

>> We will now move to the second case on today's docket, Oyola versus the state of Florida.

>> May it please the court. William McLean representing Miguel Oyola.

Mr. Oyola was convicted of murder, robbery and auto theft. The homicide victim in this case was Mr. Oyola's employer. Hit a landscape business and Mr. Oyola was assisting in that business.

The prosecutions case here was prosecuted on the theory that Mr. Oyola had improperly used a business debit card and taken money from the account.

Mr. Gerrard the employer, discovered the missing money according to the bank clerk when he appeared angry and left. The inference is that he asked Mr. Oyola about this.

We don't know exactly the details of what confrontation entailed other than the fact that Mr. Gerrard was killed from blows from probably a shovel and stab wounds.

There was actually an eyewitness through the portion of this fight if you will, a gentleman who was going down a logging road and he came upon

Mr. Gerrard's truck and trailer. He said there was a gentleman outside of the trailer who went in the trailer who was moving the trailer and then came out of the trailer fighting.

He left to get assistance and when they returned the truck and trailer was gone and Mr. Gerrard was discovered and he was alive when they first got back but he died.

>> What testimony did I witness give of the person that was fighting with Mr. Gerrard because as I understand that he didn't actually see him but he gave a description of him?

>> He saw the two gentlemen and

one of them he referred to the heavy set man Mr. Gerrard and the other man.

There was other evidence that -- to the event.

Besides that witness there was circumstantial evidence and some statements.

We are not taking issue with the state prove that Mr. Oyola was the perpetrator.

>> We are not challenging any part?

>> No.

>> So going to the part you do challenge, you challenge the HAC aggravator but not the finding of the aggravator?

>> That is greater honor and actually the point that I would make regarding the judge using discretion in giving great weight to the HAC aggravator also ties into issue two which deals with the judge's treatment of the mental medication in general.

>> He gave great weight to -- And he gave even medium weight, you are not challenging the HAC aggravator.

There are two other aggravators in this case of violent felony.

>> He was on probation at the time of the homicide for 2006 grand theft.

>> It wasn't a violent felony?

>> No he was not convicted of a robber in this case.

>> In the robbery he was on probation for another crime?

>> With the HAC factor.

>> So you're really not challenging proportionality and again even if the HAC was given, these aggravators there is HAC here and whether it's less HAC we don't qualitatively -- it's a strong aggravator.

I guess what I would like you to say is how with the facts of this crime that even if the judge found some mental mitigation how that changes their proportionate sentence to

one that would have to go back for a resentencing?

I'm trying to understand where this all fits together.

>> Well the argument with the HAC was the judge used discretion because he didn't take into account that this crime, the manner of this killing was to a large degree driven by Mr. Oyola's mental illness.

>> Because HAC focuses on the nature of the crime and what the victim experiences, I don't no, do we have the case that says that if there is something that would be a mental mitigator that then would lessen the weight given to HAC maybe it might be somebody that is certifiably mentally ill and can't control his actions.

You take that and give that more weight and that may balance out but I don't think it diminishes the weight given to HAC in that situation.

>> I don't know that this court specifically held that.

I have cited cases from this court in the past where the effective it was we can't take into account the HAC to the degree to give great weight to it.

We talked about it in those terms but because of the mental aspect is that was fueling the manner that the death occurred at this court's HAC is different.

>> We are looking at proportionality we can do that. If we look at it and say this was the product of somebody who had a depraved mind but here you have got a situation where, what I'm understanding again, your client was stealing money from his boss, right?

>> And the boss confronted him and he wasn't happy about that so he started attacking his boss, thought he maybe had

killed him put him in the trailer and leaves him to die and where he is going to take him someplace where he is going to dump the body and lo and behold he is not dead so he has to continue beating him and instead of killing him completely he leads.

Is that what this is about?

>> That is the state's very.

>> That does seem like he conforms with the physical evidence and what was observed at the end.

It just doesn't strike me that somebody, and this is again the mental alma study has, and then what he does afterwards not that affects HAC but that he very carefully tries to hide his crime.

It's not a crime of passion certainly.

>> After crime actions to cover it up I think that is a different question than what happened.

>> I understand but it shows what is mental status.

In other words we have seen cases where after somebody kills somebody they wait until the police comes and they say Oh my God I can't believe what I just did.

I just lost it.

That is not this case.

>> Now, that is not this case.

The concern that I have is the trial judge analysis here both for the HAC factor but more importantly rejecting the statutory mental mitigator in this fact, the judge really never made an order as to why he was rejecting this.

>> And that point frankly I don't know why you didn't raise what he actually does.

Every bit of the nonstatutory mitigators together and says the nonstatutory mitigation includes serious drug abuse, abusive home as a child and the cycle of

violence and mental disorder while the evidence establish such circumstances and the circumstances are given light weight in winning the aggravating circumstances against the mitigator.

That seems to me an error and how he evaluates.

You don't raise that as a separate plan on appeal.

He loves everything together and doesn't explain why he is only giving it light weight?

Or is that a point?

I did not see it.

>> I raise the whole question of how the trial judge really did not do an evaluation as to the mitigating circumstances.

He does lump them all together.

>> Again, you are an experienced appellate lawyer in death cases. I read what you are saying as he was wrong in rejecting the statutory mitigator of extreme emotional distress.

Is that not what your point was?

>> I did phrase or raise the issue as to Campbell violation and the way that the mitigation was treated.

I kind of included in the same issue of the Campbell problem but the judge made no analysis not only for the statute but for the nonstatutory.

As to the statutory mitigating factor he simply said the evidence is sufficient period even though we had on refuted testimony from the expert witness.

>> What the expert witness actually say that you think would substantiate a mental mitigator because as I see the evidence there really isn't a lot that would be given here that would really substantiated and then when you put that in perspective what the defendant actually did, it seems to me that the trial judge was correct in rejecting it.

He may not have set it out properly but what do we have that really would have demonstrated he had mental illness?

>> Dr. D'Errico it evaluated him on different occasions. He was first arrested in 2008 and on a pending probation he was evaluated and declared incompetent and was hospitalized for treatment and restoration because he was on antipsychotic medication.

He was diagnosed with schizoaffective disorder with symptoms of hallucinations. He also indicated that Mr. Oyola and particularly as to this case he said when he got in a stressful situation he was likely to interpret even a verbal confrontation, even an angry verbal confrontation is a life-threatening event which would have prompted them to overreact to the circumstances and lose emotional control so we don't know exactly what the confrontation was.

>> We don't know Mr. Gerrard, don't think there was any evidence Mr. Gerrard pulled a weapon on him but there was certainly no evidence, we don't know whether Mr. Gerrard got violent in any way because the confrontation was all just a verbal angry confrontation but Dr. D'Errico indicated that he he had a violent confrontation because of the time of the trial he had been offered antipsychotic medication. He had delusions and a history of hallucinations, and Mr. -- Dr. D'Errico did examine him. He further determined that these were still in place even though at that point he had been on medication.

>> Let me ask you this. Do the defendant's actions before and after the actual murder took place play at all

into our determination in looking at this as to whether or not this mental illness as such fit into the statutory framework?

>> I don't know because look at what he did afterwards. Because the statutory mitigator that his doctor, Dr. D'Errico indicated, it wasn't that he didn't appreciate the criminality of his actions but they were controlled. That was the foundation for that statutory mitigating circumstance that Dr. D'Errico testified to.

Once the confrontation is over and emotions come down, he may have been able to carry out the logical type activity to cover up the event.

>> THE JUDGE ACCEPTED THE PROSECUTOR'S ARGUMENT THAT THE EVENT STARTED IN ONE PLACE, HE WAS TRANSPORTED IN A TRAILER TO THE SECOND PLACE WHERE THE WITNESS OBSERVED THE FIGHTING, CONTINUED TO FIGHT. THERE IS AN INDICATION THAT AT SOME POINT BLOODSHED OCCURRED IN THE TRAILER.

THERE IS AN INDICATION, UM, THAT -- WELL, OBVIOUSLY, THEY WERE IN THE TRAILER WHEN THE WITNESS SAW THEM TOO.

BUT WHETHER THE FIGHT STARTED THERE OR WHETHER IT STARTED AT AN EARLIER LOCATION, THERE'S NO EVIDENCE OF THAT.

>> WERE THEY IN THE TRAILER WHEN HE FIRST SAW THEM OR OUTSIDE THE TRAILER?

>> WHEN HE FIRST ARRIVED, THIS TRUCKER THAT CAME UP ON THEM ON THE LOGGING ROAD, HE SAID HE SAW AN INDIVIDUAL -- THOUGHT HE SAW AN INDIVIDUAL OUTSIDE THE TRAILER.

THEN ALL OF A SUDDEN THE TRAILER WAS MOVING, AND THEN BOTH OF THEM TUMBLED OUT OF THE TRAILER IN THIS BIG FIGHT.

AND THAT'S WHEN HE MOVED BACK TO GET ASSISTANCE AND WHEN THEY

DETERMINED THE TRUCK AND TRAILER WAS GONE, AND MR. GERRARD WAS FOUND ON THE SIDE OF THE ROADWAY.

>> WHEN WAS -- GO BACK TO THIS DAUGHTER THAT HE HAD. WHAT RECORDS WERE INTRODUCED BY THE DEFENDANT AT TRIAL?

WHEN WAS THE LAST TIME THAT HE WAS TREATED FOR A MENTAL, THIS MENTAL ILLNESS?

>> BEFORE THE TRIAL?

>> I'M SORRY, BEFORE THE MURDER.

>> BEFORE THE MURDER, I'M NOT SURE THAT -- I DON'T RECALL EXACTLY WHEN THE TESTIMONY WAS WHEN HIS TREATMENT LAST OCCURRED.

I KNOW THERE WAS EVIDENCE THAT HE HAD ACTUALLY BEEN INCARCERATED IN PHILADELPHIA IN 2006 AND WAS ON TREATMENT THERE. THERE WAS RECORDS OF THAT.

I DON'T KNOW HOW LONG --

>> I MEAN, IN TERMS OF LOOKING AT THIS AND HOW IT CAUSED HIM TO FORM ERRATICALLY DURING HIS LIFE, I GUESS WE LOOK AT THE WHOLE PICTURE.

HOW OLD WAS HE AT THE TIME OF THE MURDER?

>> HE WAS -- I KNEW YOU'D -- IN HIS 30s.

AS I RECALL, HE WAS IN HIS 30s.

>> SO HE HAD GONE HIS WHOLE LIFE UNTIL HIS 30s HAVING THIS MENTAL ILLNESS AND HAD MANAGED TO NOT BE A VIOLENT PERSON, RIGHT?

REACTED AND FOUGHT PEOPLE, I MEAN, THIS IS WHAT HE WAS?

>> WE ACTUALLY DON'T HAVE MUCH IN THE RECORD AS TO WHAT KIND OF EVENTS MAY HAVE BEEN OCCURRING IN HIS LIFE.

HE DID HAVE A PRIOR CONVICTION, I BELIEVE, IN A PHILADELPHIA CASE FOR A THEFT OF SOME KIND AS I RECALL.

>> SEE, I GUESS IT'S LIKE, IT'S THIS IDEA THAT SOMEBODY, AGAIN, FOR THE STATUTORY MENTAL MITIGATOR WHICH IS A SERIOUS ONE WHICH IF IT'S FOUND AND GIVEN

WEIGHT THAT YOU, YOU KNOW,
THINGS LIKE THE AGE, AGAIN, THE
CLASSIC PERSON THAT I THINK
ABOUT WAS A DEFENDANT BY THE
NAME OF DONNY LEE CROOK WHO WAS
ON SOCIAL SECURITY DISABILITY
FOR A SERIOUS MENTAL IMPAIRMENT
THAT HAD EVIDENCED ITSELF IN
MANY WAYS DURING THE PERSON'S
LIFE SO THAT WHAT YOU SAY THEN
IS WHEN THIS, SOMEONE CONFRONTS
SOMEBODY WITH STEALING MONEY
THAT INSTEAD OF SAYING, NO, I
DIDN'T, THEY END UP MURDERING
HIM.

BUT THAT'S WHAT DEFENDANTS WHO
END UP ON DEATH ROW END UP
DOING.

THEY DON'T MAKE GOOD CHOICES.
THE QUESTION AS TO WHETHER IT
WAS THE MENTAL ILLNESS THAT
DREW, THAT WAS DRIVING IT OR
GREED OR WANTING THE MONEY AND
NOT WANTING TO GET CAUGHT AND,
THEREFORE, THINKING HE CAN GET
AWAY WITH IT.

>> WELL, TWO THINGS.

THE LAST ONE FIRST.

I'M NOT SUGGESTING THAT HE
WASN'T MOTIVATED PERHAPS BY
GREED WHEN HE STARTED TAKING
MONEY FROM THE ACCOUNT.

BUT THEN THE CONFRONTATION IS A
SEPARATE EVENT.

HE WASN'T, HE WASN'T -- I THINK
WHERE THE ROBBERY CAME IN THERE
WAS SOME INDICATION THAT

MR. GERRARD HAD WITHDRAWN SOME
CASH FROM THE BANK EARLIER, AND
THAT WAS MISSING, AND MR. OYOLA
HAD CASH AFTER THIS EVENT.

BUT, UM, HE DID NOT CONFRONT --
THERE WAS NO EVIDENCE THAT HE
WENT OUT TO CONFRONT MR. GERRARD
TO STEAL MONEY.

HE STOLE THE MONEY FROM THE
ACCOUNT INITIALLY.

UM, SECOND, THERE IS FAMILY
HISTORY HERE THAT, NUMBER ONE,
MR. OYOLA WAS THE YOUNGEST OF A
NUMBER OF CHILDREN.

HIS MOTHER LIKELY HAD
SCHIZOPHRENIA, SHE WAS ABUSIVE
TO ALL THE CHILDREN.

EVERY ONE OF THE CHILDREN LEFT

HOME BETWEEN THE AGES OF 13 AND 15 YEARS OLD.

THE OLDER BROTHER TESTIFIED HE WAS THE NEXT ONE AT HOME BEFORE MR. OYOLA WAS LEFT HOME ALONE WITH THIS MENTALLY ILL MOTHER, INDICATED THAT HE HAD ANGER ISSUES, HE HAD TEMPER ISSUES, HE REACTED, HE DID, HE DID REACT AND GOT IN FIGHTS OVER RATHER MINOR INCIDENTS.

SO THERE WAS THAT FAMILY HISTORY THAT HE HAD PROBLEMS IN THE WAY HE RESPONDED TO SITUATIONS IN LIFE.

SO THAT IS, THAT IS IN THE RECORD THROUGH THE TESTIMONY OF THE BROTHER.

>> MR. McLAIN, THE STATUTORY MITIGATOR IS VERY SPECIFIC IN ITS WORDING THAT YOU'RE RELYING ON, CORRECT?

>> YEAH.

>> BECAUSE, I MEAN, VERY CLEARLY THE EXPERT STATED THAT HE CERTAINLY UNDERSTOOD THE CRIMINALITY OF HIS CONDUCT, SO THAT'S NOT ONE OF THE STATUTORY ONES THAT WE'RE TALKING ABOUT, CORRECT?

>> CORRECT.

>> SO WE'RE TALKING ABOUT INTERFERENCE WITH HIS CAPACITY TO CONFORM HIS BEHAVIOR, CORRECT?

>> CORRECT.

>> AND THAT'S WORDED VERY SPECIFICALLY IN THE STATUTE, CORRECT?

>> CORRECT.

>> AND TO YOUR -- WHAT IS YOUR UNDERSTANDING OF THAT, THE EXACT LANGUAGE, THE REQUIREMENTS OF THAT STATUTORY MITIGATOR THAT MUST BE SATISFIED?

>> THAT DUE TO DEFENDANT'S MENTAL ILLNESS, HE LACKED THE CAPACITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW, WAS SUBSTANTIALLY IMPAIRED.

>> OKAY.

WAS THERE AT SOME POINT THAT THIS EXPERT TESTIFIED THAT IT WAS SUBSTANTIALLY IMPAIRED OTHER THAN THAT THE SCHIZO-EFFECTIVE

DISORDER, THE SYMPTOMS MAY HAVE INTERFERED WITH HIS CAPACITY TO CONFORM HIS CONDUCT?

>> WELL, I WOULD POINT OUT --

>> THAT'S VERY SIMPLE, FIRST, AND THEN YOU CAN GO AHEAD --

>> HE DID NOT USE THE WORD "SUBSTANTIAL" IN HIS ANSWER.

>> SO THAT'S WHERE I'M GOING, AND YOU KNEW THAT.

SO THE QUESTION IS THAT DO WE THEN NOT HAVE EVIDENCE TO SATISFY THE STATUTORY MITIGATOR IN THIS RECORD, OR DOES A COURT READ IN AFTER YOU LOOK AT EVERYTHING AND PULL ALL OF IT IN AND SAY, YES, EVEN THOUGH THE DOCTOR DIDN'T USE THOSE WORDS THAT THIS RECORD PROVIDES THAT SUBSTANTIALITY ASPECT?

>> I THINK THE LATTER, YOU CAN LOOK AT THE --

[INAUDIBLE CONVERSATIONS]

RIGHT OFFHAND, I DON'T HAVE ANYTHING.

>> OKAY.

>> BUT, AGAIN, IT WAS UNDERSTOOD THAT THAT IS WHAT THE EXPERT TESTIFIED TO AND, IN FACT, THE PROSECUTOR IN THE PENALTY PHASE CLOSING ARGUMENT ACKNOWLEDGED TO THE JURY THAT DR. D'ERRICO HAD TESTIFIED THAT THE STATUTORY MITIGATOR OF INABILITY TO CONFORM HIS CONDUCT TO THE LAW, HE HAD, IN FACT, TESTIFIED TO THAT.

NOW, HE WENT ON AND ATTACKED THE DOCTOR'S OPINION, BUT HE ACKNOWLEDGED THAT WHAT WAS UNDERSTOOD IN THE COURT, THAT HE HAD GIVEN TESTIMONY IN SUPPORT OF THAT ASPECT --

>> WELL, I UNDERSTAND IN SUPPORT OF, BUT IF YOU DON'T SATISFY IT, I MEAN, WE CAN CERTAINLY PRESENT EVIDENCE IN ANY NUMBER OF THINGS.

BUT I'M TRYING TO GET TO THE REAL HEART OF WHETHER THIS IS REALLY SATISFIED AS A MATTER OF LAW.

I MEAN, WE CAN TALK AROUND IT, BUT DO WE NEED TO DIRECTLY DRIVE THE NAIL INTO THIS POINT OF LAW?

>> I DON'T KNOW THAT YOU WANT TO TAKE A SPECIFIC WORD THAT WASN'T USED IN AN ANSWER.

THE QUESTION THAT WAS ASKED OF DR. D'ERRICO AT THE TIME TRACKED THE LANGUAGE OF THE MITIGATOR.

>> WELL, BUT DIDN'T HE ANSWER THAT THOUGH?

>> I WOULD THINK HE ANSWERED IN THE AFFIRMATIVE.

NOW, RATHER THAN REGURGITATING THE SAME WORDING AND PERHAPS THE DEFENSE LAWYER AT THE TIME SHOULD HAVE PROBED IT A LITTLE FURTHER, BUT HE DID ANSWER IN THE AFFIRMATIVE THAT HIS, THAT THERE WAS IMPAIRMENT OF HIS ABILITY TO CONTROL HIS BEHAVIOR. AND THEN DUE TO A SCHIZO-EFFECTIVE DISORDER AND HIS UNTREATED PSYCHOTIC POSITION THAT HE WOULD HAVE REACTED, AND HE WOULD HAVE LOST EMOTIONAL CONTROL.

I THINK HE LOST THAT TERMINOLOGY AS WELL.

>> HOW LONG HAD HE BEEN, UM, WITHOUT MEDICATION?

>> WITHOUT LOOKING AT THE RECORD, THAT'S UNCLEAR.

IT WAS LONG ENOUGH THAT HE WAS NO LONGER IN TREATMENT.

>> OKAY.

>> I MEAN, THE EXPERT WHO EXAMINED HIM IN 2008 RIGHT AFTER HIS ARREST THAT HE WAS UNTREATED, AND HE SENT HIM TO THE HOSPITAL AND DECLARED HIM INCOMPETENT.

>> AND WE HAVE NOTHING IN THE RECORD TO SHOW THE LAST TIME HE WAS TREATED FOR THIS DISORDER?

>> I DON'T REMEMBER ANYTHING IN THE TESTIMONY.

WHETHER THERE'S SOMETHING IN THE RECORDS, I CAN'T SAY ABSOLUTELY NOT.

>> BUT HE WAS TREATED THE LAST TIME HE WAS IN PRISON?

>> THERE WAS RECORDS, AT LEAST I THINK, IN 2000 -- THERE WAS RECORDS FROM PHILADELPHIA, I WANT TO SAY IT WAS SOMETIME EARLY IN 2006.

THIS OFFENSE HAPPENED, UM, IN

DECEMBER OF 2007.
UM, THE REPORT WAS HE HAD, I
MEAN, THE EXPERTS -- SAYING HE
WAS UNTREATED, PSYCHOTIC
SCHIZO-EFFECTIVE --
>> AND FOR HOW LONG?
>> I'M SORRY?
>> HE HAD BEEN OUT OF PRISON FOR
HOW LONG AT THE TIME THIS MURDER
TOOK PLACE?
>> THAT'S NOT CLEAR IN THE
RECORD AS I RECALL.
I MEAN, I DON'T RECALL IT BEING
OUTLINED IN THE RECORD, EXACTLY
HOW LONG THAT WAS.
>> CAN I -- JUST A QUESTION --
>> I'M SORRY.
>> ON THE STATUTORY MITIGATORS.
I'M JUST LOOKING, AND I'M
LOOKING AT THE STATUTE ITSELF.
YOU'VE GOT UNDER 6F THE CAPACITY
OF THE DEFENSE TO APPRECIATE
THE --
[INAUDIBLE]
WAS SUBSTANTIALLY IMPAIRED.
BUT THEN THERE'S ANOTHER
SECTION, AND IT HAS TO DO WITH
WHERE IT TALKS ABOUT THAT THE
FELONY WAS COMMITTED WHILE
DEFENDANT WAS UNDER THE
INFLUENCE OF EXTREME MENTAL OR
EMOTIONAL DISTURBANCE.
I'M NOT SEEING WHY, WHY --
ISN'T -- AREN'T THOSE TWO
SEPARATE STATUTORY MITIGATORS?
>> THEY ARE TWO SEPARATE
STATUTORY MITIGATORS.
>> YOU'RE ONLY ARGUING THE ONE
ABOUT THE CRIMINALITY OF --
>> THAT WAS THE ONLY ONE
ASSERTED BELOW BY DEFENSE
LAWYER, TRIAL COUNSEL.
>> YOU'RE NOT ARGUING POOR
MISCONDUCT --
>> I AM ARGUING THAT.
>> I WAS --
>> EXTREME EMOTIONAL
DISTURBANCE.
I DON'T KNOW WHY IT WASN'T
ASSERTED BELOW, BUT THERE WASN'T
AN ASSERTION OF THAT.
>> YOU ARE NOW INTO YOUR
REBUTTAL TIME.
YOU HAVE ABOUT FOUR MINUTES
LEFT.

>> I WILL RETAIN THAT TIME FOR REBUTTAL.

THANK YOU.

>> MAY IT PLEASE THE COURT, MEREDITH CHARBULA, ASSISTANT ATTORNEY GENERAL, ATTORNEY FOR THE APPELLEE.

JUSTICE QUINCE, TO HOPEFULLY ANSWER YOUR QUESTION, HE WAS RELEASED FROM THE PHILADELPHIA PRISON IN 1999.

DR. D'ERRICO TESTIFIED THAT THE WORKING DIAGNOSIS WHILE HE WAS INCARCERATED WAS SCHIZO-EFFECTIVE DISORDER, AND HE WAS UNDER MEDICATION, BUT THAT WAS 1999 WHEN HE WAS RELEASED.

HE WAS 37 YEARS OLD AND TEN MONTHS AT THE TIME OF THE MURDER.

>> WHAT WAS THE CRIME IN PHILADELPHIA?

>> POSSESSION OF COCAINE AND ROBBERY.

BUT, UM, APPARENTLY I THINK THE REASON THAT THE PROSECUTOR DIDN'T GO -- AND THERE WAS SOME DISCUSSION IN THE RECORD ABOUT PRIOR VIOLENT FELONY -- WAS THAT THE STATUTES ARE SOMEWHAT DIFFERENT, AND SO THE PROSECUTOR DIDN'T PRESENT ANY EVIDENCE OF A PRIOR VIOLENT FELONY BASED ON THAT ROBBERY.

>> WAS THAT THE ONE THAT HE WAS UNDER, ON PROBATION FOR, OR WAS THERE THEN A GRAND THEFT?

>> NO.

HE -- IN 2006 HE WAS PLACED ON PROBATION FOR GRAND THEFT AUTO AND GRAND THEFT.

HE WAS PLACED ON FIVE YEARS' PROBATION WITH SIX MONTHS IN COUNTY JAIL AS A CONDITION OF THAT PROBATION.

HE WAS STILL ON THAT PROBATION AT THE TIME OF THE MURDER.

UM, I THINK THAT, UM, ONE OF THE THINGS THAT IS VERY CRITICAL TO THIS INQUIRY WAS HONED IN ON BY JUSTICE LEWIS, AND THAT IS THAT THIS DR. D'ERRICO NEVER TESTIFIED THAT THE CAPACITY OF THE PERFORMANCE TO THE CONDUCT

OF LAW WAS SUBSTANTIALLY
IMPAIRED.
HE WAS ASKED THAT SPECIFICALLY.
HE WAS ASKED SPECIFICALLY, AND
YOU CAN FIND THAT ON PAGE 504
AND 505 OF THE TRIAL RECORD,
HE WAS ASKED SPECIFICALLY
WHETHER OYOLA'S CAPACITY TO
APPRECIATE THE CRIMINALITY OF
HIS CONDUCT OR TO CONFORM HIS
CONDUCT TO THE REQUIREMENTS OF
LAW WAS SUBSTANTIALLY IMPAIRED.
AND, YOU KNOW, DR. D'ERRICO DID
NOT SAY YES.

IN FACT, WHAT HE SAID WAS I
THOUGHT HE UNDERSTOOD, MENTALLY
UNDERSTOOD THE CRIMINALITY OF
HIS CONDUCT.

AND THEN HE WENT ON TO SAY, UM,
BUT I THOUGHT THE FACT THAT HE
WAS UNINVOLVED IN TREATMENT FOR
SCHIZO-EFFECTIVE DISORDER
INTERFERED WITH HIS CAPACITY TO
CONFORM HIS CONDUCT.

WHEN ASKED WHAT HE MEANT
SPECIFICALLY GIVEN ANOTHER
OPPORTUNITY TO OPINE ON THE
STATUTORY MITIGATOR, HE SAID
THOSE SYMPTOMS VERY LIKELY
ATTRIBUTED TO BEING ATTACKED BY
THE VICTIM WHICH WAS LIKELY
RELATED TO THE SYMPTOMS OF LOSS
OF EMOTIONAL CONTROL AND
IMPULSIVE BEHAVIOR.

SO FIRST OF ALL, DR. D'ERRICO,
THE EVIDENCE IN THIS CASE IS
CONTRARY TO WHAT THE INFORMATION
OYOLA GAVE TO DR. D'ERRICO, WHAT
HAPPENED IN THIS CASE.

AND THAT WAS THE STATE'S ATTACK
ON DR. D'ERRICO PRIMARILY IS
THAT OYOLA LIED TO HIM, AND HE
WAS BASING HIS OPINION PRIMARILY
ON THE IMPACT OF THE
SCHIZO-EFFECTIVE DISORDER ON
OYOLA AT THE TIME ON THE FACT
THAT HE WAS ATTACKED BY THE
VICTIM.

BUT THE EVIDENCE IN THE CASE IS
THE CONTRARY.

GOING QUICKLY BACK TO -- I CAN,
JUSTICE PARIENTE, OR AS LONG AS
YOU'D LIKE -- AS FAR AS THE HAC.
THIS COURT HAS NEVER HELD THAT A
TRIAL JUDGE IS OBLIGATED OR

ABUSES HIS DISCRETION IN GIVING GREAT WEIGHT TO THE HAC AGGRAVATOR WHICH THIS COURT HAS CONSISTENTLY SAID IS ONE OF FLORIDA'S WEIGHTIEST AGGRAVATORS.

BECAUSE THE DEFENDANT IS MENTALLY ILL.

ALL THE CASES CITED TO BY THE DEFENDANT IN HIS INITIAL BRIEF WERE PROPORTIONALITY CASES WITH THE EXCEPTION OF ONE WHICH WAS REMANDED BACK TO THE PENALTY PHASE BECAUSE FUTURE DANGEROUSNESS WAS AT ISSUE.

NOT A SINGLE CASE HAS THIS COURT SAID THE, UM, AGGRAVATOR SHOULD BE GIVEN LESS WEIGHT BECAUSE OF THE MENTAL --

>> WHAT YOU DO INSTEAD IS YOU LOOK AND SEE WHETHER THE STATUTORY MITIGATOR HAS BEEN MET, AND THEN YOU MAY WEIGH -->> AND YOU WEIGH IT.

EXACTLY.

>> AND YOU WOULD AGREE WITH THAT?

>> THAT GOES TO A PROPORTIONALITY ISSUE WHICH WASN'T RAISED IN THE INITIAL BRIEF.

>> WHEN YOU SAY INITIAL BRIEF, WAS THERE --

>> NO, MA'AM.

NO REPLY BRIEF.

SO PROPORTIONALITY WASN'T RAISED.

SO I THINK IT'S SORT OF SMUSHING TOGETHER THIS NOTION OF WEIGHT, AND I THINK YOU HAVE IT EXACTLY RIGHT.

THE TRIAL JUDGE HAS BROAD DISCRETION TO DETERMINE THE WEIGHT HE GIVES TO AN AGGRAVATOR.

AND THIS COURT WON'T INTERFERE WITH IT AS LONG AS THERE'S COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT IT.

AND THE THING IS, YOUR HONOR, AS I SAY AS A MATTER OF LAW, THIS COURT HAS HELD AS MOST WEIGHTY. BUT IN THIS CASE IT IS NOT SPECULATION FOR WHAT HAPPENED IN THIS CASE BECAUSE WE KNOW THAT

MR. GERRARD WAS KNOCKED ON THE HEAD WITH A SHOVEL. WE KNOW FROM DR. FLANAGAN, THE MEDICAL EXAMINER, THAT THAT WAS A SUFFICIENT BLOW TO KNOCK HIM UNCONSCIOUS.

SO THE STATE'S THEORY AT TRIAL WHICH IS SUPPORTED BY THE EVIDENCE IS THAT MR. GERRARD -- AND, BY THE WAY, THESE BLOWS ALL CAME TO THE BACK OF THE HEAD AND, INDEED, EVEN THE STAB WOUNDS CAME FROM BEHIND HIM. SO THE STATE'S THEORY WAS THAT MR. GERRARD WAS KNOCKED IN THE HEAD, MAY HAVE BEEN STABBED AT SOME POINT AS WELL BUT PRIMARILY KNOCKED IN THE HEAD, KNOCKED UNCONSCIOUS, CONFINED IN THE TRAILER.

AND IF YOU LOOK AT THE TESTIMONY OF SEAN YAO WHO'S THE CSI, HE TESTIFIED ABOUT THE BLOOD THAT WAS IN THE TRAILER, AND IT WAS CLEAR FROM THE BLOOD IN THE TRAILER THAT AT SOME POINT MR. GERRARD IS LAYING DOWN BLEEDING, AND HE'S ALSO ASPIRATING BLOOD.

THERE'S FINE MIST OF BLOOD ON THE DOOR AND ON PLACES IN THE TRAILER WHERE HE'S ASPIRATING BLOOD FROM HIS NOSE AND MOUTH WHEN HE'S DOWN ON THE GROUND. AND THERE'S ALSO EVIDENCE AND MOST CRITICAL IS THAT, UM, THERE'S EVIDENCE THAT HE IS BREAKING DOWN THE DOOR. HE OBVIOUSLY REGAINS CONSCIOUSNESS.

THERE'S NO REASON FOR MR. GERRARD TO BE OUT ON THIS LOGGING ROAD OFF TRAM ROAD EXCEPT FOR THAT MR. OYOLA HAS DRIVEN HIM THERE.

NOW MR.-- WE KNOW THAT MR. GERRARD DIDN'T DRIVE HIM THERE.

HE HAS THE KEYS IN THE POCKET. AND THE ONLY OTHER SET OF KEYS IS MR. OYOLA'S --
>> AND THAT'S THE BASIS FOR THE FALSE IMPRISONMENT CLAIM.

>> EXACTLY.

>> AND THAT'S NOT CHALLENGED?

>> THAT'S NOT CHALLENGED.

I THINK WHAT HAPPENED DURING THE CLOSING ARGUMENT, DURING THE GUILT PHASE THAT TRIAL COUNSEL ARGUED IT WASN'T KIDNAPPING TO FACILITATE A FELONY BECAUSE MR. OYOLA THOUGHT HE WAS DEAD ALREADY.

SO I THINK THAT'S A RATIONAL EXPLANATION IN THE JURY TO FIND HIM GUILTY OF FALSE IMPRISONMENT AS OPPOSED TO KIDNAPPING, A FELONY.

AND THAT'S EXACTLY CONSISTENT WITH THE EVIDENCE.

MR. GERRARD WAS CONFINED.

THERE'S BLOOD ALL OVER THE TRAILER, AND, AGAIN, THE COLOR PHOTOS WOULD BE VERY HELPFUL IN SEEING THE LEVEL OF VIOLENCE. BUT WHAT -- THERE'S EVIDENCE ON THE DOOR.

THE DOOR'S MADE OF PLYWOOD, AND WE HAVE TESTIMONY THAT PRIOR TO AROUND 2:00 OR SO WHEN HE DROPPED HIS CREW OFF, MUNCHO TESTIFIED ABOUT THAT, THAT THE DOOR'S PERFECTLY FINE.

AND WE HAVE EVIDENCE THAT THE DOOR IS COMPLETELY BUSTED.

IT'S GOT A PLYWOOD FRONT, AND IT'S FRACTURED TO THE SIDE, I MEAN, VERTICALLY WHERE HE IS DESPERATELY TRYING TO GET OUT OF THE TRAILER.

UM, THERE'S BLOOD ALL OVER THE DOOR FRAME, AND, UM, WHERE HE'S PUT HIS FINGERS IN THE SPACE HE'S MANAGED TO MAKE.

HE SORT OF LOOKS LIKE A RUGBY PLAYER, HE'S WELL BUILT, VERY STRONG.

AND HE ALMOST MANAGED TO GET OUT.

>> WHAT IS THE DIFFERENCE, THE WEIGHT DIFFERENCE BETWEEN OYOLA AND THE VICTIM?

>> UM, THE MEDICAL EXAMINER DID NOT TESTIFY AS TO THE WEIGHT OF MR. GERRARD.

BUT IF YOU TAKE A LOOK AT THE PHOTOS YOU SEE, HE LOOKS LIKE HE'S NOT EXCEPTIONALLY TALL, BUT HE'S VERY WELL BUILT, MUSCULAR, AND I DON'T MEAN FAT, I MEAN

WELL BUILT LIKE A RUGBY PLAYER.
MR. OYOLA WAS 5-9, AND THE
WEIGHT IN THE RECORD RANGED FROM
176 TO 200.

MR. MILLER, WHO WAS THE
GENTLEMAN WHO SAW HIM OUT ON THE
LOGGING ROAD, DESCRIBED HIM AS A
SKINNY GUY.

SO WHETHER HE WAS LIGHTER AT THE
TIME, UM, BECAUSE HE WAS
ARRESTED ON THIS AFTER THE
INDICTMENT IN 2008, I DON'T
KNOW.

BUT WHAT I DO KNOW IS THAT, UM,
I THINK ONE ARREST REPORT REFERS
TO HIM AT 176 AND ONE AT 200.

>> SO IS THERE -- DID THE STATE
ADVANCE WHERE THE INITIAL
STRUGGLE OCCURRED?

>> UM --

>> DID IT -- IT OCCURRED OUTSIDE
THE VEHICLE.

>> CERTAINLY.

>> AND, BUT DO WE KNOW WHAT THE
INITIAL, UM, INSTRUMENTS USED TO
APPARENTLY ATTEMPT TO KILL
MR. GERRARD AT THAT TIME, WHAT
HE USED?

>> NOT CONCLUSIVELY.

SOME OF THE STRUGGLE HAPPENED IN
THE TRAILER AS WELL BECAUSE
THERE WAS BLOOD EVIDENCE.

IT WAS CONSISTENT WITH
MR. MILLER WHO TESTIFIED THAT
MR. OYOLA -- OF COURSE, HE
DIDN'T IDENTIFY HIM AS
MR. OYOLA -- BUT THE GUY OUTSIDE
THE TRAILER WENT INSIDE, AND
THERE'S EVIDENCE OF SLING-OFF
BLOOD FROM THE FRONT TO THE
BACK.

SO WE KNOW SOME OF THIS
HAPPENED.

BUT WE DON'T KNOW EXACTLY WHERE
THE ATTACK HAPPENED.

IT WAS PROBABLY CLOSE TO WHERE
MR. OYOLA LIVED BECAUSE THE
PLACE WHERE HE DROVE TO DUMP THE
BODY WAS IN CLOSE PROXIMITY TO
HIS HOME, WITHIN ABOUT FIVE
MILES.

SO, BUT WE DON'T KNOW THAT, AND
I HAVE TO SAY WE DON'T KNOW
WHERE THE ORIGINAL CONFRONTATION
OCCURRED.

>> THE BOTTOM LINE IS WE KNOW HE WAS SIGNIFICANTLY INJURED AND LIVED FOR A PERIOD OF TIME AND WAS ABLE TO ACTUALLY GET UP AND TRY TO GET OUT IN TERMS OF THIS HAC AGGRAVATOR.

>> EXACTLY.

>> SO WHEN THE JUDGE FINDS THAT IT HAPPENED AT TWO DIFFERENT LOCATIONS WITH DIFFERENT OBJECTS, THAT'S -- THERE'S NO QUESTION THAT'S --

>> NO QUESTION.

>> -- THAT'S SUPPORTED BY THE RECORD.

>> EXACTLY.

MEDICAL EXAMINER TESTIFIED IT WAS A SHOVEL THAT WAS FOUND IN THE ABANDONED TRUNK.

MR. OYOLA DUMPED THE TRUCK.

IN THE BACK OF THE TRUCK WAS A SHOVEL.

IT WAS POSITIVE FOR BLOOD.

THE SHOVEL WAS BENT AT AN UNUSUAL PLACE THAN IF YOU WERE USING IT FOR -- AND IT HAD MR. GERRARD'S BLOOD, DNA ON IT. AND HE HAD SIGNIFICANT, AT LEAST FOUR SIGNIFICANT HEAD INJURIES THAT WOULD HAVE KILLED HIM ANYWAY BY THEMSELVES, OR I THINK THE MEDICAL EXAMINER TESTIFIED IT WAS A COMBO OF THE KNIFE AND THE BLOWS TO THE HEAD, THAT THEY WOULD HAVE BEEN INDEPENDENTLY FATAL AT THE TIME.

SO HE WAS CLEARLY HIT ON THE HEAD WITH A SHOVEL.

AND WHETHER HE WAS -- AND THEN THAT, AGAIN, APPLYING COMMON SENSE AND REASONABLE INFERENCES FROM THE EVIDENCE, IT'S LOGICAL THAT HE WAS HIT ON THE HEAD AND THE SHOULDER FROM BEHIND, PUT INTO THE TRAILER AND TRANSPORTED OUT TO THE LOGGING ROAD BECAUSE THERE'S, NUMBER ONE, THERE'S NO REASON FOR HIM TO BE OUT THERE, OUT ON A LOGGING ROAD.

>> JUST SO WE KNOW IN TERMS OF THE MOTIVATION, HE'S ON PROBATION.

SO IF HE IS ACCUSED AND HE IS FOUND TO BE GUILTY OF HAVING STOLEN MONEY, HIS PROBATION CAN

BE REVOKED, AND HE GOES BACK TO PRISON.

>> YES, CERTAINLY.

IF MR.--

>> GERRARD, THAT'S WHAT SOME OF THE SIGNIFICANCE OF THE SIGNIFICANCE IN THIS CASE IS THE FACT -- I DON'T KNOW HOW IT WAS ARGUED BY THE STATE, BUT THAT HE'S ON PROBATION IS THAT -- AND SOMEBODY CATCHES HIM DOING SOMETHING THAT'S ILLEGAL, THE CONSEQUENCE FOR HIM VERSUS ANOTHER PERSON IS, YOU KNOW, YOUR PROBATION'S REVOKED MOST LIKELY, AND YOU END UP BACK IN, INCARCERATED.

>> EXACTLY.

>> AND, I MEAN, IS THAT -- OR WAS THAT NOT ARGUED THAT WAY?

>> WELL, EITHER -- OF COURSE, THE JURY DIDN'T KNOW THAT HE WAS ON PROBATION DURING THE GUILT PHASE.

>> SO THAT WASN'T USED AS A MOTIVATOR FOR --

>> NOT -- NO.

NOT SPECIFICALLY.

>> BUT IN TERMS OF --

>> STEALING THE MONEY, OF COURSE, WAS.

THAT MR.-- WE KNOW THAT MR. GERRARD FOUND OUT ABOUT THE IMPROPER DEBIT CARD.

MR. OYOLA HAD THE DEBIT CARD. HE DIDN'T STEAL THE DEBIT CARD, HE HAD THE DEBIT CARD.

HE WAS THE FOREMAN OF THE CREW, HE WENT OUT AND BOUGHT GASOLINE AND THINGS LIKE THAT.

HE USED IT IMPROPERLY THE DAY BEFORE.

THAT DEBIT CARD IS BACK IN HIS WALLET, AND THERE'S BLOOD FOUND ON THE DEBIT CARD.

SO THAT DEBIT CARD GETS BACK INTO HIS WALLET.

AGAIN, REASONABLE INFERENCE FROM THE EVIDENCE, AND INTERESTINGLY, TRIAL COUNSEL DURING THE ARGUMENT KEPT SAYING, WELL, MAYBE MR. OYOLA GOT FIRED?

MAYBE HE GOT FIRED.

AND HE SAID, OF COURSE, THAT'S SPECULATION BECAUSE THERE WAS NO

EVIDENCE OF THAT.

BUT I THINK WHEN YOU LOOK AT
REASONABLE INFERENCES,
MR. GERRARD GOT THAT DEBIT CARD
BACK, AND MAYBE HE FIRED
MR. OYOLA.

WE DON'T KNOW, THERE'S NO
EVIDENCE OF THAT IN THE RECORD.
AGAIN, THAT'S LOGICAL INFERENCE
IF YOU FIND SOMEBODY'S STEALING
FROM YOU, HE GOT HIS DEBIT CARD
BACK, AND IT'S BACK IN HIS
WALLET AT THE TIME HIS BODY'S
FOUND.

SO AT SOME POINT HE'S
RENDERED -- HE'S BLOODY.
HE'S INCREDIBLY BLOODY, HE'S
INJURED, HE'S PUT INTO THE
TRAILER, HE'S TRANSPORTED OUT,
AND MR. OYOLA THEN REALIZES THAT
HE'S NOT DEAD BECAUSE HE'S GOT
TO HEAR THIS RACKET IN THE -- I
MEAN, AND THERE'S GOT TO BE
SUFFICIENT TIME FOR HIM TO, UM,
BREAK THE DOOR AND EVEN BEND THE
POLE.

THIS IS A TRAILER WHERE IF YOU
TAKE A LOOK AT THE PHOTOS,
THERE'S A BIG METAL BAR THAT
GOES OVER THE HASP, AND YOU'D
NORMALLY PUT A PADLOCK ON IT.
IT'S NOT THERE, THE PADLOCK'S
NOT THERE.

HE NOT ONLY BROKE THE DOOR AND
PUSHED OUT THE TRIM, BUT ALSO
MANAGED TO BEND -- MR. GERRARD,
BEND THE, UM, METAL BAR IN
TRYING TO ESCAPE.

SO WE KNOW THAT -- WE DON'T KNOW
EXACTLY HOW LONG HE WAS IN THE
TRAILER, BUT WE DO KNOW THAT HE
WAS IN THE TRAILER FOR A
SUFFICIENT AMOUNT OF TIME
BECAUSE THAT MUCH DAMAGE TO THE
DOOR AND TO THE FRAME AND TO TRY
TO GET OUT.

AND WE ALSO KNOW WHERE THEY
STOPPED BECAUSE CHRISTOPHER
MILLER TALKED ABOUT THE LOGGING
ROAD, AND HE SAW THEM STOPPED,
HE SAW, UM, MR. OYOLA GO INTO
THE TRAILER, HE SAW THE TRAILER
START ROCKING, AND THEN HE SAW
THEM FALL OUT.

>> WHEN, WHEN --

>> I'M SORRY.
HE ACTUALLY SAW THE DEFENDANT GO INTO THE TRAILER?
>> HE SAW THE DEFENDANT -- WELL, HE DIDN'T RECOGNIZE HIM, OF COURSE, AS WHO HE WAS.
>> RIGHT.
>> THERE WAS ONE MAN -- THE TRUCK DOORS WERE OPEN, I THINK HE SAID, OR THERE'S NOBODY IN THE TRUCK, AND HE PERCEIVED THAT SOMEBODY WAS STANDING OUTSIDE THE TRAILER DOOR AND GO IN. THEREAFTER, THE TRAILER STARTED ROCKING.
SO THE ONLY REASONABLE INFERENCE IS IT'S GOT TO BE OYOLA, HE CONTINUES THE ATTACK --
>> I THOUGHT THEY WERE ALREADY IN THERE ROCKING AND ROLLING --
>> NO.
HE SAW THE TRUCK AND TRAILER THERE, AND HE WAS KIND OF ANGRY BECAUSE SOMEBODY'S BLOCKING THE ROAD.
AND HE PERCEIVES, HE SEES -- HE PERCEIVES MORE THAN SEES, IT SEEMS, THAT THERE'S SOMEBODY OUTSIDE THE TRAILER.
THAT PERSON GOES IN, AND THEN THE TRAILER STARTS ROCKING, AND BOTH OF THE MEN TUMBLE OUT. AND OYOLA'S GETTING THE BEST OF MR. GERRARD.
MR. MILLER DOES NOT SEE THE KNIFE.
SO HOW MUCH OF THE STABBING HAPPENED INSIDE THE TRAILER WHEN HE WENT BACK INSIDE AND HOW MUCH --
>> OKAY.
AND LET ME JUST -- BECAUSE WHEN I WAS ASKING YOU ABOUT THE DIFFERENT WEAPONS, THE STABBING IS, IS THAT THE FINAL -- THE INFERENCE IS THE SHOVEL AND THE HITTING IN THE HEAD OCCURRING AT THE ONE LOCATION.
THE STABBING AND THE FATAL STABBING OCCURS AT THE, AT THE SECOND LOCATION.
>> AT THE SECOND LOCATION.
NOW, IT MAY BE THAT HE STABBED HIM SOME AT THE -- BEFORE HE CONFINED HIM TO THE TRAILER.

WE DON'T KNOW THAT FOR SURE.
BUT WE DO KNOW THAT HE WAS --
MR. MILLER PERCEIVED IT AS A
FISTFIGHT.

BUT WE, BUT THE MEDICAL EXAMINER
TESTIFIED AND, THAT, UM, ALL THE
STAB WOUNDS, THE SIX MAJOR STAB
WOUNDS RUNNING DOWN THE SIDE OF
HIS BODY WERE INFLICTED AT A
TIME WHERE MR. GERRARD WAS
HELPLESS TO RESIST OR APPEARED
TO BE HELPLESS TO RESIST BECAUSE
HE WAS NOT MOVING.

HE'S NOT EVADING THE KNIFE.
BUT HE DOES HAVE DEFENSIVE
WOUNDS.

>> NOW HOW -- THE LAST THING
THAT MR., THAT THE WITNESS SEES
IS, IS THE VICTIM DOWN AND
SEEMINGLY DEAD AT THAT POINT,
AND THEN AFTER MR. GERRARD,
AFTER MR. OYOLA LEAVES,
GERRARD'S ABLE TO GET UP SORT OF
SEMI FOR ONE LAST ATTEMPT TO
LIVE?

I MEAN --

>> NO.

WHAT HAPPENS IS WHEN MR. MILLER
LEAVES TO GO GET HELP, THEY COME
LOOK AT THE SITE.

HE SAYS THAT THE SKINNY GUY IS
ON TOP OF THE BIGGER GUY AND
GETTING THE BEST OF HIM.

SO HE LEAVES, IT APPEARS FROM
HIS TESTIMONY THAT HE LEAVES
WHILE THE FIGHT IS STILL
ONGOING.

AND WHEN I WANT TO SAY "FIGHT,"
I'M SAYING IT'S REALLY

MR. GERRARD TRYING TO SURVIVE.
AND WHEN HE, BUT WHEN HE COMES
BACK A FEW MINUTES LATER -- AND
IT'S NOT CLEAR HOW LONG HE WAS
GONE -- MR. OYOLA'S GONE, HE'S
MANAGED TO TURN THE TRAILER
AROUND MUCH TO MR. MILLER'S, YOU
KNOW, ASTONISHMENT.

AND MR. GERRARD IS UP ON ONE
KNEE LIKE MR. MILLER DESCRIBED
IT, GASPING FOR HIS LAST BREATH,
FALLS DOWN ON HIS FACE.

WHEN THE PARAMEDICS ARRIVE, HE'S
DEAD.

HE'S FLATLINED.

>> BUT MR. OYOLA PROBABLY FIRST

THOUGHT HE KILLED HIM WHEN HE WAS TAKING HIM OUT IN THE TRAILER.

HE DIDN'T, AND, I MEAN, HE LEFT HIM AND PRESUMABLY LEFT HIM FOR DEAD.

>> WELL, AGAIN, I THINK, AGAIN, MR. McLAIN MIGHT SAY WE DON'T KNOW THAT, BUT I THINK, AGAIN, YOU HAVE TO USE REASONABLE INFERENCES FROM THE EVIDENCE. IF YOU LOCK A GUY IN, YOU KNOW, YOU INCAPACITATE HIM TO SOME EXTENT, AND WE KNOW THAT BECAUSE HE'S LAYING DOWN, HE'S BLEEDING, HE'S ASPIRATING BLOOD.

YOU'RE TAKING HIM OUT TO, UM, THE TRAM ROAD, OUT TO A LOGGING ROAD IN JEFFERSON COUNTY, WHAT'S THE LOGICAL INFERENCE?

YOU THINK HE'S DEAD, HE'S TAKING HIM TO DUMP HIS BODY.

AND, AGAIN, I THINK, YOU KNOW, BECAUSE THERE'S ONLY ONE OTHER PERSON OUT THAT SURVIVED THIS ATTACK, YOU KNOW, WHO DIDN'T TESTIFY, WE HAVE TO TAKE REASONABLE INFERENCES.

AND THE REASONABLE INFERENCE IS THAT HE BELIEVED MR. GERRARD WAS DEAD.

HE TOOK HIM OUT TO DUMP HIS BODY, AND LO AND BEHOLD, HE HEARS THE STRUGGLE AND REALIZES, OH, MY GOSH, HE'S NOT DEAD. HE HITS THE BRAKES.

THE REASON WHY I SAY THAT'S SUPPORTED AND THE PROSECUTOR ARGUED THIS AT TRIAL WAS THERE'S A BLOOD SPOT ON THE TRAILER, IT LOOKS LIKE SORT OF ROUND, LOOKS LIKE SOMEBODY HIT HIS HEAD SO, LIKE, GOT SLAMMED, YOU KNOW? THEY'RE DRIVING, DRIVING, HE HITS THE BRAKES, AND SOMEONE WHO IS INJURED LOSES BALANCE AND FALLS FORWARD.

AND SO HE -- AND THEN HE APPROACHES THE TRAILER, AND WE KNOW THAT SHORTLY THEREAFTER MR. GERRARD IS DEAD.

AND IT'S A REASONABLE INFERENCE THAT MR. OYOLA ARMED HIMSELF, WENT INTO THE TRAILER, ATTACKED HIM FURTHER AND WAS SUCCESSFUL

IN KILLING HIM.
AND MR. GERRARD FOUGHT FOR HIS
LIFE, AND THAT'S WHERE THE HAC
COMES IN.
ESPECIALLY WHEN, YOU KNOW, WE'VE
GOT A BANG ON THE HEAD, WE'VE
GOT HIM WAKING UP.
IT'S REASONABLE THAT HE'S
TERRIFIED.
HE'S IN FEAR FOR HIS LIFE.
HE'S TRYING TO BREAK DOWN THAT
DOOR.
HE CAN'T DO IT, AND MR. OYOLA
COMES AND STABS HIM SIX TIMES
ACCORDING TO THE MEDICAL
EXAMINER, I THINK IT WAS SIX
TIMES ALONG THE SIDE OF HIS
BODY.
AND THAT WAS THE SERIOUS WOUNDS.
ONE STAB WOUND WENT INTO HIS
KIDNEY SEVEN INCHES AT A TIME
WHEN HE IS DOWN IN A DOWN
POSITION AND HELPLESS TO RESIST,
AND THAT'S IN THE MEDICAL
EXAMINER'S TESTIMONY.
AND THE, THE ONLY THING -- AND,
JUSTICE LEWIS, BEFORE I FORGET
IT, ALSO IN, UM, VOLUME ONE OF
THE TRIAL RECORD IS THE DEFENSE
MEMORANDUM OF, UM -- AND IF YOU
LOOK AT THE DEFENSIVE
MEMORANDUM, THEY KIND OF SMUSH
TOGETHER A BIT THE MITIGATING
CIRCUMSTANCES SOMEWHAT.
AND I KNOW THIS COURT IS
CONCERNED ABOUT THE TRIAL
COURT'S ORDER IS NOT AS DETAILED
AS YOU MIGHT LIKE IT TO BE.
BUT YOU CAN SEE WHERE HE
CONSIDERED DR. D'ERRICO'S
TESTIMONY.
HE FOUND IN NONSTATUTORY
MITIGATION HE HAS
SCHIZO-EFFECTIVE DISORDER, HE
HAS A HISTORY OF CHILD ABUSE, HE
HAS A HISTORY OF MENTAL ILLNESS.
SO IT'S CLEAR HE FULLY
CONSIDERED IT, AND IF YOU LOOK
AT THE DEFENSE MEMORANDUM,
YOU'LL SEE THAT THE TRIAL JUDGE
CONSIDERED EVERY MITIGATOR
SUGGESTED BY THE DEFENSE
COUNSEL.
>> BUT ISN'T THERE A CAMPBELL
ERROR IN THE NONSTATUTORY

MITIGATION?

I MEAN, I HAVEN'T SEEN SOMETHING LIKE THIS IN QUITE A WHILE, AND THAT IS WHERE SEVERAL THINGS, MAYBE IT IS FOR ADVOCACY ON THE DEFENSE LAWYER --

>> I'M NOT GOING TO SAY THAT, YOUR HONOR.

>> NO, I KNOW YOU DON'T WANT TO SAY THAT.

WE WANT TO MAKE SURE THIS IS EVALUATED.

BUT IT DOESN'T GIVE US ANY ABILITY TO, ON THIS NONSTATUTORY MITIGATOR TO UNDERSTAND WHETHER THESE WERE CONSIDERED SEPARATELY.

I MEAN, AN ABUSIVE CHILDHOOD IS DIFFERENT FROM DRUG, YOU KNOW, HISTORY OF DRUG ABUSE WHICH IS DIFFERENT FROM, APPARENTLY, DOCUMENTED SCHIZO-EFFECTIVE DISORDERS WHICH HE WAS -- BUT THEY'RE ALL JUST PUT TOGETHER. AND FOR SOME REASON GIVEN SLIGHT WAIT.

AND WE HAVE NO IDEA WHY THEY'RE GIVEN SLIGHT WEIGHT.

>> UM, I THINK THAT --

>> I MEAN, DOESN'T THIS AT LEAST HAVE TO GO BACK FOR REEVALUATION OF THE NONSTATUTORY MITIGATION UNDER CAMPBELL?

>> UM, I THINK, CERTAINLY I THINK THE TRIAL JUDGE'S ORDER COULD HAVE BEEN MORE, UM, THOROUGH.

>> WELL, THAT'S VERY KIND OF YOU TO SAY.

[LAUGHTER]

YOU KNOW, AGAINST WHAT WE ARE USED TO LOOKING AT FOR THE LAST MANY YEARS, I JUST DON'T KNOW HOW DO I -- HOW CAN I GIVE CREDENCE TO AN EVALUATION THAT JUST SIMPLY SAYS I'M GIVING IT SLIGHT WEIGHT?

>> I MEAN, BASED ON WHAT?

>> I UNDERSTAND, YOUR HONOR.

I MEAN, THE ONLY -- IF YOU FIND A CAMPBELL ERROR, I THINK IN THIS CASE IT WOULD BE HARMLESS ERROR BECAUSE THE JUDGE WOULD STILL FIND SLIGHT WEIGHT.

UM, THE, UM -- BUT THE ONLY

REMEDY FOR THAT IS SENDING IT
BACK TO THE JUDGE FOR EVALUATION
ON A PENALTY PHASE.

>> RIGHT.

>> ONLY SENDING IT BACK TO
NOW-RETIRED JUDGE SMITH.

BUT I THINK THAT IF YOU LOOK AT
THE FACT IS THAT, UM, THE
EVIDENCE SUPPORTS THAT THESE
MITIGATORS, YOU KNOW, WEREN'T --
THEY WEREN'T MITIGATORS.

THIS IS A 37-YEAR-OLD DEFENDANT.
YOU KNOW, HE HAD -- THAT THE
TRIAL JUDGE CERTAINLY COULD HAVE
GIVEN THEM SLIGHT WEIGHT.

UM, I THINK WHAT WE HAVE TO
UNDERSTAND IS WHEN YOU LOOK AT,
YOU KNOW, HIS MENTAL CONDITION,
NOT ONLY THE FACT THAT THE
EVIDENCE IS CONTRARY TO WHAT HE
TOLD DR. D'ERRICO, BUT HERE IS A
37-YEAR-OLD MAN WHO'S BEEN
GAINFULLY EMPLOYED WITH THE
VICTIM FOR A PERIOD OF TIME.

HE'S THE FOREMAN, HE'S GIVEN
RESPONSIBILITY, HE'S USING THE
DEBIT CARD, UM, PROPERLY WHEN
HE'S SUPPOSED TO --

>> WHAT WAS THE PERIOD OF TIME
HE WORKED FOR THE --

>> UM, HE TOLD DR. D'ERRICO THAT
HE WORKED FOR OVER TWO YEARS,
BUT I BELIEVE THERE'S, UM, I
BELIEVE THAT'S PROBABLY CLOSER
TO EIGHT MONTHS.

UM, BUT IT'S NOT PERFECTLY CLEAR
IN THE RECORD.

>> HAD HE BEFORE THAT HAD A
HISTORY OF STEADY EMPLOYMENT?

>> HE SAID -- ALL I KNOW IS WHAT
HE TOLD DR. D'ERRICO IS THAT HE
WORKED -- HE SAID HE WORKED WHEN
HE WAS --

[INAUDIBLE]

SO WHEN HE WAS OUT, HE HAD
STEADY EMPLOYMENT.

WHERE HE WORKED PRIOR TO
MR. GERRARD, I DO NOT KNOW.

UM, SO I THINK WHEN YOU LOOK
AT --

>> BUT I GUESS THE POINT IS THAT
HIS MENTAL, WHAT YOU'RE SAYING
IS THAT HIS MENTAL ILLNESS DID
NOT PREVENT HIM FROM WHEN HE
WASN'T, YOU KNOW, HE WASN'T IN

PRISON FOR SEVERAL YEARS FROM
BEING ABLE TO LEAD A PRODUCTIVE
LIFE AND LEAD --

>> RIGHT.

>> -- A, I MEAN, WITHIN THE
CONFINES OF NORMALCY THE
NORMALLY-EMPLOYED PERSON.

>> EXACTLY.

HE WORKED, HE HAD A RESPONSIBLE
POSITION.

AND IT'S NOT LIKE, YOU KNOW,
HE'S JUST -- AND WHEN I SAY
"JUST," I DON'T MEAN TO DIMINISH
THAT AT ALL.

BUT HE'S NOT A PURE EMPLOYEE.
HE IS A FOREMAN.

HE'S SOMEONE WHO MR. GERRARD HAS
ENTRUSTED WITH RESPONSIBILITY.

HE'S WORKED IN THAT CAPACITY.

HE'S GOT -- THERE WAS NO
EVIDENCE PRESENTED, YOU KNOW,
THAT HE HAD A HAIR TRIGGER
TEMPER, YOU KNOW, AND THAT HE
WAS BUSTING GUYS UP ON THE
WEEKENDS.

SO THIS NOTION THAT, YOU KNOW,
HE CAN'T CONTROL HIS BEHAVIOR,
UM, AND THE CAPACITY TO CONFORM
HIS BEHAVIOR TO THE REQUIREMENTS
OF LAW SOMETIMES ON THIS ONE
DAY, I THINK THAT THE TRIAL
JUDGE, YOU KNOW, PROPERLY
REJECTED IT.

ESPECIALLY SINCE, UM, BOTH IN
HIS REPORT WHICH IS ON THE
RECORD AND ON THE STAND,
DR. D'ERRICO DID NOT TESTIFY
THAT THE STATUTORY MITIGATOR WAS
MET.

>> WAS IT ONLY THE BROTHER WHO
TESTIFIED ABOUT, UM, THE
DEFENDANT'S HOME LIFE?

WHAT -- I'M TRYING TO FIGURE OUT
WHAT DO WE HAVE IN THE RECORD
THAT SUPPORTS EVEN THE MINIMAL
MITIGATION THAT WAS FOUND HERE.

>> HIS BROTHER TESTIFIED IN THE
PENALTY PHASE, BUT ALSO IN THE
RECORD IN VOLUME ONE WHICH WAS
ATTACHED TO THE DEFENDANT'S
SENTENCING MEMORANDUM WAS AN
INTERVIEW BY THE DEFENSE
INVESTIGATOR OF MR. OYOLA'S
PARENTS.

AND BOTH OF THEM WERE ELDERLY

AND UNABLE TO COME TO TRIAL.
>> AND DO WE HAVE ANY INDICATION THAT THE TRIAL JUDGE ACTUALLY EVALUATED THOSE INTERVIEWS?
>> UM, WELL, HE FOUND THE ABUSIVE CHILDHOOD, AND, UM, LET ME --
>> I SEE THE BROTHER'S TESTIMONY TALKS ABOUT THE ABUSIVE CHILDHOOD.
>> HE DID.
>> BUT SINCE WE DON'T HAVE ANY DETAIL, IT'S HARD TO --
>> WELL, AND MR.-- THE PARENT, THE MOM TESTIFIED THAT SHE HAD BEEN TREATED, YOU KNOW, FOR HER NERVES, AND SHE THOUGHT IT MIGHT BE SCHIZOPHRENIA.
BUT HE FOUND, I MEAN, THE DEFENDANT, THE TRIAL JUDGE FOUND BOTH IN THE HISTORY OF ABUSES AS ABUSIVE HOME LIFE AS A CHILD AND HIS ABUSIVE CHILDHOOD CREATED A CYCLE OF VIOLENCE.
AND HIS MOM TALKED ABOUT, UM, AND I DON'T RECALL WHETHER HIS BROTHER DID, BUT I KNOW HIS MOM TALKED ABOUT GANGS, AND HIS FATHER TALKED ABOUT GANGS.
YOU KNOW, HE GREW UP IN PHILADELPHIA.
HE WAS BORN IN NEW JERSEY, BUT GREW UP IN PHILADELPHIA AND ABOUT THE GANGS AND THE VIOLENCE.
THE TRIAL COURT DID FIND TWO SEPARATE --
>> THE BROTHER, I BELIEVE, ALSO TESTIFIED ABOUT PHYSICAL ABUSE AND VIOLENCE.
>> YES.
AND ALL THE KIDS LEFT HOME BETWEEN AGE 14 AND 16, AND WHETHER THAT WAS ATTRIBUTABLE SOLELY TO THE MOM'S EXCESSIVE USE OF PUNISHMENT, I DON'T KNOW. BUT I DO KNOW THAT THERE IS CERTAINLY EVIDENCE THAT, UM, HIS MOTHER HAD A HISTORY OF MENTAL ILLNESS.
AND THE TRIAL JUDGE FOUND SPECIFICALLY IN NONSTATUTORY MITIGATION THAT THE DEFENDANT'S FAMILY HAS A HISTORY OF MENTAL ILLNESS.

HIS FATHER WAS A DRINKER, UM,
AND -- BUT IT WASN'T, IT WASN'T
ALLEGED HIS FATHER WAS VIOLENT
WHEN HE WAS DRUNK.
BUT HIS FATHER WAS CLEARLY, YOU
KNOW, PROBABLY AN ALCOHOLIC.
AND THAT, AGAIN, THE TRIAL JUDGE
FOUND THAT ABUSIVE CHILDHOOD
CREATED A CYCLE OF VIOLENCE,
ABUSIVE HOME LIFE AS A CHILD.
A HISTORY OF DRUG ABUSE, AND
THAT WAS ALSO TESTIFIED TO BY
THE BROTHER AND, I THINK,
DR. D'ERRICO AS WELL, AS WELL AS
THE FAMILY HISTORY.
AND HE DID FIND IN NONSTATUTORY
MITIGATION THAT THE DEFENDANT
DID HAVE SCHIZO-EFFECTIVE
DISORDER AND THAT THE DEFENDANT
HAS A MENTAL DISORDER.
SO I THINK WHEN YOU LOOK AT --
IT'S NOT A MATTER OF THE TRIAL
COURT FAILED TO LOOK AT THE
EVIDENCE PRESENTED.
HE CLEARLY DID.
HE MAY HAVE FAILED TO EXPLAIN IT
WELL ENOUGH.
BUT IT'S THE STATE'S POSITION
THAT HE'S CLEAR FROM HIS
SENTENCING ORDER THAT HE
CONSIDERED IT.
IF THIS COURT HAS NO OTHER
QUESTIONS, THEN, UM, THE STATE
WOULD RESPECTFULLY ASK THAT YOU
AFFIRM MR. OYOLA'S CONVICTION
AND SENTENCE TO DEATH.
>> I JUST HAVE ONE FURTHER
COMMENT ON THE TRIAL JUDGE'S
ORDER REGARDING THE STATUTORY
MITIGATING CIRCUMSTANCE.
I MEAN, THE ANALYSIS HERE IS WE
HAVE AN UNREBUTTED EXPERT
TESTIMONY.
I KNOW WE HAD ISSUES ABOUT
WHETHER HE ACTUALLY ADDRESSED
IT.
THE PROSECUTOR FELT THAT HE DID
IN CLOSING ARGUMENT.
HE TOLD THE JURY.
ONCE THAT OCCURS, THIS COURT'S
CASE LAW SAYS THAT IS SUFFICIENT
TO ESTABLISH A MITIGATOR.
AND THEN THE QUESTION BECOMES
WHETHER THE TRIAL JUDGE IS GOING
TO BE ABLE TO IGNORE THAT EXPERT

TESTIMONY REGARDING MITIGATOR,
AND HE HAS TO ESTABLISH AND
EXPRESSLY EVALUATE THE EVIDENCE
WHICH DIDN'T OCCUR HERE TO SHOW
THERE'S SUBSTANTIAL COMPETENT
EVIDENCE AS A BASIS TO REJECT
THE EXPERT'S TESTIMONY.

THAT WASN'T DONE.

THAT'S AN INADEQUACY IN THE
ORDER THAT --

>> DO YOU HAVE A CASE WHERE WE
OVERTURNED A TRIAL COURT'S
REJECTION OF THAT MITIGATOR
WHERE THE EXPERT HAD FAILED TO
TESTIFY EXPRESSLY THAT THERE WAS
SUBSTANTIAL IMPAIRMENT?

I THINK THAT QUESTION WAS ASKED
EARLIER, BUT I JUST WANT TO MAKE
SURE.

>> WHETHER -- I'M NOT SURE I
FOLLOW THE QUESTION YET.

>> WELL, DO YOU HAVE A CASE THAT
SUPPORTS YOUR POSITION THAT
YOU'RE ARGUING HERE WHERE WE
HAVE OVERTURNED THE TRIAL
COURT'S REJECTION --

>> WHERE THE EXPERT DID NOT SAY
IT WAS SUBSTANTIALLY AND
SPECIFICALLY?

>> YES.

>> I DON'T KNOW THAT I HAVE A
CASE TO OFFER YOU ON THAT.
I'M SAYING THE TESTIMONY HERE,
IN ESSENCE, THAT'S WHAT HE
TESTIFIED TO.

THAT'S MY POSITION HERE.

THAT --

>> WELL, I UNDERSTAND YOUR
POSITION, BUT, YOU KNOW, IF WE
LOOK AT THE TRANSCRIPT, IT SEEMS
A LITTLE EQUIVOCAL.

>> IT SEEMS A LITTLE EQUIVOCAL,
THAT'S NOT -- IN CONTEXT, THAT'S
NOT THE WAY THE PROSECUTOR
VIEWED IT WHEN HE TALKED TO THE
JURY.

>> PROSECUTORS MISS THE BOAT ON
A VARIETY OF THINGS.

>> I AGREE THIS COURT CAN'T
EVALUATE WHETHER IT WAS THE
TESTIMONY OF THE EXPERTS
THEMSELVES ESTABLISHED IT,
WHETHER IT WAS SUFFICIENT TO
ESTABLISH IT.

AGAIN, I'M ASSERTING THAT IT WAS

ESTABLISHED.
AND IF THAT'S THE CASE, THEN
WE'VE GOT TO HAVE AN EVALUATION
OF IT IN THE RECORD AS TO WHY IT
WAS REBUTTED.
THAT DID NOT OCCUR.
CAMPBELL VIOLATIONS, I THINK,
PRESENT A PARTICULAR PROBLEM
WHEN THIS COURT STARTS TO REVIEW
HARMLESS ERROR IN A CASE AS
WELL.
YOU DON'T HAVE AN ORDER TO
REVIEW.
YOU'RE NECESSARILY HAVING TO
SPECULATE WHAT WAS IN THE
JUDGE'S REASONING AND
REJECTING --
>> BUT YOU AGREE THAT THE REMEDY
IF WE WERE TO FIND THAT WOULD BE
TO REMAND TO THE JUDGE FOR A
REEVALUATION, IT WOULDN'T GIVE A
NEW PENALTY PHASE?
>> I AGREE.
I AGREE.
UM, I'M JUST SUGGESTING THAT FOR
THIS COURT'S REVIEW THAT AT THE
VERY LEAST SHOULD BE REMANDED TO
ALLOW THE JUDGE TO DO A PROPER
EVALUATION.
I'M NOT SURE WITHOUT THAT
WHETHER THIS COURT REALLY HAS A
BASIS TO DO AN EFFECTIVE
HARMLESS ERROR ANALYSIS
REGARDING THE SENTENCE.
THAT'S ALL I HAVE.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS.
THE COURT WILL NOW STAND IN
RECESS FOR TEN MINUTES.
>> ALL RISE.