>> GOOD MORNING, AND WELCOME TO THIS SESSION OF THE FLORIDA SUPREME COURT.
THE FIRST CASE ON THE DOCKET TODAY IS McKENZIE V. THE STATE.
COUNSEL?
>> GOOD MORNING, YOUR HONORS, CHIEF JUSTICE CANADY.
MAY IT PLEASE THE COURT, MY NAME IS MICHAEL REITER.
I REPRESENT NORMAN McKENZIE.
I'D LIKE TO START WITH ISSUE ONE, AND I'D LIKE TO START WITH THE IDEA THAT I HAVE TO AGREE WITH THREE THINGS THAT THE STATE HAS SAID IN THEIR BRIEF.
ON PAGE 9 THEY STATE NOTHING IN THE STATUTE, THE STANDARD JURY INSTRUCTIONS OR THE STANDARD JURY REQUIRES THE JURY TO WRITE OUT WORD FOR WORD THE FACTS OR REASONING FOR WHICH THEY RELIED UPON IN THE FINDING THE AGGRAVATOR WAS FOUND BEYOND A REASONABLE DOUBT.
I AGREE WITH THAT.
THERE'S NOTHING IN THE STATUTE OR THE RULE.
THEY ALSO SAY UNLESS THERE IS LEGAL JUSTIFICATION TO MODIFY THE INSTRUCTION, WELL, THERE IS LEGAL JUSTIFICATION.
IT'S CALLED HURST V. FLORIDA.
ON PAGE 10 THEY ALSO SAY WHEN THE SUPREME COURT REFERRED TO THE CRITICAL FINDINGS NECESSARY TO OPPOSE THE DEATH PENALTY, IT IS REFERRED TO THOSE FINDINGS AS FACTS.
WE HAVE A SITUATION WHERE HURST V. FLORIDA HAS DICTATED THAT THE FINDING OF THE DEATH PENALTY IS BASED UPON FACTS FOUND BY THE JURY.
WE DON'T KNOW WHAT THOSE FACTS ARE FOUND BY THE JURY.
WE DO KNOW, HOWEVER, WHAT THE FACTS ARE FOUND BY THE JUDGE WHICH IS IN VIOLATION OF HURST V. FLORIDA BECAUSE THAT JUDGE SENDS OUT IN HIS ORDER ALL THE FACTS HE RELIED UPON.

WE HAVE NO APPELLATE REVIEW OF
WHAT THE FACTS WERE FOUND BY THE
JURY.
THERE HAVE BEEN CASES WHERE THIS
COURT HAS FOUND WHEN A JUDGE
ISSUES AN ORDER FINDING FACT,
WE'VE REVERSED THAT COURT'S
ORDER BECAUSE THE FINDINGS WERE
NOT COMPETENT AND SUBSTANTIAL
EVIDENCE OR THERE WAS OTHER
REASONS FOR IT.
WE CAN'T MAKE THAT SAME
DETERMINATION, YOU DON'T GET THE
OPPORTUNITY TO REVIEW THE JURY'S
FINDINGS, AND AS SUCH, IT
VIOLATES HURST V. FLORIDA.
>> COUNSEL, WHERE-- IF WE WERE
TO AGREE WITH YOU AND TRY TO
DETERMINE WHAT FACTS ARE ENOUGH
FOR THE PURPOSE OF SUPPORTING
THE PRESENCE OF AN AGGRAVATOR
UNDER POOLE, WHERE WOULD WE LOOK
FOR THAT TEST?
WHERE WOULD WE FIND GUIDANCE
ABOUT THE SPECIFICITY REQUIRED
OF A JURY'S FACTUAL FINDING IN
ORDER FOR IT TO BE SUFFICIENT
UNDER POOLE?
>> WELL, ONE OF THE THINGS,
OBVIOUSLY, IS THE JURY MUST FIND
BEYOND A REASONABLE DOUBT THE
AGGRAVATOR EXISTS.
WHAT WE DON'T KNOW IS THE FACTS
THEY RELY UPON.
FOR EXAMPLE, THERE COULD BE A
STIPULATION BY BOTH PARTIES TO
INCLUDE A VERDICT FORM THAT IS
MULTIPLE CHOICE.
DID YOU FIND THESE FACTS, DID
YOU FIND THESE FACTS BEYOND A
REASONABLE DOUBT.
THEN WE CAN MAKE A DETERMINATION
OF WHETHER THOSE FACTS RISE TO A
REASONABLE LEVEL--
>> THAT'S MY QUESTION.
WHAT'S THE LIMITING PRINCIPLE?
>> I DON'T KNOW THAT THERE IS
ANY ONLY BECAUSE WE DON'T REALLY
GET INTO THE THOUGHT PROCESSES
OF THE JURY IN THEIR VERDICT.
WE JUST WANT TO KNOW WHAT FACTS
THEY RELIED UPON.
THOSE FACTS ARE NOT SUBSTANTIAL
COMPETENT EVIDENCE.

YOU COULD REVERSE THAT RULING.
WE NEED TO KNOW WHAT THE FACTS ARE.
YOU'VE NEVER GOTTEN INTO-- AND I'M NOT ASKING YOU TO-- GET INTO THE JURY'S DELIBERATION PROCESS.
ONLY THE FACTS THAT THEY RELIED UPON AND WHETHER THEY WERE FOUND BEYOND A REASONABLE DOUBT ON ALL OF THEM, THAT'S ALL.
AS TO ISSUE TWO, AGGRAVATING CIRCUMSTANCE, THIS IS A SITUATION WHERE THIS COURT MIGHT FIND BECAUSE OF THE NUMBER OF AGGRAVATORS, THE ONE THAT WAS AMENDED WOULD AMOUNT TO HARMLESS ERROR.
BUT I DON'T THINK THAT'S, YOU CAN MAKE THAT APPLICATION OR AT LEAST YOU'VE GOT TO REVIEW IT BECAUSE THERE ARE DIFFERENT CASES WHERE, FOR EXAMPLE, THE JACKET WHICH WAS CITED BY THE STATE SAYS THAT THE 45-DAY RULE DOESN'T APPLY WHEN YOU HAVE A SITUATION WHERE AN ARRAIGNMENT WAS OCCURRED YEARS BEFORE.
BUT THAT'S NOT WHAT WE HAVE HERE.
WHAT WE HAVE IS A SITUATION WHERE THE STATE HAD FILED THEIR NOTICE EARLY ON IN 2007, BUT THEN WHEN THE RULE WAS CHANGED BASED ON HURST V. FLORIDA, THIS CASE WAS SENT BACK, AND THEY FILED A NOTICE OF INTENT TO SEEK THE DEATH PENALTY, AND THEY TRIED TO AMEND ADDING A NEW AGGRAVATOR.
WELL, EVEN IF THE ARGUMENT THAT THE STATE MAKES IS CORRECT THAT IT IS NOT RETROACTIVE, IT DOESN'T NECESSARILY MEAN THAT HAS TO BE BECAUSE IT BECAME A NEW CASE WITH REGARD TO THE NOTICE BEING FILED.
NOW, I WOULD ASSUME THE LEGISLATURE WHEN THEY MADE THE STATUTE AND THE RULING BY THIS COURT FOLLOWING THAT SAME LANGUAGE THAT THERE MUST BE NOTICE OF SEEKING THE DEATH PENALTY WITHIN 45 DAYS WOULD

ALSO NOT APPLY TO THE ARRAIGNMENT ISSUE BECAUSE IT'S ALREADY HAPPENED.
HOWEVER, THERE WAS AN OUT FOR EVERYBODY ON THAT SITUATION.
WHAT THE COURT-- WHAT THE STATUTE DID AND THE RULE DID SAID YOU CAN AMEND UPON SHOWING OF GOOD CAUSE.
AND THE CASE WHICH I'VE CITED IS EXTREMELY INTUITIVE OR INSTRUCTIVE REGARDING THE EXTENSION OF TIME.
THE COURT HAD THE AUTHORITY TO EXTEND THE TIME OF THE 45 DAYS.
THE COURT HAD THE AUTHORITY TO LISTEN TO GOOD CAUSE AS TO WHY THEY WANTED TO AMEND THAT RULE.
AND THE REASON WHY I SAY IT WOULD NOT BE HARMLESS ERROR, BECAUSE YOU LOOK AT THE FIRST TIME THIS CASE WENT TO TRIAL THE JURY DID NOT COME BACK WITH A UNANIMOUS VERDICT.
THIS TIME WITH HAC THEY DID COME BACK WITH A UNANIMOUS VERDICT.
THE COURT ACTUALLY TOOK THE EXACT SAME POSITION AS THE STATE DID AND SAID BECAUSE IT'S NOT RETROACTIVE, THEREFORE, THEY DON'T HAVE TO PUT IN THAT THEY WERE-- WHAT THE AGGRAVATORS WERE OR THE FACT THAT THEY COULD AMEND.
WELL, LOOK AT THE SITUATION WITH WHAT'S SAID.
IF, IN FACT, THAT WERE TRUE THAT IT'S NOT RETROACTIVE OR THEY DON'T HAVE TO PUT THE NOTICE OF INTENT TO SEEK THE DEATH PENALTY BECAUSE OF THE ARRAIGNMENT, THAT WOULD MEAN EVEN THOUGH THE NEW RULE IS CREATED, CASE COMES BACK AND SAY IN THE FIRST PLACE THEY DIDN'T LIST THE AGGRAVATORS BASED ON THE OLD RULE.
THAT COURT IS SAYING YOU DON'T HAVE TO LIST THE AGGRAVATORS.
YOU'RE NOT ENTITLED TO THEM BECAUSE THE RULE IS NOT RETROACTIVE.
HOWEVER, I'M SUGGESTING THAT THE RULE WAS CHANGED TO GIVE THE STATE THE OPPORTUNITY TO SAY

IT'S GOOD CAUSE BECAUSE THE ARRAIGNMENT'S ALREADY HAPPENED, WE'LL LIST THE AGGRAVATORS NOW EVEN THOUGH IT'S AFTER ARRAIGNMENT, AND YOU CAN EXTEND THAT TIME.
MY POINT IS BECAUSE HAC IN THIS PARTICULAR CASE SHOULD HAVE BEEN NOT APPROVED BECAUSE THEY DIDN'T SHOW CAUSE WHICH THE COURT MADE THE SAME FINDING.
THE STATE SAID EVEN THOUGH THE COURT WAS WRONG ABOUT THE EXTENSION OF THE TIME FRAME, THE COURT HAD THE RIGHT TO ASK THE STATEMENT TO GIVE GOOD CAUSE FOR THE PURPOSES OF THE CHANGE.
AND THEY DIDN'T.
SO THEY UPHELD THE COURT'S DENIAL OF THAT CHANGE.
AND I THINK THIS COURT SHOULD DO THE SAME HERE.
I'D LIKE TO GO TO ISSUE FOUR, SUFFICIENT AGGRAVATORS.
I AM KIND OF IN A QUANDARY MYSELF BECAUSE WITH REGARDS TO THIS COURT IN POOLE INDICATING THAT SUFFICIENCY MEANS ONE AGGRAVATOR IS SUFFICIENT, THAT BECOMES SOMEWHAT REDUNDANT BECAUSE THE STATUTE EXPLICITLY POINTS OUT WHAT IS NECESSARY TO FIND THE DEATH PENALTY.
WHAT IT IS, IS THEY SPECIFICALLY SAY IN THE STATUTE THAT ONE AGGRAVATOR MAKES A PERSON ELIGIBLE FOR THE DEATH PENALTY.
THIS COURT SAYS SUFFICIENT IS ONE AGGRAVATOR.
WELL, THAT'S REDUNDANT.
IT DOESN'T MAKE SENSE.
THE JURY-- I CAN'T ARGUE THAT THE LEGISLATURE WOULD HAVE PUT THAT IN THERE TO INDICATE TO MEAN THAT BOTH STATEMENTS ARE THE SAME.
NOT ONLY THAT, WITH REGARD TO SUFFICIENT AGGRAVATORS THIS COURT ON MANY OCCASIONS HAS INDICATED WHAT AGGRAVATORS ARE WEIGHTY AND OTHERS, AND THAT GOES TO THE SUFFICIENCY.
FOR EXAMPLE, ALTHOUGH THE LAW INDICATES ONE AGGRAVATOR IS

SUFFICIENT OR ELIGIBLE TO
CONSTITUTE A PERSON ELIGIBLE FOR
THE DEATH PENALTY, THE JURY
MIGHT NOT.
FOR EXAMPLE, AGGRAVATOR OF,
BOTTOM AGGRAVATING FACTOR, WHAT
IF SOMEBODY WAS CONVICTED OF A
SECOND BATTERY WHICH NOW BECOMES
A FELONY?
A JURY MAY FIND, WELL, YEAH
LEGALLY THAT MAY BE AN
AGGRAVATOR, BUT I DON'T BELIEVE
IT'S SUFFICIENT.
WE DON'T GET TO HEAR THAT
BECAUSE WE DON'T HEAR THE
ARGUMENTS BEHIND THE JURY.
NOW YOU'RE SAYING JUST BECAUSE
IT EXISTS, IT'S SUFFICIENT AS AN
AGGRAVATOR TO JUSTIFY THE DEATH
PENALTY UNDER THE LAW WHICH THE
JURY MAY FIND THAT IT'S NOT.
THAT'S ALL THAT I HAVE.
I'LL RESERVE FOR THE REBUTTAL.
>> GOOD MORNING, MAY IT PLEASE
THE COURT, DORIS MEACHAM ON
BEHALF OF THE STAFF-- OF THE
STATE.
I'D LIKE TO START WITH CLAIM ONE
WHICH IS THE MOTION FOR
INTERROGATORY PENALTY PHASE
VERDICTS.
THE TRIAL COURT DENIED THE
MOTION, AND THEY SPECIFICALLY
SAID THAT THIS COURT IN MAY SET
FORTH A NEW VERDICT FORM, AND
THAT'S WHAT I'LL USE.
I'M NOT GOING TO DEVIATE FROM
THAT WHICH THE FLORIDA SUPREME
COURT SAYS SHALL BE USED UNLESS
THERE IS A COMPELLING REASON TO
DO SO.
AND I DON'T SEE A COMPELLING
REASON TO DO SO.
AND THE STATE WOULD AGREE, THERE
WAS NO REASON TO USE THE
INTERROGATORY VERDICT FORMS THAT
WERE SUPPLIED BY DEFENSE COUNSEL
BECAUSE THEY WERE CONFUSING,
THEY WERE MISLEADING, AND THEY
WERE NOT A CORRECT STATEMENT OF
THE LAW.
THE JURY INSTRUCTIONS WERE IN
COMPORT WITH THE JURY VERDICT'S
FORM THAT WAS USED IN THIS CASE,

AND THE TRIAL COURT DID NOT ERR
IN DENYING THAT MOTION.
AS FOR CLAIM TWO, THE OPPONENT
WAS INDICTED ON TWO COUNTS OF
FIRST-DEGREE MURDER AND WAS
ARRAIGNED ON THAT INDICTMENT ON
FEBRUARY 15, 2007.
THAT WAS THE TRIGGERING DATE FOR
THE NOTICE WHICH WAS FILED.
AND AT THAT TIME, THERE WAS NO
REQUIREMENT TO FILE THE
AGGRAVATING FACTORS.
DEFENSE COUNSEL CITES THE CASE
TO SAY THAT GOOD CAUSE NEEDED TO
BE SHOWN IN ORDER TO AMEND,
HOWEVER, THAT IS NOT A
RESENTENCING CASE.
THAT WAS ACTUALLY A CASE THAT
CAME AFTER THE STATUTE WAS
ENFORCED, AND IN THAT CASE THEY
DID NEED TO SHOW GOOD CAUSE.
AGAIN, THE TRIAL COURT IN THIS
CASE AGREED WITH THE STATE AND
SAID THAT THE STATUTE WAS NOT
RETROACTIVE, SO IT WAS NOT
NECESSARY TO AMEND THE NOTICE OR
TO FILE ANY NOTICE.
IN FACT, THE STATE FILED A NEW
NOTICE LISTING THE FOUR ORIGINAL
AGGRAVATORS AS A COURTESY.
AS FAR AS PREJUDICE, THEY DIDN'T
REALLY ARGUE IN THEIR MOTION
THAT THEY WERE PRESENTED BY
ADDING THE HAC AGGRAVATOR, ALL
THEY ARGUED WAS THAT THE
PROCEDURE WASN'T FOLLOWED.
AND THE STATE WOULD ADD THAT
THERE WAS NO PREJUDICE IN THIS.
THE HAC AGGRAVATOR RELIED ON
FACTS THAT WERE KNOWN TO THE
DEFENSE FROM THE FIRST TRIAL.
THEY EVEN STATED IN THEIR MOTION
THAT THE STATE COULD NOT SHOW
GOOD CAUSE BECAUSE THEY KNEW
ABOUT THE FACTS FROM THE
BEGINNING.
AND FURTHERMORE, THE NEW PENALTY
PHASE COMMENCED ON AUGUST 26TH,
2019, SEVEN MONTHS AFTER THE
AMENDED NOTICE WAS MADE.
SO THEY HAD PLENTY OF TIME TO
PREPARE FOR THIS.
SO THERE WAS NO PREJUDICE AND,
AGAIN, THERE WAS NO REASON TO

HAVE GOOD CAUSE TO AMEND.
AS FOR-- DON'T BELIEVE HE WENT INTO THE VICTIM IMPACT STATEMENT, BUT THAT IS ALLOWED IN FRONT OF THE JURY PER STATUTE 921.47.
THE PROSECUTION MAY INTRODUCE AND ARGUE IMPACT EVIDENCE TO THE JURY.
AS FOR THE SUFFICIENCY, BELIEVE COUNSEL IS CONFUSING WHAT IS NECESSARY TO FIND SOMEONE ELIGIBLE FOR THE DEATH PENALTY AND ALL THAT'S REQUIRED IS A PRIOR AGGRAVATOR TO BE FOUND BEYOND A REASONABLE DOUBT.
THE SUFFICIENCY IN THE WEIGHING OF WHETHER OR NOT THEY'RE GOING TO BE SELECTED FOR THE DEATH PENALTY.
IN THIS CASE FOR HIM TO REASON THAT SUFFICIENT IS A QUALITATIVE RATHER THAN A NUMERICAL IS INCORRECT.
AND AGAIN IN THIS CASE, MR. McKENZIE HAD NINE PRIOR FELONY CONVICTIONS, AND HE DOES NOT MEET THE STANDARD THAT HE STATED WOULD BE IN CONFLICT WITH FINDING HIM ELIGIBLE FOR THE DEATH SENTENCE.
I BELIEVE IN SECTION SIX HE WENT INTO WHETHER OR NOT THERE WAS SUFFICIENT AGGRAVATING CIRCUMSTANCES IN THIS CASE, AND THERE WERE.
HE WAS CONVICTED OF THE CONTEMPORANEOUS HAC, CCP, THE PECUNIARY GAIN, MULTIPLE REASONS FOR THE AGGRAVATORS WERE USED IN ORDER TO FIND HIM GUILTY OF THE MURDER AND AS FAR AS AGGRAVATORS ARE CONCERNED, THERE ARE PLENTY OF AGGRAVATORS TO BE USED IN THIS CASE.
THE LAST PART OF THIS I DON'T BELIEVE HE TOUCHED ON.
THE TRIAL COURT IS THE ONE THAT'S RESPONSIBLE FOR DOING THE WRITTEN FINDINGS.
I KNOW IN THE BEGINNING HE SAID HOW ARE WE SUPPOSED TO THOUGH WHAT THE JURY DECIDED.
WELL, THEIR JOB WAS TO SAY YES

OR NO WHETHER OR NOT THERE WAS
AN AGGRAVATOR, AND THEY DID.
IT'S UP TO THE TRIAL COURT TO
MAKE WRITTEN FINDINGS.
WE'RE NOT HERE TO KNOW WHAT THE
JURY DELIBERATED.
AND THAT IS EXACTLY WHAT HE'S
ASKING THIS COURT TO DO.
AND IF THERE ARE NO QUESTIONS,
THE STATE WOULD ASK THIS COURT
TO AFFIRM THE DEATH SENTENCE
THAT WAS IMPOSED IN THE NEW
PENALTY PHASE DOWN BELOW.
THANK YOU.
>> THANK YOU, COUNSEL.
REBUTTAL.
>> YES, JUDGE.
WITH REGARD-- JUSTICE CANADY.
REGARDING ISSUE ONE WHERE STATE
SAID I WAS TRYING TO GET THIS
COURT TO GET INTO THE JURY'S
DETERMINATION AND DELIBERATION,
THAT'S NOT ACCURATE.
RIGHT NOW I CONTEND THAT THE
STATUTE REQUIRING WHAT THE JUDGE
DOES IN HIS WRITTEN ORDER IS IN
VIOLATION OF HURST.
I MEAN, SEE, THAT HASN'T
CHANGED.
WHEN THEY DID CHANGE THE STATUTE
REGARDING WHAT THE JURY'S
FINDINGS WERE BASED UPON HURST,
THEY DID NOT CHANGE THE RULING
REGARDING WHAT THE JUDGE IS
SUPPOSED TO DO.
AND AS LONG AS THE-- NOW, I
REALIZE THAT IN THE STATUTE IT
DOESN'T SAY THAT A JUDGE IS
SUPPOSED TO LIST FACTORS.
IT'S SUPPOSED TO MAKE CERTAIN
FINDINGS.
TECHNICALLY SPEAKING, IF THE
TRIAL COURT FOLLOWED THE
STATUTE, ALL HE HAD TO DO WAS TO
SAY THE AGGRAVATORS OUTWEIGH THE
MITIGATORS, AND HE'S DONE.
THE JURY IS THE ONE WHO'S
SUPPOSED TO BE ABLE TO DO THAT
UNDER HURST.
RIGHT NOW FLORIDA IS IN
VIOLATION OF THE LAW OF THE
CONSTITUTION UNDER FLORIDA V.
HURST.
AS TO COUNT TWO, STATE SAYS THE

CASE IS NOT RELEVANT TO THIS CASE.
WELL, EVEN THOUGH IT WAS NOT SPECIFICALLY BY THIS COURT A NEW SENTENCING, IT SETS OUT THE GENERAL RULES SPECIFICALLY WITH REGARD TO EXTENSIONS WHERE IT REQUIRES IF THE EXTENSION IS ALREADY PAST THE TIME FRAME, YOU HAVE TO SHOW JUSTIFIABLE NEGLIGENCE.
IF NOT, YOU HAVE TO SHOW GOOD CAUSE, AND THAT'S UP TO THE DISCRETION OF THE COURT.
SO THIS CASE IS AN INSTRUCTIVE CASE IN THIS CASE WITH REGARD TO ISSUE TWO.
THAT'S ALL I HAVE.
THANK YOU.
>> ALL RIGHT.
WE THANK YOU BOTH FOR YOUR ARGUMENTS IN THIS CASE.
AND THE COURT WILL NOW PREPARE TO TAKE UP THE SECOND AND FINAL CASE ON TODAY'S DOCKET.