

>> NEXT CASE ON THE DOCKET
IS HALL.
>> WERE THE THREE OF YOU HERE
YESTERDAY?
>> YES.
[LAUGHTER]
>> I THOUGHT YOU LOOKED
FAMILIAR.
[LAUGHTER]
>> OKAY.
WHENEVER YOU'RE READY.
>> MAY IT PLEASE THE COURT, I'M
ANN MARIE MIRIALAKIS, I
REPRESENT ENOCH HALL.
HE'S APPEALING DENIAL OF HIS
POSTCONVICTION MOTION.
I'D LIKE TO BEGIN WITH CLAIM
FIVE.
INEFFECTIVE ASSISTANCE OF
COUNSEL FOR FAILURE TO PRESENT
KNOWN MENTAL HEALTH MITIGATION
TO THE JURY AND INSTEAD HOLDING
IT FOR THE TRIAL JUDGE ALONE TO
THE HEAR AT THE SPENCER HEARING.
>> YOU DO AGREE THAT IF THERE'S
A VALID STRATEGY TO DO IT THAT
WAY, THAT THAT WOULD NOT
CONSTITUTE THE INEFFECTIVE
ASSISTANCE, AT LEAST FROM THE
DEFICIENCY STANDPOINT.
>> AND YOUR HONOR IS CORRECT.
IF THERE IS A VALID STRATEGY--
>> OKAY, ALL RIGHT.
SO THAT'S WHAT WE'RE GOING TO
HAVE TO LOOK AT IN THIS CASE.
THAT'S WHAT THE STATE HAS ARGUED
THAT THE LAWYERS HERE SAID THAT
THEY HAD THE EXPERT.
THAT'S NOT IN DISPUTE, CORRECT?
>> YES.
>> THEY HAD THE EXPERT AND
THAT THE EXPERT TOLD THEM, BOTH
LAWYERS AND THE INVESTOR, THAT
HE WOULD DO-- HURT YOUR CLIENT
MORE THAN HELP.
IS THAT, THAT'S FAIR, ISN'T IT?
DIDN'T HE SAY THAT?
>> OKAY.
YOUR HONOR--
>> THAT JUST REQUIRES A YES OR

NO, AND THEN WE CAN TALK ABOUT WHY.

>> YES.

>> THEY DID SAY THAT, RIGHT?

>> IN A MEMO TO THE FILE THE NEXT DAY, YES.

>> WELL, THAT'S THE UNCONTRADICTED EVIDENCE THAT THAT'S WHAT HE SAYS.

MAYBE IT'S WRONG, BUT THAT'S WHAT HE SAID.

IS THAT TRUE?

>> IT IS TRUE THAT THE DO DEFENSE'S-- THAT DR. KROP, ON THE MORNING OF THE PENALTY PHASE, QUESTIONED MR. HALL AGAIN AND HAD SOME CONCERNS WITH THE ANSWERS HE GOT, AND IN A RUSHED, ILL-CONCEIVED, LAST MINUTE CHANGE OF PLANS, IT WAS DISCUSSED-- THE ONLY TIME IT COULD HAVE BEEN DISCUSSED WAS DURING THE LUNCH HOUR.

THEY DECIDED 40 TOLD MR.--

DR. KROP'S TESTIMONY.

NOW, WHY THIS IS INEFFECTIVE IS BECAUSE BEFORE TRIAL EVEN BEGAN, WE CAN GO BACK TO AUGUST 28TH WHEN THEY WERE DOING A MOTION TO CONTINUE AND SAYING THAT WE'RE NOT PREPARED, WE'RE DOING BACK TO BACK TRIALS, OUR MITIGATORS AREN'T EVEN IN FOCUS YET.

THE MORNING OF TRIAL, AUGUST 12TH, THEY WERE DOING ANOTHER MOTION TO CONTINUE AND SAY WE'VE BEEN GIVEN 15 STATE WITNESSES, AND WE NEED MORE TIME.

AT THAT TIME THE TRIAL COURT DENIED THE MOTION TO CAN'T WITHOUT PREJUDICE TO RENEW THAT MOTION AT A LATER DATE.

SO WHAT WE'RE SAYING IS THAT AT THIS POINT IN TIME WHEN YOU ALL OF A SUDDEN HAVE THIS NEW PIECE OF INFORMATION AND THE TRIAL COURT HAS ALREADY TOLD YOU YOUR MOTION TO CONTINUE IS DENIED WITHOUT PRIVILEGE, THIS IS THE TIME TO MOVE TO CONTINUE.

BECAUSE YOU CAN SEE THAT ONCE THEY HAD TIME TO REFLECT AND CONSIDER AND REVIEW THIS NEW PIECES OF EVIDENCE AND REALLY TAKE A LOOK AS, WELL, WOULD IT BE SO DAMAGING?

AND WE CAN ANALYZE THAT. WE'LL GO THROUGH THAT AS WELL. BUT WE DON'T EVEN HAVE TO SPECULATE, BECAUSE WE CAN LOOK AT THE SPENCER HEARING TESTIMONY, AND WE CAN LOOK AT HOW DR. KROP HANDLED CROSS-EXAMINATION.

EVEN TRIAL COUNSEL ADMITTED AT THE EVIDENTIARY, WELL, YES, HE DID GIVE REASONABLE EXPLANATIONS FOR WHAT THE STATE PROFFERED AS DEFENSE COUNSEL'S CONCERNS, BECAUSE WHEN THEY MADE THIS DECISION, THE STATE MADE THE PROFFER.

THEY WERE CONCERNED ABOUT INCOMPETENT COUNSEL CLAIMS. BUT TRIAL COUNSEL SAID, YES, HE DID GIVE REASONABLE EXPLANATIONS, HE GAVE-- HE ADDRESSED AND NEUTRALIZED WHATEVER POTENTIALLY NEGATIVE TESTIMONY WE MIGHT HAVE BEEN CONCERNED ABOUT X BE WE GOT OUT THE IMPORTANT NEUROCOGNITIVE INFORMATION THAT THE JURY NEVER HEARD.

IN THIS CASE THE JURY NEVER KNEW THAT MR. HALL HAD A LOW AVERAGE INTELLIGENCE AND AN ASYMMETRY CALL ATROPHY BRAIN THAT COULD LEAD TO ISSUES WITH IMPULSE CONTROL AS WELL AS MEMORY ISSUES AND INFLEXIBILITY IN DECISION MAKING.

NOW, ALL THE JURY HEARD WAS THAT THERE WAS AN OVERDOSE OF THIS DRUG THE DAY IN QUESTION AND THAT MANY YEARS EARLIER MR. HALL WAS THE VICTIM OF A RAPE WHILE IN JAIL.

BUT IF THEY KNEW THAT THERE WAS ALSO THESE BRAIN ABNORMALITIES

THAT COULD HAVE LED TO HIM
SNAPPING BEEN BECAUSE THAT WAS
THEIR WHOLE DEFENSE, THAT HE
SNAPPED.

AND IF THEY HAD-- THEY NEVER
HEARD ABOUT STRESSFUL CONDITIONS
AT WORK WHICH GOES BEYOND
DR. KROP'S TESTIMONY.

THAT COULD HAVE BEEN, THAT'S,
THAT'S INFORMATION THAT SHOULD
HAVE ARE COME OUT ON IN THE
GUILT PHASE BUT COULD HAVE BEEN
CONSIDERED IN PENALTY PHASE AND
THAT DR. KROP SAID THAT
STRESSFUL CONDITIONS PLUS THIS
DRUG PLUS THE COGNITIVE
DEFICITS, THESE THINGS ALL LEAD
TO MORE-- THE JURY WOULD HAVE A
BETTER UNDERSTANDING OF WHY A
PERSON SNAPPED.

AND I'M KIND OF JUMPING AROUND.
THERE'S SO MUCH THAT WASN'T
DONE.

BUT IN CLAIM FOUR THERE WAS ALSO
THE FAILURE TO FULLY INVESTIGATE
THE FAMILY HISTORY.

IF WE KNEW ABOUT THE
RELATIONSHIP WITH THE FATHER AND
THE MOTHER AND HER CHEATING ON
THIS MAN WHO WAS A HARD
WORKER--

>> WELL, LET'S TALK ABOUT THAT.
THE EVIDENCE SHOWS THAT NOT ONLY
THE INVESTIGATOR, BUT THE LAWYER
AND THE INVESTIGATOR WENT OVER
TO THE PANHANDLE, AND THEY
TALKED, INTERVIEWED BROTHERS AND
MOTHER AND THE FATHER, AND THIS
WAS NOT OLD TO THEM.

>> THAT'S CORRECT.

>> DURING THE INVESTIGATION THE
DEFENDANT DIDN'T TELL THEM THIS,
RIGHT?

>> THAT'S CORRECT.

>> OKAY.

>> RIGHT.

AND WHAT I'M SAYING AND BETWEEN
WHAT THEY ADMITTED, IT-- A
SEASONED, ESPECIALLY
DEATH-QUALIFIED DEFENSE COUNSEL,

WOULD HAVE DONE ENOUGH OF THESE CASES AND HAD ENOUGH MITIGATION EXPERIENCE TO UNDERSTAND THAT A REALLY-- IT'S VERY ODD THAT THERE WAS NOTHING GOING ON IN THIS FAMILY.

PEOPLE TEND TO WANT TO PUT BEST FACE FORWARD AND PRESENT JUST THE HAPPY FACTS.

OKAY?

AND THEY ADMITTED, IT SEEMED VERY ODD THAT NOTHING CAME OUT UNUSUAL.

>> SEEMED TO HAVE A PRETTY GOOD LIFE ARE.

I MEAN, TRAIL VEHICLES AND ALL THAT KIND OF, YOU KNOW, HE DID SAY THAT.

>> HERE'S THE POINT OF WHAT WAS SO CRUCIAL THAT WAS LEFT OUT. IF THEY HAD KNOWN ABOUT THE MOTHER CHEATING ON THE FATHER AND THAT SHE-- HE HAD CONFRONTED HER, AND SHE'D LAUGHED AT HIM, AND THE CHILDREN WERE EXPOSED TO THIS SORT OF DYNAMIC AND THE SHAME THAT IT WOULD HAVE CAUSED FOR THE FATHER--

>> I'M SORRY, AND I DON'T MEAN TO SMILE ABOUT THIS BECAUSE IT'S NOT A LAUGHING MATTER, BUT LET'S JUST-- WE'RE TALKING HERE, YOU'RE TALKING DEFICIENCY. THIS MAN WAS ON, IN PRISON FOR, WHAT, TWO-- HE HAD TWO LIFE SENTENCE SHE IS?

>> THAT'S CORRECT.

>> HOW OLD WAS HE AT THE TIME--

>> 39.

AT THE TIME OF THE MURDER.

>> AT THE TIME OF THE MURDER. AND YOU ARE SAYING THE COUNSEL WAS DEFICIENT IN NOT PUTTING ON EVIDENCE THAT THE FATHER-- WAIT, WHO WAS IT CHEATED ON WHOM?

>> THE MOTHER.

>> THE MOTHER-- THAT THAT EVIDENCE WOULD HAVE BEEN

EVIDENCE THAT THE JURY WOULD
HAVE FOUND SOMEHOW COMPELLING?
MAYBE, AND I'M--

>> LET'S LOOK AT, LET'S LOOK AT
HIS STATEMENT THERE'S VERY
LITTLE THAT WE ACTUALLY
UNDERSTAND ABOUT WHAT HAPPENED
EXCEPT THAT HE REPEATED IN A
DISTRAUGHT-- HE WAS IN THIS
DISTRAUGHT STATE OF MIND AND
OVER AND OVER AGAIN HE JUST
REPEATS, I FREAKED OUT, I
SNAPPED, I JUST WANTED
THE PILLS.

WHEN THEY PRESS HIM AND PRESS
HIM TO TRY TO UNDERSTAND MORE,
TO GIVE FULLER EXPLANATION OF
THE FACTS, THE ONLY THING HE CAN
SAY IS SHE LAUGHED AT ME.
WHAT I AM SAYING IS NOW YOU HAVE
THE TRIGGER.

YOU HAVE ALL THESE EVENTS--
>> THE DOCTOR, YOUR MEDICAL
HEALTH DOCTOR SAID THAT THEY
WOULD HAVE RELATED THAT TO THIS
TWO-TIME-CONVICTED LIFER CAN
KILL A PRISON GUARD AND THAT
THAT WOULD HAVE SOMEHOW, THAT
SHOULD UNDERMINE CONFIDENCE IN
THE OUTCOME?

>> WHAT I'M SAYING IS THAT THIS
IS, THIS IS A CASE OF MANY
CUMULATIVE ERRORS.

IF ALL THE JURY HEARD, THE ONLY
THING THAT DEFENSE COUNSEL PUT
ON IN THE GUILT PHASE IS THAT
MR. HALL'S SITTING ON THE BENCH
MUMBLING TO HIMSELF, PRACTICALLY
INCOHERENT.

THE STATE PUT ON THE
INTERROGATION STATEMENTS AND
THEN I'VE ALREADY MENTIONED WHAT
WENT ON IN THE PENALTY PHASE.
BUT IF THE-- IN THE PENALTY
PHASE, THE JURY IS TOLD YOU CAN
CONSIDER ANY EVIDENCE THAT
YOU'VE HEARD IN THE GUILT PHASE.
SO IF THEY UNDERSTOOD ALL THE
FACTORS, ALL THE STRAWS THAT
FINALLY MAKE THE CAMEL'S BACK--

>> WHAT DO WE DO WITH THE TRIAL COURT'S FINDINGS?

ON THIS CLAIM THERE'S EXTENSIVE FINDINGS AS TO WHAT THE INVESTIGATOR DID IN BOTH THE GUILT AND THE PENALTY PHASE AND THAT RYAN DID CONDUCT A VERY THOROUGH INVESTIGATION.

AND WE-- ARE YOU SAYING THAT THOSE FINDINGS IN THE TRIAL COURT'S ORDER ARE NOT SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE?

>> THAT'S CORRECT.

BECAUSE AS TO THIS ISSUE, YOU'VE ONLY TALKED TO THE IMMEDIATE FAMILY.

MOTHER, FATHER, BROTHER, OKAY?

YOU KNOW IT'S UNUSUAL, THIS SHOULD BE A PERFECT, IDYLIC FAMILY SITUATION.

YOU HAVE THE NAME OF TWO UNCLES--

>> WHO THE DEFENDANT SAID DO NOT SPEAK TO ANYONE BE ELSE, CORRECT?

>> I THINK THAT'S--

>> SHOULD THEY FOLLOW THAT OR NOT?

>> I FIND THAT TESTIMONY NOT TO BE CREDIBLE, AND WHY I WOULD ARGUE THAT, YOUR HONOR, OKAY--

>> THAT WAS STATED, CORRECT?

>> STATED BY--

>> THE INVESTIGATOR.

>> THE INVESTIGATOR.

>> AND THE INVESTIGATOR SAID HE REALLY WAS HESITANT, DIDN'T WANT TO GIVE UP ANYTHING THAT WOULD HELP ME IN MITIGATION, SO I DIDN'T WANT TO CROSS WHAT HIS DESIRES WERE AS WE WERE GETTING STARTED.

AND BE NOTHING THAT WAS SAID WITH THE FAMILY LED TO ANY OF THIS, DID IT?

>> SO LET'S LOOK AT THIS STATEMENT BY THE INVESTIGATOR. WE HAVE THE ATTORNEY SAYING WHEN WE WERE ALWAYS PRESENT AND THAT

MR. HALL WAS COOPERATIVE.
WE HAVE MR. HALL GIVING THE
NAMES OF THE TWO UNCLES THAT
LIVE IN THE SAME AREA AS THE
FAMILY.
NOW, LOGICALLY, IF YOU DON'T
WANT THESE PEOPLE CONTACTED, YOU
SAY, NO, NO, YOU DON'T NEED TO
CONTACT MY AUNTS, UNCLES, THE
REST OF THE FAMILY.
YOU DON'T GIVE THE NAMES AND
WHERE THEY ARE.
NOW, IF THIS WAS SO IS CRUCIAL
THAT YOU NOT CONTACT THESE
PARTICULAR PEOPLE--
>> THEN YOU DO IT.
>>-- THEN YOU PUT A NOTE IN THE
FILE THAT SAYS UNCLE SO AND SO,
DO NOT CONTACT.
THERE'S NOTHING IN THE
INVESTIGATOR'S FILE THAT
INDICATES HE WAS NOT SUPPOSED TO
CONTACT THOSE PEOPLE.
AND, WHEN I ASKED HIM WHO
WAS HE NOT SUPPOSED TO CONTACT?
I DON'T REMEMBER.
OH, LET ME REFRESH MY MEMORY.
THERE'S NOTHING IN THE FILE THAT
SAYS DON'T CONTACT THEM.
SO I'M SAYING AFTER THE FACT,
AFTER MY MOTION'S BEEN FILED AND
HE'S BEEN DEPOSED, NOW WE'RE
COMING FORWARD AND YOU CAN
EVALUATE THE CREDIBILITY, THE
JURY COULD EVALUATE THE
CREDIBILITY OF THAT, BUT I DON'T
THINK THAT, I DON'T THINK IT'S
CREDIBLE.
SO--
>> BUT WE'RE NOT, YOU'RE NOT THE
TRIER OF FACT, AND WE'RE NOT THE
TRIER OF FACT.
THERE'S A POST-CONVICTION COURT
HERE THAT-- THERE'S A TRIAL
COURT THAT'S THE TRIER OF FACT.
>> WELL, WE'RE REVIEWING ALL THE
THINGS THAT COULD HAVE COME OUT,
AND I BELIEVE THAT IF THE COURT,
IF THE JURY HAD BEEN ABLE TO
HEAR ALL THE CIRCUMSTANCES THAT

LED UP TO THIS KILLING, THAT THERE IS A REASONABLE LIKELIHOOD THAT THEIR VERDICT, THEIR RECOMMENDATION WOULD HAVE BEEN DIFFERENT.

AND WITHOUT TURNING-- THERE'S SO MUCH IN THIS CASE, I DON'T HAVE A LOT OF TIME TO ADDRESS A FULL RETROACTIVITY ARGUMENT. IF WE LOOK AT THIS UNDER THE UNCONSTITUTIONAL SYSTEM WE HAD, THIS IS NOT GOOD TRIAL STRATEGY. THE DEFENSE EXPERT ARGUED THAT THIS IS THE WORST POSSIBLE TIMING TO LEAVE MENTAL HEALTH MITIGATION FOR THE TRIAL JUDGE TO HEAR WHEN THE JURY'S MADE A RECOMMENDATION AND THEY HAVE TO GIVE GREAT WEIGHT TO IT.

>> HERE'S THE THING, AND WE HAVE CRITICIZED, IN SOME CASES EVEN FOUND EFFICIENT PERFORMANCE WHEN THERE DIDN'T SEEM TO BE ANY GOOD REASON TO PUT THE MESSAGAL HEALTH MITIGATION ON IN THE SPENCER HEARING.

BUT I THOUGHT HERE, AGAIN, TRIAL COUNSEL TESTIFIED WHY THE JUDGE FOUND AND IT SEEMS REASONABLE AS A FACTUAL FINDING THAT IT WAS DONE WITH FULL KNOWLEDGE OF THE HARM THAT COULD HAVE TO OCCURRED AND THE JURY HEARING IT.

ARE WE, AGAIN, TO JUST DISMISS ALL OF THAT?

>> WELL, REALLY, LET'S LOOK AT THIS.

THE PROFFER THAT THE STATE MADE AND THE REASONS, WHAT HARM, OKAY?

BECAUSE THE IDEA THAT DR. KROP'S FINDINGS WEREN'T CREDIBLE-- THAT'S WHAT THE OTHER DOCTOR SAID.

HE DIDN'T DO ANY TESTING OF HIS OWN, HE'S A NEUROPSYCHOLOGIST, DOESN'T DO ANY BE TESTING. HIS FINDINGS MAY NOT BE CREDIBLE BECAUSE HE DIDN'T DO TESTS FOR MALINGERING.

SO DR. KROP EXPLAINED WHICH THE JURY COULD HAVE HEARD AS EASILY AS THE JUDGE, THESE TESTS HAVE TO DO WITH THEY'RE MINI SCREENS, THEY'RE NOT DIAGNOSTIC OF ANYTHING, AND WHAT THEY DO IS TEST FOR EXAGGERATION ABOUT PSYCHIATRIC DISORDERS LIKE-- IT'S EXAGGERATING ABOUT HEARING NOISES AND SEEING PEOPLE, ETC.

AND DR. KROP SAID, WELL, TWO THINGS.

NUMBER ONE, IN MY NEUROLOGICAL TESTING, THERE WAS-- I DID THOROUGH BATTERY OF TESTS, AND THERE WAS THINGS HE DID WELL IN, THINGS HE DIDN'T DO AS WELL IN. SO WITHIN THAT IS INDICATIONS OF RELIABILITY BECAUSE A PERSON IS USUALLY NOT SOPHISTICATED ENOUGH TO KNOW HOW TO TRICK THE TEST A LITTLE BIT HERE OR THERE.

BUT ALSO HE SAID I DIDN'T MAKE FINDINGS THAT THERE WAS A PSYCHIATRIC, THAT HE WAS ONE OF THE PSYCHIATRIC DISORDERS.

MY FINDINGS ARE MORE BASED ON A PHYSICAL ABNORMALITIES WHICH WERE COGNITIVE WHICH WERE SUPPORTED BY THE MRI.

SO IN THE CASES WHERE YOU HAVE FOUND THAT THIS IS NOT-- EITHER IT'S CUMULATIVE OR IT'S NOT A BAD STRATEGY, THERE WAS AT LEAST SOME MENTAL HEALTH MITIGATION PRESENTED TO THE JURY, AN MRI OR MAYBE ANOTHER MENTAL HEALTH DOCTOR, OR WE WERE REALLY CONCERNED SOMEWHERE ALONG THE LINE WE WOULD HEAR THAT THE CLIENT WAS A SOCIOPATH.

BUT NO ONE, NO STATE WITNESS, NO ONE HAS MADE THAT FINDING.

SO ALL WE HAVE IS THAT WE'VE REDUCED SOME OF THE FINDINGS THAT DR. KROP MADE BUT NOT THE MOST IMPORTANT ONE, THE NEURO COGNITIVE DEFICITS THAT GAVE BIOLOGICAL REASONS THAT WOULD

LEAD TO THE SNAPPING.
BUT IF I MAY, I'M WAY INTO--
THANK YOU.

>> MAY IT PLEASE THE COURT,
COUNSEL, I'M STACEY KIRCHER FROM
THE OFFICE OF THE ATTORNEY
GENERAL ON BEHALF OF THE STATE
IN THIS CASE.

I'D LIKE TO BEGIN BY POINTING
OUT MY OPPOSING COUNSEL BROUGHT
UP THE TIMING ISSUE AND THE
REASON THAT DR. KROP CALLED A
MEETING WITH TRIAL COUNSEL'S
PHIL LEADERSHIP AND VALERINO
WITH AN ASSISTANT PUBLIC
DEFENDER IN THE APPELLATE
DIVISION, MR. QUARLES, HE CALLED
A MEETING BECAUSE THE TIMING WAS
AFTER REVIEWING THE EVIDENCE
THAT WAS GOING TO BE PRESENTED
BY THE STATE IN REBUTTAL OF THE
SPENCER ARGUMENT TESTIMONY.

SO-- OR EXCUSE ME, THE STATE
HAD HIRED DR. CANSINKER AS A
REBUTTAL WITNESS.

HAD COUNSEL CALLED DR. KROP IN
THE PENALTY PHASE.

AS IT WAS, THEY HAD THIS
MEETING.

DR. KROP RELAYED TO TRIAL
COUNSELS THAT I HAVE MORE
NEGATIVE THINGS TO SAY THAN
POSITIVE.

I HAVE CONCERNS ABOUT TESTIFYING
AS TO MITIGATION.

SO THEY CALLED IN ATTORNEY
QUARLES IN THEIR APPELLATE
DIVISION.

ALL OF THEM AGREED THAT, IN
FACT, DR. KROP WAS CORRECT, HE
WOULD HAVE MORE NEGATIVE THINGS
TO SAY THAN MITIGATING.

SO THE DECISION WAS MADE, AND
IT'S SUPPORTED BY THE REASONABLE
TRIAL STRATEGY THAT WAS PUT ON
IN THE EARTH SHARE HEARING TO
CALL-- EVIDENTIARY HEARING TO
CALL DR. KROP INSTEAD IN THE
SPENCER HEARING SO THE JUDGE
WOULD GET TO HEAR THE MITIGATING

FACTORS, BUT THE JURY WOULDN'T BE SWAYED BY THE VERY NEGATIVE THINGS THAT DR. KROP COULD TESTIFY TO.

AND THE STRAW THAT BROKE THE CAMEL'S BACK IN DR. KROP'S MIND WAS SEEING ENOCH HALL'S TESTIMONY TO OR MEETING AND TESTING WITH DR. DANZIGER, THE TATE'S EXPERT.

AND SOME OF THAT INCLUDED THE INCREDIBLY DAMAGING TESTIMONY THAT-- AND JUST TO BACK UP FOR A SECOND.

ENOCH HALL A HAD GIVEN THREE SEPARATE STATEMENTS TO INVESTIGATORS, FDLE PERTAINING TO WHY THE VICTIM WAS FOUND STABBED 22 TIMES WITH HER PANTS PULLED DOWN, HER UNDERWEAR AROUND HER KNEES, WITH BLUNT FORCE TRAUMA ALL ABOUT HER FACE AND DEFENSIVE WOUNDS ON HER HANDS.

SHE HAD BEEN MOVED FROM THE PLACE THAT HE MURDERED HER, HER BODY WAS WRAPPED IN TOWELS AND SHEET, AND SHE WAS SHOVED INTO A CART.

AND THAT TESTIMONY WAS VERY IMPORTANT BECAUSE-- AND TO BACK UP TO I BELIEVE IT WAS JUSTICE PARIENTE THAT POINTED OUT HE WAS IN PRISON SERVING TWO CONSECUTIVE LIFE SENTENCES FOR RAPE.

HE WAS SERVING ON THREE DIFFERENT VICTIMS.

HE HAD A KIDNAPPING CHARGE, A SEX BATTERY, KIDNAPPING WITH A NONDEADLY WEAPON, AGGRAVATED BATTERY ON ONE OF HIS VICTIMS WHO WAS OVER 65 AND ANOTHER SEXUAL WATERY REGARDING THREE DIFFERENT VICTIMS THAT HE WAS SERVING LIFE SENTENCES ON AT THE TIME--

>> I MEAN, PLAYING DEVIL 'S ADVOCATE, AND I REALLY HI THE TRIAL COURT'S FINDINGS ARE

SUPPORTED AND, YOU KNOW, THERE WAS A STRATEGIC REASON. BUT WHAT COULD THE LAWYER HAVE LOST WITH THAT KIND OF A BACKGROUND, AND HE'S SERVING THESE TWO LIFE SENTENCES, AND HE'S-- RAPE, AND HE WAS RAPED, AND, YOU KNOW, IN PRISON, WHAT ELSE-- I MEAN, HOW MUCH WORSE COULD IT HAVE BEEN?

>> GOOD QUESTION, JUSTICE PARIENTE, BUT IT ACTUALLY COULD HAVE GOTTEN WORSE.

BECAUSE THE TESTIMONY THAT DR. KROP HAD HAD IN HIS VARIOUS MEETINGS, AND THIS IS AN EXTENSIVE MITIGATION, EXTENSIVE MENTAL HEALTH MITIGATION, AND I'LL BACK UP BECAUSE THAT WAS THE SECOND CLAIM, AND I'LL TALK ABOUT THAT IN A MOMENT.

BUT TO ANSWER YOUR QUESTION, THE-- IN NONE OF THE STATEMENTS AND IN NONE OF THE DISCUSSIONS WITH DR. KROP DID ENOCH HALL EVER SAY THAT HE INTENDED TO RAPE THE VICTIM. FIRST IT WAS I'M TAKING OFF HER PANTS BECAUSE I'M GOING TO WEAR HER UNIFORM IN AN ESCAPE ATTEMPT.

AND THEN WHEN HE CHANGED THE STORY, THEN IT WAS PERHAPS I'M GOING TO TRY TO PUT THE PANTS OVER THE BARBED WIRE TO TRY TO ESCAPE IN THAT FASHION.

BUT HE ACTUALLY ADMITTED TO DR. DANZIGER THAT HE THOUGHT ABOUT RAPING THE VICTIM POSTMORTEM.

SO THAT WAS THE INFORMATION THAT THEY ABSOLUTELY DID NOT WANT TO GET OUT TO THE JURY.

SO AS IT WAS, WHAT DR. KROP DID TESTIFY TO IN THE SPENCER HEARING WAS THAT HALL HAD A COGNITIVE DISORDER NOT OTHERWISE SPECIFIED, HE HAD A MULTIPLE SEXUAL OFFENDER PARAPHERNALIA DISORDER WHICH IS NOT

MITIGATING AND AN E
ALCOHOL/SUBSTANCE ABUSE DISORDER
WHICH WAS IN REMISSION BECAUSE
HE WAS IN A CONTROLLED
ENVIRONMENT.

HE SPECIFICALLY RULED OUT PTSD
DIAGNOSIS BECAUSE YOU HAVE TO
REMEMBER THAT WE'RE DEALING WITH
A DEFENDANT WHO HAS BEEN IN
PRISON FOR 14 YEARS.

HE'S WORKED APPROXIMATELY 80
HOURS A WEEK AS A WELDER IN THE
PRIDE FACILITY.

HE, AT ONE TIME, HAD BEEN
DIAGNOSED WITH WHAT WAS REFERRED
TO AS PSEUDO-SEIZURES, FALSE
SEIZURES, WHICH IS ONE OF THE
CLAIMS IN POST-CONVICTION AS
WELL.

BUT HE HAD SPECIFICALLY IN 1999
TAKEN OFF FRAUDULENTLY OR NOT
THAT HE HAD NO HISTORY AND NO
FAMILY HISTORY OF SEIZURES
BECAUSE HE WANTED TO BE A
WELDER.

SO WE HAVE NO MEDICAL DIAGNOSIS
OF SEIZURES, WE HAVE NO
MEDICATION FOR SEIZURES AT LEAST
FOR THE PAST 14 YEARS.

AND WORKING APPROXIMATELY 80
HOURS A WEEK AS A LEAD WELDER,
THAT'S NOT A PLACE THAT A
SEIZURE WOULD GO UNNOTICED IF
YOU HAVE A BLOW TORCH IN YOUR
HAND.

AND ALSO, AND THIS KIND OF TIES
INTO THE SECOND ARGUMENT AS TO
THE BACKGROUND MITIGATION
INVESTIGATION, WE HAVE ATTORNEYS
PHILLIPS, VALERINO AND
INVESTIGATOR RYAN WHO WORK AS A
TEAM IN THESE COLLATERAL CASES.
THEY'RE VERY EXPERIENCED.
THEY'RE BOTH BOARD CERTIFIED.
INVESTIGATOR RYAN SPECIFICALLY
WORKS ON CAPITAL CASES WITH THIS
TEAM OF ATTORNEYS IN VOLUSIA
COUNTY.

AND THE TRIAL COURT POINTS OUT
IN POST-CONVICTION THAT THIS IS

AN EXCEEDINGLY COMPREHENSIVE
BACKGROUND INVESTIGATION.
I BELIEVE THE PHRASE THAT'S USED
IS OVER AND ABOVE.

DR. KROP ALONG WITH THE
ATTORNEYS, ALONG WITH THE
INVESTIGATOR, FLEW OUT TO THE
PANHANDLE, VISITED MILTON AND
PENSACOLA, THE HOME OF THE
DEFENDANT'S MOTHER, WHERE
INCIDENTALLY THE MOTHER AND
FATHER HAD BEEN DIVORCED AT THE
TIME OF THE -- OR AT THE
TIME OF THE TRIAL.

AND THERE WERE EXTENSIVE
CONVERSATIONS WITH MOTHER,
FATHER AND TWO NATURAL SIBLINGS.
AND THERE WAS NO MENTION
WHATSOEVER OF INFIDELITY THAT
NOW BECOMES AN ISSUE.

IT'S ONLY AFTER BETTY HALL HAS
PASSED AWAY NOW IN
POST-CONVICTION THAT THIS
INFORMATION COMES OUT, THAT IT'S
AN INFIDELITY, AND THAT'S WHAT
CAUSED HIS RAPIST BEHAVIOR AND
THAT TYPE OF THING.

BUT IT'S AN EXTENSIVE BACKGROUND
INVESTIGATION.

THEY TALKED TO TEACHERS, THEY
TALKED TO COACHES, THEY TALKED
TO CLASSMATES, THEY TALKED TO
ANYONE THAT HAD HAD CONTACT WITH
THE DEFENDANT.

AND ALL OF THAT INFORMATION
EITHER DR. KROP WAS THERE FOR,
PRESENT ON SCENE OR WAS DIRECTLY
RELAYED TO HIM--

>> DID DR. KROP RECOMMEND THAT
HE NOT BE CALLED AT TRIAL?

>> IT WAS DR. KROP THAT ACTUALLY
BROUGHT THIS TO THE ATTENTION OF
THE ATTORNEYS.

>> I MEAN, THAT'S--

>> AND CALLED THE MEETING.

>> I MEAN, TO ME, THAT'S-- WE
SEE DR. BERLIN, DR. KROP,
DR. DANZIGER, THESE EXPERTS
THAT ARE PRIMARILY CALLED BY
DEFENDANTS ARE PRETTY

KNOWLEDGEABLE THEMSELVES IN WHAT IS, MIGHT BE THE BEST USE OF THEM.

THIS IS, I WAS LOOKING AT THE DUNCAN CASE, VERY DIFFERENT FROM DUNCAN WHERE THE TRIAL COURT FOUND THAT THEY WERE DEFICIENT AND HAD NO STRATEGIC REASON FOR NOT CALLING THE EXPERT.

SO THIS IS--

>> VERY DIFFERENT SITUATION. EXACTLY.

AND THE TRIAL COURT AND, EXCUSE ME, THE POST-CONVICTION COURT MAKES THAT FINDING THAT DR. KROP, WE ALL KNOW HIS NAME, HE'S A VERY, EXCUSE ME, EXTENSIVE, WORKS ON CAPITAL CASES EXTENSIVELY.

HE'S VERY EXPERIENCED.

HE KNOWS WHAT IS MITIGATING, AND IT IS HIS JOB TO BRING OUT THIS MITIGATING INFORMATION.

AND THE CONCERN WITH THIS CASE IS HE JUST DIDN'T FIND ANYTHING MITIGATING WITH ENOCH HALL.

AS JUSTICE LEWIS POINTED OUT, HE HAD WHAT WAS REFERRED TO AS, ESSENTIALLY, AN IDYLIC CHILDHOOD.

IN THEIR INVESTIGATION THEY SAY IN POST-CONVICTION WE KEPT LOOKING FOR SOMETHING BAD, BUT HE JUST HAD KIND OF A GREAT CHILDHOOD AND ESPECIALLY NOT WHAT IS THE NORM FOR CAPITAL DEFENDANTS.

AND IN THIS, HIS FAMILY WAS VERY SUPPORTIVE.

EVEN THOUGH THERE WAS A DIVORCE, THEY BOTH COMMUNICATED WITH DR. KROP, WITH THE ATTORNEYS.

THEY HAD HIS MEDALS--

>> HOW OLD WAS HE WHEN HE COMMITTED HIS FIRST MURDER?

>> WELL, THIS IS THE ONLY MURDER THAT WE THOUGHT OF, AND THIS WAS 39.

>> OKAY.

SO THE OTHER TWO WERE--

>> THEY WERE VERY AGGRAVATED,
VIOLENT RAPES.

>> AND THERE WAS NEVER ANY--
AND HOW OLD WAS HE WHEN HE
COMMITTED THESE VIOLENT RAPES?

>> HE WAS INCARCERATED FROM
1999--

>> FOR SOMETHING ELSE?

>> NO, ON THOSE CASES.

>> ALL RIGHT.

>> EXCUSE ME, NO.

HE WAS ORIGINALLY ADMITTED TO
D.O.C. ON THOSE CASES 4, 1, 94.
AND HIS DATE OF BIRTH IS 69, SO
HE WAS, I BELIEVE, IN HIS EARLY
20s.

>> AND THERE WAS NO EXPLANATION
FOR WHAT HAPPENED IN HIS
CHILDHOOD THAT WOULD LEAD HIM TO
HAVE BECOME A VIOLENT RAPIST?

>> WELL, HIS COACHES ACTUALLY
TESTIFIED-- AND THIS CAME OUT
IN POST-CONVICTION-- WHEN THEY
WERE DOING THE, THE ATTORNEYS
WERE DOING THE MITIGATION
BACKGROUND INVESTIGATION, ONE OF
THE COACHES SAID HE'S JUST TOO
FAR GONE, HE'S A BAD KID.
ONE OF THE OTHER COACHES SAID
HE'S A TICKING TIME BOMB JUST
WAITING TO EXPLODE.

SO THERE WERE ALLEGATIONS THAT
HE WAS A VIOLENT PERSON BACK
THEN.

NOW, WHAT CAME OUT AS MITIGATION
AND WHAT WAS ACTUALLY ACCORDED
WEIGHT IN MITIGATION FOR
NONSTATUTORY WAS THE RAPE IN THE
ESCAMBIA COUNTY JAIL WHEN HE WAS
19.

THAT INFORMATION CAME OUT.

AND THAT'S ANOTHER TESTAMENT
TO THE BACKGROUND INVESTIGATION
ESPECIALLY--

>> HE'D ALREADY RAPED--

>> WHEN HE WAS 19-- HE ALLEGES
THAT HE WAS RAPED AT 19 WHEN HE
WAS IN THE ESCAMBIA COUNTY JAIL.

>> AND THEN THE OTHER RAPES
OCCURRED AFTER THAT?

>> CORRECT.
>> AND THAT'S--
>> THERE ARE THREE SEPARATE VICTIMS AND THREE DIFFERENT CASES, BUT THEY ARE ALL--
>> BUT THERE WAS NO VERIFICATION THAT HE HAD BEEN RAPED IN JAIL?
>> THAT'S WHAT I WAS GOING TO SAY, JUSTICE PARIENTE. THAT'S A TESTAMENT TO THE DEPTH OF THE BACKGROUND INVESTIGATION. INVESTIGATOR RYAN FLEW TO THE PANHANDLE MULTIPLE TIMES IN AN ATTEMPT TO FIND SOME DOCUMENTATION OF IN THIS TO PRESENT IT IN THE PENALTY PHASE. RECORDS HAD BEEN PURGED AFTER SEVEN YEARS, THERE WAS NOTHING TO BE FOUND, AND HE CONTINUED TO PERSIST, CONTINUED TO PERSIST AND ACTUALLY FOUND SOME VERIFICATION OF IT. NOW, IN THE RECORD THEY SAY THAT THE CHARGES WERE ULTIMATELY, THE ESCAMBIA COUNTY JAIL FOUND THAT IT WAS NOT FOUNDED, BUT HE WAS ACCORDED MITIGATION, SO WE'RE ASSUMING THAT THAT DID OCCUR. BUT HE, THE TRIAL COURT ALREADY HEARD ABOUT THAT, AND HE WAS ACCORDED MITIGATION FOR THAT.
>> WHAT ABOUT THE TWO WITNESSES THAT YOUR OPPONENT SAYS THAT THEY SHOULD HAVE BROUGHT IN BUT DIDN'T BECAUSE THE DEFENDANT SAID NOT TO BOTHER THEM OR THEY TOLD THE INVESTIGATOR OR--
>> THAT, SPECIFICALLY THE UNCLE, EUGENE HALL, WHO WAS CALLED IN POST-CONVICTION, THE INVESTIGATOR AND THE ATTORNEYS TESTIFIED THAT-- AND THERE WASN'T A SPECIFIC NOTE ABOUT IT THAT'S IN THIS RECORD, BUT THEY BOTH, ALL PARTIES INVOLVED SAY I REMEMBER HE DIDN'T WANT US TO TALK TO THE HALF-SIBLINGS, OF WHICH THERE WERE FOUR, AND TWO NATURAL--
>> WAS THERE SOME REASON NOT TO

TALK TO THEM OR TALK TO THE
UNCLES?

>> WELL, THIS STARTED OUT AS A
PLEA.

WHEN THE TRIAL COUNSEL FIRST
CONTACTED MR. HALL, HE JUST
WANTED TO PLEA.

AND THE TESTIMONY CAME OUT IN
POST-CONVICTION, YOU KNOW,
THAT'S NOT WHAT WE'RE HERE FOR.
IT'S OUR JOB TO MAKE SURE THAT
YOU GET YOUR DUE PROCESS AND
THAT EVERYTHING'S DONE BY THE
BOOK, SO LET'S GO AHEAD AND DO
THIS MITIGATION.

SO THAT ALSO COMES INTO PLAY,
WHY INVESTIGATOR RYAN DIDN'T
WANT TO GO SPECIFICALLY AGAINST
ENOCH HALL'S WISHES.

WE'RE ALREADY DEALING WITH A
CLIENT WHO TENTATIVELY DOESN'T
WANT TO COOPERATE WITH THE TRIAL
PROCESS.

SO HE DOESN'T WANT TO GO TALK TO
THE UNCLES WHEN HE'S
SPECIFICALLY ASKED NOT TO
TALK TO THE UNCLES.

THE UNCLE THAT WAS CALLED IN
POST-CONVICTION WAS EUGENE HALL,
AND THAT'S THE UNCLE THAT
TESTIFIED TO THE ALLEGATIONS OF
INFIDELITY WITH MR. HALL'S
MOTHER WHO'S NOW DECEASED.

ALSO MY OPPOSING COUNSEL MADE A
COMMENT ABOUT INEFFECTIVENESS
FOR FAILING TO PUT ON PET SCAN
INFORMATION, EEG INFORMATION.

AGAIN, THE TRIAL COUNSEL GOT ALL
OF THIS TESTING DONE.

THERE WAS A PET SCAN THAT WAS
DONE, THERE WAS AN EEG THAT WAS
DONE, THERE WAS AN MRI THAT WAS
DONE, AND THEY HIRED DR. TANNER
WHO REVIEWED THOSE.

THE PET SCAN WAS NORMAL, THE EEG
WAS NORMAL AND THE MRI ONLY
SHOWED SOME ABNORMALITY AND SOME
WHITE MASS WHICH WAS NOT
CONSISTENT WITH THE THEORY OF
EPILEPTIC--

>> SO WHERE DOES THE INFORMATION ABOUT THE ABNORMAL BRAIN SHAPE COME FROM?

>> AND THAT COMES FROM THE MRI. DR. TANNER DOES TESTIFY-- AND DR. KROP HAD THIS INFORMATION BECAUSE THIS CAME OUT IN THE SPENCER HEARING.

>> BUT WAS THERE ANY REALLY REASON NOT TO PUT THAT ON? I MEAN, I CAN UNDERSTAND DR. KROP SAYING THAT WITH ALL THIS OTHER NEGATIVE INFORMATION, YOU KNOW, A BRAIN SCAN OR A PET SCAN OR SOMETHING THAT SHOWS THIS KIND OF BRAIN ABNORMALITY IS REALLY SORT OF OBJECTIVE EVIDENCE AT, YOU KNOW, EITHER IT'S THERE OR IT'S NOT THERE. SO WHY NOT PRESENT IT?

>> WELL, AND JUST TO BE CLEAR, JUSTICE QUINCE, THE REASON THAT TRIAL COUNSEL GAVE FOR NOT PUTTING IT ON IS BECAUSE, AGAIN, THE PET SCAN WAS NORMAL. THE EEG WAS NORMAL. THE MRI, THERE WERE NO FOCAL ABNORMALITIES, AND THE ONLY THING THAT WAS EVIDENCED ON THE MRI WAS ASYMMETRY.

NOW--

>> BUT THE BRAIN SHAPE WAS ON WHAT?

>> WAS ON THE MRI. IT SHOWED ASYMMETRY BUT NO FOCAL ABNORMALITIES.

>> AND THAT WAS NOT CONNECTED TO ANY CONDUCT OR BEHAVIOR, WAS IT?

>> CORRECT.

WELL, THEY COULDN'T TIE IT TO ANYTHING.

>> IT WAS A BIOLOGICAL FACT--

>> CORRECT.

>>-- WITHOUT ANY CONSEQUENCES.

>> AND IT'S SIMILAR TO THE PHRENOLOGY ARGUMENT THAT, YOU KNOW, THE BIOLOGICAL SHAPE OF THE BRAIN CAN'T BE TIED TO ANY TYPE OF BEHAVIORAL.

AND SPECIFICALLY--

>> AND IS THAT WHAT DR. KROP SAID?

>> DR. KROP DID NOT SAY THAT BECAUSE THE INFORMATION ONLY CAME OUT IN REBUTTAL.

DR. TANNER WAS NOT CALLED.

DR. TANNER WAS RETAINED BY TRIAL COUNSEL.

HE HAD THIS TESTING DONE AND EVALUATED BY DR. TANNER, BUT DR. TANNER ONLY WAS DEPOSED. THERE WAS NOTHING MITIGATING, SO THEY DECIDED NOT TO CALL DR. TANNER.

BUT THERE WAS A FILE, AND THIS TESTIMONY CAME OUT IN THE EVIDENTIARY HEARING.

BECAUSE YOU'RE KIND OF CUTTING OFF SOME OF YOUR LICENSE OF ARGUMENT THERE BECAUSE THE PET SCAN AND THE EEG WERE NORMAL. AND TRIAL COUNSEL ACTUALLY TESTIFIED THAT THEIR OVERARCHING THEORY WAS TO SAY-- BECAUSE ALL THEY HAD WAS TO WORK WITHIN THE CONFINES OF THE SPONTANEOUS CONFESSION AND THE CONTINUOUS CONFESSION THAT ENOCH HALL GAVE WHICH WAS I WAS TRYING TO GET PILLS, I FREAKED OUT, I SNAPPED, I KILLED HER.

SO THAT'S WHAT THEY HAD TO WORK WITH.

SO MR. HALL COULDN'T STATE WHAT PILLS HE TOOK, JUST THAT THEY WERE LITTLE WHITE, ROUND PILLS.

SO WHEN THEY BACKTRACKED--

>> HE WAS TRYING TO GET THEM FROM WHERE?

I GUESS I'M KIND OF-- HOW DID THE CORRECTIONS OFFICER PLAY INTO HIM TRYING TO GET PILLS?

>> WELL, AND SHE DIDN'T.

THAT'S WHY THIS THEORY WOULD NOT HAVE BEEN MORE MITIGATING IN POST-CONVICTION, THE THEORY THAT WAS PRESENTED THAT HE TOOK THE PILLS AND THAT, YOU KNOW, HE WAS LOOKING FOR THE PILLS, SO THAT'S WHY HE KILLED HER.

BUT THE THEORY IN TRIAL THAT TRIAL COUNSEL PUT FORWARD WAS THAT BECAUSE HE TOOK THESE PILLS WHICH THEY SUBSEQUENTLY FOUND OUT WERE TEGRETOLL WHEN THEY TESTED THOSE WHICH ARE AN ANTI-EPILEPTIC AND IBUPROFEN.

>> THOSE HAPPENED TO BE IN ANOTHER INMATE'S RECORDS IN THE OFFICE--

>> ABSOLUTELY.

>> I MEAN, JUST SO WE GET A FULL PICTURE HERE.

>> YES, THAT'S CORRECT.

>> THAT'S WHERE THOSE WERE.

>> AND WE CAN'T EVEN BE SURE, AND TRIAL COUNSEL TESTIFIED THEY CAN'T EVEN BE SURE THAT'S WHAT HE TOOK.

>> THAT'S WHERE THAT COMES FROM THOUGH.

>> CORRECT.

BECAUSE THESE PILLS WHEN THEY FOUND THEM AFTER SECURING THE CRIME SCENE WERE LITTLE WHITE PILLS IN A BLISTER PACK, THAT FITS.

HE SAID HE TOOK LITTLE WHITE PILLS IN THAT AREA.

THEY HAD TO GO WITH THAT THEORY, IT'S NOT A PILL YOU TAKE TO GET HIGH, THERE'S NO EUPHORIC PROPERTIES TO IT, AND THAT ALL CAME OUT.

BUT WHAT THEY HAD TO WORK WITH WAS THAT THESE PILLS WOULD UNMASK AN UNDERLYING PSYCHOLOGICAL CONDITION.

SO TO DO THAT, THEY ACTUALLY CALLED DR. BUFFINGTON, DR. BUFFINGTON WHO IS A PHARMACIST ACTUALLY TESTIFIED THAT, YOU KNOW, BASED ON THIS PILL'S STRUCTURE, HE COULD BE PSYCHOTIC IF HE HAD AN UNDERLYING CONDITION, IT COULD UNMASK THAT CONDITION.

SO THAT'S THE THEORY THAT THEY PUT FORTH.

>> WAS HE TRYING TO ESCAPE?

>> WELL, MANY THREE OF HIS STATEMENTS-- IN THREE OF HIS STATEMENTS HE SAYS, YES.

IN HIS STATEMENT TO DR. DANZIGER, IT'S SLIGHTLY DIFFERENT.

BUT HE GIVES THREE DIFFERENT STATEMENTS WITH SLIGHTLY DIFFERENT VERSIONS OF EVENT ARES.

THE FIRST WAS THAT HE JUST WANTED THE PILLS TO GET HIGH. SHE GRABBED HIS ARM IN THE PAINT SHOP, SO HE FREAKED OUT AND STABBED HER 32 TIMES.

>> AND HOW LONG-- AGAIN, HE HAD BEEN IN PRISON AND WORKING IN THIS SHOP FOR HOW MANY YEARS?

>> I'M NOT SURE IF HE STARTED IN THE PRIDE FACILITY RIGHT AWAY BECAUSE IT'S A COVETED POSITION, BUT HE WAS IN PRISON FOR 19 YEARS, AND HE HAD WORKED HIMSELF UP TO A LEAD WELDER POSITION WHERE THE TESTIMONY WAS THAT HE WORKED APPROXIMATELY 80 HOURS A WEEK--

>> SO IT'S PROBABLY-- HE PROBABLY DID SNAP IF HE WASN'T TRYING TO ESCAPE.

>> WELL, AND ACTUALLY--

>> DOESN'T EXCUSE WHAT HAPPENED HERE.

>> WELL, AND THE WAY THAT THE FACTS CAME OUT, IT WAS GENERALLY NOT OFFICER FITZGERALD.

SHE WAS COVERING FOR ANOTHER CORRECTIONS OFFICER THAT GENERALLY DID THIS PRIDE FACILITY.

SO MR. HALL SAW AN OPPORTUNITY. IT WAS AN ATTRACTIVE FEMALE BE, SHE WAS NOT THE PERSON WHO WAS VERY FAMILIAR WITH THE CLOSING DOWN OF THE PRIDE FACILITY. HE KNEW IF HE HID AND LAID IN WAIT MORE HER, THEN-- FOR HER, THAN SHE WOULD HAVE TO COME LOOKING FOR HIM, SO HE JUST SAW AN OPPORTUNITY AND TOOK IT.

AND THAT WAS THE STATE'S POSITION AT TRIAL, AND THAT WAS THE WAY THE FACTS PLAYED OUT. BUT THAT WAS ONE OF THE CLAIMS THAT WAS BROUGHT UP IN POST-CONVICTION, THAT BECAUSE HE WORKED SO MUCH IN THE PRIDE FACILITY, HE WAS OVERWORKED, HE SNAPPED, HE WAS JUST TRYING TO GET HIGH.

S DECIDES THE FACT THAT IT'S NOT AN INTOXICATING A SUBSTANCE ABUSE--

>> THEY WERE TALKING ABOUT ALL THE STRESS THAT WAS INVOLVED IN WORKING IN THE PRIDE FACILITY AND THAT WOULD HAVE-- SHOULD HAVE BEEN BROUGHT OUT TO SORT OF AT LEAST EXPLAIN WHY HE MIGHT HAVE SNAPPED.

>> THAT'S CORRECT.

THAT WAS ONE OF THE CLAIMS. AND TRIAL COUNSEL SPECIFICALLY SPOKE TO THAT AND SAID THE REASON THAT WE DIDN'T BRING UP STRESS-- AND IT WAS ACTUALLY REJECTED IN THE SENTENCING ORDER BECAUSE THEY DIDN'T FOCUS ON IT-- BUT THE TESTIMONY WAS PRESENTED.

THEY CALLED FOUR WITNESSES FROM THE PRIDE FACILITY TO COME AND TESTIFY.

ONE REFUSED TO TESTIFY AND SAID I DON'T AGREE WITH WHAT HAPPENED TO FITZGERALD, I'M NOT GOING TO HELP YOU.

THREE DID TESTIFY.

BUT EVEN IN POST-CONVICTION THE TWO ADDITIONAL PRIDE WORKERS THAT WERE CALLED TO TESTIFY IN POST-CONVICTION, THEY SAID, YES, THEY'RE BUSY, BUT EVERYONE LOVED THEIR JOB.

THERE WERE NO NEGATIVE CONSEQUENCES IF YOU WERE BEHIND, AND ENOCH HALL WAS ACTING COMPLETELY NORMALLY THAT DAY.

THERE WAS NO INDICATION THAT HE WAS UNDER EXTREME STRESS.

>> THANK YOU.

>> THANK YOU.

I WOULD ASK THAT THIS COURT
AFFIRM THE CIRCUIT COURT'S
DENIAL OF POST-CONVICTION
RELIEF.

THANK YOU.

>> IF I RUN OUT OF TIME, PLEASE
LOOK AT THE REPLY BRIEF, BECAUSE
SO MUCH OF THIS HAS BEEN HANDLED
THERE.

AS TO THE ESCAPE, THAT WAS NOT
IN ANY OF HIS INTERROGATION
STATEMENTS.

WHEN HE KEPT BEING PRESSED ABOUT
WHY DID YOU PULL THE PANTS
DOWN, WHY-- WERE YOU TRYING TO
ESCAPE?

YEAH, MAYBE.

BUT THEN ANOTHER TIME HE DIDN'T
KNOW WHY HE PULLED DOWN THE
PANTS.

MAYBE HE HAD THIS IDEA THAT HE
WOULD, AS SHE SAID, POSTMORTEM
RAPE.

RAPE WAS NEVER THE MOTIVE FOR
THE MURDER--

>> BUT ISN'T, GOING BACK TO WHAT
WAS-- IF THEY HAD PUT ON
DR. KROP, WASN'T THERE A
STATEMENT THAT HE HAD CONSIDERED
RAPING HER?

>> MOST MORE THE THEM--
POSTMORTEM.

AND WHAT I'M SAYING IS THAT--

>> AND THAT COULDN'T HAVE COME
OUT BEFORE THE JURY?

>> THE JURY IS GOING TO KNOW THE
PANTS ARE DOWN.

>> BUT THAT HE'S GIVING AN
EXCUSE.

BUT NOW YOU'VE GOT DR. KROP WHO
SAYS, WELL, HE TOLD ME HE
CONSIDERED RAPING HER.

>> DR. KROP SAID DID YOU--
WELL, MAYBE.

THEY KEPT PRESSING HIM-- I'M
SORRY.

>> THE WHOLE THING WITH
POST-CONVICTION CASES IS HAD,

HAD HE PRESENTED THAT EVIDENCE AND DR. KROP WOULD HAVE TESTIFIED BEFORE THE JURY ABOUT THE POSTMORTEM RAPE INTENTIONS, YOU WOULD HAVE BEEN HERE ARGUING THAT HE SHOULDN'T HAVE BROUGHT THAT OUT.

I MEAN, THIS IS WHERE WE GO WITH THESE THINGS.

>> WELL, I THINK REALLY WE DON'T HAVE TO GUESS HOW IT WOULD GO DOWN.

YOU LOOK AT THE SPENCER HEARING TESTIMONY.

IT'S NOT DAMAGING TESTIMONY. THERE ISN'T ANYTHING THAT COMES OUT FROM DR. DANZIGER THAT'S TERRIBLY DAMAGING.

ANTISOCIAL BEHAVIOR, WE ALREADY KNOW HE'S UNDER ARREST.

THAT'S WHAT THAT MEANS.

THE DRUG ABUSE IN REMISSION BECAUSE HE'S IN PRISON, WE HAD THE INSPECTOR GENERAL SAY, OH, THERE'S DRUGS IN PRISON.

THAT'S A FALSE ASSUMPTION.

DRUGS COME IN THROUGH THE TOWARDS, THROUGH THE PRISONERS, SO THAT'S A FALSE ASSUMPTION.

PARAPHILIA, YOU'RE ALREADY HEARING ABOUT RAPE.

SO IF THERE'S A DISORDER, THAT'S GOING TO BE A DIAGNOSIS THAT DAMAGES HIS CASE?

>> HOW ABOUT ALL THE CLAIMS OF THE MENTAL MITIGATION, THE EVIDENCE COMING IN THAT HE'S MALINGERING?

>> NO, NOT MALINGERING.

AS TO THE SCAN THAT YOU DO.

MALINGERING IS NOT A DIAGNOSIS.

>> OKAY.

>> IT MEANS THERE'S NO EVIDENCE OF A PSYCHIATRIC DISORDER.

IT DOES NOT GO TO THE COGNITIVE DISORDER WHICH IS BASED ON PHYSICAL ABNORMALITIES.

AND THE FOCAL ABNORMALITIES-- DIDN'T SAY THERE WASN'T ANY.

IF YOU READ THE MRI, IT SAYS DO NOT EXTEND TO THE CEREBRAL CORTEX WHICH IS THE OUTER LAYER OF THE BRAIN.

DR. TANNER SAID THESE FINDINGS OF ASYMMETRY AND ATROPHY COULD SUPPORT A FINDING OF THE COGNITIVE DEFICITS.

AND SO THE IF YOU LOOK AT DR. KROP'S TESTIMONY, HIS FINDINGS THAT THERE'S A SERIOUS EMOTIONAL DISORDER, THE JURY NEVER HEARD THAT.

THEY DIDN'T EVEN GET AN INSTRUCTION ON THAT.

AND BE WHY WOULDN'T THAT BE CRUCIAL IF WE'RE CONSIDERING WHETHER OR NOT THERE WAS SNAPPING GOING ON AS OPPOSED TO SOME OTHER MOTIVE?

THERE WAS NO EVIDENCE OF A RAPE OR AN ATTEMPTED RAPE.

SO THE PANTS BEING PULLED DOWN IS REALLY A FALSE CLUE BECAUSE THIS IS SOMETHING THAT HAPPENED WHEN MR. HALL HAD ALREADY SNAPPED.

HE'S IN THIS DERANGED STATE. AND NOW PERHAPS HE IS PANDERING TO LOWER BASE INSTINCTS.

PERHAPS THE PARAPHILIA IS A DISORDER THE JURY SHOULD HAVE HEARD ABOUT ONCE HE LOST CONTROL, BUT THEY DON'T HEAR ABOUT THAT.

THEY ASKED FOR AN INSTRUCTION ABOUT STRESS, BUT THEY PUT ON NO EVIDENCE.

MR. PHILLIPS SAID THAT'S THE MOTIVE HE GAVE US FOR NEEDING THE PILLS.

YOU PUT IT ON AS A MITIGATOR, AND YOU PUT ON NO EVIDENCE OF IT BECAUSE THEY DIDN'T UNDERSTAND THAT WHAT THE INMATE SAID WITH WE WEREN'T PUNISHED.

AND THEN THEY DIDN'T ASK THE NEXT QUESTION.

THEY ALL SAID THEY WERE STRESSED, BUT THEY DIDN'T ASK

THE NEXT QUESTION, WELL, WHY ARE YOU STRESSED IF YOU'RE NOT YOU PUT IT ON AS A MEDICATOR AND PUT EVIDENCE OF IT BECAUSE THEY DIDN'T UNDERSTAND WHAT THE INMATE SAID AS THEY WEREN'T PUNISHED AND DIDN'T ASK THE NEXT QUESTION.

THEY SAID THEY WERE STRESSED BUT DIDN'T ASK THE NEXT QUESTION WAS WHY ARE YOU STRESSED IF YOU ARE NOT PUNISHED, THAT YOU ARE SENT TO SOLITARY, BUT THEY WOULD HAVE BEEN DEMOTED, WOULD HAVE LOST THEIR POSITION, THIS IS CRUCIAL BECAUSE SO FEW POSITIONS IN PRISON WERE PAID POSITIONS AND ESPECIALLY GOD OVER TIME. YOU COULD SUPPORT YOUR SELF, COULD HAVE MORE OF A DECENT LIFE.

LYING IN WAIT, THE EVIDENCE, EXPECTING A COME BACK IS ANOTHER CLAIM, THE MOST UNUSUAL CIRCUMSTANCE THAT COULD HAVE BEEN PRESENTED BECAUSE HER GOING BACK BY HERSELF AFTER EVERYONE HAD BEEN RELEASED IS NOT THE NORMAL.

I WOULD ASK THIS COURT TO CONSIDER NOT ONLY DEMANDING THIS FOR A NEW PENALTY PHASE, THE GUILT PHASE, THE JURY DIDN'T HAVE AN OPPORTUNITY TO SERIOUSLY CONSIDER THE SECOND-DEGREE MURDER.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS, COURT IS IN RECESS FOR TEN MINUTES.

>> ALL RISE.