

>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

PLEASE BE SEATED.

>> GOOD MORNING.
THE LAST CASE ON THE DOCKET
TODAY IS JORDAN VERSUS STATE.
COUNSEL?

>> GOOD MORNING, JUSTICE.
MY NAME IS MICHAEL REITER, I
REPRESENT THE APPELLANT,
MR. JORDAN.

WITH REGARD TO ISSUE ONE, THIS
COURT FOR YEARS HAS WARNED
PROSECUTORS NOT TO GO OUT OF
BOUNDS IN OPENING AND CLOSING
ARGUMENTS.

APPARENTLY THIS HAS FALLEN ON
DEAF EARS WITH REGARD TO THIS
PARTICULAR PROSECUTOR.

NOT ONLY DOES MY CLIENT GET
DENIED A FAIR TRIAL BUT THE
STATEMENTS HE MADE TO THE JURY
DURING CLOSING ARGUMENTS ON
NUMEROUS ISSUES, IT AFFECTS THE
CREDIBILITY OF THE PROCESS.
WE ALREADY HAVE A NUMBER OF
ISSUES DEALING WITH DEATH
PENALTY PROCEDURES AS IT IS AND
THE SYSTEM SUFFERS FOR IT.
HE STARTS OFF HIS CLOSING
ARGUMENT BY TELLING THE JURY
SPECIFICALLY THAT MY CLIENT IS
NOT SORRY, NOR TAKEN
RESPONSIBILITY FOR ANYTHING THAT
HE HAS DONE.

WHICH WOULDN'T HAVE BEEN SO BAD
IF IT HAD STOPPED THERE.

BUT HE GOES ON AND ON.

IT IS IN THE BRIEF.

I DON'T WANT TO REPEAT IT
EXACTLY BUT DEFINITELY HAS A
SPECIFIC EFFECT IN CREATING IN
THE JURY'S EARS TWO ELEMENTS
THAT ARE NOT PART OF THE
OFFENSE.

ONE, YOU MUST SAY YOU'RE SORRY
FOR SOMETHING YOU'RE ACCUSED OF
AND TWO, TAKE RESPONSIBILITY
FROM IT WHEN HE HAS PLED NOT

GUILTY.
HE TAKEN ELEMENTS OF DEFENSE AND
PUT IT ON THE DEFENDANT AND TO
COME FORWARD TO SAY I'M SORRY
WHAT I DID.
THAT IS IMPROPER.
>> IN CONTEXTS WASN'T THAT IN
RESPONSE TO TESTIMONY PUT
FORWARD BY THE DEFENSE THAT WAS
INTENDED TO SHOW THAT HE WAS
SORRY?
>> NO, I DON'T THINK SO.
YOU HAVE TO REALIZE THAT, FIRST
OF ALL, THE DEFENDANT DIDN'T
TESTIFY NOR DID THEY PUT ON
EVIDENCE.
>> I DIDN'T SAY THE DEFENDANT'S
TESTIMONY.
I SAID EVIDENCE.
>> EXACTLY.
THE ENTIRE QUESTIONING DEALT
WITH WHAT THE DEFENSE'S POSITION
WAS.
SECOND-DEGREE FELONY MURDER WAS
PROVEN AT BEST.
THAT IS WHAT THE LAWYER IS
SUGGESTING, THAT HE DID NOT KILL
THE INDIVIDUAL.
THE INDIVIDUAL WHO ACTUALLY
CAUSED THE OFFENSE, AS STRANGE
AS MIGHT SOUND WAS THE ACTIONS
OF THE VICTIM HIMSELF, WHICH
FALLS DIRECTLY IN LINE WITH THE
ELEMENTS OF SECOND-DEGREE FELONY
MURDER REGARDLESS OF THE FACT HE
PUT HIMSELF IN THAT POSITION.
THE HIS ENTIRE DEFENSE THE FACT
THERE WERE OTHER ISSUES THE JURY
COULD HEAR WITH REGARD TO
ELEMENTS OF DEFENSE OTHER THAN
FIRST-DEGREE FELONY MURDER.
THIS IS STRANGE TYPE OF MURDER
CASE AS IT IS.
MY SUSPICION IS WHAT THE
PROSECUTOR WAS ATTEMPTING TO
DO, HAVE THE YOU ARE JURY NOT
FOCUS ON THE FACTS HOW THIS
INDIVIDUAL DIED BUT THE ACTIONS
OF THE CLIENTS ONLY, NOT THE
ELEMENTS.

HE GOES ON AND ON WITH REGARD TO
A LOT OF, HOW DO I SAY THE
IMPROPER COMMENTS.

EVEN TELLS THE JURY I'VE GIVEN
ALL THE EVIDENCE YOU NEED TO
KNOW.

WHAT HE SAYS DOESN'T MATTER.

THAT IS TOTALLY IMPROPER.

THIS IS NOT WHAT THIS COURT
FOUND IN THE CHAVEZ CASE,
PROSECUTOR SAYS IF YOU BELIEVE
MY WITNESSES, YOU DON'T HAVE TO
LISTEN TO THEM.

THAT IS NOT A PROPER STATEMENT.
ENTIRETY OF THE ENTIRE CASE, NOT
JUST CERTAIN FACTS DEALING WITH
ONE SIDE OR THE OTHER.

>> HOW MANY OF THE COMMENTS THAT
YOU FIND SO TOTALLY
OBJECTIONABLE, DID THE DEFENSE
LAWYER OBJECT TO?

>> NONE.

>> SO, THEN UNDERSTAND THAT IT
IS AN ISSUE OF FUNDAMENTAL ERROR
WHICH WE WOULD HAVE TO LOOK TO.

>> YES.

>> AND SO, AND THAT'S EXTREMELY
HIGH STANDARD.

IN FACT I DON'T REALLY, EVEN IN
THE CASES WHERE WE FIND
FUNDAMENTAL ERROR, THERE IS
USUALLY AT LEAST A COUPLE OF
OBJECTIONS.

SO WE LOOK AT BOTH THE PRESERVED
AND UNPRESERVED.

BUT IF THIS IS SO EGREGIOUS.

AND AGAIN, I UNDERSTAND THERE
ARE CONSTRAINTS SOMETIMES WITH
DEFENSE LAWYERS OBJECTING, BUT
THE FACT THERE IS ZERO STRIKES
ME AS, YOU KNOW, THE IDEA OF,
GIVING A NEW TRIAL, I GUESS
WOULD BE PENALTY PHASE, RIGHT?
BECAUSE YOU'RE NOT CONTESTING,
OR WOULD IT BE BOTH ARE YOU
SAYING?

>> I'M SAYING BOTH.

>> DO WE HAVE ANY CASE THAT
REVERSE, GUILT AND PENALTY PHASE
BASED ON UNPRESERVED CLOSING

ARGUMENT?

>> THERE HAVE BEEN CASES WHERE THIS COURT HAS REVERSED ON FUNDAMENTAL ERROR DUE TO THE PROSECUTOR'S IMPROPER COMMENTS.

>> I'M ASKING, WOULD THERE BEING NO PRESERVED ERRORS?

>> WITH IN COMBINATION. THERE WAS--

>> THAT'S WHAT I SAID. IN COMBINATION.

BROOKS IS AN EXAMPLE.

GORE IS AN EXAMPLE.

I MEAN THERE ARE, WE HAVE OVER THE YEARS BUT, SO, THE ANSWER IS, TELL ME, OF THE COMMENTS WHAT DO YOU SEE AS THE MOST EGREGIOUS OF COMMENTS?

>> WHEN HE STARTED OUT IN THE OPENING ARGUMENT, SET THE TONE FOR THE ENTIRE CLOSING ARGUMENT FOR THE PROSECUTOR.

I THINK IT IS ON PAGE 21 OF MY BRIEF, I SET OUT THE ENTIRE CONVERSATION THAT WAS, PROSECUTOR SET FORTH TO THE JURY.

THE CLIENT PLED NOT GUILTY.

HE HAS TAKEN THAT AWAY.

HE BASICALLY SAID, DOESN'T MATTER THAT HE HAS PLED NOT GUILTY.

HE IS NOT SORRY FOR IT.

HE GOES ON AND ON TO THAT PARTICULAR SITUATION.

HE ADDED ELEMENTS TO THE JURY, SAYING AN INDIVIDUAL NOT SORRY FOR WHAT HE HAS DONE IS AN ELEMENT OF THE DEFENSE.

ALSO, THE ARGUMENT WHERE HE MAKES TO THE JURY, I'VE GIVEN YOU EVERYTHING YOU NEED TO CONVICT THIS INDIVIDUAL, WHAT HE HAS TO SAY, DOESN'T MATTER.

IS TOTALLY REPREHENSIBLE.

AND THIS ISN'T THE FIRST TIME HE'S DONE THIS.

>> BY THE WAY, THERE IS, YOU SAID THERE WERE NO OBJECTIONS BUT THERE ACTUALLY WAS AN

OBJECTION.

>> ONE OBJECTION.

>> I ASKED WHETHER THERE WAS ANY.

>> YOU ACTUALLY ASKED ME I THOUGHT WAS SUBSTANTIAL.

WHILE I THINK THE OBJECTION WITH REGARD TO THE CASE LAW, THAT'S, DIDN'T GO FAR ENOUGH TO BE GRANTED A MISTRIAL HE DID OBJECT, AND I THINK IT WAS PROPER OBJECTION BUT WHETHER SUBSTANTIAL ENOUGH TO OVERTURN I DON'T THINK BY ITSELF WAS, BUT IN TOTO I THINK ONES I CITED IN MY BRIEF DO CONSTITUTE SUFFICIENT GROUNDS TO OVERTURN THIS PARTICULAR CONVICTION AS WELL AS PENALTY PHASE.

AND WITH REGARD TO THE PENALTY PHASE ASPECT OF THESE STATEMENTS THERE IS NO QUESTION AT ALL, THAT WHEN IT COMES TO A NON-STATUTORY AGGRAVATOR OF REMORSE THIS COURT INDICATED YOU CAN'T DO THAT UNLESS THERE IS WITNESSES PUT ON THE STAND OR DEFENDANT TAKES THE STAND AND SAYS HE WAS REMORSEFUL.

>> THERE WAS NONE OF THAT IN THIS CASE?

THERE WEREN'T ANY WITNESSES WHO TALKED ABOUT HIM BEING REGRETFUL AND SORRY ABOUT THIS.

>> THERE WAS WITNESSES, ONE OF THE GIRLFRIENDS OF THE INDIVIDUALS WHO WENT AND SAID HE HADN'T INDICATED TO HER THAT MR. COPE MAY BE IN DIRE NEED. PLEASE LOOK, GO UP THERE AND HELP HIM OUT BUT THERE WAS NEVER ANYTHING, SOMEONE SAID, SPECIFICALLY, GEE, I'M SORRY FOR WHAT I DID.

WISHED I HADN'T DONE THAT THE PROSECUTOR POINTS THAT OUT VEHEMENTLY.

THERE IS NO TESTIMONY IN THE GUILT PHASE OR PENALTY PHASE WHEN IT HAPPENED.

>> [INAUDIBLE].

START OUT IN THE BEGINNING OF THE CASE TALKING ABOUT HOW HE REGRETTED THIS OR HE WAS SORRY THAT THIS HAD HAPPENED, THAT THE DEFENSE DIDN'T MAKE THAT ARGUMENT AT THE BEGINNING OF CASE?

>> NO IN THE OPENING ARGUMENT, COUNSEL MADE HIS OWN PERSONAL STATEMENT, THAT IS A SHAME, I'M SORRY THIS HAPPENED.

NEVER REFERRED TO THE DEFENDANT HOW HE FELT ABOUT IT, WHAT HE DID.

AND IRONICALLY, AND I MIGHT, I PUT IT IN HERE I THOUGHT IT WAS RATHER CLEVER THE WAY IT WAS DONE BUT THERE IS BACK SIDE TO THIS WHERE THE PROSECUTOR IN THE CLOSING ARGUMENT OF GUILT PHASE PUTS IN ALL THE REFORCE.

IF ARGUMENT, WELL, HE DIDN'T SAY IT IN THE PENALTY PHASE, WELL, YES HE DID.

THIS COURT ALREADY INDICATED THAT THE RULES ARE, INSTRUCTIONS ARE, THAT YOU CAN CONSIDER EVERYTHING IN THE PENALTY PHASE THAT OCCURRED IN THE GUILT PHASE AS WELL AS PENALTY PHASE.

CLOSING ARGUMENTS IN THE GUILT PHASE APPLIES TO THE PENALTY PHASE.

REMORSE FACTOR APPLIES IN BOTH.

>> IS IT NOT TRUE THAT THE DEFENSE, CROSS-EXAMINED THREE WITNESSES WHO TESTIFIED THAT JORDAN APPEARED, UPSET, SUICIDAL, REGRETFUL, CONCERNED ABOUT HIS WELFARE?

>> THAT WAS HIS Demeanor.

NOT WHAT HE SAID.

HE WAS BIPOLAR.

HE WAS ALSO ON DRUGS AT TIME.

HE WAS DOING ALCOHOL AS THEY ALL STATED.

HE INDICATED HE FELT THIS GUY WAS, RESIDENCE, WAS CONCERNED FOR HIS HEALTH AND WELL-BEING.

BUT THOSE WERE NOT WORDS THAT WE UTILIZED.

THOSE WERE OBSERVATIONS.

>> BUT STILL, WHETHER THE WORDS CAME OUT OF THE DEFENDANT'S MOUTH OR THE WITNESSES WERE CHARACTERIZING HIS BEHAVIOR, THE DEFENSE WAS PUTTING ON INFORMATION THAT SAID THIS MAN WAS REGRETFUL ABOUT, OR SORRY ABOUT WHAT WENT ON, CORRECT?

>> WELL I THINK, THAT IS ONE PART OF IT.

THE OTHER PART OF IT WAS HE WAS ALSO TRYING TO CONVINCING THEM TO GO UP TO DAYTONA BEACH TO SEE AND LOOK HOW HE WAS DOING.

ONE OF THE THINGS HE WAS TRYING TO DO AT THE SAME TIME.

>> AT THE SAME TIME?

>> YES.

>> BUT HE WAS PUTTING ON EVIDENCE ABOUT BEING REGRETFUL.

>> ARE YOU SAYING GOING TO UP DAYTONA BEACH TO SEE HOW HE WAS DOING?

>> HE TOLD THEM TWO THINGS. ONE HE TOLD THEM HE HAD MONEY UP THERE.

>> SAID I GOT HIM TIED UP. YOU GO CLEAN HIS GUN COLLECTION OUT.

THAT'S WHAT HE TOLD THEM.

>> YES.

NOT AT FIRST.

HE EVENTUALLY TOLD THEM, TIED HIM UP.

CONCERNED FOR HIS SAFETY.

SENT HIM UP TO THERE ROB HIM ACTUALLY AND SEE HOW HE WAS DOING AT THE SAME TIME.

>> THAT IS ACTUALLY, NOW HERE'S, WE DON'T SEE CRIMES, FIRST-DEGREE MURDER CRIMES THAT ARE JUST, SO WHAT MURDERS BUT THIS IS, THIS IDEA THAT HE KNEW WHAT HE HAD DONE AND THEN HE TELLS THESE OTHER PEOPLE, HE IS TIED UP.

YOU CAN STEAL THEIR, YOU CAN NOW

STEAL HIS GUNS, DOESN'T DO ANYTHING TO TRY TO SEE ABOUT THE WELFARE OF THIS PERSON, BUT, AGAIN, ISN'T THE, WASN'T THE DEFENSE THAT HE REGRETTE, WAS THAT NOT PART OF THE DEFENSE, THAT HE REALLY DIDN'T INTEND TO KILL HIM?

THAT HE WAS, ONCE HE FOUND OUT WHAT HAD HAPPENED, HE WAS, HE WAS, HE WAS, DISTRAUGHT ABOUT IT?

>> NO.

I THINK--

>> THAT WASN'T THEIR DEFENSE?

>> NO BUT--

>> HE ADMITS HE DID IT.

>> YES, HE DOES.

>> SO WHAT DEFENSE DID YOU HAVE, IF NOT HE DIDN'T INTEND FOR THE PERSON TO BE, TO DIE?

>> THAT'S JUST IT.

HE DIDN'T INTEND FOR HIM TO DIE.

>> WELL, THEN HE WOULD FEEL BADLY THAT HAPPENED?

>> WELL HE MAY HAVE AFTERWARDS. MY POINT BEING IS, THAT IF YOU LOOK WHAT THE CLOSING ARGUMENT OF THE DEFENSE WAS, HE CONTINUALLY SAYS, HE DIDN'T KILL THE INDIVIDUAL.

HE DIDN'T INTEND TO KILL THE INDIVIDUAL.

EVEN SET THOSE INDIVIDUALS UP THERE TO HELP FREE HIM FROM WHERE HE WAS AT.

>> THEY WAITED TWO DAYS.

>> I'M SORRY.

>> DIDN'T THEY WAIT TWO DAYS?

>> YES, IT TOOK THREE DAYS ACTUALLY.

ONE DAY HE WAS DOWN THERE, WITH THEM TWO DAYS.

BUT EVEN THE TREATING PHYSICIAN INDICATED THAT, IT IS NOT UNUSUAL FOR SOMEONE TO GO WITHOUT FOOD AND WATER THREE DAYS TO SURVIVE.

THEY WOULD BE IN DIRE NEED BUT COULD SURVIVE IT.

>> AFTER BEING PISTOL-WHIPPED.
>> I'M SORRY?
>> AFTER BEING BEATEN UP.
>> THERE WAS NO EVIDENCE BY ANY
OF THE PHYSICIANS OR ANY
WITNESSES THERE THAT SAW ANY
BRUISES OR MARKS ON HIS FACE
EVEN THOUGH--
>> [INAUDIBLE]
HE DROVE FROM THIS, WAS
EDGEWATER, IS THAT WHERE IT WAS.
>> YES.
>> THAT'S NEAR DAYTONA BEACH?
>> YES.
>> HE DROVE FROM THERE TO
HALLANDALE, CORRECT?
>> YES.
>> HALLANDALE HE STAYED WITH
FRIENDS AND SAID HE DID THIS
OVER THERE?
>> YES.
>> DID HE STAY WITH THEM THE
WHOLE THREE DAYS?
>> I UNDERSTOOD--
>> THEY WAITED TO GO TO DAYTONA?
>> IT IS A LITTLE BIT VAGUE
BASED ON THE PROSECUTOR'S
TESTIMONY.
HE WAS THERE IN TOWN FOR A DAY
FIRST, OR HALF A DAY AND THEN
WENT THERE FOR TWO DAYS.
>> BUT HE WAS AROUND, KNOWING
THAT THESE FOLKS IN HALLANDALE
WERE NOT DOING ANYTHING FOR TWO
DAYS TO GO HELP THIS GUY IN
EDGEWATER?
>> THERE IS SOME QUESTION AS TO
WHEN THE ACTUAL CONVERSATION
WAS.
I'M NOT, I GOT FROM THE EVIDENCE
THAT THE FIRST DAY HE DIDN'T
TELL THEM ANYTHING ABOUT THE
SITUATION THAT MR. COPE WAS IN.
IT WAS THE SECOND DAY WHEN HE
STARTED TO TALK TO THE
GIRLFRIEND BEING TIED UP, HOW HE
HAD LEFT HIM.
FIRST DAY I DON'T BELIEVE HE
INDICATED.
HE TOLD HIM HE ROBBED HIM AND

STOLE STUFF.

I DON'T THINK HE TOLD HIM FIRST DAY HE WAS TIED UP.

>> HE DIDN'T HAVE TO INTEND, THIS WAS FELONY MURDER BASED ON THE ROBBERY.

HE DIDN'T HAVE TO INTEND TO HAVE KILLED HIM FOR THERE TO BE A CONVICTION FOR FIRST-DEGREE MURDER, CORRECT.

>> CORRECT.

>> OKAY.

WHAT IS THE, THE SIX LETTERS THAT WERE INTRODUCED.

WHO INTRODUCED THE SIX LETTERS?

WHAT WERE THOSE SIX LETTERS?

>> PROSECUTOR.

>> WHAT DID THOSE SIX LETTERS, WERE THOSE OBJECTED TO THOSE SIX LETTERS?

>> THEY WERE, THEY WERE, MOTION TO SUPPRESS WAS HAD BUT BECAUSE BASED UPON MY READING OF THE LAW, IT WAS PROPERLY OVERRULED. AND THEY INTRODUCED THEM TO ESTABLISH THAT THINGS HE WAS SAYING WERE SAID VOLUNTARILY. HE SOUTH OUT A LAW ENFORCEMENT OFFICER AND SENT THOSE LETTERS.

>> SO WHAT WAS THE PROSECUTION USING IT FOR?

>> TO ESTABLISH THE GUILT.

TO ESTABLISH HIS GUILT.

>> AND THEN, SO, IS THE PART WHERE HE SAYS, HE WROTE SIX LETTERS.

YOU LISTENED TO THEM.

YOU WILL HAVE THE OPPORTUNITY TO TAKE THEM BACK OF LOOK CAREFULLY FOR THE WORDS, I'M SORRY.

I'M SORRY DOESN'T APPEAR ANYWHERE.

YOU'RE SAYING THAT'S WHAT WAS OBJECTIONABLE IN THE CLOSING ARGUMENT?

>> ON FACTS NOT IN EVIDENCE.

TELLING JURY, YOU FIND THE WORD SORRY.

>> SO AGAIN, THAT WASN'T OBJECTED TO.

LET'S GO TO WHAT ELSE IS SO HORRIBLE AS TO CAUSE THIS TO REACH THE ENTIRE VALIDITY OF THE TRIAL AND PENALTY PHASE.

WHAT IS YOUR NEXT PROPER ARGUMENT?

OR DO YOU THINK THAT IS THE WORST?

IS THAT THE WORST OF THEM?

>> THAT IS ONE OF THEM.

I THINK HE MISSTATES THE LAW AND COMMENTS ON, COMMENTS ON FACTS NOT IN EVIDENCE SUBSTANTIALLY.

HE IS TELLING THE JURY, HE IS TELLING THE JURY, DO YOUR JOB TO CONVICT THIS INDIVIDUAL.

WELL, MIGHT NOT BE THE WORST ONE--

>> IS THAT NUMBER, YOU'RE EXHORTING THE JURY TO DO ITS JOB?

>> YES.

>> BUT HE IS ACTUALLY, I THOUGHT HE GOES, WHATEVER WAY IT GOES, IF YOU FIND HIM NOT GUILTY BUT YOU GOT TO FOLLOW THE LAW.

I DON'T KNOW THAT IS EXHORTING THAT IF YOU DON'T FIND HIM GUILTY YOU'RE VIOLATING THE LAW. IT SEEMS TO ME THAT'S, NOT EVEN AN IMPROPER, THAT IS NOT EVEN IMPROPER.

AM I MISSING SOMETHING ABOUT THAT COMMENT?

>> HE DOES START OFF WITH THE FACT THAT WITH REGARD TO THE EVIDENCE THAT YOU MUST FIND HIM GUILTY AND YOU MUST DO YOUR JOB. THEN TILL THE END, IF YOU LOOK AT ENTIRE STATEMENT IN CONTEXT, NOT UNTIL THE END HE GOES, WELL, IF IT GOES EITHER WAY.

>>-- MORE THAN THAT.

I WANT YOU TO ENFORCE THE LAW AND FIND HIM NOT GUILTY.

>> AT THE END.

>> IF FOR SOME REASON YOU HAVEN'T PROVEN--

SO WHY, I MEAN IS IT WRONG TO SAY, THE EVIDENCE DEMONSTRATES

HE DID DO IT, YOU FIND HIM
GUILTY, IF THE EVIDENCE
DEMONSTRATES HE DIDN'T DO IT,
THEN YOU FIND HIM NOT GUILTY?
THAT IS IN ESSENCE WHAT THIS ALL
SEEMS TO BE SAYING.

>> I AGREE IT WAS NOT THE
STRONGEST ONE.

IT WAS WAY HE STARTED OFF WITH
THE ARGUMENT.

>> WHAT IS THE STRONGEST ONE
AGAIN?

THE ONE ABOUT REMORSE?

>> SURE.

HE COMMENTS WITH REGARD TO
GOLDEN RULE.

THIS COURT IN, I GUESS IN
VICTORINO INDICATED THERE ARE
SOMETIMES YOU CAN USE COLORFUL
WORDS TO TELL THE JURY TO
IMAGINE WHAT A VICTIM IS GOING
THROUGH.

>> IS THAT WHAT HAPPENED IN THIS
CASE?

>> YEAH HE DID.

>> HE SAID IMAGINE?

>> HE UTILIZED, HE SAID, BECAUSE
HE WAS BOUND, BECAUSE HE WAS
GAGGED--

>> DID HE ASK THE JURY TO PUT
THEMSELVES IN HIS SHOES?

>> NO HE SAID IMAGINE WHAT IT IS
LIKE.

HE DIDN'T ASK THEM TO DO SO.
HIS WORDS WERE SO COLORFUL TO
SAY, WELL, HERE'S MY CLIENT OUT
HAVING FUN WHILE YOU CAN IMAGINE
HOW MR. COPE IS FEELING BY BEING
GAGGED AND BEING TIED UP.
BASICALLY, SUFFERING, TELLING
THEM BASICALLY, IN COLORFUL
WORDS TO IMAGINE WHAT HE WAS
GOING THROUGH.

>> WASN'T THAT IN RESPONSE TO,
THE DEFENSE TRYING TO SAY, WELL,
HAD HE NOT MOVED, HAD HE NOT
TRIED TO STRUGGLE HE WOULD STILL
BE ALIVE?

THEY WERE TRYING TO, AWARD
REASON FOR HIS DEATH IS

CIRCUMSTANCE TO THE VICTIM?

>> NOT AT THAT TIME.

THEY DID MAYBE THE COMMENT BUT IT WASN'T IN RESPONSE TO THAT.

>> OKAY.

>> WELL THAT IS PRETTY, TALK ABOUT OUTRAGEOUS COMMENTS AND YOU KNOW, YOU OBVIOUSLY, WEREN'T THE DEFENSE LAWYER BUT TO, TO SAY, WHAT THEY WERE ARGUING IS, HE DIDN'T INTEND TO KILL THIS PERSON.

HE THOUGHT IF HE WOULD JUST HAVE, BEEN BOUND, GAGGED AND TIED UP TO ALL PARTS OF THE POST, THAT IF HE JUST, STAYED THERE, HE WOULD HAVE BEEN, HE WOULDN'T HAVE DIED.

NOW, IF I'M A JUROR, I MEAN, YOU TO THE, SOMEONE GOT 8-4 JURY RECOMMENDATION, I'M NOT SURE HOW THAT HAPPENED, FRANKLY BUT THAT IS MY OWN PERSONAL VIEW OF IT. SEEMS THERE IS, THERE IS FELONY MURDER AND THERE IS AWFUL HAC AND, REALLY, THE COMMENTS WERE NOT, PUT YOUR PLACE, SELF IN THE PLACE, HE SAID HE IS PARTYING, HE IS INDIFFERENT.

KNOWS THIS GUY'S BOUND, AT THE SAME TIME, LOOK WHAT WAS GOING ON WITH KEITH COPE.

AND HE GOES THROUGH WHAT'S HAPPENING TO HIM.

I DON'T THINK THERE SAYING PUT YOURSELF, IMAGINE IF YOU WERE KEITH COPE AND YOU KNOW, YOU'RE THERE.

ALTHOUGH HARD NOT TO IMAGINE.

>> WHAT IS THE POINT OF JUXTAPOSITION?

WHAT ELEMENT DOES THAT GO TO PROVE?

>> HE SAID HE DIDN'T INTEND TO KILL HIM.

SO HE IS SAYING, THIS AT LEAST MY TAKE ON IT, NOT OBJECTED TO, WHILE THIS GUY IS PARTYING FOR THREE DAYS, THEN HE SAYS HE DIDN'T INTEND TO KILL HIM, AT

THE SAME TIME, THIS IS WHAT IS GOING ON WITH MR. COPE.

>> RIGHT.

WHICH IS RESULT OF HIS ACTIONS. BUT DOESN'T, ALL IT DOES IS INFLAME THE JURY, DOESN'T GO TO ANY ELEMENT.

>> GUESS WHAT?

THE FACTS OF THIS ARE GOING TO INFLAME THE JURY.

YOU DON'T NEED, I DON'T SEE WHERE IN THAT PART OF THE CLOSING ARGUMENT HE DOES SOMETHING IMPERMISSIBLE IN REGARD TO A GOLDEN RULE ARGUMENT.

WE'VE SEEN GOLDEN RULE ARGUMENTS.

MAYBE I'M MISSING SOMETHING ON THAT ARGUMENT.

BUT I DON'T SEE IT.

MR. REITER, WITH ALL DO RESPECT.

>> THERE ARE OTHER ONES WITH REGARD TO DENIGRATING THE DEFENSE, WHICH I MENTIONED A MINUTE AGO--

>> IF WE CAN GO BACK ON THIS, ISN'T ITS CASE WHEN HAC IS AN ISSUE, ONE OF THE THINGS THAT THE JURY MUST CONSIDER IS WHAT SUFFERING THE DEFENDANT WENT THROUGH?

ISN'T THAT, THAT'S PART AND PARCEL OF EVALUATING HAC?

>> YES.

>> YES.

>> WELL WHY ARE NOT THESE COMMENTS, SIMPLY COMMENTS THAT ARE AIMED AT INFORMING THE JURY OF MATTERS THEY MUST CONSIDER IN CONNECTION WITH THEIR EVALUATION OF THE HAC AGGRAVATOR?

>> TIMING.

IT BELONGS IN THE PENALTY PHASE, NOT THE GUILT PHASE.

IN ADDITION, WHILE WE'RE ON IT, LET ME GO TO HAC.

WHILE IT MAY SEEM STRANGE THE WAY I MADE THE ARGUMENT, IF YOU LOOK AT THE LEGAL RAMIFICATIONS

IT IS SAME.
IF YOU LOOK AT ARCHER,
INDIVIDUAL HIRES SOMEONE TO
KILL, SPECIFICALLY KILL BUT
DON'T NOW HOW AN INDIVIDUAL IS
GOING TO DO THAT KILLING THIS
COURT SAID YOU CAN NOT APPLY HAC
VICARIOUSLY.

MR. JORDAN INDICATED THROUGH
QUESTIONS AND ANSWER AND
METHODOLOGY, NOT ONLY DID HE NOT
KILL MR. COPE, HE DID NOT INTEND
TO KILL MR. COPE.

>> I THOUGHT HE MEANT THROUGH
SOMEBODY ELSE.

>> IT IS THROUGH SOMEBODY ELSE.

>> ALL OF THESE ACTIONS CAME
DIRECTLY THROUGH HIM, DID THEY
NOT?

WAS--

>> ACTUALLY MR. COPE DIED FROM
HIS OWN ACTIONS.

>> OH, HE KILLED HIMSELF,
SUICIDE?

>> NO.

I'M NOT EVEN SUGGESTING THAT THE
ACTIONS THAT MR. COPE HAD DONE
DID NOT ULTIMATELY LEAD TO HIS
DEATH BUT THE ACTIONS
THEMSELVES--

>> BUT FOR HIS ACTION HE WOULD
HAVE BEEN ALIVE, HAD HE NOT.

>> IF HE LAID STILL.

>> HOW DID HE--

>> HE PRACTICALLY HUNG HIMSELF
TURNING THE BED ALMOST TOTALLY
OVER.

MY CLIENT HAD NO IDEA THAT WOULD
HAPPENED.

>> HE WAS TRYING TO FREE
HIMSELF?

>> SORRY?

>> HE WAS TRYING TO FREE
HIMSELF?

>> HE WAS.

IN ARCHER CASE YOU HIRE SOMEONE
TO KILL, YOU INTENDED FOR THAT
PERSON TO DIE.

THAT DIDN'T HAPPEN HERE.

--

>> THAT IS WHY THIS IS FELONY MURDER.
>> SECOND-DEGREE FELONY MURDER APPLIES AS WELL.
>> WELL, NOT REALLY. BECAUSE THERE WAS, THIS IS COMMITTED, IN THE COURSE OF ONE OF THE ENUMERATED FELONIES.
>> EXCEPT THAT--
>> MAKES IT, FELONY FIRST-DEGREE MURDER, ISN'T THAT CORRECT?
>> THAT'S CORRECT. BUT IT ALSO APPLIES TO THE ELEMENTS OF SECOND-DEGREE FELONY MURDER.
>> THE HIGHER OFFENSE IS THE FELONY FIRST-DEGREE MURDER, ISN'T THAT CORRECT?
>> YES IT IS.
>> ISN'T THAT WHAT THE JURY IS REQUIRED TO CONVICT OF?
>> YES. THEY WERE DENIGRATING THE DEFENSE.
IF YOU LOOK AND SEE HOW IN TOTO THE PROSECUTOR MADE ARGUMENTS TO THE JURY SAYING YOU DON'T HAVE TO LISTEN TO ANYTHING HE SAYS, TAKES AWAY A JURY'S ABILITY TO SAY I FIND HIM GUILTY OF A LESSER INCLUDED OFFENSE. NOT ONLY THAT, HE TELLS THEM YOU CAN'T COME BACK WITH THE VERDICT. THAT IS IN VIOLATION OF FLORIDA LAW.
YOU YES YOU CAN.
>> CAN I GO BACK TO HAC?
YOU'RE NOT SAYING VIOLATION OF LAW IF IT IS FELONY MURDER AS OPPOSED TO PREMEDITATED MURDER THERE CAN'T BE HAC?
>> NO.
>> CONSCIENCE INDIFFERENCE TO THE SUFFERING IS PART OF HAC AND YOU LOOK WHAT THE VICTIM WENT TO.
INTENT PLAYS A LITTLE BIT OF A PART, SOMEHOW IF HE PRICKED HIS FINGER, THAT HE WAS A

HEMOPHILIAC, AND MAYBE THERE WOULD BE, WELL, HE OF COURSE HE DIDN'T INTEND IT BUT HERE, HE LEFT HIM BOUND, PRETTY MUCH GAGGED, AND THE IDEA TO SAY, WELL, I WOULDN'T HAVE EXPECTED THAT HE WOULD TRY TO FREE HIMSELF?

>> NO, I'M NOT SAYING THAT AT ALL.

>> SO THEN ONCE THEY'RE THERE, ONCE YOU GOT THAT, THERE IS CONSCIENCE INDIFFERENCE. YOU LOOK AT POINT OF THE VIEW FROM THE VICTIM WHAT HE PROBABLY WENT THROUGH.

SO ON THAT, THE ONE GOLDEN RULE, I GUESS YOU WERE GOING TO MOVE ON BUT I DON'T SEE AGAIN WHERE THE GOLDEN RULE VIOLATION IS?

>> WELL, FIRST OF ALL THE CLOSING ARGUMENT OF GUILT PHASE, NOT PENALTY PHASE WHICH IS DEALING HAC AND BRINGING ON WITNESSES TO SHOW THE PAIN AND SUFFERING OF INDIVIDUAL. NOT DURING-- MUCH OF THE PROBLEMS DURING OPENING ARGUMENT DOING AT GUILT PHASE HE NEEDS TO DO AT PENALTY PHASE INFLAMES THE JURY.

NOT INCREASES DEFENDANT'S POSITION THAT SECOND-DEGREE FELONY MURDER IS IN POSITION HERE.

HE WINDS UP DEFENDING HIMSELF OH, I'M NOT SAYING WHAT HE IS SAYING.

I'M NOT SAYING THAT WE DIDN'T TAKE RESPONSIBILITY.

RATHER THAN GETTING UP THERE TO TRY TO ARGUE THE FACTS WITH REGARD TO SECOND-DEGREE FELONY MURDER BECAUSE HE WINDS UP DEFENDING HIMSELF AGAINST ALLEGATIONS BY THE PROSECUTION THAT HAD NOTHING TO DO WITH THE CASE.

I WILL HAVE REBUTTAL.

I WILL RESERVE.

>> MAY IT PLEASE THE COURT.
I'M STACY KIRCHER, ASSISTANT
ATTORNEY GENERAL APPEARING ON
BEHALF OF THE STATE IN THIS
CASE.

I WOULD LIKE TO ADDRESS JUST A
COUPLE OF POINTS.

WE DO HAVE VARIOUS, I THINK, AS
I COUNTED THEM, FROM APPELLANT'S
BRIEF NINE THAT I COULD
INDIVIDUALIZE CLAIMS OF IMPROPER
PROSECUTORIAL COMMENTS DURING
CLOSING ARGUMENTS.

JUST FOR CLARITY, ALL OF THESE
COMPLAINED OF PROSECUTORIAL
COMMENTS OCCURRED DURING THE
GUILT PHASE ORIGINAL CLOSING
ARGUMENT WITH THE EXCEPTION OF
THE INCONSISTENT VERDICT
ARGUMENT WHICH HAPPENED IN
REBUTTAL.

BUT FAILURE TO OBJECT TO
IMPROPER OR COMPLAINED OF
PROSECUTORIAL CLOSING ARGUMENTS
WAVES ANY CLAIM OR APPELLATE
REVIEW UNLESS UNOBJECTED TO
COMMENTS RISES TO FUNDAMENTAL
ERROR, OBVIOUSLY MEANING THAT
THE VALIDITY OF THE TRIAL IS
VITIATED.

THAT THE STATE COULD NOT HAVE
GOTTEN A GUILTY.

THAT THE JURY COULDN'T HAVE COME
BACK WITH A VERDICT OF GUILTY
BUT FOR THESE PROSECUTORIAL
COMMENTS AND THAT IS JUST NOT
THE CASE WITH ANY OF THEM
INDIVIDUALLY OR WITH THEM VIEWED
CUMULATIVELY.

I SO WILL GO THROUGH ALL COULD
HAVE THOSE.

JUSTICE PARIENTE, I BELIEVE YOU
STATED YOU WEREN'T SURE HOW THEY
CAME BACK 8-4.

THEY WERE ACTUALLY 10-2, IN 18
MINUTES.

CAME BACK WITH GUILT OR
RECOMMENDATION OF DEATH IN UNDER
AN HOUR.

>> I CAN'T UNDERSTAND HOW THEY

CAME OUT WITH 10-2, I'M SORRY.

>> RIGHT.

>> BUT MAYBE, THERE WAS SOME OTHER FACTORS THAT--

>> SO, AND, AS TO THE TIMELINE, JOSEPH JORDAN GOING BACK TO WHAT HE DID, ACTUALLY.

KEITH COPE WAS AN INDEPENDENT CONTRACTOR WHO LIVED IN EDGEWATER WHICH IS ABOUT 45 MINUTES SOUTH ON THE COAST OF DAYTONA BEACH.

HE WAS AN INDEPENDENT CONTRACTOR WHO OWNED A BUSINESS THERE.

HE HAD EMPLOYED JOSEPH JORDAN AT ONE TIME.

HE ACTUALLY LIVED WITH HIM.

MATTHEW POWELL, ONE OF THE GROUP OF FOUR WHO CAME BACK TO ROB KEITH COPE WHEN THEY THOUGHT HE WAS TIED UP AND HIS SAFE WAS OPEN, ACCORDING TO THE

APPELLANT, HE ACTUALLY DROPPED THE APPELLANT OFF AT KEITH COPE'S HOUSE APPROXIMATELY THREE TO FOUR WEEKS BEFORE THE MURDER.

AT SOME POINT, JORDAN MUST HAVE LEFT BECAUSE HE GOT A BUS TICKET ON JUNE THE 24th TO COME BACK, TELLING HIS FRIENDS THAT THIS GUY OWED HIM SOME MONEY AND HE WAS GOING TO GO COLLECT.

SO THE EVENING BEFORE ALL OF THIS TRANSPIRED THERE WAS A PARTY AND, JOSEPH JORDAN WAS TAKING ADVANTAGE OF KEITH COPE'S HOSPITALITY.

AND DURING THAT TIME HE DECIDED THAT THAT MONEY SHOULD HAVE NOT SPENT ON A PARTY.

IT SHOULD HAVE BEEN SPENT ON PAYING HIM BACK FOR SOME WORK THAT HE HAD DONE AT SOME POINT. SO HE PROCEEDED TO HOLD KEITH COPE AT GUNPOINT, BRUTALLY PISTOL WHIP HIM ABOUT THE FACE AND SADIA HAGUE BEING, ONE OF THE FOUR AS WELL.

>> WHAT DID THE MEDICAL EXAMINER SAY ABOUT THE INJURIES?

AS I UNDERSTOOD MR. REITER'S ARGUMENT THERE WASN'T ANY EVIDENCE OF HIM BRUISING ON THE FACE.

>> YES, JUSTICE QUINCE, THAT'S TRUE.

THE MEDICAL EXAMINER COULDN'T TESTIFY TO THAT BECAUSE SHE DID TESTIFY THAT WAS, DR. WINSTON, EXCUSE ME, DR. HERMAN, WAS THE MEDICAL EXAMINER IN THIS CASE WHO TESTIFIED THAT AT ALL OF THE BINDING SPOTS, INCLUDING THE HEAD, ABOUT HIS FACE AND HEAD, HIS EARS, HIS WE IS AND HIS-- WRISTS AND ANKLES, BINDING, DUCK TAPE AND ROPE WAS SO TIGHT THERE WAS DEAD TISSUE AND SEVERE ABRASIONS TRYING TO FREE HIMSELF FROM THAT.

SHE COULD NOT TESTIFY TO BRUISING ON THE FACE.

HOWEVER, SADIA HAQUE, MATTHEW POWELL'S GIRLFRIEND ONE OF FOUR CAME UP TESTIFIED IN HER DEPOSITION, THERE WAS BRUISING ON HIS FACE.

BUT AT POINT THEY GOT THERE, THREE DAYS AFTER HE HAD BEEN BEATEN AND TIED TO HIS BED WITH DUCT TAPE, AND ROPE TO THE FOUR CORNERS OF HIS BED, HE WAS IN SUCH A STATE IT WAS NOT IT, WOULD HAVE BEEN DIFFICULT TO SEE BRUISING FROM THE INITIAL PISTOL-WHIPPING BUT IT IS IMPORTANT TO NOTE TOO, THAT IS HOW HE INITIALLY SUBDUED KEITH COPE AND HE ADMITS THIS IN HIS LETTERS.

HE WROTE SIX LETTERS TO DETECTIVE WINSTON.

HE ACTUALLY WROTE ONE TO THE WIFE OF THE VICTIM AS WELL, SAYING, YOU KNOW, IF YOU DON'T DO SOMETHING ABOUT MY GIRLFRIEND, IF SHE IS NOT ARRESTED AND CHARGED WITH ACCESSORY AFTER THE FACT, YOU WILL NEVER KNOW THE WHOLE TRUTH,

THE FAMILY WILL NEVER BET
CLOSURE, ETCETERA BUT HE DOES
ADMIT TO ALL OF THE
PISTOL-WHIPPING.
HE ADMITS IT WAS A HANDGUN THAT
HIS GIRLFRIEND SONIA
CORDAY-ROCHLAN HID FOR HIM AFTER
THE SAFE HOUSE, GOT HIM FOOD,
CLOTHES, HID THE GUN.
DISPOSED OF THE GUN AFTERWARDS.
HE ADMITS TO ALL OF THAT I
ADMITTS TO WORKING ALONE.
HE SAID HE OWED HIM MONEY.
THAT IS WHY HE DID IT.
WHEN HE TAPED HIM ABOUT THE
FACE, IT WAS SO TIGHT, THAT WHEN
FIRST-RESPONDERS ARRIVED, THEY
COULDN'T EVEN PULL IT DOWN.
SO WE HAVE TWO EMT
PROFESSIONALS, OFFICER SALDAGIO,
AND MATTHEW COPE GOING INTO THE
HOUSE FIRST, PULLING TAPE OFF,
TRYING TO OPEN AN AIRWAY.
HIS MOUTH WAS SWOLLEN AND
VOMITED AND ASPIRATED.
HE HAD BRONCHIAL PNEUMONIA AT
THIS POINT.
HE HAD STROKES.
IN ADDITION TO BEDSORES,
COMPRESSION WOUNDS AND ABRASIONS
AT THE TAPE AND ROPE SITES, HE
COULDN'T EVEN SWALLOW WATER AT
THIS POINT.
HE IS ASKING FOR WATER.
IT IS UNREFUTED THAT HE IS
CONSCIOUS AT THIS POINT.
THEY CAN'T UNDERSTAND MUCH OF
WHAT HE IS SAYING.
HE IS ASKING FOR WATER.
MATTHEW POWELL SAID HE WOULDN'T
BE ABLE TO SWALLOW IT.
HE WOULD NEED AN IV.
BUT BACKING UP A LITTLE BIT TO
THE ORIGINAL TIME FRAME, WHEN
THIS HAPPENED, MAGGIE COPE, WHO
IS THE VICTIM'S EX-WIFE AND THEY
STILL REMAIN, REMAINED CLOSE AT
THE TIME OF THIS, THEY SHARED
PARENTAL RESPONSIBILITY OF THEIR
15-YEAR-OLD DAUGHTER, EMILY, SHE

LIVED ABOUT THREE BLOCKS FROM THE VICTIM.

SHE SAW HIS TRUCK.

HE ALWAYS PARKED IN THE SAME PLACE.

SHE NOTICED ON JUNE 24th AT 7:00P.M. THE TRUCK WAS THERE.

BY 6:30A.M. ON JUNE 25th THE TRUCK WAS GONE.

THAT IS WHEN THE APPELLANT HAD TIED UP AND BEATEN KEITH COPE, LEFT HIM TO DIE.

AND, JUST WENT ABOUT SPENDING HIS MONEY.

STOLE HIS DEBIT CARD, HIS TRUCK. POSSIBLY SOME CASH.

THERE WAS CASH.

WE DON'T KNOW WHAT HAPPENED TO THAT.

>> CAN I ASK ABOUT THE, THE JUDGE FOUND BUT DIDN'T GIVE A LOT OF WEIGHT TO A STATUTORY MITIGATOR OF EXTREME EMOTIONAL DISTRESS.

YOU SAY, THE NIGHT THEY WERE PARTYING, IS THERE, WAS THERE ANY EVIDENCE THAT HE WAS SO, LIKE IMPAIRED, THAT HE ACTUALLY DIDN'T KNOW WHAT WEIGH WAS DOING?

AND ALSO, AS A FLIP SIDE, THAT THE WAY THIS WAS SET UP, WITH THIS BINDING AND YOU KNOW, THAT REALLY WAS CURE FOR TO KEEP HIM IMMOBILIZED, THAT THAT WAS, YOU HAD TO HAVE INTENTIONAL ACTIONS TO DO IT?

IT WASN'T JUST SOMETHING THAT HE GOT MAD AND SAID, HEY, I'M GOING TO TIE YOU UP?

>> WELL, AND JUSTICE PARIENTE, THAT WAS PART OF THE DEFENSE'S THEORY.

THEY SAID HE JUST SNAPPED BUT THE EVIDENCE WAS THAT THESE ROPES, ONE OF THEM, HAD BEEN TIED.

HE WAS HOG-TIED TO THE BED. HE WAS TAPED WITH DUCT TAPE BEHIND HIS HANDS.

IT WENT AROUND HIS HEAD, WENT
AROUND FIVE TIMES.
HE WAS TAPED WITH HIS HANDS.
HE WAS THEN, GOD BLESS YOU.
HE WAS TIED TO THE FOUR CORNERS
OF WITH THE BED WITH ROPE IN
ADDITION.

SO THAT TOOK TIME.
THE ROPE, ONE OF THE KNOTS WAS
TIED SEVEN TIMES.

>> HE IS HOG-TIED.
HOW, IF IT HIS ARMS ARE BEHIND
HIS BACK, HOW IS HE TIED WITH
FOUR, TO FOUR POSTS?

>> IT WAS, AND THAT IS HOW HE
ENDED UP HAVING THE WOUND THAT
WAS SO DEEP EMBEDDED INTO HIS
LEFT BICEP, IT ACTUALLY CAUSED
GAIN GREEN.

HE DIED OF COMPARTMENTALIZATION
SYNDROME BECAUSE HIS BODY
WAS DYING.

AFTER THREE DAYS TRANSPIRED HE
REALIZED, HAD TO REALIZE NO ONE
WAS COMING AND DESPERATELY AT
THIS POINT SUFFERING FROM
DEHYDRATION, SUFFERING FROM,
THEY SAY IT WOULD HAVE BEEN A 10
ON THE PAIN SCALE.

LIKE A CHARLEY HORSE THAT GETS
WORSE AND WORSE AND WORSE AND
NEVER GOES AWAY.

SO AT THIS POINT--

>> I THINK SHE ASKED YOU HOW WAS
HE, IF HE WAS HOG-TIED HOW WAS
HE TIED TO FOUR POLES?

>> YES, JUSTICE PERRY.
I WAS TAKING LONG WAY AROUND.
I'M SORRY.

>> OH.
>> EVENTUALLY WHEN HE IS
STRUGGLING TO GET FREE HIS HANDS
ARE BEHIND HIM BUT HE IS TIED
ALMOST AT THE ELBOW.

SO WHEN HE IS STRUGGLING TO GET
OFF THE BED, HE ALMOST BECOMES
SUSPENDED BY THAT THE ROPE BEING
EMBEDDED IN HIS LEFT BICEP.

>> YOU SAY UPPER EXTREMITIES
WERE TIED, NOT IN A NORMAL WAY

BUT ACTUALLY, AFTER HE WAS
HOG-TIED?

>> FROM THE BEST I CAN TELL FROM
A COLD READING OF THE RECORD,
THAT'S THE WAY--

>> ARE THERE PICTURES OF THIS?
I HOPE NOT.

>> THERE WAS A PICTURE, I
BELIEVE, BUT, THEY DON'T DISCUSS
THE HOWS AND WHYS BECAUSE THEY
DO STATE NOBODY WAS THERE.
SO WE'RE NOT EXACTLY SURE HOW IT
AND.

>> BUT THIS IDEA THE DEFENDANT,
I GUESS I'M GOING BACK, I DON'T
KNOW IF YOU'RE, EXCEPT FOR
REALLY GETTING US RILED UP ABOUT
THE FACTS, IF YOU'RE RESPONDING
TO THE ARGUMENTS, BUT JUST ON
THAT, THERE IS, THIS IDEA THAT
SOMEHOW HE COULD HAVE JUST
LAID-BACK AND, IF HE HAD JUST
BEEN CALM, HE WOULD HAVE BEEN
FINE, THE WAY HE WAS TIED, AND
BOUND, AND REALLY BELIES THAT,
EVEN THAT ABSURD NOTION THAT HE
SHOULD HAVE JUST STAYED WHERE HE
WAS?

>> CORRECT, JUSTICE PARIENTE,
AND ACTUALLY, ONE OF, THERE WERE
THREE MEDICAL PROFESSIONALS THAT
TESTIFIED.

THERE WAS DR. RULLAN, HIS
CRITICAL CARE PHYSICIAN
THROUGHOUT THE TIME WHEN HE
ARRIVED.

THEY TOOK OVER FROM THE E.R.
DOCTOR WHO WAS DR. WILSON WHO
ACTUALLY DID THE AMPUTATION ON
HIS ARM AND SHOULDER.

DR. RULLAN CARED FOR MR. COPE
FOR APPROXIMATELY TWO WEEKS HE
SURVIVED IN THE VEGETATIVE
STATE, DETERIORATING UNTIL HE
WAS TAKEN OFF LIFE-SUPPORT.
THEN DR. HERMAN THE MEDICAL
EXAMINER.

AND NONE OF THEM TESTIFIED HE
WOULD HAVE BEEN FINE.
THEY TESTIFIED HE PERHAPS WOULD

NOT HAVE DIED OF THE
COMPARTMENTALIZATION SYNDROME.
HE MAY NOT HAVE DIED AS QUICKLY
BUT WITHIN THREE DAYS, HAVING
THESE TIGHT DUCT TAPE AROUND HIS
MOUTH HE WOULD HAVE BEEN
DEHYDRATED.

WOE HAVE BEEN, HE STILL
ASPIRATED THE VOMIT.
AT THIS POINT HE STILL HAD
BRONCHIAL PNEUMONIA.

NOBODY-- PNEUMONIA.
NOBODY TESTIFIED HE WOULD HAVE
BEEN FINE IF HE HAD BEEN TO FIND
SOME WAY A COMFORTABLE POSITION
ON THE BED.

HE WAS SOAKED IN HIS OWN URINE
WHEN THEY FOUND HIM WHICH FOES
TO HAC.

GOING BACK TO YOUR ORIGINAL
QUESTION.

I APOLOGIZE DID TAKE THE LONG
WAY AROUND.

WITH REGARD TO STATUTORY
MITIGATION, THE JUDGE FOUND
EMOTIONAL DISTURBANCE BASED ON
TESTIMONY DURING THE PENALTY
PHASE THAT THE DEFENSE PUT ON OF
DOCTOR DANZIGER AND DR. INK INS.
HE FOUND THAT, BECAUSE THEY
TESTIFIED HE WAS ANTISOCIAL, HAD
BEEN DIAGNOSED AT 31 WITH
BIPOLAR BUT HAD BEEN TAKING
BIPOLAR MEDS AS CHILD, HE GAVE
HIM THE BENEFIT OF THAT
STATUTORY MITIGATION.

AND NOT TAKING HIS MEDICATION AT
THE TIME OF THE CRIME.

>> WHAT WAS SAID THAT WOULD HAVE
MADE IT SO THAT, FOR THIS
INSTANCE, HE WAS HAVING SOME
PROBLEMS?

>> WELL, THERE WAS--

>> JUST THE MERE FACT THAT HE
OWED HIM MONEY?

>> WELL, THAT GOES TO JUSTICE
PARIENTE'S QUESTIONS AS WELL,
JUSTICE QUINCE.

THAT, THE JUDGE IN THIS COURT,
IN THIS CASE HAD A FINDING IN

THE SENTENCING ORDER THAT THERE WAS NOTHING ABOUT THIS CRIME THAT SAID THAT HE WAS SUFFERING FROM ANY KIND OF WITHDRAWALS. WE KNOW HE WASN'T TAKING HIS MEDICATION DURING THIS TIME BUT HE HADN'T BEEN TAKING HIS MEDICATION FOR SEVERAL MONTHS LEADING UP TO IT.

HE DIDN'T LIKE THE SEXUAL SIDE-EFFECTS SO HE VOLUNTARILY STOPPED TAKING IT.

BUT IN THIS CASE THE COURT ALSO FOUND HIS CAPACITY TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT WAS NOT IMPAIRED BECAUSE BOTH THE FACTS OF THE CASE BELIE THAT FINDING.

AND BOTH DR. DANZIGER AND DR. MINGS TESTIFIED THAT HE COULD APPRECIATE THE CRIMINALITY OF HIS CONDUCT.

HE MADE VERY CONSCIOUS DECISIONS AND THIS COURT ALWAYS HELD WHEN FACTS BELIE THE FINDING APPRECIATING THE CRIMINALITY OF HIS CONDUCT.

HE WAS, THERE WAS NO COMPETENT SUBSTANTIAL EVIDENCE OF THAT MITIGATOR.

THEY FOUND, THE COURT MADE THE FINDING THAT WHEN HE WENT DOWN TO SOUTH FLORIDA THERE WAS APPROXIMATELY A THREE-DAY PERIOD.

HE WAS DOWN THERE FOR ABOUT 12 HOURS.

I THINK IT WAS 12 TO 18 HOURS BEFORE THEY MADE THE DECISION TO DO THE CARAVAN BACK UP TO ROB KEITH FURTHER.

I DON'T THINK THAT ANYONE EXPECTED OF THAT FOUR PARTY, I DON'T THINK ANYONE EXPECTED TO FIND HIM IN THE STATE HE WAS IN. AND WHEN MATTHEW POWELL FOUND HIM, HE CALLED JOSEPH JORDAN FIRST.

HE SAYS, YOU KNOW I'M ON PROBATION, RIGHT, SO I HAVE TO

CALL THE POLICE, BEFORE THE
POLICE WERE CALLED.
SAUD YAW GOES OUT AND CALLS THE
POLICE.
UNREFUTED THEY WERE GOING THERE
TO ROB HIM.
THEY ORIGINALLY SAID THEY
WERE--

>> WHO WAS GOING TO ROB HIM?

>> I'M SORRY.

THE TWO POWELL BROTHERS.

>> ON EMOTIONAL DISTRESS, MAYBE
I DIDN'T ASK QUITE LIKE THIS.
THERE WAS NO EVIDENCE-- THEY
WERE PARTYING THAT NIGHT, THAT
ANY OF THE EMOTIONAL DISTRESS
MITIGATOR RELATED TO A
PARTICULAR, LIKE USING DRUGS,
ALCOHOL, WHERE HE MIGHT NOT HAVE
REMEMBERED WHAT HE WAS DOING TO
THE VICTIM?

WAS THAT, IS THERE EVIDENCE OF
THAT THAT?

>> THERE IS NO EVIDENCE THAT
BECAUSE OF DRUG USE THAT HE
DIDN'T UNDERSTAND.

>> THERE IS NO REFERENCE, IN THE
JUDGE'S FINDING, IT ONLY TALKS
ABOUT BIPOLAR AND NOT USING
MEDICATION SOME THERE WAS
NOTHING IN THE RECORD TO TALK
ABOUT HE WAS UNDER THE INFLUENCE
OF ALCOHOL OR COCAINE OR
SOMETHING THAT WOULD HAVE PUT
HIM IN SOME OTHER STATE THAT HE
WOULD HAVE SNAPPED, IS WHAT THE
ARGUMENT IS, HE SNAPPED, HE LOST
IT?

>> FROM HIS OWN TESTIMONY HE DID
THIS, THROUGH HIS WRITINGS TO
DETECTIVE WINSTON AFTER--

>> NO EXPERT VERIFIED THAT?

>> NO.

>> OKAY.

>> BUT JUST IN ABUNDANCE OF
CAUTION THE TRIAL JUDGE DID
CONSIDER 38 NON-STATUTORY
MITIGATING CIRCUMSTANCES AND OF
THOSE 38, 37 WERE FOUND TO BE
PROVEN AND GIVEN WEIGHT AND 23

OF THOSE 37 ARE DIRECTLY RELATED TO, SEVERAL OF THEM, OVERLAPPING, BUT DIRECTLY RELATED TO MENTAL ILLNESS. INCLUDING MENTAL ILLNESS AND HOSPITALIZATION AS IN HIS PAST. WAS GIVEN MODERATE WEIGHT. HEAD INJURIES AS A CHILD. PHYSICAL, EMOTIONAL ABUSE BY HIS MOTHER.

BEING EMBARRASSED BY HIS MOTHER. SUBSTANCE ABUSE, COCAINE USE THAT LED TO HOSPITALIZATION. IT GOES ON AND ON AND ON.

>> I KNOW BUT NONE OF IT, I THINK, WHAT JUSTICE QUINCE WAS ASKING.

FOR EXAMPLE, THEY FIND HE HAD A HISTORY OF SEVERE SUBSTANCE ABUSE AND, HE FINDS THAT THAT WAS ESTABLISHED AND GIVES IT SOME WEIGHT.

>> CORRECT.

>> THEY WERE PARTYING THAT NIGHT.

I GUESS MR., THE VICTIM HAD BOUGHT DRUGS.

WHAT WERE THE DRUGS THAT WERE BOUGHT?

>> WE KNOW THERE WAS COCAINE. OTHER THAN IT WAS REFERRED TO AS DRUGS.

>> I JUST WANT TO, IT WASN'T, YEARS AGO WE USED TO SEE MANY CASES INVOLVING LIKE CRACK COCAINE AND SOME CRAZY THINGS HAPPENING WHILE PEOPLE WERE ON THAT KIND OF THING.

THAT'S NOT, DOESN'T SEEM LIKE THAT'S PART OF ANY ARGUMENT ON THE STATUTORY MITIGATOR?

>> NO, THERE IS NO OBJECTION TO THAT AND THE DEFENSE DIDN'T ARGUE THAT THEY SAID, THEY SAID THAT HE SNAPPED BUT THEY DIDN'T SAY IT WAS BECAUSE OF COCAINE USE.

THEY SAID THAT HE WAS SPENDING MONEY THAT SHOULD HAVE GONE TO JOSEPH JORDAN ON ENTERTAINMENT

AND DRUGS.

SO THAT'S WHAT CAUSED HIM TO SNAP BECAUSE HE WAS, HE WANTED THIS MONEY THAT WAS OWED TO HIM. AND BOTH OF THE MEDICAL PROFESSIONALS, DANZIGER AND MINGS TESTIFIED HE UNDERSTOOD WHAT HE DID WAS WRONG.

HE UNDERSTOOD THE CRIMINALITY OF HIS CONDUCT AND COULD HAVE CONFORMED HIMSELF TO THE LAW HAD HE SO CHOSEN.

SO, OBVIOUSLY, EACH OF THESE, THAT GOES TO THE MITIGATION AND THE PROPORTIONALITY IN THIS CASE BUT TO ADDRESS A POINT THAT WAS MADE EARLIER, IN PROPORTIONALITY THE INDIFFERENCE TO THE SUFFERING OF THE VICTIM IS SOMETHING THAT CAN BE CONSIDERED.

THIS IS AKIN TO THE STEVENS CASE WHERE THE CHILD WAS LEFT IN THE CAR.

THREE YEARS OLD, HELPLESS.

IT WAS REASONABLY FORESEEABLE THAT THE CHILD WOULD SUFFER AND DIE.

IN THIS CASE, TO ASSUME THAT SOMEBODY CAN BE OKAY, DUCT-TAPED ABOUT THEIR HEAD, HOG-TIED TO A BED, WITH NO MEANS OF WATER, FOOD, TO CONTACT ANYBODY TO HELP THEM, THEY WOULD BE OKAY UNTIL HE GOT DONE PARTYING AND BANK ACCOUNT WAS DRAINED WAS LUDICROUS.

IT WAS REASONABLY FORESEEABLE THAT KEITH COPE WOULD SUFFER AND DIE WHICH IS WHAT HAPPENED.

HE WASN'T COMING UP TO SAVE HIM. HE WASN'T SENDING ANYBODY ON A RESCUE MISSION.

EVERYTHING THAT HAPPENED TO I AM, IT WAS REASONABLY FORESEEABLE THAT HE WOULD STRUGGLE.

AND HE SET THOSE, JOSEPH JORDAN SET THOSE FACTORS IN MOTION.

HE IS, THE PROXIMATE CAUSE, HE

IS THE PROXIMATE CAUSE, RATHER,
WITH KNOW INTERVENING CRIMINAL
ACTIVITY TO ALLAY HIS
RESPONSIBILITY.

HE IS RESPONSIBLE FOR THAT.

AGAIN, FOR EACH OF THE
PROSECUTORIAL COMMENTS, UNDER
BRAD DID I, IT SAID THIS COURT
SAID EVEN IF YOU'RE ACCUMULATING
THEM BECAUSE YOU KNOW WE'LL
THROW IT ALL TO THE WALL TO SEE
WHAT STICKS THERE ARE NINE
INDIVIDUAL COMMENTS THAT ARE
ARGUED IN THE BRIEF BUT THEY'RE
STILL NOT FUNDAMENTAL ERROR.
THEY STILL DON'T VITIATE THE
TRIAL IF THE INDIVIDUAL ERRORS
ARE NOT FUNDAMENTAL.

IF THEY'RE NOT THE HEART OF THE
STATE'S CASE AND IF THE JURY
STILL HEARD SUBSTANTIAL EVIDENCE
OF DEFENDANT'S GUILT AND IN THIS
CASE THEY DID.

THERE WAS FINGERPRINT.

HE GAVE A FULL CONFESSION TO
DETECTIVE WINSTON.

HE THEN WROTE SIX LETTERS TO THE
VICTIM'S WIFE AND TO DETECTIVE
WINSTON.

AGREEING--

>> IN EFFECT THE DEFENSE CASE
HERE WAS A JURY PARDON?

>> CORRECT.

>> THAT'S REALLY ALL THEY HAD.

UNDER THE STATUTE, IT IS
FIRST-DEGREE FELONY MURDER.

THAT IS UNDISPUTED THAT IT IS
FIRST-DEGREE FELONY MURDER SO
ALL THEY HAVE TO GO ON IS THE
JURY PARDON?

>> CORRECT.

THAT'S THE SECOND COME MEN THAT
OPPOSING COUNSEL BROUGHT UP, IS
THE IT'S THE INCONSISTENT
VERDICT ARGUMENT WHICH WAS IN
REBUTTAL.

AND THIS WAS A TRUE REBUTTAL
BECAUSE IN DEFENDANT'S CLOSING
ARGUMENT HE IS SAYING, IF YOU
WANT TO GO WITH THE STATE'S

CASE, GREAT.
THE STATE'S THEORY FITS UNDER
GRAND THEFT.
THERE WAS NOTHING OBJECTIONABLE.
IT WAS WITHIN THE PERMISSIBLE
BOUNDS OF ADVOCACY FOR THE
PROSECUTOR TO COME BACK AND
ARGUE, YOU CAN DO ANYTHING YOU
WANT.
WE'RE NOT PRECLUDING LENIENCY.
IN FACT HE SAYS YOU CAN DO, AND
THERE WERE SEVERAL INSTRUCTIONS
ON LESSER INCLUDED.
FIRST-DEGREE FELONY MURDER.
SECOND-DEGREE FELONY MURDER.
THIRD-DEGREE FELONY MURDER,
MANSLAUGHTER, MANSLAUGHTER WITH
A WEAPON, ARMED ROBBERY AND
GRAND THEFT IF YOU WANT
FIRST-DEGREE FELONY MURDER STAY
ABOVE THE LINE.
IT IS IMPORTANT TO READ THAT
PART OF THE CLOSING ARGUMENT IN
CONTEXT HE HAS THE JURY
INSTRUCTION UP ON THE PROJECTOR
AND HE IS WRITING.
IF YOU WANT TO DO THAT FINE, BUT
YOU CAN'T DO FIRST-DEGREE FELONY
MURDER WITH GRAND THEFT.
THERE IS GOING TO BE PROBLEMS.
IF YOU WANT GRAND THEFT, MAKE
SURE YOU READ THE JURY
INSTRUCTIONS AND YOU KNOW WHAT
YOU'RE DOING.
HE IS NOT TRYING TO PRECLUDE
LENIENCY OR JURY PARDON IN THIS
DAYS.
HE IS JUST SAYING THERE WILL BE
A PROBLEM BECAUSE THAT'S WHAT
THIS COURT HAS TALKED ABOUT AS A
LEGALLY LEGALLY INCONSISTENT
VERDICT, YES, YOUR HONOR.
LEGALLY INCONSISTENT.
A FACTUALLY INCONSISTENT VERDICT
CAN STAND.
A LEGALLY INCONSISTENT VERDICT
NEVER CAN.
HE IS SAYING IF I WANT GRAND
THEFT THAT'S FINE BUT WILL NOT
GO WITH FIRST-DEGREE FELONY

MURDER.
MAKE SURE YOU'RE READING IT AND
DOING THE INTERLOCKING CHARGES
CORRECTLY.

THERE SO WAS NOTHING
IMPERMISSIBLE ABOUT THAT.
IF THERE ARE NO FURTHER
QUESTIONS FROM THE COURT, I
WOULD ASK THAT THIS COURT
AFFIRMS JOSEPH JORDAN'S
CONVICTIONS AND SENTENCE OF
DEATH.

THANK YOU.

>> THANK YOU.

>> JUST A COUPLE POINTS.

MR. JORDAN SPOKE TO DETECTIVE
WINSTON AND ALSO WROTE LETTERS.
JUST AS A CLARIFICATION FOR
FACTUAL BASIS, HE INDICATES TO
HER THE REASON WHY HE SNAPPED
WAS, MR. COPE SOLD A CORVETTE
RECENTLY.

HAD THE MONEY FOR IT.

AND MR. COPE WENT THERE TO
RETRIEVE AND GET MONEY OWED TO
HIM BY MR. COPE.

WHEN HE BOUGHT THE COCAINE WORTH
THOUSANDS OF DOLLARS AND ALCOHOL
THAT NIGHT DIDN'T GIVE HIM MONEY
HE SAID THAT'S WHEN HE SNAPPED.

>> HOW MUCH MONEY WAS OWED?

>> I DON'T KNOW EXACTLY.

>> THERE WAS NEVER DISCUSSION?

>> I DON'T KNOW THE ACTUALLY
NUMBER.

FEW WEEKS OF WORK HE PERFORMED
FOR HIM HADN'T GOT PAID FOR.
I DON'T REMEMBER THE NUMBING
SAID.

>> JUST TO CLARIFY, HE WAS UPSET
BECAUSE THE VICTIM WAS BUYING
ALCOHOL AND COCAINE FOR THIS
PARTY BUT, WHAT IS THERE ABOUT
THE RECORD THAT INDICATES
WHETHER THIS, THE DEFENDANT WAS
CONSUMING THE ALCOHOL AND THE--

>> INDICATES THAT IN HIS
CONFESSION.

HE WAS PARTYING WITH MR. COPE
TOGETHER, THE BOTH OF THEM.

HAD OTHER PEOPLE OVER AT THE HOUSE AS WELL.

WHEN HE FOUND OUT THAT MR. COPE HAD SOLD THE CORVETTE, IN ORDER TO BUY ALL THE ALCOHOL AND DRUGS, THAT IS WHEN HE SNAPPED, WHEN HE COULDN'T GET PAID FOR IT.

THAT WAS BASICALLY HIS CONFESSION IN THAT REGARD.

>> MR. COPE SOLD HIS OWN CORVETTE?

>> YES, HE DID.

NOW WITH REGARD TO QUESTION OF FORESEEABILITY WITH REGARD TO THE DEATH OF MR. COPE, DR. RULLAN, HIS TREATING PHYSICIAN DID SPECIFICALLY SAY, AND NOTWITHSTANDING THE ARGUMENT, WELL HE IS NOT GOING TO TRY, INDIVIDUAL WILL TRY TO FREE THEMSELVES BUT TO THE LEVEL THAT HAPPENED IN THIS PARTICULAR CASE, HIS ATTEMPTING TO FREE HIMSELF WAS A CAUSE OF THE SEVEREST INJURIES TO MR. COPE HIMSELF.

DR. RULLAN INDICATED HAD THAT NOT HAD HAPPEN, IT IS LIKELY HE WOULD HAVE SURVIVED.

SO TYING THIS INDIVIDUAL UP, FOR THREE DAYS, IN AND OF ITSELF WAS NOT THE CAUSE OF THE DEATH.

IT WAS THE FACT THAT HE, RESTRICTED HIMSELF, HE PUT HIMSELF IN THAT POSITION.

TO SAY THAT THE INDIVIDUAL HIMSELF, MR. JORDAN, WOULD FORESEEABLY KNOW HE WOULD DIE FROM THAT ACTION IS STRETCH. COULD IT OCCUR?

BUT TO KNOW FOR A FACT HE WOULD DIE FROM IT?

NO.

HAD THE DOCTOR SAID STAYED THERE FOR THREE DAYS, PROBABLY NOT.

>> JUSTICE CANADY SAID EARLIER, THAT IS WHY THEY DIDN'T PROSECUTE HIM FOR PREMEDITATED FIRST-DEGREE MURDER.

CORRECT?

>> THAT WAS ONE OF THE REASONS.
>> I MEAN, SO IT DOESN'T MATTER
THAT HE DIDN'T INTEND FOR HIM TO
DIE.

HE COMMITTED FELONY MURDER.
HE DIED AS A RESULT OF THE
ROBBERY AND ACTIONS THAT HE TOOK
AND IN TYING HIM UP DURING TO
ROB HIM.

>> WHILE I AGREE WITH THAT--
>> THAT'S WHAT, YOU'RE NOT
SAYING, I DON'T YOU WOULD ATTACK
THE SUFFICIENCY OF THE, OR DID
YOU?

>> NO.

>> OKAY.

>> WHILE I, WHILE I AGREE THAT
JUSTICE CANADY IS ARGUING THAT
THE CAN FIND TO HIGHEST LEVEL OF
OFFENSE, FIRST-DEGREE FELONY OR
SECOND-DEGREE FELONY, BY THOSE
COMMENTS MADE THROUGHOUT BY THE
PROSECUTOR HE IS BASICALLY TAKEN
THAT OFF THE TABLE.

THAT THE JURY HAD ABILITY TO DO
THAT.

>> BUT AGAIN, AS COUNSEL FOR THE
STATE WOULD POINT OUT, HE HAS
NOT TAKEN IT OFF THE TABLE IF
YOU LOOK AT ALL OF THAT IN
CONTEXT HE IS SAYING YOU'VE GOT
THESE OPTIONS AND HE IS JUST
EXPLAINING THOSE OPTIONS TO HIM.
NOW IS HE ARGUING THEY SHOULD
CONVICT OF THE HIGHEST OFFENSE?
YEAH.

THAT IS THE STATE'S POSITION BUT
THE STATE IS ENTITLED TO ARGUE
THAT.

>> HOW DO YOU EXPLAIN THE
COMMENT SAYING EVERYTHING I
SUFFICIENTLY TO DO IT YOU DON'T
HAVE TO LISTEN TO WHAT THEY HAVE
TO SAY.

WHAT IS THAT THEN?

IS THAT TAKING IT OFF THE TABLE.
I THINK IT DOES.

>> I THINK YOU HAVE GOT, I THINK
THE CASES, THAT IT ALL HAS TO BE

LOOKED AT IN CONTEXT.

WOULDN'T YOU AGREE?

>> ABSOLUTELY.

I THINK THAT'S WHY I SAID TO JUSTICE PARIENTE EVEN THOUGH ONLY BEEN ONE OBJECTION YOU NEED TO LOOK AT THEM ALL TOGETHER, NOT JUST SINGULARLY.

ALTHOUGH IT WASN'T MENTIONED I WANTED TO MAKE ONE COMMENT WITH REGARD TO THE IMPACT EVIDENCE BECAUSE IT IS IN THE RECORD AND THAT IS IN A NUMBER OF CASES THERE IS COMMENTS, IN MY MIND, ON THE CASE ITSELF WHICH IS TOTALLY PROHIBITED WITH REGARD TO IMPACT EVIDENCE.

WHERE IT SAYS, SPECIFICALLY BY HIS WIFE, DRIVING BY KEITH'S HOUSE SEVERAL TIMES THAT DAY A ROLL OF DUCT TAPE, A BED POST, A PASSING AMBULANCE AND DARK CLOUD, BEAUTIFUL RAINBOW, UPSETS HER WHEN SHE SEES THINGS.

THAT IS COMMENT ON THE EVIDENCE. IT IS POINTED OUT IN BRIEF ON NUMBER OF OCCASIONS MAKING THAT COMMENT.

NOT ONLY HER BUT DAUGHTER AS WELL.

MY ONLY POINT BEING WITH REGARD TO THE IMPACT EVIDENCE IS, AND I'M A LITTLE BIT CONFUSED.

I KNOW THIS COURT, I SUSPECT THIS COURT HAS SAID FAMILY MUST BE MEMBERS OF THE COMMUNITY BECAUSE THERE IS NO OTHER WAY THIS COURT COULD RATIONALIZE ALLOWING THEM TO TESTIFY TO THEIR IMPACT BECAUSE THAT IS NOT IN STATUTE.

THIS COURT HAS SPECIFICALLY SAID, WELL YOU'RE FINDINGS HAS NOT VIOLATED PAYNE.

I AGREE WITH THAT.

PAYNE SAYS FAMILY IMPACT CAN BE DONE BUT THAT'S NOT IN THE STATUTE.

PAYNE SPECIFICALLY SAYS THAT ANY STATE CAN MAKE LESSER DEGREE OF

RULINGS THAN WE DID.
THIS COURT, AS EXPRESSLY
INCLUDED THE FAMILY AS IT DID IN
PAYNE IN VIOLATION OF THE
STATUTE SAYING THEY'RE NOW PART
OF THE COMMUNITY WHICH I FOUND
INCONGRUENT IN WINDHAM YOU
DID NOT ALLOW POLICE OFFICER TO
DISCUSS WHAT TWO CHILDREN IN THE
PROGRAM SUFFERED AS A RESULT OF
DEATH WHILE ALLOWED THE TWO
CHILDREN.

AREN'T THOSE TWO CHILDREN PART
OF THE COMMUNITY?

THAT IS WHERE I'M CONFUSED.
IS THIS COURT SAYING PAYNE
CONTROLS IN REGARD TO, HOW A
FAMILY REACTS TO IMPACT EVIDENCE
OR DOES THE STATUTE?

AND THIS COURT HAS INTERPRETED
THE STATUTE TO INCLUDE THE
FAMILY AS PART OF THAT
COMMUNITY.

WHICH I DON'T, I THINK BROADING
OF STATUTE AND REWRITING IT.

I WOULD ASK THE COURT TO
RECONSIDER THAT.

THANK YOU.

>> OKAY.

COURT'S IN RECESS UNTIL TOMORROW
MORNING AT 9:00.