

>> ALL RISE.  
>> SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.  
PLEASE BE SEATED.  
>> OKAY.  
THE NEXT CASE ON THE DOCKET IS  
BROWN VERSUS STATE.  
WHENEVER YOU'RE READY, COUNSEL.  
>> THANK YOU, YOUR HONOR, MAY IT  
PLEASE THE COURT.  
I'M CHRIS ANDERSON, COUNSELOR  
FOR APPELLANT THOMAS BROWN.  
>> SPEAK UP PLEASE IN YOUR MIC.  
>> IS THAT BETTER?  
>> YES.  
>> I'M CHRIS ANDERSON FOR  
APPELLANT THOMAS BROWN.  
I WOULD LIKE TO CLARIFY AT THE  
BEGINNING THAT THE ISSUE ON  
APPEAL, THE ONE SOLE ISSUE ON  
APPEAL IS WHETHER THE DEFENDANT  
SUFFERED PREJUDICIAL INEFFECTIVE  
ASSISTANCE OF TRIAL COUNSEL WHEN  
HIS TRIAL COUNSEL FAILED TO  
OBJECT TO A PROSECUTOR'S  
STATEMENT THAT INDICATED  
FALSELY, THAT THE DEFENDANT HAD  
PREMEDITATED THE MURDER.  
THE ONLY ISSUE IN THIS MURDER OF  
A WENDY'S FAST-FOOD RESTAURANT  
WORKER WAS WHETHER DEFENDANT  
THOMAS BROWN COMMITTED  
UNPREMEDITATED SECOND-DEGREE  
MURDER WHICH HE ADMITTED TO IN  
TRIAL, OR WHETHER HE COMMITTED  
PREMEDITATED FIRST-DEGREE MURDER  
AND I'M GOING TO RECITE THE FULL  
PROBLEMATIC STATEMENT OF THE  
PROSECUTION.  
>> CAN I ASK, DID YOU HAVE AN  
EVIDENTIARY HEARING ON THIS  
ISSUE?  
>> YES, WE DID, YOUR HONOR.  
>> DID DEFENSE COUNSEL EXPLAIN  
WHY HE DIDN'T OBJECT?  
NO YES.  
YES, YOUR HONOR.  
>> SO, THE TRIAL COURT THEN  
FOUND THAT IT WAS A REASONABLE  
STRATEGIC DECISION, AND I GUESS,

I WOULD LIKE TO, EVEN, IF THERE WAS SOMETHING THAT WAS NOT QUITE ACCORDING TO THE EVIDENCE, THE TRIAL JUDGE LAWYER SAYS WHY? YOU STILL HAVE TO ESTABLISH PREJUDICE.

>> YES, YOUR HONOR.

>> WHICH WAS BOTH, WERE THEY BOTH EVALUATED BY THE TRIAL JUDGE?

>> YES, YOUR HONOR.

>> WE HAVE ANY CASE OUT THERE WHERE IN A INEFFECTIVE ASSISTANCE, GUILT PHASE, THAT IS POSSIBLE STRATEGIC DECISION IN CLOSING ARGUMENT TO A PARTICULAR STATEMENT, IN ITSELF WOULD UNDERMINE CONFIDENCE IN THE ENTIRE GUILT PHASE OF THE TRIAL?

>> CLOSEST I CAN COME TO THAT IS NIXON VERSUS SINGLETARY.

>> I'M SORRY, WHO?

>> NIXON VERSUS SINGLETARY, WHICH THE COURT HELD ADMISSION TO GUILT IS PER SE EFFECTIVENESS WITHOUT ANY FURTHER PROOF.

THE PROBLEM IN THIS CASE--

>> NIXON--

>> GOT REVERSED.

>> U.S. SUPREME COURT REVERSED THAT ONE, DIDN'T THEY?

>> THERE ARE SEVERAL NIXON VERSUS SINGLETARY.

>> NIXON, THE YOUNG MAN HERE IN TALLAHASSEE?

>> I DON'T KNOW WHAT PART OF TOWN HE WAS FROM, YOUR HONOR. WHAT PART OF THE STATE.

>> HE GOT A CAR AT GOVERNOR'S SQUARE MALL AND TIED UP THE VICTIM WITH BATTERY CABLES? AND THIS, HE REFUSED TO COME TO TRIAL, TAKE HIS CLOTHES OFF, THOSE KIND OF THINGS?

AND THIS COURT SAID THAT IS INEFFECTIVE ASSISTANCE.

U.S. SUPREME COURT SAID NO.

THAT SOMETIMES THAT IS THE BEST DEFENSE TO TAKE AND REVERSED, DIDN'T THEY?

>> WELL, I CITED IT FOR THE PROPOSITION ADMITTING GUILT IS PER SE EFFECTIVENESS.  
>> SUPREME COURT SAID IT IS NOT.  
>> I CAN'T REALLY COMMENT ON WHY THE SUPREME COURT.  
>> I'M SORRY, GO AHEAD.  
>> BUT EVEN WITHOUT REGARD TO WHAT THE U.S. SUPREME COURT DID LATER ON, IF THE ONLY ISSUE IN A KATE IS WHETHER YOU, IT'S SECOND-DEGREE MURDER WHICH WE ADMIT TO OR FIRST-DEGREE PREMEDITATED MURDER WHICH WE DENY, YOU SIT STILL, ARGUES TO THE JURY, ADMITTING TO SECOND-DEGREE MURDER, EXCUSE ME, ADMITTING TO FIRST-DEGREE MURDER--  
>> LET ME ASK YOU THIS. ISN'T THERE EVIDENCE IN THE RECORD THAT THE DEFENDANT STOOD OVER THE VICTIM AND ANGRILY SAID, I TOLD YOU I WOULD KILL YOU?  
HE WENT ON TO ELABORATE AND CHARACTERIZE HER IN A PARTICULARLY DESPICABLE WAY. DIDN'T HE SAY THAT?  
THEN HE FIRED HIS FINAL SHOT?  
>> YES, YOUR HONOR, AND LET ME TELL YOU, HE DID SAY THAT BUT HE DIDN'T SAY THE REST OF IT. WHAT HE SAID WAS--  
>> HE SAID IT FOUR TIMES?  
>> NOT FOUR TIMES, NO.  
WHAT THE DEFENDANT SAID, WAS I TOLD YOU I WOULD KILL YOU WHEN HE STOOD OVER THE VICTIM AND FIRED THE LAST SHOT.  
BUT WHAT THE PROSECUTOR SAID WAS, PROSECUTOR MISQUOTED THE DEFENDANT AS SAYING I TOLD YOU I'D KILL YOU, I HAD IT IN MY MIND TO KILL YOU, I WANTED TO KILL YOU FOR SEVERAL DAYS, I WANTED TO KILL SOMEONE TO TAKE OUT MY FRUSTRATION.  
THAT'S A QUOTE.  
>> LET ME ASK YOU THIS.

THE DEFENDANT WAS AT THE  
WENDY'S, CORRECT?

>> CORRECT.

>> WHETHER HE WAS FIRED OR NOT  
FIRED, HE LEFT THE PREMISES,  
RIGHT?

>> ACTUALLY, STARTED TO LEAVE  
TWICE, YES, YOUR HONOR.

>> SO AT THE TIME HE WAS ON THE  
PREMISES THERE'S NO EVIDENCE  
THAT HE HAD ANY KIND OF WEAPON  
ON HIM, CORRECT?

AT OFFICIAL TIME HE WAS ON THE  
PREMISES, WHEN HE WAS ARGUING  
WITH THE FRANCHISEE GUY, THERE  
IS NO INDICATION THAT HE HAD ANY  
KIND OF WEAPON ON HIM, CORRECT?

>> THAT'S CORRECT.

>> HE LEAVES.

>> YES, YOUR HONOR.

>> WHEN HE COMES BACK, HE HAS A  
WEAPON ON HIM?

>> HE--

>> WAIT A MINUTE.

IS THAT NOT CORRECT?

>> THERE IS NO EVIDENCE WHETHER  
THE FIRST TIME HE WAS IN THERE  
HE HAD A GUN IN HIS POCKET OR  
NOT.

WE KNOW WHEN HE CAME BACK--

>> WE KNOW WHEN HE CAME BACK--

>> HE HAD A GUN.

>> HE CAME BACK IN WITH A WEAPON  
OKAY?

>> CORRECT.

>> DID HE ASK FOR MIKE FIRST?  
OR HE JUST SAW THE VICTIM, AND  
PULLED THE GUN?

ISN'T THAT WHAT HAPPENED?

>> I HOPE I'M ANSWERING YOUR  
QUESTION CORRECTLY BUT WHAT  
HAPPENED WAS, AT THE FIRST OF  
THE MEETING IT WAS MIKE AND  
EMAMI, FRANCHISEE AT THE WENDY'S  
DEFENDANT WAS SPEAKING TO, THERE  
AIN'T GOING TO BE WENDY'S.

HE TOLD MIKE EMAMI, THE  
FRANCHISEE, NOT THE VICTIM.  
HE ASKED EMAMI WHY HIS HOURS HAD  
BEEN CUT, NOT EVERYBODY ELSE.

ANOTHER EMPLOYEE TESTIFIED  
HEARING MIKE EMAMI, HEARING  
DEFENDANT SAY THE TO MIKE EMAMI,  
THE FRANCHISEE, SOMEONE WILL  
KICK YOUR A.

THERE IS SOMEONE ADMITTED, LATER  
ON MIKE EMAMI TESTIFIED THAT HE  
HAD CHANGED THE DEFENDANT'S  
POSITION.

SO--

>> AT THIS POINT HE IS ANGRY.  
HE GOES TO HIS CAR.  
AND COMES BACK?

>> YES.

>> AND STARTS SHOOTING.

>> ON THE DAY THE MURDER HE  
FIRST ENTERED THE RESTAURANT AND  
HE ASKED FOR MIKE EMAMI.

WHEN HE FIRST ENTERED THE ACTUAL  
VICTIM, THE WENDY'S FAST-FOOD  
WORKER, WAS STANDING IN LINE  
ORDERING FOOD.

SHOWED NO INTEREST IN HER.

SHOWED NO INTEREST IN HER.

HE COMES IN, ASKS FOR MIKE  
EMAMI.

HE FINDS OUT MIKE EMAMI IS NOT  
THERE.

>> HE SEES SOMEONE ELSE WHO HE  
FEELS IS A PART OF WHY HIS HOURS  
ARE BEING CUT, WHY HE IS BEING  
TREATED THE WAY HE IS BEING  
TREATED AND HE OPENED FIRE?

>> NO.

HE WENT TO HIS CAR, STARTED TO  
DRIVE OFF BECAUSE MIKE EMAMI WAS  
NOT THERE.

STARTED TO BACK OUT.

THEN HE REENTERED STORE, HE  
SAID, WHERE THE F IS MIKE EMAMI.  
WHEN HE FOUND OUT MIKE EMAMI WAS  
NOT THERE.

HE STARTED TO WALK OUT THE DOOR.  
HE DIDN'T GO INTO THE PARKING  
LOT.

HE TURNED AROUND, WENT BACK INTO  
THE RESTAURANT AND, THEN HE  
STARTED SHOOTING.

>> LET ME ASK YOU THIS QUESTION.

>> YES, YOUR HONOR.

>> HOW MANY TIMES WAS THE VICTIM  
IN THIS CASE SHOT?

>> AT LEAST THREE TIMES.

>> FOUR.

>> THREE TIMES?

>> YES, YOUR HONOR.

>> WHEN THE FINAL SHOT WAS  
FIRED, I TAKE IT THAT VICTIM WAS  
STILL ALIVE?

>> I BELIEVE, I DON'T KNOW.  
I KNOW HE SHOT HER THREE TIMES.  
I DON'T KNOW WHICH WAS THE FATAL  
BULLET.

>> WHAT WAS IT THAT YOUR CLIENT  
ACTUALLY SAID TO THE VICTIM AT  
THAT POINT?

WHAT WAS IT YOU SAY WITH THE  
PROSECUTOR?

YOU READ TO US WHAT THE  
PROSECUTOR SAID.

WITH IS YOUR POSITION WHAT WAS  
ACTUALLY SAID BY YOUR CLIENT?

>> OKAY.

THE LAST THING--

>> TOLD YOU I'D KILL YOU, IS  
THAT IT?

I'D TOLD YOU I WOULD KILL YOU,  
DID HE SAY THAT.

>> NO.

WHAT HE SAID, NOW YOU CAN, THE  
LAST THING HE SAID TO THE  
VICTIM, NOW YOU CAN GO AND TELL  
MIKE THANKS.

AND HE ALSO DID TELL THE VICTIM,  
I TOLD YOU I'D KILL YOU.

TWO SEPARATE THINGS.

>> LET ME ASK YOU.

YOU HAVE A FACTUAL SITUATION YOU  
JUST DESCRIBED WHERE HE CAME  
BACK INTO THE STORE WITH A  
WEAPON, ASKING FOR THESE PEOPLE.  
HE SHOOTS THE VICTIM POINT  
BLANK.

YOU'RE TELLING ME THE JURY WAS  
PREJUDICE BECAUSE OF WHAT THE  
PROSECUTOR SAID INTO BELIEVING  
THAT IT WAS PREMEDITATED?

>> YES, YOUR HONOR.

HERE'S WHY.

>> WHAT DOES IT TAKE FOR

PREMEDITATION TO OCCUR?  
YOU SHOOT THEM THREE TIMES.  
>> OKAY.  
THAT PROVES HE HAD A MOTIVE.  
THAT PROVES HE COMMIT AD WHOM.  
FOR FIRST-DEGREE MURDER YOU NEED  
PREMEDITATION.  
WHAT IS PREMEDITATION UNDER THE  
RULES, UNDER THE JURY  
INSTRUCTIONS, A CONSCIOUS MIND,  
A DECISION TO KILL, REQUIRES  
TIME FOR REFLECTION.  
WHAT WE SEE IN THIS CASE--  
>> HE FIRED THE GUN THREE TIMES.  
AT LEAST, RIGHT?  
SHOT THREE TIMES.  
>> IMPULSIVELY, IMPULSIVELY  
NOT PREMEDITATED.  
>> I THOUGHT THE EVIDENCE, YOU  
SAID THREE TIMES.  
I THOUGHT THE EVIDENCE WAS HE  
SHOT HER FOUR TIMES AND STOOD  
OVER HER AND TOLD YOU I WAS  
GOING TO KILL YOU WITH SOME  
EXPLETIVES AND THEN SHOT HER IN  
HEAD.  
IS THAT FACTUALLY--  
>> HE SHOT HER MULTIPLE TIMES  
WHEN HE FIRST WENT TO SHOOT HER.  
HE STARTED TO LEAVE THE  
RESTAURANT.  
CAME BACK IN WHEN SHE WAS LAYING  
ON THE GROUND, SHOT HER ANOTHER  
TIME.  
YES, SIR.  
>> WHAT WAS THE DEFENSE THIS  
CASE?  
>> I'M SORRY?  
>> WHAT WAS THE DEFENSE IN THIS  
CASE.  
>> TO ADMIT SECOND-DEGREE  
MURDER.  
THEY SAID IT IS SECOND-DEGREE  
MURDER IT IS NOT PREMEDITATED.  
HERE'S THE PROBLEM.  
THERE IS EVIDENCE OF IT BEING  
BOTH A SPONTANEOUS, IMPULSIVE  
SHOOTING OF THE WORKER INSTEAD  
OF THE MANAGER.  
AND THERE IS EVIDENCE OF

PREMEDITATION.

THERE IS BOTH.

AND SO IT WAS UP TO THE TRIAL  
LAWYER TO EXPLAIN HAVING  
ADMITTED IT IS SECOND-DEGREE  
MURDER, NOT PREMEDITATED, TO  
EXPLAIN TO THE JURY WHY IT WAS  
NOT PREMEDITATED.

>> BUT YOU'RE NOT, YOU'RE NOT  
SAYING THAT THE TRIAL-- IN THIS  
SOLE CLAIM ON APPEAL, YOU'RE NOT  
SAYING THAT THE TRIAL LAWYER  
DIDN'T PUT ON, OR SHOULD HAVE  
PUT ON MORE WITNESSES TO EXPLAIN  
THE FACTS DIFFERENTLY?

>> NO, IN FACT--

>> YOU'RE SAYING THAT THE  
PROSECUTOR PISS STATED A QUOTE?

>> YES, YOUR HONOR.

>> DID WE IF OUR DIRECT APPEAL  
WHEN WE QUOTED WHAT BROWN SAID,  
DID WE MISQUOTE ANY OF THE  
QUOTES?

ARE THEY, OUR DIRECT APPEAL  
QUOTES CORRECT?

>> AS I RECALL, I COULD BE  
WRONG, BUT I DON'T THINK YOU  
QUOTED THE FULL PROSECUTORIAL  
STATEMENT.

>> I TOLD YOU I WOULD KILL YOU  
FING BITCH.

IS THAT AN INACCURATE QUOTE?

>> NO ONE WITNESS SAID HE SAID  
THAT TO HER WHEN SHE WAS DOWN ON  
THE GROUND WITH THE FINAL SHOT.  
WHAT IS AN INACCURATE QUOTE IS,  
CORRECT, PROSECUTOR'S CORRECT  
WHEN HE SAID, HE QUOTED THE  
DEFENDANT SAYING I'D TOLD YOU  
I'D KILL YOU.

HE DID DO THAT BUT THE  
PROSECUTOR ADDED I HAD I HAD IN  
MY MIND TO KILL YOU.

I WANTED TO KILL YOU FOR SEVERAL  
DAYS.

I WANTED TO KILL SOMEONE TO TAKE  
OUT MY FRUSTRATION.

>> WE'RE TALKING ABOUT WHETHER  
CCP, A PENALTY PHASE ISSUE, WAS  
CCP FOUND BY THE TRIAL JUDGE?

>> YES.

>> NOW ON RETRIAL IN THE PENALTY PHASE YOU COULD MAYBE ARGUE, IT WILL BE IMPORTANT TO ARGUE, THAT THIS WAS ALTHOUGH IT WAS FIRST-DEGREE MURDER, IT WAS NOT BEING CONTEMPLATED FOR SEVERAL DAYS BECAUSE THIS IS WHAT YOUR CLIENT SAID.

SEEMS TO ME THAT WOULD BE THE APPROPRIATE PLACE TO TALK ABOUT WHETHER THERE IS ANY PREJUDICE OR THE, TO DEFINING OF PREMEDITATION WHICH JUSTICE LABARGA IS SAYING CAN OCCUR, THERE'S A SHOT, THERE'S A SHOT, THERE'S A SHOT, YOU DON'T NEED ANYTHING FOR PREMEDITATED MURDER, DO YOU?

>> YES, YOU DO BECAUSE, AND I THOUGHT OF ANALOGY FOR THIS, YOUR HONOR, I THOUGHT OF THIS-- ANALOGY.

DURING THE JURY INSTRUCTION PREMEDITATION REQUIRES A CONSCIOUS DECISION, A REFLECTION, NOT AN IMPULSIVE ACT.

IF WE-- IMPULSIVE ACT. IF WE DON'T ACCEPT THAT DIFFERENCE THERE IS NO DIFFERENCE BETWEEN FIRST AGREE AND SECOND-DEGREE MURDER.

>> WE HAVE CASES WHERE THERE IS JUST SHOTS, THERE IS PREMEDITATION.

HE SAYS SOMETHING, WHAT THE SOMETHING IS, I TOLD YOU I WOULD DO THIS AND I'M DOING IT.

>> YES.

THAT IS EVIDENCE OF PREMEDITATION BUT THERE IS ALSO EVIDENCE THAT--

>> LET ME, LET ME ASK YOU THIS.

>> YES, SIR.

>> WHY AM I WRONG IN THINKING THAT THE IMPACT ON THE JURY WOULD BE NO DIFFERENT IF THE PROSECUTOR DIRECTLY QUOTED WHAT WE HAVE IN THE RECORD ABOUT WHAT

THE DEFENDANT SAID AS HE WAS SHOOTING THE VICTIM IN THE HEAD, AND, WHAT HE HAD WRITTEN IN HIS LITTLE DIARY WHERE HE TALKS ABOUT, I JUST OFFED A, THE VICTIM I'LL SAY BECAUSE SHE WAS THE CAUSE OF MY LIFE BEING, OF HIS PROBLEMS.

I WILL CLEAN IT UP.

SHE AIN'T DEAD, SHE LEARNED HOW SERIOUS WORDS CAN BE.

WITH YOU PUT ALL OF THAT TOGETHER, I HAVE A HARD TIME, I HAVE A HARD TIME OF SAYING WHY THE IMPACT OF READING ALL OF THAT TO THE JURY WOULD BE ANY DIFFERENT THAN WHAT THE PROSECUTOR ACTUALLY SAID.

AND SO, WHY AM I WRONG IN THINKING THAT, THAT IF THE JURY HAD HEARD THAT, THEY WILL BE THINKING THE SAME THING THAT THEY'RE THINKING WHEN THEY HEAR WHAT THE PROSECUTOR ACTUALLY SAID?

>> I'M GLAD YOU ASKED ME THAT, JUSTICE CANADY.

>> I'M GLAD I ASKED IT TOO.

>> HERE'S WHY.

THE WAY IT WOULD WORK IN CLOSING ARGUMENT IS THIS.

LADIES AND GENTLEMEN, THERE IS ONLY ONE QUESTION FOR YOU TO ANSWER, MY CLIENT ALREADY ADMITTED HE COMMITTED SECOND-DEGREE MURDER.

WE DENY THIS IS FIRST-DEGREE MURDER.

>> I THINK HE MIGHT HAVE ADMITTED HE COMMITTED PREMEDITATED MURDER BY WHAT'S QUOTED HERE.

>> THE EVIDENCE, FIRST OF ALL WE KNOW WE'RE DEALING WITH A DIFFERENT INDIVIDUAL, HE KILLED SOMEBODY, PUT ICE DOWN HIS BACK. WHEN HE ENTERED THE RESTAURANT ON THE DAY OF MURDER HE WENT THERE FOR MIKE EMAMI AND THE DECISION TO GO BACK AND SHOOT

JUANESE MILLER, THE WENDY'S WORKERS, WAS SPONTANEOUS, UNPREMEDITATED ACTION. LIKE WHEN YOU GO TO SUPERMARKET, YOU HAVE THE SHOPPING LIST, THINK IT OUT, YOU PREMEDITATE. WALKING OUT OF THE CHECK STAND, HAVE NO INTENTIONS, NEVER THOUGHT ABOUT THIS, YOU GRAB A CHOCOLATE BAR AND THROW IT ON THE CAN SAY I DON'T REMEMBER BELT.

THAT IS NOT A PREMEDITATED DECISION.

>> HOW LONG DOES IT TAKE TO FORM PREMEDITATION?

NO THE CASE LAW SAYS THERE IS NO TIME.

>> EXACTLY.

IT CAN BE FORMED IN A FEW SECONDS CAN'T IT?

>> THAT DID WHAT THE CASE LAW SAYS.

>> YOU MAKE YOUR DECISION ABOUT WHAT YOU'RE GOING TO DO, IT DOES NOT TAKE A LONG TIME TO DO SO. THEN YOU HAD TIME FOR REFLECTION.

>> YES.

>> HE CERTAINLY HAD TIME FOR REFLECTION AFTER HE SHOT HER THE FIRST COUPLE TIMES.

THEN HE STOOD OVER HER AND SAID WHAT HAD BEEN QUOTED HERE AND SHOT HER AGAIN.

SO, YOU'RE SAYING TO ME, THAT THAT IS NOT ENOUGH TIME AND REFLECTION TO FORM FIRST-DEGREE MURDER?

>> WHAT I'M SAYING IS, THAT THERE IS EVIDENCE THAT IT WAS FIRST-DEGREE MURDER AND ALSO EVIDENCE IT WAS UNPREMEDITATED SECOND-DEGREE MURDER.

>> WHO MAKES THE DECISION?

>> THE JURY.

>> THE JURY MAKES THE DECISION ABOUT WHETHER OR NOT IT IS FIRST-DEGREE MURDER OR SECOND-DEGREE MURDER?

>> YES.  
>> OKAY.  
>> DOWN TO YOUR REBUTTAL TIME,  
BUT BEFORE YOU SIT DOWN, ONE  
QUICK QUESTION.  
>> YES, SIR.  
>> WHAT WAS THE FIREARM USED?  
WAS IT A SEMI-AUTOMATIC OR WAS  
IT A REVOLVER.  
>> I KNOW, I JUST KNOW IT WAS A  
PISTOL.  
>> OKAY.  
PISTOL IS NOT REVOLVER.  
I'M JUST WONDERING.  
THANK YOU.  
>> THANK YOU, YOUR HONOR.  
>> MAY IT PLEASE THE COURT.  
CHRISTINA PACHEKO, OFFICE OF THE  
ATTORNEY GENERAL FOR THE STATE  
OF FLORIDA IN THIS CASE.  
>> LET ME ASK YOU THIS.  
WHERE IN THE RECORD, WHAT IN THE  
RECORD SUPPORTS THE  
PROSECUTOR'S, THAT PORTION OF  
THE PROSECUTOR'S STATEMENT THAT  
SAYS I WANTED TO KILL YOU FOR  
SEVERAL DAYS?  
I WANTED TO KILL SOMEONE TO TAKE  
OUT, TO TAKE OUT MY FRUSTRATION  
PART, BUT THE PART THAT HE SAYS  
I WANTED TO KILL YOU FOR SEVERAL  
DAYS.  
WHERE IS THAT SUPPORTED IN THE  
RECORD?  
>> IT'S SUPPORTED IN MANY  
DIFFERENT AREAS.  
IF WE LOOK AT THE CIRCUMSTANCES  
OF THE MURDER, YOUR HONOR, YOU  
ARE CORRECT, WHEN MR. BROWN  
RETURNED TO WENDY'S HE CAME WITH  
A FIREARM, HE FIRST ASKED FOR  
THE FRANCHISEE OWNER, AT THAT  
TIME, MISS MILLER WAS ORDERING  
HER FOOD.  
HE SEES HER.  
HE LEAVES.  
HE GETS IN HIS CAR.  
HE COMES BACK.  
AT THE DOOR HIS GIRLFRIEND AT  
THE TIME TRIED TO PREVENT HIM

FROM ENTERING.

HE SAYS SHE IS THE REASON I  
DON'T HAVE MY JOB.

HE WALKS IN.

AND BEFORE SHE EVEN HAS A  
CHANCE--

>> WHO MADE THAT STATEMENT IN  
THE RECORD, THE FORMER  
GIRLFRIEND?

>> YES.

HER NAME WAS ANGELA HARLEY.  
SHE SAID THE SECOND TIME THAT HE  
CAME IN, HE, HE TOLD HER, SHE'S  
THE REASON I DON'T HAVE MY JOB,  
REFERRING TO THE VICTIM.

HE WALKS IN.

AND WITHIN A VERY CLOSE RANGE  
PULLS OUT HIS GUN FROM HIS  
WAISTBAND, FIRES THREE TIMES,  
LEAVES, TURNS AROUND, AND SAYS,  
I TOLD YOU I WOULD KILL YOU,  
YOU--ING PITCH AND FIRES THE  
FOURTH AND FINAL SHOT.

AFTER HE WRITES IN HIS JOURNAL,  
I JUST OFFED A BITCH, BECAUSE  
SHE WAS THE CAUSE OF MY LIFE  
BEING F-ED UP.

FIRST TIME, CLEARLY THAT WAS A  
DIRECT QUOTE FROM HIM.

IN FACT THE QUOTE HE ACTUALLY  
SAID WAS, WORSE THAN WHAT THE,  
SHE CLEANED IT UP A LITTLE BIT.  
THE REST OF THE STATEMENT WHICH  
YOUR HONOR IS REVVING TO, THAT  
CAN BE SEEN FROM THE FACT THAT,  
WELL HE TOLD HER HE WOULD KILL  
HER.

APPARENTLY AT SOME POINT,  
BEFORE, HE FIRED THE FOURTH SHOT  
HE TOLD HER AT ANOTHER TIME HE  
WOULD KILL HER.

ALL OF THE EVIDENCE FROM THE  
TRIAL SHOWED THAT ON THAT  
MORNING, BOTH THE DEFENDANT AND  
THE VICTIM WORKED TOGETHER.  
THERE WERE NO, NO, NO ARGUMENT  
OR ANYTHING IN BETWEEN THAT  
TIME.

>> NO ALTERCATION BETWEEN THEM  
THAT DAY?

>> NO, NOTHING THAT DAY.  
IT HAD TO HAVE OCCURRED ON A  
PREVIOUS TIME BEFORE THAT.  
AND SO HE OBVIOUSLY, HE TOLD HER  
HE WOULD KILLER AT SOME POINT.  
HE DID AGAIN WHEN HE SHOT HER.  
>> PROSECUTOR WAS PARAPHRASING  
WHAT HAD BEEN SAID IN DIFFERENT  
INSTANCES?  
>> EXACTLY.  
IT WAS A PARAPHRASE OF THE  
EVIDENCE THAT WAS INTRODUCED  
DURING TRIAL, MUCH OF WHICH WERE  
THE DEFENDANT'S OWN WORDS.  
IT WAS JUST--  
>> REALLY THE, THE LAWYER WAS  
GIVEN A CHANCE TO PUT HIM ON THE  
STAND.  
DID THEY PUT HIM ON THE STAND OR  
DID YOU?  
>> WE PUT HIM ON THE STAND, YOUR  
HONOR.  
>> HE SAID HE WAS ABOUT READY TO  
GET UP TO OBJECT.  
THEN HE REALIZED THAT HE WAS  
JUST PARAPHRASING.  
IS THAT WHAT HE SAID?  
>> HE SAID IT WAS CLEAR TO HIM  
AND EVERYONE IN THE COURTROOM  
THAT THE PROSECUTOR WAS NOT  
INTENDING TO QUOTE, DIRECTLY  
FROM BROWN.  
IT WAS JUST A PARAPHRASING.  
>> IF HE REALLY LED, IF HE SAID  
HE IS MISQUOTING IT, ALL MY  
CLIENT SAID WAS, STILL AMOUNTS  
TO WHETHER HE THOUGHT ABOUT IT  
THAT DAY OR TWO DAYS?  
WE'RE NOT HERE ON THIS ISSUE OF  
CCP.  
WE'RE HERE ON THE ISSUE OF  
WHETHER THE JURY WOULD HAVE  
STILL FOUND PREMEDITATED MURDER,  
CORRECT?  
>> EXACTLY.  
I BELIEVE JUSTICE CANADY SAID IT  
BEST, REALLY WOULD HAVE BEEN NO  
DIFFERENCE HAD THE PROSECUTOR  
QUOTED DIRECTLY FROM BROWN.  
IT WAS A PARAPHRASE OF HIS

STATEMENT.

REALLY NOT ONLY HAS BEEN A  
SHOWING OF DEFICIENT  
PERFORMANCE, REALLY NONE, NO  
PREJUDICE WHATSOEVER HERE, GIVEN  
THE EVIDENCE THAT WAS EDUCED AT  
TRIAL.

THE OVERWHELMING EVIDENCE OF  
PREMEDITATION AND,  
MR. ANDERSON'S ARGUMENTS  
REGARDING PREMEDITATION ARE NOT  
REALLY RELATED TO, HE IS NOT  
SHOWING HOW THAT IMPACTED  
WHETHER THE TRIAL COUNSEL SHOULD  
HAVE OBJECTED AND HOW THAT  
IMPACTED PREMEDITATION.

THIS COURT ALREADY FOUND THAT  
THERE WAS SUFFICIENT EVIDENCE OF  
PREMEDITATION.

SO, HOW HE CAN SAY THAT THEN,  
THAT FAILURE TO OBJECT TO THAT  
VERY SPECIFIC ARGUMENT DURING  
CLOSING, DURING CLOSING  
ARGUMENT, SOMEHOW IMPACTED THE  
JURY'S FINDING OF PREMEDITATION,  
I JUST, NO MATTER WHICH WAY YOU  
LOOK AT IT, THERE IS NO COMING  
TO THAT CONCLUSION, BASED ON  
THESE FACTS.

OTHER THAN THAT, IF THIS COURT  
HAS NO QUESTIONS, I WOULD JUST  
RELY ON THE REST OF THE  
ARGUMENTS CONTAINED IN MY  
BRIEFING AND RESPECTFULLY  
REQUEST THAT THIS COURT AFFIRM  
THE LOWER COURT'S FINDINGS.

THANK YOU.

>> THANK YOU.

>> COUNSEL, YOU HAVE A FEW  
MINUTES FOR REBUTTAL.

TWO MINUTES AND 10 SECONDS, AS A  
MATTER OF FACT.

>> LET'S NOT MISTAKE SUFFICIENCY  
OF EVIDENCE FOR EFFECTIVENESS OF  
COUNSEL.

WE HAVE ALREADY, I STATED  
CLEARLY AND CANDIDLY TO THIS  
COURT THERE WAS EVIDENCE OF  
PREMEDITATION.

THERE WAS ALSO EVIDENCE THAT THE

MURDER WAS SPONTANEOUS AND UNPREMEDITATED.

>> HOW DO WE DEAL WITH, YOU KNOW, WE KNOW FROM STRICKLAND AND ALL THE OTHER CASES ABOUT INEFFECTIVE ASSISTANCE OF COUNSEL.

THAT WE DON'T LOOK AT THESE CASES WITH 2020 HINDSIGHT. AND YOU KNOW, MAYBE AN OBJECTION COULD HAVE BEEN MADE AND WHAT WOULD THE OBJECTION HAVE DONE? WOULD THE TRIAL COURT SAY WHAT? WHAT WOULD THE TRIAL JUDGE HAVE DONE IF THERE HAD BEEN A OBJECTION MADE?

>> I WOULD HAVE DECLARED A MISTRIAL BUT PROBABLY A CURATIVE INSTRUCTION, YOUR HONOR.

>> A CURATIVE INSTRUCTION, OH, HE SAID I TOLD HER I WOULD KILL YOU, WHATEVER THE REST OF IT IS, AND HE ALSO SAID BECAUSE MY LIFE WAS SO MESSED UP, YOU'RE THE CAUSE OF IT AND ALL THAT.

THAT IS WHAT HE SAID.

BUT HE DIDN'T SAY I WAS THINKING ABOUT IT FOR SEVERAL DAYS, THAT IS WHAT THE CURATIVE INSTRUCTION WOULD BE?

>> YES THE WAY IT WOULD PLAY OUT IN JURY ROOM, YOUR HONOR.

THE JURY WOULD GO, EVEN THOUGH THIS IS NOT ABOUT DIMINISHED CAPACITY.

THEY LOOK AT THE WHOLE SCENARIO, THIS IS NOT NORMAL HUMAN BEING, END UP SHOOTING SOMEBODY, PUTS ICE DOWN HIS BACK.

HE CLEARLY WAS MAD AT MIKE EMAMI.

HE CAME BACK TO THE RESTAURANT TO SHOOT MIKE EMAMI.

EVEN WENT BACK TO GET IN HIS CAR THAT WOULD HAVE BEEN PREMEDITATED MURDER IF HE SHOT MIKE EMAMI HIS INTENDED TARGET IT WOULD BE PREMEDITATED FIRST-DEGREE MURDER BUT HE DIDN'T.

>> HE WASN'T THERE, SOMETHING  
INSIDE SAYS, LET ME GO BACK, I  
SAW HER IN THERE.

HIS GIRLFRIEND SAYS YOU DON'T  
WANT TO COME IN HERE.

SHE IS THE CAUSE OF ALL MY  
PROBLEMS.

THAT IS NOT ENOUGH FOR  
PREMEDITATION?

>> IT IS ENOUGH FOR  
PREMEDITATION.

IT IS ALSO ENOUGH FOR  
SECOND-DEGREE MURDER.

>> FOR THE JURY.

>> THAT IS THE PROBLEM.

>> ARGUMENT IN THE FIRST-DEGREE?

>> IN OTHER WORDS ONCE THE REST  
OF THAT QUOTE CAME IN WAS NOT A  
BEING RAT QUOTE, I HAD IT IN MY  
MIND TO KILL YOU, I WANTED TO  
KILL YOU FOR SEVERAL DAYS, I  
WANTED TO KILL SOMEONE TO TAKE  
OUT MY FRUSTRATION, DEFENSE  
COUNSEL SAT SILENT, THE JURY  
ACCEPTING THE STATE'S STATEMENT  
AS A TRUE STATEMENT, GEE HE  
ADMITTED TO PREMEDITATION, WHAT  
ARE WE HERE FOR?

>> WE'RE OUT OF TIME.

THANK YOU FOR YOUR ARGUMENTS.