

ORIGINAL

In the

Supreme Court of the United States

MONTY LEE EDDINGS,

Petitioner,

v.

OKLAHOMA

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NO. 80-5727

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1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: We will hear arguments next
3 in Eddings against Oklahoma.

4 Mr. Baker, you may proceed whenever you are ready.

5 ORAL ARGUMENT OF JAY C. BAKER, ESQ.,

6 ON BEHALF OF THE PETITIONER

7 MR. BAKER: Mr. Chief Justice, and may it please
8 the Court, having been certified for trial as a juvenile
9 within the Oklahoma juvenile justice system, Monty Eddings
10 was convicted on a plea of nolo contendere for the murder of
11 an Oklahoma highway patrolman, an offense he committed at
12 the age of 16 years, four months. This Court granted
13 certiorari to determine whether the imposition of capital
14 punishment on a 16-year-old youth is cruel and unusual
15 punishment prohibited by the Eighth Amendment.

16 QUESTION: Was that the question, or was the
17 question whether one who was 16 years and four months at the
18 time of the act?

19 MR. BAKER: The question is actually phrased as a
20 16-year-old youth.

21 QUESTION: How old is he now?

22 MR. BAKER: He would be about 20 now. This
23 happened in 1977. Twenty years of age.

24 Because of the treatment of the case by the
25 Oklahoma Court of Criminal Appeals and by the state in its

1 brief, one special point should be made. We are not here
2 talking about accountability or criminal responsibility. I
3 concede to the state their right to fix the age of criminal
4 responsibility. The state in essence asked for that
5 latitude which they receive under the due process clause
6 under the Eighth Amendment. It is our position this is a
7 very narrow issue, the imposition of the death penalty upon
8 a 16-year-old child. Whatever age the state wishes to fix
9 for relinquishing children to the adult court system, I
10 grant their power.

11 There is in my argument one assumption. That
12 assumption is that there is an age somewhere below which it
13 is cruel and unusual punishment to put a child to death.
14 The question is, what is that age?

15 In Gregg, this Court stated that death is a
16 punishment unique in its severity and irrevocability,
17 different in kind from any other punishment imposed, and
18 indeed it is. In subsequent cases such as Lockett and
19 Woodson, the Court stated it is necessary to focus upon the
20 particular character of the defendant to determine if the
21 punishment is proportionate to the offense and to the
22 person. This Court has on innumerable occasions
23 acknowledged youth as a most mitigating circumstance. In
24 fact, in every instance in which the Court has made
25 reference to mitigating factors or given examples of them,

1 youth has been in there.

2 QUESTION: Well, the Oklahoma court allowed and
3 focused on youth as a mitigating factor here, did it not?

4 MR. BAKER: That is another problem in the case.
5 The trial judge made the finding that he was precluded by
6 Oklahoma law from considering as a mitigating circumstance
7 the background of the defendant. He did consider youth, but
8 he made the statement that he could not consider anything
9 else, and of course, we think that is in violation of
10 Lockett.

11 QUESTION: Counsel, wasn't the statement that he
12 couldn't consider the violent background of the youth?

13 MR. BAKER: Yes.

14 QUESTION: I am not sure what that meant. Did
15 that mean the whole background, and is that how the Court of
16 Appeals treated it?

17 MR. BAKER: I understand it to mean, and the Court
18 of Criminal Appeals obviously did, the history of the boy in
19 the juvenile system, the burglaries, the fight he was in,
20 his trouble with his parents, being bounced from one home to
21 another home.

22 QUESTION: If that is true, if that is what the
23 court meant, and then did not consider it, I guess the
24 Lockett case was decided shortly afterwards. Do we have to
25 then consider remanding on the basis of having the court

1 consider these other mitigating circumstances in your view?

2 MR. BAKER: That would certainly be one solution.
3 Lockett would mandate a remand.

4 QUESTION: If we were to do that, then I guess we
5 would not reach the issue of the age limit problem for an
6 execution.

7 MR. BAKER: That is true. The Oklahoma Court of
8 Criminal Appeals in considering that issue merely made the
9 statement that the juvenile knew right from wrong.
10 Therefore, he can be put to death. They begged the
11 question. They used the McNaughton test of sanity to
12 determine whether or not a juvenile could be put to death.

13 QUESTION: Lockett was decided in 1978 and the
14 Court of Criminal Appeals opinion came down in 1980. Why
15 wasn't that raised in the Oklahoma Court of Criminal Appeals?

16 MR. BAKER: That was an inadvertent error for
17 which I take full responsibility. It should have been
18 raised. But under the Oklahoma statute, it was incumbent
19 upon the court to consider these mitigating circumstances
20 anyhow. The Oklahoma statutes provide for automatic appeal,
21 and they state certain findings the appellate court must
22 make to affirm any sentence of death, and among those is a
23 comparison of other cases and the consideration of
24 mitigating circumstance. Our court just didn't do it.

25 QUESTION: They certainly wrote language that they

1 thought complied with the state requirement.

2 MR. BAKER: I don't see how they could think such,
3 especially their interpretation of especially atrocious and
4 cruel. They gave such a broad standard there that --

5 QUESTION: Well, do you think simply pulling over
6 and shooting a highway patrolman who thinks he is stopping
7 you for a traffic stop with a sawed off shotgun is not
8 atrocious and cruel?

9 MR. BAKER: Going back to Godfrey, the crime was a
10 horrible crime. Any murder involves some element of being
11 atrocious. Any murder involves an element of being cruel.
12 The crimes for which the death penalty can be imposed are
13 those that are especially cruel, and Mr. Godfrey walked up
14 to a mobile home and shot two people. I don't see any
15 distinction between that and this.

16 QUESTION: Wanton gets into the equation, does it
17 not? Wanton, mindless kind of action also enters that
18 equation, in the atrociousness or heinousness of it.

19 MR. BAKER: I would concede that, and also the
20 element of torture is what the court focused on.

21 QUESTION: There is no torture suggestion here.

22 MR. BAKER: No.

23 QUESTION: Do you question that it was a mindless,
24 wanton act?

25 MR. BAKER: No, I don't question that. I don't

1 try to defend the crime. I address myself to the
2 defendant. It was a horrible crime.

3 QUESTION: But you are really focusing only on the
4 one issue, and that is age, isn't it?

5 MR. BAKER: That's age. Age and the background
6 which produced this unfortunate product of our society.
7 This Court has --

8 QUESTION: What is your alternative solution, so
9 far as the state of Oklahoma is concerned? That he be
10 confined for life under the care of psychiatrists and
11 psychologists for 15 or 30 years, as one of them testified
12 that might enable them to rehabilitate him?

13 MR. BAKER: My suggestion is that he be given a
14 life sentence.

15 QUESTION: Why should the taxpayers have to foot
16 that bill?

17 MR. BAKER: I would suggest, Your Honor, that
18 would be cheaper than putting him to death.

19 QUESTION: From the taxpayers' point of view, I
20 don't think it would be.

21 MR. BAKER: There has been an enormous amount of
22 money spent up to this point. There is going to be a lot
23 more spent. I have read figures before on the cost of
24 executing someone. It is much more than putting them to
25 death.

1 QUESTION: Well, it is more because of the
2 litigation.

3 MR. BAKER: Precisely.

4 QUESTION: Well, it would be cheaper just to shoot
5 him when you arrested him, wouldn't it?

6 MR. BAKER: Yes, much cheaper.

7 QUESTION: Counsel, I am concerned, if we are
8 talking about setting a fixed age standard, with the
9 position that you would then have to take. For instance, an
10 immature, impulsive 18-year-old would then be subject to the
11 death penalty, but you would oppose it, I suppose, even for
12 a very sophisticated or mature young person under the age.

13 MR. BAKER: Yes.

14 QUESTION: You put yourself in a very difficult
15 position when you fix an age limit that is arbitrary.

16 MR. BAKER: The question assumes that we can
17 measure maturity. There are no good tests for measuring
18 one's maturity. In fact, it is difficult to define
19 maturity. Studies in fact suggest that at about the point
20 of 15 or 16 -- I am referring to studies by Renn, Colberg,
21 and Turrell which are mentioned in our brief -- there is a
22 regression during the years of stormy adolescence. When the
23 kids start to develop into adolescence, are subjected to
24 these pressures, they actually regress in terms of making
25 judgmental decisions.

1 Further, any such testing like that would subject
2 the cultural minorities to the death penalty because the
3 tests are biased against them.

4 My position is that we grant them measureable
5 exposure to living, to the life experience before we hold
6 them accountable as adults. I suggest the age of 18 because
7 that is the age accepted universally, and it has
8 constitutional significance, too.

9 QUESTION: Don't some 20 odd states not require
10 the age of 18, but say, youth may be considered as a
11 mitigating circumstance below that age, but is not an
12 absolute bar?

13 MR. BAKER: There ae 24 states, I believe, that
14 provide that youth is to be considered as a mitigating
15 circumstance. Six states state boldly, we will not execute
16 anyone under the age of 18.

17 QUESTION: Well, under the test of the evolving
18 social mores that this Court has stated on times for cruel,
19 unusual punishment, if you've got six lined up against 24,
20 you can't really say that you have a majority on your side,
21 can you?

22 MR. BAKER: It is my suggestion, Your Honor, that
23 we judge these evolving standards by not the availability of
24 capital punishment but by its use. In our history, and
25 things today show without question that this country just

1 has not executed children. It has been 1948 since a
2 16-year-old was executed.

3 QUESTION: Well, on that basis you would say that
4 we should declare the death penalty statutes
5 unconstitutional in general.

6 MR. BAKER: As applied to youth.

7 QUESTION: Well, as applied to anybody. How many
8 people have been executed in the last ten years?

9 MR. BAKER: In the last ten years? None that I
10 know of.

11 QUESTION: Three.

12 MR. BAKER: One involuntary execution.

13 QUESTION: One involuntary.

14 QUESTION: On your basis, then, there should be no
15 death penalty statute sustained.

16 MR. BAKER: I don't think we can --

17 QUESTION: If you are going to go by the use.

18 MR. BAKER: I don't think we can consider the last
19 ten years, because of the problems we've had with the death
20 penalty in a legal sense. I am going back to 1864, and we
21 just don't have a history of executing children. Of course,
22 there is no death penalty anywhere in western Europe now.

23 QUESTION: How many of the states that permit the
24 execution of 16-year-olds -- I think there are 20 some --
25 weren't all those laws recently enacted, re-enacted after

1 their in effect validation by --

2 MR. BAKER: By Furman, yes.

3 QUESTION: Yes. And so they have been re-enacted.

4 MR. BAKER: Yes.

5 QUESTION: All of them.

6 MR. BAKER: I believe almost all of them, yes.

7 QUESTION: And so they are recent judgments of
8 these 20 some states.

9 MR. BAKER: Yes. But in that vein, I do not see
10 -- these laws merely have provisions that relinquish
11 children to the adult justice system. I don't see in a
12 legislative judgment the decision to transfer children from
13 the juvenile system to the adult system as tantamount to a
14 judgment that we are going to put them to death.

15 QUESTION: But Justice White's question was, the
16 laws permitting execution of people under the age of 18, not
17 just simply remanding them to the adult court system.

18 MR. BAKER: Your Honor, these statutes don't
19 specifically state that we are going to execute people under
20 18. The state enacts its death penalty statute, and then
21 they jump over to another volume of their code to juvenile
22 justice, and without even thinking of the death penalty,
23 they say, hey, there are certain children that we can't take
24 care of in our juvenile system, we are going to let them go
25 to adult court. But that decision to certify or relinquish

1 jurisdiction to the adult court then makes them
2 theoretically subject to the death penalty.

3 QUESTION: And actually, as this case demonstrates.

4 MR. BAKER: Yes, sir. Every state in the country
5 has a juvenile justice system. Our law over the past 100
6 years has learned to treat children differently than we do
7 adults, because they are a different kind of person.

8 QUESTION: Well, many states allow an option to
9 the courts to decide whether a juvenile will be prosecuted
10 as an adult or under the juvenile system. Is that not so?

11 MR. BAKER: That is correct. Oklahoma, for
12 example, as most other states, has provisions for
13 transferring a juvenile from the juvenile system to the
14 adult system.

15 QUESTION: That is usually on the basis of the
16 kind of crime committed, is it not?

17 MR. BAKER: No, Your Honor. It is on the basis --
18 for example, in Oklahoma, they can transfer him merely
19 because he has an adult co-defendant, to save money. There
20 are eight reasons for which they can pass them. Only one
21 either directs itself toward the defendant or toward the
22 crime.

23 QUESTION: Counsel, isn't one of the factors
24 spelled out under Oklahoma law for consideration as to
25 whether to transfer them to the adult court for prosecution

1 the maturity of the individual?

2 MR. BAKER: That is the sixth standard, yes. Our
3 court has stated that they can be transferred without any
4 finding that they are mature. As a matter of fact, in
5 decisions which are mentioned in the amicus brief, our point
6 is specifically stated, that immature defendants can be
7 transferred. But it is not a jurisdictional prerequisite.
8 It is one ground upon which the transfer can be made.

9 The history of juvenile jurisdictions or juvenile
10 executions in this country show that much like rape, is a
11 punishment imposed upon the blacks. For example, Georgia
12 has executed 40 juveniles.

13 QUESTION: Well, your client isn't a black.

14 MR. BAKER: No.

15 QUESTION: Well, then, why do you have standing to
16 raise that?

17 MR. BAKER: It just goes to the inherent vice of
18 the execution of children. The inherent cruelty of it.
19 Monty Eddings is white, but Georgia has executed 40 people;
20 they had one white. Florida has executed 13 juveniles, all
21 black. Virginia has executed 24; only three white. It is
22 the same pattern throughout the country. It is the people
23 who are poor, and the minorities who are affected by this.

24 Let us not think for one minute that I would be
25 standing here today if in Sapulpa, Oklahoma, I had had some

1 money. If I could have brought in good psychiatrists for
2 this boy, good psychologists, I wouldn't be here today. He
3 could have bought his way out of it, in spite of the crime.
4 But as the record shows, we worked with volunteers, we
5 worked with state psychologists.

6 It would appear that there have probably been 100
7 persons under 18 executed since 1864. Only 13 of those were
8 16 or under. Thus, my point is, our experience has shown
9 that there has been one terrific decline in juvenile
10 executions. Since the forties, there have been only five
11 under 18, all black, incidentally. At the time of Furman,
12 there were only 14 on death row out of 620. Those,
13 incidentally, were under 20. We don't have statistics on
14 how many of those were under the age of 18. I would suggest
15 there were probably very few at the time of this Court's
16 decision in Furman that were under 18.

17 We go up to, as this Court as suggested, to
18 capital juries, to see what they are doing. As of October
19 20th, there were 891 on death row in this country.
20 Seventeen, or 1.9 percent, are under the age of 18. Eleven
21 are black. The point is, to take the language of this
22 Court, the extreme rarity with which the death penalty is
23 imposed upon children. The chance of execution for a
24 juvenile is too attenuated to have any significance served
25 our criminal justice system.

1 QUESTION: Well, but aren't you talking about the
2 situation that exists before Proffitt and Jurek and the 1976
3 cases that said, capital punishment was permissible under
4 certain given standards?

5 MR. BAKER: The figures I have just noted are
6 current figures. These are capital juries since Gregg.
7 Since Furman, I should say, but since the Gregg statute was
8 approved. There are currently 891 on death row at this
9 time. Seventeen of them are juvenile. The point is, the
10 percentage is so small that it can't have any measureable
11 contribution to our criminal justice system.

12 QUESTION: But if it were raised, it might.

13 MR. BAKER: If what were raised?

14 QUESTION: The percentage.

15 MR. BAKER: Of youths, you mean?

16 QUESTION: Yes.

17 MR. BAKER: I suppose, if the country ever got to
18 the point where it could accept it, and would do it, it
19 could, but the thing is, it just is something we haven't
20 done. Judges, juries have found more reasons for not
21 convicting young people, or for showing mercy. They are set
22 out in our brief, but you frequently see a jury refuse to
23 convict merely because of youth.

24 QUESTION: Well, the Oklahoma judge here had a
25 perfectly -- he said that he gave strong consideration to

1 the youth as a mitigating factor, but that he just couldn't
2 balance it in favor of the youth compared to all the
3 aggravating circumstances.

4 MR. BAKER: That was his statement. Of course, he
5 didn't consider anything other than youth, and it was our
6 effort to show that aside from youth there were other strong
7 mitigating circumstances that led Monty Eddings to end up on
8 the Oklahoma Turnpike that day. It was almost like we had
9 him programmed for this event to occur, had him raised by a
10 stepfather who is a policeman, who beats him, and having the
11 policeman killed, you know. We send Monty back to his
12 father. Being the product of a divorce. As the record
13 shows, an alcoholic, often streetwalking mother. A father
14 who is an inconsistent authoritarian, and all this coupled
15 with adolescence and psychological testimony which shows
16 clearly --

17 QUESTION: Now you are arguing the discretion of
18 the judge. The issue here is only a mathematical issue of
19 16, is it not?

20 MR. BAKER: I would suggest there is also the
21 issue that the Court faced in Godfrey, Oklahoma's
22 interpretation of its statute.

23 QUESTION: Well, Mr. Baker, you wouldn't be making
24 this argument if this boy were the son of the finest family
25 in Oklahoma. You would be making the same argument,

1 wouldn't you?

2 MR. BAKER: I would be making the same argument
3 for any 16-year-old.

4 QUESTION: What is the difference about this
5 alcoholic mother and all?

6 MR. BAKER: It is my suggestion that there are
7 mitigating circumstances, that there are other circumstances
8 besides youth that mitigate the imposition of capital
9 punishment in this case.

10 QUESTION: I thought your position was that under
11 no circumstances ever did a person who committed a murder at
12 the age of 16 when the act was committed could suffer the
13 capital punishment. I thought that is the narrow issue that
14 we had.

15 MR. BAKER: That is Proposition One. That is the
16 narrow issue, Your Honor. I just superimpose upon that the
17 particular circumstances of this particular defendant.

18 QUESTION: Well, you do have a second question in
19 your brief that whether or not you prevail on your
20 16-year-old argument, that the case should be remanded.

21 MR. BAKER: Yes.

22 QUESTION: Because of what you call a plain error.

23 MR. BAKER: Because of the Lockett violation, and
24 because of the other mitigating circumstances. Otherwise,
25 the imposition of the death penalty in this particular case.

1 QUESTION: Do you have a case where we have ever
2 recognized what you call a plain error coming from a state
3 court that wasn't raised or litigated below?

4 MR. BAKER: There is one cited in the brief. I
5 don't have it off the top of my head.

6 QUESTION: Do you think then that the Court should
7 under Lockett, although the trial judge allowed all of this
8 testimony to come in, nonetheless, re-evaluate for itself
9 whether or not the mitigating circumstances outweighed the
10 aggravating circumstances?

11 MR. BAKER: I would welcome the Court doing that.
12 There are two ways you can read Godfrey. One way would
13 indicate that is what the Court did in Godfrey. That is not
14 the way I read it. I read Godfrey as just saying the lower
15 court gave too broad an interpretation to the death penalty.

16 QUESTION: Well, certainly Proffitt and Gregg and
17 Jurek simply said if the states set up these systems which
18 were subject to the safeguards that were incorporated in
19 them, they were entitled to impose capital punishment.

20 MR. BAKER: If the statutes are properly
21 construed, yes. There are, I suggest, many reasons why 18
22 should be the point below which we don't impose capital
23 punishment. The Twenty-Sixth Amendment of our Constitution.
24 The American Law Institute in their model penal code has a
25 provision that absolutely forbids execution of any juvenile

1 under the age of 18.

2 All European countries which still retain capital
3 punishment have an absolute prohibition against the
4 execution of anyone under the age of 18. President Carter
5 has signed the International Covenant on Civil and Political
6 Rights, which prohibits the execution of defendants under
7 the age of 18.

8 QUESTION: Mr. Baker, are you talking now about
9 execution at the time of execution or time of the offense?

10 MR. BAKER: The time of the offense.

11 The American Convention on Human Rights, also
12 signed by President Carter, has an absolute prohibition
13 against the execution of juveniles.

14 QUESTION: But that was never submitted to
15 Congress, was it?

16 MR. BAKER: It was submitted and is still there,
17 as far as I know.

18 QUESTION: But never ratified.

19 MR. BAKER: It has not to this date been
20 ratified. I mention it only to show that the current
21 thought in Europe and apparently in South America is that
22 execution of juveniles is barbaric. There is no longer a
23 western European country with even capital punishment, but
24 of the eastern European countries that have capital
25 punishment, they all forbid the execution of persons under

1 the age of 18.

2 QUESTION: Perhaps they don't have a Constitution
3 like ours that affirmatively authorizes the death penalty,
4 but places no limit on it.

5 MR. BAKER: No country has a Constitution like
6 ours.

7 Eighteen is also the age at which people can be
8 drafted, be married, drink alcohol, be subjected to
9 involuntary subscription into the service.

10 QUESTION: The second question that you have in
11 your brief, whether the Court should address the plain
12 error --

13 MR. BAKER: Yes.

14 QUESTION: -- I don't find it in your petition for
15 certiorari.

16 MR. BAKER: I believe it is there. It has been a
17 long time since I read the petition for cert.

18 QUESTION: I know it is in the brief.

19 MR. BAKER: I think we should make a distinction,
20 too, between a certified juvenile and an adult. The mere
21 fact that Monty Eddings or any other child is certified for
22 trial in the adult court system does not make him an adult.
23 He is still a child. I see us as we are striving in our
24 development, where we will reach a point some day where I
25 don't believe that capital punishment will be tolerated at

1 all. Probably not in my lifetime, but as we march in this
2 progress, as we strive to become better, I urge that we not
3 regress to the point where we execute children.

4 QUESTION: Well, would you consider the so-called
5 march that you have referred to from Furman to Proffitt and
6 Jurek and Gregg as a march in the direction that you are
7 talking about?

8 MR. BAKER: Quite honestly, Your Honor, I believe
9 we are worse off now than we were before Furman. Much worse
10 off.

11 QUESTION: It is apparent from your argument that
12 you do.

13 MR. BAKER: We are much worse. That is my own
14 personal opinion. But before Furman, we had a situation
15 where in the courtroom where I am from that decision was the
16 jury's. They couldn't pass the buck to anybody. Whether
17 the defendant lived or died was up to the jury. Now, we
18 give them standards. We tell them, the law says, you know,
19 if you find such and such, you will consider putting the
20 defendant to death. It lets them pass the buck, so to
21 speak, to the legislature.

22 I think we are worse off than we were at the
23 beginning. That is what I see in the courtrooms from the
24 part of the country I come from. And prosecutors use these
25 standards to suggest to the jury that, yes, you've got to

1 consider it now. If you find one, find an aggravating
2 circumstance, and it is not balanced by a mitigating
3 circumstance, kill him.

4 QUESTION: Would you just simply prefer the
5 unbridled discretion that the Court found unconstitutional
6 in Furman where the jury just says who lives and who dies?

7 MR. BAKER: I agreed with Furman at the time it
8 was decided. With the benefit of hindsight, I would prefer
9 going back to the way we were before Furman. But my
10 hindsight is always 20-20.

11 QUESTION: You have a lot of company.

12 MR. BAKER: I would just like to make one
13 statement, and that is, the only purpose I can see in
14 executing a 16-year-old child is pure and simple
15 retribution, vengeance, and I don't think society's lust for
16 vengeance is strong enough that we have to start killing our
17 children.

18 QUESTION: Well, didn't Proffitt say retribution
19 was a proper motive for a state to --

20 MR. BAKER: And Gregg said it was.

21 QUESTION: Yes.

22 MR. BAKER: But I am talking about narrow
23 channeled retribution toward our youth. When they are 21,
24 22, 23, the Court has approved it.

25 QUESTION: Well, in Oregon against Mitchell, four

1 members of the Court said they didn't think that a
2 distinction between 21 and 18 could survive an equal
3 protection analysis.

4 MR. BAKER: That's true, in the light of evolving
5 standards. But we are talking about a 16-year-old, and we
6 are talking about capital punishment.

7 QUESTION: Mr. Baker, are there any decisions
8 around the country that agree with you on this point?

9 MR. BAKER: There are statutes. Legislatures
10 agree with me.

11 QUESTION: No, decisions. Are there any decisions
12 you know of that declare unconstitutional a statute that
13 authorizes capital punishment for a 16-year-old?

14 MR. BAKER: I am not aware of any decisions.

15 QUESTION: But there are some that disagree with
16 you in several states.

17 MR. BAKER: I am aware of one from Arizona that
18 disagrees with me.

19 QUESTION: Georgia. Louisiana.

20 MR. BAKER: Louisiana, yes. I am not familiar
21 with the Georgia case. I know there is a Kentucky case that
22 is on appeal within the Kentucky system.

23 We would ask the Court for consideration to
24 reverse the case for the imposition of a life sentence upon
25 Monty Eddings.

1 CHIEF JUSTICE BURGER: Very well.

2 Mr. Lee?

3 ORAL ARGUMENT OF DAVID W. LEE, ESQ.,

4 ON BEHALF OF THE RESPONDENT

5 MR. LEE: Mr. Chief Justice, and may it please the
6 Court, the facts of this case reveal that the Petitioner in
7 this case, Monty Eddings, was 16 years old at the time he
8 intentionally murdered an Oklahoma highway patrol trooper, a
9 man by the name of Larry Crabtree, with a sawed-off shotgun
10 as the trooper approached the vehicle which Mr. Eddings had
11 been driving. The murder occurred after Mr. Eddings
12 announced to the other members of the car that he would blow
13 the trooper away if he hassled him, then loaded the
14 sawed-off shotgun, waited as the trooper approached, and
15 fired the shotgun, striking him in the heart from a distance
16 of approximately six or seven feet.

17 The issues in this case are, Number One, whether
18 the United States Constitution prohibits a state from
19 imposing a penalty of death in every case involving a person
20 who was under the age of 18 at the time of the commission of
21 the crime without a consideration of the circumstances of
22 the offense and without a consideration of the character and
23 record of the individual defendant.

24 The Petitioners also raise the question whether or
25 not the punishment imposed in this case, the penalty of

1 death, by a person who was 16 years old at the time of the
2 commission of the crime for the crime of the intentional
3 murder of a law enforcement officer is disproportionate, in
4 violation of the Constitution.

5 The state contends that the adoption of a
6 chronological age as the sole determinative factor in making
7 the decision as to whether to impose the penalty of death to
8 the exclusion of all other considerations has support
9 neither in reason nor in the previous decisions of this
10 Court.

11 We submit that under the facts and circumstances
12 of this individual case, that Oklahoma's decision to impose
13 the death penalty upon the Petitioner who intentionally
14 murdered one of our law enforcement officers does not
15 violate the Eighth Amendment.

16 QUESTION: General Lee, before you get into your
17 argument too far, I would like to ask you about the very
18 first premise that your opponent suggested, and I don't know
19 whether it is right or not, but he said something to the
20 effect that everybody would agree that there is some minimum
21 age that you can't go below. The question is, what is that
22 age? In other words, would you deny that there is any
23 minimum age? Should you execute, say, a ten-year-old or a
24 nine-year-old?

25 MR. LEE: Well, first, of course, our contention

1 is that should be -- if there is going to be a chronological
2 age limit, it should be a legislative decision.

3 QUESTION: I mean, is there any constitutional
4 barrier, is what the question is.

5 MR. LEE: I feel like that this Court should never
6 have to answer that question. This Court, in Barker versus
7 Wingo, was asked to set the six-month period of time within
8 which a defendant had to receive a speedy trial. It
9 declined to do so, stating that its approach in setting
10 fixed lines like that must not be -- cannot be rigid.
11 Instead, it set forth four factors which must be
12 considered. I feel like that is the approach that the Court
13 has used in the Woodson case and --

14 QUESTION: Well, let's hope we never have to
15 answer the question as to a nine or a ten-year-old, but I
16 guess in England there were times when very, very young
17 people were executed. Would you say there is any
18 constitutional limit on the age of a person that could be
19 executed?

20 MR. LEE: I don't know what that age would be.

21 QUESTION: I am not asking you what the age is. I
22 am asking you if you think there is any constitutional
23 limit. Specifically, say, would it be constitutional for a
24 state to execute a ten-year-old for committing this crime?

25 MR. LEE: If the individual was ten years old, I

1 would assume that the objective factors would not support
2 the imposition of the death penalty.

3 QUESTION: Well, that is not my question. If you
4 don't want to answer it, of course, I can't force you to,
5 but do you have a view on a proper answer to my question?

6 MR. LEE: Okay. Yes, Your Honor. I think it
7 would be cruel and unusual punishment to impose the death
8 penalty on an individual who was ten years old.

9 QUESTION: And if that was the only mitigating
10 circumstance in the case?

11 MR. LEE: I think that looking at that by itself
12 would be enough to convince anybody, including this Court,
13 that a ten-year-old person under no circumstances should
14 receive the death penalty. Like I say, I don't think the
15 objective factors which the Court used in striking down
16 Georgia's death penalty, when it noted that Georgia was the
17 only state in the union that imposed the penalty of death
18 for the crime of rape -- I think that in that case it could
19 look toward the 50 states and see that a very small minority
20 of states would impose a penalty of death.

21 Also, I don't anticipate that Oklahoma will ever
22 be in that position. I am glad of the fact that we only
23 have one individual on our death row that is in this
24 position, and I would hate to be in the position of arguing,
25 look, we've got a number of juveniles on death row, that

1 shows that it is not cruel and unusual punishment to do so.
2 I think we have been -- the cases cited by the Petitioner
3 have shown that we have been very careful in making that
4 decision, and have not abused our discretion.

5 However, the facts in this case support our
6 decision to impose the death penalty, considering the victim
7 and the character and record of this individual defendant.

8 We urge the Court to uphold the punishment of
9 death in this case. We ask the Court to recognize that we
10 have covered and followed our own certification procedures
11 very carefully in this case. We have found that under our
12 statute on certification, the test being if the individual
13 is able to make a distinction between right and wrong and is
14 to be held accountable for his acts in accordance with eight
15 specific guidelines. We think the evidence supports --

16 QUESTION: General, what about the ten-year-old
17 that knows the difference between right and wrong?

18 MR. LEE: Well, there are a number of other
19 guidelines that the sentencer would have to take into
20 consideration. There are eight specific guidelines, and
21 sophistication and maturity are one of those guidelines.

22 QUESTION: I just didn't want you to get too far
23 off on that road. You might find trouble.

24 MR. LEE: Well, certification statutes in general
25 are an admission by the state that there is a certain time

1 in life when we don't know whether an individual should be
2 held accountable for his actions. As this Court noted in
3 Breed versus Jones, an overwhelming number of jurisdictions
4 in this country have certification procedures. So does the
5 federal government. And we think that if we admit that we
6 are not able to make that decision on every 16-year-old
7 person, as long as we followed our statute in that regard in
8 this case, which we think we have, as long as the sentencer
9 has found one or more aggravating circumstances, pursuant to
10 our death penalty statute, in order to guide him in his
11 discretion, as long as he has taken age to be a mitigating
12 circumstance, as he did in this case, we feel like the death
13 penalty should be upheld.

14 In the case of Bell versus Ohio, this Court
15 reversed a conviction of a person who was 16 years old at
16 the time of the commission of the murder. It said that the
17 Ohio statute was incorrect because it prohibited the
18 sentencer from taking into consideration such things such as
19 the age of the defendant, but this Court in that decision
20 did not in any way suggest or imply that the age of the
21 offender, Mr. Bell in that case, would be considered to be
22 anything more than one of several mitigating circumstances.

23 We ask that this Court's decision in that case and
24 in Lockett, and Woodson not be extended to completely bar
25 the execution of persons who were 16 years old at the time

1 of the commission of the crime without a consideration of
2 their background, character, and the circumstances
3 surrounding the individual offense.

4 We believe that the adoption by this Court of a
5 chronological age below which the state could never go in
6 imposing the penalty of death would create an arbitrary and
7 artificial line in the determination of the death penalty.

8 As I stated earlier, by analogy, this Court, when
9 requested to adopt a six-month guideline within which a
10 defendant in a criminal case should receive a trial under
11 the mandates of the speedy trial provision of the Sixth
12 Amendment, this Court declined to do so, setting forth
13 factors for the trial court to weigh and consider in making
14 a determination whether the speedy trial provision of the
15 Sixth Amendment had been violated.

16 We feel like the determination by the state as far
17 as the accountability and responsibility of a criminal
18 defendant, if anything, is a much more complex decision.

19 Furthermore, as we have stated in our brief, we
20 contend that the legislatures in this country should be
21 allowed to respond to sociological and technological changes
22 which may occur in their society, and to recognize that
23 younger people in this country are becoming mature at an
24 earlier age.

25 We feel like the state should be allowed to react

1 to the increase in and the horror of juvenile crime, and to
2 impose the penalty of death in a proper case.

3 We think that the record in this case is
4 Oklahoma's best record that the penalty of death should be
5 imposed. The facts as I have stated earlier reveal a murder
6 which by all standards and definitions was an intentional
7 one. It was undertaken with malice aforethought, which is
8 required by our statute. We have an individual defendant
9 who at the time of the commission of the murder by all
10 accounts was not under the influence of drugs or alcohol.
11 He is an individual who the other occupants of the vehicle
12 attempted to persuade him not to shoot the trooper as he
13 approached the car. This includes three people in the car
14 who were younger than the Petitioner, two 14-year-old people
15 and a 15-year-old person. They all testified they tried to
16 stop him from killing the trooper as he approached the car.

17 He is an individual who, according to the
18 testimony of the four expert witnesses on the subject of his
19 mental status who testified, according to none of them was
20 he insane or psychotic. All the doctors testified that he
21 knew the difference between right or wrong, that he was not
22 mentally ill. Even in his own -- even his own expert
23 witnesses -- he had a psychologist who testified, and he
24 contended that his problem was the fact that he had an
25 antisocial behavior problem. He was a sociopath.

1 Both the psychiatrists that testified for the
2 Petitioner stated that he was not the victim of parental
3 abuse. Dr. Gagliano, who testified -- who was the
4 psychiatrist who testified on behalf of the Petitioner
5 stated that he knew the difference between right or wrong at
6 the time he pulled the trigger, but that it did not apply to
7 him. He said that there was something wrong with Mr.
8 Eddings' personality, but there was nothing wrong with his
9 mind.

10 He also testified, as did the other psychiatrist,
11 that there was no thinking disorder, no psychosis, and that
12 he knew the difference between right or wrong, as I stated.

13 Also, the testimony of his juvenile probation
14 officer from the state of Missouri, Steven Dorn, testified,
15 "Monty is sharp". He stated he was an individual of average
16 intelligence.

17 In addition, we have an individual who expressed
18 absolutely no remorse for what he did. This was evidenced
19 by statements he made to the other law enforcement officers
20 in jail after he was arrested. He stated at one point, "If
21 you don't turn out this light, I will shoot you just like I
22 -- I have already shot one of your people and I will shoot
23 you, too, unless you turn out that light." He made the
24 statement immediately after the murder to two law
25 enforcement officers, "I have already killed one of your

1 people, I will kill you, too, if I get out."

2 QUESTION: And all this was before the Court?

3 MR. LEE: Yes, Your Honor. This was -- those
4 particular statements were what the sentencer used in his
5 determination that the defendant was capable of criminal
6 acts of violence in the future. That was one of the
7 aggravating circumstances which were found.

8 QUESTION: Mr. Lee, the trial court -- there was
9 no jury in this case, as I understand it. The trial court
10 held that the only mitigating factor he could consider was
11 the age of the defendant. He therefore did not consider in
12 determining that the sentence should be death the family
13 background of this 16-year-old, nor his extreme emotional
14 disorder, nor the other circumstances possibly relevant to
15 the commission of the crime. Is that the general law in
16 Oklahoma?

17 MR. LEE: Well, Your Honor, the law in Oklahoma,
18 according to our statute, is that the sentencer is to
19 consider any mitigating circumstances which the defendant
20 might have to offer.

21 QUESTION: So that any mitigating circumstances
22 could have been considered?

23 MR. LEE: Yes.

24 QUESTION: Do you think it was error not to have
25 considered those that I mentioned?

1 MR. LEE: No, Your Honor. Of course, I have read
2 that statement many times, and I might note, as Justice
3 White pointed out, that it was not raised in the petition
4 for certiorari. It was raised for the first time in the
5 brief, I think.

6 QUESTION: It certainly was argued. The opinion
7 of the Oklahoma Supreme Court acknowledges that.

8 MR. LEE: Yes, they said that his -- I think the
9 statement that the trial court made was that he would not
10 consider the Petitioner's violent background.

11 QUESTION: Are you saying that issue was not
12 brought here, even though it was considered in the court in
13 Oklahoma?

14 MR. LEE: One of his propositions was that the
15 defendant should not receive the death penalty because of
16 his background. That was one of the issues he raised, and
17 the Court of Criminal Appeals said that the family
18 background of the Petitioner was useful in explaining why he
19 behaved the way he did. It does not excuse his behavior.
20 So I suppose indirectly they dealt with that particular part
21 of it.

22 But in answer to your question, I think the remark
23 is ambiguous. It could be interpreted to mean that he was
24 not going to consider the juvenile's previous juvenile
25 record in Missouri, which was extensive, although it was not

1 anything approaching what he did in this particular case.
2 It could mean, and I think -- my interpretation of it is
3 that the trial court did not consider the fact of his family
4 background as a mitigating circumstance.

5 He listened to evidence. He allowed him to
6 introduce into evidence anything he wished, but the violent
7 background, which I assume he meant was -- I believe his
8 juvenile officer testified on one occasion Eddings had
9 washed the walls and his stepfather came home and slapped
10 him around a little bit, and then he was subject to some
11 slapping around and some beating by his father. I think
12 that should be weighed with the fact that his own two expert
13 witnesses said that he was not the victim of parental abuse.

14 Now, I think that if he was the victim of parental
15 abuse to the fact that it causes some mental retardation or
16 psychosis or something like that, that might --

17 QUESTION: I have trouble with no abuse. Slapping
18 around is not abuse?

19 MR. LEE: I don't think that is what we normally
20 consider to be severe child abuse.

21 QUESTION: What do you consider slapping around to
22 be?

23 MR. LEE: I don't -- well, for one thing, he was
24 14 years old before he went to live again with his father.

25 QUESTION: Well, what do you consider slapping

1 around to mean? Abuse or not?

2 MR. LEE: Well, I don't consider it to be the kind
3 of severe --

4 QUESTION: Just a little bit of slapping.

5 MR. LEE: Well, I think there are different
6 degrees of slapping around, and I don't think this is the --

7 QUESTION: There surely are. Some of them you
8 kill.

9 MR. LEE: That's correct, and I think if there is
10 abuse which affects an individual to the point which he is
11 psychotic, mentally retarded, where it directly causes an
12 extreme emotional disturbance which this Court said may be a
13 circumstance that might accompany the killing of a police
14 officer -- I think that was in Roberts versus Louisiana --
15 that is --

16 QUESTION: Does the record show these were
17 isolated incidences, or a general pattern of behavior in
18 that setting?

19 MR. LEE: Well, the juvenile officer said that the
20 beatings were inconsistent, or the slappings around, or -- I
21 think he said slappings, beatings. I believe that's what he
22 stated. They were not to the extent where he stated that he
23 noted the Petitioner coming in with any marks on him. The
24 Petitioner's own sister said that she had never seen any
25 marks on the Petitioner. Mr. Dorn, the probation officer,

1 said that he had never -- there was nothing in his file to
2 indicate that he was a victim of parental abuse.

3 So, in defense of what the judge said, this
4 individual was a product of a middle class background. He
5 was an individual who came from a broken home, but in order
6 to consider what happened to him to be mitigating, I think
7 probably you would have to consider the backgrounds of most
8 criminals to be mitigating, and he was just not legally
9 convinced that this provided a legal excuse for what the
10 Petitioner did.

11 Going back to the lack of the Petitioner that is
12 also reflected in the examination that was conducted at the
13 state's request at the state mental institution, the
14 psychiatrist there stated that the Petitioner showed no
15 remorse at any time for what he had done.

16 We contend that the only fact in this record that
17 is mitigating in the Petitioner's behalf is his age. If he
18 was not 16 years old, this would be nothing more than a
19 cold-blooded murder of a law enforcement officer for no
20 legal justification whatsoever.

21 This Court in Roberts versus Louisiana noted that
22 there are circumstances that might attend the killing of a
23 police officer which might be considered to be mitigating.
24 The Court listed youth, the absence of any prior
25 convictions, the influence of drugs or alcohol, and I am

1 quoting here, "an extreme emotional disturbance or the
2 existence of circumstances which the offender reasonably
3 provided a moral justification for his conduct." However,
4 here --

5 QUESTION: Counsel, is it your position then that
6 there is no circumstance in this case that could have
7 constituted a mitigating circumstance other than the youth?

8 MR. LEE: That is our position. Yes, Your Honor.

9 QUESTION: Your state appellate court or supreme
10 court said, there is no doubt that the Petitioner has a
11 personality disorder, and you would say under no
12 circumstances could that be a mitigating circumstance?

13 MR. LEE: A personality disorder, and I believe
14 they talked about it being in terms of antisocial
15 personality or the fact he is a sociopath --

16 QUESTION: Well, it says, he stressed his family
17 history, in saying he was suffering from severe
18 psychological and emotional disorders, and that the killing
19 was in actuality an inevitable product of the way he was
20 raised, and then the Court says, there is no doubt that the
21 Petitioner has a personality disorder, then concluded that
22 that did not excuse the offense in any way, but is it your
23 view that could never constitute a mitigating circumstance?

24 MR. LEE: That would be our position. The man is
25 a sociopath. Dr. Gagliano said that there is nothing wrong

1 with his mind. What is wrong is with his personality. And
2 as we pointed out in our brief, he demonstrated all the
3 characteristics of a sociopath, and even his own
4 psychiatrist admitted that he had an antisocial
5 personality. This is a lack of development in some aspects
6 of his personality, and it is demonstrated by his inability
7 to express remorse, impulsiveness, inability to respond to
8 punishment, which this Petitioner demonstrated, and
9 apparently it showed up very clearly, according to the
10 observations of all psychiatrists.

11 No, we don't think that the fact that a person is
12 a sociopath should be considered to be a mitigating
13 circumstance. We don't think --

14 QUESTION: Mr. Lee, would you argue also that his
15 lack of maturity should not be considered, his lack of
16 development, or his lack of maturity?

17 MR. LEE: That is a characteristic --

18 QUESTION: You would say just the chronological
19 age is a mitigating circumstance?

20 MR. LEE: Well, as was pointed out earlier, that
21 is one of the guidelines, sophistication and maturity. But
22 sociopaths --

23 QUESTION: I think it was also noted that the
24 Court doesn't have to make the finding of maturity, just
25 whether he knew right from wrong.

1 MR. LEE: Well, it makes a determination of right
2 from wrong based on those eight guidelines, and that is
3 Guideline 6, and the certifying judge in this case
4 specifically dealt with that specific guideline. He noted
5 that the Petitioner was in the tenth grade, but physically
6 he appeared to be much older than the way he was.

7 QUESTION: Should that in your argument be the
8 possible mitigating circumstance, or just the chronological
9 age?

10 MR. LEE: The lack of maturity?

11 QUESTION: Yes.

12 MR. LEE: I think that sociopaths generally, no
13 matter what age, are going to display immature conduct.
14 They are irresponsible, and certainly the act of murder is
15 certainly an irresponsible and immature act, and our court
16 has specifically said that emotional maturity is not
17 something that the court needs to specifically find in a
18 certification proceeding. I don't have that listed in my
19 brief, but it is in Shurfield versus State, 511 Pacific
20 Second. And I don't think the state should be required to
21 show that a killer is emotionally mature, because probably
22 he is not going to be, and certainly a sociopath is not
23 going to be.

24 QUESTION: I am just asking whether that should be
25 one of the mitigating circumstances that the Court must

1 consider.

2 MR. LEE: I would argue against it. I would say
3 as long as he is not psychotic, as long as his thinking is
4 ordered, as long as he knows the difference between right or
5 wrong, as long as he is of average intelligence, he is not
6 suffering from mental retardation, and as long as the state
7 has properly made a certification finding, then he -- that
8 should not be a mitigating circumstance, the fact that he
9 doesn't respond to values in society like the rest of us do.

10 QUESTION: That is the McNaughton rule.

11 MR. LEE: Well, it is the McNaughton rule
12 according to eight guidelines.

13 QUESTION: It is still the McNaughton rule. He
14 mentioned it, didn't he?

15 MR. LEE: Yes. Well --

16 QUESTION: The judge was guided by the McNaughton
17 rule.

18 MR. LEE: Yes. Well, that is in our statute, and
19 the Court of Criminal Appeals noted that that is the test of
20 criminal responsibility in Oklahoma, is the difference
21 between right or wrong, the McNaughton rule.

22 QUESTION: And that determines it all. You don't
23 have to worry about anything else, do you?

24 MR. LEE: Well, I think it is a little bit more
25 sophisticated when we are talking about whether to certify a

1 juvenile as an adult than whether to determine whether or
2 not a person is insane or not. In Oklahoma, the test to
3 determine insanity is the right versus wrong test.

4 QUESTION: Which is the McNaughton test.

5 MR. LEE: Yes, Your Honor. Yes.

6 QUESTION: I thought that's what I asked you.

7 MR. LEE: Yes, sir.

8 QUESTION: Well, in effect, if this Court were to
9 hold that all sociopaths were not to be executed, I suppose
10 we would be right back to where we were right after Furman,
11 because people who are well-balanced and stable or even
12 approaching well-balanced and stable don't take sawed-off
13 shotguns and shoot police officers, do they?

14 MR. LEE: Well, there is something wrong with his
15 personality. I agree to that. But that is all there was.
16 He was a sociopath, and he was a young sociopath, but a
17 sociopath according to all the testimony, and we don't think
18 that -- I mean, if we get to the position of saying, if you
19 are a sociopath, that might give you a break in whether or
20 not you receive the death penalty or not, I don't think that
21 is what we want to do.

22 I don't think that is what was envisioned by this
23 Court when it said extreme emotional disturbance in Roberts
24 versus Louisiana. I don't think that this Court ever
25 intended to require a sentencer who is looking at a person

1 who has murdered a police officer to say, well, I am going
2 to consider the fact that you are a sociopath in making this
3 determination whether you receive the death penalty.

4 I think the sentencer should consider other
5 things, and the sentencer in this case specifically
6 considered his age, but that's the only thing that I think
7 legally should have been considered.

8 QUESTION: Mr. Lee, may I ask you for a
9 clarification of your answer to Justice O'Connor's
10 question? She asked you if emotional immaturity would be a
11 mitigating factor, or the maturity of the individual, and I
12 think your answer said no, provided he has average mentality
13 and lots of other qualifications. But supposing his
14 mentality is that of an average 14-year-old instead of a
15 16-year-old, and his other general indicia of development as
16 a mature person also were characteristic of a 14-year-old.
17 Would that be relevant in your view? I mean, as a
18 mitigating circumstance, not as an absolute bar to execution.

19 MR. LEE: I think if he is of lower intelligence,
20 I think that should be considered --

21 QUESTION: And other factors that a psychiatrist
22 might say determine maturity in general, if they are also
23 more characteristic of an even younger person, would they
24 also be relevant?

25 MR. LEE: Such as?

1 QUESTION: Well, the ability to behave properly in
2 a school room, and the ability to obey his parents, all
3 sorts of things. I don't know what -- I mean, I am not a
4 psychiatrist, but I suppose there are ways they decide
5 whether a man -- well, I will put it this way. One of the
6 criteria in your statute for trial as an adult is whether
7 the person has sufficient maturity. What are the
8 characteristics that the judge uses to decide whether the
9 man is mature?

10 MR. LEE: Well, like I say, in this particular
11 case, he used the fact that he was in the tenth grade. He
12 also mentioned the fact in his certification order that he
13 appeared to be much older than a tenth grade person. Those
14 were the two specific things that the certification judge in
15 this case used in making that decision.

16 QUESTION: Supposing those two factors had cut in
17 the other direction against his chronological age? Would
18 they not be relevant, in your judgment?

19 MR. LEE: I think a sentencer, he should be
20 allowed to look at the person physically. I think that
21 should be a determination in making a certification
22 decision. Like I say, I think that is what he did in this
23 case.

24 QUESTION: And in deciding on the sentence, I take
25 it, too.

1 MR. LEE: I think probably we are talking about
2 something different in the sentence as opposed to the
3 certification.

4 QUESTION: Are you saying in the sentence it
5 should be a more limited inquiry or a broader inquiry?

6 MR. LEE: I think it should be limited. I think
7 it should be -- I think the whole thrust of Gregg, and I
8 think it is what Judge Woodson tried to comply with when he
9 was making his statements, is guided discretion, and if this
10 sentencer would have considered things like the fact that he
11 got slapped around to a certain extent, I think he might
12 have felt like he was running afoul of the mandates of Gregg
13 and the other decisions that say, we want guided discretion
14 in making our decision as to whether to impose the death
15 penalty or not.

16 I think he felt like he wasn't completely free to
17 consider just anything, and Footnote 12 in Lockett says that
18 the Senator is free to exclude irrelevant factors that
19 aren't mitigating, and I think that is probably what he was
20 trying to comply with.

21 QUESTION: Mr. Lee, is there a collateral remedy
22 in Oklahoma?

23 MR. LEE: He can go back on post-conviction, Your
24 Honor. There is a post-conviction --

25 QUESTION: Would there be any barrier to his

1 raising this Lockett question on state habeas?

2 MR. LEE: Well, that would be through
3 post-conviction --

4 QUESTION: Yes.

5 MR. LEE: -- or post-conviction replaced that.

6 QUESTION: Yes.

7 MR. LEE: He has to present a reason why he didn't
8 raise it the first time around.

9 QUESTION: Well, he could have raised it in the
10 Oklahoma Court of Criminal Appeals, but didn't.

11 QUESTION: He did raise it.

12 MR. LEE: Yes, sir. Well --

13 QUESTION: Well, he didn't. He says he didn't.

14 MR. LEE: Not directly. He really didn't directly
15 raise it. The Oklahoma Court of Criminal Appeals has been
16 very lenient about considering issues which have not been
17 raised the first time or second time.

18 QUESTION: Well, do you think he has exhausted all
19 his remedies in Oklahoma?

20 MR. LEE: As far as federal habeas is concerned,
21 or as far as going back and --

22 QUESTION: Here is what the Petitioner says here.
23 "This Lockett error was not enumerated or argued on appeal
24 to the Oklahoma Criminal Court of Appeals, nor was it
25 directly addressed by that Court." Now, could he raise it

1 in your post-conviction procedure?

2 MR. LEE: According to the case law, he has got to
3 give some reason why he didn't raise it initially, and I
4 don't know what his reason was.

5 QUESTION: Well, his reason is that Lockett wasn't
6 decided. Is that a sufficient reason as a matter of
7 Oklahoma law?

8 QUESTION: Well, Lockett was decided by the time --

9 QUESTION: By the time of the trial?

10 QUESTION: No, but it was certainly decided -- it
11 was decided at the time of the -- it had been decided for
12 two years by the time --

13 QUESTION: On appeal, yes.

14 QUESTION: -- it was decided in the Court of
15 Criminal Appeals.

16 MR. LEE: Well, the earlier cases of Roberts and
17 Woodson, I think, also should have anticipated Lockett as
18 well.

19 QUESTION: Then your answer is that he could not
20 raise it. Is that right?

21 MR. LEE: I will be arguing, if he raises it, I
22 will be arguing against him not being able to raise it, but
23 they have been flexible in allowing that to be raised in
24 their post-conviction, but I would say -- in answer to your
25 question I would say that he should not be allowed to raise

1 it unless he can show some reason why he didn't raise it to
2 begin with.

3 QUESTION: Well, we never know until he tries.

4 MR. LEE: Yes, sir, and I will be opposing it.

5 QUESTION: It will end up on the desk of the Court
6 of Criminal Appeals as to whether he could raise it or not.

7 MR. LEE: Yes, sir.

8 QUESTION: I agree with you that the Court of
9 Criminal Appeals is very lenient. They let you bring in
10 things that aren't mentioned any place. So I would assume
11 that he could have brought it in. That is the very reason I
12 don't think they will let you bring it in now, because he
13 could have brought it in at the original argument.

14 MR. LEE: That is probably true, but as you
15 pointed out earlier, they did discuss it to a certain
16 extent. We would not want a remand of this case for that
17 reason.

18 If there are any further questions.

19 CHIEF JUSTICE BURGER: Thank you. Thank you,
20 gentlemen.

21 The case is submitted.

22 (Whereupon, at 11:52 o'clock a.m. the case in the
23 above-entitled matter was submitted)

24

25

CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

MONTEY LEE EDDINGS, Petitioner, vs. OKLAHOMA

NO. 80-5727

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