

>> PLEASE RISE.

HEAR YE HEAR YE HEAR YE THEE
SUPREME COURT OF FLORIDA IS NOW
IN SESSION, ALL WITH CAUSE TO
PLEA, DRAW NEAR, GIVE ATTENTION
AND YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,
THIS GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THIS SESSION OF THE FLORIDA
SUPREME COURT.

THE FIRST CASE ON OUR AGENDA, IS
McLEAN VERSUS STATE, ARE THE
PARTIES READY TO PROCEED?
YOU MAY PROCEED, MR. BURR.

-- MR. BURDEN.

>> MAY IT PLEASE THE COURT,
GEORGE BURDEN.

I AM HERE ON BEHALF OF DEREK
McLEAN, GUILTY OF... FIRST
DEGREE ATTEMPTED MURDER AND
FELONY MURDER AND OTHER CHARGES
FOR THE MURDER OF JAHVON
THOMPSON AND THIS IS A HOME
INVASION/MURDER AND I WILL
DISCUSS ON THE PROPORTIONALITY
-- FOCUS MY ATTENTION ON THE
PROPORTIONALITY REVIEW, SOLELY.

>> WILL YOU TELL US AGAIN, IF
YOU ARE STARTING TO TALK ABOUT
PROPORTIONALITY, IN THIS CASE,
WHAT THE AGGRAVATOR THAT WAS

FOUND AND WHAT THE WEIGHT WAS,
THAT WAS GIVEN TO THE
AGGRAVATOR?

>> YES.

THIS WAS A FELONY MURDER,
AGGRAVATOR.

PRIOR VIOLENT FELONY AGGRAVATOR.

>> AND THE PRIOR VIOLENT FELONY
WAS AN ATTEMPTED ROBBERY, WHERE
THE VICTIM WAS TERRORIZED --

>> ATTEMPTED MURDER OF THE
NEIGHBOR.

NO BUT I'M TALKING ABOUT THE
PRIOR, THE ATTEMPTED NEIGHBOR,
AND THE PRIOR VIOLENT FELONY,
ATTEMPTED MURDER -- ROBBERY,
EXCUSE ME.

>> YES.

>> OUT ON PROBATION, AND THEN
THERE WAS ALSO --

>> THE ATTEMPTED ARMED ROBBERY
HE WAS NOT ON PROBATION, HE WAS
ON PROBATION FOR THE ATTEMPTED
ARMED ROBBERY AS AN AGGRAVATING
FACTOR HERE.

>> RIGHT.

THAT IS THE CIRCUMSTANCE.

WHEN WE TALK ABOUT THE QUALITY
AND QUANTITY OF AGGRAVATORS,
WHAT I'M GETTING AT HERE IS THIS
IS A AGGRAVATED CASE, WOULD YOU
AGREE WITH THAT?

>> I WOULD.

BUT I WOULD SUBMIT WHEN YOU LOOK
AT OTHER CASES WHEN YOU HAVE AN
ARMED ROBBERY --

>> BUT, NOW WE GO WITH, YOU HAD AN ARMED ROBBERY SHOOTING AND HERE AN UNNECESSARY, THIS WASN'T A ROBBERY GONE BAD AND YOU CANNOT CHARACTERIZE IT THAT WAY AND WOULD A LOOKIC TO YOU TO DO IS FOCUS ON THE OTHER CASES AND COMPARE THE QUALITY OF THE MITIGATION IN THIS CASE.

>> I'LL DO JUST THAT.

THE MENTAL MITIGATION IN THIS CASE WAS SUBSTANTIAL.

AND I DON'T ACCEPT THE TRIAL COURT'S CHARACTERIZATION OF IT.

DR. EISENSTEIN AND DR. TOOMER BOTH EXAMINED MR. McLEAN, HE HAS AN AVERAGE IQ BUT THEY BOTH FELT THERE WAS ORGANIC BRAIN DAMAGE BECAUSE THOUGH DISPARATE IN TESTING BETWEEN THE PARITY BETWEEN THE LOBES OF HIS BRAIN, THE LEFT SIDE OPERATED AT 9% TILE AND THE RIGHT SIDE AT 88 PERCENTILE AND BOTH CONCLUDED IT SHOULD WARRANT MORE TESTING AND FOUND THERE WAS ORGANIC BRAIN DAMAGE.

>> AND THE TRIAL JUDGE, TO SOME EXTENT, FOUND THESE MITIGATORS, DID HE NOT.

>> BOTH MENTAL STATUTORY MITIGATORS.

>> AND WHAT KIND OF WEIGHT DID HE GIVE THEM.

>> VERY LITTLE ON BOTH.

>> THAT WAS BASED ON WHAT?

>> THIS TRIAL JUDGE, I THINK,
DIDN'T UNDERSTAND WHAT
BORDERLINE PERSONALITY DISORDER
IS.

I THINK THAT IS WHY.

DR. TOOMER AND DR. EISENSTEIN,
WHO HAVE OVER 50 YEARS OF
EXPERIENCE, DR. TOOMER IN THE
TRANSCRIPT ON PAGE 1873
EXPLAINED WHY BORDERLINE
PERSONALITY DISORDER IS SUCH A
THING TO CONSIDER.

WHAT IT CAUSES IN THE PERSON,
THE DAY-TO-DAY FUNCTIONING IS
AFFECTED BY THE MENTAL ILLNESS
ACCORDING TO DR. TOOMER AND THE
NATIONAL STATUTES OF HEALTH ALSO
AGREE BORDERLINE PERSONALITY
BORDER HAS PERVASIVE INSTABILITY
MOODS AND INTERPERSONAL
RELATIONSHIPS AND --

>> DO YOU THINK THE JUDGE
UNDERSTOOD, THOUGH DR. TOOMER,
OPINED THE DEFENDANT WAS
IMPULSIVE AND UNSTABLE HE
TESTIFIED HE WAS AWARE THAT THE
BENEFIT HAD BEEN IN A
RELATIONSHIP WITH HIS
GIRLFRIEND, FIVE YEARS AND WAS
EMPLOYED AT THE TIME OF THE
OFFENSE AND AS YOU GO THROUGH
WHAT YOU ARE EVALUATING IT SEEMS
WHAT YOU ARE DOING IS ATTACKING
THE WEIGHT GIVEN TO STATUTORY
MITIGATION, AND, YET YOU HAVEN'T
MAZED THAT IN A SEPARATE POINT

ON APPEAL AND BUT IT UNDER
PROPORTIONALITY AND WE CAN SAY
WE THINK IT IS SIGNIFICANT,
MENTAL MITIGATION, BUT WHAT
PROPS IS THE JUDGE DOESN'T SEE
ANY CONNECTION BETWEEN THEIR
DESCRIPTIONS AND THE DEFENDANT'S
CONDUCT ON THE DAY OF THE
MURDER.

IT DIDN'T OCCUR AS A RESULT OF
EXTREME MENTAL DISTRESS AND
PARTICIPATED IN THE PLANNING AND
HAD A GUN, MASK AND GLOVES AND
RANSACKED THE APARTMENT AND TOOK
MARIJUANA AND ES ESCAPED AND
AFTER HE DOES THAT, THEN IT IS
-- IT GIVES LITTLE WEIGHT BUT
REALLY, WE HAVE TO READ THESE --
THE TESTIMONY AND UNDERSTAND
THAT THE JUDGE WAS REALLY
SAYING, YEAH, I CAN SEE THERE IS
MENTAL ISSUES, BUT I DON'T
REALLY SEE THERE IS ANY
CONNECTION TO THE CRIME.

>> THE WEST BAY TO DESCRIBE THAT
IS A FAMOUS -- A MOVIE WE'RE
AWARE OF, ARSENIC AND OLD LACE,
CARRY GRANT HAD A COUSIN, TEDDY,
DID BREWSTER WHO THOUGHT HE WAS
TEDDY ROOSEVELT AND EVERY DAY,
HE ACCOMPLISHED THE MURDERS AND
PLANNED BY TAKING THE BODIES
FROM HIS AUNT'S AND PLACING THEM
IN THE BASEMENT WHICH HE THOUGHT
WAS THE PANAMA CANAL AND DID SO
IN A VERY ORDERLY, PLANNED

FASHION AND DID THAT MAKE TEDDY BRUCESTERS -- WITH HIS MENTAL ILLNESS NOT A MITIGATING FACTOR, OF COURSE, HE WAS DELUSIONAL.

>> THAT IS A VERY INTERESTING MOVIE AND DESCRIPTION BUT I FAIL TO SEE EVEN A REMOTE COMPARISON WITH THE CRAZINESS WE SOMETIMES SEE IN SOME OF THESE MURDERS AND WE HAVE ONE NEXT, THAT SHOWS PRETTY MENTALLY ILL PERSON.

AND, THIS IS HIS COUSIN -- COUSIN SAYING, HEY, WE HAVE -- CAN ROB SOMEBODY AND GO IN, IN A -- WHAT I -- WITH THE CCP, ISN'T FOUND IF THEY DIDN'T DECIDE THEY WERE GOING TO ROB HIM AHEAD OF TIME AND FOR NO REASON KILL A GUY AND HIS ATTEMPT TO MURDER THE OTHER ONE.

>> AND I SUBMIT, AND, BOTH DOCTORS SAID, THIS WAS A FUNCTION OF HIS MENTAL ILLNESS. AND, IF YOU WANT TO FIND THAT THERE WAS NO MENTAL ILLNESS I THINK YOU ARE ABSOLUTELY RIGHT.

>> I THINK IT IS UP TO US TO FIND IT BUT IT IS UP TO US, DOING THE PROPORTIONALITY REVIEW AND I DON'T WANT TO STOP YOU FROM TALKING ABOUT THE OTHER CASES, THE PROBLEM, YOU SAY, THIS CASE, WE FOUND IT WAS REDUCED TO LIFE, EACH CASE WE LOOK AND EVALUATE THE QUALITY OF THE MENTAL MITIGATION AND THE

NATURE OF THE AGGRAVATION TO COME UP WITH SOMETHING SIMILAR TO ANOTHER CASE AND IF YOU WANT TO COMPARE AND SAY, WHAT IS YOUR BEST CASE.

>> I'LL TELL YOU, THE CASE -- STATE CITED 7 CASES.

WHERE YOU MOUND FOUND DEATH WAS PROPORTIONAL AND FOUR WERE ARMED ROBBERY/MURDER CASES.

AND THE OTHER THREE WERE -- HAD STABBING AS A MEANS OF KILLING, AND TWO OF HAD... I SUBMIT THEY ARE NOT RELEVANT AND THE OTHER ONE, THE COURT SAID, SHOULD HAVE BEEN HACK IN A SENSE AND I DON'T THINK THAT WOULD A-- ONE APPLIES, EITHER.

I THINK GOING RIGHT TO YOUR POINT, JUSTICE PARIENTE, SINGLETON, ESPECIALLY, WHICH HAD SUBSTANTIAL MENTAL MITIGATION, MR. SINGLETON WAS THE INFAMOUS MURDERER WHO HAD COME FROM CALIFORNIA, AFTER DOING THAT HEINOUS PRIOR VIOLENT FELONY AND I THINK YOU ARE ABSOLUTELY RIGHT.

YOU HAVE TO LOOK AT THE FACTORS OF EACH ONE, AND MR. SINGLETON IS NOT RELEVANT IN THE DISCUSSION, AND LOOK AT MENDOZA, THE ROBBERY -- HE HAD A PREVIOUS ARMED ROBBERY BUT THE TRIAL COURT FOUND NO MITIGATION WHATSOEVER.

IN MENDOSA AND HAYES, THERE WAS CCP IN HAYES AND THEY WERE GOING TO SHOOT THE CAB DRIVER BECAUSE HE WAS LIKELY ARMED AND THAT IS NOT RELEVANT.

AND, I'LL TELL YOU, IN HAYES, IN POST-CONVICTION, THEY DIDN'T EVEN SEEK THE DEALT PENALTY RIGHT OFF, BECAUSE IT WAS A 4-DECISION IN THE COURT IN HAYES, A 4-3 DECISION, BECAUSE OF THE MENTAL MITIGATION THAT WAS PRESENTED.

AND, HE'S NOW SERVING LIFE. BECAUSE, DIDN'T SEEK DEATH BEFORE A RETRIAL IN HAYES.

I THINK THAT JUSTICE PARIENTE YOU HIT THE CORE OF WHAT THIS CASE IS ALL ABOUT.

IF YOU ACCEPT THE MENTAL MITIGATION AT ALL, YOU HAVE TO FIND LIFE IN THIS CASE, AND IF YOU LOOK AT EVERY CASE CITED BY THE STATE THE ONLY ONES, ALL OF THEM THERE IS NO MITIGATION AT ALL.

>> LET ME TELL YOU WHY, LOOKING THE AT CASES LIKE, YOU CITED HESS.

I REMEMBER HESS.

I THINK IT IS ONE OF THE ADVANTAGES OR DISADVANTAGES OF BEING ON THE COURT FOR A WHILE. YOU -- THAT IS WHY I BROUGHT UP THE FACT THAT THE -- THIS MAN HAD AN ATTEMPTED ROBBERY, THAT

TERRORIZED THE VICTIM, AND BEFORE THIS CRIME, AND THE WAY I SEE PRIOR VIOLENT FELONIES, SOMEBODY HAS ALREADY DONE SOMETHING THAT IS BAD, NOT ANOTHER MURDER IT IS VERY DIFFERENT, LIKE I FORGET, IT WAS ONE OF THE CASES WHERE WE HAD, THE PRIOR FELONY, WAS -- I THINK IT WAS HESS, HE WAS LEWD AND LASCIVIOUS CONDUCT.

NOT THAT THAT IS NOT BAD AND THIS IS THE KIND OF THING THAT HE WAS DOING AND HE HAD A CHANCE, GIVEN A CHANCE BY THE CRIMINAL JUSTICE SYSTEM.

NOT TO GO TO PRISON FOR LIFE.

AND, WHAT DOES HE DO WITHIN A YEAR OR TWO?

OR LESS?

COMMITS THIS MURDER, AND, TO THE ONLY COMMITS THE MURDER...

[INAUDIBLE] NEXT-DOOR NEIGHBOR, AND I SEE THAT AND YOU HAVE THE CONTEMPORARY -- TWO PEOPLE, ONE PERSON KILLED AND THE OTHER PERSON, YOU KNOW, ATTEMPTED TO KILL.

I SEE THOSE AGGRAVATORS, YOU KNOW, I KNOW SOMETIMES WE FOCUS ON HAC AND CCP, BUT I THINK WHAT THE PERSON DID BEFORE, NOT STATUS OF... THEY ARE NOT STATUS OFFENSES, WHAT WE SAY IS LIKE IF SOMEBODY IS -- HAS AN ESCALATING PATTERN, SOMEBODY THAT... HAS

NOT LEARNED ANYTHING AND YOU SAY HE COULDN'T LEARN, BECAUSE HE WAS SO MENTALLY ILL AND WAS HE NOT WORKING AT THE TIME.

>> NOT AT THAT TIME, NO.

>> HAD HE BEEN EMPLOYED.

>> HE HAD BEEN EMPLOYED IN THE PAST BUT NEVER FOR A LONG TIME.

I THINK SINGLETON IS EXACTLY THE KIND OF CASE I PLEAD WHERE A PRIOR VIOLENT FELONY WOULD DO IT.

SO, SO EGREGIOUS.

AND, MR. SINGLETON WAS BACK ON THE STREETS, AT ALL, IT WAS VERY TROUBLING BUT IN THE TERRY CASE WE CITE IN OUR TENNIS, THAT WAS A CONVENIENCE STORE ARMED ROBBERY, FELONY MURDER, PRIOR VIOLENT FELONY, BUT --

FELONY MURDER AND PRIOR VIOLENT FELONY AND MITIGATION, THERE WERE TWO FAMILY MEMBERS THAT TESTIFIED AND THE COURT FOUND, TRIAL COURT FOUND THERE WAS EMOTIONAL DEPRIVATION, OF AN ADOLESCENT AND THE CHILD WHO GREW UP IN POVERTY AND BASED ON THE AGGRAVATORS AND MITIGATORS, IN THAT CASE, THIS COURT SAID THAT THAT WAS NOT PROPORTIONAL.

>> IN TERRY WAS THE PRIOR VIOLENT FELONY FOR AN ASSAULT THAT OCCURRED CONTEMPORANEOUSLY WITH THE MURDER.

>> I BELIEVE SO.

>> DO YOU NOT SEE... AND I'M ASKING YOU THIS, SOMEBODY THAT DOES A LOT OF DEALT PENALTY WORK, THAT IN TERMS OF -- WE CAN'T LOOK AND SAY WELL, THAT CASE HAD A PRIOR VIOLENT FELONY, DON'T WE HAVE TO LOOK AT --

>> JUSTICE, I THINK YOU ARE EXPANDING IT.

LOOK AT WHAT MR. McLEAN DID IN THE PRIOR VIOLENT FELONY, CAME AND DID A STICK UP A AND COULDN'T GET THE MONEY AND LEFT AND THOSE ARE THE FACTORS, NOT THE FACT SOCIETY WAS LET DOWN BY HIS RECURRING CRIMINAL CONDUCT.

I THINK --

>> I DON'T LOOK AT THAT PRIOR CRIME AS BEING A "NOTHING" CRIME.

I THINK IT WAS A VERY SIGNIFICANT CRIME.

THE FACT HE DECIDED NOT TO COMPLETE IT AND THEN IN TERRY, THIS IS WHERE -- IN TERRY, WE DESCRIBE THE SITUATION OF A ROBBERY GONE BAD.

THAT IS NOT THIS CASE.

>> WELL, TERRY --

>> THE ROBBERY GONE BAD, WHERE YOU TAKE THE GUN, AND YOU ARE -- INTENDING TO SHOOT ANYBODY AND SOMEBODY MAYBE TRIES TO PULL THEIR OWN GUN, AND YOU REACT. ISN'T THAT WHAT WE MEAN BY A ROBBERY GONE BAD.

>> WELL, IN TERRY, WE DON'T KNOW WHAT THE CIRCUMSTANCES ARE, WHEN TERRY PULLED THE TRIGGER.

THAT IS WHAT IT IS --

>> HERE, DON'T WE KNOW, AT LEAST THE TESTIMONY, THAT SAYS THAT THE DEFENDANT SAID, ASKED WHY HE DID IT, ASKED WHY HE FIRED THE SHOTS DURING THE ROBBERY, AND HE SAID HE WANTED TO FEEL, WHAT IT FEELS LIKE TO SHOOT AND KILL SOMEBODY.

>> THAT'S CORRECT.

>> HOW DOES THAT WEIGH IN THE BALANCE.

>> IT GIVES MORE IN SIGHT HOW IT OCCURRED BUT IT DOESN'T RISE TO THE CCP WHICH I THINK MAKES THE CASE MORE AGGRAVATED AND WOULD TIP THE BALANCE TOWARDS DEATH BUT THAT DIDN'T HAPPEN HERE.

AND, IT IS STRANGE, YOU KNOW, THE SURVIVOR, MR. LEWIS, LOOKED IN HIS EYES AND KNEW SOMETHING BAD WAS GOING TO HAPPEN AND HE RAN OFF AND THAT IS WHEN THE SHOOTING STARTED, HE RAN OFF AND YOU CAN SPECULATED IF HE SAT THERE, WHETHER THERE WOULD HAVE BEEN A SHOOTING, YOU CAN SPECULATE THAT.

>> BUT THE DEFENDANT DIDN'T SAY HE SHOT BECAUSE THE FELLOW RAN OFF.

HE SAID HE SHOT BECAUSE HE WANTED TO KNOW WHAT IT FEELS

LIKE TO SHOOT AND KILL SOMEBODY,
OUT OF HIS OWN MOUTH.

>> THAT'S CORRECT.

THAT'S CORRECT, BUT I'M SAYING
WHEN YOU HAVE THIS IMPULSE
CONTROL, LACK OF IMPULSE CONTROL
FROM IS A MENTAL ILLNESS YOU
HAVE TO LOOK AT IT IN TERMS OF
HOW HE REACTED, NOT WHAT HE WAS
THINKING, WELL, WOULDN'T IT BE
INTERESTING TO DO, BUT HIS
IMPULSE, LACK OF IMPULSE, THE
PERSON DARTED OFF AND HE STARTED
SHOOTING.

>> HE CALLED THE -- THE
CODEFENDANT, DIDN'T HE, GO
OUTSIDE AND AS YOU SEE, THE
WOMAN NEXT-DOOR, SHOOT HER.

>> IT IS VERY TROUBLING.

>> WHAT YOU ARE TELLING US IS
THAT THE HEIGHTENED
PRE-MEDITATION, REQUIRED FOR CCP
WAS NOT THERE.

AND IT SEEMS TO ME THAT AT SOME
POINT, DURING THE ROBBERY, HE
DECIDED HE'S GOING TO KILL THESE
FOLKS AND THAT IS WHEN HE TELLS
THE CODEFENDANT, GO AHEAD AND
GET OUT OF HERE AND YOU SEE THE
WOMAN, TELL HER, GET THE CAR
READY, MORE OR LESS.

I'M GOING TO STAY BEHIND,
OBVIOUSLY, SHOOT THESE PEOPLE
AND AT SOME POINT, THAT
HEIGHTENED PREMEDITATION SEEMS
TO HAVE DEVELOPED AND MAY NOT

HAVE BEEN THERE WHEN THEY FIRST
GOT THERE AND DEVELOPED IT
SOMEWHERE ALONG THE LINE AND WHY
IS THAT NOT CCP?

>> WELL, IT IS NOT CCP, BECAUSE,
THE PERSON WAS NEVER SHOT, WITH
THE... THE PERSON, THE
CO-DEFENDANT FOUND NO PURPOSE IN
DOING SO AND I DON'T THINK HE
SAW HER.

HE FLED SCENE AND THE SHOOTING
STARTED AND IT WAS UNEXPECTED.

>> I THINK HE SAW HER AND JUST
KEPT GOING AND DIDN'T SHOOT HER.

>> HE MAY HAVE.

HE MAY HAVE BUT HE SAID IT WAS
NO POINTED TO IT.

WAS, I GUESS, THE WORD HE PUT TO
IT.

YOU MAKE AN INTERESTING,
INTERESTING POINT, JUSTICE.

AND, A VERY TROUBLING PART OF
THIS CASE, THAT WHOLE THING,
THAT MEANT NOTHING IN THE CASE,
JUST... KILL THE WOMAN, IT IS A
HEARTLESSNESS THAT IS TROUBLING.

>> YOU SEEM TO BE TRYING TO
PLACE THIS CASE INTO THE
CATEGORY OF THOSE DECISIONS IN
WHICH YOU DESCRIBE AND WE HAVE
DESCRIBED AS THE COURT FOR
ROBBERY GONE BAD, BECAUSE OF THE
ESCAPE, MR. LEWIS ATTEMPTS TO GO
OUT THE BACK OR WHATEVER.

I DON'T RECALL SEEING CASES
WHERE WE HAVE DESCRIBED THAT

KIND OF CONDUCT AS A ROBBERY
GONE BAD AS OPPOSED TO THOSE
WHERE A STORE CLERK JUMPS ON OR
PULLS A GUN OUT OR GOES AFTER
THE ACCUSED.

HAVE WE EVER HAD SUCH A CASE
WHERE WE DESCRIBE THAT, SOMEONE
IS TRYING TO SAVE THEIR LIVES
AND TRYING TO LEAVE, AND THAT IS
DESCRIBED AS A ROBBERY GONE BAD?

>> NOT THAT I'M AWARE OF.

BUT --

>> IS THAT WHAT YOU ARE ARGUING
WE SHOULD... THAT IS THE ESSENCE
OF WHAT THE CASE IS?

IT IS NOT ONE OF THOSE JUST
VICIOUS MURDERS, THIS IS A
ROBBERY GONE BAD, SEEMS TO BE
WHAT YOU ARE ARGUING.

YOU MAY NOT HAVE SAID IT IN SO
MANY WORDS BUT THAT IS WHAT YOU
ARE TRYING TO PUSH THIS INTO.

>> WELL, THE NEIGHBOR COMING BY
AND BECAUSE OF THE NOISE AND --
IN THE APARTMENT, CHANGED THE
CALCULUS OF WHAT OCCURRED THAT
DAY, IN MY OPINION.

WHETHER YOU CAN CHARACTERIZE
THAT AS MAKING THE ROBBERY GO
BAD, I DON'T KNOW.

BUT THAT I THINK THAT WAS A BIG
COMPONENT IN THE OUTCOME OF THE
CRIME.

I'LL SAY, IN JOHNSON VERSUS
STATE, WHICH WAS A HOME INVASION
ROBBERY, LIKE THIS ONE WAS, IT

WAS A FELONY MURDER, PRIOR
VIOLENT FELONY, THE ONLY... THE
ONLY MITIGATION IN THAT CASE,
AND THE TRIAL COURT GAVE IT
SUBSTANTIAL WEIGHT, WAS THAT HE
EARNED THE GED, AND THAT WAS THE
ONLY MITIGATION PRESENTED IN
THAT CASE.

AND, THAT HE HAD A TROUBLED
CHILDHOOD.

>> HOW OLD WAS MR. JOHNSON.

>> I DON'T RECALL.

>> I MEAN, ONE OF THE THINGS, AS
WE LOOK AT THIS, IS THAT THIS IS
A 28-YEAR-OLD DEFENDANT.

THE CODEFENDANT THAT HE SAID TO
GO TRY TO SHOOT THIS NEXT-DOOR
NEIGHBOR, THE -- WAS 16.

IS THAT CORRECT.

>> NO.

-- YES.

YES.

HE WAS.

>> THE AGE, IS -- THE FACT
SOMEBODY ISN'T 18 OR 19 IS THAT
AT ALL SIGNIFICANT IN TERMS OF
THE ISSUES... SOME OF THE CASES
WHERE WE HAVE... [INAUDIBLE].

>> YES, AGE IS ALWAYS RELEVANT.
AND IN THIS PARTICULAR CASE,
DR. TOOMER FOUND THAT THIS
GENTLEMAN HAD THE EMOTIONAL AGE
OF AN ADOLESCENT.

BASED ON HIS CLINICAL
ASSESSMENT.

AND YOU ARE TALKING TO SOMEONE

WHO HAS OVER 30 YEARS

EXPERIENCE.

SO, EVEN THOUGH THAT WASN'T
ARGUED, AGE, AS A STATUTORY
MITIGATOR, HE DID HAVE THE
EMOTIONAL AGE OF AN ADOLESCENT.
AND THAT WAS UNREFUTED.

IN THE CASE.

SO, I THINK THAT WHEN YOU LOOK
AT THE QUALITATIVE THINGS IN THE
CASE, AND COMPARE THEM TO TERRY
AND COMPARE THEM TO JOHNSON, I
THINK IT IS INESCAPABLE THAT YOU
HAVE TO REDUCE THE SENTENCE TO
LIFE.

THAT IS WHAT PROPORTIONALITY IS.
AND THAT IS THE ESSENCE OF MY
ARGUMENT TODAY.

ANY FURTHER QUESTIONS?

I'LL BE HAPPY TO TAKE THEM.

>> THANK YOU.

>> THANK YOU.

>> MR. BROWNE?

>> GOOD MORNING.

SCOTT BROWNE, ON BEHALF OF THE
STATE OF FLORIDA.

THIS WAS A COLDLY PLANNED AND
EXECUTED HOME INVASION AND
ROBBERY IN WHICH THE DEFENDANT
MURDERED ONE HELPLESS VICTIM,
WHO WAS SIMPLY SITTING ON A
SOFA, 16-YEAR-OLD JAHVON
THOMPSON AND PUT HIS ARM UP IN A
DEFENSIVE POSE AND TWO BULLETS
WENT THROUGH HIS ARMS AND INTO
HIS CHEST AND ALSO ATTEMPTED TO

MURDER THEO LEWIS, WHO TOLD THE DEFENDANT I HAVE A WIFE AND THREE CHILDREN AND HE WAS LUCKY ENOUGH TO ESCAPE WITH HIS LIFE. HE DID TAKE ONE BULLET IN THE BACK AND HE DOVE FOR SAFETY. THE DEFENDANT'S PROPORTIONALITY CASE DO NOT HAVE A PRIOR VIOLENT FELONY SUCH AS ATTEMPTED MURDER.

>> ATTEMPTED ROBBERY, RIGHT?

>> THERE IS A --

>> ATTEMPTED MURDER, CONTEMPORANEOUS.

>> AND ABSOLUTELY NONE OF THE CASES, TERRY, JOHNSON, JONES... ALL OF THOUGH DEFENDANTS, PROPORTIONALITY CASES NOT A SINGLE ONE HAS A ATTEMPTED MURDER OF THIS NATURE AND RIGHT AWAY, WE HAVE MUCH HEAVIER AGGRAVATION IN THIS CASE. BUT, ALSO I WANTED TO CLARIFY SOME THINGS ON THE MITIGATION FRONT.

WHILE THE TRIAL COURT DID FIND BOTH STATUTORY MENTAL MITIGATORS, UPON CLOSE EXAMINATION WHAT THE COURT FOUND WAS NONSTATUTORY MENTAL MITIGATION AND I SAY THAT FOR THIS REASON.

IF YOU LOOK AT THE RECORDS, NEITHER DR. TOOMER, NOR DR. EISENSTEIN TESTIFIED AT ALL THAT THE STATUTORY MENTAL MITIGATORS APPLIES, IN FACT,

NEITHER ONE OF THEM EVEN USED
THE LANGUAGE IN THE THE
STATUTORY MITIGATORS.

DR. TOOMER, WHEN ASKED IF HIS
CAPACITY TO CONFORM HIS CONDUCT
TO THE REQUIREMENTS OF THE LAW,
WAS IMPAIRED, HE SAID, IT WAS
IMPAIRED AND NEVER SAID IT WAS
SUBSTANTIALLY IMPAIRED.

AND, WE KNOW DR. TOOMER KNOWS
WHAT THE STATUTORY MENTAL
MITIGATORS ARE.

>> HAVE WE EVER HELD, YOU
MUST... THE SUBSTANTIAL PORTION
OF THE LANGUAGE BEFORE THE TRIAL
JUDGE CAN TAKE A SIGNIFICANT
AMOUNT OF EVIDENCE AND THOUGH
THE WORD IS NOT USED, WOULD COME
TO THAT CONCLUSION.

>> NO, I DON'T THINK THERE IS A
SPECIFIC HOLDING BUT, I DON'T
THINK THE EVIDENCE, THE COURTS
FINDING --

>> YOU WOULD AGREE, THEN, IF
THERE IS AN ENORMOUS AMOUNT OF
EVIDENCE, THAT THE EXPERT WOULD
NOT HAVE TO USE THE MAGIC WORDS.

>> WELL, I WOULD SAY IF YOU HAD
AN ENORMOUS AMOUNT OF EVIDENCE,
THAT --

>> THAT IS AN EVALUATION AND IF
THERE IS AN AMOUNT OF EVIDENCE
THAT A TRIAL JUDGE IN -- IN THAT
TRIAL JUDGE'S LEARNED OPINION IS
SIGNIFICANT.

>> WELL --

>> THEN YOU AGREE YOU DON'T HAVE TO HAVE THAT --

>> I WOULD AGREE THERE IS NO HARD AND FAST RULE AND WHAT THE TRIAL COURT DID IS PUT THE EVIDENCE UNDER THE CATEGORY OF STATUTORY MENTAL MITIGATORS WITHOUT ACTUALLY FINDING THEM AND, AGAIN, THE COURT FOUND, GAVE VERY LITTLE WEIGHT TO THOSE MITIGATORS AND IT IS A WELL REASONED ORDER.

I'M NOT TRYING TO PICK APART THE TRIAL COURT IN ANY MANNER HERE.

>> DO YOU UNDERSTAND WHAT WE HAVE TO DO, BECAUSE IF WE WRITE THE OPINION, WE AGREE WITH YOU, AND, IF THIS COMES DOWN, AS, WELL, THERE WERE TWO STATUTORY MITIGATORS, THE JUDGE FOUND, THEN, THE NEXT CASE, WHERE THE PERSON MAY BE SEVERELY MENTALLY ILL, AND, THERE IS A TRUE LINK ESTABLISHED TO THE MURDERS, IF YOU ALL AHEAD HAVE THE CASE, McLEAN AND DIDN'T FIND IT, SO THAT IS AUTOMOBILE WAYS TROUBLESOME TO ME HOW WE MAKE SURE THAT WE CAPTURE WHAT THE JUDGE HAS SAID, WHICH SEEMS TO BE THAT HE HAD EMOTIONAL PROBLEMS, HE MAY HAVE HAD -- I MEAN, A BRAIN INJURY, OF THE IDEA THAT HE HAD A COMPARISON BETWEEN TWO OF HIS LOBES, MAY HAVE HAD PROCESSING ISSUES, BUT,

REALLY, IT DOESN'T LINK UP TO THIS CRIME AND THAT'S THE THING. IT MAY HAVE -- IF THIS CRIME OCCURRED A DIFFERENT WAY... AND HOW DO YOU THEN, HOW WOULD YOU ENUNCIATE THE PROPORTIONALITY ANALYSIS, NOT USE ONE WAY OR ANOTHER, NEXT TIME, BECAUSE, THIS IS MORE, YOU SAY IT WAS MORE LIKE ANOTHER CASE, THE PROBLEM IS, NO TWO CASES ARE REALLY THAT MUCH ALIKE.

>> THEY'RE NOT AND THAT IS PART OF MY CONCERN, IS, YOU KNOW, YOU SAY THIS, THE STAT GORE MENTAL MITIGATORS ARE FOUND AND IF YOU REVIEW AND PROPORTIONALITY REVIEW IS NOT JUST TALLYING WHAT MITIGATORS WERE FOUND AND THE COURT IS WELL AWARE OF THAT BUT IS LOOKING INDIVIDUALLY AT WHAT THE MITIGATORS OR AGGRAVATORS, INDIVIDUALLY REPRESENT, AND, IN THIS CASE, THOSE STATUTORY MENTAL MITIGATORS ARE ACTUALLY DESERVING OF VERY LITTLE WEIGHT, WHICH IS WHAT THE TRIAL COURT FOUND.

AND, AGAIN, WHEN YOU LOOK AT THE DEFENDANT CLAIMS THERE WAS A SERIOUS MENTAL ILLNESS FOUND, AND THERE WAS NOT.

THE BORDERLINE PERSONALITY DISORDER IS NOT AN [INAUDIBLE] SERIOUS MENTAL ILLNESS, IT IS A PERSONALITY DISORDER AND THE

MOST PROMINENT PERSONALITY CHARACTERISTICS THAT WERE FOUND, BY DR. EISENSTEIN, APPEAR TO BE ANTI-SOCIAL PERSONALITIES DISORDER BECAUSE HE ADMITTED THAT HE FOUND SIX OF 7 CATEGORIES OF PERSONALITY DISORDER, FOR THE DEFENDANT AND JUST BECAUSE HE HAS PERSONALITY DISORDER, IT IS A SERIOUS [INAUDIBLE] IT IS NOT.

>> THIS DEFENDANT HAD A LONG TERM HISTORY OF... WHATEVER IT IS, BORDERLINE PERSONALITY DISORDER.

OR ANTI-SOCIAL DISORDER.

I MEAN, DO WE HAVE A HISTORY THAT GOES BACK BEYOND THIS PARTICULAR CASE?

TO SHOW THE DEFENDANT HAS BEEN BORDERLINE FUNCTIONING IN SOCIETY, ALL OF HIS LIFE.

>> THERE IS NO EVIDENCE... THERE IS NO EVIDENCE IN THE RECORD OF ANY PRIOR MENTAL HEALTH TREATMENT.

THE --... CHARACTERISTICS, AND PERSONALITY DISORDER, IT CAN MAKE YOU UNSTABLE AND GIVE YOU FEELINGS OF LOSS OR PERCEIVED PAIN NOW RA AND HIS RELATIONSHIP AND THAT IS WHAT THE JUDGE DID, EVALUATED AND SAID, LOOK, HE WASN'T UNSTABLE, IT WASN'T A PRE-PLANNED VIOLENT OUTBURST, THIS WAS A PRE-PLANNED -- IF YOU

ACCEPT HE HAS BORDERLINE
PERSONALITY DISORDER IT WAS VERY
LITTLE MITIGATION IN THE CASE.

>> I GUESS WHAT... WHEN -- THE
PRIOR CRIME OF THE ATTEMPTED
ROBBERY AND THE -- 2002, IT
LOOKED LIKE HE POINTED THE GUN
AT HER, AND... THE VICTIM, BUT
THEN IN THE SENTENCING ORDER
SAYS, BECOMING FRUSTRATED WITH
THIS DELAY AND THE DEFENDANT
TOLD THE VICTIM TO GET INTO THE
BATHROOM AND BEFORE HE CLOSED
THE BATHROOM DOOR, SAYS TODAY IS
YOUR LUCKY DAY AND CURSE WORDS,
TODAY IS YOUR LUCKY DAY AND THEN
HE LEFT.

WAS THERE ANY -- THE ATTEMPTED
ROBBERY WITH THE GUN AND HE WAS
PUT ON PROBATION AND WAS THERE
ANYTHING ON THE RECORD ABOUT WHY
THEY WOULD HAVE PUT HIM ON
PROBATION VERSUS -- 10/20 LIFE
AND I AM ASKING ABOUT, ARE YOU
SAYING IT WASN'T ANY MENTAL
EVALUATION TO DO WITH THAT
PARTICULAR CRIME, THAT SHOWS
THAT HIS -- HE HAD OTHER ISSUES
UNDERLYING WHAT WAS GOING ON
WITH HIS BEHAVIOR?

>> NO, YOUR HONOR.

I DO NOT BELIEVE THAT THERE IS
ANY EVIDENCE IN THE RECORD OF --
TO EXPLAIN WHY, AND, AGAIN,
MRS. MONTOUTH HE PULLED TWO GUNS
ON HER AND ACTED IN A

THREATENING MANNER AND SHE IS SEVERELY TRAUMATIZED BY THE EVENT AND I CANNOT EXPLAIN THAT -- APPARENTLY LENIENT SENTENCE AND --

>> I'M NOT ASKING YOU TO EXPLAIN IT.

I WONDER IF THERE IS... NOBODY HAD EVIDENCE OR DR. TOOMER OR EISENBERG, WHOEVER THE EXPERTS WERE HERE.

TO TALK ABOUT ANY EVALUATIONS THAT WERE DONE OF HIM AT THAT TIME.

>> NO, YOUR HONOR, I DON'T BELIEVE THERE IS ANY EVIDENCE IN THE RECORD AND, AGAIN, THE DEFENDANT MENTIONS HE HAD BRAIN IMPAIRMENT, AND THE DIFFERENCE BETWEEN THE PERFORMANCE AND VERBAL IQs IN THE CASE WERE NOT SIGNIFICANT.

AND 95 AND I BELIEVE 105 AND THAT IS INSIGNIFICANT AND DR. TOOMER ADMITTED HE HAS... SIGNS OF ORGANIC BRAIN DAMAGE AND IN REALITY THERE IS LITTLE EVIDENCE TO SUPPORT THE DEFENDANT, WHO HAS AN AVERAGE IQ, SUFFERED ANY BRAIN DAMAGE WHATSOEVER IN THE CASE.

>> AND, ALTHOUGH HE TALKS ABOUT BRAIN DAMAGE, DOES THE DOCTOR GO SO FAR AS TO TELL THE DEFENSE ATTORNEY THAT YOU NEED TO TAKE THE -- THIS FURTHER OR, USUALLY,

YOU TALK ABOUT THESE PET SCANS
AND OTHER THINGS THAT WILL SHOW
THESE ORGANIC BRAIN KINDS OF
INJURIES.

>> YES.

YOUR HONOR THERE WAS NO MUCH
MEDICAL TESTING AND I DON'T KNOW
IF DR. TOOMER EVER REQUESTED IT,
THAT WOULD BE A MATTERED BETWEEN
THE DEFENSE ATTORNEY BUT WE KNOW
FROM CROSS-EXAMINATION, OF
DR. TOOMER, THAT NO OBJECTIVE
MEDICAL TESTING WAS DONE TO
CONFIRM OR DENY THE EXISTENCE OF
ANY BRAIN DAMAGE IN THIS CASE,
BUT, BEGAN, IT SIMPLY GOES TO
SHOW THAT WHAT WAS REALLY FOUND
HERE WAS NOT STRONG MENTAL
HEALTH MITIGATION AT ALL AND THE
JUDGE GAVE APPROPRIATE WEIGHT,
IN ANY TO THE TESTIMONY PROVIDED
BELOW.

AND --

>> AS FAR AS THE MITIGATION,
THERE IS A REFERENCE THAT HE HAD
A LONG TERM RELATIONSHIP WITH A
WOMAN, [INAUDIBLE] ABLE TO HAVE
RELATIONSHIPS AND THAT HE WAS
EMPLOYED.

WHAT DOES THE RECORD SHOW ABOUT,
AS IF WE SAID, HEARS A PICTURE
OF THIS PERSON, AND HE FINISHED
HIGH SCHOOL, DID HE PERFORM WELL
IN HIGH SCHOOL?

WAS THERE A POINTS WHERE THEN HE
STARTED WORKING, AND AGAIN, 28

YEARS OLD.

SO, WHAT DOES THE RECORD SHOW ABOUT WHAT WAS GOING ON IN THE DEFENDANT'S LIFE.

>> WELL, I THINK DR. EISENSTEIN, ADMITTED THAT HE HAD A VERY SKETCHY WORK HISTORY, THAT HE WAS AWARE OF, BUT THAT WOULD ALSO BE CONSISTENT WITH ANTI-SOCIAL PERSONALITY DISORDER.

YOU CAN WORK AND YOU ARE SMART ENOUGH TO WORK BUT, YOU DON'T WANT TO PUT ANY EFFORT.

SO...

>> THE ANSWER IS THERE WASN'T ANYTHING TO SHOW, DON'T KNOW ANYTHING ABOUT, REALLY, WHAT --
>> IF THE BORDERLINE PERSONALITY DISORDER AFFECTED HIS WORK HISTORY.

>> NO, NO, JUST, YOU KNOW, HE WORKED, WAS IT EVER FULL-TIME, HE'S 28 YEARS OLD.

>> YOU KNOW, I'M NOT SURE.

I KNOW THIS ONLY THING I KNOW ABOUT HIS WORK HISTORY, WAS IT WAS ADMITTEDLY INTERMITTENT. HE DIDN'T HAVE A LONG TERM JOB HISTORY.

BUT, AGAIN, I ALSO SUBMIT THAT THAT WOULD GO LANG WITH HIS CHOSEN LIFESTYLE AND ANTI-SOCIAL PERSONALITY DISORDER RATHER THAN UNDERLYING MENTAL ILLNESS.

>> THERE IS ALSO THE TRIAL JUDGE

IN THIS CASE, GAVE -- DISCUSSED
AT LEAST, SUBSTANCE ABUSE AND
OFTEN WE SEE SUBSTANTIAL ABUSE
COUPLED WITH MENTAL ILLNESS AND
SO WHAT WAS THE ESSENCE OF THIS
DEFENDANT'S SUBSTANCE ABUSE.

>> WELL, YOU HAVE BRIEF
TESTIMONY FROM DR. TOOMER THAT
YOU FOUND THAT HE HAD ABUSED
MARIJUANA, COCAINE AND I BELIEVE
ECSTASY, BUT IT WAS USE, NOT
DEPENDENCE AND THERE IS NO
EVIDENCE.

>> CONNECTED WITH THIS TIME
PERIOD.

>> THERE WAS ABSOLUTELY NO
EVIDENCE THE DOCTORS HAVE THAT
HE WAS UNDER THE INFLUENCE OF
DRUGS, AT THE TIME OF THE
OFFENSES, BUT, MORE THAN THAT,
IT IS JUST OCCASIONAL,
APPARENTLY OCCASIONAL USE,
BECAUSE THIS DOCTOR DIDN'T FIND
THAT HE HAD DEPENDENCE ISSUES.
SO, THAT WAS NOT MITIGATING.
ONCE AGAIN, IF YOU COMPARE THE
CASE TO MEN SO'S DA AND THE
OTHER CASES WHAT YOU HAVE HERE
IS A SIGNIFICANTLY AGGRAVATED
CASE AND THIS WAS NOT A ROBBERY
GONE BAD.

FAR FROM IT.

THE DEFENDANT CHOSE TO MURDER
TWO COMPLIANT AND HELPLESS
VICTIMS, ONE OF WHOM ESCAPED,
AND NOT [INAUDIBLE] HE STRUCK

ONE -- ONE SHOT IN THE BACK AND ONE SHOT, I BELIEVE WENT RIGHT, HEARD AT LEAST, BY HIS EAR.

>> ON HIS INTENT, THE INDICTMENT SHOWS AND I DON'T KNOW, FIRST DEGREE FELONY MURDER.

>> CORRECT.

>> DOES THAT -- THEY CAN CHOOSE THESE -- DON'T HAVE TO CHOOSE, BUT I WAS INTERESTED, THIS IS ACTUALLY SAID TO BE SOMETHING... FELONY MURDER AND SO, IT WASN'T AN ARGUMENT THAT THE STATE DIDN'T ARGUE CCP OR PREMEDITATED IN THIS CASE?

>> NO, BUT, THE FACTS --

>> I UNDERSTAND, I'M -- I WANTED TO MAKE YOU UNDERSTAND AND AVOID THE ARREST AGGRAVATOR WHICH WAS SOUGHT, THE JUDGE DIDN'T FIND THAT.

>> THAT'S CORRECT, YOUR HONOR.

>> I WANT TO -- BECAUSE -- AND I KNOW WE TALKED ABOUT THE HEIGHTENED PREMEDITATION AND THE STATE DIDN'T PROSECUTE...

>> NO, AND THIS COURT CAN TAKE INTO EFFECT THE FACT THAT IT WAS COLDLY EXECUTED AND THERE IS NO DOUBT ABOUT THE APPELLANT'S INTENT IN THIS CASE, HE DID INSTRUCT HIS CO-DEFENDANT TO KILL MR. LEWIS'S WIFE, ON THE WAY OUT.

AND THE 15-YEAR-OLD DECIDED, YOU KNOW, I DON'T SEE A NEED TO DO

THAT AND SO HE LEFT AND THE APPELLANT CERTAINLY AT LEAST NO DOUBT ABOUT HIS THEN AND HIS STATEMENT TO CODEFENDANT LOWEN, WHY DIDN'T YOU SHOOT? I WANTED TO KNOW WHAT IT WOULD FEEL LIKE TO KILL SOMEBODY AND NOW HE KNOWS AND THE DEFENSE CASES, ONE OF WHICH WAS CITED, JOHNSON VERSUS STATE, THE PRIOR VIOLENT FELONY IN THAT CASE WAS AN AGGRAVATED ASSAULT UPON THE DEFENDANT'S OWN BROTHER AND THE COURT DIDN'T COUNTED THAT AS A PRIOR VIOLENT FELONY AND NEITHER TERRY OR JOHNSON OR JONES VERSUS STATE HAS ANYTHING LIKE AN ATTEMPTED MURDER, AND, AGAIN THOSE ARE ROBBERY CASES GONE BAD.

AND THIS CASE IS SIGNIFICANTLY AGGRAVATED AND IF YOU ACTUALLY LOOK AT THE MITIGATION THAT WAS FOUND IT WAS MINIMAL IN THIS CASE.

AGAIN, THERE WAS NO HISTORY OF ABUSE IN THE DEFENDANT'S BACKGROUND, THERE WAS SOME FIGHTING AMONG HIS BROTHERS AND SISTERS, BUT, AGAIN IT IS NOT A CASE WHERE HE HAD A MOM AND DAD AT HOME, A LARGE FAMILY AND THIS IS NOT A HEAVILY MITIGATED CASE, IF YOU LOOK AT THE MITIGATION, IT IS ACTUALLY PRESENTED AND FOUND AND IS MORE LIKE, SHALITO

AND MENDOSA, AND OTHER CASES
STATED IN THE BRIEF.
NOTHING FURTHER.

>> THANK YOU.

REBUTTAL?

>> JUST BRIEFLY, AT TRIAL, AND
IN ARGUMENT HERE, THE STATE IS
TRYING TO CHARACTERIZE MAYBE
THERE WAS ANTI-SOCIAL
PERSONALITY DISORDER.

THE REASON BOTH DOCTORS DIDN'T
AGREE WITH THAT, ON MMPI TESTING
THE LOWEST SCALE PERFORMANCE OF
MR. McLEAN WAS IN THE SAIL 4
WHICH IS THIS PSYCHOTIC AREA
WHERE THEY LOOK FOR ANTI-SOCIAL
PERSONALITY DISORDER AND THAT'S
WHY THEY DISMISSED THAT, AND,
ALSO, THE SUPPORT OF THE
BORDERLINE PERSONALITY DISORDER
WAS IN SCALE 6, 7, 8, WHICH
DEALS WITH PARANOIA AND ANXIETY
AND SCHIZOPHRENIA HE HAD
ELEVATED SCORES ON HIS TESTING
AND THAT IS WHY THEY CONCLUDED,
WHAT WAS SUPPORTED, THEIR
CONCLUSION THAT HE HAD
BORDERLINE PERSONALITY DISORDER.
AND I DISAGREE WITH THE STATE,
ON THEIR CHARACTERIZATION, THAT
THIS IS NOT A SERIOUS MENTAL
ILLNESS, AND ALL EXPERTS IN THE
FIELD SAY IT IS.

IT IS A SERIOUS MENTAL ILLNESS,
THAT AFFECTS ALL OF THEIR
FUNCTIONING, AND SO, THIS MAKES

THIS CASE MORE MITIGATED.
I THINK THE WAY IT IS CALLED
BORDERLINE, THAT THAT HAS A
HISTORY IN THE FACT THAT
BORDERLINE PERSONALITY DISORDER
HAD ITS ORIGINS IN THE FACT THAT
THEY LOOKED AT IT... BORDERLINE
MENTAL ILLNESS BETWEEN THE
NEUROSIS AND PSYCHOSIS AND THAT
IS WHERE IT CAME FROM,
BORDERLINE, BUT IS A SERIOUS
MENTAL ILLNESS.

>> WOULD YOU ELABORATE ON WHAT
JUSTICE QUINCE WAS ASKING OF
MR. BROWNE OTHER THAN THE
EVALUATIONS THAT WERE DONE AFTER
THE MURDERS, WOULD YOU
[INAUDIBLE] DEFENSE INTRODUCE
EVIDENCE OF THE SCHOOL
PERFORMANCE, WHETHER HE
GRADUATED HIGH SCHOOL, WHETHER
HE HAD PRIOR MENTAL EVALUATIONS,
WHETHER HE WAS TREATED, THOSE
ARE THE KINDS OF THINGS, OTHER
CASES YOU LOOK AT, AND NOT THAT
WE'RE NECESSARILY SAYING SOMEONE
IS EVALUATED AFTER THE MURDER.
IT'S NOT ALONE, AND IT IS MUCH
MORE SUBSTANTIAL WHEN YOU SEE
LIFETIME OF THINGS IN RECORDS.
AND, THE FAIR EVALUATION.

>> I THINK THIS WAS AN IMMIGRANT
FAMILY THAT WAS NOT VERY --
DIDN'T BELIEVE IN MEDICINES.
I'D LIKE TO SAY.

>> I GUESS, AS SOON AS YOU SAY

THAT, I AM ASSUMING, THIS IS A
NO.

THERE AREN'T RECORDS.

>> THERE AREN'T AND I'LL EXPLAIN
WHY.

HIS MOTHER HAD BY ALL REPORTS, A
HISTORY OF MENTAL ILLNESS, THAT
WAS NEVER DIAGNOSED.

AND SHE NEVER SOUGHT TREATMENT
DESPITE HER HUSBAND'S REPEATED
DEMANDS, TO GET SOME.

BUT, HIS SISTER WAS
INSTITUTIONALIZED FOR MENTAL
ILLNESS, AND, HIS INJURIES, THAT
HE RECEIVED AS A YOUTH DID NOT
RECEIVE MEDICAL ATTENTION.

THERE IS A PATTERN HERE, OF NOT
HAVING ANY KIND OF MEDICAL
INTERVENTION IN THE FAMILY FOR
ANY KIND OF THE MENTAL ISSUES
THEY HAVE, IT IS A DEFICIT IN
THE CASE, AND I THINK THAT WHERE
THERE IS SMOKE, THERE IS FIRE
AND THERE ARE PLENTY OF
INDICATIONS, THE MENTAL ILLNESS
OF HIS MOTHER, SISTER AND
GRANDMOTHER I BELIEVE ALSO, THAT
YOU CAN CONCLUDE THAT MENTAL
ILLNESS IS A PART OF THIS CASE.

>> THANK YOU.

THANK YOU, BOTH, FOR YOUR
ARGUMENTS HERE TODAY.