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Richard Lynch v. State of Florida

CHIEF JUSTICE: GOOD MORNING, EVERYONE. THE FIRST CASE ON THE DOCKET THIS MORNING IS LYNCH VERSUS STATE. IF COUNSEL IS READY TO PROCEED, YOU MAY PROCEED.

MAY IT PLEASE THE COURT. THANK YOU, YOUR HONOR. I AM CHRIS QUARLES, AND I REPRESENT RICHARD LIFERMING IN THIS DIRECT APPEAL FROM ZM -- RICHARD LYNCH IN THIS DIRECT APPEAL FROM SEMINOLE COUNTY, WHEREAS LYNCH PLEADED GUILTY TO FIRST-DEGREE MURDER, ONE COUNT OF BURGLARY. HE ALLOW THE TRIAL JUDGE TO DECIDE HIS FEAT. THE TRIAL JUDGE FOUND TO EACH OF THE AGGRAVATING FACTORS AS TO EACH OF THE FIRST-DEGREE MURDERS. THIS IS A CASE OF A 46-YEAR-OLD MAN WITH NO PRIOR CRIMINAL HISTORY WHATSOEVER, WITH TWO DISTINCT AND SEPARATE PERSONALITY DISORDERS, WHO BECAME INVOLVED IN A TORT AFFAIR -- A TORE I HAD AFFAIR, AN EXTRAMARITAL AFFAIR, IN WHICH -- TORRID AFFAIR, AN EXTRAMARITAL AFFAIR, AND HE BECAME AFRAID THAT HE WAS LOSE HIS TWO CHILDREN, WHICH HE WATCHED WHILE HIS WIFE WORKED. SHE NEEDED MONEY TO MOVE OUT OF THE HOME OF HER MOTHER-IN-LAW WHILE HER HUSBAND WAS OVERSEAS, AND MY CLIENT, MR. LYNCH, WAS UNABLE TO -- WAS ABLE TO OBTAIN CREDIT CARDS IN HIS OWN NAME, EVEN THOUGH HE WAS UNEMPLOYED, AND HE WAS ABLE TO MOVE HER INTO A APARTMENT WITH HER 13-YEAR-OLD DAUGHTER, WHICH THE DAUGHTER WAS A PRODUCT OF A RAPE IN THE PHILIPPINES, AND HE BOUGHT HER A CAR WITH THE CREDIT CARD ADVANCES, THEN SHE RECONCILED WITH HER HUSBAND, WHO RETURNED FROM SAWEED RAIN TO THE -- FROM SAUDI ARABIA TO THE STATE OF FLORIDA, AND SHE BROKE IT OFF WITH MR. LYNCH, AND HE ATTEMPTED TO GET HER TO RECONCILE WITH HIM BUT HE WAS ALSO VERY CONCERNED ABOUT THE CREDIT CARD BALANCES, WHICH SHE HAD BEEN PAYING, AND WHEN HER HUSBAND CAME HOME, THEY ANNOUNCED TO HIM THAT THEY WERE NO LONGER GOING TO PAY THE CREDIT CARD BALANCES, AND HE WAS DESPERATE, BECAUSE HE KNEW HIS WIFE WOULD THEN FIND OUT ABOUT THE AFFAIR, SO FOR A PERIOD OF ABOUT THREE TO FOUR WEEKS, HE NEGOTIATED WITH THE MORGANS, ROSE MORGAN AND HER HUSBAND, JAMES. THEY WERE, ALSO, TRYING TO GET BACK SOME PHOTOGRAPHS THAT HE HAD TAKEN OF ROSE DURING THEIR AFFAIR, AND THEY MET WITH HIM NUMEROUS TIMES, AND HE, ALSO, ATTEMPTED TO PERSUADE THEM TO CONTINUE PAYING THE CREDIT CARD DEBT. WHEN THEY THOUGHT THAT THEY HAD GOT ALL OF THE PICTURES BACK, THEY, THEN, TOLD HIM THAT THEY WERE NOT GOING TO PAY THE CREDIT CARD DEBT. HE LEFT THEM ALONE FOR ABOUT A WEEK. THEN HE WENT TO THE APARTMENT THAT, WHERE THE MORGUE ANSWER LIVED. LEAH CADAY, THE 13-YEAR-OLD DAUGHTER, CAME HOME FROM SCHOOL. HE WAS WAITING OUTSIDE THE APARTMENT. HE CONVINCED HER TO LET HIM IN. SHOWED HER HE HAD A GUN. HE ADMITTED THAT. AND THEY WAITED FOR ROSE MORGAN TO COME BACK TO THE APARTMENT SO HE COULD TALK TO HER ABOUT THE CREDIT CARD DEBT AND, ALSO, ABOUT THE BROKEN RELATIONSHIP. THEY WAITED FOR ABOUT 30 MINUTES AND ROSE MORGAN ARRIVED AT THE APARTMENT.

DID HE HAVE THE GUN ON HER DURING THAT, ON THE CHILD DURING --

HE HAD A BAG WITH THREE GUNS IN THE BAG, AND THE CREDIT CARD BILLS. AT ONE POINT HE DID TAKE ONE OF THE GUNS OUT OF THE BAG AND SHOWED IT TO LEAH, TO ATTEMPT TO QUIET HER AND SAID, LOOK, JUST BE QUIET. I AM WAITING FOR YOUR MOM. I WANT TO TALK TO HER. HE DID SHOW HER THE GUN. HE SAID HE DID NOT POINT IT AT HER AT THAT POINT.

AS YOU KNOW, WE ARE FAMILIAR WITH THE UNDER LYING FACTS, AND I AM NOT SURE. YOU ARE LAYING A PREDICATE HERE, AND I MUST SAY THAT ONE OF THE IMPRESSIONS THAT I RECEIVED

WAS THE VERY DELIBERATE NATURE OF WHAT WAS GOING ON THERE IN THE WAY THAT YOU ARE DESCRIBING IT. I DON'T WANT TO, YOU KNOW, YOU HAVE GOT RELATIVELY LIMITED TIME YOU KNOW, HERE IN THIS ORAL PRESENTATION, SO I AM SURE WHAT YOU ARE SETTING -- I AM NOT SURE WHAT YOU ARE SETTING THE PREDICATE FOR, BY DESCRIBING THESE CIRCUMSTANCES, WHICH WE ARE ALL FAMILIAR WITH.

OKAY. OKAY. IT WAS VERY DELIBERATE, IN THAT HE WENT TO THE APARTMENT TO CONFRONT ROSE.

HE ARMED HIMSELF, YOU SAY, WITH THREE WEAPONS?

WELL, HE WAS ALWAYS ARMED. HE HAD A CARRY PERMIT, AND IN HIS STATEMENT TO THE POLICE, HE SAID I AM ALWAYS CARRYING GUNS. HE, THAT WAS RIFE THROUGHOUT ALL OF THE STATEMENTS AND, ALSO, THE TESTIMONY, WHEN HE MET WITH THE MORGUE ANSWER AT OTHER LOCATIONS. THEY KNEW HE -- WITH THE MORGANS AT OTHER LOCATIONS. THEY KNEW HE CARRIED A GUN ALWAYS. IT WAS NOT ARMING HIMSELF FOR THIS SPECIFIC EVENT.

DOES THE RECORD INDICATE THAT HE ALWAYS HAD THREE WEAPONS WITH HIM?

THE RECORD DOES NOT INDICATE THAT NECESSARILY HE ALWAYS HAD THREE, BUT HE WAS FREQUENTLY GOING TO THE RANGE TO SHOOT. HE WAS FREQUENTLY GOING TO THE GUNSHOT SHOP, TO BUY, TRADE AND SELL, AND HE HAD, BECAUSE OF THIS CREDIT CARD DEBT, HE HAD RESORTED TO SELLING SOME OF THE GUNS IN THE PAST FEW WEEKS, AT LEAST ONE OF THEM, TO PAY ONE OF THE CREDIT CARDS, AND THAT WAS MENTIONED, ALSO, AS THE REASON THAT HE HAD THE GUNS IN HIS BAG, BUT HE ALWAYS HAD THEM IN HIS CAR.

AGAIN, I AM NOT SURE WHETHER YOU ARE GOING TO THE ISSUE OF WHETHER HE HAD PARTICULARLY ARMED HIMSELF HERE, BUT YOU ARE DEMONSTRATING HIS GREAT FAMILIARITY WITH THE GUNS AND WITH WEAPONS, THAT THIS IS NOT, YOU KNOW, SOMEBODY THAT WAS UNFAMILIAR WITH GUNS AND HOW THEY OPERATED AND WHAT IT TOOK TO DISCHARGE THEM. AND SO I AM, AGAIN, NOT SURE WHERE YOU ARE HEADED.

ONE OF YOUR ISSUES IS THE FAILURE OF TRIAL COUNSEL TO PUT ON MENTAL HEALTH MITIGATION. WHY DON'T YOU MOVE TO THAT ISSUE ISSUE.

I DON'T THINK THAT IS THIS CASE, JUSTICE SHAW. THERE WERE TWO PSYCHOLOGISTS TESTIFY, AND THEY, ALL, THEY BOTH AGREED THAT HE SUFFERED FROM PERSONALITY DISORDERS. ONE PSYCHOLOGIST --

I AM IN ERROR. I AM SORRY. GO AHEAD.

WELL, HE DID, I AM GOING TO CCP, AS FAR AS, OKAY, HE, THE JUDGE FOUND --

HEAD ON. THE TRIAL JUDGE DID FIND.

HE DID AS TO ROSE.

CCP. RIGHT.

AS TO ROSE MORGAN. NOW, I THINK THAT THE JUDGE TOOK IMPROPER LIBERTY IN CONCLUDING, FROM THE NOTE, THE LETTER THAT HE LEFT HIS WIFE. HE TALKS ABOUT, CLEARLY TALKS ABOUT KILLING HIMSELF, AND THE JUDGE CONCLUDES THAT, IN SO MANY WORDS, HE IS TALKING ABOUT A MURDER/SUICIDE. HE INTENDED TO KILL ROSEANNE THEN KILL HIMSELF. HOWEVER, THE LETTER DOES NOT SPECIFICALLY SAY THAT HE INTENDS TO KILL ROSE.

IS IT IMPROPER FOR A TRIAL JUDGE, UNDER THESE CIRCUMSTANCES OR FOR A JURY, BECAUSE THE JUDGE HERE WAS THE FACT FINDER GOING TO THESE AGGRAVATING FACTORS, TO DRAW INFERENCES FROM WRITTEN DOCUMENTATION, WHERE THERE IS SOMETHING ALONG THE LINES OF YOU KNOW, THIS IS NOT JUST A RANDOM EVENT, AND HER FAMILY NEEDS TO KNOW WHAT SHE HAS DONE AND THAT KIND OF THING, AND, BUT, WHAT IS YOUR RESPONSE TO THAT? BECAUSE THE JUDGE SEEMED -- IT APPEARS THAT THE JUDGE BELIEVED THAT THIS IS DESCRIBING WHY HE IS GOING TO KILL ROSE.

WELL, THIS COURT SAID, IN CLARK VERSUS STATE THAT, THE TRIAL COURT MAY NOT DRAW, QUOTE, LOGICAL INFERENCES, TO SUPPORT A FINDING OF PARTICULAR AGGRAVATING CIRCUMSTANCE, WHEN THE STATE HAS NOT MET ITS BURDEN OF PROVING IT BEYOND A REASONABLE DOUBT. THAT LANGUAGE, IN THE LETTER, IS JUST AS CONSISTENT WITH NOT JUST KILLING ROSE BUT HUMILIATING HER IN FRONT OF HER FAMILY. HE TOLD HER IN THE LETTER, HE SAYS HE INSTRUCTS HIS WIFE TO SEND THE NUDE PHOTOS OF THE VICTIM TO HER PARENTS IN THE PHILIPPINES, AFTER THIS IS ALL OVER, TO SHOW THAT IT WAS NOT A RANDOM ACT OF VIOLENCE. THAT IS JUST AS CONSISTENT WITH THE, ROSE MORGAN ATTEMPTING TO HIDE FROM HER PARENTS WHY THIS STRANGE MAN WOULD COME INTO HER APARTMENT AND COMMIT SUICIDE IN FRONT OF HER, SO HE SAYS BURY ME QUICK. TAKE CARE OF MY BOYS. HE TALKS ABOUT HIMSELF BEING DEAD. THE ONLY LANGUAGE THAT HE TALKS ABOUT THAT COULD BE INTERPRETED IS THAT, THAT THEY WILL, THE PARENTS WILL KNOW THAT IT IS NOT A RANDOM ACT OF VIOLENCE.

AND SHE HAD TO PAY THE PRICE.

WELL, THE HUMILIATION IN FRONT OF HER FAMILY.

AGAIN, NOW, WHAT JUSTICE LEWIS IS ASKING YOU IS THAT YOU HAVE A LETTER, AND THERE ARE INFERENCES TO BE DRAWN FROM THAT LETTER. THE INFERENCE THAT THE JUDGE, AS FACT FINDER DREW, USING THAT LETTER AND ALL THE CIRCUMSTANCES IS THAT WAS EVIDENCE OF NOT ONLY HE WAS PLANNING TO KILL HIMSELF BUT THAT HE WAS, FIRST, GOING TO KILL THIS PERSON, AND THAT HE WANTED HIS RELATIVES TO KNOW THAT THAT KILLING WAS NOT A RANDOM ACT OF VIOLENCE, NOT THAT HIS SUICIDE WASN'T A RANDOM ACT OF VIOLENCE BUT THE KILLING. WHY ISN'T THAT A REASONABLE INFERENCE THAT JUDGE EATON COULD DRAW FROM ALL THE CIRCUMSTANCES, AND THAT WE WOULD, THEN, GIVE DEFERENCE TO?

I THINK THAT, WHERE THERE IS AN INTERPRETATION THAT IS JUST AS CONSISTENT WITH ONE THAT DOES IS NOT SUPPORT THE AGGRAVATING FACTOR, THE LONG LINE OF PRECEDENT FROM THIS COURT DOES NOT ALLOW IT.

BUT AREN'T YOU TALKING, THERE ABOUT THE OVERALL CONCLUSION OF WHETHER THE AGGRAVATING FACTOR EXISTS, AS OPPOSED TO INFERENCES THAT YOU MIGHT DRAW FROM INDIVIDUAL PIECES OF EVIDENCE? YOU ARE NOT SAYING THAT A COURT, AS IT DRAWS INFERENCES FROM INDIVIDUAL PIECES OF EVIDENCE, HAS TO GO THROUGH THIS CIRCUMSTANCE SUBSTANTIAL -- THIS CIRCUMSTANTIAL EVIDENCE ANALYSIS AND THEN SAY, WITH REFERENCE TO EACH ONE OF THOSE, THAT IF THERE IS ANOTHER INFERENCE THAT CAN BE DRAWN, THEN I CAN'T DRAW THIS MORE LOGICAL INFERENCE THAT I FIND. WHERE IS THERE A CASE THAT SAYS EACH PIECE OF EVIDENCE THAT THE TRIAL COURT EXAMS MUST -- EXAMINES, MUST HAVE TO PASS THIS TEST, THAT THERE IS ANOTHER REASONABLE INFERENCE THAT CAN BE DRAWN? IT IS THE OVERALL CONCLUSION OF WHETHER THE AGGRAVATING CIRCUMSTANCE EXISTS THAT WE HAVE STRESSED MUST PASS THIS CIRCUMSTANTIAL EVIDENCE TEST. IS IT NOT?

WELL, I THINK, IN CLARK, THAT THIS COURT SAID THAT THE JUDGE, THE TRIAL JUDGE, THE FINDER OF FACT CANNOT DRAW LOGICAL INFERENCES TO SUPPORT IT WHERE THE STATE HASN'T MET ITS BURDEN, AND I DON'T THINK THAT NECESSARILY IMPLIES --

BUT IS IT YOUR POSITION THAT, WITH EACH PIECE OF EVIDENCE THAT THIS TEST MUST BE APPLIED, AND IF THERE IS ANOTHER INFERENCE THAT CAN BE DRAWN, THEN YOU CAN'T DRAW THIS PARTICULAR INFERENCE. THE FACT FINDERS CAN'T DRAW LOGICAL INFERENCES. AS LONG AS THERE IS SOME OTHER LOGICAL IN FRIENDSHIPS THAT CAN BE DRAWN FROM A PIECE OF EVIDENCE.

I THINK THAT IS THE STANDARD. YES.

WHAT ABOUT, YOU SAY AS LONG AS THE STATE HAS NOT PROVEN, EVEN IN CLARK. AREN'T THERE OTHER FACTORS THAT THE TRIAL JUDGE TOOK INTO CONSIDERATION? THIS IS JUST ONE PIECE. AREN'T THERE OTHER FACTORS IN THIS CASE THAT WOULD INDICATE -- YOU HAVE ALREADY TALKED ABOUT THE GUNS AND, ALTHOUGH THE FACT THAT HE MAY HAVE CARRIED GUNS, AS I UNDERSTAND THIS RECORD, THERE IS NO OCCASION THAT HE ALWAYS TOOK THEM INSIDE OF SOMEONE'S HOUSE WHEN HE WENT THERE. DIDN'T HE SHOOT THIS LADY FIRST AND THEN DRAG HER INTO THE APARTMENT? I MEAN, AREN'T THOSE THE OTHER CIRCUMSTANCES THAT WE CAN TAKE INTO CONSIDERATION, IN DETERMINING WHETHER OR NOT THE STATE PROVED, BEYOND A REASONABLE DOUBT, THAT THIS WAS COLD, CALCULATED AND PREMEDITATED?

WELL, TRUE, AND THIS COURT MUST CONSIDER THE EVIDENCE AS A WHOLE, BUT ONE THING THAT I DON'T THINK THE TRIAL JUDGE DID CORRECTLY WAS HE DID NOT CONSIDER IT AS A WHOLE. THERE WAS, ALSO, TESTIMONY, I MEAN, IN HIS STATEMENT TO THE POLICE AFTERWARDS AS WELL AS HIS STATEMENT TO THE 911 OPERATOR, WHO, AFTER 45 MINUTES, CONVINCED AM NOT TO KILL HIMSELF, AND THAT IS WHY WE ARE HERE TODAY, BUT NEVERTHELESS HE CONSISTENTLY SAID THAT HE WENT UP THERE TO CONFRONT HER, AND THEN HE HEARD STEPS. HE WAS A VERY AFRAID OF HER HUS-- HE WAS VERY AFRAID OF HER HUSBAND, JAMES MORGAN.

WHAT ABOUT WHAT YOU KEEP TALKING ABOUT? DOESN'T HE SAY IN THERE ABOUT HER FAMILY COMING TO SOME CLOSURE? SOME CLOSURE ABOUT WHAT? I MEAN, THAT SEEMS TO, ALSO, POINT TO THE FACT THAT HER FAMILY IS GOING TO HAVE SOMETHING TO COME TO CLOSURE ABOUT.

ABOUT THE CHARACTER OF THEIR DAUGHTER, I THINK, IS JUST AS CONSISTENT, AND ALSO THAT IS CONSISTENT WITH RICHARD LYNCH'S OWN PERSONALITY DISORDERS, WHICH THE REASON HE DEVELOPED AT LEAST ONE OF THEM WAS BECAUSE HE WAS TAUGHT, AT AN EARLY AGE THAT, PARENTAL LOVE WAS CONDITIONAL. IF HE DID NOT ABIDE BY HIS STRICT FATHER'S RULES AND REGULATIONS, HE DID NOT RECEIVE THAT LOVE. IT WAS NOT UNCONDITIONAL LOVE. IT WAS CONDITIONAL, AND THE THE PSYCHOLOGIST SAID THAT PLAYED RIGHT INTO THE WAY HE WANTED ROSE MORGAN TO BE HUMAN ILLIATED IN -- HUMILIATED IN FRONT OF HER OWN FAMILY, WHEN SHE WAS EXPOSED FOR THE PERSON THAT SHE WAS.

HOW ABOUT HER OWN INDIVIDUAL DEATH? DESCRIBE FROM THE WORST CASE SCENARIO FROM YOUR STANDPOINT, AS FAR AS THE EVIDENCE THAT WE MUST CONSTRUE AGAINST YOU, WITH REFERENCE TO THE FINDER OF FACT HAVING THIS EVIDENCE. WHAT WERE THE CIRCUMSTANCES OF HER ACTUAL KILL SOMETHING.

THE CIRCUMSTANCES OF HER ACTUAL KILLING -- OF HER ACTUAL KILLING?

THE CIRCUMSTANCES OF HER ACTUAL KILLING IS THAT SHE CAME HOME AND HE HAD A BABY GLOCK, WHICH ALTHOUGH HE WAS FAMILIAR WITH GUNS, HE SAID HE HAD NEVER FIRED THAT PARTICULAR GUN. HE SAID HE WAS ATTEMPTING TO GET HER TO SIT DOWN AND TALK TO HIM, RATIONALIZE THIS PROBLEM OUT. SHE WOULD NOT ENTER THE APARTMENT. HE THOUGHT HE HEARD STEPS, ASSUMED IT WAS THE POLICE, HER HUSBAND OR SOMEBODY, AND HE PANICED, AND HE SAID THE GUN WENT OFF ACCIDENTALLY. SHE WAS HIT TWICE, ONCE IN THE LEG AND ONCE IN THE, ONE BULLET WENT THROUGH HER HAND AND INTO HER HEAD, AND HE PUT THE GUN DOWN YOU HE PUT THE GUN DOWN. IT WENT OFF AGAIN, HOWEVER, AND SHOT LEAH CADAY

IN THE BACK AND WENT THROUGH HER HEART, KILLING HER ALMOST INSTANTLY.

ARE WE MISTAKEN THAT THERE WAS A SHOOTING OUTSIDE, AND THEN A WITNESS INDICATED THAT HE KNOCKED ON THE DOOR OR MADE SOME NOISE ABOUT "OPEN THE DOOR", AND THEN HE DRUG ROSE INSIDE, THAT THERE WAS A SHOOTING OUTSIDE AND THEN INSIDE.

SHE WAS STANDING IN THE OPEN DOORWAY AND WOULDN'T ENTER, AND THAT IS WHEN SHE WAS SHOT TWO TIMES. THEN HE PUT THE GUN DOWN. THAT IS WHEN LEAH CADAY WAS SHOT AND THEN HE DRAGGED HER. MAYBE SHE WAS DEAD AT THAT POINT POINT. WE DON'T KNOW. HE DRAGGED HER INTO THE APARTMENT AND CLOSED THE DOOR. SAW THAT SHE WAS NOT BREATHING. MIGHT HAVE BEEN STILL ALIVE. DIDN'T WANT HER TO SUFFER. COUPE DE GRAS.

WAS THERE A NEIGHBOR THAT EITHER SAW OR HEARD THIS AND TESTIFIED AT THE TRIAL?

YES.

AND WHAT DID THE NEIGHBOR TESTIFY TO ABOUT THESE CIRCUMSTANCES? WASN'T IT DIFFERENT THAN WHAT YOU HAVE JUST DESCRIBED?

WELL, THE NEIGHBOR WAS LOOKING THROUGH THE PEOPLE WHO AND HEARD SHOTS.

AND THE NEIGHBOR HEARD, RIGHT?

YES.

WHAT DID THE NEIGHBOR SEE, FIRST OF ALL?

THE NEIGHBOR SAW LYNCH LURKING OUTSIDE THE APARTMENT DOOR, BEFORE ANYBODY CAME HOME. THEN SHE LOOKED IN THE HALLWAY AND HE WAS GONE. THAT WAS WHEN HE ENTERED WITH, THE APARTMENT WITH LEAH CADAY, EVIDENTLY. THEN LATER ON, 30 MINUTES LATER OR SO, SHE HEARD THREE OR FOUR SHOTS. SHE WASN'T SURE. THEY WERE NOT, ARE YOU TALKING ABOUT THE TIME SEQUENCE?

NOT ONLY TALKING ABOUT THE TIME SEQUENCE. I AM JUST REALLY TALKING ABOUT ALL THE TESTIMONY OF THIS NEIGHBOR AS TO WHAT SHE HEARD, AND IT SEEMS TO ME THAT HER TESTIMONY CONTRASTS SHARPLY WITH THE WAY THAT YOU JUST DESCRIBED WHAT OCCURRED. DID SHE TESTIFY TO THE PROLONGED SCREAMING THAT SHE HEARD, AND SHE HEARD YOUR CLIENT MAKE STATEMENTS TO THE DAUGHTER ABOUT THAT I HAVE GOT YOUR MOTHER OUT HERE? THAT I HAVE JUST SHOT HER OR SOMETHING? WHAT WAS THE TESTIMONY? WASN'T THIS IMPORTANT TESTIMONY PRESENTED BY STATE?

THERE WAS SOME TESTIMONY FROM THAT NEIGHBOR THAT SHE WAS BLOODY FROM THE WASTE DOWN, WASN'T IT?

THIS WAS WHEN SHE WAS LOOKING THROUGH THE PEOPLE WHO?

SO I TAKE IT THAT THE NEIGHBOR'S TESTIMONY WASN'T THAT IMPORTANT IN THE SCHEME OF THINGS HERE.

I DIDN'T, I DID NOT RECALL. I REMEMBER SHE WAS VERY CONFUSED ABOUT THE TIME SEQUENCE. THERE WAS SOME, SOMETHING THAT CONTRADICTED THAT.

DID SHE TESTIFY ABOUT HEARING YOUR CLIENT SAY ANYTHING?

I DON'T RECALL -- YOUR CLIENT SAY ANYTHING?

I DON'T RECALL. I AM SORRY.

AND THEN HOW WAS THE DAUGHTER KILLED?

THE DAUGHTER WAS KILLED WITH ONE SHOT IN THE BACK, TO THE BACK THAT, WENT THROUGH HER HEART. HE WAS APPARENTLY SITTING ON THE FLOOR. SHE WAS OVER TO THE LEFT IN FRONT OF HIM, ANDER TO THE OPEN DOOR.

-- AND TOWARD THE OPEN DOOR.

HOW MANY SHOTS WERE FIRED?

FOUR.

HE CLAIMS ALL OF THE FIRES -- ALL OF THE SHOTS WERE FIRED ACCIDENTALLY?

NOT THE COUPE DE. GRAS. HE DID ADMIT FIRING THE GUN, ONE SHOT OUT OF THE .38, ONE -- OUT OF THE .38, ONE SHOT TO THE BACK OF HER HEAD.

HE PUT DOWN THE GUN?

HE PUT DOWN THE GLOCK, BECAUSE THE TRIGGER PULL WAS NOT WHAT HE THOUGHT IT WOULD BE. WELL, ALSO I ARGUE THAT THE MURDER OF LEAH CADAY WAS NOT HEINOUS, ATROCIOUS AND CRUEL. SHE WAS KILLED BY ONE GUN, A SINGLE GUNSHOT WOUND THAT ENTERED HER BACK AND EXITED THROUGH HER CHEST AND WENT THROUGH HER HEART. THE MEDICAL EXAMINER TESTIFIED THAT SHE LOST CONSCIOUSNESS WITHIN 10-TO-20 SECONDS OF THE WOUND AND CERTAINLY DIED IN LESS THAN A MINUTE.

HOW LONG DID HE HAVE HER UNDER HIS CONTROL AND WHAT WAS GOING ON, WHILE HE HAD HER UNDER HIS CONTROL?

ABOUT 30 MINUTES APPARENTLY.

WHAT WAS GOING ON?

HE SAID THAT SHE WAS TALKING LOUDLY AND ATTEMPTING TO TALK REASON TO HIM, APPARENTLY, AND THAT HE KEPT EXPLAINING TO HER THAT HE WAS NOT GOING TO HURT HER, THAT HE ONLY WANTED TO TALK TO HER MOTHER, AND SHE HAD NOTHING TO WORRY ABOUT, AND --

THERE WAS NO OTHER TESTIMONY ABOUT HER SCREAMING --

THERE WAS, WHEN HE DID CALL HIS WIFE, RICHARD LYNCH CALLED HIS WIFE FROM THE APARTMENT DURING THE TIME HE WAS THERE, APPARENTLY BEFORE ROSE ARRIVED AT THE APARTMENT, AND SHE SAID THAT THE CHILD WAS SCREAMING OR TALKING LOUDLY. SHE SAID SCREAMING, BUT I THINK IT, AND SHE SAID, IS THAT THE WOMAN THAT YOU ARE INVOLVED WITH? AND HE SAID NO. BUT I THINK THAT THE EVIDENCE IS JUST AS CONSISTENT WITH LEAH YELLING AT HIM AND SAYING LET ME GO, LET MOW GO! YOU ARE NOT DOING THE RIGHT THING. HE -- LET ME GO! YOU ARE NOT DOING THE RIGHT THING. HE NEVER HARMED HER IN ANY WAY. HE DIDN'T TOUCH HER. AND THE STATE CITES CHAVEZ, FOR EXAMPLE, IN SUPPORT OF FINDING OF HAC IN THIS CASE, BUT THAT WAS CLEARLY DISTINGUISHABLE, WHERE HE ABDUCTED THE BOY AND RAPED HIM. HE EVEN SAID IN HIS STATEMENT TO THE POLICE, I COULD HAVE RAPED THE GIRL BUT I DIDN'T. I JUST WANTED TO TALK TO THE MOTHER. I KEPT TELLING HER I WASN'T THERE TO HURT HER.

SO NO EVIDENCE THAT SHE WAS BEING TERRORIZED AND THAT SHE WITNESSED HIM KILL HER MOTHER?

WELL, APPARENTLY SHE DID WITNESS --

DID, DIDN'T THE DAUGHTER ASK WHY ARE YOU DOING THIS TO ME?

YES, AND HE EXPLAINED THAT HE ONLY WANTED TO TALK TO HER MOTHER, THAT HE WOULD NOT HURT HER, WHICH THIS COURT HAS CITED IN OTHER CASES AS BEING IMPORTANT TO THE FINDING OF HAC.

YOU COUPLE THAT WITH HER SCREAMING, WOULDN'T YOU THINK THAT A JURY COULD DISCERN THAT SHE WAS TERRORIZED?

WELL, HERE AGAIN, I THINK WE DISAGREE AS TO WHETHER OR NOT, IF THE EVIDENCE IS JUST AS CONSISTENT WITH ANOTHER ASSUMPTION OR CONCLUSION, THEN I DON'T THINK YOU CAN DRAW THAT LOGICAL INFERENCE.

HE WAS WAITING FOR HER MOTHER AND THEN HER MOTHER COMES AND HER MOTHER IS SHOT ON THE PORCH AND DRAGGED IN BLEEDING. IS THAT --

LEAH CADAY GOT SHOT BEFORE HE DRAGGED HER IN BLEEDING. SHE WAS SHOT, APPARENTLY, IN FAIRLY RAPID SUCCESSION. THE TWO SHOTS TO ROSE, AND THEN ALTHOUGH MAYBE I AM REMEMBERING THE TESTIMONY INCORRECTLY ABOUT THE NEIGHBOR, BUT I THOUGHT THAT THE SHOT, THE THREE SHOTS THAT KILLED ROSEANNE THEN --

HIT HER LEG ON THE PORCH, THERE WAS SOME TESTIMONY.

ONE OF THE BULLETS HIT HER LEG AND ONE WENT THROUGH HER HAND INTO HER ORBITAL CAVITY.

UNDER FLORIDA LAW, IS IT PERMISSIBLE FOR THE TRIAL JUDGE UNDER THESE CIRCUMSTANCES, TO RELY ON THE STATEMENTS THAT MR. LYNCH MADE TO 911 AND TO THE POLICE OFFICERS, ABOUT THE FRIGHTENED NATURE OF THE YOUNG GIRL, EVEN THOUGH HE MAY NOT HAVE INTENDED TO FRIGHTEN HER, THAT, IN FACT, SHE WAS FRIGHTENED. WHAT WOULD BE THE STATUS, AS YOU SEE IT, OF FLORIDA LAW. HOW SHOULD THE TRIAL JUDGE LOOK AT THIS? THROUGH THE PRISM OF THE VICTIM OR THROUGH THE PRISM OF THE ACTOR OR THE PERSON CHARGED, THAT I REALLY DIDN'T INTEND TO FRIGHTEN THIS PERSON BUT IT DID HAPPEN. HOW DO YOU THINK THAT SHOULD BE VIEWED AND WHAT DO YOU THINK THE LAW IS ON THAT?

THIS COURT USED TO LOOK AT BOTH SIDES, THE EXTENT OF THE VICTIM SUFFERING AND WHETHER OR NOT THE DEFENDANT INTENDED TO CAUSE SUCH TORTUROUS SUFFERING THAT MET THE HAC STANDARD, BUT THIS COURT HAS SEEMED TO HAVE GOTTEN AWAY FROM THAT IN RECENT YEARS AND FOCUSED MUCH MORE ON JUST VICTIM RATHER THAN THE INTENT OF THE DEFENDANT. I THINK IT IS IMPORTANT. I LIKE, YOU KNOW, OBVIOUSLY THE OLDER CASE LAW, WHERE YOU DO LOOK AT THE INTENT, AND I THINK THAT IS NECESSARILY ENCOMPASSED IN THE DEFINITION OF HAC, IVINCING THAT DEPRAVED -- EVINCING THAT DEPRAVED, TORTUROUS -- DEPRAVED, TORTUROUS ACT.

CHIEF JUSTICE: I WANT TO CALL YOUR ATTENTION THAT YOU ARE IN YOUR REBUTTAL TIME.

THANK YOU. THIS COURT ALSO HAS A DUTY TO ENGAGE IN PROPORTIONALITY REVIEW AND THIS IS AN UNIQUE AND HIGHLY SERIOUS FUNCTION OF THIS COURT, AND THAT IS IN RECOGNITION THAT DEATH IS AN UNION HE CANLY -- IS AN UNIQUELY IRREVOCABLE PENALTY, REQUIRING A MORAL SCRUTINY OR PROCESS THAN LESSER PENALTIES, AND I THINK YOU NEED TO REALIZE

THAT, AT THE TIME OF THESE CRIMES RICHARD LYNCH WAS A 46-YEAR-OLD MAN WITH NO PRIOR CRIMINAL HISTORY. HE WAS A MARRIED FATHER OF TWO YOUNG SONS. BY ALL ACCOUNTS, EVEN THE STATE'S PSYCHOLOGIST, HE WAS UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL DISTURBANCE. THEY ONLY DISAGREED ABOUT THE EXTENT OF THAT DISTURBANCE, ALTHOUGH BOTH PSYCHOLOGISTS AGREED THAT THE CAPACITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW WAS IMPAIRED. THEY ONLY DISAGREED ABOUT THE EXTENT OF THAT IMPAIRMENT.

WHAT CASES DO YOU MAINTAIN CLOSELY RESEMBLE THIS, WHERE WE HAVE FOUND THAT THE SENTENCE WAS IN FACT, DISPROPORTIONATE?

RECOGNIZING THAT THIS COURT HAS NEVER ADOPTED A DOMESTIC DISPUTE EXCEPTION, BUT THOSE ARE THE CASES THAT IT IS MORE READILY COMPARED TO. ALMEIDA, SPENCER.

DO WE NOT TAKE INTO CONSIDERATION AT ALL THE FACT THAT THIS IS A DOUBLE HOMICIDE, THAT IF YOU HAD THE SITUATION, AND YOU HAD THE NO PRIOR HISTORY AND YOU HAD ROSE MORGAN, BUT HOW CAN WE IGNORE THE FACT THAT A TOTALLY DEFENSELESS YOUNG GIRL WAS, ALSO, KILLED, AND THAT THAT IS CERTAINLY A VALID AGGRAVATOR FOR THE ROSE MORGAN MURDER? DOESN'T THAT CHANGE THE PROPORTIONALITY REVIEW?

WELL, IT DOES. I WILL CONCEDE THAT. YOU SHOULD, YOU CANNOT, YOU SHOULD NOT IGNORE THAT, BUT THIS WAS BEFORE THIS UNFORTUNATE, TRAGIC DAY, THAT SPIRALED OUT OF CONTROL, ALL OF THE, INCLUDING THE SECOND HOMICIDE, ALL OF THESE EVENTS, REALLY, OCCURRED SPUN OUT AND THE AGGRAVATING FACTORS ALL APPLY TO THAT 45 MINUTES, YOU KNOW, AND I THINK TO SOME EXTENT, THAT, ALTHOUGH IT DOESN'T IGNORE THE SECOND HOMICIDE, IT LESSENS THE EMPHASIS AND THE APPROPRIATENESS OF THE DEATH PENALTY, WHEN YOU LOOK AT A 46-YEAR-OLD MAN.

WHEN YOU COMPARED IT TO ALMEIDA, ALMEIDA WAS NOT, WAS THERE MORE THAN --

NO. THAT WAS A SINGLE HOMICIDE. YOU ARE RIGHT. BUT I BELIEVE --

NO CCP IN ALMEIDA.

WELL, THAT'S CORRECT. IT WAS NOT FOUND, AND I DON'T THINK IT SHOULD BE FOUND HERE, NOR SHOULD THE HAC. SO THAT, I THINK THE, ARGUABLY YOU ONLY HAVE TWO VALID AGGRAVATING FACTORS FOR EACH HOMICIDE, BUT I THINK THAT THAT IS IMPORTANT THAT, TO LOOK AT THE FACT THAT THIS ALL AROSE IN BASICALLY AN HOUR, AND THAT IS WHAT THE ENTIRE SITUATION AND ALL THE AGGRAVATORS WERE LAID TO THAT ONE HOUR. THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS DOUGLAS SQUIRE, AND I REPRESENT THE STATE. NOT TO BE LABOR THE FACTS, BUT TO TRY AND HELP CLARIFY THEM, I AM SURE YOU ARE FAMILIAR, THE RECORD SHOWS THAT THERE WERE TWO WITNESSES, NOT WITNESSES BUT TWO NEIGHBORS THAT TESTIFIED. THE ONE NEIGHBOR WHO DID SEE THROUGH THE PEOPLE WHO AND THE OTHER NEIGHBOR, WHO HEARD THE GUN SHOTS, TESTIFIED THERE WERE FOUR OR FIVE GUNSHOTS. THE NEIGHBOR ACROSS THE HALL, I BELIEVE HER NAME WAS MISS LAVOY, SHE CAME TO THE PEOPLE WHO AND WITNESSED THE APPELLANT DRAGGING ROSE, THE ADULT VICTIM, BACKWARDS DOWN THE STAIRWELL, BECAUSE MOST OF THE BLOOD WAS ACTUALLY CLOSER TO THE STAIRWELL STAIRWELL. THERE IS NO EVIDENCE HE HEARD FOOTSTEPS. IT WAS MORE PROBABLE THAT ROSE WAS TRYING TO FLEE OR AT LEAST ONCE THE SHOOTING STARTED, SHE ATTEMPTED. FURTHER, OF THOSE FIVE SHOTS, SHE WAS STRUCK THREE TIMES, CAUSING FOUR INJURIES. ONE BULLET WENT THROUGH BOTH LEGS, AND THEN THE NEIGHBOR AT THE PEOPLE WHO -- AT THE PEOPLE WHO -- AT THE PEEP HOLE, HEARD SOMEBODY SCREAMING GOD, PLEASE HELP ME. SHE WOULD NOT HAVE BEEN ABLE TO DO THIS WITH A BULLET THROUGH HER LEFT HAND, EYE, JAW AND NECK AND AT THAT POINT HE WAS KNOCKING ON THE DOOR AND VERY DELIBERATELY AND CALMLY WAS ABLE

TO CONVINCING LEAH TO OPEN THE DOOR. THEN FIVE-TO-SEVEN MINUTES LATER ACCORDING TO BOTH NEIGHBORS, THERE WERE THREE MORE GUNSHOTS. WE DON'T KNOW THE SEQUENCE, EXCEPT FOR THE COULD YOU DAY FLORIDA. -- FOR THE COUPE DE. GRAS.

WHEN SHE FIRST WALKED INTO THE DOOR, SHE WOULD HAVE SEEN THE DEFENDANT AND THEN RUN OUT AND THEN HE SHOT HER TWICE IN THE LEGS, AS SHE WAS RUNNING OUT?

NO. THE VERSION THAT IS IN THE RECORD IS APPELLANT'S, AND THAT IS THAT SHE NEVER ACTUALLY ENTERED THE APARTMENT, THAT HE KEPT TRYING TO GET HER TO COME IN, THAT SHE WAS PLEADING FOR HIM TO LET HER DAUGHTER GO AND THAT HE DIDN'T, AND HIS VERSION IS HE THEN HEARD FOOTSTEPS AND SHOT HER BY ACCIDENT AND THAT THE GUN REPEATEDLY WENT OFF, AND WE KNOW FROM THE FIRE ARMTION EXPERT THAT IS NOT POSSIBLE.

BUT THE TWO GUNSHOTS TO THE LEGS WERE DONE OUTSIDE IN THE HALLWAY?

ACCORDING TO THE RECONSTRUCTION, ALL OF THE SHOTS WERE FIRED FROM IN THE APARTMENT TOWARD THE DOOR. BUT ACCORDING TO THE EMTs, THE, MOST OF THE BLOOD IN THE HALLWAY WAS CLOSER TO THE STAIRWELL, SO ROSE MUST HAVE BEEN ATTEMPTING TO FLEE, BUT THERE IS NOTHING IN THE RECORD TO SHOW WHAT STARTED THE SEQUENCE OF SHOTS, AS FAR AS IF HE HEARD FOOTSTEPS OR SHE TURNED TO LEAVE, AND THE BULLETS WERE IN A VERY ODD ENTRY PATTERN BECAUSE ONE THEY COULDN'T REALLY IDENTIFY THE ANGLE, AS FAR AS HIS ELEVATION.

BUT THE STATE'S THEORY, EVEN IF, I KNOW YOU ARE TRYING TO CLARIFY WHAT HAPPENED, BUT WAS THAT HE CAME TO THAT APARTMENT TO EVENTUALLY CONFRONT ROSE, KILL HER, AND THEN KILL HIMSELF.

YES. IF YOU BARE WITH ME, I WAS JUST TRYING TO, THAT THERE WERE WITNESSES. I MEAN, WE DON'T JUST HAVE TO RELY ON APPELLANT'S VERSION OF EVENTS. AND THEN AFTER SEVEN MORE MINUTES OF BEING IN THE APARTMENT WITH HIM, THERE WERE THREE SHOTS, AND THOSE THREE SHOTS WERE, BECAUSE SHE COULDN'T HAVE BEEN SCREAMING IN THE HALLWAY, AND HE WOULD NOT HAVE BEEN ABLE TO SHOOT DOWN THROUGH HER HEAD, AND THERE IS NO CLAIM THAT WAS AN ACCIDENT, BECAUSE SHE HAS A DEFENSIVE WOUND. I MEAN, SHE SAW IT COMING. IT WENT DOWN THROUGH HER LEFT HAND, THROUGH HER LEFT EYE, THROUGH HER JAW AND THEN OUT HER NECK. LEAH WAS SHOT WITH THE .45 ALSO, FROM 18 INCHES TO TWO FEET AWAY, THROUGH THE BACK, AND THEN THE THIRD SHOT WOULD HAVE BEEN, AS HE ADMITS, HE HAD TO GO GET A SECOND GUN, BECAUSE APPARENTLY THE GLOCK WAS EMPTY. AND SHOT HER IN THE BACK OF THE HEAD WITH THE .38. AND HE DID EVENTUALLY END UP USING THE THIRD GUN, THE 9 MM, TO PREVENT THE POLICE FROM ENTERING THE APARTMENT. HE WAS ABLE TO, AGAIN, VERY CALMLY AND DELIBERATELY ANALYZE WHICH GUN WAS THE LEAST LIKELY TO GO THROUGH THE DOOR, AND THAT IS HOW HE EXPLAINS, DURING THE TELEPHONE CONVERSATIONS AND DURING THE POLICE INTERVIEW, HOW THE SHOOTING WENT.

WHAT WAS THE TESTIMONY ABOUT THE CONDITION OF THE DAUGHTER, WHILE SHE WAS BEING HELD THERE?

IF WE GO BACK EARLIER, HE DID WE KNOW FROM THE NEIGHBOR, THAT HE WAS WAITING FOR HER, AND DESCRIBED BY APPELLANT AS LURKING, AND HE WAS ABLE, I GUESS, TO SHOW HER THE GUN AND GAIN ENTRY TO THE APARTMENT. FOR 30-TO-40 MINUTES THEY SAT THERE, WAITING FOR THE MOTHER. DURING THAT TIME HE CALLED HIS WIFE. APPARENTLY THE FIRST TIME JUST AN ANSWER ERRING MACHINE. THE WIFE PICKED IT UP THE SECOND TIME, AND WHILE HE WAS TELLING HER THAT HE WAS SORRY FOR WHAT HE WAS ABOUT TO DO AND APPARENTLY HE WAS GOING TO DO SOMETHING TERRIBLE, SHE COULD HEAR A YOUNG WOMAN SCREAMING IN THE BACKGROUND. SHE COULDN'T REALLY SAY WHAT SHE WAS SAYING, BUT IT WAS PRETTY MUCH A CONTINUOUS SCREAMING, AND WE KNOW FROM KELLY LAWSON AND LEAH'S FATHER, THAT SHE

WAS AFRAID OF APPELLANT. SHE HAD ANSWERED THE PHONE ONE TIME WHEN KELLY WAS THERE WHEN APPELLANT HAD CALLED. AFTER SHE HUNG UP, THE FATHER GOT THE FAMILY INTO THE LIVING ROOM AND COUNSELED THEM ABOUT NOT OPENING THE DOOR, BEING VERY CAREFUL ABOUT WHO THEY LET IN, AND THAT THEY SHOULD AVOID THE APPELLANT BECAUSE HE WAS DANGEROUS, AND ACCORDING TO HER CLASSMATE AND HER FATHER, SHE WAS VERY SCARED OF HIM, SO IF HE IS HOLDING HER FOR APPROXIMATELY 40 MINUTES WITH A GUN, THERE IS NO REASON FOR HER TO BELIEVE HIS CLAIM THAT HE SAID HE WAS JUST WAITING TO TALK TO HER MOTHER. WHY A GUN WOULD HAVE BEEN NECESSARY IS UNREASONABLE.

WHAT ABOUT THE 911 CALLS? WAS THERE EVIDENCE OF A 911 CALL THAT HE MADE?

YES. THERE IS ACTUALLY TRANSCRIPTS OF THE ONE THE WIFE MADE, DESCRIBING THE PHONE CALLS FROM HIM, BECAUSE HE CALLED THE WIFE A SECOND TIME AFTER THE SHOOTINGS. AND THEN WHEN HE CALLED 911, HE WAS VERY UNEMOTIONAL AND VERY CALM, AND THEY TRIED DESPERATELY TO, IN THE BEGINNING THEY WERE MORE CONCERNED ABOUT GETTING AID FOR THE VICTIMS AS OPPOSED TO HIS CLAIM THAT HE WAS GOING TO KILL HIMSELF, BUT HE WAS VERY SURE THAT THEY WERE BOTH DEAD, AND HE REFUSED TO ALLOW ANYONE TO ENTER FOR, I BELIEVE, OVER HALF AN HOUR, BECAUSE I THINK THE FIRST CALL CAME IN AT 5:23, EITHER FROM HIS WIFE OR FROM HIM AND HE HAD BEEN THERE SINCE BEFORE FIVE.

WOULD YOU ADDRESS, ON THE HAC AS TO THE YOUNG GIRL, WE HAVE HAD SOME RECENT CASES THAT HAVE COME FROM THIS COURT, RANGING FROM FRANCIS, THE TWO SISTERS, TO FARINA, TO REMMER. REMMER CAME OUT NOT LONG AGO, AND REMMER WAS TWO INDIVIDUALS, AND THE SECOND INDIVIDUAL TO BE SHOT, THE MAJORITY OF THIS COURT HELD THAT IT WAS NOT HAC. HOW WOULD YOU DISTINGUISH, HOW WOULD YOU APPROACH THIS CASE AND DISTINGUISH THAT SUFFICIENTLY FROM REMMER, SO THAT REMMER WOULD NOT BE THE CONTROLLING AUTHORITY?

I ACTUALLY HAVE TO APOLOGIZE FOR NOT HAVING REMMER WITH ME, BUT I DO KNOW THE ONE YOU WERE TALKING ABOUT, WHAT WAS IT, FRANCIS?

THE TWO SISTERS. AND FARINA WAS THE TAKING THE EMPLOYEES INTO THE STORE, THE RESTAURANT.

RIGHT.

REMMER WAS THE AUTO, THE FELLOW THAT WAS UPSET ABOUT HIS, THE SOUND SYSTEM IN HIS CAR, AND HAD ADDRESSED THAT.

AS FAR AS FRANCIS, THIS COURT RULED THAT THE DOUBLE HOMICIDE OF THE TWIN SISTERS, EVEN THOUGH THEY REMAINED CONSCIOUS FOR AS LITTLE AS A FEW SECONDS TO A FEW MINUTES, YOU FOUND HAC FOR BOTH, BECAUSE THE FIRST VICTIM WOULD HAVE FEARED FOR HERSELF AND FOR WHAT WOULD HAVE HAPPENED TO HER TWIN, AND THE SECOND VICTIM, WHICHEVER ONE THAT WAS, WOULD HAVE WITNESSED THE BRUTAL MURDER OF HER SISTER AS WELL AS FEARING FOR HERSELF, SO LEAH HAD TO WATCH HER MOTHER BRUTALLY SHOT IN THE HALLWAY AND THEN SPEND SEVEN MORE MINUTES, FOR WHICH THERE CAN BE NO CLAIM THAT SHE STILL BELIEVED HE WAS JUST THERE TO TALK, BEFORE SHE THEN SAW HER MOTHER SHOT THROUGH THE FACE, AND BY THE TIME HE CALLED 911, THEY WERE BOTH DEAD, SO WE KNOW THAT SHE DID, SHE HAD TO HAVE BEEN ALIVE TO OPEN THE DOOR, SO WE KNOW THAT THE VERSION OF EVENTS OF APPELLANT THAT SHE WAS SHOT BEFORE HE EVER WENT INTO THE HALLWAY CAN'T BE TRUE, BECAUSE WHO WAS HE ASKING TO OPEN THE DOOR, AND I BELIEVE THE STATE OFFICER RELIED ON, I APOLOGIZE FOR NOT HAVING REMMER, HINYARD. IT WAS VERY SIMILAR TO THIS CASE CONFINEMENT OF A MOTHER AND TWO DAUGHTERS. I BELIEVE THEY WERE ACTUALLY ABDUCTED. THE MOTHER WAS SHOT IN THE LEG AND THEN SHOT IN THE HEAD THREE TIMES AND THEN THE DAUGHTERS WERE DRIVEN AWAY AND BOTH KILLED BY SINGLE GUNSHOTS

AND WOULD HAVE DIED VERY QUICKLY. THIS COURT HELD HAC, BECAUSE MIRACULOUSLY IN THE DOUBLE MURDER, THE MOTHER SURVIVED.

CLARIFY, IF YOU CAN, I AM NOT SURE I UNDERSTAND COMPLETELY, YOUR OPPONENT SUGGESTS THAT TESTIMONY OF THE WIFE WAS THAT THE DAUGHTER WAS JUST TALKING LOUDLY IN THE BACKGROUND, WHILE, AND SO IS THAT A FAIR CHARACTERIZATION OF WHAT THE WIFE HEARD, OR WAS IT, DID SHE SAY THAT THERE WAS SOME SCREAMING?

I BELIEVE IT IS PAGES 93 AND 95 OF THE RRD THAT SHE -- OF THE RECORD THAT SHE, TWICE, DESCRIBED IT ASTINUOUS SCREAMING.

SHE ACTUALLY USED THE -- AS CONTINUES SCREAMING.

SHE TWICE DESCRIBED IT AS SCREAMING, IS THAT CORRECT?

YES, AND THE 911 OPERATOR, SHE ACTUALLY HEARD RICHARD, THE APPELLANT, TELL WHOEVER WAS IN THE APARTMENT SCREAMING, NOT TO DO SOMETHING OR NOT TO GO NEAR THE DOOR. THERE IS NO BASIS TO BELIEVE THAT THE DAUGHTER WASN'T, AS APPELLANT HIMSELF REPEATEDLY DESCRIBED, SCARED TO DEATH AND PETRIFIED.

HE WAS CONVICTED OF KIDNAPING ALSO, IS THAT CORRECT?

HE PLED GUILTY TO ALL FOUR COUNTS. AS FAR AS THE CCP, THESE FACTS ACTUALLY STARTED ON MARCH 3, AND THAT IS WHEN HE WROTE THE LETTER AND IN THE LETTER HE SAID THIS WAS NOT GOING TO BE A RANDOM ACT OF VIOLENCE. SUICIDES AREN'T RANDOM, SO HE WASN'T SPEAKING ABOUT HIMSELF. HE ALSO WANTED HIS WIFE TO SEND PHOTOS AND THINGS TO THE PARENTS AND ALTHOUGH THIS MAY HAVE, WOULD HAVE HAD AN EFFECT ON THE OPINION OF THEIR DAUGHTER, THERE IS NO CONNECTION BETWEEN HUMILIATING AND EMBARRASSMENT, WITH CLOSURE. THAT WOULD HAVE INSTIGATED SOMETHING. THAT WOULD NOT HAVE CLOSED ANYTHING. AND WHEN YOU COMBINE THAT WITH PAY THE PRICE AND RANDOM ACT OF VIOLENCE, AND THE DEFENDANT'S CONDUCT ON THE FIFTH, IT IS PERFECTLY SUPPORTED THAT THE INFERENCES BY THE DOCTOR IN THE LETTER WAS THAT HE INTENDED TO KILL ROSE. AND WHEN HE IS TALKING TO THE 911 OPERATOR, HE SAID I WAS GOING TO KILL MYSELF, TOO, BECAUSE I DIDN'T WANT TO BE ON TV IN THAT MONKEY SUIT OR ORANGE SUIT.

WHAT ROLE DOES THE FACT THAT THEIR CREDIT CARD DEBTS HAVE IN THIS, AS FAR AS HIS MOTIVE TO COME SEEING HER THAT DAY?

WELL, THAT IS, I BELIEVE WAS THE MOTIVE. HE, THE BREAK UP WAS ALMOST A MONTH BEFORE. HE KNEW THE RELATIONSHIP WAS OVER. THEY WERE BOTH MARRIED. SHE HAD RETURNED TO HER HUSBAND. HE WAS UPSET THAT SHE WASN'T PAYING THE CREDIT CARD BISAND THAT WAS GOING TO RUIN HIS LIFE. THAT WAS GOING TO GET HIM KICKED OUT OF THE HOUSE. THAT WAS GOING TO GET HIM TO LOSE CUSTODY OF HIS SONS, BUT THERE IS NO POSSIBLE CLAIM THAT THAT IS A PRETENSE FOR A LEGAL OR MORAL JUSTIFICATION TO --

NO. I WASN'T SUGGESTING THAT. I WAS THINKING, IF HIS DEFENSE WAS THAT HE WAS COMING THERE JUST TO KILL HIMSELF, THAT WASN'T REALLY GOING TO HELP DO ANYTHING WITH THE CREDIT CARD DEBT, SO I WAS JUST TRYING TO FIGURE OUT WHERE THAT CREDIT CARD DEBT FIT INTO EITHER OF STATE'S THEORY OR THE DEFENSE THEORY.

I BELIEVE THAT WOULD BE THE DEFENSE THEORY. I DON'T, YOU KNOW, THE CREDIT CARD DEBT WAS MORE OF WHY HE WAS ADDITIONALLY UPSET WITH HER WITH HAVING LEFT, NOT HOW HIS SUICIDE I DON'T KNOW HOW HIS SUICIDE WOULD HAVE AFFECTED THE CREDIT CARD DEBT. SORT OF HIS CLAIM, YES.

COULD YOU ADDRESS WHETHER IT MAKES A DIFFERENCE IN OUR EVALUATION OF THE CASE PROPORTIONALITY, WHETHER JUDGE EATON FOUND THE STATUTORY MITIGATOR OF ACTING UNDER EXTREME EMOTIONAL DURESS OR FOUND IT AS A NONSTATUTORY MITIGATOR. DOES THE STATE'S POSITION THAT IT MAKES A DIFFERENCE AND THAT IT IS PROPORTIONAL IN EITHER HE HAVEENT?

NO. THE SPECIFIC -- IN EITHER EVENT?

NO. THE STATE'S TESTIMONY FROM DR. RICE WAS THAT IT WAS MORE CREDIBLE BUT NOT EXTREME AND THAT THERE WAS AN IMPAIRMENT BUT NOT SUBSTANTIAL. THE DEFENSE OR THE APPELLANT HAS ATTEMPTED TO CREATE CONFUSION, BECAUSE IN THE SUMMARY OF THE ORDER THEY SIMPLY HAVE, I GUESS IN FORM, TYPED IN THE STATUTORY AND THE WEIGHT THAT WAS GIVEN, BUT IT IS CLEAR FROM THE ORDER THAT THESE WERE FOUND AND THAT THEY WERE WEIGHED AND THAT THEY WERE FOUND NOT TO BE EXTREME AND NOT SUBSTANTIAL, SO THERE IS NO DIFFERENCE.

WHETHER YOU CALL IT STATUTORY OR NONSTATUTORY, IT IS THAT IT IS NOT GIVEN GREAT WEIGHT BY THE JUDGE. IT IS GIVEN MODERATE, FOUND BUT GIVEN MODERATE WEIGHT, SO WE KNOW THAT HIS MENTAL STATE WAS CERTAINLY A FACTOR IN WHAT HAPPENED THIS DAY. IF THE STATE SAYS HE WAS GOING TO COMMIT SUICIDE, WE KNOW THAT HE WAS CERTAINLY ACTING UNDER EMOTIONAL DISTURBANCE.

CORRECT. IT WAS FOUND, AND IT WAS WEIGHED.

WHY WOULDN'T -- AND I DON'T KNOW IF IT MATTERS FOR PROPORTIONALITY, BUT IF THE STATE'S THEORY WAS THAT HE WAS GOING TO KILL HIMSELF, WHY WOULDN'T THAT MEAN THAT HE WAS, THAT DAY, HIS MENTAL STATE WAS ONE OF EXTREME EMOTIONAL DISTURBANCE?

THE DOCTOR SAID THAT HE MAY HAVE INTENDED TO KILL HIMSELF, BUT IN THIS CASE HE DID NOT, SO HE WAS UNDER A DISTURBANCE, AND MODERATE WEIGHT WAS ASSIGNED TO THAT, BUT ACCORDING TO EVERYTHING THAT HE DID, THERE WAS NOTHING EXTREME ENOUGH OR SUBSTANTIAL ENOUGH TO, OF A DISTURBANCE, TO PREVENT HIM FROM VERY CAREFULLY PLANNING AND CARRYING OUT THESE MURDERS, BECAUSE THIS WAS, AGAIN, DOUBLE HOMICIDE, AND HE, HIS CLAIMS OF ACCIDENT ARE REFUTED BY THE FIRE ARMS EXPERT, SO I AM TRYING TO REMEMBER T WAS ROBINSON. EVEN THOUGH HE HAD, IN THE PROPORTIONALITY IN THE BRIEF, EVEN THOUGH IT WAS FOUND THAT HE HAD BRAIN DAMAGE, THE EVIDENCE INDICATED THAT THE DELIBERATE PLAN, AND THAT HE WAS COGNIZANT OF HIS ACTIONS, AND IN THIS CASE WE HAVE A VERY DELIBERATE PLAN, AND HE WAS LAYING IN WEIGHT. THIS THING TOOK A LONG TIME TO TRANSPIRE. ALTHOUGH HE SAYS THIS HAPPENED IN AN HOUR, SHOOTINGS DON'T USUALLY TAKE AN HOUR. I MEAN THIS WAS SOMETHING WHERE HE HAD TO LAY IN WEIGHT. THAT SHOWS HEIGHTENED PREMEDITATION. CALCULATION. THE WHOLE CCP. OTHER THAN THAT, THE STATE WOULD STAND ON ITS ARGUMENT IN ITS BRIEF AND ASK THAT YOU AFFIRM THE SENTENCES.

CHIEF JUSTICE: THANK YOU. COUNSEL. HOW MUCH TIME DOES COUNSEL HAVE?

JUST ONE THING. I WOULD DISPUTES -- DISPUTE THE CHARACTERIZATION OF THE 911 CALL WHERE HE SOUNDED CALM. I THINK THAT, IF YOU, I LISTENED TO IT ON THE WAY UP HERE YESTERDAY, AGAIN, AND AT POINTS IN THAT CONVERSATION, HE BECOMES VERY EMOTIONAL, AND THE 911 OPERATOR DID OUTSTANDING WORK IN TALKING HIM OUT OF KILLING HIMSELF, BECAUSE THAT CLEARLY WAS WHERE HE WAS HEADED. THANK YOU.

CHIEF JUSTICE: ALL RIGHT. THANK YOU BOTH VERY MUCH.