Ricardo Gonzalez vs. State of Florida

NEXT CASE ON THE COURT'S CALENDAR IS RICARDO GONZALEZ VERSUS THE STATE OF FLORIDA.

MY NAME IS WILLIAM NORRIS. I REPRESENT RICARDO GONZALEZ, WHO IS HERE TO APPEAL HIS DEATH SENTENCE, AFTER REMAND. I WOULD -- I AM SURE THAT THE FACTS OF THIS CASE ARE WELL-KNOWN TO THE COURT. THE BASIC EPISODE HAS PRODUCED A NUMBER OF APPEALS TO THIS COURT. THE ESSENTIAL FACTS THAT RELATE TO RICARDO GONZALEZ ARE THAT HE WAS INVOLVED AS PART OF A GROUP THAT ROBBED A BANK IN NORTH MIAMI ON JANUARY 3 OF 1992. THIS BANK ROBBERY HAD BEEN PLANNED FOR SOME TIME. MR. GONZALEZ WAS ONE OF THE GROUP. ON THE MORNING OF THE BANK ROBBERY, MOMENTS BEFORE THE ACTUAL ROBBERY TOOK PLACE, HE WAS GIVEN A FIREARM. DURING THE BANK ROBBERY, THE VICTIM, WHO WAS AN OFF-DUTY POLICE OFFICER, WAS SHOT AND KILLED. HE WAS HIT BY BULLETS FROM TWO GUNS. IT WAS MR. GONZALEZ'S WEAPON THAT FIRED THE FATAL SHOT. I WOULD LIKE TO ADDRESS, FIRST, WHAT I THINK IS THE MOST IMPORTANT QUESTION HERE, AND THAT IS THE PROPORTIONALITY OF THE DEATH SENTENCE IN THIS CASE. THAT ISSUE OF PROPORTIONALITY RAISES OR ENCOMPASSES SEVERAL OF THE OTHER ISSUES THAT I RAISED IN THE BRIEF. THE POINT OF BEGINNING, OF COURSE, IS WHETHER OR NOT THIS IS AN APPROPRIATE CASE FOR THE DEATH PENALTY, BEARING IN MIND THAT THAT IS APPROPRIATE IN THE MOST AGGRAVATED AND LEAST MITIGATED OF MURDERS. THERE ARE TWO REASONS WHY I THINK THE IMPOSITION OF THE DEATH SENTENCE OUGHT TO BE REVERSED. ONE OF THOSE GOES TO THE AGGRAVATOR. THE FACT THAT SEVERAL OF THE AGGRAVATORS, THREE OF THEM SUMMARIZED OR CONDENSED INTO ONE BY THE DISTRICT JUDGE DEALT WITH THE FACT THAT THE VICTIM WAS A POLICE OFFICER. THE FACT OF THE POLICE OFFICER'S OR THE VICTIM'S IDENTITY AS A POLICE OFFICER WAS SOMETHING WHICH WAS SHOWN DURING THE VOIR DIRE TO BE AN ISSUE OF GREAT CONCERN TO THE POTENTIAL JURORS. IT CERTAINLY WAS A MATTER THAT WAS EMPHASIZED VERY HEAVILY BY THE PROSECUTOR IN THE CASE.

DO YOU HAVE ANY PROBLEM WITH THE PROPOSITION THAT THE LEGISLATURE CAN MAKE THE PENAL FEE HEAVIER, IF IT IS A POLICE OFFICER?

WELL, THAT IS MY POINT. SIR, THE HOMICIDE, A MURDER, IF IT IS FIRST-DEGREE, CARRIES THE PENALTY, EITHER OF LIFE IN PRISON WITH ELIGIBILITY FOR PAROLE AFTER 25 YEARS, OR DEATH. UNLESS, AT THE TIME OF THIS OFFENSE, THE VICTIM HAD HAPPENS TO BE A POLICE OFFICER, IN WHICH CASE THE MINIMUM PENALTY IS AGGRAVATED TO LIFE IN PRISON WITHOUT POSSIBILITY OF PAROLE. THAT --

CONSTITUTIONALLY CAN THE LEGISLATURE DO THAT?

ABSOLUTELY. NO. I AM NOT QUESTIONING, FOR A MOMENT, THAT THE LEGISLATURE CAN DO THAT. ABSOLUTELY. ABSOLUTELY, AND IN FACT, THE LEGISLATURE HAS CHOSEN TO DO THAT, NOW, ACROSS THE BOARD, SINCE THE TIME OF THIS OFFENSE, AND THAT THAT IS ENTIRELY APPROPRIATE. THOSE ARE MY POINT IS THAT, AT THE TIME OF THE OFFENSE, MR. GONZALEZ ALREADY WAS PENALIZED OR PUNISHED, BECAUSE OF THE FACT THAT THE VICTIM WAS A POLICE OFFICER. THERE WAS, BECAUSE OF HIS STATUS, THERE WAS A MINIMUM SENTENCE OF LIFE IN PRISON WITHOUT PAROLE, SO THAT THAT AGGRAVATOR, WHICH IS, TO THE PEOPLE AT LARGE, AS INDICATED BY THE JURY PANEL, TO THE -- CLEARLY TO THE PROSECUTOR IN THIS CASE, TO OTHER JUDGES WHO HAVE WRITTEN ON THIS SUBJECT, THAT IS A VERY POWERFUL EMOTIONAL AGGRAVATOR, THE FACT THAT THAT VICTIM WAS A POLICE OFFICER.

SO WHAT ARE WE TO DO WITH IT, WHEN, IN THIS PARTICULAR INSTANCE, THE TRIAL JUDGE MERGED THAT WITH MURDER TO AVOID ARREST AND HINDRANCE OF LAW ENFORCEMENT? ALL OF THIS WAS PUT TOGETHER AND, REALLY, CONSIDERED BY THE TRIAL JUDGE AS A WHOLE.

YES. BECAUSE THE OTHER -- THOSE THREE AGGRAVATORS, F, G AND E, ALL RELATE TO THE -- NONE OF THOSE WOULD BE PRESENT, IF IT WEREN'T FOR THE IDENTITY OF THE VICTIM AS A POLICE OFFICER, IN THE FIRST INSTANCE. HERE, THERE WAS -- THE OTHER TWO, IN ADDITION TO THE VICTIM BEING A POLICE OFFICER, THE HINDRANCE OF LAW ENFORCEMENT AND THE AVOIDING ARREST, BOTH ARISE BECAUSE THE VICTIM WAS A POLICE OFFICER. ON THE FACTS OF THIS CASE, THEY WOULDN'T HAVE BEEN THERE, HAD THAT FACTOR NOT BEEN THERE, SO THEY WERE PROPERLY MERGED, BUT THE CONCERN OF WHETHER OR NOT THEY OUGHT TO BEING A VATE VATEORS, IN IMPOSING THE DEATH PENALTY, IS THE SAME FOR ALL THREE OF THEM.

AGAIN, SO, ARE YOU SAYING -- WE HAVE, HERE, A MURDER OF A LAW ENFORCEMENT OFFICER.

YES.

SO WE HAVE AT LEAST ONE AGGRAVATOR MERGED TOGETHER, ARISING OUT OF THAT. CORRECT?

YOU HAVE TO HAVE MORE THAN ONE TO MERGE, BUT YES.

WE HAVE -- WE HAVE GOT SEVERAL ARRESTS AND YOU ARE SAYING SHOULD BE MERGED, BUT WE, ALSO, HAVE CCP IN THIS CASE AS A SEPARATE AGGRAVATOR?

NO. THERE WAS NO CCP. NO. THE THREE AGGRAVATORS THAT WERE MERGED WERE UNDER 5-F, LAW ENFORCEMENT OFFICER PERFORMING HIS DUTIES. G, HINDER LAW ENFORCEMENT, ENFORCEMENT OF THE LAW, AND, E, AVOID ARREST. THEY WERE MERGED INTO ONE BY THE JUDGE. ANOTHER FELONY WAS COMMITTED FOR PECUNIARY GAIN INSTEAD OF AGGRAVATOR.

D, ENGAGED IN A ROBBERY, AND, F, FINANCIAL GAIN, WHICH WERE GIVEN GREAT WEIGHT BY THE SENTENCING JUDGE, WERE MERGED. THAT IS A SEPARATE AGGRAVATOR. IT HAS NOTHING TO DO WITH THE IDENTITY OF THE VICTIM AS A LAW ENFORCEMENT OFFICER, AND IT IS NOT SUBJECT TO THE MATTER BEFORE THE COURT. THAT WASN'T APPEALED AS AN AGGRAVATOR.

LET ME SEE IF I UNDERSTAND WHAT YOU ARE SAYING. THAT, BECAUSE YOU COULD GET LIFE IN PRISON WITHOUT PAROLE, AND IN THE KILLING OF A LAW ENFORCEMENT OFFICER, THAT YOU SHOULD, NOW, NOT CONSIDER ANYTHING ABOUT THE FACT THAT THIS GUY WAS A LAW ENFORCEMENT OFFICER, IN AGGRAVATION. IS THAT WHAT THE BOTTOM LINE OF YOUR ARGUMENT IS?

I WOULDN'T PUT IT QUITE THAT WAY, BUT YES. THE ANSWER IS YES. BECAUSE THE LEGISLATURE HAS THE POWER TO IMPOSE PENALTIES, AS IT WISHES, BUT HAVING MADE THE DECISION TO IMPOSE THE ADDITIONAL PENALTY OF LIFE IN PRISON WITHOUT ELIGIBILITY FOR PAROLE, IF THE IDENTITY OF THE VICTIM IS A LAW ENFORCEMENT OFFICER, THEN TO REUSE THAT VERY SAME FACT OR FACTOR, TO MAKE THE DECISION TO IMPOSE THE DEATH PENALTY, IS A DOUBLE COUNTING OF 9 SAME FACTOR -- OF THE SAME FACTOR. THAT, IN A NUTSHELL, IS THE APPEAL AS TO THE AGGRAVATOR SIDE OF THE EQUATION.

SO LET ME DOES YOU -- LET ME ASK YOU THIS, ALSO. ARE YOU, ALSO, ARGUING THAT YOU CAN NOT CONSIDER THE OTHER TWO THAT WAS MERGED WITH THE FACT THAT THIS WAS A LAW ENFORCEMENT OFFICER. THE "AVOID ARREST" AND THE "HINDRANCE OF THE ENFORCEMENT OF LAW".

IN MY MIND, THOSE THREE AGGRAVATORS, AT LEAST AS TO THE FACTS OF THIS CASE, ARE ALL

PART AND PARCEL OF THE SAME THING. SO THAT THE ANSWER WOULD BE YES. YOU SHOULDN'T CONSIDER THE OTHERS INDEPENDENT OF THE IDENTITY OF THE VICTIM AS A LAW ENFORCEMENT OFFICER, BECAUSE HAD THE VICTIM NOT BEEN A LAW ENFORCEMENT OFFICER, THE HINDRANCE OF LAW ENFORCEMENT WOULD NOT HAVE BEEN PRESENT, AND THE AVOIDING ARREST AGGRAVATOR WOULD NOT HAVE BEEN PRESENT.

I DON'T KNOW HOW YOU CAN SAY THE "AVOID ARREST" WOULDN'T BE APPLICABLE. I MEAN, WHETHER HE WAS A LAW ENFORCEMENT OFFICER OR NOT, HE WAS ABOUT TO GET HIS GUN OUT, AND THAT IS WHEN YOUR CLIENT SHOT THE POLICE OFFICER.

BUT THE QUESTION IS WHO WOULD HAVE ARRESTED HIM, AND THE ARREST WOULD HAVE BEEN BY THIS PERSON, HERE, WHO IS A LAW ENFORCEMENT OFFICER, AUTHORIZED BY LAW TO EFFECT AN ARREST ON THE DEFENDANT AND HIS ACCOMPLICES.

IS YOUR ARGUMENT THAT THE "AVOID ARREST" AGGRAVATOR ONLY APPLIES, WHEN THE PERSON WHO IS BEING KILLED IS A LAW ENFORCEMENT OFFICER?

NO, BUT GENERALLY THAT IS SO. THE AGGRAVATOR OF AVOIDING ARREST DOESN'T COME UP IN YOUR TYPICAL MURDER. USUALLY WHAT YOU ARE DEALING WITH IS THE ELIMINATION OF WIT WITNESSES. NOT THE AVOIDING OF ARREST, PER SE.

BUT IF, IN FACT, HE DID KILL THE LAW ENFORCEMENT OFFICER TO AVOID ARREST, HOW DO YOU DEAL WITH THAT? WHY ISN'T THAT AN AGGRAVATOR?

YES, IT IS THE FACT THAT HE KILLED THE LAW ENFORCEMENT OFFICER TO AVOID HAVING THAT LAW ENFORCEMENT OFFICER ARREST HIM. BUT THAT IS THE SAME THING.

HE DID. SO AS A FACTUAL MATTER, HE KILLED THE LAW ENFORCEMENT OFFICER TO AVOID ARREST. THE FACT THAT IT HAPPENS TO, IN YOUR MIND, DOUBLE, BECAUSE HE WAS A LAW ENFORCEMENT OFFICER, IGNORES THE FACTUAL PATTERN.

IF THEY WERE SIMPLY SOMETHING COMING FROM THE ATTORNEY FOR THE DEFENDANT, SKEPTICISM MIGHT BE APPROPRIATE, BUT THIS WAS SOMETHING THAT WAS THE ANALYSIS OF THE SENTENCING JUDGE, AND I HAPPEN TO AGREE THAT IT IS ALL PART AND PARCEL OF THE SAME EPISODE. IT IS DIFFERENT FACETS, IF YOU WILL, OF THE SAME GEM, THE SAME STONE, AND THEY DO MERGE. THE QUESTION, THEN, BECOMES, SINCE THEY MERGE AND SINCE THEY TRIGGER THE MINIMUM PENALTY OF LIFE WITHOUT PAROLE, SHOULD THEY, ALSO, BE USED FOR DEATH.

BUT AREN'T THEY BOTH AGGRAVATORS THAT THE LEGISLATURE THOUGHT SHOULD BE CONSIDERED?

YES. BUT THE LAW TEACHES US AND IT TEACHES THE SENTENCING JUDGE THAT, IN EVALUATING THOSE FACTORS THAT HAVE BEEN DELINEATED AS STATUTORY AGGRAVATORS BY THE LEGISLATURE, THAT BOTH THE ADVISORY JURY AND THE JUDGE HAVE TO CONSIDER WHETHER OR NOT THEY ARE DIFFERENT ASPECTS OF THE SAME OPERATIVE FACTS.

WE HAVE A VERY LIMITED AMOUNT OF TIME FOR OUR ORAL PRESENTATION, AND YOU HAVE, ALSO, MADE A DETAILED ARGUMENT ABOUT THIS ISSUE IN YOUR BRIEF. YOU SAID YOU WERE GOING TO COME TO THE MITIGATING SIDE OF THE EQUATION, AND WOULD YOU PLEASE ADDRESS THAT.

YES. THANK YOU. IT GOES TO THE FACT THAT THE DEFENDANT HAD, WITHOUT DISPUTE, A PHYSICAL PROBLEM. HE HAD A BRAIN PROBLEM, THAT WAS, IN THE JUDGMENT OF THE MEDICAL WITNESSES, A TRIGGER OR A CAUSE FOR IMPULSIVE BEHAVIOR. THIS WAS REJECTED BY THE SENTENCING JUDGE, WHO WROTE IN HISORDER THAT THERE WAS NO FACTUAL BASIS IN THE

RECORD TO CONCLUDE THAT THE DEFENDANT WAS ACTING IMPULSIVELY.

NOW, THE JUDGE WENT -- AND I GOT THE MOST DETAILED SENTENCING ORDER ON THIS I HAVE SEEN, IN GREAT DETAIL AS TO WHY THE JUDGE FOUND THAT THE CONCLUSIONS OF THIS DEFENDANT'S BRAIN DAMAGE HAD NO CONNECTION WITH THE ACTUAL CRIMINAL ACT. NOW THAT, IS A ACTUAL FACTUAL FIND BUYING THE TRIAL JUDGE PROJECTING AND GIVING THE FACTUAL REASONS FOR REJECTING THE EXPERT CONCLUSION, AND ARE YOU SAYING THAT THE JUDGE HAD NO AUTHORITY TO MAKE THOSE FACTUAL FINDINGS AND THEN TO REJECT THE CONCLUSION OF THE EXPERT?

THE SENTENCING ORDER THAT JUDGE SKOLLER WROTE IS OUTSTANDING, BUT HE MADE THE FINDING, HOWEVER THERE ARE NO FACTS AT HAND WHICH SUPPORT THIS OPINION, WHICH IS THE OPINION OF IMPULSIVITY.

IMPULSIVITY BETWEEN -- WHAT WAS IT FOR THIS WHOLE LIFE UP TO 21 YEARS, AND THE KINDS OF THINGS THAT THEY WERE SAYING WOULD CONSTITUTE SOME BRAIN DAMAGE, THAT WOULD -- WOULD A ROBBERY PLANNED FOR TEN DAYS AND WHAT WAS DONE AFTER, THAT WOULD SUPPORT FINDING THAT THE ACT, ITSELF, WAS IMPULSIVE.

THAT IS THE ESSENCE OF THE DISPUTE. THAT IS THE ESSENCE OF MY ARGUMENT.

THIS HAPPENS A LOT. THERE MIGHT AND FINDING OF BRAIN DAMAGE, BUT HOW DOES THAT RELATE TO, IF YOU ARE LOOKING FOR A TRUE STATUTORY AGGRAVATOR OF DIMINISHED CAPACITY OR SOMETHING ELSE, HOW DOES THAT RELATE TO THIS PARTICULAR CRIME, TO MAKE IT LOGICALLY RELATED? ISN'T THAT WHAT THE JUDGE WAS TROUBLED BY IN THIS CASE? THE CONNECTION.

THAT IS THE BASIS FOR MY OBJECTION TO WHAT THE JUDGE DID. THE NEXUS, THE CONNECTION BETWEEN THE OPINION AND THE FACTS OF THE CASE ARE TWOFOLD. FIRST, IT WAS A WELL-PLANNED ROBBERY. IT WAS PLANNED FOR TEN DAYS. BUT THE DEFENDANT HAD NOTHING TO DO WITH THE PLANNING, AND THE SENTENCE WAS NOT IMPOSEED, BECAUSE THE DEFENDANT WAS INVOLVED IN A WELL-PLANNED ROBBERY. HE WAS SENTENCED TO DEATH BECAUSE HE SHOT A POLICE OFFICER, AND THE QUESTION IS DOES THE PLANNING OF THE ROBBERY, BY OTHER PEOPLE, HAVE ANYTHING TO DO WITH THE IMPULSIVITY. THE ANSWER IS NO! AS TO THE SHOOTING, IT CLEARLY WAS AN IMPULSIVE ACT, BECAUSE THE DEFENDANT WAS GIVEN THE FIREARM MOMENTS BEFORE THE ACTUAL ROBBERY TOOK PLACE. HE WASN'T EXPECTING IT. HE HAD THE GUN IN HIS HAND. HE ENCOUNTERS A POLICE OFFICER. HE SHOOTS HIM. THAT IS IMPULSIVE. THE OTHER FACTOR, OF COURSE, IS THAT THE DEFENDANT HAD A LIFE OF BEING A LAW-ABIDING CITIZEN. THERE WASN'T A HISTORY OF VIOLENCE, EXCEPT FOR THIS ONE IMPULSIVE INCIDENT, SO THAT THE JUDGE SAYING THAT THERE WAS NO SUPPORT IN THE RECORD FOR THE OPINION OF THE EXPERT IS NOT SUPPORTED BY THE RECORD, IS CONTRIBUTED BY THE RECORD. IT DOES -- IS CONTRADICTED BY THE RECORD. IT DOES SHOW A MITIGATOR THAT SHOULD HAVE BEEN ACCEPTED.

WHICH MITIGATOR WAS THAT?

THE MITIGATOR WOULD BE 6-B, MENTAL OR EMOTIONAL DISTURBANCE.

THAT HE WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE, AT THE TIME THAT HE SHOT THE POLICE OFFICER?

YES. BECAUSE OF THE PHYSICAL PROBLEM THAT HE HAD WITH HIS BRAIN, WHICH IS UNDISPUTED, AND THE QUESTION IS WHETHER OR NOT THAT WOULD LEAD TO IMPULSIVE ACTION, AND THE JUDGE SAID, NO, THE EXPERTS SAID YES. THE FACTS SUPPORT THE EXPERT.

SO YOU ARE EQUATING IMPULSIVE REACTION TO "UNDER MENTAL OR EMOTIONAL DISTRESS"? I MEAN, THOSE ARE EQUIVALENT?

THAT IS -- HERE, THAT WAS THE BALLPARK THAT EVERYBODY WAS PLAYING IN. I THINK THE ANSWER IS YES. THE QUESTION IS --

I GUESS I READ THIS IS A WHOLE EMOTIONAL DISTURBANCE HAD MORE TO DO WITH THE FACT THAT HE WAS ALLEGING HE WAS UNDER SOME KIND OF STRESS, BECAUSE HIS WIFE WANTED HIM TO MAKE MORE MONEY, AND SO THIS WAS -- HE PARTICIPATED IN THIS ROBBERY, IN ORDER TO DO THAT. I THOUGHT THAT WAS THE EMOTIONAL OR MENTAL STRESS THAT WE WERE TALKING ABOUT.

THE -- THAT WAS A FACTOR IN THE PRESENTATION IN MITIGATION. THAT IS NOT WHAT WAS REJECTED BY THE JUDGE AS UNSUPPORTED, AS AN EXPERT OPINION THAT WAS UNSUPPORTED BY THE FACTS OF THE CASE, AND THAT --

YOU ARE NOT SUGGESTING, ARE YOU, THAT A PERSON CAN KNOWINGLY PLAN OR PARTICIPATE IN AN ARMED ROBBERY OR WHATEVER AND THEN, LATER, SAY THAT, AS A RESULT OF THE STRESS OF THE RESISTANCE TO THE ARMED ROBBERY, OR THE ATTEMPT TO REBUFF IT OR SOMETHING, THAT HE WAS UNDER STRESS WHEN HE FIRED THE WEAPON THAT HE HAD, IN ORDER TO ACCOMPLISH THE ARMED ROBBERY, OR ARE YOU? IS THAT WHAT YOU ARE SAYING THAT SUPPORTS IT?

NO. THAT IS NOT WHAT I AM SAYING.

I AM HAVING A LITTLE DIFFICULTY UNDERSTANDING, TOO, WITH HOW YOU RELY ON THIS MITIGATOR.

WHAT I AM SAYING IS THAT THE DEFENDANT HAD A PHYSICAL DEFECT.

A PREEXISTING MENTAL SOMETHING.

DEFECT IN HIS BRAIN. A PHYSICAL DEFECT IN HIS BRAIN. THE QUESTION IS WHAT IMPACT DID THAT HAVE ON HIS CONDUCT, SPECIFICALLY HIS CONDUCT, FOR WHICH HE IS BEING SENTENCED TO DEATH? THERE WAS EXPERT FEST TESTIMONY THAT THIS CREATED IMPULSIVITY AND THAT THE ACT OF MURDER WAS AN IMPULSIVE ACT.

BUT WHY WOULDN'T THE TRIAL COURT, WITH REFERENCE TO THE EVIDENCE, BE ABLE TO, ALSO, CONSIDER THAT, INDEED, THAT THIS PERSON KNEW HE WAS PARTICIPATING IN A ROBBERY, AN ARMED ROBBERY, A ROBBERY THAT HAD HIGH-RISK, AND THAT THINGS WOULD HAPPEN DURING THE COURSE OF THAT ARMED ROBBERY THAT MAY BE VERY BAD, AND THAT THAT WOULD, REALLY NEGATE AN IMPULSIVITY CONCLUSION IN THE CASE? IN OTHER WORDS WHY WOULD -- I DON'T KNOW WHAT CONCLUSION SOMEBODY MAY COME TO, BUT WHY -- WOULD YOU AGREE THE TRIAL COURT SHOULD BE ALLOWED TO CONSIDER THAT? THAT IS THAT EVERYBODY THAT WAS PARTICIPATING IN THIS KNEW WHAT THEY WERE GETTING THEMSELVES INTO, AND THAT THIS IS HIGH-RISK STUFF.

THERE IS NO INDICATION THAT THE DEFENDANT KNEW THERE WERE GOING TO BE GUNS AND CERTAINLY NO INDICATION THAT THEY WERE GOING TO GIVE HIM A GUN.

THERE IS NO EVIDENCE THAT THE DEFENDANT KNEW THERE WERE GUNS INVOLVED IN THIS?

NOT UNTIL THEY STOPPED FOR COFFEE OR BREAKFAST JUST AFTER THEY HAD CASED OUT THE BANK, BEFORE THEY WENT AND ACTUALLY DID THE ROBBERY. THAT IS WHEN HE GOT THE GUN.

HE GOT THE GUN, IN OTHER WORDS, BEFORE THEY WENT OVER AND DID THE ROBBERY.

MOMENTS BEFORE, AND THE QUESTION -- BUT THAT HAS NOTHING TO DO WITH THE MAN FLORIDAING OF THE -- WITH THE PLANNING OF THE ROBBERY.

WHAT DOES IT HAVE TO DO WITH IMPULSIVITY? IN OTHER WORDS BEFORE THEY GO OVER AND DO THE ROBBERY, AFTER THEY STOPPED AND HAVE COFFEE, AND HE NOW HAS A GUN. THEY ARE ABOUT TO GO DO A ROBBERY. I MEAN, DOESN'T THAT SHED SOME LIGHT ON WHETHER OR NOT HIS, THEN, SUBSEQUENT USEFUL THE GUN DURING THE KOUFERS THE ROBBERY, THAT HE KNOWS HE IS ABOUT TO GO PARTICIPATE IN, WAS IMPULSIVE?

THE JUDGE COULD HAVE WRITTEN HIS ORDER IN A DIFFERENT WAY, BUT HE SAID THAT THERE WAS NO SUPPORT IN THE RECORD FOR THE EXPERT'S OPINION, AND THAT IS WHY HE REJECTED IT, AND THERE WAS SUPPORT. HE SHOULDN'T HAVE REJECTED IT. I AM OUT OF TIME. THANK YOU.

THANK YOU, COUNSEL.

MAY IT PLEASE THE COURT. SANDRA JAGGARD, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE.

WOULD YOU ADDRESS THIS LAST ISSUE, WHILE REALIZING YOU MAY HAVE THE ORDER OF YOUR ARGUMENT, BUT I WOULD LIKE TO HEAR, IN MORE DETAIL, THE JUDGE DID A DETAILED ORDER HERE, BUT I WOULD LIKE TO HEAR ABOUT THE EVIDENCE, WITH REFERENCE TO THIS DEFENDANT, IN HIS KNOWLEDGE THAT THERE WAS GOING TO BE THIS ROBBERY AND HIS KNOWLEDGE OF WEAPONS AND THE CIRCUMSTANCES AND WHO WAS THERE AT THE BANK AND, YOU KNOW, THIS WAS A UNIFORMED POLICE OFFICER. AM I CORRECT?

ABSOLUTELY.

A HIGHLY-VISIBLE STATUS.

ALWAYS THERE WAS A UNIFORMED POLICE OFFICER ON THIS JOB.

WOULD YOU ADDRESS THE EVIDENCE THERE? INSOFAR AS THE KNOWLEDGE OF THIS DEFENDANT.

THE DEFENDANT HAD AGREED TO PARTICIPATE IN THIS ROBBERY TEN DAYS BEFORE THE ROBBERY OCCURRED. HE CONFESSED THAT HE WAS AWARE OF THE PLAN, THAT HE KNEW THAT THERE WOULD BE GUNMEN. HE JUST DIDN'T THINK HE WOULD BE ASSIGNED AS ONE. HE KNEW THAT MR. FRANKIE WAS IN CHARGE OF SECURITY. HE KNEW THAT THEY WERE ROBBING AN ARMED POLICE OFFICER WHO WOULD NOT GIVE THEM THE MONEY WILLINGLY. AND HE ACCEPTED THE GUN AT THE BAKERY, WHILE THEY WERE HAVING COFFEE, BEFORE THEY GO BACK TO THE BANK TO DO THE ROBBERY.

ASSUMING THAT THERE IS EVIDENCE THAT HE KNEW THEY KNEW THAT THERE WAS GOING TO BE AN ARMED POLICE OFFICER IN THE BANK?

THEY HAD CASED THIS JOB. THEY HAD COME OUT THE DAY BEFORE, PLANING TO COMMIT IT THE DAY BEFORE. EVERY DAY, AT THIS BANK, THERE IS A UNIFORMED POLICE OFFICER WHO DOES THIS JOB. YES, THE DEFENDANT DENNIS KNOWING THAT THAT WAS A UNIFORMED -- AND THE DEFENDANT DENS KNOWING THAT THAT WAS A UNIFORMED -- DENYS THE FACT THAT THAT WAS A UNIFORMED POLICE OFFICER. IT IS AN INCREDIBLE DENIAL. YOU SEE A UNIFORMED POLICE OFFICER. YOU KNOW IT IS A UNIFORMED POLICE OFFICER. THE ONLY IMPULSIVE ACT THAT THIS DEFENDANT HAS ALLEGEDLY COMMITTED IS PULLING THE TRIGGER. THERE IS NOTHING IMPULSIVE ABOUT THE ROBBERY. THERE IS NOTHING ABOUT THE DEFENDANT'S PARTICIPATION IN THIS ROBBERY. THERE IS NOTHING IMPULSIVE ABOUT THE REST OF DEFENDANT'S LIFE.

DEFENDANT'S EXPERT, BRAD FISHER, TESTIFIED THAT HE IS NOT IMPULSIVE, AND THEREFORE AND WITH ALL THE DELVED EVIDENCE THE TRIAL COME -- AND WITH ALL THE EVIDENCE THAT THE TRIAL COURT HAD ABOUT THE RESULTS OF THE TESTING, THE LACK OF NEUROLOGICAL DAMAGE THAT THIS DEFECT CAUSED, THE TRIAL COURT'S FINDING THAT THIS DID NOT RISE TO THE LEVEL OF EXTREME MENTAL OR EMOTIONAL DISTRESS, IS SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE AND SHOULD BE AFFIRMED.

GOING BACK TO JUSTICE QUINCE'S QUESTION, EVEN IF THERE IS IMPULSIVITY, AS A -- BECAUSE THIS IS A YOUNG MAN THAT HAD A 79 IQ, I GUESS.

80.

THROUGH HIS SCHOOL RECORDS AND A LEARNING DISABILITY, SO MAYBE HIS THOUGHT PROCESSES ARE SOMEWHAT IMPAIRED. BASED ON OUR CASE LAW OF WHAT IS CONSIDERED THE STATUTORY AGGRAVATOR OF "UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE", DOES THAT, DO THOSE TWO EQUATE IN ANY WAY?

NO.

SO IT DOESN'T REALLY -- THIS IS SORT OF -- I MEAN, IT MAY GO, IF HE HAS GOT SOMEWHAT IMPAIRED INTELLECTUAL FUNCTIONING, TO A NONSTATUTORY --

AND IT WAS COUNTED AS SUCH.

IT WAS EVALUATED BY THE JUDGE AS SUCH.

YES, IT WAS.

THE JUDGE WAS JUST QUESTIONING THE FACT THAT THERE WAS A LINK BETWEEN THE BRAIN DAMAGE AND THIS ACT OF INTENTIONALLY SHOOTING A POLICE OFFICER.

YES.

WITHIN THE COURSE OF A PLANNED ARMED ROBBERY.

YES. WITH REGARD TO THE POLICE OFFICER AGGRAVATOR, THE LEGISLATURE DETERMINES WHAT AGGRAVATORS ARE, JUST AS THEY DETERMINE WHAT PUNISHMENT IS AVAILABLE, AND THEY DETERMINE THAT BEING A POLICE OFFICER IN THE COURSE OF YOUR DUTIES, HINDERING LAW ENFORCEMENT AND AVOIDING ARREST ARE PROPER AGGRAVATORS. IT DOES NOT RESULT IN A DOUBLE COUNTING, BECAUSE AS WAS PUT FORWARD IN THE TRIAL COURT IN THIS CASE, THEY USED THE PAROLE INELIGIBILITY AS A MITIGATOR, SO IT ISN'T DOUBLE-COUNTING AGGRAVATORS. AND --

ARE YOU SAYING THAT THIS WAS ACTUALLY ARGUED BY THE DEFENSE ATTORNEY, THAT, LOOK, IF YOU SENTENCE HIM TO LIFE, HE WOULD NEVER HAVE PAROLE, AND SO --

YES.

-- YOU NEED NOT SENTENCE HIM TO DEATH.

ABSOLUTELY. IT WAS ARGUED AS MITIGATION BELOW. AND THEREFORE THIS IS NOT -- IT DOES TRULY NARROW THE CLASS OF PEOPLE ELIGIBLE FOR THE DEATH SENTENCE, AND IT IS ENTIRELY APPROPRIATE.

WOULD YOU JUST ADDRESS, BRIEFLY, THE WHAT DO WE ---WHAT DO WE -- EVEN WHEN WE MERGE ALL OF THESE THINGS, WHAT DO WE HAVE LEFT AS AGGRAVATOR BALANCE AGAINST THE

MITIGATING?

WE HAVE -- OUR AGGRAVATING FACTORS ARE PRIOR VIOLENT FELONY, WHICH IS BASED ON THE CON TECH RAINIOUS CRIMES IN THIS CASE.

AND THE CRIMES BEING?

AN AGGRAVATED ASSAULT AND THE ARMED -- AN AGGRAVATED ASSAULT.

ON WHOM?

ON THE BANK TELLER.

HE PERSONALLY COMMITTED OR WAS COMMITTED BY A CODEFENDANT?

WELL, HE IS THE ONE WITH THE GUN WHO COMES OUT, RUNNING AT THEM WITH THE GUNS. SO IT WOULD BE THE STATE'S POSITION THAT IT WAS HIS, AND THE CONTEMPORANEOUS ARMED ROBBERY. THEY WERE THE PRIOR VIOLENT FELONIES. THE ROBBERY OF THE BANK.

WAS THERE A SEPARATE ACT ON A BANK TELLER?

THEY RAN, ALL THREE OF THESE PEOPLE, TWO BANK TELLERS AND A POLICE OFFICER WHO WERE WALKING OUT, THEY RUN AT ALL THREE WITH GUNS. EVERYBODY IS DUCKING, AND THE POLICE OFFICER DUCKS BEHIND A PILLAR, AND UNFORTUNATELY FOR HIM THEY MOVED TO OPPOSITE SIDES OF THE PILLAR AND AMBUSHED HIM AND KILLED HIM.

YOU SAY "THEY". COULD YOU ADDRESS THE -- LET ME --

SHE DIDN'T FINISH HER ANSWER TO THE AGGRAVATING AND MITIGATING.

GO AHEAD.

WE HAVE THE PRIOR VIOLENT FELONY. WE HAVE PECUNIARY GAIN DURING THE COURSE OF A ROBBERY MERGED, AND THEN WE HAVE THE THREE LAW ENFORCEMENT MERGED N MITIGATION, WE HAVE -- MERGED. IN MITIGATION, WE HAVE LACK AFTER PRIOR VIOLENT CRIMINAL HISTORY, THE BRAIN DAMAGE HISTORY AND BELOW INTELLIGENCE MERGED. WE HAVE THE LIFE SENTENCES GIVEN TO TWO OF THE CODEFENDANTS. WE HAVE THE DEFENDANT'S GOOD CONDUCT WHILE INCARCERATED AND POTENTIAL FOR REHABILITATION. THE AGGRAVATORS ARE GIVING GREAT WEIGHT TO THE POLICE OFFICER'S AND THE -- DURING THE COURSE, AND PECUNIARY GAIN AND SOME WEIGHT TO THE CONTEMPORANEOUS FELONY, AND WE HAVE SOME WEIGHT TO THE LACK OF CRIMINAL HISTORY, AND LITTLE WEIGHT TO THE REMAINING MITIGATION.

IN ONE -- MY QUESTION HAD TO DO WITH ONE OF THE MITIGATORS, WHICH WAS THE LIFE SENTENCES GIVEN TO TWO OF THE CODEFENDANTS.

YES.

THERE ARE OTHER --

THERE ARE THREE.

DO WE HAVE -- WERE ANY OF THE OTHER CODEFENDANTS GIVEN A SETH SENTENCE?

-- A DEATH SENTENCE?

YES. THE OTHER GUNMAN HAS A DEATH SENTENCE.

WHICH CODEFENDANT?

FRANKIE, WHO IS PRESENTLY PENDING BEFORE THIS COURT.

ON DIRECT APPEAL? ON RESENTENCING APPEAL.

SO HIS, IN TERMS OF HIS PARTICIPATION, HE IS THE ONE WITH THE GUN, AND HE IS THE ONE THAT ACTUALLY SHOT THE POLICE OFFICER.

BOTH HE AND FRANKLY -- BOTH HE AND FRANKIE ACTUAL SHOOT. HE IS THE ONE THAT FIRED THE FATAL BULLET AND KILLS THE POLICE OFFICER.

AND THE RECORD?

IN THE CASE IS 9-3. IT WAS A FOUR LAST TIME.

A 8-4 ON THE SENTENCING?

AND IT IS 9-3 NOW. IF THE COURT HAS NO FURTHER QUESTIONS, THE STATE WILL REST ON ITS BRIEF, REGARDING THE REMAINING ISSUES.

THANK YOU. COUNSEL, I BELIEVE YOU HAVE USED UP ALL OF YOUR TIME. BEFORE WE TAKE A RECESS, THE COURT WOULD LIKE TO ACKNOWLEDGE THE PRESENCE, IN THE COURTROOM, OF THE FLORIDA A&M UNIVERSITY STUDENT GOVERNMENT SUPREME COURT. WE ARE HAPPY TO HAVE YOU HERE. WE WILL TAKE A 15-MINUTE RECESS. THANK YOU. THE MARSHAL: PLEASE RISE.