

MARIJUANA?

>>... ONLY TALKED ABOUT HIM

BEING CONVICTED OF...

[INAUDIBLE].

>> IN WHICH YEAR?

>> 1988.

>> FOUR YEARS BEFORE THE CRIME?

>> AND, FURTHERMORE, JUDGE,

TRIAL COUNSEL MOORE TESTIFIED AT

THE POST QUICK HEARING...

[INAUDIBLE] THAT HE RECALLED

MR. HOSKINS TELLING HIM ABOUT

THE COCAINE ADDICTION AT THE

TIME OF THE HOMICIDE, AND, ALSO,

JUDGE, IF YOU LOOK AT THE VOLUME

TEN, WHICH CONSISTS OF THE

EVIDENCE OF THE EXHIBITS IN

POSTCONVICTION PROCEEDINGS, TO

HAVE HIM... [INAUDIBLE].

>> AT THE TIME OF THE MURDER --

OR ABOUT THE TIME OF THE MURDER,

THEY OBSERVED MR. HOSKINS,

TAKING DRUGS, THAT HE WAS NOT IN

CONTROL OF HIMSELF, ANY OF THAT

EVIDENCE IN THE RECORD?

>> NO, WE HAVE HIM'S REPORT

OF... DRUG USE, AROUND THE TIME

OF THE CRIME.

THE INTERVIEW NOTES, IN 1994...

[INAUDIBLE] TIME ATTORNEY MOORE

AND -- WROTE IT.

AND THEY MET THE BREVARD COUNTY

JAIL AND INTERVIEWED MR. HOSKINS

ABOUT WHAT HAPPENED AND AT THE

TIME MR. HOSKINS REPORTED HE HAD

BLACKOUTS AND SLEEP ISSUES AND

HAD BEEN USING COCAINE, ABOUT AN

HOUR, HOUR-AND-A-HALF AND PRIOR

TO THE INCIDENT.

>> DID HE HAVE A BLACKOUT ABOUT

THE INCIDENT.

>> THERE IS TESTIMONY THAT, AND

IT COMES FROM EISENSTEIN THAT HE

HAD MEMORY ISSUES AS TO WHAT

HAPPENED.

>> AND OTHER TIMES HE SEEMED TO

HAVE PRETTY CLEAR REMEMBRANCE OF

WHAT WENT ON DURING THE TIME.

>> JUDGE, MR. HOSKINS' MEMORY, I

SUBMIT TO YOU, HAS NOT BEEN
CLEAR, HAS NOT BEEN ACCURATE AND
THAT PERTAINS TO WHAT
DR. EISENSTEIN TESTIFIED ABOUT,
THAT MR. HOSKINS DOES SUFFER
FROM AN AXIS ONE MENTAL ILLNESS.
>> I THINK THE PROBLEM THAT YOU
HAVE, APPEARS TO --
POSTCONVICTION FOCUSES ON IT, NO
ONE SEEMS TO DISPUTE THAT IF
POSSIBLE, MAYBE, EVEN PROBABLE.
THE SEXUAL BATTERY OCCURRED AS A
RESULT OF SOME MENTAL ILLNESS,
SOME FRONTAL LOBE IMPAIRMENT,
SOME EXPLOSIVE THING, RESPONSE
TO A PERCEIVED BASIS... A
REMARK, THE PROBLEM IN THE CASE,
IS WHAT HE DID AFTER THE SEXUAL
BATTERY IN TERMS OF MURDERING
MS. BERGER, WHICH WAS FINDING
HER, PUTTING HER INTO A TRUNK,
DRIVING FOR SEVERAL HOURS,
OPENING UP THE TRUNK, SEEING SHE
WAS STILL ALIVE, ALL OF THAT,
AND, THAT WENT ON FOR HOURS AND

HOURS, WITH NO, NO EVIDENCE THAT
HE WAS ON A COCAINE BINGE OR ON
SOME FRONTAL LOBE IMPAIRMENT
EPISODE, FOR ALL OF THOSE HOURS
AND EVEN IF WE -- THE JURY MAY
HAVE FOUND THAT SEXUAL BATTERY
WAS FORMED IN A... AN IMPAIRED
STATE, MENTALLY OR IN A... BUT,
IT IS THE HOURS THAT RESULTED IN
THE EVENTUAL MURDER THE JUDGE
FOUND THAT HE MADE A CONSCIOUS
DECISION TO AVOID ARREST IN
THOSE ACTIONS, SO, HOW DO YOU
GET AROUND BOTH -- THAT IS TRUE,
BOTH FOR THE DRUGS AND ALCOHOL
ISSUE, AS WELL AS FOR
DR. EISENSTEIN.

HOW DO YOU GET AROUND THAT VERY
POWERFUL FACTUAL SCENARIO?

>> CERTAINLY, YOUR HONOR, THE
FACTUAL SCENARIO IS POWERFUL.

I SUBMIT TO THE COURT IF TRIAL
COUNSEL CHANG HAD DONE SOMETHING
MORE, HAD SPOKEN TO HIS EXPERT,
TALKED TO HIS EXPERT ABOUT HIS

IMPULSE SITUATION, HE WOULD HAVE
COME TO A SITUATION WHERE
DR. EISENSTEIN CAN TESTIFY AND
EXPLAIN --

>> HOW, BUT, EXPLAIN TO ME HOW

-- BECAUSE I'M NOT -- I'M NOT

GETTING IT.

YOU HAVE TO -- PART IS TO TRY TO

THEN NOT JUST GIVE THE, WELL

THIS IS WHAT THE EXPERT SAYS BUT

HOW WOULD THE JURY AND JUDGE

RESPOND TO, HOW WOULD YOU DEFEND

THE ISSUE OF WHAT HAPPENED, THE

HOW, AFTERWARDS, THAT WAS STILL

UNDER THE INFLUENCE?

I JUST DON'T -- I DON'T SEE IT.

AND, JURORS CERTAINLY HAVE

COMMON SENSE, AS DO WE IN TERMS

OF WHETHER IT IS LOGICAL.

>> RIGHT, YOUR HONOR, AND,

CONSIDERING THE FRONTAL LOBE

IMPAIRMENT, CONSIDERING ALL HIS

HISTORY OF THESE EPISODES,

DR. EISENSTEIN DID THE BEST HE

COULD TO EXPLAIN THAT AND

EXPLAIN THAT TO A SENTENCING
JURY, HOW SUCH A CRIME COULD
OCCUR, THE WAY THE MENTAL
EXPLOSIVE DISORDER OCCURS, HIS
ACTIONS AFTER THE SEXUALLY
BATTERY ARE STILL MANIFEST OF
THAT HE DISEASE AND HE'S STILL
UNDER THE IMPULSE, IRRATIONAL,
THINKING AND MAKES THE WRONG...
>> DID ANY OF THE MEDICAL
EXPERTS EXPLAIN THAT EVEN THOUGH
HE MAY HAVE HAD DRUGS AT SOME
POINT DURING THAT DAY, THAT HE
HAD A CONDITION SUCH THAT EVEN
THOUGH HE WASN'T STILL TAKING --
LET'S ASSUME HE WAS NOT STILL
TAKING ANY DRUGS DURING THE
WHOLE TIME OF THE -- AFTER THE
RAPE AND BEFORE THE MURDER.
THAT HIS CONDITION WAS SUCH THAT
THE EFFECTS OF HAVING TAKEN THE
DRUGS EARLIER WOULD STILL
MANIFEST ITSELF, DURING THAT
WHOLE TIME PERIOD?
DID ANYONE SAY THAT.

>> DR. MORTON TALKS ABOUT IT, AT THE POSTCONVICTION PROCEEDINGS, HE TALKS ABOUT HOW MR. HOSKINS' PREVALENT DRUG HISTORY WOULD AFFECT HIM SORT OF IN HIS PHYSIOLOGY, AND, TO CONSISTENTLY WANT DRUGS AND WOULD AFFECT HIS RATIONAL THINKING, AFFECT HIS BEHAVIOR.

>> DID HE EVER SAY IT WAS SUCH THAT HE COULD NOT HAVE FORMED THE INTENT TO KILL MS. BERGER?

>> HE DID NOT TESTIFY --

>> AND DID HE SAY HE COULD NOT HAVE CONTROLLED HIS ACTIONS THAT LED TO KILLING MS. BERGER.

>> DR. AMERICAN TALKS ABOUT HIS BEHAVIORAL RESPONSES, BECAUSE OF THE SUBSTANCE ABUSE.

>> BUT WAS IT EVER SAID THAT HE COULD HAVE... THERE WAS NO CONTROL, THAT HE HAD NO CONTROL AT THAT TIME WHEN HE WAS COMMITTING THAT MURDER? THAT THE DRUG USE, WOULD HAVE

PUT HIM IN SUCH A STATE THAT HE
HAD NO CONTROL.

>> DR. MORTON SAID THAT -- HE
TALKS ABOUT HIM BEING IMPULSIVE
AND IRRATIONAL AND, TO -- I
SUBMIT TO THE COURT IT GOES TO
THE ISSUE OF CONTROL.

THAT HIS BEHAVIOR -- HE DIDN'T
HAVE CONTROL AND WASN'T THINKING
LIKE A RATIONAL MAN, DIDN'T HAVE
CONTROL OF HIS ACTIONS AND
BEHAVIOR, ONCE THE RACIAL SLUR
IN TERMS OF WHAT MR. HOSKINS
HAD... HAD INSTIGATED THE MOMENT
THAT CAUSE THE AGGRESSIVE
IMPULSE RESPONSE AND HE LOST THE
CONTROL AND THAT DRUG ABUSE AND
THE DRUG HISTORY ADDS TO IT,
ALONG WITH --

>> HOW DO WE DEAL WITH THE DRUG
HISTORY?

IT SEEMS TO ME, I RECALL AT SOME
POINT IN THE RECORD, THAT
DR. KROP HAD INDICATED THAT
THERE WAS NO MAJOR MENTAL

ILLNESS -- MR. HOSKINS HAD NO
MAJOR MENTAL ILLNESS, AND THERE
WAS NO REAL EVIDENCE OF
SUSTAINED SUBSTANCE ABUSE.
HOW DO WE DEAL WITH THAT IN
RELATIONSHIP TO NOW, YOU ARE
SAYING THERE IS THIS EVIDENCE?
JUDGE, THAT WAS IN A LETTERS TO
ATTORNEY MOORE ON OCTOBER 21,
1993, YET, IF YOU LOOK AT THE
ATTACHMENTS, WHICH WERE ALL OF
THE DOCTOR'S INTERVIEW NOTES HE
MAKES SEVERAL MENTIONS OF DRUG
ABUSE -- DRUG -- COCAINE USE,
PARTICULARLY COCAINE USE DURING
AND AROUND THE TIME OF THE
CRIME, AND, THAT WAS IN THE
ATTACHMENT ON 9/23/94 WHERE I
TALKED ABOUT HIM BEING AT THE
JAIL, WITH THE ATTORNEYS.
HE TALKS ABOUT MR. HOSKINS'
REPORTING THAT AN
HOUR-AND-A-HALF, HE HAD TAKEN
COCAINE, SNORTED IT PRIOR TO THE
BASKETBALL GAME AND AGAIN AT HIS

HOME, PRIOR TO GOING OVER TO

MS. BERGER'S HOME.

>> ARE UP, LET'S ASSUME WE

ACCEPT THERE IS ALCOHOL AND DRUG

ABUSE IN THIS PICTURE.

HOW DOES IT CHANGE THE

AGGRAVATING AND MITIGATING

CIRCUMSTANCES IN THIS CASE?

THAT IS WHAT WE'RE GETTING TO,

IS WHETHER OR NOT THE MITIGATING

CIRCUMSTANCES WOULD HAVE CHANGED

SUCH THAT LIFE WOULD HAVE BEEN A

MORE APPROPRIATE SENTENCE,

CORRECT?

>> CORRECT.

>> HOW DO WE GET TO THAT?

>> YOUR HONOR, DRUG AND ALCOHOL

ABUSE IS A VERY WEIGHTY,

NONSTATUTORY MITIGATOR.

AND, IN THE EXPLOSIVE DISORDER

WHICH IS A WHATY STATUTORY

MITIGATOR, AND THE SENTENCING

JURY, LOOKING AT THE MITIGATORS,

THROUGH THE INTERMITTENT

EXPLOSIVE DISORDER AND BRAIN IM

PARROT AND THE CO MORBID -- IM
IMPAIRMENT AND THERE IS A
POSSIBILITY SINCE THE JURY WOULD
REWEIGH, BECAUSE IT EXPLAINS HOW
SUCH A HORRIFIC CRIME HAD
HAPPENED.

>> THE PROBLEM YOU STILL HAVE IS
THAT YOU HAVE CALLED THIS,
DR. EISENSTEIN MENTIONS, IED,
INTERMITTENT EXPLOSIVE DISORDER,
WHEN ASKED HOW HE GOT TO IT, HE
SAYS IT IS BECAUSE OF THE CRIME
AND AN INCIDENT RELATED TO A
FRIEND WHERE HE BECAME ANGRY AND
BEGAN SMOKE CHOKING HER AND
DIDN'T RELEASE HER UNTIL SOMEONE
HIT HIM IN THE HEAD AND YOU HAVE
MORE PRIOR BAD ACTS AND HE TALKS
ABOUT AN ARGUMENT WITH THE
GIRLFRIEND.

AND THE JUDGE, LOOKING AT THAT,
GAVE YOU THE BENEFIT OF THE
DOUBT, BUT OUT DOESN'T APPEAR TO
BE A SCIENTIFIC OR MEDICAL
DIAGNOSIS, IT SORT OF IS SAYING,

WELL, THIS THING HAPPENED, LIKE,
HOW COULD SOMEONE DO THIS, THIS
CRIME AND WE ALWAYS ASK THAT,
HOW DO PEOPLE COMMIT HORRIBLE
CRIMES, NOT WHAT A NORMAL PERSON
WOULD DO, BUT, OUT OF -- NOBODY
ON DEATH ROW IF THAT WAS THE
CRITERIA, BUT THE ISSUE IS
WHETHER IT WOULD OUTWEIGH THING
A -- THE AGGRAVATOR.

>> THE IED IS A VALID DIAGNOSIS
AND IN DIAGNOSTIC STATISTIC
MANUAL FOR MENTAL --

>> I'M NOT SAYING IT DOESN'T
EXIST, I'M SAYING HOW IT WAS
DIAGNOSED IN THIS CASE, BECAUSE,
HE WAS VIOLENT IN THIS
INDICATION AND CHOKED A
GIRLFRIEND AND, THAT IS WHAT
HEELS, THERE IS HIS WHOLE HIGH
SCHOOL... SCHOOL RECORD SHOWS
HIM BEING A PRETTY COMPLIANT
STUDENT.

>> DR. EISENSTEIN IN TERMS OF
COMING TO THIS DIAGNOSIS, HAS TO

FIND SEVERAL DISCRETE EPISODES
AND FOUND THEM THAT'S COURT
REFERRED TO, THERESA KOVACH AND
THE DISCIPLINARY RECORDS OUT OF
GEORGIA AND, ALSO, FLORIDA.

WITH RESPECT TO THE FIGHTS WITH
THE INMATES --

>> I KNOW HE DID BUT THE JUDGE
EVALUATING WAS NOT IMPRESSED AND
AGAIN, YOU ARE IN YOUR REBUTTAL,
SO, EITHER...

>> YES, YOUR HONOR, THANK YOU.

>> GOOD MORNING, YOUR HONOR, LET
ME GET BACK TO THE EXPLOSIVE
DISORDER.

AND THE TESTIMONY AT THE
EVIDENTIARY HEARING,
INTERMITTENT EXPLOSIVE DISORDER
IS A RARE DIAGNOSIS, AND, NOT TO
MAKE MYSELF AN EXPERT, THIS IS
THE FIRST CASE I HAVE EVER SEEN
OF THAT.

FIRST TIME I HAVE HEARD OF THAT.

AND, ONE OF THE... THREE
CRITERIA, UNDER THE DIAGNOSTIC

AND STATISTICAL MANUALS TO MAKE
A DIAGNOSE OF INTERMITTENT
EXPLOSIVE ORDER.

LET'S CALL IT IED, AND THERE HAS
TO BE A RE... [INAUDIBLE] OR
DESTRUCTION OF PROPERTY.

THIS MAN, HAS BEEN ON DEATH ROW
AT THE TIME OF THE EVIDENTIARY
HEARING FOR 15 YEARS.

AND, HE HAS GONE, THE LAST 4
YEARS, ON DEATH ROW WITHOUT A
SINGLE DISCIPLINARY WRITE-UP.

SECOND CRITERIA --

>> IT WOULD BE HARD, DEATH ROW,

TO -- BE -- WELL, I SHOULD --

I'M JUST SAYING -- GO BACK TO

WHAT -- HOW ABOUT -- HOW OLD WAS

HE AT THE TIME OF THE CRIME.

>> HE WAS IN HIS 20s, MAYBE 30,

I'M NOT ENTIRELY SURE.

HE WAS -- WASN'T REALLY YOUNG.

>> ARE YOU TELLING ME THE

DIAGNOSIS OF THIS DISORDER

HINGES ON THE ACTUAL PRIOR

INCIDENCES OF VIOLENCE.

>> YES, MA'AM.

>> THE JURY -- THE MORE THE JURY
WOULD HEAR --

>> EXACTLY.

>> WHICH WOULD, OF COURSE, SAY

--

>> AND UNDERCUTS -- UNDERCUTS
THE MITIGATOR THAT WAS FOUND OF
NO FUTURE DANGEROUSNESS AND THE
THIRD PENALTY PHASE, NOT THE
SECOND AND I'LL MENTION THAT,
RIGHT NOW, THERE WERE NINE
NONSTATUTORY MITIGATORS FOUND IN
THE SECOND PENALTY PHASE, THE
FIRST YOU CONSIDERED AND THAT
WAS THE ONE THAT WAS REVERSED,
OR RATHER, SET ASIDE, AND LED TO
THE THIRD PENALTY PHASE AND THE
THIRD PENALTY PHASE RESULTED IN
A FINDING OF 16 NONSTATUTORY
MITIGATORS AND THE AGE
MITIGATOR.

WITH THAT SAID, THE SECOND
CRITERIA FOR IED, THERE ARE
THREE OF THEM, THE DEGREE OF

AGGRESSIVENESS EXPRESSED DURING
THE EPISODES IS GROSSLY OUT OF
PROPORTION TO PSYCHOSOCIAL
STRESSORS, NO REAL EVIDENCE OF
THAT, BUT, AGAIN IT TIES BACK
INTO PRIOR BAD ACTS OF VIOLENCE
THAT WOULD UNDER CUT THE I
UNDERSTAND OF GOOD GUY, IF YOU
WILL, MITIGATION THEORY THAT
DEFENSE COUNSEL SEEMED TO HAVE
AND, THE THIRD ONE --

>> WELL, SO, WAIT, BEFORE YOU
MOVE FROM THAT, ARE YOU SAYING,
THAT THERE WAS A PROVOCATION FOR
THE EXPLOSIVE EPISODES THAT TOOK
PLACE?

>> NO.

I'M NOT.

WE DON'T KNOW ENOUGH ABOUT THE
PRIOR EPISODES TO ARRIVE AT THAT
DETERMINATION.

WE ARE KIND OF GOING ON THE --
EXCUSE ME, GOING ON THE
DEFENDANT'S SELF-REPORT.

WHAT WE DO KNOW, IS THAT OVER 15

YEARS, AT THE TIME OF THE
HEARING, IN DEATH ROW -- ON
DEATH ROW, THERE HAD BEEN NO
WRITE-UPS FOR ANYTHING FOR THE
FOUR YEARS PRECEDING THE HEARING
AND THERE WERE NO WRITE-UPS FOR
ASSAULTIVE BEHAVIOR OR ANYTHING
VIOLENT ON DEATH ROW.

NOR, IS THERE ANYTHING IN HIS
SCHOOL RECORDS, REALLY, ANYTHING
ELSE, TO SUPPORT THE NOTION THE
GUY HAD BEEN VIOLENT IN THE
PAST.

IT IS JUST NOT THERE.

>> ISN'T THE REAL -- AND I TEND
TO AGREE WITH YOU ON IT.

BUT, EVEN IF THE EPISODE OF THE
SEXUAL BATTERY WAS CAUSED BY THE
-- WHETHER YOU CALL IT -- TO ME
IT IS MORE IMPRESSIVE IF IT
COMES FROM AN ORGANIC BRAIN
FRONTAL LOBE THING, WHICH IS --
DR. KROP TALKED ABOUT.

IT DOESN'T EXPLAIN, DOES IT --

FRIENDLY QUESTIONS -- SEVERAL

HOURS AFTER WHAT HE DID?

>> NO, EVEN IF YOU ASSUME -- AND
PAGE 18 OF THE BRIEF, I DON'T
WANT TO GO INTO IT HERE, BUT,
EVEN ASSUMING THE SEXUAL ASSAULT
WAS AN IMPULSIVE ACT, THAT STILL
DOESN'T EXPLAIN THE CONTINUING
BEHAVIOR THAT WENT ON FOR 6, 7
HOURS.

>> I WANT TO -- BEFORE YOU LEAVE
THE INTERMITTENT EXPLOSIVE
DISORDER, WERE ANY OTHER EXPERTS
EVER ASKED ABOUT THAT KIND OF
DIAGNOSIS, AND WAS IT EVER
AFFIRMED BY ANY OTHER EXPERT?

>> IT WAS DIRECTLY CONTROVERTED
BY THE STATE'S EXPERTS.

WHO TESTIFIED THE DIAGNOSIS WAS
EXTREMELY RARE, AND, EXCEEDINGLY
RARE, I BELIEVE WAS THE PHRASE
HE USED, AND, THAT THE EVIDENCE
OF IT, IN THE -- WAS JUST NOT
THERE.

WITH REGARD TO MR. HOSKINS, THE
THIRD CRITERIA FOR MAKING AN IED

DIAGNOSIS, IS THE ONE WHERE WE
GET TO TRADING OFF A LOT OF
THINGS GOING ON, THE DRUG USE,
BECAUSE, THE THIRD CRITERIA IS,
THAT THE AGGRESSIVE DISORDER --
EPISODES, ARE NOT BETTER
ACCOUNTED FOR, BY ANOTHER MENTAL
DISORDER, UNLESS ANTI-SOCIAL
PERSONALITY DISORDER, BORDERLINE
PERSONALITY, A COUPLE OTHERS AND
ARE NOT DUE TO THE DIRECT
PHYSIOLOGICAL EFFECTS OF A
SUBSTANCE, E.G., DRUG ABUSE.
SO, IF YOU WANT TO GO DOWN -- IF
DEFENSE COUNSEL WANTS TO GO DOWN
THE ROAD OF ARGUING INTERMITTENT
EXPLOSIVE DISORDER, HE'S GOT TO
GIVE UP THE DRUG ABUSE.
BECAUSE HE CAN'T ARGUE THOSE TWO
TOGETHER, AND I WOULD SUGGEST
THAT EVEN IF ONE ASSUMES THE
SEXUAL ASSAULT WAS AN IMPULSIVE
ACT AND THE FACT OF THE MATTER
IS, HOSKINS TOLD THE STATE'S
EXPERT THAT IT WAS A CONSENTUAL

THING, PAGE 18 OF MY BRIEF,
JUSTICE PARIENTE, YOU HAVE... IT
JUST DOESN'T WORK.
YOU ARE ARGUING, THE IMPULSIVE
OR INTERMITTENT EXPLOSIVE
DISORDER IS A MITIGATOR, IS
SAYING TO THE JURY, DON'T KILL
MY CLIENT, BECAUSE HE IS A
REALLY VIOLENT PERSON, WHO JUST
CAN'T CONTROL HIMSELF.
AND, I WOULD SUGGEST THAT WHEN
YOU PUT THAT UP AGAINST THE
MITIGATION, THAT WAS FOUND, THAT
MR. CHANG PUT ON, AND CONVINCED
THE TRIAL COURT TO FIND IN HIS
SENTENCING ORDER, THAT EVEN IF
ONE CAN FIND SOME DEFICIENCY IN
HIS PERFORMANCE, WHICH I DO NOT
CONCEDE IS THERE, THERE SIMPLY
IS NO PREJUDICE.

>> I WANT TO DISCUSS SOMETHING
THAT DOES CONCERN ME.
HAS TO DO WITH DR. KROP, WHEN
THERE ARE REPEAT PENALTY PHASES
AND, THE DEFENSE LAWYER... THERE

IS ALWAYS A QUESTION, WELL, HOW
MUCH MORE DO YOU DO?

AND, MR. CHANG SAID, WELL, HE
DECIDED HE'D DO EVERYTHING THAT
WAS DONE IN THE FIRST TWO
PENALTY PHASES, MORE, YOU KNOW,
PUT ON TWO MORE EXPERTS.

AND THAT SOUNDS GOOD.

BUT, MY CONCERN IS WITH
DR. KROP, IS THAT HE DIDN'T...
HE, MR. CHANG, DIDN'T KNOW UNTIL
THE MORNING OF TRIAL, THAT
DR. KROP MET WITH HOSKINS AS...
HE DIDN'T KNOW THAT UNTIL THE
MORNING OR THE NIGHT BEFORE
TRIAL?

>> THAT WAS THE TESTIMONY.

>> NOW, I'M NOT CONCERNED WITH
THE INITIAL TESTING.

BUT I WANT YOU TO EXPLAIN TO
ME... I WANT YOU TO EXPLAIN TO
ME IS, WHEN THERE WAS IN 2003,
AN INTERVIEW, WHAT ADDITIONAL
DETAILS DID HOSKINS TELL
DR. KROP ABOUT WHAT HAPPENED

BETWEEN HIM AND THE VICTIM AFTER

HE OPENED THE TRUNK?

>> HOSKINS APPARENTLY PROVIDED

MORE DETAIL ABOUT THAT COMPONENT

OF THE OFFENSE TO DR. KROP.

BUT --

>> TELL ME WHAT --

>> BUT --

>> I'M ASKING YOU WHAT THOSE

ADDITIONAL DETAILS WERE.

BECAUSE, MY SENSE IS, AND I

DIDN'T GO BACK AND COMPARE -- IS

THAT SOME OF THE REALLY

HORRENDOUS STUFF ABOUT THE HAC,

COMES OUT OF MR. HOSKINS TELLS

DR. KROP IN THE 2003 INTERVIEW.

NOW IF THAT IS NOT -- YOU NEED

TO TELL ME, WHAT ADDITIONAL --

IF YOU CAN, WHAT ADDITIONAL

DETAILS HE GAVE OF -- IN 2003,

AND HOW THAT DIFFERS FROM 1998,

AND THE JUDGE SAYS, YEAH, YOU

SHOULD TELL CLIENTS THEY

SHOULDN'T BE CONFESSING TO THEIR

MENTAL HEALTH EXPERTS AND, YOU

SHOULDN'T HAVE DONE THAT.

BUT, THEN SAYS, THERE WERE JUST
A FEW MORE DETAILS.

>> THE BOTTOM...

>> I WANT TO ASK WHAT ADDITIONAL
DETAIL WAS GIVEN IN 2003, THAT
IS THE FIRST QUESTION.

WHAT WAS THE ADDITIONAL DETAIL.

>> BECAUSE THE ANSWER IS HE HAD
GIVEN THE DETAILS IN 1998 AND
PROVIDED SOME...

>> THAT IS MY QUESTION.

>> SOME, I THINK, A LITTLE BIT
MORE DESCRIPTION OF IT, AT THE
2003 INTERVIEW, BUT, IT WAS --
WHATEVER HE SAID AND I DON'T
REMEMBER THE SPECIFICS OF IT,
BECAUSE IT WAS KIND OF ONE --
WASN'T REALLY CLEAR WHAT NEW
CAME OUT, BU, IT WAS KNOWN IN
1998, ESSENTIALLY WHAT HOSKINS
HAD SAID, BECAUSE, THERE'S A
LETTER IN THERE FROM RANDY
MOORE, TO RANDY MOORE, OR FROM
-- MUST HAVE BEEN TO HIM, RANDY

DOESN'T WRITE LETTERS.

TALKING ABOUT IT AS WELL.

BUT, THE BOTTOM LINE TO IT,

WE'RE IN A PENALTY PHASE.

GUILT IS NO LONGER AT ISSUE, AND

HAS NOT BEEN FOR A VERY, VERY

LONG TIME.

AND, AS CHANG -- MR. CHANG PUT

IT, HE HAD TO GO WITH DR. KROP,

BECAUSE, DR. KROP IS THE ONE WHO

WAS GIVING HIM THE FRONTAL LOBE

DAMAGE BASED ON THE PET CAN, HE

HAS DR. WU AND DR. WOOD GIVING

HIM THE PET SCAN AND WHATEVER

HOSKINS SAID TO DR. KROP WAS

COMPLETELY CORROBORATED BY THE

MEDICAL EXAMINER.

>> I GUESS THE WAY I WAS LOOKING

AT IT IS THAT IF YOU DON'T KNOW

UNTIL THE DAY OF TRIAL THAT YOUR

EXPERT HAD A COMPLETE ADDITIONAL

EXAMINATION 2003, WHERE

ADDITIONAL DETAILS WERE

SUPPLIED, AND TO ME THE

AGGRAVATOR IN THIS CASE, THAT IS

THE MOST HORRENDOUS AGGRAVATOR,
IS THE FACT THAT MRS. BERGER
DIED AND YOU SAY, THE MEDICAL
EXAMINER SAID SO BUT YOU HEAR
FROM THE DEFENDANT'S OWN WORDS,
IT IS VERY POWERFUL.

I'M NOT SAYING, YOU KNOW, IT MAY
NOT STILL MAKE ANY DIFFERENCE IN
THE FINDING OF HAC, I WAS TRYING
TO FERRET IT OUT.

I DON'T SEE HOW, IN GOOD DEFENSE
LAWYERS, PREPARING FOR TRIAL
DOESN'T MEET WITH HIS MAIN
EXPERT OTHER THAN THE DAY OF
TRIAL, AND FIND OUT THAT THERE
IS A 2003 EXAMINATION.

THAT IS JUST BASIC TRIAL
PREPARATION.

I MEAN, I CAN'T SEE HOW THAT IS
NOT A DEFICIENCY.

>> IT WOULDN'T HAVE BEEN BETTER
HAD HE DONE THAT IN ADVANCE,
I'LL GIVE HIM THAT.

BUT...

>> ARE WE SAYING WE EXPECT

LAWYERS TO PUT ON WITNESSES AND
TALK TO THEM THE DAY OF TRIAL?
AND THAT IS -- THAT WE EXPECT
THAT AS THE -- BEING ACCEPTABLE
PERFORMANCE?

>> THAT WASN'T THE FIRST TIME HE
TALKED TO DR. KROP, THE FIRST
TIME I THINK HE MET WITH HIM
FACE FOR FACE BUT IT WASN'T THE
FIRST TIME HE SPOKE WITH HIM,
THEY SPOKE ON THE TELEPHONE A
NUMBER OF TIMES.

>> AND DR. KROP HAPPENED NOT TO
MENTION THERE HAD BEEN A WHOLE
OTHER EXAMINATION ON 2003.

>> THAT IS SURE WHAT IT LOOKS
LIKE.

WHEN IT -- IF YOU GO -- YOU HAVE
TO GO BACK TO THE -- ACTUALLY TO
THE PENALTY PHASE, ITSELF,
BECAUSE, WHEN THE 2003
EXAMINATION STARTED COMING OUT,
OR, WHEN IT STARTED BECOMING
APPARENT IN DR. KROP'S
TESTIMONY, THAT THERE WAS THIS

2003 INTERVIEW, IF YOU WILL,
STATE OBJECTS BECAUSE THEY
DIDN'T KNOW ABOUT IT AND A
RECESS IS TAKEN AND THE DOCTOR
IS BASICALLY INTERVIEWED
INFORMALLY BY THE STATE, THE
PROSECUTORS, TO FIND OUT ABOUT
THE EXAMINATION, AND --

>> AND THAT IS WHEN CHANG IS
FINDING OUT ABOUT THAT.

>> I THINK HE FOUND OUT ABOUT
THAT A LITTLE BEFORE THAT.

BUT, ANYWAY... BUT THE BOTTOM
LINE IS, MR. CHANG HAD THE
CHANCE, RIGHT THEN, TO NOT USE
THE EVALUATION AND MADE THE
DECISION TO GO AHEAD, FOLLOWING
IT ANYWAY, BECAUSE WHAT HE HAD
HAS GETTING FROM DR. KROP, HE
BELIEVED, WAS BETTER --

>> HE HAD NO CHOICE AT THAT
POINT.

ALMOST LIKE ONE OF THE
RICHARDSON VIOLATIONS, ONCE HE
-- HADN'T HE GIVEN HIS OPENING

STATEMENT?

I MEAN, THE WHOLE CASE WAS BASED
ON DR. KROP AND YOU WANT TO
EVALUATE WHAT THOSE ADDITIONAL
DETAILS WERE AND IF THEY WERE
SUFFICIENTLY HARMFUL, YOU
CERTAINLY HE HAS THE PET SCAN
THAT SHOWS ABNORMALITY... AND
ANOTHER EXPERT... AND THE WHOLE
STRATEGY ISSUE DOESN'T MAKE A
LOT OF SENSE WHEN YOU FIND
SOMETHING OUT, THE MORNING THAT
YOUR EXPERT IS ABOUT TO TESTIFY.

>> HE COULD HAVE KEPT THE '03
EVALUATION OUT AND CHOSE TO GO
FORWARD WITH IT ANYWAY.

>> AND THAT IS WHAT -- I'M
TALKING ABOUT DETAILS.

AGAIN, THE TESTING, I DON'T
THINK, ADDS OR SUBTRACTS.

I'M TALKING ABOUT THE DETAILS OF
WHAT HE WAS TOLD.

>> HE COULD HAVE KEPT THOSE OUT
ALSO.

BUT HE CHOSE TO GO FORWARD WITH

USING TESTIMONY ABOUT THE 2003
EVALUATION, THE STATE WASN'T
GOING TO BE ABLE TO GO INTO IT
IF HE DIDN'T GO FORWARD WITH IT
TO BEGIN WITH AND, AGAIN, YOU
HAVE A DEFENDANT -- THIS WAS THE
AGREEMENT THEY KIND OF HAD
WORKED OUT, IF HE IS GOING TO GO
FORWARD WITH IT, THE STATE WILL
CROSS-EXAMINE ON IT AND IF HE
DOESN'T, THE STATE WILL -- HE
MADE THE DECISION TO USE
DR. KROP AND GO FORWARD WITH
DR. KROP'S TESTIMONY, AND --
>> LET ME ASK YOU ABOUT THAT
2003... I THOUGHT THAT IN 2003,
DR. KROP HAD DONE ADDITIONAL
TESTING AND THIS ADDITIONAL
TESTING REALLY SORT OF AFFIRMED
HIS ORIGINAL DIAGNOSIS, OF THE
DEFENDANT AND, INDICATED THAT
THE DEFENDANT WAS NOT
MALINGERING AND INFORMATION LIKE
THAT.
WAS THAT THE BASIS OF THE 2003

INFORMATION?

>> I BELIEVE THAT IS CORRECT.

I MEAN, HE WAS... THE 2003 --

THE 2003 TESTIMONY, OR --

WHATEVER IT WAS, THE LAST

PENALTY PHASE TESTIMONY FROM

DR. KROP FOCUSED LARGELY ON THE

PET SCAN, AND, FOCUSED ON HIS

FINDING OF FRONTAL LOBE

IMPAIRMENT AND THIS AND THAT.

AND, THIS ALL DEVELOPED AND CAME

IN AND IT WAS FOUND, THE ISSUE,

REALLY BETWEEN THE SECOND AND

THIRD PENALTY PHASES -- PENALTY

PHASES WAS WHETHER HIS

TESTIMONY, QUOTE, CHANGED, BUT

THAT IS WATER UNDER THE BRIDGE

BUT THE BOTTOM LINE IS, NOTHING

PRESENTED ABOUT THE DEFENDANT

EVEN IN THE MOST RECENT

PROCEEDINGS UNDER CUTS THE

AGGRAVATORS OR ADDS MITIGATION

THEM.

BEST WE CAN SAY, I WOULD

SUGGEST, IS THAT AT MOST -- AND

I'M NOT REALLY SAYING THIS IS
WHAT IS ACCURATE, BUT, THE MOST
WE CAN SAY IS GOING ON, IS THAT
THE LABEL OF INTERMITTENT
EXPLOSIVE DISORDER HAS BEEN
APPLIED TO SOME OF THE
DEFENDANT'S BEHAVIOR.
BUT, IF YOU APPLY THAT LABEL --
AGAIN, I'M NOT SAYING IT IS
REALLY CORRECT, YOU UNDERCUT
MITIGATION THAT WAS FOUND.
SO, WE'RE LEFT WITH WHAT I
BELIEVE THE 11th CIRCUIT COURT
DESCRIBED AS A "WHAT MIGHT HAVE
BEEN" PRESENTATIONS.
I WOULD SUGGEST, IT IS
SECOND-GUESSING IS WHAT IT IS.
BECAUSE, WE HAVE HAD THREE
PENALTY PHASES, THE FIRST ONE,
WAS SET ASIDE BY THE TRIAL COURT
FOR REASONS I HAVE NEVER KNOWN
AND THE SECOND ONE, THE COURT
SET ASIDE, AND THE THIRD ONE,
THE COURT AFFIRMED ON DIRECT
APPEAL.

AND NOW, WE'RE GOING TO GIVE A LABEL TO THE DEFENDANT THAT IS INCONSISTENT WITH THE EVIDENCE AND IS CONTROVERTED BY THE STATE WITNESSES, AND, SUGGESTS THAT HE TRIAL COUNSEL WAS INEFFECTIVE.

AND THAT IS...

>> DO YOU FEEL LIKE YOU ANSWERED MY QUESTION, WHAT ADDITIONAL DETAIL WAS GIVEN IN 2003...

>> THEY WERE MINIMAL.

>> MINIMAL?

>> THEY WERE MINIMAL DETAILS.

THERE WAS NOT A LOT OF DOUBT ABOUT WHAT HAPPENED AND HOW THE VICTIM DIED IN THE CASE.

>> HE HAD ALREADY IN 1998 GIVEN THE WHOLE DETAIL OF -- PUTTING HER IN THE TRUNK AND WHAT HAPPENED.

>> I DON'T KNOW IF ALL THE DETAILS HAD COME IN, THEY CAME IN SPOTTY, THROUGHOUT THE CASE AND YOU GET TO THE MOST RECENT VERSION, MR. HOSKINS TOLD THE

STATE'S EXPERT, HE LIED ABOUT
THE CRIME, ABOUT ALL OF THAT.
SO, I DON'T KNOW WHAT THE TRUTH
-- I DON'T KNOW, IF HE GETS
INTERVIEWED AGAIN, I HAVE NO
IDEA WHAT HE'LL SAY.
BUT THE MEDICAL EXAMINER'S
TESTIMONY WAS, CONSISTENT WITH
THE VICTIM BEING ALIVE FROM
MELBOURNE FLORIDA, ALIVE IN THIS
TRUNK, TO GEORGIA, WITH A STOP
OFF AT THE DEFENDANT'S HOUSE AND
A DRIVE TO A PEANUT FIELD WHERE
HE STRANGLERED HER.

>> THERE IS NO QUESTION, WE KNOW
WHEN THE GAG AND THE... TOOK
PLACE?

IT HAD TO TAKE PLACE... IN THE
TRUNK, HAD TO BE ALIVE AT THAT
POINT.

>> AND THE MEDICAL EXAMINER'S
TESTIMONY WAS THAT SHE WAS ALIVE
AT THE TIME SHE WAS KILLED IN
GEORGIA, BECAUSE YOU HAVE IMPACT
WOUNDS CONSISTENT WITH THOSE

HAVING BEEN ADMINISTERED BY A SHOVEL, IN ADDITION TO STRANGULATION WHICH WAS THE ULTIMATE CAUSE OF DEATH.

WITH ALL OF THAT, YOU HAVE GOT QUITE SIMPLY A HORRIFIC CASE, AND, YOU HAVE GOT A NIGHTMARE CASE, FROM A DEFENSE STANDPOINT, BECAUSE, YOU JUST DON'T HAVE A WHOLE LOT YOU CAN DO WITH IT.

REMEMBER, THIS GUY'S MMPI WAS NORMAL.

YOU DON'T HAVE MENTAL STATE OR MENTAL ISSUES HERE.

THIS MAN'S MMPI HAD ONE SCALE THAT WAS SLIGHTLY ELEVATED AND THE TESTIMONY WAS, THAT IS CONSISTENT WITH SOMEONE ON DEATH ROW, SO YOU HAVE A DEFENDANT, FOR WHATEVER REASON, COMMITTED THE OFFENSE AND YOU HAVE THE DEFENDANT WHO CHANGED HIS STORY, YOU HAVE A DEFENDANT WHO ULTIMATELY STRANGLED AN 80-YEAR-OLD LADY, AFTER HE KEPT

HER IN THE TRUNK OF HER OWN CAR,
AFTER A STOP-OFF TO MAKE REPAIRS
TO THE VEHICLE, AND A STOP OFF
TO PICK UP A SHOVEL TO USE TO
BURY HER AND WHEN HE RETURNS AND
SOMEBODY SEES -- HIS BROTHER, I
BELIEVE, SEES BLOOD ON HIS
VEHICLE, HE SAID I HIT A POSSUM.
I WOULD SUGGEST THE CASE CRIES
OUT FOR THE DEATH PENALTY AND I
SUGGEST THERE IS NO ERROR
WHATSOEVER IN THE TRIAL COURT'S
DENIAL OF THE CONVICTION, AND I
ASK THE COURT TO AFFIRM.

>> IN RESPONSE TO

MR. NUNNELLEY'S STATEMENTS,
REGARDING FIRST THAT DR. MCLAREN
DID NOT DO ANY INDEPENDENT TESTS
ATO THE IED, HE TESTIFIED THAT
HE DISAGREED WITH
DR. EISENSTEIN'S FINDING AND
TESTIFIED IN HIS EXPERIENCE IT
WAS RARE.

HOWEVER, EVEN DR. McCLAREN
RECOGNIZED THAT, BASED ON THE

MMPI TEST HE DID WHICH ALSO
DR. EISENSTEIN DID, THAT
MR. HOSKINS, FIRST OF ALL, WAS
NOT MALINGERING AND HE
RECOGNIZED THAT, BASED ON
MR. HOSKINS' SELF-REPORT THAT
HE, HIMSELF, DR. McLAREN WOULD
PUT FORTH, A DEFENSE OF ALCOHOL
DEPENDENCY AND... AND ALSO HE
HAD FRONTAL BRAIN IMPAIRMENT DUE
TO SELF-ADMINISTERED INTOXICANTS
AND EVEN THE DOCTOR FOUND THAT
HE WOULD DIAGNOSE HIM WITH A
PERSONALITY DISORDER AND HE
RECOGNIZED THERE WAS MENTAL
ILLNESS AND DRUG ADDICTION AND
ALCOHOL ADDICTION.

EVIDENCE PRESENT IN HIS OWN
TESTIMONY.

WHICH CORROBORATES.

>> STILL, I DON'T SEE HOW IT

MITIGATES THE CRIME.

IF IT ENDED AT THE SEXUAL

BATTERY AND SHE DIED AS A RESULT

OF WOUNDS FROM THE SEXUAL

BATTERY, MAYBE.

MAYBE SOME JURORS MIGHT BUY THAT
BUT NOT INCIDENT THAT -- THE
BINDING, THE GAGGING, THE TAKING
IN THE TRUNK, THE OPENING IT UP,
THE HITTING WITH THE SHOVEL, THE
MANUAL STRANGULATION, IT IS
JUST... IT IS TOO MUCH.

AND, I MEAN, YOU KNOW, YOU ARE
DOING A GOOD JOB ON IT, BUT, FOR
YOUR CLIENT, BUT, HE'S GOT TO
LIVE WITH, YOU KNOW, AND RECEIVE
THE CONSEQUENCES, OF WHAT HE
DID, THAT DAY.

>> I CERTAINLY UNDERSTAND, WHERE
YOUR HONOR IS COMING FROM,
HOWEVER, WHEN DR. EISENSTEIN
TALKED ABOUT STATUTORY
MITIGATION, HE TALKED ABOUT THE
EPISODE WITH -- WHERE
MR. HOSKINS HAD IMPULSE CONTROL
LOSS WITH RESPECT TO THE RAPE,
AND HE TALKED, AGAIN, WHAT
HAPPENED, AT THE TIME WHEN HE
OPENS UP THE TRUNK AND IN '03,

THE ADDITIONAL EVIDENCE BEING
THAT NOW MRS. BERGER WAS ALIVE
AT THE TIME, THAT CAME OUT,
WELL, THAT TRIAL COUNSEL CHANG
FOUND OUT THE MORNING OF THE
PENALTY PHASE.

AND, THERE IS A CONTROL ISSUE
AND THE DR. TALKS ABOUT THAT.
AND, THAT GOES BACK TO THE
STATUTORY MITIGATOR.

>> SO WHAT ARE YOU SAYING WERE
THE ADDITIONAL DETAILS, IN 2003?
DID SHE ACTUALLY SAY...?

.

>> [INAUDIBLE].

>> I BELIEVE THAT SHE --
MR. HOSKINS SAID THAT SHE HAD
DONE SOMETHING, BECAUSE IT
CAUSED THE IMPULSE CONTROL,
AND...

>> [INAUDIBLE].

>> SHE DID, YOUR HONOR.

>> AND, YOUR HONOR, BECAUSE OF
THE DRUG ABUSE WE DON'T HAVE
INTERMITTENT LOSS OF CONTROL AND

DR. EISENSTEIN EXPLAINED YOU
CAN'T HAVE BOTH... AGGRESSIVE
DISORDER AND FOUND IT WAS AN
AXIS ONE MENTAL ILLNESS, AND,
WITH THE CO-MORBID DIAGNOSIS
WITH THE DRUG ABUSE AND I WOULD
ASK THE COURT, IN LOOKING AT THE
FRONTAL LOBE IMPAIRMENT AND THE
MENTAL DISORDER AND THE DRUG AND
ALCOHOL ABUSE, FIND THERE IS A
STATUTORY MITIGATOR, AND...

[INAUDIBLE].

>> THANK YOU, WE THANK BOTH OF
YOU FOR YOUR ARGUMENTS.