William Melvin White v. State of Florida

MR. CHIEF JUSTICE: NEXT CASE ON THE COURT AND ORAL ARGUMENT CALENDAR IS WHITE VERSUS STATE. MR. MULLER.

MAY IT PLEASE THE COURT. CHIEF JUSTICE WELLS, JUSTICES. AT THE TIME OF THE STABBING OF GRACE MAE CRAWFORD IN JUNE OF 1978, THE ONLY HUMAN BEING PRESENT IN THE ISOLATED WOOD AREA, BESIDES MY CLIENT WHERE THIS HOMICIDE TOOK PLACE, WAS THE STATE'S CLAIMED EYEWITNESS, A MAN BY THEAMEF RICHARD MARINO. ASCNORE THIS COURT THAT RISES TO DON YOU GET -- TO CONSTITUTIONAL LEVELS,S TOT MELVIN WHITE WAS DENIED HIS RIGHT TO CROSS-EXAMINE AND CONFON, UNDER THE SIXTH AMENDMENTF THE UNITED STATES CONSTITUTION, AND ARTICLE I OF OURCOION, BY THE TRIAL JUDGE, IN THE NOVEMBER7 THROUGHBER9 REHEARING ON THE HITCHK ISSUES, BY PREVENTINGRIL COUNSEL FROM CROSS EXAMINING MR. DIMARINO AND ASKINGM, MR. DIMARINO, HAVEN'T YOU STABBED ANOTHERN BEING? MR. DIMARINO, ISN'T YOURERN IN LIFE, TO KILL PEOPLE, STAB THEM, AND THEN BLAME IT ON OTHER PEOPLE?

NOW, IF I UNDERSTAND THIS FACTUAL SITUATION, THE STABBING WHICH YOU JUST REFERRED TO, E RECORD REFLECTS, OCCURRED IN 1990.

TRECT.

AND THAT THE -- WHAT DOES THE RECORD REFLECT WERE THE CIRCUMSTANCES OF THAT STABBING?

YOUR HONOR, THE RECORD HAS AN ARREST REPORT OUT OF MARYLAND, IN WHICH MR. DIMARINO DENIED, TO MARYLAND LAW ENFORCEMENT, THAT HE STABBED THE DECEDENT. IN FACT, HE DID STABE DECEDENT, AND IT WASTER PLED TO AND --

THE CIRCUMSTANCES, THOUGH, DOESN'T THE RECORD REFLECT THAT CIRCUMSTANCES OF THAT 1990 STABBING WAS WHERE THERE WERE AT LEAST TWO OTHER BIKERS WITH DIMARINO, AND THEN THERE WAS ANOTHER BIKERS' GROUP THAT WERE AT AN INTERSECTION, AND THAT IT WAS IN THE INTERSECTION, WHERE THERE WAS A STABBING OF THE BIKER FROM THIS OTHER GROUP. ISN'T THAT WHAT HAPPENED THERE?

YOUR HONOR --.

ISN'T THAT WHAT HAPPENED?

ALMOST, JUDGE. WHAT HAPPENED WAS MR. DIMARINO WAS IN A PICKUP TRUCK WITH ANOTHER MAN, AND THEY WEREN'T ON THEIR MOTORCYCLES THAT NIGHT. THEY CAME UP TO AN INTERSECTION. THE DECEDENT WAS ON A MOTORCYCLE AND THERE WAS ANOTHER RIDER WITH HIM. MR. DIMARINO AND HIS CODEFENDANT LEFT THEIR TRUCK, GOT IN AN ALTERCATION WITH THE DECEDENT AND THE OTHER MAN, AND THE DECEDENT WAS STABBED, BUT JUSTICE WELLS, I THINK WHAT IS CRITICALLY IMPORTANT IN THIS CASE IS NOT WHETHER THAT MAN BECAUSE-- TNSABD ONE TIME OR 50 TYPES P IF YOU RECALL, WHAT ISN THIS RECORD IS THAT THE PROSECUTOR, AFTER THE STATE, ITSELF, THE COURT HAD GRANTED THE STATE'S MOTIONN LIMINE, ASKED MR. DIMARINO -- NOW, UNDERSTAND, AS A PREDICATE HERE, THISYS A 25-TIME CONVICTED FELON. HE WAS A DRUG DEALER. HE MADLWIH THEE WHERE THEY WERE GOIO TAKE

HIS TATTOOS OFF AND LET HIM DO HIS TIME IN ANOTRSTD NOET ANYADLME ON RRT SENT- >EL DIDHAT MAT GRE THE. >NOTE CIRCUMSTANCFHRYLAND MURR, AND HERE IS WHAT IS IMPORTANT, JUSTICE WELLS. FIRST OF ALL, WE MAY NOT OBTAIN IT WAS ERROR BEFORE THE PROSECUTOR OPENED THE DOOR. IN THIS CASE, THE PROSECUTOR SAID, TO MR. DIMARINO, ON THE STAND, WHEN DIMARINO CLAIMED THAT HE NEVER STABBED GRACIE MAY CRAWFORD IN OUR CASE, HE ASKED MR. DIMARINO HOW DID IT MAKE YOU FEEL OR WHAT DID YOU THINK, THIS IS AT PAGE 971 OF THE RECORD, HE SAID HE WAS SICKENED. NOW, WE HAVE A RIGHT, UNDER DAVIS VERSUS LAST CAME, UNDER NUMEROUS FLORIDA CASES, TO PROBE AND SAY HOW COULD THAT SICK ENYOU,MARINO, WHEN YOU STAB OTHER PEOPLE? HE CAME AWAY, AND THE JURY WAS LEFT WITH THE IMPRESSION Y IET WAS SOME ANIMAL THAT COMMITTED THIS MURDER, AND DIMARINO JENED TO BE THERE ANDAML PARTICIPANT. ISWHEEEWH IS POSTED, BECAUSE INE -- IS POSITED, BIE RESENTENCING, AS YOUN D IN APRINEAE,ADEAHALTY DEFENDANT HAD COMPLAINED THAT THIS COURT ALLOWED THE STAEOUCE EVIDENCE THAT THAT MAN WAS VIOLENT TO OTHER WOMEN, AND THIS CO THAT HE OPENED THE DOOR BY SAYING THAT HE WAS NOT VIOLENT TO OTHER PEOPLE, AND THE COURT CORRECTLY STATED THAT IS THEA DIFFERENT STANDARD IN THE PENALTY PHASES, AS OPPOSED TO AT THE TRIAL LEVEL.

DOE EVALUATE THIS THE SAME AS IF, FOR EXAMPLE, IFITE HAD TESTIFIED THAT HE WAS NOT THE KILLER AND THAT THAT WOULD SICK ENHIM, WOULD THE STATE, WOULD THAT OPN THE DOORTO THE STATE PUTTING ON EVIDENCE OF ANOTHER STABBING, EVEN IF IT WEREN'T, JUST ASSUME IT WASN'T SIMILAR.

YES, IT WOULD. IT SURE WOULD.

ALL RIGHT. THE SECOND QUESTION IS, THE FIRST ISSUE, DO WE EVALUATE THIS AS, THEN, IS IT, IF WE DON'T BUY THE OPENING THE DOOR, BUT JUST ON YOUR FIRST ARGUMENT, THAT IS THIS IS SIMILAR TO LOOKING AT REVERSIBLE -- REVERSE WILLIAMS RULE EVIDENCE? IS THAT WHAT IT HAS TO BE?

IT NOT REVERSE WILLIAMS RULE, JUDGEDE THAT MISNOMER A LOT, BECAUSE IN USING THE WILLI,D EATE HAS TO CORRECTLY ARGUE IT. WE HAVE TO SHOW A FINGERPRINT-TYPE SITUATION. WE NEVER DENIED, IN THIS CASE, THAT MR. WHITE WAS A PARTICIPANT IN THE HOMICIDE, AND THAT IS WHERE THE STATE'S LOGIC FAILS. WE ADMIT THAT WE WERE THERE. MR. WHITE, THE RECORD INDICATES THAT IS HE WAS A PARTICIPANT. WHAT WE HAVEE, IS A SITUN WHERE THE COURT IN THEY, IE RESENTENCING, ABOUT ACCOMPLICE AND MINIMAL INVOLVEMENT, AND THIS COURT HAS HELD, IN NUMEROUS CASES, STARTING WITH DOWNS IN 1988, THAT THE JURY HAS TO BE ABLE TO SEE THE RELATIVE PARTICIPATION BETWEEN THE ACCOMPLICES.

ALL RIGHT. BUT SO WHAT YOU ARE SAYING, WHAT YOU WANTED TO HAVE THE JURY HEAR IS THAT IT WAS LESS LIKELY THAT YOUR CLIENT WAS THE KILLER, AND IT WAS MORE LIKELY THAT DIMARINO WAS THE KILLER.

THAT'S CORRECT.

ALL RIGHT. SO IF THAT WERE, AND LET'S JUST SAY THAT, LET'S ASSUME THAT WAS THE ARGUMENT, AND THE STATE HAD EVIDENCE OF A, ANOTHER TIME, UNDER A DISSIMILAR CIRCUMSTANCE, WHERE THE DEFENDANT HAD STABBED SOMEBODY.

YES.

WOULD THAT HAVE, WITHOUT IT BEING SIMILAR, WOULD YOU THINK THAT IT COULD JUST COME IN, IF THERE WAS ANY OTHER KIND OF VIOLENCE?

IT CAME NNSS, JUDGE. IN THIS CASE, WHAT HAPPENED IS, AFTER MYENT WAS SENTENCED TO

DEATH IN 1982, THE HOMICIDE TOOK PLACE IN '78. HE WAS TAKEN TO DAVIDSON COUNTY, TENNESSEE. HE WAS CHARGED WITH A FIRST-DEGREE MURDER THERE, PLED TO SECOND ON-DEGREE MURDER, RECEIVED A 30-YEAR SEN,A STATE WAS ALLOWED TO INTRODUCE EVIDENCE TO OUR JURY, N RF '99, THAT MYCLITD WITH THE RECORD, QUOTE,NYS PROFFERED BY THESTT ATTORNEY INSNTY, TENNESSEE, THAT HE HD ATEN NG,TH TIEB S.

I THOUGHT THAT -- DIDN'T THAT COME IN FOR THE PRIOR VIOLENT FELONY AGGRAVATOR?

IT CAME IN FOR THER VIOLENT FELONY AGGRAVATOR, BUT IN SPECIFIC ANSWER TO YOUR QUESTION, I BELIEVE IT WOULD BEMISSIBLE AGAINST MY CLIENT, THAT THERE HAD BEEN ANOTHER OFFENSE, AND WHAT MAKES OUR CASE SO CONSTITUTIONALLY INFIRM IS THAT THE COURT ALLOWED A SANITIZED CROSS-EXAMINATIONT N THIS PARTICULAR CASE, DIMARINO HAD DENIED THE STABBING FACEED, IF YOU WILL RECALL. HE STATED THAT MY GUY FORCED HIM TO SLIT HER THROAT, AFTER MY CLIENT HAD STABBED HER. DIMARINO SAID THAT MY'S ACTIONS SICKENED HIM. THEUTION WOULD HAVE BEEN PROTECTED. THE SIXTH AMENDMENT WOULD HAVE BEEN PROTECTED, HAD TRIAL COUNSEL PENAL ALLOWED TO CROSS-EXAMINATION HIM ABOUT -- TO CROSS-EXAMINE HIM ABOUT THE FACT THAT HE STABBED OTHER PEOPLE. HE BLAMEDR PEOPLE. THAT IS EXACTLY WHAT HAPPENED IN OUR CASE. CHIEF CHIEF FICE ING.

LET'S TALK ABOUT IN THE CASE WHAT DID COME OUT. THE FACT THAT HE COMMITTED THIS MURDER IN 1990 WAS PUT BEFORE THE JURY.

THAT'S TRUE.

AND THE FACT THAT HE HAD OVER 25 FELONY CONVICTIONS WAS PUT BEFORE THE JURY?

THAT'S TRUE.

AND THAT HE WAS ON PAROLE AT THE TIME HE PLED GUILTY TO THE 1990 R, AFTER AND IN CONNECTION WITH RECEIVING A DEAL.

WELL, THAT HE WAS ON PAROLE AT THE TIME HE TESTIFIED IN NOVEMBER OF '99 FOR THAT MURDER.

AND BUT IT IS YOUR POSITION THAT IT IS THAT THE TESTIMONY OF DIMARINO WOULD HAVE GONE BEYOND THE IMPEACHMENT AND SHOULD HAVE BEEN CONSIDERED AS SUBSTANTIVE EVIDENF HIS INVT IN THIS MURDER WITH WHITE?

NO, SIR. THE -- AS THE COURT IS WELL AWARE, YOU CAN ASK QUESTIONS THAT MAY NOT BE ADMISSIBLE FOR ONE REASON AND ALLOWED FOR ANOTHER. WE SHOULD HAVE BEEN ABLE TO CROSS-EXAMINE HIM, NOT ON THE SUBSTANCE, NECESSARILY, BUT UNDER THE FACT THAT HIS PATTERN IS, FIRST OF ALL, THAT HE STABS, BECAUSE HE DENIED STABBING, AND THE FACT THAT HE BLAMESPEOPE WITH HIM, WHICH IS EYT HAPPENED HERE, AND IN MARYLAND. AND SO THE SIMPLE REMEDY WOULD HAVE R THE COURT TO HAVE ALLOWED US TO ASK HIM, ISN'T IT TRUE THAT YOU STABBED ANOTHERHIGOD, TU IHES,D THU H P? >D TE--ASO TEY,W HATR -- C. KN. WASEDTOOG FAT OD A COND,I LEOBRITER . OTHGBOT THE. ADYSN EDER,DT ABETOLKEFATETAYEARENEN. ALRETNEDAETS15,TTHEE DL CUT HE SEIMOF SHATEULDTURENEDI CSNGA NTE,DOOSIME RATEOE EYD TARF ROON,CAE INIT LKEYDIDNG HES BY T,DATSHE UTIT. LY, TET RU WSNOR TFMYTINGE T,ODT. 0O,S T, IN OLE E,D,PTE6 A ER0 GO, HDOUT THTGGRRONRE TIOF UKT DNHISSE.HERS, TT,AS NTI,ABOTEAGGFMIF S. N TISOT,USIKE QSE,AT DOS M, IURETH STSOEHARS TNISLS TTHETMID CADATAREET DE HEAATIHEE TSDS EHLTUY D NYMITS. Y CTSITAULIP,EA.HEW SHERDRS . WIS FAE TRIGGER, BLOW HIS JAW OFF, SURVIVE, AND MY CLIENT WAS FORCED TO DRINK ALCOHOL, STARTING AT THE AGE OF 8, WITH HIS LITTLE SISTERS. MY CLIENT HAS BRAIN DAMAGE. THE EXPERT, UNREBUTTED BY THE STATE, SHOWED THAT MY CLIENT WAS A PERSON WHO WAS TOTALLY IN A POSITION OF BEING DOMINATED BY OTHER

PEOPLE. HE BELIEVED THAT, AT THE TIME THAT THIS OCCURRED, MY CLIENT WAS UNDER THE DOMINATION, AND I KNOW THIS COURT HAS HELD THE CONCEPT OF EXTERNAL DOMINATION, WHAT GREAT ERECTION TERNL DOMINATION COULD THERE BE, WHEN YOU HAVE THE REGIONAL ENFORCER OF THE OUTLAWS AND THE LOCAL CHAPTER ENFORCER, TELLING MY CLIENT THAT THEY HAD TO, QUOTE, TRAIN, AND THAT IS AN EUPHEMISM IN THE OUTLAW CULTURE OF KILLING GRACE MAE CRAWFORD, BECAUSE SHE HAD THE AUDACITY TO APPEAR TO BE RESPONDING TO A BLACK ENTERTAINER'S SINGING AT THE NIGHTCLUB THEY WERE AT. MR. CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME, MR. MULLER.

THANK YOU, JUDGE.

MR. AKE.

MAY IT PLEASE THE COURT. MY NAME IS STEVEN AKE, AND I REPRESENT THE STATE OF FLORIDA IN THIS APPEAL. AS TO THE FIRST ISSUE, I WOULD SUBMIT THAT THE TRIAL COURT PROPERLY GRANTED THE STATE'S MOTION TO PROHIBIT THE COUNSEL'S QUESTIONING OF MR. DIMARINO REGARDING THE UNDERLYING DETAILS OF THIS 1990 MURDER. THE TRIAL COURT WENT OUT OF ITS WAY, TO ALLOW DEFENSE COUNSEL TO ASK ALLELT S WITH REGARD TO IMPEACHING HIS CHARACTER REGARDING A NUMBER OF SURROUNDING AREAS ON THAT MURDER. NAMELY, DID YOU ENTER INTO MILE KIND OF DEAL TO TURN EVIDENCE AGAINST A DA IN 1990? WERE YOU ON PAROLE FOR THAT? WHAT WAS THE NATURE OF THE CRIME? A MURDER. THEY WERE ABLE TO INTRODUCE THAT.

LET ME ASK YOU, THEN, NORMALLY WHEN YOU IMPEACH A WITNESS OR A DEFENDANT, YOU GET TO IMPEACHH, EU C FEYDW IM. COR.

SO FOREASON, THE JUE REDR TELL ME WHY,N CAS, DID THE JUDGEN W THEY TONWTHE D THIS0ATIT S A MHAWASS FELONY. WHY DOES THE JUDGE ALLOW THE DEFENSE ATTORNEY TO GO BEYOND WHAT WOULDLY BE ALLOWED?

THE JUDGE WAS ACTING OUT OF AN ABUNDANCE OF CAUTION, I BELIEVE, AND RECOGNIZED THAT THE EVIDENTIARY RULES ARE SOMEWHAT RELTION -- RELAXED IN A PENALTY-PHASE CASE, AND I BELIEVE THAT SHE WAS ERRING ON THE SIDE OF CAUTION, IN ALLOWING THIS EXTRANEOUS INFORMATION TO COME BEFORE THE JURY, IN REGARD TO HIS CREDIBILITY.

SO THE FACT THAT THE JURY HEARD THAT HE WAS A MURDERER, WHY, THEN, WOULDN'T IT BE RELEVANT TO KNOW THAT THIS MURDERER WAS ONE -- THIS MURDER WAS ONE OF STABBING, WHERE HE ATTEMPTED TO BLAME OTHER PEOPLE, AS GOING TO THE QUESTION OF HIS CREDIBILITY OF SAYING THAT IT WAS ALL MR. WHITE'S RESPONSIBILITY, AND HE KIND OF WAS UNDER, I GUESS, THE DOMINATION OF MR. WHITE, IN THE FACT THAT HE WAS SICKENED BY WHAT HE SAW.

WHAT WAS RELEVANT WAS, IN 1990, DID DIMARINO ENTER INTO A DEAL AND TRY TO BLAME SOMETHING ON HIS CODEFENDANT. THAT WAS, THE COURT ALLOWED HIM TO QUESTION THAT THE ONLY REASONABLE LIMITATION THE COURT PLACED WAS YOU JUST CAN'T GET INTO THE STABBING. THAT IS THE ONLY THING, AND THERE IS NO CASE LAW IN FLORIDA THAT SAYS THAT YOU ARE ALLOWED TO GET INTO THESE UNDERLYING FACTS, EXCEPT WITH, LIKE, REVERSE WILLIAMS RULE, AND THIS DOESN'T FIT UNDER THAT, BUT YOU ARE NOT ALLOWED TO GET INTO THE UNDERLYING FACTS OF A CRIME. YOU CAN DISCUSS THAT THEY MAY HAVE SOMETHING HANGING OVER THEIR HEAD, LIKE IN THIS CASE PAROLE. HE WAS ON PAROLE, AND IF HE DIDN'T TESTIFY, THERE WAS A CHANCE THAT HIS PAROLE COULD BE REVOKED IN MARYLAND, BUT THAT OELEEO DETERMINING THAT WITNESS'S CREDIBILITY, BUT YOU DO NOT NEED TO FURTHER ASSASSINATE HIS CHARACTER BY GOING INTO THE DETAILS OF THE UNDERLYING CRIME.

IN TESTING CREDIBILITY, WOULD THIS QUESTION HAVE BEEN PROPER, IN THE OPINION OF THE

STATE? YOU TESTIFIED THAT YOU WERE SICKENED BY THE STABBING HERE. WERE YOU SICKENED BY THE STABBING, THE SUBSEQUENT STABBING --

IN --

-- IN 1990 SOMETHING? WOULD THAT HAVE BEEN A PROPER QUESTION?

NO, YOUR HONOR, IT WOULD NOT. BASICALLY WHAT YOU HAVE IS A VERY GORE I, PREMEDITATE -- GOREY, PREMEDITATED MURDER IN 1978, WHERE THE APPELLANT STABBED THE VICTIM 14 TIMES AND SLIT HER THROAT. NOTHING, BY DIMARINO SAYING HE WAS SICKENED BY THAT, THE FACT THAT HE COMMITTED A MURDER IN 1990, IN NO WAY IMPEACHS THAT TESTIMONY. WHAT HE DID IN '78 DID NOT PREPARE HIM FOR WHAT HAPPENED IN 1990.

WOULDN'T THAT HAVE BEEN RELEVANT, RELATIVE TO HIS CREDIBILITY, THE WITNESS'S CREDIBILITY?

NO, YOUR HONOR. I DON'T BELIEVE IT IS, THAT YOU GET INTO THE FACT THAT HE DID A STABBING DEATH, JUST BY IF YOU ARE SAYING DID THE STATE OPEN THE DOOR, I DON'T BELIEVE THAT THE FACT THAT HE SAID HE WAS SICKENED BY SEEING A YOUNG WOMAN STABBED 14 TIMES, EQUATES TO SAYING THAT HE WASN'T SICKENED IN 1990, WHEN A BIKER, A RIVAL BIKER WAS STABBED. WE HAVE NO WAY OF KNOWING --

WHAT IF THE FACTS WERE A LITTLE DIFFERENT, AND SIX MONTHS BEFORE THIS KILLING, IF THERE WAS EVIDENCE THAT THIS WITNESS HAD KILLED SOMEBODY IN A SIMILAR WAY, AND THEN WOULD THAT -- IN OTHER WORDS INSTEAD OF IT BEING 1990, MANY YEARS AFTER THIS EVENT, THAT IT HAD BEEN PRIOR TO THIS EVENT AND THERE WAS EVIDENCE THAT HE HAD BEENE ETO INFLICT SIMILAR WOUNDS AND KILL SOMEBODY IN A SIMILAR MANNER, YET HE TESTIFIED HERE THAT HE WAS SICKENED BY THE CIRCUMSTANCES. WOULD THAT PRIOR OFFENSE --

I THINK HE WOULD HAVE A STRONGER ARGUMENT ON THE REVERSE WILLIAMS RULE, BASED ON THE NUMBER OF YEARS, AND WHEN I DID THE NALEDZ ANALYSIS IN THE BRIEF OUGHT -- THE ANALYSIS IN THE BRIEF, ON THE REVERSE WILLIAMS RULE, AND YOU HAVE THE 12-YEAR GAP AND IF THERE WAS A SIMILAR STABBING SIX MONTHS AGO, HE WOULD BE BRINGING THAT IN, BUT HE WOULD REALLY BE BRINGING THAT IN, REALLY, TO SHOW THE DOUBT THAT DIMARINO IS THE ONE THAT DID THE KILLING, NOT THE APPELLANT, AND LINGERING DOUBT IS NOT THE PROPER THING TO BE RAISED IN THIS INSTANCE. I THINK THAT WOULD BE APPROPRIATE IN THE PENALTY PHASE OR THE GUILT PHASE, BUT HE WOULD HAVE A STRONGER WILLIAMS RULE EVIDENCE IN THAT SITUATION, BUT THAT ISN'T HERE. IF YOU LOOK AT THE SIMILARITIES BETWEEN THE TWO CRIMES, THE '78 STABBING AND THE '90 STABBING, YOU WILL SEE THAT THEY ARE TOTALLY DIFFERENT, AND THEY DID NOT MEET THAT WILLIAMS RULE STANDARD THAT THIS COURT SET FORTH IN SALVE I KNOW-. IN 1978 -- IN SAVINO. IN 1978, YOU HAVE A YOUNG WOMAN THAT IS BASICALLY BATTERED AND BEATEN AT THIS CLUBHOUSE AND THEN IS KIDNAPPED AND TAKEN TO A REMOTE AREA AND STABBED 14 TIMES BY APPELLANT AND HER THROAT IS SLASHED. IN 1990, YOU HAVE DIMARINO AND SOME CODEFENDANT GET INTO A BAR, WHERE THEY GET INTO AN ALTERCATION WITH RIVAL BIKERS AND THEY, THEN, SEE THOSE RIVAL BIKERS AT AN INTERSECTION, AND IN THE HEAT OF THE MOMENT THEY GET OVER THERE AND GET INTO AN ALTERCATION WITH THEM, AND ONE OF THE VICTIMS ENDS UP DEAD AS A RESULT AFTER SINGLE STAB WOUND, AND THAT IS JUST NOT SUFFICIENT TO MEET THAT REVERSE WILLIAMS RULE REQUIREMENT FOR SIMILARITY, SO I DON'T BELIEVE THAT THAT COMES IN UNDER REVERSE WILLIAMS RULE, EITHER. IT CERTAINLY DOESN'T COME IN UNDER THE "OPENING THE DOOR" THEORY, EITHER. APPELLANT, ALSO, ARGUES THAT THE AGGRAVATOR OF HINDER OR DISRUPT THE ENFORCEMENT OF LAWS WAS NOT ESTABLISHED IN THIS CASE, AND THAT THE TRIAL COURT ERRED IN CONSIDERING THAT, AND I WOULD POINT OUT TO THIS COURT THAT, THIS COURT AFFIRMED THAT AGGRAVATOR IN 1982, BASED ON THE EXACT SAME EVIDENCE, BASICALLY. IT IS

SUBSTANTIALLY THE SAME EVIDENCE AS TO THAT AGGRAVATOR.

THAT IS THE SAME AS THE "AVOID ARREST" AGGRAVATOR?

THERE SEEMS TO BE A GREAT OVERLAP BETWEEN THE TWO, YOUR HONOR, AND THE CASE, WHILE IT SEEMS TO KIND OF TREAT THEM EQUALLY AND, BUT, IN THIS CASE, THE TRIAL COURT REJECTED THE "AVOID ARREST" AGGRAVATOR AND FOUND THIS ONE ORIGINALLY, BACK IN '78 THAT HAPPENED, AND THIS RTEDIT, AND THE DIRECT APPEAL SAID WE AGREE WITH THAT ANALYSIS.

WE TAKE, WE KNOW THAT IN, AVOID ARREST, THERE HAS GOT TO BE THE SOLE PURPOSE OF THE MURDER.

EXACTLY, AND I THINK WHAT THIS COURT HAS FOUND IS THAT YOU ARE HINDERING THE ENFORCEMENT OF THE LAWS, BECAUSE WE KNOW THIS VICTIM COULD IDENTIFY THE PEOPLE THAT DID IT TO HER. SHE WAS FRIENDS WITH SOME OF THE OUTLAWS GIRLFRIENDS. SHE KNEW WHO THESE PEOPLE WERE. SHE COULD IDENTIFY THEM. SHE COULD BECOME A WITNESS IN THE PROSECUTION OF THIS BATTERY THAT TOOK PLACE AT THE CLUBHOUSE CLUBHOUSE.

THAT IS A SIMILAR SITUATION?

IT IS VERY SIMILAR, YOUR HONOR. I CAN'T GIVE YOU THE CONCRETE EVIDENCE OF THE DIFFEREE BETWEEN THON THEASES. I THERE S DAVERENCE BETWEEN THE RAW, IN THAT -- IN THE LAW, IN THAT THE PERSON HAS BECOME A WITNESS AND THEN IS KILLED, IN ORDER TO PREVENT HER FROM TESTIFYING, AND THEY SAY THEY CAN ID THE KILLERS AND THAT IS WHY THEY . THERE IS A GREAT OVERLAP BETWEEN THE TWO, AND I CAN'T GIVE YOU ACTION PLANATION AS TO HOW THEY ARE DIFFERENT.

SHOULD WE BELEOO THIS AS TO KNOW WHETHERS ONE MEETS THAT OR DOESN'T?

, YOUR HONOR. I THINK THE TRIAL COURT'S RULING IS SUPPORTED, UNDER THIS DEFINITION OF WHAT THE AGGRAVATOR IS, THE BEHIND ARING AND DISRUPTION AND ENFORCEMENT OF LAWS. THAT IS SUPPORTIVE EVIDENCE IN THIS CASE AND HAS BEENED AND IS STILL SUPPORTED BY THE EVIDENCE. YOU HAVE THE OUTLAW MEMBERS GOING TO THE SI O E,H APPELLANT IS DRIVING, TELLING HIM TO TAKE CARE OF BUSINESS. I DON'T WANT ANY WIT MESSES. AND THEN HE SUBSEQUENTLY FOLLOWS THAT DIRECTIVE AND DRIVES HER OUT TO A REMOTE AREA AND KILLS HER AND STABS HER, AND THEN THE COUPE DE GRAW IS THAT HE SLITS HER THROAT, AND THE E ON IS THAT AFTER BEING STABBED 14 TIMES, HE SLITS HER THROAT. SHE IS NOT GOING TO REPORT IT TO THE POLICE. THEY HAVE HINDERERRED THE ENFORCEMENT OF LAWS.

IS THERE ANY PARTICULAR AGGRAVATOR THAT YOU WOULD NEED WITH THAT, IN ORDER TO SHOW?

DEFINITELY. I BELIEVE YOU HAVE TO HAVE A SITUATION WHERE THE VICTIM CAN EASILY IDENTIFY THE MURDERS IN THIS CASE RESPECT AND WOULD, AND SHE, UNLIKE -- THERE WERE A NUMBER OF WITNESSES TO THE BATTERY AT THE CLUBHOUSE. WE HAVE A NUMBER OF BIKER OUTLAW MEMBERS AND THEIR GIRLFRIENDS THERE, BUT THEY ARE ALL OUTLAW MEMBERS. SHE WAS AN OUTSIDER. SHE HAD BEEN PICKED UP FROM A BAR. SHE KNEW THESE PEOPLE, AND SHE WOULD, PRESUMABLY, GO AND TELL LAW ENFORCEMENT OFFICERS ABOUT THIS BATTERY. THE TRIAL COURT ANALYZED THAT AND FOUND THIS AGGRARD HAT EVIDENCE.NDI HAVE SAID BEFORE, IN'8,SCOURT AFFIRMED IT, BASED ON THAT SAME EXACTEV. EVEN IF TEOURTDRN G THATVATOR,E LE THREESUBSTANTIAL AGGRAVATORS NS CASE. WE HAVE THE PRIOR CONVICTION FOR A VIOLENT FELONY, WHICH WAS THE MURDER THAT HAPPENED SHS BEFORE THIS MURDER, IN TENNE. EE MR COMMID GPIG, AND WE HAVE HAC, SO EVEN IF THE COURT DIDER IN FINDINGTHIS- DID ERRR IN FINDING THIS HINDERED OR DISRUPTED, WET THAT ERROR IS

HARMLESS. THE APPELLANT MADE THEIEFRGUMENT AS TO THE MITIGATING FACTOR THAT HE WAS UNDER THE SUBSTANTIAL DOMINATION OF THE ENFOR THE OUTLAWS, AND THE STATE WOULD SUBMIT THAT THE COURT PROPERLY REJECTED THAT MITIGATOR, BASED ON THE EVIDENCE IN THIS CASE, IN THAT HERE YOU HAVE A PERSON THAT JOINED INTO THE OUTLAW GROUP AND IS PARTAKING IN THE OUTLAW ACTIVITIES, AND THENEN THE REGIONAL ENFORCER GUY, SMITH, TELLS HIM TO GO TAKE CARE OF BUSINESS AND TO LEAVE NO WITNESSES, HE D HE DRIVES OUT AND HE MSR, BUT HE WASTHEEANT IN THIS CRIME. HE WASN'T -- THERE WAS NO EXTERNAL PRESSURE. NOBODY HAD A GUN TO HIS HEAD, TELLING HIM WHAT TO DO. HE WAS THE ONE ARMED WITH A KNIFE IN IN CASE. HE WAS THE ONE THAT -- IN THIS CASE. HE WAS THE ONE THAT GOT UPD DROVE HER OUT THERE AND JOINED IN THE BEATING, ANDTHEN HE JOINED BY DRIVING HER OUT TO THE EXCLUDED LOCATIONANE IS THE ONE THAT DID ALL OF THE STAB WOUNDS, SO BASED ON THAT, YOU CAN'T FIND SUBSTANTIAL DOMINATION OF THESE OTHER TWO CODEFENDANTS. IF THERE ARE NO FURTHER QUESTIONS, THE STATE WOULD ASK THO AFFIRM. MR. CHIEF JUSTICE: THANK YOU, MR. AKE. MR. MULLER, REBUTTAL? > THANK, JUDGE. I THINK THAT JUSTICE PARIENTE, YOUR QUESTION ABOUT WHAT THE TRIAL JUDGE EVEN LET THE FACT THAT DIMARINO WAS ON PAROLE FOR MURDER KIND OF COMES TO THE HEART OF THE QUAGMIRE THAT RESULTED WITH SOME RULINGS HERE. IF YOU LOOK AT THE TOTALITY OF WHAT THE COURT DID, THE COURT, WHILE ALLOWING THAT IN, BASICALLY EVISCERATEED ANY ABILITY TO EFFECTIVELY PROBE THROUGH THE ENGINE OF CROSS-EXAMINATION, THE CREDIBILITY OF MR. DIMARINO. I DIFFER WITH THE . I THINK, HAD THE COURT ALLOWED TRIAL COUNSEL TO ASK IT, AN APPROPRIATE QUESTION WOULD HAVE BEEN DID IT SICK ENYOUN YOU STABBED JIM VALENTIO-DID IT SICK EN-- DID IT SICKENEN U STADME, AND DID IT SICK ENYOUNU BEEEFO. WAVE TO DES DID RICHARD MARINO DO THE STABBING OF GRACIE MAE CRAWFORD OR DID WILLIAM MELVIN WHITE? AND IN THIS PARTICULAR CASE MR. DIMARINO SAID THAT HE DID NOT STAB GRACIE MAE WHITE. THE JURY -- GRACIE MAE CRAWFORD. THE JURY LEARNED THAT HE GOT A LIFE SENTENCE. RY OVERRIDE, THERY RECOMMENDED LIFE FOR GUY SMITH AND THE TRIAL JUDGE SENTENCED HIM TO DEATH IN THIS COURT AND REVERSED AND GAVE HIM A LIFE SENTENCE. HE WAS THE REGIONAL ENFORCER, THE GUY THAT STUCK HIS HEAD IN THE WINDOW OF THE CAR AND SAID "NO WITNESSES.TAKEF BUSINESS." THE TRIAL JURY FOUND DIMARINO GUILTY OF THIRD-DEGREE MURDER. AND HE SERVED EIGHT YEARS OUT OF A 15-YEAR SENTENCE. NOW, THE TWELVE PEOPLE --.

DID THE JURY HEAR THAT?

YES. THE TWELVE PEOPLE THAT HEARD THAT, IN NOVEMBER OF '99, HEARD THAT MR. DIMARINO WAS SICKENED, THAT MR. DIMARINO DID NOT STAB GRACE MAE CRAWFORD, AND THAT DIMARINO WAS A CON VAFER THE TRUTH -- A CONVEYER OF THE TRUTH BY TELLING TATS ANIMAL,ILM , WAS THE KILLED I RESPECTFULLY , AND THE REASON FOR THIS UTDA THE REASON THIS COURT, IN DOWNS AND OTHER CASES, HAS HELD THAT IT IS EXTREMELY IMPORTANT TO HAVE EVIDENCE, EVEN IF IT IS INEXTRICABLY BOUND WITH GUILT VERSUS INNOCENT PHASE TESTIMONY, THE DEFENDANT, IN A PENALTY PHASE, HAS A RIGHT TO PRESENT ALL RT EVIDENCE AS TO HIS ROLE VERSUS THE ROLE OFCCOMPLICES. HAD WE BEEN ABLE TO ESTABLISH THAT, INSTEAD OF THE SANITIZEED VERSION, THE JURY VERY WELL COULD HAVE RECOMMENDED LIFE, PARTICULARLY IN LIGHT OF THE HUGE RECORD OF STATUTORY AND NONSTATUTORY MITIGATORS. THAT ROSE TO THE LEVEL, FOR EXAMPLE, THIS COURT REVERSED THE DEATH SENTENCE --

LET'S GO BACK. SO YOU WANTEDN IT REALLY IS, AND ALTHOUGH I HATE TO USETHM, IF YOU DIDN'T WANT TO USE IT, BUT REVERSE WILLIAMS RULE THAT YOU WERE TRYING TO GET IN, THAT IT WAS MORE LIKELY THAT MR. DIMARINO WAS THE KILLER, BECAUSE OF WHAT HE DID IN 1990. ELL, THAT HIS ROLE WAS --

AS TO IMPEACHMENT OF HIM THAT HE WAS JUSTD GUY THAT GOES AROUND DOING IT.

WE WEREN'T TRYING TO ASSASSINATE HIS CHARACTER, JUSTICE, BUT WHAT WE ARE SAYING IS, AND MAYBE WE ARE QUIBBLING OVER A DISTINCTION WITHOUT A DIFFERENCE, WHEN WE TALK ABOUT WILLIAMS RULE, WHAT I AM SAYING IS THAT THIS COURT, AS RECENTLY AS APRIL, STATED THAT, IN THESE PENALTPRO YOUVEA R RIGHT TO PRESENT THIS EVIDENCE AND CALL IT REVERSE WILLIAMS RULE. I JUST DON'T WANT TO GET IN THE TRAP OF TALKINGT FINGERPRINT EVIDENCE ANDT OU E TO SHOW AT TRIAL. WE WERE ENTITLED TO SHOW MY CLIENT'S RELATIVE ROLES DIMARINO, AND WHEN DIMARINO SAID HE DIDN'T DO IT, WHEN DIMARINO D YY ORDEREDM OSLIT AE CRAWFORT, Y DAO KNOW WHETHER HE WAS SICKENED BY THE STABT HE COMMITTED IN MARYLAND. THE JURY HAD A RIGHT TO KNOW DID YOU BLAMEER IN MARYLAND ON SOMEBODY ELSE, JUST LIKE YOU ARE DOINGHERE. THEN THE JURY COULD HAVE HAD ALL 52 CARDS IN THE DECK, MADE A DECISION ABOUT WHETHER MY CLIENT SHOULD LIVER DIE. AND THAT IS THE CONSTITUTIONAL VIOLATION HERE,E UNDER THE SIXTH AMENDMENT, ON CONFRONTATION, WE HAVE AT TO PESREDIBILITY, WHICH WE WERE DISALLOWED BY THE TRIAL . AND SO, ONE THING CRITICAL, TOO, THE JURY, ALSO, HEARD THE GORE I DETAILS OF THE TENNESSEE MURDERS.Y HEARD -- THEY HEARD ABOUT THE STABBINGS OF THE DECEDENT UP IN TENNESSEE. NOW, ALL THAT COMES IN AGAINST WHITE, BUT ONLY THE FACT THAT HE WAS ON PAROLE AND THE TYPICAL LITANY OF QUESTIONS ABOUT HOW MUCH TIME WOULD YOU GET, IF THE PROSECUTION GOT MAD AT YOU,T F STUFF, WAS ALLOWED IN, BUT IT BECAME EXTREMELY IMPORTANT BECAUSE OF THE NATURE OF THE HOMICIDE HERE, BECAUSE OF E MULTIPLE STABBINGS, BECAUSE OF THE FACT THATSAD HOMICIDE. AND WHEN YOU AT THE RECORD,HIST HS UPHELD ONLY THE T MITIGD CASESD THE MOST AGGRAVATED, AND IT IS A CON JUNKTIVE TEST, AND THAT IS WHY WE BELIEVE IT IS CR. THAN.MR. CHIEF JUSTICE: THANK YOU, MR. MULLER, AND MR. MULLER, I KNOW YOU STARTED OUT, IN THIS ENTATION, AS PART OF THE VOLUNTEER LAWYERS GROUP, AND THE COURT IS VERY APPRECIATIVE OF THE SERVICE THAT YOUE PROVIDED,BY REPRESENTINGA CAPITAL DEFENDANT.

THANK YOU, YOUR HONOR. MR. CHIEF JUSTICE: THANK YOU VERY MUCH.