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David Sylvester Frances v. State of Florida

SC05-892

GOOD MORNING.

GOOD MORNING.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

>>> OKAY.

WE ARE GOING TO PROCEED TO
NUMBER FOUR CASE FOR THE
NEXT CASE THIS MORNING.
THAT IS FRANCES VERSUS STATE
OF FLORIDA.

>> THANK YOU, YOUR HONOR.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, MY
NAME IS JIM WULCHAK,
ASSISTANT PUBLIC DEFENDER
FROM DAYTONA DAYTONA BEACH,
WE REPRESENT DAVID FRANCES
IN THE RESULT OF TWO DEATH
SENTENCE.

WE SUBMIT THAT IT IS
CONSTITUTIONAL ERROR TO
CONCLUDE FROM THE JURY'S
CONSIDERATION RELEVANT
EVIDENCE OF THE PENALTY
PHASE OF THE TRIAL WHICH
SHOWED THE BACKGROUND AND
CHARACTER OF THE DEFENDANT
AND HIS ROLE IN THE CRIME
ESPECIALLY WHEN COMPARED TO
THAT OF HIS MORE CUPPABLE
AND VIOLENT BROTHER ELVIS
AND THE FACTS LEADING UP TO
THE CRIME WHICH ESTABLISHED
THE DOMINANCE BY THE BROTHER
WHO WAS THE LEAD ACTOR HERE.

>> WHAT KIND OF ARGUMENT DID
YOU MAKE ON THE BRIEF ON
THOSE ISSUES?

WHAT KIND OF ARGUMENT DID
YOU MAKE ON THE BRIEF ON
THOSE ISSUES?

>> YOUR HONOR, THAT THE
TRIAL COURT ERRORED IN
EXCLUDING A LOT OF THE
EVIDENCE BECAUSE IT WAS
HEARSAY WHERE HEARSAY IS

ADMISSIBLE AT THE OPINION TY
PHASE OF THE TRIAL AN ALSO
THAT THE EVIDENCE WAS
RELEVANT THE STATE OBJECTED
TO RELEVANCY GROUNDS ON THE
REMAINING ONE AND IF CAN I
GO THROUGH THEM TESTIMONY
REGARDING THE FAMILY HISTORY
OF THE DEFENDANT, HIS
IMPOVERISHED CONDITIONS
UNWHICH HE GREW UP
DESCRIBING THE HOUSE AND THE
POVERTY IN WHICH HE GREW UP,
THAT WAS EX EXCLUDED BECAUSE
OF HEARSAY, REPORTS THAT
THERE WERE DOMESTIC ABUSE ON
THE DEFENDANT AND HIS
BROTHER WITH THE COURT
ESPECIALLY SIGNIFICANT HERE
BECAUSE A CORD WAS USED ON
THE CRIMES.

>> WHAT WAS THE TESTIMONY --
HOW HAS THAT TESTIMONY
THOUGHT TO BE INTRODUCED
INTO EVIDENCE?

>> THAT WAS THOUGHT TO BE
PRODUCED THROUGH THE
TESTIMONY OF THE MENTAL
HEALTH EXAMINER WHO HAD
SPOKEN --

>> NOW THIS IS A AN EXPERT
OR THOUGHT TO BE INTRODUCED
THROUGH A MITIGATION?

>> I AM SORRY, THAT WAS
THROUGH THE MITIGATION
PERSON.

>> WHO IS JUST SOMEBODY
GATHERING INFORMATION?

>> YES.

WHO HAD GATHERED INFORMATION.

>> AND THAT WAS SELF-REPORT
BY THE DEFENDANT?

>> YES, YOUR HONOR.

>> AND THE DEFENDANT'S
BROTHER.

YES, YOUR HONOR.

>> WHO DID NOT TESTIFY?

>> YES.

>> HOW US THE STATE -- I
VERY MUCH AGREE, WE WANT TO
GIVE A LOT OF LATITUDE IN
PRESENTING MITIGATION, BUT
HOW IS THAT, YOU KNOW, I
MEAN, THAT IS HEARSAY AND

WHERE IS THE ABILITY TO
REBUT IT ON THE PART OF THE
STATE JUST AS THAT EXAMPLE?
>> WE SUBMIT THAT HEARSAY IS
ADMISSIBILITYABLE AT THE
PENALTY PHASE OF THE TRIAL,
RELAXED EVIDENCE BECAUSE, OF
COURSE, WE ARE AGGRAVATOR,
IT IS SPECIFICALLY LIMITED
TO THE STATUTORY
CIRCUMSTANCES AN EVIDENCE
HAVE TO BE LIMITED TO THAT,
BUT EVIDENCE IS TO
MITIGATING CIRCUMSTANCES THE
COURT HAS HELD THE U.S.
SUPREME COURT HAS HELD WIDE
OPEN AN BENEFICIAL AND IN
THE INTEREST OF JUSTICE TO
PRESENT THE MOST EVIDENCE TO
THE JURY OF MITIGATION AND
IT IS CONSTITUTIONALLY
REQUIRED.

HERE THERY TE OF
CONFRONTATION APPLIES TO THE
STATE, HOWEVER A PLAIN
READING OF THE 6th AMENDMENT
SAYS THE ACCUSED HAS THE
RIGHT TO CONFRONT WITNESSES
GAINS HIM, NOT THE STATE,
THE PURPOSE OF THE 6th
AMENDMENT WITH A WAS TO GIVE
ACCUSED ADEQUATE PROTECTION
AGAINST THE GOVERNMENT NOT
VICE VERSA.

>> WHERE IS TESTING THE
ACCURACY OF INFORMATION IF
THE STATE HAS ABC LAUT FLO
ABILITY TO CHALLENGE
COMPLETELY --

>> CERTAINLY IT CAME OUT AN
WOULD COME OUT THAT THIS WAS
SELF-REPORTED BY THE
DEFENDANT AND HIS BROTHER
AND THE STATE IS FREE TO
ARGUE SELF-REPORTING IS NOT
ENTITLED TO GREAT WEIGHT.

>> SO IF WE ACCEPT THE
POSITION, THE DEFENDANT
COULD SAY WHATEVER HE WANTED
TO MITIGATION SPECIALISTS
AND THE MITIGATION
SPECIALISTS CAN GET ON THE
STAND AND THERE WOULD KNOB
LIMITATION AS TO WHAT THE

SPECIALIST WAS SAY IS WHAT THE DEFENDANT TOLD HIM OR HER?

>> AGAIN, THE ARGUE WOULD BE AS TO WEIGHT.

WE SUBMIT RATHER THAN ADMISSIBLE, THE STATE, OF COURSE, CAN GET UP, A JURY CAN WEIGH THAT, WELL, THIS CAME FROM THE EFFICIENT DEFENDANT, FROM NOBODY ELSE, BECAUSE MITIGATION CANNOT BE LIMITED.

MITIGATION EVIDENCE, YOUR HONOR.

>> WELL, I AM A LITTLE BIT CONCERNED HERE ABOUT HOW THIS WAS PRESENTED TO THIS COURT.

I THINK IT GOES BACK TO JUST JUSTICE CANTERO'S INITIAL QUESTION TO YOU, IN YOUR BRIEF, YOU TALKED ABOUT AT LEAST EIGHT DIFFERENT THINGS THAT YOU ALLEGED TO HAVE BEEN SUBMITTED; HOWEVER, YOUR BRIEF ON THIS ISSUE COVERS ABOUT FOUR PAGES AND THERE IS NO REAL ARGUMENT HERE AS TO HOW THIS INFORMATION WOULD HAVE BEEN HELPFUL, WHAT IT WOULD HAVE DONE, THOSE KINDS OF THINGS, SO I AM REAL CONCERNED THAT YOU SEE THIS AS A VERY IMPORTANT ISSUE, BUT YOU DON'T FLUSH IT OUT REALLY FOR THE COURT.

>> I APOLOGIZE TO THE COURT. I THOUGHT THAT I HAD A QUATELY COVERED IT ON THE BRIEF, BUT WE SUBMIT THAT THESE ARE RELEVANT.

THEY GO TO MITIGATING CIRCUMSTANCES, STATUTORY AND NON-STATUTORY, THAT THIS COURT HAS FOUND IN OTHER CASES.

>> WHAT DO YOU IS YOU LIST -- AFTER GOING THROUGH THE STANDARD OF REVIEW ON PAGE 19 AND 20, YOU SIMPLY LISTS THE TYPES OF EVIDENCE THAT THE COURT EXCLUDED THAT THE

COURT SHOULD HAVE ADMITTED,
YOU DON'T TALK ABOUT ANY
INDIVIDUAL, YOU DON'T SEE
HOW ANY OF THEM INDIVIDUALLY
WOULD HAVE BEEN RELEVANT,
YOU TALK ABOUT ANY OF THE
OTHER EVIDENCE PREVENTED
ANDTHON YOU JUST CITE SOME
CASES ABOUT INTRODUCTION OF
HEARSAY EVIDENCE AND THAT IS
IT.

THE WHOLE THING IS THREE
PAGE, SO I DON'T UNDERSTAND
HOW YOU REALLY PRESERVED
THIS KIND OF ISSUE WHERE
YOUR ARGUMENT ON IT IS SO
SUMMARY.

>> AGAIN, YOUR HONOR, I
APPROXIMATELY GUISE TO THE
COURT IF HE FEELS IF THE
COURT FEELS THAT WAS A
SUMMARY ARGUMENT ON MY PART.
WE DID CONTEND IN THE BRIEF.
I CONTEND NOW THAT RELEVANCE
IS THE TEST AN THESE WERE
RELEVANT.

THE IM POF ISSUED
BACKGROUND.

>> YOU POINTED OUT OCCURRED
DURING THE GUILT PHASE, THE
TESTIMONY.

>> THERE WAS ONE, ONE
INSTANCE, YOUR HONOR, THAT
OCCURRED DURING' THE GUILT
PHASE.

THE OTHER ONES WERE DOING
THE PENALTY PHASE.

>> YOU ARE TYING THIS INTO
THE PENALTY PHASE -- DON'T
WE HAVE A SEPARATE ISSUE AS
TO RELEVANCE AND
MATERIALALITY DURING THE
GUILT PHASE AS OPPOSED TO
WHAT ON A MUCH BROADER LEVEL
WOULD BE RELEVANT?

>> AS THE CASE LAW IS HELD,
EVIDENCE DEVELOPED DURING
THE GUILT PHASE CAN GO TO
AGGRAVATING, MITIGATING
CIRCUMSTANCES, THAT IS WHY
WE INCLUDED IT HERE?
EYE GUESS WHAT I AM SAYING,
I ASSUME YOU WOULD AGREE,
YOU WOULDN'T PUT ON THE

MITIGATION SPECIALISTS

>> YES.

>> YES, YOUR HONOR.

BUT MUCH OF IT DOES COME UP DURING THE GUILT PHASE, THAT IS WHY WE INCLUDED THAT IN THIS PORTION AND LUMED IT WITH THE PENALTY PHASE BAITS WAS RELEVANT TO PENALTY PHASE IS IM POVERISHED CONDITIONS GROWING UP IS RELEVANT TO MITIGATING CIRCUMSTANCES THAT THIS COURT HAS FOUND AND USED TO VACATE A DEATH SENTENCE.

>> MOST OF THESE ISSUES THAT YOU HAVE POINTED OUT THERE ON THE FACE OF WHAT YOU HAD IS APPARENT THAT THERE WERE OTHER WAYS, OKAY, TO PRESENT EVIDENCE LIKE THAT.

>> YES, YOUR HONOR.

>> WHEN YOU TALK ABOUT CHILDHOOD CONDITIONS, OBVIOUSLY, YOU AND OTHERS ARE KNOWLEDGEABLE ABOUT BRINGING IN FAMILY MEMBERS OR TEACHERS OR NEIGHBORHOOD PEOPLE OR WHOEVER AND HAVING THEM DESCRIBE, YOU KNOW, THESE CONDITIONS.

>> RIGHT.

THE MITIGATION SPECIALISTS TESTIFIED THAT SHE INTERVIEWED APPROXIMATELY 40 WITNESSES AND THESE WITNESSES WERE FROM ST. KITTS AND ST. THOMAS EYE LANDS IN THE CARIBBEAN AND THE DEFENSE FELT IT WAS PROPER TO ADMIT THEM IN THE WAY AN AVOID THE EXPENSE OF BRINGING ALL OF THESE WITNESSES IN TO THE UNITED STATES TO TESTIFY.

AND THE BETTER WAY, OF COURSE, WOULD HAVE BEEN TO BRING THE LIVE WITNESSES TO TESTIFY, BUT WE SUBMIT THAT THE COURT SHOULD HAVE LET THESE IN HEARSAY IS ADMISSIBLE IN THE PENALTY PHASE, MANY OF THESE WERE EXCLUDE SIMPLY BECAUSE THEY

WERE HEARSAY.

>> ISN'T THERE A GREAT DEAL OF DIF DIF TULLTY, THOUGH, IF WE TAKE IT TO THE EXTREME, IS THAT WE HAVE A MITIGATION SPECIALISTS WHO HAS INTERVIEWED THESE WITNESSES, FOR INSTANCE, SAYS, WELL, YOU KNOW, MRS. JONES WAS PARTICULARLY COMPELLING BECAUSE SHE DESCRIBED THIS INCIDENT, YOU KNOW, IN WHICH THE FATHER TOOK THE CHILD IN THE BACKYARD AND TIED HIM DOWN THE BACKYARD AND THEN, YOU KNOW, PROCEEDED TO OBJECT -- INJECT NEEDLES INTO HIS STOMACH, YOU KNOW, DO ALL KINDS OF HORRIBLE THING, SEXUALLY ABUSE HIM, WHAT JEFF, THE ONLY WAY THAT THIS IS COMING IN IS FROM A MITIGATION SPECIALISTS, SAYING THAT SHE TALKED TO MRS. JONES OVER IN ST. KITTS OR WHATEVER.

HOW DOES THE STATE HAVE THE ABILITY THEN IF THEY NEVER HEARD OF THAT BEFORE AND THEY SURE, YOU KNOW, WOULD LIKE TO BE ON NOTICE THAT SOMETHING LIKE THAT HAPPENS, SO THEY CAN CHECK THAT OUT, AND THEY CAN HAVE THE OPPORTUNITY JUST AS THE DEFENSE HAS AN OPPORTUNITY TO REBUT AGGRAVATION TO REBUT.

>> I AGREE WITH YOU, YOUR HONOR.

>> HOW ARE WE GOING TO DEAL WISH SHOES LIKE TO? WE ARE GOING TO LET IT IN THROUGH MITIGATION SPECIALISTS?

>> THESE WITNESSES WERE ALL DISCLOSED TO THE STATE. THEY DEPOSED A MENTAL HEALTH EXPERT, THEY GOT A LIST OF THESE WITNESSES, YET, AND THEY COULD HAVE CONTACTED THESE INDIVIDUAL WITNESSES THEMSELVES.

THEY COULD HAVE BROUGHT THEM IN IF THEY FELT IS NECESSARY TO REBUT THIS TESTIMONY, BUT THEY CHOSE NOT TO, WE SUBMIT THAT THE STATE CAN'T SAY, WE DON'T HAVE THE OPPORTUNITY TO REBUT EVIDENCE BECAUSE THEY DID NOT TAKE THE STEP TO DEPOSE THESE WITNESSES OR CONTACT THESE WITNESSES THAT THEY KNEW ABOUT.

I AGREE THAT IF THE STATE WAS SANDBAGED, DIDN'T KNOW ANYTHING ABOUT THE EYE DENY OF THESE IDENTITY OF THESE, THEN WE WOULD HAVE A PROBLEM, BUT THE STATE WAS WELL AWARE OF IT, WHY SHOULD THE STATE BE ABLE TO PRECLUDE DEFENSE EVIDENCE SIMPLY BECAUSE THEY DIDN'T KNOW WHAT THEY WERE SUPPOSED TO DO?

>> SO YOU ARE REALLY BASICALLY SAYING THAT THE DEFENSE CAN THEN PUT ON THIS ONE PESH TO GIVE US TESTIMONY THAT REALLY COMES FROM 40 PEOPLE AN THEN IT IS THE STATE'S OBLIGATION, THEN, TO BRING IN ALL OF THE 40 PEOPLE, THAT IS WHAT YOU ARE ARGUING?

WE GET TO DO THIS WITH ONE PERSON WITH ALL OF THIS HEARSAY, THE STATE THEN HAS TO COME OUT AND BRING IN THE 40 PEOPLE?

>> AS THEY INDICATED, THEY GOT TO DEPOSE AND TALK TO THIS MENTAL HEALTH OR MENTAL, I AM SORRY MITIGATION SPECIALIST, THEY GOT THE LIST OF THOSE WITNESS, THEY COULD CROSS-EXAMINE THE MITIGATION SPECIALISTS AND FIND OUT THE CONTEXT THAT WAS GIVEN, THEN, THEY COULD DETERMINE WHETHER TO CONTACT THESE DECLEARANCE AND TALK TO THEM ON THE PHONE, FIND FOUGHT THAT WAS ACCURATE, FIT WAS NOT, THEY, THEY COULD BRING THEM IN.

WE SPENT AN AWFUL LOT OF TIME ON THIS AND REALIZE IT IS A VERY IMPORTANT ISSUE TO YOU, BUT YOU HAVE RAISED A NUMBER OF OTHER ISSUES, TOO.

>> I WOULD LIKE -- BASE THINK THIS IS A VERY IMPORTANT ISSUE HERE ABOUT WHAT MITIGATION SPECIALISTS CAN AN CAN'T TESTIFY TO. I MUST SAY I SHARE JUST JUSTIN CANTERO'S CONCERN, YOUR BRIEF IS BRIEF, IT IS 48 PAGE, IT'S NOT AND BE ISSUE OF NOT BEING ABLE TO GET IT IN, IF THESE ARE CRITICAL YOU SHALL SURE, THE COURT NEEDS ASSISTANCE, NOW, A MIT GAINGT -- WHAT CASE SAYS THAT A MITIGATION SPECIALISTS CAN COME IN AND TESTIFY TO RANK HEARSAY WITHOUT SAYING ANYTHING SHE IS RELYING ON THIS IN HER, YOU KNOW, TO RENDER AN OPINION, OR ANY OTHER PREDICATE ON THAT A JUDGE ABUSE HIS OR HER DIGRESSION IN EXCLUDING IT. AGAIN, I MEAN, THAT SEEMS LIKE IT IS A VERY IMPORTANT PRINCIPAL.

WE OUGHT TO KNOW WHAT THE LAW IS ON IT. CAN A MITIGATION SPECIALISTS JUST VIEW OUT WHATEVER IT IS THAT THAT PERSON HAS BEEN TOLD AND THE JUDGE HAS NO DIGRESSION BUT TO ADMIT IT EVEN THOUGH IT IS COMPLETELY BASED ON HEARSAY?

>> AGAIN, WE WOULD CONTEND HEARSAY IS ADMISSIBLE AT THE OPINION TY PHASE.

>> ANY CASE THAT WE UNDERSTAND THAT, BUT THE STATUTE SAYS HEARSAY WITH A FAIR OPPORTUNITY TO REBUT CRAWFORD MAY APPLY FOR THE STATE NOT TO THE DEFENDANT, BUT NEVERTHELESS, HE IS SAYING THAT THAT STATUTE WHICH SAYS THERE HAS TO BE A FAIR OPPORTUNITY TO REBUT,

THEY SAY IT DOESN'T APPLY TO EVIDENCE THAT THE DEFENDANT IS TRYING TO INTRODUCE.

>> THE STATUTE DOES SAY IF THE DEFENDANT HAS THE OPPORTUNITY TO REBUT --

>> SO THERE IS A CASE THAT SAYS HEARSAY EVIDENCE CAN BE INTRODUCED IN THE PENALTY PHASE BY THE DEFENDANT AND THAT THE TRIAL COURT HAS NO DIGRESSION IN EXCLUDING IT BECAUSE THAT IS REALLY THE RULE OF LAW THAT YOU ARE ASKING US TO ADON'T, THERE IS A CASE THAT SAYS THAT?

>> YES, YOUR HONOR.

GREEN VERSUS GEORGIA SAYS THAT FROM THE UNITED STATES SUPREME COURT.

ABOUT HEARSAY?

>> EXCLUDED HEARSAY.

>> YES, IN THAT CASE, IT WAS CONFESSION.

BY A THIRD PARTY.

>> THAT IS A LITTLE DIFFERENT.

>> A CASES FROM THIS COURT RELATING TO ANYTHING SIMILAR?

>> NOT DALING WITH MITIGATION SPECIALISTS, YOUR HONOR.

>> THE HITCHCOCK HELD THAT IT WAS NOT ADMISSIBLE UNDER SOMEWHAT OF SIMILAR CIRCUMSTANCE IN A PENALTY PHASE, CORRECT?

>> HITCHCOCK, I BELIEVE, WAS DEALING WITH DUE PROCESS ARGUMENT WHETHER THAN CONFRONTATION ARGUMENT, FIRST OF ALL, AND WE SUBMIT THAT IN LIGHT OF OTHER CASES, GREEN VERSUS GEORGIA, FOR EXAMPLE, THAT HITCHCOCK IS WRONG.

>> PARDON ME?

>> IN ORDER TO GO WITH YOUR POSITION ON THIS, WE WOULD HAVE TO RECEDED FROM HITCHCOCK?

>> WE THINK THAT IS NOT NECESSARY, THERE WAS A LACK OF OBJECTION IN HITCH CORKS

IT WAS NOT ADEQUATELY PRESERVED.

IN THE INDICATES, THE MITIGATION SPECIALISTS WAS THE SOURCE, THE INFORMATION GATHERER IN AND THERE IS TESTIMONY THAT SHE PRESENTED ALL OF THIS INFORMATION SHE GOT TO THE MENTAL HEALTH EXPERT AND MENTAL HEALTH EXPERTS REN TITLED TO RELY ON REPORTS AN INTERVIEWS AND REVIEWING THE POLICE REPORTS AN ALL OF THAT INFORM LATING THEIR OPINION.

>> BUT THAT IS THE PROBLEM HERE IS THIS WAS NOT A MENTAL MITIGATION SPECIALISTS, THIS WAS SOMEONE WHO JUST WENT OUT AND GATHERED INFORMATION.

>> RIGHT.

>> SHE WAS TESTIFYING AS TO THAT PROCESS AND THE FACT THAT SHE TURNED THIS INFORMATION OVER TO THE MENTAL HEALTH EXPERT FOR HIS USE IN FORMULATING HIS OPINION IN THIS CASE.

>> AND SO WHY NOT JUST USE THOSE MENTAL HEALTH EXPERTS? INSTEAD OF TRYING TO PUT IN ALL OF THIS HEARSAY THROUGH THIS OTHER WITNESS?

>> JUST THE FACT THAT IT WOULD HAVE BEEN ANDYATIONAL SECOND DOUBLE HEARSAY HAD THEY DONE IT THROUGH THE MENTAL HEALTH EXPERT, YOUR HONOR?

>> WE ALSO SUBMIT THAT THE DEATH SNS HERE INAPPROPRIATE WHERE THE COURT FAILED TO WEIGH OR GIVE ANY INDICATION OF WHAT WEIGHT THEY WERE GIVING TO UNCONTRO VERTED MITIGATION, WHERE THE COURT BASED ON AGGRAVATING CIRCUMSTANCE ON MERE SPECULATION AND WHERE COMPARISON WITH OTHER CASES SHOWED THAT THE MITIGATING CIRCUMSTANCES CLEARLY UTOUTWEIGH THE AGGRAVATORS.

THIS IS NO THE MOST
AGGRAVATED KILLING NOR THE
LEAST MITIGATED OF CASES.
DAVID'S INVOLVEMENT.
WHAT SPECULATION ARE YOU
SAYING THAT THE TRIAL COURT
ENGAGED IN FINDING AN
AGGRAVATE SNOR
>> DEALING WITH THE
CIRCUMSTANCES CRUEL WITH
REGARD TO THE CHARLES
MURDER, THE TRIAL JUDGE
SPECIFICALLY FOUND THAT
CRUEL DID NOT APPLY TO THE
MILLS MURDER BASED ON THE
MEDICAL EXAMINER'S TESTIMONY
REGARDING TIME OF
UNCONSCIOUSNESS; HOWEVER,
THE MEDICAL EXAMINER
TESTIFIED AT THE PENALTY
PHASE AND I BELIEVE AT THE
SPENCER HEARING, I AM SORRY,
AT THE GUILT PHASE OF THE
TRIAL, THAT, THAT CHARLES,
THE PERIOD OF HER LOSING
CONSCIOUSNESS WAS THE SAME
TIME FRAME AS THAT OF MILL,
YET THE COURT DOESN'T LIST
THAT AND INSTEAD SPECULATES
THAT CHARLES WAS INDEED
CONSCIOUS WHEN, REMEMBER,
ELVIS WAS THE ONE THAT FIRST
ATTACKED AND STRANGLERED
CHARLES, AND WE SUBMIT THAT
THE EVIDENCE THAT IS SHE
LOST CONSCIOUSNESS, THERE IS
NO EVIDENCE TO SHOW THAT SHE
HAD REGAINED CONSCIOUSNESS
WHEN THE DEFENDANT APPEARED
TO HELP HIS BROTHER.
THEY FELT THAT CHARLES STILL
HAD SOME LIFE IN HER,
ALTHOUGH, THERE WAS NO
INDICATION THAT SHE REGAINED
CONSCIOUSNESS.
>> WHAT ABOUT THE
DEFENDANT'S OWN STATEMENT?
THAT SHE WAS COMBATIVE WITH
ELVIS, HE CAME IN TO HELP
HER?
>> AND THERE WAS SOME
INITIAL COMBATIVENESS WITH
ELVIS, BUT THE TESTIMONY
FROM THE MEDICAL EXAMINER WE

FEEL SHOWS THAT SHE LOST
CONSCIOUSNESS BEFORE, BEFORE
OUR DEFENDANT.

>> MY QUESTION, DIDN'T DAVID
TESTIFY SHE WAS BEING COME
BAT WHICH HAVE ELVIS, HE HAD
TO GO IN THERE AND HELP HIM
BECAUSE HE WAS BEING
COMBATIVE WITH HIM?

>> I BELIEVE THAT AFTER HE
HAD MOVED MILL'S BODY INTO
THE OTHER, INTO THE BEDROOM,
HIS TESTIMONY WAS, HE WENT
TO ASSIST HIS BROTHER, EVEN
THOUGH SHE WAS NOT MOVING,
THEY FELT SHE HAD LIFE IN
HER.

SO WE SUBMIT EVEN UNDER HIS
STATEMENT THERE WAS NO
EVIDENCE THAT SHE WAS
COMBATIVE AT THE TIME THAT
DAVID ENTERED INTO THE ROOM
WITH CHARLES.

>> IS THERE EVIDENCE WITH
REGARD TO MARKS ALONG THE
NECK MADE POSSIBLY AROUND
NAIL MARKS?

>> YES, SCRAPINGS UNDER FIB
GER NAILS THAT MAY HAVE GIVE
AN DIFFERENT PICTURE?

>> YES.

DOES THAT FIGURE IN?
IS THAT NOT PART OF THE
EQUATION TO UNDERSTAND THE
STRUGGLING?

WE SUBMIT IT IS NOT PART OF
THE EQUATION, IT IS COMMON
FOR THAT TYPE OF MARKING TO
BE ON THERE WHEN A PERSON IS
TRYING TO REMOVE EITHER
HANDS OR A LIGATURE AND
ELVIS WAS THE ONE WHO
STRANGED HER MANUALLY AND WE
SUBMITTED IT IS A OF FAITH
TO SAY THAT THOSE MARKS WERE
PUT ON THERE DURING THE
LIGATURE STRANGULATION IN
WHICH THE --

>> ARE YOU TRYING TO -- I
MEAN, DON'T WE LOOK AT THE
WHOLE PICTURE OF HOW THIS
YOUNG LADY WAS MURDERED AS
OPPOSED TO TRYING TO
SEPARATE OUT WHEN ELVIS WAS

STRANGLING HER VERSUS THE TWO OF THEM STRANGLING HER, I MEAN THE WHOLE SCENARIO IF IT IS CRUEL IS HAN US NOW, CRUEL AS OPPOSED TO ONE PART OF IT, SO IT SEEMS TO ME, YOU ARE TRYING TO SAY THAT IF THERE WAS ANY CRUEL PART, IT OCCURRED WHEN ELVIS WAS DOING IT AS OPPOSED TO WHEN DAVID GOT INTO THE PRAY.

>> AGAIN, YOUR HONOR, WE WOULD NOTES INDICATE THAT THE MEDICAL EXAMINER SAID THAT THE TIME THAT IT TOOK CHARLES TO LOSE CONSCIOUSNESS, WHICH IS PART OF THE EQUATION WAS THE SAME AS THE TIME THAT MILLS LOST CONSCIOUSNESS.

>> WELL IN ACTUALITY, THE TRIAL COURT IN THAT FINDING HAC AS TO MILLS -- THAT IS CORRECT.

>> I MEAN, WE HAVE GOT SCORES OF CASE CASES THAT SAY THAT STRANGULATION DEATHS ARE ALMOST PER SE HAC AND BY THE DOCTOR TESTIFYING THAT EACH WOMAN WOULD HAVE BEEN CONSCIOUS AN AWARE OF WHAT WAS HAPPENING IN A MINUTE ONE TO TWO MINUTE, I DON'T KNOW HOW IT WOULD BE ERROR TO THE MILL'S MURDER.

>> THERE ARE OTHER CASES FROM THIS COURT WHICH REJECT HAC FOR STRANGULATION DEATHS BECAUSE YOU HAVE TO LOOK AT THE ENTIRE CIRCUMSTANCES OF IT.

>> I AM NOT SURE WHERE THAT MAY HAVE BEEN. BUT GOING BACK TO JUSTICE QUINCE'S QUESTION, IN THE HAC, ASSUMING THAT YOUR ARGUMENT IS THAT BY THE TIME THAT DAVID CAME ON WITH RESPECT TO JOANNA CHARLES, SHE WAS ALREADY -- THEY COULDN'T PROVE SHE WAS STILL CONSCIOUS, THAT IS CORRECT?

>> CORRECT.

>> IS THERE -- BUT YET WE

HAVE CONSIDERED, YOU KNOW, THE WHOLE SEQUENCE, HOWEVER, WHAT EVIDENCE THERE IS AS TO WHAT DAVID KNEW ABOUT WHAT ELVIS WAS DOING TO THE VICTIM.

I WOULD INCLUDE IN THAT WHAT BELL ASKED THROUGH HIS OWN WORDS AS TO WHAT HE KNEW?

>> HIS WORDS WERE WHEN THEY ARRIVED AT THE HOUSE, MISS MILLS WAS OUTSIDE IN THE GARDEN.

SHE TOLD THE TWO BOYS TO GO INTO THE APARTMENT AND WHEN SHE WENT IN, ELVIS JUMPED ON HER AND THEN MILLS AND THE DEFENDANT JUMPED ON HER AS WELL AND ESSENTIALLY TOOK OVER WHILE ELVIS WENT AND DEALT WITH CHARLES AND HE WAS AWARE THAT ELVIS WAS -- SO HE WAS ASFWHAR THAT IS A CRITICAL FACT?

IT IS NOT AS IF -- WHY ISN'T IT THEN APPROPRIATE THAT TO FOCUS ON THE WHOLE EVENT AS TO OPPOSED TO JUST THE FINAL TIME WHEN DAVID COMES IN TO ASSIST IN FINALLY KILLING THIS PARTICULAR VICTIM?

>> EVEN THE ENTIRE EVENT, WE SUBMIT, IT IS NOT PER SE, CRUEL, THE MEDICAL EXAMINER'S TESTIMONY ABOUT 1 TO 2 MINUTES BEFORE LOSS OF CONSCIOUSNESS, I BELIEVE WAS CLARIFIED SOMEWHAT BY HIM SAYING THAT WELL, IN STRANGE LAYING, OFFEN, THE VICTIM IS ABLE TO MOVE AWAY SO THE PRESSURE MAY NOT BE CONSTANT.

WHEN THE PRESSURE IS NOT CONSTANT, IT CAN TAKE ONE TO TWO MINUTES IS WHAT THE TESTIMONY WAS AN --

>> SO WHAT EXACTLY --

>> I AM SORRY?

>> WHAT DID THE TRIAL SAY? HIS EVALUATION OF HEINOUS, AND CRUEL.

>> DESPITE THE FACT THERE WAS NO EVIDENCE OF IT.

HE SPECULATES THAT CHARLES WAS ALIVE AND WAS CONSCIOUS WHEN DAVID JOINED IN THE FRAY WITH HER AND, AND THE TRIAL COURT SPECULATED THAT CHARLES WAS CONSCIOUS AND SAW THE DEFENDANT DAVID COME IN AND THOUGHT, OH, DAVID GOING TO HELP ME WHEN, IN FACT, HE DIDN'T.

THAT IS JUST RANK SPECULATION, THERE WAS ABSOLUTELY NO TESTIMONY TO THAT, YOUR HONOR, WE SUBMIT THAT IS WHAT THE ERROR IS.

>> WHERE WERE THE FINGERNAIL MARKS ON THE NECK IN RELATION TO THE LIGATURE MARKS?

>> I DON'T BELIEVE IT WAS CLEAR EXACTLY WHERE THEY WERE.

FROM WAS TESTIMONY THAT THE LIGATURE HAD SLIPPED.

I BELIEVE AND THE MEDICAL EXAMINER --

>> IT LEFT A MARK ON HER NECK?

RIGHT?

>> CORRECT.

>> SO IT WOULD HAVE BEEN -- COULDN'T THE RECORD SHOW THAT THE MEDICAL EXAMINER TESTIFIED THAT SHE HAD A CRESS DENT-SHAPED FINGERNAIL MARK ON THE NECK THAT WERE MADE AT THE SAME TIME THAT A LARGE GROVE WAS MADE IN HER NECK?

>> THE MEDICAL EXAMINER PAGE 1223 VOLUME 8 OF THE TRIAL TRANSCRIPT SAYS NO WAY TO TELL IF CHARLES' ASPHYXIATION WAS BY MANUAL STRANGULATION OR LIGATURE STRANGULATION OR BOTH OR ONE WAS BEFORE THE OTHER.

>> BUT YOU HAVE WHAT THE DEFENDANT SAID.

HE SAID THAT ELVIS IS HAVING STRANGLING TRIAL, SO WHEN MILLS FINALLY PASSED OUT FROM THE STRANGULATION, HE WENT TO ASSIST ELVIS WHO GOT

ELECTRICAL COURT TO USE AS
LIGATURE ON CHARLES THE PAIR
BOTH BEGAN STRANGLING WITH
HER WITH THE CORD SO THEIR
OWN TESTIMONY IS THAT THAT
SHE WAS STILL CONSCIOUS
STRUGGLING THE MANUAL
STRANGULATION DIDN'T WORK SO
THEN THEY GOT THE COURT.
I BELIEVE IT WAS CLARIFIED
LATER IN THE CONFESSION,
WHERE HE TALKED ABOUT AFTER
HE MOVED MILL'S BODY, THEY
BOTH MOVED CHARLES BODY INTO
THE BEDROOM FROM HER OWN
BEDROOM, SO WE SUBMIT THAT
TESTIMONY SHOWS THAT SHE WAS
UNCONSCIOUS AND NOT MOVING
AT THE TIME THAT THEY WERE
ABLE TO JUST CARRY HER INTO
THE OTHER ROOM.

>> WE SUBMIT THAT THERE IS
SUBSTANTIAL MITIGATION HERE,
THE TRIAL COURT EVEN FOUND
THAT THE DEFENDANT'S
INVOLVEMENT IN THE KILLINGS
STEM TRILLION THE
INSTIGATION OF THE DOMINANT
VIOLENT BROTHER.
THE EVIDENCE SHOWED THAT HE
ONLY CECUMED TO THE
INFLUENCE OF HIS BROTHER AND
WAS CRIME FREE UNTIL AGE 20
AND BECAUSE OF THIS
PATHOLOGICAL-DEPENDENT
RELATIONSHIP WITH ELVIS AND
THE NEED TO PROTECT THE ONLY
ONE HE HAD WHEN HE BECAME
INVOLVED IN ELVIS' ACTION,
ALL OF THE TESTIMONY, THE
MULTITUDE OF TESTIMONY SHOWS
THE DEFENDANT, DAVID, WAS
PASSIVE, WAS VIOLENCE-FREE,
WAS A LOVING PERSON GROWING
UP, ALWAYS WILLING TO HELP
OTHERS, WHEREAS THE ELVIS
TESTIMONY SHOWED THAT ELVIS
WAS THE VIOLENT ONE, THE
AGGRESSIVE ONE, THE ONE WITH
PRIOR VIOLENT ACTS, THE ONE
WHO HAD AN INFLUENCE OVER
THE DEFENDANT, WHOM THE
DEFENDANT FEARED, NOT ONLY
WHEN HE WAS A WILD CHILD,

BUT EVEN INTO ADULTHOOD AS WELL.

>> HE WAS 16.

ELVIS WAS 16.

>> YES, YOUR HONOR.

THE TESTIMONY WAS DESPITE THE FACT HE WAS 2 YEARS YOUNGER, A FEW YEARS YOUNGER THAN HIS BROTHER, HIS BROTHER WAS AFRAID OF HIM, HIS BROTHER CARRIED HIS BOOKS FOR HIM AT SCHOOL WHICH ONCE A USUAL FOR AN OLDER BROTHER TO DO FOR A YOUNGER BROTHER, THE TESTIMONY WAS THAT FROM ELVIS' GIRLFRIEND THAT ELVIS RULED THE HOUSEHOLD, AND THAT THE DEFENDANT WAS UNDER HIS INFLUENCE.

>> WHO SAID -- WHICH TESTIMONY SPECIFICALLY, WHICH WITNESS SPECIFICALLY SAID THAT DAVID WAS IN FEAR OF ELVIS?

>> JONE'S TESTIMONY DID, YOUR HONOR, AS WELL AS -- SHE SAID HE WAS WITH WIN FEAR HOW?

HE WAS JUST AFRAID.

>> WHEN HE HELPED ELVIS TO BURY THE OTHER PERSON THAT HE MURDERED, HE WAS IN FEAR OF HIM?

>> YES, YOUR HONOR.

THAT WAS FROM JONES.

JONES WAS THE CODEFENDANT IN THE OTHER MURDER CASE.

SHE IS THE ONE THAT TESTIFIED TO THAT, BUT THAT ELVIS WAS THE DOMINANT FORCE IN IT.

REMEMBER DAVID WAS NOT EVEN INVOLVED IN THE ACTUAL KILLING OF HER.

>> BUT INVOLVED IN THE ACTUAL KILLING -- UNION THE DISPOSAL OF THE BODY, BECAUSE, AGAIN, THE MENTAL HEALTH EXPERT TESTIFIESED THAT HE HAD THIS DOMINANCE BY HIS BROTHER, THIS PATHOLOGICAL-DEPENDENT RELATIONSHIP WITH HIM THAT

THE MENTAL HEALTH EXPERT TRIED TO EXPLAIN THE INTERACTION BETWEEN THE TWO AND THAT WHY A LOT OF THE PRIOR ACTS OF VIOLENCE OF ELVIS WERE VERY IMPORTANT TO THIS FACTOR.

WE SUBMIT THE THERE WAS SUBSTANTIAL MITIGATION IN THE CASE, A LACK OF SUBSTANTIAL AGGRAVATION THAT A LIFE SENTENCES ARE APPROPRIATE.

THANK YOU.

>> MAY IT PLEASE THE COURT MY NAME IS BARBARA DAVIS, I REPRESENT THE STATE OF FLORIDA.

MAY I START WITH ISSUE 2.

THE DEFENDANT'S STATEMENT THAT IS PAGE 1459 OF THE RECORD AND IT LEAVES OUT THE EVENTS AS FOLLOWS:

THEY CAME TO THE HOUSE AN DWANE WAS, THERE THEY WAITED FOR HIM TO LEAVE, THEY CAME BACK, HELENA, THE OLDER LADY, INVITED THEM IN, AS SOON AS SHE ENTERED THE HOUSE, I AM ON PAGE 1459, JIMED ON HELENA, HE, MEANING ELVIS, WENT TO JOE NAN'S ROOM, SO AND I HAD SAID IN MY BRIEF, WHEN HE JUMPED ON HELENA, IT WAS IN THE BEDROOM, BUT IT WAS NOT IT WAS IN THE HALLWAY OUTSIDE OF THE JOANNA'S ROOM.

WHEN WE GOT EXHIBIT, YOU COULD SEE THE LAYOUT.

THEN DAVIS STRANGLER HELENA, THEN, SHE PASSED OUT.

I STRANGLER HELENA WITH MY HANDS, AT THAT TIME, SHE PASSED OUT.

THEN HE WENT TO JOANNA'S ROOM.

MY COUSIN WAS, ELVIS, THE BROTHER, WAS THERE WITH JOANNA, BUT SHE WAS LIKE SHE HAVING TROUBLE, HE WAS THERE AND THEN I TOLD HIM HELENA PASSED OUT, SO HE WENT AND GOT THE CORD, I STRANGLER

JOANNA, THIS IS DAVID
TALKING, HE STARTED
STRANGLING GENTLEMEN ANNA,
HE WAS HAVING A HARD TIME
DOING IT, SO THEN I WENT OUT
AFTER DAVID STRANGLING
GENTLEMEN ANNA, ELVIS WENT
AND GOT THE KOURD CORD, THEN
ONCE ELVIS HAD THE CORD AND
HAD CONTROL OF HER, THEN
DAVID WENT OUT, TRIED TO
MOVE HELENA, THEN, HE CAME
BACK IN, I COULDN'T GET HER
MOVED ALONE, THEN JOANNA
PASSED OUT, WHEN DAVID WAS
TRYING TO MOVE HELENA, THEN
HE WENT AFTER HE HAD GONE IN
HELPED STRANGLE HELENA,
ELVIS GOT THE CORD,
STRANGLER HER, WENT BACK
OUT, MOVING HELENA, JOANNA
PASSED OUT, YOU HAVE GOT TO
COME HELP HELENA, I CAN'T
MOVE HER.

THAT IS ON PAGE 1459, I JUST
READ FROM THE RECORD, AN ON
PAGE 1419 WHEN DAVID WAS TRY
FOG BLAME EVERYTHING ON
ELVIS, HE, WHEN DAVE DAVID
WAS SAY THAING WAS JUST ON
THE HOUSE AND ELVIS DID
EVERYTHING, HE WAS TALKING
ABOUT THE STRUGGLE THAT
GENTLEMEN ANNA HAD WITH
ELVIS ON PAGE 1419.

[LOW AUDIO]

>> ON THE GUILT PHASE, THE
MEDICAL EXAMINER TESTIFIED
THAT THEY BOTH DIED FROM
STRANGULATION AN ABOUT THE
FINGERNAIL MARKS THAT WERE
ON THE NECK ON PAGE 1209,
SHE SAID SHE HAD ALMOST
CRESCENT-SHAPED MARKS ON THE
RIGHT NECK THAT LOOKED LIKE
FINGERNAIL MARKS.

NOW THE QUESTION WAS, YOU
SAID THEY LOOKED LIKE
FINGERNAIL MARKS, DID THEY
APPEAR TO OH CORE NEAR IN
TIME?

YES, THEY DID.

NOW THE REST OF THE
TESTIMONY OF THE MEDICAL

EXAMINER ABOUT THE TIMING AND EVERYTHING, THAT CAME IN THE GUILT PHASE AN I AM ON PAGE 61, I MEAN THE OPINION TY PHASE, I AM ON PAGE 61 OF THE OPINION TY PHASE AND WHAT THE MEDICAL EXAMINER SAID IS WHEN YOU STRANGLE A PERSON AND I AM AT LINE 22 AND 23, THE MEDICAL EXAMINER, THE QUESTION WAS:

HOW LONG WOULD IT TAKE A A PERSON TO BLACKOUT?

SHE SAID A COUPLE MINUTES USUALLY TO COMPLETELY BLACKOUT IF THE BLOOD SUPPLY IS COMPLETELY BLOCKED.

THEN SHE WENT ON IN THE OTHER PAGES AND SAID, SO THERE IS ACTUALLY TWO PROCESS IN STRANGULATION, THE FIRST, THE BLOOD SUPPLY MUST BE COME PLOTLY BLOCKED OFF FOR THE PERSON TO LOSE CONSCIOUSNESS.

THEN, SHE SAYS, ON PAGE 62, IF THERE IS A STRUGGLE, AND THE BLOOD SUPPLY IS INTERRUPTED, THEN, YOU CAN'T SAY HOW LONG IT TAKES TO LOSE CONSCIOUSNESS.

NOW, ONCE GET THE BLOOD SUPPLY COMPLETELY BLOCKED OFF, THEN, THE PERSON IS UNCONSCIOUS, BUT STL STILL NOT DEAD.

THEN IT WOULD TAKE ANOTHER 3 TO 5 MINUTES TO COMPLETELY FOR THE OXYGEN TO DEBRIEF PRIV THE BRAIN AND THE BODY OF OXYGEN AND SO THAT, ALL OF THAT ABOUT THE HEINOUS CAME IN AT THE PENALTY PHASE AND AROUND 61 AND THAT IS THE MEDICAL EXAMINER'S TESTIMONY.

AS FAR AS THE TRIAL JUDGE -- MY RECK ELECTION IS THAT NOBODY REALLY SAID THAT DAVID WAS EVER IN FEAR OF ELVIS.

TAMIKA SAID THAT THEY LIVED IN APARTMENT TOGETHER, THERE WERE FOUR OF THEM, DAVID AND

ELVIS' COUSIN, ELVIS, DAVID,
AND TAMIKA, SHE WAS TALKING
ABOUT HOW DAVID WAS THE
AGGRESSIVE ONE, WITH IT WAS
HIS WAY OR THE HIGHWAY, BUT
I DON'T RECALL HER EVER
SAYING THAT SHE --

>> YOU MEAN DAVID OR ELVIS?

>> ELVIS WAS THE BAD BOY.
IT WAS HIS YOU WAY OR THE
HIGHWAY.

HE WAS, UM, HE WAS MORE
AGGRESSIVE.

>> WHAT DOES THE RECORD
REFLECT ABOUT WHEN THIS
OCCURRED IN TALLAHASSEE?
THIS MURDER IN TALL LA HAS?

I
>> IT WAS SEPTEMBER 12th,
2000 WHICH WAS SEPTEMBER 12, 2000.
WHICH WAS AND OUR MURDER WAS
IN NOVEMBER 6TH IN ORLANDO.

>> OF 2000.

>> YES, SIR.

>> OKAY.

AND HOW LONG HAD THIS
DEFENDANT BEEN IN
TALLAHASSEE AT THAT TIME?
HAD BEEN IN THE MILITARY
IMMEDIATELY BEFORE THAT?

>> HE LEFT -- PSI AND JUDGE
DID HAVE THE PSI --

>> RIGHT.

>> WAY BEFORE SENTENCING, HE
LEFT THE MILITARY IN 1999.

>> HE WENT AWOL.

>> YES, SIR.

>> AND DID HE COME STRAIGHT
TO TALLAHASSEE THEN?

>> -- HE WENT INTO THE
MILITARY IN 1998.

AND LEFT THE MILITARY!!\$\$!!!!!!!!!!!!!!IN 1999 HE WAS
THIS THE MILITARY ABOUT A
YEAR AND A HALF.

>> DID HE GO IN THE MILITARY
FROM WHERE?

>> HE LEFT THE VIRGIN
ISLANDS IN JULY OF 1998 AND
WENT INTO THE MILITARY.

THEN HE WENT AWOL FROM THE
MILITARY IN JANUARY OF 99.

>> DOES THE RECORD DOES THAT
PSI REFLECT WHETHER OTHER
THAN GOING AWOL HE HAD ANY

DISCIPLINERY ISSUES, WHILE
IN THE MILITARY IN.
>> NO, SIR BUT HE HE DR.
MIGHTESTIFIED HE SMOKED
MARIJUANA IN THE MILITARY
THAT IS ALSO IN THE PSI, AND
ALSO IN THE PSI THAT DAVID
SMOKED MAR WITHIN AA DAILY
THROUGH HIGH SCHOOL?
THEN THEY AFTER THE MURDER
IN TALLAHASSEE THEY LEFT
TALLAHASSEE BY REASON OF THE
FACT THAT THE DEFENDANT WAS
ON AWOL AND ELVIS HAD MISSED
A COURT APPEARANCE?
FIFRLT AFTER THEY KILLED
MONIQUE WASHINGTON AFTER
ELVIS!!\$\$!!!!!!!
ELVIS, AND TAMICA WERE
CHARGED WITH THIRD DEGREE
FELONY MURDER DAVID WAS
CHARGED WITH ACCESSORY AFTER
THE FACT, AND BECAUSE AFTER
ALL -- ELVIS KILLED HER HE
CAME BACK TO THE HOUSE AND
TOLD DAVID "I JUST KILLED
MONIQUE. "
THEY HAD TALKED ABOUT TAKING
HER CAR AND TYING HER UP,
MONIQUE, THEN DAVID WENT
AHEAD AND KILLED HER, AND
CAME BACK, AND TOLD DAVID
AND TAMICA SAID PREEFRL THAT
DAVID SAID, WELL, NOW YOU
KNOW WHAT WE HAVE TO DO AT
TRIAL TO -- TAMICA SAID
DAVID SAID WELL WHAT HAVE
YOU DONE WHAT HAVE YOU DONE?
AND SHE ADMITTED THAT SHE
HAD NEVER SAID THAT BEFORE.
BUT SO THEN DAVID AND ELVIS
TOOK MONIQUE, AND DUMPED HER
DOWN IN A RURAL YEAR NEAR
WAUCHULA SPRINGS, DAVID AND
TAMICA TAMICA PAWNED ALL THE
ITEMS OF MONIQUE DAVID DAVID
AND TAMMACHE WENT TOLANT IN \$\$
MONACHE'S CAR PARTY\$\$!!IED FOR A
WHILE THEN THEY CAME BACK TO
TAVLZ AT THIS POINT THE
POLICE WERE LOOKING BECAUSE
ELVIS HAD MISSED A COURT
APPEARANCE AND THE MILITARY
POLICE WERE LOOKING FOR

DAVID.
SO THEIR MOM BROUGHT THEM A
BUS TICKET GO TO ORLANDO.
AND THEY WENT TO ORLANDO.
OCTOBER 15TH, I THINK, WHEN
THEY GOT TO ORLANDO.
NOW, HELENA, WAS THEIR \$\$
MOTHER'S BEST FRIEND, SO
THEY HAD KNOWN HER AND JO
ANNA THE ISLANDS AND THEY
WOULD GO OVER TO THEIR
HOUSE.
SO ONCE AGAIN, WHEN THEY
NEEDED A CAR, THEY WENT OVER
CHECKED OUT THE HOUSE, AND
THEY NEEDED A CAR TO GET
BACK TO TALLAHASSEE, THE MOM
WAS GOING TO GIVE THEM BUS
PLOEN TO GO BACK TO
TALLAHASSEE, CASE SHE KICKED
THEM BOTH OUT OF THE HOUSE
ELVIS!!\$\$!!!!!!!
ELVIS, BECAUSE HE WAS
UNCONTROLLABLE DAVID BECAUSE
SHE WAS RUDE TO HIM.
KIEKDZ THEM BOTH OUT OF THE
HOUSE THEY NEEDED A CAR,
CALLED THEIR MOM AFTER THEY
HELD HELEN AND JOANNA SAID
THAT IS OKAY MOM WE HAVE A
RIDE.
SO HERE IS DAVID WHO WAS SO
ACCESSBLY AFRAID OF ELVIS
BUT IF YOU LOOK AT HIS
CONFESSION, AS SOON AS THEY
WALKED, IN DAVID JUMPED ON
HELENA.
THEN WENT AND HELPED JOANNA
THEN THEY MOVED THE BODY.
THEN THEY WENT OUT AND MOVED
THE CAR.
AND I THINK ACTUALLY DAVID
MOVED \$\$JOANNA'S CAR OUT OF
THE WAY SO THEY SHOULD COULD
GET THE CAR AWAY WENT BACK
TO ATLANTA LIKE WITH \$\$
MONIQUE'S CAR PARTIED FOR A
MONTH THEY GOT CAUGHT IN
DECEMBER 6TH, IT WAS MONTH
AFTER THE MURDER.
THAT THEY WERE STOPPED IN
ATLANTA.
IN HANELL' CARRS.
>> WITH LICENSE TAG WAS

STILL ON.

>> YES.

>> THE VEHICLE.

>> YES.

>> HOW WAS MONIQUE MURDERED?

BY ELVIS?

WAS IT STRANGULATION?

>> YES.

YES.

>> I THINK THAT IN -- COULD YOU SPEAK THEN GOING TO THIS ISSUE ABOUT THE JUDGE DID FIND THE MITIGATION OF HOW DEDESCRIBE THE RELATIONSHIP BETWEEN THE BROTHER, AND DAVID, AND WAS THAT ADEQUATELY DEVELOPED, I GUESS, THAT LEADS ON THE FIRST POINT, WAS THERE SOME EVERY DAY EXCLUDED THAT COULD HAVE GONE TO THIS RELATIONSHIP THAT MAY HAVE CAUSED TO IT BE GIVEN GREATER WEIGHT, BECAUSE ALTHOUGH IT IS UNUSUAL THAT YOU HAVE GOT A 20-YEAR-OLD AND A 16-YEAR-OLD IT DOES SOUND LIKE THERE'S, SOME KIND OF POWER IN BALANCE GOING ON IT ALSO SOUNDS LIKE THE JUDGE -- ACKNOWLEDGED IT, FOUND AND WEIGHED IT SO -- COULD YOU SPEAK TO THAT RELATIONSHIP!!\$\$!!!!!!!!!!!!!!!!!!!!!! RELATIONSHIP.

>> IN HIS SENTENCING ORDER, WHICH AND THE PLACE WHERE HE DISCUSSED MITIGATION IS 47 TO -- 1247 TO 1248 HE FOUND AS FAR AS THE MENTAL HEALTH MITIGATION AND HE SUMMARIZED DR. MING'S TESTIMONY DR. MING SAID THERE IS NO PERSONALITY DISORDER THERE IS NO REAL EVERY DAY THAT HE WAS ELVIS WAS DAVID WAS AFRAID OF ELVIS, THAT THERE WAS DOMINANT -- WHAT THERE IS IS THIS PATH LOGICALLY DEPENDENT RELATIONSHIP WHERE DAVID FEELS AS THOUGH ELVIS IS ALL HE HAS.

>> SO IN OTHER WORDS, IF THE JUDGE DID FIND THAT THAT

EXIST!!\$\$!!!!!!!

EXISTED.

>> YES.

>> AND WEIGHED IT.

>> YES AND THAT WOULD BE AT
1248!!\$\$!!!!!!!

1248.

HE ALSO FOUND THAT HE WAS
BIRDIE GRANDMOTHER IN
POVERTY LEFT BY HIS MOTHER
AFTER HE WAS BORN HE HAD NO
ROLE MODEL, BECAUSE HE NEVER
KNEW HIS FATHER, HE WAS PATH
LOGICALLY DEPENDENT ELVIS
AND HE WERE PATH LOGICALLY
DEPENDENT ON EACH OTHER THAT
IS ALL THEY HAD GROWING UP.
THAT -- \$DAVID'S AGE OF 20
WAS CONSIDERED.

THAT HE WAS GENTLE A TEAM
PLAYER MODEL INMATE, CLOSE
TO HIS BROTHER, HAD BEEN
KICKED OUT OF HIS HOUSE BY
THE MOTHER WHO ALSO WHEN
THEY WERE EVICTED IN
TALLAHASSEE DID NOT COME
HELP THEM, HOWEVER SHE DID
SEND THEM A BUS TICKET TO
ORLANDO.

>> YOU PASSED BY THE ONE
ABOUT HIS AGE WAS
CONSIDERED.

>> YES.

>> BUT THE JUDGE SAYS HE IS
CONSIDERING IT WITH OTHER
THINGS BUT DOESN'T EVER
REALLY SAY, HOW THE AGE
PLAYED INTO THESE OTHER
THINGS, IT IS AM I MISSING
SOMETHING IN THIS ORDER
ABOUT THIS AGE OF DAVIS.

>> NO.

AND -- ONE OF THE
COMPLICATIONS OF THIS CASE,
WAS THAT THE DEFENSE COUNSEL
AND THE DEFENDANT DID NOT
WANT THE STATUTORY
MITIGATORS BROKEN OUT THEY
WANTED EVERYTHING CONSIDERED
AS A LUMP.

AND SO THE JUDGE WENT IN HIS
ORDER HE WENT AHEAD ANDREAS!!\$\$!!!!!!!
ANDREASED EACH OF THE ISSUES
AND --

>> WHAT I SAID -- I WILL
QUOTE IT FROM RECORD.

#,.

ON PAGE 1245 TO 1246, ALL HE
SAID ABOUT THE AGE WAS THAT
THE DEFENDANT WAS 20 YEARS
OF AGE, THE COURT HAS
WEIGHED HIS RELATIVE YOUTH
TOGETHER WITH OTHER FACTORS.
AND THEN HE AT THE END HE
PUT THEM ALL TOGETHER, AS
DEFENSE COUNSEL ASKED SAID I
GIVE THESE MITIGATORS SEERS
-- SERIOUS WEIGHT THE ONES
HAVE A WERE ESTABLISHED
HOWEVER, THE CIRCUMSTANCES
AND THE AGGRAVATING FACTORS
CLEARLY OUTWEIGH ALL THE
MITIGATION!!\$\$!!!!!!!!!!!!!!!!!!!!
MITIGATION.

>> LET ME ON THAT, JUST
FOLLOWING UP ON WHAT THE
JUDGE DID SAY, HE FOUND
SUBSTANTIAL EVIDENCE TO
SUPPORT THESE NONSTATUTORY
MITIGATING CIRCUMSTANCES.
HE SAYS SINCE THESE
CIRCUMSTANCES PRIMARY MATTER
UPON WHICH THE DEFENDS HAS
RESTEDED IT'S ARGUMENT FOR
MITIGATION THE COURT HAS
WEIGHED THEM CAREFULLY GIVEN
SERIOUS WEIGHT THEN GOES THE
COURT FINDS HOWEVER THAT THE
CIRCUMSTANCES ARE PRIMARILY
DESCRIPTIVE!!\$\$!!!!!!!!!!!!!!!!!!!!
DESCRIPTIVE, AND DO LITTLE
TO COUNTER BALANCE EGREGIOUS
NATURED OF THE ACTS WHICH
CONSTITUTE THE CRIMES, WELL,
IN EVERY ADMINISTERED --
MURDER, EGREGIOUS CRIMES, I
GUESS, I'M SOMEWHAT
MYSTIFIED BY WHAT THE
STATEMENT MEANS AND HOW THAT
WENT INTO WEIGHING THAT THE
CIRCUMSTANCES ARE PRIMARILY
DESCRIPTIVE!!\$\$!!!!!!!!!!!!!!!!!!!!
DESCRIPTIVE.
THAT ISES WHAT MITIGATION IS
IT IS DESCRIPTIVE OF WHAT
THE CIRCUMSTANCES ARE.
SO WHAT ARE YOU WHEN DO YOU
MAKE OF THAT OBVIOUSLY YOU

HAVE TO DEFEND WHAT THE
JUDGE IS DOING, BUT YOU
KNOW, THIS IS SOME PRETTY
DIFFERENT TYPE OF MITIGATION
THAN WE SEE IN A LOT OF THE
THESE CASES THAT IS THE
POSSIBILITY THAT THERE
REALLY WAS HIS PATHOLOGIC
RELATIONSHIP WITH THE YOUNG!!\$\$!!!!!!!
YOUNGER BROTHER BEING A
DOMINANT FORCE, AND THAT BUT
FOR THE YOUNGER \$\$BROTHER'S
INFLUENCE, IYMAN 24R THAT
WAS THEIR ARGUMENT THAT IS
WHAT THEY PUT ON EVERY DAY
TO SHOW THESE MURDERS
WOULDN'T HAVE OCCURRED AND
THAT SO SIGNIFICANT
MITIGATION!!\$\$!!!!!!!!!!!!!!!!!!!!
MITIGATION, BUT I DON'T --
DOES HE DOWN PLAY IT BY
SAYING THEY ARE PRIMELY
DESCRIPTIVE!!\$\$!!!!!!!!!!!!!!!!!!!!
DESCRIPTIVE?
CAN YOU IS THAT A 2ER78 OF
ART THAT I'M MISSING?
AND -- MITIGATION, THAT IF
SOMETHING IS PRIMARILY
DESCRIPTIVE THAT YOU DON'T
GIVE IT SERIOUS CONSIDER!!\$\$!!!!!!!!!!!!!!
CONSIDERATION?
>> FIRST OF ALL DR. MING
TESTIFIED THERE WAS A PATH
LOGICALLY DEPENDENT
RELATIONSHIP, AND THEN WHEN
HE WAS ASKED TO ELUCIDATE ON
HIS OPINION HE SAID IT JUST
MEANS HE LOVED HIS BROTHER
HE WAS VERY CLOSE TO HIS
BROTHER, NEVER SAID ELVIS
DOMINATED HIM.
DR. MING SAID THEY ARE ALL
EACH OTHER HAS, THAT IS WHAT
-- ADDICTED TO EACH OTHER IN
OTHER WORDS, BUT THE JUDGE.
>> THE JUDGE THIS IS THE
SAME JUDGE I'M SORRY IT IS
JUDGE ADAMS I SAID HE MADE
INARTFULLY STATE THINGS, BUT
HE -- WHAT HE IS SAYING HERE
IS HE HAS CONSIDERED AND
FOUND THE MITIGATING
CIRCUMSTANCES AND WEIGHED
THEM AGAINST THE AGGRAVATING

CIRCUMSTANCES.

AND IN THE NEXT PARAGRAPH,
YOU CAN -- YOU CAN SEE HE
SAYS HE HAS CAREFULLY
WEIGHED AND CONSIDERED EACH!!\$\$!!!!!!

EACHED A -- AGGRAVATING
CIRCUMSTANCES AND MITIGATING
CIRCUMSTANCE, AND SO AND --

>> AND NONSTATUTORY
MITIGATING CIRCUMSTANCE.

GO BAG BACK TO THIS ISSUE OF
THE AGE, WAS THAT YOU WILL
WAS PRESENTED BY THE AGE WAS
THAT IT WAS HE WAS 20

ANYTHING ABOUT WHETHER --
WEATHER HE WAS ACTUALLY
FUNCTIONING MORE LIKE A
ADOLESCENT!!\$\$!!!!!!!!!!!!!!!!!!!!
ADOLESCENT, ANYTHING ON
THAT.

>> NO MA'AM.

TO THE CONTRARY DR. MING\$\$!!SAID
HE HAD AVERAGE GINS WAS
FUNCTIONING -- INTELLIGENCE,
FUNCTIONING VERY WELL HAD NO
MENTAL DISORDERS HE HAD NO
PERSONALITY DISORDERS, NO
MEPTDAL HEALTH ISSUES -- AND
THE ONLY THING WAS BECAUSE
OF THE HISTORY OF THE
CHILDREN, GROWING UP WITH
THEIR GRANDMOTHER AND THEN
GOING THROUGH LIFE TOGETHER,
HE AND THE BROTHER WERE VERY
CLOSE.

THE TRIAL JUDGE FOUND THAT
THAT THEY WERE VERY CLOSE.

>> AS FAR AS THE -- THE
FIRST ISSUE, AND I -- YOUR
HONOR HAS ASKED THE QUESTION
-- ABOUT HITCHCOCK, AND
ABOUT HAS HE EVER THE COURT
EVER SAID THAT THE DEFENDANT
CAN JUST PRESAIN THE
HEARSAY AND THE STATE HAS NO
OPPORTUNITY, ON PAGE 46 OF
MY ANSWER BRIEF, I CITE THE
HITCHCOCK AND THE QUOTE FROM
BLACKWOOD WHICH AND I ALSO
QUOTE THAT 91141 THAT
HEARSAY WE ARE DEALING WITH
EVIDENTIARY RULES, 92114
1IGS EVIDENTIARY RULE, WHICH
ALLOWS HEARSAY IN THE 3E7B89

PHASE IF THE OTHER PARTY HAS AN OPPORTUNITY -- IT.

>> DOESN'T SAY THAT IT SAYS PROVIDES THE DEFENDANT IS ACCORD!!\$\$!!!!!!!!!!!!

ACCORDED A FAIR OPPORTUNITY TO REBUT ANY HEARSAY STATEMENT.

>> YES AND THEN IN MY NEXT PARAGRAPH!!\$\$!!!!!!!!!!!!!! PARAGRAPH, THIS COURT HAS DEALT WITH THE ISSUE AND HITCHCOCK AND BLOCKWOOD THE SAME ISSUE THEY ARE ARGUING THAT WELL THE DEFENDANT GETS TO PRESENT ALL THE HEARSAY AND THE STATE DOESN'T. AND THEY SAID NO.

THE HEARSAY RULE APPLIES TO BOTH PARTIES IT IS AN EVIDENTIARY RULE THAT IS ON PAGE 46 --

>> HOW DO YOU RESOLVE THE SITUATION HERE WHERE THE DEFENDANT IS ADVOCATING MORE LIBERALIZED RULE WITH REFERENCE TO THE ADMISSION OF EVERY DAY DURING THE 3E7B9 FACE WITH REFERENCE TO MITIGATION!!\$\$!!!!!!!!!!!!!! MITIGATION?

AND THIS \$\$COURT'S RULING IN A NUMBER OF CASES, THAT THE STATE IS ENTITLED TO PRESENT THE TESTIMONY OF A VICTIM, OF A PRIOR VIOLENT FELON? THROUGH THE HEARSAY TESTIMONY OF A POLICE OFFICER?

>> HOW DOES THAT HOW DO THOSE THINGS SQUARE?

>> JUST AT THE INSOCIETY I O O I THINK THE THEY ARE DOR ROGEVERS CASE YOU SAID THAT WE -- THEODORE ROGERS SAYS YOU SAID THE STATE OF THE LAW IS THAT WE WOULD BE PRESENTING THE VICTIMS TESTIMONY AND THE POLICE OFFICER WOULD NOT BE TESTIFYING AS TO HEARSAY. SO --

>> BUT THAT IS BECAUSE OF CRAWFORD, 6TH AMEND RIGHT OF

THE DEFENDANTS BUT GOING
BACK TO JUSTICE ANSTEAD,
BEFORE CRAWFORD AND CRAWFORD
WOULDN'T AFLY WHAT THE
DEFENDANT IS TRYING TO PUT
IN.

HOW IS IT THAT AGAIN WE
ALLOWED ALL SORTS OF HEARSAY
IN SUCH AS POLICE \$OFFICER'S
TESTIMONY THAT WERE VICTIMS
SAID --

>> WE HAVE A LONG LINE OF
CASES!!\$\$!!!!!!!!!!

CASES, THAT --

>> FROM THE ROADS CASE.

>> BEFORE WE GET INTO THE
CRAWFORD ISSUE, WE HAVE A
LONG LINE OF CASES, WHERE
THE -- STATE WAS PERMITTED
IN THIS COURT HAS PROVED THE
TESTIMONY OF A POLICE
OFFICER IN WHO INVESTIGATED
THE PREVIOUS CRIME, WAS
ALLOWED ON BEHALF OF THE
STATE TO TESTIFY TO
STATEMENTS MADE BY THE
VICTIM OF THAT PRIOR VIOLENT
FELONY!!\$\$!!!!!!!!!!!!

FELONY.

LET'S ASSUME THAT THAT IS
ALL WE HAVE.

IS ARE THOSE CASES THAT THIS
COURT HAS APPROVED THAT?
HOW DOES THAT SQUARE WITH
NOT ALLOWING, THE DEFENDANT
TO PRESENT SIMILAR HEARSAY
STATEMENTS.

>> IT IS ALWAYS WITH THE
CAVEAT OF 9211411E, THAT IF
THE OTHER PARTY HAS THE
ABILITY TO REBUT IT.

AND THE POLICE OFFICER IS
SUBJECT TO CROSS-EXAMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

CROSS-EXAMINATION, AND THE
STATEMENT OF THE VICTIM, IS
SUBJECT TO CROSS-EXAMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

CROSS-EXAMINATION -- SHOO
SIMILARLY THE MITIGATION
EXPERT WILL BE SUBJECT TO
CROSS-EXAMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

CROSS-EXAMINATION, DURING
THE COURSE OF HER TESTIMONY.

I'M I DON'T THINK THAT
REALLY ANSWERS THE QUESTION

HERE.

>> WELL, WHAT THEY ARE DOING IS THAT A MITIGATION SPECIALIST!!\$\$!!!!!!!!!!!!!! SPECIALIST, IS GOES OUT AND COLLECTION ALL THIS INFORMATION BUT THEN TO ALLOW HER TO COME IN AND JUST SAY WHAT EVERYBODY SAID AND GIVE HER OPINION -->> I'M TRYING TO VERY NARROWLY FOCUS ON THIS \$\$ COURT'S APPROVAL OF POLICE OFFICERS TAKING THE STAND SAYING I WAS THE INVESTIGATING OFFICER, AND IN A PREVIOUS VIOLENT FELONY!!\$\$!!!!!!!!!!!! FELONY, THAT SEVERAL YEARS BEFORE THIS DEFENDANT WAS CONVICTED OF ARMED ROBBERY, AND AGGRAVATED BATTERY, AND I INTERVIEWED THE COMPLAINING WITNESS AND HE SAID YOU KNOW, THAT THE DEFENDANT BEAT ME UP WITH THE GUN, AND BLOODIED ME UP, AND I WAS OUT OF WORK FOR A MONTH, AND WHATEVER, AND KIND OF THING.

AND THIS COURT HAS APPROVED THE ADMISSION OF THOSE HEARSAY STATEMENTS THROUGH THE TESTIMONY OF A POLICE OFFICER.

TELL ME HOW YOU DISTINGUISH THOSE CASES, FROM WHAT THE DEFENDANT IS PROFFERING HERE?

>> AND THE POLICE OFFICER ISSUED THAT EVOLVES FROM ROADS, ROADS WAS THE FIRST CASE THAT THIS COURT SAID WE DON'T WANT THE VICTIMS IN THERE, IF THERE IS A BETTER SOURCE WHO HAS PERSONAL KNOWLEDGE OF THIS, WE WILL NOT PUT THE VICTIMS THROUGH THAT, AND HE CAN TESTIFY TO THAT,!!\$\$!!!!!!!!!!

THAT,.

>> NOW YOU ARE REALLY GIVING A GOOD REASON, WHY THE DEFENDANT YOU KNOW REALLY SHOULDN'T OBJECT, AND SHOULD

SAY, WELL, BECAUSE THE STATE HAS THE RIGHT TO BRING THE VICTIM, THAT IS NOT DISTINGUISHING, ADMITTING THAT THOSE HEARSAY STATEMENTS OF THE POLICE SEARCHES -- OFFICERS THAT ISES WHAT I'M LOOKING FOR ON A -- INTELLECTUALLY HONEST BASIS!!\$\$!!!!!!!

BASIS, HOW DO YOU WE DISTINGUISH OUR APPROVAL OF THE STATE USING THAT HEARSAY FROM WHAT THE DEFENDANT IS ASKING TO DO HERE?

>> WELL, AND THERE ARE CASES WHERE THIS COURT HAS NOT APPROVED THAT.

>> CAN'T -- CAN YOU DISTINGUISH -- OUR APPROVAL OF THOSE SITUATIONS? FROM WHAT THE DEFENDANT IS ASKING HERE?

>> I WOULD HAVE -- THEY DIDN'T RAISE THAT. AND THEY -- THAT WAS NOT AN ISSUE, OR AN ANALOGY --

>> ARE YOU TELLING ME YOU CAN'T DISTINGUISH OR YOU CAN'T.

>> I'M TELLING YOU I CAN DISTINGUISH IT.

>> YOU CAN.

>> YES.

>> TELL ME HOW DO YOU DISTINGUISH.

>> IF YOU LOOK AT THOSE CASES THOSE CASES MOST ORDINARILY WENT TO TRIAL, AND VICTIM WAS SUBJECT TO CROSS-EXAMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

CROSS-EXAMINATION,

>> AND NOW I'M HAVING DIFFICULTY. YOU I MEAN THOSE PRIOR VIOLENT FELONIES WENT TO TRIAL.

>> MOST OF THEM WHERE THAT EXCEPTION IS CARVED OUT.

>> WHAT DOES THAT HAVE TO DO WITH -- WHETHER OR NOT THE HEARSAY STATEMENTS ARE ADMISSIBLE IN THE SUBSEQUENT PROCEEDINGS SEVERAL YEARS

LATER?

.
>> WELL, AND ALSO IF YOU
LOOK AT THE CASES THE POLICE
OFFICER WHO TESTIFIES WAS
YOUSHL THE ONE WHO RESPOND!!\$\$!!!!!!!!!!!!
RESPONDED TO THE SCENE, AND
OBSERVED SOME OF THE THINGS
AND HAD PERSONAL KNOWLEDGE.
AND I KNOW THAT THERE ARE
TWO INSTANCES WHERE YOU SAID!!\$\$!!!!!!
SAID --

>> YOU ARE NOT REALLY
ACCEPTING MY PREDICATE YOU
ARE SAYING THEN THAT MAYBE
IT WASN'T HEARSAY AT ALL.
THAT THERE WAS YOU KNOW -- I
AM -- EVEN IF WE IF YOU
DON'T ADMIT THOSE CASES
EXIST, LET'S TAKE IT AS
HYPOTHETICAL.
THAT WE HAVE APPROVED THE
POLICE OFFICERS BEING ABLE
TO TESTIFY TO HEARSAY
STATEMENTS BY THE VICTIM OF
A PRIOR VIOLENT FELONY.
AND YOUR VIEW WERE THOSE
PROPER HOLDINGS?

.
>> YES.
>> AND HOW WHAT -- THEORY
WOULD THOSE COME UNDER?
ARE THERE LESS RULES OF
STRICT APPLICATION OF THE
RULES OF EVERY DAY?
TO THE 3E7B9 PHASE IS THAT
THE -- THEORY.

>> NO.
BECAUSE THAT OFFICER AND OF
YOU DISPROVED -- THE WIFE
THAT TESTIFIED ABOUT HER \$\$
HUSBAND'S DEATH, BUT THE SHE
WASN'T THERE.
YOU DISPROVED THAT AS
HEARSAY!!\$\$!!!!!!!!!!!!!!
HEARSAY.
THERE IS ON THE INSTANCES
THAT THE DEFENSE CITE WHERE
THIS COURT HAS DISPROVED
THEM.
BUT THERE ARE OTHER
INSTANCES WHERE OF YOU
APPROVE FIND OFFICERS
TESTIFYING WHERE THEY HAVE

PERSONAL KNOWLEDGE AND THEY
CAN TESTIFY TO THE HEARSAY
TESTIMONY OF THE VICTIM.

AND THAT --

>> YOUR QUESTION ABOUT THE
-- EVERY DAY THAT THEY CLAIM
SHOULD HAVE BEEN ADMITTED --
-- SEEMS TO ME FROM READING
IT THAT A LOT OF THAT WAS AD
MYTHED THROUGH OTHER WNZ.

>> YES, SIR IT WAS AND THEY
MAD HAD NINE WITNESSES
TESTIFY THE AUNT TESTIMONY
HE HAD GROW UP WITH UNTIL 7
OR # MOTHER TESTIFIED THEIR
MOTHER TESTIFIED THEY HAD
NINE PENALTY PHASE WITNESSES
THAT WAS OBJECTIONS WEREN'T
ALWAYS TO HEARSAY, BECAUSE
THE STATE DIDN'T HAVE AN
OPPORTUNITY TO REBUT.
THE MAJORITY OF THE
OBJECTIONS WERE TO RELEVANCE!!\$\$!!!!!!!!!!!!!!!
RELEVANCE.

>> KERNEL THAT FALLS WITHIN
THE STATUTE WHERE STATUTE
SAYS ALL RELEVANT EVERY DAY
MAY BE -- OF EFFORT MAY BE
ADMITTED EVEN IF HEARSAY
COULD BE ADMITTED UNDER STAT
WOULDN'T BE AS --ED A
MISSIBLE

>> YES, SIR THE FIRST THING
THAT THEY COMPLAIN ABOUT IS
THAT THE MITIGATION
SPECIALIST VISITED THE
HOUSE, AND THEY SAID, WHAT
DOES THE HOUSE LOOK LIKE?
AND THE OBJECTION WAS
RELEVANT BECAUSE DAVID
HADN'T LIVED IN THAT HOUSE
FOR 5 -- 15 OR 16 YEARS.

>> WOULD YOU AGREE THAT THE
THAT THOSE POLICE OFFICER
CASES THAT JUSTICE ANSTEAD
WAS REFERRING TO -- AND
OTHER CASES, IN WHICH WE
HAVE ALLOWED THERE TO BE
HEARSAY!!\$\$!!!!!!!!!!!!!!!
HEARSAY, I REMEMBER THERE
WAS THE CASE OUT IN
PENSACOLA, IN WHICH THERE
WAS A WITNESS WHO WAS NOT
UNDER SUBPOENA THAT WE

ALLOWED THERE TO BE PRIOR TESTIMONY. BUT THE VALUATION AS I RECALL THOSE CASES, HAS ALWAYS BEEN ON THE ISSUE OF WHETHER THERE WAS A FAIR OPPORTUNITY TO REBUT. IS THAT WHAT IT COMES DOWN TO.

>> YES, SIR.

>> CAN YOU RECALL YOU WILL WHETHER WE HAVE HELD THAT THE FAIR OPPORTUNITY TO REBUT IS A MATTER WITHIN THE -- THE DISCRETION OF THE TRIAL JUDGE OR IS IT SOMETHING THAT WE DO DE NOVO!!\$\$!!!!!! NOVO.

>> NO, SIR IT WOULD ALWAYS BE WITHIN THE DISCRETION OF THE TRIAL JUDGE BECAUSE THIS IS AN EVER DENGRY RULING, AND -- EVIDENTIARY RULING THIS JUDGE RULED HE HAD SEVERAL BASES FOR MANY RULINGS I WOULD ALSO LIKE TO POINT OUT IT ALL CAME IN ANY WAY THE THINGS THAT THEY ARE COMPLAINING ABOUT THAT THERE WAS A MENTAL HEALTH EXPERT AND HE TESTIFIED THAT FOR TWO PAGES, JUST AS A SOLILOQUY ON DAVID\$\$'S QUACK GROUND THE AUNT TWO HE TEACHERS TWO COACHES.

>> WELL THATGO WOULD GO TO HARMLESS ERROR.

>> YES, SIR -- JUST ON THE ONE THAT.

>> JUST ON ONE THAT DOES CONCERN ME, I DO, AGAIN, SHARE THE FRUSTRATION THAT WE ALLUDED TO IN THE FIRST PART OF THIS, THAT IS THE BRIEF IS JUST LUMPS EVERYTHING TOGETHER, AND ONE THAT I WAS CONCERNED ABOUT WERE THE REPORTS OF THE PHYSICAL ABUSE OF DAVID AS A CHILD.

DID THAT COME IN THROUGH THE MENTAL HEALTH EXPERT?

>> NO.

BECAUSE THERE -- THERE WAS

NO PHYSICAL -- FISCAL ABUSE
IF YOU LOOK IN THE PSI DAVID
HIMSELF DEEPS HE DENIES ANY
PHYSICAL ABUSE THE MOTHER
TESTIFIED THE UP AT
TESTIFIED THAT IS WHO HE
LIVED WITH, AND DR. MING
STESTIFIED --

>> SO THAT -- TESTIFIED SO
THAT SO DURING THE PENALTY
FACE TESTIMONY MEDICAL
SPECIALIST NORMAN TESTIFIED
SHE DID NOT DISCOVER ANY
POLICE REPORTS OF DOMESTIC
VIOLENCE!!\$\$!!!!!!!!!!!!!!

VIOLENCE.

WHEN DEFENSE COUNSEL TRIED
TO QUESTION NORMAN ABOUT ANY
OTHER INFORMATION SHEED MY
-- MIGHT HAVE OBTAINED ABOUT
PHYSICAL ABUSE TO DAVID AS A
CHILD THE STATE OBJECTED ON
THE BASES OF HEARSAY.

DEFENSE THEN PROPERED
TESTIMONY THAT DAVID AND
ELVIS HAD TOLD HER ABOUT
PHYSICAL ABUSE IN THE FORM
OF BEATINGS, WITH CORDS AND
BELTS!!\$\$!!!!!!!!!!!!

BELTS.

NOW LET'S JUST ASSUME -- I
-- THE JUDGE DIDN'T --
SUSTAIN THE OBJECTION
BECAUSE THERE -- OTHER
WITNESSES DIDN'T TESTIFY THE
JUDGE SUSTAINED IT ON THE
BASIS OF HAERS MY QUESTION
WOULD BE HEARSAY, MY
QUESTION AS WE HAVE SEEN
MANY TIMES A MENTAL HEALTH
EXPERT, TESTIFIED --

TESTIFIES ON OPINIONS BASED
ON SELF RO-- SELF-REPORT OF
FISCAL ABUSE OF COURSE AS IT
GOES TO THE WEIGHT COME ON
THERE IS NO -- NOBODY ELSE
HAS SEEN IT, IT IS DENIED
HERE.

EVALUATED I'M CONCERNED
ABOUT THAT JUST BEING
EXCLUDEDED ON THE BASIS OF
HEARSAY!!\$\$!!!!!!!!!!!!!!

HEARSAY.

ESPECIALLY AGAIN WHEN YOU

SAY FAIR OPPORTUNITY TO REBUT, THEY WERE ABLE TO SHOW THAT THERE WAS YOU KNOW WHAT YOU ARE SAYING, HOW IS THAT A PROPER EVIDENTIARY RULING WHEN WE ARE TRYING TO ALLOY THE YOU KNOW IN THE GREATEST LATITUDE, FOR A DEFENDANT TO BE ABLE TO PUT ON EVIDENCE THAT MAYBE HARMLESS BECAUSE SHE WOULD SAY IT COULDN'T HAVE BEEN GIVEN ANY WEIGHT SHOULD SHE HAD TESTIFIED BECAUSE THEY DIDN'T REPORT THIS TO THE MENTAL HEALTH EXPERT. PRETTY GOOD ARGUMENT. BUT AS FAR AS A RULE OF LAW, I'M CONCERNED ABOUT THIS BEING EXCLUDED ON THE BASIS OF HEARSAY.

>> AND THIS IS A MITIGATION SPECIALIST WHO IS RELATING A STATEMENT MADE BY A DEFENDANT AND CODEFENDANT THAT WE HAVE NO ACCESS TO WHATSOEVER.

>> BUT YOU UNDERSTAND THEN WE HAVE COUNTLESS CASES WHERE MENTAL HEALTH EXPERTS TESTIFY AND PART OF THE TESTIMONY IS THAT THEY HAVE EVALUATED THE DEFENDANT.

>> THAT WAS A LOT OF THE THE DISCUSSION, BECAUSE AFTER THIS OBJECTION ON THE BASES OF HEARSAY, THEY WENT THROUGH QUALIFY HER AS A MENTAL -- EXPERT IN DEFENDANTIG VIOLENCE BECAUSE SHE HAD WORKED WITH DCF, FOR 15 YEARS THERE WAS NO BASIS TO QUALIFY HER, BUT DR. MINGWAS GOING TO TESTIFY SHE TESTIFIED SHE GAVE ALL OUR HER INFORMATION TO DR. MING WHO DID TESTIFY ABOUT IT THIS!!\$\$!!!!!! THIS.

>> SO BECAUSE OF THE NATURE OF HER SPECIALTY THAT THIS WOULD BE PARTICULARLY APPROPRIATE RULING FOR THE TRIAL COURT TO SUSTAIN THIS

OBJECT!!\$\$!!!!!!!!!!!!

OBJECTION.

>> YES.

>> WITH OUR ASSISTANCE, DO YOU HAVE -- YOU HAVE EXHAUSTED YOUR TIME THANK YOU VERY MUCH.

>> I JUST ASK THE COURT TO AFFIRM THE CONVICTIONS AND SENTENCE.

>> SHORT REBUTTAL.

>> YES YOUR HONOR JUST TO CLARIFY A RECORD CITE.

THE STATE QUOTES THAT PAGE 1459 OF THE RECORD, IN RESPONSE TO JUSTICE PARENTS!!\$\$!!!!!!!!!!!!!!\$\$ PARENTSE'S QUESTION REGARDING THE \$\$DEFENDANT'S CONFESSION SAYING THAT THE VICTIM CHARLES STILL HAD LIFE IN HER.

BUT THEY FAILED TO QUOTE THE NEXT PAGE, WHERE THE DEFENDANT CLARIFIES AND MODIFIES THAT PAGE 1460 OF THE RECORD, QUOTE CHARLES WASN'T MOVING, IF SHE STILL HAD LIFE IN HER, NOT LIKE SHE WASN'T MOVING BUT LOOKED LIKE SHE HAD LIFE IN ME -- IN HER, STILL.

TO ME SO HIS CONFESSION DOES INDICATE THAT SHE WAS UNCONSCIOUS!!\$\$!!!!!!!!!!!!!! UNCONSCIOUS.

>> BUT SHE WASN'T I MEAN BUT DURING THE COURSE OF THIS, AND WHICH THIS DEFENDANT PARTICIPATED IN SHE WAS ALIVE SHE STRUGGLED, SHE WAS AWARE OF HER INTENDING DEATH!!\$\$!!!!!! DEATH, AND, SO IF -- SOME POINT SHE BECAME UNCONSCIOUS I DON'T SEE HOW THAT TAKES AWAY FROM THE JUDGE'S RULING, THAT THERE WAS SUFFICIENT EVIDENCE TO SUPPORT HHC.

>> CASES CITEDED IN OUR BRIEF INDICATED THIS COURT IN STRANG LOOIGS CASES HAS CONSIDERED TOTALITY OF THE CIRCUMSTANCES HAS REJECTED THIS AS HEINOUS ATROSCHIOUS

AND CRUEL.

ALSO WE SUMMIT IT IS NOT
CUMULATIVE!!\$\$!!!!!!!!!!!!!!!
CUMULATIVE, THE EVIDENCE
EXCLUDED WAS NOT CUMULATIVE
NO EVIDENCE OF PHYSICAL
ABUSE TO THE DEFENDANT THE
STATE WAS ALLOWED TO ELICIT
TESTIMONY THERE WERE NO
POLICE REPORTS ANY OF A BUS
ON THE DEFENDANT, HOWEVER,
THEY WERE THE DEFENSE WAS
EXCLUDED FROM PRESENTING
EVIDENCE THAT NOT ALL
PHYSICAL ABUSE CASES ARE
REPORTED TO THE PS.

-- TO THE POLICE.

THE, TRIAL COURT, IN REGARDS
TO THE DOMINATION OF THE
DEFENDANT INDICATES THAT HE
REJECTS THE STATUTORY
MITIGATION MITIGATING
FACTORS BECAUSE OF OTHER
FACTORS WITHOUT LAEBBRATE\$\$!!ING
ON THEM.

THE SAME WITH -- HE WEIGHED!!\$\$!!!!!!!!!!!!!!!
WEIGHED --

>> YOU ARE -- YOU ARE BEYOND
YOUR TIME.

>> WOULD YOU TAKE A MOMENT,
BECAUSE OF YOU HAD MANY
QUESTIONS FROM THE BENCH
WITH REGARD TO WHAT DID NOT
COME INTO EVER DEBS,
EVIDENCE WITH REGARD TO THAT
ISSUE THAT YOU'VE ASSERT
THAT YOU HAD BELIEVE SHOULD
HAVE COME INTO EVIDENCE DID
FOR THE COME IN ANY WAY
BEFORE THE COURT.

>> THERE WAS NO EVIDENCE OF
THE PHYSICAL ABUSE TO THE
DEFENDANT, DID NOT COME IN
AT ALL, THERE WAS NO
EVIDENCE OF ELVIS' VIOLENCE
TO THE CHILD, IN
TALLAHASSEE, WHICH WAS CLOSE
TO THE TIME OF THESE
MURDERS, THE STATE HAS SAID
WELL THIS EVIDENCE ABOUT
ELVIS!!\$\$!!!!!!!!!!!
ELVIS, THE DEFENDANT BEING
AFRAID OF HIM, WAS FROM THE
YOUTH WHEN THE CHILD WHEN

THEY WERE ONLY LIKE SIX
YEARS OLD, THIS EVIDENCE THE
DEFENSE ARGUMENTED WAS
RELEVANT TO THAT
RELATIONSHIP THEY HAD, WE
SUBMIT TO THE FACT THAT HE
WAS STILL IN FEAR THEY WERE
PRECLUDED FROM THAT, WE
SUBMIT, THAT THE QUALITY AND
WANT OF THE MITIGATING
EVIDENCE SHOULD NOT BE
LIMITED!!\$\$!!!!!!!!!!!!
LIMITED.

>> YOU ARE GOING INTO KUM
LATTIVE!!\$\$!!!!!!!!!!!!
LATTIVELY.

>> HOW ABOUT THE PRECISE
THINGS SO THIS COURT
UNDERSTANDS EXACTLY WHAT YOU
ARE SAYING.

>> THE PHYSICAL ABUSE, TO
THE DEFENDANT, THE ABUSE OF
ELVIS STILL HAD WAS STILL
VIOLENT TO CHILDREN, THE
MENTAL HEALTH EXPERT WASN'T
ALLOWED TO TESTIFY THAT THE
OTHER WITNESSES THAT
TESTIFIED, THEIR TESTIMONY
WAS SUPPORTIVE OF HIS DIG!!\$\$!!!!
DIGNOSIS WOULDN'T CHANGE HIS
DIAGNOSIS ANYWAY, THE STATE
ARGUES THAT THAT WAS COMMENT
ON THE CREDIBILITY OF THE
ONE -- WITNESSES, MENTAL
HEALTH EXPERTS MEDICAL
EXAMINERS, ALL EXPERTS ARE
OFF ASKED WELL --

>> YOU ARE LISTENING PLEASE
BE BRIEF.
KEEP GOING WITH LISTENING --
LISTING!!\$\$!!!!!!!!!!!!
LISTING.

>> THE -- PSYCHOLOGIST
OPINION WHETHER THE
DEPARTMENT HAD STREET SMARTS
WHAT WOULD CAUSE A PERSON
NOT TO ATTEMPT TO DISGUISE A
STOLEN VEHICLE DEFENSE
ARGUED RELEVANCE TO SHOW HE
IS NOT A HARDENED CRIMINAL
NOT EXPERIENCED, IN THESE
TYPES OF THINGS, AGAIN
RELEVANT TO THE MITIGATING
CIRCUMSTANCE OF LACK OF

SIGNIFICANT HISTORY WE I
APOLOGIZE FOR NOT GOING INTO
MORE DIAL IN MY INITIAL
BRIEF, BUT I FELT THAT THE
RELEVANCE WAS OBVIOUS FROM
THESE, EACH OF THESE THINGS
THAT WERE EXCLUDED IS
RELEVANT TO A MITIGATING
CIRCUMSTANCE.

>> THANK YOU VERY MUCH.
WITH OUR ASSISTANCE OF YOU
USED BEYOND YOUR TIME.

>> BE WE APPRECIATE THE
ARGUMENTS WE'LL TAKE THE
CASE UNDER ADVICEMENT