

>> THE NEXT CASE UP WILL BE
HOBART VERSUS STATE.

>> GOOD MORNING.

PROCEED WHENEVER YOU'RE READY.

>> THANK YOU, JUSTICE LABARGA,
THIS HONORABLE COURT.

I'M NADA CAREY REPRESENTING
MR. HOBART.

HE WAS CONVICTED OF KILLING
ROBERT HAMM AND TRACIE TOLBERT.
THE JURY RECOMMENDED LIFE IN THE
DEATH OF MR. HAMM, BY A 7-5 VOTE
RECOMMENDED THE DEATH PENALTY
FOR THE MURDER OF TRACIE
TOLBERT.

THE TRIAL JUDGE FOUND TWO
AGGRAVATORS, INCLUDING LONG-TERM
DRUG AND ALCOHOL DEPENDENCY,
BRAIN DAMAGE, SIGNIFICANT
HISTORY OF TRAUMATIC HEAD INJURY
AND BORDERLINE INTELLIGENCE.
WE RAISED FOUR ISSUES.

I'D LIKE TO FOCUS MY TIME TODAY
PRIMARILY ON THE THIRD AND
FOURTH ISSUES.

I MIGHT JUST TOUCH ON THE FIRST
COUPLE ISSUES, WHICH INVOLVE
WHAT HAPPENED DOWN ON JESSIE
ALLEN ROAD THAT DAY.

THE VICTIMS WERE HIS DRUG
SUPPLIERS.

THEY ENGAGED IN DOCTOR SHOPPING
IN SANTA ROSA COUNTY AND
APPARENTLY SUPPLIED DRUGS OF ALL
KIND TO THE ADDICTS IN THE
COMMUNITY, ONE OF WHOM WAS
MR. HOBART.

HE WAS 40 YEARS OLD.

HE HAS NO PRIOR VIOLENT HISTORY
EXCEPT A 20-YEAR-OLD AGGRAVATED
BATTERY CONVICTION WHICH WE
DON'T REALLY KNOW MUCH ABOUT.
HE HAD BEEN AN ADDICT FOR MANY
YEARS.

HE'D BEEN USING DRUGS SINCE HE
WAS 12 OR 13, SHOOTING UP
MORPHINE BY THE TIME HE WAS A
TEENAGER.

HE HAD BEEN ADDICTED TO
OXYCODONE FOR 10 OR 12 YEARS AT
THE TIME THIS MURDER TOOK PLACE
AND HAD BEEN USING QUITE HEAVILY
IN THE WEEKS BEFORE THE MURDERS.
THE EVIDENCE INDICATES THAT
THERE ARE A SERIES OF PHONE

CALLS BETWEEN MR. HOBART AND TRACIE TOLBERT, THE SUPPLIER, THAT MORNING.

SHE CALLED HIM IN THE MORNING. HE CALLED HER BACK A COUPLE OF TIMES.

SHE CALLED HIM BACK.

THEY APPARENTLY MET UP AND THE THREE OF THEM DROVE OUT, OUT ON JESSIE ALLEN ROAD TO DO A DEAL OR TO INJECT DRUGS.

WE'RE NOT REALLY SURE.

BUT THE TWO DRUG SUPPLIERS ENDED UP DEAD, SHOT IN THE HEAD.

>> LET'S JUST, ON THAT LITTLE DETAIL, HE TOOK -- HE BROUGHT A GUN.

>> YES.

HE HAD A PISTOL WITH HIM.

>> TELL US ABOUT THAT FACT OF HIM TAKING IT FROM HIS BROTHER.

>> ALL WE REALLY KNOW ABOUT THAT IS THAT THE GUN BELONGED TO HIS BROTHER.

THAT WAS -- HIS PRINTS WERE ON IT.

THAT SORT OF LINKED HIM TO THE CRIME.

WE DON'T KNOW IF HE TYPICALLY CARRIED A PISTOL WITH HIM WHEN HE WENT TO BUY DRUGS.

WE KNOW HE HAD ONE AT THIS TIME.

THERE'S NO PROOF OF ANY KIND THAT WHATEVER HAPPENED OUT THERE WAS PLANNED IN ANY WAY.

THERE'S --

>> HOW WERE THE VICTIMS SHOT?

>> MR. HAMM WAS SHOT IN THE BACK -- WELL, THE SIDE OF THE HEAD, I GUESS, THREE INCHES TO THE RIGHT OF THE MIDLINE, WENT THROUGH THE ELBOW.

THE MEDICAL EXAMINER DID TESTIFY THAT WAS NOT A CLOSE WOUND, THAT IT COULD HAVE HAPPENED --

THERE'S SOME EVIDENCE OR A STATEMENT HE MADE THAT THERE WAS A FIGHT, THAT IT COULD HAVE HAPPENED CONSISTENT WITH THEM TRADING PUNCHES.

>> EXCEPT HE HAD SAID THAT -- THAT HAMM WAS GOING AFTER HIM WITH A METAL BAR AND THERE'S NO METAL BAR FOUND OUTSIDE OF THE VEHICLE.

>> THERE WAS A METAL BAR FOUND
IN THE VEHICLE.
>> IN THE VEHICLE.
>> YES.
>> AND THEN HOW DID HE --
>> AND HE DROVE THE VEHICLE AWAY
AFTER HE SHOT THEM.
>> AND HOW DID HE SHOOT THE
VICTIM THAT THE JURY RECOMMENDED
DEATH FOR?
>> MISSTOLBERT WAS SHOT IN THE
EAR, THROUGH THE HEAD.
>> WHEN SHE WAS SITTING IN THE
VEHICLE.
>> SHE WAS SITTING IN THE
VEHICLE, YES.
>> SO EVEN IF YOU ARGUE THAT AS
TO ONE OF THE DEFENDANTS -- I
MEAN OF THE VICTIMS THAT THERE
WAS -- IT WAS SPUR OF THE
MOMENT, SO TO SPEAK, YOU CAN'T
ARGUE THAT, CAN YOU, AS TO THE
SECOND VICTIM?
>> NO.
AND WE HAVEN'T ARGUED THAT.
IT SEEMS PRETTY CLEAR THAT AFTER
THE ONE SHOT, HE JUST SHOT HER
TOO.
WHAT HE DID AFTERWARDS BASICALLY
PUT HER ON THE SIDE OF THE ROAD,
GOT IN THE CAR, DROVE TO CLOSE
TO WHERE HE LIVED AND WALKED
HOME.
>> HOW SOON AFTER THESE MURDERS
TOOK PLACE WAS THE DEFENDANT
ARRESTED?
>> HE -- LET'S SEE.
THE MURDERS WERE ON I THINK
SEPTEMBER 22.
THE POLICE INTERVIEWED
MR. HOBART AND HIS BROTHER I
THINK FOR THE FIRST TIME ON
OCTOBER 4.
HE DENIED ANY INVOLVEMENT.
THEY INTERVIEWED HIM AGAIN AFTER
THE PISTOL WAS FOUND AND HIS
PRINTS WERE FOUND ON IT.
THAT WAS MAYBE A WEEK OR TEN
DAYS LATER.
SO JUST TURNING TO THE THIRD
ISSUE, WHAT WE'RE ARGUING THERE
IS THAT TRIAL JUDGE SHOULD HAVE
FOUND THE MITIGATING FACTOR OF
EXTREME EMOTIONAL DISTURBANCE,
AND OBVIOUSLY A MITIGATOR MUST

BE FOUND IF IT'S ESTABLISHED BY
THE PREPONDERANCE OF THE
EVIDENCE.

AND HERE THE MITIGATOR WAS
ESTABLISHED BY THE PREPONDERANCE
OF THE EVIDENCE.

>> THE JUDGE ON THIS STATUTORY
MITIGATOR GOES INTO SOME GREAT
DETAIL AS TO WHY HE REJECTS THE
STATUTORY MITIGATOR, BUT THEN HE
FINDS IT AS A NONSTATUTORY
MITIGATOR AND HE GIVES IT, WHAT,
MODERATE WEIGHT?

>> WELL, HE FINDS THE BRAIN
DAMAGE AND HE FINDS THE HISTORY
OF HEAD INJURY.

I DON'T RECALL THAT HE FINDS
EMOTIONAL DISTURBANCE AS A
MITIGATING FACTOR.

>> BUT HE FINDS -- IT'S NOT LIKE
HE SAID -- REJECTED WHAT YOU
WOULD SAY WOULD BE
UNCONTROVERTED TESTIMONY ABOUT
BRAIN DAMAGE.

THE ISSUE REALLY IS WHETHER
ANYTHING THAT WAS GOING ON AS
FAR AS THE STATUTORY MITIGATORS
AFFECTED HIM AT THIS TIME OF THE
CRIME.

AND THAT'S WHERE WE GO BACK TO,
YOU SAY, HE'S 40 YEARS OLD, HE
DIDN'T REALLY HAVE A HISTORY OF
VIOLENCE, SO THE ISSUE REALLY IS
WHAT WAS THERE TO ARGUE OR WHAT
-- WHAT DID THE EXPERTS SAY WAS
THE CONNECTION BETWEEN WHATEVER
HIS BRAIN DAMAGE WAS AND THESE
CRIMES?

>> WELL --

>> THAT THE JUDGE HAD TO ACCEPT,
I GUESS.

>> RIGHT.

DR.WALDMAN TESTIFIED.

HE DID HIS OWN SERIES OF TESTS.
HE ALSO RELIED ON THE TESTS OF
DR. GROOM.

DR. GROOM SPENT ABOUT EIGHT
HOURS WITH THE DEFENDANT.

AND WHAT HE TESTIFIED TO IS THAT
ESSENTIALLY HIS BRAIN IS BROKEN.
HE HAS FRONTAL LOBE DEFICITS.

AND WHAT THAT MEANS HE OPERATES
ON IMPULSE, GENERALLY, BUT MOST
PARTICULARLY UNDER STRESS.

SO IF THIS SITUATION THAT

HAPPENED OUT ON JESSIE ALLEN ROAD INVOLVED SOME STRESS, AND THERE'S ALSO EVIDENCE THAT HE WAS POSSIBLY GOING THROUGH WITHDRAWAL AT THIS TIME. HE SAID HE WAS DOPE SICK, MEANING GOING THROUGH WITHDRAWAL AND EXPERIENCING ALL THE NEGATIVE EMOTIONS RELATED TO WITHDRAWAL, THAT HE WOULD HAVE BEEN OPERATING PURELY ON IMPULSE AND WOULD NOT HAVE ACCESS TO REASONING OR JUDGMENT OR ANY SORT OF THINKING ABILITY. SO IT REALLY GOES INTO EXACTLY WHAT HAPPENED THAT DAY AND WHY HE PULLED OUT THE PISTOL AND SHOT HIM.

>> EXCEPT THAT -- AND I'M READING FROM THE JUDGE'S SENTENCING ORDER.

IN SUPPORT OF THIS MITIGATOR THEY PRESENTED THE TESTIMONY OF WALDMAN, A FORENSIC NEUROPSYCHIATRIST, AND DR. GROOM, A CLINICAL PSYCHOLOGIST.

THEY TESTIFIED THE DEFENDANT HAD MEMORY DEFICITS AND FRONTAL LOBE DEFICITS.

THEY ORDERED THE MRI.

DR. GROOM -- WHICH THEY FOUND -- THOSE WERE NORMAL -- ADMITTED HE DID NOT KNOW THE CAUSE OF THE DEFICITS OR HOW HIS DEFICITS CAUSED HIM TO COMMIT THE MURDERS.

DR. WALDMAN ADMITTED HE DIDN'T KNOW THE DETAILS OF THE MURDERS OR WHAT THE DEFENDANT WAS DOING ON THE DAY.

THERE WAS NO TESTIMONY FROM ANYONE, INCLUDING THE MOTHER AND BROTHER, AS TO HIS MENTAL CONDITION.

NOBODY SAID ON THAT DAY HE APPEARED TO BE MENTALLY OR EMOTIONALLY DISTURBED.

DR. WALDMAN STILL SAID HE WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE. BUT NO ONE TIED IT TOGETHER. NOW, MAYBE THIS IS A GOOD -- YOU KNOW, YOU MIGHT BE IN POSTCONVICTION SAYING THERE WAS

A WAY TO TIE IT TOGETHER, BUT WE'RE HERE WITH WHAT'S IN THE SENTENCING ORDER.

AND WHAT'S -- WE UPHOLD THE JUDGE'S EVALUATION OF THE MITIGATORS AND AGGRAVATORS IF THERE'S COMPETENT SUBSTANTIAL EVIDENCE.

SO I DON'T THINK WHAT'S WRONG WITH WHAT THE JUDGE FOUND.

>> WELL, THERE ARE TWO THINGS WRONG.

FIRST OF ALL, THE JUDGE'S REASONS FOR NOT ACCEPTING THE TESTIMONY, THEY DON'T REALLY REFUTE DR. WALDMAN'S TESTIMONY THAT THIS MITIGATOR EXISTED.

I MEAN, ONCE HE MENTIONED, FOR EXAMPLE, THE MRI, DR. WALDMAN, HE'S A PHYSICIAN.

HE'S A NEUROLOGIST AND A PSYCHIATRIST.

SO HE PERSONALLY EXAMINED THE MRI AND TESTIFIED THAT IT HAD ABNORMALITIES THAT FIT WITH THE BRAIN DAMAGE.

DR. GROOM IS A NEUROPSYCHOLOGIST, SO HE'S NOT REALLY -- HE DOESN'T -- HE'S NOT QUALIFIED TO TALK ABOUT CAUSATION.

AS FAR AS NO ONE SAW THE DEFENDANT, WELL, --

>> WELL, HE HAD AN EXPERT, DR. TURNER, EXPERT.

>> DR. TURNER WAS A NEUROPSYCHOLOGIST, YES.

>> AND DR. TURNER, AT LEAST ACCORDING TO WHAT THE JUDGE FOUND, SAID THAT HE WAS NOT UNDER THAT EMOTIONAL --

>> THAT HE WAS WHAT?

>> NOT, HE WAS NOT UNDER THAT.

>> HE SAID HE WASN'T EXTREME.

HE EVEN FOCUSED ON THE FACT THAT, WELL --

>> LET ME READ THE JUDGE'S ORDER.

DR. TURNER TESTIFIED IN HIS OPINION DEFENDANT WAS NOT UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE WHEN HE COMMITTED THE MURDERS AND THEN GOES ON TO FIND THAT THE TESTIMONY OF THIS EXPERT IS MORE

CREDIBLE.
SPECIFICALLY MAKES THAT FINDING.
>> THAT'S CORRECT, YOUR HONOR,
AND I THINK WHAT THIS COURT HAS
TO DO IS LOOK AT THE UNDERLYING
BASIS FOR DR. TURNER'S OPINION.
AND THE TRIAL JUDGE DOESN'T EVEN
REALLY DISCUSS THAT IN HIS
SENTENCING ORDER.
BUT DR. TURNER HAD THREE REASONS
-- OR FOUR, I GUESS, FOR FINDING
THERE WAS NOT EMOTIONAL
DISTURBANCE OR THERE WAS NOT
SIGNIFICANT FRONTAL LOBE DAMAGE.
NOW, HE MET WITH THE DEFENDANT
FOR ABOUT AN HOUR.
HE TALKED TO HIM.
HE GAVE HIM I THINK TWO LITTLE
TESTS ON MEMORY.
AND THESE WERE HIS REASONS.
HIS PRIMARY REASON FOR FINDING
THAT HOBART DIDN'T HAVE
SIGNIFICANT BRAIN DAMAGE WAS
HOBART'S SELF-REPORTED SKILL AT
POKER PLAYING IN JAIL.
THIS IS WHAT DR. TURNER
TESTIFIED.
I FIND IT VERY INTERESTING.
HE SAYS HE'S BEATING ALL THE
OTHER INMATES.
HE'S WINNING AT POKER IN JAIL.
AND THIS REQUIRES -- THIS IS A
COMPLEX GAME THAT INVOLVES
FRONTAL LOBE FUNCTION.
IT'S DIFFICULT TO WIN AT POKER
WITH ANYONE THAT'S GOT ANY
SKILL.
SO HE'S TAKING ON FAITH HOBART'S
DESCRIPTION OF HIS POKER-PLAYING
SKILLS AS THE PRIMARY BASIS FOR
HIS OPINION THAT THERE'S NO
BRAIN DAMAGE.
I DON'T THINK THAT'S CREDIBLE.
AND I DON'T THINK THIS COURT
COULD FIND THAT CREDIBLE.
>> I GUESS WHAT WE'RE STILL
GOING BACK TO IS IF HE HAS BRAIN
DAMAGE --
>> YES.
>> YOU SAY THAT WOULD HAVE COME
FROM WHICH EXPERT?
>> DR. WALDMAN AND DR. GROOM AND
DR. TURNER.
>> OKAY.
SO IT STILL IS -- I THOUGHT WHAT

YOU WERE SAYING IS THE JUDGE
ERRED IN REJECT THE STATUTORY
MITIGATOR OF EXTREME EMOTIONAL
DISTRESS.
AND STILL TRYING TO UNDERSTAND
HOW IF -- ASSUME HE'S GOT THIS
BRAIN DAMAGE.
>> YEAH.
>> HE'S BEEN A DRUG ADDICT FOR
HIS WHOLE LIFE.
WHAT WAS THE TESTIMONY THAT WAS
UNCONTROVERTED THAT WOULD LINK
THIS -- THESE FACTS, WHICH IS
THAT BRAIN DAMAGE, DRUG ADDICT,
TO WHAT WAS GOING ON AT THE TIME
OF THESE CRIMES, WHICH IS WHAT
IS NEEDED, YOU WOULD AGREE, FOR
THE STATUTORY MITIGATOR, THAT HE
HAS TO HAVE BEEN UNDER EXTREME
EMOTIONAL DISTURBANCE AT THE
TIME OF THE MURDER.
SO WHAT AM I MISSING ABOUT WHAT
WAS THERE THAT THE JUDGE IGNORED
OR DREW THE WRONG CONCLUSION
ABOUT?
>> WELL, DR. WALDMAN, LIKE I
SAID, HE TESTIFIED THAT BECAUSE
OF THE TYPE OF BRAIN DAMAGE HE
HAS, HE IS GOING TO OPERATE ON
IMPULSE.
AND HE WOULD BE UNDER EXTREME
EMOTIONAL DIFFICULTY IN A
SITUATION THAT HE WAS IN.
HE DID -- HE WAS AWARE OF THE
AUTOPSY REPORT.
>> THAT WAS DR. WALDMAN?
>> YES.
HE WAS AWARE OF THAT.
WHAT HE WASN'T AWARE OF WAS THAT
THE DEFENDANT MOVED THE BODIES
TO THE SIDE OF THE ROAD AND
DROVE THE TRUCK BACK AND WALKED
HOME, THE SO-CALLED COVER-UP,
WHICH DR. TURNER RELIED ON AS
EVIDENCE OF FRONTAL LOBE -- VERY
LITTLE FRONTAL LOBE PROBLEM.
BUT HAVING FRONTAL LOBE DEFICITS
DOESN'T MAKE YOU A --
>> IT JUST DOESN'T -- YOU'VE
ARGUED SEVERAL CASES -- MANY
CASES OF COURSE.
AND SEVERAL YOU'VE BEEN
SUCCESSFUL IN CONVINCING US THAT
IT WASN'T PROPORTIONATE BECAUSE
OF WHAT WAS GOING ON AT THE TIME

OF THIS CRIME.

MR.OFFERT I THINK WAS ONE.

I'M NOT GETTING IT.

THIS ONE, WHAT WAS -- AGAIN,
EVERYTHING WE'VE JUST SAID, WHAT
WOULD HAVE COMPELLED THE JUDGE
BASED ON THE TESTIMONY PRESENTED
THAT HE WAS UNDER EXTREME
EMOTIONAL DISTURBANCE AT THE
TIME OF THIS CRIME?

>> WELL, AGAIN, DR.WALDMAN'S
TESTIMONY AND HIS EXPERT OPINION
BASED ON STANDARDIZED TESTS AND
THE FACT THAT THE DEFENDANT WAS
DOPE SICK, UNDER HUGE --

>> BUT I THOUGHT THAT THEY WERE
MITIGATING AGAINST THAT,
IMPROPER USE OF THE WORD, BUT
UNDERMINING THAT, WAS THAT THEY
HAD NO IDEA THE FACTS AND
CIRCUMSTANCES SURROUNDING WHAT
HAPPENED.

WASN'T THAT THE TESTIMONY?

>> BOTH EXPERTS AGREED, EVEN
DR. TURNER AGREED THAT YOU COULD
FIND THIS MITIGATOR OF EXTREME
DISTURBANCE WITHOUT KNOWING THE
FACTS BASED PURELY ON DR.TURNER
AGREED WITH THAT.

>> BUT, SEE, THAT'S WHERE YOU
LOSE CREDIBILITY.

I MEAN, EVEN --

>> THE STATE'S EXPERT AGREED
WITH THAT.

>> BUT YOU LOSE CREDIBILITY AS
FAR AS THE JUDGE -- AGAIN, THIS
IS A JUDGE FINDING IT VERSUS --
AGAIN, THE JURY FOUND 7-5 AND
LIFE, SO IT MUST HAVE BEEN
PRETTY OVERALL A COMPELLING
PICTURE OF THIS DEFENDANT.
BUT NOW YOU'RE ASKING US I GUESS
TO DO TWO THINGS, TO SAY THAT
THE JUDGE ERRED AS A MATTER OF
LAW IN REJECTING THAT MITIGATOR
AND THEN THAT IT WOULD HAVE TO
GO BACK FOR I GUESS A
RESENTENCING.

I MEAN, THAT'S WHAT -- IS THAT
YOUR ARGUMENT ON THAT?

>> YES.

>> BEFORE THE JUDGE.

BUT IF --

>> I THINK IT ALSO IS RELEVANT
TO THIS COURT'S PROPORTIONALITY

ANALYSIS, WHICH IS OUR FOURTH
ISSUE.

>> BUT IF WE ASSUME -- LET'S
ASSUME THAT HE FOUND IT AND GAVE
IT LITTLE WEIGHT BECAUSE, AGAIN,
IT'S SORT OF IN THE AIR AND NOT
REALLY TIED TO THE FACTS IN THIS
MURDER.

AND MAYBE IT WOULD BE DIFFERENT
IF THERE WASN'T THE SECOND -- I
MEAN, AGAIN, IF WE WERE JUST
TALKING ABOUT THE FIRST VICTIM.
BUT THE SECOND VICTIM AND
BRINGING THE GUN AND IF HE'S A
DRUG ADDICT, HE'S BEEN A DRUG
ADDICT, AS YOU SAID, FOR YEARS,
SO WHAT WAS DIFFERENT THIS DAY,
I DON'T SEE HOW --

>> HE'S IN NEED.

HE'S DOPE SICK.

HE'S IN WITHDRAWAL.

I MEAN, THAT'S --

>> THAT'S -- OKAY.

TELL ME WHAT EVIDENCE YOU
PRESENTED -- NOT YOU, IN THE
TRIAL, THAT HE WAS IN WITHDRAWAL
AND COMMITTED THESE CRIMES IN A
FIT OF WITHDRAWAL FROM OXYCODONE
OR -- I'M NOT EVEN SURE --

>> IT'S A FORM OF OXYCODONE.

>> WHAT EVIDENCE WAS PRESENTED
THAT HE WAS -- NOT THAT HE SAID
HE WAS DOPE SICK, BECAUSE THAT'S
WHAT -- THAT WAS IN HIS
CONFESSION TO -- BUT TO WHAT THE
EXPERTS SAID WAS THE EVIDENCE
THAT HE WAS IN ACUTE DRUG
WITHDRAWAL AT THE TIME OF THESE
MURDERS THAT WOULD HAVE
PURPORTED THE STATUTORY
MITIGATOR?

>> I DON'T THINK THAT HAS TO BE
PROVED, YOUR HONOR.

YOU'VE GOT THE POSITIVE EVIDENCE
THAT HE'S EMOTIONALLY DISTURBED.
HE IS A DRUG ADDICT.

WHY ELSE WOULD SOMETHING HAPPEN?
I MEAN, ALL HE DOES IS DO DRUGS.
THAT'S HIS LIFESTYLE.

HE'S BEEN BUYING FROM THESE TWO
INDIVIDUALS FOR YEARS.

>> BUT YOU KNOW HOW MANY CASES
WE'VE HAD OF CRACK COCAINE
WITHDRAWALS AND WHAT HAPPENS.

>> RIGHT.

>> THAT IS STILL NOT GOING TO
SORT OF CARRY THE DAY ABOUT IT
NOT BEING A PROPORTIONATE
SENTENCE, THAT HE'S A DRUG
ADDICT IN WITHDRAWAL AND HE
COMMITTED THESE CRIMES BECAUSE
HE WANTED THE DRUGS.
>> BUT YOU HAVE THE BRAIN
DAMAGE, YOUR HONOR.
YOU'VE GOT THE BORDERLINE
INTELLIGENCE.
YOU'VE GOT -- HE'S HAD THREE
TRAUMATIC HEAD INJURIES.
HE JUST DOESN'T WORK VERY WELL.
HIS BRAIN IS BROKEN.
YOU KNOW, THE COURT'S AWARE.
IT'S VERY HARD TO EXPLAIN WHY
PRECISELY MANY OF THESE KILLINGS
OCCUR, ESPECIALLY WHEN THEY'RE
SPUR OF THE MOMENT.
AND THERE IS NO PLANNING IT.
THE PERSON'S IN THIS SITUATION.
I THINK IT'S DIFFICULT FOR US TO
UNDERSTAND WHAT'S GOING ON IN A
PERSON LIKE THIS'S BRAIN.
SO THAT'S WHY WE RELY ON THE
EXPERTS.
IF YOU JUST HAD THESE TWO
EXPERTS, THE JUDGE WOULD HAVE
BEEN REQUIRED TO FIND THIS
MITIGATOR, BECAUSE THERE WAS
NOTHING TO REFUTE IT.
AND YOU LOOK AT DR. TURNER'S
TESTIMONY AND HIS TESTIMONY
DOESN'T REFUTE IT, EITHER HE
POINTS OUT -- THE OTHER THING HE
TALKED ABOUT WAS, WELL, THERE
WAS A LOT OF PLANNING HERE.
THERE WAS NO PLANNING HERE.
HE DRIVES OUT ON THIS ROAD TO
SHOOT UP DRUGS WITH THEM.
THEY END UP GETTING KILLED.
HE GETS IN THEIR CAR --
>> WELL, IT'S CERTAINLY -- I
MEAN, OTHER THAN SOME KIND OF
GANGLAND SHOOTING, IT'S AS
PLANNED AS WE SEE, WHICH IS,
AGAIN, AND YOU CAN DISPUTE IT,
BUT HE BRINGS A MURDER WEAPON TO
THE SCENE, AND WHETHER THE FIRST
MURDER IS PLANNED OR NOT, THE
SECOND MURDER IS DONE IN AN
INTENTIONAL WAY, I ASSUME TO
AVOID ARREST, AND SO I'M NOT --
THIS ISN'T -- I MEAN, THIS IS

NOT A ROBBERY GONE BAD CASE.
>> NO.
IT'S A DRUG DEAL GONE BAD.
AND I'D ALSO POINT OUT THAT
THERE ARE OTHER CASES, CROOK IS
ONE OF THEM, --
>> HOW OLD WAS MR.CROOK.
>> WHAT?
>> MR. CROOK WAS HOW OLD?
>> I DON'T RECALL HOW OLD HE
WAS.
>> ABOUT 17, 18.
>> BUT THE REASON I BRING THAT
UP IS THAT THE EXPERTS FOUND
EXTREME EMOTIONAL DISTURBANCE IN
THAT CASE BASED ON HIS BRAIN
DAMAGE.
>> AND SINCE YOU DON'T RECALL --
DO YOU KNOW WHAT THE FACTS --
FIRST OF ALL, WE GOT A
40-YEAR-OLD VERSUS SOMEBODY
ELSE.
>> RIGHT.
>> I DON'T KNOW THAT THAT'S A
GOOD CASE THAT SUPPORTS YOUR
ARGUMENT THAT THIS WOULD BE --
BECAUSE THERE -- THE FACTS OF
THAT CRIME WAS A FRENZIED,
HORRIBLE MURDER COMMITTED BY A
VERY YOUNG DEFENDANT.
IT'S JUST NOT AT ALL ANALOGOUS.
>> HE KILLED SOMEONE IN A BAR, I
THOUGHT.
>> RIGHT.
RIGHT, WITH THE -- YES.
HE KILLED AN OLDER WOMAN IN A
FRENZIED KILLING.
>> SO THE FACTS THEMSELVES ARE
SOMEWHAT DIFFERENT.
BUT THE POINT I WAS MAKING IS
THAT THE EXPERT FOUND THE
EMOTIONAL DISTURBANCE BASED
PRIMARILY ON THE TESTING THAT HE
HAD BRAIN DAMAGE AND HE ACTED
UNDER IMPULSE.
AND THERE ARE OTHER CASES, TOO,
WHERE IT'S BASED ON THAT.
AND THERE ARE PLENTY OF CASES
WHERE THE DEFENDANT LOOKED FINE
TO WITNESSES.
I MEAN, THAT WAS THE OTHER
JUDGE'S -- POINTED OUT.
NO ONE TESTIFIED THAT HE LOOKED
ODD.
SOMEONE WHO'S EMOTIONALLY

DISTURBED IN THE BRAIN DOESN'T
NECESSARILY LOOK ODD TO OTHER
PEOPLE.

SO THAT'S NEGATIVE EVIDENCE.
IT'S NOT POSITIVE EVIDENCE THAT
REFUTES DR. WALDMAN AND
DR. GROOM'S OPINIONS THAT WERE
BASED ON STANDARDIZED TESTING IN
THE FIELD.

LET ME JUST TURN TO
PROPORTIONALITY NOW VERY
BRIEFLY.

OF COURSE, THE DEATH PENALTY IS
RESERVED FOR THE WORST OF THE
WORST, THE WORST CRIMES AND THE
WORST OFFENDERS, AND I DON'T
BELIEVE HOBART IS EITHER ONE.
AS I MENTIONED BEFORE, HE HAD
ONE PRIOR AGGRAVATED BATTERY 20
YEARS AGO.

THE CRIME ITSELF, IT WAS NOT
TORTUROUS.

IT WAS NOT COLD AND CALCULATED.
AT LEAST OF BEGINNING OF IT WAS
PROBABLY A SPUR OF THE MOMENT
IMPULSE TYPE KILLING, A RESULT
OF EXTENSIVE BRAIN DAMAGE.
THE BRAIN DAMAGE WAS PROVED.
HE'S BORDERLINE INTELLECTUAL
FUNCTIONING, WHICH ALSO PLAYS A
ROLE IN THE IMPULSIVENESS OF HIS
BEHAVIOR.

HE CAME FROM A VERY, VERY SICK
FAMILY.

I'M SURE YOU'RE AWARE OF THOSE
ISSUES, ABUSIVE FATHER,
MANIPULATIVE, CONTROLLING
MOTHER.

THE FATHER APPARENTLY SEXUALLY
ABUSED BOTH OF HIS SISTERS.
EVERYONE IN THE FAMILY HAS HAD
MENTAL PROBLEMS AND STRUGGLES
AND DRUG PROBLEMS.

THE MITIGATION IS SIGNIFICANT.
I BELIEVE THE COURT HAS FOUND
THIS TYPE OF MITIGATION
SIGNIFICANTLY COMPELLING TO
VACATE A DEATH SENTENCE IN OTHER
CASES.

AND OF COURSE THE JURY
RECOMMENDATION WAS BY THE
SLIMMEST OF MARGINS.

ONE VOTE, ONE JUROR, AND WE
WOULD NOT BE STANDING HERE
TODAY.

I CITED A NUMBER OF CASES IN MY BRIEF AS COMPARABLE CASES, LARKINS, ALMEDA, MALDEN, KNOLLS. ALL OF THOSE CASES ARE COMPARABLE ON THE AGGRAVATING SIDE AND I WOULD ASSERT THAT THEY'RE ALSO COMPARABLE ON THE MITIGATING SIDE. THERE WAS CONSIDERABLE MITIGATION HERE. THE STATE'S CASES, THEY CITED SOME CASES. NONE OF THOSE ARE REALLY COMPARABLE TO THIS CASE. THEY CITED MELTON. THAT CASE THE DEFENDANT HAD COMMITTED A PRIOR FIRST-DEGREE MURDER AND A ROBBERY AT SOME OTHER POINT IN TIME. FREEMAN, AGAIN, A PRIOR FIRST-DEGREE MURDER THREE WEEKS EARLIER, AN ARMED BURGLARY, BURGLARY WITH ASSAULT. MILLER, HE BEAT THE VICTIM WITH A PIPE. LEBRON HAD AN EXTENSIVE RECORD. I WOULD ASK THE COURT TO REDUCE MR. HOBART'S SENTENCE TO LIFE. THANK YOU.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, KATHERINE MCINTYRE ON BEHALF OF THE STATE.

WHAT I WANTED TO START OUT BY POINTING OUT WAS THAT THE TRIAL COURT HERE HAD COMPETENT, SUBSTANTIAL EVIDENCE TO REJECT THE STATUTORY MITIGATOR. FIRST OF ALL, I'D ALSO LIKE TO POINT OUT THAT THE TRIAL COURT GAVE THE NONSTATUTORY MITIGATOR OF SUBSTANCE ABUSE/DEPENDENCY MODERATE WEIGHT AND DURING HIS EXPLANATION OF THE REASON WHY HE GAVE THIS NONSTATUTORY MITIGATOR WEIGHT WAS BECAUSE DR. WALDMAN TESTIFIED THAT PROLONGED DRUG USE LEADS TO BRAIN DAMAGE AND THAT THE DEFENDANT SUFFERS FROM SUBSTANCE ABUSE -- SUBSTANCE-INDUCED DEMENTIA. THE COURT FINDS THIS HAS BEEN ESTABLISHED AND ASSIGNS IT MODERATE WEIGHT. THIS EVIDENCE WAS NOT IGNORED.

IT WAS ACTUALLY GIVEN WEIGHT.
FURTHER, THE TRIAL COURT HAD
MORE THAN ENOUGH EVIDENCE FOR
WHICH TO REJECT THE STATUTORY
MITIGATOR, SPECIFICALLY
DR. WALDMAN'S TESTIMONY.
IT HAD DR. BRETT TURNER'S
TESTIMONY WITH REGARD TO WHAT HE
REVIEWED, WHICH WAS THE ARREST
REPORT, THE AFFIDAVIT,
VIDEOTAPED STATEMENTS,
DR. GROOM'S REPORT AND THE RAW
DATA, DR. WALDMAN'S DEPOSITION.
HE WAS PROVIDED FACTS ABOUT THE
CASE AS FAR AS EVERYTHING THAT
LED UP TO THE MURDERS AND
EVERYTHING THAT HAPPENED
AFTERWARDS.

AND HE SUBMITTED THAT THE FACTS
ALL SUGGESTED FORWARD THINKING
AND SOME PLANNING, FUNCTIONS
THAT SUGGEST A FUNCTIONING
FRONTAL LOBE, WHICH IS THE
REASON HE FOUND --

>> WHICH EXPERT WAS THAT?

>> THAT WAS DR. TURNER, OUR
EXPERT.

>> THAT WAS THE DEFENDANT'S --

>> DR. TURNER IS OUR EXPERT.

>> THE STATE.

SO HE FOUND THE STATE'S EXPERT
TO BE MORE CREDIBLE ON THESE
ISSUES.

>> YES.

YES, MA'AM.

NOW, HE ALSO HEARD TESTIMONY
FROM THE FAMILY AND FRIENDS.
HE OPINED THAT IF THERE IS ANY
KIND OF BRAIN INJURY, THAT IT IS
MINIMAL, CONSIDERING THE FACTS
IN THIS CASE.

AND CONTRARY TO THE -- ONLY THE
FACTS THAT OPPOSING COUNSEL
BROUGHT UP AS FAR AS DISPOSING
OF THE BODIES AND DRIVING
HIMSELF BACK HOME, THE FACTS
THAT WERE OMITTED WERE AS SOON
AS THE DRUG BUY WAS PLANNED, HE
WENT AND GOT HIS BROTHER'S GUN,
BROUGHT THE GUN TO THE DRUG
DEAL, WENT TO A SECLUDED AREA,
SHOT DR. -- APOLOGIZE, SHOT
ROBERT HAMM IN THE BACK OF THE
SCALP AND SHOT TRACIE TOLBERT AT
CLOSE RANGE AND THEN DISPOSED OF

THE BODIES AND DROVE HIMSELF HOME, HAD THE WHEREWITHAL TO PARK AT WINN DIXIE, CLOSE ENOUGH FOR HIM TO WALK HOME.

SO THIS EVIDENCE WAS MORE THAN ENOUGH EVIDENCE FOR WHICH TO REJECT THE STATUTORY MITIGATOR.

>> WHAT IS -- I MEAN, HERE IS, AGAIN, A 40-YEAR-OLD WHO HAS NOT HAD A VIOLENT HISTORY AND WHAT WAS THE EVIDENCE ABOUT THE PARTICULAR STRESSES AROUND -- IN AND AROUND THE MURDER THAT CAUSED HIM TO GO FROM A DRUG ADDICT WHO WORKED TO A MURDERER? I MEAN, WHAT WAS -- WHAT WAS IT THAT -- THE STATE'S THEORY WAS ABOUT AND THEN HOW DID THE DEFENSE COUNTER THAT MITIGATION.

>> THE STATE'S THEORY HE WAS AFTER THE DRUGS.

THIS IS PLAIN AND SIMPLE.

DR.-- NOT DOCTOR.

TRACIE TOLBERT HAD JUST FILLED A BRAND NEW PRESCRIPTION, 90 PILLS OF OXYCODONE.

>> I GUESS WHAT I'M ASKING, IF HE WAS ADDICTED TO OXYCODONE FOR TEN YEARS, WAS THERE EVIDENCE THAT HIS SUPPLY WAS RUNNING LOW, THAT HE WAS IN FINANCIAL -- IN OTHER WORDS, DID HE LOSE HIS JOB SO THAT HE COULDN'T BUY THE OXYCODONE ANYMORE?

>> THERE WAS NO EVIDENCE THAT HE WAS OUT OF MONEY OR ANYTHING TO THAT EFFECT.

HOWEVER, THERE WAS TESTIMONY I BELIEVE EITHER -- IT WAS ONE OF HIS FRIENDS THAT TESTIFIED DURING THE PENALTY PHASE, TESTIFIED THAT THE DRUGS WERE DRYING UP ON THE STREET, THE OXYCODONE.

THEY WERE SHUTTING DOWN SHOPS, THE DOCTOR SHOPPING SHOPS, AND THAT'S THE REASON -- WHAT PUSHED HER INTO REHAB.

SO ARGUABLY THERE WAS EVIDENCE THAT THE DRUGS WERE DRYING UP AND HERE WE HAVE 90 PILLS OF OXYCODONE, A FRESH SUPPLY.

>> WAS THERE SOMETHING ABOUT HIM OWING THEM MONEY?

>> ACTUALLY, THE TESTIMONY --

AND THIS WAS HIS DEFENSE THEORY.
HE HAD SOME KIND OF SELF-DEFENSE
THEORY GOING ON THAT WHAT HE
REPORTED TO RON AXELSON, THE
INFORMANT IN THE JAIL, WAS THAT
THEY WERE SHOOTING UP IN THE
WOODS, THAT HOBART --

>> AND WHAT WERE THEY SHOOTING
UP?

>> I WOULD ASSUME OXYCODONE,
YOUR HONOR.

THERE WAS NO EVIDENCE.
WELL, THE DEAL WAS FOR
OXYCODONE.

>> I DIDN'T KNOW THAT THAT WAS
SOMETHING YOU SHOOT UP.

>> I DON'T KNOW.

THAT A FIGHT BROKE OUT OVER
WHETHER HAMM OWED HOBART'S
BROTHER HAROLD \$2,000 OR AN
AMOUNT OF MONEY.

THAT'S WHEN A FIGHT BROKE OUT,
BLOWS WERE EXCHANGED.

HAMM HIT HIM WITH A PIPE.

>> BUT THERE'S NO EVIDENCE THAT
HIS BROTHER WANTED TO GET THIS
MONEY.

>> NO.

>> AS FAR AS THAT GOES.

>> ACTUALLY, THERE WAS NO
EVIDENCE -- THERE WAS
AFFIRMATIVE TESTIMONY THAT THERE
WAS NO SUCH DEBT.

>> IT SEEMS -- I MEAN, THE THING
THAT STILL SORT OF ASTOUNDS ME
GIVEN THE FACTS OF THIS MURDER
IS THE FACT THE JURY RECOMMENDED
LIFE AND ONLY 7-5.

WHAT WAS -- IN THE LIGHT MOST
FAVORABLE TO THEM, THEY MUST
HAVE DONE A FAIRLY GOOD JOB OF
PRESENTING MITIGATION IN THIS
CASE.

>> EXACTLY.

AND WE DID HAVE 7-5 ABOUT TRACIE
TOLBERT AND THE REASON BEING
THAT WITH TRACIE TOLBERT, THERE
WAS NO THEORY AS TO WHAT
HAPPENED THERE.

>> 7-5 IS A VERY SLIM -- I MEAN,
IN THIS STATE WE ALLOW THE DEATH
PENALTY.

IN MOST OF THE REST OF THE
COUNTRY YOU NEED A UNANIMOUS
VERDICT.

SO IT SEEMS LIKE, JUST AN
OBSERVATION, THAT YOU DIDN'T
SEEK CCP, NO HAC.

>> YES.

>> THAT THERE WAS -- IF HE WAS
GOING OUT THERE AS SORT OF THIS
COLD-BLOODED KILLER TO GET THE
DRUGS AND SHOOT WHO HE NEEDED
TO, I MEAN, WE JUST HEARD THE
LAST CASE, HUNTER, THAT THERE
WOULD HAVE BEEN A DIFFERENT JURY
RECOMMENDATION.

SO --

>> WELL, -- APOLOGIZE FOR
INTERRUPTING YOU.
WHICH IS THE REASON WHY WE CITED
THE CASE OF MILLER.

IN MILLER THE DEFENDANT ATTACKED
TWO SLEEPING HOMELESS PEOPLE IN
AN EFFORT TO ROB THEM.

HE WAS -- HE UNFORTUNATELY
KILLED ONE OF THE VICTIMS.
THE OTHER VICTIM SURVIVED.

SO HE HAD THE SAME TWO
AGGRAVATORS FOUND IN OUR CASE,
THE PREVIOUSLY-CONVICTION OF A
PREVIOUS FELONY AS WELL AS THE
FELONY MURDER.

HE COMMITTED THE MURDER DURING
THE COURSE OF A ROBBERY.

THERE WAS TEN NONSTATS FOUND,
INCLUDING A FRONTAL LOBE
DEFICIT, THAT WAS GIVEN MODEST
WEIGHT, AND THE VOTE THERE WAS
7-5 AS WELL.

>> DOES THE RECORD SUGGEST ANY
REASON WHY THE STATE DIDN'T
[INAUDIBLE]

>> NO, YOUR HONOR.

THE ONLY AGGRAVATOR THAT WAS
SLIGHTLY SUGGESTED WAS CCP AND
THE JUDGE SAID LET'S NOT GO
THERE, LET'S STAY WITH WHAT WE
HAVE.

SO UNLESS THERE ARE ANY OTHER
QUESTIONS, WE WOULD ASK THAT YOU
AFFIRM THE CONVICTIONS AND
SENTENCES IN THIS CAUSE.

THANK YOU.

>> THANK YOU.
REBUTTAL?

>> YOU HAVE SIX MINUTES.

>> I'LL PROBABLY JUST USE ONE.
JUSTICE PARIENTE, JUST IN
RESPONSE TO YOUR QUESTIONING

ABOUT WHY THIS HAPPENED NOW,
HE'S 40 YEARS OLD, HE'S BEEN
USING DRUGS FOR A LONG TIME, I
WOULD JUST REFER YOU IN PART TO
DR. GROOM'S TESTIMONY.

I MEAN, THERE WAS EVIDENCE THAT
HE -- FROM FAMILY MEMBERS THAT
HE WAS USING VERY, VERY HEAVILY
IN THE WEEKS BEFORE.

AND DR. GROOM DID TALK ABOUT HIS
INCREASED -- OR LOWER TOLERANCE,
INCREASED TOLERANCE FOR THE DRUG
AND HOW THAT AFFECTS THE PERSON.
HE NEEDS MORE AND MORE TO STAY
STABLE.

AND THAT MAY HAVE PLAYED A ROLE
IN WHY AT THIS POINT IN TIME HE
WENT BERSERK, ESSENTIALLY.

AND THE ONLY OTHER POINT I WOULD
MAKE IS THIS --

>> I REALLY -- AGAIN, I KNOW
YOU'RE ADVOCATING, BUT THIS IS
NOT LIKE A BERSERK TYPE OF
CRIME.

THAT'S THE ONLY -- BUT I
UNDERSTAND WHAT YOU'RE SAYING
ABOUT WHAT MAY HAVE BEEN THE
MOTIVATION, SO...

>> WELL, IT'S NOT A RAGE KILLING
IN THAT SENSE, BUT HE HAD A
PISTOL WITH HIM.

BUT I'M TALKING ABOUT WHAT'S
GOING ON IN HIS HEAD, IMPULSE.
THE ONLY OTHER POINT I'D MAKE IS
THIS OBVIOUSLY -- CRIME WAS OUT
OF CHARACTER FOR MR. HOBART.
HE'S NOT A COLD-BLOODED KILLER.
HE'S REALLY A SAD ADDICT.

>> AND MAYBE THAT'S WHY THE
JUDGE SUGGESTED NOT SEEKING CCP.
I MEAN, WHICH IS INTERESTING,
BUT WE USUALLY SEE GOING THE
OTHER WAY.

THIS COULD HAVE SUPPORTED CCP
AND AVOID ARREST AS TO --

>> WELL, THE EVIDENCE DIDN'T
SUPPORT IT, BECAUSE HE HAD THE
PISTOL WITH HIM, BUT THERE'S NO
EVIDENCE THAT HE PLANNED THIS
UNTIL HE ACTUALLY GOT THERE.
I MEAN, THERE WAS NO PLANNING TO
KILL.

THERE'S JUST NO EVIDENCE THAT HE
PLANNED TO KILL HIM.

YOU KNOW, HE WANTED DRUGS.

THAT'S WHAT WE KNOW.
HE NEEDED AND HE WANTED DRUGS.
HE WENT OUT TO GET DRUGS.
>> DID HE HAVE MONEY WITH HIM?
>> AND SOMETHING HAPPENED.
WE DON'T KNOW.
WE DON'T KNOW.
THERE WAS SOME EVIDENCE THAT
THESE PARTICULAR SUPPLIERS HAD
TAKEN PEOPLE'S MONEY AND NOT
GIVEN THEM DRUGS AND GONE OFF
AND NEVER GIVEN THEM THE DRUGS.
IN FACT, THERE WAS A WITNESS WHO
TESTIFIED THAT THAT HAPPENED
THAT MORNING.
SHE HAD MET HIM EARLIER THAT
MORNING, AND SHE GAVE HIM \$40
FOR SOME ROXYS, AND SHE NEVER
GOT HER DRUGS.
AND THERE'S TESTIMONY THAT THAT
HAD HAPPENED BEFORE.
HE MAY HAVE TAKEN THE PISTOL FOR
INSURANCE TO MAKE SURE HE GOT
HIS DRUGS.
I DON'T KNOW.
THANK YOU, YOUR HONOR.
THAT'S ALL.
>> COURT'S IN RECESS UNTIL 3:00
P.M.