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Ricardo I. Gill v. State of Florida

SC06-1572

RICARDO IGNACIO GILL v. STATE OF FLORIDA

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> THE LAST CASE ON OUR DOCKET
FOR TODAY IS GILL V. STATE.

>> GOOD MORNING, MAY IT PLEASE
THE COURT, WILLIAM McLAIN
APPEARING FOR RICARDO GILL.

MR. GILL WAS CONVICTED FOR THE
MURDER OF ORLANDO ROSELLO WHO
WAS HIS --

>> MR. McLAIN, COULD WE GET A
SORT OF A BASELINE HERE?

THIS IS ONE OF THE MOST
TROUBLING CASES THAT I'VE SEEN
SINCE I'VE BEEN ON THIS COURT.

AND IT'S TROUBLING BECAUSE --

AND MAYBE YOU CAN HELP ME
ADDRESS IT -- TROUBLING BECAUSE
WE DO HAVE EVIDENCE OF
COMPETENCY THROUGHOUT.

I MEAN, ALL KINDS OF REPORTS ON
THAT.

YET WE DO HAVE MEDICAL EVIDENCE
OF SIGNIFICANT BRAIN CONDITION,
A TEMPORAL LOBE WITH THE GROWTH,
AND WE ALSO HAVE SUPERIMPOSED ON
THAT THIS PROMISE THAT I'M GOING
TO KILL, YOU KNOW, THE NEXT
PERSON THAT I RUN INTO.

AND THIS COURT JUST DOESN'T HAVE
THE AUTHORITY OR JURISDICTION TO
SAY, FOR EXAMPLE, THIS PERSON
NEEDS TO BE, HAVE A LIFE
SENTENCE AND BE PLACED IN A
CERTAIN CONDITION WITH CERTAIN
GUARDING, THOSE KINDS OF THINGS.

SO, YOU SEE, THIS IS RUMBLING
THAT I'M REALLY TROUBLED BECAUSE
I DO SEE A VERY, I SEE A SICK
INDIVIDUAL.

>> MR. GILL IS A VERY SICK
INDIVIDUAL.

AND COMPOUNDING THIS IS HE HAS SOUGHT THE DEATH PENALTY. AND HE'S WAIVED COUNSEL, HE'S PLED GUILTY, AND SO THERE'S A NUMBER OF COMPLICATIONS IN THIS CASE.

>> WHERE DO THOSE LEAD US? DO YOU UNDERSTAND WHAT I'M ASKING?

>> I AM, AND I'M SUGGESTING THAT THERE IS A FACTUAL BASIS IN THE RECORD AND A FOUNDATION IN THE DECISIONS OF THIS COURT TO REDUCE THE SENTENCE TO LIFE.

>> IF YOU DO THAT, HE GOT A LIFE SENTENCE ON A PREVIOUS MURDER, CORRECT?

>> YES, HE DID.

>> AND BASED ON THAT LIFE SENTENCE HE SAID, I DON'T WANT TO BE IN PRISON FOR LIFE, I'M GOING TO KILL SOMEBODY ELSE, AND YOU'RE GOING TO, THEREFORE, BE FORCED TO GIVE ME THE DEATH PENALTY.

SO --

>> THERE --

>> -- IF WE GIVE HIM THE LIFE SENTENCE AGAIN, WHERE IS THAT GOING TO LEAVE US?

>> THERE IS NO QUESTION THAT MR. GILL IS POTENTIALLY A DANGEROUS INDIVIDUAL.

>> WELL, NEXT TIME HE'LL KILL A GUARD.

>> I'M SORRY?

>> NEXT TIME HE'LL JUST KILL A PRISON GUARD.

>> WELL, NEXT TIME, HOPEFULLY, THE DEPARTMENT OF CORRECTIONS WILL DO A BETTER JOB OF SECURING HIM BECAUSE AFTER THE FIRST LIFE SENTENCE JUDGE MORRIS NOTIFIED THE DEPARTMENT OF CORRECTIONS THAT HE WAS A POTENTIALLY DANGEROUS INDIVIDUAL, BUT THEY, NEVERTHELESS, PLACED SOMEONE IN A CELL WITH HIM.

>> HOW IS THIS CASE LIKE CASES THAT WE HAVE RECENTLY REDUCED TO LIFE?

I SEE THIS SITUATION WHERE HE HAS JUST BEEN CONVICTED OF MURDER, AND HE ANNOUNCES HIS

INTENTION THAT I'M GOING TO KILL
SOMEBODY, THEN HE KILLS
SOMEBODY.

HOW COULD THIS NOT BE A DEATH
PENALTY CASE?

>> A REVIEW OF HIS MENTAL
HISTORY.

FROM THE DAY HE WAS BORN, HE
SUFFERED FROM THIS -- WE NOW
KNOW, AND THAT WASN'T DISCOVERED
UNTIL THE MENTAL HEALTH EXPERT,
DR. WALDMAN, CONTINUED TO DO
SOME SCANS, AND IT WAS A FINAL
SCAN WHERE IT WAS DIAGNOSED --
HE'S HAD THIS BRAIN ABNORMALITY
FROM BIRTH.

>> A BRAIN ABNORMALITY IS,
THAT'S A VAGUE TERM.

THERE'S NO QUESTION THAT THE MAN
HAS MENTAL ILLNESS, BUT SAYING
THERE'S A BRAIN ABNORMALITY, IS
IT A FRONTAL LOBE --

>> YES.

IT'S A FRONTAL LOBE, IT PRESSES
ON THE --

>> BUT THIS WASN'T A RAGE
KILLING.

IF HE HAD BEEN, YOU KNOW, IF
THIS ISN'T A CASE WHERE HE
HADN'T MADE ALL THESE OTHER
STATEMENTS AND THEN HE WAS IN,
IN WITH A CELL MATE, CELL MATE
SAYS, YOU KNOW, YOU'RE NOT
REALLY -- YOU'RE A PAIN IN THE
NECK AND HE THEN STARTS TO KILL
HIM IN SOME KIND OF RAGE WAY,
YOU MIGHT HAVE SOME CONNECTION.
BUT THIS WAS A PLANNED-OUT
KILLING.

>> IT APPEARS BASED UPON HIS
STATEMENTS THAT IT WAS A
CALCULATED MATTER.

>> BUT THE BRAIN INJURY THAT
YOU'RE TALKING ABOUT MANIFESTS
ITSELF BY CAUSING PEOPLE TO ACT
IN A RAGE, YOU KNOW, CAN'T
CONTROL IT.

IT JUST COMES, I DO IT.

IN THIS CASE HE PLANNED,
ACCORDING TO WHAT HE TOLD
PEOPLE, FOR 19 MONTHS.

>> AND THERE'S TWO THINGS I WANT
TO ADDRESS ON THAT QUESTION.

THERE'S NO QUESTION THAT HE WAS

SEEKING THE DEATH PENALTY.

HE SOUGHT THE DEATH PENALTY IN THE FIRST CASE.

THERE IS NO QUESTION THAT HE HAD THAT AS A GOAL.

HE DOES HAVE THE ABILITY.

AT SOME POINT HIS, THE DEGREE OF HIS PROBLEMS ARE INTERMITTENT.

HOWEVER, DR. WALDMAN ALSO SAID THAT THIS BRAIN ABNORMALITY TO A LARGER DEGREE HAS SHAPED THE NATURE OF THE INDIVIDUAL WE HAVE BECAUSE HE'S HAD THIS, I MEAN, AS A CHILD HE WAS IN PSYCHIATRIC HOSPITALS, THEY DIDN'T KNOW WHAT TO DO WITH HIM.

HE SPENT A YEAR AND A HALF IN A NORTH FLORIDA STATE HOSPITAL, MOST OF THAT TIME IN RESTRAINTS BECAUSE TRANQUILIZERS DIDN'T WORK FOR HIM.

NO ONE CAN DEVELOP NORMALLY WHEN THEY HAVE THAT KIND OF BRAIN DEVELOPMENT.

>> EXCEPT THE EXPERTS ALSO SAY THAT HE KNOWS RIGHT FROM WRONG.

>> YES.

>> AND SO HE KNOWS THAT IF HE TAKES THIS SHEET AND TIES IT AROUND THIS MAN'S NECK AND CONTINUES TO HOLD IT AND STRANGLE HIM THAT IT'S GOING TO RESULT IN THIS MAN'S DEATH.

AND THAT'S WHAT IS REALLY, YOU KNOW, IT GOES BACK TO JUSTICE LEWIS' ORIGINAL QUESTION IS THIS IS SO DISCONCERTING.

WE KNOW THAT THIS MAN HAS MENTAL ILLNESS, BUT HE CERTAINLY HAS THE CAPACITY TO KNOW WHAT HE'S DOING IS WRONG, AND YET HE CARRIES THROUGH WITH IT ANYWAY. HOW IN THE WORLD CAN WE NOW SAY THAT THIS MAN DESERVES A LIFE SENTENCE TO BE PUT -- ARE WE GOING TO SAY NOT ONLY DOES HE DESERVE A LIFE SENTENCE, BUT THAT HE HAS TO BE IN ISOLATION FOR THE REST OF HIS LIFE?

>> A COUPLE OF THINGS HERE.

THE EXPERTS -- DR. LOVERN AND DR. WALDMAN WERE THE PRIMARY EXPERTS OF THE STATE THAT THE JUDGES RELIED ON HERE.

THEY BOTH SAID HE UNDERSTANDS
RIGHT FROM WRONG, HE HAS A
CAPACITY TO APPRECIATE
MISCONDUCT, BUT HE CAN'T CONTROL
IT.

THAT'S THE PROBLEM WITH THE
FRONTAL LOBE PROBLEM, THE
ABNORMALITY IN THE FRONTAL LOBE.
DR. WALDMAN SAID THIS THING
THROUGHOUT HIS LIFE HAS AFFECTED
THE WAY HE HAS DEVELOPED.
HE HAS A CONSTANT STATE OF
HOSTILITY, ANGER, PARANOIA,
PERSONALITY BEHAVIORAL DISORDERS
THAT NO DOUBT IN LARGE PART WERE
BROUGHT ON BY THE FACT THAT THIS
BRAIN ABNORMALITY AND THE WAY HE
WAS NO DOUBT TREATED BY OTHERS
DURING THE COURSE BECAUSE I'M
SURE HE HASN'T BEEN A PLEASANT
OR EASY PERSON TO DEAL WITH
THROUGHOUT HIS LIFE.

>> AND HE HIMSELF, I MEAN, WE
HAVE A CASE IN THE STATE OF
FLORIDA MANDATORY DIRECT APPEAL
REVIEW, BUT HE WANTS THE DEATH
PENALTY.

>> YES, HE DOES.

>> SO YOU ARE HERE REALLY
ARGUING ON BEHALF OF WHAT YOU
BELIEVE TO BE IN THE INTEREST OF
JUSTICE AS OPPOSED TO
EFFECTUATING YOUR CLIENT'S
WISHES?

>> THAT'S CORRECT.

THAT'S CORRECT.

I WOULD ALSO POINT OUT HERE THAT
THERE IS A --

>> WELL, LET ME ASK YOU THIS,
YOU KNOW, YOU KEEP GOING BACK TO
MENTAL ILLNESS AND ALL OF THIS
HAS SHAPED HIM, AND SO HE CAN'T
CONTROL HIS IMPULSES.

WELL, HE SAYS BASICALLY THAT,
YOU KNOW, I WANTED A DEATH
SENTENCE, YOU GAVE ME A LIFE
SENTENCE, SO I'M GOING TO KILL
THE FIRST PERSON I COME IN
CONTACT WITH BASICALLY.

WELL, HE DOESN'T REALLY KILL THE
FIRST PERSON HE COMES IN CONTACT
WITH.

HE KNOWS ENOUGH TO WAIT UNTIL
HE'S IN A SITUATION WHERE HE CAN

ACTUALLY DO THAT.
YOU KNOW?

I MEAN, HE WAS IN CONTACT WITH
SOMEONE BEFORE HE WAS ACTUALLY
IN CONTACT WITH HIS CELL MATE.
AND SO HE KNOWS ENOUGH TO WAIT
AND DO THIS AT A TIME WHEN HE
CAN'T BE, HE WON'T BE
DISCOVERED.

HE ATTEMPTS TO COVER UP THE BODY
TO THE EXTENT THAT IT WILL BE
DISCOVERED AT A LATER POINT THAN
THE POINT AT WHICH HE ACTUALLY
COMMITTED THE MURDER, AND SO,
YOU KNOW, I'M STILL STRUGGLING
WITH HOW THIS MENTAL ILLNESS
REALLY SHAPED THIS PARTICULAR
MURDER.

>> I WANT TO ADDRESS ONE THING
BEFORE I FORGET TO DO SO, AND
THAT IS THE EVIDENCE OF THE
CALCULATION IN THIS CASE.

>> OKAY, THAT'S PART OF THE
CALCULATION TO ME.

>> THE BULK OF IT CAME FROM THE
DEFENDANT'S OWN STATEMENTS AND
LETTERS.

NOW, IN A NORMAL SITUATION WHERE
A DEFENDANT IS NOT SEEKING THE
DEATH PENALTY AND THE
ADVERSARIAL SYSTEM HASN'T BEEN
TURNED ON ITS HEAD, YOU WOULD
EXPECT SOMEONE WHO MAKES THIS
STATEMENT TO LEND CREDIBILITY TO
THE ACCURACY OF IT.

WE DON'T HAVE THAT WHEN WE HAVE
A DEFENDANT SUCH AS IN THIS CASE
WHO WAS SEEKING THE DEATH
PENALTY BECAUSE THEY MAY WELL
TEND TO EMBELLISH, TO AGGRAVATE
THE CASE FOR THAT REASON.

SO I THINK STATE -- IN THIS
PARTICULAR KIND OF CASE WHERE
DEFENDANT IS SEEKING THE DEATH
PENALTY, YOU KNOW, LARGE BULK OF
THE INFORMATION, IF YOU WILL,
COMES FROM HIS STATEMENTS TO
OTHERS --

>> WAS THE EVIDENCE INCONSISTENT
WITH HIS STATEMENT?

>> I DON'T, I CAN'T SAY THAT IT
WAS INCONSISTENT, BUT I THINK IT
NEEDS TO BE DEALT WITH WITH
CAUTION BECAUSE IT IS KIND OF

OUTSIDE THE NORMAL ADVERSARIAL MODEL.

>> EXCEPT THAT JUDGE MORRIS WAS, THOUGHT ENOUGH OF WHAT HE SAID THAT IT HAD ENOUGH CREDIBILITY TO PUT THE AUTHORITIES ON NOTICE THAT THIS PERSON HAD INDICATED HE WAS GOING TO KILL SO THAT HE COULD GET THE DEATH PENALTY.

>> I THINK ANY JUDGE WOULD ERR ON THE SIDE OF CAUTION AND PUT AUTHORITIES ON NOTICE WITH ANY KIND OF A THREAT. IN THAT INSTANCE.

BUT AGAIN --

>> I THINK WHAT YOU HAVE GOING BACK TO THIS, TO ME, IS WHAT JUSTICE LABARGA WAS HITTING ON AND, YOU KNOW, WHAT SEVERAL OF OUR QUESTIONS HAVE RAISED IS THAT -- AND THIS MAY BE TIED INTO YOUR ISSUE OF CCP ABOUT HEIGHTENED PREMEDITATION -- DR. WALDMAN WHO WAS -- WAS THAT A DEFENSE WITNESS?

DR. WALDMAN?

>> ALL OF THESE WITNESSES WERE REALLY COURT WITNESSES.

>> COURT WITNESS.

BUT SAID, ASKED ALL ABOUT THE BRAIN INJURY OR, AND SAID IT WAS THE FACTS OF THIS CASE WOULD INDICATE THE RAGE RESPONSE HE DESCRIBED AND NOT AS YOU DESCRIBED IT.

IT CERTAINLY SOUNDS VERY MUCH LIKE A THOUGHT-OUT, THREATENED, AND PREMEDITATED ACT.

AND I THINK THAT'S WHAT YOU'RE REALLY, WE'RE UP AGAINST IN THIS CASE IS THAT IF THERE HAD SOMEHOW BEEN SOME KIND OF SNAPPING THAT WENT ON EVEN THERE, FRANKLY, WITH THE PRIOR MURDER I WOULD STILL HAVE A HARD TIME SAYING THAT THERE WAS NOT, THAT JUST THAT VERY FACT ALONE SOMEONE HAS KILLED ONCE AND NOW IS KILLING AGAIN DOESN'T MAKE THAT THE ABSOLUTE CASE FOR THE DEATH PENALTY.

BUT I DON'T KNOW HOW YOU GET AROUND THE JUDGE'S FINDINGS ON TOP OF THE PRIOR VIOLENT FELONY

OF CCP, AND MAYBE THAT'S, YOU KNOW, SINCE WE'VE TALKED ABOUT WHETHER HIS CASE SHOULD BE REDUCED TO LIFE YOU WOULD AGREE THAT HAVING CCP IN THERE WITH THE PRIOR VIOLENT FELONY MAKES THAT --

>> IT MAKES AN AGGRAVATED CASE.

>> RIGHT.

>> IT DOES MAKE AN AGGRAVATED CASE, YOUR HONOR.

AGAIN, BEFORE I FORGET

DR. WALDMAN'S TESTIMONY, IF YOU CONTINUE TO READ HIS TESTIMONY, HE WAS ASKED, SO, WAS -- WHETHER HE COULD HAVE AN OPINION AS TO WHETHER IT WAS A PREMEDITATED, THOUGHT-OUT, CALCULATED KILLING, AND HE SAID, I REALLY CAN'T SAY. HE'S CAPABLE OF BOTH.

SO IT COULD HAVE BEEN, THE ACTUAL KILLING MAY HAVE BEEN THE RESULT OF A RAGE REACTION.

THERE'S NO WAY TO ASCERTAIN THAT.

>> BUT DON'T THE CIRCUMSTANCES [INAUDIBLE] AGAINST THAT CONCLUSION?

BECAUSE HE PLANNED THIS OVER A PERIOD OF TIME BY HIS OWN CONFESSION.

HE DID IT IN A STEALTHY MANNER WHILE THE VICTIM WAS SLEEPING.

THIS IS NOT, IT'S JUST NOT -- THE CONTEXT DOES NOT SUGGEST THAT IT IS AN ACT OF RAGE.

>> ACT OF RAGE --

>> HE MAY BE, I UNDERSTAND HE MAY BE A PERSON WHO IS FILLED WITH RAGE AND UNHAPPY AND ALL THESE OTHER THINGS.

BUT THE MANIFESTATION HERE IS SOMETHING THAT IS REALLY, IT IS SOMEWHAT STEALTHY IN THE WAY HE CARRIED THIS OUT.

>> ON THE FACE OF IT, IT APPEARS TO BE A CALCULATED ACTION. HOWEVER, AGAIN, WE'VE GOT THIS COUNTERVAILING PIECE ABOUT HIS MENTAL CONDITION, WE ALSO HAVE THE COUNTERVAILING PIECE OF THIS INFORMATION CAME FROM HIS OWN SELF-REPORT ABOUT HOW THIS MURDER WAS ACTUALLY CARRIED OUT

WHICH HAS SOME, HAS TO BE VIEWED WITH SOME CAUTION, I THINK, IN THESE TYPES OF CASES.

>> BUT IT'S CONSISTENT WITH THE PHYSICAL EVIDENCE.

>> IT IS.

THERE IS SOME CONSISTENCY IN THE MANNER IN WHICH HE DID IT, YEAH.

>> WHAT YOU'RE TELLING US IS THAT HIS MENTAL CONDITION DID NOT ALLOW HIM TO DEVELOP A TYPE OF PREMEDITATION, HEIGHTENED PREMEDITATION FOR CCP, BUT LOOK AT IT FOR A SECOND.

I MEAN, HE'S ASLEEP IN HIS CELL WITH HIS CELL MATE.

HE GETS UP EARLY IN THE MORNING, HE WRITES LETTERS TO THE EDITOR OF "THE GAINESVILLE SUN," I THINK IT WAS, WRITES A LETTER TO THE PRISON OFFICIALS.

I THINK HE MAY HAVE EVEN WRITTEN ONE TO JUDGE MORRIS AND TELLS HIM THIS IS WHAT I'M GOING TO DO.

AND THEN HE SITS DOWN, AND HE SAYS -- ACCORDING TO THE STATEMENT TO THE POLICE -- WELL, I'VE WRITTEN THE LETTERS, I MIGHT AS WELL GO THROUGH WITH IT.

AND THERE'S HIS CELL MATE WHO, I BELIEVE, WAS IN PRISON FOR, WHAT, AUTO THEFT?

HE STRANGLES HIM TO DEATH, AND THEN HE PUNCHES HIM IN THE CHEST TO MAKE SURE HE'S DEAD.

AND LATER ON THAT MORNING HE SITS DOWN AND HAS BREAKFAST IN HIS CELL.

HOW IS THAT NOT HEIGHTENED PREMEDITATION?

>> AGAIN, THE ONLY POSITION I HAVE IS HIS MENTAL CONDITION. I'M NOT SURE HE IS ABLE TO EVER REALLY REFLECT AND CALCULATE IN A COOL MANNER.

>> BUT DIDN'T THE DOCTOR SAY JUST THE OPPOSITE, THAT HE COULD OR COULDN'T?

>> WELL, THE ISSUE -- THEY CAN DO BOTH OF THOSE THINGS POSSIBLY.

THE EVIDENCE OF CALCULATION --

>> IS THE FACT THAT, YOU KNOW, AFTER HE'D DONE IT HE FLUSHES THE SHEET AND PAPERS DOWN THE -- I MEAN, WHEN YOU PUT IT ALL TOGETHER I'M JUST HAVING A HARD TIME COMING TO THE POINT THAT YOU WOULD LIKE US TO GET TO.

>> WHAT'S OUR STANDARD OF REVIEW ON THIS?

>> WELL, PROPORTIONALITY REVIEW, I THINK.

THIS COURT HAS THE ABILITY TO -- CERTAINLY UNDER OUR JURISPRUDENCE

WE CAN CONSIDER ANYTHING.

COURTS CAN CONSIDER ANY TYPE OF MITIGATION, THAT DOESN'T NECESSARILY MITIGATE THE AGGRAVATOR.

>> I PRESENTED A FEW CASES FOR THIS COURT'S CONSIDERATION ON PROPORTIONALITY REVIEW.

A NUMBER OF THOSE CASES EXPRESSLY SAY THIS IS ONE OF THE MORE AGGRAVATING CASES. THE MENTAL HEALTH PROBLEMS WITH THE DEFENDANT WAS ENOUGH FOR LIFE SENTENCE.

IT WASN'T ONE OF OUR MOST LEAST MITIGATED CASES. THAT IS THE ANALYSIS.

>> PROPORTIONALITY, UNFORTUNATELY IT IS NOT A MATHEMATICAL SITUATION. I KNOW CASES WITHIN THE LAST YEAR WHERE THEY WERE PROFOUND MENTALLY ILL INDIVIDUALS.

AS I RECALL THE NATURE OF THE CRIMES WERE SOMEWHAT IRRATIONAL.

AND HERE, YOU WOULD AGREE THAT THE MOTIVE OF THIS CRIME WAS TO SORT OF, HEY, I TOLD YOU I WANTED THE DEATH PENALTY AND NOW I'M REALLY SERIOUS ABOUT IT?

YOU WOULD SAY SOMEBODY THAT WOULD WANT TO BE KILLED BY THE STATE, MAY UNSUCCESSFULLY TRY TO THEMSELVES, THAT PERSON MUST NOT BE CAPABLE OF RATIONAL THOUGHT.

BUT THAT IS NOT THE CASE.

THEY HAVE A LOT OF RATIONAL

PEOPLE THAT SAY, I WOULD RATHER HAVE THE PENALTY THAN SPEND MY LIFE IN PRISON.

THERE ARE MORE AND MORE PEOPLE THAT WILL SAY THAT.

SO HOW IS THAT, IS NOT A SIGN OF SAYING, WELL, BECAUSE THIS GUY SAYS HE WAS GOING TO KILL AGAIN TO GET THE DEATH PENALTY, ONLY WAY WE LOOK AT IT WE SHOULDN'T GIVE HIM WHAT HE ASKS, THEREFORE WE SHOULD REDUCE IT TO LIFE?

THAT WOULD NOT BE A RATIONAL WAY FOR US TO BE THINKING ABOUT IT.

>> AGAIN I THINK THE OVERWHELMING MENTAL MITIGATION IN THIS CASE CALLS FOR A LIFE SENTENCE.

ON THE OTHER HAND, YOU KNOW, THERE IS AN AGGRAVATION.

>> POTENTIALLY THOUGH I THINK THE CCP, OUR STANDARD REVIEW THERE, I THINK JUSTICE, YOU ANSWERED JUSTICE POLSTON AS TO PROPORTIONALITY.

OUR STANDARD REVIEW OF CCP USE OF DISCRETION AND THE JUDGE MADE FINDINGS OF FACT?

>> WHETHER THERE IS SUBSTANTIAL COMPETENT EVIDENCE TO SATISFY THE PROOF.

>> AGGRAVATOR EXISTS AND THEN TO FIND IT.

>> ALMOST A JOA STANDARD FOR AN AGGRAVATOR, SO.

>> SO WITH THAT, HOW DO WE GET AROUND THAT THERE IS COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT CCP, AND WITH CCP YOU HAVE THIS VERY STRONG ELEMENT THEN THAT THIS IS A PLANNED MURDER FOR A VERY SPECIFIC MOTIVE TO GET WHAT HE FELT HE WANTED?

>> THERE IS EVIDENCE OF CALCULATION.

WHAT I POINTED OUT IN THE BRIEF, AGAIN, I DON'T THINK YOU CAN DIVORCE IT FROM HIS STATE OF MIND WHICH IS AN ELEMENT IN THE CCP AGGRAVATOR, THAT HIS MENTAL CONDITION IS SUCH, THAT I DON'T THINK THE GENTLEMAN CAN

CALMLY REFLECT ON ANYTHING.
BECAUSE HIS STATE OF, HIS
MENTAL STATE.
AGAIN, I WOULD ALSO POINT OUT
THAT EVEN IN THE TRIAL JUDGE'S
ORDER, ON THE MITIGATION, HE
FOUND BOTH STATUTORY MENTAL
MITIGATORS.
IN FINDING THE EXTREME MENTAL
OR EMOTIONAL DISTURBANCE EVEN
NOTED THAT GILL'S ACTIONS
APPEAR TO BE, AT LEAST SOMEWHAT
GUIDED BY ANGER.
SO THERE'S AN ANGER ELEMENT
THAT EVEN THE TRIAL JUDGE RECOGNIZED
AT WORK HERE.
HE DIDN'T CHOOSE, THE TRIAL
JUDGE DID NOT CHOOSE TO TRY TO
DISTINGUISH BETWEEN THE ANGER
THAT MIGHT HAVE BEEN
SITUATIONAL, I.E., I WANTED THE
DEATH PENALTY AND I DIDN'T GET
IT, VERSUS HIS CHRONIC ANGER
AND MENTAL CONDITION.
SO I THINK THERE'S A LITTLE
INCONSISTENCY IN THE JUDGE'S
FINDINGS THERE.
BUT THAT IS CERTAINLY VARIABLE.
I THINK IT NEEDS TO COME INTO
PLAY WHEN ADDRESSING THE CCP
ISSUE.
OKAY.
AGAIN, I WON'T BELABOR THE
CASES THAT I'VE CITED.
I WOULD POINT OUT THE CROOK AND
THE COOPER CASE, BOTH VERY
AGGRAVATING CASES WHERE MENTAL
CONDITION PRECLUDED BRAIN
DAMAGE, ORGANIC BRAIN PROBLEMS,
TEMPORAL LOBE PROBLEMS WHERE
THIS COURT LAST REDUCED THE
SENTENCE TO LIFE IMPRISONMENT
DESPITE OF THE AGGRAVATION
WHICH WAS IN THOSE CASES VERY
COMPARABLE, INCLUDING IN COOPER
A PREVIOUS CONVICTION FOR
ANOTHER MURDER.
SO, I WOULD LEAVE THE CASE WITH
THE COURT.
>> THANK YOU VERY MUCH.
>> PLEASE THE COURT, STEVE
WHITE FOR APPELLEE, THE STATE.
THE DEFENDANT NOT ONLY PROVIDED
DOCUMENTATION DURING THE

WEEKEND RIGHT BEFORE HE KILLED MR.^ROSELLO, HE PROVIDED DOCUMENTATION ALMOST 12 MONTHS BEFORE HE KILLED MR. ROSELLO. >> THIS IS REALLY NOT AN ISSUE HERE BUT JUDGE MORRIS FELT ENOUGH TO ALERT THE PEOPLE ABOUT WHAT HE SAID.

IS THERE ANY PRECAUTIONS THAT THE DEPARTMENT OF CORRECTIONS COULD HAVE TAKEN?

IT JUST SEEMS REALLY AWFUL TO ME THAT A MAN WHO WAS IN PRISON FOR NOTHING AS SERIOUS AS THIS IS PUT IN A CELL WITH SOMEONE WHO IS, JUST BEEN CONVICTED OF FIRST-DEGREE MURDER AND HAS VOW TO KILL SOMEONE ELSE?

>> I HONESTLY DON'T HAVE AN ANSWER TO THAT, YOUR HONOR. WE DO HAVE THE FACT THAT MR.^ROSELLO AFTER WE HAVE ALL THESE OTHER FACTS INDICATING MR.^GILL'S INTENT TO KILL. EXCUSE ME, I HAVE SINUS PROBLEM.

DID IN FACT PUT HIM IN THE SAME CELL WITH THE DEFENDANT. THE DEFENDANT TOOK THE FIRST OPPORTUNITY THAT HE HAD TO EFFECTUATE HIS PLAN, WHICH WAS CONCOCTED ABOUT 11 MONTHS EARLIER WITH HIS LETTER TO THE SAO AND WITH HIS LETTER TO JUDGE MORRIS, INDICATING IN JULY AND AUGUST OF 2000, WHAT HIS INTENT WAS.

AND THEN, WHEN HE ACTUALLY WAS SENTENCED BY JUDGE MORRIS, AGAIN REITERATED HIS PLAN. AND THEN FOUR DAYS LATER, IN FACT KILLED MR.^ROSELLO. STRANGLING HIM TO DEATH AS HE SLEPT.

HENCE WHY WE HAVE HAC IN THIS CASE.

>> MR.^WHITE, YOU AND MR.^McLAIN ARE HERE ON REGULAR BASIS DOING THESE KINDS OF CASES AND CERTAINLY THE COURT IS NOT MERELY HERE TO AFFIRM OR REVERSE CASES BUT ALSO MUST BE MINDFUL OF THE PACT, WHAT'S GOING TO HAPPEN BECAUSE OF

WHATEVER DECISION WE MAY RENDER, AND WITHIN THAT CONSIDERATION, IS ONE THAT WE NOT TAKE PRECIPITOUS STEPS THAT UNDERMINE THE VALIDITY EVEN OF THE CAPITAL PUNISHMENT STATUTE ITSELF.

AND WHILE THE STATEMENTS THAT YOU HAVE MADE, CERTAINLY SEE THOSE IN THE RECORD AND IN THE BRIEFS AND I, THEY ARE FULLY SUPPORTED, THE OVERRIDING QUESTION IS ONE OF THOSE THAT DOES THIS IN SOME WAY IMPACT? BECAUSE IT'S RECOGNIZED THAT YOU HAVE A, NOT JUST SYMPTOMATOLOGY BUT YOU HAVE SCAN PROOF OF ORGANIC BRAIN ISSUES AND THAT WE NOT ADMINISTER THE CAPITAL PUNISHMENT STATUTE IN A MANNER THAT LEADS TO INVALIDITY, WE ARE NOT TAKING INTO ACCOUNT THINGS THAT UNITED STATES SUPREME COURT TELLS US WHERE, DO YOU SEE THAT IMPACTING THIS CASE WHERE IT GOES?

WE CERTAINLY, AND MR. McLAIN HAS ACKNOWLEDGED THAT ALL OF THOSE INTENT, THOSE CALCULATION FACTORS ARE THERE BUT HOW DO YOU SEE THIS, THIS DETERMINED BRAIN CONDITION?

>> WELL --

>> -- IN THIS --

>> MY FIRST REACTION, YOUR HONOR, IT IS THE PACKAGE THE EXTREME CCPs, THE EXTREME -- MURDER AND EVIDENCE OF AN ATTEMPTED MURDER AND OTHER VIOLENT FELONIES.

IN TERMS OF THE BRAIN MALFORMATION WAS THE WORD THAT DR. WALDMAN USED, AS YOUR HONOR ALREADY POINTED OUT, ON CROSS-EXAMINATION, OR ON EXAMINATION BY PROSECUTOR, PROSECUTOR CALLED DR. WALDMAN, AND ASKED HIM POINT-BLANK, UNDER THE FACTS OF THIS CASE, LAID OUT THE FACTS OF THIS CASE AND ASKED HIM WHETHER THAT IMPLICATES RAGE? THIS IS WHAT WE'RE TALKING

ABOUT.

THIS MALFORMATION SUPPOSEDLY IS DEPRESSING THE AMYGDALAE THAT CONTROLS RAGE.

DOCTOR SAID UNDER THOSE FACTS THAT RAGE IS NOT IMPLICATED.

SO --

>> YOU'RE DRAWING THE REASONING THAT BECAUSE THE CONDITION IS NOT DIRECTLY RELATED TO THE FACTS OF THE PARTICULAR CASE, THAT IS REALLY NOT A MAJOR CONCERN AND THIS CASE IS BASICALLY YOUR BOTTOM LINE?

>> YES, YOUR HONOR.

GIVE THE EXTREME CALCULATION, COLD CALCULATION, GIVEN DR.^WALDMAN'S QUALIFICATION OF HIS TESTIMONY, GIVEN IN FACT GILL HIMSELF PROVIDED ADDITIONAL EVIDENCE OF HIS RATIONALITY, WHEN HE ATTEMPTED TO CROSS EXAMINE DR.^WALDMAN. HE IS REPRESENTING HIMSELF AT THIS POINT AND IN FACT, WHEN MR.^SALOMAN CHIMES IN OCCASIONALLY UNDER THESE HEARINGS, SAYS WAIT A MINUTE, HE CAN'T TALK.

I'M REPRESENTING MYSELF.

GETTING BACK TO DR.^WALDMAN, MR.^GILL SAID, WELL, DR.^WALDMAN IN 1999 I WAS SENT TO SHAND AND THEY DID CT SCANS ON ME THEN AND THEY DID MRIs ON THESE THEN AND THIS MALFORMATION DID NOT SHOW UP THEN.

SO WHY IN 2004 ARE YOU FINDING THIS MALFORMATION WHEN THE DOCTORS AT SHANDS COULDN'T FIND IT IN 1999?

>> BUT I THINK, LET'S, SINCE WE HAVE A SITUATION WHERE THE JUDGE FOUND STATUTORY MITIGATORS, I DON'T EVER REMEMBER, THIS IS THE SENTENCING ORDER AND THIS MAY BE JUDGE MORRIS'S SENTENCING ORDER BUT, IT GOES, IN BOTH OF THEM THE DEFENDANT HAS SPENT THE BETTER OF PART OF HIS LIFE MOVING BETWEEN HOSPITAL AND PRISONS.

EVEN AS AED TO HE WAS CLUMSY,
IMPULSIVE AND POSSESSED SHORT
ATTENTION SPAN.

HE WAS EXPELLED, EXPELLED FROM
TWO NURSERY SCHOOLS AND TWO
FIRST GRADE CLASSES BEFORE
BEING PLACED IN A CLASS FOR
EMOTIONALLY HANDICAPPED
STUDENTS.

VIOLENT AND HYPER ACT.

HE SHOWED SIGNS OF THINKING
DISORDERS, DELUSIONS AND
POSSIBLE HALLUCINATIONS.

AT THE AGE OF 10 HE WAS
ADMITTED TO THE GRAND CENTER
ACUTE CARE UNIT WHERE HE
REMAINED FOR A YEAR AND A HALF
DURING WHICH TIME HE DISPLAYED
FREQUENT TEMPERATURE TANTRUMS,
KICKING BITING AND SCRATCHING.

LET'S NOT PLACE THIS CASE,
WHATEVER WE DO WITH IT, IN ONE
OF THESE WHERE SOMEHOW AFTER
THE MURDER, DEFENSE LAWYERS
FIEND A FEW EXPERTS THAT CAN
SAY THERE'S, MENTAL ILLNESS.

THIS IS A HUMAN BEING, AND
WHETHER IT WAS GENETIC, WHETHER
IT WAS PHYSIOLOGICAL, WHETHER
THERE WAS SOME OTHER HISTORY,
HE WAS SEVERELY AND
EMOTIONALLY AND MENTALLY
DISTURBED AND MENTALLY ILL FROM
AN EARLY AGE.

WE DON'T KNOW IF HE GOT THE
PROPER TREATMENT.

WHAT WE KNOW THOUGH, SO I
WOULD, I WOULD LIKE, I THINK IN
TERMS OF LOOKING AT THIS CASE,
WE'VE GOT TO LOOK AT IT BEING A
VERY STRONG CASE WITH
MITIGATION.

BUT THEN YOU'VE GOT SUBSTANTIAL
VISION.

ISN'T THAT HOW WE SHOULD BE
LOOKING AT IT AS OPPOSED TO
TRYING TO DENIGRATE THE MENTAL
MITIGATION OF THIS DEFENDANT?

>> WELL, I THINK, NOT
DENIGRATING BUT QUALIFYING
THAT, JUDGE JUDGE CATES FOUND
THIS HISTORY OF MENTAL HEALTH
HISTORY AND RELIED ON JUDGE
MORRIS'S ORDER AS WELL.

ALSO CITED IN DETAIL DR.^KROP WHO BASICALLY INDICATE MR.^GILL IS ALSO VERY MANIPULATIVE, CONSISTENT WITH HIS ANTISOCIAL PERSONALITY DISORDER.

CONSIDERING TO JUDGE CATES'S ORDER, AND CONSIDERED THAT. SAID THIS MURDER WAS NOT CAUSED BY A RAGE.

WAS NOT IN A RAGE.

YES, IT MAY HAVE BEEN PRECIPITATED EARLIER ON OVER ANGER ON RECEIVING LIFE BUT IT WAS NOT, THIS MURDER WAS NOT CAUSED BY RAGE.

SO, YES, YOU HAVE THAT BACKDROP.

YES YOU HAVE A MENTAL HEALTH HISTORY.

YOU HAVE A LOT OF EVIDENCE THAT DURING THE 2002-2003 PROCEEDINGS THAT HE WAS NOT DELUSIONAL.

HE WAS IN FACT MANIPULATIVE. A FEW EXAMPLES, AUGUST 2002, THE DOC INDICATED THAT THE DEFENDANT MIGHT NOT BE HALLUCINATING, QUESTIONED THAT. DECEMBER 2002, DR.^LEVIN INDICATED THAT DEFENDANT'S NOT HALLUCINATING.

HIS THOUGHT PATTERNS ARE RELEVANT AND LOGICAL.

MARCH 2003, THAT THE DEFENDANT'S REFUSAL TO PARTICIPATE IS CHARACTEROLOGICAL IN NATURE AND NOT MENTAL ILLNESS IN SENSE OF HIS PRIOR HISTORY.

MAY 2004, DR.^KROP INDICATES THAT THE DEFENDANT'S REFUSAL TO COOPERATE IS CHARACTERLOGICAL RATHER THAN MENTAL ILLNESS. THERE ARE OTHER INDICATIONS IN THE RECORD OF THE'S MANIPULATION OF THE SYSTEM THROUGHOUT THESE PROCEEDINGS.

>> HE HAS DONE A GOOD JOB.

HE WANTED TO GET THE DEATH PENALTY.

AND GOT THE DEATH PENALTY.

>> TO ME THE THREAD THAT CUTS THROUGH A LOT OF FACTS IS, THE DEFENDANT NOT ONLY INDICATE A

DESIRE FOR THE DEATH PENALTY ABOUT A YEAR BEFORE HE WAS SENTENCED BY JUDGE MORRIS AND CARRIED OUT THAT PLAN FOUR DAYS AFTER HE WAS SENTENCED TO LIFE, BUT ALSO HE PROVIDED EVIDENCE OF RECORD TO HELP ASSURE THAT HE GOT WHAT HE WANTED.

HE DOCUMENTED HIS DESIRE BEFORE HE ACTUALLY KILLED MR. ROSELLO. SO, WHICH GOES BACK TO HIS LOGICAL THOUGHT PATTERN.

WE MAY QUESTION HIS GOALS OF COURSE BUT HE IS DEFINITELY GOAL-DIRECTED AND GIVEN HIS GOAL, HE DOES LOGICAL THINGS TO EXECUTE, TO IMPLEMENT HIS GOAL. SO THE TRIAL COURT DID --

>> SO, TO GO BACK, REALLY, TO JUSTICE LEWIS'S QUESTION BEFORE, YOU KNOW, WE REALLY ARE CONCERNED ABOUT THE DEATH PENALTY ITSELF AND WHETHER OR NOT THE TRIAL JUDGE IS REALLY CAREFUL FOLLOWED THE LAW AND GIVEN CONSIDERATION TO THE MENTAL OR ANY MITIGATORS THAT A DEFENDANT PRESENTS.

NOW IN THIS CASE IS THERE ANY ROOM FOR US TO SAY THAT THE TRIAL JUDGE REALLY GAVE ANY SHORT-SHRIFT TO ANY OF THESE MENTAL -- IT SEEMS TO ME THERE WERE THREE MITIGATORS THAT WERE FOUND BASICALLY?

>> TWO STATUTORY AND ONE --

>> TWO STATUTORY, ALL OF THEM HAVING TO DO HIS MENTAL STATE, CORRECT.

>> YES, YOUR HONOR.

>> SO IS THERE ANY ROOM FOR US TO SAY THAT THE TRIAL JUDGE IN THIS CASE DID NOT GIVE PROPER CONSIDERATION TO HIS MITIGATION?

>> NO, YOUR HONOR.

THE TRIAL COURT REACHED ITS FINDINGS BASED ON COMPETENT SUBSTANTIAL EVIDENCE AS TO EACH MITIGATOR, AND AS TO EACH AGGRAVATOR.

AND EXERCISED REASONABLE DISCRETION IN WEIGHING THOSE AGGRAVATORS AND MITIGATORS,

WITH THE TWO AGGRAVATORS BEING EXTREME AND CCP, AND REACHED A CONCLUSION CONSISTENT WITH THE CASE LAW OF THIS COURT. LAWRENCE, WHICH THE STATE TALKED ABOUT IN ITS BRIEF. LAWRENCE WE HAD PRIOR FELONY, HAD PRIOR MURDER. PRIOR ATTEMPTED MURDER, JUST LIKE THIS CASE. WE HAD CC IN THE EXTREME. HE DID IS TO-DO LIST. WROTE OUT HIS TO-DO LIST AHEAD OF TIME. THIS DEFENDANT MADE OUT HIS TO-DO LIST BASICALLY THROUGH THESE THREATS TO KILL AGAIN IF HE WASN'T GIVEN DEATH. CONFESSED AFTERWARDS THAT IS IN FACT WHAT HE DID. THE MITIGATION IN LAWRENCE WAS FAR MORE EXTREME THAN IN THIS CASE. AND LAWRENCE, SCHIZOPHRENIA, BRAIN DAMAGE, MENTALLY SLOW. DEFENDANT IS NOT MENTALLY SLOW BY ANY MEANS. THAT IS REplete IN THE RECORD. AND ATTEMPTED SUICIDES, WHICH DOES COINCIDE WITH THAT CASE. THERE ARE SOME ATTEMPTED SUICIDES BY MR. GILL. IN LARGE PART THE MITIGATION WAS MORE SUBSTANTIAL IN THIS CASE AND THIS COURT UP HELD THE DEATH PENALTY IN LAWRENCE. THIS CASE IS PROPORTIONAL BASED --

>> HOW OLD IS THIS DEFENDANT?
>> HE WAS 23 AT THE TIME OF THE MURDER, YOUR HONOR.
>> LAWRENCE WAS SIGNIFICANTLY YOUNGER IF I RECALL.
>> LAWRENCE WAS 18 TO 20. NOT SURE OF EXACT AGE.
>> HE HAD JUST BEEN RELEASED FROM CHATTAHOOCHEE AT THE TIME. I DON'T RECALL LAWRENCE HAVING, GOING TO NURSERY SCHOOL AND BEING EXPELLED AT THAT EARLY AGE.
I THOUGHT LAWRENCE HAD OVERTONES OF POSSIBLE FAKING IT.

>> WHICH YOU HAVE SOME
OVERTONES.

>> YOU THINK WE HAVE THOSE HERE
AS FAR AS, THAT'S WHAT THAT IS
AS WELL?

>> YEAH.

AND THE PROSECUTOR CONCEDED AND
RIGHTLY SO, THAT THIS DEFENDANT
HAS A LONG MENTAL HEALTH
HISTORY.

BUT IN TERMS OF THE PROCEEDINGS
FROM 2000 FORWARD,
THERE ARE MULTIPLE INDICATIONS
OF THE DEFENDANT'S
MANIPULATIVENESS.

THERE ARE MULTIPLE INDICATIONS
THE DEFENDANT WAS NOT
HALLUCINATING.

HE ADMITTED TO DISCUSSING
SUPPOSED HALLUCINATIONS TO GET
OXYCODONE.

I FASTED FOR OXYCODONE AND
PURSUANT TO MY RELIGIOUS
BELIEFS THAT WASN'T SUICIDAL.

BUT, AND, THERE'S AN INDICATION
THAT HE WANTED TO BE FOUND
INCOMPETENT FOR A WHILE.

HE INQUIRED ABOUT HOUSING FOR
PEOPLE WHO WERE INCOMPETENT.
HE WAS TALKING TO HIS LAWYER IN
THE PRESENCE OF THE MENTAL
HEALTH EXPERT.

IN TERMS OF, WELL, IF I REFUSE
TO COOPERATE THEY'RE GOING TO
HAVE TO FIND ME INCOMPETENT.

IN FACT A FEW DAYS AFTER HE
INQUIRED ABOUT THE HOUSING HE
FILED A PRO SE MOTION TO

NULLIFY THE EXPERT'S OPINION AS
BEING INSUFFICIENTLY BASED.

THERE ARE MULTIPLE EXAMPLES IN
THIS RECORD OF THE DEFENDANT'S
INTELLIGENCE AND MANIPULATIVENESS.

INDICATING HE WAS NOT
EXPERIENCING ANY.

SYMPTOMS.

HE WAS ON ESKALITH WHICH IS A
FORM OF LITHIUM WHICH APPEARS
TO HAVE DESIRABLE EFFECT IN
TERMS OF CALMING THINGS DOWN
AND MAKING HIM GOAL AN
LOGICALLY ORIENTED THROUGHOUT
THOSE PROCEEDINGS AND AS WELL
AS IMPLEMENT HIS PLAN TO KILL

AT THE FIRST OPPORTUNITY TO
INSURE THAT HE GOT DEATH.
BUT IN TERMS OF A COUPLE OF THE
CASES THAT OPPOSING COUNSEL
MENTIONED KEEPER AND CROOK, THE
STATE DISCUSSES THOSE CASES IN
ITS BRIEF.

I WOULD ALSO POINT OUT THAT LATER
WAS DIAGNOSED WITH MENTAL
RETARDATION, AGE 18.

HERE THE DEFENDANT AGAIN WAS
AGE 32 AT THE TIME OF THE CRIME
AND BY FAR, BY NO MEANS
ANYWHERE CLOSE TO MENTAL
RETARDATION.

QUITE THE OPPOSITE.

CROOK, FULL-SCALE IQ OF 66 AT
AGE 20.

AGAIN, UNLIKE THIS DEFENDANT.
YOU HAVE SERIOUS EVIDENCE IN
THOSE TWO CASES OF RETARDATION
OR CLOSE TO RETARDATION, UNLIKE
THE DEFENDANT.

BUT, YES, THE DEFENDANT HAS
BEEN MENTALLY ILL.

I'M NOT SAYING HE IS NOT MENTALLY
ILL NOW BUT FROM ALL
INDICATIONS IN OUR RECORD
HE WAS NOT DISPLAYING SYMPTOMS
OF BEING MENTALLY ILL FROM
PROCEEDINGS 2000 ONWARD TO THE
DEGREE THAT HE DID, HE FEIGNED
IT, AND AS RECORD REFLECTS THE
APPARENTLY THE ESKALITH WORKED.
THANK YOU.

THE STATE WOULD ASK TO AFFIRM.

>> MR.^McLAIN.

>> COUPLE OF POINTS, ON THE
LAWRENCE CASE HE WAS 23 YEARS
OLD AND ALSO IN THE LAWRENCE
CASE THE COURT FOUND THAT THE
LEVEL OF BRAIN DAMAGE THAT
MR.^LAWRENCE SUFFERED DID NOT
REMOVE SELF-CONTROL, WHICH WE
HAVE SOMETHING DIFFERENT HERE.
WE HAVE BRAIN DAMAGE WHICH IN
FACT DOES REMOVE SELF-CONTROL.

>> YOU KNOW, THAT IS ALWAYS
VERY INTERESTING BECAUSE THEN
YOU HAVE THE OTHER EXPERTS
SAYING THAT HE CAN, YOU KNOW,
PLAN AND DO ALL OF THIS, AND
THEN YOU HAVE, THAT THIS
LESION OR TUMOR

MAY RESULT HIM GOING INTO RAGES
AND LOSING SELF-CONTROL.
HOW DO YOU SQUARE THAT?
YOU'VE GOT EXPERTS SAYING HE
CAN PLAN AND DO ALL OF THIS.

>> THERE'S BOTH.

>> EXPLAIN TO US HOW WE --

>> THERE'S BOTH.

I THINK WHEN YOU READ
DR. WALDMAN'S TESTIMONY ABOUT
THE NATURE OF THIS A VENUS
MALFORMATION PRESSING ON
AMYGDALE.

CREATES ALMOST A SEIZURE-LIKE
DISORDER AND THERE IS A
SEIZURE-LIKE DISORDER.

THE SEIZURE HAS VARYING LEVELS.
EVEN SAYS THERE IS INTERMITTENT
LESSER SEIZURES THAT EFFECT THE
DEFENDANT EVEN THOUGH THERE IS
NOT -- IN OTHER WORDS, REACHS A
THRESHOLD WHERE HE MAY ACT OUT
IN A RAGE OR AGGRESSIVELY BUT
THERE IS ALSO INTERMITTENT TYPE
SEIZURES ONGOING WITH THIS
DEFENDANT.

>> HAVE NO MANIFESTATIONS?

>> WELL, THEY HAVE

MANIFESTATIONS BUT MAY NOT BE
MANIFESTED IN THAT OUTBURST
TYPE OF RAGE.

AND ALSO HE INDICATED THAT
THOSE KINDS OF THINGS
THROUGHOUT HIS LIFE HAS
EFFECTED HIS PERSONALITY
DEVELOPMENT.

WE TALK ABOUT HAVING
PERSONALITY DISORDERS.

LIKE, NO DOUBT THAT HE HAS HAD
PERSONALITY DISORDERS WHEN HE
HAS HAD THIS PROBLEM SINCE
NURSERY SCHOOL OR SINCE BIRTH.

SO, YES, HE IS MANIPULATIVE.

YES, THAT IS A PERSONALITY
ISSUE BUT IT ALL COMES FULL
CIRCLE BACK TO THE BRAIN
ISSUES.

>> THE TRIAL JUDGE

CONSIDERED ALL THE MITIGATION
THAT WAS OFFERED, CORRECT?

>> YES, YOUR HONOR.

>> AND THE TRIAL JUDGE GAVE
THAT MITIGATION IN TWO

INSTANCES AT LEAST GREAT WEIGHT

IN HIS WEIGHING OF THE
AGGRAVATING AND MITIGATING
CIRCUMSTANCE, CORRECT?

>> YES.

>> SO, WHERE DOES THAT LEAVE
US?

HOW CAN WE MAKE A DIFFERENT
DETERMINATION?

>> THIS COURT IN CONDUCTING A
PROPORTIONALTY REVIEW I THINK
HAS THE AUTHORITY TO LOOK AT
MENTAL MITIGATION IN THIS CASE
AND DETERMINE IT DOES NOT FIT.
IT DOES NOT, WHILE MAYBE ONE OF
THE MORE AGGRAVATING CASES IT
IS NOT NECESSARILY THE LEAST
MITIGATING OF CASES.

THAT IS EXACTLY THE ANALYSIS
THIS COURT USED IN THE CROOK
DECISION AND THE COOPER
DECISION.

I THINK THIS COURT HAS THE
ABILITY TO LOOK AT, WHO IS THIS
PERSON?

WHAT IS THIS MENTAL ILLNESS AND
HOW DOES THIS MITIGATION COME
INTO PLAY?

I DON'T, WITH PROPORTIONALITY
REVIEW THIS COURT ISN'T LIMITED
TO MAKING THE SAME KIND OF
WEIGHING THAT THE TRIAL JUDGE
DID.

THIS COURT HAS TO LOOK AT IS
THIS MENTAL MITIGATION, IS THE
TYPE OF LITIGATION --
MITIGATION THAT WE AS SOCIETY
ARE NOT GOING TO EXECUTE A
PERSON WITH THIS TYPE OF MENTAL
PROBLEM.

I THINK THAT THE CAN BE DONE
THROUGH PROPORTIONALITY REVIEW.
I HAVE NOTHING FURTHER.

>> ALL RIGHT.

THANK YOU.

THANK YOU BOTH FOR YOUR
ARGUMENTS HERE TODAY.

THE COURT WILL BE IN RECESS
UNTIL 9:00 TOMORROW MORNING.

>> PLEASE RISE.

THE SUPREME COURT IS NOW
ADJOURNED.