

>> THE SUPREME COURT OF FLORIDA IS NOW IN SESSION PLEASE BE SEATED.

>> THE SECOND AND FINAL CASE FOR TODAY IS JONES VERSUS STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT. ROBERT PIERCE ON BEHALF OF MR. JONES.

>> PLEASE SPEAK UP OR MOVE THE MICROPHONE.

>> ROBERT PIERCE ON BEHALF OF MICHAEL JONES WE HAVE REQUESTED FIVE MINUTES OF REBUTTAL TIME

>> I STILL CANNOT HEAR YOU I'M SORRY.

>> ROBERT PIERCE ON BEHALF OF MICHAEL JONES WE HAVE REQUESTED FIVE MINUTES OF REBUTTAL TIME.

EXCUSE ME.

GOOD MORNING THANK YOU FOR THE OPPORTUNITY TO DISCUSS THIS CASE. THE CASE STEMS FROM MR. JONES' PLEA AND CONVICTION FOR KILLINGS DURING THE MARION COURT IN 2019.

>> I'M STILL STRUGGLING TO HEAR YOU I'M SO SORRY.

I DON'T KNOW IF IT'S THE MICROPHONE.

>> WOODY, CAN YOU TURN IT UP?

>> I CAN USE MY AUDITORIUM VOICE.

>> USE YOUR BOOMING VOICE. AND YOU HAVE ANY EMPTY COURTROOM BEHIND YOU SO SPEAK UP.

>> THIS CAPITAL CASE STEMS FROM THE KILLINGS - FOUR KILLINGS IN JULY AND AUGUST OF 2019 MARION COUNTY FLORIDA AND FROM THE ULTIMATE RECOMMENDATION OF DEATH PENALTY PHASE IN 2022. FOR THE PURPOSES OF OUR DISCUSSION TODAY.

>> IT ACTUALLY STEMS FROM FIVE KILLINGS BECAUSE WHAT GOT HER OFF AS ONE KILLING FOR WHICH THERE IS NO DEATH SENTENCE >> CORRECT YOUR HONOR. >> IT IS NOT REALLY BEFORE US BUT THAT'S WHAT STARTED IT ALL OFF.

ISN'T THAT CORRECT?

>> I AGREE YES AND I DID NOT NEED TO REPRESENT OTHERWISE BUT BEFORE DEATH COUNTS BEFORE THE COURT BEFORE THINGS WE ARE SEEKING A REMEDY FOR ARE THOSE FOR FIRST DEGREE MURDER CHARGES FOR WHICH HE WAS ULTIMATELY SENTENCED TO DEATH IN 2022.

FOR THE PURPOSES OF OUR DISCUSSION TODAY WE WILL FOCUS ON .1 WHICH DEALS WITH THE DENIAL OF THE SPECIAL CHARITY INSTRUCTION INCLUDING THE AVOID ARREST AGGRAVATOR WITH A SIGNIFICANT REMEDY OF A NEW PENALTY PHASE.

THE AVOID ARREST AGGRAVATOR ORIGINALLY APPLIED TO LAW ENFORCEMENT OFFICERS BUT WAS EXPANDED TO COVER OTHER INDIVIDUALS BY THIS COURT'S DECISION IN RILEY 1978 AND 50 YEARS WE HAD ESSENTIALLY AN

ADDITIONAL ELEMENT WHERE THE VICTIM IS NOT A REQUIRES THE STATE TO PROVE WITHOUT A REASONABLE DOUBT THAT THE SOLE OR DOMINANT MOTIVE FOR THE KILLING WAS THE ELIMINATION OF WITNESS TO AVOID ARREST.

>> IS IT YOUR ARGUMENT THAT YOU PROPOSED DURING THIS ALTERNATIVE THEORY THAT HE HAD A PSYCHOTIC BREAK AND IF THE JURY BASED ON THE INSTRUCTION AS IT GIVEN IF THE JURY HAD NOT FOUND THAT HE WAS AVOIDING ARREST BEYOND A REASONABLE DOUBT MEANING THEY WOULD HAVE DECIDED IT WAS A PSYCHOTIC BREAK IF THEY HAD BELIEVED YOUR THEORY OF DEFENSE THAT THE STANDARD INSTRUCTION WOULD HAVE COVERED THAT?

>> RESPECTFULLY I DO DISAGREE AND I THINK THE PROBLEM WITH THE INSTRUCTION IS BECAUSE THE STATE HAS MADE THIS ARGUMENT IN THEIR ANSWER BRIEF WITH THE LANGUAGE AND TEXT OF AGGRAVATE WHICH IS ALL THE JURY WAS GIVEN WAS ESSENTIALLY THE SAME AS THIS ADDITIONAL ELEMENT OF SOUL OR DOMINANT MOTIVE AND I WOULD DISAGREE I THINK REQUIRING THE STATE TO PROVE BEYOND REASONABLE DOUBT THAT THE SOUL OR DOMINANT MOTIVE WAS TO AVOID ARREST TO OF THE ELIMINATION OF A WITNESS IS A HIGHER STANDARD THAN IS IMPLIED BY JUST THE PLAIN LANGUAGE OF FOR THE PURPOSE OF A PLANE ARREST.

>> BUT WHY IS THAT?

I UNDERSTAND THAT IT MAKES THE POINT MORE ENFORCEABLE AND I DO NOT QUESTION THAT BUT THE STANDARD INSTRUCTION SAYS THAT THE FIRST DEGREE MURDER WAS COMMITTED IT FOR THE PURPOSE OF AVOIDING ARREST. I DON'T SEE HOW THAT IS MATERIALLY DIFFERENT THAN WHAT YOU ARE ASKING FOR.

I UNDERSTAND WHAT YOU ARE ASKING FOR IS MORE EMPHATIC BUT IF YOU LOOK AT IT WHAT IT SAYS IS THE PURPOSE, IT IS NOT A PURPOSE, IT'S NOT ONE OF MANY PURPOSES, IT IS THE PURPOSE, THAT IS WHAT THE STANDARD JURY INSTRUCTION SAYS AND IT FOLLOWS THE STATUTE.

I STRUGGLE WITH WHY THIS IS MATERIAL

>> IT'S FORMED BY THE 50 YEAR PRECEDENT FROM THIS COURT REQUIREMENT IT IS RELEVANT TO PROVE

WITHOUT A REASONABLE DOUBT AND USING THAT LANGUAGE WHICH IS ALL ABOUT MOTIVE AND IT WASN'T A BIG DEAL I DON'T THINK WE WOULD HAVE THE REASONS WE HAVE TO REQUIRE THIS PROVED TO BE MADE.

I WANT TO POINT OUT ONE ERROR.

THIS POINT WAS MADE IN THE BRIEF BRIEFLY I ADDRESSED IT AS A STATE CONTESTING POINT OR THE SECOND STEPHENS FACTOR IT WAS IN FACT THE THIRD AND I APOLOGIZE FOR THAT ERROR BUT ASSUMING FOR THE SAKE OF ARGUMENT THAT IT WAS AN ERROR THE QUESTION BECOMES WHETHER OR NOT THE ERROR WAS HARMLESS AND I THINK THERE ARE TWO PATHS TO GET THERE.

THERE ARE TWO ARGUMENTS TO MAKE THAT THE ERROR CANNOT BE DEEMED HARMLESS BEYOND A REASONABLE DOUBT.

THE FIRST IS RELYING ON THE SUPREME COURT'S DECISION IN ESPINOZA AMONG OTHERS WHICH HELD THAT IN ORDER THE SENTENCING AGGRAVATOR BEING INVALID LEAVES IT WITHOUT SUFFICIENT GUIDANCE TO DETERMINE THE PRESENCE JUST AS YOU IMAGINE IF YOU WERE TO AGREE THAT THE SOLAR DOMINANT MOTIVE IS THE ADDITIONAL ELEMENT THAT IS MATERIAL TO THE JURY'S DETERMINATION OF THE FACTOR IT IS A DEFENSE'S POSITION THAT THAT WOULD MEAN THAT THE FACTOR IS INVALID.

IN OTHER WORDS THE ABSENCE OF THE ELEMENT BEFORE THE JURY TO DETERMINE THE PRESENCE OF THIS AGGRAVATE RENDERS IT INVALID AND BECAUSE OF THAT WE THEN GO TO BROWN VERSUS SANDERS WERE JUST GLIA JUST EXPLAINED WHERE THE JURY OR SENTENCE OR HEAR THE JURY IS PRESENTED WITH THIS THE QUESTION IS THEN A PRETTY SERIOUS WHAT IT IS SIMPLY WHETHER THE SENSOR COULD HAVE CONSIDERED THE FACTS AND CIRCUMSTANCES UNDERLYING THE AGGRAVATING FACTOR, THE INVALID AGGRAVATING FACTOR.

>> BROWN WAS ABOUT THE JUST AGGRAVATORS IT WAS NOT A HARMLESS ERROR STANDARD CASE CORRECT?

>> THE ULTIMATE QUESTION BROWN WAS WHETHER OR NOT THE SENSOR'S CONSIDERATION OF AN INVALID AND AGGRAVATING FACTOR RENDERED THE SENTENCE ON REQUIRING, WHILE IT HELD IN THAT CASE THAT IT DID NOT THE RATIONALE AS THE JUSTICE EXPLAINED WAS JUST LOOKING AT WHETHER OR NOT THE JURY OR SENTENCE OR COULD HAVE GIVEN AGGRAVATING WAY TO THE SAME FACTS AND CIRCUMSTANCES UNDER ANY OF THE REMAINING VALID AGGRAVATING FACTORS.

>> YES BUT THAT IS NOT WHAT WE LOOK AT.

THE HARMLESS ERROR STANDARD LET'S SAY WE AGREED WITH YOU AND HE SAID IT WAS AN ABUSE OF DISCRETION FOR THE JUDGE NOT TO HAVE GIVEN THE JURY INSTRUCTION AND LET'S SAY WE FIND IT WAS AN ERROR NOW WE LOOK AND SEE WITH THE JURY WOULD THEY STILL HAVE BEEN ABLE TO REACH THE SAME DECISION CORRECT?

DOES THAT EVER CONTRIBUTE AT SUCH A POINT THAT WE ARE CONCERNED ABOUT THE VALIDITY OF THE PENALTY PHASE CORRECT?

>> I WOULD HAVE TO DISAGREE.

THE TEST FOR HARMLESS ERROR IS NOT WHETHER THE JURY COULD HAVE REACHED THE SAME RESULT THE TEST IS WHETHER THERE WAS A REASONABLE POSSIBILITY THE ERROR COULD YOU REDO THE OUTCOME.

HERE I THINK , AGAIN I HAVE A SEPARATE ARGUMENT FOR THE MORE TRADITIONAL HARMLESS ERROR ANALYSIS BUT I THINK FOR THE PURPOSES

OF THIS WHAT WE LEARN FROM BROWN IS THAT WE.

WE DON'T NEED TO GET INTO THE WEEDS OF WHETHER THIS AFFECTED THE OUTCOME.

IT IS PER SE UNCONSTITUTIONAL AS THE CENSUS REACHED THEIR DECISION BY CONSIDERING AN INVALID FACTOR WHICH OTHERWISE COULD NOT HAVE GIVEN AGGRAVATING WEIGHT TO THE FACTS AND SERVICES.

>> HAVE WE EVER APPLIED THAT THIS WAY?

>> NO YOUR HONOR, BROWN HAS NOT BEEN CITED BY THIS COURT BUT WE HAVE NOT DECIDED IF IT IS APPLICABLE AND SECOND, ONE MORE POINT BEFORE MOVING ON.

THERE IS A SECOND REASON WHY THE AGGRAVATE IS APPLIED IN THIS CASE SHOULD BE CONSIDERED INVALID AND THAT IS BECAUSE IN THE FACTORS THAT RENDER AN AGGRAVATING FACTOR INVALID OR AREN'T LIMITED TO JUST FAILING TO SUFFICIENT NARROW THE SENSORS GUIDANCE BUT ALSO INCLUDE CIRCUMSTANCES WHERE THE CONDUCT UNDERLYING THE AGGRAVATE OR MAY ACTUALLY OUGHT TO ACTUALLY MILITATE AGAINST THE DEATH PENALTY AND HERE BECAUSE IT IS SO UNREASONABLE TO CONCLUDE THAT AS THE STATE IS SUGGESTING THE DEFENDANT DID THAT THESE ACTIONS WOULD HAVE IN ANY WAY PREVENTED HIS ARREST.

THERE WERE NO WITNESSES AND NO CONNECTION FOR THESE INDIVIDUALS.

>> BECAUSE YOUR CLIENT SOUGHT TO THAT.

>> BECAUSE YOUR CLIENT SAW TO IT THERE WERE NO WITNESSES.

I GUESS THAT IS THE POINT.

AS I SEE THE RECORD THERE IS A SEQUENTIAL PATTERN TO THE KILLINGS. IT HAS TO DO WITH RAISING A QUESTION ABOUT PRIOR KILLINGS AND THE NOTED ABSENCE FIRST OF KASEY AND THEN OF THE OTHERS AND IT SEEMS TO ME THAT IT IS VERY DIFFICULT TO CONCLUDE THAT THERE ISN'T A DRIVING MOTIVE HERE INCLUDING THE DESTRUCTION OF ANY POTENTIAL WITNESS TESTIMONY.

>> WELL, FIRST, I DON'T BELIEVE, AND I'M FAIRLY CERTAIN THE RECORD BACKS ME UP HERE.

NONE OF THE INDIVIDUALS INVOLVED IN THIS WITNESS , NOT ONLY DID THEY NOT WITNESS ANY OTHER MURDER BUT NO OTHER CRIMINAL ACT BY THE DEFENDANT AT ALL SO WE DON'T HAVE A SITUATION HERE WHERE WE ARE DEALING WITH THE ELIMINATION OF ANY WITNESS AND AS THIS COURT HELD IN THE 90s

>> I FEEL LIKE THAT IS A NARROW VIEW OF WITNESS PARTICULARLY WHEN HE'S LYING ABOUT WHERE HE IS AND THAT SORT OF THING AND THEN YOU HAVE KIDS THAT COULD COOPERATE THE INFORMATION THEY ARE SAYING IS WRONG.

I GUESS YOUR VIEW OF WITNESS IS SOMEONE WHO ACTUALLY SAW THE

MURDER COMMITTED VERSUS A WITNESS THAT COULD LEAD TO HIS ARREST.
>> YES YOUR HONOR IT'S NOT JUST ME SAYING IT BUT IT'S ALL SO THE COURT SAYING THAT THE MERE FACT THAT THE VICTIM NEW AND COULD IDENTIFY THE DEFENDANT WITHOUT MORE IS INSUFFICIENT TO PROVE THE AGGRAVATOR.

>> THEY COULD DO MORE THAN KNOW AND IDENTIFY THE DEFENDANT IN THIS CASE.

WHEN WAS THE LAST TIME YOU SAW YOUR MOTHER?

WHEN WAS THE LAST TIME DID YOU HEAR THEM FIGHTING?

>> THE DISTINCTION IS SIMPLY BETWEEN FACTS THAT COULD GIVE RISE TO SUSPICION THAT WOULD LEAVE LAW ENFORCEMENT EVENTUALLY TO HIS DOORSTEP AND WHAT WE HAVE IN THE APPLICATION OF THIS AGGRAVATOR TRADITIONALLY.

I AM UNAWARE OF ANY OTHER CASE WHERE IT HAS BEEN APPLIED THAT LOOSELY TO INDIVIDUALS WHO DID NOT WITNESS THE EVENTS AT ALL.

>> BUT YOUR STEPPING BACK FROM THIS AND IT SEEMS LIKE OVERWHELMINGLY OBVIOUS HERE THAT HE DECIDED TO KILL THE CHILDREN SEQUENTIALLY IN ORDER TO AVOID HAVING HIS STORY ABOUT HIS WIFE WHO HE HAD MURDERED FALL APART.

IT WAS ALL ABOUT KEEPING THE FICTION ABOUT THE WHY WIFE WHICH WAS DESIGNED TO COVER UP HIS MURDER OF HER AND IT WAS ALL DESIGNED TO COVER IT UP.

>> I THINK THE PROBLEM WITH APPLYING THE PROBLEM IS WITH APPLYING AN AGGRAVATING WEIGHT TO THE SEQUENCE OF EVENTS THAT WE SEE HERE.

>> YOU CAN CALL IT AGGRAVATION I CAN'T IMAGINE A MORE AGGRAVATING CASE IN THIS CASE.

MURDERING FOUR INNOCENT CHILDREN.

TWO OF THEM WERE HIS OWN FLESH AND BLOOD AND THE OTHERS WERE HIS STEPCHILDREN AND OF AGGRAVATION JUST CRIES OUT.

>> AND I WANT TO BE PERFECTLY CLEAR.

THERE IS NO DOUBT THAT THE AGGRAVATION IN THIS CASE IS SIGNIFICANT AND SEVERE AND WEIGHTY.

I CANNOT IMAGINE A REASONABLE PERSON ARGUING OTHERWISE AND THAT'S NOT MY POSITION HERE TODAY.

THE QUESTION EVEN UNDER A TRADITIONAL HARMLESS ERROR ANALYSIS IS SIMPLY WHETHER THERE IS A REASONABLE POSSIBILITY THAT THE ERROR CONTRIBUTED TO THE OUTCOME AND THE REASON WHY I BELIEVE THIS ISSUE EXISTS IS NOT BECAUSE I THINK THE AGGREGATOR ARE NOT WEIGHTY THEY CERTAINLY ARE.

THERE IS NO QUESTION.

BUT THE REASON WHY IS THE MITIGATION IS SIGNIFICANT AS WELL THE SENSELESS ACTS CANNOT-

>> I AM STRUGGLING HOW TO SEE THAT IF THE STANDARD JURY INSTRUCTION IS LESS FAVORABLE TO YOU THAN THE INSTRUCTION THAT YOU REQUESTED.

IF THEY BUY WHAT YOU ARE SELLING ABOUT THIS AGGRAVATOR AND INSTRUCTION THEY WILL FIND IT IS NOT THERE.

IT SEEMS TO ME, IT SEEMS YOUR THEORY OF WHY AGGREGATOR SHOULD NOT BE FOUND WORKS UNDER EITHER INSTRUCTION.

>> RESPECTFULLY I DISAGREE YOUR HONOR.

I DON'T BELIEVE THE STATE CASE IS SUFFICIENT TO IMPROVE IMPROVE THIS AGGREGATOR AND IT SHOULD NOT HAVE GONE TO THE JURY AT ALL AND IF IT WAS GOOD TO GO TO THE JURY I THINK THAT IT SHOULD PROVE WITHOUT A REASONABLE DOUBT FOR HALF A CENTURY AND AGAIN I WANT TO MAKE THIS POINT BECAUSE I THINK IT IS IMPORTANT AGAIN YES THESE AGGRAVATING FACTORS ARE SIGNIFICANT THERE IS NO DOUBT ABOUT IT. BUT THE ACTS CAN ONLY BE UNDERSTOOD OR MAKE SENSE IN THE CONTEXT OF THE SIGNIFICANT IT TO A SIGNIFICANT MITIGATION PRESENTED IN THIS CASE THAT HE WAS VULNERABLE TO PSYCHOSIS AND HE SUFFERED THE PSYCHOTIC BREAK AND THAT WAS THE CAUSE OF ALL OF THIS AND THE CONTINUED DETERIORATION OF HIS MENTAL CONDITION ONCE HE WAS IN CUSTODY.

IT IS ONLY THING THAT HAS MADE IT MAKE SENSE FOR ME AND IT'S WHY I'M STANDING HERE RIGHT NOW.

>> COUNCIL, IS THAT WHAT REALLY HAVE TO FIND INSIGNIFICANT MITIGATION.

WE SEE A LOT OF THESE CASES.

AND IT'S A VERY SIGNIFICANT MITIGATION.

WOULD YOU SAY THAT THIS COURT HAS DEFINED A PSYCHOTIC BREAK AS SIGNIFICANT MITIGATION?

BECAUSE THAT'S REALLY YOUR ONLY SIGNIFICANT MITIGATION BACK.

>> MY POINT MENTIONING THIS IS NOT TO SAY OF COURSE IN REVERSAL IS REQUIRED BECAUSE OF THIS DEFENSE MITIGATION.

>> I'M GOING TO THE REASONABLE POSSIBILITY THAT IS CONTRIBUTED. THERE WERE FIVE OTHER AGGRAVATORS FOUND BY THE JURY AND THE TRIAL COURT WHICH COMPRISED MUCH WEIGHTIER ISSUES THEN THE AVOID ARREST AGGREGATOR CORRECT?

HE CORRECT.

>> SO IT'S DIFFICULT FOR YOU I THINK EVEN IF YOU CAN CONVINCED THE JUSTICE ON THE JURY INSTRUCTION TO GET PAST THE HARMLESS ERROR STANDARD.

>> I DO UNDERSTAND AND JUST TO BE CLEAR THE REASON I MENTION THE MITIGATION IS NOT TO SAY OR CONVINCE ANY OF YOU THAT YOU WOULD HAVE VOTED FOR LIFE IN THIS CASE BUT MY POINT IS ONLY THAT THE MITIGATION WAS SIGNIFICANT ENOUGH THAT THIS WAS NOT AN AUTOMATIC DECISION FOR THE JURY.

THE JURY COULD HAVE BEEN, THIS THUMB ON THE SCALE COULD HAVE BEEN THE THING THAT AFFECTED THE OUTCOME.

COULD HAVE.

THERE IS AT LEAST A REASONABLE POSSIBILITY THAT CONTRIBUTED TO THE OUTCOME.

I UNDERSTAND THE RELUCTANCE TO A HOW WEIGHTY THE AGGRAVATORS ARE BUT ULTIMATELY WE ARE DEALING WITH EXECUTING SOMEBODY AND IN THAT VERY SERIOUS DECISION THEY FLOUT THE FILM ON THE SCALE SHOULD NOT BE TOLERATED.

>> WHERE DO YOU SEE THE SIGN BETWEEN REASONABLE PROBABILITY AND POSSIBILITY WHEN YOU TALK ABOUT THE SCALE?

>> I THINK LARGELY INFORMED BY THE LOGIC OF BROWN VERSUS SANDERS IT WOULD NOT NEED TO APPLY BUT THE FACT THAT THE JURY IS GIVING AGGRAVATING WEIGHT TO ANYTHING OUTSIDE OF THE AGGRAVATORS THAT OUGHT TO PROPERLY BE IN FRONT OF IT AND THE MOMENT IS ABLE TO GIVE AGGRAVATING WEIGHT TO SOME OTHER AGGRAVATING FACTOR BUT SHOULDN'T THAT'S WERE I BELIEVE THAT REASONABLE POSSIBILITY COMES IN AND A CASE WHERE WE HAVE YES, SIGNIFICANT AGGRAVATION BUT ALSO SIGNIFICANT MITIGATION AS WELL.

RESPECTFULLY I REQUEST THE COURT TO REMAND FOR ANY PENALTY CASE.

>> THANK YOU.

>> GOOD MORNING.

MAY IT PLEASE THE COURT I AM DORIS MEACHAM AND I AM HERE ON BEHALF OF THE STATE.

DURING OPENING ARGUMENTS DEFENSE COUNSEL MADE IT VERY CLEAR THAT THEY CONCEDED TO ALL THE OTHER AGGRAVATORS AND WERE PROVEN BY THE STATE AND THE DEFENSE'S POSITION WAS MOTIVE THE STATE WAS GOING TO ARGUE THAT THE DEFENDANT KILLED THE CHILDREN BECAUSE HE WAS TRYING TO AVOID ARREST. DEFENSE'S POSITION WAS THE MOTIVE AND REASON WAS BECAUSE OF A PSYCHOTIC BREAK.THE STANDARD JURY INSTRUCTIONS WERE SUFFICIENT ENOUGH TO DECIPHER WHAT IT MEANT.

IF YOU LOOK IN THE DICTIONARY UNDER MOTIVE IT MEANS REASON, GOAL, OBJECTIVE, PURPOSE.

REASON, GOAL, OBJECTIVE THEY MEAN THE SAME THING.

DURING MOTIONS, THE STATE ARGUED THE SAME THING.

THE LANGUAGE IN THE INSTRUCTION WAS PRETTY MUCH THE SAME THING

THAT COUNSEL ASKS FOR.

AS FOR THE REASONABLE DOUBT INSTRUCTION ADDED OR THE LANGUAGE ADDED IN THE INSTRUCTION AS THE PROSECUTION STATED IT WAS REDUNDANT.

AND I BELIEVE IT WAS MISLEADING.

TO PUT THAT REASONABLE DOUBT JUST IN THAT AGGREGATOR WHEN THE JURY WAS INSTRUCTED THAT EACH AGGREGATOR HAD TO BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT.

THERE IS NO REASON TO PUT IT SPECIFICALLY IN THAT AS ITSELF.

TO ME HIS BURDEN FROM THE PROPOSED INSTRUCTION HE WOULD HAVE HAD TO MOVE THROUGH DIFFERENT PRONGS AND BECAUSE DEFENSE ARGUES THAT IT WAS A DIRECT INSTRUCTION THAT IS NOT THE WAY IT WORKS.

THE REASON THAT THE JUDGE DID NOT GIVE THE INSTRUCTION WAS BECAUSE IT WAS LEGALLY ADEQUATE AND WHAT THEY WERE ASKING FOR WAS LEGAL THRESHOLD TO GET THE AGGREGATOR TO THE JURY AND IT WAS NOT NECESSARY TO PUT THAT LANGUAGE INTO THE JURY INSTRUCTION.

I DON'T BELIEVE IT WAS.

IF YOU WANT TO LOOK AT THE HARMLESS ERROR IN THIS CASE DEFENSE COUNSEL ARGUES THAT THEY CONSIDERED WHAT WAS USED FOR THE AVOID ARREST AGGREGATOR POSSIBLY TO COME TO THE CONCLUSION THAT THE OTHER AGGRAVATORS ARE PROVEN AS WELL.

IF YOU LOOK AT THE CLOSING ARGUMENTS AND THE TESTIMONY AND EVIDENCE EVERYTHING THAT WAS USED TO PROVE HAC AND CCP ARE THE SAME THINGS THAT WERE USED TO PROVE THE AVOID ARREST AGGREGATOR.

THERE IS NO HARM IN THIS CASE AT ALL WHETHER OR NOT THE INSTRUCTIONS WERE GIVEN THE JURY WOULD STILL HAVE UNDERSTOOD WHAT THE PROGRESS OF THE DEFENDANT'S ACTIONS WERE.

EVEN IF YOU WERE TO STRIKE THE AGGREGATOR AS THE DEFENSE COUNSEL SAID.

>> I END UP WITH THE QUESTION WHY THE STATE SOUGHT THE AGGREGATOR EVERYTHING YOU JUST SAID WHAT IS THE MIX?

>> IT TRIGGERED THE WHOLE THING.

SO INTERTWINED WITH WHAT HAPPENS IN THIS CASE AND FOR EVERYONE TO UNDERSTAND AS HE DID THE ONLY THING HE CAN UNDERSTAND IS HE HAD A PSYCHOTIC BREAK THAT'S WHAT MAKES HIM EXCEPT WHAT HAPPENS IN THIS CASE.

THAT'S NOT WHAT HAPPENED IN THIS CASE.

THAT'S WHAT MAKES IT SO TRAGIC IS THAT AFTER KILLING HIS WIFE HE STUFFED HER INTO A SUITCASE AND GOT OF THE NEXT MORNING AND RECONNECTED WITH HIS EX WIFE TO REKINDLE THE RELATIONSHIP AND CAME UP WITH THIS STORY THAT CASEY HAD LEFT HIM AND HE WANTED TO GET

BACK WITH HIS EX WIFE.
IT STARTS RIGHT THERE.
THE MOMENT HE COMES UP WITH THIS.
IT'S A FANTASY OF SHE LEFT ME AND WE WILL MOVE ON WITH A NEW LIFE
AND ONCE THAT STARTS TO FALL APART HE CANNOT KEEP UP THE RUSE.
LIKE WHEN SCHOOL STARTS WHICH IS EXACTLY WHAT THE COP ASKED.
I NEED TO KNOW WHY YOU DID THIS AND THE THING HE SAID IT WAS WELL
SCHOOL WAS STARTING.
SCHOOL WAS STARTING I HAVE TO GET RID OF THE KIDS HIS EXACT WORDS
I DECIDED TO CHUCK THEM OUT.
SO HE KILLED THE FIRST ONE THAT NIGHT AND THEN THE NEXT MORNING
HIS BROTHERS ASKING WHEN WHERE AND HE SAID I HAD TO GET RID OF
THEM LAST NIGHT.
EVERY MOVE HE MADE WHEN HE KILLED THOSE CHILDREN WAS TO AVOID
GETTING ARRESTED.
IT WAS NOT BECAUSE HE HAD A PSYCHOTIC BREAK.
IT WAS NOT BECAUSE HE WAS MET AT THE KIDS IT WAS NOT BECAUSE IT
WAS A STRUGGLE.
THE ONLY PURPOSE WAS TO MAKE SURE NO ONE FOUND OUT THAT CASEY WAS
DEAD AND ONCE THE KIDS ARE GOING TO START SCHOOL THEY WERE GOING
TO.
ASK QUESTIONS.
AND THE GIRLS ASKED THE DEFENDANT WHY DID YOU KILL THE GIRLS.
WELL, I GOT AN EVICTION NOTICE AND WHAT AM I GONNA DO NOW? I HAVE
THESE DEAD BODIES IN THE HOUSE.
SO HE KILLS THE GIRLS AND TELLS THE POLICE OFFICER I DROVE TO THE
POLICE STATION TO TURNED MYSELF IN AND I COULD NOT DO IT.
WHY?
HE DID NOT WANT TO GET CAUGHT.
SO WE HAD TO GO BACK TO THE HOUSE AND HE KILLED BOTH THE GIRLS
THAT NIGHT.
THE LAST REMAINING WITNESSES THOUGH THEY DID NOT SEE IT THEY
CERTAINLY COULD GET HIM ARRESTED.
SO THE STATE WAS WISE IN SEEKING THAT AGGREGATOR.
THAT AGGREGATOR IS OUT THE JURY WOULD STILL COME BACK WITH A DEATH
SENTENCE BUT I BELIEVE IT WAS VERY IMPORTANT FOR THE JURY TO KNOW
THE HORROR OF WHAT THE FACTS REALLY WERE.
AND I DON'T BELIEVE THAT CHANGING THE STANDARD JURY INSTRUCTION
WOULD HAVE MADE ANY DIFFERENCE.
THEY STILL WOULD'VE COME TO THE CONCLUSION THAT HE AVOIDED ARREST.
THAT IS WHY HE DID IT.

THEY DID NOT BELIEVE THE PSYCHOTIC BREAK WHICH HE NEVER MENTIONED DURING THE CONFESSION AT ALL.

IN FACT HE SAID HE HAD NOT BEEN DRINKING AND HIS HEADACHE STARTED AFTER HE WAS ARRESTED.

HE NEVER TOLD THEM THAT HE KILLED THEM BECAUSE HE WAS HEARING VOICES.

THAT CAME AFTERWARDS.

AND THE JURY DID NOT BUY IT OBVIOUSLY.

THERE WAS NO ERROR IN THIS CASE.

THE JURY LISTEN TO THE EVIDENCE AND THEY HEARD ALL THE HORROR THAT HAPPENED TO THOSE KIDS AND THEY CAME TO THE ACCURATE RESULT WHICH WAS THAT HE DESERVED THE DEATH PENALTY.

AND I RESPECTFULLY ASK YOU AFFIRMED THE LOWER COURTS DEATH SENTENCE AND CONVICTION.

>> THANK YOU.

>> I HAVE A FEW BRIEF POINTS.

YOU ASKED ABOUT ADDING THIS TO THE MIX.

AND WE HEARD FROM THE STATE THAT THE JURY NEEDED TO HEAR THE HORROR.

>> I THINK TO BE FAIR THE START OF THE ANSWER WAS IT WENT TO MOTIVE.

THE AGGREGATOR IS PART AND PARCEL OF THE STATE'S CASE IN TRYING TO MAKE SENSE OF A SENSELESS SITUATION BY EXPLAINING WHAT THE MOTIVE WAS FOR THE SEQUENTIAL ACTS SO I DON'T THINK IT IS A FAIR CHARACTERIZATION OF WHAT YOUR FRIEND WAS ARGUING.

I THINK WHAT I HEARD HER SAY WAS GOES TO MOTIVE.

>> YES YOUR HONOR, I BUT MY POINT IN MENTIONING IT IS THAT WHAT IT REALLY INTRODUCES IS THIS SCALE AND THAT'S THE REASON I RAISE THE ISSUE IN THE FIRST PLACE.

AS A LEGAL MATTER MY FRIEND ALSO MENTIONED THAT THIS COULD NOT POSSIBLY BE A HARMFUL ERROR BECAUSE THE SAME FACTS ARE USED TO PROVE BOTH CCP BUT THE PROBLEM AS THE JUSTICE POINTED OUT IN BERKELEY SANDERS IS THAT ANALYSIS IS NOT WHETHER THE JURY WAS CONSIDERING THE SAME EVIDENCE WHETHER IT WAS PROBABLY BEFORE THE JURY INSTEAD IT SAID WAS THE JURY COULD HAVE GIVEN THIS COULD HAVE GIVEN AGGRAVATED WEIGHT TO IT IN HERE CC P AND E DO NOT SHARE THE SAME ELEMENT OF MOTIVE.

THE JURY COULD NOT HAVE GIVEN AGGRAVATED WAIT TO MOTIVE UNDER CCP E HACKER OR ANY OTHER AGGRAVATORS.

LASTLY OPPOSING COUNSEL ALSO MENTIONED STATEMENTS THAT HE MADE DURING HIS POLICE INTERVIEW AND THEY DID NOT MENTION THAT THEY

SAID HE DIDN'T KNOW MORE OFTEN THAN NOT.
I MENTIONED ONLY BECAUSE I DON'T THINK THAT THE EXTENSIVE
EXHAUSTIVE MITIGATION EVIDENCE ESTABLISHING THE SERIOUS MENTAL
ILLNESS THAT LED TO THESE ACTS CAN BE JUST DISMISSED AS ILLUSORY.
I THINK THIS CASE DID PRESENT AS WEIGHTY AND AWFUL AS THESE
AGGRAVATORS WERE A CLOSE CALL BECAUSE OF THAT MITIGATION.
AND FROM THERE I THINK THE REASONABLE POSSIBILITY OF A DIFFERENT
OUTCOME BUT FOR THE ERROR EXISTS.
I THINK WE RESPECTFULLY REQUEST THIS COURT REMANDED FOR NEW
PENALTY.
>> THANK YOU.
WE ARE ADJOURNED.
>> ALL RISE.