

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE,
THE FLORIDA SUPREME COURT
IS NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA,
DRAW NEAR, GIVE ATTENTION AND
YOU SHALL BE HEARD.

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

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING.

WELCOME TO THE FLORIDA SUPREME
COURT.

THE FIRST CASE ON OUR DOCKET
TODAY IS CAYLOR VERSUS THE
STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT,
YOUR HONOR.

MY NAME IS DAVID DAVIS
REPRESENTING MR. CAYLOR IN
THIS CAPITAL CASE.

HE WAS CHARGED AND CONVICTED
FIRST-DEGREE MURDER, SEXUAL
BATTERY AND AGGRAVATED
CHILD ABUSE ARISING OUT OF A CASE
IN 2008 IN PANAMA CITY.

IN JUNE 2008 MR. CAYLOR WAS
ON FELONY SEXUAL PROBATION.

HE CAME TO PANAMA CITY.

TOOK UP RESIDENCE AT VALU LODGE
MOTEL. SOUNDS LIKE AN EXTENDED DAY
MOTEL.

HAD COCAINE. WAS SELLING IT.

BY JULY 8th APPARENTLY

HIS COCAINE WAS STOLEN FROM
HIM, SO HE WAS VERY FRUSTRATED.

ON JULY 8th, A 13-YEAR-OLD GIRL
NAMED, WHICH I WILL REFER TO
AS M.H.,

KNOCKED ON HIS DOOR ASKING FOR
A CIGARETTE.

SHE CAME INSIDE, CAME INSIDE
THE MOTEL ROOM.
WITHIN MINUTES THEY WERE HAVING
SEX.

AFTER THEY HAD SEX
CAYLOR, ACCORDING TO HIS
STATEMENT, SNAPPED AND
STRANGLERED THE GIRL.
HE THEN, AFTER STRANGLERED
HER MANUALLY, TOOK A TELEPHONE
CORD AND ALSO STRANGLERED HER AND
PUSHED THE BODY WITH HER
CLOTHES UNDERNEATH THE BED AND
LEFT AND WAS ARRESTED A COUPLE
DAYS LATER.

IN WHICH, HE WAS GLAD TO SEE
THE POLICE AND CONFESSED TO THE
MURDER.

LIKE I SAY THE STATE CHARGED
HIM WITH FIRST-DEGREE MURDER.
ONE OF THE UNDERLYING FELONIES
THEY CHARGED HIM WITH
AGGRAVATED CHILD ABUSE.
BEFORE TRIAL DEFENSE COUNSEL
MOVED TO HAVE AGGRAVATED CHILD
ABUSE DISMISSED BECAUSE UNDER
THIS COURT'S RULING IN BROOKS,
THE AGGRAVATED CHILD ABUSE
MERGED WITH THE MURDER AND
THEREFORE WAS NOT AN OFFENSE.

>> WHAT WAS THE, WHICH ACTS
WERE THE BASIS FOR THE ACT?

>> THE STATE ATTORNEY RELIED
PRIMARILY ON THE STRANGULATION
AS BEING THE ACTS LEADING UP
TO --

>> PRIMARILY?

>> I THINK HE WAS ALSO, HE
INCLUDED SEXUAL BATTERY AS
BEING TORTUOUS AND BUT, AS
BEING TORTUOUS AND BECAUSE IT
WAS TORTUOUS, THEREFORE PART OF
THIS AGGRAVATED CHILD ABUSE.

>> WOULDN'T, ISN'T THAT THEN

ALREADY DISTINGUISHABLE
FROM BROOKS --

>> NO, NO. I'M SORRY.

>> LET ME FINISH MY QUESTION.

>> OKAY.

>> IN THAT THERE WAS NOT A
SINGLE ACT, SINGLE ACT --

>> SEVERAL DISTRICT COURTS --

>> IN THIS CASE? BUT IN CASES
WHERE THERE HAVE
BEEN MULTIPLE ACTS FORM THE
BASIS IN THIS CASE BOTH FOR THE
SEXUAL BATTERY AS WELL AS FOR
THE MURDER DOESN'T, WHY ISN'T
BROOKS LIMITED TO A SITUATION
WHERE THERE IS JUST A SINGLE
ACT?

>> WELL --

>> ESPECIALLY IN THIS CASE.

>> WELL, THEY CHARGED, THEY
CHARGED AGGRAVATED, I'M SORRY,
MAYBE I OUGHT TO BACK UP HERE.
THEY CHARGED AGGRAVATED CHILD
ABUSE AND THAT WAS STRANGULATION.
THEY SAID THE STRANGULATION WAS
FORMED THE AGGRAVATED CHILD
ABUSE.

>> WERE THERE MULTIPLE ACTS OF
STRANGULATION ITSELF?
WAS THERE MANUAL STRANGULATION
AND STRANGULATION WITH THIS
CORD, TELEPHONE CORD?

>> YES. BUT THE STATE NEVER
MADE THAT DISTINCTION.
BY WAY, WHEN THE CHARGE, IN THE
INDICTMENT, WHAT THEY CHARGED
WAS -- [INAUDIBLE]

AND IN THE, SO THE, AND --

>> DOES THE STATE NECESSARILY
HAVE TO SAY, AND STRANGULATION
BY MANUAL STRANGULATION AND
STRANGULATION WITH A CORD?

>> WELL, WHAT I'M SAYING IT
DOESN'T REALLY MATTER BECAUSE

IT WAS ALL SINGLE CONDUCT.
THAT'S WHAT WE'RE LOOKING UNDER
THIS MERGER DOCTRINE.
IT IS NOT SINGLE STAB WOUNDS
WHICH, FOR EXAMPLE, IN BROOKS.
YOU'RE LOOKING AT ENTIRE
CONDUCT THAT FORMED THE
AGGRAVATED CHILD ABUSE.
HERE, JUST NOT, BECAUSE THE
WHOLE PURPOSE OF THE MERGER
DOCTRINE IS TO REQUIRE, IS TO
REQUIRE AS THE STATE, THE STATE
REQUIRES, I'M GOING TO RESTART.
THE LEGISLATURE REQUIRES THE
STATE TO PROVE MURDER HOW?
BY PRIMARILY THEY WANT TO PROVE
BY PREMEDITATION.
A FULLY FORMED CONSCIOUS INTENT
TO KILL.
WHEN YOU ALLOW THEM TO PROVE IT
BY AGGRAVATED CHILD ABUSE AND
ALL THEY HAVE TO DO IS HAVE
INTENT TO CAUSE GREAT BODILY
HARM YOU'RE IN --
>> WAS THERE PREMEDITATED
MURDER IN THIS CASE?
>> THEY CHARGED HIM WITH
PREMEDITATION AND AS WELL AS
FELONY MURDER.
>> WAS THERE A GENERAL VERDICT FORM?
>> YES, IT WAS GENERAL VERDICT.
I'M SORRY, I DON'T WANT TO
OVERRUN YOU LIKE I'M DOING WITH
JUSTICE PARIENTE.
BUT THE IDEA BEHIND THE MERGER
RULE BECAUSE AGGRAVATED BATTERY
IS A SPECIAL FORM OF FELONY IN
THE SENSE THAT OFTEN TIMES THAT
FELONY MERGES, THE ACTS WHICH
ARE, BECOME AGGRAVATED
BATTERY MERGE WITH THE
UNDERLYING, WITH THE MURDER,
THEN IT'S THE MERGER DOCTRINE
PRECLUDES THE STATE FROM

PROVING FELONY MURDER BY
AGGRAVATED BATTERY OR --
>> BUT THE MERGER DOCTRINE IS A
DOCTRINE OF LEGISLATIVE INTENT.
IT'S NOT A DOCTRINE OF
CONSTITUTIONAL MAGNITUDE.
DO YOU AGREE WITH THAT?
>> THAT'S CORRECT.
>> AND YOU'RE NOT MAKING A
CONSTITUTIONAL ISSUE?
>> NO.
>> WE'VE HAD CASES WHERE THE
IDEA THAT THERE'S AN AUTOMATIC
AGGRAVATOR THAT COULD MAKE THE
DEATH PENALTY UNCONSTITUTIONAL,
THAT'S NOT IN FRONT OF US IN
THIS CASE.
>> NO. AND IN FACT, AS IT
TURNS OUT I REPRESENT BROOKS
IN THE BROOKS CASE.
BUT I CLEARLY RECOGNIZED IN
BROOKS AND THE COURT RECOGNIZED
IN BROOKS THIS IS INVOLVES A
MATTER OF LEGISLATIVE,
DETERMINING LEGISLATIVE INTENT
AND GIVING EFFECT TO IT.
>> LET ME, IN CONNECTION WITH
THAT, LET ME ASK YOU TO ADDRESS
WHAT SECTION 782.04.
>> OKAY.
>> THE FIRST DEGREE MURDER
STATUTE SAYS.
IT SAYS IN PERTINENT PART I
THINK, THAT THE UNLAWFUL KILLING
OF A HUMAN BEING WHEN COMMITTED
BY A PERSON ENGAGED IN THE
PERPETRATION OR THE INTENT TO
PERPETRATE ANY AGGRAVATED CHILD
ABUSE IS MURDER IN THE FIRST
DEGREE.
>> THAT'S CORRECT.
THAT IS ABSOLUTELY CORRECT.
>> DOESN'T THAT JUST PERFECTLY
COVER THE CIRCUMSTANCES HERE?

>> BECAUSE THE STATUTE AS ALSO SAYS, IN 782.4 WE WANT THE STATE TO PROVE MURDER BY PREMEDITATION, EXCEPT IN A NARROW CLASS OF CASES WHICH, LIKE KIDNAPPING AND ROBBERY, WHICH DO NOT, WHICH ARE, DO NOT MERGE WITH THE, WITH THE HOMICIDE.

AGGRAVATED BATTERY IS A SPECIAL FORM OF FELONY IN THE SENSE THAT THE, AND THIS IS WHAT YOU RECOGNIZED IN BROOKS.

>> I DIDN'T SAY --

>> YOU'RE TALKING ABOUT AGGRAVATED BATTERY.

I'M TALKING ABOUT AGGRAVATED CHILD ABUSE.

I DON'T THINK AGGRAVATED BATTERY IS LISTED IN THIS LIST BUT AGGRAVATED CHILD ABUSE IS.

>> YOU'RE EXACTLY RIGHT.

UP UNTIL 1984 THE LEGISLATURE SPECIFICALLY INCLUDED AGGRAVATED BATTERY.

WHY?

BECAUSE THE VERY PROBLEM INHERENT IN THE MERGER.

THAT THE BATTERY WHICH -- LET ME FINISH HERE.

THE, I'M SORRY.

>> GO AHEAD. I'M SORRY.

>> THE ACTS THAT CREATE THE AGGRAVATED BATTERY BECOME THE ACTS WHICH ALSO RESULT IN THE IF FELONY IN '84 THEY ADDED AGGRAVATED CHILD ABUSE.

IN BROOKS YOU RECOGNIZED AGGRAVATED CHILD ABUSE IS NOTHING MORE THAN AGGRAVATED BATTERY ON A CHILD.

>> I DON'T THINK THE MAJORITY EVEN TALKED ABOUT THE STATUTE, DID THEY? DID I MISS THAT?

>> IN BROOKS THAT'S WHAT YOU SAID. YOU SAID AGGRAVATED CHILD ABUSE --

>> WAS THERE EVER IN THAT MAJORITY OPINION, SOME PEOPLE ON THE COURT RECOGNIZED THAT BUT I DON'T THINK THERE WAS ANY ANALYSIS OF WHAT THIS STATUTE ACTUALLY SAYS IN THE BROOKS MAJORITY OPINION.

>> WELL I THINK WHAT YOU SAID IN BROOKS AS I READ IT --

>> I UNDERSTAND WHAT WE SAID IN BROOKS BUT I'M ASKING ABOUT THE STATUTE.

>> I MEAN WHEN YOU -- YOU SPECIFICALLY ANALYZE 782.4 IN THE SENSE LIKE THAT, NO, YOU DIDN'T SAY, SPECIFICALLY STATE BUT I DON'T WANT TO GIVE YOU IDEA I'M CONCEDED THIS POINT.

>> I DON'T EXPECT TO YOU CONCEDE IT.

>> CLEARLY AN AGGRAVATED CHILD ABUSE IS -- I'M QUOTING LANGUAGE IN BROOKS. IT IS AGGRAVATED BATTERY ON A CHILD.

>> BUT LISTEN, I WAS ON BROOKS AND I'M LOOKING AT THIS AND READING THE OTHER CASES AND SINCE YOU'RE ONLY MAKING AN ARGUMENT ABOUT STATUTORY CONSTRUCTION, YOU JUST SAID THAT THE LEGISLATURE SPECIFICALLY ADDED AGGRAVATED CHILD ABUSE IN 1984, AS A FORM OF, THAT IF THAT FELONY IS PROVEN THAT IT'S FIRST-DEGREE MURDER. WHAT ELSE, WHAT COULD BE MORE CLEARER OF A STATEMENT OF LEGISLATIVE INTENT THAN THE FACT IT WAS EXCLUDED AND IT WAS

SPECIFICALLY INCLUDED?

>> WELL I THINK WHAT YOU HAVE TO LOOK AT THAT IT IS SIMPLY UNFAIR TO THE DEFENDANT TO HAVE TO DEFEND SIMPLY ON, ALLOW THE STATE TO PROVE GREAT BODILY HARM AS INTENT.

>> GUESS WHAT?

YOU JUST, THIS ISN'T ABOUT FAIRNESS BECAUSE YOU SAID IT DOESN'T RISE TO A CONSTITUTIONAL LEVEL.

IT'S ABOUT LEGISLATIVE INTENT AND THAT'S WHAT I'M ASKING YOU. NOW YOU'RE SWITCHING TO THAT'S NOT FAIR AND THERE COULD BE A SITUATION AND I COULD SEE A SITUATION WHERE A CHILD IS UNDER THE AGE OF 12 AND THERE'S A SINGLE ACT OF, THAT CAUSES A MURDER AND THEN THERE'S, THERE IS SEXUAL BATTERY.

I'M SORRY, CHILD ABUSE PLUS THAT THEY'RE UNDER 12, ALL OF A SUDDEN THERE IS THREE OR TWO AGGRAVATORS AND SOMEONE MAY MAKE AN ARGUMENT THERE IS SOME CONSTITUTIONAL INFIRMITY BUT THAT'S NOT THIS CASE.

>> I'M NOT SAYING THAT AGGRAVATED CHILD ABUSE CAN NEVER BE THE UNDERLYING FELONY IN FELONY MURDER.

I'M TRYING TO GIVE, TRYING TO GIVE, RECOGNIZE LEGISLATIVE INTENT, TO GIVE EFFECT TO AGGRAVATED CHILD ABUSE CAN BE A FELONY IN THE FELONY MURDER CONTEXT.

BUT IN THIS CASE, I'M SAYING, YOU CAN NOT DO THAT BECAUSE THE UNDERLYING FELONY, THAT THE ACTS WHICH BECOME THE UNDERLYING FELONY ALSO MERGE WITH THE,

BECOME THE --

>> I UNDERSTAND YOUR ARGUMENT.

YOU'RE SAYING IT IS JUST LIKE
AGGRAVATED BATTERY BUT THE
PROBLEM WITH IT IS THAT
AGGRAVATED BATTERY IS NOT
LISTED AS ONE OF THE FELONIES
AND AGGRAVATED CHILD ABUSE IS.

>> AND TO GIVE EFFECT TO THE
LEGISLATURE IN INSTANCES WHERE
THAT AGGRAVATED CHILD ABUSE,
THE ACTS, THE CONDUCT DOES NOT
MERGE AND CAUSE AND BECOME A
CAUSAL FACTOR IN THE FELONY, IN
THE MURDER, THEN YOU CAN USE
IT.

BUT WHEN THOSE FACTS MERGE WITH
THE FACTS GIVING RISE TO THE
MURDER OR HOMICIDE, THEN,
AGGRAVATED CHILD ABUSE IS
LIMITED IN THAT CONTEXT.

LIKE I SAY I'M NOT SAYING YOU
CAN'T USE IT BUT --

>> I JUST DON'T SEE HOW YOU
COULD POSSIBLY DRAW THAT OUT OF
WHAT IS SAID HERE IN THE
STATUTE. IT IS UNEQUIVOCAL.
IT SEEMS TO ME THAT THE ONLY
THING YOU CAN CONCLUDE FROM
THIS STATUTE AND WHAT THE
LEGISLATURE ACTUALLY SAYS IS
THAT IF YOU, THE DEFENDANT,
SETS FORTH AND COMMITS AN
AGGRAVATED CHILD ABUSE AND AS A
CONSEQUENCE OF THAT A DEATH IS
CAUSED TO THE VICTIM, THAT THAT
IS GOING TO BE A FIRST-DEGREE
MURDER.

>> THEN, YOUR HONOR, ARE WE
REEXAMINING BROOKS?

IS THAT WHAT YOU'RE DOING?

>> PERHAPS.

>> YOU SHOULD NOT DO THAT.
THAT IS WHAT STARE DECISIS IS

ABOUT.

>> WE'RE ASKED TO DO THAT IN ANY EVENT IN TWO CASES THAT HAVE BEEN CERTIFIED BY THE FIRST DISTRICT.

AND I CAN SAY THAT, YOU KNOW, PRECEDENT IS IMPORTANT BUT IF IT'S BASED ON A FAULTY PREMISE IT HAS TO BE REEXAMINED.

AND IN THIS CASE, IN ANY EVENT YOU'VE GOT THE SEXUAL BATTERY AS A SEPARATE FELONY, THAT, SO I WONDER ABOUT THE OVERALL IMPACT OF IF IT WERE ERROR, THE STATE'S ALTERNATIVE ARGUMENT WOULD BE HARMLESS.

YOU WANT TO ADDRESS THAT REAL QUICKLY?

>> AS TO HARMLESS I GO BACK TO JUSTICE QUINCE'S OBSERVATION OF THE GENERAL VERDICT.

AS A MATTER OF LAW IF THE AGGRAVATED CHILD ABUSE IS INVALID IT MERGES, THEN AS A MATTER OF LAW YOU CAN NOT SAY, BECAUSE THEY COULD HAVE ALSO FOUND SEXUAL BATTERY, THEREFORE IT'S HARMLESS.

THAT IS WHAT YATES VERSUS UNITED STATES SAYS IN GENERAL VERDICT WHEN THERE ARE MULTIPLE WAYS OF PROVING SOMETHING.

>> DO THEY FIND SEXUAL BATTERY SEPARATELY OR WAS THERE A SEPARATE FELONY SEXUAL BATTERY?

>> YES, THEY CHARGED HIM.

>> WE KNOW THEY FOUND SEXUAL BATTERY?

>> LIKE I SAY THIS IS WHAT YATES VERSUS UNITED STATES SAYS.

MULTIPLE WAYS OF PROVING SOMETHING AND ONE'S WRONG YOU

CAN NOT ASSUME IT WOULD BE FOUND UNDER THE OTHER WAY.

>> WE CAN IF THEY FOUND IT, CAN'T WE?

>> NO.

>> THEY FOUND, THEY, IN THEIR VERDICT THEY FOUND A SEPARATE COUNT OF SEXUAL BATTERY.

>> WELL, LIKE I SAY I'M RELYING ON JUST AS GENERAL VERDICT. THAT'S WHAT I'M SAYING UNDER A GENERAL VERDICT.

>> THE SEXUAL BATTERY IS UNDER THE SAME STATUTE AS THE AGGRAVATED CHILD ABUSE, IS IT NOT?

>> UNDER THE FELONY MURDER STATUTE, 782.04, THAT'S CORRECT.

>> OKAY.

>> DIDN'T YOU MAKE AN ARGUMENT THAT THERE IS SOME ISSUE WITH THE SEXUAL BATTERY?

IS THERE AN ISSUE WHETHER OR NOT THE VICTIM ACTUALLY CONSENTED IN THIS CASE BECAUSE HE WAS CHARGED WITH A PARTICULAR KIND OF SEXUAL BATTERY?

>> YES. THEY CHARGED HIM WITH SEXUAL BATTERY. AND I'M ARGUING HERE THAT BECAUSE THE CHILD WAS 13 YEARS OLD THEY HAD TO SHOW HER LACK OF CONSENT.

WHAT THE CIRCUMSTANTIAL EVIDENCE SHOWS IN THIS CASE THERE WAS NO LACK OF CONSENT, I'M SORRY, NO EVIDENCE THEY SHOWED A LACK OF CONSENT.

>> WHAT WE HAVE REALLY HERE IS THE DEFENDANT'S VERSION OF THE CASE WHICH SAYS THAT THIS YOUNG GIRL, THAT HE HAD NEVER REALLY

MET BEFORE, CAME KNOCKING ON HIS DOOR TO HAVE, ASK FOR A CIGARETTE AND ENDED UP CONSENTING HAVING SEX WITH HIM?

>> THAT'S CORRECT.

>> OKAY. SO, WHAT ELSE DO WE HAVE OTHER THAN THAT?

>> WELL YOU ALSO HAVE THE OTHER, SHE ASKED FOR A CIGARETTE. THERE WAS NICOTINE FOUND IN HER BLOOD WHICH CORROBORATES HIS VERSION WHAT HAPPENED.

YOU ALSO HAVE EVIDENCE FROM THE MEDICAL EXAMINER THERE WAS NO DAMAGE TO HER VAGINA OR ANUS WHICH WOULD BE ALSO EVIDENCE, HAD THERE BEEN DAMAGE IN THOSE AREAS WOULD HAVE BEEN EVIDENCE OF LACK OF CONSENT.

THE OTHER EVIDENCE, OTHER PHYSICAL EVIDENCE CONFIRMS HIS STORY.

HER UNDERWEAR WHICH OFTEN TIMES IS USED AS A GAG OR, TIE UP THE VICTIM, WAS JUST SIMPLY SHOVED UNDER HER BODY.

NO PHYSICAL EVIDENCE TO --

>> WE KNOW WHAT THE PHYSICAL SIZE OF THIS YOUNG GIRL WAS AND IN COMPARISON TO THE DEFENDANT?

>> I THINK SHE WAS SMALLER.

BUT I DON'T SEE, THAT, I DON'T SEE HOW THAT REALLY --

>> SEEMS TO ME, YOU'RE MAKING A POINT OF THAT HER, HER CLOTHING WAS JUST SHOVED UNDER THERE.

I MEAN HE WAS SO MUCH BIGGER THAN SHE WAS, WHY WOULD HE NEED TO PHYSICALLY TEAR THE PANTIES OFF OF HER OR ANYTHING LIKE THAT?

>> I MEAN THERE IS

CIRCUMSTANTIAL EVIDENCE.

THE FACT THAT THERE WASN'T ANY

EVIDENCE OF ANY FORCE USED GOES TO THE SHOW THAT CONFIRMS THAT SHE GAVE HER CONSENT.

I MEAN WE'RE TALKING, WE CAN MAKE UP ALL SORTS OF HYPOTHETICALS WHAT COULD HAVE HAPPENED BUT HERE'S THE FACTS THAT DID HAPPEN.

THOSE, AND THIS COURT HAS RECOGNIZED THAT WHEN YOU LOOK AT THE SEXUAL BATTERIES, WHEN YOU SEE EVIDENCE OF TORN PANTIES AND BRAS USED AS TO TIE PEOPLE UP, THAT IS EVIDENCE OF A LACK OF CONSENT.

THERE IS NONE OF THAT HERE. AND WE HAVE IN FACT, HERE WE HAVE A YOUNG WOMAN WHO WAS VERY COMFORTABLE BEING AROUND OLDER MEN.

SHE KNOCKED ON ANOTHER MAN'S DOOR. WAS WALKING HIS DOG. WOULD GO INTO HIS ROOM AT NIGHT AND WATCH MOVIES WITH HIM.

THIS --

>> THERE IS ALSO EVIDENCE IN THIS RECORD INDICATED SHE WAS SHY AND RELUCTANT TO TALK TO PEOPLE FROM HER SIBLINGS.

>> I MEAN --

>> THERE, YOU CAN, COME TO DIFFERENT CONCLUSIONS BASED ON DIFFERENT ELEMENTS OF THE EVIDENCE IN THE RECORD ON THAT PARTICULAR POINT.

>> WELL I WOULDN'T CALL HER SHY WHEN SHE IS WALKING AROUND KNOCKING ON PEOPLE'S DOORS TO WALK THEIR DOG.

GOING TO GRILLS, THAT PEOPLE HAVE BARBECUES.

TAKING MEAT OFF THEIR PLATE.

SHY IN THE SENSE THAT

13-YEAR-OLD GIRLS ARE SHY.

I DON'T SEE ANY SHYNESS HERE.
>> WHAT HAPPENS, WHAT IS THE SIGNIFICANCE OF HER AGE? YOUR ARGUMENT WOULD BE DIFFERENT IF SHE WERE 23. BUT AT 13, WHICH IS BARELY A TEENAGER, WHERE DOES THAT FACTOR IN A CIRCUMSTANTIAL EVIDENCE CASE AS TO WHETHER IT IS LOGICAL TO ASSUME THAT SHE, WOULD WALK INTO A ROOM AND VOLUNTARILY HAVE SEX WITH A MAN 20 YEARS OLDER THAN HER?
>> YOUR HONOR, WE LIVE IN A DIFFERENT WORLD THAN YOU AND I GREW UP IN. WHERE PEOPLE, WHEN I WAS 13, YOU WERE 13 WE LIVE IN DIFFERENT WORLD. THIS GIRL APPARENTLY, THE SHYNESS THAT JUSTICE CANADY IS ALLUDING TO I JUST DON'T SEE A LOT OF EVIDENCE OF. SHE IS GOING AROUND ASKING FOR CIGARETTES. SHE IS WALKING DOGS. SHE IS --
>> BESIDES A DIFFERENT WORLD ISSUE, I'M ASKING BECAUSE THIS IS A QUESTION WHETHER THE JURY COULD HAVE FOUND SEXUAL BATTERY. WHETHER THERE'S ENOUGH EVIDENCE FOR THIS TO HAVE GONE TO THE JURY. IS THAT WHAT WE'RE DEALING WITH HERE?
>> THAT'S CORRECT.
>> WHAT I'M ASKING YOU IS THAT IN, LOOKING AT THE CIRCUMSTANCES WHAT CIRCUMSTANCE IS THERE AS TO THE AGE OF A, OF THIS VICTIM THAT SHE'S 13, NOT 23?

I MEAN WHAT IS, AS FAR AS
CONSENSUAL SEX SHE CAN'T BE,
ISN'T THERE SOMETHING EVEN
ABOUT WHETHER SHE COULD HAVE
CONSENTED TO SEX WITH SOMEBODY
THIS, OVER THE AGE OF 18?

>> I THINK THAT WOULD BE
PROBABLY ON LEWD AND LASCIVIOUS
CONDUCT.

SEXUAL BATTERY I BELIEVE 12
YEARS OLD IS THE CUTTOFF
FOR CONSENT.

>> DOES THE AGE PLAY A PART
GOING TO A JURY?

THAT IS THE SAME FACTS, THAT
IS, THE PANTS, HER CLOTHING IS
NOT TORN BUT SHE'S 13, NOT 23?

>> ARE YOU SUGGESTING THAT
BECAUSE OF HER AGE THEN SHE WAS
PERHAPS INTIMIDATED AND --

>> I'M SUGGESTING THAT IS A
CIRCUMSTANCE THAT IN EVALUATING
ALL THE FACTS OF HER NOT
KNOWING THIS DEFENDANT, OF,
EVERYTHING, YOU KNOW, ALL THE
OTHER CIRCUMSTANCES JUSTICE
CANADY PUT OUT, THAT IT'S
UNLIKELY THAT SHE WOULD HAVE
VOLUNTARILY GONE INTO THIS ROOM
TO HAVE SEX WITH THIS
DEFENDANT.

THAT THAT'S A CIRCUMSTANCE THAT
THE JURY COULD CONSIDER OR THAT
IS JUST SPECULATION?

>> THAT IS WHAT I WAS GOING TO
GET AT. SOUNDS LIKE SPECULATION.
SIMPLY AGE BY ITSELF, YOU'RE
SPECULATING AND THAT IS WHAT I
HEAR --

>> I DIDN'T SAY AGE BY ITSELF.
I SAID AS ONE OF THE
CIRCUMSTANCES.

>> BUT THERE IS NOTHING TO
SUPPORT THE FACT THAT SHE WAS

UNUSUALLY SHY OR EVEN,
PARTICULARLY SHY.
I MEAN CONTRARY EVIDENCE SHOWS
THAT SHE IS --

>> IS THERE ANY INDICATION IN
THIS RECORD THAT EVEN IF WE
ACCEPT THAT AT SOME POINT, THAT
SHE BEGAN, SHE STARTED OUT AS A
CONSENSUAL ACT, THAT BECAUSE HE
THEN STARTED TO STRANGLE HER,
IT BECAME A NONCONSENSUAL ACT?

>> NO. NO. IN FACT WHAT HE
SAID IS, WE HAD SEX AND THEN
AFTER THAT HE BEGAN TO STRANGLE HER.
SO THE SEX, EVERYTHING ABOUT
THE SEXUAL ACT, ALL THE
EVIDENCE, SUPPORTING THE
SEXUAL ACTS --

>> I THINK THOUGH THERE WAS
SOME INDICATION HERE THAT AT
THE TIME HE STRANGLED HER HE HAD
NOT COMPLETELY FULFILLED THE
ACT.

THAT HE HAD NOT DISENGAGED FROM
HER AND SOME INDICATION HE
BEGAN TO STRANGLE HER AT THAT
POINT.

SO WOULD ANY CONSENT, IF THAT
IS THE CASE, WOULD ANY CONSENT
THEN BE WITHDRAWN?

>> IF THAT WAS THE
CIRCUMSTANCES THEY WERE STILL
ENGAGED AND HE BEGAN TO
STRANGLE HER, YES, THAT CONSENT
WOULD IMPLICITLY BE WITHDRAWN.
BUT WHAT HE SAID, WHEN
QUESTIONED BY THE POLICE, IN
FACT THE POLICE SPECIFICALLY
ASKED HIM, WAS THIS A BLIP
SORT OF THING WHERE EXACTLY
WHAT YOU'RE SAYING, DURING THE
SEX HE BEGAN TO STRANGLE HER.
HE SAID NO.

I STOPPED HAVING SEX WITH HER

AND THEN I, I BEGAN STRANGLING HER.
HE, THE DEFENDANT HIMSELF IS CLEARLY SAYING THE SEXUAL INTERCOURSE HAD ENDED BEFORE HE STARTED STRANGLING HER.
SO NO, I'M SORRY THAT, THAT IS WHY WE'RE RAISING THIS ISSUE NOW IN THIS CONTEXT BECAUSE THERE IS A CLEAR DEMARCATION AND THE EVIDENCE SUPPORTS THIS. THERE WAS A CLEAR SEPARATION BETWEEN THE SEXUAL INTERCOURSE AND THEN THE SUBSEQUENT STRANGULATION.
SO WHAT I'M SAYING HERE IS THE EVIDENCE, CIRCUMSTANTIAL EVIDENCE WHAT IT SHOWS IS EXACTLY WHAT I SAID, IS THAT MR. ^CAYLOR, THIS GIRL INTO THE ROOM. SHE ASKED FOR A CIGARETTE. THEY BEGAN, THEY STARTED, STARTED SOME SEXUAL, PRESEX SORT OF ACTIVITY.
SHE THEN TOOK -- THEY TOOK OFF THEIR CLOTHES.
ENGAGED IN SEXUAL INTERCOURSE. AFTERWARDS THE DEFENDANT SNAPPED, STRANGLED HER AND KILLED HER AND PUT HER BODY UNDER THE BED AND THEN LEFT.
I HAVE ASKED THIS COURT TO REVERSE THE TRIAL COURT'S JUDGMENT OF SENTENCE ON THE TWO POINTS I ARGUED HERE.
THERE ARE SOME OTHER POINTS WHICH I THINK ARE FULLY COVERED BY THE BRIEFS.
I DEFER TO THE TRIAL COURT'S JUDGEMENT.
THANK YOU VERY MUCH.
>> LET ME JUST ASK YOU THIS.
I MEAN IF WE FOUND ONE OR THE OTHER NOT APPLICABLE HERE, THE

SEXUAL BATTERY OR THE CHILD ABUSE DON'T WE HAVE ENOUGH EVIDENCE IN THIS CASE WITH A FORM OF PREMEDITATION? EVEN IN HIS OWN STATEMENT IT SEEMS AT SOME POINT HE FORMED THE INTENT TO KILL HER INDEPENDENT OF WHETHER OR NOT THERE WAS A CHILD ABUSE OR A SEXUAL BATTERY?

>> WELL, I GO BACK, THANK GOODNESS I GO BACK TO YATES VERSUS UNITED STATES FOR GENERAL VERDICT.

IF YOU HAVE A GENERAL VERDICT YOU CAN NOT -- YOU AS A COURT CAN NOT PARSE OUT THE ACTUAL BASIS UPON WHICH THEY DETERMINE THAT.

>> I THOUGHT YATES HAD TO DO WITH WHEN THE CRIME WAS LEGALLY INSUFFICIENT, NOT A QUESTION OF THE FACTUAL, AM I CORRECT, INCORRECT ON THAT?

>> I CAN'T RECALL, I'M SORRY. THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT MEREDITH CHARBULA, ASSISTANT ATTORNEY GENERAL FOR THE APPELLEE IN THIS CASE.

>> GO TO THE SEXUAL BATTERY. WHAT IS THE EVIDENCE THAT ALLOWS THIS TO GO TO THE JURY ON THE SEXUAL BATTERY?

>> OF COURSE CONSENT I WOULD SUBMIT TO YOU AND UNDER THE CASE LAW IS PRETTY WELL-ESTABLISHED IN THAT IS THAT, CONSENT SORT OF LIKE INTENT IS A MATTER UNIQUELY FOR THE FACT-FINDER AND I THINK THAT AS LONG AS THERE IS COMPETENT SUBSTANTIAL EVIDENCE THAT CONFLICTS WITH HIS

HYPOTHESIS OF INNOCENCE.

I DON'T WANT TO CONCEDE THIS AS
A CIRCUMSTANTIAL EVIDENCE CASE.

I THINK COURTS HAVE CONTINUED
TO STRUGGLE ON THE NOTION OF
WHETHER A CASE IS WHOLLY
CIRCUMSTANTIAL.

WHETHER THE SPECIAL BURDEN
APPLIES OR SIMPLY ONE ELEMENT
IS CIRCUMSTANTIAL THEREFORE WE
HAVE TO APPLY THE
CIRCUMSTANTIAL EVIDENCE TEST
WHICH I THINK THIS COURT
SHOULDN'T DO.

THE COURT HAS DONE IT BUT WHEN
YOU SAY A CASE IS WHOLLY
CIRCUMSTANTIAL THEN WE APPLY A
SPECIAL.

WE HAVE ADMITTED SEX.

WE HAVE THE DNA IN HER VAGINA.

SO, THIS IS NOT A WHOLLY
CIRCUMSTANTIAL EVIDENCE CASE.

BUT IN ANY EVENT WE HAVE
EVIDENCE FROM BILLY LAWTON WHO
LIVED WITH M.H. IN THE VALU LODGE
IN PANAMA CITY.

HE TESTIFIED SHE WAS RESERVED
AND SHY.

SCOTT HEINZE WHO SHE DID
BEFRIEND AND SHE MET HIM AND
SHE BEFRIENDED HIM.

THEY COOKED, HEINZE AND HIS
ROOMMATE, TATER COOKED OUT AND
INVITED THE KIDS, M.H. AND HER
PRETTY TO COOK OUT AND THINGS
LIKE THAT.

AND SHE WALKED HIS DOG FOR A
PART-TIME JOB.

SO, HE ALSO TESTIFIED THAT SHE
WAS QUITE RESERVED.

SHE WOULDN'T TALK TO ANYBODY AT
FIRST UNTIL HER BROTHER TALKED
TO HER, TALKED TO THEM, UNTIL
SHE GOT TO KNOW THEM.

ONCE SHE GOT TO KNOW THEM SHE WOULD, COME ON HER OWN BUT --

>> SHE WAS LIVING, THEY WERE LIVING IN A ONE-ROOM, WAS IT ONE ROOM?

>> YES.

>> WHO WAS IN THAT ROOM WITH HER?

>> M.H.'S MOTHER AND M.H.'S OLDER BROTHER, P.H.

>> HOW OLD WAS HE?

>> AT TIME OF TRIAL 16.

AT TIME OF THE MURDER PROBABLY 15. AND TWO ADULT MALES.

>> HOW OLD WERE THEY?

>> I DON'T KNOW.

>> WAS IT ESTABLISHED IN THE RECORD?

>> I DON'T RECALL IT BEING ESTABLISHED IN THE RECORD AGE OF EITHER ONE.

THEY WERE BOTH ADULTS AT LEAST IN THEIR 20s BECAUSE THEY WERE, ONE OF THEM WAS, M.H.'S MOTHER'S BOYFRIEND AND THEN A FRIEND WHO WAS STAYING WITH THEM.

>> THERE WAS NO TESTIMONY ABOUT HER RELATIONSHIP WITH THOSE TWO OLDER MEN?

>> NO. ONLY, ABSOLUTELY NOT. THE, SO, THAT IS WHO SHE WAS LIVING WITH AND --

>> WHAT WAS HER PRIOR CONTACT WITH THIS DEFENDANT?

BECAUSE AS I UNDERSTOOD IT, HE MAY HAVE ACCOMPANIED HER BROTHER ONCE WHEN HE CAME TO GIVE SOME KIND OF TAPE OR KNIFE OR SOMETHING.

>> RIGHT.

>> OTHER THAN THERE HAD BEEN NO CONTACT?

>> EXACTLY RIGHT.

CAYLOR TOLD THE POLICE AND THE

THING IS THE JURY REJECTED
CAYLOR'S CLAIM THAT THE SEX WAS
CONSENSUAL.
CAYLOR OR BILLY LAWTON, TOLD
THE POLICE AND TESTIFIED AT
TRIAL THAT CAYLOR ASKED TO
BORROW DUCT TAPE AROUND
NOONTIME THE DAY OF THE MURDER.
THEN A FEW HOURS LATER A STEAK
KNIFE TO EAT HIS DINNER.
AND THAT ON ONE OF THOSE
OCCASIONS HE THINKS M.H. WENT
WITH HIM.
BUT HE ALSO TESTIFIED THAT
CAYLOR WASN'T PAYING ATTENTION
TO HIM. HE BARELY OPENED THE DOOR.
THERE IS NO INTERACTION AS FAR
AS WE KNOW.
WE DO KNOW THAT HEINZE LIVED
TWO DOORS DOWN FROM CAYLOR AND,
M.H. WALKED THESE DOGS AS I SAY A
PART-TIME JOB.
WE HAVE THAT EVIDENCE OF
SHYNESS.
I THINK THAT IT IS REALLY
CRITICAL WHEN YOU LOOK AT THE
EVIDENCE OF SHYNESS AND JUSTICE
PARIENTE, YOU KNOW, ARE THE AGE
OF 13.
SO WE HAVE A RESERVED GIRL.
I WANT, I DO WANT TO MAKE A
POINT IN THE REPLY BRIEF
APPELLANT CLAIMS THAT THE
RECORD SUPPORTS THAT SHE WASN'T
SHY BECAUSE AMONG OTHER THINGS
SHE WAS SELLING MARIJUANA.
ABSOLUTELY NOT SUPPORTED BY THE
RECORD.
TWO CITES TO VOLUME 19.
NOTHING ABOUT SELLING MARIJUANA
AND THE OTHER CITE TO MATTHEW
CAYLOR'S STATEMENT IS IT ASKED
YOU KNEW HER NAME?
YOU HUH.

DID YOU KNOW HER BROTHER AND FAMILY?

YES. THEY CAME AROUND TO SELL MARIJUANA ALL THE TIME. EVEN IF YOU BELIEVED THAT IT WASN'T M.H.

HE NEVER ACCUSED M.H. OF SELLING MARIJUANA AND THAT IS ABSOLUTELY NOT SUPPORTED BY THE RECORD.

I'M SURE IT IS INADVERTENT BUT ABSOLUTELY NOT SUPPORTED BY THE RECORD.

BUT WHAT IS REALLY CRITICAL YOU LOOK AT HER SHYNESS VERSUS HIS TESTIMONY.

SHE SAYS SHE KNOCKS ON THE DOOR, HIS CLOSED DOOR, HIS CLOSED DOOR.

SO HE HAS TO GO OPEN IT.

ASKS FOR A CIGARETTE.

COMES SITS NEXT TO HIM AND SAYS, YOU'RE HOT.

PUTS HER ARM AROUND HIM.

AND ONE THING LEADS TO ANOTHER AND HE STARTS, TAKES OFF HER CLOTHES.

HE TAKES OFF HER CLOTHES.

THEY START HAVING SEX.

ABSOLUTELY INCONSISTENT WITH EVIDENCE FROM BILLY LAWTON AND SCOTT HEINZE, BOTH WHO KNEW HER.

THAT SHE DOESN'T JUST GO AND TALK TO STRANGERS.

SHE HAS TO GET TO KNOW THEM.

GOES FIRST WITH HER BROTHER, CH.

ONLY THEN DOES SHE GET TO KNOW SOMEONE WELL WILL SHE COME AND TALK.

EVEN THIS NOTION OF GOING TO SCOTT'S ROOM A LOT, SHE WALKED HER DOG, IF YOU LOOK AT HIS TESTIMONY, HE SAID MOSTLY SHE

CAME WITH HER BROTHER.
SOMETIMES SHE CAME BY HERSELF.
MOSTLY SHE CAME WITH HER
BROTHER.
SO WE HAVE A SHY GIRL,
TESTIMONY FROM PEOPLE WHO KNOW
HER.
IN CONTRAST TO CAYLOR'S
TESTIMONY THAT SHE KNOCKED ON
HIS CLOSED DOOR.
SHE CAME IN AND SAT DOWN.
SHE SAID SHE DIDN'T EVEN LIKE
SCOTT HEINZE AND HIS ROOMMATE
BUT, GOSH, YOU'RE HOT.
AND SHE'S THE SEXUAL AGGRESSOR.
ABSOLUTELY INCONSISTENT.
AND THAT EVIDENCE I WOULD
SUBMIT, YOU'VE GOT A
13-YEAR-OLD CHILD, ON HER
PERIOD, SHY AND RESERVED, IS
NOW SUDDENLY THE SEXUAL
AGGRESSOR THAT MATT CAYLOR
CAN'T RESIST.
SIMPLY INCONSISTENT THAT WAS
SUFFICIENT TO GO TO THE JURY.
>> YOU KNOW HE ARGUES THAT IS
ONE OF THE REASONS THAT, IN
ADDITION TO MR. ^CAYLOR'S
STATEMENT THAT IT WAS
CONSENSUAL, THAT THERE WAS NO,
YOU KNOW, RIPPING OF THE
CLOTHES OR ANY OF THAT KIND OF
ACTIVITY TO INDICATE HER
NONCONSENT.
>> 50 POUNDS. ALMOST
A FOOT TALLER. 50 POUNDS
HEAVIER, APPROXIMATELY.
HE IS A GROWN MAN.
SHE IS A 13-YEAR-OLD GIRL.
>> IS THIS MOTEL LIKE ONE OF
THESE MOTELS WHERE THE, YOU
OPEN THE DOOR AND IT'S THE
BREEZEWAY?
>> YES, THERE IS A BREEZEWAY

AND THERE IS, TATER'S AND
SCOTT'S ROOM FACED THE POOL AND
SO DID MATT CAYLOR'S.

>> WHAT IS THE STATE'S THEORY
ABOUT HOW SHE GOT INTO THE
ROOM?

IS IT THAT SHE'S WALKING AROUND
AND HE JUST GRABS HER AND
PULLED HER IN?

>> THERE IS NO EVIDENCE OF
THAT.

>> OR THAT SHE DID COME TO ASK
FOR A CIGARETTE?

WHAT IS THE STATE'S THEORY ON
THAT?

>> WELL, THE STATE'S THEORY IS
THAT SHE, GOT INTO THE ROOM
SOMEHOW.

WE DON'T KNOW HOW SHE GOT INTO
THE ROOM.

I DON'T THINK THE EVIDENCE,
ABSOLUTELY SUPPORTS, I MEAN
WE'VE GOT HIS TESTIMONY ABOUT
HOW SHE GOT IN THE ROOM.

I HAVE A THEORY HOW SHE GOT
INTO THE ROOM.

THAT IS I THINK A COMMON SENSE
THINKING IT OUT HOW IT MIGHT
HAVE HAPPENED.

SHE, WHEN SHE FINISHED WALKING
SCOTT'S DOG, SHE HEADED TO THE
RIGHT WHICH WAS WHERE CAYLOR'S
ROOM WAS.

SO I THINK IT'S FAIR PERHAPS
CAYLOR WAS, HIS DOOR WAS OPEN.
HE WAS OUT SMOKING A CIGARETTE.
THERE WAS SOME INTERACTION.

I DON'T BELIEVE THAT SHE
KNOCKED ON THAT DOOR.
IT JUST WAS ABSOLUTELY
INCONSISTENT.

I MEAN SHE HAD JUST COME FROM
SCOTT'S ROOM.

WHY WOULD SHE ASKA

CIGARETTE FROM MATTHEW CAYLOR
WHEN SHE HAD JUST COME FROM
SCOTT'S ROOM.

>> DID THE EVIDENCE INDICATE
SHE WAS IN FACT A SMOKER?

>> THERE WAS EVIDENCE SHE WOULD
BE SEEN OCCASIONALLY SMOKING A
CIGARETTE, ABSOLUTELY.
THAT WAS FROM BILLY LAWTON AS
WELL.

SO YES, THERE WAS EVIDENCE THAT
SHE SMOKED.

>> AUTOPSY SAID THERE WAS NICOTINE
IN HER BLOOD?

>> ABSOLUTELY THERE WAS
NICOTINE AND BUT THERE WAS NO
ALCOHOL OR DRUGS IN HER SYSTEM.

>> WHAT TIME OF DAY WAS THIS?

>> IT WAS 5:00 IN THE
AFTERNOON.

HE, SHE, FINISHED WALKING
SCOTT'S DOG ABOUT 5:00.

AND SOMETIME AFTER THAT
SHE, SHE WAS MISSING BECAUSE
HER BROTHER WENT TO LOOK FOR
HER AND BILLY LAWTON WENT TO
LOOK FOR HER,
PROBABLY SOMEWHERE AROUND 5:15
TO 5:30.

>> DID THEY NOT SEARCH FOR HER
IMMEDIATELY?

>> ABSOLUTELY THEY DID.
THEY DID A SEARCH FOR HER.
BILLY LAWTON AND HER BROTHER
WENT OUT DID A WHOLE SEARCH.
THEY CALLED THE POLICE ABOUT
7:00 WHEN THEY COULDN'T FIND
HER.

>> AND THE POLICE, THEY COME
IMMEDIATELY?

>> THEY CAME IMMEDIATELY.

>> AND ROOM WAS CLEANED TWO
DAYS IN A ROW WITHOUT
DISCOVERING THE BODY?

>> WHAT HAPPENED WAS, WHEN CAYLOR PUT HER BODY UNDER THE BED, AND HER CLOTHES UNDER HER AND BODY UNDER THE BED HE LEFT.

>> SAME DAY, OF THE MURDER?

>> HE LEFT, YES, MA'AM.

HE LEFT AND HE WAS ULTIMATELY ARRESTED ON ANOTHER CHARGE INVOLVING THE RUSSIAN WOMAN HE ALLEGED KILLED FOR COCAINE.

WHAT HAPPENED IS THE HOUSEKEEPING CREW CAME IN AND CLEANED THE ROOM.

BUT THE HOUSEKEEPING PERSON, HER BACK WAS THROWN OUT.

SHE IS SUPPOSED TO CHECK UNDER THE BED BUT SHE DIDN'T CHECK UNDER THE BED.

>> THAT'S WHAT THEY ALL SAY.

>> BEN WALLACE, A TRUCKER WHOSE TRUCK BROKE DOWN IN MISSISSIPPI, CHECKED INTO THE ROOM WITH HIS GIRLFRIEND ABOUT MIDNIGHT. SLEPT ON THE BED ALL NIGHT.

>> I'M JUST SAYING --

>> AND THEN HOUSEKEEPING CREW CAME IN NEXT DAY AND DISCOVERED THE BODY.

THERE WAS A THOROUGH CLEANING WITHOUT DISCOVERING THE BODY ONCE, YES.

AND SECOND TIME THEY DISCOVERED THE BODY. THAT WAS ON THE 10th.

SO, HE, AS I SAY HE WAS UNDER ARREST AND --

>> BUT THEY DIDN'T SUSPECT, DID THEY SUSPECT HIM AS THE PERPETRATOR?

>> OH ABSOLUTELY.

>> WAS THERE EVIDENCE ABOUT THAT.

>> ABSOLUTELY.

>> AND THE POLICE DIDN'T SEARCH THE ROOM AFTER --

>> I'M SORRY, NOT IMMEDIATELY.
THERE HAD BEEN, NO ONE SAW HER
GO INTO THE CAYLOR'S ROOM.
CAYLOR WAS ASKED BY, I THINK
M.H.'S MOM OR BROTHER, I CAN'T
RECALL WHICH.
HE WAS ASKED SPECIFICALLY, THEY
CALLED AND WERE TRYING TO FIND
HER, DESPERATELY TRYING
TO FIND HER.
OH, THAT'S TOO BAD SHE'S
MISSING.
MEANTIME SHE IS UNDER HIS BED,
HAVING MURDERED HER.
>> SOMEONE ASKED HIM IF HE HAD
SEEN HER AND HIS ANSWER WAS NO?
>> ABSOLUTELY.
THERE WAS TESTIMONY IN THE
RECORD THAT EVENING, I THINK
ACTUALLY CAYLOR CALLED THE
ROOM.
I BELIEVE THE TESTIMONY FROM
MAYBE I THINK FROM BILLY LAWTON
TESTIFIED THAT CAYLOR IN THAT
EVENING CALLED THEIR ROOM AND
DURING THAT CONVERSATION, HE
ASKED CAYLOR, HAVE YOU SEEN
HER? AND HE SAID NO.
AND, ISN'T IT A SHAME SHE IS
MISSING.
THAT'S HOW THAT HAPPENED.
IF I CAN GO AND TALK ABOUT THE
BROOKS ISSUE.
NUMBER ONE, WE DON'T HAVE A
BROOKS ISSUE BECAUSE WE HAVE
MULTIPLE ACTS OF CHILD ABUSE.
WE HAVE IN THE INFORMATION
ITSELF IN VOLUME ONE OF THE
RECORD, YOU CAN READ THE
INDICTMENT AND IT ALLEGES
SEXUAL INTERCOURSE, MANUAL
STRANGULATION AND LIGATURE
STRANGULATION ALL SEPARATELY.
DR. ^HUNTER, THE MEDICAL

EXAMINER, TESTIFIED THAT THE LIGATURE STRANGULATION OCCURRED IN DIFFERENT PLACES.

IN OTHER WORDS, CAYLOR TOLD THE POLICE THAT HE HAD WRAPPED IT AROUND HER THROAT AND HELD IT UNTIL SHE WAS DEAD.

THAT HE IS NOT TRUE.

NOT SUPPORTED BY THE MEDICAL EXAMINER'S TESTIMONY.

YOU CAN EVEN SEE IF YOU SEE THE PHOTOS.

IT WAS APPLIED AT DIFFERENT TIMES AT DIFFERENT ANGLES.

SO HE APPLIED THAT LIGATURE.

WHEN IT DOESN'T WORK, HE APPLIES IT AND KILLS HER THAT WAY.

JUSTICE QUINCE, YOU TALKED ABOUT PREMEDITATION.

AFTER HE MANUALLY STRANGLED HER, I THINK GOING BACK JUST FOR A MOMENT TO WHETHER THE SEX ACT HAD BEEN COMPLETE.

HE TOLD THE POLICE HE WAS STILL STRADDLING HER IN THE MISSIONARY POSITION AND HER LEGS WAS STILL SPREAD.

WHEN HE WAS ASKED ABOUT IT, HE SAID, HE PULLED OUT OF HER ACCORDING TO HIM AND THERE IS NO, ACTUALLY NO EVIDENCE OF THAT THAT IS THE CASE BUT HE PULLED OUT OF HER AND THEN THAT IS WHEN HE BEGAN TO CHOKE HER BUT HE WAS STILL STRADDLING HER IN THE MISSIONARY POSITION AND HER LEGS WERE STILL SPREAD.

BUT AFTER HE ATTEMPTS, AFTER HE MANUALLY STRANGLES HER AND ISN'T ABLE TO FINISH HER OFF, HE GETS UP OFF THE FLOOR, GOES ACROSS THE ROOM.

NOW ADMITTEDLY NOT A BIG ROOM

BUT HE TELLS THE POLICE HER BODY IS BY THE REFRIGERATOR AND THE PHONE CORD IS ON THE OTHER SIDE OF BED.

HE GETS UP AND GOES AND UNPLUGS THE PHONE CORD FROM THE WALL. HE UNPLUGS THE PHONE CORD FROM THE PHONE.

HE BRINGS IT AND APPLIES THE LIGATURE SEVERAL, NUMEROUS TIMES.

SO ABSOLUTELY THERE'S ABSOLUTE EVIDENCE OF PREMEDITATION. AND IN ANY EVENT, YOU KNOW, WE REALLY DON'T HAVE A GENERAL VERDICT.

JUSTICE PARIENTE, YOU GOT THE SEPARATE FINDING OF SEXUAL BATTERY FOR, EVEN IF THERE'S A BROOKS ISSUE, WHICH THERE'S NOT BECAUSE THERE'S MULTIPLE ACTS. CASE YOU CITED IN BROOKS, IN LUKEHART YOU DISTINGUISHED THAT FROM BROOKS.

IN BROOKS YOU DID THAT. IN LUKEHART THERE IS LIKE FIVE I THINK BLOWS TO THE HEAD AT THAT CAUSED DEATH AND THERE WAS NO ISSUE ON THAT.

OF COURSE, I WOULD LOVE FOR YOU TO RECONSIDER BROOKS BECAUSE OF COURSE IT'S ,AGGRAVATED CHILD ABUSE IS AN ENUMERATED UNDER FELONY MURDER.

AND IF YOU LOOK AT THE HISTORY OF THE MERGER DOCTRINE, YOU KNOW THE MERGER DOCTRINE STEMMED FROM COMMON LAW AND IF YOU LOOK AT THE STATES THAT ARE APPLYING IT, FOR INSTANCE I THINK IN APPELLANT'S BRIEF, CITED THE DORSEY CASE OUT OF TENNESSEE. A REAL GOOD DISCUSSION OF MERGER DOCTRINE

CAME FROM COMMON LAW TO NARROW LIST OF FELONIES AND THAT IS APPLIED IN STATES WHERE THERE IS NO, NO ENUMERATED FELONY OR IF THERE ARE ENUMERATED FELONIES THERE ARE, THE CATCH-ALL SUCH AS ROBBERY, BURGLARY, SEXUAL BATTERY AND OTHER FORCIBLE FELONY.

YOU HAVE THOSE STATES APPLYING THE MERGER DOCTRINE IN THOSE CASES WHERE THERE IS NO ENUMERATED FELONIES OR IF THERE IS ENUMERATED FELONIES THERE ARE CATCH-ALLS WHICH THEN THE COURT, IF THEY'RE CHARGED UNDER THE CATCH-ALL AS OPPOSED TO ENUMERATED FELONY THE COURT HAS TO LOOK AND SEE WHETHER THOSE CASES MERGED.

SO I THINK THAT, YOU KNOW, IT'S, OF COURSE, YATES LOOKS AT THE REALLY KEY PART OF YATES GOING BACK TO WHAT YOU SAID IS, IT'S GOT TO BE IMPOSSIBLE TO TELL THAT THE JURY FOUND THE DEFENDANT GUILTY UNDER A LEGALLY ADEQUATE THEORY AND HERE OF COURSE WE KNOW, FOUND HIM GUILTY OF SEXUAL BATTERY AS WELL AS AGGRAVATED CHILD ABUSE, SO WE DO KNOW.

>> SEE YOU MENTIONED IN THE INFORMATION THEY CHARGED AS THE ACT FOR THE AGGRAVATED CHILD ABUSE, BOTH THE ACTS, MULTIPLE ACTS OF STRANGULATION AS WELL AS THE SEXUAL BATTERY.

>> YES, MA'AM.

>> WAS THAT ARGUED TO THE JURY THAT WAY TOO?

>> IT WAS.

>> OR DID THEY LIMIT IT TO THE STRANGULATION?

>> IT WAS ARGUED EVERY WAY.
THE, NOW THE JURY WAS INSTRUCTED
AS FAR AS AGGRAVATED CHILD
ABUSE, WAS INSTRUCTED ON THE
WILLFULLY TORTURE AND WILLFULLY
AND INTENTIONALLY INFLICT
CHILD ABUSE WHERE GREAT BODILY
HARM IS AND THEY DID NOT
ARGUE NOR DID THE JUDGE
INSTRUCT ON AGGRAVATED BATTERY
AS A THEORY OF AGGRAVATED CHILD
ABUSE BUT IF YOU LOOK AT THE
INDICTMENT, AND THAT'S ON PAGE
3 OF THE RECORD, THEY CHARGED
AGGRAVATED CHILD ABUSE,
PENETRATED, PENETRATION AND IN
THE PROCESS THEREOF DID THROUGH
THE REPEATED APPLICATION OF
MANUAL AND LIGATURE
STRANGULATION CAUSED THE DEATH
OF.
SO WE HAVE THAT CHARGE, YOU
KNOW, SEVERAL ACTS.
BUT SEPARATING OUT THE MANUAL
LIGATURE STRANGULATION, AND
THAT OF COURSE IS SUPPORTED BY
THE MEDICAL EXAMINER WHEN HE
TESTIFIED THAT THE LIGATURE
STRANGULATION, COULDN'T
TELL FROM THE MANUAL
STRANGULATION, THERE WAS SO
MUCH INJURY BUT WHAT HE COULD
TELL FROM THE LIGATURE IT HAD
BEEN APPLIED AND REAPPLIED FROM
SEVERAL DIFFERENT ANGLES SO HE
WAS ABLE TO DETERMINE -- THERE
WERE, EVEN IF WE ONLY CHARGED
LIGATURE, THERE WERE MULTIPLE
ACTS OF LIGATURE STRANGULATION.
SO I THINK THAT, IF THE FACT IS
THAT WE DON'T HAVE LEGAL
INADEQUACY FOR AGGRAVATED CHILD
ABUSE BECAUSE EVEN IF BROOKS
SHOULD STAND, YOU KNOW, JUSTICE

LEWIS SAID IT WAS ENUMERATED FELONY.

BUT EVEN IF BROOKS SHOULD STAND, WE'VE HAD MULTIPLE ACTS OUTSIDE OF BROOKS IN AYE ANY EVENT BUT CERTAINLY THIS COURT MAY AND I RESPECTFULLY SUGGEST SHOULD REVISIT BROOKS BECAUSE I THINK AS YOU ACCURATELY POINTED OUT, AGGRAVATED BATTERY IS NOT AN ENUMERATED OFFENSE, TRACING BACK TO MILLS AND AGGRAVATED CHILD ABUSE IS AND THAT'S WHAT WE HAVE TO LOOK AT.

WHEN AN ISSUE IS LEGISLATIVE INTENT AND STATUTORY CONSTRUCTION YOU FIRST LOOK TO THE LEGISLATURE AND WHEN THE LEGISLATURE SAYS AGGRAVATED BATTERY, JUSTICE LEWIS, YOU KNOW, YOU SAID, IN BROOKS'S DISSENT THERE IS NOTHING IN THE LEGISLATIVE INTENT THAT SAYS IT HAS GOT TO BE MORE THAN ONE ACT.

AND THAT'S, SO EVEN IF WE HAD ONE ACT WHICH OF COURSE WE DON'T, IT'S CLEAR IN THE LEGISLATIVE INTENT THAT AGGRAVATED CHILD ABUSE.

OF COURSE WE SEE WHY.

YOU KNOW, THE LEGISLATURE HAS DEEMED FIT TO PROTECT CERTAIN VULNERABLE INDIVIDUALS AND ALSO, ENACTING THE FELONY MURDER STATUTE, AND I SEE ACTUALLY NOWHERE IF THE STATUTE THAT SAYS WE PREFER YOU TO CHARGE PREMEDITATED MURDER AND THIS IS JUST SORT OF A REDHEADED STEPCHILD.

THE STATUTE SETS OUT CLEARLY YOU CAN COMMIT MURDER IN TWO WAYS WHICH IS PREMEDITATION OR

FELONY MURDER.

AND HAS SET, HAS IDENTIFIED
CRIMES THAT ARE SO INHERENTLY
DANGEROUS TO HUMAN LIFE THAT,
THAT TO DETER PEOPLE FROM
ENGAGING IN SUCH THINGS THAT
ARE SO INHERENTLY DANGEROUS TO
HUMAN LIFE, THEN, IT'S FELONY
MURDER AND YOU KNOW, CHILD
ABUSE, ELDERLY VICTIM, THOSE
SORTS OF VULNERABLE
INDIVIDUALS.

SO THE LEGISLATURE HAS CHOSEN
TO MAKE THAT AN ENUMERATED
FELONY.

SO I THINK THIS IS A GOOD CASE
TO DO THAT.

>> WHAT IS THE, I DON'T KNOW IF
THIS GOES TO ANY SPECIFIC ISSUE
BUT IT'S ADDRESSED OR IS IT
REMORSE, PSI WAS FIELD --, WAS
THE PSI USED IN ANY WAY IN THIS
CASE?

>> YES, MA'AM.

THE JUDGE USED THE PSI, SHE
MENTIONED THE PSI IN HER
SENTENCING ORDER.

AND THE PSI IN IS IN YOUR
RECORD.

I THINK IF YOU LOOK AT THE PSI
YOU WILL SEE WHY THE COURT PUT
LITTLE WEIGHT ON THE REMORSE.
LONG BEFORE HE KNEW THAT
REMORSE WAS A MITIGATOR, HE
TALKED ABOUT HOW IT WAS HER
FAULT.

THAT HE WAS IN THE SITUATION.
AND IF, THOUGH HE DID EXPRESS
REMORSE AT THE SPENCER HEARING,
YOU LOOK AT THE PSI, THEN
MATTHEW CAYLOR TOLD THE
PROBATION OFFICER PREPARING THE
PSI, YOU KNOW, TALKING ABOUT
THE DEATH OF THIS CHILD, HOW DO

YOU TELL A MOTHER IT IS BECAUSE
HOW SHE WAS RAISED?
THAT'S WHAT HE SAID.
AND THAT IS IN THE PSI.
THE TRIAL JUDGE HAD THAT WHEN
SHE CONSIDERED WHETHER HE WAS
TRULY REMORSEFUL AND SHE
CONSIDERED REMORSE.
SHE TOOK YOUR ADMONITION TO HER
IN THE ORM CASE WHERE SHE HAD
TO CONSIDER REMORSE.
SHE DID CONSIDER REMORSE.
BUT DISCRETION OF THE TRIAL
JUDGE THE WEIGHT SHE PUTS ON
MITIGATORS.
SHE SEPARATELY CONSIDERED HIS
ISSUES OF MENTAL HEALTH AND SHE
FOUND THE EXTREME EMOTIONAL
DISTURBANCE BASED ON HIS PAST
AND SO BUT IT IS UP TO HER TO
PUT ON THE WEIGHT.
LIKE THIS IS ONE OF THE BEST
CASES I THINK OR ONE OF THE
MOST CASES YOU CAN SEE HOW
CLEARLY PUTTING LITTLE WEIGHT
ON REMORSE BECAUSE OF WHAT HE
SAID.
TO THE POLICE, POLICEMAN ASKED,
YOU KNOW, DO YOU HAVE REMORSE?
ARE YOU REMORSEFUL?
YEAH I'M GOING TO BE LOCKED IN
THE REST OF MY LIFE FOR THIS.
THAT IS HIS EXPRESSION OF
REMORSE.
SAME THING IN THE PSI.
I THINK THE TRIAL COURT WAS
WELL WITHIN HER DISCRETION TO
GIVE LITTLE WEIGHT TO THAT
ESPECIALLY SINCE HE WAS SO
INCONSISTENT.
WHEN HE THOUGHT WE WEREN'T
LOOKING THAT IS WHEN HE REALLY
EXPRESSED HOW HE FELT ABOUT
THIS CASE WHICH WAS, YOU KNOW,

IT IS HER FAULT, NOT MINE.
SO, WITH THAT I WOULD ASK THIS
COURT TO AFFIRM CAYLOR'S
CONVICTIONS FOR FIRST-DEGREE
MURDER, SEXUAL BATTERY,
AGGRAVATED CHILD ABUSE AND
AFFIRM THE DEATH SENTENCE.
THANK YOU.

>> COUPLE OF POINTS.

THIS IS NOT A CASE WHERE HE
DRAGS HER INTO HIS ROOM OR
EVIDENCE, THERE IS NO EVIDENCE
OF THAT.

SHE KNOCKS ON HIS DOOR.

SHE HAD TO COME SEE HIM.

AND WHY ELSE -- SHE OSTENSIBLY
WANTS A CIGARETTE.

THIS GOES BACK TO THE LACK OF
EVIDENCE OF CONSENT. CAYLOR IS
NOT GOING OUT BY THE SWIMMING
POOL AND PULLING HER IN FROM
THE SWIMMING POOL.

THERE IS EVIDENCE OF THAT.

EVIDENCE IS SHE CAME INTO HIS
ROOM AND THEY GOT SEXUALLY
EXCITED AND HAD SEX.

THAT SHOWS SHE CONSENTED TO
WHATEVER HAPPENED AS FAR AS
SEXUAL INTERCOURSE IS.

FOR THAT REASON I URGE THE
COURSE TO REVERSE THE TRIAL
COURT'S ORDER AND AT TRIAL.

THANK YOU.

>> THE COURT WILL NOW TAKE A
10-MINUTE RECESS.

>> PLEASE RISE.

COURT IS IN RECESS FOR 10
MINUTES.