

>> OUR NEXT CASE IS MATTHEWS
VERSUS STATE OF FLORIDA.
>> GOOD MORNING, MAY IT PLEASE
THE COURT, COUNSEL.
MY NAME IS PAULA COFFMAN.
I APPEAR BEFORE YOU THIS
MORNING ON BEHALF OF DOUGLAS
BLAINE MATTHEWS
IN HIS DIRECT APPEAL FROM A
CONVICTION OF FIRST-DEGREE
MURDER AND SENTENCE OF DEATH.
I WOULD LIKE TO RESERVE 10
MINUTES FOR REBUTTAL.
I WOULD ALSO LIKE TO SPEND MOST
OF MY TIME THIS MORNING
DISCUSSING PROPORTIONALITY IN
THIS CASE. HOWEVER I WOULD LIKE
TO PRESENT A FEW BRIEF
COMMENTS, A PROFFER, IF YOU
WILL, CONCERNING THE ISSUES
RAISED IN THE AMENDED INITIAL
BRIEF, ONE AND TWO, PERTAINING
THE CONSTITUTIONALITY OF THE
HEINOUS, ATROCIOUS OR
CRUEL STATUTORY AGGRAVATING
FACTOR AND THE FELONY MURDER
AGGRAVATOR.
>> ON THAT YOU DO NOT CHALLENGE
THE SUFFICIENCY OF THE EVIDENCE
IN THIS CASE AS TO HAC, DO YOU?
>> NO, MA'AM.
I'D LIKE TO START BY INDICATING
THAT WE DO ACKNOWLEDGE THE
CONSTRAINTS UPON THE COURT WITH
REGARD TO ADHERENCE TO
PRECEDENT.
BUT I WOULD POINT OUT THAT THE
PRETRIAL MOTIONS IN THIS CASE
RECEIVED VERY LITTLE REAL
CONSIDERATION BY THE LOWER
COURT.
IN MOST CASES THE PROSECUTOR
SIMPLY ASKED THAT THE MOTIONS
BE DENIED AND IN MOST IN JUST
THAT FEW WORDS.
>> I DON'T UNDERSTAND IF THERE
WERE A CASE WHERE A JURY
INSTRUCTION MIGHT BE OVERLY
BROAD BECAUSE IT MIGHT INCLUDE
CASES THAT SHOULDN'T BE
CONSIDERED HEINOUS, ATROCIOUS,
OR CRUEL NEWS, ATROCIOUS AND
CRUEL, CHALLENGING THE
SUFFICIENCY OF THE EVIDENCE IN
THIS CASE THERE IS AMPLE
EVIDENCE TO SUPPORT HAC UNDER
ANY DEFINITION OF THE TERM.

SO I APPRECIATE, IF YOU'RE DOING FOR SOMETHING IN THE FUTURE, FINE, BUT IT SEEMS LIKE IF YOU HAVE VALUABLE TIME TO SPEND DOESN'T SEEM THIS ISSUE, IF, IT IS DEEMED PRESERVED BUT IT WOULD ALSO IN THIS CASE BE, WOULDN'T BE HARMLESS ERROR BEYOND A REASONABLE DOUBT WITH ALL THE OTHER AGGRAVATORS?
>> IF I COULD ADDRESS THAT VERY BRIEFLY.

THE TERMS, HEINOUS, ATROCIOUS OR CRUEL, HAVE BEEN DEFINED AND THIS COURT HAS HELD THAT THAT RENDERS THE STATUTE NOT VAGUE OR OVERBROAD.

I THINK THE PROBLEM HERE IS THE TERM ESPECIALLY.

IT CALLS FOR A COMPARISON.

FOR EXAMPLE, IN THE COURT'S ORDER UNDER REVIEW THE COURT ASSIGNED EXTREMELY, AND I DO THE QUOTES IN THE AIR, EXTREMELY GREAT WEIGHT TO SOME OF THE FACTORS AND THAT WOULD BE A COMPARISON WITH THE OTHER FACTORS THAT THE COURT HAVE FOUND.

>> YOU ACKNOWLEDGED THIS COURT HAS IN THE PAST UPHELD THE CONSTITUTIONALITY OF HEINOUS ATROCIOUS AND CRUEL AND THE INSTRUCTION THAT GOES WITH IT, CORRECT?

>> YES.

>> SO IN THE PRIOR CASES WE ADDRESSED THE ESPECIALLY PART OF IT OR EXTREME, THE TERM THAT YOU ARE CONCERNED WITH NOW?

>> I BELIEVE THE COURT PROBABLY HAS.

THE PROBLEM IS THE JURY HAS NO GUIDANCE HERE.

THE COURT MAY COMPARE THIS CASE WITH OTHER CASES WITH THE AUTHORITY.

>> THROW COMMON SENSE OUT ONCE WE GO TO A JURY PROCEEDING? SEEMS TO ME THAT THE ENGLISH LANGUAGE, COMMON SENSE, WHAT THE AMERICAN PEOPLE WOULD SEE AS CONSCIENCELESS, PITILESS, UNNECESSARILY TORTUOUS, ARE WORDS THAT ARE USED IN THE ENGLISH LANGUAGE AND IF WE'RE DOWN TO THE POINT THAT EACH

TRIAL THAT GOES ON MUST HAVE
SCIENTIFIC PRECISION
FOR EACH LETTER OF THE WORD IT
SEEMS TO ME WE'RE JUST THROWING
OUT THE REASON WE EVEN HAVE A
COURT SYSTEM.

>> YOUR HONOR, I DON'T KNOW
WHAT OTHER MURDERS A JURY COULD
COMPARE THIS CASE TO.
THEY'RE GIVEN NO GUIDANCE.
>> YOU'RE COMPARING IT TO WHAT
SOMEONE HAS DONE TO ANOTHER
HUMAN.

>> I MEAN ISN'T THE PURPOSE OF
THE ESPECIALLY HEINOUS,
ATROCIOUS AND CRUEL THE MURDERS
WE SEE UP HERE ARE ALL CRUEL,
THEY'RE MOST OF THEM ARE OR ALL
OF THEM ARE UNNECESSARY.
WHAT WE'RE REALLY LOOKING AT
WHAT DISTINGUISHES THIS MURDER
FROM THE, ANY OTHER
FIRST-DEGREE MURDER AND THIS,
AS YOU SAID, YOU'VE CONCEDED
THAT THERE'S COMPETENT
SUBSTANTIAL EVIDENCE THAT THERE
WAS THIS MURDER QUALIFIES FOR
THAT AGGRAVATOR.

>> TWO BRIEF COMMENTS AND THEN
I'LL MOVE ON TO ISSUE TWO.
SEEMS AS THOUGH EVERYBODY ON
DEATH ROW HAS COMMITTED A EHAC
MURDER.

I SUGGEST THAT MAY BE A CHICKEN
OR EGG SITUATION.
WE DON'T KNOW WHICH
CIRCUMSTANCES THE JURY FOUND IN
THIS CASE OR ANY OTHER DEATH
PENALTY CASE IN THIS COURT OR
WHAT WEIGHT THE JURY BE A
DESCRIBED TO THOSE
CIRCUMSTANCES.

THEY MAY HAVE REJECTED HAC, WE
JUST DON'T KNOW.

WE WOULD ASSERT THERE IS NO
CONSISTENTLY APPLIED STANDARD.
THERE IS INCONSISTENCY FROM
CASE TO CASE WITH RESPECT TO
THIS STATUTORY AGGRAVATOR AND
REASON FROM THE DECISION TO
DECISION IN THE SAME CASE.

>> NOW YOU'RE RAISING AN ISSUE,
SHOULD THERE BE SEPARATE
FINDINGS AND AS YOU KNOW I
SUPPORT THAT.

I THINK THE U.S. SUPREME COURT
JURISPRUDENCE BUT THE MAJORITY

OF THIS COURT HAS NOT.
I DIDN'T THINK YOU RAISED THAT
PARTICULAR ISSUE THERE SHOULD
HAVE BEEN SEPARATE JURY FINDING
OF HAC.

ARE YOU RAISING THAT IN THIS
CASE?

>> I BELIEVE WE RAISED IN
EITHER POINT 3 OR 4 WHICH I
DON'T INTEND TO SPEND MUCH TIME
ON THIS MORNING.

MOVING NOW TO ISSUE TWO, THE
FELONY MURDER AGGRAVATOR, I
WOULD SIMPLY SAY, THIS
CIRCUMSTANCE DOES NOT LIMIT THE
CLASS OF INDIVIDUALS WHO ARE
ELIGIBLE FOR THE DEATH PENALTY.
IT ACTUALLY EXPANDS IT AND IT
CREATES AN UNLAWFUL PRESUMPTION
THAT DEATH IS AN APPROPRIATE
SENTENCE IN THE LEAST
AGGRAVATED FORM OF MURDER WHERE
THERE IS NO PREMEDITATION.

I WOULD THEN LIKE TO MOVE TO
THE PROPORTIONALITY ARGUMENT.

>> I JUST WANT TO MAKE SURE
ABOUT SOMETHING BECAUSE YOU, ON
THE GUILT PHASE AND PENALTY
PHASE THE ONLY ISSUES YOU'VE
RAISED ARE ISSUES THAT HAVE
BEEN RAISED AND REJECTED.
SO WHEN I WAS LOOKING AT THIS
IT SEEMED A LITTLE BIT LIKE,
THE APPELLATE COURTS CALL THEM
ANDERS BRIEF, WHERE THERE IS
REALLY NOT MUCH TO RAISE SO YOU
RAISE, YOU HAVE THOROUGHLY
EXAMINED THIS RECORD AND THERE
WERE NO EVIDENTIARY ISSUES,
THERE WAS NOTHING ELSE TO RAISE
ABOUT IN THE GUILT OR PENALTY
PHASE?

>> I THOROUGHLY EXAMINED THIS
RECORD TWICE AND I RAISED WHAT
I THOUGHT WERE THE BEST ISSUES
KNOWING THAT THIS COURT WOULD
INDEPENDENTLY REVIEW
SUFFICIENCY OF THE EVIDENCE AND
PROPORTIONALITY.

HOWEVER WE DID FILE A REPLY
BRIEF CONTAINING A
PROPORTIONALITY ARGUMENT.

>> BUT YOU DIDN'T EVEN RAISE
PROPORTIONALITY IN THE INITIAL
BRIEF?

>> THAT WAS A TACTICAL
DECISION, JUDGE.

>> WHAT TACTIC IS AVAILABLE TO NOT PRESENT AN ARGUMENT TO A COURT?

I'M MISSING SOMETHING HERE. I UNDERSTAND TRIAL STRATEGIES BUT IN THE APPELLATE ARENA I HAVE NOT REALLY HEARD OF A STRATEGY OF NOT PRESENTING A GOOD ARGUMENT TO A COURT FOR TACTICAL REASONS.

>> IT WOULD BE COMPARABLE TO A TRIAL ATTORNEY WAVING THE RIGHT TO OPENING STATEMENT AND WAITING TO HEAR WHAT THE STATE SAID AND RESERVING ITS ARGUMENT FOR THE BEGINNING OF ITS CASE IN CHIEF.

>> THERE WERE TWO MURDERS IN THIS CASE, CORRECT?

>> YES.

>> THERE WAS A LOT OF BLOOD EVIDENCE AND THERE WAS NO ISSUES AT ALL AT THE TRIAL COURT LEVEL CONCERNING THE DNA OR ANY OF THAT?

>> IT WAS PRETTY MUCH UNASSAILABLE.

>> I'M SORRY?

>> IT WAS PRETTY MUCH UNASSAILABLE EVIDENCE.

>> WAS THERE ANY CONFESSION OF ANY TYPE?

>> MR. MATTHEWS DID MAKE A STATEMENT.

IT WAS GOING TO BE ADMITTED, A REDACTED VERSION. THE STATE CHOSE NOT TO USE THAT AND THEN THE DEFENSE INTRODUCED THAT STATEMENT.

FOUR AGGRAVATORS FOUND. EXTREMELY GREAT WEIGHT WAS ASSIGNED TO HAC.

GREAT WEIGHT WAS ASSIGNED TO THE PRIOR VIOLENT FELONY AGGRAVATOR.

SIGNIFICANT WEIGHT WAS ASSIGNED TO THE FELONY MURDER AGGRAVATOR WHEN COMBINED IN CONJUNCTION WITH PECUNIARY GAIN AND SLIGHT WEIGHT WAS AFFORDED THE COCAINE POSSESSION WHILE ON PROBATION WHICH I WOULD ASSERT IS AN INDICATION OF THE DEFENDANT'S SUBSTANCE ABUSE.

>> ARE YOU QUESTIONING THE WEIGHT THAT WAS GIVEN TO THESE AGGRAVATORS?

>> FOR THE REASONS THAT, THAT WE'VE ALREADY ARGUED WITH THE IMPEDIMENTS TO HAC, I WOULD SAY YES.

>> IF YOU SAY A PARTICULAR AGGRAVATOR IT WAS IMPROPER TO WEIGH GREATLY, GOT TO BE AN ARGUMENT ON THAT.

YOU'RE AN APPELLATE LAWYER. YOU'RE, AT LEAST YOU'RE A APPELLATE LAWYER HERE.

WE CAN'T JUST GO AND FIND THE ISSUES AND THEN YOU SAY THEY'RE SUBSUMED UNDER PROPORTIONALITY, THAT YOU DIDN'T EVEN RAISE ON DIRECT APPEAL

>> THAT WAS I WAS ABOUT TO SAY. THIS COURT HAS TO ANALYZE THE NATURE AND WEIGHT OF UNDERLYING FACTS TO DETERMINE WHETHER THIS IS A ESPECIALLY AGGRAVATED MURDER WHERE THE AGGRAVATION IS NOT OUTWEIGHED BY THE MITIGATION.

>> YEAH. AND HE, MR. WAGNER, WAS FLEEING THE APARTMENT.

HE SAW MATTHEWS ON TOP OF MR. ZOELLER WHO WAS BEGGING FOR HELP, REPEATEDLY STABBING, MR. ZOELLER.

THERE WERE TWO VICTIMS.

>> THERE WAS A --

>> HE GOT THE DEATH PENALTY FOR ONE BUT THERE WAS ANOTHER MURDER AT THE SAME TIME.

>> YES.

>> PLUS HE HAD, WHAT WAS HIS, HE HAD PRIOR VIOLENT FELONIES?

>> YES.

>> AND HE WAS ON FELONY PROBATION?

>> FOR COCAINE POSSESSION.

>> WHICH WAS GIVEN LESS WEIGHT.

SO YOU'RE ASKING ON PROPORTIONALITY, WHAT WAS THE, WHAT WAS THE MITIGATION THAT IS SO COMPELLING IN THIS CASE?

>> WELL THE COURT FOUND TWO STATUTORY MENTAL HEALTH MITIGATORS, EXTREME EMOTIONAL DISTRESS AND CAPACITY TO APPRECIATE THE CRIMINALITY OF CONDUCT OR TO CONFIRM CONDUCT TO THE REQUIREMENTS OF LAW.

HOWEVER THE COURT ASCRIBED OR ASSIGNED VERY LITTLE WEIGHT.

>> WHY WAS THAT?
>> WELL, WE DON'T REALLY KNOW.
IF EHAC IS ONE OF THE WEIGHTIEST
AGGRAVATORS THEN THIS
COURT HAS SAID THAT SUBSTANTIAL
AND UNCONTROVERTED EVIDENCE OF
MENTAL ILLNESS IS AMONG THE
WEIGHTIEST AND COMPELLING
LITIGATION.
IT IS IMPOSSIBLE TO RECONCILE
THE GREAT WEIGHT ACCORDED
NONSTATUTORY MENTAL HEALTH
AGGRAVATORS WITH THE LITTLE
WEIGHT GIVEN TO THE STATUTORY
MITIGATORS.
>> IS THIS THE CASE WHERE THE
JUDGE GAVE A REASON OR AM I
CONFUSING THIS ONE WITH ANOTHER ONE,
SPECIFICALLY IN THE ORDER SAID
IT IS VERY MARGINAL EVIDENCE TO
FIND THESE?
>> THERE WAS SOMETHING TO THAT
EFFECT.
HOWEVER, THE COURT'S ORDER
MAKES NO MENTION OF THE
ANALYSIS CONCERNING THE
DEFENDANT'S ABILITY TO CONFORM
HIS CONDUCT TO THE REQUIREMENTS
OF LAW.
THE COURT DISMISSES FINDING
LITTLE WEIGHT, DISMISSES THE
IDEA THAT THE DEFENDANT'S
CAPACITY TO APPRECIATE THE
CRIMINALITY OF HIS CONDUCT
BASED ON THE EVIDENCE THAT WAS
EDUCED AT TRIAL BUT THERE IS
ABSOLUTELY NO MENTION OF THAT
OTHER COMPONENT OF THIS
STATUTORY MITIGATOR.
>> DIDN'T HE SAY THE TESTIMONY
FROM THE EXPERT WITNESSES AND
FAMILY MEMBERS WAS VERY WEAK?
>> YES.
>> OKAY.
SO TELL ME WHAT MAKES THE,
LET'S ASSUME YOU'RE, LET'S TAKE
AWAY THE JUDGE'S SENTENCING
ORDER.
WHAT IS COMPELLING ABOUT WHAT
HAPPENED AT THE TIME OF THIS
MURDER, THAT, HOW OLD WAS THIS
DEFENDANT, FIRST OF ALL?
HOW OLD WAS HE?
>> HE IS NOT A TEENAGER.
HE IS IN HIS 20s I BELIEVE.
28, 30.
>> YOU DON'T KNOW --

>> I'M SORRY, I HAVE FORGOTTEN.
>> IMPORTANT, ISN'T IT WHEN
LOOKING AT SOMEONE WITH ISSUES
IN CHILDHOOD WHETHER THEY'RE
18, 28 OR 38?

IN ANY EVENT WHAT IS SO
COMPELLING ABOUT THE MITIGATION
IN THIS CASE ABOUT WHAT
HAPPENED AT THE TIME OF THIS
MURDER?

>> THAT'S WHAT WE'RE TALKING
ABOUT WITH THESE STATUTORY
MITIGATORS?

>> THE COURT RECOGNIZED THAT,
MR. MATTHEW'S MENTAL ILLNESS
ATTRIBUTED TO THESE CRIMES
OTHERWISE IT WOULD NOT HAVE
FOUND AND ASSIGNED GREAT WEIGHT
TO MENTAL HEALTH --

>> I'M ASKING YOU TO TELL US
HOW THE MENTAL HEALTH
MITIGATION PRESENTED IN THIS
CASE SPECIFICALLY AND WAS
COMPELLING AND THE COURT SHOULD
SEE WHAT HAPPENED IN THIS CASE
A DEFENDANT WITH ALMOST REALLY
NO ABILITY TO CONTROL WHAT HE
WAS DOING AT THE TIME OF THOSE
TWO MURDERS?

>> THE HISTORY OF MENTAL HEALTH
PROBLEMS IS UNCONTROVERTED IN
THIS CASE.

DOUGLAS BLAINE MATTHEWS HAS HAD
IMPULSE CONTROL PROBLEMS AND
MENTAL HEALTH ISSUES SINCE HE
WAS A CHILD.

HE WAS IN TREATMENT FOR 10
YEARS FROM 1994 TO 2005.

HE ALSO HAD A SIGNIFICANT
SUBSTANCE ABUSE PROBLEM AND WAS
USING HALLUCINOGENICS,
COCAINE AND MARIJUANA AT THE
TIME THESE CRIMES WERE
COMMITTED.

THERE WAS UNCONTROVERTED
HEAD INJURIES.

HE WAS BEATEN INTO
UNCONSCIOUSNESS WITH A BRICK
WHEN HE WAS A CHILD.

HE HAD BEHAVIORAL PROBLEMS AS A
CHILD WAS IN COUNSELING AND
GROUP HOMES.

HIS MOTHER WAS NOT ABLE TO
CONTROL HIM.

>> I JUST WANT TO STOP YOU
THERE.

YOU THEN KNOWING THERE WAS THIS

COMPELLING MITIGATION AND
THEREFORE THE COURT CAN
CONSIDER A SEPARATE ISSUE OF
WHETHER THE JUDGE ABUSED HIS
DISCRETION IN ASSIGNING VERY
LITTLE WEIGHT, MADE A DECISION
NOT TO RAISE THAT ISSUE ON
DIRECT APPEAL BECAUSE
PROPORTIONALITY IS COMPLETELY
DIFFERENT?

YOU MADE, YOU'RE SAYING YOU
MADE A DECISION NOT TO RAISE AN
ISSUE ABOUT WHETHER THERE WAS,
LITTLE WEIGHT WAS ERRONEOUSLY
FOUND?

>> YOUR HONOR, MY
READING OF THE CASES WHERE THIS
COURT HAS REVERSED A SENTENCE
OF DEATH AND COMMUTED A
DEFENDANT'S SENTENCE TO LIFE IS
DOING THE SAME EXACT ANALYSIS
THAT I BELIEVE I'M DOING NOW
UNDER A PROPORTIONALITY REVIEW.
IF I HAVE MADE AN ERROR IN
FAILING TO ASSIGN A SEPARATE
ISSUE NUMBER TO THIS ARGUMENT,
MR. MATTHEWS, AS LONG AS HE
REMAINS ON DEATH ROW WILL
HAVE A OPPORTUNITY TO CHALLENGE
MY PERFORMANCE AND IF I HAVE
BEEN INEFFECTIVE HE WILL GET
SOME RELIEF AND I APOLOGIZE TO
THIS COURT IF I'M, WHAT I'M
HEAR SOMETHING THAT I'M MAKING
AN ARGUMENT THAT FALLS OUTSIDE
THE ISSUE I HAVE RAISED.

>> NO.

I SIMPLY SAID YOU WERE TALKING
ABOUT THEY SHOULDN'T HAVE GIVEN
LITTLE WEIGHT AND YOU'RE GIVING
ALL THE REASONS BUT, YES, YOU
CAN RAISE THAT AS A SEPARATE
ISSUE.

IF THERE'S, AN ERRONEOUS
ASSIGNMENT OF WEIGHT THAT'S A
SEPARATE ISSUE.

>> IN ADDITION TO THE HEAD
INJURIES, WHICH ARE SUGGESTIVE
OF BRAIN DAMAGE WHEN YOU'RE
BLUDGEONED IN THE HEAD WITH A
BRICK UNTIL YOU'RE
UNCONSCIOUS --

>> IN THIS CASE, IS THAT ALL
THAT THERE IS, A SUGGESTION AND
NOT EXPERT TESTIMONY, MEDICAL
RECORDS, PSYCHO --
NEUROPSYCHOLOGICAL TESTING WITH

REGARD BRAIN INJURY?

>> ACTUALLY THERE WAS AN EXPERT AT THE PENALTY PHASE WHO DID THE NEUROTESTING.

>> IS THIS WHAT THE TRIAL JUDGE FOUND TO BE EXTREMELY WEAK? IS THAT WHAT THAT'S IN REFERENCE TO? OR, SHARE WITH US. YOU'RE MAKING THE ARGUMENT. I'M TRYING TO UNDERSTAND SO WE CAN SEE THE EVIDENCE THAT SUPPORTS THAT.

>> DESPITE THE SCHOOL RECORDS SHOWING EVIDENCE OF A CONDUCT DISORDER, THAT IS NOT EVEN MENTIONED IN THE COURT'S ORDER. THE BEHAVIOR PROBLEMS, THE HEAD INJURY AND THE SUBSTANTIAL SUBSTANCE ABUSE I WOULD ARGUE THE COURT CHOSE TO DETERMINE THAT THESE WERE NONSTATUTORY MITIGATORS THAT GO TO MENTAL STATUS.

SO, WE HAVE THE COURT ASCRIBING LITTLE WEIGHT TO THE STATUTORY MENTAL HEALTH MITIGATORS. AND THEN ASSIGNING SIGNIFICANT WEIGHT, GREAT WEIGHT, OR SOME WEIGHT TO A TOTAL OF 10, NONSTATUTORY MITIGATORS.

>> BUT WHEN YOU LOOK AT SOME OF THE EVIDENCE THAT WAS PRESENTED HERE, I BELIEVE I HAVE A PSYCHIATRIST THAT TALKED ABOUT HOW THIS GENTLEMAN COULD, HE KNEW RIGHT FROM WRONG. HE HAD THE ABILITY TO CONTROL HIS ACTIONS.

I MEAN, IF THAT IS THE CASE, THEN WHY, WHAT'S WRONG WITH WHAT THE TRIAL JUDGE, THE KIND OF WEIGHT THE TRIAL JUDGE GAVE THESE, IN LIGHT OF THAT KIND OF TESTIMONY?

>> WITH ALL DUE RESPECT THE COURT SPECIFICALLY FOUND THAT NO EVIDENCE HAD BEEN SHOWN THAT THE DEFENDANT DID NOT HAVE THE CAPACITY TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT.

THERE IS NO REFERENCE WHATSOEVER IN THE COURT'S ORDER TO ANY DETERMINATION MADE BY THE COURT TO THE DEFENDANT'S ABILITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW.

>> WAS THERE TESTIMONY TO THAT

EFFECT?

>> THE EVIDENCE THAT WAS
SUBMITTED HAD TO DO WITH THE
BEHAVIORAL PROBLEMS AS A CHILD.
THE COUNSELING, GROUP HOMES.
A REFERENCE TO CONDUCT
DISORDER.

AND THE FACT THAT THE DEFENDANT
WAS --

>> SO THERE WAS NO TESTIMONY
FROM ANYONE THAT SAID THAT HE
HAD THE ABILITY TO ABIDE BY THE
LAW AND NOT COMMIT THIS MURDER?

>> I CAN'T THINK OF WHO OFFERED
IT AT THE MOMENT.

I COULD BE MISTAKEN BUT I DON'T
RECALL.

IN ADDITION TO THE 10
CIRCUMSTANCES THAT WE BELIEVE
SHOULD HAVE BEEN CONSIDERED IN
CONJUNCTION WITH THE STATUTORY
MENTAL HEALTH MITIGATION THERE
WERE 28 OTHER FACTORS THAT THE
COURT PURPORTS TO HAVE GIVEN
SLIGHT WEIGHT TO.

>> YOU KNOW, OFTEN A DEFENDANT
WILL PRESENT A LOT OF
INFORMATION BUT WHEN YOU REALLY
GET DOWN TO IT CAN BE DISTILLED
INTO SOME BROAD CATEGORIES.

JUST SEEMS TO ME IN THIS CASE
THE TRIAL JUDGE AS OPPOSED TO
DISTILLING IT INTO SOME BROAD
CATEGORIES GAVE THE DEFENDANT,
REALLY THE BENEFIT OF THE DOUBT
AND ACTUALLY LISTED EACH AND
EVERYONE OF THOSE.

SO IT SEEMS TO ME GOT THE BEST
OF THE MITIGATION THAT WAS
PRESENTED.

>> PERHAPS WITH RESPECT TO THE
28 THAT WERE GIVEN SLIGHT
WEIGHT.

HOWEVER IT IS OUR CONTENTION
THAT THE 10 THAT STILL WERE
NONSTATUTORY SHOULD HAVE
OPINION RECOGNIZED AS
CONTRIBUTING TO ASCRIBING
GREATER WEIGHT TO THE STATUTORY
MENTAL HEALTH AGGRAVATORS.

>> THE ONE YOU'RE TALKING ABOUT
A LONG HISTORY OF MENTAL HEALTH
PROBLEMS AND THAT HE WAS
TREATED FROM 1994 THROUGH 2005.
NOW, AND THOSE ARE VALID
NONSTATUTORY MITIGATORS BUT FOR
THIS TO BE A VERY MITIGATED

CASE IN TERMS OF THE STATUTORY
MITIGATOR, SOMEBODY HAS TO TAKE
THAT, IN MY VIEW, NOT YOU, BUT
AN EXPERT, AND EXPLAIN HOW THE
MENTAL HEALTH HISTORY ISSUES
AND THE HEAD INJURY ALL
COMBINED ON THE NIGHT OF THIS
MURDER TO ESSENTIALLY CAUSE HIM
NOT TO BE ABLE TO CONTROL HIS
BEHAVIOR.

IT IS NOT A RIGHT FROM WRONG
BUT NOT TO CONTROL HIS
BEHAVIOR.

NOT THAT HE MIGHT HAVE IMPULSE
CONTROL PROBLEMS BUT, AND, WHO
IS, IF YOU SAID, IF YOU GO BACK
AND LOOK AT THIS PART OF THE
RECORD, THIS PSYCHIATRIST, THIS
PSYCHOLOGIST, WHO REALLY PUTS
IT IN THE WAY THAT YOU SAY IT
IS SO COMPELLING, ANY
REASONABLE PERSON WOULD
UNDERSTAND THAT THERE WAS ONLY
ONE WAY TO GO ON THIS,
EVALUATING THIS.

IS THERE ONE PERSON, IS THERE
ONE PSYCHIATRIST, PSYCHOLOGIST,
EXPERT, THAT HAS, WAS ABLE TO
PUT THAT TOGETHER?

>> DR. DANZINGER CHANGED HIS
EXPERT OPINION RIGHT BEFORE THE
PENALTY PHASE.

HE HAD INITIALLY EVALUATED THE
DEFENDANT AND HAD WRITTEN, RULE
OUT BIPOLAR DISORDER.

APPARENTLY SOME PEOPLE DON'T
UNDERSTAND WHAT THAT MEANS.

HE EXPLAINED THAT, THAT MEANT
TO HIM THAT HE WAS CONCERNED
THAT BIPOLAR DISORDER EXISTED
AND THAT HIS JOB WAS TO TRY TO
LOOK FOR A WAY TO ELIMINATE
THAT AS A PROPER DIAGNOSIS.

THE REASON HE HAD NOT BEEN ABLE
TO RULE OUT --

>> SEE I'M NOT GETTING, YOU'RE
IN, I GUESS WHATEVER YOUR
REBUTTAL IS.

USUALLY I THINK IF SOMEBODY CAN
POINT TO IT, I HEAR, YES, YOUR
HONOR, IT'S RIGHT HERE ON PAGE
THIS OF THE RECORD.

HERE'S WHAT HE SAID.

YOU'RE SAYING WHAT

DR. DANZINGER DIDN'T SAY.

CAN YOU GET TO, WHAT IS IT, IS
THE PERSON THAT WE SHOULD LOOK

TO HIS TESTIMONY TO SAY HE PUT IT ALL TOGETHER?

>> WHAT I'M INTENDING TO SAY THAT AT THE PENALTY PHASE HE, HE APPEARED TO CHANGE HIS TESTIMONY BECAUSE THERE HAD NOT BEEN THAT DIAGNOSIS PREVIOUSLY. HE EXPLAINED THAT THE DIAGNOSIS HAD NOT BEEN GIVEN BECAUSE HE HAD NEVER SEEN MR. MATTHEWS IN A MANIC EPISODE.

HIS TESTIMONY AT THE PENALTY PHASE HE BELIEVED MR. MATTHEWS SUFFERED FROM BIPOLAR DISORDER WHICH IS A CONDITION THIS COURT HAS FOUND TO BE EXTREMELY MITIGATING IN A NUMBER OF DECISIONS.

DID I UNDERSTAND THE COURT TO SAY I'M ALREADY IN MY REBUTTAL TIME?

>> YES, YOU ARE.

YOU HAVE SEVEN MINUTES.

>> I WOULD LIKE TO RESERVE THAT TIME. THANK YOU.

>> MAY IT PLEASE THE COURT.

MEREDITH CHARBULA,
ASSISTANT ATTORNEY GENERAL FOR
APPELLEE, STATE OF FLORIDA.

MR. MATTHEW WAS 26 YEARS
AND 6 MONTHS OLD AT THE TIME OF
THE MURDER.

DR. DANZINGER TESTIFIED THAT
MR. MATTHEWS KNEW RIGHT FROM
WRONG AT THE TIME OF THE
MURDER.

THAT HE COULD CHOOSE TO OBEY
THE LAW BUT DIDN'T AND THAT'S
ON PAGE 2379, 2380, FOR THE
RECORD.

>> IS THERE ANYTHING ELSE THAT
HE OFFERED?

I UNDERSTAND THE RIGHT FROM
WRONG, WE KNOW THAT IS THE
INSANITY STANDARD.

DID SOMETHING PRECIPITATE HIM
LOSING IT FOR THIS FIVE MINUTES
OR 10 MINUTES HE THEN RIGHT
AFTER REALIZED WHAT DID I JUST
DO?

SORT OF LIKE CASES WHERE WE
HAVE FOUND THAT TO BE AN
EXTREMELY POWERFUL MITIGATOR?

>> DR. DANZINGER DIDN'T
TESTIFY.

HE WASN'T ASKED WHETHER,
SPECIFICALLY HE WASN'T ASK

WHETHER EITHER MENTAL MITIGATOR APPLIED BUT HE DID SAY HE COULD HAVE CHOSEN NOT TO COMMIT THE MURDER BUT CHOSE TO COMMIT THE MURDERS.

SO I THINK THAT'S PRETTY WELL ON POINT IS, THAT HE COULD HAVE, HE UNDERSTOOD WHAT HE WAS DOING HE COULD HAVE STOPPED HIMSELF BUT HE DIDN'T.

>> SOUNDS LIKE WHAT, THEY DIDN'T OFFER WHAT THEY'RE NOW ASKING US TO ASSIGN GREAT WEIGHT TO, IN THE TESTIMONY.

>> I THINK, I THINK WHERE THE MISUNDERSTANDING PERHAPS, IS, IS THAT YOU HAVE THE TWO STATUTORY MENTAL MITIGATORS WE MUST HAVE, WHICH DIRECTLY HAVE A NEXUS TO THE CRIME.

AT THE TIME OF THE MURDER HE WAS UNDER EXTREME EMOTIONAL DISTRESS.

AT THE TIME OF THE MURDER HIS CAPACITY TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT WAS SUBSTANTIALLY IMPAIRED.

THOSE HAVE DIRECT NEXUS TO THE MURDER.

THE FACT HE GIVES LITTLE WEIGHT TO THOSE AND MORE WEIGHT TO GENERAL NONSTATUTORY MITIGATORS WHICH HE IS REQUIRED TO CONSIDER IT IS NOT INCONSISTENT WHATSOEVER.

>> I AGREE WITH YOU.

I WAS WONDERING WHETHER THE JUDGE IGNORED, BECAUSE WE'RE TALKING ABOUT IF THERE WAS UNREBUTTED TESTIMONY.

DID A PSYCHIATRIST, PSYCHOLOGIST EXPERT SAY, HOW WAS IT AT THE TIME OF THE MURDER BASED ON ALL HIS MENTAL ILLNESS AND WHATEVER ELSE, HIS DRUGS AND THAT HE, HE LOST IT, HE COULDN'T CONTROL WHAT HE WAS DOING?

I'M ASSUMING NOW THAT THAT WASN'T, IT IS NOT IN THIS RECORD?

>> WELL, DR. DANZINGER DID TESTIFY DURING HIS TESTIMONY THAT MATTHEWS HAD IN THE DAYS AND WEEKS BEFORE THE MURDER HAD USED DRUGS HEAVILY.

THAT WHEN SOMEONE HAS MENTAL

PROBLEMS, COMBINATION WITH DRUGS, THAT'S A VERY BAD COMBINATION AND IF ONE IS MENTALLY ILL AND UNDER THE INFLUENCE OF SUBSTANCES IT CERTAINLY CAN AFFECT YOUR JUDGMENT AND REASONING.

>> WHAT ACTUALLY HAPPENED? I UNDERSTAND THERE'S TWO MURDERS BUT WHAT, WHAT DID HAPPEN? WHAT WAS LEADING UP TO IT? WAS THIS A DRUG ISSUE?

>> IT IS A DRUG ISSUE, YES. MISS TRUJILLO, THE FIRST PERSON KILLED, WAS RUNNING A TRAP HOUSE WHERE PEOPLE GO TO DRUGS OUT OF.

>> A TRAP?

>> A TRAP HOUSE.

THAT IS WHERE PEOPLE GO AND THEY SELL DRUGS FROM THE HOUSE.

AND SO JUSTIN WAGNER WAS A DRUG DEALER, ADMITTED DRUG DEALER. HE WAS THE EYEWITNESS TO THE MURDER OF KURT ZOELLER.

HE TESTIFIED HE AND MATTHEWS WERE OVER THERE AND MR. TRUJILLO'S HOUSE.

MATTHEWS AND MISS TRUJILLO WERE IN THE BACK BEDROOM FOR A PERIOD OF TIME.

HE WAS CHILLING ON THE COUCH AND THAT AT SOME POINT MISS TRUJILLO, MR. ZOELLER WENT BACK TO THE BACK BEDROOM, ACCORDING TO MR. WAGNER HER VOICE WAS FINE.

NO INDICATION OF ANY DISTRESS.

>> DO WE KNOW WHAT THEY WERE DOING BACK THERE?

WERE THEY DOING DRUGS?

>> I DON'T KNOW.

>> THERE WAS NO TESTIMONY?

>> THERE WAS NO TESTIMONY.

MR. WAGNER ALWAYS REMAINED OUTSIDE.

HE DID NOT KNOW WHAT HAPPENED IN THE BACK ROOM BUT COCAINE WAS FOUND IN MISS TRUJILLO'S SYSTEM AS WAS ALCOHOL AND COCAINE WAS FOUND IN MR. ZOELLER'S SYSTEM.

AFTER MR. MATTHEWS CAME, WENT BACK INTO THE, MR. ZOELLER WENT INTO MISS TRUJILLO'S BEDROOM, SOMETIME SHORTLY THEREAFTER THE TIME WASN'T EXACTLY CLEAR HOW

LONG THEY WERE BACK THERE, HE
HEARD EVERYONE FREAKING OUT,
HEARD YELLING AND SCREAMING.
HE WASN'T SURE WHO WAS
SCREAMING AND BANGING.
AT THAT POINT MR. ZOELLER RAN
OUT OF THE ROOM WITH
MR. MATTHEWS CHASING HIM,
STABBING HIM REPEATEDLY AND
MR. WAGNER LEFT HIS DRUGS IN
THE HOUSE AND FLED.
SO THAT'S, AND THEN WHEN THE
PARAMEDICS ARRIVED OR WHEN THE
POLICE ARRIVED TO THE SCENE
THEY FOUND MR. ZOELLER SITTING
OUTSIDE MISS TRUJILLO'S APARTMENT.
HE WAS SITTING DOWN ON THE
GROUND.
HE WAS COVERED WITH BLOOD.
HE WAS GUSHING BLOOD.
HE WASN'T RESPONSIVE TO
COMMANDS. WHEN
THEY WENT IN FOUND MISS
TRUJILLO'S BODY.
HER FACE WAS COVERED WITH A
PILLOW AND SORT OF THE
BLANKETS.
THEY DIDN'T KNOW IMMEDIATELY IT
WAS A BODY.
WHEN THEY WENT BACK OUTSIDE,
MR. ZOELLER HAD DIED FROM HIS
WOUNDS AND SO THAT'S --
>> BUT IT LOOKS LIKE, SOMEONE
HAD COVERED UP THE FIRST
VICTIM?
>> SHE WAS, THAT'S NOT REALLY
CLEARLY ESTABLISHED.
WHAT IT IS WAS, THERE WAS A
PILLOW OVER HER FACE AND SHE
WAS AMONGST THE BLANKETS,
ALMOST THE POLICEMAN ON THE
SCENE SAID SHE ALMOST BLENDED
INTO THE BLANKETS.
WHEN THEY WERE FIRST THERE, THE
POLICE HAD TO STAND THERE A FEW
SECONDS TO EVEN REALIZE THERE
WAS A BODY ON THE BED.
>> SHE WAS ALIVE A FEW MINUTES
BEFORE.
SHE CALLS FOR HIM TO COME IN.
>> CLEARLY.
BECAUSE, MR. MATTHEWS KILLED
MISS TRUJILLO IN MR. ZOELLER'S
PRESENCE.
THERE WAS A SCREAM AND
MR. ZOELLER RUN FROM THE ROOM.
AT SOME POINT HE, MR. MATTHEWS

TOOK MR. ZOELLER'S WALLET.
THERE WAS NO BLOOD ON THE
WALLET, WHICH IS
INDICATIVE OF HE
ROBBED HIM BACK IN THE BACK
BEDROOM.
AND SO, WHEN MR. WAGNER SAW
MR. ZOELLER AND MR. MATTHEWS
AGAIN, MR. MATTHEWS WAS CHASING
MR. ZOELLER THROUGH THE HOUSE,
STABBING HIM REPEATEDLY.
THE MEDICAL EXAMINER TESTIFIED
HE HAD 24 STAB WOUNDS TO HIS
HEAD, FACE, CHEST, BACK.
AND THE MEDICAL EXAMINER ALSO
TESTIFIED THAT THE STABBING
WOUNDS TO BOTH VICTIMS WAS
SOMEWHAT UNIQUE IN HER
EXPERIENCE.
THAT THERE IS GENERALLY NOT
THAT MANY STAB WOUNDS TO THE
HEAD AND FACE WHERE IN THIS
CASE THERE WERE.
MISS TRUJILLO WAS STABBED EIGHT
TIMES.
>> WHAT DOES THAT INDICATE?
>> SHE FELT THAT WAS SOMEWHAT
UNUSUAL MODUS OPERANDI.
SHE DIDN'T SAY MO.
SORT OF UNUSUAL PATTERN OF
STABBING WHICH IS INDICATIVE TO
EVIDENCE THAT PERSON THAT
STABBED MISS TRUJILLO STABBED
MR. ZOELLER.
MATTHEWS DEFENSE AT TRIAL WAS
ZOELLER STABBED TRUJILLO, AND
CAME OUT AND ATTACKED HIM.
MISS TRUJILLO IS 5'1", 94
POUNDS.
MR. ZOELLER, 5'5", 174.
MR. MATTHEWS IS 6-3,
SOMEWHERE AROUND 250.
HE TESTIFIED AT TRIAL HE WAS
209. 6'3", 209.
DETECTIVE KAY PUT HIM CLOSER TO
250, 260.
SO THERE IS SIGNIFICANT
DIFFERENCE IN THE HEIGHT AND
WEIGHT OF THE TWO VICTIMS AND
MR. MATTHEWS.
IN FACT THE MEDICAL EXAMINER
TESTIFIED THAT THE STRIKES IN
THE HEAD TO MR. ZOELLER'S HEAD
FRACTURED HIS SKULL IN TWO
PLACES AND BROKE THE TIP OFF OF
THE KNIFE INTO THE HEAD, INTO
HIS HEAD.

MR. MATTHEWS'S STATEMENT TO THE POLICE IT WAS MR. ZOELLER WHO ATTACKED HIM.

HE MANAGED TO WRESTLE THE KNIFE FROM HIS HAND AND THEN THERE AFTER HE WAS SWINGING IT TO KEEP MR. ZOELLER AWAY FROM HIM. WELL, IF HE WAS SWINGING IT, MR. ZOELLER RAN INTO IT 24 TIMES INCLUDING IN HIS HEAD AND HIS EYE.

IT WENT THROUGH HIS NECK. WENT THROUGH HIS PHARYNX, LARYNX, THROUGH THE SPINE AND THROUGH THE 4th AND 5th VERTEBRA.

AT TRIAL HE TOLD THE POLICE HE BLACKED OUT.

HE THINKS, HE MADE A COMMENT IN HIS BRIEF TO, SNAPPED.

WELL, MR. MATTHEWS TESTIFIED AT TRIAL, CONTRARY TO WHAT HE TOLD THE POLICE, HE WAS SWINGING THE KNIFE TO DEFEND HIMSELF. THAT HE DOESN'T REMEMBER ANYTHING ABOUT THE MURDER.

HE BLACKED OUT.

SO, THAT, ALL THAT EVIDENCE CAME IN. AND --

>> ACTUALLY HIS STATEMENT THAT HE WAS SELF-DEFENSE REALLY BELIES THIS IDEA THAT HE IF HE LOST IT, RATHER THAN TRY TO COME UP WITH SOMETHING ACTUALLY NOT TRUE BASED ON THE FACTS OF THE CASE?

>> HE PROBABLY SHOULD HAVE SAID MR. WAGNER KILLED BOTH OF THEM BUT HE DIDN'T THINK OF THAT.

BUT I THINK WHEN YOU GO BACK TO THIS ORDER ON THE MITIGATING FACTORS THE TRIAL JUDGE CAREFULLY ANALYZED THIS.

AGAIN WE'VE GOT EVIDENCE, WE ALSO HAVE EVIDENCE AND THIS COURT HAS CONSISTENTLY LACKED THE CAPACITY TO APPRECIATE THE CRIMINALITY OF CONDUCT OF WHAT SORT OF THINGS THE DEFENDANT DOES AFTERWARDS. WE HAVE VERY DELIBERATE CONDUCT.

HE GOES AND HE GETS RID OF HIS SHIRT.

HE GETS RID OF THE WALLET.

HE TALKS VERY RATIONALLY AND SANELY TO MISS TEAGUE AND TELLS

HER THAT I JUST ELIMINATED A
COUPLE OF PROBLEMS TODAY AND
THERE'S A COUPLE OF PEOPLE THAT
ARE PROBABLY NOT GLAD THEY MET
ME OR SORRY TO MEET ME OR WORDS
TO THAT EFFECT.

HE GETS RID OF THE MURDER
WEAPON.

HE TELLS THE POLICE HE DROPPED
MURDER WEAPON INSIDE MISS
TRUJILLO'S HOME BUT THE MURDER
WEAPON IS NEVER FOUND.

WHILE MR. WAGNER'S TESTIMONY IS
CORROBORATED BY FACT THAT HE
SAID HE WAS SO SCARED, ONE, HE
LEFT HIS DRUGS THERE.

WHICH MEANS HE IS PROBABLY
PRETTY SCARED.

AND SECOND HE WAS SO SCARED HE
THREW HIS ALCOHOL CUP AWAY
RIGHT BY THE DOOR WHEN HE FLED.
THAT ALCOHOL CUP WAS THERE.

THE DEFENDANT'S CLAIM HE THREW THE
KNIFE AWAY IS NOT CORROBORATED
BY THE EVIDENCE.

SO HE TOOK A FAIRLY GOOD DEAL
OF DELIBERATIVE CONDUCT AFTER
TO COVER UP HIS CRIME AND HE
HAD A CONVERSATION WITH MISS
TEAGUE ON THE PORCH OF MISS
TEAGUE'S HOME WHEN ALL THE
POLICE AND HELICOPTERS WERE
COMING.

>> HOW SOON WAS AFTER THE
ACTUAL CRIME WAS THAT,
THAT MISS TEAGUE SAW HIM? WHAT
WOULD SEEM TO BE PRETTY
ORGANIZED --

>> SEEMS FAIRLY SHORTLY AFTER.
BECAUSE HE CAME, JUSTIN WAGNER
SAW HIM AT MISS TEAGUE'S HOME
SHORTLY AFTER THE MURDER.
JUSTIN WAGNER, THAT IS WHERE HE
WENT.

HE SAW MATTHEWS COME UP.
TAKE OFF HIS SHIRT.

GIVE IT TO ANOTHER INDIVIDUAL
AND THAT SHIRT WAS FOUND AND
WIPE OFF THE KNIFE.

HE SAW HIM WIPE OFF THE KNIFE.
THAT SHIRT WAS FOUND IN MISS
TEAGUE'S HOME HIDDEN IN
A DR. SUESS BAG AND THE WALLET
WAS FOUND IN THE SAME BAG.

YOU HAVE A LOT OF DELIBERATIVE
CONDUCT.

WHEN MR. MATTHEWS POINTS TO

LONG HISTORY OF MENTAL ILLNESS
TREATED FROM 1994 TO 2000
THAT'S TRUE BUT THE PROBLEM
WITH THAT IS HE IS BEING
EVALUATED, HIS MOTHER IS TAKING
HIM TO FORSYTH MENTAL CENTER.
SINCE THE TIME HE IS YOUNG HE
IS ACTING UP.
HE IS DEFYING THE LAW.
HE DEFIANT.
HE IS BREAKING INTO PEOPLE'S
CARS.
HE IS BREAKING INTO PEOPLE'S
CARS AT CHURCH, IN THE GARAGE.
HE EXPELLED FROM SCHOOL FOR
STEALING.
SERVING IN-SCHOOL SUSPENSIONS.
EARLY ON HE WAS DIAGNOSED WITH
ADHD BUT INATTENTIVE TYPE.
HE IS ALSO DIAGNOSED ULTIMATELY
WITH DYSTHYMIC DISORDER, A
CHRONIC DEPRESSION LESS SERIOUS
THAN MAJOR DEPRESSION BUT MORE
CHRONIC.
HE IS ULTIMATELY PLACED ON
PROZAC.
HIS WHOLE HISTORY OF QUOTE,
UNQUOTE, MENTAL HEALTH ISSUES
BECAUSE HE IS VIOLATING THE
LAW.
THAT IS WHY HE IS PUT INTO A
GROUP HOME WHICH HE IS EXPELLED
FROM BECAUSE HE IS CHARGED WITH
SHOPLIFTING AND TRESPASSING.
THAT IS WHY HE IS SENT TO JAIL.
GOES TO WILDERNESS CAMP FOR
KIDS WITH BEHAVIORAL PROBLEMS.
>> WHEN DID THIS START HIS
HISTORY OF THE ACTING OUT?
HOW OLD WAS HE?
>> HIS MOTHER SAID, HIS MOTHER
SAID THAT SHE NOTICED HIS
CONDUCT GETTING WORSE SINCE AGE
7.
>> WHEN WAS HE HIT IN THE HEAD
WITH THE BRICK.
>> THAT WAS SOMETIME LATER IN
HIS TEEN YEARS.
I WANT TO SAY SOMEWHERE WHEN HE
WAS 15, 16, 17.
I DON'T RECALL EXACTLY WHEN
THAT HAPPENED BUT IT WAS A
FIGHT WITH A DRUG DEALER.
SO IT IS NOT LIKE HE IS WALKING
ALONG THE STREET INNOCENTLY AND
GETS HIT ON THE HEAD WITH A
BRICK.

HE IS IN A FIGHT WITH A DRUG DEALER AND THE DRUG DEALER GETS THE BETTER OF HIM.

WHEN WE LOOK AT HIS MENTAL HEALTH ISSUES, FINDING STATUTORY MITIGATORS WAS PROBABLY GENEROUS ON THE PART OF THE TRIAL COURT BECAUSE THE MENTAL HEALTH TESTIMONY DIDN'T SUPPORT IT.

FOR INSTANCE, DR. GOLDEN, PERFORMED NEUROPSYCHOLOGICAL TESTING, PERFECTLY NORMAL. DR. GOLDEN SAID HIS OVERALL COGNITIVE ABILITY IS AVERAGE. THERE IS NO SIGN OF BRAIN DAMAGE.

TESTING REVEALS NORMAL COGNITIVE DEVELOPMENT. DOES NOT INDICATE ANY COGNITIVE, NEUROPSYCHOLOGICAL DEFICITS OR PROBLEMS.

WHILE MR. MATTHEWS WANTS TO SUGGEST BEING BEAT ON THE HEAD WITH A BRICK IS INDICATIVE OF BRAIN DAMAGE, DR. GOLDEN THE TESTIMONY HE PUT ON HIMSELF SAYS OTHERWISE.

THERE DOESN'T SEEM TO BE ANY EVIDENCE OF BRAIN DAMAGE. HIS IQ IS 104.

>> DR. GOLDEN WAS THE DEFENSE'S WITNESS, RIGHT?

>> YES, YOUR HONOR.

DR. GOLDEN WAS A DEFENSE WITNESS.

I THINK WHEN YOU --

DR. DANZINGER DOES A GREAT JOB BOTH IN HIS REPORT IN THE RECORD, IN VOLUME 4 IN THE RECORD AND HIS TESTIMONY OUTLYING THE HISTORY OF QUOTE, UNQUOTE, MENTAL HEALTH ISSUES BUT WHAT IT IS IS HE IS SOMEONE WHO MISBEHAVES.

BREAKS THE LAW CONSISTENTLY. WHO IS DIAGNOSED WITH CONDUCT DISORDER AS THIS COURT WELL KNOWS IS A PRECURSOR TO ANTISOCIAL.

DR. DANZINGER TESTIFIES HE IS ANTISOCIAL.

SO I THINK THE ONLY TIME WE HEAR BIPOLAR DISORDER IS AT THE PENALTY PHASE.

EVEN AT THE PENALTY PHASE

DR. DANZINGER DIDN'T TIE

BIPOLAR DISORDER DIRECTLY TO THE MURDER.
HE SAID, OF COURSE AND I THINK THIS IS ALMOST A MATTER OF COMMON SENSE BUT DR. DANZINGER TESTIFIED ANYWAY, THAT YOU KNOW, MOST PEOPLE WITH BIPOLAR DISORDER DON'T COMMIT MURDER. BUT WHERE THAT FIRST, WHERE HE IS FIRST DIAGNOSED WITH BIPOLAR DISORDER WAS AFTER THE MURDER, AT THE PENALTY PHASE. EVEN DR. DANZINGER SAID HE HADN'T SEEN HIM IN A PANIC STATE.
THAT WAS HIS HESITATION. HIS DESCRIPTION FIT BIPOLAR. HE HAD TO HESITATE BECAUSE HE HADN'T SEEN HIM IN A MANIC STATE WHICH IS A PREREQUISITE FOR BIPOLAR DISORDER. SOUNDS COMPELLING ON ITS FACE HE IS TREATED FROM 1994 UP TO 23 YEARS OLD FOR MENTAL HEALTH. WHAT YOU SEE A MOTHER DESPERATELY TRYING TO GET HER SON ENGAGING IN LAWLESS BEHAVIOR AND DEFIANT BEHAVIOR AND GETTING SUSPENDED FROM SCHOOL FOR FIGHTING AND STEALING, FINDING OUT WHAT'S WRONG AND SOMETHING MUST BE WRONG BUT WHAT WE KNOW IS WRONG IS HE SIMPLY A KID WHO, DESPITE EFFORTS AT REHABILITATION, INCLUDING SENDING HIM TO A GROUP HOME, HAS NOT CONFORMED HIS CONDUCT TO THE REQUIREMENTS OF LAW. WHEN YOU TALK ABOUT PROPORTIONALITY, YOU SHOULDN'T FORGET ABOUT THE TWO PRIOR VIOLENT FELONIES WHICH SOME OF THE CASES CITED TO BY THE DEFENDANT, SOME OF WHICH ARE ONE AGGRAVATOR CASES LIKE THE GREEN CASE. I THINK THE, AND BUT THERE YOU HAVE TWO VERY SERIOUS PRIOR VIOLENT FELONIES FAIRLY CLOSE IN TIME, NOT TOO REMOTE IN TIME. ONE WAS IN 2000. ONE WAS IN 2001 OR 2002. THE SECOND INVOLVED A ROBBERY WHERE HE WAS AT THE HOME OF A FRIEND WHOSE HUSBAND HAD CASHED

HIS PAYCHECK.
AFTER HIS FRIEND WENT TO BED,
HE ASSAULTED THE MAN WHO WAS
CONSIDERABLY SMALLER THAN HE
WAS, CHOKED HIM OUT, RENDERED
HIM UNCONSCIOUS AND RATHER THAN
JUST TAKE HIS WALLET AND LEAVE,
HE KICKED HIM.

HE BEAT HIM.
HE BRUISED HIM AND HE URINATED
ON HIM.

THE JURY HEARD THAT.
SO WE HAVE A FELLOW IS WHO IS
ENGAGED IN VIOLENT CONDUCT, AT
LEAST SINCE 2000.

AND THE JURY WAS ABLE TO HEAR
THAT AND THE COURT WAS ABLE TO
ASSIGN THAT AGGRAVATOR GREAT
WEIGHT.

SO WHEN I THINK WHEN YOU LOOK
AT, ALL THE CASES THAT THE
DEFENDANT CITES TO IN HIS BRIEF
ARE CLEARLY DISTINGUISHABLE ON
PROPORTIONALITY GROUNDS.

THAT THIS CASE IS, THE DEATH
SENTENCE IS CLEARLY
PROPORTIONATE AND, THERE ARE
CERTAINLY SUFFICIENT EVIDENCE
TO SUPPORT HIS CONVICTIONS FOR
FIRST-DEGREE MURDER AND
MANSLAUGHTER.

ABSENT ANY OTHER QUESTIONS, THE
STATE WOULD ASK THIS COURT TO
AFFIRM HIS CONVICTIONS AND HIS
SENTENCE TO DEATH.

THANK YOU.

>> PLEASE THE COURT IN THE TIME
I HAVE REMAINING I WOULD LIKE
TO DRAW A COMPARISON BETWEEN
MR. MATTHEWS CASE AND TWO OTHER
DECISIONS IN THIS COURT.

IN THE GREEN CASE, MR. GREEN
SHOT TWO MEN, INCLUDING A
RETIRED POLICE OFFICER.
HOWEVER THERE WAS MENTAL
ILLNESS EVIDENCE.

EVIDENCE OF, POOR IMPULSE
CONTROL AND EVIDENCE OF
SELF-MEDICATION BY THE
DEFENDANT.

THIS COURT CITED GREEN IN
DISTINGUISHING ITS DECISION IN
THE BRIGHT CASE WHICH OPPOSING
COUNSEL CITED AS SUPPLEMENTAL
AUTHORITY.

THE MAIN CASE I WOULD LIKE TO
CITE IS THE OTHER DECISION FROM

2007.

THIS IS ABSOLUTELY BRUTAL
MURDER.

THE DEFENDANT KILLED HIS OWN
WIFE HITTING HER REPEATEDLY IN
THE FACE WITH 50 BLOWS FROM A
CLAW HAMMER.

HAC WAS CLEARLY FOUND.

THE DEFENDANT IN THIS CASE ALSO
SUFFERED FROM BIPOLAR DISORDER.
THIS WAS A UNANIMOUS JURY
RECOMMENDATION IN FAVOR OF
DEATH.

THE MENTAL HEALTH MITIGATION
WAS DETERMINED BY THIS COURT TO
BE COMPELLING DESPITE THE
DEFENDANT'S OWN ASSERTION IN
HIS CASE THAT HE COULD FOOL THE
MENTAL HEALTH EXPERTS ANY DAY
OF THE WEEK.

THAT EVIDENCE THEN WOULD HAVE
BEEN CONTROVERTED BUT THIS
COURT STILL ELECTED TO REVERSE
THE DEATH PENALTY AND GIVE LIFE
SENTENCE.

MANY SLIGHT WEIGHTS CAN TIP A SCALE.
THIS IS NOT A COUNTING PROCESS.
WE UNDERSTAND THAT.

IT IS A WEIGHING PROCESS AND
MANY SLIGHT WEIGHTS CAN TIP A
SCALE.

IF YOU START APPLYING ANY
SIGNIFICANT WEIGHT, THAT SIDE
IS GOING TO REFLECT THAT
CHANGE.

EVEN WITHOUT A CONVICTION AND
SENTENCE OF DEATH FOR THE
MURDER OF MR. ZOELLER,
MR. MATTHEWS WILL SERVE A TOTAL
OF 20 YEARS CONSECUTIVE TO HIS
LIFE SENTENCE.

NOT EVEN TAKING INTO ACCOUNT
WHAT THIS COURT DOES WITH THIS
CASE.

THIS IS NOT ONE OF THE MOST
AGGRAVATED MURDERS THIS COURT
HAS SEEN.

IT IS NOT THE LEAST MITIGATED
MURDER THIS COURT HAS SEEN.
A LIFE SENTENCE WILL SUFFICE IN
THIS CASE.

THANK YOU.

>> THANK YOU FOR YOUR
ARGUMENTS.

THE COURT WILL BE IN RECESS FOR
10 MINUTES.

>> PLEASE RISE.

THE COURT WILL RECONVENE IN 10
MINUTES.