

>> ALL RISE.
>> THE SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
PLEASE BE SEATED.
>> OKAY, THE NEXT CASE ON THE
DOCKET IS MULLENS V. STATE.
WHENEVER YOU'RE READY.
>> GOOD MORNING, MY NAME IS
CYNTHIA DODGE, AND I REPRESENT
THE APPELLANT.
THIS CASE IS UNUSUAL IN THAT THE
MURDERS TOOK PLACE ON VIDEOTAPE,
AND I'M GOING TO ASSUME THAT YOU
UNDERSTAND THE FACTS OF THE
CASE, THAT THERE WAS A GUILTY
PLEA TO THE TWO FIRST-DEGREE
MURDERS AND THE ATTEMPTED
FIRST-DEGREE MURDER, AND THERE
WAS A PENALTY PHASE, AND THAT
WAS-- THERE WAS NO JURY.
THE JURY WAS WAIVED FOR THE
PENALTY PHASE, SO IT WAS TRIED
TO THE JUDGE.
THE FIRST ISSUE I'D LIKE TO TAKE
BRIEFLY CONCERNS THE LACK OF
AUTHENTICATION OF THE SEVEN
VIDEOTAPES THAT WERE REPORTEDLY
GOTTEN FROM THE CONVENIENCE
STORE.
>> NOW, IF WE HAD NOT HAD THE
PROBLEM WITH THE MECHANICS OF
WHAT'S GOING ON, WOULD THE
OFFICER WHO ARRIVED, LATE--
HALF HOUR, HOUR AFTER THE
EVENTS-- WOULD HIS TESTIMONY
WITH REGARD TO THOSE TAPES HAVE
BEEN A SUFFICIENT PREDICATE OR
FOUNDATION TO PLACE THOSE IN
EVIDENCE?
>> I THINK THAT'S WHAT THEY
TRIED TO DO.
>> WELL, NO, WE HAD SOME
PROBLEMS WITH THE TAPES, DIDN'T
WE?
THE EQUIPMENT, THEY HAD TO SEND
THEM OUT FOR--
>> OH, OH.
>> SO I'M TRYING TO UNDERSTAND
HERE--
>> WHAT HAPPENED WAS THE OFFICER
WHO GOT THERE LATE, THE SYSTEM
WAS, I GUESS, A COMPUTER, DVR
KIND OF SYSTEM.
>> UH-HUH, RIGHT.
>> IT WAS INSTALLED BY SOMETHING

CALLED ABLE AND MADE BY MR., A MAN BY THE NAME OF MR. DAMATTY WAS EVENTUALLY CALLED, AND THEY COULD NOT-- I GUESS THE OFFICER COULD GO INTO THE LOCKED OFFICE, AND HE COULD FLIP ON THE MONITORS.

AND WHEN HE FLIPPED ON THE MORMON TO HAVES, HE COULD SEE WHAT WAS-- MONITORS, HE COULD SEE WHAT WAS HAPPENING AT THAT TIME.

BUT HE COULD NOT ACCESS, NOR COULD HE DOWNLOAD.

>> RIGHT.

>> I GUESS WHAT THE STATE DID WAS INSTEAD OF CALLING MR. DAMATTY--

>> I UNDERSTAND THAT.

I'M TRYING TO UNDERSTAND IF THIS OFFICER COULD HAVE TESTIFIED HAD WE NOT HAD THAT KIND OF SYSTEM?

>> IF YOU HAD NOT HAD THAT KIND OF SYSTEM?

>> RIGHT.

>> AS OPPOSED TO JUST A PLAIN OLD VCR SYSTEM?

>> RIGHT.

>> NO, I DON'T THINK SO, BECAUSE HE WASN'T PRESENT AT THE TIME.

>> WELL, BUT DOES ONE HAVE TO BE PRESENT AT THE TIME FOR ANY TYPE OF--

>> NO, NO.

>> YOU CAN TAKE A PICTURE OF A CAR LATER.

>> EXACTLY.

EXACTLY.

BECAUSE THERE ARE TWO WAYS TO AUTHENTICATE SOMETHING, ONE IS THE PICTORIAL--

>> RIGHT.

>> AND THAT'S USUALLY BEING USED WHEN SOMETHING IS OFFERED AS DEMONSTRATIVE OR CUMULATIVE, YOU'VE GOT A WITNESS WHO CAN SAY THIS ACCURATELY REPRESENTS WHAT I SAW OR THE SCENE OR WHATEVER. IT HAPPENS ALL THE TIME.

>> ALL I'M TRYING TO GET TO IS WHETHER THERE WAS SOME KIND OF PROBLEM WITH THIS THAT CAUSED THE NECESSITY FOR A THIRD PERSON TO BECOME INVOLVED IN DISPLAYING THAT VIDEO-- IS THAT WHAT THE

ERROR IS?

>> YOU MEAN LEGALLY, YOU DON'T MEAN TECHNICALLY.

>> YES, YES, YES.

>> LEGALLY, I THINK THERE IS A PROBLEM, AND IT GOES BACK TO AUTHENTICATION IS REALLY A PREREQUISITE TO-- THE PROPONENT OF THE EVIDENCE ALWAYS HAS THE BURDEN.

>> EVERYBODY ON THIS BENCH UNDERSTANDS THAT.

I'M TRYING TO GET TO THE HEART OF WHAT THE PROBLEM IS WITH WHAT YOU'RE SAYING ON--

>> RIGHT, OKAY.

>> ISN'T THAT THERE WAS A PROBLEM WITH THE EQUIPMENT, AND IT WAS ABSOLUTELY ESSENTIAL THAT YOU HAVE THE COMPANY, A REPRESENTATIVE OF THE COMPANY WHO--

>> NOT--

>>-- WHO PRODUCED THE TAPE EVENTUALLY--

>> RIGHT.

>> OR ARE YOU SAYING THAT YOU ALWAYS OR CAN YOU HAVE A POLICE OFFICER WHO ARRIVES AT THE SCENE LATER TESTIFY WITH REGARD TO THAT.

BECAUSE WE KNOW THAT THE ONLY THING THAT'S THERE WHEN THE CRIME HAPPENS IS THE CAMERA. WE KNOW THE POLICE OFFICER'S NOT THERE.

>> EXACTLY.

AND I THINK I UNDERSTAND YOUR QUESTION NOW.

>> OKAY.

>> WHETHER OR NOT A VIDEOTAPE WOULD BE SUFFICIENT, AND UNDER THE SILENT WITNESS RULE--

>> RIGHT.

>>-- IT SAYS, BASICALLY, YOU HAVE TO SHOW THE FIDELITY OF THE EQUIPMENT.

>> RIGHT.

>> AND THAT'S EITHER DONE BY WHO INSTALLED IT, WHO, YOU KNOW, IF HE JUST TOOK IT OUT OF THERE, HE COULDN'T SAY WHETHER OR NOT THAT MACHINE WAS OPERATING PROPERLY OR ANYTHING LIKE THAT.

>> SO YOU'RE SAYING THAT IT WAS

ABSOLUTELY A PREREQUISITE TO
HAVE SOMEONE FROM THE THIRD
PARTY, WHATEVER YOU WANT TO CALL
THEM, PURVEYOR OF THE EQUIPMENT,
COME IN TO IDENTIFY.

>> RIGHT.

>> WHICH IT APPEARS THEY WERE
GOING TO DO, BUT THE WITNESS WAS
LATE OR SOMETHING, IS THAT--

>> NO, I DON'T REMEMBER THAT.
I DON'T-- FROM MY RECOLLECTION,
I DON'T THINK IT EVER CAME UP.
THEY JUST-- I MIGHT, YOU
KNOW--

>> OKAY.

DON'T EVEN WORRY ABOUT THAT.

>> THEY JUST WENT AHEAD WITHOUT
DOING IT.

>> I'D LIKE TO ASK YOU ABOUT THE
ROLE THAT SECTION 911.141
SUBSECTION ONE PLAYS IN THE
ANALYSIS OF THIS ISSUE.

>> INTERESTING, YES.

>> NOW, THAT IS A PROVISION THAT
DEALS WITH THE SEPARATE
PROCEEDINGS AND THE DEATH
PENALTY CASES--

>> YES.

>>-- ON THE ISSUE OF THE
PENALTY.

>> YES.

>> AND IT SAYS THAT EVIDENCE MAY
BE PRESENTED AS ANY MANNER THAT
THE COURT DEEMS RELATIVE TO THE
NATURE OF THE CRIME AND THE
CHARACTER OF THE DEFENDANT
INCLUDING MATTERS RELATING TO
THE AGGRAVATION OF MITIGATING
CIRCUMSTANCES.

AND IT SAYS ANY SUCH EVIDENCE
WHICH THE COURT DEEMS TO HAVE
PROBATIVE VALUE MAY BE RECEIVED
REGARDLESS OF ITS ADMISSIBILITY
UNDER THE EXCLUSIVE RULES OF
EVIDENCE, PROVIDED THE COURT IS
CAN PROVIDED THE OPPORTUNITY TO
REBUT-- NOW, IT'S MY
UNDERSTANDING YOU TAKE THE
POSITION THAT DOESN'T APPLY.

>> NO.

YES, I DO TAKE THE POSITION THAT
DOESN'T APPLY--

>> FIRST OF ALL, THIS IS
EVIDENCE THAT HAS PROBATIVE
VALUE.

>> YES.
>> AND THE JUDGE DECIDED THAT IT
HAD PROBATIVE VALUE.
>> YES.
BUT-- OKAY, LET ME BACK UP FOR
A MINUTE.
921.141 1 IS USUALLY USED FOR
HEARSAY.
>> WELL--
>> I UNDERSTAND, BUT IT'S NEVER
BEEN USED IN THIS SORT OF
SITUATION.
>> BUT WHAT DOES IT SAY?
>> I UNDERSTAND.
IT SAYS--
>> HAVE I NOT READ IT CORRECTLY?
>> HOW CAN SOMETHING HAVE
PROBATIVE VALUE IF YOU HAVEN'T
PROVEN-- AND THE STATE HAD THE
BURDEN AS A PROPONENT OF THE
EVIDENCE-- THAT IT IS WHAT IT
IS?
AND WHAT THE STATE--
>> DO YOU CONTEND THAT IT'S NOT
WHAT IT PURPORTS TO BE?
>> I UNDERSTAND, I UNDERSTAND
YOUR ROB WITH IT.
>> NO, DO YOU CONTEND THAT THIS
TAPE IS NOT WHAT IT PURPORTS TO
BE?
>> I DON'T THINK THAT THERE'S A
GOOD FAITH BE ARGUMENT THAT NOT
WHAT IT PURPORTS TO BE, HOWEVER,
THERE IS A GOOD FAITH ARGUMENT
THAT WE DON'T KNOW IF ANYTHING
IS MISSING.
WE DON'T KNOW-- OBVIOUSLY, THIS
IS EXCERPTED, BECAUSE IT HAS TO
BE EXCERPTED BECAUSE THIS TAPE
WAS RUNNING CONTINUOUSLY.
SO IN OTHER WORDS, SOMEBODY HAD
TO COME AND CHOP UP THAT
SECTION.
NOT ONLY THAT, WE DON'T KNOW--
>> WELL, ON THAT ISSUE BECAUSE
JUST-- AND I JUST WANT TO GET
TO WHETHER YOU THINK THERE IS
SOME ALTERATION HERE, BECAUSE
THE PART WHERE IT COULD BECOME
HARMFUL IS ON THE AVOID ARREST.
IS WHAT HE DID AT THE POINT,
BECAUSE HE WAS LEAVING THE
CONVENIENCE STORE, AND THEN
THERE'S A PART ON THE TAPE, I
GUESS, WHERE THE VICTIM THINKS

THE DEFENDANT IS GONE, STARTS TO CALL, AND THAT'S WHEN HE TURNS AROUND AND HE SHOOTS HIM.

>> RIGHT.

>> NOW IF THAT'S NOT-- IF THERE'S SOMETHING THAT'S MISSING THERE, SOMETHING THAT YOU WOULD HAVE BEEN ABLE TO OFFER ABOUT THAT MOMENT, I MEAN, THAT'S WHAT WE'RE TRYING TO GET TO.

>> I UNDERSTAND YOUR CONCERN--

>> OTHERWISE, IF WE REVERSE THIS THING, LET THEM REAUTHENTICATE IT, WE'RE NOT GOING TO SAY IT CAN'T COME INTO EVIDENCE.

I MEAN, WITHOUT YOU GIVING US SOME BASIS TO THINK THAT THIS IS NOT ACCURATE AS TO HOW THE CRIME OCCURRED SPECIFICALLY AS TO THE SHOOTING OF THE VICTIM.

>> RIGHT AND IT'S NEVER, ALL I CAN SAY IS IT'S NEVER BEEN THE BURDEN--

>> I UNDERSTAND.

>>-- OF THE PROPONENT TO DO THAT.

AND IN OTHER WORDS, YOU CAN'T EVEN GET TO THE POINT WHERE, YOU KNOW, HE DOESN'T HAVE THE ABILITY-- HE, BEING THE DEFENDANT-- DOESN'T HAVE THE ABILITY TO CROSS-EXAMINE ANYBODY WITH REGARD TO THIS BECAUSE THE POLICEMAN KNOWS NOTHING ABOUT IT.

HE DOESN'T KNOW HOW IT GOT THERE FINISH.

>> BUT YOU KNEW AHEAD OF TIME THAT THE TAPE WAS THERE.

IT'S, AS FAR AS AND IT'S COMING IN NOW NOT AT THE GUILT PHASE BECAUSE HE'S PLED GUILTY, BUT AT THE PENALTY PHASE--

>> RIGHT.

>> THEY HAD ACCESS TO THE TAPE, I MEAN, MAYBE THIS IS POSTCONVICTION.

WHY WOULDN'T-- IF THERE WAS SOMETHING WRONG WITH THE PROCESS THEY USED IN EXTRACTING FROM THE MACHINES, SHOULDN'T THAT HAVE BEEN EXPLORED?

AND AS JUSTICE CANADY SAYS, IT SAYS YOU HAVE TO BE GIVEN A FAIR

OPPORTUNITY TO REBUT.

>> AND THAT WOULD, IF THIS COURT WERE TO RULE THAT WAY, THEN EVERY TIME YOU WOULD FLIP THE RULE ON ITS HEAD SO THAT EVERY TIME YOU HAVE A PICTURE OR AN AUDIOTAPE OR A VIDEOTAPE, THEN THE OPPONENT WOULD HAVE TO HIRE EXPERTS, AND THAT'S VERY COSTLY, TO DETERMINE WHETHER OR NOT THIS THING IS AUTHENTIC.

AND THAT'S NOT HOW IT'S EVER BEEN.

>> I GUESS I DIDN'T THINK THE ISSUE OF WHETHER IT'S AUTHENTIC, AND THIS IS-- AUTHENTIC AS TO DOES IT DEPICT THE ROBBER, THE ROBBERY AND THE SHOOTING, OR IS THERE-- AND I UNDERSTAND WHAT YOU'RE SAYING.

MAYBE IF THIS WAS IN THE GUILT PHASE OR IT WAS A JURY WITH THE PENALTY PHASE OR THERE WAS REALLY SOME SCINTILLA OF POSSIBILITY THAT BECAUSE OF HOW THEY EXCERPTED IT--

>> RIGHT.

>>-- IT REALLY DOESN'T SHOW CORRECTLY THE MOMENT OF THE SHOOTING--

>> THAT'S WHAT THIS COURT IS GOING TO HAVE DECIDE, WHETHER OR NOT THE COURT WANTS TO FLIP, BASICALLY, THE BURDEN-- OR SAY THAT THERE HAS TO--

>> DO YOU HAVE ANY LAW ARE, ANYWHERE THAT SOUTHERNS YOUR INTERPRETATION OF THIS PROVISION THAT I QUOTED, THAT SUPPORTS YOUR POSITION THAT IT DOESN'T APPLY--

>> 921.141-1?

>> YES.

>> NO, BECAUSE IT'S NEVER COME UP IN THIS SITUATION.

>> SO THERE'S NO LAW THAT SUPPORTS YOUR POSITION ON THAT.

>> OH, NO.

BUT IF YOU DO A WESTLAW SEARCH, IT MOSTLY HAPPENS IN HEARSAY CASES, AND IT HAPPENS IN CASES WHERE THE STATE WANTS TO GET FURTHER INTO PRIOR VIOLENT CONVICTIONS.

IN OTHER WORDS, THEY WANT TO

SHOW THE DETAILS OF THOSE PRIOR CONVICTIONS AS OPPOSED TO JUST THE MERE FACT THAT THERE IS A PRIOR VIOLENT FELONY CONVICTION. IT COMES INTO PLAY WHEN THERE IS EITHER A GUILTY PLEA AND A JURY IMPANELED THAT HAS NEVER HEARD THE GUILT PHASE, SO IT COMES INTO PLAY WITH HOW FAR YOU CAN GO THERE.

IT COMES INTO PLAY WHEN YOU HAVE THE ADMISSION OF COLLATERAL CRIMES EVIDENCE.

SO IN OTHER WORDS, YOU KNOW, YOU'RE TRYING TO DECIDE WHETHER OR NOT THIS PERSON, WHAT HIS CHARACTER, HIS BACKGROUND AND WHETHER OR NOT HE SHOULD GET THE DEATH PENALTY.

>> I GUESS I WAS ALWAYS SEEING THIS PROVISION-- FIRST OF ALL, HERE WAS A GUILTY PLEA, SO THE STATE--

>> RIGHT.

>>-- DIDN'T HAVE THE OPPORTUNITY, NOR WOULD THEY HAVE, TO INTRODUCE THE VIDEOTAPE.

AND AS I UNDERSTAND FROM WHAT JUDGE LEWIS SAID AND IN THE RECORD, THERE WERE SOME LOGISTICAL ERRORS THAT COULD HAVE OCCURRED.

NOW, I GUESS THEY COULD HAVE WAITED UNTIL THE NEXT DAY TO HAVE WHOEVER THEY WERE GOING TO HAVE TESTIFY, BUT THAT'S NOT WHAT HAPPENED.

MY UNDERSTANDING IS PENALTY PHASE EVIDENCE INHERENTLY CAN BE LESS, QUOTE, RELIABLE THAN GUILT PHASE EVIDENCE AS LONG AS-- AND MAYBE IT DOES FLIP IT-- AS LONG AS THE DEFENDANT IS GIVEN A FAIR OPPORTUNITY TO REBUT.

SO IF THERE WAS A, IN MY VIEW, AND I'M NOT, YOU KNOW, I'M JUST ARTICULATING.

IT COULD BE, I MAY NOT END UP THERE, THAT IF THE DEFENDANT HAD A GENUINE CONCERN ABOUT THE INTEGRITY OF HOW THIS, THE DVD WAS PUT TOGETHER SHOULD HAVE RAISED IT, ASKED FOR TIME TO BE ABLE TO HAVE THEIR OWN EXPERT

EXAMINE IT.
IT'S TOO CRITICAL TO ONE OF THE
AGGRAVATORS.
AND SO THAT'S WHY IT'S FLIPPED,
BECAUSE THE STATUTE SEEMS--
>> I UNDERSTAND.
>>-- TO SUGGEST THAT IT'S NOT
THE SAME RULES OF EVIDENCE.
>> RIGHT, I UNDERSTAND.
ONE THING I WANTED TO SAY THAT
YOU SAID THAT IT WAS CRITICAL
WITH REGARD TO THE AVOID ARREST
AGGRAVATOR.
IT'S ALSO CRITICAL TO THE
EVALUATION OF THE MENTAL
MITIGATORS, BECAUSE THE JUDGE
BASICALLY FROM THE ACTIONS ON
THE VIDEOTAPE, HE WEIGHED THEM
AND SAID, YOU KNOW, I BELIEVE
THAT HE WAS ACTING UNDER EXTREME
EMOTIONAL DISTURBANCE, DISTRESS
OR WHATEVER.
BUT FROM HIS ACTIONS ON THE
VIDEOTAPE.
AND, AGAIN, I BELIEVE THAT, YOU
KNOW, HIS ABILITY TO APPRECIATE
THE CRIMINALITY OR TO CONFORM
WAS THERE, BUT I'M WATCHING THIS
VIDEOTAPE.
SO IT HAS MORE TO DO-- IT
DEPENDS ON WHAT YOU'RE TALKING
ABOUT WITH REGARD TO
HARMLESSNESS.
>> I THOUGHT THAT-- I DON'T
THINK, AND YOU'VE SAID IT, THERE
COULD BE A GOOD FAITH ARGUMENT
THAT THIS DOESN'T DEPICT THE
EVENTS OF THIS ROBBERY AND
DEATH.
>> RIGHT.
THERE ARE SOME PROBLEMS WITH THE
TAPE.
FIRST OF ALL--
>> WELL, LET ME JUST SAY WERE
THESE ISSUES POINTED OUT BY THE
DEFENSE LAWYER BEFORE IT CAME
INTO EVIDENCE?
>> NO.
I THINK, I THINK THAT THE
DEFENSE LAWYER IS PROBABLY
RELYING ON THE REQUIREMENT THAT
IT HAS TO BE AUTHENTICATED.
>> SO WHAT ARE THE-- WHAT
PROBLEMS HAVE YOU RAISED ABOUT
WHY WE SHOULD BE CONCERNED--

>> WELL, FOR ONE THING IT DOESN'T SHOW-- ONE OF THE THINGS IS, ONE OF THE POINTS TO LOOK AT WITH REGARD TO THE AVOID ARREST AGGRAVATOR IS WHETHER OR NOT WHEN MR. MULLENS MOVES TO THE FRONT DOOR AND LOOKS OUT, YOU KNOW, AND THEN HE TURNS BACK.

THE JUDGE SPECIFICALLY FOUND THAT PEOPLES WAS THERE WHEN-- IT'S NOT ON THE TAPES.

>> WELL, JUST SO THAT'S A JUST AN ERRONEOUS-- NOW YOU'RE RELYING ON THE TAPES.

>> NO, THE TAPES FROM THE OUTSIDE ARE PARTICULARLY POOR. YOU SEE THE DOORS OPEN AND CLOSE, BUT YOU DON'T SEE HAYWORTH COMING IN, YOU DON'T SEE BARTON COMING IN.

YOU DON'T SEE MR.-- YOU SEE BARTON COMING OUT WHEN HE COMES OUT AT LAST, BUT YOU DON'T SEE MULLENS STICK HIS HEAD OUT, OR TRAFFIC.

ONE OF THE THINGS THEY WOULD HAVE ASKED PROBABLY IN THE PROCESS OF AUTHENTICATION WAS WHETHER OR NOT THIS WAS MOTION DETECTED, HOW SENSITIVE WAS IT? AND, ACTUALLY, IF YOU GET ENOUGH INFORMATION ON THIS, I'D KIND OF LIKE TO-- I'D LIKE TO MOVE ON TO THE CAMPBELL ISSUE.

THIS IS INTERESTING IN THAT THE TRIAL JUDGE FOUND THAT THE TWO MENTAL MITIGATORS HAD BEEN PROVEN AND ACCORDED THE MODERATE WEIGHT.

BUT WHAT HE DID WAS WHEN HE CAME TO THE NONSTATUTORY MITIGATION, HE SAID I'M NOT GOING TO CONSIDER-- AND THEY WERE LISTED AS 1-15 AND 21.

BECAUSE, BASICALLY, I CONSIDERED THEM AS STATUTORY MITIGATION SO, THEREFORE, I'M NOT GOING TO CONSIDER THEM AGAIN.

WELL, STATUTORY MITIGATION CAN HAS TO DO WITH THE-- MITIGATION HAS TO DO WITH THE DEFENDANT'S STATE OF MIND AT THE TIME OF THE CRIME.

IN FACT, THERE HAS TO BE A NEXUS

PROVEN BETWEEN THE CRIME AND
WHETHER OR NOT HE WAS UNDER
EXTREME E MOTIONAL DISTRESS AND
WHETHER OR NOT HE COULD
APPRECIATE THE CRIMINALITY.
WHEN YOU'RE TALKING ABOUT
NONSTATUTORY MITIGATION,
HOWEVER, YOU DON'T HAVE TO PROVE
ANY NEXUS TO THE CRIME
WHATSOEVER.

AND THE U.S. SUPREME COURT
LOCKET, SKIPPER, THOSE KINDS OF
CASES--

>> WELL, THAT COULD MAKE SENSE
IF A JUDGE HAD NOT FOUND
STATUTORY MITIGATION.
BUT THAT SEEMS TO JUST BE HOLLOW
WHEN THE TRIAL JUDGE HAS, IN
FACT, FOUND THE STATUTORY
MITIGATION, AND IT'S BEING
COMPLAINED AS ERROR.

THEY DIDN'T FIND IT AGAIN AS
NONSTATUTORY.

YOU UNDERSTAND THE DISTINCTION?

>> WELL, THERE ARE TWO DIFFERENT
THINGS--

>> DO YOU UNDERSTAND THE
DISTINCTION?

IS THAT-- IF A JUDGE FINDS IT,
IT'S ONE CATEGORY.

IF A JUDGE DOES NOT, IT'S
PROBABLY A DIFFERENT CATEGORY.

>> YES.

IT'S A DIFFERENT--

>> OKAY.

SO HERE THEY FOUND IT.

>> HE DID FIND THE STATUTORY
MITIGATION.

BUT, HOWEVER, THAT HAS TO DO
WITH WHETHER OR NOT IT REDUCES
CULPABILITY.

AND THEN YOU'RE LOOKING AT THE
NONSTATUTORY, AND YOU'RE
DECIDING BASED ON HIS CHARACTER
IS THIS SOMEONE WE WANT TO GIVE
THE DEATH PENALTY TO.

I MEAN--

>> YOU SUGGESTING THAT COURTS DO
NOT LOOK TO WHETHER STATUTORY
MITIGATION IS PART OF THE RECORD
IN DETERMINING THE PENALTY?

>> YELL, THEY DO.

>> WELL, THAT'S JUST CONTRARY TO
WHAT YOU JUST SAID.

>> THE U.S. SUPREME COURT SAYS

WITH REGARD TO WHAT WE CALL
NONSTATUTORY MITIGATION--
>> RIGHT.
>>-- THAT EVERYTHING HAS TO BE
CONSIDERED.
>> AGAIN, THAT'S WHAT I'M
ASKING.
HOW CAN YOU SAY THAT IT WAS NOT
CONSIDERED WHEN, IN FACT, IT WAS
EVEN FOUND AS A STATUTORY
MITIGATOR?
>> YES, IT WAS, AS A STATUTORY
MITIGATOR, BUT NOT AS A
NONSTATUTORY--
>> RIGHT.
>> AND ONE THING THAT WAS
GLARING IS THAT WHEN THE JUDGE
WAS REVIEWING THE MITIGATOR OF
WHETHER OR NOT THE APPELLANT WAS
IMPULSIVE BY PERSONALITY, EASILY
INFLUENCED, ETC., ONE OF THE BIG
THINGS THAT REALLY HAS TO DO
WITH THAT IS WHETHER OR NOT HE
WAS BIPOLAR.
AND BECAUSE THE JUDGE BASICALLY
FACTORED IN HIS BIPOLAR
CONDITION AND HIS SUBSTANCE
ABUSE PROBLEMS WHICH WERE ACTING
IN SYNERGY AND CAUSING HORRIBLE,
YOU KNOW, IMPULSIVITY, NOT BEING
ABLE TO UNDERSTAND CONSEQUENCES,
ETC., HE TOOK THIS OTHER THING
AND SAID, WELL, I'M GOING TO
SEVER OUT EVERYTHING THAT THE
DOCTOR SAID WHEN JUDGING WHETHER
OR NOT HE WAS IMPULSIVE.
AND THAT'S, THAT'S ONE OF THE
THINGS THAT REALLY KIND OF
COLORED THAT.
>> LET ME-- COULD I JUST GO ON
THIS?
BECAUSE I READ--
>> YES.
>> WHAT I DO IS I READ THE
SENTENCING ORDER FIRST BEFORE I
GET INTO A CASE.
>> YES.
>> I THOUGHT THIS WAS ONE OF THE
BETTER SENTENCING ORDERS THAT
I'VE SEEN, BECAUSE WHETHER YOU
PUT IT UP WITH STATUTORY
MITIGATION OR NONSTATUTORY
MITIGATION, THE JUDGE-- IN MY
VIEW-- DOESN'T GIVE EVEN THE
STATUTORY MITIGATION, BIPOLAR

AND EVERYTHING TO DO WITH THAT,
HIS EARLY CHILDHOOD, A LICK AND
A PROMISE.

HE GOES INTO IT IN GREAT DETAIL.

>> YES, HE DOES.

>> SO WE AS THE REVIEWING COURT
ON ISSUES OF PROPORTIONALITY CAN
REALLY EVALUATE THE SIGNIFICANCE
OF HIS MENTAL HEALTH ISSUES.

NOW, THE FACT THAT HE DIDN'T
ALSO FIND IMPULSIVITY AS AN
ASPECT OF HIS CHARACTER CAN'T
POSSIBLY BE SOMETHING THAT WE'D
SAY, WELL, WE'LL SEND IT BACK SO
HE CAN ALSO SEPARATELY EVALUATE
IMPULSIVITY WHEN HE CONSIDERED
IT ALL.

SO I'M HAVING TROUBLE NOT WITH
YOUR OVERALL ARGUMENT HERE IN
OTHER CASES--

>> RIGHT.

>> BUT AS APPLIED TO THIS CASE.

>> BUT WHEN YOU'RE TALKING ABOUT
CAMPBELL AND TRICE AND SOME OF
THE OTHER CASES THAT THEY
SPECIFICALLY SAY THAT THE JUDGE
HAS TO EVALUATE EVERYTHING.

>> BUT IMPULSIVITY, LET'S JUST
SAY I FIND IT IMPULSIVITY, AND
I GIVE IT SLIGHT WEIGHT.

AND I UNDERSTAND WE HAVE
CAMPING, AND HERE THE JUDGE WAS
BOTH THE JURY AND THE REVIEWER.
WHEN HE HAS GIVEN THOUGHTFUL
CONSIDERATION TO EVERYTHING IN
THIS MAN'S BACKGROUND--

>> RIGHT.

>>-- THAT MAY EXPLAIN THIS
HORRIBLE--

>> EXACTLY.

>> CRIME.

>> WITH REGARD TO BEING IMMATURE
AND IMPULSIVE AND EASILY
MANIPULATED, THE JUDGE GAVE THAT
LITTLE WEIGHT.

>> WELL, THE EASILY
MANIPULATED--

>> [INAUDIBLE]

>> WAS TRYING TO LEAD HIM IN
THESE MURDERS, RIGHT?

>> WELL, NO.

THAT WAS SEPARATELY UNDER
DOMINION IN CONTROL OF SPENCER
PEOPLES WHICH HE GAVE SOME
WEIGHT TO.

BUT IMMATURE, IMPULSIVE AND EASILY MANIPULATED, WHAT HE DID WAS HE GAVE IT LITTLE WEIGHT, BUT HE SAID-- IT WAS BASED ALL ON THE ANECDOTAL EVIDENCE OF HIS FAMILY AND HIS FRIENDS AND HIS BACKGROUND AND OTHER THINGS. BUT HE BASICALLY, WHEN YOU'RE TALKING ABOUT BEING IMMATURE AND IMPULSIVE, THAT-- IF YOU LOOK AT THE TESTIMONY OF THE DOCTOR, THAT'S WHAT HE WAS TALKING ABOUT.

>> HOW OLD WAS HE AT THE TIME OF THE CRIME?

>> I THINK HE WAS 25 AT THE TIME OF THE CRIME?

>> TWO QUESTIONS.

DO YOU ATTACK THE AVOID ARREST AGGRAVATOR IN THAT BASED ON THE IDEA THAT HE WAS LEAVING WITHOUT SHOOTING HIM, SO IF HE WAS GOING TO AVOID ARREST, YOU WOULD HAVE THOUGHT HE WOULD SHOOT HIM--

>> RIGHT.

>>-- NOT LEAVE ANY WITNESSES, THAT THAT ACT ITSELF, YOU KNOW, SORT OF TURNING AROUND AND SHOOTING DOES NOT REFLECT THE HEIGHTENED, THE HEIGHTENED INTENT FOR AVOID ARREST.

>> RIGHT.

FIRST OF ALL--

>> THE JUDGE-- WITHOUT REGARD TO THE VIDEOTAPE.

THAT THIS--

>> PARDON?

>> THIS ISN'T AN AVOID ARREST CASE BECAUSE HE WOULD HAVE-- AS TO THAT VICTIM.

>> AS TO WHICH VICTIM?

>> THE VICTIM THAT HE LEFT-- THE MAIN-- THE VICTIM THAT HE SHOT THAT WAS AT THE CASH REGISTER.

THE MAIN VICTIM.

>> THE MAIN VICTIM.

>> DID HE SHOOT HIM AS HE WAS-- AFTER HE, AS THE DEFENDANT WAS LEAVING?

>> OH.

IN OTHER WORDS, YOU HAVEN'T SEEN THE VIDEOS.

>> I DIDN'T LOOK AT THE VIDEOS.

>> OKAY.

SO WHAT HAPPENED WAS--

>> I THOUGHT YOU DIDN'T WANT US
TO LOOK--

>> OH.

I IMAGINED YOU WOULD HAVE TO.

WELL, YOU KNOW, THERE'S ONE
THING ABOUT ARGUING THAT IT
SHOULDN'T HAVE BEEN ADMISSIBLE,
BUT I STILL HAVE TO ADDRESS
THEM, BECAUSE THEY ARE THERE,
AND I CAN'T JUST LEAVE A BIG
HOLE IN THE CASE THERE.

WHEN YOU LOOK AT THE VIDEOS--
ESPECIALLY, I THINK, THE ONE
THAT'S LABELED 2195, IT'S LIKE
AN NUMBER STAMPED ON THERE--
YOU CAN SEE THAT SPENCER
PEOPLES, THEY FINALLY GET THE
KEYS TO THE CAR, AND SPENCER
PEOPLES GOES OUTSIDE TO GET THE
CAR, AND CAN HE HANDS THE GUN TO
KHADAFY MULLENS, AND MR. USEN
WHO IS THE CLERK, WHO IS THE
OWNER OF THE STORE, THEY'RE
STANDING THERE, AND THEY'RE JUST
TALKING.

AND THEY'RE VERY CALM.

BOTH OF THEM ARE VERY, VERY
CALM.

AND I GUESS UDDIN GOES TO KIND
OF LOOK OUT THE DOOR, AND
MR. MULLENS JUST KIND OF VERY
GENTLY KIND OF PUTS HIS ARM UP.
BUT THEN MR. MULLENS LOOKS AT
THE DOOR, AND I GUESS MR. UDDIN
MUST HAVE THOUGHT HE WAS
LEAVING, BECAUSE HE PICKED UP
THE PHONE, AND HE DIALED IT.
AND MR. MULLENS TURNED AROUND,
AND YOU CAN SEE ON THE VIDEOTAPE
THAT HIS DEMEANOR TOTALLY
CHANGES, AND HE JUMPS.

>> OKAY, THAT'S-- I UNDERSTAND
THAT.

THAT'S HOW YOU'VE DESCRIBED IT.
SO ISN'T THAT JUST BASED ON THAT
VIDEOTAPE THAT IF HE WAS GOING
TO SHOOT HIM, HE WOULD HAVE SHOT
HIM BEFORE-- THAT THIS WAS SORT
OF AN AFTER THOUGHT? ARE YOU
MAKING THAT ARGUMENT--

>> RIGHT, RIGHT.

THEY HAVE THE KEYS TO THE STORE.
IF THEY WERE GOING TO SHOOT THE
WITNESSES, THEY COULD HAVE JUST

SHOT THE WITNESSES--
>> I DID SEE THE TAPE.
>> YES.
>> NOW, MR. UDDIN THOUGHT HE WAS
GOING OUT THE DOOR--
>> YES.
>> HAD THE PHONE.
ODDLY, HE COULD HAVE SHOT HIM
BECAUSE HE HAD THE PHONE, BUT
WHAT ABOUT THE OTHER TWO PEOPLE?
WHY DID HE SHOOT THEM?
THE SECOND GUY WAS JUST STANDING
THERE DOING NOTHING, VERY
SUBMISSIVE, AND THE OTHER GUY
WAS TRYING TO COME IN, AND THEY
SAW HIM TRY TO RUN OUT.
WHY DID HE SHOOT HIM IF HE
WASN'T TRYING TO AVOID ARREST?
THERE'S NO OTHER REASON.
>> FIRST OF ALL, IT HAS TO BE
THE DOMINANT MOTIVE.
AND AT THAT POINT, YOU KNOW,
YOU'RE TALKING ABOUT SOMEBODY
WHO'S BIPOLAR, YOU'RE TALKING
ABOUT A STRANGE SITUATION.
ALL OF A SUDDEN HIS DEMEANOR
CHANGES, AND HE SHOOTS THIS ONE
GUY, AND IT'S VERY STRANGE.
YOU HAVE TO WATCH THE VIDEO--
>> I WATCHED VIDEO.
>> YOU DID?
>> YES.
I WATCHED IT.
THEN YOU UNDERSTAND WHAT I'M
SAYING--
>> HE HAD NO GLOVES ON--
>> NO.
>> HE HAD NO MASK ON.
>> THEY HAD NO GLOVE CANS, SO
THEY'RE LEAVING FINGERPRINTS ALL
OVER THE PLACE.
SO, YOU KNOW, OBVIOUSLY, YOU
KNOW, THERE'S SOMETHING TO
CONSIDER.
THEY'RE LEAVING FINGERPRINTS ALL
OVER THE PLACE.
WHEN HE GOES TO-- HE SHOOTS
MR. BARTON, MR. BARTON'S STILL
ALIVE, AND AT THAT POINT HE JUST
BREAKS OFF.
HE JUST BREAKING OFF THIS
ATTACK--
>> IN I FOLLOW-- IF I FOLLOW
YOUR ARGUMENT, I THINK WHAT
YOU'RE SAYING IS BEFORE THE

ARREST AGGRAVATOR CAN EVER APPLY
IS HE HAS TO ADMIT THE REASON I
SHOT HIM IS TO AVOID ARREST--
>> NO.

IT COULD BE PROVEN BY
CIRCUMSTANTIAL EVIDENCE CONCERN.

>> WELL, HERE, AGAIN, HERE,
OKAY, HE SHOOTS THE GUY AS
JUSTICE PERRY JUST MENTIONED.
HE SHOOTS THE ONE PERSON WHO WAS
DIALING THE PHONE.
HE GOT ANGRY, OKAY, HE SHOT HIM.
THE SECOND GUY WHO WAS JUST
HIDING IN THE AISLES, HE WENT
AND GOT HIM, SWUNG HIM BY THE
ARM AND SHOT HIM POINT-BLANK IN
THE HEAD.

I MEAN, WHAT OTHER REASON COULD
IT BE FOR SHOOTING HIM OTHER
THAN TO SILENCE HIM?

I MEAN, YOU KNOW, I MEAN I
UNDERSTAND THAT IT HAS TO BE THE
DOMINANT REASON, BUT THAT
DOMINANT REASON, CAN'T IT BE
DEVELOPED AFTER THE CRIME AS
WELL?

I MEAN, COMMIT THE CRIME, NOW
YOU FIND OUT THERE'S SOMEBODY
WATCHING?

THEY'RE NOT GOING TO KILL HIM.

>> IT COULD BE.

IT COULD BE.

IF YOU LOOK AT THE VIDEOS AND
ALSO, I MEAN, THERE HAVE BEEN
OTHER CONVENIENCE STORES,
THERE'S ANOTHER CONVENIENCE
STORE CASE WHERE THEY SHOOT
EVERYBODY IN THE CONVENIENCE
STORE, AND THEY SAY IT WASN'T
DOMINANT MOTIVE.

YOU KNOW, IT'S WHETHER OR NOT
THERE'S, YOU KNOW, A PLANNED OR
PRECONCEIVED IDEA, HE GOES UP TO
MR. BARTON, HE JUST BREAKS OFF
THIS ATTACK AS MR. BARTON IS
STILL GETTING UP.

VERY CALMLY-- AND HE'S MORE
CONCERNED THAT HE'S PUT
EVERYTHING IN THE LITTLE BAGS,
AND HE'S--

>> WELL, AT SOME POINT THERE
HE'S CONCERNED TO GET OUT OF
THERE.

DOES HE LEAVE?

>> HE LEAVES VERY SLOWLY.

IT TAKES HIM A FULL, LIKE, 09 SECONDS.

>> I UNDERSTAND HE'S IN THERE A WHILE, BUT AT SOME POINT IN CONNECTION WITH THE ATTACK ON MR. BARTON, HOW LONG AFTER THAT DOES HE LEAVE BASED ON WHAT YOU KNOW?

>> I THINK IT'S, LIKE, NINE OR TEN SECONDS.

>> YEAH.

HE'S GETTING HIS STUFF TOGETHER AND GETTING OUT OF THERE.

MR. BARTON WAS GIVING HIM A FIGHT.

>> RIGHT.

>> RIGHT?

>> RIGHT.

>> AND HE DECIDED HE WAS GOING TO DISENGAGE AND GO.

WHY-- I MEAN, THE RATIONALITY OF ALL-- THERE IS NO RATIONALITY IN THIS.

>> EXACTLY, THERE'S NO RATIONALITY.

>> BUT WHEN YOU LOOK AT THE SECOND VICTIM, THIS CUSTOMER WHO'S BEEN, WHO'S HAD THE MISFORTUNE OF COMING IN THE STORE LIKE MR. BARTON DID WHEN THIS ROBBERY/MURDER'S GOING DOWN, HE'S JUST STANDING THERE. HE POSES ABSOLUTELY NO THREAT TO ANYBODY.

THE ONLY CONCEIVABLE REASON THAT THE DEFENDANT ACTED TO END HIS LIFE WAS TO ELIMINATE HIM AS A WITNESS AND TO AVOID ARREST.

>> RIGHT.

AND THEN HE LEFT MR. BARTON ALIVE AND VERY SLOWLY GOT UP--

>> HE LEFT HIM ALIVE?

HE SHOT HIM IN THE FACE AND THE HEAD.

>> WELL--

>> IT WAS FORTUITOUS THAT HE SURVIVED.

>> HE WAS WOUNDED, BUT, I MEAN, HE WAS STILL VERY MUCH ALIVE.

IT'S VERY STRANGE BECAUSE HE JUST BREAKS OFF THE THING.

AND THE WHOLE, ENTIRE MURDER TAKE PLACE WITHIN LESS THAN A MINUTE.

>> WHEN HE SHOT MR. BARTON, I

THINK THE CHAMBER THING FELL
OUT, DIDN'T IT?
>> YEAH.
>> BUT HE PUT IT BACK IN AND
CONTINUED TO SHOOT IT.
>> RIGHT.
IF YOU LOOK AT THE WHOLE THING,
THE WHOLE THING IS JUST VERY
BIZARRE.
THE WHOLE THING IS EXTREMELY
BIZARRE.
>> YOU'RE WAY INTO YOUR
REBUTTAL.
>> OH.
>> YOU CAN CONTINUE IF YOU
WANT--
>> NO, THAT'S FINE.
THANK YOU.
>> TIMOTHY FREEDMAN HERE ON
BEHALF OF THE STATE OF FLORIDA.
STARTING WITH ISSUE ONE, THE
AUTHENTICATION OF THE VIDEO, OF
COURSE, IT'S IMPORTANT HERE THAT
WE ARE TALKING ABOUT PENALTY
PHASE.
AS THE COURT'S NOTED, THE
EVIDENTIARY RULES ARE RELAXED IN
PENALTY PHASE.
THEY'RE DIFFERENT FROM-- AND
ALL OF THE CASES THAT
MR. MULLENS HAS CITED IN SUPPORT
OF HIS POSITION DEAL WITH CASES
THAT COME OUT OF GUILT PHASE
WHERE THE EVIDENCE--
>> WELL, I MEAN, THAT'S BECAUSE
THE RULES OF EVIDENCE GENERALLY
APPLY TO TRIAL PROCEEDINGS.
>> CORRECT.
>> AND SO THEN THE QUESTION
BECOMES THAT, YOU KNOW,
CERTAINLY WE HAVE HELD THAT
THINGS THAT MAY BE CLASSIC
HEARSAY ARE NOT NECESSARILY
GOING TO BE EXCLUDED DURING THAT
PENALTY PHASE.
BUT DOES THAT STATUTE MEAN THAT
WE JUST THROW THE ENTIRE RULE
BOOK OF EVIDENCE OUT THE WINDOW?
I MEAN, SOMETHING LIKE
AUTHENTICATING A PIECE OF
EVIDENCE THAT'S NOT A WITNESS
COMING IN TO TESTIFY, THAT JUST
SEEMS TO ME THAT YOU COULD PICK
UP A PIECE OF PAPER OFF THE
STREET AND COME PUT IT INTO

EVIDENCE.
NOBODY LINKS IT TO ANYTHING, AND
THAT'S WHAT-- IT DOESN'T TAKE
MUCH TO ESTABLISH THE
FOUNDATION.
>> WELL, I THINK THAT WE DID
ESTABLISH--
>> OKAY, WELL, THAT MAY BE WHAT
HAPPENS.
THERE'S ENOUGH THAT DEMONSTRATES
IT'S A PAIR AND ACCURATE--
>> CORRECT.
>>-- DEPICTION OF THE EVENTS
THAT ARE REPRESENTED ON THE
TAPE?
?
>> IF I CAN GO THROUGH IT--
>> IS THAT WHAT YOU'RE--
>> YES, THAT'S MY ARGUMENT.
>> OKAY.
AND THERE'S NOT EVEN A HINT OR
SUGGESTION THAT ANY MALFUNCTIONS
OR TAMPERING WITH THE TAPE?
>> MALL FUNCTION, YES.
TAMPERING, NOW.
>> OKAY.
>> THERE WAS A MALFUNCTION OF
THE EXTERIOR VIEW.
THERE ARE SEVEN DIFFERENT
CAMERAS, SEVEN DIFFERENT
RECORDINGS--
>> RIGHT.
GO AHEAD WITH YOUR ARGUMENT.
>> LET ME START WITH DETECTIVE
TOWNSEND AND WALK THROUGH THE
AUTHENTICATION PROCESS.
DETECTIVE TOWNSEND ARRIVED
APPROXIMATELY A HALF HOUR AFTER
THE ROBBERY WAS COMPLETED, THAT
THE MURDER WAS COMPLETED.
SO HE OBSERVED CRIME SCENE
PHOTOGRAPHS WHICH SHOWED WHERE
THE BODIES WERE OF THE TWO
DECEASED VICTIMS.
HE ALSO OBSERVED-- AND THIS
PHOTO, I BELIEVE, IS IN THE
RECORD-- BLOOD SPOTS ON THE
FLOOR OF THE CONVENIENCE STORE
WHICH THAT INDICATES WHERE
MR. BARTON WAS DURING THE
STRUGGLE WITH THE DEFENDANT.
AND IF YOU LOOK AT THE VIDEO,
THE VIDEO MATCHES UP WITH ALL OF
THESE THINGS.
THE LOCATION OF WHERE-- AND

THIS IS WHAT DETECTIVE TOWNSEND TESTIFIED TO--

>> THOSE TWO MEN WERE WHEN THEY KILLED.

HE ALSO TESTIFIED THE VIDEO SHOWS THE INTERIOR OF THE STORE. THAT, I THINK, IS SUFFICIENT TO AUTHENTICATE.

BUT THERE'S MORE.

THERE'S MORE EVIDENCE THAN THAT. WE HAVE THE AUTOPSY PHOTOS OF THE TWO VICTIMS WHO DIED.

THE PHOTOS SHOW THAT BOTH MEN HAD A SINGLE GUNSHOT WOUND TO THE HEAD WHICH IS CONSISTENT TO WHAT THE VIDEOS SHOW.

THE VIDEOS SHOW WHAT WAS TAKEN FROM THE STORE, AND THE STUFF THAT WAS TAKEN FROM THE STORE WAS SUBSEQUENTLY RECOVERED EITHER FROM MR. PEOPLES APARTMENT OR MR. UDDIN'S AUTOMOBILE.

SO I THINK LOOKING AT ALL OF THAT, WE HAVE SUFFICIENT EVIDENCE TO AUTHENTICATE THIS VIDEO.

AND WE LOOK AT THE RULE, 90.091, THIS VIDEO IS WHAT WE CLAIM IT TO BE.

>> RIGHT.

I MEAN, THAT'S JUST THE SIMPLE FOUNDATION.

IT DOESN'T TAKE A LOT.

>> IT DOESN'T TAKE MUCH, AND I THINK THAT WE ESTABLISHED THAT THROUGH THOSE, THE FACT THAT IS I JUST WENT THROUGH.

>> OKAY.

>> I MEAN, IT WOULD BE REALLY THE SAME IF THE DETECTIVE CAME WHILE THE BODIES WERE STILL THERE, BECAUSE IT SOUNDS LIKE THE ONE ISSUE THAT AT LEAST CAUSED ME SOME CONCERN BUT THERE'S NO BASIS FOR IT IS WHETHER THERE WAS SOME, YOU KNOW, WHETHER THE SHOOTING TOOK, YOU KNOW, THE TIME BETWEEN WHEN HE COMPLETES THE ROBBERY AND WHEN THE SHOOTING OCCURS.

>> RIGHT.

>> AND THERE'S NO SUGGESTION, BECAUSE NOBODY WOULD KNOW THAT OTHER THAN THE DEFENDANT--

>> AND THE OCCUPANTS OF THE STORE, YEAH.
>> THE OCCUPANTS WHO WERE DEAD.
>> RIGHT.
>> SO DO WE HAVE-- WAS THAT ISSUE, THAT IS THAT MAYBE BY TAKING IT FROM THOSE SEVEN POINTS AND PUTTING IT INTO A VIDEO THAT THERE WAS A ALTERATION OF THE TIME SEQUENCE?
>> I UNDERSTAND THE COURT'S CONCERN.
>> WAS THAT RAISED?
>> IT WAS NOT RAISED, AND EVEN IF IT WAS RAISED, WE CAN-- LOOK, THERE ARE SEVEN, THERE ARE SEVEN SEPARATE DISKS, AND I CAN'T SPEAK TO WHETHER THE ACTUALLY TIME STAMP OP THE DISK IS ACCURATE.
NOBODY TESTIFIED THAT THIS THING STARTED AT 7:35 AND ENDED-- I CAN'T TESTIFY TO THAT, I CAN'T ARGUE AS TO THAT.
BUT I CAN ARGUE THAT THE TIME STAMP IS RELEVANT TO SHOW THE LENGTH OF TIME AND WHEN WITHIN THE RECORDING THESE EVENTS HAPPENED.
AND IF WE TAKE EACH VIDEO AND WATCH THEM ALL AT THE SAME TIME, THE TIME STAMPS MATCH UP WITH WHAT IS SHOWN IN THE VIDEO WITH THE EXCEPTION OF THE EXTERNAL VIEW WHICH MALFUNCTIONED, THE VIEW OF THE STREET.
SO THE CONCERN THAT WE HAVE IS WHEN DID THE SHOOTING TAKE PLACE IN RELATION TO THE ROBBERY ITSELF.
ALL OF THE VIDEOS SHOW CONSISTENTLY THE ROBBERY WAS, FOR THE MOST PART, COMPLETED. MR. PEOPLES HAD LEFT THE STORE, AND MR. MULLENS WAS INSIDE WAITING FOR MR. PEOPLES, APPARENTLY, TO COME UP WITH THE GETAWAY CAR.
SO I THINK ANY CONCERN ABOUT THERE BEING EDITING, WELL, THERE WAS EDITING.
THERE WAS A START TIME AND A STOP TIME.
BUT IN TERMS OF TAMPERING OR MANIPULATION OF THE VIDEO--

>> AGAIN, OBVIOUSLY, THAT COULD BE BROUGHT OUT IN CROSS-EXAMINATION OF THE DETECTIVE AS TO, I MEAN, OR THERE OWN WITNESS.

NOW, I'M NOT SUGGESTING-- JUST SINCE THIS WAS THEY PLED GUILTY AND WAIVED A PENALTY PHASE JURY, THIS TAPE WAS SORT OF PRETTY IMPORTANT PIECE OF EVIDENCE.

>> AND WAS THERE A FACTUAL BASIS AT THE TIME THE DEFENDANT ENTERED A PLEA, WHICH NOBODY OBJECTED TO.

ALL OF THIS IS DETAILED--

>> I MEAN, AGAIN, THERE'S NO QUESTION THAT YOU'VE GOT THREE FIRST-DEGREE MURDER CASES HERE.

>> RIGHT.

>> THAT'S PRESUMABLY WHY HE PLED GUILTY.

>> AND THERE WAS CROSS-EXAMINATION--

>> IT'S TWO, I'M SORRY, TWO FIRST-DEGREE--

>> WHEN TWO FIRST-DEGREE MURDERS AND ONE ATTEMPTED.

>> LET'S SEGUE RIGHT INTO, NOW, THE ISSUE WITH REGARD TO WHETHER THIS IS A ROBBERY GONE BAD OR IN WHICH CATEGORY DOES THIS FALL INTO.

WE DO REALLY HAVE DIFFERENT CATEGORIES OF CASES, ONES WHERE A ROBBERY'S DONE AND FIRST-DEE MURDER IS UPHELD, AND OTHER ONES WHERE MAYBE A STORE CLERK PULLS A WEAPON, AND IT'S A GUNFIGHT, AND IT'S CHARACTERIZED AS A ROBBERY GONE BAD.

>> SORT OF LIKE THE JACOB CASE.

>> RIGHT.

WOULD YOU ADDRESS THAT.

>> THIS IS NOT A ROBBERY GONE BAD.

NUMBER ONE, HE WASN'T ACTUALLY CHARGED WITH ROBBERY.

IT'S SOLELY ATTEMPTED-- YOU KNOW, TWO COUNTS OF MURDER AND ONE COUNT OF ATTEMPTED MURDER. BUT, NUMBER TWO, THE ROBBERY WAS COMPLETED, AND THERE WAS NOTHING TO PREVENT-- I MEAN, MR. PEOPLES DID, IN FACT, WALK OFF THE STORE.

THERE WAS NOTHING TO PREVENT
MR. MULLENS TO WALK OUT OF THE
STORE EXCEPT HE WAS NEARLY
WAITING FOR THE RIGHT TIME.
WHEN WAS THE GETAWAY CAR GOING
TO BE AVAILABLE OUTSIDE?
THE ROBBERY WAS COMPLETE.
ALL THE STUFF THAT WAS GOING TO
BE TAKEN HAD BEEN TAKEN, AND IT
WAS IN A BAG, MR. MULLENS' STASH
WAITING BY THE DOOR.
IF WE COMPARE THAT WITH THE
JACOB CASE, IT WAS ALSO A
CONVENIENCE STORE ROBBERY AND
MURDER.
BUT IN THAT CASE THE CLERK,
BEFORE THE DEFENDANT WAS ABLE TO
GET OUT, HE PUSHED A BUTTON
WHICH LOCKED THE FRONT DOOR, AND
THEN HE SCRAMBLED TO GET INTO
THE BOOTH WHICH HE THOUGHT WAS
SEPARATED OFF FROM THE REST OF
THE STORE BY BULLETPROOF GLASS.
UNFORTUNATELY, IT WASN'T
BULLETPROOF ENOUGH, THE BULLET
PENETRATED THE GLASS AND KILLED
HIM.
THE DEFENDANT WAS UNABLE TO GET
OUT, THAT'S WHY HE SHOT HIM.
THAT'S PART OF THE REASON WHY
THIS COURT DECIDED--
>> THERE'S ALSO ONE VICTIM--
>> ONE VICTIM.
>>-- IN JACOB.
>> RIGHT.
THAT'S ANOTHER FACTOR THAT'S
DIFFERENT, BUT IN TERMS OF A
ROBBERY GONE BAD, THAT'S A
CLASSIC ROBBERY GONE BAD.
HERE THIS IS NOT A ROBBERY GONE
BAD.
THE ROBBERY WAS DONE.
>> IS THERE ANY-- YOU'VE GOT
THE TWO VICTIMS, AND AVOID
ARREST WAS FOUND FOR BOTH.
>> YES.
>> AS TO THE SECOND VICTIM--
>> MR. HAYWORTH.
>> IT SEEMS TO ME THAT THERE'S
NO QUESTION AS TO AVOID ARREST
AS TO THAT VICTIM.
BECAUSE, AS YOU SAY, WHAT ELSE,
WHAT OTHER POSSIBLE MOTIVE
THERE.
AS TO THE FIRST ONE, I GUESS I

GO BACK AND FORTH.
IT COULD HAVE BEEN WHAT, WHAT
ARE YOU DOING, YOU'RE CALLING ON
ME, I'M SHOOTING YOU.

SO--

>> WELL, WE HAVE THE STATEMENT
OF THE DEFENDANT, YOU KNOW?
HE MADE A STATEMENT TO HIS
PSYCHOLOGIST, DR. MACKLIS.
THE STATE ASKED THE DOCTOR DID
YOU TALK TO THE DEFENDANT ABOUT
WHAT WAS GOING ON IN HIS MIND
WHEN HE SHOT MR. UDDIN, THE
STORE OWNER, AND IF MEMORY
SERVES, I THINK IT'S ON PAGE
1470 OF THE TRANSCRIPT, THE
TRIAL TRANSCRIPT.

I HOPE THAT'S CORRECT.
AND WHAT MR. MULLENS SAID TO THE
PSYCHOLOGIST WAS, "I SHOT HIM
BECAUSE I CAUGHT HIM ON THE
PHONE."

SO WE KNOW WHY HE SHOT HIM.
IT WASN'T JUST-- IF IT WAS AN
IMPULSE, THE IMPULSE WAS TO
ELIMINATE WITNESSES.

THAT WAS HIS IMPULSE.
THE MURDER, YOU KNOW, THE
ROBBERY WAS DONE.

>> WELL, THE KEY THAT THIS COURT
MUST BE CONCERNED WITH,
CERTAINLY, IS THAT IN ALL MURDER
CASES THEY'RE ELIMINATING THE
VICTIM.

AND SO THAT YOU DON'T HAVE JUST
AN AUTOMATIC AGGRAVATOR.

>> RIGHT.

>> AND, I MEAN, THAT'S REALLY
WHY WE GET INTO ALL THIS
SEPARATION.

AND WHAT WOULD YOU SAY IS THE
PRINCIPLE THAT SEPARATES THIS
CASE FROM THAT, THAT ARGUMENT?

>> IT IS THE FACT THAT THE
ROBBERY WAS COMPLETED.
THERE WAS NOTHING MORE THAT THEY
HAD TO TAKE OR STEAL OR DO.
SIMPLY THE FACT THAT HE DID NOT
WALK OUT THE DOOR.

IF HE HAD WALKED OUT THE DOOR,
WE WOULDN'T HAVE THE MURDER.
AND REALLY THAT'S THE SAME THING
WITH ALL OF THESE
ROBBERY-GONE-BAD CASES.
THE ROBBERY IS ONGOING, AND THE

MURDER OCCURS SOMETIME-- AT
SOME POINT DURING THE COURSE OF
THE ROBBERY OR BEFORE THE
DEFENDANT IS ABLE TO ESCAPE.
AND THERE WAS SOMETHING
PREVENTING HIM FROM ESCAPING.
WE DON'T HAVE THAT HERE.

>> SO IF THE VICTIM WAS NOT
DIALING FOR THE POLICE, IT'S
YOUR POSITION THAT GIVEN THESE
FACTS THAT THE DEFENDANT WOULD
NOT HAVE SHOT HIM?

>> MY ARGUMENT WOULD BE WEAKER
IF HE HAD NOT BEEN DIALING THE
POLICE, BUT I'M STILL MAKING THE
SAME ARGUMENT.

THERE WAS NO REASON FOR HIM TO
NEED--

>> I GUESS THAT WAS THE OTHER
THING THAT REALLY GOES PACK TO
THE ISSUE THAT THERE'S-- BACK
TO THE ISSUE THAT THERE'S
FINGERPRINTS LEFT, THERE'S NO
MASK.

THE-- PEOPLES HAS LEFT, SO IT
DOESN'T APPEAR THAT THIS WAS
PART OF THE ROBBERY PLAN.

>> RIGHT.

>> TO KILL ANYBODY.

>> AND MR. PEOPLES, YOU KNOW, HE
GOT LIFE OUT OF THIS--

>> HE GOT WHAT?

>> HE GOT LIFE, A LIFE SENTENCE.

>> BUT AGAIN, I'M SORT OF
STRUGGLING A LITTLE BIT WITH THE
SAME ISSUE WHICH IS THAT, AGAIN,
AND IT SEEMS TO ME IT'S STILL A
DEATH PENALTY CASE EVEN WITHOUT
THE AVOID ARREST BECAUSE--

>> WE HAVE STRONG AGGRAVATORS.

>> RIGHT.

AND I, BUT I DO THINK THAT WE'VE
GOT TO BE VERY CAREFUL, BECAUSE
IN THESE CASES AS TO WHEN THE
SHOOTING OCCURS BECAUSE IT HAS
TO BE THE DOMINANT MOTIVE, AND
SORT OF THIS IS, IS THIS MORE OF
AN AFTER THOUGHT SITUATION
WHERE-- JUST, AGAIN, JUST AS
TO-- BECAUSE HE SHOT THE ONE
PERSON, THE UDDIN BECAUSE HE WAS
CALLING THE POLICE.

WHAT'S HIS, WHAT WAS HIS REASON
FOR SHOOTING THE POOR GUY--

>> MR. HAYWORTH.

>> WHAT DID HE TELL THE
PSYCHOLOGIST ABOUT THAT?
>> HE DIDN'T SEEK TO THAT, BUT
MR. HAYWORTH WAS THERE AND SAW
HIM SHOOT MR. UDDIN.
>> AGAIN, THAT SEEMS VERY
STRONG.
BECAUSE THAT IS HE'S NOW
AVOIDING THE ARREST OF HAVING--
>> IT'S A TEST GAME.
>> RIGHT.
>> HE SHOT MR. UDDIN BECAUSE, "I
CAUGHT HIM ON THE PHONE,"--
>> AND THEN THE SECOND VICTIM--
>> SAW HIM SHOOT, AND THE THIRD
ONE IS ALONG THE SAME LINE.
HE SEES MR. HAYWORTH'S BODY ON
THE FLOOR AND SAYS, WHOA, I
DON'T WANT TO BE PART OF THIS,
BUT MR. MULLENS PULLS HIM IN.
>> AND HE'S THE ONE THAT
SURVIVED?
>> SURVIVED.
RIGHT.
>> SO IF HE HAD DIED--
>> A THIRD.
YEAH, AND I WOULD SUBMIT ALL OF
THEM WERE SHOT FOR EXACTLY THE
SAME REASON.
>> I THOUGHT WE JUST THOUGHT
THEY--
>> THE FIRST ONE WAS AN AFTER
THOUGHT BECAUSE HE WAS CALLING
POLICE, AND ONCE HE SHOT HIM, HE
WAS KILLING THE SECOND AND
TRYING TO KILL THE THIRD BECAUSE
THEY HAD SEEN HIM SHOOT
MR. UDDIN.
ISN'T THAT A DIFFERENT-- THAT'S
A DIFFERENT REASON.
>> I DON'T VIEW THEM AS
DIFFERENT REASONS.
>> OKAY.
>> I VIEW THEM AS ALL GOING
TOWARDS-- WE CAN AGREE TO
DISAGREE.
IT ALL GOES TOWARDS THE ISSUE OF
AVOIDING ARREST.
I MEAN, THE REASON WHY HE SHOT
MR. UDDIN, BECAUSE HE WAS
CALLING-- HE WAS CALLING ON THE
PHONE, HE WAS CALLING FOR HELP.
MR. HAYWORTH FOR THE SAME
REASON.
IF I CAN MOVE ON-- I THINK I

BEAT THAT HORSE AS MUCH AS I CAN.

WITH REGARD TO THE ISSUE OF MITIGATORS, I REALLY DON'T THINK THERE'S AN ISSUE HERE.

THE TRIAL COURT CONSIDERED ALL THE MITIGATORS THAT THE DEFENDANT PRESENTED--

>> WHAT ABOUT THE SEXUAL ABUSE?
>> THE COURT FOUND THAT WAS NOT PROVEN.

>> BUT IS THERE REALLY ANY--
>> THE ONLY EVIDENCE--

>> WELL, THERE'S ONLY, THE ONLY EVIDENCE IS WHAT?

>> IS THE STATEMENT THAT THE DEFENDANT, MULLENS, MADE TO HIS PSYCHOLOGIST, DR. MACKLIS.

>> I THOUGHT THAT THE MOTHER TESTIFIED THAT ALSO WHEN HE CAME BACK--

>> RUMORS.

SHE DID NOT KNOW.

SHE GAVE HER OPINION--

>> WELL, WHEN A DEFENDANT AS A MALE DEFENDANT SAYS HE'S BEEN SEXUALLY ABUSED, WHAT IS THE REASON THAT SOMEBODY SAYS-- I MEAN, AGAIN, WE'RE REALLY TALKING ABOUT WHY WOULD YOU DISCREDIT, WHAT'S THE BASIS--

>> I DON'T THINK THERE'S ANY--

>> WELL, DID HE GIVE A REASON WHY HE FOUND IT WASN'T PROVEN?

>> NO, OTHER THAN THE LACK OF EVIDENCE.

>> THAT WAS MALINGERING WAS THE EXCUSE GIVEN.

>> YES.

YES, AND HONESTLY I DON'T REMEMBER THERE BEING ANY TESTIMONY THAT THE DEFENDANT TOLD HIS MOTHER THAT HE'D BEEN SEXUALLY ABUSED.

THE IMPRESSION OF THE FAMILY WAS THAT HE BEHAVED DIFFERENTLY, BUT THERE'S NOBODY WHO SAID HE TOLD ME-- NOBODY SAID THAT.

SO WE ONLY HAVE, AS FAR AS THE STATEMENT FROM THE DEFENDANT, AND THERE'S EVIDENCE THAT THE DEFENDANT HAD A HISTORY OF MALINGERING, HAD A HISTORY OF MAKING FALSE STATEMENTS TO MENTAL HEALTH PROVIDERS.

AND, IN FACT, THE IF WE LOOK AT
THE REPORT 06 DR. MACKLIS,
THERE'S EVIDENCE THAT HE MADE
FALSE STATEMENTS TO DR.
MACKLIS.

>> WHAT ABOUT THE AUNT SAID THAT
SHE OBSERVED THE STEPFATHER
GRABBING MULLENS AROUND THE
WAIST--

>> HOLDING HIM IN THE LAP,
RIGHT.

>> IT'S NOT USUALLY THE KIND OF
THING THAT YOU SAY SOMEBODY
MALINGERS ABOUT.

THEY MAY MALINGER ABOUT THEIR
MENTAL HEALTH.

IT'S NOT SOMETHING THAT A MAN,
YOU KNOW, BASED ON WHAT WE'VE
SEEN.

BUT I DON'T KNOW HONESTLY IF YOU
SAY IT SHOULD HAVE BEEN FOUND,
IT REALLY DOESN'T--

>> WELL, I UNDERSTAND.

>> THIS ISN'T A CRIME THAT HAS
ANYTHING TO DO WITH THE SEXUAL
ABUSE.

UNLESS YOU'RE GOING TO TIE IT
UP, IT DOESN'T SEEM-- I WAS
JUST ASKING YOU ABOUT IT, BUT I
DON'T REALLY KNOW THAT IT MAKE
MUCH OF A DIFFERENCE.

>> THIS IS A MATTER OF
DISCRETION WITH THE TRIAL COURT.
THE TRIAL COURT MADE A FINDING
THAT IT HAD NOT BEEN PROVEN.

ALL THE THINGS THAT WE'RE
TALKING ABOUT IN TERMS OF WHAT
DID THE FAMILY MEMBERS SAY, THE
COURT DIDN'T BELIEVE THEM, AND
THAT'S A DISCRETIONARY MATTER
FOR THE TRIAL COURT TO MAKE
THEM--

>> WELL, IN SENTENCING ORDERS,
THOUGH, WE DO TRY TO URGE JUDGES
TO ACTUALLY SAY SOME REASON,
BECAUSE WE RELY SO HEAVILY--
>> RIGHT.

>> ON WHAT THEY FIND IN TERMS OF
OUR OWN REVIEW.

>> YES.

IN THIS CASE THE ONLY THING THAT
WE DO HAVE IS THE TRIAL CURT
SAYING THERE-- COURT SAYING
THERE WASN'T ANY COMPETENT
EVIDENCE TO SUPPORT IT,

THEREFORE, I FIND NOT PROVEN.
I DON'T KNOW HOW ELSE TO
INTERPRET THAT OTHER THAN TO SAY
HE'D LISTENED TO THE TESTIMONY
AND FOUND IT NOT TO BE CREDIBLE.
I THINK THAT'S THE EXTENT OF MY
ARGUMENT--

>> WELL, ON THE COMPETENCY
ORDER, YOU AGREE THE TRIAL JUDGE
SHOULD HAVE ENTERED A WRITTEN
ORDER ON THAT?

>> NO.

>> AND WE--

>> THE RULE DOESN'T REQUIRE IT.

>> OKAY.

>> AND THIS COURT HAS NEVER SAID
THAT IT'S REQUIRED.

IT WOULD HAVE BEEN NICE IF THE
COURT HAD DONE IT--

>> AND LOWER COURTS BELOW--

>> THEY HAVE.

>>-- GENERALLY REQUIRE AN
ORDER--

>> THEY HAVE.

>> BUT IT DOESN'T REQUIRE
REVERSAL IN THIS CASE.

>> AND THERE'S NO DISPUTE AS TO
HIS COMPETENCY.

AND HE ENTERED A PLEA AFTER THE
ORDER WAS VERBALLY ENTERED--

>> RIGHT.

>> AND I THINK THE ISSUE OF
WHETHER OR NOT THE COURT SHOULD
HAVE ENTERED A WRITTEN ORDER IS
WAIVED.

THANK YOU.

>> THANK YOU.

>> ONE THING I'D JUST LIKE TO
POINT OUT TO THIS COURT BECAUSE
THE COURT DOES PROPORTIONALITY
REVIEW IS THIS IS A PERSON WHO
WAS RAISED BY A DRUG-AWE
DISTRICTED FATHER-- ADDICTED
FATHER WHO WAS A PRACTICING, HE
WAS A HEROIN ADDICT, HE STOLE
FROM THE FAMILY, HE LEFT THEM
DESTITUTE.

HE TAUGHT THE CHILDREN HOW TO
STEAL FOR FOOD.

THEY WENT HUNGRY.

HIS MOTHER WAS A PRACTICING
ALCOHOLIC, HE HAD A

SCHIZOPHRENIC UNCLE WHO
SELF-MEDICATED AND WAS ALSO DRUG
ADDICTED.

HE HAD A CONCERN GRANDMOTHER WHO TRIED TO KILL ONE OF HER OWN CHILDREN.

HIS FATHER WAS IN PRISON FOR MANSLAUGHTER.

HE WAS ACTIVELY HALLUCINATING BY THE TIME HE WAS 14 OR 15 YEARS OLD, AND THAT WAS INDEPENDENT PEOPLE SAYING HE WAS TALKING TO HIMSELF.

WHEN HE CAME OUT OF PRISON, HE WAS IN SUCH POOR SHAPE THAT HIS MOTHER, HIS OWN MOTHER WAS TRYING TO FIND A WAY TO PUT HIM OUT OF HIS MISERY.

BASICALLY, SHE THOUGHT ABOUT POISONING HIM.

THERE'S NO, NO-- HE'S BEEN DIAGNOSED BY SUNCOAST, BY THE D.O.C., BY DR. MACKLIS AS BEING BIPOLAR WITH POLYSUBSTANCE ABUSE WITH ITS SYNERGISTIC EFFECT.

IN OTHER WORDS, THE TRIAL JUDGE SAID BASICALLY THIS WAS A VERY BLEAK UPBRINGING.

AND AS TO THE SEXUAL BATTERY, THE COURT FOUND NO COMPETENT SUBSTANTIAL EVIDENCE, BUT UNDER 921-421U HEARSAY IS ADMISSIBLE. THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.