Carlton Francis vs State of Florida

NEXT CASE ON THE COURT'S CALENDAR IS CARLTON FRANCIS VERSUS THE STATE OF FLORIDA. MR. GRABLE.

GOOD MORNING, YOUR HONORS. MY NAME IS PETER GRABLE. I AM FROM WEST PALM BEACH. I AM HERE ON BEHALF OF CARLTON FRANCIS. MR. FRANCIS WAS CONVICTED OF TWO COUNTS OF MURDER, COMPENING ROBBERY, BURGLARY, AND ASSAULT ON THE ELDERLY. THE OFFENSE OCCURRED ON 7-24 IN 1997, IN WEST PALM BEACH, FLORIDA. THE VICTIMS WERE TWO ELDERLY SISTERS, WHO LIVED TOGETHER AT 2000 SOUTH WARE STREET IN WEST PALM BEACH. THE VICTIMS' HOME WAS RIGHT NEXT DOOR TO MR. FRANCIS. THE LADIES, CLAIRE BLUNT AND DENISE FLEGEL WERE 66 YEARS OLD AND WERE RETIRED AND VERY FRIENDLY WITH THE NEXT DOOR NEIGHBOR, THE MOTHER OF CARLTON FRANCIS. ON THE DAY OF THE KILLINGS, SUSAN WOOD HAD SPOKEN TO HER MOTHER. COLLAR A BLUNT, AND HAD -- CLAIRE BLUNT, AND HAD MADE PLANS TO BE THERE AT THREE OR FOUR IN THE AFTERNOON. THIS CONVERSATION TOOK PLACE AT ELEVEN O'CLOCK. WHEN SHE ARRIVED AT THREE, SHE CAME IN AND DISCOVERED HER MOTHER DEAD IN A CHAIR IN THE FRONT ROOM, VICTIM OF NUMEROUS STAB WOUNDS, AND HER AUNT IN THE KITCHEN, ALSO A VICTIM OF NUMEROUS STAB WOUNDS. THE POLICE WERE CALLED AND AN INVESTIGATION TOOK PLACE. NUMEROUS ARTICLES WERE FOUND MYSELFING IN THE HOME. -- WERE FOUND MYSELFING IN THE HOME -- WERE FOUND MISSING IN THE HOME.

WE ARE VERY FAMILIAR WITH YOUR BRIEFS. WE ARE NOT FAMILIAR WITH YOUR ARGUMENT, AND YOU NEED TO GET RIGHT TO THE ARTICLES THAT YOU ARE GOING TO ADDRESS, DURING THE COURSE OF YOUR ORAL ARGUMENT.

THANK YOU, JUDGE. THE ISSUES THAT I WOULD LIKE TO ADDRESS ARE THE CAUSE FOR PROBABLE CAUSE FOR ARREST AND THE TAINT MADE ON THE STATEMENTS MADE, BECAUSE OF THE LACK OF A PROBABLE CAUSE FORM THE JURY ISSUE, THE SLAPY NEAL ISSUE IN THE JURY PHASE AND BRIEFLY I WOULD LIKE TO TOUCH ON THE ISSUE OF WHETHER THERE WAS ADEQUATE PROOF OF A BURGLARY.

BY THE TIME OF THE ARREST, HADN'T YOUR CLIENT BEEN SEEN IN THE VICTIM'S AUTOMOBILE AND IN POSSESSION OF A NUMBER OF ITEMS THAT WERE TAKEN FROM THE VICTIMS' HOME?

THEY HAVE --

IN A RATHER UNUSUAL MANER?

THAT HAD NOT BEEN ESTABLISHED. WHAT HAD ACTUALLY HAPPENED --

WHAT HAD BEEN ESTABLISHED.

WHAT HAD BEEN ESTABLISHED WAS THAT MY CLIENT HAD ACTED VERY SUSPICIOUSLY, ON THE DAY OF THE MURDERS, WHEN HE WAS APPROACHED AND TALKED TO.

NOTHING ABOUT THE AUTOMOBILE?

THE AUTOMOBILE WAS DISCOVERED IN A NEIGHBORHOOD APPROXIMATELY THREE MILES FROM THE HOME.

BUT NO CONNECTION, YOUR CLIENT, TO THE AUTOMOBILE, UP TO THE TIME OF ARREST?

THERE IS NO PHYSICAL --

I AM NOT ASKING ABOUT PHYSICAL. I AM ASKING WHETHER OR NOT THERE WAS ANY CONNECTION, ANY LINK BETWEEN THE AUTOMOBILE OF THE VICTIMS AND YOUR CLIENT ESTABLISHED PRIOR TO THE TIME OF THE ARREST.

THE LINK THAT WAS ESTABLISHED WOULD YOU SAY ESTABLISHED BY A C. J. HICKS, A TWICE-CONVICTED FELON, AN ADMITTED HEROIN DEALER.

WHAT WAS THAT LINK?

HE CAME FORWARD TO THE POLICE, THAT DAY, WITH A WATCH, AND HE SAID THAT HE HAD TALKED TO CARLTON FRANCIS, WHO HE HAD SEEN GETTING OUT OF A TWO-TONED BEIGE PONTIAC. THE CAR THAT HAD BEEN LONGED TO THE SISTERS WAS ONE-TONE. THE CAR HAD BEEN DISCOVERED IN MR. HICKS'S NEIGHBORHOOD.

IT WAS AN ONE-TONE BEIGE?

YES, SIR. MR. HICKS LIVED APPROXIMATELY FOUR BLOCKS FROM WHERE THE CAR WAS DISCOVERED. IT WAS HIS TESTIMONY AND HIS TESTIMONY, ALONE, THAT LINKED MY CLIENT TO THE CAR. WHEN THE WATCH WAS BROUGHT TO THE POLICE, ON AUGUST 3, IT MATCHED THE DESCRIPTION OF ONE OF THE ARTICLES WHICH WAS TAKEN, ALTHOUGH IT WAS NOT I HADFIED -- IT WAS NOT IDENTIFIED BY ANY OF THE RELATIVES OF THE VICTIMS, UNTIL THE DAUGHTER CAME AT APPROXIMATELY SIX O'CLOCK, SOME TWO AND-A-HALF HOURS AFTER THE ARREST. THERE WAS NO PHYSICAL EVIDENCE IN THE AUTOMOBILE, CONNECTING MR. FRANCIS TO THE AUTOMOBILE. MR. HICKS WAS NOT KNOWN TO BE A RELIABLE INFORMANT. MR. HICKS, AS I SAID, WAS A STREET-LEVEL DRUG DEALER AND A TWICE-CONVICTED FELON, WHO IS NOT KNOWN TO BE RELIABLE AT ALL. HIS CONNECTION TO THE POLICE DEPARTMENT WAS HE WAS A RELATIVE OF ONE OF THE OFFICERS, AND HE HAD CALLED THEM AND BROUGHT IT IN. THERE WAS HIS STATEMENT, AND THE WATCH, BUT THE SIGNIFICANCE OF THE WATCH WAS VERY MUCH DIMINISHED, BECAUSE IT HAD NOT BEEN IDENTIFIED BY ANYBODY. THE PROBABLE CAUSE AFFIDAVIT HAD INDICATED THAT MISS CUTTING HAD COME IN AROUND SIX O'CLOCK AND WAS 99% SURE THAT IT WAS THE WATCH, ALTHOUGH SHE HAD NOT SEEN IT IN NUMEROUS YEARS. MR. FRANCIS WAS BROUGHT IN AT TWO -- MR. CUTTING WAS BROUGHT IN AT TWO O'CLOCK FOR AN INTERVIEW. DURING THE INTERVIEW, HE WAS ASKED ABOUT SOME PROPERTY AND HE STARTED TO TALK ABOUT IT, AND THEN HE INVOKED HIS FIFTH AMENDMENT RIGHTS AND THEN HIS INTERVIEW WAS CUTOFF. A SECOND ISSUE I HAVE IS WITH THE REINSTITUTION OF THAT DISCUSSION, AFTER HE INVOKED HIS RIGHTS. IT IS MY POSITION THAT, UNDER AIDES VERSUS RHODE ISLAND AND UNDER ARIZONA VERSUS MORROW, THAT THE POLICE INDULGED IN PSYCHOLOGICAL PLOY, IN KEEPING HIM ON ICE FOR SOME FOUR HOURS, IN AN INTERROGATION ROOM, WITHOUT FOOD, WATER, OR, FROM READING THE RECORD, WE DON'T KNOW WHETHER THERE WAS A BATHROOM BREAK OR NOT. THEY SIMPLY, INSTEAD OF TAKING HIM TO THE POLICE OR RELEASING HIM FOR LACK OF PROBABLE CAUSE, THEY LOCKED HIM UP, CONTINUED TO DO THEIR RESTGATION, SPOKE TO THE RELATIVES -- THEIR INVESTIGATION, SPOKE TO THE RELATIVES, ACTUALLY WENT TO MR. HICKS'S HOME, WHERE HE SHOWED THEM LOCATIONS OF VARIOUS OTHER ARTICLES, WHERE THEY COULD RECEIVE, AND THEY BUILT THEIR CASE AT THAT TIME.

IS THERE SOMETHING ABOUT THE INTERROGATION ROOM, ITSELF, THAT WOULD SEPARATE THIS FROM OTHER THAN HAVING HIM IN A CELL OR HAVING HIM IN A CHAIR SOMEWHERE ELSE WITHIN THE FACILITY? THAT YOU WOULD RELY ON, BECAUSE HE HAS TO BE SOMEWHERE DURING THIS PERIOD OF TIME.

HE COULD HAVE BEEN TRANSPORTED. HE SAID HE WAS DONE. HE DIDN'T WANT TO TALK TO THEM. HE COULD HAVE BEEN TRANSPORTED TO THE PALM BEACH COUNTY JAIL AN ARRESTTED, IF THEY HAD A CASE THERE, BUT THEY DIDN'T. ONE OF THE INVESTIGATING OFFICERS SAID WE DON'T HAVE A CASE.

I WAS UNDER THE PAPERWORK THAT THEY WERE ON-I WAS UNDER THE IMPRESSION THAT THEY WERE -- I WAS UNDER THE I AM FLAEINGS THEY WERE COMPLETING THE PAPERWORK -- I AM UNDER THE IMPRESSION THAT THEY WERE COMPLETING THE PAPERWORK AND GOING OUT TO THE SCENE TO GET AN ARTICLE THAT WAS BURNING?

THEY WERE GOING OUT FOR ONE ARTICLE THAT HAD NOT BEEN IDENTIFIED.

SO HE HAD TOUCHED THEM, THE WATCHES AND THE COINS, AND BEFORE ALL OF THIS HAD HAPPENED, AND BEFORE HE SAID I DON'T WANT TO TALK ANY FURTHER, THAT HAD NOT BEEN DISCLOSED THAT THOSE THINGS HAD BEEN TAKEN?

ALTHOUGH THERE ARE RECORDINGS, WE DON'T KNOW EXACTLY WHAT HAPPENED. THE POLICE OFFICER DID SAY THAT THAT HAPPENED, THAT THE CONVERSATION TOOK PLACE AND HE ADMITTED TOUCHING SOME ARTICLES, BUT WHEN PRESSED, HE INVOKED HIS RIGHTS, SO WE DON'T KNOW, EXACTLY, THE ITEMS THAT HE IDENTIFIED. HE DID ADMIT THAT HE TOUCHED ONE OF THE WATCHES, AND A POLICE OFFICER SAID I BELIEVE SOME JEWELRY. A CHAIN AND LOCKET.

OKAY. THAT WOULD NOT BE SUFFICIENT?

NOT IF THERE WASN'T PROBABLE CAUSE FOR THE ARREST. THERE IS NO DOUBT THAT HE WAS ARRESTED IN THE ALLEY WAY, UPON THE SIMPLE WORD OF CHARLES HICKS, WHO SAID I SAW HIM GET OUT OF THE CAR. AT THAT POINT, THEY HAD NOT IN ANY WAY, KRMED THAT THE -- CONFIRMED THAT THE WATCH HAD ACTUALLY COME TO HIM, SO FOR ALL THEY KNEW, THIS DRUG DEALER, HIMSELF, HAD DONE IT AND PARKED THE CAR THERE AND WAS TRYING TO BLAME IT ON FRANCIS. THE ONLY THING THEY HAD IN ADDITION TO THAT WAS THE TESTIMONY OF MR. FRANCIS'S NEPHEW, WHO SAID THAT HE HAD TAKEN A DOVE HE WILL BAG -- A DUFFLE BAG WITH HIM AND WALKED TOWARDS THE SISTER'S HOME, AND MR. HICKS SAID THAT HE SAW HIM GETTING OUT OF THE CAR, CARRYING A DUFFLE BAG.

WHAT WOULD BE THE EFFECT, IF THERE WERE NOT INITIALLY PROBABLE CAUSE. THEY WOULD STILL HAVE A RIGHT TO TAKE HIM TO QUESTION HIM, AND THEY READ HIM HIS MIRANDA WARNINGS. WHAT IS YOUR ARGUMENT, THAT ONCE HE WAS ARRESTED, IF HE WASN'T ARRESTED WITH PROBABLE CAUSE, THAT EVERYTHING ELSE HAS TO BE SUPPRESSED?

THAT'S CORRECT, UNLESS THERE IS A CLEAR WAIVER OF MIRANDA RIGHTS, AND THERE WAS NOT, IN THIS CASE. MR. FRANCIS NEVER SIGNED THE CARD AND NEVER WAIVED THE RIGHTS ON THE RECORD, ALTHOUGH HE DID BEGIN TO SPEAK ABOUT IT BUT STOPPED. IF IT IS AN ILLEGAL ARREST AND YOU WOULD SAY THAT THERE IS NO PROBABLE CAUSE, IF YOU WOULD HOLD THERE WAS NO PROBABLE CAUSE AT THE TIME OF THE ARREST, THEN --

THEY DID NOT READ HIM HIS MIRANDA WARNINGS?

THEY READ HIM THE MIR AND A WARNINGS. HE REFUSED TO SIGN THEM, AND HE REFUSED TO WAIVE. THERE HAS TO BE A VOLUNTARY WAIVER OF HIS MIRANDA RIGHTS. THE CARD, THE SIGNING THE CARD, IN AND OF ITSELF, ISN'T THE CRUCIAL FACTOR. IT IS JUST ONE OF THE FACTORS TO CONSIDER WHETHER HE MADE A KNOWING AND WILLING WAIVER. OF HIS MIRANDA RIGHTS.

WAIT A MINUTE. I THOUGHT HE INITIALLY, WHEN HE WAS FIRST TAKEN TO THE POLICE STATION,

HE HAD WAS GIVEN HIS MIRANDA WARNINGS, AND HE AGREED TO TALK TO THE POLICE AT THAT POINT.

THAT'S CORRECT. FOR APPROXIMATELY TEN MINUTES.

AND THEN HE INVOKED HIS RIGHT TO COUNSEL.

THAT'S CORRECT, YOUR HONOR.

WHAT IS OUR STANDARD OF REVIEW, HERE, OF THE TRIAL JUDGE'S DENIAL OF THE MOTION TO SUPPRESS, WHEN WE ARE FACED WITH THE POLICE OFFICER SAYING THAT HE WANTED TO TALK TO US ABOUT THE INCIDENT, AND THE DEFENDANT SAYING THAT I JUST WANT TO FIND OUT WHAT IS GOING TO HAPPEN TO ME NEXT, BECAUSE I HAVE BEEN HERE FOR THREE OR FOUR HOURS? WHAT IS OUR STANDARD OF REVIEW HERE?

RATHER THERE WAS ANY PSYCHOLOGICAL PLOY OR ANY TREATMENT OF MR. FRANCIS, WHICH WOULD RENDER HIS REINITIATION OF THE CONVERSATION INVOLUNTARY.

JUST SO I MAKE SURE I AM STILL ON THIS PROBABLE CAUSE THING, HOW IS THERE A STANDARD, AS FAR AS LOOKING AT THE VOLUNTARY INITIATION? ANY DIFFERENT, WHETHER THERE WAS OR WAS NOT ORIGINALLY PROBABLE CAUSE TO ARREST HIM? THERE IS STILL GOING THROUGH HE STILL READ HIS MIRANDA RIGHTS. HE STILL TALKS TO THEM FOR TEN MINUTES. HE THEN STOPS. THEY STOP. AND THEN THE QUESTION BECOMES WHETHER THERE IS, THEN, VOLUNTARY REINITIATION, UNDER THE APPLICABLE CASE LAW, SO I AM TRYING TO UNDERSTAND, IF WE FOUND FOR YOU ON THAT ONE ISSUE, THEY DIDN'T SEIZE ANYTHING AT THE TIME THEY ARRESTED HIM THAT THEY USED IN THE SUBSEQUENT PROSECUTION.

ACTUALLY THEY DID. THE ONE THING THEY DID SEIZE FROM MR. FRANCIS, AT THE TIME OF THE ARREST, WAS A SMALL KNIFE, WHICH WAS KIND OF HOMOGENOUS. IT WAS A BLACK-HANDLED BOX CUTTER WHICH MATCHED A COUPLE THAT WERE FOUND IN THE HOME, AND THAT WAS INTRODUCED INTO EVIDENCE, ALTHOUGH IT COULD NOT BE EXACTLY TIED TO THE HOUSE.

SO THAT WOULD BE THE THING YOU WOULD SAY WOULD HAVE TO BE SUPPRESSED?

AND ANY SUBSEQUENT STATEMENTS. IF IT WAS AN ARREST, AN ILLEGAL ARREST, UNDER BROWN VERSUS ILLINOIS, THAT IS 422 US 590, ARRESTS MADE WITHOUT WARRANT OR WITHOUT PROBABLE CAUSE FOR QUESTIONING OR INVESTIGATION WOULD BE ENCOURAGED BY THE KNOWLEDGE THAT EVIDENCE DERIVED THERE FROM COULD WELL BE MADE ADMISSIBLE BY TRIAL, BY THE SIMPLE EXPEEDIENCE OF GIVING MIRANDA WARNINGS. SO WA-WA DID THE DEFENDANT SAY -- SO WHAT DID THE DEFENDANT SAY THAT SHOULD BE SUPPRESSED?

HE TALKED ABOUT HANDLING A .22 RIFLE AND TOUCHING BULLETS AND PUTTING THEM INTO THE .22 RIFLE, BASICALLY PLAYING WITH IT AS MR. HICKS SHOWED IT TO HIM. THIS IS SIGNIFICANT, BECAUSE FOUND INSIDE THE HOME WAS ONE ONE.22 SHELL. THERE IS NO EVIDENCE THAT THE THE.22 WAS FIRED INSIDE THE HOME, ALTHOUGH THE.22 SHELL MATCHES THE TYPE THAT WAS FOUND IN MR. MIX'S SHED AND THE TYPE THAT WAS LEAD -- THAT WAS LOADED INTO THE RIFLE. THERE IS SOME DISCUSSION THAT, IN THE DUFFLE BAG WAS A PIPE, AND IT MAY WELL BE THAT THE JURY BELIEVED THAT THE PIPE WAS THE RIFLE, AND IT IS SIGNIFICANT THAT, AFTER MIRANDA WARNINGS, MR. FRANCIS TALKED ABOUT HANDLEING THAT RIFLE. HE, ALSO, TALKED ABOUT HANDLING THE COINS AND WENT INTO MORE DETAIL AFTERWARDS AND FURTHER INCRIMINATED HIMSELF OR GAVE EVIDENCE THAT HE HAD HANDLED THOSE GOODS, ALTHOUGH HE, AT ALL TIMES, SAID I DIDN'T DO THESE THINGS. MR. HICKS SHOWED THEM TO ME.

I GUESS I STILL NEED AN ANSWER TO WE HAVE, HERE, CONFLICTING EVIDENCE. THE POLICE OFFICERS HAVE ONE VERSION OF THE REINITIATION OF CONTACT, AND THE DEFENDANT HAS

ANOTHER VERSION. EVIDENTLY THE TRIAL JUDGE CHOSE TO BELIEVE THE VERSION THAT THE POLICE OFFICERS OFFERED. WHAT ARE WE -- WHAT IS OUR STANDARD OF REVIEW OF THAT? HOW CAN WE GO BEHIND THAT?

YOUR STANDARD OF REVIEW, IF THE TRIAL JUDGE HAD ADEQUATE EVIDENCE TO MAKE THE FINDINGS HE DID, AS TO GIVE THAT -- THOSE FINDINGS AND EFFECT GREAT CREDENCE.

HOW WOULD YOU DISTINGUISH OR ATTEMPT TO DISTINGUISH BRADSHAW WITH THIS REINITIATION OF CONTACT, AND THEN THE FOLLOWING TAPE RECORDING OF WHAT OCCURRED, AFTER THE OFFICERS WERE CONCERNED? I MEAN CLEARLY THIS RECORD WOULD SUGGEST THAT THEY WERE CONCERNED THAT THEY NOT DO SOMETHING INAPPROPRIATE OR PROTECT THEMSELVES, WHATEVER, HOWEVER YOU WANT TO DESCRIBE IT, BUT THEY WAITED FOR A PERIOD OF TIME, AND THEN THEY TAPED THE CONVERSATION, AND THAT SEEMS TO SUGGEST I WANT TO TALK ABOUT WHAT IS GOING ON HERE. DOES IT NOT?

THAT CONCERNS ME A GREAT DEAL, AND THE REASON IS THERE WAS SOME 15 MINUTES BETWEEN EIGHT-THIRTY AND NINE O'CLOCK, WHEN THE KNOCK CAME ON THE DOOR. THERE IS, IN THE RECORD, EVIDENCE THAT THERE WAS 15 MINUTES THAT WAS NOT TAPED, OF CONVERSATIONS BETWEEN MR. FRANCISCAN THE POLICE OFFICERS. ALTHOUGH THEY HAD THE ABILITY TO TAPE RECORD THOSE CONVERSATIONS, HE NEVER LEFT THAT ROOM, THEY CHOSE NOT TO TAPE THOSE FIRST 15 MINUTES, NOR THE INITIAL CONVERSATION. IF THE COURT FINDS THAT THERE WAS NO PROBABLE CAUSE FOR THE ARREST AND THERE IS THIS GAP IN TIME, ONE HAS TO LOOK VERY CRITICALLY AT THIS ARREST AND INTERVIEW PROCESS. THEY -- I BELIEVE THE EVIDENCE IS THEY SIMPLY JUMPED THEIR GUN AND MADE THE ARREST BEFORE THEY COMPLETED THE INVESTIGATION, AND THEY DID HAVE INADEQUATE EVIDENCE AND THEY COULD HAVE HAD, HAD THEY TAKEN ANOTHER TWO HOURS TO GO OUT AND GATHER OTHER EVIDENCE, HAVE THE VICTIM'S FAMILIES COME IN AND IDENTIFY THE GOODS. THEY DID NOT. I BELIEVE THAT, BASED ONLY ON MR. HICKS' STATEMENTS, THAT HE WAS SEEN AT THE CAR, AND THAT HE GAVE, THAT FRANCIS GAVE HICKS THE WATCH, THAT DOES NOT MAKE PROBABLE CAUSE. A GREAT DEAL OF CREDENCE WAS GIVEN IN THE PROBABLE CAUSE AFFIDAVIT AND IN THE MOTION TO SUPPRESS, WHEN MR. FRANCIS IS SUSPICIOUS BEHAVIOR AT THE TIME OF THE MURDERS, WHEN THEY ATTEMPTED TO INTERVIEW HIM.

I WOULD LIKE YOU TO ADDRESS, AT SOME POINT, IF YOU ARE FINISHED WITH THAT POINT, YOUR ARGUMENT CONCERNING THE MOTION FOR JUDGMENT OF ACQUITTAL. YOU CLAIM, BASICALLY, THAT THIS IS A CIRCUMSTANTIAL EVIDENCE CASE AND THEREFORE THE CIRCUMSTANTIAL EVIDENCE NOT ONLY HAS TO POINT TO MR. FRANCIS'S GUILT BUT IT HAS TO BE INCONSISTENT WITH ANY REASONABLE HYPOTHESIS OF INNOCENCE. CORRECT?

THAT IS THE STATEMENT.

SO I WOULD LIKE TO YOU ADDRESS THAT PARTICULAR POINT.

THAT IS THE STANDARD, AND THE QUESTION IS WHAT IS A REASONABLE HYPOTHESIS OF INNOCENCE? AND THE EVIDENCE TIES MR. HICKS MORE CLOSELY TO THE MURDER THAN MR. FRANCIS.

WELL, I GUESS WHAT -- IF YOU ARE SAYING THAT YOUR REASONABLE HYPOTHESIS OF INNOCENCE IS THAT MR. HICKS COMMITTED THIS MURDER. WHAT, I GUESS, MAYBE IT IS MORE APPROPRIATE, WELL, YEAH, FOR YOU, WHAT EVIDENCE IS INCONSISTENT WITH THAT?

WELL, PRIMARILY EVERYTHING WAS RECOVERED FROM MR. HICKS. EVERY WITNESS THAT CAME IN AND SAID CARLTON FRANCIS TOUCHED A WATCH, CARLTON FRANCIS BURNED A POCKETBOOK, WAS EITHER MR. HICKS, HIS SIGNIFICANT OTHER, OR ONE OF HIS DRUG CUSTOMERS. FOUND, AT THE MURDER SCENE, WAS A FOOTPRINT, A BLOODY FOOTPRINT IN A SIZE 8 SHOE. MR. FRANCIS

WEARS A SIZE 11. MR. HICKS WEARS A SIZE 8. IT WAS THE STATE'S HYPOTHESIS THAT MR. FRANCIS ACTED ALONE OR THE KILLER ACTED ALONE, YET TWO SEPARATE KNIVES WERE USED. ONE KNIFE WAS USED TO SLAY MS. CLAIRE AND THE OTHER WAS USED TO SLAY THE SISTER. THAT WOULD INDICATE THAT, PERHAPS, TWO INDIVIDUALS WERE INVOLVED AND ONE OF THEM WAS CERTAINLY WASN'T CARLTON FRANCIS, BECAUSE HE DOESN'T HAVE A SIZE 8 BUT HAS A SIZE 11 SHOE.

BUT THE EVIDENCE RESPECT ALSO, INDICATES THAT HE WAS WEARING SIZE 9 AND-A-HALF, WHEN HE WAS TAKEN INTO CUSTODY. IS THAT THE EVIDENCE, OR ARE WE MISTAKEN ON THAT?

WHEN HE WAS TAKEN INTO CUSTODY, HE WAS WEARING BORROWED SHOES THAT WERE 9 AND-A-HALF NOT 8'S8'S.

I THOUGHT THEY GAVE -- NOT 8'S.

I THOUGHT THEY GAVE A RANGE FOR THE SIZE OF THE TRACKS IN THE HOME. NOT 11 BUT 8 TO 10 OR SOMETHING OF THAT NATURE. ARE WE MISTAKEN ON THAT?

I BELIEVE IT WAS 8 TO 9. I CAN'T TELL YOU EXACTLY.

IT WAS NOT AN EXACT SHOE SIZE THAT THEY WERE ABLE TO PINPOINT OR WAS IT?

IT WAS NOT AN EXACT. THE FBI, THE AGENT TESTIFIED IT WAS MORE LIKELY A SIZE 8.

OKAY.

IF I MAY, I WOULD LIKE TO SPEAK ABOUT THE JURY SELECTION PROBLEM, WHICH I THINK IS SIGNIFICANT. UNDER THE CASE LAW, IN MELBOURNE, WHAT HAPPENED IN THIS CASE, THE CHALLENGE WAS MADE TO THE SECLUSION, PRESENT OTHER SECLUSION OF THE JUROR BENNETT. WHEN ASKED FOR FOR THE REASON, SHE WAS AFRICAN-AMERICAN. THE OTHER AFRICAN-AMERICAN MEMBER OF THE PANEL WAS EXCUSED, WITH THE EXCUSE THAT IT WAS RACIALLY NEUTRAL AND IT WAS AN APPROPRIATE CHALLENGE. TO MRS. BENNETT, THE CHAEL EVENING WAS THE ANSWER -- THE CHALLENGE, THE ANSWER TO THE CHALLENGE WAS, WELL, WHEN I DESCRIBED THESE MURDERS, MRS. BENNETT LAUGHED. MRS. BENNETT WAS NEVER AFFORDED AN OPPORTUNITY TO COMMENT WHETHER SHE LAUGHED OR NOT. THERE WAS NO SUPPORT IN THE RECORD THAT SHE LAUGHED. THE TRIAL JUDGE DID NOT LOOK AT MISS BENNETT AND SAY WHAT ABOUT THAT, MA'AM? COULD YOU COME UP HERE? AND MADE NO INQUIRY. HE DIDN'T MAKE A FINDING OF FACT. I SAW THAT. LET RECORD REFLECT THAT THIS OCCURRED. THERE IS ABSOLUTELY NO PROTECTION, IN THIS PROCESS, FROM PRETEST. THE RECORD IS ABSOLUTELY VOID OF ANYTHING THAT WOULD SUPPORT -- I THINK IT IS A REASONABLE HYPOTHESIS THAT, IF THE STATE ATTORNEY HAD SEEN THIS ACTION, HE WOULD HAVE SAID SOMETHING ALONG THE LINE, MISS BENNETT, I AM SORRY. I HAPPENED TO NOTICE THAT I SAW WHAT I THOUGHT WAS A LAUGH. COULD YOU TELL ME WHAT YOU ARE LAUGHING ABOUT, AND SHE WOULD HAVE HAD AN OPPORTUNITY TO ADMIT IT, DENY IT OR SAY THAT SHE HAD THOUGHT OF SOMETHING ELSE, WHICH MIGHT HAVE BEEN GROUNDS, BUT THE RECORD IS JUST --

OUR INQUIRY, UNDER THE MELBOURNE CASE, IS WHETHER OR NOT THE REASON GIVEN BY THE STATE IS GENUINE. CORRECT?

GENUINE AND WITHOUT PRETEXT. CORRECT.

AND SO WHAT DO WE LOOK AT TO DETERMINE GENUINENESS?

SOME -- SOMETHING ON THE RECORD TO GIVE SUPPORT, AND I DO HAVE TWO CASES, STATE V HILL. AND I BELIEVE IT IS STATE V -- GEORGIA V STATE. 723 SO.2D 399. AND 047 SO.2D 175. THAT IS

HILL. THIS IS A VERY SIMILAR CASE, IN WHICH THE FOURTH DISTRICT DIDN'T ALLOW A CHALLENGE.

BUT IS IT REALLY CRITICAL WHETHER SHE INAPPROPRIATELY SMILED OR LAUGHED OR NOT, IF THE PROSECUTOR, IN FACT, BELIEVED THAT SHE DID? ISN'T THAT THE CRITICAL POINT? THE BELIEF?

YOUR HONOR, IF HE BELIEVED THAT SHE LAUGHED AND THERE IS SOMETHING --

WOULDN'T THAT BE A BASIS FOR HIM TO RECUSE HER? KNOCK HER OFF?

IF IT COULD BE SUPPORTED WITHIN THE EVIDENCE. I GUESS YOU END UP GETTING TO A POINT YOU EITHER BELIEVE THE STATE ATTORNEY --

EVEN IF HE IS WRONG. YOU KEEP GOING BACK TO IF IT IS SUPPORTED BY THE EVIDENCE. EVEN IF THE EVIDENCE DOESN'T SUPPORT IT AND HE BELIEVES IT, HE THOUGHT HE SAW HER LAUGH OR SMILE. AT AN INAPPROPRIATE TIME. WOULDN'T THAT BE A BASIS FOR HIM TO KNOCK HER OFF?

YOUR HONOR, I BELIEVE, UNDER MELBOURNE, IT MAY VERY WELL BE, AND I THINK THAT THE OPPORTUNITY THE COURT HAS, HERE, TODAY, IS TO SAY THAT THEY ARE GOING BACK TO THE OLD-LINE OF CASES AND SLANEY AND NEAL, THAT THERE HAS TO BE SOMETHING ON THE RECORD TO SUPPORT THIS, OR THERE IS NO PROTECTION FROM PRETEXT.

CAN THE STATE ARGUE OR RELY UPON THE FURTHER QUESTIONING, WHERE THIS JUROR, PERSPECTIVE JUROR, BASICALLY JUST, WHEN THEY ASKED ABOUT WHAT WAS YOUR SPONSOR YOUR -- ESSENTIALLY SAYING HOW DID IT IMPACT YOU, WHEN YOU KNEW YOU WERE GOING TO BE INVOLVED IN A MURDER CASE AND HERE IS WHAT HAPPENED, AND THEY GOT THE RESPONSE BACK, SAYING NOTHING. JUST DIDN'T BOTHER ME AT ALL. IS THAT -- CAN WE LOOK A TO THAT, OR ARE WE PRECLUDED AND MUST LOOK ONLY BACK TO THE POINT IN TIME WHERE THIS ALLEGED LAUGH OCCURRED.

I INVITE THE COURT TO LOOK AT THE RECORD. I THINK WHAT ACTUALLY HAPPENED WAS DID YOU HAVE ANY PARTICULAR FEELINGS ABOUT THIS, AND THE ANSWER WAS NO, AND THEN THERE WAS A SECOND QUESTION. IT WAS A LEADING QUESTION BY THE STATE ATTORNEY. NOTHING AT ALL? AND THE ANSWER WAS, NO, NOTHING. IT WASN'T AS BLASE AS --

OKAY.

AND I BELIEVE THAT, UNDER MELBOURNE, THE REASON FOR THE CHALLENGE MUST BE STATED ON THE RECORD, AND THAT WAS NOT THE REASON. SO I DON'T THINK IT IS PROPER TO LOOK AT THAT. I WOULD LIKE TO TURN TO THE GUILT PHASE, NOW, IF I CAN. AND UNDER THE CASES DECIDED BY THIS COURT LAST YEAR, THIS IS NOT ONE OF THE LEAST MITIGATED CASES. THERE IS UNCONTROVERTED EVIDENCE THAT CARLTON FRANCIS OF SUFFERED FROM THREE VERY SERIOUS MENTAL ILLNESSES FOR TIF YEARS -- FOR FIVE YEARS, THAT THOSE MENTAL ILLNESSES WERE PSYCHOTIC INNATE. THAT HE SUFFERED FROM PSYCHOSIS. AND FROM PSYCHO TYPICAL PERSONALITY DISEASE, AS WELL AS OBSESSIVE AND COMPULSIVE, AND FAMILY MEMBERS HAD TESTIFIED THAT THEY HAD NOTICED THAT HE HAD BECOME WITHDRAWN, BECOME SPACEY, ACTED PECULIAR FOR SOME FIVE YEARS. THE EXPERTS, IN THE EXAMINATION AND TALKING, HAD SPOKEN TO THE CORRECTIONS FACILITIES, WHO TALKED ABOUT MR. FRANCIS STANDING NAKED AND STARING AT THE WALL FOR FOUR HOURS, COMPLETELY OBLIVIOUS TO WHAT WAS GOING ON AROUND HIM.

DIDN'T THE JUDGE IN THIS CASE ACTUALLY GIVE HIM THE BENEFIT AFTER STATUTORY MITIGATOR THAT WASN'T EVEN SKAD FOR?

HE DID -- WASN'T EVEN ASKED FOR?

HE DID, BECAUSE THE EVIDENCE WAS SO COMPELLING, AND HE FOUND, ALSO, THAT MR. FRANCIS DID NOT HAVE THE ABILITY TO CONFORM HIMSELF OR WAS IMPAIRED IN HIS ABILITY TO CONFORM TO THE DICTATES OF LAW, BECAUSE OF THESE ILLNESSES, BUT HE DID FIND THAT THE MURDERS WERE HEINOUS, ATROCIOUS AND CRUEL. THE COURT HAS CONSISTENTLY FOUND THAT REPEATED STABBINGS OF THIS NATURE ARE HEINOUS, ATROCIOUS AND CRUEL. I WOULD SUBMIT, THOUGH, THAT WITH THESE MENTAL EVIDENCE THAT WE HAVE, WHICH ARE PRECURSORS TO PSYCHOTIC EPISODES, BOTH MENTAL EXPERTS SAID THEY CAN'T TELL THE COURT THAT MR. FRANCIS SUFFERED A PSYCHOTIC EPISODE AT THE TIME BUT IS CONSISTENT WITH HIS DISEASE, AND THAT WOULD BE THE NEXT STEP, AND CERTAINLY THE EPISODES IN JAIL WERE PSYCHOTIC. IT IS MORE THAN LIKELY THAT THESE OCCURRED DURING THE PSYCHOTIC EPISODE. MR. FRANCIS HAD NO VIOLENT CRIMES PRIOR TO THIS TERRIBLE DOUBLE MURDER, AND THAT, IF IT WAS A RESULT OF A PSYCHOTIC EPISODE, THERE IS NO TORTIOUS INTENT BY MR. FRANCIS, TO INFLICT THESE TERRIBLE SUFFERINGS AND WOUNDS ON THE VICTIMS.

WASN'T -- ISN'T THERE A REASONABLE OR ENOUGH EVIDENCE IN THE RECORD TO INFER THAT HE ACTUALLY -- THIS WAS A VERY CAREFULLY-PLANNED CRIME, WHERE HE INTENDED TO ROB THESE VICTIMS. I GUESS HE, ALSO, HAD A DRUG PROBLEM, AND THAT HE WANTED WHATEVER WAS IN THE HOUSE FOR PURPOSES OF BEING ABLE TO SELL THEM FOR HIS DRUG ADDICTION, SO IT IS NOT A TOTALLY UNEXPLAINED, IRRATIONAL EVENT. IT IS, ALSO, CONSISTENT WITH SOMEBODY THAT WAS INTENDING TO ROB AND THEN MURDER HIS VICTIMS. SO DOESN'T THAT CHANGE THE LOOKING AT THE NATURE OF THIS CRIME, THAT IT IS NOT SIMPLY A STABBING, BUT IT WAS A CRIME COMMITTED FOR PECUNIARY GAIN, AS WELL.

MR. FRANCIS WAS CONVICTED OF ROBBERY, AND AS MS. HESHON SAID, THE MENTAL HEALTH EXPERT, IT IS VERY COMMON FOR PEOPLE WITH THESE PSYCHOSIS TO TREAT THEMSELVES WITH STREET DRUGS, AND THAT IF HE HAD, IN FACT, NEEDED TO TREAT HIMSELF AND WAS HAVING A PSYCHOTIC EPISODE, HE NEEDED MONEY. IT WAS A SPUR OF THE MOMENT DECISION TO GO OVER THERE AND COMMIT THOSE ROBBERIES. MS. HESHON AND DR. PERRY, BOTH, SAID THAT THESE DISEASE PERMEATE EVERYTHING THAT MR. FRANCIS HAD DONE. I BELIEVE, UNDER THE COURT'S DECISIONS IN HAUCK AND IN -- IN HMENT -- IN HAWKE AND IN ALMORADO, LAST YEAR, AND COOPER, THAT WE MUST CONSIDER THESE SERIOUSLY MENTAL ILL PEOPLE TO BE MITIGATED TO A GREAT DEGREE. NO VIOLENT ACTS HAD BEEN COMMITTED BY MR. FRANCIS BEFORE, AND THE DOUBLE MURDER WAS MORE THAN LIKELY THE RESULT AFTER PSYCHOTIC EPISODE. WHICH THERE IS MORE THAN ADEQUATE PROOF. STATE ATTORNEY ACKNOWLEDGED, DURING HIS FINAL STATEMENT, THAT, YES, INDEED, MR. FRANCIS WAS MENTALLY ILL. AND HE PRESENTED NOTHING TO REBUT THIS. AND MR. FRANCIS RELIST ON HIS MENTAL ILLNESS AS -- RELIES ON HIS MENTAL ILLNESS AS OVERWHELMING MITIGATION IN THIS CASE, AND WE WOULD ASK THE COURT TO REVERSE ON THE PROPORTIONALITY THE SENTENCE OF DEATH AND IMPOSE.

THANK YOU. MR. FRENCH.

MAY IT PLEASE THE COURT. I AM CURTIS FRENCH FOR THE STATE OF FLORIDA, IN THIS CAUSE. I THINK I WILL ADDRESS, GO AHEAD TO THE LAST ISSUE FIRST AND ADDRESS PROPORTIONALITY THE STATE, OF COURSE, CONCEDED THAT, AT TRIAL, THAT MR. FRANCIS HAD SOME MENTAL PROBLEMS, AND THE TRIAL JUDGE, IN FACT, FOUND THAT HE HAD HAD SOME MENTAL ILLNESS. HOWEVER, IT BEARS NOTING THAT THERE IS NO EVIDENCE THAT THAT HE HAD ANY BRAIN DAMAGE AT ALL. THE EVIDENCE SHOWS THAT HE IS NORMALLY INTELLIGENT. NEITHER OF THE TWO EXPERTS FROM MR. FRANCIS TESTIFIED THAT HE WAS UNDER ANY KIND OF ACUTE DISTRESS AT THE TIME OF THE CRIME.

WHAT DOES THAT MEAN? BECAUSE I SEE THAT IN THE JUDGE'S ORDER. WHAT, AND, AGAIN, EXPLAINING WHATEVER IS INVOLVED IN A MENTAL ILLNESS, OBVIOUSLY SOMEONE THINKS OF

SOMEONE HAVING A PSYCHOTIC EPISODE. A LAY PERSON'S IDEA IS THAT THEY REALLY DON'T KNOW WHAT THEY ARE DOING. WHAT IS THE CONCEPT OF NOT UNDER ACUTE DISTRESS, AS FAR AS WHETHER THE MENTAL ILLNESS.

ACUTE DISTRESS WOULD TRIGGER A PSYCHOTIC EPISODE, AND NEITHER ONE OF THE EXPERTS COULD SAY WHETHER HE HAD EVER HAD ONE, BUT MS. HESHON SAID THAT IT IS POSSIBLE HE DID HAVE AND THIS EPISODE COULD BE TRIGGERED BY ACUTE DISTRESS, BUT THIS DOESN'T OCCUR AS A RESULT OF THE ACUTE ILLNESS OF THE DEFENDANT. IT WAS SOMETHING THAT HE PLANNED OUT.

WHAT WAS THE RELATIONSHIP TO THE ACUTE MENTAL ILLNESS AND THE CRIME, IF HE WASN'T HAVING A PSYCHOTIC EPISODE AT THE TIME?

DR. PERRY COULDN'T REALLY SAY WHAT THE RELATIONSHIP WAS. MS. HESHON, I DON'T REMEMBER WHETHER SHE HAD A DOCTOR'S DEGREE OR NOT, BUT SHE TESTIFIED THAT THE PROBLEMS HAD SOME EFFECT BUT SHE COULDN'T SAY EXACTLY WHAT, BECAUSE THEY WERE WITH HIM ALL THE TIME. IN NOT TRYING TO TOTALLY DISCOUNT THE TESTIMONY, BECAUSE IN FACT THE JUDGE DID FIND SOME MENTAL ILLNESS, IT, ALSO, BEARS NOTING THAT, WHEN THEY DESCRIBE SOME OF THE BEHAVIOR THAT LED TO THEIR CONCLUSIONS, FOR EXAMPLE HE TALKED ABOUT HIS OBSESSION WITH CLEANLINESS AND ORDER, AND APPARENTLY THERE HAS BEEN SOME OBSERVATIONS OF HIS BEHAVIOR IN JAIL. HOWEVER, IF YOU LOOK AT HIS BEHAVIOR BEFORE THIS CRIME, IF YOU LOOK AT THE BUILDING THAT HE WAS LIVING IN OUT BEHIND CJ'S HOUSE, THERE WAS NOTHING EITHER CLEAN OR NEAT OR ORDERLY ABOUT THAT PLACE. THEY, ALSO, TESTIFIED THAT, BASED UPON THEIR CONVERSATIONS WITH, BASED UPON THEIR DISCUSSIONS WITH THE DEFENDANT'S FRIENDS AND FAMILY, THAT SOMETHING LIKE WITHIN THE THREE YEARS LEADING UP TO THIS CRIME, THAT HE WAS ACTING WEIRD. WELL, THOSE FRIENDS AND FAMILY TESTIFIED, AT THE TRIAL, AND THEY DON'T REALLY BACK UP THAT KIND OF CONCLUSION, I DON'T THINK. TWO OF THE WITNESSES TESTIFIED THAT THEY DIDN'T NOTICE ANY CHANGE IN HIS BEHAVIOR LEADING UP TO THE TIME OF THE CRIME. HIS OWN MOTHER TESTIFIED THAT HE WAS THE SAME SWEET, KIND, WARM, LOVING PERSON, RIGHT FROM THE TIME HE WAS BORN UNTIL THIS HAPPENED.

WE KNOW -- CLEARLY AND, REALLY, WHEN YOU THINK OF A CRIME OF THIS NATURE AS SOMEONE THAT WAS NEXT-DOOR NEIGHBOR TO HIS MOTHER, THIS IS A TERRIBLE CRIME. THE THOUGHT THAT SOMEONE WOULD THINK THEY COULD GET AWAY WITH IT, YOU KNOW, AS A NEXT-DOOR NEIGHBOR, YOU ARE NOT, AGAIN, SAYING THIS MAN IS NOT A MENTALLY ILL PERSON. IT IS JUST A QUESTION AS TO WHETHER THAT IS MITIGATING ENOUGH IN THIS CASE.

I THINK IT IS LEGITIMATE TO QUESTION HOW MENTALLY ILL HE IS AND TO WHAT EXTENT THAT MIGHT BE MITIGATING. AND THE FINAL THING THEY TALKED ABOUT WAS HIS PASSIVITY. HE WAS PASSIVE AND DIDN'T CARE ABOUT THE CONSEQUENCES AND DIDN'T CARE ABOUT THE MENTAL HEALTH EXAM AND THE TRIAL AND SO ON. HOWEVER, IF YOU READ THE RECORD, ESPECIALLY THE PRETRIAL PROCEEDINGS, IN WHICH HE TOOK AN ACTIVE PART AND MADE VARIOUS MOTIONS ON HIS OWN AND, ALSO, THE SUSPENSE OTHER HEARING AT CHE TESTIFIED, I WOULD DESCRIBE HIS BEHAVIOR AS ANYTHING BUT PASSIVE. I THOUGHT IT WAS FAIRLY AGGRESSIVE, SO AT ANY RATE I WOULD THROW THOSE IN THERE FOR WHATEVER IT IS WORTH. I HAVE CITED A NUMBER OF CASES IN MY BRIEF AS TO PROPORTIONALITY. AND I WON'T GO INTO ALL OF THEM, BUT THIS COURT HAS, IN MANY CASES, THAT WERE AGGRAVATED MORE OR LESS TO THE SAME DEGREE THAT THIS WAS, AND THIS IS A VERY AGGRAVATED CASE, THIS COURT HAS FOUND THAT THE DEATH PENALTY WAS PROPORTIONATE PUNISHMENT, EVEN THOUGH THERE WAS SOME MENTAL HEALTH MITIGATION. FOR EXAMPLE IN BATHE, THE DEFENDANT HAD NEUROLOGICAL IMPAIRMENT, WHICH THIS DEFENDANT DIDN'T HAVE. IN ROBINSON THE DEFENDANT WAS A HEAVY DRUG USER. IN MITUSKY, THERE WAS THE INABILITY TO CONFORM TO THE LAW AND NEVERTHELESS THE COURT FOUND THAT IT WAS PROPORTIONAL. FINALLY, IN COLE, COLE HAD

ORGANIC BRAIN DAMAGE AND AN ABUSED AFTER DEPRIVED CHILDHOOD, WHICH THIS DEFENDANT DID NOT HAVE. THERE WAS NOTHING DISVACKD ADVANTAGED BY -- DISADVANTAGED ABOUT THIS DEFENDANT'S CHILDHOOD. THE MOTHER WAS WORKS AS A NURSE AND SHE HAD A HOUSE AND THE DEFENDANT WAS PROVIDED EVERYTHING HE NEEDED. THERE WAS NO ABUSE EXCEPT THAT ONE TIME MANY, MANY YEARS AGO, HE GOT INTO SOME SORT OF A FIGHT WITH HIS FATHER, SO IF YOU COMPARE THOSE OTHER CASES, THE MENTAL MITIGATION IN THIS CASE TO THE MENTAL MITIGATION IN THE OTHERS, WITH THE AGGRAVATION, WE THINK THE SENTENCE OF DEATH IS PROPORTIONATE AND CONSISTENT WITH CASE LAW.

BEFORE YOU LEAVE THAT, ADDRESS WITH REGARD TO THESE PARTICULAR INDIVIDUALS BEING VULNERABLE DUE TO ADVANCED AGE, AND THE ONLY EVIDENCE THAT SEEMS TO BE IN THIS RECORD IS THE FACT OF AGE. IS THIS A PER SE RULE THAT THE COURT SHOULD ESTABLISH? WE HAVE THE VICTIMS, HERE, 66 YEARS OLD AND APPARENT GOOD HEALTH, AND ARE THEY -- WE DON'T HAVE ANY EVIDENCE THAT I CAN SEE OF MORE OR LESS VULNERABLE THAN A 66-YEAR-OLD RECOGNIZING ALL THE EVENTS THAT GO WITH THAT. WE ARE NOT DEALING WITH A 85-YEAR-OLD. I REALIZE WE ARE NOT DEALING WITH A 50 OR 40-YEAR-OLD. BUT HOW DO WE -- HOW SHOULD THE COURTS DEAL WITH THIS PARTICULAR AGGRAVATOR?

WELL, FIRST OF ALL, ALTHOUGH THE TESTIMONY WAS THAT BOTH OF THESE VICTIMS WERE IN GOOD HEALTH, I WOULD NOTE THAT THERE IS TESTIMONY THAT CLAIRE BLUNT HAD RECENTLY RECOVERED FROM CANCER. THEY WERE, ALSO, WIDOWS AND BOTH LIVING ALONE. OUR POSITION IS WE ARE NOT ASKING THAT -- WE ARE NOT SUGGESTING THAT THIS DEATH SENTENCE CAN BE AFFIRMED, ON THE BASIS OF THE ADVANCED-AGE AGGRAVATOR BY ITSELF, BUT WE DO THINK THAT ADVANCED AGE --

I UNDERSTAND THAT, BUT WE DO LOOK AT THIS AS PART OF THE PICTURE.

WHAT WE CONTEND WAS THE FACT THAT THEY WERE OF ADVANCED AGE WAS THAT THE SENTENCE COULD TAKE INTO CONSIDERATION, AND UNDER THE SUPREME COURT PRECEDENCE, AN AGGRAVATOR ONLY HAS TO PROVIDE SOME GUIDANCE TO THE SENTENCE OR, AND WE THINK IT DOES THAT. AND OUR CONTENTION IS THAT 66 YEARS IS AN ADVANCED AGE.

WHERE DOES THAT LINE -- IS THERE A LINE TO BE DRAWN? ARE THERE OTHER FACTORS THAT WE MUST LOOK TO? WOULD A MARRIED 66-YEAR-OLD BE DIFFERENT FROM A WIDOWED? I AM TRYING TO GET SOME GUIDANCE, FROM THE STATE'S POSITION. WHAT KIND OF EVIDENCE DO WE NEED?

THERE IS NO HARD AND FAST LINE. IF THIS COURT WANTS TO ESTABLISH ONE, IT HASN'T BEEN DONE AT THIS POINT. WE JUST THINK THAT THE JURY WAS ENTITLED TO TAKE THEIR AGE INTO CONSIDERATION IN THIS CASE. THERE ARE SOME OTHER FACTORS BESIDES THE AGE. BESIDES THE FACT THAT CLAIRE HAD CANCER. THEY WERE BOTH WIDOWED. THEY WERE BOTH LIVING ALONE. THE DEFENDANT LIVED NEXT DOOR, SO HE KNEW THAT THEY WERE LIVING ALONE AND, OF COURSE, THAT THEY WERE ELDERLY WOMEN, AND I CERTAINLY THINK HE THOUGHT THEY WERE VULNERABLE, AND THAT IS WHY HE COMMITTED THE CRIME, AND AT LEAST FACTORING ALL THOSE THINGS TOGETHER, WE THINK THAT IS ENOUGH.

DO WE HAVE ANY CASE LAW WHERE WE FOUND THIS BEFORE AND WHAT WERE THE CIRCUMSTANCES?

NOT TO MY KNOWLEDGE, I BELIEVE, UNLESS I AM MISSING SOMETHING. I AM BELIEVE THIS IS THE FIRST ONE. I BELIEVE IT CAME UP BEFORE, IN HOOTMAN AND THIS COURT TOSSED IT OUT BECAUSE THE COURT FOUND THAT THE AGGRAVATOR COULD NOT BE APPLIED RETROACTIVELY. THIS OCCURRED AFTER THE AGGRAVATOR WAS FOUND UNDER THE LAW.

IF A CHILD IS UNDER 12, THAT IS SOMETHING THAT THEY HAVE ACTUALLY GIVEN THE AGE AS AN

AGE. THE LEGISLATURE COULD HAVE SAID IF THE VICTIM IS OVER A CERTAIN AGE, BUT --

THEY DID NOT.

WHAT?

THEY DID NOT.

THEY DID NOT. SO WHAT YOU ARE SAYING IS THE EXTRA, IT IS NOT 66 YEARS OLD, BECAUSE THEY ARE IN GOOD HEALTH, AND SO IT IS NOT AGE, BUT IT IS THE FACT THAT THEY ARE WIDOWED AND LIVING ALONE THAT WOULD BE --

THOSE ARE THINGS THAT ADD TO IT. WE -- OUR POSITION IS JUST THAT, IN THIS CASE, THE AGGRAVATOR IS NOT UNCONSTITUTIONAL, BECAUSE IT PROVIDES SOME GUIDANCE AND THAT THE JURY WAS ENTITLED TO FIND THAT AGGRAVATOR IN THIS CASE.

COULD THEY FIND -- I GUESS WHAT I AM ASKING, COULD ANYBODY THAT IS OVER 65 OR 62, LIVING ALONE, WOULD THAT BE AN APPROPRIATE AGGRAVATOR?

I WOULD SAY YES. IF IT WAS 50 OR 45, THEN OBVIOUSLY AT SOME POINT --

I THOUGHT THAT -- I THOUGHT THE STATE'S POSITION WAS THAT THE FOCUS WAS, REALLY, ON THE VUL RANLT CONTACT -- THE VULNERABILITY CONNECTED WITH EITHER THE AGE OR DISABILITY.

THE AGGRAVATOR INCLUDES REFERENCE TO VULNERABILITY, AND WE DO THINK THERE IS SOME EVIDENCE IN THIS CASE THAT THESE VICTIMS, BECAUSE OF THEIR WIDOW HOOD AND LIVING ALONE TOGETHER WERE VULNERABLE. ZOO SO IF YOU HAD A 66 YEAR -- SO IF YOU HAD A 66-YEAR-OLD COLLEGE FOOTBALL COACH THAT RAN MARATHONS, WOULD THAT QUALIFY?

THAT WOULD BE A DIFFERENT CASE.

WHILE WE HAVE YOU INTERRUPTED, WAS THERE EVIDENCE OF THE EDUCATIONAL HISTORY OR JOB HISTORY OF THE DEFENDANT IN THIS RECORD?

HE DID NOT HOLD ANY STEADY JOBS. NOW, AT THE TIME OF THE CRIME HE DID HAVE A FOUR-YEAR-OLD CHILD, WHICH, I THINK, WAS SUPPORTING TO SOME EXTENT. HE HAD SOME JOBS OFF AND ON. HIS EDUCATIONAL HISTORY, ACCORDING TO HIS MOTHER, WAS THAT HE DID WELL THROUGH JR. HIGH SCHOOL AND THAT IN HIGH SCHOOL, HE STARTED GETTING INVOLVED WITH GIRLS AND KIND OF DROPPED OUT, BUT HE TOOK A GED AND PASSED THAT, BUT HE HAS A DP. ED.

AND HIS WORK WAS?

SPOTTY.

THERE ARE NO RECORDS OF MENTAL HEALTH TREATMENT?

NO, MA'AM. NOT THAT I AM AWARE OF.

AND HOW OLD WAS HE?

23. AT THE TIME OF THE CRIME.

AND YOU AGREED THERE WERE NO -- BEFORE, THOUGH, HE HAD WHAT KIND OF CRIMINAL HISTORY DID HE HAVE?

NOT A VIOLENT CRIMINAL HISTORY. HE HAD ONE DRUG CONVICTION OUT OF JAMAICA, WHERE HE WAS APPARENTLY INVOLVED IN SOME KIND OF DRUG DEALING AND HAD SERVED SOME TIME FOR THAT. HE HAD, ALSO, BEEN ARRESTED ON COCAINE CHARGES BEFORE THIS MURDER, AND I BELIEVE AFTER THE TRIAL, AT SOME POINT AFTER HE WAS ARRESTED, ANYWAY, HE PLED GUILTY TO THOSE CHARGES.

YOU MENTION MENTAL ILLNESS, BUT IS THERE EVIDENCE IN THE RECORD OF HIS -- THIS WAS A DRUG-RELATED CRIME? THAT IS THAT HE WAS A DRUG USER?

THERE WAS SOME EVIDENCE THAT HE WAS A DRUG USER AND THAT THIS WAS DRUG-RELATED, IN THE SENSE THAT HE WANTED TO OBTAIN MONEY TO BUY DRUGS, AND AS A MATTER OF FACT DID SO, BECAUSE HE GOT MONEY OUT OF THE PURSE THAT HE TOOK AND GAVE IT TO CJ, WHO WAS A DRUG DEALER, AND HE BOUGHT DRUGS FOR HIM.

BUT THAT WAS NOT A MITIGATOR IN THIS CASE?

I DON'T THINK IT WAS -- LET ME SEE. I BELIEVE ONLY TO THE EXTENT THAT IT INVOLVED TIED IN WITH THE MENTAL ILLNESS, WHICH, OF COURSE, THE JUDGE FOUND AS A NONSTATUTORY MITIGATOR, IN ADDITION TO THE STATUTORY MITIGATOR, AND AS A NONSTATUTORY MITIGATOR, GAVE IT CONSIDERABLE WEIGHT. AS TO THE -- AS HAS BEEN POINTED OUT, HE, ALSO, FOUND A STATUTORY MITIGATOR, WHICH IS NOT EVEN CONTENDED BY THE DEFENDANT. HOWEVER, HE DIDN'T GIVE IT MUCH WEIGHT, BECAUSE, FOR ONE THING, IT HAD NOT BEEN SHOWN THAT THE DEFENDANT WAS UNDER ANY PARTICULAR ACUTE DISTRESS. BOTH EXPERTS TESTIFIED THAT THE DEFENDANT WAS CAPABLE OF PLANNING AND EXECUTING HIS CRIMES, AS WELL AS COVERING UP HIS MISDEEDS AFTERWARDS AND HE COULD DISTINGUISH BETWEEN RIGHT AND WRONG, SO EVEN THOUGH THAT STATUTORY MITIGATOR WAS NOT CONTENDED FOR, THE COURT FOUND IT AND GAVE IT SOME WEIGHT. AGAIN, OUR POSITION IS, WHEN YOU LOOK AT -- THIS WAS A BRUTAL, HIGHLY-AGGRAVATED MURDER, AND IT OUTWEIGHS AGGRAVATION, OUTWEIGHS MITIGATION. AS THE TRIAL JUDGE FOUND, IN HIS EXPRESSION OF IT, WAS THAT THE AGGRAVATING CIRCUMSTANCES FAR OUTWEIGH THE MITIGATING CIRCUMSTANCES AND TILT THE SCALES OF JUSTICE SDEEDLY TOWARDS DEATH. WE THINK THAT WAS A PROPER CONCLUSION.

WHAT WAS THE JURY'S VOTE?

8-4.

ON BOTH VICTIMS?

IT WAS 8-4 ON BOTH VICTIMS.

WHAT ABOUT THE ARGUMENT THAT THE DEFENSE HAS MADE, CONCERNING THE JUDGMENT OF ACQUITTAL, THAT THE STATE FAILED TO NEGATE THEIR REASONABLE HYPOTHESIS OF INNOCENCE THAT C. J. WAS THE ACTUAL ACTUAL KILLER HERE? WHAT EVIDENCE DO WE HAVE IN CONSISTS WENT THAT HYPOTHESIS?

THE STATE'S POSITION IS THAT IS EASY TO DEAL WITH, BECAUSE THAT HYPOTHESIS OF INNOCENCE IS REBUTTED BY THE DIRECT TESTIMONY OF J. C. J.,HIMSELF -- OF C. J., HIMSELF, WHO DENIED HAVING COMMITTED THE CRIME. OF COURSE MY OPPONENT TRIES TO ARGUE THE CREDIBILITY OF C. J. HICKS, BUT THAT WAS A MATTER FOR THE JURY. THERE IS, NEVERTHELESS, DIRECT EVIDENCE THAT ESTABLISHES THAT HE DID NOT. IN ADDITION TO DIRECT TESTIMONY, THERE IS ABSOLUTELY NO EVIDENCE PLACING C. J. HICKS OR ANY OTHER STRANGER IN THAT AREA AT THAT TIME.

WHAT ABOUT THE SHOE PRINT?

WELL, THE EXPERT TESTIFIED THAT HE MEASURED A BLOODY SHOE PRINT ON THE KITCHEN FLOOR, SOME SORT OF SNEAKER, AND HIS TESTIMONY WAS THAT IT WAS PROBABLY A SHOE SIZE FROM 8 TO 10, SOMEWHERE, HE COULDN'T BE SURE. HE THOUGHT IT LEANED TOWARDS THE 8, BUT HE COULDN'T BE SURE, BECAUSE WHEN YOU STEP IN BLOOD, THERE IS A SQUISHING EFFECT, WHICH CAN MAKE IT VERY DIFFICULT TO DETERMINE THE SIZE OF THE SHOE. NOW, THE DEFENDANT'S FOOT WAS MEASURED ON SOME SORT OF INSTRUMENT THAT YOU USE TO MEASURE FOOT SIZE, AND THERE IS TESTIMONY THAT IT WAS MEASURED AT SIZE 11, SO THERE IS, ALSO, TESTIMONY THAT HE WAS WEARING, AT THE TIME OF THE ARREST, A SIZE 9 AND-A-HALF SHOE, SO THAT SHOE COULD HAVE BEEN THE SAME SHOE THAT MADE THE PRINT. THERE IS CONSIDERABLE AMOUNT OF CIRCUMSTANTIAL EVIDENCE IN THIS CASE.

BEFORE YOU MOVE FROM THAT, WAS THERE ANY EVIDENCE ABOUT THAT SHOE THAT THE DEFENDANT HAD ON BEING TESTED OR ANYTHING?

THERE WAS NO BLOOD ON IT. THE STATE'S THEORY WAS THAT THE SHOES THAT HE WAS WEARING AT THE TIME OF THE CRIME WERE, LIKE HIS CLOTHES, BUSHED IN THE WHEELBARROW.

WAS THERE EVIDENCE TO SUPPORT THAT?

THERE WAS TESTIMONY THAT HE SET FIRE TO A LOT OF THINGS IN THE WHEELBARROW. I DON'T RECALL TESTIMONY THAT THEY SPECIFICALLY IDENTIFIED SHOE REMAINS IN THE WHEELBARROW.

BUT THERE IS EVIDENCE THAT HE PLACED A PHONE CALL TO HIS NEPHEWS, INQUIRING OF WHETHER THEY HAD LOOKED INSIDE THE DUFFLE BAG AND WERE AWARE OF ITS CONTENT?

YES, SIR. THERE IS PROBABLY SOME EVIDENCE -- I CAN'T TOUCH ON IT, IN THE TIME THAT I HAVE, BUT THE DEFENDANT'S NEPHEW SAW HIM LEAVING THE HOUSE, CARRYING A BIG, GREEN, ARMY-TYPE DUFFLE BAG WITH WHAT HE CALLED A PIPE STICKING OUT. AT SOME SHORT POINT THEREAFTER, HE SAW THE DEFENDANT LEAVING THE HOUSE, AGAIN, WITH THE SAME DUFFLE BAG. THIS TIME HE HAD A DARK RED SPOT ON HIS SHIRT. HE COULDN'T SAY WHETHER IT WAS BLOOD OR NOT BLOOD, BUT HE SAW A DARK RED SPOT ON HIS SHIRT THAT WASN'T THERE EARLIER. SHORTLY AFTER THAT, C. J. HICKS, ACCORDING TO HIS TESTIMONY, SAW THE DEFENDANT DRIVE UP IN A 1982 GRAND PRIX AUTOMOBILE, WHICH IS WHAT THE VICTIMS HAD, AND HE SAW THE DEFENDANT, CARLTON FRANCIS, GET OUT OF THAT AUTOMOBILE CARRYING A GREEN DUFFLE BAG. AT SOME POINT AFTER THAT, THE DEFENDANT WAS SITTING WITH MS. HOLLOWAY, WHO WAS C. J.'S LIVE-IN COMPANION, AND A NEWS BULLETIN CAME ON ABOUT THE MURDER AND THERE WAS A DESCRIPTION OF THE CAR. THERE WAS TESTIMONY THAT THE DESCRIPTION OF THE CAR AND THE TAG NUMBER HAD BEEN PROVIDED TO THE NEWS MEDIA. THE DEFENDANT HAD NO REACTION TO THAT AT THAT TIME. EVEN THOUGH, OF COURSE, HE KNEW, HE SHOULD HAVE KNOWN WHO THE CAR WAS. I MEAN IT WAS NEXT-DOOR NEIGHBORS TO HIM. BUT AT SOME POINT AFTER THAT HE GOT IN THE CAR AND DROVE AWAY. IT, NEXT, SHOWED UP A COUPLE OF BLOCKS AWAY AND WAS FOUND THERE. SOMETIME AFTER THAT, HE TOOK THE TAXICAB BACK TO THE RESIDENCE, ACTED VERY SUSPICIOUSLY, BECAUSE HE WALKED BY ALL OF THE POLICE CARS WERE ALL OF THEIR FLASHING LIGHTS AND THE CRIME SCENE TAPE AND TOTALLY IGNORED IT AND WALKED INTO HIS HOUSE. THE POLICE CAME OVER TO TOUCK TO HIM. THEY -- TO TALK TO HIM. THEY KNEW HE HAD BEEN THERE EARLIER IN THE DAY BECAUSE HIS MOTHER IT TOLD THEM THAT. HE CRITICIZED HIS MOTHER FOR HAVING TOLD THEM THAT, THEN THEY ASKED QUESTIONS ABOUT WHERE HE WAS AND WHAT HE HAD BEEN WEARING AND HE CRITICIZED HIS MOTHER ABOUT THAT AND ADMITTED EARLIER THAT HIS STATEMENTS HAD BEEN UNTRUE, AND THEN HE WENT AND TOOK A TAXICAB BACK TO AN AREA NEAR WHERE THE CAR WAS LEFT OFF, WHICH HAPPENED TO BE ABOUT A BLOCK FROM WHERE C. J. LIVED. HE BURNED CLOTHES, INCLUDING A KNIFE AND A WHITE PURSE THAT WAS LATER IDENTIFIED AS A PURSE THAT COULD HAVE BEEN -- IT WAS HARD TO TELL. IT WAS BURNT UP. ALL THAT WAS LEFT WAS A

FRAME, BUT IT COULD HAVE BEEN A PURSE THAT WAS TAKEN FROM THE VICTIMS. IN ADDITION, THE DEFENDANT ADMITTING, ADMITTED, BEFORE ANYBODY TOLD HIM ABOUT ANY COINS OR WATCHES OR BULLETS OR ANYTHING, HE ADMITTED, ON HIS OWN VOLITION, WHEN HE WAS FIRST TALKED TO, THAT HE HAD TOUCHED ALL OF THOSE ITEMS, I SUPPOSE BECAUSE THE STATE FIGURES HE WAS TRYING TO COVER BECAUSE THEY FOUND PRINTS ON THEM. THERE WERE NO PRINTS FOUND AT THE SCENE OR IN THE CAR, BUT THERE WAS A PAIR OF LATEX RUBBER GLOVES FOUND NEAR WHERE THE DEFENDANT HAD BEEN STAYING AFTERWARDS. IT JUST SO HAPPENS THAT HIS MOTHER WAS A NURSE AND SHE HAS GLOVES JUST EXACTLY LIKE. THAT THEN, OF COURSE, C. J. HAD TESTIFIED THAT HE GAVE HIM CERTAIN ITEMS TO TRY TO PAWN FOR HIM. OF COURSE IF C. J. HAD PAWNED THE ITEMS, THEN HIS NAME WOULD HAVE BEEN ON THE PAWN TICKET. BUT AT ANY RATE DID NOT DO SO. BUT THE ITEMS INCLUDED TWO POCKET WATCHES AND OLD COINS AND, ALSO, A BLACK RADIO THAT HE TRIED TO DO SOMETHING WITH AND NOBODY WANTED IT, SO HE THREW THAT AWAY. HE WAS SEEN BURYING A .22 RIFLE WHICH WAS FOUND EARLIER AND THAT WAS MATCHED TO A SHELL FOUND INSIDE THE VICTIM'S HOME.

DID ANYONE HEAR A SHOT GO OFF? NEITHER OF THESE VICTIMS WERE SHOT?

NO EVIDENCE THAT A SHOT WAS FOUND IN THE HOUSE, BECAUSE THEY LOOKED FOR A BULLET STRIKE AND COULDN'T FIND ONE. THE GUN WAS INOPERABLE. I DON'T THINK THE DEFENDANT DIDN'T KNOW THAT, BUT IT WAS. THE STATE'S THEORY WAS THAT HE WENT INSIDE THE HOUSE. CLAIRE BLUNT WAS SEATED IN A CHAIR WITH HER BACK TO THE DOOR. THE DEFENDANT WAS GOING TO USE THAT GUN, AND IT WOULDN'T WORK, AND IN THE PROCESS HE EJECTED THE SHELL, SO HE, THEN, WENT TO A KITCHEN COUNTER, WHICH DIVIDED THE LIVING ROOM FROM THE KITCHEN, AN OPEN AREA WITH A COUNTERTHERE. THERE WAS SOME SORT OF A KNIFE HOLDER SITTING ON THE COUNTERAND TOOK ONE OF THOSE KNIVES AND STABBED CLAIRE AND KILLED HER. SHE HAD ONE DEFENSIVE WOUND ON HER LEFT HAND. BERNICE, WE THINK, WAS BACK IN THE BACK, POSSIBLY TAKING A NAP OR SOMETHING AND WOKE UP TO SEE WHAT WAS GOING ON. GOT A KNIFE AND TRIED TO ATTACK HIM WITH IT AND IN OTHER CIRCUMSTANCES THAT YOU NEED TO BEAR IN MIND ABOUT THIS IS THERE WAS A TRAIL OF BLOOD 10 TO 15 FEET LONG FROM A WICKER CHAIR IN THE LIVING ROOM, A WICKER STOOL. ON THAT WICKER STOOL WAS THE KNIFE HE HAD USED TO MURDER CLAIRE BLUNT WITH, SO WHAT WE THINK HAPPENED WAS THAT, WHEN BERNICE CAME OUT THERE WITH ANOTHER KNIFE, THAT HE WENT OVER TO HER AND DROPPED THE KNIFE HE HAD AND SEIZED THE KNIFE FROM HER AND STARTED STABBING HER WITH IT, AND THERE WAS A TRAIL OF BLOOD INTO THE KITCHEN, WHERE SHE WAS FOUND. SHE HAD BEEN STABBED SO HARD THAT HE HAD BROKEN THE KNIFE, SO HALF OF THE KNIFE WAS ON THE COUNTERAND THE BLADE WAS DOWN BY -- WAS ON THE COUNTER, AND THE BLADE WAS DOWN BY HER. ANOTHER STATE'S THEORY WAS BOTH FELONY MURDER AND PREMEDITATION, AND IT WAS A GENERAL VERDICT.

YES, IT WAS.

WHAT IS THE EVIDENCE OF PREMEDITATION VERSUS --

THE FACT THAT, NUMBER ONE, HE WENT OVER THERE ARMED WITH A RIFLE, AND THERE IS EVIDENCE THAT HE HAD A RIFLE, BECAUSE NUMBER ONE, HE HAD TAKEN IT AND BURIED IT AND WE KNOW HE HAD A RIFLE, BECAUSE WE FOUND A SHELL INSIDE THE HOUSE.

WOULD THAT, IN ITSELF, THAT BE ENOUGH, THE PLAN, THAT IS HIS PLAN WAS TO GO THERE TO --

INNINGS, BUT IN ADDITION TO THAT WE HAVE THE FACT THAT ONE VICTIM WAS STABBED 16 TYPES AND THE OTHER ONE WAS STABBED 23 TIMES.

BUT WOULD HE HAVE KNOWN, WAS THERE ANY EVIDENCE ABOUT THE FACT THAT THEY WERE ALWAYS HOME DURING THE DAY AS OPPOSED TO MAYBE HIS INTENT TO BURGLARIZE THE HOUSE? HE KNEW THEY WERE THERE. WELL, HE SHOULD HAVE KNOWN THEY WERE THERE. LET'S

PUT IT THAT WAY. BECAUSE HIS NEPHEW TESTIFIED THAT HE HAD SEEN HIM THAT MORNING. ONE WAS AT ONE POINT, OUT AT THE POOL BEHIND THE HOUSE, I BELIEVE, AND THE OTHER ONE AT ONE POINT WAS OUT ON THE FRONT STEPS, GETTING A NEWSPAPER, AND BESIDES THAT THEY ONLY HAD ONE CAR, AND THE CAR WAS IN THE CARPORT, SO HE HAD EVERY REASON TO BELIEVE THAT AT LEAST ONE AND PROBABLY BOTH WERE THERE.

AS FAR AS THE CAR, ITSELF, IT WAS SUBSEQUENTLY ABANDONED?

YES. ABOUT -- ABANDONED BETWEEN C. J.'S HOUSE AND THE TAXI STAND THAT THE DEFENDANT KEPT USING. AND ONE FINAL THING AND ANOTHER INCONSISTENCY WAS AFTER THE ARREST THE DEFENDANT CLAIMED HE WAS OFF PLAYING BASKETBALL AT SOMEPLACE THAT WAS, LIKE, SIX MILES FROM THE CRIME SCENE, THAT HE HAD TAKEN A TAXI FROM THEIR HOME, BECAUSE HE DIDN'T FEEL LIKE WALKING, AND IT WAS APPOINTED OUT TO HIM THAT, WELL, WE KNOW YOU TOOK A TAXI OVER HERE, AT THIS STAND NOT FAR FROM NINTH AND DIVISION, I THINK IT WAS, AND AT ANY RATE HE CLAMMED UP AND DIDN'T WANT TO SAY ANYMORE, SO THROUGHOUT HE HAS MADE NUMEROUS INCONSISTENT STATEMENTS OF HIS WHEREABOUTS. HE HAS NO ALIBI AND HE HAS TRIED DIFFERENT ONES AND NOBODY CAN CORROBORATE IT. HE CAME UP WITH SOME GUY NAMED GHANDI THAT NOBODY COULD FIND. HE, OBVIOUSLY, HAD THE MOTIVE AND OPPORTUNITY AND HE HAD THE KNOWLEDGE, BECAUSE HE LIVED NEXT DOOR TO THEM. HE HAD THE FRUITS OF THE CRIME AND HIS INCONSISTENT STATEMENTS. WHEN YOU PUT ALL OF THAT TOGETHER, WE THINK IT IS A MOUNTAIN OF EVIDENCE, AND WE THINK IT SUPPORTS PREMEDITATED MURDER, AND IF IT DOESN'T, IT CERTAINLY SUPPORTS FELONY MURDER.

DOES THE STATE CONCEDE THAT THE MOTHER'S STATEMENT IS HEARSAY ? AND IT IS THE DEFENDANT'S POSITION FOR GETTING IT IN THAT IT IS A SPONTANEOUS STATEMENT?

ACTUALLY I DON'T THINK THAT IS THE STRONGEST REASON FOR GETTING IT IN T WE THINK THE STRONGEST REASON IS IN CORPORATION, LET'S SEE, THAT THE DEFENDANT ADOPTED THOSE STATEMENTS, AND THERE ARE A COUPLE OF RECENT CASES THAT I CITED IN MY BRIEF, WHERE ADOPTION BY SILENCE, IN WHICH SOMEBODY MAKES A STATEMENT, UNDER THE CIRCUMSTANCES THAT THE DEFENDANT WOULD BE EXPECTED TO DENY THAT STATEMENT, IF IT WAS UNTRUE. HERE WE HAVE MORE THAN THAT, SUCH A STATEMENT AND THE DEFENDANT IN FACT AFFIRMATIVELY ASCENTING TO THAT AND THEN CHANGING THE STORY, SO THE MOTHER'S STATEMENTS WERE NOT ONLY ADOPTED BY THE DEFENDANT BUT THEY, ALSO, EXPLAIN WHY HE CHANGED HIS STORY AND WHY HE DIDN'T MAINTAIN HIS H. HIS ORIGINAL STORY -- HIS ORIGINAL STORY, AND IT WAS ADMITED FOR THAT REASON. ALITYTIVELY WE DON'T THINK THERE IS AN ARGUMENT FOR THESE BEING SPONTANEOUS STATES, BECAUSE THEY HAPPENED SEVERAL HOURS AFTER THE CRIME AND NEVERTHELESS THEY HAPPENED AT A TIME WHEN THE MOTHER HAD NO REASON TO FABRICATE, AND THEY WERE A SPONTANEOUS REACTION TO HEARING HER SON TELL WHAT SHE KNEW WAS A LIE.

I AM SORRY.

IF WE FIND THAT IT IS ERROR, WHY WOULD YOU ARGUE HARMLESS ERROR? IS IT HARMLESS?

I THINK, IN LIGHT OF ALL OF THE OTHER EVIDENCE, YES, IT WOULD BE HARMLESS, ALTHOUGH WE DON'T THINK IT IS ERROR, BUT THAT WOULD BE MY FALL BACK POSITION.

I WAS WONDERING HOW COULD IT BE ADOPTION BY SILENCE? HE SAYS -- THE MOTHER SAYS YOU ARE LYING. THAT IS A LIE.

WE THINK IT IS STRONGER THAN ADOPTION BY SILENCE, BECAUSE HE ACTUALLY AFFIRMATIVELY AGREED THAT IT WAS AND THEN CHANGED HIS STORY AS A CONSEQUENCE, WHICH IS WHY, WELL, EVEN IF IT WAS ERROR TO PUT IT IN HER MOTHER'S STATEMENTS, HE ULTIMATELY SAID THE SAME THING. SO IT WOULD BE CUMULATIVE, BUT I THINK THE MOTHER'S STATEMENTS SIMPLY --

WHEN DID HE MAKE THE STATEMENT THAT -- OR DID HE MAKE THE STATEMENT THAT HE HAD ACTUALLY CHANGED CLOTHES BETWEEN THE TIME HIS MOTHER SAW HIM AND WHEN HE LEFT THE HOUSE?

THAT WAS WHEN HE REFERS THAT HE FIRST RETURNED TO THE SCENE OF THE CRIME, PROBABLY SOMETIME BETWEEN SEVEN AND 7:30 P.M. AND WALKED INTO HIS HOUSE AND ONE OF THE DETECTIVES WENT OVER TO TALK TO HIM AND ASKED HIM IF WHAT HE WAS WEARING WAS THE SAME THING THAT HE HAD BEEN WEARING EARLIER, AND HE SAID, YES, THEY WERE, AND HIS MOTHER SAID, NO, THEY ARE NOT, AND HE AGREED MAYBE THEY ARE NOT AND HE ASKED WHERE HE GOT THE CLOTHES AND SO FORTH. THERE WERE SEVERAL STATEMENTS IN THERE THAT HE MADE THE STATEMENTS AND THEN HIS MOTHER WOULD CONTRADICT HIM.

WHAT IS THE CLOSEST CASE YOU HAVE? BECAUSE REALLY IT IS NOT ADOPTION BY SILENCE, BUT IT HAS, CERTAINLY, THE INDICIA OF THE LIABILITY, BY THE FACT THAT IT WAS SAID.

YES.

DID YOU ARGUE IT AS A HEARSAY STATEMENT? THAT IS THE TROOUT THAT IT WAS A LIE -- THE TRUTH THAT IT WAS A LIE? A AN OUT-OF-COURT STATEMENT THAT IS ADMISSIBLE, TWO EXCEPTION TO SAY THE HEARSAY RULE.

WHAT THE MOTHER SAID WAS THAT IT WAS A LIE, THAT THAT WAS THE TRUE, THAT IT WAS A LIE.

YES, BECAUSE WE HAVE ADOPTED IT, BECAUSE WE KNOW IT AS TRUE.

THERE YOU GO.

I HAVE A LITTLE BIT OF TIME LEFT. JUST ADDRESS.

HOW ABOUT PICKING UP ON THE REINITIATION OF THE INTERROGATION?

OKAY. I THINK WHAT THE DEFENDANT TRIED TO ARGUE AT THE HEARING ON THIS MOTION, PIE HIS TESTIMONY AND SO FORTH, THAT HE DIDN'T REALLY WANT TO DO -- TALK ABOUT ANYTHING EXCEPT HE WANTED TO FIND OUT WHETHER OR NOT HE WAS UNDER ARREST. HOWEVER, FIRST OF ALL, HE TESTIFIED, HIMSELF, AT THE HEARING ON THE MOTION TO SUPPRESS, THAT HE HAD BEEN ARRESTED AT 4:25 P.M. IN AN ALLY NEAR C. J.'S HOUSE AND PUT IN HANDCUFFS. FURTHERMORE, IF YOU LOOK AT THE TRANSCRIPTS OF THE TAPED STATEMENT, HE, ALSO, ADMITS, IN THAT TAPED STATEMENT, THAT HE WAS UNDER ARREST AND THAT HE HAD BEEN TOLD THAT HE WAS UNDER ARREST, NOT ONLY OUT AT THE SCENE BUT, ALSO, AFTER HE WAS RETURNED TO THE STATION. AND IF YOU LOOK AT THE TRANSCRIPT, IT IS CLEAR THAT THE POLICE, FIRST OF ALL, THEY TALKED TO HIM FOR A FEW MINUTES. HE ADMITTED TO TOUCHING THE COINS, GOLD WATCH AND SOME BULLETS. WHEN THE POLICE PRESSED, HE DECIDED THAT HE WOULD INVOKE HIS RIGHT TO VIOLENCE AND TO COUNSEL. INTERROGATION STOPPED. THEY WERE DONE WITH HIM. THEY PUT HIM IN A ROOM, THERE, WHILE THEY CONTINUED THEIR INVESTIGATION.

WHAT DID HE SAY? I WANT A LAWYER? OR I DON'T WANT TO TALK ANYMORE.

HE INVOKED HIS RIGHT TO COUNSEL.

IF HE SAID I WANT A LAWYER, THEN ARE THE POLICE ADJUSTABLE TO TAKE YOU BACK AND PUT YOU -- ARE THE POLICE JUST ABLE TO TAKE YOU BACK AND PUT YOU BACK? COULD THEY HAVE LEFT HIM THERE ALL NIGHT?

I AM NOT AWARE OF ANY REQUIREMENT TO IMMEDIATELY PROVIDE HIM WITH A LAWYER. WHAT

THE EVIDENCE SAID IS THAT YOU CANNOT CONTINUE TO INTERROGATE HIM, AFTER HE INVOKED HIS RIGHT TO COUNSEL. THAT YOU CAN NOT CONTINUE TO TALK TO HIM UNTIL AFTER HE TALKS TO COUNSEL. BUT THEY CONTINUED THEIR INVESTIGATION AND PUT HIM IN A ROOM, PRESENTTORY TO PUTTING HIM IN VEIL AND -- IN JAIL AT SOME POINT AND HE STAYED THERE AND HAD A CHANCE TO THINK ABOUT IT AND WE THINK POSSIBLY THOUGHT THAT MAYBE HE COULD DO A BETTER JOB UNDER THE CIRCUMSTANCES AND WANTED TO TALK TO THEM AGAIN. AT ANY RATE HE KNOCKED ON THE DOOR AND TOLD THEM HE WANTED TO TALK TO THEM. THEY TOLD HIM WE CAN'T TALK TO YOU, BECAUSE YOU WANT AN ATTORNEY. HE SAID I DON'T NEED AN ATTORNEY. I WANT TO TALK TO YOU, ANYWAY.

HOW LONG BECAUSE HE -- HOW LONG WAS HE THERE?

THREE AND-A-HALF HOURS. HE WAS NOT HANDCUFFED, BUT HE WAS IN A LOCKED ROOM. I LOST MY LAST POINT. OH, YES. CONCERNING HIS CONTENTION THAT IT WAS AN EMPLOYEE, IT WASN'T ABLY. THEY -- IT WAS A PLOY, IT WASN'T A PLOY. THEY DIDN'T EXPECT HIM TO DO. THAT THEY SHUT THE DOOR AND TRIED TO FIGURE OUT WHAT THEY WERE GOING TO DO. THEY DECIDED TO TAPE RECORD THE INTERVIEW AND TALK TO HIM. THE FIRST THING THEY STARTED OUT WITH WAS WE KNOW YOU ASKED FOR AN ATTORNEY, BUT WE ARE MAKING IT CLEAR FOR THE RECORD THAT YOU KNOCKED ON THE DOOR AND ESTABLISHED THAT YOU WANTED TO TALK AND WE WENT ON. I SEE MY TIME IS UP.

THANK. THANK, MR. GRABLE. WE WILL BE IN RECESS. MARCH MARCH PLEASE RISE. -- MARSHAL: PLEASE RISE.