

>> ALL RISE.
THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
THE LAST CASE ON OUR DOCKET FOR
THE DAY IS YACOB VERSUS THE
STATE OF FLORIDA.
YOU MAY PROCEED.
>> THANK YOU YOUR HONOR.
I AM NADA CAREY REPRESENTING
YACOB.
THIS IS A FIRST APPEAL OR HIS
SENTENCE OF DEATH OUT OF DUVAL
COUNTY.
THERE ARE TWO ISSUES COME TO TWO
MAIN ISSUES YOU RAISED IN THE
BRIEF THAT I WOULD LIKE TO
ADDRESS TODAY AND I WOULD LIKE
TO BEGIN WITH A PROPORTIONALITY
ARGUMENT BUT BEFORE I DO I WOULD
LIKE TO GET A BRIEF RECAP OF THE
FACTS AND MAKE SURE WE ARE ALL
ON THE SAME PAGE.
SEE THE VIDEO IS A RECITATION OF
THE FACTS.
THE FACT THAT THEY ARGUE BOTH
SIDES IN THE VIDEO.
>> THAT'S CORRECT YOUR HONOR AND
I ASSUME THE COURT HAS SEEN THE
VIDEO BUT JUST BRIEFLY,
MR. YACOB WENT INTO THE SNAPPY
FOOD STORE EARLY IN THE MORNING
AND CONFRONTED THE CLERK OUTSIDE
OF THE CASHIERS AREA, A TYPICAL
CASHIERS AREA ENCLOSED FROM
FLOOR TO CEILING IN WHAT IS
CALLED BULLETPROOF GLASS
INCLUDING THE DOOR.
HE DIRECTED HIM INTO THE AREA
AND DEMANDED MONEY.
MR. MAIDA COMPLIED TO GET THE
MONEY FROM THE REGISTER AND
UNDERNEATH THE COUNTER.
MR. YACOB THEN EXITED THE
CASHIERS AREA AND WALKED AROUND
AND WAS ON HIS WAY TOWARD THE
FRONT DOOR WHEN HE OBSERVED
MAIDA.
>> HE DIDN'T GET VERY FAR WHEN
HE EXITED THE DOOR TO LEAVE.
I MEAN, HE WAS NOT EVEN RIGHT

AROUND THE CORNER WHEN --
>> HE WAS DIRECTLY IN FRONT OF
MR. MAIDA.
HE WAS PROBABLY HALFWAY BETWEEN
THE CASHIERS DOOR AND THE FRONT
DOOR.
HE SAW HIM HIT THE SWITCH THAT
LOCKS THE FRONT DOORS.
>> IS THERE ANY EVIDENCE --
HE SAW HIM HIT A SWITCH.
IS THERE ANY EVIDENCE THAT HE
THE DEFENDANT KNEW?
IT COULD HAVE BEEN THAT HE KNEW
PUSHING THE BUTTON MEANT?
>> THE STATE ARGUED THAT FROM
THE VIDEO IT APPEARS HE SEES
WHAT HE IS DOING, AND WHY ELSE
WOULD HE RUN BACK TO THE DOOR?
HE HAS COMMITTED THE ROBBERY AND
HAS THE MONEY.
>> WELL BUT, IT SEEMS TO ME
STRANGE TO INFER THAT THE
DEFENDANT HERE THOUGHT THE DOOR
WAS LOCKED.
WHEN HE SEES THIS ACTION, AND I
THINK IT'S CLEAR THAT HE SHOT
THE DEMAND RESPONSE TO HIS
VIEWING SOMETHING GOING ON, OF
THE VICTIM DOING SOMETHING IN
THE CAGE BUT THEN HE IMMEDIATELY
GOES BACK AROUND TO THE DOOR TO
THE CAGE AND SHOOTS THAT THE
SUM, RIGHT?
>> YOUR HONOR THE JURY DIDN'T
KNOW THIS BUT MR. YACOB WORKED
IN SEVERAL CONVENIENCE STORES.
>> BUT THAT'S NOT RESPONSIVE TO
MY QUESTION.
>> WELL, I DON'T UNDERSTAND YOUR
QUESTION.
TRY ME AGAIN.
>> I'M ASKING ABOUT THE SEQUENCE
OF THE FACTS.
HE SAW SOMETHING HAPPENED INSIDE
THE CAGE THAT BASICALLY YOU
RELATED CORRECTLY AND HE WAS
BASICALLY EVEN WITH THE VICTIM
AND HE SAW THAT AND HE OBVIOUSLY
DID NOT LIKE WHAT HE SAW ANYONE
AROUND TO THE DOOR HE HAD JUST

COME OUT AND THE DOOR WAS
CLOSED.
HE SHOT THE VICTIM THROUGH THE
DOOR RIGHT NOW.
>> ON HER, HE RUNS TO THAT DOOR
AS MR. MAIDA GOES TO THE DOOR TO
LOCK IT.
>> CAN I FINISH ASKING THE
QUESTIONS?
I WOULD LIKE TO PROCEED.
>> I WOULD LIKE TO RESPOND TO
YOUR QUESTION.
>> MR. MAIDA IS FIDDLING WITH
THE LOCK.
THE FIRST BULLET HITS THE DOOR
FRAME OF THE LOCK WHERE HE IS
TRYING TO LOCK THE DOOR.
HE DROPS HIS MONEY AT THAT POINT
AND IT'S VERY DIFFICULT TO SEE
AS YOU FOLKS KNOW BECAUSE YOU
HAVE SEEN THE VIDEO AND THE
MONEY GETS DROPPED ON THE FLOOR
AND THEN HE FIRES A SECOND SHOT
THAT PENETRATES THE GLASS.
>> AND THAT'S THE SHOT THAT
KILLED THE VICTIM.
ALL OF THAT HAPPENS BEFORE THE
DEFENDANT HAS GONE TO THE
OUTSIDE DOOR OF THE STORE.
>> THAT'S CORRECT.
>> WHEN HE GOES TO THE OUTSIDE
DOOR OF THE STORE HE SEEMS TO BE
SURPRISED BY THE FACT THAT THE
DOOR IS LOCKED.
BECAUSE HE STRUGGLES WITH IT AND
HE SAYS, OPEN THE BLANK DOOR.
NOW IF HE HAD KNOWN THAT THE
DOOR WAS LOCKED, HE SHOT THE
ONLY PERSON WHO WAS IN A
POSITION TO UNLOCK IT.
I DON'T UNDERSTAND EXACTLY WHAT
HE WAS THINKING OTHER THAN THAT
HE WAS REACTING TO SOMETHING
GOING ON IN THEIR.
I HAVE ANOTHER QUESTION FOR YOU.
IS THERE ANYTHING THAT I HAVE
SAID THAT IS FACTUALLY
INACCURATE?
>> NO.
IT'S THE INFERENCE.

>> I HAVE A DIFFERENT INFERENCE AND I'M NOT SURE IT REALLY MAKES A LOT OF DIFFERENCE TO THE BOTTOM LINE HERE, BUT TELL ME IF THERE'S ANYTHING IN THE RECORD THAT SHOWS THAT THERE ARE MORE THAN ONE BUTTON IN THEIR AND BECAUSE IT LOOKS LIKE TO ME THAT THE VICTIM, WHEN HE FIRST GOT UP HE IS HITTING A BUTTON BUT ALSO AFTER HE WAS SHOT AND IS IN HIS GOING DOWN HE IS REACHING UNDERNEATH IT LOOKED LIKE IT WAS TO HIT THE BUTTON AGAIN.

ARE THERE TWO DIFFERENT BUTTONS?

>> THERE IS ONE LOCK SWITCH.

>> IS THERE AN ALARM SWITCH?

>> IT DOES NOT REFLECT THAT THERE IS AN ALARM AT ALL.

NOW WHEN THE VICTIM REACHES UP MY INFERENCE FROM THAT WAS THAT HE WAS TRYING TO GET TO A PHONE. I DON'T KNOW WHY THE VICTIM AFTER HE IS ON THE FLOOR IS REACHING UP AGAIN.

>> WAS THERE AN ACCIDENTAL SHOT?

>> IT'S NOT CLEAR BECAUSE YOU CAN'T SEE HIM AT THAT POINT. ALL WE KNOW IS THAT THE BULLET HITS THE DOOR FRAME WHERE THE LOCK IS.

THEN THE MONEY GETS DROPPED TO THE FLOOR.

HE FIRES THE SECOND BULLET AND IT GOES THROUGH THE WINDOW.

THE SHOTS ARE ABOUT 7 INCHES APART, ONE LOWER THAN THE OTHER ONE.

AS FAR AS THE INFERENCES, THE STATE ARGUES THAT HE SAW HIM HIT THE LOCK SWITCH AND HE PROBABLY KNEW WHAT HE WAS DOING.

WE CAN'T ASSUME THAT WHY ELSE WOULD HE GO BACK TO THE DOOR UNLESS HE FELT LIKE HE COULDN'T GET OUT?

THERE IS NO OTHER LOGICAL REASON FOR HIM TO RUN BACK THERE.

>> WHY IS THE GUY WHO CAN OPEN THE DOOR --

>> THAT IS EXACTLY MY QUESTION AND THE JUDGE SAYS IT'S CLEAR. IT DOESN'T MAKE SENSE FOR HIM TO COOK KILL THE ONE PERSON I CAN GET THEM OUT SO THE INFERENCE OF THAT IS THAT HE IS NOT TRYING TO KILL HIM.

HE'S TRYING TO GET IN THE DOOR. HE'S IN A PANIC AND RUNS BACK AND FIRES A COUPLE OF TIMES.

I THINK IT'S LIKELY THAT EVERYBODY HE AND MR. MAIDA BELIEVED THAT GLASS WAS BULLET PROOF.

I THINK IT'S LIKELY HE NEVER ANTICIPATED THE BULLET WOULD PENETRATE THE GLASS AND FOLLOW THE TRAJECTORY THAT WOULD INJURE AND KILL MR. MAIDA.

>> SO WHY THE SECOND SHOT? I CAN UNDERSTAND THE PANIC OR WHATEVER IT WAS WITH THE FIRST SHOT.

BUT THEN AS I UNDERSTAND THAT IT, HE DROPS THE BAG OF MONEY AND HE SORT OF TAKES ONE OF THESE STANDS UP AND SO WHY HE NEVER THOUGHT THE BULLET WOULD PENETRATE.

>> HE COULD BE THREATENING. HE COULD BE TRYING TO THREATEN MAIDA OR HE COULD BE TRYING TO SHATTER THE GLASS OR TRYING TO GET THE DOOR TO UNLOCK.

I DON'T KNOW BUT I THINK WE CAN GET FROM THAT HE EXPECTED OR INTENDED TO KILL THIS YOUNG MAN.

>> BUT THE JURY FOUND PREMEDITATED AND FELONY MURDER.

>> YES.

>> I DIDN'T THINK WHEN WE WERE DEALING WITH PROPORTIONALITY -- WE WOULD ACCEPT THAT WHATEVER HE WAS DOING, THE JURY FOUND AND THERE IS EVIDENCE BEFORE US THAT IN HIS PLAN, WHATEVER HAPPENS THAT THE KILLING WAS NOT ACCIDENTAL.

IF YOU ARE NOT CONTESTING FINDING PREMEDITATION BUT WE ARE

HERE ON PROPORTIONALITY.

AM I CORRECT THAT --

>> NO.

>> LET'S TRY TO DO THIS AND ANSWER THE QUESTION.

YOU DID NOT CHALLENGE THE FINDING OF PREMEDITATION?

>> I DIDN'T CHALLENGE THE FIRST THREE MURDER CONVICTIONS.

I DIDN'T CHALLENGE PREMEDITATION BUT IT'S STILL FELONY MURDER SO IT'S NOT RELEVANT.

>> IT IS RELEVANT BECAUSE A LOT OF TIMES WHEN I DON'T DO SPECIAL VERDICTS WE DON'T KNOW IF THE JURY FOUND FELONY MURDER OR PREMEDITATION.

LET'S ASSUME WHETHER IT'S THE MOMENT BEFORE BECAUSE THEY DON'T NEED MUCH FOR PREMEDITATION, WHERE THEY HAVE EVER SHOT WAS ACCIDENTAL AND THE SECOND SHOT WAS INTENDING TO HARM OR TO KILL THE VICTIM.

NOW LET'S GO AND ASSUME THAT AND THERE IS A PREMEDITATED FINDING. HOW IS IT STILL NOT FOR PORTION AND BASED ON ALL OF OUR CASES THAT HAVE A SINGLE AGGREGATOR OR OF ROBBERY.

HE DIDN'T INTEND TO KILL AND A BUDDY INITIALLY.

YOU WOULD HAVE TO AGREE WITH THAT BUT HE DIDN'T COMMENCE TO THE STORE TO KILL THE CASHIER. HE CAME IN TO ROB THE STORE AND SOMETHING HAPPENED.

IS IT CLOSER TO THE ONES WHERE WE SAY THIS IS REALLY NOT THE HEIGHTENED KIND OF SITUATION AND THERE IS NO --

[INAUDIBLE]

THAT THIS IS ANALOGOUS TO?

>> YOUR HONOR I HAVE TO RESPOND TO THE ASSUMPTION YOU'RE MAKING.

I DO NOT AGREE WITH THAT.

I THINK THE COURT HAS TO LOOK AT WHETHER THIS IS PREMEDITATED REGARDLESS OF WHAT THE JURY FOUND.

I THINK THE RELEVANT FACTORS TO CONSIDER IN THE PROPORTIONALITY ARGUMENT.

>> BUT IF WE FIND THOUGH, IF WE FIND THERE IS EVIDENCE TO SUPPORT PREMEDITATION, AND I CAN ANSWER --

IT'S STILL NOT PROPORTIONATE.

>> IT'S STILL DISPROPORTIONATE.

>> I WOULD READ THE ARGUMENT THAT WAY.

>> YES BUT I JUST WANTED TO MAKE THAT CLEAR.

IT'S STILL A DISPROPORTIONATE PENALTY.

THERE ARE EIGHT OR 10 CASES HERE THAT WE CITED.

ON TWO OF THEM THE JURY FOUND PREMEDITATED MURDER WITH SCOTT JOHNSON.

IN THE OTHER CASES SINCLAIR, THOMPSON AND PERRY, THERE WASN'T A JURY FINDING.

WE DON'T EVEN KNOW IF THERE WAS A SPECIAL VERDICTS IN THOSE CASES.

I DOUBT THAT THERE WAS.

THAT WAS BEFORE THEY WERE GIVING SPECIAL VERDICTS AND REQUIRED TO GIVE SPECIAL VERDICTS BUT IN ALL OF THOSE CASES THE EVIDENCE OF PREMEDITATION AS MUCH AS IT WAS HERE, SINCLAIR FOR EXAMPLE SHOT A CABDRIVER TWICE IN THE HEAD AND HE CLAIMED IT WAS AN ACCIDENT IN THE COURSE THAT WAS ON THE MEDICAL EVIDENCE.

HE SHOT SOMEONE POINT-BLANK IN THE HEAD TWICE SO THE EVIDENCE THERE IS PREMEDITATION AND THE WAY THE CRIME WAS COMMITTED THE AGGRAVATING PART OF IT WAS CERTAINLY GREATER.

>> THE PROBLEM YOU HAVE IS THAT THE CLIENT DID NOT ALLOW COUNSEL --

IT SEEMS TO ME VERY COMPELLING.

[INAUDIBLE]

YET THIS IDEA THAT HE GRADUATED HIGH SCHOOL AND STRUGGLED

THROUGH AND ALL OF THAT IS
NOT --

SO IF WE LOOK AT THE SINGLE
AGGREGATOR CASE, THEN WE SAY
OKAY BUT THERE IS NOT MUCH IN
THE WAY OF MITIGATION.

HOW DO WE DEAL WITH THAT?

>> YOUR HONOR THERE IS
SIGNIFICANT MITIGATION.

IT'S IN THE RECORD.

THE TRIAL JUDGE ADMITTED IT.
IT WAS SUBMITTED IN THE HEARING.
THE JUDGE JUST DIDN'T CONSIDER
IT.

IT'S IN THE RECORD IN ITS THERE
FOR THIS COURT TO CONSIDER.

IT'S BELIEVABLE AND
UNCONTROVERTED IN THE STATE
DIDN'T OBJECT TO IT.

>> BUT THEY DID OBJECT IN THE
SENSE OF THAT THE STATE, AS I
RECALL THAT WE HAVE NOT HAD AN
OPPORTUNITY TO CONFRONT THESE
WITNESSES AND TO CROSS-EXAMINE
THEM.

WE DON'T KNOW HOW LONG THEIR
RELATIONSHIP WAS.

ALL THESE THINGS AND IT SEEMS TO
ME THAT THE STATE WAS TRYING TO
TELL THE JUDGE THAT LOOKED, YOU
ARE GOING TO BE CONSIDERING
SOMETHING THAT'S TOTALLY
ONE-SIDED BECAUSE WE HAVEN'T HAD
AN OPPORTUNITY.

>> HONORED, THAT'S JUST
INCORRECT.

PRIOR TO THE PENALTY PHASE ONE
THE DEFENSE SOUGHT TO INTRODUCE
THIS VIDEOTAPE AND THE
DEPOSITION BEFORE THE JURY,
ESTATE OBJECTED AND AT THAT TIME
THE STATE HAD NOT VIEWED THE
VIDEOTAPE.

THEY HAD NOT EVEN SEEN IT.
WHAT I'M REFERRING TO IS AT THE
PENALTY PHASE THE VIDEOTAPE WAS
INTRODUCED WITHOUT OBJECTION
FROM THE STATE AS WELL AS THE
DEPOSITION.

>> WAS IT THE PENALTY PHASE OR

THE SPENCER HEARING?

>> IT WAS ALL ADMITTED THAT THE STATE DID NOT OBJECT IN THE STATE RECOGNIZED THAT IT WAS DEFENSIBLE AS LONG AS THEY HAVE A FAIR OPPORTUNITY TO REBUT. THEY DID HAVE AN OPPORTUNITY TO REBUT.

>> LET ME JUST ASK AND LOOK AT THIS A LITTLE DIFFERENTLY. THEY DIDN'T SAY ANYTHING ABOUT NOT HAVING AN OPPORTUNITY TO TALK TO THE WITNESSES AND CONFRONT THE WITNESSES THAT WERE ON THE DVD I GUESS IT WAS?

>> WITH THE STATE SAID IS I WANT TO MAKE AN ARGUMENT TO SUPPORT WIDE IT SHOULDN'T HAVE GONE BEFORE THE JURY.

THAT IS ALMOST A DIRECT QUOTE. THEY KNEW THEY HADN'T SEEN THE VIDEO AND THEY ARE MAKING THE ARGUMENT FOR THEIR PREVIOUS OBJECTION TO PRESENTING IT TO THE JURY.

AS FAR AS THE ADMISSION TO THE PENALTY PHASE BEFORE THE JUDGE, THEY SAID WE DO NOT OBJECT AND WE UNDERSTAND ALMOST ANYTHING COMES IN HERE.

THEY LATER SAID WE WANT TO INTRODUCE --

THERE WAS A SCHOOLYARD FIGHT WHICH I'M SURE THE COURT IS AWARE OF AND HAS SEEN.

HE PLED TO I THINK THIRD-DEGREE ASSAULT AND GOT PROBATION.

THAT WAS THE ONLY EVIDENCE THE STATE OFFERED AT THE PENALTY PHASE --

I MEAN AT THE SPENCER HEARING. THEY OFFERED THAT TO REBUT THE TEACHER'S TESTIMONY THAT HE WAS A DILIGENT STUDENT.

OF COURSE THAT DOESN'T REBUT THE TESTIMONY BUT THAT WAS THE BASIS FOR.

>> WHAT WOULD YOU SAY IS THE MOST COMPELLING MITIGATION WHETHER IT CAME IN AND THE JUDGE

DIDN'T FIND THE CHANGE IN THE CALCULUS OR THAT WE NEED TO WORRY ABOUT HOW COMPELLING THE MITIGATION IS, THAT IT'S MORE IN THE CASES OF WHERE WHEN ONE COMES IN TO ROB A STORE AND DOES NOT INTEND TO KILL AND SOMETHING HAPPENS, THE REACTION.

>> WILL, WHAT THE COURT HAS SAID IMMEDIATELY, IF THERE IS A SINGLE AGGREGATOR IN AGGREGATOR CASES ARE NOT SUBJECT TO THE DEATH PENALTY UNLESS THE AGGREGATOR SPECIALLY WAYS AND THERE IS LITTLE UNKNOWN MITIGATION.

IN THIS CASE THERE IS NOT SUCH A WEIGHTY AGGRAVATOR AND YOU HAVE A FAIR AMOUNT OF MITIGATION.

I UNDERSTAND IT'S NOT OVERWHELMING AND IT'S NOT MENTAL HOMELESS AND THOSE TYPES OF THINGS.

BUT IT'S COMPARABLE TO MITIGATION AND IN CAREY, SCOTT, JOHNSON, WILLIAMS, CAROTHERS, LLOYD AND TO ANSWER YOUR QUESTION, HE HAS SIGNIFICANT LIFE CHALLENGES.

I THINK THAT IS MITIGATION THAT FAR SURPASSES LITTLE OR NO.

I THINK HE WAS BORN IN A WAR-TORN THIRD WORLD COUNTRY AND HIS MOTHER WAS 13 WHEN HE WAS BORN, AN ARRANGED MARRIAGE AND HIS FATHER LEFT.

HE IMMIGRATED HERE WHEN HE WAS ABOUT 12 YEARS OLD.

HAVING TO LEARN A NEW LANGUAGE AND OBVIOUSLY DIFFERENT FROM ERITREA.

HIS FATHER HAD A NEW WIFE AND NEW CHILDREN AND THERE WAS STRIFE IN THE FAMILY.

HIS MOTHER MOVED TO SEATTLE. AT SOME POINT HE WAS REMOVED FROM HIS FATHER'S HOME BY SPECIAL SERVICES DUE TO ABUSE BY THE FATHER.

HE LIVED IN FOSTER CARE SHELF

CURES A NUMBER OF THEM
APPARENTLY FOR A YEAR.
>> IS UNFORTUNATE THEY DIDN'T
ALLOW THE MITIGATION TO BE
DEVELOPED BECAUSE IT'S PRETTY
CLEAR TO ME THAT SINCE HE WAS
GETTING IN TROUBLE THAT THERE
WAS SOME.
>> BUT IT'S IN THE RECORD.
>> EXCEPT THAT I'M NOT SURE THAT
MR. WHITE IS GOING TO AGREE WITH
YOU THAT IT'S IN THE RECORD AND
UNCONTROVERTED AND ADMISSIBLE
THE WAY IT IS.
>> THE STATE DIDN'T EVEN OBJECT
TO IT.
THEY DIDN'T SAY IT WASN'T OBJECT
OF ALL.
IT WAS THE MOTHER AND THE
GRANDMOTHER TALKING ABOUT THE
CHILD.
THIS IS WHAT WE SEE ALL THE TIME
PERIOD.
>> THE DEPOSITION IS USUALLY THE
WAY WE GET THAT EVIDENCE IN.
>> MR. DOUGLAS' DEPOSITION IS IN
THERE.
>> WHERE IS IT WRITTEN THAT A
JUDGE IN ONE OF THESE SYMPTOMS
PROCEEDINGS IS REQUIRED TO
CREDIT HEARSAY?
>> IT'S THE RULE.
>> IT'S ADMISSIBLE BUT THAT
DOESN'T MEAN IT HAS TO BE
CREDITED.
THE JUDGE WOULD LOOK AT THAT IN
THE WHOLE CONTEXT TO DETERMINE
WHETHER HE WOULD CREDIT IT.
HAVE WE EVER SAID THAT A JUDGE
MUST CREDIT HEARSAY?
>> I'M NOT SURE WHAT YOU MEAN BY
CREDIT.
>> IT'S ACCEPTED AS TRUTHFUL ON
ITS FACE.
>> NO, THE JUDGE DOESN'T HAVE TO
ACCEPT ANY WITNESSES TESTIMONY
IS TRUTHFUL BUT WHAT A JUDGE HAS
TO DO IS HE HAS TO DETERMINE
WHETHER IT'S MITIGATED IN NATURE
AND HE ASKED TO DETERMINE

WHETHER IT'S PROVED BY THE
GREATER WEIGHT OF THE EVIDENCE
AND WHAT AWAITS TO ASSIGN.
IN THIS CASE THE TRIAL JUDGE DID
NOT HAVE THAT.

THE TRIAL JUDGE BASICALLY
TREATED IT AS IF IT WAS AN
ADMISSIBLE AND OF COURSE IT WAS
INADMISSIBLE.

THE TRIAL JUDGE DIDN'T SAY, I
WATCHED THIS VIDEO AND I THINK
THIS MOTHER IS LYING THROUGH HER
TEETH.

I WATCHED THE TEACHERS AND I
THINK THEY ARE MAKING IT ALL UP.
THE JUDGE COULD DO THAT JUST THE
WAY THE JUDGE COULD WITH ANY
WITNESS.

THE JUDGE DIDN'T DO THAT IN THIS
CASE.

>> THE ISSUE OF THE VIDEO AND
THE SIGNIFICANCE AND YOU ALL
SEEM TO AGREE THAT THE DEFENDANT
BEGAN TO LEAVE AND THEN SHE IS
ALERTED TO SOMETHING.

>> I'M STILL NOT SURE THAT THERE
WAS A CLEAR RESPONSE AND THERE
WAS NO EVIDENCE ADMISSIBLE
EVIDENCE, AS TO WHAT HE THOUGHT
THE VICTIM WAS DOING BUT HE
THOUGHT IT WAS A THREAT.

WOULD THAT BE FAIR TO SAY?

IN OTHER WORDS IF HE HADN'T GONE
UP TO THE FRONT DOOR TO KNOW
WHAT WAS LOCKED UNTIL AS JUSTICE
CANDIDATE POINTED OUT UNTIL
AFTER HE DID THE SHOOTING.

>> THE DEFENDANT DID NOT TESTIFY
AT.

THAT WOULD BE THE ONLY WAY.

>> SO WHILE WE KNOW ON THIS
RECORD IS THAT HE WAS PLANNING
TO LEAVE AFTER HE HAD GOTTEN --
HAVING ROBBED THE VICTIM AND
ROBBED THE STORE AND HE SEES THE
VICTIM DO SOMETHING THAT CAUSES
HIM TO EITHER, WHATEVER IT IS,
TO GO BACK AND THEN EITHER SHOOT
HIS WAY IN ORDER TO TRY TO GET
BACK IN THERE?

IS THAT WHAT WE --
HE WAS TRYING TO GET BACK IN
THERE?

>> WHAT OTHER EXPLANATION IS
THERE?

WE ALSO KNOW HE WORKED AT
CONVENIENCE STORES.

WE KNOW THAT BECAUSE OF THE
ADMISSIBLE EVIDENCE.

>> YES BUT I DON'T REALLY
KNOW --

>> WHAT DOES IT MATTER AND MAYBE
THIS IS WHAT I'M TRYING TO GET.
I GUESS HE WAS JUST TRYING TO
GIVE AN TO GET THE VICTIM TO
PUSH THE BUTTON TO LET HIM OUT.
IF HE WAS GETTING BACK IN THERE
AND HE PANICKED AND HE KILLED
THE VICTIM AND IS THAT STILL A
QUESTION OF WHETHER IT'S A
PROPORTIONATE SENTENCE OR NOT?

>> YES I THINK IT STILL FITS.
LIKE I SAID THE CABDRIVER GOT
SHOT IN THE HEAD.

THE FAST FOOD WORKER, THERE WAS
A WITNESS WHO WAS SITTING
OUTSIDE IN HER CAR.

SHE SAW THE DEFENDANT GO IN.
SHE LOOKED DOWN AT HER SANDWICH
AND A SHOT WAS FIRED AND THE
VICTIM WAS SHOT IN THE HEAD.

WE HAVE GOT --

WHO SHOT A FEMALE IN A GAS
STATION AND WE ARE NOT REALLY
SURE EXACTLY HOW THAT HAPPENED.
SCOTT SHOT THE LAUNDROMAT
CUSTOMER IN THE FACE.

JOHNSON TOOK THE VICTIM AND I
GUESS THIS WAS A ROBBERY AND HE
THOUGHT HE CHEATED THEM OUT OF
MONEY.

HE TOOK THE VICTIM IN THE HOUSE
AT GUNPOINT AND SHOT THEM A
NUMBER OF TIMES AND DRAGGED HIM
OUT TO THE PORCH.

THROUGH HIM ON THE FLOOR AND
SHOT HIM AGAIN IN THE FACE.

WILLIAMS SHOT THE VICTIM MAY
TIMES INCLUDING IN THE BACK
WHILE THE VICTIM WAS FACE DOWN.

THREE MORE CASES CAROTHERS, ROY
AND LINDBERGH.

>> SO WE HAVE TO LOOK BACK AT
WHAT THE MITIGATION WAS.

>> I CAN TELL YOU WITH THE
MITIGATION WAS.

AND CARRY THE TRIAL COURT FOUND
NO MITIGATION.

HE OFFERED THAT HE LIVED ON HIS
OWN AND HAVE BEEN UNEMPLOYED FOR
A LONG TIME AND PLAYED VIDEO
GAMES AT THE MALL AND HE LOVED
HIS GIRLFRIEND.

SCOTT, RELIGIOUS FAITH LOVES
FAMILY AND FRIENDS AND THEY
LOVED HIM.

A GOOD FATHER AND A GOOD SON.
DOMESTIC ABUSE AS A CHILD.

JOHNSON HAD TWO PRIOR VIOLENT
FELONIES, SHOT TWO PEOPLE BEFORE
YOU SHOT THIS MAN NUMEROUS
TIMES.

HE HAD QUOTE UNQUOTE A TROUBLED
CHILDHOOD AND WE DON'T KNOW WHAT
THAT MEANS.

HE'D BEEN RESPECTFUL TO HIS
PARENTS.

THE TRIAL COURT GAVE A LOT OF
WEIGHT TO THE FACT THAT HE
PARTICIPATED IN HIGH SCHOOL
ATHLETICS.

WILLIAMS, G.E.D., CAPACITY FOR HARD
WORK.

THOMPSON A GOOD PROVIDER,
PARENTS NO VIOLENT PROPENSITY
BEFORE THE KILLING, HONORABLE
DISCHARGE FROM THE NAVY, RAISED
IN CHURCH AND ARTISTIC SKILLS.
SINCLAIR, THE TRIAL JUDGE DIDN'T
FIND THIS BUT THIS COURT NOTED
THAT THERE WAS EVIDENCE OF LOW
INTELLIGENCE AND EMOTIONAL
DISTURBANCE.

HE ALSO WAS RAISED WITHOUT A
FATHER FIGURE.

THE MITIGATION IN THIS CASE IS
EQUAL TO OR IN SOME CASES
GREATER THAN THE MITIGATION IN
ALL OF THE CASES.

IF THE COURT HAS NO FURTHER

QUESTIONS I WILL SAVE WHAT I
HAVE GOT LEFT FOR REBUTTAL.
>> MAY IT PLEASE THE COURT.
STEPHEN WHITE ATTORNEY GENERAL
REPRESENTING THE APPELLEE.
SOME DISAGREEMENTS ON THE FACTS.
NUMBER ONE IS AS THE TRIAL COURT
FOUND THERE WAS NO EVIDENCE THAT
THE DEFENDANT KNEW OR THOUGHT
THAT THE GLASS WAS BULLETPROOF.
THE PROOF IS ACTUALLY IN TERMS
OF WHAT HE ACTUALLY DID AND
LET'S BACK THIS UP A LITTLE BIT
IN TERMS OF THE VIDEO.
THE TRIAL COURT FOUND THAT THIS
WAS NOT A PANIC REACTION.
>> WHEN WE LOOK AT THE TRIAL
COURT FINDINGS ON
PROPORTIONALITY, THE AGGRAVATOR,
YOU HAVE GOT THE VIDEO.
I UNDERSTAND WE GIVE DEFERENCE
TO FINDINGS WHEN WE ARE LOOKING
AT PROPORTIONALITY.
WE HAVE THE FOUR CAMERAS AND WE
HAVE GOT THE VIDEO.
DO YOU AGREE THAT IN THIS
SITUATION, WHETHER THIS WAS A
ROBBERY WITH INTENT WHEN HE WINS
TO KILL OR A ROBBERY WHERE
SOMETHING OCCURRED AFTER HE WENT
IN THAT THEN CAUSED A PANIC
REACTION TO KILL?
DO YOU AGREE THAT HE WAS LEAVING
AND ROBBED THE VICTIM WHO HAD
BEEN COMPLIANCE, LEFT THE AREA
AND THEN IN REACTION TO WHAT HE
SAW THE PUSHING OF A BUTTON AND,
THAT HE THEN CAME BACK?
>> WE DON'T KNOW WHAT HE SAW.
IN FACT IF YOU LOOK AT CAMERAS
TO WIN THREE GETTING INTO
JUSTICE CANADY'S POINT, WE DON'T
KNOW WHAT HE SAW.
THE BUTTON IS DOWN HERE.
>> I GUESS WHAT I'M ASKING IS
HAD HE COMPLETED THE ROBBERY
WHEN HE LEFT THE AREA?
>> YES, MA'AM.
I CANNOT POINT TO ANY EVIDENCE
THAT SHOWS AN INTENT TO KILL

HIM.

OTHERWISE HE WOULD HAVE SHOT
WOULD HAVE SHOT THEM AND THE IN
THE CASHIERS ROOM.

>> M. THE DEFENDANT WAS NOT ONLY
ARMED BUT HE WAS HEAVILY --

>> HE HAVE A GLOVE ON THE LEFT
HAND IN THE RIGHT-HAND TRIGGER
HAND WAS FREE AND UNGLOVED AND
THE MASK CAMOUFLAGED THE JACKET.

>> IN TERMS OF KNOWING WHETHER
WAS ALL APPROVED FOR HE LOCKED
THE DOOR, SOMETHING HAPPENED
THAT THE VICTIM DID THAT ALERTED
THIS GUY THAT HE NEEDED TO TRY
TO GET BACK IN?

>> THE VICTIM WAS STANDING UP.
IN FACT IN TERMS OF NOT BEING
ABLE TO SEE THE VICTIM PUSH THE
BUTTON AND, THE DEFENDANT IS
KIND OF SHORT.

HE IS 5 FEET 4 INCHES.

HE IMMEDIATELY PULLED OUT HIS
GUN AS HE IS LEAVING THE
CASHIERS ROOM AND HAS TO ANGLE
THE GUN UP LIKE THIS TO POINT
OUT THAT THE VICTIM AND HE
TRACKS THE VICTIM AS THE VICTIM
IS GOING DOOR-TO-DOOR TO LOCK
THE CASHIER DOOR TO KEEP THE
DEFENDANT --

>> I UNDERSTAND ALL THAT
HAPPENED AFTER BUT LET ME
UNDERSTAND THAT THIS WAVE.
IN TERMS OF WHETHER THIS IS A
DEATH CASE, THE LITANY HAS BEEN
RECITED, WHAT DOES IT MATTER?
IT IS WITHIN SECONDS AFTER THIS
HAPPENS.

TO WATCH IT IS HEARTWRENCHING.
THE PANIC AND EITHER HE
ACCIDENTALLY OR INTENTIONALLY
SHOOTS THE VICTIM.

HOW DOES THAT MATTER IN TERMS OF
PROPORTIONALITY IN THE CASES
WHERE WE HAVE PRODUCED THE
DEFENDANTS SENTENCED TO LIFE?

>> TWO POINTS ON THAT AND THIS
GOES WITH THE TRIAL COURT FOUND.
THE SHOOTING WAS NOT PANICKED.

THE SHOOTING WAS INTENTIONAL.
THE DEFENDANT WENT BACK TO THE
DOOR AND YOU CAN SEE IT IN THE
VIDEO.

HE IS BENDING OVER.

HE JUST HAS TO DROP IT IN AFTER
HE FIRES ONCE HE FIRES AGAIN.

>> WHERE HAVE WE SAID IN ANY OF
THOSE ROBBERY CASES THAT A
PANICKED --

THEY ARE ALL THE SINGLE
AGGRAVATOR AGAIN THE CABDRIVER
SHOT IN THE FACE.

STILL THE IDEA WAS THAT THE
ORIGINAL INTENT WAS ROBBERY.
THERE IS NO OTHER AGGRAVATOR.
THAT IS WHAT I'M TRYING TO FIND
OUT.

>> A KEY FEATURE OF MANY OF
THOSE CASES SUCH AS SCOTT IS THE
VICTIM -- TO HEAR THE ROBBERY
WAS TOTALLY COMPLETE AND THE
DEFENDANT DECIDED TO EXECUTE THE
VICTIM.

THE DEFENDANT DECIDED TO GO BACK
TO THE CASHIER DRAWER AND SHOOT
THE VICTIM.

>> BUT HE WAS REACTING.

I AM NOT BY ANY MEANS JUSTIFYING
ANYTHING BUT THE REALITY IS THAT
HE WAS REACTING TO WHAT HE SAW
OR SOME PERCEPTION THAT HE HAD
ABOUT WHAT THE VICTIM WAS DOING.
ISN'T THAT TRUE?

>> I CANNOT SPEAK TO THAT.
THAT IS CORRECT YOUR HONOR.

>> WHY AT THIS POINT DO WE SAY
THE ROBBERY HAS GONE BAD?

>> THE ROBBERY IS OVER YOUR
HONOR.

>> FOR SOME PURPOSES THIS
ROBBERY IS A CRIME.

HE HAS GOT THE MONEY.

THIS CRIME IS STILL GOING ON.
IT SEEMS THAT YOU COULD INFER
THAT HE FELT SOME THREAT FROM
WHAT WAS GOING ON INSIDE THE
CAGE.

I AM NOT JUSTIFYING ANYTHING
THAT THE DEFENDANT DOES HERE BUT

WHY IS IT THAT THIS IS A ROBBERY
GONE BAD?

AND DO WE HAVE ANY SINGLE
AGGRAVATOR CASE WITH A ROBBERY
GONE BAD WHERE IT WAS SAID THAT
WAS NONETHELESS PROPORTIONATE?

>> AGAIN I RESPECTFULLY
DISAGREE.

THIS ISN'T A ROBBERY GONE BAD.

>> TELL ME WHY THIS ISN'T A
ROBBERY GONE BAD.

>> THE ROBBERY WAS COMPLETED AND
WHEN HE WAS FLEEING HE DECIDED
TO KILL HIM.

>> NOW I'M GOING TO KILL HIM
BEFORE I GO.

>> HE DID NOT THREATEN --

>> IT WAS BECAUSE OF THE
MOVEMENT OF THE VICTIM.

I'M NOT JUSTIFYING IT BUT THAT
IS WHAT HAPPENED.

>> AS JUSTICE CANADY POINTED OUT
THERE WAS SOMETHING ABOUT THE
VICTIM STANDING UP THAT --

>> I WATCHED THE VIDEO.

HE WENT LIKE THIS.

I UNDERSTAND.

>> YOU KNOW I KNOW I JUST
REALIZE WHAT YOU SAID AND I
HADN'T THOUGHT ABOUT THIS
BEFORE.

HE SAID HE CAME BACK AND WAS
INTENDING TO EXECUTE HIS VICTIM
BUT AS HE LEFT --

HE COULDN'T HAVE THOUGHT ABOUT
EXECUTING THE VICTIM BECAUSE HE
IS TRYING TO GET OUT.

HE IS SAYING OPEN THE DOOR, OPEN
THE DOOR.

HE IS SAYING IT TO THE VICTIM.

>> HE GOES BACK TO THE CASHIER
ROOM AND LOOK SEND AND HE
APPARENTLY SEES THE VICTIM DEAD
OR DYING AT THAT TIME PERIOD HE
IS PANICKED AND THE JUDGE DID
FIND HE DID PANIC AFTER HE
DISCOVERED HE COULDN'T GET OUT
OF THAT IS WHEN HE PANICKED.

>> I JUST WANT TO MAKE SURE,
YOUR INFERENCE IS AND I THINK

YOU SAID THIS IS ONLY PCP?
I THINK ANYONE WATCHING THE
VIDEO CAN'T SEE THIS AS AN
EXECUTION AS IN THE CASE BEFORE?
IT'S A POST-CONVICTION STYLE
MURDER.

ITS FIRST A PANIC SHOT AND MAYBE
AN INTENTIONAL SHOT MAYBE MAY BE
TO KILL HIM AND MAYBE TWO
DISABLE HIM SO HE OPENS THE TOUR
FOR HIM.

>> AGAIN I RESPECTFULLY DISAGREE
YOUR HONOR.

PUTTING THE BAG DOWN AND FIRING
THE SECOND SHOT, AND WHILE THE
VICTIM IS TRYING TO KEEP THE
DOOR CLOSED AND LOCKED IT.
THE VICTIM IS NOT TRYING TO GET
OUT.

HE IS TRYING TO KEEP THE DOOR
CLOSED AND LOCKED THE DOOR AND
PUSHES OUTWARD IN THE VICTIM IS
PULLING IT TOWARD HIM.

>> WHEN YOU ARE TRYING TO KILL
MAIM OR ACCIDENTALLY DO IT, HE
IS TRYING TO GET OUT OF HIS
PLACE, HE THE DEFENDANT, WITH
HIS GOODS SO I GUESS THAT GOES
BACK TO THE QUESTION ABOUT THE
ROBBERY, THE ROBBERY OF THE
VICTIM IS COMPLETE BUT THE
ROBBERY OF THE STORE AND GETTING
OUT IS NOT COMPLETE.

>> THE TRIAL COURT EXPRESSLY
FOUND THAT THE EVIDENCE DID NOT
SUPPORT THE INFERENCE THAT THE
DEFENDANT KNEW AT THE TIME HE
SHOT THE VICTIM WHO WAS LOCKED
IN.

AND IN FACT IF YOU LOOK AT THE
VIDEO THE DEFENDANT CAN'T SEE
WHAT THE VICTIM IS DOING.

AS JUSTICE CANADY POINTED OUT HE
DID NOT LIKE WHATEVER HE SAW,
BUT THERE IS NO EVIDENCE.

>> AND IT'S KIND OF CONTRARY TO
ANY INFERENCE THAT THE DOOR WAS
BEING BLOCKED AND WHEN HE GETS
TO THE DOOR HE SEEMS TO BE
SURPRISED.

AFTER HE DOES THE SHOOTING IT GOES TO THE DOOR TO GO OUT. BUT HE IS SHAKING IT AND HE CAN'T GET OUT AND HE CRIES OUT FOR IT TO BE OPENED.

IT SEEMS LIKE THIS IS NOT A PERSON WHO IS EXPECTING A DOOR TO BE LOCKED.

>> AS THE TRIAL COURT IN FACT FOUND, WHEN HE GOES BACK TO THE CASHIER DOOR AND SHOOTS THE VICTIM TWICE HE DOESN'T DEMAND OPEN THE DOOR, OPENED THE STORY THAT DOOR.

>> BUT PUTTING ALL THAT ASIDE, SAY WE DISAGREE WITH YOU ABOUT THIS BEING A ROBBERY GONE BAD AND WE HAVE CONCLUDED THAT IT'S A ROBBERY GONE BAD.

DO WE HAVE ANY SINGLE AGGRAVATOR CASE OF A ROBBERY GONE BAD WHERE WE HAVE SAID THERE IS A ROBBERY GONE BAD OR THE CIRCUMSTANCES THAT AMOUNT TO THAT WHERE WE HAVE UPHELD THE DEATH SENTENCE AS PROPORTIONATE?

>> I CANNOT FIND ONE, YOUR HONOR.

>> I AM SURE YOU LOOKED.

>> I DID LOOK AND I DID INQUIRE OF COLLEAGUES BUT I ALSO HAVE NOT FOUND ANY CASE WHERE IT'S LIKE THIS ONE ARE YOU ACTUALLY SEE THE CLARITY CONQUERED THE FACTS AND I BEG TO DIFFER THE EXECUTION STYLE MURDER OF A VICTIM.

THAT IS ALL HE WENT BACK TO THE DOOR TO DO.

UNLIKE A LOT OF THE CASES THAT MY OPPONENT SITES WHERE IT WAS NOT THE VICTIM STANDING UP IN THE LAUNDRY SAYING YOU AIN'T TAKING MY MONEY.

THE VICTIM IS TOTALLY SUBMISSIVE.

>> IN A WAY IT IS TOTALLY ANALOGOUS BECAUSE THE VICTIM DID SOMETHING THAT THIS DEFENDANT AND HE DOESN'T EXACTLY WALK IN

CALMLY.
HE IS VERY MUCH LIKE HE KNOWS
WHAT'S GOING ON.
>> HE'S VERY METHODICAL.
>> I WOULDN'T EXACTLY SAY
METHODICAL.
VERY MUCH HE KNOWS WHAT HE WANTS
TO DO.
HE SAYS GIVE ME THE VIDEO IN THE
DVD AND EVEN THOUGH WE DON'T
KNOW A LOT OF WHAT HE KNOWS --
>> HE IS VERY PREOCCUPIED WITH
THE VIDEO.
>> SO WE DON'T KNOW WHY HE HAS
TURNED BACK TO EITHER SHOOT OR
GET HIS WAY IN THEIR, BUT IT
ISN'T IN REACTION TO SOMETHING
HE PERCEIVES AS A THREAT TO HIM
BEING ABLE TO SUCCESSFULLY
COMPLETE THE ROBBERY AND GET OUT
OF THERE.
I THINK THAT'S THE MOST LOGICAL
INFERENCE AND AGAIN I GUESS I
BEG TO DIFFER BUT THE IDEA THAT
YOU ARE CALLING THIS AN
EXECUTION STYLE MURDER IS
SOMETHING CLOSE TO --
IT'S CONCERNING ME.
>> THE WAY TO HARMONIZE THE
STATES VIEW WITH YOUR HONOR'S
VIEW AS HE DECIDED TO EXECUTE
THE VICTIM AFTER HE WENT IN THE
STORE AND SAW THE VICTIM
STANDING AT THE COUNTER.
THAT IS WHEN HE WENT BACK TO THE
CASHIER DOOR FOR SINGULAR
PURPOSE COMPETITION AT THE
VICTIM.
THAT IS WHAT THE VIDEO SHOWS.
>> SO THE ISSUE WHEN HE GETS TO
THE FRONT DOOR AND HE SAYS OPEN
THE FRONT DOOR, OPENED THE
DOOR --
>> THAT IS WHEN HE PANICS.
HE IS YELLING OUT AND HE KNEW
THERE WAS SOMEBODY AROUND
SOMEWHERE AND HE DIDN'T SEE
MR. HARDY WHO CAME IN AND WAS
HIDING AT THE TIME.
HE HEARS SOMEONE COMING IN THE

DOOR AND GLANCED UP AND WENT ABOUT HIS BUSINESS AND CONTINUING THE ROBBERY.

>> THAT WOULD BE A DIFFERENT CASE.

HE THEN SOUGHT OUT THIS OTHER --

>> THE TRIAL COURT FOUND THAT HIS MITIGATION.

HE DID NOT SEEK OUT THE CUSTOMER AND THERE WAS EVIDENCE THAT HE KNEW SOMEBODY ELSE AT ONE TIME WHO WENT IN THE STORE.

>> WHEN THE DOOR OPENED IS THAT RIGHT?

>> YES, YOUR HONOR.

I WOULD AGAIN RESPECTFULLY DISAGREE WITH YOUR HONOR IN TERMS OF THE MITIGATION BOTH WITH THE EMERGING INTO THE SEGUE BEING COMPELLING WITH OR WITHOUT THE VICTIM.

AND THE STATE ARGUES IN ITS BRIEF THE DEFENDANT CREATED THE SITUATION AND HE INSISTED TIME AFTER TIME AFTER TIME AND THE TRIAL JUDGE CONDUCTED ONE COLLOQUY AFTER ANOTHER.

>> I AGREE THE DEFENDANT THWARTED THE PRESENTATION OF MITIGATION AND I CLARIFY BY SAYING IT'S UNFORTUNATE THEY COULDN'T HAVE PRESENTED A VERY COMPELLING CASE.

I AGREE THAT THE DEFENDANT AS UNFORTUNATELY HAVING NOT A LOT BUT MORE THAN THEY WOULD LIKE DOESN'T SEEM WHETHER HE GET THE DEATH PENALTY OR NOT FOR WHAT HAPPENED IN HIS LIFE.

>> I WOULD URGE YOUR HONOR TO COMPARE THE VIDEO.

ASSUMING THE WHOLE PACKAGE, LET'S ASSUME FOR THE SAKE OF ARGUMENT.

>> NOW WE ARE TALKING ABOUT VIDEO?

>> THE FAMILY AND THE THREE TEACHERS -- THE MOTHER THE GRANDMOTHER AND THE TEACHERS. I WOULD SUGGEST TO YOUR HONOR

THAT YOU LOOK AT THE
CROSS-EXAMINATION AND ASK WOULD
THIS MITIGATION STILL HAVE BEEN
COMPELLING?

I SUMMARIZED SOME PAGES, 56 AND
58 OF THE STATE'S ANSWER BRIEF.
IN TERMS OF ALL OF THE NEGATIVE
BAGGAGE THAT VIDEO WOULD HAVE
COME WITH IN TERMS OF THE
SPECIFIC CROSS-EXAMINATION
QUESTIONS --

>> I APPRECIATE THAT AND I THINK
THE JURY OR SOMEONE KNEW THAT HE
HAD USED AGGRAVATED ASSAULT WHEN
HE WAS IN HIGH SCHOOL AND A
METAL BAR.

THAT IS THERE.

>> FIFTY DISRUPTIONS AND --

>> UNFORTUNATELY.

[INAUDIBLE]

BUT HE ENDED UP GRADUATING HIGH
SCHOOL.

I GUESS WHAT I THOUGHT WAS
COMPELLING AND APPRECIATED WAS
THAT THIS WAS A YOUNG MAN WHO IS
THE PRODUCT OF AN ARRANGED
MARRIAGE AND A 13-YEAR-OLD
MOTHER, A WAR-TORN AFRICAN
COUNTRY, EMIGRATES TO THIS
COUNTRY.

IN THAT AND HE GRADUATES HIGH
SCHOOL AND WE DON'T REALLY KNOW
ENOUGH ABOUT WHAT HAPPENED
DURING THE TIME HE GRADUATED --
AND EITHER HE IS ON DEATH ROW
AND HE IS EXECUTED OR IF HE IS
IN PRISON FOR THE REST OF HIS
LIFE SO WE HAVE THIS DOUBLE
TRAGEDY.

WE ARE JUST TRAINED TO MAKE A
DECISION HERE WHETHER HE IS
GOING TO GO ON THE LIST OF 400
PLUS DEFENDANTS THAT WOULD BE
MAYBE AT SOME POINT EXECUTED OR
SPEND THE REST OF HIS LIFE IN
PRISON.

THAT'S THE ONLY CHOICE THAT IS
THERE.

>> IN TERMS OF THE MITIGATION, I
THINK IT'S ALSO NOTEWORTHY THERE

IS NO STATUTORY MITIGATION,
NONE.

THERE IS NO MENTAL MITIGATION.

>> DID THE DEFENDANT ARGUED THAT
THE TRIAL JUDGE --

DID THE STATE ALLOW THIS DVD AND
WITHOUT OBJECTION AND IF THAT IS
THE CASE SHOULD THE TRIAL JUDGE
HAD CONSIDERED IT?

>> IN TERMS OF THE EXACT QUOTE
THE PROSECUTOR SAID THIS WAS
EARLY ON IN THE SPENCER HEARING.
HE SAID I DON'T HAVE ANY
OBJECTIONS BECAUSE PRETTY MUCH
EVERYTHING COMES INTO SPENCER,
PRETTY MUCH WORDS TO THAT EFFECT
OF THAT HE SAYS I WANT TO GO
OVER OR REVIEW THAT WITH YOUR
HONOR LATER IN THE HEARING AND
IT MUST BE 10 PAGES GOING ON --
GOING THROUGH OTHER REASONS
WHILE THE TRIAL COURT SHOULD NOT
ACCREDIT, SHOULD NOT CONSIDER
THE THINGS ON THE DVD AND THE
STATUTE SAYS EVIDENCE 9211.41
AND A FAIR OPPORTUNITY TO REBUT.
THIS EVIDENCE BECAUSE THESE TWO
GO HAND-IN-HAND THE PROSECUTOR
HAD NO OPPORTUNITY TO
CROSS-EXAMINE.

IT'S TOTALLY EX PARTE.

SIX MONTHS --

EIGHT MONTHS EARLIER THEY DID
THIS DVD AND DIDN'T GET TO THE
PROSECUTOR UNTIL THE DAY BEFORE
THE SPENCER HEARING.

THE DEFENDANT DIDN'T MAKE UP HIS
MIND THAT HE WANTED ONLY THE
INVESTIGATORS TO TESTIFY AND NOT
TO USE THE FAMILY.

I THINK THAT WAS OCTOBER 15.

>> HOW DID IT WORK WITH MOHAMMED
AND THIS IS THE PARTIAL MOHAMMED
CASE.

IT'S A PSI.

PSI, I mean the state is not
contesting that the other parts
about the age of his mother and
WHEN HE CAME TO THIS COUNTRY AND
THE FACT THAT HE GRADUATED HIGH

SCHOOL.

>> THE INVESTIGATOR TESTIFIED TO THAT.

>> REALLY I'M NOT SURE IN TERMS OF WHAT --

IT'S NOT LIKE AGAIN --

WHAT IS IT THAT WE ARE ACTUALLY ARGUING ABOUT?

WHAT SHOULD HAVE BEEN THERE THAT WASN'T THAT MIGHT CHANGE SOMETHING?

THE JUDGE DID CONSIDER SOME OF THIS EVIDENCE.

WHAT IS IT THAT THE STATE FELT SHOULDN'T COME THAN THAT JUDGE ENDED UP NOT CONSIDERING?

WHAT ARE WE TALKING ABOUT?

>> IN TERMS OF GOING DOWN TO THE MITIGATION THAT THE TRIAL COURT DID, BECAUSE IT WAS HEARSAY WITHOUT THE RIGHT OF CONFRONTATION IN CROSS-EXAMINATION?

IF WE GO DOWN THE LIST OF MENTAL MITIGATION, AGE THE TRIAL COURT REJECTED BECAUSE OF THE METHODOICAL WAY THAT THE CRIME WAS COMMITTED.

>> THE AGE IS 22.

>> ALMOST 23 ACTUALLY.

>> SO THAT REALLY DIDN'T HAVE TO DO WITH ANY MITIGATION.

>> THE PANIC THE TROUT COURT REJECTED BECAUSE THE PROCESS HE PANICKED AFTER THE SHOOTING AND NOT BEFORE.

>> I'M TALKING ABOUT STUFF THAT WOULD HAVE TO DO WITH THE VIDEO EVIDENCE OF THE THREE WITNESSES.

>> THE DEFENDANT EMIGRATED WHICH WAS TESTIFIED TO BY THE INVESTIGATOR AS WELL AS ON THE DVD.

THE TRIAL COURT FOUND AND GAVE WAY TO --

[INAUDIBLE]

HE WAS A DILIGENT STUDENT AND THE TRIAL COURT REJECTED IT BECAUSE IT WAS BASED ON THE NON-CONFRONTING HEARSAY EVIDENCE

IN THE DVD.

>> AS FAR AS BEING --
I MEAN I DON'T KNOW WHAT THAT
MEANS.

WE KNOW THAT WE HAD GOTTEN IN A
LOT OF TROUBLE IN HIGH SCHOOL.

[INAUDIBLE]

>> HOW DO WE KNOW THAT IT WAS
HIGH SCHOOL RECORD?

>> IS HIS HIGH SCHOOL DIPLOMA
WAS PUT IN THERE.

>> WE KNOW HE GRADUATED FROM
HIGH SCHOOL DESPITE EVERYTHING.

>> THE TRIAL COURT FOUND THAT
BUT IN TERMS OF HOW HE BEHAVED
IN-SCHOOL, THAT WAS NOT
CROSS-EXAMINED.

>> SO THE WAY WE LOOK AT THIS IS
THAT HE HAD A VERY ROCKY HIGH
SCHOOL CAREER.

HE MANAGED TO GRADUATE.

>> HE IS ONE THAT TOLD A PSI
WRITER THAT HE HAD SUSPENSIONS
AND HE TRIED TO MINIMIZE IT.

50 SUSPENSIONS I WOULD NOT
CHARACTERIZE THAT IS MINIMAL.

>> SOME OF THIS INFORMATION WAS
IN THE PSI also.

>> Some of it was, yes Your
Honor.

The suspensions were in the
PSI.

>> And some of that background
inference was in the PSI.

>> The trial court considered
the PSI.

GETTING DOWN --

BACK TO THE LIST OF MITIGATION
OF THE TRIAL COURT REJECTED.

THE THINGS THAT WERE NOT IN THE
PSI that the family testified
that the trial court rejected
because there was no opportunity
to cross-examine and this case
was at the heart of a
reliability evidence.

That is what the trial court was
troubled about.

>> IT SOUNDS LIKE THE TRIAL
COURT NO MATTER WHAT WAS SAYING

WELL HE DID THIS AND WE DON'T REALLY FIND THAT MITIGATING AND THE IDEA BEING THAT ONCE THE TRIAL COURT HAS HAD IN MIND THAT HE COMMITTED THIS CRIME WHILE WE LOOK AT PROPORTIONALITY A LITTLE DIFFERENTLY.

>> YES, MAÍAM.

>> THIS ISN'T A 50-YEAR-OLD THAT HAD A LIFE OF CRIME.

THIS WAS SOMEBODY AND SOMETHING THAT WENT REALLY WRONG AND ENDED UP IN THIS TRAGEDY BUT NOTHING TO SHOW THAT HE HAD A MENTAL HEALTH ISSUE.

THAT HE WAS LOW IQ OR ANYTHING.

>> NO, MAÍAM.

HIS INTELLIGENCE POSED AS A MITIGATOR.

>> IT'S EITHER LOW OR HIGH.

>> HE HAD EVERY OPPORTUNITY ONCE HE CAME HERE BECAUSE THEY PROPOSE THAT HE HAD A LOVING FAMILY.

THE TRIAL COURT FOUND THAT.

>> WHAT DO WE KNOW ABOUT THIS DEFENDANT FROM THE TIME HE CAME TO FLORIDA?

DO WE KNOW ANYTHING ABOUT THAT?

>> WE KNOW FROM THE PSI THAT HE JOB-HOPPED A LOT.

WE KNOW THAT HE HAD QUITE A FEW ARRESTS INCLUDING RESISTING A POLICE OFFICER WITHOUT VIOLENCE.

>> THE PSI SHOWS HE WAS WORKING?

>> YES MAÍAM, I THINK SEVERAL OF THEM.

THERE WERE SEVERAL THAT WERE IN THE PSI AND IT'S INTERESTING THE PSI continually refers to the father confirming those facts.

The father is not on the video but apparently his father was the one who confirmed a lot of the facts.

The father was the one who the DEFENDANT LIVED WITH.

HE WANTED TO LEAVE THE MOTHER

AND LIVE WITH HIS FATHER IN JACKSONVILLE.
THERE IS SOME CASE WHERE THE FATHER MAY HAVE ABUSED HIM.
THERE IS NO CREDIBLE EVIDENCE OF ANY ABUSE WHATSOEVER AND THERE IS NO EVIDENCE WHATSOEVER OF ANY MENTAL HEALTH ILLNESS AND THERE IS NO STATUTORY MITIGATOR PERIOD.

>> NOT YET.

I MEAN UNFORTUNATELY SOMETIMES WE DON'T SEE IT HERE.

>> IN TERMS OF THE MITIGATION JUST GOING DOWN THE LIST AND IF YOUR HONOR WANTED ME CONTINUE WITH THAT.

THE FACT THAT HE WAS A HARD WORKER AND THE TRIAL COURT SAID NO THAT IS BASED ON HEARSAY AND NOT CROSS-EXAMINED.

IT'S ALSO IN THE PSI THAT HE JOB-HOPPED A LOT.

THE DEFENDANT LOVES HIS FAMILY AND HIS FAMILY LOVES HIM.

THE TRIAL COURT FOUND THAT ON THE INVESTIGATOR'S TESTIMONY AND GIVE IT LIGHT WEIGHT.

RELIGIOUS.

THE TRIAL COURT REJECTED.

AGAIN THIS CUTS BOTH WAYS LIKE HAVING A LOVING FAMILY.

YOU HAVE BEEN TAUGHT THESE YET YOU HAVE SUSPENSION ACTIONS IN SCHOOL AND YOU RESIST A POLICE OFFICER.

>> BUT YOUR ARGUMENT ABOUT MITIGATION ALL MITIGATION CASES WHERE THERE ARE SIBLINGS AND SO YOU GET TO A POINT WHERE OTHER THAN SOME SERIOUS MENTAL ILLNESS AT THE TIME OF THE CRIME AND BEING 17 OR 18 ALMOST ANY MITIGATION --

IT CAN CUT BOTH WAYS.

I DON'T THINK IT'S UNIQUE TO THIS CASE.

>> THE DEFENDANT ABANDONED BY FATHER IN THE TRIAL COURT REJECTED IT BECAUSE NO

CROSS-EXAMINATION OF THE VIDEO
BUT ALSO THE MOTHER TESTIFIED
THAT SHE WAS NOT UNDER OATH.
MY MISTAKE ON THAT WHICH IS
ANOTHER PROBLEM WITH THE VIDEO
BUT THE MOTHER ACTUALLY
INDICATED IN THE VIDEO THAT THE
DEFENDANT CHOSE TO LIVE WITH THE
FATHER.

THE FATHER WAS REPEATEDLY
CONSULTED ON THE PSI.

>> It may have been better if
the judge said I was finding
this by giving it little weight.

>> No matter how you look at
it --

>> That is what Ms. Carey is
saying that he would have been
better off if he would have just
taken it and said this is all
contrary evidence and I'm giving
it no weight or little weight.

>> The optimal situation is
these witnesses called and the
prosecutor had an opportunity to
cross-examine.

>> He said he didn't want to
spend the money.

>> In fact at one point I think
it was during the guilt phase of
the trial that the trial judge
wanted to move the penalty phase
closer to the trial and he was
scheduled for October the 18th
AND THE TRIAL STARTED ON
OCTOBER 6TH.

DURING THE TRIAL THE JUDGE SAID
TO THE COUNSEL, LET'S MOVE THE
PENALTY PHASE CLOSER AND DEFENSE
COUNSEL SAYS NO YOUR HONOR WE
HAVE A LOT MORE.

WE CAN'T GET TOGETHER AT THE
PENALTY PHASE EVIDENCE IN TIME
FOR THAT.

WHAT DID THEY END UP DOING?
THEY ENDED UP USING THE VIDEO.

>> I THOUGHT THERE WAS SOMETHING
WHERE HE SAID I DIDN'T WANT TO
INVEST THE MONEY.

>> I THINK I WAS A LITTLE

EARLIER WHEN HE MENTIONED THEY WERE CONSIDERING.

BEFORE OCTOBER 4 OR THE BEFORE OCTOBER SIXTH ANYWAY.

THE DEFENSE COUNSEL DIDN'T MENTION THAT.

HE DIDN'T WANT TO SPEND THE MONEY.

THEY WERE CONSIDERING NOT FLYING PEOPLE AND FROM SEATTLE.

>> DID THE JUDGE ALSO -- WAS HE GIVEN PERMISSION TO DO IT TELEPHONICALLY?

>> ABSOLUTELY YOUR HONOR.

>> ABSOLUTELY.

THESE WITNESSES --

>> WERE THEY IN FACT PRESENT IN COURT?

>> WE KNOW SOME FAMILY WAS THERE YOUR HONOR BUT WE DON'T KNOW EXACTLY WHO.

THE FAMILY IS MENTIONED A COUPLE OF TIMES A WEEK DON'T KNOW EXACT WEIGHT.

ONE TIME THE DEFENSE COUNSEL SAYS ONE OF THEM WAS MS. DIANA BUT HE CHARACTERIZES HER IS NOT SPEAKING ENGLISH.

SHE SPEAKS ENGLISH BECAUSE SHE WAS A TRANSLATOR IN THE VIDEO AND BY THE WAY SHE WAS THE TRANSLATOR IN THE VIDEO FOR THE GRANDMOTHER AND THE TRANSLATOR THE MOTHER YOU CAN HEAR HER VOICE CRACK.

SHE IS CRYING AS A TRANSLATOR. YOU'RE SUPPOSED TO HAVE AN OBJECTIVE MUTUAL TRANSLATOR WHEN YOU HAVE SOMEBODY WHO DOESN'T SPEAK ENGLISH.

CERTAINLY THE MOTHER WAS NOT THAT.

IN TERMS OF THE CAMERA HONING IN ON THE MOTHER'S FACE, THE FAMILY CAN CRY ON THE WITNESS STAND IN TERMS OF --

BUT THE CAMERA ZOOMS IN ON THE MOTHER SHE IS CRYING AND THE MOTHER CRIES WHEN SHE IS TRANSLATING FOR THE GRANDMOTHER.

IN TERMS OF THE EX PARTE NATURE,
ACROSS EXAMINED NATURE OF THE
VIDEO.

IN TERMS OF HAD NO FRIENDS, I
THINK THE MOTHER BARELY MENTIONS
THAT AND I WOULD SUBMIT THAT IS
TOTALLY INCONSEQUENTIAL.

THE DEFENDANT CAME TO THE
DEFENSE OF SOMEBODY WHO IS
BULLIED.

NO IT'S INTERESTING ON THAT ONE
THE PROSECUTOR AFTER HE SAYS NO
OBJECTION TO THE VIDEO AND THEN
GOES ON FOR PAGES AND PAGES
ABOUT THE CROSS-EXAMINATION,
ALSO WANTS THE FACTS OF THE
PRIOR INCIDENT WITHOUT A LAWYER.
THE DEFENSE OBJECTS ON THE
GROUND OF HEARSAY AS TO THAT
PARTICULAR MITIGATOR.

IN TERMS OF THE NEXT ONE
RESPECTFUL AND OBEDIENT, WE HAVE
AN AGGRAVATION TO DELUDE.
WE HAVE 50 SUSPENSIONS FOR
DISRUPTION OF SCHOOL AND IN
TERMS OF THAT PARTICULAR
PROPOSED MITIGATOR THE TRIAL
COURT REJECTED AND I BELIEVE
THAT'S THE LAST ONE IN TERMS OF
THE ONES THAT THE TRIAL COURT
REFUSED TO CONSIDER AND SAID IT
WAS BASED ON THE UNCROSSED,
UNTESTED AND UNRELIABLE VIDEO OF
THE FAMILY, UNSWORN VIDEO OF THE
FAMILY.

IN TERMS OF ALL THE OTHER CASES,
WE DON'T HAVE ANY CASE WHERE YOU
SEE WITH ABSOLUTE CLARITY WHAT
HAPPENED.

WE DON'T HAVE ANY CASES WHERE
THE ROBBERY WAS OVER.

THAT IS ALL THESE CASES EITHER
THERE WAS AMBIGUITY AS TO WHAT
HAPPENED, THE VICTIM WAS
ATTACKED DURING THE ROBBERY AND
NOT AFTER THE ROBBERY WAS OVER
AND A LOT OF THOSE WHO HAVE
STATUTORY MITIGATION.

YOU HAVE NO STATUTORY MITIGATION
WHERE YOU HAD MENTAL MITIGATION.

THANK YOU YOUR HONORS.

>> REBUTTAL?

>> I KNOW I SAID THIS IN MY INITIAL ARGUMENT BUT RAISED ON THE STATE'S ARGUMENT I WOULD LIKE TO JUST SAY ONCE AGAIN AT THAT THE TRIAL, THE PROSECUTOR OBJECTED TO THIS VIDEOTAPED TESTIMONY AND THE DEPOSITION OF THE MITIGATION SPECIALIST COMING IN AT THE PENALTY PHASE BEFORE THE JURY.

THE SPENCER HEARING THE PROSECUTOR DID NOT OBJECT SO WE HAVE NO OBJECTION.

THEN HE SAID HE HAD WATCHED THE VIDEO AND HE WANTED TO MAKE ARGUMENTS QUOTE UNQUOTE JUST FOR THE RECORD TO SUPPORT HIS OBJECTION TO ADMITTING THE VIDEOTAPE BEFORE THE JURY.

THIS IS IN THE RECORD VOLUME 15 AND 13.99 SO THE STATE DID NOT OBJECT TO THIS TESTIMONY.

THE STATE SUBMITTED ONE PIECE OF EVIDENCE TO REBUT SOME OF THE TESTIMONY.

THAT PIECE OF EVIDENCE WAS THE CONVICTION, THE JUDGMENT CONVICTION FOR THE THIRD-DEGREE ASSAULT FOR THE SCHOOLYARD FIGHT THAT THE DEFENDANT GOT INTO WHEN HE WAS 16 YEARS OLD.

>> HERE IS THE ISSUE.

THE JUDGE IN TERMS OF PROPORTIONALITY, HOW MUCH DID THE JUDGE LOOK AT THE MITIGATION OR NOT?

IN TERMS OF THIS VIDEO WHICH I HAVEN'T SEEN, WHICH SHOWS ITS EVIDENCE.

SOMEHOW THAT IS WHAT IS THE MATTER OF LIFE OR DEATH.

ISN'T MR. WHITE CORRECT THAT WE DO HAVE TO CONSIDER THE 50 SUSPENSIONS AND THESE OTHER THINGS THAT ARE IN THE PSI?

>> You can't just take the good PART AND THEN FORGET ABOUT THE OTHER PARTS OF THIS.

AS WE ARE LOOKING AT IT WE HAVE TO SEE THE WHOLE PACKAGE. IT DOESN'T CHANGE THE ...MIGR... TO THE COUNTRY BUT CERTAINLY IT WOULD HAVE GRADUATED BUT IT WASN'T LIKE HE WENT TO A SCHOOL WITHOUT PROBLEMS SO I DON'T SEE HOW WE ESCAPE AND HOW WE LOOK AT THE WHOLE PICTURE AND ALSO LOOKING AT THOSE PARTS.

>> I THINK THE COURT HAS TO LOOK AT THE WHOLE PICTURE OF MITIGATION.

BUT YOU CAN'T HAVE A MITIGATION CASE.

THE DEFENDANT DOESN'T WANT TO PUT ON MITIGATION THROW IN THE CASE --

I JUST HAVE A PROBLEM WITH THE BASIC RULES OF EXAMINATION AND CROSS-EXAMINATION.

OTHERWISE IT WOULD BE ENCOURAGING THE DEFENDANT TO SAY WE ARE JUST GOING TO PUT IT IN THESE VIDEOS.

>> YOUR HONOR I'M NOT ASKING THE COURT TO ONLY CONSIDER MITIGATION.

I'M ASKING THE COURT TO CONSIDER EVERYTHING IN THE RECORD.

THAT IS WHAT THE LAW SAID.

THE TRIAL JUDGE HAD TO CONSIDER ALL POSSIBLE MITIGATION IN THE RECORD AND EVALUATED.

>> MAYBE PREVENTING THE DEFENSE LAWYER FROM PUTTING ON A CASE OF MITIGATION, THAT EVEN IF THE JUDGE --

IF THIS WASN'T A SINGLE AGGREGATOR CASE, TO ME THE MITIGATION DOESN'T GO FROM BEING SORT OF MINOR MITIGATION TO GREAT MITIGATION AND UNLESS YOU CAN SHOW ME SOMETHING THAT WOULD CHANGE THAT PICTURE, I THINK WE ARE DEALING WITH THE ONE PART OF THE EQUATION WHICH IS IT'S A SINGLE OR AGGREGATOR CASE AND I'M NOT SURE THE MITIGATION PICTURE IS GOING TO CHANGE THAT

ONE WAY OR ANOTHER.
WHETHER IT'S GOOD OR BAD FROM
YOUR POINT OF VIEW.
>> ARE NOT SURE WHAT THE
QUESTION IS.
>> QUESTION IS WHAT IS THERE IN
THIS VIDEOTAPE THAT WOULD CHANGE
THE NATURE OF THIS MITIGATION
AND THE FACT THAT HE ALSO HAD 50
SUSPENSIONS AND AGGRAVATED
ASSAULT AND I'LL BE OTHER THINGS
THAT HE HAPPENED WHEN HE WAS IN
JACKSONVILLE.
>> YOUR HONOR, THIS MITIGATION
IS COMPARABLE TO THE MITIGATION
IN ALL THE OTHER CASES.
HE HIT A KID DURING A FIGHT IN
THE SCHOOLYARD AT AGE 16.
THE JUDGE DIDN'T EVEN CONSIDER
THAT HE WAS BORN AND RAISED IN
ERITREA AFRICA.
THE JUDGE DIDN'T EVEN BELIEVE
THAT WAS TRUE.
THE JUDGE DIDN'T CONSIDER THAT
HIS FATHER LEFT BEFORE HE WAS
BORN AND HE HAD NO FATHER FIGURE
UNTIL HE MOVED TO THE U.S.
THE JUDGE DIDN'T CONSIDER THAT.
THE JUDGE DIDN'T CONSIDER
DESPITE THE FACT THAT HE --
HE CAME TO THE ALTERNATIVE
SCHOOL AND HE WORKED VERY HARD.
HE DID EVERYTHING HE HAD TO DO
TO COMPLETE HIS WORK EVEN THOUGH
HE WASN'T NECESSARILY VERY GOOD
AT THE WORK.
HE WAS A DILIGENT STUDENT.
HE WAS EMPLOYED.
HE WAS A RESPECTFUL OBEDIENT
CHILD.
THAT DOES NOT NEGATE THE FACT
THAT HE HAD ALSO GOTTEN IN A
FIGHT.
AS FAR AS THE 50 SUSPENSIONS,
THE ONLY EVIDENCE WE HAVE OF
THAT IS THAT HE TOLD SOMEBODY
ABOUT THAT.
WE HAD NO IDEA IF THAT WAS TRUE
OR WHAT THEY WERE FOR.
THAT MAY NOT BE MITIGATION BUT

IT DOESN'T REBUT OR REFUTE ALL THESE OTHER MEDICATIONS. IT'S COMPARABLE OR GREATER THAN THE MITIGATION IN THESE OTHER CASES.

THE OTHER THING I WOULD LIKE TO POINT OUT IS NO ONE HAS MENTIONED THIS BEFORE.

IF YOU WATCH THE VIDEOTAPE IS NOT VERY HANDY WITH HIS GUN. WHEN HE RUNS BACK HE FORGETS THAT THEY DROP THE MONEY ON THE FLOOR.

HE RUNS BACK AND HE IS BENDING OVER TO GRAB THE MONEY AND ANOTHER SHOT IS FIRED.

THAT APPEARS TO BE SOME ACCIDENTAL SHOT FIRED AT THAT TIME PERIOD THERE IS A THIRD SHOT THERE AND ONE MORE THING I WOULD LIKE TO RESPOND TO JUSTICE CANADY'S STATEMENT WHICH I UNDERSTAND, AFTER HE HAS FIRED THE SHOT AND HE RUNS BACK TO THE DOOR, THE FIRST THING HE DOES IS PULL ON THE DOOR.

I THINK JUSTICE CANADY SAYS WELL DOES NOT MEAN HE DIDN'T KNOW THAT THE DOOR WAS LOCKED? I WOULD SUBMIT THAT IF HE THOUGHT THE DOOR WAS BEING LOCKED, HE WOULD STILL PULL ON THE DOOR WHEN HE WENT TO THE DOOR.

MAYBE HE HOPED IT WASN'T LOCKED BUT CLEARLY HE THOUGHT --

>> ANYBODY GOING OUT OF A DOOR IS GOING TO PULL ON THE DOOR.

>> I DON'T THINK THAT MEANS HE DIDN'T KNOW THE DOOR WAS LOCKED OR IT'S NOT REASONABLE TO INFER THAT BECAUSE OF HIS PREVIOUS EMPLOYMENT IN AN IDENTICAL STORE HE KNEW WHAT WAS GOING ON.

I THINK THAT IS ALL, YOUR HONORS.

THANK YOU VERY MUCH.

>> THANK YOU FOR YOUR ARGUMENTS. THE COURT IS ADJOURNED.

>> ALL RISE.

