Thomas Davis Woodel v. State of Florida

FINAL CASE ON THE COURT'S CALENDAR FOR MORNING IS WOODEL VERSUS STATE. MR. MULLER.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS ROBERT MOELLER. I AM ASSISTANT PUBLIC DEFENDER WITH THE TENT JUDICIAL CIRCUIT. I AM HERE ON BEHALF OF THE APPELLANT, THOMAS WOODEL. MR. WOODEL WAS CONVICTED OF TWO COUNTS OF FIRST-DEGREE MURDER, IN THE STABBING DEATHS OF BERNICE AND CLIFFORD MOODY, AND HE WAS CONVICTED OF THE KILLINGS, AND IN ADDITION CONVICTED OF ROBBERY AND BURGLARY IN THE SAME INCIDENT. THE JURY RECOMMENDED DEATH BY A VOTE OF 12-0 IN BERNICE MOODY AND DEATH AS A MOTIVE TO KILLING IN FINDING 9-3 IN CLIFFORD MOODY. THE COURT FOUND THAT MR. WOODEL HAD PREVIOUSLY BEEN CONVICTED OF ANOTHER AGGRAVATED FELONY, THAT WAS THE KILLINGS OF THE TWO INDIVIDUALS, CLIFFORD AND BERNICE MOODY, AND, ALSO, FOUND THAT THE KILLINGS WERE COMMITTED WHILE WOODEL WAS ENGAGED IN A BURGLARY. THE COURT FOUND HAC AND, ALSO, FOUND THAT THE VICTIMS WERE PARTICULARLY VULNERABLE, DUE TO AGE. SEVEN OTHER CONSIDERATION WERE, ALSO, CONSIDERED END THE SO-CALLED CATCH ALL MITIGATOR, SUBSEQUENTLY WHICH THE COURT FOUND SIX TO HAVE BEEN ESTABLISHED BUT WHICH HE, QUOTE, FOUND IRRELEVANT, IN REGARD TO SIGNIFICANCE OR WEIGHT. UNQUOTE. MR. WOODEL CLAIMED THAT HIS LARGE CONSUMPTION OF BEER PRIOR TO HOMICIDES WAS MITIGATING. THE TRIAL COURT FOUND THAT THE EVIDENCE DID NOT SUPPORT THIS, AND THAT THE JURY HAD REJECTED A FINDING THAT WOODEL WAS INCAPABLE OF FORMING THE REQUISITE INTENT. TURNING TO THE SPECIFIC ISSUES THAT WE HAVE RAISED IN THE BRIEF, I WOULD LIKE TO START OUT BY DISCUSSING THE FIRST ISSUE. WHICH HAS TO DO WITH THE FACT THAT THE PENALTY PHASE IN THIS CASE WAS HELD ON ONE DAY FROM EARLY IN THE MORNING UNTIL LATE IN THE EVENING. THE PENALTY PHASE BEGAN AT 9:ON 5 IN THE MORNING AND THE JURY -- 9:05 IN THE MORNING AND THE JURY WAS NOT DISCHARGED UNTIL 10:0 7:00 P.M..

WAS THERE A -- UNTIL 10:0 7:00 P.M..

WAS THERE AN OBJECTION TO THAT?

AT THE TIME THAT THE DEFENSE ATTORNEYS WERE GOING TO MAKE THEIR ARGUMENTS, THE DEFENSE COUNSEL MADE A STATEMENT ABOUT HAVING TO START THE ARGUMENTS THAT LATE IN THE DAY AND HE, ALSO, LODGED AN OBJECTION TO THE LATENESS IN THE DAY.

WHAT TIME WAS IT THEN?

I DON'T BELIEVE THE RECORD REFLECTS EXACTLY WHAT TIME IT WAS AT THAT POINT. THEY WERE ABOUT TO GO INTO THEIR ARGUMENTS TO THE JURY. IT WAS AFTER THE TESTIMONY HAD BEEN GIVEN.

IS THERE SOME SPECIFIC PERIOD THAT WAS WRONG HERE? I AM NOT SURE WHERE WE WOULD CUTOFF SUCH A SITUATION. WE STARTED IN THE MORNING. WE HEARD THE ARGUMENTS, AND SHOULD WE HAVE CUT IT OFF AT NINE O'CLOCK, AT EIGHT O'CLOCK? I AM JUST NOT SURE WHERE WE WOULD GO, WITH THIS KIND OF SITUATION.

YES. I AM NOT SURE THAT YOU CAN NECESSARILY ESTABLISH A BRIGHT-LINE RULE AND SAY THAT YOU CAN NEVER GO BEYOND X O'CLOCK, BUT I THINK, WHEN YOU START GETTING BEYOND

A NORMAL WORKDAY, YOU ARE GETTING INTO DANGEROUS TERRITORY, AND YOU HAVE TO CONSIDER HOW THE JURY IS DOING AND HOW THE ATTORNEYS ARE DOING, AS WELL, AT THAT POINT IN TIME.

DO WE KNOW IF THERE WAS A BREAK FOR DINNER OR ANYTHING HERE?

THERE WAS SOME ARRANGEMENT MADE, I BELIEVE. I REMEMBER THERE WAS A DISCUSSION ABOUT WHAT TO DO WITH THE JURORS GETTING DINNER, AND I DON'T BELIEVE THEY ACTUALLY TOOK A BREAK FOR THAT, BUT THEY DID, SOMEHOW, PROVIDE FOR THEIR NOURISHMENT FOR THE EVENING MEAL. BUT DURING THE COURSE OF THIS 13-HOUR DAY THAT THE ATTORNEYSANT JURORS PUT IN, THEY -- THE ATTORNEYS AND THE JURORS PUT IN, THEY RECEIVED THE TESTIMONY OF SOME 17 WITNESSES, NINE FOR THE STATE AND EIGHT FOR THE DEFENSE, AND THE DEFENSE ATTORNEY, OBVIOUSLY, WAS CONCERNED ABOUT HIS OWN CONDITION, AS WELL AS THE JURORS. HE STATED THAT THEY WERE EXHAUSTED, BY THE POINT IN TIME THAT HE LODGED HIS OBJECTION.

DID ANY OF THE JURORS COMPLAIN ABOUT WANTING TO HAVE A BREAK AT SOME POINT?

I DON'T BELIEVE THE RECORD REFLECTS ANY COMPLAINTS BY THE JURORS.

AND YOUR ARGUMENT, REALLY, HAS TO JUST DO WITH THE FACT THAT IT ALL OCCURRED ON ONE DAY AND IT WENT UNTIL LATE AT NIGHT. YOU ARE NOT MAKING A SPECIFIC ARGUMENT THAT THE DEFENDANT DIDN'T HAVE AN ADEQUATE CHANCE TO PRESENT WITNESSES OR THAT QUESTIONING OF WITNESSES WAS CUT OFF? THERE IS NOTHING OF THAT NATURE, THAT YOU ARE ABLE TO POINT TO, AS FAR AS PREJUDICE, IS THERE?

NO. THE ONLY POSSIBLE MANIFESTATION OF A PROBLEM OCCURRING, AS A RESULT OF THE LONG HOURS, ASIDE FROM WHAT WOULD APPEAR TO BE OBVIOUS, THAT THE ATTORNEYS AND THE JURORS COULD NOT FUNCTION PROPERLY IN THAT EXTENDED A PERIOD OF TIME --

SO YOUR ARGUMENT WOULD HAVE JUST BEEN THAT THEY SHOULD HAVE COME BACK THE NEXT DAY, TO DO A CLOSING ARGUMENT.

THEY COULD HAVE COME BACK THE NEXT DAY. APPARENTLY --

BUT ISN'T THAT SOMETHING, THEN, GOING BACK TO THE ORIGINAL QUESTION, YOU WOULD EXPECT THE DEFENSE LAWYER TO SPECIFICALLY REQUEST I CANNOT GO ON. THESE JURORS HAVE BEEN HERE ALL DAY, AND EVEN THOUGH YOU HAVE GOT A CIRCUIT JUDGE'S CONFERENCE, WE HAVE, YOU KNOW, I CANNOT PROPERLY ARGUE TONIGHT. BUT WITHOUT THAT, WE ARE JUST SPECULATING.

WELL, HE DID LODGE AN OBJECTION. IT WAS SOMEWHAT PER FUNK OTHER AND -- PER FUNKTORY AND IT WASN'T AS SPECIFIC AS HE WOULD HAVE LIKED, BUT I THINK WHEN YOU TALK ABOUT A PENALTY PHASE IN A DEATH PENALTY CASE, I THINK YOU CONSIDER THE ASPECT OF FUNDAMENTAL ERROR AS WELL, THAT JUST TO SUBJECT THE JURORS AND THE LAWYERS TO THIS TYPE OF A DAY, IT CAN'T AND FAIR PROCEEDING. IT CAN'T COMPORT WITH DUE PROCESS, AND WE SAW A MANIFESTATION, POSSIBLY, OF THE TIREDNESS OF THE JURORS, IN THE RECOMMENDATION THAT THEY DID RETURN, AS TO BERNICE MOODY, WHERE ORIGINALLY THEY HAD PUT THE VOTE AS 12-12, WHICH OBVIOUSLY WAS INCORRECT AND MAY HAVE BEEN A RESULT OF THEIR EXHAUSTION, AFTER PUTTING IN SUCH A LONG DAY. THE FERRER CASE THAT WE HAVE CRATED IS PARTICULARLY APPLICABLE TO THIS PARTICULAR ISSUE, AS WELL AS THE THOMAS CASE THAT WAS DECIDED BY THIS COURT. INFERER, THE DAY WAS ACTUALLY SHORTER THAN THE ONE THAT THE ATTORNEYS AND THE JURORS PUT IN IN THIS PARTICULAR CASE. IN THAT CASE, THE JURY SELECTION BEGAN AT 7:30 IN THE EVENING AND END ADD HOUR LATER AND STARTED IN THE MORNING, SO -- AND ENDED AN HOUR LATER, AND STARTED IN THE MORNING, SO THAT WAS

DIFFERENT THAN THIS CASE. I WANT TO MOVE ON TO THE SECOND ISSUE, WHERE WE HAVE DISCUSSED THE INSUFFICIENCY OF THE EVIDENCE, BOTH AS TO PREMEDITATION AND AS TO THE TWO FELONIES, APART FROM THE HOMICIDES OF WHICH MR. WOODEL WAS CONVICTED. ON THE ISSUE OF PREMEDITATION, ALTHOUGH THIS WAS A -- THESE WERE STABBING DEATHS, IT DOES NOT APPEAR THAT MR. WOODEL HAD THE KNIFE IN QUESTION, AT THE TIME HE ENTERED THE PREMISES. RATHER IT WAS A WEAPON THAT HE ACQUIRED THERE, AND, IN FACT, HE TOLD THE POLICE THAT IT WAS FIRST IN THE POSSESSION OF BERNICE MOODY, AND THAT HE TOOK IT AWAY, AND THEY WERE ESSENTIALLY STRUGGLING BACK AND FORTH OVER THE KNIFE OR STRUGGLING IN ORDER TO GET HIM OUT OF THE TRAILER, AND THAT IS WHEN SHE WAS STABBED.

DO WE HAVE ANY EVIDENCE THAT GOES TO THAT PARTICULAR FACT? THAT, OTHER THAN HIS WORD, THAT THIS WAS A KNIFE THAT WAS ACTUALLY ON THE PREMISES?

WE HAVE THE FACT THAT THERE WAS A SET OF KNIVES, I GUESS IT IS CALLED A BUTCHER WLOCK -- BUTCHER BLOCK, IN THE KITCHEN, FROM WHICH THREE KNIVES WERE MISSING. WE HAVE THAT, AND WE DON'T HAVE ANY EVIDENCE THAT HE DID HAVE A KNIFE, WHEN HE WAS IN THE PREMISES.

DID THIS MATCH THAT SET THOUGH?

I BELIEVE THAT IT DID.

DON'T WE, ALSO, HAVE EVIDENCE THAT THE MAJORITY OF THESE WERE DEFENSIVE-TYPE WOUNDS TO THE ARM, AND THEY HAVE OVER.

ACTUAL IMPACTS HERE?

THERE WERE 56 TOTAL WOUNDS. I AM NOT SURE. SOME OF THEM WERE DEFENSIVE WOUNDS. I AM NOT SURE HOW MANY THERE WERE, BUT SOME OF THEM WERE. THAT IS CORRECT. AND OBVIOUSLY THERE WAS SOME TYPE OF A STRUGGLE THAT OCCURRED. MR. WOODEL ESSENTIALLY INDICATED THAT MOST OF THE INJURIES OCCURRED, WHEN MS. MOODY WAS TRYING TO GET HIM OUT OF THE TRAILER AND STRIKING UP AGAINST THE KNIFE. WITH REGARD TO --

BUT DOESN'T OUR CASE LAW SUGGEST THAT, BY VIRTUE OF THE NATURE OF THE EVENTS, THAT PREMEDITATION CAN BE ESTABLISHED, FROM THE STAB WOUNDS, SUCH AS OCCURRED IN THIS CASE? DO WE HAVE A LONG LINE OF CASES THAT ADDRESS THAT?

WELL, THERE ARE SOME CASES THAT SAY THAT THAT IS TRUE. THERE ARE OTHER CASES THAT SEEM TO SAY DIFFERENTLY. FOR EXAMPLE KIRKLAND AND COULAND, WHICH WE HAVE DISCUSSED IN THE BRIEF, SO THERE ARE CASES THAT, I BELIEVE, WOULD GO BOTH WAYS.

HOW DO YOU DISTINGUISH BETWEEN THE TWO, THOUGH? ARE THEY IN ABSOLUTE CONFLICT, OR IS THERE SOME EXPLANATION FOR THEM?

ONE OF THE CASES CITED BY MY OPPONENT IN THE BRIEF WAS JIM ENEZ, AND I WAS TRYING TO REVIEW AND DISTINGUISH THAT AND I FOUND IT VERY DIFFICULT. HOWEVER, I DO THINK THIS CASE IS QUITE CLOSE TO THE KIRKLAND CASE, WHERE THE COURT FOUND THAT THERE WAS INSUFFICIENT EVIDENCE OF PREMEDITATION, BUT I THINK SOME OF THE CASES JUST CANNOT BE DISTINGUISHED. I THINK THEY JUST GO BOTH WAYS. LET ME MOVE ON, NOW, TO THE ROBBERY, AND WHETHER THERE WAS INSUFFICIENT EVIDENCE OF THE ROBBERY. MR. WOODEL TOLD THE POLICE THAT CLIFFORD MOODY'S WALLET WAS TAKEN AS AN AFTERTHOUGHT, AND THERE IS NO EVIDENCE TO SUGGEST THAT THAT WAS NOT THE CASE. THERE IS NO INDICATION THAT MR. WOODEL, WHO WAS WORKING, AT THE TIME, HE WAS WORKING AT PIZZA HUT, EITHER NEEDED MONEY PARTICULARLY OR SUSPECTED THAT THE MOODYS HAD ANYTHING OF VALUE THAT HE COULD TAKE.

WAS ANYTHING ELSE TAKEN OF VALUE? WAS THERE JEWELRY TAKEN?

NO. IN FACT, THERE WAS JEWELRY REMAINING ON BOTH MR. AND MRS. MOODY THAT WAS NOT TAKEN. THEY WERE, BOTH, WEARING WATCHES, AND MR. MOODY HAD A SILVER-COLORED CHAIN WITH ACROSS ON IT THAT WAS NOT TAKEN, AND MS. MOODY HAD A GOLD-COLORED WEDDING BAND AND A GOLD-COLORED CHAIN WITH ACROSS ON IT. ALL OF THAT WAS LEFT BEHIND.

SO THE ROBBERY WAS ONLY THE ROBBERY OF THE ONE VICTIM, CLIFFORD, NOT OF -- WAS THAT THE ROBBERY CHARGED?

IT ALLEGED, THE INDICTMENT ALLEGED, IN THE ALTERNATIVE, THAT PROPERTY WAS TAKEN FROM EITHER ONE, BUT I BELIEVE ACTUALLY THE FACTS SHOWED THAT IT WAS ONLY TAKEN FROM MR. MOODY, FROM CLIFFORD MOODY.

THIS WAS HIS WALLET, LATER FOUND DISPOSED OF IN A GARBAGE CONTAINER?

YES. IT WAS LATER FOUND IN A DUMPSTER ON THE PREMISES OF THE OUTDOOR RESORTS OF AMERICA, WHERE THESE KILLINGS TOOK PLACE AND WHERE BOTH MR. WOODEL AND THE VICTIMS LIVED.

DID THE VERDICT DIFFERENTIATE INTO ROBBERY OF THE ONE VICTIM VERSUS THE OTHER VICTIM, CLIFFORD VERSUS BERNICE?

NO. NO. IT DID NOT.

BUT YOU ARE SAYING THE ONLY ROBBERY THAT COULD HAVE TAKEN PLACE THAT WAS PROVED WAS THE ROBBERY OF CLIFFORD?

AS FAR AS I CAN RECALL, YES, THAT WAS THE ONLY ONE. I MEAN, WE ARE SAYING IT WASN'T PROVEN, BUT AS FAR AS THE PROPERTY TAKEN, IT WAS, I BELIEVE, ONLY MR. MOODY'S PROPERTY THAT WAS ACTUALLY TAKEN OR PROVEN TO BE TAKEN. AND DEFENSE COUNSEL ARGUED THAT, AT MOST, WE HAD A THEFT HERE, BECAUSE THERE WAS NO INDICATION, AS I SAID, THAT MR. WOODEL TOOK THE MONEY OR INJURED THE PEOPLE, IN AT EMPTOR WITH A -- IN AN ATTEMPT OR WITH A EFERD EFFORT FOR -- OR WITH AN EFFORT FOR THE PURPOSE OF TAKING THE WALLET, FOR THAT MATTER.

WHAT IS YOUR DEFENSE FOR WHY THESE MURDERS WERE COMMITTED.

THAT MR. WOODEL WAS SIMPLY TRYING TO GET OUT OF THE TRAILER. HE HAD GONE IN THERE, ACCORDING TO THE STATEMENT TO THE POLICE, AFTER HE HAD BEEN DRINKING BEER, TO FIND OUT WHAT TIME IT WAS. HE WAS GOING TO ASK MS. MOODY WHAT TYPE TIME IT WAS, AND THE STABBINGS OCCURRED JUST IN HIS EFFORT TO GET OUT OF THE TRAILER. HE WAS JUST TRYING TO GET AWAY.

BUT WE HAVE A SITUATION, HERE, IN WHICH THIS -- THE TAKING OF THE WALLET WAS PART OF THIS CRIMINAL ACT OF HIM BEING AND COMMITTING THE MURDERS, AND THEN TAKING THE WALLET, TAKING THE WALLET OVER TO OR AT LEAST THE WALLET ENDED UP OVER IN THE DUMPSTER, AND WAS DISPOSED OF, AND THE MONEY WAS REVOLVED MOVED FROM THE WHAT WILL -- WAS REMOVED FROM THE WALLET. ISN'T THAT CORRECT?

YES. THE MONEY WAS REMOVED FROM THE WHAT WILL HEET -- FROM THE WALLET, AND IT WAS DISPOSED OF IN THE DIMP SISTER, BE -- IN THE DUMPSTER, BUT WE HAVE RELIED ON THE, IF THE VIOLENCE IS NOT DONE FOR THE PURPOSE OF TAKING, AND IN THIS CASE I DON'T BELIEVE THERE WAS EVIDENCE THAT IT WAS DONE FOR THE PURPOSE OF TAKING THE WALLET, THEN IT IS NOT A

ROBBERY.

THE QUESTION, REALLY, IS, WHETHER THERE IS SUFFICIENT EVIDENCE FOR A JURY TO CONCLUDE THAT THE -- THAT THIS WAS A FORCEFUL TAKING. CORRECT?

YES. THAT'S CORRECT.

OKAY. AND AND SO THE JURY HAD, BEFORE IT, ALL OF THE PHYSICAL EVIDENCE OF THIS ACT, CORRECT?

YES.

AND THE JURY HAD, BEFORE IT, THE FACT THAT HE, IN FACT, HAD TAKEN THE MONEY, CORRECT?

YES.

AND THE ONLY STATEMENT AS TO ANY OTHER MOTIVE FOR COMMITTING THE MURDER, OTHER THAN THE FACT THAT THE MONEY WAS TAKEN, WAS HIS STATEMENT THAT HE WENT IN THERE TO CHECK THE TIME. AND THE JURY COULD REJECT THAT, COULD IT NOT?

WELL, IN THE ABSENCE OF ANY OTHER EVIDENCE AS TO WHAT HIS MOTIVE WAS, I DON'T THINK THAT THE STATE HAD PROVEN WHAT THEY NEEDED TO PROVE. LET ME MOVE ON, NOW, BEFORE MY TIME GETS AWAY. I WON'T DWELL ON THE THIRD ISSUE, WHICH DEALS --

LET ME, JUST ON THE QUESTION OF THE BURGLARY.

YES. THE BURGLARY.

HE COMES IN UNANNOUNCED, SO IT IS NOT UNDER OUR DELGADO DECISION. THERE IS THE -- TO SUSTAIN THE BURGLARY, DOESN'T THE MURDER, ALONE, SUSTAIN THE BURGLARY CONVICTION?

-- THE FACT THAT THERE WAS THIS ASSAULT AND SUBSEQUENT MURDER?

WELL.

IF THEY ESTABLISH THAT HE ENTERED WITH THAT INTENT, THEN THE JURY COULD FIND --

IF IT WAS ESTABLISHED THAT HE ENTERED WITH THAT INTENT, YES, BUT, YOU KNOW, HIS STATEMENTS WERE THAT HE DIDN'T, AND THE STATE DIDN'T PROVE WHAT HIS INTENT WAS.

BUT HERE THERE -- THIS, ALSO, IS DISTINGUISHED FROM DELGADO ON, THE BASIS THAT, IN HIS -- DELGADO, ON THE BASIS THAT, IN HIS STATEMENT, HE WAS TOLD TO GET OUT.

RIGHT. WE HAVEN'T ARGUED THAT DELGADO IS APPLICABLE TO THIS CASE, AND I DON'T BELIEVE DEFENSE COUNSEL MADE THAT PARTICULAR ARGUMENT, THAT HE ENTERED, ACTUALLY, WITH CONSENT, PRIOR TO THIS INCIDENT.

SO THAT IS WHY -- ISN'T A BURGLARY ESTABLISHED, EVEN IF ROB --' WELL, HE -- ROBBERY --

WELL, HE STILL HAS TO ESTABLISH THAT HE COMMIT ADOLPHENS, WHEN HE ENTERED. THAT IS WHAT WE ARGUED WASN'T PROVEN BY THE STATE, AS TO WHAT HIS INTENT WAS, IF HE INTENDED TO COMMIT AN OFFENSE THERE.

BUT IF HE STAYED IN THERE, ONCE HE WAS TOLD TO LEAVE, AT THAT POINT, IF HE HAD COMMIT ADOLPHENS.

IF HE HAD THAT INTENT, YES, BUT WE ARE SAYING THAT THE EVIDENCE DIDN'T SHOW THAT, THAT HE HAD THAT INTENT. HIS ONLY INTENT WAS TO, AS FAR AS WHAT HE TOLD THE POLICE AND AS FAR AS WHAT THE STATE SHOWED, THAT HE WANTED TO GET OUT OF THERE.

HOW MANY TIMES WAS SHE STABBED?

56.

AND A JURY COULD NOT INTERPRET THAT, AS EVIDENCE OF INTENT?

WELL, I THINK --

AS OPPOSED TO HIS STATEMENT THAT HE JUST WANTED TO GET OUT OF THERE?

I THINK THAT THE STATE DIDN'T SHOW THAT HIS INTENT WAS ANYTHING OTHER THAN TO GET OUT OF THERE.

THE VICTIM WAS NUDE? THERE WAS A TOILET TANK THAT HE OBVIOUSLY TO GET FROM SOMEPLACE, TO USE AS PART OF THESE, OF THIS ATTACK? THIS IS CONSISTENT WITH TRYING TO GET OUT OF THE TRAILER?

THAT IS WHAT HE SAID, AND I DON'T BELIEVE THE STATE PROVED OTHERWISE.

YOU DON'T THINK THE CIRCUMSTANCES ARE SUCH THAT THE JURY COULD BE, BEYOND A REASONABLE DOUBT, FIND OTHERWISE?

I DON'T THINK THEY WERE SUFFICIENT TO EXCLUDE HIS HYPOTHESIS. WITH REGARD --

DOESN'T COMMON SENSE HAVE TO COME INTO PLAY SOMEPLACE, HERE, WITH REGARD TO THE FACTORS ARE? I MEAN, THERE ARE SOME THING AS THAT ARE JUST SO NONSENSICAL, THEY JUST DON'T FIT WITH THE EVIDENCE THAT IS FOUND.

WELL, THAT'S RIGHT. I MEAN, COMMON SENSE DOES COME INTO PLAY, AND I THINK THIS WHOLE, REALLY, THESE TWO KILLINGS DON'T MAKE ANY SENSE, WHEN YOU LOOK AT THEM. IT IS HARD TO ASCRIBE A MOTIVE FOR THIS HAPPENING. THE ONLY EXPLANATION SEEMS TO BE HIS INTOXICATION AT THE TIME. AND THAT IS ANOTHER PART OF OUR ARGUMENT THAT THE STATE DIDN'T PROVE THE INTENT. LET ME MOVE ON. I DON'T REALLY WANT TO TALK ABOUT ISSUE THREE TOO MUCH, BECAUSE I KNOW THIS COURT HAS REJECTED, IN THE PAST, HAVING TO DO WITH THE, ALLOWING THE STATE TO CONSTRUCTIVELY AMEND THE INDICTMENT TO PROSECUTE FELONY MURDER, WHEN THE INDICTMENT ONLYAL EDGED PREMEDITATED MURDER. I WILL JUST RELY UPON THE BRIEF, WITH REGARD TO THAT PARTICULAR ISSUE, AND MOVE ON TO NUMBER FOUR. WHICH RELATES TO SOMETHING THAT THE PROSECUTOR SAID IN HIS OPENING REMARKS TO THE JURY, WHEN HE TOLD THEM THAT THEY WOULD HEAR CERTAIN EVIDENCE THAT HE WAS NOT ABLE, LATER, TO PRESENT. THIS HAD TO DO WITH A STATEMENT THAT MR. WOODEL SUPPOSEDLY MADE TO HIS EX-WIFE, WHEN THEY WERE IN MR. WOODEL'S TRAILER, TOGETHER, THERE, AT THE OUTDOOR RESORTS, AND HE SUPPOSEDLY WHISPERED TO HER SOMETHING TO THE EFFECT OF GET RID OF THE KNIFE. THE PROSECUTOR TOLD THE JURY, IN OPENING STATEMENT, THAT THEY WOULD HEAR FROM MR. WOODEL'S EX-WIFE, HE SAID, REGARDING THIS PARTICULAR STATEMENT, BUT SOMEHOW, DURING THE COURSE OF THE TRIAL, THE PROSECUTOR LEARNED THAT THEY WERE NOT, IN FACT, DIVORCED, THAT HIS EX-WIFE WAS STILL HIS WIFE, AND --

BUT AT THE TIME OF THIS STATEMENT, THERE IS NO INDICATION THAT, AT THE TIME THIS STATEMENT WAS MADE, THAT THE PROSECUTOR DID NOT, IN GOOD FAITH, BELIEVE THAT THEY HAD BEEN DIVORCED, IS THERE?

WELL, HE CLAIMED THAT HE THOUGHT THEY WERE DIVORCED, BUT HOW HE CAME TO THAT CONCLUSION, I DON'T KNOW.

WAS THERE AN OBJECTION RAISED, EITHER IN LIMINE OR AT THE TIME THAT THIS STATEMENT WAS MADE, ON THE BASIS THAT THAT IS AN INVASION OF ATTORNEY -- OF THE SPOUSAL PRIVILEGE?

I BELIEVE THE OBJECTION CAME LATER, WHEN THE STATE WANTED TO PUT THIS PARTICULAR EVIDENCE BEFORE THE JURY.

AND HOW DID IT COME?

ACTUALLY I BELIEVE THE STATE, AS I RECALL, THE STATE PROFFERED, WANTED TO PROFFER THIS, AND AFTER --

BECAUSE IT CAME TO THE ATTENTION OF THE STATES ATTORNEY.

SOMEWHERE DURING THE TRIAL HE MUST HAVE FOUND OUT, YES, SOMEHOW. THE RECORD DOESN'T REFLECT HOW HE FOUND OUT THAT THEY WERE STILL MARRIED.

BUT THE DEFENSE NEVER RAISED THAT POINT UP UNTIL THAT TIME.

UP UNTIL THAT TIME, I DON'T BELIEVE THAT HE DID.

SPOUSAL PRIVILEGE WOULD BE SOMETHING YOU CAN WAIVE, WOULD IT NOT?

I SUPPOSE SO, BUT AT THAT POINT, THE STATE CONCEDED THAT IT WOULD APPLY, TO KEEP OUT THIS PARTICULAR PIECE OF EVIDENCE.

DID I UNDERSTAND YOU TO AGREE THAT, IF THE DEFENDANT IS AN IN THE', INITIALLY -- AN INVITE', INITIALLY, AND ONCE HE IS IN, BEGINS TO COMMIT CRIME, AND ONE OF THE VICTIMS SAYS GO AHEAD OUT, THAT IS SUFFICIENT TO TURN IT INTO A BURGLARY. IS THAT -- DID I UNDERSTAND YOU TO SAY THAT?

IF THE -- I AM SORRY. CAN YOU REPEAT THE QUESTION? I DIDN'T QUITE UNDERSTAND IT.

IF HE IS INITIALLY, THE DEFENDANT IS INITIALLY AN INVITEE, AND THEN ONCE HE IS IN --

OKAY. YES.

HE BEGINS TO COMMIT A CRIMEANT PERSON SAYS "GET OUT", AND AT THAT POINT HE CONTINUES TO STAB THE PERSON OR WHATEVER HE IS DOING, DOES THAT TURN IT INTO A BURGLARY AT THAT POINT?

YES. I THINK SO, IF THE PERSON ESSENTIALLY REVOKES THE CONSENT TO BE THERE AND THE DEFENDANT HAS FORMED THE INTENT TO COMMIT A CRIME, THEN, AT THAT POINT, I BELIEVE IT WOULD BE BURGLARY.

WHAT IS THE PREJUDICIAL EFFECT OF THIS STATEMENT MADE BY THE PROSECUTOR, AS I UNDERSTAND IT? THE THEY, IN FACT, FOUND THE KNIFE BEHIND THE SAME DRESSER THAT WAS MENTIONED, OR SOME DRESSER, SO WHERE IS THE PREJUDICE HERE?

THEY DID FIND THE KNIFE BEHIND THE DRESSER. I THINK THE PREJUDICE IS ESSENTIALLY THE WAY IT LOOKS TO THE JURY, THAT, LOOK, THIS GUY IS TRYING TO HIDE SOMETHING, AND IT COULD, PROBABLY -- POSSIBLY, GO TO THEIR PERCEPTION OF THE QUESTION OF PREMEDITATION.

BUT DIDN'T HE CONFESS?

HE DID. THERE IS NOT A QUESTION OF -- WE HAVEN'T SUGGESTED THAT THE EVIDENCE IS INSUFFICIENT TO SHOW THAT HE DID IT, BUT I THINK THE PREJUDICE FROM THIS PARTICULAR STATEMENT WOULD GO TO HOW IT CAST HIM IN THE JURY'S EYES, AND THAT THEY MAY VIEW THIS, AS AN ALLEGED ATTEMPT TO GET RID OF THE KNIFE, AS POSSIBLE EVIDENCE OF PREMEDITATION. I THINK THAT IS HOW IT, THE PREJUDICE WOULD TIE INTO THIS.

THIS IS -- I AM NOT SURE I UNDERSTAND THAT ARGUMENT, BECAUSE THIS ISN'T AN AFTER-THE-FACT, YOU KNOW, KIND OF STATEMENT, SO I AM NOT SURE I UNDERSTAND HOW IT WOULD TIE INTO PREMEDITATION.

WELL, BECAUSE I THINK ONE OF THE THINGS THAT MY OPPONENT HAS RAISED, IS THAT EVIDENCE REGARDING WHAT THE DEFENDANT DID AFTER THE KILLINGS CAN GO TO THE QUESTION OF PREMEDITATION, AND I THINK THAT THIS IS SOMETHING THAT THE JURY WOULD VIEW HIM UNFAVORABLY AS, AS A RESULT OF THIS STATEMENT, AND THEY COULD VIEW IT AS POSSIBLE EVIDENCE OF PREMEDITATION, THAT HE KNEW HE WAS GUILTY OF A FIRST-DEGREE MURDER, SO, HERE, HE IS TRYING TO GET RID OF THE KNIFE.

WAS SHE DEPOSED BEFORE THE TRIAL BEGAN?

THAT I DON'T KNOW.

I MEAN, IT WOULD SEEM THAT THIS IS ONE OF THE SITUATIONS WHERE, IF ANYONE IS GOING TO KNOW WHETHER THEY WERE MARRIED OR NOT, IT WOULD HAVE BEEN THE DEFENDANT, SO THAT GOING BACK TO WHAT JUSTICE WELLS WAS ASKING, IT IS JUST SORT OF HARD TO NOT SEE THIS AS SOMETHING THAT THE DEFENDANT COULD HAVE AT LEAST PREVENTED AT THE OUTSET, AND IT IS, REALLY, QUESTIONABLE WHETHER THE HUSBAND AND WIFE PRIVILEGE, APPLYING IT TO A MARRIAGE THAT HAS NO LONGER BEEN IN EXISTENCE FOR SEVERAL YEARS, REALLY, EVEN FULFILLS THE PURPOSE OF THE STATUTE, SO THIS LOOKS LIKE SOMETHING THAT THE STATE WAS MORE THAN CAUTIOUS ABOUT, ONCE THEY DISCOVERED THAT THERE WAS A PROBLEM, RATHER THAN SOMETHING THAT THEY, YOU KNOW, IN SOME SINISTER OR BAD FAITH WAY, TRIED TO GET IN FRONT OF THE JURY.

WELL, BUT, IT MAKES ME WONDER WHY THE STATE ATTORNEY DIDN'T INVESTIGATE AND MAKE SURE ABOUT THIS, BEFORE HE BROUGHT IT FORWARD TO THE JURY, IN HIS OPENING STATEMENT. NOW, WHEN HE DID FINALLY, AT SOME POINT, REALIZE THAT THEY WERE STILL MARRIED, YES, HE BROUGHT IT UP, HIMSELF, AND HE ESSENTIALLY CONCEDE THAT THE MARITAL PRIVILEGE WOULD APPLY, WHEN IT WAS ESTABLISHED THAT THEY WERE STILL MARRIED.

LET ME MOVE YOU ON, IF I COULD, TO THE PENALTY PHASE OF THIS.

YES.

TELL US WHAT THE EVIDENCE WAS, FROM THE 17 WITNESSES, PARTICULARLY IN RESPECT TO THE DEFENDANT'S UPBRINGING, HIS PARENTS WERE DEAF MUTS, AND -- DEAF MUTES, AND ANY EFFECT THAT HAD ON THE DEFENDANT.

OKAY. YES. A LOT OF THE TESTIMONY AT PENALTY PHASE DID HAVE TO DO WITH HIS UPBRINGING AND THE FACT THAT HIS PARENTS WERE DEAF. THERE WAS TESTIMONY ABOUT HOW HIS MOTHER DID NOT TAKE CARE OF HIM. SHE APPARENTLY WAS A DRUG USER, AND RAN AROUND AND ESSENTIALLY LEFT THE FATHER TO TAKE CARE OF THE KIDS, AS BEST HE COULD. THERE WAS TESTIMONY FROM DR. DEE, REGARDING THE FACT THAT DEAF PEOPLE ARE OFTEN RAISED IN INSTITUTIONS, AND THAT CAN LEAD TO THEM BEING VERY POOR PARENTS, BECAUSE THEY ARE NOT AROUND -- THEY ARE MORE AROUND THEIR PEERS THAN THEY ARE AROUND PARENTAL

FIGURES.

HOW OLD IS THIS DEFENDANT?

HE WAS 26 AT THE TIME THIS HAPPENED. 26. BUT DR. DEE TALKED ABOUT HIS DEPRIVED UPBRINGING, AS WELL AS HIS ALCOHOL USE, WHICH BEGAN AT AN EARLY AGE. I BELIEVE MR. WOODEL WAS BETWEEN TEN AND 12, WHEN HE STARTED USING ALCOHOL, AND DR. DEAN DESCRIBED HIM AS BEING AN ALCOHOLIC, AS HE WOULD, OFTEN, ENGAGE IN BINGE DRINKING. DO YOU WANT ME TO GO INTO THAT A LITTLE BIT MORE, AS FAR AS THE EVIDENCE AT PENALTY PHASE?

YOU ARE INTO YOUR REBUTTAL.

MY TIME IS RUNNING OUT HERE. JUST BRIEFLY I WANT TO ADDRESS TWO OF THE AGGRAVATING CIRCUMSTANCES THAT WE HAVE CHALLENGED, WHICH ARE COMMITTED DURING THE COURSE OF A BURGLARY, WHICH WE HAVE, REALLY, ALREADY TALKED ABOUT, AND I DON'T NEED TO ADDRESS THAT ANYMORE, BUT THE FACT THAT THE VICTIMS, THE COURT FOUND THE VICTIMS WERE PARTICULARLY VULNERABLE, DUE TO THEIR ADVANCED AGE OR DISABILITY, WHICH IS ONE OF THE RELATIVELY NEW AGGRAVATORS IN THE STATUTE, THE STATE PRESENTED, AT THE PENALTY PHASE, THE TESTIMONY OF DR. MALONMODE, BUT PARTICULARLY IT WAS VICTIM IMPACT STATEMENTS OF THE FRIENDS OF THE MOODIES AND RELATIVES -- OF THE MOODYS AND THE RELATIVES, AND THEY TALK ABOUT HOW THEY WERE VIGOROUSLY PARTICIPATING IN ACTIVITIES.

HADN'T HE JUST SUBMITED TO OPEN HEART PROCEDURES WITHIN THE LAST FIVE MONTHS, AND WE KNOLL THEIR AGES, AND MRS. MOODY HAD A SIGNIFICANT SHOULDER INJURY? AM I MISTAKEN IN THAT? I THOUGHT THAT WAS IN THERE, MORE SO THAN JUST MENTIONING OF --

THAT WAS IN THERE AS WELL, BUT APPARENTLY THEY WERE RECOVERING GREATLY FROM THE HEART SURGERY THAT MR. MOODY HAS HAD AND THE JURY TO MRS. MOODY'S SHOULDER. THEY WERE GETTING ALONG QUITE WELL, DESPITE THOSE THINGS THAT, I GUESS, GO WITH AGE IN A LOT OF INDIVIDUALS. BUT AT ANY RATE, THEY WERE DESCRIBED AS BEING VERY VIGOROUS AND ENGAGED IN A LOT OF ACTIVITIES, AND THERE IS NO INDICATION THAT THEY WERE SINGLED OUT BECAUSE THEY WERE PARTICULARLY VULNERABLE.

THEY WERE BOTH IN THEIR SEVENTIES?

YES. MR. MOODY WAS 79 AND MS. MOODY WAS 74, I BELIEVE WERE THEIR AGES.

SO ARE YOU ASKING US, THEN, TO FIND, IN ORDER FOR THIS AGGRAVATOR TO APPLY, THAT, ONE, THEY HAD TO HAVE BEEN PICKED OUT, BECAUSE THEY WERE EITHER BECAUSE OF AGE OR VULNERABILITY, AND THAT THERE IS SOMETHING MORE THAN THE FACT THAT THEY WERE 7 AND 74?

-- 79 AND 74?

I THINK THAT YOU AT LEAST NEED TO HAVE SOMETHING MORE THAN THAT HE WAS 79 AND SHE WAS 74.

IN RELATIONSHIP TO A 26-YEAR-OLD MAN. THAT IS NOT ENOUGH?

WELL, I DON'T KNOW THAT THE FACT THAT EVERS 26, REALLY, HAS A LOT TO DO WITH IT, AND WE HAVE TALKED, IN THE BRIEF, ABOUT HOW, WITH REGARD TO YOUNG AGE BEING A MITIGATING CIRCUMSTANCE, THE COURT HAS REQUIRED SOMETHING ELSE TO BE ATTACHED TO IT. EVERYBODY HAS AN AGE, JUST AS THE MOODYS HAVE AN OLDER AGE, AND THAT THERE SHOULD

BE SOMETHING MORE THAN JUST THEIR AGE, IN ORDER FOR THIS FACTOR TO APPLY.

WHY ARE NOT THE FACTORS OF THE OPEN HEART SURGERY AND THE SHOULDER PROBLEM? WHY WOULD THAT NOT BE SUFFICIENT TO ESTABLISH THAT ELEMENT? IT IS MY UNDERSTANDING FROM THE RECORD THAT THE GENTLEMAN DID NOT HAVE THE PHYSICAL STRENGTH AND ENDURANCE TO WASH HIS DRIVEWAYS AND THOSE KINDS OF THINGS, THAT HE HAD TO SIT AND WATCH AS THAT OCCURRED. ISN'T THAT THE KIND OF DESCRIPTION THAT, WHERE THE STATUTE IS ADDRESSING?

WITH REGARD TO WASHING THE DRIVEWAY, IT IS TRUE THAT HE WAS GOING TO HAVE SMNLS DO IT FOR -- SOMEBODY ELSE DO IT FOR HIM. WHETHER THAT WAS BECAUSE HE COULD NOT DO IT OR FOR SOME OTHER REASON, THAT IS NOT ESTABLISHED BY THE ERROR -- BY THE RECORD, BUT I THINK THAT THE RECORD DOESN'T SHOW THAT MR. MOODY OR MS. MOODY HAD PARTICULARLY ONGOING PROBLEMS AS A RESULT OF THE HEART SURGERY OR THE SHOULDER INJURY THAT RENDERED THEM PARTICULARLY VULNERABLE.

WE ARE TALKING ABOUT THE OTHER SIDE OF AGE. IF YOU HAVE A YOUNG VICTIM, CAN WE CONSIDER THAT, AS AN AGGRAVATING CIRCUMSTANCE?

A YOUNG VICTIM.

A PARTICULARLY YOUNG VICTIM. YES.

I DON'T BELIEVE THE WAY THE STATUTE IS WRITTEN, YOU CAN, BECAUSE IT TALKS ABOUT ADVANCED AGE. I SUPPOSE THAT POSSIBLY THE LEGISLATURE COULD COME UP WITH SUCH AN AGGRAVATOR, BUT I BELIEVE THE WAY IT IS WRITTEN NOW, THAT THAT WOULD NOT APPLY.

THANK, -- THANK YOU. YOUR TIME IS UP. MS. DIT MEIR.

GOOD MORNING, YOUR HONORS. I AM CAROL DIT MEIR, MAY IT PLEASE THE COURT. I REPRESENT THE STATE OF FLORIDA. THE FIRST BEING THE PENALTY PHASE PROCEEDINGS CONDUCTED IN ONE DAY. I THINK THIS COURT NEEDS TO VERY CLOSELY LOOK AT THE DISCUSSION THAT WAS HELD AND MAKE A DETERMINATION AS TO WHETHER OR NOT THIS ARGUMENT HAS BEEN PRESERVED FOR APPEAL. PARTICULARLY KEEPING IN MIND THE RATIONALE OF HAVING A CONTEMPORARY OBJECTION RULE, BECAUSE THE TRIAL COURT, IN THIS CASE, WAS NOT ON NOTICE OF THE ARGUMENTS THAT ARE NOW BEING ADVANCED ON APPEAL, THAT MR. WOODEL WAS BEING DENIED EFFECTIVE ASSISTANCE OF COUNSEL AND WAS BEING DENIED DUE PROCESS, WITH THE TRIAL COURT PROCEEDING AT THAT POINT. SOME OF THE TIME FRAME, AS MR. MOELLER MENTIONED, THE PENALTY PHASE PROCEEDINGS STARTED AT ABOUT NINE O'CLOCK IN THE MORNING. THERE WERE, THE STATE PRESENTED NINE WITNESSES, THE MEDICAL EXAMINER AND THEN EIGHT VERY BRIEF VICTIM IMPACT STATEMENTS, AND IT WAS CONCLUDED BY LATE THAT MORNING, SO THE STATE'S CASE WAS WITH THE EIGHT WENESSES THAT -- SO THE REST OF THE CASE WAS TAKEN UP BY THE CASE THAT THE DEFENSE PRESENTED. AT 4:45 IN THE AFTERNOON, DR. DEAN'S TESTIMONY WAS PRESENTED. THERE IS NO RECORD OF THE TIME WHEN HIS TESTIMONY CONCLUDED, BUT IN JUST READING HIS TESTIMONY, IT APPEARS TO BE, MAYBE, AN HOUR. THERE WAS A DISCUSSION AFTER HIS TESTIMONY CONCLUDED, THAT HAD A CHARGE CONFERENCE, AND AFTER THE CHARGE CONFERENCE, THE DEFENSE ATTORNEYS STATED THAT HE WAS CONCERNED, GOING INTO CLOSING SO LATE IN THE DAY, AND HE SAID, HOWEVER, I UNDERSTAND THE LOGISTICS. I KNOW THAT THIS IS HOW, YOU KNOW, WE HAVE HAD THIS DISCUSSION ALL ALONG, AS THE TRIAL HAS CONTINUED, AND I KNOW THAT THE COURT WANTS TO CONCLUDE THIS TODAY, AND SO REALLY, CERTAINLY, DID NOT REQUEST A CONTINUANCE AT THAT TIME, JUST EXPRESSED A COMPLAINT ABOUT HAVING TO GO INTO THE CLOSING ARGUMENTS.

LET ME KEEP YOU ON THAT FRAME, THOUGH. DR. DEE CAME AND TESTIFIED, CONCERNING THIS

DEFENDANT'S BACKGROUND.

YES.

CORRECT? AND HASN'T -- HAVEN'T THIS COURT, IN ITS RECENT PICKIONS, SAID THAT -- OPINIONS, SAID THAT, WHERE THERE IS EVIDENCE OF AN EXPERT AND THAT THERE IS EVIDENCE THAT CONCERNS MITIGATING CIRCUMSTANCES, THAT THE TRIAL JUDGE HAS TO GIVE A WRITTEN EXPLANATION AS TO THE TRIAL JUDGE'S DETERMINATION, CONCERNING THE WEIGHT OF THE EXPERT'S TESTIMONY AND WHETHER IT IS ACCEPTED OR REJECTED, AND THE MATTER WHICH I AM PARTICULARLY CONCERNED ABOUT, IN THIS CASE, IS THE EFFECT OF THIS DEFENDANT HAVING BEEN RAISED IN A -- WHERE BOTH OF HIS PARENTS ARE DEAF MUTS.

SO YOU ARE JUMPING WAY AHEAD TORCKTS CAMPBELL ISSUE.

RIGHT. I WANT TO GET TO THAT ISSUE.

YES. I UNDERSTAND. I THINK THAT THE SENTENCING ORDER IN THIS CASE LEAVES A LITTLE BIT TO BE DESIRED, BUT I DO O'CLOCK THAT, MINIMALLY -- BUT I DO THINK THAT, MINIMALLY, IT DOES MEET THE REQUIREMENTS OF CAMPBELL, BECAUSE IT DOES IDENTIFY THE MITIGATING AND AGGRAVATING FACTORS THAT THE TRIAL COURT FOUND. THE INTERESTING THING ABOUT DR. DEE'S TESTIMONY IN THIS CASE, HE WAS AN EXPERT, AND HE DID, PRIMARILY, TALK ABOUT THE BACKGROUND. HE DID NOT TALK ABOUT -- HE DID NOT OFFER A LOT OF TESTIMONY, AS WE TYPICALLY CONSIDER THE MENTAL HEALTH EXPERTS, OF PROVIDING MENTAL HEALTH-TYPE OF TESTIMONY. HIS TESTIMONY WENT MORE TO THE BACKGROUND AND ITS EFFECT ON MR. WOODEL'S ABILITY TO COMMUNICATE, AND AN OFFER AND EXPLANATION AS TO WHY THESE CRIMES OCCURRED, SO IT WASN'T TO THE EXTENT OF HAVING TO, REALLY, MAKE A FACTUAL -- THE TRIAL JUDGE WAS NOT HAVING TO MAKE FACTUAL FINDINGS, BECAUSE THERE WAS NO FACTUAL DISPUTE ABOUT THAT TESTIMONY. WHEREAS, IN A LOT OF CASES, YOU HAVE A MENTAL HEALTH EXPERT WHO IS GIVING HIS OR HER OPINION THAT, FOR EXAMPLE, SOME, EITHER STATUTORY OR NONSTATUTORY MENTAL HEALTH MITIGATORS APPLY, AND THAT IS A DISPUTED FACT. SOMETIMES THE STATE HAS ANYWHERE OWN EXPERTS THAT MAY HAVE A -- THE STATE HAS THEIR OWN EXPERTS THAT MAY HAVE A DIFERING OPINION, BUT SOMETIMES THERE IS A STATE EXPERT THAT DISPUTES WHAT THE DEFENSE EXPERT SAID. IN THIS CASE YOU DIDN'T HAVE THAT DISPUTE.

WHAT WAS THE EVIDENCE, CONCERNING THE DEFENDANT'S USE OF DRUGS AND ALCOHOL?

ARE YOU CONSIDERING ON THE NIGHT IN QUESTION OR THE HISTORY OR BOTH?

BOTH.

THE DEFENSE DID NOT BRING ANYTHING OUT IN THEIR EXAMINATION OF DR. DEE, REGARDING HIS USE OF ALCOHOL. THE PROSECUTOR ASKED, ON CREATION, WHAT MR. WOODEL HAD TOLD DR. DEE ABOUT HIS HISTORY OF ALCOHOL AND DRUG USE, AND DR. DEE STATED THAT HIS UNDERSTANDING, FROM MR. WOODEL, WAS THAT HE STARTED CONSUMING ALCOHOL SOMEWHERE BETWEEN TEN AND 12 YEARS OF AGE, AND THAT HE, ALSO, STARTED SOME MARIJUANA USE AT THE SAME TIME, THAT HIS MOTHER SMOKED MARIJUANA, AND THAT HE WOULD SMOKE WITH HER. HE SAID THAT HIS DRINKING, HOWEVER, WAS VERY SPORADIC, THAT HE DID NOT HAVE A RAGLAR -- A LEGLAR PATTERN OF DRINKING, THAT WHEN HE DRANK, THROUGH THE YEARS AND AS AN ADULT, HE WOULD TYPICALLY DRINK TO EXCESS. HE WOULD BINGE DRINK, AND HE WOULD BECOME INTOXICATED. HOWEVER, THIS DID NOT HAPPEN ON A DAILY OR WEEKLY OR REGULAR KIND OF BASIS. IT WAS JUST SPORADICALLY THAT, WHENEVER HE WOULD DRINK, HE WOULD BECOME INTOXICATED. THAT WAS THE ONLY TESTIMONY ABOUT HIS HISTORY. THERE WAS TESTIMONY THAT HIS MOTHER WAS ALCOHOLIC, AND THAT WAS MAINLY FROM HIS SISTER AND FROM THE OTHER FAMILY WITNESSES, ALTHOUGH DR. DEE

RECOGNIZED THAT. AS TO ACTUALLY THE FIGHT THAT THIS OCCURRED, MR. WOODEL TOLD THE POLICE, IN HIS INITIAL STATEMENT, THAT HE HAD CONSUMED SEVEN OR EIGHT BEERS AFTER HE GOT OFF WORK, WHICH WAS 11:30 OR TWELVE O'CLOCK. HE SAID FOR SEVERAL HOURS, UNTIL ABOUT THREE O'CLOCK, WHEN, AT THAT POINT, HE SAIDED BACK TO THE TRAILER PARK, AND WE KNOW THAT IT WAS AT LEAST SEVERAL HOURS AFTER THAT TIME FRAME, BECAUSE MR. MOODY WAS SEEN AS LATE AS 5:30, 5:40, STILL AT THE LAUNDROMAT, AND HE WAS, ALSO, SEEN, I THINK, PRIOR TO THAT TIME, BY THE NEWSPAPER DELIVERY GUY, SO WE KNOW WE HAVE AT LEAST A COUPLE OF HOURS WHERE EVEN MR. WOODEL DIDN'T CLAIM TO BE DRINKING, AFTER HE HAD LEFT THE CAMPGROUND OR THE AREA NEAR PIZZA HUT WHERE HE HAD BEEN DRINKING WITH THE STRANGERS THAT WE DON'T REALLY KNOW ANYTHING B THERE WAS TESTIMONY FROM ONE OF HIS COWORKERS AT PIZZA HUT, I THINK THE MANAGER'S DAUGHTER, THAT SHE DID INITIALLY, WHEN SHE GOT OFF WORK, WENT OUT, AND SHE WAS WITH THE OTHER GUYS THAT WERE, ALSO, DRINKING BEER. SHE WAS THERE UNTIL ABOUT ONE OR TWO O'CLOCK, AND WHEN SHE LEFT, THEY WERE ALL STILL DRINKING, SO THAT WAS THE EXTENT OF THE TESTIMONY. HE DID TELL HIS SISTER THAT HE HAD BEEN DRINKING, AND THAT HE WAS INTOXICATED, AND HE DID TELL THE POLICE GENERALLY, THAT HE WAS INTOXICATED, BUT AS FAR AS SPECIFICS AS TO HOW MUCH HE ACTUALLY CONSUMED, AND THERE WAS NEVER ANY TESTIMONY AT ALL, ABOUT HIM BEING IMPAIRED, AS A RESULT OF THIS. JESSICA, THE OTHER CO-WORKER FROM PIZZA HUT, TESTIFIED THAT HE WAS KIND OF HAPPY AND SINGING AND KIND OF A HAPPY DRUNK, AS WAS CONSISTENT WITH TIMES WHEN SHE HAD SEEN HIM DRINKING IN THE PAST. OTHER THAN THAT, HE DID NOT, REALLY, OFFER ANYTHING, AND THERE WAS NO OTHER TESTIMONY OFFERED THAT HE WAS IMPAIRED BY THE ALCOHOL THAT HE HAD CONSUMED. AND, AGAIN, WE HAVE THIS GAP IN TIME.

WAS THERE ANY ADDITIONAL EVIDENCE PUT ON, IN THE SENTENCING HEARING, BEFORE THE JUDGE, THAT WAS NOT PRESENTED TO THE JURY?

NO. THERE WAS NO EVIDENCE. IT WAS JUST ARGUMENT BY THE ATTORNEYS. AND I BELIEVE MR. WOODEL DECLINED TO MAKE A STATEMENT AT THAT TIME, ALSO.

SO THERE WAS NO TESTIMONY ABOUT LONG-TERM EFFECTS OF ALCOHOL?

NOT AT ALL. IN FACT, DR. DEE, REALLY, DIDN'T, OTHER THAN NOTING, WELL, ACCORDING TO MR. WOODEL, THIS IS HIS HISTORY, AND THAT I WOULD CHARACTERIZE, BECAUSE HE DID DRINK TO EXCESS, I WOULD CHARACTERIZE HIM AS ALCOHOLIC, BASED ON THAT. HE DID NOT, CERTAINLY DID NOT FIND ANYTHING IN HIS PSYCHOLOGICAL TESTS OR IN HIS DISCUSSIONS OR COME TO ANY TYPE OF CONCLUSIONS ABOUT LONG-TERM ALCOHOL USE OR ANY IMPACT THAT HE HAD OR ANY IMPAIRMENT THAT IT HAD ON THE NIGHT THAT THESE MURDERS OCCURRED, SO HE DIDN'T -- THERE IS JUST NO EVIDENCE ABOUT THAT.

BUT THE -- YOU SAY THAT IT SORT OF COULD BE A CAMPBELL PROBLEM, BUT IT IS OKAY, BECAUSE EVEN THOUGH IT IS LUMPED ALL TOGETHER, HE GIVES THEM ALL LITTLE WEIGHT, BUT IN READING WHAT HE STATES, WHAT THE JUDGE STATES, BECAUSE PART OF THIS IS THIS IS A DEFENDANT WHO IS 26 YEARS OF AGE, HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL ACTIVITY, AND WE HAVE THIS ONE NIGHT OF THESE TERRIBLE, TERRIBLE, DOUBLE MURDERS, AND SO WOULD YOU SAY IT IS OKAY, IN OUR SENTENCING LAW OF DEATH SENTENCES, THAT THERE CAN BE CERTAIN MURDERS THAT ARE -- THEY ARE SO BAD THAT, BY THEIR NATURE, REALLY, THE JUDGE IS SAYING IT DOESN'T MATTER WHAT THIS MITIGATION IS, YOU KNOW, I AM NOT GETTING PAST THESE AGGRAVATING FACTORS, AND THAT IS WHAT I HAVE DONE. ISN'T THAT WHY WE ARE SORT OF ASKING FOR THIS CAMPBELL ANALYSIS TO BE DONE, BECAUSE YOU, REALLY, ALTHOUGH YOU ARE, AS A HUMAN BEING, YOU LOOK AT THIS AND SAY THERE CAN'T BE ANYTHING TO OVERCOME IT, WE STILL HAVE TO UNDERSTAND WHAT THE NATURE AND QUALITY OF THE MITIGATION IS, TO, REALLY, UNDERSTAND WHETHER IT HAS BEEN WAIVED AND GIVEN THE -- A WEIGHT AND WHY IT HAS BEEN GIVEN A WEIGHT OR REJECTED. IT CAN'T JUST BE REJECTED, I

GUESS, BECAUSE --

SURE.

-- OF THE AGGRAVATION. IT HAS TO BE REJECTED FOR SOMETHING ABOUT THE -- THE MITIGATION, ITSELF. RIGHT?

THAT'S CORRECT. BUT HE DIDN'T REJECT. THE ONLY THING THAT HE REJECTED WAS HE SAID THAT THE INTOXICATION WAS NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE, WHICH IS THE CORRECT STANDARD. HE DID NOT REJECT ANY OTHER MITIGATION THAT WAS OFFERED OR THAT WAS ARGUED. IN FACT, HE FOUND ALL OF THE MITIGATION TO EXIST, AND HE SAID THAT HE WEIGHED IT, SO THE FACT THAT HE RELEGATEED IT TO IN SIGNIFICANCE AND TO VERY MINIMAL WEIGHT, I THINK, IS WHAT THIS COURT IS LOOKING FOR. AGAIN, YOU GO BACK TO WHY WE HAVE CAMPBELL. WE WANT TO MAKE SURE THAT THE TRIAL COURT CONDUCTED A REASONED WEIGHING PROCESS, CONSIDERED ALL OF THE APPROPRIATE EVIDENCE, AND WE WANT TO MAKE SURE THAT THIS COURT HAS SUFFERED SUFFICIENT -- HAS SUFFICIENT KNOWLEDGE, FROM LOOKING AT THE ORDER OF WHAT THE TRIAL COURT FOUND, TO BE ABLE TO DO A PROPORTIONALITY ARGUMENT.

THE REASON FOR THE REJECTION OF THE ALCOHOL MITIGATOR WAS THAT HE SAID THAT THERE WAS NO EVIDENCE THAT HE WAS INCAPABLE OF FORMING THE REQUISITE INTENT. ISN'T THAT WHY THE JUDGE REJECTED THAT?

WELL, I THINK HE TURNED THAT, IN THE SENSE OF THAT IS HOW DEFENSE COUNSEL HAD ARGUED IT. I THINK WHAT HE IS SAYING IS THAT THE INTOXICATION, TO HIS MIND, WAS NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE, TO HAVE ANY MITIGATING VALUE, TO NOT BE SOMETHING WHICH REDUCED THE MORAL CUP ABILITY OF THIS DEFENDANT -- CULPABILITY OF THIS DEFENDANT, BECAUSE IT DID NOT APPEAR TO HAVE ANY IMPACT ON WHY THE CRIMES OCCURRED, SO I THINK HE IS EXPLAINING WHY HE IS NOT WEIGHING IT, BUT I THINK, AGAIN, YOU LOOK AT HE DID CONSIDER, AND WHEN YOU HAVE THE SITUATION, HERE, THAT YOU HAVE THE STATE CONCEDING THAT THIS MITIGATION EXISTS, AND THAT THIS BACKGROUND TESTIMONY, WHICH WAS, REALLY, THE SIGNIFICANT MITIGATION THAT WAS FOCUSED ON, BOTH BY THE DEFENSE ATTORNEY, AT THE PENALTY PHASE PROCEEDING AND, ALSO, AT THE SPENCER HEARING, THAT IS WHAT THEY FOCUSED ON IS HIS BACKGROUND, AND THAT IS WHAT THE TRIAL COURT SAID, YOU KNOW, I HEARD ALL OF. THAT I AM FINDING ALL OF THAT, AND YOU DON'T HAVE THE STATE DISPUTING ANY OF THAT, SO I THINK THERE IS A LESSENED REQUIREMENT, WHEN YOU DON'T HAVE A FACTUAL DISPUTE, FOR A TRIAL JUDGE TO EXPRESSLY MAKE A LOT OF FACTUAL FINDINGS IN HIS ORDER. NOW, HE DID, WITH THE AGGRAVATING CIRCUMSTANCES, WHICH WERE DISPUTED BY THE DEFENSE, PUT A LITTLE MORE FACTS INTO WHY HE WAS FINDING THOSE CIRCUMSTANCES TO EXIST. THE MITIGATION, HE BASICALLY JUST GROUPED IT TOGETHER, WHICH, I THINK HE IS PERMITTED TO DO. CAMPBELL, ITSELF, SAYS IT IS OKAY TO GROUP THE MITIGATION TOGETHER, AND ASSIGNED IT MINIMAL WEIGHT, SO WE KNOW THAT HE CONSIDERED IT AND THAT HE WEIGHED IT, AND HE COMPARED IT TO THE AGGRAVATING FACTORS THAT HE HAD FIND. -- FOUND. THE -- JUST TO GO BACK, BRIEFLY, OVER A COUPLE OF THE ISSUES, ALSO, THAT WE TALKED ABOUT EARLIER, WITH THE SUFFICIENCY ON THE PREMEDITATION, YOU DO HAVE THE PROLONGED NATURE OF THE ATTACK, AND I DID WANT TO REMIND THE COURT THAT, IN ADDITION TO HAVING THE STAB WOUNDS AND THE REPEATED STAB WOUNDS, THAT HE DID STOP AND, IN THE MIDDLE OF THE ATTACK, AND GO, OR AT SOME POINT, AND GO INTO THE BATHROOM AND GET THE TOILET TANK LID, WHICH HE STATED EXPRESSLY WAS TOABLEABLE -- WAS TO BE ABLE TO USE TO KNOCK HER OUT. HE HAD SEEN THAT BEFORE. THE BURGLARY WAS PRESSED ON OFFENSES OF ASSAULT. HIS OWN STATEMENT THAT HE WENT IN AND GOT THE TOILET TANK LID IN ORDER TO KNOCK HER OUT, BECAUSE YOU HAVE THE ASSAULT PROVEN BY THAT VERY STATEMENT. ON THE ISSUE OF THE FELONY MURDER AND WHETHER THE WALLET ON THE ROBBERY, THERE WAS ONE COUNT OF ROBBERY CHARGED, AND WHAT IT CHARGED WAS THE

TAKING OF THE WALLET AND THE CAR KEYS, SO IT WAS NOT -- BECAUSE THE MURDERS WERE NOT CHARGED AS FELONY MURDER, THEY DIDN'T TALK ABOUT ROBBERY IN THE INDICTMENT, OTHER THAN THE ONE COUNT THAT WENT TO THE ROBBERY, ITSELF. ROBBERY WAS NOT USED --

WAS THE CAR ACTUALLY TAKEN?

NO. IT WAS NOT. ONLY THE KEYS. AND ROBBERY WAS NOT USED AS AN AGGRAVATING FACTOR. THE BURGLARY WAS USED AS AN AGGRAVATING FACTOR. BUT ON THE WHOLE ISSUE OF WHETHER THE WALLET WAS TAKEN AS AN AFTERTHOUGHT, I SENT THEM THE BEASLEY CASE, WHICH THIS COURT JUST DECIDED THE WEEK BEFORE LAST, WHICH DISCUSSED, IN DEPARTMENT, THE FELONY MURDER AND THE AFTERTHOUGHT CASES, AND WHAT YOU SAID IN BEASLEY WAS THAT, WHERE THERE IS NO OTHER APPARENT MOTIVE, AND YOU HAVE PROPERTY THAT IS TAKEN FROM A SCENE WHERE VIOLENCE HAS BEEN USED, YOU HAVE THE COMPETENT SUBSTANTIAL EVIDENCE OF ROBBERY AND YOU HAVE NO OTHER CLEAR MOTIVE FOR WHAT OCCURRED, THEN THE ROBBERY CONVICTION IS PROPER.

WELL, HERE, THOUGH, WHEN HE FIRST ENTERED THE TRAILER, IS THERE EVIDENCE WHETHER CLIFFORD WAS THERE AT THAT TIME, OR WAS THE STATE'S THEORY THAT HE CAME UPON THIS ASSAULT?

FROM MY READING OF THE EVIDENCE, IT WOULD APPEAR THAT CLIFFORD CAME UPON THE ASSAULT. I DON'T KNOW THAT THE STATE, REALLY, TOOK A POSITION, ONE WAY OR THE OTHER.

SO THE WALLET IS WITH CLIFFORD, WHO, AND IF CLIFFORD COMES IN WHILE THIS OTHER -- WHILE THIS ASSAULT IS TAKING PLACE, THEN WHERE -- HOW WOULD HE HAVE KNOWN THAT CLIFFORD WAS GOING TO BE COMING IN, IN ORDER TO COMMIT ROBBERY, AND WOULDN'T THE MOST LOGICAL REASON FOR HAVING, THEN, ASSAULTED CLIFFORD, IS BECAUSE HE COMES IN DURING THIS ASSAULT ON HIS WIFE?

BUT, AGAIN, HE DID ASSAULT CLIFFORD, SO HE DIDN'T JUST ASSAULT THE WIFE AND LEAVE THE SCENE. HE, YOU KNOW, HE DIDN'T PUSH CLIFFORD OUT OF THE WAY. THERE WAS SOMETHING HE WANTED FROM CLIFFORD. THERE WAS SOME REASON THAT CLIFFORD WAS KILLED.

HOW WOULD HE KNOW THAT THIS PERSON HAD A WHAT WILLET?

I DON'T THINK HE HAS TO KNOW THAT -- THAT THIS PERSON HAD A WALLET?

I DON'T THINK YOU HAVE TO KNOW ANYTHING. HE COULD HAVE GONE INTO THE HOUSE, HOPING FOR A ROBBERY. HE COULD THINK I AM GOING TO GO IN THERE TO STEAL SOMETHING, AND HE DOESN'T HAVE TO KNOW THAT THERE IS A WALLET IN THIS GUY'S POCKET, TO TRY TO FIND IT THE. IT DOESN'T MATTER WHETHER THE WALLET WAS THERE OR NOT, THAT IS HIS INTENTION, AND WHETHER HE TAKES THE WALLET AND TAKES THE MONEY OUT OF THE WALLET AND THROWS THE WALLET AWAY, YOU HAVE NO OTHER MOTIVE THAN THE ROBBERY, FOR THESE MURDERS HAVING OCCURRED. ALSO I THINK AN INTERESTING POINT ON THAT ISSUE, IN THIS CASE, IS THAT THE JURY WAS SPECIFICALLY INSTRUCTED, FROM THE LANGUAGE IN MONT, THAT IF THEY FOUND THAT THE WALLET WAS TAKEN AS AN AFTERTHOUGHT, THEN ROBBERY WAS NOT APPROPRIATE, AND YET THEY CAME BACK WITH THE ROBBERY, SO THEY HAD THAT INSTRUCTION THEN, BEFORE THE JURY INSTRUCTIONS, AND THEY AGREED THAT A ROBBERY DID OCCUR.

YOU SAY THAT IS A CASE WHERE IT WAS ASSERTED?

IN MON, YOU HAVE THE CLEAR CASE THAT THERE WERE OTHER FACTORS INVOLVED, AND IN REVERSING THE ROBBERY, FINDING THAT THIS WASN'T RELATED TO THE MURDER, ITSELF, AND I THINK ISSUE HERE. OUGHT -- AND, I THINK, THE ISSUE HERE. ON THE ISSUE ABOUT THE PROSECUTOR'S OPENING STATEMENT AND THE STATEMENT ABOUT THE KNIFE THAT WAS

MENTIONED BY WOULD HE WILL TO GAIL, I WANT TO CLEARLY DEMONSTRATE THIS THE PROSECUTOR'S GOOD FAITH WAS DEMONSTRATED. THE PROSECUTOR TOLD THE TRIAL JUDGE, AS SOON AS HE WAS AWARE OF THIS SITUATION. HE CAME TO HIM AND HE SAID WE ARE GOING TO NEED TO MAKE A PROFFER FOR THE RECORD. GAIL, THE WIFE, HAD JUST FLOWN DOWN THIS MORNING, AND SHE WAS NOT DEPOSED PRIOR TO TRIAL, AND THAT WAS THE FIRST TIME THAT THE PROSECUTOR HAD AN OPPORTUNITY TO TALK WITH HER. THE PROSECUTOR SAID THAT HE ASSUMED THAT THEY WERE DIVORCED, BECAUSE THEY WERE SEPARATED SINCE 1992, AND THE DEFENDANT WAS LIVING WITH ANOTHER GIRLFRIEND, WHO WAS PREGNANT. THE CIRCUMSTANCES JUST WOULD, I THINK, MAKE ANYBODY INFER THAT THESE PARTIES WERE DIVORCED, AND NOBODY HAD EVER TOLD THE PROSECUTOR DIFFERENTLY, SO ONCE HE FOUND OUT, AND HIS DISCUSSION WITH GAIL, THE FIRST OPPORTUNITY HE HAD TO TALK WITH HER, AND I AM SURE HE SAID SOMETHING LIKE WHEN DID YOU GET DIVORCED OR HOW LONG HAVE YOU BEEN DIVORCED, AND SHE SAID WE HAVEN'T, IT NEVER HAPPENED, HE IMMEDIATELY BROUGHT THAT TO THE ATTENTION OF THE TRIAL JUDGE. HE ASKED THE TRIAL JUDGE TO MAKE A PROFFER, AND MAKE A DECISION AS TO WHETHER OR NOT THE MERIT OF PRIVILEGE WAS SATISFIED BY AN INTENTION TO KEEP THESE STATEMENTS SECRET, WHICH THE TRIAL JUDGE DID, AND THE TRIAL JUDGE FOUND THAT THERE WAS NOTHING PREJUDICIAL, BECAUSE THIS TESTIMONY, OR THE SUGGESTION OF THIS EVIDENCE WAS NOT INCONSISTENT WITH THE THEORY OF DEFENSE, AND, OF COURSE, THERE WAS A LOT OF OTHER EVIDENCE THAT MR. WOODEL WAS TRYING TO GET RID OF AND TRYING TO HIDE, AND THIS WAS JUST ONE MORE THING, SO IT WAS CONSISTENT WITH THE DEFENSE THAT HE WAS ARGUING, AND THAT WAS THE BASIS OF THE TRIAL JUDGE FINDING THAT THE STATEMENT, IN OPENING ARGUMENT, WAS NOT PREJUDICIAL. ON THE -- FINALLY ON THE ADVANCED-AGE AGGRAVATOR, I WANT TO MAKE IT CLEAR, ALSO, THAT THE STATUTE DOES HAVE -- THE VICTIMS BEING PARTICULARLY VULNERABLE, DUE TO ADVANCED AGE OR DISABILITY, AND I THINK THAT, BECAUSE THAT IS PHRASED IN THE ALTERNATIVE, THERE IS NO REQUIREMENT THAT THE TRIAL COURT FIND, BOTH, A DISABILITY AND ADVANCED AGE. I THINK THE LEGISLATURE HAS MADE A DECISION THAT ONE OR ANOTHER OF THOSE IS SUFFICIENT TO SHOW THAT THE VICTIMS WERE PARTICULARLY VULNERABLE, IF THEY MET THOSE CONDITIONS. IN THIS CASE, IN THE SENTENCING ORDER, THE TRIAL JUDGE FINDS BOTH, AND HIS FINDINGS ARE SUPPORTED BY THE RECORD, THAT THERE WAS SOME DISABILITY, AND THERE WAS, ALSO, ADVANCED AGE, AND I HAVE CITED SOME CASES FROM WASHINGTON, WHERE THE ADVANCED AGE IS USED AS AN EXCEPTIONAL CIRCUMSTANCE TO SENTENCES THAT ARE DEPARTING FROM THE GUIDELINES. IT IS NOT BASED ON A CAPITAL SENTENCE AGGRAVATOR BUT A COMPARABLE SITUATION, I THINK NORTH CAROLINA, ALSO, HAS SOME CASES WHERE VERY SIMILAR WORDING TO WHAT IS CONSIDERED AN AGGRAVATING FACTOR, TO GO OUTSIDE THE GUIDELINES, AND IN THOSE CASES, THEY SAY ADVANCED AGE, ALONE, IS SUFFICIENT. YOU DON'T NEED A FURTHER SHOWING OF DISABILITY ON TOP OF THAT, SO I THINK THAT IS CONSISTENT WITH WHAT WE HAVE HERE, AND I BELIEVE THERE IS, ALSO, ANOTHER AGGRAVATOR ON AGE OF THE VICTIM BEING, I THINK IT IS UNDER 12, BUT AT ANY RATE, YOUNG VICTIM IS, ALSO, A SEPARATE AGGRAVATOR, THAT, I THINK, WAS ENACTED AT THE SAME TIME THIS AGGRAVATOR WAS, BUT IT IS WRITTEN UP SEPARATELY, SO FOR ALL OF THESE REASONS, I WOULD ASK THE COURT TO AFFIRM THE JUDGMENT AND SENTENCES IMPOSEED HERE IN. THANK YOU.

COUNSEL, I BELIEVE YOUR TIME HAS EXPIRED. THE COURT WILL BE IN RECESS UNTIL TOMORROW MORNING. THE MARSHAL: PLEASE RISE.