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## **Seburt Nelson Connor v. State of Florida**

THE NEXT CASE ON THE COURT'S DOCKET IS CONNOR VERSUS STATE.

MAY IT PLEASE THE COURT. LOUIE CAMPBELL, ON BEHALF OF SEBURT CONNOR. YOUR HONOR, I WOULD LIKE TO ADDRESS THE LAST ISSUE IN THE BRIEF, WHICH IS THE DISPROPORTIONALITY OF THE DEATH SENTENCE AND, ALSO, OTHER ASPECTS OF THE PENALTY-PHASE ISSUES, WHICH ARE INTERRELATED WITH THIS ONE. AS THIS COURT RECENTLY REAFFIRMED, THE DEATH PENALTY IS RESERVED FOR THOSE CRIMES WHICH ARE BOTH THE LEAST LITIGATED AND MOST AGGRAVATED OF MURDERS. IN THIS CASE, THE CRIME IS NOT THE LEAST MITIGATED BUT, IN FACT, ONE OF THE MOST MITIGATED OF THE MURDERS THIS COURT HAS REVIEWED, AND AS I WILL TRY TO SHOW --

WOULD YOU BE KIND ENOUGH TO PULL THE MIKE DOWN OR EITHER STEP A LITTLE CLOSER TO IT. I AM HAVING DIFFICULTY HEARING YOU.

AS I WILL TRY TO SHOW, AS WAS, IN FACT, THE MURDERS WERE, IN FACT, THE DIRECT RESULT AND THE UNPLANNED CONSEQUENCE OF HIS MENTAL ILLNESS, AND THE STARTING POINT IS THE FACT THAT THE TRIAL COURT FOUND MR. CONNOR IS MENTALLY ILL AND BRAIN DAMAGED. SPECIFICALLY HE SUFFERS FROM PARANOID THINKING AND DAMAGE TO THE FRONTAL LOBE OF THE BRAIN, WHICH IMPEDES HIS JUDGMENT, HIS ABILITY TO MAKE DECISIONS AND IMPAIRS HIS CAPACITY TO CONTROL HIS IMPULSES. IT IS TRUE THAT, FOR MANY YEARS, IN FACT, FOR MOST OF HIS LIFE, THIS CONDITION, ALTHOUGH IT HAD EXISTED, HAD NOT DETERIORATED TO THE POINT WHERE MR. CONNOR WAS ABLE TO CONTROL EITHER HIS IMPULSES OR HIS PARANOID THINKING, AND UP UNTIL MID40s, HIS LIFE IS NOT DOMINATED BY MENTAL ILLNESS BUT DEFINED AND DOMINATED BY HIS CHARACTER AND VALUES. MR. CONNOR, CLEARLY, FOR THE RECORD, VALUED HARD WORK. HE VALUED SUPPORTING HIS FAMILY. HE VALUED ENCOURAGING HIS CHILDREN TO GET AN EDUCATION, AND HE DID ACHIEVE THESE SORTS OF THINGS, IN A MODEST WAY, DESPITE THE HANDICAPS OF HIS PAIR KNOW YEAH, BUT -- PARANOIA, BUT, ALSO, A SPEECH IMPEDIMENT AND INTELLIGENCE AND A SEVERE BACKGROUND. HOWEVER, WHEN HE GOT INTO MIDLIFE, HIS MID40s, THINGS STARTED TO FALL APART. HIS MENTAL CONDITION BEGAN TO DETERIORATE PROBABLY, AS A RESULT, AMONG OTHER THINGS, BECAUSE OF HYPERTENSION AND MATERIAL PROBLEMS. AND HE BEGAN TO MANIFEST THOSE TRAITS WHICH WE, GENERALLY, TEND TO ASSOCIATE WITH PARANOID PEOPLE. HE WAS NO LONGER AGREEABLE. HE WAS CONSTANTLY DISRUPTIVE AND ANTAGONISTIC TO HIS EMPLOYERS AND COEMPLOYEES. HE WENT HIS OWN WAY AND FINALLY, HE WAS FIRED BECAUSE OF HIS IMPAIRMENT TO HIS WHOLE WORK UNIT, AND SO AFTER MANY YEARS, MR. CONNOR LOST HIS JOB, EVEN IN CONSIDERATION OF EVERYTHING THAT HE HAD ACHIEVED TO THAT POINT. IN FACT, AFTER HE LOST HIS JOB, WHICH INVOLVED HIS YOUNG SON, HE WAS NO LONGER AS FUNCTIONAL AS HE USED TO BE. ALTHOUGH HE STILL HAD A WIFE, IT WAS A TEMPORARY JOB. ALTHOUGH HAD HE A WIFE, HE WAS ESTRANGED FROM HIS WIFE. HE BUILT A LITTLE COTTAGE IN BACK OF HIS HOUSE, WHERE HE WOULD SLEEP AND SPEND HIS TIME. AND HIS RELATIONS WITH HIS FAMILY WERE NOT -- AT LEAST THEY WERE FROM HIS PERSPECTIVE, AS HE TOLD DR. GARCIA, HE THOUGHT HIS FAMILY WAS AGAINST HIM. HE WAS NOT ONLY LESS FUNCTIONAL AND MORE OPENLY PARANOID AT THIS TIME, HIS THINKING, ALSO, BEGAN TO CHANGE IN OTHER WAYS. HE WAS NO LONGER ORIENTED TOWARDS SO MUCH ACHIEVING SUCCESS THROUGH THIS HARD WORK. HE, NOW, BEGAN TO THINK OF, IN MORE UNREALISTIC WAYS, IN A MORE GRANDY OWES FASHION, AND IN -- GRANDIOSE FASHION, AND IN WAYS WHICH WILL EVENTUALLY BECOME CLEAR, AS WE SEE HIS LIFE AFTERWARDS, AFTER HIS ARREST AND WHAT HE SAYS TO THE COURT, WHAT HE SAYS IN HIS TESTIMONY, WHAT HE SAYS IN HIS LETTERS. AT THIS TIME WE BEGIN TO SEE THE BEGINNING GINKS OF WHAT WOULD -- THE

BEGINNINGS OF WHAT WOULD BECOME SOME OF HIS DELUSIONS. MR. CONNOR, AT THIS POINT, ONE OF HIS MAIN ACTIVITIES WAS TO PURSUE A LAWSUIT AGAINST THE POLICE DEPARTMENT. AS FAR AS HE KNEW, HE WAS ARRESTED FOR STEALING A CHAPSTICK AND MR. CONNOR HAD STOLEN EITHER \$98 ON 0 OR \$9100 -- \$9800 OR \$9100, DEPENDING ON WHICH DAY YOU TALKED TO MR. CONNOR, AND HIS PHYSICAL ASPECT CHANGED. HE WAS, NOW, HE SAID, A SUCCESSFUL, RESPECTED BUSINESSMAN, AND NOT ONLY THAT, HE WAS A PERSON WITH SUBSTANTIAL HOLDINGS. IN FACT FACT, I THINK DR. ANSLEY CHARACTERIZED HIM AS THINKING HIMSELF PART OF THE LANDED ARISTOCRACY. IN THIS, HE HAD A PROJECT FOR A HOTEL HE WAS GOING TO BUILD IN HIS NATIVE BAY ISLANDS OF HONDURAS, AND THIS WAS GOING TO BE A MULTI-MILLION DOLLAR HOTEL AND INVOLVED ALL SORTS OF THINGS. HIS REAL CIRCUMSTANCES WERE QUITE DIFFERENT. HE DID HAVE A LITTLE BUSINESS. HE WOULD SEND USED AND NEW CLOTHING TO HIS RELATIVES IN THE BAY ISLANDS, TO SELL. HE WORKED OUT OF HIS LITTLE COTTAGE, WHICH WAS ESSENTIALLY HIS WAREHOUSE, AND HE WAS USING THE EXISTENCE OF FRIENDS --

YOU ARE GIVING US, REALLY, A DETAILED TRAIL, HERE, OF HIS SORT OF PERSONAL HISTORY AND HIS MENTAL DIFFICULTIES, BUT HOW ABOUT BRINGING THE ISSUE INTO SHARPER FOCUS, HERE. WE ARE TALKING, ARE WE NOT, ABOUT TWO DEATHS?

RIGHT.

IS THAT CORRECT?

I AM LEADING UP TO THIS.

AND IF YOU COULD TELL US, YOU KNOW, WHAT THE EVIDENCE WAS THAT WAS PRESENTED, DURING THE PENALTY PHASE PROCEEDINGS. HOW THE TRIAL COURT TREATED THAT EVIDENCE, AND WHERE THE TRIAL COURT WENT WRONG IN TREATMENT OF THAT EVIDENCE.

WELL, THE TRIAL COURT, BASICALLY, WENT WRONG, ALTHOUGH IT RECOGNIZED THAT MR. CONNOR WAS MENTALLY ILL AND BRAIN-DAMAGED, THE TRIAL COURT WENT WRONG IN CONCLUDING THAT HIS MENTAL ILLNESS AND HIS BRAIN DAMAGE INCLUDED EVERYTHING BUT THE CRIMES HERE, AND THE FACTS IN THE RECORD DEMONSTRATE, AS I SAY, THAT THIS WAS A CONSEQUENCE. AND RUNNING FORWARD --

WHAT WAS THE EVIDENCE PRESENTED DURING THE PENALTY PHASE. WAS IT JUST EVIDENCE PRESENTED BY THE DEFENDANT, ABOUT HIS MENTAL STATE, AND SO IT WAS ALL ONE-SIDED, OR WAS THERE EVIDENCE PRESENTED BY THE STATE, TOO? DID THEY CONTROVERT THE MENTAL ILLNESS?

THE DEFENSE PRESENTED TWO HENT MENTAL HEALTH EXPERTS. IN FACT THEY WERE THE ONLY EXPERTS TO ADDRESS THE ISSUE THAT MR. CONNOR, AT THE TIME OF THE CRIMES, WAS UNDER THE INFLUENCE OF EXTREME MENTAL AND EMOTIONAL DISTURBANCE AND WAS SUBSTANTIALLY IMPAIRED, IN HIS CAPACITY TO ACT IN ACCORDANCE WITH THE LAW. THESE WERE THE ONLY EXPERTS WHO ADDRESSED THAT ISSUE. THEY WERE THE ONLY EXPERTS WHO ACKNOWLEDGED ANY KNOWLEDGE OF THE EXTENT OF THE CRIME. THE STATE, ALSO, CALLED ALANDO GARCIA, AND HE ANSWERED YES -- OR HE ANSWERED NO, WHEN ASKED IF THESE MENTAL HEALTH MITIGATORS APPLIED. DR. GARCIA RESPONDED NO AND, IN FACT, HE REQUIRES THOSE MITIGATORS APPLIED TO THE INSANITY. HE HAD ONLY BEEN ASKED TO EXAMINE MR. CONNOR, WITH RESPECT TO HIS SANITY AND COMPETENCE AND THAT IS ALL THAT HE APPLIED IT TO. ALTHOUGH HE HAD MENTAL HEALTH ISSUES, HE KNEW RIGHT FROM WRONG, AND THAT WAS THE COMPARATIVE NEGLIGENCE, AND, IN FACT, THE FACTS OF THE CASE, WHICH HAD BEEN INTRODUCED AT TRIAL AND THROUGH THESE EXPERTS, AND SUBSTANTIALLY CORROBORATE THE TESTIMONY OF DR. ICE ENSTEIN AND DOCTOR -- EISENSTEIN AND DOCTOR MARSBURG, AND, IN FACT, CONCLUDED THAT HE WAS, IN FACT, HAD NO MENTAL HEALTH --

NO LESS THAN 7 OR 8 PAGES ARE SPENT CAREFULLY ANALYZING ALL OF THE TESTIMONY, CONCERNING THE MENTAL ILLNESS, AND IN WHICH HE CONCLUDES THAT YOUR CLIENT DID SUFFER FROM MENTAL ILLNESS, AT THE TIME OF THE OFFENSE, AND, HOWEVER, DOES NOT FIND THAT IT IS IN THE CATEGORY OF SEVERE EMOTIONAL OR MENTAL ILLNESS, AND EXPLAINS, IN DETAIL, WHY SHE CONCLUDES THAT. NOW, WHAT IS IT -- AND BASICALLY LOOKS TO WHAT ELSE HE WAS DOING AROUND THAT TIME, TO SHOW THAT THIS WAS A -- A DELIBERATE, PLANNED ACT, AS OPPOSED TO THE SIMPLY THE ACT OF SOMEBODY THAT WAS UNDER AN EXTREME EMOTIONAL DISTURBANCE AT THAT TIME. HOW DO YOU -- HOW DO YOU GET AROUND THOSE PRETTY DETAILED FACTUAL FINDINGS?

THEY ARE DETAILED, BUT MOST OF THEM ARE WRONG. THE TRIAL COURT IS GETTING AROUND HIS MENTAL ILLNESS, BASICALLY, ONE, SHE -- AS THE JUDGE SAID, YOU KNOW, SHE CONCLUDED THAT IT DOES EXIST IN AREAS OTHER THAN THE CRIMES, AND ONE OF THE REASONS IS SHE DISCUSSES WHAT SHE THINGS ARE -- IS PREMEDITATION, INTENTIONALITY, EVIDENCE OF THAT SORT OF THING. ON THE RECORD, HERE, WHAT WE HAVE IS A CASE WHICH, CLEARLY, ON BOTH OF THESE MURDERS, WERE, IN FACT, UNPLANNED CRIMES. THERE IS NO EVIDENCE THAT, WHEN MR. CONNOR CAME TO THE HOUSE ON NOVEMBER 19, 1992, TO THE GOODINE RESIDENCE, HE HAD PLANNED TO MURDER ANYBODY, ESPECIALLY THESE TWO PEOPLE, LAWRENCE GOODINE AND JESSICA GOODINE. LAWRENCE WAS A MAN HE HAD NEVER QUARER HE WOULD WITH BEFORE. JESSICA WAS -- QUARRELED WITH BEFORE AND JESSICA WAS A GIRL, AND EVERYONE WAS IN UNIVERSAL AGREEMENT ABOUT THIS, HE LOVED AS HIS OWN CHILD. WHEN HE CAME TO THAT HOUSE, NOBODY SHOULD HAVE BEEN THERE. THIS WAS DURING WORKING HOURS. THIS WAS DURING SCHOOL HOURS. ACCORDING TO THE SCHEDULE OF THE HOUSEHOLD, THAT HE WAS AWARE OF, NOBODY SHOULD HAVE BEEN AT THIS HOUSE AT THAT TIME. HE CAME TO THIS HOUSE, PROBABLY, AS A RESULT TO PERPETRATE ANOTHER ONE OF HIS BURGLARIES, WHERE HE TAKES ONLY PERSONAL ITEMS OF MRS. GOODINE, HER MAKEUP, HER TOOTHBRUSH, THINGS OF THAT NATURE AND TAKES THEM BACK TO HIS COTTAGE. THAT APPEARS TO BE HIS NATURE. HOWEVER, MR. GOODINE SHOWS UP AT 2:30 IN THE AFTERNOON AND HIS REACTION TO THIS UNEXPECTED ENCOUNTER IS TO BLUDGEON MR. GOODINE TO DEATH. THERE IS NO EVIDENCE OF PLANNING HERE.

HE WAS NOT SENTENCED TO DEATH FOR --

THE TRIAL JUDGE IS LOOKING INTO THIS AND SAYING THIS WAS A DYE BOLCAL PLOT TO KILL LAWRENCE GOODINE, AND IT -- THIS WAS A DIABOLICAL PLOT TO KILL LAWRENCE GOODINE, AND WHEN JESSICA SHOWED UP LATER, HIS PLOT WAS TO ELIMINATE HER AS A WITNESS, AND THE EVIDENCE DOESN'T SUPPORT THAT CONTENTION, EITHER, BECAUSE WE KNOW THAT, WHEN JESSICA CAME TO THE HOUSEHOLD, SHE WAS ALLOWED TO GO BACK ACROSS THE STREET TO HER NEIGHBOR'S HOUSE AND TO ASK THE NEIGHBOR A QUESTION AND SAY I AM LEAVING NOW. SHE WENT BACK AND WAS SEEN LEAVING WITH MR. CONNOR. THE COURT SAYS A LOT OF THINGS ABOUT FORCIBLE ABDUCTION. NONE OF THAT WAS SUPPORTED BY THE RECORD. NONE OF IT.

NOW YOU ARE GIVING A DIFFERENT AGGRAVATOR.

AGAIN, I AM DIRECTING MYSELF TO WHAT THE TRIAL COURT RELIED ON. SHE IS RELYING ON A WRONG READING OF THE FACTS. SHE IS LOOKING AT FACTS WHICH DON'T EXIST. THIS EVIDENT INTENT TO ELIMINATE A WITNESS. WHAT WE HAVE IS DIRECTLY TO THE CONTRARY. WE HAVE EVIDENCE THAT HE WAS NOT EVEN THINKING OF ELIMINATING JESSICA GOODINE, AND THAT HE WAS TAKING HER -- WE DON'T KNOW FOR WHAT REASON, BUT WE KNOW FOR SURE HE WASN'T CONCERNED ABOUT HER AS A WITNESS, BECAUSE HE LET HER GO ACROSS THE STREET TO SPEAK TO THE NEIGHBOR, SO SHE COULD HAVE REPORTED, CLEARLY, AT THAT TIME. HE TAKES HER AND, ALL WE KNOW ABOUT THE CIRCUMSTANCES OF THE KILLING IS THAT IT WAS PRECEDED BY CRYING. THERE WAS A STRUGGLE. HE PUT HIS HAND FORCEFULLY OVER HER MOUTH, APPARENTLY TO QUITE HER, AND THEN HE STRANGLED HER, ALL CONSISTENT WITH AN

INSTINCTIVE PANIC RESPONSE AND, AGAIN, INCONSISTENT WITH THE COURT'S IDEA THAT THIS IS A COLD, CALCULATED KILLING. THIS IS A KILLING THAT WAS CAREFULLY PLANNED TO ELIMINATE A WITNESS, SO ALL OF THESE THINGS --

WASN'T THERE SOMETHING WITH REGARD TO DUCT TAPE AND THAT TYPE OF THING WITH THE CHILD?

THERE HAD BEEN A PIECE OF DUCT TAPE PUT ON HER MOUTH. WE DON'T KNOW WHEN, EXACTLY.

IS THAT CONSISTENT WITH YOUR THEORY THAT THIS IS JUST SOMETHING THAT HAPPENED?

IT IS CONSISTENT. THERE IS A LONG PERIOD OF TIME, WHICH INVOLVES ALMOST 24 HOURS. WE KNOW THAT HE TAKES HER -- IT APPEARS FROM THE RECORD THAT SHE WAS GOING VOLUNTARILY WITH HIM, AND AT THAT TIME HE WAS NOT CONCERNED WITH ELIMINATING A WITNESS. SUBSEQUENTLY, WE DON'T REALLY KNOW WHAT HAPPENED BETWEEN THEN. HE APPARENTLY TOOK HER TO HIS HOUSE. THINGS CHANGED. SHE WAS NO LONGER WILLING TO BE WITH HIM. WE DON'T KNOW AT WHAT POINT HE PUT THE DUCT TAPE ON HER MOUTH. WE KNOW THAT HE HAD NOT BOUND HER, AND AS THE TRIAL COURT RECOGNIZED, IN ARGUMENT WITH COUNSEL, THAT HE HAD NOT, REALLY, WRAPPED HER IN THIS ROPE FOR ANY PERIOD OF TIME, BECAUSE IT WAS THE PHYSICAL FACTS THAT WERE INCONSISTENT WITH THAT, SO AT SOME POINT, GETTING CLOSER TO THE MURDER, THINGS CHANGED BETWEEN HIM AND HER. AND THAT WE DO KNOW, FOR A FACT, THAT HE TOOK OFF THE DUCT TAPE. SHE WAS CRYING, CRYING, CRYING, AND WE HAVE TO LOOK BACK. THIS IS WHERE THE TRIAL COURT GOES WRONG. IGNORING ALL THE BASIC FACTS WE KNOW ABOUT THIS MAN, I MEAN, WE KNOW HIS MENTAL ILLNESS. WE KNOW HIS ORGANIC BRAIN DAMAGE AND WHAT THAT DOES TO HIM. WHATEVER DEGREE OF SEVERITY YOU WANT TO PUT ON THAT, WHAT IT DOES PUT ON HIM IS MAKE HIM UNABLE TO CONTROL HIS IMPULSES TO A GREAT EXTENT, ESPECIALLY WHEN UNDER STRESS. NOW, THE COURT IS IGNORING ALL OF THAT ARBITRARILY, REALLY, AND SAY, WELL, THAT JUST DOESN'T APPLY. I FOUND IT -- THIS WAS ALMOST LIKE MR. CONNOR HAD SUDDENLY HAD A MOMENT OF LUCIDITY AND COMMITTED THE WORST THING HE HAS EVER DONE IN HIS LIFE IN THAT MOMENT. THAT IS NOT -- IT IS NOT SUPPORTED BY THE RECORD, AND THAT IS WHY I WAS TRYING TO BRING BACK THE SEQUENCE AND WHAT THE EMOTIONAL DISTURBANCE WAS, BECAUSE IF YOU SEE HOW HE REACTED TO THE BREAK UP OF MARGARET GOODINE, WHICH WAS THE EMOTIONAL DISTURBANCE LASTING FOR MONTHS, YOU BEGIN TO UNDERSTAND HOW HE WOULD HAVE REACTED, WHEN LAWRENCE GOODINE CAME TO THE HOUSE, WHAT KIND OF STATE OF MIND HE HAD, WHEN JESSICA CAME TO THE HOUSE, WHAT KIND OF STATE OF MIND HE HAD WHEN HE MURDERED HER, BECAUSE FOR MONTHS AND MONTHS HE HAD BEEN OBSESSIVELY CONCERNED ABOUT THIS BREAK UP, AND IT WAS NOT JUST A MATTER OF PASSION ANGEL UZI. IT HAD A LOT TO DO WITH HIS MENTAL STATE AT THE TIME, WHICH I WAS SAYING, HE WAS BEGINNING TO BECOME A LITTLE DELUSIONAL. MARGARET GOODINE WAS NOT JUST HIS LOVER AND HIS MISTRESS. SHE WAS A PARTICIPANT IN THESE GREAT HOTEL PROJECTS. IT HAD A LOT TO DO WITH HIS STATUS. HE SAID HE SUPPORTED HER, EVEN THOUGH SHE DIDN'T HAVE TO. HE WAS MAKING MORE MONEY THAN SHE DID. AND HE HAD INVOLVEMENT WITH JESSICA, WHOM WE BELIEVE MAY HAVE BEEN HIS OWN CHILD, BECAUSE IN HIS MIND THE PREVIOUS RELATIONSHIP WITH MARGARET GOODINE HAD NEVER ENDED, AND HE REACTED WITH OBSESSIVE FASHION AND NOT ONLY THAT HE REACTED IN A PARANOID FASHION, BECAUSE WHEN THEY BROKE UP, HE DIDN'T ACCEPT THAT IT COULD HAVE ANYTHING TO DO WITH HIM. HE, NOW, INVENTS ANOTHER MAN.

I AM UNDERSTANDING WHAT MAY HAVE BEEN HIS UNDERLYING MOTIVE OF WHAT HAPPENED HERE. I AM TRYING TO UNDERSTAND HOW THIS ENDS UP, THEN, BEING THE MOST -- ONE OF THE MOST MITIGATED OF CASES, BECAUSE THAT IS WHAT YOU WERE SAYING THIS. IS AMONGST MOST MITIGATED. I MEAN, MANY OF THE DEFENDANTS, UNFORTUNATELY, THAT WE SEE, HERE, HAVE UNDERLYING MENTAL ILLNESS, WHICH IS WHAT LEADS THEM TO THE CRIME THEY COMMIT. I

DON'T -- WHAT IS IT ABOUT THIS 56-YEAR-OLD MAN KILLING ONE PERSON AND THEN KILLING A DEFENSELESS CHILD, THAT WOULD MAKE THIS GO INTO THE MOST MITIGATED CATEGORY, SINCE YOU CERTAINLY HAVE SOME -- THE AGGRAVATORS. I KNOW YOU SAID THE AVOID ARREST IS NOT THERE, BUT THERE IS KIDNAPPING, AND THERE IS, ALSO, THE TRIAL JUDGE FOUND CCP AS WELL.

WELL, THE SITUATION, WHERE -- AGAIN, HE -- IT APPEARS THAT, OF ALL PEOPLE, IF HE WAS GOING TO MURDER ANYBODY, IT WOULD NOT BE LAWRENCE GOODINE. IT WOULD NOT BE JESS I CAN CAME GOOD -- JESSICA GOODINE. HE WAS CONCERNED ABOUT MARGARET. HIS MENTAL ILLNESS CREATED THE SITUATION IN WHICH THESE THINGS HAPPENED. HIS SICK MIND CREATED THE SITUATION IN WHICH HE IS AT THE GOODINE HOUSE, STEALING TRINKETS, AND LAWRENCE GOODINE SHOWED UP. HIS MENTAL ILLNESS CREATED THAT, BECAUSE HIS MENTAL ILLNESS IS WHAT CREATED THE OBSESSION WITH MARGARET AND THE UNREASONABLE BREAKING UP AND CREATED A FANTASY, BECAUSE THERE WAS NO OTHER MAN INVOLVED, AND THE WEIRDNESS OF IT. THESE BURGLARIES THAT DON'T MAKE ANY SENSE. HIS BUYING A CADILLAC, WHICH WAS JUST LIKE MARGARET'S. THE TRIAL COURT THOUGHT THAT WAS EVIDENCE OF A DIABOLOCAL PLOT TO PURSUE THESE BURGLARIES UNOBSERVED, BUT CLEARLY HE HAD TOLD HER BEST FRIEND THAT HE WAS GOING TO DO THIS AND IN THE NEIGHBORHOOD HE WAS DRIVING THIS CAR, CLEARLY IN VIEW OF EVERYBODY, AND HE WAS CREATING ANOTHER FANTASY. IT WAS ANOTHER WEIRD THING HE WAS NOT GOING TO GIVE UP. IT WAS ALL A PART OF A PATTERN OF WEIRD BEHAVIOR AND OBSESSIVELY JEALOUS BEHAVIOR, AND HE WALKED INTO IT, AND MR. CONNOR, WITH THAT STATE OF MIND REACTS IMPULSIVELY, BECAUSE OF THE ORGANIC BRAIN DAMAGE HE HAS, AND HE DOES SOMETHING STUPID AND IRRATIONAL AND HE KILLS LAWRENCE. WE HAVE EVEN MORE IRRATIONAL AT THIS POINT, AND I EMPHASIZE THAT, UP TO THIS POINT WE SEE THAT IT IS A PRODUCT OF HIS MENTAL ILLNESS, EVEN THOUGH THE RESULT IS UNPLANNED. WE HAVE JESSICA WALKING INTO THE PICTURE, AND, NOW, HE DOES SOMETHING WHICH IS REALLY IRRATIONAL. HE TAKES HER WITH HIM. THAT MAKES NO SENSE, BECAUSE, AS I SAY, THE TRIAL COURT FOUND THE ONLY WAY REASON HE COULD HAVE TAKEN HER WAS TO ELIMINATE WITNESSES. THE FACTS SHOW HE WASN'T CONCERNED ABOUT THAT. NOT ONLY DID HE LET HER GO BACK INTO THE HOUSE, WE, ALSO, HAVE THE FACTS THAT SHOW THAT HE WASN'T EVEN THINKING ABOUT THE MURDER OF LAWRENCE GOODINE. HE JUST PUT THAT TOTALLY OUT OF HIS MIND.

WHAT IS OUR STANDARD OF REVIEW IN THIS REGARD? WHAT -- TO DO WHAT YOU ARE SUGGESTING, WHAT WOULD WE HAVE TO FIND, AS TO THE TRIAL COURT'S ORDER?

WELL, BASICALLY WE WOULD JUST HAVE TO REVIEW AND COMPARE THIS WITH OTHER CASES, AS TO THE NATURE OF THIS MITIGATION, AND EITHER AS TO ONE OF THE LEAST MITIGATED CASES OR IT IS NOT, AND I WOULD RELY UPON AND, ALSO, CONTRAST THIS WITH THE COOPER CASE.

BUT YOU ARE ASKING US TO DO A LITTLE MORE THAN A PROPORTIONALITY REVIEW, I GATHER, BY SAYING THAT THE JUDGE WAS WRONG. I MEAN THAT HER FINDINGS OF FACTS ARE NOT CORRECT?

BECAUSE THEY ARE NOT CORRECT. I MEAN, THERE IS A SEPARATE ISSUE AS --

IN THAT REGARD, WHAT IS OUR STANDARD OF REVIEW?

I BELIEVE YOUR HONORS, AS PART OF THE PROPORTIONALITY REVIEW, WOULD HAVE TO REVIEW THE FULL RECORD. IT IS NOT THE SAME TYPE OF DECISION THAT THE TRIAL COURT IS MAKING. IT IS NOT A QUESTION OF REWEIGHING THINGS, BUT IF THE FACTS ARE WRONG AS TO INTENT --

ARE YOU SAYING THERE IS NO EVIDENCE TO SUPPORT HER ANALYSIS AND FINDINGS OF FACT?

IN THESE PARTICULAR ISSUES, AS TO HIS INTENT AND WHETHER THAT SHOULD -- THE INTENT THAT SHE FINDS SHOULD TAKE -- MAKE US IGNORE HIS MENTAL ILLNESS, YES, SHE IS WRONG ABOUT THOSE THINGS, AND I DON'T THINK THIS COURT CAN IGNORE THOSE, BECAUSE IT IS CLEAR

FORWARD I AM NOT MAKING UP SOME OF THESE THINGS ABOUT JESSICA GOING OVER TO THE HOUSE. THE STATE, IN ITS BRIEF, ACKNOWLEDGES IT. THE COURT TOTALLY IGNORED THAT AND THE STATE, IN ITS ARGUMENT, IGNORED IT, BUT IT IS A FACT. HE LET'S THAT CHILD GO BACK ACROSS THE STREET. WHERE CAN THAT CONCLUDE THAT HE WAS IGNORING --

YOU ARE IN YOUR REBUTTAL TIME. YOU CAN SAVE IT. IT IS UP TO YOU.

MAY IT PLEASE THE COURT. MY NAME IS CHARMAINE MILLSAPS, REPRESENTING THE STATE IN THIS CASE. I WOULD LIKE TO END UP WHERE COUNSEL ENDED -- STARTED, BUT, FIRST, I WOULD LIKE TO TALK ABOUT THE AVOID-ARREST AGGRAVATOR. THIS COURT HAS, TRADITIONALLY AND CONSISTENTLY FOUND, WHEN YOU TAKE A VICTIM FROM THE ORIGINAL CRIME SCENE, SECRET THEM TO ANOTHER LOCATION AND SECRET THEM IN THAT SECOND LOCATION, AND THEN KILL THEM IN THAT SECOND LOCATION, THAT IS SUFFICIENT EVIDENCE OF AVOID-ARREST AGGRAVATOR, AND THAT IS WHAT WE HAVE HERE. THE TEN-YEAR-OLD GIRL STUMBLED UPON HER FATHER BEING KILLED. EXACTLY WHAT SHE SAW, WE DON'T KNOW. OBVIOUSLY SHE DIDN'T SEE IT, WHEN SHE WENT OVER TO THE NEIGHBOR'S HOUSE FOR THE SECOND TIME, BUT SHE DID SEE HIM THERE, AND WE KNOW THAT, BECAUSE HE DRIVES OFF WITH HER IN THE CAR. SO THE AVOID ARREST AGGRAVATOR IS, IN FACT ACTION HERE, UNDER THESE FACTS, BECAUSE HE TAKES HER FROM HER HOUSE, THE SCENE OF THE MURDER OF HER FATHER, BACK TO HIS OWN HOUSE, KEEPS HER IN THE COTTAGE FOR DAYS. SHE IS TAKEN ON A THURSDAY, AFTER SCHOOL, AND IS NOT FOUND UNTIL SATURDAY. SHE IS KILLED SOMETIME IN THAT TIME, AND THAT GETS ME TO THE SECOND POINT, ABOUT COLD, CALCULATED AND PREMEDITATED. SHE WAS, IN FACT, WE FOUND THE RESIDUE ON HER FACE OF DUCT TAPE. SHE WAS, IN FACT, HER MOUTH WAS COVERED WITH DUCT TAPE. SO HER CRYING COULD NOT HAVE LED TO THIS PANIC, THIS, JUST, JUST A RAGE, BECAUSE, IN FACT, HE HAS HER GAGED. IF SHE IS CRYING, IT IS VERY SILENTLY THROUGH THE TEARS. SHE IS NOT MAKING NOISE. THIS IS NOT THE CRYING OF A CHILD, LEADING TO SOME SORT OF AGGRAVATED CHILD ABUSE. THAT IS NOT WHAT IS GOING ON HERE. SHE IS GAGED. NOT ONLY IS THERE RESIDUE FOUND ON HER MOUTH, BUT THE DUCT TAPE IS FOUND IN THE COTTAGE. HE HAS MORE DUCT TAPE. IT IS NOT LIKE HE HAS RUN OUT OF DUCT TAPE. HE COULD JUST PUT THE DUCT TAPE BACK OVER HER MOUTH. SO MOREOVER, IT SEEMS SHE WAS KILLED, PROBABLY, IN THE WAKE OF DETECTIVE MORALIST -- MORALIS. DETECTIVE MORALIS WAS THE MISSING-PERSON'S DETECTIVE. OKAY. HE COMES OVER TO THE DEFENDANT'S HOUSE, EARLY FRIDAY, ABOUT 3:00 A.M., AND ASKS HIM IF HE KNOWS ANYTHING ABOUT THEY HAVE HAD A MISSING PERSONS REPORT, THE MOTHER OF THIS CHILD HAS REPORTED HER HUSBAND AND HER CHILD MISSING. AND SO THE DETECTIVE, THE MISSING PERSONS DETECTIVE, GOES OVER TO THE DEFENDANT'S HOUSE, AND ASKS IF HE KNOWS ANYTHING ABOUT THIS, SO HE, REALLY, PROBABLY KILLS THIS CHILD, ONCE HE REALIZES THAT HE IS A SUSPECT. OKAY. SO THAT --

IS IT YOUR POSITION THAT THERE CAN BE NO OTHER REASONABLE EXPLANATION FOR HIS TAKING HER AWAY AND STEALING HER?

YES. IT IS. ESPECIALLY WHEN HE -- THE TIMING IS PRETTY MUCH RIGHT AROUND WHEN THE MISSING PERSONS DETECTIVE COMES OVER AND STARTS ASKING HIM QUESTIONS. SO, GIVEN -- YES, THAT IS THE ONLY REASONABLE EXPLANATION FOR WHY HE TAKES HER. SHE CAN PUT HIM AT THE LOCATION OF HER HOUSE. IN OTHER WORDS AT THE SCENE AT THE TIME OF HER FATHER'S DEATH.

IT DOES NOT MAKE ANY DIFFERENCE THAT THE CHILD WENT ACROSS THE STREET, TO INDICATE THAT SHE WAS GOING TO HAVE TO GO SOMEWHERE, I THINK?

NO. SHE PROBABLY JUST HADN'T SEEN ANYTHING AT THAT POINT. REMEMBER, WHEN WE THINK SHE, REALLY, SEES THIS, THE FATHER'S BODY IS WRAPPED AND PUT IN THE BACK OF THE BLACK CADILLAC. SHE IS, THEN, IN THE CAR WITH IT. SHE PROBABLY SEES HER -- WHAT IS GOING ON.

WOULDN'T IT, IF THE PURPOSE OF THAT WAS TO ENSURE THAT SHE WOULD NOT TELL ANYTHING, ABOUT THAT, WOULDN'T IT BE CONSISTENT WITH REASON THAT HE WOULDN'T LET HER GO ACROSS THE STREET?

BUT IF SHE HASN'T SEEN ANYTHING, YET, WHAT DIFFERENCE DOES IT MAKE TO GO ACROSS THE STREET? SEE, IT IS PROBABLY JUST A MATTER OF TIMING. SHE, PROBABLY, HASN'T SEEN ANYTHING, WHEN SHE GOES ACROSS THE SECOND TIME, AFTER COMING HOME FROM SCHOOL.

BUT I GUESS, JUST NOLLING UP ON THAT -- JUST FOLLOWING UP ON THAT, JUST IN TERMS OF THE LOGIC ON THIS, IF SHE HADN'T SEEN ANYTHING, THEN -- WHY WOULD HE HAVE TAKEN HER IN THE VEHICLE,, TO BEGIN WITH?

SHE HASN'T SEEN ANYTHING TO TELL, BUT, REMEMBER, WITNESS ELIMINATION IS GOING TO HAD BEEN IN THE MIND OF THE DEFENDANT. WHILE SHE DOESN'T KNOW THAT HER FATHER HAS BEEN KILLED, PROBABLY, AT THE POINT, SHE DOES KNOW WHO IS IN HER HOUSE. SHE KNOWS THIS MAN. SHE KNOWS HIM VERY WELL. SHE CAN TELL THE POLICE, THE MINUTE THEY FIND OUT, OKAY, YOUR FATHER HAS BEEN KILLED, SHE CAN TELL THEM WHO WAS THERE THE. WHO WAS THERE WHEN YOU GOT HOME FROM SCHOOL, HONEY, THE POLICE SAY TO HER, AND SHE SAYS CONNOR. MR. CONNOR WAS THERE. SO WE DO THINK IT IS CONSISTENT THAT HE JUST LET HER GO ACROSS THE STREET. SHE -- PROBABLY LET HER GO ACROSS THE STREET --

WHAT IS THE BURDEN THAT HAS TO BE SHOWN, IT TO PROVE THIS AGGRAVATOR? WHAT IS THE BURDEN OF THE STATE TO PROVE THIS AGGRAVATOR, AND, I GUESS, CONSISTENT WITH THAT QUESTION IS WASN'T THERE SOME CONCERN EXPRESSED BY THE COURT THAT, EVEN IF THIS DID NOT EXIST, THE OTHER AGGRAVATORS WOULD, STILL, OUTWEIGH THE MITIGATORS.

THE COURT PUT THAT IN A FOOTNOTE. IT DID, INDEED, SAID THAT EVEN IN THE ABSENCE OF THE AVOID-ARREST AGGRAVATOR.

HOW ARE WE TO READ THAT?

WELL, I WOULD TAKE IT TO MEAN EXACTLY WHAT SHE SAID. EVEN IN -- SHE FOUND FIVE AGGRAVATING CIRCUMSTANCES. WHAT THE TRIAL JUDGE, HERE, IS SAYING, IS THAT SHE WOULD HAVE FOUND THE DEATH PENALTY, THE APPROPRIATE PENALTY, EVEN IF THERE WERE JUST FOUR, BECAUSE SHE HAS FOUND FIVE, AND EVEN IF YOU TAKE THE AVOID-ARREST AGGRAVATOR AWAY, SHE HAS FOUND FOUR.

BUT SHE DIDN'T SAY THAT IN REGARD TO ANY OF THE OTHER AGGRAVATORS.

NO. THAT IS TRUE. THAT IS THE ONE SHE SAID IT AS.

AND MY QUESTION IS HOW ARE WE TO READ THE FACT THAT SHE PUT THAT IN A FOOTNOTE?

DOES THAT -- DOES THAT GIVE US ANY COULD YOU THAT SHE MIGHT HAVE -- ANY CUE THAT SHE MIGHT HAVE SOME CONCERN ABOUT THIS?

EVEN IF SHE DOES, YOU COURTS HAVE HISTORICALLY HELD THAT, WHEN YOU MOVE SOMEBODY WHO HAS SEEN A CRIME TO A SECOND LOCATION AND THEN KILLED THEM, MOREOVER YOU HAVE TO TAKE IT -- IT IS IN THE WAKE OF DETECTIVE MORALIS. IT DOESN'T MATTER IF THE AVOID-ARREST AGGRAVATOR, IF THE FACTS AROSE IN THE HOME. WHAT ABOUT IF THEY AROSE IN THE WAKE OF DETECTIVE MORALIS AND THE DEFENDANT? HE HAS, NOW, GOT A CHILD IN HIS COTTAGE THAT IS KIDNAPPED, THAT CAN IDENTIFY HIM AS THE MURDERER OF HER FATHER, SO IF THE TRIAL COURT IS CONCERNED, I DON'T SEE, ON THOSE FACTS, THAT SHE SHOULD HAVE BEEN, BUT, ANYWAY, SHE DID FIND THAT, EVEN IN THE ABSENCE OF THE AVOID-ARREST MITIGATOR, SHE WOULD HAVE IMPOSEED THE DEATH PENALTY, BECAUSE OF THE FOUR OTHER AGGRAVATING

CIRCUMSTANCES SHE FOUND HERE.

WITH REGARD TO THE FINDING OF THE CHILD, THERE WAS AN INDICATION, IN THE TRANSCRIPT, HERE, ABOUT A SEARCH OF THE COTTAGE. SOMETIME BEFORE THE CHILD WAS ACTUALLY FOUND WRAPPED IN THE COMFORT OR, IF YOU WILL -- THE COMFORTER, IF YOU WILL, HOW DOES THIS THEORY FIT IN WITH WHAT THE STATE SAYS IS OCCURRING HERE. WHAT IS THE TIMING OF THE INITIAL SEARCH, BECAUSE IT SEEMED TO BE IN THE VERY OBVIOUS LOCATION, JUST DOWN BESIDE A BED OR SOMETHING, SO WOULD YOU SHARE, WITH US, A LITTLE BIT OF THE THEORY THAT GOES INTO SOME OF THE CCP AND THE OTHER ASPECTS?

NOW, SHE IS KEPT IN THE COTTAGE. DETECTIVE MORALIST COMES. THAT IS NOT WHEN HE SEARCHES THE COTTAGE. THAT FIRST TIME, THAT 3:00 A.M. ON SATURDAY MORNING, FRIDAY MORNING, OKAY, HE LEAVES. HE DOESN'T -- HE JUST ASKS QUESTIONS AND HE LEAVES. OKAY. SHE IS STILL IN THAT COTTAGE, AND WE DON'T KNOW WHETHER -- IT IS RIGHT AROUND THAT TIME SHE IS KILLED, ACCORDING TO THE MEDICAL TESTIMONY. THEN, THE NEXT MORNING, 2:00 A.M. SATURDAY, IS WHEN THEY COME BACK. WHAT HAPPENS IN THE MEANTIME IS THEY FIND THE BODY OF HER FATHER BY THE AIRPORT. THEY, NOW, HAVE PROBABLE CAUSE. THE MINUTE THEY IDENTIFY THAT BODY AS HER FATHER'S BODY, THEY HAVE PROBABLE CAUSE TO ARREST MR. CONNOR. BUT THEY DON'T DO. THAT THEY JUST GO OVER TO THE HOUSE. THEY KNOCK ON THE DOOR -- BASED ON WHAT? WOULD THEY HAVE PROBABLE CAUSE TO ARREST HIM?

YES.

BASED ON WHAT? THEY DON'T HAVE ALL THIS EVIDENCE AND ALL OF THE BLOOD AND STUFF.

NO, THEY DON'T.

PROBABLE CAUSE TO ARREST HIM FOR THE MURDER OF THE FATHER, BASED ON WHAT?

JUST BASED ON THE FACTS THAT THEY SEE HER. REMEMBER THE POLICE DO NOT HAVE TO KNOW THE EXACT CRIME. IT IS ANY FELONY. SO THEY HAVE, AT THE TIME THEY IDENTIFY THE FATHER, THEY KNOW A MURDER HAS BEEN COMMITTED. THEY KNOW THE PERSON WHO WAS LAST SEEN WITH JESSICA. THEY WERE REPORTED MISSING TOGETHER. AND THEN THEY GO OVER TO THE HOUSE, AND THEY SEE BLOOD IN THE HOUSE OF THE GOODINES, OKAY, SO THEY SEE, THEY, NOW, KNOW THAT THE HOME IS THE MURDER SCENE. SO EVEN BEFORE THIS SEE THAT BLOOD EVIDENCE IN THE CAR, IN THE BACKSEAT OF HIS CADILLAC AND OTHER PLACES IN THE CADILLAC, THEY HAVE PROBABLE CAUSE. THEY KNOW A CHILD IS MISSING. THE ONLY REASONABLE EXPLANATION FOR THAT CHILD, OTHER THAN HER BEING ABDUCTED, IS THAT HER FATHER AND HER WENT SOMEWHERE. WE, NOW, KNOW HER FATHER AND HER DID NOT GO SOMEWHERE. SHE IS, NOW, IN THE HANDS OF SOMEBODY WHO HAS KIDNAPPED HER AND WHO HAS MURDERED HER FATHER.

SO ARE YOU, ALSO, SAYING THERE IS AN ISSUE HERE. WHETHER OR NOT EVIDENCE SHOULD HAVE BEEN SUPPRESSED, BECAUSE THE DEFENDANT WAS UNDER ARREST, ALTHOUGH THE STATE MAINTAINS HE WAS NOT ARRESTED, ARE YOU MAINTAINING THAT, WHEN THE POLICE CAME TO THIS HOUSE AT 2:00 A.M. AND ASKED -- AND SAID WE NEED YOU TO COME TO THE POLICE STATION, THAT THEY HAVE PROBABLE CAUSE AT THAT POINT?

YES. THEY HAD PROBABLE CAUSE, BECAUSE THEY HAD -- BY THAT TIME, THEY KNEW THE IDENTITY. THEY KNEW THE FATHER HAD BEEN KILLED. REMEMBER HOW LOW A STANDARD PROBABLE CAUSE IS. IT IS NOT EVEN MORE LIKELY THAN NOT. IT IS JUST A FAIR PROBABILITY. THEY, NOW, HAVE -- THEY KNOW A CRIME HAS BEEN COMMITTED. THEY KNOW WHERE THAT CRIME HAS BEEN COMMITTED. OKAY. AND THEY KNOW THAT THE LITTLE GIRL WAS AT THAT HOUSE.



IT IS NOT CORRECT THAT THE STATE SAID THEY DID NOT HAVE PROBABLE CAUSE, BUT THAT THIS WAS A CONSENTUAL ENCOUNTER, BETWEEN --

YES. EITHER WAY. EITHER WAY. WE -- OUR POSITION IS THAT WE, IN FACT, GOT CONSENT. WE WENT IN HIS HOUSE TO FINISH THE TIME LINE HERE. AT 2:00 A.M., WE KNOCK ON THE DOOR. EVERYBODY ADMITS, THAT WAS THE TESTIMONY AT THE MOTION TO SUPPRESS, THAT WE KNOCKED ON THE DOOR. WE WERE INVITED IN. THE POLICE ARE, THEN, INVITED IN. THEY ASK HIM TO COME DOWN TO THE STATION. OKAY. HE SAYS, DO YOU NEED -- DO WE NEED TO DO IT NOW? THE COPS SAY, YES, WE NEED TO DO IT NOW. WHAT THEY MEAN, BY THAT, IS WE NEED TO DO IT NOW, BECAUSE A CHILD IS MISSING. A CHILD'S LIFE IS AT STAKE. WE CANNOT WAIT UNTIL THE MORNING. THAT IS WHAT THE DEFENDANT IS ASKING. CAN'T THIS WAIT UNTIL THE MORNING? AND THEY ARE SAYING, NO, IT CAN'T WAIT UNTIL THE MORNING, BECAUSE A CHILD'S LIFE IS AT STAKE. WE MAY NOT OBTAIN THAT IS CONSENTUAL, BUT IT DOESN'T EVEN MATTER IF IT IS NOT, BECAUSE WE HAD PROBABLE CAUSE, BEFORE WE SAW THE BLOOD EVIDENCE. WHAT HAPPENED AFTER THEY ASKED HIM TO COME TO THE STATION IS THE COPS GO OUTSIDE AND WAIT BY THEIR CAR AND LET HIM GO INTO HIS OWN BEDROOM, WHICH IS NOT CONSISTENT WITH BEING UNDER ARREST, AND LET HIM CHANGE HIS CLOTHES, AND AS HE WALKS OUT, THEY ASK FOR CONSENT TO EXAMINE HIS CAR. THEY LOOK AROUND AND LOOKING ANY PLACE A CHILD CAN BE AND THEN AT THE FIND THE BLOOD. THE POLICE OFFICER, AT THAT TIME, HAD PROBABLE CAUSE TO ARREST HIM.

AT WHAT POINT DID THEY GIVE HIM THE MIR AND A WARNINGS.

IT WAS SIGNED MIRANDA WARNINGS, BUT EVEN BEFORE THAT, DOWN AT THE STATION, THEY GIVE HIM.

WHAT WAS CHANGED, BETWEEN WHEN THEY CAME TO THE HOUSE AND WHEN THEY HAD HIM SIGN MIRANDA WARNINGS AT THE STATION, TO -- WHAT CIRCUMSTANCES CHANGE?

SHE SEES THE BLOOD IN THE CAR. AS THEY ARE WALKING OUT, SHE ASKS PERMISSION, AND GETS WRITTEN CONSENT, TO SEARCH THE CAR. THE OFFICER, THEN, SEES BLOOD IN THE CAR.

SHE, THEN, SAYS TO HIM, NOW, YOU ARE UNDER ARREST?

NO. SHE DIDN'T SAY. THAT SHE JUST CONTINUED WITH WHAT SHE CONSIDERED. SHE DIDN'T THINK SHE NEEDED TO. BUT SHE DOES, DEFINITELY, HAVE PROBABLE CAUSE THEN.

WAS THEIR TEST MONEY OF ONE OF THE OFFICERS THAT IT WAS HIGHLY UNLIKELY THAT HE COULD HAVE REFUSED THE INVITATION TO GO TO THE POLICE STATION?

WELL, SHE DOES SAY -- NO. ACTUALLY HER TESTIMONY, AND BY HER, LET ME EXPLAIN WHO, DETECTIVE TIMES, WHO WAS THE LEAD INVESTIGATOR OF THE HOMICIDE UNIT, ONCE THEY FIND THE FATHER, SHE IS CALLED IN, BECAUSE THIS IS, NOW, A HOMICIDE. SHE SAYS SHE DOESN'T THINK SHE HAD PROBABLE CAUSE. THE STATE WOULD DISAGREE. THEY HAD PROBABLE CAUSE, THE MINUTE THEY SAW THE BLACK CADILLAC IN THE FRONT -- IT WAS PARKED IN THE FRONT OF THE HOUSE. THE DEFENDANT'S HOUSE. BUT SHE TESTIFIED SHE DIDN'T THINK SHE HAD PROBABLE CAUSE, SO SHE WAS ASKING HIM TO COME DOWN. SHE THINKS SHE ONLY GOT PROBABLE CAUSE, THE OFFICER, WHEN SHE SAW THE BLOOD IN THE CAR, WHICH SHE GOT VIA CONSENT H THERE IS A WRITTEN CONSENTUAL FORM, WHICH IT DOESN'T HAVE TO INCLUDE, THE RIGHT TO REFUSE. GOING BACK TO YOUR QUESTION OF WHAT HAPPENS THEN. THEY TAKE HIM DOWN TO THE STATION. WHEN HE CHANGES CLOTHES, HE CHANGES CLOTHES BACK INTO THE SHOES AND SOX HE WAS WEARING AT SOME POINT EARLIER. THEY HAVE BLOOD ON THEM. THEN THEY ASK IF THEY CAN SEARCH. THEY HAVE ALREADY SEARCHED THE CAR, AS THEY WERE GOING OUT TO GO DOWN TO THE POLICE STATION. THEN THEY ASK IF THEY CAN SEARCH THE HOUSE. OKAY. AND THEY GET WRITTEN CONSENT, FROM HIS WIFE AND FROM, EVEN, HIS DAUGHTER, OKAY. THEY,

ALSO, ASKED TO SEARCH THE COTTAGE. SHE GOES AND GETS THE KEYS. HE IS DOWN AT THE STATION. OKAY. HE, ALSO, CALLS. ALL THREE PEOPLE HAVE GIVEN THEM CONSENT TO SEARCH THE HOUSE AND THE LITTLE COTTAGE, AND THAT IS ALL IN WRITING. OKAY. SO THEN WE SEE, ALSO, WHEN THEY SEARCH THE HOUSE, THEY FIND, IN THE BEDROOM, THE CLOTHES HE WORRY ON THURSDAY. ON THOSE -- HE WORE ON THURSDAY. ON THOSE CLOTHES IS THE BLOOD OF LAWRENCE GOODINE. OKAY.

IF HE HAD BEEN ARRESTED, WHEN THE DETECTIVES CAME AND SAID YOU ARE NOW UNDER ARREST, WHAT DOES THE LAW SAY ABOUT THE -- THEREAFTER ABOUT, QUOTE, VOLUNTARY CONSENT? IN OTHER WORDS IS THERE A DIFFERENT TYPE OF DISCUSSION THAT YOU HAVE, BEFORE YOU ARE GOING TO, THEN, BE ABLE TO SEARCH SOMEBODY'S VEHICLE OR THEIR HOUSE, AFTER YOU HAVE PLACED THEM UNDER ARREST?

NO. IT IS JUST INFORMED CONSENT. WHAT THEY ARE ARGUING, THEIR ARGUMENT, WHOLELY, GOES TO LACK OF PROBABLE CAUSE. THAT IS WHAT THEY ARE SAYING. TAINTED ALL THESE SEARCHES AND ALL OF THESE WRITTEN CONSENTS. THEY ARE SAYING WE LACKED PROBABLE CAUSE AT THE MOMENT WE ARRESTED HIM. WE ARE SAYING, A, IT WAS CONSENTUAL, AND, B, WE HAD PROBABLE CAUSE.

I GUESS I AM THINKING MORE OF THE MIR AND A SITUATION, THAT, UNLESS THERE IS GOING TO AND INTERROGATION, WHICH IS THAT YOU DON'T HAVE TO GIVE MIRANDA WARNINGS. YOU ARE SAYING THERE IS NOT A SIMILAR REQUIREMENT, EARLIER ON, BEFORE, WHEN YOU COME TO SOMEONE'S HOUSE WHO YOU THINK IS A SUSPECT, THAT YOU, IF YOU -- IF THERE IS -- IF YOU HAVE THEM AS A SUSPECT AND YOU ARE ABOUT TO ARREST THEM, YOU CAN'T, FIRST, SAY, WELL, LISTEN, LET ME SEE WHAT ELSE I CAN SEARCH VOLUNTARILY, BEFORE I ARREST THEM, SORT OF TO LULL THEM INTO A FALSE SENSE OF SECURITY? IS THERE ANY LAW?

NO. THERE IS NO -- I THINK WHAT YOUR HONOR IS ASKING IS, IS THERE SUCH A CONCEPT AS SUPER CONSENT, AND THE ONLY THING THAT I CAN THINK OF THAT EVEN GOES BEYOND JUST NORMAL VOLUNTARY CONSENT, IS GIVING YOU THE RIGHT, INFORMING THAT YOU HAVE THE RIGHT TO REFUSE, AND, IN FACT, THAT WAS GIVEN IN THIS CASE, SO, NO, YOUR HONOR, THERE ARE WHAT -- THEY ARE ARGUING THAT WHAT TAINTS THIS CONSENT IS THE LACK OF PROBABLE CAUSE.

THEY ARE NOT LACKING CONSENT?

THEY ARE SAYING THE ORIGINAL ARREST LACKED PROBABLE CAUSE. THEY ARE SAYING THERE WAS AN ARREST INSIDE THE HOUSE AND THERE WAS NO PROBABLE CAUSE, AND THAT TAINTS ALL OF THE SUBSEQUENT CONSENTS, AND WE ARE SAYING, A, IT WAS CONSENTUAL, SO IT CAN'T TAINT ANYTHING, AND, SECONDLY, THAT WE HAD PROBABLE CAUSE, SO IT CAN'T TAINT ANYTHING. IT IS ONLY WHEN YOU HAVE A LEGAL ARREST THAT IT TAINTS THE SUBSEQUENT CONSENTS, AND WE HAVEN'T GOTTEN THAT HERE. REMEMBER WE, ALSO, PROBABLE HAD SOMETHING ELSE. WE HAD EXGENT CIRCUMSTANCES. WE PROBABLE DIDN'T EVEN NEED A WARRANT FOR EITHER THIS HOUSE OR THIS COTTAGE. EXI GENT CIRCUMSTANCES CAN, ALSO, BE BEEN KNOWN AS THE KIDNAPPING. WE DIDN'T EVEN NEED HIS CONSENT TO SEARCH EITHER THE MAIN RESIDENCE OR THE COTTAGE. AS TO THE PROPORTIONALITY, I WANTED TO ANSWER YOUR HONOR'S QUESTION. THESE ARE FACTUAL FINDINGS. OKAY. SO YOUR STANDARD OF REVIEW TO FIND THE TRIAL COURT'S ORDER WAS ERRONEOUS. YOU ARE GOING TO HAVE TO SAY THAT, WHAT THE TRIAL COURT DID, WHEN IT FOUND NONSTATUTORY MITIGATION, INSTEAD OF STATUTORY MITIGATION, AND, IN FACT, THE TRIAL COURT GAVE THAT STATUTORY MITIGATION SUBSTANTIAL WEIGHT. THAT IS THE TERM SHE USED, SUBSTANTIAL WEIGHT. OKAY. BUT YOU ARE GOING TO HAVE TO FIND THAT YOUR STANDARD OF REVIEW IS COMPETENT AND SUBSTANTIAL EVIDENCE, BECAUSE THIS IS A FACTUAL FINDING, AND BASICALLY WHAT HAPPENED HERE IS WE NOT ONLY HAD THE TESTIMONY OF THE PEOPLE, THE PSYCHIATRIST AND THE EXPERTS, WHO TESTIFIED AT

PENALTY PHASE, BUT THE TRIAL COURT, ALSO, CONSIDERED THE EXPERTS WHO HAD TESTIFIED EARLIER. CONSIDERED THEIR TESTIMONY. THEY HAD TESTIFIED AS TO COMPETENCY. THERE HAD BEEN TWO PRIOR COMPETENCY HEARINGS, ONE DURING THE MIDDLE OF THE MOTION TO SUPPRESS. THE TRIAL JUDGE STOPPED THE MOTION TO SUPPRESS. IT IS KIND OF HARD TO TELL, ON THE RECORD, EXACTLY WHY, BUT THE DEFENDANT SEEMED TO HAVE MORE TROUBLE THAN BE NORMAL EXPRESSING HIM -- THAN NORMAL, EXPRESSING HIMSELF. THE TRIAL JUDGE STOPPED THE SUPPRESS HEARING AND STARTED THE COMPETENCY HEARING. AND AT THE ORIGINAL TRIAL POINT, THEY STOPPED. THAT THE ORANGE A.M. HIGHLY TRIAL WAS GOING -- THE ORIGINAL TRIAL WAS GOING TO BE HELD IN JUNE AND THEY STOPPED THAT, STOPPED THE TRIAL TO HOLD ANOTHER COMPETENCY HEARING, SO THERE WERE NUMEROUS EXPERT WITNESSES THAT THIS TRIAL COURT LISTENED TO, OKAY, AND, ALSO, HAD EXTENSIVE CONTACT WITH THE DEFENDANT, HERSELF. OKAY. SO SHE IS EVALUATING THIS EXPERT TESTIMONY, IN LIGHT OF HER OWN EXPERIENCES WITH THE DEFENDANT. AND THE TESTIMONY IS, AS YOU CAN WELL IMAGINE, RUNS THE GAMUT. EVERYTHING FROM THERE IS ABSOLUTELY NOTHING WRONG WITH THE DEFENDANT, TO THE TWO EXPERTS WHO TESTIFIED THAT HE WAS PARANOID SCHIZOPHRENIC. THE TWO THAT THE TRIAL COURT SEEMS TO HAVE RELIED ON THE MOST WERE DR. JACOBSEN AND DR. GARCIA. DR. JACOBSEN WAS A COURT-APPOINTED EXPERT, AND -- WHO HAS TESTIFIED, BEFORE, AND WHO THIS TRIAL COURT, IN HER ORDER, SAYS I KNOW THIS EXPERT -- THIS EXPERT, SO SHE RELIED ON DR. JACOBSEN, AND, ALSO, DR. GARCIA, AND WHAT THEY FOUND WAS SHE REJECTED THE IDEA THAT THERE WASN'T ANYTHING WRONG WITH THE DEFENDANT AND WENT, PRETTY MUCH, IN THE MIDDLE, WITH THE EXPERTS THAT SHE KNEW. DR. GARCIA WAS A FORENSIC PSYCHIATRIST. OKAY. SO SHE IS BASICALLY GOING WITH THE EXPERTS THAT SHE KNOWS AND THE EXPERT WHO IS --

WERE THESE EXPERTS EXAMINING THE DEFENDANT -- EXPERTS EXAMINING THE DEFENDANT FOR PURPOSES OF MITIGATION OR DID THEY EXAMINE -- ARE THESE THE DOCTORS WHO EXAMINED HIM FOR PURPOSES OF COMPETENCY?

OKAY. THEY OVERLAP. SO IT IS HARD FOR ME TO ANSWER YOUR QUESTION, WITHOUT GOING THROUGH EXPERT BY EXPERT, BUT THE ONES I AM TALKING TO, FOR INSTANCE --

I AM TALKING ABOUT THE ONE SHE RELIED ON.

DR. JACOBSEN, ONE OF THE ONES THAT SHE RELIED ON WAS DR. JACOBSEN, WAS COURT COURT-APPOINTED, FOR THE PURPOSE OF COMPETENCY, BUT THE TRIAL COURT, IN HER ORDER, SPECIFICALLY SAYS, LOOK, I KNOW THE DIFFERENCE BETWEEN COMPETENCY AND THESE STATUTORY MITIGATORS. I AM USING THE MEAT, THE SUBSTANCE OF WHAT THEY ARE TESTIFYING TO, NOT THEIR LEGAL CONCLUSION ON COMPETENCY OR NOT COMPETENCY. SHE IS REACHING THROUGH AND ACTUALLY GOING TO THE MEAT OF THEIR TESTIMONY AND ANALYZING IT, UNDER THE CORRECT STANDARD. SHE MAKES THAT VERY CLEAR, IN HER TRIAL COURT ORDER, THAT SHE IS USING THIS TESTIMONY FOR THE SECONDARY PURPOSE. REMEMBER, AT ISSUE, WHETHER IT IS COMPETENCY OR STATUTORY MITIGATOR OR NONSTATUTORY MITIGATOR, IT IS BASICALLY THE SAME THING, THE DEFENDANT'S MENTAL HEALTH, OKAY, SO SHE IS USING THAT TESTIMONY JUST TO DETERMINE THAT. NOW, THE SECOND EXPERT SHE RELIES ON THE MOST, DR. GARCIA, IN FACT, DOES TESTIFY IN THE PENALTY PHASE, OKAY, SO WE HAVE GOT ONE OF EACH, REALLY. HE BASICALLY SAYS THIS IS A VERY MITIGATED CRIME, BUT, IN FACT, THERE WERE FIVE AGGRAVATORS, AND OF THE FOUR MITIGATORS, MOST WERE GIVEN -- THREE OF THEM WERE GIVEN VERY LITTLE WEIGHT. THEY WERE THINGS LIKE HE WAS A GOOD FATHER. HE WOULD SPEND THE REST OF HIS LIFE IN JAIL. HE HAD NO DR'S. HE WAS A MODEL PRISONER. SO THE ONE MITIGATOR THAT THE TRIAL COURT DID FIND THAT HE SUFFERS FROM ORGANIC BRAIN SYNDROME, THOSE ARE HER WORDS, AND SOME PARANOID FEATURES, SHE GAVE SUBSTANTIAL WEIGHT. SHE JUST DID NOT FIND THAT IT -- THAT THE -- WHAT SHE FOUND WAS THE AGGRAVATORS OUT WEIGHED THAT ONE SUBSTANTIAL MITIGATOR. OKAY. AND ONCE AGAIN, WHEN YOU HAVE THE -- ALL THESE EXPERTS THAT THE TRIAL JUDGE IS FACED WITH, THIS TRIAL JUDGE DID EXACTLY WHAT A TRIAL JUDGE, ANY TRIAL JUDGE, WOULD DO, AND THERE IS

NOTHING WRONG WITH HER FACTUAL FINDINGS HERE. SHE WAS PRESENTED WITH NUMEROUS TESTIMONY. SHE EVALUATED, IN LIGHT OF HER OWN DETERMINATION OF THE CREDIBILITY OF THESE EXPERTS, BOTH THEIR EXPERTISE AND THE FACT THAT THEY WERE COURT-APPOINTED, AND THEN COMES TO THE CONCLUSION THAT THERE IS SOME MENTAL ILLNESS, ON THE PART OF THE DEFENDANT. BUT NOT ENOUGH TO MITIGATE THESE CRIMES. AND, FOR INSTANCE, WE WOULD ARGUE SHE IS NOT EVEN WRONG ON THE FACTS. HE DID, IN FACT, BUY A BLACK CADILLAC, ABOUT 30 DAYS BEFORE THIS CRIME. YOU KNOW, THERE IS VERY OTHER LITTLE POINT IN BUYING THE EXACT MAKE, MODEL AND YEAR, A 1986 BLACK CADILLAC, THAN TO ENGAGE AND BE ABLE TO PARK THAT CAR OUTSIDE THE HOUSE, WITHOUT THE NEIGHBORS BEING SUSPICIOUS. SO THE TESTIMONY, IN FACT, DOES SUPPORT THE TRIAL COURT'S REASONING ON ALL THE ISSUES, AS TO --

WHAT WAS THE STATE'S THEORY, WITH REFERENCE TO THE MURDER OF LAWRENCE AND THEN -- AND WHAT WERE THE TRIAL COURT'S FINDING, IN THAT REGARD? THE STATE'S THEORY, AS FAR AS THE MURDER OF LAWRENCE.

WELL, THE STATE'S THEORY WAS THAT HIS CAR WAS PARKED OUTSIDE, SO THE STATE'S THEORY WAS THAT IT WAS PREMEDITATED, AND THE FACT THAT I AM ASSUMING YOUR HONOR MEANS DID HE KNOW THAT THE DEFENDANT, THAT THE VICTIM WAS THERE, IN THE HOUSE, AND, YES, THAT WAS OUR THEORY, THAT HE, IN FACT, WENT IN. THE DEFENDANT -- THE VICTIM'S CAR WAS PARKED OUT FRONT, AND SO HE WOULD HAVE KNOWN THAT THE VICTIM WAS IN.

SO THE STATE'S THEORY WAS THAT HE PLANNED THE MURDER OF LAWRENCE, OUT OF, WHAT, JEALOUSY, OR OUT OF INTERFERENCE IN HIS LIFE, OR, IN OTHER WORDS, WHAT WAS THE THEORY, HERE? WHAT WAS GOING ON?

TO GET BACK WITH MRS. GOODINE. TO GET BACK IN THE RELATIONSHIP WITH MRS. GOODINE.

TO REMOVE LAWRENCE AS AN OBSTACLE TO THAT?

TO THAT RELATIONSHIP.

WAS THERE OTHER EVIDENCE IN THAT REGARD, THAT IS WAS THERE OTHER EVIDENCE OF THREATS AGAINST LAWRENCE OR STATEMENTS THE DEFENDANT MADE?

YES. HE MADE STATEMENTS TO ONE OF THE NEIGHBORS THAT I AM GOING TO PUT HIM OUT OF HIS MYSTERY. OKAY -- OUT OF HIS MISER I. SO THERE WERE -- OUT OF HIS MISERY, SO THERE WERE, IN FACT, STATEMENTS.

WHEN DID THESE STATEMENTS GET MADE, IN REGARD TO --

YOUR HONOR, I DON'T KNOW. IT WAS BEFORE.

CLOSELY BEFORE?

THAT IS NOT -- NOW, WE DO KNOW THAT THE BREAK UP OCCURRED EIGHT TO NINE MONTHS BEFORE THE CRIME, SO IT WAS SOMETIME WITHIN THAT PERIOD, BUT THE NEIGHBOR, IF I REMEMBER THE TESTIMONY CORRECTLY, DOES NOT TESTIFY TO EXACTLY WHEN THIS IS. THAT TESTIMONY IS VERY LOOSE, AS TO TIME, BUT IT IS PRIOR TO THE MURDERS, AND WITHIN THE YEAR.

WAS THERE ANY TESTIMONY ABOUT OPEN HOSTILITY, BETWEEN THE DEFENDANT AND LAWRENCE? THAT IS OF -- IN CONFRONTATIONS OR --

NO. MRS. GOODINE TESTIFIED SHE DIDN'T LIKE THEM TOGETHER. SHE WAS AFRAID SOMETHING WOULD HAPPEN, BUT, IN FACT, WHEN THEY WERE TOGETHER THE FEW TIMES, FOR WHAT SEEMS

RATHER SHORT PERIODS OF TIME, THAT THERE WAS NO ANIMOSITY. THEY DID NOT FIGHT, AT LEAST, IN THOSE PERIODS OF TIME. THEY DID NOT FIGHT, IN THOSE PERIODS OF TIME. BUT WE DON'T KNOW WHEN THAT WAS. FOR INSTANCE, IF THAT IS WHEN MR. GOODINE WAS A WAY FROM THE HOUSE AND NOT LIVING WITH THEM, THEN THAT WOULD PUT A DIFFERENT LIGHT ON THE LEVEL OF HIS JEALOUSY SURROUNDING THOSE INCIDENCES. IF HE IS THE ONE AT THE HOUSE, MR. GOODINE, THE VICTIM, HAS BROKEN UP WITH HIS WIFE AND MOVED OUT, AND THEN HE MOVES BACK IN, PRIOR TO THESE MURDERS, SO IF THOSE INTERACTIONS OCCURRED, WHILE THE RELATIONSHIP WAS STILL GOING ON, WITH THE DEFENDANT, MR. CONNOR, THEN HE WOULD HAVE NO REAL REASON TO BE JEALOUS, SO THAT DOESN'T NECESSARILY SHOW US ANYTHING ABOUT HOW HE, REALLY, FELT ABOUT THIS VICTIM. BECAUSE WE DON'T KNOW THE TIMING OF WHEN THOSE -- WHEN THOSE MEETINGS OCCURRED. OKAY. WE WOULD ASK THAT YOU WOULD AFFIRM THE, BOTH THE CONVICTIONS AND THE SENTENCES IN THIS CASE. THANK YOU.

THANK YOU. MR. CAMPBELL.

JUST BEGINNING WITH THE LAST POINT, THERE ACTUALLY WAS NO REASON AT ALL TO KILL LAWRENCE GOODINE. IN FACT, CERTAINLY NOT THE REMOVAL OF HIM AS AN OBSTACLE. CERTAINLY NOT BECAUSE OF JEALOUSY. IN FACT, MR. GOODINE HAD BROKEN UP, YEARS BEFORE, WITH HIS WIFE, MARGARET, AND MR. CONNOR KNEW THIS, AND HE WAS IN NO WAY A RIVAL OF MR. CONNOR. A.M. REDUCE RELATIONS WERE NEVER REESTABLISHED. NOT ONLY THAT, BUT IT WAS MR. CONNOR WHO BROUGHT HIM BACK INTO THE PICTURE. THE REASON MR. GOODINE HAD COME BACK TO THE HOUSE, AT LEAST TEMPORARILY, WAS BECAUSE MR. CONNOR TOLD MARGARET, I WILL STOP BOTHERING YOU IF LARRY COMES BACK, IF YOU GET BACK TOGETHER WITH LARRY. WHICH IS TOTALLY INCONSISTENT WITH ANY IDEA THAT HE WAS TRYING TO ELIMINATE LARRY. LARRY WAS OUT OF THE PICTURE. MR. CONNOR BROUGHT HIM BACK IN.

WAS THAT, THOUGH, THE STATE'S THEORY, AND DID THEY PRESENT EVIDENCE TO SUSTAIN IT? FIRST OF ALL, WAS THAT THE STATE'S THEORY AT TRIAL?

THEY HAD ONE, YES.

AND WAS THEIR TEST MONEY AFTER NEIGHBOR OR SOMEBODY THAT SAID THAT THERE WAS BAD BLOOD BETWEEN THEM, AND THAT YOUR CLIENT HAD THREATENED HIM BEFORE?

NO. THERE HAD BEEN TESTIMONY OF ONE OF MARGARET GOODINE'S FRIENDS, WHO SPOKE VERY OFTEN WITH MR. CONNOR, THAT HE WOULD SAY THINGS LIKE I AM GOING TO PUT LARRY OUT OF HIS MYSTERY -- OUT OF HIS MISERY, BUT THESE ARE BIZARRE STATEMENTS, AS WELL, BECAUSE HE SAID I DON'T LIKE WHAT MARGARET IS DOING TO LARRY, WHICH IS KIND OF A BIZARRE, NONSENSICAL STATEMENT TO MADE. I WOULD LIKE TO STATE THAT, ALTHOUGH HE PUT HIM BACK IN THE PICTURE, MR. CONNOR GOT THE IDEA, AS WELL, THAT PERHAPS MR. GOODINE WAS -- PUT DOWN A VOODOO TO BREAK HIM AND MARGARET UP. THE MAN IS CONFUSED, AND I THINK THAT IS MY PRIMARY POINT. THE TRIAL COURT IGNORES THE IRRATIONALITY OF A LOT OF HIS BEHAVIOR IN THESE MONTHS LEADING UP TO THE MURDER, BUT THAT IRRATIONALITY IS PATENT. WE HAVE HIM BRINGING LARRY BACK IN BUT THEN THINKING MAYBE IT WAS ALL HIS FAULT. WE HAVE HIM SAYING I AM GOING TO PUT HIM OUT OF HIS MISERY, BUT ON THE OTHER HAND, HE IS CONCERNED FOR LARRY, BECAUSE MARGARET IS TREATING HIM WRONG. LARRY WAS NEVER A RIVAL. HE WAS NOT IN THE PICTURE, AND HE ONLY GOT IN THERE, BECAUSE OF CONNOR ASKING HER TO TAKE HIM BACK, AND SO THE QUESTION OF JEALOUSY OR AS A MOTIVE, REMOVING AN OBSTACLE AS MOTIVE, IT JUST ISN'T THERE. IT IS MUCH MORE LIKELY THAT HE WAS THERE TO CONTINUE DOING THESE BURGLARIES, FOR WHICH WE DON'T HAVE ANY REAL REASON, EITHER, BECAUSE IT WASN'T LIKE HE WAS USING THAT AS A CLUB OR ANYTHING. HE WAS, ALWAYS, DENYING THAT HE COMMITTED THESE BURGLARIES. FOR SOME REASON HE WANTED TO GET AHOLD OF THESE SMALL PERSONALITY EPPS AND TAKE THEM AWAY. IT WAS NOT RATIONAL: HE WAS DISCUSSING RATIONALITY, AND THE POINT ABOUT WHEN DETECTIVE

MORALIS CAME TO THE HOUSE. THIS IS WHEN MR. CONNOR WAS THINK GOING MURDERING JESSICA. THE MURDER DIDN'T OCCUR UNTIL MANY, MANY HOURS AFTER THAT, AND DURING ALL OF THAT TIME HE DID NOTHING TO REMOVE THE INCRIMINATING EVIDENCE. THE EVIDENCE ACTUALLY CONVICTED HIM OF THE MURDER OF LARRY GOODINE, NAMELY THE BLOOD IN THE CADILLAC, WHICH IS VERY OBVIOUS, AND HE KNEW, AS THE STATE HAS POINTED OUT, THAT THEY WERE VERY INTERESTED IN HIS CADILLAC, THAT, IN FACT, HE DROVE OFF WITH THE GIRL IN HIS CADILLAC, AND HE DID NOTHING TO REMOVE THOSE. THERE WAS ABSOLUTELY NOTHING HE WOULD DO, AND HE DIDN'T REMOVE THE BLOODY CLOTHING, EITHER. HE LEFT A PILE OF CLOTHING ON TOP OF THE HAMPER, WHERE HIS WIFE COULD, OBVIOUSLY, SEE IT.

DID HE TESTIFY AT THE PENALTY HEARING? AND HE TESTIFIED HE HAD NOTHING TO DO --

THIS WAS ALL A BIG CONSPIRACY. HE HAD CAUGHT THE STATE RED-HAND, PLANTING EVIDENCE IN HIS CAR AND AMONG MANY, MANY OTHER THINGS, BUT BASICALLY THAT WAS HIS THEORY, THAT THERE WAS A CONSPIRACY, BECAUSE WHAT THE STATE WAS PROSECUTING HIM FOR WAS BECAUSE OF WHAT HE FABRICATED ABOUT THE POLICE DEPARTMENT, AND THEY WERE DOING EVERYTHING THEY COULD TO RAILROAD HIM INTO A MENTAL INSTITUTION. ON TOP OF EVERYTHING ELSE HE DID, WHEN THE POLICE TOOK HIM TO THE STATION AND AS THE STATE POINTED OUT, HE HAD 5 MINUTES TO GO IN HIS BEDROOM AND CHOOSE HIS CLOTHES AND GET READY. WHAT HE CHOSE TO PUT ON WAS A PAIR OF BLOODY SOX AND A PAIR OF BLOODY SHOES, WHICH WAS VERY NOBLE. IT SEEMS WHAT HE FAILED TO DO, THAT THE LAST THING ON HIS MIND WAS THE MURDER OF LAWRENCE GOODINE. SOMEHOW HE HAD MANAGED TO PUT THAT OUT OF HIS MIND, AND I WOULD MENTION, ALSO, THAT DR. EISENSTEIN, WHO HAD EXAMINED HIM AT LEAST 15 TIMES, OVER A PERIOD OF FIVE YEARS, HAD CONCLUDED THAT MR. CONNOR ACTUALLY BELIEVED THAT HE HAD NOTHING TO DO WITH THIS CRIME. HE ACTUALLY BELIEVES THIS WAS A CONSPIRACY, BECAUSE THIS IS SOMETHING HE CANNOT BEAR TO THINK ABOUT, AND HIS ACTIONS ARE CONSISTENT WITH THAT. HE GRABS THE HEAD ON THE BATHROOM, AND HE COULDN'T BARE TO -- BEAR TO LOOK AT THE VICTIM OR THINK ABOUT IT, AND AFTER HE DISPOSES OF THE BODY, HE NEVER THINKS OF IT AGAIN. HE DOES NOTHING TO DO AWAY WITH THE EVIDENCE, WHICH IS WHAT CONVICTED HIM. IT WAS VERY, VERY OBVIOUS. ANY PERSON WOULD HAVE AT LEAST WIPE OFF THE SEAT OF THE CADILLAC AND CERTAINLY WOULDN'T HAVE PUT ON A PAIR OF BLOODY SOCKS TO GO TO THE POLICE SAYINGS, AND I DON'T THINK THAT CAN -- AT THE POLICE STATION, AND I DON'T THINK THAT CAN BE OVERLOOKED, EVEN THOUGH THE TRIAL COURT OVERLOOKED THAT, AND PRECISELY AT THE PERIOD OF TIME OF THE CRIME AND IN AN IRRATIONAL MANNER, BASED ON MANY FACTS THAT I THINK ARE NO MORE THAN SPECULATIONS. SHE STUMBLED UPON THE MURDER BEING COMMITTED, WHICH, I GUESS, THE TRIAL COURT BACKED AWAY FROM, AND IT WAS NOT SUPPORTED BY THE RECORD BUT IN FACT WAS CONTRADICTED BY THE RECORD, WHICH IS ALLOWING THE GIRL BACK TO THE HOUSE AND THINGS OF THAT NATURE.

IS YOUR OPPONENT CORRECT THAT THE TRIAL COURT PLACED GREAT WEIGHT ON THE TESTIMONY OF TWO PARTICULAR EXPERTS?

I THINK, THOUGH -- I THINK, NO, THE TWO EXPERTS SHE IS CHOOSING ARE PRECISELY THE WRONG EXPERTS.

WHO IS CHOOSING?

THE COURT BASICALLY KRETTED THE TESTIMONY OF THE TWO DEFENSE EXPERTS. SHE BASICALLY WENT, BECAUSE THESE WERE THE ONLY EXPERTS, THE ONLY EXPERTS WHO EVALUATED HIM FOR THE MITIGATING FACTORS, THE ONLY EXPERTS WHO HAD KNOWLEDGE OF THE MITIGATING FACTS AND CIRCUMSTANCES, PLUS THE MOTIVE AND SO ON. YOU CAN MAKE AN ARGUMENT THAT SHE RELIED ON OTHER EXPERTS, BECAUSE THERE WAS GENERALLY A CONSENSUS ABOUT THESE THINGS. THERE WAS A CONSENSUS THAT HE HAD SOME ORGANIC

BRAIN DAMAGE. IN PARTICULAR, DR. GARCIA AGREED WITH THAT AND THAT HE SHOWED GAND I DON'T SAYITY AND PAIR -- GRANDS ONITY AND -- GRANDIOSITY AND PARANOIA. DR. GARCIA WAS CORRECT IN HIS CONCLUSIONS, I THINK, BECAUSE THE CONCLUSION WERE THAT MARTIANS WERE AFTER ME AND THAT SORT OF THING, BUT HE WAS LOOKING FOR INSANITY. THAT IS ALL HIS ASSESSMENT WAS LIMITED TO, AND I THINK THE JUDGE ACTUALLY ACCEPTED MUCH OF THE TESTIMONY OF THE TWO DEFENSE EXPERTS, AND SIMPLY DISREGARDED THAT. I THINK, CONTRARY TO THE RECORD, BY MAKING SOME WRONG -- BY DISREGARDING IMPORTANT FACTS, SUCH AS JESSICA GOING OVER TO THE HOUSE AND ET CETERA, AND IN EFFECT, IT REACHED, I THINK, AN ILLOGICAL CONCLUSION, TO SAY THAT A MAN WHO IS MENTALLY ILL AND EMOTIONALLY DISTURBED AND BRAIN-DAMAGED, WILL BE SO, EXCEPT SUCH AS WHEN HE IS MURDERING THE MAN, WHEN HE MURDERS THE CHILD THAT HE LOVED AS HIS OWN. HE LOVED HER AS HIS OWN CHILD, AND YET HE IS LUCID WHEN HE IS KILLING HER? COME ON. THAT CANNOT BE.

SO WHAT DO WE END UP, AT THE PENALTY PHASE, WITH THE DEFENSE'S THEORY, OF THESE TWO MURDERS? WHAT WAS THE DEFENSE THEORY OF HOW AND WHY THESE TWO MURDERS OCCURRED?

WELL, THEY OCCURRED, BECAUSE OF HIS MENTAL ILLNESS, SET UP A SITUATION, A CRAZY SITUATION, SUCH AS HIM IN THE HOUSE WHEN LARRY COMES HOME, SUCH AS HIM IN THE COTTAGE, WITH JESSICA LATER. HE SETS UP THIS CRAZY SITUATION. THINGS HAPPEN UNEXPECTEDLY FOR HIM. LARRY SHOWS UP, AND HE ACTS IMPULSIVELY, BASICALLY BECAUSE HIS BRAIN DAMAGE REQUIRES THAT. HE IS NOT ABLE TO ACT RATIONALLY IN THAT KIND OF HIGHLY, HIGHLY STRESSFUL SITUATION, AND THEN, LATER, HE, ALSO, IS BEING CHALLENGED TO HIM, IN AN UNEXPECTED WAY, WHEN JESSICA NOW MANIFESTS HER DESIRE NOT TO BE WITH HIM. SHE IS NO LONGER GOING TO BE WITH HIM AND TREAT HIM AS DADDY. SHE WANTS TO GO HOME. HE REFUSES. SHE IS CRYING. WE ARE BASICALLY LOOKING AT THE SEQUENCE OF --

WITH THE LEAVE OF THE CHIEF JUSTICE, ONE LAST QUESTION.

GO AHEAD.

DID THE DEFENSE EXPERTS TRACK THAT THEORY? THAT IS DID THEY SAY THESE MURDERS OCCURRED, BECAUSE OF HIS MENTAL ILLNESS, AND THAT THIS IS THEIR THEORY OF HOW IT OCCURRED?

WELL, YES. I MEAN, GENERALLY.

GENERALLY.

TESTIFYING -- THEY TESTIFIED AT THE PENALTY PHASE. IS THAT CORRECT?

AND --

DID THEY GIVE A THEORY, EXPLAINING WHY THESE MURDERS OCCURRED?

THEY RECITED THE CIRCUMSTANCES AND SAID THAT, IN THEIR OPINION, AT THE TIME, BECAUSE OF THE WAY HE IS, HIS PAIR KNOW YEAH, HIS ORGANIC BRAIN DAMAGE, THE WAY THEY WORKED TOGETHER. HE WAS UNDER AN EXTREME EMOTIONAL DISTURBANCE, AND BECAUSE OF, AND ESPECIALLY BECAUSE OF THE WAY HIS ORGANIC BRAIN DAMAGE AND PARANOIA REACT, TOGETHER, UNDER STRESS, HE WAS CLEARLY IMPAIRED IN HIS CAPACITY TO ACT TO CONTROL HIS VIOLENT IMPULSES AT THAT MOMENT, AND THAT WAS THEIR THEORY, AND I BELIEVE THAT THE RECORD APTLY SUBSTANTIAL YATES THAT, ALL OF THE FACTS THAT I HAVE RECITED HERE, AND IN THE BRIEF.

THANK YOU VERY MUCH.

THANK YOU, YOUR HONOR.