Jeremiah Martel Rodgers v. State of Florida

MARSHAL: PLEASE RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT.

CHIEF JUSTICE: GOOD MORNING. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING EVERYONE, AND WELCOME TO THE FLORIDA SUPREME COURT. WE APPRECIATE COUNSEL BEING READY ON THE FIRST CASE. JUSTICE BELL IS RECUSED ON THAT FIRST CASE. SO WITHOUT ANY FURTHER ADO, WE WILL GO TO RODGERS VERSUS STATE, IF COUNSEL IS READY TO PROCEED.

THANK YOU, YOUR HONOR. MARK OLIVE ON BEHALF THE APPELLANT. IN NOVEMBER OF 1997, 20-YEAR-OLD MR. RODGERS WAS RELEASED FROM PRISON, HAVING SPENT FOUR YEARS, MOST OF IT AT CHATAHOOCHEE. IN MAY OF 1998, TWO PEOPLE HAD BEEN KILLED AND ONE PERSON SERIOUSLY INJURED.

LET ME ASK YOU, ONE, WHICH OF THESE POINTS ARE YOU GOING TO PRESENT TO US, ARGUMENT-WEISS, TODAY?

I WAS SORT OF SETTING THE TABLE AND HEAD TO GET FIRST ARGUMENT. I WILL GO BY THE WAY --

WHICH PIECES OF EVIDENCE ARE YOU CLAIMING AND ON WHAT BASIS? FROM YOUR BRIEF, IT IS A LITTLE BIT HARD FOR ME TO FORMULATE EXACTLY WHAT THE EVIDENCIARY BASICS --

LET ME LIST IT FOR YOU, YOUR HONOR. I THOUGHT IT WAS CLEAR. FIRST, IN THE PROFFER OF THE LOWER COURT VOLUME 9, PAGES 1680 AND VOLUME 10, PAGE 1683 --

I UNDERSTAND THAT ALL OF THE ITEMS ARE LISTED, BUT WHICH ONES IN THERE ARE THE ONES THAT REALLY ARE RELEVANT FOR AN ISSUE IN THE PENALTY PHASE?

I WILL START WITH THE WEAPONS THAT WERE TAKEN FROM THE PROPERTY OF THE CODEFENDANT. THERE WERE FIVE DIFFERENT SORTS OF WEAPONS. FIRST, ALL SORTS OF AMMUNITION, LIVE, AMMUNITION FOR ALL SORTS OF WEAPONS. SECOND, ALL SORTS OF KNIVES, LONG, THROWING KNIVES. THIRD, HANDCUFFS. FOURTH, A PIPE BOMB. FIFTH, A SLAP JACK, AND NOW WE ARE GETTING INTO THE MORE EXOTIC KILLING WEAPONS, A SLAP JACK, SOME MARTIAL ARTS DEVICES CURVED IN A SICKLE FASHION, ACCORDING TO THE POLICE TESTIMONY, AN ACTUAL SICKLE, A GLOVE FOR THE HAND --

WHAT IS THE RELEVANCE OF THOSE WEAPONS, AS TO THE CASE INVOLVING THE PENALTY FOR RODGERS?

WHEN YOU TAKE THIS KILLING ARSENAL, AND YOU ADD IT TO WHAT WAS IN EXHIBIT NO. 12 AT THE LAWRENCE TRIAL, WHICH WAS HIS PARAPHERNALIA ABOUT KILLING, PAGE AFTER PAGE, PARAPHERNALIA, WHICH THIS COURT HAS, IT HAS BEEN TRANSFERRED TO THIS COURT, A

FASCINATION WITH MURDERERS, DAHMER, A FASCINATION WITH TED BUNDY, A FASCINATION WITH TED KASINSKI. A FASCINATION WITH CLOSE COMBAT KILLING OF PEOPLE, FASCINATION WITH ASSAULT-LIKE RIFE -- RIFLES, FASCINATION WITH SNIPERS, AS AS INSIDE, BEING WITH SNIPER-LIKE PEOPLE. THERE WAS A NOTE LEFT ON THIS PROPERTY, WHICH WAS USED TO SENTENCE THE DEFENDANT IN THIS CASE, TO DEATH, AND THIS NOTE ON THAT PROPERTY WAS IN THE MIDST OF ALL OF THIS OTHER EVIDENCE ON THIS KILLING MAN'S PROPERTY. THIS MAN, THE CODEFENDANT, WAS OBSESSED WITH WEIRD WEAPONS. HE WAS OBSESSED WITH WEIRD BOOKS, AND BOTH OF THOSE THINGS WERE USED --

BUT IS YOUR ISSUE THERE, RELATIVE CULPABILITY OR --

IT IS, GO AHEAD. THAT IS WHAT I AM SEARCHING FOR.

THAT IS ONE ISSUE. BUT, ALSO, DEFENSE COUNSEL PROFFERED IT TO PROVE THE TRUTH OF JEREMIAH RODGERS' FIRST FOUR STATEMENTS, PARTICULARLY THE MAY 10 STATEMENT TO THE OFFICER IN -- OFFICER LUCY IN LAKE COUNTY, WHICH SAID THAT HE WAS OBSESSED ABOUT KILLING. HE TALKED ABOUT KILLING ALL OF THE TIME. AND ALSO HE SAID HE DIDN'T DO IT. I DID IT. HE WAS STAND. HE WAS A SICK MAN. THREE DAYS LATER BECAUSE OF REMORSE AND HE HAD TO BE LIFE FLIGHTED OUT OF THE JAIL BEFORE THE TRIAL, BECAUSE OF SUICIDEATION, AND HE CHANGED HIS STORY TO, NO, I AM THE ONE, AND THE ENTIRE BATTLE AT TRIAL WAS OVER WHICH STORY IS THE TRUE STORY. THAT THE OTHER --

HOW DOES THIS ALL RELATE TO THE FACT THAT NOT ONLY WAS EVOLVED IN THIS MURDER WITH MR. LAWRENCE, BUT HE, WASN'T HE ALSO INVOLVED IN ANOTHER MURDER AND ANOTHER ATTEMPTED MURDER, WITH THE SAME DEFENDANT, ALSO?

YES.

I MEAN, I AM TRYING TO FIGURE OUT HOW THIS INFORMATION WOULD NEGATE THE FACTOR HOW DOES IT PLAY INTO THE FACT THAT, WHILE LAWRENCE MAY HAVE HAD SOME KIND OF FASCINATION WITH WEAPONS AND KILLING, THIS DEFENDANT, WHILE HE MAY NOT HAVE HAD THAT KIND OF PARAPHERNALIA IN HIS HOUSE, CERTAINLY PARTICIPATED AND SEEMS TO BE FASCINATED WITH KILLING, ALSO.

IN THE FIRST FOUR STATEMENTS, JEREMIAH, ALSO, SAID I DIDN'T DO THOSE TWO KILLINGS OR THE ATTEMPTED MURDER AND THE MURDER OF JUSTIN LIVINGSTON, AND THAT HE WAS SICKENED, HE WAS SURPRISED BY THE FIRST AND SICKENED BY THE SECOND. HE DID SAY HE THOUGHT SOMETHING WAS GOING TO HAPPEN TO JUSTIN, AND HE BLAMED HIMSELF FOR NOT TAKING ACTION TO STOP IT.

SO HAVING BEEN INVOLVED IN THESE, HE STILL CONTINUES TO ASSOCIATE WITH MR. LAWRENCE.

HE HAD NO REASON TO BELIEVE THAT, WHEN HE WENT TO A YOUNG WOMAN'S MOTHER'S HOUSE AND MET HER, AND THEN WENT OUT, HE WASN'T PLANNING, IF HE WAS, IT WAS PRETTY STUPID PLANNING OR SICK PLANNING AND MAYBE THAT IS THE ARGUMENT, BUT HE WASN'T PLANNING FOR THIS PERSON TO BE INJURED, AND IN FACT, HE SAID IN HIS MAY 10 STATEMENT TO THE POLICE, NO, HE SAID, THE CODEFENDANT SAID TO ME CAN'T WE DO SOMETHING TO HER, AND I TOLD HIM NO, NO WAY.

WHEN DID THE LIST INVOLVEMENT BECOME INVOLVED IN THIS SCENARIO WITH THIS YOUNG WOMAN, AND THAT WAS PART OF THE FIRST LAWRENCE, I AM AWARE OF THAT AS WELL, BUT THIS, THERE IS ALSO EVIDENCE HERE THAT IT WAS SHOWN, DEMONSTRATED, WAS IT NOT?

THE EVIDENCE IN THIS CASE, THE STATE MOVED TO INTRODUCE FOUR PAGES OF HANDWRITTEN NOTES BY MR. LAWRENCE, THE CODEFENDANT, WHICH I CONCEDE HAD INFORMATION ON IT THAT

WAS CONSISTENT, SOME OF IT, WITH WHAT -- THAT WASER ILLLY CONSISTENT -- THAT WAS EERILY CONSISTENT, SOME OF IT, WITH WHAT HAPPENED IN THIS MURDER. AFTER ALL OF THE CONFESSIONS HAD BEEN TAKEN ON MAY 18, THE OFFICER REDIRECTED HIM WITH VERY SPECIFIC QUESTIONS, DID HE KNOW ABOUT THE NOTE, AND HE SAID, YEAH, I KNEW ABOUT THE NOTE OR I WAS AWARE OF THE NOTE. HE ALSO SAID, BUT THAT IS JUST SOMETHING THAT THE CODEFENDANT D WE DON'T KNOW WHEN THE NOTE WAS WRITTEN. WE DON'T KNOW WHEN IT WAS SHOWN TO THE CLIENT, TO MY CLIENT. WE DON'T KNOW WHETHER A CONSPIRACY WAS IN EXISTENCE AT THE TIME THAT WAS DONE. THE DEFENSE AT TRIAL, AND WHAT HE SAID, IN HIS STATEMENT, WAS THAT IS JUST SOMETHING THAT THE CODEFENDANT WAS DOING. HE IS NUTS.

DO WE KNOW WHETHER OR NOT HE KNEW OF THIS NOTE PRIOR TO THE TIME OF THE MURDER?

HE SAID THAT HE DID.

AND YET HE STILL BROUGHT THIS GIRL, HE PICKED THE GIRL UP, THIS DEFENDANT PICKED UP THE YOUNG LADY WHO WAS MURDERED, CORRECT? AND WENT TO LAWRENCE'S HOUSE WITH HER. EVEN KNOWING WHAT WAS IN THESE NOTES.

I THINK THEY WENT OUT IN THE WOODS, BUT HE DOESN'T SAY HE KNOWS, HE KNOWS OF THE EXISTENCE OF THE NOTE, AND THEN THE STATE SAYS OR THE INTERROGATE OR SAID THERE IS THESE THREE ITEMS IN THE NOTE. DID YOU KNOW ABOUT THOSE THREE ITEMS? AND HE GOES,IA, I KNEW ABOUT THOSE THREE, BUT THE -- AND HE GOES, YEAH, I KNEW ABOUT THOSE THREE, BUT THE ENTIRE CONTENT OF THE NOTE, WE DON'T KNOW. HE KNEW THERE WAS A NOTE, AND LET ME RETURN AND GIVE ONE FOOTNOTE TO THE ANSWER TO YOUR QUESTION WHY THIS IS RELEVANT. IT IS RELEVANT ON RELATIVE CULPABILITY, AS THE TRIAL JUDGE IN JONATHAN LAWRENCE'S CASE EXPRESSLY FOUND. THE JUDGE WENT THROUGH ALL OF THIS MATERIAL THAT IS IN EXHIBIT NO. TWELVE FROM LAWRENCE'S TRIAL AND HAS BEEN TRANSFERRED TO THIS COURT AND IS SITTING OUT IN A BOX IN THE CLERK'S OFFICE AND SAID THIS IS HIGHLY PERTINENT TO WHO INITIATED THE ACTIONS IN THIS CASE AND WHO PLANNED THE ACTIONS IN THIS CASE.

DOES THE SAME JUDGE PROVIDE OVER THE BOTH CODEFENDANTS' TRIALS?

NO. IRONICALLY, JUDGE BELL WAS RECUSED BY THE FIRST DCA IN THIS CASE, AND THEN HE DID TRY, EARLIER, THE OTHER CASE, AND IT IS JUDGE BELL WHO MADE THE FINDING, AND IRONICALLY ENOUGH, MADE THE FINDING IN THAT CASE THAT THIS INFORMATION WAS PERTINENT TO THE CODEFENDANT.

WHAT DID THE JURY IN THIS CASE HEAR ABOUT THE CODEFENDANT'S OBSESSION WITH KILLING?

NOTHING. EXCEPT WHAT WAS, NOTHING.

NOTHING. AND WHAT WAS THE TRIAL COURT'S REASON FOR EXCLUDING ALL OF THE EVIDENCE?

NOT ALL OF IT. THE OBSESSION EVIDENCE, WHAT WAS INTRODUCED WAS ANYTHING PERTINENT TO THE ACTUAL MURDER WEAPON IN THIS CASE, SO THE WEAPON, SOME SALES RECEIPTS, CLEANING, A GUN, THAT, ANYTHING RELATIVE TO THAT WEAPON WAS ADMITTED BUT NOT THE OTHER, AND, THE JUDGE EXCLUDED ON THE STATE'S OBJECTION, WHEN THE STATE SAID, QUOTE, THIS, WE DO THIS AS CHARACTER ASSASSINATION OF MR. LAWRENCE, AND SO THEN THE JUDGE SAID, WELL, WHAT IS IT, AND IT WAS ALL PROFFERED.

WAS IT PROFFERED ON THE BASIS, BECAUSE I HAVE PROBLEMS WITH YOUR REASON THAT IT WOULD CORROBORATE THE TRUTH OF THE FIRST FOUR STATEMENTS. BUT AS TO THE ISSUE OF RELATIVE CULPABILITY, WAS IT ARGUED TO THE TRIAL JUDGE AT THE TIME OF THE PENALTY PHASE, THAT IT WAS BEING ADMITTED TO SHOW RELATIVE CULPABILITY?

YES, YOUR HONOR, AND HERE IS THE RECORD CITES. FIRST, THE FIRST STATEMENTS WERE TRUE. HERE IS A QUOTE FROM THE RECORD. DEFENSE COUNSEL SAYS IN THE FIRST STATEMENTS, THE DEFENDANT SAID LAWRENCE WAS, QUOTE, ALWAYS TALKING ABOUT KILLING AND SUCH, TALKED ABOUT THINGS LIKE KILLING, AND THE DEFENSE ARGUMENT AT VOLUME 10, 1695, IN SUPPORT OF THE PROFFER, WAS, AND THIS IS WHY WE WANT TO INTRODUCE THIS, TO CORROBORATE THESE STATEMENTS AND ALSO THAT LAWRENCE WAS, ACTUALLY WHO KILLED THE VICTIM, AND THERE IS FURTHER PROFFER BETWEEN 1582 AND 1590.

HOW DOES THE FACT THAT HE IS OBSESSED WITH, YOU KNOW, THAT HE WAS THE KILLER IN THIS CASE. I AM NOT SURE I UNDERSTAND HOW THE TWO ACTUALLY GO TOGETHER.

IT IS PROBATIVE ON THE MATERIAL ISSUE, WHICH IS WHICH OF THE STATEMENTS ARE TO BE BELIEVED? WHEN IS HE TELLING THE TRUTH? IS HE TELLING THE TRUTH WHEN HE SAYS THE CODEFENDANT IS CRAZY AND OBSESSED WITH KILLING? YES. HE IS TELLING THE TRUTH. THAT THE CODEFENDANT IS OBSESSED WITH KILLING. IF HE IS TELLING THE TRUTH, THEN HE IS NOT EVEN GUILTY OF MURDER!

DID THE STATE TRY TO ARGUE THAT THE CODEFENDANT WASN'T OBSESSED WITH KILLING?

THEY JUST SAID WE OBJECT BECAUSE IT IS CHARACTER ASSASSINATION, AND THAT WAS THAT.

WITH RESPECT TO THE FIRST FOUR STATEMENTS, WHERE HE SAID HE WASN'T THE SHOOTER AND THE CODEFENDANT WAS OBSESSED --

IT IS PART OF THE HISTORY THAT THE STATE OBJECTED TO ANY OF THAT GUILT/INNOCENCE, AND IT WAS GOING TO BE EXCLUDE. THE REASON WAS, WAS BECAUSE THERE WAS A PLEA, AND IT WAS CONCEDED YOU PUT THOSE STATEMENTS IN AND WE WILL PUT OUR STATEMENT IN. THEY NEVER CONCEDED ANY OF THE TRUTH OF THE FIRST FOUR STATEMENTS, WHICH WERE THAT THE CODEFENDANT, FOR INSTANCE, THAT THE CODEFENDANT WAS OBSESSED WITH KILLING. HE ALSO GOES INTO DOES HE TAIL --

THE FACT THAT HE IS OB-- INTO DETAIL.

THE FACT THAT --.

HE ALSO GOES INTO DETAIL.

THE FACT THAT HE IS OBSESSED, WHY DOES THAT HAVE RELATIVITY AS TO WHETHER HE DID OR DID NOT DO THE SHOOTING?

OUR CLIENT HAD NO INTFLES MARTIAL ARTS, HAD NEVER HURT ANYONE OTHER THAN HIMSELF, HE HAD NO INTEREST IN KILLING A PERSON. YOU HAVE GOT DEFENSE RECORDS THAT TALL AS EXHIBIT THAT WERE FROM CHATTAHOOCHEE, WHERE THEY SAY IS HE MENTALLY ILL BUT HE HAS NEVER HURT ANYONE BUT HIMSELF, AND THEN ON THE OTHER HAND YOU HAVE GOT A BOX OF MATERIALS FULL OF THIS STUFF, WHICH THE JUDGE FOUND TO BE INDICATION THAT THE CODEFENDANT INITIATED THE MOST GRUESOME PARTS OF THE PLAN IN THIS CASE.

LET'S HE -- LET'S, IF WE COULD, GET OVER TO THE OTHER ISSUE, THE MITIGATION ARGUED IN YOUR BRIEF, BEGINS, REALLY, AT BIRTH, AS I UNDERSTAND THE MITIGATION HERE. IF YOU COULD DISCUSS THE EVIDENTIARY, WHERE THAT EVIDENCE COMES FROM, AS TO THE SEXUAL ABUSE OF THE MOTHER, AND, ALSO, DISCUSS THE COMPARATIVE MITIGATION WITH, BETWEEN RODGERS AND LAWRENCE.

AND LAWRENCE.

YES.

THE EVIDENCE OF SEX ABUSE IS NOT EASY TO COME BY, UNLESS THE PERPETRATOR COMES FORWARD. IN THIS CASE, HOWEVER, WE HAVE REPORTS, BEGINNING AT AGE 13, FROM PEOPLE WHOSE JOB IT IS TO DISCOVER THIS INFORMATION, DOCUMENTING AT LEAST STATEMENTS FROM A 13-YEAR-OLD, WHO, BY THE WAY, WAS IN FOUR-POINT RESTRAINTS AND MEDICATED AT AGE 13 IN A MENTAL HEALTH FACILITY, WHERE HE DISCUSSES, QUOTE, HIS HISTORY OF BEING PHYSICALLY, SEXUALLY, EMOTIONALLY ABUSED BY HIS BIOLOGICAL MOTHER, SO THE FIRST RECORD THAT I KNOW OF, WHICH IS EXHIBIT 3 1-A, DEFENSE EXHIBIT 3 1-A, THE FIRST IN WRITING BY A PROFESSIONAL THAT I KNOW OF BY A PROFESSIONAL,, WAS GENERATED AT AGE 13, SO WE KNOW HE REPEATEDLY TOLD MENTAL HEALTH PROFESSIONALS THESE SAME ANECDOTES IN GRAPHIC DETAIL, AND HE HAD A HORRIBLE HALLUCINATIONS THAT WERE EXPLAINED BY HIM AND BY THE MENTAL HEALTH PROFESSIONALS, BROUGHT ON BY HIS FEAR THAT HIS THEN-DEAD MOTHER WAS GOING TO RETURN TO RAPE HIM.

WAS THERE EVER ANY OTHER CORROBORATING EVIDENCE TO THIS, OTHER THAN THE DEFENDANT'S OWN STATEMENT? WAS THERE ANY FAMILY MEMBERS WHO SAID THE KIND OF ACTIVITY WENT ON, ANY KIND OF HRS REPORTS OR ANYTHING LIKE THAT?

I THINK THAT THERE ARE MORE REPORTS LIKE THIS ONE, AND I WOULD HAVE TO, I JUST WENT TO THIS ONE THIS MORNING BECAUSE I SUSPECTED THAT WE MIGHT WANT TO DOCUMENT T IT IS THE ONLY ONE I STARTED WITH.

INDEPENDENT REVIEW OF --

NO ONE HAS CONFESSED TO SEXUALLY ASSAULTING HIM. THAT'S CORRECT. BUT A VERY IMPORTANT CASE HAS RECENTLY COME OUT OF THE UNITED STATES SUPREME COURT, WIGGINS OUT OF THE FOURTH CIRCUIT, IN WHICH THE U.S. SUPREME COURT FOUND TRIAL COUNSEL TO BE INEFFECTIVE, BECAUSE TRIAL COUNSEL DID NOT INTRODUCE EVIDENCE OF SEX ABUSE, AND THE ONLY EVIDENCE OF SEX ABUSE IN WIGGINS, WAS THE DEFENDANT'S STATEMENT TO AN INVESTIGATOR, AFTER BEING CONVICTED AND SENTENCED TO DEATH, NONE OF WHICH WAS CORROBORATED BY THE PERPETRATORS, AND THE SUPREME COURT HELD THAT THAT WAS HEAVILY MITIGATING INFORMATION, AND THIS IS BETTER THAN THAT, BECAUSE THIS IS INFORMATION THAT IS DOCUMENTED IN STATE-PRODUCED RECORDS EARLY O PEOPLE BELIEVED IT, AND THE SENTENCING JUDGE FOUND IT. SO IT IS FOUND AS A FACT THAT HE WAS SEXUALLY ABUSED AS CHILD.

BUT THE WIGGINS APPROACH WAS THE QUESTION OF INEFFECTIVE ASSISTANCE, AS OPPOSED TO WHAT WE ARE SPEAKING OF TODAY, IS IT NOT?

THAT'S CORRECT, BUT MY POINT IS THAT THE COURT FOUND REPORTS TO AN INVESTIGATOR ABOUT RAPE, MITIGATING, AND THAT IS WHY TRIAL COUNSEL WAS INEFFECTIVE, FOR NOT GETTING THAT MITIGATING INFORMATION. YOU ARE RIGHT. IT IS A TOTALLY DIFFERENT CONTEXT.

DIDN'T THE COURT IN WIGGINS SAY, THEY DIDN'T REAL OPINE, DID THEY, ON WHETHER COUNSEL WAS INEFFECTIVE FOR FAILING TO INTRODUCE THE EVIDENCE. HE WAS INEFFECTIVE FOR FAILURE TO INVESTIGATE THE EVIDENCE OF SEXUAL ABUSE, NOT WHETHER HE DECIDED TO INTRODUCE IT AT THE HEARING OR NOT.

BUT THEN THEY WENT ON TO PREJUDICE, THEY WENT ON TO A PREJUDICE ANALYSIS AFTER THAT, AND IF IT HAD NOT BEEN MITIGATING, THERE WOULD BE NO PREJUDICE.

TRIAL COURT HERE ACCEPTED ALL OF THAT EVIDENCE.

WELL, THE TRIAL COURT MADE A FINDING.

GAVE IT CONSIDERABLE WEIGHT?

THE TRIAL COURT MADE A FINDING ON THE SEX ABUSE, AND ON THE PHYSICAL ABUSE, SAYING THAT THE DEFENDANT HAD, INDEED, PROVEN THAT HE HAD GROWN UP IN AN ABHORRENT ENVIRONMENT, AND THAT NO AMERICAN CHILD SHOULD BE REQUIRED OR ALLOWED TO LIVE IN SUCH HELLISH CONDITIONS, AND JUSTICE WELLS,ION AND WE CAN'T LOOK AT THE LAWRENCE MITIGATION, BECAUSEION THAT RECORD. AND -- BECAUSEION THAT RECORD, AND I -- BECAUSE I DON'T KNOW THAT RECORD AND I HAVEN'T BEEN ABLE TO GO OVER THAT RECORD, SO AS YOU ARE SUGGEST U SUGGESTING IS IMPOSSIBLE FOR ME -- AS YOU ARE SUGGESTING IS IMPOSSIBLE FOR ME. I CAN SUGGEST THAT THIS BOX OF MATERIALS OUGHT TO BE COMPARED TO THE BOX OF MENTAL HEALTH RECORDS ON THE PART OF THE DEFENDANT, MY CLIENT, AND I SUGGEST YOU JUDGE WHO IS MITIGATED AND WHO ISN'T MITIGATED.

WHAT WAS THE AGE OF LAWRENCE VERSUS RODGERS? -- WHAT WAS THE AGE OF LAWRENCE RODGERS?

21. AND DARIUS HAD JUST TURNED 23.

AND RODGERS, WHEN WAS HE RELEASED FROM CHATTAHOOCHEE?

HE WAS RELEASED FROM PRISON, NOT CHATTAHOOCHEE AT THAT POINT, IN 1993, AND THE FIRST CRIME OCCURRED IN MARCH OF 1998.

HOW LONG WAS HE AT CHATTAHOOCHEE?

OFF AND ON REGULARLY.

AND WHY WAS HE IN CHATTAHOOCHEE?

BECAUSE HE WAS A DANGER TO HIMSELF, AND THEY WERE TREATING HIM FOR, HE CUT HIMSELF ALL UP, YOU KNOW, HE WAS MENTALLY ILL, SEVERELY MENTALLY ILL AND THEY DIAGNOSED HIM AS SCHIZOPHRENIC AND PSYCHOTIC AND BIPOLAR AND THEY ADMINISTERED LITHIUM AND HE WAS BEING TREATED FOR SERIOUS AND LONG-DIAGNOSED MENTAL HEALTH PROBLEMS.

IT SEEMS TO ME PART OF YOUR EVIDENCE ABOUT ABUSE, SEXUAL ABUSE, GETTING BACK TO THAT FOR A MOMENT, WAS SEXUAL ABUSE IN PRISON, ALSO?

YES. THE JUDGE FOUND ABUSE IN PRISON.

THAT WAS DOUMENTD HOW?

I DON'T RECALL. I WAS LOOKING AT THAT YESTERDAY, AND SAW THE FINDING BY THE -- THAT WAS DOCUMENTED HOW?

I DON'T RECALL. I WAS LOOKING AT THAT YESTERDAY AND SAW THE FINDING BY THE JUDGE AND DON'T RECALL WHERE. PROBABLY A STATEMENT MADE BY THE DEFENDANT. I CAN'T SAY. I AM NOT POSITIVE.

DID HE MEET LAWRENCE IN CHATTAHOOCHEE?

CHATTAHOOCHEE.

AND LAWRENCE WAS AT CHATTAHOOCHEE AT SOME POINT?

CORRECT. AND THE DEFENSE COUNSEL SAID TO THE COURT THAT THERE IS NO ISSUE OF COMPETENCY, THEY HAD THE ISSUE OF JOINT HEARINGS, THERE IS NO ISSUE OF COMPETENCY, WITH RESPECT TO LAWRENCE, BUT MY CLIENT HAD TO GO THROUGH TWO COMPETENCY HEARINGS BEFORE HE COULD GET TO TRIAL.

I KNOW YOU WANT TO SIT DOWN, BUT WOULD YOU SUMMARIZE, AGAIN, TRIAL COUNSEL'S EFFORTS TO HAVE THIS EVIDENCE ADMITTED BY THE CODEFENDANT, AS TO RELATIVE CULPABILITY? THAT IS --

IT HAPPENED TWICE.

IN OTHER WORDS DOES THE RECORD DEMONSTRATE THAT A SPECIFIC ARGUMENT WAS MADE THAT THIS EVIDENCE SHOULD BE ADMITTED ON THE ISSUE OF RELATIVE CULPABILITY?

YES, YOUR HONOR.

WAS THAT HAD WHEN THEY WERE TALKING ABOUT THE RECORDS GENERALLY OR WHEN DID THAT OCCUR?

ON THE FIRST DAY OF THIS EPISODE OF TRYING TO GET IT IN, VOLUME 9 AT PAGE 1582-TO-1590, DEFENSE COUNSEL WHITE JUST SPOKE INTO THE RECORD AND SAID THESE ARE THE ITEMS THAT WE WANT TO INTRODUCE, AND THESE ITEMS WERE ALL, WERE WEAPONS, AND ALSO THE ITEMS HE DIDN'T KNOW IT AT THE TIME, THAT WERE IN EXHIBIT 12 FROM THE LAWRENCE PROCEEDING, AND HE JUST SPOKE. THEN HE SAID I ALSO WANT TO INTRODUCE PROOF ABOUT IT, AND THE JUDGE SAID OKAY, SO THE NEXT DAY AT VOLUME 10 OF THE RECORD STARTING AT PAGE 1693, HE PUT AN OFFICER ON THE STAND AND WALKED THE OFFICER THROUGH ALL OF THE WEAPONS AND THEN HE WAS GOING TO WHAT YOU MEAN WALK THROUGH ALL OF THE STAUF THAT WAS IN THE BOX, THESE -- ALL OF THE STUFF THAT WAS IN THE BOX, THESE THINGS, AND THE JUDGE SAID WHY DO THAT? I AM NOT GOING TO ADMIT IT. THE JUDGE DID THAT AT --

CUTTING TO THE CHASE, WHERE IN THE RECORD, DOES COUNSEL ARGUE THAT I WANT TO ADMIT THESE?

AT THOSE PAGES.

IN OTHER WORDS AND SO HE USES THE WORDS "RELATIVE CULPABILITY"?

I WILL SIT DOWN AND LOOK FOR THOSE EXACT WORDS BUT THAT WAS DEFINITELY THE GIST. THANK YOU, YOUR HONOR.

CHIEF JUSTICE: THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS CURTIS FRENCH REPRESENTING THE STATE OF FLORIDA IN THIS CASE.

WOULD YOU HELP ME, INFORMATIONALLY, JUST TO COVER THAT ISSUE.

YES, SIR.

DID DEFENSE COUNSEL UTILIZE THE BASIS OF RELATIVE CULPABILITY AS AN ALTERNATIVE BASIS FOR ADMITTING THIS EVIDENCE?

WHAT HE SAID FIRST, AND I REFER TO PAGE 1582 OF THE TRANSCRIPT, BY MR. WHITE, SAYS YOUR HONOR, IN ORDER TO ARGUE WHEN THE STATE QUESTIONED RELEVANCE OF THIS MATERIAL, IN ORDER TO ARGUE CULPABILITY, WE NEED TO BE ABLE TO ARGUE ABOUT A PERSON'S

KNOWLEDGE OF WEAPONS, THE USE OF WEAPONS AND THINGS OF THAT NATURE. LATER ON, THE STATE OBJECTED ON RELEVANCE GROUNDS AND REFERRED TO PAGE 1584. AGAIN, WE WOULD OBJECT TO IT ON THE RELEVANCE GROUND THERE. IS NO INDICATION OR ANY LENGTH, I AM NOT SURE, THAT MUST NOT HAVE GOTTEN TRANSCRIBED CORRECTLY, BUT TO SUBSTANTIAL DOMINATION, JUST BASED UPON THE PRESENCE OF THESE ITEMS BEING FOUND IN MR. LAWRENCE'S RESIDENCE. AND HE WAS BROUGHT UP -- IT WAS BROUGHT UP LATER. DEFENSE COUNSEL SAID THIS EVIDENCE IS PROBATIVE OF THE DOMINANCE OF JOHN LAWRENCE, AND PROBATIVE THE TRUTH OF THE MAY 10 STATEMENT. I GUESS ABOUT WHO THE SHOOTER WAS. OF COURSE, THE THING IS IN THIS CASE, THE STATE DID NOT ARGUE, PURSUANT TO HIS PLEA AGREEMENT, THAT THE DEFENDANT WAS THE SHOOTER. THE STATE ARGUED THAT IT DOESN'T MATTER WHO THE SHOOTER WAS, THAT --

BECAUSE OF THE OTHER CIRCUMSTANCES.

-- THEY WERE BOTH PARTICIPANTS.

BECAUSE OF THE OTHER CIRCUMSTANCES SURROUNDING.

YES, SIR, AND THERE WAS A PLEA AGREEMENT, AND MIGHT POINT OUT THAT FIRST OF ALL, THERE HAS BEEN A DISPUTE ABOUT WHETHER OR NOT THE DEFENDANT PLED GUILTY AS A PRINCIPLE TO OR AS AN ACCESSORY. A PORTION OF THE PLEA AGREEMENT, THE WRITTEN PLEA AGREEMENT APPARENTLY IS IN THE RECORD. I DIDN'T REALIZE THAT, BUT IT IS ATTACHED TO ANOTHER ORDER BY THE JUDGE, SO THAT IT IS NOT IN THE INDEX. BUT AT ANY RATE, THE DEFENDANT PLED GUILTY AS A PRINCIPLE, TO FIRST-DEGREE MURDER. IN ADDITION, THE DEFENDANT ALSO PLED GUILTY TO CONSPIRACY TO COMMIT A MURDER. TO SOME EXTENT, I SEE THE ARGUMENT BEING MADE TODAY, AS SOME SORT OF RESIDUAL DOUBT ARGUMENT AND NOT THAT MR. ROGERS -- RODGERS WAS SUBSTANTIALLY DOMINATED BUT THAT HE WASN'T GUILTY AT ALL. OF COURSE RESIDUAL DOUBT IS NOT A VALID MITIGATOR, AS WAS APPOINTED OUT TO DEFENSE COUNSEL AT TRIAL, AND THAT WAS NOT PART OF THE AGREEMENT. THERE WAS NO AGREEMENT BY THE STATE, TO ALLOW THE DEFENDANT TO ARGUE THAT, ALTHOUGH HE HAD PLED GUILTY, HE WAS CLAIMING THAT HE WAS, IN FACT, INNOCENT, OR TO MAKE ANY RESIDUAL DOUBT ARGUMENT.

I DON'T HEAR THAT BEING THE ARGUMENT. I HEAR THE ARGUMENT BEING THAT YOU HAVE GOT TWO DEFENDANTS WHO PARTICIPATED IN A HORRIBLE TRAGIC CRIME, AND THE DEFENDANT WANTED TO SHOW THAT, REALLY, THE REAL FORCE IN THIS WAS NOT THE DEFENDANT BUT WAS THE CODEFENDANT. I GUESS WHAT I WOULD LIKE TO KNOW FROM YOU IS HOW IS IT, HOW DID IT BECOME RELEVANT IN THE CODEFENDANT'S PENALTY PHASE AND TOTALLY IRRELEVANT, BECAUSE IT WASN'T ANY WEIGHING GOING ON, IN THIS DEFENDANT'S PENALTY PHASE?

IN THE LAWRENCE CASE, THESE BOOKS, THE ONES THAT HE TRIED TO GET IN, PLUS A COUPLE IN ADDITION, AND I WILL GET TO IN A MINUTE, LAWRENCE, OF COURSE, ALSO CLAIMED THAT HE WAS SUBSTANTIALLY DOMINATED BY ROGERS. THESE BOOKS WERE NOT INTRODUCED AT THE JURY SENTENCING HEARING, BUT THEY WEREN'T INTRODUCED AT THE SPENCER HEARING, AND THIS COURT FOUND THAT THEY WERE RELEVANT BS, TO SHOW THAT THEY WERE -- RELEVANT, TO SHOW THAT IN FACT, LAWRENCE WAS SUBSTANTIALLY DOMINATED.

DID LAWRENCE PLEAD GUILTY ALSO AND WAS THERE SOME KIND OF PLEA AGREEMENT WITH THE STATE THAT THEY WOULD NOT TRY TO SHOW THAT HE WAS THE SHOOTER?

I HAVEN'T READ THE LAWRENCE RECORD. I HAVE ONLY READ THE OPINION ON APPEAL, SOION. -- SO I DON'T KNOW. MATTER OF FACT, I THINK HE PLED GUILTY, BUT I DON'T RECALL IF HE DID.

AGAIN, OBVIOUSLY THERE ARE TWO DIFFERENT DEFENDANTS, BUT THE ARGUMENT IN THIS CASE WAS THAT IT WASN'T RELEVANT AT ALL, AND YET BECAUSE IT HAD NOTHING TO DO WITH THIS CRIME.

CORRECT.

OKAY. IF IT IS RELEVANT, IN THE LAWRENCE CASE, TO REBUT THE SHOWING THAT HE WAS SUBSTANTIALLY DOMINATED BY ROGERS, EVEN IF IT IS NOT A GREAT A RELEVANCE, WHY WOULD IT BE TOTALLY IRRELEVANT, IN RODGERS, TO SHOW THAT THE DOMINATION WAS ACTUALLY THE OBSESSED PERSON WITH MURDER AND WITH THE CRIME WAS LAWRENCE NOT ROGERS? -- NOT RODGERS? AGAIN, MAYBE I CAN UNDERSTAND THAT THE JUDGE SAID, WELL, I AM WORRIED THAT THE JURY IS GOING TO BE CONFUSED OR SOMETHING, BUTT STATE WAS ARGUING NO RELEVANCE AT ALL.

CORRECT. BUT I WOULD SUGGEST THAT IT IS ONE THING TO SAY THIS EVIDENCE REBUTS LAWRENCE'S CLAIM THAT HE WAS SUBSTANTIALLY DOMINATED AND IT IS ANOTHER THING TO SHOW THAT ROGERS -- RODGERS WAS SUBSTANTIALLY DOMINATED. THE STATE, AND I HAVE A HARD TIME SEEING HOW IT SHOWS THAT RODGERS WAS IN ANY WAY SUBSTANTIALLY DOMINATED BY LAWRENCE, AND I THINK THAT BASICALLY IS THE CLAIM THAT WAS MADE BELOW. THERE WAS ACTUALLY A BOOK THAT WAS INTRODUCED IN THE LAWRENCE TRIAL THAT WAS DISCUSSED ON APPEAL. ONE OF THE THINGS THAT HE WAS COMPLAINING ABOUT, CALLED THE INCREDIBLE MACHINE, WHICH WAS MARKED, PRESUMABLY, BY LAWRENCE, IN SEVERAL PLACES, INCLUDING THERE WAS A PICTURE OF A MUSCLE STRUCTURE OF A FEMALE BODY WITH A CALF SECTION MARKED. THAT, OF COURSE, WAS RELEVANT TO THIS PARTICULAR CRIME, THAN IS ONE OF THE THINGS THIS COURT DISCUSSED ON APPEAL. THERE IS NO INDICATION IN THIS RECORD THAT I CAN SEE, JUST READING THROUGH THE BOOKS HE LISTS, THAT THE DEFENDANT ACTUALLY WISHED TO INTRODUCE THAT BOOK, AND IT SEEMS TO ME THAT IF ANYTHING WOULD BE RELEVANT, IT WOULD BE THAT ONE, BUT LET ME SAY THIS, TOO. FIRST OF ALL, THERE IS ACTUALLY NO EVIDENCE OF SUBSTANTIAL DOMINATION IN THIS CASE, UNLIKE THE LAWRENCE STATEMENT TO POLICE, WHICH APPARENTLY HE CLAIMS SOME SORT OF SUBSTANTIAL DOMINATION. EVEN IF YOU LOOK AT THE INITIAL STATEMENT TO POLICE BY RODGERS, IN THIS CASE IN WHICH HE CLAIMED HE WAS NOT THE SHOOTER AND BASICALLY WAS A BYSTANDER, THERE IS NOTHING IN THERE THAT INDICATES SUBSTANTIAL DOMINATION. IN FACT, AMONG OTHER THINGS, RODGERS CLAIMED THAT, AFTER THE MURDER, HE TOOK THE MURDER WEAPON FROM LAWRENCE AND POINTED IT AT HIM, THINKING HE WOULD KILL HIM. HE ALSO YELLED AT HIM. HE THREATENED TO BUST HIS CAMERA. AND HE ORDERED LAWRENCE, ACCORDING TO RODGERS IN HIS MAY 10 STATEMENT, TO PUT HIS STUFF UP AND GET HIM OUT OF THERE RIGHT NOW. AND RODGERS, ALSO, AND I AM REFERRING TO PAGES 2349 AND 2350 OF THE RECORD, ACKNOWLEDGED IN HIS MAY 10 STATEMENT THAT, LAWRENCE HAD SUPPOSEDLY ASKED HIM IF HE WANTED TO TAKE THIS GIRL OUT AND RAPE HER, AND HE CLAIMED TO SAY, NO, AND HE WASN'T GOING TO DO ANY SUCH THING, AND HE STATED THAT HE KNEW LAWRENCE MEANT THAT, AND LAWRENCE USUALLY LISTENS TO ME, AND THESE AND OTHER STATEMENTS DO NOT INDICATE ANY SORT OF SUBSTANTIAL DOMINATION OF RODGERS BY LAWRENCE.

WHAT WERE THESE OTHER CRIMES THAT THE TWO OF THEM COMMITTED? IN RELATIONSHIP TO THIS MURDER?

THE FIRST ONE WAS THE SHOOTING, ATTEMPTED MURDER OF LEIGHTON SMITHER MAN, AND THAT WAS A CRIME FOR WHICH RODGERS WAS CONVICTED AFTER A JURY TRIAL. THE TRANSCRIPT OF THAT TRIAL IS ACTUALLY ON THE RECORD ON APPEAL IN THIS CASE, I AM NOT SURE WHY, BUT ANYWAY HE WAS CONVICTED OF THAT CRIME, THAT WAS MARCH 9 OF -- 29 OF 1998, AND APRIL 10, TEN DAYS LATER, LAWRENCE AND RODGERS TOGETHER, MURDERED JUSTIN LIVINGSTON, AND WILL EVIDENCE IN THIS CASE -- AND THE EVIDENCE IN THIS CASE, INCLUDING THE MAY 13 STATEMENT, WHICH THE JUDGE FOUND TO BE MORE CREDIBLE THAN THE MAY 10 STATEMENT, INDICATED THAT RODGERS WAS THE SHOOTER OF SMITHER MAN, SUGGESTS THAT RODGERS AND LAWRENCE EACH STABBED LIVINGSTON. THOSE ARE THE PRIOR CRIMES.

WOULD YOU MOVE TO THE PROPORTIONALITY ISSUE? I AM CONCERNED ABOUT THE MITIGATION HERE, AND, ALSO, THE RELATIVE CULPABILITY BETWEEN, ON THE BASIS AND EVALUATION AND MITIGATION BETWEEN LAWRENCE AND RODGERS. IN THAT I RECOGNIZE THAT, IN LAWRENCE, THERE WERE FOUND TO BE TWO MENTAL MITIGATORS, AND IN RODGERS, THERE ARE NOT ANY MENTAL MITIGATORS. HOWEVER, THERE IS, ALSO, NOT, IN LAWRENCE, THE SAME TYPE OF SELF-DESTRUCTIVE HISTORY OR THE DESTRUCTIVE HISTORY BY THE MOTHER'S ACTIONS.

I WOULD NOTE THAT, WHILE LAWRENCE HIMSELF MAY NOT HAVE BEEN ABUSED, LAWRENCE'S FAT AER WAS IN -- LAWRENCE'S FATHER WAS IN PRISON FOR THE SEXUAL ABUSE OF HIS SISTER. HE WAS ALSO IN PRISON, DIAGNOSED AS HAVING ORGANIC BRAIN DAMAGE AND SCHIZOPHRENIA. BOTH EXPERTS TESTIFIED THAT THE STATUTORY MITIGATORS APPLIED, WHICH IN THIS CASE NONE OF THE EXPERTS TESTIFIED THAT THEY APPLIED AND NONE OF THE EXPERTS IN THIS CASE FOUND ANY BRAIN DAMAGE OR SCHIZOPHRENIA, ALTHOUGH THERE WAS SOME DISPUTE ABOUT WHAT HE ACTUALLY HAD, BASICALLY WHAT, THE DIAGNOSIS IN THIS CASE, INCLUDING TWO PERSONALITY DISORDERS AND/OR DEPRESSION AND/OR POST-TRAUMATIC STRESS DISORDER AND ANXIETY DISORDER. THE PERSONALITY DISORDERS WERE ANTISOCIAL PERSONALITY DISORDER AND BORDERLINE PERSONALITY DISORDER.

HAD HE PREVIOUSLY BEEN DIAGNOSED AS SKITS FRIENDIC?

NONE OF THE EXPERTS THAT TESTIFIED IN THIS CASE, EITHER AT THE SENTENCING HEARING OR DURING THE COMPETENCY EVALUATION, THOUGHT THAT HE WAS SCHIZOPHRENIC. NOW, THEY DID NOTE THAT, OVER THE YEARS, THE NUMBER OF EVALUATIONS HAD BEEN MADE BY PERSONS HAVING VARYING LEVELS OF ABILITY AND HAVING EVALUATED THE DEFENDANT AT VARYING LENGTHS, BUT THE MEDICAL EXPERTS THAT TESTIFIED IN THIS CASE, MENTAL HEALTH EXPERTS THAT TESTIFIED IN THIS CASE WERE BASICALLY UNANIMOUS IN REJECTING SCHIZOPHRENIA OR ORGANIC BRAIN DAMAGE.

DID THEY ATTEMPT TO EXPLAIN WHY ALL THE SELF-DESTRUCTIVE BEHAVIOR?

YES. AND THEY TESTIFIED ABOUT THAT, AND FRANKLY, THEY ALL AGREE THAT A LOT OF THIS WAS SELF-SERVING EXAGGERATION. WHAT IT WAS, WHAT THEY WERE, WERE ATTEMPTS BY THIS DEFENDANT, TO GET OUT OF A CORRECTIONAL INSTITUTION, INTO MENTAL HEALTH FACILITIES, AND HE SUCCEED THE AT DOING. THAT HE ALSO NOTED HE HAS A -- HE SUCCEEDED AT DOING THAT. HE ALSO NOTED THAT HE HAS A HISTORY OF VIOLENCE AND INSTITUTIONAL STAFF CONCERNING HE HAS NO HISTORY OF VIOLENCE. HE DOES, AND DR. COLLAR I KNOW HAD AN MMPI -- DR. CLARIN HAD AN MMPI AND THOSE SCORES WERE INVALID, DUE TO OVER EXERTION OF PSYCHOPATHOLOGY. IN SHORT, HE HAS A HISTORY OF OVER EXAGGERATION. NOW, SOME OF THOSE, AND HE DOES HAVE SCARS AND HAS SELF MUTILATED HIMSELF, AND THAT IS APPARENTLY NOT AS UNCOMMON AS I WOULD HAVE THOUGHT IT IS. MOST OF THESE ARE MINORITY. ALSO BEARS NOTING THAT ALL OF THESE HE HE SODZ ONLY OCCURRED WHILE HE WAS IN CUSTODY. HE DIDN'T DO THESE KINDS OF THINGS WHEN HE WAS OUT, AND IN FACT, HE, WHILE HE MISS BEHAVED, I SUPPOSE, SERIOUSLY MISS BE AVED HAVED -- MISS BEHAVED WHILE HE WAS IN CUSTODY LEADING UP TO THIS TRIAL, HE WAS ABLE TO BEHAVE HIMSELF IN COURT WITHOUT ANY KIND OF RESTRAINT WHATEVER, IN THE FEDERAL TRIAL, IN THE --

WASN'T HE IN CUSTODY FOR A SUBSTANTIAL PART OF THE TIME, BETWEEN THE TIME THAT HE WAS 13 AND THE TIME THAT HE, THAT THIS MURDER WAS, HOW OLD WAS HE? TWENTY ONE WHEN THIS OCCURRED?

TWENTY ONE. HE DID SERVE FOUR YEARS, FROM 16 TO 20, THEN HE WAS OUT SEVERAL MONTHS. PRIOR TO 16, I GUESS HE WAS IN AND OUT. HE HAD PRIMARILY A HABIT OF, AS I UNDERSTAND, STEALING CARS, AND I THINK HE STOLE 15 CARS WHEN HE WAS 13 YEARS OLD, INCLUDING CARS BELONGING TO FAMILY MEMBERS AND STUFF.

WHAT HAPPENED, OKAY, SO, GOING, SO HIS INCARCERATION FROM 16-TO-20, WAS AS A RESULT OF STEALING CARS, IS THAT --

I BELIEVE THAT'S CORRECT. AND HE WAS SENTENCED AS AN ADULT. NOW, WHILE --.

AND AT 13, WHAT WAS HIS SENTENCE AT AGE 13?

I AM NOT SURE. I DON'T THINK THE RECORD REFLECTS THAT. HE GOT IN TROUBLE --

WAS HE DIAGNOSED AT 13 WITH HAVING SIGNIFICANT MENTAL HEALTH ISSUES AT THAT TIME?

WELL, THERE ARE MENTAL HEALTH REPORTS IN HIS RECORD, DATING BACK TO 13 AND EVEN BEFORE 13. HE HAS A HISTORY --

THE TRIAL COURT SEND THE MENTAL MITIGATION. DID HE GIVE IT CONSIDERABLE WEIGHT?

JUST AS THE TRIAL COURT DID IN THE LAWRENCE CASE, HE GAVE IT CONSIDERABLE WEIGHT. BASICALLY WE HAVE THE TWO DEFENDANTS HERE WITH THE SAME AGGRAVATION IN EACH CASE, THE CCP AGGRAVATOR AND THE PRIOR VIOLENT FELONY AGGRAVATOR, AGAINST STAFF MENTAL HEALTH MITIGATION, AND LAWRENCE CLAIMED HE WAS THE MENTALLY ILL PERSON EVER TO GET A DEATH PENALTY AND RODGERS COMES VERY CLOSE TO SAYING THAT. WHILE THE STATE DOES NOT DISPUTE THAT HE HAS SOME MENTAL HEALTH ISSUES, THE STATE DOES NOT AGREE THAT A MORE MITIGATED CASE WILL NEVER BE SEEN, AND THE STATE WOULD SUBMIT THAT, AS TO THE PROPORTIONALITY, LAWRENCE IS RIGHT ON POINT. IF ANYTHING, LAWRENCE HAS A MORE MITIGATED CASE, BECAUSE HE HAS BRAIN DAMAGE AND BECAUSE HE HAS SCHIZOPHRENIA.

WOULD YOU MOVE, SINCE I KNOW YOUR TIME IS GOING, AND MR. OLIVE DIDN'T DISCUSS IT, BUT I AM, WOULD LIKE TO HAVE SOME DISCUSSION OF THIS CONFLICT THAT AROSE BETWEEN RODGERS'S LAWYERS RIGHT AT, DURING THE PENALTY PHASE, AND THEN HE PROCEEDED TO THE END.

JUST BEFORE THE TRIAL WAS ABOUT TO BEGIN, THE STATE OFFERED A PLEA AGREEMENT, AND THE PLEA AGREEMENT WAS THAT THE STATE WOULD NOT ARGUE THAT RODGERS WAS THE SHOOTER IN THIS CASE, ALTHOUGH HE RESERVED THE RIGHT TO ARGUE THAT HE WAS THE SHOOTER AND/OR STABER IN THE PREVIOUS CASES, AND IN EXCHANGE, ALSO, THE STATE AGREED TO ALLOW THE STATEMENTS OF THE DEFENDANT, PREVIOUS STATEMENTS IN WHICH HE HAD CLAIMED NOT TO HAVE BEEN THE SHOOTER, TO COME INTO EVIDENCE, AND SO THAT WAS PRESENTED TO DEFENSE COUNSEL. THERE WERE TWO DEFENSE ATTORNEYS IN THIS CASE. ONE, MR. DAVID WHITE, WAS APPOINTED IN, PROBABLY, WELL, I DON'T HAVE IT HERE. BUT MORE THAN A YEAR BEFORE THIS TRIAL, AND ATTORNEY LeBOEUF WAS ALSO APPOINTED IN THIS CASE. THEY HAD ALREADY BEEN INVOLVED IN THIS CASE FOR SOME TIME. THEY REPRESENTED THE DEFENDANT IN FEDERAL PROCEEDINGS AND THEY REPRESENTED OR AT LEAST MR. WHITE REPRESENTED THE DEFENDANT IN A ATTEMPTED MURDER TRIAL, LEIGHTON SMITHER MAN AND OF COURSE THEY BOTH REPRESENTED IN THIS CASE SO FORT AND SO ON, AND AT ANY RATE THESE TWO -- SO FORT AND SO ON, AND AT ANY RATE THESE TWO ATTORNEYS, I THINK THEY SORT OF DIVIDED UP THEIR TWO RESPONSIBILITIES AND ONE WAS GOING TO DO THE GUILT PHASE AND THE OTHER WAS GOING TO DO THE PENALTY PHASE. MS. LeBOEUF WAS APPOINTED MAY 6, 1999, WHICH WAS MORE THAN A YEAR BEFORE THIS TRIAL. AT ANY RATE, THEY DISAGREED ABOUT WHETHER OR NOT THE DEFENDANT SHOULD PLEAD GUILTY. THEY EXPLAINED THEIR DISAGREEMENT TO THE DEFENDANT. EACH ONE OF THEM MADE THEIR CASE AND THE DEFENDANT DECIDED HE WOULDN'T PLEAD GUILTY AND THEN THEY PROCEEDED TO THE PENALTY PHASE.

WHAT I AM CONCERNED ABOUT IS THAT THERE COMES A TIME HERE, WHEN THEY GO BACK APPARENTLY, INTO CHAMBERS, AND THE JUDGE SAYS SOMETHING TO RODGERS, AND RODGERS

SAYS, I WILL JUST WAIT HERE IN THE BACK, AND THEN THERE, I CANNOT MAKE OUT FROM THE TRANSCRIPT, REALLY, AS TO WHETHER HE WAS STILL INVOLVED IN THE, WHETHER HE WAS STILL IN THE COURTROOM OR WHERE HE WAS TAKEN OR --

THERE WAS A DISCUSSION OUTSIDE HIS PRESENCE, SO ATTORNEY LeBOEUF --

IT WAS OUTSIDE HIS PRESENCE.

ATTORNEY LeBOEUF STATED THAT WE HAVE A DISAGREEMENT. IT HAS AFFECTED OUR PREPARATION OF THE CASE. WE WOULD LIKE TO DISCUSS IT WITH THE COURT AND WOULD PREFER TO DISCUSS IT OUTSIDE THE PRESENCE OF THE JURY.

THE NEXT DAY SHE COMES IN AND MOVES FOR A MISTRIAL.

YES. I READ THAT AS SORT OF A PERFUNCTORY MOTION FOR MISTRIAL, BUT, YES, SHE DID.

WAS THERE ANY DISCUSSION WITH RODGERS AT THAT TIME?

NOT THAT THE RECORD SHOWS. AT ANY RATE, THE COURT EXPLAINED TO THE DEFENDANT HE HAD A RIGHT TO REMAIN FOR THAT DISCUSSION, THAT THE ATTORNEYS HAD SOME SORT OF DISAGREEMENT, HE WASN'T SURE WHAT IT WAS, BUT THEY WANTED TO DISCUSS IT WITHOUT HIM, WOULD THAT BE ALL RIGHT? MR. RODGERS SAID YES, SO THEY WENT TO CHAMBERS AND THE JUDGE FOUND OUT THAT THE DISAGREEMENT WAS HE WAS GOING TO CROSS-EXAMINATION THE WITNESSES, THAT THEY HAD BEEN IN THIS CASE FOR A LONG TIME AND JUST HAD BUTTED HEADS ON THIS, AND THE JUDGE TOLD THEM THEY WERE PROFESSIONALS AND THEY NEEDED TO GET THEIR ACT TOGETHER, AND TO DO THIS AND IF THEY NEEDED A LITTLE BIT OF TIME TO FIGURE OUT HOW TO DO, IT HE WOULD GIVE THEM THE REST OF THE AFTERNOON OFF, SO THE NEXT MORNING THEY DISCUSSED IT AND WERE READY TO PROCEED, AND THERE IS A PENALTY PHASE PROCEEDING HERE AT WHICH SOME 20 WITNESSES TESTIFIED. FOLLOWING THE DEATH PENALTY RECOMMENDATION OR THE DEATH RECOMMENDATION BY THE JURY, ANOTHER ATTORNEY, TIMOTHY SHARLTHS, CAME INTO THE -- TIMOTHY SHARTLE, CAME INTO THE CASE AND WAS JUST APPOINTED ON THE DEFENDANT'S MOTION TO WITHDRAW THE PLEA.

HOW DID HE GETS INVOLVED IN IT?

I AM NOT SURE. SOMEBODY CONTACTED HIM AND I THINK THERE WAS SOME DISCUSSION BETWEEN HIM AND MS. LeBOEUF AND HE DECIDED TO COME AND VOLUNTEER INTO THE CASE. AT ANY RATE THERE WAS A HEARING AS TO WHETHER OR NOT TO WITHDRAW THE PLEA. RODGERS WAS ASKED IF THIS MEANT THAT HE WANTED TO GET RID OF HIS ATTORNEYS AND WANTED TO GET NEW ONES, AND HE SAID NO, THAT HE WAS SATISFIED WITH HIS ATTORNEYS. HIS CONCERN WAS THAT THEY HADN'T TOLD HIM THE CONSEQUENCE OF HIS GUILTY PLEA, WAS THAT THEY WEREN'T GOING TO BE PREPARED FOR TRIAL AND THEREFORE THEY WERE MOVING TO WITHDRAW HIS PLEA. THE JUDGE GAVE THE DEFENSE AN OPPORTUNITY TO PRESENT EVIDENCE. THE DEFENSE DECLINED. THE DEFENSE REFUSED TO WAIVE THE ATTORNEY/CLIENT PRIVILEGE. NO EVIDENCE WAS PRESENTED ON THIS CLAIM, AND OUR POSITION IS THAT, IF HE WISHES TO WITHDRAW HIS PLEA, HE HAS TO PRESENT SOME EVIDENCE TO EXPLAIN WHY HE SHOULD WITHDRAW IT. IF HIS CLAIM IS THAT HE WANTS TO WITHDRAW THE PLEA BECAUSE HIS ATTORNEYS WERE INEFFECTIVE IN THEIR ADVICE TOM, THEN HE NEEDS TO PRESENT EVIDENCE ON -- ADVICE TO HIM, THEN HE NEEDS TO PRESENT EVIDENCE ON THAT, TOO, AND HE DID NONE OF THESE THINGS.

WHERE DOES THE WHOLE THING ABOUT COUNSEL'S PREPAREDNESS COME IN HERE? I AM NOT SURE THAT I UNDERSTAND, WAS HE MAKING THE ALLEGATION THAT THEY COERCED HIM OR ONE OR BOTH OF THEM COERCED HIM INTO PLEADING? BECAUSE THEY WERE NOT PREPARED TO GO TO TRIAL.

I DO NOT UNDERSTAND THAT TO BE THE ALLEGATION. I UNDERSTAND THE ALLEGATION TO BE SIMPLY BASED ON THE FACT THAT, ONCE THEY ENTERED INTO THIS PLEA, OR ONCE THEY HAD THIS PLEA, AND IT BEARS NOTING THAT, REMEMBER, ONE OF HIS ATTORNEYS ADVISED MR. RODGERS AGAINST THE PLEA, SO THERE WAS A DISAGREEMENT THERE THAT HE KNEW ABOUT, BUT THE UNPREPAREDNESS WAS WHO WAS GOING TO DO THE CROSS-EXAMINATION. IT IS NOT THAT THEY WEREN'T PREPARED FOR TRIAL, NOT THAT THEY HADN'T DEPOSED ALL OF THESE WITNESSES OR KNEW WHAT WAS GOING ON. THEY SIMPLY HAD A DISPUTE ABOUT WHOSE RESPONSIBILITY WAS IT TO DO THE CROSS-EXAMINATION.

THE PENALTY PHASE.

OF THE PENALTY PHASE WITNESSES, AND THE JUDGE TOLD THEM TO WORK THAT OUT AND THEY DID, FOR ALL OF THE RECORD THAT APPEARS.

WAS THERE A FIRST-TIME MOTION TO WITHDRAW THE PLEA, AFTER THE JURY'S --

AFTER THE JURY RECOMMENDED SENTENCE, YES.

RIGHT BEFORE THE SPENCER HEARING.

BEFORE THE SPENCER HEARING, SO THE FINAL SENTENCE HAD NOT YET BEEN IMPOSED BUT YET THERE WAS A JURY RECOMMENDATION OF DEATH.

THAT WAS WHEN THE MOTION TO WITHDRAW THE PLEA WAS FILED, AND THAT WAS BY SHARTLE.

THAT'S CORRECT.

WAS THERE ANY EVIDENCE PRESENTED AT THAT POINT OR WAS IT JUST DENIED?

NONE WHATSOEVER. THE DEFENDANT WAS GIVEN THE OPPORTUNITY TO PRESENT THE EVIDENCE.

I THOUGHT THAT THE ATTORNEY, THIRD ATTORNEY WHO A CAME IN, WANTED, REALLY A CONTINUANCE TO BE ABLE TO PRESENT EVIDENCE, AND WAS THAT DENIED?

I DON'T RECALL THAT, BUT IT IS THE STATE'S POSITION. THE ONLY CONTINUES THAT I RECALL, IS THE SHORT CONTINUES THAT THE ATTORNEYS REQUESTED AT THE OUT SE SET OF THE PENALTY PROCEEDINGS -- AT THE OUTSET OF THE PENALTY PROCEEDINGS, TO RESOLVE THE ISSUE OF THEIR STRATEGY AND HOW THEY WERE GOING TO PROCEED. I AM NOT AWARE OF ANY DENIAL OF CONTINUANCE THAT MR. SHARTLE ASKED FOR OR THAT ANY ISSUE WAS MADE OF THAT ON APPEAL. IF THERE ARE NO OTHER QUESTIONS, I I WOULD RELY ON MY -- I WOULD RELY ON MY BRIEF AND ASK YOU TO CONFIRM THE CONVICTIONS.

CHIEF JUSTICE: THANK YOU. MR. MARSHAL, HOW MUCH TIME?

IF I COULD ADDRESS THE LAST POINT, AND I WILL GET BACK, CHIEF JUSTICE ANSTEAD, TO THE QUESTION I LEFT YOU WITH, WHEN I SAT DOWN. WHAT HAPPENED WAS, AFTER, RIGHT BEFORE THE SPENCER HEARING, THE MOTION WAS FILED TO WITHDRAW THE PLEA. THE JUDGE DENIED THAT. THEN THE SPENCER HEARING HAPPENED.

WHAT WAS PRESENTED TO THE JUDGE?

JUST A MOTION IN ARGUMENT.

ARGUMENT WAS BASED ON WHAT?

ON MR. SHARTLE SAID THAT, IN HIS DISCUSSIONS WITH THE DEFENDANT AND WITH MS. LeBOEUF, TRIAL COUNSEL, THAT HE HAD DETERMINED THAT THEY HAD NOT TOLD HIM THAT THEY WOULDN'T BE PREPARED TO GO TO TRIAL, AND THAT THE CONSEQUENCE OF THE GUILTY PLEA WOULD BE SHE WOULD NOT BE PREPARED. SHE SAID ON THE RECORD, SHE WAS NOT PREPARED. SHE WAS PREPARED TO DO --

SHE WAS NOT PREPARED TO DO WHAT?

TO CROSS-EXAMINATION THE GUILT/INNOCENCE WITNESS. IF SHE WAS GOING TO DO SENTENCING AND MR. WHITE WAS GOING TO BE ARE DOING THE POLICE OFFICER, AND WHITE TURNED TO HER AND SAID YOUR WITNESS, AND SHE SAID "YOUR WHAT?"

DID HE SEEK TO WITHDRAW THE PLEA?

YES. THERE WAS EVIDENCE OF IT. IF YOU ACCEPT THE EVIDENCE, THE DEFENDANT, THE JUDGE LOOKED AT IT AND SAID WHAT'S YOUR GRIPE? AND HE SAID I DIDN'T KNOW THEY WEREN'T PREPARED. THEY DIDN'T TELL ME THEY WEREN'T PREPARED, AND THEN MS. LeBOEUF AS AN OFFICER THE COURT, SAID YOU ARE ABSOLUTELY RIGHT. I DIDN'T TELL HIM. AND THAT IS EVIDENCE. THE DEFENDANT SAID IT AND THE ATTORNEY SAID IT, AND THE JUDGE ISSUED A RULING.

THAT CAME UP AFTER ALL OF THE EVIDENCE HAD BEEN PRESENTED AND BEFORE THIS TRIAL JUDGE, WHO HAD SAT THERE WHILE THE EVIDENCE HAD GONE IN AND THE JURY, IN FACT, HAD COME BACK AND MADE A RECOMMENDATION, ISN'T THAT RIGHT? AND THEN --

BUT THERE IS NO PREJUDICE COMPONENTS OF THIS. THE DEFENDANT SAYS I DID NOT KNOW WHAT WOULD HAPPEN, WHEN I ENTERED A PLEA. HE IS ENTITLED TO. THE THING HE DID NOT KNOW WAS THAT HIS LAWYERS WOULD NOT BE PREPARED AND THAT THEY WOULD BE IN CHAMBERS BEHIND CLOSED DOORS.

IS THERE A, SOME CASE THAT WE HAVE COME DOWN WITH THAT SAYS THAT THERE IS A BASIS TO WITHDRAW A PLEA, BECAUSE OF SOME INEFFECTIVE ASSISTANCE OF COUNSEL COMPLAINT?

ON THE BASIS OF IGNORANCE, YES. I MEAN, I, THEY HAVE TO BE --

DOES IT GO TO THE ABILITIES OF THE LAWYER?

IGNORANCE OF WHAT WOULD HAPPEN IF A PLEA WAS ENTERED.

BUT IF DEFENSE COUNSEL DIDN'T FEEL THEY WERE READY FOR THE PENALTY PHASE, THEN THEY SHOULD HAVE MOVED FOR A CONTINUANCE.

MS. LeBOEUF, IN FACT, MOVED FOR A MISTRIAL, BASED ON THE JUDGE NOT, I BELIEVE NOT DOING THE CONTINUANCE. WHAT HAPPENED WAS --

NOT DOING WHAT?

NOT GRANTING MORE OF A CONTINUANCE, I THINK. THEY CAME BACK THE NEXT DAY, AND MR. WHITE SAID "READY TO GO", AND MS. LeBOEUF SAYS "MISTRIAL ON THE BASIS OF WHAT I TOLD YOU YESTERDAY." WHICH IS I AM NOT READY TO GO.

WOULDN'T THAT THEN BE THE OBLIGATION OF ONE OR THE BOTH OF THE ATTORNEYS TO SAY WE WOULD MOVE FOR A CONTINUANCE OF THE PENALTY PHASE, SO THAT WE CAN PREPARE FOR THE PENALTY PHASE. AND THEN WE WOULD BE REVIEWING THIS ON AN ABUSE OF DISCRETION AS TO WHETHER A CONTINUANCE SHOULD BE GRANTED NOT AS TO WHETHER A GUILTY PLEA SHOULD

BE WITHDRAWN. THIS DOESN'T SEEM LIKE THE CORRECT REMEDY OR THE CORRECT, YOU KNOW, MOTION WAS FILED.

BUT IF YOU ARE THE DEFENDANT AND YOU ARE BEING ADVISED BY COUNSEL WHAT THE CONSEQUENCE OF YOUR PLEA IS, THE MOST IMPORTANT CONSEQUENCE IS GOING TO BE WHETHER THEY ARE READY TO GO FORWARD. WELL, THEY ARE OR THEY AREN'T. YOU ARE ENTITLED TO BE TOLD, BEFORE YOU ENTER A PLEA, THAT, THAT IS WHAT TOMORROW WE ARE GOING TO BE IN CHAMBERS TELLING THE JUDGE WE CAN'T GO FORWARD, AND HE WASN'T TOLD THAT, SO WHETHER THEY WERE WRONG FOR NOT ASKING FOR A CONTINUANCE, MAYBE THAT IS THE CLAIM I SHOULD ALSO RAISE BUT THE COLONEL OF THIS CLAIM IS HE DIDN'T KNOW BUT THEY DID, SO HIS PLEA WAS UNKNOWING, AND THE MINUTE HE LEARNED, HE MOVED TO WITHDRAW IT AND SENTENCE HADN'T BEEN IMPOSED.

WAS THERE ANY EVIDENCE ON THIS RECORD THAT THE, THE STATEMENT I AM NOT READY, BUT AS FAR AS IN THE CROSS-EXAMINATION OF THE WITNESSES AND THE WITNESSES PRESENTED, WAS THERE THINGS RAISED, WE ARE SUPPOSED TO HAVE WITNESSES HERE. WE DON'T HAVE THEM HERE. WE WOULD HAVE MORE MENTAL HEALTH EXPERTS.

I ACTUALLY THINK THAT THE JUDGE WAS PROBABLY PRETTY LIBERAL ABOUT MORE TIME. IF THEY NEEDED MORE TIME, THEY GOT IT, LIKE WHEN THE PLEA WAS ENTERED, PEOPLE WEREN'T PREPARED, WITNESSES WEREN'T THERE BECAUSE THEY DIDN'T KNOW THEY WERE GOING TO HAVE A PLEA, SO THERE WAS A RECESS, SO I THINK THE JUDGE WAS FAIRLY LIBERAL IN THAT REGARD, AND THEN I MOVED A COUPLE OF OTHER ---.

IN THAT VEIN, THE PLEA WAS ENTERED ON WHAT DAY AND WHAT DAY DID THE PENALTY PHASE ACTUALLY BEGIN?

DAY OF THE WEEKION, BUT AFTER THE PLEA WAS ENTERED, THREE DAYS OF JURY SELECTION AND THEN SENTENCING.

I AM STILL CONCERNED ABOUT THE ISSUE OF TRIAL COUNSEL WAS SUPPOSED TO DO THE PENALTY PHASE. MS. LeBOEUF.

YES.

AND SHE BECAME CONCERNED WHEN THE FIRST WITNESS WAS --

REALLY NOT A PENALTY-PHASE WITNESS BUT AN INVESTIGATOR. SEE, THE STATE HAD TO PROVE SOME ELEMENT OF GUILT/INNOCENCE ANYWAY, BUT TECHNICALLY THEY WERE AT SENTENCING NOT AT GUILT/INNOCENCE, AND SO DEFENSE COUNSEL WHITE SAID WE ARE AT SENTENCING SO IT IS YOUR WITNESS, SO THEY WERE HAVING DISAGREEMENTS. THEY WERE NOT HAECH HAPPY WITH ONE ANOTHER -- THEY WERE NOT HAPPY WITH ONE ANOTHER AND IT WAS A JOB -- A JAB, SO HE SAID IT IS YOUR FIRST WITNESS, AND SHE SAID IT HAD NEVER HAPPENED TO HER BEFORE AND SO SHE GOES INTO CHAMBERS AND TELLS THE JUDGE SHE NOT READY. IT WAS A DETECTIVE NOT SOMEONE IN MITIGATION. DOES THAT ANSWER YOUR QUESTION?

THAT IS FINE. YES.

YOUR HONOR, AT PAGE 1585 OF THE RECORD, MS. LeBOEUF IS ADDRESSING WHY THEY WENT THIS INFORMATION FROM THE CODEFENDANT, AND SHE SAYS MR. LAWRENCE'S ROLE AND THE RELATIVE ROLES OF THESE TWO DEFENDANTS IS ABSOLUTELY THE JURISPRUDENCE'S UNIFORM, IN SAYING THE RELATIVE ROLE OF CODEFENDANTS IS ONE OF THE REASONS FOR THE JURY TO CONSIDER SUBSTANTIAL DOMINATION. SUBSTANTIAL DOMINATION IS NOT WHAT I AM TALKING B.

WITH REGARD TO ANY INDIVIDUAL AND THE CHARACTERISTICS OF THAT PERSON, THE

PARTICULAR DEFENDANT IS CERTAINLY COMING IN AND IS VERY BROAD AND WIDE SWEEPING. IS THERE AUTHORITY THAT GOES INTO THE CAPACITY OF SOMEONE ELSE TO DO WHATEVER OR THE PROPENSITY OF OTHERS TO DO WHATEVER, THAT THAT IS SOMETHING THAT DOES COME INTO EVIDENCE IN CONNECTION WITH THE TRIAL OF A DIFFERENT PERSON, BECAUSE THAT DOESN'T NECESSARILY RELATE TO THIS CRIME, THIS PARTICULAR CRIME. IT IS A PROPENSITY TO BE ENGAGED IN KRINL CONDUCT. -KNOW CRIMINAL CONDUCT.

GREEN VERSUS GEORGIA IS CLOSE. GREEN VERSUS GEORGIA, THE CODEFENDANT WANTED TO INTRODUCE EVIDENCE THAT THE CODEFENDANT STAGED THE CRIME. THE JUDGE SAID, NO, THAT CAN'T COME IN. IN THE TRIAL OF THE CODEFENDANT, THE STATE PUT THAT EVIDENCE IN, VERY MUCH LIKE HERE, AND THE SUPREME COURT SAID, REGARDLESS OF STATE, YOU KNOW, EVIDENCE RULES, YOU WERE ENTITLED TO PUT THIS IN IN THE GREEN TRIAL, ESPECIALLY IN LIGHT OF THE FACT THAT THE STATE FOUND IT SO SIGNIFICANT THAT THEY PUT IT IN, IN THE CODEFENDANT'S TRIAL.

THAT IS IN GREEN VERSUS GEORGIA. THAT WAS CONFESSION AS TO THE CRIME THAT HE WAS CHARGED WITH.

THAT'S RIGHT.

BUT IN ANSWER, DO YOU HAVE ANYTHING AS TO RELATIVE CULPABILITY IS A MITIGATOR? HAVE WE, ARE THERE CASES OUT OF THIS COURT THAT HAVE SAID THAT THAT IS SOMETHING IN MITIGATION?

YES. I THINK THERE IS TONS OF THEM, AND IF I CAN'T LOCATE THEM, WE HAVE GOT LOCKET, WHICH IS A CODEFENDANT CASE, WE HAVE GOT GREEN, WHICH IS A CODEFENDANT CASE, TYSON VERSUS ARIZONA, WHICH IS A CODEFENDANT CASE, IN MAN VERSUS ARIZONA, WHICH IS A CODEFENDANT CASE.

YOU ARE OUT OF MR. CHIEF JUSTICE

YOU USED YOUR TIME. THANK YOU BOTH VERY MUCH. WE ARE GOING TO TAKE A BRIEF RECESS, WHICH JUDGE BELL WILL REJOIN THE PANEL OF JUDGES. WE WILL BE IN RECESS FOR ABOUT 5 MINUTES BEFORE WE CALL THE NEXT CASE.

MARSHAL: PLEASE RISE.