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Jermaine Lebron v. State of Florida
SC06-138

FINAL CASE ON OUR CALENDAR THIS MORNING, IS, LeBRON VERSUS STATE OF FLORIDA. MR. NOR GUARD.
PROCEED WITH THAT, JUSTICE WELLS.
HE IS NOT SITTING ON THIS CASE.
THANK YOU, SIR.
YOUR HONOR, BOB NOR GUARD THIS IS RESENTENCING. WHERE MR. LeBRON WAS SENTENCED TO DEATH AFTER 7-5 JURY RECOMMENDATION. FIRST ISSUE I LIKE TO ADDRESS IS WHAT WE ALL CAN SAVELY CALL THE STEEL ISSUE. WHERE IN THIS CASE THE TRIAL JUDGE THE REQUIRED JURY TO MAKE FINDINGS OF FACT AS TO AGGRAVATING FACTORS AS WELL AS MITIGATING CIRCUMSTANCES IN THE CASE. THIS WAS DONE, OVER, OBJECTION OF BOTH THE STATE ATTORNEY AND, OVER OBJECTION OF THE DEFENSE.
WHY, IF THAT'S ERROR, WHY IS IT NOT HARMLESS?
I THINK FIRST OF ALL, WE HAVE TO LOOK AT THE COURT'S DECISION IN STEELE WHERE THIS COURT FOUND THE, GIVING OF SPECIFIC FINDINGS OF FACT TO BE SOMETHING THAT WAS AN ESSENTIAL DEPARTURE FROM THE REQUIREMENTS OF LAW. THAT'S A VERY STRONG FINDING BY THIS COURT TO FIND THAT SOMETHING, THAT SIGNIFICANTLY DEPARTS FROM THE REQUIREMENTS OF LAW. SO, IT'S MY POSITION THAT --
SOMETIMES YOU DEPART FROM THE REQUIREMENTS OF LAW AND HAPPENS TO BE IN FAVOR OF THE DEFENDANT.
WELL --
WHY ISN'T GIVING, WHY DIDN'T IT ACTUALLY FAVOR THE DEFENDANT TO GIVE THE JURY THESE INSTRUCTIONS TO, TO GIVE ITEMIZED ACCOUNT?
AGAIN, AS A STARTING POINT I THINK WE HAVE TO LOOK WHAT THE COURT DID FIND IN STEELE BUT, TO GET DEEPER INTO THAT, I THINK WE NEED TO LOOK AT WHY THE COURT IN STEELE DETERMINED IT TO BE AN ESSENTIAL DEPARTURE FROM THE REQUIREMENTS OF LAW.Â --
IT GOES BEYOND WHAT THE STATUTE SAYS.
THAT IS BECAUSE OF THE FACT THAT UNDER OUR CURRENT LAW, THE TRIAL COURTS ARE REQUIRED TO MAKE THE ULTIMATE SENTENCING DECISION. TRIAL COURTS ARE REQUIRED TO MAKE AN INDEPENDENT DECISION.
BUT STEELE ALSO SAID THAT BY GIVING THE JURY SUCH INSTRUCTIONS, YOU'RE IMPOSING ANOTHER BURDEN ON THE STATE THAT THE STATUTE DOESN'T REQUIRE. AND THAT BURDEN ON THE STATE ENURES TO THE DEFENDANT'S BENEFIT.
IN PART THAT WAS WHAT THE COURT LOOKED AT IN STEELE. BUT WHAT YOU ALSO TALKED ABOUT AT A GREAT LENGTH WAS THE NECESSITY OF THE JUDGE MAINTAINING THAT INDEPENDENT DETERMINATION. AND, WHAT'S CRUCIAL HERE IS THAT, YOU KNOW THE BEDROCK OF OUR LAW, IS THAT WE ALL KNOW THAT TRIAL JUDGES ARE SUPPOSED TO GIVE A JURY RECOMMENDATION GREAT WEIGHT. SO, THE TRIAL COURTS WHEN THEY MAKE A DECISION OF THIS NATURE, KNOW WHAT THEY'RE SUPPOSED TO DO WITH THAT JURY VOTE. BUT, THERE IS ABSOLUTELY NOTHING THAT INSTRUCTS A JUDGE WHAT DO YOU DO, WITH A VOTE FROM JURORS IN THESE SPECIAL VERDICT FORMS?
DOESN'T THAT JUST GIVE THE ADDITIONAL INFORMATION AS TO THE STRENGTH OF THAT ANY PARTICULAR JURY MAY HAVE GIVEN THE WEIGHT IT MAY HAVE GIVEN, JUST AS ADDITIONAL INFORMATION WOULD BE IN ANY OTHER FACTOR? WHY WOULD THAT NOT BE THE PROPER ANALYSIS?
WELL I THINK THAT IT DOES GIVE THE JUDGE ADDITIONAL INFORMATION, ADDITIONAL INFORMATION WHICH Y'ALL HAVE SAID THEY SHOULDN'T HAVE. I DIDN'T WRITE THE STEELE DECISION. Y'ALL HAVE SAID THAT UNDER OUR SYSTEM OF LAW, THAT HAS BEEN UPHELD AND

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FOUND TO BE CONSTITUTIONAL BOTH AT THE STATE COURT LEVEL AND THE FEDERAL LEVEL IS PREMISED ON THE JUDGE MAKING AN INDEPENDENT DETERMINATION THAT IS NOT IN ANY WAY INFLUENCED BY IMPROPER INFORMATION. AND PART OF OUR JURISPRUDENCE NOT TO REQUIRE THE JURY TO MAKE A SPECIFIC --

DID THE STEELE CASE REALLY SAY THAT IS IMPROPER INFORMATION AND APPROACH IT FROM THAT PERSPECTIVE? OR DID STEELE APPROACH IT FROM WHAT IS REQUIRED FROM THE STATUTE AND DEPARTING FROM THE STATUTE AND THAT TYPE? HOW, SHARE WITH US YOUR THOUGHTS WITH REGARD TO HOW THAT PLAYS OUT.

SURE, ACTUALLY I WILL SHARE MY THOUGHTS WITH YOU AS TO WHAT STEELE EXACTLY SAYS IS THAT OUR CURRENT SYSTEM FOSTERS INDEPENDENCE BECAUSE THE TRIAL COURT ALONE MUST, MUST, MAKE DETAILED FINDINGS ABOUT THE EXISTENCE AND WEIGHT OF AGGRAVATING CIRCUMSTANCES. IT HAS NO JURY FINDINGS ON WHICH TO RELY. INDIVIDUAL JURY FINDINGS ON AGGRAVATING FACTORS WOULD CONTRADICT THIS SETTLED PRACTICE.

THAT WAS, WASN'T THAT CASE ABOUT REQUIRING THEM, RATHER THAN PERMITTING THEM? OR IS THAT JUST A CIRCUMSTANCE WHERE IT WAS PERMITTED?

THIS IS, DOCTOR.

WHERE THEY SHOULD BE MANDATORY? WASN'T THAT THE DISCUSSION, ABOUT MANDATORY IN STEELE?

I AM NOT CLEAR ON YOUR QUESTION, YOUR HONOR?

I'M TRYING TO DETERMINE WHAT WAS DECIDED IN STEELE WHETHER IT SHOULD BE MANDATORY THAT BE GIVEN OR WAS IT PER MISSIVE? AND A WAS THAT DISCUSSION IN THAT LIGHT WERE THEY MANDATORY FOR JUDGES TO DO THAT OR WHETHER THE JUDGE HAD THE ABILITY TO DO THAT ON A DISCRETIONARY KIND OF BASIS?

I MEAN IN STEELE WHAT THE COURT DID ADDRESS COULD THE COURT, YOU KNOW, ONE OF THE ISSUES YOU DECIDED COULD THE COURT REQUIRE THE STATE TO DISCLOSE AGGRAVATING FACTORS.

RIGHT, RIGHT.

YOU DECIDED THAT WAS PERMISSIVE.

MANDATORY.

THE COURT COULD DO THAT IF THEY WANTED TO, IF IT WASN'T ESSENTIAL REQUIREMENT OF LAW.

LET'S, I STILL THINK, I WAS RIGHT IN STEELE BUT I WAS IN THE MAJORITY. I THINK IT ENHANCES FACT-FINDING. HERE WHAT YOU'RE SAYING SOMEHOW BY DOING IT THE JUDGE WASN'T ABLE TO EXERCISE HIS OWN INDEPENDENT WEIGHING. AND I'D LIKE TO GO SPECIFICALLY AS TO THE MITIGATION. THE JURY ACTUALLY, WE WEREN'T EVEN TALKING ABOUT THE JURY FINDING MITIGATORS. ACTUALLY ONLY THREE OF THE MEMBERS OF JURY FOUND SOME ASPECT OF THE DEFENDANT'S CHARACTER, RECORD OR BACKGROUND TO BE MITIGATING. 12 MEMBERS OF THE JURY DID NOT FIND SOME OTHER CIRCUMSTANCES. YET THE TRIAL JUDGE, AN EXPERIENCED, VERY EXPERIENCED TRIAL JUDGE GOES THROUGH IN, FOR PAGES, ON EACH MITIGATING CIRCUMSTANCE PRESENTED AND GIVES SOME SOME WEIGHT, LITTLE WEIGHT AT NO TIME BUS DOES HE SAY I'M GOING TO GIVE SOMETHING NO WEIGHT BECAUSE THE JURY DIDN'T FIND IT. HOW DO YOU GET AROUND THAT? SO NOW WE HAVE REALLY WE KNOW WHY THE JURY REACHED ITS VERDICT BECAUSE WE SEE HOW THEY VOTED AND IT MAKES SENSE THAT THEY VOTED FOR THE DEATH PENALTY BECAUSE THEY DIDN'T FIND ANYTHING MITIGATING. BUT THE JUDGE INSTEAD OF SAYING I'M GOING TO GIVE THAT GREAT WEIGHT, WHAT THE JURY FOUND ON MITIGATION, GOES IN AND WEIGHS THINGS, SOME, LITTLE, YOU KNOW. AND SO HOW DOES, I DON'T UNDERSTAND HOW USING IT UNDERMINED THE JUDGE'S, USING SPECIAL VERDICT FORM, UNDERMINED IN THIS CASE, THE JUDGE'S INDEPENDENT RESPONSIBILITY TO ALSO LOOK AT THE AGGRAVATORS AND MITIGATORS?.

I THINK THE FIRST THING WE HAVE TO LOOK AT THIS TRIAL JUDGE'S MINDSET. THE REASON THAT HE INSISTED ON GIVING SPECIAL VERDICT FORMS OVER THE OBJECTION OF NOT ONLY THE DEFENSE BUT ALSO THE STATE WAS THAT HE DIDN'T LIKE FISHING IN THE DARK.

WELL, AND, IF YOU HEAR, LISTEN TO JUDGE EATON AND ALL THE JUDGES THAT ARE EXPERIENCED, THAT'S WHY THEY URGE THIS COURT TO ADOPT THAT BECAUSE THEY DON'T LIKE

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FISHING IN THE DARK. BUT ON THE OTHER HAND AT THAT TIME AND BEFORE STEELE MANY JUDGES FELT THAT RING WAS GOING TO REQUIRE IT. SO THEY THOUGHT THEY WOULD GET AHEAD THE CURVE. SO, I THINK THAT, AND I REMEMBER JUDGE EATON SITTING UP, STANDING UP HERE SAYING THAT'S EXACTLY WHY WE SHOULD, YOU KNOW, GIVE AT LEAST THE JUDGE'S DISCRETION TO USE IT, IF NOT MANDATE IT BECAUSE IT HELPS, AND HE SAID, HE USES IT ALL THE TIME. IT HELPS HIM IN HIS INDEPENDENT FACT-FINDING. SO LET'SÂ --
I THINK THERE IS DISTINCTION BETWEEN THE PERCEPTION THAT THERE IS AN NECESSITY FOR FINDING UNDER RING, WHICH WOULD, COMPLY WITH, YOU KNOW, CONSTITUTIONAL REASONING VERSUS A JUDGE SAYING, THESE ARE, THIS IS SOMETHING I'M GOING TO CONSIDER, NOT BECAUSE OF IT MEETS CONSTITUTIONAL MUSTER BUT BECAUSE I DON'T WANT TO BE FISHING IN THE DARK. SO NOW WHEN HE FISH -- HE WASN'T FISHING IN THE DARK BUT THEY FOUND NO MITIGATION. THE JUDGE FINDS MITIGATION. HOW DID THAT, HOW DOES THAT HARM THE DEFENDANT?
THAT TIES INTO ISSUE NUMBER ONE IN THIS CASE IS THAT DESPITE UNCONTROVERTED EVIDENCE THIS JUDGE REJECTED MITIGATION. AND I THINK A LOGICAL CONCLUSION OF THAT IS, IS THAT, THE JURY DID NOT FIND MANY OF THESE THINGS TO BE MITIGATING. SO I'M NOT GOING TO FIND IT MITIGATING EITHER. SO, BUT CERTAINLY UNDER CAMPBELL HE HAD TO GO THROUGH AND ADDRESS EVERYTHING THAT WAS RAISED IN THE SENTENCING ORDER OR, PARDON ME, REQUESTED BY THE DEFENSE AS TO, NONSTATUTORY MITIGATING FACTORS. BUT, HE REJECTED NONSTATUTORY MITIGATING FACTORS THAT WERE SUPPORTED BY THE EVIDENCE AFTER HAVING RECEIVED FROM A JURY, ESSENTIALLY THEM SAYING, YOU KNOW, A LOT OF THOSE FOLKS DIDN'T FIND NONDOCTOR.
THAT IS SEPARATE POINT OF ERROR. WHETHER THERE SHOULD HAVE BEEN FINDING OF MITIGATORS. THAT YOU COULD ARGUE WHETHER THE JURY FOUND IT OR NOT. WHICH ONE, WHICH ONES ARE YOU TALKING ABOUT HE HAD TO FIND BASED ON UNCONTROVERTED EVIDENCE, WHICH MITIGATORS?
SPECIFICALLY, THE JURY AND ALSO, NOT JUST THE NONSTATUTORY BUT ALSO THE STATUTORY MITIGATING FACTOR OF AGE. SPECIFICALLY, THE JURY REJECTED AGE AS --
HOW OLD WAS HE?
21 AT TIME OF THE OFFENSE. THE EVIDENCE HOWEVER, ALSO SHOWED THAT HE DID NOT FUNCTION AT HIS CHRONOLOGICAL AGE. THAT HE HAD BEEN IN SPECIAL ED CLASSES FROM ABOUT ONE YEAR AFTER ENTERING SCHOOL UNTIL HE LEFT SCHOOL AT THE AGE OF 18. THAT HE HAD AN IQ IN THE RANGE OF 86 OR 87. THAT HE HAD MILD ORGANIC IMPAIRMENT. THAT HE WAS AT LEAST FIVE GRADES ACADEMICALLY BEHIND HIS CHRONOLOGICAL AGE.
I WANT TO MAKE SURE THAT THESE FACTS THAT YOU'RE TELLING RUSS TAKEN IN LIGHT MOST FAVORABLE TO THE JUDGE'S DETERMINATION BECAUSE THERE MAY HAVE BEEN ALL THIS EVIDENCE INTRODUCED IF THERE WAS EVIDENCE INTRODUCED TO THE CONTRARY, THEN THAT'S WHAT WE HAVE TO TAKE AS THE FACTS. SO I WANT TO MAKE SURE WHEN YOU'RE TELLING US ALL THIS, THIS WAS UNCONTRADICTED EVIDENCE YOU'RE TALKING ABOUT?
YES, SIR.
HOW ABOUT WAS THE, WERE THE RECORDS FROM NEW YORK ADMITTED INTO EVIDENCE HERE?
YES, SIR.
WELL, THOSE SHOW WHEN HE WAS 13 THAT HIS IQ WAS 97. WAS IN THE AVERAGE RANGE. THAT HE GOT ALONG FAIRLY WELL AND WAS A PRETTY BRIGHT YOUNG MAN AT LEAST IN THE AVERAGE. IS THAT NOT IN THIS RECORD?
I MEAN THOSE RECORDS WERE VOLUMINOUS. I DO NOT RECALL.
THE QUESTION IS, YOU'RE STANDING HERE SAYING IT'S UNCONTRADICTED. THE ISSUE AS JUSTICE CANTERO IS ASKING, IS THAT WE NEED TO HAVE WHAT ALL THE FACTS ARE NOT JUST FROM ONE SIDE. AND THERE IS NO EVIDENCE OF REALLY, WHAT HE WAS DOING FROM 18 TO 21 IN EVIDENCE, WAS THERE.
I WILL ACCEPT IF IT'S IN THERE. I DO NOT RECALL SIGHING THAT IN THERE. I DO RECALL SEEING TWO SEPARATE IQ SCORES. ONE AT ONE SAME, 86. ONE AT ONE TIME, 87. MORE SPECIFICALLY IT'S NOT LIKE THE TRIAL COURT IN HE REJECTING THIS MITIGATING FACTOR SAID, WELL HERE'S EVIDENCE OF IQ OF 86 OR 87 BUT I'M REJECTING BECAUSE OF IQ OF 97 IS MORE CREDITABLE.
IS HE REQUIRED TO DO THAT LIKE A WORKERS' COMPENSATION ORDER? THE JUDGE FOUND

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THERE WAS EVIDENCE THAT CHRONOLOGICAL, THAT THE, AGE WAS NOT, NOT A FACTOR. AND IS HE REQUIRED, TO SET FORTH THE PRECISE EVIDENCE THAT HE RELIED ON? MAYBE SO. IS THAT WHAT YOU'RE SAYING?
WELL IN THIS INSTANCE I THINK PART OF THE PROBLEM THAT WE'RE DEALING WITH, IS THIS JUDGE WAS, MISTAKENLY RELYING ON EVIDENCE THAT WAS PRESENTED IN A 2002 RESENTENCING HEARING, NOT WHAT WAS --
HE DID THAT WITH REGARD, JUST STAY ON THIS ONE, WHAT HE SAYS IS THERE IS NO EVIDENCE THE DEFENDANT WAS NOT MENTALLY AND EMOTIONALLY MATURE. NOW, I DON'T KNOW OF ANY CASE THAT WOULD SAY SOMEONE THAT HAS AN IQ OF 85, 90, THAT THAT, WHETHER -- AND 50 YEARS OLD AND HAVE THAT IQ, THAT YOU WOULD FIND THAT BECAUSE OF THAT IQ, SOMEHOW THAT TRANS PLATES -- TRANSLATES INTO THE AGE MITIGATOR. DO YOU KNOW OF ANY CASE THAT SAYS THAT.
I'M NOT SAYING IT'S THE IQ ALONE, BEFORE I MENTIONED IQ I TALKED ABOUT THE FACT THAT IN THE RECORDS IT WAS ESTABLISHED THAT HE WAS FIVE YEARS BEHIND ACADEMICALLY, THAT HE WAS DETERMINED TO BE FOUR YEARS BEHIND ON A SOCIAL/EMOTIONAL LEVEL. HE WAS FOUND TO BE EMOTIONIALLY IMMATURE IN THOSE RECORDS AND EMOTIONALLY DISTURBED AND DISPLAYED DELAYED SOCIAL DEVELOPMENT.
IS THERE ALSO EVIDENCE THAT HE IS SANTA SOCIAL PERSONALITY AND THOSE RECORDS THAT CAME IN.
I WOULD SAY THAT IS ONE CONCLUSION THAT YOU --
AGAIN THAT IS -- YOU ARE ONLY GIVING THUS --
SINCE WE ARE DEALING WITH PRE-18 IT WOULD BE CONDUCT PERSONALITY DISORDER NOT ANTI-SOCIAL PERSONALITY AND THERE WAS NEVER A DIAGNOSIS OF THAT BUT YES. THERE IS EVIDENCE -- LET ME PUT IT THE WAY, FACTS THAT YOU COULD POINT TO THAT HAD THERE BEEN COMPETENT MENTAL HEALTH EVIDENCE WOULD SUPPORT AN ARGUMENT THAT PERHAPS THERE IS A CONDUCT PERSONALITY DISORDER. BUT IT DOESN'T NEGATE THE FACT HE'S BEHIND FIVE YEARS ACADEMICALLY --
IS THAT WHAT THE RECORDS INDICATE FROM NEW YORK, WHEN HE WAS 13 OR 14, HE WAS FIVE GRADES BEHIND.
YES, SIR.
YOU HAVE TOUCHED ON IT IN PASSING ALMOST, THAT IT DOES APPEAR THAT THE TRIAL COURT HERE REFERRED TO CIRCUMSTANCES OUTSIDE OF THE RECORD OF THIS AND -- YOU TOUCH ON WHAT THOSE WERE AND WHETHER OR NOT THEY WERE HARMFUL.
WELL, FIRST OF ALL, THIS -- YOU KNOW, THIS WHOLE CONVERSATION WE ARE HAVING NOW CAME UP IN THE CONTEXT OF ARGUING WHETHER STEELE REQUIRES HARMFUL ERROR AND I THINK, YOU KNOW, CERTAINLY MANY OF THESE THINGS I'M TALKING ABOUT --
NOT TALKING ABOUT STEELE, I'M TALK ABOUT THE TRIAL JUDGE ALAUDING TO FACT AND CIRCUMSTANCES IN THE SENTENCING ORDER THAT AREN'T IN THE RECORD OF THIS SENTENCING. THEY MAY HAVE BEEN IN ANOTHER RECORD. AT A PRE--- PRIOR SENTENCE THING OR SOMETHING BUT NOT BEFORE THE JUDGE AT THIS TIME. AS -- IS ONE OF YOUR CLAIMS HERE THAT HIS FINDINGS ARE NOT ALL SUPPORTED, BECAUSE THEY MAY HAVE OCCURRED AT ANOTHER PROCEEDINGS, THAT HE PRESIDED BEFORE BUT NOT IN THIS ONE.
IN PART, BUT I UNDERSTAND, YOU KNOW -- ABOUT STEELE WHEN I'M ASKED TO TRY AND SPECULATE HOW A JURY'S STATEMENT THEY FIND NO MITIGATION WAS HARMFUL, WHERE A JUDGE REJECTS MITIGATION, MISTAKENLY RELIES ON TESTIMONY FROM A PREVIOUS TRIAL -- WHAT IS THE JUSTICE IS ASKING.
I THINK THAT IS EVIDENCE NOT ONLY, YOU KNOW, ERROR ON THE PART OF THE TRIAL JUDGE IN WEIGHING THAT MITIGATING FACTOR BUT ALSO IN TERMS OF HOW DID THAT YOU KNOW -- BOUNCING AROUND IN HIS HEAD THE JURY --
COULD YOU ANSWER JUSTICE AM STEAD'S DIRECT QUESTION, PLEASE, SIR.
THE SHORT ANSWER, NOT JUST ON THAT ONE PARTICULAR MITIGATING FACTOR AND ISSUE NUMBER WENT I WENT THROUGH A NUMBER OF MITIGATING FACTORS I FEEL THE JUDGE DID NOT PROPERLY CONSIDER IT. IN PART HIS FAILURE TO PROPERLY CONSIDER THE MITIGATING FACTORS WAS BASED ON HIS RELIANCE OF 2002 TESTIMONY VERSUS 2005 --

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WHAT IS -- THAT'S WHAT HE IS ASKING.
--
SAYING THE JUDGE HAD SAID WELL, FURTHERMORE, HE WAS A BOY SCOUT AND I FIND THAT MITT DPAINGT. BUT, THERE IS NOTHING IN THE RECORD THAT HE WAS A BOY SCOUT BUT OF COURSE YOU WILL NOT ARGUE THAT THAT WAS ERROR BECAUSE THAT IS, YOU KNOW, IN FAVOR OF YOUR CLIENT. SO, PUT THIS IN CONTEXT FOR US HERE. WHAT KINDS OF FINDINGS THAT AREN'T SUPPORTED BY THIS RECORD DID THE JUDGER RONIOUSLY, YOU KNOW, SET OUT THAT WERE HARMFUL TO YOUR CLIENT.
WELL, PRIMARILY IT WAS RELATED TO FIRST OF ALL, THE MOTHER'S DRUG ADDICTION AND HISTORY OF DRUG ADDICTION. IT WAS RELATED TO --
LET'S ANALYZE IT AS WE GO THROUGH, BECAUSE I MEAN, ITS OF CONCERN TO THE COURT, THIS HAPPENED. AND IT WAS IN THE FIRST TIME AROUND THERE IS A QUESTION WITH REGARD TO ADDICTION OR NOT ADDICTED AND THEN, THE SECOND TIME AROUND THAT -- THE ADDICTION FACTOR. IS THAT A FAIR STATEMENT OF THE -- DIFFERENCE.
I THINK 200T WE COULD SAFELY CHARACTERIZE THAT THE MOTHER TALKED ABOUT DRUG USE BUT CERTAINLY WAS NOT DEVELOPED TO THE EXTENT THAT IT WAS IN THE 2005 TRIAL.
BUT THEY WENT INTO THE DRUG USAGE.
CORRECT.
A QUESTION OF EXTENT AND THE WEIGHT THEN?
RIGHT.
OKAY.
AND ESSENTIALLY THE REASON FOR -- [INAUDIBLE] TESTIMONY WAS SIMPLY THERE WAS TESTIMONY THAT SHE DID DRUGS, NOT REALLY ANYTHING ESTABLISHED AS TO HOW IT TIED INTO THE DEVELOPMENT OF --
THAT IS ANOTHER POINT THE JUDGE MADE, NOW, IS THAT AN INCORRECT -- WITHOUT SUPPORT, THAT THERE WAS EVIDENCE, DIRECT EVIDENCE OF MOTHER DID DRUGS AND THEREFORE, THIS?
YES. I BELIEVE THERE WAS. AND, YOU KNOW, ESSENTIALLY TO RUN THROUGH THAT TESTIMONY, SHE TESTIFIED SHE WAS ADDICTED TO DRUGS AT BIRTH. AS A RESULT OF HER ADDICTION, THAT SHE NEGLECTED AN SANCTION ABANDONED HER CHILD, THERE WAS --
CAME IN THE SECOND TIME, DID IT NOT, THAT -- TRYING TO FEED THE CHILD AND DIDN'T WORK, THAT KIND OF THING.
YES, SIR, I'M GOING INTO THE THINGS THAT CAME OUT IN '05 THAT DID NOT COME OUT TO THIS EXTENT IN 2002. THINGS SUCH AS, HER LOSING CUSTODY BECAUSE OF THE DRUG ADDICTION. THE EXTENT OF HER RESIDENTIAL TREATMENT AND THE FACT SHE DIDN'T GET THE GET THE CHILD BACK UNTIL AGE 4 OR 5 AND RESUMED DRUG USE AFTER SHE GOT THE CHILD BACK AND ESSENTIALLY BECAUSE SHE WAS NOT PROPERLY CARING FOR THE CHILD, THE CHILD WAS INSTITUTIONALIZED.
THE INSTITUTIONALIZATION WAS THE DELINQUENCY, RIGHT, WHAT YOU ARE REFERRING TO.
ACTUALLY, HE WAS -- THE PLACEMENT WAS NOT BASED ON DELINQUENCY, IT WAS BASED ON MORE OF A -- BEING REMOVED FROM THE CARE OF THE MOTHER BECAUSE THE MOTHER COULDN'T TAKE CARE OF --
THAT WAS EARLY ON, WASN'T IT AND THEN THE MOTHER TOOK CARE AGAIN.
SHE RESUMED CARE BUT SHE BEGAN USING DRUGS AGAIN AND WAS WORKING AS A STRIPPER AND FREQUENTLY LEAVING THE AREA, LEAVING HIM IN THE CARE OF OTHER PEOPLE AND EVENTUALLY WAS PLACED INTO THE PLEASANTVILLE AND THESE OTHER INSTITUTION, NOT AS -- PURSUANT TO THE DELINQUENCY PROCESS BUT AS DEPENDENCY PROCESS.
DEPENDENCY PROCESS.
YES, SIR, AND SO CERTAINLY IN THOSE RECORDS --
AND HE WAS STEALING FROM HIS MOTHER, WHY THEY PUT HIM AWAY OR HAD HIM IN AN INSTITUTION.
WHICH WAS ESSENTIALLY ONLY WAY HE GOT ATTENTION FROM HIS MOTHER WAS IF HE STOLE SOMETHING BUT SHE'D TALK ABOUT HOW HE TRIED TO CLING ON HER, AND SHE'D SMACK HIM, NEVER SHOWED HIM LOVE, THAT KIND OF THING. BUT IN THE RECORD, IT SHOWS THAT, YOU KNOW, THEY SPECIFICALLY STATE THAT, YOU KNOW, THIS SITUATION WAS -- WITH HIS MOTHER

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CONTRIBUTED TO HIS PSYCHOLOGICAL AND EMOTIONAL PROBLEMS AND SO, CERTAINLY WHAT WAS PRESENTED IN THE 2005 TRIAL WAS MUCH MORE EXTENSIVE, THAN WHAT WAS PRESENTED IN THE 2002 TRIAL. AND IN A CASE WHERE I FEEL VERY STRONGLY PURR INFORMATIONATELY AT THIS POINT IS AN -- PROPORTIONATELY IS AN ISSUE, I KNOW YOU LOOK AT THEM, BUT WARRANTS A PROPORTIONALITY FINDING WHEN THE TRIAL COURT HAS NOT PROPERLY LOOKED AT THE MITIGATING FACTORS IN A SITUATION WHERE THERE WAS SIGNIFICANT MITIGATION PRESENTED AS TO THE AGGRAVATING FACTORS WHERE THERE WAS, YOU KNOW, SIGNIFICANT MITIGATION PRESENTED IN THIS CASE, INCLUDING THE FACT THAT MR. LEBRON WAS FOND BY A JURY NOT TO BE THE TRIGGER MAN, I CERTAINLY THINK PURR INFORMATION -- PROPORTIONALITY IS SOMETHING THAT WOULD APPLY IN THIS DAYS AND WHAT REALLY TAINTED THE PROCESS WAS THE JUDGE TRYING TO CONFORM HIS SENTENCING ORDER IN PART TO7:XIBF)YYY]2\YY8U THE JURY RECOMMENDED. AND I'M RUNNING OUT OF TIME.
AND I THINK WE HAVE A BETTER UNDERSTANDING OF YOUR ANALYSIS NOW, WITH REGARD TO THE CONNECTION BETWEEN STEELE AND THE ULTIMATE ORDER.
I MEAN, -- YOU ARTICULATED --
THEY INTERTWINE NERM OF THE FINDINGS THE JUDGE MADE. THANK YOU VERY MUCH.
.
MAY IT PLEASE THIS COURT, I'M BARBARA DAVIS, I REPRESENT THE STATE OF FLORIDA. FIRST ON THE STEELE ISSUE I WOULD LIKE TO CORRECT A MISSTATEMENT IN MY BRIEF. MR. NORGARD OBJECTED TO THE SPECIAL FINDINGS AS FAR AS THE AGGRAVATING CIRCUMSTANCES,. THERE WAS NO OBJECTING AS TO THE JURY FINDINGS ON THE MITIGATING CIRCUMSTANCES. AND THAT IS AT PAGE 556 IN THE RECORD. THE AGGRAVATING CIRCUMSTANCES WERE ATTACHMENT A AND AS TO ATTACHMENT B THERE WAS ONE INSERT THAT HE HAD ASKED THE JUDGE TO PUT THE WORD "CRIME" INTO THOSE JURY FINDINGS AND THE JUDGE DID THAT. THE JUDGE GRANTED THOSE MOTIONS PRETRIAL AND WHEN THE STATE OBJECTED TO THE FINDINGS ON AGGRAVATING CIRCUMSTANCES, MR. NORGARD AGREED WITH THAT. BUT THERE HAS BEEN NO SHOWING OF PREJUDICE. THIS CASE WAS PRE-STEELE AND THIS CASE IS JUST LIKE HUGINS WHERE THEY DID NOT SHOW PREJUDICE, WHEN IT COMES TO THE AGGRAVATING CIRCUMSTANCES THOSE WERE JURY VERDICTS, PRIOR VIOLENT FELONIES AND DURING A ROBBERY AND THOSE WERE CLEARLY ESTABLISHED AND AS FAR AS THE TRIAL JUDGE REJECTING THE MITIGATION, HE HAD A COMPREHENSIVE ORDER, I WOULD NOTE THAT IN LEBRON-ONE, IT WAS THE SAME MITIGATION THAT WAS PRESENTED AND HE DEALT -- AND HE DEALT WITH BASICALLY EVERYTHING EXCEPT THREE WHICH IN LEBRON-1, SAID THAT RACE AND URBANIZATION AND NO EVIDENCE OF CHILDHOOD ACCIDENTS, THOSE WERE NOT PRESENTED IN THE FELL LAN PHASE BUT WOULD BE PERSUASIVE THIS TRIAL JUDGE DID CONSIDER ABSOLUTELY EVERY, SINGLE MITIGATION.
THAT IS ARGUMENT -- THE ARGUMENT SEEMS TO BE TO THE EXTENT THAT BECAUSE THE TRIAL JUDGE REACHED BACK TO PULL SOME INFORMATION IN THIS FINAL JUDGMENT, FINAL ORDER, FROM A 2002 PROCEEDING, THAT THAT TAINTS THIS TO THE EXTENT IT CANNOT STAND BECAUSE WHAT IT DOES IS THAT YOU HAVE USED FACTORS TO LETH LESSEN THE MITIGATION AND THAT TIES UP PROPORTIONALITY. THE -- CAN YOU PLEASE ADDRESS IT? DO WE HAVE CASE LAW THAT TALKS AND -- INTERNSHIPS OF THAT.
LET ME FIRST SAY THE ONE INSTANCE HE SITES THAT INURES TO HIS BENEFIT BECAUSE IN THE 2002 PENALTY PHASE THEY PRESENTED EVIDENCE THAT MR. LEBRON WAS GOOD WITH CHILDREN, AND THE TRIAL JUDGE SAID -- THIS IS IN THE RECORD AT 272, UNDER THE INTERPERSONAL, NUMBER 4, HE SAID THAT DURING THE CURRENTS PROCEEDING THERE WAS NO EVIDENCE PRESENTED HE WAS GOOD WITH SOME CHILDREN BUT SOME EVIDENCE THAT HE WAS GOOD WITH CHILDREN WAS PRESENT AT THE PREVIOUS PROCEEDING. THE COURT FIND BEING GOOD WITH CHILDREN IS SOMEWHAT OF A MITIGATING FACTOR AND GIVES IT LITTLE WEIGHT.
BUT AGAIN HE'S GOING BALKING TO -- THERE ARE SOME WITH REGARD TO THE EXTENT OF THE DRUG USE THAT APPARENTLY THERE ARE DIFFERENCES AND WHERE THE QUESTION GOES.
SO THAT WOULD INURE TO HIS BENEFIT AND THE OTHER ONE THAT HE IS REFERRING TO IS -- [INAUDIBLE] LET ME REFER YOU TO THE PAGES ON THAT.
WE THAT HE HAVE PAGES. WE NEED KNOW, HOW THIS COURT SHOULD ADDRESS CIRCUMSTANCES WHERE A TRIAL JUDGE CLEARLY GOES BACK AND MAKES REFERENCE TO AN EARLIER PENALTY

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PHASE PROCEEDING AND WE KNOW IT IS A CLEAN STATE, DENOVO AND THAT'S THE ISSUE, NOT HOW IT INURES TO HIS BENEFIT.
OKAY. THAT IS PART OF THE ISSUE, BECAUSE IF THE JUDGE DID COMMIT ERROR IT IS COMPLETELY HARMLESS.
HARMLESS. OKAY.
AND THE JUDGE CITED THE 2002 TESTIMONY BUT THE 2005 TESTIMONY WOULD ALMOST BE EXACTLY THE SAME. THIS ONLY DIFFERENCE HE IS SAYING IS, HE SAYS THAT SHE TESTIFIED NOW THAT SHE WAS ADDICTED TO DRUGS. THAT IS NOT IN THE RECORD. SHE TESTIFIED THAT WHEN SHE WAS PREGNANT SHE WAS DOING DRUGS. AND SHE MENTIONS THE DRUGS. THAT IS PAGE 364. SHE LATER ON SAYS AFTER SHE WAS IN DETOX 28 MONTHS AND DID 12 MONTHS OF AFTER CARE AND THE JURY KNEW THAT, OKAY? SO WHATEVER YOU WANT TO CALL IT, DOING DRUGS OR I'M A DRUG ADD DICK, WAS BEFORE THE JURY.
HEAVY USE OF DRUGS WAS BEFORE THE JURY IN 2005.
OH, YEAH. OH, SHE'S --
LET ME ASK ANOTHER QUESTION WITH REGARD TO THE AGGRAVATION, AS I READ THE ORDER THERE IS NO WEIGHT ATTRIBUTED TO EITHER OF THING A VARIETIES FOUND. AND THERE IS A STATEMENT IN THE LAST SENTENCE IN THE JUDGMENT WHERE THE JUDGE SAYS THAT I FIND THAT THE AGGRAVATION OUT WAYS THE MITIGATION. DO WE HAVE CASE LAW THAT ADDRESSES WHETHER THERE MUST BE WEIGHT GIVEN, SPECIFIC WEIGHT GIVEN WITHIN THAT JUDGMENT, TALKING ABOUT THE FORM NOW, FINDING ON THE AGGRAVATION, WITHOUT THIS COURT GETTING INTO LOOKING AT WHAT THAT AGGRAVATION OR THOSE AGGRAVATING FACTORS WERE.
AND JUDGE, HE DID NOT GIVE WEIGHT TO THE -- EACH SEPARATE ONE BUT FOUND THAT THESING A VARIETIES WHICH CAN BE CONSIDERED ALMOST TOGETHER BECAUSE THEY ARE ALL JURY VERDICTS AND ARE ABSOLUTELY ESTABLISHED AND THEY --
I AM NOT SUGGESTING THEY ARE NOT ESTABLISH, DO THEY HAVE TO HAVE WEIGHT A-- AFFORDED TO THEM AS WE HAVE A DISCUSSION OF PROPORTIONALITY IN THIS WEIGHING OF THE FACTORS.
YES, SIR, THEY SHOULD BE AFFORDED WEIGHT BUT IN THIS CASE IT DOESN'T MAKE ANY DIFFERENCE, BOTHING A VARIETIES ARE OVERWHELMINGLY ESTABLISHED.
WE CAN GO BEHIND THAT AND LOOK OURSELVES TO WHAT THOSE WERE. AND HOW WEIGHTY THOSE MAY BE.
WELL, YOUR HONOR HE OBVIOUSLY GAVE THEM GREAT WEIGHT BECAUSE HE SAID THEY OUT WEIGHED --
I DON'T KNOW, HE DIDN'T SAY, HE SAID THEY OUT WEIGH BUT IT COMES DOWN, TO YOU SEE THIS PROBLEM WE COULD GET INTO IF WE ISSUE AN OPINION TO ENCOURAGE JUDGES NOT TO GIVE WEIGHT TO SOMETHING AND HOW IT MAY COMPLICATE THE PROCESS.
YES, SIR AND I WOULD NOT ENCOURAGE THIS BUT AS YOU DID IN PRESTON, YOU CAN ADVISE THE TRIAL JUDGE AS TO THE PROPER PROCEDURE, HOWEVER IN THIS CASE IT DOES NOT MAKE A DIFFERENCE.
CAN I ASK A QUESTION WITH REGARD TO JUST THE GENERAL PROCEDURES ON THESE? WE DON'T SEEM TO EVER SEE ANY POST-JUDGMENT ACTIVITY IN THE TRIAL COURT BY WAY OF PETITIONS FOR REHEARING OR ANYTHING LIKE THAT IN THESE CASES. IS THERE SUCH A PROCEDURE AVAILABLE?
FOR REHEARING? YES, SIR.
AND SO IN THIS CASE, ALL OF THESE THINGS THAT WE'RE TALK ABOUT, THE USE OF INAPPROPRIATE FACTORS AND THOSE KIND OF THINGS, COULD HAVE BEEN CORRECTED BEFORE IT EVEN GETS HERE?
IF IT HAD BEEN PRESENTED TO THE JUDGE AND THE JUDGE HAD LOOKED AT THAT? IS THAT A CORRECT STATEMENT OR INCORRECT?
I THINK THAT THE -- THAT IS A CORRECT STATEMENT.
THERE IS A REASON IN THIS TYPE OF LITIGATION IT'S NOT USED?
ONLY THING IS, MR. NORGARD MAY HAVE MOVED FOR REHEARING SO I DON'T WANT TO -- [INAUDIBLE].

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I UNDERSTAND.
BUT I DO HAVE THE RECORD HERE AND COULD LOOK AT THAT QUICKLY.
BUT THERE.
THAT CAN BE DONE, AND THE SAME THINGS CAN BE PRESENTED TIE JUDGE AND SAY, LOOK, JUDGE, YOU DID NOT GIVE WEIGHT TO THESE FACTORS. AND THE JUDGE COULD HAVE RECONSIDERED THAT.
YES, SIR, ABSOLUTELY.
AND ARE NOT SURE WHETHER THAT WAS DONE AND THE TRIAL JUDGE REFUSED IN A RELIEF?
YES, SIR AND I THINK MR. NORGARD WOULD KNOW WHETHER HE MOVED FOR REHEARING.
MS. DAVIS ON THAT, I DIDN'T WHEN WE EXTENDED 3800-B WE EXPLICITLY EXCLUDED DEATH CASES WHICH DOES NOT MEAN THAT SOMEONE STILL CAN MOVE FOR REHEARING, CORRECT.
AND MY UNDERSTANDING IS -- [INAUDIBLE] CORRECT SENTENCING ERRORS, SO --
THAT'S I THINK WHY WE PROBABLY DIDN'T DO THAT. I WOULD LIKE TO ASK JUST ONE -- CLARIFYING QUESTION ABOUT THE MITIGATION AND HIS CHILDHOOD BECAUSE HERE HE IS, 20, 21 AT THE TIME, SO CHILDHOOD MAY BE MORE MEANINGFUL THAN IF HE WAS 40 OR 50. HE WAS DOVEATELY IN FOSTER CARE UNTIL THE AGE OF 4 OR 5, IS THAT CORRECT.
YES.
ALL RIGHT. NOW THEN HE WAS WITH HIS MOTHER AND THAT'S WHEN -- AT THAT POINT WHEN HE GOES BACK WITH THE -- HIS MOTHER, IS SHE WORK AS A DANCER AND STRIPPER AND HAS WHAT IS DESCRIBED AS A PROMISCUOUS LIFESTYLE?
SHE EVOLVED FROM A DANCER TO A TOPLESS DANCER TO A STRIPPER. AND IF I COULD DIRECT YOU TO PAGE 4.
EVOLUTION? THAT WOULD SATISFY GETTING BETTER AND BETTER. I MEAN, THAT SOUNDS LIKE IT IS GETTING, FOR THE CHILD WORSE AND WORSE.
WELL, SHE IS NOT -- MAKE A LOT OF MONEY WITH STRIP CLUBS, SO IN THAT --
I DON'T THINK -- I MEAN -- WHAT I WANT TO KNOW IS, I ASKED YOU WAS WHEN DURING -- WHEN HE GOES BACK TO LIVE WITH HIS MOTHER, WAS THAT THEN THE PERIOD OF TIME THAT SHE STARTED TO ENGAGE IN STRIPPING AND PROMISCUOUS LIFESTYLE.
YES.
ALL RIGHT.
WELL -- WHEN YOU SAY PROMISCUOUS LIFESTYLE HE WALKED IN ON HER ONE TIME WITH A BOYFRIEND AND FOUND HER VIDEOS. BUT, THAT WAS OLDER. AND LET ME DIRECT YOU TO PAGE 404, WHERE SHE SAYS I WAS NOT DOING DRUGS LIKE I WAS INMY YOUTH DURING THIS TIME. I WOULD DRINK AND OCCASIONALLY SMOKE MARIJUANA. SO THAT IS WHAT THE EVIDENCE -- WHAT HAPPENS WHEN HE THEN IN HIS EARLY TEENAGE YEARS GOES TO HIS -- NOW INSTITUTIONALIZED, ONE OF THE PLACES IS MT. PLEASANT COLLEGE. IS THAT THROUGH THE DEPENDENCY COURT OR THE DELINQUENCY COURT.
NOT DEPENDENCY OR DELINQUENCY, THAT KIM MUCH LATER. WHEN HE WAS 17 OR 18.
THE MT. PLEASANT CAME AT 17 OR 18.
NO, MA'AM --
WHAT I'M ASKING IS, WHEN HE WENT BACK AFTER BEING IN FOSTER CARE, WAS HE EVER AGAIN PLACED WITHIN THE DEPENDENCY SYSTEM.
MUCH LATER.
CAN'T BE THAT MUCH -- ALL RIGHT. SO -- SOMEWHERE BEFORE AGE 18.
YES.
13 OR 14 HE WAS IN SOME LOCATION, CORRECT.
NO, BUT MOTHER PUT HIM IN A VERY NICE BOARDING SCHOOL. MOTHER -- WHEN HE STARTED ACTING OUT AND SHOWING OPPOSITIONAL DEFIANT DISORDER AND CONDUCT DISORDER IN SCHOOLS, SHE -- AND THE STATE EXHIBIT ONE OF THE SPENCER HEARING HAS A SUMMARY OF EVERYTHING MOTHER DID, PAGES 120 TO 157. IN 1987 WHEN HE WAS -- WOULD HAVE BEEN 13, ARC CHILLY 14, HE WAS BORN IN JULY, FEBRUARY OF 1987 WHEN HE WAS STILL 13 SHE TOOK HIM TO A PSYCHIATRIST, A THERAPIST, BECAUSE HE WAS STEALING FROM HER, TRUANT FROM SCHOOL, HE WAS SHOWING EARLY SIGNS OF CONDUCT DISORDER. SPEND AN EVALUATION WITH THAT PSYCHIATRIST. THE PSYCHIATRIST IS THE ONE THAT TOLD HER IT WOULD BE GOOD FOR HIM TO

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BE IN A BOARDING SCHOOL. SHE PUT HIM IN A VERY EXPENSIVE BOARDING SCHOOL.
I STILL -- WAS HE AGAIN IN THE DEPENDENCY SYSTEM.
NO.
EVER AGAIN UNTIL HE WAS 18.
THAT IS WHAT I ASKED, THAT'S THE QUESTION I ASKED. DID HE THEN GO AGAIN BEFORE HE BECAME A -- 18, WAS HE EVER AGAIN PLACED IN DEPENDENCY. THAT IS AN EASY -- MR. NORGARD SAID YES. YES. OR NO.
HE WAS NEVER DECLARED DEPENDENT. HE WAS PUT INTO THE NEW YORK EMERGENCY CHILDREN'S SERVICES IN 1990. WHICH HE WOULD HAVE BEEN 16 OR MAYBE 17. DEPENDING ON WHEN HIS BIRTHDAY WAS, BECAUSE HE WAS RUNNING AWOL FROM THE SCHOOL -- WONDERFUL BOARDING SCHOOL. DID ANY PSYCHOLOGIST OR PSYCHIATRIST TESTIFY THAT WHEN A CHILD IS SEPARATED FROM HIS OR HER PARENT OR PARENTS FROM ZERO TO 5 WHICH IS AS WE NOW KNOW THE MOST SIGNIFICANT TIME IN A CHILD'S LIFE FOR BONDING AND THE POSSIBILITY OF ABANDONMENT THAT THAT WAS -- LINKS IT UP WITH WHAT HAPPENED IN TERMS OF HIS TEENAGE YEARS, WAS THAT TESTIMONY IN THE RECORD.
NONE.
OKAY. NONE. AND IF YOU LOOK AT THE STATE'S ASSESSMENT SHE TRIED DO EVERYTHING AND THERE WAS NO EVIDENCE HE WAS ABUSED, NEGLECTED OR MISTREATED IN FOSTER HOMES, AN FOSTER HOMES CAN BE -- I MEAN, THERE IS NO WAY TO SAY, OH, WELL THAT IS JUST AWFUL. BUT HE HAD CONDUCT DISORDER. THAT IS JUST THE ONLY WAY TO SLICE IT. IF YOU LOOK AT THE SUMMARY SHE TRIED EVERYTHING AND THE ONLY TIME THAT HE WAS TAKEN OVER BY THE STATE IS WHEN THERE WAS NO FACILITY THAT WOULD ACCEPT HIM. HE WOULD GO INTO THE FACILITY AND GO ON -- OUT INTO THE COMMUNITY, COME BACK WITH A GALLON OF VODKA OR COCAINE IN HIS POCKET. MOM AT THIS POINT WAS LOSING CONTROL. WHEN HE WAS AROUND 16, 17. WHEN HE WAS ABOUT 17 HE START TO REALLY BLOOM IN HIS ANTI-SOCIAL BEHAVIOR AND THAT IS SHOWN IN THE REPORT. AND THEY TRIED AND TRIED -- COULDN'T PUT HIM IN A PAY FACILITY. THE STATE HAD TO TAKE OVER FROM HIM WHEN HE STARTED COMMITTING CRIMES. SO THERE WERE SEVERAL PLACES THAT WOULD NOT ACCEPT HIM AFTER GLENN MILLS, THE MILITARY SCHOOL. AND WHEN HE BECAME 18 THE STATE SAID WE WILL AFFORD HIM NO FURTHER SERVICES, BECAUSE HE IS NOW 18. SO HE WENT JUST TOTALLY BAD DESPITE THE MOM -- SHE HAD A LOT OF MONEY, SHE TRIED TO DO EVERYTHING FOR THAT CHILD AND THAT IS WHAT THE STATE SUMMARY SHOWS AND ALL THESE RECORD. THESE WERE PRIVATE SCHOOLS AMILITARY SCHOOL. AND THE TRIAL COURT -- HIS FINDINGS ARE ABSOLUTELY SUPPORTED BY THE RECORD. HE MADE COMPLETE FINDINGS, ANY REFERENCE TO THE 2002 WAS HARMLESS AND IF YOU LOOK AT THE TESTIMONY IN THE 2005. HE ALSO CITES TO THAT. WHAT THE TOM TESTIFIED TO IN 2005. SO I WOULD ASK THE COURT TO AFFIRM THE CONVICTION AND SENTENCE. THANK YOU.
GIVE YOU A COUPLE OF MINUTES.
FIRST OF ALL, I THINK THE RECORD NEEDS TO BE CLEAR, NONE OF THESE INSTITUTIONAL INSTITUTIONS HE WAS IN WERE EVER PRIVATELY PAID FOR BY THE MOM. THEY WERE ALL THROUGH THE JEWISH CHILD CARE ASSOCIATION, WHICH ESSENTIALLY HAS CONTRACTS WITH THE CITY OF NEW YORK AND IN THIS INSTANCE AND INITIALLY STARTED AS A VOLUNTARY PLACEMENT. THESE WERE NOT EXPENSIVE PRIVATE SCHOOLS. THESE ARE WHERE THE CITY OF NEW YORK --
NO EVIDENCE HE WAS IN A MILITARY SCHOOL SOMEPLACE.
GLENN MILLS SCHOOL WAS DIFFERENT PLACEMENT THEY FOUND FOR HIM WITHIN THEIR SYSTEM.
IS THAT A FAIR STATEMENT AMILITARY SCHOOL OR --
-- THERE ARE PLACEMENTS AND THERE ARE PLACEMENTS.
IT IS NOT A MILITARY SCHOOL, GLENN MILLS SCHOOL FOR BOYS.
GLENN MILLS ACCEPTS DELINQUENT AN DEPENDENT KIDS, PRIMARILY BUT IT WAS PRIMARILY A --
AND HIS PLACEMENT --
TYPICAL MILITARY SCHOOL.
AND NONE OF THESE WERE PRIVATE SCHOOLS BUT TO ADDRESS JUSTICE PARIENTE'S QUESTION --

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SHE'S BUSY TALKING ABOUT --
LET ME ASK YOU A QUESTION --
I'LL GET BACK TO HER.
PROCEDURALLY WHY WEREN'T THESE CONCERNS ABOUT RELYING ON THE PRIOR RECORD --
WERE THEY, WERE THEY RAISED TOD MOTION FOR REHEARING --
TO ANSWER -- I MEAN, I HAVE BEEN DOING DEATH PENALTY CASES A LONG TIME AND I DON'T KNOW OF ANY PROCEDURE FOR IT ONCE THE JUDGE ISSUES HIS SENTENCING ORDER.
YOU KNOW OF NO PROCEDURE TO CORRECT THESE KINDS OF THINGS.
CALLED A DIRECT APPEAL OR AT THE END YOU HAVE 30 DAYS TO APPEAL.
LET'S LOOK AT A COUPLE OF THING A VARIETIES AND WE'RE LOOKING AT THE CASES AND TRYING TO BALANCE THESE THINGS AND SEEMS WE HAVE CASES SUCH AS MILTON AND FREEMAN AND MILLER THAT REALLY HAVE PRETTY MUCH THE SAME AGGRAVATING FACTORS. AS THIS CASE. AND THOSE SEEM TO HAVE EVEN GREATER MITIGATION YET THIS COURT HAS AFFIRMED ON PROPORTIONALITY BASIS IN THESE THREE CASES AT LEAST, THERE ARE OTHER BUT IN TRYING TO FIND THIS ONES THAT SEEM TO BE THE CLOSEST, WHAT -- SHARE WITH US YOUR ARGUMENT ON THAT.
SURE. I THINK ONE OF THE CRITICAL THINGS THE COURT NEED TO LOOK AT IS WHERE MANY OF THESE CASES ARE POSITIONED IN TERMS OF ARGUING FOR PROPORTIONALITY IS THE MITIGATION OF THOSE AGGRAVATING FACTORS AND YOU MAY HAVE A SIMILAR AGGRAVATING FACTOR BUT WHAT DID THE DEFENSE PRESENT THAT MITT DPATED THAT AGGRAVATING FACTOR AND IN THIS RECORD THERE IS SIGNIFICANT EVIDENCE THAT MITIGATED THOSE CRIMES COMMITTED --
BUT IN READING THROUGH THESE, MILTON, A COUPLE OF -- TWO HAD A BAD FAMILY HISTORY AND WE HAVE PEOPLE ON THE -- TREMENDOUS DRUGS AT THE TIME. OF THE EVENT WHICH WE DON'T REALLY HAVE HERE. JUST DIDN'T SEEM AS -- LOOKING AT THEM, THAT THIS MITIGATION WAS EVEN EQUAL TO THE MITIGATION IN THOSE CASES, WHAT I'M.
I THINK THE DIFFERENCE HERE IS THAT PERHAPS MITIGATION MAY HAVE BEEN A LITTLE BIT MORE COMPELLING IN THOSE CASES, AND ALSO THE MITIGATION OF THE AGGRAVATION. OCCURRED IN THIS CASE, DIDN'T HAPPEN IN THOSE CASES WHERE THERE WAS SIGNIFICANT MITIGATION PRESENTED AND THE IN THE RECORDS TALKS ABOUT THE LACK OF NURTURING AS BEING PART OF THE REASON FOR HIS PSYCHOLOGICAL AND EMOTIONAL PROBLEMS. THANK YOU.
THANK YOU BOTH VERY MUCH, WE'LL TAKE THE CASE UNDER ADVISEMENT AND THE COURT WILL STAND IN RECESS UNTIL 9:00 TOMORROW MORNING.,,
PLEASE RISE.