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**Donald Lee Bradley vs. State of Florida**

THE MARSHAL: PLEASE RISE. PLEASE BE SEATED.

NEXT CASE ON THE COURT'S CALENDAR IS DONALD LEE BRADLEY VERSUS THE STATE OF FLORIDA. MS. CAREY, YOU MAY PROCEED.

THANK YOU. CHIEF JUSTICE HARDING, THIS HONORABLE COURT, MY NAME IS NADA CAREY, AND I REPRESENT THE APPELLANT, DONALD BRADLEY. THERE ARE TWO ISSUES I WOULD LIKE TO ADDRESS IN THE CASE TODAY. THE BURGLARY ISSUE AND THE SENTENCING PHASE, THE PROPORTIONALITY ISSUE. I AM NOT GOING TO RECAP THE FACTS IN ANY GREAT DETAIL BUT JUST BRIEFLY, BRADLEY WAS CONVICTED OF FIRST-DEGREE MURDER, CONSPIRACY TO COMMIT FIRST-DEGREE MURDER, AND BURGLARY WITH A DANGEROUS WEAPON. THE STATE'S THEORY WAS THAT HE BEAT THE VICTIM, JACK JONES, TO DEATH, FOLLOWING A PLAN DEVISED BY THE VICTIM'S WIFE, LINDA JONES. LINDA JONES WAS CONVICTED, IN A SEPARATE TRIAL, OF FIRST-DEGREE MURDER, CONSPIRACY TO COMMIT FIRST-DEGREE MURDER, AS WELL AS TWO COUNTS OF SOLICITATION TO COMMIT -- AS TWO COUNTS OF SOLICITATION TO COMMIT MURDER. BRADLEY RECEIVED A DEATH SENTENCE, FOLLOWING A JURY RECOMMENDATION OF DEATH 10-2, I BELIEVE. MS. JONES WAS SENTENCED TO LIFE, FOLLOWING A JURY'S RECOMMENDATION OF LIFE.

WERE THEY TRIED TOGETHER?

NO. THEY WERE TRIED SEPARATELY. LINDA JONES WAS TRIED FIRST THEN BRADLEY.

WHEN YOU TREAT THE BURGLARY ISSUE, WOULD YOU, ALSO, TREAT THE POTENTIAL HARMLESS ERROR ANALYSIS OF THAT ISSUE, ALSO.

YES, SIR, I WILL. AS TO THE BURGLARY, IT IS OUR CONTENTION THAT THE STATE'S THEORY, AS TO THE BURGLARY, WAS INVALID, AND THE STATE'S THEORY WAS THAT MR. BRADLEY COMMITTED BURGLARY BY REMAINING IN THE DWELLING OF JACK JONES, WITHOUT HIS CONSENT, AFTER JACK JONES TOLD HIM TO LEAVE. THAT WAS THE STATE'S THEORY AS TO THE BURGLARY. NOW, UNDER DELGADO, THAT THEORY IS LEGALLY INADEQUATE.

COULD WE DISTINGUISH THE FACT THAT YOU ARE BASING THIS ON THE FACT THAT MRS. JONES GAVE THE DEFENDANT -- MRS. JONES GAVE -- MRS. JONES GAVE THE DEFENDANT THE AUTHORITY TO ENTER?

THAT WAS UNDISPUTED. YES, YOUR HONOR.

ISN'T IT -- ALTHOUGH WE BROADLY SPEAK, IN DELGADO, ABOUT THE NOTION THAT, IF SOMEBODY LET'S NEW AND THEN YOU REMAIN IN, AND THEN YOU DECIDE TO COMMIT A MURDER, THAT THAT IS NOT BURGLARY. HOW CAN YOU, IN THIS CASE, WHERE THE AUTHORITY TO ENTER WAS GIVEN BY MRS. JONES WAS FOR THE PURPOSE OF COMMITTING THE MURDER, AND SHOULDN'T WE, REALLY, SPEAK TO THAT IN FOTOPOULOS AND SAY THAT THERE CAN BE NO CONSENT, WHEN THE CONSENT, REALLY, IS CONSENT TO COME IN TO COMMIT THE MURDER?

NO, YOUR HONOR. I DON'T THINK THE COURT DID ADDRESS THAT IN FOTOPOULOS, AND I DON'T THINK THAT ISSUE HAS BEEN ADDRESSED IN A CASE UNDER THE FACTS HERE. IN THIS CASE, LINDA JONES WAS A CO-OWNER AND COOCCUPANT OF THE HOUSE. SHE HAD COMPLETE

AUTHORITY THAT WAS NOT SUPERSEDED BY ANYONE ELSE, TO INVITE SOMEONE INTO THE RESIDENCE FOR ANY REASON.

EVEN TO COMMIT A CRIME? HE HAVE TONE COMMIT MURDER?

THERE IS NOTHING -- EVEN TO COMMIT MURDER?

THERE IS NOTHING IN THE BURGLARY STATUTE THAT IS AN EXCEPTION TO ENTER, BASED ON WHAT THE INVITATION IS FOR. THERE IS NO AUTHORITY FOR THAT. NOW, IN FOTOPOULOS, I BELIEVE IT IS THE SON-IN-LAW WHO APPARENTLY ALLOWED SOMEONE TO ENTER HIS MOTHER-IN-LAW'S HOME, SO HIS AUTHORITY TO ALLOW SOMEONE ACCESS TO -- SOMEONE ELSE ACCESS INTO THE HOME WAS LIMITED, BECAUSE HE DIDN'T HAVE THE AUTHORITY, AND THE ONLY OTHER CASES, ALSO, INVOLVE A MINOR SON, I BELIEVE, IN THE KLM CASE, AND ANOTHER CASE WHERE A CORPORATE OFFICER ALLOWED SOMEONE TO COME IN AND STEAL FROM THE CORPORATION. NONE OF THOSE INDIVIDUALS HAD THE AUTHORITY THAT MRS. JONES HAD. AND I DON'T BELIEVE HER AUTHORITY IS SUPERSEDED BY ANYONE. I MEAN, IT IS THE SAME SITUATION, IF YOU HAVE TWO CO-OWNERS OR COOCCUPANTS OF A HOUSE AND ONE OF THEM INVITES SOMEONE IN, AND THE OTHER ONE SAYS, WELL, I DON'T WANT THE PERSON HERE. THAT IS NOT A TRESPASS. THAT AUTHORITY IS NOT SUPERSEDED BY THE OTHER OCCUPANT, BECAUSE THEY HAVE AN EQUAL RIGHT TO INVITE PERSONS IN THE HOME.

SO IN THIS SITUATION, WHERE MR. JONES CLEARLY TELLS THE PEOPLE TO GET OUT, AND MRS. JONES STAYS SILENT AT THAT POINT, HE DOESN'T HAVE THE AUTHORITY TO TELL THEM TO GET OUT?

IT IS OUR CONTENTION THAT HE DOES NOT. IT DOES NOT CONSTITUTE A BURGLARY IN ANY EVENT. THAT IS NOT A TRESPASS INJURY, AND EVEN PREDELGADO OR UNDER DELGADO, THERE WOULD NOT BE A BURGLARY IN THAT CASE, BECAUSE THAT ELEMENT OF THE CRIME DOES NOT EXIST. SO IN EFFECT, MR. BRADLEY WAS CONVICTED OF A CRIME FOR WHICH THERE WAS AN INADEQUATE OR INVALID LEGAL THEORY, AND TO GET --

I GUESS, THEN, WHAT YOU ARE SAYING IS THAT, ONCE A PERSON HAS BEEN INVITED IN, YOU CAN NEVER HAVE A BURGLARY?

WELL, UNDER DELGADO, IF THE ENTRY IS BY INVITATION, YES. THAT IS A COMPLETE DEFENSE TO BURGLARY.

HOW DO YOU TAKE OUR STATEMENT IN FOTOPOULOS, BECAUSE WE AGREE WITH THE STATE THAT FOTOPOULOS'S SON-IN-LAW AND OWNER HAD NO LEGAL OR MORAL AUTHORITY TO CONSENT TO ENTRY FOR THE PURPOSE OF MURDERING ANOTHER OCCUPANT. WERE YOU THINKING THERE WE WERE SIMPLY REFERRING TO HIS STATUS THAT HE WASN'T THE OWNER, AND THAT IT WOULD BE OKAY, THAT WE WOULD WANT TO SAY THAT THE OWNER DOES HAVE THE AUTHORITY TO ALLOW SOMEONE TO COME IN, FOR THE PURPOSE OF MURDERING AN OCCUPANT?

YES, YOUR HONOR. I BELIEVE SO, AND I BELIEVE, A LITTLE BIT FURTHER IN THAT SAME PARAGRAPH, THE COURT DOES EMPHASIZE THAT THIS WAS THE MOTHER-IN-LAW'S HOME. THAT SHE WAS THE OWNER OF THE HOME. THERE IS NOT A LOT OF ANALYSIS IN THE CASE, BUT THAT IS THE WAY I READ THE CASE.

I THINK THAT THE OTHER SIDE OF THIS IS, THEN, HOW, ADDRESS THE HARMLESS ERROR ASPECT, ASSUMING WE AGREE WITH YOU THAT THERE IS NOT A BURGLARY.

OKAY. ASSUMING YOU DO, THE STATE PROCEEDED, HERE, THEN, UNDER WHAT I VIEW AS AN INADEQUATE LEGAL THEORY. THIS IS NOT A, UNDER THE FELONY MURDER THEORY, THE STATE'S THEORY OF FELONY MURDER, IT WAS INADEQUATE, BECAUSE WHAT THEY ALLEGED MR.

BRADLEY DID DOES NOT FIT THE DEFINITION OF THE CRIME. SO THIS ISN'T A QUESTION OF MERELY FACTUAL IN SUFFICIENCY. IT IS LEGAL IN SUFFICIENCY, AND UNDER GRIFFIN, UNDER THAT CIRCUMSTANCE, THE REMEDY IS A REVERSAL FOR A NEW TRIAL, AND IN THIS COURT --

THERE IS NO CLAIM HERE THAT THIS WAS PREMEDITATED MURDER?

WE HAVE ARGUED THAT THE EVIDENCE OF PREMEDITATION WAS INSUFFICIENT, AND WE CERTAINLY STANDBY THAT ARGUMENT. THERE WAS EVIDENCE THAT THE PLAN MAY HAVE BEEN MERELY TO BEAT UP THE VICTIM AND NOT TO KILL HIM, BUT EVEN IF THE COURT FINDS THE EVIDENCE OF PREMEDITATION SUFFICIENT, BECAUSE THE FELONY MURDER THEORY WAS PRESENTED TO THE JURY, ON AN INADEQUATE LEGAL GROUND, THE JURY -- WE HAVE NO WAY OF KNOWING WHETHER THE JURY'S CONVICTION FOR FIRST-DEGREE MURDERESSTED ON THAT INADEQUATE LEGAL THEORY.

WAS THERE A REQUEST FOR A SPECIAL VERDICT HERE?

YES, THERE WAS, YOUR HONOR.

THERE WAS A REQUEST?

THERE WAS A REQUEST FOR A SPECIAL VERDICT.

AND THAT WAS REJECTED?

THAT WAS REJECTED. YES, SIR.

BUT THAT IS NOT RAISED ON APPEAL, CORRECT? THAT IS NOT RAISED AS AN ERROR?

NO. THAT IS NOT RAISED ON APPEAL.

HAVEN'T WE DPELT -- DEALT WITH THAT ISSUE BEFORE, ABOUT THE PREMEDITATION AND THE FELONY MURDER, IF THERE WAS EVIDENCE SUFFICIENT TO SUPPORT ONE?

YES, SIR, YOUR HONOR, YOU HAVE, AND THE LINE THAT YOU HAVE DRAWN, THE LINE THAT YOU HAVE DRAWN WHICH PARALLELS THE LINE THE SUPREME COURT DREW IN GRIFFIN IS THE ISSUE IS WHETHER THE FELONY MURDER THEORY IS INSUFFICIENT AS A MATTER OF LAW, OR WHETHER IT IS INSUFFICIENT AS MATTER OF FACT, AND IN THIS CASE, WHAT OUR ARGUMENT IS, IS THAT THE THEORY PRESENTED TO THE JURY WAS INVALID. AND WHAT THE COURT SAID, IN GRIFFIN, IS, IT IS ONE THING TO NEGATE A GENERAL VERDICT, WHEN THE JURY IS PRESENTED WITH ONE THEORY, WHICH IS SUFFICIENT FACTUALLY, AND ANOTHER THEORY, WHICH IS INSUFFICIENT FACTUALLY, AND THAT SITUATION, WE CAN ASSUME, AND IT IS TOO REMOTE A CHANCE TO ASSUME THAT THE JURY MAY HAVE CONVICTED ON THE INSUFFICIENT THEORY, BUT WHEN THE JURY IS PRESENTED WITH A THEORY THAT IS LEGALLY INADEQUATE, JURIES AREN'T EQUIPPED TO DETERMINE WHETHER THERE IS AN ERRONEOUS VIEW OF THE LAW THAT IS PRESENTED TO THEM, AND IN THIS CASE, THE JURY CERTAINLY HAD NO WAY OF KNOWING THAT DID -- THAT THIS WAS AN INSUFFICIENT THEORY.

IF IT IS LEGALLY INADEQUATE, THEN ON, THE FELONY MURDER, EVEN IF THERE IS FACTUAL SUFFICIENCY TO SUPPORT THE PREMEDITATION, THE ERROR REQUIRES A NEW TRIAL?

YES, SIR. IT DOES.

BECAUSE WHAT -- YES, SIR, IT DOES. BECAUSE WHAT YOU HAVE IS THE POSSIBILITY, AND IT IS FAIRLY -- PARTICULARLY IN THIS CASE, WHERE THE FELONY MURDER WAS PRESENTED AS GIVE ENTO THE JURY, THERE IS A VERY STRONG POSSIBILITY THAT CONVICTION, HERE, RESTED ON AN

INADEQUATE LEGAL GROUND.

WELL, DID THE STATE NOT PRESS AHEAD ON THE ISSUE OF PREMEDITATION?

THE STATE DID ARGUE PREMEDITATION. THE STATE PRESSED THOSE, BOTH THEORIES.

I MEAN, IN FACT IN THIS CASE, THE COURT FOUND CCP AS ONE OF THE AGGRAVATORS.

THAT'S CORRECT, YOUR HONOR. AND WE CHALLENGE THAT FOR THE SAME REASON THAT WE HAVE CHALLENGED THE PREMEDITATION, BUT THAT DOESN'T TELL US WHAT THE JURY BASED ITS CONVICTION ON. THE JURY MAY WELL HAVE SAID, WELL, IT IS A BURGLARY. THIS IS FELONY MURDER. WE NEED NOT REACH PREMEDITATION. WE DON'T EVEN KNOW IF THE JURY REACHED THE PREMEDITATION ISSUE.

EXPLAIN TO ME THE DIFFERENCE AS TO WHY THE COURT -- IF SOMETHING IS FACTUAL -- WE DON'T KNOW THAT THEY MAY HAVE RESTED A CONVICTION ON FACTUALLY INSUFFICIENT GROUND VERSUS A LEGALLY INSUFFICIENT GROUND, IF THERE IS SUBSTANTIAL EVIDENCE OF THE OTHER BASIS, WHICH, IN THIS CASE, IS THE PREMEDITATION. WHY -- EXPLAIN WHAT THE LEGAL REASONING IS FOR WHY THERE MUST BE A REVERSAL.

OKAY. THE REASONING OF THE COURT, REALLY, GOES TO LOOKING AT THE PERSPECTIVE OF THE JURORS. WHAT THE COURT SAID, IN GRIFFIN, IS THE JURORS ARE NOT EQUIPPED TO DETERMINE WHETHER A THEORY IS INADEQUATE IN LAW. THEY ARE NOT EQUIPPED TO DETERMINE, FOR EXAMPLE, WHETHER A PARTICULAR ACT IS UNCONSTITUTIONAL. THEY ARE NOT EQUIPPED TO DETERMINE WHETHER A PARTICULAR ACT IS ALLEGED FAILS TO FIT THE STATUTORY DEFINITION OF THE CRIME. JURIES ARE VERY EQUIPPED, HOWEVER, TO DETERMINE WHETHER THE FACTS PRESENTED ARE SUFFICIENT TO ENABLE THEM TO FIND A PARTICULAR ALLEGED FACT. THE FACTUAL SUFFICIENCY IS WHAT JURIES DO ALL THE TIME. AND WHEN YOU HAVE TWO THEORIES, ONE OF WHICH IS FACTUALLY SUFFICIENT, AND ANOTHER WHICH IS FACTUALLY INSUFFICIENT, IT -- WE ARE NOT GOING TO ASSUME THAT THEY CHOSE THE FACTUALLY INSUFFICIENT THEORY. BUT WHEN YOU HAVE A THEORY THAT IS FACTUALLY SUFFICIENT AND A THEORY THAT IS LEGALLY INSUFFICIENT, WE CAN'T MAKE THAT ASSUMPTION. AND IT IS A VIOLATION OF DUE PROCESS TO ALLOW A CONVICTION, BASED ON A LEGALLY INSUFFICIENT THEORY, AN IN VALUE I THEORY. -- AN INVALID THEORY. MR. BRADLEY DIDN'T CONVICT BUT FOUND A CONVICTION OF MURDER, BASED ON THE BURGLARY THAT DIDN'T EXIST HERE. THAT IS THE COURT'S REASONING ON THAT ISSUE. IF THE COURT HAS NO FURTHER QUESTIONS ON THE BURGLARY, I WILL GO ON TO THE PROPORTIONAL PROPORTIONALITY ARGUMENT. ASSUMING THE COURT REJECTS OUR CONVICTION CLAIMS, THE ISSUE REGARDING THE DEATH SENTENCE HERE IS WHETHER DONALD BRADLEY, WHETHER THE DEATH SENTENCE FOR DONALD BRADLEY IS A PROPORTIONAL SENTENCE, IN LIGHT OF THE FACT THAT THE CODEFENDANT, LINDA JONES, WHO WAS THE INSTIGATOR AND THE MASTERMIND AND THE DOMINANT FORCE BEHIND THIS MURDER, RECEIVED A LIFE SENTENCE.

DOES IT MATTER, IN THIS, THAT -- AS FAR AS WHEN YOU COMPARE, BEYOND THE FACT THAT MR. BRADLEY WAS ACTUALLY THE PERPETRATOR OF THE MURDER, ACTUALLY DID THE MURDER, THAT THE JURY DECIDED, IN MRS. JONES'S CASE, THAT THE DEATH PENALTY SHOULD NOT BE IMPOSED AND HERE, IN THIS CASE, A DIFFERENT JURY DECIDED? IN OTHER WORDS, IS OUR PROPORTIONALITY REVIEW THE FACT THAT, WHEN A CODEFENDANT GETS A LIFE SENTENCE, IS IT DIFFERENT AT ALL, WHEN IT IS THE JUDGE THAT SAYS I AM GOING TO GIVE YOU ONE PERSON A LIFE SENTENCE AND ONE PERSON DEATH, AS OPPOSED TO TWO JUDGES FOLLOWING RECOMMENDATIONS OF THE JURY AND WHERE WE CAN SEE THAT THE REASONING COULD BE WHAT SUPPORTS DIFFERENT RESULTS? THAT IS ONE PERSON BEING THE SHOOTER AND THE OTHER, I GUESS, THE JURY FINDING THAT IT -- SOME OF THE AGGRAVATORS, THE SAME AGGRAVATORS DIDN'T APPLY AND THAT SHE WAS UNDER, YOU KNOW, MAYBE EMOTIONAL DISTRESS? THAT THOSE WERE OTHER FACTORS? HOW DOES THAT GO?

YOUR HONOR, I DON'T THINK THAT THE JURY'S RECOMMENDATION IN EITHER CASE IS A FACTOR. WE CAN ONLY SPECULATE ABOUT WHY LINDA JONES'S JURY RECOMMENDED LIFE IN HER CASE. WE HAVE NO IDEA WHY THAT JURY RECOMMENDED LIFE. HER JURY MAY HAVE RECOMMENDED LIFE IN MR. BRADLEY'S CASE.

WAS THERE A DIFFERENT AGGRAVATOR PRESSED AHEAD BY THE STATE, FOR BRADLEY AND JONES?

THAT IS THE ANALYSIS RIGHT THERE. YOU LOOK AT THE -- FIRST OF ALL, THE COURT SAID YOU LOOK AT WHO WAS -- THEIR RELATIVE PARTICIPATION IN CARRYING OUT AND PLANNING THE MURDER, WHO STOOD TO RECEIVE THE MOST BENEFIT, AND THEN THE AGGRAVATORS AND MITIGATORS APPLICABLE TO EACH, AND WHETHER THERE ARE ANY SIGNIFICANT DIFFERENCES, AND IN THIS CASE, THE AGGRAVATORS FOUND, AS APPLIED TO BRADLEY, WERE CCP, PECUNIARY GAIN, FELONY MURDER, AND HAC: AS TO LINDA JONES, THE AGGRAVATORS THAT THE TRIAL COURT FOUND AND THAT WERE PRESENTED WERE FELONY MURDER, PECUNIARY GAIN, CCP. THE HAC AGGRAVATOR WAS NOT PRESENTED TO LINDA JONES'S JURY, BECAUSE THERE WAS A FAILURE OF PROOF IN HER CASE. THE PROOF IN HER CASE WAS DIFFERENT FROM THE PROOF PRESENTED IN DONALD BRADLEY'S CASE. BUT AS WE SEE IN DONALD BRADLEY'S CASE, SHE WAS EQUALLY CULPABLE FOR THE MANNER OF KILLING. SHE WAS THE ONE THAT CAME UP WITH A PLAN TO BEAT HER HUSBAND TO DEATH WITH A BAT IN THE FIRST PLACE. NOT ONLY DID SHE PLAN THE MANNER OF DEATH, SHE WAS THERE WHEN IT HAPPENED. SHE WATCHED THE WHOLE THING. SHE PLANNED TO BE THERE. SO AS FAR AS HAC, THEY WERE EQUALLY CULPABLE AS TO THAT AGGRAVATOR. SHE, CERTAINLY, STOOD TO GAIN MORE FROM THE MURDER. SHE CLEARLY WAS THE ONE WHO WAS THE MASTERMIND BEHIND THE MURDER, SO THE AGGRAVATORS ARE, IF ANYTHING, ARE MORE COMPELLING, AS TO LINDA JOBES -- LINDA JONES, THAN THEY ARE TO DONALD BRADLEY.

WAS THE JURY MADE AWARE OF THE LIFE SENTENCE GIVEN TO MRS. JONES?

YES. THE JURY, DONALD BRADLEY'S JURY WAS MADE AWARE OF THAT. THAT WAS ARGUED AS A MITIGATING FACTOR, BUT THE JURY --

AND THE JUDGE, ALSO, CONSIDERED IT IN HIS SENTENCING ORDER?

THE JUDGE CONSIDERED IT, YES, BUT I THINK WHAT IS IMPORTANT IS THE JURY DOESN'T -- IS NOT GIVEN THE TASK THAT THIS IS THIS COURT'S EXCLUSIVE TASK, THAN IS TO DETERMINE THE RELATIVE CULPABLEITY OF THE TWO DEFENDANTS, AND ONE DEFENDANT WHO RECEIVES DEATH IS LESS CULPABLE, THEN HIS SENTENCE MUST BE VACATED.

THAT IS WHAT WE WOULD HAVE TO -- IS THAT UNDER PROPORTIONALITY, THAT WE INDEPENDENTLY MAKE A DETERMINATION THAT, WHETHER MR. BRADLEY IS LESS CULPABLE THAN MRS. JONES?

IF -- UNDER SLATER, THE RULE UNDER SLATER IS, IF A DEFENDANT WHO RECEIVES DEATH IS EQUALLY OR LESS CULPABLE THAN A DEFENDANT WHO HAS RECEIVED LIFE, HIS CONVICTION MUST BE REVERSED.

SO IF WE FIND THAT HE IS MORE CULPABLE, THEN THE DEATH SENTENCE IS APPROPRIATE.

THAT'S CORRECT.

ARE THERE MANY CASES, OR THERE ARE CASES OUT THERE, WHERE, ALTHOUGH ONE PERSON IS THE ONE THAT HIRES, THE CONTRACT KILLER, THAT THE CONTRACT KILLER IS THE PERSON THAT GETS THE DEATH SENTENCE, AND FOR ONE REASON OR ANOTHER, THE PERSON THAT ORDERS THE KILLING GETS THE LIFE SENTENCE, ALTHOUGH THERE ARE SOME CASES WHERE THAT PERSON,

ALSO, GETS THE DEATH SENTENCE? ISN'T THAT HAPPEN FAIRLY --

THE CASES HAVE GONE BOTH WAYS. AND, AGAIN, WHAT THE COURT HAS TO LOOK AT IS THE TOTALITY OF CIRCUMSTANCES.

YOU DON'T THINK, IN THIS CASE, GIVEN THE FACT THAT SHE ORDERED THE KILLING, AS TO THE NATURE, THE MANNER IN WHICH THE KILLING WAS CARRIED OUT, WAS SO HEINOUS AND ATROCIOUS AND CRUEL, THAT IT WOULD DISTINGUISH THIS FROM A CASE, SAY, WHERE SOMEBODY IS ASKED TO SHOOT SOMEBODY AND THEY SHOOT THEM. TO ACTUALLY BEAT SOMEBODY TO DEATH IS A -- THIS WENT ON. THIS BEATING WENT ON FOR A LONG PERIOD OF TIME AT THIS PERSON'S HANDS. DOESN'T THAT DISTINGUISH THIS CASE?

IT DOESN'T DISTINGUISH THE CASE, BECAUSE SHE WAS EQUALLY CULPABLE FOR THE BEATING. SHE IS THE ONE THAT TOLD DONALD BRADLEY TO DO IT THAT WAY. SHE TOLD HIM TO WEAR A MASK. SHE TOLD HIM TO WEAR GLOVES. SHE TOLD HIM THE BASEBALL BAT. SHE WAS THERE. SHE WATCHED IT HAPPEN. SHE DID NOTHING TO STOP IT. IT WAS HER PLAN. I MEAN, IN LOOKING AT THE CULPABILITY, IT IS THE RELATIVE CULPABILITY OF THE TWO. SHE KNEW EXACTLY WHAT WAS GOING TO MANY HERE. SHE DIDN'T SAY THERE WAS A GUN. JACK JONES OWNED A GUN. SHE TOLD DONALD TO COME IN AND GET THE GUN, SO THAT HE COULD NOT DEFEND HIMSELF FROM THE BEATING. SHE DIDN'T TELL HIM TO SHOOT HER HUSBAND IN THE HEAD. SHE TOLD HIM TO BEAT HIM TO DEATH, AND THE TRIAL COURT MADE FACTUAL FINDINGS THAT THAT WAS HER PLAN, THAT SHE PLANNED FOR HER HUSBAND TO BE BEATEN TO DEATH. AND THE BEATING WAS HEINOUS. IT WAS TORTUROUS, BUT IT WASN'T A PROLONGED BEATING. THEY WERE IN THE HOUSE, I THINK, AT 8:17. SOMETHING LIKE THAT. THEY WERE OUT OF THERE BY 8:30 AT THE VERY LATEST, SO THEY HAD TO GET IN. THEY HAD TO GET OUT. BEFORE RUNNING AROUND, TRYING TO MAKE IT LOOK LIKE A BURGLARY. IT WASN'T AN EXTENDED, LONG, PROLONGED BEATING.

HER MOTIVATION FOR THIS WAS TO GET LIFE INSURANCE MONEY, BUT IT WAS, ALSO, BECAUSE OF HER ANGER ABOUT HIS HAVING HAD A RELATIONSHIP WITH A MINOR, THAT HE ACTUALLY HAD A SEXUAL RELATIONSHIP WITH? THAT WAS HER -- HER MOTIVE WAS FROM ANGE HE. CORRECT?

WELL, I AM -- WAS FROM ANGER, CORRECT?

WELL, I AM NOT SURE WHETHER HER MOTIVE WAS ANGER, BUT CLEARLY HER HUSBAND WAS INVOLVED IN AN AFFAIR WITH A YOUNGER WOMAN.

A YOUNGER WOMAN. SOMEBODY THAT WAS UNDER AGE.

SHE WAS 18 AT THE TIME.

I THOUGHT SHE WAS 17. 17 WHEN IT STARTED?

I BELIEVE SHE WAS 18. HER HUSBAND WAS THREATENING TO DIVORCE HER, AND SHE DID NOT AGREE WITH THE DIVORCE. SHE DIDN'T WANT TO LOSE THE ASSETS. APPARENTLY DECIDED THAT, IF SHE GOT THE DIVORCE, SHE WOULD, ALSO, LOSE THE BENEFIT FROM THE LIFE INSURANCE POLICY, AND SHE --

REBUTTAL. IF YOU WANT TO CONTINUE, YOU MAY, OR IF YOU WISH TO RESERVE SOME TIME, YOU MAY.

THANK, YOUR HONOR. I APPRECIATE IT.

THANK YOU. MR. WHITE.

> THANK YOU, YOUR HONOR. STEVE WHITE. ASSISTANT ATTORNEY GENERAL REPRESENTING THE

APPELLEE. IF IT PLEASE THE COURT. ADDRESSING THE TWO ISSUES THAT HAVE BEEN RAISED AT THE ORAL ARGUMENT, FIRST BURGLARY. THE STATE AND, OF COURSE, APPELLANT HAVE DONE SOME SUPPLEMENTAL BRIEFING, WHICH THIS COURT HAS GRACIOUSLY ACCEPTED, AND THE STATE, ALSO, HAS PENDING A MOTION FOR REHEARING IN DELGADO, ITSELF, AND OF COURSE THE STATE STILL ADVANCES THOSE POSITIONS, BUT I WOULD LIKE TO HIGHLIGHT A FEW ASPECTS OF THE STATE'S ARGUMENTS. FIRST OF ALL, REGARDING THE INITIAL CONSENT, OF COURSE, WE ARE TALKING, HERE, ABOUT, AS THE COURT HAS ALREADY POINTED OUT, THE CONSENT TO ENTER THE RESIDENCE, THE MARITAL HOME, WAS SOLELY FOR THE PURPOSE OF KILLING JACK JONES. THAT WAS THE ONLY PURPOSE OF THAT CONSENT. AND AS THE STATE HAS ARGUED IN ITS SUPPLEMENTAL BRIEF, AS WELL AS ITS ANSWER BRIEF, THAT IS A CONSENT THAT THE LAW SHOULD NOT RECOGNIZE. THE LAW SHOULD NOT BE COMPLICIT IN RECOGNIZING THAT CONSENT AS VALID. IT SHOULDN'T BE A PARTNER, IN ESSENCE, IN THAT CONSENT. THAT CONSENT IS VOID.

IS THIS CONSISTENT WITH DELGADO, IN YOUR OPINION?

YOUR HONOR, I BELIEVE THE STATE HAS ARGUED, IN A MOTION FOR REHEARING, THAT THERE IS A DISPUTE IN THAT MOTION FOR REHEARING AS TO WHETHER THERE WAS ANY INITIAL CONSENT. I HONESTLY HAVE NOT READ THE RECORD IN DELGADO, BUT IN OUR CASE WE --

ASSUME IT IS THE LAW. AT THIS POINT IT IS THE LAW. I WOULD SUGGEST THAT YOU ARGUE RELATIVE TO THAT.

YES, YOUR HONOR. IN OUR CASE, YOU DIDN'T HAVE THIS IN DELGADO, I DON'T BELIEVE. IN OUR CASE, THE CONSENT WAS SOLELY FOR THE PURPOSE OF MURDER. THE CONSENT OF A COCONSPIRATOR IN A MURDER, FOR THE SOLE PURPOSE OF THAT MURDER, WHICH I DON'T BELIEVE YOU HAVE IN DELGADO. I HAVE CONFESSED THAT I HAVE NOT READ THE RECORD IN DELGADO, BUT THAT CLEARLY DISTINGUISHES THIS CASE FROM DELGADO.

DOES A PERSON HAVE TO BE SURE HE TISSUESLY IN THE HOUSE -- SURREPTITIOUSLY IN THE HOUSE, FOR PURPOSE OF A BURGLARY?

ASSUMING THERE IS A INITIAL CONSENT THAT THE COURT, THE LAW RECOGNIZES AS VALID, WE CROSS THAT THRESHOLD, SO WE HAVE THE DEFENDANT IN THE RESIDENCE, NOW, WITH A CONCEPT THAT THE LAW RECOGNIZES IS VALID. THEN THE QUESTION BECOMES DELGADO. YOU KNOW. IS SURE HE TISSUES REQUIRED -- IS SURREPTITIOUS REQUIRED, IN ORDER TO INVALIDATE THAT CONSENT, AND, OF COURSE, I THINK WE HAVE ARGUED IN THE MOTION FOR REHEARING, AS WELL AS THE SUPPLEMENTAL BRIEF IN THIS CASE, THERE IS NOTHING IN THE STATUTE THAT SAYS THE CONSENT SHOULD BE IRREVOCABLE, FOR ALL TIME, ALL PEOPLE WHO HAVE A PRIVACY INTEREST IN THAT HOME. WE ARE TALKING ABOUT THE ULTIMATE SANCTUARY OF THE HOME HERE. AND, OF COURSE, THE STATE ARGUES THAT SURREPTITIOUS SHOULD NOT BE REQUIRED, ESPECIALLY IN THIS CASE.

DO YOU THINK IT IS REQUIRED UNDER DELGADO? UND THE LANGUAGE OF DELGADO, ONCE YOU RECOGNIZE THE CONSENT AS VALID, ASSUMING THAT IS THE CASE, DELGADO, TO ME, MY READING OF DELGADO INDICATES THAT WE HAVE TO, THEN, PROVE THAT THE DEFENDANT REMAINED SURREPTITIOUSLY.

HAVE YOU PROVED THAT IN THIS CASE AT THAT POINT?

WELL, WE DO HAVE THE INTRUDERS. ASSUMING THAT YOU NOT WILLING TO READ THE EXCEPTION TO DELGADO, ASSUMING THAT, WE DO HAVE THE INTRUDERS WITH SKI MASKS AND ENTERING AT NIGHTTIME. YOU HAVE THEIR IDENTITIES AS SURREPTITIOUS, BECAUSE THERE ARE SKI MASKS. IN FACT THAT IS WHEN JACK SEES THEM IN A REFLECTION. HE IS WATCHING TV IN A FRONT ROOM THERE. HE IS RIGHT WHERE THEY EXPECTED HIM TO BE, BECAUSE LINDA HAS TOLD HIM. HE SEES THE REFLECTION AND RUSHES ONE OF THE MacWHITES AND TELLS THEM TO GET

OUT OF THE HOUSE, SO -- ONE OF THE MARC WHITES AND -- ONE OF THE MACK WHITING AND TELLS THEM TO GET OUT OF THE HOUSE. IN THIS CASE THAT IS NOT CONSISTENT WITH DELGADO. NUMBER TWO IS THAT AN EXCEPTION SHOULD BE CARVED OUT, IF WE DO KEEP DELGADO, WHERE SOMEBODY WITH A LEGITIMATE PRIVACY INTEREST IN THE RESIDENCE EXPLICITLY TELLS SOMEBODY TO GET OUT, AND IN THIS CASE ACTUALLY TRIES TO PHYSICALLY REPEL THESE VERY MUSCULAR INTRUDERS. THAT SITUATION WASN'T PRESENTED TO THE COURT IN DELGADO. OF COURSE ALL OF THE STATE'S ARGUED IN REHEARING IS THAT THERE WAS A STRUCTURE BROKEN INTO, IN DELGADO.

IF THE ISSUE HERE, WHICH IS THE FIRST ONE, WHICH IS THAT THERE CAN BE NO CONSENT TO ENTER A HOME, IN ORDER TO COMMIT A MURDER. THAT THAT IS NOT A CONSENT. THAT THAT WOULD NOT MEAN RECEDING FROM DELGADO, WHICH IS CARVING OUT AND MAKING SURE THAT THIS SITUATION, WHICH I WOULD IMAGINE IS SOMEWHAT UNUSUAL SCENARIO, WOULD NOT BE WITHIN DEL GAD OWE THEN WE DON'T HAVE TO REACH THE OTHER ISSUES IN THIS CASE, CORRECT?

YES, YOUR HONOR, IN TERMS OF THE BURGLARY. ALSO, IN TERMS OF REACHING THE ISSUE, AS THE STATE ARGUED IN ITS BRIEF, THE DEFENSE THEORY, IN ATTACKING THE STATE'S CASE, IN THIS CASE, WAS TO ATTACK THE MacWHITES, BECAUSE THE MacWHITES WERE, INDEED, THE KEY WITNESSES. THEY WERE THE MUST THAEL BRADLEY BROUGHT WITH HIM, AND -- THE MUSCLE THAT BRADLEY BROUGHT WITH HIM, AND THAT DEFENSE THEORY IN ATTACKING THEIR CREDIBILITY, WAS TO AMPLIFY, ON CROSS-EXAMINATION, WITH EACH OF THE MacWHITES, HEY, YOU ARE GUILTY OF FELONY MURDER, ARE YOU NOT? YOU FACE A POSSIBLE DEATH PENALTY, DOO YOU NOT -- DO YOU NOT, UNDER A FELONY MURDER THEORY. SO BASICALLY THE DEFENSE USED FELONY MURDER IN ATTACKING THE STATE'S CASE AGAINST BRADLEY. I WASN'T THERE. THAT WAS THE MAIN DEFENSE. I WASN'T THERE. THE PEOPLE WHO PUT ME THERE ARE THE MacWHITES. JURORS, YOU SHOULD NOT BE LEAVE THE MacWHITES, BECAUSE THEY HAVE A LOT TO GAIN. THEY ADMIT TO BEING THERE AND BEING COMPLICIT IN THIS HOME INTRUSION. SO THE DEFENSE ACTIVELY USED THE LEGAL THEORY. IF WE ARE TALKING ABOUT JUST A MATTER OF LEGAL THEORY HERE, THE DEFENSE ACTIVELY USED THAT LEGAL THEORY TO ITS BENEFIT IN ATTACKING THE MacWHITE'S CREDIBILITY, AND THE STATE CONTENDS THAT THE DEFENSE SHOULD BE HELD TO THAT AND SHOULDN'T BE ALLOWED TO ATTACK THAT VERY LEGAL THEORY THAT THEY USED IN THE TRIAL, TO THEIR BENEFIT.

COULD YOU ADDRESS THE ISSUE? HERE, AGAIN, DID THE DEFENSE REQUEST A SPECIAL VERDICT, AND THE STATE -- DOES THE STATE OPPOSE IT IN THIS CASE?

THE DEFENSE REQUESTED IT. I DON'T RECALL WHETHER THE STATE CHILD IN AT THAT POINT OR NOT, YOUR HONOR.

HERE IS ONE MORE GOOD EXAMPLE OF WHY, IF YOU HAD A SPECIAL VERDICT, AND HERE IS A STRONG CASE FOR PREMEDITATION, WE WOULD KNOW IF THE JURY FOUND PREMEDITATION, AS DISTINCT OR IN ADDITION TO TELL ANY MURDER. CORRECT? WE WOULD KNOW THAT. ANOTHER STATE'S POSITION IS WE HAVE A STRONG CASE OF PREMEDITATION AND FELONY MURDER, IN THIS PARTICULAR CASE.

WE WOULD KNOW THAT, IF THE JURY HAD GIVEN A SPECIAL VERDICT. NOW, ASSUMING YOU WOULD FIND THAT DELGADO WOULD REQUIRE THIS NOT TO BE A BURGLARY, COULD YOU ADDRESS THE ARGUMENT THAT IS CARRIED, UNDER GRIFFIN, THAT WE WOULD BE COMPELLED TO REVERSE, BECAUSE THERE WAS NO SPECIAL VERDICT, AND BECAUSE THE FELONY MURDER CHARGE WOULD, THEN, BE LEGALLY INSUFFICIENT?

I WOULD HAVE TO -- THE STATE HAS A VERY LONG STRING CITE IN ITS BRIEF, AND I WOULD HAVE TO GO BACK AND LOOK AT EACH OF THOSE CASES, BUT I DON'T RECALL MANY OF THEM MAKING



THAT DISTINCTION, YOUR HONOR.

WHAT ABOUT GRIFFIN? YOU POINT -- SHE POINTS SPECIFICALLY TO GRIFFIN.

I AM SORRY. I WOULD HAVE TO TAKE ANOTHER LOOK AT IT. BUT IF WE ARE TALKING, STILL, ABOUT A MATTER OF LAW, THE DEFENSE SHOULD BE BOUND TO THE LAW THAT IT PROPOSED AT THE TRIAL. IT PROPOSED A FELONY MURDER THEORY, AS TO MacWHITES.

HOW DO YOU GET AROUND THE PROPOSITION THAT THE JURY, YOUR OPPONENT'S ARGUMENT THAT THE JURY MIGHT HAVE CONVICTED, HERE, OFF OF AN INADEQUATE OR INVALID THEORY?

THE STATE'S MAIN THEORY, AS I RECALL, YOUR HONOR, WAS PREMEDITATION. THIS IS A CONSPIRACY TO MURDER. THIS WAS A CONTRACT MURDER. THAT WAS THE MAIN -- THE STATE'S MAIN THEORY. THE STATE REDUCED EVIDENCE OF LIBD A JONES TALKING TO JAN -- OF LINDA JONES TALKING TO JANIS COLB, ONE OR TWO DAYS BEFORE THE MURDER, AND TALKING TO JANIS ABOUT KILLING HER HUSBAND. "I COULD TAKE A GUN AND KILL MY HUSBAND AND GET AWAY WITH IT." EVEN THE DEFENSE, AT THE PENALTY STAGE, TALKING ABOUT LINDA JONES SOLICITING GREG GREEN AND MR. DONAHUE. THIS IS A CONTRACT MURDER THEORY, PURE AND SIMPLE. I MEAN, THE FELONY MURDER WAS, I WOULD SAY, ALMOST AN AFTERTHOUGHT. WELL, YES, THERE IS, ALSO, FELONY MURDER HERE.

SO IT IS THE STATE'S POSITION THAT, IF THERE IS ONE INVALID THEORY AND ONE VALID, AND YOU DON'T HAVE THE VERDICT FORM SAYING WHICH YOU ARE CONVICTED FOR, IT MAKES FOR DIFFERENCE.

WELL, IN THIS CASE, WHERE THE STATE ADVANCED A CONTRACT MURDER THEORY, HAS ITS PRIMARY AND, ALMOST, I WON'T SAY TOTAL BUT ALMOST SOLE THEORY, AND WHERE THE EVIDENCE IS OVERWHELMING OF A CONTRACT MURDER, YES, YOUR HONOR. AND, OF COURSE, THAT ASSUMES THAT THE OTHER SIDE SURPASSES THE HURDLE THAT THE INITIAL CONSENT WAS VALID, AB INITIO, AND THAT CONSENT IS IRREVOCABLE BY ANY OCCUPANT WHO HAS A PRIVACY INTEREST IN THE RESIDENTS -- IN THE RESIDENCE, WHICH GETS US BACK TO THE MERITS OF THE ISSUE, AND THAT ASSUMES THE THEORY THAT THE DEFENSE IS NOT BOUND BY THAT THEORY THAT IT ADVANCED IN THE TRIAL. IT IS NOT A MATTER OF PRESERVING. THE DEFENSE ADVANCED THIS THERETY TO ITS BENEFIT, FELONY MURDER, AND THE STATE, OF COURSE, CONTENTS IT SHOULD BE HELD TO THAT THEORY. IN TERMS OF PROPORTIONALITY, I WOULD LIKE TO MAKE FEW POINTS. THE STATE DETAILED THE INJURES TO JACK JONES, IN ITS BRIEF, AND THE INJURES WERE INCREDIBLY SEVERE. AND I AM NOT GOING TO REPEAT THAT DETAILED AT THE PODIUM, OTHER THAN TO SAY THAT LINDA JONES -- THERE IS NO EVIDENCE, WHATSOEVER, THAT LINDA JONES MICROMANAGED THAT LEVEL, THAT SEVERITY OF A BEATING. LINDA JONES, INDEED, LOOKING AT THE EMOTIONAL BACKDROP, AS HAS ALREADY BEEN POINTED OUT, WAS EXTREMELY EMOTIONALLY DISTURBED ABOUT HER HUSBAND'S IN FED HE WILLITY. -- INFIDELITY. A MAJOR, MAJOR DISTINCTION BETWEEN LINDA JONES AND DONALD BRADLEY. DONALD BRADLEY IS A CONTRACT KILLER, PLAIN AND SIMPLE. THE TRIAL COURT FOUND THAT. THE EVIDENCE SUPPORTS THAT. LINDA JONES, ON THE OTHER HAND, AND I HAVE BLOCK-QUOTED SOME OF HER DIARY NOTES IN THE STATE'S BRIEF, FROM HER TRIAL, AND THE COURT HAS THAT IN THE RECORD BEFORE IT, LINDA JONES WROTE, AT LENGTH, ABOUT HOW EMOTIONALLY DISTRAUGHT SHE WAS. SHE CONTEMPLATED SUICIDE. SHE BEGED JACK TO COME BACK. PLEASE COME BACK. WE LOVE YOU. DON'T DO THIS TO JILL. THEIR DAUGHTER. JILL NEEDS YOU. PLEASE COME BACK. AT ONE POINT, SHE LISS IS ITS -- SHE SOLICITS, I FORGET WHETHER IT IS GREEN OR DONAHUE, ONE OF THE -- THIS IS IN HER TRIAL, AGAIN, GREEN OR DONAHUE, TO KILL JACK. SHE SAYS, NO, WAY. YOU ARE GOING ON THIS CRUISE. LET'S SEE WHAT HAPPENS ON THE CRUISE. DON'T BE SO HASTY. SO THEY GO ON THE CRUISE. SHE AND JACK GO ON THE CRUISE. THIS IS, I BELIEVE, LATE SEPTEMBER OR SO.

SO ARE YOU TELLING US THAT, IN ORDER TO SAY THAT MRS. JONES IS LESS CULPABLE, IN TERMS OF THIS MURDER?

EXACTLY, YOUR HONOR. SHE WAS EXTREMELY EMOTIONALLY DISTURBED, WHICH WENT TO THAT MITIGATOR.

BUT WHEN DID THIS AFFAIR BEGIN?

IN THE SUMMER OF '95. 1995.

THIS MURDER TOOK PLACE WHEN?

NOVEMBER 7 OF 1995.

SO WE ARE TALKING ABOUT SOME PERIODS OF MONTHS THAT THIS HAS BEEN GOING ON, AND THERE WAS QUITE A BIT OF PLANNING. I MEAN, FIRST OF ALL, THEY HAD A PLAN TO DO SOMETHING ELSE THAT WENT AWRY, CORRECT?

THEY -- WELL, LINDA WAS VERY UPSET, ESPECIALLY ABOUT THE JEWELRY THAT JACK BOUGHT CARRIE DAVIS IN MIDOCTOBER. EXCUSE ME, YOUR HONOR?

THEY HAD A PLAN TO RETRIEVE THAT JEWELRY, AND IT DID NOT PAN OUT. SO THEN SHE GOES BACK TO HIM WITH SOME OTHER PLAN.

AT THAT POINT, THE PLAN WAS NOT, APPARENTLY, TO KILL JACK. OTHERWISE -- JACK WAS IN THE APARTMENT, WHEN THEY ARRIVED, WHEN BRADLEY AND COMPANY ARRIVED AT CARRIE'S APARTMENT, BUT THEY LET HIM GO. I MEAN THE PLAN WAS TO KILL JACK AT THAT JUNCTURE.

RIGHT. BUT THEN LATER WE COME UP WITH A PLAN TO KILL HIM.

CORRECT.

YOU KEEP SAYING HOW EMOTIONALLY DISTRAUGHT SHE WAS. HERE WE HAVE A PERIOD OF TIME WITH SEVERAL PLANS, AND SHE WAS, IN FACT, THE ONE WHO DECIDED TO -- YOU SHOULD BEAT HIM UP, TO THE POINT WHERE, YOU KNOW, HE DIES. SHE IS THE ONE WHO DISCUSSES WANTING TO GET THE INSURANCE POLICY. SHE DOESN'T WANT SOME OTHER WOMAN TO END UP WITH HIS INSURANCE MONEY.

THAT WAS THE DAY BEFORE THE MURDER, YOUR HONOR.

BUT, I MEAN, DOESN'T THIS INDICATE THAT, REALLY, THIS LADY IS AT LEAST AS CULPABLE FOR THIS MURDER AS MR. BRADLEY?

YOUR HONOR, GIVEN -- I WOULD ENCOURAGE THE COURT TO READ HER DIARY. I MEAN, IT DOESN'T EXCUSE HER ACTIONS, AS A MATTER OF LAW, BUT SHE IS, IN MANY RESPECTS, TRULY, IN THE SENSE OF HER EMOTIONAL DISTURBANCE, BECAUSE OF JACK'S IN FED FIDELITY -- INFIDELITY, A PATHETIC FIGURE. I MEAN, THAT IS WHAT THE JURY CONCLUDED IN HER TRIAL.

HOW OLD IS MS. JONES. DO YOU KNOW?

PARDON ME, YOUR HONOR.

HOW OLD SHE IS.

I THINK SHE WAS IN HER LATE 40s. MIDTO LATE 40s AT THE TIME. THEY WERE CHILDHOOD SWEET HEARTS. LIVED TOGETHER ALL THEIR LIVES. I MEAN MARRIED FOR 30 YEARS. EXCUSE ME. AT THE

TIME. YOUR HONOR, ALSO, I WOULD POINT OUT, IN HER TRIAL, WE DON'T KNOW WHY, BUT THE TESTIMONY WASN'T THAT LINDA HIRED BRADLEY TO BEAT HER HUSBAND TO DEATH. THAT EVIDENCE WAS FIRST INTRODUCED IN THE PENALTY PHASE, BY BRADLEY'S LAWYER, THROUGH HEARSAY, DETECTIVE LAW -- I THINK IT WAS GREEN'S STATEMENT TO LAW THAT WAS MOST DAMAGING AT THAT POINT. GREEN DID TESTIFY IN LINDA'S TRIAL, BUT HE DIDN'T TESTIFY TO LINDA HIRING OR TRYING TO HIRE HIM, RATHER, TO BEAT JACK TO DEATH. HE TESTIFIED THAT LINDA SOLICITED HIM TO COME OVER AT NIGHT, WHEN JACK GOES TO BED, AND KILL HIM. IN OTHER WORDS THERE IS NOTHING IN THERE ABOUT A BEATING. IN FACT, THE EVIDENCE THERE WAS GET HIM WHEN HE IS ASLEEP, BASICALLY. YOU KNOW, THERE IS NONE OF THAT TERROR.

WHERE DO WE GET THE EVIDENCE ABOUT THE GUN WAS THERE BUT TAKE THAT SO HE WON'T DEFEND HIMSELF?

FROM THE MacWHITES, YOUR HONOR. THEY ARE IN THE CAR OR THE VAN WITH BRADLEY, AS BRADLEY IS TALKING TO LINDA. AND -- ON THE CELL PHONES. AND THAT BRADLEY SAYS, WELL, I WILL GO THROUGH THE GARAGE AND GET JACK'S GUN. YOU GUYS, THE MacWHITES, GO THROUGH THE FRONT DOOR, AND IT WILL ALL BE UNLOCKED. AND, IN FACT, THEY WERE.

WHAT EVIDENCE IS THERE THAT EITHER, ONE WAY OR ANOTHER, THAT THE METHOD OF KILLING, THAT IS A HEINOUS BEATING, WAS SOMETHING THAT WAS SPECIFIED BY MRS. JONES, AS OPPOSED TO THE ORIGINATION OF THE -- THIS DEFENDANT?

YOUR HONOR, AT THE BEST LIGHT FOR THE OTHER SIDE, DETECTIVE WHAT THE, THE PENALTY PHASE -- DETECTIVE WATT, THE PENALTY PHASE, TESTIFIED THAT GREEN TOLD THAT MANY LINDA ASKED HIM TO BEAT HER HUSBAND TO DEATH, AND TO USE A BASEBALL BAT, AND THEN THERE WAS THE TRIAL, AT LINDA'S TRIAL, WHERE THERE WAS THE ADDED FACT THAT CAUSED THE SLEEP, BASICALLY. WHEN HE GOES TO BED. BUT THERE IS NO EVIDENCE THAT LINDA HIRED BRADLEY TO INFLICT MULTIPLE BRUISES ON JACK'S FACE, A BRUISE TO THE RIGHT CHEEK, PARTIALLY TEAR OFF ONE OF HIS EARS, EIGHT BRUISES TO THE BACK, INCLUDING TWO FRACTURED RIBS, A BRUISED LUNG, AN IMPACT TO THE KNEE THAT IS SEVERE, AND THEN FIVE TO SEVEN BRUISES AND FIVE TO SIX SEVERE LACERATION TO SAY HIS HEAD.

IF YOU TELL SOMEBODY I WANT YOU TO BEAT SOMEONE SOMEONE TO DEATH, THAT IS GOING TO BE --

IT COULD BE ONE BLOW. HE IS KNOCKED UNCONSCIOUS. IN FACT THE MEDICAL EXAMINER TESTIFIED THAT ONE OF THESE BLOWS, ESPECIALLY A COUPLE OF THEM, WOULD KNOCK JACK UNCONSCIOUS, WHICH, OF COURSE, IS EVIDENCE THEY WERE INFLICTED LAST.

WHAT WOULD BE HIS MOTIVATION FOR WANTING THE DEATH OF THIS PERSON TO BE UNNECESSARILY TORTUROUS, VERSUS THE MOTIVATION OF THE WIFE, WHO IS SO ANGRY AT HER HUSBAND THAT SHE CONTEMPLATES DOING SOMETHING AND ACTUALLY BEING THERE WHILE IT HAPPENS?

WELL, WE DON'T KNOW WHAT HE WAS THINKING, WHEN HE, AFTER HE HIT JACK AND DRAGGED HIM TO THE OTHER ROOM. WE DON'T KNOW THE PLAN.

HE DOESN'T HAVE A PRIOR HISTORY AT ALL?

HE DOES HAVE A PRIOR HISTORY OF SOME AS ULTS -- ASSAULTS, YOUR HONOR. HE DID NOT OBTAIN THE MITIGATOR OF NO PRIOR CRIMINAL HISTORY. IN FACT, THERE WAS SOME -- THERE WERE SOME ASSAULTS IN HIS BACKGROUND.

THIS IS NOT A HIT MAN. THIS IS NOT A PERSON --

WE DON'T HAVE EVIDENCE AFTER PROFESSIONAL HIT MAN, NO, YOUR HONOR.

IT IS NOT CHARACTERISTIC OF ANYTHING IN HIS LIFE?

NO, ALTHOUGH HE CHOSE THE WEAPON.

I AM TRYING TO UNDERSTAND, IN THE WHOLE PICTURE HERE AND THE RELATIVE CULPABLEITY, THAT IS WHY THE QUESTIONS ARE BEING ASKED.

YES, YOUR HONOR, I UNDERSTAND, BUT PART OF THE PLAN WAS NOT TO DRAG THIS OUT. NOT TO COLD CONGRESS HIM AND DRAG HIM INTO THE ROOM AND HIT HIM WHEN HE SAYS PLEASE STOP AND CONTINUE THE BLOWS. PART OF THE PLAN WAS NOT TO TIE HIM UP. THAT WAS NOT PART OF THE PLAN.

IS THE STATE'S POSITION THAT IS WHAT SEPARATED -- IN OTHER WORDS IF THE WIFE HAD SAID "PLEASE SHOOT HIM" AND HE HAD SHOT HIM, WOULD THAT STILL, WOULD THERE STILL BE ENOUGH, IN TERMS OF THE FACT THAT HE IS THE SHOOTER? UNDER A PRIOR CASE LAW, TO JUSTIFY THE IMPOSITION OF THE DEATH PENALTY?

THE DEATH PENALTY? OR IS IT THE FACT OF THERE BEING HEINOUS, AT ROCHE US AND CRUEL, AS BEING THE -- ATROCIOUS AND CRUEL, AS BEING --

IF YOU HAVE A CO-CONSPIRATOR WHO DOES SET OUT THE DETAIL OF HOW THE KILLING IS TO OCCUR, AND IF THE KILLING IS CARRIED OUT TO THAT DETAIL, UNLIKE HERE, WHERE THERE IS NO EVIDENCE OF NEARLY AS SEVERE A BEATING, JUST A BEATING. NO EVIDENCE AFTER PLAN OF DOING IT MULTIPHASES, WHILE JACK PLEADS FOR HIS LIFE. TIE HIM UP FIRST BUT THEN BASICALLY FINISHING HIM OFF. THERE IS NO EVIDENCE THAT LINDA PLANNED THAT.

CAN YOU ANSWER JUST QUESTION I ASKED, THAT IF SHE SAID SHOOT AND HE SHOT, THAT HE IS THE SHOOTER? IS THERE, UNDER OUR CASE LAW, ENOUGH TO SAY THAT THAT STILL WOULD JUSTIFY THE IMPOSITION OF THE DEATH SENTENCE FOR HIM?

GETTING BACK TO WHAT OPPOSING COUNSEL SAID, THE TOTALITY OF THE CIRCUMSTANCES, GIVING ALL THE AGGRAVATORS AND ALL THE MITIGATORS, IF EVERYTHING ELSE IS THE SAME, AND IF ONE GETS LIFE AND ONE GETS DEATH, THEN THERE IS A PROBLEM WITH PROPORTIONALITY, UNDER THE CASE LAW.

BUT BEING THE ACTUAL SHOOTER, IT DOESN'T COUNT FOR MORE UNDER OUR CASE LAW?

OH, ABSOLUTELY, YOUR HONOR. THE TRIGGERMAN, THAT IS DEFINITELY A WEIGHTY, VERY WEIGHTY FACTOR.

THAT IS WHAT I AM ASKING.

YES, YOUR HONOR. ANOTHER FACT, HERE, THAT HE IS THE PERPETRATOR OF THIS MURDER, DOESN'T THAT, UNDER OUR CASES, JUSTIFY THE IMPALSO POSITION OF THE DEATH SENTENCE? -- JUSTIFY THE IMPOSITION OF THE DEATH SENTENCE?

I SEE YOUR POINT. YES, YOUR HONOR. THAT, IN AND OF ITSELF, IS A WEIGHTY FACTOR. HE WAS THE ONE, AS HE WAS THROWING THE BLOWS, WHO SAW THE BLOOD SPLATTER. IF, IN FACT, I COULD GET GROSS HERE, I AM SORRY, BUT HEARD THE IMPACTS AND FELT THE IMPACTS. EACH TIME HE STRUCK ONE OF THOSE BLOWS THAT TORE JACK'S EAR PARTIALLY OFF, FRACTURED HIS RIBS AND BRUISED HIS LUNGS, ET CETERA, ET CETERA, AND AS SUCH, HE IS MORE CULPABLE, ESPECIALLY IN A BEATING DEATH, LIKE THIS, WHERE YOU DO FEEL THE IMPACT, AS YOU INFLICT THE INJURY. FROM BRADLEY'S PERSPECTIVE. BUT IT WAS A PROTRACTED -- I MEAN, THERE IS

NOTHING IN LINDA'S STATEMENT TO GREEN, ABOUT IT BEING A PROTRACTED BEATING OR A BEATING OF THIS SEVERITY. AS THE TRIAL COURT FOUND, THERE IS A FACTUAL BASIS FOR THE TRIAL COURT'S FINDING IN DISTINGUISHING THE TRIAL COURT'S ORDER WENT DETAIL BY DETAIL, AGGRAVATOR BY AGGRAVATOR, MITIGATOR BY MITIGATOR, IN COMPARING THE TWO DEFENDANTS. AND THERE IS A FACTUAL BASIS. THERE IS COMPETENT EVIDENCE TO SUPPORT THOSE CONCLUSIONS, BY THE TRIAL COURT. AND SO THE STATE WOULD RESPECTFULLY SUBMIT THAT, ON THAT GROUND, AND ON THE GROUND THAT THERE -- IN LINDA'S TRIAL, THE JURY RECOMMENDED LIFE, AND THAT THERE WASN'T EVIDENCE TO OVERRIDE IT, AND IN THIS CASE, THE JURY, IN SPITE OF THE FACT OF BRADLEY INTRODUCING THIS EVIDENCE OF LINDA'S PLAN, IN SPITE OF THAT, THE JURY RECOMMENDED DEATH. THE JURY HAD THAT TOTALITY BEFORE IT. BRADLEY'S JURY CONSIDERED ALL THIS. THE TRIAL JUDGE CONSIDERED ALL THIS. AND THEY ARE INCLUDING THE DIFFERENCES BETWEEN LINDA AND BRADLEY, AND THERE IS A FACTUAL BASIS IN THE RECORD TO SUPPORT THOSE DIFFERENCES. THANK YOU. THE STATE WOULD REQUEST THAT THE COURT AFFIRM THE JUDGEMENT SENTENCE.

MS. CAREY. REBUTTAL?

YOUR HONOR, I WOULD LIKE TO JUST START WITH THE PROPORTIONALITY QUESTION, FIRST, AND ADDRESS JUSTICE PARIENTE'S QUESTION. AS TO WHETHER SOLELY THE FACT THAT ONE PERSON IS THE ACTUAL KILLER, DOES THAT MAKE THEM RELATIVELY MORE CULPABLE, AND I THINK THE ANSWER IS NO, IT DOES NOT. PARTICULARLY WHEN THE KILLER HAS BEEN HIRED BY SOMEONE ELSE, WHO PLANNED AND INSTIGATED AND WAS THE DOMINANT FORCE BEHIND THE MURDER, AND THAT IS WHAT I THINK THIS COURT'S ANALYSIS IN LAST LAYER SAID, AND -- LAZALERE SAID, AND NONETHELESS, MRS. LAZALERE IS MORE CULPABLE, BECAUSE SHE PARTICIPATED IN THE PLANNING AND CARRYING OUT OF THE MURDER. SHE WAS THERE WHEN IT OCCURRED. SHE STOOD TO GAIN THE MOST FROM IT, AND IN THIS CASE, LINDA JONES HAD ASKED TWO OTHER PEOPLE KILL HER HUSBAND, BEFORE SHE ACTUALLY PERSUADED DONALD BRADLEY TO DO IT. THE STATE HAS SAID THAT DONALD IS A CONTRACT KILLER. DONALD BRADLEY IS NOT A CONTRACT KILLER.

LET ME ASK YOU A QUESTION. THAT IS WHY I ASKED YOU EARLIER, THE FACT THAT THE JURY RECOMMENDED LIFE, IN THIS CASE IF A DEATH SENTENCE HAD BEEN GIVEN FOR MRS. JONES, WE WOULD HAVE, BASED ON OTHER CASE LAW, MS. LARZELERE UPHOLD THAT DEATH SENTENCE, BECAUSE THAT WOULD HAVE BEEN A PROPORTIONAL SENTENCE FOR HER, SO THE TRUTH IS THAT THERE IS SOMETHING TO BE SAID, ONCE THERE IS A LIFE SENTENCE AND THE JUDGE GIVES THE LIFE SENTENCE, WE ARE NOT REVIEWING IT, SO THERE IS SOMETHING TO BE SAID ABOUT THE FACT THAT WE HAVE TO SORT OF TAKE THAT AS A GIVE EN, EVEN THOUGH IF THE DEATH SENTENCE HAD BEEN IMPOSED, WE MIGHT HAVE AFFIRMED THAT.

THAT'S CORRECT. THAT IS THE WHOLE PURPOSE OF PROPORTIONALITY. REALLY, IT IS TO EVEN OUT THE PROCESS, TO MAKE IT FAIR.

WHY IS MRS. JONES AS CULPABLE AS MRS. LARZELERE?

WHY ISN'T SHE? SHE IS.

SO, THEN, SHE SHOULD HAVE BEEN GIVEN THE DEATH SENTENCE.

WELL, THE DEATH SENTENCE WOULD HAVE BEEN APPROPRIATE FOR HER. AS A MATTER OF FACT, THE PROSECUTOR DIDN'T GO AFTER THE DEATH SENTENCE, WITH ANY GREAT VEHEMENCE IN HER CASE. THE CLOSING ARGUMENT IN THAT CASE WAS FOUR OR FIVE MINUTES LONG. VERY LITTLE WAS PUT ON IN HER CASE. TO GO BACK TO THIS NOTION THAT DONALD IS A CONTRACT KILLER, HE IS NOT A CONTRACT KILLER. HE WAS A FRIEND OF MRS. JONES.

WHAT ABOUT THE STATE'S ARGUMENT ABOUT THE -- HOW FIRST THIS BEATING WAS AND -- HOW

FIERCE THIS BEATING WAS AND THE AMOUNT OF FORCE THAT IT PROBABLY TOOK TO INFLICT SOME OF THE WOUNDS THAT WERE INFLICT ON MR. JONES'S BODY? I MEAN -- INFLICTED ON MR. JONES'S BODY? I MEAN, WE DON'T HAVE ANY EVIDENCE, DO WE, THAT MRS. JONES TOLD HIM TO BE AS VICIOUS AS YOU CAN POSSIBLY BE.

NO, AND I THINK THAT IS SPLITTING HAIRS, QUITE FRANKLY, YOUR HONOR, BECAUSE MRS. JONES DID ASK TWO OTHER PEOPLE TO COMMIT CRIME, AND WHEN SHE TALKED TO GREG GREEN, I KNOW THAT, IN HER TRIAL, ALL THE DETAILS DIDN'T COME OUT, BUT HE -- SHE ASKED GREG GREEN, ON THREE DIFFERENT OCCASIONS, TO BEAT HER HUSBAND UP, AND ON ONE OF THOSE OCCASIONS, SHE GAVE THE DETAILS OF WEARING THE MASK, BRINGING A BASEBALL BAT AND BEATING HIM TO DEATH. IT IS, ALSO, CLEAR THAT DONALD BRADLEY WAS A PUPPET. HE DID NOT DO A THING, EXCEPT UNDER LINDA JONES'S DIRECTION. IF YOU LOOK AT WHAT HAPPENED ON OCTOBER 31, HE HAD TO MAKE A PHONE CALL TO HER EVERY FIVE MINUTES, TO FIND OUT WHAT DO I DO NOW. MR. JONES IS IN THE HOUSE. WHAT DO I DO NOW. MORE PHONE CALLS. MR. JONES LEFT. NOW WHAT DO I DO. SHE DIRECTS HIM TO VANDLIZE THE YOUNG WOMAN'S AUTOMOBILE. HE -- VANDALIZE THE YOUNG WOMAN'S AUTOMOBILE. HE CALLED HER THREE TIMES BEFORE THE MURDER --

ARE YOU SAYING THAT HE WAS UNDER HER DOMINATION? IS THAT WHAT YOU ARE SAYING? IS THERE ANY EVIDENCE AFTER RELATIONSHIP BETWEEN THE TWO OF THEM THAT WOULD PUT HIM IN THE POSITION THAT HE WOULD BASICALLY JUST BE A PUPPET TO THIS WOMAN?

THE FACTS SHOW THAT SHE ABSOLUTELY DOMINATED THE ENTIRE EPISODE, FROM BEGINNING TO END.

SHE PLANNED IT, BUT HOW DID SHE -- DID SHE OVERCOME HIS WILL, SO THAT HE WOULD JUST ONLY DO WHATEVER, SPECIFICALLY, THAT, MICROMANAGED HOW THIS BE DONE?

I WOULDN'T GO THAT FAR, YOUR HONOR. THAT IS NOT WHAT I AM SAYING, BUT WHAT I AM SAYING IS SHE CLEARLY WAS THE DOMINATING FORCE. SHE CLEARLY PLANNED THE DETAILS OF THE CRIME. I THINK THAT HE FOLLOWED THE PLAN. HE BEAT THIS MAN UP WITH A BAT. IT DOESN'T MAKE HIM MORE CULPABLE.

WHAT, IF ANY, WEIGHT, SHOULD WE GIVE TO THE DIFFERING RECORDS WE HAVE HERE? I MEAN, BOTH OF YOU HAVE BASICALLY INDICATED THAT, IN MRS. JONES'S HEARING, SOME OF THE INFORMATION THAT WE GET, IN MR. BRADLEY'S HEARING, DIDN'T COME OUT, SO WHAT KIND OF WEIGHT ARE WE TO GIVE, IN THIS WHOLE PROPORTIONALITY REVIEW, THE FACT THAT THE JURY HEARD DIFFERENT EVIDENCE, AND MRS. JONES CASE?

I THINK THE COURT HAS TO REVIEW THE ENTIRE RECORD THAT IS BEFORE IT TODAY, AND THAT RECORD INCLUDES THE RECORD OF BOTH TRIALS FORM THE TRIAL COURT CONSIDERED THAT, AND THEN THE TRIAL COURT MADE ITS RULINGS. THE TRIAL COURT CONSIDERED WHAT CAME OUT. LINDA JONES'S TRIAL AS WELL AS WHAT CAME OUT IN DONALD BRADLEY'S TRIAL, AND I WOULD LIKE TO POINT OUT THAT THE TRIAL JUDGE WHO PRESIDED OVER BOTH TRIALS, DID NOT FIND, AS A MITIGATE OR, THAT LINDA JONES WAS EMOTIONALLY OR MENTALLY DISTURBED. HE DID NOT FIND THAT AS A MITIGATING FACTOR.

IN WHICH CASE?

IN DONALD BRADLEY'S CASE, WHEN HE WAS REVIEWING THE RELATIVE CULPABILITY OF THE TWO DEFENDANTS AND THE MITIGATION AS TO EACH, HE DID NOT FIND THAT THAT WAS A MITIGATOR, AS TO LINDA JOBES. HE FOUND THAT THEY -- AS ON TO LINDA JONES. HE FOUND THAT THEY BOTH WERE ENTITLED TO STATUTORY MITIGATORS AS TO NO SIGNIFICANT HISTORY, NO PRIOR CRIMINAL HISTORIES TRIAND AGE.

AGE?

YES. HE FOUND AGE FOR BOTH OF THEM. BRADLEY WAS 36. I THINK LINDA WAS 48. AS TO THE NONSTATUTORY MITIGATION, THE MITIGATION PRESENTED ON DONALD BRADLEY'S BEHALF WAS MUCH MORE EXTENSIVE AND MUCH MORE COMPELLING THAN WAS PRESENTED IN LINDA JONES'S

--

HOW DO YOU THEN -- WHAT DO WE DO WITH THE FACT THAT WE HAVE GOT A TRIAL JUDGE, AND THIS IS A MUCH BETTER SITUATION THAN MANY OTHER CASES THAT ACTUALLY HEARS THE EVIDENCE IN BOTH CASES. THE JURY IS TOLD ABOUT THE LIFE SENTENCE. THE TRIAL JUDGE, WHO WAIST EVIDENCE AND MAKES THE DETERMINATION THAT YOUR CLIENT IS MORE GUILTY. ARE WE JUST SUPPOSED TO TAKE THAT AND DISCARD THAT?

PROPORTIONALITY REVIEW IS THE TASK OF THIS COURT.

PROPORTIONALITY AS COMPARED TO ALL OTHER CASES. NOW YOU ARE ASKING ABOUT RELATIVE CULPABILITY. AREN'T THOSE TWO -- I MEAN, THEY ARE INTERTWINING RELATIONSHIPS, BUT ISN'T PROPORTIONALITY, IN OTHER WORDS, LOOKING AT ALL OF THE CRIMES, ALL OF THE DEATH SENTENCES, AND WE COMPARE THIS CASE TO THAT. RELATIVE CULPABILITY IS SOMETHING THAT IS A STATUTE, IS A MITIGATOR THAT THE JUDGE LOOKS AT. SO DON'T WE LOOK AT THOSE TWO IN A DIFFERENT WAY?

NO, YOUR HONOR. YOU LOOK AT THEM EXACTLY THE SAME. AS TO ANY FINDINGS OF FACT THAT THE JUDGE MAKES, OF COURSE, THOSE MUST BE GIVEN DISCRETION. IF THE JUDGE'S FINDINGS, AS TO THE AGGRAVATORS OR THE MITIGATORS OR ANY OTHER FACTS OF THE CRIME ARE SUPPORTED BY THE CRIME ARE SUPPORTED BY THE EVIDENCE, THEN THIS COURT HAS TO ACCEPT THOSE FINDINGS OF FACT, BUT IN APPLYING THE LAW, THE LAW OF FOR PORTIONALITY -- THE LAW OF IMPORTANT PORTIONALITY, THIS COURT HAS TO FORM ITS OWN REVIEW DE NOVO.

IMPORTANT PORTIONALITY HAS TO DO WITH THE FACT THAT THE CODEFENDANT GOT LIFE, RIGHT? IT IS A MUCH BROADER REVIEW TO LOOK AT ALL OTHER CASES.

RIGHT. BUT IT IS A SPECIES OF PROPORTIONALITY REVIEW, AND I THINK THE SAME PRINCIPLE APPLIES, IS THAT UNDER THE SAME FACTS, EQUALLY CULPABLE CODEFENDANTS CAN'T RECEIVE DIFFERENT SENTENCES. I WOULD, ALSO, LIKE TO ADD THAT THE JUDGE'S PROPORTIONALITY REVIEW AND HIS FINDINGS WERE FLAWED IN SEVERAL OTHER RESPECTS, AND I RAISE THOSE IN MY BRIEF. FOR EXAMPLE, THE TRIAL JUDGE SAID, WELL, LINDA'S JURY MAY HAVE FOUND IN PRETENSE, MORAL OR LEGAL JUSTIFICATION, BASED ON THE MARITAL INFIDELITY. THAT IS CLEARLY ERRONEOUS, AS A MATTER OF LAW, BECAUSE THAT IS NOT HOW THIS COURT HAS DEFINED A MORAL OR NO MORAL OR LEGAL PRETENSE AND JUSTIFICATION. THE COURT, ALSO, DISTINGUISHED, IN WHAT WE FEEL IS THE EXTREME HAIR SPLITTING, CONSIDERING THE GRAVITY OF THE CONSEQUENCES HERE, OF THE RECORDS OF THE TWO DEFENDANTS. HE FOUND THAT EACH OF THEM HAD THE MITIGATOR OF NO SIGNIFICANT HISTORY, YET WENT ON TO SAY, WELL, I THINK BRADLEY'S IS MORE SIGNIFICANT. THERE IS REALLY NO PRINCIPLE BASIS FOR THAT CONCLUSION OF THE TRIAL COURTS, EITHER. AND I JUST HAVE A COUPLE OF COMMENTS REGARDING THE BURGLARY ISSUE. FIRST OF ALL, IF, UNDER THE BURGLARY STATUTE, AND UNDER DELGADO, OPEN TO THE PUBLIC, THAT THE STRUCTURE IS OPEN TO THE PUBLIC, IS A COMPLETE DEFENSE TO BURGLARY, REGARDLESS OF THE INTENT OF THE DEFENDANT, THEN THE INVITATION TO ENTER, ALSO, MUST BE A COMPLETE DEFENSE TO BURGLARY, REGARDLESS OF THE INVITATION TO ENTER. OTHERWISE THIS COURT WOULD BE EXPANDING THE REACH OF THE STATUTE, TO INCLUDE ACTS WITHOUT ANY CLEAR INTENT OF THE LEGISLATURE TO DO SO.

THANK YOU VERY MUCH. WE APPRECIATE YOUR -- BOTH OF YOUR ASSISTANCE IN THIS REGARD.

THANK YOU, YOUR HONOR.

THE COURT WILL BE IN RECESS.