

>> ALL RISE.

HEAR YE HEAR YE HEAR YE, THE SUPREME COURT OF FLORIDA IS NOW IN SESSION, ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION, AND YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA. PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT. THE FIRST CASE ON OUR DOCKET, TODAY, IS KOCAKER VERSUS THE STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT, AN DEGREE NA NORGARD, APPEARING ON BEHALF OF -- ACTUALLY PRONOUNCED IT KOCAKER.

>> A DIFFERENT PRONUNCIATION RATHER THAN MINE.

>> WE HAD A DISCUSSION ABOUT THAT AND DECIDED TO GO WITH KOCAKER AND WE KNOW WHO WE ARE TALKING ABOUT AND WHAT I INTEND TO DO THIS MORNING, BECAUSE I'M A LITTLE CONCERNED ABOUT TIME, IS, BEGIN WITH ADDRESSING THE ISSUE OF PROPORTIONALITY IN THIS CASE.

I THINK IT IS -- THE ISSUES RAISED IN THE INITIAL BRIEF, I'M VERY AWARE OF, OSH VALLEYS THE RULING FROM THE FEDERAL COURT REGARDING THE RING DECISION BUT I BELIEVE IS AN ISSUE BEST ALLOWED TO LITIGATE ITSELF OUT IN COURT, AND IT WOULD BE MY INTENTION TO TALK WITH ISSUE 2, WHICH IS THE PROPORTIONALITY ISSUE.

>> LET ME ASK YOU, ARE YOU PLANNING AT SOME POINT TO TALK

ABOUT THE... [INAUDIBLE].

>> IF WE GET... I WOULD ADDRESS THAT IF THERE IS REMAINING TIME IN MY INITIAL ARGUMENT BUT I BELIEVE, QUITE HONESTLY, FROM THE COURT'S PERSPECTIVE, THE PROPORTIONALITY ISSUE THIS IS THORNIEST ISSUE AND ISSUE OF GREATEST DEBATE.

AND --

>> AND I REALIZE THAT YOU... GET THE HAND YOU ARE DEALT. THE AGGRAVATORS IN THIS CASE, ARE -- HAVE NOT BEEN CHALLENGED BY YOU.

>> NO, THEY HAVE NOT BEEN.

>> HAC, YOU KNOW, WE HAVE CASES THAT -- THOUGH I DON'T AGREE WITH HAC, BUT THIS IS EVER AN HAC CASE, A CLASSIC HAYS OF HAC.

>> I BELIEVE THERE WAS HAC, MR. KOCAKER WAS IN PROBATION...

>> WHEN HE HAD -- SPENT MOST OF HIS ADULT LIFE IN PRISON, AND, HE WAS RELEASED FROM PRISON, APPARENTLY TWO MONTHS BEFORE THIS -- HE WAS IN FOR, WHAT, ALMOST 15 YEARS.

>> I BELIEVE, 20.

>> WITHIN TWO MONTHS THIS HEINOUS MURDER AND TO ME, THOSE THINGS TOGETHER, THE -- FIRST YOU HAVE A MANSLAUGHTER CONVICTION AND THEN 8 ARMED ROBBERIES AND THEN HE HAS THE SENSELESS, HEINOUS MURDER AND SO, ANY OTHER AGGRAVATORS THAT THE JUDGE FOUND?

>> THE JUDGE FOUND THREE.

>> AND THE PRIOR VIOLENT FELONIES WHICH ARE TRULY PRIOR VIOLENT FELONIES.

>> CORRECT.

>> MANSLAUGHTER, WASN'T IT?

>> CORRECT, MANSLAUGHTER THAT OCCURRED WHEN HE WAS BASICALLY A

JUVENILE, THERE WAS VERY LITTLE INFORMATION IN THE APPELLATE RECORD ABOUT DETAILS OR FACTS CONCERNING THE PRIOR MANSLAUGHTER, AND IT APPARENTLY, GIVEN THE DOC RECORDS, MR. KOCAKER ENTERED DOC BY AGE 18 AND IT OCCURRED SOMETIME BEFORE THE AGE OF 18.

>> MOST RESPECTFULLY IF WE HAVE A DEATH PENALTY IN FLORIDA, WHICH WE HAVE THE CASE SEEMS LIKE IT MEETS EVERY CRITERIA AND MORE, FOR BEING THE WORST OF THE WORST AND I KNOW -- I GUESS YOU WILL GET INTO MENTAL HEALTH MITIGATION BUT THERE ARE CASES WHERE THE AGGRAVATION IS SO SIGNIFICANT AND IT WOULD BE HARD TO SAY THAT THERE WOULD BE MITIGATORS WHICH OUT WEIGH IT AND SOMETIMES IF THERE IS ONE STATUTORY AGGRAVATOR AND SIGNIFICANT MITIGATION AND THAT IS WHY I BRING OUT ALL OF THE AGGRAVATION, WHICH IS NOT JUST, WELL, HE HAD A PRIOR VIOLENT FELONY AND HIT A POLICE OFFICER OR SOMETHING.

SO I GUESS, I'M JUST -- WANT TO LET YOU KNOW MY VIEW ON THIS SO YOU CAN APPROACH IT AND THAT IS MY VIEW ON THINGS AND AFTER LOOKING AT IT IN SOME DETAIL.

>> WHAT I CAN RESPOND TO YOU, JUSTICE PARIENTE WOULD BE THIS. AS YOU ARE WELL AWARE WE DIDN'T CONTEST THE AGGRAVATORS, NO CONTESTING HE HAD THE PRIOR CONVICTIONS THAT HE HAD. AND I THINK THOUGH WHAT IS IMPORTANT TO LOOK AT THOSE IN TERMS OF JUST THE EVIDENCE IN THE RECORD AND, OBVIOUSLY ONE OF THE DUTIES OF A TRIAL ATTORNEY IS TO ATTEMPT TO MITIGATE SOME

OF THE AGGRAVATORS, AND, WE'RE ONLY LEFT WITH A VERY SCARCE RECORD AS TO WHAT THE DETAILS WERE AND IN FACT MOST OF THE INFORMATION ABOUT IT CAME TO SOME DEGREE FROM MR. KOCAKER AND HE TESTIFIED DURING THE PENALTY PHASE, IF YOU CAN RELY ON THE TESTIMONY THAT HE GAVE BUT WE DO KNOW AT LEAST THE BULK OF THESE PRIOR CONVICTIONS, ALL OCCURRED WHEN HE WAS QUITE YOUNG BASED ON THE LENGTH OF TIME HE SPENT DURING HIS INCARCERATION.

>> THAT IS BECAUSE HE HAS BEEN INCARCERATED FOR A LENGTHY PERIOD OF TIME.

>> THAT IS CORRECT.

>> BUT WHAT THEY DEMONSTRATE TO ME IS THAT THIS MAN IS A...

DOESN'T WANT TO WORK, HE WANTS TO ROB PEOPLE IN ORDER TO GET HIS MONEY AND THAT IS HOW THIS PARTICULAR CRIME, WE ARE HERE ON TODAY, STARTS, AND, OBVIOUSLY, HE WANTED TO ROB THE CAB DRIVER, AND, KILLS HIM IN THE PROCESS.

>> I WOULD DISAGREE WITH THE COURT'S CHARACTERIZATION THAT THAT WOULD BE THE DEFINING FACTOR OR THE DEFINING MOTIVATION OF MR. KOCAKER'S BEHAVIOR.

I THINK THE DEFINING MOTIVATION, BEHIND MR. KOCAKER'S BEHAVIOR IS HIS MENTAL ILLNESS, WHICH IS ALSO WELL DOCUMENTED, ALMOST 3500 PAGES WORTH OF DOCUMENTATION, FROM DOC THAT BEGINS WHEN HE FIRST ENTERS THE PRISON SYSTEM AT AGE 18, SAID AGE 18 AND 19 THAT WE FIRST BEGIN TO SEE DOCUMENTATION FROM PSYCHIATRISTS, PSYCHOLOGISTS AND ASSESSMENT CENTERS, AS TO MR. KOCAKER'S MENTAL STATE AND

THE -- IN MY OPINION, ABSOLUTE  
CLEAR-CUT ESTABLISHMENT THAT  
THIS MAN EVEN AT THAT EARLY AGE  
HAD SERIOUS, SIGNIFICANT AND  
LONGSTANDING MENTAL ILLNESS.  
ONCE THEN YOU COUPLE THAT WITH

--

>> WHAT WAS THAT MENTAL ILLNESS?

>> WHEN HE FIRST ENTERED THE...

THE MENTAL DIAGNOSIS AT THE TIME  
OF THIS CASE WHICH VARIED  
BETWEEN THE PENALTY PHASE AND  
THE FINAL SPENCER HEARING,  
LARGELY BECAUSE DOC TOOK THAT  
LONG TO ACTUALLY FIND ALL OF  
MR. KOCAKER'S RECORDS AND,  
BASICALLY HE IS A PARANOID  
SCHIZOPHRENIC, HE HAS --  
DIAGNOSED WITH TWO AXIS TWO  
PERSONALITY DISORDERS ON TOP OF  
THAT, WHICH WERE EXPLOSIVE  
CONDUCT DISORDER AND A  
BORDERLINE PERSONALITY DISORDER  
AND IN ADDITION TO THAT HE WAS  
-- UNREBUTTED FROM DR. WOOD  
BASED ON THE PET SCAN HE HAS  
ORGANIC BRAIN DAMAGE TO THE  
RIGHT HEMISPHERE OF HIS BRAIN  
WHICH DR. WOOD OPINED WAS  
PROBABLY PRENATAL, IN UTERO AND  
EXISTED HIS ENTIRE LIFE.

>> YOU KNOW, WE HEAR A LOT OF  
COMMENTS ABOUT MENTAL ILLNESS,  
PERSONALITY DISORDER, WE HAVE  
PARANOIA, ANY NUMBER OF MENTAL  
ILLNESS, BUT WHAT REALLY BOTHERS  
ME IS THAT THERE IS RARELY A  
CONNECTION ABOUT WHY THIS MENTAL  
ILLNESS WOULD RESULT IN A PERSON  
ACTING THE WAY THEY DID.

SO, TELL ME WHY MR. KOCAKER'S  
MENTAL ILLNESS RESULTED IN THESE  
CRIMINAL ACTS?

>> WELL, IF YOU READ

DR. EISENSTEIN'S TESTIMONY IN  
THE RECORD, OBVIOUSLY, TO SOME

DEGREE, YOU DON'T HAVE A PSYCHIATRIST OR A PSYCHOLOGIST STANDING ON THE SIDEWALK OR TEN FEET AWAY, WHEN AN OFFENSE LIKE THAT OCCURS, NOR DO YOU HAVE THE ABILITY IN MOST INSTANCES FOR A FORENSIC PSYCHIATRIST OR PSYCHOLOGIST TO INTERVIEW SOMEONE IN THE IMMEDIATELY 30, 45 AN HOUR AFTERWARD.

WHAT YOU HAVE TO LOOK AT, THOUGH, I BELIEVE, IS ESPECIALLY IN A SITUATION LIKE THIS, WHERE YOU HAVE A LIFETIME OF MENTAL ILLNESS, WHICH FOLLOWS A LIFETIME OF BEING -- AN INABILITY TO CONTROL BEHAVIOR -- >> WHEN YOU SAY THERE IS A LIFETIME OF MENTAL ILLNESS, YOU ARE HAMPERED, BECAUSE MOST OF HIS LIFETIME, ADULT LIFETIME WAS SPENT IN PRISON.

HIS SISTER WOULD TESTIFY -- DID SHE TESTIFY TO A LIFETIME OF -- AGAIN, WE -- MENTAL ILLNESS IS OBVIOUSLY A SERIOUS, SERIOUS PROBLEM IN THE COUNTRY, AND THERE ARE MANY MENTALLY ILL PEOPLE AND WE DON'T HAVE RIGHT FACILITIES TO TREAT THEM AND THEY ARE IN OUR COMMUNITIES AND DO ACT BIZARRELY BUT AS FAR AS MR. KOCAKER'S MENTAL ILLNESS, WHAT DID HIS SISTER SAY ABOUT HIS -- FROM THE TIME HE WAS BORN UP, ABOUT HOW -- WHAT WAS HIS MENTAL ILLNESS, AND BEFORE HE COMMITTED HIS FIRST CRIME, WHAT WAS -- WHAT WERE THE -- IF ANY, THE DIAGNOSIS OF MENTAL ILLNESS. >> HE WAS NOT DIAGNOSED -- THAT I'M AWARE OF, FROM THIS RECORD. WHAT WE CAN LEARN FROM THE TESTIMONY --

>> YOU SEE, AND WE HAVE TO LOOK AT -- BECAUSE THIS IS A

PROPORTIONALITY REVIEW AND I WAS INVOLVED, AS MANY OF THE JUSTICES HERE, IN THE COOK CASE, A YOUNG MAN WHO HAD A TRUE MENTAL ILLNESS AND THE CASE WAS I THINK REMANDED... HERE WHEN YOU SAY THERE IS NO DOCUMENTATION AND, IT IS NOT THAT WE ARE SAYING THESE ARE, QUOTE, MANUFACTURED. BUT, IN TERMS OF WHETHER THE MITIGATION OUT WEIGHS THE HORRENDOUS AGGRAVATION IT BECOMES IMPORTANT TO ME, WHAT IS THE OBJECTIVE EVIDENCE OF IT? WHEN YOU SAY, IT WAS -- AND DIDN'T HE -- HE GREW UP IN -- >> IN PARTS OF NEW YORK, APPARENTLY, AT ONE TIME THERE WAS SPENDING TIME IN PUERTO RICO AND BY THE TIME HE WAS ROUGHLY 13, 14 HE HAD DROPPED OUT OF SCHOOL AND HE WAS INVOLVED WITH WHAT CLEARLY APPEARS TO BE A HOMOSEXUAL RELATIONSHIP WITH MEN MUCH OLDER THAN HIM, BY THE TIME THE FAMILY MOVED BACK TO FLORIDA, AT AGE 15 AND 16 HE HAD DROPPED OUT OF HIGH SCHOOL, AND -- >> DOES THAT, THEREFORE, BECAUSE OF THAT, HE IS MENTALLY ILL? S. >> I'M NOT SUGGESTING THAT BUT I WOULD SUGGEST THAT HE WOULD BE A SYMPTOM OF THE MENTAL ILLNESS, CLEARLY AT A YOUNG AGE WE HAVE HIM DEMONSTRATING PATTERNS OF CONDUCT THAT I DON'T VIEW WOULD BE HEALTHY -- >> NOW THAT IS A DIFFERENT ISSUE. HE MAY HAVE BEEN -- HE WAS SEXUALLY ABUSED AND MAYBE HAD AIDS AND MAYBE MADE ADVANCES TO THE CAB DRIVER AND, I MEAN, IT

WOULD BE SPECULATION, BUT THERE IS -- NOT MAKING A CONNECTION.

>> WE KNOW FROM THE HAL BROTHER'S TESTIMONY, OLDER THAN MR. KOCAKER AND THE SISTER WHO TESTIFIED WAS YOUNGER THAN HIM. AND THE OLDER HALF BROTHER TESTIFIED THAT THROUGHOUT MR. KOCAKER'S YOUTH, THE FAMILY HAD TO MOVE AT LEAST 17 TIMES, LARGELY RELATED TO VIOLENT OUTBURST AND BEHAVIOR FROM MR. KOCAKER DURING THAT PERIOD OF TIME AND PART OF THE PROBLEM IN THE FAMILY DYNAMIC WAS, THE MOTHER'S RESPONSE TO DEALING WITH HIS BEHAVIOR WAS NOT TO SEEK TREATMENT BUT, INSTEAD, TO PICK UP AND MOVE TO A DIFFERENT APARTMENT, TO MOVE TO A DIFFERENT LOCATION.

AND, THAT HE RECALLED AT LEAST 17 OF THOSE INSTANCES, WHERE THEY WERE MOVING BECAUSE OF THESE BEHAVIORAL DIFFICULTIES THAT CLEARLY WOULD INDICATE THERE WAS MENTAL ILLNESS AT THAT POINT IN TIME.

I THINK IT IS ALSO IMPORTANT TO NOTE THAT IF THE COURT LOOKS AT THE DSM-4 UNDER PARANOID SCHIZOPHRENIA IS NOT A DIAGNOSIS CLINICIANS ASSIGN UNTIL THE AGE OF 18.

AND PARANOID SCHIZOPHRENIA WAS ALWAYS A DIAGNOSED NOT UTILIZED UNTIL A PERSON REACHED ADULTHOOD, BECAUSE THERE ARE OTHER SYMPTOMS THAT MAY BE INDICATIVE OF THAT BUT YOU ARE DEALING WITH ADD DENVER ISSUES AND YOU GET THE BORDERLINE PERSONALITY DISORDER --

>> HOW ABOUT THE 8 ARMED ROBBERIES HE WAS CONVICTED OF AND SENTENCED TO, HOW WAS THAT A

RESULT OF HIS MENTAL ILLNESS?  
WERE THEY RUN-OF-THE-MILL ARMED  
ROBBERIES OR A --

>> THE ONLY INFORMATION WE HAVE  
IN THE RECORD IS THAT HE MADE A  
STATEMENT THAT HE, BECAUSE OF  
CRIMINAL CONVICTION, HAD LOST  
HIS DRIVERS LICENSE, COULD NOT  
GET A JOB, BECAUSE HE COULDN'T  
WORK, COULDN'T GET BACK AND  
FORTH, AND, THAT HE HAD  
COMMITTED THE ROBBERIES IN A WAY  
TO GET MONEY TO SUPPORT HIMSELF,  
AND, AGAIN...

>> NORMAL, CRIMINAL ACTIVITY.

>> I CAN'T CHARACTERIZE IT AS  
NORMAL BASED ON THE HISTORY THAT  
HE EXHIBITED, THROUGHOUT THE  
EARLY LIFE THAT IS DOCUMENTED,  
AND, YOU KNOW, HIS SISTER  
BELIEVED HE WAS ADHD AND HAD  
ISSUES IN SCHOOL THAT WOULD  
INDICATE THAT THOUGH HE WAS ABLE  
TO GET GOOD GRADES IN SCHOOL  
BUT, AGAIN WHAT WE HAVE TO  
RECOGNIZE IS THAT SOMEBODY WHO  
IS A PARANOID SCHIZOPHRENIC BY  
30-SOMETHING OR BEGINS TO  
EXHIBIT THE BEHAVIOR MORE AND  
MORE, AS THEY AGE, IS NOT  
NECESSARILY GOING TO EXHIBIT ALL  
OF THE SYMPTOMS OF FULL-BLOWN  
SCHIZOPHRENIA WHEN THEY ARE 7.  
OR WHEN THEY ARE TEN, WHICH IS  
WHY IT IS NOT A DIAGNOSIS THAT  
IS MADE AT THOSE AGES.

>> JUST SO I'M CLEAR... YOU ARE  
CLAIMING THAT BRAIN DAMAGE,  
SEXUAL ABUSE AS A CHILD, ALCOHOL  
ABUSE, HIV POSITIVE, AND IN THE  
ABSENCE OF A FATHER AND FAMILY,  
THOSE ARE THE MITIGATORS THAT  
YOU CLAIM CLEARLY OUT WEIGH THE  
INCREDIBLE AGGRAVATING FACTORS  
IN THE CASE.

>> THOSE MITIGATORS ARE IN

ADDITION TO THE MENTAL HEALTH ISSUES AND THE COURT SEPARATED THEM OUT.

AND WHAT THE TRIAL COURT DID WAS SAID, I'M NOT GOING TO FIND THESE RISE TO THE LEVEL OF STATUTORY MITIGATORS, WHICH I COMPLETELY DISAGREE WITH AND, QUITE HONESTLY, THINK WAS NONSENSE.

ON THE OTHER HAND, THE COURT DID FIND THAT THEY WERE MITIGATING, AND, FELT, THOUGH, THEY WERE ENTITLED TO MODERATE WEIGHT, ABOVE AND BEYOND, THE MODERATE WEIGHT GIVEN TO THOSE MENTAL HEALTH FACTORS WHICH WOULD LARGELY FOCUS ON THE TESTIMONY OF DR. EISENSTEIN AND OF DR. CARPENTER AND, OF DR. PORTMAN AND VARIOUS PSYCHOLOGISTS AND PSYCHIATRISTS SUCH AS DR. DOLES IN THE DOC RECORDS, THEN THE... THE EVIDENCE THAT CAME OUT FROM THE STAY AT THE JACKSONVILLE HOSPITAL WHERE HE WAS ALSO DIAGNOSED...

>> YOU JUST HAVE THROWN A LOT OF THINGS IN HERE AND THE FIRST THING YOU SAID IN GOING BACK TO THE SENTENCING ORDER IS THE JUDGE, DISMISSED THE TWO VERY WEIGHTY STATUTORY MITIGATORS, WHICH IS -- JUSTICE QUINCE ASKED ABOUT CONNECTION TO THE CRIME. AND THEN YOU SAID SOMETHING ABOUT, WHAT THE JUDGE DID WAS NONSENSE.

YOU DIDN'T RAISE, AS A SEPARATE ISSUE ON APPEAL, THAT THE JUDGE EERRONEOUSLY REJECTED THE STATUTORY MITIGATORS.

AND, WE HAVE THEREFORE, THE SENTENCING ORDER AND WE TAKE IT TO BE THAT IN THIS CASE, THE TWO

WEIGHTY MENTAL HEALTH STATUTORY  
MITIGATORS, MENTAL STATUTORY --  
WERE NOT FOUND.

NOW, FOR ME, WHEN I'M LOOKING AT  
THE WEIGHTIEST OF THE  
AGGRAVATORS, UNLESS THERE IS  
SUBSTANTIAL MENTAL HEALTH  
TESTIMONY THAT THE JUDGE FINDS,  
TO SHOW THE MENTAL HEALTH  
AGGRAVATOR, MITIGATORS AND THE  
-- AND AGE, IT IS -- I MEAN, IF  
YOU GO BACK, BECAUSE YOU ARE  
SAYING IT IS NOT PROPORTIONATE  
AND YET WE HAVE TO GO WITH THIS  
RECORD, NOT HOW YOU WISH THE  
JUDGE FOUND IT.

DO YOU AGREE YOU DIDN'T  
CHALLENGE THE REJECTION OF THE  
TWO STATUTORY MITIGATORS.

>> I BELIEVE IN THE REPLY BRIEF,  
I BROUGHT TO THE COURT'S  
ATTENTION THE FACT THAT THE  
COURT IS NOT BOUND BY THE  
JUDGE'S FINDINGS REGARDING THAT.  
THAT IN ORDER --

>> THAT IS DIFFERENT... BUT, YOU  
AGREE THAT AS FAR THAT'S JUDGE  
IS CONCERNED, THAT WE CAN LOOK  
AT THIS, IF WE FIND THERE IS  
COMPETENT SUBSTANTIAL EVIDENCE  
TO SUPPORT, THAT HE FOUND OTHER  
EXPERTS, MORE CREDIBLE, THAN  
DR. EISENSTEIN.

AND, SO, WE GO BACK TO THE  
QUESTION OF PROPORTIONALITY  
WHICH YOU SAY THIS IS... THIS IS  
YOUR MAIN ISSUE AND I WANT TO  
ASK YOU, WHAT CASE THAT IS  
REMOTELY SIMILAR TO THIS, HAVE  
WE REDUCED A DEATH SENTENCE TO  
LIFE BASED ON THESE WEIGHTY  
AGGRAVATORS AND NO STATUTORY  
MITIGATORS.

>> I WOULD SAY SINCLAIR.  
WHICH WAS CITED IN THE REPLY  
BRIEF AND IN SINCLAIR, NEITHER

STATUTORY MENTAL HEALTH  
MITIGATOR WAS FOUND.  
I BELIEVE IT WAS A 3 AGGRAVATOR  
CASE AND I'M... TRYING TO GIVE  
THE COURT THE CITATION BUT I  
BELIEVE IT IS THE MOST SIMILAR.  
THERE WERE -- I'M SORRY.  
A ONE AGGRAVATOR CASE, HOWEVER  
-- NOW -- I DON'T MEAN -- I'M  
NOT -- I KNOW YOU ARE DOING THE  
BEST FOR YOUR CLIENT AND, I  
APPRECIATE THAT.  
BUT AS I SAID EARLIER I KNOW WE  
HAVE HAD CASES, A ONE AGGRAVATOR  
CASE AND LOOK AT SIGNIFICANT  
MENTAL HEALTH MITIGATION, TO  
DETERMINE IT WAS ONE AGGRAVATOR  
CASE THAT THERE ARE SITUATIONS  
WHERE THE MENTAL HEALTH  
MITIGATION OUT WEIGHSES THE ONE  
STATUTORY MITIGATOR BUT THIS IS  
NOT A ONE AGGRAVATOR CASE AS WE  
DISCUSSED EARLIER, THREE  
SIGNIFICANT, SIGNIFICANT  
AGGRAVATORS AND SO, IF SINCLAIR  
IS YOUR BEST CASE, THEN I THINK  
THAT TO ME SAYS THERE IS NO  
PRECEDENT FOR THIS COURT  
REDUCING A CASE LIKE THIS TO  
LIFE.  
>> I WOULD CITE TO THE COURT TO  
SINCLAIR, ADDRESSING HOW I  
BELIEVE THE COURT SHOULD VIEW  
THE MITIGATION IN THIS CASE  
WHICH I DON'T THINK CAN BE  
OVERLOOKED.  
WE SPENT A LOT OF TIME TALKING  
ABOUT WHAT THE AGGRAVATORS WERE,  
BUT, WHAT IS EQUALLY IMPORTANT  
IS WHAT THE MITIGATION WAS --  
>> THAT IS WHY I ASKED ABOUT THE  
MENTAL HEALTH MITIGATION --  
>> AND WHEN YOU TALK ABOUT THIS  
MENTAL HEALTH MITIGATION IN THIS  
CASE, HOW CAN YOU TIE IT TO THE  
OFFENSE ITSELF?

WHERE I BELIEVE YOU TIE IT TO THE OFFENSE ITSELF IS WHAT THE EFFECT OF BEING A PARANOID SCHIZOPHRENIC HAS ON AN INDIVIDUAL'S ABILITY TO CONTROL THEIR BEHAVIOR.

AND IT LEADS TO SOMEONE WHO BEHAVES IN AN INAPPROPRIATE MANNER AND LEADS TO SOMEONE WHO WILL BE SUBJECTED TO EXPLOSIVE OUTBURSTS.

>> YOU ACT AS IF WE'D ACCEPT THAT AS A FINDING.

THE JUDGE DIDN'T FIND THAT DIAGNOSIS AND IN FACT SAID AT THE SPENCER HEARING, DR. EISENSTEIN ADVANCED A NEW THEORY INCLUDING HE SUFFERED FROM THE SCHIZOPHRENIA PARANOID TYPE AND RELIED ON THE DOC RECORDS.

DR. GAMACHE SAID HE DIDN'T FIND ANY CREDIBLE OR CONSISTENT EVIDENCE THAT DEFENDANT SUFFERED FROM ANY TYPE OF PSYCHOTIC DISORDER INCLUDING PARANOID SCHIZOPHRENIA OR AFFECTIVE DISORDER AND FINDS THE TESTIMONY OF DR. GAMACHE TO BE MORE CREDIBLE AND SO YOU TAKE THE CASE AND WRITE THE OPINION AS IF HE WAS A PARANOID SCHIZOPHRENIC WHEN THE JUDGE'S FINDING WHICH YOU HAVE NOT CHALLENGED, REJECTS THAT.

I HAVE TROUBLE WITH IT.

>> WHERE I BELIEVE, WHERE THE COURT ERRED WHICH IS WHY I SUGGESTED TO THE COURT THERE IS NOT COMPETENT SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE JUDGE'S CONCLUSIONS REGARDING DR. GAMACHE, WOULD BE THIS:

THE TRIAL COURT SENTENCING ORDER FOCUSES SOLELY ON DR. GAMACHE

AND DR. EISENSTEIN AND IT  
OVERLOOKS OR CHOOSES NOT TO  
ADDRESS THE OTHER TESTIMONY  
FROM, FOR EXAMPLE,  
DR. CARPENTER.  
WHO TESTIFIED THAT HE WAS  
APPOINTED BY THE COURT AS A  
COURT EXPERT FOR COMPETENCY AND  
HIS INITIAL DIAGNOSIS IN JANUARY  
OF 2008, HE LEANED TOWARD  
PARANOID SCHIZOPHRENIA AND  
WANTED TO BE CONSERVATIVE  
BECAUSE HE DIDN'T HAVE ANY OTHER  
INFORMATION SUCH AS MENTAL  
HEALTH RECORDS.

>> YOU UNDERSTAND, BECAUSE YOU  
ARE AN EXPERIENCED APPELLATE  
LAWYER, IF YOU WISH TO ATTACK A  
FINDING OF THE TRIAL COURT,  
WHICH IS FUNDAMENTAL NOW, TO  
WHAT YOU ARE -- YOUR ARGUMENT  
IS, YOU RAISE IT AS AN ISSUE ON  
APPEAL.

AND, IT IS -- YOU HAVE RAISED  
THE CIRCUMSTANTIAL EVIDENCE ON  
THE CONVICTION FOR FIRST DEGREE  
MURDER, YOU RAISE  
PROPORTIONALITY, YOU RAISE  
LETHAL INJECTION AND RAISE THE  
CONSTITUTIONALITY OF THE DEATH  
PENALTY AND YOU MAY HAVE SAID  
SOMETHING IN YOUR REPLY BRIEF TO  
SAY, WELL, WE SHOULD QUESTION IT  
BUT, WE DON'T GO AROUND  
REWRITING THE JUDGE'S SENTENCING  
ORDERS, OR EVEN MAKING OUR OWN  
DETERMINATION ON FACTS THAT HAVE  
BEEN REJECTED AND CREDIBILITY  
DETERMINATION.

>> WHICH IS WHY I WOULD POINT  
THE COURT TO SINCLAIR, BECAUSE,  
ESSENTIALLY, WHAT THE COURT DID  
IN SINCLAIR, WAS THE TRIAL COURT  
HAD ASSIGNED A CERTAIN AMOUNT OF  
WEIGHT, I BELIEVE, LITTLE OR NO  
WEIGHT, TO THE DEFENDANT'S SLOW

INTELLIGENCE AND -- ALTHOUGH THERE WERE NO SATTER TO MENTAL HEALTH MITIGATORS I BELIEVE IN SINCLAIR, DULL INTELLIGENCE AND, UNCOOPERATION WITH POLICE AND LACK OF A FATHER AN DID NOT FIND OTHER MITIGATING FACTORS THAP COURT REVERSED THE DEATH SENTENCE AND SAID THE EVIDENCE OF THE DEFENDANT'S SEE EMOTIONAL DISTURBANCES AND LOW INTLLECT WERE MITIGATORS TO HAVE WEIGHT AND... HE DID ASSIGN THE MENTAL HEALTH MITIGATORS AND FIND THEM TO BE SIGNIFICANTLY GREATER. THE JUDGE'S RULING HAS TO BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.

>> IT SEEMS TO ME THAT, WHEN YOU LOOK AT SINCLAIR, I DON'T KNOW HOW DO YOU SQUARE THAT WITH ALL OF THE CASE LAW THAT WE HAVE, ABOUT NOT REWEIGHING... THESE MITIGATORS.

AGGRAVATORS.

WE DON'T -- YOU KNOW, THAT CAN GET US THE TRIAL JUDGE, WHO IS THERE, HEARD THE TESTIMONY, SAW THE WITNESSES, ALL OF THAT, AND WE DON'T REALLY RE-WEIGH THE JUDGE'S DETERMINATION HOW MUCH WEIGHT SHOULD BE GIVEN TO MITIGATORS.

>> BUT THE JUDGE'S FINDINGS, I ACKNOWLEDGE ARE SUBJECT TO AN ABUSE OF DISCRETION STANDARD HOWEVER THEY DO HAVE TO BE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.

AND, THE POINT OF THIS ARGUMENT IS, REGARDING HOW THE TRIAL COURT HANDLED THIS, WAS THAT THE EVIDENCE REGARDING DR. GAMACHE'S OPINIONS WAS ONE NOT SUPPORTED BY THE SUBSTANTIAL WEIGHT OF THE EVIDENCE.

ALTHOUGH THE TRIAL COURT ONLY ADDRESSED DR. EISENSTEIN AND DR. GAMACHE IN THE SENTENCING ORDER, HE DID NOT ADDRESS THE TESTIMONY OF DR. PORMAN OR ADDRESS THE TESTIMONY OF DR. CARPENTER, AND HE...

>> ANY OF THOSE EXPERTS -- DID ANY OF THOSE EXPERTS SAY, LOOK, THIS MAN HAS WHATEVER DIAGNOSIS. PARANOID SCHIZOPHRENIA.

THAT WHEN HE FINDS HIMSELF IN THESE KINDS OF SITUATIONS, THIS IS THE ACTION -- SEE, TO ME, UNLESS YOU REALLY MAKE SOME CONNECTION ABOUT WHAT THE MENTAL ILLNESS DOES TO A PERSON, HOW IT AFFECTS THEM, IN A SPECIFIC KIND OF SITUATION, YOU KNOW, IT IS LIKE THROWING OUT A -- A LOT OF PEOPLE HAVE DIFFERENT MENTAL ILLNESS, AND FUNCTION EVERY DAY.

>> I WOULD NOT DISAGREE WITH THAT.

>> THAT IS THE KIND OF INFORMATION THAT IT SEEMS TO ME IS IMPORTANT IN US MAKING SOME EVALUATION OF HOW THIS MENTAL -- HIS MENTAL ILLNESS PLAYS INTO HIS CRIMINAL ACTIVITY.

>> I BELIEVE THERE IS EVIDENCE IN THE RECORD OF THAT.

WHEN DR. WOOD TESTIFIED, HE SAID PEOPLE WITH RIGHT HEMISPHERE BRAIN ORDERS, YOU SEE POOR SELF-CONTROL AND POOR IMPULSE CONTROL AND YOU HAVE THE TESTIMONY OF DR. EISENSTEIN AND DR. CARPENTER WHO DID ADDRESS THE PARTICULAR TYPES OF BEHAVIORAL ISSUES AND LIMITATIONS THAT YOU WILL SEE FROM SOMEONE WHO IS A PARANOID SCHIZOPHRENIC AND ONCE AGAIN, THOUGH, YOU KNOW, IT WOULD BE VIRTUALLY IMPOSSIBLE TO HAVE A

PSYCHIATRIC EVALUATION OF A  
DEFENDANT IMMEDIATELY AFTER A  
HOMICIDE AND TO BE ABLE TO SAY,  
WELL, WERE YOU THINKING THIS OR  
THAT?

>> WHEN YOU LOOK AT THE FACTS OF  
THE CASE, IT IS HARD TO SAY  
SOMEONE THAT HAS THE WHEREWITHAL  
TO SLIT SOMEONE'S THROAT, TO GO  
GET SOME KIND OF... I GUESS  
GASOLINE IN THIS CASE, START THE  
FIRE AND PUT SOMETHING IN THE  
GAS TANK TO TRY TO GET THE CAR  
TO EXPLODE.

TIE THIS MAN UP AND PUT HIM IN  
THE CAR, AND, ALL OF THIS IS  
SOMETHING THAT HAPPENS OUT OF  
HIS PARANOIA?

>> WELL, I COULD DIRECT THE  
COURT TO AT LEAST ONE NOTATION  
IN THE DOC RECORDS, WHERE  
MR. KOCAKER HAD TO BE MOVED TO A  
FAR MORE SECURE FACILITY WITH A  
PSYCHIATRIST ONSITE AND, I  
BELIEVE THE REFERENCE IN THAT  
PARTICULAR REPORT WAS BASED UPON  
THE MENTAL HEALTH DIAGNOSIS THE  
DOC WAS REACHING AND THEY FELT  
HE DID HAVE HOMICIDAL TENDENCIES  
AND, WOULD HAVE EXPLOSIVE  
OUTBURSTS OF BEHAVIOR AND  
CLEARLY HE WASN'T ABLE TO  
CONTROL...

>> YOU ARE NOW WELL INTO YOUR  
REBUTTAL TIME.

YOU HAVE A TOTAL OF ABOUT 3  
MINUTES AND 20 SECONDS LEFT.

>> ALL RIGHT, I WILL STOP AND  
WE'LL ADDRESS THE REST OF THE  
QUESTIONS, ON REBUTTAL.

THANK YOU.

>> GOOD MORNING, MAY IT PLEASE  
THE COURT, CAROL DITTMAR FROM  
THE ATTORNEY GENERAL'S OFFICE,  
REPRESENTING THE APPELLEE IN THE  
CASE, THE STATE OF FLORIDA.

AS FAR AS PROPORTIONALITY, THERE ARE A NUMBER OF TIMES WHERE THE COURT UPHELD DEATH SENTENCES FOR THE KILLING OF A CAB DRIVER, PARTICULARLY WHERE THERE ARE PRIOR VIOLENT FELONY CONVICTIONS AS THERE ARE IN THIS CASE AND I THINK THIS CASE IS EVEN MORE AGGRAVATED THAN MOST OF THE TYPICAL CAB DRIVER CASES BECAUSE IN THOSE CASES, SOMEONE IS USUALLY SHOT OR USUALLY NOT HEINOUS ATROCIOUS AND CRUEL AS THIS CASE CLEARLY WAS.

>> DO WE HAVE IN TERMS OF THAT, BECAUSE SOMETIMES THE IDEA THAT SOMEONE IS MENTALLY ILL MAY EXPLAIN WHY A HOMICIDAL MURDER OCCURS, AND WHEN A MURDER OCCURS AND ONE THAT IS ESPECIALLY NONSENSICAL, AFTER YOU HAVE ROBBED THE DRIVER, RIGHT, IF YOU WANT TO KILL THEM, YOU KILL THEM IN A CONVENTIONAL WAY, SHOOT THEM OR WHATEVER AND IT -- I DON'T KNOW IF HE SET OUT TO DO IT BUT -- TO CAUSE THIS UNDUE SUFFERING BUT IT IS A PRETTY INCOMPETENT MURDER.

DO WE HAVE ANY EVIDENCE THAT THERE WAS ANYTHING ELSE GOING ON, ANY SEXUAL ISSUES? OR... TO EXPLAIN WHAT COULD HAVE BEEN GOING ON IN THE PERSON'S MIND?

SO I MEAN, I WOULD ACCEPT THE ATTORNEY'S STATEMENT THAT THIS PERSON MUST HAVE SERIOUS ISSUES WHO COMMITTED THE MURDER THIS WAY.

I DON'T THINK IT MAKES ANY DIFFERENCE IN THE -- IT BEING PROPORTIONATE BUT, CAN YOU ADDRESS THAT A LITTLE BIT, LIKE DR. GAMACHE, EXPLAIN HOW SOMEBODY WOULD COME TO COMMIT

THIS KIND OF MURDER?  
IS THERE ANYTHING IN THE RECORD  
THAT WOULD EXPLAIN HIS ACTIONS?

>> I THINK WHAT EXPLAINS IT MOST  
CLEARLY IS, HE HAD A KNIFE.  
HE DIDN'T HAVE A GUN.

SO, I MEAN, IN TERMS OF IT BEING  
A DIFFERENT TYPE, THE METHOD OF  
KILLING, I THINK THAT WAS JUST A  
MATTER --

>> THE KNIFE, THOUGH, YOU SEE  
PLENTY OF KNIFE MURDERS, WHERE  
-- NOT MURDERS WHERE YOU ARE  
TRYING TO FIGURE OUT, NOW I WANT  
TO...

>> THROW THEM IN THE TRUNK AND  
DESTROY THE EVIDENCE?  
I HAVE SEEN A NUMBER OF THOSE  
CASES AND THAT WAS NOT  
SPECIFICALLY ADDRESSED BY  
DR. GAMACHE, WHO DID LOOK  
GLOBALLY AT HIS MENTAL HEALTH  
FUNCTIONS NOT ONLY JUST BASED ON  
HIS OWN EVALUATIONS BUT ON THE  
20 YEARS OF DOC RECORDS AND IN  
FACT DR. GAMACHE IN  
INCORPORATING THOSE RECORDS AND  
HIS TESTIMONY, I THINK IS MUCH  
MORE CONSISTENT WITH WHAT HE  
CONCLUDES AND WHAT, OF COURSE  
THE TRIAL COURT FINDS IS VERY  
PERSUASIVE IN SAYING THAT THERE  
IS NO SEVERE MENTAL ILLNESS IN  
THIS CASE.

YES, THERE MAY BE PERSONALITY  
DISORDERS AND GAMACHE SAID THERE  
MAY BE AN AXIS ONE, BASED ON  
SUBSTANCE ABUSE.

ADDICTION, THAT SORT OF THING,  
BUT THERE IS CERTAINLY NO  
SCHIZOPHRENIA, AND THERE IS NO  
AFFECTIVE DISORDER AND IN TERMS  
OF THE MOTIVATION FOR THE CRIME,  
WE KNOW THAT A DAY-AND-A-HALF  
BEFORE THIS HE HAD GIVEN JEWELRY  
TO HIS FRIEND SO WE COULD BUY

CRACK COCAINE, AND, HE WANTED TO GET THE MONEY TO BE ABLE TO GET MORE CRACK COCAINE AND GET THE JEWELRY BACK FROM FURY AND HE WAS CLEARLY MOTIVATED TO GET MONEY TO GET HIMSELF OUT OF THE SITUATION.

>> WAS HE ON CRACK COCAINE AT THE TIME OF THE MURDER?

>> THAT WAS ACTUALLY REJECTED AS A MITIGATOR.

THERE WAS NO EVIDENCE OF THAT. THE EVIDENCE WAS HE PURCHASED CRACK FROM FURY ON SUNDAY, DURING THE DAY, SUNDAY AND THROUGH THE NIGHT SUNDAY NIGHT. HE WASN'T REALLY SEEN AGAIN ON MONDAY AND THIS HAPPENS TUESDAY NIGHT AND THERE WAS SOME EVIDENCE, I THINK, HE,

MR. KOCAKER TESTIFIED AND MAYBE ONE OF THE MENTAL HEALTH EXPERTS SAID THAT HE DESCRIBED HAVING HAD SOME OF THE VODKA THAT HE HAD GONE AND BOUGHT FROM ALBERTSON'S, WHEN HE HAILED THE CAB, THAT HE DRANK SOME OF THE VODKA AND MAY HAVE BEEN UNDER THE INFLUENCE OF ALCOHOL --

>> BUT THE IDEA WOULD BE, AND IT DOESN'T AGAIN EXCUSE ANYTHING IN THIS CASE, THAT HE MAYBE BECAME ADDICTED TO CRACK COCAINE AND HE WAS IN WITHDRAWAL AND HAD BEEN -- YOU KNOW, WAS -- WOULD DO ANYTHING HE CAN TO GET MORE CRACK COCAINE.

>> YOU KNOW, THAT IS... YOU CAN SPECULATE, BUT THERE IS --

>> THAT WAS NOT HOW THE CASE WAS PRESENTED.

>> THAT WASN'T HOW IT WAS PRESENTED AND THE JUDGE REJECTED THE PROPOSED MITIGATOR HE WAS ON CRACK AT THE TIME OF THE MURDER BASED ON HIM HAVING BOUGHT IT

TWO DAYS EARLIER BECAUSE THE JUDGE SAID, IT IS REASONABLE THAT HE WENT AHEAD AND DID THE DRUGS WHEN HE BOUGHT THEM AND DIDN'T HOLD ON TO THEM FOR TWO DAYS AND DOING THE CRACK AND GOING OUT AND COMMITTING THE MURDER.

BUT, I THINK YOU REALLY DO HAVE TO DELVE INTO DR. GAMACHE'S TESTIMONY, TO BE ABLE TO SEE WHAT MENTAL HEALTH FACTORS WERE GOING ON, AND WERE AT PLAY, BECAUSE THIS IS A MAN WHO HAS A DEMONSTRATED HISTORY IN THE DOC RECORDS, OF MALINGERING, OF MANIPULATIVE BEHAVIOR, ALTHOUGH, WE TALK ABOUT, WELL, HE'S HAD ALL OF THIS MENTAL HEALTH TREATMENT AND DIAGNOSIS IN DOC, FOR THE MOST PART, THOSE WERE HIM SELF-REPORTING HEALTH EMERGENCIES AND WOULD BE PLACED IN THE FACILITY WITH THE PSYCHIATRIST BASED ON WHAT HE WAS SAYING AND ALL OF THOSE MENTAL HEALTH RECORDS, THERE IS NO DIAGNOSIS OF ANY KIND OF SCHIZOPHRENIA, UNTIL HE SEES DR. EISENSTEIN, AFTER THE OFFENCE, WAY AFTER THIS OFFENCE AND HE INITIALLY COMES UP WITH A DIAGNOSIS OF MULTIPLE PERSONALITIES WHICH IS THERE IS ALSO NO EVIDENCE IN THE THE RECORD TO SUPPORT THAT AND --  
>> MAY I ASK A QUESTION ABOUT THE DOC RECORDS?  
BECAUSE I DON'T KNOW IF WE --  
>> YES.

--

>> POSTCONVICTION.  
3,000 PAGES OF RECORDS.  
WHY DID IT TAKE UNTIL AFTER THE TRIAL FOR THE DEFENSE TO GET IT?  
IS THERE AN EXPLANATION FOR

THAT?

>> WELL, THE DEFENSE WAS TRYING TO GET IT BEFORE THEN AND THERE WERE LETTERS --

>> SHOULDN'T THE STATE BE MAKING SURE THE DOC RECORDS ARE AVAILABLE TO THE DEFENDANT IN A TIMELY WAY?

>> WELL, I DON'T KNOW HOW MUCH CONTROL -- I MEAN, WHEN YOU SAY THE STATE, YES, WE'D LIKE THE DOC TO HAVE THINGS AVAILABLE AND PRODUCE THINGS AND I DON'T KNOW THE MECHANICS, FOR ACTUALLY GETTING THAT DONE OR HOW THAT GETS DONE WHEN A CASE IS INITIALLY BEING TRIED.

WHETHER, YOU KNOW, IT IS NOT LIKE IT'S ON DOC'S RADAR TO PICK UP AND PUT TOGETHER A MITIGATION CASE FOR THE DEFENDANT.

I THINK THAT WHEN THEIR RECORDS -- AND THEIR RECORDS WERE REQUESTED BY THE DEFENSE, AND, WERE PROVIDED TO, WHAT HAPPENS WITH THE INITIAL BATCH OF RECORDS, THAT COMES IN, THERE IS A GAP OF 10 OR 12 YEARS WHERE THERE ARE MISSING RECORDS AND THERE IS NO EXPLANATION IN THE APPELLATE RECORD AND THERE IS A LETTER FROM THE DEFENSE ATTORNEY, TO DOC AND A LETTER BACK TO THE DEFENSE ATTORNEY FROM DOC, SAYING THAT THERE IS THIS GAP, RECOGNIZING -- THEY'LL CONTINUE TO LOOK FOR THE RECORDS AND ULTIMATELY FIND THEM AND THAT IS WHY WE HAVE A SECOND SPENCER HEARING, SO THE EXPERTS CAN GO BACK AND LOOK AT THE RECORDS THAT HAD BEEN MISSING. BUT, AS FAR AS THE MECHANICS OR THE PROBLEMS...

>> I CAN JUST --

>> FLESH OUT IN THE RECORD, THEY

GOT HIM ULTIMATELY AND THEY ARE IN OUR RECORD ON APPEAL AND JUST TO LET YOU KNOW, I THINK VOLUMES FIVE THROUGH VOLUMES 19, ARE ALL THE EXHIBITS IN THIS TRIAL, IN THIS RECORD AND VOLUME FIVE IS MOSTLY THE TRIAL EXHIBITS AND SOME OF THE INITIAL -- STATE EXHIBITS AT THE SPENCER HEARING, WHICH WAS HIS JAIL -- PINELLAS COUNTY JAIL RECORDS, THE -- MOST OF HIS MEDICAL RECORDS ARE STARTING IN VOLUME 6 AND PRETTY MUCH GOING THROUGH THE END OF VOLUME 19.

VOLUME 6 REALLY HITS ON THE RECORDS THAT THE DOCTORS ARE DISCUSSING, SO THEY ARE NOT CHRONOLOGICALLY IN ORDER. THERE IS A LOT OF DISCUSSION ABOUT THE -- THIS INCIDENT IN MARCH OF 2006, WHICH I'M GOING TO ADDRESS IN A MINUTE AND THOSE RECORDS ARE ALL IN VOLUME 6 AND THE EARLIER ONES AND THE ONES THAT ARE PROBABLY MOST RELEVANT ARE EARLIER IN THE RECORD.

>> TAKEN AS A WHOLE... ARE THERE THINGS IN THIS RECORD THAT DEMONSTRATE THAT HE WAS HAVING, OTHER THAN HIS SELF-REPORTING OF, MAYBE, VOICES OR WHATEVER IT WAS, HE WAS SELF-REPORTING, DID HE HAVE ANY KIND OF DISCIPLINARY PROBLEMS WITH OTHER INMATES OR WITH PEOPLE WHO -- SUPERVISORS AT THE PRISON, THOSE KINDS OF THINGS?

DO THOSE RECORDS CONTAIN THAT?

>> THESE ARE JUST HIS MEDICAL RECORDS AND DON'T CONTAIN HIS DISCIPLINARY REPORTS, THOUGH IN THE RECORDS IT TALKS ABOUT HIS AGGRESSIVE BEHAVIOR AND ACTING OUT AND, NOW, HE IS NOT REPORTING ANY TYPE OF

HALLUCINATIONS, DELUSIONS, NONE OF THAT TYPE OF PSYCHOTIC BEHAVIOR REPORT AT ALL BEFORE MARCH OF 2006.

SO WE DON'T HAVE 20 RECORDS OF HIM -- OR 20 YEARS OF HIM SELF-REPORTING HALLUCINATIONS, FOR EXAMPLE.

HE DOESN'T START THAT UNTIL AFTER HE'S BEEN MEETING WITH DR. EISENSTEIN, SO, THE INCIDENT IN MARCH OF 2006, WHICH IS OF COURSE AFTER THE MURDER IN THIS CASE AND THE REASON THAT HE IS BACK IN DOC CUSTODY, HE WAS ARRESTED INITIALLY ON VIOLATION OF PROBATION AND THEY WENT AHEAD AND PROCESSED THAT BEFORE THE TRIAL.

SO, HE'S NOT JUST IN THE PINELLAS COUNTY JAIL FOR THE FOUR YEARS BEFORE TRIAL, HE'S ACTUALLY OFF BACK AT DOC, BECAUSE, HIS PROBATION HAS BEEN REVOKED AND IN THAT TIMEFRAME, MARCH OF 2006, IS WHEN HE GETS READMITTED TO DOC ON THAT, AND, THE SCREENING, HEALTH SCREENING OF HIS ADMISSION SAYS HE IS IN GOOD HEALTH, NOT REPORTING ANY TYPE OF MENTAL HEALTH PROBLEMS AND YET, A WEEK LATER, IS FOUND AT THE FACILITY, TO BE IN KIND OF A CATATONIC STATE, UNRESPONSIVE, AND NOBODY IS REALLY SURE WHAT IS HAPPENING WITH HIM, THE DOC RECORDS REFLECT THAT IT IS BELIEVED TO BE SOME SORT OF NEUROLOGICAL EVENT, SO THEY DO A CAT SCAN, AT THE FACILITY, THEY DON'T FIND ANYTHING, AND THEY SEND HIM OFF TO A HOSPITAL, IN JACKSONVILLE, AND HE SPENDS SOME TIME AT THE HOSPITAL IN JACKSONVILLE AND MAYBE AS MUCH AS A WEEK, SEVERAL

DAYS THERE, BEFORE HE IS RETURNED BACK TO THE FACILITY. SO, WE HAVE THOSE RECORDS AND THERE IS OBVIOUS CONFLICT BETWEEN...

>> HOSPITAL RECORDS FROM THAT JACKSONVILLE...

>> WELL, THEY DON'T ACTUALLY MAKE A DIAGNOSIS AT THE END. THEY SEND HIM BACK AND ONE OF THE THINGS DR. GAMACHE NOTICES IS WHAT CAUSED HIM TO BE RELEASED FROM THE HOSPITAL AND SENT BACK INTO DOC, TO THE FACILITY, IS HE'S BEEN UNRESPONSIVE AND HE HAS NOT BEEN EATING, HE HAS NOT BEEN ANSWERING QUESTIONS, THAT SORT OF THING, AND WHEN THEY TELL HIM THEY WILL GIVE HIM THE FEEDING TUBE AND BASICALLY HAVE TO, I GUESS, PUT A HOLE IN HIS THROAT TO STICK A FEEDING TUBE IN, HE SAYS, YOU KNOW WHAT? I'M OKAY.

I CAN EAT AND I'LL GO AHEAD AND EAT SO THEY DON'T HAVE TO DO THAT AND START HIM ON A REGULAR DIET, AND, HE SEEMS TO MIRACULOUSLY COME OUT OF HIS UNRESPONSIVE STATE ONCE HE HEARS HE'S GOING TO GET A FEEDING TUBE AND HE HAS NO MORE PROBLEMS AFTER THAT AND THEY SEND HIM BACK TO DOC AT THAT POINT, AND, GAMACHE FOUND THAT TO BE INTERESTING, ALSO IN THE RECORD, IT IS NOTED THAT THERE IS A VITAMIN B12 DEFICIENCY WHICH ACCORDING TO DR. GAMACHE CAN CAUSE DISORIENTATION AND EVEN DEMENTIA, SIGNS OF DEMENTIA AND THAT SORT OF THING AND FELT LIKE, BEFORE YOU COULD MAKE ANY KIND OF DIAGNOSIS OF SCHIZOPHRENIA BASED ON THIS

EVENT ACCORDING TO THE DOCTOR  
YOU NEED TO RULE OUT THERE BEING  
JUST THIS VITAMIN B12 DEFICIENCY  
AND THAT IS ONE OF THE THINGS.  
NOW, HE WAS PRESCRIBED  
ANTI-PSYCHOTIC MEDICATION, AS --  
UPON HIS DISCHARGE FROM THE  
HOSPITAL.

AND, DR. GAMACHE SAID SOMETIMES  
THAT IS ALMOST A DIAGNOSTIC TOOL  
AND DOESN'T NECESSARILY MEAN  
THEY DIAGNOSED HIM, WITH HAVING  
SCHIZOPHRENIA OR ANY OTHER  
MENTAL ILLNESS, SERIOUS MENTAL  
HEALTH DISEASE AND THERE IS NO  
DIAGNOSIS OF THAT, IN THE  
RECORDS.

SO, THE RECORDS ARE REALLY VERY  
SUPPORTIVE OF CONCLUSIONS THAT  
DR. GAMACHE REACHES, WHICH IS  
THIS MAN IS NOT SERIOUSLY MENTAL  
TELEILL AND MAY HAVE PERSONALITY  
DISORDERS, BUT, HE DOESN'T  
SUFFER FROM PARANOIA AND,  
DR. GAMACHE WAS SPECIFIC ABOUT  
REBUTTING THAT DIAGNOSIS, THERE  
WERE A NUMBER OF FACTORS, ONE  
IS, HE SAID TYPICALLY THE  
DIAGNOSIS FOR SCHIZOPHRENIA  
COMES WHEN SOMEONE IS IN THEIR  
LATE TEENS OR EARLY 20s AND YOU  
DON'T HAVE AN INDIVIDUAL GETTING  
TO BE 43 YEARS OF AGE, WITH NO  
PRIOR HISTORY OF ANY KIND OF  
PSYCHOTIC SYMPTOMS, ALL OF A  
SUDDEN BEING DIAGNOSED WITH  
SCHIZOPHRENIA.

THE AGE OF ONSET IS MUCH  
EARLIER.

AND THAT IS VERY, HIGHLY  
UNLIKELY, HIGHLY UNUSUAL.

ALSO, THE NATURE OF THE  
SYMPTOMS, IF YOU LOOK AT THE  
PARTICULAR DELUSIONS --

>> WELL, WOULD THAT HAVE  
ANYTHING TO DO WITH THE FACT

THAT HE WENT TO PRISON AT THE  
TIME --

>> --

>> THE DIAGNOSIS WAS TAKING  
PLACE, DIDN'T HE GO TO PRISON  
AROUND THE AGE OF 18.

>> HE DID BUT IF HE WAS  
DISPLAYING THE SYMPTOMS HE WOULD  
HAVE BEEN DIAGNOSED IN PRISON  
WITH PARANOID SCHIZOPHRENIA  
BECAUSE THE PRISON DOCTORS WILL  
DO THAT, IF THEY FIND THAT THAT  
EXISTS AND THAT AN INMATE IS  
SUFFERING FROM THAT, THEY'LL  
MAKE A DIAGNOSE AND IT WILL BE  
IN THE MEDICAL RECORDS.

>> WE HAVE A NUMBER OF MENTAL  
HEALTH RECORDS FROM THAT POINT  
UNTIL THE TIME HE WAS  
DISCHARGED.

>> RIGHT.

YES.

AND HE DOES NOT GET ANY KIND OF  
DIAGNOSIS ALONG THESE LINES, AND  
FOR THE MOST PART IS NOT TREATED  
FOR ANYTHING.

HE JUST -- FREQUENT NOTATIONS  
ARE IN THE RECORDS ABOUT HIM  
COMPLAINING, MAKING COMPLAINTS,  
ABOUT HAVING ISSUES, AND WANTING  
TO BE IN A FACILITY AND MOVING  
HIM AROUND TO DIFFERENT  
FACILITIES, BECAUSE HE WAS  
ACTING OUT AND BEING AGGRESSIVE  
AND OTHER MANAGEMENT PROBLEMS  
THEY HAD AND THOSE ARE MEDICAL  
RECORDS BUT DON'T SUPPORT THE  
DIAGNOSIS DR. EISENSTEIN COMES  
UP WITH, AGAIN, LOOKING BOTH AT  
HIS PRESCRIPTIONS AND LOOKING AT  
THE DIFFERENT SYMPTOMS WHICH  
DR. EISENSTEIN WAS ATTRIBUTING,  
WHEN -- ONE OF THEM IS THE  
CATATONIC STATE THAT WAS  
DESCRIBED, THAT IS NOT EVEN A  
FEATURE OF SCHIZOPHRENIA,

PARANOIA TYPE AND THERE IS, WHAT DR. GAMACHE SAYS THERE IS CATATONIC SCHIZOPHRENIA AND HE'S NOT DIAGNOSED WITH THAT AND THAT IS THE ONLY TIME YOU WOULD HAVE THE FEATURE IN SOMEONE WHO SUFFERS FROM SCHIZOPHRENIA, YOU WOULDN'T HAVE IT WITH THE PARANOIA TIME AND THE OTHER THING, WITH THE PARTICULAR DELUSIONS THAT HE ENDORSED AND ONE OF THE ONES THAT IS TALKED ABOUT FREQUENTLY, IS THE BELIEF -- IF HE HAD THE BELIEF THAT HE USED TO BE A HELICOPTER PILOT. AND THERE'S A LOT OF DIFFERENT DISCUSSIONS ABOUT THAT FROM THE DIFFERENT MENTAL HEALTH EXPERTS, AND, DR. GAMACHE SAID THAT IS NOT THE TYPE OF HALLUCINATION THAT WILL CAUSE, EVEN IF HE DID HAVE THIS DELUSION, AND EVEN IF HE BELIEVED HE WAS' HELICOPTER PILOT, WHICH DR. GAMACHE DID NOT THINK THAT WAS THE CASE, HE DIDN'T THINK IT WAS A DELUSION AT ALL, IT'S NOT A DELUSION, NUMBER ONE, THAT HE WAS PRO OCCUPIED WITH AND TELLING PEOPLE ALL THE TIME AND IT WASN'T ONE THAT WAS PARANOID IN NATURE. IN OTHER WORDS, HE WASN'T SAYING, I WAS A HELICOPTER PILOT, AND THIS IS THE EXAMPLE DR. GAMACHE GIVES, IF HE HAD SAID I WAS A HELICOPTER PILOT AND WHEN I WAS IN VIETNAM I GOT -- LEARNED SOME BAD STUFF ABOUT THE AIR FORCE AND NOW PEOPLE FROM THE AIR FORCE ARE OUT TRYING TO KILL ME. THAT WOULD BE THE TYPE OF DELUSION THAT WOULD SUPPORT A PARANOID FEATURE SCHIZOPHRENIA DIAGNOSIS AND THAT IS NOT THE TYPE OF SYMPTOM THAT IS EVEN

BEING SELF-REPORTED HERE.  
THAT IS NOT ANYTHING, THERE IS  
ANY SUGGESTION IN THE RECORD YOU  
COULD MAKE FINDING ABOUT.

>> HE HAD NO ACTUAL MILITARY  
SERVICE?

>> NO, HE DID NOT AND, YOU KNOW,  
WHEN DR. GAMACHE FIRST ASKED HIS  
HISTORY HE DIDN'T MENTION  
MILITARY SERVICE AND WITH  
DR. CARPENTER, WHEN HE ASKED HIM  
ABOUT MILITARY SERVICE, HE SAID  
HE DIDN'T HAVE ANY AND, SO, YOU  
KNOW, IT IS ONE OF THOSE THAT  
SOMETIMES HE SAYS HE DOESN'T AND  
SOMETIMES HE SAYS HE DOES AND  
THAT IS NOT THE WAY, ACCORDING  
TO THE FEATURES OF  
SCHIZOPHRENIA, WOULD HAVE TO BE  
A FIXED AND HE'D HAVE TO BE  
PREOCCUPIED WITH THE DELUSION  
AND, AGAIN, IT DOESN'T SUPPORT  
THAT BEING A SYMPTOM OF THIS  
PARTICULAR DISEASE.

ALSO, IF YOU LOOK AT HIS  
PRESCRIPTIONS WHEN HE WAS BACK  
AT THE PINELLAS COUNTY JAIL  
WAITING ON TRIAL HE WAS ONLY ON  
DEPAKOTE, WHICH IS SOMETIMES  
USED FOR AGGRESSION, BUT, IS NOT  
SOMETHING THAT IS EVER  
PRESCRIBED FOR PSYCHOTIC  
BEHAVIOR.

SO, THAT IS INCONSISTENT WITH  
THAT.

THERE WERE A NUMBER OF OTHER  
FINDINGS AND OTHER RESULTS THAT  
DR. EISENSTEIN TALKED ABOUT,  
THAT DR. GAMACHE ALSO REFUTED,  
IF YOU LOOK AT THE INTELLIGENCE  
TESTING, THAT HE TOOK THE --  
WHEN DR. EISENSTEIN GAVE HIM THE  
TEST AND COMES UP WITH THE 70  
FOR AN IQ, AT THE SAME TIME HE  
GAVE HIM THAT, HE GAVE HIM A  
TEST FOR MALINGERING AND HE

SCORED UNDER 43 TIMES ON THAT WHICH THE DOCTOR SAYS MEANS THIS IS COMPLETELY UNRELIABLE. HE WAS MALINGERING.

SO...

>> ANY OTHER... IQ TESTS FOR THE DEFENDANT?

>> THERE ARE A NUMBER OF THEM SCATTERED THROUGHOUT THE DOC RECORDS.

THE LOWEST I THINK IS A 57, IN ONE OF THE DOC RECORDS, ONE OF THE SCREENING TESTS.

DR. GAMACHE ESTIMATED IT TO BE, HIS IQ, 89 OR 90 BASED ON THE TESTING HE HAD DONE AND THE REVIEW OF DIFFERENT SCREENING TESTS THROUGHOUT HIS DOC HISTORY, AND ALSO, BASED ON HIS CLINICAL PRESENTATION, BECAUSE, HE USED GOOD VOCABULARY AND SEEMED TO HAVE -- DID NOT HAVE DEFICITS, OBVIOUS DEFICITS IN HIS CLINICAL...

>> [INAUDIBLE].

>> WE HAVE HIS SISTER SAYING THAT HE WAS SMART ENOUGH TO SKIP A GRADE IN SCHOOL AND THAT, YOU KNOW, THEY USED TO PLAY BOARD GAMES EVERY NIGHT AFTER DINNER AND HE DIDN'T LIKE MONOPOLY BECAUSE IT TOOK TOO LONG BUT LOVED CHESS, BECAUSE HE PLAYED WELL AND, EVEN BEAT ADULTS IN CHESS AND DOESN'T APPEAR HE HAD ANY COGNITIVE DIFFICULTIES IN CHILDHOOD, TO SUPPORT ANY KIND OF LOW IQ.

SO, THERE IS SCATTERING OF DIFFERENT THINGS AND, AGAIN, THE DOC DOCTORS REPEATEDLY FIND THAT HE IS MALINGERING AT TIMES AND ENGAGING IN MANIPULATIVE BEHAVIOR AND THAT BEHAVIOR DR. EISENSTEIN USES TO SUPPORT HIS OPINION AND, THE OTHER

DOCTORS DID THE COMPETENCY EXAM AND, HE DOESN'T REFUTE ANYTHING DR. GAMACHE SAYS AND THE DOCTOR SAYS, ALL SHE REALLY LOOKED AT WAS COMPETENCY AND SHE WASN'T TRYING TO ASSESS HIS MENTAL FUNCTIONING OVERALL, SHE WAS JUST SEEING WHETHER HE WAS COMPETENT FOR TRIAL.

AND, SHE WAS SAYING, YOU KNOW, EVEN IF HE HAD DELUSIONS AND SHE WOULDN'T SAY HE DID OR DIDN'T, BECAUSE, THAT IS NOT WHAT SHE WAS LOOKING FOR BUT SHE SAID, EVEN IF YOU HAVE DELUSIONS IT DOESN'T MAKE YOU INCOMPETENT FOR TRIAL AND AS LONG AS HE CAN ADDRESS THE ISSUES AND IDENTIFY THE POINTS THAT HE NEEDS TO FOR COMPETENCY, HE IS FOUND COMPETENT AND DOESN'T -- THE SUGGESTION THAT DR. GAMACHE IS SAYING SOMETHING INCONSISTENT WITH ALL THE DOC RECORDS AND DR. PORMAN AND DR. CARPENTER AND DR. EISENSTEIN IS NOT TRUE IN THIS RECORD.

HE SAYS SOMETHING COMPLETELY DIFFERENT THAN WHAT DR. EISENSTEIN IS SAYING. BUT, IN TERMS OF ALL OF THE OTHER DOCUMENTATION AND OTHER EXPERT TESTIMONY PRESENTED, DR. CARPENTER AGREES WITH DR. EISENSTEIN ABOUT HAVING THE DIAGNOSIS BUT AGAIN, HE REALLY DIDN'T DO A LOT OTHER THAN, CAME ON TO DO COMPETENCY AND LOOKED AT SOME OF THE RECORDS AND WHEN HE TESTIFIED AT THE SPENCER HEARING, HIS TESTIMONY WAS BASICALLY IN HIS OPINION, THE DEFENDANT WASN'T MALINGERING AND THAT WAS THE FOCUS OF WHAT HE OFFERED AT THE SPENCER HEARING AND REALLY WASN'T A STRONG

WITNESS TO BE ABLE TO TALK ABOUT  
-- HE DID AGREE WITH THE  
DIAGNOSIS OF SCHIZOPHRENIA, BUT,  
HE I DON'T THINK EVALUATED THE  
DOC RECORDS TO THE EXTENT THAT  
DR. GAMACHE AND DR. EISENSTEIN  
HAD GONE THROUGH THEM AND  
REACHED THE HISTORY THEY HAD  
BEEN ABLE TO PUT TOGETHER.

THE -- I JUST WANTED TO CLARIFY,  
I KNOW IT WAS SAID, ABOUT THE  
OLDER BROTHER HAVING TESTIFIED  
AND HE DIDN'T ACTUALLY TESTIFY.  
THE OLDER BROTHER TALKED TO  
DR. EISENSTEIN AT ONE POINT  
BEFORE THE SPENCER HEARING AND  
SO, WHEN HE RELATED ABOUT HOW  
THE FAMILY MOVED AROUND A LOT,  
MANY TIMES, BECAUSE MR. KOCAKER  
WAS HAVING SOCIAL PROBLEMS OR  
AGGRESSION...

>> I THOUGHT THE SISTER'S  
TESTIMONY WAS THAT THE MOTHER  
WORKED FOR...

>> THE UNITED NATIONS.

>> THE MOVING-AROUND WAS JUST...

>> APPARENTLY PRETTY LOCAL.  
YES.

I DON'T KNOW THAT THAT IS REALLY  
FLESHED OUT CLEARLY.

IT SEEMS LIKE THEY MAY HAVE GONE  
TO ANOTHER CITY AT SOME TIME AND  
THEN WHEN HE'S 13, 14, THEY GO  
DOWN TO PUERTO RICO AND SHE  
STILL HAS FAMILY IN PUERTO RICO  
AND I DON'T WANT TO SUGGEST HE  
SPENT ALL OF HIS TIME IN NEW  
YORK CITY BUT I THINK MOST OF  
THOSE MOVES WERE PROBABLY LOCAL  
MOVES, THE OLDER BROTHER IS  
REFERRING TO BUT THAT IS REALLY  
NOT -- THEY THREW THE NUMBER OUT  
WITHOUT REALLY EXPLAINING IT BUT  
HE DID NOT TESTIFY AND I DON'T  
BELIEVE THAT IT WAS AS EARLY AS  
12 OR 13 YEARS OF AGE THAT HE

DROPPED OUT OF SCHOOL.  
HE DID COME FROM PUERTO RICO, HE  
CAME WITH A FRIEND OF HIS AND, I  
GUESS NOW A HOMOSEXUAL  
RELATIONSHIP AND IT WASN'T CLEAR  
FROM THE EVIDENCE AT THE --  
TESTIMONY I THINK IT WAS MAYBE  
INFERRED, THE TESTIMONY AT THE  
PENALTY PHASE BUT, HE COMES TO  
TAMPA, WITH THIS OLDER MAN,  
RUNNING A BUSINESS.

AND, HIS MOM AND SISTER COME A  
FEW YEARS LATER AND THE SISTER  
TALKED ABOUT HOW HIS MOM WAS  
DISAPPOINTED -- AND HE WOULD  
HAVE BEEN 15, I THINK AT THIS  
POINT, THAT HE WASN'T GOING TO  
SCHOOL WHEN HE CAME TO TAMPA AND  
I'M NOT SURE EXACTLY WHAT POINT  
THE SCHOOL, YOU KNOW, HOW FAR  
HIS FORMAL EDUCATION WENT IN  
SCHOOL, BUT I THINK IT WAS  
BEYOND --

>> AT SOME POINT, EARLY ON IN  
HIS LIFE, HE SEPARATED FROM HIS  
MOTHER, AND HIS SISTER, AND WENT  
TO LIVE WITH AN OLDER MAN?

>> HE AND HIS SISTER WENT DOWN  
TO LIVE IN PUERTO RICO --

>> WHY WAS THAT?

>> THEY HAD FAMILY DOWN THERE  
AND USED TO SPEND SUMMERS DOWN  
THERE AND THE MOM WOULD COME  
DOWN BRIEFLY FOR SOME TIME IN  
THE SUMMERS AND THEY'D GO BACK  
TO NEW YORK FOR THE SCHOOL YEAR.  
AND AT ONE POINT THEY DECIDED TO  
MOVE AND I DON'T KNOW IF THIS IS  
ONE OF THE MOVES THE OLDER  
BROTHER WAS REFERRING TO, BUT,  
MR. KOCAKER AND HIS SISTER COME  
DOWN TO PUERTO RICO AND THEY ARE  
LIVING DOWN THERE AND HE COMES  
TO TAMPA AND THE MOTHER AND  
SISTER ARE IN PUERTO RICO AND  
COME BACK TO TAMPA LATER.

>> THAT IS WHAT I'M SAYING, THE IDEA OF A YOUNG BOY, BEING A ALLOWED BY THE MOTHER TO GO TO TAMPA, WITH AN OLDER MAN, THERE IS... AGAIN, NONE OF THESE -- WE DON'T EFR FIGURE OUT ALL THE CASES AND IT PROBABLY DOESN'T MATTER.

WHAT I THOUGHT SEEMED STRANGE IS THAT THE SISTER TESTIFIED HOW THEY HAVE THIS UP BRINGING WHERE THEY ARE GOING SKIING IN UPSTATE NEW YORK AND GO TO PRIVATE SCHOOLS, SOUNDS LIKE THEY HAVE SOME KIND OF AN UPPER MIDDLE CLASS FAMILY UP BRINGING WITH AN ABSENT FATHER AND NEXT THING WE KNOW AT 13 OR 14 HE'S IN TAMPA WITH AN OLDER MAN AND THERE IS SOMETHING MISSING IN THE PICTURE AND THAT IS OKAY BUT I'M SAYING WE REALLY CAN'T EXPLAIN BASED ON THIS RECORD WHAT HAPPENED TO THIS YOUNG MAN EARLY IN HIS LIFE.

>> NO, PART OF WHAT WAS THROWN INTO THE MIX WITH THE MOVE TO PUERTO RICO WHEN HE AND HIS SISTER MOVED DOWN WITH THE FAMILY -- I THINK THE MOTHER'S PARENTS DOWN THERE, WAS THAT THE SISTER HAD BEEN INVOLVED IN SOME KIND OF ACCIDENT IN THE -- AND THE DOCTORS WERE RECOMMENDING SOME SORT OF THERAPY THAT INCLUDED A LOT OF WATER AND SWIMMING AND PHYSICAL THERAPY THAT WOULD BE MORE AVAILABLE IN PUERTO RICO THAN IT WAS APPARENTLY IN NEW YORK AND SO, AT ONE POINT THAT WAS ONE OF THE REASONS OFFERED FOR WHEN THEY CAME DOWN AND WHEN HE AND HIS SISTER CAME DOWN -- I HATE TO THE SEE YOU PERMANENTLY, BUT CAME DOWN FOR MORE THAN JUST THE

SUMMER TO PUERTO RICO AND WERE STAYING THERE AND THAT IS WHERE HE KIND OF HOOKS UP AND THE SISTER, I THINK, STARTS FEELING LIKE SHE'S DISTANCING FROM HIM, BECAUSE, WHEN THEY GET TO PUERTO RICO, HE STARTS HANGING OUT WITH OLDER GUYS AND DOING OTHER THINGS, AND SHE DOESN'T REALLY LIKE THESE PEOPLE AND SHE DOESN'T SEE HER BROTHER AS MUCH AND IT SEEMS LIKE THE SEPARATION KIND OF STARTS WHEN THEY GO TO PUERTO RICO, FROM WHAT, YOU KNOW, MY TAKE ON WHAT I PUT TOGETHER, BUT YOU ARE RIGHT. IT IS NOT FLESHED OUT IN THE RECORD, EXACTLY HOW HE GOT THERE, AND, WHAT WAS GOING ON AT THE TIME BUT HE KNOW THAT HE DOES GET DOWN THERE, AND, THEN, ULTIMATELY, ENDS UP IN TAMPA. THE... IN TERMS OF THE SINCLAIR CASE THAT WE TALK ABOUT, I THINK THE PIVOTAL THING ABOUT SINCLAIR IS THE ONLY AGGRAVATING FACTOR THERE IS IT WAS DURING THE COMMISSION OF A FELONY WHICH WAS NOT A STRONG ING A COMMISSION OF A FELONY WHICH WAS NOT A STRONG -- AGGRAVATING FACTOR AND, SINCLAIR MIGHT BE MY CASE AND NOT ONE I WOULD WANT TO ARGUE AND IT IS -- WHEN YOU HAVE SUCH A WEAK AGGRAVATING CASE IT IS HARD TO RELY ON THAT AS THE COURT POINTED OUT, ON PROPORTIONALITY BASIS WHEN ARGUING A CASE WE HAVE HERE WHERE YOU HAVE SUCH STRONG -- THE TRIAL COURT CHARACTERIZED IT AS HORRENDOUS AGGRAVATING FACTORS AND I THINK THAT IS A FAIR CHARACTERIZATION IN THE RECORD.

>> IN THAT CASE WE REDUCED IT TO

LIFE.

>> YES.

YOU REDUCED IT TO LIFE BASED ON PROPORTIONALITY AND IT WAS JUST THE ONE AGGRAVATING FACTOR DURING THE COURSE OF A FELONY WHICH I THINK WE DO HAVE IN THIS CASE, IT JUST, YOU KNOW, I THINK YOU CAN CONSIDER THAT AS PART OF THE TOTALITY OF THE CIRCUMSTANCES, WITHOUT FINDING -- I'M NOT ASKING THE COURT TO FIND THE AGGRAVATING FACTOR EXISTS BUT I'M SAYING FOR PROPORTIONALITY PURPOSES YOU CAN CERTAINLY CONSIDER WHAT WAS GOING ON AND WHY THE CRIME OCCURRED AND I THINK IT IS CLEAR IN THIS RECORD WHY THE CRIME OCCURRED BECAUSE MR. KOCAKER NEEDED THE MONEY AND WHEN HE CALLS HIS FRIEND FURY AND THE DRIVER GIRL CHRISSY TO PICK HIM UP AFTER HE KILLED THE DRIVER, HE HAS A BLOODY SHIRT AND IS COUNTING THE WAD OF CASH, AND THAT WAS THE MOTIVATION, NOTHING GOING ON WITH HIS MENTAL ILLNESS AND DR. EISENSTEIN AND DR. WOOD COULDN'T IDENTIFY ANYTHING ABOUT WHAT THEY THOUGHT HIS MENTAL HEALTH ISSUES TO BE, HAD ANY KIND OF EFFECT ON THE CRIME OR WHY IT OCCURRED.

AND WE DON'T HAVE THE LINK THAT YOU HAD WITH DONNY CROOK AND IN SOME OF THOSE CASES, THERE IS JUST NOTHING HERE THAT RELATES TO WHY THE CRIME OCCURRED OTHER THAN THE PERSONALITY DISORDERS WHICH AGAIN YOU GET INTO SOME OF THE SAME FEATURES THAT YOU SEE WITH INDIVIDUALS WITH MENTAL HEALTH AND I THINK THOSE ARE PRETTY WELL ESTABLISHED IN THIS RECORD AS WELL.

I DON'T KNOW IF THE COURT HAD ANY FURTHER QUESTIONS, THAT WAS MOST OF MY COMMENTS.

>>... THE TYPE OF BEHAVIOR, SOMEONE WITH A DIAGNOSIS OF PARANOID SCHIZOPHRENIA, DR. WOOD, FOR EXAMPLE, BELIEVED IT WOULD CAUSE, AMONG OTHER THINGS, PROBLEM WITH AUDITORY FUNCTIONING, AND CAUSE ISSUES WITH AGGRESSION, NOT BEING ABLE TO... READ SOCIAL SITUATIONS RIGHT AND WHAT HE TERMED BIZARRE BEHAVIOR AND, CERTAINLY THE ORGANIC FINDINGS OF BRAIN DAMAGE SUPPORT THE FACT THAT THE AUDITORY HALLUCINATIONS WERE GOING ON...

>> WHAT BIZARRE BEHAVIOR?

>> DR. WOOD DIDN'T IDENTIFY WHAT KINDS OF BIZARRE BEHAVIOR. THAT WOULD BE A -- WOULD BE FOR SOMEONE WITH PARANOID SCHIZOPHRENIA, WOULD BE A CLINICAL EXHIBITION OF THAT THAT YOU WOULD EXPECT.

>> I UNDERSTAND WHAT YOU ARE SAYING, BUT I'M SAYING, I... I'M TRYING TO FIGURE OUT WHAT IN THIS RECORD INDICATES THAT MR. KOCAKER HAD ANY KIND OF BIZARRE BEHAVIOR. I MEAN, WELL A MURDER ITSELF... IT IS BIZARRE...

>> I BELIEVE THERE WAS THE INCIDENT ABOUT SEVERAL WEEKS BEFORE THIS HAPPENED WHERE THERE WAS A STORM GOING ON AND HIS SISTER REPORTED ABOUT HOW PANICKED HE WAS AND TO THE POINT HE HAD HER CALL THE POLICE BECAUSE HE BELIEVED PEOPLE WERE IN THE HOUSE AND HE WAS REPORTING AUDITORY HALLUCINATIONS, AT THE TIME OF THE CRIME IN TERMS OF WHEN HE

WAS FIRST BEING TREATED.  
AND I THINK IT IS IMPORTANT TO  
NOTE THE WAY THE HIV PLAYS INTO  
THIS.

MR. KOCAKER'S DIAGNOSED IN  
PRISON WITH HIV.

IN 1996.

WELL, HE WENT INTO PRISON AT 17,  
18 YEARS OLD, AND WE CAN ONLY  
ASSUME HIS SEXUAL CONTACTS IN  
PRISON WERE PROBABLY NOT WITH  
WOMEN.

BEFORE THAT, FROM HIS EARLY --  
12 YEARS OLD ON, HE WAS ALWAYS  
IN THE COMPANY OF OLDER MEN  
DESCRIBED AS... WHO HIS MOTHER  
WAS UNCOMFORTABLE WITH AND IN  
2003, ANY MEDICATIONS FOR HIV  
ARE ENDED, ACCORDING TO THE  
PRISON MEDICAL RECORDS.

AND BY 2006, WHEN HE'S IN THE  
CATATONIC STATE, ONE OF THE  
CRITICAL THINGS FOUND AT THE  
JACKSONVILLE HOSPITAL ARE  
LESIONS ON THE BRAIN STEM, IN  
FACT DR. WOOD IS SO CONCERNED  
WHEN HE ADMINISTERS HIS TESTING  
PRIOR TO THAT, THAT HE IS AFRAID  
THAT THERE IS EVEN BRAIN TUMORS  
INVOLVED BECAUSE OF...

>> WHAT INVOLVED.

>> BRAIN TUMORS INVOLVED BUT  
THEY FIND IN 2006 IS ACTUALLY  
SIGNIFICANT LESIONS ON THE BRAIN  
STEM, AND IN THE BRAIN, PROBABLY  
AS A RESULT OF THE UNTREATED  
HIV.

>> HOW WOULD THAT AFFECT HIM?

>> WELL, WHAT THE... WHAT IT  
GOES BACK TO, I BELIEVE, IS, IT  
IS A CONSTANT REINFORCEMENT OF  
WHAT DOC NOTES ALL THROUGHOUT  
THEIR RECORDS, WHERE HE'S  
CONSTANTLY BEING MOVED BECAUSE  
OF THE AGGRESSIVE TENDENCIES,  
BECAUSE THERE IS HOMICIDAL

ISSUES, WHERE THEY FEEL THAT HE IS A DANGER IN THAT MANNER...

>> SOMEPLACE IN THE RECORD THAT BECAUSE OF THESE -- POSSIBLY BECAUSE OF THESE LESIONS, THAT THAT CONTRIBUTES TO HIS AGGRESSIVE BEHAVIOR?

>> WELL, WHAT I BELIEVE THAT IT SHOWS IS -- THERE IS NO -- NO DOCTOR SAYS THESE LESIONS CAUSED THE OFFENCE, WHAT THERE IS CLEARLY TESTIMONY ABOUT, THOUGH, IS THESE LESIONS ON THE BRAIN ARE RELATIVELY SIGNIFICANT, THEY CERTAINLY CAN CAUSE SOME OF THE MENTAL HEALTH ISSUES HE'S HAVING AND A SIGNIFICANT DECOMPENSATION IN HIS MENTAL ILLNESS.

>> AND, YOUR TIME IS ABOUT --

>> THANK YOU, YOUR HONOR, WHAT I WOULD ASK THE COURT TO DO IS REVERSE AS FAR THAT'S PROPORTIONALITY AND I BELIEVE THAT THE CASE, THOUGH IT IS CLEARLY AN AGGRAVATED CASE WHICH WE HAVE NEVER ARGUED THAT IT WAS NOT, HOWEVER, WHAT THE CASE DOES PRESENT IS THE TYPE OF MITIGATION THAT SHOULD BE CAREFULLY UTILIZED.

YOU HAVE MENTAL HEALTH ISSUES, YOU HAVE ORGANIC BRAIN DAMAGE, YOU HAVE SEXUAL ABUSE AS A CHILD.

YOU HAVE ALCOHOLISM, YOU HAVE DRUG ABUSE.

THAT THIS CASE PRESENTS THE TYPE OF MITIGATION THAT SHOULD MILITATE IN FAVOR OF A LIFE SENTENCE.

THANK YOU.

>> WE THANK YOU BOTH FOR YOUR ARGUMENTS.