

>> THE NEXT CASE ON THE DOCKET
WILL BE LANDRUM V. STATE.
HANG ON FOR A MINUTE.
WAIT FOR THEM TO CLEAR THE
COURTROOM.
OKAY.

I THINK WE CAN HANDLE IT NOW.
>> MAY IT PLEASE THE COURT, MY
NAME IS MAUREEN SURBER, AND I'M
HERE ON BEHALF OF THE
PETITIONER, LAISHA LANDRUM.
LAISHA WAS 16 YEARS OLD WHEN SHE
PARTICIPATED IN A CRIME THAT
RESULTED IN THE DEATH OF ANOTHER
JUVENILE.

SHE WAS CONVICTED OF
SECOND-DEGREE MURDER WITH A
WEAPON WHICH IS A LIFE FELONY AT
THE TIME AND STILL A LIFE
FELONY, DID NOT MANDATE A
MANDATORY LIFE SENTENCE BUT DID
ALLOW FOR A DISCRETIONARY LIFE
SENTENCE.

AND SHE ACTUALLY RECEIVED A
DISCRETIONARY LIFE SENTENCE EVEN
THOUGH SHE SCORED ONLY 26 YEARS.

>> SO LET ME ASK YOU ABOUT WHAT
EXISTED AT THE TIME, BECAUSE
THERE WAS A SENTENCING STATUTE
THAT USED TO SAY THAT THE
DEVIATION FROM THE SENTENCING
GUIDELINES HAD TO BE 25%.

THAT'S, AS I UNDERSTAND IT, THE
STATUTE AT THE TIME THAT YOUR
CLIENT WAS SENTENCED COULD ALLOW
THE JUDGE TO GIVE, WHAT WAS IT,
27 YEARS?

>> RIGHT.

>> OR UP TO LIFE.

BUT HAD TO GIVE NO REASON FOR
THE LIFE SENTENCE, WHICH HE
ESSENTIALLY DID NOT GIVE.

>> CORRECT.

>> I MEAN, AND THE ONLY, ONLY IF
HE WAS TO DEPART DOWNWARD FROM
27 YEARS WOULD HE HAVE TO TAKE
INTO CONSIDERATION THE
MITIGATION.

SO, ESSENTIALLY, JUST TO HELP
YOU ALONG HERE, THERE WAS NO

REQUIREMENT THAT HE CONSIDER
ANYTHING TO DO WITH
MS. LANDRUM'S YOUTH--

>> NOTHING AT ALL.

>>-- OR THE MILLER FACTORS.

>> YEAH.

AND YOU CAN SEE THAT IN THE
SENTENCING HEARING WHICH IS
FAIRLY SHORT.

IT'S DEFINITELY PRE-MILLER
BECAUSE THERE IS SOME MITIGATION
THAT'S PRESENTED.

BUT IT ONLY, IT'S INADEQUATE,
AND IT DOESN'T TOUCH ON ANY OF
THE CHILDREN OR DIFFERENT
FACTORS OR REALLY IT DIDN'T
TOUCH ON SIX OR SEVEN OF THE
THINGS THAT HAVE NOW BEEN
CODIFIED INTO THE STATUTE.

AND IT ALSO ESPECIALLY DIDN'T
TAKE INTO CONSIDERATION HER
ABILITY TO BE REHABILITATED.
AND SO IT KIND OF, IT READS LIKE
A 26-YEAR-OLD BEING SENTENCED.
BECAUSE THEY DIDN'T KNOW.

>> DID TRIAL COUNSEL AT THAT
TIME ATTEMPT TO BRING ANY OF THE
MITIGATION TO THE ATTENTION OF
THE TRIAL COURT?

>> YES.

I THINK HER FAMILY, BOTH OF HER
PARENTS AND I THINK HER AUNT
TESTIFIED AT THE SENTENCING
HEARING.

I MEAN, YOU KNOW, SHE WAS 16.
SHE HAD VERY MINIMAL CRIMINAL
BACKGROUND.

THEY TALKED ABOUT THAT.
THEY TALKED ABOUT THE FACT SHE
HAD A DAUGHTER.

>> SHE WAS 16--

>> RIGHT.

>>-- AND SHE HAD A
FIVE-MONTH-OLD CHILD.

I MEAN, THE JUDGE-- IT LOOKS
LIKE, I MEAN, THERE WAS
CERTAINLY NO MENTAL HEALTH--

>> NOT THAT WE KNOW OF.

>>-- PRESENTED.

>> NOT PRESENTED.

DEFINITELY NOT.

>> WE DON'T HAVE-- THE PSI, DID THAT REVEAL ANYTHING?

WE DON'T HAVE THE PSI IN THE RECORD.

>> I DON'T HAVE THE PSI EITHER. I COULD ORDER IT.

>> BUT YOU NEVER LOOKED-- I MEAN, AGAIN, IT'S NOTHING IN OUR RECORD.

>> NO.

BECAUSE REALLY IN THE LONG RUN IT DOESN'T MATTER BECAUSE FOR THIS PURPOSE, BECAUSE THIS IS STILL A SECOND-DEGREE FELONY WITH A WEAPON, AND IT'S STILL A LOWER CLASS THAN THE CAPITAL FELONY.

SHE'S ONE CLASS BELOW, BUT SHE BASICALLY HAS A GROSSLY DISPROPORTIONATE SENTENCE BECAUSE NOW THE CHILDREN WITH THE MANDATORY LIFE SENTENCE ARE ALL GETTING NEW SENTENCING HEARINGS.

>> WELL, AND THIS NEW STATUTE WOULD DEFINITELY APPLY FOR, SHE'D GET THE BENEFIT AS SOMEBODY WHO COMMITS SECOND-DEGREE MURDER.

>> YES.

YES.

THIS IS THE THING, SHE WAS-- SHE HAS A GROSSLY DISPROPORTIONATE SENTENCE NOW AFTER MILLER BECAUSE EVERYBODY-- ALL THE JUVENILES WITH CAPITAL FELONIES, THEY'RE GETTING RESENTENCED.

THEY MORE THAN LIKELY HAVE A CHANCE AT A REVIEW, AND SHE HAS NEITHER ONE OF THESE.

AND SHE STILL HAS THE EQUIVALENT SENTENCE.

>> THE ONLY THING THE STATE IS SAYING IS MILLER ONLY APPLIED TO MANDATORY SENTENCING.

BUT IF YOU LOOK AT MILLER AND THEN YOU LOOK AT MONTGOMERY, IT'S-- MONTGOMERY CLARIFIES

THAT UNLESS THERE IS A REQUIREMENT THAT YOU CONSIDER THE YOUTH IN ITS INTENDED CIRCUMSTANCES, AND THEY ALSO SAY THAT A LIFE SENTENCE SHOULD BE EXTREMELY RARE.

>> AGAIN --

>> THERE'S NO WAY UNDER THE SENTENCING STATUTE THAT EXISTED THAT THAT COULD HAVE EVER EXISTED UNDER MILLER.

>> RIGHT.

THEY RULED THAT IT'S A SUBSTANTIVE RULE CHANGE. AND THEY ALSO KIND OF MADE A DISTINCTION.

MONTGOMERY WAS JUST RELEASED ABOUT SIX WEEKS AGO FROM THE UNITED STATES SUPREME COURT, AND AGAIN, THEY REEMPHASIZED SHOULDN'T GIVE THIS HARSH A PENALTY, AND EVEN CHILDREN WITH THE MOST HEINOUS CRIMES CAN BE REHABILITATED.

AND THEY ALSO MADE A DISTINCTION BETWEEN CHILDREN WHOSE CRIMES REFLECT TRANSIENT IMMATUREITY VERSUS CHILDREN WHO HAVE--

>> DID SHE HAVE A PRIOR HISTORY OF VIOLENCE?

>> NO.

>> THIS WAS HER BOYFRIEND AND SHE KILLED ANOTHER, A GIRL.

>> ANOTHER JUVENILE, UH-HUH.

>> DO WE-- I GUESS THE FACTS OF WHO WAS MORE, WHETHER THIS WAS THE BOYFRIEND EGGING HER ON WHO WAS ACTUALLY COMMITTING THE-- IT WAS A BEATING DEATH.

WHO WAS ACTUALLY DOING IT, IS THAT IN THE RECORD?

>> THERE'S AN INDICATION DURING THE SENTENCING HEARING THAT TRIAL COUNSEL BROUGHT UP THE JURY QUESTION WHICH KIND OF SAID ALONG THE LINES OF IF WE THINK THE DEFENDANT DIDN'T DO THE FATAL BLOWS, DO WE STILL HAVE TO CONVICT HER OF SECOND-DEGREE MURDER?

THAT'S PARAPHRASING.
UNDER THE PRINCIPLE THEORY,
SHE'S STILL GUILTY--
>> BUT IT WAS A CRIME, LIKE, OF
JEALOUSY?
>> YES.
YES.
I THINK.
>> OKAY.
>> THAT'S MY IMPRESSION.
BUT EVEN STILL, I MEAN, SO HER
SENTENCE IS GROSSLY
DISPROPORTIONATE.
AND ALSO THE SPIRIT OF MILLER, I
MEAN, THE LETTER OF MILLER SAYS,
NO, IT'S MANDATORY LIFE
IMPRISONMENT.
YOU CAN'T HAVE THAT WITHOUT--
>> IN THE BEST CASE ON THIS IS
MS. FALCON WHO WAS, I THINK, 15.
SHE MURDERED A CAB DRIVER, AND
SHE'S GETTING THE BENEFIT OF--
>> RIGHT.
>>-- OF GOING BACK FOR A
RESENTENCING.
>> AND MOST OF THEM ARE, ALL OF
THEM ARE.
SHE'S GOT A LOWER CRIME.
>> I WAS JUST THINKING OF THESE
GIRLS WHO HAVE DIFFERENT
FACTORS.
I WONDERED IF MS.-- WE DON'T
KNOW IF MS. LANDRUM'S WAS A
FOSTER CHILD, WHAT HER
CIRCUMSTANCE HAVING THE
BABY WAS--
>> I DON'T KNOW.
>>-- AT 15.
>> I THINK SHE RAN AWAY, BUT I
DON'T THINK SHE WAS IN THE
FOSTER CARE SYSTEM.
ALSO, SO THE SPIRIT OF
MONTGOMERY AND OF MILLER REALLY
DOES, SHOULD EXTEND EVERYTHING
TO A DISCRETIONARY LIFE
SENTENCE.
OTHERWISE THIS GROUP,
MS. LANDRUM'S GROUP, IS
BASICALLY STUCK WITH A SENTENCE
WITH NO OPPORTUNITY FOR REVIEW

OR ANYTHING ELSE.

>> SO YOUR ARGUMENT REALLY IS THAT BECAUSE MILLER TALKS ABOUT INDIVIDUALIZED SENTENCING, ANY JUVENILE WHO HAS A LIFE SENTENCE WHETHER IT WAS A MANDATORY LIFE SENTENCE OR NOT SHOULD BE GIVEN THE BENEFIT.

>> YES.

DEFINITELY MY ARGUMENT. BECAUSE IT'S GROSSLY DISPROPORTIONATE.

>> I'M SORRY?

>> BECAUSE IT'S GROSSLY, SHE HAS A GROSSLY DISPROPORTIONATE SENTENCE THAN SOMEBODY WITH A HIGHER CRIME.

>> BUT AT THE CORE OF MILLER, ISN'T IT THAT JUVENILES ARE CONSTITUTIONALLY DIFFERENT?

>> YES.

AND THAT'S THE THING.

>> BUT WHAT-- I GUESS THIS IS A FRIENDLY QUESTION THEN.

ISN'T THAT WHAT THE ISSUE IS? REGARDLESS OF WHETHER YOU ARE SENTENCED MANDATORILY OR DISCRETIONARY?

>> YES.

>> THE JUDGE HAS DISCRETION OR NOT?

>> YES.

EVEN IF THEY HAVE DISCRETION, THEY SHOULD AT LEAST BE AWARE OF ALL THE FACTORS.

I MEAN, THERE'S NO, YOU KNOW, EXPERT ABOUT THE BRAIN SCIENCE, NOTHING THAT SAYS CHILDREN ARE DIFFERENT FOR HER IN HER CASE AND NOTHING THAT TALKS ABOUT HER ABILITY TO BE REHABILITATED.

>> I THINK WHAT THIS ALSO, WHAT THIS CASE POINTS OUT IS SINCE THE SENTENCING GUIDELINES WERE REPEALED, A JUDGE LIKE JUSTICE LABARGA WHO COULD HAVE SENTENCED HER TO 27 YEARS AND YET THIS JUDGE DECIDES TO GIVE HER A LIFE SENTENCE WITHOUT PAROLE, AND THERE'S NO REVIEW OF THAT.

>> NO.

>> AND THAT DISCREPANCY ABSENT MILLER IS, SHOULD BE SOMETHING THAT WE SHOULD BE CONCERNED ABOUT, THAT THAT DISCRETION IS ESSENTIALLY UNGUIDED.

>> THAT'S TRUE.

>> EVEN WITHOUT MILLER.

>> THAT'S TRUE.

AND IT'S KIND OF-- THIS IS LIKE, BASICALLY, THE DEATH PENALTY FOR CHILDREN, THIS KIND OF A CASE.

>> THE DISCREPANCY WAS THE REASON THAT WE HAVE SENTENCING GUIDELINES TO BEGIN WITH. BACK IN THOSE DAYS IN CERTAIN PARTS OF THE STATE POSSESSION OF MARIJUANA A PERSON WOULD GET A YEAR IN JAIL WHEREAS ANOTHER PART OF THE STATE A PERSON WOULD GET PROBATION OR PRETRIAL INTERVENTION.

FOR THAT REASON, OF COURSE, SENTENCING GUIDELINES ARE APPLIED ONLY TO FELONIES, BUT WE-- PALM BEACH COUNTY AT THE TIME WAS ONE OF THE FOUR CIRCUITS THAT WAS USED AS AN EXPERIMENT TO FLORIDA SENTENCING GUIDELINES FOR THAT REASON. THE GENESIS WAS SO DIFFERENT THROUGHOUT THE ENTIRE STATE. I SEE THAT HERE.

AND I'LL HAVE THE SAME QUESTION FOR OPPOSING COUNSEL HERE AS TO WHETHER OR NOT ISN'T IT THE CONSTITUTIONAL, ISN'T THE WHOLE CORE OF MILLER-- AGAIN, THE FACT THAT JUVENILES ARE TO BE CONSIDERED AS A CLASS-- CONSTITUTIONALLY DIFFERENT? AND THEN YOU'LL CONSIDER AN ADULT PERSON WHO COMMITS A CRIME.

>> ABSOLUTELY.

>> IF THAT'S THE CORE OF THE QUESTION IN MILLER, THEN WHAT IS THE DIFFERENCE BETWEEN WHETHER THE SENTENCE IS MANDATORY OR

DISCRETIONARY?

LIFE SENTENCE IS A LIFE SENTENCE.

ISN'T THAT--

>> RIGHT.

RIGHT.

THAT'S WHY IT IS THE SPIRIT, IT BASICALLY IS THE SPIRIT OF MILLER INSTEAD OF JUST THE LETTER THAT SAYS MANDATORY.

>> IT MIGHT EVEN BE THE REASONING.

>> I'M SORRY?

>> IT MIGHT EVEN BE THE REASONING.

>> YES.

YES.

>> YEAH, I DON'T THINK THE SPIRIT THING.

I MEAN, WE'RE--

>> I AGREE.

TO ME, IT'S THE LETTER.

>> THE EIGHTH AMENDMENT, I THINK THIS REQUIRES THAT FOR A JUVENILE BEFORE YOU'RE GOING TO GIVE THAT JUVENILE A LIFE SENTENCE, YOU ARE REQUIRED TO DO IT ONLY IN THE RAREST OF CIRCUMSTANCE AND TO DO IT AFTER A FULL HEARING WITH ALL OF THE FACTORS THAT ARE NOW IN OUR STATUTE WHICH THE LEGISLATURE FINALLY RECOGNIZED HAS TO BE CONSIDERED.

>> I AGREE.

AND, YOU KNOW, MILLER HAS SAID THAT, AND NOW THEY SAID IT AGAIN IN MONTGOMERY JUST A FEW WEEKS AGO.

AND, FRANKLY, THE STATE OF FLORIDA NEEDS TO SCORE IT TO KIND OF INSTRUCT SOME OF THE LOWER COURTS THAT IT SHOULD BE-- YOU KIND OF HAVE TO KEEP SAYING IT.

>> WE DON'T HAVE TO KIND OF, WE EITHER DO IT OR--

>> PLEASE DO IT.

[LAUGHTER]

NO.

SOME OF THESE CHILDREN ARE ALWAYS GOING TO BE SENTENCED TO COMING BACK UP THE APPELLATE ELEVATOR WITH A LIFE SENTENCE AGAIN.

DOESN'T MEAN SOME PEOPLE WON'T, BUT POSSIBLY SHE WON'T BECAUSE SHE HAS A LESSER CRIME.

AND IF IT'S THE RAREST OF THINGS, MORE UNCOMMON, IT SHOULD BE EVEN MORE UNCOMMON FOR SOMEBODY TO BE CONVICTED OF A LIFE FELONY INSTEAD OF A CAPITAL FELONY.

>> AND WE NOW HAVE A CHILD WHO'S GROWING UP WITHOUT HER MOTHER, AND WHO KNOWS WHAT THAT'S GOING TO LEAD TO FOR THAT CHILD.

>> THEY ALSO SAID THAT IN THE--

>> BUT NOBODY'S SAYING SHE SHOULD HAVE GOTTEN PROBATION.

>> NO, NO.

>> HE COULD HAVE GONE DOWNWARD IF HE FOUND ANY OF THE MITIGATING FACTORS.

AND I DON'T-- WAS THE LAWYER ASKING FOR LESS THAN 27 YEARS?

>> YES.

HE DID TRY TO BRING IN SOME MITIGATORS, BUT THAT JUST WENT-- THERE WASN'T A REASONING, IT JUST WAS IGNORED. IT WASN'T TAKEN INTO CONSIDERATION.

I HAVE NO IDEA.

BUT THERE IS A LINE IN MONTGOMERY THAT TALKS ABOUT EVEN IF-- BECAUSE, YOU KNOW, THEY DID SORT OF TALK ABOUT HER AGE DURING THE SENTENCING HEARING. THERE'S A LINE IN MONTGOMERY THAT SAYS EVEN IF THE TRIAL COURT TAKES INTO CONSIDERATION THE AGE, IT STILL DOESN'T MEAN THERE'S AN EIGHTH AMENDMENT VIOLATION BECAUSE THE CHILD'S CRIME REFLECTS THE TRANSIENT IMMATURETY INSTEAD OF IRREPARABLE CORRUPTION. WHICH I THINK SHE WOULD FALL

UNDER THE TRANSIENT IMMATURITY,
FOR SURE.

IF THE COURT DOESN'T HAVE ANY
MORE QUESTIONS, I'LL SAVE SOME
TIME FOR REBUTTAL.

>> MAY IT PLEASE THE COURT,
PETER KOCLANES FOR THE ATTORNEY
GENERAL'S OFFICE.

THE STATE'S POSITION IS THAT
MILLER ONLY EXPRESSLY APPLIES TO
MANDATORY LIFE SENTENCES, AND
THIS DEFENDANT RECEIVED A
DISCRETIONARY LIFE SENTENCE.
AND EVEN IF MILLER DOES APPLY TO
THIS DISCRETIONARY LIFE
SENTENCE, THE DEFENDANT RECEIVED
A CONSTITUTIONALLY-SUFFICIENT
HEARING AT WHICH HER AGE--

>> HERE'S WHAT THE JUDGE SAID.
"MS. LANDRUM, IT'S THE JUDGMENT,
ORDER AND SENTENCE OF THE COURT
THAT YOU BE ADJUDICATED GUILTY
OF THE OFFENSE OF MURDER IN
SECOND-DEGREE AND CONFINED IN
STATE PRISON FOR THE REMAINDER
OF YOUR NATURAL LIFE THEREFORE."
THAT WAS THE ENTIRE SENTENCING.

>> AND MONTGOMERY SPECIFICALLY
SAYS THEY'RE NOT IMPOSING A
FACT-FINDING REQUIREMENT.
A JUDGE DOESN'T HAVE TO MAKE A
FORMAL FINDING.

WE SHOULD LOOK AT MILLER, AND
IT'S THE STATE'S POSITION THAT
MILLER ACTUALLY EXPRESSES FAITH
THAT THERE WAS A SOCIETAL NORM
THAT JUDGES WERE NATURALLY
RELUCTANT TO TREAT JUVENILES AS
JUVENILES.

>> IT'S REALLY INESCAPABLE
THOUGH.

I THINK YOU HAVE A HARD ROW.
HERE WE HAVE A SECOND-DEGREE
MURDER AND A SENTENCING SCHEME
THAT NOT ONLY DIDN'T REQUIRE THE
JUDGE TO CONSIDER ALL OF THE
MILLER FACTORS, BUT ACTUALLY
GAVE NO GUIDANCE TO THE
DISCRETION, ALLOWING A JUDGE--
YOU WOULD AGREE-- TO SENTENCE

MS. LANDRUM ANYWHERE FROM 27 YEARS UP TO LIFE WITHOUT CONSIDERING ANYTHING.

DO YOU AGREE THAT THAT'S WHAT THE SENTENCING SCHEME--

>> I BELIEVE THAT--

>> A JUDGE COULD HAVE GIVEN MS. LANDRUM FOR THE SAME CRIME 27 YEARS?

>> IF HE FOUND THAT IT DESERVED 27 YEARS.

>> BASED ON WHAT?

BASED ON WHAT?

>> WELL, MILLER ACKNOWLEDGES THE FACT, AND HERE'S A QUOTE FROM MILLER, ONLY ABOUT 15% OF ALL JUVENILE LIFE WITHOUT PAROLE SENTENCES COME FROM THE 15 STATES, THE JURISDICTIONS THAT GIVE JUDGES DISCRETION AT THE TIME.

BECAUSE REMEMBER, AT THE TIME OF MILLER NOT EVERY STATE HAD MANDATORY SENTENCING.

AND THE FOLLOWING QUOTE IS THAT FIGURE INDICATES THAT WHEN GIVEN THE CHOICE, SENTENCERS IMPOSE LIFE WITHOUT PAROLE ON CHILDREN RELATIVELY RARELY.

>> WELL, HOW-- IN THIS STATE, THIS STATE WAS THE GRAHAM STATE. THIS STATE IS THE STATE THAT CHARGES MOST JUVENILES AS ADULTS.

THIS IS THE STATE THAT GIVES THE MOST LIFE SENTENCES.

WHAT MILLER NOW SAYS IS THAT IF SENTENCERS ARE REQUIRED TO CONSIDER THESE FACTORS.

THERE'S NOTHING IN THE STATUTE AT THE TIME THAT REQUIRED THE JUDGE TO TAKE THOSE CONSIDERATIONS INTO ITS, HIS OR HER SENTENCING DECISIONS.

>> AND WHAT THEY'RE ESSENTIALLY ARGUING--

>> DO YOU AGREE WITH THAT? WERE THEY REQUIRED TO DO A MILLER ANALYSIS BACK WHEN MS. LANDRUM WAS SENTENCED?

>> THEY WERE NOT REQUIRED TO,
BUT THE QUESTION IS WOULD THEY
HAVE NATURALLY DONE IT.
WHAT MONTGOMERY FOCUSES ON IS A
SIGNIFICANT RISK.

>> BUT THEY DIDN'T.
BUT WHAT WE JUST READ TO YOU IS
THIS JUDGE HAD SAID IT'S JUST
TOO BAD.

THANKS FOR TELLING US THAT SHE'S
GOT A FIVE-MONTH-OLD CHILD, THAT
THIS WAS NOT SOMEONE WHO DID A,
YOU KNOW, A ARMED ROBBERY AND
KILLED SEVERAL PEOPLE.

THIS WAS A-- I MEAN, TO SAY
THIS WAS A CRIME OF, I DON'T
KNOW, PASSION, WE DON'T KNOW THE
DETAILS.

AND HE GOES, OKAY, TOO BAD, SO
SAD.

YOU GET LIFE.

>> WELL, JUDGE, HE DIDN'T SAY IT
IN SUCH A DISMISSIVE WAY.

>> WELL--

>> HE GAVE DUE DEFERENCE TO--

>> WHERE IS THAT?

JUSTICE LABARGA READ WHAT THE
JUDGE SAID.

>> I THINK THEN WE HAVE TO MAKE
AN ASSUMPTION ARE WE GOING TO
ASSUME THE WORST OF THE JUDGE,
THAT HE WOULD HAVE NOT KNOWN
THESE FACTORS AND WOULD HAVE NOT
KNOWN TO APPLY THEM?

>> WHERE IS THE STATE-- WHY IS
THE STATE RELUCTANT TO LET
MS. LANDRUM HAVE THE SAME
BENEFIT THAT MS. FALCON HAD,
WHICH IS TO ALLOW SOMEONE
CONVICTED OF SECOND-DEGREE
MURDER TO GET THE SAME BENEFIT
AS SOMEBODY CONVICTED OF
FIRST-DEGREE MURDER?

I REALIZE YOU'VE GOT TO BE UP
HERE TAKING, I GUESS, THIS HARD
LINE.

BUT IN TERMS OF TRYING TO MAKE A
DIFFERENCE FOR THESE JUVENILES,
EVEN THE LEGISLATURE SAYS
SECOND-DEGREE, FIRST-DEGREE, YOU

GET THIS STATUTE GOING FORWARD.
WHY WOULDN'T WE APPLY IT TO
SOMEBODY WHO HAS A LESSER CRIME
THAN SOMEBODY WHO WAS CONVICTED
OF FIRST-DEGREE MURDER?
>> BECAUSE THE TEST FOR
RETROACTIVITY IS WHETHER THERE
WAS AN UNCONSTITUTIONAL RESULT.
AND HERE THE FACT THAT THE JUDGE
COULD HAVE CONSIDERED IT AND,
INDEED, WOULD HAVE BEEN
NATURALLY INCLINED TO BE
RELUCTANT TO SENTENCE A JUVENILE
ALLOWS FOR THE INDICATION THAT
THIS IS A CONSTITUTIONAL RESULT.
WE HAVE PERFECTED THE PROCESS
AFTER MILLER.
MILLER GAVE MORE CLARITY,
GRANTED.
BUT IT DOESN'T GUARANTEE THAT
ALL THE JUDGES PRE-MILLER GOT IT
WRONG.
AND THE FACT THAT THERE'S ACROSS
THE NATION, OBVIOUSLY, JUVENILE
SENTENCING HEARINGS ARE GOING TO
RUN THE GAMUT.
THERE'S GOING TO BE SOME THAT
WERE PROBABLY JUST A FEW PAGES.
MAYBE AGE WASN'T EVEN
CONSIDERED.
AND THEN THERE'S GOING TO BE
SOME LIKE THIS WHERE IT WENT
RELATIVELY THOROUGH.
IN FACT, THERE WAS A LOT OF
DETAILS.
THE DEFENDANT'S AGE BEING 16 WAS
MENTIONED AT LEAST FIVE TIMES.
WE HAD BOTH OF HER PARENTS AND
HER AUNT TESTIFY AS TO HER
UPBRINGING.
WE KNOW THAT SHE WAS NOT A
FOSTER CHILD.
>> WAS THE JUDGE REQUIRED TO
CONSIDER ALL OF THAT?
>> HE WAS NOT REQUIRED TO, BUT
IT SHOULD BE ASSUMED THAT HE
WOULD HAVE OR AT LEAST HE MAY
HAVE.
AND THAT IS WHY--
>> WHY WOULD WE ASSUME THAT HE

DID?

>> WELL, I GO BACK TO THE LANGUAGE IN MILLER THAT, REMEMBER, IN THE U.S. SUPREME COURT'S EIGHTH AMENDMENT JURISPRUDENCE THEY DON'T WANT TO JUST ANNOUNCE A NEW RULE AND SAY WE, FIVE OUT OF NINE JUSTICES, ARE NOW GIVING A NEW RULE. THEY WANT TO ROOT IT IN SOCIETAL NORMS.

THAT'S WHAT THEY DID IN ROPER. THEY POINTED OUT JUVENILES ARE HARDLY EVER SENTENCED TO DEATH BECAUSE IT'S CRUEL.

THEY DID THE SAME THING IN GRAHAM, THEY DID THE SAME THING IN MILLER.

THEY'RE OBSERVING A NATIONAL NORM THAT, WHEN GIVEN THE CHOICE, SENTENCERS OVERWHELMINGLY CHOOSE NOT TO GIVE JUVENILES LIFE EXCEPT IN THE RAREST--

>> HOW CAN WE-- YOU LOOK AT THIS RECORD, AND THE JUDGE JUST MAKES THE KIND OF CURSORY ANNOUNCEMENT THAT HE DID IN THIS CASE, WHY SHOULD THE JUDGE BE GIVEN THE BENEFIT OF SAYING, OF US SAYING, OH, YEAH, HE HEARD ALL OF THIS, HE HAD TO HAVE CONSIDERED ALL OF THIS, AND YET HE COMES DOWN ON THE SIDE OF A MANDATORY LIFE SENTENCE?

I MEAN, A LIFE SENTENCE WITHOUT PAROLE?

>> WELL, BECAUSE THE FACTS HERE SUPPORT IT, AND THIS WAS ONE OF THOSE RARE JUVENILES.

HOW MANY CASES HAVE YOU SEEN-- TAKE HORSLEY OR FALCON WHERE THE GIRL SHOT A CAB DRIVER, I BELIEVE IT WAS, TO SEE IF SHE WANTED TO SHOOT SOMEONE.

THESE FACTS HERE ARE WORSE THAN PRETTY MUCH ANY CASE YOU CAN SEE.

HOW MANY CASES HAVE YOU SEEN WHERE A JUVENILE USED THE CLAW

END OF A HAMMER TO UTTERLY
DESTROY AND DISFIGURE ANOTHER
JUVENILE'S FACE?
AND THEN THREW THAT OTHER
JUVENILE INTO A GARBAGE CAN AND
LITERALLY BURIED THEM ALIVE IN A
GARBAGE CAN?

OUR POSITION IS THAT THE JUDGE
HEARD THOSE MITIGATING
CIRCUMSTANCES.

SHE GOT HER G.E.D. AND HAD
A YOUNG CHILD.

WE KNEW A LOT OF DETAILS, BUT HE
ALSO HEARD THIS WAS ONE OF THE
WORST CASES HE HAD SEEN, AND--

>> COULD THE JURY HAVE FOUND HER
GUILTY OF FIRST-DEGREE MURDER?

>> COULD THEY HAVE?

>> YEAH.

WAS IT-- DID THE STATE CHARGE
HER WITH FIRST-DEGREE MURDER?

>> THEY CHARGED HER WITH
FIRST-DEGREE, PREMEDITATED
MURDER BUT THE JUDGE--

>> WHAT?

>> THE JUDGE JOA'D IT DOWN TO
SECOND-DEGREE.

>> SO THIS WHOLE IDEA OF WHAT
YOU'RE SAYING WHICH SOUNDS LIKE,
AGAIN, I DON'T DENY THAT YOU'RE
GIVING MISINFORMATION.

THE SENTENCING GUIDELINES
ALLOWED 27 YEARS EVEN THOUGH
THIS CRIME SOUNDS TO ME LIKE
WHAT YOU'RE DESCRIBING IS A
FIRST-DEGREE MURDER CASE.

SO IT MAY NOT BE QUITE AS CLEAR,
AND THE QUESTION STILL IS WAS
THIS A CHILD THAT ON ONE DAY
MADE A HORRIBLE, HORRIBLE
MISTAKE THAT WAS GUIDED BY
JEALOUSY, A EMBLEMATIC, IMMATURE
BUT HORRIBLE CRIME WHICH 20
YEARS AGO SHE WOULD HAVE MAYBE
GOT THE DEATH PENALTY FOR IN
FLORIDA, AND TEN YEARS AGO OR
FIVE YEARS AGO SHE COULD HAVE
GOTTEN LIFE, BUT ANOTHER JUDGE
COULD HAVE GIVEN HER 27 YEARS.
HOW DO WE NOT ALLOW HER TO HAVE

A CHANCE TO SHOW THAT SHE DOES NOT DESERVE A LIFE SENTENCE? DOESN'T MEAN THAT SHE'S NOT GOING TO GET A LIFE SENTENCE, YOU'RE RIGHT.

>> RIGHT.

>> BUT AT LEAST IN A SENTENCING HEARING WHERE THE PROPER FACTORS WILL BE BROUGHT BEFORE THE JUDGE.

>> OUR POSITION IS THAT THIS CASE IS DISTINGUISHABLE FROM MILLER OR MONTGOMERY PRECISELY BECAUSE SHE DID HAVE THE OPPORTUNITY TO LITIGATE ALL OF THIS.

THE PROCEDURE HAS BEEN CLARIFIED IN MONTGOMERY, BUT THAT DOESN'T MEAN THAT THE PRIOR PROCEDURE WAS WHOLLY UNCONSTITUTIONAL.

>> WELL, BUT SHE REALLY DIDN'T HAVE THE OPPORTUNITY TO LITIGATE THIS BECAUSE THIS IS NEW WISDOM THAT HAS BEEN DELIVERED BY MILLER.

AND SO, AND IN MONTGOMERY THE COURT MAKES REFERENCE TO MILLER'S SUBSTANTIVE HOLDING THAT LIFE WITHOUT PAROLE IS AN EXCESSIVE SENTENCE FOR CHILDREN WHOSE CRIMES REFLECT TRANSIENT IMMATURETY.

AND THERE WAS NOT THIS WHOLE DICHOTOMY BETWEEN THE TRANSIENT IMMATURETY AND IRREPARABLE CORRUPTION WAS NOT SOMETHING THAT WAS KNOWN UNTIL MILLER WAS ASSIGNED.

THERE WAS NO WAY THAT THAT COULD BE LITIGATED AT THE TIME-- BEFORE THIS, THE TRIAL JUDGE WHO WAS IMPOSING SENTENCE HERE.

>> WELL, IT'S INTERESTING--

>> WHY AM I WRONG ABOUT THAT?

>>-- THAT YOU SAY IT'S NEW WISDOM, BECAUSE ONE OF THE THINGS THAT JUMPED OUT AT ME AT THE SENTENCING HEARING WAS COUNSEL USED THE TERM "THROWAWAY."

I'LL READ THE QUOTES.

"IF WE IMPOSE THE MAX SENTENCE,
WE HAVE DEEMED HER A THROWAWAY."
GIVE HER AN OPPORTUNITY TO MAKE
AMENDS AND BE A PRODUCTIVE
MEMBER OF SOCIETY.

>> BUT WHAT I'M SAYING IS THAT
THE TRIAL JUDGE COULD NOT HAVE
KNOWN THAT HE WAS REQUIRED TO
CONSIDER THIS.

THE DICHOTOMY THAT HAS BEEN
ESTABLISHED BY THE SUPREME COURT
IN MILLER AND I THINK IN SOME
WAYS CLARIFIED IN MONTGOMERY.
I MEAN, I JUST DON'T-- IT SEEMS
LIKE WE'RE--

>> MONTGOMERY PHRASES THAT THE
REASON IT'S RETROACTIVE IN
MONTGOMERY IS BECAUSE THERE'S
SUCH A HIGH RISK IN TERMS OF A
MANDATORY SENTENCE.

AND THE DICHOTOMY YOU'RE TALKING
ABOUT, LET'S ASSIGN PERCENTAGES
TO IT.

THE U.S. SUPREME COURT ASSUMES
THAT ONLY A SMALL PERCENTAGE OF
JUVENILES AR IRREPARABLY
CORRUPT.

LET'S JUST SAY 20% FOR THE SAKE
OF ARGUMENT, WHETHER THAT'S HIGH
OR LOW.

>> I DON'T KNOW THAT THEY SAY
"RARE," ISN'T THAT A TERM?
I'M NOT SURE 20% WOULD BE RARE.

>> LET'S SAY 10% JUST FOR THE
SAKE OF ARGUMENT, A SMALL
PERCENT, AND 90% ARE REPARABLE.
THE PROBLEM WITH A MANDATORY
SENTENCING SCHEME IS YOU'RE
GOING TO NET THAT ENTIRE GROUP,
THE 90% AND WHATEVER THE SMALL
PERCENT THAT IS IRREPARABLE.
THAT'S WHY THE MONTGOMERY CASE
USES THE PHRASE "SIGNIFICANT
RISK."

THAT'S WHY THERE'S SIGNIFICANT
RISK.

THAT'S WHY IT'S RETROACTIVE.
THAT'S PART OF THE TEAGUE TEST,
THAT THERE'S A SIGNIFICANT RISK.

THAT CHANGES WHEN YOU HAVE A DISCRETIONARY SENTENCE. EVEN PRE-MILLER, EVEN PRE THE WISDOM OF MILLER, ASSUME THERE WAS SOME RELUCTANCE ON JUDGES TO LOOK AT A 16-YEAR-OLD AND--

>> SURE DIDN'T LOOK LIKE THIS JUDGE WAS VERY RELUCTANT. IT DIDN'T LOOK LIKE THIS JUDGE WAS REALLY AGONIZING OVER THE THOUGHT THAT A 16-YEAR-OLD WHO COMMITTED A CRIME OF JEALOUSY, A TERRIBLE CRIME, THOUGHT IT WASN'T PREMEDITATED EVEN PUT IT DOWN TO SECOND-DEGREE WAS STRUGGLING WHETHER HE SHOULD GIVE MS. LANDRUM THE CHANCE, THE HOPE THAT SHE'D SEE LIGHT BY GIVING A 27-YEAR SENTENCE.

>> WELL, I REMEMBER HE HAD A 900-PAGE TRIAL TRANSCRIPT THAT HE WAS FAMILIAR WITH. SO THE FACT THAT HE QUICKLY MAKES THE DECISION DOESN'T MEAN HE WASN'T GIVING DUE DEFERENCE TO ALL THE FACTS.

>> DO YOU THINK THERE'S ANY CHANCE THIS CRIME REFLECTS TRANSIENT IMMATURITY AS OPPOSED TO IRREPARABLE CORRUPTION? THAT MS. LANDRUM WHO WAS RAISED BY, AS YOU SAID, A GOOD FAMILY BUT RAN AWAY AND HAD A CHILD, THAT THIS WAS REALLY SOMETHING THAT SHE WAS PROGRAMMED TO DO FROM AN EARLY AGE? DO YOU THINK THIS CRIME IS THAT TYPE OF SITUATION THAT MONTGOMERY AND MILLER WERE TALKING ABOUT?

>> THE TRANSIENT IMMATURITY?

>> AT THE TIME SOMETHING WHEN SHE MAYBE HAD A CHANCE TO THINK ABOUT IT AND BECOME AN ADULT WOULD SAY I'M NOT DEALING WITH JEALOUSY THAT WAY. I'M NOT LETTING A BOYFRIEND GET ME RILED UP WHEN I HAVE A BABY TO CONSIDER TO RAISE. MAYBE THAT SHE MIGHT, AS SHE HAS

REFLECTED THAT SHE'S NOW ABLE TO CONSIDER WHEN SHE'S NOW BEEN IN PRISON FOR A CERTAIN NUMBER OF YEARS?

>> WELL, MILLER ALLOWS HER THE POSSIBILITY THAT WE CAN MAKE THAT DETERMINATION AT THE OUTSET.

WE CAN DETERMINE AT THE INITIAL SENTENCING HEARING THAT THEY MAY NOT GET A PAROLE OR REVIEW HEARING.

>> DO YOU SEE THIS THOUGH, I'M ASKING YOU, AS IRREPARABLE CORRUPTION?

>> YES, WE DO SEE THIS AS ONE PARTICULARLY BECAUSE OF THE HEARTLESSNESS OF BURYING SOMEONE ALIVE IN A DUMPSTER AND--

>> SO IT SEEMS TO ME THAT WHAT WE HAVE HERE REALLY, IT SEEMS A MANIFEST INJUSTICE TO ME SIMPLY BECAUSE IF HE HAD NOT SAID THIS WAS A SECOND-DEGREE MURDER AND HE SAID IT WAS A FIRST-DEGREE MURDER, GAVE HER A MANDATORY LIFE WITHOUT PAROLE, SHE WOULD NOW BE IN A POSITION WHERE SHE COULD HAVE THAT LOOKED AT.

>> YOU MEAN THE 25-YEAR REVIEW PROVISION?

>> YES.

BUT ON A LESSER SENTENCE, ON A LESSER-DEGREE CRIME, SHE IS NOW IN A POSITION WHERE YOU ARGUE WE CANNOT LOOK AT THAT.

DOES THAT SEEM LIKE THAT OUGHT TO BE THE STATE OF THE LAW IN THIS STATE?

>> WELL, LET'S BE CLEAR.

IN HORSLEY YOU ALL GAVE, APPLIED THE NEW STATUTE TO THE OLD DEFENDANTS BECAUSE THEY HAD A MANDATORY SENTENCE AND ABSOLUTELY NO DUE PROCESS WHATSOEVER.

AND I WOULD REMIND THE COURT THAT UNDER THE NEW SENTENCING STATUTE FOR CAPITAL MURDER DEFENDANTS WHO KILL, THEY WOULD

FACE A 40-YEAR MINIMUM
MANDATORY.

SO SHE WOULD NOT ACTUALLY BE
BETTER OFF WITH A 40-YEAR
MINIMUM MANDATORY, EVEN WITH A
REVIEW PROVISION.

IT'S STILL A WHOLLY HIGHER RANGE
THAN THE RANGE SHE FACED WHICH
WAS ANY TERM OF YEARS UP TO
LIFE.

>> BUT WHAT SHE GOT WAS A LIFE
SENTENCE--

>> BUT WE CAN'T JUST LOOK AT THE
LAST TIME FRAME.

>> SO EVEN IF SHE GOT THAT, EVEN
IF SHE ENDS UP WITH A LIFE
SENTENCE AT A NEW HEARING, IT
JUST SEEMS TO ME THAT IF PEOPLE
WHO ARE CONVICTED OF A HIGHER
DEGREE OF CRIME NOW HAVE AN
OPPORTUNITY TO BRING THEIR CASE
BEFORE A JUDGE AND MAKE ALL
THOSE ARGUMENTS ABOUT THEIR
YOUTH AND ALL THOSE FACTORS, NOW
SOMEONE WITH A LOWER DEGREE
CRIME DOES NOT HAVE THAT
OPPORTUNITY.

WHY ISN'T THAT A MANIFEST
INJUSTICE IF NOTHING ELSE?

>> BECAUSE OUR POSITION IS THAT
THERE CAN BE LEVELS OF
PROCEDURAL DUE PROCESS, AND SHE
GOT A CONSTITUTIONALLY
SUFFICIENT LEVEL AT HER INITIAL
HEARING.

THE LEGISLATURE CAN ALWAYS
IMPROVE A STATUTE, AND THEY
CERTAINLY DID WITH THE NEW
STATUTE.

BUT LET'S BE CLEAR, THEY COULD
IMPROVE IT MORE.

THERE'S ABOUT 12 FACTORS.
SUPPOSE THREE YEARS FROM NOW
THEY ADD MORE LAYERS OF CLARITY?
DO WE THEN HAVE TO RESENTENCE
EVERYONE AGAIN?

>> WELL, NO, BECAUSE YOU CAN
GO--

>> BUT WHEN YOU TALK ABOUT IT AS
PROCEDURAL, THAT SEEMS TO KIND

OF RUN INTO CONFLICT WITH WHAT THEY'RE SAYING IN MONTGOMERY. BECAUSE IT SEEMS LIKE THEY'RE THINKING REALLY THIS PROCEDURE IS NECESSARY TO DEFINE THE SCOPE OF THE SUBSTANTIVE RIGHT. SO THEY KIND OF-- IT'S BOUND UP.

AND THAT'S KIND OF CENTRAL TO THEIR HOLDING ABOUT ONE OF THE HOLDINGS IN THE CASE.

SO WHAT DO YOU SAY ABOUT THAT?

>> WELL, IT'S BOUND UP TO DETERMINE THE CORRECT CLASS OF JUVENILE.

BUT THE REASON IT'S RETROACTIVE IS BECAUSE, YES, IT'S A SUBSTANTIVE RIGHT THAT'S CREATED.

BUT IT'S ONLY RETROACTIVE WHEN THERE'S A SIGNIFICANT RISK OR HIGH DEGREE OF CERTAINTY OF AN UNCONSTITUTIONAL RESULT.

YOU DON'T NECESSARILY HAVE TO RESENTENCE PEOPLE WHO THERE IS A HIGH DEGREE OF PROBABILITY OR A STRONG POSSIBILITY THAT THERE WAS A CONSTITUTIONAL RESULT. WHAT IT COMES DOWN TO IS A PER SE REVERSAL.

EVERY DEFENDANT SENTENCING PRIOR TO MILLER PER SE REVERSAL.

>> OKAY, YOU'RE-- OKAY, LET ME ASK YOU THIS, BECAUSE YOU SAY IT'S SO RARE IN THE STATE OF FLORIDA.

HOW MANY SECOND-DEGREE MURDER LIFE SENTENCES FOR JUVENILES DO WE HAVE?

>> I DON'T KNOW THAT EXACT FIGURE.

>> SO YOU'RE EITHER SAYING THERE ARE TONS OF THEM, WHICH WOULD MEAN IT'S NOT RARE, OR THERE ARE JUST A FEW WHICH WILL MEAN IT'S NOT-- THAT WE'LL HAVE A FEW JUVENILES RESENTENCED.

IT SEEMS TO ME THE STATE OUGHT TO KNOW THAT BEFORE IT MAKES A STATEMENT THAT IT'S, YOU KNOW,

IT'S SO RARE.

BUT THEN YOU'RE SAYING, WELL,
WE'VE GOT ALL THESE JUVENILES
THAT ARE GOING TO HAVE TO BE
RESENTENCED.

>> OUR POSITION IS THAT JUDGES
WOULD HAVE NATURALLY, BECAUSE
THIS WAS A SOCIETAL NORM AGAINST
IT, THEY WOULD HAVE NATURALLY
SENTENCED THEM--

>> SO HOWEVER MANY THERE ARE--

>> THE IDEA OF LOOKING AT
SENTENCING HEARINGS OF JUDGES
WHERE THERE ARE MURDERS-- I AM
SORRY, BUT I THINK THERE ARE
MANY JUDGES THAT CONSIDER THOSE
DEFENDANTS, THEY MAY HAVE BEEN
FORMER PROSECUTORS, WHATEVER,
SHOULD GET LIFE SENTENCES.
AND THE SENTENCING GUIDELINES
ALLOWED IT.

SO I DON'T REALLY, YOU KNOW,
WITH ALL DUE DEFERENCE, AND
THESE AREN'T JUDGES, BY THE WAY,
THAT ARE JUVENILE JUDGES THAT
ARE DOING THIS.

THESE ARE JUDGES WHO SEE ADULT
CRIME AND LOOK AT THE JUVENILE
IN THE SAME WAY BECAUSE THEY'RE
ALLOWED TO.

SO, AGAIN, IT'S NOTHING AGAINST
THE JUDGE, BUT WE'VE GOT TO GIVE
STRUCTURE AND GUIDANCE SO THAT
THEY CAN IMPOSE A CONSTITUTIONAL
SENTENCE.

>> WELL, AND THE STATE WANTS TO
BE CLEAR.

THAT MAY BE A REASONABLE
INTERPRETATION OR APPLICATION OF
MILLER, BUT UNDER THE CONFORMITY
CLAUSE OF FLORIDA'S
CONSTITUTION, THIS COURT MUST
STRICTLY CONFORM TO THE
DECISIONS OF THE U.S. SUPREME
COURT, NOT WHAT COUNSEL REFERRED
TO AS THE SPIRIT OF MILLER.

>> ARE YOU SAYING THAT WE CAN'T
FIND THIS SENTENCING STRUCTURE
UNCONSTITUTIONAL UNTIL THE
UNITED STATES SUPREME COURT

FINDS IT UNCONSTITUTIONAL?

>> I'M SAYING--

>> ISN'T IT THE OPPOSITE WHICH IS WE FOLLOW THE PRECEDENT, BUT IF THERE'S NO-- WE DO OUR BEST TO CONSTRUE IT.

IF WE'RE WRONG, THEY CAN TAKE IT UP, AND WE'LL HAVE LANDRUM V. FLORIDA AS THE NEXT MILLER CASE.

>> WELL, I WOULD SUGGEST THE OPPOSITE BECAUSE THE DEFENDANT WILL ALWAYS HAVE THE RIGHT TO A 3800 SHOULD THE U.S. SUPREME COURT CLARIFY THAT THIS APPLIES TO HER.

SO RATHER THAN DISRUPT THE STATE'S INTEREST IN FINALITY AND SAY IF WE'RE WRONG THE STATE CAN TAKE IT UP, I WOULD SAY GIVEN THAT THE U.S. SUPREME COURT HAS NOT MADE A DEFINITIVE PRONOUNCEMENT ON THIS, PRESUME THE STATE'S INTEREST IN FINALITY, PRESUME THE SECOND DISTRICT AND THE THREE OTHER DCAs CORRECTLY INTERPRETED THE LAW.

THAT WAS THE PROCEDURAL POSTURE.

>> EVEN JUDGE POSENER OF THE SEVENTH CIRCUIT INTERPRETED IT TO MEAN THAT IF IT COULDN'T MEAN THAT IT'S DISCRETIONARY, THAT THEY-- JUDGES WERE NOT REQUIRED TO CONSIDER THIS.

>> SO ARE YOU SAYING THE JUDGE REDUCED IT FROM FIRST-DEGREE TO SECOND-DEGREE SO HE COULD GET HER AROUND THE DICTATES OF MILLER?

>> I WASN'T SUGGESTING THAT, ALTHOUGH THAT'S ALWAYS A POSSIBILITY OF JUDGE NULLIFICATION SO THAT HE'D HAVE DISCRETION, SO THAT HE WOULDN'T-- IF THAT'S WHAT YOU'RE SAYING.

>> AND THAT'S WHAT THIS CASE DICTATES?

MILLER?

>> I'M NOT SURE WHAT YOU'RE

ASKING.

I DON'T BELIEVE THE JUDGE--

>> YOU SAID IT'S NOT MANDATORY.
HE CAN DO IT INDIRECTLY WHAT HE
CAN'T DO DIRECTLY.

>> I BELIEVE THE DISCRETION HE
GOT BY REDUCING IT TO
SECOND-DEGREE MURDER WAS
CONSTITUTIONALLY SUFFICIENT, IF
THAT ANSWERS YOUR QUESTION.
I THINK THE JUDGE GENUINELY
THOUGHT THE EVIDENCE OF
PREMEDITATION, BECAUSE IT
HAPPENED A FEW MONTHS PRIOR THAT
THERE WAS A THREAT, WAS NOT
QUITE SUFFICIENT.

>> I THINK YOUR TIME IS UP.

>> AND WE RESPECTFULLY ASK YOU
TO UPHOLD THE OPINION OF THE
SECOND DISTRICT.

>> THANK YOU.

COUNSEL?

LET ME JUST ASK YOU, BEFORE WE
GET GOING AGAIN HERE, YOUR
CLIENT WAS INITIALLY CHARGED
WITH FIRST-DEGREE MURDER, AM I
CORRECT?

>> YES.

>> DID THE STATE SEEK THE DEATH
PENALTY?

>> I DON'T THINK SO.

BUT I'M NOT TOTALLY SURE.

>> PROBABLY POST-ROPER.

>> I THINK IT IS.

I'M NOT TOTALLY SURE THOUGH.

>> [INAUDIBLE]

>> JUST SO, ALSO TO CLARIFY, WE
DON'T-- THE STATE HAS DISCUSSED
SOME OF THE GORY DETAILS OF THIS
CRIME.

OUR RECORD HERE HAS ONLY THE
SENTENCING HEARING.

IT DOESN'T HAVE THE TRIAL, IS
THAT CORRECT?

>> YES.

>> THE STATE WANTED TO GIVE US
ALL THAT OTHER INFORMATION.
THEY COULD HAVE ASKED FOR THAT
RECORD TO BE PLACED UP HERE.

>> YES, BUT IT DOESN'T MATTER

ANYWAY.

>> THERE'S NO REFERENCE TO A CLAW AND A HAMMER AND BEING IN THE SENTENCING--

>> YEAH.

THEY DID TALK ABOUT IT IN THE SENTENCING HEARING.

>> THE CLAW AND THE HAMMER?

>> YES, YES.

THERE'S A LINE IN THERE ABOUT THAT.

BUT EVEN IF THE WHOLE TRIAL WAS IN THERE, IT'S STILL A SECOND-DEGREE MURDER CONVICTION, IT'S STILL A LIFE FELONY, AND SHE HAS A GROSSLY DISPROPORTIONATE SENTENCE THAN EVERYBODY WITH A LIFE FELONY. SHE REALLY SHOULD BE RESENTENCED AND GIVEN AN OPPORTUNITY FOR REVIEW.

PETITIONER REQUESTS-- IF THERE ARE NO FURTHER QUESTIONS-- THIS COURT EXTEND THE RULING OF MILLER, FOLLOW MILLER, FOLLOW MONTGOMERY AND REVERSE AND REMAND FOR RESENTENCING.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS. THE COURT WILL BE IN RECESS FOR TEN MINUTES.