Freddie Lee Hall v. State of Florida

JUSTICE QUINCE IS RECUSED ON THE NEXT CASE, WHICH IS HALL VERSUS STATE. MR. PINKARD.

GOOD MORNING. I AM ERIC PINKARD FROM CCRC, MIDDLE STRICTMENT -- MIDDLE DISTRICT. I AM HERE REPRESENTING FREDDIE LEE HALL ON A STATE HABEAS PETITION, AND THE FIRST CLAIM THAT I WANT TO ARGUE INVOLVES THE FAIL USER -- YOUR OR IN EFFECT -- THE FAILURE OR INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, IN NOT ARGUING, ON DIRECT APPEAL, THE CRITICAL PRETRIAL DEPOSITION TESTIMONY OF DEPUTY BERNARD BISHOP. THE FAILURE OF APPELLATE COUNSEL TO INCLUDE THE TESTIMONY OF DEPUTY BISHOP IN THIS CASE, LEFT THIS COURT WITH INCOMPLETE INFORMATION, UPON WHICH TO BASE ITS PROPORTIONALITY AND DISPARATE TREATMENT ANALYSIS IN THIS CASE. AND OUR POSITION IS, WITH THE INCLUSION OF THAT DEPOSITION TESTIMONY OF DEPUTY BISHOP, IT CHANGES THE ENTIRE EVIDENTIARY PICTURE AS TO THE RELATIVE CULPABILITY OF MR. HALL AND MR. RUFF I KNOW, AND IN THIS PARTICULAR CASE, MR. HALL AND MR. RUFFIN WERE, BOTH, CONVICTED OF FIRST-DEGREE MURDER, AS THEY WERE, BOTH, TRIED TOGETHER, AND LATER ON, THEY WERE, BOTH, GIVEN RESENTENCING PROCEDURES, LATER ON, WHERE MR. HALL RECEIVED THE DEATH SENTENCE, WHEREAS MR. RUFFIN RECEIVED A LIFE ADVISORY RECOMMENDATION FROM HIS JURY AND ULTIMATELY A LIFE SENTENCE.

WHAT CONVICTIONS AND SENTENCES DID THEY RECEIVE IN THE POLICE OFFICER'S DEATH?

ACTUALLY IN THE POLICE OFFICER'S DEATH, MR. RUFFIN, THE CO-DEFENDANT, WAS GIVEN A FIRST-DEGREE MURDER CONVICTION, WHEREAS MR. HALL RECEIVED A SECOND-DEGREE MURDER CONVICTION, AS TO THE DEATH OF DEPUTY COBURN, WHICH OCCURRED LATER ON, WHEREUPON MR. RUFFIN, IT TURNED OUT, WAS THE ACTUAL SHOOTER OF DEPUTY COBURN.

RUFFIN RECEIVED A LIFE SENTENCE IN THAT CASE, TOO?

HE RECEIVED 35 YEARS IMPRISONMENT FOR THE DEATH BUT HE WAS, ACTUALLY, CONVICTED OF FIRST-DEGREE MURDER, WHEREAS HALL RECEIVED SECOND-DEGREE MURDER, BY REVERSAL OF THIS COURT DOWN TO SECOND-DEGREE MURDER FOR THAT CRIME. THAT IS TRUE. BUT DEPUTY BISHOP'S TESTIMONY IN THIS CASE IS ABSOLUTELY CRITICAL, BECAUSE HE IS THE ONLY INDEPENDENT WITNESS AVAILABLE FOR THIS COURT'S CONSIDERATION, AS TO THE TRUE RELATIONSHIP BETWEEN MR. HALL AND MR. RUFFIN. ALL OTHER INFORMATION IN THIS CASE, CONCERNING HOW THIS HOMICIDE HAPPENED, HOW IT WAS PLANNED, WHO PLANNED IT, THAT THIS COURT RELIED UPON, IN THE DIRECT APPEAL, CAME FROM STATEMENTS FROM HALL AND STATEMENTS FROM RUFFIN. THIS DEPUTY SHERIFF, WHO WAS EXTENSIVELY INVOLVED IN THE INVESTIGATION OF THIS CASE AND WHO EXTENSIVELY INTERVIEWED, BOTH HALL AND RUFFIN AND WAS CLOSE TO THE HOMICIDE IN QUESTION AND ACTUALLY HAD THE OPPORTUNITY TO VIEW THE TWO MEN, AS TO THEIR RELATIONSHIP, AND TOOK IT UPON HIMSELF TO GO TO COURT AND WITNESS THE FIRST TRIAL, WHERE THEY WERE, BOTH, TRIED TOGETHER --

DIRECT ME TO THE POINT IN YOUR BRIEF WHERE YOU ARE ARGUING YOUR CLAIM NUMBER TWO.

ARGUING CLAIM NUMBER TWO, YES, AS TO THE DISPARATE TREATMENT.

AND THE FACT THAT THERE WAS -- FAILED TO POINT OUT TO THE COURT THAT THE FACTUAL FINDING THAT FREDDIE LEE HALL WAS THE LEADER OF THE CRIMINAL ACTS, WAS NOT

SUPPORTED BY THE EVIDENCE, THAT IS THE BASIS OF THIS CLAIM YOU ARE, NOW, ARGUING.

RIGHT. I AM SAYING THAT THE INCLUSION OF DEPUTY SHERIFF BISHOP'S TESTIMONY MAKES A FINDING BY THE TRIAL COURT THAT FREDDIE LEE HALL WAS THE LEADER OF THIS CRIMINAL ENTERPRISE, IS NOT SUPPORTED BY THE SUBSTANTIAL COMPETENT EVIDENCE, WHICH, I THINK, IS THE STANDARD OF REVIEW THAT THIS COURT UNDER TAKES ON A PROPORTIONALITY ANALYSIS, AND THE DISPARATE TREATMENT.

DOES IT SHOW THAT HALL WAS, IN FACT, OLDER AND BIGGER THAN RUFFIN?

THAT IS ONE OF THE THINGS THAT THE TRIAL COURT --.

THAT IS ONE OF THE THINGS THAT THE TRIAL COURT ALLUDED TO.

A FINDING OF FACT?

A FINDING OF FACT AND ONE OF THE THINGS THAT THIS COURT ALLUDED TO IS THAT ONE OF THE BASIS OF FINDING OF FACT IS THAT HALL WAS OLDER AND THE LEADER OF THE TWO, BUT WHAT I AM SAYING IS THAT IS BASING LEADERSHIP ON THE RELATIVE SIZE AND AGE OF THE TWO INDIVIDUALS. WE HAVE FAR BETTER EVIDENCE THAN THAT. WE HAVE GOT THE ACTUAL EYEWITNESS TESTIMONY OF A DEPUTY SHERIFF, WHO KNOWS THESE TWO MEN, WHO INVESTIGATED THIS CASE, WHO TOOK STATEMENTS FROM THESE TWO INDIVIDUALS, AND HE HAS AN OPINION AS TO WHO WAS THE LEADER.

HOW DO WE FACTOR IN THE FACT THAT RUFFIN'S RESENTENCING JURY RECOMMENDED LIFE IMPRISONMENT FOR HIM? HOW DOES THAT FACTOR INTO IT?

I THINK IT FACTORS IN THAT THAT IS WHAT ACTUALLY CREATES THE DISPARATE TREATMENT ANALYSIS THAT WE ARE BEFORE, BECAUSE WE HAVE WHAT I CONSIDER THE EVIDENCE WILL SHOW, WITH THE INCLUSION OF DEPUTY BISHOP'S TESTIMONY, TO BE TWO EQUALLY CULPABLE DEFENDANTS, AND ONE GETS LIFE AND ONE GETS DEATH. IF YOU HAVE THEM, BOTH, GETTING DEATH, THEN YOU WOULD NEVER HAVE A DISPARATE TREATMENT ANALYSIS, BUT WHAT WE HAVE IN THIS CASE, ONE DEFENDANT GETS DEATH AND ONE DEFENDANTS DEFENDANT GETS LIFE.

DOES THE TRIAL LAWYER -- ONE DEFENDANT GETS LIFE.

DOES THE TRIAL LAWYER USE TESTIMONY OF THE POLICE OFFICER, BEFORE THE JURY OR THE JUDGE, TO TRY TO MAKE THIS POINT?

NO, HE DOES NOT.

AREN'T WE, THEN, TALKING ABOUT THE INEFFECTIVENESS OF TRIAL COUNSEL, AS OPPOSED TO APPELLATE COUNSEL?

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, AS TO PUTTING FORTH MITIGATION, BUT I THINK REVIEWING THE RESPONSIBILITY AND THE ENTIRE RECORD, AS TO PROPORTIONALITY ANALYSIS, AND THE TRIAL COURT, ON THE CIRCUIT LEVEL, DOESN'T CONDUCT A PROPORTIONALITY ANALYSIS. THIS COURT IS THE FINAL ARE A BITTER OF THE PRO -- ASHITYER OF THE -- ASHY TORO-ARBITER OF THE PRO MORINGSALITY -- PROPORTIONALITY ARGUMENT.

WHETHER WE TALK ABOUT THE RECORD, WE TALK ABOUT A TRIAL TRANSCRIPT AND THEN THE TRANSCRIPT OF A PENALTY-PHASE PROCEEDING. IN OTHER WORDS THE EVIDENCE THAT WAS PRESENTED, IN BOTH OF THOSE PORTIONS OF THE OVERALL TRIAL OF THE DEFENDANT. WE ARE NOT TALKING ABOUT SOMETHING, YOU KNOW, THAT THERE MAY BE STATES OUT THERE. THERE MAY BE DEPOSITIONS OUT THERE. OR WHATEVER. WAS THIS RAISED AS AN ISSUE, DO WE KNOW,

AS TO THE INEFFECTIVENESS OF TRIAL COUNSEL, FOR NOT --

IT WAS NEVER RAISED AS ISSUE FOR INEFFECTIVENESS OF TRIAL COUNSEL, THAT'S CORRECT, BUT I WOULD, ALSO, CITE TO THE COURT THE FLORIDA RUFLS APPELLATE PROCEDURE, 9.200, AL -- THE FLORIDA RULES OF APPELLATE PROCEDURE, 9.200, ALLOW EITHER PARTY TO FILE A DEPOSITION AS MATTER OF RECORD, AND I BELIEVE THAT APPELLATE COUNSEL WAS ALERTED TO THIS DEPOSITION, BECAUSE DURING THE ACTUAL TRIAL, DURING THE TESTIMONY OF KATHLEEN HEIDI, WHICH WAS A WITNESS CALLED BY THE DEFENSE, TO TALK ABOUT MR. HALL'S RETARDATION AND MENTAL STATUS, REFERS, SPECIFICALLY, TO THIS DEPOSITION, AND, AGAIN, THIS IS THE CRITICAL DETERMINATION IN THIS CASE AS TO WHO THE LEADER WAS. IF YOU CANNOT FIND FREDDIE LEE HALL TO BE THE LEADER, YOU CANNOT IMPOSE THE DEATH PENALTY, SO IT WAS INCUMBENT UPON COUNSEL TO USE ALL OF THE MEANS DISPOSABLE TO HIM AND BEFORE THIS COURT, TO FIND THAT THE DEPUTY SHERIFF HAS THE ANSWER TO THE QUESTION THEY WERE ALL ASKING, WHO WAS THE LEADER, AS TO BETWEEN HALL AND RUFFIN. THEY WERE ALL INDEPENDENT WITNESSES TO THE RELATIONSHIP.

WE CAN HOLD IT WAS FUNDAL ERROR, IF TRIAL COUNSEL HAD NOT BROUGHT IT TO THE ATTENTION OF THE TRIAL COURT, CAN'T WE?

I BELIEVE THE TRIAL COURT CAN RELY ON THE PSI AND RELY ON THE LETTERS WITHIN THE COURT FILE. THIS IS A FILE LETTER, WITHIN THE COURT FILE.

THAT IS WHAT I AM TALKING ABOUT, IS THAT IF IT HAD BEEN RAISED, HOW CAN WE HOLD THAT IT WAS ERROR BY THE TRIAL COURT, WHICH I ASSUME THAT IT WOULD BE WITHIN THE CONTEXT THAT YOU AREALING, HOW CAN -- ALLEGING, HOW CAN WE HOLD THAT THE TRIAL COURT MADE AN ERROR, IN NOT CONSIDERING THAT INFORMATION, WHEN IT HAD NOT EVEN BEEN PRESENTED TO THE TRIAL COURT?

I WOULD SAY IT WAS IN THE FILED DEPOSITION PRIOR TO THE SENTENCING PROCEDURE, AND CERTAINLY THE TRIAL COURT CAN RELY UPON DEPOSITIONS. THEY ARE NOT HEARSAY, AND CAN RELY IT DURING A SPENCER HEARING OR DWURING THE ENTIRETY OF THE RECORD -- OR DURING THE ENTIRETY OF THE RECORD.

WE HAVE NOT HELD THAT THE TRIAL COURT HAS TO PUT A FEELER OUT THERE AND SAY WHAT IS IN THE RECORD, REPORTS OR DEPOSITIONS OR WHATEVER, THAT I NEED TO BRING ALL THOSE IN, BECAUSE THE SUPREME COURT MIGHT REVERSE ME, IF I DON'T GO DOWN A CHECKLIST LIKE THAT, I DON'T THINK WE HAVE EVER HELD THAT RESPONSIBILITY, HAVE WE?

AGAIN I WOULD POINT OUT TO THIS COURT THAT THIS COURT IS THE UNIQUE ONE WITH THE RESPONSIBILITY TO CONDUCT THE PROPORTIONALITY ANALYSIS, AND THAT DOESN'T OCCUR AT THE TRIAL COURT LEVEL, BECAUSE THE TRIAL COURT IS ALL DEATH SENTENCE CASES, AND -- BECAUSE THIS COURT IS IN THE UNIQUE CASE TO REVIEW IT AND ALL OTHER CASES IN DEATH CASES, AND THESE UNIQUE CIRCUMSTANCES, AND I CERTAINLY UNDERSTAND, IN THESE UNIQUE CIRCUMSTANCES, IT WAS INCUMBENT UPON APPELLATE COUNSEL TO INCLUDE THE UNIQUE TESTIMONY THAT WAS REFERRED TO.

WAS THERE EVIDENCE THAT CONFLICTS WITH THE TESTIMONY THAT YOU ARE, NOW, POINTING OUT TO US? IN OTHER WORDS WAS THEIR TEST MONEY OR EVIDENCE THAT HALL WAS THE DOMINANT MOVER IN THIS PARTICULAR CRIME AND DEATH?

THERE IS ONE STATEMENT GIVEN BY MARC RUFFI -- BY MACK RUFFIN, THAT, AT SOME POINT DURING THE CRIMINAL HE SIDE, AND IT MAY NOT -- EPISODE, AND IT MAY NOT HAVE BEEN THIS PARTICULAR EPISODE THAT, HALL SAID TO HIM THAT, IF YOU WANT TO RUN WITH ME, YOU HAVE GOT TO BE A MAN, BUT THAT WAS NOT SHOWN IN THE RECORD.

THE TRIAL JUDGE RELIED UPON DEPUTY FREEMAN'S TESTIMONY.

DEPUTY FREEMAN WAS THE ONE AT THE INITIAL -- WHAT HAPPENED WAS AT THE INITIAL TRIAL OF THESE TWO INDIVIDUALS, HALL SAID RUFFIN WAS THE SHOOTER AND RUFFIN SAID HALL WAS THE SHEER. HALL LATER CHANGED HIS STATEMENTS TO DEPUTY FREEMAN, AND DEPUTY FREEMAN SAID THAT, AT SOME POINT, HALL SAID, IF YOU WANT TO RUN WITH ME, YOU HAVE GOT TO BE A MAN, AND DEPUTY FREEMAN IS VERY CLEAR, AT SEVERAL POINTS IN THE RECORD, THAT HE WAS ASSUMING, WHEN THAT STATEMENT WAS MADE, NOT SURE WHETHER THAT STATEMENT WAS MADE AT THE TIME OF THE SHOOTING, IMMEDIATELY BEFORE OR IMMEDIATELY AFTER, THAT BASIS, WHEN YOU CONSIDER THE RELATIVE MENTAL STATUS OF THESE TWO INDIVIDUALS, IS RATHER ANYONE EVIDENCE OF WHO -- RATHER THIN EVIDENCE OF WHO THE LEADER WAS, BECAUSE WHAT DID THAT STATEMENT MEAN? WHEN YOU TAKE A LOOK AT WHAT SHERIFF BISHOP SAID, THE QUESTION SAYS HALL IS DIM WITNESSED, CAN'T THINK THREE THOUGHTS AHEAD, IS PLAYING A -- CANNOT PLAY A GAME, IS NOT QUICK MENTALLY, AND IN CONTRAST TO RUFFIN, HE WAS VERY INTELLIGENT, CON WISE, MANIPULATIVE, WOULD DO WHATEVER HE COULD, TO GET WHAT HE WANTED. THAT IS THE BETTER ANSWER TO THE QUESTION. THAT IS NEBULOUS EVIDENCE THAT WAS GIVEN BY THE STATEMENT THAT RUFFIN ALLEGES, AND, AGAIN, WE HAVE TO PUT THIS IN CONTEXT OF RUFFIN BEING A CON MAN, BECAUSE IN THE FIRST TRIAL HE TRIES TO SAY HALL WAS THE SHOOTER AND LATER ON, HE SAYS I AM THE SHOULD -- I AM THE SHOOTER, SO IT FITS IN, PERFECTLY, WITH THE STATEMENT THAT RUFFI IN. IS THE -- RUFFIN IS THE LEADER T FITS IN PERFECTLY IN THE CASE AND IT, ALSO, FITS IN WITH THE REST OF THE CASE. RUFIN IS THE ONE THAT SHOT DEPUTY COBURN. THAT IS THE EVIDENCE THAT WAS PUT FORTH AT THE TRIAL. RUFFIN WAS THE ONE WHO SHOT AT THE PURSUING DEPUTY AND RUFIN WAS THE ONE WHO SHOT THE FIRST VICTIM. THERE IS NO EVIDENCE THAT FREDDIE LEE HALL FIRED A SHOT DURING THIS ENTIRE CRIMINAL EPISODE, AND YET WE ARE CONCLUDING THAT HE IS THE LEADER OF THIS CRIMINAL ENTERPRISE. IT IS, ALSO, TRUE THAT RUFFIN, UNLIKE HALL, IS CONVICTED OF SEXUAL BATTERY IN THIS CASE. HALL IS NOT CONVICTED OF SEXUAL BATTERY, SO WHEN WE GO BACK TO THE STATE CHARGING DOCUMENTS IN THIS CASE, THEY CHARGE RUFF ANY. IN WITH SEXUAL -- CHARGE RUFFIN WITH SEXUAL BATTERY, SO THEY MAKE IT CLEAR THAT IT IS RUFFIN, NOT HALL, ALSO DEPUTY SHERIFF BISHOP, IN THE NR TESTIMONY, GAVETIS MONEY AS TO -- GAVE TESTIMONY AS TO STATUS. HE MADE THE TESTIMONY THAT FREDDIE LEE HALL HAS BEEN MENTALLY RETARDED HIS ENTIRE LIFE. THERE IS NO FINDING OF THAT FACT, AS TO MACK RUFFIN, SO WHEN YOU TAKE INTO CONSIDERATION NOT WHO THE OLDER OR THE LARGER OF THE TWO IS, BUT WHO HAS THE MENTAL CAPACITY ANDABILITY.

WHAT WERE THEIR AGES AT THE TIME?

I CANNOT RECALL WHAT THEIR AGES WERE AT THE TIME. I BELIEVE THAT HALL MAY HAVE BEEN SIX TO EIGHT YEARS OLDER, BUT I AM NOT SURE. AT ONE TIME I WENT BACK AND COMPARED, ON THE BASIS OF WHAT INFORMATION I COULD COME UP WITH. BUT NOT MUCH OLDER, NOT SIGNIFICANTLY OLDER AND NOT THAT MUCH LARGER, BECAUSE FREDDIE LEE HALLOW-.

YOU MENTIONED THAT FREDDIE LEE HALL'S MENTAL STATE AND MENTAL RETARDATION IS SOMETHING THAT HAS BEEN RAISED THROUGHOUT THESE PROCEEDINGS.

RIGHT.

THE TRIAL JUDGE KNEW THAT, WHEN HE MADE A DETERMINATION OF THE RELATIVE CULPABILITY. CORRECT?

I AM SAYING THAT THAT IS TRUE. I AGREE WITH THAT, BUT WHAT I AM SAYING WAS THAT I AM TAKING A LOOK AT THIS, WITH THE INCLUSION OF DEPUTY BISHOP'S STATEMENT THAT HE IS SIGNIFICANTLY MEBLTALLY RETARDED. IF YOU HAVE ONE PERSON WHO IS MENTALLY RETARDED AND THE OTHER ONE IS NOT, THEN --

BUT THE JUDGE HAD THAT INFORMATION THROUGH OTHER SOURCES, THE RELATIVE MENTAL ACUTE OR INTELLIGENCE OF THESE TWO -- ACUTEITY OR INTELLIGENCE OF THESE TWO AS TO THE DEFENDANTS.

I BELIEVE THE TRIAL COURT'S RULING IF IN THIS CASE, IN THE SENTENCING ORDER, SPECIFICALLY STATES THAT HE MADE NO ATTEMPT TO GO BACK AND TAKE A LOOK AT THE CULPABILITY OF RUFFIN. THE ONLY GUILT-PHASE TRIAL THAT THESE TWO INDIVIDUALS HAD WAS THE FIRST GUILT PHASE TRIAL, WHERE HALL AND RUFFIN WERE TRIED TOGETHER. THAT IS WHEN THE DEPUTY COMES IN AND MAKES THE OBSERVATIONS, IN ADDITION TO THE STATEMENTS THAT HE GOT FROM BOTH MEN, BUT INTERESTINGLY ENOUGH, MR. HALL AT THAT TIME PUT FORTH INFORMATION THAT HE WAS NOT THE ONE UNDER CONTROL, BUT THE COURT DENIED THAT, SAYING THAT IT WAS ONLY SELF-SERVING STATEMENTS AS TO MR. RUFFIN, AND THE COURT FOUND THAT MR. HALL DID NOT EXERCISE CONTROL OVER MR. RUFFIN, AND NOW WE HAVE TURNED THAT AROUND AND WE ARE SAYING THAT, NOW, HALL IS THE LEADER, AND THE ONLY CHANGE BETWEEN THE FIRST TRIAL AND THE SENTENCING PROCEDURES IS THAT RUFFIN, THE CON MAN, CHANGES HIS STORY FROM THE FIRST TRIAL TO THE STATEMENT HE GAVE TO DEPUTY FREEMAN AT THE PRESENTENCING. HE SAYS HALL DID THE SHOOTING AND LATER ON HE RETRACTS AND SAYS OH, WAIT A MINUTE. I DID THE SHOOTING. SO, AS I STATE, THE ANSWER TO THE QUESTION AS TO WHO WAS THE LEADER AMONG THESE TWO MEN IS GIVEN BY THE DEPOSITION TESTIMONY OF DEPUTY BETTER ARRESTED BISHOP AND FITS IN -- DEPUTY BERNARD BISHOP AND FITS IN WITH THE OTHER FACTS IN THE CASE, AND I WOULD ASK YOU TO CONCLUDE. THAT NOW, ONE OTHER ALLEGED DISTINCTION IS THE 1968 CONVICTION THAT MR. HALL HAS, FOR THE ATTEMPTED SEXUAL ASSAULT OR ATTEMPTED RAPE. THAT IS ONE OF THE THINGS THIS COURT USED AS A DISTINCTION, AS BETWEEN HALL AND RUFFIN. BUT THIS COURT'S RESPONSIBILITY IS TO CONDUCT A PROPORTIONALITY REVIEW OR A QUALITY TATIVE ANALYSIS OF ALL -- QUALITATIVE ANALYSIS OF ALL OF THE AGGRAVATING CIRCUMSTANCES PUT FORT, AND IN THIS PARTICULAR CASE, APPELLATE COUNSEL FAILED TO POINT OUT THAT, WITHIN THE RECORD, THERE IS SIGNIFICANT TESTIMONY FROM THAT CASE, IN 1968, WHEREUPON THE BAILIFF, IN OPEN COURT, IN THE PRESENCE OF THE JURY, MADE THE STATEMENT THAT, ABOUT DEFENSE COUNSEL, LOOK AT THAT DAMNED HAGAN, TRYING TO GET THAT NIGGER OFF. LOOK AT HIM SITTING OVER THERE, READING HIS BIBLE. THAT TESTIMONY MAKES THIS -- MAKES ANY RELIANCE WHATSOEVER ON THAT PRIOR 1968 CONVICTION NOT DESERVING AFTER AGGRAVATING STATUS, PAW THIS COURT MAKES A QUALITATIVE, AS WELL AS A QUANTITATIVE REVIEW. I SEE I AM INTO MY REBUTTAL TIME, SO I WILL HAVE A SEAT.

MR. LANDRY.

MAY IT PLEASE THE COURT. BOB LANDRY, REPRESENTING THE RESPONDENT, MR. MOORE, IN THIS CASE. WITH RESPECT TO THIS CASE, IT IS LIKE THE LAST CASE, IN THAT IT HAS BEEN AROUND FOR A NUMBER OF YEARS. AS I RECALL, THE RESENTENCING APPEAL BECAME FINAL, BACK IN MARCH OF 1993. THE DEFENDANT FILED A NOTICE OF APPEAL FROM HIS 3.850 MOTION, BACK IN DECEMBER OF '97. THIS COURT DENIED OR AFFIRMED THE DENIAL OF RELIEF, BACK IN JULY OF 1999, AND THEN THE DEFENDANT WAITED ABOUT A YEAR, THEN, TO FILE HIS HABEAS CORPUS PETITION. WE SUBMIT THAT, AS WE HAVE ARGUED IN OUR BRIEF, THAT THIS COURT SHOULD DENY IT AS BEING UNTIMELY OR ABUSIVE, AS A, CERTAINLY, UNDER THE LATCHES DOCUMENT, IN THE McCRAE DECISION THAT THIS COURT WROTE ABOUT. I UNDERSTAND THAT THIS COURT HAS RULED, IN THE ROBINSON CASE THAT, THE STATE'S ATTEMPT TO DISMISS THE -- A LATE HABEAS IN THAT CASE, THE RULE 3.851 DID NOT APPLY, BECAUSE THE CONVICTION WAS NOT FINAL, UNTIL AFTER JULY 1994. WE SUBMIT THAT IT DOESN'T, REALLY, MAKE ANY SENSE, POLICY WISE, TO ALLOW PEOPLE WHO HAVE BEEP AROUND FOR TWENTY OR THIRTY YEARS SIMPLY TO WAIT UNTIL THE LAST MINUTE TO FILE A HABEAS PETITION. ALL OF THE CLAIMS THAT HE IS RAISING, HERE AND NOW, HE COULD HAVE, AND WE SUBMIT IN SOME RESPECTS, DID RAISE PREVIOUSLY. TURNING, FIRST, TO THE CLAIM ABOUT DETECTIVE BISHOP, WE ARE TOLD, NOW, FOR THE FIRST TIME, THAT DETECTIVE BISHOP IS, REALLY, THE ONLY EYEWITNESS. NOW, DETECTIVE BISHOP WAS NOT AN

EYEWITNESS TO ANYTHING. DETECTIVE BISHOP, IN THE DEPOSITION THAT HE IS RELYING ON, APPARENTLY MR. BISHOP GIVES HIS INTERPRETATION OR HIS OBSERVATIONS, HAVING TALKED TO MR. HALL AND MR. RUFFIN, AT THE TIME OF OR SHORTLY THEREAFTER. IT IS JUST HIS REFLECTIONS, AS TO WHAT HE THOUGHT OF EACH DEFENDANT. NOW, WHAT WE DO HAVE, IN THE TESTIMONY, WAS YOU KNOW, THE MENTAL HEALTH EXPERT TESTIMONY OF BOTH SIDES, THE STATE REBUTTAL EXPERT WITNESS, DR. CARRERA, TALKED ABOUT, YOU KNOW, IN ESSENCE, TALKED ABOUT THE MAN I I AMTIVE ON-THE MANIPULATIVE NATURE OF MR. -- THE MANIPULATIVE NATURE OF MR. HALL, HOW HE TOLD HIM THAT HE HAD FAKED INSANITY, TO AVOID THE MILITARY, ET CETERA, ET CETERA. I SUBMIT THAT, HAD TRIAL COUNSEL ATTEMPTED TO USE DIRECTIVE PIRB OP, THAT HIS -- DETECTIVE BISHOP, THAT HIS TESTIMONY WOULD NOT HAVE BEEN ALLOWED TO COME IN. CERTAINLY IN ANY EFFECT, CERTAINLY TO SUBMIT THE DEPOSITION TESTIMONY OF DETECTIVE BISHOP TO THE TRIAL OUT IN -- TRIAL COURT IN THIS EVENT, CERTAINLY WOULD NOT -- IF YOU EXAMINE MR. HENDERSON'S BRIEF ON APPEAL IN THIS COURT, ON DIRECT APPEAL, IT WAS AN EXCELLENT BRIEF. HE RAISED ELEVEN ISSUES. COVERED ABOUT 104 PAGES. YOU KNOW, HE COVERED ALL THE TESTIMONY. HE MADE A CHOICE, CERTAINLY, OBVIOUSLY, WITHIN THE PAGE LIMITATIONS OF THIS COURT'S RULES, AS TO WHAT ISSUES MERITED CONSIDERATION AND ADVOCACY AND WHICH ONES DIDN'T. TO, NOW, CONDEMN HIM, FOR HAVING FAILED TO FURNISH, TO GO OUT AND SEARCH FOR A DEPOSITION OF AN OFFICER WHO IS MERELY GIVING HIS OPINION ABOUT SOMETHING, AND BY THE WAY, I DON'T EVEN KNOW IF THAT DEPOSITION HAS BEEN INCLUDED IN THE RECORD OF THIS COURT. I DON'T KNOW IF THIS COURT HAS THAT DEPOSITION OR NOT, BUT IN ANY EVENT, WE WOULD SUBMIT THAT APPELLATE COUNSEL CANNOT O'CLOCK DEEMED DER -- CANNOT BE DEEMED DERELICT OR NOT, IN TRIAL COUNSEL'S FAILURE TO CHALLENGE THE FINDING OF THE TRIAL COURT AS TO WHO WAS THE LEADER OF THE PACK, JUDGE TOMBRINK WROTE A DETAILED, 35-PAGE ORDER, IN WHICH HE WENT INTO GREAT DETAIL, AND IN HE POINTED OUT THAT, ALTHOUGH IT WAS UNCLEAR AS TO WHO THE SHOOTER ACTUALLY WAS IN THIS CASE, THERE WAS NO DOUBT THAT MR. HALL WAS THE LEADER OF THE PACK, THAT HE WAS OLDER. THAT HE WAS BIGGER. FACTUALLY, IT WAS MR. HALL, WHO DROVE THE VICTIM, IN ONE CAR, FROM THE SPOT OF THE KIDNAPPING, TO THE EXCLUDED AREA, WHERE SHE WAS ULTIMATELY RAPED, BEATEN, AND MURDERED, AND IT WAS MR. RUFFIN, WHO WAS FOLLOWING IN THE SECOND CAR SO TO MERELY CHARACTERIZE MR. HALL AS A TOOL OF MR. RUFFIN TOTALLY MISSES THE CONTEXT AND THE TESTIMONY THAT WAS ALL BEFORE THE TRIAL COURT. WE SUBMIT THAT THERE IS, YOU KNOW, ABSOLUTELY NOTHING THAT CAN OR SHOULD BE RAISED AT THIS TIME, WHICH WOULD CALL INTO QUESTION THE CONVICTION AND THE SENTENCE OF MR. HALL IN THIS CASE. MR. HALL HAD, I THINK IT WAS, SEVEN AGGRAVATING FACTORS THAT WERE FOUND BY THE TRIAL COURT. THIS COURT APPROVED THOSE FINDINGS AND THAT JUDGMENT AND SENTENCE, ON DIRECT APPEAL. THIS COURT APPROVED AND -- APPROVED THE TRIAL COURT'S DENIAL OF A 3.850 MOTION TO VACATE, IN WHICH IT WASAL END THAT TRIAL -- WAS ALLEGED THAT TRIAL COUNSEL WAS INEFFECTIVE, AND THE AS -- THE ASSERTION WAS MADE THAT MR. HALL WAS NOT COMPETENT TO UNDERGO RESENTENCING. IF I MIGHT REMIND THE COURT, AT THAT TIME IT WAS SAID THAT HIS IQ WAS APPROXIMATELY 73. THAT WAS A DEFENSE WITNESS AT THE TIME OF TRIAL. DR. ZIMMERMAN TESTIFIED IT WAS 74. SO WE DISAGREE, COMPLETELY, WITH THE ASSERTIONS BEING MADE THAT SOMEHOW MR. HALL'S MENTAL DEFICITS WERE NOT TAKEN INTO ACCOUNT BY JUDGE TOWNBRINK. WE WOULD ASK THIS COURT TO DENY THE WRIT OF HABEAS CORPUS AND THE FAILURE TO MAKE THIS CLAIM IN A TIMELY MANNER SHOULD NOT PROVE RELIEF.

THANK YOU. REBUTTAL?

WHILE DEPUTY BISHOP IS NOT AN EYEWITNESS TO THE ACTUAL HOMICIDE THAT TOOK PLACE, HE IS THE ONLY EYEWITNESS AS TO THE RELATIONSHIP BETWEEN HALL AND RUFF ANY. -- AND RUFFIN AND AS TO WHETHER OR NOT HE WAS THE LEADER BETWEEN THE TWO MEN. SO DESPITE OF THE FACT THAT HE WAS NOT A WITNESS, IT WAS A CRITICAL PIECE OF INFORMATION THAT WAS LEFT ON OUT. I URGE THIS COURT TO CONSIDER WHETHER A MENTALLY RETARDED PERSON CAN BE EXECUTED, UNDER ARTICLE I, SECTION 17, WHICH THIS COURT WAS NOT GLICHB THE

OPPORTUNITY TO REVIEW -- GIVEN THE OPPORTUNITY TO REVIEW, WAS BECAUSE IT WAS NOT RAISED ON DIRECT APPEAL, AND I WOULD SAY THAT IT IS UNCONSTITUTIONAL, FOR THE DEATH PENALTY FOR A MENTALLY RETARD INDIVIDUAL, AND THAT THE FEDERAL STANDARD IS ONLY THE MINIMUM STANDARD, AND THAT OTHER STATES --

WHAT IS THE DEFINITION THAT YOU SAY WE SHOULD USE?

WELL, I CAN'T GIVE THE COURT AN EXACT DEFINITION, BUT YOU WOULD, OBVIOUSLY, HAVE TO HAVE MENTAL HEALTH EXPERT'S EVALUATIONS, BUT IN THIS CASE THERE IS A DIRECT FINDING OF FACT IN THE RECORD BY THE TRIAL COURT THAT FREDDIE LEE HALL IS MENTALLY RETARDED AND HAS BEEN THROUGHOUT HIS LIFE. THERE ARE VARYING STANDARDS. THE GEORGIA COURT IMPOSED SOME STANDARDS WHILE THEIR LEGISLATION WAS PENDING ON THIS ISSUE, BUT I CAN'T SPECIFICALLY, I THINK THIS COURT WOULD HAVE TO BE THE ONE TO FORMULATE THE STANDARDS, BUT I THINK THEY HAVE BEEN MET BY ANY STRETCH IN THIS CASE, BECAUSE HE HAS BEEN EVALUATED MULTIPLE TIMES AND FOUND TO BE MENTALLY RETARDED BY MANY, MANY DIFFERENT MENTAL HEALTH EXPERTS. I WOULD, ALSO, LIKE TO CONCLUDE, BY STATING THAT, WHEN YOU ARE TALKING ABOUT A PROPORTIONALITY ANALYSIS, AND YOU ARE ANALYZING DISPARATE TREATMENT BETWEEN TWO INDIVIDUALS, THERE WAS A COMPARISON MADE AS TO THE AGGRAVATING CIRCUMSTANCES, BUT I WOULD SUBMIT, TO DO A TRUE PROPORTIONALITY AND PROPER PROPORTIONALITY ANALYSIS, YOU, ALSO, HAVE TO TAKE A LOOK AT THE MITIGATION. IN THIS CASE IT IS UNDISPUTED, AS IT WAS FOUND BY THE TRIAL COURT THAT HALL WAS RAISED UNDER THE MOST HORRIBLE FAMILY CIRCUMSTANCES IMAGINABLE. HE SUFFERS FROM ORGANIC BRAIN DAMAGE. HE HAS BEEN MENTALLY RETARDED HIS ENTIRE LIFE. HE WAS ONE OF 17 CHILDREN. HE WAS TORTURED AND BEATEN BY HIS MOTHER, ABUSED BY HIS NEIGHBORS, TIED AND PUT INTO A SACK AND SET ON FIRE, BURIED UP TO HIS NECK, SO THAT HIS LEGS AND ARMS WOULD GET STRONG. SHE WOULD ALLOW NEIGHBORS TO PUNISH HALL, BY FORCING HIM TO STAY UNDERNEATH THE BED FOR THE ENTIRE DAY. WHEN YOU ARE CONDUCTING A PROPORTIONALITY ANALYSIS, COMPARE THAT MITIGATION. THERE IS NO SUCH MITIGATION FOR RUFFIN. DOESN'T MITIGATION LESSEN CULPABILITY? WOULDN'T YOU HAVE TO TAKE A LOOK AT MITIGATION, WHEN YOU ARE TRYING TO DETERMINE THE RELATIVE CULPABILITY, AS BETWEEN TWO CODEFENDANTS?

DID HIS APPELLATE COUNSEL NOT ADDRESS THE MITIGATION AT ALL?

APPELLATE COUNSEL WOULD HAVE ADDRESSED THE MITIGATION, BUT I DON'T BELIEVE IN THE CONTEXT OF WHAT I AM ASKING THIS COURT TO DO, WHICH IS TO VIEW IT FULLY, UNDER PROPORTIONALITY ANALYSIS. I DON'T THINK THAT WAS ADEQUATELY DONE, BUT ABOUT THE BOTTOM LINE IS, WHEN YOU TAKE A LOOK AT FREDDIE LEE HALL. HE IS NO LEADER. HE WAS NO LEADER IN THIS CASE, AND THE EVIDENCE WASN'T THERE, BY SUBSTANTIAL COMPETENT EVIDENCE, WHEN YOU CONSIDER DEPUTY BISHOP'S TESTIMONY. I ASK THE COURT TO GRANT THE HABEAS PETITION.

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.