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John Loveman Reese vs. State of Florida

MUSCARE I, WE WILL WAIT JUST -- MISCARRY I, WE WILL WAIT JUST -- MISS CAREY, WE WILL WAIT JUST A MINUTE. ALL RIGHT. YOU MAY PROCEED.

THEEFERB -- THANK YOU, YOUR HONOR. NADA CAREY, THE ASSISTANT PUBLIC DEFENDER, REPRESENTING JOHN REECE. WE ARE HERE, TODAY, TO REVIEW THE COURT'S SENTENCING ORDER, SENTENCING MR. REECE TO DEATH. AS THE COURT RECALLS, THE FIRST ORDER WAS SENT BACK ON A CAMPBELL ERROR, AND IN THAT DECISION, THE COURT NOTED THERE WAS UNREBUTTED MITIGATION IN THE RECORD. IT IS OUR CONTENTION THAT THE PRESENT ORDER, ALTHOUGH IT IS LENGTHYER THAN THE ORIGINAL ONE PARAGRAPH ORDER, IT IS JUST AS EFFECTIVE AS THE FIRST ORDER, BECAUSE THE TRIAL COURT'S REJECTION OF THE MITIGATION, THIS TIME AROUND, IS NOT SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE IN THE RECORD, AND THE COURT'S REASONS FOR REJECTING EACH OF THE PROPOSED MITIGATING CIRCSTABZ -- CIRCUMSTANCES IS SPECULATIVE, CONCLUSIVE, AND IN SOME INSTANCES BASED ON ERRONEOUS VIEW OF THE LAW. A MISREADING OF THE TESTIMONY, AND IN SEVERAL INSTANCES, THE TRIAL COURT'S REASONS FOR REJECTING THE PROPOSED MITIGATION WERE BASED ON THE JUDGE'S OWN PERSONAL OPINION ABOUT HUMAN BEHAVIOR, WHICH HE SUBSTITUTED FOR THE OPINIONS OF THE EXPERT WITNESS IN THIS CASE. I DON'T HAVE TIME, TODAY, OBVIOUSLY, TO CATALOG ALL OF THE ERRORS IN THE SENTENCING ORDER, BUT I WOULD LIKE TO POINT OUT TO THE COURT SOME OF THE ERRORS THAT I FEEL ARE THE MOST HE DRAGE US ONES AND TO -- THE MOST EGREGIOUS ONES AND TO GIVE THE COURT INDICATION OF HOW MANY ERRORS THERE ARE, THAT THE ORDER IS, REALLY, RIFE WITH ERRORS HERE. IF YOU LOOK AT THE EVIDENCE OF REECE'S TRAUMATIC CHILDHOOD, BRIEFLY WHAT THE EVIDENCE SHOWED, THIS IS THE CASE WHERE REECE FOUND HIS MOTHER STABBED TO DEATH. HE WAS SEVEN YEARS OLD AT THE TIME. HE WOKE UP ONE MORNING AND FOUND HIS MOTHER HAD BEEN STABBED TO DEATH. APPARENTLY HIS FATHER HAD STABBED HER, IN A PSYCHOTIC RAGE. AT THAT POINT IN HIS LIFE, REECE WAS SENT TO LIVE HUNDREDS OF MILES AWAY, WITH AN AUNT AND UNCLE HE HAD NEVER MET. HE NEVER SAW HIS FATHER AGAIN. HIS FATHER WAS INSTITUTIONALIZED. HE NEVER SAW HIM AGAIN. IN THIS ENVIRONMENT HE WAS SENT TO, THE HOME OF MARVIN SMITH, A RELATIVE, THE EVIDENCE SHOWS THAT THIS WAS A VERY RESTRICTIVE, VERY ISOLATING ENVIRONMENT. HE WAS NOT ALLOWED TO LIVE AS A CHILD, AND HE RECEIVED VERY LITTLE EMOTIONAL NURTURING THERE. EVENTUALLY, WHEN HE WAS ABOUT 14 OR 15, WENT TO LIVE WITH ANOTHER AUNT AND UNCLE, WHO APPARENTLY DID CARE FOR HIM. THAT UNCLE DIED, WHEN REESE WAS ABOUT 18, SO HE LOST ANOTHER FATHER FIGURE WHEN HE WAS 18 YEARS OLD. WHEN THE COURT EVALUATED THIS TESTIMONY, THE TRIAL JUDGE VIRTUALLY IGNORED THE EXPERT, DOCTOR CROCK'S TESTIMONY, REGARDING THE EFFECT OF THE STABBING DEATH OF HIS MOTHER, THE TRAUMATIC EFFECT THAT HAD ON REESE, WHICH WAS FOLLOWED BY THIS VERY RESTRICTIVE, NONNURTURING ENVIRONMENT THAT HE LIVED IN. THAT THOSE FACTORS, TOGETHER, REALLY CONTRIBUTED TO HIS DEVELOPMENT OF HIS PERSONALITY, THAT HE WAS VERY INSECURE. HE DEVELOPED AN ABNORMAL FEAR OF REJECTION. ALL OF WHICH CONTRIBUTED TO HIS LATER, VERY DYSFUNCTIONAL, VERY PATHOLOGICAL ATTACHMENT TO THE GIRLFRIEND JACKIE REESE, WHICH IS REALLY THE BASIS AND THE MURDER WAS COMMITTED. THE TRIAL JUDGES ESSENTIALLY IGNORED ALL OF THAT TESTIMONY. THE TRIAL JUDGE, ALSO, SAID, WELL, THIS ENVIRONMENT WASN'T SO BAD. REESE WAS WHIPPED FOR THINGS HE DID WRONG. THERE IS NO EVIDENCE OF THAT WHATSOEVER IN THE RECORD. HE SAID, WELL, MARVIN SMITH'S WIFE PROVIDED SOME NURTURING. AGAIN THERE IS NO EVIDENCE OF THAT AT ALL IN THE RECORD. HE DISCOUNTED AND DENIGRATED THE MITIGATING WEIGHT OF THE STABBING WEIGHT OF REESE'S

MOTHER, FINDING, WELL, THIS HAPPENED A LONG TIME AGO. THAT IS NOT A REASON THAT IS VALID, UNDER THIS COURT'S DECISION, THE FACT THAT IT HAPPENED A LONG TIME AGO, IS STILL RELEVANT HERE. HE SAYS, WELL, THAT DOESN'T CAUSE THE MURDER. HE SAYS, WELL, THE STABBING WASN'T THE RESULT OF DOME EITHERTIC VIOLENCE. IT MIGHT HAVE -- OF DOMESTIC VIOLENCE. IT MIGHT HAVE BEEN MITIGATING. IT MIGHT HAVE BEEN TRAUMATIC, IF REESE, AS A CHILD, HAD WATCHED HIS PARENTS FIGHTING A LOT, BUT THE MERE FACT THAT HE WOKE UP ONE MORNING AND FOUND HIS MOTHER STABBED TO DEATH IS NOT TRAUMATIC.

BUT THE TRIAL JUDGE DID GIVE ALL OF THIS INFORMATION. I MEAN, HE LAYS IT OUT IN THE SENTENCING ORDER, AND HE SAYS HE IS GIVING IT SOME WEIGHT. I MEAN, WHAT IS IT THAT WE ARE SUPPOSED TO DO? SAY THAT THE TRIAL JUDGE ERRED AND SHOULD HAVE GIVEN IT GREAT WEIGHT?

THE TRIAL JUDGE GAVE NONE OF IT ANY WEIGHT, EXCEPT THE STABBING DEATH OF THE MOTHER, WHICH HE DISCOUNTED AND DENIGRATEED AND GAVE VERY LITTLE WEIGHT. THAT IS AN ABUSE OF DISCRETION PARTICULARLY --

I MEAN HE DISCUSSES IT ALL AND, AT THE VERY END OF THE WHOLE DISCUSSION, HE SAYS HE IS GIVING IT -- LET'S SEE HOW MUCH WEIGHT THIS IS GIVEN. HE HAS GIVEN THE FACTOR A LITTLE WEIGHT.

A LITTLE WEIGHT.

SO I GUESS WHAT I AM ASKING YOU IS, ARE WE SUPPOSED TO SAY THAT, BASED ON OUR EVALUATION, HE SHOULD HAVE GIVEN THIS GREAT WEIGHT?

NO, YOUR HONOR. I THINK THE PROBLEM WITH THE TRIAL JUDGE'S ANALYSIS IS THE REASON HE GAVE IT LITTLE WEIGHT. THEY ARE NOT SUPPORTED BY THE RECORDS. THEY ARE COMPLETELY CONTRADICTED BY THE EXPERT'S TESTIMONY, AND THEY ARE BASED ON THE TRIAL JUDGE'S OWN PERSONAL PIN I DON'T OBJECT. -- OPINION. THAT IS NOT A VALID, LEGALLY SUFFICIENT REASON TO EITHER REJECT THE MITIGATOR OR TO ASSIGN IT LESS WEIGHT. IT IS NOT A VALID REASON.

WHAT DID HE SAY IN THAT REGARD?

WHAT DID --

WHAT DID HE SAY THAT YOU ARE SAYING IS NOT A VALID REASON? YOU SAID THE TRIAL JUDGE GAVE A BUNCH OF REASONS FOR NOT GIVING IT MUCH WEIGHT, AND THAT ALL HIS REASONS WERE SUBJECTIVE AND NOT PROPER. WHAT WERE THOSE REASONS?

HIS REASONS WERE THAT IT HAPPENED A LONG TIME AGO. THAT IT DIDN'T CAUSE THIS MURDER. HE RECOGNIZED THAT IT CONTRIBUTED TO THE MURDER, BUT IT DIDN'T CAUSE THE MURDER. THAT THE STABBING DEATH OF THE MOTHER WASN'T THE RESULT OF DOMESTIC VIOLENCE. NERD THE JUDGE HAS DECIDED, BASED ON I DON'T KNOW WHAT, HIS OWN PERSONAL OPINION, HIS OWN LIFE EXPERIENCES, THAT IT IS NOT TRAUMATIC AND IT IS NOT WORTH ANY WEIGHT, BECAUSE IT WASN'T THE RESULT OF DOMESTIC VIOLENCE. IT WAS MERELY THE RESULT OF THE FATHER'S PSYCHOSIS.

HAVE WE EVER DONE THAT IN A CASE DECIDED THAT THE JUDGE, IN GIVING GREAT WEIGHT OR LITTLE WEIGHT, HAVE WE HAVE SAID THAT -- CAN YOU THINK OF ONE CASE IN WHICH WE HAVE SAID THAT WE REVERSED THE JUDGE BECAUSE IT IS NOT SUPPORTED BY CSE, AND I GATHER THAT IS YOUR ARGUMENT, IS IT? THAT THE JUDGE'S REASON FOR GIVING IT LITTLE WEIGHT IS NOT SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE?

IN NIGER, THIS COURT REJECTED, THE TRIAL JUDGE REJECTED A NUMBER OF MITIGATING

CIRCUMSTANCES, AND THIS COURT FOUND THAT THE COURT'S REJECTION OF THOSE MITIGATORS WAS NOT SUPPORTED BY THE RECORD.

REJECTION, BUT IN MAKING AN EVALUATION OF WHETHER IT IS GREAT WEIGHT OR LITTLE WEIGHT, HAVE WE HAVE USED THAT?

I DON'T KNOW, YOUR HONOR. BUT I THINK THE ANALYSIS IS THE SAME. JUST BECAUSE THE COURT -- I THINK THE COURT'S REASONING IS WHAT YOU HAVE TO LOOK AT. IF THE COURT'S REASONING AND HIS EVALUATION IS NOT VALID, IF IT IS LEGALLY INVALID, IF IT IS NOT BASED ON THE FACTS, THEN THE TRIAL JUDGE HAS ABUSED HIS DISCRETION.

WHAT EVIDENCE WAS THERE THAT THIS TRAUMATIC EVENT ABOUT THE MOTHER'S DEATH AFFECTED HIM BEFORE THIS INCIDENT OR EPISODE? IN OTHER WORDS WHAT MENTAL PROBLEMS OR OTHER SOCIAL PROBLEMS DID HE HAVE THAT WERE AN OUTGROWTH OF THIS WILL, BEFORE THIS EVENT?

WELL, THE PRIMARY EFFECT WAS HIS RELATIONSHIP WITH JACKIE GREER, WHICH HAD BEEN GOING ON FOR SEVEN YEARS.

OTHER THAN HIS RELATIONSHIP WITH JACKIE GREER, WHAT ELSE HAPPENED IN HIS LIFE THAT DEMONSTRATED THAT HE HAD BEEN, YOU KNOW, MAIMED OR OTHERWISE SERIOUSLY AFFECTED BY THAT?

WELL, THE EVIDENCE SHOWS THAT, IN HIS HIGH SCHOOL YEARS, ONCE HE WAS PLACED IN THIS ENVIRONMENT, WHERE HE RECEIVED A LOT OF LOVE AND CARE, THAT HE DID WELL. APPARENTLY, WHEN, ACCORDING TO THE TESTIMONY OF DR. CROCK, THE EXPERT, AFTER HIS FATHER FIGURE DIED, AT THAT POINT, REESE BEGAN DESPERATELY SEARCHING FOR SOME SORT OF STABILITY IN HIS LIFE, AND THAT IS WHEN HE BEGAN TO HAVE A RELATIONSHIP WITH JACKIE GREER, WHICH PROCEEDED AND BECAME VERY DYSFUNCTIONAL AND VERY PATHOLOGICAL.

BUT ARE YOU TELLING ME THAT, OTHER THAN THAT, THAT THERE REALLY IS NOTHING IN THE RECORD TO SHOW THAT THAT EPISODE OTHERWISE IMPAIRED HIM OR AFFECTED HIM?

NO. THERE IS NOTHING ELSE BESIDES THAT.

WHAT DOES DR. CROCK SAY SPECIFICALLY ABOUT THAT? WHAT WAS HIS TESTIMONY ABOUT THE RELATIONSHIP BETWEEN HAVING WITNESSED -- DISCOVERED YOUR MOTHER'S DEATH? HE -- DID HE ACTUALLY WITNESS THE KILLING OR HE FOUND HER AFTERWARDS?

HE FOUND HER AFTERWARDS.

THE RELATIONSHIP BETWEEN THAT, AT AGE 7, AND THIS MURDER AGE, WHAT WAS HIS AGE AT THE TIME?

HE WAS, I BELIEVE, 27.

TWENTY YEARS LATER. DID THE PSYCHOLOGIST OFFER THE CAUSAL RELATIONSHIP?

WELL, YES, YOUR HONOR, WHAT DR. CROCK SAID IS THAT THIS TYPE OF TRAUMA WILL EVOKE FEELINGS OF HELPLESSNESS AND LOSS OF CONTROL, SO THAT THE PERSON WILL DEVELOP, UNLESS THEY RECEIVE SOME COUNSELING, WILL DEVELOP OR CAN DEVELOP AN INTENSE NEED TO CONTROL A SITUATION AROUND HIM. HE, ALSO, SAID THAT OTHER ASPECTS OF REESE'S PERSONALITY, FOR EXAMPLE THE FACT THAT HE IS VERY INSECURE. THIS ABNORMAL FEAR OF REJECTION. HE SAID ALL OF THIS CONTRIBUTED TO DEVELOPMENT OF REESE'S PERSONALITY AND HIS LATER, WHAT HE CHARACTERIZED AS A VERY PATHOLOGICAL ATTACHMENT TO HIS

GIRLFRIEND, SO THAT WHEN SHE SAID I WANT TO LEAVE YOU, HE BECAME EXEXTRAORDINARILY DISTRAUGHT. HE WOULD START CRYING.

DID HE HAVE THE RELATIONSHIP WITH HER FOR MOST OF HIS ADULT LIFE BEFORE THIS HAPPENED?

YES.

WAS THERE VIOLENCE IN THAT RELATIONSHIP? WAS THERE --

IN HIS RELATIONSHIP WITH THE GIRLFRIEND?

YES.

HE TESTIFIED THAT HE DID HIT HER ON OCCASION. THERE WAS SOME HITTING. THERE WAS SOME SHOVING. THERE WAS SOME TESTIMONY THAT, WHEN HE TRIED -- WHEN SHE TRIED TO GET HIM TO LEAVE, HE WOULDN'T LEAVE. HE WOULD BEG HER TO STAY. SHE SAID THAT THE ONLY WAY HE FELT LIKE HE COULD PROVE HE LOVED HER WAS TO HAVE SEX, AND SOMETIMES HE WOULD PRESSURE HER, BUT THERE WAS NO EVIDENCE OF ANY BEATING OR RAPING, WHICH IS ANOTHER POINT OF CONTENTION THAT WE HAVE. THE TRIAL JUDGE, THREE OR FOUR TIMES, IN HIS ORDER, SAID REESE IS A PERSON WHO RAPES AND BEATS WOMEN IN HIS LIFE, AND THIS IS HOW HE CONTROLS. THERE WAS NO EVIDENCE OF THAT.

BUT NOW WE TAKE SOMETHING THAT HAPPENED AT AGE SEVEN, AND YOU ARE SAYING THAT WE SHOULD, REALLY, RELOOK AT THE JUDGE ONLY GIVING THIS LITTLE WEIGHT, BUT THE NATURE OF THIS CRIME, WHERE HE LAID IN -- HE SAT IN SOMEBODY'S HOUSE FOR SEVERAL HOURS, WAITING FOR HER TO RETURN, THEN GOES AND LIES IN WAIT AT THE -- IN THE CLOSET AND THEN, WHEN SHE IS ASLEEP, COMES OUT AND NOT ONLY -- AND NOT ONLY BRUTALLY ATTACKS HER BUT RAPES HER, AND THEN KILLS HER. I GUESS ISN'T THE JUDGE, REALLY, REFLECTING ON WHERE -- WHAT IS THE -- WHERE IS THE REAL RELATIONSHIP BETWEEN THAT TRAUMA AND THIS, THE NATURE OF THIS CRIME AND THE PLANNING OF THIS CRIME? THAT IT WASN'T JUST A SPONTANEOUS ERUPTION OF VIOLENCE BUT A CAREFULLY PLANNED, YOU MAY DISAGREE WITH THAT, BUT THAT IS THE JUDGE'S ESSENTIAL EVALUATION, OF A VICIOUS, VICIOUS CRIME? HOW DO -- WHAT DO YOU SAY TO THAT?

WELL, I HAVE A COUPLE OF RESPONSES TO THAT. JUSTICE PARIENTE, FIRST OF ALL, YOU HAVE THIS PERSON WHO HAS NO CRIMINAL HISTORY, AND AT THE AGE OF 27, HE DOES COMMIT THIS VERY PECULIAR CRIME. HE IS MURDERING HIS GIRLFRIEND'S BEST FRIEND. HE DOESN'T HAVE NIL CRIMINAL HISTORY. HE IS NOT -- NO RECORD OF ANY VIOLENCE BEFORE. AND THEN SDE THIS VERY PECULIAR THING -- AND THEN HE DOES THIS VERY PECULIAR THING. I THINK THAT, IF ANYTHING, DEMONSTRATES AND BACKS UP DOCTOR CROP'S TESTIMONY THAT THIS WHOLE HISTORY OF HIS IS DIRECTLY RELATED TO IT. HE IS SO THREATENED. HE IS SO AFRAID TO LOSE HIS GIRLFRIEND, HE WILL DO ANYTHING, AND AS FAR AS LYING IN WAIT, THERE WAS EVIDENCE NOT THAT HE LAID IN WAIT BUT HE IS DESPERATE. HE DOESN'T KNOW WHAT TO DO. HE DECIDES TO GO TALK TO THE GIRLFRIEND. WHAT IS HAPPENING HERE? WHY ISN'T SHE -- WHY IS SHE GOING AWAY EVERY WEEKEND? THE GIRLFRIEND IS GOING AWAY EVERY WEEKEND, MEANWHILE PRETENDING THAT SHE IS STILL INVOLVED WITH REESE, SO HE GOES TO TALK TO HER BEST FRIEND, TO SEE IF HE CAN GET SOME ANSWERS. HE GOES IN THE HOUSE. ONCE IN THERE, HE IS SCARED. HE IS AN UNASSERTIVE PERSON, A PERSON WHO HAS STRONG FEELINGS BUT DOESN'T KNOW HOW TO EXPRESS THEM. SHE COMES HOME. HE GETS SCARED. HE FREAKS OUT. HE HIDES. HE IS, ALSO, DOING COCAINE AT THE TIME. HE DOESN'T KNOW WHAT TO DO. HE IS BACK THERE IN THE CLOSET.

BUT HE RAPES HER.

YES. HE -- HOW DOES THAT GO ALONG WITH ANY OF THIS OTHER THING? HE IS SCARED. HE IS TRYING TO HIDE. HE -- HE IS TRYING TO HIDE. HE PANICS AND RAPES SOMEBODY IN A PAN SNICK.

IT IS AN ACT OF -- IN A PANIC?

IT IS AN ACT OF RAGE, YOUR HONOR. HE HE WALKS OUT. HE IS ENRAGED.

WOULD YOU AGREE THAT THIS IS NOT A REWEIGHING PROCESS AT THIS POINT, AND IF THERE IS SOME EVIDENCE THAT WOULD SUPPORT THE TRIAL JUDGE'S WEIGHING PROCESS, SUCH THINGS AS THIS HAPPENED SO LONG AGO THAT I GIVE IT LITTLE WEIGHT. DON'T WE HAVE TO ACCEPT THAT?

NO, YOUR HONOR. I DON'T THINK YOU DO, PARTICULARLY BECAUSE THIS ORDER HAS SO MANY ERRORS IN IT. THE TRIAL JUDGE MADE SO MANY MISTAKES. MISREAD THE TESTIMONY. GAVE REASONS THAT AREN'T SUPPORTED BY THE EVIDENCE OR THE FACTS. WHAT YOU HAVE HERE IS THE ABSENCE OF A FAIR AND IMPARTIAL TRIAL JUDGE. JOHN REESE DIDN'T HAVE A TRIAL JUDGE IN THIS CASE.

BUT DON'T WE GET ON A SLIPPERY SLOPE, WHEN WE START GETTING INTO, I BELIEVE, WHAT YOU ARE SUGGESTING, THAT WE DO? AND AREN'T WE, IN EFFECT, REWEIGHING THE EVIDENCE, AT THIS POINT? IF WE SAY YOU SHOULD HAVE GIVEN IT GREAT WEIGHT, AND THE JUDGE SAID I GIVE IT LITTLE WEIGHT, BECAUSE IT HAPPENED 20 YEARS AGO, AND HE HAS LIVED A -- A FRUITFUL LIFE SINCE THEN T HASN'T AFFECTED HIM, UP UNTIL THIS POINT, AND THERE ARE ALL SORTS OF OTHER REASONS WHY HE, REALLY, KILLED THIS GIRL. HE WAS -- THOUGHT SHE WAS TAKING HIS GIRLFRIEND AWAY TO MEET A MAN ON SOME PLACE ELSE. SO SHOULD WE GET INTO THAT TYPE OF REWEIGHING? ISN'T THAT WHAT YOU ARE ASKING US TO DO?

I DON'T THINK I AM ASKING YOU TO REWEIGH. THE EVIDENCE DOESN'T SUPPORT THE TRIAL JUDGE'S FINDINGS OR THE TRIAL JUDGE'S CONCLUSIONS. AND THE TRIAL JUDGE'S REASONING, HERE, ONCE THE TRIAL JUDGE HAD TO GIVE REASONS, THEY ARE NOT VALID. AND THAT IS EXACTLY WHY THIS COURT REVIEWS THESE SENTENCING ERRORS, AND THAT IS EXACTLY WHY THE TRIAL COURT -- I MEAN THIS COURT REQUIRES TRIAL COURTS TO GIVE A WRITTEN EVALUATION THAT IS COMPREHENSIVE, THAT IS ANALYTICAL. THAT POINTS TO SPECIFIC FACTS IN THE CASE, TO SUPPORT THEIR REASONS. SO THAT WE CAN SEE WHETHER IT IS A FAIR AND IMPARTIAL EVALUATION, SO THAT THIS COURT CAN REVIEW IT. THIS CASE INVOLVES MUCH MORE THAN SIMPLY THE TRIAL JUDGE'S GIVING CERTAIN WEIGHT TO THESE MITIGATORS. AND THE TRIAL COURT REJECTED THREE OF THE MITIGATORS, AND OBVIOUSLY I WON'T HAVE TIME TO GO INTO THOSE, BUT REJECTED SEVERAL ENTIRELY, WITHOUT ANY RECORD OF SUPPORT FOR HIS REJECTION OF THOSE MITIGATORS. AND I SEE I AM INTO MY REBUTTAL TIME, SO --

YOU MAY RESERVE SOME TIME. MS. YATES.

MAY IT PLEASE THE COURT. I AM BARBARA YATES, ASSISTANT ATTORNEY GENERAL, ON BEHALF OF THE STATE. I BELIEVE THAT JUSTICE SHAW HAS HIT THE NAIL ON THE HEAD IN THIS. WHILE COUNSEL DOES NOT REALLY SAY IN HER BRIEF, OH, HE DIDN'T GIVE IT ENOUGH WEIGHT, THAT IS THE EPPSENS OF ALL OF HER ARGUMENTS -- THAT IS THE ESSENCE OF ALL OF HER ARGUMENTS. WE ALL KNOW THE HISTORY OF THIS CASE FORM THE JUDGE DIDN'T WRITE AN OFFICIAL ORDER, THE FIRST TIME AROUND, REGARDING MITIGATION. HE HAS NOW.

WHAT ABOUT THE ARGUMENT THAT, AS A PART OF HIS ORDER ON THE CHILDHOOD TRAUMA, THE TRIAL JUDGE MAKES CERTAIN INDICATIONS, SUCH AS THAT THE DEATH OF THE MOTHER WASN'T DUE TO ANY DOMESTIC VIOLENCE. DO WE HAVE ANYTHING THAT SUPPORTS HIS CONCLUSION THAT THE DEATH WAS NOT A PART OF ANY DOMESTIC VIOLENCE SITUATION?

YOUR HONOR, I DO NOT BELIEVE THAT THERE IS ANY EVIDENCE IN THE RECORD THAT REESE WAS ADOPTED AS AN INFANT, AND IT WAS HIS ADOPTIVE MOTHER AND ADOPTIVE FATHER.

APPARENTLY HAD HE HAD A CLOSE RELATIONSHIP. THERE IS EVIDENCE IN THE RECORD THAT HIS FATHER WAS MENTALLY ILL, AND THIS IS PROBABLY WHAT CAUSED HIM TO KILL HIS WIFE. HOWEVER, I DON'T THINK THERE IS ANYTHING IN THE RECORD THAT REFLECTS THAT THEY HAD, YOU KNOW, AN ONGOING FIGHTING RELATIONSHIP OR ANYTHING LIKE THAT.

SO THE ABSENCE OF ANY EVIDENCE IS WHAT YOU ARE SAYING SUPPORTS HIS CONCLUSION?

YES. AND, AS YOU POINTED OUT EARLIER, THE JUDGE, AT THE END OF HIS LONG DISCUSSION ON CHILDHOOD TRAUMA, WHICH JUST, INCIDENTALLY, HAPPENS AFTER HE SAYS, OKAY, FINE, THE BOY'S MOTHER WAS KILLED WHEN HE WAS SEVEN YEARS OLD. THIS HAPPENED A LONG TIME AGO. THE JUDGE'S CONCLUSION THAT, YES, THIS IS GOING TO BE ESTABLISHED, IS ONLY -- I AM ONLY GIVING IT MINIMAL WEIGHT, DOES NOT ONLY APPLY TO JUST MOTHER'S DEATH. IT APPLIES TO ALL OF THE THINGS ABOUT CHILDHOOD TRAUMA. THAT IS WHY I SAID JUSTICE SHAW HAS HIT THE NAIL ON THE HEAD. THIS IS A COMPLAINT ABOUT WEIGHT. AND THERE IS SUPPORT IN THE RECORD FOR THE JUDGE'S CONCLUSIONS, ESPECIALLY WHAT HE IS SAYING ABOUT DR. CROP'S TESTIMONY. WHILE --

I GUESS -- I GUESS I WANT TO KNOW, FROM YOU, CAN WE LOOK AT THAT, WHAT WEIGHT IS GIVEN TO A PARTICULAR MITIGATING OR AGGRAVATING CIRCUMSTANCE, FOR THAT MATTER, BASED ON THE JUDGE'S CONCLUSIONS ABOUT WHAT THE EVIDENCE SHOWS?

YOUR HONOR, THERE ARE A MULTITUDE, A LITERAL MULTITUDE OF CASES OUT OF THIS COURT, SAYING THAT THE ACTUAL WEIGHT GIVEN TO A MITIGATOR IS WITHIN THE TRIAL COURT'S DISCRETION. YOU LOOK TO SEE IF THE EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING OR REJECTION THAT A MITIGATOR HAS BEEN ESTABLISHED ON THE RECORD. AT THAT POINT, THEN, IT BECOMES DISCRETIONARY AS TO WHAT WEIGHT IS GIVEN. AND I BELIEVE I CITED, IN MY BRIEF, A NUMBER OF CASES WHERE THIS COURT HAS AFFIRMED A TRIAL COURT'S RULING OMIT GATORS, WHERE IT WAS GIVEN SLIGHTLY, SOME WEIGHT, MINIMAL WEIGHT, THINGS LIKE THIS. THE JUDGE DID A CONSCIENTIOUS JOB ON THIS. HE LOOKED AT EVERYTHING. HE FOUND THIS HAD BEEN ESTABLISHED, AND HE GAVE IT THE WEIGHT THAT HE FELT IT DESERVED. I WAS TRYING TO FIND, IN THE TRANSCRIPT OF DR. CROP'S TESTIMONY, SOME OF THE THING IT IS THAT HE SAID ABOUT THE MOTHER'S DEATH. AND IN ESSENCE, HE SAID THE MOTHER'S DEATH PLAYED SOME INFLUENCE IN SHAPING REESE'S PERSONALITY. HOWEVER, IT WAS NOT THE CAUSE OF THIS CRIME. AND I FOUND THIS ONE PLACE. THIS IS DR. CROP. "I SAID THAT I RECEIVED A HISTORY FROM MR. REESE, WITH REGARD TO HIS PERCEPTION OF WHAT HAPPENED." "IT IS NOT UP TO ME TO DETERMINE THE FACTS." HE GOES ON, LATER, HOWEVER, AND SAYS "NOTHING CAUSED MR. REESE TO KILL THIS WOMAN." "HE HAS ACCEPTED RESPONSIBILITY. HE IS NOT TRYING TO JUSTIFY IT OR EXCUSE HIS BEHAVIOR." YOU HAVE TO TAKE THAT IN CONTEXT WITH EVERYTHING ELSE THAT DR. CROP SAID. AT THE TRIAL, AT THE GUILT PHASE, REESE TOOK THE STAND AND TESTIFIED IN HIS OWN BEHALF. HE TESTIFIED ABOUT HIS RELATIONSHIP WITH JACKIE. THAT HE HAD NEVER BRUTALIZED HER, THAT THERE WERE TIMES WHEN THEY DISAGREED AND HE ACTUALLY LOCKED THE BEDROOM DOOR ONCE, BECAUSE HE JUST WANTED TO TALK TO HER. THE STATE PUT JACKIE GREER ON THE STAND IN REBUTTAL. AND ASKED HER HAS EVER BEATEN YOU? YES. HAVE YOU EVER CALLED THE COPS ON HIM? YES. HAS EVER FORCED YOU TO HAVE SEX WITH HIM? YES. THIS IS EXACTLY WHAT HAPPENED WITH THE VICTIM IN THIS CASE. HE SAYS, TO DR. CROP, WELL, I JUST WENT THERE TO TALK TO HER, AND THEN, WHEN I WAS TRYING TO LEAVE, AFTER SIX, EIGHT, TEN HOURS IN THE HOUSE AND HER BEING ASLEEP, SHE WOKE UP. SHE SAW ME. SHE PAN IB I COULD FORM I HAD TO CHOKE HER INTO SUBMISSION. I HAD TO RAPE HER AND THEN I HAD TO STRANGLE HER. DR. CROP TESTIFIED, WELL, I LISTENED TO REESE. I HAVE HIS STATEMENT. I READ ALL THE REPORTS, WHICH WOULD INCLUDE THE TWO POLICE REPORTS AND THE TESTIMONY AT THE DEPOSITION AND TESTIMONY BY THE DETECTIVES, WHO SAID THAT REESE ADMITTED TO THESE TWO DETECTIVES, THAT HE DECIDED TO KILL CHARLENE AUSTIN WHILE HE WAS IN HER HOUSE, WAITING FOR HER TO COME HOME. DR. CROP SAID HE BASED HIS ANALYSIS ON WHAT REESE TOLD HIM, ON ALL OF THESE SELF-SERVING STATEMENTS. WHEN, ON CROSS-EXAMINATION, THE STATE

ATTORNEY ASKED HIM, DO YOU KNOW THAT HE FORCED HIMSELF ON JACKIE GREER, AND THAT HE BEAT HER, DR. CROP DID NOT MAKE A DIAGNOSIS OF ANY KIND OF MENTAL ILLNESS, NO PERSONALITY DISORDER. HE JUST SAID THAT REESE IS NONAGGRESSIVE AND NONASSERTIVE. AND THE STATE ATTORNEY ASKED, WELL, WHAT DOES KNOWING THAT HE FORCED HIMSELF ON MS. GREER AND THAT HE BEAT HER NUMEROUS TIMES, DUE TO YOUR ASSESSMENT OF HIS NONASSERTIVE, NONAGGRESSIVE BEHAVIOR, AND CROP SAYS, WELL, THAT TIES JUST RIGHT INTO IT. AND ESSENTIALLY, HIS TESTIMONY BOILS DOWN TO REESE IS NONASSERTIVE AND NONAGGRESSIVE, WHENEVER HE ALWAYS GETS HIS WAY AND WHENEVER NO ONE MAKES HIM MAD. WE SHOULD ALL LIVE IN SUCH PERFECT WORLD. THAT WE ALWAYS GET OUR WAY AND NO ONE EVER MAKES US MAD. NOW, CROP SAID, OH, WELL, I LOOKED AT EVERYTHING. I LOOKED AT EVERYTHING. WHEN REESE WAS ON THE STAND, IN THE GUILT PHASE, HE TESTIFIED, AFTER I KILLED JACKIE, I WENT TO A GROCERY STORE AND I GOT SOME FOOD, AND I TOOK IT OVER TO JACKIE'S, AND SHE COOKED IT AND WE HAD DINNER, AND I SPENT THE NIGHT WITH HER. THE REST OF JACKIE GREER'S TESTIMONY ON REBUTTAL WAS DID YOU SEE REESE ON THE 28th? THIS IS THE DAY THE VICTIM WAS KILLED. NO. I DID NOT SEE HIM ON THAT DAY. DID HE BRING GROCERIES TO YOUR HOUSE, AND DID YOU COOK SUPER FOR HIM? NO. DID HE SPEND THE NIGHT WITH YOU? NO. THEN WE HAVE DR. CROP TESTIFY TESTIFYING. I HAVE LOOKED AT EVERYTHING. THIS IS WHAT HE SAID. QUOTE. I BELIEVE HE WENT SHOPPING. HE WENT BACK IN MS. GREER'S HOUSE. HE HAD DINNER. THIS IS TOTALLY CONTRARY TO THE TESTIMONY THAT WAS PRESENTED AT THE GUILT PHASE, WHICH DR. CROP SAYS I HAVE READ. I AM SURE A LOT OF YOU WHO WERE AROUND FOR THE PRESTS VERINGS OF THIS HAVE READ -- FOR THE PREVIOUS VERSIONS OF THIS HAVE READ THIS RECORD, AND I SUSPECT THAT ALL OF YOU WILL HAVE, BY THE TIME THAT THIS IS OVER. DR. CROP'S TESTIMONY IS REplete WITH INCONSISTENCY, AND THOSE ARE THE THINGS THAT THE TRIAL COURT POINTED OUT. HE BASED HIS TESTIMONY ON REESE'S SELF-SERVING STATEMENTS TO HIM. THIS COURT HAS SAID NUMEROUS, NUMEROUS TIMES. I HAVE LISTED NUMEROUS CASES IN MY BRIEF, THAT SELF-SERVING TESTIMONY, A FINDER OF FACT CAN FIND IT IS NOT WORTHY OF BELIEF. THIS COURT HAS SAID, NUMEROUS TIMES, THAT AN EXPERT'S OPINION, BASED ON SELF-SERVING TESTIMONY, CAN HAVE THE SAME TREATMENT. THE JURY AND THE JUDGE IN THIS CASE SAT THROUGH THE GUILT PHASE. THEY HEARD ALL OF THE TESTIMONY. THEY HEARD ABOUT HIM INITIALLY DENYING HE HAD EVER HAVING BEEN IN THE VEHICLE TM -- IN THE VICTIM'S HOUSE, AND THEN WHEN HE IS CONFRONTED THREE MONTHS LATER, WELL, WE FOUND YOUR PALM PRINT ON HER WATER BED, AND HE CONFESSES. HE TELLS THE TWO DETECTIVES, WELL, YEAH, I GOT IN THERE ABOUT NOON AND IT WAS ABOUT FOUR HOURS BEFORE SHE CAME HOME, AND WHILE I WAS SITING THERE WAITING FOR HER, I DECIDED THAT I WAS GOING TO KILL HER, AND HE, IN FACT, HE F.A.C. WAITED THAT PLAN VERY -- HE EFFECT WAITED THAT PLAN VERY -- EFFECTUATED THAT PLAN VERY WELL. HE HAS A HISTORY OF VIOLENCE TOWARDS WOMEN. JACKIE GREER MAY BE ONE OF THE TWO LUCKYES WOMEN ON EARTH. HE DID THE SAME THINGS TO HER THAT HE DID TO THE VICTIM, WITH THE EXCEPTION THAT HE DIDN'T KILL HER. THE OTHER THING THAT DR. CROP MENTIONS IN HERE, IS WHEN HE TALKS ABOUT REESE'S DESCRIPTION OF THE KILLING TO HIM. HE SAYS WELL, THAT HE TOLD ME HE CHOKED HER INTO SUBMISSION AND SHE WAS FIGHTING, AND HE DRAGGED HER INTO THE BEDROOM, AND HE FORCED HIMSELF ON HER AND SHE WAS STILL FIGHTING, AND THEN HE CHOKED HER ENOUGH TO SHE FELL TO THE FLOOR, AND THAT HE GOT THE EXTENSION CORD AND PUT IT AROUND HER NECK AND HE PULLED IT ONCE OR TWICE MUCH THE MEDICAL EXAM -- THE MEDICAL EXAMINER TESTIFIED THAT THE VICTIM WOULD IS A LOST CONSCIOUSNESS SHORTLY AFTER STARTING. HOWEVER, THE MANUAL STRANGLING WOULD HAVE TAKEN THREE TO FOUR MINUTES OF PULLING PRESSURE, TO EFFECT HER DEATH. THERE IS ANOTHER DISCREPANCY BETWEEN WHAT DR. CROP RELIED ON, FROM WHAT REESE TOLD HIM AND WHAT THE FACTS ACTUALLY WERE. THE DEFENSE COUNSEL RZ, ON ALAMO RENT A -- THE DEFENSE COUNSEL REALIZES, ON ALAMO RENT A CAR, PLEASE READ THAT CASE. ON ALAMO RENT A CAR, WE HAVE A JUDGE OF INDUSTRIAL CLAIMS WHO DOES NOT BELIEVE THE EMPLOYER CARRIER'S EXPERT, WHO SAYS THAT NO, THIS GUY IS HAVING TO WASH BUSES OUT IN THE COLD CONTRIBUTED TO, IN THE RAIN, EVERYTHING LIKE THAT, CONTRIBUTED TO HIS NEWMAN OWN YEAH. HE BASED ON HIS PERSONAL EXPERIENCE. HE PREJUDGED THE -- THERE WAS A MOTION TO STRIKE THE EMPLOYER CARRIER'S EXPERT. HE ALLOWED THE EMPLOYER,

REFUSED TO GRANT THE MOTION TO STRIKE, BUT HE SAID VARIOUS THINGS ON THE RECORD. THE FIRST DCA SAID, ON THE TOTALITY OF THESE CIRCUMSTANCES, THIS JUDGE HAS INTERJECTED HIMSELF IN THIS PROCEEDING, AND THE BASIS FOR HIS DENIAL OF THE EMPLOYER EMPLOYER-SCHOLARIER'S CLAIMS IS HIS PERSONAL BE -- OF THE EMPLOYER-CARRIER'S CLAIMS IS HIS PERSONAL BELIEVE. -- HIS PERSONAL BELIEF. THE JURY HEARD ALL OF THE EVIDENCE IN THIS CASE AND IT REJECTED REESE'S TESTIMONY THAT THIS WAS NO MORE THAN SECOND-DEGREE MURDER, AND IT LISTENED TO ALL OF THE EVIDENCE PRESENTED IN THE CASE AND IT HAD ALL OF THE EVIDENCE IN THE GUILT PHASE TO GO BACK WITH. THIS IS A CREDIBILITY DETERMINATION. THE JURY AND THE JUDGE HAVE MADE CREDIBILITY DETERMINATIONS THAT ARE SUPPORTED IN THIS RECORD. I WOULD, ALSO, LIKE TO ADDRESS CCP. IN THE ORIGINAL APPEAL OF THIS CASE, THERE WERE THREE AGGRAVATORS FOUND IN THIS CASE. FELONY MURDER COMMITTED DURING BOTH BURGLARY AND A SEXUAL BATTERY. AJC, THE MEDICAL EXAMINER TESTIFIED THAT THERE WERE FOUR BLUNT TRAUMA WOUND TO THE GIRL'S FACE. SHE WAS BEATEN. SHE WAS CHOKED. SHE WAS STRANGLER. SHE WAS RAPED. AJC IS MORE THAN COVERED IN THIS. ON DIRECT APPEAL, HAC AND FELONY MURDER WERE NOT CHALLENGED. THE ONLY KAING VATE OR CHALLENGED WAS -- THE ONLY AGGRAVATOR CHALLENGED WAS CCP. THIS COURT FOUND THAT CCP HAD BEEN ESTABLISHED. THE MAIN BASIS FOR CHALLENGING A CCP ON DIRECT APPEAL WAS THAT THIS WAS A, QUOTE, DOMESTIC MURDER. THIS COURT DECIDED THAT AND SAID THIS IS NOT A DOMESTIC MURDER. CCP IS, AGAIN, BEING CHALLENGED, BECAUSE NOW, EVEN THOUGH THE STATE'S CONTENTION OF FINDING THAT CCP WAS ESTABLISHED, THE LAW OF THE CASE, IS NOW CHALLENGING THE CCP UNDER THE THEORY THAT, WELL, YOU DIDN'T HAVE A PROPER CONSIDERATION OF MITIGATION EVIDENCE IN CONJUNCTION WITH THE AGGRAVATORS. LIKE I SAID, THE STATE'S CONTENTION THAT CCP IS THE LAW OF THE CASE AND REALLY SHOULDN'T REVISIT IT. THEY STILL HAVEN'T CHALLENGED HAV OR FELONY MURDER. THOSE ARE MORE THAN -- HAC OR FELONY MURDER. THOSE ARE MORE THAN SUPPORTED BY THE RECORD. WE HAVE THREE VERY POWERFUL AGGRAVATORS HERE. WE HAVE ESSENTIALLY LITTLE IN THE WAY OF NONSTATUTORY MITIGATION. THERE ARE COMPLAINTS IN HERE THAT THERE WASN'T ENOUGH -- THE JUDGE DIDN'T PAY ENOUGH ATTENTION TO DR. CROP ON THE EXTREME EMOTIONAL OR MENTAL AND EMOTIONAL DISTURBANCE OR DECIDES TRESS. AT TRIAL -- DISTRESS. AT TRIAL, THE ONLY MITIGATOR THAT WAS ASKED FOR WAS THE CATCH-ALL. TRIAL COUNSEL RECOGNIZED THAT DR. CROP COULD NOT TESTIFY THAT ANY STATUTORY MENTAL MITIGATORS HAD BEEN ESTABLISHED. COUNSEL ADMITS THAT, ON PAGE 36 OF HER BRIEF, AND SAYS NO STATUTORY MENTAL MITIGATORS WERE ESTABLISHED. THE TRIAL COURT CONSIDERS THIS ALL UNDER NONSTATUTORY MITIGATION, AND AS I HAVE EXPLAINED, THERE ARE SO MANY INCONSISTENCY IN DR. CROP AS TESTIMONY, THE COURT WAS JUSTIFIED IN REJECTING HIS NONSTATUTORY MITIGATION THAT HE WAS UNDER EXTREME --

WITH THE THREE AGGRAVATORS, SEXUAL BATTERY AND BURGLARY AND A MURDER, EVEN UNDER CCP, IF THE JUDGE HAD FOUND EVIDENCE OF THIS TRAUMATIC EVENT IN CHILDHOOD AND GIVEN IT GREAT WEIGHT, THERE CERTAINLY ARE CASES WHERE THAT, STILL, WOULD -- THAT THESE KINDS OF AGGRAVATORS AND WITH THAT STATUTORY MITIGATORS, WOULD SUPPORT THE --

YES, YOUR HONOR. I CITED ANY NUMBER OF CASES IN THE PROPORTIONALITY REVIEW. I CITED BURGLARY CASES, WHICH HAD FEWER AGGRAVATORS AND MORE MITIGATORS, WHERE THIS COURT HAS SAID DEATH IS APPROPRIATE ON A BURGLARY. I THINK I ONLY CITED ONE STRANGULATION CASE, BUT THAT ONE HAD EITHER TWO OR THREE AGGRAVATORS, HAD BOTH MENTAL MITIGATORS ESTABLISHED. DOMESTIC CASES THAT, REALLY, WEREN'T DOMESTIC CASES THAT ARE COMPARABLE. CASES THAT ARE JUST, IN GENERAL, WITH FEWER AGGRAVATORS, AND MORE MITIGATION. TRUE DOMESTIC CASES, WHERE SOMEBODY, YOU KNOW, KILLED A FAMILY MEMBER, A GIRLFRIEND, A FORMER GIRLFRIEND, ARBELAISE KILLED HIS GIRLFRIEND'S SON HENRY, KILLED HIS WIFE AND HIS WIFE'S SON. THIS VARIOUS SORT PRESIDENT OF INTERRELATIONSHIPS -- THIS VARIOUS ASSORTMENT OF INTERRELATIONSHIPS. I ALSO CITED THAT THE DEATH PENALTY WAS UPHELD IN ALL OF THOSE, WHERE, AGAIN, THE SAME OR FEWER

AGGRAVATORS AND, IN GENERAL, MUCH, MUCH MORE MITIGATION. A WOULD YOUR POSITION BE DIFFERENT --

WOULD YOUR POSITION BE DIFFERENT, IF THIS HAD BEEN HIS GIRLFRIEND?

NO. BECAUSE THEN I WOULD HAVE RELIED ON THE TRUE DOMESTIC CASES. I DISLIKE USING THE WORD DOMESTIC.

WE HAVE SAID THAT THERE IS NO DOMESTIC EXCEPTION.

I THINK IT IS PULLER, IN THE EARLY 1700S, WHEN YOU START TALKING ABOUT SPENCER AND THE DOMESTIC -- THE EARLY 700S.

THE EARLY 700S IN THE SOUTHERN REPORTER?

EARLY 700S. I HOPE WE HAVEN'T BEEN HERE THAT LONG. THE DEFENSE ALWAYS CLAIMS DOMESTIC, BECAUSE IN SO MANY OF THOSE CASES, THERE IS AN ONGOING FEUD. YOU HAVE MENTAL ILLNESSES. YOU HAVE FAULT ON BOTH SIDES AND THINGS LIKE THIS, AND WE ALL RECOGNIZE THAT, WHEN SOMEONE IS KILLED, FRANKLY IT IS THE FAMILY THAT IS LOOKED TO FIRST. YOU KNOW, A LOT OF THIS HAPPENS, BUT YOU HAVE LAID REST TO THE IDEA THAT THERE IS A TRUE SUBSET OF, QUOTE, DOMESTIC CASES. HOWEVER, THERE ARE LOTS OF FACTS SCENARIOS, WHERE SOMEONE HAS KILLED A LOVED ONE OR A FORMER LOVED ONE OR A LOVED ONE OF A FORMER LOVED ONE. WE HAVE GOT CASES WHERE PEOPLE SAY, WELL, IF I CAN'T HAVE HER, NO ONE CAN. BAM. SHE IS DEAD! THERE ARE OTHER CASES -- JACKIE GREER WAS THE PERSON THAT MIGHT FIT THIS. YOU RECOGNIZE THIS IN THE ORIGINAL OPINION. HE DIDN'T KILL JACKIE. HE KILLED JACKIE'S FRIEND. JACKIE TESTIFIED AT TRIAL THAT CHARLENE DID NOT LIKE OR, NO, THAT REESE DID NOT LIKE CHARLENE. CHARLENE NEVER INTERFERED WITH JACKIE'S RELATIONSHIP WITH REESE. I CITED OCHICONE. I CITED TURNER. I CITED HUDSON. IN OCHICONE, HE BROKE INTO THE HOME OF HIS FORMER GIRLFRIEND AND KILLED HER PARENTS. HUDSON BROKE INTO HIS FORMER GIRLFRIEND'S APARTMENT. SHE WASN'T THERE. SHE KNEW HE WAS LOOKING FOR HER. AND HE KILLED THE ROOMMATE. TURNER KILLED HIS FORMER WIFE AND HER CURRENT ROOMMATE. HE GOT DEATH FOR KILLING THE ROOMMATE. THESE ARE MUCH MORE SIMILAR TO REESE, THE SITUATION IN REESE, THAN WHAT HAPPENED IF, YOU KNOW, SOMEBODY KILLS A FORMER GIRLFRIEND. A WIFE. SOMETHING LIKE THAT. THIS IS SIMPLY NOT DOMESTIC. YOU HAVE ALREADY HAD THAT. THIS -- THE JUDGE FINALLY WROTE AN ACCEPTABLE ORER. -- ORDER. IT IS SUPPORTED BY THE CASE. IT IS SUPPORTED BY THE FACTS. IT IS SUPPORTED BY THE LAW. ALL OF THE AGGRAVATORS ARE WELL ESTABLISHED AND SHOULD BE AFFIRMED. AND THIS CASE IS DEFINITELY PROPORTIONATE. IT IS TRULY ONE OF THE MOST AGGRAVATED AND MOST MITIGATED, WHEN YOU LOOK AT TRULY PROPORTIONAL CASES. THE CASES OF THE DEFENSE RELYING ON, A LOT OF THEM ARE THE QUOTE/UNQUOTE DOMESTIC CASES, WHERE THERE WAS A LOT OF MENTAL MITIGATION AND AGGRAVATOR WAS STRUCK. THERE WERE JURY OVERRIDES. THERE WERE SINGLE AGGRAVATOR CASES. THEY ARE NOT TRULY PROPORTIONAL TO THIS CASE. AND THE STATE ASKS YOU TO AFFIRM THIS DEATH SENTENCE. THANK YOU.

THANK YOU, MS. YATES. MS. CAREY, REBUTTAL?

YES, YOUR HONOR. WITH REGARD TO MOST OF THE STATE'S ARGUMENTS, WE HAVE ANSWERED MOST OF THOSE IN OUR REPLY BRIEF, AND I JUST URGE THE COURT TO REREAD THAT BRIEF. I CERTAINLY DON'T HAVE TIME TO RESPOND TO THEM TODAY. THE STATE HAS BROUGHT UP MANY, MANY TIMES, THAT THE EXPERT OPINION IS BASED ON, SOLELY ON REESE'S SELF-SERVING TESTIMONY THAT IS SIMPLY INACCURATE. THIS EXPERT EXAMINED, DID A FULL PSYCHOLOGICAL EXAMINATION OF REESE AND EXAMINED EVERY OTHER BIT OF EVIDENCE IN THE CASE AND INTERVIEWED WITNESSES, INTERVIEWED REESE'S FAMILY MEMBERS, AND THIS EXPERT, THE BACKGROUND FOR HIS OPINION IS CERTAINLY AS EXTENSIVE AS IT WAS FOR THE EXPERT'S OPINION IN NIBERT AND OTHER CASES --

IT IS CORRECT, THOUGH, IS IT NOT, WHERE THE EXPERT WOULD NOT SUPPORT ANY OF THE STATUTORY MENTAL MITIGATORS?

THAT'S CORRECT, YOUR HONOR, BUT THE EXPERT DID EXPRESS THE OPINION THAT REESE WAS SERIOUSLY MENTALLY IMPAIRED AT THE TIME OF THE CRIME, DUE TO HIS EMOTIONAL AGITATION OR DISTURBANCE OVER THE POTENTIAL LOSS OF THIS RELATIONSHIP, AND TO HIS USE OF DRUGS AND ALCOHOL AT THE TIME, AND HIS FEAR AND ANXIETY ABOUT WHAT WAS HAPPENING IN HIS LIFE. THE TRIAL JUDGE --

THERE IS NO CLAIM THAT ANY OF THE STATUTORY MENTAL MITIGATORS WERE ADVANCED OR THAT THE TRIAL COURT ERRONEOUSLY DID NOT FIND ANY, IS THERE?

NO. NOT STATUTORY MITIGATORS, BUT THE TRIAL JUDGE DID FIND HE WAS MENTALLY IMPAIRED, AND THAT PARTICULAR OPINION WAS NEVER, EVER ADDRESSED BY THE TRIAL COURT. IT IS NOT EVEN MENTIONED IN THIS ORDER. AND THAT IS, ITSELF, A VIOLATION OF CAMPBELL. THE TRIAL COURT NEVER MENTIONS, AGAIN, ONCE AGAIN, MUCH OF THE EXPERT'S TESTIMONY HERE. INSTEAD THE TRIAL JUDGE REACHES HIS OWN CONCLUSIONS, BASED ON FAULTY REASONING OR HIS OWN PERSONAL OPINION ABOUT THE CASE.

WELL, IF HE FELT THAT HE WAS MENTALLY IMPAIRED, WHY WASN'T THERE A CLAIM FOR STATUTORY MENTAL MITIGATION?

I AM SORRY. I MISUNDERSTOOD YOUR QUESTION. YOU ARE ASKING IF REESE ASKED FOR THE STATUTORY MITIGATOR. I AM NOT SURE IF HE DID OR NOT, YOUR HONOR. BUT WE ARE NOT CONTESTING THE TRIAL JUDGE'S REJECTION OF A STATUTORY MITIGATOR.

I MEAN THAT IS WHAT I AM ASKING, WHETHER --

RIGHT.

I AM NOT SURE WHETHER HE REJECTED THEM OR THEY JUST WEREN'T CLAIMED.

THERE IS NO EVIDENCE THAT A STATUTORY MITIGATOR EXISTED. THE EVIDENCE IS THAT HE WAS SERIOUSLY IMPAIRED, NOT THAT IT ROSE TO THE LEVEL OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE.

THANK YOU. YOUR TIME IS CONCLUDED. APPRECIATE BOTH OF YOU. THIS CONCLUDES OUR COURT SESSION FOR TODAY, BUT BEFORE WE EXIT THE COURTROOM, WE HAVE BEEN ASKED TO REMAIN FOR THE PURPOSE OF TAKING SOME PHOTOGRAPHS WITH INTERNS THAT HAVE BEEN THE COURT, AND WE ARE READY TO DO THAT AT THIS POINT. THANK YOU. YOU DON'T HAVE TO REMAIN, MS. YATES OR MS. CAREY. WE NEED TO TAKE THOSE QUICKLY! WHERE DID YOU WANT US TO BE? WHAT DO YOU WANT US TO DO? WHERE DO YOU WANT US TO BE?

STAND AND MAYBE SCOOT IN.

SURE.

TAKE ONE AND THEN WE WILL GO. ONE AT A TIME?

WELL, MAYBE WE COULD PULL THESE BACK AND BE CLOSER.

WE TALK IT AS A GROUP. -- WE WILL TAKE IT AS A GROUP. WE WILL DO IT QUICKLY. READY. ACTION!

JUSTICE WELLS IS GOING TO BE RIGHT BACK.