

>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
PLEASE BE SEATED.
>> AFTER THE BREAK WE HAD
HOLMES COUNTY HIGH SCHOOL JOIN
US VISITING IN THE COURTROOM
TODAY.
WE WELCOME THEM.
WE HAD A LITTLE BIT OF A DELAY
TO ALLOW THEM TO GET SETTLED
INTO THE COURTROOM.
OUR NEXT CASE FOR THE DAY IS
GONZALEZ VERSUS STATE OF
FLORIDA.
YOU MAY PROCEED.
>> THANK YOU.
MAY IT PLEASE THE COURT.
MY NAME IS JOSE RAFAEL RODRIGUEZ
REPRESENTING MR. GONZALEZ ON
THIS DIRECT APPEAL ON A DEATH
SENTENCE AND --
>> MIGHT WANT TO MAKE SURE --
>> SORRY FOR MY VOICE.
I JUST CAME OFF A COLD.
I WILL DO THE BEST I CAN.
WE HAVE RAISED SEVERAL ISSUES
IN THE CASE BUT I WANT TO A FEW
OF THEM IF I MAY.
>> WHICH ONES DO YOU FOCUS ON
BECAUSE WE DO HAVE 13 OR 14
ISSUES HERE?
>> THE ONES, THE FIRST MATTER
THAT I WOULD LIKE TO ADDRESS
ENCOMPASSES THREE OF THE ISSUES
AND THAT IS THE PROSECUTORIAL
COMMENTS.
SO I'M GOING TO JOIN THOSE
TOGETHER.
THIS COURT HAS PREVIOUSLY
PERMITTED EVALUATION OF
COMMENTS OF BOTH GUILT AND
PENALTY PHASE COMMENTS IN
ASSESSING WHETHER OR NOT
REVERSIBLE ERROR HAS OCCURRED.
IN THIS CASE I ACKNOWLEDGE UP

FRONT THAT THE DEFENSE LAWYER BELOW FAILED TO OBJECT TO MOST OF THESE COMMENTS.

HOWEVER HE DID OBJECT TO ONE IN PARTICULAR.

THAT PERMITS THIS COURT TO THEN ASSESS WHETHER HE OBJECTED TO OR UNOBJECTED TO COMMENTS CONSTITUTE FUNDAMENTAL ERROR.

>> HANG ON A MINUTE.

>> YOU MAY PROCEED.

>> BASICALLY THE MATTER BEGAN IN OPENING STATEMENT WHEN THE PROSECUTOR INDICATED TO THE JURY THAT THE TWO PRINCIPLE WITNESSES AGAINST MR. GONZALEZ, MR. FLORENCE AND MR. THORNTON, HAD IN FACT CONFESSED AND HE TOLD THE JURORS, THEY HAVE TOLD THE TRUTH.

NOW THE PROSECUTOR DIDN'T COUCH THIS AS, YOU WILL HAVE TO ASSESS WHETHER OR NOT THEY TOLD THE TRUTH.

>> THIS IS A STATEMENT THAT WAS MADE IN AN OPENING STATEMENT, CORRECT?

>> IN OPENING STATEMENT, CORRECT.

>> THIS IS THE TIME WHEN THE DEFENSE ATTORNEY, PROSECUTORS LAYING OUT WHAT IS GOING TO BE THEIR CASE?

>> CORRECT.

AND HAD THE PROSECUTOR PERHAPS COUCHED THE STATEMENT IN DIFFERENT, IN A DIFFERENT WAY AND SAID, WE ASKED THE JURORS TO ASSESS THEIR CREDIBILITY.

WE MAY BE IN A DIFFERENT POSTURE IN THIS CASE BUT HE DIDN'T SAY THAT.

HE SAID THEY CONFESSED.

CONFESSED TO WHOM?

WELL THE LAW ENFORCEMENT.

THEY'RE TELLING THE TRUTH.

TELLING THE TRUTH ACCORDING TO

WHOM?

THE PROSECUTION.

THESE WERE OUTRIGHT STATEMENTS OF FACT BY THE PROSECUTOR. THEY WERE NOT IN ANY WAY COUCHED IN ARGUMENT, FIRST OF ALL THERE IS NOT SUPPOSED TO BE ARGUMENT IN OPENING STATEMENT TO BEGIN WITH BUT THEY WERE NOT COUCHED IN A WAY THEY WERE ASKING JURORS TO MAKE THAT ASSESSMENT.

HE ALSO WENT ON TO INDICATE THAT ANOTHER WITNESS BY THE NAME OF CAROL BRANDT, HER ONLY INTEREST IS TO TELL THE TRUTH. THIS IS COMMON THEME OF THE PROSECUTION BELOW.

>> I AM VERY SENSITIVE TO WHEN A PROSECUTOR OR POLICE OFFICER VOUCHES FOR A WITNESS BUT IT SEEMED TO ME THAT MOST OF WHAT THESE COMMENTS WERE DIRECTED TO IS SOMEBODY WAS, DIDN'T HAVE A MOTIVE TO LIE AND THAT IS, THAT WAS BORNE OUT AS TO SOME OF THESE WITNESSES.

SO I DON'T KNOW HOW THAT IS VOUCHING IN THE SAME WAY THAT YOU THAT WE HAVE CONDEMNED IT IN OTHER CASES.

WHY DON'T YOU, BECAUSE YOU HAVE GIVEN SEVERAL EXAMPLES.

GIVE ME YOUR THOUGHT OF WHAT YOU THINK IS THE MOST EGREGIOUS EXAMPLE OF VOUCHING?

>> I THINK THE MOST EGREGIOUS EXAMPLE ASIDE FROM THE OPENING STATEMENT WAS THE IMPROPER COMMENT DURING CLOSING ARGUMENT.

>> OF THE OPENING STATEMENT ONES, WHICH ONE WAS THE ONE THAT YOU THINK REALLY --

>> THEY HAVE TOLD THE TRUTH. UNVARNISHED STATEMENT BY THE

PROSECUTOR.

>> BUT WHAT WAS THAT PRECEDED BY BEFORE?

>> IT WAS NOT COUCHED IN TERMS OF ANY TYPE OF PLEA AGREEMENT IS THAT WHAT THE COURT WAS TRYING TO GET AT.

>> WAS THERE AN OBJECTION TO THAT?

>> NO.

>> YOU ARE AWARE OF COURSE, IF THERE IS NOT AN OBJECTION WHICH IN THIS CASE AN OPENING STATEMENT WOULD HAVE BEEN THE TIME TO DO IT, SAY, YOU KNOW, WHATEVER YOUR ARGUMENT IS NOW, YOU WOULD HAVE TO SHOW FUNDAMENTAL ERROR.

>> THAT'S CORRECT.

AND I POINTED THAT OUT IN MY BELIEF.

I HAVE NOT OBVIOUS CAN NOT HIDE THE FACT THAT DEFENSE COUNSEL DID NOT OBJECT BUT I THINK THERE'S TWO THINGS THAT THIS COURT NEEDS TO CONSIDER IN ASSESSING ALL OF THESE COMMENTS UP FRONT.

THE COMPRESSED TIME. PERIOD WE'RE TALKING ABOUT.

THIS TRIAL ACCORDING TO THE STATE'S OWN ADMISSION LASTED 2 1/2 DAYS AS FAR AS TESTIMONY IS CONCERNED.

>> 2 1/2 DAYS IS -- WHAT DID YOU SAY?

>> 2 1/2 DAYS OF TESTIMONY FROM WHEN THE JURY WAS SELECTED UNTIL THE VERDICT OF DEATH WAS 2 1/2 DAYS.

>> THAT SAYS WHAT TO US?

>> WELL THAT TELLS YOU THE COMMENTS WERE NOT SO FAR REMOVED FROM THE JURY'S DECISION THAT THIS COURT CAN'T SAY THEY HAD NO EFFECT ON THE

VERDICT.

THAT IS THE FIRST POINT I WANT TO MAKE.

IT ALSO TOUCHES ON THE VARIOUS ASPECTS AND --

>> BUT THE REAL QUESTION IN A FUNDAMENTAL ERROR CASE TO ME IS, HOW YOU COULD NOT HAVE GOTTEN A VERDICT WITHOUT THIS COMMENT.

SO TELL ME HOW, WHY YOU WOULD HAVE NOT GOTTEN A VERDICT OF GUILTY IN THIS CASE WITHOUT THIS COMMENT.

>> A VERDICT OF GUILTY OR A RECOMMENDATION OF DEATH.

I'LL TELL YOU.

>> EITHER ONE.

WHY COULD YOU NOT GET THAT WITH THESE COMMENTS?

>> THE SPECIFIC REASON I'M POINTING TO IS THAT THE PROSECUTOR HIMSELF IN CLOSING ARGUMENT CONCEDED THEIR CASE WAS BASED, WAS PREMISED LARGELY ON THE TESTIMONY OF TWO COOPERATING CODEFENDANTS.

MR. FLORENCE --

>> IN THERE CASE I'M HAVING A HARD TIME, FIRST OF ALL, I'M HAVING A HARD TIME UNDERSTANDING HOW THESE COMMENTS, THAT I HAVE THEM UP WERE EVEN IMPROPER.

THEY HAVE CONFESSED.

THEY TOLD THE TRUTH.

HER ONLY INTEREST TO TELL THE TRUTH WHICH WAS PRECEDED BY SHE HAS NO INVOLVEMENT, NO INTEREST IN THE CASE.

THE PROOF WILL SHOW AND HER ONLY INTEREST IS TO TELL THE TRUTH.

THAT WAS IN THE OPENING STATEMENT.

THE, THERE IS, THERE WAS

SURVEILLANCE CAMERAS TO SHOW UP UNTIL WHAT HAPPENED IN THE BEDROOM, YOU'RE NOT SAYING, IS THE ARGUMENT THAT THERE IS A REASONABLE DOUBT AS TO THIS DEFENDANT'S GUILT IN THIS CASE?

>> I'M GLAD THE COURT MENTIONED THE VIDEO CAMERA BECAUSE THE TESTIMONY IN THE TRIAL INDICATED THAT IT WAS MR. THORNTON WHO TOLD JURORS WHO WAS DEPICTED IN THE VIDEO CAMERA BECAUSE THE IMAGES WERE SO POOR.

SO ONCE AGAIN WE'RE RELYING ON THE CREDIBILITY OF MR. THORNTON AND MR. FLORENCE.

>> SO WHO IS, WHAT WAS THE DEFENSE THEORY OF GUILT? THAT YOUR CLIENT WAS NOT THERE OR HE WASN'T THE MAIN ACTOR?

>> THE DEFENSE COUNSEL'S MAIN ARGUMENT WAS REASONABLE DOUBT IN THE SENSE NO ONE COULD PROVE THAT MR. GONZALEZ WAS IN FACT THE SHOOTER OR IN FACT WAS EVEN PRESENT AND WHAT HIS ARGUMENT THROUGHOUT THE TRIAL WAS THAT THESE OTHER INDIVIDUALS IN ORDER TO GET SWEETHEART DEALS IMPLICATED HIM.

THAT WAS BASICALLY THE THEORY OF THE DEFENSE BELOW.

>> THIS IS A CASE, ALBEIT CIRCUMSTANTIAL IT SEEMS TO ME, YOU'VE GOT A DEFENDANT WHO KNEW THE VICTIM OR IT SEEMS TO ME THE ONLY RECORD EVIDENCE THAT WE HAVE IS THAT HE IS THE ONE WHO KNEW THE VICTIMS, CORRECT? THE MAN HAD GIVEN HIM \$5,000 TO HELP OUT WITH SOME COMMUNITY PROJECT HE WAS WORKING ON, CORRECT?

>> CORRECT.

>> THAT HE KNEW THE LADY WHO

HE, WENT TO HER HOUSE THAT HAD THE SAFES CORRECT?

THEY PUT THE SAFE IN HER HOUSE? THE DEFENDANT KNEW HER.

>> THE PERSON THAT THE SAFE WAS TURNED INTO, YES.

>> THE VAN, ONE OF THOSE VEHICLES THAT WAS OUTSIDE OF THE HOUSE BELONGED TO HIM?

>> CORRECT.

>> CORRECT?

JUST SEEMS TO ME WHEN YOU TIE ALL OF THIS TOGETHER, HOW IN THE WORLD ARE WE TO BELIEVE THAT THIS MAN WAS NOT INVOLVED IN THIS MURDER AT ALL?

>> WELL, THE QUESTION REALLY BECOMES WHAT TIES IT TOGETHER? THE GLUE THAT TIED IT TOGETHER WAS THE TESTIMONY OF MR. THORNTON AND MR. FLORENCE.

>> BUT YOU HAVE, YOUR BOOKENDS ARE, THE PROSECUTOR SAID THEY CONFESSED, THEY'RE TELLING THE TRUTH IN OPENING AND SAID SOMETHING ABOUT THAT IN CLOSING.

IN BETWEEN YOU DON'T POINT TO ONE ERROR THAT OCCURRED IN THIS GUILT PHASE OF THIS TRIAL.

WHEN THESE CODEFENDANTS TESTIFIED NOT ONE ERROR IN THE ACTUAL TESTIMONY IN THIS CASE, NOT ONE ERROR WITH THE PROSECUTOR, YOU KNOW, LEADING OR VOUCHING OR DOING ANYTHING. AND SO YOU WOULD HAVE US TO BELIEVE THAT A COUPLE OF COMMENTS WHICH I'M NOT EVEN SURE COMES CLOSE TO WHAT WE'VE CONDEMNED IN OTHER CASES WOULD HAVE SO PERMEATED THE TRIAL THAT UNLESS THE PROSECUTOR HAD SAID THEY'RE TELLING THE TRUTH, THERE WOULDN'T HAVE A BEEN A VERDICT OF GUILT.

THAT'S WHAT YOU WOULD HAVE US BELIEF.

>> AND I WOULD ALSO POINT OUT --

>> DO YOU SEE HOW, I KNOW YOU'RE NOT GOING TO SAY IT'S RIDICULOUS BUT DO YOU SEE THAT STRAINS CREDULITY TO SAY WHAT WAS SAID AT THE BEGINNING, WHICH SEEMED INNOCUOUS AND NOT EVEN INFLAMMATORY COMMENTS, WOULD HAVE SO INFLUENCED THE JURY THEY COULDN'T HAVE EVALUATED THESE CODEFENDANTS AND MADE THEIR OWN DECISION AS TO WHETHER THEY WERE MOTIVATED BY A DEAL OR SOMETHING ELSE?

>> I UNDERSTAND THE COURT'S POSITION BUT I ALSO WANT TO POINT OUT THAT IN CLOSING HE TOLD JURORS IF THEY HAD WANTED TO PLEASE US THEY WOULD HAVE APPLIED ADDITIONAL DETAILS. PLEASE WHO?

PLEASE THE PROSECUTION. WHY IS THE PROSECUTOR EVEN MENTIONING THAT TO JURORS?

>> I WOULD ASSUME IN CROSS-EXAMINATION THEY WERE CROSS-EXAMINED ABOUT THE DEAL THAT THEY MADE WITH THE STATE AND THAT THEY WERE SAYING WELL, I MEAN IF YOU ARE TRYING TO PLEASE THE STATE BY ENTERING A DEAL THE DEFENSE WAS IMPEACHING THEM ON THAT BASIS.

SO THAT'S A REBUTTAL TO WHAT WAS SAID.

AGAIN WITHOUT KNOWING IT, IT SOUNDS LIKE IT WOULD BE. IF THEY REALLY WANTED, THAT THE DEFENSE WAS CRITICIZING THESE WITNESSES SAYING THEY JUST SAID IT TO PLEASE THE STATE.

WAS THERE SOMETHING LIKE THAT IN, BY THE DEFENSE LAWYER?

>> WELL THERE WERE
CROSS-EXAMINATION AS TO THE
PLEA DEAL BUT --

>> AS YOU WERE DOING IT SO THEY
WERE SIMPLY, THEY WEREN'T
TELLING THE TRUTH BECAUSE THEY
WANTED TO GET A SWEETHEART
DEAL?

AND THE REBUTTAL TO THAT IS,
LISTEN, IF THEY WANTED TO
PLEASE US THEY COULD HAVE GIVEN
US AND NOT TELL THE TRUTH, THEY
COULD HAVE GIVEN US A LOT MORE
INFORMATION TO WORK WITH.

>> IN FACT IT WAS BROUGHT OUT
THEY LIED TO THE POLICE
INITIALLY AND THEY HAD LIED TO
EVERY ONE BUT --

>> THE JURY HEARD THAT, RIGHT?

>> YES.

>> THE JURY HEARD WHEN THEY
FIRST TALKED TO THEIR MOTHER,
AS I BELIEVE IT WAS THE
17-YEAR-OLD OR 19-YEAR-OLD,
TALKED TO HIS MOTHER AND THAT'S
WHEN HE SAID THAT HE HAD BEEN
INVOLVED IN THIS BUT THAT HE
WAS OUTSIDE, CORRECT?

>> CORRECT.

>> THAT WAS HIS INITIAL
STATEMENT.

>> HE REPEATED THAT TO THE
POLICE.

>> RIGHT.

>> AS IT WENT ON, HE CHANGED
AND ADMITTED THAT HE WAS
ACTUALLY IN THE HOUSE BUT THAT
THE DEFENDANT, MR. GONZALEZ,
ACTUALLY WAS THE ONE WHO DID
THE SHOOTING?

>> CORRECT.

AND BEFORE I FORGET OF COURSE,
I WANT TO TOUCH UPON SOME OF
THE OTHER COMMENTS.
I THINK THE MOST IMPORTANT ONE
IS THE ONE THAT WAS ACTUALLY

OBJECTED TO AND THAT WAS --
>> WAS THAT IN THE PENALTY
PHASE OR WAS THAT IN THE
CLOSING ARGUMENT PHASE?
>> THAT WAS IN THE PENALTY
PHASE.
>> OKAY.
>> WHERE HE IS TALKING ABOUT
THE MITIGATION THAT WAS
PRESENTED BY MR. GONZALEZ.
AND AFTER A LONG RENDITION THAT
IS IN THE RECORD OVER A
PARAGRAPH AND A HALF OF
MR. GONZALEZ'S LIFE AND HOW HE
IS A LAW-ABIDING CITIZEN.
HOW HIS FAMILY LOVES HIM, ET
CETERA, THE PROSECUTOR THEN
WENT ON TO SAY THIS IS ACTUALLY
AN AGGRAVATING CIRCUMSTANCE
WHICH DREW THE OBJECTION ON
THOSE SPECIFIC GROUNDS BY
DEFENSE COUNSEL.
>> I KNOW THIS IS A DIFFERENT
POINT ON APPEAL.
>> YES.
>> ARE YOU LEAVING NOW THE
GUILT PHRASE IMPROPER COMMENTS
AND ARGUMENTS?
>> JUST, WELL, I STAND ON THE
BRIEF ON THE OTHER ONES.
HE DID MAKE FURTHER STATEMENTS
LIKE THESE PEOPLE WERE VERY
CREDIBLE, THEY'RE VERY
REMORSEFUL.
WHAT HAS THAT GOT TO DO WITH
ANYTHING?
HE ALSO TOLD US THE VICTIMS
WERE EXECUTED.
THESE WERE ALL IMPROPER
COMMENTS DURING OPENING
STATEMENTS.
I MENTION THAT IN MY BRIEF AND
ALSO HERE ONLY TO LET THE COURT
KNOW IT IS NOT SIMPLY THE
BOLSTERING ARGUMENTS THAT WE'RE
RELYING ON.

>> WAS THE VICTIM EXECUTED?
WASN'T HE SHOT IN THE BACK OF
THE HEAD TWICE?
>> THE FACTS SHOW HE WAS SHOT
IN THE BACK OF THE HEAD.
THE FACTS DO NOT SHOW THAT THE
DEFENDANT WAS ENGAGED IN AN
EXECUTION.
THE BASIS OF AN OPENING OR
CLOSING STATEMENT --
>> WE'RE TALKING ABOUT THE MALE
VICTIM, CORRECT?
>> THE MALE VICTIM.
>> THE MALE VICTIM.
HE ASKED HIM ABOUT THE MONEY IN
THE SAFE.
>> CORRECT YES.
>> HE SHOOTS HIM IN THE LEG.
>> YES.
>> HE ASKS HIM AGAIN AND STILL
TELLS HIM THERE IS NO MONEY.
HE SHOOTS HIM IN THE OTHER LEG.
>> CORRECT.
>> AND THEN HE SHOOTS HIM TWICE
IN THE BACK OF THE HEAD.
>> HE SHOOTS HIM TWICE IN THE
HEAD, CORRECT.
>> THAT'S WHAT WE HAVE IN THIS
RECORD?
>> YES.
AND PROSECUTOR WHO WOULD HAVE
MADE THAT STATEMENT AS THE
FACTS INDICATED BY THE COURT,
THAT WOULD HAVE BEEN DIFFERENT
IN SAYING THIS WAS AN
EXECUTION-STYLE ESPECIALLY WHEN
CCP IS NOT AN ISSUE IN THIS
CASE.
>> THEY HAD THE FACTS BEFORE
THEM, CORRECT.
>> EXCUSE ME, YOUR HONOR?
>> THEY ALREADY HAD THE FACTS
BEFORE THEM WHEN THAT STATEMENT
WAS MADE BY THE PROSECUTOR?
>> I UNDERSTAND THAT BUT THIS
COURT REPEATEDLY SAID A

PROSECUTOR MAY NOT USE THOSE WORDS.

THIS COURT REPEATEDLY IN URBAN AND OTHER CASES YOU CAN NOT SAY EXECUTION.

YOU CAN NOT SAY EXTERMINATION. YOU CAN RELATE THE FACTS WHICH IS WHAT A PROSECUTOR --

>> WHAT CASE DO WE HAVE A CATEGORICAL RULE THAT THE WORD EXECUTION CAN NOT --

>> I BELIEVE IT IS URBAN.

>> URBAN I KNOW ABOUT THAT. THERE WAS A LOT OF STUFF SAID IN URBAN.

THE BOTTOM LINE WE MADE A CONCLUSION ABOUT ALL OF IT BUT I DON'T REMEMBER THERE BEING A CATEGORICAL RULE STATED THAT THE WORD EXECUTION COULD NOT BE USED AND THE FACTS HERE CRY OUT THAT WAS AN EXECUTION-STYLE KILLING.

>> RIGHT.

>> THIS IS JUST, IT CAN'T BE DENIED BASED ON THE FACTS BEFORE THE JURY USING THAT WORD SEEMS ALMOST INCONSEQUENTIAL IN LIGHT OF THE WHAT THE FACTS HERE ACTUALLY SHOWED.

>> I WOULD TEND TO AGREE WITH YOUR HONOR IF CCP HAD EVEN ON BEEN REQUESTED BY THE STATE OR HAD BEEN INSTRUCTED ON. IT WASN'T.

>> WHAT ABOUT HEINOUS, ATROCIOUS AND CRUEL? YOU'VE GOT THAT WITH RESPECT TO, NOT JUST TO THE VICTIM WE'RE TALKING ABOUT HERE, THE HUSBAND BUT YOU ALSO GOT THAT WITH RESPECT TO THE WIFE. AND PART OF WHAT SHE SUFFERED WAS THE EXPERIENCE OF SEEING THIS PROCESS, THIS DEADLY

PROCESS BEING CARRIED OUT TO
KILL HER HUSBAND.

>> RIGHT.

AND WHICH HAVE RAISED AN ISSUE
IN, ON OUR APPEAL THAT
CHALLENGES THE HAC FINDING BY
THE COURT AND I WILL BE GLAD TO
ADDRESS THAT.

>> AS TO THE WIFE?

>> AS TO THE COURT'S ORDER, I'M
SORRY TO THE WIFE.

>> TO THE WIFE OR TO THE
HUSBAND?

>> I THINK THE TRIAL COURT
FOUND IT AS TO BOTH.

>> BUT YOU'RE COMPLAINING
BECAUSE THERE WAS NOT A
SPECIFIC ASSIGNMENT OF THE
WEIGHT TO BE AFFORDED?

>> THAT'S ANOTHER PART OF THE
ARGUMENT.

>> OKAY.

>> WE'RE ALSO ARGUED THAT HAC
WAS NOT APPLICABLE BECAUSE IN
SHOOTING DEATHS GENERALLY
SPEAKING THEY'RE NOT.

>> WELL BUT AGAIN ON THAT IF
YOU WANT TO TALK ABOUT THAT WE
CAN TALK ABOUT THAT IN THE
CONTEXT OF THE FACTS WE'VE BEEN
GOING THROUGH HERE BUT WHAT IS
HAC ABOUT?

IT'S ABOUT THE PERCEPTION OF
THE VICTIM, ISN'T THAT CORRECT.

>> CORRECT.

>> WHAT COULD BE MORE
HORRENDOUS AND FRIGHTENING AND
MORE WITHIN THE CONCEPT OF
HEINOUS, ATROCIOUS AND CRUEL
THAN A VICTIM WHO IS TORMENTED
LIKE DOCTOR TORMENTED
LIKE THIS, HAVING GUNSHOT
WOUNDS INFLICTED IN THE LEGS
BEFORE THE FINAL SHOTS ARE
DELIVERED TO THE HEAD?

>> BECAUSE --

>> THAT'S A FORM OF TORTURE.
THE POINT OF IS WAS TO TORTURE
THE VICTIM TO GET INFORMATION
THAT WOULD GIVE ACCESS TO THE
MONEY THEY WERE LOOKING FOR.
THEY WERE TRYING TO TORTURE
THAT INFORMATION OUT OF HIM,
RIGHT?

>> WELL, JUDGE, WHAT --

>> ISN'T THAT WHAT THE FACTS
SHOW?

>> I THINK WHAT HE WAS
OBVIOUSLY TRYING TO DO GET
WHERE THE SAFE WAS.

>> SHOOTING SOMEBODY IN THE
LEG, WHEN YOU'RE SHOOTING
SOMEBODY IN ONE LEG AND THEN
THE OTHER TO GET THAT
INFORMATION WHAT ABOUT THAT IS
NOT TORTURE?

>> I THINK THIS COURT IN ITS
PREVIOUS DECISIONS INDICATED
THAT WHAT YOU HAVE TO LOOK AT
BEYOND WHAT THE ACTUAL
SHOOTING, YOU HAVE TO LOOK AT
THE LONG, PROLONGED TIME PERIOD
THAT THIS OCCURRED.

ACCORDING TO EVERYONE IN CASE
BELOW, INCLUDING THE
PROSECUTOR, THIS MATTER
OCCURRED WITHIN SECONDS, WITHIN
SECONDS.

IT WASN'T A DRAWN OUT, ONE HOUR
SITUATION WHERE THEY WERE IN
THE HOUSE AND WERE DRAGGING HIM
FROM ROOM TO ROOM.

>> WHEN HAVE WE EVER SAID IT
HAS TO TAKE AN HOUR OR EVEN 30
MINUTES OR EVEN 15 MINUTES, 10?
WE HAVE NEVER PUT A TIME FRAME,
AS I RECALL, HOW LONG IT HAS TO
TAKE BEFORE YOU ARE TORTURING
SOMEONE, BEFORE YOU ARE
ACTUALLY, PEOPLE ARE GOING
THROUGH THE MENTAL GYMNASTICS
OF REALIZING THAT THEY'RE GOING

TO DIE?

>> THIS COURT HAS NEVER I DON'T
THINK SET A TIME LIMIT.

WHAT I SAID WAS THIS COURT USED
THAT AS A FACTOR WHERE YOU HAVE
UNNECESSARILY TORTURING A
VICTIM FOR A LONG PERIOD OF
TIME.

>> BUT IN EVERY STABBING AND
STRANGLING, --

>> CORRECT.

>> -- WHICH SOMETIMES TAKES A VERY
SHORT TIME WE FIND THOSE TO BE
HAC.

GENERALLY WE SAY SHOOTING
DEATHS ARE NOT HAC BECAUSE
USUALLY THEY'RE CCP, THEY'RE
JUST EXECUTION-STYLE.

HERE THE FACTS OF THE SHOOTING
IN ONE LEG AND THE OTHER LEG IS,
AS JUSTICE CANADY POINTED OUT,
PUTS THIS IS IN A WHOLE
DIFFERENT CATEGORY.

THE ONLY, IT SEEMS LIKE YOU'RE,
WE'RE KIND OF GOING INTO A
WHOLE LOT OF DIFFERENT ISSUES
AT ONE TIME.

THE ONLY ONE, AND I'M NOT SURE
IT REALLY MAKES A DIFFERENCE
BUT THERE WAS AN OBJECTION TO
THE STATEMENT, I SUBMIT TO YOU,
THEY TALK ABOUT WHAT A GOOD
LIFE HE HAD LIVED UP TILL THIS
TIME AND THEN DEFENSE,
PROSECUTOR SAYS, I SUBMIT TO
YOU THAT IS AN AGGRAVATING
CIRCUMSTANCE.

THE DEFENSE LAWYER SAYS I
OBJECT.

HE IS CALLING THIS AN
AGGRAVATING CIRCUMSTANCE.

AND THEN THE STATE DOESN'T,
THEY OVERRULE THE OBJECTION BUT
THEN THE NEXT TIME HE SAYS IT
HE GOES, THE FACT THAT HE LED A
RESPECTFUL LIFE, LAW-ABIDING

LIFE IS NOT A MITIGATING CIRCUMSTANCE.

SO AT THAT POINT, EVEN THOUGH CERTAINLY IT IS A MITIGATING CIRCUMSTANCE, YOU KNOW, THERE IS POTENTIALLY A PROBLEM WITH THE PROSECUTOR SAYING IT BUT HOW IN THIS CASE COULD THAT NOT BE HARMLESS BEYOND A REASONABLE DOUBT ASSUMING THERE WAS ERROR IN THE FIRST CHARACTERIZATION? GIVEN THAT, ALTHOUGH YOU MAKE SOMETHING OF THE FACT THAT A DOUBLE MURDER ISN'T AGGRAVATING.

THAT YOU'VE GOT A DOUBLE MURDER AND A PRIOR VIOLENT FELONY AND A ROBBERY.

THE BASIS OF REASONS TO EXECUTE TWO PEOPLE TAKES SOME MONEY AND THEN IN THIS CASE, ALTHOUGH WE'RE NOT, VICTIM IMPACT STATEMENTS BUT THESE WERE, THIS COUPLE WITH NINE CHILDREN ADOPTED OUT OF FOSTER CARE, YOU KNOW, AND THE WAY THEY PREYED ON THESE TWO, JUST STRIKES ME THAT THIS IS, UNDER EVERY CIRCUMSTANCE, THE MOST AGGRAVATED AND LEAST MITIGATED OF CASES, CERTAINLY FOR PROPORTIONALITY.

I'M TRYING TO SEE HOW ANY OF THIS WOULD BE REVERSIBLE ERROR. EVEN IF I WERE TO SAY MAYBE HAC IS TO THE WIFE ISN'T THERE.

I MEAN YOU STILL HAVE ENOUGH AGGRAVATION IN BOTH OF THESE CASES TO WARRANT THE IMPOSITION OF THE DEATH PENALTY.

SO TELL ME HOW YOU GO, NO, HE MIGHT NOT HAVE REALLY BEEN INVOLVED, EVERYTHING SEEMS TO POINT TO THE FACT THAT HE WAS THE MOTIVATING FACTOR HERE.

TWO PEOPLE, DEFENSELESS PEOPLE

ARE SHOT TO DEATH IN A CRUEL WAY.

HOW DOES ANY OF THIS MEAN THAT THERE SHOULD BE A NEW TRIAL FOR THIS DEFENDANT?

>> WELL TWO THINGS I THINK THAT THE RECORD INDICATES WAS THAT THE DEFENDANT HAD APPARENTLY INSTRUCTED HIS LAWYERS NOT TO PRESENT ANY TYPE OF MITIGATION AND THEN SOME MITIGATION WAS PRESENTED.

WHAT THE --

>> NOW YOU DON'T RAISE THAT.

>> NO.

>> AS AN ISSUE ON APPEAL.

>> NO.

>> OKAY.

>> BECAUSE IN FACT THE DEFENSE LAWYERS DID THE BEST THEY COULD UNDER THE CIRCUMSTANCES AND PRESENTED SOME MITIGATION. APPARENTLY THE DEFENDANT DIRECTED HIM NOT TO PRESENT OTHERS.

BUT I THINK WHAT'S IMPORTANT IS, AND YOUR HONOR MENTIONED THE CHILDREN AND THAT WAS PART OF MY OTHER ARGUMENT THAT WAS THROUGHOUT THE TRIAL, EVEN BEGINNING IN OPENING, PARTICULARLY IN CLOSING, THE PROSECUTOR KEPT GOING BACK TO THIS ISSUE OF THE CHILDREN AND THE FACTS ARE GRAVE ENOUGH AS THEY ARE, WITHOUT INTRODUCING WHAT AMOUNTED TO A NONSTATUTORY AGGRAVATING CIRCUMSTANCE.

>> BUT THE FACTS ABOUT THE CHILDREN -- [INAUDIBLE] HAC, BECAUSE WHAT PART OF THE HORRIBLE -- THAT THE VICTIMS HERE ARE SUBJECTED TO INVOLVES THE KNOWLEDGE THAT THEIR

CHILDREN WERE THERE AND THE FEAR THAT WOULD HAVE OVERWHELMED ABOUT WHAT MIGHT HAPPEN TO THEIR CHILDREN AS WELL.

IT IS ALL, THAT CAN'T BE DIVORCED FROM WHAT, FROM THE ESSENTIAL REALITY OF THIS CRIME.

>> I THINK WHEN THE PROSECUTOR INSERTED A IMAGINARY SCRIPT IN THE MIND OF MRS. BILLINGS IT CROSSED THE LINE.

THE COURT IN URBAN CONDEMNED THAT.

>> JUST GIVE ME, WHERE, WHAT ISSUE ON APPEAL IS THE IMAGINARY SCRIPT? IS THAT UNDER IMPROPER PROSECUTORIAL ARGUMENT DURING THE PENALTY PHASE?

>> YES.

>> AND WHICH, GIVE ME --

>> ON PAGE 1101 OF THE RECORD. I HAVE IT RIGHT IN FRONT OF ME.

>> WHAT EXACTLY --

>> HE BEGINS ON THE PREVIOUS PAGE, THE LEADER WHEN YOU CONSIDER HOW BAD HIS ACTIONS WERE, HE PLANNED IT.

HE TRIED TO SHOW IN THE HOME THERE WERE, HER NINE OF HER CHILDREN THAT HAD DISABILITIES. AT SOME POINT, AT SOME POINT MELANIE BILLINGS FEARFULLY WONDERED WHAT WILL HAPPEN TO MY CHILDREN, MY PRECIOUS CHILDREN. I MEAN --

>> BUT IT GOES, MR. BILLINGS, HE KNOWS THE CHILDREN ARE IN THE HOUSE RUNNING AROUND.

IS THAT A FACT OR NOT A FACT?

>> THE ONLY FACT --

>> WERE THE CHILDREN IN THE HOUSE?

>> THE CHILDREN WERE IN THE

HOUSE BUT THERE IS NO EVIDENCE THAT THEY WERE RUNNING AROUND OR THAT THEY WERE ACTUALLY WITNESSED THE SHOOTING.

>> WELL THEY DIDN'T ARGUE THAT THINK, THERE ARE NINE CHILDREN. SHE KNEW THAT.

I DON'T, AGAIN, APPRECIATE AND I CONDEMN IMAGINARY SCRIPTS BUT I'M A MOTHER AND A FATHER AND NOT ONLY AM I BEING ROBBED AND IT LOOKS LIKE I'M BEING KILLED BUT I KNOW THAT MY NINE ADOPTED DISABLED CHILDREN ARE THERE IN THE HOUSE.

I HAVE TO SAY THAT I DON'T KNOW WHAT KIND OF IMAGINARY SCRIPT. YOU DON'T NEED TO IMAGINE ANYTHING TO KNOW THAT ADDS TO THE HAC THAT IS, FOR BOTH OF THEM.

I THINK, NOW YOU CAN SAY NO, YOU DON'T ALLOW THAT TO COME IN BUT I DON'T THINK WE'VE EVER SAID THAT.

IT DOESN'T SEEM THAT IT IS THE KIND OF IMAGINARY SCRIPT THAT WE'VE CONDEMNED IN OTHER CASES.

>> I UNDERSTAND WHAT THE COURT'S POSITION IS.

I WANT TO POINT OUT EARLIER IN THE TRIAL WHEN THE PROSECUTOR ATTEMPTED TO ELICIT INFORMATION ABOUT THE DISABILITIES OF THE CHILDREN, THE COURT DID SUSTAIN THE OBJECTION AS IRRELEVANT AS HE SHOULD HAVE DONE.

>> THE EXTENT TO WHAT THEIR DISABILITIES AND ALL THAT IS BUT WE DO HAVE IN THIS RECORD THAT THEY HAD NINE ADOPTED CHILDREN WHO WERE DISABLED IN SOME WAY.

>> CORRECT.

>> THE COURT WOULD NOT LET THEM GET INTO WHAT THOSE

DISABILITIES WERE, IS THAT CORRECT?

>> THAT'S CORRECT.

>> SO THE PROSECUTOR NEVER AS I READ ALL THESE STATEMENTS AS TO HOW THEY WERE DISABLED.

HE SIMPLY REPEATED WHAT WAS ALREADY IN THE RECORD WHICH IS THERE WERE NINE CHILDREN WHO WERE DISABLED.

>> CORRECT, BUT HE DID IT REPEATEDLY AND MADE IT IN REFERENCE TO -- HE DIDN'T MAKE IT IN REFERENCE TO A PARTICULAR AGGRAVATOR.

>> HOW REPEATEDLY IS REPEATEDLY?

>> I HAVE IN MY BRIEF BUT I THINK THERE WERE AT LEAST, I BELIEVE THERE WERE SEVEN INSTANCES ASIDE FROM THE OPENING STATEMENT WHERE HE MADE THOSE COMMENTS.

>> IF IT IS NOT, LET ME ASK YOU THIS.

THERE IS NO ISSUE IT WAS ERROR TO ADMIT EVIDENCE THERE WERE CHILDREN IN THE HOUSE OR THEY HAD DISABILITIES.

SO IT'S EVIDENCE IN THE RECORD. IF IT WASN'T, IF YOU'RE NOT SAYING IT WAS AN ERROR TO PUT IT IN THEN TO SAY YOU COULDN'T MAKE SOME ARGUMENT ABOUT IT MEANS THAT IT WAS PUT IN FOR NO REASON.

SO THERE MUST HAVE BEEN AN ARGUMENT THEY TRIED TO KEEP, MOVE IN LIMINE TO KEEP OUT EVIDENCE THERE WERE CHILDREN IN THE HOUSE?

>> APPARENTLY THE DEFENSE COUNSELS BELOW DID NOT FILE A MOTION IN LIMINE.

>> IS THERE ANY, YOU'RE NOT

MAKING ANOTHER ARGUMENT HERE IT WAS FUNDAMENTAL ERROR? DID HE OBJECT TO THE REFERENCE TO IT?

>> NOT TO THE CHILDREN.

>> OKAY.

>> NOT TO THE COMMENTARY ON THE CHILDREN.

>> YOU'RE IN REBUTTAL TIME.

>> I'M SORRY?

>> YOU'RE IN YOUR REBUTTAL TIME.

>> THE ONLY OTHER MATTER I WANTED TO ADDRESS, OTHER THAN THE FACT THAT THE TRIAL COURT DID NOT GIVE ANY WEIGHT TO HAC, WHICH UNDER CAMPBELL THIS COURT HASN'T INDICATED --

>> WHAT DO YOU MEAN IT DID NOT ASSIGN A SPECIFIC WEIGHT.

>> RIGHT.

>> OBVIOUSLY HE GAVE WEIGHT TO IT BECAUSE ALL THE EXTENSIVE FINDINGS HOW BAD IT WAS.

>> HE CALLED IT SUFFICIENT, IS WHAT HE CALLED IT AT THE END OF HIS ORDER.

HE DIDN'T GIVE ANY SPECIFIC WEIGHT.

THIS COURT IN THE PAST REMANDED FOR A SPECIFIC ORDER AND VACATED THE DEATH SENTENCE WHEN THAT ISSUE ARISES.

THE ONLY OTHER ISSUE THAT ARISES SO I DON'T EAT UP ALL MY TIME IS THE AZURI CLAIM.

COUNSEL DID NOT OBJECT.

>> IT GOES BEYOND COUNSEL NOT OBJECTING.

COUNSEL SAID THAT'S FINE.

WE DON'T WANT IT TO GO BACK.

IF ANYTHING THERE WOULD BE ERROR INVITED ERROR SPECIFICALLY?

>> I THINK IT INVITED ERROR BECAUSE THE STATE, TOLD THE COURT THE SAME THING BUT IN

AZURI.

AND I DID IN MY BRIEF, THIS COURT WENT SIMPLY BEYOND THAT IT WAS ERROR, BUT THE TRIAL JUDGE HAS SPECIFIC OBLIGATION VIS-A-VIS THE JURY.

IT REJECTED THE THIRD DISTRICT'S DECISION, THERE IS NO AFFIRMATIVE DUTY, FOR THE REQUEST OF THE JURY TO REQUEST READBACK.

I READ THIS OPINION OF THIS COURT WHERE IT ALSO PLACES THE JURY'S ROLE AS A CONSTITUTIONALLY MANDATED ROLE WHERE THE COURT IS PROMPTED TO INFORM THE JURY AND IT IS INCUMBENT UPON THE TRIAL JUDGE TO DO IT.

THESE WORDS ARE NOT JUST THROWN, I WOULD SUGGEST BY THIS COURT INTO AN OPINION TO REACH A CONCLUSION BUT THEY ARE SPECIFIC WORDS THAT IMPOSES UPON A TRIAL JURY AN AFFIRMATIVE DUTY, IRRESPECTIVE WHAT TRIAL COUNSELS ARE SAYING TO THE COURT ESPECIALLY WHEN THE FIRST DISTRICT --

>> IN THAT CASE DID THE TRIAL COUNSEL MAKE SOME OBJECTION?

>> YES HE DID BUT THE FIRST DISTRICT HAD ALREADY RULED A FEW MONTHS BEFORE THIS IN THE HENDRICKSON CASE IT WAS ERROR NOT TO TELL THE JURY BUT THEY FOUND IT WAS NOT FUNDAMENTAL. THE ISSUE SQUARELY BEFORE THIS COURT IS WHETHER OR NOT IT IS IN FACT FUNDAMENTAL WHEN THAT SITUATION OCCURS AND IN A DEATH CASE IN PARTICULAR.

>> THIS WOULD BE LIKE SUPER FUNDAMENTAL ERROR BECAUSE IT'S ERROR THAT WAS INVITED IN SPECIFICALLY ACQUIESCED IN BY

THE DEFENSE?

>> THAT'S CORRECT.

BUT I THINK IT WOULD ALSO, I DON'T THINK YOU CAN TAKE THE TRIAL JUDGE OUT OF THE EQUATION.

AND I THINK THAT THE TRIAL JUDGE IS SITTING IN THE FIRST DISTRICT WHERE THE FIRST DISTRICT HAS MADE THAT RULING SHOULD KNOW THAT HE HAS THAT OBLIGATION AND ESPECIALLY AFTER AZURI, HE HAS AN AFFIRMATIVE DUTY TO DO SO.

THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT. MEREDITH CHARBULA, ASSISTANT ATTORNEY GENERAL, COUNSEL FOR THE APPEALEE, THE STATE OF FLORIDA.

>> THE ONE ISSUE, OR IT IS NOT AN ISSUE BUT EXPLAIN THE RELEVANCE OF THE EVIDENCE OF THE CHILDREN IN THE HOUSE AND THEIR DISABILITY.

DID THAT COME IN THE GUILT PHASE, THE PENALTY PHASE? BECAUSE FRANKLY AS A HUMAN BEING, AS A MOTHER, AS ALL THESE THINGS, YOU KNOW, YOU LOOK AT THIS PARTICULAR COUPLE AND WHAT THEY DID AND IT IS HARD NOT TO, HOWEVER ELSE YOU FEEL, GO, YOU KNOW, RATCHET IT UP LIKE BY A MILLION BECAUSE OF WHAT THEY DID.

AND SO HOW, YOU KNOW, IN OTHER WORDS IT AFFECTS, IT AFFECTS YOU AS A HUMAN BEING.

SO DID IT COME IN THE GUILT PHASE, COME IN THE PENALTY PHASE?

HOW DID IT, WHAT WAS THE RELEVANCE TO THE GUILT PHASE, FIRST OF ALL?

>> MY RECOLLECTION IS THE

TESTIMONY DID COME IN THE GUILT, THERE WAS TESTIMONY IN THE GUILT PHASE.

THE ARGUMENT I THINK HE IS MAKING REFERENCE THAT IS RAISED IS A PENALTY PHASE ARGUMENT MY RECOLLECTION.

>> THIS MAY COME UP POST-CONVICTION.

WHAT, BECAUSE APPARENTLY THE JUDGE DIDN'T ALLOW IN EVIDENCE OF THE SPECIFIC DISABILITIES. THEY DID NOT WITNESS THIS, THESE SHOOTINGS.

THEY WERE NOT WITNESSES IN THE CASE AND THEY DIDN'T WITNESS THE SHOOTINGS?

>> WELL THERE WAS AT LEAST, BOTH FREDERICK THORNTON AND RAKEEM FLORENCE TESTIFIED THERE WERE CHILDREN IN THE HOUSE. THEY SAW CHILDREN WHEN THEY CAME IN, INTO THE HOME WHEN THEY INVADED THE HOME.

IF YOU LOOK AT ONE OF THE PHOTOGRAPHS IN EXHIBIT 124, ONE OF THE STILLS FROM THE VIDEO SURVEILLANCE CAMERA, IN ONE CORNER OF THE LIVING ROOM WHERE THE PARENTS HAVE BEEN, YOU KNOW, ASSAULTED FROM THREE LOCATIONS IN THE HOUSE IT APPEARS TO BE A CHILD RIGHT THERE.

AND THE MOTHER LOOKS LIKE SHE IS HOLDING A CHILD AWAY.

NOW, IT IS NOT CRYSTAL CLEAR BUT IT APPEARS TO BE A CHILD BUT BOTH RAKEEM THORNTON, I'M SORRY, RAKEEM FLORENCE AND FREDERICK THORNTON SAID THEY SAW CHILDREN WHEN THEY CAME INTO THE HOUSE.

>> BUT THEY HAD DISABILITIES?

>> THAT THEY HAD DISABILITIES BUT THAT WAS IT.

THE REASON WHY, THAT HELPED ALSO EXPLAIN WHY THEY HAD A SURVEILLANCE CAMERA THROUGHOUT THE HOUSE.

THE TESTIMONY WAS THEY HAD SURVEILLANCE CAMERAS IN THE HOUSE BECAUSE THEY HAD CHILDREN AND WITH DISABILITIES.

>> THAT WOULD BE THE RELEVANCE OF SAYING IT IN THE GUILT PHASE?

>> EXACTLY.

IT SET THE STAGE FOR THE SURVEILLANCE CAMERAS.

>> TWO REASONS.

ONE BECAUSE THERE WERE CHILDREN AROUND AND TWO, BECAUSE IT EXPLAINED WHY THEY HAD SURVEILLANCE CAMERAS?

>> EXACTLY.

>> OKAY.

>> WASN'T THERE ALSO SOME TESTIMONY FROM AN OLDER DAUGHTER SHE ACTUALLY TALKED TO THESE CHILDREN WHEN SHE CALLED THE HOUSE?

>> EXACTLY, JUSTICE QUINCE.

ACTUALLY MARKHAM TESTIFIED SHE CALLED THE HOUSE SOMETIME AFTER 7:00 P.M. AND JAKE ANSWERED THE PHONE.

SHE WAS GOING TO CALL HER PARENTS AND JAKE ANSWERED THE PHONE HYSTERICAL.

ONE OF THE CHILDREN, HE WAS ONE OF THE OLDER CHILDREN.

HE WAS SO HYSTERICAL HE HAD TO HAND THE PHONE TO ADRIANA WHO WAS ABLE TO RELATE AS MUCH AS SHE COULD AND MISS MARKHAM DIRECTED THEM TO GO GET THE NURSE WHO ALSO LIVED ON THE PROPERTY.

SHE WAS ALSO, THAT IS ALSO PART OF THE CHILDREN IS THERE WAS A NURSE ON THE PROPERTY THAT

WAS ABLE TO RESPOND REALLY QUICKLY AND SHE NOTICED THE BREAK INN AND THE BLOOD AND CALLED THE POLICE.

>> SO THERE WAS A LOT OF REASONS, OKAY.

A LOT OF REASONS WHY, THERE IS NO OBJECTION IN THE GUILT PHASE.

>> NO OBJECTION.

NO OBJECTION IN THE PENALTY PHASE.

>> IN THE PENALTY PHASE THERE WASN'T, I MEAN IT IS NOT EVEN AN OBJECTION HERE ON VICTIM IMPACT STATEMENTS WHICH I ASSUME COULD HAVE REALLY BEEN PRETTY POWERFUL IN THIS CASE?

>> WELL, NOWADAYS PROSECUTORS IN ALMOST EVERY INSTANCE HAVE THE VICTIM IMPACT STATEMENT REDUCED TO WRITING PROVIDED TO THE DEFENSE COUNSEL BEFORE TRIAL.

RESOLVE ANY POTENTIAL ISSUES AND THEN IT'S READ.

PROSECUTORS ARE DOING THAT MORE OFTEN TO TRY TO AVOID THE VICTIM IMPACT STATEMENT ISSUES. WHAT WHICH HAVE NO OBJECTION TO THE CHILDREN.

IT IS RELATIVE TO THE HEINOUS ATROCIOUS AND CRUEL AND RELEVANT IN THE COURSE OF A ROBBERY HOW MUCH WEIGHT, THIS IS NOT ORDINARY ROBBERY.

WE HAVE NINE CHILDREN, SOME OF WHICH ARE CLEARLY ACCORDING TO THE TESTIMONY IN THE HOUSE.

WITNESSING AT LEAST PART OF THE HOME INVASION.

ONE OF THE OTHER --

>> EXPLAIN THAT TO ME.

THE ROBBERY CONVICTION, IT WAS --

>> DURING THE COURSE OF THE, IN

THE COURSE OF THE ROBBERY
AGGRAVATOR.

>> SO THE CHILDREN WERE PART OF
THE HOME INVASION COUNT?

>> NO, BUT I THINK WHEN YOU,
WHEN YOU --

>> WE SHOULDN'T STRETCH HERE.
YOU GAVE A REASON IN THE GUILT
PHASE WHY IT WOULD HAVE BEEN
RELEVANT.

THERE WERE ACTUALLY FACTS THAT
HAD TO DO WITH THE CRIME BUT
DID THEY ALSO, THAT THE ROBBERY
WAS A ROBBERY, IN THE COURSE OF
THE ROBBERY BECAUSE IT WAS FROM
TWO ADULTS OR ALSO FROM THE
NINE CHILDREN?

>> WELL THE CRIME IS
HOME-INVASION ROBBERY SO THERE
WASN'T ANY ALLEGATION THAT THE
CHILDREN WERE SPECIFIC VICTIMS
BUT I THINK THAT WHEN YOU, WHEN
A JURY IS ENTITLED TO GIVE
WHATEVER WEIGHT THEY WISH TO AN
AGGRAVATOR, THE FACT THAT A
ROBBERY, IN THE COURSE OF A
ROBBERY --

>> DID THE --

>> THE FACTS OF THE CRIME ARGUE
THAT.

>> DID THEY --

>> IF YOU LOOK AT ISSUES WHERE
THE CHILDREN WERE IT SEEMED TO
BE IN THE ARGUMENT BOTH TO HAC
AND IN THE COURSE OF A ROBBERY.

>> WHAT YOU'RE SAYING IN THE
COURSE OF THE ROBBERY IT IS
REALLY RELEVANT TO BOTH
AGGRAVATORS?

>> YES, I BELIEVE IT IS.
I THINK IT IS PERFECTLY PROPER
FOR A PROSECUTOR TO TALK ABOUT
THE CIRCUMSTANCE OF A ROBBERY.
WHY A PARTICULAR MURDER IN THE
COURSE OF A ROBBERY SHOULD BE
GIVEN GREAT WEIGHT OR PERHAPS

WHY IT WOULD BE DIMINISHED
WEIGHT.

>> WHAT DAY AND WHAT TIME OF
DAY?

>> THURSDAY AND IT WAS
SOMEWHERE AROUND 7:00 P.M..

>> OKAY.

>> 7:30, BETWEEN 7:00 AND 7:30.

>> WITH THE IDEA EVERYONE WOULD
BE HOME.

>> ABSOLUTELY.

THIS ALSO HAPPENED IN THE
SUMMER.

ALL THE KIDS WOULD BE HOME FROM
SCHOOL.

THEY WOULD BE UP.

>> WAS THERE ANY DISCUSSION IN
THE RECORD AHEAD OF TIME THAT
THEY, THAT THE DEFENDANT KNEW
THAT THESE CHILDREN WERE, LIVED
ON THE PREMISES?

ANYTHING ABOUT THAT?

>> WELL, WE DO KNOW THAT MR.^,
WHAT, WE HAVE TO FIRST OF ALL
CONSIDER THAT THIS IS A FAIRLY
SMALL COMMUNITY.

AND THIS IS ALSO A FAIRLY
PROMINENT BUSINESS COUPLE.

AND THEY ALSO HAVE DONE AN
EXTRAORDINARY THING BY
ADOPTING NINE CHILDREN ONCE
THEIR KIDS ALREADY LEFT THE
HOUSE.

ONCE THE CHILDREN HAVE ALREADY
LEFT THE HOUSE, THEY HAVE
ADOPTED NINE CHILDREN.

SO I THINK IT IS FAIR, FAIR
INFERENCE TO SAY THIS FAMILY
WAS WELL-KNOWN IN THE
COMMUNITY, ESPECIALLY A SMALL
COMMUNITY.

SO WE DO HAVE EVIDENCE THAT HE
WENT, THAT GONZALEZ WENT TO
THE BILLINGS TO DO TWO THINGS.

FIRST SOLICIT MONEY FOR HIS
KARATE BUSINESS.

THAT WAS ONE OF THE THINGS HE OFFERED IN MITIGATION THAT HE RAN KARATE SCHOOLS AND TAUGHT KIDS SELF-DEFENSE.

HE WENT TO MR. BILLINGS AND MRS. BILLINGS AND ASKED, I THINK HE TALKED TO MR. BILLINGS AND ASKED FOR A DONATION AND MR. BILLINGS GAVE GONZALEZ \$5,000.

>> I THOUGHT THERE WERE TWO REASONS HERE THAT HE HAD A COMMUNITY THING GOING AND THAT IS WHERE HE CONTRIBUTED THE \$5,000 TO BUT HE WOULD NOT CONTRIBUTE TO THE ACTUAL KARATE BUSINESS?

>> RIGHT.

WHEN I SAY HE HAD THE KARATE BUSINESS HE LAUNCHED HIS TRAINING OF TEACHING KIDS SELF-DEFENSE.

HE WENT OUT INTO THE COMMUNITY. GONZALEZ ALSO ASKED FOR AN INVESTMENT IN HIS BUSINESS AND MR. BILLINGS ASKED HIM TO BRING HIM A BUSINESS PLAN.

APPARENTLY HE DID.

I DON'T KNOW WHERE HE WENT, WHETHER HE WENT TO THE HOME OR BACK TO THE BUSINESS THE BILLINGS HAD BUT HE DECLINED TO INVEST IN THE KARATE BUSINESS. BUT MR. GONZALEZ AS PART AND PARCEL OF HIS RUNNING THESE KARATE SCHOOLS WENT OUT INTO THE COMMUNITY AND CREATED THIS PROGRAM.

I THINK IT WAS OPERATION FIGHT BACK OR SOMETHING LIKE THAT. THAT IS WHERE HE SOLICITED THE MONEY FROM MR. BILLINGS.

SO --

>> AND SPEAKING OF WHICH, IS THERE ANYTHING IN THIS RECORD TO SUGGEST THAT ANY OF THE

OTHER CODEFENDANTS, IT WAS ABOUT SEVEN OTHER PEOPLE WHO WERE INVOLVED HERE.

>> CORRECT.

>> DID ANY OF THEM HAVE ANY KIND OF PERSONAL CONTACT OR RELATIONSHIP WITH THE BILLINGS OTHER THAN MR. GONZALEZ?

>> NOT IN THIS RECORD.

FROM ANOTHER CASE WE KNOW THAT MR. GONZALEZ, SR. HAD SOME CONTACT.

THAT WAS NOT IN THIS RECORD.

IT WAS IN ONE OF THE OTHER CODEFENDANT'S RECORD.

IN THIS RECORD THERE IS NO INDICATION THAT ANY OTHER PERSON HAD CONTACT WITH MR. BILLINGS OR MRS. BILLINGS DIRECTLY, THAT I RECALL.

>> OR, HOW ABOUT, I FORGET THE LADY'S NAME BUT THE ONE WHO WAS THE ACCESSORY AFTER THE FACT THAT HE TOOK THE SAFE TO HER HOUSE?

>> MISS LONG. YES, LONG.

>> OTHER THAN MR. GONZALEZ, DID ANY OF THESE OTHER CODEFENDANTS HAVE ANY RELATIONSHIP WITH HER?

>> I DON'T RECALL ANY TESTIMONY THAT ESTABLISHED ANY KIND OF LINK BETWEEN MRS. LONG AND THE BILLINGS.

>> NOT THE BILLINGS, THE OTHER CODEFENDANTS.

>> OH, I'M SORRY.

THE, GONZALEZ WORKED WITH PAMELA LONG.

HE HAD KEYS TO HER CONDO AT THE BEACH.

THERE WAS A LOT OF CONTACT BETWEEN GONZALEZ AND PAMELA LONG.

GARY SUMNER IS THE ONE WHO APPEARS, BASED ON THE TESTIMONY OF THORNTON AND FLORENCE, TO

HAVE, WELL, MR. THORNTON IN SPECIFIC, GARY SUMNER IS THE ONE WHO SEEMS TO HAVE RECRUITED THORNTON INTO THE CONSPIRACY.

HE IN TURN RECRUITED FLORENCE INTO THE CONSPIRACY.

SO THERE IS NO, IT APPEARS THAT THORNTON AND FLORENCE NEVER HAD ANY CONTACT WITH GONZALEZ UNTIL THIS CONSPIRACY STARTED.

SO I THINK IT'S A FAIR INFERENCE TO SAY THERE MUST HAVE BEEN A RELATIONSHIP BETWEEN GONZALEZ AND SUMNER WHO HAD THIS FIFTH DIMENSIONS BODY SHOP WHERE, THAT IS WHERE THE CONSPIRATORS MET TO HATCH THEIR PLANS.

THEY ALSO USED IT AS LAUNCHING POINTS FOR VARIOUS, GOING TO VARIOUS LOCATIONS.

SO THERE'S GOT TO BE SOME RELATIONSHIP BETWEEN GARY SUMNER.

IN FACT GONZALEZ TRIED TO ENLIST TWO OTHERS OR SO INTO HIS PLAN AND THEY DECLINED.

SO BUT AS FAR AS I KNOW TO THE BILLINGS GONZALEZ WAS THE ONLY ONE THAT HAD DIRECT CONTACT.

GOING BACK TO THE ISSUES RAISED BY COUNSEL FOR MR. GONZALEZ, AS HE ACKNOWLEDGED, NONE OF THE OPENING WAS ADMITTED TO, WAS OBJECTED TO SO AS TO FUNDAMENTAL ERROR.

THE ONLY OBJECTION AMONG ALL THE ARGUMENTS WAS THIS MISSPEAK ABOUT THE FACT THAT HIS, YOU KNOW, HE HAD A GOOD FAMILY. WAS BROUGHT UP TO BE A LAW-ABIDING CITIZEN.

>> SO THE CLOSING ARGUMENT COMMENTS THAT HE IS TALKING

ABOUT WHICH WAS VOUCHING FOR THE TWO OF THE CODEFENDANTS AND SOME COMMENT ABOUT HE WAS LEFT-HANDED OR RIGHT-HANDED BUT IN KARATE HE USED BOTH OF THOSE, ALL OF THESE COMMENTS WERE UNOBJECTED TO COMMENTS ALSO?

>> YES, JUSTICE QUINCE.

THE ONLY COMMENT THAT IS RAISED AS A CLAIM OF ERROR IN THIS BRIEF THAT WAS OBJECTED TO WAS THE ONE COMMENT WHERE THE PROSECUTOR MISSPOKE AND SAID THAT THIS IS NOT A DEFENDANT WHO LIKE OTHERS, IF YOU LOOK IN THE CONTEXT, LIKE OTHERS GREW UP IN A BROKEN HOME, YOU KNOW, WHO WEREN'T TAUGHT RIGHT FROM WRONG.

THIS IS NOT THAT KIND OF DEFENDANT. HE MISSPOKE.

AS SOON AS HE MISSPOKE THE DEFENSE COUNSEL JUMPED UP AND SAID OBJECTION.

THAT IS NOT AN AGGRAVATOR.

THE JUDGE GAVE A AD HOC CURATIVE INSTRUCTION AND SAID, WELL THE JURY IS WELL AWARE I WILL BE THE ONE INSTRUCTING THEM ON THE AGGRAVATORS AND THAT THE LAWYERS IS NOT EVIDENCE.

THE PROSECUTOR IMMEDIATELY CORRECTED HIMSELF AFTERWARDS AND SAID IT IS NOT MITIGATING UNDER THE CIRCUMSTANCE OF THIS CASE.

WHEN THE TRIAL JUDGE INSTRUCTED THE JURY HE DIDN'T LIST AN AGGRAVATOR.

THAT HE GREW UP AS A GOOD CHILD, HAD A DECENT CHILDHOOD.

SO I THINK CLEARLY THIS IS HARMLESS ERROR BECAUSE IT WAS SIMPLY ONE MISSPEAK IN THE

ENTIRE CLOSING ARGUMENT THAT WAS IMMEDIATELY CORRECTED NOT ONLY BY THE AD HOC INSTRUCTION BUT THE PROSECUTOR RIGHT THAT SAID THEY SHOULD NOT FIND THIS IN MITIGATION UNDER THE CIRCUMSTANCES OF THE CASE.

>> IT REALLY IS, IN TERMS OF, IT IS ALWAYS IRONIC, RIGHT, PEOPLE THAT GROW UP IN BAD HOMES OR GOOD HOMES, IT IS ALL IN THE NATURE OF MITIGATION. IT IS REALLY, TO SAY YOU SHOULDN'T GIVE IT, IT'S NOT NEARLY ENOUGH TO OUTWEIGH THE AGGRAVATION.

>> RIGHT.

>> BUT IT CERTAINLY THE FACT THAT THE PERSON HAS A GOOD UPBRINGING IS DEEMED MITIGATING BY THIS COURT BY THE U.S. SUPREME COURT.

SO IT'S A LITTLE BIT OF A MISSPEAK BUT I WOULD AGREE WITH YOU THAT THE FIRST PART THAT WAS OBJECTED TO AND THE SECOND REALLY, I THINK IT'S PROSECUTOR'S WAY OF SAYING LISTEN UNDER THE CIRCUMSTANCES OF THIS CASE IT IS NOT MITIGATING TO OUTWEIGH THE AGGRAVATING IS THE WAY I WOULD LOOK AT IT.

>> EXACTLY.

AND WHEN YOU LOOK AT IT AGAIN IN CONTEXT, AND I THINK THAT IS WHAT THE PROBLEM WITH IS, TRYING TO PULL THESE COMMENTS OUT OF CONTEXT BECAUSE, YES, THE PROSECUTOR SAID THAT THE WITNESSES WERE, HAD CONFESSED, WHICH IS A TRUE STATEMENT AND WERE CREDIBLE.

BUT RIGHT AFTER HE TALKS ABOUT HOW THE EVIDENCE WOULD SHOW THEY'RE CREDIBLE.

SAME THING IN CLOSING ARGUMENT.
CLEARLY POINTING TO THE
EVIDENCE THAT WOULD SHOW
THEY'RE CREDIBLE ESPECIALLY ALL
THE CORROBORATING EVIDENCE.
NOT ONLY, JUSTICE QUINCE, I
THINK YOU HAD A PRETTY GOOD
OUTLINE OF WHAT THE EVIDENCE
WAS BUT NOT ONLY THAT BUT WE
HAVE GONZALEZ'S DNA ON ONE OF
THE WEAPONS THAT RAKEEM
FLORENCE WAS CARRYING UP TO I
THINK ONE IN 32 TRILLION.

>> SHE HAD A HUSBAND ALSO WHO
WAS INVOLVED WITH THESE GUNS,
CORRECT?

>> CORRECT.

>> WAS HE CHARGED ALSO?

>> NO, JUSTICE QUINCE.

I DON'T BELIEVE HE WAS CHARGED.
HE WASN'T CONVICTED.

I'M NOT CERTAIN IF HE WAS
CHARGED.

HE CERTAINLY WASN'T CONVICTED.

>> THIS IS NOT RELEVANT TO ANY
PARTICULAR ISSUE ON APPEAL BUT
THE SAFE NEVER GOT OPENED?

WE --

>> THEY NEVER OPENED IT.

>> THEY NEVER OPEN IT?

>> IT DIDN'T CONTAIN A SINGLE
DOLLAR.

THEY NEVER GOT IT OPEN.

ABOUT THE SIZE OF A MICROWAVE
IF YOU LOOK AT PHOTOS.

THEY NEVER GOT IT OPEN.

IT WAS FOUND KIND OF BURIED IN
THE BACK OF MISS LONG'S YARD.

>> THERE WAS NO QUESTION THAT
WAS THE MOTIVATION.

>> CLEARLY.

>> WAS ROBBERY?

>> ABSOLUTELY.

>> THEY DON'T TRY TO OPEN IT
AFTER --

>> I DON'T KNOW IF THEY TRIED

TO OPEN IT.

WE DON'T KNOW.

WE WEREN'T THERE.

I DON'T KNOW IF THEY TRIED TO OPEN IT BUT WHAT I DO KNOW THEY NEVER GOT IT OPEN.

>> THEY INTENDED TO TRY TO OPEN IT OR THEY WOULDN'T HAVE TAKEN IT WITH THEM.

THAT IS NOT SOMETHING THEY CARRY AROUND FOR THE FUN OF IT.

>> MY SUSPICION, I THINK A REASONABLE INFERENCE IS RIGHT AFTER THIS MURDER LAW ENFORCEMENT WERE ALL OVER THE PLACE.

THE, FLORENCE AND THORNTON I THINK CAME FORWARD FAIRLY QUICKLY.

AND LAW ENFORCEMENT WERE ALL OVER THE PLACE.

THERE WAS A RED VAN THAT WAS SEEN ON THE PHOTOGRAPHS.

IF YOU LOOK AT STILL PHOTOGRAPHS YOU SEE THE RED VAN.

LAW ENFORCEMENT WAS ABLE TO TRACK THE RED VAN BACK TO GONZALEZ FAIRLY QUICKLY.

THERE IS A LOT OF HEAT ON THESE DEFENDANTS.

>> WHAT WAS THE AMOUNT THEY THOUGHT WAS IN THERE?

>> WELL, GONZALEZ TOLD THORNTON AND FLORENCE THAT THERE WAS ABOUT \$13 MILLION.

>> WHAT WOULD HAVE BEEN THE BASIS?

YOU KNOW, I DON'T SEE ANYTHING IN THIS RECORD, THERE WAS SOME MENTION OF DRUGS BUT I DON'T SEE ANYTHING IN THIS RECORD THAT WOULD THAT WOULD CONNECT THESE VICTIMS WITH ANY KIND OF DRUGS OR ANYTHING.

>> ABSOLUTELY NOT.

>> DO WE HAVE ANY REASON THAT HE WOULD THINK THERE WOULD BE \$13 MILLION IN A SAFE IN SOMEONE'S HOUSE?

>> I THINK IT'S A REASONABLE INFERENCE FROM THAT STATEMENT THAT HE WANTED TO INDUCE YOUNG THORNTON AND FLORENCE TO HELP HIM.

AND THAT HE WANTED TO MAKE IT VERY, VERY ATTRACTIVE BECAUSE WE'VE GOT FIVE MEMBERS OF THE INVASION TEAM THAT WERE RECRUITED AND MY SUSPICION IS THAT HE DIDN'T BELIEVE THERE WERE \$1 MILLION IN THERE. HE PROBABLY BELIEVED THERE WAS SOME MONEY WHICH WAS IN FACT THE MONEY WAS UP IN THE SAFE UPSTAIRS.

>> BUT YOU KNOW, AGAIN, MAYBE, LOOK AT HOW, IF HE DIDN'T THINK THERE WAS SUBSTANTIAL MONEY, WOULDN'T HE HAVE WAITED UNTIL THEY LEFT THE HOUSE AND GONE AND JUST DONE A BURGLARY? THE WHOLE THING IS JUST, IT IS JUST INCREDIBLE.

>> -- IN THE OTHER HOUSE, IN THE OTHER SAFE.

>> JUSTICE QUINCE?

>> THERE WAS SUBSTANTIAL MONEY IN THE OTHER SAFE?

>> THE AMOUNT WASN'T REVEALED BUT THERE WAS SUBSTANTIAL MONEY.

>> THEY GOT THE WRONG --

>> WELL THE OTHER ONE THEY COULD HAVE CARRIED AWAY. THE OTHER SAFE. GLEANING FROM THE RECORDS THE OTHER SAFE WOULD BE TOO BIG TO CARRY AWAY.

>> AS WE SAID IN MANY TRAGIC DEATH CASES, NOT A QUESTION OF THESE ARE DEFENDANTS THAT ARE HIGHLY SKILLED CRIMINALS.

OFTEN TIMES THEY ARE, THEY HAVE MANY FLAWS BUT THAT DOESN'T MITIGATE THE GRAVITY OF WHAT THEY HAVE DONE.

>> TRUE.

AND IT'S, BECAUSE, THE NATURE OF THE CRIME IT APPEARS QUITE A BIT OF PLANNING WENT INTO IT. GONZALEZ DID QUITE A LOT OF PLANNING.

HE WAS DIRECTING THE ASSAULT TEAM INTO THREE DIFFERENT LOCATIONS OF THE HOUSE.

HE GATHERED GUNS.

HE --

>> WAS THE PLANNING TO GET THE VICTIMS TO OPEN THE SAFES OR WAS THE PLAN FROM THE BEGINNING TO TAKE THE SAFES?

>> I DON'T THINK, WELL, I DON'T THINK IT WAS TO TAKE THE SAFE. THIS IS WHY I SAY THIS.

GONZALEZ SENT THORNTON OUT OF THE HOUSE TO GET THE BAGS OUT OF THE VAN AND WE SEE HIM IN THE PHOTOGRAPH, STILL PHOTOGRAPH, YOU CAN SEE HE IS GOING INTO THE VAN.

HE IS COMING OUT WITH A BAG.

I DON'T THINK, I THINK A REASONABLE INFERENCE FROM THAT GONZALEZ HAD NO IDEA IT WAS SO PORTABLE BECAUSE HE WAS GETTING BAGS.

>> THE SHOOTING OF THEM AND THE MALE VICTIM IN THE LEG WAS TO GET HIM TO OPEN OR TELL WHERE THE SAFE WAS?

>> TELL HIM WHERE THE SAFE WAS. THEN THEY USED, AFTER THEY EXECUTED, AFTER GONZALEZ EXECUTED MR. BILLINGS HE TRIED TO MAKE MRS. BILLINGS OPEN THE SAFE.

WHEN SHE COULDN'T OPEN THE SAFE, HE POINTED THE GUN AT

HER, SHOT HER IN THE FACE AND SHOT HER TWO OR THREE MORE TIMES.

AS FAR AS WHETHER OR NOT THIS WAS AN EXECUTION THE MEDICAL EXAMINER TESTIFIED THAT MR. BILLINGS, AFTER HE WAS SHOT IN BOTH LEGS, FORCED AT GUNPOINT, YOU CAN ALSO SEE THAT IN THE PHOTOGRAPHS IN EXHIBIT 124, HE WAS SHOT FIRST IN THE CHEEK AND THEN HE WAS SHOT TWO TIMES IN WHAT THE MEDICAL EXAMINER TESTIFIED WAS RAPID SUCCESSION DUE TO THE ANGLE OF THE ROUNDS IN THE BACK OF THE HEAD.

MRS. BILLINGS WAS SHOT IN THE FACE.

SHE WAS LOOKING AT HER ATTACKER AFTER SHE WITNESSED HER HUSBAND BEING SHOT TWICE, HER CHILDREN IN DANGER.

HIM BEING EXECUTED IN FRONT OF HER.

SHE WAS WATCHING GONZALEZ AS HE RAISED THAT PISTOL, THAT .9 MILLIMETER, AND SHOT HER.

>> THERE WERE MASKS, WERE THEY NOT?

>> THEY WERE MASKED?

>> THE MASK DIDN'T COME OFF DURING THE COURSE?

>> BUT IF YOU LOOK AT THE PHOTOGRAPHS, HE WAS AT WAL-MART SOMETIME AROUND 3:24 IN THE AFTERNOON.

WEARING A SHORT-SLEEVE SHIRT, SLEEVES COME A LITTLE BIT DOWN CLOSE TO HIS ELBOWS.

THAT SAME SORT OF SHIRT IS WORN BY --

>> MY QUESTION HAD TO DO WHETHER OR NOT HE KILLED THEM BECAUSE THEY COULD IDENTIFY HIM?

>> THERE WAS NO DIRECT EVIDENCE OF THAT.

WE DID NOT ATTEMPT TO DO THE VICTIM, I MEAN THE WITNESS ELIMINATION AGGRAVATOR BECAUSE OF THAT.

BUT YOU KNOW, MR. BILLINGS HAD HEARD MR. GONZALEZ'S VOICE AND THEY HAD SPOKEN AT LEAST TWICE, IF NOT MORE AND WHETHER GONZALEZ BELIEVED THAT HE COULD HAVE IDENTIFIED HIM, I DON'T KNOW BUT IF YOU LOOK AT THE PHOTOGRAPH OF WHEN HE, WHEN GONZALEZ IS LEADING MR. BILLINGS INTO THE BEDROOM WHERE HE WOULD EXECUTE HIM, YOU CAN SEE QUITE A LOT OF THE FACE.

SO, I MEAN OF THE EYES. CLEARLY HE IS CAUCASIAN AND SO --

>> SEE A LOT OF WHOSE EYES? >> GONZALEZ, THE MASK IS SORT OF BIG ON HIS EYES.

I'M NOT SAYING HE COULD IDENTIFY HIM.

I DON'T THINK IT IS FAIR TO SAY HE COULD IDENTIFY HIM BY THAT EYE.

WHAT I'M SAYING IS, I THINK MOST LIKELY IS THE VOICE.

IT IS A POSSIBILITY.

>> WHAT IS, WAS TO AVOID ARREST ONE OF THE AGGRAVATORS SOUGHT?

>> NO. WE DID NOT SEEK THE AVOID ARREST AGGRAVATOR BECAUSE THERE WASN'T ANY DIRECT EVIDENCE AND THIS COURT HAS MADE IT PRETTY CLEAR IT HAS TO BE ALMOST THE SOLE OR PRIMARY REASON FOR --

>> I THINK YOU MAY HAVE ANSWERED IT AND I'M SORRY IF YOU DID, WAS THE PLAN GOING IN THEY WERE GOING TO KILL THESE, THE HUSBAND AND WIFE?

>> BOTH THORNTON AND FLORENCE DENIED THAT THEY KNEW AHEAD OF TIME THAT THERE WAS GOING TO BE A KILLING.

BUT I THINK IF YOU LOOK AT THE EVIDENCE OF GONZALEZ'S ACTIONS WITHIN, YOU KNOW, SECONDS OF ENTERING THE HOME HE --

>> HOW OLD WAS THE OLDEST CHILD?

>> 11.

>> 11.

I MEAN THERE IS CHILDREN IN THE HOUSE.

IF YOU'RE GOING TO GO AHEAD, IF YOU'RE GOING TO REALLY DO, WHY NOT SHOOT ALL, I MEAN IF YOU'RE GOING IN THERE, YOU CAN TAKE THE SAFE AND, WHY DO YOU KILL, YOU KNOW, WHY DO YOU KILL THEM BOTH?

IF THEY'RE, AND NOT KILL, GO EVEN DO MORE HORRENDOUS THINGS?

>> WELL --

>> IF THERE WAS A PLAN, IF THIS WAS PLANNED.

>> THE KIDS WERE, HAD VARIOUS DEGREES OF DISABILITY AND FRANKLY I JUST WOULD HAVE TO SPECULATE.

>> OKAY.

>> THAT HE DIDN'T BELIEVE THESE KIDS, YOU KNOW, WOULD BE ABLE TO PROVIDE ANY EVIDENCE AGAINST HIM.

HE WAS MASKED.

YOU KNOW, THERE IS NO REASON HE WOULD BELIEVE THE KIDS WOULD IDENTIFY HIM.

>> AS FAR AS THE WEAPONS, WERE THEY AK-47?

>> AN AK-47, TWO SHOTGUNS, A 357 AND GONZALEZ HAD A .9 MILLIMETER.

>> GONZALEZ HAD A .9 MILLIMETER.

>> YES, YOUR HONOR.

>> ALL THE WEAPONS USED
BELONGED TO GONZALEZ?

>> HE FURNISHED THE WEAPONS.

>> HE FURNISHED THE WEAPONS?

>> YES HE DID.

THREE OF THOSE WEAPONS WERE
TAKEN TO MISSISSIPPI AND
EVENTUALLY EDDIE DENSON
SURRENDERED THEM TO THE POLICE
UNDER SOME DURESS SINCE THE ATF
AGENTS WERE OUTSIDE HIS DOOR.
THE POISE STOLE WAS FOUND, THE
ACTUAL MURDER WEAPON, IT WAS
LINKED AS THE MURDER WEAPON,
ONLY .9 MILLIMETER SHELL
CASINGS ARE FOUND AT MURDER
SCENE AND BOTH FLORENCE AND
THORNTON SAY ONLY ONE WEAPON
WAS SHOT.

>> WHEN THE MALE VICTIM SHOT IN
THE LEGS WAS HE SHOT WITH THE
.9 MILLIMETER OR SHOT WITH A
AK-47.

>> HE WAS SHOT WITH THE .9
MILLIMETER.

>> WITH THE HANDGUN.

>> A HANDGUN AT PRETTY MUCH
POINT-BLANK RANGE.

WHEN YOU LOOK AT EXHIBIT 124,
STATE'S EXHIBIT 124 YOU SEE HOW
GONZALEZ IS LEANING OVER HIM
WITH THE .9 MILLIMETER IN HIS
HAND.

>> I'M TALKING ABOUT WHEN HE
WAS SHOT IN THE LEGS INITIALLY
TO GET HIM TO TALK WHERE THE
MONEY WAS, THAT WAS WITH A .9
MILLIMETER?

>> .9 MILLIMETER.

>> HE WAS EVENTUALLY EXECUTED
WITH THE SAME .9 MILLIMETER.

>> YES, JUSTICE LABARGA.

ONLY THE .9 MILLIMETER WAS SHOT
IN THE HOUSE.

THERE IS NOT ANOTHER SINGLE

SHELL CASING IN THE HOUSE.
GONZALEZ HAD THE .9 MILLIMETER.
GONZALEZ WAS THE SOLE SHOOTER.
NO ONE FIRED A SHOT INSIDE OF
THE HOUSE.

>> LET ME ASK YOU ABOUT THE
HAC.

WHAT SHOULD WE DO ABOUT THE
FACT THAT THE TRIAL JUDGE --
[INAUDIBLE]

DIDN'T DESIGNATE ANY WEIGHT TO
BE GIVEN TO THE HAC AGGRAVATOR?

>> I THINK YOU SHOULD DO TWO
THINGS.

THE FIRST THING IS, FIND THAT
THE ERROR WASN'T PRESERVED
BECAUSE THIS IS ONE OF THOSE
ERRORS THAT COULD HAVE BEEN SO
EASILY CORRECTED AND OF COURSE
JUSTICE PARIENTE, YES, THE
STATE SHOULD HAVE, SHOULD HAVE
NOTICED IT BUT DIDN'T.

BUT THE SENTENCE OBLIGATION TO
PRESERVE ISSUES FOR APPEAL --
DEFENDANT'S OBLIGATION.

BUT HE DIDN'T PRESERVE IT.
HE SHOULD HAVE SAID, JUDGE, YOU
FAILED TO ASSIGN ANY WEIGHT.
THAT IS AN ERROR, CORRECT IT.

>> WE NEVER REQUIRED IN THE
SENTENCING ORDER FOR IT TO BE
PRESERVED, SOMETHING THAT GOES
INTO THE SENTENCING ORDER BE
OBJECTED TO AHEAD OF TIME.

>> I HAVEN'T FOUND ONE BUT I
THINK HE SHOULD DO IT.

THE REASON WHY I SAY IT, THERE
IS SIGNIFICANT DIFFERENCE IN
LET'S SAY, THE ISSUE ON
APPEAL IS THAT THE TRIAL JUDGE
SHOULD HAVE GIVEN MORE WEIGHT
TO THIS PARTICULAR MITIGATOR.

WELL THAT IS SOMETHING YOU
ADDRESS IN A
SENTENCING MEMORANDUM.
SOMETHING SQUARELY BEFORE THE

JUDGE YOU WANT HIM TO GIVE A
LITTLE WEIGHT TO THIS.
SO THE JUDGE HAS THAT.
BUT, IN THIS CASE, IT WAS
CLEARLY A, BASICALLY SUPER
SCRIVENER'S ERROR.
HE NEGLECTED IT.
YOU LOOK AT THE DISCUSSION IN
THE HAC.
HE CLEARLY FOUND THE HAC TO BE
WEIGHTY AGGRAVATOR.
HE SIMPLY JUST, INADVERTENTLY
OMITTED TO DO IT.
I THINK A DEFENDANT, WHEN YOU
HAVE SUCH A QUINTESSENTIAL,
EASILY CORRECTABLE ERROR IT
SHOULD HAVE TO BE PRESERVED.
THE OTHER THING IS, THIS COURT
HAS SAID IT WON'T REVERSE, FOR
CAMPBELL ERROR IF THE, THE
ERROR IS DIMINIMUS OR MINOR.
IN THIS CASE WE HAVE A GOOD
DISCUSSION OF HAC.
IT IS CLEARLY --
>> I THINK THAT --
>> -- APPELLATE REVIEW.
>> I THINK THAT IS THE
BETTER ARGUMENT.
THE ISSUE ON THE PRIOR VIOLENT
FELONY.
I ALWAYS THOUGHT, THEY SAID YOU
SHOULDN'T GIVE MORE WEIGHT
THERE IS THE BOTH PRIOR VIOLENT
FELONY AND CONTEMPORANEOUS AND
THE PRIOR VIOLENT FELONY, I
DON'T KNOW HOW YOU DON'T GIVE
MORE WEIGHT TO THAT SITUATION
IF YOU'VE GOT MORE THAN ONE
PRIOR VIOLENT FELONY EVEN
THOUGH YOU HAVE IT IN ONE
AGGRAVATOR?
>> WELL I THINK THAT, I MEAN
THE THING WITH THIS IS --
>> THAT IS FRIENDLY QUESTION.
>> I UNDERSTAND.
I DO GET THAT'S A FRIENDLY

QUESTION.

IT COULDN'T POSSIBLY HARM THE DEFENDANT BECAUSE I THINK WHAT HAPPENED IS, THE JUDGE LOOKED AT THE FACT THAT THE OBJECTION TO THE PRIOR VIOLENT FELONY, THE ROBBERY WAS TOO REMOTE IN TIME, SO HE GAVE IT LESS WEIGHT.

THIS COURT NEVER SAID THAT THE COURT COULDN'T, A TRIAL JUDGE CAN'T GO AND GIVE LESS WEIGHT TO THE PART OF THESE AGGRAVATORS.

>> TO ME, I AM, THIS IS, I NEVER UNDERSTOOD, I GUESS IT IS SOMETHING THE LEGISLATURE WOULD HAVE TO ADDRESS, SOMEBODY THAT KILLS MORE THAN ONE PERSON AT THE SAME TIME, TO ME THAT SHOULD BE A SEPARATE AGGRAVATING FACTOR, SO WE WOULDN'T HAVE TO SAY THAT IS THE PRIOR VIOLENT FELONY.

IT IS OBVIOUSLY WORSE WHEN YOU KILL THE, THE MORE PEOPLE YOU KILL AT ONE TIME.

BUT ALL WE PUT THEM INTO, WE'VE GOT TWO DEATH SENTENCES MAYBE. BUT --

>> OTHER STATES DO THAT WHERE YOU HAVE AGGRAVATED MURDER INCLUDES MORE THAN ONE VICTIM.

>> HARD TO BELIEVE WE DON'T DO SOMETHING OTHER STATES DO BECAUSE WE DO SO MANY THINGS THAT OTHER STATES DON'T DO, LIKE NOT HAVE UNANIMOUS JURY VERDICT.

>> WELL --

>> WAS THE VOTE IN THIS CASE.

>> 10-2.

>> SORT OF AMAZING THERE WASN'T UNANIMOUS.

>> I AGREE.

I DEFINITELY AGREE.

SO BUT WE DO HAVE A 10-2
VOTE.

>> IS THERE ANYTHING ABOUT THAT
THOUGH THAT THERE MIGHT BE
ANOTHER PERSON THAT WAS MORE
INVOLVED?

>> YOU MEAN ON THE 10-2 VOTE?

>> THEY IN TERMS OF, YEAH,
THERE WAS ANY DISCUSSION THAT
ANOTHER DEFENDANT REALLY WAS
THE PLANNER HERE?

>> NO, ABSOLUTELY NOT.

THE TRIAL JUDGE MADE THAT
SPECIFIC FINDING.

THERE WAS NEVER ANY ALLEGATION
THAT ANYONE ELSE -- GARY SUMNER
WAS INVOLVED BECAUSE HE HAD THE
FIFTH DIMENSIONS.

THERE WAS NEVER ANY TESTIMONY,
OH, YEAH, I WAS THERE, I WAS
THE SHOOTER.

THE DEFENSE WAS CLEARLY, I WAS
NOT THERE.

THERE WAS NO TESTIMONY ANYONE
ELSE WAS THE SHOOTER.

THE PHYSICAL EVIDENCE BACKED
THAT UP.

THAT IS WHY DISCUSSIONS FROM
THE PROSECUTOR ABOUT POINTING
TO EVIDENCE THAT SHOWED THAT
THORNTON AND FLORENCE ARE
CREDIBLE IS PERFECTLY PROPER
BECAUSE ALL THE PHYSICAL
EVIDENCE CERTAINLY CORROBORATED
THEIR TESTIMONY.

UNLESS THIS COURT HAS ANY OTHER
QUESTIONS, THE STATE WOULD
RESPECTFULLY REQUEST THIS COURT
AFFIRM MR. GONZALEZ'S
CONVICTIONS FOR FIRST-DEGREE
MURDER AND HOME-INVASION
ROBBERY AND AFFIRM HIS
SENTENCES TO DEATH.

THANK YOU.

>> THANK YOU FOR YOUR
ARGUMENTS.

