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Donny L. Crook vs State of Florida

THE FINAL CASE ON THE COURT'S DOCKET THIS MORNING IS CROOK VERSUS STATE. THANK YOU, COUNSEL, FOR YOUR HELP.

MAY IT PLEASE THE COURT. I AM STEVE BOLOTIN OF THE PUBLIC DEFEND EVER'S OFFICE IN -- OF THE PUBLIC DEFENDER'S OFFICE IN BARTOW. I REPRESENT THE APPELLANT, DONNY CROOK. THIS IS AN ONE-ISSUE CAPITAL CASE. THERE IS ONE SERIOUS AND ONE OVERWHELMING ERROR IN THE SENTENCING ORDER THAT COULD RESULT IN A REMAND FOR RESENTENCING, BUT ON THIS RECORD, I BELIEVE THIS COURT CAN DETERMINE THAT THE DEATH SENTENCE IS DISPROPORTIONATE, IN ANY EVENT, AND THAT A REMAND IS UNNECESSARY. IN ADDITION, THIS IS A TRUE PROPORTIONALITY CASE, IN THE SENSE THAT IT INVOLVES VERY LITTLE, IF ANY, CONFLICTING EVIDENCE AS TO EITHER THE AGGRAVATORS OR THE MITIGATORS. WE CONCEDE THE EXISTENCE OF THE AGGRAVATORS AND THE SATISFACTION OF THE AGGRAVATION PRONG OF THE PROPORTIONALITY STANDARD. AS TO THE MITIGATORS, HOWEVER, THIS IS MOST DEFINITELY NOT ONE OF THE LEAST MITIGATED FIRST-DEGREE MURDERS, AND UNDER THE STANDARD RECENTLY ANNUNCIATED IN THE COOPER AND ALMEIDA CASES, THE APPROPRIATE SENTENCE IS LIFE IMPRISONMENT. I WILL START WITH THE FACT THAT THIS WAS NOT A PREMEDITATED MURDER. THIS WAS A ROBBERY COMMITTED BY A BRAIN-DAMAGED, INTOXICATED, BY BOTH ALCOHOL AND DRUGS, INDIVIDUAL, THAT ESCALATED, WHEN, ACCORDING TO THE STATE'S OWN THEORY OF WHAT OCCURRED, THE VICTIM ATTEMPTED --

LET ME STOP YOU THERE. I APPRECIATE THE ONE ISSUE, GIVING US ONE ISSUE. IT IS, CERTAINLY, REFRESHING TO HAVE THAT, BUT ON YOUR -- YOU JUST SAID, NOW, YOU ARE NOT CONTESTING ANY OF THE AGGRAVATORS, AND THEN YOU SAY THIS IS NOT A PREMEDITATED MURDER. HOWEVER, WASN'T HE CONVICTED ON ALTERNATIVE THEORIES OF PREMEDITATED AND FELONY MURDER?

HE WAS CONVICT ODD A GENERAL VERDICT.

BUT THE ALTERNATIVE THEORY IS BEING PREMEDITATED.

RIGHT.

AND THERE IS EVIDENCE IN THE RECORD THAT HE -- THERE WAS -- THAT THE DOORS WERE LOCKED BEFOREHAND.

GOES TO PREMEDITATION OF THE ROBBERY AS THE PROSECUTOR ARGUED.

BUT TRY AND UNDERSTAND, IF WE -- SINCE YOU ARE NOT CONTESTING THE AGGRAVATORS, AND THERE WAS NO FINDING OF CCP, SO WE DON'T HAVE -- THAT IS NOT AN ISSUE, WHAT IS THE SIGNIFICANCE OF SAYING, TO US, THERE IS NO PREMEDITATION, AND HOW WOULD WE COME UP WITH THAT, IN TERMS OF LOOKING AT THIS PROPORTIONALITY ISSUE?

THE ABSENCE OF PREMEDITATION AND THE NATURE OF THE CIRCUMSTANCES OF THE CRIME IS VERY CRUCIAL TO THE PROPORTIONALITY REVIEW HERE. THE REASON THAT I CAN'T ARGUE THAT THE ABSENCE OF PREMEDITATION SHOULD ENTITLE THEM TO A NEW TRIAL OR TO REVERSAL OF THE FIRST-DEGREE MURDER CONVICTION, NOW HAD, IN THE MUNGIN CASE, JUSTICE ANSTEAD HAD A DISSENT IN THAT CASE, THAT RECOGNIZED THAT, IN SOME CIRCUMSTANCES, THE

INSTRUCTION ON A FACTUALLY UNSUPPORTED THEORY OF FIRST-DEGREE MURDER COULD AFFECT THE JURY'S VERDICT AND THAT, YOU KNOW, SHOULD, IN SOME CASES, RESULT IN REVERSAL. I CAN'T ARGUE THAT IN THIS CASE, BECAUSE IT IS CLEAR THAT THE JURY DID FIND HIM GUILTY OF FELONY MURDER. THE REASON THAT IS CLEAR IS BECAUSE, A, THEY FOUND HIM GUILTY OF THE SEXUAL BATTERY AND THE ROBBERY, AND, B, THERE IS NO EVIDENCE TO SUPPORT FELONY MURDER.

THERE ARE TWO DIFFERENT FELONIES IN THIS CASE THERE. IS THE ROBBERY AND THERE IS THE SEXUAL BATTERY.

CORRECT.

BUT IF IT DOESN'T GO TO ANY OF THE AGGRAVATORS, WHAT -- WHICH MITIGATOR -- IN OTHER WORDS IF WE FOUND THAT -- THAT THERE WOULD BE SUPPORT TO SAY THIS WASN'T THE -- THIS WASN'T A CCP CASE -- BUT IT IS ENOUGH FOR PREMEDITATED MURDER, THEN WHAT DOES IT GO TO -- WHICH MITIGATORS?

IN PROPORTIONALITY REVIEW, PROPORTIONALITY REVIEW IS NOT JUST NUMBER OF AGGRAVATING MITIGATORS. YOU HAVE TO LOOK AT THE CIRCUMSTANCES OF THE CRIME AND THE DEFENDANT. THE CIRCUMSTANCES HERE, WE HAVE GOT UNCONTRA ADDICTED, OVERWHELMING TESTIMONY -- UNCONTRADICTED, OVERWHELMING TESTIMONY, INCLUDING THE REPORT THAT THE EXPERT WAS PREPARED TO MAKE AND BACKED OUT OF IT AT THE LAST MINUTE, UNDERSTANDING THAT DONNY CROOK IS SUFFERING FROM OVERWHELMING DAMAGE TO THE FRONT LOBE. THE EMPHATIC TESTIMONY IS THAT WHAT IT AFFECTS IS THE PERSON'S ABILITY TO CONTROL THEIR IMPULSES AND CONTROL THEIR BEHAVIOR. DR. MACRANIAN, IN PARTICULAR, TALKED ABOUT THE PHENOMENA OF SHAM RAGE, WHICH SOUNDED VERY SIMILAR TO WHAT OCCURRED IN THIS CASE. NOW, WE KNOW DONNY CROOK, A 20-YEAR-OLD WITH NO PRIOR VIOLENCE, SIGNIFICANT HISTORY OF VIOLENCE. WE KNOW THAT HE IS SITTING IN THE BAR AT THE TIME THAT EVA JOHNSON DRIVES BY AND LOOKS IN AND HE SEES HER. I WILL SAVE THE ALAMEDA CASE FOR THE IMPORTANCE OF MITIGATING AGGRAVATORS. DONNY CROOK, IN HIS INTOXICATION, ON BOTH ALCOHOL, A FIFTH OF TEQUILA AND THE BETTER PART OF A CASE OF OLD MILWAUKEE BEER, PLUS HE HAD BEEN USING CRACK COCAINE AND WAS HIGH ON THAT, THAT IS NOT JUST SELF-REPORTING. THAT IS AT LEAST PARTIALLY CORROBORATED BY THE TWO STATE'S WITNESSES. HE SEES HER COUNTING MONEY, AND HE DECIDES THAT HE IS GOING TO ROB HER TO GET MORE MONEY FOR CRACK. THE ROBBERY -- WE DON'T KNOW EXACTLY WHAT OCCURRED IN THE ROBBERY, BUT THERE IS A REASONABLY HYPOTHESIS THAT IS VERY INCONSISTENT WITH THE EXISTENCE OF PREMEDITATION AND VERY CONSISTENT WITH THE MITIGATING CIRCUMSTANCES IN THIS CASE. THE PROSECUTOR SUGGESTED THAT THE STAB WOUNDS ARE CONSISTENT WITH SCISSORS, AND SHE POINTS OUT WHAT WAS MISS SPURLOCK USING TO CUT HAIR THAT DAY. SCISSORS. THE PROSECUTOR SUTSS THAT MISS SPURLOCK DEFENDED HERSELF WITH SCISSORS. THE PROSECUTOR, ALSO, SUGGESTED THAT THE BRUCE ON DONNY CROOK'S FORWARD, WHICH HE HAD EXPLAINED TO THE POLICE OFFICERS AND THE DOCTOR AS VARIOUSLY COMING FROM AN AIR COMPRESSOR AT THE TEXACO STATION, COMING FROM HITING IT ON A TREE LIMB, HITING IT ON A DOOR. THE PROSECUTOR SUGGESTED THAT WHAT HAPPENED HERE IS MISS SPURLOCK PICKED UP THE POOL COULD YOU AND WHACKED DONNY CROOK ACROSS THE FORD WITH IT. -- THE FORWARD WITH IT. NOW, ALL OF THE TESTIMONY ABOUT THE FRONTAL LOBE DAMAGE IS THAT THESE PEOPLE TEND TO OVERREACT AND FLY INTO AN ANIMALISTIC BLIND RAGE, WHERE THEY HAVE NO CONTROL. ONCE THESE EVENTS ARE SET INTO MOTION, THEY HAVE NO CONTROL OVER THEIR ACTIONS.

DID YOUR EXPERTS -- YOU HAD THREE EXPERTS. DID ANY EXPERT ACTUALLY EXPRESS THE OPINION THAT THE MURDER IN THIS CASE AND THE MANNER IN WHICH IT OCCURRED WAS CAUSED BY THE COMBINATION OF INGESTION OF ALCOHOL AND THE ORGANIC BRAIN DAMAGE TO THE FRONTAL LOBE THAT LED TO A RAGE REACTION? WAS THAT ACTUALLY EVER ASKED, AS

OPINION, AND GIVEN AS AN OPINION?

I BELIEVE THAT WORDS TO THAT EVENT WERE -- ALL THREE OF THE EXPERTS TESTIFIED THAT BOTH OF THE TWO STATUTORY MENTAL MITIGATORS EXISTED. DR. MACRANEY, THE NEUROLOGIST, WHO, BEAR IN MIND, WHAT THIS GUY DOES FOR ALIVING, HE IS A MEDICAL DIRECTOR OF A FACILITY FOR BRAIN-DAMAGED --

I DON'T WANT TO CUT YOU OFF. I UNDERSTOOD THEY ALL TALKED ABOUT WHAT KIND OF MENTAL CONDITION HE HAD, AND OBVIOUSLY IF SOMEONE HAS BRAIN DAMAGE, THEY HAVE GOT IT THE DAY BEFORE. THEY HAVE GOT IT ON THE DAY OF AN INCIDENT. WHAT I AM TRYING TO UNDERSTAND IS THE CAUSAL LINK, WHICH IS -- COULD BE, IN YOUR ESTIMATION, IS THE SIGNIFICANT ONE THAT YOU ARE ARGUING, HERE, THAT WHAT HAPPENED, HERE, WAS A A PRODUCT OF SOMEBODY THAT WAS USING ALCOHOL AND DRUGS AND THAT BECAUSE -- THAT SOMETHING SNAPPED, ESSENTIALLY, WHEN, BY A PRECIPITATING EVENT, AND BECAUSE OF THAT, BECAUSE OF THE BRAIN DAMAGE THAT HE WENT INTO AN UNCONTROLLABLE RAGE AND THIS IS WHAT HAPPENED. DID SOME -- DID EXPERTS, ACTUALLY, TIE THOSE TWO TOGETHER, NOT SAYING THE GUY IS MENTALLY ILL ON THIS DAY. HE HAS GOT A BORDERLINE IQ ON THIS DAY, BUT RELATING WHAT HIS CONDITION TO THE VERY FACT OF HOW THIS PARTICULAR MURDER OCCURRED.

THEY, ALL, MADE IT VERY CLEAR, HOW THIS PARTICULAR MURDER OCCURRED WAS VERY CONSISTENT WITH, A, BRAIN DAMAGE AND THE SPECIFIC TYPE OF BRAIN DAMAGE HE HAS. B, ADDING GASOLINE TO THE FIRE OF HIS INTOXICATION WITH ALCOHOL AND CRACK COCAINE. ALL TLEEF THE EXPERTS, AND -- ALL THREE OF THE EXPERTS, AND MOST PARTICULARLY DR. MACRANEY GAVE TESTIMONY ON. THAT DID THEY SAY, YES, DID THIS CAUSE THAT? NOT IN SO MANY WORDS, BUT THEIR READING OF DEFINING THE IMPAIRED CAPACITY TO CONTROL THE BEHAVIOR MITIGATOR AND THE EFFECTS OF THE ALCOHOL, COUPLED WITH DR. MACRANEY'S TESTIMONY ABOUT BLIND RAGE -- NOW, BEAR IN MIND DR. MACRANEY EXAMINED DONNY CROOK WAS NOT AWARE OF THE FACTS OF THE CASE. HE REACHED THE CONCLUSION THAT DONNY CROOK HAD BRAIN DAMAGE, FRONTAL LOBE SYNDROME, INDEPENDENT OF WHAT HAPPENED IN COURT. HE TESTIFIED ABOUT PEOPLE WHO HAVE THIS SYNDROME, AND THEN HE WAS ASKED, WELL, ARE THE FACTS OF THIS CASE CONSISTENT WITH THIS TYPE OF ATTACK AND THIS TYPE OF BRAIN DAMAGE, AND HIS ANSWER WAS YES. I WAS NOT AWARE OF THE FACTS, AT THE TIME THAT I DID MY EXAMINATION, BUT, YES, IT IS VERY CONSISTENT WITH IT.

WHAT IS YOUR UNDERSTANDING ABOUT THE AMOUNT OF ALCOHOL THAT WAS CONSUMED AND THE AMOUNT OF DRUG THAT IS MR. CROOK WAS ON THE NIGHT OF THIS?

THERE IS NO CONFLICTING EVIDENCE. DONNY CROOK, IN HIS STATEMENT TO POLICE OFFICERS, INDICATED THAT HE WAS DRUNK AND HIGH ON CRACK COCAINE. HE STATED THAT HE HAD DRUNK A CASE OF MILWAUKEE AND A FIFTH OF TEQUILA.

HE SAID HE BLACKED OUT, BUT THERE WAS TESTIMONY FROM THE CORRECTIONAL OFFICER THAT OVERHEARD HIM TELLING TWO PEOPLE WHAT HAD HAPPENED.

WHICH, AS A MATTER OF FACT, WHAT HE WAS OVERHEARD, HIGH NOTE, THE -- HINOTE, THE CORRECTIONAL OFFICER, THOUGHT HE WAS JUST BRAGGING AND DIDN'T REPORT IT. NUMBER TWO, HE COULD HAVE HEARD THE RUMOR FLYING AROUND THE JAIL. THE FACT IS WHERE HE SAID HE PUT THE COULD YOU WAS NOT WHERE IT WAS. IT IS -- YOU KNOW, IF YOU READ DONNY CROOK'S -- THE TAPE OF HIS CONVERSATION WITH HIS BROTH HE, JAMES, WHICH IS IN THE RECORD IN THREE DIFFERENT PLACES. THE STATE INTRODUCED IT DURING THE OFFICER'S TESTIMONY. THEY INTRODUCED IT DURING THEIR CLOSING ARGUMENTS. THEY PLAYED IT, AGAIN, DURING THEIR CLOSING ARGUMENT. IT WAS PLAYED, A THIRD TIME, IN RESPONSE TO THE JURY'S QUESTION. ONE OTHER THING IS THAT THE TRANSCRIPTS OF TWO OF THEM ARE IDENTICAL BUT

THE THIRD ONE IS QUITE DIFFERENT, BUT HERE IT DOESN'T REALLY MATTER. DONNY CROOK, IT IS PRETTY CLEAR, FROM THE TOTALITY OF HIS CONVERSATION WITH HIS BROTHER AND FROM HIS STATEMENT TO THE DETECTIVES, THAT HE, REALLY, DOESN'T HAVE A VERY GOOD IDEA OF WHAT OCCURRED. YOU KNOW, YOU COULD SAY THAT IT IS, YOU KNOW --

DID HIS COUSIN TESTIFY?

HIS BROTHER? NO, HIS BROTHER DID NOT.

HIS COUSIN.

MELISSA LEM I AND DAVID -- MELISSA LEMAY AND DAVID LEMAY, HIS COUSINS, THERE WAS COMPARING -- FIRST OF ALL EVA JOHNS SAW HIM ON HIS BICYCLE PRIOR TO THE TIME THIS WAS OCCURRING AND HE HAD A CASE OF BEER AND IT WAS GETTING LOW, ON THE BUYS SICKLE. MELISSA LEMAY TESTIFIED THAT HE SEEMED TO BE HIGH AND SHE THOUGHT HE WAS HIGH ON CRACK OR PAPER. THE PUPILS, SHE COULDN'T SEE THE COLOR OF HIS EYES.

DID HE CHANGE HIS CLOTHES THERE?

THE TESTIMONY OF MELISSA AND DAVID WOULD INDICATE, YEAH, HE DID CHANGE HIS CLOTHES THERE.

AND THEN SHE WAS GOING TOO LET HIM SLEEP IN HER GARAGE.

SHE LET HIM SLEEP IN HER GARAGE.

AND THEN THE NEXT HE IS SEEN IS TWO HOURS LATER?

HE WAS SEEN -- HE WAS STOPPED BY AVON PARK POLICE OFFICERS, WHO SAID THAT HE HAD, LIKE, SCRATCHES AND A BRUISE AND ASKED HIM FOR AN EXPLANATION, AND HIS EXPLANATION SEEMED PLAUSIBLE TO THEM, SO THEY DIDN'T THINK MUCH OF IT AT THAT POINT. LATER --

HE WAS ON HIS BICYCLE AT THAT POINT.

I BELIEVE HE WAS.

WAS THEIR TEST MONEY FROM THEM AS TO HIS STATE OF SOBRIETY?

THEY THOUGHT HE WAS NERVOUS, AND THAT THE JITTERS WAS CONSISTENT. THEY ACKNOWLEDGED THAT THE JITTERS WAS CONSISTENT WITH THE DRUG USE, BUT THEY DID NOT THINK THAT HE WAS IMPAIRED. AGAIN, BEAR IN MIND, ALSO, THAT THAT WAS A COUPLE OF HOURS LATER.

THIS -- APPARENTLY HE WAS LAST SEEN ABOUT EIGHT O'CLOCK, AND THEN THIS -- LAST SEEN AT ELEVEN OKAY? A COUPLE OF HOURS? -- AT ELEVEN O'CLOCK?

A COUPLE OF HOURS? WHEN WAS HE NEXT SEEN, AFTER THAT?

I BELIEVE IT WAS THE NEXT MORNING, WHEN SHE WOKE HIM UP.

IN THEIR GARAGE.

YES. BEAR IN MIND THAT ON THIS RECORD, SIMILAR TO THE NIBERG AND SOME OF THE OTHERS, IT IS NOT NECESSARY TO HAVE A CAMPBELL-TYPE REMAND, HERE, BECAUSE THIS COURT CAN DETERMINE, ON THE UNCONTRADICTED OVERWHELMING EVIDENCE HERE, THAT THIS CASE DOES NOT MEET THE MITIGATING STANDARD, BUT THE TRIAL COURT'S REJECTION, IN BOTH HIS

FINDINGS ON THE NONSTATUTORY MITIGATORS AND THE STATUTORY MITIGATORS, THE JUDGE, POINT-BLANK, SAID THERE IS NO EVIDENCE TO SUPPORT THE EXISTENCE OF BRAIN DAMAGE IN THIS CASE, AND THAT IS JUST FLAT WRONG AND VIRTUALLY INEXPLICABLE. AGAIN --

WHAT IS THE EVIDENCE THEY RELIED ON? SOME TYPE OF PIPE JURY TO THE HEAD, WITH HOSPITAL RECORDS?

WELL, THE EVIDENCE IS THE OPINION OF ALL OF THE --

THEY HAD TO RELY ON SOMETHING AS WELL, THOUGH.

UNDERLYING INFORMATION.

ALL OF THE THREE DOCTORS THAT TESTIFIED, TALKED ABOUT THE TYPES OF THINGS THAT CAUSED ORGANIC FRONTAL LOBE BRAIN JURIES. DR. MCLAIN, I BELIEVE, IS THE ONE THAT WENT INTO THAT MOST. HE IDENTIFIED FIVE COMMON CAUSATIVE FACTORS AND SPECIFICALLY SAID THAT FOUR OF THOSE APPLY IN THIS CASE, EITHER AS TO THE INITIAL CAUSE OR TO EXACERBATING CAUSES. THE ONLY ONE THAT DID NOT WAS BIRTH TRAUMA.

DID THE UNDERLYING FACTS SUPPORT THAT? FOR EXAMPLE THE PIPE TO THE HEAD. THE HOSPITAL RECORDS. DID THOSE TWO COORDINATE PROPERLY?

THERE IS A RECORD FROM A DR. HASCOVAC, WHEN DONNY CROOK WAS FIVE YEARS OLD, THAT STATED THAT HE WAS HIT ON THE HEAD WITH PIPES AND THAT HE WAS UNCONSCIOUS FROM THAT, AND ALL OF THE DOCTORS AGREED THAT THAT, YOU KNOW, ON TOP -- THIS IS NOT THE ONLY CAUSE HERE, AND NONE OF THE DOCTORS SAID IT WAS, BUT THEY, ALL, BELIEVE THAT UNCONSCIOUSNESS ON A FIVE-YEAR-OLD KID FROM BEING BEAT ON THE HEAD WITH A METAL PIPE, COULD CAUSE BRAIN DAMAGE.

SO IT IS CONSISTENT WITH THE HOSPITAL RECORDS.

I DON'T BELIEVE THERE IS ARE HOSPITAL RECORDS FROM THAT INCIDENT.

FROM THE RECORDS OF THAT INCIDENT.

THE RECORDS THAT WE HAVE IS A SCHOOL PSYCHOLOGIST. ONLY A SCHOOL PSYCHOLOGIST'S RECORDS.

HOW ABOUT THE BIKE ACCIDENTS? WAS THERE SOMETHING ABOUT THOSE?

HIS MOTHER TALKED ABOUT BIKE ACCIDENTS. ONE OF THEM WAS WHEN HE WAS PLAYING WITH BUSES. I AM NOT SURE WHAT THAT MEANS. THE OTHER ONE OCCURRED IN HIGHLANDS COUNTY, WHERE HE INTENTIONALLY ROAD, HEAD ON, INTO A -- INTENTIONALLY RODE, HEAD ON, INTO A CAR.

ARE THERE MEDICAL RECORDS TO SUPPORT THAT?

I DON'T BELIEVE THERE ARE MEDICAL RECORDS THAT I COULD READ. WE HAVE THE THE SCHOOL RECORDS AND THE MEDICAL RECORDS. IT JUST HAPPENS THAT THEY ARE IN THERE.

SO WE DON'T HAVE MEDICAL RECORDS AS TO -- TO SUPPORT THESE.

THESE ARE NOT THE KIND OF PEOPLE WHO GO TO HOSPITALS WHEN THINGS HAPPEN.

BUT THEY DID GO ON THOSE OCCASIONS, DID THEY NOT? WERE THERE MEDICAL RECORDS RELATED TO SOME OF THESE INCIDENTS? AM I CORRECT?

THERE ARE VOLUMINOUS MEDICAL RECORDS IN THIS INCIDENT. WHETHER THEY RELATED WHAT THE MOTHER TESTIFIED ABOUT, I CAN'T. I AM NOT CERTAIN. NOW, THE THREE DOCTORS TESTIFIED THAT YOU LOOK AT THE FAMILY HISTORY OF DONNY CROOK. THE SINGLE MOST COMMON CAUSE OF ORGANIC BRAIN DAMAGE IS GENETIC, NOT BIRTH TRAUMA BUT GENETIC, AND THEY, ALL, AGREED THAT HE LIKELY HAD THAT, AND THEN IN ADDITION THE CAUSATIVE BRAIN, HEAD INJURY WITH THE METAL PIPE. THEN YOU HAVE GOT THE POSITIVELY CAUSE I HAVE OR CERTAINLY EXACERBATING EFFECTS OF HIS HISTORY OF DRUG ABUSE AND THE INCREDIBLY NEGLECTFUL AND, AS THE TRIAL JUDGE REFERRED TO, ABYSMAL CHILDHOOD THAT DONNY CROOK HAD. ALL OF WHICH CAN CAUSE ORGANIC BRAIN DAMAGE.

THE -- ON THE -- IN THE SENTENCING ORDER, THE JUDGE SAYS NO EVIDENCE ESTABLISHED THAT THE DEFENDANT EXHIBITED SEVERE SYMPTOMS OF BRAIN DAMAGE, BUT HE WENT ON TO SAY THAT THE OTHER DYSFUNCTIONS OF HYPERACTIVITY, LEARNING DISABILITIES, SOCIALIZATION, LANGUAGE, CONFUSION, LEFT-RIGHT DOMINANCE CONFUSION, VISUAL FOCUS PROBLEMS, BLADDER AND BOWEL CONTROL PROBLEMS, FEAR OF ABANDONMENT AND SLEEP DISTURBANCE WITH NIGHT TREMORS WERE, INDEED, ESTABLISHED BY THE EVIDENCE, AND HE WEIGHED THEM.

EXCUSE ME FOR INTERRUPTING, BUT THOSE THINGS ARE ALL QUITE MINOR AS COMPARED TO THE OVERALL BRAIN DAMAGE, AS TESTIFIED TO BY THE EXPERTS HERE. HE SAID NO EVIDENCE SUPPORTED THE EXISTENCE OF SEVERE BRAIN DAMAGE. DR. MacCRANEY, WHO MAKES HIS LIVING IN A SEVERE BRAIN INJURY CLINIC, TESTIFIED THAT DONNY CROOK HAD BRAIN DAMAGE AND WAS ONE OF THE WORST EMOTIONAL CASES OF DISTURBANCE HE HAS SEEN.

WHY, WHEN THE TRIAL JUDGE FOUND THE EMOTIONAL, THE MITIGATING CIRCUMSTANCES, THE TWO STATUTORY MENTAL MITIGATORS, AREN'T THOSE TWO STATUTORY MENTAL MITIGATORS BASED ON THE EXPERTS' TESTIMONY ABOUT THIS BRAIN DAMAGE? AND SO WHY ISN'T THAT SUBSUMED INTO THOSE TWO FINDINGS BY THE COURT?

BECAUSE THE COURT SPECIFICALLY SAYS OTHERWISE. THE COURT, BASICALLY, SAYS THIS. THE COURT SAYS I AM NOT FINDING THAT HE HAS BRAIN DAMAGE. IN THE FACE OF ALL OF THAT, I AM FINDING THAT THERE IS NO EVIDENCE THAT HE HAS BRAIN DAMAGE. HE JUST HAS A CONDUCT DISORDER, AND THAT A CONDUCT DISORDER, ORDINARILY, ISN'T MITIGATING. FIRST OF ALL --

SO WHAT ARE THOSE TWO STATUTORY MENTAL MITIGATORS BASED ON?

ACCORDING TO THE JUDGE'S ORDER, THEY ARE BASICALLY BASED ON HIS STATE OF INTOXICATION AT THE TIME OF THE OFFENSE, AND THAT IS ALL WELL AND GOOD, AND HE GAVE THEM MODERATE WEIGHT, AND THEY MAY, WELL, HAVE DESERVED MODERATE WEIGHT, BUT WHAT I AM SAYING IS, IF THE JUDGE HAD CORRECTLY FOUND THE EXISTENCE OF THIS FRONTAL LOBE BRAIN DAMAGE THAT CAUSED THIS CRIME, THAT WAS AGGRAVATED BY THE USE OF THE COCAINE AND THE ALCOHOL, THAT HE VERY WELL MIGHT HAVE GIVEN IT OVERWHELMING WEIGHT OR GREAT WEIGHT, AND CERTAINLY THIS COURT CAN DO SO, ON PROPORTIONALITY REVIEW.

IS THIS STATEMENT, WHAT THE JUDGE SAYS, WHEN HE IS TALKING ABOUT THE STATUTORY MITIGATOR, HE SAYS AS CAN BE SEEN THROUGHOUT THE DEFENDANT'S LIFE, HE HAS A HISTORY OF THE INABILITY TO CONFORM HIS CONDUCT TO THE EXPECTATIONS OF SOCIETY, AFTER GOING THROUGH ALL OF THE PSYCHOLOGICAL EVALUATIONS, INCLUDING EVALUATION THAT IS OCCURRED WHILE HE WAS IN SCHOOL AND BEFORE THIS MURDER. THEN HE SAYS THIS WOULD NORMALLY NOT BE MITIGATING, SINCE CONDUCT DISORDER IS A CONDITION WHICH CANNOT BE CONSIDERED IN MITIGATION. ARE YOU SAYING THAT IS A ERROR OF LAW, STATEMENT THAT HE HAS MADE?

THAT IS AN ERROR OF LAW, ALTHOUGH IT IS A FAIRLY MINOR ERROR OF LAW, AS COMPARED

WITH THE OVERWHELMING ERROR EVER FACT THAT HE MADE ON THE BRAIN DAMAGE. CONTRARY SOCIAL -- WHAT HE HAS GOT IS A MIXED PERSONALITY DISORDER THAT IS SECONDARY TO HIS BRAIN DAMAGE, NOT INSTEAD OF HIS BRAIN DAMAGE BUT BASICALLY CAUSED BY HIS BRAIN DAMAGE ON TOP OF HIS BRAIN DAMAGE, AND THAT IS SOMETHING THAT I POINTED OUT IN MY REPLY BRIEF. NOW, YES, IT WAS ERROR TO SAY THAT THE CONDUCT DISORDER CAN'T BE CONSIDERED IN MITIGATION, BUT THAT, REALLY, IS A DROP IN THE BUCKET, COMPARED WITH THE SERIOUS ERROR THAT OCCURRED HERE. SO THEN HE GOES AND SAYS I AM GOING TO FIND THIS, BASED ON HIS ALCOHOL AND COCAINE CONSUMES, BUT THEN -- CONSUMPTION, BUT HE THEN KIND OF DISSES THAT, ON THE BASIS OF HIS CONCLUSION OF CONTROL. WHATEVER THAT, WHENEVER HE IS TALKING, BOTH TO THE MENTAL AND FACTUAL MITIGATORS -- STATUTORY AND OTHER MITIGATORS, THAT FLIES IN THE FACE OF ALL OF THE OTHER EVIDENCE OF THIS CASE.

YOU ARE IN YOUR REBUTTAL TIME.

CAN I EAT INTO MY REBUTTAL TIME FOR ONE MINUTE HERE? I DO WANT TO TALK ABOUT DR. KREMPE HERE. THE STATE HAD THE DOCTOR OF THEIR CHOICE, DR. KREMPE REFORM, WHO HAD PREVIOUSLY EXAMINED DONNY CROOK, BEFORE THIS EVER OCCURRED, FOR COURT DETERMINATION. AFTER THE STATE PRESENTED THE THREE WITNESSES, ALL OF WHOM TESTIFIED TO THE EXTENT AND NATURE OF THE FRONTAL LOBE DAMAGE, ALL OF WHOM TESTIFIED THAT, AS A RESULT, BOTH STATUTORY MENTAL MITIGATORS WERE PRESENT, THE STATE, THEN, OPTED NOT TO CALL DR. KREMPE, WHICH WE CAN TAKE IT THAT DR. KREMPE WOULD NOT HAVE SAID ANYTHING OTHER THAN THE MENTAL MITIGATORS STATUTORY AND NONSTATUTORY. INCLUDED IN THE RECORDS WAS DR. KREMPE'S EVALUATION FROM THE STATE SOCIAL SECURITY DETERMINATION.

WE HAVE THOSE FINDINGS AND MENTAL MITIGATORS, SO EVEN IF WE BELIEVE THAT THIS DOCTOR WOULD HAVE,, SUPPORTED THOSE, WHAT CONCLUSION ARE WE TO DRAW FROM THAT?

YOU DON'T, REALLY, HAVE THE FINDING. YOU DON'T HAVE THE FINDINGS OF THE STATUTORY MENTAL MITIGATORS PROPERLY. WHAT YOU HAVE IS KIND OF A HALF-BAKED FINDING OF THE STATUTORY MENTAL MITIGATORS THAT IS BASICALLY BASED ONLY ON HIS STATE OF INTOXICATION THAT DAY AND THEN KIND OF DISSING THAT. THE WEIGHT THAT HE GAVE, THE STATUTORY MENTAL MITIGATORS, WAS SO IMPAIRED BY HIS WRONG FINDING THAT THERE WAS NO BRAIN DAMAGE THAT, THE REALIBILITY OF THIS DEATH SENTENCE IS TOTALLY COMPROMISED.

SAYING THAT, HOW ARE WE TO EVALUATE THE NONUSE OF A DOCTOR?

OKAY. AS A TACIT ADMISSION, THAT, YES, THIS BRAIN DAMAGE DOES EXIST, WHICH, BY THE WAY THE PROSECUTOR, ALSO, ADMITTED IN HER CLOSING ARGUMENT. IN OTHER WORDS THIS IS NOT A CASE LIKE COOPER, WHERE JUSTICE WELLS, IN DISSENT, POINTED OUT THAT, WELL, THERE IS CONFLICTING EVIDENCE ON THE MENTAL MITIGATORS AND ON THE BRAIN DAMAGE, AND JUSTICE WELLS MADE THE POINT THAT HE THOUGHT THAT THE MAJORITY WAS PICKING AND CHOOSING WHICH EVIDENCE IT FOUND MOST CONVINCING. HERE WE DON'T HAVE THAT. THERE IS ONLY ONE KIND OF EVIDENCE HERE, AND THAT IS WHY I WANT TO GET INTO DR. KREMPE'S FINDINGS. THE WEXLER INTELLIGENCE SCALE, RESULTING IN AN OVERALL IQ SCORE OF 66. DR. KREMPE'S DIAGNOSTIC IMPRESSION INCLUDED ALCOHOL AND COCAINE ABUSE AND DEPENDENCYENS AND SOCIETAL DISORDER AND MENTAL MITIGATION MILD. HE WAS NOT IN THE COGNITIVE AND BEHAVIORAL DEFICITS. HE WAS UNABLE TO TOLERATE ROUTINES AND HAD SEVERE MENTAL DIFFICULTIES AND WAS NOT ABLE TO FOLLOW INSTRUCTIONS ON A SIMPLE BASIS. WITH INSTRUCTION, HE WAS LIKELY TO BECOME PHYSICALLY AGGRESSIVE. HE WAS RATED FOR ORGANIC MENTAL DISORDER AND ORGANIC PERSONALITY DISORDER. HE IS WORRIED THAT OTHERS WILL GET HIM. ARGUES WITH EVERYONE. POOR IMPULSE CONTROL AND --

ARE YOU READING FROM DR. KREMPER'S REPORT?

I AM READING.

WAS HE ENTITLED TO DISABILITY, AFTER DR. KREMPER'S REPORT?

HE SAYS ORGANIC DISORDER WITH POLLY SUBSTANCE ABUSE AND -- POLI-SUBSTANCE ABUSE AND MENTAL DISORDER. CLIENT APPEARS TO MEET 12.02 AND 12.05, WHICH IS MENTAL DISORDERS AND MENTAL RETARDATION, AND IT SAYS RECOMMEND A THIRD PARTY PAY OR. THAT WOULD BE -- PAYOR. THAT WOULD BE DR. KREMPER'S REPORT AND I WILL SAVE THE REST OF MY TIME.

MAY IT PLEASE THE COURT. I AM CANDACE SABELLA, REPRESENTING THE STATE OF FLORIDA. THIS IS A CONCLUSIVE ARGUMENT HERE, THAT THIS CRIME IS SO HEINOUS THAT IT CAN'T POSSIBLY PRESERVE DEATH. THAT SHE RESISTED THE ATTACK AND HE WENT INTO A RAGE. THE FACTS CLEARLY STATE THAT HE WENT IN THERE WITH THE INTENT TO DO THE JOB. HE LOCKED THE DOOR AND ATTACKS HER BEHIND THE REGISTER, WHERE SHE FALLS DOWN. HE TELLS HIS BROTHER I WAS TRYING TO GET THE CASH DRAWER OPEN AND I COULDN'T OPEN IT. THIS IS CONSISTENT WITH THE EVIDENCE, BECAUSE THE EVIDENCE IS YOU HAVE TO PUSH A SPECIAL BUTTON. HAVING KNOCKED HER DOWN AND SHE HAVING GOTTEN UP AND GOTTEN AWAY, HE REPEATEDLY STABS HER IN THE NECK AND BEATS HER DOWN, UNTIL SHE DOWN ON THE FLOOR, AGAIN, AND SHE IS COMPLETELY HELPLESS AT THAT POINT, AND AT THAT POINT HE DRAGS HER BODY AND STOMPS ON HER FACE UNTIL THERE IS A FOOTPRINT LEFT ON HER FACE AND HE, THEN, TAKES A POOL COULD YOU AND PUTS IT THROUGH HER VAGINA AND UP THE BASE OF HER SKULL AND OUT THROUGH HER FORWARD. THESE ACTIONS ARE ACTIONS THAT ARE DELIBERATE ON THE PART OF THE DEFENDANT. THIS IS NOT SOMETHING THAT I KNOCK HER DOWN AND SHE IS HELPLESS AND I PUT HER DOWN AND KICKED HER. THIS IS SOMETHING THAT GOES ON AND ON AND ON, AND IT GOES THROUGHOUT THE WHOLE PROCEEDING.

WHAT WAS THE STATE OF THE RECORD, AS TO HIS INTOXICATION?

WHAT WE HAVE IN THE RECORD ABOUT HIS INTOXICATION IS AS HE STATED. THERE WERE WITNESSES WHO SAID THEY SAW HIM A FEW HOURS BEFORE THE CRIME. HE WAS ON HIS BICYCLE. HE HAD THE OLD MILWAUKEE CASE WITH HIM THAT HAD A FEW LEFT IN IT. HE OFFERED THEM ONE. THE WITNESS TESTIFIED THAT HE APPEARED TO BE PARTYING. THERE WAS NOT TESTIMONY THAT HE WAS INTOXICATED BUT THAT HE APPEARED TO BE PARTYING. THE ONLY OTHER EVIDENCE WE HAVE, AFTER THAT, IS HIS OWN REPORT THAT HE HAD DRANK TEQUILA, AND THERE WAS EVIDENCE BY MELISSA LEMAY, AFTER THE CRIME, THAT HE APPEARED TO BE HIGH AND HIS PUPILS WERE DILATED. HIS STATED PURPOSE FOR THE CRIME WAS THAT HE WANTED TO GET MONEY FOR CRACK COCAINE. IT IS CERTAINLY LOGICAL TO ASSUME THAT, HAVING OBTAINED THIS MONEY FROM THIS ROBBERY, HE, THEN, WENT AND OBTAINED THE DRUGS THAT HE WAS SEEKING TO OBTAIN. AND THAT IS ALL THE EVIDENCE THAT WE HAVE OF HIS LEVEL OF INTOXICATION.

WHAT DO WE KNOW ABOUT HIS LEVEL OF CRACK COCAINE USE, AT OR ABOUT THE TIME OF THE CRIME? WAS HE AN ADDICT? WAS HE ADDICTED TO CRACK COCAINE?

I DON'T KNOW YOUR HONOR. ALL I KNOW IS HE TOLD THE POLICE OFFICERS THAT HE WANTED TO GET THE MONEY TO GET ROCK. THERE IS SOME EVIDENCE IN THIS RECORD THAT THE POLICE OFFICERS WERE FAMILIAR WITH MR. CROOK AND IT IS APPARENT DURING THE QUESTIONING THAT THEY HAD HAD EXPERIENCE WITH HIM AND ROCK COCAINE BEFORE, SO THERE IS, CERTAINLY, CONSISTENT WITH HE HAS DONE DRUG IN HIS THE PAST.

DO YOU AGREE THAT THE RECORD DOES NOT SHOW THAT ANY HISTORY OF HAVING BEEN CONVICTED OF ANY PRIOR VIOLENT --

SIGNIFICANT VIOLENT FELONY. THAT'S RIGHT. THERE IS EVIDENCE THAT HE HAD SOME DEALINGS WITH THE POLICE IN THE PAST, BUT THERE IS NO EVIDENCE OF A SIGNIFICANT VIOLENT --

I WAS SAYING TO MR. BOLOTIN THAT WE HAVE HAD SOME CASES WHERE SOMEONE WAS DOING A ROBBERY AND THEY DECIDE TO SHOOT SOMEBODY, BECAUSE THE ROBBERY IS NOT GOING VERY WELL. THIS CRIME SEEMS TO BE, IN ALL DUE RESPECT, IT IS, IN ITS HEINOUSNESS, SOMEWHAT INEXPLICABLE, FROM SOMEBODY WHO HAS HAD NO HISTORY OF HAVING BEEN, YOU KNOW, SOMEBODY THAT WAS ROBBING PEOPLE OR, YOU KNOW, VIOLENT BEHAVIOR. DOES IT -- AND, AGAIN, THE THING ABOUT THE SEXUAL BATTERY HERE, AND ALTHOUGH IT IS FOUND, AND I THINK IT IS CONCEDED, AND IT IS HORRIBLE, SHE -- THE JUDGE FOUND THAT THE VICTIM WAS UNCONSCIOUS, AT THE TIME OF THE SEXUAL BATTERY. CORRECT?

EXACTLY. EXACTLY.

SO THIS ISN'T ONE OF THESE CASES OF SOMEBODY WHO HAS TAKEN SOMEONE OUT AND BATTERED THEM SEXUALLY, BATTERED THEM AND THEN KILLED THEM. CORRECT?

EXACTLY.

SO YOU DON'T SEE ANY SIGNIFICANCE TO THE FACT, WITH THE EVIDENCE BEING THAT HE WAS A CHRONIC ALCOHOL AND COCAINE USER, A PERSON THAT, THROUGHOUT HIS LIFE HAD APPARENTLY HAD DROPPED OUT OF SCHOOL AT A FAIRLY YOUNG AGE, THAT HAD A BORDERLINE, TO A MENTALLY-RETARD IQ, THAT THAT, THAT THIS CRIME, AND THEN THE EVIDENCE, THE BRAIN DAMAGE OR -- THAT THAT, THAT THE TWO HAVE NOTHING TO DO WITH ONE ANOTHER?

WELL, CLEARLY, THEY HAVE SOMETHING TO DO WITH ON ANOTHER. CLEARLY, IN THIS SENTENCING ORDER, THE TRIAL COURT, IT IS A 19-PAGE ORDER, AND WHEN YOU READ THIS ORDER, YOU CAN SEE THAT HE NOT ONLY WENT THROUGH, DETAIL BY DETAIL, WHAT THE EXPERTS TESTIFIED TO, BUT, ALSO, THE EXHIBITS THAT WERE GIVEN TO HIM. I MEAN HE TOTALLY CONSIDERED ALL OF THIS EVIDENCE.

I WOULD LIKE TO -- YOU FOCUS ON THE ONE THAT I AM MOST CONCERNED WITH, IS THE STATUTORY MITIGATOR THAT HE DID FIND, OF -- ON PAGES 9 AND 10 OF THE SENTENCING ORDER, LET'S SEE, THAT WOULD BE THE ONE THAT IS THE CAPACITY OF THE DEFENDANT, BOTH UNDER THE INFLUENCE --

HE JOINED THE TWO OF THEM TOGETHER.

BOTH MENTAL DISTURBANCE AND THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINAL OF HIS CONDUCT, BEING TWO VERY SUBSTANTIAL, POTENTIALLY SUBSTANTIAL --

ABSOLUTELY.

OKAY. AFTER GOING THROUGH EVERYTHING, ON PAGES 8 AND 9, WHEN YOU GET TO THE BOTTOM, THE JUDGE, THEN, SAYS, AS CAN BE SEEN THROUGHOUT THE DEFENDANT'S LIFE, HE HAD A HISTORY OF THE INABILITY TO CONFORM HIS CONDUCT TO THE EXPECTATIONS OF SOCIETY. THIS WOULD NOT NORMALLY BE MITIGATING, SINCE CONDUCT DISORDER IS A CONDITION WHICH CANNOT BE CONSIDERED IN MITIGATION, AND HE SAID THERE WAS NO ACTUAL PROOF OF BRAIN DAMAGE, AND THEN HE GOES TO TO SAY THERE WERE -- GOES ON TO SAY THERE WERE ADDITIONAL FACTORS OF ALCOHOL AND SUBSTANCE, AND WHAT IT LOOKS LIKE HE IS SAYING IS THAT, THE REASON HE FOUND THESE MITIGATORS IS SOLELY BECAUSE HE WAS USING ALCOHOL AND DRUGS AT THE TIME, AND HE SAYS, BECAUSE OF THAT, AND BECAUSE THAT IS VOLUNTARY, THAT HE IS NOT GOING -- THAT HE IS ONLY GIVING THAT MODERATE RATE. DO YOU NOT READ THAT PART --

ACTUALLY THAT IS THE SUGGESTION THEY ARE CLEARLY MAKING, BUT WHEN YOU READ THIS ORDER IN ITS ENTIRETY AND READ IT ALL TOGETHER, IT IS CLEAR THAT THIS TRIAL JUDGE WAS CONVINCED THAT MR. CROOK HAD SOME KIND OF MENTAL DISABILITY, THAT MR. CROOK HAD A LOT OF MENTAL PROBLEMS. HE FOUND BOTH MITIGATORS. HE WAS NOT, HOWEVER, CONVINCED THAT THERE WAS EVIDENCE OF BRAIN DAMAGE, AND I THINK --

LET ME ASK -- BUT IF SOMEBODY, IF A TRIAL JUDGE, IN LOOKING AT THIS STATUTORY MITIGATOR, IF SOMEBODY HAS GOT A CONDUCT DISORDER, SECONDARY TO BRAIN DAMAGE, CAN THAT BE CONSIDERED, IN MITIGATION?

WELL, THE CASE THAT HE REFERS TO, CARTER, SAYS THAT, BEING A SOCIO-PATH IS NOT A MITIGATING FACTOR.

IS THAT WHAT THE EVIDENCE WAS?

NO. AND I DON'T THINK THAT IS WHAT HE WAS SAYING. I THINK THAT WHAT HE IS SAYING IS THAT I AM CONSIDERING THIS IN THE APPROPRIATE CONTEXT, AND HE HAS THE SOCIO-PATH I CAN TENDENCIES, WHICH ARE NORMALLY NOT MITIGATING, BUT HE HAS ALL OF THIS OTHER EVIDENCE, WHICH IS MITIGATING, AND NOT ONLY IN CONSIDERATION OF THIS FACTOR BUT OUT, THROUGHOUT THE ORDER, HE REFERS TO THIS, AND WHEN HE SAYS THERE IS NO ACTUAL PROOF OF BRAIN DAMAGE, WHAT HE IS REFERRING TO, AND JUSTICE LEWIS, THIS GOES TO YOUR QUESTION, THERE ARE NOT HOSPITAL RECORDS WHERE HE WAS FIVE YEARS OLD, THAT SAY THAT HE WAS TAKEN TO THE HOSPITAL. THAT HE WAS UNCONSCIOUS, THAT THERE WAS ANY KIND OF ACTUAL DAMAGE. THE ONLY RECORDS WE HAVE ARE WHEN HE IS MISBEHAVING AT SCHOOL OR NOT FUNCTIONING APPROPRIATELY AT SCHOOL, AND THE SCHOOL IS HAVING HIM EVALUATED, THAT HIS MOTHER WILL REPORT, WELL, YES, HE GOT HIT IN THE HEAD BY A PIPE, AND HE FELL DOWN HERE, AND HE FELL OFF THIS DRAIN PIPE. I MEAN, THERE WERE A SERIES OF HE FELL DOWN. HE GOT HIT. AND AT ONE POINT THE SCHOOL NURSE, NOTICED A HIT ON HIS HEAD. SHE WAS QUESTIONED. OH, HE FELL OFF OF THIS, AS CHILDREN WILL DO, BUT WHAT THE COURT IS REFERRING TO, HERE, IS THERE IS NO ACTUAL HOSPITAL RECORD THAT ESTABLISHES HE WAS KNOCKED OUT AND HE WAS IN THE HOSPITAL FOR A MONTH AND HE WAS UNCONSCIOUS AND WE HAVE ALL OF THIS BRAIN DAMAGE. THAT IS WHAT HE IS LEFERING TO.

-- IS REFERRING TO.

HOW DID THE EXPERTS, THEN, GET TO THEIR OPINION OF THE BRAIN DAMAGE?

THEY DID IT, BASED UPON THE MOTHER'S REPORTS AND THE REPORTS THAT ARE IN THE SCHOOL PERSONNEL AND THAT, AND THEY WILL SAY, ALSO, DURING THE TESTIMONY, AND, AGAIN, THIS IS SOMETHING THAT WE GET FROM THE RECORD AND THIS IS SOMETHING THAT THE TRIAL COURT, SITTING THERE, WATCHING THE EXPERTS, CAN REACH THIS CONCLUSION, IS WHAT THEY ALL SAY IS, WELL, IT WAS REPORTED AS THIS, AND WHILE THERE IS -- WE REALLY CAN'T IDENTIFY WHAT THE PRECIPITATING CAUSE WAS, WHAT IT WAS, EXACTLY, THAT CAUSED THIS, THESE ARE ALL THE TYPE OF THINGS THAT WILL CAUSE BRAIN DAMAGE, AND HE CAME FROM A BAD BACKGROUND, AND HE HAS THIS GENETIC TENDENCY, AND THERE ARE REPORTS OF HAVING HEAD INJURIES, AND NONE OF THEM COULD IDENTIFY THE EXACT SOURCE OF THIS REPORTED BRAIN DAMAGE.

DOES THAT MATTER, FOR THE MENTAL MITIGATOR TO BE GIVEN WEIGHT, IF HE IS -- THE POTENTIAL IS THAT HE COULD HAVE BEEN BRAIN DAMAGED, FROM A VARIETY OF SOURCES, IS IT -- DOES IT MATTER, IF -- DOES AN EXPERT HAVE TO SAY, IN THIS KIND OF CASE, VERSUS A PERSONAL INJURY CASE, THAT, WITHIN REASONABLE MEDICAL PROBABILITY, HIS BRAIN DAMAGE CAME FROM BEING HIT ON THE HEAD WITH A PIPE AT AGE FIVE?

WHAT MATTERS IS THAT THE TRIAL COURT, AS THE FINDER OF FACT, HEARD THESE -- THIS

TESTIMONY, AND REACHED A CONCLUSION, AND THAT IS WITHIN HIS DISCRETION AND THE WEIGHT HE GIVES THAT IS WITHIN HIS DISCRETION AND CLEARLY, AS YOU CAN SEE IN THIS ORDER, HE CONSIDERED ALL OF THIS EVIDENCE, AND HE FOUND THAT THERE WERE MENTAL PROBLEMS. HE FOUND THAT THERE WERE -- HE FOUND BOTH OF THESE MITIGATORS, AND WHETHER HE DID IT BASED ON BRAIN DAMAGE AND ALTHOUGH HE STATES THERE IS NO ACTUAL PROOF OF ANY BRAIN DAMAGE, I SUGGEST THAT REFERS TO THE FACT THAT THERE ARE NO HOSPITAL RECORDS TO SUPPORT THIS, HE DID FIND BOTH MITIGATORS. HE SIMPLY WAS NOT CONVINCED, TO THE EXTENT THAT THEY SUGGEST HE SHOULD HAVE BEEN, AS TO THE BRAIN DAMAGE, BUT NO MATTER WHAT THE ROUTE OF THE CAUSE WAS, HE KNOWS THAT THIS MAN HAS MENTAL PROBLEMS.

IS THERE A DIFFERENCE -- YOU SAY THERE IS NO ACTUAL PROOF OF BRAIN DAMAGE, BECAUSE, TO ME, WHAT I SAW DIFFERENT IN THIS CASE AND MANY OTHERS, IS RECORDS FROM SCHOOL, ON, THAT THIS IS -- WAS A SEVERELY TROUBLED YOUTH THAT COULD NOT FUNCTION IN SCHOOL.

ABSOLUTELY.

IS IT -- MAYBE IT IS A DIFFERENCE OF SEMANTICS. ARE YOU SAYING THAT, WHEN THE JUDGE SAID THERE WAS NO ACTUAL PROOF OF BRAIN DAMAGE, ALL IS HE REFERRING TO IS THAT I DIDN'T HAVE A RECORD THAT SAID THIS GUY'S BRAIN WAS DAMAGED, OR THAT HE REJECTED THE -- ALL THE EXPERTS THAT TESTIFIED THAT THIS PERSON WAS BRAIN DAMAGED, AND THAT HAD A CONDUCT DISORDER, SECONDARY TO THAT, THAT CONTRIBUTED TO HIS MENTAL STATE ON THE NIGHT OF THE MURDER.

I THINK TWO THINGS SUGGEST THAT HE IS NOT REJECTING THE EXISTENCE OF BRAIN DAMAGE BUT IS MERELY QUESTIONING THE LEVEL OF EVIDENCE THAT SUPPORTS IT. ONE OF THESE THINGS IS, UP UNTIL THE TIME HE APPLIED FOR THE SOCIAL SECURITY DISABILITY, ALL OF THE PEOPLE WHO HE HAD -- WHO HAD EVALUATED HIM, AND AS YOU SAY HE WAS EXTENSIVELY EVALUATED DURING HIS CHILDHOOD, NONE OF THOSE PEOPLE FOUND BRAIN DAMAGE BEFORE, AND IT WASN'T UNTIL DR. KEMPER FOUND ORGANIC BRAIN DAMAGE -- AND SUBSEQUENT TO --

NOW, DR. CRAMPER -- DR. KREMPER WAS SOMEBODY WHO EVALUATED THIS DEFENDANT AND WHAT YOU SAY? AN ORGANISTIC --

YES. ORGANIC PROBLEMS. YES. EXACTLY. AND THAT IS IN THE RECORD, BUT THE FACT IS, PRIOR TO THAT, THERE WASN'T ANY FINDING OF THAT. AND ONE OF THE THINGS --

LET ME ASK YOU THIS, BEFORE YOU GET TOO FAR WITH THAT. HIS RECORD WAS BASED -- HIS FINDING WAS BASED ON WHAT?

HIS BEING DOCTOR KREMPER?

YES.

> I ASSUME THAT DR. KREMPER EXAMINED HIM AND THAT DR. KREMPER HAD HIS RECORDS.

YES.

AREN'T YOU ASSUMING THAT THERE ARE TESTS THAT YOU CAN PERFORM THAT WOULD ACTUALLY SHOW BRAIN DAMAGE? I THINK WE HAVE HAD PET SCANS AND CT SCAN THINGS.

IT IS MY UNDERSTANDING THAT A PET SCAN CAN GIVE YOU ACTUALLY A PICTURE THAT SHOWS BRAIN DAMAGE.

WAS THAT DONE IN THIS CASE?

THERE IS NO EVIDENCE IN THIS RECORD THAT THAT WAS DONE. ABSOLUTELY.

DO WE KNOW WHETHER OR NOT DR. KREMPER, IS THAT HIS NAME, DID ANY TESTS LIKE THAT?

HE DIDN'T TESTIFY. JUST HIS RECORDS WERE PUT IN.

AND HIS RECORDS DIDN'T SHOW THAT ANY KIND OF OBJECTIVE TEST WAS DONE TO SUPPORT THE BRAIN DAMAGE?

YOUR HONOR, I REALLY DOESN'T THINK IT MAKES ANY DIFFERENCE. THE BOTTOM LINE IS THE COURT, FOR WHATEVER REASON MR. CROOKS HAS MENTAL PROBLEMS, THE COURT FOUND THOSE MENTAL MITIGATORS, AND WHETHER IT WAS BECAUSE OF DRUGS OR WHETHER IT WAS BECAUSE OF BRAIN DAMAGE OR HE IS A SOCIO-PATH OR WHATEVER REASON HE HAD THESE PROBLEMS, THE COURT FOUND THEM, ACKNOWLEDGED THEM AND GAVE THEM MODERATE WEIGHT.

I GUESS HIS ARGUMENT, MR. BOLOTIN'S ARGUMENT IS, WELL, IF HE HAD FOUND IT BASED ON THE FACT THAT HE HAD BRAIN DAMAGE, HE MIGHT HAVE GIVEN HIM MORE WEIGHT.

AS THIS COURT SAID IN ROBINSON, THIS IS LEFT TO THE TRIAL COURT. HE CAN MAKE THIS DETERMINATION, AND THE WEIGHT THAT IS ASSIGNED TO IT IS WITHIN HIS DISCRETION. WHETHER -- WHETHER IT IS ONE THING OR ANOTHER, THE FACT IS HE FOUND IT. HE GAVE IT THE WEIGHT THAT IT WAS AFFORDED, AND, AGAIN, AS THIS COURT FOUND IN ROBINSON, MR. CROOKS WAS FUNCTIONING IN SOCIETY. THIS IS NOT A MAN WHO WAS INSTITUTIONALIZED. THIS IS NOT A MAN THAT WAS, LIKE, IN HOME CARE. HE IS OUT, RIDING AROUND, HAVING A GOOD TIME, AND WHETHER IT IS BEING PAID FOR BY THE STATE, WHICH I DO NOT KNOW, OR WHETHER HE WAS SUPPORTING HIMSELF BY SOME OTHER MEANS, HE WAS, STILL, OPERATING IN NORMAL SOCIETY. GOING TO BARS, HAVING FRIENDS, RIDING HIS BICYCLE, STAYING AT PEOPLE'S HOUSES. THIS IS NOT SOMEBODY THAT HAD TO BE CARED FOR. THIS IS SOMEBODY THAT COULD FUNCTION ON HIS OWN AND GET HIS OWN DRUGS. ONE OF THE OTHER -- I AM SORRY.

DO YOU KNOW WHY -- WAS THIS A CASE WHERE THERE WAS AN INSANITY DEFENSE, POSSIBLY, AT ONE POINT?

THE ONLY EVIDENCE OF AN IN ANDITY -- INSANITY DEFENSE IS DURING HIS STATEMENT TO POLICE OFFICERS. HE ASKED THEM, WELL, IF I WAS INSANE, WOULD I GET OFF? AND THE OFFICER SAID, WELL, I COULDN'T TELL YOU THAT. ONE OF THE OTHER THINGS THE TRIAL COURT NOTED, AND I THINK THIS CLEARLY GOES TO THIS MENTAL MITIGATING ISSUE, IS ONE OF THE THINGS THAT REDUCES THE WEIGHT OF IT IS THE DEFENDANT'S GOAL-DIRECTED BEHAVIOR. THE DEFENDANT WENT THERE WITH THE INTENTION TO DO A JOB. HE LOCKED THE DOOR. HE DID WHAT HE NEEDED TO DO AFTERWARDS, TO HIDE EVIDENCE OF THE CRIME.

BUT DO WE REALLY KNOW THAT HE WENT THERE TO DO THE JOB? DID HE BRING A WEAPON? DID HE -- I MEAN, THOSE KINDS OF THINGS THAT YOU WOULD NORMALLY LOOK AT, TO DETERMINE WHETHER OR NOT THIS WAS A PREPLANNED THING? I MEAN JUST LOCKING THE DOOR, HE COULD HAVE FORMED THAT INTENT, ONCE HE WAS THERE.

HE STATED, BEFORE HE WENT THERE, THAT HE WAS THERE TO DO A JOB. HE IS A 20-YEAR-OLD MAN. SHE IS A 59-YEAR-OLD WOMAN. I DON'T KNOW THAT HE NEEDS A WEAPON, AND CLEARLY HE DIDN'T NEED A WEAPON TO BEAT HER AND STOMP HER TO THE GROUND. I ASK THIS COURT TO AFFIRM THE DEATH SENTENCE. THANK YOU.

THANK YOU. MR. BOLOTIN.

THE STATE SAYS THAT DONNY CROOK, BECAUSE HE COULD RIDE AROUND ON HIS BICYCLE AND, YOU KNOW, LIVE HOWEVER HE WAS LIVING, HE COULD FUNCTION ON HIS OWN AND WAS NOT

SOMEBODY WHO MEADED TO BE CARED FOR -- WHO NEEDED TO BE CARED FOR. MAYBE THIS CASE ILLUSTRATES THAT HE WAS SOMEBODY WHO NEEDED TO BE CARED FOR. WENT THERE TO DO A JOB. THAT TESTIMONY WAS FROM EVA JOHNS. HE WAS ON HIS BIKE HOURS BEFORE THE CRIME OCCURRED. SHE ASKED HIM WHAT ARE YOU DOING IN AVON PARK, BECAUSE SHE KNEW HE LIVED IN SEBRING. HE WAS JUST COMING OVER TO HANG OUT, HE STATED. LATER, SHE OVERHEARD DONNY TALKING TO HER DAUGHTER, RHONDA, AND DONNY SAID SOMETHING TO THE EFFECT OF I CAME TO DO A JOB. HE DIDN'T COME TO THE BULL PEN BAR TO DO A JOB. HE CAME TO AVON PARK TO DO A JOB. ASSUMING THAT JOHNS HEARD HER, THE JOB COULD HAVE BEEN MOWING THE LAWN OR SOME KIND OF DRUG TRANSACTION. THERE WAS NO EVIDENCE WHATSOEVER THAT DONNY CROOKS WENT TO THE BULLPEN TO COMMIT A ROBBERY. MS. JOHNS EVEN STATED THAT. THE PROSECUTOR'S OWN THEORY WAS PICKED UP BY THE VICTIM. AS FAR AS GETTING EVA JOHN'S TESTIMONY, AND NUMBER TWO, DR. KREMPER FELT LIKE HE NEEDED TO BE REFERRED TO A NEWEROLOGIST. HE CLAIMS THAT HE DOES THAT IN ONE OUT OF 100 CASES, AND DONNY CROOKS WAS REFERRED TO THE PSYCHOLOGIST WHO SPECIFIES IN NEUROPSYCHOSIS, AND ALL OF THEM DID A BATTERY OF TESTS. THE TESTS HEY NOT BE IN THE -- MAY NOT BE IN THE NATURE AFTER PICTURE, BUT LOOK AT ROBINSON'S DEFENSE TESTIMONY, WHERE ACTUALLY THE PSYCHOLOGICAL TESTS DO A BETTER JOB OF SHOWING HOW BRAIN DAMAGE AFFECTS A PERSON'S FUNCTIONING THAN SOMETHING LIKE A SCAN DOES. THERE WAS -- GOING TO THE PROPORTIONALITY ISSUE, HERE, OKAY, AGAIN, TO THE -- TO THE FACT EVER THIS NOT BEING ONE OF THE LEAST MITIGATED OF HOMICIDES, YOU HAVE GOT APPELLANT'S AGE OF 20, JUST A COUPLE OF MONTHS PAST HIS 20th BLIRT DAY, AND HE WAS NOT A -- BIRTHDAY, AND HE WAS NOT A VERY FUNCTIONAL 20. YOU HAVE GOT A LACK OF HISTORY OF VIOLENCE AND HORRENDOUSLY NEGLECTFUL AND KIND OF PATHETIC CHILD ON THE, WHICH -- CHILD HOOD, WHICH ANITA CROOK TESTIFIED TO THAT HE WAS BORN UNDER DIFFICULT CIRCUMSTANCES AND TAKEN HOME TO LIVE IN THE TRUCK.

HOW DID HE LIVING? WAS HE GETTING SOME KIND OF SOCIAL SECURITY OR SOMETHING LIKE THAT HOW WAS HE LIVING?

THERE WAS NO INDICATION THAT HE WAS REGULARLY EMPLOYED. I THINK HE WAS DOING ODD JOBS, WHICH GOES TO THE THING, AGAIN, OF I CAME TO DO A JOB. YOU HAVE GOT I IQ BORDERLINE, IN THE 60s AND THE 70s. IN DR. KREMPER'S TESTS, I WANT TO POINT OUT THERE WAS A BILL PASSED IN THE SENATE COMMITTEE AND WAS CONFERRED IN THE HOUSE COMMITTEE, THAT ATTORNEY GENERAL BUTTERWORTH SUPPORTED, THAT INCLUDED PRECOLLUSION OF THE DEATH PENALTY UNDER CERTAIN CIRCUMSTANCES. I AM NOT SAYING THAT, IF THAT LAW HAD BEEN IN EFFECT, THAT DONNY CROOKS WOULD HAVE BEEN PRECLUDED. THIS IS ONE FACTOR OUT OF A DOZEN IN THIS CASE. HE HAS GOT A SERIOUSLY LOW IQ. HE HAS GOT LEARNING DISABILITIES. HE READS ON A FIRST GRADE LEVEL. HE CAN'T TELL TIME. HE HAS GOT A HISTORY OF ABUSE, INCLUDING HUFFING ORGANIC SUBSTANCES AND GASOLINE, STARTING WHEN HE WAS 8 YEARS OLD. WE KNOW STREET KIDS IN HONDURAS AND ROMANIA, ONE HUFFING INCIDENT CAN CAUSE BRAIN DAMAGE. HOW MANY TIMES DID DONNY CROOK HUFF GASOLINE OR OTHER PAINT? WE HAVE GOT HIS INTOXICATION AT THE TIME OF THE CRIME, ALCOHOL AND COCAINE. AS DR. MacCRANEY SAID, POURING GASOLINE ON A FIRE. YOU HAVE GOT ORGANIC BRAIN DAMAGE, WHICH WAS NOT DPOUND ALTHOUGH IT SHOULD HAVE BEEN -- WHICH WAS NOT FOUND ALTHOUGH SHOULD HAVE BEEN. YOU HAVE GOT THE GREATER WEIGHT. YOU HAVE GOT THIS CRIME AND A HARROW BRAINED ATTEMPT. WE KNOW FROM THE LARK INSIDE CASE THAT PEOPLE CAN REACT -- FROM THE LARKINS CASE THAT PEOPLE CAN REACT FROM SOMETHING AS LOW AS A BABY CRYING. THIS IS NOT WHAT HE DID. YOU HAVE GOT A JURY WITH 7-5, AS CLOSE AS IT COULD BE, AND THIS COURT RECOMMENDS IN COOPER AND ALAMEDA AND JONES THAT THIS IS WHAT HE DID AND THE JURY, IN FACT, CAME BACK WITH THE SENTENCE THAT BASICALLY DOES THAT REALLY MEAN LIFE, LIFE WITH NO PAROLE, AND THE JUDGE SAID I HAVE GOT TWO INSTRUCTIONS. YOU ARE ENTITLED TO THE INSTRUCTIONS OF LIFE UNDER THE DEATH PENALTY OR -- OF LIFE OR THE DEATH PENALTY AND THAT IS WHAT I INSTRUCTED BY LAW. THIS COULD AND ANDERS BRIEF IN THE SECOND DCA. I AM PROBABLY OUT OF TIME. THANK YOU.

THANK YOU, MR. BOLOTIN. THE COURT WILL BE IN RECESS UNTIL TOMORROW MORNING.

PLEASE RISE.