>> THE SUPREME COURT IS NOW IN SESSION. PLEASE BE SEATED.
>> Chief Justice Carlos Muniz: WE WILL NOW TAKE UP CASE NO. SC2023-0079.
JOHN SEXTON V. STATE OF FLORIDA
>> Karen M. Kinney,Appellant: MAY IT PLEASE THE COURT. I AM KAREN KINNEY
ON BEHALF OF JOHN SEXTON. THIS IS A CAPITAL DIRECT APPEAL FROM A
RESENTENCING. I'M ASKING THIS COURT TO REVERSE FOR A NEW PENALTY PHASE
BASED ON A NUMBER OF ERRORS, STARTING WITH THE DENIAL OF FUNDS FOR THE
PRIVATE COURT APPOINTED ATTORNEY TO DO THE INVESTIGATION AND
CULMINATING IN A SENTENCING ORDER THAT BEARS LITTLE RESEMBLANCE TO WHAT
ACTUALLY OCCURRED AT THIS PENALTY PHASE TRIAL.
STARTING WITH DENIAL OF FUNDS TO INVESTIGATE THE MITIGATION. I WOULD LIKE
TO ADDRESS THE STANDARD OF REVIEW.
BECAUSE NORMALLY I AGREE THAT THAT WOULD BE AN ABUSE OF DISCRETION
STANDARD TO LOOK AT THE ORDER ON THE DENYING INVESTIGATION FUNDS. BUT IN
THIS CASE WE HAVE THE FACT THAT THE US SUPREME COURT HAS SPOKEN MANY
TIMES ON WHAT THE PREVAILING PROFESSIONAL NORMS ARE IN A CAPITAL
INVESTIGATION . IN THIS CASE THE STANDARD OF REVIEW HAS TO BE INFORMED BY
WHAT THE COURT HAS SAID IN TERMS OF WHAT THE SIXTH AMENDMENT REQUIRES A
PRIVATE ATTORNEY TO DO.
>> Justice: WHAT IS THE PARTICULARS NEED FOR TRAVEL TO OREGON AND
ARKANSAS. IN THIS CASE IN 2023 WHEN THEY THINK THERE IS SUFFICIENT MEANS
AVAILABLE FOR OBTAINING THE INFORMATION NEEDED BY MEANS OTHER THAN
TRAVEL. CAN YOU ARTICULATE WHY THAT WAS NECESSARY?
YOU'RE SAYING WE DON'T NEED TO BE ASKING WHY IT IS AN ABUSE OF DISCRETION
FOR NOT ASKING WHY IT'S AN ABUSE OF DISCRETION. WHAT QUESTION DO YOU
PROPOSE I ASK?
>> Karen M. Kinney,Appellant: THE NEED IS GOING TO WHAT THE SUPREME COURT
REQUIRES OF THESE WERE OF AN ATTORNEY THAT IS REPRESENTING A CAPITAL
CLIENT.
>> Chief Justice Carlos Muniz: WHICH SUPREME COURT CASE AS AN ATTORNEY
DEFENDING THE CAPITAL CLIENT MUST TRAVEL TO VISIT MITIGATION EXPERTS
RATHER THAN OBTAIN THE SWORN AFFIDAVITS OR TALK TO THEM ON THE PHONE
WHICH CASE SAYS THAT.
>> Karen M. Kinney,Appellant: THE CASE OF WIGGINS V. SMITH TALKS ABOUT THE ABA
GUIDELINES AND THE ABA GUIDELINES TALK ABOUT THE STANDARD FOR AID
DEFENSE. IT IS NOT TALKING ABOUT A CADILLAC DEFENSE IS TALKING ABOUT A
REASONABLE AND NECESSARY DEFENSE IN THOSE STANDARDS REQUIRE
INVESTIGATION OF WITNESSES THAT IS A FACE TO FACE INVESTIGATION AND SO THE
TRAVEL IS NECESSARY. IT IS ALSO PART OF THE PREVAILING NORMS OF WHAT IS
DONE IN THESE CASES.
AND THAT IS ALL PART OF WHAT THE COURT DISCUSSES IN WIGGINS V. SMITH AND IN

PORTER V. McCOLLUM THAT THE INVESTIGATION HAS TO COMPORT WITH THE PREVAILING NORMS.
IN THIS CASE, EVEN WHEN THE MITIGATION EXPERT WAS CALLED TO TESTIFY BY THE COURT. SHE SAID THERE WERE PEOPLE I COULD NOT GO TO SEE BECAUSE THESE PEOPLE, THIS IS VERY SENSITIVE.
>> Justice John Couriel: TO ARGUE THIS WAS A DEPRIVATION OF COUNCIL IN VIOLATION OF THE SIXTH AMENDMENT.
>> Karen M. Kinney,Appellant: .YES, THAT IS WHY THERE IS AN ELEMENT OF A PURE QUESTION OF LAW.
THAT HAS TO GO INTO THE ABUSE OF DISCRETION STANDARD.
JUST LIKE THE DISCRETION HAS TO BE INFORMED BY THE SUPREME COURT CASES THAT DESCRIBE WHAT A COMPETENT SIXTH AMENDMENT INVESTIGATION WOULD BE IN A CAPITAL CASE.
>> Justice John Couriel: IT SEEMS LIKE A VERY HEAVY BURDEN FOR YOU TO SHOULDER.
>> IT IS NOT.
ANYTIME YOU HAVE ANY TIME IN THIS CASE I THINK IT WAS THE AMOUNT OF MONEY THAT WAS ASKED FOR WAS. NOT A LOT OF MONEY.
THE JUDGE WAS BEING UNREASONABLE IN DENYING IT. EVEN WHEN THE DEFENSE ATTORNEY SAID HOW ABOUT IF I JUST ALLOW SOME OF THE OTHER TAKE SOME OF THE MONEY AWAY FROM THE OTHER EXPERTS AND ALLOWED THIS TO OCCUR . I NEED THIS MITIGATION I NEED MY SPECIALIST TO GO AND SEEK OUT THESE PEOPLE . THE JUDGE SAID NO I WILL NOT HAVE A NEGOTIATION ABOUT THIS.
HE WAS REALLY JUST BEING UNREASONABLE . THAT ALSO GOES TO THE QUESTION OF HIM DENYING THE BRAIN SCANS. WE ARE NOT TALKING ABOUT A LOT OF MONEY. WE ARE TALKING ABOUT THE QUESTION OF WHETHER OR NOT THE CLIENT HAD ORGANIC BRAIN DAMAGE. AND THE DEFENSE ATTORNEY HAD DONE AND TOLD THE JUDGE I HAVE EXPERT WITNESSES THAT HAVE RECOMMENDED THIS. AND THE JUDGE THOUGHT THAT WELL IT DOESN'T MATTER WHATEVER HIS PROBLEMS ARE. IT DOESN'T MATTER IF HE HAS ORGANIC BRAIN DAMAGE THAT IS NOT SOMETHING THAT YOU NEED TO DISCERN.
>> Justice John Couriel: .ISN'T IT TRUE, WE ALSO HAVE TO ASK ABOUT THE PREJUDICE THAT WAS WROUGHT BY THIS.
ISN'T IT TRUE THAT SEXTON'S SISTER BASICALLY ESTABLISHED THE FACT THAT HE HAD BEEN ABUSED. NO ONE IS REALLY DISPUTING THAT FACT IN MITIGATION. WHAT IS THE PREJUDICE THAT ULTIMATELY RESULTED AS A RESULT OF THIS DECISION BY THE TRIAL COURT, EVEN IF WE AGREE IT WAS AN ERRONEOUS DECISION.
>> Karen M. Kinney,Appellant: NOT TO ALLOW THE TRAVEL.
>> Justice John Couriel: WHAT WAS THE PROVISIONS PREJUDICE RESULTING GIVEN TO ESTABLISH AND WHAT THE EVIDENCE IN THE RECORD THAT THE COURT DID HAVE WITH RESPECT TO THE VERY POINTS IN MITIGATION THAT YOU WERE SAYING YOU NEED TO TRAVEL IN ORDER TO ESTABLISH.
>> Karen M. Kinney,Appellant: .ACTUALLY WE DIDN'T KNOW WHAT WAS GOING TO BE

ESTABLISHED . IT IS PUTTING THE CART BEFORE THE HORSE . TO SAY THAT THE DEFENSE NEEDED TO SHOW WHAT THE MITIGATION IS GOING TO TURN UP AND THE DEFENSE ATTORNEY EVEN MADE TO THIS POINT, I CAN BE LOOKING FOR A POSITIVE MITIGATION.
WHICH THE DEFENSE CASE. HE PUT ON WAS ABOUT POSITIVE MITIGATION. SO IT IS PUTTING AN IMPOSSIBLE BURDEN ON THE DEFENSE TO SAY IN THIS SITUATION . TELL US WHAT THAT INVESTIGATION WOULD HAVE TURNED UP.
>> Justice John Couriel: .NO. I THINK OUR CASES ESTABLISH PRETTY CLEARLY WITH THE SHOW PREJUDICE . . ARE YOU SAYING THAT IT IS IMPOSSIBLE TO ESTABLISH PREJUDICE THE FACTS LIKE THESE WE SHOULD GIVE UP THAT PART OF OUR CASE LAW?
>> Karen M. Kinney,Appellant: I'M SAYING THERE WAS PREJUDICE AND WAS ESTABLISHED BECAUSE.
>> Justice John Couriel: WHAT IS THE PREJUDICE?
WHAT CHANGED AS A RESULT OF THE LACK OF ACCESS TO FUNDS FOR THESE TRIPS?
BECAUSE WHAT I HEAR YOU SAYING I DON'T KNOW WHAT THE HARM WAS. I CANNOT TELL YOU WHAT THE PREJUDICE IS BECAUSE THE PREJUDICE IS IN THE THINGS I DON'T KNOW. THAT WILL DO UNDER OUR CASES, WE DO REQUIRE SHOWING OF PREJUDICE. I DON'T HEAR YOU ARTICULATING WITH THE PREJUDICE ACTUALLY WAS IN LIGHT OF WHAT WE ALSO KNOW.
>> Karen M. Kinney,Appellant: I THINK YOU ARE TALKING ABOUT PREJUDICE IN A DIFFERENT WAY THAN I AM. IT'S ALMOST LIKE YOU ARE SAYING WE NEED TO ESTABLISH PREJUDICE AS IF THIS WERE A POST CONVICTION PROCEEDING WHERE WE WOULD NOW TELL YOU WHAT WE WOULD HAVE FOUND OUT IF WE HAD THE FUNDING. BUT WE CAN'T DO THAT BECAUSE UNTIL THERE IS A POST CONVICTION PROCEEDING AND GOES MAKES THESE TRIPS AND LOOKS INTO HIS LIFE AND TRIES TO FIND THESE WITNESSES THAT SHE COULD NOT GET ON THE PHONE . WE CANNOT DO THAT THE PREJUDICE IS THAT THE MITIGATION EXPERT WAS NOT ABLE TO TALK TO SOME OF THE PEOPLE THAT SHE WANTED TO TALK TO BECAUSE SHE COULDN'T GO INTO HER JOB.
THAT IS WHAT SHE IS TRAINED FOR. OBVIOUSLY IT IS NOT GOING TO BE THIS IS SORT OF A UNIQUE SITUATION. WE ARE TALKING ABOUT A CAPITAL CASE WHERE THERE WERE SIXTH AMENDMENT RIGHT TO AN INVESTIGATION.
THAT IS SUPPOSED BE VERY COMPETITIVE. AS I READ THE US SUPREME COURT CASES.
IT IS NOT ENOUGH TO SAY THERE WAS A RUDIMENTARY INVESTIGATION BASED ON A NARROW SET OF WITNESSES.
I THINK THE PREJUDICE IS THAT WE DID NOT GET TO DO THE MITIGATION THAT WAS NECESSARY IN A CAPITAL CASE.
>> Justice John Couriel: WOULD YOU MIND IF I REDIRECTED YOU SLIGHTLY. CAN WE TALK A LITTLE BIT UP ABOUT WHETHER THE TRIAL COURT TRULY MISUNDERSTOOD ITS DISCRETION TO IMPOSE THE DEATH SENTENCE?

AS ILLUMINATION BY ITS STATEMENT THAT THE SENTENCE WAS COMPELLED BY THE LAW . CAN YOU SAY A LITTLE BIT ABOUT WHAT EVIDENCE YOU HAVE THAT THE COURT WAS TRULY UNDER MISIMPRESSION ABOUT THE SCOPE OF ITS DISCRETION, AS OPPOSED TO THIS BEING AN UNFORTUNATE INARTFUL STATEMENT.
WHAT EVIDENCE DO YOU HAVE THAT THE COURT WAS ACTUALLY CONFUSED ABOUT WHAT IT HAD TO DECIDE.
>> Karen M. Kinney,Appellant: I'M LOOKING AT EXACTLY WHAT SHE SAID AND SHE SAID THIS WAS. SHE MADE IT LIKE A MATHEMATICAL EQUATION. THESE ARE THE AGGREVATORS. THESE ARE THE MITIGATOR . THIS IS THE MATHEMATICAL EQUATION. THEREFORE, I AM COMPELLED BY LAW.
I'M JUST TAKING HER AT THE WORD . THAT'S THE LAST THING IN THE SENTENCING ORDER.
I THINK TO TAKE THAT A DIFFERENT WAY WOULD BE PURE SPECULATION AT THIS POINT.
I DON'T KNOW THAT SHE UNDERSTOOD THAT SHE DIDN'T HAVE WERE HAVE TO.
>> Justice John Couriel: THE WHOLE EXISTENCE OF THE SECOND PENALTY PHASE GIVE THE LIE TO THAT. IT WOULD BE A PRETTY CATASTROPHIC MISUNDERSTANDING OF THE LAW TO OF GONE THROUGH THIS PROCESS HAD A PENALTY PHASE TRIAL WHERE PRECISELY THIS ISSUE IS BEING LITIGATED IN LIGHT OF THE WHOLE HISTORY OF THIS CASE. AND TO THEN SORT OF CONCLUDE AT THE LAST MINUTE THAT THIS IS NOT A DISCRETIONARY EXERCISE.
I GUESS WHAT I'M STRUGGLING WITH . I AGREE THAT THOSE WORDS ARE INCORRECT AS A STATEMENT OF LAW. I THINK YOU ARE RIGHT ABOUT THAT. I'M NOT QUITE SURE WHAT TO DO WITH IT. IN LIGHT OF ALL OF THE OTHER EVIDENCE IN THE RECORD THAT SEEMS TO DEMONSTRATE THAT THE COURT KNEW THAT THOSE WORDS WERE WRONG.
THAT IS WHAT I'M STRUGGLING WITH.
>> Karen M. Kinney,Appellant: I DON'T THINK THE COURT NEWT THAT THOSE WORDS WERE WRONG. I THINK THE COURT, THE COURT DID NOT UNDERSTAND WHAT THE JOB WER IN THE SELECTION PHASE THAT THERE IS THE WEIGHING BUT THERE IS A DETERMINATION AT THE END IT HAS TO BE AN EVENTUAL MORAL CHOICE PRINTS AND IS A COMPELLED BY LAW IS SKIRTING THAT.
I THINK THAT I DON'T KNOW HOW TO READ THAT ANY OTHER WEIGHT THAN WHAT SHE SAID.
THAT WAS JUST SOMETHING I THOUGHT WAS A PROBLEM IN THE CASE.
GOING TO THE SECOND ISSUE.
I THINK THERE IS SERIOUS PROBLEM WHERE JUDGE HENSEL VIOLATED MR SEXTON'S CONSTITUTIONAL RIGHTS BY CALLING THE MITIGATION EXPERT AS A COURT WITNESS TO QUESTION HER ABOUT THE EVIDENCE THAT MR SEXTON ELECTED NOT TO PRESENT IN HIS CASE. AND HE HAD BEEN VERY CLEAR ABOUT WANTING TO CONTROL THE PRESENTATION OF THE MITIGATION AND MEANT TO KEEP CERTAIN THINGS OUT OF THE RECORD AND THIS CAME UP IN SUCH A ROUNDABOUT WAY BECAUSE THE JUDGE INITIALLY SAID SHE WANTED THE DEFENSE AT THE BEGINNING

OF THE TRIAL TO PRODUCE A MEMO THAT WOULD GO INTO A SEALED PLACE IN THE RECORD, NOT FOR THE DIRECT APPEAL, BUT JUST TO DEFEAT A FUTURE POSTCONVICTION MOTION. SO RIGHT THERE SHE'S ACTING IN A PROSECUTORIAL MANNER. THINKING ABOUT TRYING TO DEFEAT THE POSTCONVICTION MOTION TO CHALLENGE THE DEATH SENTENCE.
>> Justice Charles Canady: WHO DID SHE ORDER.
>> Karen M. Kinney,Appellant: SHORTED THE TRIAL ATTORNEY FOR MR SEXTON TO PREPARE A MEMO OF THE ITEMS THAT HE HAD DISCOVERED IN MITIGATION THAT MR SEXTON WOULD NOT BE PRESENTING HIS CASE. BECAUSE MR. SEXTON WITH THE DEFENSE HAD PUT A NOTICE TO THE COURT THAT HE WAS GOING TO BE USING SELECTIVE MITIGATION.
SO SHE SAID I NEED THIS MEMO THAT THE DEFENSE ATTORNEY IS GOING TO PREPARE.
THE DEFENSE ATTORNEY HAD PREPARED THE MEMO HE NEVER ACTUALLY CAME INTO THE RECORD.
BECAUSE THE JUDGE KEPT CHANGING WHAT SHE WAS ASKING AND THEN MR SEXTON WAS OBJECTING TO THIS.
AND AT ONE POINT HE EVEN SAID THAT IF I FIRE MY LAWYERS . CAN I STOP THIS FROM HAPPENING?
AND SHE SAID NO.
THAT IS WHAT WAS SUPPOSED TO HAPPEN ON THE SECOND DAY, WHEN THE CASE ADJOURNED ON THE FIRST DAY.
SHE WAS TALKING ABOUT . OKAY THAT IS GOING TO HAPPEN AND PREPARE TO HAVE THIS MEMO.
BUT SHE WAS GOING BACK AND FORTH AS TO WHETHER OR NOT IT NEEDED TO BE PUT INTO THE RECORD.
WHEN WE GET TO THE SECOND DAY. SHE SAYS I'VE BEEN LOOKING AT THESE CASES OVERNIGHT. NOW I THINK I NEED THIS ON THE RECORD. THEN SHE SAID I AM GOING TO HAVE TO EITHER HAVE THE MEMO PUT ON THE RECORD OR I WILL CALL THE MITIGATION SPECIALIST AS THE COURT WITNESS AND ASK HER THESE QUESTIONS MYSELF.
THIS WHOLE PROCEDURE WHICH MR SEXTON WAS VOCIFEROUSLY OBJECTING TO.
>> Justice Charles Canady: LET ME ASK YOU IF COUNSEL REQUESTED THAT THAT GO IN THE RECORD AND PUT ON WHATEVER PROPER FROM THE MITIGATION EXPERT HAD DEFENSE COUNCIL SUGGESTED THAT AND THE COURT GRANTED IT WOULD NOT BE A PROBLEM.
>> Karen M. Kinney,Appellant: YES BECAUSE THE DEFENDANT IS THE PERSON THAT WOULD ALMOST BE TAKEN TO THE McCOY V. LOUISIANA SITUATION WHERE THE COURT MADE CLEAR THAT THIS IS THE DEFENDANT'S RIGHT TO CONTROL WHAT IS PRESENTED IN HIS CASE. HE HAS THE AUTONOMY, EVEN WHEN HE IS REPRESENTED BY COUNSEL. IT WOULD BE A DIFFERENT CLAIM WOULD BE MAYBE A CLAIM OF THE ATTORNEY VIOLATING THE DEFENDANT'S RIGHTS IN THAT RESPECT.
>> Chief Justice Carlos Muniz: DOESN'T OUR CASE LAW. SEND MIXED SIGNALS TO TRIAL

JUDGES ON THAT ISSUE . IT SEEMS LIKE WE SAY THAT THEN WE SEEM THERE SEEMS LIKE THIS NEBULOUS OBLIGATION ON THE COURT TO AVAIL ITSELF OF WHATEVER IT CAN GET ITS HANDS ON IN TERMS OF MITIGATION EFFECTOR THAT IMPRINTS I DON'T KNOW WE HAVE SET A BRIGHT LINE . THE DEFENDANT IS 100% IN CONTROL AND IT WOULD BE EVER FOR THE COURT TO ACTUALLY GO BEYOND THAT, DELETE, REQUIRE PRESENTENCE REPORT TO BE PREPARED REGARDLESS OF WHETHER THE DEFENDANT ONCE IT . WITH THIS BE THE CASE FOR US TO MAKE SORT OF BRIGHT LINE RULE, IT'S 100% UP TO DEFENDANT AND THERE IS NOTHING BEYOND THAT. THAT THE COURT NEEDS TO WORRY ABOUT. IN FACT, IT WOULD BE EVER TO GO BEYOND THAT?

>> Karen M. Kinney,Appellant: I READ THIS COURT'S CASES AS BEING VERY CLEAR . I DON'T THINK IT'S A NEBULOUS SITUATION. BECAUSE I READ THESE COURT CASES AS THIS IS THE DEFENDANT'S RIGHT. THE DEFENDANT HAS THE AUTONOMY WHERE THE JUDGE WENT OFF. I THINK SOME OF THE CASES HAVE SOME LANGUAGE IN IT WHICH ARE THE MOHAMMED CASES WHERE YOU HAVE SOMEBODY THAT IS UNREPRESENTED WHO DOES NOT WANT TO HAVE A MITIGATION HEARING IT ALL AND SAYS ABSOLUTELY NOTHING. I DON'T WANT TO PRESENT ANYTHING.

AND A LOT OF TIMES THEY DON'T WANT AN ATTORNEY WHICH IS NOT THE CASE HERE.

MR SEXTON WANTED AN ATTORNEY.

HE JUST WANTED TO CONTROL THE MITIGATION. I THINK IT IS VERY CLEAR FROM THIS COURT CASES THE BOYD CASE . HE HAD THAT RIGHT.

THE CONFUSION WAS JUST MISREADING THE BELL CASE, THE JUDGE CITES A STATEMENT IN THE BELL CASE THAT IS TALKING ABOUT THE MOHAMMED SITUATION. WHERE THE COURT CAN APPOINT INDEPENDENT COUNSEL.

THAT IS NOT THE CASE WHEN THE DEFENDANT IS EXERCISING HIS AUTONOMY TO CHOOSE SOME MITIGATION WHICH HERE MR SEXTON WAS EXERCISING HIS AUTONOMY TO PUT STRATEGICALLY PUT ON POSITIVE MITIGATION TO HUMANIZE HIMSELF.

HE WAS TRYING NOT TO PUT ON WHAT HAPPENED AT THE FIRST TRIAL WHICH DID NOT END WELL FOR HIM.

THE JUDGE JUST COMPLETELY MISSED OR MISREAD THE COURT CASES WHICH I THINK VERY CLEAR.

I THINK MR SEXTON KNEW HIS RIGHTS UNDER THAT HE WAS CITING McCOY. HE WAS CITING, BOYD TO THE COURT. AND HE WAS SAYING, I WILL FIRE MY LAWYERS IF THEY ARE GOING TO BE DOING THAT.

IT WAS THE JUDGE WHO THOUGHT THAT SHE HAD TO DO THAT IN ORDER TO PROTECT THE CASE. THE DEATH SENTENCE FROM A REVIEW ON POSTCONVICTION.

>> Chief Justice Carlos Muniz: YOU CAN WRAP UP THEN YOU CAN HAVE TWO MINUTES FOR REBUTTAL.

>> Karen M. Kinney,Appellant: I JUST THINK THERE WERE ERRORS. IF YOU LOOK AT THE THIRD ISSUE THAT ENDED UP WITH A SENTENCING ORDER THAT ACTUALLY IS PRETTY MUCH ON THE MITIGATION EXACTLY WORD FOR WORD.

WHAT THE FIRST ORDER WAS IN 2013.
THIS COURT SHOULD REVERSE THIS FOR A NEW PENALTY.
>> Christina Z. Pacheco,Appellee: MR. CHIEF JUSTICE MAY IT PLEASE THE COURT
CHRISTINA Z. PACHECO
APPEARANCE FOR APPELLEE
TURNING TO THE ISSUE JUSTICE COURIEL THAT YOU HAD MENTIONED REGARDING THE SENTENCING ORDER IN THIS CASE I WOULD AGREE WITH THE LANGUAGE THAT THE WORDING WAS UNFORTUNATE AND IN ARTFUL . HOWEVER, GIVEN WHAT THE TRIAL COURT SAID THROUGHOUT THE PROCEEDINGS. I THINK IT IS VERY CLEAR THAT WE CAN PRESUME THAT THE TRIAL JUDGE KNEW . HER ROLE AND SHE WAS PERMITTED TO SENTENCE THE DEFENDANT TO EITHER A LIFE SENTENCE OR DEATH AND SHE WAS NOT COMPELLED BY LAW TO ENFORCE THE DEATH SENTENCE IN THIS CASE I THINK IT IS MORE OF A SEMANTICS ISSUE. SHE JUST AS WELL COULD'VE SAID THE FACTS OF THIS CASE, I'M COMPELLED BY THE FACTS OF THIS CASE,
>> Justice: WAS THAT SOMETHING THAT WAS BROUGHT TO THE COURT'S ATTENTION.
>> Christina Z. Pacheco,Appellee: NO, YOUR HONOR, IT WAS NOT.
THERE WAS NEVER ANY MOTION FILED . THERE ARE SEVERAL ISSUES RAISED THAT CHALLENGED THE SENTENCING ORDER AND IF THERE WAS NEVER ANY MOTION FILED OR OBJECTION MADE WHEN THE ORDER WAS READ ALOUD TO CHALLENGE THE WORDING IN THE WATER. THIS IS A SITUATION WHERE THE COURT COULD HAVE EASILY CORRECTED THESE ISSUES AND THE TRIAL COURT WAS NEVER PUT ON NOTICE . THE PROMISE OF THE PRESERVATION OF ERRORS THAT HE TRIAL COURT BE GIVEN AN OPPORTUNITY TO CORRECT SUCH ERRORS BEFORE WE BRING THEM TO THE APPELLATE LEVEL. I THINK THIS ERROR COULD'VE BEEN EASILY CORRECTED. THIS COURT CAN FIND THAT THE JUDGE KNEW THE LAW AND THE STATEMENT WAS JUST AN UNFORTUNATE MISWORDING OF HER OBLIGATION THIS CASE AND HER FINDINGS. HOWEVER, IF THE COURT IS NOT PERSUADING IT IS THE STATE'S POSITION THAT, CONTRARY TO WHAT A COLLEAGUE MS KINNEY HAS REQUESTED A RESENTENCING PROCEEDING WOULD NOT BE REQUIRED. ALL THE WOULD BE REQUIRED IS A REMAND FOR SIMPLE REENTRY OF THE ORDER . THERE IS NO REASON FOR AN ENTIRELY NEW RESENTENCING PROCEEDING ISSUE REGARDING THE MITIGATION SPECIALIST I WOULD LIKE TO KIND OF ELABORATE ON WHAT MY COLLEAGUE HAD DESCRIBED IN TERMS OF THE SENTENCING MEMO AND HOW THE JUDGES RULING EVOLVED.
THE JUDGE DID NOT COME ABOUT HAVING THE MITIGATION SPECIALIST IS TO FIGHT IN A ROUNDABOUT WAY. AS MY COLLEAGUE HAS HAD, SHE ACTUALLY DID THAT BECAUSE DEFENSE COUNCIL PUT ON THE RECORD, THERE ARE TWO SENTENCING HEARINGS. I BELIEVE THERE JANUARY 9, 2023 AND JANUARY 10 AND IF YOU CAN SEE KIND OF HOW THE ARGUMENT EVOLVES AND HELP THE JUDGE CHANGED HER RULING AT THE BEGINNING OF THAT JANUARY 10 DATE BECAUSE AT THE END OF THE JANUARY 9 HEARING, DEFENSE COUNSELS BOTH COUNSELS PUT ON THE RECORD THAT THEY WERE OBJECTING TO THE MOHAMMED LINE OF CASES. THE CASES WERE UNCLEAR IN A SITUATION LIKE THIS WHERE THE DEFENDANT WAIVES A MAJORITY OF

HIS MITIGATION DEFENSE COUNCIL FELT THAT THE CASE LAW WAS UNCLEAR THAT THE ABA STANDARDS REQUIRED MORE AND THAT THEY SHOULD BE ABLE TO PRESENT ADDITIONAL MITIGATION . NOW AS THIS COURT HAS SAID IN THE FEDERAL FIRST SANDBAR BRICK IS WHEN A DEFENDANT WAIVES MITIGATION COUNSEL CAN THEN HAS TO UNEARTH THAT AND CANNOT PRESENT MITIGATION IN THIS CASE, THE JUDGE WAS IN A VERY SENSITIVE POSITION BECAUSE WE HAVE DEFENSE COUNSEL SAYING WE THINK THAT WE WANT TO PUT THIS MITIGATION ON THE RECORD . SEXTON IS SAYING, BUT I KNOW MY RIGHT AND IF YOU DO THAT, THEN I'M JUST GOING TO DISCHARGE COUNCIL AND PROCEED WITHOUT THEM.

THE JUDGE WAS DOING WHAT SHE FELT WAS BEST IN THIS SITUATION, WHICH WAS TO ALLOW SEXTON TO CLOSE HIS CASE . HE PRESENTED THE ONLY MITIGATION THAT HE WANTED TO, WHICH WAS EXTREMELY MINIMAL.

AND THE TRIAL JUDGE CALLED THE MITIGATION SPECIALIST AS A COURT WITNESS. NOW SHE TOLD THE PARTY I COULD DO THIS, ONE OF TWO WAYS. I CAN ORDER A PSI THEN WOULD YOU GET ALL THE INFORMATION THAT I'M REQUIRED TO LOOK AT. SHE FELT THAT THE CASE LAW REQUIRED HER TO LOOK AT ALL OF THE MITIGATION THAT IS OUT THERE. SHE SAID I CAN ORDER A PSI OR YOU HAVE YOUR MITIGATION SPECIALIST HERE. I CAN JUST HAVE THE MITIGATION SPECIALIST. TELL ME WHAT ADDITIONAL MITIGATION. THERE WAS THAT WAS NOT PRESENTED SO THAT WAY I . I CAN CONSIDER ALL OF THE MITIGATION IN MY SENTENCE. DEFENSE COUNCIL NEVER OBJECTED TO THAT.

THEY SAID THEY WERE OKAY WITH THEIR MITIGATION SPECIALIST READING THE MITIGATION THAT THEY HAD BECAUSE THE LIST HAD ALREADY BEEN FORMED. I WILL GIVE MS KINNEY THE BENEFIT THAT INITIALLY THE JUDGE DID RAISE THIS AS A POSTCONVICTION ISSUE . LET'S PUT A MEMO IN THE RECORD SAYING WHAT ALL THE MITIGATION WAS. I WON'T EVEN LOOK AT IT I WILL SEAL IT THEN IT WILL BE IN THE RECORD. HOWEVER, THAT EVOLVED, GIVEN WHAT TRANSPIRED. WHAT DEFENSE COUNCIL SAID REGARDING THEIR CONCERNS ABOUT NOT PRESENTING THE MITIGATION AND WAS ULTIMATELY THE JUDGE DID WAS TO PROTECT SEXTON'S RIGHTS AND TO CONSIDER ALL OF THE MITIGATION THAT WAS IN THE RECORD.

IF WE LOOK AT REALLY SETTING ASIDE, I'M NOT WAIVING I THINK I MADE MANY PROCEDURAL ARGUMENTS REGARDING THESE CLAIMS . IF WE SET THOSE ASIDE, LOOK AT WHAT MS KINNEY IS ESSENTIALLY ASKING FOR THE JUDGE . THIS WAS SUCH A HEAVILY HEAVILY AGGRAVATED CASE, WE HAVE THE VULNERABLE VICTIM AGGRAVATE HER. THE VICTIM WAS 94 YEARS OLD. SHE LIVED A LOAN . SHE TRUSTED THE DEFENDANT. HE WAS HER LAWN MAINTENANCE PROVIDER. SHE LET HIM INTO THE HOUSE. THERE WAS NO STRUGGLE.

AND WE HAVE THE VULNERABLE VICTIM AGGRAVATE OR WE HAVE HAC THE DEFENDANT TOOK HER OVER, STRUCK HER AT THE DOOR ONCE SHE LET HIM IN A STRUGGLE ENSUED.

HE BROKE SO MANY BONES IN HER FACE REPEATEDLY STRIKING HER FACE IN SUCH A FORCEFUL MANNER. IT WAS SUCH A GRUESOME DEATH THAT RISE WERE DISPLACED SO MANY BROKEN BONES. THEN ON TOP OF THAT THERE WOULD BE

CONVENTIONAL TEARS THAT SUPPORT THE DURING THE COURSE OF HIS SEXUAL OTTERY AGGRAVATE HER. WHEN THIS VERY, VERY HEAVILY AGGRAVATED CASE, THEN THE MITIGATION THAT SEXTON WAIVED THE JUDGE, HOWEVER, FOUND ADDITIONAL MITIGATION THAT HE WAS NOT ASKING FOR . AND FOUND EVEN WITH THAT, THAT THE MITIGATION PALES IN COMPARISON TO THE HEGER HEAVY AGGRAVATION, WE TAKE AWAY THE ADDITIONAL MITIGATION THAT SHE FOUND THAT SHE WAS NOT ASKING FOR WAS THE THREE STATUTORY MITIGATE HER'S . THE NO SIGNIFICANT CRIMINAL HISTORY WHICH SHE GAVE MODERATE WEIGHT. TWO. I BELIEVE IT WAS EXTREME MENTAL AND EMOTIONAL DISTURBANCE AND SUBSTANTIAL IMPAIRMENT. IF WE TAKE THOSE AWAY THEN WE ARE ONLY LEFT WITH ONE LITIGATOR . THEN HE ASKED FOR ADDITIONAL MITIGATION REGARDING HIS FAMILY INVOLVEMENT THAT WAS PRETTY MINIMAL. I THINK THIS COURT CAN BE CONFIDENT IN FINDING THAT ANY ERROR NOTWITHSTANDING OUR PROCEDURAL ARGUMENTS, BUT ANY ERROR HERE, THERE IS NO REASONABLE POSSIBILITY THAT THE ERROR WOULD HAVE CHANGED THE ULTIMATE OUTCOME AND THE JUDGE IMPOSING DEATH. IN THIS CASE.

WITH REGARD WITH THE FIRST ISSUE, THE FUNDING, I DO WANT TO POINT OUT THAT AGAIN BECAUSE SEXTON WAIVED MOST OF HIS MITIGATION. HE MADE IT VERY CLEAR HE WOULD NOT HAVE WOULD NOT HAVE ALLOWED HIS COUNSEL TO PUT ON THE MITIGATION REGARDING THE PET SCANS AND ANY ADDITIONAL ADDITION THAT HIS FAMILY WOULD HAVE TESTIFIED TO REGARDING WHAT HE PERCEIVED AS NEGATIVE, WHICH WOULD BE LIKE ABUSE FROM HIS FAMILY SEXUAL ABUSE. HE DID NOT WANT THAT PRESENTED.

I WILL ALSO POINT OUT JUSTICE COURIEL. I DO WANT TO JUST CORRECT THE RECORD AND THAT HIS SISTER DID NOT CONCEDE I DON'T BELIEVE SHE CONCEDED DURING THE RESENTENCING PHASE ABOUT THE ABUSE. SHE HAD ACTUALLY TESTIFIED SHE DID NOT TESTIFY. SHE WROTE HER LETTER . DURING THE ORIGINAL SENTENCING PHASE AND SHE EXPLAINED THE ABUSE THAT SEXTON SUFFERED. HE WAS NOT IN THE RECORD FOR THE RESENTENCING. BUT, COUNSEL KNEW ABOUT THIS WITNESS. IT WAS SEXTON'S SISTER. THEY KNEW THAT HE HAD THIS HISTORY OF ABUSE.

TRAVELING TO GO TALK TO HER WOULD HAVE NOT . IT WOULD NOT CHANGE THE OUTCOME, ESPECIALLY GIVEN THAT SEXTON'S COUNSEL TOLD THE JUDGE JUDGE IS NOT THE JUDGE HANDLING THE FUNDING ISSUES THAT THE MITIGATION SPECIALIST ALREADY. WE STOPPED IN THESE FAMILY MEMBERS AND HAD SPOKEN TO THEM. THERE WAS NO NEED FOR ADDITIONAL FUNDING TO BE GRANTED FOR TRAVEL. I'M NOT SURE I FULLY UNDERSTAND MY COLLEAGUES ARGUMENT REGARDING SWITCHING THE STANDARD REGARDING THE ABA GUIDELINES . HOWEVER, I THINK THIS COURT HAS LONG HELD THAT THE DEFENDANT MUST SHOW A PARTICULARIZED NEED WHEN MAKING SUCH REQUEST, AND IN THIS CASE, IT JUST WASN'T THERE. I WILL POINT OUT THAT THE JUDGE DID GRANT TRAVELED TO TEXAS FOR SEXTON'S OTHER SISTER.

THE ATTORNEY DEFENSE ATTORNEY SAID THAT WHILE THE MITIGATION SPECIALIST

WAS ABLE TO SPEAK TO THE SISTER IN ARKANSAS . SHE WASN'T ABLE TO MAKE CONTACT WITH THIS OTHER SISTER.
JUDGE.
[LISTING NAMES] AUTHORIZED THAT TROUBLE REQUESTING GRANTED HER THE FUNDS TO TRAVEL TO TEXAS.
TO SPEAK TO THAT SISTER.
THERE WAS NO SHOWING OF NEED. THE REQUEST WAS JUST VERY BARE-BONES IN TERMS OF THE TRAVEL AND THE BRAIN SCANS JUST THAT THIS IS SOMETHING THAT IS ALWAYS DONE.
THAT IS JUST NOT ENOUGH.
ON TOP OF THAT, I THINK WE CAN CLEARLY SEE THAT THERE IS NO PREJUDICE.
GIVEN THAT THIS LINE OF MITIGATION WAS ULTIMATELY WAIVED.
IF THERE ARE NO FURTHER QUESTIONS, I WOULD RESPECTFULLY REQUEST THIS HONORABLE COURT AFFIRMS SEXTON'S DEATH SENTENCE IN THIS CASE.
>> Chief Justice Carlos Muniz: .THANK YOU.
>> Karen M. Kinney,Appellant: I WOULD JUST SAY THAT THE FUNDING MOTIONS AND THE HEARINGS WERE HELD IN EARLY 2019.
THE CASE WENT TO TRIAL IN JANUARY 2023.
MR SEXTON INFORMED THE COURT IN DECEMBER 2022 THAT HE WAS GOING TO USE SELECTIVE MITIGATION. HE NEVER WAIVED HIS RIGHT TO HAVE HIS COUNSEL FULLY INVESTIGATE THE MITIGATION. IN FACT, HE SAID HE WANTED THE ATTORNEYS TO DO THAT. IT IS IMPOSSIBLE TO SAY NOW WHAT WOULD HAVE TURNED UP . IF IN THOSE THREE YEARS. IF THEY HAD THE FUNDING TO ACTUALLY DO THE TRAVEL AND GO AND TALK TO WITNESSES.
I THINK THAT THE CHARACTERIZATION OF THE MITIGATION THAT WAS ACTUALLY PUT ON AS VERY MINIMAL IS INCORRECT. THERE WAS TESTIMONY FROM HIS DAUGHTER THAT WAS VERY MOVING TESTIMONY ABOUT HOW HE HAD RAISED HIS CHILDREN FROM INFANCY UNTIL SHE WAS TAKEN AWAY FROM HIM WHEN SHE WAS 11. FROM A PARTNER THAT HE HAD BUILT A BUSINESS WITH FOR 10 YEARS. FROM HIS SISTER. WE WAS VERY INVOLVED WITH AND WE WAS CONSOLING THROUGH HER OWN PROBLEMS AND GRIEF OVER HER HUSBAND'S DEATH. THERE WAS EVIDENCE ABOUT HIM WORKING AS A JOURNALIST ABOUT HIM NOT HAVING ANY PROBLEM WHILE HE HAD BEEN IN PRISON. NOW HE HAD BECOME A VERY ACCOMPLISHED PAINTER AND ARTIST WHILE HE WAS IN PRISON.
SO NONE OF THIS TITLE WAS EVEN ADDRESSED BY THE TRIAL JUDGE IN THE SENTENCING ORDER. IF YOU PUT THE SENTENCING ORDER FROM 2013 SIDE-BY-SIDE WITH THE SENTENCING ORDER FROM 2023. IT'S AN EXACT REPLICA OF WHAT THE JUDGE SAYS THE MITIGATION WAS. NONE OF THAT WAS PRESENTED. SHE JUST TOOK AND COPIED AND PASTED FROM THE 2013 ORDER.
THERE WERE A LOT OF PROCEDURAL ERRORS AND THIS CASE SHOULD BE REVERSED FOR A NEW PENALTY PHASE. THANK YOU.
>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH. WE ARE ADJOURNED.
>> Marshal: ALL RISE.