Byron Bryant vs State of Florida

BUT THAT IS NOT PART OF THE RECORD. WE ASKED, ON OVER AND OVER AND OVER AGAIN, FOR AN EVIDENTIARY HEARING.

DID COUNSEL MAKE ANY PROFFER TO THE TRIAL JUDGE, AS TO WHAT HE OR SHE WANTED TO PRESENT?

THE ANSWER WAS, NO, THERE WAS NO PROFESSOR, BECAUSE THE COURT SAID "I DEFER TO CORRECTIONS. IT IS NOT A DECISION I MAKE." AND SAID IT REPEATEDLY.

THIS JUDGE PRESIDED AT SOME PART OF DEFENDANT'S LAST TRIAL, WHERE A CHAIR WAS THROWN, AND THE JUDGE SAID THIS WAS THE MOST VIOLENT ACT HE HAD EVER SEEN IN A COURTROOM, SO HE ACTUALLY WITNESSED THIS DEFENDANT BEING VIOLENT.

ABSOLUTELY.

DOESN'T THAT CHANGE -- IN OTHER WORDS, WHEN HE SAID HE WAS DEFERRING TO CORRECTIONS, SHOULDN'T WE, ALSO, TAKE INTO CONSIDERATION WHAT HE ACTUALLY OBSERVED, AS FAR AS THIS DEFENDANT'S CONDUCT IN THE PAST TRIALS?

TWO SEPARATE QUESTIONS, I THINK. IF I COULD RESPOND TO THE SECOND ONE FIRST. JUDGE MOUNTS WAS NOT SAYING ORIGINALLY, AT THE TRIAL, I SAW ALL THIS TERRIBLE STUFF AND THEREFORE I AM HAVING HIM SHACKLED. WHAT JUDGE MOUNTS SAID, ACCORDING TO CASE LAW, WAS I DEFER TO CORRECTIONS. JUDGE MOUNTS WANTED HIM SHACKLED AND REPEATEDLY SAID THAT. THE SECOND ISSUE WAS THE CHAIR THROWN. CERTAINLY THE JUDGE WITNESSED THAT AND CERTAINLY THAT OCCURRED. ACCORDING TO THE RECORD, FIVE OR SIX YEARS BEFORE -- THAT WAS MENTIONED.

WAS THERE A BOOK THROWING?

TRIAL COUNSEL ASKED JUDGE MOUNTS IF HE WITNESSED THAT PARTICULAR BOOK THROWING. THE STATE SAID THERE WAS SOME CON TEMPTS.

SO, IF THE JUDGE SAID I AM GOING TO HAVE HIM SHACKLED. THE LAST TIME HE WAS IN MY COURT, HE THREW THIS CHAIR. THAT ACT WAS SO VIOLENT THAT I DON'T WANT ANYTHING LIKE THIS TO HAPPEN IN MY COURTROOM AGAIN. THAT WOULD NOT HAVE BEEN ENOUGH TO HAVE HIM RESTRAINED?

I WOULD LIKE TO MAKE ONE CORRECTION TO YOUR STATEMENT. THEN I WILL ASK IT. THE CORRECTION IS NOT THE LAST TIME HE WAS IN THE COURTROOM. FIVE YEARS BEFORE.

WHEN HE WAS IN MY COURTROOM, AT SOME POINT, THIS IS WHAT HE DID.

I WOULD SUGGEST TO THE COURT THAT WHAT IS NEEDED IS AN EVIDENTIARY HEARING TO DETERMINE --

WHAT IS NEEDED AND WHAT IS REQUIRED. YOU KEEP SAYING WHAT IS NEEDED, IN ANSWER TO THAT. ARE YOU SAYING THAT IT IS AN ABSOLUTE REQUIREMENT, NO MATTER HOW VIOLENT A PERSON IS, THAT YOU MUST HAVE THIS EVIDENTIARY HEARING BEFORE YOU CAN SHACKLE HIM.

IS THAT YOUR POSITION?

YES. UNDER QUINCE AND UNDER BELLOW AND HE WILL RIDGE. THE ANSWER -- AND ELRIDGE. THE ANSWER IS THERE ARE SOME CASES IN FLORIDA WHERE THAT WAS NEVER DISCUSSED, AN EVIDENTIARY HEARING. BUT UNDER THE CASES THAT DISCUSS IT, AN EVIDENTIARY HEARING IS REQUIRED.

ARE YOU REPRESENTING THAT, IN ALL OF THE PRETRIAL HEARINGS THAT THIS DEFENDANT CAME TO, HE WAS NOST SHACKLED.

-- HE WAS NOT SHACKLED?

I AM NOT REPRESENTING THAT AT ALL.

I THOUGHT YOU SAID THAT HE WAS UNRESTRAINED.

NO. IF I IMPLIED THAT, I DID NOT MEAN TO IMPLY THAT, BUT MR. BRIAN, AS ALL FIRST-DEGREE MURDER DEFENDANTS IN PALM BEACH COUNTY, ARE RESTRAINED DURING PRETRIAL EVIDENTIARY HEARINGS. MY POINT WAS THAT, DURING THE PRETRIAL EVIDENTIARY HEARINGS, DURING ALL OF THE HEARINGS, BETWEEN THE TIME OF THE CHAIR-THROWING, FIVE TO SIX YEARS BEFORE, AND THE TIME OF THE SHAQ LINK, MR. BRYANT BEHAVED HIMSELF. NEVER SPOKE OUT OF TURN. NEVER DID ANYTHING IN COURT TO SHOW ANY DISRESPECT FOR THE COURT, TO SHOW ANY VIOLENCE, AND I AM SUGGESTING THAT --

WERE ANY OF THOSE INCIDENTS THAT YOU ARE REFERRING TO, WHERE THERE WAS NO PROBLEM, WERE THESE TRIALS WHERE THERE WAS A FINAL VERDICT, BECAUSE IT SEEMS TO ME THAT, IF I RECALL CORRECTLY, THE CHAIR THROWING INCIDENT AND THE BOOK THROWING IBS DENT WERE BOTH -- INCIDENT WERE BOTH AT THE END OF THE TRIAL, WHEN THE VERDICT HAD BEEN ENTERED. IS THAT NOT -- ANOTHER CHAIR THROWING INCIDENT, WE DON'T KNOW. THE BOOK THROWING INCIDENT WAS MENTIONED. WE DON'T KNOW WHEN IT OCCURRED, FOR WHAT REASONS IT OCCURRED. THE REASON YOU HOLD AN EVIDENTIARY HEARING, UNDER JACKSON, IS TO DETERMINE AN ALTERNATIVE, SO ONE OF THE THINGS THAT COULD HAVE BEEN DONE, PERHAPS, IN THIS CASE, WAS TO RESTRAIN MR. BRYANT, PRIOR IT THE VERDICT COMING IN. THERE ARE ANY NUMBER OF THINGS THAT COULD HAVE BEEN DONE IN THIS CASE. YOU BOLT THE CHAIR TO THE FLOOR. YOU DON'T ALLOW ANY BOOKS TO BE NEAR HIM. YOU TAKE TESTIMONY AS TO WHETHER OR NOT THIS IS A CHANGED PERSON, A MATURED PERSON, FROM FIVE TO SIX YEARS PRIOR, UNTIL THE TIME OF TRIAL. IN EFFECT, WHAT THE TRIAL COURT SAID WAS I SAW SOMETHING. I HAVE HEARD SOME OTHER THINGS, AND I AM NOT GOING TO ALLOW AN EVIDENTIARY HEARING TO DETERMINE WHETHER OR NOT THE SHAQ LINK IS -- THE SHAQ HE WILLING IS VALID -- THE SHACKLING IS VALID.

WHEN HE SAID "I AM GOING TO DEFER TO CORRECTIONS", IMPLIED THAT HE HAD MADE SOME INQUIRY OF CORRECTIONS, AND CORRECTIONS PROBABLY TOLD HIM WE NEED THIS TYPE OF REST RESTRAINT, I GATHER.

THAT IS CORRECT. THERE IS NOTHING IN THE RECORD WHICH INDICATES THAT WHAT CONTACT WAS MADE, AND IT WAS NOT RAISED THAT ANY CONTACT WITH CORRECTIONS WAS NECESSARILY IMPROPER, BUT IT WAS OBVIOUS, FROM JUDGE MOUNT SAYING OVER AND OVER AGAIN, I DEFER TO CORRECTIONS, AND THEN CALLING ON A CORRECTIONS OFFICER IN THE COURTROOM OR CORRECTIONS SUPERVISOR. IS THAT WHAT CORRECTION WANTS?

YOU HAVE GOT SOME OTHER ISSUES TO MOVE ON TO, BUT LET ME ASK YOU ONE MORE QUESTION. SUPPOSE THIS CHAIR THROWING HAD OCCURRED IN THIS TRIAL. ARE YOU OF THE POSITION THAT, STILL, AN EVIDENTIARY HEARING WOULD HAVE BEEN REQUIRED, BEFORE THE JUDGE COULD HAVE USED THE RESTRAINT?

I WOULD SUGGEST THAT THERE WOULD HAVE BEEN SOME TYPE OF EVIDENTIARY HEARING REQUIRED, NOT FOR PURPOSES OF REST RESTRAINT, BECAUSE OBVIOUSLY IF IT TOOK PLACE DURING THIS TRIAL, THERE IS NOT FIVE, SIX YEARS' DISTANCE. THE QUESTION IS WHAT REST RESTRAINT IS APPROPRIATE, UNDER JACKSON. WHAT IS THE LEAST RESTRICTIVE ALTERNATIVE. HOW CAN WE HIDE THAT FROM THE JURY AND THOSE KINDS OF THINGS. I WOULD POINT OUT, ALSO, THAT, WHEN MR. BRYANT TESTIFIED. HE IS ON TRIAL FOR HIS LIFE. ANOTHER REQUEST WAS MADE TO UNSHACKLE HIM. ANOTHER REQUEST FOR EVIDENTIARY HEARING WAS MADE, AND THE JUDGE SAID, NO, I DEFER TO CORRECTIONS, AND I WOULD SUGGEST THAT, GIVEN THE JUROR REACTION, GIVEN THE PREJUDICE, UNDER McCOY, THE STANDARD IS WHAT IS THE PREJUDICE, AND THE PREJUDICE WAS STATED BY THE JURORS IN THIS CASE, STATED BY THE GENTLEMAN WHO SAW MR. BRYANT ON TV AND CONVEYED THAT INFORMATION. THE HANDCUFFS WERE OBVIOUS. THERE WAS AN ISSUE AS TO WHETHER OR NOT MR. BRYANT COULD WRITE, AND THERE WAS NO ATTEMPT MADE TO HIDE THAT. I WOULD SUGGEST TO THE COURT THAT A DEFENDANT, PARTICULARLY IN A FIRST-DEGREE MURDER CASE, ALTHOUGH THESE CASES ARE NOT LIMITED TO FIRST-DEGREE MURDER CASES, IS ENTITLED TO HAVE A HEARING. THE CASE LAW SAYS SHACKLING IS INHERENTLY PREJUDICIAL. BELLOW AND ELRIGGE SAY THAT A HEARING IS REQUIRED. THE HEARING WAS OUT OF THIS COURT, AND JACKSON AND McCOY SAY YOU CANNOT DEFER TO CORRECTIONS OFFICIALS.

WASN'T THERE SOME OBLIGATION TO BRING FORWARD THE LESSER DEFENSE, THE LEAST RESTRICTIVE OR SOMETHING ALONG THOSE LINES, TO SAY WE NEED TO HAVE A HEARING BALL OF A, B AND C, OR JUST SAY "WE HAVE A HEARING"?

TRIAL COUNSEL REPEATEDLY ASKED FOR A HEARING, TO EXPLORE THOSE ISSUES. THE JUDGE SAID, NO, I DEFER TO CORRECTIONS.

THAT IS WHAT I AM SAYING. THERE WAS NO SUGGESTION TO THE JUDGE THAT THERE ARE OTHER MEANS OF SECURING THIS COURTROOM, AND HERE ARE WHAT THOSE ARE, AND WE ARE WILLING TO PRESENT EVIDENCE ON THESE?

THERE WAS DISCUSSION OF WHETHER OR NOT ADDITIONAL SECURITY PERSONNEL COULD BE BROUGHT INTO THE COURTROOM. THAT WAS DONE PRIOR TO THE ACTUAL REQUEST FOR A HEARING. THE ANSWER IS THAT THERE WAS NO SPECIFIC REQUEST MADE TO HAVE A LESS RESTRICTIVE ALTERNATIVE. THAT WOULD HAVE BEEN COVERED AT AN EVIDENCE YEAR -- AN EVIDENTIARY HEARING. IF THERE ARE NO FURTHER QUESTIONS ON THIS ISSUE, I WOULD LIKE TO GO TO POINT SIX, IF I COULD, WHICH IS THE FAILURE FOR THE COURT TO DETERMINE TO USE ITS DISCRETION IN DETERMINE NATURING THE MITIGATING FACTOR OF NEUROLOGICAL IMPAIRMENT. WHAT THE TRIAL COURT HEARD WAS UNREBUTTED TESTIMONY OF BOTH THE NEUROPSYCHOLOGIST AND THE RADIOLOGIST THE, THAT THERE WAS NEUROLOGICAL DAMAGE, DUE TO A BLOW IN THE HEAD. THE JUDGE SAW THE MRI, SAW THE DAMAGE, WAS TOLD THAT THERE ARE RIPPLED EFFECTS FROM THE AT TRO IF I AREA OF THE BRAIN -- ATROPHY AREA OF THE BRAIN. THE TRIAL COURT HEARD ADDITIONAL TESTIMONY THAT THERE ARE ADDITIONAL FACTORS THAT COULD AFFECT THE BRAIN. POST TRAUMA PROCEDURES, A LACERATED DURA. THE TRIAL COURT ADDRESSED THIS ISSUE, ONLY AS IT RELATED TO THE CRIME, ITSELF. THE TRIAL COURT, IN ITS SENTENCING ORDER, SAID IT WOULD CONSIDER THIS MITIGATION, EXCEPT THAT, ON THE NIGHT IN QUESTION, THE DEFENDANT, THE APPELLANT, HERE, KNEW WHAT HE WAS DOING. KNEW WHY HE WAS DOING IT, AND KNEW THAT IT WAS UNLAWFUL. AND I WOULD SUGGEST THAT THE COURT, IN ITS SENTENCING ORDER, DID NOT EXERCISE ITS DISCRETION BECAUSE THAT ISSUE WAS NOT BROUGHT UP, SIMPLY TO MITIGATE THE CONDUCT ON THE NIGHT IN QUESTION. JUST AS AN AGE MITIGATOR OR A LACK OF PRIOR RECORD MITIGATOR OR SO MANY OF THE OTHER MITIGATORS THAT ARE USED. MITIGATING FACTORS, AS IT RECEIPTS TO THE HUMAN BEING, NOT NECESSARILY MITIGATING FACTORS THAT RELATE TO THE NIGHT IN QUESTION, TO THE CRIME IN QUESTION. THE TRIAL COURT DID NOT UTILIZE THIS FACTOR IN

ANYTHING BUT MITIGATION, IN TERMS OF WHAT HAPPENED ON THE NIGHT IN QUESTION, AND THE COURT REJECTED THAT. AND I AM NOT SUGGESTING THAT THAT PORTION IS NOT AN ABUSE OF DISCRETION. THE COURT EXERCISED ITS DISCRETION IN DETERMINING WHETHER THE NEUROLOGICAL IMPAIRMENT WAS A MITIGATOR ON THE NIGHT IN QUESTION, AND REJECTED IT. HOWEVER, THE COURT DID NOT LOOK TO WHETHER OR NOT THIS WAS A MITIGATOR. THERE WAS EVIDENCE PRESENTED BY DR. APPEL, SIGNIFICANT, SUBSTANTIAL TESTIMONY FROM DR. RAPPEL, THAT THE TRIAL COURT DID NOT CONSIDER. WHEN YOU LOOK AT THE TRIAL COURT'S REJECTION OF THIS MITIGATOR AND THE COURT'S REJECTION OF THE OTHER MITIGATORS, WHICH, ADMITTEDLY ARE CLOSER QUESTIONS, IN TERMS OF ABUSE OF DISCRETION AND, ALSO, THE TRIAL COURT'S FINDING THAT, WHILE APPELLANT HAD REMORSE, HIS COURTROOM CONDUCT PRETTY MUCH NEGATED THAT. THE COURT WAS GIVING IT MINIMAL WEIGHT. THE TRIAL COURT ABUSED ITS DISCRETION BY NOT CONSIDERING THE MITIGATING EVIDENCE THAT WAS BEFORE IT, AND SIMPLY REJECTING THE MITIGATING EVIDENCE, PARTICULARLY THE NEUROLOGICAL IMPAIRMENT, ON THE BASIS OF DETERMINING THAT IT DID NOT EXCUSE HIS CONDUCT ON THE NIGHT IN QUESTION. THE LAST ISSUE, ACTUALLY ILL --

YOU ARE INTO YOUR REBUTTAL TIME.

ILL STATE IT VERY BRIEFLY, AND THIS IS THE ISSUE OF PROPORTIONALITY. THIS IS NOT A CRIME WHERE MR. BRYANT INTENDED TO KILL. IT WAS A CRIME, AN UNFORTUNATE CRIME, WHERE MR. BRYANT TRIED TO ROB. IT WAS A STRUGGLE FOR THE FIREARM, AND I WOULD SUGGEST THAT THE DEATH PENALTY IS DISPROPORTIONATE TO THE CRIMINAL ACTIVITY THAT WAS INVOLVED.

THANK YOU. MISS CAMPBELL.

GOOD MORNING. MAY IT PLEASE THE COURT. LESLIE CAMPBELL, ASSISTANT ATTORNEY GENERAL FOR THE STATE OF FLORIDA, APPELLEE. THE STATE'S POSITION IS THAT THIS COURT SHOULD AFFIRM BOTH THE CONVICTION AND SENTENCE OF MR. BRYANT FOR THE FIRST-DEGREE MURDER OF LEONARD ANDRE AND THE ROBBERY OF MRS. ANDRE. SPEAKING TO THE ISSUE OF SHACKLING, IF THE COURT BELIEVES THAT THERE SHOULD HAVE BEEN SOME SORT OF EVIDENTIARY HEARING, IT NEEDS TO ONLY LOOK TO THE RECORD. BEFORE THE COURT, BEFORE THIS COURT, IS THE RECORD OF THE COMPETENCY HEARING THAT WAS HELD, PRETRIAL. THAT WAS FEBRUARY 2, FEBRUARY 4, AND, AGAIN, ON FEBRUARY 6. AND ALL THREE EXPERTS TESTIFIED ABOUT THE CHAIR THROWING INCIDENT. THEY USED THE CHAIR THROWING INCIDENT TO ANALYZE MR. BRYANT BRYANT'S VOLITIONAL ACTS.

ISN'T IT A FACT THAT THE CHAIR THROWING INCIDENT WAS SOME FIVE OTHER SIX YEARS BEFORE THIS INCIDENT?

YES, IT WAS, YOUR HONOR.

AND DO WE HAVE ANY EVIDENCE IN THE RECORD OF ANY DISRUPTIVE BEHAVIOR ON THE DEFENDANT'S PART SINCE THAT TIME?

WITHIN -- IN THE COURTROOM? NO, BUT, AGAIN, HE WAS SHACKLED ON THE -- CERTAINLY ON THE OCCASIONS THAT HE WAS BEFORE THE COURT IN HIS PRETRIAL HEARINGS. HOWEVER, THERE WAS AN INCIDENT IN JAIL, AND WHEN HE WAS AWAITING HIS RETRIAL, AND THERE HE COMMITTED AN AGGRAVATED BATTERY, AND IT WAS THE BOOK THROWING INCIDENT. IT WAS THE CHAIR THROWING INCIDENT, AND IT WAS THE AGGRAVATED BATTERY THAT OCCURRED, IN JAIL, AWAITING TRIAL, THAT JUDGE MOUNTS LOOKED TO, TO DETERMINE THAT THIS GENTLEMAN WAS STILL A VERY, VERY DANGEROUS AND VIOLENT MAN, AND A VERY IMPORTANT ISSUE OR POINT, HERE, IS THAT THE DEFENSE'S OWN EXPERT, DR. RAPPEL, WHEN ASKED WHETHER OR NOT THIS DEFENDANT COULD CONTROL HIS ACTIONS IN COURT, STATED THAT THE CHAIR THROWING, AND THE BOOK-THROWING INCIDENTS, SPEAK FOR THEMSELVES, AND SHE DID NOT FEEL THAT THEY WERE NECESSARILY COMPLETELY VOLITIONAL ACTS, SO THE COURT HAD, BEFORE IT,

BEFORE MR. BRYANT ACTUALLY OBJECTED TO WEARING THE RESTRAINT BELT, THE COURT HAD, THE TRIAL COURT HAD, BEFORE IT, TESTIMONY FROM AN EXPERT, SAYING THAT THIS GENTLEMAN IS VIOLENT AND MAY NOT BE ABLE TO CONTROL HIS ACTIONS. NOW, SPEAKING TO --

THAT WAS DR. RAPPEL. THAT WAS ON THE COMPETENCY ISSUE THAT THE COURT REJECTED, BUT THE STATE'S EXPERT SAID HE KNOWS HOW TO BEHAVE IN COURT AND HE CAN CONDUCT HIMSELF ACCORDINGLY. NOW, IF WE GET INTO SAYING THERE SHOULD HAVE BEEN A WEIGHING INVOLVED, ISN'T THAT JUST POINT THAT MR. DUBNER IS MAKING, THAT THERE IS NO OPPORTUNITY TO DECIDE WHICH TESTIMONY THE JUDGE WAS GOING TO BELIEVE OR DISBELIEVE, IF THE ONLY THING HE WAS GOING TO DO WAS RELY ON THE DEPARTMENT OF CORRECTIONS.

NO, YOUR HONOR. I DON'T THINK THERE NEEDS TO BE A WEIGHING, AND I DON'T BELIEVE THAT THE STATE'S RELIANCE ON DR. RAPPEL'S TESTIMONY UNDERMINES ITS BELIEF THAT REST RESTRAINT SHOULD HAVE BEEN USED IN THIS -- THAT RESTRAINT SHOULD HAVE BEEN USED IN THIS CASE. WHAT IT DOES SAY IS THAT MR. BRYANT IS A VERY VIOLENT INDIVIDUAL. WHETHER THAT VIOLENCE IS A VOLITIONAL ACT OF DECIDING TO PICK UP A CHAIR OR DECIDING TO THROW A BOOK, OR WHETHER HE CANNOT CONTROL HIMSELF, THE BOTTOM LINE IS MR. BRYANT DOES COMMIT VIOLENT ACTS IN COURT. AND IT IS THE DECORUM OF THE COURTROOM, THE SAFETY OF THE PARTICIPANTS THAT IS AT ISSUE, AND IT NEEDS ON BE WEIGHED AGAINST THE DEFENDANT'S RIGHT TO BE BEFORE THE JURY WITHOUT RESTRAINTS. MR. BRYANT, THROUGH HIS OWN ACTIONS AND CONSISTENTLY FROM 1990 TO AT LEAST PRETRIAL, SHOWED THAT HE WAS NOT A RELIABLE INDIVIDUAL. YOU COULD NOT TRUST AM NOT TO BE VIOLENT. AND THEREFORE, THE COURT, IN ITS WISDOM, ASKED COUNSEL, ASKED DEFENSE COUNSEL, IF HE HAD DISCUSSED WITH DOC, THE DEPARTMENT OF CORRECTIONS, WHAT TYPE OF RESTRAINTS WERE GOING TO BE USED, WHAT METHOD OF RESTRAINTS WERE GOING TO BE USED, AND HOW THE DEFENDANT WAS GOING TO BE DRESSED. THAT WAS, FIRST, BROUGHT UP BY THE TRIAL COURT, ON THE SECOND OF FEBRUARY, AND FROM THAT DISCOURSE, IT IS OBVIOUS THAT THERE WAS A DETERMINATION PRIOR. FROM 1993, THROUGH THE TRIAL, THAT THIS DEFENDANT WAS GOING TO BE RESTRAINED. THE OFFER THAT THE COURT MADE WAS WHETHER OR NOT IT WAS GOING TO BE SHACKLES OR WHETHER OR NOT IT WAS GOING TO BE A RESTRAINING BELT. NOW, THE SHAQ ELSE, OF COURSE, YOU CAN SEE OUTSIDE THE CLOTHING. THE RESTRAINING BELT COULD BE WORN UNDERNEATH, SO THAT A PROPER COURTROOM ATTIRE COULD BE WORN: SO IN ESSENCE, WHEN MR. BRYANT DETERMINED THAT HE WANTED TO WEAR -- WHEN HE ELECTED TO WEAR THE RESTRAINT BELT, THE COURT HAD OFFERED THE LEAST RESTRICTIVE METHOD. MR. BRYANT ACCEPTED THAT, AND IT WAS ONLY AFTER HE HAD ACCEPTED IT AND ON THE DAY OF TRIAL THAT HE DECIDED THAT HE DID NOT WANT THE RESTRAINT BELT. HE DID NOT WANT THE SHAQ ELSE. HE DIDN'T WANT ANYTHING -- THE SHAKLES. HE DIDN'T WANT ANYTHING LIKE THAT BEFORE THE JURY. IT IS VERY TELLING AS TO THE TIMING. IT IS, ALSO, VERY TELLING, AS TO HIS METHOD OF DISRUPTING THE COURT. NOT ONLY DL HE DISRUPT THE MORNING PROCEEDINGS -- NOT ONLY DID HE DISRUPT THE MORNING PROCEEDINGS, SO THAT THE TRIAL COURT HAD TO RELEASE THE FIRST 50 USERS JURORS, BUT THE COURT HAD TO INTERRUPT VOIR DIRE, SO THAT WHEN HE WAS IN HIS ROOM AND COULD COMMUNICATE WITH COUNSEL, WHAT HE DID BY NOTE WAS, ON SEVERAL OCCASIONS HE DIRECTED HIS COUNSEL NOT TO PARTICIPATE. NOT ONLY WAS HE VIOLENT IN COURT, BUT HE WAS DISRUPTIVE, EVEN THROUGH THESE PROCEEDINGS. EVENTUALLY HE WAS RETURNED TO COURT, AND THE RECORD IS SILENT AS TO ANY OTHER DISRUPTIONS THAT MR. BRYANT COMMITTED. SO UNLESS THE COURT HAS ANY OTHER QUESTIONS, I WILL GO FORWARD ON POINT -- I GUESS IT IS POINT SIX. WITH RESPECT TO THE NEUROLOGICAL IMPAIRMENT, JUDGE MOUNTS WAS WELL WITHIN HIS DISCRETION TO REJECT NEUROLOGICAL IMPAIRMENT AS A MITIGATOR. DR. RAPPEL HAD SAID THAT THE DEFENDANT WAS -- HAD IMPAIRED JUDGMENT, AND HE WAS IMPULSIVE. THE CASE FACTS, WHICH JUDGE MOUNTS RELIED UPON, BELY THESE TWO FINDINGS. THERE WAS PLANNING. THERE WAS PLANNING THAT WAS INVOLVED IN THE ROBBERY. TWO ROBBERIES WERE PLANNED FOR THAT EVENING. THE THE FIRST WAS AT A HOME AND THE SECOND WAS AT ANDRE'S MARKET.

LET ME STOP YOU THERE. WHAT I AM CONCERNED ABOUT IS THERE IS A STATUTORY MITIGATOR OF DIMINISHED CAPACITY OR EXTREME DURESS, AND THAT WOULD BE SOMETHING THAT -- WHAT YOU ARE, NOW, GOING TO SAY WOULD GO TO, BUT FOR EXAMPLE, IF THIS GENTLEMAN HAD HAD -- HAD DROPPED OUT OF SCHOOL AT THIRD GRADE AND HAD A LOW IQ, COULD THE JUDGE JUST IT SKIMPLY -- JUST SIMPLY, BY SAYING, WELL, THIS WAS A PLANNED ROBBERY, JUST REJECT, OUT OF HAND, THE MITIGATOR OF, YOU KNOW, A LOW IQ OR A POOR EDUCATION, THAT COULD GIVE IT LITTLE WEIGHT OR NOT FIND IT SUFFICIENT TO OUTWEIGH THE AGGRAVATORS, BUT AS I AM SEEING WHAT THE JUDGE WROTE, HE COMPLETELY TOOK UNCONTROVERTED EVIDENCE OF BRAIN DAMAGE AND SAID IT HAD NO WEIGHT, BECAUSE THIS WAS A PLANNED CRIME. IN OTHER WORDS AREN'T THERE TWO SEPARATE ISSUES, ONE NONSTATUTORY MITIGATION AND ONE STATUTORY, AS FAR AS THE MENTAL -- HIS BRAIN DAMAGE WOULD BE CONCERNED?

WELL, FIRST OF ALL THERE WAS NO STATUTORY MITIGATION REQUESTED, SO -- AND DR. RAPPEL DID NOT TESTIFY TO STATUTORY MITIGATION. SHE DIDN'T RAISE IT TO THAT LEVEL. WHAT SHE SAID WAS THERE WAS IMPAIRED JUDGMENT,, WHICH CERTAINLY, ISN'T TO THE LEVEL OF SUBSTANTIAL NEUROLOGICAL PROBLEMS. AND, YES, HE HAD THE MRI SHOWED THAT HE HAD A HOLE IN HIS BRAB, BUT -- IN HIS BRAIN, BUT DOES THAT NECESSARILY TRANSFER, MERELY BECAUSE THERE IS A HOLE IN THE BRAIN, TO SOME SORT OF MITIGATION?

ARE YOU SAYING THAT IT HAS TO GO TO THAT THE MITIGATION, TO MITIGATE FOR, TO FIND IT AS A MITIGATING CIRCUMSTANCES, HAS TO, SOMEHOW, HAVE AFFECTED THE ACTIONS ON THE NIGHT IN QUESTION? I THOUGHT WE HAD CASE LAW SAYING THAT WASN'T NECESSARILY THE FACTS. IN OTHER WORDS SOMEONE HAS A LONG HISTORY OF ALCOHOL ABUSE, THEY MAY NOT BE INTOXICATED ON THE NIGHT OF THE ACCIDENT, BUT THAT THAT, IF IT IS UNREBUTTED, NEEDS TO BE CONSIDERED AS A SORT OF MITIGATION THAT THE JUDGE WEIGHS, IN DETERMINING WHETHER IT OUTWEIGHS AGGRAVATION?

YES, YOUR HONOR, BUT WHEN THE -- WHETHER DR. RAPPEL IS TALKING ABOUT IT -- WHEN DR. RAPPEL IS TALKING ABOUT IT, SHE IS SAYING THAT THIS HOLE IN THE BRAIN COULD MEAN THIS OR COULD MEAN SOMETHING ELSE, AND SHE COULDN'T SAY FOR A FACT THAT, BECAUSE HE HAD THIS HOLE IN THE BRAIN, HE COMMITTED THIS CRIME, SO IN ORDER TO MAKE THAT LINK, IN ORDER TO SEE IF THIS IS A TRUE MITIGATOR, WE HAVE TO LOOK AT THE DEFENDANT'S ACTIONS. IF THE EXPERT IS MERELY SPECULATING AS TO WHAT AN ONE 16th -- A 1/16 HOLE IN SOMEONE'S RIGHT FRONTAL LOBE IS GOING TO DO TO A PERSON'S CHARACTER OR ACTIONS, YOU NEED TO ACTUALLY LOOK AT THE PERSON PERSON'S CHARACTER OR ACTIONS, AND THAT IS WHAT THE TRIAL COURT D THE TRIAL COURT SAID WE HAD FOUR INDIVIDUALS WHO WENT OUT TO ROB TWO LOCATIONS. A DETERMINATION WAS MADE THAT THE FIRST LOCATION WAS TOO CLOUDED, AND THEY DID -- WAS TOO CROWDED AND THEY DID NOT WANT TO ROB THAT PLACE, SO THEY WENT TO THEIR SECOND CHOICE.

BUT I GUESS MY PROBLEM WITH THIS IS, ARE THESE THINGS MUTUALLY EXCLUSIVE? THE FACT THAT YOU CAN PLAN AN ACTIVITY, WELL, THE QUESTION IS DOES THAT NECESSARILY MEAN THAT YOU CANNOT BE IMPAIRED? HAVE A NEUROLOGICAL PROBLEM, SIMPLY BECAUSE AT SOME POINT, YOU CAN, ALSO, HAVE -- MAKE PLANS? I MEAN, ISN'T THAT WHAT WE ARE, REALLY, TALKING ABOUT HERE? HE WAS ABLE TO PLAN THIS ROBBERY. HOW DOES THAT NEGATE THE FACT THAT HE HAS SOME KIND OF -- I THOUGHT IT WAS EVEN DOCUMENTED BY SOME KIND OF TESTING, THAT HE HAS SOME KIND OF BRAIN DAMAGE.

RIGHT. HE HAS A 1/16 HOLE, FOR LACK OF A BETTER WORD, IN HIS RIGHT FRONTAL LOBE.

BUT THAT EXISTS, WHETHER HE CAN PLAN OR NOT. DOESN'T IT?

BUT HAVING THAT HOLE, IF THAT HOLE DOES ABSOLUTELY NOTHING TO SOMEONE'S BRAIN PROCESSES, WHAT DIFFERENCE DOES THAT HOLE MAKE?

WELL, THEN, YOU ARE SAYING THAT IT HAS TO BE LINKED TO THE COMMISSION OF THE OFFENSE.

I THINK THERE HAS TO BE SOMETHING MORE THAN I HAVE A HOLE IN MY BRAIN. I THINK, IF YOU HAVE A STROKE AND YOU CAN GET ALONG THROUGH SOCIETY, JUST AS THE EXPERT SAID, IF SOMEBODY HAS A STROKE, THEY CAN STILL FUNCTION IN SOCIETY. NOT EVERYBODY WHO HAS A STROKE COMMITS CRIMES.

OKAY. SO YOU ARE SAYING, IF THERE WAS CHILDHOOD ABUSE THAT WENT UP UNTIL THE TIME HE WAS 20, AND THE EXPERT COULDN'T LINK THE CHILDHOOD ABUSE THAT WENT UP TO 20 AND, SAY, THE GUY WAS 21, WITH THE CRIME, AND COULDN'T SAY THIS WAS A CAUSE OF THE CRIME, THAT A TRIAL COURT, IF IT WAS UNREBUTTED, COULDN'T REJECT THAT AS MITIGATION?

I THINK THAT IS GOING FURTHER THAN WHAT I AM SAYING HERE. THESE EXPERIENCE LINKED THIS PERSON -- MR. BRYANT'S BRAIN DAMAGE TO IMPULSIVITY AND IMPAIRED JUDGMENT, AND THE ACTIONS OF THE DEFENDANT, HIMSELF, BE LIED THAT FINDING -- BE LIED THAT FINDING, AND THAT WAS THE FINDING OF THE DEFENSE EXPERT.

WAS THERE ANY OTHER CONDUCT DISCUSSED OR DESCRIBED BY THE EXPERTS, OTHER THAN THE OFFENSE FOR WHICH HE WAS TRIED?

ANY OF HIS OTHER CHILDHOOD, THINGS LIKE THAT?

NO. IN CONJUNCTION WITH THIS, DID THEY TALK ABOUT HOW THIS LACK OF IMPULSE CONTROL COULD MANIFEST ITSELF, NOT COULD BUT DID MANIFEST ITSELF IN ANY OTHER PART OF HIS LIFE?

I WOULD HAVE TO READ THE TRANSCRIPT AGAIN. I DON'T RECALL THAT THERE WAS ANYTHING SPECIFIC, AS TO, WELL, HE HAS THIS BRAIN DAMAGE. NOW HE CAN'T FUNCTION.

AND I GUESS THE POINT OF MY QUESTION IS, IF ALL OF THE TESTIMONY COMING IN REGARD TO HIS IMPULSIVE BEHAVIOR AND IMPAIRED JUDGMENT, RELATED TO THE OFFENSE, AS OPPOSED TO OTHER AREAS OF HIS LIFE, IT WOULD SEEM THAT THAT WOULD FOCUS ON THE OFFENSE, AND I WAS JUST WONDERING IF THAT WAS THE WAY THAT IT CAME OUT.

I CAN REVIEW THE TRANSCRIPT AGAIN, YOUR HONOR, AND I COULD SUPPLEMENT WITH THOSE TRANSCRIPT CITES, IF THERE IS ANYTHING IN THERE, BUT MY RECOLLECTION IS THAT THEY WERE TALKING ABOUT HIS GENERAL, FOR LACK OF A BETTER WORD, THE HOLE IN HIS BRAIN, AND THAT HE COULD BE IMPULSIVE AND HE COULD HAVE A LACK OF JUDGMENT.

DID HE HAVE -- IS THIS --

HE HAD MENINGITIS.

HE HAD MENINGITIS, ALSO.

HE HAD A DOCUMENTED HEAD SQLIR, AND HE HAD A -- INJURY, AND HE HAD A POSITIVE MRI, SHOWING ATROPHY OF THE RIGHT FRONTAL LOBE.

YES.

OBJECTIVE EVIDENCE OF BRAIN DAMAGE.

YES. 1/16 OF THAT RIGHT FRONTAL LOBE. HOWEVER, IF YOU LOOK AT HIS ACTIONS, YOU WILL FIND THAT HE WAS NOT IMPULSIVE THAT NIGHT AND HE DID THOUGHT HAVE -- AND HE DID NOT HAVE IMPAIRED JUDGMENT. THE ABORTING OF ONE ROBBERY SITE AND THE CHOOSING OF A

SECOND. THE DECISION TO SEND IN THE TWO DEFENDANTS, MR. BRYANT AND HIS CODEFENDANT, INTO THE MARKET, BECAUSE THEY WERE NOT KNOWN, AND THEN THE DECISION TO SHOOT MR. ANDRE, IN ORDER TO GET AWAY, SHOWS THAT MR. BRYANT KNEW WHAT HE WAS DOING AND HAD THE JUDGMENT AND ABILITY TO GO THROUGH WITH HIS CRIME. IF THERE AREN'T ANY OTHER QUESTIONS ON THE NEUROLOGICAL IMPAIRMENT, I WILL DISCUSS PROPORTIONALITY. THIS CASE IS PROPORTIONAL. MR. BRYANT HAS THREE STATUTORY AGGRAVATORS THAT WERE FOUND. ONE IS A PRIOR VIOLENT FELONY, WHICH INCLUDED A ROBBERY WITH A WEAPON, AN AGGRAVATED BATTERY, AND A SEXUAL BATTERY.

WHICH ONE WAS THE CONTEMPORANEOUS FELONY. THE ROBBERY WITH A WEAPON?

NO. ALL THREE --

HE HE HAD A PRIOR, PRIOR TO THIS INCIDENT?

YES. THOSE THREE HAD NOTHING TO DO WITH THIS PARTICULAR CRY. THEN WE HAD THE FELONY MURDER AND PECUNIARY GAIN, AND THAT DEALT WITH THE INSTANT ROBBERY.

DOES THAT HAVE TO DO WITH THE FACT THAT THEY WERE PRIOR VIOLENT FELONIES, HAVE SOMETHING TO DO WITH OTHER CASES RELEVANT TO LIFE. IN OTHER WORDS THERE ARE SOME CASES, IF THIS WERE TO OCCUR, I WOULD SAY, ROBBERY GONE BAD, THAT THERE ARE NO OTHER PRIOR AGGRAVATORS, LIKE PRIOR VIOLENT FELONIES, THAT THAT IS DIFFERENT THAN WHERE THERE HAS BEEN FOUND TO BE PRIOR ACTS OF VIOLENCE?

WELL, THIS COURT HAS ALWAYS SAID THAT A PRIOR VIOLENT FELONY IS A GRAVE AGGRAVATOR. IT IS A GREAT AGGRAVATOR, AND IT, CERTAINLY, SHOWS THAT THIS DEFENDANT'S ACTIONS, HE HAD IS A -- HE IS A DANGEROUS INDIVIDUAL. HE COMMITS CRIMES, AND HE CONTINUES TO COMMIT CRIMES, EVEN THOUGH HE HAS BEEN INCARCERATED AND SUPPOSEDLY REHABILITATED, SO THAT IS A STRONG AGO RIGHT OR, AND IF -- AGGRAVATOR, AND EVEN IF YOU FIND THAT NEUROLOGICAL IMPAIRMENT COULD BE -- SHOULD HAVE BEEN FOUND OR COULD HAVE BEEN FOUND, THIS COURT CAN WEIGH THAT AND LOOK AT THE FACT THAT THERE WAS A PRIOR VIOLENT FELONY. THAT THERE WAS THE INSTANT ROBBERY OR PECUNIARY GAIN AGGRAVATOR AND, ALSO, THE FACT THAT THE CRIME WAS COMMITTED IN ORDER TO AVOID ARREST. THAT WAS A SPECIFIC FINDING BY THE TRIAL COURT, THAT THE SHOTS WERE FIRED INTO MR. ANDRE, THREE SHOTS, WITH A VERY, VERY LARGE WEAPON, IN ORDER TO ESCAPE THIS CRIME. SO WE HAVE THREE STRONG -- WE HAVE THREE AGGRAVATORS, ONE OF WHICH THIS COURT HAS FOUND TO BE VERY STRONG, AND WE HAVE ONE MITIGATOR, WHICH IS REMORSE, AND THAT WAS GIVEN VERY LITTLE WEIGHT, BASED ON THE ACTIONS OF MR. BRYANT. IN -- HE CONFESSED TO THE CRIME. HE EXPLAINED HIS ACTIONS AND, THEN, CAME BACK TO SAY THAT THE CONFESSION WAS COERCED, SO HIS -- THE REMORSE, WELL, WHILE THE TRIAL COURT FOUND IT, IT SAID THAT IT WAS WORTH VERY LITTLE WEIGHT. GIVEN THE AGGRAVATORS AND MITIGATORS IN THIS CASE, I WOULD POINT THE COURT TO FREEMAN, CLARK, AND MOORE, ALL OF WHICH ARE CITED IN THE STATE'S BRIEF, TO SAY THAT THIS CASE, REALLY, IS PROPORTIONALLY, THAT THE DEATH PENALTY IS PROPORTIONALLY WARRANTED.

BUT ABSENT THOSE AGGRAVATORS THAT YOU JUST MENTIONED, BASICALLY YOU HAVE A ROBBERY GONE BAD. IS THAT WHAT WE HAVE? DO YOU AGREE?

ABS THE -- ABSENT THE PRIOR VIOLENT FELONY?

THE AGGRAVATORS. I AM SETTING THOSE ASIDE FOR A MOMENT, BUT YOU HAVE A ROBBERY THAT HAS GONE BAD, AND ACCORDING TO THE DEFENDANT'S TESTIMONY, HE SHOT THE PERSON, BECAUSE THE VICTIM GRABBED A GUN, AND THEY GOT TO TUSSLING OVER THE GUN. WAS THERE EVIDENCE CONTRARY TO THAT?

WELL, THAT IS THE BEST SPIN THAT THE DEFENSE COULD PUT ON IT AT THIS POINT. THE DEFENDANT'S TESTIMONY WAS THAT HE SHOT THE VICTIM IN ORDER TO ESCAPE, NOT THAT THE DEFENDANT EVER GOT THE GUN, THEY WERE STRUGGLING FOR A GUN. THE DEFENDANT KNEW IT WAS EITHER HIM OR ME. GOT CONTROL OF THE GUN AND PUT THREE BULLETS IN. MR. ANDRE, FROM A .357 MAGNUM, AND SAID I KNOW HE IS DEAD, BECAUSE I SHOT HIM WITH A .357 MAGNUM. IT WAS HIS INTENT TO COMMIT AS GRAVE AN INJURY AS POSSIBLE, IN ORDER TO LEAVE THE SCENE.

WELL THAT, IS INCONSISTENT, ISN'T IT, WITH WHAT HE TOLD HIS GIRLFRIEND, DIRECTLY AFTER IT, THAT I WAS IN THIS ROBBERY, AND I AM SORRY THAT IT HAPPENED. I HAD TO SHOOT THE MAN, BECAUSE HE GOT TO STRUGGLING WITH ME OVER THE GUN. DID THE STATE HAVE SOMETHING CONTRARY TO THAT?

THE DEFENDANT'S OWN CONFESSION TO THE POLICE OFFICERS, UNDER OATH.

WELL, WASN'T THAT WHAT HE SAID IN HIS CONFESSION?

NO. HE SAID THAT MR. ANDRE CONTINUED TO STRUGGLE. HE SHOT HIM IN THE STOMACH, POINT-BLANK RANGE, WITH A .357 MAGNUM. HE, THEN, SHOT HIM, I GUESS IT WAS TOWARDS THE BACK OR THROUGH THE ARM AND INTO THE SIDE AND THEN A THIRD TIME, AND EVEN THEN, MR. ANDRE IS CONTINUING TO STRUGGLE, AND ANOTHER POINT IS, AS THEY ARE STRUGGLING, WHAT THE DEFENDANT IS ASKING HIS CO-DEFENDANT TO DO IS SHOOT MR. ANDRE. HE IS CALLING TO HIS COPERPETRATOR, WHO, ALSO, HAS A.38, TO SHOOT MR. ANDRE. THE CO-DEFENDANT DOESN'T. IT IS MR. BRYANT WHO EVENTUALLY GETS FULL CONTROL OF THE WEAPON AND PUTS THREE BULLETS INTO MR. ANDRE. SO THAT SHOWS PLANNING. THAT SHOWS NO IMPULSIVITY. HE KNEW EXACTLY WHAT HE WAS DOING AND WHY HE WAS DOING IT. HE WANTED TO EXTRICATE HIMSELF FROM THAT SITUATION, FROM THE ROBBERY, FROM THE CRIME, SO THAT HE COULD GET AWAY, AND THE COURT WILL, ALSO, RECALL THAT THERE WAS A MASK THAT WAS FOUND AT THE SCENE, AND THE DEFENDANT, AFTER HE COMMITTED THIS CRIME, CALLED, PERIODICALLY, THE DEPARTMENT OF CORRECTIONS OR THE SHERIFF'S OFFICE, TO FIND OUT IF THERE WERE ANY WARRANTS OUT FOR HIS ARREST. ALL OF THOSE THINGS SHOW THAT MR. BRYANT KNEW WHAT HE WAS DOING AND THE COMMISSION OF THE CRIME ISN'T JUST A ROBBERY GONE BAD AND SHOULD BE DISMISSED AS SUCH.

THE AVOID-ARREST AGGRAVATOR IS NOT BEING CHALLENGED ON APPEAL?

NONE OF THE AGGRAVATORS ARE CHALENGEDZ.

I HAVEN'T SEEN WHERE YOU HAVE THE STRUGGLE AND I GUESS SOMEONE IS ARGUING SELF-DEFENSE THAT, THAT IS CONSIDERED TO BE AN AVOID-ARREST AGGRAVATOR.

WELL, MR. ANDRE IS HOLDING ON TO HIM. MR. BRYANT IS TRYING TO ESCAPE THE SITUATION. AND THE FACT THAT HE SHOT, IN ORDER TO ESCAPE, SHOULD NOT BE ELEVATED TO THE LEVEL OF SELF-DEFENSE. HE PUT HIMSELF IN THAT SITUATION. MR. BRYANT BROUGHT THE GUN TO THE MARKET. MR. BRYANT POINTED THE GUN AT MR. ANDRE. MR. BRYANT STRUGGLED WITH MR. ANDRE.

SO, UNDER THAT -- I AM NOT -- I AM JUST SORT OF WONDERING, THEN, I GUESS, THEN, ALL THE ROBBERY-GONE-BAD CASES WOULD, REALLY, FALL INTO THAT AGGRAVATOR HAVING BEENING THERE. BECAUSE IT STARTED OUT AS A SHOOTING. IT ISN'T INTENDED BUT AS A RESULT OF SOMETHING THAT HAS BEEN DONE DURING THE ROBBERY, BUT THEY ARE STRUGGLING AND THEY END UP SHOOTING THE VICTIM.

I CAN'T REALLY SPEAK TO THE OTHER HYPOTHETICAL SITUATION THAT IS MIGHT OCCUR, BUT, DEPENDING ON THE SITUATION, I THINK AN ARGUMENT COULD BE MADE THAT IT WOULD BE TO

AVOID ARREST, DEPENDING ON THE DIFFERENT CIRCUMSTANCES. MAYBE NOT ALL BUT CERTAINLY SEVERAL. UNLESS THE COURT HAS ANY OTHER QUESTIONS, I WOULD ASK THE COURT TO AFFIRM BOTH THE CONVICTION AND SENTENCE.

THANK YOU, MISS CAMPBELL.

MR. DUBNER.

I JUST WANT TO MAKE SURE THE COURT IS CLEAR ON THE SERIES OF EVENS REGARDING SHACKLING. IT WAS NOT UNTIL AFTER ALL THE EXPERTS HAD TESTIFIED, REGARDING COMPETENCY, THAT JUDGE MOUNTS ANNOUNCED THAT THE APPELLANT WAS GOING TO BE RESTRAINED. NONE OF THOSE ISSUES -- IT WASN'T AS IF JUDGE MOUNT SAID I AM THINKING OF RESTRAINING HIM OR I AM GOING TO RESTRAIN HIM. LET'S PUT ON THE EXPERT TESTIMONY THAT THEY HAVE. IT WAS THE SAME DAY, BUFF AFTER THE EXPERTS HAD ALREADY -- BUT AFTER THE EXPERTS HAD ALREADY TESTIFIED, THAT JUDGE MOUNTS SAID WE ARE GOING TO RESTRAIN HIM.

WAS THIS AFTER THE START OF TRIAL?

IT WAS AFTER THE START OF TRIAL.

WAS THERE SOMETHING THAT SHOULD HAVE BEEN DONE TO MEASURE THAT STANDPOINT, BEFORE THE START OF TRIAL?

IT WAS CONTROVERSY ON THE HEARING, WHETHER IT WAS NOT ON THE SHAQ LINK ISSUE. IT WAS AN EVIDENTIARY HEARING ON COMPETENCY. SHACKLING WAS NOT MENTIONED UNTIL AFTERWARDS, AND THE AFTERWARDS TESTIMONY, WHERE EXPERT TESTIMONY COULD AND SHOULD HAVE BEEN PRESENTED, BOTH WITH THE NEED FOR SHACKLING AND THE NEED FOR THE LEAST RESTRICTIVE ALTERNATIVE, WAS DENIED REPEAT I HAVE ALTERNATIVE REQUESTS. AS TO THE MITIGATOR, THE NEUROLOGICAL IMPAIRMENT MITIGATOR, I WOULD SUGGEST THAT THE COURT, IN EFFECT, WAS ADDRESSING THE STATUTORY MITIGATOR, NOT THE NONSTATUTORY MITIGATOR, AND THERE WAS A QUESTION -- I DON'T REMEMBER FROM WHICH JUSTICE -- ABOUT WHETHER OR NOT THIS WAS AN ISSUE THAT WAS RAISED, WHETHER THERE WERE OTHER ISSUES, OTHER THAN THE CRIMINAL OF THAT NIGHT, WERE RAISED BY THE EXPERTS. IT WAS TESTIMONY THAT THERE WAS AN IMPACT ON MR. BRYANT'S IQ, AS A RESULT OF THE BLOW TO THE HEAD, AND THE ATROPHY, THERE WAS TESTIMONY WITH REGARD TO HOW IT CHANGED HIS LIFE, HOW IT CHANGED HIS CRIMINAL IN THE PAST. ALL OF THOSE FACTORS SHOULD HAVE BEEN CONSIDERED BY THE TRIAL COURT, IN MAKING THE DETERMINATION AS TO WHETHER OR NOT THE NONSTATUTORY MITIGATOR THAT WAS RAISED, ABOUT HIS NEUROLOGICAL IMPAIRMENT --

WHEN DID HE HAVE MEN I THINKITE IS?

AS A -- MEN I THINKITE IS?

AS A CHILD. I DON'T REMEMBER THE AGE.

WAS THERE A PARTICULAR HEAD INJURY?

THERE WAS A HEAD INJURY.

WAS HE HOSPITALIZED?

HE WAS HOSPITALIZED. JUDGE MOUNTS WAS SHOWN THAT THERE WAS AN EXTERNAL INJURY. THERE WAS AN MRI THAT RELATED TO THE EXTERNAL INJURY, WHICH SHOWED THE ATROPHY OF THE BRAIN, AND THERE WAS TESTIMONY THAT MR. BRYANT WAS HIT WITH A PIPE IN THAT AREA. SO THAT WAS UNCONTROVERTED THAT THAT WAS THERE. THE STATE DID NOT ATTEMPT TO

CONTROVERT THAT IN ANY WAY OR THE IMPACT, THE NONSTATUTORY MITIGATING IMPACT. LOWER IQ, EFFECT ON HIS LIFE, EFFECT ON PRIOR CRIMINAL, ALL OF WHICH WOULD HAVE A SIGNIFICANT ROLE IN MITIGATION. INSTEAD THE COURT FOCUSED ON THE CRIME THAT NIGHT, THE IMPACT OF THE NEUROLOGICAL IMPAIRMENT ON THAT CRIME, AND I WOULD SUGGEST THAT THE COURT ERRED IN NOT EXERCISING ITS DISCRETION NOT EVEN ATTEMPTING TO EXERCISE ITS DISKREINGS. WE ARE ASKING FOR -- DISCRETION. WE ARE ASKING FOR REVERSAL AND A NEW TRIAL, WITH REGARD TO THE SHACKLING ISSUE AND EITHER A REDUCTION TO A LIFE SENTENCE OR A NEW SENTENCING.

WHAT WAS THE EVIDENCE WITH REGARD TO THE IQ TESTIMONY? OR THE TESTIMONY?

THERE WAS AN ESTIMATE OF A 70 IQ. THERE WAS SOME TESTING WHICH INDICATED A HIGHER IQ OF, I BELIEVE, ABOUT 80, AND WE ARE NOT RAISING THE ISSUE THAT HE WAS -- A MITIGATOR THAT HE WAS OF SUCH LOW IQ THAT HE COULD NOT FORM INTENT OR ANYTHING. THE POINT IS THAT -- THE QUESTION WAS HIS THERE AN IMPACT? WAS THEIR TEST MONEY OF AN IMPACT OF THIS BLOW TO THE HEAD, THE ATROPHY OF THE BRAIN, AND THERE CLEARLY WAS. IT HAD NOTHING TO DO WITH THE CRIMINAL INVOLVED ON THE NIGHT IN QUESTION. IF THE COURT HAS NO FURTHER QUESTIONS, THANK YOU.

THANK YOU. THE COURT WILL BE BE IN RECESS. THE MARSHAL: PLEASE RISE.