

>> ALL RISE.  
SUPREME COURT OF THAT IS NOW IN  
SESSION.  
PLEASE BE SEATED.  
>> OKAY.  
THE NEXT CASE ON THE TODAY'S  
DOCKET IS PHILLIPS VERSUS STATE.  
MR. McCLAIN.  
>> MAY IT PLEASE THE COURT.  
COUNSEL, FOR THE RECORD MY NAME  
IS MARTIN McCLAIN.  
I'M HERE TODAY ON BEHALF OF  
TERRANCE PHILLIPS.  
THIS IS HIS DIRECT APPEAL OF HIS  
JUDGMENT AND SENTENCE.  
I INTEND TO ARGUMENT, ONE, FIVE  
AND SIX OF THE BRIEFING.  
I WANT TO MAKE ONE COMMENT WITH  
ARGUMENT FOUR, BRADY GIGLIO.  
ON MONDAY, TWO DAYS AGO, THE  
U.S. SUPREME COURT HANDED DOWN  
DECISION WITH QUERY AND  
McCAIN.  
WEARRY.  
IN WHICH, THEY REVERSED THE  
LOUISIANA SUPREME COURT ON BRADY  
CLAIM, ORDERED A NEW TRIAL.  
I BELIEVE IT SUPPORTS, PROVIDES  
ADDITIONAL SUPPORT FOR ARGUMENT  
FOUR.  
>> I WOULD LIKE YOU TO FOCUS IN  
ON THE QUESTION OF  
PROPORTIONALITY IF YOU WOULD,  
PLEASE.  
>> YES, YOUR HONOR.  
ARGUMENT ONE IS THE  
PROPORTIONALITY, EXCUSE ME.  
CONCERN FOR PROPORTIONALITY OF  
THE DEATH SENTENCE IN THIS CASE.  
AND, FIRST, I MEAN I THINK IT'S  
IMPORTANT TO NOTE AT THE OUTSET  
THAT THE U.S. SUPREME COURT IN A  
SERIES OF CASES IN THE PAST 16  
YEARS HAVE TALKED ABOUT THE  
IMPORTANCE OF THE DEATH PENALTY  
BEING LIMITED TO THE WORST OF  
THE WORST.  
THAT A REGULAR HOMICIDE IS NOT A  
DEATH CASE.  
THAT THERE HAS TO BE SOMETHING

PARTICULARLY AGGRAVATING.  
I THINK THAT'S IMPORTANT IN  
TERMS OF THE APPROACH TO THE  
PROPORTIONALITY REVIEW WHICH IS  
ALSO STATUTORILY REQUIRED AND  
ALSO IN PROFFITT V. FLORIDA,  
SOMETHING THE U.S. SUPREME COURT  
WAS AWARE THEY WERE DOING THAT,  
ONE OF THE REASONS THEY APPROVED  
THE FLORIDA STATUTE BECAUSE THE  
PROPORTIONALITY REVIEW THAT  
WOULD BE CONDUCTED BY THIS  
COURT.

IN CASE I JUST SUBMIT THIS,  
THIS IS NOT A DEATH CASE THIS IS  
A CASE WHERE THERE-- THERE ARE  
FOUR CODEFENDANTS.

ANDERS AND BING ARE FEMALE.  
BAKER AND PHILLIPS ARE MALE.  
THE OLDEST IS BAKER.  
HE IS 20 AT THE TIME OF THE  
CRIME.

THE CRIME HAPPENS CHRISTMAS EVE  
OF 2009.

BAKER'S THE OLDEST.

PHILLIPS IS NEXT.

PHILLIPS' BIRTHDAY WAS IN JULY  
OF 2009.

SO HE TURNED 18 IN JULY OF 2009.

THIS HAPPENS FIVE MONTHS LATER.

SO HE IS 18 YEARS AND FIVE  
MONTHS.

ANDERS IS NEXT.

HER BIRTHDAY WAS IN NOVEMBER OF  
2009.

SO SHE WAS 18 AND A MONTH I  
BELIEVE.

AND THEN YOUNGEST WAS BING.

BING WAS 17.

>> HOW OLD WAS BING?

>> BING WAS 17.

THE EVENTS, I'M TOLD, OVER THE  
COURSE OF AN AFTERNOON AND THE  
VICTIMS IN THE CASE, SELGADO WAS  
TESTIFYING VICTIM IN THE CASE.  
MATEO HERNANDEZ-PEREZ AND  
REYNALDO ANTUNES-PADILLA WERE  
THE TWO DECEDENTS.

THAT AFTERNOON, IT HAPPENS IN  
JACKSONVILLE.

THE GIRLS, BING AND ANDERS, A THIRD ONE BY THE NAME OF DWIGHT WENT INTO A CONVENIENCE STORE TO GET CHANGE FOR A FIVE DOLLAR BILL FOR BUS FARE AND THEY RUN INTO SALGADO AND HERNANDEZ-PEREZ AND ANTUNES-PADILLA WAS NOT THERE.

ANOTHER INDIVIDUAL WAS THERE AND SO THERE IS THREE HISPANIC MALES IN THE COURSE OF THIS TRIAL THEY'RE CALLED MEXICANS.

I KNOW ONE OF THEM IS FROM HONDURAS.

I DON'T THINK THAT IS ACCURATE. I WILL JUST REFER TO THEM AS HISPANIC.

OF THE THREE HISPANIC MEN MET THE THREE GIRLS.

THE FIVE DOLLAR BILL IS CHANGED AND SOMEHOW THE TESTIMONY IS A BIT VAGUE, DWIGHT ENDS UP GIVING OF THE MALES PHONE NUMBER FOR ANDERS.

THE GIRLS THEN LEAVE, TAKE THE BUS I GUESS AND GO TO ANOTHER LOCATION AND, WHILE THEY'RE THERE ACCORDING TO BING A NEFARIOUS MOON IS DEVELOPED BETWEEN HER AND DWIGHT.

DWIGHT THEN, ALTHOUGH THERE IS DISPUTE ACTUALLY WHETHER ANDERS CALLS OR DWIGHT CALLS, ANDERS OR DWIGHT, ONE OF THEM CALLS BAKER. BAKER IS ANDERS'S BOYFRIEND. PHILLIPS IS BAKER'S COUSIN AND CALL TO HAVE THEM COME PICK THEM UP.

BAKER AND PHILLIPS ARRIVE IN ONE CAR.

PHILLIPS'S BROTHER ARRIVES IN ANOTHER CAR.

DWIGHT THEN GETS INTO THE PHILLIPS'S BROTHERS CAR AND IS OUT OF THE PICTURE.

IN THE CAR WITH BREAK BAKER AND PHILLIPS ARE ANDERS AND BING AND THEY THEN, AGAIN, THE TESTIMONY VARIES FROM THE, BETWEEN ANDERS AND BING TALK ABOUT GOING TO THE

HISPANIC MALE'S APARTMENT WITH THE GIRLS.

>> I WANT TO STOP YOU ABOUT THIS NARRATIVE.

OF THE JUDGE LABARGA TALKED ABOUT PROPORTIONALITY.

ARE YOU GOING TO HE IS NOT MOST CULPABLE OF THE DEFENDANTS?

SO WE KNOW IN THIS NARRATIVE, YOU KNOW THE FACTS SO PRECISELY AND IT ALWAYS-- WHERE ARE YOU, WHERE IS THIS--

>> IN PART, IT IS THE MORAL CULPABILITY OF MR. PHILLIPS VIS-A-VIS THE OTHER CODEFENDANTS AND IN PART IT IS THE AGE AND IN PART WHAT HAPPENS IS A ROBBERY GONE AWRY.

THERE IS A FIGHT AND MELEE THAT BREAKS OUT.

SO SORT OF ALL THOSE THINGS COMBINED.

>> SO YOUR THING IT WASN'T HIS IDEA, EVEN THOUGH SET ONE THAT DOES DO THE SHOOTING?

>> IT IS NOT EVEN CLEAR HE DOES THE SHOOTING.

TO CLARIFY THE TESTIMONY IN THAT REGARD--

>> THERE IS CERTAINLY EVIDENCE TO SUPPORT THE CONCLUSION HE DID THE SHOOTING?

>> THE EVIDENCE IS--

>> I UNDERSTAND THERE COULD BE A DIFFERENCE OF OPINION ABOUT THAT AND WHO YOU CREDIT AND ALL THAT.

>> NO ONE SAW THE SHOOTING.

>> I UNDERSTAND THAT.

>> THE EVIDENCE IS FROM ANDERS THAT SHE SAW THE GUN IN PHILLIP'S HAND BEFORE THE SHOOTING AND BEFORE SHE LEFT THE APARTMENT.

OF COURSE SHE HAS A MOTIVE.

SHE IS IN LOVE WITH BAKER.

SHE ORIGINALLY GAVE A STATEMENT IT WAS BAKER WITH THE GUN.

SALGADO IS NOT ABLE TO IDENTIFY PHILLIPS.

BUT, THE DESCRIPTION THAT HE

GIVES OF THE INDIVIDUAL WITH THE HOODIE ARGUABLY MATCHES THE DESCRIPTION ANDERS GAVE AS TO PHILLIPS.

>> WHO TESTIFIED AS TO PHILLIPS SUPPOSEDLY PUTTING THE GUN ON THE VICTIM'S HEAD AND THE VICTIM, PRETTY MUCH SLAPPING THE HAND AWAY AND THAT STARTED THE WHOLE THING?

>> SALGADO, IN HIS TESTIMONY, INDICATES THAT THE GUN WAS POINTED AT THE VICTIM'S HEAD HERNANDEZ-PEREZ'S HEAD.

>> SO THAT, ONCE THE HAND WAS SLAPPED AWAY, AND TESTIMONY I READ, THE OTHER FOLK THERE IN THE APARTMENT PRETTY MUCH JUMPED ON PHILLIPS AND THAT STARTED THE FIGHT?

>> YES.

>> THAT YOU DESCRIBED EARLIER.

>> THE TWO PEOPLE.

FIRST BING LEAVES THE APARTMENT AS SOON AS THE MALES ENTER. SO SHE DOESN'T ACTUALLY SEE WHAT THEN TRANSPIRES.

WE HAVE TWO VERSIONS INSIDE THE APARTMENT.

ONE IS ANDERS AND ONE IS SALGADO.

TWO OF THE HISPANIC MALES JUMPS ON PHILLIPS OR THE PERSON WITH THE HOODIE, DEPENDING WHICH WAY YOU GO AND A FIGHT ENSUES.

>> HERE IS THE THING, I KNOW YOU'RE NOT REARGUING, I DON'T THINK YOU'RE REARGUING SUFFICIENCY OF THE EVIDENCE BUT THERE WAS A SPECIAL VERDICT FORM THAT THE JURY FOUND THAT THE KILLING WAS PREMEDITATED, NOT JUST THAT IT WAS FELONY MURDER. THEY ALSO FOUND THE DEFENDANT DISCHARGE AD FIREARM CAUSING THE DEATH OF THE PERSON.

THIS IDEA IT MIGHT NOT HAVE BEEN HIM, IT WAS ROBBERY GONE BAD, WHAT'S THE IMPACT OF THE JURY FINDINGS THAT IT IS PREMEDITATED

AND THAT HE IS ONE THAT  
DISCHARGED THE FIREARM?  
>> ARGUMENT THREE OF THE BRIEF  
THERE IS NO EVIDENCE OF  
PREMEDITATION.  
THERE IS NO EVIDENCE OF  
PREMEDITATION.  
>> LET'S STICK ON  
PROPORTIONALITY.  
>> YES.  
>> HE IS 18 YEARS OF AGE AND  
FIVE MONTHS.  
WHY IS WITH-- HOW MANY  
INDIVIDUALS WERE KILLED?  
>> THERE ARE TWO DECEDENTS.  
>> SO HE KILLS TWO PEOPLE.  
>> UH-HUH.  
>> AND WHY, WHAT IS SO, YOU  
KNOW, WHAT'S SO COMPELLING ABOUT  
THE MITIGATION THAT WOULD NOT  
MAKE THIS PROPORTIONATE  
SENTENCE?  
>> WELL, FIRST OF ALL THE  
SHOOTING HAPPENS IN THE COURSE  
OF A FIGHT AND, EVERYBODY  
AGREES, I MEAN THE TWO WITNESSES  
AGREE THAT PHILLIPS WAS BEING,  
WAS FIGHTING WITH TWO, THE TWO  
MALES, THE TWO DECEDENTS AND  
THAT ANDERS IN FACT, AND  
ACTUALLY SALGADO HAD JOINED  
THERE WERE THREE AT ONE POINT IN  
TIME AND ANDERS TESTIFIED SHE  
TOOK A PEER BOTTLE AND HIT--  
BEER BOTTLE AND HIT ONE OF THE  
MEN OVER THE HEAD WITH THE BEER  
BOTTLE.  
SALGADO TESTIFIES HE WAS HIT  
OVER THE HEAD WITH THE BEER  
BOTTLE.  
HE WAS SEEING STARS.  
BAKER WHO HAD JUST BEEN STANDING  
THERE, HAD NOT BEEN A PART OF  
THE FIGHT STARTS ATTACKING  
SALGADO.  
>> THIS ISN'T SOMETHING WHERE  
THEY GO IN WITH THE INTENT TO  
KILL ALL THESE PEOPLE.  
SO WE UNDERSTAND THAT.  
YOUR PROPORTIONALITY ARGUMENT,

EXPLAIN THE MITIGATION AND TELL US, I THINK YOUR BEST CASE IS COOPER AS FAR AS A YOUNG DEFENDANT AND HOW DOES THIS COMPARE FAVORABLY WITH COOPER IN TERMS OF REDUCING THIS TO LIFE?

>> WELL I THINK--

>> UNLESS YOU HAVE A BETTER CASE.

>> PART OF IT LOOK AT AGGRAVATING CIRCUMSTANCES AS WELL.

THE COURT INDICATED IN SCOTT v. STATE ONE OF THE AGGRAVATING CIRCUMSTANCES ON BOTH HOMICIDES WAS THE OTHER HOMICIDE, CONTEMPORANEOUS CONVICTION.

THIS COURT INDICATED IN SCOTT v. STATE, A PRIOR CRIME OF VIOLENCE WHEN IT IS PART OF THE SAME CASE AND IT'S NOT SEPARATE, NOT SOME PRIOR INCIDENT, IS TEMPERED, IT IS LESSENERED AND NOT AS SIGNIFICANT AS IF HE COMMIT AD MURDER THE YEAR BEFORE.

THE FACT IT HAPPENS IN THE SAME INCIDENT, LESS INS IT, THAT IS SCOTT v. STATE.

SECOND THE OTHER AGGRAVATING CIRCUMSTANCE WAS FOUND HE WAS ON PROBATION AT THE TIME.

HE WAS ON PROBATION FOR POSSESSING ECSTASY, A PARTY DRUG.

HE HAD BEEN PLACED ON PROBATION TWO MONTHS BEFORE THIS HAPPENED. OBVIOUSLY HE WAS DOING DRUGS.

THAT IS WHY HE WAS PUT ON PROBATION.

THAT IS NOT REALLY A VERY SIGNIFICANT AGGRAVATOR.

THE THIRD AGGRAVATOR--

>> WHAT DID THE JUDGE GIVE THAT AGGRAVATOR?

>> HE GAVE THEM ALL, I BELIEVE HE SAID SUBSTANTIAL WEIGHT.

>> FOR THE FELONY, RIGHT.

THIS FELONY PROBATION WOULD BE

RIGHT A MINIMAL AGGRAVATOR.  
>> THEN THE--  
>> I THINK.  
>> THIRD AGGRAVATOR WAS IN THE  
COURSE OF A ROBBERY.  
SO THAT'S IT.  
THERE IS NO HAC.  
THERE IS NO CCP.  
NONE OF THE OTHER AGGRAVATORS.  
NONE OF THE AGGRAVATORS THIS  
COURT HAS DESCRIBED AS  
PARTICULARLY WEIGHTY.  
>> YOU DON'T THINK AS WHEN YOU  
KILL MORE THAN ONE PERSON, WHAT  
IF FIVE PEOPLE HAD BEEN KILLED  
IN THIS MELEE?  
AT SOME POINT IT DOESN'T FACTOR  
IN THAT YOU KILL MORE THAN ONE  
PERSON?  
>> IT, AGAIN, IT'S ABOUT THE  
MORAL CULPABILITY OF THE ACTOR  
IN THE COURSE OF DOING IT.  
HERE WE'RE TALKING ABOUT AN  
INDIVIDUAL WHO IS 18 YEARS AND  
FIVE MONTHS.  
HE DIDN'T PLAN IT.  
HE IS NOT THE ONE THAT CAME UP  
WITH THE PLAN.  
THE GIRLS DID.  
ANDERS IS THE ONE EVERYBODY--  
WELL, BING--  
>> THERE WAS IN FACT AN  
AGREEMENT THEY WERE GOING TO DO  
THIS ROBBERY, CORRECT?  
>> THE TESTIMONY--  
>> THAT'S WHAT THE PLAN WAS  
ABOUT, RIGHT?  
>> TESTIMONY IS CONFUSING IN  
TERMS OF WHAT PHILLIPS'  
PARTICIPATE IN THE PLANNING WAS.  
ANDERS CAME UP WITH THE PLAN AND  
SO, JUST ACCEPTING THERE IS A  
PLAN THAT PHILLIPS--  
>> THEY WERE ALL IN THIS CAR  
TOGETHER?  
>> THEY WERE IN THIS CAR  
TOGETHER.  
>> OKAY.  
>> BING'S TESTIMONY THERE WAS A  
DISCUSSION BUT SHE TUNED OUT BUT

DOESN'T KNOW WHAT WAS SAID BY ANYBODY.

ANDERS DEVELOPS THE PLAN WITH DWIGHT PRIOR TO GETTING INTO THE CAR.

SO ANY, IN ANY EVENT IT HAPPENS AND PHILLIPS IS CLEARLY PART OF IT AND GOES IN.

THE PLAN IS FOR CLEARLY TO TAKE MONEY FROM THESE INDIVIDUALS. BUT WHAT HAPPENS IS THERE'S A FIGHT.

>> AND HOW DID THEY GET INTO THE, IS IT APARTMENT?

>> YEAH, WHAT HAPPENED IS THE GIRLS GO FIRST.

THERE IS A DISPUTE IN THE TESTIMONY AS TO WHETHER THE DOOR IS LEFT AJAR OR WHETHER, WHEN SHE CALLS BAKER ON HIS PHONE, AND THAT HE COMES, IF HE KNOCKS AND THE DOOR IS OPEN.

BING SAYS THE DOOR, THERE IS A KNOCK AT THE DOOR AND ANDERS OPENS THE DOOR.

SALGADO SAYS THE DOOR IS AJAR AND AT THE JUST COME IN.

>> I GUESS WHAT IS INTERESTING TO ME, AND YOU KEEP SAYING THIS IS, YOU KNOW, A ROBBERY SORT OF GONE BAD BUT ALMOST IMPLIES THAT PEOPLE WHO, YOU COME INTO THEIR APARTMENT UNDER FALSE PRETENSES, NO MATTER, WHETHER THEY ARE SELLING DRUGS OR WHATEVER IT IS, THAT THEY DON'T HAVE A RIGHT TO TRY TO RESIST WHAT IS GOING ON.

>> I'M NOT SAGGER ARGUING THAT THEY DIDN'T HAVE A RIGHT TO RESIST BUT I AM ARGUING THAT GOES TOWARDS THE MORAL CULPABILITY, THAT IS HOW THE SHOOTING HAPPENS.

IT'S NOT THAT THEY CAME IN AND THEY SHOT AND KILLED THESE PEOPLE TO TAKE THEIR MONEY.

IT IS--

>> YOUR CLIENT, ACCORDING TO THE EVIDENCE, FIRED THE GUN THREE TIMES.

>> THERE ARE THREE--  
>> THREE SPENT SHELL CASINGS  
FOUND.  
>> YES.  
>> IT WAS 9MM.  
SO THAT IS CONSISTENT WITH THAT.  
IT IS YOUR POSITION THAT ONCE  
THE RESIDENTS, THE PEOPLE WHO  
LIVED IN THE APARTMENT, JUMPED  
ON HIM TO HELP THE OTHER ONE,  
THAT HE JUST STARTED FIRING AND  
JUST FIRED THREE RAPID SHOTS?  
>> ALL THAT WE KNOW BECAUSE  
THERE IS NO ONE INSIDE THE  
APARTMENT TO TESTIFY AS TO THE  
SHOTS BEING FIRED IS THAT ANDERS  
AND SALGADO HEARD THE SHOTS  
FIRED AFTER THEY HAVE HAD LEFT  
AND THEY'RE FIRED FAST.  
>> THAT IS THE POINT I'M TRYING  
TO MAKE.  
IF THERE IS A TIME SPAN BETWEEN  
SHOTS, THAT'S ONE THING.  
IF THERE ARE THREE RAPID SHOTS,  
THAT IS MORE INDICATIVE OF THE  
ROBBERY GONE BAD AND HE IS JUST  
SHOOTING THE GUN AS--  
>> THAT IS MY UNDERSTANDING.  
THEY DESCRIBED THREE RAPID  
SHOTS.  
ACTUALLY I THINK ANDERS SAID  
TWO.  
SALGADO SAID THREE.  
BUT WE KNOW THERE WERE THREE  
BECAUSE THERE ARE THREE INJURIES  
ON THE VICTIMS.  
>> JUSTICE PARIENTE MENTIONED IT  
EARLIER, THE COOPER CASE, COOPER  
VERSUS STATE WHICH WE DECIDED IN  
1999.  
SEEMS TO BE THE ONE THAT IS MOST  
HELPFUL TO YOU AND IN YOUR  
PROPORTIONALITY ARGUMENT.  
>> YES.  
>> THERE ARE TWO THINGS IN  
COOPER, HOWEVER, THAT ARE  
DISTINCTIVE FROM YOUR CASE.  
ONE, IN COOPER, THE COURT FOUND  
TWO STATUTORY MITIGATING  
CIRCUMSTANCES.

NOT JUST ONE.

AND IN THIS CASE WE'RE ONLY  
STATUTORY MITIGATING  
CIRCUMSTANCE WAS THE FACT HE WAS  
JUST 18 YEARS OLD.

AND SECOND, IN COOPER, AND  
INVOLVED EXTENSIVE TESTIMONY  
ABOUT ABUSE IN COOPER'S LIFE AS  
A CHILD.

SO THOSE TWO STATUTORY  
MITIGATING CIRCUMSTANCES WERE IN  
PLAY IN COOPER.

THEY ARE NOT IN PLAY HERE.

SO HOW DO YOU RESPOND ABOUT THAT  
DIFFERENCE?

>> WELL THERE WERE 12  
NON-STATUTORY MITIGATING FACTORS  
FOUND HERE AND ONE OF THEM IS  
THE I.Q. OF 76 WHICH RELATES TO  
SOME EXTENT IN MY ARGUMENT SIX  
BUT THE TESTING WAS DONE THE DAY  
BEFORE THE TRIAL BEGAN AND WE  
DON'T KNOW ON WHAT KIND OF A  
TESTING FORUM THE 76 WAS  
RETURNED BUT WE KNOW THERE WAS A  
I.Q. SCORE OF 76 AND THERE IS A  
HISTORY, SCHOOL RECORDS,  
ETCETERA, SHOWING THAT HE WAS  
IN SPECIAL ED, SHOWING THAT HE  
HAD SPEECH IMPEDIMENT.  
SHOWING LEARNING DISABILITIES.  
SHOWING HE HAD ALL SORTS OF  
PROBLEMS.

SHOWED UP ONE DAY WHEN HIS FACE  
WAS BURNED, HE EXPLAINED HE  
WANTED TO SEE IF THE IRON WAS  
HOT.

THERE ARE ALL SORTS OF SORT  
EVER-- OF SHOWING DEFICITS IN  
ADAPTIVE FUNCTIONING THROUGHOUT  
HIS CHILDHOOD AND PROBLEMS IN  
SCHOOL.

ALL OF THAT CAME IN.

AND, MENTAL HEALTH EXPERT, IT IS  
CLEAR HE IS RELYING ON CHERRY  
AND THE 70 CUTOFF.

DOESN'T DO A FULL MENTAL  
RETARDATION OR INTELLECTUAL  
DISABILITY FOUNDATION BECAUSE  
HIS UNDERSTANDING OF FLORIDA LAW

REQUIRE AS 70 CUTOFF.  
WE'RE TALKING ABOUT A INDIVIDUAL  
JUST TURNED 18.

HE IS 18 IN FIVE MONTHS WITH A  
76 I.Q.

HE IS NOT AMONG THE WORST OF THE  
WORST.

>> WHAT IS THE-- I NOTICED IN  
COOPER WE MADE REFERENCE TO, WE  
NOTED THAT THE JURY  
RECOMMENDATION WAS ONLY 8-4 AND  
COINCIDENTALLY THE JURY  
RECOMMENDATION HERE IS 8-4,  
WHICH OF COURSE WOULD BRING ME,  
WHEN I ASKED THE STATE ABOUT  
YOUR HURST ISSUE THAT SINCE THIS  
WAS, WE DON'T KNOW, WE KNOW  
UNANIMITY CERTAINLY ABOUT THE  
FELONIES BUT WHETHER WHICH CAN  
SAY THAT ANY ERROR WOOS HARMLESS  
BEYOND A REASONABLE DOUBT.

SO WHAT DO YOU SAY ABOUT, WHAT  
IS THE SIGNIFICANCE OF AN 8-4  
JURY RECOMMENDATION IN  
PROPORTIONALITY?

DOES IT HAVE ANY ROLE AT ALL?

>> I DON'T KNOW THAT IT'S  
CONTROLLING BUT--

>> I MEAN, WHY WOULD THAT  
MATTER.

IF IT IS 7-5, 8-4, 9-3, I KNOW  
WE SAY A LOT OF TIMES WHAT THE  
VOTE IS BUT WHAT DOES IT MATTER  
OF PROPORTIONALITY.

>> IT REFLECTS SOMETHING.

>> OBVIOUSLY IT REFLECT REFLECTS  
SOMETHING, .

>> OBVIOUSLY THERE WERE JURORS  
ABOUT THIS RESULTING IN A DEATH  
SENTENCE.

I DO WANT TO BRING UP, I KNOW  
WE'RE TALK ABOUT THE  
PROPORTIONALITY, IT DOES RELATE  
TO HURST AND IT IS NEW STATUTE.  
IN THE NEW STATUTE THIS IS LIFE  
SENTENCE, 8-4.

>> NOW YOU'RE GOING TO BRING, IF  
THE JURY WAS TOLD THE VOTE HAD  
TO BE 10-2, MAYBE TWO JURORS  
DIDN'T WANT TO VOTE FOR-- WE

CAN'T SPECULATE, I MEAN YOUR OTHER ARGUMENT YOU THINK THIS CASE YOU KNOW HURST SHOULD BE REDUCED TO LIFE AUTOMATICALLY.

>> YES.

>> BUT IF WE, LET'S ON THE ISSUE, HAVE YOU ENUMERATED, I WANT TO MAKE SURE, BECAUSE I THINK THIS IS A CLOSE CASE ON PROPORTIONALITY.

I THINK THIS IS, VERY SIMILAR TO COOPER AND OTHER CASES.

SO, HAVE YOU ENUMERATED ALL OF THE MITIGATION THAT YOU THINK IS COMPELLING IN THIS CASE TO SHOW THAT IT IS A HEAVILY-MITIGATED CASE, OR CERTAINLY NOT ONE OF THE MOST AGGRAVATED, AND LEAST MITIGATED, HOWEVER WE DECIDE?

>> THE JUDGE, IDENTIFIED 12 MITIGATING FACTORS.

>> BUT YOU CAN, WHAT'S THE GUTS? WHAT IS THE MOST IMPORTANT PART HERE?

>> 18 YEARS AND FIVE MONTHS. HE IS YOUNGEST PERSON ON DEATH ROW.

>> BUT WE DON'T-- IF THERE WAS CUTOFF OF 19 WE WOULD BE IN DIFFERENT SITUATION.

>> HE HAS 76 I.Q.

HE IS BORDERLINE ON TWO, ON TWO LINES.

HE IS JUST ACROSS THEM ON TWO LINES.

THAT MAKES HIM DIFFERENT THAN EVERYBODY ELSE.

THAT IS SIGNIFICANT.

AND WHEN YOU LOOK AT HIS ROLE IN THE CASE HE IS NOT THE ONE THAT CAME UP WITH THE PLAN.

HE--

>> LET ME ASK YOU.

THE STATE SAYS ALL THE CODEFENDANTS HAD LEFT WHEN THE SHOTS WERE FIRED AND THESE FOLKS WERE KILLED IS THAT--

>> NO.

BAKER WAS THERE.

AND BAKER, ACCORDING TO SALGADO

BAKER FOLLOWED HIM OR THE PERSON HE BELIEVED WAS BAKER FOLLOWED HIM TO THE DOOR AND THEN, WHEN HE STARTED DOWN THE STAIRS BAKER WENT BACK IN.

SO BAKER IS THERE.

AND WE DON'T KNOW ANYTHING OF WHAT BAKER HAS TO SAY AS TO WHAT HAPPENED.

BUT THAT DOES RELATE TO THE PROPORTIONALITY IS THAT BAKER GOT A LIFE SENTENCE.

>> IS THERE ANY EVIDENCE AS TO WHETHER PHILLIPS HAD AN OPPORTUNITY TO LEAVE?

>> THERE'S NO INDICATION THAT THE FIGHT EVER STOPS SO THAT HE COULD LEAVE.

HE WAS BEING ATTACKED, AND I'M NOT SAYING THAT THEY DIDN'T HAVE REASON TO BE, YOU KNOW, TRYING TO EVICT HIM OR WHATEVER BUT IT IS AN ONGOING STRUGGLE AND AS FAR AS WE KNOW, THE STRUGGLE LASTED UNTIL THE GUN WENT OFF. WE KNOW THAT HE LEFT A SHOE BEHIND.

THAT ANDERS DESCRIBED IT AS HE WAS BEATEN OUT OF A SHOE WAS WHAT SHE HAD SAID.

AND SHE, YOU KNOW, SHE'S ALSO, TELLS HER FRIEND DWIGHT ON A TAPE RECORDING THAT BAKER WASN'T HELPING HIM.

THAT PHILLIPS WAS JUST BEING BEATEN UP.

>> LET ME ASK YOU THIS ON THE SENTENCING OF CODEFENDANTS. BAKER, THE CASE WENT TO VERDICT, CORRECT AND JURY RECOMMENDED LIFE?

>> THE JURY RECOMMENDED LIFE.

>> AND ANDERS, SHE PLED GUILTY TO ARMED ROBBERY, ATTEMPTED ARMED ROBBERY AND CONSPIRACY TO COMMIT ARMED ROBBERY.

GOT A YEAR IN JAIL PLUS TWO YEARS PROBATION.

>> YES.

>> BING PLED GUILTY TO ARMED

BURGLARY, CONSPIRACY TO ARMED ROBBERY, SENTENCED TO SIX MONTHS IN JAIL AND ONE YEAR PROBATION.

>> YES.

>> DID ANDERS AND BING TESTIFY AGAINST MR. PHILLIPS?

>> ANDERS AND BING TESTIFIED AT MR. PHILLIPS' TRIAL AND MR. BAKER'S TRIAL.

THE WAY IT WORKED OUT THERE WAS A PRETTY LONG TIME WHEN THEY'RE CHARGED.

THE CHARGES FILED IN EARLY 2010. THE TRIAL HAPPENS IN EARLY 2012. THE GIRLS PLED IN THE MIDDLE OF 2010 AND THEY THEN TESTIFIED BUT THEIR SENTENCINGS ARE HELD OFF UNTIL AFTER THE DEATH SENTENCE IS IMPOSED ON PHILLIPS.

THEIR SENTENCING IS IN I THINK MAY OF 2012.

SO THEY HAD PLED EARLIER AND THEIR SENTENCES ARE HELD IN ABEYANCE SO THEY-- THE JURY IS NEVER TOLD WHAT THEY GOT.

>> YOUR ARGUMENT WAS THAT BAKER AND ANDERS WERE THE TWO WHO ORIGINALLY STARTED THE WHOLE DISCUSSION ABOUT THE ROBBERY? OR BAKER--

>> INDICATION, DWIGHT, WHO IS NOT CHARGED, SHE'S THE OTHER GIRL THAT LEFT--

>> OKAY.

>> DWIGHT AND ANDERS ARE ONES THAT EXCHANGED PHONE NUMBER WITH THE MEN IN THE FIRST INSTANCE AND THEY ARE THE ONES THAT CAME UP WITH THE PLAN.

>> SO WHAT WAS BAKER'S, I'M SURE YOU HAVE DISPARATE TREATMENT OF CODEFENDANTS AS PART OF THIS WHOLE ARGUMENT?

>> YES.

>> WHAT WAS BAKER'S PARTICIPATION?

BECAUSE I THOUGHT HE DID NOT LEAVE WHEN ANDERS LEFT?

>> CORRECT.

HE REMAINED IN THE APARTMENT.

HE WAS IN THE APARTMENT WHEN THE SHOTS WERE FIRED.

AGAIN--

>> WHAT WAS HIS PARTICIPATION IN WHAT WAS GOING-ON IN THE APARTMENT?

>> WELL WE KNOW THAT ACCORDING TO SALGADO, HIS TESTIMONY IS BASICALLY THAT BAKER WOULD HAVE BEEN THE PERSON WHO HAD FOLLOWED HIM AND WAS COMING AFTER HIM AS HE LEFT.

I THINK THE DESCRIPTION THAT SALGADO GAVE HE GOT HIT OVER THE HEAD WITH THE BEER BOTTLE, PRESUMABLY BY ANDERS.

ANDERS TESTIFIES WHEN SHE GETS INVOLVED, THAT'S WHEN BIKER COMES TO HER RESCUE, NOT PHILLIPS 'RESCUE.

PRESUMABLY THAT IS THE ENCOUNTER WITH SALGADO.

BAKER THEN STAYS IN.

THE ONLY INFORMATION WE HAVE SAYS ANDERS SAYS PHILLIPS SAID HE DROPPED THE GUN AND IT WENT OFF.

>> YOU'RE WAY DOWN INTO YOUR REBUTTAL TIME.

>> YES, YOUR HONOR.

IF I MAY, I WANTED TO JUST MAKE THE POINT THAT I, I THINK THAT WITH THE NEW STATUTE, IT DOES RAISE THE QUESTION, THIS COURT, IN WRIGHT v. STATE, 586 SO.2D 1024 SAID THAT A LIFE RECOMMENDATION IS ENTITLED TO DOUBLE JEOPARDY PROTECTION SO IF A NEW TRIAL IS ORDERED, THE DEFENDANT DOES NOT LOSE THE BENEFIT AFTER LIFE RECOMMENDATION.

ONE OF THE QUESTIONS I HAVE, I HAVEN'T HAD A CHANCE PAUSE THE STATUTE JUST WENT INTO EFFECT, HOW DOES THIS RELATE WE HAVE THE 8-4 RECOMMENDATION IN THIS CASE? WE KNOW PROSECUTORS ARE HOLDING UP TRIALS THROUGHOUT THE STATE MAINTAINING CRIMES COMMITTED

BEFORE THIS PAST MONDAY, WHEN THE NEW LAW WENT INTO EFFECT WILL BE TRIED UNDER THE NEW STATUTE.

IF THE NEW STATUTE IS JUST PROCEDURAL, AND APPLIES TO ALL THESE CRIMES THAT OCCURRED BEFORE MONDAY, WHY DOES MR. PHILLIPS NOT GET THE BENEFIT OF THE 8-4 RECOMMENDATION? THANK YOU.  
YOUR HONOR.

>> I'M NOT-- THIS NEVER-ENDING CREATIVE ARGUMENTS THAT YOU PRESENT TO THE COURT.

>> MAY IT PLEASE THE COURT. ASSISTANT ATTORNEY GENERAL BERDENE BECKLES FROM THE STATE OF FLORIDA.

I WANT TO CLEAR UP FACTS WHAT HAPPENED THAT DAY.

MY OPPONENT STATED THAT BAKER'S PARTICIPATION ONLY BEGAN AFTER ANDERS HIT ONE OF THE VICTIMS, THE SURVIVING VICTIM.

ACTUALLY SALGADO TESTIFIES WHEN HE GOT UP TO GO AND, I GUESS HELP MATEO HERNANDEZ-PEREZ HE WAS HIT BY BAKER.

HE ALSO PARTICIPATED IN THE MELEE THAT BEGAN RIGHT AWAY. ANDERS ACTUALLY HIT ANOTHER OF THE DECEASED VICTIMS WITH A BEER BOTTLE.

AND--

>> DOES SOUND LIKE ON THIS THOUGH THIS ISN'T A SITUATION WHERE THE DEFENDANT WAS THE RINGLEADER, THAT HE CONCEIVED OF THE PLAN.

YES, HE HAD THE GUN, SO WHY ISN'T THIS CLOSER, JUST ON THE ISSUE OF PROPORTIONALITY TO, THEY WENT WITH THE IDEA OF ROBBING?

OBVIOUSLY THEY WENT WITH A FIREARM AND THAT'S NOT, THAT MAKES IT A ARMED ROBBERY OF COURSE.

WHY IS THIS NOT CLOSER THE

ROBBERY GONE BAD CASES,  
ESPECIALLY WHEN THEN, IN  
DISPROPORTIONATE SENTENCE, WHEN  
YOU CONSIDER HIS AGE, THE  
UNCONTROVERTED ISSUE OF A  
BORDERLINE I.Q., MAYBE NOT  
INTELLECTUALLY DISABLED AND  
BEING IN SPECIAL EDUCATION  
CLASSES, NEVER HAVING WORKED,  
BEING JUST ON THE CUSP OF 18,  
HOW DOES THAT, WHY DOESN'T THAT  
MAKE THIS A DISPROPORTIONATE  
SENTENCE UNDER OUR  
JURISPRUDENCE?

>> OKAY THE FIRST OF ALL WE HAVE  
THE DEFENDANT ALONE.

THERE WAS NO DISCUSSION OF  
BRINGING A GUN TO THIS ROBBERY.  
HE ENTERS THE PROPERTY, GOES  
DIRECTLY TO THE HEAD OF ONE OF  
THE VICTIMS AND PLACE AS GUN TO  
THEIR HEAD.

HE ENTERED BEFORE BAKER WHILE  
THE GIRLS WERE STILL IN THERE.  
FURTHERMORE, YES THERE WAS A  
MELEE BUT EVERYBODY HAD LEFT.  
THE OTHER TWO FEMALE  
CODEFENDANTS WERE DOWN THE  
STAIRS BY THE CAR.

BAKER WAS ACTUALLY OUTSIDE THE  
DOOR.

SALGADO WHEN HE HEARD THE SHOT,  
BAKER IS AT THE DOOR.

>> I'M NOT ARGUING HE IS NOT THE  
MOST CULPABLE, AND IF YOU'RE  
GOING TO-- AND THE PLAN WAS TO  
GO TO ROB.

IF YOU'RE GOING TO GO ROB AND  
ROB A GROUP OF PEOPLE I GUESS  
YOU BRING A GUN TO THE ROBBERY.  
I MEAN AND SO WHEN HE PUT, WHEN  
HE PUT THE GUN TO THE PERSON'S  
HEAD, IT WASN'T, THE, WHAT  
CAUSED THE SHOOTING, WASN'T IT  
THAT OTHER PEOPLE STARTED  
ATTACKING HIM OR THAT STATE SAYS  
NO?

WHEN HE PUT THE GUN, CAME IN AND  
IMMEDIATELY PUT THE GUN TO ONE  
OF THEIR HEADS, THEN WHAT

HAPPENED.

>> THEN THEY STARTED TO ATTACK.  
SALGADO CAME AT HIM.

ANDERS AND BAKER PARTICIPATED.  
BUT EVERYBODY DISPENSED.

WE DON'T KNOW WHAT HAPPENED AT  
TIME BUT WE DO KNOW TWO PEOPLE  
WERE SHOT.

HE SHOT ONE PERSON.

THEN HE SHOT ANOTHER PERSON.

THERE IS PREMEDITATION THERE.  
THERE IS MOMENT TO REFLECT AND  
THINK.

HE REMAINED IN THE APARTMENT.  
THERE IS NO TESTIMONY THAT HE  
COULDN'T GET OUT.

THE OTHER CODEFENDANTS WERE ABLE  
TO GET OUT.

HE COULD HAVE GONE AND WE HAVE  
CASES, WE HAVE SMITH WHERE THIS  
COURT FOUND IT TO BE  
PROPORTIONAL WHERE HE, HE COULD  
ALSO HAVE LEFT--

>> HOW OLD WAS SMITH?

>> SMITH WAS-- OH, HIS AGE?

19.

>> HOW IN THE WORLD, YOU KNOW,  
HE WAS THE ONE IN THE MIDDLE OF  
THE FIGHT, MR. PHILLIPS.

THE OTHERS GOT, THEY WERE NOT IN  
THE FIGHT REALLY AND SO THEY  
LEFT THE APARTMENT, MISS ANDERS  
AND, WHAT WAS THE OTHER LADY'S  
NAME, BING?

>> BING.

>> EVEN AS YOU SAY, YOU BELIEVE  
BAKER WAS AT THE DOOR AND NOT  
REALLY PARTICIPATING SO, THEY  
WERE NOT THE FOCUS OF THE FIGHT.  
SO THEY COULD GET AWAY.

HOW IN THE WORLD COULD SOMEONE  
WHO IS THE FOCUS OF THE FIGHT  
GET AWAY?

>> WELL, ONE WE DON'T HAVE  
TESTIMONY THAT PHILLIPS WAS IN  
THE MIDDLE OF THE FIGHT OR THAT  
BAKER WAS JUST AT THE DOOR ONLY.  
IT WAS EVERYBODY THERE.

THE LIVING ROOM IS VERY SMALL.  
IT IS NOT THAT BIG.

FURTHERMORE, WE KNOW FROM THE MEDICAL EXAMINER'S TESTIMONY THAT THERE IS STIPPLING FROM TWO TO THREE FEET AWAY.

THEY WERE NOT ON HIM.

THEY WERE NOT HOLDING HIM DOWN WHEN HE SHOT THEM.

SO IT WASN'T LIKE, WE HAVE NO TESTIMONY OR ANYTHING SHOWING THAT HE COULD NOT LEAVE AS WELL.

>> HOW DOES THIS, I MEAN, I PICTURED THE TYPICAL CONVENIENCE STORE TYPE ROBBERY WHERE SOMEONE COMES IN WITH A GUN INTENDING ONLY TO ROB BUT THEN THE CLERK OR MAYBE A NUMBER OF CLERKS IN THERE, DECIDE TO PUT UP A FIGHT AND THERE'S A STRUGGLE.

AND SOMEONE GETS SHOT.

WE CALL THOSE A ROBBERY GONE BAD.

HOW IS THIS DIFFICULT?

THESE FOLKS, SUPPOSEDLY, TWO WOMEN, SAW AN IN WHERE THEY GET INTO THIS GUY'S APARTMENT, TAKE THEIR MONEY.

THEY CALL THEIR BOYFRIENDS.

THEY PUT TOGETHER THEIR BOYFRIEND AND THE FRIEND AND PUT TOGETHER THIS, THIS PLAN AND THEY WERE SUPPOSED TO GO IN FIRST TO OFFER THE SEX OR WHATEVER AND THEN THESE GUYS WOULD FOLLOW INTO THE APARTMENT. THAT WAS SUPPOSED TO BE THE ROBBERY.

ONCE IN THERE HE PUT AS GUN ON ONE OF THE GUYS IN THE APARTMENT'S HEAD AND THAT GUY SLAPS THE GUN AWAY.

THE OTHER ONES JUMPED HIM.

FROM THERE WE HAVE PEOPLE BREAKING BOTTLES OVER PEOPLES HEADS AND RUNNING OUT THE DOOR AND STRUGGLE AND THREE SHOTS WERE RAPID.

HOW IS THAT REALLY DIFFERENT THAN THAT 7-ELEVEN OR THAT CONVENIENCE STORE?

>> THAT SOUNDS FAMILIAR TO A

CASE CALLED JACOB WHERE THE COURT FOUND ROBBERY GONE BAD BECAUSE ESCAPE WAS THREATENED IN THAT CASE.

WE DO TO THE VERY IN THAT PHILLIPS 'ABILITY TO LEAVE WAS BEING THREATENED.

HE COULD HAVE LEFT WITH THE OTHER CODEFENDANTS.

THE VICTIM WAS ABLE TO GET AWAY. THERE IS NO TESTIMONY REGARDING THAT.

>> MAYBE THIS IS WHERE THE OTHER SIDE OF THE COIN COMES IN.

HE IS 18.

HE WAS IN SPECIAL EDUCATION THROUGHOUT HIS ENTIRE EDUCATIONAL LIFE.

HAS BORDERLINE I.Q., NEVER WORKED.

SO MAYBE HIS JUDGE, AT THE AGE, WE KNOW OF 18 HIS JUDGMENT OF WHAT RATIONAL, FIRST OF ALL NO RATIONAL PERSON, RIGHT, NO LAW-ABIDING CITIZENS IS GOING TO GET INTO THIS SITUATION.

SO WE'RE NECESSARILY DEALING WITH PEOPLE THAT EITHER ARE, IN THE WORDS OF THOSE, JUVENILE CASES HAVE A IRREPARABLE CORE RIP SHUN OR TRANSIENT IMMATUREITY OR SOMETHING IN BETWEEN.

THE POINT BEING THE FACT HOW THIS CRIME OCCURRED IS NOT THE KIND OF CAREFUL PLANNING IT IS NOT A CCPP.

IT WAS A MISTAKE, TERRIBLE, HORRIBLE MISTAKE THAT MR. PHILLIPS WILL LIVE WITH THE REST OF HIS LIFE.

IF WE, HE DOESN'T GET THE DEATH PENALTY HE WILL SPEND THE REST OF HIS LIFE IN PRISON.

THE QUESTION IS, HOW DOES THIS QUALIFY THOUGH AS THE WORST OF THE WORST AND THE LEAST MITIGATED, CERTAINLY FOUR JURORS DIDN'T THINK THIS WAS A DEATH PENALTY CASE.

THAT IS WHERE I'M STRUGGLING.

I CAN SEE HOW THE JURY DECIDED  
PREMEDITATION AND THAT HE HAD  
THE GUN.

SO I THINK YOU'RE STRONG ON  
THAT.

BUT AS FAR AS ON THE  
PROPORTIONALITY NOW DO YOU  
ADDRESS THE MITIGATION AND SAY  
IT IS NOT SIGNIFICANT  
MITIGATION?

>> WELL, FIRST IN REGARD TO THE  
AGGRAVATION WE TO HAVE HIM  
KILLING TWO PEOPLE AND THERE IS  
CONSCIOUS DECISION.

FURTHERMORE INTO THE MITIGATION  
WE ONLY HAVE HIS AGE IS ALL THAT  
THE COURT FOUND WAS STATUTORY  
MITIGATOR.

THE DEFENSE DID ASK FOR  
EMOTIONAL, SORRY, DEFENSE ASKED  
FOR EXTREME DURESS OR UNDER  
SUBSTANTIAL DOMINATION OF  
ANOTHER, AND THE COURT FOUND  
THAT WAS NOT PRESENT.

THE COURT GAVE IT NO WEIGHT.  
BECAUSE HE ENTERED AND HE--

>> HOW DO WE KNOW WHAT THE JURY  
DID?

WE DON'T HAVE ANY SPECIAL  
FINDINGS.

WE DON'T KNOW THE JURY, AT LEAST  
FOUR MEMBERS DIDN'T THINK HE WAS  
UNDER THAT.

THAT IS WHERE THIS JUDGE FINDING  
VERSUS JURY FINDING UNDER HURST  
BECOMES SOMEWHAT IMPORTANT AND  
THIS IS PROBLEMATIC HERE.

WE DON'T REALLY KNOW HOW THE  
JURY WAS WEIGHING THIS.

SO I GUESS GOING BACK TO IT, SO,  
HE DOESN'T FIND, THE JUDGE  
DOESN'T FIND EMOTIONAL DISTRESS  
AS A MITIGATOR.

BUT, WHAT ABOUT THE VARIOUS  
MITIGATORS THAT ARE FOUND THAT  
ARE GIVEN, THAT ARE WEIGHED?  
ARE THOSE INCONSEQUENTIAL?

>> THEY'RE NOT INCONSEQUENTIAL.  
HE GOT MODERATE WEIGHT FOR THE  
BORDERLINE I.Q., SEVERE

SPEECH IMPEDIMENT AND  
DR. DERICO STATED THAT.  
HE WENT THROUGH HIS SCHOOL  
RECORDS.

MEDICAL RECORDS.

>> WE HAVE THE HALL ISSUE.  
WE HAVE THE CHERRY CUTOFF.  
I KNOW THAT IS ANOTHER CLAIM  
HERE WHETHER HE IS ALSO UNDER  
THE STATUTE INTELLECTUALLY  
DISABLED BUT FOR MITIGATION HE  
IS PRETTY CLOSE TO WHERE THIS IS  
NOT SOMEBODY HEADED FOR HIGHER  
EDUCATION.

HE DROPPED OUT OF SCHOOL.  
HE, WHAT GRADE DID HE FINISH.

>> I THINK NINTH GRADE MAYBE,  
10th?

>> HE HAD THE INDEPENDENT  
EXAMINER SIDE HE HAD MARGINAL  
SKIS WITH READING AND WRITING.  
WE'RE TALKING ABOUT A-- THAT IS  
WHAT I'M ASKING YOU ABOUT HIS  
JUDGMENT.

YOU SAID HE COULD HAVE LEFT.  
OBYIOUSLY THAT IS 25 YEARS OLD  
BUT 18 YEARS OLD MAYBE--

>> HE WAS FELON ON PROBATION.  
HE KNEW HIS PROBATIONARY-- WHAT  
HE SHOULD HAVE NOT DONE AND  
STILL WENT AHEAD WITH THE  
ROBBERY, BRINGING THE GUN TO THE  
ROBBERY.

>> LET ME ASK YOU ON THE  
DISPARATE SENTENCES HERE, I MEAN  
ANDERS WOULD AGREE WAS MAJOR  
PLAYER?

HER AND BING PRETTY MUCH  
CONCOCTED THIS WHOLE PLAN TO  
BEGIN WITH.

>> I THINK THEY CONCOCTED IT IN  
THE CAR.

>> BEFORE THE GUYS CAME ON BOARD  
THE WOMEN WERE ALREADY TALKING  
ABOUT ROBBING THE PLACE, WEREN'T  
THEY?

>> THE TESTIMONY AS I REMEMBER  
THEY GOT A CALL FROM ONE OF THE  
VICTIMS AND THEN THEY DISCUSSED  
THE--

>> WELL, ANDERS WALKED AWAY AFTER PLEADING GUILTY TO ARMED BURGLARY, WHICH, IN FLORIDA I BELIEVE IS A PBL, ISN'T IT? ATTEMPTED ARMED ROBBERY AND CONSPIRACY TO COMMIT ARMED ROBBERY.

SHE WALKED OUT OF THERE WITH ONE YEAR IN JAIL AND TWO YEARS PROBATION.

AND BING PLED GUILTY TO BURGLARY, ARMED BURGLARY AND CONSPIRACY TO COMMIT ARMED ROBBERY AND WALKED AWAY WITH SIX MONTH IN JAIL AND ONE YEAR OF PROBATION.

I MEAN, PRETTY LIGHT ISN'T IT CONSIDERING THOSE CHARGES? IN COMPARISON TO EVERYONE ELSE? IN COMPARISON TO BAKER AND EVEN OBVIOUSLY PHILLIPS?

>> WELL, ONE THEY WERE NOT IN THE APARTMENT WHEN THE SHOOTING BEGAN.

THEY, BING DEFINITELY RAN OUT WITH THE SHOOTING BEGAN.

ANDERS RAN OUT SHORTLY AFTER.

>> ANDERS BROKE A BOTTLE ON SOMEBODY HEAD.

SHE COULD BE EASILY CHARGED WITH MURDER IF THAT GUY DIED.

>> SHE FACED CHARGES, PROSECUTORIAL DISCRETION WITH WHAT THEY WILL SEEK WITH THEM TESTIFYING.

THEY TESTIFIED ACCORDINGLY.

AND WE CAN'T USE THEIR, THEIR SENTENCES THAT THEY GOT BECAUSE THEY WEREN'T EVEN CHARGED WITH FIRST-DEGREE MURDER.

>> THEY WERE CHARGED WITH LIFE FELONIES, PUNISHABLE BY LIFE AT LEAST.

ARMED BURGLARY, ARMED ROBBERY, THOSE ARE PBLs.

>> THEY TOLD THE JURY THEY WERE FACING THAT WHEN THEY GAVE THEIR TESTIMONY AT TRIAL.

THEY WERE UP FRONT WHAT THEY WERE FACING AND HOPED TO GET.

>> I'M JUST LOOKING AT IT FROM THE PERSPECTIVE OF PROPORTIONALITY AND DISPARATE SENTENCES AS FACTOR.

>> THEY ALSO TESTIFIED THERE WAS NO DISCUSSION ABOUT PHILLIPS BRINGING A GUN TO THE ROBBERY. HE BROUGHT THE GUN. SET ONE WHO USED GUN.

>> HOW, WHEN YOU GO TO A ROBBERY, YOU GO TO THERE EMPTY HANDED?

IT IS NOT A BURGLARY. YOU GO TO ROB SOMEBODY. ONLY THING I DON'T UNDERSTAND, HOW CAN THIS NOT BE A ROBBERY GONE BAD?

HE SHOT HERNANDEZ AT CLOSE TO INTERMEDIATE RANGE, ABOUT THREE FEET FROM THE BODY. AND HE SHOT HIM IN THE LEG. IF YOU TRY TO KILL SOMEBODY YOU WOULDN'T TRY TO SHOOT FOR THE THIGH AND LEG.

>> I'M NOT SURE WHAT WAS HAPPENING AT THE TIME, WHY IT WAS SHOT IN THIGH AND LEG AND OTHER PERSON WAS SHOT IN THE CHEST.

>> OKAY.

>> SO TWO PEOPLE WERE SHOT.

>> THAT WAS CLOSE RANGE. SO THAT COULD HAVE BEEN-- WHO SHOT FIRST, DO YOU KNOW.

>> WE DON'T KNOW WHO WAS SHOT FIRST.

WE DO KNOW THERE WAS TIME BETWEEN THE SHOOTINGS. ONE PERSON WAS SHOT TWICE. ONE PERSON WAS SHOT ONE TIME.

>> HOW DO WE KNOW THERE WAS TIME BETWEEN THE SHOOTINGS? FROM WHAT I UNDERSTAND WHAT MR. McCLAIN SAID, THESE WERE SORT OF RAPID FIRE IN SUCCESSION.

SO HOW DO WE KNOW WHETHER IT WAS THAT WAY OR WHETHER THERE WAS TIME BETWEEN THE SHOOTING?

>> HE WENT DOUGH KNOW HOW MUCH

TIME WAS BETWEEN THE SHOOTINGS.  
WE DO KNOW THAT HE TURNED THE  
GUN ON ONE PERSON AND TURNED ON  
THE OTHER PERSON AND I BELIEVE  
THAT THE SHELL CASINGS  
AROUND THE ROOM WERE  
FOUND IN VARIOUS PLACE.

I'M NOT REALLY SURE BUT--

>> YOU'RE NOT SURE--

>> I'M NOT SURE ABOUT HOW MUCH  
TIME THERE WAS BETWEEN THE  
SHOOTINGS.

>> LET ME ASK YOU ABOUT BING AND  
ANDERS?

>> YES.

>> AT WHAT POINT DID THEY LEAVE  
THE APARTMENT AND WHERE WAS  
MR. PHILLIPS AT THE POINT THEY  
LEFT THE APARTMENT?

BECAUSE YOU HAVE SAID MANY TIMES  
THAT HE HAD AN OPPORTUNITY TO  
LEAVE JUST LIKE THEY HAD AND  
EXERCISE THEIR OPPORTUNITY TO  
LEAVE.

SO WHERE WERE, WAS HE AND AT THE  
TIME THAT THEY LEFT THE  
APARTMENT?

>> WHEN BING LEFT THE APARTMENT  
IT WAS IMMEDIATELY AFTER THE  
GUYS CAME IN.

SO SHE DIDN'T SEE ANYTHING.

>> SHE AND ANDERS WERE IN THE  
APARTMENT FIRST?

>> YES.

>> AND THEN THE GUYS CAME AND,  
AS THE GUYS ARE COMING IN, BING  
LEAVES?

>> YES.

>> OKAY.

>> AND SHE'S DOWNSTAIRS WAITING  
FOR EVERYBODY.

WHEN ANDERS LEAVES SHE SAYS SHE  
HITS SOMEBODY OVER THE HEAD WITH  
BEER BOTTLE AND SHE LEAVES.

THERE IS BAKER AND PHILLIPS IN  
THE APARTMENT STILL.

SHE DOESN'T REALLY SAY WHERE  
THEY ARE OR HOW FAR IN THEY  
WERE, BUT SHE LEFT, THEY WERE  
STILL IN THE APARTMENT.

>> AND THE FIGHT WAS GOING ON  
STILL I ASSUME THAT MR. PHILLIPS  
WAS ENGAGED IN THE FIGHT THAT AT  
THE TIME SHE LEFT THE APARTMENT?

>> YES.

>> WHAT WAS THE SIZE OF  
MR. PHILLIPS PHYSICALLY COMPARED  
TO THE VICTIMS, DO YOU KNOW?

>> I DON'T KNOW HOW HE WAS  
COMPARED TO THE VICTIMS BUT  
SALGADO TESTIFIES HE WAS BIGGER  
OF THE TWO, BETWEEN HIM AND  
BAKER, HE WAS THE BIGGER PERSON.

>> YOU DON'T KNOW HOW TALL AND  
WEIGHT OF MR. PHILLIPS.

>> I DON'T KNOW ON TOP OF MY  
HEAD.

I THINK MR. PHILLIPS--

>> 5'8", 215-POUND?

>> I BELIEVE THAT-- ONE WEIGHED  
215 AND BAKER I THINK WEIGHED  
150 AND PHILLIPS WEIGHED 215.

>> WAS THERE ANYTHING IN THE  
RECORD THAT INDICATED  
MR. PHILLIPS EXPERIENCED ANY  
KIND OF INJURIES AFTER THIS,  
FROM THE VICTIMS?

>> NO.

THERE WAS NO TESTIMONY REGARDING  
THAT.

LET ME ALSO, WE HAVE WHEN HE IS  
IN THE CAR WITH THE OTHER  
CODEFENDANTS LEAVING, OH THE GUN  
FELL AND WENT OFF THREE TIMES  
AND DON'T SAY ANYTHING.

HE DIDN'T SAY HE WAS INJURED OR  
ANYTHING LIKE THAT.

I WOULD ALSO LIKE TO, I BELIEVE  
WE ADDRESSED HALL BRIEFLY BUT IN  
THIS CASE WE ALSO DO NOT HAVE  
THE DEFENSE

ATTORNEY ASKING FOR A HEARING ON  
HIS MENTAL ACUITY.

HE DID HAVE A DOCTOR EVALUATE  
MR. PHILLIPS.

HE PRESENTED ALL OF THAT AT THE  
PENALTY PHASE.

>> SO PART OF HIS MITIGATION WAS  
THAT HE WAS AT A BORDERLINE IQ?

>> YES, THAT HE HAD 76 IQ.

HE WAS IN SPECIAL ED EDUCATION BECAUSE OF HIS SPEECH IMPEDIMENT AND BECAUSE OF HIS BAD BEHAVIOR. THIS IS WHAT DOCTOR TESTIFIED TO.

>> SO DOES THIS RECORD CONTAIN INFORMATION OF -- WELL, WE KNOW WHATEVER -- WHAT YEAR WAS THAT IQ OF 76 --

>> THIS WAS DONE IN 2012.

>> AND SO HE WAS ONLY FIVE MONTHS BEYOND 18, SO WE KNOW WE HAVE THIS ONSET OF -- BEFORE 18.

>> THE CRIME HAPPENED WHEN HE WAS 18.

THAT WAS IN '09.

THE TRIAL WAS IN 2012.

HE WAS 20 AT THE TIME.

>> WE DO HAVE INFORMATION IN THIS RECORD ALSO ABOUT HIS ADAPTIVE FUNCTIONING, DON'T WE?

>> NO, WE DON'T.

THE DOCTOR STATED THAT HE DIDN'T GO FURTHER BECAUSE OF HIS IQ SCORE OF A 76.

HE TALKED ABOUT HOW HE WAS IN SPECIAL EDUCATION CLASSES.

HE SAID HE IS NOT INTELLECTUAL DISABLED, SO HE DIDN'T GO FORWARD.

AND THEN ALSO IN REGARD TO HURST, IT DOES NOT APPLY IN THIS CASE BECAUSE WE HAVE THE PRIOR MURDER, THE PRIOR CONVICTION, WHICH THE SUPREME COURT AND THIS COURT HAS HELD MULTIPLE TIMES DOES NOT -- TAKES IT OUT OF THE VENUE OR THE PURVIEW OF THE JURY.

>> WHEN YOU LOOK AT WHAT THE SUPREME COURT SAID IN HURST, HOWEVER, DON'T YOU HAVE TO AGREE DID SHE DID THE JURY HERE MAKE FINDINGS, AGGRAVATING CIRCUMSTANCES?

>> NO.

THE JURY JUST FOUND HIM GUILTY OF THE MURDER.

>> OKAY.

AND SO UNDER HURST, WHAT IS

REQUIRED?

ISN'T IT REQUIRED THAT THE JURY,  
AT A VERY MINIMUM, WOULD HAVE TO  
MAKE THE FINDINGS OF  
AGGRAVATION, WOULDN'T THEY?

>> I AGREE THAT THAT IS WHAT  
HURST IS SAYING.

HOWEVER, HURST DOES NOT OVERRULE  
APPENDI WHERE IT SAYS OTHER  
THAN THE FACT OF A PRIOR  
CONVICTION.

THIS UNANIMOUS JURY FOUND HIM  
GUILTY OF TWO MURDERS.

>> LET'S SAY WE DISAGREE THAT  
THAT THRESHOLD IS ENOUGH TO  
SATISFY HURST OR THE FLORIDA  
STATUTE, WHICH IS A WEIGHING  
STATUTE.

SO LET'S ASSUME THAT I WAS  
INCORRECT FOR 14 YEARS AS TO  
THAT PARTICULAR EXCEPTION.  
HERE, THOUGH, AND IF YOU WANT TO  
ADDRESS THE HARMLESS ERROR  
ANALYSIS, THE AGGRAVATORS ARE  
WE'VE GOT TWO MURDERS, AND THOSE  
WERE FOUND UNANIMOUSLY.

WAS THE ROBBERY FOUND  
UNANIMOUSLY?

>> YES, IT WAS.

>> WE GOT THAT.

THAT FLOWS FROM PECUNIARY GAIN.  
NO ONE'S CONTESTING THAT HE WAS  
ON FELONY PROBATION.

SO IS THERE ANY CONTESTED  
AGGRAVATOR IN THIS CASE?

>> NO.

THE JUDGE DIDN'T FIND ANY OTHER  
AGGRAVATOR.

>> THAT'S A BETTER ARGUMENT.

NOW, THE QUESTION THEN IS IF  
HURST, THOUGH, REQUIRES, BECAUSE  
OUR STATUTE REQUIRES, THAT THE  
JURY NOT ONLY FIND AGGRAVATORS,  
BUT FIND THAT THOSE AGGRAVATORS  
ARE SUFFICIENT TO OUTWEIGH THE  
MITIGATORS IN ORDER TO GET  
SOMEONE TO QUALIFY FOR THE DEATH  
PENALTY, THAT IT'S NOT ENOUGH  
THAT YOU JUST HAVE AGGRAVATORS,  
WE HAVE A PROBLEM HERE BECAUSE

WE'VE GOT FOUR JURORS SAYING,  
NO, DEATH IS NOT THE APPROPRIATE  
PUNISHMENT.

SO UNDER AN EXPANSIVE  
INTERPRETATION OF WHAT HURST  
SAYS AND WHAT OUR STATUTE SAYS,  
DON'T WE HAVE A PROBLEM HERE?  
BECAUSE WE DON'T KNOW WHAT THAT  
-- WHAT THAT -- THEY MAY HAVE  
BEEN EXERCISING MERCY OR THEY  
MAY HAVE BEEN SAYING THESE  
AREN'T SUFFICIENT AGGRAVATORS  
FOR ALL THE REASONS THAT WE'VE  
BEEN TALKING ABOUT  
PROPORTIONALITY.

WE DON'T KNOW THAT.

>> AND I GUESS YOUR QUESTION IS  
IF THE JURY --

>> HOW CAN IT BE -- THE QUESTION  
IS IF HURST MEANS MORE THAN JUST  
FINDING OF THE AGGRAVATORS, AS  
APPLIED TO FLORIDA STATUTE AS IT  
EXISTED BEFORE YESTERDAY, A LOT  
OF WORK FOR US CUT OUT HERE, HOW  
WOULD IT BE HARMLESS BEYOND A  
REASONABLE DOUBT THEN?

I CAN ACCEPT IT THAT IF IT'S  
JUST A REQUIREMENT OF FINDING  
THE AGGRAVATORS YOU COULD SAY  
IT'S HARMLESS BEYOND A  
REASONABLE DOUBT.

BUT IF IT'S MORE THAN THAT,  
WHERE THEY HAVE TO FIND  
SUFFICIENT AGGRAVATING  
CIRCUMSTANCES TO QUALIFY FOR THE  
DEATH PENALTY AND THAT HAS TO BE  
FOUND UNANIMOUSLY, HOW IT BE  
HARMLESS WITH A 8-4 JURY  
RECOMMENDATION AS OPPOSED TO IF  
IT WAS 12-0, WHICH WE HAVE IN  
MANY CASES.

>> MY OPINION WOULD BE  
SPECULATING RIGHT NOW AS TO WHAT  
COULD HAPPEN, BUT I THINK THAT  
THESE AGGRAVATORS THAT ARE  
FOUND, A JURY NOW WOULD -- IT  
WOULD STILL BE FOUND AS WELL  
BECAUSE THEY FOUND THAT IN  
FINDING HIM GUILTY UNANIMOUSLY.  
AS TO HIS MITIGATORS, I'M NOT

SURE HOW THE JURY WOULD VOTE.  
I CAN'T SPECULATE AS TO WHAT  
THEY WOULD SAY IF IT WAS TO GO  
BACK.

BUT I DON'T THINK THIS IS THAT  
SITUATION THAT IT HAS TO GO BACK  
FOR A REWEIGHING OR A NEW  
[INAUDIBLE] OR ANYTHING OF THAT  
SORT.

IF THERE ARE NO FURTHER  
QUESTIONS, THE STATE WOULD ASK  
THE COURT TO AFFIRM THE  
DEFENDANT'S CONVICTIONS AND  
SENTENCES.

THANK.

>> THANK YOU.

>> I JUST WANT TO POINT OUT THE  
LANGUAGE IN RING IS THE  
DISPOSITIVE QUESTION IS NOT ONE  
OF FORM, BUT OF FACT.

IF A STATE MAKES AN INCREASE IN  
A DEFENDANT'S PUNISHMENT  
CONTINGENT ON THE FINDING OF A  
FACT, THAT FACT, NO MATTER HOW  
THE STATE LABELS IT, MUST BE  
FOUND BY A JURY BEYOND A  
REASONABLE DOUBT.

>> WHAT CASE THIS?

>> THIS IS RING.

SO RING ON ITS FACE IS NOT  
LIMITED TO ONE ACT.

>> WE UNDERSTAND THAT, BUT THIS  
GOES BACK TO THE ARGUMENT I  
THINK YOU PARTICIPATED IN  
EARLIER THIS WEEK OR --

>> LAST WEEK.

>> WHERE THE ISSUE IS IT'S  
BEYOND A REASONABLE DOUBT.  
IT'S NOT THE STATE'S OBLIGATION  
TO PROVE A MITIGATOR BEYOND A  
REASONABLE DOUBT IF THE  
DEFENDANT DOES NOTHING.

THE STATE HAS THE DEATH PENALTY  
AS BEYOND A REASONABLE DOUBT.  
SO HOW CAN UNDER THE RATIONALE  
OF THE SIXTH AMENDMENT, AS  
OPPOSED TO THE EIGHTH AMENDMENT,  
WHICH I STILL THINK WE ARE IN A  
-- YOU KNOW, THERE'S A BIG  
EIGHTH AMENDMENT ARGUMENT THAT

IS LEFT NOW WITH THE NEW  
STATUTE.

HOW DOES THE FINDING OF THE  
MITIGATOR HAVE TO BE FOUND --  
IT'S NOT DISPROVEN BY THE STATE  
BEYOND A REASONABLE DOUBT.  
IT'S GOT TO BE PROVED BY THE  
DEFENDANT BY A PREPONDERANCE OF  
THE EVIDENCE.

SO I UNDERSTAND WHAT RING SAYS,  
BUT WHEN WE'RE WEIGHING STATE,  
BUT HOW DOES THAT MEAN THAT THE  
JURY HAS TO FIND EVERY SINGLE  
THING UNANIMOUSLY WHEN THEY  
DON'T HAVE TO FIND MITIGATORS  
BEYOND A REASONABLE DOUBT?

>> IT GOES BACK TO THE STATUTE,  
BECAUSE THAT'S WHAT RING SAYS.  
YOU LOOK TO THE STATUTE.

AND THE STATUTE SAYS THEY HAVE  
TO IMPOSE A LIFE SENTENCE UNLESS  
THERE ARE SUFFICIENT AGGRAVATING  
CIRCUMSTANCES AND THERE ARE  
INSUFFICIENT MITIGATING  
CIRCUMSTANCES.

>> THAT'S AS TO THE JUDGE'S  
OBLIGATION.

ISN'T THE JUDGE STILL THE  
SENTENCER?

>> THAT IS AS TO THE JUDGE'S  
OBLIGATION IN THE STATUTE, BUT  
THAT'S WHAT IS REQUIRED BEFORE  
DEATH SENTENCE CAN BE IMPOSED.

>> FOR THE JUDGE TO FIND, BUT  
NOT FOR THE JURY TO FIND  
UNANIMOUSLY.

THAT'S THE ISSUE.

>> BUT THAT'S WHAT RING --  
THAT'S WHERE RING COMES IN,  
BECAUSE RING SAYS THOSE FACTS  
THAT HAVE TO EXIST AND HAVE TO  
BE FOUND BY A JUDGE IN ORDER FOR  
A DEATH SENTENCE TO BE IMPOSED  
ARE THE FACTS THAT THE JURY HAS  
TO FIND BEYOND A REASONABLE  
DOUBT UNANIMOUSLY.

>> BUT IT'S SENTENCING FACTORS  
THAT ARE UP TO THE STATE TO  
PROVE BEYOND A REASONABLE DOUBT.  
HOW IS A MITIGATOR -- THAT'S ALL

I'M ASKING YOU, IS HOW IS A  
MITIGATOR -- AND I UNDERSTAND --  
LISTEN.

I COULD ARGUE IT BOTH WAYS AND  
I'M STRUGGLING HERE.

HOW IS A MITIGATOR A SENTENCING  
FACTOR FOR THE STATE?

>> BECAUSE THE STATUTE SAYS  
THERE HAS TO BE INSUFFICIENT  
MITIGATORS FOR DEATH SENTENCE TO  
BE IMPOSED.

IT COULD HAVE BEEN WRITTEN SOME  
OTHER WAY.

THE STATE'S BEEN ARGUING A CASE  
AS CONTROLLING, BUT THE STATUTE  
IS WRITTEN THAT THE FACT IS  
BEFORE DEATH CAN BE IMPOSED,  
INSUFFICIENT MITIGATORS.

THE STATUTE SAYS THAT'S THE FACT  
THAT'S NECESSARY.

AND SO THAT'S WHERE IT COMES  
FROM.

>> BUT DOES THE STATUTE SAY  
THAT'S A FACT?

>> YES.

>> WHERE DOES IT SAY THAT?

>> SHALL SET FORTH IN WRITING  
ITS FINDINGS UPON WHICH THE  
SENTENCE OF DEATH IS BASED AS TO  
THE FACT THAT THERE ARE  
INSUFFICIENT MITIGATING  
CIRCUMSTANCES.

IT USES THE WORD FACTS.

AND IT'S THE STATUTE THAT RING  
SAYS AND HURST SAYS WE LOOK TO  
AND THE STATUTE SAYS THEY'RE  
FACTS.

>> EVEN IF THERE'S NONE, LET'S  
ASSUME NO MITIGATORS AT ALL, THE  
JURY STILL HAS TO MAKE THE  
DETERMINATION WHETHER THERE'S  
SUFFICIENT AGGRAVATORS TO IMPOSE  
DEATH ON SOMEONE.

>> YES.

AND IN FACT I JUST WANT TO POINT  
OUT BRIEFLY THAT IN THE JURY  
INSTRUCTIONS IN THIS CASE, THE  
JURY WAS TOLD REPEATEDLY THAT  
THEY HAD TO FIND SUFFICIENT  
AGGRAVATING CIRCUMSTANCES.

SO THE FOUR VOTES FOR LIFE COULD  
BE BECAUSE FOUR JURORS DID NOT  
BELIEVE THE AGGRAVATORS IN THIS  
CASE WERE SUFFICIENT.

>> OKAY.

TIME IS UP.

THANK YOU FOR YOUR ARGUMENTS.