

ORIGINAL

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1 IN THE CIRCUIT COURT OF THE
18TH JUDICIAL CIRCUIT IN AND
2 FOR SEMINOLE COUNTY, FLORIDA

3 CASE NO.: 93-3237-CFA

4
STATE OF FLORIDA,

Plaintiff,

6
vs.

EDWARD T. JAMES.

Defendant.

1

DEPOSITION OF:

GARY ANDERSEN

16 APPARENCES:

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18 Park Drive, Suite 210, Tampa, Florida, 33619, on Behalf of
the Defendant.

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 32771, on Behalf of the State

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I N D E X

2	TESTIMONY OF GARY ANDERSEN	
3	DIRECT EXAMINATION	3
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1 WHEREUPON,

2 GARY ANDERSEN

3 was called as a witness, and after having been first duly
4 sworn by the reporter, testified as follows:

5 DIRECT EXAMINATION:

6 BY MR. WELLS:

7 Q. Would you please state your name?

8 A. Gary Andersen.

9 Q. And how are you employed at this point?

10 A. I'm employed with Siemens Westinghouse Power
11 Corporation.

12 Q. From -- well, in 1993, '94 and '95, how were you
13 employed?

14 A. I was employed at the Public Defender's Office,
15 18th Judicial Circuit in Sanford, Florida.

16 Q. All right. And did you recently change
17 employment?

18 A. Yeah, about four months ago.

19 Q. And as a part of your employment with the Public
20 Defender's Office were you assigned capital cases?

21 A. I was for about five years while I was here.

22 Q. When did -- if you can tell us, when did that
23 assignment begin?

24 A. I think it was around '90, '91.

25 Q. All right.

1 A. Somewhere in that area.

2 Q. All right. And you did that --

3 A. For about five years, until about '96, '97.

4 Q. Okay.

5 A. So maybe it was '92.

6 Q. And at that point did you transfer back to a
7 felony division or --

8 A. I went to juvenile and then back to felony.

9 Q. All right. During the time that you were doing
10 capital cases, approximately how many cases did you take
11 to a jury where death was being sought by the State?

12 A. I participated in penalty phase parts of trials
13 three or four times is my best guess.

14 Q. All right.

15 A. That would include this one.

16 Q. All right. Did you ever participate as a guilt
17 phase attorney?

18 A. Yes.

19 Q. Okay. Well, I'm only asking that because of the
20 way you answered the last question.

21 A. Well, you were structuring it where death was a
22 possibility, so --

23 Q. Yeah.

24 A. -- that would only include those cases that went
25 to penalty phase because, you know, if they were -- if

1 they had dropped the sentence to life even during the
2 trial or at some point just prior to the trial or after
3 the jury selection, then of course there's no penalty
4 phase.

5 Q. Right.

6 A. That's why I answered the question the way I
7 did.

8 Q. Okay. Well, let me try to maybe clarify the
9 question then.

10 A. Okay.

11 Q. In your five years -- well, I'll start out with,
12 how many first degree murder cases were you involved in?

13 A. I don't have the exact number. My best guess is
14 probably ten to fifteen.

15 Q. All right. And are you saying that only four of
16 them actually went all the way to penalty phase?

17 A. Correct.

18 Q. Did you normally in this office, the Public
19 Defender's Office, have a two attorney team in capital
20 cases?

21 A. Yes.

22 Q. Did you have two attorney teams in some cases
23 where at some point the State announced that they were no
24 longer seeking death?

25 A. The team usually stayed together.

1 Q. Well, you anticipated my next question.
2 So even in those cases where it became a life
3 sentence type murder case, the two lawyers stayed on the
4 case?

5 A. Correct.

6 Q. Okay. Let me at least back up a little bit and
7 ask you, have you read anything or in any way reviewed any
8 material reference Mr. James in preparation for this
9 deposition?

10 A. Yes, I have.

11 Q. Okay. And could you tell me what you have read?

12 A. Well, several months ago -- I'm trying to
13 remember when -- in January or February we located the
14 file because the deposition was coming up and so I went
15 through the file that we have here and this morning I went
16 over and looked at the clerks' file.

17 Q. All right.

18 A. And went through it.

19 Q. Do you recall you and I meeting?

20 A. Yes, but I can't tell you which month it was.

21 Q. Well, actually it was just about the time you
22 were leaving the office.

23 A. Oh, was it?

24 Q. You were leaving the next week or something.

25 A. Okay. Well, it was later than I thought then.

1 It was March then instead of January or February. Because
2 I -- but we had the files a little time before that and I
3 had gone through them.

4 Q. Are you talking about the trial attorney files?

5 A. Our trial attorney files, right. Uh-huh.

6 (Indicating affirmatively.)

7 Q. Well, just for clarification, do you remember me
8 actually bringing them physically here and we sat in this
9 room and they were on the table?

10 A. I think it was the room over there. I
11 remember --

12 Q. Well, it was one of these rooms?

13 A. Yeah.

14 Q. All right.

15 A. Yeah. They were -- I don't remember them being
16 on the floor, but whatever, the boxes were in the room
17 with us.

18 Q. Okay. And are those the boxes you say you've
19 reviewed?

20 A. Yes.

21 Q. At some point in the past?

22 A. Correct.

23 Q. And then this morning you reviewed the trial
24 file?

25 A. Yes.

1 Q. Okay. How many lawyers were in the capital
2 division of this office at the time Mr. James' case came
3 into this office?

4 A. Three.

5 Q. And who were those three attorneys?

6 A. James Figgatt, myself and Arthur Haft.

7 Q. Okay. And who became responsible for Mr. James'
8 case?

9 A. I was the main attorney.

10 Q. All right. And what was your first -- where was
11 your first contact with Mr. James?

12 A. My first contact was at the Seminole County Jail
13 here.

14 Q. All right. Do you know if someone from this
15 office actually flew to California where Mr. James was
16 apprehended?

17 A. Yes, Arthur did, but not -- not while he was
18 still there.

19 Q. All right.

20 A. For the deposition, yes.

21 Q. Okay. Deposition of police officers?

22 A. Of -- yes.

23 Q. Okay. So that was long after Mr. James was back
24 in Seminole County?

25 A. Yes. Uh-huh. (Indicating affirmatively.)

1 Q. Okay.

2 A. We didn't get appointed until he came back here.

3 Q. Okay.

4 A. It kind of makes sense. Although there have
5 been a couple of cases where we tried to get appointed
6 before they came back. We almost succeeded in one of
7 those.

8 Q. In terms of who was assigned to this case, who
9 was assigned to the case other than yourself?

10 A. James Figgatt. Although Arthur Haft did the
11 depositions for me in this case. I think that was the
12 only thing he participated in.

13 Q. And how would you describe the working
14 relationship between you and Mr. Figgatt?

15 A. Good.

16 Q. Okay. How would you describe the division of
17 labor between you and Mr. Figgatt?

18 A. He focused more on penalty phase type things,
19 but I would say it was more like 70/30. Whoever was the
20 main attorney did most of the stuff for the case, led it
21 and would focus on it or decide who was going to do what
22 if decisions had to be made. But usually it was a mutual
23 agreement type of thing. It wasn't like, you know, I was
24 the boss of the case or anything like that.

25 Q. All right. But when you're using that 70/30

1 split, you're talking you have the seventy percent and Mr.
2 Figgatt had the thirty percent?

3 A. That would be a rough estimate, I guess.

4 Q. All right. When you first had contact with
5 Mr. James, how much did you know about the facts of the
6 case?

7 A. Probably only what I had read in the paper.

8 Q. Was there significant press coverage of this
9 case?

10 A. Yes.

11 Q. Was there TV coverage of this case?

12 A. I believe so.

13 Q. In fact did Mr. James at some point confess in a
14 TV medium?

15 A. He did in California.

16 Q. Right. Okay. Had you seen or were you aware of
17 any of his confessions when you first had contact with
18 him?

19 A. I believe so.

20 Q. From your memory were the confessions quite
21 graphic and complete?

22 A. I wouldn't say complete but they were certainly
23 graphic and they went, if I remember right, four or six
24 hours. That's a long period of time. Maybe it was only
25 two hours but it seemed like six.

1 Q. When you first met with Mr. James -- or at what
2 point after you met Mr. James did you start to discuss
3 strategy?

4 A. It's usually not my first meeting. It's
5 difficult to remember our first meeting but my usual
6 circumstance would be to go out and introduce myself to
7 these people and not dive right into the facts but mainly
8 protect the present interest and keep things on the status
9 quo. We probably spent a lot more time talking to him
10 about remaining silent and not entertaining visits from
11 police officers and that type of thing. We did file a
12 paper that in a written way engaged his rights for the
13 jail to understand that he's not to be approached without
14 us knowing about it.

15 Q. Did you become aware at some point of Mr. James'
16 alcohol and drug problems?

17 A. Yes.

18 Q. How early in the process do you think that was?

19 A. I don't think we really understood the extent of
20 it until later, but I think we all knew it was a factor
21 from the beginning.

22 Q. Did you have in the office an investigator
23 assigned to this case?

24 A. No.

25 Q. Did you use an investigator from the Public

1 Defender's Office at any point in this case?

2 A. Yes.

3 Q. And who was that?

4 A. I'm trying to remember who was our investigator
5 back then. It was probably Jim McConahey and then after
6 he left us, Alex. I can't remember what Alex -- what
7 Alex's last name is. I can't remember it. But I remember
8 we had -- Jim McConahey was here for, I think, most of
9 the time that we did this case.

10 Q. Is he still here?

11 A. No.

12 Q. Okay. Do you know where he is?

13 A. Brevard County. I couldn't even tell you the
14 city right now.

15 Q. All right. He's no longer employed by the
16 Public Defender's Office?

17 A. No, he's retired.

18 Q. All right.

19 A. He had retired before he came with us, highway
20 patrol or some place, or maybe he was a sheriff in some
21 place in Ohio.

22 Q. And you used the name Alex, is that the first
23 name of someone else that may have been involved at some
24 point with the case?

25 A. Yes. He came in and was their investigator here

1 in Seminole County, and his last name is Economou.

2 E-C-O-N-O-M-O-U, something like that.

3 Q. Okay. Do you know if he's still about?

4 A. Last I heard he was working with either K-Mart

5 -- no, Target, in security.

6 Q. Okay.

7 A. Whether he's still with them or not, I don't
8 know.

9 Q. Did you have in the office at that time a person
10 I will define as a mitigation specialist?

11 A. No.

12 Q. Do you know the concept of a mitigation
13 specialist?

14 A. The concept, yes. I've never actually worked
15 with one on any of my cases.

16 Q. All right.

17 A. So to say that I understand what they do, I
18 would have to say no because I don't think you can really
19 understand that unless you actually go through a case with
20 one.

21 Q. All right. Was it part then of your
22 responsibility to develop mitigation evidence?

23 A. Yes.

24 Q. And at the point that you begin your case, is it
25 also your job as lead attorney to develop whatever theory

1 of defense that you're going to use?

2 A. Yes. I'm not doing this alone, I mean, when
3 you're talking about a theory of defense is something that
4 we discuss with the client and between each other and I
5 don't remember there being any controversy about where we
6 were headed, so there was no lack of agreement.

7 Q. All right. And what was your theory of defense?

8 A. That he was intoxicated to the extent that he
9 could not perform the -- ability to perform first degree
10 murder.

11 Q. He could perform the requisite intent?

12 A. That's what we were trying to get to.

13 Q. Okay. And was the selection of that as a
14 defense based upon at least initially conversations with
15 Mr. James?

16 A. It was based on the facts, the depositions as
17 they went and what Mr. James could remember about that
18 particular time period. You know, things developed over
19 time as we got to know each other and as discovery came
20 out, we would come out and go over with him, get any
21 thoughts or ideas that he had about somebody that might
22 help us with this peculiar aspect of the case. So it
23 would develop over time. And I would have to say that
24 once we realized the number of different kinds of drugs
25 that were involved, we realized that we would need some

1 sort of a specialist in that area, so that's when we
2 sought out Dr. Buffington.

3 Q. All right.

4 A. So whenever that was, that's when we started
5 focusing on that defense.

6 Q. Now did you in conversations with Mr. Figgatt
7 reach a joint decision that the drug aspect of the case
8 would be at least a major responsibility of Mr. Figgatt?

9 A. He from a general perspective was going to focus
10 on the mitigation part of it, and once we decided to plead
11 the case and focus on that end of it anyway, then I delved
12 into it with both feet as well.

13 Q. How long after Mr. James returns to Seminole
14 County was that decision made, that is that he was going
15 to plead guilty and not have a guilt phase?

16 A. It wasn't until close to trial. I would say
17 early '95.

18 Q. Okay. And was that done pursuant to discussions
19 between you and Mr. James based upon your completing
20 pretty much the discovery end of a guilt phase
21 presentation?

22 A. Yes. I would -- I can't remember the exact
23 sequence but I remember that one of the things that we
24 were concerned about was the -- we were trying to find an
25 expert that could help us overcome the State's medical

1 examiner about [REDACTED] being alive at the time of the
2 sexual battery. And if I remember correctly, that was one
3 of the last pieces of the puzzle before we came to the
4 conclusion or advised our client that that might be a good
5 way to consider going.

6 Q. You mean to plea?

7 A. Yes.

8 Q. Okay.

9 A. To enter a plea.

10 Q. Okay. Were you able to find an expert to assist
11 you in the area of whether or not the little girl was
12 alive or dead at the time of the sexual battery?

13 A. No. I did talk to an expert who assisted us in
14 looking at the possibility of it but I didn't ever get the
15 impression that Dr. Feegle was really interested in
16 helping us in that particular area. He really -- when I
17 went over to talk to him, and I think that we probably --
18 I was talking to him about two cases at once, if I
19 remember that particular meeting over there in Tampa. We
20 had sent the materials over for him to review the autopsy
21 information and Dr. Gore's statement that he felt the
22 child was alive based on the blood that was in the
23 cavity. And so when I went over to talk to him about the
24 case, he told me he had reviewed the materials and I asked
25 him if there was any, you know, way that we could come up

1 with a defense to try to at least suggest that, you know,
2 maybe the way the body was moved, the blood moved around
3 in the body without the parts pushing it around. And
4 essentially his reaction, and that's all I can remember
5 now, was one of, you know, I've reviewed the materials, it
6 was kind of why bother type of thing. And in a way I was
7 rather disgusted back then.

8 Q. By what?

9 A. Response. I mean, the previous times that I had
10 worked with Dr. Feeble he had always seemed very
11 professional, ready to be inventive, try to come up with
12 some angle, some way to go, some way to operate it. So
13 this kind of was disturbing to me to have this kind of
14 reaction because it was not like him.

15 I don't want to say that I know the man because
16 I probably haven't spent more than three hours with him
17 altogether, except while he was on a case, I mean,
18 actually talking to him. But I really had hoped that he
19 would have given us something more. But it was like there
20 really is no way to go, I mean, he wasn't suggestive of
21 anything or -- it didn't seem to me that he even appeared
22 to be encouraged at all in any way to go. Let's put it
23 that way, I guess. Whether he tried various things and
24 realized there was no way to go with it or whether he was
25 just repulsed by the type of case, I couldn't give you an

1 answer to that.

2 Q. Do you recall with any specificity what
3 materials you presented to Dr. Feeble, either before he
4 went over to Tampa or took with you to Tampa, in terms of
5 him reaching whatever conclusion he reached?

6 A. I'm sure we would have sent him a copy of the
7 photographs that we had, along with the autopsy report. I
8 don't know that we would have given him a statement that
9 the client had confessed or not. I don't know. We try to
10 be as complete and thorough with our experts as we can
11 because you never know what they might be able to make out
12 of something. So I would not have withheld the
13 information that he had confessed. And a lot of times
14 we'll give a -- either I'll summarize it in letter form or
15 we'll send a copy of the basic police report to let them
16 know what the basic facts are around the case, not just
17 the cold autopsy report.

18 Q. Do you know if you took any slides?

19 A. Of what?

20 Q. To Dr. Feeble.

21 A. I don't remember having slides. So that would
22 be no.

23 Q. Well, do you know if Dr. Gore made slides?

24 A. I don't -- I don't know.

25 Q. Okay.

1 A. You know, I'm trying to remember back in my mind
2 if he had some slides for trial. I don't know.

3 Q. Well, let me ask you this, do you recall whether
4 Dr. Gore's testimony as to whether or not the child was
5 dead or alive at the time of the sexual battery was based
6 at least in part on the amount of blood that he found in
7 the vaginal/anal area of the little girl?

8 A. It was my understanding that that was his
9 opinion, that because of the blood the heart was still
10 pumping.

11 Q. Dr. Gutman was hired by your office, correct?

12 A. Yes.

13 Q. And why Dr. Gutman versus anyone else?

14 A. He was very helpful, insightful in many cases
15 that we had in the past. He was -- he was a good doctor
16 for us in my opinion at the time.

17 Q. Okay. Was he hired at least initially under the
18 part of the evidence code that allows you to hire a
19 confidential expert, if you recall?

20 A. We usually start that way but I'm not sure if I
21 did with him.

22 Q. Did you, in terms of your contact with Mr. James
23 perceive at least from sitting across the table from him,
24 any obvious mental health problems?

25 A. No.

1 Q. Did he --

2 A. I'm not a psychiatrist and I don't play one on
3 TV.

4 Q. Okay.

5 A. I try not to play one as a lawyer either. But I
6 know as lawyers we have to make that initial judgment and
7 I always hate to make that statement, you know, I'm
8 assessing this person, he obviously has some mental health
9 problem, we better get somebody in to see him right away,
10 I don't know. But there was nothing obvious.

11 Q. Okay.

12 A. As I've seen in other clients or Baker Acts.

13 Q. Well, that was my next question. Obviously some
14 people you may be able to detect that they're slow or
15 they're mentally retarded or they're schizophrenic if
16 they're bouncing off the wall?

17 A. Right.

18 Q. But would it be fair to say that none of those
19 kind of things jumped out at you with Mr. James?

20 A. That's correct.

21 Q. All right. Mr. James, hopefully while he's been
22 in jail -- well, had he been in jail in California for at
23 least a short period of time?

24 A. As long as it took to do the confession and send
25 him back here. I don't think it was very long.

1 Q. All right.

2 A. I would like to say it was seven to ten days but
3 I don't know exactly.

4 Q. And then he was in jail here?

5 A. Yeah.

6 Q. And one would assume he didn't have access to
7 booze, cocaine, LSD?

8 A. I never saw him under the influence, no.

9 Q. Okay. So he was getting better in terms of his
10 drug addiction and alcohol addiction as you had contact
11 with him over the months?

12 A. Correct.

13 Q. Okay. To talk to you?

14 A. Yes.

15 Q. Share ideas with you?

16 A. Absolutely. He seemed to be very intelligent.

17 Q. Okay. And in fact in reviewing Dr. Gutman's
18 material, I think Dr. Gutman did an IQ test or an
19 intelligence test, I guess they're called these days. Do
20 you recall that?

21 A. No.

22 Q. Okay. What was your -- at the point you're
23 employing Dr. Gutman, what is your goal?

24 A. I don't know. Dr. Gutman was helpful in two
25 ways really. I can't remember if we retained him before

1 we got Buffington, but I'm sure we at least called him
2 when we started understanding there were a combination of
3 various drugs because he seems to have a pretty good
4 knowledge of that area as well, being able to, you know,
5 extrapolate facts for DUI's, that type of thing, and the
6 mixture of cocaine, he's explained cocaine psychosis to me
7 in the past. So those types of things have been -- so I'm
8 sure we used him for that area as well as a mental health
9 exam.

10 Q. Do you recall giving Mr. James some instructions
11 when he first got back to Seminole County about his hair
12 and his beard?

13 A. There was an issue that someone had mentioned in
14 some conference I had gone to that you can collect hair
15 somehow and have it analyzed and determined if or how
16 frequently a person has used cocaine because some residue
17 is left. I was never able to find that expert or
18 anything. And I had asked him to, just for the
19 possibility of that, to not cut his hair. It seems to me
20 he did, though, and I don't -- but I don't think that -- I
21 mean eventually he did because it was several months and I
22 still hadn't found anybody and he eventually cut it.

23 Q. In terms of determining what drugs could or
24 could not be tested from hair samples, you've mentioned
25 that you perhaps went to a seminar or came across some

1 information about that subject, correct?

2 A. Correct.

3 Q. Okay. Did you consult with Dr. Gutman or anyone
4 else about the possibility that hair could be tested
5 for --

6 A. Yes.

7 Q. All right. And what did they tell you?

8 A. I couldn't get any information about how to get
9 that done or who could do it. I can't remember -- you
10 know, I can't remember the conversation that I had with
11 Dr. Gutman, but I'm sure that I asked him about that, if
12 he knew of anyone. I didn't have any leads from his
13 direction either.

14 It seems to me at some point in time I found
15 either a magazine or a newspaper article about it as well
16 and the only drug that I'm aware of from the information
17 that I've had in the past is cocaine.

18 Q. All right.

19 A. It could be determined that -- if other drugs
20 could be determined, that's something else. So it was
21 something that we thought of early on. We tried to
22 maintain the evidence, so to speak, as long as we could.
23 But I am trying to remember if we actually went out and
24 got a sample anyway and kept it. I don't remember if I
25 asked my investigator to do that or not.

1 Q. Was there some concern in this case again at
2 some point about LSD use?

3 A. Yes.

4 Q. And what was the concern?

5 A. We had determined and I'm trying -- I couldn't
6 tell you exactly when that we got all these details down
7 about how he acquired it or how much he had, but there was
8 -- by the time we got to the sentencing phase of it, it
9 was part of the case that we were trying to show that he
10 had ingested quite a bit of LSD that day in little sticker
11 form.

12 Q. And you're not, as we sit here today, you're not
13 sure of the timing of when you found that out, the first
14 part of the case, the middle of the case --

15 A. No.

16 Q. Okay.

17 A. I don't. You know, it was part of the
18 information that had gone to Dr. Buffington because I
19 believe he included LSD in his determinations.

20 Q. All right. Were you aware then or even are you
21 aware now that in fact LSD could be detected in your hair?

22 A. No, I have no idea about that.

23 Q. Okay. During this time frame, if you -- well,
24 first of all are you familiar with the fact that the
25 Florida Association of Public Defenders has a pretty

1 extensive list, if you want to call it that, of experts?

2 A. We have a book. I'm not sure who it was put
3 together by, if it's the Florida Public Defenders or the
4 Florida Defense Attorneys. I don't know.

5 Q. Okay.

6 A. But we have a book of forensic experts and it
7 seems to me I called the ones that seemed to be close to
8 that area and could not get anywhere with that.

9 Q. Okay.

10 A. Not sufficient to send anything off.

11 Q. When you say you called, you are -- again, and
12 I'm asking these questions having taken Mr. Figgatt's
13 deposition -- are you saying you're making these calls or
14 do you feel maybe he's making these calls, seeing how --

15 A. As soon as I'd, you know, get the information I
16 would let him know what I had found. You know, I don't
17 remember if -- you know, it was one of these things where
18 I tried to call somebody and, you know, leaving messages
19 and, you know, you want to try to call them or what. If I
20 got into a bind, you know, the main focus was for him to
21 do the sentencing stuff so he could be the one that's
22 making the calls on that. I seem to remember also making
23 calls.

24 Q. Okay. Do you recall who it was that found
25 Buffington?

1 A. I believe Mr. Figgatt found him. I can't
2 remember if we found him for a previous case or if it was
3 one that came after that. But I believe Mr. Figgatt found
4 Dr. Buffington.

5 Q. And what was Dr. Buffington's, from your
6 understanding, area of expertise?

7 A. Pharmacology.

8 Q. Okay. Do you know whether you or Mr. Figgatt
9 ever asked him the question about the testing of the
10 hair?

11 A. I'm sure we would have brought it up at some
12 point in time. Whether it was initially -- I would have
13 to say yes, even though the hair was already cut by then.

14 Q. Well, that was going to be my next question. Do
15 you know if --

16 A. I was still interested --

17 Q. Okay.

18 A. -- in the question.

19 Q. Did you ever yourself go down to the Casselberry
20 Police Department and look at the physical evidence that
21 they had down there in relation to Mr. James' case?

22 A. Other than the photographs, no, or some diagrams
23 maybe.

24 Q. Were you familiar with the process by which
25 clothes could have been tested for drug -- especially for

1 LSD usage?

2 A. No, I've never heard of that.

3 Q. All right. When you initially began I guess
4 discussing the possibility of Mr. James pleading, did that
5 also include him waiving jury at penalty phase?

6 A. No, it was a separate issue.

7 Q. Do you feel Mr. James understood that was a
8 separate issue?

9 A. I don't know. We talked to him about pleading
10 guilty. We didn't talk about -- we talked about the
11 sentencing phase from the perspective of, you know, the
12 judge is the ultimate one to do it. At some point we just
13 -- I don't remember discussing waiving the jury at the
14 time we did the plea or, you know, we would have done
15 that.

16 Q. Was there a length of time -- well, let me ask
17 you this. Was the case in total, guilt and penalty, never
18 set for jury trial?

19 A. Well, we set these things for jury trial, we
20 call them dockets nowadays.

21 Q. Right.

22 A. They might even be date certains on a case like
23 this because we'll want to reserve a whole week. And so,
24 you know, I would have to say it was set probably more
25 than once. But it seems to me it was around March or

1 April that it was coming up for jury selection.

2 Q. March or April of '95?

3 A. Of '95.

4 Q. Okay.

5 A. And I don't think we would have had a problem
6 getting a continuance if we needed it but I believe this
7 was -- I can't remember what prompted going forward with
8 it at that particular time but it just seems -- the thing
9 that I seem to remember is that once we get the
10 information from Dr. Feegle it was time to make the
11 decision. There wasn't any other avenues that I knew to
12 take so we presented it to our client and weighed the pros
13 and cons and decided to enter the plea. I'm sure it was
14 -- once he decided to enter the plea, we started talking
15 about, well, how are we going to handle the sentencing
16 phase. But as far as waiving a jury and that type of
17 thing, it was discussed but I don't think it factored into
18 his decision of pleading guilty.

19 Q. Okay. You just referred again to the
20 information or the -- I'll characterize it as really the
21 non-availability of Dr. Feegle to assist you on that issue
22 that you've gone to him to seek a consult on?

23 A. Correct.

24 Q. Was it your thought at the point of your
25 contacting Dr. Feegle to present to a jury information

1 that would have put in doubt Dr. Gore's assessment of
2 whether or not the little girl was alive or dead?

3 A. That's the main issue that we talked to Dr.
4 Feegle about.

5 Q. All right. Well, are you still at that point
6 developing an intoxication defense?

7 A. No.

8 Q. What's happened to the intoxication defense?

9 A. I'm sorry. Intoxication doesn't go away. It
10 just doesn't play any role in the issue that we're trying
11 to focus on of whether the child was alive or dead.

12 Q. All right. I understand that.

13 A. I mean, we never quit doing depositions, asking
14 questions about the intoxication. That is constantly
15 going on, so it's not like it stopped.

16 Q. All right. So what you're trying to do -- well,
17 let me ask you, what you're trying to do then is you're
18 still going to present intoxication on the issue of
19 intent, correct? Or that's what you're trying to develop?

20 A. Yeah.

21 Q. Okay. But you're also trying to develop a
22 separate issue on whether or not the little girl was dead
23 when she was sexually assaulted?

24 A. Correct.

25 Q. And that is before Mr. James decides to enter a

1 plea, that work is ongoing?

2 A. Yes.

3 Q. Okay. The issue of whether or not the little
4 girl was dead or alive at the time of the sexual assault
5 can also be a sentencing issue, can it not?

6 A. Yes.

7 Q. Other than Dr. Feegle, did you talk to anyone
8 else about that issue?

9 A. Only people in my office and my client.

10 Q. At the time that you're preparing this case for
11 trial, and I'm asking your total career at that point, how
12 many jury trials had you done, roughly?

13 A. Let's see. I've been practicing since '79.

14 This is '95. At least a hundred and fifty.

15 Q. Okay. And at this point how many capital trials
16 have you done?

17 A. You're talking about first degree murder,
18 capital trials?

19 Q. Right.

20 A. Ten.

21 Q. Okay.

22 A. That I participated in.

23 Q. All right. In this case, the case of Mr. James,
24 did you consider the issue of whether or not the little
25 girl was dead or alive an issue that would fly with the

1 jury? Let's say you got Dr. Feegle to come back and say
2 she was dead.

3 A. Right.

4 Q. Was it your attempt then to present that
5 testimony to a jury as to contrast Dr. Gore's testimony,
6 is that --

7 A. What I was hoping he would say since he knows
8 the human body and the cavities that Dr. Gore was
9 describing, is that he could tell me that the tearing of
10 the vaginal wall and the movement of the body from where
11 she lay in the house to the autopsy room would shift blood
12 around. And had he told me something like that, then we
13 would go back to depositions and find everybody that
14 handled the body and to find out what they had to do with
15 it. That's what I was hoping the direction we would go.

16 Q. Okay. Turning for a moment to Dr. Gutman, you
17 had worked for Dr. Gutman before this case, correct?

18 A. Yes, many times.

19 Q. And you were familiar with whatever information
20 he might want on a client before he does an eval or as a
21 part of his evaluation process?

22 A. He's not as particular as most of our doctors.

23 Q. Okay.

24 A. On what he gets ahead of time.

25 Q. Well, would you attempt to get to him whatever

1 he wanted --

2 A. Sure. Absolutely.

3 Q. -- whatever it was?

4 A. Absolutely.

5 Q. Okay. Do you think it would be in this
6 particular case, Mr. James' case, important for him to
7 know from you a -- your knowledge of Mr. James' drug use?

8 A. I'm sure I didn't hide it from him. I'm not
9 sure -- yes, I mean, I think that drug use, you know, the
10 facts surrounding the case, are all helpful information
11 to, you know, a mental health doctor before they evaluate
12 somebody. He seems to be one of those persons that even
13 if he doesn't have it ahead of time, he'll go ahead with
14 the evaluation and then when he gets the information he'll
15 put it together with what he's understood. So I'm not
16 sure what we got him ahead of time exactly.

17 Q. Did the nature of the crimes that Mr. James'
18 committed seem to be out of character with most of his
19 history?

20 A. Yes.

21 Q. And in fact he had a relationship, did he not,
22 with both [REDACTED] and the little girl?

23 A. Yes.

24 Q. And I believe what had been described as a good
25 relationship?

1 A. Yes.

2 Q. Did that make, from what you knew of again the
3 synergistic impact and perhaps all the drugs Mr. James was
4 using, did it make the LSD more important or the
5 possibility that he ingested LSD?

6 A. I'm sorry, I had no way of differentiating the
7 affect of LSD from a cocaine psychosis or the amount of
8 alcohol that he had, but it certainly plays a big part in
9 why this doesn't make sense. That's what we tried to
10 present to the jury is that this isn't the way that Eddie
11 James acts on a normal basis and there's no, you know,
12 reason for him to be mad at either one of these people.

13 Q. Right.

14 A. I think we clearly presented that to the jury.

15 Q. You had a witness in relation to the LSD?

16 A. I thought we had more than one but there was one
17 in particular that I remember.

18 Q. [REDACTED]

19 A. Yes. [REDACTED]

20 Q. [REDACTED] -- well, how would you rate
21 [REDACTED] in trial prep in relation to the LSD issue,
22 where would you put him?

23 A. He was a druggie.

24 Q. Well --

25 A. He was an alcoholic himself. He's not the best

1 witness that I would like to put on the stand but he was
2 the only one that could present to the jury that -- it
3 seems to me there was one other witness. I can't remember
4 who it was, that also confirmed that LSD was involved but
5 they couldn't tell how much, where as [REDACTED] seemed to have
6 some recollection of how much he saw Eddie with.

7 Q. So in terms of that issue, I guess my question
8 was, he would be like right at the top of the list in
9 terms of people you'd want to testify, even with --

10 A. Absolutely.

11 Q. -- his problems?

12 A. Sure.

13 Q. Okay. And he showed up to court intoxicated,
14 correct?

15 A. Yes.

16 Q. Did you ever in any case that you worked here
17 defending persons here at the Public Defender's Office,
18 did you ever provide witnesses with rides to court?

19 A. I couldn't tell you a particular instance and
20 more often than not, if they got a ride to court, it was
21 by the sheriffs. But it seems to me that on one or two
22 occasions I had either had a witness brought to court by
23 our investigator or somebody else did. It's a violation
24 of our rule.

25 Q. Of whose rule?

1 A. This office's rule.

2 Q. Okay. You mean it's a violation of the rule to
3 have somebody from this office bring them to court?

4 A. To get a witness and bring them here.

5 Q. Okay. Is that for like liability reasons?

6 A. I guess. I don't know.

7 Q. Okay. Were you aware -- well, first of all,
8 whose witness would ■■■■■ have been, yours or
9 Mr. Figgatt's, in terms of the way the work was split up?

10 A. He was our witness. We don't split it up that
11 way, I mean, we work together.

12 Q. Okay.

13 A. So, you know, I would just as easily go out and
14 talk to these people as Mr. Figgatt would.

15 Q. Okay. All right. Were you aware that
16 ■■■■■ had no independent way to get to court?

17 A. I can't say that I was.

18 Q. All right. Were you aware -- were you ever made
19 aware of how he got to court?

20 A. Of -- no.

21 Q. Okay. So you're unaware that a relative of ■■■■■
22 ■■■■■ brought him to court?

23 A. I -- I didn't know that.

24 Q. Okay. And made a stop at a liquor store on the
25 way to court?

1 A. No. I'm not aware of that either.

2 Q. Okay.

3 A. That wouldn't be [REDACTED] would it?

4 Q. Yeah, that's who it would be.

5 So his testimony was, in reading the Court's
6 order which basically rendered -- I don't know what words
7 you want to put on it, but it wasn't taken very highly or
8 very heavily by the Court?

9 A. You're talking about Judge Dickey?

10 Q. Correct.

11 A. I don't think the jury knew. I don't remember
12 making an objection concerning the jury might have been
13 aware that he was intoxicated and was taken into custody.
14 I don't think so. If it had been while the jury was
15 present, I certainly would have objected.

16 Q. But some form of --

17 A. But the Court, Judge Dickey, certainly knew, and
18 you know, may or may not have weighed that in his opinion
19 of his testimony.

20 Q. Okay. But the jury itself heard a tape
21 recording or an interview with the State Attorney or
22 something in lieu of [REDACTED] live testimony?

23 A. You got me on that one. I don't remember that.
24 I thought we got him up there the next day on Saturday and
25 he testified.

1 Q. No. He didn't make it. He didn't make the
2 show.

3 MR. WELLS: I would like to take a lunch
4 break.

5 THE WITNESS: That's fine.

6 MR. WELLS: And this seems to be a pretty
7 good place to do it.

8 (A lunch break was taken.)

9 BY MR. WELLS:

10 Q. Dr. Buffington, do you recall in relationship to
11 when the penalty phase trial was had when he was hired?

12 A. When he was actually hired?

13 Q. Yeah.

14 A. It was shortly before that but I don't remember
15 when.

16 Q. Okay.

17 A. Whether it was a month or six weeks. It was
18 long enough for us to go and talk to him and give him
19 information and then the State to post him and get the
20 transcripts done.

21 Q. But would it be fair to say that it was well
22 after Mr. James was arrested?

23 A. Oh, yes. That's fair.

24 Q. Did you have discussions with Mr. James about
25 waiving jury at penalty phase?

1 A. I'm sure we've talked about the issue but I
2 can't -- I couldn't tell you exactly when we did that.

3 Q. Okay. Was there ever what you felt was an
4 agreement that that's what Mr. James wanted?

5 A. Yes.

6 Q. All right.

7 A. Not to waive it, but to go forward with the
8 jury. I believe that we discussed that and he was
9 agreeable to it.

10 Q. So you don't ever recall a time when he was
11 going to waive jury and -- for sentencing?

12 A. No. My discussions with him about the point --
13 I would ordinarily not try to give my client information
14 about a decision they need to make and then ask them to
15 make the decision right away. I would ordinarily tell
16 them about it, and I may have mentioned it to him, you
17 know, before we got Buffington, you know, that this is a
18 procedure that is possible, you might want to consider it
19 in your case, we'll talk about it later, you know, when we
20 get more information, that type of thing.

21 So the idea of it is usually introduced
22 somewhere along the line in the conversations leading up
23 to it. But the final decision is not made until you have
24 to make it.

25 Q. Would there have been in your office in this

1 time frame an actual waiver, a written waiver form, that
2 if Mr. James was indicating he wanted to waive jury, he
3 would execute some form?

4 A. No. I don't believe we have a form and I'm the
5 king of forms.

6 Q. Yeah.

7 A. But I have worked on the Hernandez case that
8 went to the Supreme Court on an issue, so I certainly
9 could have prepared a pleading for it.

10 Q. All right. So you feel it was like the team's
11 decision, that is your decision, Mr. Figgatt's decision,
12 Mr. James' decision, to go ahead and proceed to jury with
13 the sentencing phase?

14 A. Yes.

15 Q. Do you ever recall Judge Dickey saying anything
16 about either having a jury or not having a jury for
17 sentencing phase?

18 A. I seem to recall Judge Dickey saying something
19 like this is the kind of case that I would like to have a
20 recommendation from a jury.

21 Q. Okay.

22 A. And I'm sure that was incorporated in our
23 decision, or our recommendation and his decision. I
24 believe we were recommending that we go forward with the
25 jury, if I'm remembering correctly.

1 Q. Okay.

2 A. So he wasn't like overruling us. He was
3 agreeing with us.

4 Q. In terms of looking at Mr. James' case, what
5 factors would you consider in at least discussing that
6 option with your client, whether to go with a jury or not
7 go with a jury?

8 A. What factors?

9 Q. Yeah.

10 A. Well, the -- I think one of the bigger factors
11 is the judge involved and that was also a big factor in
12 determining whether to enter the guilty plea. And also
13 whether to elect to take the new law which provided that
14 if he was found guilty, it would not be a minimum
15 mandatory twenty-five, but life in prison without patrol.
16 All those things factored together in the decision of the
17 procedure to go with. And we really felt that a good
18 presentation, as we did on the penalty phase, would result
19 in a life sentence for Mr. James. And what other
20 factors? You know, one of the things that -- I don't know
21 if I can put it in particular factors that you would put
22 on a check list and check off because each case is so
23 different, but, you know, you have to evaluate your
24 client. We had the long presentation that he gives on
25 video, which also shows remorse. We felt that we had,

1 between the facts that we had been able to put forward or
2 would put forward at penalty phase, that he had no beef
3 with the victims and that this type of thing, you know,
4 could have only occurred through a cocaine induced
5 psychosis type of thing that was out of character for this
6 man. And the fact that his mother was going to
7 essentially say to both the jury and the judge that I know
8 my son has been in trouble a lot, but when he's in jail he
9 does fine, and that's what we were asking for.

10 Q. Certainly, even in waiting or in having
11 Mr. James plead guilty, the State still had to put on
12 facts of the actual homicide itself?

13 A. Correct. Usually its abbreviated.

14 Q. Did you have any kind of agreement with the
15 State in terms of abbreviating it?

16 A. No.

17 Q. Okay.

18 A. No. The State would not agree with us on
19 anything really. I mean, they couldn't stop us from
20 entering a plea, but there was no agreement. It would
21 have been nice to have an agreement but -- and I'm sure we
22 went to them with the idea that, you know, we'll waive the
23 new law and we'll take the new law and go with life in
24 prison instead of the mandatory twenty-five in exchange,
25 but that was declined.

1 Q. You mentioned Mr. James' mother, was she
2 involved in the trial?

3 A. In the sentencing phase and I had talked with
4 her before the plea.

5 Q. And she lives out in Casselberry, correct?

6 A. Yeah. It's really not far from where he was
7 living.

8 Q. In fact, all these folks sort of live in the
9 same neighborhood?

10 A. Yes. Within probably a quarter to a half mile
11 of each other.

12 Q. Did Edward's mother testify for the Defense or
13 for the State in penalty phase?

14 A. You got me on that. I don't remember who called
15 her. I'm sure that we wanted her to testify, whether we
16 -- and we got the information out that we wanted that I
17 recall.

18 Q. So you feel his mother gave favorable testimony?

19 A. Well, you know, I did have -- it was favorable
20 from the perspective of what we were trying to put
21 forward, but there were some negative things that came out
22 if I recall. But I couldn't tell you what they were now.
23 I just remember having a feeling like that could have gone
24 better or something along that line.

25 Q. You said earlier, just a couple -- maybe a few

1 minutes ago that you felt some degree of confidence in a
2 life sentence?

3 A. Yes.

4 Q. Did you feel that would result from a life rec
5 from the jury and the Court opposing a life sentence or
6 did you feel that perhaps Judge Dickey even -- or the
7 death rec would override?

8 A. We felt that if it was a close death rec, maybe
9 8-4, that he would probably still go with life. And that
10 was probably about as good as we hoped to get. I think
11 that's what our thinking was.

12 MR. WELLS: I think that's all I have.

13 MR. HASTINGS: Read or waive, Gary?

14 THE WITNESS: I'll waive. I would like a
15 copy before the hearing.

16 MR. HASTINGS: I can get you one.

17 (Deposition concluded at 1:32 p.m.)

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2 C E R T I F I C A T E O F O A T H

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4 STATE OF FLORIDA)

5 COUNTY OF SEMINOLE)

6

7 I, the undersigned authority, certify that

8 GARY ANDERSEN personally appeared before me and was duly
9 sworn.

10

11 WITNESS my hand and official seal this 29th day
12 of November, 2001.

13

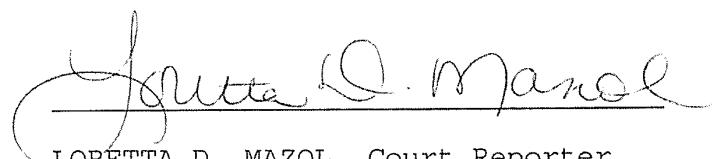
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LORETTA D. MAZOL, Court Reporter

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and Notary Public, State of Florida

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at Large.

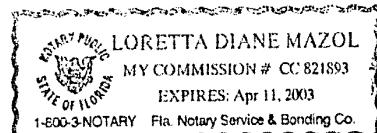
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KERR & ASSOCIATES
SANFORD, FLORIDA

044

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C E R T I F I C A T E

3 STATE OF FLORIDA)
4 COUNTY OF SEMINOLE)

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6 I, LORETTA D. MAZOL, Court Reporter, certify
7 that I was authorized to and did stenographically report
8 the deposition of GARY ANDERSEN; that a review of the
9 transcript was requested; and that the transcript is a
10 true and complete record of my stenographic notes.

11

12 I further certify that I am not a relative,
13 employee, attorney, or counsel of any of the parties, nor
14 am I a relative or employee of any of the parties'
15 attorneys or counsel connected with the action, nor am I
16 financially interested in the action.

17

18 DATED this 29th day of November, 2001.

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Loretta D. Mazol
LORETTA D. MAZOL, Court Reporter

LORETTA D. MAZOL, Court Reporter