Lawrence Singleton vs State of Florida

NEXT CASE IS LAWRENCE SINGLETON VERSUS THE STATE OF FLORIDA.

MAY IT PLEASE THE COURT. I AM PAUL HELM, AND I REPRESENT THE APPELLANT LAWRENCE SINGLETON. MR. SINGLETON WAS CONVICTED OF FIRST-DEGREE MURDER AND THE STABBING DEATH OF ROCKS ANN HAYES -- OF ROCKS AND HAYES. THE -- OF ROXEANNE HAYES. UNLIKE THIS COURT'S DECISION IN HIS BOLEN LAST YEAR, THE STATE CAN GRANT VOIR DIRE ON THE ISSUE OF PRETRIAL PUBLICITY. THE COURT RULED, AT THE QUALIFY THE DEFENSE, THAT IT WOULD EXCUSE JURORS FROM THE CASE WHO HAD KNOWLEDGE OF SINGLETON'S PRIOR CONVICTIONS IN CALIFORNIA. MR. SINGLETON HAD BEEN NATIONALLY NOTORIOUS FOR HAVING KIDNAPPED, RAPED, AND CHOPPED OFF THE ARMS OF THE 15-YEAR-OLD GIRL IN CALIFORNIA, BACK IN 1978. HE WAS CONVICTED IN 1979. THE INDIVIDUAL VOIR DIRE FOCUSED ON WHETHER THE JURORS KNEW ABOUT THOSE PRIOR CRIMES. THE COURT GRANTED 75 CAUSE CHALLENGES TO THE DEFENSE, FOR JURORS WHO DID KNOW ABOUT THOSE CRIMES. HOWEVER, THE COURT DENIED THREE CAUSE CHALLENGES TO OTHER JURORS WHO, ALSO, HAD SOME KNOWLEDGE OF THOSE CRIMES. THE FIRST WAS MR. CRUMPTON.

THIS IS, AS YOU SAY, UNUSUAL, IN THAT THE JUDGE DID WHAT WE HAVE SUGGESTED IN THESE HIGH PUBLICITY CASES AND GRANTED, I SAW THAT IN YOUR BRIEF, 75 DEFENSE CHALLENGES, SO THIS IS A JUDGE THAT WAS REALLY LIBERALLY ERRING IN FAVOR OF CAUSE CHALLENGES, SO COULD YOU TELL US WHAT IS THE DIFFERENCE BETWEEN THESE JURORS, THE THREE THAT -- WHAT KNOWLEDGE THEY HAD VERSUS THE 75?

WELL, IN THE COURSE OF THE INDIVIDUAL VOIR DIRE, THE COURT AND THE PARTIES TENDED TO FOCUS ON THE JURORS' SPECIFIC KNOWLEDGE OF THE ACTUAL CRIMES IN CALIFORNIA. MANY OF THE CAUSE CHALLENGES THAT WERE GRANTED, WERE GRANTED OVER THE STATE'S OBJECTION. MR. CRUMPTON WAS NOT -- MR. CRUMPTON WAS MISINFORMED BY THE PRIOR CHARGES. HE BELIEVED THAT THE PRIOR CRIME INVOLVED THE KILLING OF A YOUNG WOMAN AND CHOPPING OFF HER ARMS. THAT, IN FACT, WAS MORE PREJUDICIAL TO MR. SINGLETON THAN THOSE JURORS WHO ACTUALLY KNEW THAT IT WAS A RAPE AND ATTEMPTED MURDER AND NOT A COMPLETED MURDER.

AND THAT IS THE ONLY DISTINCTION, THAT MR. CRUMPTON THOUGHT IT WAS KILLING AND CHOPPING OFF THE ARMS AND THE ONES THAT WERE EXCUSED THOUGHT --

WERE MORE AWARE OF THE FACTUAL DETAILS, THAT IT WAS A CALIFORNIA CASE, THAT THE GIRL WAS RAPED AND MUTILATED.

IS IT YOUR POSITION THAT ANY PRIOR KNOWLEDGE OF THE CALIFORNIA CRIME WOULD HAVE BEEN GROUNDS?

YES, YOUR HONOR. IT IS MY POSITION THAT ANY KNOWLEDGE WOULD BE SUFFICIENT.

HOW DO YOU -- IT MAKES IT PRETTY HARD TO PICK A JURY, WHEN YOU HAVE A NOTORIOUS CASE SUCH AS THIS, AND DON'T WE HAVE SITUATIONS EVERYDAY, CAPITAL CASES BEING TRIED, WHERE JURORS KNOW OR HAVE READ, SOMEPLACE, UNLESS THEY ARE LIVING IN A CASE, OF A PRIOR CRIME, AND THEN THIS IS THE JOB OF THE LAWYERS, THEN, TO FIND OUT IF THIS IS GOING TO PREJUDICE THEM IN THEIR DELIBERATIONS. ISN'T THAT THE WAY A SYSTEM WORKS?

YES, YOUR HONOR, AND IN THIS CASE, THE COURT GRANTED 75 CAUSE CHALLENGES AND WAS STILL ABLE TO PICK A JUROR. I WOULD CONTEND THAT THE COURT COULD HAVE GRANTED THE ADDITIONAL THREE THAT I AM COMPLAINING ABOUT, REGARDING THE PREJUDICIAL PUBLICITY, AND STILL HAVE MANAGED TO SELECT A JURY, AND WOULD HAVE SUCCEEDED IN SELECTING A JURY SHOULD THAT WOULD HAVE BEEN TRULY FAIR AND IMPARTIAL, RATHER THAN A JURY TAINTED BY KNOWLEDGE OF A PRIOR CRIME THAT WAS NOT GOING TO BE ADMITTED DURING THE GUILT PHASE OF THE TRIAL.

WHAT ABOUT MR. CRAWFORD? IF I UNDERSTAND CORRECTLY, HE, REALLY, HAD SOME VAGUE KNOWLEDGE OF -- THAT THERE HAD BEEN A CRIME IN HIS PAST, BUT HE KNEW NOTHING ABOUT THE CIRCUMSTANCES OR WHAT IT WAS. WHY WOULD HE HAVE BEEN SUBJECT TO A CAUSE CHALLENGE?

THE FACT -- THAT, I WILL ADMIT, IS THE WEAKEST OF THE CAUSE CHALLENGES IN QUESTION. HOWEVER, THE SECOND DISTRICT HAS RULED, IN A CASE CALLED RICHARDSON, AND IN ANOTHER CASE CALLED WILDING, I BELIEVE, THAT WHEN JURORS HAD ANY KNOWLEDGE OF PRIOR CRIMINAL ACTIVITY ON THE PART OF THE DEFENDANT, THAT THAT WOULD SO PREJUDICE THE JURORS THAT THEY COULD NOT BE FAIR AND IMPARTIAL.

WOULD THAT BE SOMETHING THAT THIS COURT -- WOULD THAT BE THE STANDARD THAT THIS COURT HAS EMPLOYED?

THE STANDARD THIS COURT EMPLOYEES IS WHETHER THERE IS A REASON -- EMPLOYEES IS WHETHER THERE IS A -- EMPLOYS IS WHETHER JURORS CAN BE FAIR AND IMPARTIAL, WITH REASONABLE DOUBT. I WOULD SUSPECT, WITH SOME KNOWLEDGE OF THE BACKGROUND, THAT THERE IS A REASONABLE ABILITY TO DECIDE, BASED SOLELY ON THE FACTS AND THE LAW, AND NOT --.

THAT IS GOING BACK TO WHAT JUSTICE SHAW SAYS, THAT ANY PER SE RULE WOULD MEAN ANY KNOWLEDGE, NO MATTER WHAT THEY SAY, AND WOULDN'T THAT STAND THE PREVIOUS LAW ON ITS HEAD THAT YOU GIVE BENEFIT, IF THERE IS IN DOUBT, YOU EXCUSE, BUT IT IS NOT A PER SE RULE, IS IT?

I AM NOT ASKING FOR A PER SE RULE.

BUT BACK TO THE ONE THAT KNEW SOMETHING VAGUELY ABOUT THE PAST. CRAWFORD. WHAT DID HE KNOW? WHAT DID HE SAY HE ALL JURORS SAID THAT THEY COULD JUDGE, BASED ON THE FACTS AND THE EVIDENCE, BUT NUMEROUS JURORS SAID THE SAME THING.

BUT THEY SAID THAT THEY KNEW ABOUT THE CRIME, ABOUT THE CHOPPING OFF THE ARMS PART, RIGHT?

YES, AND THIS COURT COULD RULE FOR MR. SINGLETON, WITHOUT ADOPTING SUCH A BROAD RULE THAT JURORS WITH ANY KNOWLEDGE WHATSOEVER OF A PRIOR CRIME WOULD HAVE TO BE EXCUSED. AS I SAID, WITH REGARD TO MR. CRIMP TON, HE THOUGHT THAT THE -- MR. CRIMP TON, HE THOUGHT THAT THE -- MR. CRUMPTON, HE THOUGHT THAT THE VICTIM WAS MUTILATED AND KILLED, AND THE THIRD VICTIM WAS AWARE THAT THE ARMS HAD BEEN CHOPPED OFF A YOUNG GIRL. HE JUST WASN'T AWARE OF WHERE AND WHEN THAT HAD OCCURRED. JUSTICE SHAW, I BELIEVE YOU TRIED TO ASK ME SOMETHING.

WELL, ISN'T THIS NORMALLY A CALL, ON THE PART OF THE JUDGE, AT THAT POINT, TO DETERMINE WHETHER, ONCE THE LAWYERS HAVE MADE THEIR INQUIRY, AS TO THE TENTATIVE JUROR, OF WHETHER OR NOT THERE IS THIS REASONABLENESS AND HE WOULD BE ABLE TO PUT IT ASIDE OR SHE WOULD BE ABLE TO PUT IT ASIDE?

YES, YOUR HONOR.

AND ISN'T IT, AS A REASONABLE BASIS, THAT SUPPORTS THIS CALL, THEN AREN'T WE DUTY-BOUND TO AFFIRM THAT?

YOUR HONOR, IT IS A MATTER OF THE DISCRETION OF THE TRIAL JUDGE. BUT DISCRETION IS NOT WITHOUT ITS LIMITS. IT HAS TO BE EXERCISED REASONABLY, AND IN SIMILAR SITUATIONS, THE COURT SHOULD REACH THE SAME RESULT. AND HERE THE COURT WAS INCONSISTENT, HAVING GRANTED THE 75 CAUSE CHALLENGES, IT WAS INCONSISTENT FOR THE COURT TO DENY THE THREE CHALLENGES IN QUESTION, PARTICULARLY THE ONE FOR MR. CRUMPTON AND THE ONE FOR MR. MEYER, BECAUSE BOTH OF THEM WERE AWARE THAT A YOUNG GIRL HAD HAD HER ARMS CHOPPED OFF, AND MR. CRUMPTON ERRONEOUSLY BELIEVED THAT SHE HAD BEEN KILLED. THAT IS EXTREMELY PREJUDICIAL INFORMATION FOR HIM TO HAVE IN HIS MIND, AND THIS COURT HAS SAID THAT, ONCE IMPRESSIONS ARE FORMED IN JUROR'S MINDS, THAT IT IS EXTREMELY DIFFICULT FOR THEM TO SET THAT ASIDE.

IF WE TAKE JUROR KROUFERD OUT OF THIS MIX -- CRAWFORD OUT OF THIS MIX OF PEOPLE WHO WERE ERRONEOUSLY DENIED A CAUSE CHALLENGE, WHERE DOES THAT LEAVE YOUR ARGUMENT?

THEN I SHOULD STILL WIN, BECAUSE THERE WOULD BE TWO ERRONEOUS DENIALS OF CAUSE CHALLENGES, ON THE BASIS OF PREJUDICIAL PUBLICITY, PLUS THERE IS AN ADDITIONALER REASON OWENIOUS -- ADDITIONAL ERRONEOUS AGAIN DEN ISLE OF CAUSE CHALLENGES -- DENIAL OF CAUSE CHALLENGES, WHO, IN THIS CASE, VOLUNTARY INTOXICATION WAS THE DEFENSE.

LET ME ASK YOU ABOUT THE WHOLE PRONG THING THAT YOU IDENTIFY A USER THAT WAS UNACCEPTABLE. IS THAT CORRECT?

YES.

IS THAT IDENTIFYING THEM, JUST NAMING THEM?

THAT IS ALL THIS COURT HAS EVER REQUIRED, AND DEFENSE DID THAT IN THIS CASE. THEY IDENTIFIED A JUROR BY THE NAME OF NORIEGA A NOW, THE STATE HAS ARGUED THAT THE DEFENSE DIDN'T SHOW THAT HE WAS A BIASED JUROR AND THEREFORE YOU SHOULDN'T FIND THAT THE ISSUE WAS PRESERVED, BUT THIS COURT HAS NEVER PLACED THE BURDEN ON THE DEFENSE IN THESE CAUSE CHALLENGE SITUATIONS, WHEN THEY EXHAUST THEIR PRESENT OTHERS AND ASK FOR ANOTHER AND IDENTIFY A SPECIFIC JUROR. THIS COURT HAS NEVER REQUIRED THE DEFENSE TO SHOW THAT THAT PARTICULAR JUROR, THAT THE DEFENSE FINDS OBJECTIONABLE, IS ACTUALLY BIASED. AND THERE IS A REASON FOR THAT. THERE IS NO DUTY, ON THE PART OF EITHER THE DEFENSE OR THE STATE, IN EXERCISING PRESENT OTHER CHALLENGES TO SHOW THAT THE -- PRESENT OTHER CHALLENGES TO SHOW -- PRESENT OTHER CHAL -- PREEMPTRY CHALLENGES TO SHOW THAT THE PERSON IS BIASED. IF THAT WERE THE CASE, EVERYBODY THAT IS TRULY OBJECTIONABLE COULD BE EXCUSED FOR CAUSE. THE ONLY EXCEPTION TO THAT RULE, THE PREEMPTORIES MAY BE EXERCISED FOR ANY REASON IS WHEN IT APPEARS THAT THE JUROR IS BEING EXCUSED ON THE BASIS OF RACE, GENDER OR ETHNIC BACKGROUND, BUT BEFORE THAT BECOMES A FACTOR, THE OPPOSING PARTY NEEDS TO RAISE AN OBJECTION TO PRESERVE THAT ISSUE.

WAS THERE -- WHAT DOES THE RECORD SHOW ABOUT WHAT WAS SAID ABOUT MR. NORIEGA? WAS THERE -- I WOULD LIKE TO EXCUSE HIM FOR CAUSE DENIED OR I WOULD LIKE ANYTHING?

THERE WAS NO ATTEMPT TO EXCUSE HIM FOR CAUSE. IT WAS SIMPLY AN ATTEMPT TO USE A -- IT WAS A REQUEST FOR AN ADDITIONAL PREEMPTORY FOR EXCUSE MR. NORIEGA, WHICH IS ALL THIS THIS COURT HAS EVER REQUIRED.

BACK TO THE PRESERVATION, IF WE FIND THAT CRUMPTON WAS ERRONEOUSLY, SHOULD HAVE BEEN STICK PHONE CAUSE OR THE OTHER TWO, THE JUDGE PROPERLY OR THAT WE SHOULD GIVE CREDENCE TO HIS EXERCISE OF DISCRETION DOES THAT STILL GET YOU -- IS THAT --

WELL --

YOU NEED ALL THREE?

THERE ARE ACTUALLY FOUR EXCUSEABLES FOR CAUSE IN ISSUE. THERE IS, ALSO, MR. BELCHER ON THE INTOXICATION ISSUE.

IF WE ONLY FOUND THAT CRUMPTON WAS ERRONEOUS, ARE YOU OUT OF --

I WOULD THING THAT THAT IS SUFFICIENT. I WOULD UNDERSTAND THAT THE STATE'S ARGUMENT IS THAT, BECAUSE THE COURT DID GRANT ONE EXTRA PREEMPTORY, THAT I NEED TO SHOW THAT THERE WERE TWO WHO WERE IMPROPERLY, WHERE THE CAUSE CHALLENGES WERE IMPROPERLY DENIED, AND I MAINTAIN THAT ALL FOUR WERE IMPROPERLY DENIED. I WOULD BE WILLING TO CONCEDE THAT YOU COULD ACCEPT THE COURT'S DISCRETIONARY DECISION REGARDING JUROR CRAWFORD, WHO, REALLY, DIDN'T KNOW WHAT THE PRIOR CRIME WAS.

BUT DOESN'T COOK PRETTY MUCH INDICATE THAT, SINCE THE COURT DID GRANT ONE EXTRA, THAT THERE WOULD HAVE TO BE A PROBLEM WITH TWO OF THESE?

WELL, AND I AM SAYING THERE --

I KNOW YOUR POSITION IS, BUT I THINK IN ANSWER TO JUSTICE PARIENTE'S QUESTION, THAT IF YOU -- IF THERE IS ONLY A PROBLEM, IF WE ASSUMED THAT THERE WAS ONLY A PROBLEM WITH CRIMP TON, AS FAR AS THE CAUSE CHALLENGE WAS CONCERNED, AND THE COURT WAS WITHIN ITS DISCRETION AS TO THE OTHER THREE, THEN COOK WOULD SAY THAT THE TRIAL COURT COULD BE AFFIRMED, BECAUSE HE DID GIVE THE ONE EXTRA CHALLENGE.

YOUR HONOR, I THINK THAT IS PROBABLY CORRECT.

THAT'S THE WAY MY UNDERSTANDING OF COOK, AT LEAST.

DO YOU HAVE HAVE IN OTHER ISSUES?

YES. I WOULD LIKE TO ADDRESS THE PROPORTIONALITY OF THE DEATH SENTENCE IN THIS CASE. THIS COURT HAS VERY CLEARLY RULED THAT THE DEATH PENALTY IS RESERVED FOR ONLY THE MOST AGGRAVATED AND LEAST-MITIGATED CASES. LAST SUMMER, IN ALMEIDA, YOU RULED THAT IT HAD TO BE ONE OF THE MOST AGGRAVATED AND LEAST MITIGATED. THIS CASE IS PROBABLY AGGRAVATED TO JUSTIFY A DEATH SENTENCE, IF THERE WERE NO MITIGATION TO BE CONSIDERED, BECAUSE THERE ARE TWO AGGRAVATING CIRCUMSTANCES, AND THEY ARE FAIRLY SUBSTANTIAL CIRCUMSTANCES. ONE IS HEINOUS, ATROCIOUS OR CRUEL, AND THE OTHER IS PRIOR VIOLENT FELONY CONVICTION. NOW, THE PRIOR VIOLENT FELONY CONVICTION IN THIS CASE IS NOT AS BAD AS IN THE MAJORITY OF THE CASES THAT THE STATE HAS CITED IN THEIR BRIEF, BECAUSE THE PRIOR VIOLENT FELONY CONVICTION DOES NOT INVOLVE A PRIOR MURDER. NONETHELESS --

WAIT. WAIT. WAIT.

I WOULD AGREE --

YOU ARE TRYING TO SAY THAT WHAT THIS PRIOR CRIME WAS HIS NOT A VERY, VERY WEIGHTY AGGRAVATOR?

I AM SAYING IT IS WEIGHTY. IT IS NOT AS WEIGHTY AS IT WOULD HAVE BEEN, HAD THE PRIOR VICTIM BEEN KILLED.

THAT IS A VALUE JUDGMENT YOU ARE MAKING FOR THIS PARTICULAR VICTIM. WHAT HAPPENED TO HER, SHE WAS MUTILATED.

YOUR HONOR, I HAVE CONCEDED THAT THE AGGRAVATING CIRCUMSTANCES, STANDING ALONE, WOULD JUSTIFY A DEATH SENTENCE. HOWEVER, THERE IS THE SECOND PRONG. THIS IS ONE OF THE MOST MITIGATED CASES I HAVE EVER WORKED ON, IN MY CAREER. MR. SINGLETON WAS 69 YEARS OLD. HE WAS SUFFERING FROM AN EXTREME EMOTIONAL DISTURBANCE, AS FOUND BY THE COURT. THE COURT FOUND THAT HE WAS SUFFERING FROM A SUBSTANTIAL IMPAIRMENT OF HIS CAPACITY TO CONTROL HIS BEHAVIOR. HE WAS SUFFERING FROM BRAIN DAMAGE. HE WAS SUFFERING FROM MILD DILLENS YEAH. HE WAS A LONG -- DIMENCIA. HE WAS A LONG-TERM ALCOHOLIC. HE WAS AN ALCOHOLIC AND TAKING PRESCRIPTION MEDICINE AT THE TIME OF THE OFFENSE.

THAT HIS REASON FOR THE CRIME IS THAT IT WAS ALCOHOL-RELATED?

YES. IT WAS ALCOHOL-RELATED.

ALL THE TIMES IN CALIFORNIA AND RELEASED ON PAROLE, NEVER GOTTEN TREATMENT FOR HIS ADDICTION?

WHEN HE WAS RELEASED IN CALIFORNIA, ACTUALLY HE WAS NEVER COMPLETELY RELEASED ON PAROLE. NO COMMUNITY IN CALIFORNIA WOULD ACCEPT HIS PRESENCE, SO HE HAD TO SERVE HIS PAROLE TERM ON THE GROUNDS OF THE STATE PRISON, LIVING IN A TRAVEL TRAILER. ONE OF THE CONDITIONS OF HIS PAROLE WAS THAT HE HAD TO TAKE ANTABUSE TO KEEP HIM FROM DRINKING, BECAUSE THE STATE OF CALIFORNIA RECOGNIZED THAT HE HAD SEVERE PROBLEMS WITH ALCOHOL, BUT ALCOHOL, LONG-TERM ALCOHOL ABUSE AND USE OF ALCOHOL AT THE TIME OF THE OFFENSE ARE, BOTH, WELL RECOGNIZED MITIGATING FACTORS THAT THIS COURT HAS OFTEN CONSIDERED.

HOW INTOXICATED WAS HE AT THE TIME?

WELL, THERE WAS CONFLICTING EVIDENCE ON THAT. VARIOUS EYEWITNESSES WHO SAW HIM IN THE TWO HOURS OR SO FOLLOWING THE MURDER DESCRIBED HIM ASSETS APPEARING TO BE VERY DRUNK OR NOT APPEARING TO BE DRUNK AT ALL. THE DEFENSE'S OWN EXPERT WITNESS COULD NOT DETERMINE WHETHER HE WAS SO INTOXICATED AT THE TIME OF THE OFFENSE THAT HE COULD NOT PREMEDITATE WE DO KNOW THAT HE WAS CONSUMING ALCOHOL. WE DO KNOW THAT VARIOUS WITNESSES OBSERVED SUCH SYMPTOMS AS HIS FACE WAS FLUSHED. HIS EYES WERE BLOODSHOT.

THERE IS NOTHING ABOUT HIM BEING A .3 OR SOMETHING AND HE IS STUMBLING AROUND.

HE WAS STUMBLING AROUND, ACCORDING TO SOME OF THE WITNESSES. WE DON'T KNOW WHAT HIS BLOOD ALCOHOL CONTENT WAS. IT WASN'T MEASURED. I WOULD LIKE TO POINT OUT A COMPARISON BETWEEN THIS CASE AND KRAMER VERSUS STATE, IN WHICH THIS COURT FOUND THAT DEATH WAS DISPROPORTIONATE. IN KRAMER, THE AGGRAVATING CIRCUMSTANCES WERE THE SAME. PRIOR VIOLENT FELONY CONVICTION AND THE MURDER WAS HEINOUS, ATROCIOUS OR CRUEL. THE MITIGATING FACTORS IN KRAMER, THAT THIS COURT FOUND TO RENDER THE DEATH SENTENCE DISPROPORTIONATE, WERE ALCOHOLISM, MENTAL STRESS, SEVERE LOSS OF EMOTIONAL CONTROL, AND POTENTIAL FOR PRODUCTIVE FUNCTIONING IN THE STRUCTURED ENVIRONMENT OF THE PRISON. IF YOU WILL STUDY THE RECORD OF MITIGATION IN THIS CASE, MR. SINGLETON'S CASE IS FAR MORE MITIGATED THAN MR. KRAMER'S CASE WAS. THE STATUTORY

MENTAL MITIGATORS, BOTH, WERE FOUND FOR MR. SINGLETON. THEY WERE NOT FOUND FOR MR. KRAMER. THERE IS NO INDICATION, FROM THE KRAMER OPINION, THAT MR. KRAMER WAS SUFFERING FROM BRAIN DAMAGE OR MILD DIMENS YEAH OR -- DIMENTI A OR SUICIDAL DEPRESSION. ALL OF THOSE FACTORS APPLIED TO MR. SINGLETON.

LET ME ASK YOU, MR. HELM, THE SENTENCING ORDER IN THIS CASE, I NOTE THAT PART OF YOUR .3 IS THAT THE TRIAL JUDGE REALLY DOESN'T GIVE US A WEIGHT TO THE MITIGATION.

THE ONLY THING HE SAID, AS I RECALL, IS THAT THE AGGRAVATING CIRCUMSTANCES OUTWEIGH THE MITIGATING CIRCUMSTANCES, WITHOUT EXPLAINING WHY THAT WAS SO.

WHAT -- IN THAT HE DIDN'T USE SOME OF THE MITIGATORS THAT WERE PROPOSED IN THE MEMORANDUM --

THERE WERE MORE THAN 20 PROPOSED MITIGATORS IN THE MEMORANDUM.

WHAT WERE THE STRONGEST ONES THAT HE DIDN'T INCLUDE.

I DON'T BELIEVE THAT HE INCLUDED BRAIN DAMAGE. HE DID NOT INCLUDE MR. SINGLETON'S HISTORY IN THE MERCHANT MARINE, WHERE HE STARTED AS A SEAMAN, AS A TEENAGER, AND BY THE AGE OF 51, HE HAD WORKED HIS WAY UP TO SHIP'S CAPTAIN.

THAT WAS PRIOR TO THE TIME HE WENT TO JAIL IN CALIFORNIA.

THAT WAS PRIOR TO THE CALIFORNIA OFFENSE.

OKAY. ANY OTHER THAT, REALLY, STICKS OUT?

-- THAT WASN'T INCLUDED? I KNOW YOU INCLUDED IT IN YOUR BRIEF.

HE DIDN'T GO INTO DETAILS ABOUT THE MITIGATORS SHOWING A POTENTIAL FOR PRODUCTIVITY IN PRISON. THE COURT DIDN'T DISCUSS THE FACT THAT MR. SINGLETON OBTAINED HIS G.E.D. AND TOOK SEVERAL COLLEGE COURSES IN ENGLISH AND MATH AND PHILOSOPHY AND SO ON AND THAT MR. SINGLETON WAS REGARDED AS AN EXCELLENT TEACHER OF OTHER INMATES. THE COURT DISCUSSED THAT HE WAS A GOOD PRISONER. THE COURT DIDN'T DISCUSS THE PROPOSED CIRCUMSTANCE THAT HE WAS, ALSO, A MODEL PAROLE'.

HOW CAN HE AND MODEL PAROLEE? IN THE CONTEXT OF THIS CASE, WHERE HE IS GIVEN TEN YEARS IN CALIFORNIA AND THEN HE COMES HERE TO FLORIDA AND COMMITS THIS CRIME.

YOUR HONOR, HE HAD COMPLETED SERVICE OF HIS PAROLE BEFORE HE LEFT CALIFORNIA. HE RETURNED HOME TO TAMPA, HIS HOMETOWN, AFTER HE HAD COMPLETED HIS PAROLE.

SO HE WAS UNDER NO SUPERVISION BY THE STATE OF FLORIDA.

THAT'S CORRECT. AND HE WAS IN TAMPA FOR A SUBSTANTIAL PERIOD OF TIME BEFORE THIS CRIME OCCURRED, AND IN THE INTERVENING PERIOD, THE ONLY CRIMES OF WHICH HE HAD BEEN ACCUSED OR ARRESTED WERE PETTY THEFT. IF THE COURT HAS NO FURTHER QUESTIONS, I WOULD LIKE TO RESERVE THE REST OF MY TIME FOR REBUTTAL.

THANK YOU. MR. BROWN.

GOOD MORNING. SCOTT BROWN FOR THE STATE OF FLORIDA. YOUR HONORS, AS JUSTICE SHAW RECOGNIZED, ON THE FIRST ISSUE, JUROR CHALLENGES FOR CAUSE ARE DISCRETIONARY CALLS BY THE TRIAL JUDGE. IN FACT, THIS COURT HAS STATED THAT VIRTUALLY NO AREA OF THE LAW DOES THE TRIAL JUDGE HAVE MORE DISCRETION THAN IN THE AREA OF JUROR CHALLENGES FOR

CAUSE. THE JUDGE IS IN A BETTER POSITION TO EVALUATE THE JUROR'S RESPONSES, AND OBSERVE THEIR DEMEANOR.

HASN'T THIS CATEGORY, THOUGH, OF PRIOR KNOWLEDGE OF VERY PREJUDICIAL INFORMATION, BEEN A SPECIAL CATEGORY AMONGST THOSE CASES, AND SO IF YOU HAVE A JUROR THAT IS GOING INTO, FOR INSTANCE, THE GUILT PHASE OF A MURDER CASE, ALREADY KNOWS THAT THE DEFENDANT CONFESSED AND YET THE CONFESSION IS NOT GOING TO BE PART OF THE EVIDENCE OF THE STATE'S CASE, WHAT DISCRETION DOES A TRIAL COURT HAVE IN DECIDING WHETHER OR NOT THAT JUROR SHOULD BE EXCUSED OR NOT?

YOUR HONOR, I BELIEVE YOU ARE REFERRING TO THE COURT'S DECISION IN REILLY.

I AM NOT REALLY REFERRING TO ANY PARTICULAR CASE AT ALL. I AM -- THAT IS JUST THOUGHT THAT CAME TO MY MIND AT THE TIME THAT I WAS RESPONDING TO YOUR STATEMENT. WHAT ARE THE CIRCUMSTANCES SUBSTANCES IN THAT CASE, IN A CASE LIKE THAT?

IN A CASE LIKE THAT, IT IS WHETHER OR NOT THE JUROR IS OPEN TO THE IMPRESSIONS THAT HE WILL RECEIVE AT TRIAL. IN OTHER WORDS CAN HE PUT ASIDE ANY KNOWLEDGE THAT HE MAY HAVE ABOUT THE CASE AND DECIDE THE CASE, BASED UPON THE FACT --

SO YOU ARE SAYING THAT, EVEN THOUGH THE JUROR KNEW THAT THE DEFENDANT HAD CONFESSED TO THIS CRIME, THAT THAT JUROR COULD STILL SIT, AS LONG AS A JUROR PROMISED FAITHFULLY TO THE JUDGE AND SINCERELY DID IT, THAT HE COULD STILL SIT AS A FAIR JUROR? IS THAT --

YOUR HONOR, THE ANSWER TO THAT IS THERE IS NO PER SE RULE THAT THAT JUROR WOULD HAVE TO LEAVE, BUT THAT IS A MORE DIFFICULT QUESTION. WE ARE NOT TALKING ABOUT A CONFESSION HERE. WE ARE TALKING ABOUT VAGUE RECOLLECTION OF A PRIOR CRIME, NOT THE CRIME THAT THE APPELLANT IS CURRENTLY CHARGED WITH. IN FACT, YOU CAN THROW CRAWFORD OUT. ALL HE KNEW ABOUT THIS CASE WAS THAT HE HAD A PRIOR CRIME IN HIS PAST. CRUMPTON, HE READ A SINGLE UP IN ARTICLE, ONE MONTH PRIOR TO JURY SELECTION, AND HE WAS AWARE THAT THE DEFENDANT KILLED SOMEONE AND CHOPPED HER ARMS OFF. HE BELIEVED THAT WAS IN A PRIOR CASE.

I THINK YOU ADMIT THAT THAT IS A LITTLE DIFFERENT THAN HAVING SOME VAGUE RECOLLECTION ABOUT A PRIOR CRIME. THAT THAT INFORMATION -- HOW DID THAT INFORMATION THAT MR. CRUMPTON HAD VARY FROM THE 75 JURORS THAT THIS JUDGE, RECOGNIZING THE HIGHLY-PREJUDICIAL NATURE OF THIS INFORMATION, DID EXCUSE?

I THINK HIS RESPONSES WERE UNQIFLAL. HE INDICATED THAT, NUMBER ONE, HE DIDN'T KNOW AS MUCH DETAIL AS MANY OF THE JURORS. IN FACT, IN MY BRIEF I POINTED OUT THAT MOST OF THE JURORS, AND I DIDN'T GO THROUGH ALL OF THE 75, BUT MOST OF THE JURORS WHO WERE EXCUSED HAD, A, MORE DETAILED INFORMATION AND, B, THEY ADMITTED, QUITE CANDIDLY, THAT THEY COULD NOT PUT THAT INFORMATION OUT OF THEIR MINDS.

SO IF THERE ARE TWO JURORS SITTING THERE AND WITH THE SAME INFORMATION AND ONE SAID I CAN SET IT ASIDE AND THE OTHER CAN'T, IS THAT JUST JUDGE'S CALL? WHAT ABOUT ALL OF OUR CASE LAW THAT SAYS IF THERE IS ANY DOUBT THAT THE JUROR IS THERE AND IMPARTIAL, BASED ON THE INFORMATION, THAT YOU MUST EXCUSE --

I AGREE WITH THE CASE LAW, BUT ONCE THE JUDGE MAKES THAT CALL, AND THERE IS NO CONTENTION HERE THAT THE JUDGE DID KNOW WHAT THAT WAS, AND IN FACT HE WAS QUITE LIBERAL IN EXCUSING JURORS, BUT ONCE HE MAKES THAT CALL THAT HE BELIEVES THE JUROR ARE NOT QUALIFIED, IT COMES TO THIS COURT FOR AN ABUSE OF DISCRETION AND THERE HAS BEEN NO SHOWING OF ABUSE OF DISCRETION IN THIS DAYS. IN OTHER WORDS THE JURORS WERE

PRAYING SAYING THIS WOULDN'T HAVE AN IMPACT ON MY DECISION. THEY SAID, NO, IT WOULD HAVE ABSOLUTELY NO DECISION --

AS WITH THE CONFESSION, HOW DO YOU, ONCE A JUROR SAYS, WELL, I HAVE KNOWLEDGE, FROM READ AGO UP IN ARTICLE, THAT THIS -- FROM READING A NEWSPAPER ARTICLE, THAT THIS MAN WHO WAS ON TRIAL FOR MURDER COMMITTED A MURDER BEFORE? THAT EVIDENCE IS NOT GOING TO COME OUT DURING THE GUILT PHASE OF THIS TRIAL.

THAT'S CORRECT, YOUR HONOR.

AND SO YOU ARE SAYING THAT, ON THE ASSURANCE THAT I WON'T CONSIDER THAT, THAT THAT JUROR CAN BE LEFT ON THAT JURY?

IF THE JUDGE MAKES THAT CALL, AS HE DID IN THIS CASE, AND THERE IS NO HE EQUIVOCATEING WHATSOEVER -- NO EQUIVOCATING WHATSOEVER IN THAT JUROR'S ANSWERS, BELIEVE THE BLANK SLATE --

WE ARE NOT TALKING ABOUT JURORS BEING BLANK SLATES. WE ARE TALKING ABOUT THE KNOWLEDGE OF A CONFESSION OR, IN THIS CASE, THE KNOWLEDGE THAT THE DEFENDANT COMMIT ADD PREVIOUS MURDER AND ACTUALLY WITH EXTREME AGGRAVATING CIRCUMSTANCES, AS ENDS UP LATER IN THIS CASE, THAT THE TRIAL COURT, OF COURSE, FINDS THAT THIS PREVIOUS OFFENSE IS AN ESPECIALLY, YOU KNOW, EGREGIOUS AND AGGRAVATING CIRCUMSTANCES, AND AS THE DEFENDANT CONCEDES, HOW DO YOU HAVE A FAIR AND IMPARTIAL TRIAL, IF YOU HAVE SOMEBODY THAT KNOWS THOSE PREJUDICIAL FACTS AND THEN WHICH WILL NOT BE BROUGHT OUT AT A TRIAL, AND THEN HAS TO SIT IN JUDGMENT OF SOMEBODY? WHY DO WE EVEN HAVE RULES, THEN, ABOUT THAT THE JURORS SHOULDN'T HAVE KNOWLEDGE OF THAT OR THAT WE EXCLUDE THAT FROM EVIDENCE? IN OTHER WORDS WHY LEAVE IT OUT OF HE HAVE -- OUT OF EVIDENCE, IF THE JURY CAN JUST TAKE CARE OF THAT?

YOUR HONOR, I THINK YOU ARE LEADING US TO KIND OF A DANGEROUS COURSE, HERE, OF A PER SE RULE OF EXCUSEAL. IN OTHER WORDS, THERE WILL BE A CASE, AND THIS CASE GOT A TREMENDOUS AMOUNT OF PUBLICITY. THERE WILL AND CASE WHERE YOU CAN CRAWL UNDER A ROCK AND EVERYBODY HAS HEARD ABOUT IT, SOMETHING ABOUT IT, SOMETHING ABOUT A PRIOR OFFENSE. THAT PERSON CAN NEVER GET A TRIAL, UNDER YOUR STANDARD, YOUR HONOR, BECAUSE --

THESE CHALLENGES, HERE, PRESENT US, REALLY, WITH A SITUATION WHERE WHAT YOU HAVE IS SORT OF A CONTINUUM. AND AT ONE END OF THE CONTINUUM, YOU HAVE APPARENTLY 75 PEOPLE THAT WERE EXCUSED, BECAUSE THEY KNEW WHAT THIS DEFENDANT HAD DONE BEFORE, AND THEY CANDIDLY SAID THEY WOULD HAVE TO STRUGGLE, HAVING THAT KNOWLEDGE, YOU KNOW, AND SOME OF THEM, IF I UNDERSTAND THIS RECORD CORRECTLY, SAID, NO, THEY COULD PUT THAT ASIDE, AND YET THE JUDGE EXCUSED THEM, AND HERE, AT ONE END OF THIS CONTINUUM, WE HAVE APPARENTLY ONE JUROR THAT WAS LEFT ON THE JURY OR AT LEAST HE WASN'T GRANTED A CAUSE CHALLENGE, AND WHO SAID I NOT ONLY KNOW ABOUT HIM CUTTING THE HANDS OFF OR THE ARMS OFF OF A PREVIOUS VICTIM. I KNOW HE KILLED SOMEBODY BEFORE, AND AT THE OTHER END, OF COURSE, WE HAVE, APPARENTLY, A JUROR THAT WAS CHALLENGED, THAT SAID I KNOW I READ SOMETHING, AND MAYBE THERE WAS -- BUT I DON'T EVEN KNOW WHAT IT WAS THAT I READ, AND SO WE DO HAVE, YOU KNOW, A CONTINUUM. IF I UNDERSTAND WHAT YOU ARE SAYING, IT IS THAT ALL OF THOSE, NO MATTER WHERE THEY APPEAR ON THE CONTINUUM, THAT IT IS THE TRIAL COURT'S DISCRETION AND HE CAN LEAVE THIS JUROR DOWN HERE ON THE JUROR, AS LONG AS THE JUROR SAYS THAT HE CAN SET THAT ASIDE. IS THAT --

YOUR HONOR, I AM NOT SURE -- I DO AGREE THAT THE TRIAL JUDGE EXCLUDED OTHER JURORS, BUT I DO KNOW, FROM READING THE ENTIRE VOIR DIRE, THAT MOST OF THOSE JURORS KNEW

ABOUT A PRIOR RAPE, ABOUT THE VICTIM BEING A MINOR, ABOUT HIM MOVING TO FLORIDA, AND THEY USED TERMS LIKE IT WAS A HORRENDOUS CRIME. IF YOU LOOK AT THE WAY MR. CRUMPTON DESCRIBED THIS, IT WAS VERY MATTER OF FACT. HE HEARD THAT THE DEFENDANT KILLED SOMEONE, A SINGLE UP IN ARTICLE, A MONTH PRIOR TO JURY SELECTION, AND, AGAIN, THERE WERE A FULL RANGE OF QUESTIONS DIRECTED TOWARD MR. CRUMPTON THAT INDICATED HE COULD PUT THAT INFORMATION ASIDE. THERE IS NO, PROBABLY, NO MAYBE, AND WHAT THIS COURT, IF I UNDERSTAND YOUR QUESTION, YOUR HONOR, YOU ARE BASICALLY ARTICULATING A PER SE RULE OF EXCUSEAL, THAT THIS MAN, NO MATTER WHAT HE SAYS, HAS TO BE EXCLUDED. WE CAN'T TRUST HIM, UNDER OATH, TO GIVE RESPONSES TO THE TRIAL JUDGE AND NOT TO HOLD THAT --

HAVEN'T WE SAID THAT, IN SOME CASES, THAT THE INFORMATION THAT THE JUROR KNOWS IS SO PREJUDICIAL THAT WE CAN'T EXPECT A PERSON TO SET THAT ASIDE AND SIT AS A FAIR JUROR?

I BELIEVE IN REILLY, THAT IS THE ONLY CASE WHERE YOU SAID KNOWLEDGE OF THE CONFESSION, DESPITE UNEQUIVOCAL ASSURANCES FROM THAT JUROR, REQUIRED HIS EXCUSEAL. THAT IS THE ONLY CASE THAT I CAN THINK OF, WHERE YOU SAID, HEY, LOOK, NO MATTER WHAT HE SAYS, FORGOT IT.

WHAT CASE HAVE WE APPROVED KNOWLEDGE THAT SOMEBODY WAS A PRIOR MURDERER AND THEN THEY WERE IN A MURDER CASE, AND THEY COULD SIT ON THE JURY? WHAT CASE HAVE WE DONE THAT?

I DON'T KNOW ABOUT MURDER, BUT I KNOW MURPHY V FLORIDA, PRIOR ROBBERIES.

IS THERE A CASE WHERE SOMEBODY KNEW THAT SOMEBODY HAD COMMITTED A PRIOR MURDER AND WE APPROVED THEM?

I BELIEVE THE ELEVENTH CIRCUIT APPROVED THEM AND DID A MORE EXTENSIVE CASE OF CHALLENGE FOR CAUSE.

HAS THIS COURT APPROVED A JUROR?

NO. BUT I AM AWARE OF A NUMBER OF CASES INVOLVING PRIOR CRIMES, PRIOR MURDERS. I AM NOT SURE, BUT I DON'T WANT TO SAY, ONE WAY OR THE OTHER, BUT THE BOTTOM LINE IS, HERE, YOUR HONOR, EVEN IF THIS COURT, AND THIS COURT DOESN'T HAVE TO REACH THE SECOND PART OF THIS STATE'S ARGUMENT, BECAUSE THERE WAS NO ABUSE OF DISCRETION IN THIS CASE, BUT EVEN IF YOU DO FIND AN ABUSE OF DISCRETION FOR CHALLENGES TO TWO JURORS, AND RECALL THAT, SINCE THERE WAS ONE PRESENT OTHER CHALLENGE GRANTED -- PREEMPTORY CHALLENGE GRANTED, HE HAD TWO OF THEM, EVEN IF THE COURT WERE TO FIND THAT A JUROR WAS IMPROPERLY LEFT ON THE PANEL, AND THE STATE IS NOT CONCEDING THAT, HE WAS TRIED BY AN UNBIASED JURY. EACH OF THESE JURORS WAS CHALLENGED PREEMPTORILILY AND NONE OF THEM SAT ON THE JURY.

I GUESS WHAT WE ARE REALLY CONCERNED ABOUT IS MR. NORIEGA A DIDN'T HE SIT ON THE JURY?

YES, HE DID, YOUR HONOR.

THAT IS THE ONE THAT THE DEFENSE IS NOW CLAIMING WAS AN OBJECTIONABLE JUROR, AND BUT FOR THE FAILURE TO LET THESE OTHERS OFF FOR CAUSE, MR. NORIEGA WOULD NOT HAVE BEEN ON THE JURY.

I AGREE, AND IN THE PAST THERE HAS BEEN AN EVOLUTION OF CASE LAW IN THIS AREA, BECAUSE SINGER REQUIRED THE CASE LAW ONLY TO EXEMPT THE PREEMPTORY CHALLENGES. AND THE

CASE LAW, NOT ONLY WOULD YOU HAVE TO EXHAUST THOSE WHO SAT ON THE JURY BUT, ALSO, YOU WOULD HAVE TO EXHAUST THEM ON THE JURORS WHO SHOULD HAVE BEEN EXCUSED FOR CAUSE. WE ARE ASKING THIS COURT TO GO ONE BABY STEP FURTHER, AS THE UNITED STATES SUPREME COURT DID, AND DEFINE OBJECTIONABLE JUROR, TO BE ONE WHO WAS BIASED, ONE WHO SHOULD HAVE BEEN REMOVED FOR CAUSE. NOW, YOU UNANIMOUS UNITED STATES SUPREME COURT MADE THAT HOLDING, BASED ON AN ANALOGOUS FEDERAL RULE. THAT WASN'T A CONSTITUTIONAL HOLDING. THAT MAKES IT EVEN MORE PERSUASIVE.

WHAT WOULD BE THE POLICY REASONS FOR THE STATE OF FLORIDA TAKING THAT EXTRA STEP?

THE THE POLICY REASON IS BASICALLY HARMLESS ERROR. A DEFENDANT IS ENTITLED TO A FAIR AND IMPARTIAL JURY. HE IS NOT ENTITLED TO A PARTICULAR JUROR.

BUT WHEN YOU STACK THAT UP AGAINST THE PREJUDICE, ESPECIALLY IN THE AGGRAVATED SITUATIONS WE ARE TALKING ABOUT, NOW, WHERE KNOWLEDGE OF PRIOR MURDER IS KNOWN, WOULDN'T THE PREJUDICE OUTWEIGH ANY POSSIBLE BENEFIT? AS FAR AS --

WELL, I DON'T KNOW, BECAUSE NONE OF THESE JURORS WHO HAD ANY KNOWLEDGE ABOUT THE PRIOR OFFENSE SAT ON THE THE ONLY PROBLEM THE STATE COULD FIND WITH NORIEGA, ON HIS QUESTIONNAIRE, HE THOUGHT THAT THE DEATH PENALTY WAS AUTOMATIC, ONCE YOU ARE CONVICTED OF FIRST-DEGREE MURDER, BUT THE STATE HAS NOT ARGUED BEFORE THIS COURT THAT A SINGLE UNFIT JUROR REMAINED ON HIS PANEL.

I NOT WHAT YOU SAID WAS A BABY STEP. LET'S BE PERFECTLY HONEST. IT IS BIGGER THAN A BABY STEP. WHAT WE ARE TALKING ABOUT IS USING HARMLESS-ERROR ANALYSIS, WHEN TROTTER WAS DEALING WITH PRESERVATION, AND THAT IS WHY YOU HAVE TO EXHAUST AND THEN IDENTIFY, NOT TO TRY TO GET INTO AN HARMLESS ERROR ANALYSIS, WHEN LOOKING AT ACTUALLY WHO SAT. THIS COURT HAS NEVER GONE EVEN NEAR THAT PLACE.

NO. NO. BUT IT HAS EVOLVED FROM SIMPLY EXHAUSTING TO IDENTIFYING AN OBJECTIONABLE JURY, AND I THINK A LOGICAL STEP IS, IN LIGHT OF A VERY PERSUASIVE AUTHORITY OF AN UNANIMOUS UNITED STATES SUPREME COURT, THAT THIS COURT NEED NOT REVERSE A CONVICTION WHERE A DEFENDANT HAS A FAIR AND IMPARTIAL JURY.

HOW COULD YOU DO THAT IN THIS DAYS, IF THE RULES WERE -- IN THIS CASE, IF THE RULES OF THE GAME WERE DIFFERENT AT THE TIME THAT THIS CASE WAS TRIED, IF THE DEFENDANT THOUGHT THAT THAT IS ALL THEY NEED TO DO WAS IDENTIFY, AS THIS COURT HAS INSTRUCTED. NOW YOU ARE SAYING AN ADDITIONAL REQUIREMENT IS ADDED THERE. HOW CAN THAT BE APPLIED TO THIS CASE?

WELL, THE BOTTOM LINE IS HE WAS NOT FORCED TO ACCEPT AN UNACCEPTABLE JUROR. NOW, THE SUPREME COURT, IN MARTINEZ SALAZAR, WAS FACED WITH THE SAME QUESTION. I MEAN, REALLY, BECAUSE -- HE DIDN'T KNOW HE HAD THE CHOICE AT THE TIME. HE COULD EITHER LEAVE THE JUROR ON THE PANEL WHO SHOULD HAVE BEEN REMOVED FOR CAUSE OR USE A PREEMPT ORY STRIKE TO REMOVE HIM.

THIS COURT HAS LAID OUT, BEFORE, IN REVERSE CASES, BASED ON THAT FORMULA.

YES, YOUR HONOR.

SO HOW WOULD THE DEFENDANT KNOW THAT, WELL, THERE IS THE FORMULA THAT APPLIES AT THE TIME MY CASE IS TRIED, AND NOW, A COUPLE OF YEARS LATER, THE COURT SAYS, WELL, WE ARE GOING TO CHANGE OUR MINDS ABOUT THAT AND WE ARE NOT ONLY GOING TO CHANGE OUR MINDS, BUT WE ARE GOING TO RETRO ACTIVELY APPLY THAT TO YOUR CASE, BACK WHEN YOU TRIED THIS AND ABANDONED THE FORMULA, SO YOU HAD NO RIGHT TO RELY ON THAT FORMULA

AT THE TIME.

YOUR HONOR, ALL THE DEFENDANT HAD A RIGHT TO WAS A FAIR AND IMPARTIAL JURY. HE GOT IT. THE DEFENDANT IS NOT --

HE DIDN'T HAVE A RIGHT TO THE ENFORCEMENT OF THIS COURT'S LAW AS IT EXISTED AT THE TIME?

YOUR HONOR, HE HAD 11 PREEMPT ORY CHALLENGES. HE WAS ONLY ENTITLES TO TEN. THE FACT THAT HE USED PREEMPT ORY CHALLENGES TO ACHIEVE AN UNBIASED JURY, THAT IS FINE, AND THE STATE ISN'T EVEN ASKING THE COURT TO REACH THAT QUESTION, BECAUSE I DON'T THINK THIS COURT HAS TO, BECAUSE THERE WAS NO CLEAR ABUSE OF DISCRETION IN THE TRIAL JUDGE FAILING TO REMOVE CRUMPTON AND CRAWFORD IN THIS CASE.

ARE YOU GOING TO ADDRESS BOTH PROPORTIONALITY BUT, ALSO, THE ISSUE, THE CAMPBELL ISSUE AS TO THE FAILURE OF THE TRIAL COURT TO ADDRESS THE --

YES, YOUR HONOR.

NONSTATUTORY MITIGATION.

YOUR HONOR, THE SENTENCE IN THIS CASE, I WILL START WITH PROPORTIONALITY FIRST.

DON'T WE HAVE TO, IF CAMPBELL IS A PROBLEM, THEN WE DON'T REALLY GET TO PROPORTIONALITY?

WELL, I WILL GET TO BOTH, YOUR HONOR. IF YOU WANT ME TO, I WILL ADDRESS CAMPBELL FIRST. I THINK THE SENTENCING ORDER IN THIS CASE PROVIDES AN INTELLIGENT FOUNDATION FOR THIS COURT TO REVIEW THE SENTENCE IN THIS CASE. THE TRIAL COURT DID, IN FACT, CONSOLIDATE A NUMBER OF PROPOSED MITIGATORS. THE DEFENDANT IDENTIFIED 33 PROPOSED MITIGATORS. THE JUDGE FOUND NINE. CONSOLIDATING MANY SEPARATE MITIGATORS, SUCH AS HE FOUND HE WAS A MODAL PRISONER CALIFORNIA. INCLUDEDED IN THAT MITIGATOR WOULD BE, OF COURSE, THAT HE GOT HIS DIPLOMA AND TAUGHT COURSES IN CALIFORNIA. THIS COURT, IN CAMPBELL, IN FACT, RECOGNIZED THAT IT WAS ENTIRELY PROPER FOR A TRIAL JUDGE TO CONSOLIDATE PROPOSED MITIGATORS, AND THAT IS FOOTNOTE FOUR IN CAMPBELL. THE ONLY REMAINING FACTORS SUGGESTED BY THE DEFENSE, AND I THINK THE APPELLANT ARGUED THAT THE STRONGEST ONE WAS BRAIN DAMAGE, WELL, THAT WAS FOUND IN THE STATUTORY MITIGATORS.

LET ME ASK YOU THIS. IS THERE A PROBLEM THAT HE FOUND TWO STATUTORY MITIGATORS --

ACTUALLY THREE, YOUR HONOR.

THREE.

AGE. INCLUDING AGE. THE TWO MENTAL MITIGATORS AND AGE.

BUT I DOESN'T SAY WHAT -- BUT HE DOESN'T SAY WHAT WEIGHT HE GIVES TO THOSE, AND THE ONLY REASON THERE, IN TERMS OF LOOKING AT THAT, HE, THEN, GOES AND SAYS THAT HE LOOKS AT, AND WHEN HE HAS FINALLY CAREFULLY CONSIDERED IT, DOES HE NEED TO, AND THEN HE SAYS BECAUSE IT IS UNPROVOKED SENSE LIST KILLING -- SENSELESS KILLING WITHOUT CAUSE, THAT HE IS NOW GOING TO SENTENCE TO DEATH. IS THAT A PROBLEM, GIVEN THE STRUCTURE OF THIS ORDER? SUBSTANTIAL MITIGATORS, SUCH AS AGE, AND WE KNOW EVERYONE HAS GOT AN AGE. BECAUSE HE IS 69, DOES THAT MEAN HE IS ELDERLY AND THEREFORE HE IS ENTITLED TO SOME SPECIAL CONSIDERATION? HOW DO WE KNOW THAT, IF HE DIDN'T WEIGH THE MITIGATORS?

I THINK HE DID PROVIDE A GOOD ANALYSIS OF THE WEIGHING, BECAUSE HE FOUND THAT DR. McMAHON, THE DEFENSE WITNESS ON THE MENTAL MITIGATORS, HER TESTIMONY WAS GIVEN GREAT WEIGHT. I THINK IF YOU READ THE TOTALITY OF IT, HE WAS GIVING HER OPINION GREAT WEIGHT.

YOU WOULD CONCEDE THAT THESE THREE STATUTORY MITIGATORS, ASSUMING HE GAVE THEM GREAT WEIGHT?

YOU MAY ASSUME THAT. I BELIEVE IF YOU READ THE ENTIRE ORDER NOW, THAT IS FROM THE LANGUAGE IN THE ORDER. THAT IS PRETTY CLEAR AND WILL JUMP OUT AT YOU THAT HE FOUND SOME BRAIN DAMAGE OF MILD TO MODERATE, AND HE DISCUSSED HER TESTIMONY AT LENGTH IN FINDING THE STATUTORY MENTAL MITIGATORS. I THINK THERE IS A ADEQUATE BASIS, HERE. IT IS NOT A MODEL SENTENCING ORDER.

BUT EVEN WHEN YOU READ THIS ALL TOGETHER, I GUESS THE QUESTION BECOMES WHETHER OR NOT YOU HAVE CONCEDED THAT HE GAVE THIS GREAT WEIGHT, BUT DID HE GAVE IT GREAT WEIGHT TOGETHER OR EACH ONE OF THEM SEPARATELY, IS GIVEN GREAT WEIGHT? WHEN YOU READ THE DOCTOR'S TESTIMONY, WHAT THE JUDGE SAYS ABOUT HER TESTIMONY, IT STARTS OUT SAYING THAT THIS 69 TO 70-YEAR-OLD PERSON WHO HAS HAD THIS LONG-TERM ALCOHOLISM AND DEMENTIA AND ON AND ON, SO SHE IS LUMPING IT INTO ONE THING, SO WHEN HE GAVE IT GREAT WEIGHT, DEGIVE ALL OF THOSE THREE THINGS GREAT WEIGHT TOGETHER OR INDIVIDUALLY?

THAT I CAN NOT ASCERTAIN. I HAVE READ IT A COUPLE OF TIMES, AND I THINK IT COULD BE READ EITHER WAY. AND I DON'T BELIEVE THAT IS FATAL. I THINK THIS COURT HAS RECOGNIZED THAT SOME CAMPBELL ERROR CAN BE HARMLESS. I THINK IT IS HARMLESS IN THIS CASE, IF THERE IS AN ERROR. MOVING ON TO PROPORTIONALITY, APPELLANT'S SENTENCE IS SUPPORTED BY THE TWO WEIGHT YES, SIR AGGRAVATORS IN -- WEIGHT IEST AGGRAVATORS. THE APPELLANT HANGS HIS HAT ON IT WAS ATTEMPTED MURDER. IT WAS RAPE. IT WAS FORCIBLE ORAL SODOMY. IT WAS KIDNAP. IT WAS MAYHEM. IT WAS CHOPPING THE ARMS OFF A 15-YEAR-OLD GIRL AND LEAVING HER TO DIE, MUCH MORE THAN ATTEMPTED MURDER. SECONDLY, IT WAS HEINOUS, ATROCIOUS AND CRUEL. THERE IS NO QUESTION ABOUT THAT IN THIS CASE. THE VICTIM FOR THE FOR HER LIFE. SHE WAS IN APPELLANT'S CONTROL AND HE STABBED HER REPEATEDLY. HER FINGERS WERE CUT DOWN TO THE BONE ON BOTH SIDES OF HER HANDS.

WHAT, EXACTLY, SHE CAME TO HIS HOUSE, COULD YOU JUST THUMBNAIL, BECAUSE -- WHAT, EXACTLY, PRECIPITATED THIS, AS FAR AS THE STATE'S POSITION IN THE CASE? THIS WAS -- WAS SHE A FRIEND? WAS THIS A SEXUAL -- HE HAD PAID FOR SEXUAL FAVORS?

IT WAS BEING PAID, EVIDENTLY, FOR SEXUAL FAVORS. AT SOME POINT IT WENT -- APPELLANT BECAME ENRAGED --

SHE WAS IN HIS HOUSE.

YES, YOUR HONOR. AND WHAT PAUL HITS, AND THIS IS UNUSUAL, AND IT IS UNLIKE KRAMER V STATE, WHERE YOU HAD NO EYEWITNESS. IN KRAMER THIS COURT LIKENED IT TO NOTHING MORE THAN A FIGHT BETWEEN A DISTURBED ALCOHOLIC AND A MAN WHO WAS LEGALLY INTOXICATED. WE HAVE A WITNESS IN THIS CASE, PAUL HIXON. HE CAME AROUND THE BACK OF THE HOUSE, AND HE OBSERVED APPELLANT OVER A PRONE INDIVIDUAL, LATER KNOWN AS ROXEANNE HAYES, INCOMPLETE CONTROL OF THAT INDIVIDUAL. HE HEARD HER GASPING OUT FOR HELP.

DOESN'T HE, ALSO, SAY HE DIDN'T SEE ANY KIND OF WEAPON OR ANYTHING?

NO, YOUR HONOR, HE CAME BACK AROUND TO THE FRONT OF THE HOUSE, HEARING, AGAIN, GURING HE WILLED CRIES FOR -- GURGLED CRIES FOR HELP, BUT IT IS CLEAR THAT SHE IS HURT AT THAT POINT. THE APPELLANT IS HUNCHED OVER HER AS SHE IS LAYING ON THE SOF, A AND HE IS INCOMPLETE CONTROL OF ROXEANNE HAYES.

WHAT HAPPENED TO PRECIPITATE THIS? DID WE KNOW? DID THE STATE HAVE ANY THEORY OR WAS THERE ANY EVIDENCE AS TO WHAT HAD OCCURRED, IN THE HOUR BEFORE OR -- THIS -- HAD OCCURRED?

EVIDENTLY THE APPELLANT BECAME ENRAGED AND DECIDED TO KILL ROXEANNE HAYES. WE DON'T KNOW MORE THAN THAT.

WERE THEY USING DRUGS?

THE APPELLANT WAS DRINKING ALCOHOL. THE VICTIM ONLY HAD AN AMOUNT OF COCAINE METABOLITE IN HER BLOOD SCREAM STREAM THAT COULD HAVE BEEN THERE AS LONG AS -- IN HER BLOODSTREAM, THAT COULD HAVE BEEN THERE AS LONG AS TWO DAYS BEFORE, BUT THE MEDICAL EXAMINER SAID THAT WOULD HAVE NO ABILITY TO DULL HER PAIN OR CONTROL HER CONSCIOUSNESS. WE DO KNOW THAT, AS SHE CRIED OUT FOR HELP, HE SAID SHUT UP, PITCH, AND ADMINISTERED THREE BONO CRUNCHING BLOWS THAT WERE WITNESSED BY MR. HIXON. HE DID NOT SEE A KNIFE BUT HE HEARD A SOUND LIKE CHICKEN BONES CRACKING AT THAT POINT. SO WE KNOW THAT APPELLANT --

DID THE MEDICAL EXAMINER TESTIMONY TALK ABOUT CRACKED BONES?

NO, YOUR HONOR, BUT THE MEDICAL EXAMINER'S TESTIMONY INDICATES A TREMENDOUS AMOUNT OF FORCE AND VIOLENCE WAS USED IN THIS CASE, BECAUSE ONE KNIFE WOUND ALONE WENT, PENETRATED THE LIVE AND WENT IN SIX OR SEVEN INCHES, SO WE KNOW THAT SHE SUFFERED THREE FATAL WOUNDS. WE KNOW THAT SHE WAS CONSCIOUS FOR SEVERAL MINUTES DURING THE ATTACK. WE, ALSO, KNOW THAT APPELLANT WAS NOT GROSSLY INTOXICATED AT THE TIME THAT HE COMMITTED THE OFFENSE, BECAUSE WHEN THE FIRST OFFICER ARRIVED AT THE SCENE, APPELLANT HAD THE PRESENCE OF MIND TO COME UP WITH A STORY TO THE FIRST OFFICER ARRIVED, AND SAID THAT MY GIRLFRIEND AND I HAD A DISPUTE. WE HAD A FIGHT OR ARGUMENT, BUT EVERYTHING IS OKAY NOW. SO HE HAD THE PRESENCE OF MIND TO LIE.

WERE THERE SOME POLICE OFFICERS THAT TESTIFIED HE WAS DRUNK?

YES. THAT HE WAS INTOXICATED. THERE WAS, ALSO, TESTIMONY FROM A DEFENSE WITNESS, I BELIEVE DANNY SALES, THAT SAID HE WAS DRUNK BUT NOT GROSSLY INTOXICATED. HIS OWN WITNESS SAID HE WAS SMASHED. HE -- IN FACT THE EMT TECHNICIAN WHICH TREATED MR. SINGLETON FOR A SINGLE SCRATCH, WHICH WE LATER DETERMINED PROBABLY CAME FROM THE VICTIM'S FINGERNAIL, DIDN'T SHOW ANY SIGNS OF INTOXICATION.

COMING BACK TO CAMPBELL, AND YOUR OPPONENT HAS APPARENTLY CONCEDED THE SERIOUS AGGRAVATION, AND AS WELL HE MUST, IN THE FACE OF THE RECORD HERE, I SUPPOSE, BUT DOESN'T THIS AGGRAVATE, AND I DON'T MEAN THAT AS A PUN, OBVIOUSLY, THE CAMPBELL PROBLEM THAT WE HAVE IN THE CASE, AND THAT IS THAT, IN TRYING TO COMPARE THIS TO OTHER CASES, IF WE DON'T KNOW HOW MUCH WEIGHT THE JUDGE GAVE TO THESE INDIVIDUALS -- THESE INDIVIDUAL MITIGATING CIRCUMSTANCES, ESPECIALLY THE STATUTORY ONES, CAN WE, REALLY, DO A COMPLETE ANALYSIS HERE, AS IT STANDS NOW? IT IS LIKE YOUR OPPONENT POINTS OUT THAT THE STATUTORY MITIGATORS WEREN'T FOUND IN KRAMER, THE CASE HE RELIES ON THE MOST, SO WE NUMBERICALLY WISE, WE END UP WITH -- NUMERICALLY WISE WE END UP WITH THREE STATUTORY MITIGATORS HERE, BUT NOT KNOWING JUST HOW THE JUDGE VIEWED THOSE INDIVIDUALLY OR COLLECTIVELY, BECAUSE OF HIS ORDER, DOESN'T THIS, THEN, SORT OF AGGRAVATE THE CAMPBELL ISSUE AND DO YOU UNDERSTAND WHAT I AM SAYING?

I THINK IT ISCLINED -- IT IS KIND OF A CLOSE ISSUE, BASD ON THE NUMBERS? I DON'T THINK IT IS. BASED ON THIS COURT'S PRIOR PRECEDENCE. WE ARE NOT IN THE PROCESS OF REWEIGHING, GRANTED THE TRIAL JUDGE COULD HAVE DONE A BETTER JOB, AS I THINK IN MOST CASES, OF DELINEATING HOW HE WEIGHED THESE THINGS, BUT I THINK EVEN IF YOU TAKE --

DO YOU AGREE THERE WAS SUBSTANTIAL MORE MITIGATION IN THIS CASE THAN THERE WAS IN KRAMER, FOR INSTANCE?

SUBSTANTIALLY MORE? THERE WAS MORE.

THE TRIAL JUDGE DIDN'T FIND ANY STATUTORY MITIGATORS IN KRAMER, RIGHT?

I AGREE THERE WAS MORE, BUT THIS COURT HAD A PROBLEM, OBVIOUSLY, WITH THE FACTS IN KRAMER, THAT IT WAS A FIGHT BETWEEN A DISTURBED ALCOHOLIC AND A DRUNK. THIS COURT, ALSO, ASSUMED ARGUENDO AND USED THE WORD THAT HAC WAS PRESENT, SO I THINK IT CAST GREAT DOUBT ON THE STRENGTH OF THE AGGRAVATION.

BUT YOU AGREE THAT THE MITIGATION, HERE, GREATER THAN IN KRAMER.

ON THE FACE OF THE RECORD, YES, YOUR HONOR, BUT I, ALSO, AGREE IN SPENCER V STATE, WHERE THIS COURT FOUND THE SAME TWO AGGRAVATORS, THE PRIOR FELONY CONVICTIONS WERE NOT AS SERIOUS AS IN THIS CASE AND THE ARGUMENT WAS EVEN MORE COMPELLING. IN FACT, IN SPENCER DID YOU NOT ONLY HAVE THE MENTAL MITIGATORS, YOU HAD THE NONSTATUTORY MITIGATORS, INCLUDING SEXUAL ABUSE AS A CHILD.

DO YOU THINK, IN LOOKING AT THIS, ARE WE TO TAKE INTO ACCOUNT THAT IT IS A PRIOR VIOLENT FELONY. IT IS NOT A MURDER, IN THIS COURT'S JURISPRUDENCE, WHEN SOMEONE COMMITS A CRIME LIKE THIS, WHICH IS ESSENTIALLY A CRIME AGAINST A DEFENSELESS YOUNG WOMAN AND SERVES TIME AND IS APPARENTLY REHABILITATED AND RECOMMITS A CRIME THAT IS AGAINST A WOMAN WHO IS DEFENSELESS, THAT BE THE VERY FACT THAT IT IS NOT JUST THERE IS A PRIOR VIOLENT FELONY AND NOW THERE IS A DIFFERENT CRIME. I MEAN, THERE MIGHT BE A CASE OF SOMEBODY, TWO DRUNKS, AND THEY ARE HAVING THIS AND THE PRIOR VIOLENT FELONY WAS AN ARMED ROBBERY. IS THERE ANYTHING, IN TERMS OF LOOKING AT WHAT IS THE NATURE OF BOTH CRIMES THAT IS TO BE TAKEN INTO CONSIDERATION? RATHER THAN JUST LOOKING AT, WELL, THERE ARE THREE HERE. TWO THERE?

CERTAINLY. I THINK THAT IS TO BE TAKEN INTO ACCOUNT. IN THIS CASE, WITHIN TEN YEARS OF HIS RELEASE FROM CALIFORNIA, HE MURDERS A WOMAN, AND HIS OWN DOCTOR TESTIFIED THAT HE HAS TREMENDOUS VIOLENCE AND RAGE AGAINST WOMEN. HE DIDN'T LEARN ANY LESSON FROM HIS PRIOR CRIMES. I THINK HIS RECORDS SPEAK FOR ITSELF. I THINK THIS IS A HORRIBLE, A BRUTAL CRIME. THE SENTENCE IS PROPORTIONAL, AND I, ALSO, INVITE THIS COURT TO EXAMINE POPE V STATE. THERE WERE TWO AGGRAVATORS IN THAT CASE, INCLUDING PRIOR VIOLENT FELONY, PECUNIARY GAIN, BALANCED AGAINST TWO MENTAL MITIGATORS, SO I THINK IF YOU LOOK AT THIS COURT'S PRIOR CASES, THIS CASE IS CLEARLY PROPORTIONAL. DEATH IS THE APPROPRIATE PUNISHMENT HERE.

THIS RAGE AGAINST WOMEN, WHAT CATEGORY WOULD THAT FALL IN? MENTAL ABERRATION OR.

I DON'T KNOW IF THAT IS A PROPOSED MITIGATOR.

BEG YOUR PARDON?

I DON'T KNOW IF THAT WAS A PROPOSED MITIGATOR IN THIS CASE. I DON'T THINK IT WAS, BUT WHAT CATEGORY? A RELATED CRIME.

WAS IT BECAUSE OF SOME KIND OF MENTAL ABERRATION OR IS IT CONNECTED WITH THAT?

YOU KNOW, I DON'T KNOW. I READ THE RECORD. IT IS NOT SURE WHERE HIS RAGE AGAINST WOMEN COMES FROM. I MEAN HIS OWN DAUGHTER, EVIDENTLY, EXPERIENCED THE RAGE, SO I REALLY DON'T KNOW THE ANSWER TO THAT QUESTION. THE STATE HAS NOTHING FURTHER.

IF THERE IS A MEDICAL OR PSYCHOLOGICAL BASIS FOR IT, COULD IT BE USED AS A MITIGATOR?

I GUESS THAT WOULD GO TO THE QUESTION AS TO WHAT IS A MITIGATOR. I DON'T BELIEVE SO. I DON'T BELIEVE THERE WAS ANY PHYSICAL CAUSE FOR THE RAGE. I DON'T THINK WE KNOW THE SOURCE OF THE RAGE. YOU KNOW, MAYBE WE COULD IN THE FUTURE, BUT I DON'T BELIEVE WE CAN. OR WE DO IN THIS CASE. IF -- THE STATE HAS NOTHING FURTHER.

THANK YOU. MR. HELM.

I AM NOT SURE I HAVE ANYTHING TO ADD, BUT I WOULD BE HAPPY TO ENTERTAIN QUESTIONS FROM THE COURT.

DO YOU THINK THAT CAMPBELL REQUIRES THAT THERE BE THIS INDIVIDUAL WEIGHING? YOU DIDN'T, REALLY, ON THE FIRST PART OF YOUR CASE. YOU SEEMED TO STRESS PROPORTIONALITY.

WELL, I HONESTLY THINK THAT, ON THE RECORD THAT WE HAVE, WITH THE SENTENCING ORDER THAT WE HAVE, THAT THIS COURT CAN AND SHOULD READILY DETERMINE THAT DEATH IS A DISPROPORTIONATE PENALTY. I THINK IT IS A WASTE OF EVERYBODY'S TIME TO SEND THE CASE BACK FOR RESENTENCING BY THE TRIAL COURT, BECAUSE, I THINK, YOU SHOULD HOLD THAT DEATH IS DISPROPORTIONATE. IF YOU ARE NOT WILLING TO GO THAT FAR, THEN YOU DO NEED TO REMAND, SO THAT THE COURT CAN EXPLAIN ITS WEIGHING PROCESS, SO THAT YOU CAN UNDERSTAND EXACTLY WHAT THE COURT'S BASIS WAS FOR THIS DEATH SENTENCE.

I MEAN, IS IT MORE IMPORTANT, YOU MENTIONED SOME OF THE NONSTATUTORY MITIGATORS. HE DIDN'T MENTION THAT HE HAD SERVED IN THE SERVICE IN 19.

OR SOMETHING, AND -- IN 1950 OR SOMETHING, IF HE HAD BEEN A BOY SCOUT AT AGE TEN OR SOMETHING IN THE PAST, BUT IS IT MORE IMPORTANT THAT THE VERY SUBSTANTIAL STATUTORY MITIGATOR OF BEING UNDER EXTREME EMOTIONAL DISTRESS AND BEING UNABLE TO CONFORM HIS CONDUCT TO LAW, WHICH IS MENTIONED, IS NEVER DISCUSSED INTO RELATIONSHIP, WELL, WHY, THEN, WASN'T THAT SUFFICIENT TO MITIGATE THIS CRIME?

PROBABLY THE WORST CAMPBELL PROBLEM, HERE, IS THE COURT'S FAILURE TO EXPLAIN ITS WEIGHING PROCESS, MORE SO THAN ITS NEGLECTING TO EXPRESSLY EVALUATE EACH OF THE PROPOSED CIRCUMSTANCES, BUT BOTH ARE ERRORS, AND BOTH REQUIRE REVERSAL, UNDER THIS COURT'S PRECEDENT. THANK YOU.

THANK YOU, MR. HELM. MR. BROWN. WE WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.