

ALL RISE.

[BACKGROUND SOUNDS]

>> SUPREME COURT OF FLORIDA IS

NOW IN SESSION.

PLEASE, BE SEATED.

>> THE NEXT CASE ON OUR DOCKET

IS HEYNE V. THE STATE OF

FLORIDA.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, MY NAME

IS GEORGE BURTON, I'M HERE ON

BEHALF OF JUSTIN HEYNE.

HE HAS BEEN CONVICTED OF THREE

COUNTS OF FIRST-DEGREE MURDER

AND SENTENCED TO DEATH FOR THE

MURDER OF IVORY HAMILTON.

UM, I'D LIKE TO ADDRESS THE

THREE MURDERS AS THEY WERE

ARGUED BY THE DEFENSE COUNSEL AT

TRIAL.

HOW HE CHARACTERIZED THEM.

HE CHARACTERIZED THE MURDER OF

MR. HAMILTON AS HAPPENING IN THE

COURSE OF MUTUAL COMBAT, AND

THEREFORE, SHOULD NOT HAVE BEEN

A FIRST-DEGREE MURDER CASE, BUT
A LESSER MURDER.

HE THEN CHARACTERIZED THE MURDER
OF, UM, MS. BUCKOSKI AS SORT OF
A SELF-DEFENSE BECAUSE HE DID IT
IN PANIC WHEN SHE BOBBED FROM
UNDER THE BED, AND THERE WERE
HANDGUNS DOWN THERE, AND SO HE
SHOT DOWN THERE SORT OF PANIC IN
DEFENSE.

AND IN THE SHOOTING OF IVORY
HAMILTON, THAT WAS CHARACTERIZED
BY DEFENSE AS A ACCIDENT.

HE NEVER PURPOSEFULLY SHOT HER,
AND AS A RESULT SHOULD BE NO
CRIMINAL LIABILITY WHATSOEVER.

THAT WAS THE ARGUMENT THAT HE
MADE FROM THE EVIDENCE THAT WAS
PRESENTED.

AND IT WAS, IT WAS, THERE COULD
BE INFERENCES THAT COULD SUPPORT
THAT, BUT THE JUDGE DIDN'T AGREE
AND NEITHER DID THE JURY.

AND THE REASON WHY THOSE THINGS
COULD BE ARGUED THAT WAY WAS THE

KIND OF EVIDENCE THAT WAS

PRESENTED IN THIS CASE.

THE EVIDENCE WAS THE CONFESSION

OF MR. HEYNE HIMSELF, IT WAS THE

TESTIMONY OF THE FIRST

RESPONDERS, AND IT WAS THE

TESTIMONY OF THE NEXT DOOR

NEIGHBOR.

THERE WAS NO FORENSIC EVIDENCE

OF ANY KIND, THERE WAS NO WHERE

THE BULLETS CAME FROM, WHAT

ANGLE BECAUSE THE PEOPLE, THE

PARENTS THAT WERE MURDERED IN

THIS CASE WERE BOTH ALIVE WHEN

FIRST RESPONDERS CAME.

>> BUT LET ME JUST MAKE SURE WE

UNDERSTAND.

THERE IS NO QUESTION IN THIS

CASE THAT MR. HEYNE KILLED THESE

THREE PEOPLE, ACTUALLY DID THE

SHOOTING, THERE'S NO QUESTION

THAT THIS WAS SOMEONE ELSE, HE

WAS THE ONE WHO ACTUALLY DID THE

SHOOTING WHETHER WE WANT TO TERM

IT ACCIDENTAL OR RESPONSE OR

SOMETHING, THAT IS THE STATE OF
THIS RECORD?

>> NO QUESTION.

BY HIS CONFESSION AND THE FACT
THAT THE MURDER WEAPON WAS LAST
IN HIS POSSESSION, I THINK IT'S
OVERWHELMING THAT HE DID THESE
SHOOTINGS.

AND, UM, NOW GETTING BACK TO IT,
THE --

>> ARE YOU GOING TO ARGUE, YOU
SAID THIS WAS THE WAY THIS WAS
PRESENTED.

IS THAT THE ARGUMENT THAT YOU'RE
MAKING, TOO, THAT THAT'S THE
SEQUENCE OF THIS MURDER?

ARE YOU ARGUING THAT THE DEATH
OF THE CHILD WAS TOTALLY AN
ACCIDENT AND THAT MR. HEYNE IS
NOT RESPONSIBLE FOR MURDER OF
THAT CHILD?

>> NO.

BUT I THINK THE SENTENCING ORDER
IS NOT CORRECT, AND I'LL EXPLAIN
THAT.

THE --

>> MAYBE IT WOULD BE HELPFUL FOR
ME IF YOU COULD -- YOU WERE
TRYING TO TELL US WHAT DEFENSE
THEORY IS.

BUT ARE YOU GOING TO ARGUE ALL
YOUR POINTS?

WHICH ARGUMENT ARE YOU GOING
TO --

>> I'M GOING TO ARGUE EHAC, BUT
I WANT TO FIRST EXPLAIN WHY THE
SENTENCING ORDER'S NOT CORRECT,
AND YOU'VE GOT TO GET BACK --

>> WHAT I WOULD SAY, EVEN IF YOU
TAKE THE ASIDE AND A MURDER OF A
CHILD UNDER 12 AND TWO OTHER
MURDERS SEEMS TO BE A --

[INAUDIBLE]

DEATH SENTENCE WITH THE FACT
THERE WERE TWO MURDERS AND THE
MURDER OF A CHILD.

I DON'T KNOW HOW YOU GET AROUND,
BUT THAT'S NOT -- WITH OR
WITHOUT, WHETHER THE CHILD KNEW
THE PARENTS WERE BEING KILLED OR

NOT, IT DOESN'T SEEM TO ME -- HE
KILLED THREE PEOPLE, ONE A
CHILD, AND THAT'S --

[INAUDIBLE]

BUT KILLING MULTIPLE PEOPLE IS
SIGNIFICANT ON THE PRIOR VIOLENT
FELONY AS A CONTEMPORANEOUS
AGGRAVATOR.

>> WELL, IT DOES.

IT DOES, BUT YOU HAVE TO GO WITH
THE HAND YOU'RE DEALT, AND
THAT'S THE SENTENCING ORDER THAT
THE JUDGE IN THE FINDINGS HE
MADE.

AND I WANT TO ADDRESS THOSE AND
EXPLAIN WHY THEY'RE NOT
ACCURATE.

AND, AND THIS IS THE WAY.
THE SHOOTING SEQUENCE AND HOW IT
HAPPENED, THERE ARE MULTIPLE
TIMES THAT MR. HEYNE DESCRIBED
WHAT HAPPENED UNDER QUESTIONING
BY POLICE.

HE SPENT THE GREAT BULK OF HIS
CONFESSION TIME DENYING ANY

INVOLVEMENT, AND THEN WHEN THEY
CAME BACK TO THE ROOM WITH THE
MURDER WEAPON AND CONFRONTED HIM
WITH THAT, SAID, OH, THEY'VE GOT
ME, AND HE CONFESSED.

FIRST HIS CONFESSION WAS, I
DON'T REMEMBER MUCH.

I, I SHOT, UM, MR. HAMILTON.

WE WERE ARGUING, MR. HAMILTON
HAD A GUN, AND I PUSHED HIM ONTO
THE BED.

THE GUN FELL AND THEN SHOTS
STARTED GOING OUT.

THAT WAS THE INITIAL VERSION OF
HOW THINGS HAPPENED.

AS THE POLICE KEPT PRESSING AND
KEPT PRESSING, AND RIGHTFULLY SO
BECAUSE THERE WERE A LOT OF GAPS
THAT WERE NOT FILLED IN HOW THIS
HAPPENED.

REMEMBER, THERE'S NO
EYEWITNESSES, MS. BUCK HOW SKY
WAS COHERENT AND SPEAKING WHEN
SHE WAS FOUND, BUT SHE HAD NO
RECOLLECTION OF WHAT HAD

HAPPENED, SO SHE COULDN'T TELL
THE POLICE WHAT HAPPENED.

>> SO IT'S HIS VERSION, ANOTHER
VERSION OF THE DEFENDANT'S THAT
THE VICTIM, THE MALE VICTIM HAD
ACTUALLY PUT HIS GUN DOWN.

DON'T WE HAVE THAT IN THE
RECORD --

>> WELL, THE GUN IS DOWN ON THE
GROUND IN A JAMMED STATE.

AND IT IS CONSISTENT WITH WHAT
HE SAID WHERE HE PUSHED HIM ON
THE BED AS A PART OF THEIR
FIGHT.

AND HE SAID THE GUN FELL TO THE
GROUND, THAT MR. HAMILTON HAD.
THAT IS A RECURRING STATEMENT IN
HIS CONFESSION.

THAT HAS NEVER WAVERED.

THAT'S PRETTY CONSISTENT ALL
THROUGHOUT.

WHAT IS NOT CONSISTENT AND WHAT
IS VERY, VERY DIFFICULT TO
DISCERN FROM THIS CONFESSION IS
WHO WAS SHOT NEXT; IVORY

HAMILTON OR MS. BUCKOSKI.

>> AND WHY IS IT IMPORTANT?

>> BECAUSE IF IT HAPPENED THE

WAY I BELIEVE MR. HEYNE

DESCRIBED IT, IS AFTER HE SHOT

MR. HAMILTON, AND HE SAID HE

THOUGHT HE SHOT HIM IN THE

CHEST.

HE DIDN'T REALIZE HE SHOT HIM IN

THE HEAD.

HE SAID, I THOUGHT I SHOT HIM IN

THE CHEST.

HE WENT DOWN ON THE BED.

AND HE HAD THE GUN, AND THE

CHILD CAME IN AND THE MOTHER

CAME INTO THE ROOM JUST BECAUSE

OF THE SOUND OF THE GUNFIRE.

NOW, HE SAID HE TURNED TO FIRE,

AND HE MADE A SHOT AND BOTH WENT

DOWN.

NOW, OF COURSE THAT DIDN'T

HAPPEN.

BOTH DID NOT GO DOWN.

BUT WHAT DID HAPPEN WAS IVORY

HAMILTON WENT DOWN BECAUSE SHE

WAS SHOT, AND MRS. BUCKOSKI WENT
DOWN UNDER THE BED TO HIDE.

>> HOW DID THE STATE EXPLAIN THE
HIT ON THE HEAD?

>> SHE WAS ACTUALLY SHOT IN THE
ARM AND THROUGH THE ARM AND THE
HEAD.

>> [INAUDIBLE]

[INAUDIBLE CONVERSATIONS]

>> SHOT IN THE FACE, RIGHT?

>> THE TRIAL THE STATE ARGUED,
AND THAT WAS THE LINCHPIN OF
THEIR CASE, THAT THE MEDICAL
EXAMINER'S TESTIMONY THAT THIS
CHILD WAS SLAPPED WITHIN MINUTES
OR UP TO FOUR HOURS THIS
HAPPENED.

AND THERE'S NO EXPLANATION FOR
HOW IT HAPPENED FROM ANYONE.

SO THE WAY THAT THE LINCHPIN OF
GETTING THIS TO BE THE MURDER OF
THIS CHILD AS THEY DID IS THAT,
WELL, HE SLAPPED THE CHILD, AND
THEN HE PURPOSELY WENT AND SHOT
THE CHILD.

THAT IS THEIR THEORY, BUT
THERE'S NO EVIDENCE TO SUPPORT
IT OTHER THAN WHAT THE MEDICAL
EXAMINER IS SAYING --

>> WAS THERE TESTIMONY --

[INAUDIBLE]

AFTER HE SHOT THE FATHER?

>> YES.

YES.

IN ONE OF THE ALLITERATIONS OF
THIS EXPLANATION, THAT'S WHAT HE
SAID.

BUT TOWARDS THE END OF THE
CONFESSION WHEN THEY WERE, THE
OFFICERS WERE TRYING TO GET HIM
TO ADMIT OR DENY WHETHER OR NOT
THIS WAS WITNESS ELIMINATION.
THEY'VE GONE THROUGH IT SEVERAL
TIMES.

NOW, WEREN'T YOU AFRAID THAT
MS. BUCKOSKI OR THE CHILD WOULD
HEADLINE YOU?

HE SAID, WELL, I GOT WORRIED
AFTER I HIT CLEVELAND.

IT SAYS CLEVELAND IN THE RECORD,

AND YOU DON'T KNOW IF THAT'S

MS. BUCKOSKI OR THE CHILD.

I ASSUME IT'S THE CHILD BECAUSE

HE TALKS ABOUT THE CHILD IN THE

NEXT STATEMENT AND SAYS --

[INAUDIBLE]

HE SHOT HER, IS WHAT I BELIEVE

HE MEANT.

AND NOW HE SHOT THE TWO OF THEM,

AND HE HAS THE MOTHER DOWN BELOW

HIDING AND BOBS UP, AND HE

SHOOTS HER.

AND I THINK THAT'S THE

PROBLEMATIC MURDER IN THIS CASE.

NOT THE ONE OF THE CHILD, BUT OF

THE MOTHER.

BECAUSE SHE WAS THE ONE THAT

CAME IN SCREAMING, AND WHEN HE

SHOT THE CHILD, SHE DIVED DOWN

UNDER THE BED FOR COVER.

BECAUSE WHEN HE SAID HE SHOT

THAT WAY, THEY BOTH WENT DOWN

SIMULTANEOUSLY.

>> HOW FAR, HOW FAR WAS WHEN HE

SHOT AT THE TWO OF THEM?

>> FROM THE SCIENTIFIC EVIDENCE,
THE SHOT AT THE TRIAL WAS AT
CLOSE RANGE.

THE ONE FOR THE CHILD WAS AT
CLOSE RANGE.

IT WAS BECAUSE THERE WAS --

[INAUDIBLE]

ON THE CHILD.

>> RIGHT.

SO DOESN'T THAT CONTRADICT THAT
YOU'RE SAYING HE SHOT AT THE MOM
AND THE DAUGHTER AND HAPPENED TO
HIT THE DAUGHTER FIRST?

>> HE SAID THAT HE SHOT IN THAT
DIRECTION IN A PANIC, AND THEY
BOTH WENT DOWN.

>> HOW FAR AWAY?

>> THE CHILD WAS CLOSE TO THE
MOTHER AS SHE WAS FOUND, AND IT
WOULD HAVE BEEN --

>> HOW FAR WAS HE FROM THEM?

>> IT HAD TO BE LESS THAN 5
FEET.

>> WELL, ISN'T THAT
CONTRADICTION, SAYING THAT THE

CHILD WAS KILLED AT VIRTUALLY
POINT-BLANK RANGE, LESS THAN 2
FEET?

>> WELL, HE SAID HE DID IT
WHILE, AFTER THE TUSSELE WITH
MR. HAMILTON.

HE SAID, I'M OUTTA HERE.

AND THE CHILD --

[INAUDIBLE]

AT HIM, GOES OVER TO THE MOTHER
AND, BOOM.

SHOOTS THE CHILD, MOTHER GOES
DOWN UNDER THE BED.

THIS IS WHAT HE EXPLAINS LATER
BECAUSE THE POLICE ARE TRYING TO
PUT THIS TOGETHER.

HE SAID, WELL, I THINK SHE HAD
ACCESS TO GUNS DOWN THERE, AND
WHEN SHE POPPED BACK UP, I SHOT
HER.

>> I'M TRYING TO UNDERSTAND, SO,
I MEAN, YOUR POINT WOULD BE THAT
IF CHILD SHOT BEFORE THE MOTHER,
THEN JUDGE EATON'S SENTENCING
ORDER THAT SAYS THAT THE CHILD

SAW BOTH HER MOTHER AND FATHER
KILLED AND HEARD HER MOTHER
SCREAMING OR WOULD HAVE HEARD
HER MOTHER SCREAMING WOULD BE
INCORRECT?

>> THAT'S RIGHT.

>> NOW, IN TERMS OF THIS,
THOUGH, LET'S JUST GO THROUGH
WHAT HAPPENED WITH THIS CHILD.
A HELPLESS CHILD, 5 YEARS OLD, 6
YEARS OLD --

>> 5 YEARS OLD.

>> -- KNOWS THIS, KNOWS THE
DEFENDANT LIVES IN THE HOUSE.
AND THE CHILD COMES IN WHILE
SHE'S -- HE'S ARGUING WITH THE
FATHER.

>> UH-HUH.

>> AND THE CHILD IS UNDENIABLY
PRESENT WHEN HE SEES THE, AND
SEES THE DEFENDANT KILL HER
FATHER?

>> THE EVIDENCE IS NOT CLEAR ON
THAT.

ACCORDING TO HIS TESTIMONY, SHE

LEFT THE ROOM, THE FATHER SENT
HER OUT OF THE ROOM.

>> BUT SHE COMES -- SO WHEN'S
THE TUGGING ON THE SHORTS THAT
JUSTICE QUINCE MENTIONED?

>> AFTER HE SHOT THE FATHER.

>> WELL, IF SHE'S TUGGING ON THE
SHORTS, PRESUMABLY, SHE'S IN THE
ROOM AT THE TIME THAT THE
DEFENDANT SHOT THE FATHER.

NOW, THE QUESTION I HAVE WITH
THE MOTHER, WHAT SIZE IS THE
BEDROOM?

>> IT'S NO MORE THAN 10X14.

>> OKAY, IT'S A SMALL BEDROOM.
WHAT SIZE BED IS THIS?

>> I BELIEVE IT WAS AT LEAST A
QUEEN SIZE.

>> SO WAS THE MOTHER ON THE SAME
SIDE OF THE BED AS THE DEFENDANT
WAS?

BECAUSE WHEN YOU SAY DUCK DOWN,
IT SOUNDED LIKE TO ME SHE MUST
HAVE BEEN DUCKING BEHIND THE
OTHER SIDE OF THE BED.

>> HE WAS ASKED SEVERAL TIMES TO
DRAW WHERE HE WAS AT SEVERAL
INCREMENTS HOW THIS OCCURRED.
NOW, IF YOU TAKE WHAT HE SAID,
AND IT'S VERY CONFUSING, HE WAS
ON THE OTHER SIDE, THE OPPOSITE
SIDE BY THE DRESSER WHEN HE SHOT
THE DAUGHTER AND THE MOTHER WHO
WERE TOGETHER BY THE OTHER SIDE
OF THE BED.

AND THE DAUGHTER --

>> OKAY.

SO THAT'S WHERE WE GO BACK TO --

>> THAT'S WHERE.

>> -- JUSTICE POLSTON SAYS

THAT'S NOT POSSIBLE BECAUSE IF
THEY'RE SEPARATED BY A
QUEEN-SIZED BED, THAT'S NOT
BEING SHOT WITHIN 2 FEET.

SO WE DON'T ACCEPT WHAT HE SAYS
ABOUT HOW THIS TOOK PLACE, HE'S
WITHIN CLOSE RANGE OF A CHILD
WHO IS TUGGING ON HIS SHORTS,
AND I'M HAVING THE IMPRESSION
THAT WHAT HAPPENS IS HE TURNS

AROUND, AND HE SHOOTS THIS CHILD
IN THE HEAD.

>> I THINK THAT'S A FAIR
INFERENCE.

>> OKAY.

SO HOW MUCH, I MEAN, IN TERMS OF
THIS AS A MURDER CASE, A DEATH
PENALTY CASE BECAUSE THAT'S WHAT
WE'RE TALKING ABOUT, WHETHER THE
CHILD HEARD THE MOTHER SCREAMING
PART OF THE TIME OR NOT, TO ME,
THIS IS A HORRIBLE MURDER.

YOU'VE GOT KILLED A MOTHER,
FATHER AND A CHILD.

AGAIN, I'M NOT SURE WHAT ELSE I
NEED TO KNOW TO SAY -- OVER A
NOTHING.

I MEAN, OVER AN ARGUMENT ABOUT
DRUGS.

I MEAN, NO REAL MOTIVATION.

>> DISRESPECT.

[INAUDIBLE]

>> OH.

DISRESPECTED, EVEN WORSE.

I DON'T SEE, TO ME -- NOW, IT

MAY MATTER TO SOME OTHER PEOPLE
BECAUSE I'M NOT A BIG FAN OF
THESE HACs THAT HAPPEN
CONTINUOUSLY.

EVEN IF YOU ELIMINATE HAC, I
THINK THIS IS STILL A DEATH
PENALTY CASE.

SO CAN YOU -- LET'S JUST ASSUME
YOU'RE CORRECT THAT THE EVIDENCE
IS UNCLEAR WHETHER THE MOTHER
WAS SHOT BEFORE THE CHILD OR
NOT.

THE MOTHER MUST HAVE BEEN
SCREAMING TO DRAW THE ATTENTION
TO THE DEFENDANT.

AND SO, AGAIN, THE CHILD AT
LEAST HEARS THE SCREAMING.

WHAT MAKES THIS A PROPORTIONATE
DEATH SENTENCE?

>> WELL, BECAUSE IN THE
MITIGATION DEVELOPMENT OF THIS
CASE, JUDGE EATON ACCEPTED
EVERYTHING THAT WAS PRESENTED.
HE ACCEPTED THAT THERE WAS A
FOUR-DAY COCAINE BINGE.

HE ACCEPTED THAT MR. HEYNE HAD

AT LEAST TEN BEERS THAT DAY.

HE SMOKED MARIJUANA.

IT'S RIGHT IN HIS SENTENCING

ORDER.

HE ACCEPTED ALL THOSE THINGS.

HE ACCEPTED THE TESTIMONY THAT

THIS PERSON WAS EMOTIONALLY

DISTURBED.

NOW, IT WASN'T CLEAR AS TO WHY.

I'LL CALL HIM EXPERT R BECAUSE I

CAN'T --

>> CAN WE GO BACK TO THE DRUGS

AND ALCOHOL?

>> YEAH.

>> THE JUDGE SAID THAT, ACCEPTED

THERE WAS SOME TESTIMONY THAT HE

WAS, HAD BEEN DRINKING, BUT THEN

HE SAYS HE SHOT THEM WITH DEADLY

ACCURACY, AND THEN WHAT HE DID

RIGHT AFTER, HOW HE PURPOSEFULLY

CONCEALED THE WEAPON --

[INAUDIBLE]

HE SAID IF THE DEFENDANT WAS

UNDER THE INFLUENCE OF ALCOHOLIC

DRUGS, HE WAS NOT AFFECTED AT
THAT POINT OF BEING
SIGNIFICANTLY IMPAIRED.
SO IT'S NOT QUITE ACCURATE TO
SAY HE WAS ON SOME KIND OF
COCAINE BINGE THAT MADE HIM NOT
ABLE TO EVEN FORM AN INTENT.
THAT'S NOT WHAT THE JUDGE FOUND.

>> BUT THIS ISN'T, THIS WASN'T
AN OZZY AND HARRIET HOUSEHOLD.
THIS WAS A DRUG HOUSE.
THERE WERE WEAPONS EVERYWHERE.
THERE WAS A COCKED HANDGUN ON
THE COFFEE TABLE IN THE ROOM,
COCKED AND LOADED --

>> WHY THERE'S SIGNIFICANT
MITIGATION.

I'M GOING ON EVEN PEOPLE THAT
LIVE IN A DRUG HOUSE, WE IMPOSE
THE DEATH SENTENCE OR UPHOLD IT
IF THEY KILL PEOPLE IN THE
COURSE OF --

>> YEAH, BUT MR. HEYNE --

>> THERE'S LAWLESSNESS, AND THEN
THERE'S LAWLESSNESS.

>> RIGHT.

>> I STILL DON'T KNOW HOW THAT
GOES TO THE MITIGATION OUTWEIGHS
THE AGGRAVATION IF THERE'S NO
EVIDENCE HE'S ON A COCAINE BINGE
AND THAT'S WHAT IS GOING ON WITH
HIM AT THE TIME OF THE MURDER
AND RIGHT AFTER.

>> WELL, THE DEFENSE PROVED OR
PUT ADEQUATE EVIDENCE, ADEQUATE
EVIDENCE THAT THERE WERE TWO
STATUTORY MENTAL MITIGATORS
HERE.

AND THE EVIDENCE WAS TWOFOLD.
IT WAS EITHER HE HAS, HE'S
EITHER EMOTIONALLY DISTURBED, OR
HE HAS BRAIN DAMAGE.

ONE OR THE OTHER.

AND DR. R. KIND OF THOUGHT THAT
IT WAS THAT HE HAD IMPULSE
CONTROL PROBLEMS THAT WERE FROM
CHILDHOOD.

MR. HEYNE WAS SUSPENDED FROM
KINDERGARTEN FOR BEHAVIOR.

HE WENT TO JAIL AS A JUVENILE

AND ATTEMPTED SUICIDE SEVERAL
TIMES IN PRISON.

THIS MAN WASN'T RIGHT, THERE'S
NO QUESTION ABOUT THAT.

>> ASK THAT EVIDENCE WAS
PRESENTED.

>> YES, IT WAS.

>> OKAY.

AND THEY LISTENED TO THAT
EVIDENCE?

>> THAT'S CORRECT.

>> BOTH THE JURY AND THE JUDGE?

>> YES.

>> AND EVALUATED IT?

>> YES.

THEY DID, AND THE JUDGE ALTHOUGH
NOT FINDING IT STATUTORY MENTAL
MITIGATION BECAUSE THE STATE
NEVER REBUTTED IT.

IN ANY WAY.

THEY ACCEPTED IT AS TRUE AS
WELL.

BUT FOR THE POLICE TESTIMONY
THAT THE JUDGE DIDN'T ACCEPT IN
HIS SENTENCING ORDER.

SO IT'S, WHEN YOU HAVE EVIDENCE
OF MENTAL MITIGATION LIKE THAT,
YOU HAVE TO ACCEPT IT.

SO THAT MAKES IT MORE MITIGATED,
MORE MITIGATED.

>> BUT THE FACT THAT HE HAS, I

MEAN, WE TAKE CASES ALL THE TIME
WHERE WE HAVE ACCEPTED AND THE
JUDGE HAS INCLUDED IN HIS

SENTENCING ORDER THAT THE
DEFENDANT HAS MENTAL PROBLEMS.

BUT WE ALSO HAVE IN SOME OF

THOSE VERY SAME CASES THERE'S

EVIDENCE THAT INDICATES THAT

DESPITE MENTAL PROBLEMS, DESPITE

PEOPLE BEING, HAVING CONSUMED

ALCOHOL OR HAVING CONSUMED DRUGS

THAT THE CIRCUMSTANCES

DEMONSTRATE THAT THE DEFENDANT

KNEW WHAT HE WAS DOING.

THIS DEFENDANT AFTER HE HAS HIS

ALTERCATION WITH THE MALE VICTIM

GOES OUT AND GETS ANOTHER GUN,

COMES BACK TO CONTINUE THE

ARGUMENT FOR -- WE'RE NOT

EXACTLY SURE WHY, BUT THE VICTIM
DOESN'T HAVE HIS GUN ANY LONGER.
THE DEFENDANT SHOOTS HIM AND,
REALLY, FROM WHAT THE EVIDENCE
INDICATES HE'S ON THE OTHER SIDE
OF THE BED.

THESE OTHER PEOPLE COME INTO THE
ROOM AFTER THEY'VE HEARD THIS
GUNSHOT, AND HE, YOU KNOW,
DELIBERATELY SHOOTS THEM.

I JUST DON'T UNDERSTAND HOW THAT
DOESN'T DEMONSTRATE THAT DESPITE
I KIND OF USE OF SUBSTANCES OR
ANY MENTAL ILLNESS OR MENTAL
PROBLEMS, I SHOULD SAY, THAT
THIS DEFENDANT DID NOT KNOW WHAT
HE WAS DOING AND THAT THESE ARE
NOT MURDER CASES.

>> THIS WASN'T AN ISSUE OF
COMPETENCY.

IT'S NOT AN ISSUE OF COMPETENCY,
AND WE CONCEDE IT'S NOT AN ISSUE
OF COMPETENCY.

>> WELL, IT'S AN ISSUE OF WHAT?

>> HE IS MENTALLY ILL TO THE

POINT OF HAVING POOR IMPULSE
CONTROL.

WHEN HE GETS ANGRY --

>> WE SEE THOSE A HOT.

>> WELL, IT'S MITIGATION,
JUSTICE QUINCE.

>> AND YOU KNOW WHAT --

>> AND HE FOUND THIS IS
MITIGATION.

THE PROBLEM IS, IT DOESN'T
NEGATE THOSE FACTORS THAT
INDICATE HE KNEW WHAT HE WAS
DOING, AND THIS WAS A TERRIBLY
AGGRAVATED CASE.

>> IT'S NOT, IT'S NOT A QUESTION
OF WHETHER HE KNEW WHAT HE WAS
DOING.

IT'S COULD HE CONFORM HIS
CONDUCT TO THE REQUIREMENTS OF
LAW?

NO, HE'S EMOTIONALLY ILL.

>> WHY, I DON'T KNOW.

HE CALLED HIS EX-GIRLFRIEND TO
GO AWAY AND BUY NEW CLOTHES, THE
SAME CLOTHES THAT HE HAD -- THE

NEW CLOTHES THAT MAKE HIM LOOK
OLD.

I MEAN, HE HAD, HE HAD THE
ABILITY TO DETERMINE HOW TO GET
AWAY FROM THESE UNLAWFUL ACTS,
BUT HE DIDN'T HAVE THE CONTROL
TO NOT COMMIT THEM.

>> IF YOU RECALL THE END OF THE
CONFESSION AFTER HE PUT UP HIS
HAND, AND HE SWORE HE WAS
TELLING THE TRUTH TO THIS
OFFICER OF EVERYTHING THAT
HAPPENED, AND HE WAS GOING AWAY
FOR LIFE IN HIS MIND, YOU KNOW,
HE MESSED UP, HE REFRAINED, I
WAS DOING SO GOOD.

I HAVE A SERIOUS PROBLEM, BUT I
WAS DOING SO GOOD, AND I HOPE
NOW, FINALLY, I CAN GET HELP FOR
IT.

BECAUSE THIS WAS THE LIFE THAT
HE LED.

>> BUT HERE IS THE ISSUE YOU
HAVE, YOU HAVE A JUDGE, JUDGE
EATON, WHO WE HAVE MANY CASES ON

APPEAL, THE ISSUE IS THE JUDGE
DOESN'T WEIGH PROPERLY THE
MENTAL HEALTH MITIGATION.
NO, THE JUDGE DIDN'T DO IT.
IN FACT, AS IT EFFECTS THE
MURDER OF SARAH BUCKOSKI WHERE
THERE WAS A VOTE FOR THE DEATH
PENALTY OF 8-4, LET'S NOT FORGET
THE JUDGE OVERRODE THAT
RECOMMENDATION AND IMPOSED LIFE
BECAUSE HE FOUND THAT THERE WAS
SIGNIFICANT MENTAL HEALTH
MITIGATION.

SO HE WEIGHED, HE FOLLOWED THE
JURY'S RECOMMENDATION AS --

[INAUDIBLE]

HE OVERRODE THE DEATH PENALTY
RECOMMENDATION AS TO THE SECOND,
BUT WHEN IT CAME TO A HELPLESS
CHILD, AS JUDGE EATON SAID, THE
MURDER OF IVORY HAMILTON IS
ANOTHER MATTER.

AND BECAUSE IN THIS STATE AND
ANY STATE THAT HAS THE DEATH
PENALTY WHAT WE RECOGNIZE IS

CHILDREN, ESPECIALLY CHILDREN

UNDER THE AGE OF 12 ARE

ESPECIALLY VULNERABLE.

HE KILLED AT POINT-BLANK RANGE A

HELPLESS CHILD WHO HAD MOST

LIKELY JUST SEEN HIS PARENTS --

HER PARENTS MURDERED.

SO AT SOME POINT WHAT JUDGE

EATON SAID IN WEIGHING THIS, AND

THIS IS DIFFICULT NOW, LIFE AND

DEATH IS AT STAKE.

NO, THAT WAS ONE MURDER.

YOU TURNED YOUR GUN ON A

5-YEAR-OLD CHILD.

WHATEVER MITIGATION THAT YOU HAD

DOESN'T OUTWEIGH THIS

AGGRAVATION OF THE OTHER TWO

MURDERS --

[INAUDIBLE]

AND THAT'S WHAT WE'RE TALKING

ABOUT HERE.

SO WE'RE NOT DISPUTING

SIGNIFICANT MITIGATION, BUT

WE'RE SAYING WHETHER JUDGE

EATON, WHETHER HE ERRED IN

SAYING THE AGGRAVATION
OUTWEIGHED THE MITIGATION, AND
THEN I'M ASKING YOU HOW IS IT
NOT PROPORTIONATE?
SO TELL ME THE CASE THAT SAYS
WHEN SOMEONE'S MURDERED THREE
PEOPLE AND THE PERSON WHO'S THE
DEATH PENALTY --

[INAUDIBLE]

A 5-YEAR-OLD CHILD, EVEN WITH
MITIGATION LIKE THIS THAT THE
DEATH PENALTY'S NOT --

[INAUDIBLE]

>> WELL, IN THIS CASE HAD JUDGE
EATON NOT FOUND THE HAC, HE
WOULD HAVE DONE THE SAME THING
FOR THE MURDER OF THE MOTHER.

>> WELL, WE DON'T REALLY KNOW
THAT, DO WE?

>> WELL, IF YOU READ HIS
SENTENCING ORDER, THAT IS A FAIR
INFERENCE FOR WHAT HE SAID.

>> I'M ASKING YOU ABOUT
PROPORTIONALITY.

ASSUMING BOTH WITHOUT EHAC, AND

I'M ASKING YOU, IS IT A
PROPORTIONATE SENTENCE?
THAT'S DIFFERENT THAN IF WE
FOUND THAT HAC WAS ERRONEOUSLY
FOUND AND WHETHER THERE WAS
HARMLESS ERROR IN TERMS OF THE
SENTENCING RECOMMENDATIONS.

>> WELL, IT'S A DIFFICULT, IT'S
A DIFFICULT QUESTION.

AND I WILL SAY THIS COURT
ESPECIALLY IN THE LAST FEW YEARS
HAS GIVEN A LOT MORE WEIGHT TO
PRIOR VIOLENT FELONIES WHICH IS
WHAT YOU'RE ASKING.

ISN'T THE PRIOR VIOLENT
THEREONNY INVOLVED HERE --
FELONY INVOLVED HERE ENOUGH?
AND ARGUABLY, IT COULD BE.

IT REALLY COULD BE.

BUT BEFORE YOU MAKE THAT
JUDGMENT, YOU SHOULD BE
SENTENCED PROPERLY.

AND YOU MAY CONCLUDE AFTER A
RESENTENCING THAT, YOU KNOW
WHAT?

THE PRIOR VIOLENT FELONY IS
SUFFICIENT.

>> SO, AND WE SHOULD HAVE A
RESENTENCING HERE BECAUSE OF
WHAT EXACTLY?

>> THE IMPROPER FINDING OF EHAC
THAT TAINTED THE JURY FOR SURE,
THAT THEY WERE EVEN INSTRUCTED
ON THAT BECAUSE IT DIDN'T APPLY.

IF YOU, IF YOU READ THAT
CONFESSION, AND I'VE READ IT
SEVERAL, SEVERAL, SEVERAL TIMES,
TRIED TO MAKE SENSE OF IT, I
BELIEVE THAT THE LITTLE GIRL WAS
KILLED SECOND.

SHE WAS KILLED SECOND AND THE
MOTHER THIRD.

AND IT WAS DONE REFLEXIVELY
AFTER BEING PULLED ON THE LEG --

>> SO IF THAT WERE THE CASE, THE
FACT THAT SHE WAS THERE AND SAW
THE FATHER BEING KILLED OR WAS
SHE NOT THERE WHEN THE FATHER --

>> ACCORDING TO HIS CONFESSION,
SHE WAS NOT THERE.

SHE LEFT THE ROOM --

>> BUT SHE SAW HIM WITH A GUN IN HIS HANDS AND THE FATHER ON THE BEDSIDE?

>> ACCORDING TO THE SENTENCING ORDER, SHE HEARD THE GUNFIRE.

>> OKAY, SO SHE CAME IN THE ROOM, SAW THE FATHER ON THE BED SHOT, SAW THE DEFENDANT WITH A GUN IN HIS HAND.

SHE RUNS OVER TO HIM AND STARTS PULLING ON HIM, AND SO THAT SCENARIO IS NOT ENOUGH FOR HEINOUS, ATROCIOUS AND CRUEL, IS THAT WHAT YOU'RE SAYING?

>> YES.

THAT'S WHAT I'M SAYING.

>> ISN'T THAT CONTRARY TO OUR JURISPRUDENCE?

DIDN'T WE HAVE A CASE WHERE THE TWO SISTERS, I BELIEVE IT'S BROOKS, AND BOTH OF THEM ARE MURDERED, AND THAT WAS THE ARGUMENT --

>> FRANCIS.

>> THAT'S FRANCIS.

>> FRANCIS, I'M SORRY.

AND THAT WAS THE ARGUMENT,
BECAUSE WE DIDN'T KNOW WHEN
BECAUSE NOBODY SURVIVED, YET IT
HAD TO BE THAT ONE WAS KILLED
WHILE THE OTHER ONE WATCHED, AND
IT WAS THE SERRATED KNIVES FROM
THE KITCHEN, AS I RECALL.

AND THIS COURT, I BELIEVE, IN
THAT CASE UPHELD THAT HAC WOULD
BE APPLICABLE BECAUSE YOU'RE
WATCHING YOUR LOVED ONE BE
EXECUTED BY A PERPETRATOR OF
THIS.

IS THAT NOT THE FACT, OR WERE
THOSE THE FACTS IN THE FRANCIS?

>> IF THERE WAS A SIGNIFICANT
TIME BETWEEN THE MURDER OF
MR. HAMILTON AND THE MURDER OF
IVORY HAMILTON, I WOULD CONCEDE
THAT EHAC IS SUFFICIENT, IS
PROVEN HERE.

BECAUSE TO HAVE HER IN HORROR
AND CONTEMPLATING THE DEATH OF

HER FATHER, THAT WOULD BE

EHAC --

>> SO YOU'RE ARGUING THAT THE

DISTINGUISHING FACTOR IS THE

TIMING --

>> CORRECT.

>> -- THAT THIS IS VIRTUALLY

SIMULTANEOUS, AND THAT'S WHAT

YOU'RE ARGUING?

>> YES, WELL --

>> DO WE HAVE EVIDENCE, REALLY,

OF THAT?

>> YES.

>> AND THAT'S TRUE --

>> THE TESTIMONY OF MICHELLE

COLLINS, THE NEXT DOOR NEIGHBOR?

>> UH-HUH.

>> SHE SAID THERE WAS THREE TO

SIX SHOTS IN RAPID SUCCESSION.

>> AND, I MEAN, AGAIN, AND THIS

IS NOT ONLY FOR THE STATE TO

PROVE BY CLEAR AND CONVINCING

EVIDENCE WHICH MURDER OCCURRED

FIRST AND WHETHER THERE WAS --

[INAUDIBLE]

ARE YOU SAYING THAT --

>> YEAH.

BECAUSE HE NEVER REALLY EVEN

EVER ADMITS TO --

[INAUDIBLE]

BUT WHEN HE FINALLY ADMITS TO

THE GUN IS THAT WAY, HE SAYS

THEY BOTH WENT DOWN AT THE SAME

TIME.

THAT'S WHAT HE REMEMBERS.

THAT MEANS SHE DOVE FOR COVER,

AND THE CHILD WAS SHOT.

>> YOU ARE NOW DOWN TO LESS THAN

TWO AND A HALF MINUTES TOTAL.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, I'M

KEN NUNNALLY, I REPRESENT THE

STATE OF FLORIDA IN THIS

PROCEEDING.

PERHAPS THE BETTER WAY TO HANDLE

THIS PARTICULAR CASE IS TO ASK

IF COURT HAS ANY PARTICULAR

QUESTIONS.

>> WELL, I WOULD ASK ON THE HAC

WHAT IS THE CLEAR AND CONVINCING

EVIDENCE THAT SHOWS THAT THE CHILD BEFORE SHE WAS SHOT EITHER WITNESSED THE MURDER OF HER MOTHER AND HER FATHER, HEARD HER MOTHER SCREAMING AND ALL OF THAT?

IT'S NOT -- WE CAN'T RELY ON SPECULATION.

WHAT'S THE EVIDENCE AS OPPOSED TO THESE BEING PRETTY WELL IN A RAPID SUCCESSION?

>> LET'S START WITH THE NEXT DOOR THEIR AND DEAL WITH HER FIRST.

SHE SAID SHE HEARD THREE TO SIX POPS.

THE INFERENCE BEING THOSE WERE GUNSHOTS, HOWEVER, THERE WAS ALSO TESTIMONY THERE WAS ROOFING WORK GOING ON IN THE NEIGHBORHOOD, THEY WERE USING A NAIL GUN.

WE DON'T KNOW FOR SURE IF WHAT SHE HEARD WAS GUNSHOTS OR NOT.

NOW --

>> DID THE STATE PUT HER ON?

>> YES, MA'AM.

>> SO WHAT?

>> I'M NOT SURE WHY THEY PUT HER
ON.

ACTUALLY, I AM, BECAUSE SHE WAS
THE ONE WHO WENT OVER AND FOUND
THE BODY, OR FOUND THE CRIME
SCENE AND CALLED LAW
ENFORCEMENT.

>> BUT THEY DIDN'T RELY ON
TESTIMONY ABOUT HOW MANY GUNSHOT
WOUNDS, GUNSHOTS, HOW MANY SHOTS
WERE FIRED?

>> NO.

BECAUSE WE HAD THE M.E. FOR
THAT.

THE MEDICAL EXAMINER TESTIMONY
WAS THE MEDICAL TESTIMONY IN THE
EXAMINATION TESTIMONY WAS THREE
GUNSHOTS, ONE --

>> OKAY.

SO WE HAVE, YEAH, WE KNOW --

>> YEAH.

>> -- THREE GUNSHOTS --

>> ONE GUNSHOT --

>> ALL THAT WERE FIRED, IS THAT
WHAT YOU'RE SAYING?

>> MA'AM?

>> ONLY THREE SHOTS FIRED TOTAL?

>> THE BEST EVIDENCE IS, YES,
THERE WERE THREE SHOTS THAT HIT.
IF THERE WAS A FOURTH SHOT, WE
DON'T KNOW IT, WE CAN'T PROVE
IT.

WE KNOW THAT THE MALE VICTIM,
MR. HAMILTON, WAS SHOT IN THE
LEFT TEMPLE.

I BELIEVE THAT ONE WAS A THROUGH
AND THROUGH EXITING THE RIGHT
TEMPLE.

SARAH BUCKOSKI, THE ADULT FEMALE
VICTIM, WAS SHOT IN THE BACK OF
THE HEAD.

THE TESTIMONY WAS FROM THE
MEDICAL EXAMINER THAT THAT
PROJECTILE PASSED THROUGH HER
ARM, I THINK THE TRICEP OF HER
ARM, AND ENTERED HER HEAD.

APPARENTLY, SHE HAD HER ARM OVER

HER HEAD TRYING TO PROTECT
HERSELF.

>> HOW FAR AWAY WAS THAT SHOT?

>> MORE THAN 2 FEET IS THE BEST
THE MEDICAL EXAMINER CAN DO.

>> MORE THAN 2 FEET?

>> YES, MA'AM.

BUT, APPARENTLY, SHOT IN THE
BACK OF THE HEAD.

THE CHILD WAS SHOT, I BELIEVE,
LEFT TEMPLE TO RIGHT -- LEFT TO
SLIGHT ENTRY WOUND, LEFT TEMPLE,
AND A RANGE OF LESS THAN 2 FEET
BECAUSE THERE WAS POWDER
STIPELING FOUND AROUND THE ENTRY
WOUND.

>> AND SO MY QUESTION WOULD BE
THEN, WHAT IS THE EVIDENCE OF WE
KNOW THE FATHER WAS SHOT FIRST,
THE MOTHER WAS SHOT SECOND AND
THAT THERE WAS ENOUGH TIME
BETWEEN WHEN IVORY WAS IN THE
ROOM, WHAT SHE WOULD HAVE
WITNESSED BEFORE THE -- WHAT'S
THE EVIDENCE ON THAT?

>> THE EVIDENCE IS LARGELY FROM
THE DEFENDANT'S STATEMENT AS TO
THAT SEQUENCE.

AND THE REASON FOR THAT IS
BECAUSE AS MR. BURTON SAID, WE
HAD TWO LIVE VICTIMS WHEN THE
FIRST RESPONDERS GOT THERE.

THE TWO ADULT VICTIMS WERE STILL
ALIVE.

THE CHILD WAS ALREADY DEAD.

NOW, THE DEFENDANT SAID, THERE'S
NO DISPUTE, THAT BENJAMIN
HAMILTON IS SHOT FIRST.

THERE'S NO DISPUTE ABOUT THAT.

THE DEFENDANT SAYS --

>> LET'S JUST STOP RIGHT THERE.

SO AT THAT POINT WHERE WAS THE
TWO FEMALE VICTIMS AT THE POINT
WHEN THE MALE VICTIM WAS SHOT?

WHERE WERE THE OTHER TWO -- WHAT
DOES THE EVIDENCE INDICATE?

>> THIS IS -- OKAY, I'M GOING TO
ANSWER IT, I PROMISE.

BUT THIS IS WHERE YOU GET SOME
DIVERGENCE BETWEEN WHAT THE

DEFENDANT TOLD LAW ENFORCEMENT
AND WHAT HE TOLD HIS OWN MENTAL
HEALTH EXPERT.

THE EVIDENCE IS THE TWO FEMALES
ARE IN THE HOUSE WHEN THIS
HAPPENS, WHEN THE FIRST SHOT IS
FIRED.

THE EVIDENCE IS THE CHILD ENTERS
THE BEDROOM AND IS TUGGING ON
THE DEFENDANT'S SHORT PANTS,
LOOKING UP AT HIM IN PANIC, AND
THEN SHE IS SHOT IN THE HEAD AT
POINT-BLANK RANGE.

THE INFERENCE FROM THE KNOWN
EVIDENCE THAT IS UNDISPUTED IS
THAT THE DEFENDANT SLAPPED HER
IN THE FACE AND SHOT HER.

THE LOGICAL --

>> AND THE MOTHER IS WHERE AT
THIS POINT?

>> MA'AM?

>> AND THE MOTHER IS WHERE?

>> OKAY.

THE REASON I DID IT THIS WAY IS
BECAUSE IT DOESN'T REALLY MAKE

ALL THAT MUCH DIFFERENCE WHERE
THE MOTHER WAS ULTIMATELY.
BUT THE INDICATION IS -- AND,
AGAIN, WE DON'T HAVE A PRISTINE
CRIME SCENE BECAUSE OF THE
CIRCUMSTANCES OF, YOU KNOW, TWO
LIVING VICTIMS AT THE TIME.
ALL OF THE EVIDENCE SUGGESTS
FROM THE STATEMENTS, FROM THE
WAY THINGS KIND OF PLAYED OUT,
FROM WHERE THE BODIES WERE
POSITIONED IS THAT THE MOTHER
WAS ALREADY IN THE ROOM AND THAT
THE CHILD SAW BOTH VICTIMS SHOT.

NOW, IF YOU WANT TO --

>> OKAY, WAIT.

I GUESS WHAT EVIDENCE ARE YOU
SAYING, IT COMES FROM IF HIS OWN
CONFESSION THAT THAT'S WHAT
HAPPENED?

I WAS TRYING TO FIGURE OUT,
STATE HAS TO PROVE BY CLEAR AND
CONVINCING EVIDENCE THE
AGGRAVATOR OF HAC.

NOW, I HEARD YOU SAY IT DOESN'T

MATTER.

ARE YOU SAYING IT DOESN'T MATTER

IF THE CHILD IS SHOT BEFORE THE

MOTHER?

IS THAT WHAT YOU WERE -- FOR

HAC?

>> YES, MA'AM.

BECAUSE SEEING HER FATHER SHOT

IS ENOUGH FOR HAC.

THE DEFENDANT'S STATEMENTS AND

DESCRIPTIONS OF THE SEQUENCE OF

EVENTS INDICATES THAT THE CHILD

IS THE LAST VICTIM SHOT.

THE, EXCUSE ME, THE

CIRCUMSTANCES OR THE WAY THIS

ROOM IS, AND IT'S 12X13 FEET WAS

THE TESTIMONY, I THINK THAT'S

ONE OF THE SIZE OF THE RUGS IN

THE LAWYERS' LOUNGE.

WITH THE BED AND SOME OTHER

FURNITURE, A SAFE, SOME OTHER

THINGS IN THERE.

COUPLE BARRELS OF MARIJUANA TOO,

I BELIEVE.

BUT THIS IS A VERY CRAMPED AREA,

AND THE DEFENDANT'S DESCRIPTION
COUPLED UP WITH THE PHOTOGRAPHS
THE BEST WE KNOW WHAT HAPPENED,
IT IS THAT THE CHILD IS THE LAST
VICTIM KILLED.

NOW, THE DEFENDANT WANTS TO KIND
OF GO WITH THIS NOTION OF THE
CHILD WAS SENT BACK OUT OF THE
ROOM.

AND IF YOU BUY INTO THAT
POSITION, THEN YOU'VE GOT TO
LOOK --

>> [INAUDIBLE]

THE ARGUMENT PORTION?
WHEN THE DEFENDANT AND THE
VICTIM, THE MALE VICTIM WERE
ARGUING THAT THE CHILD WAS SENT
OUT OF THE ROOM, THAT WAS BEFORE
THE ACTUAL SHOOTING AND BEFORE
THE DEFENDANT WENT OUT AND
PROCURED ANOTHER GUN.

THAT'S THE WAY I UNDERSTOOD
IT --

>> WELL, THE DEFENDANT HAD HIS
OWN GUN.

THE DEFENDANT HAD HIS OWN
WEAPON.

IT WAS A TAURUS .38 CALIBER
REVOLVER.

>> BUT I THOUGHT HE LEFT THE
SCENE OF THE ARGUMENT --

>> THAT IS WHAT THE CHILD --

>> THAT'S BEFORE THE CHILD GOT
THERE.

HE HAD THE GUN BACK IN THE
BEDROOM WITH THE MALE VICTIM
BEFORE THE CHILD GOT THERE.

NO MATTER HOW -- IT DOESN'T
MATTER ANYTHING ELSE AROUND
THAT.

>> OKAY.

>> BUT IF YOU ACCEPT THE
DEFENDANT'S ARGUMENT THAT THE
CHILD WAS SENT BACK OUT AND, YOU
KNOW, WE DON'T REALLY KNOW WHEN
SHE CAME BACK IN AND ALL THIS,
THEN THAT KIND OF, THAT PLAYS IN
TO WHAT THE DEFENDANT TOLD
DR. REEVE WHICH IS NOT IN THE
SENTENCING ORDER, BUT IS

ACCORDING TO AFTER HE WHAT HE
TOLD DR. RIEBSAME, HE GOT THE
TWO FEMALE VICTIMS AND HERDED
THEM BACK INTO THE BEDROOM AND
KILLED THEM.

THAT'S WHAT HE TOLD DR. RIEBSAME
WHAT HAPPENED.

AND I DON'T THINK HE WANTS TO GO
DOWN THE ROAD OF ACCEPTING THAT
VERSION IS TRUE.

>> YOU'RE SAYING THE
CIRCUMSTANCES, WE'VE GOT THE
SIZE OF THE ROOM.

SO WHAT YOU'RE SAYING IS FROM
WHERE THE BODY OF THE FEMALE WAS
LOCATED WHEN THE FIRST
RESPONDERS ARRIVE, THAT IT WAS
SUCH THAT SHE WOULD HAVE HAD TO
HAVE WALKED OVER THE BABY OR THE
CHILD TO GET IN THAT POSITION IF
THAT IS TO BE ACCEPTED --

>> YES, SIR.

>> -- BECAUSE THE FEMALE VICTIM
WAS LOCATED IN SUCH A POSITION
THAT IT'S JUST NOT LOGICAL THAT

SHE WOULD HAVE STEPPED OVER AND
WALKED AROUND TO THE OTHER SIDE.

IS THAT --

>> THAT'S PRETTY -- YES, SIR.

>> OKAY.

>> BETTER THAN I DID WITH IT.

>> WELL, ON THE OTHER SIDE OF
THE BED, AND, I MEAN, THE
PHYSICAL LAYOUT COMING IN IS THE
CLOSEST TO THE DOOR, I WOULD
ASSUME --

[INAUDIBLE CONVERSATIONS]

>> BEYOND THAT, I DON'T REALLY
KNOW THAT THERE IS MUCH I NEED
TO SAY.

I DO HAVE --

>> WHAT IF HAC DOES NOT, THIS
COURT DETERMINES THAT WE DON'T
HAVE ENOUGH FOR HAC?

>> IF WE DON'T HAVE ENOUGH FOR
HAC, WE STILL HAVE A VICTIM
UNDER 12.

I MEAN, WE'VE GOT A BABY.

WE'VE GOT A DEAD BABY.

>> I UNDERSTAND.

>> WE'VE GOT TWO PRIOR VIOLENT
FELONIES, TWO OTHER FIRST-DEGREE
MURDERS.

EVEN WITHOUT HEINOUS, ATROCIOUS
OR CRUEL AS AN AGGRAVATOR, THIS
IS A DEATH CASE UNDER THIS
COURT'S WELL-SETTLED
JURISPRUDENCE.

I WOULD SUGGEST THAT WE REALLY
SHOULD HAVE FOUR AGGRAVATORS.

>> WELL, THAT'S ON YOUR
CROSS-APPEAL.

>> YES, SIR.

>> BUT, I MEAN, REALLY IT'S OUR
JURISPRUDENCE REQUIRES THAT THE
PREDOMINANT REASON FOR THE
MURDER BE THE WITNESS
ELIMINATION.

ISN'T THAT WHAT IT REQUIRES AS A
FUNDAMENTAL PRINCIPLE?

>> YES, SIR, AND THAT'S WHAT HE
SAID.

>> WELL, THEN IT COMES DOWN TO
WAS THAT WAS THE PRIMARY AND
PREDOMINANT REASON FOR THESE

OTHER SHOOTINGS.

>> YES, SIR.

>> AND YOU SAY HE SAID THAT'S
WHAT IT WAS.

AND WHERE'S THAT FINDING?

WHERE WAS THAT IN HIS

CONFESSION?

>> IN HIS CONFESSION, JUDGE.

I DON'T REMEMBER THE PAGE OFF
THE TOP OF MY HEAD.

IT'S CITED IN MY BRIEF.

>> HE TOLD HIS PSYCHIATRIST.

>> NO, MA'AM.

HE TOLD LAW ENFORCEMENT THIS.

HE TRIED TO BACK UP FROM IT

LATER ON, BUT, YOU KNOW, IT'S A

SELF-SERVING STATEMENT.

>> QUESTION BACK ON THE HAC.

I AGREE THAT IT'S UNFORTUNATE

WITHOUT A -- I AGREE WITH YOU

ON --

[INAUDIBLE]

BUT IN TERMS OF IF WE FOUND IF

HAC WAS ERRONEOUS FOUND BY JUDGE

EATON, WOULDN'T THERE BE --

YOU'D HAVE TO FIND IT HARMLESS
BEYOND A REASONABLE DOUBT TO --

[INAUDIBLE]

FOR THE MOTHER WHEN HE GOES TO
THE CHILD, MENTIONED THREE
AGGRAVATING FACTORS.

SO DO WE REALLY KNOW WHETHER
JUDGE EATON WOULD HAVE FOUND THE
MURDER OF IVORY TO BE A DEATH
SENTENCE WITHOUT HAC?

WOULDN'T WE HAVE TO REEVALUATE
THAT?

>> NO, MA'AM.

BECAUSE FOR THE MOTHER THERE WAS
ONLY THE ONE AGGRAVATOR, THE
PRIOR VIOLENT FELONY.

WE DIDN'T HAVE -- WE'VE GOT,
WE'VE GOT A QUANTITATIVE AND
QUALITATIVE DIFFERENCE IN THE
AGGRAVATION WITH RESPECT TO THE
5-YEAR-OLD VICTIM.

>> BECAUSE OF HER AGE.

>> BECAUSE OF HER AGE.

WHICH, OF COURSE, WE OBVIOUSLY
CAN'T HAVE FOR THE ADULT FEMALE

VICTIM.

I WOULD, YOU KNOW, I SAID THIS
IN MY BRIEF, I'M NOT NITPICKING
AT ANYBODY, BUT, YOU KNOW, I DO
BELIEVE THAT WITNESS ELIMINATION
SHOULD HAVE BEEN FOUND AS TO
IVORY HAMILTON.

I ALSO BELIEVE WITNESS
ELIMINATION SHOULD HAVE BEEN
FOUND AS TO THE ADULT, AS TO
SARAH BUCKOSKI, BUT THAT'S
UNAPPEALABLE, AND I CAN'T DO
ANYTHING ABOUT THAT.

BUT WE SHOULD BE HERE ON TWO
DEATH SENTENCES AT LEAST REALLY,
BUT WE'RE NOT.

BUT THE BOTTOM LINE AT THE END
OF THE DAY, THIS DEATH SENTENCE
IS CLEARLY AND ABSOLUTELY
PROPORTIONAL WITH OR WITHOUT THE
HEINOUSNESS AGGRAVATOR, AND I AM
ABSOLUTELY NOT AGREEING THAT
THIS MURDER DOES NOT QUALIFY
UNDER ITS UNIQUE FACTS AS
ESPECIALLY HEINOUS, ATROCIOUS OR

CRUEL IN THE CONTEXT OF THIS
CASE WHICH IS THE ONLY ONE THAT
MAKES ANY DIFFERENCE WHATSOEVER.
IF THE COURT HAS NO FURTHER
QUESTIONS, I WOULD ASK THE COURT
TO AFFIRM THE DEATH SENTENCE,
AND THAT'S ALL.

>> JUST BRIEFLY, ONE CORRECTION.

THE RESPONDER NEIGHBOR WAS
YVETTE BERNARD, NOT THE OTHER
NEIGHBOR WHO TALKED ABOUT THE
SHOOTING IN SUCCESSION.

THE STATE CALLED TWO DIFFERENT
PEOPLE, YVETTE BERNARD WAS ALSO
A NEIGHBOR WHO WAS THE FIRST ON
THE SCENE, FOUND THE, FOUND THE
VICTIMS.

BUT THIS NEIGHBOR HAD NO
KNOWLEDGE OF THE SHOOTINGS, AND
IT WAS DETERMINED THAT THERE WAS
NO ROOFERS THAT DAY OF THE
SHOOTING.

SO THE POPS SHE HEARD HAD TO BE
THE GUNSHOTS.

AND THEY WERE IN SUCCESSIVE

ORDER.

>> NOW, YOU'VE INDICATED THAT
THE EVIDENCE IS THAT THE SHOT
FOR THE CHILD IS JUST PURE
ACCIDENT.

YOUR OPPOSITION HAS SAID IS THAT
THERE'S A CONFESSION THAT SAYS
THAT THE REASON, I MEAN, THERE'S
A REASON FOR IT.

NOT AN ACCIDENT, IT'S TO
ELIMINATE THE CHILD AS A
WITNESS.

COULD YOU ADDRESS THAT?

I MEAN, IT CAN'T BE BOTH.

>> WELL --

>> AND WE'RE NOT HERE TO -- OUR
FACTS, WE OUGHT TO BE ABLE TO
AGREE ON FACTS.

WE MAY DISPUTE THE LAW, BUT WE
NEED TO KNOW WHAT'S AS OF THIS
RECORD.

>> ON PAGE 146 IN THE RECORD OF
HIS CONFESSION, HE SPECIFICALLY
SAYS SHOOTING IVORY HAMILTON TO
ELIMINATE HER AS A WITNESS HAD

NEVER CROSSED HIS MIND.

THE WITNESS ELIMINATION THAT
THEY TRIED TO CULL FROM HIS
STATEMENT, FROM HIS CONFESSION
WAS HAVING TO DO WITH THE MOTHER
BECAUSE, AS I SAID, HE HAD DONE
THESE TWO TERRIBLE THINGS, AND
SHE WAS STILL ALIVE.

AND IT WENT THROUGH HIS MIND FOR
THE MOTHER, BUT NOT FOR IVORY
HAMILTON BECAUSE HE NEVER
ADMITTED TO PURPOSELY SHOOTING
HER, EVER.

NEVER.

>> NEVER ONCE.

>> THE QUESTION EARLIER IN THAT
LITTLE INTERROGATION WAS, THE
QUESTION OF THE INTERROGATING
OFFICER SAID AFTER YOU SHOT BEN,
YOU WERE WORRIED ABOUT SARAH OR
IVORY BEING ABLE TO IDENTIFY YOU
IF YOU HAD DONE THIS.

TELL THE TRUTH, WERE YOU
CONCERNED ABOUT THAT?

AND THEY WEREN'T -- AND THEN THE

QUESTION, THEY WEREN'T EVEN

SUPPOSED TO BE HOME, NO.

OKAY.

WERE YOU WORRIED ABOUT THERE

BEING A WITNESS?

HE SAYS, YEAH.

OKAY?

AND THAT'S DEFINITELY TALKING

ABOUT THE TWO OF THEM.

NOW, HE LATER ON, HE DOES SAY

THAT HE HADN'T THOUGHT ABOUT

IVORY, BUT AT ONE POINT THERE HE

GROUPS THEM TOGETHER.

THAT'S WHAT IT SAYS, DOESN'T IT?

>> IT DOES, BUT I WATCHED THE

CONFESSION.

IT'S ON VIDEO, YOU CAN WATCH IT.

AND IT'S MY ARGUMENT TO YOU THAT

HE SINCE HE NEVER PURPOSELY EVEN

ADMIT CANS TO PURPOSELY SHOOTING

HER, HOW CAN HE SHOOT HER FOR

WITNESS ELIMINATION?

IT DOESN'T MAKE ANY SENSE.

>> SOME PEOPLE ADMIT TO SOME

THINGS INADVERTENTLY.

YOU KNOW --

>> SURE.

>> -- IT'S NOT ON THE SCRIPT,
BUT, YEAH, THEY WILL -- THAT'S
NOT UNCOMMON.

>> THAT'S CORRECT.

BUT THAT'S THE EVIDENCE THAT YOU
HAVE.

>> AND YOU HAVE JUDGE EATON
MAKING A FACTUAL FINDING.

>> CORRECT.

>> DIFFERENT IF HE HAD FOUND IT
AND YOU WERE TRYING TO KNOCK OUT
THAT.

>> YES.

>> AND THAT'S THE SAME PROBLEM
WE MAY HAVE WITH HAC THAT YOU
FOUND SOMETHING --

>> YEAH.

BUT IF YOU LOOK AT THE TESTIMONY
OF THE NEIGHBOR, QUICK
SUCCESSION IS WHAT MAKES THIS
NOT EHAC.

>> COUNSEL SAYS THE SITUATION IN
THE ROOM, LET'S ASK HIM ABOUT,

YOU KNOW, THE CLOSE QUARTERS AND
WOULD IT NOT REQUIRE THAT THE
MOTHER STEP OVER THE CHILD TO
GET TO THE LOCATION?

>> I CONCEDE THE MOTHER WAS IN
THE ROOM BEFORE THE CHILD.

I BELIEVE THE MOTHER CAME IN
BEFORE THE MURDER.

I THINK HIS CONFESSION IS OVER
AND OVER SAYING THAT, THAT SHE
CAME IN TO SEE WHAT HAPPENED
BEFORE THE CHILD DID AND WAS
SCREAMING.

AND WHEN HE WENT TO SHOOT THAT
WAY, SHE DOVE DOWN TO THE BED,
AND HE SHOT THE CHILD.

I DON'T THINK ON PURPOSE.

OR IF HE DID, IT WAS WITHOUT A
WHOLE LOT OF THOUGHT.

>> YOU KNOW YOUR TIME IS UP.

YOU KEEP TALKING ABOUT THE QUICK
SUCCESSION OF THESE GUNSHOTS,
BUT AS I -- HOW QUICK COULD IT
HAVE BEEN IF THEY WERE, IF THEY
ARE MOTHER AND THE CHILD ARE IN

ANOTHER PART OF THE HOUSE, EVEN
IN THE NEXT ROOM, AND THEY HEAR
THE SHOTS AND COME IN, AND
THAT'S WHEN ANOTHER SHOT IS
FIRED, THAT, TO ME, DOES NOT
CONNOTE QUICK SUCCESSION.

>> WELL, THEY QUICKLY CAME BACK
IN THE ROOM BECAUSE THEY JUST
HAD LEFT.

THEY WERE JUST STEPS AWAY FROM
THE DOOR WHEN THE FIRST SHOT
HAPPENED ACCORDING TO HIS
CONFESSION.

THEY WERE JUST STEPS AWAY FROM
THE DOOR.

THEY HAD JUST LEFT THE ROOM.

THANK YOU.

>> WE THANK BOTH OF YOU FOR YOUR
ARGUMENTS.