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GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. WE ARE PLEASED TO HAVE, IN THE AUDIENCE, TODAY, STUDENTS FROM FLORIDA A&M UNIVERSITY, A CLASS ON AMERICAN COURT SYSTEM, TAUGHT BY DR. MYERS. WE ARE PLEASED TO HAVE YOU HERE. I UNDERSTAND MOST OF THE STUDENTS IN THAT CLASS ARE CRIMINAL JUSTICE MAJORS. AND WE ARE, ALSO, PLEASED TO HAVE AN AMERICAN GOVERNMENT CLASS FROM GODBY HIGH SCHOOL. MR. BATTS, THE TEACHER. THE FIRST CASE ON THE COURT'S CALENDAR, TODAY, IS STEPHENED TO BOOKER VERSUS THE STATE OF FLORIDA -- IS STEPHEN TODD BOOKER VERSUS THE STATE OF FLORIDA. ARE YOU READY TO PROCEED?

I AM, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS DAVID TODD DAVIS IN THIS CAPITAL SENTENCING. THIS CASE STARTED IN 1977, WHEN MR. BOOKER WAS CONVICTED OF FIRST-DEGREE MURDER, SEXUAL BATTERY AND MURDER, AND SENTENCED TO DEATH, AND OVER THE NEXT 20 YEARS, HE WOUND HIS WAY BACK AND FORT THROUGH THE COURT SYSTEM, UNTIL 1997. HE WENT BACK AND WAS SENT FOR A RESENTENCING HEARING, IN WHICH HE WAS, AGAIN, SENTENCED TO DEATH, THE COURT FINDING FOUR AGGRAVATING FACTORS, ALL OF WHICH GAVE GREAT WEIGHT AND 11 MITIGATORS, INCLUDING TWO STATUTORY MITIGATORS AND SEVERAL MITIGATORS ON MR. BOOKER'S MENTAL STATE AT THE TIME OF THE MURDER. THE FACTS ARE REALLY QUITE SIMPLE, IN THAT NOVEMBER OF 1977, NOVEMBER OF THAT YEAR, BOOKER BRUTALLY MURDERED 94-YEAR-OLD LORENA HARMON. HE, ALSO, SEXUALLY ASSAULTED HER, SEXUALLY BATTERED HER AND BURGLARIZED HER HOME. BOOKER, AT THIS TIME, WAS 24 YEARS OLD AND BY THIS TIME HAD HAD A LIFETIME OF SEVERE MENTAL PROBLEMS,, NOT JUST SIMPLY MENTAL PROBLEMS THAT PSYCHIATRISTS WILL RECOGNIZE, BUT HE, ALSO, HAD PROBLEMS STEMMING BACK TO HIS CHILDHOOD. HE HAD BEEN BRUTALLY BEATEN AS A CHILD, MENTALLY ABUSED AND SEXUALLY ABUSED AS A CHILD. THOSE PROBLEMS, I THINK, BEGAN TO SURFACE BY THE TIME HE IS 13, WHEN HE BEGINS USING ALCOHOL, AND CERTAINLY BY THE TIME HE IS 16, IS HE SEVERELY ALCOHOLIC, BEING HOSPITALIZED BY THE TIME HE IS 16, FOR BLACK OUST AND MEMORY LOSS. -- FOR BLACKOUTS AND MEMORY LOSS.

THE HISTORY OF HIS SEXUAL ABUSE AND HIS PHYSICAL ABUSE AND HIS ABUSE OF ALCOHOL AT A YOUNG AGE, WHERE IS THAT DOCUMENTED IN THE RECORD?

THE -- DR. BERNARD HAD TESTIFIED AND PULLED THAT OUT OF THE RECORDS THAT HE SAW AND, I BELIEVE, HIS RELATIVES, ALSO, MAY HAVE TESTIFIED ABOUT THAT.

SO THERE IS ACTUAL HOSPITALIZATION RECORDS?

I CAN'T RECALL IF IT IS IN THIS RECORD, BUT DR. BERNARD RELIED UPON THEM IN HIS EVALUATION OF BOOKER, BUT BOOKER, ALSO, WAS HOSPITALIZED WHEN HE WAS IN THE ARMY. HE, DOCTORS THERE, WHEN HE WAS STATIONED IN OKIE THAT WHAT COULDN'T -- OKINAWA COULDN'T REALLY TREAT HIM THERE, SO HE WAS DIAGNOSED AS BEING POSSIBLY SCHIZOPHRENIC AND PARANOID AND WHILE HE WAS IN THE ARMY, HE WAS DIAGNOSED WITH SNIFFING GLUE AND HEROIN AND MARINAND ALCOHOL. AT AGE 24 HIS MENTAL PROBLEMS PERSISTED. HE WAS HOSPITALIZED THEN, AND HE EVENTUALLY DRIFTED DOWN INTO THAT, WHERE HE WAS FRONTLY CONVICTED OF A ROBBERY HE COMMITTED. HE WAS SENTENCED IN PRISON AND WHILE IN PRISON HE COMPLAINED OF DEMONS ATTACKING HIM AND BEING ON HIS CHEST AND THINGS LIKE THIS.

ARE YOU MAKING ANY ALLEGATION THAT THE TRIAL JUDGE FAILED TO FULLY CONSIDERED ALL OF THIS INFORM SNAINGS.

NO, MA'AM. HE OBVIOUSLY CONSIDERED IT ALL, AND I AM NOT ARGUING ABOUT THE WEIGHT HE GAVE TO IT, ALSO, BUT IF WE WANT TO SKIP RIGHT TO THE PROPORTIONALITY ARGUMENT, I AM ARGUING THAT, UNDER THIS COURT'S RULINGS THE DEATH SENTENCE IS NOT PROPORTIONAL, LARGELY BECAUSE OF HIS MENTAL CONDITION. THIS COURT HAS SAID THAT, WELL, YOU HAVE SAID, YOU HAVE ESTABLISHED A CATEGORY OF OFFENSES RESULTING FROM SERIOUS MENTAL DISTURBANCE NOT AMOUNTING TO INSANITY, FOR WHICH DEATH IS IMPERFECT MISSIBLE. THIS COURT HAS, ALSO, SAID THAT WHEN WE LOOK AT DEATH PENALTY SENSES, WE NEED TO LOOK AT TWO THINGS, ONE THE MOST AGGRAVATED AND THE MOST MITIGATED. THIS IS A TWO-PRONG ATTACK. THERE ARE FOUR AGGRAVATING FACTORS WHICH TRIAL COUNSEL DID NOT CONTEST AND THEY ARE THERE. FOUR AGGRAVATING FACTORS AND REDUCED BY HIS MENTAL CONDITION, WHICH MAKES THIS NOT ONE OF THE LEAST MITIGATED. IN FACT, LIKE THIS COURT'S OPINION INAL MADE A, WHICH YOU DECIDED -- IN ALMEDA, WHICH YOU DECIDED LAST SUMMER.

LET ME ASK YOU THIS, IN REGARD TO THE MENTAL AGGRAVATING, WHICH YOU ARE TALKING ABOUT, THERE IS SOME EVIDENCE IN THE RECORD CONCERNING MR. BOOKER'S LITERARY AND ARTISTIC TALENTS, I BELIEVE, SO HOW ARE WE TO BALANCE THAT? THERE IS SOME POINT WHERE SOMEONE SAYS HE IS NEAR GENIUS OR WORDS TO THAT EFFECT, SO HOW ARE WE TO BALANCE AGAINST THIS MENTAL MITIGATING SNEVED.

I THINK WHAT YOU ARE IMPLY IMPLYING IS THAT ONLY SANE PEOPLE CAN BE BRILLIANT. OBVIOUSLY IN THIS CASE THAT DOESN'T FLOW. I THINK ONE OF THE THINGS THAT WE ARE SEEING, WHICH IS ONE OF THE RESULTS ABOUT HIM BEING CONFINED FOR THE LAST 20 YEARS IS THAT BOOKER'S BRILLIANCE BEING THERE SINCE HE WAS A CHILD, HE WAS RECOGNIZED AS A CHILD PRODIGY, I BELIEVE, BUT WHEN HE IS PUT IN THIS STABLE ENVIRONMENT, WHICH PRISON IS. IT IS NOT THE PLACE YOU WANT TO GO TO DEVELOP YOUR LITERARY TALENTS, BUT BOOKER HAS HAD THAT. HE HAS BEEN STABLE AND THERE IS A CERTAIN AMOUNT OF INHERENT VIOLENCE IN THERE, BUT HE HAS BEEN STABLE. THE LAST 20 YEARS HE HAS BEEN IN A 8 BY 10 OR WHATEVER THE SIZE CELLS ARE OVER AT FLORIDA STATE PRISON, AND HE HAS CLEARLY BEEN DENIED THE ALCOHOL, THE DRUGS THAT HAS AGGRAVATED THESE MENTAL PROBLEMS THAT HE HAS HAD, SO I THINK THAT IS WHAT HAS HAPPENED THERE. BUT HE NEVERTHELESS HAS SIGNIFICANT MENTAL PROBLEMS THAT HAVE BEEN RECOGNIZED SINCE CHILDHOOD, WITH ALCOHOLISM, WITH THE DRUG ABUSE, AND IN NOVEMBER 1977, HE WAS CERTAINLY ONE STEP SHORT OF BEING CRAZY OR INSANE, AS WE WOULD, UNDER MORE LEGAL CONCEPT.

WHEN HE WAS ARRESTED AND IMPRISONED FOR THE ROBBERY, HOW LONG WAS HE IN PRISON IN FLORIDA?

HE GOT OUT OF THE ARMY AND CAME DOWN TO FLORIDA IN '74 AND WAS CONVICTED OF ROBBERY AND GIVEN A FLEE-YEAR SENTENCE. HE WAS RE-- A THREE-YEAR SENTENCE AND WAS RELEASED IN SEPTEMBER '677 AND THE MURDER -- IN SEPTEMBER '77 AND THE MURDER OCCURRED IN NOVEMBER.

WHEN HE WAS IN PRISON, DID HE RECOGNIZED AND RECEIVE ANY TREATMENT?

THE EVIDENCE IS MORE SELF SUPPORTING. HE CLAIMED THAT THERE WERE DEMONS THERE AND THEY WERE PUTTING SOMETHING IN THE WATER, A DRURTION MAKING HIM IMP TENT -- A DRUG MAKING HIM IMP TENT. CLEARLY HE HAD MENTAL PROBLEMS WHILE HE WAS THERE.

DID HE RECEIVE TREATMENT WHILE HE WAS IN PRISON?

I DON'T BELIEVE SO. I DON'T RECALL. I DON'T BELIEVE THERE IS ANY EVIDENCE THAT HE DID. WHAT I DO RECALL IS THAT HE DID SAY THERE WERE DEMONS IN THE PRISON AND THINGS LIKE. THAT BUT, SO, THE REAL ISSUE WE ARE LOOKING AT, THEN, IS THIS ONE OF THE LEAST MITIGATED CRIMES THAT OCCURRED, AND, NO, IT IS NOT. WHAT WE ARE FINDING IS THIS MENTAL

MITIGATION IS SO OVERWHELMING THAT IT DEFINES NOT ONLY THE CRIME, BUT IT, ALSO, DEFINES WHO STEPHENED TO TODD BOOKER IS. -- WHO STEPHEN TODD BOOKER S HE IS A MAN WHO IS OBVIOUSLY VERY BRIGHT, BUT HE, ALSO, HAS SIGNIFICANT MENTAL PROBLEMS THAT HAVE BEEN PERMEATED AND RECOGNIZED SINCE HE WAS A CHILD. THIS EVIDENCE WAS LARGELY UNREBUTTED AND, REALLY, UNCONTROVERTED, SO WE HAVE THE CASE REALLY FALLING INTO THIS CATEGORY OF CASES THAT THIS COURT HAS RECOGNIZED THAT, WHEN WE HAVE A CRIME THAT MAY BEING A VATED, SUCH AS IN THIS COURT'S CASE WITH FITZPATRICK, WHERE THERE WERE FIVE AGGRAVATING FACTORS, THIS COURT NEVER REDUCED IT TO LIFE, BECAUSE ALL THEY HAD WAS TWO STATUTORY MENTAL MITIGATORS PLUS HIS LOW AGE. WHEN WE HAVE THE VAST MENTAL HEALTH EVIDENCE LIKE THEY HAD IN ALMEDA, WHEN YOU HAVE THAT SORT OF EVIDENCE, EVEN THOUGH IT IS ONE OF THE MOST AGGRAVATED, IT IS, ALSO, ONE OF THE MOST MITIGATED, AND IT IS ONE FOR WHICH DEATH IS INAPPROPRIATE. NOW, I RAISE SEVERAL OTHER ISSUES IN THE BRIEF, BUT THE ONE THAT I -- THE ONLY OTHER ONE I REALLY WANT TO TALK ABOUT IS THE FACT THAT THE JURY WAS NOT -- DID NOT HEAR ABOUT THE FACT THAT HE, ALSO, HAD A 100-YEAR SENTENCE. THAT IS ADDITIONAL CRIMES. HE PICKED UP 85 YEARS CONSECUTIVE TO THE DEATH SENTENCE HE GOT, AND THEN HE PICKED UP AN ADDITIONAL 15 WHEN HE WAS CONVICTED OF AGGRAVATED BATTERY IN 1980, SO HE HAD A TOTAL OF 100 YEARS THAT HE WAS FACING IN PRISON.

WHY WOULD THE CAMPBELL DECISION NOT BE CONTROLLING UNDER THESE CIRCUMSTANCES?

CAMPBELL OR THE ONE I WAS LOOKING AT WAS BAITS, THE MORE RECENT ONE OF BAITS, OR, ACTUALLY, THIS COURT IS NIXON, TWO CASES NIXON AND BAITS, WHERE YOU BASICALLY HAVE SAID THAT THIS EVIDENCE IS IRRELEVANT, AND I REALIZE I AM AM--- IT IS A DIFFICULT ARGUMENT TO MAKE, IN LIGHT OF BATES, THAT YOU JUST RECENTLY HAVE AFFIRMED NIXON, BUT WHAT I WOULD SAY IS YOU NEED TO GO BACK AND LOOK AT SOUTH CAROLINA VERSUS SIMMONS FROM THE UNITED STATES SUPREME COURT, WHICH SPECIFICALLY REJECTED THE ARGUMENT THAT YOU USED RECENTLY IN BATES, WHICH YOU SAID IN BATES THIS SORT OF EVIDENCE IS IRRELEVANT. THE "IS THIS INTRODUCTION OF THIS EVIDENCE WOULD OPEN THE DOOR AND CON VECKT YOUR AND SPECULATION -- CONJECTURE AND SPECULATION AS TO WHAT IS THE RELEVANT SENTENCE FOR THE MURDER. THE UNITED STATES SUPREME COURT WAS FACED WITH A SIMILAR IN SOUTH CAROLINA VERSUS SIMMONS, AND AS TO THE SPECULATION THAT THIS SORT OF EVIDENCE WOULD TEND TO ENCOURAGE JURY SPECULATION, THEY SPECIFICALLY REJECTED THAT. THIS IS WHAT THEY SAID IN SIMMONS. THEY SAID CERTAINLY SUCH AN INSTRUCTION IS MORE ACCURATE THAN NO INSTRUCTION AT ALL, WHICH LEAVES THE JURY TO SPECULATE WHETHER LIFE IMPRISONMENT MEANS LIFE WITHOUT PAROLE OR SOMETHING ELSE. SO WHAT HAS HAPPENED --

WAIT. WHAT WAS, IN THIS CASE, THOUGH, THIS WAS A LONG TIME AGO, AND THE DEFENDANT WAS FACED WITH LIFE WITH A MAXIMUM OF 25 YEARS.

THAT IS PRECISELY THE PROBLEM HERE, IS BECAUSE THE JURY, ONCE THEY WENT OUT, WELL, DURING THE ENTIRE VOIR DIRE, THIS QUESTION REPEATEDLY CAME UP. IS BOOKER GOING TO BE GIVING CREDIT FOR THE 20 YEARS HE HAS BEEN IN PRISON, KNOWING THAT HE FACES THE LIFE WITHOUT POSSIBILITY OF PAROLE FOR 25, SO THE JURY WAS THINKING IN THEIR MIND, THE MEMBERS OF THE VENIRE WERE, THAT IF WE GIVE HIM LIFE, HE IS GOING TO BE OUT IN 25 YEARS, AND IN FACT THEY WEREN'T OUT A MINUTE DURING THEIR DELIBERATIONS AND THEY CAME BACK ASKING IS BOOKER GOING TO BE GIVEN CREDIT FOR TIME SERVED, AND THEY WERE VERY CONCERNED, OBVIOUSLY FROM THIS QUESTION, THAT BOOKER IS GOING TO BE ON THE STREETS IN FIVE YEARS, AND THIS SORT OF THINKING ON THE PART OF THE JURY THAT THEY WEREN'T FOCUSING ON THE LIFE AND, IN FACT, WHAT THE SUPREME COURT, IN SIMMONS SAYS, IS MOST JURORS DO NOT BELIEVE THAT LIFE MEANS LIFE. THEY THINK IT MEANS THAT THE DEFENDANT WILL BE OUT ON THE STREETS SOMETIMES LESS THAN, OBVIOUSLY, LESS THAN HIS LIFE. SO THE SUPREME COURT SAYS IN THAT SITUATION, IT IS ONLY FAIR THAT, IF THE STATE IS GOING TO

INTRODUCE EVIDENCE OF HIS PRIOR ACTS --

MR. DAVIS, ARE WE, IS THIS PRONOUNCEMENT BY THE SUPREME COURT OF THE UNITED STATES THAT BINDS US? IS IT ON A CONSTITUTIONAL?

IT WAS ON DUE PROCESS. THE MAJORITY. ACTUALLY IT WAS THE PLURALITY OF OPINION ON DUE PROCESS PRONOUNCEMENT. THE CONCURRING OPINION, ALSO, SAID THAT, UNDER THE EIGHTH AMENDMENT ANALYSIS, IT SHOULD HAVE BEEN THIS EVIDENCE OF HIS PRIOR -- I AM SORRY -- HIS ADDITIONAL SENTENCES SHOULD HAVE BEEN ADMITTED, SIMPLY BECAUSE IT WOULD HAVE MADE THE SENTENCING MORE RELIABLE, SO WHAT I AM SAYING IS IF THE STATE IS GOING TO BE ALLOWED TO INTRODUCE EVIDENCE OF HIS PRIOR CONVICTIONS FOR WHICH HE HAS A TOTAL OF 100 YEARS, THAT IT IS ONLY FAIR THAT THE JURY, ALSO, KNOW THAT HE IS GOING TO SERVE 100 YEARS ADDITIONALLY TO WHATEVER SENTENCE THE COURT IMP OASIS IN THE CAPITAL SENTENCE. ALSO -- IMPOSES IN THE CAPITAL SENTENCE. ALSO AN INSTRUCTION THAT HE WILL FACE 100 YEARS IS CERTAINLY INACCURATE INSTRUCTION. NO ONE DENIES HE IS GOING TO FACE THE INITIAL 100 YEARS AND AT LEAST TWO OPINIONS, TWO JUSTICES, SUTER AND STEPHENS, SAID THAT UNDER THOSE CIRCUMSTANCES, UNDER AN EIGHTH AMENDMENT ANALYSIS, BECAUSE IT IS RELIABLE INFORMATION AND WE WANT NOT ONLY RELIABLE SENTENCES BUT DEATH PENALTY CASES WE WANT ONE HIGH REALIBILITY, THE JURY NEEDS TO HAVE THIS INFORMATION, IN ORDER TO HAVE THESE SENTENCES BE MORE RELIABLE, SO --

IN THIS CASE, SO THE JURY WAS INSTRUCTED THAT THE DEATH SENTENCE, THE LIFE SENTENCE, THE ALTERNATIVE TO DEATH WAS LIFE PLUS 25 YEARS, BECAUSE THIS WAS BEFORE --

NO.

-- DID THEY INSTRUCT ON THAT?

THEY WERE TOLD ABOUT LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR 25 YEARS. THEY WERE NEVER TOLD HE HAD AN ADDITIONAL 100 YEARS CONSECUTIVE TO THAT LIFE SENTENCE, SO WHAT THE JURY WAS CONCERNED ABOUT AND WHICH THE UNITED STATES SUPREME COURT PICKS UP IN SIMMONS IS THEY WERE SAYING, LOOK, HE HAS ALREADY SERVED 20 YEARS. HE IS GOING TO BE OUT OR THERE IS A POSSIBILITY THAT HE IS GOING TO BE OUT IN 25 YEARS, SO THERE IS A SPECULATION ON THE PART OF THE JURY THAT THE TRIAL JUDGE DID NOTHING TO STOP.

DID THE JURY KNOW THAT MR. BOOKER HAD BEEN CONVICTED OF MULTIPLE OTHER OFF SNENZ.

YES. THEY KNEW HE HAD BEEN CONVICTED AFTER ROBBERY IN '74 AS WELL AS THE ACCOMPANYING SEXUAL BATTERY AND BURGLARY, FOR WHICH HE GOT 100 YEARS, BUT THEY WERE NEVER TOLD ABOUT THAT 100 YEARS. I AM SORRY. THAT ROBRY DIDN'T FIGURE INTO THE 100 YEARS. IT WAS THE ADDITIONAL BATTERY HE PICKED UP IN 1980, SO HE HAD A TOTAL OF 100 YEARS EXTRA.

BUT THEY KNEW ABOUT EACH OFFENSE THAT COMPRISED THE 100 YEARS.

YES. THEY KNEW ABOUT EACH OFFENSE BUT THEY WERE NOT TOLD THAT HE WAS FACING AN ADDITIONAL 100 YEARS.

IS IT YOUR POSITION THAT, BECAUSE THEY WERE CONSIDERING THOSE PRIOR FELONIES OR CONTEMPORANEOUS FELONIES AS AGGRAVATORS, THAT THAT IS WHY IT IS RELEVANT, TO KNOW ABOUT THE SENTENCE FOR THOSE?

UNDER SIMMONS ANALYSIS, UNDER DUE PROCESS ANALYSIS, IT IS ONLY FAIR THAT, IF THEY ARE TOLD HE HAS GOT THESE OTHER CRIMES, THAT, TO BALANCE THE LEVEL OF THE PLAYING FIELD,

BALANCE THE SCALES OR WHATEVER YOU WANT TO CALL IT, THAT THEY, ALSO, KNOW WHAT PUNISHMENT HE IS FACING.

BUT WE WOULD HAVE TO RECEIVE --

I AM SORRY. YES. I THINK CLEARLY YOU WOULD HAVE TO RECEIVE -- WELL, IN MY BRIEF, I TALK ABOUT WAYS YOU CAN DISTINGUISH NIXON AND I DIDN'T HAVE BATES AT THE TIME. BUT I THINK, IN HONESTY, YOU WOULD HAVE TO REcede FROM BATES AND NIXON, SIMPLY, AND THAT SHOULDN'T REALLY BE THAT HARD, BECAUSE THE UNITED STATES SUPREME COURT HAS TOLD YOU HOW TO DO IT AND TOLD YOU WHAT YOU NEED TO BE LOOKING AT, AND SIMPLY LOOKING AT SPECULATION, AND I THINK IT IS A LEGITIMATE CONCERN. YOU DON'T WANT THE JURY TO SPECULATE, BUT THEY ARE CLEARLY SPECULATING, ANYWAY, AS TO WHAT, IN THIS PARTICULAR CASE BECAUSE HE IS FACING THE POSSIBILITY OF GETTING OUT OF PRISON WITHIN FIVE YEARS. THE COURT TELLS HIM HE CAN'T DO. THAT HE CAN'T CONSIDER THAT, BUT THE SUPREME COURT IN SIMMONS, ALSO, SAID THAT WHEN YOU -- WE PRESUME THE JURY IS FOLLOWING THE COURT'S INSTRUCTION, BUT THAT IS NOT AN IRREBUTTABLE PRESUMPTION. THE STAKES ARE SO HIGH IN THIS THAT YOU CAN'T FOLLOW THE PRESUMPTION.

THIS ISN'T A QUESTION WHERE, LIKE IN BATES, HE WAS SENTENCED TO THE HARsher POSSIBILITY OF LIFE WITHOUT PAROLE.

NO. EVEN IF HE REQUESTED IT, IT WOULDN'T HAVE HAD EFFECT. SO THE POINT I AM MAKING, NOT I GUESS, BUT THE POINT I AM MAKING IS THIS CASE IS REALLY NOT A DEATH CASE. UNDER PROPORTIONALITY ANALYSIS, IT IS ONE OF THE MOST MITIGATED YOU HAVE SEEN, LARGELY DO TO -- DUE TO HIS MENTAL STATE AND THAT YOU CAN VERY SIMPLY HAVE A LIFE SENTENCE. I THINK THE OTHER CASES, THE MERITORIOUS 100-YEAR SENTENCE, I THINK, NEEDS TO BE ANALYZED, SIMMONS VERSUS SOUTH CAROLINA.

THANK YOU.

MAY IT PLEASE THE COURT I AM BARBARA YATES FROM THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE OF FLORIDA. I WOULD LIKE TO ADDRESS PROPORTIONALITY FIRST, SINCE THAT IS WHERE MR. DAVIS STARTED. I WAS GLAD TO HEAR HIM ADMIT THAT HE HAS NO QUARREL WITH THE COURT'S FINDINGS ON AGGRAVATORS AND MITIGATORS CONSIDERATION. THIS COURT DID EVERYTHING THAT THIS COURT, THE TRIAL COURT DID EVERYTHING THAT THIS COURT HAS DIRECTED TRIAL COURTS TO DO. CASES SUCH AS ROGERS AND CAMPBELL. HE CONSIDERED EVERY SPEC OF MITIGATION THAT WAS PRESENTED. THE RECORD FULLY SUPPORTS THE TRIAL JUDGE'S FINDINGS ON THESE THINGS. MR. DAVIS SAID THAT BOOKER IS NOT COMPLAINING ABOUT THE WEIGHT GIVEN, BUT THAT IS, IN ESSENCE, WHAT HIS PROPORTIONAL PROPORTIONALITY ARGUMENT IS. HE IS ASKING THIS COURT TO SUBSTITUTE ITS JUDGMENT FOR THAT OF THE TRIAL COURT. HE RELIES ON FITZPATRICK V STATE. FITZPATRICK IS TOTALLY DISTINGUISHABLE. IN FITZPATRICK, THE STATEMENT IS MADE THAT FITZPATRICK IS NOTABLE BECAUSE OF THE ABSENCE OF BOTH THE CCP AND THE HAC AGGRAVATORS, AND IN THIS CASE, ON THE OTHER HAND, WE HAVE THE HAC AGGRAVATOR.

WOULD YOU ADDRESS, A LITTLE BIT, THE BACKGROUND? HE HAS DESCRIBED FOR US A PERSON WHO HAS SUFFERED THROUGHOUT HIS LIFE, WHO STABLIZES SOMEWHAT IN A CONFINED SITUATION. COULD YOU ADDRESS SOME OF THOSE AND THE RECORDS FROM WALTER REED AND THE ARMY MEDICAL RECORDS?

MOST OF THE PERSONAL INFORMATION, DR. BAR NARD TESTIFIED EX--- BARNARD TESTIFIED EXTENSIVELY IN THIS. HE EVALUATED HIM IN 1977, AGAIN IN THE 1980s, HE EVALUATED HIM, AGAIN, BEFORE THIS SENTENCING PROCEEDING. HE HAS A 20-YEAR STRETCH WITH HIM. HE ADMITS THAT MOST OF THE INFORMATION ABOUT BOOKER'S PERSONAL LIFE CAME FROM BOOKER'S SELF REPORTING. HE ADMITS THAT BOOKER MAY HAVE BEEN LYING. HE MENTIONS, IN

ONE PLACE, THAT WHEN HE FIRST INTERVIEWED BOOKER, BOOKER HAD CLAIMED TO HAVE NO MEMORY OF THE CRIME. WHEN HE INTERVIEWED HIM IN THE '80s, AGAIN, HE HAD A VERY DRAMATIC RECALL OF THE EVENTS. WHEN HE SAW HIM, AGAIN, FOR THE THIRD TIME, BOOKER WAS BACK TO I DON'T REMEMBER A THING. DR. BERNARD TESTIFIED THAT, WHEN HE CHALLENGED BOOKER ON THAT AND SAID LOOK BACK IN THE '80s, YOU REMEMBERED VERY WELL, BOOKER SAID, OH, YEAH, NOW I REMEMBER, AND HIS MEMORY CAME BACK. THERE IS A HISTORY OF SUBSTANCE ABUSE. THERE IS A HISTORY OF HOSPITALIZATIONS. THOSE ARE WELL DOCUMENTED. DR. BERNARD TESTIFIED THAT HE RELIED ON ALL OF THESE THINGS, AND ONE OF THE HOSPITALIZATIONS, I THINK IT WAS WALTER REED, WHILE HE WAS IN THE ARMY, THERE WAS A DIAGNOSIS OF SKITS FRIEND YEAH. DR. -- OF SCHRITZFRENIA. HE SAID THAT WAS -- HE TESTIFIED THAT HE DIAGNOSED MR. BOOKER, NOW, AS HAVING A DISSOCIATIVE DISORDER AND AN ANTI-PERSONALITY DISORDER. HE SAID THAT, IN 1977 HE WAS DEPRESSED. HE, ALSO, SAID THAT IN HIS OPINION BOTH OF THE STATUTORY MINIMUM MITIGATORS APPLIED. THE JUDGE FOUND THOSE AND WEIGHED THEM. DR. BARNARD, ALSO, SAID THAT, TESTIFIED IN THE SENTENCING HEARING, THAT IN HIS OPINION, BOOKER NEVER HAD A MAJOR MENTAL ILLNESS. BOOKER CLAIMED TO HALLUCINATE AND HAVE ANOTHER PERSONALITY, THIS NEAL CHARACTER. DR. BARNARD TESTIFIED THAT, IN NONE OF HIS INTERVIEWS AND OBSERVATIONS OF BOOKER DID HE HAVE ANY INDICATION THAT THERE WAS ANY TRUTH TO THE CLAIM OF HALLUCINATIONS.

HAS HE BEEN ON MEDICATION DURING THE 20-PLUS YEARS THAT HE HAS BEEN IN PRISON SINCE HIS MURDER?

YOUR HONOR, I DON'T KNOW. I DON'T BELIEVE THE RECORD REFLECTS THAT AT ALL. HE WAS MEDICATED WHEN HE WAS HOSPITALIZED BEFORE AND THINGS LIKE THAT, AND YOUR QUESTION PREVIOUSLY ABOUT HIS TREATMENT, WHEN HE WAS IN THE STATE PRISON SYSTEM FOR THE 1974 ROBBERY, I DON'T THINK THERE IS ANY EVIDENCE IN THE RECORD THAT EVER RECEIVED ANY TREATMENT THERE.

THAT IS WHAT I WAS REALLY ASKING ABOUT. FOR THIS REASON, WE HAVE GOT A PERSON WHO HAS SOME TYPE OF MENTAL ILLNESS, THAT HAS BEEN DOCUMENTED THROUGH HOSPITALIZATIONS AND, YOU KNOW, AND IN THE ARMY. HE IS CONVICTED OF A ROBBERY IN 1974 E IS IN PRISON FOR THREE YEARS. HE IS LET OUT. AND WITHIN TWO MONTHS, HE COMMITS THIS MURDER, WHICH IS A BRUTAL AND FOUND TO BE A HEINOUS, ATROCIOUS AND CRUEL KILLING, WHERE IT APPEARS, AT LEAST THE JUDGE HAS FOUND, THAT HE WAS UNDER EXTREME MENTAL STRESS AT THE TIME AND SUFFERING FROM MENTAL ILLNESS. WE HAVE A SITUATION, THEN, THE QUESTION OF WHETHER HIS BE SOMETHING IN THE PRISON FOR THREE YEARS AND THIS RELEASE A SHORT TIME AFTER, WITH NO REAL SUPERVISION OR MEDICATION OR GUIDANCE, WAS A CONTRIBUTING FACTOR TO THIS MURDER SUCH A SHORT TIME AFTER HIS RELEASE.

I DON'T KNOW THAT IT WAS CONTRIBUTING FACTOR, AND I WOULD LIKE TO SAY THAT I BELIEVE THE JUDGE IN THIS SENTENCING ORDER GAVE BOOKER THE BENEFIT OF THE DOUBT ON EVERYTHING. IN THIS STUFF, DR. BARNARD, ALSO, TESTIFIED THAT BOOKER WAS NOT INSANE; THAT HE KNEW THE DIFFERENCE BETWEEN RIGHT AND WRONG. IN HIS OPINION, IN 1977, WHEN THIS MURDER OCCURRED, BOOKER WAS DEPRESSED AND HE HAD A SUBSTANCE ABUSE PROBLEM. THERE IS, ALSO, TESTIMONY FROM DR. BARNARD THAT, IN TALKING WITH BOOKER, BOOKER SAID THAT, WHEN HE WENT OUT THAT MORNING, THAT HE KILLED MRS. HARMON. HE WAS THINKING ABOUT KILLING SOMEONE. THE TRIAL JUDGE, IN DISCUSSING THE NONSTATUTORY MITIGATION OF THE DRUG AND ALCOHOL USE, MENTIONS THE COURT WAS GIVING IT MODERATE WEIGHT, BECAUSE WHILE HE WAS IN THE ARMY AND WHILE HE WAS IN PRISON, HE HAD THE OPPORTUNITY TO RESIST THESE DEBILITATING HABITS. RIGHT NOW IT HAS BEEN SUGGESTED TO YOU THAT OH, WOW. ON DEATH ROW HE HAS CLEANED UP HIS ACT. HE IS CLEAN AND HEALTHY. HE IS SOBER, AND HE IS A BETTER PERSON FOR IT. HE HAD AN OPPORTUNITY TO DO THAT BEFORE. I WOULD LIKE TO DIRECT THE COURT'S ATTENTION TO ROBINSON V STATE, WHICH THIS COURT I SHOULD TWO MONTHS AGO, AND IN IT, THERE WERE ONLY THREE AGGRAVATORS. THERE WAS THE

PECUNIARY, THERE WAS AVOID ARREST, THERE WAS CCP. THE TRIAL COURT FOUND THAT BOTH MENTAL AGGRAVATORS HAD BEEN ESTABLISHED, AND IT WAS GIVEN SUBSTANTIAL WEIGHT TO THE ABILITY TO CONFORM DUE TO ROBINSON'S DRUG USE. THERE WAS SOMETHING LIKE 18 NONSTATUTORY MITIGATORS FOUND. IN THIS ROBINSON KILLED HIS GIRLFRIEND. HE BEAT HER TO DEATH WITH A HAMMER.

THIS IS A LITTLE DIFFERENT FROM THE PICTURE THAT DEFENSE COUNSEL POINTS. HE PAINTS A PICTURE OF --

WE ARE ON THE OTHER SIDE OF THE STREET.

HE PAINTS A PICTURE OF A TROUBLED YOUTH THAT HAS HAD MENTAL PROBLEMS ALL HIS LIFE. HE HAS EXHIBITED BRILLIANCE IN SOME WAYS. THE STATE DISPUTES THIS CHARACTERIZATION OF HIM?

IT IS A SORT OF SO WHAT ANALYSIS? HE COULD HAVE BECOME THE PERSON THAT THEY CLAIM HE IS NOW BEFORE. AGAIN, COMPARING THIS WITH ROBINSON, WHEN YOU LOOK AT THE MITIGATORS THAT WERE FOUND IN ROBINSON, HE WAS ABUSED BY HIS FATHER. HIS FATHER WAS AN ALCOHOLIC. HE HAD PERSONALITY DISORDERS. HE WAS PLACED IN SPECIAL EDUCATION CLASSES AND HE CHANGED SCHOOLS FREQUENTLY. HIS FAMILY HAD A HISTORY OF MENTAL HEALTH DISORDERS. HE HAD, YOU KNOW, DRUG PROBLEMS AND ALL OF THIS STUFF. THESE CASES ARE ALMOST IDENTICAL, EXCEPT FOR THE FACT THAT THERE ARE ACTUALLY FOUR AGGRAVATORS, AND IN TRUTH, THIS IS A -- ONE OF THE MOST EGREGIOUS CRIMES WE HAVE HAD IN THIS STATE. HE BRUTALIZED THIS 94-YEAR-OLD WOMAN WHEN SHE CAME HOME FROM PLAYING CARDS WITH HER FRIENDS. HE HAS, REALLY, NO EXCUSE FOR IT. HIS MITIGATION HAS BEEN TOTALLY CONSIDERED.

LET ME ASK YOU THIS ABOUT THE VICTIM IN THIS CASE. THERE WAS, I GUESS, ONE OF THE POINTS ON APPEAL IS ABOUT THE VICTIM'S FAMILY, A PERSON THAT WASN'T ABLE TO SIT IN THE COURTROOM, BUT IN THIS CASE, THE VICTIM'S FAMILY REQUESTED THAT THIS DEFENDANT NOT RECEIVE THE DEATH PENALTY.

NO. THERE WAS NO TESTIMONY TO THAT EFFECT. MS. IROBSKI TESTIFIED THAT SHE HAD BEFRIENDED BOOKER AFTER HE WAS SENT TO DEATH ROW AND SHE TESTIFIED ABOUT THAT THE. PRESENTING TESTIMONY FROM A SURVIVOR THAT THE FAMILY DOESN'T THINK YOU SHOULD HAVE THE DEATH PENALTY IS NOT PERMITTED. JACKSON IN 498. THAT IS NOT AN ISSUE HERE. THE ISSUE IS WHY WASN'T SHE ALLOWED TO SIT IN THE COURTROOM, AND THE --

I WANTED TO ASK YOU ABOUT THAT. THE VICTIM. WHY IS IT THAT, IF THE VICTIM, THERE IS CERTAIN CONSTITUTIONAL RIGHTS THE VICTIMS HAVE. WHY IS NOT WHAT THEIR VIEW IS ABOUT PUNISHMENT SOMETHING THAT THE COURT SHOULD CONSIDER?

THIS COURT, WELL, IN LOCKET, THE U.S. SUPREME COURT SAID THAT MITIGATION GOES TO THE DEFENDANT'S CHARACTER OR RECORD AND THE CIRCUMSTANCES OF THE CRIME. GETTING INTO THE FIRST ISSUE THAT IS PRESENTED IN THIS, THE ADDITIONAL SENTENCES BOOKER IS UNDER, THIS COURT HELD, IN NIXON, FLAT-OUT, THE FACT THAT NIXON WAS CONVICTED OF OTHER OFFENSES THAT CAR I LENGTHY -- THAT CAREY LENGTHY MACKTS MUM -- THAT CARRY LENGTHY MAXIMUM PENALTIES IS, IN FACT, IRRELEVANT TO THE RECORD AND THE CRIME. IT IS ESSENTIALLY IRRELEVANT TO THE PERPETRATOR'S RECORD, THE CHARACTER OR THE OFFENSE.

WHAT I AM ASKING, THERE ARE MANY OTHER CRIMES WHERE A JUDGE HAS DISCRETION TO MAKE CERTAIN DECISIONS AND SENTENCING. SUCH AS DOWNWARD DEPARTURE.

THIS IS IMPROPER EVIDENCE TO BE PRESENTED TO THE JURY, THAT IT IS OUTSIDE WHAT THE JURY IS SUPPOSED TO DO. SO YOU WOULD HAVE TO OVERRULE AGAIN.

I UNDERSTAND THAT.

ANOTHER LINE OF CASES.

BUT WHY IS THAT SOMETHING THIS COURT SHOULDN'T CONSIDER?

WHY SHOULD THIS COURT CONSIDER IT, WHEN THE JURY AND THE JUDGE ARE NOT ALLOWED TO?

WHY --

IS THE JUDGE NOT ALLOWED TO CONSIDER IT?

WELL, IN SOME CASES, THE JUDGE DOES LOOK AT THESE THINGS. AND IT HAS BEEN MENTIONED. BUT --

IT SEEMS TO ME THAT WE HAVE OTHER, SEEN OR HEARD OF CASES, WHERE, AT THE SENTENCING, THE FAMILY OF THE VICTIM HAS ASKED THE JUDGE NOT TO IMPOSE A DEATH PENALTY.

IT IS IN THE SAME LINE, JUDGE. USUALLY THIS WOULD BE DONE TO THE JUDGE, AFTER THE JURY HAS MADE ITS RECOMMENDATION. WE, ALSO, HAVE MANY, MANY CASES, WHERE SURVIVORS AND FRIENDS OF THE VICTIM HAVE WRITTEN TO THE JUDGE AND SAID IMPOSE THE DEATH PENALTY, AND TRIAL COURTS IGNORE THOSE THINGS, BECAUSE THEY PLAY NO PART IN THIS. WHETHER TO SEEK THE DEATH PENALTY IS AN EXECUTIVE DECISION THAT IS TOTALLY UP TO THE STATE ATTORNEY, AND IN SOME CASES A FAMILY MAY NOT WANT THE DEFENDANT SENTENCED TO DEATH. YOU HAVE SEEN THIS IN MEDINA. YOU HAVE SEEN IT IN JACKSON. THERE ARE SEVERAL OTHERS. BUT WHAT WE HAVE HERE IS THE RULE OF SEQUESTRATION. IF MS. ZYROBSKY HAD NOT TESTIFIED, SHE WOULD WE WILL HAVE BEEN ABLE TO SIT THERE AND OBSERVE THE PROCEEDINGS. IF THEY HAD SCHEDULED HER LAST FOR DRAMATIC EFFECT, IF SHE WAS SCHEDULED TO TESTIFY FIRST, SHE COULD HAVE SAT THERE AND OBSERVED ALL OF THE TRIAL PROCEEDINGS. THERE HAS BEEN NO ABUSE OF DISCRETION HERE. GOING TO ANOTHER CASE I WOULD LIKE TO MENTION TO YOU ON PROPORTIONALITY IS HORACE POPE. HORACE POPE KILLED HIS GIRLFRIEND OVER SOME MONEY. HE HAD BOTH STATUTORY MENTAL MITIGATORS ESTABLISHED. HE NUMEROUS NONSTATUTORY MENTAL MITIGATORS ESTABLISHED. THIS COURT FOUND THE DEATH PENALTY APPROPRIATE AND PROPORTIONATE. FITZPATRICK IS DISTINGUISHABLE. BOOKER, CALVIN JOHNSON THAT YOU DECIDED, I THINK IT WAS 1998. IT WAS A DRUG MURDER OVER IN JACKSONVILLE. THE ONLY AGGRAVATORS IN THAT WAS THAT CALVIN JEROME JOHNSON HAD PRIOR VIOLENT FELONY AGGRAVATORS. THEY WERE CAUSED BY HIS BEATING UP ON HIS BROTHER. HIS BROTHER TESTIFIED, WELL, HE DIDN'T HURT ME REAL BAD, SO THIS COURT ON APPEAL SAID, WELL, THAT ISN'T WORTH VERY MUCH AND FOUND THE SENTENCE DISPROPORTIONATE. CALVIN JEROME JOHNSON IS NOT PROPORTIONAL AT TO THIS -- PROPORTIONATE TO THIS CASE. IT IS NOT COMPARABLE. GOING TO THE FIRST ISSUE ON THE OTHER SENTENCES, AS WAS ADMITTED, YOU WOULD HAVE TO OVERRULE A NUMBER OF CASES TO GET TO THE POINT THAT BOOKER IS SUGGESTING YOU GO TO. STARTING WITH NIXON, WHERE THIS COURT SAID THAT OTHER SENTENCES JUST SIMPLY ARE NOT MITIGATING. THEY ARE NOT PROPER CONSIDERATIONS FOR THE JURY. NIXON WAS AN ORIGINAL SENTENCING, WITH OTHER CONVICTIONS COMBINED.

WHY WOULDN'T THEY BECOME RELEVANT, IN THE UNIQUE CIRCUMSTANCES HERE, WHERE YOU HAVE A RESENTENCING, AFTER SOMEBODY HAS SERVED, YOU KNOW, AN EXTENSIVE PART OF THE MINIMUM 25 THAT THE LIFE SENTENCE ALTERNATIVE TO DEATH, YOU KNOW, WAS STATUTORILY PROCEEDED -- PROVIDED FOR BEFORE? HAVE ANY OF THOSE CASES TREATED THIS ISSUE?

YES, SIR. YOU HAVE ANSWERED THAT SPECIFICALLY IN CAMPBELL AND MOST RECENTLY BATES, WHICH CAME OUT, WHAT, TWO WEEKS AGO? A MONTH AGO? IN BATES --



IF WE HAVE A DIRECT INDICATION, IF WE HAVE A DIRECT INDICATION THAT THE JURY IS CONCERNED ABOUT THIS ISSUE OF HOW LONG THE DEFENDANT ACTUALLY WILL SERVE, WHY WOULDN'T IT BECOME ACCURATE AND RELEVANT FOR THE JURY TO KNOW THAT THESE OTHER SENTENCES HAVE ALREADY BEEN IMPOSED ON THE DEFENDANT? WHAT WOULD BE -- HOLD ON JUST A MINUTE. ALL RIGHT. TELL ME HOW IT WOULD DAMAGE THE PROCESS FOR THE JURY TO KNOW THAT.

BECAUSE IT CAUSES THE JURY TO ENGAGE IN SPECULATION. THE SAME EVIL THAT BOOKER IS SAYING NOT TELLING THEM CAUSES. THIS IS WHAT THE COURT SAID IN BATES A MONTH AGO. THESE OTHER SENTENCES ARE NOT RELEVANT MITIGATION ON THE ISSUE OF WHETHER APPELLANT WILL ACTUALLY REMAIN IN PRISON FOR THE LENGTH OF THE SENTENCES. THE LENGTH OF ACTUAL PRISON TIME IS AFFECTED BY MANY FACTORS, OTHER THAN THE LENGTH OF SENTENCE IMPOSED BY THE SENTENCING ORDER. THE INTRODUCTION OF THIS EVIDENCE -- ALL HAD THE SENTENCE ALREADY BEEN IMPOSED IN BATES?

OF COURSE THEY HAD. THEY WERE IMPOSED 22 YEARS AGO.

AND WHAT ARE WE TO DO ABOUT THE JURY'S VISIBLE CONCERN ABOUT THE DEFENDANT ONLY SERVING ANOTHER FIVE YEARS?

EXACTLY WHAT THE JUDGE DID IN THIS INSTANCE. TOLD THEM THAT YOU ARE NOT TO BE CONCERNED WITH THINGS THAT HAVE NOT BEEN PRESENTED TO YOU, AND YOU ARE TO FOLLOW THE EVIDENCE AND INSTRUCTIONS THAT I GIVE YOU. THIS COURT WENT ON IN BATES AND SAID THE INTRODUCTION OF THIS EVIDENCE WOULD OPEN THE DOOR TO CONJECTURE AND SPECULATION AS TO HOW MUCH TIME A PRISONER SERVES OF A SENTENCE AND DISTRACT JURORS FROM THE RELEVANT ISSUE OF WHAT IS THE APPROPRIATE SENTENCE FOR THE MURDER CONVICTION. THIS JUROR WAS INSTRUCTED ON THE POSSIBILITY PETS FOR MURDER.

IS THAT -- ON THE POSSIBILITY PENALTIES FOR MURDER.

IS THAT REALISTIC AND DID THE SUPREME COURT COMMENT ON WHETHER OR NOT THAT WAS REALISTIC IN SOUTH CAROLINA DECISION?

NOT REALLY. SIMMONS IS DISTINGUISHABLE.

THEY DIDN'T COMMENT ON ABOUT WHETHER OR NOT THAT, AND, AGAIN, WAIT A MINUTE. OKAY. ON WHETHER OR NOT IT IS REALISTIC NOT TO EXPECT JURORS TO CONSIDER THE AMOUNT OF TIME THAT A DEFENDANT WILL ACTUALLY SERVE IN THESE SENTENCES?

AGAIN, WE ARE ENGAGING IN SPECULATION. SIMMONS IS DISTINGUISHABLE, AND THIS COURT HAS DISTINGUISHED IT, IN FRANKY, 1997, WHERE FRANKY WAS AN ORIGINAL SENTENCING, BUT HE TRIED TO BRING IN OTHER STUFF. HE SAID I HAVE GOT OTHER CONVICTIONS AND LENGTHY SEBTSS AND THE -- SENTENCES AND THE COURT SAID DON'T DO IT.

YOU DON'T HAVE A VALID CONCERN THAT THE JURY MIGHT CONSIDER A LIFE SENTENCE WITH A 25-YEAR MINIMUM, WHEN THEY KNOW THAT THE 25-YEAR MINIMUM HAS ALREADY BEEN SERVED? IN OTHER WORDS THAT THAT -- YOU DON'T BELIEVE THAT IS A LEGITIMATE CONCERN.

I THINK IT IS ARGUABLE, YOUR HONOR, BUT THIS COURT HAS SAID, NO, IT IS NOT A VALID CONCERN AT THIS POINT. IN FRANKY, FOOTNOTE TEN, DISTINGUISHS SIMMONS. SIMMONS IS DISTINGUISHABLE. SIMMONS MIGHT HAVE MORE APPLICABILITY NOW, POST 1994, WHEN THE SENTENCE HAS BEEN CHANGED TO A PAROLE INELIGIBLE LIFE SENTENCE. AND JURIES, YOU ALL HAVE REVISED THE STANDARD INSTRUCTIONS, AND JURIES ARE NOW TOLD THAT, THAT, YOU KNOW, THERE ARE PEOPLE WHO ARE CONVICTED OF FIRST-DEGREE MURDER. THE SENTENCE IS

EITHER DEATH OR LIFE IMPRISONMENT. JURIES ARE TOLD THAT NOW. SO IN THAT RESPECT, SIMMONS MIGHT APPLY NOW. IT DOES NOT BEFORE, HOWEVER, AND IN FRANKY, YOU SAID SIMMONS IS HERE, SINCE THIS CASE DID NOT INVOLVE ANY DIRECT EFFORT TO IMPOSE THE DEATH PENALTY, BASED ON THE DEFENDANT'S FUTURE DANGEROUSNESS. NOW, BOOKER TRIES TO EQUATE PROPENSITY TO COMMIT CRIMES, WHICH WAS SHOWN THROUGH THE PROVING OF PRIOR VIOLENT FELONY AGGRAVATORS, WITH FUTURE DANGEROUSNESS. IF STATE ATTORNEY SMITH HAD ARGUED FUTURE DANGEROUSNESS, TO THIS JURY, YOU ALL WOULD BE ALL OVERALL OF US. YOU HAVE BEEN BEFORE. WHEN STATES ATTORNEYS HAVE PRESENTED EVIDENCE OR ARGUED THAT YOU HAVE GOT TO DO THUS AND SUCH TO THIS DEFENDANT OR HE IS GOING TO CUT OUT, AND HE IS GOING TO COME AFTER US, COME AFTER YOU.

LET ME ASK YOU A QUESTION ON THIS ISSUE. IS IT A LEGITIMATE CONCERN OF OURS WHETHER OR NOT, IF WE ALLOW TESTIMONY CONCERNING THE AMOUNT OF TIME THE DEFENDANT HAS RECEIVED ON OTHER CRIMES, WHETHER OR NOT THE JURY MIGHT BE SPECULATING, IN THE OTHER DIRECTION? THAT IS THAT, WELL, HE ALREADY HAS 100 YEARS TO SERVE. WHY DO WE NEED TO IMPOSE A DEATH PENALTY? IS THAT A LEGITIMATE ISSUE THAT WE SHOULD CONCERN OURSELVES WITH?

IT IS AS ARGUABLE AND AS LEGITIMATE AS ARGUING THE OTHER WAY, AND THIS COURT HAS HELD, NO, NEITHER OF THOSE IS A LEGITIMATE CONCERN. THE JURY SHOULD FOCUS ON THIS. NOW, IT IS ONLY HUMAN NATURE TO BE CURIOUS.

WHAT IS THE JURY SUPPOSED TO BE FOCUSING ON, WHEN THEY ARE DETERMINING WHETHER OR NOT A LIFE SENTENCE IS PROPRIETOR A DEATH SENTENCE IS APPROPRIATE?

THAT IS IT. YES. AND THEY ARE ALLOWED TO CONSIDER MITIGATION. THERE WAS A LOT OF MITIGATING EVIDENCE PROPOSED MITIGATING EVIDENCE, SUBMITTED TO THE JURY IN THIS CASE, AND IT IS -- IT CREATES SOMETHING OF A CONUNDRUM. HOWEVER, THE JURY IS THERE TO GIVE A RECOMMENDED SENTENCE, ONLY ON THE FIRST-DEGREE MURDER CHARGE. ANY OTHER CHARGE IS EXTRANEOUS TO ITS CONSIDERATION. YOU HAVE HELD THAT, AND THAT REALLY HAS TO BE THE WAY IT IS. BECAUSE OTHERWISE YOU ARE GOING TO HAVE JURIES JUST GOING CRAZY, UNBRIDLED DISCRETION. THAT WAS WHAT GOT US IN TROUBLE YEARS AGO, WITH THE DEATH PENALTY, WAS UNBRIDLED DISCRETION. THIS IS CHANNLED DISCRETION. THE JURORS ARE TOLD THAT THERE ARE TWO POSSIBILITY PENALTIES. THEY ARE THERE TO MAKE A CHOICE BETWEEN THOSE TWO. TOSCANO AND SOME OF THE OTHER OLDER CASES FROM THE '80s, THIS IS IN THE STATUTE THAT THEY HAVE TO BE INFORMED OF THE MAXIMUM AND MINIMUM PENALTIES THAT ONLY APPLIES TO THE CAPITAL CONVICTION, NOT TO OTHERS. WE FOUGHT THIS BATTLE YEARS AND YEARS AGO, AND THE STATE WOULD RELY ON ITS BRIEF FOR THE REST OF THE POINTS AND ASK YOU TO AFFIRM BOOKER'S DEATH SENTENCE. THANK YOU.

THANK YOU, MS. YATES. MR. DAVIS, REBUTTAL?

A COUPLE OF POINTS. THE TRIAL COURT, IN THIS CASE, FOUND THAT BOOKER'S ABILITY TO APPRECIATE THE CRIMINALALITY OF HIS CONDUCT WAS SUBSTANTIALLY IMPAIRED. THAT IS THE DEFINITION OF INSANITY THE AMERICAN LAW INSTITUTE HAS ADOPTED. THIS COURT OBVIOUSLY DOESN'T FOLLOW IT. IT FOLLOWS THE McNAUGHT ONE RULE, BUT 25 STATES SAY THAT IS HOW WE FOUND INSANITY. THE COURT IN THAT CASE FOUND THAT MITIGATOR APPLIED, SO THIS CASE, BOOKER IS REALLY ONE STEP SHORT OF BEING INSANE.

CAN I ASK YOU A QUESTION ON THAT? WE THROW AROUND A LOT OF PSYCHOLOGICAL TERMS. WE HEAR SKIS FRIEND YEAH. WE -- SCHRICPHRENIA AND MULTIPLE PERSONALITY, ANOTHER PERSONALITY DID IT, WE HEAR PERSONALITY DISSOCIATIVE DISORDER. CAN YOU TELL US, FROM THE DEFENDANT'S VIEWPOINT, AT THE TIME OF THIS MURDER, WHAT WAS THE TESTIMONY THAT YOU PRESENTED AS TO WHAT WAS THE UNDERLYING MENTAL ILLNESS THAT MR. BOOKER WAS

SUFFERING FROM?

I THINK HE WAS SUFFERING FROM PARANOIA, THE SCHRIZPHRENIA, THE TESTIMONY OF DR. BARNARD, THE DISSOCIATIVE DISORDERS.

YOUR EXPERT SAID THAT HE DID NOT HAVE A SCHRIZPHRENIC PERSONALITY?

THAT IS DIFFERENCE OF OPINION.

WHEN YOU HEAR SOMEONE'S DEPRESSION, WAS IT DEPRESSION THAT CAUSED THIS MURDER ON THAT --

I THINK THAT WAS ONE PART OF IT. JUST TO SAY YOU HAVE ONE PROBLEM AND YOU DON'T HAVE ANY OTHERS. HE WAS, ALSO, ALCOHOLIC. HE WAS ALCOHOLIC AT TIMES. WHEN ARRESTED, AND DR. BARNARD TALKED TO HIM. BOOKER WAS SAYING SOMETHING ABOUT THIS DEMON OR NEAL TELLING HIM TO JUMP ON DR. BARNARD, SO THERE WERE HALLUCINATIONS THERE WHICH WERE INDICATIVE OF BEING PSYCHOTIC, SO IT IS KIND OF A JUMBLE OF ANALYSIS, AND I FRANKLY CAN'T RECALL WHAT BARNARD SAID HE WAS SUFFERING AT, AT THE TIME OF THE MURDER.

DO YOU KNOW WHAT, HAS HE BEEN ON MEDICATION WHILE HE IS IN PRISON? DO YOU KNOW THAT?

I DON'T KNOW IF, IN PRISON. I DO KNOW THAT WHILE HE WAS AT WALTER REED, THEY WERE GIVING HIM 300 PILL GRAMS OF -- MILLIGRAMS OF THORAZININE A DAY, WHICH IS ENOUGH TO KILL A HORSE.

CAN YOU BREAKDOWN THOSE THAT ARE ASSORTED AND THOSE THAT ARE DOCUMENT ADD AND THOSE THAT ARE SELF REPORTING?

THOSE THAT ARE SELF REPORTING I KNOW. THE DEMONS ARE SELF REPORTING. THE ALCOHOLISM IS NOT. THAT WAS WELL DOCUMENTED. THE DIAGNOSIS, WHEN HE WAS IN THE ARMY, OF PARANOIA, SCHRIZPHRENIA, AND THE RECORD FROM WALTER REED, LIKE THE STATE SAYS, DR. BARNARD DISAGREES WITH THE SCHRIZPHRENIA ANALYSIS. THOSE ARE THE ONES THAT I RECALL THAT WERE DOCUMENTED. THE SELF REPORTING ONES ARE THE ONES THAT I WAS TALKING ABOUT WITH THE DEMONS. YOU CAN KIND OF EXPECT THAT. WE DON'T SEE DEMONS, OUTSIDE OF TV. BUT LIKE I SAY, HE WAS SUFFERING FROM, HIS ABILITY TO PERFORM HIS CONDUCT WAS SUBSTANTIALLY IMPAIRED AND GIVEN SUBSTANTIAL WEIGHT BY THE TRIAL COURT, AND I THINK THIS COURT NEEDS TO REALIZE THAT THAT IS THE DEFINITION OF INSANITY THAT MANY STATES USE, SO IT IS SIGNIFICANT THAT BOOKER HAD MANY PROBLEMS. NOW, JUSTICE ANSTEAD, YOU HAD A QUESTION THAT WAS RAISE BAD THIS 100 YEARS. WHAT DAMAGE DOES THAT SO TO THE PROCESS I THINK WHAT WE ARE LEGITIMATELY LOOKING AT IS THIS IS GOING TO BE SPECULATION HERE. JUST LIKE DISCRETION ONE OF THE THINGS THAT WE ARE LOOKING FOR IS HOW DO WE CONTROL THIS, CONTROL THE SPECULATION. THE JURY, OBVIOUSLY, IS SPECULATING HERE THAT HE EITHER HAVE THE CHOICE OF LIFE OR DEATH. THAT IS WHAT THE STATE IS SAYING, THE CHOICE OF LIFE OR DEATH, BUT WHAT DOES LIFE MEAN? DOES LIFE MEAN HE WILL SPEND THE REST OF HIS LIFE IN PRISON? WHAT SIMMONS SAYS IS, NO, THEY DON'T THINK THAT. THEY THINK HE IS GOING TO GET OUT, AND SO LIFE DOESN'T MEAN LIFE, AND SO THE JURORS ARE PRESENTED WITH THE FALLS ASSUMPTION 6 DEATH OR LIFE IN -- ASSUMPTION OF DEATH OR LIFE IN PRISON WITH THE POSSIBILITY OF GETTING OUT IN 25 YEARS. THERE IS NO PROBLEM WITH TELLING THE JURY THAT HE FACED AN ADDITIONAL 100 YEARS, AND WE ARE SAYING, UNDER THOSE CIRCUMSTANCES, THAT BOOKER SHOULD HAVE BEEN GIVEN A LIFE SENTENCE OR AT LEAST ALLOWED TOLL TELL THE JURY THAT HE FACED AN ADDITIONAL 100 YEARS. THANK YOU.

THANK YOU, MS. YATES, MR. DAVIS. APPRECIATE YOUR ASSISTANCE IN THIS MATTER. THE NEXT CASE IS AUTO OWN OTHERS INSURANCE VERSUS KAREN ANDERSON.

