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Donny Lee Crook v. State of Florida

NEXT CASE ON THE DOCKET IS CROOK V STATE. ARE THE PARTIES READY TO PROCEED?

I AM STEVE BOLOTIN CONTINUE FROM THE PUBLIC DEFENDERS OFFICE IN BARTOW AND I REPRESENT THE APPELLANT DONNY CROOK. UNDER FLORIDA LAW, THE DEATH PENALTY CANNOT BE IMPOSED, UNLESS IT IS A TWO-PRONG PROPORTIONALITY TEST. THE CRIME MUST BE AMONG THE MOST AGGRAVATED AND AMONG THE LEAST MITIGATED OF FIRST-DEGREE MURDERS. IN THE COOPER AND ALAMEDA CASES, THE COURT MADE IT VERY CLEAR THAT THERE ARE TWO SEPARATE ANALYSIS AND THAT IT IS IN THE CONJUNCTIVE. IN OTHER WORDS THE STATE -- IN THE CONJUNCTIVE. IN OTHER WORDS, THAT THE STATE MUST SATISFY BOTH.

CHIEF JUSTICE: YOU WOULD AGREE THAT IN THE CASE OF THE HAC, MAKES THIS SOMEWHAT DIFFERENT IN TERMS OF THE AGGRAVATING CIRCUMSTANCE, AND I THINK YOU CONCEDED THAT IN YOUR BRIEF, CORRECT?

WELL, WHAT I AM SAYING IS THAT I THINK THAT THE AGGRAVATORS IN THIS CASE, VIEWED ALONE, WOULD SATISFY THE AGGRAVATION PRONG, SO THAT IF THIS IS A CASE WITH LITTLE OR NOTHING IN MITIGATION, CLEARLY WOULD BE SATISFIED

CHIEF JUSTICE: I GUESS WHAT I AM ASKING, IF WE ON PROPORTIONALITY REVIEW, CONVERTED DEATH SENTENCE TO LIFE, WHERE THE HAC AGGRAVATOR WAS FOUND.

YES. YOUR HONOR, THE CLOSEST I CAN CITE BY ANY PARTY IN THIS CASE IS ROBERTSON. ALSO IN THE CASE OF MILLER, THE COURT TALKED ABOUT, THAT WERE THERE SUBSTANTIAL MITIGATION, PARTICULARLY MENTAL MITIGATION, THAT THAT CAN OUTWEIGH EVEN A HEINOUS CRIME.

WOULD YOU, IN TERMS OF GIVING US A PICTURE OF THE MITIGATION, I KNOW THE LAST TIME THE CASE WAS HERE, THERE WAS A, ALSO AN ISSUE OF MENTAL RETARDATION. IT WAS A HEARING, AND APPARENTLY NOW THERE IS NOT A CLAIM THAT MR. CROOK IS MENTALLY RETARD, CORRECT?

THAT'S CORRECT.

CHIEF JUSTICE: SO WOULD YOU GO THROUGH, I GUESS, YOU ARE REALLY LOOKING AT THE BRAIN DAMAGE ISSUE AS BEING THE, AND THE AGE, AS BEING THE MOST SIGNIFICANT MITIGATORS, COULD YOU GIVE THE COURT BENEFIT OF HOW THAT TESTIMONY CAME OUT AND TO EXPLAIN HOW THIS IS A MORE SIGNIFICANT CASE OF BRAIN DAMAGE OR 20-YEAR-OLD, THAN OTHER CASES WHERE WE HAVE UPHELD THE DEATH PENALTY?

FIRST OF ALL, BEFORE I GET INTO THAT, I ALSO WANT TO MENTION THE BELL CASE, WHICH IS ANOTHER CASE THAT WAS REVERSED ON PROPORTIONALITY, EVEN THOUGH FOUR AGGRAVATORS, INCLUDING BOTH HAC AND CCP WERE FOUND, SO BELL AND ROBERTSON ARE THE TWO THAT COME TO MIND. I AM SURE THAT THERE ARE OTHERS THAT ARE PROBABLY CITED IN MY BRIEF AND SOME WHICH DON'T COME TO MIND. THIS CASE IS NOT ABOUT BRAIN DAMAGE. THIS CASE HAS GOT VOLUMINOUS COMPELLING MITIGATION, AND BASICALLY EVERY CASE I CAN COMPARE IT TO, INCLUDING PROPORTIONALITY REVERSALS, THIS CASE HAS MORE. BOTH MENTAL MITIGATORS WERE FOUND. NOW, I GRANT YOU THERE HAVE BEEN CASES WHERE THIS CASE WAS WAS AFFIRMED, EVEN THOUGH BOTH MENTAL MITIGATORS WERE FOUND, BUT TYPICALLY THEY

WERE GIVEN SLIGHT WEIGHT OR SOME WEIGHT OR MODERATE WEIGHT. IN THIS CASE BOTH MENTAL MITIGATORS WERE GIVEN A SIGNIFICANT AMOUNT OF WEIGHT. I AM NOT AWARE OF WHERE THAT WAS CONCURRED. FOUR DEFENSE EXPERTS, DR. McCRANEY, A NEUROLOGIST, DR. DELANY, A NEUROPSYCHOLOGIST, AND DR. McMAHON AND ANOTHER NEUROPSYCHOLOGIST, WHO TESTIFIED AT THE REHEARING. AND DR. DRAPER SAID THAT HE IS NOT DISPUTING THEIR FINDINGS AND IS NOT AN EXPERT IN THEIR FIELD AND THAT THE PEOPLE THAT HE WOULD RELY ON ARE PEOPLE LIKE THE DOCTORS, McCRANEY, DR. McMAHON. AND WHEN ASKED DID YOU SPECIFICALLY FIND BRAIN DAMAGE, HIS ANSWER WAS NOT SPECIFICALLY. I DON'T GET INTO ADHD. THAT CAN BE INCLUDED WITH MANY THINGS INCLUDING BRAIN DAMAGE BURKES BRAIN DAMAGE IS MY SPECIALTY.

HE DID THE EVALUATION BEFORE THIS MURDER --

CORRECT. CORRECT. NOW, GOING INTO THE CLASSIFICATIONS OF THE MITIGATION HERE, YOU HAVE GOT BOTH MENTAL MITIGATORS AND YOU HAVE GOT THEM BEING GIVEN SIGNIFICANT WEIGHT BY THE TRIAL JUDGE. YOU HAVE GOT THE OVERWHELMING UNREBUTTED EVIDENCE OF THE ORBITAL FRONTAL SYNDROME, BUT NOT ONLY DO YOU HAVE THE EXISTENCE OF THAT, YOU HAVE, FROM EACH OF THE FOUR EXPERTS PARTICULARLY I WOULD REFER THE COURT TO THE TESTIMONY OF DR. McCRANEY AND DR. McMAHON, SHOWING THE NEXUS BETWEEN THE FRONTAL LOBE DAMAGE AND THE RAGE REACTION HOMICIDE. A CASE, I CITED THE ROBBERY-GONE-BAD CASES. OKAY. I CITED FOUR CASES WHERE THIS COURT REVERSED ON PROPORTIONALITY IN ROBBERY GONE BAD AND FOUR FROM IT WAS AFFIRMED.

CHIEF JUSTICE: IN THOSE CASES OF ROBBERY GONE BAD, IT WAS A SITUATION WHERE SOMEONE GOES IN INTENDING SIMPLY TO ROB AND SOMEHOW THE GUN GOES OFF. NONE OF THOSE INVOLVE THE KIND OF VICIOUS ATTACK THAT WAS INVOLVED IN THIS CASE. WOULD YOU AGREE WITH THAT?

BUT I THINK THAT GOES TO THE MITIGATION. I THINK DR. McCRANEYS --

THAT IS HARD TO IMAGINE. YOUR ARGUMENT AND I GUESS THE DEFENSE LAWYERS MADE IT TO THE JURY AND TO THE JUDGE, THAT THE VERY FACT OF HIS BRAIN DAMAGE AND FRONTAL LOBE IMPAIRMENT, WAS RESPONSIBLE FOR THE RAGE REACTION, AND FOR THE NATURE AND EXTENT OF THIS ATTACK. THAT IS THE ARGUMENT.

ALL FOUR OF THE EXPERTS RELATED TO THAT.

HOW DOES THAT, THEN, DIDN'T THE JUDGE ALSO FIND THAT HE HAD MADE A STATEMENT TO A, SOMEONE IN THE JAIL THAT THERE WAS A REASON THAT HE ACTUALLY STUCK THE COULD YOU, THE POOL COULD YOU UP THE VICTIM AND THAT WAS TO MAKE IT LOOK LIKE SOMEONE ELSE HAD COMMITTED THE ATTACK? ISN'T THAT A REAL PROBLEM?

I DON'T THINK IT IS. THAT OCCURRED DURING THE SORT OF WINDDOWN FROM THE RAGE ATTACK, WHERE HE REALIZED WHAT HE HAD DONE AND GOT THE HALF-BAKED IDEA, WHAT DO I DO, AND THERE WAS SOME INDICATION IN THE MEXICAN CULTURE IN WHICH HE WAS SOMEWHAT FAMILIAR WITH, THAT THIS WAS, MIGHT BE SOMETHING THAT MIGHT BE DONE. THAT WAS PART OF DR. McMAHON'S TESTIMONY. AS FAR AS HE KNEW, SHE WASN'T ALIVE AT THAT POINT AND SHE BARELY WAS ALIVE, AND THE UNDISPUTED TESTIMONY WAS THAT SHE WAS BARELY CONSCIOUS AND BARELY ALIVE AND COULD FEEL NOTHING BUT FEAR.

CHIEF JUSTICE: YOU ARE NOT GETTING TO THE PART WHERE THE ASSAULT WAS PART OF THE RAGE REACTION.

IT APPEARS THAT THAT FINAL ACT MAY HAVE BEEN DURING THE WINDDOWN FROM THE RAGE REACTION, WHEN HE REALIZED WHAT HE HAD DONE. I AM BASING THAT ON DR. McMAHON'S

TESTIMONY

CHIEF JUSTICE: DID HE EXPERT TESTIFY TO THAT?

I DON'T KNOW THAT AN EXPERT COULD TESTIFY TO THAT. THAT IS WHAT DR. McMAHON SEEMED TO THINK.

STOPPING YOU RIGHT THERE AND ASKING TO YOU CLARIFY, WHAT WAS THE EXPERT TESTIMONY ABOUT THE CAUSE OF DEATH OF THE VICTIM?

THE CAUSE OF DEATH, THE VICTIM WAS ON THE VERGE OF DEATH ANYWAY FROM THE BEATING AND THE STABINGS.

WHO SAID THAT?

THE MEDICAL EXAMINER, DR. MALAMUT, WHO TESTIFIED IN THE ORIGINAL TRIAL.

DID HE TESTIFY TO THAT?

YES. SHE WAS LITERALLY ON THE DEATH, THE HEMORRHAGING AND WHAT CAUSED THE DEATH FINALLY WAS AN INJURY TO, I BELIEVE IT WAS THE BRAIN FROM THE POOL CUE SITUATION, BUT ACCORDING TO THE DOCTOR, SHE WAS DEFINITELY UNCONSCIOUS AND DEFINITELY ON THE VERY CUSP OF DEATH AT THE MOMENT.

DID HE TESTIFY THAT SHE WOULD HAVE DIED ANYWAY?

I DON'T KNOW THAT HE USED THE TERM "SHE WOULD HAVE DIED ANYWAY."

TELL ME WHAT HE DID, THEN.

I WILL SAY THIS, THAT IF YOU READ DR. MALAMUT'S TESTIMONY, THAT THERE WILL BE NO QUESTION IN YOUR MIND THAT SHE WOULD HAVE DIED ANYWAY.

HOW DID SHE GET TO THAT POINT OF DEATH?

FROM THE BEATING AND THE STABBINGS.

AND THAT ITSELF, WOULD CONSTITUTE HAC.

ABSOLUTELY. IT WAS FOUND IN THIS CASE AND I AM NOT DISPUTING IT. WHAT I AM SAYING IS THAT DONNY CROOK WAS A 20-YEAR-OLD WITH, ACCORDING TO DR. McMAHON, THE EMOTIONAL MATURITY OF A FOUR-YEAR-OLD.

LET'S GO OVER. THAT A FOUR-YEAR-OLD, EMOTIONAL MATURITY, WHEN WE LOOK AT AGE, WE ARE LOOKING AT HOW SOMEONE, THEN, FUNCTIONS IN THE WORLD, SO IF YOU COULD GIVE WAS PICTURE OF I KNOW HE DROPPED OUT OF SCHOOL WHEN HE WAS INNATE GRADE. HE READ AT A VERY BASIC LEVEL, BUT AT THE AGE OF 20, WAS HE LIVING ON HIS OWN?

THERE IS NO TESTIMONY THAT HE EVER HELD DOWN, LIKE, A REGULAR JOB OR ANYTHING LIKE THAT.

CHIEF JUSTICE: WHAT IS IT THAT HE BASES THE FACT, AND THEREFORE WE SHOULD TREAT THIS CASE AS IF THIS WAS A MUCH, YOU KNOW, A 16-YEAR-OLD, I MEAN, BECAUSE THAT IS ANOTHER ISSUE THAT OBVIOUSLY IF HE WAS, HAD THE EMOTIONAL OR PSYCHOLOGICAL AGE AFTER 16-YEAR-OLD, THEN THAT MIGHT BE ANOTHER COMPELLING FACTOR?

THE TRIAL JUDGE FOUND, THE TRIAL JUDGE REJECTED THE FOUR-YEAR-OLD EQUIVALENT, BUT TRIAL JUDGE SPECIFICALLY ACCEPTED THAT MR. CROOK'S EMOTIONAL AGE, PSYCHOLOGICAL MATURITY, WAS CHRONOLOGICALLY LESS THAN THE AGE OF 20 AND GAVE IT MODERATE WEIGHT AS A STATUTORY MITIGATOR.

CHIEF JUSTICE: IT IS SOMETHING FOR SOMEONE TO SAY IT. I WANT TO KNOW WHAT ARE THE FACTUAL UNDERPINNINGS FOR THAT STATEMENT THAT, ALTHOUGH HE WAS 20 YEARS OF AGE, HE, IN FACT, WAS MUCH, ACTED IN LIFE, MUCH DIFFERENTLY THAN THAT?

YOU HAVE GOT THE TESTIMONY OF EACH OF THE FOUR DEFENSE EXPERTS, BASICALLY SAYING THAT, THAT HE HAS, BASED ON THEIR EXAMINATIONS --

CHIEF JUSTICE: SAYING WHAT?

BASED --

WAS HE DROPPED OUT OF SCHOOL, LIVING WITH THE FAMILY? WAS HE LIVING BY HIMSELF? DID HE WORK? YOU SAY FACTS. WHAT WERE THE FACTS?

THERE IS NO EVIDENCE IN THE RECORD THAT HE EVER HELD DOWN A JOB.

DON'T SAY THERE IS NO EVIDENCE OF. WHAT WAS THERE EVIDENCE OF, IN TERMS OF DESCRIBING HIS LIFE. IF WE KNOW THAT HE DROPPED OUT OF SCHOOL, WHAT HAPPENED TO HIM AFTER THAT?

HIS LIFE CONSISTED, I MEAN, WE KNOW, HE PROBABLY DID SOME ODD JOBS. HE USED EVERY CONTROLLED SUBSTANCE HE COULD GET HIS HANDS ON, TO SELF-MEDICATE. I THINK I NEED TO REFER TO THE TESTIMONY OF DR. CREMPER AT THE ORIGINAL, THAT WAS INTRODUCED INTO HIS RECORDS FROM THE 1994 DISABILITY EVALUATION, WHERE, IF I CAN FIND THIS HERE.

JUST SUM IT UP FOR US.

ALL RIGHT. TO SUM IT UP, DR. CREMPER, THE STATE'S EXPERT, HIS DIAGNOSTIC IMPRESSION WAS THAT CROOK WAS NOT ABLE TO OBTAIN EMPLOYMENT, DUE TO HIS COGNITIVE DEFICITS, AND WAS UNABLE TO RETAIN AND HAD NO MEMORY AND WAS, WITH MINOR CONFRONTATION, BECAME DRASTICALLY OUT OF TOUCH WITH HIS --

CAN WE PIECE THIS TOGETHER?

YOU CAN PIECE A FEW THINGS TOGETHER. IT APPEARS THAT HE LIVED WITH HIS MOTHER SOME OF THE TIME, AND HE MIGHT HAVE LIVED WITH FRIENDS SOME OF THE TIME. THERE WAS INDICATIONS THAT HE WAS DOING DRUGS WITH EITHER JOHN'S DAUGHTER AND HER BOYFRIEND AND PROBABLY SOME OTHER PEOPLE AS WELL.

DID DR. CREMPER TESTIFY THAT HE HAD A HISTORY OF MALINGERING?

NOT A SPECIFIC HISTORY OF MALINGERING. THERE WAS NO ONE SPECIFIC INDICATION THAT THE IQ TEST GIVEN IN 1994 WAS SPURIOUSLY LOW AND PROBABLY THE POINTS OF CONTEST OVER THAT IS THAT THE DEFENDANT TOLD DR. McMAHON, A DEFENSE EXPERT, THAT, YES, HE WAS TRYING TO GET A LOW SCORE ON THAT PARTICULAR TEST. HIS SCORES AND, AGAIN, HE DOESN'T QUALIFY, IT WAS AGREED BY ALL CONCERNED THAT HE DIDN'T QUALIFY UNDER THE MENTAL RETARDATION STATUTE, BUT TESTING OVER THE COURSE OF HIS LIFE, STARTING BACK AS EARLY AS I BELIEVE AGE 5, CONSISTENTLY SHOWS VERBAL IQ SCORES IN THE 60s AND LOW 70s. PERFORMANCE IQ SCORES RELATIVELY TEN TO 15 TO POSSIBLY 20 POINTS HIGHER HAD, WHICH IS AN INDICATION OF BRAIN DAMAGE. THE ONE SCORE THAT HE EVER RECEIVED THAT WAS SIGNIFICANTLY HIGHER THAN THAT WAS THE LAST ONE GIVEN BY DR. CREMPER, BUT DR.

CREMPER IN HIS STATEMENT, STATED THAT THAT MIGHT NOT BE ENTIRELY VIABLE BECAUSE IT WAS GIVEN, A RETEST, HE HAD BEEN TESTED BY DR. McMAHON A WEEK EARLIER, SO BASICALLY HIS IQ SCORES CONSISTENTLY SHOW 60s AND LOW 70s VERBAL.

WAS THERE ANYBODY THAT TESTIFIED ABOUT HIS LIFE?

HIS MOTHER.

GIVE US A THUMBNAIL SKETCH.

I WISH I COULD. HIS LIFE, THIS IS SOMETHING WHO STARTED LIFE AND ACCUMULATED ABOUT TEN STRIKES AGAINST HIM, BY A VERY EARLY AGE. HIS MOTHER MARRIED AT THE AGE OF 15. HE WAS THE THIRD OF THREE SONS. THERE WAS A LATER-BORN DAUGHTER. ALL OF THE SONS HAD SEVERE PROBLEMS. DONNY WAS RAISED IN A SITUATION. HE WAS BROUGHT HOME AFTER A DIFFICULT BIRTH, AND HIS MOTHER WENT TO LIVE IN THE TRUCK WITH HIM BECAUSE IT WAS FREEZING COLD IN ALABAMA. THE FATHER, WHO HAD A THIRD GRADE EDUCATION, HAD BEEN HIT ON THE HEAD WITH A TROLL MOTOR, OVER AT LAKE REGION, AND HE WAS CRAZY AND AT THAT POINT BECAME ABUSIVE TO THE MOTHER AND TO DONNY. DONNY WITNESSED VERBAL AND PHYSICAL ABUSE FROM HIS FAMILY VERY EARLY AND WAS PHYSICALLY AND VERBALLY ABUSED AT THE AGE OF FIVE, BEATEN BY PIPES BY THE OTHER KIDS, AND THAT WAS CITED BY MANY FACTORS AS BEING A SOURCE OF THE BRAIN DAMAGE.

SO THE FACTORS ATTRIBUTED AS A SOURCE OR THE CAUSE OF THE BRAIN DAMAGE --

McMAHON WAS THE MAIN ONE IN THIS BUT BASICALLY THEY ALL SAID IT, THAT THEY REFERRED TO ABOUT FIVE LIKELY SOURCES OF BRAIN DAMAGE CROOK HAD AT LEAST FOUR OF THEM, IF NOT THE FIFTH. CONGENITAL, ABUSE AND NEGLECT WITHIN THE HOME, LACK OF STRUCTURE, SUBSTANCE ABUSE, PARTICULARLY THE HUFFING OF PAINT AND OTHER CHEMICALS, WHICH HE STARTED AS YOUNG AS ABOUT THE AGE OF EIGHT AND IT CONTINUED AND WORSENERD THROUGHOUT, WHICH DR. McCRANEY LIKENED TO THROWING GASOLINE ON A FIRE, AND I AM TRYING TO REMEMBER, THE FOURTH FACTOR WAS THE PHYSICAL TRAUMA, WHICH THERE IS SEVERAL DOCUMENTED INSTANCES OF, INCLUDING THE INCIDENT WHERE HE WAS BEATEN ON THE HEAD WITH PIPES AT THE AGE OF FIVE, INCLUDING A NUMBER OF ACCIDENTS WITH CARS.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME.

AND I PROBABLY HAD BETTER RESERVE. THANK YOU.

MAY IT PLEASE THE COURT. I AM CANDACE SABELLA REPRESENTING THE STATE OF FLORIDA. WHAT WE NOW KNOW AFTER THIS RESENTENCING IS THAT THIS DEFENDANT IS NOT RETARDED, THAT HE HAS LOW AVERAGE INTELLIGENCE AND BASICALLY HE SUFFERS FROM ANTISOCIAL PERSONALITY DISORDER, WHICH MEANS THAT HE IS A PSYCHOPATH. WE CLEARLY KNOW THIS BY THE FACTS INTRODUCED AT THE PREVIOUS TRIAL FOR THE CONVICTION, WHICH THIS COURT HAS AFFIRMED.

DOESN'T THE DIAGNOSIS OF BRAIN DAMAGE, THOUGH, THE EXTENSIVE TESTIMONY OF THE DOCTORS DISTINGUISH THIS CASE FROM THE CASES THAT ORDINARILY YOU WOULD SAY IS A PSYCHOPATH, THAT IS THAT, SOMEBODY THAT JUST IS SOCIALLY OUT THERE. ISN'T THAT A DRAMATIC DISTINCTION?

YOUR HONOR, I AM NOT AWARE OF ANY CASE OUT OF THIS COURT WHERE THEY HAVE FOUND --

LET ME FINISH. FROM OUR USUAL CHARACTERIZATION OF PSYCHOPATH, WHICH USUALLY JUST MEANS A MEAN SON OF A GUN, BUT THE TESTIMONY BY THE EXPERTS AND THE BRAIN DAMAGE, DOESN'T DISTINGUISH THIS CASE FROM THOSE CASES USUALLY, WHERE JUST BEING A

PSYCHOPATH, IN OTHER WORDS, VERY MEAN PERSON, IS INVOLVED?

I AM NOT AWARE OF ANY CASE, YOUR HONOR, OUT OF THIS COURT WHERE WE HAVE ALLEGED ANTISOCIAL PERSONALITY DISORDER THAT THEY HAVE NOT ALSO ALLEGED BRAIN {DACHBLINGT} BRAIN DAMAGE IS A VERY COMPLICATED DIAGNOSIS AS THIS COURT IS AWARE.

ARE WE TALKING ABOUT ALLEGATION OR ARE WE TALKING ABOUT SOMETHING PROVEN?

THE COURT FOUND BRAIN DAMAGE.

MENTAL MITIGATORS, ISN'T THAT RIGHT, AND GAVE THEM GREAT WEIGHT?

HE GAVE THEM MODERATE WEIGHT.

SIGNIFICANT WEIGHT?

SIGNIFICANT WEIGHT. MODERATE WEIGHT. BUT REGARDLESS OF THAT.

CHIEF JUSTICE: WHEN WE SAY REGARDLESS OF THAT, THE STATE, EVEN IN THE INITIAL PENALTY PHASE, AND THIS WAS A 7-TO-5 CASE DESPITE THIS VERY VICIOUS TYPE OF ATTACK, THAT THE STATE DIDN'T CONTEST BRAIN DAMAGE. NOW, SO, AGAIN, BACK TO WHERE JUSTICE ANSTEAD IS ASKING YOU, SO WHEN WE JUST, TO SAY THIS IS A PSYCHOPATH CASE, SORT OF PUTS IT IN THIS REALM OF SOMETHING THAT, WHERE SOMEBODY HAS JUST HAD A HISTORY OF DOING BAD THINGS, WE ARE GOING TO LABEL THEM A PSYCHOPATH OR AN ANTISOCIAL PERSONALITY DISORDER, AND THAT, YOU KNOW, SORT OF PUT IT ASIDE, BUT HERE THERE ARE HARD FINDINGS, ARE THERE NOT, THAT THE JUDGE ATTRIBUTED SIGNIFICANT WEIGHT TO, AS TO THIS BEING A STATUTORY MITIGATOR OF BEING UNDER SIGNIFICANT IMPAIRMENT AT THE TIME OF THIS CRIME?

ABSOLUTELY, YOUR HONOR, AND THE STATE DIDN'T CONTEST BELOW, AND THE STATE IS NOT CONTESTING IT HERE. THERE IS EVIDENCE OF BRAIN DAMAGE. THE QUESTION IS HOW MUCH BRAIN DAMAGE, HOW DOES IT COMPARE TO THE FACTS OF THIS CASE AND HOW, WHEN YOU ARE BALANCING THE TWO AGAINST EACH OTHER, WHERE DO WE GET TO FROM THERE? CLEARLY --

WAIT A MINUTE. LET ME ASK YOU THIS. BEFORE YOU GET TOO FAR. ON THIS BRAIN DAMAGE, WHEN THE DOCTORS ACTUALLY TALKED ABOUT THE BRAIN DAMAGE, DID, WAS IT LINKED TO THE FACT THAT HE COULDN'T CONTROL HIS ACTIONS? HOW DID THE DOCTORS LINK THE BRAIN DAMAGE TO THE FACT OF, I MEAN, WELL, THE ACTUAL FACTS OF THIS CASE?

THE DOCTORS THAT FOUND BRAIN DAMAGE AND MOST OF THEM ASSERTED THAT THEY BELIEVED HE HAD FRONTAL LOBE DAMAGE, ALTHOUGH THERE WAS NO PHYSICAL EVIDENCE THAT COULD SUBSTANTIATE THAT, BUT THEY BELIEVE, BASED ON HIS TESTING, THAT HE HAD FRONTAL LOBE DAMAGE, AND THE ALLEGATION AND THE TESTIMONY WAS THAT FRONTAL LOBE DAMAGE HAS TO DO WITH YOUR IMPULSE CONTROL, WHICH IS EXACTLY WHERE I AM GETTING TO AT THIS POINT. THEY ARE ARGUING HE HAS LACK OF IMPULSE CONTROL. WELL, CLEARLY THE FACTS OF THIS CASE SHOW THAT THIS MAN INTENTIONALLY ATTACKED THIS WOMAN, KNOCKED HER DOWN. SHE GOT UP. HE KNOCKED HER DOWN AGAIN. STABBED HER AND STOMPED HER IN THE FACE AND WHILE SHE IS STRUGGLING TO GET TO A PHONE, HE INCAPACITATES HER. ONCE THIS WOMAN IS COMPLETELY INCAPACITATED, HE STOPS. OKAY. IF I MAKE THESE ACTIONS, IT THROWS SUSPICION OFF ME.

BUT AS FAR AS FIGURING THIS CRIME OUT, HE [TECHNICAL DIFFICULTIES] I AM NOT GOING TO DISPUTE THAT THERE MAY OR MAY NOT BE A CONNECTION BETWEEN HIS IMPULSE CONTROL, BUT WHAT I AM SUGGESTING IS THE POSSIBILITY OF IMPULSE CONTROL, WHICH MANY OF US MAY HAVE, DOES NOT LEAD YOU TO STOMP SOME POOR WOMAN TO DEATH AND THEN ONCE SHE INCAPACITATED, DECIDES TO SHOOT A POOL CUE THROUGH HER ENTIRE BODY.

THERE WERE BATTERIES?

THERE WERE BATTERIES AND ALL SORTS OF THINGS.

SO WHAT WAS THE IMPULSE THAT LED TO AGGRESSIVE VIOLENT BEHAVIOR, OUTSIDE OF THIS EVENT?

THERE WAS NO EVIDENCE THAT I RECALL AS TO HIS PRIOR CRIMES AND WHAT MAY HAVE LED HIM TO DO THAT.

OUTSIDE OF CRIMINAL BEHAVIOR, SCHOOL ACTIVITY, PRIOR COMMITMENT PROGRAMS OR WHATEVER, WAS THERE --

THROUGHOUT THIS MAN'S LIFE, HE HAS HAD CONDUCT DISORDERS THROUGHOUT HIS LIFE. HE HAS HAD PROBLEMS IN SCHOOL. HE HAS HAD PROBLEMS IN HIS LIFE, AND HE WAS CONSISTENTLY DIAGNOSED, I THINK, FROM THE TIME HE WAS FIVE YEARS OLD, WITH CONDUCT DISORDERS.

BUT TO THE LEVEL, WAS IT A RAGE TYPE RESPONSE?

NO. THERE WAS NO RAGE TYPE RESPONSE THAT I AM AWARE OF, NO.

WASN'T THAT ONE OF THE REASONS WHEN DR. CREMPER FOUND HIM DISABLED FOR SOCIAL SECURITY PURPOSES, WASN'T THE FACT OF LACK OF IMPULSE CONTROL, IMPULSIVITY, ONE OF THE MAJOR FINDINGS OF THAT EXAMINATION?

I AM GLAD YOU MENTIONED DR. CREMPER, BECAUSE COUNSEL SUGGESTS THAT WE HAVE THIS FINDING BY DR. CREMPER THAT HE WASN'T ABLE TO HOLD THE JOB AND THAT HE WASN'T ABLE TO CONDUCT A NORMAL LIFE, AND ACTUALLY DR. CREMPER TESTIFIED THAT THAT '94 EXAMINATION HE HAD DONE WAS WRONG, THAT HE DID NOT HAVE ENOUGH INFORMATION AT THAT TIME TO MAKE AN ADEQUATE ANALYSIS, AND HAVING BEEN FIRST WITH THAT INFORMATION FOUR YEARS LATER THAT, HE CAME TO A DIFFERENT DETERMINATION. AT THE TIME HE WAS NOT AWARE THAT THE DEFENDANT WAS PROBABLY ON DRUGS WHEN HE TOOK THE TEST AND THAT THERE WERE OTHER THINGS THAT WERE AFFECTING THE OUTCOME OF THE TEST.

LET ME ASK YOU SOMETHING, THE JUDGE FOUND TWO STATUTORY MITIGATORS AND ASSIGNED SIGNIFICANT WEIGHT TO THEM. AND SPECIFICALLY, HE FOUND THAT THE DEFENDANT HAD, THAT THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCTOR CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW, WAS SUBSTANTIALLY IMPAIRED, ASSIGNING SIGNIFICANT WEIGHT TO THAT.

YES, YOUR HONOR.

DOESN'T THAT IMPLICITLY, THEN, FIND THAT THIS IMPULSE CONTROL DID AFFECT THE CRIME?

ABSOLUTELY, YOUR HONOR. ABSOLUTELY. AND THAT IS WHAT THE COURT FOUND. THE COURT ALSO FOUND THAT, HAVING HAD THIS INITIAL ATTACK, THAT THE DEFENDANT, THEN, WENT BEYOND THAT AND CONTINUED TO BEAT THIS WOMAN, ONCE SHE WAS INCAPACITYED, ONCE SHE COULD NO LONGER KEEP HIM FROM TAKING THE CASH REGISTER, WHICH IS WHAT THEY ALLEGED WAS HIS INITIAL INTENT.

WHAT YOU ARE ALLEGING IS AT SOME POINT HE MAY HAVE LOST IT BUT AT SOME POINT, THE FACT THAT WHAT HE DID BEYOND THAT OUGHT TO SET THIS APART AND NOT HAVE THE MITIGATION OUTWEIGHED, IS THAT BECAUSE ARE --

FIRST OF ALL, I WOULD NOT SAY THAT HE HAD EVER LOST IT. I THINK HE KNEW ALL ALONG WHAT

HE WAS DOING. I THINK HE DIDN'T CARE WHAT THE OUTCOME OF IT WAS, THAT SHE MADE HIM MAD FOR WHATEVER REASON AND HE BEAT HER, THAT HAVING BEAT HER AND STOMPED HER AND INCAPACITATED HER, HE THEN MADE THE DECISION, MUCH LIKE YOU WOULD HAVE A DEFENDANT WHO STOPPED AND HAD TO RELOAD A GUN. WAIT A MINUTE.

I GUESS THE PROBLEM I SEE IN THAT ARGUMENT, IS HOW DO YOU GET FROM THE POINT OF, OKAY, THIS MAN HAS NO IMPULSE CONTROL, SO HE LOST IT AND STARTED SOMETHING, AND WHERE DO WE PICK UP THAT HE NOW HAS IT BACK? I AM HAVING DIFFICULTY CONNECTING HERE OF HOW YOU CHANGE FROM ONE GEAR TO THE OTHER.

EVEN THE DOCTORS WHO TESTIFIED FOR THE DEFENDANT, SAID THAT HE COULD CHANGE FROM ONE GEAR TO ANOTHER, WHETHER THAT HAPPENED WHEN HE GOT OUTSIDE WITH THE CASH REGISTER OR WHETHER HE REALIZED THIS WOMAN WAS INCAPACITATED, NOT BEING AWARE THAT THE DOCTOR COULD MAKE THAT DETERMINATION, WHEN PRESENTED WITH CROSS-EXAMINATION, SAID COULD HAVE BEEN THAT OR THAT, AND NOT BEING PRESENT FOR THE CRIME SHOULD KNOW THAT THE FACTS SHOW THAT, ONCE SHE WAS INCAPACITATED HE THEN DRAGGED HER TO ANOTHER PART OF THE BAR AND DISROBED HER AND GOT THIS POOL CUE AND WITH SUCH FORCE AS TO GO THROUGH HER COMPLETE BODY, TO PUT THIS OFF ON SOMEONE ELSE. THIS IS DELIBERATIVE THINKING THAT NEGATES ANY CLAIMS OF MITIGATION?

WERE THE DOCTORS TO THE POINT WHERE THEY ACTUALLY ASK, A DEFENDANT HAVING DONE XYZ, DOES THIS STILL DEMONSTRATE IMPULSE CONTROL OR LACK OF IMPULSE CONTROL, OR DOES THIS DEMONSTRATE THAT NOW WE MIGHT BE IN CONTROL? WAS THERE ANY --

THERE WAS THAT KIND OF EXAMINATION, AND IN FACT INTERESTINGLY ENOUGH GOING THROUGH THAT EXAMINATION, THE DOCTOR REALLY WASN'T ABLE TO POINT TO SOMETHING THAT WOULD HAVE SET HIM OFF.

LET ME ASK YOU ABOUT THE AGE ISSUE. HE IS 20, CHRONOLOGICAL AGE. WHAT DID THE JUDGE FIND ABOUT HIS PSYCHOLOGICAL OR EMOTIONAL AGE, AND WHAT DO WE, DID HE FIND THAT AS A STATUTORY MITIGATOR?

HE FOUND IT AS, I BELIEVE IT WAS UNDER HIS STATUTORY AS A CATCHALL, WHAT HE FOUND WAS HE SAID, HE TALKED ABOUT DR. McMAHON SAYING THAT HE WAS FOUR YEARS OF AGE. HE ALSO SAID HIS UNDERSTANDING OF ORAL LANGUAGE TO BE ELEVEN, BUT THE COURT CANNOT ACCEPT THE FINDING THAT THE DEFENDANT'S PSYCHOLOGICAL AGE WAS FOUR YEARS, SINCE THE FACTS INDICATE THAT HE WAS ABLE TO SURVIVE ON HIS OWN IN SOCIETY. HOWEVER, CLEARLY FROM THE EXPERTS, HE WAS IMMATURE FOR HIS:LOGICAL AGE AND THE EXPERT HAS PROVEN TO GIVE IT MODERATE WEIGHT.

WAS THAT A STATUTORY MENTAL MITIGATOR?

I BELIEVE, YOUR HONOR, IT WAS IN THE CATCHALL OF THE OTHER FACTORS, BECAUSE HE FOUND ON WHOLE CATEGORY OF STATUTORY MENTAL MITIGATORS UNDER THE CATCH ALL AND THEN A WHOLE OTHER ANOTHER UNDER THE NONSTATUTORY.

IF WE HAD A CASE HERE OF A BRAIN-DAMAGED INDIVIDUAL WHO WAS 18 AND REALLY FUNCTIONED AT A 14-YEAR-OLD LEVEL IN HIS LIFE, WOULD THAT BE, WHAT WOULD YOU SAY ABOUT THE PROPORTIONALITY ISSUE THEN, AND I GUESS WHAT I AM LEADING TO, IS, AND IT WAS A QUESTION I ASKED MR. BOLOTIN, DOES THE FACT THAT YOU KEEP ON, OF THE HAC, THAT THE MANOR IN WHICH THIS CRIME WAS COMMITTED, SORT OF TRUMP EVERYTHING ELSE, AND IF IT HAD BEEN A GUNSHOT RAGE, THAT THAT WOULD, MAYBE IT IS NOT PROPORTIONAL, BUT BECAUSE IT IS A VICIOUS ATTACK, THAT THAT IS WHAT, THEN, SETS IT APART FROM EVERY OTHER CASE?

THIS COURT HAS CLEARLY HELD THAT THE ACC IS AT THE APEX OF AGGRAVATORS, AND

BECAUSE IT IS A MORE HEINOUS CRIME, BUT YOU HAVE TO BALANCE IT WITH THE SPECIFIC FACTS OF THE CASE AND THE FACTS OF THE CASE, DESPITE EVERYTHING ELSE, ARE THAT HE HAS LOW INTELLIGENCE THAT, IS HE OPERATING ON HIS OWN THROUGHOUT HIS LIFE.

CHIEF JUSTICE: HE IS OPERATING ON HIS OWN THROUGHOUT HIS LIFE? TELL ME ABOUT THAT.

HE IS LIVING ON HIS OWN. HE HAS A GIRLFRIEND WHO HAS A BABY. THIS IS NOT SOMEBODY SITTING AROUND SUCKING HIS THUMB, BEING TAKEN CARE OF BY HIS MOMMY. HE HAS HELD A JOB AND HAS HIS BICYCLE AND RIDING AROUND, DRINKING HIS BEER. HE IS CLEARLY NOT SOMEBODY THAT HAS TO BE CARED FOR BY DAY BY HIS CARETAKERS.

WHAT, THE FACTS OF THIS CASE INDICATE THAT HE IS LIVING ALONE? BECAUSE I THOUGHT MR. BOLOTIN WAS SAYING --

I AGREE WITH MR. BOLOTIN. THE FACTS ARE BEING LIMITED AS TO EXACTLY WHAT HE WAS DOING. THERE WAS SOME EVIDENCE THAT HE WOULD LIVE WITH THIS FRIEND AND THAT FRIEND. THERE WAS SOME EVIDENCE THAT HE HAD A GIRLFRIEND WHO HE HAD GOTTEN PREGNANT AND THEY HAD SPLIT UP AND THERE WAS SOME EVIDENCE THAT HE WAS LIVING IN ANOTHER TOWN. THERE WAS NO EVIDENCE THAT HE WAS LIVING WITH HIS MOTHER AT THE TIME OF THIS CRIME.

WHAT WAS HIS SUPPORT?

THE SSI, SOCIAL SECURITY DISABILITY.

SO HE WASN'T WORKING.

NOT TO MY KNOWLEDGE.

AND ARE NOT SAYING THAT THE ABILITY TO GET SOMEBODY PREGNANT IS A SIGN OF MATURITY?

NO, YOUR HONOR. I AM NOT SAYING THAT, BUT I AM SAYING THAT YOU ARE ALSO NOT TALKING ABOUT SOMEBODY THAT IS IN A HOME AND IS NOT CAPABLE OF SURVIVING. CLEARLY THE COURT

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CHIEF JUSTICE: I DON'T THINK WE HAVE ANY DEFENDANT THAT ENDS UP COMMITTING A CRIME LIKE THIS, THAT IS IN A HOME SUCKING THEIR THUMB. I MEAN, AS FAR AS REALLY LOOKING AT WHETHER WE ARE IN A SITUATION WHERE THIS IS A, ONE OF THOSE RARE CASES WHERE A PROPORTIONALITY REVIEW WOULD SAY THAT THIS IS A VERY CLOSE CASE, AND WHETHER THERE IS, ON BALANCE, SUFFICIENT INFORMATION TO UPHOLD THE DEATH SENTENCE IN THIS CASE, AND THAT IS REALLY WHAT WE ARE TALKING ABOUT, BUT YOU ARE MAKING IT SOUND LIKE IT IS A SLAM DUNK, EASY ASSESSMENT, THAT NOBODY, AND THAT IS WHY --

YOUR HONOR, I WOULD NEVER MAKE THAT ASSERTION ABOUT ANY OF OUR CASES. I MEAN, CLEARLY.

CHIEF JUSTICE: BUT SOME ARE EASIER THAN OTHERS, AND I FIND THIS TO BE A MORE DIFFICULT CASE, BECAUSE OF THE NATURE, THE QUALITY OF THE MITIGATION EVIDENCE THAT WAS --

BUT IF YOU TAKE AWAY ALL OF THE SMOKE AND MIRRORS, THE SMOKE AND MIRRORS IS WE HAVE LOW AVERAGE INTELLIGENCE. WE HAVE SOMEBODY WHO COMMITTED AN INTENTIONAL CRIME, STOPPED, RELOADED AND CONTINUED ON. I MEAN, THE FACTS ARE HE IS OPERATING WITH THIS 85-TO-90 IQ. HE IS ON HIS OWN FOR WHATEVER REASON. HE IS ABLE, HE HAS FRIENDS, HE IS IN SOCIETY AND MAKES --

WHY DID HE DROP OUT OF SCHOOL IN THE EIGHTH GRADE? ANOTHER EVIDENCE SHOWS THAT

THIS MAN, DURING HIS LIFETIME BEFORE HE WAS IN THE SIXTH GRADE, HAD BEEN TO SOMETHING LIKE TEN SCHOOLS. MY UNDERSTANDING IS HIS FAMILY WAS SOMETHING OF MIGRANT FARM WORKERS WHO WENT FROM NEW YORK TO TEXAS TO HERE, PICKING FRUIT AND DOING WHATEVER. THE MOTHER WORKED IN BARS AND CONSEQUENTLY HE WAS IN AND OUT OF SCHOOLS AND THE MOTHER TESTIFIED THAT SHE TRIED TO GET HIM IN SCHOOL AS MUCH AS POSSIBLE BUT BY THE TIME HE GOT TO THE EIGHTH GRADE, HAD HE A LOT OF TROUBLE IN SCHOOL BECAUSE HE HAD THIS CONDUCT DISORDER AND A LOT OF TROUBLE IN SCHOOL BECAUSE HE DIDN'T READ, AND CONSEQUENTLY HE DROPPED OUT.

WHAT ARE THE SMOKE AND MIRRORS THAT YOU REFER TO?

THE SMOKE AND MIRRORS REFERRED TO WERE BECAUSE HE DID HAVE AN IMPOVERISHED CHILDHOOD. THE EVIDENCE OF ABUSE, THE MOTHER HAD BEEN ABUSED. I DON'T RECALL ANY EVIDENCE THAT DONNY, HIMSELF, WAS ABUSED. HE HAD ABUSE BY OTHER CHILDREN, WHERE THEY HAD A FIGHT AND THEY HIT HIM WITH A PIPE, BUT IT IS NOT THE KIND OF EVIDENCE THAT YOU HAVE, FOR EXAMPLE IN COOPER, WHERE HE WAS PHYSICALLY ABUSED BY HIS FATHER AND TORTURED AND THAT TYPE OF THING. WE DON'T HAVE ANY OF THAT HERE. WE HAVE A MAN WITH BELOW-AVERAGE INTELLIGENCE, WHO HAS EVIDENCE OF BRAIN DAMAGE, WHICH ONE OF THE DOCTORS TESTIFIED SOMETHING LIKE 32 PERCENT OF THE POPULATION HAVE, SO THIS IS NOT THE TYPE OF MITIGATION THAT IS GOING TO OUTWEIGH THESE THREE VERY WEIGHTY AGGRAVATORS AND WE ASK THIS COURT TO AFFIRM.

CHIEF JUSTICE: REBUTTAL.

I THINK THE KEY TO THIS WHOLE CASE, IS JUSTICE PARIENTE'S QUESTION ABOUT WHETHER DOES THE MANNER IN WHICH THIS CRIME WAS COMMITTED, TRUMP EVERYTHING ELSE, AND IN SUPPORT OF THE ARGUMENT UNDER FLORIDA LAW, I WOULD SAY CLEARLY IT DOES NOT, THE CLOSEST COMPARISON CASE OF TONY ROBERTSON AT 695 SO.2D 643 AND THE BELL CASE 841 SO.2D 329 AND IN THE MILLER CASE, THE CASE OF MILLER, THE COURT BASICALLY SAID THAT A LARGE NUMBER OF THE STATUTORY MITIGATING FACTORS REFLECT A DETERMINATION TO MITIGATE DEATH PENALTY IN FAVOR OF A LIFE SENTENCE, FOR THOSE PERSONS WHOSE RESPONSIBILITY FOR VIOLENT ACTIONS IS SUBSTANTIALLY DIMINISHED BY THE STATE OF MENTAL ILLNESS, UNCONTROLLABLE MIND OR DRUG ABUSE AND SUCH INFORMATION MAY BE SUFFICIENT TO OUTWEIGH THE OTHER MITIGATING FACTORS.

THE ROBERTSON IS HERE IN TALLAHASSEE?

YES. IF THERE IS MITIGATION IN THIS CASE, ALSO YOU HAVE GOT THE JURY'S QUESTION AND AT EIGHT O'CLOCK WHEN EVA JOHNS LOOKED INTO THE BAR AND SAW BETTY SPURLOCK AT THE BAR AND SAW DONNY CROOKS SITTING IN FRONT OF HER ON A BAR STOOL, AT THAT POINT THIS 20-YEAR-OLD HAD NO AGGRAVATING CIRCUMSTANCES. NOTHING HAD BEEN SAID IN EMOTION. HE IN HIS INTOXICATED BRAIN DAMAGED STATE, SAW HER COUNTING MONEY AND GOT THE HALF BAKED IDEA THAT HE NEEDED IT FOR MORE CRACK AND FROM THE STATE'S THEORY OF WHAT OCCURRED, BETTY SPURLOCK IN DEFENDING HERSELF WITH THE SCISSORS AND POOL SKEW CUE AND WHACKED HIM ON THE TOP OF THE HEAD WITH THE POOL COULD YOU, WHICH IS REPEATEDLY WHY HE GOT THE BUMP ON HIS HEAD THAT, IS WHEN HE WENT NUTS AND LOST IT AND THAT IS WHAT SET THIS IN MOTION, NOW, IN TERMS OF MATURITY IN THIS CASE, YOU HAVE GOT THE MODERATE WEIGHT, IMMATURE FOR HIS AGE AT 20, AND THE LACK OF HISTORY OF ANY VIOLENT BEHAVIOR, WHICH DISTINGUISHES ALL EIGHT OF THE CASES THAT THE STATE CITED AS COMPARISON CASES. THE STATE'S EIGHT CASES, SEVEN OF THE EIGHT HAVE VIOLENT FELONIES AND THE ONE THAT DOESN'T HAVE A WEIGHT OF MITIGATING FACTORS THAT DIDN'T HAVE A PLAN TO INTRODUCE THE ASSAULT AND SOME ARE MITIGATING FACTORS AND EVERY ONE OF THOSE CASES HAS MUCH LESS MITIGATION THAN THIS CASE.

WHAT WAS THE OVERWHELMING SUPPORT OF INTOXICATION BY DRUGS OR ALCOHOL?

THE DRUG WAS SELF-REPORTING. THE OTHER EVIDENCE OF INTOXICATION, WOULD HAVE COME FROM EVA JOHNS, WHO TESTIFIED SHE SAW HIM DRIVING AROUND ON HIS BIKE WITH A CASE OF BEER THAT WAS GETTING REAL LOW AND LOOKED LIKE HE HAD BEEN PARTYING, AND THEN YOU HAVE ALSO GOT THE TESTIMONY OF HIS COUSIN MELISSA LeMAY, WHEN HE SHOWED UP AT HER HOUSE, SHE TESTIFIED THAT HE LOOKED LIKE HE WAS ON ROCK OR PAPER, THAT HIS PUPILS WERE SO BIG, THAT YOU COULDN'T SEE HIS EYE COLOR.

HOW WAS THE SELF-REPORTING, OTHER THAN THIS SELF-REPORTING, WHAT TESTIMONY WAS THERE CLOSE TO THE CRIME SCENE, AS TO HIS LEVEL OF INTOXICATION?

OTHER THAN HIS SELF-REPORTING, I DON'T THINK THERE IS ANYTHING, BUT I THINK THAT HIS SELF-REPORTING IS EVIDENCE.

I AM NOT SAYING IT IS NOT.

YOU HAVE GOT AN EXTREMELY TRAUMATIC, NIGHTMAREISH CHILDHOOD FROM THE BIRTH TO THE AGE OF 20 AND, AGAIN, I WOULD COMMEND THAT THE TESTIMONY OF ANITA CRUPP, THE TRAIN WRECK OF A MOTHER, THE TRIAL JUDGE FOUND AS MUCH THAT THE PARENTS WERE ABYSMAL EXAMPLES OF PARENTS AND THE ABUSE AND VIOLENCE HE WAS EXPOSED TO AND THE NEGLECT HE WAS EXPOSED TO AND THE EFFECT OF THAT ON HIS BRAIN DAMAGE, HE HAS GOT LOW INTELLIGENCE, AND I TAKE ISSUE WITH THE STATE SAYING HIS IQ IS 90. THAT IS HIS PERFORMANCE IQ ONLY IN THE ONE TEST THAT DR. CREMPER GAVE, AND HE DIDN'T REFER TO IT IN HIS TESTIMONY, IN WHICH HE, HIMSELF, SAID WAS INVALID.

WITH REGARD TO THIS INDIVIDUAL'S CONTACT WITH MENTAL HEALTH EXPERTS, IT APPEARS THAT THAT WENT ON FOR A PERIOD OF TIME. IT WAS NOT JUST AFTER, AFTER THIS EVENT, SO WE HAVE SOME EVALUATIONS AND CERTAINLY IN THOSE EVALUATIONS, THEY SEEM TO SUGGEST CONDUCT DISORDERS.

WAS BRAIN DAMAGE EVER DIAGNOSED PRIOR TO THIS EVENT, OR WAS IT ONLY SUBSEQUENT WITH ALL OF THESE OTHER EVALUATIONS?

THE TESTIMONY IS, THE FOUR EXPERTS WHO DIAGNOSED BRAIN DAMAGE HERE, SAID BASICALLY THAT SCHOOL OFFICIALS WERE NOT REALLY LOOKING FOR THAT.

I UNDERSTAND IT WAS NOT. SO CAN YOU ANSWER THE QUESTION?

THE ONLY DIAGNOSIS OF BRAIN DAMAGE PRIOR TO THE CRIME, WAS THE ONE OF ORGANIC HALLUCINATIONS OR WHATEVER IT WAS THAT CREMPER FOUND IN 1998 AND WHAT CREMPER SAID WAS INACCURATE, I BELIEVE WAS THE IQ TEST. I DON'T THINK THAT EVERYTHING HE FOUND WAS INACCURATE. I DO BELIEVE THAT THIS COURT, NOT IN ALL CASES BUT SOMETIMES HAS AFFIRMED CASES WHERE MENTAL MITIGATOR AND STATUTORY WERE FOUND AND GIVEN SIGNIFICANT WEIGHT, AND I HAVE GOT FIVE MORE MITIGATORS TO GO THROUGH IN THE BRIEF. 7-5 JURY VOTE AND THE JURY WANTED TO KNOW --

CHIEF JUSTICE: THANK YOU VERY MUCH FOR YOUR TIME. THE COURT WILL BE IN RECESS FOR 15 MINUTES.