

04-28-14 Case 3 - John William Campbell v. State of Florida case no. SC13-716.txt
>> ALL RISE.

>> SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

PLEASE BE SEATED.

>> THE NEXT CASE FOR TODAY IS
CAMPBELL V. STATE OF FLORIDA.
YOU MAY PROCEED.

>> MAY IT PLEASE THE COURT, MY
NAME IS GEORGE BURDEN.

I'M HERE ON BEHALF OF THE
APPELLANT, JOHN CAMPBELL.

JOHN CAMPBELL WAS INDICTED ON
ONE COUNT OF FIRST-DEGREE
MURDER.

HE WAS FOUND GUILTY AND
SENTENCED TO DEATH BY AN 8-4
VOTE.

THIS IS HIS DIRECT APPEAL.

I WISH TO EXPLAIN TO THIS COURT
TODAY THAT JUDGE HOWARD IN
CITRUS COUNTY IMPROPERLY FOUND
THREE AGGRAVATING FACTORS AND
THAT THIS COURT SHOULD EITHER
ORDER A RESENTENCING OR, BASED
ON PROPORTIONALITY REVIEW,
REDUCE THIS SENTENCE TO LIFE.

I'LL FIRST ADDRESS HEINOUS,
ATROCIOUS AND CRUEL.

IN JUDGE HOWARD FASHION, HE
CITES IN THE HAC -- THE
SENTENCING ORDER WITH HAC HE
SPECIFICALLY MENTIONS THE

SIMMONS CASE LIKE HE'S DONE IN
OTHER ORDERS WHERE HE SAYS,
WELL, THIS COURT IN SIMMONS
WHERE SOMEONE IS NAPPING AND
GETS STRUCK -- JUST LIKE THIS
CASE -- THIS COURT HAS FOUND
THAT HAC DOES NOT APPLY.
HE'S MINDFUL OF WHAT YOU HAVE
SAID ABOUT THIS IN THE PAST, BUT
NONETHELESS FIND THAT BECAUSE --
AND IT'S DISTINGUISHABLE -- IN
THIS CASE THE VICTIM,
MR. CAMPBELL'S FATHER, WAS
AWAKENED BY THE FIRST STRIKE
AND SAID, "WHAT IS THAT?"
AND THEN IMMEDIATELY FOLLOWED BY
A DEADLY BLOW THAT THE MEDICAL
EXAMINER, DR. SHAW, SAID WAS --
>> LET ME ASK YOU THIS FROM THE
GET GO.
THE BASIS FOR FINDING HAC WAS
SOLELY THE DEFENDANT'S VARIOUS
STATEMENTS TO THE POLICE.
>> THAT IS CORRECT.
>> SO BUT FOR THE DEFENDANT'S
DESCRIPTION OF HITTING HIS
FATHER FIRST AND HAVING THE
FATHER WAKE UP AND SAY "WHAT'S
THAT" AND THEN HIT HIM AGAIN,
AND THEN THE THIRD TIME AFTER
THE INVOLUNTARY MOVEMENT OF THE

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ARM, BUT FOR THAT STATEMENT IN

ORAL STATEMENTS, THERE WOULD BE
NO BASIS FOR HAC.

>> THAT'S CORRECT BECAUSE WHERE
HAC HAS BEEN FOUND IN THESE KIND
OF CASES, THERE ARE DEFENSIVE
WOUNDS.

AND DEFENSIVE WOUNDS SPEAK FOR
THEMSELVES, THAT THEY MUST HAVE
KNOWN THEIR IMPENDING DEATH
BECAUSE THEY WERE TRYING TO
DEFEND AND WARD OFF THE ATTACK.
THERE WERE NO DEFENSIVE WOUNDS
IN THIS CASE.

SO, JUSTICE, YOU'RE ABSOLUTELY
RIGHT.

THERE WOULD BE NO BASIS FOR HAC.

>> WELL, DEFENSIVE WOUNDS IN AND
OF THEMSELVES IS NOT AN ELEMENT
OR DOES NOT HAVE TO BE.

YOU AGREE WITH THAT?

>> OH, ABSOLUTELY.

>> ALL RIGHT.

>> BUT DOUGLAS IN A LINE OF
CASES SAY THAT -- BECAUSE THESE
ARE VERY PROBLEMATIC SOMETIMES.
AND THERE HAVE BEEN CASES WHERE
YOU HAVE SOME COMMENTS BUT NOT A
LOT OF EVIDENCE, AND YOU HAVE
THE MEDICAL EXAMINER SAYING
THESE THINGS.

AND THIS COURT FINDING THAT

THERE WAS COMPETENT, SUBSTANTIAL
EVIDENCE IN HAC --

>> DO WE EVEN KNOW IN THIS CASE
THE ORDER OF THE BLOWS?

DO WE KNOW THAT THE FIRST BLOW
DID NOT INCAPACITATE HIM?

I MEAN, THE DEFENDANT SAYS THAT
HIS FATHER THEN SAYS "WHAT WAS
THAT," BUT DO WE KNOW THAT HE
WAS NOT INCAPACITATED FROM THE
FIRST BLOW?

WHAT DID THE MEDICAL EXAMINER
SAY?

>> THE ANSWER IS, NO, WE DO NOT.
THE MEDICAL EXAMINER COULD NOT
SAY, AND THE JUDGE IN HIS
SENTENCING ORDER REPEATS THAT WE
DON'T KNOW FOR SURE.

BUT THE STATEMENTS OF THE
APPELLANT WERE SUCH THAT HE CAME
UP WITH THAT CONCLUSION.

>> WELL, HE'S ASLEEP AND SAYING
"WHAT IS THAT" COULD BE, MEAN
ANYTHING.

I MEAN, THAT'S SORT OF -- I
MEAN, WHAT DID THE JUDGE FIND,
DID THE JUDGE HAVE TO INTERPRET
WHAT THAT MEANT?

>> IT MEANT THAT HE WAS
CONSCIOUS WHEN THE SECOND BLOW
HIT.

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>> BUT THAT'S NOT ENOUGH FOR

HAC.

I MEAN, OBVIOUSLY, PEOPLE ARE
CONSCIOUS AT THE POINT THEY'RE
BEING MURDERED UNLESS THEY'RE
SLEEPING.

>> YES.

>> SO WE'D BE EXTENDING HAC JUST
TO SAY, WELL, YOU'RE CONSCIOUS,
BUT THAT'S ONLY BECAUSE YOU WERE
SLEEPING FIRST.

SO --

>> YOU MAY RECALL IN KALISH
JUDGE HOWARD DID THE SAME THING
WITH MANY OF THE AGGRAVATING
FACTORS.

THIS COURT FOUND THEY WERE
HARMLESS, BUT HE IGNORED WHAT
THE FACTS WERE AND IGNORED WHAT
YOUR CASE LAW WAS AND,
NONETHELESS, DID WHAT HE DID.

>> THE MEDICAL EXAMINER
TESTIFIED THAT THE WOUND, THE
ONE THAT MAY HAVE CAUSED THE
DEATH, WAS 7.5 INCHES BY 2
INCHES AND EXTENDED DEEP INTO
THE BRAIN.

SO IT COULD NOT HAVE BEEN THE
FIRST ONE.

SO IT HAD TO HAVE BEEN THE
SECOND ONE OR PERHAPS THE THIRD
ONE.

>> IF YOU TAKE THE COMMENTS FROM
MR. CAMPBELL AT FACE VALUE, YES.
BUT THE MEDICAL EXAMINER
COULDN'T LOOK AT THE WOUNDS AND
SAY WHAT ORDER THEY OCCURRED.
AND WE'RE ONLY MAKING THAT --
THE JUDGE IS ONLY MAKING THAT
FINDING BASED ON THE MANY
STATEMENTS MR. CAMPBELL MADE.

>> THAT'S, BASICALLY, ALL WE
HAVE.

THAT AND THE MEDICAL EXAMINER'S
TESTIMONY.

WE DO KNOW FROM THE MEDICAL
EXAMINER'S TESTIMONY THAT THAT
ONE WOUND WOULD HAVE BEEN THE
ONE THAT EVENTUALLY KILLED THE
VICTIM IN THIS CASE.

IT'S JUST A QUESTION OF WHEN IT
HAPPENED.

AND BASED ON THE TESTIMONY GIVEN
BY THE DEFENDANT IN THIS CASE,
IT DIDN'T HAPPEN THE FIRST ONE
BECAUSE HE GOT UP AND WAS ABLE
TO RESPOND OR SAID WHAT
HAPPENED.

>> YES.

>> SO IT HAD TO HAVE BEEN EITHER
THE SECOND ONE OR, PERHAPS, A
THIRD ONE WHICH SUPPOSEDLY
OCCURRED FIVE MINUTES LATER.

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>> YES.

BUT THE JUDGE FOUND, THE JUDGE
ACCEPTED MR. CAMPBELL'S VERSION
OF EVENTS.

AND BASED ON THOSE VERSION OF
EVENTS FOUND THAT HAC APPLIED.

AND EVEN IF YOU ACCEPT
MR. CAMPBELL'S VERSION OF
EVENTS, HAC DOES NOT APPLY.

AND I THINK THAT WAS INFERRED BY
JUSTICE PARIENTE.

IT DOESN'T APPLY.

BECAUSE HE WOKE UP, "WHAT IS
THAT?"

AND, POW, THE DEADLY BLOW THAT
WAS NEAR INSTANTANEOUS DEATH.

CERTAINLY, INSTANTANEOUS
UNCONSCIOUSNESS OCCURRED RIGHT
THEREAFTER.

SO IN THIS CASE, AND THIS IS A
VERY WEIGHTY AGGRAVATOR.

HAC IS VERY WEIGHTY.

THIS COURT HAS SAID OVER AND
OVER AGAIN WHEN YOU FIND THIS
AGGRAVATOR, LOOK OUT.

THIS ONE YOU GIVE A LOT OF
WEIGHT.

AND IT WAS IMPROPERLY
INSTRUCTED, IMPROPERLY FOUND.
AND BECAUSE OF THAT, AND THAT
ALONE SHOULD GET HIM A NEW
SENTENCING HEARING.

WHETHER IT CREATES A
PROPORTIONALITY REVIEW, I WOULD
SAY IT DOES BECAUSE --
>> HAVE WE, HAVE WE EVER SAID OR
SIMPLY THE ELIMINATION, THE
IMPROPER FINDING OF HEINOUS,
ATROCIOUS AND CRUEL IF THERE ARE
THREE OR FOUR AGGRAVATING
CIRCUMSTANCES AND SOME OF THOSE
BEING WEIGHTY ALSO THAT YOU ARE
ENTITLED TO A NEW TRIAL, A NEW
PENALTY PHASE?
>> I THINK THE SIMMONS CASE
THAT'S EVEN MENTIONED WAS ONE OF
THOSE THAT A NEW SENTENCING
HEARING WAS ORDERED.
>> OKAY.
>> AND IT WAS PRINCIPALLY
BECAUSE THERE WAS NOT A LOT OF
MITIGATION IN SIMMONS.
>> BUT IN THIS CASE, I MEAN, WE
LOOK AT THERE WERE A TOTAL OF
FOUR AGGRAVATING CIRCUMSTANCES
FOUND?
>> YES.
>> AND IT WAS CCP WHICH WE'VE
ALSO SAID IS A WEIGHTY
AGGRAVATOR, CORRECT?
>> YES.
>> HE HAD A PRIOR VIOLENT
FELONY.

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>> UH-HUH.

>> AND PECUNIARY GAIN?

>> THAT'S CORRECT.

>> AND SO WE WOULD, ASSUMING HAC
WAS IMPROPERLY FOUND, WE STILL
HAVE THREE AGGRAVATING
CIRCUMSTANCES, SO WHY IS THIS
THE ONLY PROPORTIONAL QUESTION?

>> WELL, I WOULD SUBMIT TO THIS
COURT DOES ANYONE REALLY THINK
THAT IF THIS SET OF FACTS
OCCURRED IN THE CITY OF MIAMI,
THAT THIS WOULD HAVE BEEN, THEY
WOULD HAVE SOUGHT DEATH IN THIS
CASE?

DOES ANYBODY REALLY THINK THAT?
I DON'T.

>> WELL, THE DIFFERENCE
BETWEEN -- WAIT, LET'S TALK
ABOUT THE DIFFERENCE BETWEEN
PROPORTIONALITY WHICH YOU'RE NOW
SHIFTING TO.

I THINK JUSTICE QUINCE WAS
ASKING YOU ABOUT HARMLESS ERROR
WHICH WOULD MEAN IN FRONT OF THE
JURY AND THE JUDGE.

SO I DON'T KNOW THAT YOU FULLY
ANSWERED.

NOW YOU'RE SAYING, I MEAN, THE
FACT THAT SOMETHING'S NOT A JUST
CASE IN MIAMI ISN'T OUR BASIS
FOR PROPORTIONALITY.

>> AND EVEN, I'M NOT SURE THAT'S
NECESSARILY TRUE.

>> WE SUBMIT IT SHOULD BE.

>> IN MIAMI YOU HATCHET YOUR
FATHER TO DEATH, SEEMS PRETTY
SERIOUS EVEN IN MIAMI.

>> YES, JUSTICE.

WELL, THAT'S BECAUSE CCP DOESN'T
APPLY HERE EITHER.

AND RECALL THAT THE FIRST
FOUR --

>> OKAY.

BUT, BUT --

>> YES.

>> LET'S START WITH THE PREMISE
THAT THE OTHER THREE ARE VALID.

>> YES, JUSTICE.

>> HARMLESS ERROR OR NOT.

>> WELL, UNDER THIS RECENT COURT
THE WAY IT HAS RULED, NO, IT
WOULDN'T BE HARMLESS ERROR WITH
THIS COURT.

IT WOULD BE HARMLESS ERROR
PERHAPS 15 YEARS AGO BUT NOT
TODAY BECAUSE THERE HAS BEEN --
AND YOU SEE IT IN THE WAY THEY
CONDUCT THESE CASES.

FIFTEEN YEARS AGO THEY WOULD
HIRE A STATE EXPERT TO REBUT THE
DOCTOR IN THIS CASE AND SAY HE
HAD ANTISOCIAL PERSONALITY

TESTIMONY ALTOGETHER.

THEY DON'T DO THAT ANYMORE.

THEY DON'T HAVE TO.

EVEN IF YOU HAVE TWO MENTAL
MITIGATORS, SO WHAT?

THAT'S, ESSENTIALLY, WHAT'S
HAPPENED.

SO THE ANSWER IS, YES, YOU WOULD
FIND HARMLESS ERROR.

THIS COURT WOULD, ABSOLUTELY.
EVEN WITH TWO STATUTORY MENTAL
MITIGATORS.

>> OKAY.

>> WELL, THEN, I MEAN, THOSE
ARE -- AND I KNOW YOU MAKE THESE
ARGUMENTS, BUT THOSE AREN'T
LEGAL ARGUMENTS.

SO LET'S TRY TO STICK TO --

>> SURE.

>> -- THE LEGAL BASIS.

DO YOU -- AGGRAVATOR OF
PECUNIARY GAIN, YOU CONTEST THAT
ONE.

>> YES.

>> IT WAS, YOUR ARGUMENT IS THAT
THE PECUNIARY GAIN, THAT THAT
WAS AFTER THE FACT, THAT HE --

>> YES.

>> WHAT DRAWS THE LINE ON THOSE?
BECAUSE, YOU KNOW, I CAN SEE YOU
CAN MAKE THAT ARGUMENT BECAUSE

EVERY TIME IT HAPPENS IS THAT
THE MONETARY ASPECT OF IT COMES
AFTER THE DEATH.

>> UH-HUH.

>> I MEAN, IT'S JUST THE WAY
THAT THESE THINGS, THESE THINGS
HAPPEN.

HERE HE KNEW WHERE SOME THINGS
WERE, AND HE SORT OF RANSACKED
LOOKING FOR AND FINDING THOSE
THINGS.

HOW DO YOU, YOU KNOW, SPLIT THE
LINE HERE AS TO WHEN IT IS AND
WHEN IT'S NOT?

>> WELL, THE STANDARD IS WAS IT
A PART OF THE MOTIVATION --

>> I UNDERSTAND.

I UNDERSTAND THAT.

BUT HOW DO YOU DRAW -- I'M
TALKING ABOUT DRAWING THE LINE
ON GROUNDS.

>> YOU DO A CASE-BY-CASE
ANALYSIS, AND IN THIS CASE
MR. CAMPBELL HAD ALREADY TAKEN
HIS CAR AND WENT OFF FOR THREE
DAY ON A THREE-DAY DRUG BINGE
WHEN HE LOST HIS JOB.

HE'D ALREADY JUST DONE THAT.

WHY DOES HE HAVE TO KILL HIS
FATHER TO DO IT AGAIN?

>> BECAUSE HE NEEDS MORE MONEY.

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AND THAT'S EXACTLY WHAT HE DID.

I MEAN, YOU FOLLOW THE WHOLE
THING THROUGH, AND THAT'S WHAT
HAPPENED.

>> THAT'S WHAT JUSTICE HOWARD
FOUND.

BUT WHY WOULD HE DO THAT AND
LOSE ANY FUTURE SUPPORT FROM HIS
FATHER?

HE RELIED ON HIS FATHER TO
SURVIVE.

HE KILLS HIM, HE DOESN'T HAVE
SUPPORT ANY LONGER.

IT DOESN'T MAKE LOGICAL SENSE
THAT HE WOULD DO THAT.

>> THE FACT THAT THE DEFENDANT
DID NOT BEHAVE IN A LOGICAL
MANNER IS CHARACTERISTIC OF
MURDER CASES, AND IT IS, ISN'T
IT THE CASE THAT SOMETIMES THE
NEEDS OF THE MOMENT OVERSHADOW
CONSIDERATIONS OF THE FUTURE?

>> YES, JUSTICE.

THAT IS A FAIR READING OF THE
EVIDENCE IN THIS CASE.

JUST WHAT YOU SAID.

BUT IT'S EQUALLY FAIR TO SAY
JUST WHAT HE TOLD POLICE FOUR
TIMES WHEN HE GOT ARRESTED.

HE WAS OPEN AND HONEST.

HE SAID I'M GOING TO KILL MYSELF
AT THE FIRST OPPORTUNITY, AND

THIS IS WHAT HAPPENED.

WHAT DID HE HAVE TO LOSE?

WHAT DID HE HAVE TO HIDE?

>> ONCE AGAIN THE BASIS FOR THIS

AGGRAVATOR IS SOLELY THE

DEFENDANT'S STATEMENTS TO THE

POLICE.

>> YES.

>> BUT FOR THAT STATEMENT, IT

WAS AN UNKNOWN.

THE DEFENDANT STATED AND WAS

CONSIDERED DURING THE TRIAL THAT

THE REASON HE KILLED HIS FATHER

WAS TO -- AND I FORGET THE RIGHT

PHRASE -- PUT HIM OUT OF HIS

MISERY.

>> GIVE HIM PEACE.

>> GIVE HIM PEACE.

THE TRIAL JUDGE CHOSE TO NOT

BELIEVE THAT OR NOT FIND THAT

CREDIBLE, FOUND IT TO BE

SELF-SERVING --

>> YES.

>> AND GO AHEAD WITH THE

AGGRAVATOR.

NOW, THERE'S A NUMBER OF THINGS

HERE.

THERE HAD BEEN A ROBBERY AT

LOWE'S EARLIER THAT DAY.

AND SUPPOSEDLY BY YOUR CLIENT.

WAS THAT CONSIDERED BY THE JURY?

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>> NO.

>> WAS THE JURY PRESENTED WITH
THAT EVIDENCE IN THIS CASE?

>> I DO NOT BELIEVE SO.

>> BECAUSE IN THAT ROBBERY, HE
PLED GUILTY TO THAT OR PLED
NOLO.

HE SAID HE DID IT BECAUSE HE WAS
JACKED UP ON CRACK, AND HE
NEEDED THE MONEY.

NOW, HAD THAT BEEN INTRODUCED
DURING THE TRIAL, THAT WOULD
HAVE BEEN EVIDENCE THAT THE
REASON HE KILLED HIS FATHER A
LITTLE LATER WAS TO GET MONEY
FOR MORE DRUGS.

BUT THAT WAS NOT PRESENTED TO
THE JURY.

>> NO, IT WAS NOT.

>> OKAY.

>> AND THAT WOULD MAKE IT A MUCH
MORE LIKELY SCENARIO THAT
PECUNIARY GAIN WAS SUPPORTED.

>> BUT WE DO KNOW EVEN FROM THIS
RECORD THAT HE HAD LOST HIS JOB,
HE HAD NO MONEY, AND, YOU KNOW,
HE KNEW THAT HIS FATHER HAD
CREDIT CARDS.

HE TOOK THEM.

USED THEM RIGHT AFTER THE
MURDER.

THAT IS EVIDENCE IN THE RECORD,

CORRECT?

>> ABSOLUTELY.

AND YOU CAN DRAW THAT

CONCLUSION.

BUT YOU CAN EQUALLY SAY --

>> AND THE FATHER'S POCKETS WERE

TURNED INSIDE OUT, HE TOOK 35 \$2

BILLS.

I MEAN, HE DID ALL KIND OF

THINGS.

IT MIGHT NOT HAVE BEEN THE

PRIMARY REASON, BUT IT WAS --

>> YES.

>> IT COULD HAVE BEEN PART OF

IT.

>> YES, SIR.

AND I THINK JUSTICE LEWIS SAID

IT RIGHT.

AT WHAT POINT DO YOU GO OVER THE

THRESHOLD TO ONE OR THE OTHER?

AND IT'S A VERY VEXING PROBLEM

BECAUSE I SUBMIT THAT THIS WAS A

LONGSTANDING PROBLEM HE HAD WITH

HIS FATHER BASED ON HIS

CHILDHOOD AND EVERYTHING YOU'VE

HEARD FROM THE EXPERTS IN THIS

CASE.

AND I THINK THAT HE WAS

MOTIVATED BY THIS.

BOOM.

I THINK THAT'S WHAT HAPPENED

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HERE.

AND THEN REALIZING WHAT HE DID,
WHAT'S THE FIRST THING HE ALWAYS
DOES?

HE GOES AND GETS HIGH.

AND HE NEEDED MONEY TO DO IT.

NOW, I WOULD HAVE A LOT MORE
HARD TIME CONVINCING YOU OF THAT
IF YOU KNEW EARLIER IN THAT DAY
AT LOWE'S, AS THE JUSTICE
POINTED OUT, HE WAS ALREADY
TRYING TO GAIN MONEY TO GET HIGH
AGAIN.

BUT THAT'S NOT THE RECORD THAT
WAS BEFORE --

>> AGAIN, I'M JUST TRYING TO
FOCUS ON WHAT'S ON THE RECORD IN
THIS CASE.

>> UH-HUH.

>> WHICH IS WHAT WE HAVE TO
CONSIDER.

>> YES.

>> ON THE RECORD IN THIS CASE IS
THE DEFENDANT'S STATEMENT,
VARIOUS STATEMENTS WHERE HE SAID
I KILLED MY FATHER TO PUT HIM
OUT OF HIS MISERY, WHATEVER HE
SAID.

EVERYTHING AFTER THAT IS BASED
ON WHAT THE DEFENDANT SAID.

I WENT TO THE HOUSE, WENT TO THE
SAFE, IT WAS EMPTY.

EMPTIED OUT HIS POCKETS, FOUND
HIS CAR KEYS.

ALL THOSE THINGS BASED ON WHAT
THE DEFENDANT SAID APPEARED TO
BE AN AFTERTHOUGHT.

>> YES.

>> BUT IF THAT'S ALL WE HAVE ON
THE RECORD HERE, ALL WE HAVE IS
THE DEFENDANT SAYING I KILLED MY
FATHER OUT OF PITY AND THEN
LATER ON AS AN AFTERTHOUGHT I
ROBBED HIM, IF THAT'S THE CASE,
THEN YOU MAY HAVE A POINT ON
PECUNIARY GAIN.

>> YEAH, BECAUSE THINK ABOUT IT;
IF HE'S ASLEEP, CAN'T HE STEAL
THESE THINGS JUST AS EASILY?

>> OKAY.

LET'S ASSUME FOR THE SAKE OF
ARGUMENT THAT YOU PREVAIL ON HAC
AND PECUNIARY GAIN.

WOULDN'T THERE STILL BE
COMPETENT EVIDENCE THE
AGGRAVATORS VERSUS MITIGATORS?

>> IF YOU UPHOLD CCP, OF COURSE.
AND WE CONTEND YOU SHOULDN'T.
AND THE REASON BEING IS THIS:
SEE, CCP TRADITIONALLY HAS BEEN
FOR CONTRACT MURDERS AND/OR
SOMEONE TRULY IN THEIR HEART
DECIDES THEY'RE GOING TO MURDER

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SOMEBODY.

>> WELL, DIDN'T HE DECIDE -- I
THOUGHT THE RECORD SAID HE'D
BEEN THINKING ABOUT IT AND THEN
ONCE HE DECIDED --

>> IN THE DOMESTIC CONTEXT -- I
DIDN'T MEAN TO OVERSPEAK, SIR.

>> THAT'S OKAY.

>> IN THE DOMESTIC CONTEXT HE
WAS SAYING THAT IN HIS FIFTH
STATEMENT IN JAIL, "I WAS
MEDITATING ON IT BEFORE I DID
IT."

AS HAPPENS IN DOMESTIC CASES
WHEN PEOPLE ARE EMOTIONALLY
UPSET WITH SOMEONE THEY LOVE AND
HATE.

AND I THINK YOU HAVE TO TAKE THE
CONTEXT OF HOW HE SAID THAT.

LOOK AT THE PLAN.

WHAT PLAN WAS THERE HERE?

THERE WAS NO PLAN.

>> HATCHET AND BEHIND IT AND HIS
FATHER AND MEDITATED ON WHETHER
TO USE SHARP SIDE OR THE BLUNT
SIDE.

AND HE DECIDED TO USE THE SHARP
SIDE.

>> RIGHT BUT --

>> COULD HAVE WALKED AWAY THEN,
COULD HE?

>> YES.

UNDER THE BUZIA ANALYSIS, YOU'RE
ABSOLUTELY RIGHT, JUST BEFORE
THE ARGUMENT HE HAD WENT FOOD
SHOPPING, PERMISSION FROM HIS
FATHER TO GO FOOD SHOPPING.
WHO GETS PERMISSION FROM HIS
DAD, GOES FOOD SHOPPING AND THEN
COMES BACK AS PART OF HIS PLAN
TO KILL HIM?

NO ONE.

>> YOU KNOW, JUSTICE CANADY SAID
EARLIER, NONE OF THESE MAKE
LOGICAL SENSE.

IF YOU USE LOGIC TO DETERMINE
WHETHER OR NOT SOMEBODY
PREMEDITATED A PLAN TO MURDER
YOU WOULD ALWAYS COME DOWN --

>> WHEN THE GLOVE DON'T FIT YOU
HAVE TO ACQUIT.

THAT'S WHAT WE HAVE HERE.

IT DOESN'T FIT.

>> ARE YOU ARGUING, YOU'RE
ARGUING ON PROPORTIONATE, IS
THAT WHAT I'M UNDERSTANDING?
LET ME GIVE YOU WHAT WOULD BE MY
FRIENDLY QUESTION.

THIS WAS AN 8-4 JURY VERDICT.

>> YES.

>> THE JURY WAS INSTRUCTED ON
SIX AGGRAVATORS, TWO OF WHICH
THE JUDGE FOUND WERE NOT PROVEN.

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AND SO, IF TWO OF THE

AGGRAVATORS ARE STRICKEN,
BECAUSE THERE'S NOT COMPETENT
SUBSTANTIAL EVIDENCE ISN'T A
BETTER ARGUMENT, I DON'T KNOW,
WERE THEY OBJECTED TO BY THE
DEFENDANT'S LAWYER?

>> YES.

>> THAT THEY SHOULDN'T BE GIVEN?
AND WHAT WAS THE STATE OF THE
RECORD?

>> IN AWE FAIRNESS ON PECUNIARY
GAIN HE DID OBJECT THOUGH HE
NOTED THERE WAS EVIDENCE TO
SUPPORT.

>> SO THAT WOULD STILL HAVE GONE
TO THE JURY.

SO WHAT ABOUT THE OTHER, DID
HE --

>> HE OBJECTED TO HAC AND CCP,
YES.

>> WHAT ABOUT THE TWO THAT
WEREN'T PROVEN, AVOID ARREST
AND --

>> I DON'T BELIEVE HE OBJECTED
TO THOSE.

>> TO ME, IF YOU HAVE SIX, IF
THE JURY IS HEARING SIX
AGGRAVATORS, IF THERE ARE ONLY
TWO YOU MIGHT CONSIDER THAT'S
NOT HARMLESS BEYOND A REASONABLE
DOUBT BUT IF THE, IF THE DEFENSE

LAWYER DOESN'T OBJECT, THAT'S REALLY NOT, A BASIS THEN TO LOOK AT ALL OF THEM TOGETHER, OR IS IT?

IN OTHER WORDS, IS THERE AN ARGUMENT TO BE MADE THAT MAYBE THIS JUDGE WOULD HAVE IMPOSED A SENTENCE BUT DON'T WE LOOK AT THE EFFECT ON THE JURY HEARING ALL THESE AGGRAVATORS?

>> I MIGHT, I SAY YOU SHOULD. THIS COURT HASN'T TRADITIONALLY ACCEPTED THAT ARGUMENT BUT I WOULD SAY YOU SHOULD, BECAUSE OF THE EFFECT IT HAS ON THE JURY. THEY'RE NOT, YOU KNOW, SKILLED IN THE LAW AND THEY HEAR ALL THESE AGGRAVATORS BEING INSTRUCTED AND SO I'VE ALWAYS CONTENDED THAT THAT POISONS THE JURY BUT THIS COURT DOESN'T SEEM TO ACCEPT THAT ARGUMENT.

>> WELL LET'S GO BACK TO YOUR PROPORTIONALITY ARGUMENT WHICH IS THAT, AND TO ME WHETHER IT IS CCP, HAC, PART OF WHAT JUSTICE QUINCE IS SAYING HERE'S THIS THING, YOU HACKED HERE, HACKED YOUR PARENT TO DEATH. SEEMS THAT THE ONLY WAY THIS BECOMES QUESTIONABLY NOT

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PROPORTIONATE, AND AGAIN, AND

YOU HAVE MULTIPLE PRIOR VIOLENT
FELONIES INCLUDING ONE WHERE HE
WAS JUST RELEASED A FEW MONTHS
BEFORE WHICH TO ME IS A VERY,
MUCH STRONGER THAN SAYING THERE
WAS HAC OR CCP SO WHAT IS THE
COMPELLING STATUTORY MITIGATION,
YOU SAID THE JUDGE FOUND IT BUT
HE DIDN'T GIVE IT MUCH WEIGHT,
THAT WOULD OFFSET THE
AGGRAVATION?

AND TO ME I SEE THE CCP AND THE
PRIOR VIOLENT FELONIES AS BEING
SUBSTANTIAL AGGRAVATION?

WHAT IS THE MENTAL MITIGATION
THAT'S SO COMPELLING?

>> WELL I THINK THE MENTAL
MITIGATION, ESPECIALLY WHEN YOU
LOOK AT THE PRIOR VIOLENT
FELONIES, BOTH OF THEM.

THE TWO PRIOR VIOLENT FELONIES,
ONE STRIKING A POLICE CAR.

>> WHAT IS THE ONE HE HAD JUST
GOTTEN OUT OF PRISON?

>> THAT WAS HIS WIFE'S SISTER,
ANGELA THATCHER, I BELIEVE HER
NAME WAS, HE HAD HIS CHILD TAKEN
AWAY FROM HIM AND HAD NO
VISITATION RIGHTS WHATSOEVER.

AND HE GOT EXTREMELY EMOTIONALLY
UPSET AND WAITED FOR HER TO COME

HOME AND TAKE IT OUT ON HER.

HE ACTUALLY HAD A HAMMER.

I THINK IF --

>> YOU DON'T THINK THAT'S, AND

HE WAS SENTENCED TO PRISON?

>> YES.

>> SO WHAT'S, DID HE NOT, AND

HE'S OUT OF PRISON FOR HOW LONG

BEFORE HE DECIDES HE IS GOING TO

KILL HIS FATHER?

>> OH, I THINK WHAT'S IMPORTANT

TO KNOW IS PRIOR TO THAT

INCIDENT HE HAD JUST BEEN

RELEASED FROM A PSYCHIATRIC

FACILITY.

AND AFTER THAT HE WAS PUT BACK

IN A PSYCHIATRIC FACILITY.

THIS IS A EXTREMELY EMOTIONALLY

DISTURBED PERSON.

>> HE WAS INVOLUNTARY OR --

VOLUNTARILY OR INVOLUNTARILY --

>> I DON'T BELIEVE THE RECORD IS

CLEAR ON THAT.

>> THE RECORD, WHAT WAS THE

PSYCHIATRIC ISSUE THAT HE WAS

HOSPITALIZED FOR?

>> SUICIDAL TENDENCIES.

>> WHAT IS THE UNDERLYING, WHAT

IS THE DIAGNOSIS?

>> DEPRESSION, SEVERE

DEPRESSION, BORDERLINE

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PERSONALITY DISORDER.

>> THAT WAS IN, BUT DO WE HAVE
THE RECORDS IN OUR RECORD?

>> THE RECORDS FROM TEXAS WERE
SEVERE DEPRESSION AND SUICIDAL
TENDENCIES OF THE RECORD
HERE.

THE RECORD HERE IN FLORIDA IS
BORDERLINE PERSONALITY DISORDER.

>> HE TESTIFIED, I'M ASKING, YOU
KNOW, THE THINGS TO ME THAT
SEPARATE SOMETHING THAT'S
GENUINE MENTAL MITIGATION AS
OPPOSED TO AN EXPERT COMING IN
AND SAYING IT, NOT THAT THEY'RE
NOT VALID, WHEN YOU'VE GOT A
HISTORY OF SOME TYPE OF
PSYCHIATRIC DIAGNOSIS, SO, IT
WOULD BE, DID THE DOCTORS THAT
HAD HOSPITALIZED HIM, IS THERE
EXPLANATION IN THIS RECORD AS TO
WHAT, EXEMPT FOR THE SUICIDAL
TENDENCIES?

>> HE HAS AN EMOTIONAL
DISTURBANCE OF SEVERE DEPRESSION
IS WHAT HIS PROBLEM IN TEXAS WAS
DIAGNOSED AS.

THAT WAS UPDATED BY DR. BURSTEN.
HE ACCEPTED THAT AND IT WAS EVEN
WORSE, BORDERLINE PERSONALITY
DISORDER AND WHICH IS EXTREME
EMOTIONAL MENTAL DISTURBANCE IS

WHAT HE --

>> I KNOW, JUSTICE LEWIS HAS A FAVORITE PHRASE OF TALKY TALK. I'M TRYING TO FIND OUT IN TERMS OF MEDICAL DIAGNOSES --

>> YES.

>> -- SAYING IT IS EXTREME EMOTIONAL DISTURBANCE DOESN'T REALLY -- WAS IT DRUG-RELATED, DRUG-INDUCED, BRAIN-DAMAGED, SCHIZOPHRENIA, BIPOLAR, ANY OF THOSE?

>> HE, HAD ITS BASIS IN HIS UPBRINGING, CHILDHOOD. VIOLENCE FROM HIS MOTHER. DISAFFECTION FROM HIS FATHER, ALL THESE WERE INGREDIENTS. HE HAD A CHILDHOOD FROM HELL. HE SPENT MOST OF HIS CHILDHOOD AWAY FROM HIS PARENTS.

>> THE SECOND PRIOR FELONY CONVICTION, AGGRAVATOR, THE SECOND ONE INVOLVING HIS ATTEMPT TO SUPPOSEDLY RAM THE DEPUTY SHERIFF'S SQUAD CAR, RIGHT AWAY, THIS DEPUTY SHERIFF WAS NOT INVOLVED IN THIS CHASE. HE WAS JUST GIVING A TICKET TO SOMEBODY?

>> NO.

I THINK HE WAS THERE TO PUT THE

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STOP-STICKS.

>> OKAY.

BUT ACCORDING TO THE DEFENDANT,
YOUR CLIENT'S STATEMENT, THE
REASON HE RAMMED THE DEPUTY
SHERIFF'S PATROL CAR AT 110
MILES-AN-HOUR HE SAID?

>> 120.

>> BECAUSE HE WANTED TO COMMIT
SUICIDE.

>> YES.

>> WAS HE GOING 120 MILES, DO
YOU KNOW?

>> THE OFFICER THAT GOT STRUCK
SAID HE WAS GOING A HIGH RATE OF
SPEED.

I THINK HE SAID IN EXCESS OF 80
I BELIEVE BUT I'M NOT
CERTAIN ON THAT I COULD GET BACK
TO THE COURT ON THAT BUT HIS OWN
SELF-REPORTING AFTERWARDS, THAT
IS MR. CAMPBELL, THAT HE WAS
GOING 120 TO END HIS LIFE.

>> I WASN'T TRYING TO KILL THE
DEPUTY, I WAS TRYING TO KILL
MYSELF.

>> THAT IS CORRECT.

HE DIDN'T KNOW IF A DEPUTY WAS
NEAR OR NOT.

AT ALL.

BUT, YOU KNOW, IT IS WHAT IT IS.
I WILL RESERVE THE BALANCE OF MY

TIME, THANK YOU.

>> MAY IT PLEASE THE COURT.

COUNSEL.

I'M STACY KERCHER, ASSISTANT
ATTORNEY GENERAL FROM DAYTONA
BEACH ON BEHALF OF THE STATE.

I WOULD LIKE TO BEGIN BY
ADDRESSING A COUPLE OF THE
POINTS THAT THE JUSTICES ASKED
BY MY OPPOSING COUNSEL HERE.
TO ADDRESS JUSTICE LABARGA'S
QUESTION, DEPUTY RUBY WAS PART
OF THE CHASE.

HE WAS CROUCHING BY HIS PATROL
VEHICLE.

THE DEFENDANT,
THE APPELLANT'S STATEMENT WAS HE
AS WAS TRYING TO COMMIT SUICIDE
IN RAMMING THE DEPUTY'S VEHICLE
IN EXCESS, THE EVIDENCE IS ABOUT
IT WAS 110 MILES PER HOUR.

THE DEFENDANT'S STATEMENT IT WAS
120 MILES PER HOUR.

BUT IT IS IMPORTANT TO NOTE THAT
HE HAD BEEN DRIVING UP AND DOWN
HIGHWAY 19 THAT WHOLE DAY.

THERE ARE TREE LINES.

THERE ARE BUILDINGS AND HE
DIDN'T ATTEMPT TO RUN INTO ANY
OF THOSE TO KILL HIMSELF BUT
RATHER TO, TO HIT THE CAR WHICH

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THE DEBRIS FROM THAT CAR IS WHAT

INJURED DEPUTY RUBY.

>> HIS CAR WAS MARKED TOO,

WASN'T IT?

>> I'M SORRY?

>> IT WAS A MARKED CAR?

>> YES, IT WAS.

IT WAS A MARKED CAR.

THERE WAS OBVIOUSLY A POLICE
ROADBLOCK AID AT THAT POINT AND
DEPUTY RUBY WAS TALL GENTLEMAN.
THE EVIDENCE HE WAS OVER SIX
FEET TALL.

SO HE WOULD HAVE BEEN VISIBLE BY
THE MARKED CAR.

ALSO IMPORTANT TO NOTE THAT THE
PRIOR VIOLENT FELONIES WE'RE
TALKING ABOUT, SEVEN CERTIFIED
CONVICTIONS OF PRIOR FELONIES
WERE INTRODUCED INTO EVIDENCE,
ONE OF WHICH BEING THAT TEXAS
CASE WHEREBY HE IS SHOWING IT IS
KIND OF HIS MODUS OPERANDI TO
LIE IN WAIT FOR FAMILY MEMBERS,
TO ATTACK THEM WITH BLUNT FORCE
TRAUMA.

IN THAT CASE HE LIED IN WAIT IN
HIS SISTER-IN-LAW'S CLOSET.
WHEN SHE ARRIVED HOME, HE
ATTACKED HER ABOUT THE FACE WITH
A HAMMER.

SHE WAS ABLE TO NEGOTIATE HER

WAY OUT OF THAT SITUATION, AFTER WHICH HE SAYS, I DON'T EVEN KNOW WHY I'M DOING THIS TO YOU.

I HAVE ALWAYS LIKED YOU.

WHAT WE'RE TALKING ABOUT THE, IN ANSWER TO JUSTICE PARIENTE'S QUESTION, WHEN WE'RE TALKING ABOUT MITIGATION IN THIS CASE, IT'S IMPORTANT TO NOTE THAT THE TRIAL COURT GAVE THIS DEFENDANT THE BENEFIT OF THE DOUBT AND SOMETIMES DOUBLE-DIPPED TO DO THAT.

FOR EXAMPLE, DR. BURSTEN TESTIFIES THAT HIS DIAGNOSIS HE HAS THIS REJECTION, THIS ACTING OUT, PASSIVE AGGRESSIVENESS TOWARD HIS FATHER, BASED OUT OF DEPRESSION. THERE IS NEVER AN ALLEGATION FROM THE DEFENDANT'S SISTER THAT THE FATHER WAS EVER ABUSIVE.

THERE WAS ALCOHOLIC RELATIONSHIP BETWEEN THE MOTHER AND THE FATHER IN WHICH THEY HAD MUTUAL ALTERCATION AFTER WHICH THE FAMILY WOULD BE TREATED TO A VACATION.

THE ONLY INDICATION OF THE FATHER HE WAS EMOTIONALLY DISTANT.

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AND THERE IS EVER INDICATION

EVEN FROM THE APPELLANT'S
TESTIMONY HERE THAT THE WORST
THAT HIS FATHER DID WAS IGNORE
HIM.

EVEN ON THE DAY IN QUESTION
HIS SUPPOSED RAGE BUILT BECAUSE
HIS FATHER WAS IGNORING HIM AND
THEN SLEEPING.

>> WOULD YOU ADDRESS THE
PECUNIARY GAIN ASPECT AND WHERE
IN THE STATE'S VIEW IT BECOMES
APPLICABLE IN THIS CASE AND WAS
NOT AN AFTERTHOUGHT?

>> ABSOLUTELY, JUSTICE LEWIS.
WITH PECUNIARY GAIN IN THIS CASE
WE HAVE A VERY STRONG, COMPETENT
SUBSTANTIAL EVIDENCE FOR THAT.
AFTER THE SECOND BLOW TO HIS
FATHER'S HEAD, AT THIS POINT,
THE FATHER IS STILL ALIVE.
HE IS ALIVE FOR FIVE MINUTES
AFTER THIS AND I WILL COME BACK
TO THAT POINT, BUT DURING THIS
POINT WHEN THE FATHER IS DYING
HE THEN TURNS HIS POCKETS OUT AS
JUSTICE PERRY POINTED OUT OF THE
HE STARTS TO RANSACK THE
TRAILER.
HE IS LIVING, THE APPELLANT IS
LIVING IN THE MASTER BEDROOM OF
HIS FATHER'S TRAILER.

SO HE THEN GOES, RANSACKS
THROUGH THE BEDROOM.
HIS FATHER'S BEDROOM.
GOES THROUGH THE DRESSER WHERE
HE FIND HIS COLLECTION OF 35
TWO DOLLAR BILLS
HE GETS HIS WALLET.
HE GETS HIS CHECKBOOK, CREDIT
CARDS, I.D. HE GOES THROUGH THE
LOCKBOX.
THERE IS NOTHING IN THE LOCKBOX.
HE CALLS IT A STRONG BOX.
HE IS RANSACKING THE PLACE
LOOKING FOR ANY ITEMS OF VALUE
WHICH HE LATER, I BELIEVE IT IS
THE FIFTH, EXCUSE ME THE FIFTH
CONFESSION, WITH DETECTIVE
ATCHISON WHERE HE SAYS, YEAH,
THAT IS WHAT THE MONEY WAS FOR.
I WAS GETTING JACKED UP ON
CRACK.
SO AT THIS POINT AFTER HE STEALS
HIS FATHER'S KEYS, HE TAKES HIS
CREDIT CARD, CHECKBOOK, I.D.
THE ONLY CASH IN THE HOUSE WHICH
IS THE COLLECTION OF 35 TWO
DOLLAR BILLS.
AT THIS POINT FIVE MINUTES LATER
HE SEES HIS FATHER HAND RISE.
SO TO ADDRESS KIND OF TANGENTIALLY
JUSTICE LABARGA'S

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QUESTION, THE STATE'S POSITION

TESTIFIED, ONE CHRONIC OR
INVOLUNTARY MOVEMENT WOULD BE,
AS A VICTIM WOULD BE DYING,
SIMILAR TO A CHICKEN RUNNING
AROUND WITH ITS HEAD CUT OFF,
THERE IS INVOLUNTARY JERKING OR
NERVE FIRINGS THAT A PERSON
WOULD HAVE AFTER A PERSON IS
DYING.

THE DEFENDANT DOESN'T
CHARACTERIZE IT THAT WAY, HE
CHARACTERIZES HIS FATHER REACHES
UP.

AT THE POINT HIS FATHER REACHES
UP THAT IS AT THE POINT THE
THIRD AND FINAL DEATH BLOW WHICH
EMBEDDED THE HATCHET INTO HIS
SKULL WAS DELIVERED.

>> BUT IN FAIRNESS, I MEAN IN
BEING OBJECTIVE ABOUT THIS
RECORD, THE MEDICAL EXAMINER DID
TESTIFY THAT THE DEEPEST WOUND
IS THE ONE THAT WOULD HAVE
RENDERED HIM CERTAINLY
UNCONSCIOUS WITHIN SECONDS?

>> WELL, JUSTICE LEWIS, THAT'S A
FAIR QUESTION.

THE MEDICAL EXAMINER IN THIS
CASE COULD NOT CONCLUSIVE LIVE
STATE WHICH BLOW WOULD HAVE
RENDERED THE DEFENDANT

UNCONSCIOUS.

>> HE DIDN'T KNOW WHAT THE SEQUENCE WAS, BUT THE ONE FROM THE DEEPEST PENETRATION IS THE ONE THAT WOULD HAVE, CORRECT?

>> I DON'T BELIEVE HE EVER --

>> HE NEVER SAID THAT?

>> HE DOES SAY THAT THE BLOWS ARE CONSISTENT WITH A CONSTELLATION THAT.

THAT PARTICULAR CONSTELLATION OF CRANIAL FRACTURES AND CERVICAL FRACTURES EMBEDDING INTO THE BRAIN, APPROXIMATELY FOUR INCHES EMBEDDED INTO THE BRAIN REQUIRED THREE TO FOUR BLOWS BUT THE TRIAL JUDGE ACCEPTED THREE WHICH THE DEFENDANT ADMITTED TO. SO THE FACTUAL FINDING IS THERE WERE THREE BLOWS.

NOW THE FIRST BLOW HE DOES TALK ABOUT BEING A SUPERFICIAL, HE SAYS, THE MORE SUPERFICIAL WOUND WAS A SCALP WOUND AND THEN THAT WAS DEEPENED AND WIDENED BY THE SECOND BLOW, WHICH WOULD BE CONSISTENT WITH THE APPELLANT'S VERSION OF EVENTS.

NOW THE THIRD BLOW, AND IT IS THE STATE'S POSITION AND UNCONTESTED BY THE APPELLANT IN

EVENTS THAT HIS FATHER WAS ALIVE
FOR FIVE MINUTES.

>> FOR HAC PURPOSES HE MAY BE
UNCONSCIOUS, BUT STILL BE A LIVE
BUT CONSCIOUSNESS OF THE PAIN
AND SUFFERING WE HAVE TO LOOK
AT.

>> ABSOLUTELY.

>> THAT IS THE LAW, RATHER THAN
WHICH WAS THE DEATH BLOW.

>> ABSOLUTELY.

SO AT THAT POINT EVEN IF WE
DON'T HAVE THE FULL FIVE
MINUTES, AND WE'RE NOT CONCEDING
AT THIS POINT THAT THE, THAT THE
VICTIM WAS NOT CONSCIOUS WHEN HE
WAS RAISING HIS HAND UP.

EVEN IF WE WERE TO SAY THAT THE
SECOND BLOW, THE DEEPER BLOW WAS
THE BLOW THAT RENDERED HIM
UNCONSCIOUS AT THAT POINT WE
STILL HAVE UNREFUTED EVIDENCE
FROM THE DEFENDANT'S OWN
STATEMENT WHICH IS BACKED UP BY
THE MEDICAL EXAMINER'S
TESTIMONY, IT IS NOT REFUTED BY
THE MEDICAL EXAMINER'S TESTIMONY
OF THE MORE SUPERFICIAL,
PRESUMABLY FIRST WOUND AT LEAST,
THAT THE FATHER IS CONSCIOUS AND
AWARE AT THE POINT THAT HE SAYS

HE AWAKES AND HE SAYS, WHAT WAS THAT?

WHICH IS CONSISTENT WITH HAD COURT'S HOLDING IN OWEN WHERE THE VICTIM WAS ASLEEP FIRST BLUDGEONED IN THE HEAD.

WAKES UP SCREAMING AND HAC WAS FOUND IN THAT CASE.

>> ISN'T IT A LITTLE DIFFERENT THOUGH TO WAKE UP SCREAMING, WHICH WOULD INDICATE FEAR?

I MEAN IF YOU'RE SCREAMING YOU'RE FEARFUL.

ISN'T THAT DIFFERENT FROM WAKE UP AND SAYING WHAT'S THAT, WHICH INDICATES CONFUSION AND REALLY ABSENCE OF FEAR?

>> WELL, JUSTICE CANADY, I CAN SEE THE DISTINCTION AND I WOULD NOT CHARACTERIZE A STARTLED, WHAT WAS THAT AS BEING SOMETHING CONCLUSIVE NOT BEING IN PAIN OR SUFFERING OR NOT BEING IN FEAR.

THE FACT THAT THE --

>> BUT STATE HAS TO PROVE THAT THE AGGRAVATOR.

SO IF THERE'S JUST HARD FOR ME TO SEE HOW YOU CAN GO FROM THAT QUESTION, WHICH, TO A CONCLUSION THAT THAT THERE WAS FEAR GOING ON, THAT THERE WAS SOME

WAS THIS TERRIBLE DEED THAT WAS
ACTUAL IN PROGRESS.

>> YES, JUSTICE CANADY, AND THE
FACT FINDINGS BY THE COURT WERE
THAT EXCLAMATION OF, WHAT WAS
THAT, UPON HAVING JUST BEEN
HATCHETED IN THE HEAD WHILE YOU
WERE ASLEEP, WAS A FINDING BY
THE TRIAL COURT THAT THE VICTIM
AWOKE WITH FEAR AND PAIN.

>> WHERE DOES THAT COME FROM?
IN OTHER WORDS, YOU KNOW, AND
AGAIN I APPRECIATE THAT THE
STATE, AND YOU HAVE TO ADVOCATE
OR FOR EACH AND EVERY AGGRAVATOR
THAT'S BEEN FOUND BUT WE ALSO
HAVE TO PRESERVE AGGRAVATORS
DON'T APPLY TO EVERY MURDER,
HAC, DOESN'T APPLY TO EVERY
MURDER.

>> ABSOLUTELY.

>> WHERE IS IT, OTHER THAN THE
SPECULATION THAT THAT'S WHAT IT
WAS THAT JUSTIFIES THAT FINDING?
THERE HAS TO BE COMPETENT
SUBSTANTIAL EVIDENCE BEFORE WE
ACCEPT THAT FINDING OF FACT,
THAT HE AWOKE AND WAS IN FEAR?

>> ABSOLUTELY.

>> SO WHAT IS IT?

>> THE FACT THAT WHEN THE

DEFENDANT IS STANDING BEHIND THE
VICTIM, HE HATCHET HIM IN THE
HEAD.

HE AWAKES.

HE SAYS, WHAT WAS THAT.

THERE IS CONSCIOUSNESS AND
AWARENESS.

>> HE IS BEHIND HIM.

DOESN'T SEE IT IS HIM.

>> CORRECT.

THERE HAVE BEEN CASES BY THIS
COURT, SPECIFICALLY I BELIEVE
LAMB, WHERE THE DEFENDANT WAS
STANDING BEHIND THE VICTIM.

ONE BLOW TO THE HEAD.

HE AWOKE, THEY SAY MOANING, AND
THEN HE DELIVERED I BELIEVE TWO
MORE BLOWS --

>> I HATE TO, BUT MOANING,
SCREAMING, IS NOT, WHAT WAS
THAT?

>> WELL, AND I BELIEVE --

>> WHAT WAS THAT?

THE RECORD --

>> THE RECORD READS COLD ON
OBVIOUSLY WHAT WAS THAT?

IT COULD HAVE BEEN A SCREAM.

>> THEREFORE WHY IS IT, WITH
WHAT THE MEDICAL EXAMINER SAYS
THAT THERE IS, THAT THE STATE
HAS PROVEN BEYOND A REASONABLE

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DOUBT THAT THERE IS HAC?

>> IT IS ALSO APPROPRIATE,
JUSTICE PARIENTE, TO LOOK AT THE
MEANS AND MANNER IN WHICH THE
MURDER WAS COMMITTED.

UNDER DOUGLAS WE CAN LOOK AT THE
METHODOLOGY AND TOOL USED.

IN THIS CASE THERE'S A FACTUAL
FINDING AND THE TOOL IS ACTUAL
IN EVIDENCE, THE TRIAL JUDGE
SAYS, IT WAS AN ALMOST MEDIEVAL
TOOL, MORE APT TO CRUSH WOOD
THAN TO CUT IT.

IT WAS A FOOT-LONG WOOD HANDLE,
RUSTY BLADE.

IT WAS A, EXCUSE ME, RUSTY AND
DULL-BLADED INSTRUMENT.

THIS WAS NOT, YOU KNOW, A
GUILLotine TYPE SITUATION.

THIS WAS NOT A AKIN TO CASES IN
WHICH HAC HAS NOT BEEN UPHELD.

IT WASN'T A QUICK SHOOTING.

>> YOU KNOW, BUT HERE'S MY
PROBLEM WITH THAT.

ALTHOUGH WE HAVE SAID OVER AND
OVER THAT IT IS PERCEPTION OF
THE VICTIM, IT ALSO, YOU LOOK AT
THE DEFENDANT, WE HAVE ACCEPTED
EVERYTHING ELSE.

HE WANTED TO PUT HIS FATHER OUT
OF HIS MISERY.

MAYBE SOMEBODY MIGHT GIVE

TOO MANY SLEEPING PILLS AND
THAT'S HOW THEY DO IT BUT THERE
IS, WHERE IS THE EVIDENCE THAT
THERE WAS INDIFFERENCE TO THE
SUFFERING OF HIS FATHER BECAUSE
HE CHOSE THIS INSTRUMENT VERSUS
A KITCHEN KNIFE?

WHAT IF THERE WAS A KITCHEN
KNIFE AND THE SAIL THING
HAPPENED?

DOES THAT, IS IT ANYTHING OTHER
THAN A GUN THAT WILL, WHICH IS,
AVAILABLE TO, I GUESS, A LOT
MORE PEOPLE THAN IT SHOULD BE?
IS THERE ANYTHING OTHER THAN
THAN A GUN WOULDN'T GIVE RISE TO
HAC?

>> ABSOLUTELY, JUSTICE PARIENTE.

>> WHAT?

>> THAT ADDRESSES YOUR QUESTION,
YOUR CONCERN WITH MY OPPOSING
COUNSEL THAT THIS DOES NOT
REQUIRE ANY EXTENSION OF THIS
COURT'S RULINGS ON HAC.

THIS DOESN'T OPEN FLOODGATES AND
DOESN'T MAKE A RUBBERSTAMPING OF
HAC IN ANY OTHER CASE OTHER THAN
A SHOOTING OF THE SPACES THAT MY
SPECIFIC -- APPELLANT CITES IN
THIS ARE CASES WHERE
CONSCIOUSNESS ARE NOT PROVEN.

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IN CASES WHERE CONSCIOUSNESS IS

NOT PROVEN, WHETHER THAT BE
BLOWS INFLICTED BY AN AXE, BY A
KNIFE, BY A GUN, BY A TIRE IRON,
IF THAT FIRST BLOW RENDERS THE
VICTIM UNCONSCIOUS, WE DON'T
HAVE HAC, PERIOD.

BUT IF THIS CASE WE HAVE
UNREFUTED EVIDENCE THAT THERE
WAS CONSCIOUSNESS.

AND TO WHAT EXTENT, WHETHER WE
SAY, WHAT WAS THAT?

THE QUESTION MARK, WHAT WAS
THAT?

AND A SCREAM.

THAT IS GOING TO READ COLD ON
THE RECORD.

>> OF THEIR IMPENDING DEATH
BEING TORTURED BY THE MEANS--

>> CORRECT.

>> NOT WHAT, WE SORT OF BEATEN
THIS ONE TO DEATH.

MAYBE WE OUGHT --

>> TO GO ON TO THE NEXT POINT,
JUSTICE PARIENTE --

>> WOULD YOU FINISH UP ON THE
FIRST ONE?

>> PECUNIARY GAIN.

>> RIGHT.

BEFORE YOU JUMP FURTHER AWAY.

YOU LISTED ALL OF THE MATTERS OF
A MONETARY NATURE BUT YOU DID

NOT ADDRESS THE AS EXPECT THAT
I'M REALLY CONCERNED.

>> I WILL ADDRESS THAT
ABSOLUTELY.

>> THAT'S WHERE WE DO THE LINE
DRAWING, WHAT EVIDENCE IS THERE?
WHAT IS NECESSARY?

PRE, PREINFLICTION OF A, OF A
BLOW SUCH AS WE HAVE HERE?

>> ABSOLUTELY.

AND IN THIS CASE, JUSTICE LEWIS,
AND I WILL GO BACK AND I'LL TALK
MORE ABOUT WHAT HE DID WITH
THOSE ILL-GOTTEN GAINS IN JUST A
MOMENT.

>> OKAY.

>> BUT TO ANSWER YOUR DIRECT
QUESTION, WHERE WE DRAW THE LINE
IS, HAS ALREADY BEEN DRAWN IN
THE BOWLES CASE.

IN THE BOWLES CASE, EVEN IF WE
FIND, EVEN IF THIS COURT FINDS
THAT THE PECUNIARY GAIN ASPECT
IS NOT PREDOMINANT.

WE HAVE ORME, DOESN'T SAY IT HAS
TO BE PREDOMINANT ASPECT.

IT HAS TO BE ONE ASPECT OF THE
MURDER.

IN THE BOWLES CASE THIS COURT
SPECIFICALLY HELD, EVEN IF IT IS
AN AFTERTHOUGHT, IT STILL CAN BE

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UPHELD FOR PECUNIARY GAIN AS

LONG AS THERE IS NO EVIDENCE
THAT THE DEFENDANT DIDN'T NEED
OR WANT THOSE VALUABLES.

IN THE CASE WHERE, IF HE WANTED
TO PUT HIS FATHER AT PEACE, AS
HE STATES, IF WE WERE TO TAKE
THAT AT FACE VALUE, HE WOULD
THEN KILL HIS FATHER AND WALK
AWAY.

THERE WOULD BE NO NEED AS
JUSTICE PERRY POINTED OUT TO
RANSACK THE APARTMENT, EXCUSE ME,
THE TRAILER, TO TAKE HIS POCKETS
OUT AS HE IS DYING.

SO IT DOESN'T COMPORT WITH
FACTS THAT WOULD LEAD TO A
REVERSAL OF A FINDING OF
PECUNIARY GAIN.

>> YOU'RE SAYING,
YOU SAY THERE NEED NOT BE
EXPRESS EVIDENCE OF A PLAN OR
PECUNIARY GAIN BUT THAT THE
CIRCUMSTANTIAL
EVIDENCE WHEN IT IS RELATED TO
SOMETHING OF MONETARY VALUE THAT
CAN BE CONSIDERED IN SUPPORT AN
AGGRAVATOR OF PECUNIARY GAIN?

>> YES, JUSTICE LEWIS.
IN FACT, IN THIS CASE AFTER THE
THIRD AND FINAL DEATH BLOW WAS
DEALT TO HIS FATHER HE PROCEEDED

DIRECTLY TO WALMART,
THE WALMART IN INVERNESS.
HE MADE SEVEN DIFFERENT
TRANSACTIONS ON THE VICTIM'S
CREDIT CARD WITHIN 20 MINUTES OF
THE MURDER.
HE BUYING GIFT CARDS, RUGS AND
CIGARETTES.
HE STATES IN THE CONFESSION THAT
ARE THE RUGS ARE TO TRADE FOR
CRACK AT A CRACK HOUSE.
HE THEN GOES TO A CVS WHERE HE
TRIES TO BUY MORE GIFT CARDS,
THREE TIMES.
THE CREDIT CARD IS DECLINED AT
THAT POINT.
MEETS UP WITH AN ASSOCIATE OF
HIS WHO BECOME AS WITNESS,
THOMAS FORD.
THOMAS FORD, HE ASKS HIM, DO YOU
KNOW A PLACE WHERE I CAN GET RID
OF SOME WALMART GIFT CARDS?
HE SAID, I CAN CALL SOME PEOPLE.
YOU BUY ME SOME GAS, I WILL MAKE
SOME CONNECTIONS FOR YOU.
>> IS THERE FLORIDA
JURISPRUDENCE THAT ADDRESSES THE
IMMEDIACY OF THE USE OF THE
MONETARY ELEMENTS AS BEING A,
SOMETHING THAT WE SHOULD LOOK
TO, FOR EXAMPLE, I LEAVE THE

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SCENE, GO DIRECTLY TO DO

SOMETHING AS OPPOSED TO USING IT
DAYS LATER?

IS THAT PART OF OUR CASE LAW?

>> I DON'T KNOW, JUSTICE LEWIS,
IF THERE IS PARTICULAR CASES
THAT TALK ABOUT THAT TIMELINE
BUT IN THIS CASE IT CERTAINLY
STRONG CIRCUMSTANTIAL EVIDENCE
THAT HE'S NOT WAITING AROUND
MOURNING HIS FATHER.

AT THIS POINT, IS CIRCUMSTANTIAL
EVIDENCE HE NEEDED THAT MONEY.

AS HE STATES LATER, THE MONEY
WAS TO GET THE CRACK.

I BELIEVE HE SAYS TO GET JACKED
UP ON CRACK.

>> WHY DIDN'T THE STATE PRESENT
EVIDENCE OF THE LOWE'S ROBBERY?
THAT WOULD HAVE BEEN HELPFUL TO
YOUR PECUNIARY GAIN.

>> I CAN NOT SPEAK TO THAT
JUSTICE LABARGA.

I'M NOT SURE WHY.

THERE IS EVIDENCE THEN AFTER
ASSOCIATING WITH THOMAS FORD, HE
THEN USES THE VICTIM'S CREDIT
CARD AND I.D. TO TRY TO GET
INFORMATION FROM THE CREDIT CARD
COMPANY TO GET MORE ACCESS TO
THE CREDIT CARD.

THAT WE HAVE THAT.

THAT WAS PRESENT THE TO JURY.

NOT JUST THE DEFENDANT'S

STATEMENTS IN THIS CASE.

WE ALSO HAVE HIM ON VIDEO BUYING

THE GIFT CARDS AT WALMART.

ATTEMPTING TO BUY THE GIFT CARDS

AT CVS.

>> AGAIN, I'M CONCERNED ABOUT

THE WHOLE IDEA OF HIM DEVELOPING

THE IDEA TO ROB AFTER HE KILLED

HIS FATHER AND ALL THAT CAME

AFTERWARDS.

SO I DON'T KNOW IF THAT IS

HELPFUL.

>> WELL, AND JUSTICE LABARGA, TO

ADDRESS THAT CONCERN, HE DOES

STATE IN THINKS CONFESSIONS THAT

THAT WAS WHAT, TO GET THE MONEY

TO GO TO, GO TO THE CRACK HOUSE.

AND HE DOES STATE THAT HE HAD

ENGAGED IN OR IMBIBED A LARGE

AMOUNT OF CRACK SEVERAL DAYS

PRIOR BUT SINCE, NOT HAVING

EMPLOYMENT ANYMORE HE HAD NO

MORE ACCESS TO IT.

SO HE STATES HE HAD BEEN CLEAN

FOR A FEW DAYS.

SO AT THIS POINT HE HAD ALREADY

RELAPSED.

HE HAD LOST HIS JOB AND THE

EVIDENCE HIS WHEN THE CRIME

WALLET, THE DEFENDANT'S WALLET,
THERE WAS ONE DOLLAR IN IT.

>> SO GOING BACK TO JUST THE
MURDER, AND PERHAPS, YOUR
OPPOSING COUNSEL CAN ANSWER
THIS, THE WAY I'M LOOKING AT IT,
YOU HAD THE FIRST BLOW WHERE HE
GIVES UP AND SAID, WHAT WAS
THAT?

YOU HAVE THE SECOND BLOW.
AFTER THE SECOND BLOW, THAT'S
WHEN HE BEGINS TO SEARCH THE
POCKETS AND LOOKING AROUND THE
HOUSE AND SO ON, AM I CORRECT?

>> CORRECT.

BECAUSE AT THAT POINT HE
TESTIFIES HE THINKS HIS FATHER
IS DEAD.

>> SO IT WAS BEFORE THE THIRD
BLOW CAME HE WAS ALREADY
SEARCHING AND FINDING, LOOKING
FOR MONEY AND SO ON?

>> CORRECT, FOR THAT FIVE
MINUTE PERIOD.

>> THEN HE SAW THE MOVEMENT IN
THE ARM.

DOCTOR DESCRIBED AS INVOLUNTARY
MOVEMENT.

THAT'S WHAT HE HIT HIM AGAIN
WITH THE HATCHET.

>> CORRECT.

>> DURING THAT INTERVAL PERIOD
OF TIME HE MAY HAVE NOT HAD THE
INTENT TO KILL HIS FATHER TO ROB
HIM.

ONCE HE BEGAN ROBBING HIM, AFTER
HE STRUCK HIM TWICE, BEFORE THE
THIRD BLOW, HE MAY HAVE
DEVELOPED THE INTENT TO KILL
BECAUSE HE WAS ROBBING HIM?
AM I MAKING SENSE?

>> I BELIEVE HIS INTENTION ALL
ALONG, HE SAID HE HAD BEEN,
WHICH BRINGS ME TO MY ARGUMENT
IN SUPPORT OF CCP, HE STATES
THAT HE HAD BEEN MEDITATING ON
KILLING HIS FATHER FOR SEVERAL
DAYS.

HE STATES, SO IT WAS NEVER AN
INTENTION JUST TO INJURE HIS
FATHER BUT INTENTION WAS ALWAYS
TO KILL HIM.

HE STATES I HAD BEEN MEDITATING
ON IT.

I KNEW I WANTED TO DO IT.

I JUST WASN'T SURE HOW TO DO IT.

IN FACT, EVEN OUTSIDE OF THAT
STATEMENT OF A FEW DAYS,
THINKING ABOUT IT, HOW HE WANTED
TO DO IT, MULLING IT OVER, FOR A
FEW DAYS, FORMULATING THIS PLAN,
ALBEIT NOT THE MOST FOOL-PROOF

IN CASES SUCH AS THESE, HE THEN
COMES HOME FROM EATING AT
WALMART.

HIS FATHER IS ASLEEP IN THE
RECLINER AND HE SITS BEHIND HIM
AT THE COMPUTER CHAIR AND JUST
WAITS.

HIS STATEMENT IS, HE'S WAITING.
SO AT THIS POINT HE MAKES THE
DECISION.

HE TRAVERSES THE HOUSE.

RETRIEVES THE MURDER WEAPON OUT
OF THE TOOL SHED.

COMES BACK AND NOW WE'RE IN BURZIA
TERRITORY.

HE IS BRINGING THE MURDER WEAPON
BACK TO THE VICTIM.

THERE IS NO CONFLICT.

THERE IS NO HEATED ARGUMENT.

THERE IS NO WITNESS MUTUALLY
ATTACKING HIM.

HIS FATHER IS ASLEEP.

SO HE WALKS BEHIND HIM AND
STANDS THERE AND WAITS.

BY HIS OWN ADMISSION HE IS JUST
THERE FOR A FEW MINUTES FLIPPING
THE MURDER WEAPON OVER IN HIS
HAND DECIDING WHICH SIDE TO USE.

HE DOESN'T KNOW WHETHER TO USE
THE BLUNT END, THE HAMMER, OR
THE CUTTING END, THE HATCHET.

SO AT THIS POINT WE HAVE A CLEAR
CASE OF CCP.

IT'S COLD, IT IS AN
EXECUTION-STYLE KILLING.

THE FATHER IS ASLEEP.

HE BRINGS IT DOWN ON HIS HEAD OF
THE FATHER AWAKES.

SAYS, WHAT WAS THAT?

AT THIS POINT HE TESTIFIES THAT,
HE PUTS BOTH HANDS ON THE MURDER
WEAPON AND BRINGS IT DOWN WITH
AS MUCH FORCE AS HE CAN.

SO AT THIS POINT OBVIOUSLY IF HE
JUST WANTED TO STEAL THE MONEY,
HIS FATHER WOULD HAVE BEEN NONE
THE WISER.

HE IS ASLEEP.

HE COULD HAVE ABANDONED HIS PLAN
TO COMMIT THE ULTIMATE CRIME AND
THE MURDER AT ANY POINT.

YET HE CARRIES IT OUT.

MURDERS HIS FATHER AS HE HAS
BEEN THINKING ABOUT DOING FOR
SEVERAL DAYS.

>> WHAT IS THE SIGNIFICANCE,
BECAUSE THERE'S SOMETHING ABOUT
IT THAT IS EITHER TO ME, COULD
FURTHER SUPPORT CCP, THE
DEFENDANT AFTER HE KILLS HIS
FATHER, COVERS THE VICTIM WITH A
BLANKET AND PLACED A FAMILY

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PHOTO OF THE DECEASED DAUGHTER

AND HIS GRANDSON ON HIS
FOREHEAD?

WHAT IS THAT, THE JUDGE MAKES,
HAS THAT STATEMENT IN THERE,
WHAT IS, HOW DOES THE STATE SEE
THAT AS, IS THAT A FACT THAT HAS
ANY RELEVANCE TO THE MURDER,
EITHER GOOD OR BAD AS FAR AS
AGGRAVATORS AND MITIGATORS?

>> JUSTICE PARIENTE, THAT GOES
TO THE DEFENDANT'S VERSION OF
EVENTS THAT HIS FATHER WAS
MENTALLY SUFFERING ON DUE TO THE
DEATH OF APPELLANT'S SISTER
APPROXIMATELY FIVE YEARS BEFORE
WHERE SHE WAS HIT BY A CAR.
THAT PICTURE HAD BEEN PREVIOUSLY
ON THE TABLE NEXT TO WHERE HIS
RECLINER WAS.

SO HE COVERS HIM WITH A
TARP-LIKE MATERIAL AND SETS THAT
ON HIS BODY.

SO AT THIS POINT --

>> THING IS THAT WAS ONLY PERSON
HE EVER LOVED?

>> THAT IS THE ONLY PERSON HE
EVER LOVED.

SO PERSONALLY I SEE IT AS A BIT
OF PASSIVE AGGRESSIVENESS BUT IT
IS NOT IN THE RECORD AS TO WHY,
OTHER THAN THE DEFENDANT'S OWN

STATEMENT THAT'S WHO HE CARED ABOUT.

>> THAT IS WHY HE WANTED TO PUT HIM AT PEACE, BECAUSE HE WAS NOT AT PEACE BECAUSE SHE DIED?

>> CORRECT.

IT IS HOWEVER IMPORTANT TO NOTE, THOMAS SCHOFIELD, WHO WAS THE DEFENDANT'S, EXCUSE ME, DEFENDANT AND VICTIM'S NEIGHBOR HAD BEEN IN CONSTANT CONTACT WITH THE VICTIM FOR SEVERAL YEARS.

THEY HAD COFFEE TOGETHER AS WELL AS JILL LANE, THE VICTIM'S SISTER HAD COFFEE TOGETHER.

HE WAS RELATIVELY SOCIAL.

HE SEEMED TO WANT TO --

>> THE DEFENDANT?

>> NO, I'M SORRY THE VICTIM.

THE VICTIM DID NOT APPEAR BY ANYBODY OTHER THAN THE DEFENDANT'S OWN TESTIMONY TO BE IN GREAT EMOTIONAL AND PHYSICAL PAIN.

>> YOU DON'T DISPUTE, THAT'S WHAT, THAT WAS, THAT WAS HIS MOTIVATION?

I MEAN, AGAIN YOU KEEP ON SAYING, WELL WE HAVE TO GO WITH WHAT THE DEFENDANT SAID.

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>> SURE.

>> THAT'S WHAT THE DEFENDANT
SAYS.

>> THAT'S WHAT THE DEFENDANT
SAYS, UNEQUIVOCALLY.

>> WHAT ABOUT, I WANT TO
UNDERSTAND THE MENTAL
MITIGATORS.

WAS IT RAISED, WAS HE UNDER THE
INFLUENCE OF CRACK COCAINE AT
THE TIME OF THIS MURDER.

>> NO, JUSTICE.

HE STATES HE HAD BEEN CLEAN FOR
SEVERAL DAYS PRIOR.

>> SO EVEN THOUGH HE HAD ROBBED
THE, WAS THE LOWE'S, GOT MONEY,
HE BOUGHT CRACK COCAINE?

WE DON'T KNOW IN THIS RECORD?

>> THE ROBBERY FROM THE LOWE'S
IS NOT IN EVIDENCE.

WE HAVE A CERTIFIED
CONVICTION OF A ROBBERY IN 2001
IN FLORIDA BUT THERE IS NO
MENTION IN THE RECORD AS TO THE
PRIOR ROBBERY.

>> OKAY.

NOW FROM THE TIME THOUGH,
THERE'S STATEMENT THAT HE WAS
HOSPITALIZED FOR ATTEMPTED
SUICIDE.

PREVIOUSLY HOSPITALIZED.

WHEN WAS THAT, IN RELATIONSHIP

TO WHEN THIS MURDER OCCURRED?

>> WELL IT IS IMPORTANT TO NOTE
AS WELL THAT THERE WAS EVIDENCE
BROUGHT OUT OF A BAKER ACT BUT
THERE WAS NEVER ANY DATE GIVEN.
THERE WAS NEVER ANY
SUBSTANTIATING EVIDENCE PROVIDED
FOR THAT.

>> SO WE DON'T -- WHEN WAS HE
RELEASED IN PRISON IN TEXAS?

>> I BELIEVE IT WAS, IT WAS LESS
THAN A YEAR -- WELL, IN TEXAS HE
WAS PREVIOUSLY IN PRISON IN
FLORIDA.

THE TEXAS CRIME OCCURRED SEVERAL
YEARS PRIOR.

THAT WAS IN 1998.

>> HE JUST WASN'T RELEASED FROM
TEXAS?

>> FROM TEXAS, NO.

>> OUR RECORD DOESN'T REVEAL
WHEN HE WAS HOSPITALIZED FOR
ATTEMPTED SUICIDE.

>> CORRECT.

DR. BURSTEN.

>> COULD IT BE SEVERAL YEARS.

>> HE GIVES SEVERAL DATES IN THE
90'S.

I BELIEVE IT WAS '94, '97, '98
HE REVIEWED HOSPITAL RECORDS BUT
HE DOESN'T DISTINGUISH WHAT THE

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BAKER ACT WAS.

A DATE WAS NEVER GIVEN FOR THAT.

THAT IS NOT IN THE RECORD.

WHILE IT IS IMPORTANT TO NOTE
THAT DR. BURSTEN GOING BACK TO A
POINT I MADE BEFORE, HE HAD THIS
REJECTION AND DEPRESSION FROM
HIS FATHER AND THE TRIAL JUDGE
GAVE HIM BENEFIT OF SAYING HE
HAD A BORDERLINE PERSONALITY
DIAGNOSIS BUT HE DOESN'T.

IF YOU ACTUALLY LOOK, AND IT
APPEARS IN THE RECORD, VOLUME
20, ON PAGE 226, WHAT HE
ACTUALLY DIAGNOSES HIM WITH A
CHRONIC SEVERE DISTURBANCE.

HE IS UP THERE WITH HIS SCALE ON
BORDERLINE, ON THE TESTING BUT
HE CAN'T DIAGNOSE HIM WITH
BIPOLAR BUT WITH THE BENEFIT
OF THAT.

WHEN THE JUDGE IS DOING THE
PROPORTIONALITY ANALYSIS AND
WEIGHING, OR RATHER WEIGHING THE
AGGRAVATORS AND MITIGATORS IN
THIS CASE HE CONSIDERS EVERY
PIECE OF EVIDENCE AND SOMETIMES
TWICE BECAUSE HE TAKES
DR. BYRSTEN AT HIS TESTIMONY.
GIVES HIM BOTH STATUTORY
MITIGATORS AND ALSO GIVES HIM
NON-STATUTORY MITIGATORS IN THE

TESTIMONY OF DEPRESSION FROM LOSS
OF JOB AND REJECTION FROM
FATHER.

HIS LONGSTANDING DRUG USE.

HIS LONGSTANDING HISTORY OF
DEPRESSION OF SO WE HAVE SOME
DOUBLE-DIPPING THERE AS WELL AS
REMORSE.

BUT IT IS IMPORTANT TO NOTE THAT
EACH ONE OF THESE MITIGATOES
IS AFFORDED VERY LITTLE WEIGHT
OR EXTREMELY SLIGHT WEIGHT.

AND THE STATUTORY MITIGATORS,
THOUGH HE GAVE THEM TO HIM, WERE
AFFORDED VERY SLIGHT WEIGHT.

I'M SORRY, THE EXTREME EMOTIONAL
AND MENTAL DISTURBANCE WITH
LITTLE SLIGHT, HE USING THEM
INTERCHANGEABLY AND INABILITY TO
CONFORM HIS CONDUCT WITH THE LAW
WAS AFFORDED EXTREMELY LITTLE
WEIGHT BECAUSE WHEN THE TRIAL
JUDGE REVIEWED IN LIGHT OF ALL
THE OTHER EVIDENCE, AND EVEN
DR. BURSTEN SAYS HE KNEW WHAT HE
WAS DOING WAS WRONG.

HE KNEW THE CRIMINALITY OF HIS
CONDUCT.

HE UNDERSTOOD AND HE CHOSE TO DO
THIS.

SO THE JUDGE DID GIVE THAT TO

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HIM.

WHICH BRINGS ME TO MY HARMLESS
ERROR ANALYSIS.

IF THIS COURT WERE TO FIND HAC
WHICH IS THE BULGE OF QUESTIONS
OR PECUNIARY GAIN WAS FOUND TO
BE ERROR, IT WOULD BE HARMLESS
ERROR.

IT WOULD NOT LIKELIHOOD AT
DIFFERENT OUTCOME IN THIS TRIAL.
WE HAVE 8-4 DECISION IN THIS
CASE.

WE HAVE THREE WEIGHTIEST
AGGRAVATORS IN THIS INSTANCE
BOLSTERED BY PECUNIARY GAIN.
SO THE MITIGATION WE HAVE IS
VERY SLIGHT.

THERE ARE HAVE BEEN CASES
DECIDED BY THIS COURT WHERE ONLY
ONE OF THOSE AGGRAVATORS WAS
WEIGHED AGAINST SLIGHT
MITIGATION AND THE DEATH
SENTENCE WAS FOUND TO BE
PROPORTIONATE.

AND IF THERE ARE NO FURTHER
QUESTIONS FROM THE COURT I WOULD
ASK THIS COURT UPHOLD AN AFFIRM
THE SENTENCE OF DEATH BELOW.

THANK YOU.

>> THANK YOU.

REBUTTAL?

>> MAY IT PLEASE THE COURT, I

WOULD LIKE TO ADDRESS ONE
COMMENT MADE BY MY OPPOSING
COUNSEL.

IN THE CONTEXT OF PECUNIARY GAIN
MR. CAMPBELL AT ONE TIME SAID HE
WAS MOTIVATED BY PECUNIARY GAIN
AND THERE WAS, I THINK A
MISSTATEMENT HERE THAT
DESCRIBING WHAT HE DID AFTER THE
MURDER IT WAS IMPLIED THAT IT
WAS COMING OUT OF HIS MOUTH BUT
IT NEVER WAS.

IT WAS SIMPLY TO PUT HIS FATHER
AT PEACE.

I THINK JUSTICE PARIENTE NAILED
IT WHEN SHE IDENTIFIED THAT TO
SUPPORT THAT.

PUT THE BLANKET ON TOP OF HIS
HEAD AND PUT IT THERE THAT IS
EXPLAINS TO EVERYONE.

HE EXPLAINING, UNLIKE MOST
DEFENDANTS, THIS FELLOW WAS
COOPERATIVE WITH POLICE.

DIDN'T HOLD ANYTHING BACK SAID,
THIS IS WHAT I WAS DOING AND I
THINK THAT'S IMPORTANT.

FROM THE GIST I HEARD TODAY, YOU
MAY FIND THERE IS CCP AN
CERTAINLY PRIOR VIOLENT FELONY.

IN TERMS OF MITIGATION NOT A LOT
OF WEIGHT BE GIVEN THOSE BECAUSE

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THEY WERE ALL CONSISTENT WITH

EMOTIONAL MENTAL DISTURB THAN

THAT HE POSSESSES AND THAT YOU

HAVE TO LOOK AT THIS WOULD BE

CASE FOR PROPORTIONALITY REVIEW.

I HAVE NOTHING FURTHER UNLESS

THERE ARE ANY QUESTIONS.

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU.