

>> ALL RISE.

>> NOW IN SESSION, PLEASE BE SEATED.

>> WE NOW TAKE UP THE FOURTH CASE ON TODAY'S DOCKET, COLLEY VERSUS THE STATE OF FLORIDA, COUNSEL.

>> MR. CHIEF JUSTICE, MAY IT PLEASE THE COURT, MY NAME IS GEORGE BURDEN, I'M HERE ON BEHALF OF MR. JAMES COLLEY, JR, MR. COLLEY WAS SENTENCED TO DEATH FOR THE MURDER OF HIS WIFE AMANDA COLLEY AND HER FRIEND LINDY DOBBINS IN ST. AUGUSTINE, FLORIDA, WE ARE HERE TO CONTEND THAT JUDGE MALTZ WAS INCORRECT IN INSTRUCTING AND FINDING TWO AGGRAVATING FACTORS, THOSE AGGRAVATING FACTORS WERE CALCULATED PREMEDITATED AND CRUEL AND WE THINK IN THIS PARTICULAR CASE REQUIRES A NEW SENTENCING HEARING.

AND I SAY THAT BECAUSE IN THE REVIEW OF THE TRIAL THEY CONCEDED THAT MR. COLLEY DID THIS HORRIFIC MURDER, THEY SAID SO IN OPENING STATEMENT, THEY'VE NEVER DISPUTED THAT FACT.

WHAT THEY DISPUTE IS THE APPLICATION OF THE AGGRAVATING FACTORS, AND NOW YOU KNOW THIS IS A FIRST HURST ENVIRONMENT WHERE WE REQUIRE A JURY UNANIMITY AND WHEN A JURY IS NOT INSTRUCTED PROPERLY AS YOU MENTIONED IN WOOD RECENTLY, THERE IS A HARMLESS ERROR RULE BUT THE HARMLESS ERROR RULE THAT'S SCRUTINY IN HARMLESS ERROR AND WE WOULD SAY THAT WOULD BE AN AUTOMATIC RESENTENCING HEARING IF A JURY IS MISINSTRUCTED.

I WOULD LIKE TO EXPLAIN WHY CCP DOES NOT APPLY, YOU MAY RECALL THE FACTS OF THIS CASE AND IT'S VERY UNIQUE AND LET ME DIGRESS A MOMENT AND SAY THERE'S NOT MUCH

ABOUT THE CASE WE DON'T KNOW BECAUSE OF TECHNOLOGY AND EXPERTS AND SO FORTH, AND THE 911 CALLS, SO WE KNOW WHAT HAPPENED HERE, AND YOU'D BE HARD PRESSED TO FIND A CASE WITH THESE KINDS OF FACTS AND THE FACTS ARE YOU HAD A MARRIAGE THAT WAS ESTRANGE, MR. COLLEY HAD AN INJUNCTION FOR GOING TO THE HOUSE BUT THE EVIDENCE SHOWED HE ROUTINELY WENT TO THE HOUSE ANYWAY BECAUSE THEY WERE STILL NOT IN A DIVORCE POSTURE AND THERE WERE THE CHILDREN INVOLVED AND IN THIS PARTICULAR CASE, MRS. COLLEY INFORMED THE HUSBAND THAT SHE WASN'T FEELING WELL AND TO TAKE THE KIDS, AFTER A NIGHT OF DRINKING AND DOING DRUGS HE WENT TO THE HOUSE AT APPROXIMATELY 4:00 O'CLOCK IN THE MORNING AND SHE WAS NOT THERE, BUT WHAT DID HE FIND IN THE HOUSE, HE FOUND EVIDENCE THAT SHE WAS HAVING A RELATIONSHIP WITH ANOTHER MAN. WENT TO A NEIGHBOR RIGHT THERE AFTER AND HE WAS EXTREMELY UPSET AND HE DISCLOSED WHAT WAS FOUND LATER, HE TRASHED THE HOUSE, HERE IS A MAN WHO IS A FINANCIAL SECTOR PROFESSIONAL IN A MIDDLE-CLASS NEIGHBORHOOD THAT WENT BACK IN AND TRASHED HIS OWN HOUSE AND HE HAS AN INJUNCTION NOT TO BE THERE, THAT'S HOW EMOTIONALLY UPSET HE WAS.

>> IN ANY OF THESE CASES INVOLVING A DOMESTIC MURDER, PEOPLE ARE UPSET, OKAY, THAT'S -- THAT'S KIND OF INTRINSIC TO IT, IT SEEMS TO ME -- YOU ARE FOCUSING ON THINGS THAT HAPPENED EARLIER, WHAT ABOUT THE CIRCUMSTANCES THAT LEAD UP FROM THE TIME HE WAS IN COURT THAT MORNING, RIGHT, SEEMINGLY BEHAVING IN A VERY RATIONAL MANNER, UNDERSTANDING THINGS,

ASKING INTELLIGENT QUESTIONS,
BEHAVING HIMSELF VERY WELL,
RIGHT?

>> ABSOLUTELY.

>> OKAY.

SO HE DOES THAT AND THEN -- THEN
HE'S OFF TO COMMIT THESE
MURDERS, ISN'T THAT CORRECT?
BUT WE CAN KNOW THAT HE'S OFF TO
DO THAT AND THIS IS -- THIS IS
SOMETHING THAT IS SET IN MOTION,
IT'S NOT LIKE HE GOT THERE TO
CONFRONT HER AND THEN IT GOT OUT
OF CONTROL AND HE KILLED HER.
NO.

>> NO, SIR.

>> IT'S NOT LIKE THAT.

I MEAN, WE CAN SEE THAT -- THE
JURY CAN SEE THAT HE'S GOING
WITH A PLAN TO DO DAMAGE, TO DO
-- TO COMMIT ACTS OF EXTREME
VIOLENCE, ISN'T THAT CORRECT?

>> THAT'S CORRECT, JUSTICE
KENNEDY, AND I WILL SAY TO YOU
AND YOU'LL SEE THROUGHOUT YOUR
CAREER, PEOPLE ARE IN THEIR BEST
BEHAVIOR IN FRONT OF A JUDGE,
THEY REALLY ARE, HE WAS ON HIS
BEST BEHAVIOR.

>> THAT'S GENERALLY TRUE BUT NOT
UNIVERSALLY TRUE.

>> THAT IS CORRECT.

[LAUGHTER]

>> BUT -- BUT LET ME GIVE YOU A
FACT THAT CHANGES THE WAY YOU
ARE VIEWING THIS, YOUR
PERSPECTIVE ENTIRELY, JUST
BEFORE HE WENT TO COURT HE HAD A
SHORT CONVERSATION WITH HIS WIFE
AND IN THAT CALL HE WAS
APOLOGIZING FOR WHAT HE DID AND
THAT HE WOULD COME AND PAY AND
MAKE IT RIGHT AND SO THIS IN
EFFECT WAS THE BEGINNING OF A
COOLING OFF PERIOD BECAUSE,
REMEMBER, IF YOU LISTEN TO THE
OPENING STATEMENT OF THE
PROSECUTOR IN THIS CASE,
MS. DUTTON, SHE MAKES IT CLEAR
FROM THE TIME HE DISCOVERED THE

ITEMS IN THE HOUSE THAT SET HIM OFF TILL THE TIME THE MURDER OCCURRED THERE WAS NO TIME WHERE HE HAD A TIME TO COOL OFF AND SLEEP OR SLEEP IT OFF, IT WAS A CONTINUOUS PERIOD OF TIME FROM 4:30 IN THE MORNING TILL 10:30 IN THE MORNING WHEN THE SHOOTING OCCURRED.

>> HOW DOES THE CALL ABOUT TO THE WIFE AND MAKE IT RIGHT AND PAY FOR IT, HOW DOES THAT UNDERMINE THE PERSPECTIVE I WAS EXPLAINING?

>> IT SUPPORTS YOUR PERSPECTIVE. IT ABSOLUTELY SUPPORTS YOUR PERSPECTIVE, THERE WAS THIS BEGINNING THAT MAYBE THING WOULD BE OKAY AND HE WENT TO COURT AND AFTER COURT HE DIDN'T GO TO THE HOUSE, THAT'S THE KEY, HE DIDN'T, BECAUSE HE WAS GOING TO MAKE THINGS RIGHT AND THINGS WERE GOING TO BE OKAY BUT THEY HAD A 14-MINUTE PHONE CONVERSATION AND IN THAT 14-MINUTE PHONE CONVERSATION WHAT HAPPENED?

WE KNOW VERY LITTLE BUT WHAT WE CAN CALL FROM HIS TALK WITH THE EXPERTS, THE MENTAL EXPERTS BECAUSE, REMEMBER, HE HAD THIS CLAIM OF PARASOMNIA AND MEMORY WAS SPOTTY BUT WHAT HE DID SAY WAS THAT HE TOLD THE POLICE AND THEY ARE COMING AND SHE HAD PROMISED HIM THAT SHE WOULD NOT DO ANYTHING ABOUT THAT AND SHE HELD THAT PROMISE, IF YOU RECALL IN THE RECORD, THE POLICE DID COME AND SHE SAID, I AM NOT MAKING A CLAIM HERE OF A VIOLATION, I WANT TO TALK TO MY LAWYER JUST LIKE SHE PROMISED HIM, BUT THAT SET HIM OFF, THAT REENRAGED HIM.

>> HOW LONG WAS THAT BEFORE THE MURDERS TOOK PLACE?

>> LESS THAN 30 MINUTES.
LESS THAN 30 MINUTES.

FROM A GUY WHO WAS SO EMOTIONALLY DISTRAUGHT THAT HE TRASHED HIS OWN HOUSE WITH INJUNCTION AND NEVER STOPPED, IT STARTED TO CALL FROM BEING IN FRONT OF A JUDGE AND HAVING THIS TALK ABOUT I'LL PAY YOU AND MAKE THIS RIGHT, THAT SUPPORTS YOUR PERSPECTIVE ENTIRELY.

>> LET ME ASK YOU JUST BASICALLY WHAT'S OUR STANDARD OF REVIEW ON THE ISSUE THAT YOU'RE ARGUING.

>> IT'S WHETHER OR NOT THERE IS SUBSTANTIAL, COMPETENT EVIDENCE TO SUPPORT.

>> OKAY.

BECAUSE IT READS LIKE AND SOUNDS LIKE YOU'RE ASKING US TO REWEIGH THE EVIDENCE BY ARGUING EVIDENCE THAT COULD CAUSE A FINDER OF FACT TO COME TO A DIFFERENT CONCLUSION THAN THEY DID.

AND, YOU KNOW, THE STATE POINTS OUT THE EVIDENCE THAT WOULD SUPPORT A FINDING OF CCP, AND I DON'T SEE ANYTHING OR HAVEN'T HEARD ANYTHING THAT WOULD INDICATE WHY THAT WOULD NOT BE THE KIND OF THINGS THAT JUSTICE CANADY TALKED-- BROUGHT OUT, BUT OTHER FACTS WOULDN'T BE SUFFICIENT EVIDENCE TO BE COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDING.

>> JUSTICE LAWSON, I'M NOT SUPPORTING A REWEIGHING OF THE EVIDENCE AT ALL.

LET'S BE CLEAR HERE.

THE EVIDENCE SUPPORTS EXACTLY WHAT I'M SAYING.

AND THE JUDGE, IN THE WAY-- JUDGE MALTZ, IN HIS LENGTHY ORDER CHARACTERIZED THE EVENTS WAS CONSISTENT WITH THE STATE'S THEME.

SUDDENLY, THE EMOTION GOT SHUT OFF.

JUST LIKE A SWITCH.

IT GOT SHUT OFF, AND THEN HE WENT INTO THIS CALCULATED PLAN.

SURE, WE'VE SEEN THAT, AND THIS IS A LOVE TRIANGLE DOMESTIC CASE, LET'S BE CLEAR.

AND WHEN WE'VE HAD THOSE CASES WHERE CCP HAS BEEN UPHOLD LIKE, FOR EXAMPLE, A COP SHOW, PERFECT EXAMPLE.

HE HAD THREE DAYS TO COOL OFF, AND HE PLANNED THE MURDER OF HIS WIFE.

FAR DIFFERENT.

ALLRED, WHICH IS A CASE THAT'S VERY CLOSE TO THIS, HE SPENT WEEKS ON TARGET PRACTICE OF THE THIRD PERSON IN THE TRIANGLE. AND THREATENED TO KILL HIM REPEATEDLY.

NONE OF THAT HAPPENED HERE.

IN FACT, WHEN HE SHOWED UP AT THE HOUSE, THERE WAS NO CLUE THAT HE WAS GOING TO MURDER ANYBODY IN THE MINDS OF THE PEOPLE IN THE HOUSE BASED ON PAST CONDUCT.

>> UNTIL HE STARTED SHOOTING THROUGH THE SLIDING GLASS DOORS, THEN THEY PROBABLY GOT AN IDEA.

>> YES, SIR.

THE FORMER MARINE GOT IT.

ABSOLUTELY.

BUT IN ALL THOSE OTHER CASES, IN SANTOS, YOU HAVE TO OVERRULE SANTOS TO UPHOLD CCP HERE.

BECAUSE IN THE SANTOS CASE, WHICH IS IDENTICAL HERE-- ALTHOUGH IT'S A LITTLE, LITTLE DIFFERENT PERSPECTIVE.

IN SANTOS THE MOTHER OF HIS CHILD WOULD NOT NAME, WOULD NOT GIVE HIS NAME, AND IT AGGRAVATED HIM.

AND TWO DAYS OR THREE DAYS BEFORE THE MURDER, HE THREATENED TO KILL HER, AND SHE CALLED THE POLICE.

THEY DIDN'T FIND A GUN ON HIM, THEY RELEASED HIM.

AGAIN HERE, THESE THREATS OF MURDER.

WE NEVER HAD THAT IN THIS CASE.

THERE WAS NO THREAT OF MURDER
EVER.

HE SHOWED UP FROM THE EVENT THAT
GOT HIM ENRAGED AND WENT TO THAT
HOUSE WITHIN SEVEN HOURS.

>> SO IS WHAT YOU'RE SAYING THEN
THAT ANYONE WHO IS THAT
EMOTIONALLY STRAINED CANNOT
DEVELOP THE HEIGHTENED
PREMEDITATION REQUIRED?

>> ABSOLUTELY, JUSTICE LABARGA.
IN FACT, YOU SAID SO IN SANTOS
SPECIFICALLY.

SAID IT IN SANTOS.

>> WELL, THIS ONE THING WHERE
YOU, A PERSON VIEWS A PARTICULAR
EVENT THAT ENRAGES HIM OR HER
AND ACTS IN A SUDDEN FASHION.
IT'S ANOTHER THING TO GET REALLY
UPSET AN HOUR EARLIER AND STILL
BE UPSET AN HOUR LATER.

I MEAN, WHY CAN'T YOU DEVELOP
THIS HEIGHTENED PREMEDITATION
DURING THAT TIME?

JUST BECAUSE YOU'RE UPSET
DOESN'T STOP YOU FROM THINKING.

>> WELL, I WAS REFERRING TO IT
IN THE CONTEXT OF COLE WITH A
CAREFUL PLAN.

THERE WAS NO CAREFUL PLAN HERE.

>> I MEAN--

>> AS SOON AS HE HEARD THAT THAT
MAN WAS AT HIS HOUSE, HE WENT
THERE AS FAST AS HE COULD TO
KILL HIM.

PERIOD.

>> I MEAN, THE PERFECT EXAMPLE
OF THE HEIGHTENED PREMEDITATION
WOULD BE LIKE AN ASSASSIN
SITTING ON THE TOP OF A ROOF
LIKE LEE HARVEY OSWALD, WAITING
FOR THE PRESIDENT TO DRIVE BY
AND COLLEY SHOOT HIM.

WE DON'T GET THAT HERE.

WE USUALLY GET SITUATIONS SUCH
AS THIS.

>> WELL, THAT'S BEEN THE
EXPANSION OF CCP SINCE IT WAS
DEVELOPED.

WHEN IT WAS FIRST THOUGHT OF,

AND IF WE'RE ONE OF THE FIRST STATES IN THE COUNTRY THAT HAS IT, IS EXECUTION.

WHERE YOU PLAN I'M GOING TO WAKE UP TODAY AND I'M TO GOING TO KILL SOMEBODY.

THAT WAS THE ORIGINAL WAY THIS COURT INTERPRETED CCP.

IT HAS BEEN EXPANDED TO WHERE SOMEBODY WHO IS A SOULLESS KILLING MACHINE ON A DRUG BINGE, HARMS SOMEBODY AND THEN THE OTHER PERSON COMES HOME AND THE VICIOUSNESS AND THE WAY HE STAYS THERE AND DIDN'T RUN OUT OF THE HOUSE, WELL, THAT WAS ENOUGH FOR CCP.

THERE'S BEEN A GREAT EXPANSION BY THIS COURT IN WHAT CCP WAS ORIGINALLY CONTEMPLATED TO BE. AND IF YOU FIND IT HERE, IT BECOMES AN AUTOMATIC AGGRAVATOR BECAUSE YOU DON'T HAVE THE COLDNESS IN THIS CASE, CLEARLY. YOU DON'T HAVE A DAY TO REFLECT ON THE EMOTIONAL TURMOIL THAT HE DISCOVERED THAT HIS WIFE HAD A LOVER AND DISCOVERED THEN— AND THIS IS TO JUSTICE CANADY'S PERSPECTIVE, THAT HE WAS COMING TO GRIPS WITH THAT, AND HE WAS HEADING TO WORK AFTER COURT.

HE WAS HEADING TO WORK. THEY HAVE THE CELL PHONE WHERE HE WAS GOING.

THEY KNOW ALL THE FACTS OF THIS CASE.

HE WAS HEADING TO WORK. AND THEN ON THE PHONE CALL, WELL, THE POLICE ARE COMING, HE CALLED THEM.

AND, BOOM, THAT'S WHAT WAS— REIGNITED THAT EMOTIONAL HARDSHIP.

YOU DON'T HAVE THE COLDNESS NECESSARY.

AND YOU DON'T HAVE THE HEIGHTENED PREMEDITATION EITHER. I HONESTLY THINK, AND THIS COURT DOESN'T ACCEPT THIS, BUT IF THE

PERSON DIDN'T WAKE UP THAT DAY
DECIDING TO KILL SOMEBODY, YOU
CAN'T HAVE CCP.

IF IT'S FORMED DURING THE COURSE
OF A DAY, YOU SHOULDN'T BE ABLE
TO.

IF YOU REALLY, TRULY WANT TO
NARROW THE CLASS OF PEOPLE
ELIGIBLE FOR THE DEATH PENALTY
IN THIS STATE, YOU WOULDN'T.

>> SO IS IT YOUR ARGUMENT THAT
THE INSTRUCTION THAT'S GIVEN
DOESN'T SUFFICIENTLY NARROW THE
CLASS?

YOU'RE NOT ARGUING THAT THE JURY
WAS IMPROPERLY INSTRUCTED AS TO
WHAT THEY HAD TO FIND BEYOND A
REASONABLE DOUBT IN ORDER TO
FIND THIS AGGRAVATOR, CORRECT?

>> CORRECT.

>> OKAY.

>> IT DOES NARROW.

IN FACT, RIGHT HERE TODAY
NARROWS THE CLASS, BECAUSE
YOU'RE LISTENING TO A DIRECT
APPEAL WHETHER PROPERLY DONE.
JUDGE MALTZ IS NARROWING WHEN HE
DOES HIS JOB.

THESE ARE ALL NARROWING IN A
BROADER CONTEXT WHERE WE HAVE
GONE FROM 8 TO 16 AGGRAVATORS,
AND THE WAY THAT YOU LOOK AT
THEM HAS BEEN EXPANDED.

BUT SINCE YOU STILL HAVE THESE
OTHER SAFEGUARDS, IT STILL
PASSES EIGHTH AMENDMENT MUSTER.

BUT I WILL TELL THIS COURT,
BECAUSE I'VE ARGUED FOR 13
YEARS--

>> CASES THAT YOU THINK WERE
INCORRECTLY DECIDED AND
INCORRECTLY EXPANDED, THE
EVIDENCE NECESSARY--

>> BUZIO IS ONE OF THEM THAT
COMES RIGHT TO MIND,
THAT WASN'T A CCP CASE, IN MY
MIND.

WHEN SOMEONE IS ON A DRUG BINGE,
WHEN WE HAD THE COCAINE
EPIDEMIC, THESE PEOPLE ARE

NOT-- BECAUSE ONCE HE DID THE
CRIME, WHAT DID HE DO?
HE WENT TO THE BANK WITH THEIR
STUFF TO A TELLER AND GOT
ARRESTED RIGHT ON THE SPOT.
WHO IN THEIR RIGHT MIND DOES
THAT?

THAT THERE WAS THIS CAREFUL
PLAN?

THAT'S WHAT HAPPENED IN BUZIO.
BUT THIS COURT WAS PERFECTLY
CONTENT TO SAY THAT WAS CCP.
AND I'LL SAY THAT, TO FINISH
THAT POINT, THIS COURT HAS BEEN
PUT ON NOTICE FROM 2014 BY THE
U.S. SUPREME COURT THAT THEY'RE
LOOKING AT THIS NOW IN EIGHTH
AMENDMENT ANALYSIS AS TO WHETHER
OR NOT YOU'RE GOING BACK TO THE
DAYS PRE-FURMAN WHERE THERE ARE
SO MANY AGGRAVATORS, THE WAY
THAT YOU DO THIS PROCESS IS SO
SKEWED THAT THE ABILITY TO HAVE
DISCRIMINATION, ARBITRARINESS IS
GOING TO BE BACK.

AND FOR 13 YEARS, I CAME UP HERE
TELLING THIS COURT THAT THE
SIXTH AMENDMENT WAS BEING
VIOLATED BECAUSE YOU WEREN'T
LETTING THE JURY HEAR
AGGRAVATORS.

AND NOW YOU'RE GOING TO BE
HEARING THIS UNTIL THE U.S.
SUPREME COURT COMES BACK ON THE
EIGHTH AMENDMENT AND SAY YOU'RE
NOT DOING YOUR JOB ON THESE
AGGRAVATORS AS WELL.

AND SO IF THERE'S ANY MORE
QUESTIONS ABOUT CCP, I'D LIKE TO
MOVE ON TO HEINOUS, ATROCIOUS
AND CRUEL.

>> LET ME JUST ASK YOU ONE
THING--

>> SURE.

>> YOU, IN YOUR BRIEF, TALK
ABOUT THE UNITED STATES SUPREME
COURT CASE OF BROWN.

AND SEEMED TO SUGGEST, IF I'M
UNDERSTANDING YOUR BRIEF
CORRECTLY, THAT WE-- THAT THE

WAY THAT WE DEAL WITH HARMLESS
ERROR IN THIS CONTEXT IS
INCONSISTENT WITH THE EIGHTH
AMENDMENT.

IS THAT YOUR ARGUMENT?

>> I'M SAYING IT COULD BE.
THE WOOD CASE IN WHICH I DIDN'T
SEE, AND I APOLOGIZE TO THIS
COURT.

YOU DECIDED WOOD RECENTLY, AND
YOU-- IN THE LANGUAGE OF WOOD
YOU TALKED ABOUT HARMLESS ERROR
ANALYSIS IN THAT CONTEXT.
AND YOUR PERSPECTIVE THAT YOU
GAVE TO THE STATE WAS THAT YOU
WERE GOING TO REALLY ENFORCE
DIGUILIO IN THE WAY THAT IT
MEANS AND IT'S GOING TO BE TOUGH
ONCE HAPPENS THAT YOU'RE NOT
GOING TO GIVE RELIEF.

SO THAT WAS REASSURING TO THE
STATE, THAT YOU WOULD DO THAT
PROPER EXERCISE.

>> SO THE WAY I BELIEVE THAT
WE'VE HANDLED HARMLESS ERROR IN
THIS CONTEXT BEFORE IS TO SAY,
OKAY, ASSUMING THAT THIS
AGGRAVATOR, THE EVIDENCE WASN'T
SUFFICIENT OR IT SHOULDN'T HAVE
BEEN PRESENTED, THEN WE'RE GOING
TO, ESSENTIALLY, REWEIGH AND
DETERMINE WHETHER WITHOUT THAT
AGGRAVATOR IT'S CLEAR BEYOND A
REASONABLE DO YOU WANT THAT THE
JURY STILL WOULD HAVE FOUND THAT
THE AGGRAVATORS OUTWEIGH THE
MITIGATORS.

THAT'S WHAT WE'VE DONE IN THAT.
THERE'S LANGUAGE IN BROWN THAT
SUGGESTS THE SUPREME COURTS LEFT
IT UP TO THE STATES TO DO THAT
KIND OF ANALYSIS.

WOULD YOU AGREE?

>> THEY DO.

BUT THE DIFFERENCE HERE NOW IS
JURY CHANGES EVERYTHING, JUSTICE
LAWSON.

IT CHANGES EVERYTHING.

IT JUST TAKES ONE VOTE AND THEN
IT'S LIFE.

SO HOW COULD YOU SIT THERE IN THIS COURT AND MAKE A JUDGMENT AS TO WHETHER OR NOT A JUROR WASN'T PROPERLY SWAYED ONE WAY OR ANOTHER ON TWO VERY WEIGHTY AGGRAVATORS, CCP AND HAC? YOU CAN'T.

AND JUST LIKE YOU DID AFTER HURST, YOU JUST-- IF THERE WAS NOT A UNANIMOUS DEATH RECOMMENDATION, YOU JUST ORDERED A NEW SENTENCING HEARING.

>> SO THE STANDARD THAT'S SET FORTH AT THE END OF BROWN IS SOMETHING LIKE THIS, THAT THE ERROR WOULD BE HARMFUL ANYTIME THAT THE JURY WOULD NOT HAVE GOTTEN THE SAME EVIDENCE IF THAT AGGRAVATOR HAD NOT BEEN PRESENTED, CORRECT?

>> NO.

NO, JUSTICE LAWSON. THE EVIDENCE ISN'T THE ISSUE. THE EVIDENCE--

>> THAT'S THE LANGUAGE THAT YOU QUOTE FROM BROWN IN YOUR BRIEF.

>> RIGHT.

BUT WHAT I'M-- I'M NOT SPEAKING TO THE EVIDENCE BEFORE THE JURY IN THIS CASE.

I'M TALKING ABOUT THE FACT THAT THE JUDGE IS TELLING THEM THAT THEY CAN CONSIDER THAT EVIDENCE FOR THIS AGGRAVATION.

THAT'S THE ISSUE.

BECAUSE THE EVIDENCE IS ALWAYS THERE MOST OF THE TIME IN A TRIAL.

THEY DON'T HAVE A SPECIAL EVIDENTIARY HEARING LATER.

MOST OF THE TIME IT'S FROM THE TRIAL ITSELF FROM RELEVANT EVIDENCE.

IT'S THE FACT THAT THEY'RE TOLD THIS EVIDENCE CAN SUPPORT THIS.

AND THEN YOU'RE SAYING, WELL, THE JURY'S SAYING WELL INSTEAD OF THREE AGGRAVATORS, THIS IS FIVE.

THIS MUST BE THE MOST AGGRAVATED

CASE THEN.

IF THEY'RE NOT AGGRAVATED--
PARDON ME.

IF THEY'RE NOT INSTRUCTED ON
CCP, THEY'RE NOT INSTRUCTED ON
HAC, IT'S A DIFFERENT JURY
POSTURE.

AND YOU'D ALL AGREE WITH THAT.
AND SO WHEN THEY'RE IMPROPERLY
INSTRUCTED, YOU CAN'T SIT AND
SAY, WELL, THEY WOULD HAVE FOUND
A 12-0 VOTE ANYWAY WITHOUT THIS.
THAT'S OUR POSITION.

NOW HEINOUS, ATROCIOUS AND
CRUEL, THIS IS A CASE, TOO,
WHERE WE KNOW EXACTLY WHAT
HAPPENED.

WE HAVE THE 911 CALL.

WE HAVE THE PHONE RECORDS OF
MR. COLLEY BEFORE HE GOT THERE
AND AFTER HE GOT THERE, SO WE
KNOW THE TIME THAT OCCURRED.
NOW, THERE WAS ONLY ONE TIME
THAT THIS COUNTER HAS HELD THAT
A CRIME IS HEINOUS, ATROCIOUS
AND CRUEL WHERE THE TESTIMONY
WOULD SAY THAT THE TIME THAT IT
TOOK FOR SOMEONE TO BE HARMED
AND IN FEAR AND DIE IS LESS THAN
A MINUTE.

AND THAT WAS A CASE INVOLVING
STABBING.

THAT WAS THE ROLLINS CASE THAT
YOU HELD THAT.

BUT THIS IS NOT A STABBING CASE,
THIS IS A SHOOTING CASE.

AND IN THIS CASE--

>> WELL, IN THE CASE OF THE
WIFE, IT'S MULTIPLE SHOOTINGS.
OR AT LEAST THERE'S A VIEW OF
THE EVIDENCE THAT THE TRIAL
JUDGE TOOK THAT IT'S MULTIPLE
SHOTS FIRED WITH A SEPARATION
BETWEEN THE FIRST AND THE FINAL.
AND WITH RESPECT TO THE WIFE
ALSO, ISN'T IT TRUE THAT THERE'S
TESTIMONY THAT SUPPORTS, THAT
THERE WERE EFFECTIVELY DEFENSIVE
WOUNDS ON HER ARMS THAT SHE WAS,
PUT UP TRYING TO PROTECT HERSELF

FROM THESE SHOTS.
ISN'T THAT CORRECT?
>> THAT IS CORRECT.
THE MEDICAL EXAMINER,
DR. BULICH, SAID THAT THERE WERE
DEFENSIVE WOUND SHOTS BECAUSE OF
THE WAY SHE LIFTED HER LEGS.
BECAUSE THE SHOT THAT WAS
IMMEDIATELY FATAL, SHE WOULD NOT
HAVE BEEN ABLE TO LIFT HER LEGS.
SO WE KNOW THAT THERE WERE
DEFENSIVE SHOTS BEFORE THE FATAL
SHOTS.
BUT THE DOCTOR MADE IT VERY
CLEAR HE COULD NOT SAY WITH
SCIENTIFIC CERTAINTY WHAT SHOT
SEQUENCE THERE WAS.
BUT LET ME TELL YOU WHAT HE SAID
THAT WAS CRITICALLY IMPORTANT
WHEN IT COMES TO HAC.
BECAUSE HAC WAS PROVEN, THE
JUDGE ACCEPTED RACHEL HENDRICKS'
TESTIMONY ON ITS FACE.
AND WE KNOW HER TESTIMONY WASN'T
CORRECT IN MANY ASPECTS BECAUSE
WE HAVE INDEPENDENT SCIENTIFIC
EVIDENCE TO SHOW IT WASN'T.
I'LL GIVE YOU AN EXAMPLE.
SHE SAID WHEN SHE ARRIVED, THE
DEPUTY SHERIFF THAT HAD COME
THERE BEING CALLED BY THE
BOYFRIEND WAS JUST LEAVING.
WELL, WE KNOW THAT'S NOT TRUE
BECAUSE THERE WAS A SURVEILLANCE
CAMERA THAT SHOWED WHEN SHE
ARRIVED, AND THAT CAR HAD LEFT
15 MINUTES BEFORE.
SO WE KNOW THAT HER TESTIMONY,
YOU CAN'T TAKE IT AT FACE VALUE
FROM THE START.
LET ME GIVE YOU ANOTHER EXAMPLE.
SHE MADE A 911 CALL RIGHT AFTER
THE EVENT.
AND WOULDN'T YOU ALL AGREE A 911
CALL RIGHT AFTER IT HAPPENED WAS
PROBABLY THE BEST EVIDENCE OF
WHAT OCCURRED AT THAT TIME AND
NOT TESTIMONY AT TRIAL YEARS
LATER?
I THINK ANYBODY WOULD ACCEPT

THAT.

WELL, WHAT DID SHE SAY IN THE 911 CALL?

SHE SAID THINGS THAT WERE DIFFERENT, BUT ONE THING SHE MADE CLEAR.

THEY ASKED HER TO GIVE A DESCRIPTION OF MR. COLLEY, AND WHAT DID SHE SAY?

"HE HAD A WHITE SHIRT AND BLACK PANTS, AND HE WAS COVERED IN BLOOD."

NOW, THAT IS, THAT IS CRITICAL, AND I'LL EXPLAIN WHY.

IF YOU ACCEPT THE SENTENCING ORDER OF JUDGE MALTZ AND HOW THINGS HAPPENED RELATING TO HAC, YOU WOULD HAVE TO SAY THAT THE FIRST SHOT OCCURRED TO MRS. COLLEY, AND THEN HE WENT INTO THE CLOSET AND MURDERED MRS. DOBBINS.

THAT'S WHAT YOU'D HAVE TO ACCEPT.

BUT IF YOU REMEMBER, MS. HENDRICKS WAS BEHIND THE DOOR OF THE CLOSET AND GOT PUSHED BEHIND THAT DOOR.

AND SHE SAID BEFORE THE FIRST SHOT WAS FIRED, SHE FLED.

NOW, HOW COULD SHE HAVE SEEN BLOOD ON HIS SHIRT?

BECAUSE IF YOU LOOK AT DR. BULICH'S TESTIMONY RIGHT AT THE BEGINNING OF HIS TESTIMONY, HE SAYS THE SHOTS TO THE WIFE, NONE OF THEM WERE UP CLOSE. THEY WERE BETWEEN 4-34 FEET AWAY.

THERE COULD NOT-- IF THE FIRST SHOT WAS THAT SHOT, WHERE DID THE BLOOD COME FROM?

DIDN'T COME FROM THE WIFE.

SHE WAS TOO FAR AWAY, ACCORDING TO THE DOCTOR'S TESTIMONY.

WHERE IT CAME FROM, IT CAME FROM MS. DOBBINS BECAUSE SHE WAS THE FIRST PERSON SHOT.

BECAUSE WHAT HAPPENED REALLY WAS MS. HENDRICKS WAS BEHIND THE

DOOR, AND SHE-- THE OTHER
PERSON WAS EXECUTED.
AND THE BLOOD, BECAUSE IT WAS
IMMEDIATE-- HE GOES RIGHT UP TO
THE TEMPLE AND SHOT HER AT
POINT-BLANK RANGE, AND THAT'S
HOW THE BLOOD GOT ON HIM, AND
THAT'S WHY SHE SAID SHE SAW IT.
BUT IF YOU ACCEPT THE TESTIMONY
THE JUDGE ACCEPTED, SHE DIDN'T
SEE ANYBODY GET SHOT.
YET SHE KNEW THAT MRS. COLLEY
WAS SHOT AT POINT-BLANK RANGE IN
THE CLOSET BEHIND A DOOR.
THAT'S WHAT SHE TESTIFIED TO AT
TRIAL.
BUT THE 911 CALL WE KNOW WHAT
HAPPENED.
AND YOU CAN HEAR THE 911 CALL
THAT SOMEONE SCREAMED AFTER THE
SHOOTING.
IT WAS HER LEAVING FROM BEHIND
THE DOOR AFTER SHE LEFT,
MURDERING MS. DOBBINS.
THAT'S HOW IT OCCURRED.
BUT, YOU SEE, HER TESTIMONY,
IT'S TOUGH.
IT'S TOUGH FOR THIS COURT TO
SECOND GUESS THAT.
>> COUNSEL, YOU ARE NOW IN YOUR
REBUTTAL TIME.
YOU CAN KEEP GOING, BUT YOU ARE
CONSUMING REBUTTAL TIME.
>> I JUST WANT TO MAKE ONE MORE
POINT ABOUT HAC THEN.
YOU'D HAVE TO OVERRULE CHESHIRE
AS WELL IF YOU FIND HAC IN THIS
CASE.
BECAUSE THIS IS A HEAT OF
PASSION CASE EVEN THOUGH THERE
IS TESTIMONY AND YOUR
PERSPECTIVE, JUSTICE CANADY, WAS
RIGHT ON TARGET.
IF YOU LOOK AT THE SENTENCING
ORDER AT FACE VALUE, YOU COULD
SAY THAT THERE WAS SECONDS OF
KNOWLEDGE OF DEATH.
WHICH ARE FAR DIFFERENT THAN ANY
OTHER CASE YOU'VE SEEN BEFORE,
BECAUSE SHE NEVER KNEW THEY WERE

COMING, LIKE ALLRED.
NEVER KNEW THEY WERE COMING, AND
SHE WAS IN THE BATHROOM FOR OVER
A MINUTE AND A HALF IN ALLRED
WHERE--

>> I MEAN, THE IDEA THAT WE
WOULD NOT LOOK AT THIS WHOLE
CONTEXT WHERE, FROM THE TIME HE
SHOOTS OUT THE WINDOW, OUT THE
SLIDING GLASS DOORS AND THE
HORROR THAT THIS WOULD HAVE TO
CREATE, I MEAN, HOW LONG DID
THAT TAKE?

>> LESS THAN THREE MINUTES.

>> OKAY.

BUT THAT-- WOULDN'T YOU AGREE
THAT THAT WOULD BE PART OF THIS
WHOLE SCENARIO OF LOOKING AT
WHAT THE PERCEPTION OF THE
VICTIMS IS?

>> IT WOULD IF THEY HAD ANY
KNOWLEDGE BEFOREHAND THAT HE WAS
COMING AND HE INTENDED TO KILL
SOMEONE.

AND THAT'S ALL THE OTHER CASES
HAVE THAT FEATURE, LIKE SANTOS.
YOU DIDN'T FIND HAC IN SANTOS,
AND HE THREATENED HER LIFE.
SHE WENT RUNNING AND SCREAMING,
CHASED HER DOWN AND KILLED HER,
AND YOU DIDN'T FIND HAC IN THAT
CASE.

>> I WASN'T HERE FOR SANTOS.

>> I UNDERSTAND, SIR.

>> THAT CASE, WE'VE SAID THINGS
ABOUT THAT CASE SUBSEQUENTLY,
HAVEN'T WE?

>> WELL, IN LYNCH YOU SAID--
NOT IN TERMS OF HAC, BUT CCP.
YOU SAID IN LYNCH THAT THERE IS
NO EXCEPTION FOR A DOMESTIC
VIOLENCE.

BUT YOU DIDN'T SAY SO IN TERMS
THAT WOULD OVERRULE SANTOS IN
ANY WAY.

YOU JUST SAID LYNCH WAS AN
ATTEMPTED MURDER/SUICIDE.

IT WASN'T A DOMESTIC CASE TO
BEGIN WITH.

THAT'S WHAT YOU SAID IN LYNCH.

AND IN ALLRED YOU SAY WE DON'T
LOOK AT IT THE SAME WAY, BUT YOU
DIDN'T OVERRULE IT.

IT CERTAINLY CAN NEGATE COLD.
YOU HAVEN'T SAID IT CAN'T, SO IT
MUST.

AND I'LL RESERVE THE REST OF MY
TIME.

THANK YOU.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, I'M
PATRICK BOBEK, ATTORNEY
GENERAL'S OFFICE, AND I
REPRESENT THE STATE OF FLORIDA
IN THIS CASE.

SO FIRST, I'D LIKE TO TALK ABOUT
THE CCP AGGRAVATOR AND HOW IT
APPLIES TO BOTH VICTIMS.

WHEN YOU LOOK IN THE EVIDENCE IN
THIS CASE AND THE EVIDENCE THAT
THE JUDGE RELIED ON IN HIS
SENTENCING ORDER, YOU SEE THAT
THIS ISN'T A MAN WHO WAS
OVERBURDENED BY HIS EMOTIONAL
FRENZY.

HE DIDN'T DRIVE STRAIGHT FROM--
HE'S DRIVING TO WORK, AND HE HAD
THAT PHONE CALL WITH HIS WIFE.
IF HE WAS SO ENRAGED HE WANTED
TO KILL THEM IMMEDIATELY, HE
WOULD HAVE DRIVEN STRAIGHT TO
HER HOUSE, AND THAT'S NOT WHAT
HE DID.

THAT'S WHERE THE CCP COMES INTO
PLAY, BECAUSE WE SEE HIS
PLANNING.

HE ARMS HIMSELF BEFOREHAND.
HE GOES TO THE HOUSE HE'S
STAYING AT, HIS SISTER'S HOUSE.
THERE HE GRABS MULTIPLE GUNS AND
A BUNCH OF AMMUNITION.

THEN AGAIN, HE DOESN'T GO TO HIS
WIFE'S HOUSE.

HE GOES TO A GAS STATION, AND HE
BUYS \$3 WORTH OF GAS TO TOP OFF
HIS GAS TANK AND SO THAT HE CAN
DRIVE FARTHER, LONGER AFTER
COMMITTING THE CRIME.

THEN AGAIN HE DOESN'T GO TO HIS
WIFE'S HOUSE.

HE PARKED IN AN ADJACENT NEIGHBORHOOD IN A FORECLOSED HOME WHERE NO ONE WILL WONDER WHY HE'S PARK ANYTHING THIS DRIVEWAY.

AND AGAIN, HE SNEAKS UP BEHIND THE HOUSE.

HE STARTS SHOOTING INTO THE HOUSE FROM THE OUTSIDE YELLING, "WHERE IS HE?"

AND AT EVERY STEP HE COULD HAVE STOPPED WHAT HE WAS DOING AND GONE HOME OR GONE TO WORK.

HE HAD NEARLY AN HOUR BETWEEN THE PHONE CALL WITH HIS WIFE AND GETTING TO THE HOUSE WHERE HE WAS ALONE WITH HIS THOUGHTS IN HIS CAR THINKING ABOUT WHAT HE WAS DOING.

AND EVERY STEP OF THE WAY HE COULD HAVE TURNED BACK AND INSTEAD HE DIDN'T.

HE WENT INTO THE HOUSE, HE HUNTED DOWN THESE WOMEN AND HE KILLED THEM.

THAT IS CCP.

YOU DON'T HAVE TO WAKE UP THAT MORNING THINKING I'M GOING TO KILL SOMEBODY.

THIS COURT HAS NOT PUT ANY SORT OF TIME LIMIT ON HOW CCP CAN DEVELOP.

MERELY YOU HAVE THE TIME TO HAVE COLD REFLECTION, WHICH HE DID-- HE WAS ALONE IN HIS CAR, HE WAS MAKING PHONE CALLS AND TEXTING. BUT HE KNEW WHAT HE WAS GOING TO DO.

HE SENT WHAT WAS CONSIDERED POSSIBLY A GOOD-BYE TEXT TO HIS GIRLFRIEND AT THE TIME SAYING I LOVE YOU WHEN HE WAS RIGHT OUTSIDE THE HOUSE.

THIS WAS A MAN WHO HAD A PLAN FROM THE MOMENT HE KNEW THAT LAMAR-- WHO WAS THE FOCUS OF HIS JEALOUS OBSESSION, WAS AT HIS HOUSE WITH HIS WIFE, HE WANTED TO KILL HIM AND HIS WIFE AND, APPARENTLY, ANYBODY ELSE HE

FOUND IN THE HOUSE.
AND THAT'S WHY CCP APPLIES HERE.
AS TO HAC, IT'S CORRECT THAT IN
MOST SHOOTING CASES THIS COURT
SAYS THAT HAC CAN'T APPLY
BECAUSE OF THE INSTANTANEOUS
NATURE OF THE WOUNDS AND DEATH.
BUT THAT'S NOT TRUE IF THERE ARE
OTHER CIRCUMSTANCES SURROUNDING
THE KILLINGS THAT SHOW THAT
THERE WAS FEAR AND KNOWLEDGE OF
IMMINENT DEATH IN THE VICTIMS.
THE FOCUS IN HAC IS NOT
DEFENDANT'S ACTIONS, BUT WHAT
THE VICTIMS COULD HAVE
REASONABLY KNOWN WAS ABOUT TO
HAPPEN.

AND THIS COURT HAS PREVIOUSLY
SAID THAT THE FEAR OF IMMINENT
DEATH NEED ONLY LAST A SECOND.
SO WHILE I AGREE THERE WAS A
SHORT PERIOD OF TIME WHEN THEY
KNEW THEY WERE GOING TO DIE,
BOTH VICTIMS WERE WELL AWARE
THAT THEIR LIVES WERE ENDING
THAT DAY.

AND YOU CAN TELL THAT IN THE 911
CALLS.

WHICH, BY THE WAY, BACK UP THE
COURT'S FINDINGS ABOUT HOW
EXACTLY THE MURDERS PLAYED OUT.
I HIGHLY ENCOURAGE THIS COURT TO
LISTEN TO THE 911 CALLS IF YOU
HAVE THEM.

IN AMANDA COLLEY'S CALL, YOU CAN
HEAR HER YELLING AND SCREAMING
AT THE DEFENDANT TO PUT THE GUN
DOWN.

YOU HEAR GUNSHOTS.

WHEN SHE STOPS SCREAMING FOR A
LITTLE BIT, YOU HEAR A COUPLE
MORE GUNSHOTS ABOUT 10-15
SECONDS LATER.

THAT'S WHEN HE'S KILLING LINDY.
AND THEN HE COMES BACK OUT,
SHE'S BEGGING FOR HER LIFE.
HE CALLS HER A WHORE AND SHOOTS
HER.

HE RUNS OUT OF BULLETS IN ONE
GUN, DROPS IT, PULLS OUT THE

OTHER ANDS SHOOTS HER UNTIL SHE DIES.

SHE KNEW SHE WAS DYING.
HER TERROR--

>> LET ME ASK YOU THIS.
WITH RESPECT TO CCP, IT SEEMS TO BE THAT THE TRIAL JUDGE WOULD NOT HAVE BEEN ABLE TO RELY ON RACHEL HENDRICKS TESTIMONY AS TO TIMING OF THE SHOTS AND THE COURSE OF THE KILLING, THAT THAT APPARENTLY ISN'T COMPETENT, SUBSTANTIAL EVIDENCE THAT THE TRIAL JUDGE COULD RELY ON IN MAKING THE HAC FINDING.
COULD YOU ADDRESS THAT?

>> YEAH.

I WOULD DISAGREE WITH THAT BECAUSE IT DOES MATCH AMANDA COLLEY'S PHONE CALL, HER DESCRIPTION OF EVENTS MATCHES THE GUNSHOTS WE HEAR ON THE GALL, AND AMANDA IS STILL ALIVE AFTER WE HEAR THE GUNSHOTS SLIGHTLY FARTHER AWAY.
SO MAYBE SHE SAID THINGS SLIGHTLY DIFFERENTLY IN HER 911 CALL.

SHE WAS IN SHOCK.
SHE HAD A LOT MORE TIME TO THINK ABOUT WHAT ACTUALLY OCCURRED TO HER THAT MORNING.

SO I THINK THE JUDGE WAS PERFECTLY ABLE TO MAKE THAT CREDIBILITY DISTINCTION ESPECIALLY WHEN HE COMPARES IT TO OTHER EVIDENCE IN THE CASE.
I DON'T THINK HER TESTIMONY WAS SO CONTRADICTORY, UNRELIABLE THAT HE COULDN'T HAVE USED IT IN HIS SENTENCING ORDER.

AND FOR HAC FOR LINDY DOBBINS IF WE USE THE 911 CALL, HERS AND AMANDA'S, YOU CAN HEAR LINDY SAY "I'VE BEEN SHOT."

AND THEN WHAT CAN ONLY BE DESCRIBED AS, YOU KNOW, ABJECT TERROR SCREAMING BEFORE SHE'S MURDERED.

USING THE 911 CALLS AND RACHEL'S

TESTIMONY, WE CAN PUT OURSELVES
IN LINDY'S HEAD.

SHE HEARS HER FRIEND YELLING AT
HER HUSBAND, AND THEN SHE HEARS
A GUNSHOT AND SILENCE.

AT THIS POINT SHE MUST ASSUME
HER FRIEND HAS BEEN MURDERED.

>> WAS THE, WAS THE VOICE
IDENTIFIED AT TRIAL, THE FEMALE
VOICE THAT SAID, "OH, MY
GOODNESS, I'VE BEEN SHOT"?

>> SO THE 911 CALLS WHEN THEY
WERE ENTERED, RACHEL TESTIFIED
THAT SHE HEARD THEIR VOICES ON
THE 911 CALLS, BUT SHE DIDN'T
IDENTIFY THIS AS AMANDA'S AND
THIS IS LINDY'S.

BUT WHEN YOU LISTEN TO THE 911
CALLS, THE LONGER ONE WHERE YOU
CAN HEAR AMANDA-- AND IT'S
REASONABLE FOR THE JUDGE TO HAVE
FOUND THAT THAT WAS HER PHONE
CALL BECAUSE IT CAUGHT HER VOICE
WHEREAS THE OTHER PHONE CALL
DIDN'T CATCH HER VOICE AS MUCH.
SO IN LINDY'S PHONE CALL YOU CAN
HEAR HER SAY "I'VE BEEN SHOT."
SHE KNOWS THAT HER FRIEND'S BEEN
MURDERED.

AND THEN THE MAN STARTS TRYING
TO FORCE HIS WAY INTO THE
CLOSET, AND THEN HE SHOOTS HER.
AT THIS POINT MAYBE SHE WOULD
HAVE THOUGHT SHE COULD GET AWAY
BEFORE HE STARTS FORCING HIS WAY
INTO THE CLOSET, BUT NOW SHE'S
TRAPPED IN THE BACK OF A CLOSET
WITH AN ENRAGED MAN WHO'S ARMED
WITH A GUN, AND SHE HAS NOWHERE
TO GO.

>> IS THERE ANY EXPLANATION AS
TO WHY MS. DOBBINS WAS KILLED
BUT NOT MS. HENDRICKS?

>> SO RACHEL HENDRICKS TESTIFIED
THAT WHEN HE BUSTED DOWN THE
DOOR, IT WENT BETWEEN HER AND
HIM.

AND HE WAS, HE WAS WALKING WITH
HIS GUN OUT STRAIGHT FORWARD TO
LINDY, SO HE DIDN'T IMMEDIATELY

SEE HER BECAUSE THE DOOR WAS IN THE WAY.

THAT WAS HER OPPORTUNITY TO GET AWAY.

AND THAT'S, YOU KNOW, THE ONLY EXPLANATION, THE ONLY REASON WE CAN SEE WHY SHE WAS ABLE TO GET AWAY--

>> WAS THERE ANYTHING IN THE RECORD TO INDICATE THAT HE WOULD HAVE AN INTENT TO KILL MS. DOBBINS FOR ANY REASON OTHER THAN THE FACT THAT SHE HAPPENED TO BE THERE?

>> YES.

THERE WERE TEXT MESSAGES HE HAD SENT TO HIS NEIGHBOR, AND HE HAD-- HE PARTIALLY BLAMED LINDY FOR THE MARRIAGE FALLING APART. HE SENT THINGS LIKE LINDY CAME OVER AND NOW AMANDA SAYS SHE DOESN'T LOVE ME.

HE CALLED LINDY NAMES.

SO HE BLAMED HER.

HE DIDN'T KNOW SHE WAS AT THE HOUSE WHEN HE WAS ON HIS WAY THERE, BUT I THINK WHEN HE SAW HER, HE TOOK THE OPPORTUNITY. AND SO, YOU KNOW, LINDY, WHILE SHE WAS ONLY AWARE OF HER DEATH FOR A SHORT PERIOD OF TIME, IF YOU LISTEN TO HER 911 CALL, IT IS VERY CLEAR THAT SHE WAS AWARE.

AND I WOULD POINT THIS COURT TO THE ALLRED CASE.

WHILE THERE WAS MORE WARNING FOR THE VICTIM IN THAT CASE THAT ALLRED WANTED TO KILL HER, THIS COURT SPENT A LOT OF TIME TALKING ABOUT THE PHONE CALL, THE 1:17 PHONE CALL WHERE YOU CAN HEAR HER IMMINENT KNOWLEDGE OF HER DEATH.

AND I, THAT'S ANOTHER CASE I'VE HANDLED, SO I'VE HEARD THE 911 CALLS IN BOTH CASES.

AND I THINK YOU'LL FIND THAT THEY HIT YOU IN THE SAME WAY, THAT THESE VICTIMS KNEW WHAT WAS

COMING.

AND THAT'S WHY HAC APPLIES TO BOTH OF THE VICTIMS.

AS-- WE'LL COME TO THE ISSUE OF INSTRUCTING THE JURY ON THESE AGGRAVATORS.

FIRST OF ALL, THE STATEMENT'S POSITION IS THAT THE AGGRAVATORS WERE PROPERLY FOUND BY THE JURY AND THE JUDGE, SO THERE CAN'T BE ERROR WHEN THEY'RE PROPERLY FOUND.

BUT IF THIS COURT DECIDES THAT ONE OR BOTH WOULD BE STRUCK, THEN YOU'D DO AS JUSTICE LAWSON SUGGESTED.

YOU WOULD THEN REWEIGH THE AGGRAVATORS VERSUS THE MITIGATORS.

AND THIS IS A CASE WHERE THE MITIGATION WAS PRETTY MUCH NONEXISTENT.

I THINK IT WAS BEST SUMMARIZED BY A STATEMENT FROM ONE OF THE DEFENDANT'S FRIENDS, JOHN SWINGHAMMER, WHEN HE SAID THE DEFENDANT WAS A NORMAL, TYPICAL GOOD GUY.

THAT WAS WHAT THE MITIGATION PRESENTATION WAS IN THIS CASE. HE WAS A GOOD DAD, HE'S A GOOD EMPLOYEE, GOOD UNCLE, GOOD NEIGHBOR, A GOOD COACH WITH LITTLE CRIMINAL HISTORY OUTSIDE THE DV INJUNCTION.

SO THAT IS NOT VERY PERSUASIVE MITIGATION.

YOU KNOW, MITIGATION HAS BEEN LOOKED TO IN THE PAST AS PERSUASIVE OR SEVERE MENTAL HEALTH ISSUES, BRAIN DAMAGE, TERRIBLE, ABUSIVE UPBRINGING. AND FROM ALL ACCOUNTS, HE HAD A NORMAL CHILDHOOD IN A TIGHT-KNIT FAMILY.

SO THE MITIGATION IN THIS CASE IS SOME OF THE LOWEST THIS COURT IS LIKELY TO SEE, AND THE AGGRAVATION IS SOME OF THE HIGHEST.

EVEN IF YOU STRUCK THE ONE OR BOTH AGGRAVATORS, YOU WOULD STILL FIND THE WEIGHTY PROCESS TO FALL--

[INAUDIBLE]

IF THERE ARE NO OTHER QUESTIONS, I'D JUST ASK TO SUPPORT, UPHOLD THE CONVICTIONS AND SENTENCES. THANKS.

>> MR. CHIEF JUSTICE, BRIEFLY, JUSTICE LAWSON BROUGHT OUT A GREAT QUESTION, WERE THE DIFFERENT VOICES IDENTIFIED IN THIS TRIAL.

THEY WERE NOT.

AT ALL, IN FACT.

MS. HENDRICKS' TESTIMONY WAS SHE SAW LINDY DOBBINS DIAL 911, AND IT WAS OPEN, AND SHE NEVER SPOKE INTO THE PHONE.

AND THE 911 CALLS, YOU NEVER HEAR WHEN THE OPERATOR'S, "911, WHAT'S YOUR EMERGENCY?"

YOU NEVER HEAR EITHER PERSON ANSWER THAT QUESTION, THE WIFE OR MS. DOBBINS.

AND MS. DOBBINS WAS FOUND DEAD IN THE CLOSET WITH THE PHONE TO HER EAR.

BUT YOU HAD TWO PHONES, 911 GOING AT THE SAME TIME.

SO YOU HAD A PERSPECTIVE OF TWO DIFFERENT PHONES NO MORE THAN 15 FEET AWAY OR EVEN LESS.

>> BUT WE KNOW WHAT WAS COMING FROM THE PARTICULAR INDIVIDUAL PHONES.

>> YES.

BUT WE DON'T KNOW-- AND SO --

>> AND WHERE DID THE "OH, MY GOODNESS, I'VE BEEN SHOT" COME FROM?

WHOSE PHONE?

>> THAT WAS-- WE DON'T KNOW BECAUSE THEY DIDN'T IDENTIFY WHOSE PHONE WAS WHO.

WE DON'T KNOW.

>> I MEAN, YOU COULD CLEARLY HEAR THE FORMER WIFE'S VOICE ON ONE OF THE CALLS.

>> ABSOLUTELY.
>> AND THERE WAS ANOTHER CALL.
SO WAS THE, "OH, MY GOODNESS,
I'VE BEEN SHOT" ON--
>> YES.
IN FACT, MS. HENDRICKS TESTIFIES
THAT MS. DOBBINS NEVER SAID SUCH
A THING.
"I'VE BEEN SHOT."
SHE DOES SAY THAT SHE SAYS
THINGS, BUT WE'VE NEVER HEARD
THE THINGS THAT MS. HENDRICKS
SAID SHE SAID.
IF YOU LOOK AT THE RECORD,
MS. HENDRICKS TESTIFIED THAT
LINDY SAID THINGS, BUT IF THE
PHONE IS RIGHT TO HER MOUTH,
YOU'D SUSPECT YOU WOULD HAVE
HEARD THEM, BUT YOU DIDN'T.
THIS IS THE PROBLEM WITH HER
TESTIMONY.
THERE'S A LOT OF GAPS THAT DON'T
TIE UP WITH THE OTHER EVIDENCE.
THERE'S NO EVIDENCE THAT
MS. DOBBINS EVER SAID ANYTHING
ON THE PHONE CALLS THEMSELVES.
IT WAS ALL THE WIFE, IS OUR
POSITION.
AND WE WISH THAT THE STATE
IDENTIFIED WHOSE PHONE WAS WHO
AND WHO CALLED FIRST.
BECAUSE THEY WEREN'T CALLED AT
THE SAME TIME.
ONE CALL HAPPENED BEFORE THE
SHOOTING.
WE SAY THAT MUST HAVE BEEN
MS. DOBBINS BECAUSE WE HAVE THE
TESTIMONY OF MS. HENDRICKS SAID
SHE DIALED.
SHE WAS THERE SO SHE COULD CATCH
WHAT WAS GOING ON, YOU SEE?
AND AS FAR AS A HAC FOR
MS. DOBBINS, REMEMBER WE TALKED
ABOUT HIM SHOOTING THROUGH THE
DOOR.
BUT FROM THE TIME HE GOT IN THE
HOUSE AND THE TIME SHE DIED
INSTANTLY--
>> YOU'VE USED ALL YOUR TIME.
I'LL GIVE YOU ANOTHER 30 SECONDS

TO SUM UP.

>>-- WAS A MATTER OF SECONDS,
WAS SIMPLY A MATTER OF SECONDS.
IF YOU FIND HAC ON LINDY
DOBBINS, EVERY MURDER IS HAC IN
THE STATE OF FLORIDA.

EVERY SINGLE ONE.

YOU CANNOT SAY THAT THE EVIDENCE
SUPPORTED HEINOUS, ATROCIOUS AND
CRUEL IN THE TRAGIC DEATH OF
LINDY DOBBINS.

THANK YOU VERY MUCH.

>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS.