>> SUPREME COURT OF FLORIDA IS

NOW IN SESSION, PLEASE BE

SEATED

>> LAST CASE FOR THE DAY

IS CALHOUN VERSUS STATE OF

FLORIDA.

YOU MAY PROCEED.

>> MAY IT PLEASE THE COURT.

WILLIAM McCLAIN REPRESENTING

JOHNNY CALHOUN.

MR. CALHOUN WAS CONVICTED OF

FIRST-DEGREE MURDER AND

KIDNAPPING IN HOLMES COUNTY

OF MIA BROWN.

STATE'S EVIDENCE WAS LARGELY

CIRCUMSTANTIAL.

MR. CALHOUN KNEW MIA BROWN.

HE ASKED HER FOR A RIDE ON

DECEMBER 16th, 2010.

THE NEXT DAY THEY WERE BOTH

REPORTED MISSING.

THERE WAS KIND OF A MISSING

FLIER THAT WENT OUT.

THEY WERE SEARCHING FOR HER.

BOTH OF THEM, PHOTOGRAPHS OF

BOTH OF THEM ON THE SAME FLIER.

MISS, MIA BROWN'S CAR WAS FOUND

THE NEXT DAY IN THE GENEVA

COUNTY AREA OF ALABAMA.

IT HAD BEEN COMPLETELY

CONSUMED BY FIRE.

HER REMAINS WERE FOUND IN THE

TRUNK OF THE CAR.

HER REMAINS HAD COAXIAL CABLE

BINDING HER WRIST AND EVIDENCE

OF DUCT TAPE ON THE BODY.

>> LET ME ASK YOU ON THESE

FACTS, I THOUGHT THERE WAS SOME

INDICATION THAT MR. CALHOUN WAS

DRIVING THE VICTIM'S CAR AT

SOME POINT BUT IF THE VICTIM

AND THE CAR WERE BURNED, WHAT

CAR WAS MR. CALHOUN DRIVING?

>> WELL, THERE WAS EVIDENCE

THAT MR. CALHOUN, THIS, THERE

WAS EVIDENCE OF MR. CALHOUN

STOPPING AT A CONVENIENCE STORE

IN SOUTH ALABAMA IN THE EARLY

MORNING HOURS OF THE 17th OF

DECEMBER.

>> THIS WAS BEFORE THE CAR WAS

SET ON FIRE?

>> YES.

>> OKAY.

>> NOW, THE TESTIMONY WAS HE

WAS DRIVING A WHITE FOUR-DOOR

CAR WHICH WAS CONSISTENT WITH

HER CAR.

I DON'T RECALL THERE WAS

EVIDENCE IDENTIFYING THAT IT IS

HER CAR BY THE WITNESS BUT IT

WAS CONSISTENT WITH HER CAR.

THAT WAS THE EARLY MORNING

HOURS OF THE 17th.

THE FIRE OF THE CAR, THE

BURNING OF THE CAR LIKELY

OCCURRED AROUND 10:30 IN THE

MORNING ON THE 17th, 10:30 TO

11:00 ON THE MORNING OF THE

17th, BASED ON WITNESSES SEEING
A LARGE FIRE PLUME IN THE
GENERAL AREA WHERE THE CAR WAS
ULTIMATELY FOUND.
THE EVIDENCE, ALSO, IN
MR. CALHOUN, LIVED IN A CAMPER
TRAILER ON THE GROUNDS OF HIS
FATHER'S SCRAP METAL BUSINESS.
INSIDE THE TRAILER THERE WAS
ITEMS OF EVIDENCE THAT BELONGED
TO MIA BROWN.
THERE WAS ALSO DNA EVIDENCE
FOUND IN THERE.
>> BECAUSE OF THE BURNING OF
THE BODY AND THE CONDITION THE
BODY WAS IN, WERE, WAS THE
MEDICAL EXAMINER ABLE TO SAY
WHETHER OR NOT MISS BROWN WAS
DEAD AT THE TIME SHE WAS PUT IN
THE TRUNK OF THE CAR OR NOT?
>> THE MEDICAL EXAMINER'S
TESTIMONY ABOUT THE ACTUAL
CAUSE OF DEATH WAS IT WAS DUE TO

SMOKE INHALATION AND BURNING.

THAT WAS PREMISED UPON THERE

WAS ENOUGH --

>> WAS SHE CONSCIOUS OR, I

GUESS THAT'S THE REAL QUESTION?

>> NO.

>> WHETHER SHE WAS CONSCIOUS OR

UNCONSCIOUS AT THE TIME SHE WAS

PUT INTO THE TRUNK OF THE CAR?

>> NO, THERE WAS NO EVIDENCE

SHE WAS CONSCIOUS AT THE TIME.

THE MEDICAL EXAMINER AND IN

FACT THE TRIAL COURT FOUND IN

THE SENTENCING ORDER SAYING THE

STATE PRESENTED NO EVIDENCE TO

ESTABLISH THAT SHE WAS

CONSCIOUS AT THE TIME OF DEATH

AND THEREFORE HE REJECTED THE

HEINOUS, ATROCIOUS AND CRUEL

AGGRAVATING CIRCUMSTANCE ON

THAT BASIS.

SO WE'RE LEFT WITH HER ACTUAL

DEATH MAY VERY WELL HAVE

OCCURRED, HE ASSUMED THAT THE
DEATH OCCURRED BY BURNING
BECAUSE THERE WAS EVIDENCE IN
THE LUNG MUCOUS MEMBRANES THAT
WERE AVAILABLE THAT THERE WAS
SOOT, INDICATING SOME
INHALATION.
>> WHETHER SHE WAS CONSCIOUS OR
NOT, SHE WAS STILL ALIVE.
>> THERE HAD BEEN INHALATION AT
THE TIME
CONSCIOUSNESS, THERE WAS NO
EVIDENCE SHE WAS CONSCIOUS AT
THE TIME OF DEATH.
THERE WAS NO EVIDENCE THAT SHE
WAS CONSCIOUS AT THE TIME SHE
WAS PUT IN THE CAR.
THAT IS THE PREMISE OF THE
ARGUMENT I WILL BE MAKING
REGARDING AGGRAVATING
CIRCUMSTANCES.
>> CONSCIOUS BUT THE JUDGE
DIDN'T FIND HAC, SO ARE YOU

ARGUING THAT THAT'S NOT, BUT

SHE WAS ALIVE WHEN SHE WAS PUT

IN THE TRUNK AND SO WHY

ISN'T THAT THERE ENOUGH

FOR CCP IN THIS CASE?

I MEAN IS THAT YOUR POINT OF

YOUR ARGUMENT?

>> I'M MAKING THOSE ARGUMENTS.

>> OKAY.

>> MY POINT IS THERE WAS NO

EVIDENCE SHE WAS CONSCIOUS.

THAT LEADS TO THE INFERENCE,

WHEN DID THAT UNCONSCIOUSNESS

OCCUR?

IT MAY HAVE VERY WELL SHE WAS

RENDERED UNCONSCIOUS EARLIER AT

THE STRUGGLE IN THE TRAILER.

THERE WAS EVIDENCE SHE WAS

BOUND.

THERE WAS BINDING HER AND USING

DUCT TAPE.

MAYBE SHE LOST CONSCIOUSNESS.

THE WHOLE POINT BEING

MR. CALHOUN MAY HAVE THOUGHT HE

WAS DISPOSING OF A BODY NOT

KILLING SOMEONE.

>> WHAT WOULD HE BIND HER --

>> WHY WOULD HE BIND AND GAG

A DEAD BODY?

>> HE WOULDN'T BIND AND GAG A

DEAD BODY.

>> WASN'T THE VICTIM'S BODY,

THE VICTIM WAS FOUND AND GAGGED

RIGHT?

>> YEAH.

>> IT WAS FOUND --

>> WE DON'T KNOW WHEN THAT MAY

HAVE OCCURRED.

HE MAY HAVE ABDUCTED THE VICTIM --

>> CAN WE INFER HE DID THAT

WHEN SHE WAS ALIVE?

>> THAT IS A REASONABLE

INFERENCE.

>> WHAT DIFFERENCE DOES IT

MATTER AT WHAT POINT THAT

HAPPENED, EXACTLY WHEN SHE

DIED? WE DO KNOW SHE DID NOT
DIE IN FACT UNTIL SHE WAS
BURNED IN THE CAR AND BURNED
UP.
>> THAT IS THE FACT.
>> I DON'T UNDERSTAND YOUR
ARGUMENT.
>> SHE MAY HAVE BEEN RENDERED
UNCONSCIOUS AND HE MAY HAVE
THOUGHT SHE WAS DEAD AT THE
TRAILER.
EVEN THOUGH HE BOUND HER, MAYBE
IN THE PROCESS OF THE STRUGGLE
OR PROCESS OF BINDING SHE LOST
CONSCIOUSNESS AND HE MAY HAVE,
I THINK THERE'S AN INFERENCE IT
COULD BE DRAWN HERE HE MAY HAVE
THOUGHT SHE WAS DEAD AND
THEREFORE THE WHOLE PROCESS OF
TAKING THE BODY TO ANOTHER
LOCATION AND BURNING IT --
>> WHAT ROLE DOES THAT PLAY IN
CCP?

>> WELL IT PLAYS A ROLE IN CCP

BECAUSE THE JUDGE'S ORDER, THE

JUDGE'S FINDING RELIED LARGELY

ON THE FACT OF, YOU KNOW, HE

PUT HER IN THE CAR.

HE DROVE HER THERE AND HE

BURNED HER UP.

>> I MEAN, I CAN UNDERSTAND

YOUR ARGUMENT AS TO HAC BECAUSE

WE LOOK AT, WHEN WE CONSIDERING

HAC, WE LOOKING AT IT FROM THE

PERSPECTIVE OF WHAT THE VICTIM

WENT THROUGH.

CCP, WE DON'T LOOK AT IT FROM

THAT PERSPECTIVE.

WE LOOK AT IT FROM THE

PERSPECTIVE FROM THE PLANS AND

ACTIONS THE DEFENDANT TOOK.

>> CORRECT.

>> SO WHAT DIFFERENCE DOES IT

MAKE IN CCP?

>> WELL IF, IF THE INFERENCE

THAT SHE WAS NOT CONSCIOUS AT

THE TIME OF DEATH, WE DON'T
HAVE ANY EVIDENCE THAT SHE WAS
CONSCIOUS AT THE TIME SHE WAS
PLACED IN THE VEHICLE.
AGAIN, THE MECHANISM OF DEATH
MAY HAVE BEEN INADVERTENT
DURING THE STRUGGLE.
AFTER SHE WAS BOUND IN THE
TRAILER AND INADVERTENT DEATH
MAY HAVE OCCURRED WHILE HE WAS
BINDING HER.
>> WE KNOW THAT DID NOT HAPPEN.
WE KNOW THAT DID NOT HAPPEN
FROM THE EXPERT'S TESTIMONY, DO
WE NOT?
>> WHAT EXPERT TESTIMONY ABOUT
THAT?
>> ABOUT THE INHALATION OF THE
SMOKE?
>> I CORRECT, I CORRECT MYSELF.
I MEANT SHE WAS RENDERED
UNCONSCIOUS, I'M SORRY.
WHAT I INTENDED TO SAY SHE WAS

RENDERED UNCONSCIOUS AT THE
TIME AND THE DEFENDANT MAY VERY
WELL HAVE THOUGHT SHE WAS DEAD
AT THAT POINT AND STATE OF MIND
OF THE DEFENDANT AT THE TIME HE
IS PLACING HER IN THE BACK OF
THE CAR WAS THAT HE WAS
DISPOSING OF THE BODY, NOT
TAKING HER SOMEWHERE TO BURN
HER UP AND KILL HER.
THE FACT THAT SHE WAS
TRANSPORTED --
>> IS THERE ANYTHING TO SUPPORT
THAT SPECULATION?
>> WELL THE TRIAL JUDGE FOUND
THAT THERE WAS NO EVIDENCE THAT
SHE WAS CONSCIOUS AT THE TIME
OF DEATH.
I THINK THAT, THE QUESTION, --
>> BUT EVEN PEOPLE THAT AREN'T
CONSCIOUS ARE BREATHING?
AND A DEFENDANT CAN OBSERVE
WHETHER SOMEONE IS BREATHING.

NOW THEY MIGHT NOT ALWAYS GET
IT RIGHT. I UNDERSTAND THAT.
>> NOT ALWAYS.
>> THIS WAS OVER A PERIOD OF
TIME HE WAS MOVING HER AND HE HAD
CLOSE CONTACT WITH HER AND IT
SEEMS TO BE RATHER FANCIFUL
TO SUGGEST HE THOUGHT SHE WAS
DEAD OVER THIS PERIOD OF TIME
WHILE HE WAS PUTTING HER IN THE
CAR AND TRANSPORTING HER AND
THEN BURNING HER UP.
>> I THINK THE INFERENCE CAN BE
DRAWN FROM THE FACT THERE WAS
NO EVIDENCE OF CONSCIOUSNESS AT
THE TIME OF DEATH.
YES, IN FACT PEOPLE CAN BE
UNCONSCIOUS AND APPEAR DEAD.
I THINK, THERE'S A LOT OF
INSTANCES WHERE IN FACT THAT
HAS OCCURRED.
SO I THINK THAT'S AT LEAST A
REASONABLE INFERENCE THAT THE

DEFENDANT WAS ENTITLED TO HAVE

IN EVALUATING THIS AGGRAVATING

CIRCUMSTANCE.

AND AGAIN, THE TRIAL JUDGE'S

ORDER RELIED PREDOMINANTLY ON

THE WHOLE PROCESS OF PLACING

HER IN THE CAR AND TRANSPORTING

TO WHERE SHE WAS FOUND.

>> [INAUDIBLE].

>> I'M SORRY.

>> THIS PROCESS TOOK AT LEAST

ABOUT 14 HOURS? TRANSPORTING

HER IN THE CAR?

>> WE DON'T KNOW THE EXACT

TIME.

>> FROM THE TIME THEY SAW THE

SMOKE.

>> FROM THE TIME THEY SAW THE

SMOKE --.

>> FROM THE TIME HE LEFT?

>> WE DON'T KNOW WHEN HE

EXACTLY, WHEN HE WOULD HAVE

LEFT THE TRAILER WITH THE CAR.

>> WE KNOW WHEN HE STOPPED AT

THE CONVENIENCE STORE THOUGH.

>> THAT'S CORRECT.

HE STOPPED AT A CONVENIENCE STORE.

>> HE WAS DRIVING HER CAR THEN.

>> HE STOPPED AT THE

CONVENIENCE STORE AT 5:30 OR

6:00 IN THE MORNING.

WHEN THE DRIVING STARTED, THE

DISTANCE BETWEEN WHERE HE LIVED

IN FLORIDA AND THAT AREA OF

ALABAMA IS NOT AN EXTENDED

DRIVE.

THAT'S THE SUBSTANCE OF MY

ARGUMENT BOTH AS TO THE CCP AND

THE ARREST AND STATE OF MIND

ISSUE.

>> ISN'T --

>> I MEAN, WHAT WAS, WHAT WAS

ANY OTHER MOTIVE FOR THE

MURDER?

>> I'M SORRY.

>> I MEAN --

>> WE DON'T KNOW EXACTLY WHAT

THE MOTIVE WAS.

WE HAVE VERY LITTLE EVIDENCE

OTHER THAN HE, I MEAN HE KNEW

HER.

THEY WERE ACQUAINTANCES.

SHE WAS A FRIEND OF HIS

GIRLFRIEND'S.

HE ASKED HER FOR A RIDE THAT

DAY IN THE PRESENCE OF ANOTHER

WITNESS.

SHE WAS GOING TO COME BY AFTER

SHE GOT OFF WORK, 8:30, 9:00 AT

NIGHT.

THEN THE NEXT DAY THEY'RE BOTH

MISSING AND --

>> THIS SEEMS SO SENSELESS AND

SO, I'M JUST WONDERING WHAT WAS

THE STATE'S THEORY OF WHY THIS

MURDER TOOK PLACE?

>> YOU KNOW, I'M NOT SURE HAD A

THEORY, UNLESS, YOU KNOW, WE

HAVE NO EVIDENCE THAT THERE

WAS, OF COURSE, THE BODY WAS

BURNED.

WE DON'T KNOW IF THERE WAS

SEXUAL BATTERY OR NOT.

>> IS THERE A REASON YOU WOULD

GO THROUGH ALL THIS ELABORATE

BURNING OF THE BODY AND BURNING

OF HER CAR IS TO AVOID THE -- I

SEE NO OTHER REASON FOR IT.

>> AVOIDING DETECTION, NO

QUESTION.

IT GOES BACK TO WHETHER THE

INFERENCE HE THOUGHT SHE WAS

DEAD AT THE TIME AND HE WAS

DISPOSING OF A BODY RATHER THAN

KILLING SOMEONE TO AVOID

ARREST.

>> THE ARGUMENT TO THE JURY WAS

IN THE STRUGGLE IN THE TRAILER

SHE DIED, BUT THE DEFENDANT

DIDN'T REALIZE THAT.

SO HE BOUND HER UP ANYWAY AND

HE PUTS HER IN THE TRUNK AND,

BECAUSE THE DEBT COULD HAVE
OCCURRED IN THE TRAILER, AT
LEAST.
>> YEAH.
>> AT LEAST THE DEFENDANT
THOUGHT, IT OCCURRED IN THE
TRAILER.
>> RIGHT.
>> BUT ISN'T, IN TERMS OF THE
INFERENCES, GOING BACK TO WHAT
JUSTICE CANADY IS SAYING, ISN'T
IT MORE LOGICAL A PERSON IS
BREATHING, CERTAINLY ALIVE BY
THE TIME THE FIRE STARTS, AND
IF SHE'S NOT DEAD, THE FACT
THAT THIS DEFENDANT TAKES HER
TO THIS PLACE, DOESN'T CHECK
AGAIN AND JUST SAYS WELL,
INSTEAD OF RELEASING HER, OH I
JUST REALIZED SHE IS NOT DEAD,
I WILL SET IT ON FIRE, DIDN'T
THAT REALLY SHOW HEIGHTENED
PREMEDITATION?

IN OTHER WORDS, IT SEEMS TO ME
YOUR SPECULATION ABOUT WHAT
MIGHT HAVE HAPPENED, THAT SHE
DIED ACCIDENTALLY OR SOMETHING
IN THE STRUGGLE BACK, WHICH
THEN WOULDN'T EVEN BE
FIRST-DEGREE MURDER, IS
SOMEWHAT, THERE IS NO, THERE IS
NO EVIDENCE TO SUPPORT THAT
WHEREAS THERE IS EVIDENCE TO
SUPPORT THAT SHE WAS BREATHING
UP UNTIL THE TIME OF HER DEATH
IN THE TRUNK BY SETTING THE CAR
ON FIRE?
>> THAT'S CORRECT.
OTHER THAN INFERENCES.
>> SO YOURS IS SPECULATION
WHEREAS WHAT THE JUDGE FOUND IS
BASED ON A REASONABLE INFERENCE
TO THE EXCLUSION OF OTHER
INFERENCES, YOU KNOW, WHICH THE
JUDGE FOUND BEYOND A REASONABLE
DOUBT.

>> I THINK THAT'S THE QUESTION

WHETHER IT EXCLUDES THIS OTHER

INFERENCE.

I THINK THAT'S A QUESTION FOR

THE COURT IN THIS ISSUE.

>> DID YOU PUT ON, WAS THERE

ANY EXPERT TESTIMONY FROM THE

DEFENSE AT WHAT POINT SHE DIED?

>> NO.

>> WASN'T THERE EVIDENCE THAT

SHE WAS GAGGED ALSO?

>> THERE WERE SOME POTENTIAL

EVIDENCE THAT SHE HAD DUCT TAPE

OVER HER MOUTH.

>> BUT THE DUCT TAPE OVER HER

MOUTH SOMEBODY THOUGHT WAS

THERE -- [INAUDIBLE]

>> WELL, WE DON'T, AGAIN WE

DON'T KNOW WHEN SHE WAS BOUND.

WE DON'T KNOW FOR WHAT PURPOSE

SHE WAS BOUND.

>> WHAT IS, OKAY, LET'S JUST

SAY IN THE NORMAL COURSE OF

LIFE WE DON'T KNOW WHY SHE WAS

BOUND.

SHE IS IN THIS TRAILER.

WAS THERE ANY EVIDENCE OF

SEXUAL MISCONDUCT?

>> THERE WAS EVIDENCE OF A

STRUGGLE BUT, THEY DIDN'T

ESTABLISH SEXUAL MISCONDUCT.

MAY HAVE BEEN, MAY NOT HAVE

BEEN, WE DON'T KNOW.

>> AND HE, SOMEHOW UNTIL A

STRUGGLE, WE DON'T KNOW WHY THE

STRUGGLE OCCURRED, SHE DIES, HE

THINKS?

AND IS THAT, WHAT WAS ARGUED TO

THE JURY, THAT THIS WAS AN

ACCIDENTAL --

>> THAT WASN'T ARGUED TO THE

JURY.

>> WHAT WAS ARGUED TO THE JURY?

>> THE ARGUMENT TO THE JURY WAS

REALLY TESTING THE EVIDENCE OF

HIS GUILT.

>> SAYING THAT SOMEONE ELSE DID

IT?

>> SAYING THAT, THEY WERE

TESTING THE CIRCUMSTANTIAL

EVIDENCE OF THE STATE'S CASE.

>> OKAY.

SO IF YOU DON'T RAISE, BECAUSE

YOU'RE REALLY SAYING THIS WAS

JUDGMENT OF ACQUITTAL, IT

SHOULD HAVE BEEN JUDGMENT OF

ACQUITTAL OF CCP AND AVOID

ARREST, DON'T YOU HAVE TO

ADVANCE THE OTHER INFERENCE

BEFORE THE TRIAL COURT IN ORDER

FOR THE STATE TO EITHER REFUTE

IT OR PUT ON --

>> THE FACT OF THE MATTER IS

THE INFERENCE AROSE FROM THE

TRIAL JUDGE'S FINDINGS

REGARDING THE HAC FACTOR.

>> THE ARGUMENT THAT WAS MADE

BY THE DEFENDANT WASN'T THAT

SHE MIGHT HAVE DIED IN THE

TRAILER.

WASN'T IT THAT SOMEONE ELSE DID

THIS AND SHE WAS KIDNAPPED TOO?

>> WELL THE GUILT ISSUES, I'M

NOT SURE THEY ACTUALLY RAISED

THESE ARGUMENTS AT THE PENALTY

PHASE I DON'T RECALL THAT BEING

MADE.

THE GUILT ISSUE IN THE GUILT

PHASE OF THE TRIAL THEY WERE

TESTING THE CREDIBILITY OF, YOU

KNOW, THERE WAS, AGAIN, I WILL

BACKPEDAL A LITTLE BIT HERE

BECAUSE IN HIS STATEMENT TO THE

POLICE THAT DID NOT COME IN HE

HAD SAID THAT HE IN FACT

HIMSELF WAS KIDNAPPED THAT

EVENING BEFORE SHE ARRIVED AT

THE TRAILER AND THAT THERE WAS

SOME EVIDENCE, THEY PRESENTED

SOME EVIDENCE, HE SAID, THESE

PEOPLE MAY HAVE BEEN TRYING TO

STEAL ITEMS FROM THE SCRAP
METAL YARD.
HE DIDN'T KNOW OR DROVE HIM TO
ANOTHER REMOTE LOCATION
HIMSELF.
THAT WAS ONE REASON WHY HE WAS
IN ALABAMA.
THAT WAS PART OF THAT
STATEMENT.
BUT THAT DID NOT COME IN AT
TRIAL.
THAT EVIDENCE WAS NOT ADMITTED
AT TRIAL.
BUT THEY DID PRESENT EVIDENCE
THAT THERE WAS ACTUALLY A
REPORT BY HIS FATHER THE NEXT
MORNING BECAUSE THINGS WERE
AMISS AT THE SCRAP METAL YARD.
HAD BEEN FORKLIFT THAT HAD BEEN
MOVED.
THERE WERE WITNESSES THAT HEARD
LOUD NOISES COMING FROM THE
SCRAP METAL BUSINESS THAT

EVENING AS WELL.

SO, YOU KNOW, THEY PRESENTED,

PRESENTED THAT TYPE OF

TESTIMONY DURING THE DEFENSE

CASE.

BUT THE SPECIFIC ARGUMENT THAT

I HAVE RAISED HERE, I DON'T

RECALL THAT BEING PRESENTED AT

THE TRIAL COURT.

AGAIN THE INFERENCE AROSE FROM

THE JUDGE'S TREATMENT OF THE

HAC FACTOR IN THE SENTENCING

ORDER.

I WILL BRIEFLY GO BACK TO ISSUE

1 IN THE CASE WHICH DEALS WITH

RULE OF COMPLETENESS ARGUMENT.

AS I MENTIONED RECALLER, HIS

STATEMENT TO THE POLICE

INCLUDED HIS POSITION THAT HE

HIMSELF WAS ABDUCTED THAT SAME

EVENING BEFORE MIA BROWN WAS

DUE TO ARRIVE AT HIS TRAILER.

HE HAS NO IDEA WHETHER HE

ARRIVED AT HIS TRAILER OR NOT.
AND HE WAS, YOU KNOW, LEFT IN
THE WOODS HIMSELF AND HE MADE
HIS WAY TO HIS FRIEND'S HOUSE
IN ALABAMA.
AND THEN ULTIMATELY HE WAS
ACTUALLY ARRESTED BACK AT HIS
TRAILER A COUPLE OF DAYS
LATER.
THE STATE PRESENTED JUST
FIVE STATEMENTS THAT HE MADE
DURING HIS INTERVIEW WITH THE
POLICE.
AND, NUMBER ONE, DID YOU, DID
YOU KNOW MIA BROWN AND WHETHER
HE HAD HER FOR A RIDE.
HE AFFIRMATIVELY RESPONDED TO
THAT.
THERE WAS A WITNESS TO THAT.
HE WAS ASKED IF HE WAS AT THE
BROOKS RESIDENCE IN ALABAMA.
THE BROOKS FAMILY WERE FRIENDS
OF HIS IN ALABAMA AND HE WAS AT

THEIR HOUSE ON DECEMBER THE

18th.

HE WAS MUDDY.

HE WAS DIRTY THEY CLAIM.

THEY LET HIM CHANGE CLOTHES.

WASHED HIS CLOTHES AND DROVE

HIM, DROPPED HIM OFF AT ANOTHER

LOCATION.

AND HE SAID THAT HE WAS.

HE WAS ALSO ASKED IF HE WAS

AVOIDING LAW ENFORCEMENT DURING

THIS TIME PERIOD?

HE SAID HE WAS.

IT WAS BROUGHT OUT BECAUSE HE

HAD ADVERSE RESPONSES FROM LAW

ENFORCEMENT IN THE PAST.

HE WAS ALSO ASKED IF HE, IF MIA

BROWN HAD EVER BEEN TO HIS

CAMPER TRAILER HOME ON THE

SCRAP METAL BUSINESS.

AND HE SAID SHE HAD NOT.

NOW THESE TWO, AT LEAST TWO OF

THESE STATEMENTS WERE

CRITICALLY MISLEADING TO THE

JURY.

THE FIRST ONE WAS THE, HIS

STATEMENT, HAVE YOU EVER BEEN

TO THE BROOKS RESIDENCE IN

ALABAMA?

HE SAID HE HAD.

THAT WAS A BARE STATEMENT THE

STATE INTRODUCED.

THEY DID NOT INTRODUCE IN THE

SAME INTERVIEW THAT HE DID

PROVIDE WHAT WOULD HAVE BEEN AN

INNOCENT EXPLANATION.

SO THE JURY, I.E., THAT HE HAD

BEEN ABDUCTED AND DROPPED OFF

HIMSELF.

>> WHY WOULD THAT HAVE BEEN

IMPORTANT?

>> IT WAS IMPORTANT --

>> THE STATEMENT I'M NOT SURE

WHY ANY ADDITIONAL

WOULD HAVE BEEN HELPFUL TO THE

DEFENDANT OR THIS CASE AT ALL?

>> WELL THE STATE WAS TRYING TO

GET STATEMENTS FROM THE

DEFENDANT'S OWN MOUTH THAT HE

WAS PRESENT AT THE BROOKS

RESIDENCE, WHICH THE BOOKS, HAD

ALREADY TESTIFIED TO THAT.

>> OKAY.

>> BUT HE HAD ALSO GIVEN, BUT

THEY LEFT IT AS A BARE

STATEMENT.

YES, I WAS THERE I WAS THERE

BECAUSE OF FOR OTHER REASONS.

SO THEY WERE TRYING TO PLACE

HIM IN ALABAMA.

>> TELL ME WHAT WAS INCRIMINATORY

ABOUT HIM SAYING YES, HE WAS AT

THE BROOKS RESIDENCE.

>> IT WAS IN THE TIME FRAME

WHEN THE CAR WAS FOUND IN THE

SAME GENERAL AREA.

THE BROOKS RESIDENCE IN ALABAMA

WASN'T A GREAT DISTANCE AWAY

FROM WHERE THE CAR WAS

ULTIMATELY FOUND AND THE STATE
WANTED TO GET FROM THE
DEFENDANT'S OWN MOUTH,
CONFIRMING, IF YOU WILL, YES, I
WAS THERE AND THAT WOULD HAVE
BEEN ON THE 18th, WHICH WAS
THIS DAY AFTER THEY FOUND THE
CAR THAT HAD BEEN BURNED.
>> SO IT WOULD BE RELEVANT TO
HIS ALIBI?
>> IT WOULD BE RELEVANT TO HIS
ALIBI, HIS ALIBI WAS, I WAS
THERE BUT I WAS THERE FOR THIS
OTHER REASON.
AND THAT OTHER REASON DID NOT
COME OUT.
>> DID HE TESTIFY AT TRIAL?
>> HE DID NOT TESTIFY AT TRIAL.
>> WHAT DID TIFFANY AND GLENDA
BROOKS TESTIFY TO?
>> THEY TESTIFIED THAT THEY
ACTUALLY, THEY KNEW
MR. CALHOUN.

THEY HAD SOCIALIZED IN THE PAST

AND ONE OF THEM GOT UP EARLY

ONE MORNING AND FOUND HE WAS

ACTUALLY SLEEPING IN A SHED

THEY HAD OUT BACK WHERE THEY

KEPT A FREEZER AND OTHER

THINGS.

THEY BROUGHT HIM IN.

THEY LET HIM CHANGED CLOTHES

AND SHOWERED.

HE SAID, YEAH, I DIDN'T WANT TO

WAKE YOU UP.

I WAS ROAMING IN THE WOODS ALL

DAY.

I WAS ABDUCTED FROM MY OWN

TRAILER A DAY OR SO BEFORE.

>> THEY TESTIFIED TO THAT?

>> THEY DID NOT, HE DID NOT

TELL THEM THAT ENTIRE STORY.

HE SAID THAT HE HAD BEEN

ROAMING IN THE WOODS ALL DAY

AND THAT HE NEEDED A RIDE BACK.

>> WELL, I MEAN, REALLY AND

TRULY, THE JURY HEARS THAT AND
THEN THEY HEAR FROM THE
DEFENDANT SAYS, AND I HAD BEEN
ABDUCTED AND WOULDN'T TELL THE
PEOPLE WHERE HE WAS SEEKING
REFUGE AND HAD BEEN ABDUCTED?
>> MY POINT IS THE RULE OF
COMPLETENESS THE DEFENDANT WAS
ENTITLED TO HAVE THIS
INFORMATION IN FRONT OF THE
JURY.
>> I'M LOOKING HARMLESS BEYOND
A REASONABLE DOUBT REALLY.
>> I UNDERSTAND. I UNDERSTAND.
BUT THAT WAS, THAT WAS THE CRUX
OF THAT PARTICULAR POINT.
THE OTHER ONE WHICH I THINK IS
ARGUABLY MORE COMPELLING, ASKED
HAD MIA BROWN EVER BEEN TO YOUR
TRAILER BEFORE?
THAT STATEMENT WAS TAKEN OUT OF
CONTEXT IN THE INTERVIEW AND
WAS AFFIRMATIVELY MISLEADING. IT

SUGGESTED TO THE JURY, NO, SHE
HAS NEVER BEEN IT MY TRAILER.
THE JURY DID NOT HEAR THE REST
OF THE STATEMENT SAYING, WELL,
TO THE DEFENSE WAS, I DON'T
KNOW WHETHER SHE GOT TO MY
TRAILER THE NIGHT I WAS
ABDUCTED MYSELF OR NOT.
SHE MAY HAVE.
BUT THE JURY NEVER HEARD THAT.
SO THEY'RE LEFT WITH THE
IMPRESSION THAT THE DEFENDANT
WAS TRYING TO COVER UP
SOMETHING, WAS TRYING TO, YOU
KNOW, GUILTY STATE OF MIND.
NO, SHE HAS NEVER BEEN IT MY
TRAILER WHEN THERE WAS CLEARLY
PHYSICAL EVIDENCE LINKING HER
TO THE TRAILER.
>> IT SEEMS UNUSUAL IF THE
STATE IS PUTTING IN A STATEMENT
BY A DEFENDANT, THAT YOU ARE
LEAVING OUT A PART OF WHAT THE

STATEMENT IS.

AND THAT WAS, HOW WAS THAT

TESTED BELOW?

DID YOU, NOT YOU, DID THE

DEFENSE LAWYER ASK THAT THE

ENTIRE STATEMENT COME INTO

EVIDENCE?

WAS IT SPECIFICALLY ASKED AS TO

THOSE TWO STATEMENTS THE REST

OF THE SENTENCE OR SENTENCES

HAVE TO COME IN?

>> THE REQUEST WAS,

ADDITIONALLY I WANT TO PUT IN

THE REST OF THE STATEMENT.

THE STATE COUNTERED THAT,

WELL, THE STATEMENT IS

SELF-SERVING HEARSAY.

THE DEFENSE LAWYER ACKNOWLEDGED

THAT PORTIONS WERE SELF-SERVING

BUT THE SELF-SERVING PORTIONS

WERE IMPORTANT FOR THE CONTEXT

AND THE JUDGE SAID, WELL IT IS,

IT IS ESSENTIALLY IF YOU READ

THROUGH THE RECORD, THE RULING
WAS IT IS SELF-SERVING HEARSAY,
IT CAN'T COME IN.
>> IT SEEMS, I KNOW THESE
BURDENS WE PUT ON LAWYERS BUT
HERE WHERE YOU'RE LOOKING AT
TWO SPECIFIC STATEMENTS, A
REQUEST TO SAY, LOOK, AND I
THINK THE REST OF THIS SENTENCE
SHOULD COME IN OR THIS
PARAGRAPH OF HIS STATEMENT, SO
THAT THE TRIAL JUDGE HAS AN
OPPORTUNITY TO RULE ON THAT
SPECIFIC REQUEST, SHOULDN'T
THAT BE REQUIRED?
>> WELL, I THINK THE DEFENSE
WAS CUT OFF FROM THAT BECAUSE
THE COURT ERRONEOUSLY THOUGHT
THAT THE SELF-SERVING HEARSAY
COULD BE APPLIED TO A RULE OF
COMPLETENESS SITUATION TO AVOID
THAT.
>> DID THE DEFENDANT ARGUE RULE

OF COMPLETENESS?

>> YES, THE ARGUMENT WAS RULE OF

COMPLETENESS.

THE PROSECUTOR CAME UP AND

SAID, WHAT DO YOU WANT TO PUT

HER ON?

THIS IS SELF-SERVING HEARSAY,

I.E., THE PART ABOUT HIMSELF

BEING KIDNAPPED AND THE POINT

IS THAT'S CRITICAL.

>> IF THE STATE IS GOING TO PUT

SOMETHING INTO EVIDENCE WHERE

THE DEFENDANT INCRIMINATES

HIMSELF THEY OPEN THE DOOR

BASICALLY TO REQUIRE THAT THE

ENTIRE CONTEXT BE PUT IN,

THAT'S YOUR ARGUMENT?

>> WELL THAT IS, I THINK THAT'S

THE CASE LAW.

IN ESSENCE IT CREATES, THE

PRESUMPTION AT THAT POINT IS

FOR THE STATE TO COME FORWARD

AND SAY WHAT SHOULD BE REDACTED.

>> SEEMS LIKE SMALL PARTS

GIVEN THIS ENTIRE

SCENARIO, I'M LEANING TO THINK

WHY ISN'T HARMLESS BEYOND A

REASONABLE DOUBT?

CAN YOU TELL ME THAT AS TO THE

SECOND STATEMENT?

>> WELL THE SECOND STATEMENT,

AND I WANT TO FLESH THAT

OUT A LITTLE BIT.

THE WAY THE WHOLE THING CAME UP

HE WAS SAYING SHE HAS NEVER

BEEN TO MY HOUSE BEFORE TO

SOCIALIZE BECAUSE THEY WERE

TALKING ABOUT A WHOLE DIFFERENT

CONTEXT.

THEN THEY USED IT TO LEAD THE

JURY TO BELIEVE THAT HE WAS,

GUILTY KNOWLEDGE AND WAS

COVERING UP.

NO, SHE HAS NEVER BEEN TO MY

RESIDENCE WHEN HE NEVER SAID

THAT.

THE REST OF THE STATEMENT WOULD
DEMONSTRATE THAT HE
ACKNOWLEDGED SHE MAY HAVE COME
THAT SAME THURSDAY NIGHT.
YOU KNOW, WE'RE TALKING ABOUT
THE IMPACT IT COULD HAVE HAD AN
THE JURY WEIGHING THE
CIRCUMSTANCES OF THE CASE.
YOU'VE GOT A DEFENDANT WHO IS
EVIDENCING GUILTY KNOWLEDGE BY
HIS STATEMENTS.
COULD VERY WELL HAVE BEEN
INFLUENCE ON THE JURY ABOUT HOW
THEY WEIGHED THE STATE'S
CIRCUMSTANTIAL EVIDENCE AND
THAT WOULD BE THE POSITION I
WOULD TAKE ON THE HARMLESS
ERROR QUESTION.
>> YOU ARE IN YOUR REBUTTAL
TIME.
>> I WILL SAVE MY TIME, THANK
YOU.
>> THANK YOU.

>> GOOD MORNING.

MY NAME IS MEREDITH CHARBULAH,

ASSISTANT ATTORNEY GENERAL

REPRESENTING APPELLEE, STATE OF

FLORIDA IN THIS CASE.

IF I COULD TAKE SORT OF, THE

ARGUMENTS IN THE ORDER THAT THE

DEFENDANT PRESENTED THEM.

JUSTICE PARIENTE, THE ANSWER TO

YOUR QUESTION IS, SHOULD THE

DEFENSE HAVE TO PRESENT SOME

EVIDENCE TO SUPPORT THEIR

REASONABLE HYPOTHESIS OF

INNOCENCE TO ASSERT IT ON

APPEAL AND THE ANSWER SHOULD BE

YES BECAUSE THE STANDARD ON

REVIEW IS THERE COMPETENT

SUBSTANTIAL EVIDENCE, NOT IS

THERE A POSSIBILITY THAT THE

APPELLATE COUNSEL CAN THINK OF

LATER.

IS IT COMPETENT SUBSTANTIAL

EVIDENCE TO SUPPORT THE

AGGRAVATOR.

>> HERE IS WHAT IT IS ALL

HINGED ON, THERE SEEMS TO BE NO

DISPUTE THAT THE DEFENDANT,

THAT THE VICTIM WAS

UNCONSCIOUS.

>> I WISH I COULD DISPUTE THAT,

YOUR HONOR.

>> YOU COULD DISPUTE BUT THE

JUDGE FOUND THAT HE DIDN'T KNOW

OR SHE DIDN'T KNOW WHEN THE

VICTIM BECAME UNCONSCIOUS.

BUT AS FAR AS THE HYPOTHESIS

THAT THE DEFENDANT THOUGHT SHE

WAS DEAD AT THE TIME THAT HE

BOUND HER IN THE TRAILER --

>> NEVER CAME OUT.

>> BUT WHAT IS THE EVIDENCE

THAT SHE WAS, THAT THE, WE KNOW

SHE WAS ALIVE.

SO THE REASONABLE DEDUCTION

FROM THAT IS THAT

A REASONABLE PERSON WOULD KNOW

THE VICTIM WAS ALIVE ESPECIALLY

AS JUSTICE PERRY SAID WHEN HE

WAS TAPING HER MOUTH SHUT.

>> RIGHT.

THE DUCT TAPE WAS FOUND IN,

REMAINING OF IT BURNT UP WAS

AROUND THE BACK OF HER NECK.

SO THE REASONABLE INFERENCE IS

IT WAS WRAPPED AROUND HER NECK

AND AROUND HER MOUTH.

SHE WAS BOUND AT THE WRIST AND

OTHER CABLE, IT WAS LOOSER,

THERE WAS ONLY 26 POUNDS LEFT

OF HER BODY LEFT AFTER THE

BURNING.

THERE WAS OTHER CABLE SHOWING

SHE WAS BOUND.

IT IS NOT REASONABLE INFERENCE

I THOUGHT SHE WAS DEAD AND I

WILL GAG HER AND BIND HER TO

MAKE SURE THE DEAD PERSON

DOESN'T GET LOOSE.

MORE IMPORTANTLY I THINK ALSO

FOR YOUR QUESTION IS, THIS WAS

NEVER PROFFERED DURING CLOSING

ARGUMENT.

THEY NEVER CHALLENGED THE CCP

AGGRAVATOR, THE AVOID ARREST

AGGRAVATOR.

SHE FOCUSED SOLELY ON THE

MITIGATION EVIDENCE AND SHE

READ A POEM INTO THE RECORD TO

THE JURY.

SO THIS WAS --

>> LET ME ASK YOU ABOUT THE

DUCT TAPE ROLL WAS FOUND IN THE

TRAILER, CORRECT?

>> CORRECT.

>> AND ON THIS DUCT TAPE WAS

SOME DNA, BLOOD EVIDENCE FROM

BOTH THE DEFENDANT AND THE

VICTIM, RIGHT?

>> THAT'S CORRECT.

>> WHICH WOULD SUGGEST AT LEAST

SOMETHING OF A BLOODY NATURE

WENT ON IN THE TRAILER.

AND SO --.

>> SHE FOUGHT FOR HER LIFE.

SHE FOUGHT FOR HER LIFE.

SHE FOUGHT FOR HER LIFE AND

LOST.

WHAT HAPPENED IS THAT THE --

>> SO HE WAS IN FACT, I MEAN

DOES THAT SUGGEST THAT HE WAS

HITTING HER OR DOING SOMETHING

WHILE THEY WERE IN THE TRAILER?

>> WELL, I THINK THAT, THERE

WAS SOME, CERTAINLY SOME

PHYSICAL CONTACT.

I DON'T KNOW OF ANY EVIDENCE,

YOU KNOW, WHETHER HE HIT HER.

WHAT I DO KNOW HE WAS SCRATCHED

UP.

WHEN HE ARRIVED AT THE

CONVENIENCE STORE IN ALABAMA

HIS ARMS AND HANDS WERE

SCRATCHED UP.

HE HAD DRIED BLOOD ON HIS

HANDS.

HE HAD A LITTLE SPOT OF BLOOD

ON HIS SHIRT.

>> WAS THERE ANY OTHER BLOOD

LIKE, A POOL OF BLOOD OR

ANYTHING FOUND IN THE TRAILER?

>> NO. THERE WAS A BLOOD SPOT ON A

MULTICOLORED SHEET OR A WHITE,

OR A WHITE QUILT, ONE OF THE

TWO.

THERE WAS A BLOOD STAIN THAT

CAME BACK TO MIA BROWN.

THE BLOOD, AS YOU SAY IN THE

DUCT TAPE WAS MIA BROWN.

THERE WAS ALSO HAIR, PULLED

HAIRS IN THE TRAILER AND THE

EXPERT TESTIMONY PRESENTED THAT

THERE WAS DNA ON THE HAIR

FOLLICLES WHICH INDICATED THEY

WERE FORCEFULLY PULLED OUT NOT

THAT THEY JUST DROPPED OUT

NATURALLY.

THERE WERE SEVERAL OF HER HAIRS

ON CLOTHING AROUND THE TRAILER.

ONCE --

>> COULD YOU EXPLAIN THE

STATE'S THEORY, IN OTHER WORDS,

WE KNOW THEY KNEW EACH OTHER.

THEY HAD SEEN EACH OTHER

EARLIER THAT DAY.

SHE SAID, WHEN I GET OFF WORK,

I WILL GIVE YOU A RIDE.

SHE WAS GOING TO GIVE HIM A RIDE

WHERE?

>> WELL, IN HIS, THE DEFENSE

STATEMENT, HE WANTED A RIDE TO

BRITTANY MIXON'S HOUSE, THAT IS

HIS GIRLFRIEND.

MR. BUSH STANDING THERE

LISTENING TO IT, MENTIONED

GOING TO A PLACE CALLED PARTY

SHACK.

>> SHE IS MARRIED?

>> MISS BROWN IS MARRIED TO

BRANDON BROWN, VERY HAPPILY

MARRIED.

>> SHE GOES TO PICK HIM UP.

THE IDEA DID SHE GO INTO THE

TRAILER VOLUNTARILY TO GET HIM?

IN OTHER WORDS WHAT DOES THE

STATE SAY HAPPENED?

WHAT HAPPENED?

HE DIDN'T SEXUALLY, THERE IS

NO EVIDENCE OF SEXUAL ASSAULT

OR IS THERE A THEORY --

>> HER BODY WAS TOO DAMAGED.

>> SO HE MAY HAVE TRIED TO RAPE

HER IN THE TRAILER?

>> OF COURSE.

>> WHAT DID THE STATE ARGUE,

I'M ASKING?

>> OF COURSE THE STATE, MY VERY

EXPERIENCED PROSECUTOR DIDN'T

INTRODUCE ANY KIND OF OTHER

CRIMES.

WE DIDN'T CHARGE HIM WITH

SEXUAL BATTERY.

WE DIDN'T ARGUE THAT HE

SEXUALLY BATTERED HER.

WHEN YOU LOOK AT REASONABLE

INFERENCES, THE STATE DIDN'T

CHARGE THAT HE, YOU KNOW,

DRAGGED HER INTO THE TRAILER.

WE KNOW AT 8:40 SHE IS AT JERRY

GAMMONS'S HOUSE. SHE IS LOST.

SHE IS LOOKING FOR JOHNNY MACK.

AFTER THAT WE DON'T KNOW.

WE KNOW THERE IS A STRUGGLE IN

THE TRAILER.

HER BLOOD IS IN THE TRAILER.

NOT A GREAT DEAL OF BLOOD.

NOT POOLS OF BLOOD.

IT WAS BLOOD, SMALL AMOUNTS OF

BLOOD.

THAT AND JUST A SMALL POINT,

THE CAR WAS ACTUALLY FOUND ON

DECEMBER 20th.

NOT ON DECEMBER 18th.

AT THE TIME HE IS AT THE

BROOKS, THE CAR WAS FOUND ON

THE 20th.

MR. MULBERRY I BELIEVED

TESTIFIED THE CAR WAS FOUND ON

THE 20th.

>> WAS HER PURSE IN THE

TRAILER?

>> HER PURSE WAS FOUND IN THE

TRAILER.

BRITTANY MIXON, WHO IS THE

DEFENDANT'S ON AGAIN, OFF AGAIN

GIRLFRIEND, FOUND MIA'S PURSE

IN THE TRAILER.

ALSO FOUND, AND WE CAN, JUSTICE

PERRY, THIS SORT OF GOES TO

YOUR QUESTION, MORE IN THE AREA

OF PROBABLY AROUND SEVEN HOURS

BECAUSE IN THE TRAILER WAS

FOUND THE SD CARD FROM HER

CAMERA WHICH SHE CARRIED AROUND

ALL THE TIME.

HER CAMERA WAS MISSING.

CELL PHONE WAS MISSING.

NEVER RECOVERED.

ON THE FLOOR OF THE TRAILER WAS

AN SD CARD.

SHE TOOK OR HER CAMERA TOOK A

PICTURE OF THE CEILING OF

CALHOUN'S TRAILER, AROUND 3:30,

4:00 IN THE MORNING.

BY 5:30 OR 6:00 BECAUSE HE IS AT A

CONVENIENCE STORE IN ALABAMA,

DRIVING A CAR WITH WHITE

FOUR-DOOR CAR WITH FLORIDA

PLATES.

CALHOUN DOESN'T HAVE A CAR.

>> FROM 9:00 TO 3:00 THEY'RE IN

THE TRAILER TOGETHER?

AND 3:30 SHE'S STILL IN THE

TRAILER?

>> WE KNOW THAT, WE KNOW THAT

AT 3:30 APPROXIMATELY, THE

CAMERA, HER CAMERA TOOK A

PHOTOGRAPH OF HIS CEILING.

THAT'S WHAT WE KNOW.

SO, IT, I THINK IT IS A FAIR

INFERENCE THAT HE TOOK HER OUT

SOMETIME AROUND THAT TIME.

WE ALSO HAVE EVIDENCE BY THE

DEFENSE THAT THERE WAS A LOUD

NOISE SOMEWHERE AROUND 3:00 AND

THEY DESCRIBED IT AS, ONE

DESCRIBED IT AS METAL ON METAL,

LIKE AN ACCIDENT.

TWO DESCRIBED IT AS SORT OF A

LOUD BANG.

THE CORRECTIONS OFFICER

TESTIFIED SAID IT COULD HAVE

BEEN CONSISTENT WITH THE

SLAMMING OF A TRUNK OR A CAR

DOOR.

SO I THINK, GOING BACK TO THE,

TO COLD, CALCULATED, WE HAVE

HIM SHOWING UP AT A CONVENIENCE

STORE.

HE'S BUYING CIGARETTES.

HE IS CHATTING WITH HIS FRIEND

DARREN.

NOTHING TO INDICATE HE IS

ACTING OUT OF FRENZY, PANIC OR

RAGE.

HE DOWN AND GAGGED HER.

HE STUFFED HER INTO THE TRUNK

OF HER OWN CAR.

HE DROVE HER MILES FROM HOME.

AT SOME POINT HE ACQUIRED

ACCELERANT.

THAT IS AN IMPORTANT POINT.

IT WAS LIGHT PETROLEUM

DISTILLATE HE POURED INTO THE

BACK SEAT OF THE CAR.

IT WASN'T GASOLINE.

IT WAS NOT SOMETHING IN HER

CAR.

IT WAS COLEMAN FUEL.

HIS CAMPSITE WAS 148 FEET FROM

THE PLACE WHERE THE CAR WAS

FOUND.

SO HE ACQUIRED THIS FUEL AT

SOME LOCATION.

HE, POURED ACCELERANT INTO THE

PASSENGER COMPARTMENT AND HE

SET THE CAR ABLAZE.

HE COULD HAVE, AS THIS COURT

HAS SAID, WHEN SOMEONE COULD

HAVE LET THE VICTIM GO AND

DOESN'T THAT SUPPORT THE CCP?

AND SO, GIVEN THE TIME FRAME,

THERE'S ABSOLUTELY NO EVIDENCE

THAT HE WAS UNDER ANY KIND OF

RAGE OR PASSION OR UNDER THE

INFLUENCE OF DRUGS.

EVEN IN HIS OWN STATEMENT HE

SAID HE HADN'T USED METH FOR

FIVE DAYS BEFORE THE MURDER.

SO THERE IS ABSOLUTELY NO

EVIDENCE THAT HE WAS ACTING IN

SOME SORT OF HEAT OF PASSION.

INSTEAD HE COLDLY PUT HER IN

THE TRUNK OF THE CAR, DROVE HER

AWAY FROM HOME, OBTAINED THE

MURDER WEAPON AND SET HER

ABLAZE.

THE MEDICAL EXAMINER'S

TESTIMONY ESTABLISHED CLEARLY

SHE BREATHED IN NOT ONLY SOOT

BUT FIRE INTO HER LUNGS.

THERE IS COMPETENT SUBSTANTIAL

EVIDENCE TO SUPPORT THE CCP

ALSO FOR AVOID ARREST, THIS
COURT CONSISTENTLY CONFIRMED
AVOID ARREST WHEN THE DEFENDANT
DRIVES THE VICTIM AWAY FROM A
SPECIFIC LOCATION AND, KILLS
HER AND HIDES THE BODY.
SO WE HAVE HIM TAKING HER AWAY
FROM, IN THE TRUNK OF HIS CAR,
SECRETING, HE DID SUCH A GOOD
JOB OF SECRETING THE BODY THAT
LIEUTENANT RALEY AT THE
CAMPSITE ON THE AFTERNOON OF
THE 17TH,
BRITTANY MIXON TOOK HIM OUT
WHERE HE HAD A CAMPSITE AND HE
WAS SUCCESSFULLY HID THE CAR SO
MUCH THAT WHEN LIEUTENANT
RALEY WAS AT OUT AT THE
CAMPSITE HE COULDN'T FIND IT OR
DIDN'T FIND IT.
>> WAS THERE DIFFERENCE BETWEEN
ACTIONS TAKEN AFTER A KILLING
OR TO AVOID ARREST AND

MURDERING A, A VICTIM TO AVOID

ARREST?

IN OTHER WORDS, THERE'S,

SOMEONE KILLS SOMEBODY, AND IT

COULD BE ACCIDENTAL BUT THEN

SAYS, I'M GOING TO TAKE STEPS

TO HIDE THE BODY OR HIDE

EVIDENCE OF MY, OF THE CRIME,

LIKE WE HAD IN ONE OF THE

PREVIOUS CASES?

>> SURE.

LET'S SAY, LET'S SAY THAT THERE

WAS EVIDENCE THAT DEFINITELY

SHE DIED AT THE TRAILER.

SHE DIDN'T DIE IN THE FIRE.

SHE DIED IN THE TRAILER.

I THINK THEN YOU WOULD, THEN I

THINK YOU WOULD HAVE AN ISSUE

WITH AVOID ARREST, COLD,

CALCULATED, PREMEDITATED.

WE KNOW SHE WAS ALIVE AND BOUND

AND GAGGED IN TRUNK OF THE CAR.

AND HE DROVE THE CAR WITH HER

IN THE TRUNK ALIVE THROUGH THE
WOODS, TO CLOSE TO WHERE HIS
CAMPSITE WAS, INTO THE WOODS.
RUNNING, HE RAN INTO TREES BUT
PUT ENOUGH INTO THE WOODS, HE
SET IT AFIRE AND COMPLETELY
DESTROYED THE CAR.
>> THERE WAS NO EVIDENCE OF
TAKING ANY MONEY FROM HER OR
ANYTHING OF THAT NATURE?
>> NO.
>> AGAIN, I GUESS I WOULD
SEARCH FOR A MOTIVE WHEN MANY
OF THESE CASES ARE SO SENSELESS
BUT THE LOGIC TO ME,
INFERENCE THERE WAS EITHER A
VOLUNTARY SEXUAL RELATIONSHIP
AT SOME POINT IN THE TRAILER,
THAT AT SOME POINT TURNED NOT
TO BE VOLUNTARY AND THAT'S
WHEN THE STRUGGLE ENSUED.
>> JUSTICE PARIENTE, THERE IS
ABSOLUTELY NO EVIDENCE THIS

WOMAN HAPPILY MARRIED TO

BRANDON, WOULD HAVE HAD

CONSENSUAL SEX.

IN FACT IN HIS STATEMENT HE

DENIED CONSENSUAL SEX.

IN FACT TALKED ABOUT HOW

HAPPILY MARRIED SHE WAS.

>> IN WHO'S STATEMENT?

>> THE DEFENDANT'S.

>> THE DEFENDANT, DEFENDANT'S

STORY WAS, WE'RE NOT REALLY

CREDITING WHAT THE DEFENDANT

HAD TO SAY HERE, ARE WE?

>> I'M SORRY?

>> WE'RE NOT CREDITING WHAT THE

DEFENDANT HAD TO SAY?

>> I'M SAYING THERE IS

ABSOLUTELY NOTHING IN THIS

RECORD TO SUSPECT SHE --

>> THERE IS NO REASON TO

SPECULATE THAT THE VICTIM HAD

CONSENSUAL SEX WITH THE

DEFENDANT?

>> ABSOLUTELY NOT.

>> THAT IS PURE SPECULATION.

>> ABSOLUTELY RIGHT, JUSTICE

CANADY.

>> OR ANY --

>> LOOKING AT THE RECORD,

THERE'S IN THE RECORD, THERE IS

EVIDENCE THAT SHE DIDN'T.

AND SO --

>> ALL MY POINT --

>> OR HAD ANY SEX AT ALL.

>> MY ONLY QUESTION WAS, WE

HAVE A MURDER.

WE'RE TRYING TO FIGURE OUT A

MOTIVE FOR A MURDER.

IT IS TO AVOID ARREST.

WHAT WAS THE REASON SHE IS IN

THE TRAILER FOR SIX HOURS AND

WE DON'T KNOW THAT?

>> WE DON'T KNOW THAT.

WE DON'T KNOW THAT.

WE DO KNOW SHE PUT UP A HELL OF

A FIGHT BECAUSE HE WAS ALL

SCRATCHED UP AND WELL BEFORE HE
WENT INTO THE WOODS.
WHEN HE WAS AT THE CONVENIENCE
STORE HE TOLD MISS SHERRY THAT,
WHO ASKED ABOUT THEM THAT HE
HAD GOTTEN THEM DEER HUNTING.
WE DO KNOW SHE PUT UP A FIGHT
AND UNFORTUNATELY LOST.
SO, THIS COURT CONSISTENT WITH
THIS COURT'S PRECEDENT THAT
WHERE THE, WHEN THE DEFENDANT
IS ACQUAINTED WITH THE VICTIM
AND CARRIES AWAY HER AWAY FROM
THE LOCATION IN WHICH THEY WERE
INITIALLY AND EXECUTES HER,
WHICH IS WHAT THIS WAS, THEN
AVOID ARREST IS SUPPORTED BY
COMPETENT SUBSTANTIAL EVIDENCE.
LET ME TALK ABOUT THE RULE
OF COMPLETENESS.
CALHOUN SAYS THE SECOND
STATEMENT IS SO CRITICAL
BECAUSE IT LEFT THE JURY WITH

THE IMPRESSION THAT HE WAS
LYING OR HE, BECAUSE NO ONE
KNEW WHETHER, YOU KNOW, CALHOUN
COULDN'T HAVE KNOWN SHE WAS AT
THE TRAILER THAT NIGHT BECAUSE
SHE WAS KIDNAPPED.
AT TRIAL THEY DIDN'T DISPUTE
SHE WAS AT THE TRAILER.
THEY NEVER DISPUTED ABOUT THE
TRAILER.
THE ONLY LOGICAL OR ONLY REASON
TO INTRODUCE EVIDENCE THAT HAS
MIA EVER BEEN THERE BEFORE TO
PREVENT THE JURY FROM
SPECULATING, I WONDER WHETHER
THOSE HAIRS GOT THERE EARLIER?
I WONDER WHETHER THE DNA GOT
THERE EARLIER.
IT WASN'T INTRODUCED TO MAKE
HIM LOOK LIKE A LIAR OR REFUTE
ANY NOTION SHE WAS THERE ON THE
NIGHT OR NOT.
THEY ADMITTED SHE WAS THERE. IT

WAS SOME OTHER DUDE DID IT.

SHE WAS THERE. CALHOUN WAS NOT.

SO THAT WAS THE DEFENSE.

SO ANY NOTION THAT THIS, AND

NOWHERE IN HIS STATEMENT DID HE

EVER SAY SHE WAS AT HIS TRAILER

BEFORE.

IN FACT A COUPLE PLACES HE SAID

NO. WE SOCIALIZED BEFORE WHEN I

LIVED AT A PLACE WHERE THERE

WAS A POOL TABLE BUT SHE HAS

NEVER BEEN IN MY TRAILER

BEFORE.

THAT WAS THE ONLY REASON FOR

THE FACT THAT SHE WASN'T THERE

BEFORE TO PRECLUDE ANY KIND OF

ARGUMENT LATER OR SPECULATION

ON THE JURY'S PART, GEE, I

WONDER THE HAIRS GOT THERE

EARLIER WHEN SHE WAS THERE, TWO

DAYS BEFORE, THREE DAYS,

BEFORE, FOUR DAYS BEFORE.

HIS TESTIMONY SHE HADN'T EVER

BEEN THERE BEFORE THE ONLY TIME
PULLED HAIRS GOT IN THE
TRAILER, ONLY TIME THE BLOOD
GOT ON THE DUCT TAPE AND ONLY
TIME THE BLOOD GOT ON THE SHEET
AND QUILT WAS WHEN HE WAS
ASSAULTING HER AND FIGHTING FOR
HER LIFE.
SO NOTHING IN HIS STATEMENT
CLARIFIED THAT BECAUSE THAT WAS
THE OBVIOUS RELEVANCE OF THAT
TESTIMONY.
INSOFAR AS THE BROOKS
TESTIMONY, THE, GOING BACK AND,
YOU KNOW, IT'S THE STATE'S
POSITION IF A DEFENDANT WISHES
TO INTRODUCE OTHER PARTS OF A
STATEMENT TO THE POLICE AND
NOW, LIEUTENANT RALEY TESTIFIED
TO THIS. HE WAS ASKED SPECIFIC
QUESTIONS.
DID YOU ASK HIM WHETHER HE KNEW
MIA?

YES.

HE KNEW MIA.

HE SAID THEY WERE FRIENDS.

SO THE STATEMENT ITSELF DIDN'T

COME INTO EVIDENCE.

THE STATEMENT WAS NEVER

PROFFERED INTO EVIDENCE AS PART

OF THE RULE OF COMPLETENESS.

AT NO TIME DID THE DEFENSE

COUNSEL EVER SAY TO THE JUDGE,

JUDGE, LOOK, I NEED THIS PART

OF THE STATEMENT IN BECAUSE

OTHERWISE THIS TESTIMONY FROM

LIEUTENANT RALEY IS TAKEN OUT

OF CONTEXT.

THEY NEVER, SHE NEVER, WHEN THE

BROOKS TESTIFIED SHE NEVER

PROFFERED THAT SHE WANTED TO

ASK THE BROOKS, WELL, DID HE

TELL YOU THAT HE HAD BEEN

KIDNAPPED?

AND NOTHING ABOUT THAT

KIDNAPPING STORY, HIM BEING AT

THE BROOKS HOUSE IS CLARIFIED
BECAUSE HE WAS NOT KIDNAPPED
AND TAKEN TO THE BROOKS HOUSE.
HE IS NOT LEFT ON THE
BROOKS PROPERTY AND THE BROOKS
DIDN'T KIDNAP HIM.
THE FACT IS HE WAS IN THE AREA
WAS NOT EXPLAINED NECESSARILY
BY WHAT HE SAID.
AND HE WAS OF COURSE ABLE TO,
THERE WAS NOTHING TO PREVENT
HIM FROM OFFERING THIS DEFENSE
AT TRIAL.
WHICH BY THE WAY, AS FAR AS
WHEN YOU'RE LOOKING AT HARMLESS
ERROR, THAT WASN'T HIS DEFENSE.
HE NEVER SAID, YOU KNOW, YOU'RE
PREVENTING ME BY NOT LETTING
THIS IN FROM OFFERING MY
DEFENSE AT TRIAL.
IN FACT HIS STATEMENT WAS
INCONSISTENT WITH HIS DEFENSE
AT TRIAL.

THE DEFENSE AT TRIAL WAS SOME
OTHER DUDE DID IT, PROBABLY
AROUND 3:00 IN THE MORNING
BECAUSE THERE WERE THESE BIG
PRY MARKS ON MY TRAILER DOOR
THAT WEREN'T THERE BEFORE.
HIS UNCLE TESTIFIED TO THAT,
THESE PRY MARKS WERE NOT THERE
THE DAY BEFORE.
BRITTANY NIXON SAID THEY USED
TO PRY THE DOOR OPEN ALL THE
TIME BECAUSE THEY LOST THE KEY
TO THE TRAILER.
THE UNCLE SAID THOSE WERE
REALLY BIG PRY MARKS AND NOT
THERE THE NIGHT BEFORE.
BUT IN HIS OWN STATEMENT HE
SAID THAT THIS GUY LANCE, WHO
PUT CHLOROFORM OR SOMETHING
OVER HIS NOSE KIDNAPPED HIM
OUTSIDE THE TRAILER AT 6:00 IN
THE EVENING.
SO, MOREOVER, THERE WAS THINGS

IN THAT STATEMENT THAT NO
REASONABLE DEFENSE COUNSEL
WOULD HAVE WANTED TO COME IN.
THAT HE USES METH.
THAT HE IS SEXUALLY PROMISCUOUS
AND ADULTEROUS.
AND THERE WERE THINGS IN
STATEMENT.
THERE WAS THE BROOKS EVIDENCE
THAT HE WAS FOUND SLEEPING ON
THE BARN COVERED UP WITH
SLEEPING BAGS.
HE SAID HE WENT AND KNOCKED ON
THE DOOR.
HE SAID WHEN HE DIDN'T GET AN
ANSWER AND SAT IN CHAIRS IN
THEIR SHED.
SO THE STATE'S POSITION IS
THAT WHEN YOU WANT TO INVOKE
THE RULE OF COMPLETENESS YOU
HAVE TO TELL THE TRIAL JUDGE, I
WANT THIS PART OF THE STATEMENT
IN BECAUSE OTHERWISE IT'S NOT,

IT'S TAKEN OUT OF CONTEXT OR IT
MISLEADS.
THAT IS WHAT THE RULE OF
COMPLETENESS IS.
IT IS NOT A PER SE RULE IF ONE
LITTLE PART OF THE STATEMENT
COMES IN THE OTHER STATEMENT
HAS TO COME IN.
IT IS A MATTER OF FAIRNESS.
WHAT, HOW CAN YOU PRECLUDE THE
STATE FROM INTRODUCING
EVIDENCE.
MY FAVORITE AND MY FAVORITE
ANALOGY OF THAT IS, IS THE RULE
OF COMPLETENESS PREVENTS THE
STATE FROM PUTTING IN EVIDENCE
THAT THE DEFENDANT SAID, I SHOT
THE MAN AND LEAVE OUT, AND OMIT
THE PART WHERE HE SAID, IN
SELF-DEFENSE.
THAT IS WHAT THE RULE OF
COMPLETENESS IS FOR, TO PREVENT
THAT SORT OF TAKEN OUT OF

CONTEXT MISLEADING.

SORT OF LIKE IN THE WHITFIELD

CASE APPELLANT CITED TO IN HIS

REPLY BRIEF.

THAT IS WHAT HAPPENED.

THE DEFENDANT WAS FOUND IN

SOMEONE'S APARTMENT.

I WENT TO THE APARTMENT TO

SMOKE COCAINE AND I KNEW THE

OWNER WASN'T AT HOME.

WELL THE PART THAT THE TRIAL

COURT LEFT OUT OR ERRED IN

LEAVING OUT WAS, EVIDENCE THAT

HE SAID I HAVE PERMISSION OF

THE HOMEOWNER, CENTRAL TO HIS

DEFENSE.

THIS WAS NOT THE CASE. THE,

MOREOVER AS I THINK YOU NOTED

NOTHING ABOUT THESE STATEMENTS

IN THEMSELVES WERE INCULPATORY.

THIS WAS NOT A CASE WHERE THE

STATE INTRODUCED HIS ADMISSIONS

AND WANTED TO KEEP OUT HIS 20

PROTESTATIONS OF INNOCENCE

EARLIER.

NONE OF THE STATEMENTS BY

THEMSELVES WERE INCULPATORY.

IN FACT MOST WERE TESTIFIED TO

OTHER WITNESSES.

DID YOU KNOW MIA BROWN, HIS

GIRLFRIEND AND BUSH DID THAT.

DID YOU ASK FOR A RIDE?

HIS ADMISSION HE DID WAS

CORROBORATED BY MR. BUSH.

AND SO, FOR INSTANCE, AND SO,

ALMOST EVERYTHING WITH THE

EXCEPTION OF, WERE YOU IN THE

TRAILER, I MEAN WAS SHE EVER IN

THE TRAILER BEFORE, WAS BROUGHT

OUT BY OTHER WITNESSES.

SO WHEN YOU LOOK AT THAT, THE

FACT THAT THE TRIAL, THE TRIAL

DEFENSE, OR CALHOUN FAILED TO

OFFER THE PARTS OF THE

STATEMENT HE FELT WAS RELEVANT,

THE FACT THAT IT WAS

INCONSISTENT WITH THE DEFENSE

HE OFFERED AT TRIAL.

IT WAS CORROBORATED BY OTHER

WITNESSES.

IF THERE'S VIOLATION IT IS

CERTAINLY HARMLESS BEYOND A

REASONABLE DOUBT.

BUT BECAUSE THE DEFENSE FAILED

TO CORROBORATE IT AND ACTUALLY

IN FACT NOTHING ABOUT THE

STATEMENT PUTS THE DEFENDANT'S

FACT STATEMENTS IN CONTEXT,

THIS, THERE'S NO VIOLATION OF

RULE OF COMPLETENESS.

IF THIS COURT HAS NO OTHER

QUESTIONS, THE STATE WOULD ASK

THAT THIS COURT AFFIRM JOHNNY

CALHOUN'S CONVICTIONS AND

SENTENCE TO DEATH.

THANK YOU.

>> THANK YOU, REBUTTAL.

>> JUST WANT TO MAKE ONE POINT

WHETHER OR NOT THERE WAS

ACTUALLY A VIOLATION OF THE
RULE OF COMPLETENESS.
THE STATE MADE THE ARGUMENT
THAT THE DEFENSE SHOULD HAVE
PUT FORWARD PARTS OF THE
TESTIMONY THAT SHE THOUGHT WAS
GOING TO BE IN THE INTEREST OF
FAIRNESS, FLESH OUT THE
STATEMENT.
WHAT'S IMPORTANT HERE IS THE
TRIAL JUDGE RELIED UPON THE
FACT THAT IT INCLUDED
SELF-SERVING HEARSAY TO EXCLUDE
IT.
SO THAT FORECLOSED ANY SORT OF
DISCUSSION ABOUT WHETHER PARTS
OF IT COULD BE COMING IN IN THE
INTEREST OF FAIRNESS BECAUSE
THE JUDGE BOUGHT THE
PROSECUTOR'S THEORY, IF IT IS
SELF-SERVING HEARSAY IT CAN'T
COME IN.
THAT IS NOT THE STANDARD OF THE

RULE OF COMPLETENESS

DISCUSSION.

SELF-SERVING HEARSAY CAN NOT

PRECLUDE INFORMATION FROM THE

STATEMENT THAT'S PERTINENT

UNDER THE RULE OF COMPLETENESS.

AND I WOULD POINT TO THIS

COURT'S DECISIONS IN LAZOLIERE

AND FIRST DISTRICT COURT CASE,

WHITFIELD.

WHITFIELD BEING VERY CLOSE TO

THE CIRCUMSTANCES IN THIS CASE.

I HAVE NOTHING FURTHER.

>> THANK YOU FOR YOUR

ARGUMENTS. THE COURT IS ADJOURNED.

>> ALL RISE.