

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS IN
SESSION.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
THE FIRST CASE ON OUR DOCKET
TODAY IS MCMILLIAN VERSUS THE
STATE OF FLORIDA.

>> THANK YOU, YOUR HONOR.
I'M REPRESENTING MR. MCMILLIAN.
>> SPEAK UP A LITTLE BIT.
>> HOW'S THAT?
>> THAT'S BETTER.

>> OKAY.
MR. MCMILLIAN WAS SENTENCED TO
DEATH FOR THE MURDER OF DANIELLE
STUBBS.
WE RAISED THREE ISSUES IN THE
BRIEF.
I'D LIKE TO FOCUS ON TWO OF THOSE
TODAY, THE FIRST AND THE THIRD.
BEFORE WE GET INTO THE ARGUMENT
I'D LIKE TO GIVE A BRIEF RECAP OF
THE FACTS SO THAT WE'RE ALL ON THE
SAME PAGE.
JUSTIN MCMILLIAN HAD BEEN DATING
THE VICTIM FOR ABOUT EIGHT
MONTHS.
HE MET HER IN THE SPRING OF '08.
HE HAD JUST GOTTEN BACK FROM
A -- HE WAS A CIVILIAN EMPLOYEE
IN IRAQ AND AFGHANISTAN FOR TWO
AND A HALF YEARS.
HE HAD JUST GOTTEN BACK.
HE'D SEPARATED FROM HIS WIFE IN
GEORGIA.
HE HAD TWO SMALL KIDS AND THEY
BEGAN DATING.
THEY DATED FOR EIGHT MONTHS.
THE WEEK -- BY ALL ACCOUNTS, THEY
HAD A LOVING, CLOSE
RELATIONSHIP.
THERE'S NO INDICATION OF ANY TYPE
OF DIFFICULTIES BETWEEN THEM.

HE WAS CLOSE TO HER FAMILY, SPENT VACATIONS WITH HER FAMILY AND SO FORTH.

THEY WERE BOTH NAVY FAMILIES. THE WEEK BEFORE SHE WAS KILLED, SHE MOVED INTO ANOTHER APARTMENT.

HE HELPED HER ALONG WITH HER FAMILY MOVE INTO THAT TOWNHOUSE. SHE WAS KILLED LATE -- EARLY SUNDAY MORNING AND THAT FRIDAY DURING THE MOVE HE WENT TO LUNCH WITH HER AND HER MOTHER AND HER MOTHER TESTIFIED AT TRIAL THAT HE TOLD HER AT THAT POINT THAT THEY WERE BREAKING UP, THAT SHE WAS DONE WITH THE RELATIONSHIP. HE SAID HE WAS MOVING BACK TO GEORGIA TO SEE ABOUT HIS KIDS. AND HE ALSO INDICATED AT SOME POINT THAT HE WAS HEADING BACK TO IRAQ IN THE NEXT MONTH OR SO.

>> AS FAR AS WHAT HE TESTIFIED TO, I THOUGHT -- DID HE SAY HE WAS BREAKING UP WITH HER?

SHE WAS AT THE LUNCH, THE VICTIM. >> SHE WAS THERE.

>> I MEAN, IT WAS HER THANK YOU LUNCH.

>> YES.

THEY WERE ALL THERE.

IT'S NOT CLEAR WHETHER SHE WAS PRESENT DURING THIS CONVERSATION WITH THE MOTHER.

>> THE POINT IS THAT IT SOUNDED TO ME, I GUESS, AND WE CAN LOOK EXACTLY HOW IT WAS SAID, IS THAT HE WAS LEAVING HER TO GO BACK TO GEORGIA AND THEN TO IRAQ RATHER THAN SHE WAS DUMPING HIM.

>> IT'S NOT CLEAR.

THERE'S SOME INDICATION THAT SHE WAS ENDING IT, BUT SHE WAS ENDING IT BECAUSE HE WAS LEAVING.

SHE WANTED TO GET MARRIED.

HE WAS LEAVING.

HE HAD HIS KIDS TO DEAL WITH.

THAT'S NOT CLEAR.

WE DON'T REALLY HAVE HER TESTIMONY ABOUT THAT, OBVIOUSLY.

>> BUT YOU'RE NOT SAYING -- WAS THERE ANY INDICATION FROM THE RECORD THAT HE WAS EMOTIONALLY UPSET?

>> NO.

THERE'S NO INDICATION THAT HE WAS ANGRY OR UPSET ABOUT THE BREAKUP.

>> AND HE WASN'T UPSET ABOUT HER GOING OUT WITH THESE -- THIS OTHER MAN AND HAVING SEX WITH HIM?

>> THAT COMES LATER.

WE'RE STILL AT FRIDAY.

IF I COULD JUST GO THROUGH THE TIME LINE A LITTLE BIT.

SO SATURDAY HE GOES TO THE RACES.

I'M GOING TO GET THERE REALLY QUICK.

HE GOES TO THE RACES.

SHE'S -- SHE GOES OUT SATURDAY NIGHT WITH SOME FRIENDS, WORK FRIENDS.

HE'S WITH HIS SISTER AND THEN HIS SISTER AND BROTHER.

THIS IS LIKE 2:00, 3:00 A.M.

SHE'S WITH HER WORK FRIENDS.

HE'S WITH HER SISTER AND BROTHER.

SHE HAS SEX WITH A FRIEND, A MAN THAT NIGHT.

HE GIVES HER A RIDE HOME.

HE DROPS HER OFF 3:30, 3:45 A.M.

OKAY?

AND HIS CAR IS AT THE TOWNHOUSE WHEN THIS MORRIS DROPS HER OFF, OKAY?

AND THEN THAT'S WHEN THE MURDER OCCURS.

>> WAS HE ALREADY INSIDE THE TOWNHOUSE?

BECAUSE I THOUGHT THERE WAS SOME -- THERE WAS NO INDICATION THAT THEY SAW SOMEONE IN THE TOWNHOUSE -- IN HIS CAR, AND SO WAS HE IN THE TOWNHOUSE?

ALTHOUGH HE SAID HE DIDN'T HAVE A KEY.

>> WELL, WE DON'T KNOW.

WE DON'T KNOW AND WE DON'T KNOW BECAUSE HE -- I CAN TELL YOU WHAT HE SAID, WHAT HIS STATEMENTS ARE.

WHEN MORRIS DROPPED HIM OFF, HE DIDN'T SEE ANYBODY IN THE CAR, DIDN'T SEE ANYBODY STANDING AROUND THE CAR.

HE DROPS HER OFF.

SHE WALKS UP TO THE DOOR BY HIS CAR AND WAVES GOODBYE.

SHE OBVIOUSLY SEES THAT HER BOYFRIEND OR EX-BOYFRIEND'S CAR

IS THERE.

AND HE TESTIFIES THAT HE'S IN THE CAR WHEN SHE'S DROPPED OFF AND THAT HE OPENS HIS DOOR, THEY HAVE A CONVERSATION, THEY GO INSIDE, THEY HAD SEX, THEY GO UPSTAIRS AND THERE'S SOME SORT OF HEATED CONFRONTATION.

HE GIVES -- HE SAYS HE LOST IT.

>> WELL, LET'S GO -- THE KEY IS -- THE PERSON THAT DROPS HIM OFF, THE VEHICLE IS THERE.

>> YES.

>> THE DEFENDANT GIVES HOW MANY DIFFERENT VERSIONS OF WHAT HAPPENED?

>> HE GIVES A VERSION OF WHAT HAPPENED TO THE POLICE.

THERE'S THE SHOOTOUT, OF COURSE, AND HE'S IN THE HOSPITAL FOR TWO WEEKS IN A COMA.

THIS HAPPENS TWO DAYS AFTER THE MURDER.

THE DAY HE GETS REMOVED FROM ICU THE POLICE GO IN AND QUESTION HIM AND THAT STATEMENT HE INITIALLY DENIES IT AND THEN HE SAYS, YES, AND HE SAYS HE WAS IN THE CAR, SHE CAME HOME, SHE GO INSIDE, THEY HAVE SEX DOWNSTAIRS.

THEY GO UPSTAIRS.

HE SAYS HE LOST IT.

HE SHOT HER WHILE SHE WAS ON THE BED.

HE SHOT HER ONCE AND SHE ROLLED AND HE SHOT HER AGAIN.

THAT'S WHAT HE -- HE SAYS HE WANTED TO TAKE HIS LIFE, BUT HE COULDN'T.

THAT'S WHAT HE SAYS IN THE HOSPITAL.

>> BUT I GUESS I'M ASSUMING THIS IS ALL GOING TO WHETHER THE JURY FOUND PREMEDITATED MURDER.

>> YES.

>> THAT YOU'RE SAYING THERE WASN'T ENOUGH HERE TO ESTABLISH PRE-MEDICATION?

>> THAT'S CORRECT.

I MEAN, OUR POSITION IS BASED ON THE FACTS WE HAVE, THERE'S A REASONABLE HYPOTHESIS THAT THEY WERE UPSTAIRS, THERE WAS A HEATED CONFRONTATION.

EITHER BECAUSE THEY WERE TALKING

ABOUT THIS MAN SHE'D BEEN
SLEEPING WITH.
HE FOUND OUT SHE WAS SLEEPING
WITH ANOTHER MAN, AND HE LOST IT
OUT OF JEALOUSY, RAGE, I DON'T
KNOW, FEELINGS OF ABANDONMENT.
HE OBVIOUSLY -- I MEAN, DR. CROP
TESTIFIED THAT --
>> WELL, LET'S JUST GO OVER THIS.
HE SHOT HER.
>> YES.
>> WHETHER SHE HAD SEX BEFORE,
WHETHER THEY HAD THE HEATED
CONFRONTATION DOWNSTAIRS OR
UPSTAIRS, THE GUN -- HE HAD TO
GET THE GUN FROM WHEREVER --
>> YES.
>> OR HE HAD IT WITH HIM.
>> YES.
>> AND HOW DID HE SHOOT HER?
>> HE EITHER HAD IT WITH HIM OR
IT WAS ON THE DRESSER.
BUT HE CARRIED A GUN.
>> HOW WAS SHE SHOT?
>> SHE WAS IN THE BED WHEN SHE WAS
SHOT THE FIRST TIME.
>> SHE WAS FACEDOWN OR WAS SHE
FACEUP?
>> SHE WAS FOUND BESIDE THE BED.
>> BUT I GUESS THE FORENSIC -- I
GUESS HERE'S MY PROBLEM WITH YOUR
ARGUMENT.
>> YES.
>> YOU'RE A VERY EXPERIENCED
APPELLATE ATTORNEY, AND YOU
ALWAYS BRING INTERESTING ISSUES
TO US, BUT I DON'T SEE -- THIS
ISN'T EVEN CLOSE TO LIKE A
DOMESTIC, THAT THERE'S NOT
ENOUGH FOR PREMEDITATED MURDER.
I DON'T THINK THEY FOUND CCP
HERE.
WE'RE NOT TALKING ABOUT
HEIGHTENED PREMEDITATION.
>> RIGHT.
>> THAT MAY BE A GOOD ARGUMENT IF
YOU SAID THE CCP ISN'T JUSTIFIED.
BUT FOR THE LIFE OF ME, I CAN'T
SEE HOW WITH PREMEDITATION IN THE
INSTRUCTION THAT IT CAN
BE -- THAT THE INTENT CAN BE
FORMED, YOU KNOW, MOMENTS
BEFORE, THAT THIS ISN'T A
PREMEDITATED MURDER.
>> WELL, HE SAYS HE LOST IT, HE

REACTED.

WE'VE GOT SEVERAL CASES WHERE IT WAS A --

>> BUT, AGAIN, WHAT DOES THE JURY HAVE -- I THOUGHT -- AND YOU -- WHAT'S THE STATEMENT THAT HE GIVES THAT'S THE LEAST FAVORABLE TO HIM?

THAT THE JURY WOULD HAVE HEARD. OTHER THAN JUST THAT HE SOMEHOW LOST IT AND THE GUN HAPPENS JUST TO BE THERE AND HE DOESN'T SAY IT'S DISCHARGED ACCIDENTLY. HE DOESN'T SAY THEY WERE IN A FIGHT.

HE DOESN'T SAY THAT SHE WAS CLAWING AT HIM.

>> HE SAYS IT WAS A HEATED -- YEAH.

IT WAS A HEATED DISCUSSION. HE GRABBED THE GUN AND HE JUST FIRED IN REACTION.

IT WAS A REFLEXIVE REACTION.

PREMEDITATION REQUIRES CONSCIOUS FORMATION OF INTENT.

>> IN THE STATEMENT HE GAVE AT THE HOSPITAL, THE TAPED STATEMENT THAT WAS PLAYED TO THE JURY, IN THAT STATEMENT DID HE NOT SAY THAT IT WAS NOT OUT OF ANGER? THEY WERE NOT ARGUING? THEY WERE NOT FIGHTING?

>> I DON'T BELIEVE SO.

>> DIDN'T HE SAY THAT? BECAUSE THAT WOULD BE AN INCONSISTENT STATEMENT TO HIS POSITION AT THE TRIAL.

>> I DO NOT RECALL HIM SAYING -- HE DID IN HIS TRIAL TESTIMONY SAY, WELL, HE WASN'T ANGRY, HE WAS -- HE REACTED.

>> I BELIEVE IN HIS CONFESSION IT WAS STATED THAT HE AND STUBBS WERE NOT ARGUING AND WERE NOT FIGHTING AFTER SHE GOT HOME.

>> WELL, AFTER SHE GOT HOME, CORRECT.

>> RIGHT.

>> BUT THEN THERE'S WHAT HAPPENED UPSTAIRS.

THE STATEMENT AT THE HOSPITAL WAS VERY BRIEF.

HIS RESPONSES WERE MONOSYLLABIC.

THERE WERE A LOT OF INAUDIBLES.
HE SAID VERY LITTLE IN THAT
STATEMENT.

I HAVE IT SUMMARIZED HERE AND
WHAT I HAVE IS HE SAID HE LOST IT.
HE SHOT HER WHILE SHE WAS ON THE
BED.

HE DOESN'T REALLY SAY WHAT
HAPPENED, NOR DO THEY ASK HIM.
>> DOESN'T HE MAKE A STATEMENT,
THOUGH, AT SOME POINT ABOUT THE
FACT THAT SHE HAD AN ABORTION OR
SOMETHING?

>> YES.

AT TRIAL HE TESTIFIES THAT
THEY'RE UPSTAIRS.
HE GETS DRESSED.
THEY'RE GETTING READY TO LEAVE.
HE SAYS A COUPLE OF TIMES -- AND
HE SAYS THIS TO DR. CROP, TOO,
WHO TESTIFIED AT THE PENALTY
PHASE, THAT SHE WAS UPSET WITH
HIM BECAUSE SHE WAS LEAVING.
AND HE SAYS THAT SHE SAYS I KNEW
YOU WERE LEAVING ANYWAY, SO I
KILLED YOUR CHILD.
AND HE SAYS THAT WAS WHAT HE
REACTED TO.

>> NOW, ISN'T -- THE FIRST TIME
HE SAID ANYTHING ABOUT THAT AT
TRIAL?

>> YES.

>> IN ALL THESE DISCUSSIONS AND
ALL THE VARIOUS STORIES HE TELLS
TO THE POLICE PRIOR TO THAT,
THERE WAS NO MENTION OF THAT.
>> WELL, THERE WAS ONLY ONE OTHER
TIME HE SPOKE TO THE POLICE WHERE
HE ADMITTED DOING THIS AND THAT
WAS IN THE HOSPITAL RIGHT AFTER
HE GOT OUT OF THE ICU.
THAT WAS THE ONLY ONE.
HE TRIED TO DENY IT A COUPLE OF
TIMES.

BUT THAT WAS THE ONLY TIME HE
FLESHED OUT WHAT WAS GOING ON
UPSTAIRS.
>> AND HE SAID AT -- AS I RECALL,
THAT THERE WAS -- SHE SHOWED HIM
A RECEIPT.

WAS THERE ANY ACTUAL RECEIPT OR
ANYTHING THAT DEMONSTRATED
THAT --

>> THERE WAS A RECEIPT INTRODUCED
AT TRIAL THAT SHE HAD BEEN TO AN

ABORTION CLINIC, YES.

>> AND HIS TESTIMONY CAME AFTER THAT RECEIPT WAS INTRODUCED INTO EVIDENCE.

HE KNEW ABOUT THE RECEIPT FROM THE PROCEEDINGS AT TRIAL.

>> I'M NOT SURE WHEN THAT WAS INTRODUCED, YOUR HONOR.

I DON'T RECALL.

THAT MAY HAVE COME IN DURING THE STATE'S REBUTTAL.

I'M SURE IT'S IN THE BRIEF, BUT I DON'T RECALL.

YEAH.

SO OUR POSITION IS THAT IT WAS A REFLEXIVE SHOOTING.

HE FIRED AT THE BED.

HE EVEN TESTIFIED THE ROOM WAS DARK.

WE DON'T KNOW IF THE ROOM WAS DARK.

THE ROOM COULD HAVE BEEN DARK.

>> AFTER THE FIRST SHOT, THOUGH, SHE ROLLED OVER AND WAS ON THE FLOOR AND SO THEN HE HAD TO SHOOT HER AGAIN ONCE SHE WAS ON THE FLOOR.

>> WELL, HE SHOT HER A SECOND TIME AFTER OR AS SHE WAS ROLLING OFF THE BED.

HE SAID SHE ROLLED OFF THE BED.

THE SECOND SHOT HIT HER IN THE TOP OF THE HEAD.

THE MEDICAL EXAMINER TESTIFIED, RIGHT HERE, RIGHT HERE AT THE TOP.

PART OF THE BULLET EXITED.

THE OTHER BULLET WENT ACROSS JUST THROUGH THE VERY TOP OF HER HEAD.

SO IT'S NOT A SITUATION WHERE HE'S STANDING OVER AND HE'S FIRING RIGHT INTO HER HEAD.

THERE'S NO EVIDENCE OF THAT.

THERE'S NO INDICATION THAT HE MOVED AFTER HE FIRED THE FIRST SHOT.

>> I GUESS THE PROBLEM OF THE REFLEXIVE IDEA, OBVIOUSLY HE SHOT HER BECAUSE HE GOT UPSET WITH HER.

>> YES.

>> I MEAN, HE WASN'T DOING IT FOR MONEY.

SO THAT'S NOT --

>> RIGHT.

>> EITHER HE GOT UPSET BECAUSE SHE HAD HAD SEX THAT EVENING OR WHATEVER IT WAS.

AND THE IDEA THAT TWO PEOPLE WHO HAVE HAD A RELATIONSHIP COULD GET UPSET WITH ONE ANOTHER IS NOTHING OUT OF THE ORDINARY.

THE ISSUE I STILL HAVE IS THAT SHE'S EITHER, ACCORDING TO HIM, SLEEPING IN THE BED OR IN THE BED. HE HAS TO GET THE GUN.

AND I DON'T SEE HOW WITH HAVING TO GET THE GUN IS THEN I LOST IT AFTER I GOT THE GUN.

THAT'S WHAT'S NOT MAKING SENSE IN WHAT YOU'RE SAYING.

>> WELL, HE TESTIFIES THAT -- I MEAN, HE CARRIES A GUN WITH HIM. HE'S GOING TO GEORGIA.

I MEAN, HE SPENT -- HE WAS WITH HIS BROTHER AND SISTER.

HE WAS HAPPY.

HE WAS NORMAL.

THIS WAS LIKE HALF HOUR, AN HOUR BEFORE THIS HAPPENED.

HE TOLD THEM HE'S GOING TO GEORGIA TO SEE ABOUT HIS KIDS. HE CARRIES A GUN WITH HIM.

>> I APPRECIATE HE MIGHT HAVE IT WITH HIM, BUT UNDER HIS SCENARIO THEY HAD SEX, SO I ASSUME HE DIDN'T HAVE SEX WITH HIS GUN TIED TO HIM.

HE HAD TO GET THE GUN.

>> HE SAID THE GUN IS SITTING ON THE T.V. STAND RIGHT IN FRONT OF THE BED AND HE'S IN THE BATHROOM. HE GETS DRESSED.

HE GETS THE GUN.

HE'S GETTING READY TO LEAVE AND THAT'S WHEN THEY HAVE THE CONFRONTATION.

THAT'S WHEN SHE SAYS WHAT SHE SAYS.

>> I THOUGHT SHE SAID -- I THOUGHT SHE WAS IN THE BED SLEEPING?

>> WELL, IN HIS TRIAL TESTIMONY HE SAYS, NO, THAT'S WHEN SHE SAYS --

>> THE PROBLEM IS IT'S HIS -- HE GIVES FOUR DIFFERENT VERSIONS. THE JURY MAKES THE CREDIBILITY DETERMINATION AS TO WHAT VERSION

IS CORRECT, AND THERE
IS -- YOU'RE SAYING THERE'S NOT
ENOUGH EVIDENCE FOR THE JURY TO
FIND THIS WAS PREMEDITATED,
WHICH MEANS JUST THAT -- WHAT
DOES THE JURY INSTRUCTION SAY?
MOMENTS BEFORE OR ALL YOU HAVE TO
HAVE IS A FULLY FORMED INTENT AT
THE TIME YOU CHOOSE --
>> FULLY FORMED, CONSCIOUS
PURPOSE TO KILL.

>> RIGHT.

>> RIGHT.

>> AND CLEARLY WITH THE GUN HE
WASN'T -- THE GUN JUST DIDN'T GO
OFF ACCIDENTLY EVEN UNDER ANY OF
HIS FOUR VERSIONS.

>> THAT'S CORRECT.

>> AND THEY WEREN'T IN A FIGHT
WITH THE GUN.

IN OTHER WORDS, THAT SHE HAD THE
GUN AND HE'S TRYING TO GET IT FROM
HER.

WE DON'T HAVE THAT VERSION.

>> THAT'S CORRECT, YOUR HONOR,
BUT THE STATE'S -- THE EVIDENCE
HAS TO EXCLUDE ALL -- ANY
POSSIBILITY THAT THIS WAS A SPUR
OF THE MOMENT, REFLEXIVE
SHOOTING WITHOUT THOUGHT.

>> WASN'T THE FIRST SHOT IN THE
ARM?

>> YES.

>> AND THEN THE SECOND SHOT NFS
THE HEAD.

>> YES, AS SHE'S ROLLING OFF THE
BED.

>> ISN'T THAT ENOUGH TIME TO FORM
SOME PREMEDITATION?

>> IT'S A SEMIAUTOMATIC, TWO
RAPID SHOTS.

HE'S NOT THINKING WHEN HE GRABS
THE GUN.

HE'S NOT THINKING WHEN HE FIRES
THE FIRST SHOT OR THE SECOND
SHOT.

>> THAT'S JUST AN ASSERTION.

I MEAN, YOU'RE SAYING HE'S NOT
THINKING.

I MEAN --

>> THAT'S A REASONABLE
HYPOTHESIS OF WHAT HAPPENED
HERE.

GIVEN WHAT WE KNOW ABOUT THIS

MAN, HE HAS AN I.Q. OF 76.
THE TRIAL JUDGE FOUND HE WAS
UNDER MENTAL AND EMOTIONAL
DISTRESS AT THE TIME THIS
HAPPENED.
THERE WASN'T ANY INDICATION OF
ANIMOSITY TOWARDS HER.
THERE'S NOT -- IT'S NOT --
>> WHICH MAKES IT EVEN -- I MEAN,
IF THERE'S NO ANIMOSITY, WHY?
WHY DO THIS?
IF THERE'S NO ANIMOSITY BETWEEN
THEM -- I THOUGHT YOUR ARGUMENT
REALLY WAS THAT THERE WAS SOME
KIND OF -- BASED ON THE FACT THAT
SHE SAID SHE HAD ABORTED THE
CHILD OR SHE HAD HAD SEX WITH
SOMEONE ELSE THAT VERY SAME
NIGHT, SO --
>> AT THAT MOMENT -- AND WHAT I'M
SUGGESTING IS THAT THERE WAS NO
PREPLANNING.
THERE'S NO INDICATION THAT HE WAS
ANGRY AT HER OR CONTEMPLATED
HURTING HER UNTIL THE MOMENT HE
GRABBED THE GUN.
>> YOU DON'T HAVE TO PLAN TO DO
IT FOR A LONG TIME.
>> THAT'S CORRECT.
>> TO HAVE PREMEDITATION.
IT CAN BE, YOU KNOW, A MINUTE
OR --
>> WELL, I -- I -- THE JURY
REJECTED THE STATE'S THEORY THAT
THIS WAS A BURGLARY, THAT THERE
WAS A SEXUAL BATTERY, THAT HE
BROKE IN AND ALL THIS STUFF.
THE STATE REJECTED ALL OF THAT.
SO TO SOME DEGREE THEY MUST HAVE
BELIEVED HIS VERSION OR SOME OF
HIS VERSIONS OF WHAT OCCURRED,
THAT THERE WAS SOME KIND OF
EMOTION-FUELED ENCOUNTER.
>> BUT THE FACT THAT HE GOT MAD
WITH HER AND SHOT HER DOESN'T
MEAN THAT IT WAS NOT
PREMEDITATED.
I MEAN, THERE'S ALL KINDS OF
CASES WHERE PEOPLE GET MAD AND
ACT ON THE ANGER AND IT'S
PREMEDITATED.
>> IT DOESN'T MEAN IT WASN'T
PREMEDITATED.
BUT IT ALSO DOESN'T MEAN THAT IT
WAS.

I MEAN, I CITED SEVERAL CASES
HERE WHERE, I MEAN, I THINK IN
GREEN THE WOMAN WAS SHOT IN THE
HEAD AND SHE WAS BATTERED AND SHE
WAS STRANGLERED AND THE COURT SAID
THERE'S NOT ENOUGH EVIDENCE OF
PREMEDITATION.

>> BUT WHAT WE GOT TO -- WHAT HE'S
GOT TO CONVINCING US OF IS THAT NO
REASONABLE JURY COULD DECIDE
THAT THIS WAS PREMEDITATED
BEYOND A REASONABLE DOUBT.
ISN'T THAT WHAT YOU GOT TO SHOW?
>> NO.

I THINK I HAVE TO SHOW THAT THE
STATE'S EVIDENCE DOES NOT
EXCLUDE THAT THIS HOMICIDE COULD
HAVE BEEN COMMITTED WITHOUT ANY
PREMEDITATION.

AND I DON'T THINK THE STATE'S
EVIDENCE DOES THAT.

>> IS GREEN YOUR -- WHAT'S YOUR
BEST CASE WHERE YOU WOULD SAY
BASED ON THAT CASE, THE
COURT -- AND THIS EVIDENCE, THE
COURT WOULD HAVE TO FIND
INSUFFICIENT EVIDENCE OF
PREMEDITATED MURDER?

>> WELL --

>> NOW, GREEN -- SOMEHOW -- I
LOOKED BACK ON GREEN.
I JUST DON'T THINK GREEN IS GOING
TO BE YOUR BEST CASE.
IS THAT YOUR BEST CASE?

>> I DON'T KNOW IF THAT'S OUR BEST
CASE, BUT I THINK THAT
DEMONSTRATES TO SOME DEGREE MY
POINT, IS THAT WE DON'T KNOW WHAT
HAPPENED HERE.

WE DON'T KNOW WHAT HAPPENED.
AND IF YOU LOOK AT GREEN AND YOU
ALSO LOOK AT MUNGION AND JACKSON,
THOSE WERE SHOOTINGS, AND THEY
WERE REFLECTIVE SHOOTINGS, AND
THE COURT SAID THERE'S NO
EVIDENCE OF PREMEDITATION THERE.
AND THEN YOU LOOK AT GREEN AND
GREEN AGAIN, THERE WAS -- IN
GREEN THE DEFENDANT HAD EVEN
TALKED ABOUT KILLING HER, BUT
BECAUSE THE COURT DIDN'T KNOW
EXACTLY WHAT HAPPENED AT THE TIME
OF HER DEATH --

>> THAT'S THE THING.
WE KNOW ABOUT WHAT HAPPENED.
WE DON'T KNOW WHICH VERSION OF
HIS IS THE MOST CREDIBLE.
AND IT MAY BE THAT THERE WERE
PHONE CALLS RIGHT ABOUT -- SHE
CALLED HIM AT 4:08 A.M.
IT WAS A TWO SECOND CALL TO HIS
CELL PHONE.
HE HAD CALLED FROM A PAY PHONE AND
MADE TWO CALLS TO HER.
SO WE KNOW THERE MAY HAVE BEEN
SOME ATTEMPTS.
AND IF -- SHE SAW HIM, SHE MAY
HAVE LET HIM IN, AND I GUESS THE
JURY FOUND THAT HE DIDN'T BREAK
IN.
>> RIGHT.
>> WE GOT THAT.
MAYBE THERE WAS CONSENSUAL SEX.
MAYBE THERE WASN'T.
I GUESS THAT'S WHY THE JURY
REJECTED ANY KIND OF AN ATTEMPTED
SEXUAL BATTERY.
BUT AT SOME POINT WE KNOW THAT IF
THERE WAS A FIGHT AND HE LOST IT,
HE HAD TO GO GET THE GUN.
AND AS JUSTICE POLSTON SAID AND
JUSTICE QUINCE, THE COMPELLING
THING IS THE FIRST SHOT IS IN THE
ARM, BUT THEN HE HAD TO -- THERE
HAD TO BE A SECOND SHOT RIGHT IN
HER HEAD.
AND THAT IS -- AND, AGAIN, THE
FORMED INTENT CAN BE -- I DON'T
KNOW IF IT'S A SECOND OR A MINUTE,
BUT IT'S -- IT'S A FULLY FORMED
INTENT PRIOR TO THE SHOOTING.
>> YES.
A FULLY FORMED PURPOSE TO KILL
HER.
AND OUR POSITION -- IS SHOOTING
SOMEONE IN THE HEAD IS ABOUT AS
CLOSE TO INTENDING TO SHOOT
SOMEBODY.
IT'S NOT LIKE HE THOUGHT HER IN
THE FOOT AND SOMEHOW SHE BLED TO
DEATH BECAUSE IT HAD GONE OFF IN
THE FOOT.
I MEAN, THE HEAD.
>> WELL, MUNGION AND JACKSON SHOT
THE VICTIM IN THE HEAD AND THE
CHEST AND THE COURT SAID THERE'S
NOT ENOUGH BECAUSE IF IT'S
REFLECTIVE, IF IT'S A REACTION,

THERE'S NOT NECESSARILY A THINKING PROCESS, THERE'S NOT NECESSARILY A PURPOSE TO KILL. IT'S JUST -- THE GUN WAS RIGHT THERE, EITHER IN HIS WAISTBAND OR SITTING ON THE COUNTER AS HE GRABBED IT.

I THINK YOU HAVE TO ASSUME THAT THAT'S GOING ON IN HIS HEAD IS FURY, ANGER, EMOTION.

AND WHEN THOSE FEELINGS ARE IN SOMEONE'S BRAIN, THEY'RE NOT THINKING.

IT'S NOT LIKE US STANDING HERE TALKING ABOUT THIS.

THIS IS A MAN WHO HAS AN I.Q. OF 76.

HE HAS EMOTIONAL DEFICITS.

HE HAS BRAIN DAMAGE.

>> WAS GREEN -- ARE YOU TALKING ABOUT THE GREEN FROM 1998?

WHERE THERE WAS A MULTIPLE STABBING?

>> YES.

>> AND HER -- SHE HAD -- SO THERE WASN'T A GUNSHOT.

YOUR BRIEF SAYS THAT.

>> YES, STAB WOUNDS AND STRANGLING.

>> AND HER LEGS WERE SPREAD APART IN THE MIDDLE OF AN INTERSECTION.

>> THAT'S CORRECT.

SHE WAS STABBED NUMEROUS TIMES AND BLUNT TRAUMA, BUT SHE WAS ALSO STRANGLING.

WHICH OBVIOUSLY TAKES SOME TIME.

NORTON WAS FOUND FACEDOWN IN AN OPEN FIELD WITH A GUNSHOT WOUND IN THE BACK OF HER HEAD.

THAT'S ANOTHER ONE THE COURT SAID THERE WERE NO PRIOR DIFFICULTIES.

WE JUST DON'T KNOW WHAT HAPPENED EXCEPT THAT SHE WAS SHOT IN THE BACK OF THE HEAD.

>> NO PRIOR DIFFICULTIES.

BUT ISN'T BY HIS OWN STATEMENTS THAT HE WAS EITHER -- THERE WAS SOMETHING THAT HE HEARD ABOUT THE ABORTION OR THE SEX THAT SHOWED THERE WAS -- YOU DON'T HAVE TO HAVE DIFFICULTIES IN THE WEEKS BEFORE.

THAT THIS -- HE WAS COMING THERE. HE SAW SHE WASN'T HOME.

AND HE WAS PROBABLY PO'D.
WHERE WAS SHE?
HE HAD JUST HELPED HER MOVE IN AND
NOW SHE'S OUT WITH HER FRIENDS.

>> RIGHT.

THAT'S PART OF OUR ARGUMENT, THAT
THERE WAS AN EMOTION-FUELED,
SUDDEN REACTION.

>> WELL, I THINK THAT WE PROBABLY
HEARD THAT PART OF YOUR ARGUMENT
AND EITHER GOING TO ACCEPT IT OR
NOT.

>> YES.

I AGREE.

SO LET'S MOVE ON TO
PROPORTIONALITY.

I KNOW THE COURT'S AWARE.
THE DEATH PENALTY IS RESERVED FOR
MOST AGGRAVATED, LEAST
MITIGATED.

AND IT'S OUR POSITION THAT
NEITHER OF THOSE APPLY HERE.

OF COURSE, THE MOST SERIOUS
AGGRAVATEOR WAS THE
SECOND-DEGREE MURDER.

THAT HAPPENED TWO DAYS AFTER HE
KILLED MISS STUBBS IN THE
SHOOTOUT WITH THE POLICE.

>> THAT'S A PRETTY SERIOUS
FELONY, WHAT HAPPENED.

I MEAN, IF YOU JUST TOOK THIS CASE
AND NOTHING ELSE AND THAT HE'S ON
FELONY PROBATION AND HE'S UNDER
EMOTIONAL DISTRESS, YOU GOT ONE
THING.

BUT DOESN'T THE COMPLEXION
CHANGE WHEN HE IS ABOUT TO BE
CAUGHT AND HE COMES OUT SHOOTING
AND HE ATTEMPTS TO MURDER A
POLICE OFFICER?

>> I AGREE THAT IT'S A SERIOUS
AGGRAVATEOR.

I THINK THERE'S SOME
CIRCUMSTANCES THE COURT NEEDS TO
CONSIDER, THOUGH.

HE DID RETURN TO JACKSONVILLE.

HE DIDN'T GO TO THE POLICE
STATION LIKE HE SAID HE WOULD.

BUT HE CAME BACK TO JACKS
SONVILLE, APPARENTLY TO FACE
WHAT HE'D DONE.

HIS FATHER TESTIFIED THAT HE
CALLED THE DETECTIVE AND SAID I
WILL BRING HIM IN.

THE DETECTIVE SAID HE NEVER GOT THAT CALL.
THE FATHER SAID I MAY HAVE TALKED TO A DIFFERENT DETECTIVE.
HE WAS AT HIS AUNT'S HOUSE.
HE WASN'T HIDING.
HE ALSO DIDN'T RUN WHEN THE POLICE WERE BEHIND HIM.
THERE'S SOME CONFLICTING TESTIMONY -- DETECTIVES SAID THEY WERE BEHIND HIM.
>> HE DIDN'T RUN BECAUSE HE INTENDED TO KILL THEM?
>> I DON'T THINK SO, YOUR HONOR. AND THE JURY FOUND HIM GUILTY ONLY OF SECOND-DEGREE MURDER, RECKLESS DISREGARD, NOT INTENT TO KILL.
HE FIRED TWO SHOTS AT THE POLICE CAR AND HE WAS SHOT SEVEN TIMES. IT WAS AN IMPULSIVE REACTION.
>> THE PEOPLE IN THE CAR STARTED RUNNING WHEN HE STOPPED THE CAR, RIGHT?
SO CLEARLY THEY KNEW SOMETHING WAS ABOUT TO GO DOWN.
>> HIS PASSENGERS GOT OUT -- WELL, FIVE CARS PULLED UP. FIVE POLICE CARS PULLED UP. HE DID GET OUT SHOOTING. BUT I THINK THE POINT IS IS THIS WAS AN IMPULSIVE REACTION. I THINK THE COURT HAS TO VIEW IT AS PART OF WHAT HAPPENED TWO DAYS EARLIER.
HE WAS STILL UNDER EMOTIONAL STRAIN AND STRESS OF WHAT HE HAD JUST DONE, WHICH IS KILLED THE PERSON HE LOVED MORE THAN ANYONE IN THE WORLD.
MAYBE HE HAD HOPED THEY WOULD SHOOT HIM.
I MEAN, DR. CROP TESTIFIED, YOU KNOW, HE DID SOME DESTRUCTIVE THINGS.
HE MAY HAVE BEEN HOPING THEY WOULD SHOOT HIM.
HE DID SAY --
>> COUNSEL, YOU CAN CONTINUE. YOU'RE NOW DOWN TO A TOTAL OF THREE MINUTES.
SO YOU'RE IN YOUR REBUTTAL.
>> DOES THAT INCLUDE MY REBUTTAL?
>> IT DOES.
>> I'LL GIVE A COUPLE MORE

MINUTES NOW THEN.

SO WE DO HAVE THE SERIOUS
AGGRAVATEOR.

>> YOU HAVE ONE MINUTE LEFT.
IN YOUR REBUTTAL TIME, YOU HAVE
TWO MINUTES AND 44 SECONDS.
>> OKAY W. THAT, I'LL SIT DOWN.
THANK YOU, YOUR HONOR.

>> IF IT PLEASE THE COURT, STEVE
WHITE WITH THE ATTORNEY
GENERAL'S OFFICE.

>> I JUST WANT TO GO TO SOMETHING
IN THE JUDGE'S SENTENCING ORDER
AND YOU TELL ME IF THERE WAS -- IF
THIS EVIDENCE WAS EVIDENCE THE
JURY HEARD.

IT'S ON PAGE 4 AND 5 OF THE
SENTENCING ORDER.
THERE WAS EVIDENCE OF STRUGGLE.
THREE OF THE BLINDS FROM THE
SLIDING GLASS DOOR WERE TORN OFF
THE TRACK.

DANIELLE'S CLOTHING WAS FOUND
DOWNSTAIRS.

THEY FOUND A LIVE ROUND ON THE
BEDROOM FLOOR.

TWO CASINGS WERE FOUND NEAR
DANIELLE STUBBS' BODY.

THE PHYSICAL EVIDENCE INDICATED
THAT DANIELLE HAD BEEN SHOT IN
THE ARM WHILE SHE WAS LAYING ON
THE BED.

AFTER BEING SHOT IN THE ARM,
DANIELLE STUBBS GRABBED THE
COMFORTER AND MOVED TO THE FLOOR
ON THE SIDE OF THE BED, WHILE
COWERING ON THE FLOOR TRYING TO
PROTECT HERSELF, THE DEFENDANT
MOVED TOWARDS HER AND SHOT
DANIELLE STUBBS IN THE HEAD.

IS THAT -- THE PART ABOUT THAT
SHE DIDN'T JUST FALL OFF OF THE
BED AS IF SHE HAD BEEN SHOT, BUT
THAT SHE ACTUALLY MOVED TO TRY TO
PROTECT HERSELF, IS THERE
EVIDENCE OF THAT IN THE RECORD?

>> ABSOLUTELY, YOUR HONOR.

AND OF COURSE THE STATE IS
ENTITLED TO ALL THE FACTS AND
FAVORABLE INFERENCES THAT
SUPPORT THE VERDICT.

>> SEEMS TO ME IF WE JUST HAVE
THAT, WE HAVE AMPLE EVIDENCE
OF --

>> ABSOLUTELY.

IF THE COURT LOOKS AT THE COLOR PHOTOGRAPHS OF THE CRIME SCENE, IT IS ABSOLUTELY CLEAR THAT DANIELLE STUBBS WAS SHOT -- AS YOU FACE -- FROM THE FOOT OF THE BED TOWARDS THE FRONT OF THE BED; THAT IS, FROM THE DOORWAY, SHE WAS SHOT FROM THE LEFT SIDE OF THE BED.

THAT'S WHERE THE PROJECTILE WAS RECOVERED THAT WENT THROUGH HER ARM.

THEN THERE IS SUBSTANTIAL BLOOD, A BLOOD TRAIL WITH SUBSTANTIAL BLOOD GOING FROM THE LEFT SIDE OF THE BED TO THE RIGHT SIDE OF THE BED AND BLOOD SPATTER ON THE WALL JUST OFF THE BED AND THEN MISS STUBBS IS FOUND -- DANIELLE STUBBS IS FOUND KNEELING ON THE FLOOR THREE-QUARTERS OF THE WAY TURNED AROUND ALSO.

SO SHE NOT ONLY ROLLED OUT OF BED, GOT ON THE FLOOR, GOT ON HER KNEES, BUT SHE ALSO HAD TURNED AROUND WHEN HE SHOT HER THE NEXT TIME IN THE HEAD.

SO THE PHOTOGRAPHS TELL IT ALL. THERE IS NO DOUBT WHATSOEVER THAT HE FIRED ONCE AND THAT FIRST SHOT WENT THROUGH THE QUILT, THE COMFORTER, AND THROUGH HER ARM, LANDED ON THE BED.

THE POLICE RECOVERED IT THERE ON THAT LEFT SIDE OF THE BED.

AND THERE'S NO DOUBT WHATSOEVER THAT SHE THEN ROLLED OUT OF BED, TURNED PARTIALLY AROUND AND WHILE SHE WAS KNEELING ON THE FLOOR, HE BASICALLY EXECUTED HER AS SHE KNELT THERE.

>> NOW, THE JURY HAD -- IT WAS A SPECIAL -- A VERDICT THAT HAD BOTH FELONY MURDER AND PREMEDITATED?

WAS IT TWO CHOICES?

>> YES, YOUR HONOR.

>> SO THEY ACTUALLY SPECIFICALLY CHOSE PREMEDITATED MURDER.

>> THEY DID.

>> AND REJECTED THE STATE'S THEORY OF EITHER A BURGLARY OR A SEXUAL --

>> THEY DIDN'T FIND IT, SO, YES,

MA'AM.

>> BUT I WOULD ALSO POINT OUT THAT THE CRIME SCENE EVIDENCE IN THE UPSTAIRS BEDROOM COMPORTS WITH HIS STATEMENT TO DETECTIVE WALCOTT ON JANUARY 29 AND THERE THE DEFENDANT TOLD THE DETECTIVE I SHOT HER WHILE SHE WAS IN THE BED, SHE ROLLED OUT OF THE BED AND THEN WHILE SHE WAS ON THE FLOOR I SHOT HER AGAIN.

>> NOW, THE PART WHERE THERE'S A STRUGGLE DOWNSTAIRS AND WHERE SOME OF HER CLOTHING IS FOUND DOWNSTAIRS, HOW DOES THE STATE WEAVE THAT EVIDENCE IN IN TERMS OF PRESENTING THAT TO THE JURY?
>> AT SOME POINT BEFORE SHE WAS SHOT, THERE'S A STRUGGLE. SHE WAS ALIVE A LITTLE AFTER 4:00 A.M.

WE KNOW THAT HIS CAR WAS THERE BY HIS OWN TESTIMONY, HE WAS SITTING IN HIS CAR AT 3:30.

SO WE KNOW HE DIDN'T GET INSIDE AND STAY INSIDE FROM 3:30 TO A LITTLE AFTER 4:00.

WE HAVE HIM ON THE SURVEILLANCE TAPE A LITTLE AFTER 4:00 AT THE GAS STATION.

>> SO HE WOULD HAVE -- HIS CAR WAS THERE, THOUGH, WHEN MORRIS DROPPED STUBBS OFF?

>> HIS CAR WAS THERE.

>> AND WHAT TIME WOULD THAT HAVE BEEN ABOUT?

WHAT TIME?

>> THAT WAS ABOUT 3:30.

WE HAVE A McDONALD'S RECEIPT THAT INDICATES THAT JUST BEFORE THAT, 3:30 SOMETHING, THE LAST DIGIT IS BLURRED OUT, 3:30 SOMETHING, THEY GOT THE FOOD AT McDONALD'S, AND THAT WAS RIGHT BEFORE HE ARRIVED AT THE TOWNHOUSE. AND MORRIS TESTIFIED IT WAS ABOUT 3:30.

>> HIS VEHICLE IS THERE.

DOES HE -- DID HE THEN LEAVE TO GO TO THE PAY PHONE TO CALL HER?

>> WELL, WE KNOW THAT HE'S NOT IN THE APARTMENT AROUND 4:04 A.M.

HE IS AT THE STORE ABOUT A QUARTER OF A MILE TO AN EIGHTH OF A MILE AWAY AT 4:04 A.M.

SO HE'S AT THE STORE AFTER SHE COMES HOME.
SO AT SOME POINT WE ALSO KNOW THERE WAS A STRUGGLE.
I MEAN, WE HAVE -- AND OPPOSING COUNSEL BASICALLY ATTACKED EACH ASPECT OF THE STRUGGLE, BUT YOU PUT THIS PACKAGE TOGETHER, YOU KNOW, THE BLOODY SUBSTANCE UNDER HER FINGERNAILS, HIS DNA UNDER HER FINGERNAILS, FRESH BRUISE ON HER FOREHEAD, ON HER BACK, THE ITEMS THAT ARE DISHEVELED DOWNSTAIRS.
THIS APARTMENT, IF YOUR HONOR LOOKS AT THE PHOTOGRAPH, IT IS NEAT AS A PIN EXCEPT FOR THESE ITEMS THAT ARE DISHEVELED.
THE THREE BLINDS TORN DOWN.
>> WAS SHE FOUND WITHOUT CLOTHES ON?
>> SHE HAD A TOP ON, BUT NOTHING ON THE BOTTOM.
>> AND THERE WAS -- WHAT CLOTHES WERE FOUND --
>> HER FLOWERY PAJAMA SHORTS WERE DOWNSTAIRS UNDERNEATH ONE OF THE BLINDS.
I THINK IT WAS ENTANGLED WITH HER PANTIES.
THERE MAY HAVE BEEN A SOCK THERE ALSO.
>> SO SHE WOULD HAVE ENOUGH TIME TO COME HOME AND UNDRESS AND PUT ON PAJAMAS?
>> RIGHT.
>> SO SHE WAS ALSO FAIRLY, ACCORDING TO MR. MORRIS, FAIRLY INEBRIATED THAT EVENING.
>> SHE WAS INTOXICATED AND HAD BEEN THROWING UP, IN FACT, WHICH IS INCONSISTENT WITH THE DEFENDANT'S STORY THAT SHE HAD CONSENSUAL SEX AFTER SHE GOT HOME IN THIS SHORT PERIOD OF TIME.
WE DO KNOW THAT HIS DNA IS IN HER VAGINA AND HER ANUS AND THE INJURY DID NOT FIND HIM GUILTY ON THE FELONY MURDER, SO THAT'S WHERE WE ARE WITH THAT, BUT WE --
>> DID YOU SEPARATELY CHARGE SEXUAL BATTERY?
>> IT WAS FELONY MURDER I BELIEVE BY BURGLARY -- AND OR SEXUAL --
>> BUT THERE WASN'T A SEPARATE

FINDING.

>> NO, MA'AM.

>> THE JURY COULD HAVE DECIDED THIS IS MORE CONSISTENT WITH A PREMEDITATED MURDER.

>> AND STOPPED THERE.

THEY DID NOT SAY WE DO NOT FIND. THEY JUST DIDN'T CHECK THE BOX, THE LINE NEXT TO FELONY MURDER. THAT'S ALL.

SO WE GOT VERY PROBATIVE CRIME SCENE EVIDENCE THE JURY WAS ENTITLED TO WEIGH, EXTREMELY PROBATIVE.

WE'VE GOT HIS STATEMENT ALONE. I MEAN, EVEN IF WE DIDN'T HAVE THIS CRIME SCENE, BUT THESE TWO CORROBORATE EACH OTHER IN TERMS OF HIM BEING LUCID, WHEN BASICALLY HE DIDN'T HAVE TIME TO CONCOCT A STORY ABOUT THE APPORTION RECEIPT, WHICH WAS IN DISCOVERY LATER ON FROM THE STATE.

HE DIDN'T HAVE TIME TO CONCOCT A STORY.

HE BASICALLY LIED AGAIN AT THE VERY BEGINNING OF HIS STATEMENT TO SHANDS.

THEN THE DETECTIVE SAID WE GOT A MATCH ON THE SHELL CASE.

YOUR GUN KILLED THE VICTIM.

THAT'S WHEN HE FINALLY CONFESSED AND ADMITTED HE SHOT HER IN THE BED, SHE ROLLED OUT OF BED AND HE SHOT HER AGAIN ON THE FLOOR.

>> BUT THE ROLLING OUT AGAIN, AS WE LOOK AT THE EVIDENCE, IT'S MORE OF I'M TRYING TO PROTECT MYSELF FROM BEING KILLED.

I MEAN, THAT'S WHAT THE JURY COULD HAVE --

>> RIGHT, BUT OF COURSE THE KEY THING IN TERMS OF PREMEDITATION, THAT MOMENT THAT PREMEDITATION IS REQUIRED, WE HAVE MORE THAN A MOMENT FROM THE FIRST SHOT, HER ROLLING OUT OF BED, TURNING PARTIALLY AROUND, KNEELING ON THE FLOOR AND HIM SHOOTING HER AGAIN.

WE ALSO HAVE THE STRUGGLE DOWNSTAIRS.

SHE ALSO APPARENTLY GOT UP TO THE UPSTAIRS AT SOME POINT BECAUSE

THAT'S WHERE THE McDONALD'S
RECEIPT IS AND HER CELL PHONE.
SHE HAD GOTTEN UPSTAIRS AT SOME
POINT.

>> WHERE DO WE -- WHAT'S THE
STATE'S THEORY OF WHEN THE SEX
BETWEEN THE TWO TOOK PLACE?

I MEAN, WAS IT DOWNSTAIRS
OR -- I'M HAVING A HARD TIME
TRYING TO FIGURE OUT -- THEY
STRUGGLE DOWNSTAIRS.

SHE COMES UPSTAIRS AND HE FOLLOWS
HER OR JUST WHAT -- WHAT WAS
GOING ON HERE?

>> WE DON'T HAVE A JURY FINDING
THAT -- I MEAN, MY THEORY IS HE
RAPED HER DOWNSTAIRS.

>> IS THAT HOW THE STATE ARGUED
THE CASE?

>> YES, YOUR HONOR.
BASICALLY THEY HAD A FIGHT
DOWNSTAIRS.

HE RAPES HER.
SHE RUNS UPSTAIRS AND THE
EVIDENCE IS CONSISTENT WITH A
STRUGGLE DOWNSTAIRS AND RUNNING
UPSTAIRS.

BASICALLY COWERS UNDERNEATH THE
COMFORTER.

WE HAVE TWO HOLES IN THE
COMFORTER.

HE CAN'T SEE HER HEAD THEN, BUT
HE FIRES AND IF YOU LOOK AT THE
PHOTOGRAPH OF WHERE THE BULLET
WOUND IS, IF HER ARM HAD BEEN
RAISED TO RAISE THE COMFORTER UP,
IT WOULD HAVE BEEN CLOSE TO HER
HEAD.

SO HE FIRES ONCE.

THEN SHE ROLLS OUT OF BED,
DRAGGING THE COMFORTER WITH HER
SO IT ENDS UP ON THE FLOOR WITH
HER, AND, BY THE WAY, SHE ALSO HAD
HAIR IN HER HAND WHICH WE DID NOT
GET DNA OFF OF.

BUT AT SOME POINT THERE WAS A
STRUGGLE AS INDICATED
DOWNSTAIRS, THE DNA AND BLOODY
SUBSTANCE UNDER HER FINGERNAILS,
THE FRESH BRUISES ON HER BODY.
WHERE THE RAPE OCCURRED, IF THERE
WAS A RAPE, I --

>> WAS THE HAIR LINKED TO THE
DEFENDANT?

>> WE COULDN'T GET DNA OFF OF IT,

YOUR HONOR.
THEY TRIED TO GET DNA OFF OF THE
HAIR.
WE KNOW THERE WAS HAIR IN HER
HAND, BUT WE COULDN'T GET DNA.
>> NOW, WAS IT HAIR IN HER HANDS
OR HAIR UNDER HER FINGERNAILS?
>> NO.
THE HAIR WAS IN HER HAND.
BUT HIS DNA WAS UNDER HER
FINGERNAILS.
AND THERE WAS A BLOODY-LOOKING
SUBSTANCE THAT TESTED POSITIVE
ON A PRESUMPTIVE TEST FOR BLOOD
UNDER HER FINGERNAILS.
SO, I MEAN, AND THE BRUISES,
THESE ARE FRESH BRUISES TO THE
FRONT OF HER BODY, TO THE
FOREHEAD AND TO ON TO HER BACK.
SO THERE ARE FRESH BRUISES IN TWO
DIFFERENT LOCATIONS.
YOU TIE THAT IN WITH ALL THE OTHER
EVIDENCE, THE EVIDENCE OF A
STRUGGLE, THE HAIR, THE DNA, THE
BLOOD UNDER THE FINGERNAILS,
THERE IS NO DOUBT THAT A STRUGGLE
OCCURRED AT SOME POINT BEFORE SHE
WAS KILLED.
AND IT WAS THAT NIGHT SOMETIME.
BUT -- AND OF COURSE WE ALSO
HAVE -- WE HAVE MULTIPLE
STATEMENTS BY HIM.
HE'S ALL OVER THE MAP.
>> BUT HE NEVER DISCUSSED A
STRUGGLE IN HE?
OF THOSE STATEMENTS, DID HE?
>> NO.
I DON'T THINK SO, YOUR HONOR.
BASICALLY HE FIRST -- HE FIRST
CALLS THE MOTHER THE MORNING OF
JANUARY 11.
THIS ALL OCCURRED AROUND 3:30
A.M. TO EARLY MORNING HOURS OF
JANUARY 11.
LATER THAT MORNING HE CALLS THE
MOTHER AND SAID WHERE'S
DANIELLE?
AND HE CALLS HER AGAIN LATER THAT
DAY AND CAN ASKS -- I DON'T KNOW
WHERE DANIELLE IS, PRETENDS
LIKE -- BASICALLY HE'S DENYING
HE WAS INVOLVED AT ALL.
THEN HE CALLS THE POLICE AND SAID
I HEAR SHE'S DEAD.
EVENTUALLY TAWCTS -- TALKS TO

THE DETECTIVE.
SAYS I LEFT AT 3:00 A.M.
HE SET THE TIME FOR LEAVING WHEN
HE KNEW THAT WOULD TAKE HIM OUT
OF THE CRIME SCENE.
AND THEN SO THAT'S ANOTHER
VERSION OF HIS STORY WHERE HE
BASICALLY SAYS I WASN'T EVEN
THERE.
AND THEN WHEN IT GETS TO SHANDS,
HE FIRST DENIES BEING THERE
AGAIN.
THAT FIRST STORY IS CONSISTENT
WITH WHAT HE TOLD THE DETECTIVE
OVER THE PHONE IN TERMS OF -- BY
THE WAY, HIS LUCIDNESS, THAT PART
A OF HIS STORY WAS CONSISTENT
WITH WHAT HE TOLD THE DETECTIVE
OVER THE PHONE.
THEN WHEN CONFRONTED WITH THE
SHELL CASING, THAT'S WHEN HE
FINALLY ADMITS, HE KNOWS THEY GOT
MY GUN.
BY THE WAY, I HAD THE SAME GUN AT
THE SHOOTOUT WITH THE POLICE.
THAT'S WHEN HE FINALLY ADMITS TO
SHOOTING HER.
BUT -- AND IT MISSED HER ROLLING
OUT OF BED.
THEN HE CHANGES HIS STORY AGAIN.
THIS IS IN THE STATE'S REBUTTAL.
HE INITIATES CONTACT WITH THE
POLICE JANUARY 4, 2010, ABOUT A
YEAR LATER, AND HIS STORY THEN
IS, HEY, I SAW A LIGHT ON IN HER
APARTMENT AND I WENT UP THERE AND
SHE WAS ALREADY DEAD AND I WANTED
TO GET MY GUN AND SO I GOT MY GUN.
SO NOW HE'S TRYING TO EXPLAIN.
HE KNOWS HE'S GOT PROBLEMS WITH
THE GUN STILL.
THAT'S HOW I HAD MY GUN, BECAUSE
I WENT UP THERE AND GOT IT.
AND THEN HE CHANGES HIS STORY
THEN TO -- HE TELLS THAT STORY TO
BASICALLY DR. CROP THE FIRST
TIME.
THIS IS GETTING INTO THE PENALTY
PHASE OF IT.
>> WELL, LET'S GO TO -- YOU'VE
GOT A LOT OF -- I THINK THERE'S
A LOT OF EVIDENCE THAT SUPPORTS
THE CASE HERE.
ON THE TWO OTHER ISSUES THAT WERE
RAISED IS THE GIVING FELONY

PROBATION GREAT WEIGHT AND THEN
PROPORTIONALITY.

>> YES, MA'AM.

>> AND THE STATE, AS I SEE, HAD
FIRST ASKED FOR -- WAS PURSUING
CCP, HAP AND THEY ABANDONED ALL
THOSE.

SO THE TWO UNDISPUTED
AGGRAVATORS HERE IS UNDER
FELONY PROBATION AND THEN THE
CONVICTION FOR THE FELONY.

IT SEEMS TO ME -- IS THAT IT'S
ANOTHER FELONY THAT OCCURS TWO
DAYS LATER THAT PUTS THIS INTO A
WHOLE ANOTHER REALM.

WOULD YOU AGREE WITH THAT AS FAR
AS HOW WE LOOK AT THAT?

>> VERY SIMILAR TO PHILLIPS IN
THAT REGARD.

>> BECAUSE IF WE JUST HAD -- WE
DIDN'T HAVE THAT SUBSEQUENT
THING AND WE HAD THIS MURDER AND
HE WAS ON FELONY PROBATION, THE
FELONY PROBATION HE WAS ON, I
MEAN, HE WAS A FIRST OFFENDER, I
GUESS, SO THEIR CONCERNS -- AND
MY QUESTION IS THE GIVING OF THAT
GREAT WEIGHT, WE'VE NEVER SAID
FELONY PROBATION DEPENDING WHAT
IT IS.

IF YOU'RE ON FOR HAVING HAD
ANOTHER MURDER, YOU KNOW.
BUT THAT'S NOT AMONG THE
WIGHTEST OF AGGRAVATORS, IS
IT?

>> IT'S NOT ONE OF THE ONES THIS
COURT HAS LISTED --

>> I KNOW THE COURT HAS LISTED
EVERYTHING, BUT I JUST -- HOW
DOES A JUDGE -- AND I KNOW WE
DON'T QUESTION IT, BUT WHY IS
THAT ENTITLED TO GREAT WEIGHT?
AND HOW DO WE -- WHAT FACTS DID
THE JUDGE HAVE -- IF WE WERE JUST
REWEIGHING THIS TO LOOK AT
PROPORTIONALITY THAT WOULD SAY
WHEN YOU HAVE THAT KIND OF FELONY
PROBATION, WHICH WAS -- HE WAS IN
A HIGH -- I GUESS HE WENT THROUGH
A NEIGHBORHOOD AT 120 MILES AN
HOUR, THAT IN A DEATH PENALTY
CASE THAT'S GOING TO BE
CONSIDERED GREAT WEIGHT.

>> ENDANGERING CHILDREN IN THE
CHASE AT 120 MILES PER HOUR,

NARROWLY MISSING A CHILD, RACING AT 120 MILES PER HOUR.

>> BUT YOU SORT OF -- AGAIN, WE DON'T REALLY NEED TO REACH HOW -- WHETHER THAT WAS ERRONEOUS WEIGHT BECAUSE ISN'T REALLY THE OTHER AGGRAVATEOR SO SUBSTANTIAL HERE --

>> YES, MA'AM.

IF THERE WAS ERROR, WHICH THE STATE OF COURSE DOES NOT CONCEDE, IT WAS CERTAINLY HARMLESS GIVEN THE EXTREME, EXTREME WEIGHT OF THE FELONY IN THIS CASE, SHOOTING AT THE POLICE WHEN THEY TRIED TO APPREHEND HIM.

>> AND WHAT WERE THE MITIGATORS HERE?

>> IN TERMS OF WHAT'S NOT MITIGATION, YOUR HONOR, YOU DON'T HAVE ANY MENTAL ILLNESS, YOU DON'T HAVE ANY CHILD ABUSE, NO SEXUAL ABUSE.

YOU HAVE AN I.Q. SCORE OF 76 ON THE ONE HAND.

ON THE OTHER HAND, HE GRADUATED FROM HIGH SCHOOL.

AND HE PASSED HALLIBURTON'S TEST TO WORK OVERSEAS.

HE TRAVELED OVERSEAS AS WELL.

>> SO THERE WAS NO ATTEMPT -- BECAUSE I KNOW THIS FROM READING IN THE NEWSPAPER THAT THOSE CONTRACTORS CAN SOMETIMES BE SUBJECT TO A LOT OF STRESS IN THAT SITUATION.

THERE WAS NOTHING TO TIE IN WHAT HAD HAPPENED TO HIM BEING IN IRAQ?

>> I THINK AT ONE TIME SOMEBODY TESTIFIED THAT HE WAS SHOT AT, BUT THERE WAS NO TESTIMONY THAT I RECALL THAT HAD ANY EFFECT ON HIM PSYCHOLOGICALLY.

>> IT'S NOT LIKE HE WENT TO IRAQ, HE WAS IN THIS SITUATION AND CAME BACK A DIFFERENT PERSON?

>> NO, MA'AM.

I DIDN'T SEE ANYTHING LIKE THAT. IN TERMS OF WHAT MITIGATORS WERE FOUND, THE NO SIGNIFICANT CRIMINAL HISTORY, THAT WAS GIVEN LITTLE WEIGHT AND THAT'S BASICALLY ISSUE TWO.

AND THE STATE SUBMITS THAT WHAT THE TRIAL COURT DID IN TERMS OF THOSE -- OF THE AGGRAVATEOR, GREAT WEIGHT AND PRIOR CRIMINAL HISTORY LITTLE WEIGHT DID EXACTLY WHAT HE'S SUPPOSED TO DO. HE LOOKED AT ALL THE UNDERLYING FACTS.

HE SAID YOU GOT TO WITHHOLD ON THE MITIGATOR, SO I'M GOING TO GIVE IT TO HIM BUT I'M ONLY GOING TO GIVE IT A LITTLE WEIGHT.

ON THE OTHER HAND, WE'VE GOT THESE SERIOUS FACTS UNDERLYING THE FELONY PROBATION IN TERMS OF THE HIGH-SPEED CHASE, NARROWLY MISSING A SCHIELD -- CHILD. THERE ARE MORE AGGRAVATING FACTS.

WE'VE GOT SERIOUS FACTS UNDERLYING THE FELONY PROBATION SO I'M GOING TO GIVE THAT ONE GREAT WEIGHT.

THE PRIOR FELONY IS EXTREMELY SERIOUS IN THIS PARTICULAR CASE. THE OTHER -- NO OTHER STATUTORY MITIGATORS AT ALL, NO MENTAL MITIGATION, STATUTORY MEANT MEDICAL MITIGATION, RELIGIOUS WEIGHT, LITTLE WEIGHT, LOVE FOR FAMILY, LITTLE WEIGHT.

HIS BIOLOGICAL MOTHER REJECTED HIM, SLIGHT WEIGHT.

ON THE OTHER HAND, THERE WAS TESTIMONY THAT HIS STEPMOTHER AND DAD WERE EXCELLENT PARENTS. HE WAS RAISED BY EXCELLENT PARENTS.

AND OF COURSE WE HAVE THIS OTHER EVIDENCE THAT HE HAD AN EXCELLENT FAMILY LIFE OTHERWISE.

EMOTIONAL DISTRESS, HE BASICALLY -- DR. CROP DID NOT TESTIFY AS TO THE STATUTORY MENTAL MITIGATION, BUT BASICALLY DR. CROP BOUGHT THE DEFENDANT'S STORY THAT HE WAS UNDER SOME SORT OF EMOTIONAL DISTRESS WHEN HE FIRED THE SHOT.

SO THE TRIAL COURT GAVE THAT SOME WEIGHT.

ESSENTIALLY THERE WAS ALSO SOME TESTIMONY FROM DR. CROP I SHOULD MENTION THAT THERE WAS MILD TO MODERATE FRONTAL LOBE --

>> HOW OLD WAS HE?
>> HE WAS 24 AT THE TIME OF THE MURDER.
BUT DR. CROP COULDN'T SAY WHEN THAT OCCURRED.
IT COULD HAVE OCCURRED WHEN HE WAS SHOT AT BY THE POLICE.
AND THERE WERE A COUPLE OF ACCIDENTS THAT THE DEFENDANT RELATED EARLIER IN HIS LIFE.
THERE WAS A MOTORCYCLE ACCIDENT, BUT THE CAT SCAN WAS NEGATIVE FOR THAT PARTICULAR INCIDENT.
THERE WAS SUPPOSEDLY SOME FOOTBALL INJURY, BUT HE DIDN'T EVEN GO TO THE HOSPITAL FOR THE FOOTBALL INJURY.
SO BASICALLY YOU HAVE VERY, VERY SUBSTANTIAL GREATLY WEIGHTED AGGRAVATION AND VERY, VERY LITTLE MITIGATION IN THIS PARTICULAR CASE.
SO THE STATE WOULD CONTEND THAT THE TRIAL COURT'S DETERMINATION OF THE DEFENDANT BE PUT TO DEATH SHOULD BE UPHELD, THAT THE SENTENCE WAS PROPORTIONATE.
BUT IF THERE ARE NO OTHER QUESTIONS, THE STATE WOULD RESPECTFULLY SUBMIT THAT THE TRIAL COURT SHOULD BE AFFIRMED, FIRST-DEGREE MURDER CONVICTION SHOULD BE AFFIRMED AND THE DEATH SENTENCE SHOULD BE AFFIRMED.
THANK YOU.

>> JUST BRIEFLY, YOUR HONOR, I HAVE TO TAKE ISSUE WITH THIS NOTION OF A STRUGGLE AND ITEMS IN DISARRAY.
THE APARTMENT WAS NEAT.
THERE WAS AN IRON ON THE FLOOR.
SHE'D JUST MOVED INTO THE APARTMENT TWO DAYS BEFORE.
THAT WAS THE ONLY THING IN DISARRAY OTHER THAN THESE THREE SLATS.
I DON'T UNDERSTAND HOW YOU GET FROM THESE THREE SLATS THAT ARE LYING NEATLY, ONE BESIDE THE SOFA RIGHT IN FRONT OF THE BACK DOOR, ONE DRAPED OVER THE SOFA AND ANOTHER ONE IN FRONT OF THE STAIRS.
THEY'RE NOT TORN UP.

THEY'RE NOT MASHED.
I DON'T KNOW HOW YOU GET THIS STRUGGLE.
>> SO YOU WOULD DISAGREE WITH THE TRIAL COURT'S FINDINGS?
>> I DO DISAGREE.
>> WHAT ABOUT THE FINDING, THOUGH -- LET'S TAKE THE STRUGGLE ASIDE.
HOW ABOUT THE FINDING THAT SHE'S SHOT ON THE BED ON ONE SIDE IN THE ARM AND THAT SHE DOESN'T LIKE FALL OFF THE BED.
SHE ACTUALLY ROLLS OFF, HAS A COMFORTER AND SHE'S COWERING WHEN THE SHOT TO THE HEAD OCCURS? THAT'S NOT BASED ON PHYSICAL EVIDENCE?
>> I THINK IT'S CLEAR THAT THE FIRST SHOT SHE WAS ON THE BED IN THE ARM AND THAT SHE ROLLED OFF OR MOVED OFF AND THEN THE SECOND SHOT WAS FIRED AS SHE WAS ROLLING OFF OR AS SHE WAS ON THE FLOOR.
I DON'T THINK THERE'S ANY EVIDENCE THAT HE MOVED TOWARDS HER TO FIRE THE SHOT.
THERE WAS NO EXPERT TESTIMONY OF ANY KIND TO SHOW THE POSITION SHE WAS IN, WHERE HE HAD TO BE WHEN THAT SHOT WAS FIRED.
NOTHING.
>> WHEN SHE WAS FOUND BY THE POLICE, WHAT POSITION WAS HER BODY IN?
>> SHE WAS ON THE FLOOR BESIDE THE BED.
SHE WAS LEANING OVER, SORT OF LIKE THIS.
OF COURSE, THE FAMILY WAS ALL IN THE ROOM AS WELL.
ALL THREE FAMILY MEMBERS.
THE MOTHER TESTIFIED SHE LAID DOWN ON THE FLOOR BESIDE HER DAUGHTER AND RUBBED HER.
SO WE DON'T EVEN KNOW IF THE POSITION SHE WAS FOUND IN WAS THE WAY SHE WAS AFTER SHE WAS KILLED.
>> BECAUSE THE MOTHER TESTIFIED -- THEY TESTIFIED THE ONLY THING -- THE BROTHER SAW HER AND -- THE MOTHER SAID SHE SIMPLY RUBBED HER BACK.
>> SHE WENT IN THERE --
>> BUT NO EVIDENCE THEY MOVED

HER.

>> SHE LAID DOWN BESIDE HER.
SO I DON'T KNOW WHAT THEY COULD
HAVE MOVED.

NO ONE ASKED THEM.

THE BRUISES, SHE HAS TWO SMALL
BRUISES THE MEDICAL EXAMINER
SAID WERE CONSISTENT WITH
FALLING OFF THE BED.

IT DOESN'T MAKE ANY SENSE.

THERE'S SOME STRUGGLE DOWNSTAIRS
AND THEN SOMEHOW SHE MANAGES TO
WALK UPSTAIRS AND THEN -- IT
DOESN'T MAKE ANY SENSE.

SO I CAN'T BUY THAT.

>> WAS THERE CLOTHING FOUND
DOWNSTAIRS?

>> YES.

>> PART OF HER PERSONAL CLOTHING?

>> YES.

>> AND WHAT DOES THAT SUGGEST?

>> CONSISTENT WITH THEM HAVING
SEX DOWNSTAIRS, WHICH IS WHAT HIS
TESTIMONY WAS, AND THEN THEY WENT
UPSTAIRS.

I'D LIKE TO IN MY 16 SECONDS I
HAVE LEFT --

>> ACTUALLY --

>> AM I OVER?

>> IN OVERTIME.

DON'T GET CONFUSED BY THINKING
THAT THE INCREASING NUMBER HERE
MEANS YOU GET MORE AND MORE TIME.
IT MEANS THERE ARE MORE AND MORE
OVERTIME, OKAY?

BUT I'LL GIVE YOU AN ADDITIONAL
MINUTE.

>> ONE MINUTE.

OKAY.

PROPORTIONALITY.

I CITED CASES IN MY BRIEF THAT I
THINK ARE CONSISTENT WITH THIS
CASE NOT BEING A DEATH CASE.

I FILED TWO OTHER CASES
YESTERDAY.

IN ONE HE KILLED HIS WIFE, HE
PLANNED TO KILL HER.

HE EVEN TRIED TO HIRE SOMEONE TO
KILL HER.

HE HAD A PRIOR FELONY OF A
SECOND-DEGREE MURDER.

THE COURT REDUCED HIS SENTENCE TO
LIFE.

IN THE OTHER CASE WAS A METH
DEALER, A METH ADDICT.

HE HAD A PRIOR SECOND-DEGREE
MURDER.

SO I THINK IF THIS COURT DECIDES
THIS IS A DEATH CASE, WHAT YOU'RE
SAYING IS BECAUSE OF THAT FLEEING
AND ELUDING, THIS TIPS THE SCALE
TOWARDS DEATH AND I DON'T THINK
THAT'S CONSISTENT WITH THE
COURT'S OPINIONS FOR A MAN WHO
HAS A BORDERLINE INTELLECTUAL
FUNCTIONING, WHO WAS MENTALLY
AND EMOTIONALLY DISTURBED AT THE
TIME OF THE MURDER AND HAS NO
CRIMINAL HISTORY, I THINK FOR
THOSE REASONS THE COURT SHOULD
REDUCE THE SENTENCE TO LIFE.
THANK YOU, YOUR HONOR.

>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS.