>> THE COURT WILL NOW TURN TO THE NEXT CASE ON THE DOCKET.
>> WE NOW TAKE UP THE SECOND CASE ON TODAY'S DOCKET WHICH IS CRAFT VERSUS THE STATE OF FLORIDA.
COUNSEL, YOU MAY PROCEED.
>> THANK YOU, MAY IT PLEASE THE COURT.
I HOPE TO FOCUS ON ONE MULTIPARTY CLAIM FOR RELIEF, THAT CLAIM DRAWS ISSUES TO AND FOR THE INITIAL BRIEF AND 0.4 ON THE REPLY BRIEF DEALING WITH HARMLESS ERROR.
IN SHORT THIS CASE SHOULD BE REMANDED AT A MINIMUM FOR EVALUATION OF THE MITIGATING EVIDENCE BECAUSE THE TRIAL COURT ERRED WHEN IT FAILED TO AFFIRMATIVELY SHOW THAT ALL BELIEVABLE UNCONTROVERTED MITIGATING EVIDENCE WAS CONCERTED AND WADE, TWO, THE TRIAL COURT ASSIGNED THE SAME WAY TO THE CHILDHOOD TRAUMA MITIGATING CIRCUMSTANCE ASSIGNED TO GOOD BEHAVIOR FOR MITIGATING CIRCUMSTANCE AND 3, AT LEAST CONSIDER CUMULATIVELY THOSE ERRORS WOULD NOT HARM THIS.
AND THIS CASE -- ANY MAN SENTENCED TO DIE IS TREATED AS UNIQUELY INDIVIDUAL HUMAN BEING AND ANY DEATH SENTENCE IMPOSED IS SUBJECT TO MEANINGFUL APPELLATE REVIEW.
WITH THIS MULTI-CLAIM MULTIPARTY CLAIM FOR RELIEF. CONSIDERING AND WEIGHING ALL MITIGATING EVIDENCE IS CRITICAL TO SATISFYING THE EIGHTH AMENDMENT.
AFFIRMATIVELY SHOWING THAT IS CONSIDERED AND WEIGHED IS CRITICAL TO SATISFYING THE EIGHTH AMENDMENT EVEN THOUGH MISTER CRAFT INVITED THE SENTENCE IN THIS CASE THE TRIAL

COURT WAS REQUIRED, FOR
UNCONTROVERTED MITIGATING
EVIDENCE.
>> IT SEEMS THE MITIGATING
EVIDENCE, THE FOUNTAINHEAD WAS
LOCKET.
LOCKET TALKS ABOUT THE EIGHTH
AMENDMENT REQUIRING THE COURT
TO CONSIDER MITIGATING EVIDENCE
THE DEFENDANT CRAWFORDS IS --
IF THERE'S ANY SUPREME COURT
CASE LAW THAT SAYS THE EIGHTH
AMENDMENT REQUIRES SENTENCING
COURTS TO AFFIRMATIVELY SEEK
OUT AND CONSIDER MITIGATING
EVIDENCE AND I LOOKED AT OUR
STATUTE ON DEATH SENTENCING AND
DON'T SEE AN OBLIGATION THERE.
WHAT IS OUR AUTHORITY TO
REQUIRE COURTS TO DO THAT.
I UNDERSTAND ANYTHING THAT --
HAS TO BE CONSIDERED.
WHAT IS OUR AUTHORITY FOR
REQUIRING MORE THAN THAT?
>> THE EIGHTH AMENDMENT, IF I
COULD TO ANSWER YOUR QUESTION
IF I COULD CIRCLE BACK TO A
COUPLE MAIN POINTS THAT MAY
HELP.
>> THE EIGHTH AMENDMENT, WE
HAVE A CONFORMITY CLAUSE, DO
YOU ACCEPT THE PREMISE THE
SUPREME COURT HASN'T HELD
COURTS HAVE TO AFFIRMATIVELY
SEEK OUT MITIGATING EVIDENCE,
MAKE SURE THAT IS NOT SOMETHING
I'M MISSING BECAUSE I HAVEN'T
BEEN ABLE TO FIND THEM.
>> I COULDN'T SITE A PARTICULAR
CASE THAT SAYS THAT EXACTLY BUT
ANY FAIR READING OF THE SUPREME
COURT PRECEDENT WOULD LEAD TO
THE LOGICAL CONCLUSION AND
AGAINST THE BACKGROUND OF THE
UNITED STATES SUPREME COURT
PRECEDENT, THIS CERTAINLY HAS
SAID THAT AND I BELIEVE THE
REASON THIS COURT HAS SAID THAT
IS THE SUPREME COURT PRECEDENT
ON THIS ISSUE.

IF I COULD ELABORATE, I BELIEVE
--
>> SOMETHING THAT IS SORT OF
RELATED YOUR ASSERTING A
HARMLESS ERROR STANDARD IN THIS
CONTEXT, THE HARMLESS ERROR
CASES RELATE TO FAILURE TO
CONSIDER PROFFERED MITIGATION
BY THE DEFENDANT.
THERE WAS A WAIVER OF
MITIGATION AND WE LOOKED AT
FUNDAMENTAL ERROR, I AM CURIOUS
WHY WE WOULD NOT BE LOOKING AT
FUNDAMENTAL ERRORS, THINGS THE
TRIAL COURT DIDN'T CONSIDER,
ASSUMING YOU ARE RIGHT THE
EIGHTH AMENDMENT REQUIRES WE
PUT THE AFFIRMATIVE OBLIGATION
ON THE TRIAL JUDGE TO DO THAT,
WHY WOULD IT BE A HARMLESS
STANDARD WHEN IT IS NOT
SOMETHING THAT IS PREFERRED?
>> IF THIS COURT WAS TO DECIDE
THESE ISSUES ON THE BASIS OF
WHAT YOU ARE OUTLINING, TO BE
HEARD ON THAT IN WRITTEN FORM.
THE STATE DID NOT RAISE THAT.
I ASK SUPPLEMENTAL BRIEFING ON
THAT.
WHAT I WOULD SAY TO THAT IS MY
READING OF THE CASE, MITIGATING
EVIDENCE IS IMPROPERLY WAIVED,
THERE WAS SUBJECT HARMLESS
ERROR ANALYSIS.
IN SOME OF THE CASES ISOLATE
I'M NOT 100% SURE OF THIS, I AM
NOT SURE, IN ROBINSON VERSUS
STATE, WHAT WE RELY ON ON ISSUE
NUMBER 2, MISTER ROBINSON
WAIVED HIS RIGHT TO PREVENT
MITIGATING EVIDENCE AND EVEN SO
THE COURT SAID IT WAS
REVERSIBLE ERROR FOR THE COURT
TO CONSIDER AND WEIGH ALL THE
BELIEF FOR MITIGATING EVIDENCE.
I'M NOT SURE THE HARM A
ANALYSIS WAS CONDUCTED IN THAT
CASE BUT I WOULD MAINTAIN THIS
TYPE OF ERROR, WITH FUNDAMENTAL
BEARER ANALYSIS.

IT IS NOT CONSISTENT WITH THE COURT'S PRECEDENT BUT I WELCOME THE OPPORTUNITY TO ELABORATE ON THE SUBMENTAL BRIEFING.
I BRIEFLY TAKE THE POSITION THAT IT IS FUNDAMENTAL ERROR IN THESE CIRCUMSTANCES.
IF I TAKE A STEP BACK, TO REAPPROACH THIS FROM A DIFFERENT PERSPECTIVE, I HOPE WHAT I SAY, THE POINT THAT IS ALREADY RAISED, I THINK THE UNITED STATES SUPREME COURT SAID A FUNDAMENTAL RESPECT FOR HUMANITY UNDERLIES THE EIGHTH AMENDMENT.
THE LAST PART IS THE CONSTITUTION INDISPENSABLE PART OF THE PROCESS, WITH A SENTENCE OF DEATH AND THAT IS IN WILSON VERSUS NORTH CAROLINA.
THE COURT HAS GONE ON TO SAY ONLY WHEN EVIDENCE IS CONSIDERED AND WEIGHED OUR WE SHOULD THE CAPITAL DEFENDANT HAVE UNIQUELY INDIVIDUAL HUMAN BEING.
ANY DETERMINATION THAT DEATH IS AN APPROPRIATE SENTENCE IS RELIABLE AND AGAINST THE BACKGROUND THIS COURT LONG SAID, THIS IS A QUOTE FROM THE HARM IN VERSUS STATE THIS COURT HAS EMPHASIZED THE TRIAL COURT HAS A DUTY TO CONSIDER ALL MITIGATING EVIDENCE IN THE RECORD TO THE EXTENT IS UNCONTROVERTED.
I'M AWARE THAT PRINTABLE GOING BACK TO 1993, FROM 1993 IT IS -- IT GOES BACK AT LEAST THAT FAR.
THE COURT, THAT GENERAL PRINCIPLE HAD BEEN EXTENDED TO CASES IN WHICH THE DEFENDANT DID PRESENT MITIGATING EVIDENCE, IN FAVOR OF THE DEATH PENALTY.
I WOULD START WITH THAT GENERAL PROPOSITION THAT CONSIDERING

AND WEIGHING ALL UNCONTROVERTED MITIGATING EVIDENCE IS CRITICAL TO SATISFYING THE EIGHTH AMENDMENT.
STARTING WITH THE US SUPREME COURT, THEY SAID MEANINGFUL APPELLATE REVIEW IS CRITICAL TO ENSURING ANY DEATH SENTENCE IF PROPERLY IMPOSED NOTED THAT MEANINGFUL APPELLATE REVIEW IS ONLY POSSIBLE WHEN THEY SPECIFY THE FACTORS REACHING ITS DECISION TO IMPOSE AND AGAINST THAT BACKDROP THIS COURT HAS SAID TO ENSURE MEANINGFUL APPELLATE REVIEW, THEY HAVE TO MEANINGFULLY ANALYZE THE CIRCUMSTANCES AND –
>> REDIRECTING THE SPECIFICS OF THE ISSUE TOO YOU ALLEGE NINE CIRCUMSTANCES WHERE THE TRIAL COURT FAILED TO CONSIDER MITIGATION IN THE RECORD WITH RESPECT TO ALL OF THOSE IT LOOKS TO ME AS IF THEY FIT WITH CATEGORIES THE WAY THE TRIAL JUDGE FIT THE ORDER, HE NARROWED DOWN MITIGATION IN THE RECORD OR THOUGHT HE COULD FIND TO CATEGORIES LIKE CHILDHOOD TRAUMA PLUS FAMILY TIES, MENTAL HEALTH, MITIGATION AND GOOD BEHAVIOR DURING TRIAL AND WHAT MITIGATION DO YOU POINT TO THAT DOESN'T FIT IN THE CATEGORIES THAT WAS CONSIDERED?
>> I DON'T BELIEVE THE CIRCUMSTANCES OF MITIGATING EVIDENCE THAT WOULD FALL WITHIN THOSE CATEGORIES.
IF I COULD LIST THOSE NINE PIECES OF EVIDENCE, BORN WITH THE UMBILICAL CORD AROUND HIS NECK, HE WAS BLUE IN THE FACE AND NOT BREATHING WHEN HE WAS BORN, HIS MOTHER DIDN'T SEEK PROPER MENTAL HEALTH TREATMENT, THAT IS A QUOTE.
>> I THOSE CHILDHOOD TRAUMA?
>> JUSTICE LAWSON, THERE'S

CERTAINLY NOT MENTIONED
EXPLICITLY IN THE COURT'S
CONSIDERATION OF CHILDHOOD
TRAUMA.
IF WE LOOK AT IT THOSE WOULD BE
TRAUMATIC EVENTS.
HOWEVER, I WOULD TAKE A
POSITION THAT IT WOULD BE A
STRETCH FOR THIS COURT TO SAY
THOSE THINGS WERE CONSIDERED
AND WEIGHED.
THIS COURT SAID GOING BACK TO
1996 THAT IT IS THE COURT'S
DUTY TO AFFIRMATIVELY SHOW ALL
BELIEVABLE INCREDIBLE
MITIGATING EVIDENCE IS
CONSIDERED AND WEIGHED.
>> TO FOLLOW UP ON THAT I WANT
TO UNDERSTAND FROM YOUR
PERSPECTIVE WHAT THE RECORD
WOULD BE, THE COURT'S
CONSIDERATION OF CHILDHOOD
TRAUMA IN A CASE LIKE THIS.
WHAT KIND OF RECORD SHOULD THE
COURT MAKE UNDER THE RULE YOU
ARE PROPOSING?
>> I BELIEVE THE APPLICABLE
GENERAL RULE HERE IS THE TRIAL
COURT AFFIRMATIVELY SHOWING
CONTROVERTED MITIGATING
EVIDENCE HAS BEEN CONSIDERED.
I APPRECIATE THAT IS NOT A
STRICT POOL, NOT STRICT IN THE
SENSE THAT NOT BEING ABLE TO GO
THROUGH SOME CHECKLIST IN EACH
CASE TO SATISFY, IN OTHER
WORDS, IN APPLYING THAT, THEY
ARE THE LINE DRAWING.
IT IS HARD FOR ME TO SEE WHAT
PROPER APPLICATION OF THAT RULE
IS NOT THE CASE.
IT FALLS ON THE WRONG SIDE OF
THE LINE.
IT IS THE RARE CASE THAT A
TRIAL COURT ABUSES ITS
DISCRETION WHEN NO REASONABLE
PERSON ADOPTED BY THE TRIAL
COURT AND HERE I WOULD SAY THIS
IS THE RARE CASE IN WHICH NO
REASONABLE PERSON WOULD TAKE

THE VIEW THE TRIAL COURT
AFFIRMATIVELY SHOWED ALL
BELIEVABLE UNCONTROVERTED
META-GETTING EVIDENCE OF BEEN
CONSIDERED AND WEIGHED.
ULTIMATELY I WOULD FALL BACK ON
THIS BEING THE RARE CASE IN
WHICH THE TRIAL COURT ABUSED
ITS DISCRETION HERE.
IF I COULD TOUCH BACK ON THIS
MAIN POINT I OUTLINED EARLIER,
THE POSSIBILITY -- THE TRIAL
COURT WAS REQUIRED TO WEIGH ALL
UNBELIEVABLE MITIGATING
EVIDENCE.
THE DEFENDANT'S INTEREST,
SELF-DETERMINATION OR AUTONOMY
IS NOT ABSOLUTE.
THERE ARE TIMES THE AUTONOMY
HAS TO YIELD TO SOCIETY'S
INTEREST AND INTEGRITY OF
JUDICIAL PURSUITS.
THERE ARE FEW INSTANCES, YIELDS
TO SOCIETY'S INTERESTS.
AND FIRST REPRESENTATION AND
APPOINT COUNSEL AND ON APPEAL
THAT IS CATEGORICALLY THE CASE,
THE COURT CAN APPOINT COUNSEL
OVER DEFENDANTS OBJECTIONS.
FINALLY AND PERHAPS MOST
RELEVANT, THERE'S A POSSIBILITY
OF A CONFLICT OF INTEREST, THE
TRIAL COURT CAN REFUSE TO HONOR
A DEFENDANT'S WAIVER OF
CONFLICT, THE COUNSELOR ALLOW
THE DEFENDANT TO BE REPRESENTED
BY COUNSEL OF HIS CHOICE.
GOING BACK 40 YEARS, THE
RIGHTS, RESPONSIBILITIES AND
PROCEDURES OUTLINED IN THE
CONSTITUTIONS AND STATUTES ARE
NOT SUSPENDED BECAUSE THE
DEFENDANT INVITES THE
POSSIBILITY OF A DEATH
SENTENCE.
FURTHERMORE AND MORE
SPECIFICALLY, THE START IN
1993, I KNOW THE COURT SAID
THIS IN 2005, THE COURT HAS SET
A TRIAL COURT'S DUTY TO

CONSIDER ALL UNCONTROVERTED
MITIGATING EVIDENCE, QUOTE,
APPLIES WITH NO LESS FORCE WERE
CAPITAL DEFENDANT ASKED THE
COURT TO NOT CONSIDER
MITIGATING EVIDENCE AND
FURTHERMORE WHERE A DEFENDANT
INVITES THE POSSIBILITY OF A
DEFENDANT SO I THINK THAT CASE
LAW, THAT CASE LAW IS CERTAINLY
CONSISTENT WITH THE UNITED
STATES SUPREME COURT PRECEDENT.
I THINK IT IS DICTATED BY THE
UNITED STATES SUPREME COURT
PRECEDENT AND CERTAINLY IF THIS
COURT WAS INCLINED TO RECEDE
FROM THAT PRESIDENT AGAIN I
WOULD RESPECTFULLY ASK FOR THE
OPPORTUNITY TO ADDRESS THAT IN
SUPPLEMENTAL BRIEFING BECAUSE
EVEN IF REASONABLE MINDS CAN
DISAGREE AS TO WHETHER THE
GENERAL WAS APPROPRIATED IS NOT
CLEARLY ERRONEOUS SO I WOULD
ASK THE OPPORTUNITY TO ADDRESS
WHICH IS BASICALLY THAT NO
REASONABLE PERSON WOULD TAKE THE
VIEW THAT THE TRIAL COURT HERE
AFFIRMATIVELY SHOWED THAT THE
BELIEVABLE, UNCONTROVERTED
MITIGATING EVIDENCE THERE
DOESN'T SEEM TO BE A DISPUTE
THAT CERTAIN EVIDENCE BEFORE THE
COURT, THE MAIN DISPUTE SEEMS TO
BE WHETHER IT WAS CONSIDERED
WEIGHED PROPERLY.
AND I WOULD JUST SAY THIS
SITUATION IS LIKE ROBINSON V.
STATE.
IN ROBINSON THE TRIAL COURT DID
CONSIDER SOME MITIGATING
EVIDENCE,BUT THERE WAS OTHER
MITIGATING EVIDENCE THAT
RECEIVED LITTLE OR NO DISCUSSION
IN THE SENTENCING ORDER, AND I
BELIEVE ROBINSON SHOULD DICTATE
THE OUTCOME ON ISSUE TWO IN THIS
CASE.
NOW, IF I COULD TOUCH ON THE
SECOND PART OF THIS MULTIPART

PLANK FOR RELIEF WHICH IS THAT
THE TRIAL COURT ERRED IN
ASSIGNING THE SAME LITTLE WEIGHT
TO THE CHILDHOOD TRAUMA
MITIGATING CIRCUMSTANCE THAT IT
ASSIGNED TO THE GOOD BEHAVIOR IN
TRIAL CIRCUMSTANCE.
IN THE PORTION OF THE SENTENCING
ORDER THAT CONSIDERED THE
CHILDHOOD TRAUMA, THE TRIAL
COURT INDICATED THAT MR. CRAFT'S
FAMILY MEMBERS' STATEMENTS WERE
CREDIBLE AND UNREFUTED.
AND I WOULD ARGUE THAT THIS CASE
ON THIS ISSUE SIMILAR TO RAMIREZ
V. STATE.
AND IN RAMIREZ, IN ESSENCE, WHAT
HAPPENED WAS THE TRIAL COURT
ASSIGNED LESS WEIGHT TO THE NO
SIGNIFICANT HISTORY OF PRIOR
CRIMINAL ACTIVITY MITIGATING
CIRCUMSTANCE.
AND IT DID SO BASED ON THE
JUDGMENT THAT REACHING THROUGH
AN OPEN WINDOW OF A PICKUP TRUCK
AND STEALING $10 OFF THE
DASHBOARD WAS SIGNIFICANT PRIOR
CRIMINAL ACTIVITY, AND THIS
COURT SAID THAT WAS AN ABUSE OF
DISCRETION, THAT WAS
UNREASONABLE.
AND SIMILARLY HERE, I BELIEVE
THAT THE TRIAL COURT-- WELL,
HERE THE TRIAL COURT REASONED
THAT THE CHILDHOOD TRAUMA
EVIDENCE, MITIGATING EVIDENCE,
IN ESSENCE, SHOULD BE ASSIGNED
LESS WEIGHT BECAUSE THE EVIDENCE
WAS INSUFFICIENT TO ESTABLISH
THAT IT HAD A ILL EFFECT ON
MR. CRAFT.
BUT I WOULD ARGUE THAT JUST AS
IN RAMIREZ, HERE THAT WAS AN
UNREASONABLE, THAT WAS AN
UNREASONABLE CONCLUSION.
AND, FIRST OF ALL, I WOULD POINT
OUT THAT BASED ON THE NATURE OF
MR. CRAFT'S ADULT LIFE, IT WAS
SELF-EVIDENT THAT THAT TRAUMA
HAD AN ILL EFFECT ON HIM.

AND IN SHORT, BY THE AGE OF 30, HE'S ESSENTIALLY VOLUNTEERED TO BE ON DEATH ROW.
BUT EVEN IF THAT WAS NOT THE CASE, I WOULD ARGUE IN THIS DAY AND AGE ANY REASONABLE PERSON, PARTICULARLY ANY REASONABLE PERSON WITH ANY EXPERIENCE IN THE CRIMINAL JUSTICE SYSTEM WOULD APPRECIATE THAT THE CHILDHOOD TRAUMA OF THE KIND AND TO THE DEGREE THAT MR. CRAFT ENDURED, THAT THAT WOULD HAVE AN ILL EFFECT OF THAT PERSON'S HEALTH, DEVELOP AND ABILITY TO FUNCTION.
AND IF I COULD BRIEFLY JUST-- I DON'T WANT TO GET TOO BOGGED DOWN INTO THE MITIGATING EVIDENCE, BUT IF I COULD BRIEFLY POINT OUT TWO INSTANCES THAT I BELIEVE ARE MICROCOSMS CONCERNING THE QUALITY OF THE MITIGATING EVIDENCE HERE.
IN THIS CASE MR. CRAFT'S AUNT TESTIFIED THAT THERE WERE INSTANCES WHERE HIS MOTHER AT THE BEGINNING OF THE MONTH WOULD COLLECT A GOVERNMENT CHECK AND DISAPPEAR ON A DRUG BINGE.
IN THOSE INSTANCES, HIS AUNT-- WHO WAS HIS MOTHER'S YOUNGEST SISTER-- WOULD LOOK AFTER MR. CRAFT AND HIS YOUNGER SIBLINGS, AND THERE WERE TIMES WHEN ALL SHE HAD TO FEED THE KIDS WAS CRACKERS AND KETCHUP.
SHE WAS CALLED OUT IN THE MIDDLE OF THE NIGHT BECAUSE MR. CRAFT HAD RUN OFF, SHE FOUND HIM IN SOME BUSHES.
IT WAS THE MIDDLE OF THE NIGHT, HE CAME RUNNING OUT OF BUSHES WEARING A SOILED PEAR OF UNDERWEAR.
HE HAD WELTS ON HIM FROM HEAD TO TOE BECAUSE HE'D BEEN BEATEN.
AGAIN, I WOULD TAKE THE POSITION THAT ON ISSUE FOUR NO REASONABLE PERSON WOULD HAVE ASSIGNED THE

SAME LITTLE WEIGHT TO THE
CHILDHOOD TRAUMA CIRCUMSTANCE
THAT IT ASSIGNED TO THE GOOD
BEHAVIOR DURING TRIAL
CIRCUMSTANCE.
I WOULD ALSO POINT OUT ON THIS
ISSUE THAT JUST AS NO EXPERT
TESTIMONY WAS REQUIRED IN
RAMIREZ TO ESTABLISH THAT
STEALING THE $10 WAS NOT
SIGNIFICANT PRIOR CRIMINAL ACT
AT THIS POINT, THE SAME IS TRUE
HERE AS FAR AS ESTABLISHING THAT
CHILDHOOD TRAUMA OF THIS KIND
AND TO THIS DEGREE WOULD HAVE AN
ILL EFFECT ON MR. CRAFT.
AND THEN LASTLY, IF I COULD
TOUCH ON THE HARMLESS ERROR
ISSUE.
THE BASIC, MY BASIC POSITION
THERE WOULD BE THAT EVEN IF
THESE ERRORS DID NOT
SUBSTANTIALLY INFLUENCE THE
TRIAL COURT'S DECISION TO IMPOSE
DEATH, THAT A REASONABLE
POSSIBILITY EXISTS THAT IT
CONTRIBUTED TO THAT DECISION.
AND I WOULD NOTE THAT THE
REASONABLE POSSIBILITY STANDARD
IS AN EXTREMELY LOWER STANDARD.
AND I WOULD ARGUE THAT IF THIS
COURT WAS TO CONCLUDE THAT NO
REASONABLE POSSIBILITY EXISTED
HERE, IT WOULD BE SUBSTITUTING
ITSELF FOR THE TRIAL FACT AND
REWEIGHING THE EVIDENCE WHICH IS
NOT ALLOWED UNDER THE HARMLESS
ERROR ANALYSIS.
I WOULD ALSO POINT OUT IN THIS
SITUATION WHEN CONSIDERING THIS
TYPE OF ERROR AND FAILING TO
PROPERLY CONSIDER AND WEIGH
MITIGATING WE'VE, THIS COURT HAS
OFTEN APPLIED A TEST, WHETHER
IT'S SUBSTANTIAL, WHETHER THE
MITIGATING CIRCUMSTANCES THAT
WERE CONSIDERED AND WEIGHED WERE
NUMEROUS AND THEN, FINALLY,
WHETHER THE CIRCUMSTANCES THAT
WERE NOT PROPERLY CONSIDERED AND

WEIGHED WERE MINOR AND
TANGENTIAL.
AND APPLYING THAT TEST HERE, I
WOULD ARGUE THAT ON THE ONE HAND
THE COURT DID FIND FOUR
MITIGATING FACTORS.
ON THE OTHER HAND, IT ONLY
CONSIDERED AND WAGED FOUR
NONSTATUTORY MITIGATING
CIRCUMSTANCES.
AND AS TO ONE OF THOSE, THE
CHILDHOOD TRAUMA, IT ERRED IN
WEIGHING THAT CIRCUMSTANCE.
MOST CRITICALLY, THE FACTORS
HERE THAT WERE NOT PROPERLY
CONSIDERED AND WEIGHED, THOSE
FACTORS WERE NOT MINOR AND
TANGENTIAL.
INSTEAD, THEY PAINTED A
COMPELLING PORTRAIT AS, TO USE
WORDS THAT THIS COURT HAS USED
BEFORE, IT PAINTED A COMPELLING
PORTRAIT AS TO WHY MR. CRAFT
SUCCUMBED TO THE PASSIONS AND
FRAILTIES INHERENT IN THE HUMAN
CONDITION.
AND SO I WOULD ARGUE THAT THIS
CASE IS SIMILAR TO CROOK, CROOK
V. STATE, THAT OWNED THIS
ERROR-- THAT OWNED THIS ISSUE,
I'M SORRY, OWNED THIS ISSUE OF
HARMLESS ERROR THAT CROOK SHOULD
CONTROL.
ARE THERE ANY FURTHER QUESTIONS?
>> I GUESS THE ONLY QUESTION IS
YOU SAID-- AND I KNOW YOU
HAVEN'T HAD A CHANCE TO REALLY
THINK THIS THROUGH, BUT WHAT
WOULD BE YOUR FUNDAMENTAL
ARGUMENT GIVEN THE VERY SERIOUS
AGGRAVATORS AND THE GREAT WEIGHT
PROPERLY GIVEN TO HAC AND CCP?
I'M STRUGGLING TO SEE HOW IF
FUNDAMENTAL ERROR IS THE
STANDARD, YOU COULD ARGUE THAT.
SO--
>> YES, SIR.
WELL, JUSTICE LAWSON, AT THIS
POINT I THINK THE BEST ANSWER I
COULD SAY WOULD BE THAT THESE

ERRORS VITIATED THE BASIC
VALIDITY OF THIS SECOND PHASE
CAPITAL SENTENCING PROCESS.
AND I BELIEVE THAT IT WOULD BE
EQUIVALENT TO THE DENIAL OF DUE
PROCESS IN THE SENSE THAT IT
FAILS TO SATISFY THE EIGHTH
AMENDMENT.
AND, AGAIN, I WOULD COME BACK TO
THE FACT THAT, WELL, FIRST OF
ALL, I WOULD SAY THIS, JUSTICE
LAWSON.
IN FURMAN, JUSTICE STEWART SAID
THAT DEATH DIFFERS NOT ONLY IN
DEGREE, BUT IN KIND FROM ANY
OTHER CRIMINAL PUNISHMENT.
FIRST OF ALL, IT'S IRREVOCABLE.
SECOND OF ALL, IT REJECT
REHABILITATION AS A BASIC
PURPOSE OF CRIMINAL JUSTICE.
AND THEN FINALLY, IT REJECTS OUR
BASIC CONCEPT OF HUMANITY.
AND I THINK IT REJECTS OUR BASIC
CONCEPT OF HUMANITY IN THE SENSE
THAT, YOU KNOW, ONCE DEATH IS
IMPOSED, ONCE A PERSON IS
EXECUTED, THEY ARE BEYOND
REDEMPTION.
AND AT THAT POINT IN TIME, I
MEAN, THAT REJECTS OUR BASIC
CONCEPT.
AND SO AGAINST THAT BACKGROUND,
I THINK THE U.S. SUPREME COURT
HAS MADE IT CLEAR THAT FOR A
DEATH SENTENCE TO BE
APPROPRIATE, THE CASE HAS TO BE
NOT ONLY AMONG THE MOST SERIOUS,
BUT THE DEFENDANT'S CULPABILITY
HAS TO BE EXTREME, AND I THINK
IT'S THE SAME THING AS THIS
COURT SAYING FOR A DEATH
SENTENCE TO BE APPROPRIATE, THE
CASE HAS TO BE AMONG BOTH THE
MOST AGGRAVATED AND LEAST
MITIGATED.
AND SO HERE EVEN IF WE ASSUME
THIS CASE IS AMONG THE MOST
AGGRAVATED, THE QUESTION IS, IS
IT AMONG THE LEAST MITIGATED.
AND I WOULD SAY HERE WHERE THE

TRIAL COURT CONSIDERED TO--
FAILED TO CONSIDER EVIDENCE IN
MULTIPLE INSTANCES, I WOULD
ARGUE THAT IN THAT CASE WE
CANNOT SAY UNDER THE EIGHTH
AMENDMENT THAT IT'S AMONG THE
LEAST MITIGATED.
AND AS A RESULT, IT WOULD BE THE
EQUIVALENT OF A DENIAL OF DUE
PROCESS.
IT WOULD VITIATE THE BASIC
VALIDITY OF THIS PROCEEDING.
THAT WOULD BE, THAT WOULD BE MY
BASIC ARGUMENT THERE, JUSTICE
LAWSON.
AND I WOULD JUST COME BACK ONE
LAST TIME TO THE FACT THAT EVEN
THOUGH MR. CRAFT INVITED THE
POSSIBILITY OF THE DEATH
SENTENCE, THE COURT, INCLUDING
THIS COURT, STILL HAVE TO HONOR
THE INTEGRITY OF JUDICIAL
PROCEEDINGS AND HERE WHERE THE
TRIAL COURT-- WHERE THE
SENTENCE FAILED TO CONSIDER
UNCONTROVERTED MITIGATING
EVIDENCE, THIS COURT SIMPLY
CAN'T SAY THAT HAPPENED.
AS A RESULT, WE CAN'T SAY THAT
THE DEATH SENTENCE WAS RELIABLE
AND THAT MR. CRAFT WAS TREATED
AS A UNIQUELY INDIVIDUAL HUMAN
BEING.
UNLESS THERE ARE QUESTIONS AT
THIS POINT, I WOULD RESERVE THE
BALANCE OF MY TIME FOR REBUTTAL.
>> ALL RIGHT.
YOU HIT IT RIGHT AT FIVE
MINUTES, SO YOUR TIMING IS
IMPECCABLE.
COUNSEL, YOU MAY PROCEED.
>> MAY IT PLEASE THE COURT,
CHIEF JUSTICE CANADY, MY NAME IS
DAVID CHAPPELL, AND I AM THE
ASSISTANT ATTORNEY GENERAL
REPRESENTING THE STATE IN THIS
MATTER.
THIS CASE ARISES FROM A BRUTAL
PRISON MURDER WHEREIN THE
DEFENDANT, MR. CRAFT, STRANGLED

AND BEAT TO DEATH A FELLOW
INMATE.
HE CONFESSED TO THE CRIME TO THE
JAILHOUSE PERSONNEL,
SUBSEQUENTLY CONFESSED TO THE
CRIME TO THE LAW ENFORCEMENT
PERSONNEL WHO INTERVIEWED HIM
AND AGAIN CONFESSED TO THE CRIME
DURING A TRIAL COURT PROCEEDINGS
IN THIS CASE.
NOW, COUNSEL BEGAN WITH THE
DISCUSSION OF ISSUE FOUR IN THIS
CASE, SPECIFICALLY WHETHER OR
NOT TRIAL COURT CONSIDERED AND
WEIGHED ALL OF THE MITIGATING
EVIDENCE THAT IT WAS PRESENTED.
AS JUSTICE LAWSON POINTED OUT,
THE TRIAL COURT IN THIS CASE
PROVED ALL OF THE MITIGATION
THAT WAS PRESENTED TO IT INTO
FOUR CATEGORIES.
AND THIS COURT HAS REPEATED HI
HELD AND ENCOURAGED TRIAL COURTS
TO PROVE MITIGATING FACTORS
ESPECIALLY IN CASES WHERE THE--
[INAUDIBLE]
MOREOVER IN THIS CASE, THE
DEFENDANT NEVER REQUESTED THAT
THE TRIAL COURT EXPLICITLY LIST
OUT ALL OF THE INDIVIDUAL
MITIGATORS THE DEFENDANT WISHED
THE COURT TO CONSIDER.
ACCORDINGLY, THE TRIAL COURT DID
A VERY ADMIRABLE JOB OF CRAFTING
A SENTENCING ORDER THAT
HIGHLIGHTED MANY OF THE
INDIVIDUAL THINGS THAT DEFENSE
COUNSEL NOW ON APPEAL HAS
ARTICULATED AS FAILING TO EVEN
CONSIDER, INCLUDING UNDER THE
CHILDHOOD TRAUMA THAT THE
DEFENDANT'S MOTHER ALLEGEDLY
USED DRUGS WHILE SHE WAS
PREGNANT WITH THE DEFENDANT.
THESE ARE INDIVIDUAL MITIGATING
FACTORS THAT THE COURT DID, IN
FACT, CONSIDER.
AND, INDEED, THE COURT ALSO MADE
SURE TO INCLUDE IN ITS
SENTENCING ORDER THAT IT

REVIEWED ALL OF THE EVIDENCE AND
REVIEWED ALL OF THE TESTIMONY
BEFORE COMING UP WITH THE
MITIGATING FACTORS THAT IT FOUND
IN THIS PARTICULAR CASE.
>> MR. CHAPPELL, COULD I ASK YOU
A QUESTION?
DO YOU AGREE THAT ONE OF THE
ALLEGED ITEMS THAT WAS NOT
CONSIDERED WAS SAVING A FELLOW
INMATE'S LIFE, ANOTHER WAS PRIOR
WORK HISTORY, AND WOULD YOU
AGREE THAT THOSE WOULDN'T FALL
INTO ANY OF THE CATEGORIES OR
GROUPINGS THAT THE TRIAL JUDGE
PUT FORTH IN THE ORDER?
>> YES, YOUR HONOR.
THAT DOES APPEAR TO BE THE CASE.
HOWEVER, THAT BEING SAID, THE
STATE WOULD STILL ARGUE THAT ANY
ERROR IN THIS CASE IS, AGAIN,
EITHER INVITED BECAUSE THE
DEFENDANT DIDN'T SPECIFICALLY
REQUEST THAT THE TRIAL COURT
LIST OUT EACH INDIVIDUAL PIECE
OF MITIGATING EVIDENCE THAT IT
WANTS THE COURT TO CONSIDER, OR
ALTERNATIVELY THAT THE ERROR
HERE WAS HARMLESS.
AS THIS COURT HAS HELD
REPEATEDLY, THE AGGRAVATORS THAT
ARE PRESENT IN THIS CASE ARE
SOME OF THE MOST EGREGIOUS THAT
CAN EXIST; SPECIFICALLY, HAC,
CCP AND PRIOR VIOLENT FELONY
EVENTS.
ACCORDINGLY, EVEN IF THE TRIAL
COURT SHOULD HAVE LISTED OUT
ADDITIONAL FACTORS OR ADDITIONAL
MITIGATORS OR EVEN IF THIS COURT
DETERMINES THAT TRIAL COURT IN
THIS CASE SHOULD HAVE WEIGHED
PARTICULAR MITIGATORS IN A
DIFFERENT WAY, THE ERROR IS
ULTIMATELY HARMLESS HERE.
BECAUSE OF THE AGGRAVATORS THAT
ARE PRESENT IN THIS CASE AND THE
FACT THAT THOSE AGGRAVATORS WERE
SOME OF THE MOST EXTREME THAT
CAN EXIST IN A CAPITAL DEATH

PENALTY CASE.
THE DEFENDANT ALSO ARGUES IN ISSUE TWO THAT THE TRIAL COURT ERRED SPECIFICALLY BY NOT ASSIGNING MORE WEIGHT TO THE CHILDHOOD TRAUMA MITIGATOR THAT IT FOUND IN THIS CASE.
FIRST, I WOULD LIKE TO POINT OUT THAT THE WAY THE DEFENSE IS ARGUING THIS DOESN'T SEEM TO BE BASED IN LAW ANYWHERE.
SPECIFICALLY, THE DEFENSE CLAIMS THAT THE COURT ERRED BECAUSE IT WEIGHED THE CHILDHOOD TRAUMA OR WEIGHED IT THE SAME WAY THAT IT GAVE TO GOOD BEHAVIOR THE DEFENDANT EXHIBITED IN THE COURTROOM.
THIS COURT HAS NEVER HELD THAT A TRIAL COURT MUST LOOK AT ALL OF THE MITIGATORS PRESENTED AND EVALUATE EACH MITIGATOR IN COMPARISON TO THE OTHER MITIGATORS THAT ARE IN THE RECORD.
SO THE DEFENSE'S ARGUMENT TO THIS POINT SEEMS TO BE WITHOUT BASIS IN THE LAW WITH RESPECT TO THAT.
AS FAR AS THE WEIGHT THE COURT SPECIFICALLY ASSIGNED TO THE CHILDHOOD TRAUMA MITIGATOR, FIRST, IT'S IMPORTANT TO NOTE THAT THE COURT DID DO AN INDIVIDUALIZED ORDER, SENTENCING ORDER WITH RESPECT TO THIS.
AND IT EVALUATED THE TESTIMONY OF THE FAMILY MEMBERS WHO TESTIFIED THE DURING THE DEFENDANT'S PENALTY PHASE HERE.
AND IT SPECIFICALLY WENT THROUGH THE EVIDENCE THAT IT REVIEWED AND ARTICULATED THAT IT FOUND THERE WAS EVIDENCE TO FIND THAT THE MITIGATOR EXISTED.
SO THIS IS NOT A CASE WHERE A TRIAL COURT HAS FAILED TO FIND A MITIGATOR THAT WAS IN THE RECORD; RATHER, THIS IS A CASE WHERE WHAT IS AT ISSUE IS THE

TRIAL COURT'S WEIGHING OF THAT PARTICULAR MITIGATING CIRCUMSTANCE.
AND SINCE THE DEFENDANT IN THIS CASE WAS FOUND COMPETENT TO PROCEED, CHOSE TO REPRESENT HIMSELF AND WAS ALLOWED TO PUT ON A CASE THAT HE DESIRED TO PUT ON, THE TRIAL COURT FAULTED THE PRESENTATION OF EVIDENCE IN TERMS OF TYING THE CHILDHOOD TRAUMA TO THE MAN THE DEFENDANT HAD BECOME.
WHETHER IT MATERIALLY IMPACTED HIM AT THE TIME THIS MURDER HAD OCCURRED AND THE FACT THERE WAS NOT EVIDENCE PRESENTED BY THE DEFENSE IN TERMS OF ESTABLISHING THAT.
AND WERE THIS COURT TO REVERSE THE TRIAL COURT'S, THE WEIGHT THAT THE TRIAL COURT ASSIGNED TO THAT MITIGATOR, THIS COURT WOULD HAVE TO CONCLUDE THAT NO REASONABLE PERSON WOULD HAVE AGREED WITH THE TRIAL COURT'S INTERPRETATION OF THIS.
AND HERE AGAIN, THE TRIAL COURT WAS IN THE BEST POSITION TO WEIGH THE EVIDENCE, TO EVALUATE THE DEFENDANT IS AND TO REVIEW THE RECORD AND SEE ALL THE WITNESSES THAT TESTIFIED ON HIS BEHALF.
AND THE STATE'S POSITION IS THAT THE TRIAL COURT DID NOT ERR WITH RESPECT TO ASSIGNING LITTLE WEIGHT TO THE CHILDHOOD TRAUMA MITIGATOR.
ALSO IMPORTANT TO NOTE AS WAS NOTED IN THE STATE'S BRIEF, THERE HAVE BEEN OTHER CASES IN WHICH THIS COURT HAS AFFIRMED ON DIRECT APPEAL TRIAL COURT SENTENCING ORDERS WHERE THE TRIAL COURT HAS A ASSIGNED LITTLE WEIGHT TO A CHILDHOOD TRAUMA MITIGATOR.
SPECIFICALLY, LYNCH V. STATE WHICH IS CITED IN THE STATE'S

BRIEF.
LASTLY, EVEN IF THIS COURT DETERMINES THAT THE TRIAL COURT SHOULD HAVE ASSIGNED MORE WEIGHT TO THE CHILDHOOD TRAUMA MITIGATOR, THIS, AGAIN, ISSUE IS SUBJECT TO HARMLESS ERROR ANALYSIS.
AND, AGAIN, BECAUSE OF THE FACT THAT THE STATUTORY AGGRAVATORS HERE WERE SOME OF THE MOST SEVERE THAT CAN EXIST IN A CAPITAL CASE, THE STATE CONTENDS THAT THERE IS NO, ANY ERROR THAT WOULD BE HARMLESS IN THIS CASE.
THE STATE HAS NOTHING FURTHER TO PRESENT, AND WE RESPECTFULLY REQUEST THAT THIS COURT AFFIRM THE DEFENDANT'S JUDGMENT AND SENTENCE.
>> CAN I ASK YOU A QUESTION, COUNSEL?
WHAT'S YOUR VIEW ON WHAT THE EIGHTH AMENDMENT REQUIRES AS FAR AS GOING BEYOND CONSIDERING MITIGATING EVIDENCE THAT DEFENDANT PROFFERS?
>> THE STATE DID NOT BRIEF THIS PARTICULAR ISSUE IN THIS CASE IN THAT PARTICULAR CONTEXT.
THAT MEANS THAT THE STATE DOES NOT HAVE AN OBJECTION TO THIS COURT REVISITING THAT PRECEDENT AND TAKING MAYBE A HARDER LOOK AT APPLYING THE CONFORMITY CLAUSE AND FOLLOWING THE UNITED STATES SUPREME COURT PRECEDENT IN TERMS OF LIMITING IT TO THE DEFENSE-- THE MITIGATING EVIDENCE THAT THE DEFENSE ACTUALLY WANTS TO PRESENT.
>> IS THAT YOUR UNDERSTANDING OF WHERE THIS AGREEMENT-- JURISPRUDENCE STANDS RIGHT NOW, THAT IT'S LIMITED TO WHAT'S PUT IN FRONT OF THE COURT BY THE DEFENDANT?
>> I BELIEVE THAT THAT SEEMS TO BE THE DIRECTION THAT THE COURT GOING IN.

IN PARTICULAR, IT WAS A RECENT
2018 CASE, McCOY V. LOUISIANA,
JUSTICE GINSBURG ARTICULATED A
POSITION THAT WAS VERY MUCH IN
FAVOR OF DEFENDANTS HAVING THE
AUTONOMY TO PRESENT THE CASE
THAT THEY WANTED TO PRESENT AND
THE FACT THAT IF THEY ARE
COMPETENT TO PROCEED AND ARE NOT
DISRUPTIVE DURING COURTROOM
PROCEEDINGS, THAT THE DEFENDANTS
DO HAVE A CONSTITUTIONAL RIGHT
TO PRESENT THE CASE THAT THEY
CHOOSE TO.
AND IN CONTEXT OF A DEATH
PENALTY CASE, THAT ABSOLUTELY
WOULD INCLUDE PRESENTATION OR
LACK OF PRESENTATION OF
MITIGATING EVIDENCE.
>> THANK YOU.
>> THANK YOU.
>> ALL RIGHT.
THANK YOU, COUNSEL.
COUNSEL, YOU MAY PROCEED.
>> CHIEF JUSTICE CANADY, JUSTICE
MUNIZ, IF I COULD RETURN TO THE
LAST POINT YOU ASKED ABOUT, I
WOULD ARGUE THIS: UNDER THE
EIGHTH AMENDMENT FOR A DEATH
SENTENCE, FOR A DEATH SENTENCE
TO BE DETERMINED TO BE REASONED
AND INDIVIDUALIZED, MITIGATING
EVIDENCE HAS TO BE CONSIDERED.
AND I WOULD, AND I WOULD ARGUE
THAT EVEN WHERE A DEFENDANT
FAILS TO PROFFER MITIGATING
EVIDENCE, EVEN WHERE A DEFENDANT
ARGUES, INVITES THE POSSIBILITY
OF THE DEATH SENTENCE, AT LEAST
THE BELIEVABLE, UNCONTROVERTED,
MITIGATING EVIDENCE HAS TO BE
INSURED TO MAKE SURE IT'S
REASONED AND INDIVIDUALIZED.
FURTHERMORE, IN ORDER TO INSURE
THAT A SENTENCE IS RELIABLE AND
REASONABLY CONSISTENT UNDER THE
EIGHTH AMENDMENT, I WOULD ARGUE
THE SAME THING, THAT AT LEAST
THE BELIEVABLE, UNCONTROVERTED
MITIGATING EVIDENCE HAS TO BE

CONSIDERED AND WEIGHED.
I THINK IF THIS COURT WAS TO RECEDE ITS PRECEDENT WHICH CLEARLY FOR GOING ON 30 YEARS NOW, AT LEAST 30 YEARS, HAS SAID THAT A TRIAL COURT HAS TO-- IF THIS COURT WERE TO RECEDE FROM THAT PRECEDENT, A SIGNIFICANT EIGHTH AMENDMENT ISSUE WOULD ARISE UNDER THIS STATE'S CAPITAL SENTENCING SCHEME.
AND IF THAT WAS A DIRECTION THIS COURT WAS INCLINED TO GO, I WOULD ASK FOR SUPPLEMENTAL BRIEFING ON THAT.
>> AND HOW DOES THAT WORK IN THE CONTEXT OF STATES WHERE IT'S JURY SENTENCING?
IN THAT CASE AREN'T THEY JUST CONSIDERING WHAT THE PARTIES PUT IN FRONT OF THEM?
>> WELL, I BELIEVE THAT IT WOULD DEPEND ON WHICH PARTICULAR SYSTEM WE'RE TALKING ABOUT.
I MEAN, I THINK THAT IN MANY STATES IN WHICH THERE'S A JURY ROLE IN THE CAPITAL SENTENCING PROCESS, IT IS LIKE FLORIDA IN THE SENSE THAT A TRIAL COURT HAS AN ADDITIONAL ROLE TO PLAY.
BUT AGAIN, I WOULD ARGUE-- I MEAN, I BELIEVE THAT UNDER THOSE SYSTEMS, OF COURSE-- I CAN'T SAY THIS FOR SURE, JUSTICE MUNIZ, BUT I IMAGINE THAT THE JURY IS INSTRUCTED TO CONSIDER ALL MITIGATING EVIDENCE PRESENTED, AND--
>> RIGHT.
BUT I THINK THAT'S THE POINT, THOUGH, IS THAT THE JURY OBVIOUSLY ISN'T IN A PLACE TO GO AND SEEK OUT ADDITIONAL MITIGATING EVIDENCE BEYOND WHAT THE DEFENDANT PUTS IN FRONT OF IT.
THAT'S MY-- AND I'M ASSUMING THAT WE CAN'T HAVE WHATEVER THE A EIGHTH AMENDMENT REQUIREMENT IS, IT'S GOT TO BE SOMETHING

THAT MAKES SENSE FOR BOTH
SYSTEMS.
>> RIGHT.
AND I IMAGINE THAT UNDER THOSE
SYSTEMS IF IT WAS A SITUATION
WHERE NO MITIGATING EVIDENCE WAS
BEING CONSIDERED AT ALL, THEN IT
WOULD BE PROBLEMATIC FROM AN
EIGHTH AMENDMENT PERSPECTIVE AND
THAT CHALLENGES WOULD BE MADE ON
THAT BASIS, THIS AT LEAST THE
SENTENCER SHOULD CONSIDER THE
BELIEVABLE, UNCONTROVERTED
MITIGATING EVIDENCE.
TO THAT'S THE BASIC POINT I WANT
TO EMPHASIZE IS THAT I BELIEVE
IT WILL BE EXTREMELY PROBLEMATIC
UNDER THE EIGHTH AMENDMENT IF
THIS COURT WAS TO RECEDE FROM
PRECEDENT AND NO LONGER REQUIRE
THE SENTENCER TO-- AND I WOULD
JUST EMPHASIZE THIS IS NOT ALL
MITIGATING EVIDENCE, IT'S ONLY
THE BELIEVABLE, UNCONTROVERTED
MITIGATING EVIDENCE.
SO IT'S NOT A BURDEN THAT'S
EXTREMELY HIGH ON THE SENTENCER
HERE.
AND AGAIN, I WOULD JUST RETURN
TO THIS NOTION THAT A
DEFENDANT'S INTEREST IN AUTONOMY
HAS TO BE BALANCED AGAINST
SOCIETY'S INTEREST IN THE FAIR
ADMINISTRATION OF JUSTICE AND
THE INTEGRITY OF JUDICIAL
PROCEEDINGS X. SO, AGAIN, I
THINK IF THIS COURT WAS TO
RECEDE FROM THE PRECEDENT THAT
IT, I MEAN, THE-- THIS COURT
HAS CLEARLY SAID THAT EVEN WHEN
A CAPITAL DEFENDANT ARGUES IN
FAVOR OF DEATH OR ASKS THE COURT
NOT TO CONSIDER MITIGATING
EVIDENCE, THAT THE DUTY TO
CONSIDER ALL THE MITIGATING
EVIDENCE APPLIES WITH NO LESS
FORCE.
SO AGAIN, EVEN IF REASONABLE
MINDS COULD DISAGREE, THOSE
DECISIONS ARE NOT CLEARLY

ERRONEOUS.
AND I WOULD ARGUE THAT THIS COURT SHOULD RESPECT AND, SHOULD RESPECT AND ABIDE BY ITS PRIOR PRECEDENT.
IF I COULD JUST BRIEFLY TOUCH ON A COUPLE OF THINGS THE STATE MENTIONED.
ONE IS WE WERE TO ASSUME HERE THAT THE TRIAL COURT CONSIDERED AND WEIGHED THE MITIGATING EVIDENCE AT ISSUE IN ISSUE TWO, THIS COURT WOULD NOT BE ABLE TO CONDUCT MEANINGFUL APPELLATE REVIEW.
IT WOULD ONLY BE ABLE TO ASSUME IT WAS CONSIDERED, IT WOULD ONLY BE ABLE TO SUBSTITUTE ITSELF FOR THE TRIAL COURT AND DECIDE IF ANY ERROR WAS HARMLESS, IT WOULD ONLY BE ABLE TO DETERMINE THAT THIS CASE IS AMONG THE LEAST MITIGATED.
SO, AGAIN, IT'S CRITICAL THAT THE TRIAL COURT AFFIRMATIVELY SHOW THAT IT SPECIFIED THE FACTORS IT RELIED ON IN REACHING THIS DECISION TO IMPOSE DEATH.
AND IF I COULD JUST SUM UP WITH A FEW BRIEF SENTENCES, THIS CASE IS AN OUTLIER.
IT'S THE RARE CASE IN WHICH IN MULTIPLE INSTANCES THE TRIAL COURT FAILED TO CONSIDER AND WEIGH BELIEVABLE, UNCONTROVERTED AND COMPELLING MITIGATING EVIDENCE.
AS A RESULT, MR. CRAFT WAS NOT TREATED AS A UNIQUELY INDIVIDUAL HUMAN BEING.
FURTHERMORE, WE CAN'T BE SURE THAT THE TERMINATION HERE WAS RELIABLE.
AS A RESULT IN THOSE CIRCUMSTANCES, I WOULD ASK THIS COURT TO HONOR SOCIETY'S INTEREST IN THE FAIR ADMINISTRATION OF JUSTICE AND THE INTEGRITY OF JUDICIAL PROCEEDINGS, AND I WOULD IS CAN

THIS COURT TO DO SO BY REVERSING
THE DEATH SENTENCE IMPOSED
BELOW.
THANK YOU.
>> OKAY, THANK YOU, COUNSEL.
WE THANK YOU BOTH FOR YOUR
ARGUMENTS IN THIS CASE.
THE COURT WILL NOW STAND IN
RECESS FOR ABOUT TEN MINUTES
BEFORE WE TAKE UP OUR NEXT CASE.