

>> THE SECOND CASE ON OUR DOCKET TODAY IS MESAC DAMAS VERSUS THE STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT, MY NAME IS VALARIE LINNEN AND I REPRESENT THE APPELLATE, MESAC DAMAS.

MESAC DAMAS PLAYED GUILTY TO CAPITAL HOMICIDE OF HIS WIFE AND 5 CHILDREN.

HE ALSO AT ONE POINT ASKED THE COURT TO REPRESENT HIMSELF WHICH THE COURT DENIED, HE WAIVED THE PENALTY PHASE JURY ALONG THE TRIAL JUDGE IN THIS CASE TO DETERMINE HIS SENTENCE.

>> IN YOUR BRIEF, THERE IS NO STATEMENT OF THE FACTS CONCERNING MESAC DAMAS'S MENTAL STATE.

AM I CORRECT YOU DON'T TAKE ISSUE WITH WHAT YOU RAISED, ANY OF THE FACTUAL FINDINGS, OR YOUR CLIENT'S COMPETENCY, MENTAL ILLNESS THAT YOU HAVE NOT YET CHALLENGED.

>> I WILL CHALLENGE THAT TODAY. FOLLOWING THE PENALTY PHASE, BEFORE THE COURT TODAY OR TWO ISSUES, IN THE INQUIRY.

TO REPRESENT HIMSELF AND WHETHER THE TRIAL COURT HAD AGGRAVATED THEY RELIED UPON THE AGE OF THE FIVE CHILD VICTIMS.

>> EVEN IF WE AGREED THAT THEY IMPROPERLY DOUBLED WHICH IT DIDN'T SEEM THEY WERE, THIS WAS WITH SIX DEATH AND MULTIPLE AGGREGATORS, IT IS BEYOND HARMLESS BEYOND A REASONABLE DOUBT BUT EVEN SO IT SEEMS THEY DO HAVE RELEVANCE THE OTHER HAS. CORRECT?

>> I START BY SAYING THIS IS DIFFICULT CASE.

WE ARE IN THE UNIQUE SITUATION WHERE A JURY DID NOT POINT RECOMMENDATION.

>> YOU WERE NOT CHALLENGING THE WAIVER, THIS WAS TRIED AFTER

HURST, YOU WERE NOT CHALLENGING HIS INFORMED DECISION TO WAIVE PENALTY PHASE AND MITIGATION. >> BEHIND DENYING HIS REQUEST FOR STILL RECOMMENDATION THAT THE REASONING BEHIND THAT, THE TRIAL JUDGE DENIED IT, AND FAILED TO DEMONSTRATE SUFFICIENT UNDERSTANDING OF LEGAL PROCESS. ACCORDING TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.11D 3, ONLY THREE REQUIREMENTS, THE FIRST BEING HE MAKE AN UNEQUIVOCAL REQUEST TO DISMISS HIS COUNSEL AND THE SECOND BE KNOWING AND VOLUNTARY AND -- >> THE PROCEDURE IN SUBSECTION 2, ASIDE FROM THE FACT THAT HE WAVES COUNSEL, COURT IS REQUIRED TO CONDUCT AN INQUIRY. AND ACCUSED COMPREHENSION OF THE OFFER AND OFFERED TO WAIVE COUNSEL ON THIS. AND THE CAPACITY OF A KNOWING WAIVER. I UNDERSTAND THE POSITION THAT THE COURT MAY NOT HAVE CORRECTLY CONSIDERED THE LEGAL SKILLS OF THE TRIAL. HOWEVER THE COURT DID CONDUCT AN EXTENSIVE COLLOQUY, PAGE AFTER PAGE, YOUR CLIENT SEEMED TO HAVE BEEN COMBATIVE AND ARGUING WITH THE COURT, INTERRUPTED THE COURT, AND SO ON. THE RECORD, THE TRANSCRIPT, THE COLLOQUY THAT WAS CONDUCTED IN THE WAIVER, THE COURT WAS CONVINCED THAT HE WAS NOT WILLING TO OFFER WHATEVER WAS COORDINATED TO HEAR TO ACCEPT THE FACT HE WAS KNOWINGLY WAVING THE RIGHT TO COUNSEL. WHAT ELSE DID THE COURT NEED TO DO OTHER THAN CONTINUE? >> TO SAY THAT THE COLLOQUY IS THOROUGH IS A LOT LESS THAN WHAT HE WAS TRYING TO SAY. I DON'T WANT COUNSEL, THAT IS IT.

FROM THE PERSPECTIVE OF ENGLISH IS NOT HIS NATIVE LANGUAGE, NOT RAISED IN THE UNITED STATES, MIGHT HAVE SEEMED A LITTLE WEIRD SO LOOKING AT IT FROM THE DEFENDANT'S PERSPECTIVE I ASK YOU TO DO THAT IN THAT REGARD. HE BEARS THE PERSONAL CONSEQUENCES OF HIS CRIME AND THE CONSEQUENCES OF GOING BEFORE THE JUDGE REPRESENTING HIMSELF BEFORE THE JUDGE. IT IS NOT ON THE LAWYERS OR THE JUDGE BUT ON MESAC DAMAS HIMSELF.

>> AND MENTAL HEALTH EVALUATION, AND THE INQUIRY.

WHEN WAS THE COMPETENCY DONE IN RELATIONSHIP?

>> THERE WERE SEVERAL COMPETENCY EVALUATIONS.

>> HE WAS RESTORED. IN 20 DAYS.

>> IN THE FOR RATHER INQUIRY HE REQUESTED IT, CORRECT ME IF I DON'T HAVE THESE DATES RIGHT, IN JULY THERE WAS A COMPETENCY EVALUATION.

AND THE JUDGE ACCEPTED THE COMPETENCY EVALUATION.

>> FERRERA WAS PRIOR TO THAT.

>> THE FIRST REQUEST IN JULY 2017, AND AUGUST 2017 IN THE FOR RENT A HEARING ON SEPTEMBER 5TH.

>> IN BERETTA, NORMALLY FROM MY POINT OF VIEW NEVER WISE FOR A DEFENDANT TO REPRESENT HIMSELF OR HERSELF BUT I AGREE THAT IS A CONSTITUTIONAL RIGHT.

WHEN DEFENDANTS BLED GUILTY AND WAVED MITIGATION AND THE DEFENDANT HAD THE RIGHT TO ADDRESS THE COURT TO TELL THE COURT WHAT HE WANTED.

IF THERE WASN'T A LAWYER THERE, THIS HAS NEVER BEEN ADDRESSED AND SEEMS TO ME IN THIS CASE THERE WOULD HAVE BEEN 0, THERE WAS NOTHING OF, DIDN'T HAVE

WITNESSES TO CROSS-EXAMINE,
DIDN'T HAVE AN OPENING
STATEMENT, DIDN'T HAVE THE
SENTENCING ORDER HE DIDN'T LIKE.
WHAT WAS THAT HE DIDN'T DO THAT
HE COULD HAVE DONE IF THE LAWYER
WAS NOT IN THE COURTROOM?

>> HARD TO SAY BECAUSE THERE
WERE A COUPLE WITNESSES AT THE
SENTENCING HEARING.

THERE WAS AN TESTIMONY TAKEN.
LAWYERS WERE ALLOWED TO STAY
WITH THE MITIGATION PACKAGE
WOULD HAVE SHOWN.

THEY CONSULTED A CULTURAL
EXPERT.

>> HE WANTED TO WAIVE
MITIGATION.

YOU WOULD BE ARGUING, I MUST SAY
THIS RESPECTFULLY, KNOWING THIS
IS A DIFFICULT CASE, THEY WOULD
HAVE BEEN ARGUING DOWN THE ROAD
THE JUDGE DIDN'T CONSIDER ALL
THE MITIGATION ANYWHERE IN THE
RECORD.

WHEN A DEFENDANT IN A DEATH
PENALTY CASE PLED GUILTY, WAVED
MITIGATION UNDER MOHAMMED AND
EVERY OTHER CASE THE JUDGE HAS
AN OBLIGATION THROUGH THE STATE,
CERTAINLY THE ATTORNEY, TO SEE
WHAT MITIGATION THERE IS.

THIS DEFENDANT COULD BE A BIG
MALINGERER OR COULD BE A
SERIOUSLY MENTALLY ILL
INDIVIDUAL AND THAT JUDGE HAS
THE VERY IMPORTANT DUTY TO
DETERMINE IT.

I JUST IN THIS CASE AM TRYING TO
UNDERSTAND WHAT YOU WOULD BE
ASKING FOR, A NEW --

>> A RESENTENCING HEARING WHERE
MESAC DAMAS SAYS TO THE COURT
WHATEVER HE WANTS.

>> HAS HE EXPRESSED HE WANTS THE
DEATH PENALTY?

>> IT IS NOT CLEAR FROM THE
RECORD BUT IT DOES CERTAINLY
SUGGEST THAT AT THAT POINT IN
TIME BUT HE DOESN'T COME RIGHT

OUT AND SAY I VOLUNTEER.
IT IS NOT ENTIRELY CLEAR.
BASED ON THE RECORD BEFORE US.
IT IS HARD TO SAY HOW THAT
SENTENCING HEARING WOULD HAVE
TURNED OUT IF THERE WERE THE
CULTURAL EXPERT AND ATTORNEYS
SAYING WE BELIEVE THE LITIGATION
WILL HAVE SHOWN THIS OR THAT.
I ASK THE COURT TO BE MINDFUL IN
THIS CASE THAT IT WAS JUDGE
GRIDER ALONE THAT SENTENCED
MISTER MESAC DAMAS.

NORMALLY THE HARMLESS ERROR
TESTS WOULD HAVE BEEN APPLIED WE
HAVE THE UNIQUE SITUATION WE
COULD SEND IT BACK TO MAKE A NEW
DETERMINATION ON EITHER OF THESE
ISSUES OR ALL THREE OF THEM.
I WOULD LIKE TO STAND ON THAT
ISSUE TODAY.

THE SECOND ISSUE REGARDING THE
CHILD VICTIMS, THE WIFE OF THE
TWO OF THE AGGRAVATED US RELY ON
THE TENDER AGE OF THE VICTIM,
THE VICTIM WAS UNDER 12 YEARS OF
AGE AND THE DEFENDANT WAS IN A
POSITION OF FAMILIAL OR
CUSTODIAL AUTHORITY OF THE
CHILDREN.

>> WHY FAMILIAL OR CUSTODIAL
RELATIONSHIP DEPENDS SOLELY ON
AGE.

IN THE CIRCUMSTANCE WHERE THERE
IS NO RELATIONSHIP OF THE AGE OF
THE CHILD THAT IS SEPARATE OR
NOT OR SOLELY DEPENDENT ON THAT.
I STRUGGLE TO SEE YOUR POINT.

>> LOOKING AT THE STATUTE AND
AVERAGE CONTEXT, OR UNUSUAL
CASES WHERE THE DEFENDANT WOULD
BE IN CUSTODIAL AUTHORITY OVER
AN ADULT BUT THE GENERAL SENSE
OF THAT STATUTE LOOKING AT IT IT
WILL BE A CHILD UNDER THE AGE OF
18, IN ORDER TO HAVE FAMILIAL
CUSTODY IN THE FIRST PLACE,
SOMEONE UNDER THE AGE OF 18.
WE HAVE 5 VICTIMS UNDER THE AGE
OF 12.

THAT GOES INTO PLAY WITH SUB L
AND SUB IN.

BOTH BASED ON THEIR
VULNERABILITY BECAUSE OF THEIR
AGE.

THE PROPER REMEDY WOULD BE TO
REMAND AND ASKED THE PROSECUTOR
TO CHOOSE WHICH ONE IS SUPPLY.
IF THERE ARE NO FURTHER
QUESTIONS?

MAY I RESERVE THE REST OF MY
TIME FOR REBUTTAL?

THANK YOU.

>> MAY IT PLEASE THE COURT, MY
NAME IS LISA MARTIN, REPRESENT
THE STATE OF FLORIDA IN THIS
MATTER.

THE STATE ASSERTS THIS FIRST
ISSUE HAS BEEN WAIVED.

>> COULD YOU SPEAK UP ALSO?
SPEAK UP.

>> OKAY.

>> INTO THE MIC.

>> OKAY.

THE FIRST ISSUE HAS BEEN WAIVED.
MESAC DAMAS PLED, HE WAIVED HIS
RIGHT TO APPEAL TO MATTERS
ELATED TO THE SENTENCE.

THIS ORDER WAS NOT A POSITIVE
ORDER.

AND THE DEFENSE HAS NOT CITED
ANYTHING THAT SAYS HE MAY NOT
WAIVE HIS APPELLATE RIGHTS.
HE WAIVED THE ISSUE BECAUSE HE
EXPRESSED SATISFACTION WITH HIS
ATTORNEY DURING HIS COLLOQUY,
WHEN HE FIRST HAD THIS FOR
RATHER HEARING HE WAS BEFORE
JUDGE HART.

JUDGE HART WAS REPLACED BY JUDGE
BRIGHTER ON SEPTEMBER 1ST JUST
BEFORE HE WAS SUPPOSED TO GO TO
TRIAL ON SEPTEMBER 5TH.

WHEN HE GOT IN FRONT OF A NEW
JUDGE HAD HE TRULY WANTED TO
REPRESENT HIMSELF HE WOULD HAVE
RENEWED HIS REQUEST WITH A NEW
JUDGE, A CLEAN SLATE STARTING
OVER BUT HE DIDN'T.

WHAT HE DID WAS EXPRESS HIS

DESIRE TO PLEA AND NOT GO TO TRIAL AND EXPRESS SATISFACTION. AS TO THE FERRERA INQUIRY WAS A FULL AND COMPLETE INQUIRY. THE DEFENDANT WOULD HAVE A RIGHT TO REPRESENT HIMSELF IN AN INTELLIGENT WAIVER.

THE TRIAL COURT FOUND HE WAS NOT ABLE TO DO SO BECAUSE HE WAS NOT RESPONDING APPROPRIATELY TO THE INQUIRY.

HE KEPT REPEATING THAT HE DOESN'T HAVE A LAWYER, HE HAS A SPECIAL LAWYER THE COURT DIDN'T KNOW ABOUT.

HE MISSTATED THE NUMBER OF YEARS SINCE THE MURDERS, HE SAID 5 YEARS WHEN IT WAS 8 YEARS.

SO HE WAS NOT ABLE TO SHOW HE WAS MAKING A KNOWING AND INTELLIGENT WAIVER OF HIS RIGHT TO COUNSEL SO THE TRIAL COURT DENIED HIS REQUEST FOR SELF REPRESENTATION.

AS TO THE IMPROPER DOUBLING, THE VICTIM UNDER 12 AGGRAVATED IS SOLELY BASED ON AGE BUT THE PARTICULAR VULNERABILITY BASED ON THE FAMILIAL OR CUSTODIAL AUTHORITY IS BASED ON THE VICTIM'S RELATIONSHIP WITH THE DEFENDANT.

THE DEFENDANT HAD AUTHORITY AND CONTROL OVER THE VICTIM AND THAT MADE THEM ESPECIALLY VULNERABLE.

THIS IS A CASE THAT IS UNDOUBTEDLY ONE OF THE MOST AGGRAVATED AND LEAST MITIGATED CASES BEFORE THE COURT.

THE TRIAL COURT FOUND FIVE AGGRAVATED.

TRIAL COURT FOUND THE MOTEL ALL BE, EACH ONE WAS SUFFICIENT FOR THE IMPOSITION OF THE DEATH PENALTY.

THE MITIGATION THAT WAS PROFFERED OR ARGUED WAS ONLY FOUND TO BE WITH SOME OR LITTLE WEIGHT.

THERE WAS ONLY ONE NONSTATUTORY

MITIGATED FOUND TO BE MODERATE
BASED ON MESAC DAMAS'S CHILDHOOD
IN HAITI AND HIS ABANDONMENT OR
NEGLECT BY HIS PARENTS WHEN HE
WAS A CHILD.

OTHER THAN THAT A NEW MITIGATED
FOUND WITH GREAT WEIGHT AND THIS
COURT HAS FOUND MANY OTHER CASES
WITH FEWER VICTIMS, LESS BRUTAL
CRIMES THAT WAS IMPOSITION OF
THE DEATH PENALTY.

IF THERE ARE NO QUESTIONS THE
STATE WOULD ASK YOU TO JUDGE IN
THE SENTENCE.

>> JUST BRIEFLY THE APPEAL
WAIVER ISN'T ABOUT THAT.

IN THE PLEA AGREEMENT IT WAS NOT
COVERED, NOT EVEN MENTIONED SO
GIVEN THAT, NOT EVEN ABLE TO
FILE LEADERS BRIEFS AND DEATH
PENALTY CASES BECAUSE OF
STATUTE, THE CONSTITUTION
REQUIRES APPEAL.

I ASK THE COURT TO NOT ENFORCE
THE APPEAL IN THIS CASE.

THERE IS NOT A REQUIREMENT
ANYWHERE IN THE DECISION THAT HE
KNEW THAT REQUEST ON THE EVE OF
TRIAL BEFORE THAT.

IF THERE ARE NO FURTHER
QUESTIONS WE ASK THE COURT TO
PROCEED.

>> THANK YOU FOR BOTH FOR YOUR
ARGUMENTS.

THE COURT WILL STAND IN RECESS
FOR TEN MINUTES.

>> ALL RISE.