William Taylor v. State of Florida Docket Number: SC04-2243

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MARSHAL: LADIES ANDGENTLEMEN , THE FLORIDASUPREME COURT.PLEASE BE SEATED.

CHIEF JUSTICE: THE NEXT CASE ON THIS MORNING APARTMENTS DOCKET IS -- ON THIS MORN ING'S DOCKET IS TAYLOR VERSUS THE IS STATE OF FLOR IDA. PARTIES APPEAR TO BE READY. YOU MAY PROCEED.

MAY IT PLEASE THE CO URT.MY NAME IS ANDREA N O RGARD , AND I AM REPRESENTING THE APPELLANT IN THIS CASE WILLIAM TAYL OR. THIS CASE AROSE FROM HILLSBOROUGH COUNTY.IT IS A CAPITAL CAS E AND THEREFORE BEFORE THIS COURT UPON ORAL ARGUMENT ON THEDIRECT APPEAL. A BRIEF SUMMARY ON THE FACTS RELATING TO THE TRIAL BELOW--

CHIEF JUST ICE: I THINK WE ARE FAMILIAR WITH THE FACTS , AND I T SEEMS LIKE YOU HAVE ONE SUBSTANTIAL ISSUE AND THE REST SEEM TO BE MORE QUESTIONS OF LAW THIS COURT HAS EITHER DE CIDED .

THAT WOULD BE CORRECT, YOUR HONOR , AND WHAT I INTEND TO DO THIS MORNING IS F OCUS ON ISSUE 2 , WHICH WOULD BE THIS COURT 'S PROPORTIONALITY REVIEW OF THE SENT ENCE OF DEATH IMPOSED ON THIS C ASE.

CHIEF JUSTICE: YOU ARE NOT GO ING TO REVIE W THE ISSUE ON THE MOTION TO SUPPRESS?

YOUR HONOR , I BELIEVETHAT THE B R IEFS WO ULD ADEQUATELY AD DRESS THAT. OBVIOUSLY THE ISSUE WAS ONE THAT WAS PRESERVED BELOW. IT WAS ONE OF THE FEW ISSUES THAT WERE PRES ERVED THAT A ROSE FROM THE GUILT P HASE IN THIS CASE. MY PERSONAL O P INION IS THAT VERY HONESTLY , THE SUFFICIENCY OF THE EVIDENCE WAS SU CH, EVEN WITH SOME OF THE EV IDENCE CONTAINED I N THAT MOTION TO SU PPRESS , THAT A CONVICTION WOULD STI LL BE IS SUSTAINABLE UNDER A SUFFICIENCY OF THE E VIDENCE REVI EW. H OWEVER, I D O BELIEVE THAT THE PRIMARY FOCUS THAT THIS COURT SHOULD ADDRESS WOULD BE THE PROPORTIONALITY OF THE DEATH SENTENCE AS RAISED IN ISSUE T WO. I WOULD BE MORE THAN HA PPY TO ADDRESS ANY QUESTIONS THE COURT MIGHT HAVE SURROUNDING ISSUE ONE , BUT M Y INTENT WAS TO DIRECT MY FOCUS TO TW O.

WAS THIS A JURY TRIAL?

YE S, YOUR HONOR , IT WAS A JURY TRIAL.

JUSTICE: WITH RE GARD TO YOUR PROPORTIONALITY ISSUES THAT YOU WOULD LIKE TO DISCUSS, IN REVIEWING AND LOOKING AND COMPARING THESE CASES , ONE THING KEPT JUST LEAPING FROM THE PAGES ON YOUR CASES , AND THOSE SEEM TO BE CASES OF SPONTANEOUS F IGHTS , OF ALCOHOLIC BRAWLS, AS OPPOSED TO SOMETHING THAT WE ARE DEA LING WITH HERE, SO COULD YOU JUST G O DIR ECTLY TO THAT PO INT, IF THAT IS WHERE YOU WOULD LIKE TO START.

YES , YOUR HONOR. I BELIEVE THAT FLORIDA'S STATUTORY AGGRAVATING FACTORS SPECIFICALLY ADDRESS WHEN, IN A HOMICIDE CASE, THE LEVEL OF PREMEDICATION -- PREMED ITATION RISES TO THE DEGREE THAT YOUR HONOR APPEARS TO BE CONCERNED ABOUT UNDER

THE COLD , CALCULATED AND PREMEDITATED FACTOR. THAT FACTOR WAS NOT PRESENT IN THIS CASE , NOR WAS IT CONSIDERED BY THE JURY NORFOUND BY THE TRIAL COURT. THE FACT S THAT RE LATED TO WHAT ACTUALLY HAPPENED ON THE NIGHT OF THE MURDER AND THE --

JUSTICE: I DON'T BELIEVETHAT THE COURT FO UND THE C CP HERE , AND --

NO , THEY DID NOT. IT WAS NOT CONSIDERED BY THE COURT.

JUSTICE: RI GHT, BUT THERE ARE OTHER CASES IN TRYING TO BALANCE AND LOOK ACROSS THE BOARD WHERE THE JURISPRUDENCE IS , IT JUST SEEMS THOSE CASES ARE THOSE BRAWLING KIND OF CASES. IS THAT A MISINTERPRETATION?

I DON'T THINK THAT IS A MISINTERPRETATION. OBVIOUSLY THERE ARE CASESOUT THERE WHERE AN INSTIGATION BETW EEN TWO P EOPLE OCCU RS. SOMEONE AS A RESULT OF THAT, IS KI LLED I N THE FACT PATTERN THAT YOUR HONOR HASDESCRIBED.HOWEVER, I BELIEVE THAT THIS CASE THAT WE ARE DEALING WITH TODAY, ALTHOUGH IT CERTAINLY WAS NOT APP ARENT THAT IT WAS NOT A BRAWLSITUATION, IT CERTAINLY DOES NOT RISE TO THE LEVEL THAT YOU COULD SAY THAT THIS WASA LONG AND PREMED ITATED MURDER, EI THER. IT APPEARS , AND , AGAIN , THE NECESSITY OF EXPLAINING THIS REQUIRES ME TO REFER SOMEWHAT TO THE TRIAL FACTS . THE, REALLY, ONLY IDEA OF WHAT ACTUALLY OCCURRED IN THE HOM E THAT NIGHT CAME FROM SEVERAL OF THE STATEMENTS THAT MR. TAYLOR G AVE AT VARIOUS POINTS N E ACH OF THOSE, IT DI D NOT APPEAR THAT THE INTENT OR THE INTENT ORIGINALLY , HAD BEEN TO MU RDER EITHER MS. KUSHMER OR TO INFLICT THE INJU RIES THAT WERE INFLICT ODD MR . MADDOX.WHAT THE -- IN IN N CONFLICTED ON MR . MAD DOX. WHAT THE EVIDENCE WAS FAI RLY CLEAR IS MS. KUSHMER AND MR . TAYLOR HAD ACQUAINT ANSWER AND ASSOCIATED IN THE PAST , APPARENTLY WITH NO DIFFICULTIES BUT ON THE EVENING IN QUESTION THE THREE PARTIES HAD BE EN AT A LOCAL BAR. DRINKING WAS QUITE HEAVY AND IN FACT IT WAS THAT THAT LED TO MR . TAYLOR PROV IDING A R IDE OR OFFERING SOME ASSISTANCE TO THE OTHER TWOINDIVIDUALS IN GETTING THEM BACK TO THEIR HOME, WHERE HE WAS IN VITED TO GO. AGAIN , DOESN'T SHOW, DOE SN'T , NO FACTS TENDING TO S HOW THAT MR . TAYLOR E NTERED THE BAR THAT NIGH T WITH THE INTENT OF KILLING OTHER PARTIES .

JUSTICE: DOE SN'T THE EVIDENCE TEND TO SHOW, HOWEVER , THAT THERE MAY HAVE BEEN, AT THE POINT WHERE SHE WAS ACTUALLY SHOT , BECAUSE THE EVIDENCE DEMONSTRATES THAT CONTRARY TO WHAT HE SAID, IS HE HEARD A NO ISE AND KIND OF T URNED AR OUND , AND INSTINCTIVELY SHOT GUN , BUT AS I UNDERSTAND WHAT THE M EDICAL EXAMINER AND OTHER WITNESSES SAY , IS THAT SHE WAS ALREADY DO WN, HAD BEEN HIT WITH SOME KI ND OF WE APON , AND THE N SHE WAS SHOT WHILESHE WAS DOWN ON THE G ROUND .

THAT WOULD BE KREINGT , YOUR HONOR. THAT WOULD BE A -- THATWOULD BE CORRECT, YOUR HONOR.THAT WOULD BE A CORRECT ASSESSMENT OF THE TESTIMONYFROM THE ME DICAL EXAMINER.MR. TAYLOR GAVE THREE DIFFERENT STATEMENTS TO THE POLICE, AND IN EACH OF THOSE STATEMENTS, MR. TAYLOR MAINTAINED THAT HE WAS NOTTHE ONLY INDIVIDUAL WHO WASPRESENT DU RING THESE HOMICIDES. IT IS CORR ECT THAT NO OTHER INDIVIDUAL HAS EVER BEEN ARRESTED AND THE PO LICE DID NOT APPA RENTLY , FROM THE RECORD, THERE WAS NOT A TREMENDOUS AMOUNT OF ENERGY FOCUSED ON FINDING ANY OF THE OTHER INDIVIDUALS THAT MAY OR MAY NOT HAVE BEEN PRESENT AT THE TIME .

JUSTICE: WHAT WAS THE CONVICTION IN THIS CASE? PREMEDITATED FIRST-DEGREE MURDER?

YOUR HONOR , THE JURY WAS NOT ASKED TO MA KE A DETERMINATION WHETHER IT WAS FELONY MURDER OR PREMEDITATION,, SO AGAIN , IN RESPONSE TO JUSTICE LE WIS TO F INISH ANSWERING YOUR QUESTION, IT APPEARS THAT AT SOME POINT IN THE EVENING , THERE WAS MUCH DRINKING THAT OCCURRED IN THE BAR. WHEN THEY RETURNED TO THE HOME, EVIDENCE INDICATEDTHAT THE PARTIES HAD CONTINUED TO DRINK IN THE HOME. MR. TAYLOR'S

FINGERPRINTS WERE FOU ND ON SOME BOTTLES OF BEE R THAT WERE FOUND IN THE HOME. B Y ALL ACCO UNTS , THAT WAS UNDISPUTED. IT APPEARS THAT AT THAT POINT , THAT THIS WAS A ROBBERY GO NE ARE A RYE , AS -- - GONE AWRY, AS OPP OSED TO -

JUSTICE: WHERE WOULD SAY THAT WOULD TAKE US AS DISTINGUISHED BETWEEN CASESWHERE A ROBBERY GONE AWRY, WHERE IN MANY CASES IT IS NOT PROPORTIONAL TO THE OTHER SIDE THAT , IT IS PROPORTIONAL, THAT IT IS M ORE EGREGIOUS AND MORE AGGRAVATING.WHAT WOULD YOU SEE AS THELINE OF CASES? IS THERE SOMETHING WE CAN POINT TO THAT HELPS US DR AWA LINE BETWEEN THOSE KINDS OF CASES?

I THINK THE ST ARTING POINT IS TO LOO K AT THE AGGRAVATING FACT ORS , AND , AGAIN , WHEN YOU HAVE A SPECIFIC JUDICIAL FIN DING OR FINDING FROM A JURY THAT THERE WAS SIGNIFICANT PREMEDITATION , OBVIOUSLY THAT WOULD BE ONE END OF THE SPECTRUM. WHERE THE LINE IS DRAWN AFTER THAT , V ER Y HONESTLY IS U P TO THIS COURT , AND IDON'T BELIEVE THAT I CAN POINT TO A SPECIFIC CASE THAT HAS SPECIFICALLY SAIDWHAT THE BRIGHT-LINE TEST WOULD BE ON WHICH SIDE THE CASE WOULD FALL INTO.

CHIEF JUSTICE: AGAIN, I DON'T THINK WE HAVE EVER SORT OF MADE THIS CONCEPT OF ROBBERY GONE AWRY IS NOT GOING TO BE A PROPORTIONATEDEATH SEN TENCE , BEC AUSEL ET'S JUST, SO THAT WE ARECLEAR ABOUT THE AGGRAVATING FACTORS HERE , THIS WAS ONE MURDER AND ONE ATTEMPTED MURDER .

THAT IS CORRECT.

CHIEF JUSTICE: WE HAVE GOT TWO CRIMES ALREADY IN THIS, IN ADDITION TO THIS BEING FOR PECUNIARY G A IN.

RIGHT , BECAUSE THERE ARE ATTENDANT CONVICTIONS FOR ROBBERY THAT AROSE FROM THETHEFT OF PERSONAL PROP ERTY.

CHIEF JUSTICE: ON TO P OF IT, THIS IS A MAN THAT SPENT, FROM 19 77 TO 2000, EXCEPT FOR THREE Y E ARS , INCARCERATED , AND HE WAS O NLY OUT FOR AB OUT A YEAR. HE HAD BEEN CONTINUOUSLY INCARCERATED. I ME AN, THIS WAS A PERSON WHO WAS A C A REER F ELON, AND ALTHOUGH THERE MAY BE SOME CASES THAT SAY THAT HAC OR C CP ARE CR ITICAL FROM MY RECOLLECTION OF WE HAVE LOOKED TO , THE FACT THAT SOMEBODY HAS PREVIOUSLY BEEN CONVICTED OF A FELONY INVOLVING VIO LENCE AND THEN IS OUT , AND HE IS OUT ON FELONY PRO BATION , AND THEN HE MURD ERS A PERSO N AND ATTEMPTS TO MURDER ANOTHERIN THE COURSE AFTER RO BBERY , I AM NOT SO SURE THAT I CANTHINK OF SOMETHING OF HOW THAT IS NOT A PROPOR TIONATE S ENTENCE UNDER OUR JURISPRUDENCE , SO WHAT IS THE CLO SEST CASE YOU HAVE FOUND WHERE WE FOUND A SITUATION LIKE THIS NOT TO BE PROPORTIONATE , AND HE IS 45 YEARS OLD, BY THE WAY , NOT 1 8 OR 19-YEAR-OLD KID .

NO, YOUR HONOR . THAT IS CORRECT.I THINK WHAT THE COURT HAS TO DO IS FOC US ON WHAT THE AGGRAVATORS WERE AND THEFACTS THAT SUPPORTED THEM BUT ALSO ADDRESS WHAT THE MITIGATION WAS IN THIS CASE, BECAUSE AS THE COURT IS A WARE , PROPORTIONALITY REVIEW FOCUSES ONLY -- NOT ONLY ON THE AGGRAVATION B UTTHE MITIGATION.

CHIEF JUSTICE: BUT YOU WERE FOLLOWING UP WITH JUSTICE LEWIS ABO UT THE SUPPOSED ROBBERIES GONE BAD. I AM RECALLING CASES WHERE A COUPLE OF KIDS GO IN TO COMMIT A ROBBERY AND THEN THEY PANIC AND SOME BODY GETS SHOT IN THE PROCESS. THAT IS WHERE WE HAVE SORT OF BUT I DON'T KNOW WHAT THE AGGRAVATORS WERE IN THOSE CASES, SO WHAT CASE THAT HAS SIMILAR AGGR AVATION HAVE WE FOUND NOT TO BE PROPORTIONATE?

WHAT I WOULD ASK THE COURT TO FOCUS ON WOULD BE THE CASES C ITED IN THE RE PLY BRIEF THAT WE DI RECTED THE COURT'S ATTENTION TO , THAT IFEEL ARE MORE SIMILAR T O THIS THAN

THE CASES THAT WERE CITED I N SUPPORT OF A PROPORTIONAL DEATH SENTENCE BY THE STATE , AND IN , WITHIN THIS REGA RD, WHAT I WOULD DO WOULD BE DIRECT THE COURT TO A CASE SUCH AS K RAMER , SUCH AS VOOR HIS , SUCH AS SA GE R , WHERE IN THOSE CASES YOU YOUDID HAVE AGGRAVATING FACTORS .

JUSTICE: IN VO ORHIS AND S AGER , THERE WAS ONLY ONE VICTIM, AND THERE HAD NOT BEEN THE LONG PERIODS OF INCARCERATION FOR THE PR IOR ASSAULTS ON EITHER SAG E RROR V OORHIS, CORR ECT? -- ON EITHER SAGER , OR IN VOORHIS , CORRECT?

THAT IS CORRECT, BUT THE COURT ASKED ME HE TO ADDRESS SIMILAR V I OLENT CONV ICTIONS AND THAT APPEARS TO BE ONEOF THE ARE AS THAT JUSTICE PARIENTE IS CONCER NED ABOUT THE FACT THAT MR . TAYLOR DID HAVE PRIOR VIOLENT FEL ONY CONVICTIONS AND E ACH OF THE AGGRAVATING FACTORS IS NOT ONLY AS RELATE S TO THE CASE BUT TO EACH INDIVIDUAL THAT STANDS BEFO RE THE COURT IN A PROPORTIONALITY REVIEW , SO , AGAIN , I F YOU ARE LOOKING AT THE L I STING OF WHO HAS A PRIOR VIOLENT FELONY AGGRAVATOR AND WHO DRAWS THE L INE , I THINK IT WOULD BE IMPORTANT TO T A LK ABOUT WHAT THEY WERE. JUS T IS JUST IS ONE OF THE PRIOR VIOLENT FELONY AGGRAVATORS CONTEMPORANEOUS?

N O , IT WAS NOT I N THIS CASE. THAT WAS NOT CONSIDERED BY THE TRIAL CO URT , AND THE JURY WAS NOT GIVEN TESTIMONYOF THAT OR ASKED TO CONSIDER THAT, IN LI GHT OF MA KING A FINDING REGARDING THAT AGGRAVATOR. WHAT THE COURT CONS IDERED AND AS JUSTICE PARIENTE HAS POINTED OUT , MR . TAYLOR DID SPEND A SIGNIFICANT PO RTION OF HIS AD ULT LIFE I N AN INCARCERATION ST ATE.

JUSTICE: WHAT WAS THE JURY'S RECOMMENDA TION.

THE JURY'S RECOMMENDATION IN THIS CASE WAS TWELVE IN FAVOR OF THE IMPOSITION OF A DEATH SENTENCE AND NONE OPPOSED.

YOU UNANIMOUS RECOMMENDATION.

THAT IS CORRECT, YOUR HONOR.

JUSTICE: AS YOU LOOK ATTHE MITIGATION WHICH YOU REALLY WANTED TO SE GUE INTEREST IS WHERE I THINKYOU WERE HEADED ON IT , HERE IT SEEMS AS THOUG H THAT WAS PRETTY HEA VILY DISPUTED AS WELL. WE SEE MANY CASES WHERE MITIGATION IS NOT REALLY CHALLENGED BY THE STATE , BUT HERE IT SEEMED AS THOU GHTHIS WAS , ALSO, A BATTLE OF THE EX PERTS , AND THE JURY HAD TO EVALUATE THAT.

THE JURY DID EVALUATE IT. HOWEVER , IT WAS THE COURTWHO ULTIMATELY MADE THEDECISION ON WHETHER OR NOT THE STATUTORY ME NTAL HEALTH MITIGATORS WERE GO ING TO BE FOUND OR NOT. THE COURT DETERMINED AND T O BRIEFLY DISCUSS WHAT THE M ENTAL HEALTH TESTIMONY WAS IN THIS CASE, THE STATE CALLED TWO PHYSICIANS , DR . CROPP AND D O CTOR McCRAINY , WHO BOTH HE B IND THAT MR . TAYLOR SUF FERED FROM ORGANIC BRAIN DA MAGE IN THE TEMPORAL LOBES , ORGANICITY .

JUSTICE: AND THEY ALSO BOTH AGREED WITH THE STAT E'S EXPERT THAT HE HAD THAT ANTISOCIAL PERSONALITYDISORDER, CORRECT?

THAT IS CORRECT AND BORDERLINE PERSON ALITY DISORDER AND OTHER ASSOCIATED TRAUMAS THAT , RELATING FROM HIS CHILDHOOD. HIS DYSFUNCTIONAL FA MILY UPBRINGING .

JUSTICE: USUALLY ANTISOCIAL PERSONALITY DISORDER IS N' T CONSIDERED NECESSARILY MITI GATING, IS IT ?

WHET HER OR NOT IT IS CONSIDERED MITIGATING , I THINK , DEPENDS UPON WHAT E LSE IS PRESENT. I F AN INDIVIDUAL SIMPLY PRE SENTED WITH ONLY AN ANTISOCIAL PERSONALITY DISORDER, I WOULD HAVE TO AGREE WITH THE COURT , WITHOUT FURTHER INVESTIGATION INTO WHETHER OR NOT OTHER MENTA L IMPAIRMENTS WERE PRESENT , OTHER DIAGNOSIS UNDER THE DSM-4 , WHETHER OR NOT THAT IN AND OF ITSELF OR STANDING A LONE , WOULD BE SUFFICIENT TO SUPP ORT ONE OF THE STATUTORY MITIGATING FACTORS , A ND I WOULD AGREE WITH THE COURT THAT IT PROBABLY WOULDN OT. HOWEVER, THAT IS NOT THECASE IN THIS CASE. ESSENTIALLY , THE STATEDOCTOR, DOCTOR TAYLOR , DID NOT DIS AGREE WITH BHAEN OF THE CONCLU SION OF DR . CR OPP AND DR . McCRAINY. THE AREA OF DISAGREEMENT WAS ON WHETHER OR NOT THERE WAS ORGANIC BRAIN DAMAGE IN THE TEMPORAL LO BE. ESSENTIALLY DR . CROPP AND DR . McCRAINY'S OPIN ION WAS THAT THERE WAS DAM AGE MR . TAYLOR COU LDN'T USE THAT PORTION OF HIS BRAIN TO ACT APPROPRIATELY.

JUSTICE: AND THAT WAS THEBASIS TO DETERMINING THAT HE COULD NOT CONTROL WHAT HE HAD DO NE ON THE NIGHT OF THE MURDER?

THAT IT CONTRIBUTED TO THAT, GENTLEMEN -- YES, YOUR HONOR . DR . TAYLOR ON THE OTHER HAND , FOUND MANY OF THE SAME MENTAL HEALTH ISSUES PRESENT. HIS OPINION , TH OUGH , WAS THAT MR . TAYLOR CHOSE NOT TO USE THE FULL CAPACITY OF HIS FRONTAL LOBE FUNC TIONING,AND THEREFORE DID NOT MEET EITHER OF THE STATUTORY MENTAL HEALTH MITIGATORS FORPURPOSES OF THIS PROCEEDING. SO I WOULD CHARACTERIZE THE DIFFERENCE OF OPINION BETWEEN THE TWO DOCT ORS ON THAT ONE AREA, AS CAN'T VERSUS WO N'T. THE DEFE NSE DOCTORS BASICALLY SAID MR . TAYLOR IS INCAPABLE . IT IS SIMPLY NOT THERE , AND DR . McCRAINY PH RASED IT AS SIMPLY HE COULD DO IT BUT HAS CHOSEN ALL HIS LIFE NOT CHOSEN TO. HOWEVER, ALL THREE RECOGNIZED THAT THIS WAS ASEVERELY MENTALLY ILL MAN WITH A VARIETY OF ISSUES DATING BACK TO AGE 9 , 10 , 11 , 12 , 1 3, WHEN YOU HAVE THE FIRST INSTAN CES OF SUBSTANCE A BUSE, ALCOHOL AB USE , WHEN YOU HAVE REFERRALS AT AGE 8 AND 9 BACK IN A V ERY ANTIQUATED TERM FOR MENTAL HYGIENE SERVICES THROUGH THE SCHOOL SYSTEM.

CHIEF JUSTICE: WHAT WAS THE TESTIM ONY , AS TO WHAT STARTED THIS DEFENDANT DOWN THE PA TH OF A CRIMINAL BEHAVIOR?

I BELIEV E THERE WAS GENERAL AGRE EMENT THAT FAMILIAL SITUATION, THAT THE E ARLY CHILDHOOD ENVIRONMENT WAS VERY L ACKING . OBVIOUSLY THERE WERE SOME IMPEDIMENTS IN THIS CASE IN BEING ABLE TO PRESENT COMPLETE TESTIMONY , BECAUSEMR. TAYLOR'S MOTHER WAS DECEASED. THE STEPFATHER REFUSED TO COOPERATE , OTHER THAN A V IDEO APPARENTLY , WHERE IN HE VERY CLEARLY EXPRESSED HIS DISGUST AND LONG-TERM HATRED OF MR . TAYLOR. THERE WAS SOME ATTEMPTS BY A MATERNAL AUNT TO ALLEVIATE THE SAY INGS BEST AS THEY COULD.

CHIEF JUSTICE: YOU YOU REALLY DON'T KNOW , WE DON'T KNOW ENOUGH ABOUT WHAT HAPPENED IN THE EA RLY YEARS, TO KN OW WHETHER IT WAS --

RIGHT. THE ONLY IMPERICAL EVIDENCE THAT WE HAVE IS THE EARLYSCHOOL RECORDS THAT WOULD BEGIN TO DEMDEM ST RAIGHT AT A VERY - - DEMONSTRATE AT A VERY YOUNG AGE AND ENTRYINTO THE PUBLIC SCHOOL SYSTEM, THAT HE HAD DIFFICULTIES BEING PLACED IN SCHOOL. WE HAD HIM PLACED ON RI TALIN IN WHAT ESSENTIALLY WOULDHAVE BEEN THE EARLY 1960s , WITH MR. TAYLOR BEING 45 ATTHIS POINT IN TIME.AT THAT POINT IN T IME YOU YOU ALSO HAVE THE REFERRAL FOR M ENTAL HIJ EACH AND THEN BY AGE 11 , MR . TAYLOR HAS BASICALLY REAC HED A POINT THAT HE IS ISN'T FUNCTIONING IN THAT TYPE OF SE TTING .

CHIEF JUSTICE: YOU SEE , THE PROBLEM WITH THAT POTENTIAL TYPE OF MITIGATION AND YOU HAVE DONE A GOOD JOB OF LAYING IT OUT I N YOUR BRIEF, THAT TODAY YOU YOU GO AND YOU

WE IGH THE AGGRAVATION IN THIS CASE , AND THE AGE AT WHICH SOME OF THESE OTHER THIN GS OCCURRED , AND, AGAIN , THIS IDEA THATHE HAD BEEN INCARCERATED MOST OF HIS ADULT LIFE , ANDIT IS JUST DIFFICULT FOR ME TO SEE IN THE COURT'S PROPORTIONALITY ANAL YSIS, NOW , THAT MAY BE A GOOD ARGUMENT THAT WAS MA DE TO THE JURY THAT THIS MITIGATION SHOULD OUT WEIGH THE AGGRAVATION, BUT WHEN WE ARE LOOKING AT PROPORTIONALITY, WE ARE LOOKING AT IT TO MAKE SURETHAT THE DEATH SENTENCE I S NOT IMPOSE D IN AN ARBITRARY AND CAPRICIOUS MANNER SO A S TO FALL AFOUL OF THE EI GHTH AMENDMENT , CORRECT?

THAT IS CORRECT.

CHIEF JUSTICE: AND IT IS HARD FOR ME TO SEE UNDER THESE CIRCUM STANCES , A GAIN , FOCUSING ON THE AGGRAVATION IN THIS CASE, HOW THAT WOULD , THIS WOULD BE ON E OF THOSE CASES WHERE THE COURT WOULD CONSIDER REDU CING IT TO LIFE . AGAIN , SO CAN YOU HE LP ME ON THAT IF THERE IS SOMETHING YOU CAN ADD?

WHAT I WOULD LIKE TO DO THEY , YOUR HONOR , IS TALK A LITTLE BIT ABOUT WHAT THE FACTS WERE BEHIND THE AGGRAVATIONS, BECAUSE I DO THI NK THERE IS AN ENTER PLAY WITH THE, WHAT I WOULD TERM THE MOST SER IOUS AGGRAVATOR, THAT BEING THE PR IO R VIOLENT FELONY CON VICTION . I THINK IT IS APPROPRIATE TO REMEMBER IN THAT, THAT THOSE CONVICTIONS OCCU RRED AT A TIME WHEN MR . TAYLOR WAS A JUVENILE. HE WAS 17 YEARS OLD. THE ONE CASE THAT AROSE FROM NEVADA, HE ULTIMATELY PLED GUILTY TO A BURGLARY THAT WAS NOT THE CASE THAT PL ACED HIM IN AN INCARCERATIVE SETTING FOR THE REMAINDER OF THE INTERVENING 20 YEARS.

CHIEF JUSTICE: WHAT DID PUT HIM IN FOR THE REMAINING 20 YEARS?

A N INC IDENT THAT OCCURRED WHEN HE WAS 17 YEARS OLD IN THE STATE OF DELAWARE , WHERE APPARENTLY EXTENDING FROM O UTSIDE OF A HO ME , A RI FLE , AND IT STRUCK A WOMANTHROUGH A W I NDOW , A WOMANTHAT WAS SITTING IN SI DE THE HOUSE.THERE WAS NO INDICATION THATMR. TAYLOR TO OK ANYTHING FROM THE HOME. HE WE NT TO TRIAL AND WAS CONVICTED OF A FIRST-DEGREE AGGRAVATED ASSAULT AND AT AGE 17 RECEIVED THAT VERY LENGTHY PRISON SENTEN CE. AGAIN , I THINK IT IS IMPORTANT FOR THE COURT IN TERMS OF ADDRESSING THAT, IS THAT THE AGE AT WHICH THOSE OFFENSES OCCURRED, WHEN MR . TAYLOR WAS 17, IT T IES IN WITH THIS IDEA THAT THIS WAS AN INDIVIDUAL WHO , FROM THEERLY IEST ON -- FROM THE EARLIEST ON , E S SENTIALLY DEMONSTRATED THIS ORG ANIC BRAIN DAMAGE AND THESE SERIOUS MENTAL HEALTH DIFFICULTIES, AND THE FACT THAT HE SERVED THAT ENT IRE INCARCERATIVE SENTENCE.

CHIEF JUSTICE: I D ON'T SEE HOW THAT WORKS I N HIS FAVOR. I UNDERSTAND WHEN WE ARE LOOKING AT THE W H OLE SYSTEM AND TR YING TO HAVE EARLY INTERVENTION, J UST AS A MATTER OF POLICY, BUT FOR THIS COURT , TO SAY , WELL , T HESE ARE EARLY FELO NIES , IT WAS BECAUSE HE WAS INCARCERATED FOR SO LONG. HE G ETS OUT AND IS OUT FORABOUT A YEAR , AND THEN HE COMMITS THESE TWO PRE TTY BAD CRIMES.

I THINK IT IS IMPORTANT FOR THE CO URT TO NOTE THAT , AND THE INNER CON NECTION BETWEEN THE AGE OF THE CR IME AND THE TEST MO ANS O F DR . CROPP AND DR . McCRAINY , WHICH WAS ESS ENTIALLY THESE MENTAL HEALTH IMPAIRMENTS ARE ORGA NIC . IN OTHER WORDS , THEY WERE PRESENT THEIR , FROM THE GET-GO .

JUSTICE: BUT DIDN'T THETRIAL JUDGE, REALLY , THE FACTUAL FI NDING BASIS , FOR INSTANCE, REJECT ANY FINDING OF BRAIN DAMAGE AND INDICATE THAT THE EVIDENCE TO THE CONTRARY?

WHAT THE JUDGE FO UND IN HER SENTENCING ORDER WAS SHE ACCORDED SOME WEIGHT TO THEFACT THAT M R . TAYLOR SUFFERED FROM MENTAL HEALTH DOESN'T. SHE DID NOT

CONCLUDE THAT HE HAD ORGANIC BRAIN DAMAGE OR NEUROLOGICAL IMPA IRMENT RISING --

TO THE CONTRARY, DIDN'T SHE POIN T TO THE EVID ENCE, INDICATING THAT THERE WAS NO BRAIN IN JURY ? SHE POINTED TO THE TESTS THAT HAD BEEN CONDUCTED BEFORE, THE EVALUATION, APPARENTLY , BY AN E X PERT THAT DIDN'T TESTIFY , BUTTHAT WAS HI GHLY REGARDED .

DR . SE STA.

JUSTICE: RIGHT. READING THOSE TESTS. SO I CAN'T READ THE SENTENCING ORDER OF THE T RIAL JUDGE , WITHOUT CONCLUDING THAT SHE CONCLUDED THAT SHE WAS FINDING OR REJ ECTING ANY CLAIM THAT THERE WAS BRAIN DAMAGE. NOW, HELP ME. AM I CORRECT IN READING THAT OR NOT?

NO , YOUR HONOR , YOU ARE CORRECT IN THAT SHE ALIGNED HERSELF MORE WITH DR. TAYLOR, IN IN TERMS OF THE CAN'T/WON'T ANALYSIS , THAT MR. TAYLOR DIDN'T USE THOSE ASPECTS OF HIS BRAIN, I N O RDER TO FUNCTION PROPERLY, BUT SHE DID ACKNOWLEDGE THAT HE DID VERY SERIOUS MENTAL IMPAIRMENT , BY FINDING THAT AND ASSIGNING THAT NONSTATUTORY MITIGATING CIRCUMSTANCE SOME WEIGHT. AND THEN SHE WENT ON TO HIGHLIGHT FOUR OTHER AREAS THAT ADDRESS ED NEUROLOGICAL OR BRAIN IMPEDIMENT THAT SHE DID ASSI GN SOME WEIGHT TO THOSE FACTORS , SO I THINK IT WOULD BE INCORRECT TO READTHAT THE JUDGE REJE CTED ALL MENTAL HEALTH MITIGATION. THE JUDGE DID REJECT EITHER THE FINDING OF THE TWO STATUTORY MITIGATING MENTAL HEALTH CIRCUMSTANCES BUT DID FIND THAT THIS WAS OBVIOUSLY AN INDIVIDUAL WITH MENTAL IMPAIRMENT.

CHIEF JUSTICE: JUSTICE CANTERO HA S A QUESTION.

I AM SO RRY , JUDGE .

JUSTICE: THAT IS OKAY. I WAS GOING TO ASK IF THE COURT FOUND ANY STAT UTORY MITIGATORS.

THE JUDGE DID NOT FIND ANY STATUTORY MITIGATORS, BUT SHE DID FIND TWELVE NONSTATUTORY MITIGATING CIRCUMSTANCES. THE BU LK OF THEM , SE VEN OF THEM, WERE PRIMARILY FOCUSED O N MR. TAYLOR'S MENTAL HEALTH , THE ABUSIVE CHILDHOOD , CHILDHOOD TR AUMA , THAT TYPE OF ENVIRONMENTAL IMPAIRMENT THAT HE HAD GONE THROUGH , AND THEN, AGAIN , IT GOES BA CK, TO I THINK JUSTICE PARIENTE'S CONCERN , WAS THAT ALL OF THE THREE DOCTORS WERE IN AGR EEMENT THAT THERE HAD BEEN ABSOLUTELY NO INTERVENTION DONE FOR THIS INDIVI DUAL I N ANY MEANINGFUL T YPE OF SENSE, WHEN H E WAS A CHILD AND AS A YOUNG TEEN AGER .

JUSTICE: IT SEEMS LIKE IN THE CASES WHERE WE FOUND A DISPROPORTIONATE SENTENCE BASED ON THE MITIGATION , THE MITIGATION HAS TO DO WITH PARENTAL , PHYSICAL OR SE XUAL ABUSE OR PERHAPS NONPARENTAL D URING CHILDHOOD , SEVERE PHYSICAL ABUSE AND NEGLECT , THINGS LIKE THAT. I S THERE ANYTHING IN THE RECORD LIKE THAT HERE ?

THE FACTORS THAT YOU HAVE INDICATED, JUDGE , WOULD NOT FALL WITHIN THE STATUTORY MITIGATING CIRCUMSTANCES. HOWEVER , THOSE ARE NONSTATUTORY MITIGATING CIRCUMSTANCES , AND , YES , I BELIEVE THERE IS. THE AUNT TESTIF IED ESSENTIALLY TO FIND ING WELTS ON MR . TAYLOR'S BACK AS A YOUNG CHILD. SHE TESTIFIED TO HE AND HIS BROTHER BEING LO CKED INTO A V ERY S MALL CONT AINED SPACEIN A BOAT AND NOT BEING PROVIDED WITH FOOD OR WATERDURING THAT TIME PERIOD. SHE ESSE NTIALLY --

JUSTICE: WHAT TIME PERI ODIS THAT?

WHEN HE WAS N INE, TEN YEARS OLD.

JUSTICE: WHEN HE WAS LOCKED IN?

THERE WAS A B OAT THAT SHE REFERENCED THAT HE AND HIS BROTHER WERE LOCKED INTO ABOAT OR BOAT SHED.

JUSTICE: FOR HOW L O NG?

SHE WAS UNAWARE OF. THAT SHE TESTIFIED THAT FINALLY BECAUSE THE STEPFATHER WOULD NOT FEED THEM OR GIVE THEM WATER, SHE HERSELF, AC TUALLY TOOK THEM FOOD AND WATE R.I THINK AGAIN , THAT IT IS IMPORTANT TO REMEMBER THAT AT THE TI ME WHEN THIS PENALTY PHASE OCCURRED , THE MOTHER WAS DECEASED , AND THE STEPFATHER WAS UNAVAILABLE. I , A LSO , THINK THAT THE STEPFATHER 'S STATEMENT THAT HE DID GIVE, THAT THEY HAD, IN TERMS OF A V I DEO RECORDING , WAS VERY TE LLING ABOUT HIS RELATIONSHIP WITH MR. TAYLOR. I MEAN, THE VENOMOUS QUALITY IN HIS V OICE AND CERTAINLYTHAT, CERTAINLY WOULD INDICATE THAT THAT WOULD BE A VERY TRAUMATIC AND AWFUL ENVIRONMENT FOR A CHILD TO BE BROUGHT UP INTO , AND , AGAIN , THAT AREA OF CHILDHOOD TRAUMA , CHILDHOOD MISTREATMENT WAS NOT IN DISPUTE BY ANY OF THE THREE DOCTORS. THEY BA SICALLY ALL ACCEPTED THAT HE HAD COME FROM A VERY TRAUMATIC CHILDHOOD BACKGROUND AND ALL AGREED THAT SOME ONE WITH THE MENTAL ISSUES THAT MR. TAYLOR FACED ESSEN TIALLY WOULD HAVE NEEDED VERY INTE NSIVE THERAPY AND INTERVENTIONS , IN ORDER TO EVEN HAVE THE POSSIBILITY OF HAVING A POSITIVE OUT COME LATER ON I N LIFE, AND EVERYONE AGREED THAT THAT WAS SIMPLY NOT DONE OR AVAILABLE .

JUSTICE: HOW FA R DID HE GO IN SCHOOL?

THE R E CORDS DON'T SHOW HIM ATTENDING SCHOOL AFTER THE AGE OF ABOUT 1 4. I CAN'T TELL YOU WHERE HE WAS FROM AGE 14 TO 17. AGAIN , IT APPEARS FROM THIS RECORD THAT DEFENSE COUNSEL HAD A LOT OF DIFFICULTY IN RESEARCHING SOME OF THE CHILDHOOD AND EARLY ADULTHOOD OF MR . TAYLOR , SIMPLY DUE TO THE PA RTIES BEING DECEASED THAT WOULDHAVE BEEN THE BEST REPORTERSOF THAT INFORMATION.

CHIEF JUSTICE: YOU YOU ARE INTO YOUR REBUTTAL. JUSTICE CANTERO , DID YOU HAVE ADDITIONAL QUESTIONS? WHY DON' T YOU SAVE THE REST OF YOUR TIME.

THANK YOU YOU .

GOOD MORNING YOUR HONORS. MAY IT PLEASE THE COURT. I AM CAROL DI TTMAR FROM THE ATTORNEY GENERALS OF FICE REPRESENTING THE APPELLEE IN THE CASE, THE STATE OF FLORIDA.THE CASES WHICH ARE CITED IN THE REPLY BR IEF AND HAVE BEEN OFFERED BY THE DEFENDANT ON PROPORTIONAL IT Y ARE G REATLY DISTINGUISHABLE IN TWO GENERAL AREAS, AND JUSTICE LE WIS , I THINK YOU POINTED OUT WITH RE GARD TO THE FACT S OF THE CASE, THAT MOST OF THEM INVOLVE SPONTANEOUS TYPE CRIMES, EITHER THE ROB BERY GONE AWRY OR SPONTANEOUS FIGHTING BETWEEN INTOXICATE ED INDIVIDUALS.

JUSTICE: WE HAVE TO BE VERY CAREFUL, DO WE NOT , REALLY, TO HAVE OUR ANALYSIS BASED ON THE AGGRAV ATORS THAT THE TRIAL COURT FOUND AND THE MITIGATORS THAT THE TRIAL COURT FOUND AND DO THAT QUALITATIVE ANALYSIS , AND NOT TO IN EFFECT, FIND OTHER AGGRAVATION BASED ON THE CIRCUMSTANCES OF THE CRIME THAT WASN'T FOUND IN THE TRI AL COURT BELOW , DO W E NOT?

WELL , ACT UALLY IN THE S LINEY CASE CIT ED IN THEBRIEF , THIS COURT CONSIDERED THE BRUT ALITY OF THE CRI ME, AND ONE OF THE THING INSTHAT CASE WAS THIS COURT HAD NOT FOUND THE CR UE L , ATROCIOUS AND AGGRAVATING FACTOR AND THIS COURT SA IDYOU CAN PROP

ERLY CONS IDER THE BLUTALITY OF THE CRIME -- BRU TALITY OF THE CRIME NOTWITHSTANDING THAT AGGRAVATING FACTOR . BECAUSE IT IS YOUR RESPONSIBILITY --

JUSTICE: ARE YOU URGING US TO DO THAT HERE ? P ART OF MY CONCERN ABOUT THAT WOULD BE TO SUGG EST THAT THE AGGRAVATION THAT W AS FOUND BY THE TRIAL COURT , COMPARED TO THE MITIGATION HERE, WOULD NOT BE SUFFICIENT IN ITSELF , BUT IF WE CONSIDER, THEN , THE , THESE OTHER CIRC UMSTANCES , THAT MAYBE THAT WOULD ESTABLISH THE CASE. IS THAT WHAT THE STATE'S POSITION IS?

WELL , I THINK IT IS CLEARLY PROPOR TIONAL , BISEDON THE AGGRAVATORS S AS FOUND BY THE TRIAL COURT, BALANCED AGAINST THE MITIGATO RS , BUTI DON'T THINK THIS C OURT IS LIMITED TO ONLY CONSID ERING THOSE SPECIF IED AGGRAVATING AND MITIGATING FACTORS.

JUSTICE: HOW WOULD WE DO THAT? IN OTHER WO RD S --

BY CONSIDE RING THE T OTALITY OF THE CIRCUMSTANCES.

JUSTICE: IF THE STATUTESAYS THAT THE CONSIDER ATION F OR THE DETERMINATION OF THE PENALTY MUST BE MADE ON AN ANALYSIS OF THE AGGRAVATION AND THE MITIGATION , THEN HOW CAN WE DO THAT?

WELL , WHAT THIS COURT HAS S AID BE FORE IN PROPORTIONALITY REVIEW IS YOU CONSIDER THE TO TALITY OF THE CIRCUMSTANCES OF THE CRIME AND THE DEFENDANT. AND I THINK UN DER THE TOTALITY OF THE CIRCUMSTANCES , YOU HAVE TO CONSIDER THE FACTS OF THE CASE. I DON'T KNOW HOW YOU CAN A VOID CONSIDERING THE WAYTHAT THE CRIME OCCURRED , IN DETERMINING WHETHER OR NOT IT IS A PROPORTIONAL CRIME.

JUSTICE: LE T ME ASK YOU ANOTHER PRELIMINARY QUESTION, AND THAT IS I NOTICE THE TRIAL COURT DIDN'T FIND THE CONTEMPORARY VIO LENT FELONY , THE OTHER ATTEMPTED MURDER UPON THE OTHER VI CTIM , AS AN AGGRAVATOR. WAS THAT BECAUSE THE STATE DIDN'T URGE THAT AS AN AGGRAVATOR, OR IS IT BECAUSE THE COURT , IN AN ABUNDANCE OF CA UTION , D IDN'T WANT TO USE A CONTEMPORARY CRIME AS AGGRAVATION ? CAN YOU HELP ME WITH THAT?

I DON'T KNOW THAT THE RECORD WAS F ULLY CLEAR ON THAT. THE STATE CERTAINLY DIDN'T ARGUE IT, DIDN'T TA KE A CROSS-APPEAL AND DIDN'T ARGUE IT AND TRY TO MAKE THAT , I THINK THAT THIS JUDGE WAS BEING EXTREMELY CAREFUL , A S YOU CAN TELL FROM THE RECORD, AND SHE, A COUPLE OF TIMES, NOTES FOR THE RE CORD THAT SHE IS INTENDING TO PROVIDE EXTREME DUE PROCESS TO THE DEFENDANT.THERE WAS A MISTRIAL BEFORE THIS TRIAL OCCURRED, S O SHE KEPT EVERYBODY ON A VERY TIGHT LEAS H WITH REG ARD T O HER EVIDENTIARY RULINGS , WITH REGARD TO RESPONDING TO DEFENSE CONCERNS ABOUT JURY INSTRUCTIONS AND THIN GS COMING BEFO RE THE JURY, AND I THINK IN AN ABUN DANCE OF CAUTION , SHE WAS NOT WANTING TO CONSIDER THE OTHER THINGS THAT OBVI OUSLY THE JURY CONVICTED HIM O F THESE TERRIBLE OFFE NSES THAT WERE CONTEMPORANEOUS .

JUSTICE: UNDER OUR CASE LAW, SHE WOULD HAVE BEEN ENTITLED TO DO THAT , IS THAT CORRECT?

CHIEF JUSTICE: JUSTICE WELLS HAS A QUESTION.

JUSTICE: HOW DO YOU DISTINGUISH THIS CASE FROM VOORHIS?

VOOR HIS AND SA GE R , BOTH , WERE CODEFENDANTS , AND I N B OTH OF THOSE CASES , THEDEFENDANTS WERE I N THEIR VERY YOUNG TWENTIES. I THINK ONE WAS 21 AND ONE WAS 2 2. THERE WERE NO PR IOR VIOLENT FELONY CONVICTIONS AT ALL FOR EITHER ONE OF THOSE DEFENDANTS, AND, AGAIN, THAT SEEMED TO BE M ORE OF A SPONTANEOUS , THEY WERE HIGHLY

INTOXICATED. I BEL IEVE THAT , WITH VO ORHIS , BOTH MENTAL MITIGATORS WERE FOUND AND WITH SAGER , MA YBE O NE OF THE STATUT ORY MENTAL MITIGATORS WERE FOUND, SO THERE WAS MORE EXTENSIVE MENTAL MITIGATION.WITH REGARD TO THE DEFENDANTS, THE RE WAS A LACK OF ANY PRIOR VIOLENT FELONY CONVICTIONS IN BOTH CASES , AND THERE WAS THE, I THINK , NOT AS AGGRAVATED A CASE AS IN THIS. IN THIS CASE YOU HAVE ONE DEFENDANT AND TWO VICTIMS , ESSENTIALLY , AS OPPOSED TO HAVING TWO DEFENDANTS AND ONE VICTIM , S O I THINK JUST , OF COUR SE, THIS IS HAPPENING IN THEIR OWN HOME AND OTHERFACTS OF THE CASE THAT I THINK THIS COURT HAS TO CONSIDER. WITH REGARD TO THE ACTUAL M URDER OF SANDRA, THE E VIDENCE ESTABLISHED NOT ONLY IN TERMS OF WHETHER THIS COULD BE CONSIDER ED A ROBBERY GONE AWRY OR THAT TYPE OF SPONTANEOUS KILLING , THE EVIDENCE WAS PRETTY CLEAR THAT SAN DRA WAS STRUCK WHEN SHE AND THE DEFENDANT ARRIVED BACK AT HER MOTHER'S HOUSE , THAT SHE WAS STRUCK IMMEDIATELY UPON GETTING OUTOF THE CAR IN THE BACK OF THE HEAD, FORCEFULLY STRUCK , PROBABLY KNO CKED UNCONSCIOUS. THE DEFENDANT AT THAT POINT WENT INTO THE HOUSE , BE AT UP THE BROTHER , S T OLE SOME CAMERAS , JEWELRY , CR EDIT CARDS , THINGS THAT HE COULD FIND IN THE HOUSE THAT HE IS TAKING BACK OUT TO HIS TRUCK. AT SOME POINT BEFORE HE GETS IN HIS TRUCK AND LEAVES , HE MUST HAVE NOTI CED THAT SANDRA WAS STARTING TO GET UP. SHE WAS NO LO NGER UNCONSCIOUS BUT SHE CLEARLYWAS NO THREAT TO HIS ESCAPE. SHE , THE FOR ENSIC EVIDENCE WHICH WAS AVAILABLE , THE BLOOD SP ATTER AGAINST THEWALL OF THE HOUSE , SHOWED THAT SHE WAS E ITHER S ITTING OR KNE ELING BUT PROBABLY STARTING TO RISE. SHE WAS NOT ACTUALLY LAYING ON THE GROUND STILL UNCONSCIOUS BUT SHE WASN'T WALKING AROUND. SHE CLEARLY WASN'T PRESENTING A THREAT TO HIM OR RES ISTING HIM. IN ANY OF THE R OBBERY GONE AWRY TYPE OF CASES , EITHER THE VICTIM WAS RESI STING , IN LARKINS I THINK THERE WAS TESTIMONY OF A CONVENIENCE STORE HOLD UP AND A BABY STARTED CR YING THAT AFFECTED HIS MENTAL THING AND TRIGGERED HIS AGGRESSION.THERE WAS NOTHING HERE THAT WOULD SUGGEST THAT HE HAD A REASON TO GO BACK , AND OF COURSE HE DIDN'T TURN AROUND AND SHOOT SAND RA. HE WALKED OVER TO HER ANDPUT THE SHOTGUN AGAINST HER FACE AND BLEW HALF HER FACE OFF AND SHE BLED TO DEATH. THERE AL SO DO ESN'T SEEM TOBE, WHEN YOU LOOK AT THE FACTS OF THIS CASE , ANY REASON TO FIND THAT IT IS NOT AGGRAVATED OR THAT IT IS SIGNIFICANTLY MITIGATED , AND I THINK THE DIFFERENCE BETWEEN THE WAY THE CRIME OCCURRED AND IN AD DITION TO THE MANY PRIOR VIOLENT FELONY CONVICTIONS , YOU HAD TWO PRIOR VIOLENT FELONY CONVICTIONS IN THIS CASE , BOTH OF WHICH WERE VERY SERIOUS. THE VICTIM STEWART THAT CAME DOWN FROM THE 1976 DELAWARE OFFENSE , SHE WAS SHOT SITTING IN HER HOME.THAT WAS FOUR SHOT S INTO THEHOUSE.SHE WAS STRUCK BY TWO OF THEM. ONE OF THEM IN THE HEAD AND ONE OF THEM TO HER NECK, SO IT WAS NOT L IKE IT WAS AN ACCIDENTAL DISCHA RGE AFTER WEAPON THAT HE WASN'T P AYING ATTENTION.IT WAS A VERY S E RIOUS CRIME, AND HE CLEA RLY HAS NOT BEEN ABLE TO LIVE WITHIN THE CONFINES OF THE LAW, ANYTIME THAT HE HAS BEEN OUT. HE HAD ONLY BEEN OUT ABOUT A YEAR WHEN THIS CRIME OCCURRED. HE WAS STI LL ON PROB ATION .

JUSTICE: WHEN DID THE SECOND FELONY THAT THEY USED A S A PRIOR VIOLENT FELONY OCCUR? WAS THE DELAWARE CASE BEFORE THE NE VADA CASE?

I BELI EVE THE NEV ADA CASE WAS ACTUALLY FIRST. THEY WERE BOTH IN 1976 , AND I THINK ONE WAS A UGUST , ANDI THINK THAT WAS THE LATER ONE IN DELAWARE , AND I BELIEVE THAT THE NEVADA CASE HAD BEEN BEFORE THE N.

JUSTICE: SO IT WAS , HEWAS ON ONE STATE AND COMMITTED SOME CRIME AND LEFT AND WENT TO SOME OTHER STATE AND COMMIT TED A CRIME THERE?

THE RECORD REALLY DOE SN'T EXPLAIN.HE WAS FROM DELAWARE , I BELIEVE HIS PA RENTS LIV ED IN DELAWARE AND HE GREW UP IN THAT AREA , SO I DON'T KNOW THE CIRCUMST ANCES OF WHY HE WAS IN NEVADA .

JUSTICE: THE COURT ORDER SAYS THE DELAWARE OFFENSE WAS NOVEMBER OF '7 8 AND THE NEVADA OFFENSE WAS AP RIL OF '77.

I THINK THOSE MAY BE THE DATES THAT HE WAS ACTUALLY SENTENCED AS OP POSED TO WHEN THE CRIMES ACTUALLY OCCURRED. I BELIEVE THAT BOTH OF THEM OCCURRED IN 197 6, BUT I BELIEVE THAT IS THE DATES THAT - -

JUSTICE: CONVICTION.

-- THAT WOULD BE WHEN THE CONVICTIONS OCCURRED.

CHIEF JUSTICE: WERE THOSE FEDERAL CRIMES OR STATECRIMES, AND THE REASON I ASK IS BECAUSE THE OTHER AGGRAVATOR WHICH WE HAVE NOT MENTIONED WHIC H IS A FELONY AGGRAVATOR , H E WAS ON FELONY PROBATION, BUT THE JUDGESAYS THAT HE WAS ON FE DERAL FELONY PROBATION.

I BELIEVE THOSE WERE BOTH STATE CRIMES. HE HAD FEDERAL OFFENSES THAT WERE NONVIOLENT OFFENSES AND THE ACTUAL CRIME THAT HE WAS ON PROBAT ION FOR WAS NOT A VIOLENT OFFENSE. IT WAS A FEDE RAL OFFENSETHAT HE WAS ON PROBATION , SO THERE WERE OTHER, AND ITHINK THE RECORD REFLECTS IT THAT THE JURY DIDN'T HEAR ABOUT THEM BECAUSE THEY WEREN'T VIOLENT , BUT I THINK WHAT HE WAS ACTUALLY ON PROBATION FOR, I KNOW THAT HE HAD WRITTEN THREATENING LETTERS TO THE PRESIDENT AND I BELIEVE THERE WAS A CONVICTION FOR. THAT I DON'T KNOW IF THAT IS EXACTLY WHAT THIS PROBATIONWAS FOR , BUT I THINK THERE WERE S E VERAL OTHER FEDERAL CONVICTIONS THAT WERE NONVIOLENT, SO THE Y ARE NOT VERY DEVELOPED.

JUSTICE: OF THESE CONVICTIONS THAT OCCURRED , DO YOU KNOW I F THEY OCCURRED AFTER HE WAS OUT OF PRISON ON THE TWO VIOLENT FELONIES OR BEFORE THEN?

MY IMPRES SION IS HE WAS IN PRIS ON, AT L EAST AS FAR AS THE THREATENING LE TTERS. I KNOW THAT THERE WERE SOME OTHER OFFENSES. THERE WAS AN OFFENSE WHERE HE HAD TR IED TO POISON ONEOF THE PRISON NURSES, BUT I BELIEVE THAT, I DON'T KNOW WHAT THE ACTUAL CONVICTION WAS ON IT BUT IT WASN'T VIOLENT CONVICTION.

CHIEF JUSTICE: IT MA KES HIM SOUND LIKE HE REALLY IS,I DON'T KNOW WHAT WE WOULD CALL IT BUT CERTAINLY HAD S OME UNDERLYING DISORDER.

YES, YOUR HONOR. WELL , THE ANTISOCIAL AND BORDERLINE PERSONALITY WERE BOTH ACKNOWLEDGED BY ALL OF THE EXPERTS. SO HE DOES HAVE THE PERSONALITY DISORD ERS THATGO WITH AN EXTENSIVE CRIMINAL BACK GROUND , SO WHEN YOU LOOK AT BOTH THE FACTS OF THE CASE AND AT THE INDIVIDUAL DEFENDANT , YO U YOU SEE THAT THE CASES ARGUED FOR DISPROPORTIONALITY REALLY AREN'T CONSISTENT AND AREN'T COMPARABLE ON EITHER REGARD , WITH REGARD TO THE WAY THE CRIME OCCURRED OR WITH REGARD TO THE INDIVIDUAL FACTORS ON THE DEFENDANT. THE MENTAL MITIGATION WHICH IS OFTEN AR GUED , WAS CONFLICTING , AND WE DO HAVE THESE PERSONALITY DISOR DERS , BUT , A GAIN , THAT IS SOMETHING THAT THE TRIAL COURT FOUN D BUT REJECTED THE ORGANIC B RAIN DAMA GE. WE DO KNOW THAT GOING BACK TO HIS SCHOOL HISTORY , THATHE WAS IN TR OUBLE FOR INATTENTIVE NESS. THE AT TENTION DEFICIT , ANDTREATED FOR THAT EA RLY ON OR AT LE AST RECEIVED MEDICATION. I THINK IT WAS PROBABLY VERY INCONSISTENT IN HIS HOME . NOW , HIS AUNT , WE TALKED ABOUT THE LACK OF THERE BEING AVAILABLE MITIGATION , BECAUSE OF HIS MOTHER HAVING BEEN DECE ASED , BUT THE AUNT WAS AVAILABLE, AND SHE WAS PRESENT FOR A GREAT DEAL OF THE TIME WHEN HE WAS GROWINGUP. SHE LIVED NEAR BIRX AND SHE SAID THAT HE SPENT -- NEARBY , AND SHE SA ID THAT HE SPENT M OST WEEKE NDS WITH HER AND HER HUSBAND IN A LO VING ENVIRONMENT AND THAT HE HAD A VERY CLOSE RELATIONSHIP WITH HIS MOTHER AND THERE IS NO DISPUTE ABOUT THAT, SO EVEN THOUGH HE DID HAVE PROBLEMS

WITH THE STEPFATHER , APPARENTLY ABUSIVE TO BOTH HIM AND HIS BR OTHER AND TO HIS MOTH ER, SO APPARENTLY THERE WAS THAT STEPFATHER FIGURE IN THE HOME BUT HE HAD A GO OD RELATIONSHIP WITH HIS MOTHER AND A GOOD RELATIONSHIP WITH HIS STEP B ROTHER WHO LATER ON WASKILLED IN A CAR ACCIDENT , BUT CERTAINLY THERE WAS SOME AVAILABLE EVIDENCE ABOUT HIS GROWING UP, AS FAR AS PHYSICAL ABUSE BY THE STEPFATHER, THE AUNT SAID THAT AT ONE POINT SHE SAWMARKS ON HIM AND SHE CONFRONTED HIS PARENTS ABOUT THAT AND SAID IF SHE EVER SAW ANY INDICATION THAT HE HAD BEEN BEATEN , I G UESS HE TOLD HER IT WAS FROM A BELT , IF SHE EVER SAW ANYTHING IN T ERMS OF PHYSICAL ABUSE THAT SHE WOULD BE RE PORTING IT TO THE POLICE, AND HER TESTIMONY IS THAT SHE NEVER SAW ANYTHING FURTHER. SO A LOT O F IT WAS EMOTIONAL ABUSE AND APPARENTLY PHYSICAL ABUSE ON THE MOTHER, BUT NOT ANY S UC H PH YSICAL OR ANY ALLE GATIONS OF SE XUAL ABUSE OR THAT T YPE OF ABUSEIN THE HOME OR ANY OTHERPLACE.THERE WAS, DESPITE THE LACK OF CCP, THIS WAS CLEARLY A PREMEDITATED MURDER. THERE WAS AN OBVIOUS INTENT TO KILL. HE WA LKED O VER TO THE VICTIM WHERE SHE IS DEFENSELESS , HELPLESS AND NOT PO SING ANYTHREAT TO HIM , AND P UTS THE SHOTGUN DIRECTLY TO HER FACE , SO IT IS NOT LIKE IT WAS AN ACCIDENTAL, AGAIN , GOINGBACK TO THE FACTS OF THE CRIME . I T HINK THAT, WITH AL L OF THE CASES CITED IN BOTH THEBRIEFS AND OBVIOUSLY THIS COURT HAS THE EXPERIENCE AND HAS REVIEWED A LOT OF THESECASES , IF YOU CO MPARE BOTH THE AGGRAVATORS AND THE MITIGATORS, THE TO TALITY OF THE CIRCUMSTANCES , NO MATTER WHICH WAY YOU APPROACH IT, THIS CASE IS CLEARLY PROPORTIONAL TO OTHER CASESWHERE THE DEATH SENTENCE HAS BEEN IMPOSED AND UPHELD BY THIS COURT, AND WE WOULD ASK THAT YOU YOU AFFIRM THE CONVICTIONS AND THE SENTENCE.

CHIEF JUSTICE: THANK YOU , MS. DITTMAR.

THANK YOU , YOUR HONOR.

CHIEF JUSTICE: REBUTTAL.

YES, YOUR HONOR. I WOULD LIKE T O ADDRESS TWO POINTS VERY BR IEFLY AND THEFIRST WOULD BE JUSTICE ANSTEAD'S PRELIMINARY QUESTIONS.I DO THINK THAT , S HOULD THE COURT CH OOSE TO DELVE INTO FINDING AD DITIONAL AGGRAVATING FACTORS BEYOND THOSE THAT WERE FOUND BY THE TRIAL COURT AND SUBMITTED FOR CONSIDERATION TO THE J URY , THAT THAT IS A DISSENTINTO A SLIPPERY SLOPE THAT WOULD BRING US WELL UNDERTHE RESTRICTION THAT IS THEU.S. SUPREME COURT HAS PLACED UPON FINDINGS REGARDING AGGRAVATING FACTORS , AND THE APPROPRIATENESS O F THE DEATHSENTENCE IN CASES AS UNDER--

CHIEF JUSTICE: JUSTICE CANTERO .

JUSTICE: ARE WE REQUIRED TO IGNORE THE FACT THAT HE WAS ALSO CONVICTED IN THIS CAS E WITH ATTE MPTED MURDER?

I DON'T THINK , I THINK THAT YOU CAN CONSIDER ANDOBVIOUSLY YOU DON'T HAVE TO LOOK WITH BLINDERS ON , BUT I THINK THAT IT WOULD BE INAPPROPRIATE TO CONSIDER AGGRAVATING FACTORS PREMISED UPON THAT CONVICTION OR THE CIRCUMSTANCES THAT WE NT ON THAT EVENING , WHEN THOSE WERE NOT CONSIDERED BY THE TRIAL COURT OR THE JURY .

JUSTICE: IF W E COMPARE , FOR EXAMPLE , IF THIS CASE TO A JURY WHERE THE OTHER CASE WAS DISPROPORTIONATE ANDTHERE WAS NO ATTEMPTED M URDER CONVICTION AS WELL , ARE WE SU PPOSED TO SA Y THAT IS EXACTLY EQUAL TO THIS CASE BECAUSE I N NE ITHER CASE WAS THERE A CONTEMPORANEOUS CONVICTION FOR ATTEMPTED MURDER?

I OOB LEAVE THAT , YES , YOU WOULD HAVE -- I BELIEVETHAT, YES , YOU WOULD HAVE TO DO THAT UNDER THESE FACTS , BECAUSE THAT WAS NOT ONE OF THE AGGRAVATING FACTORS THAT THE JUDGE AND THE JURY CONSIDERED IN THIS CASE. I THINK THAT IT IS IMPORTANT TO

REMEMBER WHAT THE TRIAL JUDGE AND WHAT THE JURY B ASED THEIR DECISION ON, AND THAT THIS COURT IS LI MITED TO THAT, IN TE RMS OF AN ASSESSMENT OF WHAT THE AGGRAVATION IS IN COMPARISON TO OTHER CASES . I WOULD DI RECT THE COURT'S ATTENTION TO THE CASE OF TERRY VERSUS STATE. IN TERRY VERSUS STATE , CITED AT 668.954, A DEATH SEN TENCE WAS IM POSED ON A GENTLEMAN WHO COMMITTED A ROBBERY OF A MOBIL GAS STAT ION. IN THAT CASE THERE WERE TWO AGGRAVATING FACTORS FOUND , PECUNIARY GAIN AND PRIOR VIOLENT FELONY . ONE IS IN THIS CASE THAT HE WAS ON PROBATIO N, BUT , AGA IN, FROM THE INFORMATION THAT WE HAVE POST URED IN THE RECORD , THAT IT WAS NOT FOR A VIOLENT OFFENSE. IN THAT CASE THE TRIAL COURT REJECTED ALL MITIGATION , DESPITE THE FACT THAT THERE HAD BEEN TESTIMONY PRE SENTED REGARDING THE DEFENDANT HAVING EMOTIONAL DISTURBANCES, THAT HE HAD COME FROM A VERY IMPOVERISHED HOME AND HAD BEEN A GOOD FAMILY MAN. IN THAT CASE , THIS COURT ALTHOUGH IT FOUND THAT THE MURDER WAS DEPLORABLE , FOUNDFURTHER , THAT IT DID NOT RISE TO THE LE VEL A MONG THE MOST AGGRAVATED AND LEAST MITIGATED IN FLORIDA.

JUSTICE: I DID NOTREMEMBER THAT THIS COURT HAS EVER SAID THAT OUR PROPORTIONALITY REV IEW IS MERELY A COMPARISON OF ONE CASE'S AGGRAVATORS AND MITIGATORS AG AINST AN OTHER CASE'S AGGRAVATORS OR MITIGATORS, A S MS. DITTMAR POINTED OUT , SLINEY I S ONE EXAMPLE OF WHICH THE COURT SAID THAT WHAT THE COURT HASTO DO IS LOOK AT THE TOTALITY OF THE CASE VERSUS THE WHOLE LI NE OF CASES THAT WE HAVE DECIDED THE DEATH PENALTY WAS EITHER TO BE UPHELD OR NOT. ISN'T THAT THE WAY WE HAVE DONE IT?

YE S, YOUR HONOR. YOU HAVE DONE THAT , AND THAT IS WHY I TH INK IT IS IMPORTANT TO RECOGNIZE THE FACTORS BE HIND THE AGGRAVATING AND MITIGATING CIRCUMSTANCES. IT IS OB VIOUSLY DIFFICULT NOT TO COMPAR E, AND THE STATE CERTAINLY WENT TO GREAT LENG THS IN THEIR ANSWER BRIEF, TO PROVIDE THE COURT WITH CERTAIN CASESTHAT THEY FELT WERE SIGNIFICANT, BASED UPON WHAT THE AGGRAVATORS WERE , WHAT THE MITIGATION WAS, THE LA CK THEREOF OR THE EXTENSIVE NE SSOF, AND , AGAIN , I BELIEVE THAT WHEN THIS COURT LOOKS AT THIS AND COMPARES EVEN THE TOTALITY OF THE CIRCUMSTANCES IN THIS CASE , TO OTHER CASES , W HAT WE HAVE IN THIS CASE IS ESSENTIALLY A MURDER OCCURRING WITH A SINGLE GUN SHOT WOUND AND THE ATTENDANT INJU RIES ON MR . MADDOX . NO AGGRAVATING FACTORS.

CHIEF JUSTICE: I WANT YOU TO REMIN D YOU THAT YOUR TIME HAS EXP IRED .

CERTAINLY, YOUR HONOR. WE AS K THE COURT TO REMAND FOR THE IMPOSITION OF THE DEATH SENTENCE.