John Troy v. State of Florida Docket Number: 04-332

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

CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT. THE FIRST CASE ON THIS MORNING'S DOCKET IS TROY V STATE OF FLORIDA. JUSTICE BELL IS RECUSED ON THIS CASE. THE PARTIES ARE READY? YOU MAY PROCEED.

I'M REPRESENT THE APPELLANT, JOHN TROY. I WILL BEGIN WITH THE PENALTY ISSUES IN THIS CASE AND TIME PERMITTING I WOULD LIKE TO ADDRESS THE ISSUE DEALING WITH THE CONSTITUTIONALITY.

THE CASE LAW MAKES IT CLEAR THAT THERE IS OR WHETHER IT APPLIES TO A CAPITAL CASE, THE SPENCER AND JACKSON CASES MAKE THAT CLEAR THAT IT DOES.

HOW WOULD YOU DEFINE THE RIGHT OF ALLOCUTION? HOW WOULD YOU DEFINE ALLOCUTION TO BEGIN WITH AND THEN WOULD YOU DEFINE THE RIGHT.

IN THIS CASE, THE CASES CITED IN THE BRIEF, IT IS VERY LIMITED. THE RIGHT OF ALLOCUTION IS THE SENTENCER IN THIS CASE THE JURY IS THE CONSTANCE OF THE COMMUNITY UNDER FLORIDA LAW. IT HAS A RIGHT TO HEAR THE DEFENDANT IN HIS OWN VOICE EXPRESS HIS REMORSE FOR THE CRIME AND HIS HOPES FOR THE FUTURE, AND FACTORS LIKE THAT. STRICTLY ALLOCUTION DOES NOT ALLOW A DEFENDANT TO GET INTO THE FACTS OF THE CRIME, DOES NOT ALLOW A DENIAL OF THE CRIME. IF A DEFENDANT STRAYS FROM THE LIMITS OF ALLOCUTION THEN CROSS-EXAMINATION --

AND WHAT'S THE SOURCE OF YOUR EXPLANATION OR DEFINITION OF ALLOCUTION AND THE RIGHT OF THE ACCUSER? .

FOR SUMMING UP THE STATE OF THE LAW IS THE FEDERAL LAW OF DESHIELDS VERSUS SNYDER WHICH BASICALLY SAID THAT THE FEDERAL COURTS ARE ALL OVER THE MAP ON IT AND IT BASICALLY TO THE EXTENT YOU CAN SEE A COMMON THREAD THE COURTS TEND TO HOLD THAT DUE PROCESS REQUIRES RECOGNITIONS, THE RIGHT OF ALLOCUTION WHEN THE DEFENDANT SPECIFICALLY REQUESTS IT, AND PERHAPS NOT WHEN HE DOESN'T. THAT SEEMS TO BE THE COMMON THREAD OF THE CASES. THE DESHIELDS CASE CITES SEVERAL FEDERAL CASES HOLDING IT IS CONSTITUTIONALLY BASED. SEVERAL HOLDING THAT IT IS NOT. THE SUPREME COURT OF DELAWARE, DELAWARE BEING ONE OF THE FOUR HYBRID STATES LIKE FLORIDA. DELAWARE'S CAPITAL SENTENCING STATUTE IS INTENTIONALLY PATTERNED AFTER FLORIDA'S ALTHOUGH NOT IDENTICAL. IN THE SHELTON CASE, DEALING WITH THE RIGHT OF ALLOCUTION AND MOST SPECIFICALLY WHETHER IT APPLIES TO THE COSENTENCING JURY, WHAT THE DELAWARE SUPREME COURT DID IS BASICALLY DECLINED TO DECIDE WHETHER THE RIGHT WAS CONSTITUTIONALLY BASED AND DECIDED THE ISSUE AS A MATTER OF STATE LAW. BUT THE RESULT --

ARE YOU REALLY SAYING THEN THAT A DEFENDANT HAS A RIGHT TO COME BEFORE THE COURT,

BOTH THE JUDGE AND THE JURY, AND ON THIS ONE LIMITED ISSUE OF REMORSE, MAKE A STATEMENT TO THE JURY WITHOUT ANY CROSS-EXAMINATION BY THEM?

YES. IT IS A LITTLE BIT MORE EXPANSIVE THAN JUST REMORSE. IT CAN ALSO APPLY TO THINGS LIKE, YOU KNOW, HOPES FOR THE FUTURE, JUST A PLEA TO BE SPARED. BUT BASICALLY, YES. I ALSO THINK AS I SAID THAT I THINK THAT MY POSITION IS OBVIOUSLY STRONGER IF THE RIGHT OF ALLOCUTION IS CONSTITUTIONALLY BASED BUT IT DOESN'T DEPEND ON THAT. BECAUSE FLORIDA COURTS, SPENCER AND JACKSON MAKE IT CLEAR THAT A DEFENDANT HAS A RIGHT TO ALLOCUTION IN A CAPITAL CASE BUT UP UNTIL NOW IT HAS BEEN BEFORE THE TRIAL JUDGE. THAT WAS THE ISSUE THAT WAS DEBATED IN THE TRIAL COURT IN THIS CASE.

WHY SHOULD WE EXPAND ON SPENCER AND MAKE THIS BEFORE THE JURY IN ADDITION?

BECAUSE UNDER FLORIDA LAW THE JURY IS THE COSENTENCER. UNDER ESTABLISHED FLORIDA LAW, EVEN PRIOR TO RING IT HAS BEEN RECOGNIZED THAT THE JURY IS THE CONSCIENCE OF THE COMMUNITY BUT MOST PARTICULARLY AFTER RING, THE CONSTITUTION REQUIRES THAT WE DON'T PRETEND THIS IS A JUDGE SENTENCING STATE.

CHIEF JUSTICE: WELL, I MEAN RING SPECIFICALLY, AT LEAST THE MAJORITY IN RING, SPECIFICALLY EXPLAINS THAT THIS IS NOT FOR SENTENCING PURPOSES. THAT JUST FOR ANY FACTS THAT WOULD WORK AS AGGRAVATORS, SO YOU WOULD AGREE WITH THAT AS JUSTICE BREYER GAVE THE OPPOSITE VIEW EVEN AFTER RING IT IS NOT THAT THERE IS A CONSTITUTIONAL MANDATE THAT THE JURY BE THE SENTENCER IN CAPITAL CASES.

I THINK IT IS AN OPEN QUESTION FOR EXAMPLE WHETHER RING APPLIES TO JUST THE SINGLE ELIGIBILITY AGGRAVATOR OR ALL OF THE AGGRAVATORS. I THINK THAT'S AN OPEN QUESTION. MY POSITION WOULD BE IT APPLIES TO ALL OF THE AGGRAVATORS BUT MOST IMPORTANTLY HERE EVEN BEFORE RING IT WAS RECOGNIZED BY THIS COURT AND BY THE U.S. SUPREME COURT THAT THE JURY IS A COSENTENCER UNDER FLORIDA LAW.

CHIEF JUSTICE: DID YOU ANSWER THE QUESTION AS TO, YOU SAID YOUR ARGUMENT DOESN'T DEPEND ON WHETHER THE RIGHT IS CONSTITUTIONALLY BASED, BUT IF IT DOES DEPEND ON THAT, WHERE IS THE CONSTITUTION? WHAT IS THE CONSTITUTIONAL BASIS THAT YOU ARE ASSERTING FOR A DEFENDANT IN A CAPITAL CASE TO BE ABLE TO GET UP AND WITHOUT ANY CROSS-EXAMINATION GIVE THIS LIMITED TESTIMONY?

IT WOULD BE THE RIGHT OF DUE PROCESS AND IT WOULD BE IN A CAPITAL CASE, THE 8TH AMENDMENT AS WELL. NOW, AGAIN --.

CHIEF JUSTICE: WELL, YOU KNOW, YOU ARE AN EXCELLENT LAWYER. YOU CAN'T JUST ROLL OUT AND SAY THE 8TH AMENDMENT. HOW? IT DOESN'T, I THINK THAT AS I SEE THIS I DON'T SEE WHERE THE CONSTITUTIONAL BASIS IS. I DON'T SEE HOW DUE PROCESS WOULD ALLOW SOMETHING WHERE THE STATE WOULDN'T HAVE A CHANCE TO CROSS-EXAMINE A DEFENDANT IN A, AGAIN, BEFORE THE JURY IN THAT SITUATION.

I'M GOING TO USE THAT AS AN OPPORTUNITY TO SEGUE INTO THE OTHER PART OF MY ISSUE WHICH IS THAT THE PROSECUTOR WAS SAYING OH, YOU ONLY GET TO ALLOCUTE BEFORE THE JUDGE AND NOT THE JURY BECAUSE THE JUDGE IS THE SENTENCER HERE AND THE JURY IS ONLY AN ADVISORY. I WANT TO POINT OUT ALSO THE CHONG CASE SAYS THAT ALLOCUTION BEFORE THE JUDGE ONLY IS PRETTY MUCH AN EMPTY FORMALITY BUT THE PROSECUTOR IS SAYING, YOU KNOW, YOU WANT TO TALK ABOUT YOUR REMORSE, YOU WANT TO EXPRESS THAT IT HAS TO BE SUBJECT TO CROSS-EXAMINATION. WELL, OKAY, FINE. LET'S FOR ARGUMENT'S SAKE GO THERE. I'LL ASSUME THAT THAT IS A VALID POINT BUT THE CROSS-EXAMINATION THAT IT IS SUBJECT TO HAS TO BE PROPER CROSS-EXAMINATION. HERE WHAT WAS USED BASICALLY, AND IT IS THE VERY THING THAT WAS FORESEEN IN THE CHONG CASE AND THE NEW JERSEY CASE WHICH WAS WHY

THE RIGHT OF ALLOCUTION IS SO IMPORTANT IS THAT A DEFENDANT MAY BE UNWILLING OR AS A PRACTICAL MATTER UNABLE TO TESTIFY BECAUSE OF THE THREAT OF CROSS-EXAMINATION. HERE WE ARE TALKING ABOUT IMPROPER CROSS-EXAMINATION BECAUSE IT WAS FAR BEYOND THE SCOPE OF DIRECT, AND WE ARE TALKING ABOUT UNLAWFUL CROSS EXAMINATION BECAUSE IT WAS WITH MATERIAL SECURED IN VIOLATION OF THE U.S. CONSTITUTION SPECIFICALLY THE SUPPRESSED CONFESSION WHICH EVEN THE PROSECUTION CONCEDED THAT THE CURRENT STATE OF THE LAW REQUIRED SUPPRESSION. THE FLORIDA --

WAS THAT DONE BEFORE THE JURY?

WAS THAT --.

CHIEF JUSTICE: YOUR SEGUE, ARE WE TALKING NOW ABOUT --.

I'M TALKING ABOUT WHAT HAPPENED BEFORE THE JURY. IT CAME IN IN THE SPENCER HEARING AND ALL I REALLY CARE ABOUT.

CHIEF JUSTICE: JUST LET ME CLARIFY. BEFORE THE JURY, DID HE TESTIFY THEN?

NO, HE WAS BASICALLY, I HAVE TO SAY COERCED NOT TO TESTIFY BECAUSE OF THE THREAT OF THIS WIDE OPEN CROSS-EXAMINATION.

CHIEF JUSTICE: NOW THE SEGUE IS THAT NOW IT IS BEFORE THE JUDGE AND IN THE SPENCER HEARING?

NO, I'M NOT CONCERNED ABOUT THE SPENCER HEARING.

CHIEF JUSTICE: WHAT ARE YOU TALKING ABOUT THE CROSS-EXAMINATION?

THE THREAT OF CROSS-EXAMINATION. EVERY TIME COUNSEL WOULD PROFFER I WANT TO PUT HIM ON THE STAND TO TESTIFY ABOUT HIS REMORSE BUT I'M CONCERNED ABOUT THE SCOPE OF THE CROSS. I WANT TO ASK HIS MOTHER, DEBRA, ABOUT HIS EXPRESSIONS OF REMORSE BUT I'M CONCERNED ABOUT WHAT THE CROSS WILL BE. I WANT TO ASK DETECTIVE GRODOSKI ABOUT THE EXPRESSIONS OF REMORSE BUT I'M CONCERNED ABOUT WHAT THE STATE IS GOING TO DO. THE STATE SAYS THAT'S RIGHT WE'RE GOING TO BRING IN THIS WHOLE SUPPRESSED CONFESSION, WE'RE GOING TO BRING IN THIS WHOLE NEW AGGRAVATING CIRCUMSTANCE OF WITNESS ELIMINATION AND ALL OF THE EXPLICIT DETAILS, THE RECORD SAYS --

DID THEY MAKE A PROFFER BOTH OF WHAT IT WAS GOING TO OFFER AND THEN A PROFFER OF WHAT THE CROSS-EXAMINATION WOULD BE SO THAT IT MIGHT HAVE AN OPPORTUNITY TO KNOW THE ANSWER TO THOSE QUESTIONS? YOU ARE NOW POSING?

RIGHT, THERE IS NOT A QUESTION. THERE IS NOT A Q AND A PROFFER. WHAT THERE IS THE DEFENSE MAKING IT CLEAR REPEATEDLY THESE ARE THE TWO AREAS, THESE ARE THE FOUR AREAS THAT I WANT TO GET INTO. FOR EXAMPLE, AT ONE POINT HE SAID ALL I WANT TO ASK DETECTIVE GRODOSKI IS DID HE EXPRESS REMORSE AND ACKNOWLEDGE RESPONSIBILITY FOR THE DEATH OF DEBRA CARROLL. THOSE ARE THE TWO QUESTIONS THAT LATER WERE ASKED BY DEFENSE COUNSEL AND THE FLOODGATES OPENED AND IT ALL CAME IN, THE ENTIRE CONFESSION.

CHIEF JUSTICE: BUT IF THERE WAS NO RIGHT OF ALLOCUTION BEFORE THE PENALTY PHASE JURY, NO CONSTITUTIONAL RIGHT, AND THIS ISSUE ABOUT WHAT WOULD HAVE COME UP IF HE HAD TESTIFIED SEEMS ACADEMIC.

IT IS NOT ACADEMIC AT ALL, BECAUSE THE PROSECUTOR IS SAYING HE DOESN'T HAVE TO

ALLOCUTE. HE CAN TESTIFY SUBJECT TO CROSS BUT THE POINT IS THE CROSS THAT THE PROSECUTOR SAID WE ARE GOING TO DO AND THAT THE JUDGE BASICALLY SAID, HEY, YOU KNOW, I'M INCLINED TO RULE THAT THIS OPENS THE DOOR. REPEATEDLY THE JUDGE WARNED BOTH DEFENSE COUNSEL THAT, LOOK, IF YOU TAKE THE STAND YOU DO IT AT YOUR OWN RISK. IF YOU ASK THESE WITNESSES THESE QUESTIONS YOU DO IT AT YOUR OWN RISK. I'M INCLINED TO LET THIS STUFF IN. DEFENSE COUNSEL COULDN'T HAVE MADE IT ANY -- THIS IS NOT A SITUATION WHERE THE JUDGE IS SAYING I HAVE TO HEAR THE QUESTION IN ORDER TO MAKE A RULING ABOUT HOW FAR THE DOOR IS OPENED. IT WAS MADE AS CLEAR AS IT COULD BE TO THE JUDGE. THIS IS WHAT WE WANT TO DO BUT WE CAN'T DO IT UNLESS YOU PREVENT THEM FROM BRINGING IN THIS CONFESSION.

THE OFFICER THAT THEY WERE EXAMINING ABOUT REMORSE, HE DID MAKE A STATEMENT TO THE OFFICER?

CORRECT.

AND WAS THERE ANY INFORMATION IN THAT STATEMENT THAT WAS RELEVANT TO THE ISSUE OF HIS REMORSE?

I DON'T BELIEVE THERE WAS. I DON'T THINK FOR EXAMPLE IF YOU ARE GOING TO BRING IN A SUPPRESSED CONFESSION THAT IS SUPPRESSED AS A RESULT OF A CONSTITUTIONAL VIOLATION WHICH BY THE WAY THE FLORIDA DEATH PENALTY STATUTE SPECIFICALLY PROHIBITS, NOW, THERE ARE A COUPLE OF EXCEPTIONS UNDER WHICH THAT COULD CONCEIVABLY COME IN THAT WERE ADDRESSED IN MY BRIEF. ONE OF THOSE IS THE DOCTRINE OF HARRIS VERSUS NEW YORK WHICH IS LIMITED TO IT BASICALLY SAYS A DEFENDANT CAN'T LIE. THAT IF THE DEFENDANT TESTIFIES INCONSISTENTLY WITH WHAT HE SAID IN HIS CONFESSION THEN THAT OPENS THE DOOR TO BRINGING INTO THE CONFESSION IN THE SAME MANNER AS ANY OTHER PRIOR INCONSISTENT STATEMENT SO THEN THE QUESTION BECOMES IF YOU BRING OUT THE FACT IF JOHN TROY HAD GOTTEN UP THERE AND TESTIFIED TO THE JURY UNDER, YOU KNOW, UNDER OATH TESTIFIED EXACTLY AS HE DID WHEN HE DID FINALLY MAKE HIS ALLOCUTION STATEMENT TO THE JUDGE IN THE SPENCER HEARING IF HE HAD SAID THOSE THINGS ABOUT HIS SORROW FOR WHAT HE HAD DONE AND HIS REGRET WOULD THAT HAVE BEEN A PRIOR INCONSISTENT STATEMENT TO THEN BRING IN ALL OF THE DETAILS THAT HE TOLD DETECTIVES GRODOSKI ABOUT THE OCCURENCE OF THE CRIME INCLUDING THIS NEW AGGRAVATOR OF WITNESS ELIMINATION? THE DOOR CAN'T POSSIBLY BE OPEN THAT WIDE. IT IS NOT A PRIOR INCONSISTENT STATEMENT. IT DOESN'T COME IN UNDER ANY KIND OF RULE OF COMPLETENESS.

BUT THEY DIDN'T FIND THAT AGGRAVATING CIRCUMSTANCE, DID HE?

NO, HE DID NOT, AND BUT THE PROBLEM HERE, THE JURY DIDN'T FIND IT, EITHER, BECAUSE THE JURY NEVER HEARD IT AND THE REASON THE REASON NEVER HEARD IT IS BECAUSE THE STATE DIDN'T BRING IN THE SUPPRESSED CONFESSION. SO WHERE IS THE HARM? THE HARM IS HERE. THE HARM IS THAT THIS WAS USED AS A COERCIVE AGENT TO PREVENT JOHN TROY. HE WAS NOT ALLOWED TO ALLOCUTE AND HE COULDN'T TESTIFY BEFORE THE JURY AND HE COULDN'T ASK QUESTIONS OF DETECTIVE GRODOSKI OR HIS MOTHER ABOUT PRIOR EXPRESSIONS OF REMORSE BECAUSE OF THIS CONSTANT THREAT IF YOU DO THAT, THE FLOODGATES ARE GOING TO OPEN AND EVERYTHING IN THAT SUPPRESSED CONFESSION IS COMING IN. I HAVE OTHER THINGS I NEED TO ADDRESS BUT I THINK THAT THE COMBINED EFFECT OF ALL OF THESE OCCURRENCES DEPRIVED HIM OF HIS RIGHT TO BE HEARD AT THIS PENALTY PHASE AND ABSOLUTELY VIOLATED DUE PROCESS. WHETHER THE ALLOCUTION ALONE WOULD HAVE BEEN SUFFICIENT TO DO THAT MY POSITION WOULD BE THAT IT WOULD. BUT CERTAINLY THAT IF THE IDEA THAT HE HAS TO TESTIFY SUBJECT TO CROSS.

IS REMORSE A MITIGATOR?

YES, IT IS, RECOGNIZED UNDER FLORIDA LAW.

DOES THE STATE HAVE A RIGHT TO PRESENT REBUTTAL EVIDENCE ON THAT?

YES, IT DOES.

HOW WOULD THE STATE DO THAT UNDER YOUR THEORY OF THE DEFENDANT HIMSELF ADDRESSING THE JURY AND EXPRESSING GREAT REMORSE THEN WOULD THE STATE HAVE THE RIGHT TO REOPEN THE CASE NOW AND PUT ON EVIDENCE OF LACK OF REMORSE?

WELL, IF --

IN OTHER WORDS IN OTHER WORDS AFTER THE DEFENDANT ADDRESSES THE JURY AND THE THEORY OF THE RIGHT OF ALLOCUTION AND EXPRESSES, YOU KNOW, GREAT REMORSE AND NOW THE STATE WANTS TO REBUTT THAT BY EVIDENCE OF THE BACK OF REMORSE OR EVIDENCE THAT WOULD CONFLICT WITH THAT, HOW WOULD THEY DO IT?

IF IT WAS DONE UNDER TRADITIONAL ALLOCUTION THEN THEY PROBABLY COULDN'T DO IT. IF IT WAS DONE UNDER TESTIMONY IT WOULD BE DONE THE SAME WAY IT HAS BEEN DONE IN PLENTY OF FLORIDA CASES.

MY QUESTION IS IF IT WAS DONE BY THE DEFENDANT CLAIMING A RIGHT OF ALLOCUTION AND HE MAKES STATEMENTS TO THE JURY ABOUT GREAT REMORSE FOR THIS, HOW WOULD THE STATE THEN HAVE ITS RIGHT TO REBUT THAT?

UNDER THE CASE LAW DEALING WITH THE RIGHT OF ALLOCUTION THEY WOULDN'T.

THEY WOULDN'T?

THEY WOULDN'T. IF IT CAME IN AS ALLOCUTION, AND IT WAS LIMITED TO REMORSE THEY WOULDN'T. IF IT CAME IN AS TESTIMONY, THEN THEY WOULD HAVE THE RIGHT TO REBUT IT, BUT IT WOULD ONLY HAVE TO BE REBUTTAL EVIDENCE DEALING WITH THE ISSUE OF REMORSE. IT COULDN'T BE REBUTTAL EVIDENCE DEALING WITH ANYTHING THEY WANTED ON THE CRIME INCLUDING IMPROPERLY OBTAINED CONFESSIONS.

WOULDN'T THE STATE BE DEPRIVED OF ITS RIGHT TO REBUT THIS EVIDENCE OF MITIGATION?

WELL, THAT IN EFFECT COULD BE USED AS AN ARGUMENT BASICALLY TO SAY THE RIGHT OF AL CUSHION SHOULDN'T EXIST AT ALL. I MEAN, THIS IS WHAT AL CUSHION TRADITIONALLY HAS BEEN. I MEAN, THE DEFENDANT CAN DO IT. IT IS RECOGNIZED THAT THE DEFENDANT CAN DO IT AT A SPENCER HEARING. THE DEFENDANT DID DO IT AT THE SPENCER HEARING. I DON'T WANT -- I MEAN I COULD SAY THAT, WELL, YES, THEY COULD REBUT IT AFTER ALLOCUTION AS WELL BUT I DON'T THINK THAT'S THE LAW ON ALLOCUTION. IF IT WAS DONE IN THE FORM OF ALLOCUTION THEY WOULD HAVE NO RIGHT OF REBUTTAL. IF IT WAS DONE AS TESTIMONY THEY WOULD HAVE A RIGHT OF REBUTTAL BUT CERTAINLY NOT WITH THIS SUPPRESSED CONFESSION ABOUT THE DETAILS OF THE CRIME AND THE NEW AGGRAVATOR OF WITNESS ELIMINATION.

CHIEF JUSTICE: JUSTICE CANTERO HAS A QUESTION.

IF THE DEFENDANT DID IT AS ALLOCUTION WOULD THE STATE HAVE THE RIGHT IN CLOSING TO TELL THE JURY, YOU KNOW, THE DEFENDANT HAS TALKED TO YOU HERE BUT HE HASN'T PLACED HIMSELF UNDER OATH. NOTHING HE SAID HAS BEEN SWORN TO AND WE HAVEN'T BEEN ABLE TO CROSS-EXAMINE ON IT?

I DON'T SEE WHY NOT. I WANT TO MOVE ON TO THE ISSUE HAVING TO DO WITH THE EXCLUSION

OF THE TESTIMONY THAT THE DOC MICHAEL GALEMORE. THIS IS EVIDENCE I BELIEVE SHOULD HAVE BEEN ADMISSIBLE AS RELEVANT TO MITIGATION. NOT MITIGATION ITSELF, THE CONDITIONS OF CONFINEMENT, THE FACT THAT TROY WOULD BE IN CLOSE CONFINEMENT, THAT DOC TAKES STRONG EFFORTS TO KEEP DRUGS FROM GETTING INTO THE PRISON IN THOSE CIRCUMSTANCES, THAT IN ITSELF IS NOT MITIGATION. IT IS EVIDENCE RELEVANT TO MITIGATION, RELEVANCY UNDER THE EVIDENCE CODE IS EVIDENCE TENDING TO MAKE A MATERIAL FACT MORE OR LESS PROBABLE AND I THINK IT CLEARLY FALLS UNDER THAT CATEGORY. BUT THE ISSUE IN THIS CASE IS WAY STRONGER THAN THAT AND THE REASON IS BECAUSE WHETHER OR NOT THE CONDITIONS OF CONFINEMENT WERE RELEVANT INITIALLY, THE STATE IS WHO MADE IT RELEVANT. NOW, ALL THE DEFENDANT WAS TRYING TO DO WAS REBUT VERY DAMAGING IMPEACHMENT AND CROSS-EXAMINATION DONE BY THE STATE.

CHIEF JUSTICE: HOW DID THEY MAKE IT RELEVANT?

HOW THEY MADE IT RELEVANT IS THIS: THERE WERE THREE MAIN THEMES OF THE MITIGATION IN THIS CASE AND ONE OF THE MAJOR THEMES WAS THE FACT THAT JOHN TROY IS AMENABLE TO REHABILITATION AND HE TENDS TO DO WELL IN A STRUCTURED PRISON ENVIRONMENT. THE DEFENSE CALLED FIVE CORRECTIONAL OFFICERS, FIVE FAMILY MEMBERS, A JAIL NURSE, AN INMATE, A CORRECTIONAL OFFICER FROM TENNESSEE THAT HE SAVED FROM BASICALLY A JAIL RIOT IN A PRIOR INCIDENT AND THE PSYCHOLOGIST -- PSYCHIATRIST ALL TO TESTIFY ABOUT THAT. WHAT THE STATE DID IS THIS: WITH THREE WITNESSES IN PARTICULAR, JOHN TROY'S FATHER, JOHN TROY'S GRAND MOTHER, JOHN TROY'S SISTER ARE ALL UP THERE TESTIFYING ABOUT TROY'S POTENTIAL FOR REHABILITATION AND HOW WELL HE DOES IN A STRUCTURED ENVIRONMENT AND THE STATE'S CROSS-EXAMINATION OF THESE THREE WITNESSES WAS LIKE THIS. YOU HAVE NEVER BEEN TO PRISON, HAVE YOU? YOU REALLY DON'T KNOW ANYTHING ABOUT THE CONDITIONS OF CONFINEMENT, DO YOU? DO YOU KNOW ANYTHING ABOUT HIS DRUG USE WHEN HE HAS BEEN IN PRISON BEFORE? DO YOU KNOW HOW EASY IT IS OR WHETHER IT IS POSSIBLE OR HARD OR EASY TO GET DRUGS INTO THE PRISON? YOU DON'T KNOW ANYTHING ABOUT PRISON, MR.^TROY, MS.^TROY, MISS NATALIE WALLACE?

THE OFFICERS THAT WERE BROUGHT IN, BECAUSE THERE WERE A THE LOT OF DEFENSE WITNESSES IN THIS HEARING AND THERE WERE SOME WHO ACTUALLY HAD BEEN IN THE FACILITIES WHERE MR.^TROY HAD BEEN. WERE THOSE OFFICERS ASKED THESE KINDS OF QUESTIONS ABOUT THE FACILITIES THAT MR.^TROY HAD REALLY BEEN IN AND HOW HE HAD REACTED THERE, WHAT KIND OF DRUG SITUATIONS WERE IN THOSE FACILITIES?

TO A DEGREE, YES, BUT I MEAN WHAT WAS IMPORTANT HERE WAS TO GET THE TESTIMONY FROM SOMEBODY WHO KNEW SOMETHING ABOUT THE KIND OF CONFINEMENT THAT TROY WOULD BE IN SERVING A LIFE SENTENCE FOR MURDER. CLOSE CONFINEMENT. THAT WAS WHY DOC OFFICIALS WERE CALLED. THE OTHER OFFICIALS BASICALLY TESTIFIED --.

CHIEF JUSTICE: GOING BACK TO THE CROSS-EXAMINATION OCCURRED IF THE WITNESSES WERE WITNESSES THAT SAID HE DID REALLY GOOD IN CONFINEMENT BEFORE HE GOT OUT IN JULY WAS THAT HE WAS DOING DRUGS AT LEAST BEFORE HE GOT OUT. I MEAN, HE WAS ADDICTED APPARENTLY WHEN HE WENT IN OR AFTER HE GOT IN AND STAYED ADDICTED AND WAS ADDICTED WHEN HE GOT OUT.

EXACTLY.

BUT THAT SEEMS TO ME THAT'S VALID CROSS-EXAMINATION.

IT IS VALID, YOU KNOW, IT IS CERTAINLY TRUE THAT HE HAS HAD A PROBLEM WITH DRUGS THROUGHOUT HIS LIFE AND OUR OWN PSYCHIATRIST TESTIFIED THAT HE, IN SUPPORT OF THE TWO MENTAL MITIGATORS, ONE OF WHICH WAS GIVEN GREAT WEIGHT. YES, HE IS SEVERELY ADDICTED TO COCAINE AND OTHER DRUGS AND HE HAS A SEVERE ADDICTION PROBLEM. THE

QUESTION THEN BECOMES THE DEFENSE HAD PLENTY OF EVIDENCE THAT HE CAN -- HE IS -- OTHER THAN HIS DRUG PROBLEM WHEN HE IS KEPT AWAY FROM DRUGS HE IS A MODEL INMATE. THE STATE'S ARGUMENT IS YOU CAN'T KEEP HIM AWAY FROM DRUGS. YOU DON'T KNOW ANYTHING ABOUT THIGHS CONDITIONS OF CONFINEMENT. EVERY TIME HE GOES TO PRISON HE USES DRUGS. THAT MADE IT RELEVANT WHAT THE CONDITIONS OF CONFINEMENT WERE. I NEED TO POINT OUT THE FACT I THINK IN ESTELLE VERSUS WIGGINS IT IS POINTED OUT THAT THE AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL DEFENSE FUNCTION ONE OF THE THINGS THAT AND THESE ARE LIKE CONSIDERED A GUIDELINE FOR WHAT IS REASONABLE ON QUESTIONS OF EFFECTIVE ASSISTANCE OF COUNSEL. ONE OF THE THINGS COUNSEL IS SUPPOSED TO DO IS CONSIDER EVIDENCE SHOWING THE ALTERNATIVES TO A DEATH SENTENCE, THE CONDITIONS UNDER WHICH A LIFE SENTENCE WOULD BE SERVED. I BELIEVE THIS IS RELEVANT BUT IT CERTAINLY WAS MADE RELEVANT BY THE STATE TELLING THESE WITNESSES YOU ARE IN EFFECT TELLING THE JURY YOU CAN'T GO BY WHAT THESE WITNESSES SAY. THEY ARE HIS RELATIVES. THEY DON'T KNOW ANYTHING ABOUT PRISON. IF HE GOES BACK TO PRISON HE IS JUST GOING TO GO BACK TO USING DRUGS. WE HAD A RIGHT TO INTRODUCE RELEVANT REBUTTAL TO SHOW THAT THAT'S UNDER THE CONDITIONS OF CONFINEMENT THAT HE WOULD BE SERVING THAT OPPORTUNITY WOULD BE EXTREMELY LIMITED. HE WOULD BE IN CLOSE CONFINEMENT. HE WOULD WORK. IT IS RELEVANT EVIDENCE AS TO THE MITIGATOR OF POTENTIAL FOR REHABILITATION AND PRODUCTIVITY IN A STRUCTURED ENVIRONMENT BUT IT IS CERTAINLY RELEVANT EVIDENCE TO REBUT WHAT THE STATE DID IN THIS CASE. I'LL MOVE ON VERY QUICKLY TO A COUPLE OF THE PENALTY ISSUES. THE JUDGE'S REFUSAL TO GIVE INSTRUCTION ON THE MITIGATING CIRCUMSTANCE OF AGE WHERE THE CASE LAW FROM THIS COURT IS THAT AGE IS A VALID MITIGATOR.

CHIEF JUSTICE: HOW OLD WAS HE AT THE TIME?

HE IS 31. THE BLACKWOOD CASE SAYS AGE COULD BE A RELEVANT MITIGATION, YOUNG, MIDDLE-AGED OR OLD. THE KEY IS TO ANY OTHER EVIDENCE OR TESTIMONY DEALING WITH OTHER THINGS PSYCHOLOGICAL OR EMOTIONAL IMMATURITY. WE HAVE THAT EVIDENCE. WE HAVE DR.^MAHAR TESTIFIED AS A RESULT OF TROY'S BEING MOLESTED BY A TEACHER WHEN HE WAS 13 THAT HE IS BASICALLY A CASE OF ARRESTED DEVELOPMENT. THAT HE IS EXTREMELY IMMATURE. HE OPERATES ON THE LEVEL OF A TEENAGER AND THAT THAT, IN FACT, IS PART OF WHY THE EFFORTS, THE PRIOR EFFORTS TO GET HIM OFF OF THE DRUGS AND THE DRUG PROGRAMS HAVE BEEN UNSUCCESSFUL.

THE AGE MITIGATOR, CONCERNS OTHER THAN CHRONOLOGICAL AGE?

YOU BASICALLY SAID THAT EXCEPT IN THE VERY LOW END OF THE SPECTRUM WHERE I THINK THE AGE NOW, THERE CAN BE NO DEATH PENALTY UNDER 18. I THINK IF YOU ARE TALKING 18 OR 19 THEN CHRONOLOGICAL AGE ALONE IS ENOUGH BUT ANYTHING AFTER THAT HAS TO BE LINKED WITH SOMETHING. THE KEY IS THE LINKAGE AND WE HAVE THAT. THIS COURT HAS MADE IT CLEAR THAT THE JUDGE CAN DECIDE, THE JUDGE COULD HAVE LOOKED AT THIS EVIDENCE AND SAY I'M REJECTING THIS MITIGATOR OR I AM GIVING IT VERY LITTLE WEIGHT. WHAT HE CAN'T DO IS HE CAN'T INTERFERE WITH THE JURY'S DELIBERATIONS OR THE JURY'S RIGHT TO GIVE IT WHATEVER WEIGHT THEY THINK IT IS APPROPRIATE TO BY REFUSING TO INSTRUCT ON IT AND THAT GOES BACK TO CASES AS OLD AS FLOYD.

CHIEF JUSTICE: DID YOU ARGUE IT AS A NONSTATUTORY MITIGATOR?

AS A STATUTORY MITIGATOR.

CHIEF JUSTICE: BUT NOTHING WOULD HAVE PRETHE DEFENSE LAWYER FROM ARGUING IT AS A NONSTATUTORY MITIGATOR TO THE JURY?

WELL, YOU CAN SAY THAT ABOUT ANY STATUTORY MITIGATOR.

CHIEF JUSTICE: I UNDERSTAND THAT, BUT FRANKLY IF ANYTHING THIS IS MY HUMBLE OPINION HARMLESS ERROR ASSUMING YOU ARE CORRECT IT WOULD BE THIS SITUATION OF A 31-YEAR-OLD AND I UNDERSTAND, YOU KNOW, THERE WAS OTHER PRETTY POWERFUL MITIGATION ABOUT HIS CHILDHOOD BUT I THINK THAT TO LINK IT AND TO SAY AGE --

WELL, LIKE I SAID, I WOULD RESPECTFULLY DISAGREE WITH YOU. I THINK THAT IT IS EASY TO SAY HARMLESS ERROR WHEN YOU MESS UP THE EQUATION LIKE THAT. I'M TRYING TO THINK OF THE NAME OF THE RECENT CASE OH, MAN, I'M DRAWING A BLANK ON THE NAME BUT THERE IS A U.S. SUPREME COURT CASE OUT OF THE CALIFORNIA CIRCUIT WITHIN THE LAST FEW MONTHS. WHERE JUSTICE SCALIA HAS WRITTEN AN OPINION SAYING THAT HARMLESS ERROR SHOULD NOT BE FOUND WHEN THE -- WHEN IT INVOLVES A SITUATION WHERE THE TRIER OF FACT DOESN'T CONSIDER OR THE JURY IS NOT GIVEN AN INSTRUCTION ON A MITIGATOR THAT IS NOT COVERED BY OTHER MITIGATORS.

LET ME ASK YOU THIS.

THE EVIDENCE WOULDN'T BE COVERED.

WHAT?

YOU ARE SAYING THAT THE EVIDENCE THAT SUPPORTS THAT MITIGATOR WOULDN'T, OR AGGRAVATOR WOULDN'T BE APPLICABLE TO ANYTHING?

NO, THE EVIDENCE COULD BE APPLICABLE TO OTHER MITIGATORS, BUT I DON'T THINK THAT'S WHAT SCALIA IS SAYING.

CHIEF JUSTICE: DID YOU CITE THAT CASE IN YOUR BRIEF?

I DID NOT.

CHIEF JUSTICE: WHY DON'T YOU -- THEN YOU -- IF YOU WANT TO SUPPLEMENT -- SUBMIT SUPPLEMENTAL AUTHORITY.

HAVE WE EVER HELD THAT A TRIAL JUDGE HAS ABUSED DISCRETION IN NOT APPLYING THE AGE MITIGATOR WHERE THE DEFENDANT WAS OVER 30 AND UNDER 60?

ABUSED HIS DISCRETION IN NOT FINDING IT? I DON'T BELIEVE SO BUT AGAIN MY ISSUE IS NOT THAT HE WAS ERRONEOUS IN NOT FINDING IT. MY ISSUE IS THAT HE COMMITTED ERROR IN NOT INSTRUCTING ON IT.

ALL RIGHT. HAVE WE EVER HELD TO THAT EFFECT WHERE THE DEFENDANT WAS OVER 30 AND UNDER 60?

I'M NOT SURE THAT THE COURT HAS EVER CONFRONTED THAT ISSUE IN THAT CONTEXT. I MEAN IN THE CAMPBELL CASE --

THE DEFENDANT WAS 21.

RIGHT. I DON'T KNOW THAT THE COURT HAS EVER DECIDED AN ISSUE WHERE THE ISSUE HAD TO DO WITH A JURY INSTRUCTION AND THE DEFENDANT WAS BETWEEN THE AGES OF 30 AND 60 WHERE THERE WAS OTHER EVIDENCE SUPPORTING IMMATURITY. I'M NOT SURE THAT I KNOW OF A CASE WHERE THAT HAS COME UP. THANK YOU.

CHIEF JUSTICE: THANK YOU.

MAY IT PLEASE THE COURT. I'M BOB LANDRY APPEARING ON BEHALF OF THE STATE TODAY IN THIS APPEAL. WITH REGARD TO THE FIRST ISSUE THAT RAISED ARGUMENT TODAY BY OPPOSING COUNSEL, THE RIGHT OF ALLOCUTION I WOULD LIKE TO POINT OUT THE DEFENDANT WAS GIVEN THE RIGHT OF ALLOCUTION AT THE SPENCER HEARING AS PER THE USUAL RULE AND PROCEDURE IN FLORIDA. HE WAS ATTEMPTING, OF COURSE, TO REQUEST OF THE TRIAL COURT THAT HE BE ALLOWED TO GET ON THE STAND IN FRONT OF THE JURY, NOT BE SUBJECT TO CROSS-EXAMINATION, NOT BE REQUIRED TO TAKE THE OATH, TO TELL THE TRUTH, AND SIMPLY ANNOUNCE THAT HE FELT REMORSE. THE PROSECUTOR OBJECTED, SAYING THAT THAT'S NOT WHAT IS AUTHORIZED UNDER FLORIDA LAW. WE CITED IN OUR BRIEF BOTH THE JOHNSON CASE AND THE CHANDLER CASE IN WHICH THIS COURT HAS ACKNOWLEDGED THAT IF A DEFENDANT WANTS TO TAKE THE STAND AND TALK ABOUT ANYTHING IN HIS TRIAL OF COURSE HE HAS TO BE SUBJECT TO CROSS-EXAMINATION. WE SEE NO REASON WHY THAT SHOULD BE EXPANDED IN THIS CONTEXT SIMPLY TO MAKE THINGS MORE CONVENIENT FOR THE DEFENDANT. THE LEGAL WRITERS HAVE CONTEMPLATED AND COMMENTED IN THE PAST ABOUT HOW IMPORTANT THE ROLE OF CROSS-EXAMINATION IS IN DETERMINING THE -- IN GETTING AT THE TRUTH OF MATERIALS, AND SIMPLY TO ALLOW A DEFENDANT TO PASS UNDER THESE CIRCUMSTANCES.

UNDER THESE CIRCUMSTANCES IF YOU ALLOW THE DEFENDANT TO GET ON THE STAND AND TALK ABOUT THE LIMITED SITUATION OF REMORSE AND WHAT THE REST OF HIS LIFE WOULD BE LIKE, WHAT WOULD BE THE DOWN SIDE OF THE DEFENDANT BEING ALLOWED TO, IN FACT, MAKE THAT KIND OF STATEMENT TO THE JURY? WOULDN'T THE STATE THEN HAVE AN OPPORTUNITY TO BRING IN OTHER EVIDENCE THAT MIGHT BE ABLE TO REBUT THAT?

WELL, I DON'T KNOW TO WHAT EXTENT THE STATE MIGHT HAVE WITNESSES TO REBUT THAT. CERTAINLY IT WOULD SEEM TO ME THAT THEY SHOULD BE ALLOWED TO CROSS-EXAMINE AS TO HIS ALLEGED REMORSE. HIS REMORSE WAS ALL-ENCOMPASSING. DETECTIVE GRODOSKI INDICATED WHILE HE HAD STATED IN HIS TESTIMONY AT THE SPENCER HEARING WHILE THE DEFENDANT HAD STATED THAT HE FELT REMORSE, CERTAINLY HIS PHYSICAL BODILY GESTURES DID NOT CERTAINLY INDICATE THAT.

WELL, PART OF THIS ARGUMENT ALSO IS THAT THE DEFENDANT WAS THREATENED WITH THE SUPPRESSED STATEMENT IF HE, IN FACT, GOT ON THE STAND OR EVEN IF THESE OTHER WITNESSES GOT ON THE STAND THAT THE STATE WOULD THEN GO INTO THE SUPPRESSED STATEMENT. WHAT WAS IN THIS STATEMENT THAT WOULD HAVE ADDRESSED THE ISSUES THAT THE DEFENDANT WANTED TO DISCUSS IN HIS ALLOCUTION?

WELL, FIRST OF ALL I'M NOT CERTAIN THAT THE STATE THREATENED ANYTHING IN PARTICULAR, OTHER THAN THE USUAL PROVISO OF THE LAW THAT IF THE DEFENDANT COULD UNDERSTAND HE IS SUBJECT TO CROSS-EXAMINATION LIKE ANYBODY ELSE. NOW, IF -- I'M NOT SURE THE QUESTION IS WHAT WAS DAMAGING?

WHAT WAS IN THAT SUPPRESSED STATEMENT THAT WOULD HAVE BEEN RELEVANT TO THE ISSUE OF REMORSE AND HIS FUTURE LIFE IF HE WAS GIVEN A LIFE SENTENCE?

WELL, THE DEFENDANT, OF COURSE, STATED IN HIS STATEMENTS THAT HE FELT REMORSE FOR IT. HE SAID A NUMBER OF THINGS. HE SAID FOR EXAMPLE THIS CASE IS NOT GOING TO GO TO TRIAL. IT IS PROBABLY GOING TO GO TO A PLEA. WHEN THE PROSECUTOR, WHEN THE DETECTIVE INQUIRED AS TO WHETHER OR NOT HE WOULD GIVE A TAPED STATEMENT HE SAID, NO, I HAVE TO HAVE SOMETHING FOR MY LAWYER TO HANG ON TO, AND HAVE SOME KIND OF A DEFENSE AVAILABLE. SO HE CERTAINLY DID NOT INDICATE IN THE STATE'S VIEW A TOTAL ACCEPTANCE OF RESPONSIBILITY WHICH IS, YOU KNOW, ONE OF THE BASES UPON WHICH THE DEFENDANT WAS ARGUING BELOW. HE HAD INDICATED FOR, YOU KNOW, I MEAN DID HE ACCEPT RESPONSIBILITY FOR THE ATTEMPTED SEXUAL BATTERY OF BONNIE CARROLL? WE DON'T KNOW. THAT DEPENDS

ON WHAT VERSION OF EVENTS HE IS GIVING TO HIS MOTHER OR THE GIRLFRIEND OR THE DETECTIVE, BUT HE MADE A NUMBER OF STATEMENTS IN TERMS OF CERTAINLY WHAT WOULD BE DAMAGING FROM HIS PERSPECTIVE WOULD BE HIS ANNOUNCEMENT THAT AFTER HE HAD ATTEMPTED TO KILL HER ONCE OR TWICE OR SEVERAL TIMES THAT SHE WAS STILL ALIVE AND HE WAS SURPRISED THAT SHE WAS STILL ALIVE. HE HAD TO COME BACK FROM THE BATHROOM TO FINISH THE JOB. HE CLEARLY INDICATED A NUMBER OF TIMES THAT HE RECOGNIZED THAT HE HAD TO KILL THE VICTIM BECAUSE HE DIDN'T WANT TO GO BACK TO PRISON FOR A NUMBER OF YEARS. SO I THINK, YOU KNOW, THAT IF THE DEFENDANT HAD GOTTEN ON THE STAND AND WANTED TO TALK ABOUT HIS REMORSE AND ALL OF THAT --

WHY WOULDN'T HE BE ALLOWED, THOUGH, TO ADDRESS THE JURY AND IN ESSENCE SAY I'M SORRY FOR WHAT I HAVE DONE, AND ALL I'M DOING IS MAKING A PLEA FOR MERCY TO YOU TO SPARE MY LIFE, REALIZING THAT I'LL SPEND THE REST OF MY LIFE IN PRISON. THEN THE STATE IF IT WISHES COULD RESPOND TO THAT BY POINTING TO THE EVIDENCE AND SAYING, YOU KNOW, WHERE WAS ALL OF THAT SORROW AT THE TIME THAT THIS OFFENSE OCCURRED? AND, YOU KNOW, POINTING OUT THE CIRCUMSTANCES OF WHAT OCCURRED THAT NIGHT AND THE BRUTALITY THAT WENT ON, AND HIM FLEEING AND ALL OF THOSE CIRCUMSTANCES. WHY WOULDN'T THAT HAVE BEEN AN ADEQUATE WAY? I'M HAVING DIFFICULTY WITH HIM NOT EVEN HAVING THE RIGHT TO STAND BEFORE THE JURY AND MAKE THIS PLEA FOR MERCY BY SAYING I'M SORRY FOR WHAT I HAVE DONE, BUT I ASK YOU FOR MERCY IN SPARING MY LIFE? WHAT ARE THE GREAT CONSEQUENCES OF MAKING THAT PLEA AND WHY WOULDN'T THE STATE HAVE AN ADEQUATE BASIS TO REBUT THAT IN ARGUMENT BY POINTING TO THE EVIDENCE?

I THINK THE STATE WOULD HAVE AN OPPORTUNITY TO REBUT THAT IF HE WERE TO GET ON THE STAND AND TAKE THE OATH AND BE SUBJECT TO CROSS-EXAMINATION SO THEY COULD ASK HIM ABOUT ALL OF THAT. HIS ONLY MENTAL HEALTH EXPERT ACKNOWLEDGED THAT THIS DEFENDANT HAS HAD A SOCIAL PERSONALITY CHARACTERISTICS, HE IS ADEPT AT CONNING PEOPLE. THAT CAME FROM THEIR EXPERT WITNESS. I THINK.

WOULD YOU JUST STOP AT BECAUSE I WANT TO BE SURE THAT I UNDERSTAND WHERE THE STATE IS ABOUT THIS RIGHT OF -- IT IS THE STATE'S POSITION THAT THE INDIVIDUAL DEFENDANT HAS ABSOLUTELY NO RIGHT TO ADDRESS THE JURY AS THE COSENTENCER IN DEATH PENALTY PROCEEDINGS, DIRECTLY; IS THAT THE STATE'S POSITION?

YES, ABSENT HIS BEING UNDER OATH AND SUBJECT TO CROSS-EXAMINATION.

OKAY. SO IT IS THE STATE'S POSITION THAT THERE IS NO RIGHT --

RIGHT.

TO ADDRESS THE JURY AND THAT THAT REALLY IS THE ANSWER TO THAT.

THAT'S THE ANSWER TO THAT AND FURTHERMORE I THINK WE'VE CITED CASE LAW IN OUR BRIEF INDICATING THAT MOST OF THE FEDERAL COURTS HAVE REJECTED ANY SUCH CONSTITUTIONAL RIGHT OF ALLOCUTION. IN ADDITION SOME OF THE CASES THAT THE DEFENDANT HAS CITED IN THEIR BRIEF ARE REALLY VERY SPECIFICALLY INTERPRETATIONS OF STATE RULES, STATE LOCAL RULES LIKE NEW JERSEY OR DELAWARE OR SOME OTHER STATE WHICH HAVE A SPECIFIC PROVISION FOR THAT WHICH WE DON'T HAVE HERE IN FLORIDA.

CHIEF JUSTICE: IN DELAWARE WHAT WAS THE BASIS FOR THEIR DECIDING THAT --.

I THINK IT IS NEW JERSEY BUT I THINK NEW JERSEY HAD A -- AS A MATTER OF FACT I THINK --.

CHIEF JUSTICE: IN DELAWARE, YOU SAID DELAWARE HAD A STATUTE OR WHAT WAS IT IN DELAWARE?

I BELIEVE, WELL, WHATEVER -- THE CASES THAT HE RELIES ON FROM OUT OF STATE, I THINK WE'VE INDICATED IN OUR BRIEF THAT THE COURTS SAID IN THOSE CASES WE ARE NOT DECIDING AS A MATTER OF FEDERAL CONSTITUTIONAL LAW WE ARE DECIDING AS A MATTER OF OUR OWN STATE RULE OR STATUTE ON ALLOCUTION WHICH IS NOT APPLICABLE HERE IN FLORIDA.

CHIEF JUSTICE: SO COULD THE COURT RESPECTFULLY, COULD THE COURT DECIDE THAT THAT WAS APPROPRIATE FOR THE OVERALL FAIRNESS OF THE TRIAL? OR ARE WE PROHIBITED FROM DOING THAT?

I THINK YOU WOULD BE PROHIBITED UNLESS THERE WAS A STATUTORY CHANGE OR A CHANGE OF THE RULE AND PROCEDURES AS TO HOW ALLOCUTION WORKS IN FLORIDA.

CHIEF JUSTICE: LET ME JUST, WHERE DID SPENCER COME FROM? DID THAT COME FROM THE STATUTE OR FROM, I MEAN THE IDEA THAT AT LEAST IN THE SPENCER HEARING THAT THE DEFENDANT HAD A RIGHT OF ALLOCUTION, WHERE DID THAT COME FROM?

WELL, I THINK THIS COURT AMENDED ITS PROCEDURES TO ALLOW A DEFENDANT AT A SPENCER HEARING.

CHIEF JUSTICE: SO THEN IT DIDN'T COME FROM -- IT WAS AN INTERPRETATION OF WHAT THE OVERALL FAIRNESS OF THE PROCEEDINGS, CORRECT?

I THINK THE SPENCER PROCEEDING WAS AN ATTEMPT TO CLARIFY FOR TRIAL JUDGES AS TO WHAT HAD TO BE DONE PRIOR TO SENTENCING A DEFENDANT.

CHIEF JUSTICE: SO WE THOUGHT IT WAS IMPORTANT THAT THE TRIAL JUDGE HEAR FROM THE DEFENDANT OR THAT THE DEFENDANT HAD THAT RIGHT AT SOME POINT IN THE PROCEEDING?

WELL, IN TERMS OF THE SPECIAL SPENCER PROTOCOL, THAT CAME FROM THIS COURT.

CHIEF JUSTICE: SO COULD WE HAVE DECIDED THAT EITHER AT THE --.

BUT THE RULES OF PROCEDURE ON THE ALLOCUTION, THERE IS ALREADY IN THE CRIMINAL RULES OF CRIMINAL PROCEDURE ALLOW FOR ALLOCUTION I THINK. I DON'T HAVE IT IN FRONT OF ME AT THE MOMENT, BUT I THINK THAT THIS ORDINARILY WHEN A DEFENDANT WHEN A DEFENDANT IN A NONCAPITAL CONTEXT COMES UP FOR SENTENCING HE HAS A RIGHT TO SAY WHATEVER HE WANTS.

CHIEF JUSTICE: BASED ON THE RULES OF PROCEDURE?

YES.

CHIEF JUSTICE: SO THEN GOING BACK TO JUSTICE ANSTEAD'S QUESTION, WHY WOULDN'T IT BE A GOOD IDEA SINCE THE JURY'S RECOMMENDATION IS GIVEN GREAT WEIGHT TO LET THE JURY HEAR THE SAME THING THAT THE JUDGE IS GOING TO HEAR IF THE DEFENDANT CHOOSES TO DO THAT?

WELL, I THINK IT IS I DON'T KNOW WHY WE NEED TO EXPAND THAT, THE DEFENDANT'S RIGHTS. OBVIOUSLY IT SEEMS TO ME THAT HE IS DEPENDING ON THE PARTICULAR DEFENDANT, OBVIOUSLY HE IS GOING TO BE ABLE TO PERHAPS MANIPULATE THE JURY INTO THINKING THAT HE IS MORE REMORSEFUL OR HAS OTHER GOOD QUALITIES.

CHIEF JUSTICE: AGAIN THAT'S WHERE IT MAY OPEN THE DOOR AT SOME POINT TO, AND I THINK THAT'S THE BALANCING TEST, BUT IN THIS CASE AGAIN YOU, IF THERE IS NO CONSTITUTIONAL BASIS AND THERE IS NO RULE BASIS RIGHT NOW, YOUR POSITION WOULD BE THERE WAS NO

ERROR ON THAT POINT?

NO ERROR ON THAT. IN ADDITION, THE CASE LAW OUT OF THIS COURT, CHANDLER AND JOHNSON, THE OTHER CASES, ALL INDICATE THAT IF THE DEFENDANT WANTS TO TELL HIS SIDE OF THE STORY HE HAS TO BE SUBJECT TO CROSS-EXAMINATION. SO OBVIOUSLY THERE IS NO ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT. AS TO THE ISSUE RAISED IN REGARDING MR.^GALEMORE'S TESTIMONY, THE DEFENDANT POINTS OUT THAT HE SEEMS -- HE DEEMS IT UNFAIR THAT DURING THE OPENING STATEMENT PENALTY PHASE THE PROSECUTOR COMMENTED THAT THEY ARE GOING TO HEAR EVIDENCE ABOUT HIS -- THE DEFENDANT'S PRIOR AGGRAVATED ASSAULT WHICH OCCURRED WHILE HE WAS IN THE TENNESSEE PRISON. THAT, OF COURSE, WAS APPROPRIATE FOR THE STATE TO INTRODUCE COMMENTS ALONG THAT LINE BECAUSE THEY WERE ABOUT TO PROVE THAT HE HAD PRIOR CONVICTIONS, PRIOR FELONY CONVICTIONS, AND THAT THE ASSAULT CONVICTION THAT HAD OCCURRED WAS OF IN THE JAIL SYSTEM IN TENNESSEE. THE COMPLAINT ABOUT THE CROSS-EXAMINATION OF JOHN TROY, THE FATHER OF THE DEFENDANT, HE HAD TESTIFIED ON DIRECT EXAMINATION THAT IF THE DEFENDANT COULD BE PLACED IN A STRUCTURED ENVIRONMENT WHERE HE COULDN'T HAVE ACCESS TO DRUGS AND ALL OF THAT THAT HE MIGHT DO BETTER AND OBVIOUSLY ON CROSS-EXAMINATION IT WAS APPROPRIATE TO INQUIRE AS TO WHAT THE DEFENDANT -- WHAT THIS WITNESS KNEW ABOUT THOSE KINDS OF CIRCUMSTANCES. I WOULD LIKE TO POINT OUT THAT ON THE SISTER, NATALIE WALLACE, AGAIN THE STATE WENT INTO THAT LINE ABOUT WHAT DO YOU KNOW ABOUT PRISONS? DO YOU KNOW ABOUT SITUATION OF DRUGS BEING IN PRISON AND DO YOU UNDERSTAND ABOUT HOW THE PRISON SYSTEM OPERATES AND SHE SAYS ABSOLUTELY, I DEFINITELY DO. MY HUSBAND IS IN PRISON SO OBVIOUSLY THE DEFENDANT WAS ABLE TO ARTICULATE TO THE JURY WHAT THE SITUATION WAS IN THE PRISON SYSTEM. NOW, THE TRIAL COURT.

WHAT WOULD HAVE BEEN THE DOWN SIDE OF HAVING AN OFFICER WHO I ASSUME THIS OFFICER ACTUALLY WORKED IN THE PRISON THAT MR.^TROY WOULD HAVE BEEN IN IF HE HAD BEEN GIVEN A LIFE SENTENCE, IS THAT WHAT HIS TESTIMONY WOULD HAVE BEEN?

HIS TESTIMONY APPARENTLY WOULD HAVE BEEN THAT HE IS A GUARD, AN EMPLOYEE OF THE DOC SYSTEM. WE DON'T KNOW WHERE HE -- I DON'T KNOW IF HE WAS FROM POLK COUNTY OR WHATEVER, WHAT HIS STATUS WHAT WAS. THAT WASN'T MADE CLEAR BUT HE CERTAINLY INDICATED THAT HE HAD NO PERSONAL KNOWLEDGE OF THE DEFENDANT. HE HAD NO WAY OF TESTIFYING FOR EXAMPLE WHETHER THIS DEFENDANT WAS A GOOD CANDIDATE FOR PRISON, WHETHER OR NOT HE WAS A VIOLENT OR A DANGEROUS PERSON OR ANYTHING ALONG THAT LINE.

BUT WOULD THIS PERSON HAVE HAD INFORMATION ABOUT HOW A PERSON WHO IS, IN FACT, CONVICTED AND GIVEN A SENTENCE OF LIFE IMPRISONMENT, WHAT KIND OF SECURITY ARRANGEMENTS, THOSE KINDS OF THINGS, ARE APPLICABLE IN THAT KIND OF FACILITY, WAS HE A PERSON WHO, IN FACT, WAS IN A FACILITY THAT HAD CLOSE CONFINEMENT?

HE WAS BASICALLY A PERSON WHO SAID ON HIS PROFFER THAT HE SAID THAT A PERSON WHO IS SERVING A PRISON TERM IN FLORIDA IS PLACED UNDER CLOSE CUSTODY AND THAT MEANS THEY ARE SUPERVISED AND THAT THE CORRECTIONS INSTITUTION MAKES EVERY EFFORT TO TRY TO KEEP DRUGS OUT OF THE PRISON SYSTEM. OBVIOUSLY HE COULDN'T TESTIFY AND HE WASN'T ASKED TO TESTIFY THAT, IN FACT, DRUGS CAN BE KEPT OUT TOTALLY OR WHATEVER. HE WASN'T, YOU KNOW, HE CERTAINLY DIDN'T HAVE ANYTHING PERTINENT TO SAY ABOUT THIS PARTICULAR DEFENDANT BECAUSE HE HAD NEVER MET HIM AND HE DIDN'T KNOW HIM, BUT, YOU KNOW, CLEARLY THE TESTIMONY OF MR.^GALEMORE BASICALLY ADDED NOTHING MORE TO WHAT HAD BEEN ADMITTED BY THE DEFENDANT. NOW, THE DEFENDANT BELOW ARGUED THAT, WELL, HE CITED THE FORD CASE AND THE TRIAL COURT TOOK A MOMENT TO READ THE FORD CASE AND SAID, WELL, THIS DOESN'T REALLY APPLY TO YOU. IT DOESN'T HOLD WHAT YOU CLAIM THAT IT

HOLDS. AND CERTAINLY THE DEFENDANT CAN CERTAINLY ARGUE TO THE JURY ABOUT PAROLE AND ELIGIBILITY WHICH HE DID, AND CERTAINLY HE COULD ARGUE THAT, YOU KNOW, IF FOR EXAMPLE IT HAD BEEN ALLOWED IN AND CERTAINLY IT WOULD HAVE -- THE DEFENDANT WOULD NOT HAVE BEEN ENTITLED TO ANY KIND OF FINDING IN THIS REGARD ON HIS BEHALF BECAUSE THE EVIDENCE DEMONSTRATED THAT HE HAD BEEN VIOLENT IN THE TENNESSEE PRISON AND COMMITTED AN ASSAULT IN THAT CASE SO EVEN IF IT HAD COME IN, IF THE TESTIMONY HAD BEEN ALLOWED IN I SUBMIT THE ERROR WOULD HAVE BEEN DEEMED HARMLESS. NOW, WITH RESPECT TO THE CLAIM THAT IT WAS ERROR TO INSTRUCT THE JURY ON THE DEFENDANT'S AGE AS A MITIGATOR, THE DEFENDANT ARGUED BELOW, HE TOLD THE JUDGE THE DEFENDANT IS AGE 33, AND HE WANTED TO ARGUE THAT LIFE WITHOUT PAROLE IS EVEN WORSE DUE TO THE AMOUNT OF TIME HE MAY HAVE TO SERVE, AND THEN HE SAID AND ALSO IT MAY BE RELEVANT TO THE DEFENDANT'S EMOTIONAL MATURITY. NOW, OBVIOUSLY IF THAT'S THE MAIN ARGUMENT THEN I SUBMIT TO THE TRIAL COURT OBVIOUSLY DID NOT ABUSE HIS DISCRETION IN DENYING THAT, BECAUSE IT REALLY DOES NOT SAY ANYTHING AT ALL ABOUT SOMETHING OF MITIGATING NATURE IN THE STATE OF FLORIDA. THE CASE LAW AS I UNDERSTAND IT IN FLORIDA HAS BEEN THAT OBVIOUSLY EVERYONE HAS AN AGE, AND THE AGE MITIGATOR APPLIES CERTAINLY TO THE VERY YOUNG, CERTAINLY TO THE VERY OLD, OR FOR SOME OTHER QUALITY ABOUT THE DEFENDANT THAT WE CAN ATTACH TO IT, FOR EXAMPLE RETARDATION OR LOW IQ OR SOMETHING OF THAT NATURE. THIS DEFENDANT HAS NONE OF THOSE. HE'S GOT AN IQ OF 100 TO 115. HE IS NORMALLY INTELLIGENT.

IS THAT REALLY IMPORTANT IN THE WHOLE SCHEME OF THINGS? WHAT THE ARGUMENT IS HERE IS REALLY THAT THIS GUY IS EMOTIONALLY IMMATURE, BASED ON THE FACT THAT THERE WAS SOME KIND OF SEXUAL ASSAULT OF HIM WHEN HE WAS YOUNG AND THAT HE REALLY HAS NOT PROGRESSED BEYOND, MUCH BEYOND THAT AGE AND SO HE STILL IS OPERATING AS IF HE WERE A TEENAGER?

WELL, AGAIN --

EMOTIONALLY?

WELL, AGAIN, THE JURY HEARD ALL OF THAT TESTIMONY. THEY HEARD ALL OF THE TESTIMONY, THE EPISODE IN WHICH HE WAS ASSAULTED, ALLEGEDLY VICTIMIZED AS A YOUNGSTER AND THEN THERE WAS CONTRARY TESTIMONY AS TO WHETHER OR NOT THERE WAS SIMPLY A DEFENDANT MAKING AN OPPORTUNITY TO MAKE MONEY FOR THOSE PURPOSES OR WHATEVER.

CHIEF JUSTICE: I JUST WANT TO MAKE SURE. WAS THERE ANY CONTEST THAT HE HAD BEEN SEXUALLY ASSAULTED AND HAD TESTIFIED HE WAS A VICTIM OF SEXUAL ABUSE BY AN OLDER MAN?

NO, NO, NO, HE HAD -- THERE WAS TESTIMONY PRESENTED THAT PART OF HIS EARLIER LIFE THAT HE HAD BEEN THE VICTIM OF A SEXUAL ASSAULT AND HAD BEEN AS PART OF THE LEGAL SYSTEM'S PART OF HIS DEALING WITH THE LEGAL SYSTEM INCLUDED THAT HE HAD BEEN THE ONE TO TESTIFY AGAINST HIM.

CHIEF JUSTICE: YOU SAID ALLEGED ALLEGEDLY. IS THERE ANY QUESTION THERE WAS A TRIAL?

NO QUESTION ABOUT THAT. WHAT I SAY WAS A SLIGHT CONFLICT WAS THE DEGREE TO WHICH THE DEFENDANT WAS REALLY A VICTIM OR WHETHER OR NOT HE WAS TRYING TO MAKE MONEY OUT OF THE EPISODE BECAUSE THERE WAS CONFLICTING EVIDENCE ALONG THAT LINE BUT THE JURY HEARD IT ALL AND IN ANY EVENT, WHAT THE STATE WOULD CONCLUDE BY SAYING ON THIS POINT IS THE TRIAL JUDGE'S SENTENCING ORDER IS PRETTY THOROUGH AND COMPREHENSIVE IN THIS REGARD, AND WHATEVER ASPECT OF THESE OTHER FACTORS WHICH WOULD COMBINE WITH AGE WERE TREATED BY THE JUDGE'S SENTENCING ORDER AND EITHER FOUND TO BE MITIGATING OR ELSE THE JUDGE EXPLAINED WHY THESE FACTORS WOULD NOT BE

OF A MITIGATING NATURE. SO FOR THESE REASONS, WE WOULD ASK THE COURT TO AFFIRM THE JUDGMENT AND SENTENCE.

CHIEF JUSTICE: REBUTTAL?

OPPOSING COUNSEL SAID THAT IF THE DEFENDANT GETS ON THE STAND HE IS SUBJECT TO CROSS-EXAMINATION LIKE EVERYBODY ELSE, AND IF THAT HAD BEEN THE CASE, IF HE HAD BEEN SUBJECT TO CROSS-EXAMINATION LIKE EVERYBODY ELSE, THEN REGARDLESS OF THE ALLOCUTION ISSUE AT LEAST WE WOULDN'T HAVE THE PROBLEM OF HIS HAVING BEEN ENTIRELY DEPRIVED OF HIS RIGHT TO BE HEARD. THE PROBLEM WAS THAT HE WASN'T SUBJECT TO CROSS-EXAMINATION LIKE EVERYBODY ELSE. HE WAS SUBJECT TO CROSS-EXAMINATION FAR OUTSIDE THE SCOPE OF DIRECT. HE WAS SUBJECT TO CROSS-EXAMINATION WITH THE USE OF AN UNCONSTITUTIONALLY OBTAINED EVIDENCE.

CHIEF JUSTICE: NOW AGAIN YOU ARE TALKING ABOUT WHAT HAPPENED IN THE SPENCER HEARING?

NO, AGAIN I'M TALKING ABOUT WHAT HAPPENED IN THE SPENCER HEARING IS THIS STUFF ALL CAME IN. WHAT HAPPENED IN THE PENALTY PHASE, THE SPENCER HEARING ONLY SERVES TO ILLUSTRATE THE DEFENSE COUNSEL WASN'T BEING UNDULY CAUTIOUS. DEFENSE COUNSEL'S FEARS WERE REAL IN THE SPENCER HEARING.

CHIEF JUSTICE: IN THE SPENCER HEARING WHEN HE SPOKE, HE WAS CROSS-EXAMINED, CORRECT?

HE WAS IMPROPERLY CROSS-EXAMINED.

CHIEF JUSTICE: SO WHAT YOU ARE SAYING IS ASSUMING WE FIND THAT THERE WAS SOME RIGHT HE HAD, IF HE WAS IMPROPERLY CROSS-EXAMINED IN THE SPENCER HEARING WE SHOULD SAY THAT WOULD HAVE HAPPENED IN THE --

EXACTLY. THAT'S WHAT DEFENSE COUNSEL IS SAYING. I CAN'T PUT HIM ON THE STAND. I CAN'T ASK DEBRA CHOI THESE QUESTIONS, I CAN'T ASK THE DETECTIVE THESE QUESTIONS BECAUSE IF I DO THIS IS ALL GOING TO BREAK LOOSE. THIS IS WHAT IS GOING TO OCCUR. ALL THE SPENCER HEARING DOES IS IT PROVES THE DEFENSE COUNSEL WASN'T CRYING WOLF. HE WASN'T DOING CHICKEN LITTLE. HE WAS RIGHT. THIS IS WHAT WOULD HAVE HAPPENED. THE SPENCER HEARING PROVES IT DID HAPPEN.

CHIEF JUSTICE: BUT YOU AGREE THAT THE TRIAL COURT WOULD ASSUME THAT SOMETHING CAME IN THAT WASN'T PROPER. THE TRIAL COURT SPECIFICALLY DID NOT RELY ON ANYTHING THAT CAME IN IN CROSS EXAMINATION, AND HE SPECIFICALLY SAID THAT?

YES, I WOULD AGREE THAT THE TRIAL JUDGE DIDN'T RELY ON THAT ALTHOUGH THE STATE IN HIS CROSS APPEAL IS ARGUING THAT HE SHOULD HAVE. IN ALL FAIRNESS I DON'T CARE ABOUT THE HEARING OTHER THAN IT PROVES THAT HE WASN'T CRYING WOLF IN THE PENALTY PHASE. MOVING ON TO THE ISSUE ABOUT GALEMORE, MY OPPOSING COUNSEL SAYS REPEATEDLY THAT GALEMORE DIDN'T KNOW ANYTHING ABOUT MR.^TROY PERSONALLY. THAT'S WHY WE INTRODUCED TESTIMONY FROM ABOUT 15 OTHER WITNESSES WHO DID. GALEMORE'S FUNCTION LARGELY WAS TO REBUT THIS. THEY'VE GOT JOHN TROY, THE FATHER ON THE STAND. THE PROSECUTOR ASKS HIM: YOU HAD ALSO TALKED ABOUT THAT HE WOULD FINALLY IF HE WERE IN PRISON BE DRUG-FREE AND IS IT YOUR IMPRESSION THAT AN INMATE WOULDN'T BE ABLE TO GET DRUGS IN PRISON? MR.^TROY: THAT WOULD BE DEFINITELY MY IMPRESSION, YES. WERE YOU AWARE THAT YOUR SON HAD MADE ADMISSIONS TO HIS CONDITIONAL RELEASE OFFICER HERE IN FLORIDA THAT BEFORE HE GOT RELEASED WHILE HE WAS IN PRISON HE CELEBRATED THAT RELEASE WITH MARIJUANA IN PRISON. DID YOU KNOW THAT? I DID NOT. THE NEXT EXAMPLE IS THE SISTER, NATALIE WALLACE TESTIFIED THAT HER BROTHER COULD MAKE POSITIVE

CONTRIBUTIONS IF HE SPENT THE REST OF HIS LIFE IN PRISON AND THE PROSECUTOR SAYS AS FOR WHAT YOU BELIEVE YOUR BROTHER'S VALUE WOULD BE IN THE PRISON SYSTEM YOU HAVE NEVER BEEN TO PRISON BECAUSE YOU DON'T KNOW WHAT THE SYSTEM WOULD BE LIKE, THAT'S TRUE? HE ALSO ASKED HER ABOUT DRUGS IN PRISON. THE GRANDMOTHER, HILDA TROY. IN TERMS OF HIS INCARCERATION AND THE TIME HE HAS BEEN INCARCERATED YOU DON'T HAVE ANY PERSONAL KNOWLEDGE AS TO WHAT HAPPENS IN THE PRISON SYSTEM; IS THAT FAIR TO SAY? YES, MA'AM. AND ANYTHING YOU'VE HEARD ABOUT WHAT GOES ON IN PRISON IS JUST THAT, SOMETHING SOMEONE HAS TOLD YOU, CORRECT? THAT WOULD BE TRUE. AND DO YOU HAVE ANY KNOWLEDGE AS TO WHETHER YOUR GRANDSON HAS THE ABILITY TO USE DRUGS WHILE IN PRISON? I WOULDN'T HAVE ANY KNOWLEDGE OF THAT. TO REBUT THEY ARE IMPEACHING OUR WITNESSES WAY SAYING YOU DON'T KNOW ANYTHING ABOUT IT, WHAT COULD BE MORE RELEVANT REBUTTAL FOR US THAN TO CALL A WITNESS WHO DOES. SO WHETHER OR NOT GALEMORE'S TESTIMONY WOULD HAVE BEEN RELEVANT IN THE FIRST INSTANCE AND I WOULD MAINTAIN IT STILL WOULD HAVE BEEN IT WAS CRUCIALLY RELEVANT AS REBUTTAL AND FOR THAT I WOULD CITE THE SKIPPER VERSUS SOUTH CAROLINA CASE. BOTH THE 6TH JUSTICE MAJORITY AND PARTICULARLY THE THREE-JUDGE CONCURRING OPINION WHICH MAINLY DEALS WITH THAT PART OF IT. I CAN'T GO INTO THE VOLUNTARY INTOXICATION ON REBUTTAL BECAUSE I DIDN'T DEAL WITH IT INITIALLY, BUT I WOULD RELY ON MY INITIAL BRIEF FOR THE DIFFERENCES.

CHIEF JUSTICE: MR.^BOLOTIN, THANK YOU. THANK YOU, MR.^LANDRY. THE COURT WILL TAKE THIS CASE OF COURSE UNDER ADVISEMENT.