

>> ALL RISE.
SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
PLEASE BE SEATED.
>> OUR LAST CASE FOR THE DAY
IS DELGADO VERSUS STATE OF
FLORIDA.
YOU MAY PROCEED.
>> MAY IT PLEASE THE COURT,
I'M STEVE.
I REPRESENT THE APPELLANT,
DELGADO.
FLORIDA'S LONGESTABLISHED
PARTIALITY STANDARD SAYS DEATH
PENALTY CAN BE CONFIRMED IF
THE CASE IS AMONG THE MOST
AGGRAVATED AND LEAST
MITIGATED.
THIS CASE SATISFIES NEITHER
PRONG OF THAT TEST.
REMARKABLY IN THIS CASE, WITH
EIGHT DOCTORS EXPRESSING THEIR
DIAGNOSES AND THEIR
ASSESSMENTS, WITH LAY
TESTIMONY FROM NUMEROUS
WITNESSES WHO KNEW HUMBERTO
DELGADO IN THE VIRGIN ISLANDS,
IN NORTH CAROLINA AND IN
FLORIDA, THESE FACTS WERE
ESTABLISHED BY OVERWHELMING
AND WITH ONE PARTIAL EXCEPTION
UNCONTRADICTED EVIDENCE.
>> WELL, WE'VE GOT
APPARENTLY, AS YOU SAY, THIS
IS ABOUT IN TERMS OF
CONSISTENT TESTIMONY,
INCLUDING FROM THE DOCTORS, A
VERY SERIOUSLY MENTALLY ILL
INDIVIDUAL.
AND APPARENTLY THE JUDGE
DIDN'T CONTEST THAT.
IT WAS PRESENTED.
BUT THEN THERE HAS BEEN
SOMETHING DOES IT HAVE TO
BE THE MOST MITIGATED, LEAST
AGGRAVATED.
BUT THIS IS ISN'T THIS AN
AGGRAVATED CASE?
IT INVOLVES A LAW ENFORCEMENT
OFFICER.

IT INVOLVES ANOTHER AGGRAVATED ASSAULT.

SO HOW DO WE BALANCE BECAUSE WE HAVEN'T GOTTEN TO THE POINT WHERE MENTALLY ILL INDIVIDUALS ARE EXEMPT FROM THE DEATH PENALTY.

HOW DO YOU SQUARE THAT?

>> A COUPLE THINGS.

FIRST OF ALL, HAVING SEEN THE TAPE OF THE ORAL ARGUMENT LAST JUNE IN THE THOMAS MCCORE CASE, I'M NOT ARGUING THAT THE 8TH AMENDMENT PRECLUDES THE DEATH PENALTY FOR MENTALLY ILL INDIVIDUALS.

THAT'S FOR ANOTHER DAY, PROBABLY ANOTHER COURT.

WHETHER IT'S GOING TO GO THE SAME WAY AS UNDER 18, AS MENTALLY RETARDED MAY.

BUT THAT'S NOT WHAT I'M ARGUING.

WHAT I'M ARGUING IS UNDER TRADITIONAL PROPORTIONALITY ANALYSIS.

THE COURT HAS MADE IT VERY CLEAR IN COOK, COOPER, IN GREEN THAT THE BOTH PRONGS OF THE TEST HAVE TO BE SATISFIED.

IT HAS TO BE BOTH AMONG THE MOST AGGRAVATED AND LEAST MITIGATED.

THE STATE IN THEIR ANSWER TURNED THAT ON THEIR HEADS AND SAID THIS CASE ISN'T AMONG THE LEAST AGGRAVATED OR MOST MITIGATED.

IT IS.

IT'S NOT AMONG THE LEAST AGGRAVATED, BUT ALSO NOT AMONG THE MOST AGGRAVATED.

WHEN YOU SAY IT'S AN AGGRAVATED CASE, THERE ARE TWO AGGRAVATORS IN THIS CASE.

HE'S GOT IN SIGNIFICANT CRIMINAL HISTORY AT ALL FOR 34 YEARS.

>> HAVE WE EVER SAID THAT THE

KILLING OF A LAW ENFORCEMENT
OFFICER IS A SIGNIFICANT
AGGRAVATOR?

>> I'M NOT SAYING IT'S NOT
SIGNIFICANT.

BUT IT'S NOT DISPOSITIVE.
THIS COURT SAID IN WHEELER
THAT DEATH IS NOT NECESSARY OR
AUTOMATIC FOR KILLING OF A LAW
ENFORCEMENT OFFICER.

>> THERE IS NO AUTOMATIC DEATH
PENALTY.

THERE CAN'T BE UNDER THE LAW.
BUT EXPLAIN AND I THINK THIS
IS WHAT BECAUSE I DO
CONSIDER MURDER OF A LAW
ENFORCEMENT OFFICER YOU
KNOW, I'D PICK THAT ABOVE CCP.
JUST AS WE PICK WHAT WE CANNOT
TOLERATE IN THIS SOCIETY.
BUT WHAT IS THE RECORD SHOW?
WHAT WAS THE EVIDENCE ABOUT,
THAT HE WAS UNDER EXTREME
EMOTIONAL DISTRESS AT THE TIME
OF THE MURDER.

COULD YOU FACTUALLY EXPLAIN
WHAT WE KNOW ABOUT HOW THIS
MURDER OCCURRED.

>> OKAY.

WELL, ABOUT HALF WHAT WE
KNOW ARE YOU TALKING ABOUT
THE ACTUAL EVENTS THAT
OCCURRED ON THE DAY?

>> YES.

YES.

>> I WON'T AT THIS POINT GET
INTO HIS YOU KNOW, HIS
THE MENTAL ILLNESS THAT HE
HAS.

>> BECAUSE DO YOU APPRECIATE
THAT SOMEONE COULD BE VERY
SERIOUSLY MENTALLY ILL, BUT
THEY COULD ACT IN A WAY ON THE
DAY OF A MURDER IN A VERY
DELIBERATE WAY.

>> I UNDERSTAND THAT.

BUT THIS IS A CASE WHERE I
NEED TO SAY THAT THERE HAVE
BEEN A COUPLE CASES OF LAW
ENFORCEMENT OFFICER MURDERS

THAT WERE REVERSED ON
PROPORTIONALITY, HARDY AND
FITZPATRICK.

HARDY IS SLIGHTLY MORE LESS
AGGRAVATED THAN THIS CASE ONLY
BECAUSE OF THAT MODERATE
WEIGHT SECOND OF POINTING BUT
NOT FIRING A GUN.

I WANT TO GET INTO THAT IN
MORE DETAIL LATER IF I CAN.
BUT THIS CASE IS WAY, WAY MORE
MITIGATED THAN HARDY.
THE OTHER CASE, FITZPATRICK

>> WELL, I'M ASKING YOU,
THOUGH.

I UNDERSTAND I'M ASKING YOU
ABOUT WHAT HAPPENED

>> CIRCUMSTANCES LEADING UP TO
OKAY.

THE JUDGE FOUND AS AN
UNSTATUTORY MITIGATOR THE
ENORMOUS STRESS HE WAS UNDER.
HE HAD BEEN KICKED OUT OF HIS
RESIDENCE BY THE MOTHER OF HIS
CHILD BECAUSE SHE COULDN'T
DEAL WITH HIS MENTAL ILLNESS
ANYMORE.

HE'S ALLOWED TO STAY WITH HIS
AUNT AND HIS UNCLE.

AND THE TESTIMONY FROM THE
AUNT AND THE UNCLE IS THAT
HE'S WALKING UP AND DOWN,
PACING CONSTANTLY,
SLEEPDEPRIVED, NOT EATING.
HE'S SCARING THEIR CHILDREN,
NOT THROUGH ANY THREATS OR
VIOLENCE OR ANYTHING LIKE
THAT, BUT JUST THROUGH HIS
WEIRD BEHAVIOR.

HE'S TALKING TO HIMSELF AS IF
HE WAS TALKING TO SOMEBODY
ELSE.

HE'S YOU KNOW, I'M TALKING
ABOUT PEOPLE OUT TO GET HIM
AND THERE'S OTHER EVIDENCE OF
THAT AS WELL.

PEOPLE HAVE CALLED HIM ON THE
PHONE, TALKED TO HIM.
HIS GIRLFRIEND IN NORTH

CAROLINA CALLED HIM ON THE
PHONE AND TALKED TO HIM AND HE
WAS ASKING THE WAY SHE'D SEEN
BEFORE WHEN HE'S SLEEP
DEPRIVED AND NOT EATING.
HE WAS DECOMPENSATING.
HE WAS OFF HIS MEDS.
EVENTUALLY HIS AUNT SAYS HE'S
GOT TO GO.

HE'S SCARING MY KIDS.
HE'S TOO CRAZY.
HE'S SICK AND I GOT TO GET HIM
OUT OF MY HOUSE.
SO THEY TELL HIM YOU GOT TO
LEAVE.

THEY TOLD HIM HE COULD HAVE AN
EXTRA MONTH, I BELIEVE, BUT HE
WAS OFFENDED AND HE LEFT AND
HE WAS KIND OF STAYING WITH
PEOPLE AND HE WAS ON THE
STREETS.

>> AND HOW LONG AGO WAS THIS
IN RELATIONSHIP TO THE MURDER?
>> WEEK OR TWO.

HE'S STAYING WITH SOME PEOPLE.
HE'S NOT YOU KNOW, HER
GRANDMOTHER COMES BACK.
HE HAS TO LEAVE.

HE'S SLEEPING ON THE STREETS.
HE'S SLEEPING IN A STORAGE
BIN.

HE'S BEEN GOING TO
>> YOU SAY HE'S SLEEPING IN A
STORAGE BIN.

>> LIKE A STORAGE FACILITY,
WHICH IS WHERE HE RETRIEVED
ALL OF HIS EARTHLY GOODS AND
PUTS THEM IN THE BAG WHEN HE
GOES ON THIS 15MILE TREK.
THE MORNING OF THE CRIME HE
GETS ALL THIS STUFF AND HE
PUTS IT IN A LARGE BAG, LIKE
CANVAS BAG, AND HE STARTS
WALKING, VAGUELY LOOKING FOR
THE VA IN TAMPA, WHICH HE
DOESN'T EXACTLY KNOW WHERE IT
IS, BUT HE'S KIND OF GOT SOME
GENERAL IDEA.

THIS GUY HAS GOT SEVERE
PHYSICAL PROBLEMS DOCUMENTED,

BAD KNEES, BAD BACK, NECK.
HE'S WALKING IN THE HEAT AND
THE RAIN WITH THIS PACK.
AND HE'S GOT IN THE BACK HE
SHOULDN'T HAVE.
HE'S GOT FOUR FIREARMS IN THE
BACK.
>> COULD WE JUST PUT A LITTLE
PIN RIGHT THERE?
WHERE IN RELATIONSHIP TO THIS
WALKING TO TAMPA I THOUGHT
ON THIS SAME DAY HE ALSO TRIED
TO RETRIEVE MONEY THAT HE HAD
PUT ON A LAYAWAY OR SOMETHING
TO THAT EFFECT?
DID THAT HAPPEN BEFORE OR
AFTER THE TRIP
>> TOWARD THE BEGINNING OF THE
TRIP.
HE GOES INTO THE STORE AND HE
WANTS
>> WHILE HE'S STILL
>> HE WANTS TO TAKE THE WATCH
OFF LAYAWAY AND THE WOMAN
TELLS HIM WE CAN'T GIVE YOU
ANY MONEY BECAUSE WE JUST
OPENED.
WE DON'T HAVE ANY MONEY IN THE
TILL RIGHT NOW.
HE SAYS HE'LL WAIT, BUT 45
MINUTES OR SOMETHING PASSES
AND HE SAYS THAT'S OKAY, I'M
LEAVING AND HE STARTS ON HIS
TREK.
NOW, HE'S GOT FOUR LOADED
FIREARMS AND A LAPTOP
COMPUTER, WHICH HE OWNS,
BASICALLY ALL HIS IT'S IN
THIS HOMELESS BAG THAT HE'S
GOT.
HE'S TAKING EVERYTHING WITH
HIM.
HE'S GOING TO THE V A.
HE'S NOT COMMITTING CRIMES,
USING FIREARMS TO ROB A BANK.
HE'S TAKING THEM TO THE VA.
THERE'S A LITTLE BIT OF
HISTORY ON THERE.
>> I'M MORE I WANT TO GO
LET'S WE FAST FORWARD TO

HE'S NOW AT SOME POINT HE
ACQUIRES A SHOPPING CART?

>> RIGHT.

RIGHT.

15 MILES LATER, MANY HOURS
LATER.

>> HE'S WALKED.

SO HE PUTS HIS STAFF IN THE
SHOPPING CART.

>> HE'S GOT HIS STUFF IN THE
SHOPPING CART.

>> HE'S GOING ALONG TO TRY TO
FIND THE VA IN TAMPA.

>> YEAH.

>> OKAY.

AND THAT'S IN THE RECORD.

NOW, WHAT HAPPENS WITH THE
POLICE OFFICER AND THE
TASTING?

>> THAT GETS A LITTLE SKETCHY.
IT'S SKETCHY BECAUSE THERE'S A
CAMERA IN CORPORAL ROBERTS'
CAR, BUT IT'S NOT ACTIVATED.
THERE'S NO INFORMATION ABOUT
DELGADO ON THE POLICE CAR
COMPUTER.

ROBERTS CAN'T TESTIFY.

DELGADO CAN'T TESTIFY.

WHEN HE TALKS TO THE
PSYCHIATRISTS, PSYCHOLOGISTS
IN THIS CASE HE HAD SNAPSHOT
MEMORIES.

HE WASN'T ABLE TO GIVE A
COHERENT ACCOUNT.

>> I THOUGHT THERE WERE
SEVERAL EYE WITNESSES WHO
TALKED ABOUT THIS ENCOUNTER.

>> THERE WERE SEVERAL PARTIAL
EYE WITNESSES.

THERE'S AN EYE WITNESS BY THE
NAME OF RICHARD FARMER, A
SEVENTIME CONVICTED FELON.
HE SEES DELGADO GETS TASED.
FARMER SAYS DELGADO PULLED THE
TASER OUT OF HIS SHOULDER.

>> DO WE KNOW WHAT LED TO THE
POLICE OFFICER TASING MR.
DELGADO?

>> WE CAN CONJECTURE TO A
DEGREE.

>> WE CAN'T CONJECTURE HERE.
>> WELL, YOU GOT TO CONJECTURE
BECAUSE THERE'S NO TESTIMONY.
>> WELL, WE GOT TO USE FACTS,
THOUGH.
WHAT DID THE TRIAL COURT
DID THE TRIAL COURT FIND
ANYTHING ON THIS?
>> I DON'T RECALL WHETHER THE
TRIAL COURT FOUND ANYTHING OR
NOT.
APPARENTLY ROBERTS STOPPED
DELGADO, STARTS GOING THROUGH
HIS THINGS, FINDS THE LAPTOP,
SAYS THINGS IMPLYING THAT I
DON'T BELIEVE THIS IS YOURS.
MAY OR MAY NOT HAVE SEEN A
GUN.
I DON'T THINK THAT'S
COMPLETELY CLEAR.
AT SOME POINT DELGADO BOLTS,
STARTS TO RUN, DOESN'T ATTACK
ROBERTS, DOESN'T PULL ANY OF
THE WEAPONS.
HE RUNS.
HE GETS TASED.
WHERE HE GETS TASED IS NOT
CLEAR.
ACCORDING TO FARMER HE PULLS
THE TASER OUT OF HIS SHOULDER.
THE WIRES ARE FOUND IN HIS
DREADLOCKS.
THERE'S A WITNESS IN A CAR WHO
HEARS THE TASER.
DR.†TAYLOR WHEN HE'S
TESTIFYING FOR THE STATE IN
THE GUILT PHASE SAYS HE
WOULDN'T BE AT ALL SURPRISED
IF DELGADO WAS MOMENTARILY
STUNNED BY THE TASER.
AFTER HE GETS TASED, A FIGHT
OCCURS BETWEEN DELGADO AND
ROBERTS.
ANOTHER WITNESS KENT SHARP
THOUGHT THE CUSTOMER WAS
GETTING THE BETTER OF THE
FIGHT.
AT SOME POINT THE OFFICER GETS
SHOT.
NOW, RICHARD FARMER, THE

STATE'S WITNESS, THIS SEVENTIME CONVICTED FELON WHO WAS DRINKING AND WANTED A REWARD, HE SAID HE SAW THE HOMELESS GUY STANDING OVER THE OFFICER, REACHES DOWN POINTBLANK, FIRES A SHOT INTO HIS CHEST.

WE KNOW FROM THE EVIDENCE THAT'S NOT TRUE BECAUSE THE MEDICAL EXAMINER TESTIFIED THAT THE OFFICER WAS ON HIS BACK, THE SHOT ENTERED HIS ARM, WENT INTO THE ARM, FRACTURED THE BONE, CAME OUT OF THE ARM AND WENT INTO THE CHEST CAVITY.

SO WE KNOW FARMER IS NOT RIGHT ABOUT WHAT HE SAYS HE SAW THERE.

SO I MEAN BASICALLY THAT'S WHAT WE KNOW ABOUT THE ALTERCATION ITSELF.

WE KNOW THAT THE JURY HAD THE OPTION OF A VERDICT.

THEY HAD A VERDICT OPTION OF PREMEDITATED AND FELONY

>> WELL, WE HAVE THE JUDGE FINDING THAT HE WAS FOUND THAT HE WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE AT THE TIME HE KILLED ROBERTS AND AFFORDS THIS MITIGATING FACTOR SUBSTANTIAL WEIGHT.

>> YES.

>> WE GOT THAT.

>> SINCE YOU'RE GIVING US THE SCENARIO OF WHAT HAPPENED, THE OTHER AGGRAVATING CIRCUMSTANCE HERE IS THAT THERE WAS AN AGGRAVATED ASSAULT ON ANOTHER OFFICER, CORRECT?

>> THERE WAS

>> SO TELL US HOW THAT AGGRAVATED ASSAULT OCCURRED.

>> OKAY.

WELL, AGAIN, HOW THAT OCCURRED WAS THAT ROBERTS' SUPERVISOR GETS THE RADIO CALL, OFFICER

DOWN, RESPONDS TO THE AREA,
SEES ROBERTS ON THE GROUND,
SEES A DISHEVELEDLOOKING GUY
THAT INITIALLY HE THINKS IS
COMING TO HELP AND THEN HE
THINKS, NO, THIS IS PROBABLY A
SUSPECT.

THE HOMELESSLOOKING GUY IS
RUNNING.

HE REACHES INTO A BAG AND
POINTS A FIREARM AT MUMFORD.
THE WHOLE THING TOOK A MATTER
OF SECONDS.

>> BUT DID NOT SHOOT.

>> DID NOT SHOOT.

AND AGAIN I WANT TO CONTRAST
THAT MCCOY CASE THAT YOU ALL
HEARD THREE MONTHS AGO, WHICH
IS A CASE WHERE THE GUY WENT
TO TAMPA AND 11 DAYS LATER
SAID HE WAS GOING TO GO OUT IN
A BALL OF FLAMES AND STARTING
FIRING AT OFFICERS.

LITTLE BIT OF A DIFFERENT
SITUATION.

ALSO THAT WAS GIVEN GREAT
WEIGHT.

THIS ONE WAS GIVEN MODERATE
WEIGHT.

WHEN YOU'RE ASSESSING FOR
PROPORTIONALITY PURPOSES

>> WHAT HAPPENS AFTER HE
POINTS THE GUN?

>> ACCORDING TO MUMFORD, HE
POINTS THE GUN.

MUMFORD THEN KIND OF GETS TO
THE SIDE OF A BUILDING AND
DRAWS HIS OWN GUN.

DELGADO FLEES.

MUMFORD MAKES A RADIO CALL IN
WHICH HE SAYS THE SUSPECT IS
HEADING WEST ON ARCTIC AND I
THINK HE'S TEN UP, MEANING
ARMED.

I THINK HE'S 10.0.

HE DIDN'T REPORT HE PULLED THE
GUN AT ME, POINTED IT ON ME.

HE DIDN'T SAY HE'S 10.0 EVEN
THOUGH HE TESTIFIED HE HAD THE
GUN WHEN HE SAW HIM RUNNING

AWAY.

ADDITIONALLY THERE WAS
CONFLICTING TESTIMONY FROM
MUMFORD.

HE TESTIFIED THAT HE DIDN'T
DRAW HIS GUN UNTIL AFTER
DELGADO DREW HIS GUN, BUT ON
THE NIGHT OF THE INCIDENT
MUMFORD HAD TOLD POLICE DEATHS
THAT HE HAD HIS GUN DRAWN AS
SOON AS HE GOT OUT OF HIS CAR,
SO THERE'S CONFLICTING
TESTIMONY ON THAT.

I HAVE TROUBLE WRAPPING MY
MIND AROUND THE CONCEPT THAT
YOU WOULDN'T HAVE YOUR GUN
DRAWN IF YOU'RE AT THE SCENE
WHERE AN OFFICER IS DOWN AND
IS LYING ON THE GROUND

>> OKAY.

AGAIN, THAT'S

>> SO HE'S

>> I UNDERSTAND.

>> SO HE DREW THE GUN.

IT WAS AN AGGRAVATED ASSAULT.

WHAT HAPPENS DOESN'T HE
AFTERWARDS START HE, THE
DEFENDANT, START CALLING
PEOPLE SAYING JUST FREAKING
OUT?

HE SAYS I THINK

>> CALLS HIS UNCLE.

>> WHAT DOES HE SAY?

>> I THINK I KILLED I SHOT
A POLICEMAN.

I THINK HE'S DEAD.

I'M GOING TO KILL MYSELF.

UNCLE SAYS DON'T DO THAT.

YOU HAVE A FAMILY.

A FEW MINUTES LATER HE'S FOUND
UNDERNEATH THIS WOOD PILE,
WHERE THE OFFICERS CONVERGE ON
HIM.

>> DOES HE TRY TO SHOOT THE
WHEN HE'S

>> AT MOST, AT MOST, WHEN YOU
READ THEIR TESTIMONY, I
SUPPOSE YOU COULD SAY THERE
WAS PASSIVE RESISTANCE.

THEY WERE PULLING AT HIM AND

TUGGING AT HIM AND I GUESS,
YOU KNOW, HE DIDN'T SLIDE OUT
THAT EASY.

HE PROBABLY THOUGHT HE WAS
GOING TO GET KILLED, WHICH IS
CONSISTENT WITH WHAT ALL THE
SHRINKS SAY.

AGAIN, BEAR IN MIND THAT THIS
IS A DIAGNOSED PERSON WHO HAS
GOT BIPOLAR DISORDER WITH
PSYCHOTIC FEATURES OR, EVEN
WORSE, SCHIZOAFFECTIVE
DISORDER WITH PSYCHOTIC
FEATURES.

>> WHAT YEAR WAS HE DISCHARGED
FROM THE ARMY?

>> 2005.

NOW AND INTERESTINGLY
ENOUGH, WHEN HE WAS
HOSPITALIZED IN THE ARMY, HE
HAD TAKEN WEAPONS THERE TO THE
ARMY HOSPITAL WITH HIM FOR
SELFDEFENSE PURPOSES AS WELL.
HE TOOK I THINK IT WAS A
HAMMER AND A PELLET GUN TO THE
PSYCHIATRIC FACILITY AT THE
ARMY.

I MEAN, WHAT DID HE THINK WAS
GOING TO HAPPEN

>> AM I ON HERE?

I BELIEVE IF I'M READING
HISTORY CORRECTLY, HE WAS BORN
IN THE VIRGIN ISLANDS?

AM I CORRECT?

>> YES.

>> AND HE WAS A POLICE OFFICER
IN THE VIRGIN ISLANDS?

>> THAT'S CORRECT.

>> FOR ABOUT FIVE YEARS?

>> MAY HAVE BEEN FIVE YEARS.
MAY HAVE BEEN A LITTLE LESS.

>> HE WAS DISCHARGED BECAUSE
OF MENTAL PROBLEMS?

>> HE WASN'T NO.

HE WAS DISCHARGED FROM THE
ARMY FOR MENTAL PROBLEMS.
NOT THE POLICE.

>> I THOUGHT HE HAD TO LEAVE
THE POLICE DEPARTMENT BECAUSE
HE HAD ISSUES.

>> HE DID HAVE TO LEAVE THE POLICE DEPARTMENT BECAUSE HE HAD ISSUES.

>> I THOUGHT HE LEFT THE POLICE DEPARTMENT BECAUSE HE THOUGHT THE POLICE WERE TRYING TO CONSPIRE WITH THE MASONS TO KILL HIM AND A FRIEND OF HIS TOLD HIM BASED ON THAT FRIEND, KNOWING HE WAS A LITTLE CRAZY, YOU SHOULD LEAVE.

SO THAT'S WHEN HE LEFT THE POLICE DEPARTMENT IN THE VIRGIN ISLANDS.

>> I DON'T RECALL TESTIMONY OF A FRIEND SAYING BASED ON THAT, YOU SHOULD LEAVE.

BUT OTHER THAN THAT, THAT IS CORRECT.

>> HE WASN'T DISCHARGED.

>> I DON'T RECALL ANY TESTIMONY THAT HE WAS FIRED PER~~T~~SE.

>> HE QUIT.

>> HE QUIT, DIDN'T SHOW UP, WENT TO THE HOSPITAL.

HIS FAMILY PUT HIM IN THE HOSPITAL TWICE.

>> LET ME GET BACK TO A POINT. WAS HE FIRST DIAGNOSED BACK THEN IN THE VIRGIN ISLANDS WITH HAVING MENTAL PROBLEMS?

>> YES.

>> WHAT WAS THE DIAGNOSIS BACK THEN?

WAS HE DIAGNOSED WITH BIPOLAR?

>> TO BE HONEST WITH YOU, I DON'T KNOW THAT THE BIPOLAR DIAGNOSIS WAS MADE IN THE VIRGIN ISLANDS.

I KNOW THAT WAS MADE AT FORT BRAGG.

HE WAS HOSPITALIZED TWICE IN 2003.

HE WAS PUT ON HALDOL, WHICH HAS HORRENDOUS SIDE EFFECTS.

>> DO YOU KNOW HOW LONG HE WAS MORE OR LESS BACK THEN?

>> HE WAS 34 IN 2009, SO THAT MAKES HIM 28 IN 2003.

>> SO WHEN HE LEFT THE POLICE DEPARTMENT, HE WAS ABOUT 28 YEARS OLD?

>> 27, 27, YEAH.

>> OKAY.

>> BUT DIDN'T HE HAVE AN ONSET OF THESE EPISODES WHEN HE WAS 19, PRIOR TO WORKING FOR THE

>> THERE'S TESTIMONY THAT HE WAS A GOOD STUDENT AND A GOOD GUY AND A PRETTY NORMAL GUY IN HIGH SCHOOL AND HE STARTED SHOWING SYMPTOMS OF THE PARANOIA AND THE DELUSIONS AND THE WEIRDNESS SHORTLY AFTER THAT.

>> AND THAT'S A VERY I MEAN, FOR A BIPOLAR OR AGAIN, I MAY BE MIXING TERMS. THE IDEA OF THE ONSET FOR A MALE IN THEIR

>> VERY TYPICAL.

>> LATE TEENS, EARLY 20s.

>> YES.

>> SO WHEN WAS THE TIME IN THE MILITARY IN RELATIONSHIP TO BEING A POLICE OFFICER IN THE VIRGIN ISLANDS?

>> ALL RIGHT.

HE'S HOSPITALIZED TWICE IN THE VIRGIN ISLANDS IN '03.

HE WAS A POLICE OFFICER PRIOR TO THAT.

HE ALSO WORKED AT THE OIL REFINERY IN THE VIRGIN ISLANDS AND ANOTHER ISLAND ACTUALLY PRIOR TO THAT AND HIS PROBLEMS GOT EVEN WORSE THERE.

HE'S HOSPITALIZED IN THE VIRGIN ISLANDS IN 2003.

THE FORT BRAGG INCIDENT WHEN HE'S IN THE ARMY OCCURRED IN 2005.

>> SO HE GETS INTO THE UNITED STATES ARMY WITH A PREVIOUS DIAGNOSIS OF MENTAL ILLNESS? I MEAN

>> IT CERTAINLY APPEARS THAT WAY, YES.

>> AND HE'S THEN IN THERE AND
THEN HE IS SEEN DOES HE
EVER ENGAGE IN ACTIVE COMBAT?
>> NO.
>> BECAUSE I THOUGHT THERE WAS
SOMETHING ABOUT AFGHANISTAN.
>> NO.
IT WAS NEVER OVERSEAS.
>> HOW LONG DID HE SERVE?
>> A FAIRLY SHORT TIME.
>> BECAUSE
>> RIGHT.
HE DID BASIC TRAINING AND
ENJOYED IT.
THEN HE STARTED TO
DECOMPENSATE AGAIN.
HE SEES IEDs OUTSIDE THE
BARRACKS.
HE SEES PEOPLE CRAWLING
THROUGH THE CEILING TILES.
THERE'S A GUY IN HIS UNIT WHO
LOOKS LIKE A RAPPER'S BROTHER
WHO'S OUT TO KILL HIM.
THERE'S COMPLAINTS FROM THE
SOLDIERS.
THEY REFER HIM TO THE SHRINK.
THAT'S WHERE HE'S DIAGNOSED
ABOUT BIPOLAR DISORDER WITH
PSYCHOTIC FEATURES.
>> WELL, THE EARLIEST
AGAIN, GOING BACK TO MY POINT,
I'M TRYING TO REACH A CERTAIN
POINT IN MY MIND.
THE EARLIEST POINT IN TIME
THAT THERE IS SOME EVIDENCE OF
MENTAL ILLNESS WAS AFTER HE
LEFT THE POLICE DEPARTMENT.
AND YOU SAID THAT MUST HAVE
BEEN WHEN HE WAS 27, 28 YEARS
OLD.
>> WELL, NO.
I'M GOING TO SAY THE EARLIEST
THE FIRST HOSPITALIZATION
WAS AFTER HE LEFT THE POLICE
DEPARTMENT.
I THINK THE EARLIEST EVIDENCE
THAT PEOPLE WERE OBSERVING
SOMETHING MENTALLY WRONG WITH
HIM WOULD HAVE BEEN SHORTLY
AFTER HIGH SCHOOL.

>> OKAY.
SO WE HAVE A PERSON WHO HAS
BASICALLY CONFIRMED MENTAL
ILLNESSES SINCE LEAVING HIGH
SCHOOL, IS ABLE TO WALK INTO A
PLACE AND LEGALLY PURCHASE
FOUR VERY POWERFUL FIREARMS.
>> THAT'S CORRECT.
>> THOSE FIREARMS DID HE
HAVE A RECEIPT THAT HE BOUGHT
THEM?
>> HE HAD RECEIPTS.
HE BOUGHT THEM IN THE FORT
BRAGG AREA WHEN HE WAS WITH
HIS GIRLFRIEND UP THERE.
>> HE BOUGHT THEM TO PROTECT
HIMSELF FROM THE DEMONS.
>> HE BOUGHT THEM FOR
PROTECTION.
I WISH I COULD POINT TO
EVIDENCE THAT HE BOUGHT THEM
TO PROTECT HIMSELF FROM THE
DEMONS.
>> THAT'S JUST A FIGURE OF
SPEECH.
HIS DEMONS.
>> I'M BEING TOO MUCH OF A
STICKLER HERE, I GUESS.
>> WELL, THE MAIN THING IS
THAT UP UNTIL AGE 34 HE HAD NO
HISTORY CRIMINAL HISTORY.
>> ABSOLUTELY NOT.
AND NOT ONLY THAT, THE
TESTIMONY IS THAT WHEN HE'S
NOT DECOMPENSATING, EXHIBITING
THE PSYCHOTIC SYMPTOMS, HE'S A
GOOD GUY.
PEOPLE LIKE HIM.
PEOPLE LOVE HIM.
HE'S OUTGOING, FRIENDLY,
UPBEAT.
HE WASN'T ACTING THAT WAY AT
HIS UNCLE'S HOUSE.
>> WHAT'S THE RECORD ABOUT
ATTEMPTS TO GET MENTAL HEALTH
TREATMENT AND BE ON
MEDICATION?
EVERYBODY WHO IS MENTALLY ILL
LIKE THIS AND HAS BIPOLAR
DISORDER CAN FUNCTION IN THIS

SOCIETY IF THEY'RE ON
MEDICATION.
NOW, IS THERE DID HE EVER
GET MEDICATION FROM THE VA?
DID ANYONE TRY TO HELP HIM GET

>> I'LL GIVE YOU THE HISTORY
OF THE MEDICATION AS BEST I
CAN.
IN THE VIRGIN ISLANDS THEY
GAVE HIM HALDOL.
ANTIPSYCHOTIC MEDICATIONS HAVE
TERRIBLE SIDE EFFECTS.
ALL THE SHRINKS ARE SAYING
IT'S EXTREMELY COMMON THAT
PEOPLE GO OFF THEIR MEDS AND
THAT'S A BIG PROBLEM.
HALDOL IS ONE OF THE WORST OF
ALL.
THE HALDOL MADE HIM FEEL LIKE
A ZOMBIE.
HE HATED THE HALDOL, WENT OFF
IT.
IN NORTH CAROLINA, WHEN HE WAS
DISCHARGED FROM THE ARMY
BECAUSE HE OBVIOUSLY COULDN'T
KEEP HIM IN THE ARMY WITH HIS
DIAGNOSIS, I THINK HE WAS
GIVEN LIKE A SEVEN TO TEN DAY
SUPPLY OF ANTIPSYCHOTICS.
THERE'S A PERIOD OF TIME WHEN
HIS GIRLFRIEND UP THERE
THERE ARE PERIODS WHEN HE'S
BETTER AND THEN HE GETS OFF
HIS MEDS OR STRESS OR
WHATEVER, HE GETS WORSE.
I DON'T REMEMBER A CASE WHERE
I'VE EVER ACTUALLY SAID THIS
BECAUSE USUALLY I HAVE A CASE
WHERE EITHER A CASE WHERE
THERE'S NO DOUBT AS TO GUILT,
THAT THE PERSON IS IN FACT THE
PERSON, OR I HAVE A CASE WHERE
I'M ARGUING IT'S THE WRONG
GUY.
I DON'T THINK I'VE EVER HAD A
CASE BEFORE WHERE I'VE ARGUED
THAT THE EVIDENCE REALLY SHOWS
IF YOU LOOK AT THE CONTEXT OF
THIS GUY'S ENTIRE LIFE, THIS

IS A GOOD GUY.

THIS IS A GOOD GUY.

I SAID IN MY BRIEF HE'S BEEN
BATTLING THE DEMONS OF SEVERE
MENTAL ILLNESS HIS ENTIRE
ADULT LIFE.

THE STATE SAYS I ARTFULLY
PORTRAY HIM AS BATTLING THE
DEMONS OF MENTAL ILLNESS
THROUGHOUT HIS ADULT LIFE.

I DIDN'T ARTFULLY PORTRAY
ANYTHING.

THAT'S WHAT THE EVIDENCE
PORTRAYED.

AND, YOU KNOW, THIS IS
SOMEBODY WHO THIS IS
REMARKABLE.

I MEAN,

>> BUT STILL AND YOU'RE IN
YOUR REBUTTAL, BECAUSE WE'VE
HAD A LOT ABOUT MENTAL ILLNESS
RECENTLY.

ISN'T THERE A TIME THAT EVEN,
AGAIN, FOR A MENTALLY ILL
PERSON, SAY HE WENT ON A
RAMPAGE LIKE THE PERSON DID IN
WASHINGTON D.C. AND SHOT AND
KILLED EIGHT PEOPLE, IS THERE

THAT'S WHY I ASKED YOU
ABOUT THE CIRCUMSTANCE.

TO ME WHAT DISTINGUISHES THIS
AND I'D LIKE THE STATE TO
IS NOT THAT HE'S PROVOKED, BUT
ESSENTIALLY HE WASN'T GOING
OFF TO KILL PEOPLE.

>> ABSOLUTELY.

AND HE WAS TASED.

I MEAN,

>> AND, AGAIN, NOT THAT THAT'S
BUT IT WAS THE

PRECIPITATING FACTOR, AS
OPPOSED TO SOMEONE WHO SAYS I
AM NOW GOING TO GO IN AND KILL
PEOPLE, CHILDREN IN A SCHOOL
OR GO IN AND KILL PEOPLE IN A
INNOCENT PEOPLE.

AND SO THAT CIRCUMSTANCE OF
WHAT PRECIPITATED IT HAS TO
DISTINGUISH IT, BECAUSE YOU
CAN'T SAY JUST BECAUSE

SOMEONE'S MENTALLY ILL THEY'RE
NOT SUBJECT TO THE DEATH
PENALTY.

>> AND I'M NOT SAYING THAT.
IF I GOT TIME, I GOT TO TALK
ABOUT THREE CASES REAL QUICK.
THE ONE CASE I CAN THINK OF
THAT THE STATE CITED THAT HAS
COMPARABLE EVIDENCE IS GILL.
HE KILLED A WOMAN FOR MONEY,
GOT A LIFE SENTENCE.
THEN HE STRANGLES HIS CELL
MATE TO DEATH.

THERE WAS THREE GREAT
AGGRAVATORS, CCP, PRIOR
VIOLENT FELONY AND FIVE OTHER
FELONIES AS WELL.

INCREDIBLY AGGRAVATED CASE,
BUT WHICH THERE WAS A FINDING
OF GUILT THAT HIS MENTAL
ILLNESS AND BRAIN ABNORMALITY
WERE NOT CAUSALLY LINKED TO
THE MURDER OF EITHER THE CELL
MATE OR THE PRIOR MURDER.
HERE THEY'RE INCREDIBLY
LINKED.

READ THE SENTENCING ORDER AND
YOU'LL FIND THE LINKAGE.
READ THE TESTIMONY OF THE
DOCTORS, INCLUDING THE STATE'S
SPENCER HEARING GUY.

I WISH I HAD MORE TIME.
I REALLY WISH I HAD MORE TIME,
BUT I DON'T.
I'M GOING TO SIT DOWN.

>> THANK YOU.

>> GOOD MORNING, YOUR HONORS.
MAY IT PLEASE THE COURT, I'M
FROM THE ATTORNEY GENERAL'S
OFFICE REPRESENTING THE STATE
OF FLORIDA.

AND I'M GOING TO PICK UP RIGHT
WHERE HE LEFT OFF BECAUSE THE
KEY TO THIS CASE, THE KEY TO
YOUR PROPORTIONALITY IS NOT
WAS HE MENTALLY ILL.

THERE'S NO QUESTION ABOUT
THAT.

THE KEY IS TO WHAT EFFECT WAS
HIS MENTAL ILLNESS WHAT

EFFECT DID IT HAVE ON HIM AND
HIS FUNCTIONING AT THE TIME
THAT THIS MURDER OCCURRED.
AND THE TRIAL JUDGE

>> DO YOU AGREE, THOUGH
AND, AGAIN, BECAUSE THERE'S
MR.†GILL.

IN LOOKING AT THIS, THE FACT
THAT HE IS A MENTALLY ILL
PERSON, THOUGH, HAS GONE
THROUGH 34 YEARS OF HIS LIFE
WITHOUT BEING VIOLENT, DOES
THAT PLAY A PART IN HOW WE
LOOK AT THE CIRCUMSTANCES OF
WHAT OCCURRED AT THE MOMENT OF
THE CRIME?

DOES THAT PLAY AT ALL?

IN OTHER WORDS, IF YOU LOOK AT
OTHER CASES WHERE SOMEONE HAS
NO PRIOR HISTORY, CRIMINAL
HISTORY, WHAT IS IT THAT
HAPPENS ON THAT DAY THAT ENDS
UP IN A TRAGIC KILLING WHERE
NOTHING HE NEVER STARTED
OUT TO ROB SOMEBODY OR

>> WELL, HE'S CAUGHT BY A LAW
ENFORCEMENT OFFICER BREAKING
THE LAW.

AND HE KNOWS IT.

>> WHAT IS HE DOING?

>> HE'S CARRYING CONCEALED
WEAPONS AND HE KNOWS IT.

AND IT'S WHEN THE OFFICER
FINDS THE WEAPONS THAT THIS
TURNS INTO SUCH A BAD STOP.

>> IS THERE EVIDENCE IN THE
RECORD THAT THE OFFICER
ACTUALLY SAW THE WEAPONS?

>> WELL, DELGADO AS HE
RECOUNTED IT SAID IT WAS WHEN
THE OFFICER FOUND THE WEAPONS
THAT THE OFFICER GOT ANGRY AND
TOLD HIM TO MOVE AWAY.

THE OFFICER INITIALLY FOUND
THE LAPTOP AND WAS ACCUSING
DELGADO OF HAVING STOLEN THE
LAPTOP, SAYING WHERE DID WE
GET THIS.

HE WAS VERY OFFENDED.

>> BEFORE HE SEES THE LAPTOP,

DID THIS START OUT AS A I
MEAN, HE'S GOING ALONG WALKING

>> THE TESTIMONY WAS YES.

>> HE'S HOMELESS.

>> HE LOOKS LIKE HE'S

HOMELESS.

HE IS DISHEVELED.

HE'S BEEN WALKING THROUGH THE
RAIN AND THE HEAT AND HE'S
PUSHING A SHOPPING CART WITH A
BAG IN IT.

AND THERE WAS TESTIMONY IN THE
RECORD THAT IN THIS PARTICULAR
AREA OF TOWN THERE HAD BEEN A
LOT OF CRIME COMMITTED BY
HOMELESS PEOPLE WITH SHOPPING
CARTS, SO IT WOULD BE NATURAL
HE WOULD HAVE REASONABLE
SUSPICION TO CHECK OUT WHY
THIS PERSON IS WALKING DOWN
10:00 AT NIGHT WALKING WITH A
SHOPPING CART DOWN THE STREET.
AND OFFICER ROBERTS DID NOT
THERE WAS CONFLICTING
TESTIMONY, BUT ACCORDING TO
THE VIDEO CAMS AND EVERYTHING,
HE DID NOT ACTIVATE HIS
EMERGENCY LIGHTS.

HE JUST PULLED OVER TO THE
SIDE OF THE ROAD AND HE
APPROACHED HE APPROACHED
DELGADO AT THAT POINT.

NOW, DELGADO AND I DO WANT
TO MAKE THE POINT BEFORE I GET
ANY FURTHER THAT THE JUDGE
MADE A SPECIFIC FINDING THAT
HE WAS NOT SUBSTANTIALLY
IMPAIRED BY THIS MENTAL
ILLNESS AT THE TIME OF THE
CRIME.

AND THE JUDGE

>> WELL, YOU SAID SOMETHING
ABOUT HE PULLED OVER.

HE HADN'T ACTIVATED HIS
LIGHTS, HE WASN'T DOING
ANYTHING.

WOULD YOU EXPLAIN TO ME THEN,
IN THAT KIND OF STOP, DID MR.
DELGADO VOLUNTARILY SAY, LOOK

IN MY BAG?
OR DID HE LOOK INTO MR.
DELGADO'S BAG AND DID THE
OFFICER NEED SOMETHING BEYOND
I PULLED OVER JUST TO TALK
WITH HIM TO LOOK INTO THAT
BAG?

>> WELL, AND, AGAIN, DELGADO
GIVES CONFLICTING STATEMENTS.
BUT HE DOES HE ASKS DELGADO
FOR IDENTIFICATION WHEN HE
FIRST APPROACHES DELGADO AND
ASKS FOR IDENTIFICATION.
AND DELGADO IS SAYING, HEY,
IT'S OKAY.

I USED TO BE A COP.
I WAS IN THE MILITARY, YOU
KNOW.

AND HE'S TRYING TO MAKE IT
HE ACCORDING TO WHAT THE
MENTAL HEALTH EXPERTS SAID IN
TRYING TO ANALYZE THIS OUT,
DELGADO IS THINKING, YOU KNOW,
I LOOK LIKE I'M HOMELESS SO I
NEED TO CONVINCE THIS OFFICER
THAT I'M NOT A THREAT.

>> SO HE GAVE HIM THE ID.

>> HE HANDS OVER HIS ID.
HE HAS SOME OF HIS WITNESSES
AND IT'S TRUE THE EYE
WITNESSES WERE COMING AND
GOING.

APPEARS THAT HE'S LOOKING AT
THE ID WITH A FLASHLIGHT AND
HE'S ASKING HIM WHAT'S IN THE
BAG?

AND DELGADO AT THAT MOMENT
SOMETIMES HE SAYS THAT HE WAS
GOING TO TELL HIM ABOUT THE
GUNS.

HE KNEW ABOUT THE GUNS.

HE WAS OFFENDED.

HE SAYS HE STARTED GOING
THROUGH MY STUFF AND DELGADO
FELT VERY DISRESPECTED BY
THAT, THAT THE OFFICER WAS NOT
APPEASED BY HEARING YOU'RE A
FORMER OFFICER, GO AHEAD ON
YOUR WAY.

HE CONTINUES TO ASK HIM ABOUT

HIS STUFF.

DELGADO WAS VERY RESENTED
ABOUT AND BECOMES VERY ANGRY
AND IT'S THIS ANGER

>> BUT IF WE LISTEN TO WHAT
DELGADO SAYS, HE SHOWED HIM
THE ID AND THE OFFICER JUST
STARTED GOING THROUGH HIS
THINGS AND HE NEVER EVEN ASKED
CAN I LOOK IN YOUR BAG OR
ANYTHING LIKE THAT.

HE JUST STARTED LOOKING

>> THE WAY DELGADO DESCRIBES
IT IS HE WAS VERY DISRESPECTED
BY THE OFFICER IS THE WAY HE
PUTS IT AND HE COULDN'T
UNDERSTAND WHY THE OFFICER WAS
BEING SO RUDE TO HIM AND SO
MEAN TO HIM AND HE GETS VERY
ANGRY WITH THE OFFICER.

AND IT'S THIS ANGER THAT
CAUSES THE CRIME.

IT IS NOT THE MENTAL ILLNESS
THAT IS GOING ON, BECAUSE HE'S
VERY GOALDIRECTED.

AND I HAVE TO GO BACK AND THIS
IS A CASE WHERE I HAVE A VERY
DIFFERENT TAKE ON THE EVIDENCE
AND I AM DRAWING EVERYTHING
FROM THE EVIDENCE.

AND IF YOU LOOK AT AND THE
REASON THE JUDGE CREDITS DR.
MYERS IN HIS TESTIMONY ON THE
SUBSTANTIAL IMPAIRMENT IS IF
YOU READ ALL OF THE EVIDENCE,
WHICH I'M SURE YOU WILL, FROM
THESE MENTAL HEALTH EXPERTS,
DR. MYERS IS THE ONE THAT IS
REALLY TRYING TO FIGURE OUT
HOW DELGADO IS FUNCTIONING
MENTALLY, WHETHER YOU KNOW,
IN THE DAYS AND MONTHS LEADING
UP TO THIS AND THE DAY THAT
THIS HAPPENED AND AFTER THIS
HAPPENED.

HIS ACTUAL DAYTODAY
FUNCTIONING.

HE TALKED ABOUT HE'S LIVING
WITH HIS UNCLE AND ALL THIS
SUMMER HE'S JUST BEING CRAZY

AND ACTING CRAZY AND GETTING
KICKED OUT OF PLACES BECAUSE
HIS MENTAL ILLNESS.

THE RECORD DOESN'T REALLY
SUPPORT THAT.

HE CAME DOWN TO LIVE WITH HIS
UNCLE WHEN HE AND HIS
GIRLFRIEND BROKE UP.

>> THE RECORD DOESN'T SUPPORT
THE UNCLE TOLD HIM TO LEAVE
BECAUSE HE WAS SCARING THE
CHILDREN?

>> IT DOESN'T SUPPORT THAT HE
WASN'T EATING AND THAT HE WAS
DISHEVELED AND HE WAS ACTING
CRAZY.

>> BUT DOES IT SUPPORT THAT
THE UNCLE ASKED HIM TO LEAVE
BECAUSE OF HIS BEHAVIOR WAS
SCARING THE CHILDREN?

>> YES.

HE HAD VERY MILD SYMPTOMS OF
WHETHER IT'S THE BIPOLAR, THE
DEPRESSION.

THESE SYMPTOMS, WHICH INCLUDE
THAT HE WAS PACING, HE WAS
CONSTANTLY PACING, HE HAD
LITTLE NEED FOR SLEEP.

THOSE ARE SYMPTOMS WHICH HE
HAD HAD DATING BACK TO BEING
IN HIGH SCHOOL AND WHICH
PEOPLE TALKED ABOUT ALL THE
TIME AND NOT SEEING THAT IN
HIM AND NOT ACTUALLY TYING IT
TO ANY TYPE OF PSYCHOTIC
EPISODE.

IT WAS JUST A RESTLESSNESS
THAT HE HAD HAD APPARENTLY HIS
WHOLE LIFE.

HIS STEPMOTHER SAID THAT SHE
SAW IT IN HIM FOR YEARS BEFORE
SHE EVER SAW ANY KIND OF
MENTAL HEALTH PROBLEMS.

>> WOULD YOU ADDRESS THE
EVENTS ON THE EVENING?

IS IT TOTALLY CLEAR FROM ALL
OF THE MEDICAL WITNESSES THAT
THE TASER WAS TO THE FRONT?

THERE'S SOME MENTION OF NECK.
WAS IT TO THE FRONT OR THE

BACK SIDE?

>> THE ISSUE ON THE TASER,
FIRST OF ALL, YOU HAVE TWO EYE
WITNESSES.

YOU HAVE THE STATE WITNESS AND
YOU HAVE THE DEFENSE WITNESS
WHO BOTH TESTIFIED THEY
OBSERVED THE TASER INCIDENT.
BOTH OF THEM TESTIFIED THAT
DELGADO DID NOT IN ANY WAY
REACT TO THE TASER.

>> THAT'S NOT WHAT I ASKED.

>> WAS HE TASED FROM THE FRONT
OR THE BACK?

THAT WAS THE QUESTION.

>> APPARENTLY HE STARTS
RUNNING AWAY FROM THE OFFICER,
SO APPARENTLY HE'S TASED FROM
THE BACK.

AND WHEN THEY FIND

>> AND DO THE INDIVIDUALS WHO
WITNESSED THIS, ARE THEY IN A
POSITION WHERE THEY CAN
OBSERVE WHETHER THE DEFENDANT
HAD A WEAPON IN HIS HAND AT
THAT TIME?

OR WHAT IS THE EVIDENCE THAT
YOU SAY DEMONSTRATES THE
CONNECTION OF DELGADO WITH THE
WEAPON AT THAT POINT, AT THE
TASERING POINT.

>> THE STATE WITNESS WAS A
PASSENGER IN THE CAR.
HE'S TELLING HIS GIRLFRIEND
WHO'S DRIVING THE CAR THIS
GUY'S ABOUT TO GET TASED, I
WANT TO SEE HIM REACT.

THE DEFENSE WITNESS WAS GOING
I HAVE THE IMPRESSION GOING
THE OPPOSITE WAY AND AT SOME
POINT HE SEE IT IS AND HE IS
RIGHT ABOUT WHERE IT'S
HAPPENING WHEN THE TASER COMES
OUT.

HE SAYS HE HEARS IT, BUT HE
KEEPS GOING AND KIND OF LOOKS
IN HIS REAR VIEW MIRROR AND
SAYS HE DOESN'T SEE ANY KIND
OF REACTION AT ALL.

>> I WAS ASKING ABOUT WEAPONS.

I DIDN'T HEAR THAT MENTIONED
AT ALL.

>> OKAY.

SO THE STATE WITNESS IS
WATCHING FROM THE SIDE.
BOTH DEFENSE AND STATE WITNESS
SAID AFTER THE TASER THERE'S A
BIG FIST FIGHT.

ACCORDING TO THE STATE
WITNESS, THE OFFICER IS ON THE
GROUND, LYING ON THE GROUND ON
HIS BACK.

THE DEFENDANT IS LEANING OVER
HIM BEATING HIM.

HE SAYS I CAN'T TELL IF HE'S
GOT SOMETHING IN HIS HANDS.

I CAN SEE HE'S GOT HE'S
HITTING HIM ABOUT THE HEAD AND
NECK AND CHEST.

NOW, WE KNOW BECAUSE WE HAVE
MEDICAL EVIDENCE THAT CONFIRMS
THAT THE OFFICER WAS THE ONE
THAT WAS GETTING WAS NOT
GETTING THE BETTER OF IT.

>> WITH DELGADO'S GUN OR THE
OFFICER'S GUN?

>> THE OFFICER'S GUN NEVER
COMES OUT OF HIS HOLSTER.

DELGADO HAS THE GUN,
APPARENTLY HAS THE GUN ON HIS
PERSON.

>> BUT THERE'S NO EVIDENCE.

>> THE EYE WITNESS DOES NOT
SEE THE GUN UNTIL THERE'S
ACTUALLY THE SHOT.

HE SAYS HE BEATS THE OFFICER
UP.

THIS IS THE STATE WITNESS.
HE BEATS THE OFFICER UP AND
THE OFFICER IS LYING
UNCONSCIOUS ON THE GROUND ON
HIS BACK AND THAT HE SEES
DELGADO AT THAT POINT HE
SEES A GUN IN HIS HAND AND HE
SEES DELGADO SHOOT THE
OFFICER.

WE KNOW THEY WERE NOT FIGHTING
FOR THE GUN.

THERE WAS NOT AN ACCIDENTAL
DISCHARGE.

IT WAS NOT A CLOSE SHOT.
IT WAS NOT A CONTACT WOUND.
IT WAS AT LEAST A COUPLE OF
FEET AWAY WE KNOW FROM THE
EVIDENCE AND WE KNOW THAT THE
OFFICER ISN'T GETTING HIS GUN
OUT AND THAT HE HAS THE
INJURIES AND IN FACT THE GUN
HAD BLOOD THAT INDICATED HE'D
BEEN PISTOLWHIPPED WITH THE
GUN BECAUSE THERE WAS BLOOD UP

SO WE KNOW FROM THE
PHYSICAL EVIDENCE THERE WAS A
STRUGGLE AND A FIGHT BEFORE
THE SHOT.

>> WELL, THERE'S NO THE
ISSUE THAT THIS WAS A
PURPOSEFUL SHOOTING, I DON'T
THINK THAT THE DEFENSE IS
SAYING THE SHOOTING WAS AN
ACCIDENT.

>> NO, HE'S NOT.

>> WE'RE NOT TALKING ABOUT THE
TOTALITY OF THE CIRCUMSTANCES.

>> IT SOUNDS LIKE YOU'RE
SAYING SECONDDGREE MURDER.
NO ONE'S CONTESTING THAT THIS
IS A FIRSTDEGREE MURDER CASE.
BUT YOU SAID SOMETHING, THAT
THE JUDGE DIDN'T FIND THAT HE
WAS SUBSTANTIALY IMPAIRED.
BUT READING THROUGH EVERYTHING
THE JUDGE SAID, HE SAID HE WAS
IMPAIRED AND THEN HE ALSO
FOUND HE WAS UNDER THE
INFLUENCE OF EXTREME EMOTIONAL
DISTURBANCE AT THE TIME OF THE
EVENT.

AND WHAT I THINK I'M
UNDERSTANDING NOW IS THAT THIS
DEFENDANT WAS TRYING TO RUN
AWAY AFTER HAVING THIS I
DON'T KNOW WHETHER IT WAS
CONSENSUAL OR NOT, BUT GETTING
HIS BAG SEARCHED, RUNNING AWAY
AND I'M ASSUMING THEN AT THE
POINT HE GETS TASED, DOES THE
POLICE OFFICER CONTINUE TO RUN
AFTER HIM?

>> YES.

HE TURNS AROUND AND IS ABLE TO
OVERCOME

>> DOESN'T HE TELL SOMEONE,
THE WITNESS FREEMAN, HE SAID
HE STARTED YELLING HE WAS
SORRY, INSISTED HE WAS CRAZY,
HE DIDN'T MEAN TO DO IT, HE
COMPLAINED HE HAD BEEN SHOT
WITH A TASER, THAT HE TOLD HIM
THAT HE WAS THAT THE POLICE
WERE TRYING TO KILL HIM?

>> YES.

>> I'M STRUGGLING WITH ON THE
ONE HAND WE HAVE CLEAR
EVIDENCE THAT WE HAVE SOMEONE
HERE WHO HAS BEEN SUFFERING
WITH MENTAL ILLNESS SINCE
MAYBE BEFORE HIGH SCHOOL.

>> YES.

WELL,

>> ON THE ONE HAND.

LET ME JUST STAY WITH ME.
ON THE OTHER HAND, I'M ALSO
I WOULD BELIEVE THAT ONE DOES
NOT HAVE TO BE MENTALLY ILL TO
BECOME AGGRESSIVE ONCE YOU'RE
TASED.

I MEAN, PEOPLE DO GET
AGGRESSIVE ONCE THE TASE GOES
ON.

AND FROM WHAT I'M HEARING FROM
DEFENSE COUNSEL, UP UNTIL THE
POINT THE POLICE OFFICER
APPROACHED THIS GENTLEMAN, HE
WAS OKAY.

HE WAS A NICE GUY.

HE WAS JUST PUSHING A CART
DOWN THE STREET.

IT WAS AFTER THE TASING THAT
HE BECAME THIS AGGRESSIVE.

>> I DON'T KNOW THAT YOU CAN
SAY HE WAS REALLY A NICE GUY
UNTIL THE TASING.

HE HAD HE DIDN'T BECOME
VIOLENT.

>> RIGHT.

>> BUT HE CLEARLY WAS I
MEAN, HE AND I DON'T AGREE
WITH THE CHARACTERIZATION THAT
HE WAS JUST A GOOD GUY FOR 34

YEARS AND THEN ALL OF A SUDDEN
THIS BAD THING HAPPENS.

I MEAN, HE CLEARLY HAD
EPISODES IN HIS LIFE WHERE WE
KNOW HIS MENTAL HEALTH WAS
AFFECTING HIS FUNCTIONING AND
THEN HE HAD TIMES WHERE HE
FUNCTIONED PERFECTLY NORMALLY.
AND WE KNOW THAT IN THE DAYS
AND MONTHS LEADING UP TO THIS,
HE HAD BEEN FUNCTIONING FAIRLY
NORMALLY.

AND HE WASN'T

>> THE POINT I'M MAKING AND
I'M TRYING TO GET YOU TO HELP
ME WITH IS IT SEEMS TO ME
THAT IT WAS THE TASING THAT
CONVERTED THIS PERSON FROM A
PERSON WHO WAS COOPERATING TO
THE POINT THAT HE BECAME
VIOLENT.

>> I DON'T THINK IT WAS THE
TASING.

I THINK IT WAS THE FACT THAT
THE OFFICER WAS BEING RUDE TO
HIM, AS HE TOOK IT, AND
DISRESPECTING HIM AND GOING
THROUGH HIS THINGS AND HE KNEW
HE WAS CARRYING CONCEALED
WEAPONS AND HE KNEW HE WAS IN
TROUBLE FOR THAT.

AND I THINK THAT'S WHAT IT WAS
MORE THAN THE TASING BECAUSE
ALL OF THE EVIDENCE SUGGESTS
THAT HE WAS NOT AFFECTED BY
THE TASING AT ALL.

THERE IS NO EVIDENCE OTHER
THAN HIS OWN STATEMENTS.

AND WHAT HE TELLS HIS

>> WAS THERE ANY VIOLENCE ON
HIS PART BEFORE HE WAS TASED?

>> WELL, HE'S PUNCHING YOU
MEAN BEFORE THE FIGHT?

>> BEFORE HE WAS TASED.

>> BEFORE HE'S TASED, THERE'S
NO VIOLENCE, NO.

HE WAS GOING TO RUN AWAY.

>> SO AFTER THE TASING, THAT'S
WHEN HE TURNED AROUND AND
CONFRONTED THE OFFICER AND

THERE WAS A FIST FIGHT OR
WHATEVER.

>> RIGHT.

>> IT WAS THE TASING THAT
CAUSED HIM TO GET ANGRY TO THE
POINT THAT HE BECAME VIOLENT.

>> WELL, IT WAS THE VIOLENCE.
I THINK THE ANGER WAS BEFORE
THEM.

BUT I THINK THE WAY HE WAS
GOING TO DEAL WITH THE ANGER
WAS JUST TO RUN AWAY.

AND I THINK THAT WAS NO LONGER
AN AVENUE WHEN HE GOT TASED.
BUT I DON'T THINK THE TASING
WAS THE ACT THAT DID IT.

I THINK IT WAS THE I REALIZE
I'M IN TROUBLE BECAUSE HERE I
AM AND THE OFFICER IS ABOUT TO
FIND ME HAVING THESE CONCEALED
WEAPONS.

>> EXCEPT HE'S RUNNING AWAY.
WE'VE HAD SOME HORRIBLE
SITUATIONS WHERE SOMEBODY
THE OFFICER STOPS SOMEBODY,
YOU KNOW, ON THE SIDE OF THE
ROAD AND THEN THE NEXT THING
THAT HAPPENS IS THAT OFFICER
IS SHOT AND BEFORE ANYTHING
THE OFFICER DOES ANYTHING.
THAT'S NOT THE SITUATION.

>> RIGHT.

AND I THINK THAT SHOWS THAT
HE'S NOT HE'S NOT PSYCHOTIC
AND HE'S NOT BEING IMPACTED BY
HIS MENTAL ILLNESS.

>> EXCEPT THAT'S NOT WHAT THE
JUDGE FOUND.

THE JUDGE FOUND THAT AT THE
TIME OF THE MURDER HE WAS
UNDER THE INFLUENCE I NEVER
SAY IT RIGHT EXTREME
EMOTIONAL DISTURBANCE.

>> RIGHT.

AND I THINK THE JUDGE HE
DID FIND THAT WAS AGGRAVATING,
BUT WHEN HE FINDS THE
SUBSTANTIAL IMPAIRMENT I
THINK THE DIFFERENCE IS WHEN
HE TALK ABOUT, WELL, HE'S

UNDER THE INFLUENCE, IF YOU
THINK ABOUT SOMEONE WHO'S
UNDER THE INFLUENCE OF AN
ALCOHOL, THEY CAN HAVE A .0001
BLOOD ALCOHOL LEVEL AND STILL
BE UNDER THE INFLUENCE OF
ALCOHOL.

>> YOU HAVE BEEN HERE LET
ME JUST FINISH.

YOU'VE BEEN ARGUING THESE
CASES FOR A VERY LONG TIME AND
DOING AN EXCELLENT JOB FOR THE
STATE OF FLORIDA.

I AM TRYING TO THINK OF A CASE
DURING AT LEAST MY TENURE HERE
WITH A MORE DOCUMENTED HISTORY
OF SEVERE MENTAL ILLNESS.

NOT SOMEBODY THAT YOU KNOW,
WE SEE SO MANY THAT COME AND
AFTER THE FACT THEY
RECONSTRUCT SOMETHING AND
THEY'RE MENTALLY ILL.

SO NOW WE HAVE TO GET TO
WHETHER IN MY VIEW THIS IS
MORE LIKE THAT CASE UP IN

>> I THINK I KNOW LET ME
EXPLAIN IT LET ME TRY IT
THIS WAY.

>> DO YOU AGREE THAT HE IS
I JUST WANT DO YOU AGREE
THIS IS YOU AGREE THAT HE'S
A SEVERELY MENTALLY ILL PERSON
THAT HAS BEEN ABLE TO FUNCTION
IN SOCIETY AND FUNCTIONED ON
AND OFF FOR 34 YEARS.

>> HIS FUNCTIONING IS WAXING
AND WANING.

I DO NOT AGREE IT'S BEFORE
2003.

I DON'T THINK YOU GO BACK TO
HIGH SCHOOL FOR THAT.

AND I THINK YOU HAVE TO LOOK
VERY CAREFULLY AT THE
TESTIMONY.

YOU HAVE HIS WIFE TESTIFYING.
HE LEFT THE POLICE DEPARTMENT
VOLUNTARILY TO TAKE THE JOB AT
THE OIL REFINERY IS WHAT SHE
TESTIFIED.

SO THERE'S A LOT OF EVIDENCE

ABOUT THAT.

BUT IF YOU LOOK AT HIS OVERALL FUNCTIONING AND HOW HE WAS DOING DAY TO DAY, WHAT THE MENTAL HEALTH EXPERTS SAY, IS BIPOLAR, IT WILL WAX AND WANE, BUT IT DOESN'T TURN OFF INSTANTLY.

IT'S NOT GOING TO BE TRIGGERED BY BEING TASED.

IT TAKES DAYS AND WEEKS.

EVEN THAT HE'S WALKING THIS 15 HOURS, EVEN THAT WOULD NOT CAUSE HIM TO ALL OF A SUDDEN DECOMPENSATE SO SEVERELY FROM GOING TO SOMEONE WHO'S AT THE JEWELRY STORE SAYING I DON'T REALLY WANT TO WAIT, BUT IF I HAVE TO WAIT COMPLETELY APPROPRIATE THE WAY HE'S REACTING IN THAT STRESSFUL SITUATION.

NO MENTAL ILLNESS IS JUST GOING TO COME ON HIM SO SUDDENLY THAT BY THE TIME HE GETS TO TAMPA THAT NIGHT AT 10:00 AT NIGHT HE IS GOING TO BE REACTING TO WHAT'S HAPPENED.

THE MENTAL HEALTH EXPERTS AGREED WITH THE EXCEPTION OF DR.†MAYER.

HE WASN'T ACTUALLY GOING TO THE VA.

HE WAS GOING TO AN APARTMENT COMPLEX CLOSE TO THE TAMPA VA BECAUSE HE HAD READ UP ABOUT THIS APARTMENT COMPLEX WORKS WITH VETERANS AND WILL NEGOTIATE RENTS AND THAT'S WHY HE HAD GOTTEN ALL HIS STUFF FROM HIS UNCLE.

HE GETS KICKED OUT OF HIS UNCLE'S HOUSE, HE LIVES WITH A FRIEND OF A FRIEND.

HE SAYS, YES, HE'S UP PACING AT NIGHT, BUT HE'S VERY NICE, CONVERSATIONAL, TALKS TO PEOPLE.

HE HAS DIFFERENT OPTIONS

AVAILABLE TO HIM.
HE'S GOING TO THE LIBRARY ON
THE COMPUTERS, CHECKING FOR
JOBS AND HOUSING.
HE'S FRUSTRATED WITH THE VA IN
PINELLAS COUNTY BECAUSE
THEY'RE NOT GIVING HIM THE
SERVICES HE THINKS HE
DESERVES.
HE WANTS TO TRY TO WORK WITH
THE VA IN TAMPA.
HE DOES THE RESEARCH AND FINDS
THIS APARTMENT COMPLEX
ADVERTISED TO WORK WITH
VETERANS AND THAT'S WHY HE
SAYS I WANT TO GET ALL MY
GOODS AND LAPTOPS IN CASE I
NEED TO PAWN SOMETHING.
I WANT TO HAVE EVERYTHING WITH
ME WHEN I GET OVER THERE.
HE'S VERY GOALORIENTED.
KNOWS WHAT HE'S DOING.
AND DR. MYERS IS THE ONLY
EXPERT WHO WENT AND PULLED HIS
CELL PHONE RECORDS AND SAID
HOW MUCH IS HE USING HIS CELL
PHONE OVER THESE DAYS AND
MONTHS LEADING UP TO THIS.
IT'S NORMAL.
IT'S NOT SOMETHING YOU WOULD
EXPECT TO SEE IN SOMEBODY WHO
IS FINANCIALLY ILL.
HE LOOKS AT HIS FINANCIAL
RECORDS.
AT THE END OF THE MONTH HE'S
STILL GOT MONEY IN HIS
ACCOUNT.
SO HE'S ABLE TO FUNCTION IN
THESE DAYTODAY THINGS.
WE DO KNOW THAT HE HAS A
PERSONALITY WHICH, YES, IT CAN
BE FUN AND A LOT OF PEOPLE
FIND IT ATTRACTIVE, BUT HE'S
ALSO GOT A PERSONALITY OF I
DON'T PUT UP WITH PEOPLE WHO
DISRESPECT ME.
WHEN HE GOT THESE FOUR GUNS IN
2006 AND 2008 HE LIED AND SAID
HE'D NEVER HAD ANY MENTAL
HEALTH ISSUES.

HE LIED.
THESE ARE TIMES WHEN HE'S
FUNCTIONING NORMALLY.
THERE ARE THESE SHADES OF
THINGS ALL THROUGH.
BUT IT APPEARS THAT IF YOU
REALLY LOOK AT ALL OF HIS
SYMPTOMS UP UNTIL THE TIME
AND ESPECIALLY OVER THE
SUMMER, THEY'RE VERY MILD.
HE'S NOT HAVING ANY KIND OF
PSYCHOSIS.
HE DOESN'T TELL ANYBODY THAT
HE THINKS THIS OFFICER IS
COMING TO GET HIM TO JOIN THE
MASONS.
HE DOESN'T OFFER ANYTHING LIKE
THAT.
HE CAUGHT ME AND I HAD THESE
GUNS AND HE DISRESPECTED ME
AND I WANT A LAWYER BECAUSE
I'M THE VICTIM HERE.
HE HAD THAT ATTITUDE.
>> HE COULD HAVE SHOT
>> THE EXPERTS
>> YOU WANT TO LISTEN TO ME?
>> YES.
>> TAKE A BREAK.
CALM DOWN.
>> OKAY.
>> I GOT A HEADACHE.
>> I'M SORRY.
I APOLOGIZE.
>> HE COULD HAVE SHOT THE
SECOND OFFICER, COULDN'T HE?
HE WAS CLOSE ENOUGH TO HIT
HIM.
>> YES.
THE TESTIMONY ABOUT THAT
DOESN'T JUST COME FROM THE
OFFICER THERE AT THE SCENE
BECAUSE THE STATE WITNESS, MR.
FARMER, WHO HAD HAD HIS
GIRLFRIEND PULL OVER, HE'S THE
ONE THAT CALLS 911 AND IN FACT
HE ACTUALLY IS ACTUALLY IS
A WITNESS TO THE SECOND
INCIDENT AS WELL.
HE'S TELLING THE 911 OFFICER,
AND IT'S RIGHT THERE ON THE

TAPE, OH, MY GOD, HE'S GOING TO SHOOT A SECOND OFFICER. SO THIS AND, YOU KNOW, AS IT WAS DESCRIBED FROM MUMFORD AND FARMER SAYS AT THAT POINT WE DO KNOW ABOUT THE GUN BECAUSE FARMER SAYS HE REACHED INTO HIS BAG AND TAKES OUT THE BIG GUN.

HE'S GOT AN ASSAULT RIFLE. THAT'S THE GUN HE USES. HE GETS INTO A THREEPOINT STANCE.

AND THE SECOND OFFICER DIVES BEHIND A DUMPSTER TO AVOID GETTING SHOT.

DID HE SHOOT AT THE SECOND OFFICER AT ALL?

>> HE DID NOT SHOOT THE SECOND OFFICER.

>> SO IF HE'S THINKING SO CLEARLY AND PLAINLY AND HE KNEW HE KILLED THE FIRST OFFICER AND THE SECOND OFFICER IS THERE

>> HE WANTS TO GET AWAY.

>> COULDN'T HE JUST SHOOT HIM AND GET AWAY BETTER?

>> HE REALLY JUST WANTED TO GET AWAY.

HE WAS ABLE TO DO WHAT HE WANTED TO DO BECAUSE THE OFFICER DIVES AND HE IS ABLE TO RUN AWAY.

HE HIDES IN THE WOOD PILE.

THEY GET THE CANINE.

WHEN THEY'RE PULLING HIM OUT, WHAT HE'S SAYING IS I'M SORRY, I DIDN'T MEAN TO DO IT, I'M ONE OF YOU, I'M MENTALLY ILL.

ALL OF A SUDDEN THIS MAN IS SOMEHOW AWARE ENOUGH THAT HE'S ALREADY TALKED TO HIS UNCLE ON THE PHONE

>> YOU'RE SAYING HE WAS PRETENDING.

>> NO.

I'M JUST SAYING YOU HAVE TO LOOK AT HOW HIS MIND WAS FUNCTIONING AT THE TIME AND IT WAS FUNCTIONING PRETTY DARN

WELL AT THE TIME.

HE KNEW WHAT WAS GOING ON.

HE CALLS HIS UNCLE

>> THE WAY YOUR ARGUMENT
BREAKS DOWN TO ME IS THAT
EVERY MINUTE THIS DEFENDANT
HAS TO BE PRETTY MUCH A
BABBLING IDIOT IN ORDER TO
DEMONSTRATE THAT HE'S HAVING
ANY KIND OF PSYCHOLOGICAL
PROBLEMS GOING ON.

>> NO, NOT AT ALL.

NOT AT ALL.

>> I MEAN, THAT'S WHAT IT
SEEMS TO ME.

BECAUSE YOU PICK OUT EVERY
LITTLE THING AND SAY THIS
SHOWS THAT HE'S FUNCTIONING
FINE.

BUT HOW IN THE WORLD CAN YOU
SAY SOMEONE IS FUNCTIONING
FINE WHO'S BEEN PUT OUT, WHO
HAS NO MONEY, WHO'S GOT TO
TRAVEL OR CHOOSES FOR WHATEVER
PSYCHOLOGICAL REASON TO TRAVEL
16 15, 16 MILES WAS IT THAT
HE WALKED IN THE HEAT AND WAS
IT RAINING PART OF THAT TIME
ALSO?

>> APPARENTLY, BECAUSE AT ONE
POINT WHEN HE CALLS HIS UNCLE
HE SAID IT WAS RAINING.

BUT HE KNEW WHERE HE WAS
GOING.

HE HAD

>> DIDN'T HE HAVE A BAD LEG
TOO WHEN HE WAS DOING ALL THIS
WALKING?

>> HE APPARENTLY HAS A BAD
KNEE, ALTHOUGH, AGAIN, THE
EVIDENCE ABOUT HIS PHYSICAL
PROBLEMS IS NOT REAL WE
KNOW THAT HE HAS PHYSICAL
PROBLEMS.

WE KNOW HE WAS TREATED FOR
NECK BUT WE REALLY DON'T
KNOW WHAT THE ISSUE IS OR WHAT
THE TREATMENT WAS.

AND WE KNOW THAT HE HAS GONE
THESE FIVE YEARS WHERE HE'S

BEEN ABLE TO FUNCTION AND HE REALLY ISN'T SEEKING MENTAL HEALTH TREATMENT.

HE'S NOT GETTING MEDICATION.

HE'S NOT TAKING MEDICATION.

AND HE'S ABLE TO, AGAIN, DO DAYTODAY THINGS.

IF YOU HAD HIM AT THE SCENE OF THE CRIME SOMEHOW GIVING SOME DEMONSTRATION OF PSYCHOSIS OR HAVING SOMEBODY SAY, WELL, HE'S MAKING STATEMENTS OR HE'S TAKING ACTIONS WHICH SHOW THAT HE'S NOT ALL THERE, WHICH SHOWS HE'S ACTING UNDER SOMETHING THAT'S GOING ON, THERE WOULD BE EVIDENCE OF THAT AND THERE ISN'T.

WHEN YOU TALK ABOUT THE EXTREME DISTURBANCE AND MENTAL HEALTH TESTIMONY, IT ALL RELATES TO THE FACT HE HAS THIS HISTORY AND HE WAS UNDER THESE STRESSORS AT THE TIME THIS OCCURRED.

BUT THEY'RE NOT LOOKING AT HIS ACTUAL ACTIONS AND BEHAVIORS AS DR.†MYERS IS.

AND THAT'S WHY THE JUDGE CREDITS DR.†MYERS AND THAT'S A CREDIBILITY DETERMINATION ON THE SUBSTANTIAL IMPAIRMENT.

SO I THINK YOU REALLY AND IT IS VERY TRICKY BECAUSE YOU CAN PULL LITTLE FACTS OUT AND SAY, WELL, THIS HELPS ME AND THIS HELPS ME AND OBVIOUSLY THE DEFENSE CAN DO THE SAME THING, BUT THAT'S WHY WE LOOK AT THE TRIAL COURT FINDINGS AND THE TRIAL COURT MAKING THE FINDING THIS WAS NOT THERE WAS NO SUBSTANTIAL IMPAIRMENT BASED ON HIM FINDING DR.†MYERS TO BE CREDIBLE, IS I THINK WHAT HAS TO BE THE KEY TO THIS COURT'S PROPORTIONALITY.

NOW I DO WANT TO ADDRESS I TALKED A LITTLE BIT ABOUT THE SECOND AGGRAVATING FACTOR.

I AGREE WITH JUSTICE PARIENTE.
THIS COURT HAS SAID CCP,
THEY'RE VERY WEIGHTY BECAUSE
THEY SET THE NORMAL MURDER
APART.

BUT THE MURDER OF A LAW
ENFORCEMENT OFFICER IS ALREADY
SET APART IN A CLASS BY
ITSELF.

IT IS NOT JUST A NORMAL MURDER
THAT NEEDS ANOTHER FACTOR TO
SET IT APART.

IT IS A HORRENDOUS CRIME.

YOU HAVE NOT JUST THE
INDIVIDUAL THAT YOU'RE
KILLING, BUT YOU'RE KILLING
PART OF SOCIETY.

YOU'RE KILLING EVERYTHING THAT
IS GOOD AND RIGHT AND JUST IN
SOCIETY BECAUSE THE MEN AND
WOMEN BEHIND THAT BADGE ARE
COMMUNITY HEROES.

AND WHEN YOU TAKE THAT LIFE,
IT SHOULD BE CONSIDERED AN
EGREGIOUS CRIME AND A CRIME
AGAINST ALL OF US.

AND THAT'S THE REASON YOU
REALLY HAVE TO HAVE
SUBSTANTIAL, SUBSTANTIAL
MITIGATION THAT WAS IMPACTING
HIM SUBSTANTIALY AT THE TIME
OF THE CRIME IN ORDER FOR THIS
COURT TO FIND THAT IT'S
DISPROPORTIONATE.

SO I WOULD ASK THIS COURT TO
PLEASE AFFIRM THE JUDGMENT,
THE CONVICTIONS AND THE
SENTENCES IMPOSED BELOW.

THANK YOU.

>> THANK YOU.

REBUTTAL?

>> IF THE STATE'S NOT ARGUING
AUTOMATIC DEATH SENTENCE FOR
LAW ENFORCEMENT OFFICER CASE,
THEN I DON'T KNOW WHAT THEY'RE
ARGUING.

>> WELL, WHAT SHE'S SAYING IF
YOU WANT TO ADDRESS IT, THAT
YOU HAVE IMPAIRMENT BUT THE
JUDGE DIDN'T FIND SUBSTANTIAL

IMPAIRMENT.

>> THE LAW ENFORCEMENT OFFICER
JUST LOOK AT HARDY.

THAT'S THE CASE THAT COMES WAY
CLOSER THAN ANYTHING ELSE.

THE STATE LIKES AT OTHER
CASES.

LOOK AT THEM.

LOOK AT THE SENTENCE ORDERED
IN THIS CASE.

YES, THE JUDGE CREDITED DR.
MYERS ON IMPAIRED CAPACITY.

HE STILL FOUND THAT HE STILL
GAVE IT MODERATE WEIGHT.

YES, HE FOUND DR.†MYERS THE
MOST CREDIBLE ON IMPAIRED
CAPACITY.

DO I THINK HE WAS RIGHT?

NO, I DON'T.

BUT HE DID THAT.

BUT HE DID JUST THE OPPOSITE
ON EXTREME MENTAL OR EMOTIONAL
DISTURBANCE.

HE CLEARLY FOUND THAT IT WAS
AT THE TIME OF THE CRIME.

HE GAVE IT SUBSTANTIAL WEIGHT.

HE WASN'T BASING THAT ON HIS
HISTORY BECAUSE HE FOUND HIS
HISTORY AS A SEPARATE

MITIGATOR.

LOOK AT THE STRESS THAT HE WAS
UNDER.

I WANT TO TALK ABOUT THE AUNT
AND THE UNCLE, BUT DR.†MYERS
NEVER EVEN SAW THE DEFENDANT
UNTIL TWO YEARS AFTER THE
CRIME.

AFTER HE HAD BEEN STABILIZED
ON ANTIPSYCHOTIC MEDS.

THE DOCTORS WHO SAW HIM RIGHT
AROUND THE TIME OF THE CRIME
WERE MAHER, STEIN, WHO WAS
HIRED BY THE STATE WHO
TESTIFIED FOR THE DEFENSE IN
THE PENALTY PHASE AND THE
SPENCER HEARING.

I THINK A VERY IMPORTANT
WITNESS IN THIS CASE WAS THE
JAIL PSYCHIATRIST, HERNANDEZ;
WHO SAW DELGADO THE DAY AFTER

THE CRIME AND IMMEDIATELY SAID
I FOUND THAT HE WAS VERY
PSYCHOTIC AND DELUSIONAL AND I
PRESCRIBED ANTIPSYCHOTIC MEDS
AND I MONITORED HIM EVERY DAY
AND I HAD TO UP THE DOSE BUT
EVENTUALLY IT STABILIZED HIM.
THE DOCTORS TESTIFY EVEN WHEN
STABILIZED ON THE MEDS HE
STILL BELIEVES HIS DELUSIONS
BUT THEY'RE LESS INTENSE.

>> DO YOU AGREE WITH THE
ASSESSMENT THAT THERE WAS NO
VIOLENCE HERE UNTIL THE POINT
THAT HE WAS TASED?

>> YES, I DO.

>> NO VIOLENCE BEFORE?
BEFORE HE WAS TASED?

>> THERE WAS NO VIOLENCE
BEFORE HE WAS TASED.
HE WAS RUNNING AWAY.

>> SO WHY ISN'T IT THE TASING
THAT CAUSED HIS VIOLENT
REACTION?

>> IT MAY WELL HAVE BEEN.
BUT I GOT TO ADDRESS SOMETHING
THE STATE SAYS.

I GOT TIME.

THE STATE SAYS THERE'S NO
EVIDENCE HE WAS AFFECTED BY
THE TASING.

HOW ABOUT THE STATE'S WITNESS,
RICHARD FARMER, WHO'S THE ONE
THAT THEY'RE RELYING ON FOR A
LOT OF THEIR ARGUMENT THAT
THIS WAS A DELIBERATE CRIME
EVEN THOUGH THE JURY AND TRIAL
JUDGE DIDN'T FIND THAT.

FARMER TESTIFIED THAT HE
PULLED THE TASER OUT OF HIS
SHOULDER AND THAT WHEN HE TOLD
INVESTIGATORS WHEN HE WAS
QUESTIONED AFTER THE INCIDENT
THE MAN DID LOOK LIKE HE'D
BEEN TASED AND HE WAS HOPPING
AROUND.

WHAT ABOUT THE STATE'S OWN
WITNESS, DR.†TAYLOR, WHO
TESTIFIED FOR US IN THE
PENALTY PHASE IN THE SPENCER

HEARING, BUT WHEN HE WAS A
STATE WITNESS ON INSANITY IN
THE GUILT PHASE TESTIFIED HE
WOULDN'T BE AT ALL SURPRISED
IF DELGADO WAS MOMENTARILY
STUNNED BY THE TASER.

SO THERE'S CLEARLY EVIDENCE
THERE WAS LIKELY SOME EFFECT
FROM THE TASER.

I WISH THERE HAVE BEEN MORE
EFFECT.

I WISH HE WASN'T MENTALLY ILL
OR IT GOT STUCK IN HIS
DREADLOCKS.

I WISH IT WOULD HAVE
INCAPACITATED HIM BECAUSE THEN
THE OFFICER WOULD BE ALIVE AND
DELGADO WOULD NOT BE A DEATH
ROW.

HE'D PROBABLY BE HOSPITALIZED.
BUT THE TASER HAD CERTAINLY
SOME PSYCHOLOGICAL EFFECT IF
NOT PHYSICAL.

DID IT COMPLETELY CAUSE THE
CRIME?

NO.

THE MAIN FACTOR WAS MENTAL
ILLNESS.

THE DOCTOR DIDN'T DENIED THE
MENTAL ILLNESS PLAYED A ROLE
IN IT.

READ THE SENTENCING RECORD ON
THE STRESSORS, WHAT HIS LIFE
WAS LIKE IN THE MONTHS AND
WEEKS LEADING UP TO THIS CRIME
AND THEN SAY, WELL, HE WAS
MENTALLY ILL BUT HE WAS JUST
DOING FINE THIS WEEK HE
HAPPENED TO KILL A POLICE
OFFICER.

TELL ME THAT PEOPLE WHO ARE
PSYCHOTIC WHO HAVE BIPOLAR
DISORDER WITH PSYCHOTIC
FEATURES, THEY GET BETTER WHEN
THEY'RE OFF THEIR MEDS.

>> YOU'RE OUT OF TIME.

THANK YOU FOR YOUR ARGUMENTS.
COURT IS ADJOURNED.

>> ALL RISE.

