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Anthony J. Farina v. State of Florida

THE MARSHAL: PLEASE RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION, AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

GOOD MORNING. WE BEGIN THIS MORNING, WITH THE CASE OF ANTHONY FARINA VERSUS THE STATE OF FLORIDA. MR. DISEASE, ARE YOU READY TO PROCEED? -- MR. DEES, ARE YOU READY TO PROCEED?

YES, YOUR HONOR.

THANK YOU.

MY NAME IS JEFF DEES. I AM FROM DAYTONA BEACH. I HAVE BEEN APPOINTED TO REPRESENT ANTHONY FARINA ON HIS APPEAL OF THE DEATH SENTENCE. BRIEFLY THE BACKGROUND, THERE WERE TWO BROTHERS CONVICTED OF A FELONY MURDER AT A TACO BELL IN 1992, SENTENCED TO DEATH FOR THAT MURDER, AS WELL AS OTHER RELATED CRIMES. THEY RECEIVED LIFE, ROBBERY, ET CETERA. IN 1996, THIS COURT REMANDED FOR A NEW SENTENCING PHASE, DUE TO ERRORS IN THE JURY SELECTION. BOTH BROTHERS RECEIVED THE DEATH PENALTY RECOMMENDATION FROM THE JURY A SECOND TIME, AND THE COURT SENTENCED BOTH BROTHERS TO DEATH. THE YOUNGER BROTHER, JEFFREY, WHO WAS 16, THIS COURT REDUCED HIS SENTENCE TO LIFE IN JULY OF THIS YEAR, DUE TO HIS AGE, UNDER THE BRENNAN DECISION. THE 16-YEAR-OLD, JEFFREY, WAS THE TRIGGERMAN WHO KILLED MS. VAN NESS. ANTHONY, WHO WAS 18, DID NOT KILL ANYBODY. WE HAVE HIS APPEAL, TODAY, OF THIS RESENTENCING. I CAN ONLY HAVE A BRIEF TIME. I WOULD LIKE TO RAISE ONLY TWO ISSUES TODAY. VICTIM IMPACT AND THE APPROPRIATENESS OF A DEATH PENALTY FOR ANTHONY. I WOULD LIKE TO SPEND ABOUT 15 MINUTES ON THE -- BOTH ISSUES AND RESERVE REBUTTAL TIME. ON THE VICTIM IMPACT ISSUE, AT THE RETRIAL, THE STATE CALLED 12 WITNESSES FOR VICTIM IMPACT OUT OF 19 TOTAL WITNESSES CALLED BY THE STATE. OVER 50% OF THE STATE'S TIME WAS DEVOTED TO VICTIM IMPACT. THE DEFENDANTS OBJECT

THE DEFENDANT OBJECTED AND ASKED FOR A PROFFER. NO PROFFER WAS MADE OTHER THAN THAT THAT WAS MADE BY THE STATE. THESE ARE FRIENDS AND RELATIVES AND WE ALL KNOW WHAT THEY ARE GOING TO SAY, THESE DEFENDANTS ARE UNIQUE -- THESE VICTIMS ARE UNIQUE AND A LOSS TO THE COMMUNITY. AFTER THAT TRIAL, DAY ONE, THE STATE HAD CALLED SEVEN IMPACT WITNESSES. AT THE BEGINNING OF DAY TWO, THE DEFENDANTS OBJECTED TO ANY FURTHER VICTIM IMPACT EVIDENCE, ON THE GROUNDS IT WAS GETTING TO BE PREJUDICIAL, CONFUSING, AND A DENIAL OF DUE PROCESS. THE COURT --

WHAT WAS THE OBJECTION? WAS THE OBJECTION THAT IT WAS CUMULATIVE AND TOO MUCH OF IT, OR IT SHOULDN'T HAVE COME IN AT ALL?

THEY RENEWED ALL PRETRIAL OBJECTIONS AND THEN MADE A FURTHER OBJECTION AT THAT TIME, THAT IT WAS GETTING TO THE POINT, IN THEIR WORDS, THAT IT WAS EXTREMELY PREJUDICIAL AND CONFUSING, DENYING THE RIGHT TO A FAIR TRIAL AND DUE PROCESS.

THE VICTIM IMPACT EVIDENCE IS GOING TO BE PREJUDICIAL.

YES, SIR. BUT I SUPPOSE THERE NEEDS TO BE SOME LIMITS PLACED, AS TO HOW FAR THE STATE CAN GO. IN THE JOHNSON CASE, DECIDED BY THE SECOND DISTRICT, JUST RECENTLY, LAST YEAR, IT DID RULE THAT THE COURT HAS A DUTY TO REVIEW THE ADD MIFCKT OF -- THE ADMISSIBILITY OF IMPACT EVIDENCE, UNDER CHAPTER 21 AND THE EVIDENCE CODE, TO ENSURE THAT THE VICTIM RIGHTS DO NOT ENTER FEAR -- INTERFERE WITH THE RIGHTS OF THE ACCUSED AND THE CONSTITUTION.

YOU SAY HE RENEWED THE PRETRIAL MOTIONS. WHAT WERE THEY?

YES, SIR. TWO PHASES. ONE, IT WAS UNCONSTITUTIONAL, WHICH, OF COURSE, THE COURT DENIED, AND THE SECOND, THAT THERE SHOULD AT LEAST BE A PROFFER, SO THAT, IN THE EXPRESS WORDS, IT DID NOT BECOME A FEATURE OF THE TRIAL. AND THE TRIAL JUDGE, AT TWO HEARINGS, PROMISED THESE DEFENDANTS HE UNDERSTOOD HIS OBLIGATION TO REVIEW THE ADMISSIBILITY OF THIS EVIDENCE, AND HE WOULD NOT LET IT BECOME A FEATURE OF THE TRIAL. I THINK IT DID IN THIS CASE, BECAUSE IT WAS OVER TWO DAYS OF TESTIMONY A DAY TO A DAY -- TWO DAYS, 12 WITNESSES IN TOTAL. I WOULD LIKE TO POINT OUT, AT THE END OF DAY ONE, THE AFTERNOON HAD BEEN SPENT ON SEVEN VICTIM IMPACT WITNESSES. TWO SCHOOLMATES, ONE TEACHER, A BOYFRIEND, A AUNT AND UNCLE AND A COUSIN. AT THAT TIME, THE STATE --

WAS WHAT THEY SAID INADMISSIBLE?

NO, SIR. AT THAT TIME THE STATE HAD EVERYTHING THEY NEEDED. THEY HAD THE IMPACT OF DEATH ON OTHER PEOPLE. THE IMPACT OF THE DEATH ON THE FAMILY. THE IMPACT OF THE DEATH ON THESE PARTICULAR PEOPLE WHO KNEW THE GIRL AND THE LOSS TO THE COMMUNITY. DAY TWO IS WHEN IT, REALLY, STARTED TO GET VERY TOUGH AND VERY HARD. YES, SIR.

ISN'T THE SUPREME COURT PRECEDENT THAT THAT IS ADMISSIBLE?

IN THE PAYNE CASE, YES, SIR, BUT THE COURT DID SAY THAT, IF IT DOES GET PREJUDICIAL, THERE IS A REMEDY, UNDER DUE PROCESS, AND THE PAYNE COURT EXPLICITLY SAID, AND I QUOTED IT IN MY BRIEF THAT, THE COURTS HAVE A DUTY TO ENSURE THAT DOES NOT OCCUR, AND THEY SEEM TO SUGGEST IT WOULD BE A QUICK GLIMPSE OF THE LIFE AFTER VICTIM. WE HAD A DAY AND-A-HALF HERE.

HOW LONG DID THIS RESENTENCING PROCEEDING LAST?

TWO AND-A-HALF DAYS FOR THE STATE'S CASE, AND THEN THE TOTAL TIME WAS PROBABLY ABOUT A WEEK, A WEEK AND A DAY.

YOU SAY THE FIRST DAY WAS TAKEN UP WITH THIS SEVEN WITNESSES?

THE FIRST DAY WAS THE ROBBERY VICTIM AND THE POLICE OFFICERS, AND THE SECOND DAY WAS ANOTHER POLICE OFFICER. THEN SEVEN VICTIM IMPACT WITNESSES. AND THE THIRD DAY OF THE STATE'S CASE WAS FIVE MORE VICTIM IMPACT WITNESSES, AND THEN THE KBECKT DETECTIVE, WHO PLAYED THE TAPED STATEMENT IN THE BACKSEAT OF THE CAR.

AGAIN, SO I UNDERSTAND THIS, YOU ARE NOT SAYING THAT ANY OF THE INDIVIDUAL WITNESSES TESTIFIED TO SOMETHING THAT WOULD BE INADMISSIBLE UNDER PAYNE. YOUR ARGUMENT TO US, AND YOU STATED IT WAS MADE BELOW, IS THAT IT WAS THE COST. -- THAT IT WAS BECAUSE IT WAS TOO MUCH OF IT, THAT IT BECAME INAPPROPRIATE. IF THAT IS YOUR ARGUMENT, WHAT CASE?

UNDER DUE PROCESS, WE DON'T HAVE, I DON'T THINK, HARDLY ANY CASES. WE DO HAVE YOUR

CASE OF BURNS VERSUS STATE AT 609 SO.2D 607, 1992. IN WHICH THE COURT REMANDED FOR RESENTENCING, WHERE THERE WAS EXTENSIVE AND EMOTIONAL TESTIMONY, REGARDING THE VICTIM'S BACKGROUND THAT COULD HAVE IMPROPERLY INFLUENCED A JURY'S SENTENCING RECOMMENDATION. WE HAVE THAT LIMIT. WE HAVE JOHNSON SAYING THERE SHOULD BE A PROFFER AND PRETRIAL REVIEW BEFORE THE JURY HEARS THIS. THE SECOND DISTRICT CASE. THIS IS ARGUMENT UNDER DUE PROCESS. LET ME JUST FINISH PLEASE. DUE PROCESS, AND I THINK THERE WERE SOME ELEMENTS THAT DID GO INTO IN ADMISSIBILITY. FOR EXAMPLE, TESTIMONY, ON THE SECOND DAY, BY THE CLOSE FAMILY, INCIDENTS IN THE HOSPITAL, THE SUFFERING OF THE VICTIM, THE LINGERING DEATH IN THE HOSPITAL, THEY VISITED THE VICTIM ONE BY ONE TO SAY GOOD-BYE. MOTHER'S DAY IS VERY HARD FOR THE MOTHER. THIS FATHER CANNOT GO BACK TO CHURCH. HE DESCRIBED THE CASKET AND THE FUNERAL. THINGS LIKE THAT WENT BEYOND WHAT VICTIM IMPACT WAS DESIGNED TO DO, WHICH IS SOME EVIDENCE OF THE UNIQUENESS OF THE VICTIM AND THE LOSS TO THE COMMUNITY. THIS, I THINK, MOVED WAY BEYOND THAT, ON THE SECOND DAY, WHICH IS THE DAY THE DEFENDANTS OBJECTED TO AT THE OUTSET. YES, MA'AM.

THAT WAS GOING TO BE MY QUESTION TO YOU IS WHICH SPECIFIC EVIDENCE YOU CAN POINT TO THAT WOULD HAVE BEEN I AM PROPER?

ON DAY TWO -- THE STATE HAD, IN MY OPINION, EVERYTHING THEY NEEDED ON DAY ONE. ON DAY TWO THERE WAS THE -- ON DAY TWO, THERE WAS THE MOTHER, THE FATHER, AND THE GRANDMOTHER OF MS. VAN NESS.

EVEN THOUGH THERE WERE A NUMBER OF WITNESSES THERE, THEIR CUMULATIVE TESTIMONY, REALLY, ONLY TOOK UP A MINOR PORTION OF THE ENTIRE TRANSCRIPT. SHOULD WE CONSIDER THAT FACTOR? OBVIOUSLY EACH WITNESS ONLY TESTIFIED VERY -- HAD A VERY SHORT PORTION OF TESTIMONY.

IT WASN'T REALLY SHORT. I KNOW THE ARGUMENT. IT WAS 63% OF THE STATE'S WITNESSES. OVER 50% OF THE STATE'S TIME WAS DEVOTED TO VICTIM IMPACT. AND IN TERMS OF THE NUMBER OF PAGES OF TESTIMONY, IT IS APPROXIMATELY 30% OF THE STATE'S CASE, WHICH I THINK IS A FEATURE OF THE STATE'S TRIAL ON THIS -- IN THIS RESENTENCING. AND YOU MUST, ALSO, RECALL THAT THE TESTIMONY WAS NARRATIVE. SEVERAL WITNESSES READ STATEMENTS. THERE WERE NO QUESTION AND ANSWER FORMATS, AS NORMALLY DRAWS OUT THE LENGTH OF PAGES OF TRANSCRIPT TESTIMONY. AND FINALLY, THIS COURT COULD HAVE HAD AN EASY PROFFER ON DAY TWO, IF IT HAD ASKED, BECAUSE APPARENTLY THE STATE HAD STATEMENTS THAT ALL OF THESE DAY TWO WITNESSES READ, AND THERE WAS A STATEMENT READ THE DAY BEFORE.

YOUR TIME IS MOVING ON. I KNOW -- HOW ABOUT ADDRESSING THE ISSUE REGARDING THE SENTENCE, IN LIGHT OF WHAT HAPPENED TO HIS BROTHER.

MY ISSUE, HERE, IS THAT TO SUGGEST THAT DEATH IS NOT THE PROPER PENALTY FOR ANTHONY, FOR A VARIETY OF REASONS, RELATED TO AGGRAVATION, TO MITIGATION, RELATED TO HIS INTENT AND TO THE FACT THAT HE IS NOT THE TRIGGERMAN. FIRST AGGRAVATION.

WAS THERE EVER A FINDING BY THE COURT? I KNOW THE STATE INDICATED THAT THE TRIAL COURT SPECIFICALLY FOUND THAT ANTHONY'S PARTICIPATION WAS MAJOR. DOES -- IS THERE A FINDING THAT HE WAS MORE CULPABLE OR LESS CULPABLE THAN HIS BROTHER?

NO, SIR. NO FINDING LIKE. THAT AND THAT FINDING, IF I AM REFERRING TO THE ONE YOU ARE REFERRING TO, CAME IN MITIGATION, AND THE COURT FOUND THAT ANTHONY WAS AN ACCOMPLICE TO THE MURDER COMMITTED BY JEFFREY, AND ANTHONY'S PARTICIPATION WAS MINOR. THE COURT SAID ANTHONY'S PARTS PARTSATION IN THE -- PARTICIPATION IN THE ROBBERY WAS MAJOR, BUT THE COURT DID RULE IT WAS MINOR, AND THE COURT NEVER RULED SPECIFICALLY THAT ANTHONY INTENDED FOR ANYBODY TO BE KILLED. I AM CONCERNED WITH

THAT ASPECT.

DID ANTHONY GIVE THE KNIFE TO JEFFREY?

THE WAY THAT IT APPEARED TO HAPPEN IS, AFTER GEOFFRY WENT IN AND DID ALL THE SHOOTING AND THEN FINALLY THE GUN MISFIRED. MICHELE HAD BEEN SHOT AND GORDON WAS NEXT. ANTHONY, ACCORDING TO WHEN I READ THE TRANSCRIPT, TURNED TO JEFFREY, TURNED TO ANTHONY, HANDED ANTHONY THE GUN, AND REACHED FOR THE KNIFE AND TOOK THE KNIFE FROM ANTHONY.

WHAT CONNECTION HAD JEFFREY HAD TO THE TACO BELL, BEFORE THIS OCCURRED?

I AM NOT SURE. I THINK HE MAY HAVE WORKED THERE BRIEFLY, BUT THAT IS ABOUT IT.

HOW ABOUT ANTHONY?

ANTHONY HAD WORKED THERE PREVIOUSLY.

WOULD YOU SHARE WITH US, A LITTLE, THE FACTS, WITH REGARD TO IT SEEMS AS THOUGH WHAT PRECIPITATEED THE EVENT, AND YOUR WORDS FOR THAT AND, SECONDLY, WOULD YOU ADDRESS TO ME ARE REESTABLISHING THAT SOME TYPE OF PRECEDENT THAT, WHEN AN ADULT IS INVOLVED WITH A MINOR, THAT THE ADULT MUST BE TREATED AS THE MINOR? THOSE TWO THINGS TROUBLE ME SOME.

I DON'T THINK WE ARE DOING THAT. BUT IF I COULD JUST POINT OUT, FIRST, I DON'T THINK THE COURT WAS RIGHT IN FINDING THIS WAS HEINOUS, ATROCIOUS AND CRUEL. THERE WAS NO TORTURE OF THE VICTIMS, NO BEATING, NO ABDUCTION. A SINGLE GUNSHOT WOUND, AND MISS VAN NESS, UNNORTH NATALIE, WAS UNO-UNFORTUNATELY, WAS UNUNCONSCIOUS AFTER THAT. WHAT I AM CONCERNED ABOUT IS THE FACTS REGARDING WHAT ANTHONY DID. THERE WAS NO TESTIMONY THAT HE PREPLANNED THE MURDER BEFORE THIS HAPPENED. THE TESTIMONY WAS THAT, THROUGH HIMSELF AND HIS BROTHER, THAT THE BROTHER HAD BROUGHT UP SHOULD WE KILL SOMEBODY, AND ANTHONY SAID, NO, I DO NOT WANT TO DISCUSS THAT ANY FURTHER, AND THERE WAS NO PLAN MADE TO KILL. I AM CONCERNED THAT ANTHONY GOT CAUGHT UP IN SOMETHING THAT HIS BROTHER INDEPENDENTLY DECIDED TO DO, AND THE FACTS EQUALLY SUPPORT THAT CONCLUSION AS TO THE COURT'S MORE SUSPICIOUS CONCLUSION.

WHAT ABOUT THE STATEMENT THAT -- CONCERNING WHETHER -- I DON'T REMEMBER THE EXACT WORDING, BUT IT WAS SOMETHING TO THE EFFECT OF THAT IS UP TO YOU. THAT IS YOUR CALL. WHEN IT CAME TO WHETHER OR NOT --

WHAT HAPPENED, THE ROBBERY WENT ACCORDING TO PLAN, WHICH IS TIE THE EMPLOYEES, LEAVE THEM IN THE FREEHER, SO THEY COULD -- IN THE FREEZER, SO THEY COULD DELAY REPORTING THE CRIME. THE RESTAURANT WOULD BE CLOSED THE REST OF THE NIGHT. RIGHT WHEN JEFFREY WAS READY TO LEAVE, JEFF RAY SAYS THEY CAN IDENTIFY YOU. WHAT SHOULD I DO? THE CONVERSATION WENT LIKE THIS. JEFFREY SAID I DON'T KNOW. JEFFREY SAID I CAN SHOOT THEM. ANTHONY SAID I CAN'T DO IT. HE TOLD HIS BROTHER, THEN, IT IS YOUR SHOW. IT IS YOUR CALL. NOW, JEFFREY, THE SHOOTER, SAID NOTHING AFTER THAT. THE COURT SAID THAT APPROVED THE YOUNGER BROTHER DOING THE SHOOTING. I DON'T SEE THAT. MOST YOUNGER BROTHERS, YOU TELL THEM YOU DO THIS. YOU ARE ON YOUR OWN, THEY SAY, HEY, I AM NOT GOING TO DO THIS. IT WAS NOT APPROVAL. IT DIDN'T SAY, YES, NOW IS THE TIME. YES, YOU SHOULD SHOOT THEM.

AT THE VERY LEAST, THAT WOULD BE RECKLESS INDIFFERENCE, WOULD IT NOT?

IT COULD BE ANALYZED THAT WAY, BUT WHEN THIS CASE, JEFFREY SAID HIS BROTHER HAD

NEVER DONE ANYTHING LIKE THIS BEFORE. HE DIDN'T THINK HE WOULD ACTUALLY DO IT.

HE INDICATED, FROM WHAT YOU JUST SAID, THAT HE WAS ABOUT TO DO IT.

NO. HE SAID HE COULD. BUT HE NEVER FINALLY SAID I WILL AND I AM GOING TO DO IT NOW. HE JUST SAID "I COULD". ANTHONY SAID, IF YOU DO THAT, YOU ARE ON YOUR OWN. IT IS YOUR SHOW. AND JEFFREY SAID NOTHING FURTHER. ANTHONY, THEN, PUT THE PEOPLE IN THE FREEZER, WHICH, I THINK, WAS A PART OF THE PLAN. ANTHONY WALKED TO THE OUTSIDE DOOR OF THE COOLER, AND JEFFREY, THEN, WENT IN AND STARTED SHOOTING, WITHOUT ANY FURTHER DISCUSSION.

IS YOUR BASIC POSITION THAT THIS CASE IS DIFFERENT THAN WAS WHEN IT WAS HERE IN 1996, BY REASON OF THE FACT THAT THIS COURT HAS, NOW, ISSUED BRENNAN AND FOUND THAT -THAT THAT IS NOT A FACTOR?

I AM AWARE THAT THAT IS NOT A PROP ORTIONALITY REVIEW. THAT DOESN'T END THE REVIEW THOUGH. I DON'T THINK BEHIND BEYOND A REASONABLE DOUBT APPLIES TO -- I DON'T THINK HINYARD, IT WORKS IN CASES LIKE HINYARD. HE DID NOT SHOOT AND KILL ANYBODY. HINYARD WAS IN HIS MIDTWENTIES, WHEN HE RAPED THE MOTHER THREE TIMES AND KILLED HER CHILDREN AND WENT DOWN THE ROAD. HINYARD WORKS ON A DEFENDANT WHO IS EQUALLY OR LESS CULPABLE. IT DOESN'T WORK IN A CASE LIKE THIS, WHERE THE DEFENDANT IS LESS CULPABLE. IT DOESN'T SAY DEFENDANTS SHOULD BE CONSIDERED MORE CULPABLE. YOU MAY WANT TO CONSIDER HINYARD, AND GO BACK ON THAT CASE AS GENERAL RULE, BUT PARTICULARLY WHERE ANTHONY DID NOT HIRE SOMEBODY TO KILL. HE DID NOT KILL. HE DID NOT SHOOT ANYBODY. HE DIDN'T TELL HIS BROTHER TO DO IT. HIS BROTHER SEEMED TO ACT ON HIS OWN, AND WHY WOULD WE SENTENCE ANTHONY TO DEATH? BECAUSE HE WAS JUST THERE? UNDER ALL THIS EVIDENCE THAT WE HAVE THAT HE NEVER WANTED ANYBODY TO BE KILLED, AND HE IS NOT GOTTEN CREDIT FOR TRYING TO AVOID DEATH. THE LOWER COURT SIMPLY BRUSHED IT ASIDE, AND ASSUMED THAT DEATH WAS PART OF THE ORIGINAL PLAN, WITHOUT ANY BASIS IN TESTIMONY.

OKAY. SO YOU ARE SAYING WE HAVE TO STRIKE THE CC OR FIND THAT THE CCB AGGRAVATOR WAS IMPROPERLY FOUND, IN ORDER TO MAKE THE ARGUMENT THAT YOU ARE MAKING. BECAUSE THE JUDGE DID MAKE A SEPARATE FINDING AT CCP, THAT IT WAS APPROPRIATE AS TO ANTHONY.

I THINK IT IS INAPPROPRIATELY FOUND ON THE FACTS. IT GOES BEYOND THE EVIDENCE, INTO SPECULATION.

ARE YOU TAKING OBJECTION ON THE MITIGATOR, THAT WHEN THE JUDGE SAID HE WAS AN ACCOMPLICE IN FELONY MURDER AND THAT HIS PARTICIPATION WAS RELATIVELY MINOR, IS THAT A FINDING OR IS THAT SENTENCE A STATEMENT OF WHAT THE STATUTORY MITIGATOR WOULD HAVE BEEN?

I THINK THE STATEMENT WAS A FINDING. I THINK THE COURT BELIEVED. THAT I THINK THE COURT WAS KIND OF CONFUSED. I AM NOT SURE THE COURT --

I DON'T READ IT THAT WAY. I THINK, TO EACH OF THEM, HE WAS SAYING WHAT THE MITIGATOR WOULD BE AND EVALUATING IT, SO IF THERE IS CONFUSION, WE MIGHT HAVE TO GET THE JUDGE TO --

I THINK THERE WAS A SHOWING. A FINDING, THE FIRST SENTENCE SAID "ANTHONY'S PARTICIPATION WAS MINOR." THE COURT FOUND THAT ANTHONY DID NOT FIRE A SHOT. HIS PARTHS PAINGS APPEARED TO BE MAJOR. I THINK THAT IS THAT HE NEEDED MONEY, AND THAT IS THE REST OF THAT SENTENCE THERE. HE CAN'T FIND THAT ANTHONY'S PARTHS PAINGS WAS MINOR IN THE FIRST SENTENCE AND THEN SAY HIS PARTICIPATION WAS MAJOR IN THE NEXT

SENTENCE. I THINK, ALSO, WITNESS ELIMINATION IS VERY SUSPECT. I THINK THE BROTHER HAD, MAYBE, AN IDEA HE WOULD ELIMINATE WITNESSES, BUT I DON'T SEE EVIDENCE THAT ANTHONY ENCOURAGED HIM OR TOLD HIM OR WANTED TO ELIMINATE WITNESSES. I THINK THAT THE SUSPECT ON ANTHONY'S PART, IN THE PRIOR VIOLENT FELONY IS, I THINK, MITIGATION IS VERY SIGNIFICANT. HE IS 18. NO PRIOR CRIMINAL HISTORY. THESE WERE NOT SOPHISTICATED CRIMINALS WHO KNEW HOW TO DO ROBBERIES AND HAVE DONE VIOLENCE BEFORE. THESE WERE A COUPLE OF KIDS WITH SOME EMOTIONAL PROBLEMS. ONE OF ANTHONY'S WAS HE HAD DIFFICULTY VERBALLY EXPRESSING HIMSELF AND A DEFENDENT DISORDER, WHICH MEANS HE TRIED TO AVOID CONFLICT WITH THOSE CLOSE TO HIM, SO THAT HE WOULD NOT LOSE THEIR APPROVAL. WHICH, I THINK, INTERPRETS HIS CONVERSATION WITH HIS BROTHER.

YOU ARE INTO YOUR REBUTTAL TIME.

PERHAPS I HAD BETTER STOP NOW. THANK YOU, YOUR HONOR.

MR. NONE LIP. -- MR. NUNNELLEY.

MAY IT PLEASE THE COURT. I AM KEN NUNNELLEY. I REPRESENT THE STATE OF FLORIDA IN THIS PROCEEDING. TO TOUCH, BRIEFLY, ON THE VICTIM IMPACT, AS WE POINTED OUT -- [AUDIO TROUBLES] [AUDIO TROUBLES] I DON'T WANT TO GO DOWN THE ROAD AND SUGGEST THAT THERE IS A MAGIC INCENTIVE OR FEATURE THAT ESTABLISHEST TRIAL. I DON'T THINK THIS COURT HAS EVER DONE THAT, AND I DON'T THINK IT WOULD BE APPROPRIATE, BECAUSE THIS TRIAL IS DIFFERENT, AS WE ALL KNOW, BUT WHAT WE HAVE IN THIS CASE IS 67 PAGES' WORTH OF VICTIM IMPACT TESTIMONY, AND THAT -- [AUDIO DIFFICULTIES] THAT THIS TESTIMONY -- THE POINT THAT WAS MADE IN PAYNE VERSUS TENNESSEE, THAT MURDER IS THE ULTIMATE ACT OF DE%IZATION AND NOTHING IN THE CONSTITUTION PRE-THEY -- DEPERSONALIZATION, AND THAT IS WHAT WAS DONE IN THIS CASE. AND THAT, JUSTICE SHAW, AS YOU POINTED OUT IS THE WAY A TRIAL WORKS. WE ALL KNOW THAT. THIS WAS NOT IMPROPER TESTIMONY. THIS WAS LEGITIMATE TESTIMONY. I WOULD POINT OUT, AND THIS IS ABOUT ALL I HAVE TO SAY ABOUT THE VICTIM IMPACT ISSUE, UNLESS YOU ALL HAVE QUESTIONS, THAT IN THIS VERY CASE, THIS COURT SAID NO KIDDING. WE REALLY MEAN IT. VICTIM GACKT EVIDENCE IS ADD -- VICTIM IMPACT EVIDENCE IS ADMISSIBLE IN THE STATE OF FLORIDA, AND TO SUGGEST THAT THE TRIAL COURT SHOULD HAVE GRANTED A MOTION TO EXCLUDE THAT TESTIMONY IN THE FACE OF THIS COURT'S RULING, IS QUITE, QUITE A STRETCH.

BUT ONE OF HIS ARGUMENTS, REALLY, IS THAT THERE SHOULD HAVE BEEN A PROFFER MADE, SO THAT THE TRIAL JUDGE COULD DETERMINE IF THERE WAS SOME POINT WHEN THIS VICTIM IMPACT INFORMATION BECAME OVERKILL. AND SO SHOULDN'T THERE HAVE BEEN THAT PROFFER, SINCE THE DEFENSE REQUESTED IT?

WELL, JUSTICE QUINCE, MY ANSWER TO THAT COMES OUT OF MY OPPONENT'S OPENING STATEMENTS, AND THAT IS THAT, ACCORDING TO MY OPEN OBT'S -- MY OPPONENT'S REPRESENTATIONS OF THE RECORD IS THAT THE DEFENSE ASKED FOR A PROFFER, AND THE STATE GAVE A BROAD BRUSH GENERIC, WHATEVER YOU WANT TO CALL IT, STATEMENT OF WHAT THE VICTIM IMPACT EVIDENCE WAS GOING TO BE, AND I DON'T KNOW THAT THERE WAS EVER A RENEWAL OF THE REQUEST FOR A PROFFER AFTER THAT. I AM JUST NOT -- I JUST DON'T KNOW. I DON'T REMEMBER -- I DON'T KNOW THE ANSWER TO THAT QUESTION. BUT I WOULD SUGGEST THAT, IF THERE WAS NOT A SUBSEQUENT RENEWAL OF THE REQUEST FOR A MORE SPECIFIC PROFFER, THAT THE DEFENDANT CAN'T COME IN HERE, NOW, AND COMPLAIN. THAT IF HE ASKED FOR A PROFFER AND THE STATE SAYS, WELL, IT IS GOING TO BE VICTIM IMPACT EVIDENCE. IT IS GOING TO BE FAMILY MEMBERS. IT IS GOING TO BE FRIENDS. IF HE DOESN'T SAY, WELL, YOU KNOW, JUDGE, MAKE HIM GIVE ME SOME SPECIFICS, HOW CAN HE COMPLAIN? HE SHOULDN'T BE ALLOWED TO COME BACK IN HERE AND PUT THE TRIAL COURT IN ERROR FOR SOMETHING THAT DIDN'T HAPPEN, BECAUSE HE DIDN'T ASK FOR IT. WITH RESPECT TO PROPORTIONALITY --

BEFORE YOU GET TO THAT --

YES, MA'AM.

ONE POINT THAT WAS NOT DISCUSSED BY MR. DEES THAT HE WAS CONCERNED ABOUT IS THE APPROPRIATENESS OF THE POST-ARREST STATEMENTS OF BOTH JEFFREY AND ANTHONY COMING IN, IN THAT THEY DIDN'T GO TO A PARTICULAR AGGRAVATOR, SO WHAT WAS THE PURPOSE OF THIS COMING IN, IN THE RESENTENCING?

JUSTICE PARIENTE, I AM NOT TRYING TO DEFLECT YOUR QUESTION, BUT THERE ARE ABOUT THREE SEPARATE KIND OF SUBISSUES THAT WEAVE THROUGH THIS. FIRST OF ALL, THE STATEMENTS AT ISSUE WERE THE SUBJECT OF THE FIRST -- OF LITIGATION ON THE DIRECT APPEAL TO THIS COURT PREVIOUSLY.

I AM NOT ASKING ABOUT THEIR ADMISSIBILITY OR THE APPROPRIATE OF ADMISSIBILITY IN THE GUILT PHASE. I AM ASKING, BECAUSE THIS IS, NOW, RESENTENCING, THAT THEY WEREN'T OFFERED FOR A PARTICULAR AGGRAVATOR. WHAT WAS THE PURPOSE OF THE STATE, YOU KNOW, PUTTING IN THAT EVIDENCE, IN THE PENALTY PHASE OF THIS RESENTENCING?

WELL, AGAIN, IT GOES BACK TO THE FACT, FIRST OF ALL, LET'S TAKE A STEP BACK FROM WHAT WE ARE -- FROM THE FACT THAT THIS IS A RESENTENCING. IF THIS WAS A DIRECT APPEAL, FULL UP APPEAL, WITH GUILT AND PENALTY AT ISSUE, AND THIS COURT HELD THAT THOSE STATEMENTS WERE PROPERLY ADMITTED IN THE GUILT PHASE, THERE WOULD BE NO QUESTION THAT THEY WERE PROPER FOR THE PENALTY PHASE. THE DEFENDANT COULD NOT COME BACK IN ON DIRECT APPEAL AND ARGUE, WELL, OKAY, MAYBE IT WAS ALL RIGHT FOR GUILT PHASE, BUT YOU CAN'T DO THAT FOR PENALTY PHASE, SO I GET A NEW PENALTY PHASE. YOU ALL WOULDN'T LET HIM DO THAT, AND IT WOULDN'T MAKE ANY SENSE TO ALLOW THAT. AND THAT IS MY FIRST POINT. A RESENTENCING JURY IS ENTITLED TO HEAR EVIDENCE TO INFORM THEM OF WHAT WENT ON IN THE GUILT PHASE, AND THIS GETS TO WHERE I THINK I AM FIXING TO ANSWER YOUR QUESTION. AGAIN, I AM NOT TRYING TO EVADE IT, BUT --

BUT YOU WOULD AGREE THAT YOU WOULD NOT -- THAT THE WHOLE -- AND THE RESENTENCING, THE STATE IS NOT GOING TO PUT IN THE WHOLE, ENTIRE GUILT PHASE CASE. I MEAN, THERE HAS GOT TO BE -- WOULD YOU AGREE WITH THAT, OR CAN THEY JUST SIMPLY PUT -- SAY I AM GOING TO PUT ON EVERY WITNESS THAT THE JURY HEARD IN THE ORIGINAL CASE. CAN THEY DO THAT, UNDER OUR CASE LAW?

PROBABLY SO. I MEAN, AGAIN, YOU KNOW, THIS GETS TO THE QUESTION OF WE HAVE TO -- THE PROSECUTORS, IF WE GO DOWN THE ROAD OF, WELL, MAYBE THIS IS ADMISSIBLE. MAYBE THIS ISN'T. YOU KNOW, THIS AND THAT, PICK AND CHOOSE, FROM TWO DIFFERENT COLUMNS OF EVIDENCE, WE ARE LEFT WITH HAVING TO GUESS ABOUT WHAT WE CAN DO AND WHAT WE CAN'T DO. THE BOTTOM LINE, THOUGH, JUSTICE PARIENTE, IS TWOFOLD. FIRST OF ALL, UNDER YOU ALL'S CASE LAW, HE CAN'T COME IN AND ARGUE FOR REINVEST VARIESAL -- FOR REVERSAL, BASED UPON THIS ISSUE. OUTSIDE OF THE CASES IN BRIEF, I BELIEVE IT WAS HARVARD, AND A LONG TIME AGO, WE SAID THIS. SECONDLY, THE STATEMENTS AS TO, YEAH, WHAT WE SHOULD HAVE DONE WAS LOCKED THEM IN THE FREEZER AND STABBED THEM AND CUT THEIR THROATS, GOES TO THE COILED, CALCULATED AND PRE -- TO THE COLD, CALCULATED AND PREMEDITATED NATURE OF THIS MURDER. THERE IS NOTHING TO SAY THAT AN AFTER-THE-FACT CRITIC OF IT BY THE DEFENDANT OF HIS CRIME, IF YOU WILL, IS NOT ADMISSIBLE. THAT IS LIKE SAYING, WELL, YOU KNOW, IF I WAS GOING TO DO IT AGAIN, YOU KNOW, I WOULD HAVE DONE THIS. THERE IS NOTHING WRONG WITH THAT. THIS EVIDENCE IS RELY SDRENT TO THE -- IS VERY WELL VENT TO THE PENALTY-PHASE ISSUES, BECAUSE IT IS RELEVANT TO THE CULPABILITY OF THE DEFENDANTS. IN ADDITION TO BEING, LIKE I SAID BEFORE, EVIDENCE THAT IS ADMISSIBLE, TO BEGIN WITH, BECAUSE IT WAS PROPERLY ADMITED IN THE GUILT PHASE, AND THE JURY IS

ENTITLED TO KNOW THE FACTS AND CIRCUMSTANCES OF THE CRIME THAT THEY ARE CALLED UPON, TO MAKE A SENTENCING RECOMMENDATION FOR, AND I WAS QUITE, REALLY, SURPRISED TO SEE THE ISSUE IN THE DEFENDANT'S BRIEF, BECAUSE IT IS PRETTY WELL SETTLED. YOU KNOW, I DON'T KNOW WHAT MORE I CAN SAY ABOUT THAT. YOU KNOW, IT CERTAINLY IS EVIDENCE THAT THE JURY AND IN THE GUILT PHASE, HEARD, AND THIS COURT SAID THAT IT WAS OKAY, WHEN IT AFFIRMED THE CONVICTION BEFORE.

CAN THE DEFENSE PUT ON ALL OF THE EVIDENCE THAT THEY PRESENTED DURING THE COURSE OF THE GUILT PHASE IN THE PENALTY PHASE?

I AM NOT SURE IF THEY COULD OR NOT, JUSTICE ANSTEAD. I DON'T KNOW THE ANSWER TO THAT QUESTION. I HAVE NEVER ACTUALLY LOOKED AT IT. I HAVE NEVER RUN INTO IT.

WELL, IT CERTAINLY DOESN'T MAKE A LOT OF SENSE, TO SAY THAT, ONCE THE JURY HAS DETERMINED THE GUILT, THAT YOU, THEN, PRESENT ALL OF THE GUILT-PHASE EVIDENCE OVER, AGAIN, TO THE SENTENCING JURY, DOES IT?

-- I MEAN THAT, IS THE PURPOSE OF PRESENTING EVIDENCE DURING THE COURSE OF THE GUILT PHASE, IS TO --

YES, SIR, BUT THAT -- THAT WOULD BE CONTRARY TO ALL OF THE CASE LAW THAT THIS COURT HAS ISSUED, THAT THE JURY IS ENTITLED TO KNOW WHAT THE GUILT PHASE JURY KNEW.

EVEN IF THE JURY IS ENTITLED TO KNOW THAT INFORMATION, IN TERMS OF MAKING A DECISION ABOUT THE PENALTY, THE JURY IS GUIDED BY THE JUDGE'S INSTRUCTIONS IN THE STATUTORY SCHEME, THAT ONLY TALK ABOUT AGGRAVATION AND MITIGATION. IS THAT NOT CORRECT?

THAT WOULD BE CORRECT, JUSTICE ANSTEAD.

THEY CAN'T PLACE THAT EVIDENCE IN ONE OF THOSE CATEGORIES, THEN HOW WOULD THAT BE ADMISSIBLE, DURING THE COURSE OF THE PENALTY PHASE?

JUSTICE ANSTEAD, I DON'T MEAN TO BE CONFRONTATIONAL, BUT IF YOU ARE GOING TO GO DOWN THAT ROAD, YOU ALL MIGHT AS WE WILL SAY THAT THE ONLY THING WE CAN PUT ON IS THE JUDGMENT AND CONVICTION. I AM SERIOUS ABOUT THAT. IF YOU GO DOWN THE ROAD OF SAYING THAT THE JURY IS NOT ENTITLED TO KNOW THE FACTS THAT LED TO THIS CONVICTION, IN ORDER TO PROPERLY ASSESS AND MAKE A REASONABLE, INDIVIDUALIZED SENTENCING DETERMINATION, WITH RESPECT TO THIS DEFENDANT, THEN WE ARE LEFT WITH A VERY REAL POSSIBILITY OF HAVING THE LAW IN THIS STATE CONVERTED INTO SOMETHING THAT SAYS, ON A RESENTENCING, ALL THE JURY GETS TO KNOW IS THAT THIS GUY WAS CONVICTED, AND THAT IS NOT THE LAW.

HOW DO YOU, UNDER THAT JURY, THOUGH, EXCLUDE THE DEFENSE EVIDENCE THAT WAS PRESENTED DURING THE GUILT PHASE?

I AM NOT SAYING YOU DO. I AM NOT SAYING YOU DON'T. I AM SAYING YOU DON'T KNOW, BECAUSE I HAVE NEVER RUN INTO IT. I HAVE NEVER ENCOUNTERED THAT. IT WOULD -- YOU KNOW, I CAN THINK OF ARGUMENTS PRO AND CON. YOURS IS ONE IN FAVOR OF IT. MY RESPONSE TO IT WOULD BE THAT RESIDUAL DOUBT IS NOT AN AGGRAVATED MITIGATOR, BUT ON THE OTHER HAND, WE SEE DEFENDANTS ARGUE RESIDUAL DOUBT ALL THE TIME. I HAVEN'T ANSWERED THAT QUESTION. I HAVE NEVER RUN INTO IT, AND I HAVE HAD A WHOLE LOT OF CASES, SO I DON'T KNOW. THE POINT BEING THAT THE POINT COULD BE MADE, ON THE OTHER SIDE OF IT, BUT THAT IS NOT THE POINT BEING MADE HERE. IT IS A LEGITIMATE QUESTION. I DON'T DISPUTE THE LEGITIMACY OF YOUR QUESTION, SIR, BUT IT IS NOT THE ISSUE IN THIS CASE. WITH RESPECT TO PROPORTIONALITY, JUSTICE PARIENTE, YOUR QUESTION ABOUT THE STATEMENT IN THE SENKTS ORDER -- IN THE SENTENCING ORDER, AS TO THE ACCOMPLICE MITIGATOR,, I

BELIEVE THAT IN ORDER TO ANSWER THE QUESTION POSED BY MY OPPONENT, THAT THE TRIAL COURT ACTUALLY DID FIND THAT ANTHONY WAS A MINOR PARTICIPANT IN THE FELONY. YOU HAVE TO GO BACK AND READ THE REST OF THE COURT'S SENTENCING ORDER, AND IF YOU DO SO, WHERE THE TRIAL COURT SETS OUT THE MITIGATING FACTORS THAT HE CONSIDERED, THE OPENING SENTENCE OF THE THREE STATUTORY -- SECTIONS DEALING WITH THE STATUTORY MITIGATORS, ALL, BEGIN WITH A RECITATION OF THE STATUTORY MITIGATING CIRCUMSTANCE. I DO NOT BELIEVE THAT YOU CAN READ THIS ORDER TO ROLL IT OVER INTO BEING ANYTHING OTHER THAN MERELY STATING WHAT THE MITIGATING CIRCUMSTANCE WAS THAT WAS BEING CONSIDERED AND NOT THAT HE WAS FINDING IT. BECAUSE THE TRIAL COURT WENT ON AND FOUND THE COURT FINDS THAT ANTHONY DID NOT FIRE THE SHOT THAT KILLED MICHELE VAN NESS BUT THAT HIS PARTICIPATION IN THE CRIME WAS MAJOR. IF WE GO DOWN THE ROAD OF SEMANTICS, THAT SENTENCE CLEARLY FINDS MAJOR PARTICIPATION IN THE KILLING. THERE IS NO OTHER WAY TO READ THAT SENTENCE. AND THAT IS WHAT THE TRIAL COURT'S PLAIN INTENT IT IS, FROM A PLAIN READING OF THE SENTENCING ORDER.

HOW DOES THAT COMPORT WITH THE GRIEF AND CUP -- WITH THE DEGREE OF CULPABLE OF CULPABILITY. SO WAS JEFFREY'S PARTICIPATION, AND DON'T WE LOOK AT THIS FROM BALL ANSWERING -- FROM BALANCING THE CULPABILITY?

YES, SIR, YOU DO, BUT, AND THIS IS WHERE BRENNAN COMES IN AND CONFUSES THE MATTER. WE HAVE JEFFREY, WHO, AS MATTER OF LAW, IS INELIGIBLE TO BE SENTENCED TO DEATH. THAT MEANS, BASED UPON THIS COURT'S PRIOR DECISIONS AND PRIOR DISCUSSIONS OF MITIGATION, THAT HE IS LESS CULPABLE. BY DEFINITION. WE ARE UP, UNDER CASES LIKE -- I AM GETTING THERE. I AM GETTING THERE, JUSTICE. I PROMISE. WE ARE UP UNDER CASES LIKE DEMPS, LIKE HINYARD, LIKE LARZELERE. LIKE WILLIAMS, COLEMAN AND ROBINSON, FROM MIAMI, WHERE YOU HAVE VARYING DEGREES OF CULPABILITY. THIS CASE IS MORE CLOSELY AKIN, IF YOU WILL, TO LARZELERE, THAN IT IS TO ANYTHING ELSE, AND IN LARZELERE, AS WE ALL KNOW, THE CO-DEFENDANT WAS JASON -- I CANNOT REMEMBER HIS LAST NAME. IF I HAVE EVER KNOWN, AND HE WAS ACQUITTED OF MURDER. VIRGINIA LARZELERE WAS CONVICTED. SHE WAS NOT THE SHOOTER. SHE WAS PRESENT AND SHE WAS THE MASSER MIND BEHIND THE MURDER -- THE MATSTER MIND BEHIND THE MURDER, AND THAT IS WHAT WE HAVE HERE. WE HAVE ANTHONY FAR I KNOW, A WHO FORMERLY OR MAYBE, EVEN PRESENTLY, WAS EMPLOYED AT THE TACO BELL.

WAS THERE A SPECIFIC FINDING OF THAT? I ASKED OPPOSING COUNSEL. WAS THERE A SPECIFIC FINDING OF THAT BY THE COURT, THAT JEFFREY ACTED UNDER THE PLAN AND DOMINATION OR -- OF ANTHONY?

SAY THAT AGAIN, SIR? I DON'T RECALL. THAT WOULD HAVE BEEN IN THE OTHER -- THAT WOULD HAVE BEEN IN THE JEFFREY FARINA CASE, AND I DON'T REMEMBER WHAT THE SENTENCING ORDER SAID ON THAT RESPECT.

BUT WAS THERE A FINDING IN THIS CASE THAT, REGARDING THAT CULPABILITY?

THERE WAS A FINDING, AND I AM -- READING FROM THE COURT'S SENTENCING, THE FINAL SENTENCING ORDER, WITH RESPECT TO THE COLD, CALCULATED AND PREMEDITATED AGGRAVATING CIRCUMSTANCE, THAT THE DEFENDANTS KNEW, FROM THE BEGINNING OF THEIR TACO BELL PLANS, THAT THEY WOULD HAVE TO EXECUTE WITNESSES. ANTHONY, AS THE TRIAL COURT FOUND, WAS THE MASTERMIND BEHIND THE PLANS. THAT IS A DIRECT QUOTE, FROM PAGE 358 OF THE RECORD, THE SENTENCING ORDER, WITH RESPECT TO THE ACCOMPLICE MITIGATOR. THE TRIAL COURT WENT ON TO SAY ANTHONY'S NEED FOR MONEY TO MOVE HIS CHILDREN WAS THE BASIC MOTIVATION FOR PLANNING THE ENTIRE EVENING. IT WAS ANTHONY'S FAMILIARITY WITH THE TACO BELL RESTAURANT AND ITS EMPLOYEES THAT PROVIDED THE TARGET OF THE PLANS. ANTHONY BOUGHT THE BULLETS AND HELD THE GUN, AS JEFFREY TIED UP THE MALE

VICTIMS. AND HERE I WOULD INTERJECT THERE WAS TESTIMONY THAT ANTHONY DID ALL THE TALKING AND SEEMED TO BE IN CHARGE. I BELIEVE THAT CAME FROM THE TESTIMONY OF KIM GORDON, IF I AM NOT MISTAKEN. THE TRIAL COURT FOUND, POINTED OUT, ACCORDING TO AT LEAST ONE WITNESS, ANTHONY WAS THE ONE WHO HELD KIM GORDON'S HEAD WHILE JEFFREY TRIED TO KILL HER BY DRIVING A KNIFE INTO HER SKULL. IT IS DISPUTED BY MY OPPONENT AS TO WHETHER OR NOT ANTHONY, REALLY, DID THAT OR NOT. THE TESTIMONY WAS, FROM KIM GORDON, ONE PERSON WAS HOLDING HER HEAD. THE OTHER PERSON WAS TRYING TO STAB HER. SHE DIDN'T KNOW WHICH ONE IT WAS. THERE WAS OTHER TESTIMONY, I BELIEVE, FROM DERRICK MASON, THIS THAT HE OBSERVED ANTHONY HOLDING KIM GORDON'S HEAD. IT STANDS TO REASON, SINCE THEY WERE THE ONLY TWO ROBBERS IN THE STORE, THAT ONE OF THEM WAS HOLDING HER HEAD WHILE THE OTHER ONE WAS TRYING TO STAB HER. THE TRIAL COURT WENT ON TO FIND, AND I AM, AGAIN, READING FROM THE SENTENCING ORDER, ANTHONY WAS TOTALLY INVOLVED IN THE CRIME, FROM BEGINNING TO END, WITHOUT ANTHONY AND JEFFREY ACTING IN CONCERT, THE DEATH WOULD NOT HAVE OCCURRED.

WHAT ABOUT THE MITIGATING, AS FAR AS THE JEFFREY AND ANTHONY? IS THERE ANY DIFFERENCE IN THAT?

IN THE MITIGATION, AS TO JEFFREY?

AND ANTHONY.

I THINK WE HAVE -- I AM NO SURE HOW TO -- I AM NOT SURE HOW TO ANSWER YOUR QUESTION, BECAUSE I DIDN'T COME PREPARED TO ARGUE THE JEFFREY FARINA CASE, BUT JEFFREY, UNDER THE BRENNAN DECISION, INELIGIBLE FOR DEATH, THAN IS THE END OF THAT, BECAUSE A 16-YEAR-OLD DEFENDANT, ONCE THE DEFENDANT IS 16, UNDER THIS COURT'S PRIOR DECISION, THAT IS SUCH A STRONG MITIGATOR, THAT HE CAN'T BE SENTENCED TO DEATH. THAT IS THE END OF THAT DISCUSSION. THE COURT FOUND, AND I THINK WHAT YOU ARE DRIVING AT IS AN IN MAN-TYSON -- IS AN INMAN-TYSON ISSUE, AND I AM GETTING THEM MIXED UP, THAT ANTHONY WAS THE DRIVING FORCE BEHIND THESE PLANS. THERE WAS TESTIMONY, FROM, I BELIEVE, MR. FARINA'S, ANTHONY FARINA'S MENTAL STATE EXPERT, THAT DEALT WITH THEIR DISCUSSIONS ABOUT KILLING THE VICTIMS, SOMETIME IN THE WEEKS BEFORE THE ULTIMATE MURDER. I AM OUT OF TIME. THE COURT HAS NO FURTHER QUESTIONS, I WOULD ASK THAT THE SENTENCE OF DEATH IMPOSED ON ANTHONY FARINA BE AFFIRMED.

THANK YOU, MR. NUNNELLEY. MR. DEES.

IF I COULD ADDRESS THE POST-ARREST STATEMENTS, BRIEFLY, HERE, I WAS CONCERNED ABOUT THAT, AS WELL, IN THE BRIEF, AND I HAVE ARGUED IT THERE, THAT THE MOTION IN LIMINE WAS FILED AND NOT PREVIOUSLY RULED UPON ON FIRST APPEAL, TO HOLD THAT THOSE STATEMENTS SHOULD NOT COME IN AS EXCEEDING RELY CONVENIENCE, RELY CONVENIENCE IN RESENTENCING PROCEEDING, RELATED TO EVIDENCE RELATED TO AGGRAVATION, MITIGATION, AND THE STATE HAS SOME LEEWAY TO PROVE A LIMITED AMOUNT OF THE NATURE OF THE CRIME, BUT NOT TO RETRY GUILT WHATSOEVER. THESE STATEMENTS MAY HAVE BEEN RELEVANT TO GUILT, BUT IN THE RESENTENCING CONTEXT, ONLY, SHOULD NOT HAVE BEEN ADMITTED, BECAUSE I DON'T THINK IT WAS CRITIC OF THE CRIME. -- CRITIQUE OF THE CRIME. I DON'T SEE IT I NI DIFFERENCE BETWEEN DERRICK AND CORMANDY, PARTICULARLY CORMANDY WHO,, AFTER RAPING HER AND KILLING MR. ADAMS, WHO SAID AFTER I GET OUT, I AM GOING TO KILL HER AND I AM GOING TO KILL THE WITNESS THAT CONFESSED TO. THAT WAS RULED IMPROPER EVIDENCE. THAT DID NOT RELATE TO INTENT AND SHOULD NOT HAVE BEEN ADMITTED AT THE RESENTENCING. IT DID NOT RELATE TO ANY RELEVANT ISSUE AND WAS DANGEROUSLY ACCESSIBLE TO PROVE LACK OF REMORSE AND AGGRAVATING FACTOR. I SEE NO DIFFERENCE IN JEFFREY SAYING WE SHOULD HAVE DONE SOMETHING DIFFERENT. WE SHOULD HAVE CUT THROATS AND CUT PHONE LINES, TO CORMANDC SAYING I SHOULD HAVE KILLED WHER WHEN I LEFT OR I WILL KILL HER WHEN I GET

OUT. I SEE NO LEGAL DIFFERENCE IN THE REASON, AND THAT DOES NOT RELATE TO THE CRIME, AND I DON'T THINK THIS, ONE AYOTTE, A COULD CONSTRUE IT TO ANTHONY'S INTENT AT THE TIME. YOU COULD CONSTRUE IT THAT HE DID INTEND TO KILL OR THAT, AFTER HE WAS ARRESTED, HE WISHED HE HAD INTENDED TO KILL OR HE DID AT THE TIME. I DON'T SEE ANY ADVANCE IN THIS CASE AT THE TIME, AND I THINK IT WAS THE ONE-TWO PUNCH, WITH THE VICTIM IMPACT COMING IN AND THE STATEMENT COMING IN, ON THE HEELS OF IT -- ON THE HEELS OF IT, THAT DENIED ANTHONY A REALLY FAIR SHOT WITH THIS JURY.

MR. DEES, I THINK YOUR TIME IS UP. THANK YOU.

THANK YOU. I HOPE THAT YOU WOULD REDUCE IT TO LIFE OR REMAND FOR A NEW HEARING. THANK YOU.

THANK YOU.