Julio Mora v. State of Florida

VERSUS STATE OF FLORIDA. MR. RE IBM AN.

YES, YOUR HONOR. MAY IT PLEASE THE COURT. I AM REPRESENT DR. MORA, CONVICTED OF THE FIRST-DEGREE MURDER OF KAREN MARKS AND CLARENCE RUDOLPH AND RECEIVED TWO SENTENCES OF DEATH. THIS RECORD REFLECTS THAT IT MUST HAVE BEEN AN EXTREMELY DIFFICULT CASE FOR EVERYONE TO DEAL WITH. DR. MORA, AS EVERYONE KNOWS, WAS A VERY, VERY ACTIVE PARTICIPANT THIS THIS TRIAL. DR. MORA'S ATTORNEYS AND DR. MORA FOR THE CONTINUALLY OVER THE INSANITY DEFENSE. DR. MORA, AS THE COURT KNOWS, ALSO, PRESENTED SUBSTANTIAL EVIDENCE THAT HE HAD A PAIR NOTICED -- PARANOID PERSONALITY DISORDER AND THAT IS WHAT COLORED THIS RECORD, FROM EVERYTHING THAT HE DID. DR. MORA BELIEVED THAT HE WAS NOT INSANE. HE SAID SO ON SEVERAL OCCASIONS, TO THE COURT. HE BELIEVED THAT HE WAS FINE. HE BELIEVED THAT DR. RUDOLPH WAS PERSECUTING HIM, IN THE MANNER THAT HE ADDRESSED IN HIS EXTENSIVE TESTIMONY, WHEN HE TESTIFIED AT THE GUILT PHASE, AND HE BELIEVED THAT THE SHOOTINGS WERE DONE IN SELF-DEFENSE. THE SELF-DEFENSE, THOUGH, WAS A VERY BIZARRE AND STRANGE SELF-DEFENSE. DR. MORA CLAIMS THAT WANG CHUNG, WHO WAS PART ORIENTAL, WAS STANDING AT THE DOOR OF THE DEPOSITION ROOM AND SHOT THE FIRST SHOT INTO THE ROOM AND DR. MORA DREW HIS GUN, AND IN RESPONSE THE SHOOTING STARTED AND THE TWO INDIVIDUALS, MRS. MARKS AND DR. RUDOLPH WERE, UNFORTUNATELY KILLED, AND DR. MORA WAS INJURED TWICE.

THE COURT REPORTER HAD THE TAPE ON.

YES.

WHAT DOES THE RECORD REFLECT WERE THE EXTREME, IN THE LIGHT THAT IT IS TAKEN, WHAT REFLECTS THAT, AS SOMETHING OTHER THAN APART FROM SOMETHING THAT WAS A COOL I-CONDUCTED-TYPE OF LAY PERSON DEPOSITION OR A LAY PERSON ATTEMPTING TO DO A DEPOSITION.

I HAD THE UNFORTUNATE OPPORTUNITY TO LISTEN TO THAT TAPE ON SEVERAL OCCASIONS. DR. MORA, IN THE TAPE, DIDN'T GO ANYWHERE RELATED TO HIS CASE. THE SUBJECT MATTER OF HIS INQUIRY OF DR. RUDOLPH RELATED TO WHERE DID YOU PARK YOUR CAR. IT RELATED TO THE ISSUE OF THE PIE CORPORATION, IT RELATED TO WHETHER OR NOT DR. RUDOLPH WAS OR WAS NOT A LICENSED PSYCHOLOGIST. DR. RUDOLPH'S ADDRESS, WHICH DR. RUDOLPH WOULDN'T GIVE, AS OPPOSED TO THE POST OFFICE BOX THAT HE USED. IT HAD NOTHING DO WITH THE LITIGATION THAT WAS ACTUALLY ON THE TABLE, WHICH WAS THE SEXUAL HARASSMENT OF DR. MORA BY DR. RUDOLPH, AT THE PLACE OF EMPLOYMENT. DR. MORA, I THINK THE KEY, AND I DO MENTION IT IN THE BRIEF, AND THAT IN THIS CASE DR. MORA WAS REACTING TO A TOTALLY UNFAIR SET OF CIRCUMSTANCES. THAT IS THE READING THAT I HAVE OF THIS RECORD. I CAN'T COME INTO THIS COURT AND SAY OH, YES, DR. RUDOLPH ATTACKED DR. M ON ORA IN THE MEN'S ROOM BEFORE THE DEPOSITION. I DON'T OBJECT THAT THAT OCCURRED. I SINCERELY DOUBT IT OCCURRED. HIS LAWYERS DIDN'T BELIEVE THAT IT OCCURRED. NONE OF THE PSYCHIATRISTS AND PSYCHOLOGISTS TESTIFYING BELIEVED THAT IT OCCURRED. DR. MORA HAD THIS SITUATION WHERE THE GAS BEING PUMPED INTO HIS APARTMENT, WHOLLY INTERNALIZED. THE MORNING OF THE DEPOSITION, THE CAR THAT MOVED BY ITSELF, WHOLLY INTERNALIZED.

YOU ARE DESCRIBING THINGS, THOUGH, AS IF YOU KNOW, YOU ARE ADDRESSING THE FACT

FINDER. THAT IS THAT THESE ARE THINGS ORDINARILY YOU WOULD ADDRESS TO A JURY OR A JUDGE.

THAT'S CORRECT.

NOW, IN --

BUT I AM -- ANOTHER PERSON THAT WE HAVE SAID THAT IS IN THE BEST POSITION TO EVALUATE THESE THINGS IS THE PERSON THAT LISTENS TO THEM FOR THIS SPECIFIC PURPOSE, AND THAT IS THE TRIAL COURT.

THAT'S CORRECT.

ALL RIGHT, NOW, AND SO WE GIVE AN ENORMOUS AMOUNT OF ROOM TO THE TRIAL COURT, BECAUSE THAT IS THE ROLE OF THE TRIAL COURT, TO LISTEN TO IT FROM ALL THESE -- SO HELP US WITH THE FACT THAT IT IS THE TRIAL JUDGE THAT HEARD ALL THIS, AND THE TRIAL COURT CAME DOWN WITH OPPOSITE CONCLUSIONS FROM THE CONCLUSIONS YOU ARE ASKING US TO REACH, SO HOW, IN THE CONTEXT OF THE ROLE THAT WE HAVE SAID THE TRIAL COURT IS TO PLAY, CAN WE POSSIBLY TURN OVER THE TRIAL COURT'S DECISIONS ABOUT THESE ISSUES?

WELL, LOOKING BACKWARD FROM THE SENTENCING ORDER BACKWARD, I THINK THE TRIAL COURT EVENTUALLY CAME TO THE CONCLUSION, AND I HAVE IT RIGHT HERE, NOW, AND I WILL JUST READ IT, IN NONSTATUTORY MITIGATING CIRCUMSTANCES PORTION, THAT WOULD BE BANK 3203 OF THE RECORD -- THAT WOULD BE PAGE 3203 OF THE RECORD, THE EVIDENCE IS CLEAR THAT THE PATIENT HAS A HISTORY OF BEHAVIOR AND THE PATTERN, IN THE LAST WEEK BEFORE THE CRIME, THE PLAINTIFF WAS DELUSIONAL THAT PEOPLE WERE TRYING TO HARM HIM.

DOESN'T THE TRIAL COURT, THOUGH, ALSO, TALK ABOUT HOW DR. MORA HAS FUNCTIONED OUT THERE AND HOW HE HAS GOTTEN BY, VERY WELL. HE DOESN'T TALK ABOUT THIS --

WELL, THAT WASN'T WHAT THE EVIDENCE WAS. HE DIDN'T GET BY VERY WELL.

WELL, I AM NOT ASKING YOU, IN TERMS -- THIS IS WHERE THE PROBLEM THAT I GET IN, IF WE ARE JUST GOING TO ARGUE EVIDENCE THAT FAVORS YOUR POSITION IN THIS THING, ARE YOU SAYING THAT THERE ISN'T ANY EVIDENCE THAT HE WAS A FUNCTIONING INDIVIDUAL OUT THERE, TAKING CARE OF HIMSELF, IN SOCIETY? WHAT WAS THE EVIDENCE ABOUT THAT? WAS HE DEPENDENT ON SOMEBODY ELSE? WAS HE INSTITUTIONALIZED?

NO, SIR.

WAS HE ABLE TO CLOTHE HIMSELF AND FEED HIMSELF AND DRIVE A VEHICLE, AND IN OTHER WORDS TELL US, IN TERMS OF THE ORDINARY THINGS OF LIFE, WHAT WERE HIS CAPABILITIES AND HOW DID HE FUNCTION?

I DON'T KNOW HOW HE FED HIMSELF. THERE WAS EVIDENCE, SOME EVIDENCE IN THE RECORD, OF GETTING $1200 A MONTH FROM PIE. SOME EVIDENCE THAT SAID HE DIDN'T. THERE WAS SOME EVIDENCE THAT HE WAS LIVING ON SOCIAL SECURITY. I DON'T KNOW HOW HE ACTUALLY MAINTAINED HIMSELF. THE RECORD IS NOT CLEAR ON. THAT THE RECORD IS, AS THE COURT KNOWS, NOT CLEAR ON A LOT OF THINGS AS REGARDS DR. MORA. HE HAS THIS VERY MURKY HISTORY. HE MAKES ALL OF THESE GRAND YOES CLAIMS, BUT THE THING IS THAT WE HAVE THE VIDEOTAPE, WHICH SHOWS, AND IT IS IN THE RECORD, WHICH SHOWS THE APARTMENT, AND ALL -- THIS ALL OF THE CONSTRUCTION THAT DR. MOR DID PREVENT THE -- THAT DR. MORA DID, TO PREVENT THE GAS FROM GETTING TO HIM.

AREN'T YOU SAYING THERE IS CONFLICTING EVIDENCE? IS THAT BECAUSE ARE SAY SOMETHING.

THERE IS NOT EVIDENCE THAT IS CONFLICTING. I UNDERSTAND WHERE THE COURT IS GOING, AND I TELL THE COURT THAT I TRY TO BE VERY, VERY CAVE IN MY BRIEF, TO TALK ABOUT THE THINGS THAT WERE NOT IN DISPUTE. THE VIDEOTAPE WASN'T IN DISPUTE, FOR EXAMPLE. THE PRIOR, THE PEOPLE WHO TESTIFIED, WHO LIVED IN PUBLIC HOUSING WITH THEM. THERE WAS A PUBLIC HOUSING IN PEMBROOK PINES, PUBLIC HOUSING IN FT. LAUDERDALE. THE REPRESENTATIVE COMPLAINTS THAT HE MADE, ABOUT BEING HARASSED AND ATTACKED AND ABOUT HAVING GAS PUMPED INTO HIS APARTMENT. HE MADE --

BUT SOMEBODY HAS TO DISTILL ALL THIS EVIDENCE.

THAT'S CORRECT.

AND THAT IS THE FUNCTION OF THE TRIAL COURT.

THAT'S RIGHT.

AND THAT IS WHAT THE TRIAL COURT DID, IN IN INSTANCE, SO WHAT WE ARE ASKING YOU IS, WAS THERE SOME EVIDENCE THAT WOULD SUPPORT THE TRIAL COURT'S DETERMINATION?

WELL, THERE WAS A DOCTOR -- THE PRIMARY EVIDENCE WOULD COME FROM, I BELIEVE ON THIS RECORD, FROM DR. SPENCER. AND WHAT DR. SPENCER -- AND I WILL ADDRESS DR. STARK IN A MOMENT, BUT DR. SPENCER TESTIFIED FOR THE PROSECUTION, ON BOTH SANITY ISSUES AND COMPETENCY ISSUES, AND WHAT DR. SPENCER SAID WAS THAT HE THOUGHT THAT DR. MORA HAD SOME SORT OF PARANOID PERSONALITY DISORDER, BUT IT DIDN'T RISE TO A MENTAL ILLNESS, AND THAT ALL THIS, ALL THESE CONSTRUCTIONS AND ALL THAT DR. MORA ENGAGED IN, AND ALL OF THESE COMPLAINTS WERE NOTHING MORE -- HE CALLED THEM PROPS. HE DIDN'T, REALLY, EXPLAIN WHAT PROPS WERE. HE WASN'T, REALLY, WELL CROSS-EXAMINED ON THAT ISSUE, I AM AFRAID, BUT THAT IS WHAT HE CALLED IT, AND THEN YOU HAVE DR. STOCK, AND DR. STOCK'S SPECIFIC REFERENCE TO THE ASSAILANT AT THE DOOR, WANG CHUNG, AND DR. STOCK FELT THAT WANG CHUNG WAS A PURE INVENTION OF DR. MORA, AND THE TRIAL COURT SEIZED ON THAT, AND IN TALKING ABOUT THE TWO MENTAL MITIGATORS, THE TRIAL COURT SPECIFICALLY STATED THAT, WELL, DR. STOCK SAID, AND DR. STOCK WAS DR. MORA'S OWN WITNESS, DR. STOCK TESTIFIED THAT WANG CHUNG WAS A PURE CONSTRUCTION AND A FICTION, BUT THAT ISN'T WHAT DR. STOCK SAID, AND I QUOTED DR. STOCK IN THE BRIEF, AND I WON'T READ IT TO THE COURT, BUT DR. STOCK CLEARLY SAID THAT WANG CHUNG WAS A CONSTRUCTION THAT DR. MORA MADE INTERNALLY, TO HELP HIM COPE WITH HIS MENTAL DISEASE, AND THAT IS WHAT DR. STOCK SAID, BECAUSE THERE WAS CONFLICTING EVIDENCE, AS THE COURT WELL KNOWS, ABOUT WHETHER SOMEONE WITH THIS PARTICULAR KIND OF PARANOID PERSONALITY DISORDER HALLUCINATES OR DOESN'T HALLUCINATE OR WHETHER HALLUCINATIONS ARE COMMON OR RARE.

BUT JUST WHAT WE ARE DEALING WITH, AS FAR AS, I ASSUME, WHICH ISSUE ARE YOU REFERRING TO?

WELL, I WAS --

ISSUE TWO, ABOUT WHETHER THE TRIAL COURT ERRED IN REJECTING THE EXTREME EMOTIONAL OR MENTAL DISTRESS SOCIAL MITIGATOR?

I WAS GOING TO MOVE TO TRIAL COUNSEL, BUT I WILL TALK ABOUT THAT, IF YOU WANT ME TO.

IN THIS CASE, LIKE OTHER CASES, WE HAVE A TRIAL JUDGE WHO DID ACCORD SOME WEIGHT TO YOUR CLIENT'S MENTAL CONDITION. HE -- THE TRIAL JUDGE JUST DIDN'T FIND THAT IT MET THE REQUIREMENT OF EXTREME EMOTIONAL DURESS OR WHATEVER THE MITIGATOR WAS, AT THE

TIME OF THE OFFENSE, AND IN REJECTING THAT, ONE OF THE THINGS THAT IS APPROPRIATE TO LOOK AT, ISN'T IT, IS THIS MAN'S WHOLE LIFE, WHICH, APPARENTLY HE HAS HAD THIS MENTAL CONDITION A GOOD PART OF HIS LIFE, SO HE DIDN'T GO AROUND HAVING A HISTORY OF KILLING PEOPLE, YOU KNOW, EVERY DAY OF THE WEEK, SO THERE IS -- AND THEN YOU HAVE, AS JUSTICE LEWIS IS SAYING, THE DEPOSITION THAT WAS GOING ON, AND YOU HAVE SOMEBODY WHO SOUNDS LIKE, ALTHOUGH THEY MAY NOT BE ASKING PERTINENT QUESTIONS, THAT IS PRETTY -- THERE ARE A LOT OF PRO SE LITIGANTS THAT DON'T ALWAYS ASK THE KINDS OF QUESTIONS THAT LAWYERS MIGHT ASK, SO WHAT IS WRONG WITH THE JUDGE REJECTING THE EXTREME EMOTIONAL DISTRESS MITIGATOR AT THE TIME OF TRIAL BUT STILL FINDING AND ACCORDING SOME WEIGHT TO MISS MENTAL CONDITION, AND THAT IS WHAT YOU ARE -- SINCE WE HAVE GOT TO deFEHR TO THE JUDGE ON THAT, UNLESS YOU CAN SHOW US HOW, AS A MATTER OF LAW, THE JUDGE MADE THE WRONG CONCLUSION, THEN WE HAVE GOT TO AFFIRM THE TRIAL COURT'S FINDINGS, AS TO THAT REJECTION OF THAT STATUTORY MITIGATE OR.

WELL, WHAT WE HAVE ARGUED ON THAT POINT IS THAT THERE WAS -- THE JUDGE FOUND THE TWO MENTAL MITIGATORS TO BE NONEXISTENT. THERE WAS A LOT OF -- IN THIS CASE, THERE WAS A LOT OF PSYCHOLOGICAL EVIDENCE, AND --

I THOUGHT HE FOUND THAT AS NONSTATUTORY MITIGATION.

HE FOUND IT AS NONSTATUTORY, BUT THE QUESTION, I BELIEVE, JUDGE PARIENTE ASKED ME, WAS STATUTORY MITIGATION.

I AM ASKING YOU WHAT IS WRONG WITH THE JUDGE ASKING REJECTED IT AS A STATUTORY MITIGATE OR, UNDER THE CIRCUMSTANCES OF THIS CASE? WHAT YOU ARE POINTING TO IS A PERSON THAT HAD A LONG STANDING MENTAL CONDITION. THE JUDGE CONCEDED THAT BUT THEN WENT ON TO EXPLAIN WHY HE CONCLUDED THAT, AT THE TIME OF THIS CRIME, THAT HE WASN'T UNDER EXTREME EMOTIONAL OR MENTAL DISTRESS. HE USED WHAT HAPPENED WITH THE TAXI DRIVER, DRIVING HIM TO COME HERE, AND IF ANYTHING, THIS WAS -- SEEMS LIKE A DELIBERATE ACT THAT THE JUDGE COULD HAVE FOUND THE CCP AGGRAVATOR, BUT DIDN'T, SO I AM JUST TRYING TO UNDERSTAND WHAT IT IS THAT WOULD -- YOU KNOW, MAKE THAT ERRONEOUS, AS A MATTER OF LAW.

THE -- MY UNDERSTANDING IS THAT A DEFENDANT CAN PUT THE MITIGATORS INTO PLACE, SO TO SPEAK, PIE PRESENTING A -- BY PRESENTING AN UNCONTRADICTED EVIDENCE OF THE MITIGATOR, AND THEN, AT THAT POINT, THE JUDGE HAS TO ENGAGE IN THE WEIGHING PROCESS, BECAUSE HE HAS TO FIND T A LOT OF WHAT DR. MORA PUT INTO EVIDENCE WAS ABSOLUTELY UNCONTRADICTED. ALL THAT HISTORICAL EVIDENCE, NO ONE CONTRADICTED.

AND YOU WOULD HAVE A STRONGER POINT, IF THE JUDGE DIDN'T FIND ANY NONSTATUTORY MENTAL MITIGATION, BUT THE JUDGE DID AND ACCORDED IT SOME WEIGHT.

I FULLY UNDERSTAND THAT, YOUR HONOR. I MEAN, YOU TAKE THIS RECORD AS IT COMES, AND I THINK I DID TAKE THE RECORD AS IT COMES, AND AS THE WAY THE RECORD WAS PRESENTED, WAS VERY SIMPLE. THE ATTORNEYS DID A PRETTY GOOD JOB OF PUTTING ON THE HISTORY. THIS WAS A LONG-STANDING, PARANOID PERSONALITY DISORDER THAT MAY HAVE MANIFESTED ITSELF, EVEN, BACK IN 1984, I BELIEVE IT WAS, WHEN HE SHOT HIS WIFE AND WAS TRIED FOR THAT.

LET ME MOVE YOU TO, IF I COULD, TO HAC, AND IN THIS SITUATION, EVEN THOUGH THIS WAS A SHOOTING, YOU HAVE A PERSON WHO IS -- THERE IS EVIDENCE THAT WAS LINGERING AND CRYING FOR HELP, AND THAT THERE WAS CERTAINLY GREAT FEAR THAT WAS IN TORMENT, THAT WAS EVIDENCED ON THIS TAPE, AND SO, ONE, AND SECONDLY, IF YOU COULD DEAL WITH PROPORTIONALITY, WHY, IN THIS CASE VERY MUCH LIKE PROVENZANO AND ANOTHER CASE, IN WHICH THERE WAS THE TYPE OF SHOOTING, HERE, CRUZ, THE FELLOW THAT SHOT THE PEOPLE AT

THE WINN-DIXIE, DOWN IN BREVARD COUNTY.

DEALING WITH HAC FIRST, THIS SHOOTING TOOK PLACE IN A VERY COMPACTED PERIOD OF TIME. I BELIEVE, INSOFAR AS MRS. MARSHAL WAS CONCERNED, IT WAS 17 SECONDS, START TO FINISH, AND THEN YOU HAD THE 31-SECOND WAIT, AND THEN THE LAST SHOT, WHICH APPARENTLY WENT INTO DR. RUDOLPH. AS I UNDERSTAND HAC, THERE HAS TO BE SOME ACT OF THE DEFENDANT THAT TAKES THE KILLING OUT OF THE RUN OF KILLINGS. THIS WAS JUST -- I -- IN THINKING ABOUT WHAT I WAS GOING TO SAY, I HATE TO USE THE TERM, BUT IT WAS A RUN. I MEAN, IT WAS JUST A SHOOTING. THERE WAS NO STABBING, NO KIDNAPPING, NO TORTURE. THERE WASN'T ANYTHING UNNECESSARILY TORT YURS ABOUT THE KILLING. IT HAPPENED RELATIVELY QUICKLY.

THE DEFENDANT, AS I UNDERSTAND THE RECORD, THE DEFENDANT SHOT SEVERAL PEOPLE ONCE, AND THEN DECIDED TO SHOOT THEM ALL AGAIN.

CORRECT.

SO DOESN'T THAT KIND OF TAKE THIS OUT OF THE WHOLE, AS YOU WOULD SAY, ORDINARY RUN OF CASES? I MEAN, YOU KNOW, THREE PEOPLE ARE SHOT, AND THEN THREE PEOPLE ARE SHOT AGAIN, AND THIS LADY BEGINS TO CALL FOR HELP. YOU KNOW, WE KNOW SHE IS STILL ALIVE. WHY ISN'T THIS?

ADDRESSING THE CRY FOR HELP, THIS COURT HAS HELD, IN OTHER CASES THAT WE CITE IN THE BRIEF, STANDING BY AND DOING NOTHING, DOES NOT, IN AND OF ITSELF, CREATE HAC, BUT THE KILLING, ITSELF, MUST BE UNNECESSARILY TORT YURS. THIS, STILL -- WE HAVE THE TAPE -- TORTURE. THIS, STILL, WE HAVE THE TAPE --

THIS CRY FOR HELP CAME BETWEEN TWO SHOTS, AFTER THE FIRST SHOT?

MY REMEMBRANCE OF THE TAPE IS THE SHOT, SHE WAS SHOT, AND THEN SHE CRIED FOR HELP. HELP ME, HELP ME, HELP ME! WITHIN THE 31-SECOND WAIT, BEFORE THE TENTH SHOT WAS FIRED. THAT WAS MY UNDERSTANDING OF THE TAPE.

BEFORE THE WHAT SHOT WAS FIRED? ANOTHER TENTH.

NOW YOU SAY THAT THE LAST SHOT WAS FIRED INTO DR. RUDOLPH. IS THAT WHAT YOU SAID?

THAT IS WHAT I SAID.

BECAUSE DID THE JUDGE FIND THAT THE LAST SHOT WAS SHOT INTO MS. MARX?

NO.

WOULD THAT MAKE A DIFFERENCE AS TO, IN OTHER WORDS, IF SHE HAD CRIED OUT FOR HELP AND THEN HE SHOT HER AGAIN, WOULD THAT BE A DIFFERENT SCENARIO?

I IMAGINE IT WOULD. IT JUST DIDN'T OCCUR --

YOU ARE SAYING THERE IS NO EVIDENCE OF THAT.

WELL, IN THE REPLY BRIEF, I THINK, SPECIFICALLY, I HAVE IT RIGHT HERE, AT PAGE ONE OF THE REPLY BRIEF, AND IT IS PAGE 3189 TO 3190 OF THE RECORD, THE JUDGE IDENTIFIES EXACTLY WHICH BULLET WENT INTO WHOM, AND HE HAS, I WILL PARAPHRASE IT, DEFENDANT SHOT EACH OF THE THREE VICTIMS, ONCE IN TURN AND THEN SHOT THE SECOND VICTIM A SECOND TIME, AND THEN THE COURT REPORTER LEAVES. WE KNOW THERE WERE TEN SHOTS. THEN SAYS HE

TURNED AND FIRED -- SEVEN WENT INTO THE DOOR, ACCORDING TO THE JUDGE, AND THEN 8 AND 9 WENT INTO HER, AND THEN THE 31 SECONDS COMES, SO THE MEDICAL EXAMINER TESTIFIES TO FOUR BULLETS. THE JUDGE ACCOUNTED FOR ALL FOUR BULLETS. THE STATE, IN ITS SENTENCING MEMORANDUM, ARGUED THAT THE LAST BULLET WENT INTO DR. RUDOLPH, SO I DON'T THINK, ON THIS RECORD, THERE IS, REALLY, ANY DOUBT THAT THE LAST BULLET DID NOT GO INTO MRS. MARX.

COULD YOU SPEAK TO PROPORTIONALITY.

YES. WELL, RIGHT NOW I HAVE THREE AGGRAVATORS AND A FEW MITIGATORS. SO UNLESS THIS COURT IS WILLING TO DEAL WITH THE HAC AND REVERSE ON THOSE GROUNDS AND TALK IN TERMS OF -- AND FIND THAT WE DID ESTABLISH ENOUGH TO REQUIRE THE COURT TO WEIGH THE MITIGATING CIRCUMSTANCES, THE STATUTORY MITIGATING CIRCUMSTANCES, I HAVE, REALLY, ON THIS RECORD, FINDINGS OF VERY, VERY LITTLE WEIGHT. NOW, THERE ARE CASES, AND WE CITE THEM IN THE BRIEF, WHERE INDIVIDUALS WITH SERIOUS MENTAL DISORDERS WERE FOUND TO BE ACTING AS THE PRODUCT OF THE MENTAL DISORDER, AND I THINK THAT THAT COUNTS FOR SOME PROPORTIONALITY HERE. BUT RIGHT NOW, AS IT STANDS RIGHT NOW, I MEAN, THE COURT DID ITS WEIGHING AND DID FIND THAT THERE WERE AGGRAVATING FACTORS THAT OUTWEIGH THE MITIGATING FACTORS. NOW, SOME OF THE MITIGATING FACTORS, THOUGH, IF I CAN TALK ABOUT THE MITIGATING FACTORS --

BEFORE YOU GET TO MITIGATING, WHAT IS IT? YOU SAID THREE AGGRAVATORS? WHAT ARE THOSE THREE AGGRAVATORS?

I AM SORRY. TWO. TWO CONTEMPORANEOUS FELONIES AND HAC.

SO YOU WOULD AGREE THAT THE FACT THAT THERE ARE TWO, THAT THIS IS A MULTIPLE KILLING CASE, MAKES THIS A, THAT THAT GIVES THOSE AGGRAVATORS EVEN GREATER WEIGHT THAN IF THIS WAS, SAY, A ROBBERY.

NOT GREATER WEIGHT. THE COURT FOUND IT.

BUT ISN'T THE IT? TWO MURDERS AND AN ATTEMPTED MURDER?

IN THIS CONTEXT, AND, AGAIN, MY BELIEF, AFTER READING OF THIS RECORD, AND A FAIR READING OF THIS RECORD, IS I AM REPRESENTING A SERIOUSLY DISTURBED INDIVIDUAL. THAT IS MY BELIEF. THE BEST I COULD DO IS ARTICULATE IT TO THE COURT. I FULLY UNDERSTAND THE TRIAL JUDGE'S FUNCTION, BUT NONETHELESS, ON READING OF THIS RECORD AND READING THE MEDICAL EVAN THE CONCURRENCE OF ALL OF -- MEDICAL EVIDENCE AND THE CONCURRENCE OF ALL OF THE DOCTORS, DR. SPENCER, HE WAS VERY GRUDGING ABOUT IT, BUT EVEN DR. SPENCER DETERMINED THAT THERE WAS A PARANOID PERSONALITY DISORDER AT WORK HERE.

WHAT ABOUT THE ISSUE OF THE LAWYER OUT OF THE CASE AND THE DR. REPRESENTING HIMSELF. COULD YOU ADDRESS THAT?

YES. THAT IS WHERE I WANTED TO GO INITIALLY. BECAUSE OF THE PARANOID PERSONALITY DISORDER, ACCORDING TO DR. STOCK, AND I DON'T THINK ANYONE TESTIFIED OTHERWISE, DR. MORA THOUGHT HE WAS FINE, SO HE WAS CONSTANTLY HAVING THESE BATTLES. I BELIEVE THIS WAS HIS THIRD SET OF ATTORNEYS, MR. COLORAN AND MR. MALECK. HE WAS HAVING A BATTLE WITH HIS ATTORNEYS. THE ATTORNEYS WANTED TO GO FORWARD WITH AN INSANITY DEFENSE AND DR. MORA SAID I AM FINE. THIS GUY, WANG CHUNG, WAS AT THE DOOR AND STARTED SHOOTING, AND EVENTUALLY IDENTIFIED, MR. COLORAN, THE TRIAL ATTORNEY, AND JUDGE BACHMAN DETERMINED, OKAY, DR. MORA, YOU ARE COMPETENT, YOU CAN FIRE THEM, BUT YOU ARE ON YOUR OWN, HE BACKED OFF, SO COLORAN REMAINED IN THE CASE. MR. MALEK, WHO WAS THE PENALTY PENALTY-PHASE ATTORNEY, THEN, WANTED TO SUBPOENA, PUT ON SOME

MITIGATION WITNESSES, AND HE GOT INTO A BATTLE WITH DR. MORA, AND HE WAS ON AND OFF AND ON AND OFF. I THINK IT WAS THREE OR FOUR TIMES, JUDGE BACKMAN REVERSED HIMSELF AS TO MR. MALEK'S ROLE, AND FINALLY, JUDGE BACKMAN, AFTER SOME OUTBURST THE WITH DR. MORA, SAID OKAY. YOU WANT TO REPRESENT YOURSELF. YOU ARE ON YOUR OWN, BUT THERE WAS NO FERRET A HEARING AT THAT POINT, SO MALEK IS MOVED, WITHOUT A FERRETA HEARING, OUT OF THE CASE AND DR. MORA STANDS UP AND ADDRESSES THE JURY IN LATIN AND SITS DOWN. AT THAT POINT, THOUGH, MR. COLORAN IS STILL IN THE CASE, AND THIS IS THE MOST DISTURBING THING ABOUT THIS WHOLE COUNSEL THING TO ME, FROM MY PERSPECTIVE, THAT APPARENTLY MR. COLORAN SITS AND SAYS NOTHING. HE DOESN'T SAY, JUDGE, I AM NOT FIRED. I AM RETAINED COUNSEL. THE JUDGE SAID I SPECIFICALLY WANT YOU IN THE CASE. THEY HAVE THAT DISCUSSION, AND WE CITED IT AT, I BELIEVE, A FOOTNOTE IN THE BRIEF. HE SPECIFICALLY SAYS MR. COLORAN, I WANT YOU TO STAY IN THE CASE. I WANT YOU. I PAY YOU. YOU ARE HERE, AND YET ON THE SECOND DAVE THE PENALTY PHASE, MR. COLORAN IS NOWHERE TO BE SEEN. HE DOESN'T COME TO COURT. SO DR. MORA HAD COUNSEL. AT THE TIME HE HAD COUNSEL IN THE CASE, EVEN IF THE COURT WAS RIGHT INLET PLING MALEK OUT OR MOVING MR. -- IN LETTING MR. MALEK OUT OR HE HAD THE CASE, AND NO ONE SAID A WORD -- I THINK IT WAS INCUMBENT ON COUNSEL TO SAY A WORD.

YOU ARE IN YOUR REBUTTAL TIME.

THANK YOU.

MS. HANNAH.

GOOD MORNING, YOUR HONORS. MY NAME IS MARRETT HANNA, AND I WILL BE ARGUING THE STATE'S POSITION THIS MORNING.

MS. HANNA, DR. MORA FILED A NUMBER OF PRO SE MATTERS THIS THIS. ONE WAS BACK IN JUNE. HE SHOWS, ON THOSE, THAT THEY WERE SERVED ON THE ATTORNEY GENERAL. YOU HAVE RECEIVED THOSE MOTIONS AND BRIEFS? I MEAN, THERE IS ABOUT --

I KNOW THAT OUR OFFICE DID RECEIVE, AT ONE POINT, THERE WAS A HANDWRITTEN MOTION, BUT I DON'T BELIEVE THAT WE RECEIVED A VARIETY OF PRO SE MOTIONS, SO I CAN'T SPEAK TO ANY OTHERS. I KNOW, AT ONE POINT I DID SEE A MOTION, AND I BELIEVE THAT WAS OBJECTING TO APPELLANT COUNSEL'S BRIEF, THE INITIAL BRIEF, BUT AFTER THAT, I THINK WE RECEIVED AN ORDER FROM THIS COURT, SAYING THAT APPELLANT WAS PRECLUDED FROM FILING ANY FURTHER PRO SE MOTIONS, BUT TO THE BEST OF MY RECOLLECTION, I BELIEVE WE ONLY HAVE ONE OF THOSE PRO SE MOTIONS.

ALL RIGHT.

COULD WE HAVE THAT SAME QUESTION ADDRESSED TO DEFENSE COUNSEL, WHETHER YOU RECEIVED ALL OF THE FILINGS? YOU DON'T BELIEVE THAT YOU HAVE.

THAT SPECIFIC ONE. IF THERE ARE OTHERS, I HAVEN'T GOTTEN THEM.

OKAY. OKAY. THANK YOU.

OBVIOUSLY THIS IS A DIFFICULT CASE. THE VICTIMS SUFFERED TERRIBLY. YOUNG VICTIM CUT DOWN IN THE PRIME OF HER LIFE. THE TRIAL COURT WAS FACED WITH A TREMENDOUS BURDEN, AND HE CONDUCTED AN EXHAUSTIVE AND DETAILED REVIEW OF THE ENTIRE RECORD. THE TRIAL COURT'S ORDER IN THIS CASE IS OUTSTANDING UNDER THE CIRCUMSTANCES.

WHILE YOU ARE RIGHT THERE, LET ME ASK YOU ANOTHER QUESTION. THE ASSERTION IS MADE, IN THE APPELLANT'S BRIEF, THAT THE TRIAL COURT CONSIDERED THE PS A., WITHOUT -- THE PSI,

WITHOUT MAKING IT AVAILABLE TO THE DEFENSE COUNSEL OR TO THE DEFENDANT. AND THE STATE, REALLY, AS I READ THE BRIEF, DOESN'T DIRECTLY SAY, ONE WAY OR THE OTHER, WHAT ITS POSITION IS ON WHETHER THIS -- THE TRIAL JUDGE CONSIDERED SOME MATTER THAT HAD NOT BEEN FURNISHED TO THE DEFENDANT OR THE DEFENSE COUNSEL. WHAT IS THE STATE'S POSITION ON IT?

YOUR HONOR, I BELIEVE THAT MALNICK DID HAVE THE PSI OR DID HAVE ACCESS TO THE PSI. I MAY BE MISTAKEN, BUT I BELIEVE THAT MR. MALNICK HAD ACCESS TO THE PSI.

WHERE DOES THE RECORD SHOW THAT?

AT THE ENDS END -- AT THE END, WHERE THE COURT IS ASKING FOR THE SENTENCING RECORD AND HAS REQUESTED THAT THE PSI BE UNDERTAKEN. I BELIEVE IT IS SOMEWHERE IN THE 3,000 RANGE OF THE TRANSCRIPT.

WHAT DID THAT TELL US? DID THAT TELL US MR. MALNI CHR. K SAYS I HAVE A -- MALNICK SAYS I HAVE A COPY OF THE PSI?

MY RECOLLECTION IS THAT HE DOES ALLUDE TO THE FACT THAT HE HAS OR IS AWARE OF THE PSI. HE HAS, ALSO, INDICATED EARLIER THAT --

HAD THE PSI BEEN DONE, AT THE TIME THAT YOU ARE ALLUDING TO ON THE RECORD?

I BELIEVE AT THAT POINT IT HAD BEEN CONCLUDED. EARLIER -- THERE WERE SEVERAL TIMES THAT THEY HAD COME INTO COURT, AND EARLIER I BELIEVE THAT THE COURT HAD ORDER THAT THE PSI BE DONE, AND I CAN'T REMEMBER THE EXACT PAGE NUMBER, BUT I BELIEVE IT IS IN THE 3,000 PAGE THAT MR. MALNICK HAD --

I UNDERSTAND WHAT YOU ARE TRYING TO DO, BUT WHAT I AM ASKING IS THERE EVIDENCE IN THE RECORD THAT MR. MALNICK HAD A COPY OF 9 THE PSI, THE PRESENTENCE INVESTIGATION REPORT?

I CAN'T SAY FROM MY MEMORY. FROM THE RECORD, I BELIEVE THAT MR. MALNICK HAD A COPY OF THE PSI TO REVIEW, BUT I CAN'T SAY AFFIRMATIVELY THAT.

SO YOU ARE SAYING THAT THERE ISN'T ANYTHING ON THE RECORD THAT INDICATES, AFFIRMATIVELY --

YES.

WOULD THE STATE AGREE THAT, UNDER THE U.S. SUPREME COURT LAW, THAT THE DEFENDANT HAS TO BE FURNISHED WHATEVER IS GOING TO BE USED BY THE SENTENCER, INCOMING TO A CONCLUSION, AS TO THE APPROPRIATE SENTENCE?

YES, YOUR HONOR, BUT THERE WAS NO OBJECTION OR NOTHING BROUGHT FORWARD TO THE COURT, TO MAKE THAT COMPLAINT.

HOW DOES THAT ISSUE COME BEFORE US?

IN MY ESTIMATE, IT SHOULD NOT APPROPRIATELY BE BEFORE THIS COURT AT THIS POINT, BECAUSE THERE HAS BEEN NO CHALLENGE TO THAT OR NO ARGUMENT, SO ANY ISSUE WITH THAT, IN THAT RESPECT, WOULD BE UNPRESERVED, AND PERHAPS WOULD BE AN ISSUE FOR A 3.850.

WELL, THE APPELLANT MAKES THAT ARGUMENT IN ITS BRIEF, CORRECT? THAT THAT COURT

SHOULD NOT HAVE CONSIDERED THE MATTER OF THE SUBSTANCE OF THE CHARGE, AS TO THE PRIOR ALLEGATIONS, INDICTMENT, OF MR. MORA FOR THE ATTEMPTED MURDER OF HIS WIFE.

EXACTLY.

AND SO THAT ARGUMENT, I MEAN, AND THE JUDGE DID CONSIDER THAT, ON THE BASIS OF PSI.

WELL, WHAT HAPPENED TO GET THAT FAR, TO GET THE COURT TO THAT POINT, DURING THE PROCEEDINGS, MR. MALNICK HAD SPECIFICALLY INDICATED THAT HE DIDN'T WANT TO REQUEST THIS MITIGATOR, BECAUSE HE WAS AFRAID THAT IT WOULD BE OPENING THE DOOR FOR THE STATE TO BRING IN WITNESSES, WHO WOULD TESTIFY AS TO PRECISELY WHAT HAPPENED, IN AN EFFORT TO EXPLAIN APPELLANT'S ACTIONS IN THE PREVIOUS CASE, SO MR. MALNICK AFFIRMATIVELY REPRESENTED THAT HE DID NOT WANT TO GO FORWARD WITH THAT MITIGATOR AND FOR THAT REASON WAS NOT REQUESTING IT. APPELLANT AGREED WITH HIS ATTORNEY, AT THAT POINT, AFTER SOME DEBATE ON THE RECORD, AND SAID, NO, I DON'T WANT THAT MITIGATOR. THE COURT REQUESTED SENTENCING MEMAND UPS, AND THEN THE DEFENDANT, HIMSELF, IN ONE OF HIS MANY PRO SE MOTIONS, BRINGS THAT MITIGATOR TO THE COURT'S ATTENTION, AND THE COURT, THEN, AT THAT POINT HAS NOT HAD THE OPPORTUNITY TO HAVE THE STATE REBUT OR EVEN FOR THE STATE TO PRESENT WITNESSES. THE COURT, OF COURSE, IS FACED WITH THE MITIGATOR AND MUST LOOK AT THE ENTIRE RECORD, TO CONSIDER IF THERE IS ANY EVIDENCE IN THE RECORD TO SUPPORT THE APPELLANT'S CLAIM THAT THIS MITIGATOR EXISTED. THAT IS WHAT BRINGS US TO THIS POINT.

WHY WOULDN'T IT JUST BE ENOUGH, FOR THE TRIAL COURT TO HAVE SAID THAT IT WAS WAIVED? THAT THAT IS BY THE ACTIONS OF THE DEFENDANT AND HIS COUNSEL, IN EXPRESSLY NOT REQUESTING THE JURY INSTRUCTIONS.

I BELIEVE THE COURT DID NOT WANT TO OVERLOOK ANYTHING, THAT HE WANTED TO TAKE ANYTHING THAT THE APPELLANT HAD TO OFFER, AND DIDN'T WANT TO MAKE THAT, DIDN'T WANT TO GO THAT STEP FURTHER, TO SAY THAT IT WAS WAIVED, GIVING THE DEFENDANT EVERY BENEFIT OF THE DOUBT THAT THIS MITIGATOR DID EXIST IN THE RECORD, AND IF IT DID EXIST IN THE RECORD, THAT HE WAS GOING TO TAKE THE STEP AND SAY, WELL, NO, IT DOESN'T, AND THAT IS WHY I AM REJECTING IT. HE FELT IT WAS HIS DUTY TO REVIEW THE RECORD AND DETERMINE, BASED ON APPELLANT'S PROFFER OF THIS MITIGATOR, THAT THIS MIGHT GATOR DID -- MITIGATOR DID OR DID NOT EXIST, AND I BELIEVE IT REJECTED THE MITIGATOR, BECAUSE OF THE PSI BUT, ALSO, BECAUSE OF THE VARIOUS TESTIMONY THROUGHOUT THE TRIAL. AS WE POINTED OUT IN OUR BRIEF, APPELLANT MAY OR MAY NOT BE DELUSIONAL, BUT HE ADMITTED TO SEVERAL ACTS OF FIRING A WEAPON AND FIRING AT PEOPLE, AND IN ADDITION, THROUGHOUT THE RECORD, THERE ARE SPRINKLINGS OF APPELLANT -- OF THE INDICATIONS OF HIS FORMER TRIAL, WHERE HE ATTEMPTED TO MURDER HIS WIFE, AND I BELIEVE IT IS EVEN DR. LIVINGSTON REVIEWED THE PRIOR HISTORY, IN MAKING HER DETERMINATION, AND SHE SPECIFICALLY SAYS THAT APPELLANT'S ACTIONS WERE VERY SIMILAR, IN THAT FORMER TRIAL. HIS SYMPTOMS WERE VERY CONSISTENT, AND SO I BELIEVE THE TRIAL COURT, LOOKING AT THE ENTIRE RECORD AND CALLING ALL OF THE -- CULLING ALL OF THE INFORMATION IT POSSIBLY COULD FROM THE RECORD, FELT JUSTIFIED IN REJECTING THAT MITIGATOR.

WOULD YOU PLEASE ADDRESS THE HAC AGGRAVATOR.

AS THIS COURT POINTED OUT, IN ITS EARLIER QUESTIONS, THERE IS NO QUESTION, THERE IS NO NEED TO SPECULATE. THIS WAS A HEINOUS, ATROCIOUS AND CRUEL CRIME. KAREN MARX SUFFERED HORRENDOUSLY AND I BELIEVE, WHEN YOU LISTEN TO THE TAPE, WHICH IS EXTROORD EXTRA NEARLY DISTURB -- EXEXTRAORDINARILY DISTURBING, MRS. MARX WAS LAYING ON THE FLOOR AND CRIED FOR HELP, AND THEN TWO SHOTS CAME. THERE WERE FOUR SHOTS. I BELIEVE IT IS UNCLEAR FROM THE RECORD. IN LOOKING FROM THE TAPE, THE TENTH SHOT WAS FIRED

INTO MRS. MARX, BUT THE STATE MAY -- BUT THE DEFENSE MAY ARGUE OTHERWISE.

WHAT DID THE STATE ARGUE ABOUT THAT? I BELIEVE THE DEFENSE DID ARGUE THAT IT WAS MR. RUDE OFF.

BELOW. BUT WHEN YOU LISTEN TO THE TAPE, IT IS SOMETHING THAT LISTENING TO IT SEVERAL TIMES, MAYBE YOU WILL COME UP WITH A DIFFERENT INTERPRETATION, REGARDLESS OF WHETHER --

HOW DOES LISTENING TO THE TAPE INDICATE TO YOU WHO WAS BEING SHOT. WHAT IS IT ABOUT THE TAPE, THAT WOULD INDICATE TO YOU THAT THE LAST SHOT WAS INTO MS. MARX.

IT IS VERY PRECISE. YOU CAN HEAR, FROM THE TAPE, THE FOOTSTEPS GOING AROUND THE TABLE, AND YOU CAN HEAR MS. MARX GROANING, AND HER REACTIONS WHEN THE SHOT IS FIRED. YOU CAN ALMOST HEAR AN EXHAUSTION OF AIR, WHEN THE SHOT IS FIRED INTO HER, AND A SOUND OF PAIN, WHEN THE SHOT IS FIRED, AND THAT IS WHAT GAVE ME THE IMPRESSION THAT THE LAST SHOT WAS FIRED INTO HER. REGARDLESS, WE DO KNOW, WHETHER IT WAS THE NINTH OR THE TENTH SHOT, WE DO KNOW THAT SHE WAS AWARE THAT THESE PEOPLE WERE BEING SHOT, THAT THIS WAS A DELIBERATE, METICULOUS, SYSTEMATIC SHOOTING OF EACH INDIVIDUAL IN THIS ROOM, WITH THE EXCEPTION OF THE COURT REPORTER, WITH WHOM THE APPELLANT HAD NO BEEF. MRS. MARX OBVIOUSLY WITNESSED THESE OTHER PEOPLE BEING SHOT, FALSE TO THE GROUND, IS HELPLESS, LAYING THERE, PLEADING FOR HELP, AND THE APPELLANT IS APPARENTLY LOOMING OVER THE VICTIM, AND THIS IS FROM THE TESTIMONY OF THE COURT REPORTER, LEANS OVER THE TABLE AND SHOOTS HER AGAIN, AND THE OTHER THING THAT IS IMPORTANT TO REMEMBER IS MRS. MARX, ALSO, WITNESSED PATTY CHARLES ONE AND MAURICE HALL RUNNING FROM THE ROOM. SHE WAS NOT ABLE TO DO THIS. SHE WAS FORCED TO LAY ON THE FLOOR AND ENDURE THIS TREASURY, WATCHING THE DEFENDANT KILL AND KNOWING THAT SHE WAS PREGNANT AND SHOOTING HER IN THE BELLY, TO THE UNBORN FETUS.

DID THE DEFENDANT KNOW THAT SHE WAS PREGNANT?

IT IS NOT INDICATED THAT THE DEFENDANT KNEW THAT SHE WAS PREGNANT, BUT WHAT WAS IN HER MIND, WHAT SHE WAS AWARE OF WAS CONTEMPLATING NOT ONLY HER OWN DEATH BUT THE DEATH OF HER UNBORN FETUS.

LET ME ASK YOU, IF YOU ASSUME THAT THE HAC WERE NOT AN AGGRAVATOR, THAT THAT WAS STRICKEN, WOULD THIS BE A PROPORTIONAL CASE?

YES, YOUR HONOR. IN THAT CASE, I STILL SUBMIT THAT IT WOULD BE.

AND WHERE WOULD IT BE? WHAT WOULD BE PROPORTIONATE?

A RECENT CASE, BLACKWOOD VERSUS STATE WAS A SINGLE AGGRAVATOR, WLTHS OR SOME MITIGATION, LITTLE TO NO MITIGATION, AND -- WITH LITTLE TO SOME MITIGATION, LITTLE TO NO MITIGATION, AND THAT WAS RECENTLY -- THAT WAS JANUARY 18th, I BELIEVE, OF THIS YEAR, THAT THIS COURT ISSUED THAT OPINION, AND THAT WAS A SINGLE AGGRAVATOR WITH NO MENTAL MITIGATION, AND FOR THAT REASON, I WOULD SUBMIT --

DO WE HAVE REASON TO KNOW MENTAL MITIGATION HERE? WE HAVE A NUMBER OF DOCTORS, BOTH AT THE COMPETENCY HEARING AND LATER, WHO WERE DISCUSSING THIS LONG-TERM MENTAL ILLNESS THAT A DEFENDANT HAD, SO DO WE, REALLY, HAVE LITTLE?

WELL, THE TRIAL COURT GAVE THAT SOME WEIGHT, SOME WEIGHT. IT DIDN'T RISE TO THE LEVEL OF EXTREME, AND THE TRIAL COURT DIDN'T BELIEVE THAT THAT INTERFERED WITH HIS ABILITY TO CONDUCT HIS AFFAIRS ON A DAILY WAY, TO DRESS HIMSELF, TO GO TO WORK, TO HAVE

FRIENDSHIPS, RELATIONSHIPS, TO CHARM PEOPLE. THE TRIAL COURT BELIEVED THAT THAT OBVIOUSLY, IN THE SCHEME OF THINGS, WAS RELATIVELY PALED BY COMPARISON.

WASN'T BLACKWOOD A CCP CASE?

NO. IT WAS HAC.

HAC. THAT WAS THE FELLOW THAT MURDERED HIS GIRLFRIEND OR WOMAN THAT HE HAD HAD A SIGNIFICANT RELATIONSHIP.

A WOMAN THAT HE HAD HAD A SIGNIFICANT RELATIONSHIP WITH.

THIS CASE IS SIMILAR TO THE PROVENZANO AND CRUISES CASES -- CRUZ CASES, IT SEEMS TO ME, BUT IN BOTH OF THOSE CASES, THERE WAS A FINDING OF CCP, AND DOESN'T THAT DISTINGUISH THIS CASE, IN THAT THERE WAS NO CCP?

WELL, CCP WAS THE FOURTH, EXCUSE ME, AND APPELLANT SUCCESSFULLY, APPELLANT, HIMSELF, SUCCESSFULLY CONVINCED THE TRIAL COURT NOT TO PUT FORTH THE CCP MITIGATOR OR AGGRAVATOR. JUSZ FOR -- JUST FOR YOUR INFORMATION, AND WHILE IT WASN'T SPECIFICALLY FOUND, OBVIOUSLY CRUZ AND PROFENS ZAHN-, AND -- AND PROVEN ZAHN-, AND KING AND -- PROVENZANO, AND KING AND POOLER, THERE WAS NO --

HOW DO YOU DISTINGUISH THIS BETWEEN THE CASE WHERE THE FELLOW GOT ON THE BUS IN FT. LAUDERDALE AND SHOT --

IT IS ESCAPING ME AT THIS POINT, YOUR HONOR. I APOLOGIZE. THESE ARE EXEXTRAORDINARY AGGRAVATORS, THEMSELVES, AND IF THIS COURT FINDS HAC AND THAT THE APPELLANT ACTEDED IN UTTER INDIFFERENCE TO HER PLEADS FOR HER LIFE, AND WE ARE STILL ARGUING A CAPITAL FELONY. AND WE ALSO, IF YOU LOOK AT IT, HE ALMOST KILLED MAURICE HALL BUT WAS UNSUCCESSFUL IN DOING THAT.

IS IT YOUR POSITION THAT THIS DOCTOR -- THAT THERE WAS NOTHING WRONG WITH HIM, THAT HE WAS FULLY FUNCTIONAL AND SO FORTH?

NO, YOUR HONOR.

THERE SEEMS TO BE SOME RATHER BIZARRE BEHAVIOR ON THE PART OF THE DOCTOR, DOESN'T THERE, AND HOW DOES THAT FACT OR INTO PRO -- THAT FACTOR INTO PROPORTIONALITY, IF YOU HAVE GOT SOMEBODY THAT IS GOING IN AND OUT OF IT AND SAYS THAT HE WANTS TO REPRESENT HIMSELF AND THEN SAYS NO, HE DOESN'T WANT TO REPRESENT HIMSELF. HE WANTS A LAWYER. HIS ACTIONS ARE NOT CONSISTENT WITH -- HOW DOES THAT FACTOR INTO PROPORTIONALITY?

YOUR HONOR, I DISAGREE WITH YOUR CHARACTERIZATION THAT HIS ACTIONS WEREN'T CONSISTENT. I BELIEVE, THAT IF YOU READ THE RECORD, YOU WILL SEE THAT EACH TIME APPELLANT HAS REACTED TO SOMETHING THAT HAS OCCURRED, AND HE IS ATTEMPTING TO MAN I AM LAT, WHICH HIS OWN EFFORT FOUND THAT HE WAS HIGHLY MANIPULATIVE. HE WAS ATTEMPTING TO MANIPULATE THE COURT, AND JUDGE BACKER DIDN'T WANT TO PREVENT HIM FROM HIS CONSTITUTIONAL RIGHT TO REPRESENT HIMSELF, BUT HE WANTED TO BE SURE THAT THE PROCEEDINGS WERE RELIABLE AND CONSTITUTIONAL AND PROPORTIONAL, SO HE TOOK EVERY STEP TO PROTECT THE APPELLANT, AS BEST HE COULD IN THE WEIGHING PROCESS, AND I AM NOT SAYING THAT APPELLANT DIDN'T HAVE PROBLEMS. HE WAS ODD. HE OBVIOUSLY WAS PARANOID. HE WAS PARANOID FOR SOME LENGTH OF TIME, APPARENTLY, BUT THERE IS EVIDENCE --

THAT IS MY POINT. IF HE IS PARANOID, AND THE PLAINTIFF IS AGREEING THAT HE WAS PARANOID, IS THIS THE KIND OF A PERSON THAT THE DEATH PENALTY SHOULD APPLY TO?

IT CERTAINLY IS. IT APPLIED IN PROVENZANO'S SITUATION AND IN CRUZ'S SITUATION AND IT MOST CERTAINLY APPLIES IN THIS SITUATION. SIMPLY BECAUSE HE IS PARANOID DOESN'T KNOW INTERFERE HIS ABILITY TO FUNCTION IN A SOMEWHAT NORMAL MANNER ON A DAILY BASIS. AGAIN, THE RECORD IS FILLED WITH INFORMATION THAT APPELLANT FORMED FRIENDSHIPS WITH DOROTHY McCLEARY. THAT HE, WHEN SHE WENT TO HIS APARTMENT, IT WAS ACTUALLY, SHE SAID IT WAS NICE, SO AT SOME POINT THESE CONTRAPTIONS WERE BUILT, BUT AT THE TIME AT THANKSGIVING, BEFORE THIS OCCURRED, DOROTHY McCLEARY DIDN'T SEE ANY CONTRAPTIONS.

IF HE BELIEVES THAT PEOPLE ARE AFTER HIM, AS PART OF HIS PAIR KNOW YEAH -- PARANOIA, AND AS A RESULT OF, THIS HE TAKES ACTION, AS A RESULT OF THIS PARANOID. IS THAT THE KIND OF PERSON THAT OUGHT TO BE EXECUTED?

UNDER YOUR HYPOTHETICAL, IF WE WERE GOING TO GO THAT FAR AND TO SHOW, UNDER YOUR FACTS, THAT HYPOTHETICALLY-SPEAKING, A DEFENDANT WHO IS COMPLETELY PARANOID AND TAKES ACTION TO PRESENT HIMSELF, I WOULD SUBMIT IF HE WAS MENTALLY ILL, THEN, NO, HE WOULD NOT BE COMPETENT TO BE EXECUTED, BUT THAT IS NOT WHAT WE HAVE HERE. WE HAVE A FINDING, BY SEVERAL EXPERTS, AT LEAST THREE EXPERTS OUT OF FOUR, AND THEN A SUBSEQUENT COMP TAENS DETERMINATION THAT HE WAS -- COMP TAENS DETERMINATION THAT HE WAS -- COMPETENCY DETERMINATION THAT HE WAS COMPETENT AT THE TIME, AND THAT, YES, HE WAS ABLE TO FUNCTION AND ABLE TO FUNCTION RELATIVELY WE FEEL. HE WAS NOT MESSY. HE WAS A GENTLEMAN. WHEN HE STAYED AT A FRIEND'S HOME, DURING A TIME WHEN HE WAS IN BETWEEN APARTMENTS, HE BROUGHT GROCERIES FOR HIS HOSTS, AND HE SENT FLOWERS TO THE WOMAN, TO THANK HER FOR LETTING THEM STAY -- HIM STAY AT THEIR HOUSE, SO WE HAVE EVIDENCE THAT THIS GENTLEMAN, ALTHOUGH HE ADMITTEDLY HAS THESE PROBLEMS, THESE AREN'T PROBLEMS THAT SO INTERFERED WITH HIS ABILITY TO KNOW RIGHT FROM WRONG THAT HE WAS COMPLETELY UNABLE TO DETERMINE THAT HE HAD A GUN IN HIS HAND THAT, THE GUN WOULD SHOOT THIS VICTIM AND CAUSE THIS VICTIM TO SUFFER AND ULTIMATELY DIE.

WHAT WAS THE CASE, HERE, THAT WAS PRESENTED TO THE JURY AND THE JUDGE, THAT IS THE THEORY OF, LIKE, IF WE HAVE SOMEBODY HIRED TO GO KILL PEOPLE, YOU SAY OUR THEORY IS THIS PERSON GOT $10,000 TO GO AND EXECUTE SOMEBODY, AND THAT IS A FAIRLY CLEAR-CUT -- WHAT WAS THE TEAR HA I OF THE -- WHAT WAS THE THEORY OF THE STATE HERE?

UNFORTUNATELY THE RECORD REALLY DOESN'T SHOW A DEFINITIVE THEORY THAT WAS PUT FORTH. I BELIEVE, IN CLOSING ARGUMENT, THE STATE SAYS THAT HE DOESN'T KNOW WHY THIS OCCURRED, BUT I SUBMIT, ON READING THE RECORD, YOU CAN COMPLETELY TELL WHY THIS OCCURRED, AND I WOULD PUT IT TO YOU THAT APPELLANT WAS ANGRY WITH HIS FORMER EMPLOYER FOR FIRING HIM, AND APPELLANT BELIEVED THAT HE WAS, AND THERE WAS TESTIMONY THAT IS HE WAS INTELLIGENT, AND APPELLANT BELIEVED THAT HE WAS SOMEONE DESERVING OF RESPECT, AND WHEN HE DIDN'T GET THE REQUISITE RESPECT THAT HE FELT THAT HE DESERVED, HE TOOK STEPS TO PUNISH THE PEOPLE THAT DID NOT RESPECT HIM.

SO IS THAT -- SO, AGAIN, ON THE CCP THING, HE OBVIOUSLY HAD A GUN.

YEAH.

SO YOU ARE SAYING THAT HE CAME INTO THIS DEPOSITION WITH THE IDEA THAT HE WAS GOING TO SHOOT, OR WAS THERE SOME -- SOMETHING THAT WAS SAID, AT THE MOMENT, IN THAT DEPOSITION, THAT, THEN, SET HIM OFF TO START THIS MULTIPLE FIRE SOMETHING.

I AM SORRY, YOUR HONOR. NO. THE STATE DID PROCEED UNDER THE THEORY THAT HE CAME TO THE DEPOSITION, ARMED WITH A WEAPON, TO KILL THESE INDIVIDUALS, OR AT LEAST, AT THE

VERY MINIMUM, TO KILL DR. RUDOLPH, WHICH, ALL, FELL UNDER THE AARP, SE --

DID HE PRESENT THAT TO THE JURY SUCCESSFULLY?

NO. THE TRIAL COURT DID NOT PRESENT THAT CCP AGGRAVATOR.

BASED ON WHAT?

HIS PRETENSE WAS THE STICKING POINT ON MORAL JUSTIFICATION, AND THE COURT DID AGREE. THERE WAS DISCUSSION WITH BETWEEN THE APPELLANT AND THE COURT. THE APPELLANT WAS REALLY AFRAID THAT THE JURY WOULDN'T UNDERSTAND PRETENSE, AND SINCE HE FELT HE WAS JUSTIFIED, MORALLY, IN SHOOTING THESE PEOPLE, HE FELT THAT THAT AGGRAVATED DEFENSE SHOULD NOT BE PRESENTED TO THE JURY.

WHAT WAS THE MORAL JUSTIFICATION?

HE BELIEVED THAT HE WAS JUSTIFIED IN KILLING THESE PEOPLE BECAUSE THEY WERE AFTER HIM, BECAUSE THEY WERE, IN EFFECT, ATTEMPTING TO KILL HIM.

AND THE JUDGE DID THAT?

THE JUDGE DID THE BEST HE COULD, WITH THE CIRCUMSTANCES THAT HE HAD, AND WHEN THIS DOUBT, DON'T, AND THAT IS EXACTLY WHAT THE TRIAL COURT DID, RATHER THAN CREATE A POTENTIAL PROBLEM DOWN THE LINE. THE TRIAL COURT TOOK THE HIGH ROAD AND DECIDED NOT TO GIVE THAT AGGRAVATOR. AND STUCK WITH THE HAC AND WITH THE CONTEMPORANEOUS CAPITAL FELONY. THIS IS A TORTURED RECORD. THE ONE THING THAT THIS RECORD DOES SHOW, THOUGH, IS THAT APPELLANT CERTAINLY HAS AN ABILTY TO MANIPULATE THE PROCEEDINGS, JUST AS THE DEFENDANT, IN VALDES DID, WHEN HE WAS GOING TO REQUEST A NEW ATTORNEY AND WAS FIRING HIS ATTORNEYS, AND THIS COURT SAID, BUT YOU SPECIFICALLY CAN'T -- AND THE THIS COURT SPECIFICALLY SAID YOU CAN'T FIRE YOUR ATTORNEYS TO INITIATE A DELAY, AND THAT IS EXACTLY WHAT HE WAS TRYING TO DO HERE.

IN PROVENZANO, WHAT I RECALL IS THAT THERE WERE NO FINDINGS OF MENTAL MITIGATION. IS THAT YOUR UNDERSTAND SOMETHING.

-- IS THAT YOUR RECOLLECTION?

YES.

SO THIS IS SIMILAR TO PROVENZANO, EXCEPT THERE IS A FINDING OF MENTAL MITIGATION. DO YOU NOT SEE THAT, ALTHOUGH MAYBE IF WE LOOKED AT THE PROVENZANO RECORD, THAT THERE WAS EVIDENCE AFTER PARANOID PERSONALITY, HERE THE JUDGE SPECIFICALLY FOUND THAT MENTAL ILLNESS TO BE UNDERLYING THIS DEFENDANT'S ACTIONS. DO YOU SEE THIS -- LET'S JUST ASSUME, AND TAKE JUSTICE ANSTEAD'S HYPOTHA.M., THIS -- HYPOTHETICAL, THIS SITUATION BEING BECAUSE DR. MORA HAD COME IN AND PAID HIM $20,000 TO TAKE OUT THREE OF THE PEOPLE. IS THIS THE SAME -- ARE BOTH CASES EQUALLY DEATH PENALTY CASES, HE EVEN THOUGH IN ONE CASE, SOMEONE HAD AN UNDERLYING MENTAL ILLNESS, AND IN THE OTHER, SOMEONE DOES IT SIMPLY BECAUSE THEY ARE WIPING OUT, WANTING TO WIPE OUT THREE PEOPLE AND THEY ARE PAID TO DO IT. ARE THOSE THE SAME, WHEN WE LOOK AT THE MOST AGGRAVATED, LEAST MITIGATED, ARE BOTH THOSE SITUATIONS, SHOULD THEY BE LOOKED AT IN THE SAME WAY? WELL, IN --

WELL, IN PROF ENSAN-, HE -- IN PROVENZANO, HE DID BELIEVE THAT HE WAS JESUS CHRIST.

WE HAVE TO DEAL WITH WHAT THE CASE ON APPEAL MIGHT LOOK LIKE, NOT WHAT WE MIGHT

KNOW SUBSEQUENTLY, IN TERMS OF EVALUATING PROPORTIONALITY, DON'T WE?

YES. I AM NOT SURE THAT I QUITE UNDERSTAND YOUR QUESTION, BUT WHAT I WOULD SAY IS THAT, WITHOUT REWEIGHING WHAT THE TRIAL COURT DID HERE, AND GIVING THE DUE DEFERENCE THAT IT DID TO THE MENTAL MITIGATION THAT WAS ESTABLISHED, THIS CASE IS CERTAINLY THE MOST AGGRAVATED AND LEAST MITIGATED, AND IN COMPARISON --

MAYBE THAT IS WHAT I AM GETTING AT IS THERE WAS A LOT OF TIME SPENT ON THE DURESS, TODAY, ON THE FACT THAT THERE SEEMS TO BE AN ERROR IN FINDING THAT THERE WAS AN EXTREME EMOTIONAL DISTRESS MITIGATOR, AND THAT IT WAS FOUND TO BE A NONSTATUTORY MITIGATOR BUT GIVEN SOME WEIGHT, DOESN'T MEAN THAT YOU DISREGARD IT, DOES IT, DO YOU?

NO. OBVIOUSLY THE TRIAL COURT CONSIDERED THAT AND WEIGHED THAT, BUT IN COMPARISON TO THESE WEIGHTY, EXTROORD NEARLY WEIGHTY -- EXTRAORDINARILY WEIGHTY AGGRAVATORS, DID PALED IN COMPARISON AND WAS GIVEN LITTLE WEIGHT. AS YOUR HONOR MENTIONED BEFORE, THERE WAS CONFLICTING EVIDENCE, BUT THERE WAS SUBSTANTIAL AND CONFIDENT EVIDENCE TO SUPPORT THE TRIAL COURT'S CONCLUSION.

DO WE GIVE ANY GREATER WEIGHT, WHEN IT COMES TO MENTAL MITIGATION, WHETHER OR NOT THEY ARE STATUTORY OR NONSTATUTORY? I MEAN, WOULD THIS CASE BE WEIGHED DIFFERENTLY, IF THE JUDGE HAD NOT DISCUSSED MENTAL MITIGATION, IN TERMS OF NONSTATUTORY, BUT DISCUSSED IT IN MATERIALS OF STATUTORY.

WELL, IN GENERAL, THAT IS A BIG DISCUSSION, IN MANY OFFICES IN OUR OFFICE. I DON'T BELIEVE THERE, REALLY, IS A DISTINCTION. JUDGE BACHMAN EXPLAINS IT TO APPELLANT ON THE RECORD THAT HE BELIEVES THAT THE STATUTORY MITIGATORS ARE THOSE THAT THE LEGISLATURE CHOSE TO LIST AND THAT THE NONSTATUTE OTHER ARE THOSE THAT THE DEFENDANT CAN COME UP WITH, ANYTHING THAT HE CAN PRESENT TO THE COURT. THEY ARE JUST NOT WRITTEN DOWN.

EXCUSE ME. ARE YOU FINISHED WITH USUAL ANSWER?

I HAD ONE MORE -- NOW I CAN'T REMEMBER IT.

LET ME POSE THIS QUESTION. THIS THE GUILT -- IN THE GUILT PHASE, NOW, THE JUNK MADE THE DETERMINATION, MADE SEVERAL DETERMINATIONS THAT DR. MORA WAS COMPETENT TO PROCEED IN THE TRIAL, AND THEN DR. MORA, IN THE GUILT PHASE, GOT ON THE WITNESS STABBED AND GAVE A STATEMENT -- WITNESS STAND AND GAVE A STATEMENT AS TO THE FACT THAT THESE, DR. RUDOLPH, HAD GASSED HIM THE NIGHT BEFORE, AND THAT THE REASON THAT HE SHOT HIM WAS BECAUSE AN ACCOMPLICE OF DR. RUDOLPH HAD FIRED SHOTS AT HIM. HE MADE ALL OF THESE STATEMENTS. NOW, WE CAN'T JUST DISMISS THOSE STATEMENTS AS BEING INCOMPETENT, CAN WE, SINCE WE ARE ACCEPTING THAT HE IS COMPETENT TO PROCEED. MAYBE WE CAN TEST HIS CREDIBILITY, BUT WE HAVE TO ACCEPT THAT HIS TESTIMONY IS COMPETENT EVIDENCE.

I BELIEVE THAT APPELLANT'S TESTIMONY WAS CALCULATED TO ACHIEVE THE RESULT THAT HE SOUGHT TO ACHIEVE, WHICH WAS AN ACQUITTAL. HE HAD SUCCESSFULLY ACHIEVED IN HIS 1983 OR 1984 TRIAL, AND THIS IS THE REASON WHY I BELIEVE THAT. APPELLANT DISCUSSED, WITH, I BELIEVE IT WAS DR. MACULUSO BUT I COULD BE MISTAKEN, THE FACT THAT, IF HE PLED INSANITY ORING IN BY REASON OF INSANITY, HE FACED THE POSSIBILITY OF INSTITUTIONALIZED, BEING INSTITUTIONALIZED. IF HE PURSUED THIS RESULT, WHICH ACKNOWLEDGED THAT HE WAS -- THAT HE HAD SOME PROBLEMS BUT IT WAS BASED UPON HIS BELIEF OF SELF-DEFENSE, THEN HE WOULD NOT BE INSTITUTIONIZED. RATHER IF HE WAS ACQUITTED, HE WOULD BE FREE, JUST AS HE WAS BEFORE.

THE SENSE OF MY QUESTIONS IS, IF WE ACCEPT THAT HE IS COMPETENT AND HE GETS ON THE WITNESS STAND AND MAKES THESE STATEMENTS, THEN ISN'T HE ENTITLED TO HAVE JURY INSTRUCTIONS, BASED UPON WHAT HIS THERE I HAVE THE CASE IS? HIS THEORY OF THE CASE IS THAT HE SHOT HIM IN SELF-DEFENSE. A THE JURY WAS INSTRUCTED ON SELF-DEFENSE, AND HE BELIEVED --.

HE, ALSO, HAD A THEORY AS FOR INVOLUNTARY INTOXTATION.

THAT IS WHAT I WOULD CHARACTERIZE AND THE BOLSTERING OF HIS CLAIMS, THAT HE WAS SO DISORIENTED BY THESE GASES AND ALL OF THESE DRUGS, WHICH THERE WAS NO EVIDENCE OF DRUGS FOUND ON HIM, THAT HE DIDN'T KNOW WHAT HE WAS DOING.

HE TESTIFIED TO IT, SO THAT IS COMPETENT EVIDENCE.

AT THE SAME TIME, YOU CAN TAKE PART OF A WITNESSES' TESTIMONY AND DISREGARD ANOTHER PART OF IT. ARE YOU SAYING THAT --

CAN THE JUDGE DO THAT, IN GIVING INSTRUCTIONS TO THE JURY? DOESN'T THE JUDGE HAVE TO GIVE INSTRUCTIONS, ON THE BASIS OF WHAT -- IF THERE IS ANY EVIDENCE IN THE RECORD TO SUPPORT THE DEFENDANT'S THEORY, GIVE INSTRUCTIONS ON THE BASIS OF THAT?

BUT AT THE SAME TIME THE JURY HAS INSTRUCTED THAT THEY CAN DISREGARD THAT TESTIMONY, IF THEY FIND THAT IT IS NOT CREDIBLE, AND IN BEING INCREDIBLE AND INCOMPETENT ARE TWO ENTIRELY DIFFERENT THINGS. THE JUDGE MAY HAVE FOUND THAT THE DEFENDANT WAS MALINGERING. HE WAS MAKING THE ENTIRE THING UP AND JUST DISREGARDED HIS TESTIMONY, AND BELIEVED THE STATE'S WITNESSES THAT HE DECIDED HE WAS GOING TO SHOOT THESE PEOPLE, BECAUSE HE WAS ANGRY WITH THEM, SO I AM NOT SURE IF I QUITE UNDERSTAND YOUR QUESTION, BUT I BELIEVE THAT THE JURY WAS INSTRUCTED ON SELF-DEFENSE, AND THE JURY HAD THE ABILITY, WITHIN ITS PURVIEW, TO SMITH -- TO DISMISS ALL OR SOME OF APPELLANT'S TESTIMONY, AND I, ALSO, BELIEVE THAT APPELLANT'S TESTIMONY WAS CALCULATED. HE WAS OBVIOUSLY AN INTELLIGENT MAN, AND HE KNEW WHAT HE HAD TO DO, TO GET HIS RESULTS, WHICH WAS ACQUITTAL, AS HE HAD DONE BEFORE, AND THE RECORD REVEALS SNIPPETS OF THIS THROUGHOUT.

THANK YOU VERY MUCH. I THINK YOUR TIME IS UP.

THANK YOU. REBUTTAL?

IF I CAN --

COUNSEL, HELP ME TIE-UP ONE LITTLE THING. YOU HAVE ANSWERED, IN RESPONSE TO QUESTIONS IN REGARD TO HAC, YOU GAVE A SEQUENCE OF THE GUN SHOTS AND THE CRIES FOR HELP BY MS. MARKS, AND HELP ME UNDERSTAND WHY THE SEQUENCE YOU GAVE MITIGATED AGAINST HAC.

THE SEQUENCE I GAVE.

YES.

WHAT I WAS SAYING --

WHY WOULD THAT SAY THAT IT WAS NOT HAC?

WELL, THE SHOOTING PRECEDED, WAS COMPLETED, INSOFAR AS MRS. MARKS WAS CONCERNED. THE -- MRS. MARX WAS CONCERNED, THE SHOOTING TOOK PLACE PRIOR TO THE CRIES FOR HELP, AND IN FACT IT WAS CITED IN THE BRIEF, AFTER THE CRIES FOR SHOOTING, STANDLY IDLY BY

DOESN'T MAKE IT HAC, AND THAT IS EXACTLY WHAT WE HAVE. IT IS A --

ISN'T THAT THE SAME THING AS TO ESTABLISHING THAT THERE IS A STABBING. THERE IS A STABBING AND THEN THERE IS A LINGERING DEATH, AS A RESULT OF THAT.

I AM REING THE STABBING CASES AS SOMEWHAT DIF-- I AM READING THE STABBING CASES AS SOMEWHAT DIFFERENT FROM THE SHOOTING CASES. STABBING IS --

BUT IT IS YOUR POSITION THAT THE TIME AFTERWARDS IS WHAT MITIGATES IN THE SHOOTING CASE, AGAINST HAC.

NO. IN THIS CASE, THE TIME AFTERWARD DOESN'T RELATE BACK TO WHAT HE DID TO MRS. MARX. I MEAN, YOU HAVE GOT TO LOOK AT WHAT I AM SAYING, IF YOU LOOK AT THE SHOOTING, IT IS FAST, VERY FAST, 17 SECONDS. AND IT IS NOTHING OUT OF THE ORDINARY, TO TAKE IT OUTFIT THE ORDINARY COURSE OF OTHER SHOOTINGS THAT THIS COURT HAS HELD THAT WERE NOT HAC. I JUST WANT TO TALK ABOUT THE PSI FOR A MINUTE. I READ THE RECORD. I DIDN'T SEE THE PSI HANDED UP, AND, OF COURSE, THE PROBLEM WITH THE PSI, NOT ONLY WAS THAT IT WASN'T DISCUSSED BEFOREHAND. IT, CERTAINLY, WASN'T DISCUSSED BY MR. COLAMENT, WHO SAID NOTHING. IT WASN'T DISCUSSED BY MR. MALL NICK, AND IT WASN'T -- MALNICK, AND IT WASN'T DISCUSSED BY THE APPELLANT'S COUNSEL. AND THAT IS SNAG I NEED TO ADDRESS IS DR. MORA WAS A HYBRID COUNSEL, AND THERE WAS NO RIGHT TO BE A HYBRID COUNSEL. THAT WAS FOR THE COURT'S DISCRETION AND GIVEN ALL OF THE EVIDENCE THAT WAS COMING IN ABOUT DR. MORA, HIS BACKGROUND, HIS HISTORY, YOU HAVE THE VIDEOTAPE. YOU HAVE THE WITNESSES. YOU HAD HIS OWN TESTIMONY, I BELIEVE, AT THE TIME, THAT WAS ABSOLUTELY OUT THERE, ABOUT THIS -- THESE GUNBATTLES ON I-95 AND -- GUN BATTLES ON I-95 AND INVISIBLE PEOPLE AT THE DOOR, SHOOTING, AND YET DR. MORA POPS UP AND SAYS I WANT TO BE COUNSEL, AND THE COURT SAYS, OKAY, YOU WANT TO BE COUNSEL? YOU ARE COUNSEL. AND SORT OF OFF-HANDED --

DIDN'T THE PREVIOUS PORTION OF YOUR ARGUMENT TELL US THAT THERE HAD BEEN MULTIPLE ATTORNEYS INVOLVED IN THIS CASE AND MR. MORA WAS ALWAYS HAVING ARGUMENTS WITH THEM, CONCERNING WHAT WAS THE THEORY OF DEFENSE AND ALL OF THIS? AND SO WOULDN'T YOU THINK THAT, UNDER THOSE CIRCUMSTANCES, THE TRIAL COURT WOULD, THEN, SAY, MR. MORA HAS ALL OF THESE IDEAS ABOUT HOW HIS CASE SHOULD GO? YES, I WILL LET HIM BE COME COUNSEL IN THIS CASE.

NONE OF THOSE IDEAS WERE REALITY-BASED. I MEAN, YOU HAVE INVISIBLE MEN AT THE DOOR. THAT IS WHAT HE IS TALKING ABOUT.

WASN'T A PART OF HIS ARGUMENT WAS THAT, YOU KNOW, I AM DOING THIS, I HAVE GOT SOME REALLY -- WHETHER IT IS LEGAL OR MORAL JUSTIFICATION, BUT SOME KIND OF JUSTIFICATION FOR THIS PARTICULAR ARGUMENT.

THAT IS WHAT HE SAID. THAT IS WHAT HE ARGUED. HE WAS ARGUING THAT, ABSOLUTELY, HE WAS BEING PURSUED AND HARASSED AND SHOT AT BY DR. RUDOLPH AND HIS HENCHMEN. HE WAS BEING GASSED. AND THAT IS WHAT HE WAS SAYING. THE POINT IS, AND I THINK THIS IS CLEAR, AND I THINK IT IS FAIR TO SAY IT ON THIS RECORD. NOBODY, IN THAT COURTROOM, BELIEVED HIM. AND IF NO ONE IN THAT COURT ROOM BELIEVED DR. MORA, FOR ONE MINUTE, THAT, ABOUT THE GUN BATTLES, "THE INVISIBLE MAN", NONE OF THE DOCTORS BELIEVED IT. NONE OF THE LAWYERS BELIEVED IT. JUDGE BACHMAN CLEARLY DIDN'T BELIEVE IT. THEN HOW CAN YOU POSSIBLY EXERCISE YOUR DISCRETION FAVORABLY, TO ALLOW SOMEONE TO BE HYBRID COUNSEL? HE IS ONLY GOING TO DO WHAT HE DID, WHICH IS RANT AND RAVE AND BE MORE DISRUPTIVE. THIS WAS -- I HAVE TO SAY, AND I STARTED SAYING THIS, THIS WAS A VERY, VERY DIFFICULT TRIAL FOR EVERYONE CONCERNED, AND -- ABOUT I THINK IT WAS DIFFICULT FOR TWO REASONS, BECAUSE OF THE EXTENT OF DR. MORA'S DISEASE THAT ALL OF THE DOCTORS

TESTIFIED TO, AND HIS INTELLIGENCE,, WHICH APPARENTLY, ACCORDING TO THE RECORD AND THE PSYCHOLOGISTS AND PSYCHIATRISTS, WAS EXTRAORDINARY. AND THAT IS A DANGEROUS MIX IN A MURDER TRIAL.

YOUR TIME SUBPOENA UP. THANK YOU VERY MUCH, COUNSEL. WE APPRECIATE COUNSEL'S ASSISTANCE IN THIS CASE FORM