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NEXT CASE ON THE COURT'S CALENDAR IS CURTIS BEASLEY VERSUS THE STATE OF FLORIDA.

YOU MAY PROCEED.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. COUNSEL. MY NAME IS BOB NORGARD. I AM HERE ON BEHALF OF CURTIS WILKY BEASLEY. WHAT I WOULD LIKE TO DO IS RESERVE FIVE MINUTES FOR MY REBUTTAL. ESSENTIALLY WHAT THIS CASE INVOLVES IS MR. BEASLEY WAS CHARGED WITH FIRST DEGREE MURDER OF A WOMAN BY THE NAME OF CAROLYN MUMFORD, WHO HE HAD KNOWN FOR A NUMBER OF YEARS. MS. MUMFORD WAS SOMEBODY, WHO, AT THE TIME THAT SHE DIED, MR. BEASLEY HAD BEEN DOING SOME WORK FOR HER. CIRCUMSTANCES WERE SUCH THAT MR. BEASLEY HAD BEEN TEMPORARILY LIVING WITH MS. MUMFORD. THE OTHER TWO COUNTS THAT HE WAS CHARGED WITH, ONE INVOLVED A ROBBERY, IN WHICH THERE WAS AN ALLEGATION THAT HE HAD TAKEN SOME MONEY, WHICH MRS. MUMFORD HAD RECEIVED THAT DAY FROM SOMEBODY WHO HAD RECENTLY RENTED AN APARTMENT FROM HER THAT SHE WAS MANAGING FOR HER SON-IN-LAW. THE THIRD COUNT INVOLVES MR. BEASLEY ALLEGEDLY TAKING HER CAR AT THE TIME OF THIS INCIDENT. THE ISSUE --

ARE THOSE TWO COUNTS BOTH ROBBERY COUNTS?

ONE WAS ROBBERY COUNT AND ONE WAS A GRAND THEFT COUNT ON, THE TAKING OF THE CAR.

GRAND THEFT?

YES, SIR. SO THOSE WERE THE CHARGES THAT MR. BEASLEY WAS FACING, AND AT TRIAL, THIS WAS A WHOLLY CIRCUMSTANTIAL EVIDENCE CASE. IN MY EXPERIENCE, THOSE ARE RELATIVELY RARE. GENERALLY, THERE IS SOME TYPE OF DIRECT EVIDENCE, SOME TYPE OF STATEMENT OR ADMISSION OR SOMETHING THAT THIS CASE WAS WHOLELY BASED ON CIRCUMSTANTIAL EVIDENCE.

THE SHIRT THAT WAS FOUND THAT WAS IDENTIFIED AS BEING MR. BEASLEY'S THAT HAD BLOOD OF THE VICTIM ON IT.

YES. ESSENTIALLY, AS I INDICATED, EVERYTHING WAS WHOLLY CIRCUMSTANTIAL, INCLUDING THE SHIRT. I AM GLAD THAT YOUR HONOR BROUGHT UP THE SHIRT, BECAUSE OBVIOUSLY THAT WAS SOMETHING THAT THE STATE, IN THEIR PORTION OF THE CASE, FOCUSED ON MOST HEAVILY. ESSENTIALLY WHAT HAPPENED IS A SHIRT WAS FOUND UNDER A BED IN THE ROOM THAT MR. BEASLEY HAD BEEN STAYING IN. THERE WERE SMALL AMOUNTS OF WHAT WAS LATER IDENTIFIED AS BEING MS. MONFORT'S BLOOD ON THE SHIRT. THAT IS A PIECE OF CIRCUMSTANTIAL EVIDENCE WHICH, DEPENDING ON THE SURROUNDING FACTS, CAN BE INTERPRETED IN A NUMBER OF DIFFERENT WAYS. I -- IT WAS ADDRESSED BY DEFENSE COUNSEL, WHO HAPPENED TO BE MYSELF, IN CLOSING ARGUMENT, IN EXTREME DETAIL AT THE TRIAL. THAT WAS IN THE BRIEF THAT I PROVIDED, A MAJOR DISCUSSION, REGARDING THAT SHIRT, AND I KNOW IN CLOSING ARGUMENT AT TRIAL, I SPENT QUITE A BIT OF TIME TALKING ABOUT THAT ITEM, AND SO IN A 30-MINUTE TIME PERIOD, I KNOW THAT IT IS DIFFICULT TO FULLY COVER THAT, BUT ESSENTIALLY WHAT THE COURT HAS TO KEEP IN MIND, AS IT RELATES TO THAT SHIRT, IS FIRST OF ALL, THERE WAS TESTIMONY FROM A POLICE OFFICER THAT MR. BEASLEY HAD BEEN WEARING WHAT HE IDENTIFIED AS THAT SHIRT A FEW DAYS BEFORE. OBVIOUSLY IT HAD BEEN A SHIRT HE HAD ALREADY WORN. THE HOMICIDE IN THIS CASE OCCURRED IN THE LAUNDRY ROOM. MR. BEASLEY WAS LIVING AT THAT HOUSE. IT IS ENTIRELY REASONABLE THAT THE SHIRT, AT SOME POINT, DURING THE MURDER, HAD BEEN IN THE LAUNDRY ROOM, GOTTEN MRS. MONT HAD FORT'S --

MRS. MONTFORT'S BLOOD ON IT AND THEN MEAN BEEN MOVED.

WAS THAT A JURY QUESTION?

IN TERMS OF CIRCUMSTANCE EVIDENCE, IT IS A JURY QUESTION, FIRST OF ALL, TO MAKE DECISIONS AS TO GUILT AND INTERPRET THE EVIDENCE, BUT IF IS, ALSO, THE DUTIES OF THE COURT TO ANALYZE THE SUFFICIENCY OF THE EVIDENCE, AND IN DOING THAT, THE COURT NEEDS TO LOOK AT AND EXPLORE THE REASONABLE HYPOTHETICAL EASES AND THE REASON -- HYPOTHETICAL AND THE REASONABLE INTERPRETATION THAT CAN BE DRAWN FROM THE EVIDENCE. WHAT THE COURT NEEDS TO KEEP IN MIND WAS THAT THIS SHIRT WAS NOT FOUND DURING THE COURSE OF THE CRIME SCENE INVESTIGATION.

DOES THAT ELIMINATE ITS EVIDENTIARY VALUE, WHEN YOU HAVE THE TWO POLICE OFFICIALS, THE CRIME SCENE SPECIALIST AND THE OFFICER TESTIFYING WE DID NOT LOOK THERE, AND THREE OTHER INDIVIDUALS SAYING WE DIDN'T PUT IT THERE?

BUT -- YOU SEEM TO BE SAYING WE MUST DISREGARD IT BECAUSE OF HOW IT WAS FOUND.

I AM NOT SAYING THAT IT SHOULD BE DISREGARDED WHOLLY AND ENTIRELY, BUT WHAT I AM SAYING IS THAT, IN TERMS OF INTERPRETING THE REASONABLE FACTS IN THIS CASE, THE CIRCUMSTANCES AS TO HOW THAT SHIRT WAS FOUND NEEDS TO BE LOOKED AT.

WE, ALSO, NEED TO LOOK AT THE MADE IN THE LAUNDRY ROOM INDICATING THAT THE SHIRT WAS NOT THERE DURING THE DAY.

PARDON ME, YOUR HONOR.

IS IT NOT THE STATUS OF THE RECORD THAT THE MAID HAD TESTIFIED THAT THE SHIRT WAS NOT IN THAT LAUNDRY ROOM DURING THE DAY?

SHE HAD SEEN THE SHIRT AT SOME POINT.

THE BEDROOM, RIGHT?

YES. THAT WAS EARLIER IN THE DAY, MR. BEASLEY HAD BEEN IN THE HOUSE AFTERWARDS, AND THAT WAS ESTABLISHED BY THE EVIDENCE. THE PHONE RECORDS CLEARLY A DIRT SHIRT -- A DIRTY SHIRT REASONABLY COULD HAVE BEEN TAKEN FROM POINT A TO POINT B BY MR. BEASLEY.

AFTER THE MAID HAD LEFT.

SHE WAS THERE IN THE MORNING. HE HAD GONE TO DO SOME WORK AND THEN WAS BACK MOST OF THE AFTERNOON, ACCORDING TO PHONE RECORDS, BUT TO ANSWER THE COURT'S QUESTION, ALSO TESTIFIED TO BY THE CRIME SCENE TECHNICIANS AND BY THE POLICE PERSONNEL, IS THAT, IN TERMS OF THE EVIDENTIARY VALUE, WHICH I SUBMIT GOES HAND-IN-HAND WITH THE SUFFICIENCY OF EVIDENCE, THE EVIDENTIARY INTEGRITY AND VALUE OF EVIDENCE DEPENDS ON A CAREFUL, THOROUGH CRIME SCENE EFFORT. THE POLICE ALL TESTIFIED THAT, ONCE THEY TURNED OVER THAT CRIME SCENE, ONCE ANY NUMBER OF UNKNOWN PEOPLE COULD HAVE HAD ACCESS TO THAT CRIME SCENE, THAT THEY COULD NOT VOUCH FOR THE EVIDENTIARY INTEGRITY OF THOSE ITEMS OF EVIDENCE. THE STATE PRODUCED A LIMITED NUMBER OF PEOPLE WHO SAID, NO, WE DIDN'T DO IT, BUT CLEARLY THERE ARE OTHER FAMILY MEMBERS WHO HAD ACCESS TO THE HOUSE, WHEN THE FAMILY MEMBERS GOT THERE, A CLEANING CREW WAS IN THE HOUSE, DOING THINGS. STRANGERS WHO WERE THERE WERE MOVING THINGS AROUND, WERE DOING THINGS IN THE LAUNDRY ROOM.

ARE YOU ARGUING THE ADMISSIBILITY OF THE SHIRT?

NOT ADMISSIBILITY. WHAT I AM ARGUING IS THE INTERPRETATION THAT IS CAN BE DRAWN.

WELL, THEN, ISN'T THAT SOMETHING FOR THE JURY TO CONSIDER?

THAT OTHER PEOPLE COULD HAVE CONTAMINATED THE CRIME SITE? -- SIGHT? -- THE CRIME SITE?

IN SITUATIONS OF THIS NATURE, WHERE WE ARE ADDRESSING THE SUFFICIENCY OF THE CIRCUMSTANCE EVIDENCE, CERTAINLY JURIES LOOK AT EVIDENCE, HEAR ARGUMENTS AND MAKE THEIR DISCUSSION -- THEIR DECISIONS, BUT THIS COURT, IN GOLDEN, WHICH I CITED IN MY BRIEF, LOOKS AT THE SAME EVIDENCE THAT THE JURY LOOKS AT, BUT LOOKING AT IT FROM THE DISPASSIONATE VIEWPOINT OF EXPERIENCED JURISTS CAN MAKE DECISIONS, SUCH AS WHETHER THAT EVIDENCE IS SUFFICIENT, AND SO IN SITUATIONS WHERE YOU ARE DEALING WITH SUFFICIENCY OF EVIDENCE IN A CASE, THE COURT IS, IN EFFECT, DOING A SECOND GUESSING JOB ON WHAT THE JURY DID.

HOW DOES THAT WORK HERE, THOUGH, IF YOU HAVE AN UNREBUTTED EVIDENCE OF HOW THE SHIRT WAS DISCOVERED? IN OTHER WORDS NO CONFLICT ABOUT THAT, IS THERE?

WELL, THERE IS, ALSO, NO EVIDENCE THAT MR. BEASLEY PUT IT THERE.

BUT THERE IS -- THERE IS AN UNREBUTTED SHOWING OF HOW THE SHIRT WAS FOUND, ITS CONDITION.

YES. THE EVIDENCE WAS --

THERE IS NO DISPUTE ABOUT THAT, IS THERE?

I THINK, IN THIS INSTANCE, I AM BOUND BY THE JURY'S DETERMINATION AS TO CREDIBILITY, IN TERMS OF THIS COURT CAN'T OBVIOUSLY SECOND GUEST JURY'S DETERMINATION TO THE CREDIBILITY OF MR. STALNACKER.

ADDITIONALLY A LOT OF TIME WAS SPENT ON THIS AT TRIAL. NOW, I AM TALKING ABOUT THE SHIRT, AND A LOT OF TIME IS NOW BEING SPENT. WHAT WE ARE GOING TO END UP WITH IS THAT WE ARE GOING TO BE AT THE END OF YOUR ORAL ARGUMENT.

AND WE ARE TALKING ABOUT THE SHIRT THE ENTIRE TIME.

I THINK YOU NEED TO GET ON WITH MORE SPECIFIC ARGUMENTS.

YES, SIR. THE ISSUE WAS ADDRESSED, LIKE I SAID, IN CLOSING ARGUMENTS, AND I WOULD STANDBY THAT, AND IT WAS, ALSO, ADDRESSED DURING THE COURSE, IN THE BRIEFS, AS WELL. BUT ESSENTIALLY, IN LOOKING AT THE EVIDENCE OF GUILT, WHETHER IT BE A SITUATION WHERE THEY CLAIM THAT, BECAUSE MR. BEASLEY HAD LEFT THE AREA AROUND THE TIME PERIOD OF THIS INCIDENT, RECALL THAT IN THE EVIDENCE, MR. BEASLEY --

ARE YOU ARGUING, NOW, THAT THE EVIDENCE WAS SIMPLY INSUFFICIENT TO SUSTAIN --

YES, AS TO THE ISSUE OF GUILT, YES, YOUR HONOR. AND WITHOUT FURTHER ADD DO, I BELIEVE IT IS FULLY DEVELOPED. THE COURT WILL OBVIOUSLY LOOK AT THE RECORD, THE CLOSING ARGUMENTS, WHEN 24 THIS IS MORE FULLY ARGUED, AS -- WHEN THIS IS MORE FULLY ARGUED, AS TO THE REASONABLE INTERPRETATION OF THE EVIDENCE. THE SECOND ISSUE THAT I WANT TO COVER IS RELATED TO WHETHER OR NOT THE STATE ACTUALLY EVEN PROVED THE CRIME CHARGED. THE EVIDENCE IS THAT THERE HAD BEEN NO EVIDENCE OF ANY PREPLANNING ON THE

PART OF MR. BEASLEY, NO EVIDENCE OF HIS HAVING SECURED A WEAPON, BRINGING IT FROM A DIFFERENT LOCATION, ABSOLUTELY NO EVIDENCE OF ANY ILL WILL, HATRED, OR PRIOR PROBLEMS BETWEEN MRS. MONTFORT AND MR. BEASLEY.

WASN'T THERE EVIDENCE THAT WOULD SUPPORT IT, IF THE JURY BELIEVED IT, THAT A THEFT WAS MOTIVATION FOR IT? THAT HE WANTED TO STEAL -- WHAT HAS HE GOT, \$800 OR \$700 THAT DAY?

THE KEY IS EXACTLY THE WAY THE COURT PHRASED IT. A THEFT. THAT IS ALL THE STATE PROVED. THEY DID NOT PROVE A ROBBERY, WHICH WOULD BE THE PREDICATE FELONY FOR FIRST-DEGREE MURDER. THERE IS ABSOLUTELY NO EVIDENCE TO SHOW THAT ANY PROPERTY WAS TAKEN, UNTIL -- I MEAN A REASONABLE HYPOTHESIS BASED ON THE CIRCUMSTANCE EVIDENCE, IS THAT IT WAS TAKEN AS AN AFTERTHOUGHT. A CAR, AS A MEANS TO LEAVE THE SCENE OF A CRIME THAT OCCURRED. THE EVIDENCE WAS MR. BEASLEY DID NOT HAVE A CAR. THE EVIDENCE --

MONEY WAS TAKEN AS AN AFTERTHOUGHT?

WELL, THE EVIDENCE SHOWS THAT MS. MONTH FORT GOT THIS MUST NOT -- MS. MONTFORT HAD GOTTEN THIS MONEY FROM THE TENANT THAT EVENING. SHE MET WITH THE TENANT AND TALKED TO THE TENANT ABOUT RENT AGO APARTMENT. GOT THE MONEY FROM THE TENANT. THERE IS NO EVIDENCE THAT MR. BEASLEY WAS AWARE THAT SHE HAD \$800. THERE WAS ABSOLUTELY NO EVIDENCE. THERE WERE OTHER PEOPLE AT THE SCENE WHEN MS. MONTFORT GOT THE MONEY, BUT NOT MR. BEASLEY, SO FOR HIM TO HAVE KILLED HER, WITH THE INTENT OF TAKING \$800, WHEN HE HAD NO WAY OF EVEN KNOWING SHE HAD \$800, SUPPORTS THE MORE LOGICAL CONCLUSION THAT BE, IF HE COMMITTED THE MURDER, THAT, AFTER THE MURDER OCCURS, OBVIOUSLY A PERSON IS GOING TO LEAVE, TRY TO GET AWAY. A LOGICAL AFTERTHOUGHT IS TO SEE IF, LOOK IN HER PURSE AND SEE IF THERE IS ANY MONEY TO TAKE. THE CAR AS A MEANS OF ESCAPE, AND SO --

BUT IF YOU REMOVE THAT, THEN WHAT WOULD BE THE MOTIVATION AT ALL?

I THINK THE REASONABLE CONCLUSION, PARTICULARLY LOOKING AT THE WEAPON INVOLVED, THE MANNER AND HOW SHE WAS KILLED, WAS THAT THERE HAD BEEN SOME TYPE OF ANGRY CONFRONTATION DURING WHICH, OF COURSE, A WEAPON WAS USED TO KILL HER.

IN A FRENZY?

I THINK THE KILLING, ITSELF, INDICATES THAT.

WHAT WOULD MOTIVATE THE FRENZY?

WELL, I THINK --

NO SEXUAL ASSAULT OR ANYTHING LIKE THAT WAS INVOLVED. WHY WOULD SOMEBODY JUST TAKE A HAMMER AND BEAT A PERSON TO DEATH?

I THINK A REASONABLE CONCLUSION, YOUR HONOR, YOU KNOW, PARTICULARLY LOOKING AT ISSUES LIKE, YOU KNOW, THE TYPE OF WEAPON INVOLVED --

HOW ABOUT THE WRAPPING ON THE WEAPON? WHAT PART DOES THAT PLAY IN OUR ANALYSIS, IF ANY, AND WHAT PART --

HAVING OCCURRED IN THE LAUNDRY ROOM, WHETHER THE HAMMER WAS PICKED UP IN A LAUNDRY ROOM AND THERE WAS A CLOTH AROUND IT.

BUT IT DIDN'T SEEM TO MATCH ANY OTHER TOWELS OR ANYTHING AROUND, AND MY PERCEPTION OF LOOKING AT THE PHOTOGRAPHS IS IT WAS A VERY NEATLY KEPT HOUSE.

CERTAINLY.

YOU DIDN'T SEE ANYTHING LYING AROUND, LIE SAWS AND HAMMERS, NOR DID I PERCEIVE THAT THE WRAPPING OF THE IMPLEMENT, ITSELF, WAS HAPHAZARDLY DONE. IT SEEMED TO BE WRAPPED. AM I MISTAKEN?

MY RECORD IS IT WAS SIMPLY AROUND THE HAMMERHEAD. THERE WAS A CLOTH. WHETHER IT GOT CAUGHT UP IN IT OR WHAT, WHO KNOWS, AND I THINK THE POINT THAT YOU MADE ABOUT THIS BEING A NEATLY WELL KEPT HOUSE IS THAT ANYTHING THAT WAS DIRTY, SUCH AS A CLOTH OR OTHER ITEM WOULD BE WHERE IT BELONGS, IN THE LAUNDRY ROOM.

YOU ARE SUGGESTING HAMMERS ARE KEPT IN THE LAUNDRY ROOM?

THAT IS WHERE MY HAMMER IS.

I MEAN IN THIS CASE.

YOU KNOW, WHAT ITEMS WERE IN THE LAUNDRY ROOM? THE PROBLEM WAS THAT YOU CAN GAUGE THIS FROM THE CRIME SCENE WORK, IS THAT THEY DID NOT DO ANY TYPE OF SPECIFIC INVENTORY OF WHAT WAS IN THE LAUNDRY ROOM. THEY PHOTOGRAPHED IT, IF IT WASN'T IMMEDIATELY VISIBLE IN THE PHOTOGRAPHS. WHO KNOWS. AND THEN, LIKE, WITHIN THE NEXT DAY OR SO, THE CLEANING CREW IS IN THERE, TOTALLY DISMANTLING THE LAUNDRY ROOM. YOU KNOW, I MEAN --

THESE ARE FACTORS OR SHOULD WE NOT TAKE THESE FACTORS INTO CONSIDERATION, AS WE TRY TO DEDUES, FROM THE TOTALITY OF THE CIRCUMSTANCES, WHETHER YOU HAVE A PREMEDITATION SITUATION, WITH THE DEFENSIVE WOUNDS AND THE NATURE OF THE BEATING AND THE IMPLEMENT USED AND THE WRAPPING. DO WE CONSIDER THOSE OR DID WE NOT CONSIDER THOSE?

CERTAINLY YOU HAVE TO LOOK AT THOSE, AND YOU KNOW, THE MEDICAL EXAMINER TESTIFIED THAT, YOU KNOW, THE DEATH IN THIS CASE, OR UNCONSCIOUSNESS, AT LEAST, MAY HAVE BEEN VERY RAP IDENTICALLY. -- RAPIDLY. THAT THIS WAS AN EXTREMELY RAPID ATTACK, THAT UNCONSCIOUSNESS WOULD HAVE OCCURRED VERY QUICKLY. THE TYPE OF KILLING, WHICH, IN AND OF ITSELF, EVIDENCES SOME TYPE OF ANGRY, SPONTANEOUS REACTION, VERSUS A PLANNED-OUT ROBBERY. THE OTHER THING TO KEEP IN MIND IS THAT MR. BEASLEY WAS LIVING IN THAT HOME. THIS WASN'T A STRANGER WHO HAD COME TO MS. MONTFORT'S DOOR OR SOMETHING LIKE THAT. IF MR. BEASLEY'S INTENT WAS TO STEAL FROM MRS. MONTFORT, SHE WAS GONE ALL DAY LONG. THE FAMILY MEMBERS CAME TO CLEAN OUT THE HOUSE AND LOOK FOR HER VALUABLES AND COLLECT HER JEWELRY AND OTHER ITEMS THAT HAD MONEY VALUE. MR. BEASLEY WAS IN THAT HOUSE ALL AFTERNOON.

WAS THERE ANY EVIDENCE OF THE INDIVIDUAL REQUESTING MONEY OR BEING IN NEED OF MONEY AT ANY TIME, IN ANY CLOTHES PROXIMITY TO --

THE ONLY THING THAT CALM REGARDING THAT IS MR. BEASLEY HAD DONE SOME WORK THAT DAY, AT MRS. MONTFORT'S REQUEST, WHERE HE ASSISTED MRS. MONTFORT'S DAUGHTER IN MOVING SOME THINGS. HE ASKED HER TO BE PAID FOR DOING THAT WORK AND SHE SAID, YOU KNOW, HER HUSBAND WOULD TAKE CARE OF IT.

THAT WAS THE EXTENT OF THAT REQUEST. THAT EXCHANGE WAS TO BE PAID JUST FOR THAT WORK.

YES. THAT IS MY UNDERSTANDING, IN TERMS OF THE REQUEST FOR MONEY THAT DAY FROM THE DAUGHTER. AND SO --

A QUESTION ABOUT THE MONEY. THE \$800. THAT WAS GIVEN TO HER AT SOME PLAYS OUT SIDE OF HER HOUSE, RIGHT? AT AN APARTMENT.

YES. DO YOU DISPUTE THAT THE MONEY ACTUALLY CAME WITH HER BACK TO THE HOUSE THAT EVENING?

FROM THE EVIDENCE IN THIS CASE, WE DON'T EVEN KNOW THAT. YOU KNOW, IT WAS CASH. WHETHER SHE DID SOMETHING TO HIDE IT OR SECRET IT, RATHER THAN BE CARRYING AROUND \$800 IN CASH, THERE IS NO WAY OF EVEN KNOWING WHETHER THAT MONEY WENT INTO HER PURSE AND INTO THE HOUSE.

SO WE DON'T KNOW WHERE IT WAS. WE KNOW SHE GOT IT, AND WE KNOW SHE DIDN'T, AFTER THE MURDER, THEY DIDN'T FIND ANY MONEY, BUT WE REALLY DON'T KNOW WHETHER IT ACTUALLY, SHE ACTUALLY BROUGHT IT BACK TO THE HOUSE. DID YOU ARGUE THAT?

I DON'T REMEMBER. I AM SORRY. I THINK -- I DON'T REMEMBER IF I ARGUED THAT TO THE JURY DURING THE TRIAL, ITSELF. I JUST DON'T REMEMBER AT THIS POINT, BUT THE OTHER THING TO KEEP IN MIND IS THAT, YOU KNOW, IN THE CAR, MS. MONTFORT HAD GIVEN A RECEIPT TO THE GENTLEMAN, AND HER BOOK, AT LEAST, WHICH SHE KEPT RECEIPTS, WAS APPARENTLY FOUND IN THE CAR. SHE MAY VERY EASILY HAVE LEFT THE \$800 IN THE RECEIPT BOOK, AND THE CAR IS TAKEN AS AN AFTERTHOUGHT, AS A MEANS OF GETTING AWAY FROM THE AREA, AND THE PERSON FINDS THE \$800 IN THE RECEIPT BOOK, SO YOU KNOW, THERE IS NO EVIDENCE THAT SHE ACTUALLY EVEN HAD IT ON HER PERSON, WHEN SHE CAME INTO THE WHO US THAT DAY, AND AS I WAS SAYING, IF MR. BEASLEY'S INTENT, IN KILLING HER, WAS TO STEAL, HE COULD HAVE STOLEN EVERYTHING OUT OF THAT HOUSE DURING THE COURSE OF THE AFTERNOON, LEFT.

WHAT OTHER THINGS OF VALUE WERE IN THE HOUSE THAT WERE REALLY ACCESSIBLE THAT WEREN'T TAKEN?

JEWELRY. APPARENTLY SOME VERY VALUABLE JEWELRY.

WAS IT IN HARD TO FIND PLACES, OR WAS IT --

I BELIEVE JEWELRY BOXES, THINGS OF THAT NATURE, THAT WERE IN THE OPEN. YOU KNOW, MR. BEASLEY, LIKE I SAID, LIVED THERE, HE HAVE EASTBOUND IF MONEY OR -- EVEN IF MONEY OR JEWELRY HAD BEEN HIDDEN, HE COULD HAVE SPENT ALL AFTERNOON --

WHAT IF SHE HAD COME BACK AND HE SAID, LISTEN, I NEED MY MONEY NOW, AND SHE SAID I AM NOT GOING TO GIVE IT TO YOU, AND THAT IS WHY THE ARGUMENT BROKE OUT, AND THEN THE MOTIVE BECAME TO GET THE MONEY FROM HER. ISN'T THAT LOGICAL?

I THINK THAT IS ONE OF THE THINGS ABOUT THIS CASE WHICH LENDS ITSELF TO THE SUFFICIENCY ARGUMENT IS THAT I WENT THROUGH THIS CASE ON THE TRIAL LEVEL AND NOW ON THE APPELLATE LEVEL, AND WHEN YOU LOOK AT THE EVIDENCE IN THIS CASE, YOU KEEP COMING UP WITH WHAT-IFS, THIS IS ANOTHER EXPLANATION. THIS IS ANOTHER EXPLANATION. ANY ENOUGH OF INTERPRETATIONS THAT CAN BE DRAWN FROM THE CIRCUMSTANTIAL EVIDENCE OF THIS CASE, IN TERMS OF THE WHAT-IFS OF WHAT HAPPENED.

WAS THERE ANY INDICATION THAT SHE HAD HUNDRED DOLLAR BILLS, THE VICTIM HAD HER \$800 IN HUNDRED DOLLAR BILLS? WAS ANY EVIDENCE TO THAT EFFECT?

I KNOW IT WAS LARGE BILLS. AND I KNOW THAT THERE WAS THE TESTIMONY OF THE ROBIN SONS ABOUT MR. BEASLEY COMING BY TO PAY THEM SOME MONEY. IF THAT IS WHAT THE COURT IS ASKING ABOUT.

AND THERE WAS SOME EVIDENCE THAT MR. ROBINSON HAD A DRUG HABIT, THAT HE -- AND HE WAS GOING -- HE WANTED THE DEFENDANT TO BUY SOME DRUGS WITH THE HUNDRED DOLLAR BILL. IS THAT --

THAT IS WHAT MR. ROBINSON HAD ASKED HIM TO DO. MR. BEASLEY HAD OWED HIM SOME MONEY THAT HAD BEEN A LONG-STANDING DEBT THAT WAS NOT ANYTHING PRESSING, BUT MR. ROBINSON'S TESTIMONY WAS THAT HE COULD NOT RECALL WHEN MR. BEASLEY COULD COME BY TO BRING HIM THE MONEY. THE STATE'S THEORY WAS THAT IT HAPPENED, THAT THIS OCCURRED IMMEDIATELY AFTER THE EVENING OF THE KILLING, BUT THERE WAS ABSOLUTELY NO TESTIMONY ON THE PART OF MR. ROBINSON THAT THAT, IN FACT, WAS ACCURATE AND THAT, IN FACT, OCCURRED THAT EVENING.

WHEN WAS IT THAT HE SHOWED UP IN MIAMI?

THIS WOULD HAVE BEEN, AGAIN, WHEN YOU ARE DEALING WITH WITNESSES IN TERMS OF TIME, THE EVIDENCE WAS THAT HE WAS IN MIAMI, EITHER TUESDAY OR POSSIBLY WEDNESDAY OF THAT WEEK, AT LEAST BASED ON CIRCUMSTANCES ANALYSIS OF THE CASE. SHE WAS KILLED PROBABLY SOMETIME MONDAY NIGHT.

THAT WAS -- WHEN DID HER DAUGHTER COME OVER?

THIS WAS DURING THE DAY ON MONDAY, AND IN FACT, DURING THE TIME PERIOD WHEN MR. BEASLEY WAS DOING WORK WITH HER, HE HAD EVEN TOLD JANE ON TOLL THAT -- JANE O'TOOLE THAT HE WAS LEAVING THE AREA.

HE WAS GOING TO ALABAMA FOR INHERITANCE OR SOMETHING, WAS HE NOT?

HE HAD SAID THAT HE WAS GOING TO GO TO ALABAMA, BUT HE INDICATED THAT HE WAS LEAVING THE AREA. ULTIMATELY HE WOUND UP IN ALABAMA.

SURPRISING THAT HE CAME TO MIAMI, DRESSED INAPPROPRIATELY, ACCORDING TO HIS FRIENDS, WITH NEW CLOTHING, NEW SHOES, DIDN'T MATCH? THE DESCRIPTION. IS THAT A FAIR DESCRIPTION?

THEY DESCRIBED THE SHOES AS NOT REALLY MATCHING THE OTHER CLOTHING, BUT WHEN YOU LOOK AT THE EVIDENCE IN THE CASE, MR. BEASLEY WAS NOT A PERSON OF ANY KIND OF SUBSTANTIAL PROPERTY. I MEAN EVERYTHING HE OWNED WAS IN ONE ROOM OF THE HOUSE. I MEAN, HE JUST DID NOT HAVE VERY MUCH PROPERTY.

DID HE LEAVE ANY BELONGS? THE MONTFORT HOME?

THERE WAS A SHAVING KIT FOUND AND SOME SHAVING ITEMS, THOSE KINDS OF THINGS FOUND IN THE BATHROOM. THERE WAS NO INDICATION THAT MR. BEASLEY WAS PERMANENTLY LEAVING. HE, I GUESS THE BEST WAY TO PUT IT, IS SOMEBODY WHO IS LIVING WITH A WOMAN TEMPORARILY. HE HAD BEEN LIVING WITH SOMEONE ELSE TEMPORARILY BEFORE THAT, DURING THIS POINT POINT IN HIS LIFE. HE WAS A BLUE COLLAR HANDYMAN TYPE WORKER WHO ESSENTIALLY GOES FROM PLACE TO PLACE AND GETS OTHER JOBS. WHEN HE WAS DOWN IN MIAMI, AFTER GOING TO VISIT HIS FRIENDS DOWN THERE, WHERE A FRIEND HAD JUST GOTTEN OUT OF PRISON, HE GOT A JOB, HE GETS THERE AND STARTS VISITING WITH THEM AND IT IS, LIKE, OH, CAN YOU PAINT MY HOUSE WHILE ONE OF THE PEOPLE'S MOTHER LEAVES THE AREA. HE WENT TO FT. LAUDERDALE FOR A BRIEF PERIOD OF TIME AND DID SOME TEMPORARY WORK TO

MAKE MONEY. WENT TO ALABAMA. GOT A STEADY JOB UP THERE AT B&B ELECTRIC, SO HE WAS SOMEBODY WHO ESSENTIALLY DID NOT HAVE ANY EXTREMELY FIXED --

TELL WAS THIS RECORD REFLECTS IN THE PENALTY PHASE, AS TO HIS DRUG AND ALCOHOL USAGE.

PRIMARILY, THE DRUG AND ALCOHOL -- OR DRUG USAGE, IN PARTICULAR, WAS ACTUALLY DEVELOPED AT THE SPENCER HEARING, AS OPPOSED TO --

IT WASN'T INTRODUCED --

AT THE PENALTY PHASE, NO, SIR. ESSENTIALLY AT THE PENALTY PHASE WHAT WAS PRESENTED TO THE JURY WAS MANY OF THE POSITIVE THINGS ABOUT MR. BEASLEY, IN TERMS OF HIS LIFE AND HIS BACKGROUND, A LOT OF DIFFERENT POSITIVE THINGS AS IT RELATES TO HIS RELATIONSHIP WITH HIS FAMILY. HIS CHILDREN. OTHER PEOPLE. WHAT WAS, ALSO, BROUGHT OUT AT THE PENALTY PHASE WERE SOME OF LIFE'S BUMPS THAT HE HAD TO DEAL WITH, NOT ONLY THE POSITIVE THINGS IN HIS LIFE BUT THINGS SUCH AS THE CONFLICT HE HAD BETWEEN GOING TO COLLEGE YET WANTING TO MARRY THE WOMAN HE LOVED. THE DIVORCE BETWEEN HIM AND HIS WIFE, WHICH WAS SOMETHING THAT THE FAMILY TESTIFIED IT AFFECTED HIM VERY STRONGLY, UP YOU BELIEVE UNTIL THAT POINT HE HAD BEEN A FAIRLY STABLE, ONE JOB KIND OF GUY, BUT THEN WHEN THIS HAPPENED, HE BECAME MORE THE DREST DRIFTER.

WHAT WAS -- THE DRIFTER.

WHAT WAS THE EVIDENCE AT THE SPENCER HEAR SOMETHING ANOTHER EVIDENCE AT THE SPENCER HEARING WAS TESTIMONY BY MENTAL HEALTH EXPERTS THAT HE DID HAVE A DRUG PROBLEM, AND THAT PART OF THE PROBLEMS IN HIS LIFE WERE PERIODIC BINGES AND USE OF COCAINE, CRACK COCAINE, SPECIFICALLY, AND THAT, I BELIEVE IT WAS DR. DEE, WHO WAS THE NEUROPSYCHOLOGIST IN THIS CASE, HE TESTIFIED THAT, BASED ON HIS EXAMINATION OF MR. BEASLEY, THERE WAS SOME EVIDENCE THAT HE HAD SOME TYPE OF ORGANIC BRAIN DAMAGE THAT WOULD EFFECT THIS COULD CERTAINLY AFFECT BEHAVIOR, IN A SITUATION SUCH AS A RING UNIT, A -- AN ARGUMENT, A PERSON WHO HAS THAT TYPE OF SITUATION WOULD TEND TO GO OFF, MORE, JUST GO OFF MORE QUICKLY AND WITH A HIGHER DEGREE OF VEHEMENCE, BECAUSE OF THE CONTROL PROBLEMS INVOLVED.

AM I CORRECT IN UNDERSTANDING THAT, AT FIVE OKAY THE DAY THAT SHE WAS MURDERED, SHE MET WITH A MR. ROSE ARE A YO, AND HE -- A MR. ROSARIO, AND HE GAVE HER \$800 IN HUNDRED DOLLAR BILLS. IS THAT CORRECT?

YES.

OKAY. THANK YOU.

I SEE THE LIGHT IS ON. I WILL SAVE --

THE STATE RAISES -- ON YOUR ARGUMENT THAT THERE IS NOT ENOUGH TO SUPPORT THE ROBBERY CONVICTION AND FELONY MURDER, THAT YOU NEVER PRESENTED THIS TO THE JUDGE, YOU NEVER ARGUED THAT THERE WASN'T ENOUGH EVIDENCE TO SUPPORT THE ROBBERY. I SUPPOSE, I GUESS, THE WHOLE IDEA THAT THERE WASN'T ENOUGH TO SUPPORT MURDER. IS THAT CORRECT? DID YOU NOT ARGUE THAT TO THE JUDGE?

MR. HOWELLMAN IN THE CASE BECAUSE MY COCOUNSEL, AND HE DID THE JUDGMENT OF ACQUITTAL MOTION, AND IN THE REBUTTAL BRIEF THAT WE FILED, WE DID ADDRESS THAT ISSUE, AS FAR AS THE STATE'S CLAIM ON THE PRESERVATION ISSUE, BUT IT IS MY CLAIM THAT MR. HOWELLMAN HAD ADEQUATELY PRESERVED THAT ISSUE IN THE ARGUMENT TO THE TRIAL



JUDGE. ESSENTIALLY THE WAY THE ARGUMENT WENT, THE MAIN FOCUS ON THE CASE HAS BEEN THE WHODUNIT, AND SOME OF THE OTHER DETAILS HAVE BECOME A LITTLE BIT SECONDARY. THAT WAS THE ONE ARGUED MORE FULLY, BUT I DO FEEL HE PRESERVED THOSE ISSUES AS WELL. THANK YOU.

THANK YOU. MS. DITTMAR.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. I AM CAROL DITTMAR, FROM THE STATE ATTORNEY GENERAL'S OFFICE, REPRESENTING THE STATE OF FLORIDA. THIS IS A VERY STRONG CIRCUMSTANTIAL EVIDENCE CASE, AND THE REASON I SAY THAT IS THERE ARE A NUMBER OF INDEPENDENT FACTORS, WHICH ALL, ARE VERY INCRIMINATING AND CLEARLY POINT TO MR. BEASLEY'S GUILT. NOW, WHAT THE DEFENSE HAS DONE IN THIS CASE IS TRY TO PICK APART THOSE FACTORS. WE CAN START WITH THE SHIRT, BECAUSE OBVIOUSLY THE SHIRT IS A VERY KEY PIECE OF EVIDENCE, AND THEY SAY MAYBE THE SHIRT WAS PLANTED, EXCEPT WE HAVE EVIDENCE IN THE RECORD THAT IS INCONSISTENT WITH THE THEORY THAT THE SHIRT WAS PLANTED. WE HAVE PEOPLE IN THE HOUSE DENYING THAT. IT IS ALSO UNREASONABLE THAT SOMEBODY WOULD KNOW WHERE TO PLANT A SHIRT THAT HAPPENED TO BE THE ONE PLACE IN THIS HOUSE WHICH THE CRIME SCENE TECHS HAD BEEN PROCESSING FOR TEN HOURS, AND THEIR IMMEDIATE REACTION WAS YOU KNOW, WE DIDN'T LOOK UNDER THE BED IN MR. BEASLEY'S ROOM. THEY WENT THROUGH THE REST OF THE HOUSE AND CERTAINLY WENT THROUGH HIS ROOM. THEY FOUND HIS BUSINESS CARDS AND HIS CIGARETTES AND TOIL TRIS, BUT THEY DID NOT LOOK UNDER THE BED. IF A PERSON IS GOING TO COME ALONG AND PLANT EVIDENCE, IT IS UNREASONABLE THAT THEY ARE GOING TO HAVE HAPPEN TO PLANT IT IN THE ONE PLACE THAT THE CRIME SCENE TECHS DID NOT WORK, BUT WE DON'T HAVE TO GET THAT FAR WITH IT, BECAUSE WE KNOW THAT THE HOUSE WAS TURNED OVER TO THE FAMILY. THE FAMILY WAS THERE. THEY DENIED THE CRIME SCENE TECHS AND THE DETECTIVES NOTED THAT THEY HAD NOT LOOKED IN THIS PLACE, SO IT IS A VERY INCRIMINATING THING, AND THE EXPLANATION THAT IS OFFERED BY THE DEFENSE TO EXPLAIN HOW THIS SHIRT COULD HAVE POSSIBLY GOTTEN UNDER THE DEFENDANT'S BED DOESN'T HOLD UP. IT IS NOT REASONABLE TO BEGIN WITH, BUT EVEN IF YOU CONSIDER IT, IT IS INCONSISTENT WITH EVIDENCE THAT WAS PRESENTED IN THE RECORD.

HOW ABOUT FOCUSING, MORE DIRECTLY, ON THE PREMEDITATION ASPECT OR THE FELONY MURDER ASPECT.

THE KEY THAT I SEE TO THE PREMEDITATION IS, AS JUSTICE LEWIS TURNED OUT, THE WRAPPING OF THE HAMMER. YOU CAN SAY, WELL, MAYBE HE PICKED IT UP WITH SOME RAGS AND MAYBE IT WAS SITTING THERE IN THE UTILITY ROOM. MR. NORGARD KEEPS HIS HAMMER IN THE UTILITY ROOM. I KEEP MINE IN THE GARAGE. I GUESS THAT IS A SPLIT AS TO WHERE IT MAY HAVE BEEN INITIALLY. IF YOU LOOK AT THE TESTIMONY ABOUT HOW THE HAMMER WAS, INDEED, WRAPPED, IN TWO RAGS, AND THEY KNOW THAT, BECAUSE, IN FACT, THE BEATING, SHE WAS STRUCK AT LEAST 15 TIMES, WITH THE HAMMER, AND THE BEATING ACTUALLY CAUSED THE HAMMER, NOT ONLY THE HAMMERHEAD TO BREAK OFF OF THE HAMMER BUT CAUSED IT TO RIP A HOLE IN THE RAGS, BECAUSE OF THE WAY IT WAS WRAPPED, SO IT HAD TO BE WRAPPED AND HELD, IN ORDER TO PREVENT FINGERPRINTS OR WHATEVER. YOU KNOW, WITH SUCH FORCE, THEN THE PRESSURE THAT IS BEING USED, IF IT WASN'T WRAPPED AROUND, IT WOULDN'T HAVE STAYED THERE, ON THE HAMMER FOR THE PERIOD OF TIME, SO I THINK THE WRAP -- FOR THE REPEATED TIME, SO I THINK THE WRAPPING OF THE HAMMER, ITSELF, IS INDICATION OF PREMEDITATION, AND ALSO THIS ISN'T A GUN OR A KNIFE THAT HE PULLED OUT AND STARTED BEATING. IT IS A HAMMER THAT HE WOULD HAVE TO GO SOMEWHERE AND GET OR AT LEAST MAKE SOME EFFORT TO FIND, WHICH I THINK DEMONSTRATES IT WAS VERY DELIBERATE, THAT HE KNEW WHAT HE WAS GOING TO DO. HE GOT THE HAMMER. HE WRAPPED --

IN THESE SPUR OF THE MOMENT THINGS, I MEAN, SOMEONE, THE IDEA, WELL, YOU SAY, THEY

HAD A GUN ON THEM, WELL, THAT INDICATES PREMEDITATION. I HAVE GOT A GUN. BUT I GUESS I ALWAYS THOUGHT THAT THE SPUR OF THE MOMENT THINGS ARE SOMEONE GETS A KNIFE. WELL, OBVIOUSLY THEY HAVE TO MAYBE GO IN THE KITCHEN TO GET THE KNIFE. HAS THAT BEEN ENOUGH TO SHOW PREMEDITATION?

I THINK YOU HAVE TO LOOK AT THE PERSON. IF IT WAS A PERSON WHO, THERE IS TESTIMONY THAT THIS PERSON ALWAYS CARRIED A GUN ON HIM. THIS PERSON HAD A GUN AT ALL TIMES, THEN I DON'T KNOW THAT HAVING A GUN AT THE TIME OF THE OFFENSE IS EVIDENCE OF PREMEDITATION. IF IT IS A PERSON THAT, THERE IS SOME EVIDENCE TO SHOW THAT HE SPECIFICALLY GOT THE GUN AND TOOK IT, FOR WHATEVER REASON, AND SHOWED UP AT THE CRIME SCENE WITH A GUN, WHEN HE DIDN'T USUALLY HAVE ONE.

IF SHE HAD BEEN KILLED WITH A KNIFE, AND THE KNIFE WAS A KITCHEN KNIFE, WOULD THAT SHOW PREMEDITATION?

I THINK IT CERTAINLY SHOWS HE HAD TO GO TO ANOTHER ROOM TO GET A WEAPON, WHICH SHOWS HE IS NOT JUST REACTING TO SOMETHING THAT IS HAPPENING. YOU KNOW, I THINK THAT IT CERTAINLY SHOWS HIGHER PREMEDITATION THAN HIM JUST, SOMEBODY THAT ALWAYS CARRIES A KNIFE PULLING ONE OUT OF HIS POCKET AND STABBING SOMEBODY, BUT AT ANY RATE, I THINK IT IS, THE KEY HERE IS THE WRAPPING AND THE TOWELS, AND ADDITIONALLY WE HAVE THE FELONY MURDER. WE HAVE THE \$800 PORTION AND I THINK THE EVIDENCE IS -- THE \$800. I THINK THE EVIDENCE IS PRETTY CLEAR ABOUT THAT. HE WAS GIVEN -- SHE WAS GIVEN \$800 RED DOLLAR BILLS AND HE WAS SEEN FLASH A HUNDRED DOLLAR BILL LATER THAT NIGHT IN THE CAR. I THINK MR. BEASLEY SAID IT DIDN'T ESTABLISH IT WAS THE SAME NIGHT OF THE MURDER, BUT IT WAS CLEARLY THE SAME NIGHT AS THE MURDER. FIRST OF ALL MR. ROBINSON TESTIFIED IT WAS LATE AUGUST. THIS MURDER OCCURRED ON AUGUST 21. IT WAS LATE AUGUST AND, ALSO, TESTIFIED THAT IT WAS SOMEWHERE BETWEEN THREE AND SEVEN DAYS PRIOR TO MR. ROBINSON BEING INTERVIEWED BY DETECTIVE CASH ABOUT WHETHER OR NOT HE HAD SEEN MR. BEASLEY.

THE IDEA, THOUGH, THAT SHE GETS THE MONEY THE LATE AFTERNOON, AND SHE GETS IT AT THE SAME TIME SHE HAS GOT HER BOOK, HER RENTAL BOOK.

RIGHT.

WOULDN'T IT BE, AND SHE IS, YOU KNOW, I WOULDN'T THINK SHE WOULD BE THE KIND PERSON TO KEEP \$800 IN THE HOUSE. SHE WOULD WANT TO PUT IT IN THE BANK BUT THE BANK IS CLOSED, SO WHY ISN'T IT LOGICAL THAT THE MONEY WAS JUST LEFT IN THE CAR, IN THE GARAGE, WITH THE BOOK? IN OTHER WORDS I GUESS HOW DOES THE STATE GET THE MONEY DOES INTO THE HOUSE IN THIS CASE?

WELL, I WOULD THINK THE REASONABLE INFERENCE IS THAT THE MONEY WAS IN HER PURSE. I CERTAINLY WOULDN'T FEEL COMFORTABLE LEAVING \$800 IN MY CAR. I WOULD FEEL MORE COMFORTABLE CARRYING IT WITH ME, UNTIL I HAD A CHANCE TO GET IT SOMEPLACE SAFE.

WHERE WAS THE PURSE AND THE WALLET? ANOTHER PURSE WAS IN THE LAUNDRY ROOM, WHERE HER BODY WAS FOUND.

IS THERE ANYTHING -- WAS THE WALLET TAKEN?

I DON'T RECALL ANY SPECIFIC TESTIMONY ABOUT THE WALLET BEING TAKEN. THERE WAS TESTIMONY THAT SOME OF THE JEWELRY IN THE HOUSE WAS MISSING.

THE PURSE WAS IN THE LAUNDRY ROOM.

YES. WHAT IS THE STATE -- HOW DO THEY SAY THIS CAME ABOUT? WHAT WAS THEIR ARGUMENT

TO THE JURY?

SHE WOULDN'T LEAVE A PURSE IN A LAUNDRY ROOM.

SHE WAS PROBABLY EITHER COMING OR GOING WITH HER PURSE. WHEN SHE WAS CONFRONTED BY MR. BEASLEY. AND THEY -- WHEN SHE ACTUALLY GOT THE MONEY, WE KNOW MR. ROSE ARE A YO SAID THAT HE -- MR. ROSARIO SAID THAT HE HAD LEFT. HE WAS RENTING THE APARTMENT WHERE HE METER HAD. HE LEFT AT -- WHERE HE MET HER. HE LEFT AT 5:30 AND SHE STAYED THERE AND TALKED TO THE WORKERS ABOUT WHATEVER WAS BEING DONE IN THE APARTMENT AT THE TIME, SO WE NOTICED KNOW IT WAS 5:30 OR MAYBE EVEN AFTER THAT, WHEN SHE LEFT WITH THE MONEY. OTHER THAN THAT WE KNOW THE DEFENDANT WAS IN THE HOME UNTIL ABOUT SEVEN O'CLOCK, DUE TO THE PHONE CALLS THAT HE WAS MAKING. THERE IS NO EVIDENCE TO EXPLAIN EXACTLY WHAT TIME SHE LEFT, EXACTLY WHAT TIME SHE GOT HOME. THE MEDICAL EXAMINER TALKED ABOUT THE FACT THAT THE FOOD THAT THERE WAS A VERY SMALL AMOUNT OF FOOD IN HER STOMACH AND THERE WAS NO EVIDENCE IN THE HOUSE THAT ANY FOOD HAD BEEN PREPARED, SO THE SUGGESTION WAS SHE HADN'T EATEN DINNER YET.

WAS THERE ANY EVIDENCE THAT HE KNEW THAT SHE HAD THAT MONEY?

THERE IS NO DIRECT EVIDENCE THAT HE KNEW ABOUT IT, BUT THE FACT THAT THEY LIVED IN THE SAME HOUSE, AND YOU WOULD THINK THAT PEOPLE THAT LIVE IN THE SAME HOUSE ARE GOING TO TALK TO EACH OTHER. SHE MAY HAVE SAID I MAY BE LATE GETTING HOME TONIGHT, BECAUSE I AM MEETING A GUY THAT IS GIVING ME A DEPOSIT, OR IT COULD BE HAPPENSTANCE THAT HE LUCKED OUT, THAT HE KNEW THAT, PERHAPS, SHE WOULD HAVE MONEY IN HER WALLET, BUT EVEN IF -- THE BOTTOM LINE IS, EVEN IF IT WAS AN AFTERTHOUGHT THAT HE KILLED HER AND HE LOOKED IN THE PURSE AND GOT THE MONEY, THAT IS STILL A ROBBERY. THAT STILL FALSE WITHIN THE DEFINITION OF A ROBBERY. THE CASE, MR. NORGARD IS RELYING ON THE LINE OF CASES THAT TALK ABOUT AN AFTERTHOUGHT, WOULD NOT SUPPORT THE PECK UNION YEAR GAIN AGGRAVATING FACTOR. THE SKULL CASE IS A CASE FOR THAT PROPOSITION. IF YOU DO READ SKULL, AND YOU HAVE TO READ TO THE END OF THE OPINION, BECAUSE IN THE BEGINNING THEY TALK ABOUT HIS MURDER CONVICTION, BUT THE INTERESTING THING IN SKULL WAS THAT HE WAS CONVICTED OF ROBBERY AND THAT HIS ROBBERY CONVICTION WAS UPHELD.

HOW CAN THAT BE, IF THE MURDER IS ALREADY COMPLETED? IN OTHER WORDS THE MURDER IS COMPLETED AT THE TIME THE PERSON DIES.

THE PURPOSE OF THE FELONY MURDER RULE --

WHAT I MEAN IS THAT, IF WE ARE GOING TO TALK ABOUT IN THE COURSE OF A ROBBERY, IF THE MURDER IS COMPLETED, THE PERSON IS DECEASED, AND NOW AN HOUR LATER, AFTER SOMEBODY, HERE THE SCENARIO MAY BE THE DEFENDANT CLEANED HIMSELF UP OR WHATEVER, AND THEN AN HOUR LATER, AFTER SHE IS DEAD, THEN HE LOOKS AROUND FOR THINGS TO TAKE, AND ARE YOU SAYING THAT THAT IS A ROBBERY? FOR PURPOSES OF FELONY MURDER, EVEN THOUGH THE MURDER HAD NOTHING TO DO WITH THAT, AND IT IS ALL OVER WITH?

IN THE COURSE OF A ROBBERY.

I AM HAVING TROUBLE WITH THE --

THE STATE'S POSITION IS THAT IT IS NOT ALL OVER WITH, THAT THIS IS ONE CONTINUING SERIES OF EVENTS, THAT THE MURDER, THE TAKING OF THE MONEY, THE TAKING OF THE CAR, ALL HAPPENED AT THE SAME TIME. NOW, I CAN'T TELL YOU WHETHER IT WAS 30 SECONDS OR 15 MINUTES.

THE WHOLE THEORY OF A FELONY MURDER IS THAT THERE IS A FELONY GOING ON, AND THAT

THE MURDER HAPPENS INCIDENTAL TO THE FELONY. YOU ARE DESCRIBING --

THE MURDER CAN FACILITATE THE FELONY. IF SHE HAD NOT BEEN MURDERED, HE WOULD NOT HAVE BEEN ABLE TO TAKE THIS MONEY. THE DEFINITION, THE STATUTORY AND CASE LAW DEFINITION OF ROBBERY, I AM SORRY, FELONY MURDER IN THE COURSE OF A ROBBERY, SAYS THAT THE MURDER COULD OCCUR BEFORE, DURING OR AFTER THE ROBBERY.

WOULD THE RANDOLPH CASE BE APPLICABLE HERE, AND IF SO, HOW?

I AM SORRY. I AM NOT --

THERE WAS SOME MONEY TAKEN AFTER A MURDER IN THAT CASE, AND I AM NOT SURE THAT IT FITS OR DOES NOT FIT. IN THIS CASE.

WELL, IT WOULD SOUND LIKE IT FITS, TO ME.

GIVE US YOUR BEST CASE.

I THINK SKULL. I THINK SKULL, WHICH IS THE CASE THAT THEY ALWAYS BRING UP TO SAY, YOU KNOW, IF IT IS AN AFTERTHOUGHT, IT IS NOT PECK UNION YEAR GAIN -- PECUNIARY GAIN, AGGRAVATING FACTOR. IN SKULL IT WAS AN AFTERTHOUGHT, BUT HE WAS CONVICTED FOR ROBBERY, AND HIS CONVICTION FOR ROBBERY WAS UPHeld.

WAS HE CONVICTED OF FELONY MURDER, BASED ON THE ROBBERY?

MY UNDERSTANDING IS HE WAS CONVICTED OF FELONY MURDER, BASED ON THE ROBBERY. IF YOU LOOK IN SKULL, THE STATE HAD RAISED, AN ACROSS APPEAL -- AS A CROSS APPEAL ISSUE IN SKULL, THE COURT FOUND THERE WAS A MITIGATING FACTOR OF NO SIGNIFICANT MITIGATING HISTORY, AND THE STATE CROSS APPEALED THAT, SAYING THAT SHOULD NOT APPLY BECAUSE HE HAD CONVICTIONS FOR ARSON, FOR ROBBERY, BUT THE COURT SAID, YES, BUT THOSE WERE CONTEMPORANEOUS WITH THE MURDER, AND BECAUSE THEY WERE CONTEMPORANEOUS, IT WAS PROPER FOR THE COURT TO FIND NO SIGNIFICANT MITIGATOR. BASED ON THAT, YOU HAVE THE CRIME OF ROBBERY OCCURRING, AND JUST IN THIS CASE, YOU HAVE THE CRIME OF ROBBERY OCCURRING.

THE COURT DISCUSS THAT THIS WAS -- I AM HAVING TROUBLE UNDERSTANDING, YOU WERE ASKING, AND JUSTICE ANSTEAD WAS ASKING, HOW HE WOULD HAVE KNOWN THE MONEY WAS IN THE WALLET, WAS IN THE PURSE. SHE JUST HAS COME IN. SHE IS IN THE LAUNDRY ROOM WITH THE PURSE, ACCORDING TO WHAT THE STATE IS SAYING, AND YOU SAY IT DOESN'T MATTER IF THE DEFENDANT KNEW SHE HAD THIS MONEY OR NOT, BECAUSE THE FACT THAT HE TOOK THE MONEY AFTER HE KILLED HER WOULD BE ENOUGH TO SHOW A ROBBERY, AND YOU ARE SAYING THAT SKULL WILL SUPPORT THAT THAT IS THE DEFINITION, THAT ROBBERY CAN OCCUR, EVEN THOUGH THE MURDER OCCURS FIRST, AND THAT --

I THINK YOU HAVE TO LOOK AT THE CASES THAT TALK ABOUT FELONY MURDER AND THE REASON THAT WE HAVE THE FELONY MURDER RULE, AND THEY TALK ABOUT A MURDER, EVEN IF IT IS INDEPENDENT OF PROPERTY TAKEN LATER, IF IT FACILITATES BEING ABLE TO COMMIT ANOTHER FELONY --

BUT YOU STILL WOULD HAVE TO SHOW THAT THE MURDER WAS COMMITTED, SO HE COULD TAKE THE MONEY, AND IF HE DOESN'T -- IF THERE IS NO EVIDENCE THAT HE KNEW SHE HAD THIS MONEY, THEN HOW COULD THE MURDER FACILITATE --

THE FELONY MURDER DOESN'T REQUIRE THAT THE FELONY BE THE MOTIVE FOR THE MURDER. A YOU JUST SAID IT WOULD HAVE TO AT LEAST FACILITATE.

BUT YOU ARE SAYING HE WOULD HAVE HAD TO HAVE DONE IT TO GET THE MONEY. A NO. I AM ASKING YOU, WOULDN'T HE HAVE TO KNOW, IN ORDER TO DECIDE THAT IS WHY HE IS GOING TO KILL HER, THAT SHE HAD MONEY FOR HIM TO TAKE?

NO. BECAUSE HE DIDN'T HAVE TO INTEND TO COMMIT THE FELONY, AT THE TIME THAT THE MURDER OCCURS, AS LONG AS THE MURDER FACILITATES THE FELONY.

HE INTENDED TO TAKE SOMETHING FROM HER, AS HE STARTED THE MURDER.

I THINK, AGAIN, IF YOU LOOK AT THE DEFINITION OF FELONY MURDER AND YOU LOOK AT THE CASE LAW DEFINING FELONY MURDER AND THE RELATIONSHIP THAT HAS TO HAPPEN, IT JUST HAS TO BE A CONTINUOUS CRIMINAL EPISODE. YOU JUST NEED ONE CRIMINAL EPISODE, WHERE A MURDER OCCURS, AND A FELONY OCCURS, AND YOU HAVE IT, SO --

SO THE TAKING, HOW DO YOU DISTINGUISH THE CASES THAT TALK ABOUT THEY TOOK SOMETHING AS AN AFTERTHOUGHT?

THOSE CASES ARE WHETHER YOU ARE STRIKING THE PECUNIARY AGGRAVATING FACTOR, BECAUSE THIS COURT HAS SAID THAT THE PECUNIARY GAIN AGGRAVATING FACTOR APPLIES WHEN THERE IS A PECUNIARY GAIN AFTER THE MURDER.

THEY ARE GOING TO FIND THAT A ROBBERY OCCURRED.

I DON'T KNOW THAT THEY ARE GOING TO FIND THAT, BECAUSE IN SOME CASE, AS IN THIS CASE, THERE IS PREMEDITATION, SO THAT MIGHT NOT BE A CONCERN FOR THE COURT.

WAS THAT THE CASE THE COURT DEALT WITH IN MANN, WHERE THE KID TOOK THE FATHER'S THUNDERBIRD OR WHATEVER KIND OF CAR, TOOK THE KEYS OFF --

I THINK SO.

WAS IT PECUNIARY GAIN OR WAS IT ROBBERY?

MY FEELING IS IT WAS A PECUNIARY GAIN WAS THE ISSUE THAT YOU ARE LOOKING AT. I THINK THE CASE LAW TALKING ABOUT FELONY MURDER, THEY TALK ABOUT IT BEING A SINGLE CRIMINAL HE SIDE -- EPISODE. I AM THINKING THE CASE IN WHICH THIS HAS COME UP, AND BECAUSE YOU SO CLEARLY HAVE PREMEDITATION, I KNOW I HAVE HAD CASES WHERE THE PECUNIARY GAIN FACTOR WAS STRUCK BUT THE ROBBERY CONVICTION WAS UPHELD.

DO YOU THINK THE STRONGEST ARGUMENT ABOUT THE PREMEDITATION WAS WHAT JUSTICE LEWIS BROUGHT UP WAS THE WRAPPING, BECAUSE I WAS CONCERNED THAT THE ARGUMENT ABOUT HOW THE MURDER WAS OCCURING, THAT IS THAT IT WAS SORT OF A VICIOUS, CONTINUES ACT WHICH WOULD SUPPORT HAC, WOULD SEEM TO ME TO BE HARD, THE WAY THE STABBING OR THE HITTING WOULD, ALSO, BE THE FACT THAT WOULD DEVISE THE PREMEDITATION.

I THINK THE STRONGEST FACTOR OF THE PREMEDITATION IS THE NATURE OF HOMICIDE, THE WAY IT WAS CONVICTED, THE FACT THAT YOU HAVE THIS TERRIBLY DESTRUCTIVE WEAPON THAT YOU ARE BASHING SOMEBODY IN THE HEAD WITH 15 TIMES. I THINK THOSE ACTIONS ALONE, I THINK THIS CASE HAS MORE THAN THAT, BECAUSE IT HAS THE WRAPPING, SO I THINK THE WRAPPING IS KEY.

WOULD YOU SAY IN ANY CASE IN WHICH WE FIND HAC WOULD BE A PREMEDITATED MURDER. IS THAT WHAT YOUR ARGUMENT IS?

NO. I AM NOT ARGUING THAT. BUT I THINK VERY OFTEN YOU CAN HAVE PREMEDITATION BASED

HAD, IN PART, ON THE WAY THAT THE HOMICIDE WAS COMMITTED, AND OF COURSE THAT IS WHAT MAY LEAD TO HAC BEING APPLIED. I THINK THAT THE NATURE OF THE WOUNDS, THE NATURE OF THE WEAPON ARE ALL TRADITIONALLY FACTORS THAT GO INTO WHETHER OR NOT PREMEDITATION EXISTED, AND IN THIS CASE THE WOUNDS, THE FACT THAT SHE HAS THESE DEFENSIVE WOUNDS, AND MR. NORGARD SAID, WELL, SHE MAY HAVE LOST CONSCIOUS QUICKLY. WE DON'T KNOW. IT MAY HAVE BEEN QUICK. IT WAS NOT QUICK ENOUGH FOR MRS. MONFORT. SHE HAD A LOT OF DEFENSIVE WOUNDS. HANDS. ARMS. THIS WAS A STRUGGLE. IT WAS NOT OVER IN AN INSTANT, SO I THINK, AGAIN, THE DURATION SHOWS THAT IT WASN'T JUST A KNEE JERK TYPE THING. IT WAS A STRUGGLE. HE WAS THINKING ABOUT WHAT HE WAS DOING. THE, ALSO, THERE WAS SOME JEWELRY IN THE HOUSE, WHICH ONE OF THE SONS TESTIFIED, BECAUSE I THINK THERE WAS A STATEMENT MADE PREVIOUSLY THAT THERE WAS NO JEWELRY MISSING. THERE, ALSO, WAS SOME JEWELRY FROM THE HOUSE THAT, I THINK, ONE OF THE SONS TESTIFIED HE RECALLED SPECIFICALLY A PIECE OF JEWELRY THAT HIS MOTHER HAD SAID HIS DAUGHTER WOULD HAVE ONE DAY OR SOMETHING ALONG THAT LINE, SO HE WAS ABLE TO DESCRIBE IT, BUT THERE WAS STILL JEWELRY FOUND.

BUT THERE WASN'T A SEPARATE -- THE ROBBERY COUNT WAS FOR THE \$800.

THE MONEY. THAT'S CORRECT. BECAUSE HE WAS FLASHING THE MONEY LATER, SO THE STATE COULD CONNECT HIM TO THE MONEY. THE JEWELRY WAS NEVER DISCOVERED, BUT IT WAS, IN FACT, MISSING.

AN ONE HUNDRED DOLLAR BILL OR MORE THAT HE HAD IN HIS POSSESSION THAT EVENING?

HE SHOWED AN ONE HUNDRED DOLLAR BILL THAT NIGHT. OF COURSE WHEN HE ARRIVED IN MIAMI THE NEXT DAY, HE HAD NEW CLOTHES AND HAD BOUGHT A BUS TICKET. AGAIN BACK BACK TO THE EFFICIENCY, WE DON'T HAVE THE SHIRT AND THE MONEY. WE HAVE HIS ACTION IN HIS FLEEING THE AREA AND GOING BACK TO ALABAMA AND LIVING UNDER AN ASSUMED NAME, AFTER HE HAD TROUBLE IN MIAMI AND TELLING, WHEN HE WAS ARRESTED, AT THE TIME OF HIS ARREST AND THE OFFICER SAID THERE IS A WARRANT FOR YOUR ARREST BECAUSE OF A MURDER IN FLORIDA AND HIM SAYING, YEAH, I KNEW I WAS IN TROUBLE, BECAUSE I WENT BACK TO THE HOUSE AND IT WAS SURROUNDED BY FBI AGENTS, WHICH WE KNOW COULDN'T HAVE HAPPENED IN THIS CASE, BECAUSE WE KNOW SHE WASN'T FOUND UNTIL TWO OR THREE DAYS AFTER HE WAS IN MIAMI.

THIS GOES TO THE PREMEDITATION --

CORRECT. IT IS JUST TYING IN. ANOTHER RECORD SUPPORTS THE FACT THAT HE, THAT IT WAS THE DAY AFTER THIS BODY WAS DISCOVERED THAT HE SHOWED UP IN MIAMI.

NO. ACTUALLY THE DAY AFTER THE MURDER OCCURRED. THE BODY WASN'T DISCOVERED UNTIL A COUPLE OF DAYS LATER. THE MURDER OCCURRED ON AUGUST 21. THE TESTIMONY BY THE WOMAN IN MIAMI SAID IT WAS AUGUST 22.

SHE PINPOINTED THAT.

YES, SHE DID, THAT HE ARRIVED IN MIAMI AND LEFT SOMETIME IN LATE SEPTEMBER OR EARLY OCTOBER. IT WAS -- HE WAS THERE THE WHOLE TIME, AND THEN HER BODY WAS NOT DISCOVERED UNTIL THE 24th.

HE SHOWED UP, I KNOW, WITH NO CLOTHES. DID HE SHOW UP WITH NO TOILETRIES?

HE SAID THAT THE BUS COMPANY HAD LOST HIS LUGGAGE, INCLUDING HIS TRAVELERS CHEQUES. HE HAD NOTHING.

BUT HIS TOILETRIES WERE FOUND IN HER HOUSE.

WITH HIS CIGARETTES AND CLOTHING AND SHOES AND APPARENTLY ALL OF HIS PERSONAL EFFECTS.

WHEN YOU SAY APPARENTLY, THERE WAS TESTIMONY THAT, BECAUSE I HAD THOUGHT THERE WAS A QUESTION ABOUT HIS BUSINESS CARDS AND HIS TOILETRIES, BUT ALL OF HIS PERSONAL EFFECTS WERE STILL AT THE HOUSE?

WELL, I DON'T KNOW THAT ANYBODY TESTIFIED WHAT ALL OF HIS PERSONAL EFFECTS WERE, BUT THERE WAS TESTIMONY THAT SHOES OF HIS, CLOTHES OF HIS, CIGARETTES OF HIS, BUSINESS CARDS OF HIS AND HIS TOILETRIES.

I GUESS, I AM THINKING THAT, IF SOMEBODY IS INTENDING TO MURDER SOMEBODY OR ROB SOMEBODY AND GET OUT OF TOWN, THAT THEY WOULD HAVE THEIR STUFF PACKED AND READY TO GO.

I DON'T KNOW THAT HE HAD ANYTHING THAT WAS THAT VALUABLE TO HIM. HE -- I MEAN, HE CLEARLY DIDN'T JUST RUN OUT THE DOOR. HE TOOK THE TIME TO REMOVE THE LIGHT FROM THE DOME IN HER CAR, WHICH WAS FOUND IN HER TRASH CAN AND DO SOME CLEANUP OF THE SCENE, AND GET RID OF THE BLOODY SHIRT. HE DID SOME THINGS. I THINK IT WAS NOTHING THAT WAS REALLY IN HIS ROOM WAS VALUABLE ENOUGH FOR HIM TO TAKE ALONG, AND I THINK HE, ALSO, DIDN'T WANT IT TO LOOK LIKE HE WAS ABSOLUTELY GONE, BECAUSE YOU KNOW, IF YOU COME INTO A MURDER SCENE AND THIS WOMAN USED TO LIVE WITH THE GUY AND ALL OF A SUDDEN EVERYTHING HE HAS IS CLEARED OUT, IT IS GOING TO POINT THE FINGER AT HIM.

WOULDN'T HE WANT TO COME BACK TO THE SCENE?

NO. IF THERE IS NOTHING WORTH COMING BACK TO, I DON'T THINK THAT WOULD AND REAL CONCERN OF HIS. I DO WANT TO ADDRESS THE PENALTY PHASE ISSUES AND TESTIMONY, BECAUSE THERE HAS BEEN AN ARGUMENT HERE, OBVIOUSLY, ABOUT PROPORTIONALITY. HAC IS A VERY STRONG AGGRAVATOR, WHICH THE COURT GAVE VERY GREAT WEIGHT TO. WE ALSO HAVE DURING THE COURSE AFTER ROBBERY. THE DEFENSE CREATES, AS HIS PROPORTIONALITY ARGUMENT, HE SIMPLY TURNS INTO A NUMBERS GAME. TWO AGGRAVATORS. 38 MITIGATORS. THERE IS NO WAY THAT TWO CAN OUTWEIGH 38. YOU HAVE TO LOOK AT THE NATURE AND QUALITY OF THE MITIGATING FACTORS THAT WERE FOUND. HE DISTINGUISHES ALL MY PROPORTIONALITY CASES BY SAYING, YEAH, BUT THAT WAS ONLY THREE MITIGATORS OR FOUR MITIGATORS, IN CASES WHERE THERE WERE STATUTORY MITIGATE RESPECT, WHICH WERE FOUND ON -- MITIGATEORS, WHICH WERE FOUND IN SIMILAR CASES, BUT NORMALLY I HAVE 38 MITIGATORS, THIS HAS TO BE A MUCH MORE MITIGATED CASE, BUT IF YOU LOOK AT THE QUALITY OF HIS MITIGATING FACTORS. YOU HAVE MENTAL HEALTH TESTIMONY FROM DR. DEE, WHO IS THE ONLY MENTAL HEALTH EXPERT THAT EVALUATED MR. BEASLEY, WHO SAID THAT HE DID HAVE BRAIN DAMAGE, BUT AS A CONSEQUENCE OF HIS LONG-TERM DRUG ABUSE. HE SAID THAT THERE WERE NO SPECIFICS ABOUT IT. HE SAID THAT THAT WOULD MANIFEST ITSELF BY SOMEONE BEING IMPULSIVE AND A LACK OF PRUD EPPS IN THEIR ACTIONS AND, IN SOME WAY -- PRUDENCE IN THEIR ACTIONS AND IN SOME WAYS FORGETFULNESS. WE MIGHT TRADITIONALLY LOOK AT THIS AS STATUTORY BUT NONETHELESS NONSTATUTORY, IT IS INCREDIBLY REMARKABLE THEY FOUND 35 WAYS TO SAY HE HAS POSITIVE CHARACTER TRAITS. HE WAS A GOOD SON, GOOD BROTHER, GOOD STUDENT, AN ATHLETE, ON THE SAFETY PATROL WHEN HE WAS IN SCHOOL. HE WAS ON HONOR ROLL. THIS MAN WAS 48 YEARS OLD WHEN HE COMMITTED THIS CRIME. HOW SIGNIFICANT IS IT THAT HE WAS ON PATROL WHEN HE WAS IN ELEMENTARY SCHOOL. IT IS NOT THAT I AM SAYING IT SHOULDN'T BE CONSIDERED BUT SHE GAVE IT VERY LITTLE WEIGHT. THAT IS EXACTLY WHAT THESE MITIGATING FACTORS ARE. JUST SAME THING. HE HAD POSITIVE TRAITS.

WHAT WAS HIS MENTAL HEALTH HISTORY BEFORE THIS?

WE DON'T KNOW, BECAUSE THE DEFENSE DID NOT SEEK A MITIGATING FACTOR OF HISTORY. DR. DEE TESTIFIED THAT HE HAD A LONG HISTORY WITH LOCAL LAW ENFORCEMENT. PRESUMABLY RELATED TO HIS DRUG PROBLEMS. THERE WAS SOMETHING ABOUT AN ARREST AND HE SPENT TIME IN PRISON AS A RESULT OF A CONVICTION FOR DEALING IN DRUGS OR SMOKING DRUGS. EYE GUESS THERE IS NO CRIMINAL CONVICTIONS FOR FINDING VIOLENT CRIMES. THIS WAS ESTABLISHED BY THE EVIDENCE AND CONSIDERED AS A MITIGATING FACTOR BY THIS COURT.

RIGHT. DR. DEE TESTIFIED.

SO HE HAD GOTTEN TO AGE 47, WITH A DRUG PROBLEM, BUT HAD NEVER HAD ANY -- ANYTHING LIKE THIS.

ACCORDING TO HIS TESTIMONY, HE REALLY ONLY STARTED -- I AM SORRY. HIS TESTIMONY. ACCORDING TO HIS STATEMENTS TO DR. DEE, HE REALLY ONLY GOT INVOLVED IN DRUGS WHEN HE WAS IN HIS THIRTIES. AT ONE POINT IT SAYS 1983 WAS WHEN HE STARTED GETTING INTO DRUGS. AT ONE POINT IT SAYS, I THINK '79, SO DOCTOR DEE'S REPORT IS A LITTLE CONFLICTING AS TO WHAT THE STARTING POINT WAS, BUT IT IS FOR THE LIKE HE HAD BEEN INVOLVED IN DRUGS HIS ENTIRE LIFE. IT IS APPARENT THAT HE WAS IN THIRTIES AND LATER IN LIFE, ONCE HE STARTED DOING DRUGS, SO I WOULD NOT EXPECT TO SEE A LONG HISTORY OF VIOLENT CRIMES FOR SOMEBODY WHO HAD NOT BEEN INVOLVED IN DRUGS THAT LONG. FOR ALL OF THESE REASONS, I WOULD ASK THE COURT --

IF WE FIND THERE WAS ENOUGH EVIDENCE FOR PREMEDITATION, THE FIRST-DEGREE MURDER, BUT FIND A CONCERN ABOUT THE ROBBERY OR THE PECUNIARY GAIN, WE WOULD BE LEFT, THEN, WITH ONE SUBSTANTIAL AGGRAVATOR OF HAC. ARE THERE CASES THAT WOULD SUPPORT THE ONE AGGRAVATOR OF HAC, THE IMPOSITION OF THE DEATH PENALTY?

I THINK ABSOLUTELY ANY OF THE CASES THAT YOU LOOK AT, WHERE THE SINGLE AGGRAVATOR CASES HAVE BEEN APPROVED, IF YOU LOOK AT THE MITIGATION IN THIS CASE, THEY ARE NOT GOING TO RISE TO EVEN THAT LEVEL. I MEAN THE MITIGATION WAS REALLY UNREMARKABLE. THERE JUST IS NOTHING OUTSTANDING, AND ALTHOUGH HE DID HAVE A MENTAL HEALTH EXPERT LOOK AT HIM, THERE IS NOTHING OUTSTANDING ABOUT THAT TESTIMONY THAT, REALLY, MITIGATES THIS OFFENSE AND MITIGATES THE HEINOUS NATURE OF WHAT HAPPENED TO MRS. MONFORT, SO FOR ALL OF THOSE REASONS, I WOULD ASK YOU TO AFFIRM THE JUDGMENT AND SENTENCE.

THANK YOU. MR. NORGARD. 50 THANK YOU, --

THANK YOU, YOUR HONOR. ONE OF THE POINTS I WANT TO ADDRESS ON THE REBUTTAL IS THE STATE, THIS THEIR ARGUMENT, WAS -- IN THEIR ARGUMENT, WAS SAYING THAT THE CLOTH AROUND THE HAMMERHEAD SOMEHOW INDICATES PREMEDITATION BECAUSE HE IS TRYING TO COVER-UP FINGERPRINTS. WELL, IF HE WAS COVERING UP FINGERPRINTS, YOU WOULD WRAP THE HANDLE TO NOT GET FINGERPRINTS ON THE HANDLE. WHY, THERE WAS A CLOTH AROUND THE TOP OF THE HAMMERHEAD, IS ONE OF THOSE FACTS IN THIS CASE WHICH YOU COULD SIT AND SPECULATE ALL DAY LONG OF HOW IT GOT THERE, WHEN IT GOT THERE, WHY IT WAS THERE. IF, IN FACT, SOMEBODY WAS TRYING TO KILL SOMEBODY WITH SOMETHING LIKE A HAMMER, WHY WRAP IT IN A SOFT OBLIKE A CLOTH TWO TIMES AND -- OBJECT LIKE A CLOTH TWO TIMES AND THEN START HITTING THEM WITH IT, IF YOUR GOAL WAS A PLANNED KILLING OF THAT PERSON. THE FACTS OF THIS CASE, SOME OF THESE ARE JUST EXTREMELY CONFOUNDING. THE CAR OF MRS. MRS. MONFORT WAS FOUND IN A LOCATION WHERE IT COULDN'T HAVE BEEN, WHEN MR. BEASLEY IS IN JAIL. THE CAR IS FOUND IN A LOCATION WHERE IT HAD TO HAVE BEEN MOVED THERE AFTER HE WAS ALREADY IN JAIL, WITH NO EVIDENCE OF HIS HAVING ANY CONTACT WITH



ANYONE MOVING THE CAR THERE OR ANYTHING. THE CAR, BECAUSE OF THE EVIDENCE, WITH THE PARKING LOT WHERE IT WAS FOUND BEING REPAVED, THEY KNEW THE PARKING LOT, THE CAR WASN'T THERE IN THE PARKING LOT, AT A POINT IN TIME WHEN MR. BEASLEY WAS ALREADY IN CUSTODY. THE FACTS OF THIS CASE --

DID HE TAKE THE CAR TO MIAMI OR DID HE GO ON A BUS?

HE TOLD THEM HE HAD COME IN A BUS, AND I BELIEVE THE WOMAN EVEN TESTIFIED SHE PICKED HIM UP AT THE BUS STATION, BUT I THINK, GIVEN THE QUESTIONS BY THE COURT, AND EVEN THE ARGUMENT BY OPPOSING COUNSEL, IN ANDIZING THESE FACTS, IT IS A -- IN ANDALIZING THESE FACTS, IT IS A CONTINUAL IT COULD HAVE BEEN THIS OR IT COULD HAVE BEEN THAT. PROBABLY THIS BUT MAYBE THIS. THAT IS THE VERY NATURE OF THE SUFFICIENCY ARGUMENT HERE IS THAT THERE ARE SO MANY DIFFERENT INTERPRETATION OF HIS WHAT TRULY AND ACTUALLY HAPPENED IN THIS CASE.

WOULD YOU ADDRESS, PLEASE, ARE YOU FAMILIAR WITH THE RANDOLPH CONCEPT? THAT IS THE PIMP AND A PROSTITUTE, REGULAR CUSTOMER, KILLED THE CUSTOMER, THEN THEY SUGGESTED THAT THE CUSTOMER HAD SOME MONEY, AND THE MONEY WAS, THEN, TAKEN, AND THAT WAS SUFFICIENT FOR A FELONY MURDER APPLICATION. COULD YOU ADDRESS THAT, WHETHER THAT DOES OR DOES NOT APPLY, UNDER THESE CIRCUMSTANCES, AND HOW WE SHOULD DEAL -- I AM HAVING SOME TROUBLE WITH THAT CASE.

SURE. IN THAT CASE, THIS WAS A SITUATION WHERE, I MEAN, YOU HAVE A PROSTITUTE. YOU HAVE HER PIMP. THEIR BASIC FUNCTION IS TO TAKE MONEY FROM CUSTOMERS, AND YOU KNOW, WE HAVE A KILLING WHERE THEY KNEW THE PERSON HAD MONEY, WAS THERE TO HIRE THE PROSTITUTE, SO THAT IS SOMETHING WHERE CLEARLY THERE WAS EVIDENCE WHICH SUPPORTED THAT ROBBERY WAS A MOTIVE. I THINK A FACTUAL EXAMPLE THAT WE COULD LOOK AT IS THAT I THINK IS MORE AKIN TO THIS SITUATION IS TWO PEOPLE GET INTO AN ARGUMENT. THEY ARE IN A DOMESTIC SITUATION. ONE KILLS THE OTHER IN THE COURSE OF A HEATED ARGUMENT, WITH SOMEBODY WHO THEY ARE SHARING A HOUSE WITH OR LIVING WITH. AFTER THE FACT --

IS THERE A SUGGESTION HERE THAT THERE IS SOME KIND OF A RELATIONSHIP BETWEEN THESE TWO?

I AM NOT SAYING THAT. THEY LIVED IN THE SAME HOUSE. HE WAS WORKING FOR HER, SO THERE WAS AT LEAST AT BUSINESS WORKING RELATIONSHIP.

HOW LONG HAD HE BEEN THERE?

IT WAS TEMPORARY. HE HAD BEEN THERE, OFF THE TOP OF MY HEAD, I BELIEVE JUST A WEEK OR TWO WEEKS, SOMETHING LIKE THAT. A TEMPORARY ARRANGEMENT WHILE HE WAS DOING WORK FOR HER, BUT, YOU KNOW, TWO PEOPLE HAVE AN ARGUMENT. A PERSON IS KILLED IN AN ARGUMENT, BECAUSE OF ANGER. THE -- IN MR. BEASLEY'S CASE WITH THIS HEIGHTENED IMPULSIVITY, HEIGHTENED DEGREE OF NOT BEING ABLE TO CONTROL HIS EMOTIONS BECAUSE OF THE ORGANIC BRAIN DAMAGE. SOMEONE IS DEAD. THE IMMEDIATE THOUGHT IS I NEED TO GET OUT OF HERE. WHEN YOU ARE LEAVING A PLACE, AS THE AFTERTHOUGHT, YOU TAKE THE CAR. I THINK IT IS SIGNIFICANT THAT HE WAS ONLY CHARGED WITH GRAND THEFT, AS TO TAKING THE CAR. YOU KNOW, I NEED MONEY, IF I HAVE JUST COMMITTED A KILLING, AND I NEED TO GET AWAY. CLEARLY, I THINK, UNDER THOSE FACTS, WHERE THE TAKING IS AS AN AFTERTHOUGHT, WE ARE DEALING WITH A SITUATION WHERE THE KILLING WAS NOT MOTIVATED FOR MONEY TO IN CAPACITY -- INCAPACITATE A PERSON TO GET THEIR MONEY. FINALLY, ON THE ISSUE OF PROPORTIONALITY, I WANT TO MAKE SURE IT IS CLEAR MR. BEASLEY WAS NEVER IN PRISON FOR A DRUG CHARGE. THAT WAS HIS FRIEND IN MIAMI, WHO HAD JUST GOTTEN OUT. MR. BEASLEY'S CRIMES, AS TESTIFIED TO BY DR. DEE, WERE CHECK TYPE CASES. I AM NOT SURE IF DR. DEE HAD SPECIFIED THAT, WHERE HE HAD BOUNCED SOME CHECKS AND SITUATIONS WHERE HE HAD BEEN

SPENDING HIS MONEY ON DRUGS AND THEN LATER ACTUALLY PAID OFF THOSE DEBTS AND EVERYTHING. THERE IS A LOT OF POSITIVE THINGS ABOUT MR. BEASLEY'S BACKGROUND. THOSE THINGS ARE SIGNIFICANT. AS I TOLD THAT, AS I FEEL VERY STRONGLY ABOUT THIS, CERTAINLY WE HAVE SOME PEOPLE WHO COME UP WITH BACKGROUNDS OF CHILD ABUSE AND THINGS LIKE THAT, BUT WHEN PEOPLE ARE PROUD OF THEIR CHILDREN, WHAT DO THEY TALK ABOUT? THEY DID GOOD IN SCHOOL. THEY WERE GOOD ATHLETES. THEY WERE INVOLVED IN SCHOOL POLITICS. THEY WERE INVOLVED IN EXTRACURRICULAR ACTIVITIES. THEY WERE INVOLVED IN THEIR CHURCHES. THOSE ARE THE KINDS OF POSITIVE THING THAT IS MR. BEASLEY HAD IN HIS LIFE. THE EVIDENCE WAS THAT, WHEN HE GOT INVOLVED IN DRUG ABUSE, IT WAS AFTER A DIVORCE FROM HIS CHILDHOOD SWEETHEART, WHO HE EVEN DROPPED OUT OF COLLEGE SO HE COULD GO HOME AND MARRY HER, AND THAT IT HAD A DEVASTATING EFFECT ON HIS LIFE. I SEE I AM OUT OF TIME. THANK YOU VERY MUCH.

THANK YOU VERY MUCH. THANKS TO BOTH OF YOU.