

>> >> ALL RISE.

HEAR YE HEAR YE HEAR YE..THE SUPREME COURT OF FLORIDA IS NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR. GIVE ATTENTION. YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA. PLEASE BE SEATED

>> GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT THE FIRST CASE TODAY IS MOSLEY VERSUS STATE OF FLORIDA 2023-1091.

>> GOOD MORNING YOUR HONOR.

I'M GEORGE BYRNE HERE ON BEHALF OF JOHN MOSLEY JUNIOR.

MR. MOSLEY WAS CONVICTED OF TWO COUNTS OF FIRST DEGREE MURDER.

THE JURY RECOMMENDED LIFE FOR ONE OF THE VICTIMS AND BY AN EIGHT FOUR VOTE DEATH FOR THE SECOND.

THIS IS ONE OF THE RING VERSUS ARIZONA HURST CASES WHERE IT WAS AFTER RING SO HE WAS IN THAT WINDOW SO HE GOT HURST RESENTENCING AFTER 2015.

HE WENT THROUGH THAT PROCESS AND BECAUSE OF A FOR RATHER A VIOLATION DURING THE SPENCER HEARING THIS COURT REVERSED HIS DEATH SENTENCE FOR THAT PURPOSE.

WE ARE HERE TODAY TO DISCUSS TWO ISSUES.

THE FIRST ISSUE HAS TO DO -

>> TO EITHER OF THOSE TWO ISSUES HAVE TO DO WITH THE SPENCER HEARING ARE THE REMAND?

>> NONE WHATSOEVER YOUR HONOR.

ABSOLUTELY NONE.

>> WHY ISN'T THAT A PROBLEM?

>> BECAUSE THIS COURT HAS THE POWER AND SHOULD EXERCISE THIS POWER TO DO JUSTICE IN THIS CASE AND IT IS LAID OUT IN THE BRIEF WITH THE FIRST ISSUE THIS IS SOMETHING BECOMING MORE AND MORE COMMON WERE WE HAVE VERDICTS NOW FROM THE JURY AND THEY FOUND NO MITIGATING EVIDENCE WHATSOEVER.

>> WHAT MAKES YOU THINK WE WERE NOT AWARE OF THAT THE LAST TIME WE WERE HERE?

>> I DO NOT DO THE INITIAL BRIEF IN THE CASE.

IT >> BUT YOU HAVE ACCESS TO WHAT WE WROTE LAST YEAR PRESUMABLY?

>> OF COURSE.

>> WHAT MAKES YOU THINK WE WERE NOT AWARE OF THE ISSUES THAT YOU ARE PRESENTING NOW?

>> IT WAS NOT RAISED IN THE INITIAL BRIEF.

>> IS THAT A PROBLEM FOR YOU IF THEY WERE NOT RAISED?

>> OF COURSE.

THE ATTORNEY GENERAL CORRECTLY ARGUED THAT IT IS WAIVED.

ABSOLUTELY.

>> WHAT ARE WE DOING HERE?

YOU WANT US TO WAIVE THE WAIVER?

>> ABSOLUTELY.

>> POINT US TO A CASE THAT SUGGESTS THAT WHAT WE SHOULD DO OR THAT IS A LAW OR ARE YOU ASKING US TO MAKE UP SOMETHING?

AFFIRMATIVELY ASK US TO MAKE UP SOMETHING?

>> ABSOLUTELY.

IF YOU DON'T DO IT NOW IT WILL COME BACK LATER BECAUSE ASSISTANCE OF APPELLATE COUNSEL NOT TO HAVE RAISED IT BEFORE.

THE REASON YOU HAVEN'T SEEN THIS BEFORE IS BECAUSE WE DIDN'T HAVE VERDICTS LIKE THIS WAY BACK WHEN.

YOU WOULD NOT KNOW WHAT THE JURY WAS THINKING BUT HERE WE KNOW.

THEY SAID THERE IS NO MITIGATION HEARING WHICH OBVIOUSLY MEANS

THEY DID NOT PAY TED TO THE JUDGE BECAUSE THE JUDGE FOUND 29

PAY ATTENTION TO THE JUDGE BECAUSE THE JUDGE FOUND 29 MITIGATING FACTORS.

IF YOU REMEMBER THE WHOLE REASON WE HAVE THE DEATH PENALTY THEY SET UP THE SYSTEM WHERE AGGRAVATED FACTORS HAVE TO BE ESTABLISHED AND MITIGATING FACTORS FOR THE PURPOSE OF NARROWING THE CLASS AND NOT BEING ARBITRARY.

AS THIS COURT IS WELL AWARE YOU HEARD NUMEROUS ARGUMENTS THAT WITH AGGRAVATED CREED AND ALL OF THAT.

WE DON'T HAVE THAT SYSTEM ANY IN THIS STATE.

WE JUST DO NOT.

YOU CANNOT THINK OF WAY TO KILL SOMEONE THAT YOU WON'T BE DEATH ELIGIBLE ANYMORE.

IT HAS BECOME ARBITRARY AND NOW IT EVEN MORE ARBITRARY WITH THE JURY IS IGNORING THE JUDGE'S INSTRUCTIONS.

AND AT SOME POINT THIS COURT HAS ADDRESSED THIS.

>> WHAT EVIDENCE DO YOU HAVE HERE THAT WE SHOULD REBUT THE

PRESUMPTION THAT THE JURY IN FACT FOLLOWED THE JUDGE'S

INSTRUCTIONS AND HEARD HIM BUT DECIDED TO COME OUT ANOTHER WAY?

>> IT SPEAKS FOR ITSELF.

>> WHAT DOES.

HELP ME I DON'T SEE IT.

>> THEY FOUND ON THE VERDICT FORM NO MITIGATION HAS BEEN PROVEN.

>> AND YOU SAY THERE IS NO WAY FOR A JURY TO REASON TO THAT CONCLUSION IS IMPOSSIBLE?

>> YES ABSOLUTELY.

>> THE BASIS FOR THAT IS?

>> THAT THE JUDGE FOUND 29 NON STATUTORY MITIGATING FACTORS.

>> THE JUDGE FOUND THIS BECAUSE OF THE VERDICT?

>> SAY THAT AGAIN I'M SORRY?

>> I'M TOO FAR BACK I'M SORRY.

WHEN THE JURY CONSIDERED THE VERDICT WHEN THEY DELIBERATED DID THEY KNOW THAT ALL THE MANY GATORS HAD BEEN FOUND TO BE ON THE VERDICT AND THEY WERE TOLD THAT YOU HAD TO ASSUME THEY WERE TRUE? SOMETHING LIKE THAT?

>> NOW I DON'T BELIEVE THEY WERE INSTRUCTED OF THAT.

>> THEN HOW DOES THE JURY KNOW THAT THE JUDGE FOUND THEM TO BE LIKE THIS?

>> HOW DO WE KNOW THE JURY WAS THINKING?

>> RIGHT.

>> WE KNOW.

THEY REJECTED THE FACT THAT ANY MITIGATION EXISTED.

ON ITS FACE BY THE VERDICT.

WHICH MEANS THEY DID NOT FOLLOW THE INSTRUCTION BECAUSE THE JUDGE SAID YOU MUST FIND MITIGATION IF IT EXISTS IN ANY WAY.

>> I WANT TO ASK YOU THIS COUNSEL, DOES THE STATUTE REQUIRE THAT THEY MAKE A SPECIFIC FINDING OF MITIGATION?

I KNOW THE STATUTE REQUIRES THAT THEY CONSIDER MITIGATION AND THEY HAVE TO MAKE THE DETERMINATION ON THE AGGRAVATE HER'S AND THEN THEY HAVE TO MAKE THE BOTTOM BOTTOM LINE DETERMINATION RECOMMENDATION BUT THERE'S NOTHING IN THE STATUTE THAT REQUIRES THAT THERE BE A DETERMINATION INDIVIDUALLY ABOUT THE AGGREGATORS IS THERE?

>> NO SIR.

>> THE REALITY IS THAT THIS VERDICT FORM AND THESE THE COURT KIND OF HAD GONE OFF AND DONE THIS AND THEN WE FIGURED OUT LATER THAT IT WASN'T REALLY SMART AND WE TOOK A DIFFERENT TACTIC.

THIS IS IN AN AREA HERE OF IT IS WHERE THESE ARE DETACHED TO A CERTAIN EXTENT FROM THE STATUTE.

IT DOESN'T HAVE TO BE VIEWED IN THE CONTEXT OF ALL OF THAT.

>> IT IS VIEWED THIS WAY.

IF YOU LOOK AT THE TWO GEORGIA CASES GREG AND FERRMAN AND THEN LOCK VERSUS OHIO AND YOU PUT THE THREE CASES TOGETHER THAT IS THE SUPPORT FOR THIS.

TO HAVE PROPERLY CONSTITUTIONAL A DEATH PENALTY SENTENCE.

THESE THINGS ARE REQUIRED.

WITH LOCKETT IT'S WIDE OPEN AS TO WHAT YOU CAN PRESENT IN MITIGATION BECAUSE OF LOCKETT.

AND THE STANDARD OF EVIDENCE IS DIFFERENT FOR MITIGATION EFFORTS. MITIGATION EFFORTS.

IT IS INEXPLICABLE WHETHER THE JURY DIDN'T FIND ON THE FORM WHY THIS WAS MITIGATING FACTORS NOT FOUND AS EVIDENCE.

THE ONLY CONCLUSION SHOULD COME TO IS THEY DID NOT FIND THE JUDGES INSTRUCTIONS AND WE GET HEIGHTENED PROCESS IN LITIGATION.

THIS IS NOT A CONTRACT DISPUTE THIS IS WHERE SOMEONE'S LIFE IS ON THE LINE SO IT IS A DIFFERENT SCRUTINY AND YOU GUYS CAN ADDRESS THIS NOW OR YOU CAN ADDRESS IT LATER.

>> WE HAVE ANOTHER CASE TODAY THAT RAISES THE SAME ISSUE.

>> THE ONE THAT FOLLOWS.

>> IT RAISES IN THE CONTEXT WHERE MAYBE IT ISN'T BARRED IN THE WAY IT WOULD BE HERE.

>> I DO UNDERSTAND YOUR STATEMENTS ABOUT WAIVER AND IT IS TRUE. ABSOLUTELY IT IS.

I JUST SUBMIT THAT THE JUDICIAL ECONOMY YOU CAN DEAL WITH IT NOW AND TELL THE STATE AND ALL THE JUDGES WITH THESE VERDICT FORMS THAT SEEMS TO PARAPHRASE YOU JUSTICE BUT THAT WE WON'T HAVE THIS ANYMORE.

THAT'S WHY I RAISED IT.

I TOTALLY IN ALL CANDOR KNEW IT WAS SOMETHING YOU MAY NOT WANT TO ADDRESS TODAY BUT I THOUGHT THIS COURT SHOULD BE MADE AWARE OF IT AND YOU CAN CHOOSE TO DO AS YOU WISH.

>> WHAT ABOUT YOUR SECOND ISSUE?

>> THE SECOND ISSUE THE MEDICAL EXAMINER IN JACKSONVILLE HAD DEMENTIA.

AT WHAT POINT EVIDENTIALLY WE DON'T KNOW BUT YOU CERTAINLY DID. AND THEY MADE A CLAIM PROCEDURALLY DURING THE COURSE OF THESE INTERACTIONS IN 2019 THAT THIS AND NEWLY DISCOVERED EVIDENCE BECAUSE OF HIP BUT IT IS NOT EASY TO GET PEOPLE'S MEDICAL STUFF BUT THEY GOT IT AND IT SHOWED THAT SHE DID HAVE DEMENTIA AND SHE ACTUALLY PASSED IN THEIR ARGUMENT IS WELL IF SHE HAD DEMENTIA SHE IS A DISQUALIFIED WITNESS UNDER 90.63.

SHE WOULD BE A DISQUALIFIED WITNESS.

SO HOW ARE YOU GOING TO?

IT'S NOT A CASE WHERE YOU CAN GET A SUBSTITUTE AT ME AND LOOK AT HER NOTES IF SHE HAD DEMENTIA OR NOTES ARE NO GOOD EITHER.

>> I WANT TO ASK YOU TO PARTS ABOUT THIS.

WHEN THIS WAS DEALT WITH THERE WAS A NOTE ENTERED.

>> YES SIR.

>> WHY WOULD I THINK IT'S ANYTHING OTHER THAN A FILE ORDER?

>> I THANK YOU CAN TAKE THAT POSITION.

>> IT'S A FINAL ORDER.

OKAY WILL IF IT'S A FINAL ORDER OF THE APPEAL WAS NOT TIMELY.

>> THAT IS CORRECT.

IT AFFECTED THE SYSTEM ALSO ABSOLUTELY.

BUT US AS COMING BEFORE THIS COURT WE CANNOT IGNORE AN INEFFECTIVE ASSISTANCE AND THERE HAS BEEN A LOT OF CHANGE.

>> I WANT TO ASK YOU THE SECOND THING ABOUT THIS.

HOW IN ANY WAY DOES THE SUPPOSED MENTAL PROBLEMS OF THE MEDICAL

EXAMINER HAVE ANY SIGNIFICANCE HERE WHEN THE MEDICAL EXAMINER TESTIMONY WAS SO DRAMATICALLY INCONSEQUENTIAL.

>> VERY EASY AND GREAT QUESTION.

THE REASON IS.

>> I TRY TO ASK GOOD QUESTIONS.

>> YES YOUR HONOR.

THE REASON IS BECAUSE WE DON'T KNOW BECAUSE THERE IS NO EVIDENTIARY HEARING.

THAT'S WHAT WE'RE FIGHTING ABOUT HERE.

>> WE DO NOW.

WE KNOW WHAT SHE TESTIFIED TO WHICH WAS NOTHING.

TRAGIC CIRCUMSTANCES HERE IN INCINERATION.

BUT THE RESULT OF THIS WAS SHE TESTIFIED TO NONMATERIAL.

SO THE IDEA THAT WE DON'T KNOW THAT SEEMS TO ME TO BE FANCIFUL.

BECAUSE WE DO KNOW WHAT YOU TESTIFIED TO.

IT IS ON THE RECORD.

>> ABSOLUTELY.

BUT WITH AN EVIDENTIARY HEARING THAT YOU COULD FLUSH IT OUT ABSOLUTELY.

AND WE ARE NOT SAYING.

>> WHAT ARE THE FACTS OF ISSUE IN THE EVIDENCE YEAR HEARING?

WHAT ARE WE TAKING TESTIMONY ON TO DETERMINE WHETHER OR NOT IT IS TRUE?

>> WHETHER OR NOT SHE WAS SO IMPAIRED THAT WHAT SHE DID WOULD NOT JUSTIFY HER TESTIMONY.

>> TELL YOU WHAT LET'S ASSUME SHE WAS IMPAIRED.

NOW WHAT.

>> UNDER THE EVIDENCE CODE SHE WILL BE DISQUALIFIED AS A WITNESS.

>> GREAT WE DISQUALIFY HER NOW.

WHAT?

>> I STILL HAVE A DECEASED TEN MONTH OLD BABY IN A GARBAGE BAG AND AN INCINERATED GIRLFRIEND RIGHT?

>> THAT'S WITH A 15 YEAR OLD TESTIFIED TO.

>> KNOW I HAVE THE BODIES DON'T I?

>> NO SIR THEY NEVER DISCOVERED THE BODY OF THE CHILD.

>> OKAY I HAVE THE BODY OF YOUR RIGHT BUT I HAVE THE BODY OF THE GIRLFRIEND?

>> YES.

>> AND I HAVE THE TESTIMONY ABOUT THE BABY.

>> BASED ON WHAT MR. GRIFFIN AND, SO, LIKE I SAID.

>> TO GET THE TESTIMONY TO THE BABY IS UNCHANGED BY THE EXCLUSION OF THE M 80 RIGHT?

>> YES.

>> IT SEEMS LIKE THIS HAVING WORKED THROUGH THE LOGIC AND

EXCLUDING THE WITNESS WE ARE STILL IN THE SAME PLACE AREN'T WE?
>> WELL, YES.
YOU COULD TAKE THAT POSITION ABSOLUTELY IN CASES LIKE THIS.
>> WHAT IS THE OTHER POSITION?
>> THE OTHER POSITION IS JUST HAVE AN EVIDENTIARY HEARING TO HAVE FULL DUE PROCESS.
>> I THINK YOU'RE FIGHTING THE LOGIC YOU JUST WALK INTO.
I THANK YOU SHOULD CONCEDE THE POINT HERE WHICH IS THE HEARING THAT YOU ADVOCATE FOR AT THE END OF THE DAY HAS NO IMPACT AT ALL ON THE OUTCOME OF THIS CASE.
>> I CAN SEE WHAT YOU COULD SAY THAT AND QUITE FRANKLY THIS IS A CHALLENGING APPEAL TO DO.
>> AND WE DO APPRECIATE THAT YOU WERE DOING IT I JUST WISH IT WERE ABOUT THE SPENCER HEARING.
>> THE SPENCER HEARING HAD, WIFE, AND TWO DAUGHTERS TESTIFIED. THAT'S IT.
AND THEY JUST SAID THAT - THEY SAID NICE THINGS ABOUT HIM. THAT'S IT.
THERE WAS NOTHING ELSE PRESENTED.
I DON'T KNOW WHAT ARGUMENT I COULD MAKE TO THIS COURT BASED ON THAT PRESENTATION HONESTLY.
IT DIDN'T MAKE IT LESS MITIGATING OR ANYTHING ELSE AND IT SHOULD BE POINTED OUT IN A NEW PENALTY PHASE THE AGGRAVATION GOT MORE SEVERE.
THEY FOUND HACK IN THE SECOND PENALTY PHASE WHERE THEY DID NOT IN THE FIRST AND I THINK IT IS SIGNIFICANT.
YOU KNOW, AS YOU KNOW CCP AND HACK MURDERS ARE AGGREGATORS MORE THAN ANY OTHERS.
THE FIRST PENALTY PHASE THEY DID NOT FIND HACK.
>> YOU'RE NOT ARGUING ABOUT THAT BECAUSE IT'S HARD TO ARGUE ABOUT IT GIVEN THE FACT HERE CORRECT?
>> YES.
>> WITH A BABY IN A BAG AND DISPOSING OF IT IN A DUMPSTER AND THEN INCINERATING A WOMAN, THE MOTHER OF THE CHILD.
THAT KIND OF SOUNDS LIKE HACK TO ME.
>> I WILL CONCEDE IT IS HACK ESPECIALLY WITH THE CHILD VICTIM ABSOLUTELY.
AND, SO, ANYWAY.
>> OF COURSE, THAT IS -
>> I WANT TO ASK YOU THE ISSUE THAT WE ARE ON PRETTY MUCH WE SENT THE CASE BACK ON THE QUESTION OF THE SPENCER HEARING BECAUSE THE TRIAL JUDGE AT THE TIME RIGHT BEFORE THE SPENCER HEARING WAS SUPPOSED TO COMMENCE THE PROSECUTOR AND INFORMED THE JUDGE THAT THEY HAD THIS NEW MOTION FOR THE DEFENDANT AND HE WANTS TO PROCEED

ON HIS OWN SO, THE PROSECUTOR WILL HAND HIM TO THE JUDGE BEFORE YOU PROCEED TO DO ANYTHING ELSE TAKE CARE OF THIS. AND THE JUDGE KIND OF JUST WAIVED HIM OFF AND PROCEEDED TO SOMETHING ELSE.

WENT AHEAD AND SENTENCED HIM TO DEATH AND SAID O YOU WANT TO DO THAT SPENCER HEARING NOW.

OBVIOUSLY, THERE WAS AN ISSUE THERE CONCERNING THE DEFENDANT'S RIGHT TO PROCEED PRO SE IF YOU WANT TO DO.

SO WE SENT IT AND THE ONLY REASON WE SENT IT BACK WAS FOR THE TRIAL JUDGE TO CONDUCT A PROPER SPENCER HEARING AND TO SEE WHAT THE DEFENDANT IS AND AS IT TURNED OUT WHEN THEY WENT BACK NOW THE GUY WANTS A LAWYER SO HE CHANGED HIS MIND AGAIN.

I MEAN ARE WE DONE?

GIVEN THE OBJECTIVE OF WHAT WE HAD THIS CASE GO BACK FOR?

>> YOU CERTAINLY CAN TAKE THAT POSITION ABSOLUTELY.

AND WITH THAT I WILL FINISH UP AND ALLOW MY OPPOSING COUNSEL TO GO FORWARD.

THANK YOU VERY MUCH.

>> THANK YOU.

>> MAY IT PLEASE THE COURT LISA MALLIK READ LERNER ATTORNEY GENERAL'S OFFICE WITH THE STATE.

AS THIS COURT KNOWS IT ISSUED A VERY NARROW RE MANNED ONLY ON THE SPENCER HEARING.

THIS IS NOT A SECOND APPEAL OF THE SECOND PENALTY PHASE TRIAL. AND IF THE COURT HAS NO QUESTIONS I WILL REST ON MY BRIEF >> I HAVE A QUESTION.

WE ALREADY WASTED TIME WITH THE REMAND THAT SHOULD'VE NEVER HAPPENED THE FIRST PLACE.

IS THERE ANYTHING THAT WE CAN DO IN OUR DISPOSITION THAT WOULD ADDRESS THE QUESTIONS HE SAID WOULD HAVE TO BE ADDRESSED IN THESE PROCEEDINGS IF WE TRIED TO OVERLOOK THE FACT THAT THESE ISSUES THAT HE IS RAISED AREN'T REALLY PROPERLY IN FRONT OF US RIGHT NOW?

>> THE EVIDENCE YEAR HEARING ISSUE THE COURT IN AN ACT OF CHARITY TOOK IT ON THE MERITS AND FOUND THAT HE FAILED TO MEET EITHER OF THE JONES PRONGS FOR NEWLY DISCOVERED EVIDENCE.

HIS REASONING WAS SOLID GIVEN THE SITUATION AND THE FACT OF THIS CASE.

THAT ISSUE AS FAR AS THE STATE IS CONCERNED.

AND IN TERMS OF THE JURORS HAVE A VERY LIMITED DUTY IN TERMS OF MITIGATION.

IT IS NOT THE SAME AS IF THEY WERE AGGREGATORS.

THEY DO NOT HAVE TO FIND THEM BEYOND REASONABLE DOUBT IT IS UP TO THE INDIVIDUAL JUROR TO MAKE A WHAT THE SUPREME COURT HAS CALLED A VALUE CALL ON WHETHER A SET OF FACTS IS MITIGATING OR

NOT.

THEY MAY BELIEVE THE FACTS BUT DON'T FIND THE MITIGATING.
AND WE KNOW THE JURY FOLLOWED THE INSTRUCTIONS IN THIS CASE
BECAUSE WE HAVE THE JURY FOREMAN VERDICT FORM WHERE THEY GO
THROUGH EACH MITIGATE OR INDIVIDUALLY AND TALLY HOW MANY JURORS
VOTED YES TO FIND IT MITIGATING AND HOW MANY JURORS VOTED NO.
AND ON A NUMBER OF THE MITIGATORS SOME JURORS FOUND IT MITIGATING.
SO WE KNOW THAT THE JURORS FOLLOWED THE INSTRUCTIONS AND
INDIVIDUALLY ANALYZE THE MITIGATORS HOWEVER THE JURY AS A WHOLE
FOUND THE MITIGATE HER'S WERE NOT ESTABLISHED NOR WERE THEY
SUFFICIENT TO OUTWEIGH THE VERY WEIGHTY AGGREGATORS.
AND THE VERDICT FORM SHOWS THAT.

UNDER THE SUPREME COURT LAW THE TRIAL COURT HAS NO OBLIGATION TO
ADOPT THE JURY'S ASSESSMENT OF THE MITIGATE OR'S.

IT HAS AN INDEPENDENT DUTY TO GO AND EVALUATE.

THE COURT'S SENTENCING BODY NOT THE JURY IN THE STATE OF FLORIDA.
THE COURT INDIVIDUALLY EVALUATED THE MITIGATE OR'S AND IN ITS ROLE
FOUND 25 MEDIATORS AND NON STATUTORILY THAT GAVE WEIGHT AND FOUR
THAT HE GAVE NO WEIGHT.

>> IN TERMS OF ADDRESSING THIS OPINION WOULD YOUR POSITION BE THAT
REGARDLESS OF THE PROCEDURAL ISSUES WAIVER AND YOU KNOW EXCEEDING
THE SCOPE OF REMAND THAT THERE WOULD BE A NEED TO ADDRESS THIS
OPINION BECAUSE COUNSEL WOULD BE INEFFECTIVE FOR FAILING TO RAISE
A MERITLESS ISSUE REGARDLESS?

>> YES.

>> AND THERE IS NO INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
BECAUSE IS A NON MERITORIOUS ISSUE.

>> I CANNOT REMEMBER DID THE FORM DISTINGUISH BETWEEN WHETHER THE
UNDERLYING FACTS WERE PROVEN VERSUS ASSUMING THE FACTS ARE PROVEN
WHETHER IT'S MITIGATING OR NOT?

>> NO.

INTERESTING IN THE 2020 RECORD ON APPEAL THE VERDICT FORM IS NOT
IN THERE.

IT IS ONLY IN THERE AS AN EXHIBIT TO THE MOTION FOR NEW TRIAL AND
IT STARTS AT PAGE 1319.

BUT IT ONLY GOES THROUGH SAYING EVIDENCE WAS PRESENTED ON THIS DO
YOU VOTE YES OR NO?

THEN THEY GO THROUGH.

>> YES OR NO AS TO WHAT?

>> WHETHER OR NOT IT'S MITIGATING.

>> REALLY THEN IT SHOWS THAT IT SUPPORTS THE IDEA THAT MAYBE
THE JURY THE INCONSISTENCY IT'S ONE THING TO SORT OF
DISAGREE AS TO WHETHER SOMETHING WAS ACTUALLY PROVEN.

DID SOMEONE HAVE A BAD CHILDHOOD OR WHATEVER VERSUS DO I CONSIDER

IT MITIGATING.

THE JURY OBVIOUSLY HAS DISCRETION REGARDLESS OF WHAT FACTS ARE PUT IN FRONT OF THEM.

WHETHER THEY VIEW IT IS MITIGATING ARE NOT RIGHT?

>> YES.

>> SO THE FORM IT'S NOT AS IF WE CAN DEFER FROM THE FORM OF THAT THEY LITERALLY SORT OF ARBITRARILY DISREGARD IT WITH THE EXISTENCE OF, YOU KNOW, OBJECTIVE THINGS IN THE REALITY AS OPPOSED TO WHATEVER KIND OF SORT OF JUDGMENT WISE IT SIGNIFICANCE THEY GIVE TO THAT.

>> THE STATE MAINTAINS THAT BY LOOKING AT THIS FORM AND SEEING WHEN THE COURT PULLED THE JURY WHEN IT GAVE ITS RECOMMENDATION THE JURY OBVIOUSLY CONSIDERED IT BECAUSE SOME OF THE JURORS IT WAS NOT ALWAYS THE SAME NUMBER.

>> THE FORMER ESTABLISHES THAT THEY DID NOT IGNORE THE INSTRUCTIONS.

>> CORRECT.

>> THEY MAY NOT HAVE CONSIDERED IT IN THE WAY THAT THE DEFENSE WANTED TO BE CONSIDERED BUT THAT IS WITHIN THE PROVINCE.

>> YES AND IT SHOWS THAT THEY DISCUSSED IT BECAUSE SOME PEOPLE SAID YES ON THIS AND KNOW ON THAT AND IT SHOWS OF THE JURY WENT THROUGH EACH ONE INDIVIDUALLY AND DISCUSSED IT AND EVALUATED IT AND CONSIDERED IT AND THEN ULTIMATELY AGAINST THE AGGREGATORS AND UNANIMOUSLY FOUND THAT THEY DID NOT OUTWEIGH THE AGGRAVATION.

>> AND CONSTITUTIONALLY THE DEFENDANT ALL YOU'RE ENTITLED TO IS TO BE ABLE TO PRESENT WHAT THE DEFENDANT THINKS IS MITIGATING AND TO HAVE IT FAIRLY CONSIDERED RIGHT?

>> YES.

>> AND WITH THAT THE STATE ASKS YOU TO AFFIRM THIS THANK YOU.

>> JUSTICE CANADY, I DISAGREE RESPECTFULLY WITH YOU ON THE ISSUE OF WHETHER OR NOT THE MITIGATION WAS HANDLED PROPERLY IN THIS CASE.

THE FACT THAT THEY DISCUSSED IT OR DIDN'T IS IMMATERIAL AS FAR AS I AM CONCERNED.

THOSE FAR AS THEY FOUND THAT IT DIDN'T EXIST WHEN IT CLEARLY DID THAN THEY DIDN'T UNDERSTAND WHAT THEY'RE SUPPOSED TO DO.

THAT'S OUR POSITION ON THAT.

AND THEN SECONDLY.

>> I THINK THERE IS SOME CONFUSION IN THE WAY THESE INTERROGATORIES ARE STRUCTURED.

>> I AGREE.

>> I DO NOT QUESTION THAT AND HOPEFULLY THE COURT DECIDED THAT BECAUSE WE CHANGED IT.

AND PROMISE FOR YOUR ARGUMENT IS THAT THEY REALLY DIDN'T CONSIDER

MITIGATION AND IN FACT THAT IS ABSOLUTELY CONTRADICTED BY WHAT WE
HAVE JUST BEEN TALKING ABOUT.
>> WELL I DON'T WANT TO PARSE WORDS BUT THEY CAN CONSIDER THIS ALL
THEY WANT.
WERE NOT CLAIMING INCONSIDERATE WE ARE SAYING THEY DID NOT FOLLOW
THE THAT'S WHAT THEY DID NOT DO.
THE JURY DID NOT FOLLOW THE LAW BY FINDING MITIGATION THAT
EXISTED.
THAT'S OUR POSITION.
AND THEN FINALLY, ON THE SECOND POINT, THE JUDGE WAS WRONG TO SAY
THAT THE EVIDENCE WAS EASILY DISCOVERABLE.
IT WAS NOT.
IT WAS NOT EASILY DISCOVERABLE AT THE TIME.
I'M JUST ADDRESSING THE AG'S COMMENTS IN THAT REGARD THAT IT IS
NOT TRUE AND THERE WAS NO WAY THEY COULD HAVE KNOWN ABOUT HER
MEDICAL DIAGNOSIS.
IT IS NEWLY DISCOVERED EVIDENCE AND WITH THAT I CONCLUDE MY
PRESENTATION.
>> THANK YOU VERY MUCH.