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Steven Maurice Evans vs State of Florida

NEXT CASE ON THE COURT'S DOCKET IS EVANS VERSUS STATE. MR. BURDEN?

MAY IT PLEASE THE COURT, MY NAME IS GEORGE BURDEN P I REPRESENT THE APPELLANT, STEVEN EVANS. MR. EVANS WAS CHARGED AND CONVICTED FOR FIRST DEGREE MURDER AND KIDNAPPING AND SENTENCED TO DEATH BY 11-1 -- OH PARDON ME HE RECEIVED 11-1 DEATH RECOMMENDATION AND WAS SENTENCED TO DEATH BY THE TRIAL COURT. THIS WAS A CASE WHERE MR. EVANS AND SOME OF HIS COLLEAGUES WENT ON A HOME INVASION TRIP TO SANFORD THAT FELL THROUGH BECAUSE THE GET-AWAY DRIVER HAD LEFT THE NEIGHBORHOOD AND MR. EVANS CAME TO BELIEVE THAT WAS BECAUSE THIS PERSON WANTED TO GO BACK TO HIS APARTMENT AND ROB HIS MONEY. SO HE MADE HIS WAY BACK TO ORLANDO AND GOT THERE WAITING FOR THIS MR. LEWIS TO RETURN. WHEN HE DID ARRIVE, HE WAS NOTICEABLY UPSET, AND SO FORTH AND STARTED TO ACT STRANGELY. HE BEAT HIS GIRLFRIEND, SHANA WRIGHT, AND WHEN MR. LEWIS DID ARRIVE, MR. LEWIS WAS ASSAULTED, BEATEN FOR ABOUT 15 MINUTES, AND THEN THE POLICE ARRIVED PURSUANT TO A CALL HAVING TO DO WITH THE VEHICLE THAT MS. WRIGHT HAD BEEN USING. MR. LEWIS, THE VICTIM, WAS HIDDEN IN THE APARTMENT WHILE THE POLICE INVESTIGATED, ACTUALLY ENTERED THE APARTMENT, AND AFTER THE POLICE HAD LEFT, HE WAS GIVEN SOME STRANGLE-HOLDS OF SOME SORT. THEN HE WAS TAKEN OUTSIDE THE APARTMENT AND SHOT AND KILLED. THE TRIAL COURT FOUND FIVE AGGRAVATING FACTORS. AND ALSO THE TRIAL COURT IGNORED A REQUEST TO FIND MR. EVANS INCOMPETENT PRIOR TO TRIAL. I'D LIKE TO STEP INTO THAT ISSUE RIGHT NOW. PREPARE TO TRIAL, MR. EVANS WAS INVOLUNTARILY COMMITTED TWICE FOR MENTAL ILLNESS. THERE WAS THREE DIFFERENT INDEPENDENT EVALUATIONS -- PARDON ME, THREE DIFFERENT INDEPENDENT EXPERTS WHO EVALUATED MR. EVANS. TWO OF THEM WERE SORT OF SIMILAR SAYING THAT HE HAD A MENTAL ILLNESS OF BIPOLAR DAYS SOUTHEAST. DR. HERKOFF AND DR. BURNS ULTIMATELY CONCLUDED THAT. IT WAS DR. GUTPLAN WHO FELT MR. EVANS SUFFERS FROM PARANOID SCHIZOPHRENIA AND A RARE PART OF THAT DISEASE CALLED ASSEMBLING. HE DESCRIBES THAT AS SOMEONE WHO DOESN'T WANT PEOPLE TO KNOW THAT THEY'RE MENTALLY ILL, THAT THEY'RE FEARFUL OF THAT MORE THAN ANYTHING ELSE. THEY'RE MENTALLY ILL BUT THEY DON'T WANT THE WORLD TO KNOW. IT'S CALLED DISSEM BLINK. HE ALERTED THE COURT AFTER HIS FOURTH EXAMINATION OF MR. EVANS AND READING THE TRANSCRIPTS OF THE WITNESSES WHO WERE THERE WITH MR. EVANS THE NIGHT OF THE MURDER AND HE CONCLUDED THIS BECAUSE OF THE PECULIAR WAY MR. EVANS HAD BEHAVED. AND I'D LIKE TO SPEND A MOMENT ON THAT. ALL THE LAY WITNESSES DESCRIBED HIS CONDUCT AT THE NIGHT OF THE MURDER THAT WHEN HE RETURNED BACK TO THE APARTMENT, HE PACED - BACK AND FORTH, BACK AND FORTH BOUNCING OFF THE WALLS A HE LOOKED WEIRD. HIS EXPRESSION ON HIS FACE WAS LIKE THE JOKER IN BATMAN. ONE MINUTE HE WAS ENRAGED IN FITS OF ANGER. THE NEXT MINUTE HE WAS LAUGHING. IT WAS VERY PE EXUL YAR TO THIS GROUP. THE YOUNGEST OF THE MEMBERS BLANE STAFFORD SAID HE WAS JUST ACTING CRAZY.

WHAT ISSUE ON APPEAL ARE YOU ORG WING?

THIS IS GOING TO THE ISSUE OF COMPETENCY.

COMPETENCY TO STAND TRIAL.

YES.

SO WHAT HIS ACTIONS WERE THE NIGHT OF THE MURDER HOW WOULD THAT EFFECT AT THE TIME OF THE --

DR. GUTMAN REVIEWED ALL OF THESE STATEMENTS IN THE DEPOSITIONS PRIOR TO TRIAL AND HE CONCLUDED THAT HE WAS SUFFERING FROM PARANOID SCHIZOPHRENIA IN A DISSEMBLING MODE AND WAS OF NO ASSISTANCE TO HIS ATTORNEY IN HIS DEFENSE, I. E., THE DEFENSE OF INSANITY. IT WAS DR. GUTMAN'S POSITION THE DEFENSE OF SANITY AT THE TIME O OF DEFENSE SHOULD HAVE BEEN RAISED IN THIS TRIAL AND IT WAS NOT RAISED BECAUSE THE DEFENDANT WAS NOT BEING OF ANY ASSISTANCE TO HIS COUNSEL.

THESE ARE ALL ARGUMENTS THAT COULD BE MADE TO THE TRIAL COURT BUT IN THE FACE OF OTHER EXPERT EVIDENCE THAT HE WAS COMPETENT, WEREN'T THERE TWO OTHER EXPERTS WHOSE OPINIONS THE TRIAL COURT CONSIDERED IN MAKING THE DETERMINATION THAT AT THAT POINT IN TIME THAT HE WAS COMPETENT TO STAND TRIAL? AND SO WHILE YOUR ARGUMENTS MAY OR MAY NOT HAVE BEEN ORIGINALLY ACCEPTED BY THE TRIAL COURT, HERE WE KNOW WE'VE GOT WAS IT THE SAME TRIAL JUDGE THROUGHOUT?

YES.

WE CLEARLY HAVE A SITUATION WHERE -- OF HIM BEING HOSPITALIZED AND FOUND INCOMPETENT BEFORE. THIS ISN'T SOMETHING THAT EVERYBODY WAS IGNORING. AND SO -- BUT NOW ON APPEAL HERE YOU'RE FACED WITH THE FACT, IF I UNDERSTAND IT CORRECTLY, THAT THERE'S ABUNDANT EVIDENCE IN THE RECORD TO SUPPORT THE TRIAL COURT'S DETERMINATION THAT HE WAS NOW COMPETENT TO PROCEED. ISN'T THAT RIGHT?

WELL, IT'S AN ABUSIVE DISCRETION STANDARD AND COULD REASONABLE PEOPLE DISAGREE. IT'S MY POSITION THAT THIS AREA OF PSYCHOLOGY OF COURSE IS NOT AN EXACT SCIENCE AS WE KNOW. BUT IN THIS PARTICULAR CASE, THEY ALL AGREED HE WAS MENTALLY ILL. NO DISAGREEMENT AMONGST THE EXPERTS ON THAT ISSUE. BUT I THINK THAT DR. GUTMAN, WHO HAD TESTIFIED IN 800 TRIALS, DR. BURNS --

THAT'S SIMPLY NOT OUR ROLE, IS IT, TO SORT OF STEP INTO THE SHOES OF THE TRIAL JUDGE AND SAY WELL, NOW, MAYBE IF IT WAS ONE OF US EXAMINING THIS, MAYBE WE WOULD HAVE PUT MORE EMPHASIS HERE OR WHATEVER? THAT'S THE RESPONSIBILITY OF THE TRIAL COURT. AND ESPECIALLY IN A CASE HERE WHERE YOU'VE GOT SOMEBODY THAT WAS BACK AND FORTH AND VERY CLOSE ATTENTION WAS BEING PAID TO THIS. AND AT TIMES HE WAS FOUND INCOMPETENT. HOW COULD WE POSSIBLY SECOND SECOND-GUESS THE JUDGMENT OF THE TRIAL COURT WHEN THERE ARE -- THERE ARE TWO OTHER EXPERTS, RIGHT, THAT GAVE EVIDENCE HERE? HOW COULD WE IN OTHER WORDS, UNDER ANY STRETCH OF ANY OF THE LAW THAT WE'VE WRITTEN, HOW COULD WE POSSIBLY SUBSTITUTE OR JUDGMENT FOR THAT OF THIS TRIAL JUDGE?

IT'S NOT A TABULATION OF WHAT EXPERTS SAY. IT IS WHAT IS REASONABLE. WHAT WOULD A REASONABLE PERSON HAVE DONE. WAS THIS DETERMINATION BY THE TRIAL COURT UNREASONABLE. IT'S OUR PROPOSITION THAT IT WAS UNREASONABLE BASE PD ON WHAT HAS -- WHAT WAS BEFORE THE COURT THE DEPOSITIONS OF THE PEOPLE WHO WERE INVOLVED THAT NIGHT, WHAT DR. GUTMAN CAME FORWARD WITH. I AGREE --

EVEN DR. GUTMAN STARTED OUT SAYING YES, NOW I THINK HE IS COMPETENT, DID HE NOT?

RIGHT.

IT'S ONLY BECAUSE HE NOW WAS EXAMINING THIS OTHER MATERIAL. SO REALLY IT'S NOT JUST THE OTHER TWO EXPERTS BUT IT'S THE CIRCUMSTANCES OF DR. GUTMAN REALLY IN A SENSE VACILLATING AND SAYING, WELL, MAYBE I DIDN'T -- WASN'T FULLY AWARE OF HIS RESISTANCE

TO HAVING A PLEA OF NOT GUILTY BY PREEZ ON OF INSANITY, AND NOW -- BY REASON OF INSANITY AND HOW HIS JUDGMENT ABOUT THAT AFFECTS MY I VALUATION OF HIM. BUT I'M JUST LEFT IN THE POSITION HERE WHERE I DON'T SEE ANY CASE LAW OR RULE OUT THERE THAT WOULD ALLOW US IN THE FACE OF TWO OTHER OPINIONS TO THE CONTRARY. IT WOULD ALMOST SEEM THAT THE JUDGE WENT AGAINST THOSE OPINIONS THAT IT WOULD BE UNREASONABLE BUT AT LEAST CERTAINLY AN OPINION THAT WAS BOLSTERED OR A FINDING BOLSTERED BY THOSE TWO OPINIONS. WE WOULD SIMPLY BE SUBSTITUTING OUR JUDGMENT FOR THAT OF THE TRIAL JUDGE, WOULD WE NOT?

IT COULD BE VIEWED THAT WAY A BUT AS I SAID, WAS THIS A REASONABLE DETERMINATION BASED ON WHAT WAS PRESENTED? AND I FEEL VERY COMFORTABLE TELLING THIS COURT THAT MR. EVANS WAS OF NO ASSISTANCE TO HIS COUNSEL IN THE DEFENSE OF HIS CASE. AND THAT WAS EVEN SHOWN LATER WHERE HE BECAME ESSENTIALLY A DEAF VOLUNTEER, NOT WANTING MITIGATION PRESENTED INVOLVING HIS MENTAL CONDITION. THIS ALL ENFORCED WHAT GUT MAN WAS TRYING TO DEL THE COURT.

MITIGATION WAS CONSIDERED BY THE WAY, WAS IT NOT?

YES, YES, IT WAS. AND IT'S OUR PROPOSITION THAT THE -- TWO OF THE STATUTORY AGGRAVATING FACTORS, COLD CALCULATED AND PRE-MEDITATED AND HEINOUS, ATROCIOUS AND CRUEL WERE IMPROPERLY FOUND IN THIS CASE. FIRST FOCUSING ON --

WASN'T THIS A CLASSIC EXECUTION STYLE KILLING? WHICH IS FROM DAY ONE WHEN THIS COURT HAS TALKED ABOUT THAT STATUTORY AGGRAVATEOR, I MEAN, ISN'T THIS THE VERY KIND OF CASE THAT APPEARS TO BE -- THAT THAT AGGRAVATEOR WAS INTENDED TO FIT? THE EXECUTION STYLE KILLING.

ABSOLUTELY NOT. NOT IN THESE FACTS. ABSOLUTELY NOT.

IF I UNDERSTAND IT, THE VICTIM WAS BOUND. HE WAS HELD AGAINST HIS WILL. AND THEN IN ESSENCE HE WAS MARCHED OUT INTO THE BACK YARD. WAS THERE A DACH INVOLVED?

A CULVERT YES.

A CULVERT INVOLVED. HE WAS TOLD THEN IN ADVANCE THAT THIS IS IT. YOU ARE NOW ABOUT TO LEAVE THIS WORLD. AND THEN SIX SHOTS WERE FIRED INTO HIS HEAD. NOW, THAT'S NOT AN EXECUTION STYLE KILLING?

IT WAS -- EVERY SHOOTING OF A PERSON IN THE HEAD IS AN EXECUTION. BUT I THINK THE EXECUTION LANGUAGE IS INTENDED BY SOMEONE WHO IS THROUGH CALM REFLECTION AND HEIGHTENED PREMEDITATION.

HOW DOES THE SOIL EN SER -- IT SEEMS AS THOUGH THIS WAS THE EPITOME OF THAT. WAS THERE NOT A HEEM MADE SILENCER CONSTRUCTED TO BE UTILIZED?

THE DIFFICULTY I HAVE FINDING CCP IN THIS CASE IS THAT AT THE SAME TIME THE TRIAL COURT FOUND THE STATUTORY MITIGATING CIRCUMSTANCE THAT HE WAS UNDER AN EXTREME EMOTIONAL DISTURBANCE. NOW, HOW CAN SOMEONE BE CALM AND REFLECTIVE MURDERING SOMEBODY WHEN THEY'RE UNDER EMOTIONAL DISTURBANCE? IT'S NOT CONGRUENT. THAT'S WHAT SEPARATES THIS APART FROM A TYPICAL EXECUTION MURDER. HERE YOU HAVE SOMEONE WHO'S MENTALLY ILL AND UNDER EXTREME MENTAL DISTURBANCE WHICH THE TRIAL COURT GAVE SUBSTANTIAL WEIGHT, I MIGHT ADD. I DON'T SEE HOW UNDER THE CASE LAW, ESPECIALLY THE JACKSON CASE WHERE THIS COURT HAS SPECIFICALLY SAID THAT IF THE ACT WAS PROMPTED BY A EMOTIONAL FRENZY OR FIT OF RAGE, IT CAN'T BE PA CCP MURDER. THAT'S EXACTLY WHAT HAPPENED HERE.

WHERE IS THE FRENZY OR FIT OF RAGE? AREN'T WE TALKING ABOUT A PERIOD OF TIME WHERE -- GIVE US THE TIME FRAME HERE IN TERMS OF FIRST WAS IT GOING TO SANFORD? IS THAT WHERE THE CONTEMPLATED OTHER CRIME WAS TO BE COMMITTED?

YES.

WHAT TIME OF THE DAY OR NIGHT DID THAT FIRST OCCUR? AND THEN WHAT IS THE TIME LINE RIGHT UP UNTIL THE TIME OF THE KILLING?

I BELIEVE THE HOME INVASION WAS BETWEEN 10:00 AND 11:00 P.M. I BELIEVE THEY GOT BACK TO ORLANDO AROUND 1:00. I BELIEVE TA MURDER OCCURRED SOMETIME AFTER 2:00. THE INITIAL BEATING WAS APPROXIMATELY 15 MINUTES. THEN THERE WAS THE INTERLUDE OF THE POLICE INVESTIGATION. OF THE CAR THAT WAS REPORTED STOLEN. AND THEM ENTERING THE APARTMENT AND SO FORTH. AND THEN AFTER THE POLICE LEFT, MR. -- THE VICTIM WAS TAUNTED, AND AT THAT TIME IS WHEN THE WEAPON WAS PREPARED AND HE WAS BROUGHT POUT AND SHOT.

BUT AREN'T ALL THOSE CIRCUMSTANCES, CIRCUMSTANCES THAT WOULD SUPPORT THE COLDNESS AND THE CALCULATION? THAT IS, THAT EVERYBODY WAS UNDER CONTROL TO THE EXTENT THEY EVEN HAD THE POLICE THERE AND THEY WERE ABLE TO TALK TO THE POLICE WHILE THEY HAD THE VICTIM BACK HERE BOUND AND HAD THE POLICE LEAVE. AND THEN AS JUSTICE LEWIS ASKED ABOUT, THAT THEY VERY CALMLY AND DELIBERATELY PREPARED A SILENCER? IN OTHER WORDS, IN TERMS OF THERE BEING A FRENZY OR SOMETHING, WE'RE NOT TALKING ABOUT SOMETHING WHERE TEMPERS FLARED AND ALL OF A SUDDEN, SOMEBODY WAS KILLED, LIKE IN A BAR ROOM BRAWL OR SOMETHING LIKE THAT. WE ARE TALKING ABOUT ALL OF THIS PERCOLATING FOR SEVERAL HOURS, AND THEN EVERYBODY APPARENTLY BEING UNDER EXTREME CONTROL THERE AT THE APARTMENT, BECAUSE IN CONTROL WAS SO GREAT THAT THEY COULD EVEN HAVE THE POLICE COME AND RESPOND TO THE POLICE AND THEN HAVE THE POLICE LEAVE. AND ALL THE TIME, HAVING THIS VICTIM BOUND AGAINST HIS WILL AND THEN GOING FORWARD WITH THE EXECUTION.

WELL, AS A FACTUAL MATTER, THE CO-DEFENDANTS ALL HID IN THE APARTMENT A IT WAS SHANA WRIGHT, THE GIRLFRIEND, THAT DEALT WITH THE POLICE. NONE OF THE OTHER CO-DEFENDANTS DID OR SPOKE TO THE POLICE.

WHAT I MEAN IS THEY WERE ALL UNDER CONTROL. THEY WERE ABLE TO HIDE. AND CONCEAL THEMSELVES AND WHAT THEY WERE DOING FROM THE POLICE AND DO IT VERY SUCCESSFULLY. AND IF IT WAS A FRENZY, THAT'S THE VERY KIND OF THING THAT YOU CAN'T CONTROL OR HIDE OR WHATEVER.

WELL, I STILL HAVE TROUBLE GETTING OVER THE -- HOW CAN YOU AS A MATTER OF LAW FIND THAT SOMEONE IS UNDER AN EXTREME EMOTIONAL DISTURBANCE, THAT THIS COURT DID AS A STATUTORY MITIGATING FACTOR, BECAUSE OF THE TESTIMONY OF THE THREE IND - PENDANT PSYCHIATRISTS THAT ALL SAID HE WAS MENTALLY ILL. ONE SAID HE HAD BIPOLAR DISEASE WHICH THE MANIC PHASE WOULD HAVE BEEN AK SEN WAITED WITH THE INDUCTION OF ALCOHOL AND MARIJUANA AND THE LAY WITNESS TESTIMONY ALL SAYING THIS GUY WAS ACTING CRAZY THROUGHOUT THIS EPISODE, TOTALLY CRAZY. I DON'T SEE HOW YOU CAN SAY AS A MATTER OF LAW THAT SOMEONE IN THAT KIND OF --

HAVE WE EVER SAID THAT? IN OTHER WORDS, HAVE WE EVER SAID THERE CANNOT BE A FINDING OF COLD, CALCULATING, THE AGGRAVATEOR, IF THERE ALSO IS THIS FINDING OF THE MENTAL MITIGATORS?

IT DOESN'T SAY IT IN THOSE TERMS. THE JACKSON CASE SPECIFICALLY SAYS -- CONCLUDES THAT,

THAT YOU CAN'T HAVE THIS EMOTIONAL FRENZY FIT, PANIC, ALL THESE TERMS WERE USED IN THE JACKSON CASE --

BUT DO WE HAVE -- THAT'S WHAT I ASKED BEFORE P IS THERE REALLY DOES THE EVIDENCE REALLY SUPPORT FRENZY AND PANIC AND ALL THAT AS OPPOSED TO DELIBERATE AND --

I THINK IT SUPPORTS RAGE. THAT THIS MAN WAS ENRAGED EITHER THROUGH HIS BIPOLAR DISEASE, MENTAL ILLNESS, OR HIS PARANOID SCHIZOPHRENIA. HE WAS ENRAGED THINKING HE WAS BETRAYED BAY A MEMBER OF HIS GROUP. AND NOT -- SEEMINGLY NOT IN A RATIONAL WAY BECAUSE I DON'T KNOW HOW YOU COULD HAVE CONCLUDED BECAUSE HE WENT AROUND THE BLOCK, BECAUSE HE SAW SOMETHING. THAT'S WHAT HE REPORTED WHEN HE RETURNED. HE HAD JUST GONE AROUND THE BLOCK. AND MR. EVANS CONCLUDE THIS WAS REALLY AN EFFORT TO GO BACK TO MY PLACE AND STEAL FROM ME WHICH WAS NOT A RATIONAL CONCLUSION.

YOU SEEM TO BE ARGUING THAT THIS EXTREME EMOTIONAL DISTRESS IS TO THE LEVEL OF INCAPACITY TO FORMULATE PREMEDITATION. IT REALLY SEEMS TO BE WHAT YOU'RE ARGUING AS OPPOSED TO ANYTHING ELSE. IS THAT REALLY WHERE YOU'RE HEADED WITH THIS? THE JACKSON CASE, WAS THAT NOT THE ONE WHERE THE YOUNG LADY WAS IN THE CONFRONTATION WA THE POLICE OFFICER? IS THAT THE JACKSON CASE YOU'RE REFERRING TO, THE FIGHT AND ALL OF A SUDDEN THE ARREST AND THEY GRAB THE GUN AND SHOOT THE A OFFICER?

I BELIEVE SO. WELL, OH YES I AM ARGUING THAT BECAUSE THAT'S PRECISELY WHAT DR. GUTPLAN CONCLUDED TO THE COURT. THAT THIS GENTLEMAN WAS LIKELY NOT COMPETENT AT THE TIME OF THE MURDER BECAUSE OF THIS MENTAL ILLNESS. AND IT'S IF YOU LOOK AT HIS CONDUCT PRIOR TO TRIAL, THE ALL THREE EXPERTS CONTINUALLY REVISED THEIR DIAGNOSIS OF THIS GENTLEMAN BECAUSE OF HIS BIZARRE BEHAVIOR, PERSECUTED THROUGH FREE MASONRY, PERSECUTED BY NUMBERS AND SPEAKING IN ILLOGISMS, COMBINEING A WORDS AND PROPERTY TO MAKE POINTS. HE'S JUST A MENTALLY ILL PERSON. AND HERE THE TRIAL COURT IS SAYING, WELL, YES HE'S MENTALLY ILL, HE WAS UNDER EXTREME EMOTIONAL DISTURBANCE BHI WAS CALM AND REFLECTIVE IN THE -- AND HAD THE HEIGHTENED PREMEDITATION NECESSARY TO QUALIFY FOR A STATUTORY AGGRAVATEOR. I DON'T THINK YOU CAN HAVE THOSE AT THE SAME TIME. IT JUST DOESN'T SEEM LOGICAL IN ANY WAY.

HOW LONG WAS THE VICTIM GONE WITH THE CAR?

I'M SORRY?

HOW LONG WAS HE, THE VICTIM, HOW LONG WAS HE GONE BEFORE THEY CALLED SOMEBODY ELSE TO GET A CAR TO TAKE THEM AWAY?

I WOULD SAY THE VICTIM WAS ABS A ABSENT ABOUT AN HOUR AND A HALF. -- ABSENT ABOUT AN HOUR AND A HALF. FROM THE TIME HE LEFT THE HOUSE IN SANFORD AND HE SHOWED UP AT THE APARTMENT IN ORLANDO. AND --

EXACTLY HOW DID THEY GET HIM TO SHOW UP AT THE HOUSE? DID THEY GO GET HIM OR SEND A MESSAGE TO HIM TO COME TO THE HOUSE? EXACTLY HOW DID THAT HAPPEN?

THEY WERE LIVING THERE. THAT'S WHERE THEY HAD ORIGINATED THE PLAN. SO HE WAS RETURNING BACK TO WHERE HE WAS ACTUALLY RESIDING. THREE OF THE ASSOCIATES WERE RESIDING IN THAT APARTMENT WITH SHANA WRIGHT.

SO HE SHOWED UP ON HIS OWN.

COMING BACK TO HOME BASE, YEAH. AND SAID THAT, I JUST WENT AROUND THE BLOCK BECAUSE I SAW SOMETHING AND I WAS CONCERNED. AND I CAME BACK AND YOU WERE ALL GONE. AND

THEY JUST --

THAT SPAN OF TIME WAS HOW MUCH, DID YOU SAY?

HE RETURNED IN ABOUT AN HOUR AND A HALF. I THINK IT TOOK ABOUT AN HOUR FROM THE TIME THAT THE PEOPLE LEFT THE HOME INVASION THAT THEY ACTUALLY ARRIVED BACK TO THE APARTMENT WAS PRECISELY ABOUT AN HOUR AND I BELIEVE THE VICTIM ARRIVED ABOUT 30 MINUTES LATER TO THE APARTMENT.

AND EVANS RAGE WAS BECAUSE HE FELT HE'D GONE TO STEAL SOMETHING FROM HIM, IS THAT --

YES.

IS THAT WHY HE WAS SO --

THE APPELLANT HAD A CACHE OF MONEY IN THE APARTMENT, FROM WHAT SOURCE WE DON'T KNOW. BUT HE HAD A LARGE SUM OF MONEY AND GETTING TO THE HOUSE IN SANFORD, THE FIRST THING HE DID WAS CALL HIS GIRLFRIEND TO SAY TAKE THE MONEY OUT OF THE APARTMENT AND GO SOMEWHERE ELSE BECAUSE THIS MAN'S COMING TO STEAL OUR MONEY. BASED ON WHAT, WE DON'T KNOW WHERE HE CONCLUDE THAT BUT I SUSPECT IT'S A PART OF HIS MENTAL ILLNESS, THIS PARANOIA THAT DR. GUTMAN HAD SPOKEN ABOUT. AND IT'S BECAUSE THE SAME REASON WHY CCP DOESN'T APPLY IN THIS CASE, HACK DOES NOT APPLY EITHER BECAUSE THIS COURT HAS SAID ALSO THAT IF SOMEONE IS IN A FIT OF RAGE OR ALL THE LANGUAGE I'VE ALREADY DISCUSSED, THAT HAC CANNOT APPLY EITHER. OR AT BEST IT GIVES IT VERY LITTLE WEIGHT, THAT AGGRAVATING FACTOR IN A CASE LIKE THIS. AND ONE THING THAT THE COURT PUT IN ITS SENTENCING ORDER THAT I FOUND NO EVIDENCE TO SUPPORT WAS THAT THE VICTIM WATCHED WHILE THIS SILENCER WAS CREATED. THAT'S TOTALLY A CREATION OF THE TRIAL COURT. THERE'S NO EVIDENCE THAT THIS VICTIM HAD ANY KNOWLEDGE THAT THERE WAS A SILENCER OR A GUN PRODUCED FOR HIS MURDER IN THE APARTMENT. ABSOLUTELY NO EVIDENCE. IN FACT, THE CO-DEFENDANT SPECIFICALLY TESTIFIED THEY HAD NO KNOWLEDGE THAT THIS VICTIM WAS GOING TO BE MURDERED UNTIL HE WAS ACTUALLY MURDERED IN THE CULVERT. THE JUDGE DISMISSED THIS.

ARE YOU TRYING TO TELL US NO ONE SAW HIM DO THE SILENCER?

THE CO-DEFENDANTS TESTIFIED THEY HAD NO IDEA THIS GENTLEMAN WAS GOING TO BE MURDERED IN THAT CULVERT UNTIL HE WAS ACTUALLY SHOT IN THAT CULVERT. BOTH OF THE CO-DEFENDANTS TESTIFIED TO THAT. AND THE TRIAL COURT DISMISSED THAT TESTIMONY AS NOT BELIEVEABLE. BUT.

CONSIDERING THE FACT IF THEY WERE WITH HIM BUT HE MARCHED HIM OUTSIDE, THEY HAD TO HAVE AT LEAST SEEN THE SILENCER WHETHER THEY SAW HIM ACTUALLY MAKE IT OR NOT. WOULDN'T YOU THINK THAT'S A FAIR INFERENCE FROM THE RECORD?

THAT'S THE INFERENCE THE TRIAL COURT MADE. BUT THERE'S NO FACTUAL BASIS TO MAKE THE INFERENCE OTHER THAN TO SAY THE SILENCER --. I'M NOT TALKING ABOUT THE VICTIM. I'M TALKING ABOUT THE OTHER PERPETRATORS.

ALL IT WAS WAS A SHAMPOO BOTTLE ON TOP OF THE MUZZLE. IT WAS NOT SOME BIG ITEM THAT COULD NOT BE CONCEALED. AND THEY ACTED IN A STEALTHY WAY SO IT WOULD BE JUST AS EASY TO HIDE THE GUN IN YOUR SHIRT WITH THAT SILENCER OR WITHOUT IT.

WASN'T THERE EVIDENCE THAT YOUR CLIENT MADE STATEMENTS TO THE VICTIM BEFORE HE SHOT HIM?

HE MADE THE STATEMENTS CONTEMPORANEOUS WITH THE SHOOTING. HE DID NOT MAKE THEM ON THE WAY.

WHAT WAS THE SOURCE OF THAT EVIDENCE?

THAT WAS THE CO-DEFENDANTS' TESTIMONY.

AND WHAT DID THE -- BOTH OF THEM?

YES.

WHAT DID THEY TESTIFY TO THAT THE DEFENDANT SAID?

THAT WHEN HE WAS THROWN TO THE GROUND, HE AIMED THE PISTOL AND SAID, "YOU'RE THE LAST MF 'ERS WE'RE EVER GONNA SEE," POW, POW, POW.

HE SHOT HIM SIX TIMES?

I THINK THERE WERE SIX SHOTS AND FIVE THAT ACTUALLY IMPACTED. YES. SO I THINK THAT HAC CANNOT APPLY. IF THOSE TWO CANNOT APPLY YOU HAVE THREE OTHER AGGRAVATING CIRCUMSTANCES. AND ALL THREE OF WHICH THE TRIAL COURT DID NOT GIVE A LOT OF WEIGHT. UNDER A SENTENCE OF IMPRISON --

WASN'T THERE MORE TO THAT FINAL STATEMENT THAN YOU JUST GAVE? DIDN'T HE SAY SOMETHING ABOUT YOU'RE NOT GOING TO LEAVE ANYBODY AGAIN TO SHOW --

THAT'S CORRECT. THAT'S THE FULL STATEMENT.

THOUGHT ABOUT WHY THE EXECUTION WAS TAKING PLACE, BECAUSE YOU LEFT US.

YOU ARE CORRECT. WHILE HE WAS AIMING HE SAID YOU'RE NOT GONNA LEAVE ANYBODY EVER AGAIN AND THESE ARE THE LAST THREE MFs YOU'RE EVER GOING TO SEE. IT'S A LENGTHIER STATEMENT, THAT IS CORRECT. THE OTHER THREE AGGRAVATING CIRCUMSTANCES IN THIS CASE ARE THAT HE WAS UNDER A SENTENCE OF IMPRISONMENT. THE EVIDENCE WAS SUFFICIENT ON THAT THAT HE WAS -- HE HAD LEFT A WORK RELEASE PROGRAM. THE TRIAL COURT DID NOT GIVE IT A LOT OF WEIGHT BECAUSE THE ACTUAL ESCAPE WAS NOT RELATED TO THE ACTUAL HOMICIDE WHERE HE WOULD HAVE GIVEN IT A LOT OF WEIGHT. THE PREVIOUS VIOLENT FELONY WAS A PRINCIPAL TO ARMED ROBBERY. HE ALSO DID NOT GIVE IT A LOT OF WEIGHT BECAUSE HE ACTUALLY DIDN'T ENGAGE IN THE ARMED ROBBERY ITSELF BUT WAS A PRINCIPAL AND THEN THE KIDNAPPING, THE CONTEMPORANEOUS MOVEMENT IS DISCUSSED IN THE INITIAL ARGUMENT ALSO SHOULD NOT BE GIVEN A LOT OF WEIGHT. WHEN YOU LOOK AT THE AGGRAVATING FACTORS THAT SHOULD HAVE BEEN FOUND IN THIS CASE, COMPARE IT WITH THE MENTAL MITIGATION IN THIS CASE, AND ALSO COMBINE IT WITH THE FACT THAT LOOKING AT THIS PERSON IN HIS TOTALITY HE WAS BORN OF A RAPE. HIS MOTHER WAS RAPED. HIS FATHER WAS AN ALCOHOLIC WHO DIED OF SCLEROSIS OF A LIVER AILMENT. HAD VERY SPORADIC CONTACT. HE WAS RAISED SUBSEQUENTLY IN A JEHOVAH WITNESS CHURCH HIS MOTHER JOINED WITH HER NEW HUSBAND, AND HAD A NUMBER OF PROBLEMS IN THAT CHURCH. HE GOT CAUGHT MASTURBATING BY HIS FATHER AND GOT BROUGHT BEFORE THE WHOLE CONGREGATION OF THE JEHOVAH WITNESS CHURCH.

DID THE DEFENDANT WAIVE THE MITIGATION AFTER THE JURY RECOMMENDATION? OR DID THE JURY ITSELF HEAR THE MITIGATION THAT YOU'RE SPEAKING OF?

THE JURY I BELIEVE DID NOT HEAR -- YES, THE JURY DID HEAR THE MITIGATION. HEARD THE WITNESSES, THE FAMILY MEMBERS THAT CAME FORWARD.

EVEN THOUGH THE DEFENDANT DIDN'T WANT MITIGATION, THEY HAD THE LAWYER STILL PUT ON MITIGATION.

YES, UNDER KUHN. THE TRIAL COURT ALLOWED THE FAMILY MEMBERS TO COME FORWARD.

AND THE JURY ACTUALLY HEARD THAT.

YES, YES, I BELIEVE SO.

DID THEY HEAR OTHER EVIDENCE OF MITIGATION, MENTAL MITIGATION? DID ANY OF THE EXPERTS TESTIFY?

I BELIEVE THAT -- I DON'T BELIEVE SO. I DON'T RECALL WHETHER THEY DID OR NOT BECAUSE IT WAS CONFUSING BECAUSE SOME THINGS WERE LET IN, SOME THINGS WERE NOT. SOME WERE LEFT AS ADVISORY BECAUSE OF THIS CONFLICTING SITUATION. FOR EXAMPLE, ALL THE REPORTS OF HIS INCOMPETENCEY AND PUTTING IN THE MENTAL HOSPITAL WAS NOT ACCEPTED BY THE TRIAL COURT WHICH I THOUGHT WAS NOT PROPER. I THINK THAT WAS PROPER TO BE INTRODUCED BUT HE WOULD NOT ACCEPT IT AS ONE EXAMPLE. BUT THERE WAS ALREADY THAT EVIDENCE PRIOR TO TRIAL THAT COULD BE CONSIDERED BY THE COURT AND IT WAS ARGUED --

BUT WAS NOT BEFORE THE JURY.

I DON'T RECALL. I DON'T RECALL.

IS THERE ANY CLAIM BEING MADE ON APPEAL THAT ANY EVIDENCE OF MITIGATION WAS ERRONEOUSLY EXCLUDED FROM THE JURY?

NO. THERE IS NO SUCH CLAIM OF THAT BEING MADE. I THINK THE CLAIM IS MADE AS HOW THE TRIAL COURT ACTUALLY HANDLED IT. FOR EXAMPLE, IT DISMISSED THE MULTIPLE HEAD INJURIES THAT MR. EVANS HAD IN HIS TRIAL. ONE THAT ACTUALLY LEFT HIM TO BE VERY WITHDRAWN AND ACTUALLY WAS PROBABLY THE PRE-CURSOR OF WHAT HE HAS TODAY. THAT WAS TOTALLY DISMISSED BY THE COURT. IT WAS DISMISSED BECAUSE HE FOUND THE STATUTORY MENTAL MITIGATORS. SO HE FOUND THE NONSTATUTORY EVENTS WERE NOT TO BE GIVEN ANY WEIGHT SINCE HE FOUND BOTH STATUTORY --

YOU'RE WELL INTO YOUR REBUTTAL TIME.

THANK YOU.

MR. NUNNELLEY.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT, I'M KEN NUNNELLEY. I REPRESENT THE STATE OF FLORIDA IN THIS PROCEEDING. IN ANSWER TO YOUR QUESTION, JUSTICE ANSTEAD, THREE MENTAL STATE WITNESSES TESTIFIED AT THE JURY IN THE PENALTY PHASE OF THE TRIAL.

SO THE JURY HEARD ALL THE MENTAL MITIGATION.

THE JURY HEARD EVERYTHING. ON THE COMPETENCY ISSUE FIRST OF ALL, I DON'T WANT TO GET INTO THE IDEA OF BLENDING UP THE VARIOUS COMPETENCY ISSUES THAT CAN AR ARISE. THE ONLY COMPETENCY ISSUE WE'RE TALKING ABOUT ARISES OUT OF A MOTION TO DETERMINE COMPETENCY THAT WAS ON ORAL MOTION MADE ON THE DAY JURY SELECTION BEGAN. THAT'S THE ONE WE'RE TALKING ABOUT A THREE MENTAL STATE EXPERTS TESTIFIED WITH RESPECT TO THAT PROCEEDING. TWO OF THEM SAID THIS MAN'S EXAE TENT TO STAND TRIAL. THE ONLY OUTLIER IN ALL THIS WAS DR. GUTMAN WHO SAID THAT BECAUSE -- WELL, YES, JUDGE I FOUND HIM COMPETENT TWO WEEKS AGO, BUT PI WENTLWI PIECE OF A STATEMENT MADE BY ONE OF

THE CO-DEFENDANTS AND THAT COUPLED WITH HIS RELUCTANCE TO PURSUE A NOT GUILTY BY REASON OF INSANITY DEFENSE MAKES ME THINK HE'S NOT EXE FENT TO STAND TRIAL. AND I WOULD SUBMIT TO THE COURT THAT THE JUDGE WOULD HAVE ABUSED HIS DISCRETION HAD HE NOT FOUND MR. EVANS COMPETENT TO PROCEED UNDER THIS EVIDENCE. ANY CONTRARY RULING WOULD HAVE BEEN PATENTLY ABSURD. NOW, LET ME LAP OVER, IF I COULD TO THE PENALTY PHASE TESTIMONY. THERE WAS A GOOD BIT OF PENALTY PHASE MENTAL STATE EVIDENCE PUT ON AT THE PENALTY PHASE. THROUGH THREE EX - PERCENT, DR. HERKOFF, BURN, OR BURNS I CAN'T REMEMBER AND DR. GUTMAN ALL OF WHOM TESTIFIED THEY ALL HAD A LITTLE BIT DIFFERENT OPINION ABOUT WHAT WAS WRONG WITH MR. EVANS IN THEIR OPINION. HOWEVER, THAT'S NOT THE ONLY EVIDENCE WE HAVE ABOUT MR. EVANS. MR. EVANS WAS SENT TO THE FLORIDA STATE HOSPITAL NOT ONCE, BUT TWICE. AND HE CAME BACK FROM THE FLORIDA STATE HOSPITAL WITH THAT FACILITY REPORTING THAT THEY HAD OBSERVED IN MR. EVANS RAT AIR LENGTHY STAY WITH THEM NO EVIDENCE OF PSYCHOSIS. I WOULD SUGGEST TO THE COURT THAT WHAT WE HAVE HERE IS THE FACILITY AND THE DOCTORS, THE RECORDS FROM WHICH WERE AVAILABLE TO ALL OF MR. EVANS' EXPERTS, --

DO WE KNOW WHETHER OR NOT THOSE EXPERTS, IN FACT, LOOKED -- READ THOSE HOSPITAL STAY RECORDS AND UTILIZED THEM IN FORMULATING THEIR OWN OPINIONS?

WE KNOW THAT THEY READ THEM, BECAUSE THEY TESTIFIED ON CROSS-EXAMINATION THAT YES, I KNOW FLORIDA STATE HOSPITAL SAID THAT THERE IS NO PSYCHOSIS IN THIS MAN. THAT'S HOW WE KNOW IT'S IN THERE. WE KNOW THEY HAD THEM. WE KNOW THEY READ THEM. THEY JUST REACHED A DIFFERENT CONCLUSION. AND THAT JUST GOES TO SHOW, OR POINTS UP THE FACT, THAT MENTAL STATE TESTIMONY IS NOT AN EXACT SCIENCE. EXCUSE ME. MENTAL STATE EXPERTS CAN. WE ALL KNOW THAT. THE CASES WITH INNUMERABLE THAT TALK ABOUT THE CAN TEN SHOWSNESS OF MENTAL STATE EXPERTS. BUT THE BOTTOM LINE IS YES, JUSTICE QUINCE, THE EXPERTS WHO TESTIFIED AT THIS TRAIL, THE PENALTY PHASE BEFORE THE JURY, WERE WELL AWARE OF WHAT FLORIDA STATE HOSPITAL HAD FOUND. THEY JUST REACHED A DIFFERENT CONCLUSION BASED ON THEIR SHORT-TERM SNAPSHOT EVALUATIONS AS OPPOSED TO FLORIDA STATE HOSPITAL'S LONG-TERM EVALUATION. BUT AGAIN, THAT IS -- I SAY THIS AND AGAIN I DON'T WANT TO --

LET ME ASK YOU THIS: DO WE HAVE ANYTHING TO SUGGEST THAT THERE'S ANY MENTAL HEALTH HISTORY PRIOR TO HIS HOSPITALIZATION IN THIS CASE FOR INCOMPETENCY?

I DO NOT REMEMBER ANY, JUSTICE QUINCE. I WOULDN'T SAY UNEQUIVOCALLY ABSOLUTELY NOT. I DO NOT THINK SO. I'M UNAWARE OF ANYTHING. NOTHING COMES TO MIND. BUT AGAIN, I DON'T WANT TO BLEND UP THE COMPETENCY TO STAND TRIAL WITH ANY OTHER COMPETENCY ISSUE THAT IS NOT BEFORE THE COURT. THE ONLY COMPETENCY ISSUE WE'RE TALKING ABOUT IS THE ONE THAT CAME OUT OF THE HEARING THAT WAS CONDUCTED IN THE PHASE OF THE TRIAL, THE LAST MINUTE THING, IN APRIL OF '99, I BELIEVE IT WAS, RIGHT AS THE TRAIL WAS FIXING TO START. WHAT WE HAVE HERE IS A JUDGE THAT HAS BENT OVER BACKWARDS TO PROTECT THIS DEFENDANT'S CONSTITUTIONAL RIGHTS AND NOW WE'RE BACK UP HERE ARGUING OVER WHETHER THIS TRIAL JUDGE ABUSED HIS DISCRETION IN FINDING MR. EVANS COMPETENT. ONE THING I DO WANT TO POINT OUT MR. EVANS' BRIEF IS TO SOME DEGREE A BLENDING OF THE VARIOUS COMPETENCY ISSUES. WE HAVE OF COURSE COMPETENCY TO STAND TRIAL, COMPETENCY AT THE TIME OF THE OFFENSE, MENTAL STATE ISSUES COME INTO PLAY IN MITIGATION. THE LARGE PORTION IF YOU WILL OF MR. EVANS' BRIEF ON COMPETENCY TO STAND TRIAL REALLY IS FOUNDED ON THE PENALTY PHASE TESTIMONY THAT WAS OFFERED IN MITIGATION THAT WAS NOT OFFERED TO ADDRESS COMPETENCY. SO IN A VERY REAL SENSE, THERE IS AT LEAST AN UNDERCURRENT HERE OF THE TRIAL COURT BEING PUT IN ERROR BASED UPON EVIDENCE THAT WASN'T BEFORE IT WHEN IT MADE ITS DECISION. AS TO THE COLD, CALCULATED AND PRE-MEDITATED AGGRAVATING A CIRCUMSTANCE. THIS CASE AS I BELIEVE JUSTICE ANSTEAD COMMENTED IS A CLASSIC CASE OF THE APPLICATION OF THE COLD,

CALCULATED AND PRE-MEDICATED AGGRAVATEOR. THIS IS AN EXECUTION STYLE KILLING THAT IN A -- THAT QUITE SIMPLY OVERMEETS THE CRITERIA FOR THE CCP AGGRAVATE OR.

HOW LONG WAS THIS WHOLE EPISODE GOING ON?

IT'S A LITTLE BIT UNCLEAR FROM THE RECORD, JUSTICE WELLS. WE HAVE A CALL BEING MADE IN SANFORD, FLORIDA, TO MR. EVANS' APARTMENT IN ORLANDO TO SHANA WRIGHT, HIS GIRLFRIEND, TELLING HER TO GET THE MONEY AND GET OUT OF THE APARTMENT. THEY'RE COMING FOR YOU. AT THIS POINT HE ALSO TOLD HER TO REPORT HIS CAR -- THE CAR HE WAS USING WHICH WAS ACTUALLY HER CAR AS STOLEN.

DO WE KNOW IF SHE IN FACT DID THAT, LEFT THE APARTMENT?

YES, MA'AM. LET ME -- BUT JUSTICE WELLS, IN ANSWER TO YOUR QUESTION, THAT CALL WAS MADE BETWEEN 2:00 AND 3:00 A.M., SO IN THAT BAND OF TIME, 2:00, 3:00 IN THE MORNING, THEY HAD HAD -- THEIR ROBBERY THAT THEY WERE PLANNING ON DOING IN SANFORD HAD ALREADY COME APART. THEY HAD ALREADY MADE THEIR WAY BACK TO THEIR FRIEND'S APARTMENT OR RESIDENCE, IN SANFORD, AND GOTTEN ON THE PHONE BUT THEY HADN'T LEFT SANFORD YET. SO IT TOOK AN HOUR TO GET FROM SANFORD BACK TO ORLANDO. I DON'T KNOW WHERE THEY LIVED IN ORLANDO, ASSUMING IT TOOK ABOUT AN HOUR. AND THEN THE VICTIM SHOWS UP SOMEWHAT AFTER THAT. THE COPS TURN UP AND JUSTICE QUINCE IN ANSWER TO YOUR QUESTION, ORLANDO PD SHOWED UP AT THE DOOR OF THE APARTMENT IN RELATION TO THE VEHICLE HAVING BEEN REPORTED STOLEN.

SHE WAS AT THE APARTMENT AT THAT POINT, WASN'T SHE?

YES, MA'AM BUT SHE HAD LEFT THE APARTMENT. HE TOLD HER TO GET OUT OF THE APARTMENT, GET THE MONEY AND GET OUT OF THE APARTMENT. SHE DID HALF OF WHAT HE TOLD HER TWO OR ACTUALLY TWO THIRDS. HE TOLD HER GET THE MONEY, GET OUT OF THE APARTMENT AND REPORT THE CAR STOLEN. SHE REPORTED THE CAR STOLEN AND LEFT THE APARTMENT BUT LEFT MONEY IN THE APARTMENT. MR. EVANS HAD TO ACTUALLY LOCATE MS. WRIGHT ONCE HE GOT BACK TO ORLANDO BY BEEPING HER ON HER PAGER AND THEN SHE GOT SLAPPED AROUND BECAUSE SHE DIDN'T DO WHAT SHE WAS TOLD ABOUT GETTING THE MONEY AND GETTING IT OUT OF THE APARTMENT IS MY UNDERSTANDING OF THE RECORD. SO YES, SHE DID GET OUT OF THE APARTMENT. YES, SHE DID REPORT THE CAR STOLEN. SOMETIME AFTER THEY GOT BACK OVER THERE, AND ALL THIS IS TAKING TIME. IT DOESN'T -- IT NOT HAPPENING JUST BOOM, BOOM, BOOM. THERE'S SOME TIME LAG IN WITH ALL THIS. BUT BY THE TIME ORLANDO POLICE DEPARTMENT OFFICERS COME TO KNOCK ON HER DOOR AND SAY WE'RE HERE TO TALK ABOUT THAT CAR YOU REPORTED STOLEN, AT THIS POINT IN TIME, LEWIS HAS BEEN BEATEN UP ON TO SOME DEGREE. WE DON'T KNOW HOW MUCH. BUT HE HAD BEEN BEATEN, HE WAS TIED. HE WAS GAGGED. THEY TOOK HIM BACK IN THE BACK BEDROOM AND MR. EVANS INSTRUCTED SHANA WRIGHT TO GET RID OF THE COPS. WHICH SHE DID. BUT AND THIS GOES BACK TO WHAT JUSTICE ANSTEAD WAS SAYING, THIS GUY HAD HIS VICTIM TIED UP AND GAGGED IN CLOSE PROXIMITY TO LAW ENFORCEMENT OFFICERS. HE KEEPS HIS COOL. HE TELLS SHANA WRIGHT, GET RID OF THEM. THE OFFICER SAYS I NEED TO USE THE PHONE, I'VE GOT TO CALL HEADQUARTERS. SHE SAID HERE, USE THE PHONE. THE OFFICER IS STANDING IN THE APARTMENT TALKING ON THE TELEPHONE OR MAYBE OUT ON THE PORCH P I'M NOT SURE WHICH IT WAS. BUT HE IS DOING THIS UNDER THE NOSE OF THE POLICE DEPARTMENT. AND IF THAT DOESN'T GO TO COLD, CALCULATION AND PREMEDITATION, NOTHING IS EVER GOING TO. LET ME COME BACK TO THE SILENCER JUST A MINUTE. THIS WAS THE LITTLE MORE THAN JUST A SHAMPOO BOTTLE STUCK ON THE END OF A PISTOL. MR. EVANS HAD SAID, AND THIS IS AFTER LEWIS HAD BEEN, THE VICTIM HAD BEEN TIED UP AND BEATEN AND GAGGED, GET ME A SHAMPOO BOTTLE. SO HE CUTS A HOLE IN IT AND HE GETS SOME OF THESE PLASTIC PA BAGS LIKE YOU GET FROM WINN-DIXIE OR PUBLIX AND STUFFS THEM INTO IT. THEN HE TAPES IT TO THE BARREL OF HIS PISTOL. SO THIS IS NOT JUST STICKING A

SHAMPOO BOTTLE ON THE END OF A PISTOL TRYING TO IT LOOKED LIKE SOMETHING OUT OF JAMES BOND P THIS IS --

IN THAT REGARD, DO WE KNOW, IS THERE ANYTHING IN THE RECORD TO SUPPORT OR NOT SUPPORT WHETHER OR NOT THE VICTIM SAW HIM DOING THIS?

WHETHER THE VICTIM ACTUALLY WAS SITTING THERE EYE BALLING HIM WHEN HE DID IT, WE DON'T KNOW FOR SURE. WE KNOW THIS WAS A FAIRLY SMALL APARTMENT A THEY WERE ALL IN THERE TOGETHER. THEY WERE TALKING ABOUT WHAT WAS GOING ON. WHETHER THE VICTIM WAS ACTUALLY WATCHING IN GREAT DETAIL WHAT WAS GOING ON, I CAN'T POINT YOU TO ANYTHING IN THE RECORD WHERE ANYBODY SAYS, TO MY MEMORY, EXPLICITLY, THAT THE VICTIM WAS SITTING IN THE CHAIR WATCHING THE DEFENDANT PREPARE THE SILENCER. I DON'T KNOW THAT THAT'S IN THERE. I DON'T RECALL IT BEING IN THERE. BUT AT THE SAME TIME, THE VICTIM KNEW, WOULD HAVE KNOWN, WHAT WAS GOING ON. THERE'S NO EVIDENCE HE WAS UNCONSCIOUS. THERE'S NO EVIDENCE HE WAS INSENSATE IN THE SENSE HE WAS STUNNED OR DAZED TO THE EXTENT HE WOULD NOT BE AWARE OF WHAT WAS HAPPENING. THE TRIAL COURT WAS JUSTIFIED AND WITHIN HIS PREROGATIVE TO REJECT THE TESTIMONY OF THE CO-DEFENDANTS WHERE THEY'RE SAYING, WAIT A MINUTE, WE DIDN'T KNOW HE WAS GOING TO KILL HIM TILL HE SHOT HIM. THAT'S WHAT THE TRIAL JUDGE IS IN THE POSITION TO DO THAT AFTER HAVING OBSERVED THE CREDIBILITY OF THE WITNESS AND THE WITNESS' DEMEANOR AND THIS AND THAT UNDER SPAZIANO. BUT AGAIN WHAT WE GET BACK TO IS THIS MURDER IS COLD, CALCULATED AND PRE-MEDICATED IF EVER ONE WAS. IT'S CLASSIC, IT'S A TEXTBOOK EXAMPLE. I'VE SET OUT THE CHRONOLOGY OF THE SEQUENCE OF EVENTS WHAT WENT ON. AGAIN THIS WAS MORE THAN JUST MAKING THE SILENCER AND SHOOTING THE VICTIM FOUR, FIVE OR SIX TIMES, HOWEVER MANY IT WAS. I THINK IT WAS ACTUALLY FOUR SHOTS THAT HIT HIM IN THE HEAD AND WENT IN, ANY ONE OF WHICH WOULD HAVE BEEN FATAL. THE VICTIM SENT ONE OF HIS COHORTS OUT TO CHECK OUT THE AREA, TO MAKE SURE EVERYTHING'S CLEAR, MAKE SURE THERE'S NOBODY AROUND GOING TO SEE WHAT WE'RE FIXING TO DO. THEN THEY ESCORT THIS GENTLEMAN, THEY ESCORT MR. LEWIS, DRAG HIM DOWN THE STAIRS, AROUND THE BUILDING, OUT BEHIND THE BUILDING TO WHAT'S VARIOUSLY DESCRIBED AS A CULVERT OR DRAINAGE DITCH OR CANAL. I'M NOT SURE WHICH IT IS. I THINK THERE'S PROBABLY A LITTLE BIT OF A DIFFERENCE BUT APPARENTLY IT WAS SOME OPEN DITCH BECAUSE THEY TALKED ABOUT HIM HAVING BEEN SHOVED DOWN IN THE WATER. A CULVERT TO ME I THOUGHT WAS AN ENCLOSED THING, BUT BE THAT AS IT MAY, THEY SHOVE HIM DOWN, THEY TELL HIM WHAT HE DID. THEY TELL HIM WHAT HE'S NOT GOING TO EVER DO AGAIN AND THEY TELL HIM THEY'RE GONNA KILL HIM AND THEN THEY SHOOT HIM. THAT IS AN EXECUTION STYLE MURDER IF THERE EVER WAS ONE A. AND IF THIS MURDER IS NOT COLD, CALCULATED AND PRE-MEDITATED, NO MURDER IS EVER GOING TO BE.

HOW DO YOU RESPOND TO THE APPELLANT'S ARGUMENT, HOWEVER, THAT BECAUSE THE TRIAL COURT FOUND HE HAD THIS SERIOUS MENTAL ILLNESS THAT HE WAS UNDER EMOTIONAL DISTURBANCE, THE TWO STATUTORY MITIGATING CIRCUMSTANCES AT THE TIME OF THIS OFFENSE, THAT IT'S VIRTUALLY IMPOSSIBLE TO HAVE THAT AND HAVE THIS SAME KIND OF COLD, CALCULATEDNESS THAT YOU NEED IN ORDER TO HAVE AN EXECUTION-STYLE MURDER?

MY FIRST RESPONSE TO IT WAS PERHAPS THE TRIAL COURT SHOULD NOT HAVE FOUND THE MENTAL STATE MITIGATOR UNDER THESE FACTS.

THOUGH WE HAVE --

UNFORTUNATELY HE DID DO THAT SO I HAVE TO DEAL WITH IT.

YOU DO IN FACT HAVE DOCTORS WHO SAID HE HAS SOME KIND OF MENTAL ILLNESS, DON'T WE?

BUT NOBODY SAID -- NO DOCTOR, HOWEVER, SAYS THAT THE MENTAL STATE MITIGATOR APPLIES.

AND I RECOGNIZE THAT'S A DECISION FOR THE TRIAL COURT, NOT FOR THE MENTAL STATE PEOPLE. BUT AT THE SAME TIME, BUT NONETHELESS, NOT ONE OF THESE MENTAL STATE EXPERTS SAID THAT HE THOUGHT THE MENTAL MITIGATOR APPLIED TO THIS DEFENDANT.

WERE THEY ASKED?

I DON'T THINK HE WAS. I DON'T BELIEVE THEY WERE. ONE WONDERS WHY THEY WEREN'T. I DON'T KNOW THE ANSWER TO THAT. IF Y'ALL AFFIRM WE MAY FIND OUT ON COLLATERAL ATTACK. BUT WHAT I WOULD ALSO POINT OUT IS NO MENTAL STATE EXPERT EVER CONNECTED UP, IF YOU WILL, THE MENTAL STATE DIAGNOSIS THAT THEY WERE MAKING WITH THE FACTS OF THE OFFENSE OVER HERE. AND IF -- SO WHAT YOU QUITE LITERALLY HAVE, AND I THINK THE WAY TA TRIAL COURT INTENDED FOR THIS TO BE, WAS THAT WHILE THIS GUY MAY HAVE SOME MENTAL PROBLEMS, YOU HAD THREE DOCTORS WHO SAY HE DID. THEY COULDN'T AGREE ON WHAT IT WAS BUT THEY ALL SAID HE HAD SOMETHING WRONG WITH HIM. THAT EXISTS OVER HERE BUT IT'S NOT MUTUALLY EXCLUSIVE OF THE COLD, CALCULATED AND PRE-MEDITATED AGGRAVATING CIRCUMSTANCE BECAUSE IT DIDN'T IMPACT IT. I'M NOT SURE I'M MAKING SENSE HERE WITH THIS. BUT WHAT I'M SAYING IS THEY NEVER LINKED UP THE MENTAL STATE MITIGATOR TO THE CRIME. THE MENTAL STATE MITIGATOR WHILE IT EXISTS, WHILE ATE WAS FOUND BY THE TRIAL COURT AND I'M STUCK WITH IT AS IT EXISTING, IT EXISTS OUT HERE STANDING ALONE. IT'S NOT A MENTAL MITIGATOR THAT PRECIPITATED THE MURDER, CAUSE ADD THE MURDER, OR SOMEHOW CONTRIBUTED TO IT. AND IT DOESN'T UNDERCUT THE VALIDITY AND THE APRIL OLYMPICABILITY OF THE COLD, CALCULATED AND PRE-MEDITATEDDING A VA OR BECAUSE THE ACTIONS CARRIED OUT BY THIS DEFENDANT OF A SUBSTANTIAL PERIOD OF TIME ESTABLISH COLD, CALCULATED AND PRE-MEDITATED ACTIONS TO EFFECT THE DEATH OF THIS VICTIM. NOW, HE CAN BE WHATEVER THE MENTAL STATE EXPERTS SAY HE IS AND STILL BE CAPABLE OF ACTING IN A COLD, CALCULATED AND PRE-MEDITATED MANNER. AND THAT'S WHAT HAPPENED HERE. AS FAR AS THE HEINOUS, ATROCIOUS OR CRUEL AGGRAVATING CIRCUMSTANCE IS CONCERNED AND IN RESPONSE TO MY COLLEAGUE'S ARGUMENT THAT CCP AND HAC ARE INAPPLICABLE FOR THE SAME REASONS, THIS COURT HAS LONG HELD THAT THERE IS NO SUCH THING AS AN INTENT ELEMENT TO THE HEINOUS, ATROCIOUS OR CRUEL AGGRAVATING CIRCUMSTANCE. THAT'S ALL THERE IS TO IT. THAT'S THE CASE LAW. GUZMAN, IT WAS DECIDED THREE OR FOUR YEARS AGO. BROWN WAS DECIDED THE SAME DAY. BOTH ARE CITED IN MY BRIEF. HITCHCOCK THAT WAS DECIDED THE MIDDLE LAST YEAR CITED GUZMAN AS SAYING NO KIDDING WE REALLY MEANT IT WHEN WE SAID THERE IS NO INTENT ELEMENT TO THE HEINOUS ATROCIOUS CIRCUMSTANCE. AS FAR AS THE MITIGATION WAIVER, I'M SHIFTING GEARS HERE ON Y'ALL. MR. EVANS SAID, FOLLOWING THE JURY'S 11-1 DEATH RECOMMENDATION THAT HE DIDN'T WANT ANY MORE -- DIDN'T WANT ANY MITIGATION PUT ON HIM, ANY MORE MITIGATION PUT ON AND TOLD THE JUDGE, JUDGE, I THINK YOU OUGHT TO FOLLOW THE JURY'S RECOMMENDATION. IT HAPPENED AFTER THE JURY HAD COME BACK WITH ITS RECOMMENDED SENTENCE. AND BASICALLY, I HAVE NO FURTHER COMMENTS UNLESS THE COURT HAS FURTHER QUESTIONS. I WOULD STAND ON MY BRIEF AS TO THE UNARGUED ISSUES AND RESPECTFULLY ASK THE COURT TO CONFIRM THE CONVICTIONS AND SENTENCE OF DEATH. THANK YOU.

THANK YOU, MR. NUNNELLEY. MR. BURDEN, REBUTTAL?

THANK YOU, JUSTICE WELLS. I WOULD LIKE TO CORRECT A STATEMENT OF THE APPELLEE THAT IN THE PENALTY PHASE, DR. GUTMAN TESTIFIED THAT BOTH THE MENTAL MITIGATORS APPLIED IN THIS CASE TO THE APPELLANT. AND DR. BURNS TESTIFIED THAT THE BIPOLAR DISEASE THAT THE APPELLANT SUFFERS FROM COULD EXPLAIN HIS CONDUCT THAT EVENING ALTHOUGH HE WAS NOT WITHIN A MEDICAL CERTAINTY THAT HE ACTUALLY HAD IT. THAT COULD EXPLAIN THE CONDUCT THAT THE LAY WITNESSES WERE DESCRIBING. SO I THINK THERE WAS ADEQUATE EVIDENCE IN THE PENALTY PHASE TO SUPPORT THE AGGRAVATING PARDON ME THE MENTAL MITIGATION THAT WAS FOUND BAY THE TRIAL COURT AS WELL AS THE LAY WITNESSES. THE TRIAL COURT COULD HAVE SOLELY RELAYED ON THE LAY WAITSES BUT THEY HAD THE EXPERT

TESTIMONY AS WELL. AGAIN, I THINK THIS WHOLE CASE HINGES UPON WHETHER OR NOT THIS COURT ACCEPTS THE TRIAL COURT'S FINDING OF STATUTORY MENTAL MITIGATION. IF THEY DO, AND FIND IT'S A SUBSTANTIAL AS THE TRIAL COURT HAS, YOU CAN'T FIND THAT THE TWO WEIGHTY STATUTORY AGGRAVATING CIRCUMSTANCES APPLIED. THE CASE LAW OF THIS COURT IS CLEAR ON BOTH OF THEM. IN THE JACKSON CASE FOR CCP, THE PORTER AND BUFORD CASE FOR HAC THAT IF THERE IS AN EXTREME EMOTIONAL DISTURBANCE, THESE AGGRAVATING FACTORS CAN APPLY.

JUSTICE QUINCE?

I GUESS, AREN'T YOU REALLY ARGUING HERE THAT UNDER OUR STATUTE, IN ORDER TO SAY A PERSON CANNOT FORM PREMEDITATION YOU HAVE TO MEET THE McNAUGHT ON TEST, CORRECT? ISN'T THAT OUR TEST FOR INSANITY?

YES, IT IS.

SO AREN'T YOU REALLY ARGUING HERE THIS MAN WAS INSANE AND THEREFORE HE COULD NOT HAVE FORMED THE COLD, CALCULATED PRE-MEDITATED AND INTENT TO KILL THIS GUY?

I'M ARGUING HE WAS --

IT SEEMS TO ME THAT'S WHERE THIS ALL LEADS.

HE WAS CERTAINLY MENTALLY ILL AT THE TIME OF THE OFFENSE.

BUT MENTAL ILLNESS DOES NOT NEGATE PREMEDITATION, DOES IT?

NO, IT DOES NOT BUT I THINK THAT THE STATUTORY MITIGATING FACTORS DO. WHEN YOU HAVE AN EXTREME EMOTIONAL DISTURBANCE, THAT TRUMP'S A FINDING OF CCP I THINK THAT'S WHAT THIS COURT SHOULD DETERMINE IN THIS CASE. IN ALL CASES. THAT IF A PERSON'S UNDER A RAGE OR AN EMOTIONAL DISTURBANCE, HOW COULD THEY BE CALM, COOL AND REFLECTIVE? IT'S JUST NOT CONSISTENT.

YOUR TIME IS UP. THANK YOU, MR. BURDEN. MR. NUNNELLEY?