

>> ALL RISE.

THE SUPREME COURT OF FLORIDA
NOW IN SESSION.

THE NEXT CASE ON THE DOCKET IS
EDWARD ALLEN COVINGTON V. STATE
OF FLORIDA.

WHENEVER YOU ARE READY.

>> MY NAME IS CYNTHIA DODGE AND
I REPRESENT THE APPELLATE,
EDWARD COVINGTON.

EVEN THOUGH THIS IS A JURY
WAIVED CASE THE JURY WAS WAIVED
IN OCTOBER 2014.

THE SENTENCING WAS IN MAY 2015.
TALKING ABOUT THE OLD STATUTE.

WITH REGARD TO THE JURY WAIVER
ISSUE, THIS CASE IS SLIGHTLY
DIFFERENT AND THE FACT THAT IT
IS DIFFERENT MAKES ALL THE
DIFFERENCE.

THE JURY WAS PICKED AND OPENING
STATEMENTS HAVE BEGUN AND THE
TESTIMONY HAD STARTED.

THE TRIAL WAS HALTED.

THE THREE HOMICIDES AND WAIVED
JURY TRIAL, THIS IS DIFFERENT
FROM OTHER CASES, MISTER
COVINGTON HAS A JURY BEFORE HIM
SO HE IS NOT THINKING ABOUT
HYPOTHETICAL, AND WEIGHING
THE OPTION WHETHER OR NOT HE IS
GOING TO WAIVE JURY FOR PENALTY
PHASE.

HE HAS AN ACTUAL JURY, HE SAT
THROUGH -- HE HAD LOOKED AT
OPENING STATEMENTS AND THE
TESTIMONY, LOOKING AT AN
ABSOLUTE JURY.

IN VOLUME 17, THE COLLOQUY WITH
THE JUDGE, MISTER COVINGTON
ASKED SPECIFICALLY WITH THE JURY
HAVE TO BE A MAJORITY?

THEY DON'T HAVE TO BE UNANIMOUS
AND THE JUDGE TELLS THEM AT
LEAST SEVEN WOULD HAVE TO
RECOMMEND DEATH FOR THAT TO
CONSTITUTE A RECOMMENDATION OF
DEATH SO THE DEFENDANT ASKS IF
IT IS 6 AND 6, THE JUDGE
RESPONDS, WILL THAT CONSTITUTE A

RECOMMENDATION OF LIFE AS A
MATTER OF LAW AND THEN AT THAT
POINT JULIAN HOLT, THE ELECTED
PUBLIC DEFENDER ASKS IF THEY CAN
CONFIRM.

AT THIS POINT THEY ARE DECIDING
WHETHER TO GO AHEAD WITH THIS
JURY WAIVER.

THE DEFENDANT ULTIMATELY SAYS
THAT HE UNDERSTOOD THE
IMPORTANCE OF THE JURY AND
RECOMMENDATION BUT GIVEN THE
MAKEUP OF THIS JURY I DO NOT
FEEL CONFIDENT WITH IT.

IN OTHER WORDS HE IS LOOKING AT
THE JURY AND IS MENTALLY
COUNTING DO I HAVE SIX VOTES.
IF THE STATUTE, THIS IS A DIRECT
APPEAL SO THERE IS NO DOUBT THAT
HE IS IN THE PIPELINE.

IF THE STATUTE WERE
CONSTITUTIONAL AT THE TIME OF
THIS JURY WAIVER, HIS
CALCULATION, HIS THOUGHT
PROCESSES WOULD BE ENTIRELY
DIFFERENT BECAUSE HE WOULD BE
LOOKING AT THIS JURY AND SAYING
DO I HAVE ONE VOTE?
BECAUSE IT HAS TO BE UNANIMOUS.
THIS CASE IS DIFFERENT AND I AM
ARGUING THE WAIVER SHOULDN'T
APPLY TO HIM.

>> I DON'T UNDERSTAND HOW THAT
IS DIFFERENT FROM THE OTHER
WAIVER CASE.

THE RULES CHANGED.

THIS BUSINESS ABOUT LOOKING AT
ONE VOTE AS OPPOSED --

>> IT HAS TO DO WITH --

>> A GREATER NUMBER.

I DON'T REALLY SEE HOW THIS IS
DIFFERENT.

FURTHERMORE THERE IS A SITUATION
HERE, YOU WOULD CONCEDE, THIS IS
A TOUGH CASE TO TAKE BEFORE THE
JURY GIVEN ALL THE
CIRCUMSTANCES, THE MUTILATION,
ALL THE SWIRLING AROUND THAT.
THIS IS A TOUGH CASE TO GO
BEFORE A JURY.

>> I UNDERSTAND THAT BUT A
SUBSTANTIAL AGILE AMOUNT OF
MITIGATION, THE DEFENSE PRODUCED
I THINK IT WAS SIX WITNESSES,
PSYCHOLOGISTS AND PSYCHIATRISTS
FROM THE PAST OR ONES THAT
SPECIFICALLY EVALUATED HIM
FORENSICALLY DURING THIS
PROCESS, AND THERE WAS A LOT OF
MENTAL ILLNESS.

IF YOU GO BACK, IT STARTED WHEN
HE WAS 15 YEARS OLD.

WHAT I AM SAYING IS THIS IS NOT
YOUR TYPICAL CASE WITH REGARD TO
THE JURY WAIVER AND I ASK YOU TO
CONSIDER THAT.

>> CONSIDER IT IN WHAT WAY?
WHAT DO YOU THINK WE SHOULD DO
WITH THE FACT THAT HE ALREADY
PICKED THE JURY?

HOW IS THAT SUPPOSED TO FORM
WHATEVER DECISION AND WHAT IS
THE DECISION YOU ARE ASKING US
TO MAKE?

>> THAT IT IS NOT A VOLUNTARY
WAIVER.

YOU CAN SEE IT IS NOT A
VOLUNTARY WAIVER.

>> I AM NOT SURE HOW, MAYBE I
MISSED SOMETHING, I AM NOT SURE
HOW HIM HAVING ALREADY AT THIS
CASE BEING IN A POSTURE OF A
JURY ALREADY BEING PICKED, TELLS
US WHETHER OR NOT THE WAIVER WAS
VOLUNTARY OR NOT.

>> YOU HAVE TO LINK IT TO THE
FACT HE IS IN A POSTURE OF
DIRECT APPEAL.

IF HE HAD HAD, THERE IS NO DOUBT
THE STATUTE WAS UNCONSTITUTIONAL
SO IF HE HAD A CONSTITUTIONAL
STATUTE IN FRONT OF HIM, THE
WAIVER --

>> BECAUSE?

>> HE WASN'T GIVEN ALL THE
INFORMATION.

>> I AM CONFUSED.

I'M LOOKING AT THE BRIEF, I
DON'T SEE --

>> I YOU LOOKING AT -- IT CAME

OUT AFTER THE INITIAL BRIEF BUT
IF YOU GO TO THE REPLY IF
THERE'S MUCH MORE BECAUSE
MULLINS HAD COME OUT AFTER THAT.

>> I DON'T SEE AN ISSUE IN YOUR
INITIAL BRIEF.

>> IT SHOULD BE THE NUMBER 6,
THE LAST ONE.

>> OKAY, THANK YOU.

I WOULD LIKE TO MOVE ON TO OTHER
ISSUES IF I COULD BECAUSE THE
HEARST ISSUE COULD TAKE UP ALL
THE TIME.

>> THE ONLY REASON YOU ARE
ARGUING THIS WAIVER WAS
INVOLUNTARY IS BECAUSE THE JURY
WAS ALREADY PICKED AND HE
BELIEVED HE NEEDED SIX PEOPLE IN
ORDER TO GET A LIFE
RECOMMENDATION.

>> WOULD HAVE HAD THE BENEFIT OF
A CONSTITUTIONAL STATUTE.

I WOULD LIKE TO GO TO ISSUE
NUMBER ONE.

THIS IS THE IT IS 5M, 6M.
THE ACTIVATOR APPLIED TO BOTH OF
THE CHILDREN AND THE VULNERABLE
-- THE DEFENDANT STOOD IN
CUSTODIAL AUTHORITY OVER THE
VICTIM.

THAT PART OF THE STATUTE
REQUIRES NEXUS BETWEEN THE
CUSTODIAL AND FAMILIAL
RELATIONSHIP AND THE FACT THEY
ARE PARTICULARLY VULNERABLE.

NOT PER SE THAT THERE IS A
RELATIONSHIP, THE RELATIONSHIP
HAS TO CAUSE THE VICTIM TO BE
PARTICULARLY VULNERABLE BUT
THERE IS NO CASE LAW ON THIS
ISSUE BUT IF YOU LOOK AT THE
CASES, ONE OF THE THINGS,
WHETHER THEY ARE PARTICULARLY
VULNERABLE BECAUSE OF AGE OR
PHYSICAL INCAPACITY.

>> DID THEY FIND THE ACTIVATOR
OF AGE, DO THOSE MERGE?

>> ACTUALLY NOT.

>> I KNOW YOU HAVE TO ARGUE FOR
YOUR CLIENTS BUT WITH THREE

VICTIMS, ONE OF THE TRIAL
VICTIMS WAS TWO YEARS OLD,
REALLY CAN'T BE SAYING THE CHILD
-- ARE YOU SAYING HE WASN'T IN A
POSITION OF CUSTODIAL AUTHORITY?

>> I AM NOT SAYING THAT.
THAT IS WHAT THE JUDGE FOUND.

>> HOW IS SHE NOT PARTICULARLY
VULNERABLE WHEN HE IS THE
CARETAKER AND SHE IS TWO YEARS
OLD?

>> IT HAD NOTHING TO DO WITH THE
OFFENSE WHICH A CASUAL BOYFRIEND
WHO HAD BEEN SPENDING THE NIGHT
WOULD HAVE HAD THE SAME ACCESS
AND CONTROL OVER THE VICTIM AS
SOMEONE WHO HAD A FAMILIAL --

>> ONE INCIDENT WHERE THE
BIOLOGICAL FATHER VISITED AND
ONE OF THE CHILDREN SPOKE OUT OF
TURN OR REFERRED TO SOMEBODY BY
FIRST NAME AND THE CLIENT
CORRECTED THE CHILD, WE CALL HIM
SIR.

THAT IS REFERRING TO THE
BIOLOGICAL FATHER.

>> LET ME BE MORE CLEAR.
I AM NOT CONTESTING THE FINDING
THAT THERE WAS A CUSTODIAL OR
FAMILIAL RELATIONSHIP.
I AM SAYING THE JUDGE IN THIS
COURSE CANNOT REWRITE THE
STATUTE.

THE STATUTE SAYS THAT THE TIME
OF THE OFFENSE THE VICTIM WAS
PARTICULARLY VULNERABLE BECAUSE
THE DEFENDANT STOOD IN A
POSITION.

IF YOU LOOK AT THE AGE CASES THE
CASES ARE CLEAR AND THERE IS A
FRANCIS CASE THAT ADVANCED AGE
DOES NOT PER SE PUT YOU INTO THE
AGGRAVATE HER.

>> THAT IS DIFFERENT.
WHY ISN'T THAT DIFFERENT?
SOME OF US HAVE ADVANCED AGE,
CONSENT FOR OURSELVES QUITE WELL
AND IT IS NOT A PROBLEM.
WE ARE NOT PARTICULARLY
VULNERABLE.

OTHERS OF ADVANCED AGE, BASED ON THEIR AGE ARE GOING TO BE PARTICULARLY VULNERABLE BUT HERE IT IS DIFFERENT YOU DON'T HAVE THAT DIFFERENCE.

>> IF I MAY, TO SAY THAT THIS CHILD WAS TWO YEARS OLD, SHE WAS PARTICULARLY VULNERABLE IS NOT WHAT THE COURT FOUND, HAS TO DO WITH THE RELATIONSHIP.

TO SAY IT WOULD BE CONFLATING TWO THINGS, THIS IS 2-YEAR-OLD CHILD, THEREFORE SHE HAS PER SE PARTICULARLY VULNERABLE BUT THAT IS NOT WHAT THE COURT FOUND, HE FOUND THE RELATIONSHIP RENDERED HER PARTICULARLY VULNERABLE. EVEN A BURGLAR HAD BROKEN AND WOULD HAVE BEEN IN THAT SITUATION.

THE WAY THAT A RELATIONSHIP -->> WOULD EVER APPLY?

>> IF THIS PERSON, AND IN A SECLUDED AREA, SAYS COME WITH ME.

AND THEREFORE --

>> AN ENTIRELY FANCIFUL SPIN ON THE LANGUAGE OF THE STATUTE.

>> FORGIVE ME FOR MAKING THAT OBSERVATION.

>> I AM LOOKING AT THE THREE VICTIMS.

I DON'T UNDERSTAND, IF THIS WAS A SINGLE VICTIM, SINGLE VICTIM CASE THE AGGRAVATE HER, THERE ARE TWO AGGRAVATE HER ZEN WHAT A DIFFERENCE IF YOU MAKE THIS ONE AGGRAVATE HER OR TWO I WONDER WHY THEY WOULD EVEN MERGE, DOES IT MAKE IT MORE AGGRAVATED OR NOT?

HOW DOES IT MAKE A DIFFERENCE?

>> THE SUBSTANTIAL AMOUNT OF MITIGATION.

IF YOU GO TO ISSUE 3, THIS DOES NOT COMPLY WITH CAMPBELL.

>> THERE IS MITIGATION BUT THREE VICTIMS, SAYING THIS TO ONE.

YOU THINK IT REALLY MATTERS TO US, LOOK AT THESE AGGRAVATED, WE

DON'T COUNT THEM UP.

LOOK AT THE QUALITY OF THE
AGGRAVATE IS, YOU HAVE H AC,
ANOTHER VICTIM AND 2-YEAR-OLD
HELPLESS CHILD.

THE FACT THAT HE IS ALSO IN A
CUSTODIAL RELATIONSHIP I GUESS
MAKES IT WORSE BUT IT IS ALMOST
LIKE WHO CARES?

IT WOULD STILL BE A DEATH
PENALTY APPROPRIATELY FOUND FOR
THIS MURDER.

ALL OF THESE ISSUES ARE RELATED.

>> WHAT I'M ARGUING IS BASICALLY
THIS HAS TO GO BACK BECAUSE OF
CAMPBELL.

WHEN YOU TALK ABOUT SENDING THIS
BACK, IT WOULD BASICALLY THE
COURT WOULD HAVE TO WRITE ON
EACH ONE OF THESE ISSUES AND YOU
TALK ABOUT SENDING IT BACK AND I
AM SAYING --

>> YOU ARE TALKING SENDING IT
BACK.

>> I AM TALKING YES, DEFINITELY
TALKING ABOUT SENDING THIS BACK.
IF THE COURT WERE TO SEND THIS
BACK I AM SAYING AS TO THESE TWO
CHILDREN, THIS AGGRAVATE HER
UNDER 5M TO WHICH THE COURT
ACCORDED WEIGHT DOES NOT APPLY,
YOU HAVE ONE AGGRAVATE HER THAT
DOESN'T APPLY SO IN ANY CONTEXT
WHEN YOU SEND SOMETHING BACK,
THESE ALL BECOME RELEVANT
BECAUSE AT THIS POINT YOU ARE
NOT CONDUCTING A PROPORTIONALITY
REVIEW, YOU ARE DECIDING WHETHER
OR NOT UNDER ISSUE 3 THIS THING
HAS TO GO BACK.

>> WHAT IS A CAMPBELL ARGUMENT?

>> THE CAMPBELL ARGUMENT IS WITH
REGARD TO THE LITIGATORS THAT
ARE MOST IMPORTANT ARE THE
STATUTORY, THE STATUTORY
MITIGATION.

IF YOU LOOK AT THE ORDER, IT
LOOKS LIKE IT IS VERY VERY LARGE
BUT THE FIRST PART OF THE ORDER,
THE COURT MAKING A STATEMENT OF

CASE IN FACTS WITHOUT EXPLAINING WHY CERTAIN FACTS ARE LEFT OUT AND A CERTAIN FACTS ARE EMPHASIZED.

THE SECOND PART OF THE ORDER IS ALMOST VERBATIM RECITATION OF OR COPYING OF THE STATE'S SENTENCING MEMORANDUM AND THE THIRD PART IS THE DEFENSE, NONE OF IT IS BEING RECONCILED, NONE OF IT IS BEING ANALYZED SO WHEN YOU GET TO THE ACTUAL PART OF THE SENTENCING IT ENDS UP 6 PAGES SO WHEN TALKING ABOUT THE MITIGATION THAT ENDS UP FOUR PAGES AND IT STARTS IN VOLUME -- THE VOLUME OF THE SENTENCING, PAGE 3355, 3356, YOU HAVE GOT UNDER THE STATUTORY MITIGATION OF WHETHER MISTER COVINGTON WAS UNDER EXTREME MENTAL OR EMOTIONAL DISTRESS AT THE TIME, THAT ENDS ONE SENTENCE, ONE SENTENCE LONG AND IT IS AT THE BOTTOM OF PAGE 3355, THE COURT FINDS HIS MENTAL OR EMOTIONAL DISTURBANCE AND RAGE AND VIOLENCE WERE PRECIPITATED BY VOLUNTARY USE OF COCAINE, ALCOHOL AND VOLUNTARY DISCONTINUING OF HIS PSYCHOTROPIC MEDICATIONS BECAUSE IT CAUSED HIM SEXUAL DYSFUNCTION KNOWING SUCH WOULD PRECIPITATE RAGE AND VIOLENCE. SIX DOCTORS, PSYCHOLOGISTS TESTIFIED FOR THE DEFENSE. NONE OF THAT IS ANALYZED IN THEIR.

NONE OF THAT.

IT TALKS ABOUT RAGE AND VIOLENCE, VOLUNTARY USE OF COCAINE AND ALCOHOL OR DISCONTINUATION, DOESN'T TALK ABOUT BIPOLAR DISORDER, INTERMITTENT EXPLOSIVE DISORDER, THREE DOCTORS SPECIFICALLY DIAGNOSED HIM WITH OR TALK ABOUT THE FACT THAT HE HAS BEEN DIAGNOSED SINCE HE WAS 15 YEARS

OLD.

>> YOU ARGUE IT IS A CAMPBELL ERROR.

DID HE FIND THOSE STATUTORY LITIGATORS?

>> THE FIRST ONE, YOU HAVE TO READ THE WHOLE THING TOGETHER BUT SEEMS HE DID FIND THEM BUT THERE IS A LOT -- HE IS NOT TELLING YOU THERE IS NOTHING IN THERE IS A TELLS YOU WHAT YOU CONSIDERED --

>> WAIT A MINUTE.

ON THE SAME PAGE, 3355, MISTER COVINGTON SUFFERED FROM A LONG-STANDING CONDITION OF BIPOLAR DISORDER INTO COCAINE AND ALCOHOL ABUSE DISORDER AND GOES ON AND TALKS ABOUT THAT AND AT THE LIMIT SAYS THE COURSE ACCORDS THIS CIRCUMSTANCE GREAT WEIGHT.

>> YES.

>> SO THE WAY HE DOES THIS, WHY WOULD HE HAVE TO REPEAT THAT IN THE NEXT PORTION OF IT?

>> HE STICKS THAT IN IS NONSTATUTORY MITIGATION AND WHEN TALKING ABOUT STATUTORY MITIGATION YOU HAVE TO -- THE COURT HAS TO RECONCILE ALL OF THIS TESTIMONY AND GIVE YOU SOMETHING TO WORK ON.

>> THEY WE AGREE THIS WOULD HAVE BEEN HIS MENTAL ILLNESS AND USE OF PSYCHOTROPIC DRUGS OR WHATEVER HE WAS ON, HE WAS OBVIOUSLY HAD SOMETHING GOING ON AT THE TIME OF THIS CRIME. SAY WE SEND IT BACK FOR THE JUDGE TO SAY I ACCORD THIS STATUTORY MITIGATE OR GREAT WEIGHT.

I AM NOT TRYING TO BE FACETIOUS HERE BUT THE QUESTION GOES TO THREE MURDERS WITH THE AGE OF THE CHILDREN, I DON'T KNOW A CASE WHERE THIS WOULD NOT BE A PROPORTIONATE SENTENCE WHICH IS WHAT WE HAVE TO LOOK AT.

>> IF THERE IS A CAMPBELL ERROR

--

>> WE CAN LOOK AT THIS RECORD.
CAMPBELL ERRORS ARE NOT GOING TO
BE CAMPBELL ERRORS BECAUSE WE
HAVE A JURY MAKING THESE
DECISIONS.

THE JUDGE STILL IF THE JUDGE
WANTS TO GIVE A LIFE SENTENCE
THEY CAN'T VERY, CAN'T GIVE A
DEATH SENTENCE OF THE JURY
RECOMMENDS LIFE.

HOW IS THIS TO WORK?

WE SEND IT BACK FOR HIM TO
REEVALUATE, WOULD YOU SAY
RELINQUISH THAT AND IT COMES
BACK TO US?

LET'S ASSUME HE GIVES THAT
AGGRAVATE A GREAT WEIGHT.
ARE YOU THEN GOING TO ARGUE
SUCCESSFULLY THAT WE SEE THE
SAME EVIDENCE THAT THIS IS NOT A
PROPORTIONATE SENTENCE?

>> IF YOU ARE SENDING IT TO THE
TRIAL JUDGE TO REEVALUATE, HE
COULD CHANGE HIS MIND.
THAT IS FOR HIM TO DO.

>> WE CAN SEE THE ISSUE IN
CAMPBELL WHERE THERE WOULD BE
SUMMARY STATEMENTS.
EVEN THOUGH WE DO SEE SENTENCING
ORDERS THAT ARE CERTAINLY MORE
FULSOME THERE IS ENOUGH
EVIDENCE, THERE IS ENOUGH IN
THIS, HE DIDN'T LOOK AT THESE
ISSUES THAT YOU ARE SAYING HE
ONLY GAVE SUMMARY ATTENTION TO.
I AM HAVING TROUBLE WITH WHAT WE
WOULD WANT HIM TO DO.

>> LET ME ANSWER YOUR QUESTION
BY MOVING ON TO THE IMPAIRED
CAPACITY.

IF YOU LOOK AT THAT FINDING, THE
JUDGE REJECTS IT, IT ACCORDS A
MODERATE WAY.

THE COURT FINDS VISIBILITY TO
APPRECIATE THE CRIMINALITY OF
HIS CONDUCT, THE MENTAL ILLNESS,
PERIOD.

AND VISIBILITY TO CONFORM

MISCONDUCT, WAS NOT
SUBSTANTIALLY IMPAIRED DUE TO
MENTAL ILLNESS BUT MERELY
DIMINISHED.

THIS WAS A REJECTION.

>> THE MENTAL ILLNESS AND
VOLUNTARY --

>> THAT IS A REJECTION,
SUBSTANTIALLY IMPAIRED BECAUSE
HE IS ACTUALLY -- THIS UNTIL
MITIGATE HER, HE IS ACTUALLY
REJECTED.

>> THAT IS WHY I ASKED IF YOU
MADE A SEPARATE POINT, WE
USUALLY SEE SEPARATELY, THE
JUDGE, IN LIGHT OF THE UNREFUTED
EVIDENCE REJECTED STATUTORY
MITIGATE OR.

THAT IS NOT A CAMPBELL ERROR.

>> I COMBINED THE CAMPBELL ERROR
WITH THE FACT THAT HE DIDN'T
BECAUSE THIS WHOLE SENTENCING
ISSUE WAS SO UNWIELDY THAT I
COMBINED IT WITH THE FACT THAT
HE NEGLECTED TO CONSIDER WHEN HE
REJECTED THIS IMPAIRMENT THAT
THE STATUTORY MITIGATE HER, HE
DIDN'T PUT ANYTHING IN THERE
ABOUT HIS MENTAL ILLNESS AND
VOLUNTARY INTOXICATION DOES
FIGURE INTO THIS.

YOU CAN'T EVEN TELL FROM THIS
WHETHER HE IS REJECTING FINDING
HIS ABILITY TO APPRECIATE THE
CRIMINALITY OF CONDUCT WAS NOT
IMPAIRED BECAUSE OF HIS MENTAL
ILLNESS WHETHER OR NOT HE IS
APPLYING INSANITY.

YOU CAN'T TELL BECAUSE THIS IS
SO BARE-BONES THAT YOU CAN'T
TELL FROM THAT.

MY POINT IS ALL OF THIS HAS TO
GO BACK AND WHEN YOU LOOK BACK,
THERE IS AN ISSUE WHERE THE
MEDICAL EXAMINER COULD NOT
TESTIFY THAT SHE WAS NOT
UNCONSCIOUS AT THE OUTSET.

IF YOU TALK ABOUT, THE JUDGE IS
GIVING THE AGGRAVATE HER TO
SAVANNA AND GREAT WEIGHT AS TO

THE FACT THAT THERE IS CUSTODIAL AND FAMILIAL RELATIONSHIP AND TALKING ABOUT THAT HE IS NOT PROPERLY EVALUATING STATUTORY MITIGATION WHICH IS THESE ARE THE MOST WEIGHTY FORMS OF MITIGATION SO THIS HAS TO BE SENT BACK FOR A PROPER, PROPER SENTENCING ORDER AND THEN IT CAN COME TO YOU AND I AM IN MY REBUTTAL TIME.

>> MAY IT PLEASE THE COURT, I AM SUZANNE BECHARD, REPRESENTING THE STATE.

I WOULD LIKE TO START WITH A CAMPBELL ISSUE SINCE THAT SEEMS TO BE ONE THAT HINGES MOST OF THE REST OF THE DEFENSE'S ARGUMENT.

FIRST OF ALL, THIS SENTENCING ORDER MAKES THE STANDARD OF CAMPBELL AND FINNEY, THE CASES THAT HAVE BEEN DECIDED.

WHAT IT SAID IS THE ORDER MUST EVALUATE EACH PROPOSED LITIGATOR, DETERMINE IF THEY ARE TO THE MITIGATING, DETERMINE IF THE MITIGATED ARE ESTABLISHED BY THE GREAT WEIGHT OF EVIDENCE, WAY THE AGGRAVATE OF THE LITIGATORS, EXPRESSLY CONSIDER EACH ESTABLISHED MITIGATING CIRCUMSTANCE, A SIGN WAIT TO EACH AGGRAVATE HER AND MITIGATE HER.

THOSE REQUIREMENTS ARE MET. THERE IS NO DOUBT THAT THIS ORDER IS REVIEWABLE BY THIS COURT.

THE REASON FOR THE CAMPBELL AND FINNEY DECISIONS WAS BECAUSE THE ORDERS IN THOSE CASES WHERE APPARENTLY SO SPARE, OR EVEN NONEXISTENT, THAT IT DIDN'T FACILITATE APPELLATE REVIEW. IF YOU LOOK AT THE ORDER IN THIS CASE, YES, HE DOES VERBATIM, QUOTE, THE ARGUMENTS OF THE PARTIES BUT BEFORE HE DOES THAT AND AFTER HE GIVES OUT THE BASIS

FOR THE PLEA, THE FINDINGS BY THE COURT, THE FINDINGS COMPRISE 17 PAGES OF DISORDER AND IN BETWEEN THAT, YOU HAVE THE VERBATIM RENDITION OF THE PARTIES ARGUMENTS.

>> I DON'T KNOW, MY THOUGHT IS NOT, BUT WHEN WAS THIS FOUND IN THE CLAUSE LONG AFTER THAT?

>> THE MURDERS TOOK PLACE SUNDAY MORNING, AND UNDER HIS STATEMENTS AT 8:30, THAT IS WHEN IT ALL HAPPENED.

PLAYING WITH THE CELL PHONE, WE KNOW THE BODIES WERE FOUND THE FOLLOWING MORNING.

THERE HAD BEEN A SWEEP OF THE TRAILER, AND ANOTHER SWEEP.

>> LOOKS LIKE YOU COULD VALIDLY AGREE AT THE TIME OF THESE MURDERS, EMOTIONAL DISTRESS, AND IT WAS FOR MORE, SELF REPORTING, AND PRESENTED AS TO WHAT DRUGS IN HOURS LEADING UP TO THIS.

>> SMOKED CRACK COCAINE AND INGESTED ALCOHOL AND RAGE EFFECTS FOR HIM.

>> DID HE TAKE THEIR WELL?

>> IN A STATEMENT TO THE POLICE, THINK THERE WOULD BE A PROBLEM WITH DRINKING ALCOHOL BECAUSE --

>> A GREAT HISTORY OF MENTAL ILLNESS.

>> THAT IS SOMETHING THE STATE PRESENTED --

>> DID THE JUDGE FIND THAT

>> THE FACT OF THE MENTAL ILLNESSES AND THE JUDGE FOUND AS YOU SAID EARLIER THE BIPOLAR DISORDER INTERMITTENT EXPLOSIVE DISORDER COCAINE USE, ALCOHOL USE DISORDERS.

>> DEFINED AS A STATUTORY MITIGATE HER.

>> THE COURT, GREAT WEIGHT TO THE FACT THAT HE HAD MENTAL ILLNESS.

>> WHEN IT COMES DOWN TO IT, I WANT TO DIRECT YOU TO THE AGGRAVATE HER'S.

IT MEETS THE REQUIREMENTS OF
WHAT WE WANT IN CAMPBELL,
ASSESSMENT.

ON THE AGGRAVATE HER'S, PROBABLY
MAKES NO DIFFERENCE IN THIS CASE
BUT IF YOU HAD ONE VICTIM AND
THE VICTIM WAS 2 YEARS OLD,
THERE ARE THREE POSSIBLE
AGGRAVATE IS THE FLOW FROM THAT,
THEY ARE UNDER 12.

SECOND IS THEY ARE ESPECIALLY
VULNERABLE BECAUSE IT IS
CUSTODIAL FAMILIAL RELATIONSHIP
AND THREE, AGGRAVATED CHILD
ABUSE.

THE JUDGE ON THE STATE'S
CONCESSION AGREED AGGRAVATED
CHILD ABUSE WOULD MERGE.

IS THIS A SITUATION WHERE IF THE
ONLY AGGRAVATE HER WAS ONE
VICTIM, THERE WOULD BE TWO
WEIGHTY AGGRAVATE HIS OR DOES
THE STATE SEE IN THAT CASE THOSE
WOULD PROBABLY MERGE LIKE OTHER
GAMES IN THE ROBBERY AND WHERE
WE MERGED THE AGGRAVATE HER'S.

>> YOU ARE ASKING IF THE ONLY
VICTIM WERE SAVANNA AND THE ONLY
AGGRAVATE HERS WERE UNDER 12 AND
VULNERABLE VICTIM WOULD THOSE
TWO MERGE?

I WOULD SAY THAT IS A QUESTION.
I DON'T THINK THEY WOULD.

>> NO ONE HAS ARGUED THAT.

>> IT IS THE BUT IS LOOK AT THE
AGGRAVATE HERS AND THE QUALITY,
HARD TO LOOK AT IT AND SAY
SOMEBODY, THE AGGRAVATE HER OF
THE CUSTODIAL RELATIONSHIP
APPLIES SO IT IS DOUBLE IF THE
PARENT COMMITS THIS MURDER AS
OPPOSED TO A STRANGER AND IT IS
EQUALLY HORRIBLE.

IT IS JUST TRYING TO FIGURE OUT
IF THIS CAME UP AGAIN IF IT IS
APPROPRIATE TO FIND THIS
AGGRAVATE HER BUT DOES IT MERGE
WITH A 2-YEAR-OLD?

>> YOU CAN HAVE A PARTICULARLY
VULNERABLE VICTIM BECAUSE OF THE

PARENTAL --

>> OVER 12.

IF IT HAPPENS UNDER 12 --

>> YOU CAN HAVE A PARTICULARLY
VULNERABLE VICTIM.

>> IT IS NOT LIKE IF YOU ARE
OVER 65 YOU ARE AN AGGRAVATE
HER, BUT HAVE TO BE ALSO
PARTICULARLY VULNERABLE OR
WHATEVER THE LANGUAGE IS.

>> I DON'T THINK WE GET TO THAT
QUESTION BECAUSE IT WASN'T
RAISED AND THIS IS SUCH AN
AGGRAVATED CASE.

I WILL TOUCH ON THE HEARST
MATTER.

THIS SITUATION AND ARGUMENT BY
THE DEFENSE PRESENT AN
ILLUSTRATION OF WHAT THIS COURT
WAS TALKING ABOUT WHEN IT SAID A
DEFENDANT CAN'T SUBVERT HIS
RIGHT TO A JURY FINDING BY
WAVING IT AND COMING BACK AND
SAYING NO, I COULDN'T DO THAT.
IF THERE ARE NO FURTHER
QUESTIONS THE STATE WOULD ASK
THE COURT TO AFFIRM THE RULINGS
BELOW.

THANK YOU.

>> I DON'T WANT TO GIVE THE
IMPRESSION THAT I DON'T THINK
THIS IS ABSOLUTELY THE MURDERS
WERE ABSOLUTELY ATROCIOUS AND
THE MUTILATION IS ABSOLUTELY
SHOCKING.

I DON'T WANT TO GIVE THE
IMPRESSION I'M THINKING LIGHT OF
THIS BUT I WOULD LIKE TO POINT
OUT THE MUTILATION OCCURRED
AFTER DEATH AND THIS CASE, THERE
IS NO REASON FOR THESE MURDERS.
IT IS NOT AS IF HE WAS MARRIED
TO THIS WOMAN.

IN OTHER WORDS HE HAD TO MURDER
TO GET OUT OF SPOUSAL SUPPORT OR
CHILD SUPPORT OR GET OUT OF THE
MARRIAGE, THERE IS NO REASON.
THIS MAN HAD HIS FIRST BAKER
ACT.

DON'T KNOW IF THEY HAD THE BAKER

ACT BACK THEN.

HIS FIRST COMMITMENT AFTER HE
SHOT HIMSELF PLAYING RUSSIAN
ROULETTE WHEN HE WAS 15.

AT THAT TIME HE WAS PUT ON
LITHIUM AND I THINK IT IS
PRONOUNCED WILL BE, WHEN HE WAS
16 HE OVERDOSED ON PILLS.

HE LEAD A PRODUCTIVE LIFE.

HE WAS A CORRECTIONAL OFFICER
WITH THE DEBARMENT OF
CORRECTIONS FROM 1996 TO 2006.

IN 1993 HE HAD A MOTORCYCLE
ACCIDENT WHERE HIS HELMET
ACTUALLY CRACKED AND EVEN THOUGH
THERE WAS NO PET SCAN OR

WHATEVER SCANS THEY DO NOWADAYS
TO SHOW FRONTAL LOBE DAMAGE THIS
WAS IN THE FRONTAL LOBE

DEPARTMENT PART OF THE HEAD AND
DOCTOR CROFT AND DOCTOR RAO
FIGURED OUT THAT AND IT DOESN'T
HAVE TO BE THIS TESTING THING.

I THINK IT WAS DOCTOR RAO WHO
SAYS HE SEES TRAUMATIC BRAIN
INJURY WITH REGARD TO VETERANS
AND IT DOESN'T NECESSARILY SHOW
UP.

IT BEGAN WORKING IN 1996 WITH
THE DEPARTMENT OF CORRECTIONS.

IN 2000 HE SAW DOCTOR DAWSON
VOLUNTARILY BECAUSE HE TOLD HIS
MOM HE WAS A MESS AND HE GOT ON
LITHIUM AND WILL BE AGAIN.

IN 2000 WHEN HE WAS HOSPITALIZED
BECAUSE HE WAS LOSING
CONSCIOUSNESS AND I DIAGNOSED
THAT AS SEIZURES OR POSSIBLE
SEIZURES.

IN 2003 HE HAD GASTRIC BYPASS
AND THAT IS REALLY IMPORTANT.
HE HAD GASTRIC BYPASS SURGERY
AND TO REDUCE THE SIZE OF HIS
STOMACH AND THAT MADE HIM SO
MUCH MORE DIFFICULT TO MEDICAID
AND ALL THESE EXPERTS ESPECIALLY
THE PHARMACOLOGIST, SAID THIS
WOULD AFFECT HIS ABILITY TO BE
MEDICATED AND DOCTOR BUFFINGTON,
THE PHARMACOLOGIST, AND DOCTOR

CROFT, THEY SAID IT WOULD TAKE 6 WEEKS TO MONTH, ONE OF THEM SAID EIGHT WEEKS TO THREE MONTH TO GET SOMEBODY STABILIZED SO SOMEBODY OFF HIS MEDICATION WHO HAS PROBLEMS, HAD EPISODES, HORRIBLE EPISODES BEFORE IT IS OFF HIS MEDICATION AND TAKING HIS MEDICATION AGAIN AND THEY HAVEN'T HAD TIME TO KICK IN. WHETHER OR NOT HE VOLUNTARILY DECIDED NOT TO TAKE IT BECAUSE IT HAD SEXUAL SIDE EFFECTS DOESN'T MAKE TOO MUCH DIFFERENT IF HIS BLOOD LEVEL IS UP TO THE POINT THAT IT IS ACTUALLY DOING HIM ANY GOOD.

YOU HAVE AN UNMEDICATED INDIVIDUAL AT THAT POINT.

>> IF HE DECIDES NOT TO TAKE IT BECAUSE OF THE SIDE EFFECTS, IT IS HAVING SIDE EFFECTS BECAUSE IT WOULD ALSO HAVE EFFECTS.

YOU AGREE?

>> EXACTLY.

THESE EXPERTS TESTIFY PEOPLE IN THIS SITUATION WITH THIS KIND OF CHEMICAL DEPENDENCE AND THESE KIND OF BIPOLAR, ESPECIALLY, THEY MAKE HORRIBLE DECISIONS ESPECIALLY WITH REGARD TO WHETHER THEY NEED THEIR MEDICATION BECAUSE WHEN THEY START TO FEEL BETTER THEY GO OFF THERE MEDICATION.

IT IS VERY DIFFICULT, NOT ONLY THAT BUT IF YOU LOOK AT, HE WAS IN JAIL FOR SIX YEARS, THERE IS A DOCTOR, BETHANY WEAVER, WHO TESTIFIES THEY ARE CONSTANTLY TWEAKING HIS MEDICATION.

IN A FOOTNOTE, HOW MUCH YOU HAD TO DO THAT TO GET STABILIZED OVER SIX YEARS.

IN 2004, HIS LIFE AFTER THE BYPASS -- SOMEONE NAMED SHERRY TATE WAS A COCAINE ADDICT AND WAS ALSO BIPOLAR.

>> THIS IS ALL VERY INTERESTING BUT I AM WONDERING AT WHAT DECK

ARE YOU TRYING TO MAKE?

>> THIS CASE HAS SUBSTANTIAL MITIGATION AND IF YOU LOOK AT THIS COURT ORDER WHERE THE ACTUAL EVALUATION HAPPENS IN THE LAST SIX PAGES COME ALL THESE FACTS I'M TELLING YOU ABOUT ARE NOT IN THEIR.

>> THE BEGINNING OF THIS, WE TALK ABOUT A DEFENSE PROPOSED MITIGATING CIRCUMSTANCE, SEEMS TO ME THEY GO THROUGH, THE JUDGE LAYS OUT A LOT OF HOSPITALIZATIONS AND ALL THAT.

>> THE JUDGE DOESN'T TELL YOU WHY HE REJECTED THOSE AND ONCE HE REJECTS THE FACT BECAUSE THE STATE'S EXPERTS TESTIFY UNEQUIVOCALLY HE IS NOT MENTALLY ILL LOSE THE JUDGE IS TOTALLY AND COMPLETELY REJECTED THAT. ONCE YOU REJECT THAT, ALL THE OPINIONS CRUMBLE, THE TWO STATE WITNESSES.

HE DOESN'T TELL YOU WHY HE IS REJECTING, ACCEPTED THE SEVENTH FACT THAT HE IS MENTALLY ILL AND ACCEPTED DEFENSE TESTIMONY BUT IS COMING UP WITH HIS OWN CONCLUSION AND THAT CONCLUSION IS NOT FOUND IN THE TESTIMONY. THE CONCLUSION THAT HE WAS MERELY DIMINISHED IS NOT FOUND IN THAT TESTIMONY.

HE ALREADY REJECTED THE STATE'S WITNESSES BUT IS NOT ACCEPTING THE DEFENSE CONCLUSIONS AND NOT TELLING YOU WHY AND THAT IS WHY THIS IS IMPORTANT BECAUSE NONE OF THIS, TO SAY THE -- YOU WOULD HAVE TO COME TO A LEAP AND SAY THAT HE DID CONSIDER THESE THINGS WHEN IT IS NOT THERE AND I AM OUT OF TIME.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENT.