNDY, ALL
THE THINGS THAT EVOKES THE MOST
EMOTIONAL RESPONSES, I THINK WE
TRY TO STAY AWAY FROM THIS.

IT WOULD BE BETTER, TO ME,
BASICALLY TO BE CONSISTENT WITH
OUR CASE LAW TO SAY, WE REALLY
DON'T WANT THIS KIND OF

EMOTIONAL APPEAL.

BUT IN THIS CASE IT IS HARMLESS
ERROR BEYOND A REASONABLE
DOUBT.

>> IF IT WERE ERRONEOUS OF
COURSE IT IS HARMLESS.

WE HAVE FIVE AGGRAVATING
CIRCUMSTANCES.

WE HAVE THE MOTHER IN GATED
RETIREMENT COMMUNITY TERRORIZED
FOR 30 MINUTES.

SHE AND HER DISABLED HUSBAND
SHOT IN THE HEAD AS SHE HAD
BEGGED FOR 30 MINUTES FOR THEM
TO CALL 911.

>> YOU KNOW, THIS, SORT OF,
ALWAYS A QUESTION, WHAT IS THE
PROSECUTOR NEED THIS?

THEY HAVE GOT ALL THIS, AS YOU
SAY THIS OTHER EVIDENCE.

IT DOES RUN THE RISK OF, OF
BEING IMPERMISSIBLE, AND
REVERSIBLE?

>> PROSECUTOR DIDN'T NEED IT.
IT WAS UNFORTUNATE COMMENT BUT
IT'S NOT THAT PREJUDICIAL TO
MCGIRTH.

AND, REMEMBER THAT HE WAS
TRYING TO PARLAY THE BLOW OF,
THE PLAN SHEILA DID IT, SHEILA,
EVERYTHING, SO THESE
TWO COMPLETELY NOT GUILTY.

>> IT DOES CHANGE -- IF THE
JURY BELIEVED SHEILA WAS AN
ESSENTIAL PLAYER HERE, WHETHER,
IN THE PENALTY PHASE, CERTAINLY

DOESN'T AFFECT THE GUILT BUT IT
COULD AFFECT THE SENTENCE
THEY'RE GOING TO GIVE BECAUSE,
SOMEONE ELSE IS THE MASTERMIND.
I MEAN, THEY DON'T JUST SHOW
UP, I MEAN THEY SHOW UP.
SHE'S HAPPY THEY'RE THERE.
I MEAN THE IMPLICATION IS,
ESPECIALLY WITH EVERYTHING IS
THAT SHEILA KNEW THAT THEY WERE
GOING TO ROB HER PARENTS AND,
IF SHE DID STAND TO GAIN A
MILLION DOLLARS OR WHATEVER IN
LIFE INSURANCE, AND THIS WAS A
PERSON THAT HAD A PRETTY
CHECKERED PAST, THAT COULD GIVE
HER MOTIVATION TO WANT HER
PARENTS TO BE KILLED.
SO IT IS NOT FARFETCHED AND
WHEN YOU'VE GOT SOMEBODY WHO IS
THE MASTERMIND, IT MIGHT
MINIMIZE THE CULPABILITY OF THE
ACTUAL SHOOTER.
SO IT'S NOT, I MEAN IT IS NOT
OUT OF THE BALLPARK AS FAR AS
IN THE PENALTY PHASE THAT IS
WHAT YOU WOULD HAVE A
LEGITIMATE ARGUMENT.
>> THAT'S EXACTLY WHAT THE
PROSECUTOR KNEW THAT DEFENSE
COUNSEL WAS GOING TO ARGUE AND,
SO, I MEAN, A FAIR COMMENT ON
THE EVIDENCE WOULD BE, THESE
TWO DON'T TAKE A PASS BECAUSE,
JUST BECAUSE SHE WAS THE
MASTERMIND.

THEY'RE STILL GUILTY.

SO THE INSERTION OF PILOTS AT
9/11 EIGHT YEARS AFTER THE
EVENT, THE JUDGE OVERRULED IT.

BUT HE SAID, STOP SAYING IT.

HE TOOK STEPS TO STOP IT.

HE SAID, LOOK, IT WAS A BAD
ANALOGY.

DON'T SAY IT AGAIN.

THAT'S WHAT THE JUDGE RULED, IT
IS A BAD ANALOGY.

IS IT HARMFUL ERROR, NOT AT
ALL?

PARTICULARLY BECAUSE IT WAS A
FAIR COMMENT ON THE EVIDENCE.

>> OTHER THAN, THE

CROSS-EXAMINATION OF SHEILA,
TELL ME, WHAT EVIDENCE WAS IN
THIS RECORD THAT THIS WAS,
THERE WAS A DRUG, THIS WAS A
DRUG-RELATED OFFENSE?

>> DRUGS PERMEATED THIS ENTIRE
SCENARIO.

SHEILA, OKAY, SO WE HAVE TWO
RETIRED PEOPLE IN A GATED
COMMUNITY, IN THE VILLAGES.

THEY HAVE THEIR DRUG-ADDICTED,
40-YEAR-OLD DAUGHTER WHO HAS
BEEN IN A TRAFFIC ACCIDENT WITH
A DRUNK DRIVER WHO IS A DRUG
ADDICT, WHO HAD BEEN IN DRUG
REHABILITATION THAT HER
PARENTS --

>> THAT WASN'T MCGIRTH, THOUGH.

>> THAT WAS SHEILA, THE
DAUGHTER.

THE DAUGHTER WAS AN ABSOLUTE
DRUG ADDICT.

HAD BEEN IN REHAB, NOT
SUCCESSFULLY.

THE PARENTS SUPPORTED HER ALL
HER LIFE.

EVEN AFTER ALL THESE FAILURES.

>> THIS WAS THE STATE'S CASE
ABOUT SHEILA?

>> OH, THIS IS, THIS IS THE
WHOLE SCENARIO OF WHY SHEILA
WAS IN THE HOUSE AND WHY THESE
THREE, YOUNG BLACK MALES ARE IN
A RETIREMENT COMMUNITY VISITING
A RETIRED FAMILY BECAUSE,
SHEILA, THEY HAD ALLOWED SHEILA
TO COME STAY WITH THEM WHEN SHE
WAS REHABING AND SHE WAS GOING
CRAZY.

THE DAD SAYS SHE IS ON THE
PHONE ALL DAY LONG.

SHE IS ANTSY.

THE MOM WANTED HER THERE.

THEY DID EVERYTHING FOR THIS
CHILD.

SHE'S 38 AT THE TIME.

>> I UNDERSTAND THAT BUT I'M
STILL TRYING TO UNDERSTAND WHAT
THE FACT THAT THERE WAS A
TWO-YEAR RELATIONSHIP IN DRUG
DEALING BETWEEN MCGIRTH AND
SHEILA WOULD, YOU KNOW, HOW
DOES THAT ADD TO THE MOTIVATION
FOR THE CRIME?

>> OH, SHE LET HIM IN THE
HOUSE.

IT IS A GATED COMMUNITY.

SHE GAVE HIM DIRECTIONS TO THE COMMUNITY.

SHE GOT HIM IN THE GATE.

>> BY IMPLICATION.

THE STATE'S THEORY THE STATE WAS SHEILA WAS INVOLVED IN THIS CRIME?

>> NO. THAT'S, STATE'S THEORY WAS SHE THOUGHT THEY WERE BRINGING HER DRUGS.

SHE HAD NO IDEA --

>> MCGIRTH HAD MARIJUANA FOR HER FIANCE, THE TRIAL COUNSEL FOR MCGIRTH OBJECTED ON SPECULATION BUT THE TRIAL COURT SUSTAINED THE OBJECTION.

>> THAT WAS AFTER TESTIMONY FROM BOTH HOUSTON AND SHEILA WAS THEY CAME IN WITH A BLACK BAG.

SHEILA WAS PRETTY HAPPY TO SEE THEM WITH THE BLACK BAG.

THEY HAD A PRESENT FOR HER.

NOW.

WE KNOW DRUGS PERMEATE THIS.

THAT'S WHY THEY WERE THERE.

SHE THOUGHT HAD DRUGS FOR HER.

SHE LET THEM IN.

>> WHAT ADMISSIBLE EVIDENCE IS THERE THAT SHE THOUGHT THEY HAD DRUGS FOR HER?

WHERE DID THAT COME IN?

THE STATEMENT I'M SEEING THE JUDGE STRUCK IT ON THE GROUNDS OF SPECULATION.

>> BUT THEN --

>> THERE WAS NO EVIDENCE SHEILA SAID I TALKED TO MCGIRTH EARLIER THAT DAY AND HE SAID HE WAS COMING TO GIVE ME DRUGS. THERE'S NOTHING LIKE THAT.

>> HOUSTON TESTIFIES THEY HAD A PRESENT FOR SHEILA.

WHEN THEY WENT IN THE HOUSE, THEY WENT INTO THE BACK ROOM FOR SHEILA TO GET HER PRESENT OUT OF THE BLACK BAG.

INSTEAD OF DRUGS, THERE WAS DUCT TAPE IN THERE.

BUT ISSUE OF WHY, --

>> WHAT I'M ASKING YOU, YOU SAY DRUGS PERMEATED IT BUT I'M SO FAR, SHEILA IS, WAS A DRUG ADDICT BUT, AND, SO IT MIGHT BE RELEVANT TO SAY SHE KNEW MCGIRTH BECAUSE, YOU KNOW, LIMITED, THAT MCGIRTH AND SHE HAD DEALT DRUGS, BUT, HOW DOES THE WHOLE NATURE OF THEIR RELATIONSHIP BECOME RELEVANT IN THE DRUG DEALING?

>> NOW REMEMBER, THE STATE DIDN'T BRING THIS IN.

>> I HAD ASKED THAT QUESTION. THE STATE, WASN'T, THE STATE WAS NOT INTERESTED IN PUTTING THIS EVIDENCE IN?

>> HERE'S HOW THIS WORKED. THAT THE STATE FILED A NOTICE OF WILLIAMS RULE.

THAT IS IN THE SUPPLEMENTLE

RECORD.

THEY HAD A WILLIAMS RULE
HEARING.

23 WILLIAMS RULE HEARING.

THE JUDGE SAID THIS PART CAN
COME IN

BECAUSE IT IS INEXORABLY
INTERTWINED.

REMEMBER, WHEN THEY'RE OUT
RIDING IN THE VAN SHEILA IS

CALLING FOR DRUGS BECAUSE SHE
HADN'T BROUGHT HER DRUGS.

SHE IS OUT USING ONE OF THEIR
CELL PHONES CALLING FOR DRUGS.

>> OF THE MURDER.

>> SHE DIDN'T KNOW THEY WERE
MURDERED.

SHE IS CALLING FOR DRUGS.

SO, YOU KEEP CALLING IT
WILLIAMS RULE.

THIS IS INEXORABLY INTERTWINED
BECAUSE THAT'S THE

RELATIONSHIP.

THAT'S HOW THEY KNEW EACH
OTHER.

AND REMEMBER, SHE KNEW BOTH
MCGIRTH AND HOUSTON.

WHEN THEY CAME, SHE GREETES THEM
AT THE DOOR AND GIVES MCGIRTH A
BIG HUG.

SHE HAS BEEN, SHE IS AN
ALCOHOLIC, DRUG ADDICT.

SHE IS DRYDOCKED HERE WITH HER
PARENTS FOR TWO TO THREE
MONTHS.

AND HERE COME THESE THREE

YOUNG BLACK MALES IN THIS
RETIREMENT COMMUNITY, I DON'T
THINK ANYBODY THOUGHT THEY WERE
THERE TO PLAY BINGO.

I MEAN WE KNOW EXACTLY WHY
WE'RE THERE.

WHY, I MEAN, THAT'S THE ONLY
REASON THEY WOULD BE THERE IS
TO BRING SHEILA DRUGS.

SO, AND THEY LATER ON, SHE IS
TAKEN THE MONEY AND CREDIT
CARDS AND TRYING TO BUY DRUGS.

>> IF THAT WERE TRUE WOULD ONLY
REASON WOULD BE THERE.

THEY COULD BE THERE BECAUSE
SHEILA WANTED MONEY HER PARENTS
HAD.

THAT WAS THEIR DEFENSE WAS.
WHETHER IT WAS PROVEN OR NOT.
THERE ISN'T ONLY REASON THEY
WOULD HAVE BEEN THERE.

>> THAT IS THE DEFENSE THEORY
THAT SHEILA WAS VERY MUCH
INVOLVED IN THIS.

HOWEVER, SHEILA THOUGHT THE
BLACK BAG CONTAINED DRUGS.

WHEN THEY DUCT TAPE HER --

>> SAID THAT COUPLE TIMES.

BUT, SHOWED YOU THE PART WHERE
THE, THAT WAS, STRICKEN FROM
THE RECORD.

>> WASN'T THERE ONE OF THE
OTHER DEFENDANTS THAT, OR ONE
OF THIS GROUP OR TRIO
TESTIFIED THEY
WERE GOING TO TAKE DRUGS.

WAS THAT STRICKEN?

>> NO. THAT'S HOUSTON.

>> OKAY.

>> WHEN THEY GO INTO THE BACK

ROOM TO GIVE SHEILA HER

PRESENT, IT IS NOT DRUGS.

IT IS DUCT TAPE.

THEY TAME HER UP.

SHE STARTS CRYING.

THAT'S WHY MOM COMES BACK AND

THEY SHOOT HER IN THE CHEST.

>> ISN'T ALL OF THAT HIGHLY

RELEVANT TO REFUTING THE

DEFENSE'S THEORY THAT SHEILA

WAS THE MASTERMIND?

>> YES.

IT IS ALSO RELEVANT AS,

PROFESSOR EAR HEART SAYS AND

THIS COURT SAID, AS FAR AS

INEXORABLY INTERTWINED TO

ESTABLISH THE ENTIRE CONTEXT OF

THE CRIMINAL EPISODE AND

ADEQUATELY DESCRIBE THE EVENTS

LEADING UP TO THE MURDER.

>> WOULD THAT BE, IS THERE ANY

LIMITATION ON HOW LONG THEY CAN

TALK ABOUT THE DRUG

RELATIONSHIP?

I MEAN AS FAR AS BEING

INEXTRICABLY INTERTWINED?

>> THIS WAS NOT THE

FEATURE OF THE TRIAL.

>> THERE WAS ALSO TESTIMONY THE

TWO HAD A FALLING OUT WHEN HE

PULLED A KNIFE ON HER FIANCE

SOMETIME BEFORE.

TELL ME, WHAT'S THE RELEVANCE
OF THAT?

>> WELL, BECAUSE, WHY WOULD SHE
LET THEM IN THE HOUSE IF
THERE'S TWO-YEAR HIATUS AND HER
FIANCE, WHICH SHE IS STILL WITH
NOW, HAD BEEN THROWING CHAIRS
AND HAVING AN ALTERCATION WITH
A CHAIR WITH MCGIRTH.

MCGIRTH PULLED A KNIFE.

THEREFORE THEY HADN'T SEEN EACH
OTHER FOR TWO YEARS.

KNOW SHE IS DESPERATE.

SHE IS HERE WITH HER PARENTS.

SHE WANTS DRUGS AND SHE LET
BYGONES BE BYGONES IN HER OWN
WORDS AND LETS THEM IN THE
HOUSE.

SO I MEAN, THE WHOLE CONTEXT OF
THIS WHY WOULD SHE LET THESE
PEOPLE BACK IN THE HOUSE?

WELL, SHE NEEDS DRUGS.

I WANT BYGONES TO BE BYGONES.

THEY'RE COMING IN.

IF THERE IS NO FURTHER
QUESTIONS ON THAT, LET ME GO
BACK TO THE, I THINK WE'VE DONE
THE 9/11 COMMENT IN THE PENALTY
PHASE. OH AND THEY DID SAY PILOTS.
JUSTICE LEWIS.

THE CONSCIOUS INTENT ISSUE,
REMEMBER, THIS QUESTION ONLY
CONCERNED MR. ^ROBERTS.

THE JURY HAD SAID NINE-PAGES
BEFORE THEY HAD ASKED THE
JUDGE, WE WANT TO HAVE A

CONVERSATION WITH YOU ABOUT PRINCIPLE.
ON PAGE 45 OF THE INSTRUCTIONS. AND THE JUDGE TOLD THEM, WELL. GO BACK IN THE JURY ROOM AND DISCUSS THE JURY INSTRUCTIONS WITH YOU BUT I'M BEING FACETIOUS, BUT HE SAID, LOOK, YOU HAVE TO GIVE ME A SPECIFIC QUESTION.
YOU HAVE TO ASK ME PRECISELY WHAT YOU WANT.
SO THEY GO BACK.
THEY FORMULATE THEIR QUESTION AND THEY ASK THE JUDGE TWO QUESTIONS.
IS CONSCIOUS INTENT THE SAME AS PREMEDITATION?
AND IN THAT IT CAN OCCUR A FEW SECONDS BEFORE THE CRIME WAS COMMITTED? NOW REMEMBER, THIS DOESN'T REFER TO MCGIRTH AT ALL BECAUSE HE HAD THE GUN.
THEY FOUND HE HAD THE GUN. HE WAS ONLY PERSON EVER WITH THE GUN AND THEY'RE TALKING ABOUT ROBBERS NOW.
BECAUSE THE WHOLE ARGUMENT, THE CLOSING ARGUMENT FOR ROBERTS WAS, HE WAS IN THE VAN AND THAT WAS HIS ISSUE IN THE FIFTH DCA THEY WANTED INDEPENDENT ACT INSTRUCTION TO ISOLATE ROBERTS AND THAT WAS THEIR ENTIRE CLOSING ARGUMENT.
>> BUT WAS THE PRINCIPLE

INSTRUCTION APPLICABLE TO BOTH
OF THEM?

>> I MEAN, MCGIRTH WAS IT.

HE WAS THE ACTOR.

>> I MEAN THAT'S WHAT WE KNOW
WAS FOUND BUT HE WAS THE ACTOR
BUT WHEN THE PRINCIPLE
INSTRUCTION WAS GIVEN, IT WAS
GIVEN AS TO BOTH PEOPLE WHO
WERE ON TRIAL, OR WAS IT
SPECIFIC AS TO ONE PERSON?

>> IT WAS TO BOTH PRINCIPLES.

>> A QUESTION THEN, REALLY,
COULD BE APPLICABLE TO BOTH OF THEM?

>> I MEAN, THERE WAS NO
EVIDENCE HOUSTON EVER HAD THE
GUN UNTIL THE END -- ONE TIME
MCGIRTH HANDED IT OFF TO HIM TO
MAKE HIM UNJAM IT.

THREW IT TO HIM AT THE END AND
SAID SHOOT SHEILA.

>> AS FAR AS THIS TRIAL IS WHAT
I'M GETTING AT.

MR.^ROBERTS AND MR.^MCGIRTH ON
TRIAL.

THE PRINCIPLE INSTRUCTION WAS
GIVEN.

SO THE REQUEST FOR SOME
CLARIFICATION OF THE PRINCIPLE
INSTRUCTION WOULD HAVE BEEN
APPLICABLE TO THEORETICALLY
ANYWAY, TO BOTH OF THEM.

>> IT MIGHT HAVE BEEN
THEORETICALLY, BUT IF YOU LOOK
AT THE CLOSING ARGUMENTS,
MR.^MCGIRTH'S CLOSE ARGUMENT HE

DIDN'T DO IT, SHEILA DID IT.
ROBERT'S CLOSING ARGUMENT THEY
CAN ONLY GET HIM AS PRINCIPLE.
HE WAS IN THE VAN.
THEY ASKED FOR INDEPENDENT ACT
INSTRUCTION.
SO IT WAS CLEARLY FOCUSED ON
ROBERTS.
YOU KNOW, HE PARTICIPATED IN
THE ARMED ROBBERY.
>> IF YOU SEPARATED THESE TWO
DEFENDANTS IN DIFFERENT TRIALS
ISSUE OF PRINCIPLE WOULD HAVE
NEVER COME UP IN MCGIRTH'S
TRIAL, WOULD IT?
>> NO.
>> SO I MEAN REALLY WAS
DIRECTED TO ROBERTS MORE THAN
ANYTHING ELSE?
>> YES, ABSOLUTELY.
>> YOU KNOW, IT ALL COMES BACK
TO ME, THIS IS A JOINT TRIAL.
MR.^MCGIRTH WAS IN FACT TRYING
TO POINT THE FINGER AT SOMEONE
ELSE.
AND SO, YOU KNOW, THIS
INSTRUCTION SEEMS TO ME IS
APPLICABLE TO BOTH OF THESE
DEFENDANTS.
>> IT WOULD APPLY BUT IT
WOULDN'T HURT MCGIRTH IN ANY
WAY.
THE JUDGE DID ANSWER IT
CORRECTLY.
IF YOU LOOK AT WHAT THE JURY
WAS LOOKING AT, PAGE 45 AND THE

QUESTION THEY WERE ASKING, HE WAS ASSISTING THEM, AND HE GAVE THEM THE CORRECT ANSWER.

THIS WAS A VERY ACTIVE JURY.

THEY HAD, LOTS OF, LOTS OF JURY QUESTIONS.

THEY DEBATED FOR A LONG TIME.

AND IT WASN'T LIKE, THEY DIDN'T PICK THROUGH THE JURY INSTRUCTIONS.

I MEAN, THAT, THAT INSTRUCTION, THEORETICALLY COULD HAVE AFFECTED THE, I MEAN, BEEN APPLICABLE TO, BUT IT DIDN'T AFFECT HIM IN ANY WAY.

I THINK THESE ARE ONLY ISSUES THAT MR. ^ANDERSON ADDRESSED.

>> I HAVE A QUESTION, GOING BACK TO THE ISSUE ON THE DRUG EVIDENCE.

WHAT IS THE SIGNIFICANCE OF THE FACT THAT MOST OF WHAT THEY'RE OBJECTING TO IS IMPERMISSIBLE EVIDENCE CAME OUT BY CROSS-EXAMINATION OF THE CODEFENDANT AS OPPOSED TO, THE STATE ELICITING IT.

DOES THAT HAVE ANY SIGNIFICANCE?

>> YES. BECAUSE THE STATE ACTUALLY MADE A CONSCIOUS DECISION NOT TO PUT THAT IN.

>> AFTER SEEKING TO PUT IT IN? THEY DECIDED NOT TO?

>> YES.

>> AND REMEMBER THERE WAS, THE JUDGE WAS ALSO GOING TO ALLOW EVIDENCE THAT, MR.^BURGESS HAD GIVEN THEM THE VEHICLE, THE LITTLE FORD FOCUS THEY TRAVELED IN, FOR COCAINE.

THE STATE DIDN'T PUT THAT IN.

THE STATE DIDN'T PUT ANY OF THIS IN.

BUT THE, THIS, DEFENSE COUNSEL DID SAY, YES.

THAT DOES, I MEAN HOW CAN YOU FAULT THE STATE FOR SOMETHING THAT THEY DIDN'T DO?

AND DEFENSE COUNSEL FOR MR.^ROBERTS HAD AN ABSOLUTE RIGHT BECAUSE THAT WAS VALID CROSS-EXAMINATION ON SHEILA.

>> TO SHOW THAT HE, ROBERTS, WAS REALLY A MINOR PLAYER IN THE, IN THIS?

THAT THE RELATIONSHIP WAS BETWEEN MCGIRTH AND SHEILA?

>> YES.

>> I MEAN THAT WOULD BE HIS MOTIVATION?

>> RIGHT.

>> NOT THAT HE MADE AN ARGUMENT THERE SHOULD NOT HAVE BEEN A JOINT TRIAL?

I MEAN THAT'S NOT, THEY MAY HAVE MADE IT BUT IT IS NOT BEING MADE HERE?

>> IT IS NOT RAISED ON APPEAL. IF THERE IS NOTHING FURTHER I DIRECT THE COURT TO JUDGE'S

VERY COMPREHENSIVE SENTENCING
ORDER AND ASK THIS COURT TO
AFFIRM THE CONVICTIONS AND
SENTENCES.

>> MR. ^ANDERSON, YOU HAVE A
MINUTE OR SO TO, IF THERE'S
SOMETHING IMPORTANT THAT YOU
NEED TO CLARIFY, TELL US.

>> JUST REMIND THIS COURT, ON
THE WILLIAMS RULE EVIDENCE, THE
EVIDENCE OF DRUGS, THERE WAS A
DETAILED WILLIAMS RULE HEARING
AND THE JUDGE SAID THAT
EVIDENCE IS ALL COMING IN.

AND SO, I'M, WITH RESPONSE TO
JUSTICE PARIENTE, KNOWING THAT
IT IS COMING IN, I THINK IS A
DEFENSE ATTORNEY, MCGIRTH'S
ATTORNEY MAY HAVE GENUINELY
THOUGHT WHAT DIFFERENCE DOES
BRINGS IT IN OR THE STATE
BROACHES ISSUE FIRST.

IT WILL COME IN.

MAYBE BETTER TO HAVE
CODEFENDANT BRING IT IN TO
SOFTEN THE BLOW A LITTLE BIT
BECAUSE I'VE LOST THAT ISSUE IN
LIMINE.

THE OTHER POINT I WOULD MAKE,
THESE ARE A FEW FACTS.

AND WHY I REALLY THINK A SMALL,
MISTAKE, A SMALL DEDECEPTION, A
SMALL MISCONCEPTION IN TRIAL
COURT'S HANDLING THIS COULD
MAKE A BIG DIFFERENCE.

WE KNOW HOUSTON DROVE A SILVER

CAR.

HE WHEELED SHEILA AROUND THE HOUSE.

HE MOVED THE VAN AROUND THE HOUSE.

HE ADMITTED HE PICKED UP A SHELL CASING.

HE ADMITTED HE LIED TO THE POLICE.

HE ADMITTED HE HANDLED THE GUN AND UNJAMMED IT.

ROBERTS MOVED THE VAN NEARER THE HOUSE.

WE KNOW THAT SHEILA STOLE FROM HER PARENTS.

STOOD TO INHERIT OVER \$5 MILLION IF THEY BOTH DIED.

WE KNOW THE JURY DID NOT BELIEVE SHEILA WAS KIDNAPPED.

WE KNOW IN TERMS OF THE GUN HANDLING EVIDENCE, THE ONLY DNA FOUND ON THE GUN WAS ROBERTS DNA.

NOW THE, GUNSHOT RESIDUE TESTING WAS INCONCLUSIVE.

BUT ALL OF THE DEFENDANTS WERE FOUND TO HAVE METAL RESIDUE ON THEIR HAND WHICH COULD BE INDICATION OF GUN HANDLING.

AND SO WE REALLY HAVE A BUNCH OF COMPLETELY UNBELIEVABLE WITNESSES IN THIS CASE.

I THINK WHAT MAY HAVE HAPPENED, IS THAT WHEN HOUSTON AND SHEILA TESTIFIED THAT MCGIRTH WAS THE PERSON THAT KIND OF DIRECTED AND MASTERMINDED THIS THING,

AND THEN THE JURY CAME IN WITH
A VERDICT, THAT, FOUND MCGIRTH
GUILTY OF FIRST-DEGREE MURDER I
THINK SUBSEQUENT COURTS, THE
TRIAL JUDGE AND ROB APPELLATE
COURT BOTH TOOK A JUMP TO
CONCLUSION THAT IS THE JURY HAD
FOUND THAT MCGIRTH HAD SHOT THE
FATAL BULLET.

I DON'T THINK THAT IS TRUE.

I THINK IT'S VERY DOUBTFUL THAT
HE SHOT THE FATAL BULLET.

BUT IN ANY EVENT, THAT COULD
HAVE MADE THE DIFFERENCE.

THAT COULD HAVE MADE THE
DIFFERENCE IN MORE JUST RESULT
IN THIS CASE WOULD HAVE BEEN,
IF THE YOUNG, BARELY 18,
DEFENDANT, MCGIRTH, NOT OLD
ENOUGH TO BUY A SIX-PACK OF
BEER HE WILL BE EXECUTED YET
ROBERTS, TWO YEARS OLDER, 20,
GETS LIFE?

THAT'S NOT RIGHT.

>> WITH THAT, YOU HAVE USE ALL
OF YOUR TIME.

WE THANK YOU BOTH FOR YOUR
ARGUMENTS HERE TODAY.

THE COURT WILL BE IN RECESS
UNTIL TOMORROW MORNING.

>> PLEASE RISE.

COURT IS NOW ADJOURNED.