

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

>> WHENEVER YOU'RE READY.

>> THANK YOU.

GOOD MORNING.

I'M MARIA PERINETTI AND I
REPRESENT THE APPELLANT, TAVARES
WRIGHT.

I'D LIKE TO FOCUS ON
MR. WRIGHT'S INTELLECTUAL
DISABILITY, AND INEFFECTIVE OF
ASSISTANCE OF COUNSEL CLAIM.
HE SUFFERS FROM FETAL ALCOHOL
SYNDROME.

HIS BRAIN IS TWO-THIRDS THE SIZE
OF A NORMAL BRAIN.

THE CIRCUIT COURT IN ITS ORDER
DENYING RELIEF FOUND THAT
MR. WRIGHT'S DID NOT MEET HIS
BURDEN THAT HE SUFFERS FROM AN
INTELLECTUAL DISABILITY.

TIME AND AGAIN, HE STRESSED IN
HIS ORDER THAT MR. WRIGHT'S WAS
NOT -- HAD NOT LEGALLY
ESTABLISHED THAT HE SUFFERS FROM
AN INTELLECTUAL DISABILITY.

>> CAN I ASK YOU, DID YOU RAISE
THAT THE STANDARD OF CLEAR AND
CONVINCING COULD BE
UNCONSTITUTIONAL UNDER COOPER?
THEY SAY YOU WAIVED THAT
ARGUMENT.

>> YES.

IT WAS RAISED IN THE WRITTEN
CLOSING ARGUMENTS.

THE STATE RESPONDED IN ITS
WRITTEN CLOSING ARGUMENTS TO OUR
ARGUMENT REGARDING THE CLEAR AND
CONVINCING EVIDENCE STANDARD.

THEY DID NOT ARGUE THAT IT WAS
PROCEDURALLY BARRED BELOW.
AND THE COURT SQUARELY ADDRESSED
THE CLEAR AND CONVINCING
EVIDENCE ENTERED AND THE
CONSTITUTIONALITY OF THE CLEAR
AND CONVINCING EVIDENCE
STANDARD.

SO IT'S OUR POSITION THAT IT WAS
PRESERVED.

>> IF IT'S NOT RAISED IN ANY OF

THE PLEADINGS, CORRECT?

>> I WOULD AGREE WITH THAT.

>> AND SO IT WAS NOT UNTIL THE WRITTEN ARGUMENTS AFTER THE CASE HAD ALREADY BEEN PRESENTED TO THE TRIAL JUDGE AND THAT'S WHEN IT WAS FIRST RAISED, THE ONLY TIME.

>> YES.

>> OKAY.

MAKE SURE WE'RE CORRECT ON THE FACTS.

>> THAT'S CORRECT.

BUT THE STATE DID RESPOND TO IT AND THE LOWER COURT ADDRESSED IT.

>> THE STATE DIDN'T ASK THE JUDGE -- MANY TIMES WHEN THIS HAS BEEN CHALLENGED BEFORE, USUALLY THEY SAY YOU DIDN'T MEET CLEAR AND CONVINCING OR PREPONDERANCE OF THE EVIDENCE. SO THAT DIDN'T HAPPEN HERE.

>> NO.

AND I THINK IT'S VERY CLEAR FROM THE LOWER COURT'S ORDER THAT THE COURT HAD GRAVE CONCERNS, EVEN IF HE HAD NOT MET THE STANDARD, THAT MR. WRIGHT'S IS ACTUALLY INTELLECTUALLY DISABLED.

I THINK IT'S BEYOND QUESTION THAT HE HAS MET THE PREPONDERANCE OF THE EVIDENCE STANDARD.

>> HOW DO YOU DEAL WITH THE IQ SCORE, THE HIGHEST IQ SCORE? WAS IT 82?

>> THE HIGHEST SCORE HE RECEIVED WAS IN 2005 WHEN HE WAS AWAITING TRIAL.

HE RECEIVED AN 82.

THERE WAS A PROBLEM WITH THE NORMING OF THAT TEST.

YOU HAVE TO TAKE A 2.34 OFF THE TOP OF THAT SCORE.

BUT THE BIGGER ISSUE IS THE PRACTICAL EFFECT IN THIS CASE.

MR. WRIGHT'S HAS TAKEN SOME FORM OF LESSER --

>> HOW LONG -- HAD HE EVER TAKEN

THAT SAME TEST PREVIOUSLY?

>> NO.

THAT WAS THE FIRST TIME HE TOOK THE WAIS.

>> HOW LONG BEFORE THAT PARTICULAR TEST WAS IT THAT HE HAD TAKEN ANY IQ TEST? HOW MANY YEARS?

>> IN 2003, WHICH WAS APPROXIMATELY TWO YEARS BEFORE HE TOOK A PRORATED WAIS TEST, HOWEVER, EVEN THOUGH IT WASN'T THE SAME EXACT VERSION OF THE WECHSLER --

>> UNDER THOSE CIRCUMSTANCES, WOULD THAT -- WITH A DIFFERENT TEST BEING TAKEN EARLIER AND THE TIME OF THE TEST, WOULD NOT EXPLAIN THE 82IQ?

>> THAT IT WOULD NOT EXPLAIN IT?

>> RIGHT.

>> NO.

IN FACT, DR. CASPER --

>> I UNDERSTAND THERE WAS NO EVIDENCE THAT WOULD SUPPORT THE TRIAL COURT IN CONCLUDING THAT THAT SCORE SHOULD NOT BE DISCOUNTED AND THE DISCOUNTING BEING ON THE BASIS OF THE PRACTICE EFFECT.

>> I'M SORRY.

I DON'T UNDERSTAND YOUR QUESTION.

>> OH.

THERE WAS NO TESTIMONY THAT THE STATE'S EXPERTS PROVIDED --

>> RIGHT.

>> -- THAT WOULD SUPPORT A CONCLUSION BY THE TRIAL COURT THAT THAT 82 SCORE WAS GOOD AND THAT THE PRACTICE EFFECT WAS NOT A BASIS FOR DISCREDITING THAT SCORE OF 82.

>> OKAY.

THE DOCTOR WHO WAS THE STATE'S EXPERT TESTIFIED THAT HE BELIEVED THAT THE 82, WHICH WAS THE HIGHEST IQ SCORE OBTAINED BY MR. WRIGHT'S, WAS THE BEST INDICATOR OF HIS INTELLIGENCE

BECAUSE YOU CAN FAKE THAT BUT YOU CAN'T FAKE GOOD.
OUR POSITION IS YOU HAVE TO DO THAT 2.34 CORRECTION.
NUMBER TWO, THE PRACTICE EFFECT. THESE TESTS ARE NOT NORMED ON PEOPLE WHO HAVE TAKEN THEM EIGHT TIMES.

SO IT'S AN UNRELIABLE SCORE. THE 82 FALLS WITHIN THE RANGE THAT WAS PREDICTED BY THE STANDARD ERROR OF MEASUREMENT. WHEN YOU APPLY IT TO THE FIRST TEST HE EVER TOOK WHEN HE WAS TEN YEARS OLD, YOU GET A RANGE OF 70 TO 82.

THAT 82 FALLS WITHIN THE RANGE. IN FACT, ALL OF MR. WRIGHT'S IQ SCORES FALL WITHIN THAT RANGE, WHICH LEND INCREDIBLE -- YOU KNOW, IT SHOWS THE RELIABILITY OF THE FIRST IQ TEST THAT HE EVER TOOK.

AND THE FACT THAT HE WAS IQ TESTED SO MANY TIMES, PARTICULARLY BEFORE THE AGE OF 18 YEARS OLD, HE WAS IQ TESTED FOUR TIMES.

SHOWS THAT PEOPLE --
>> WASN'T THERE A DR. KREMPER THAT CAME UP WITH AN IQ SCORE OF 85?

>> NO.

DR. KREMPER WAS THE 82. HE TESTED MR. WRIGHT'S DURING TRIAL.

>> IT WASN'T --

>> YES.

THAT WAS DR. KREMPER. THE FACT THAT HE WAS IQ TESTED FOUR TIMES BEFORE THE AGE OF 18, EVEN THE STATE'S EXPERT SAID THIS IS HIGHLY UNUSUAL FOR SOMEBODY TO BE IQ TESTED SO MANY TIMES.

>> WHY WAS HE?

>> IN 1991 HE WAS TEN YEARS OLD. HE WAS GIVEN THE EXACT SAME TEST THREE TIMES IN A YEAR --

>> YOU SAY WE HAVE SO MANY CASES

WHERE THERE'S NO IQ TEST.
DO WE HAVE ANY EXPLANATION?
>> THE FIRST TEST WAS FOR SOCIAL
SECURITY DISABILITY.
THE SECOND TEST WAS IN THE
FLORIDA SCHOOLS.
AND THE THIRD TEST WAS IN THE
NEW YORK SCHOOLS.
>> DOES HE QUALIFY FOR SOCIAL
SECURITY DISABILITY?
>> YES.
HIS MOTHER RECEIVES BENEFITS FOR
HIM.
>> BASED ON HIM.
WHAT WAS THE BASIS?
BECAUSE THAT'S WHEN DR. KREMPER,
I REMEMBER THAT NAME FROM
ANOTHER CASE --
>> DR. KREMPER.
>> DID HE DO THE TESTING FOR
SOCIAL SECURITY?
>> NO.
ANOTHER DOCTOR DID THE TESTING
FOR SOCIAL SECURITY DISABILITY.
>> SO -- BECAUSE THAT'S PRETTY
RARE FOR THEM TO FIND A CHILD
DISABLED BASED ON AN IQ TEST.
WHAT DID THEY FIND HIM DISABLED
FOR?
WHAT WAS THEIR CONCLUSION?
>> THE DOCTOR TESTIFIED -- AND
ANOTHER DOCTOR ALSO WHEN HE WAS
16 YEARS OLD HE WAS TESTED AGAIN
FOR SOCIAL SECURITY DISABILITY.
BOTH DOCTORS TESTIFIED AT OUR
EVIDENTIARY HEARING IN
POST-CONVICTION.
THEY SAID THAT THEY DIDN'T
DIAGNOSE HIM AS MENTALLY
RETARDED BACK THEN BECAUSE THEY
UNDERSTOOD THAT UNDER THE LAW
THERE WAS A STRICT 70 CUTOFF.
HOWEVER, IT WAS BECAUSE OF HIS
LEARNING DISABILITIES AND LOW IQ
THAT HIS MOTHER RECEIVES SOCIAL
SECURITY BENEFITS.
>> WHAT DO WE DO WITH THE
TESTIMONY OF THE STATE EXPERT
THAT THERE ARE NO ADAPTIVE
DEFICITS AND THE EXPLAINING AWAY

OR REFUTING, IF YOU WILL -- I
MEAN, WE HAVE TESTIMONY BOTH
WAYS -- AS TO DR. CASPER AND THE
DEFENDANT'S EXPERTS?

SO EVEN IF WE ACCEPT THE NUMBER,
WE'VE GOT THAT SECOND STEP,
RIGHT, THAT WE HAVE TO DEAL
WITH?

>> YES.

AND I WOULD ARGUE THAT DR. --
AND I WOULD BE HAPPY TO ADDRESS
ANY CONCERNS THAT THIS COURT HAS
REGARDING ANYTHING VERY SPECIFIC
THAT DR. GAMASH TESTIFIED TO,
BECAUSE I COULD HAVE AN ANSWER
FOR ANY OF IT.

AND I WOULD WELCOME THOSE
QUESTIONS.

BUT DR. GAMASH WAS RELYING
MOSTLY ON WHAT MR. WRIGHT'S TOLD
HIM.

IN FACT, HE HADN'T INTERVIEWED A
SINGLE COLLATERAL WITNESS.

HE DIDN'T EVEN LOOK AT THE
SCHOOL RECORDS, EVEN THOUGH THEY
WERE INTRODUCED AT THE
EVIDENTIARY HEARING IN
POST-CONVICTION.

ALL HE WAS RELYING ON WAS WHAT
MR. WRIGHT'S TOLD HIM.

AND INTELLECTUALLY DISABLED
PEOPLE ARE KNOWN TO EXAGGERATE
AND THEY HAVE THIS CLERK OF
CONFIDENCE WHERE THEY SAY THAT
THEY'RE BETTER, THAT THEY CAN DO
MORE THAN THEY CAN.

AND ALL OF WHAT MR. -- WHAT
DR. GAMASH TESTIFIED TO
REGARDING HIS DEFICITS HAD TO DO
WITH WHAT MR. WRIGHT'S TOLD HIM
HE COULD DO, MOST OF WHICH WAS
CONTRADICTED BY THE RECORD AND
BY THE WITNESSES WHO TESTIFIED
IN POST-CONVICTION.

SECONDLY, I THINK THAT THERE IS
A MISPERCEPTION, GROSS
MISPERCEPTION ABOUT WHAT MILDLY
INTELLECTUALLY DISABLED PEOPLE
CAN DO.

IN THE CAPITAL CONTEXT,

ESPECIALLY THE 70 TO 75 IQ RANGE, THAT THESE PEOPLE ARE GOING TO BE MILDLY INTELLECTUALLY DISABLED, NOT MODERATELY OR SEVERELY. MILDLY INTELLECTUALLY DISABLED PEOPLE CAN DO A LOT MORE THAN I THINK WHAT THE POPULAR PERCEPTION IS OF WHAT THEY CAN DO.

THEY CAN HOLD JOBS.
THEY CAN GET MARRIED.
THEY CAN HAVE CHILDREN.
THEY CAN WALK AND TALK AND BRUSH THEIR TEETH.

THIS ISN'T -- YOU KNOW, THIS ISN'T SOMEBODY WHO'S INCAPABLE OF DOING ANYTHING.

WHEN YOU LOOK AT THE TESTIMONY OF THE DOCTOR ABOUT WHY HE FELT THAT MR. WRIGHT'S WAS NOT INTELLECTUALLY DISABLED, HE CITED, FOR EXAMPLE, THAT MR. WRIGHT'S DURING THE INTERVIEW OF DR. GAMASH WITH MR. WRIGHT'S, THE DOCTOR TOOK A BREAK AND WENT TO THE SODA MACHINE.

HE ASKED MR. WRIGHT'S IF HE WOULD LIKE ANYTHING FROM THE SODA MACHINE.

HE SAID YES.

I WOULD LIKE A MOUNTAIN DEW. THAT WAS CITED AS A REASON THAT HE WAS NOT MENTALLY RETARDED.

>> WELL, YOU ARE GOING INTO NOW THE QUESTION OF COMPETENCY OF EXPERTS.

THERE WAS NOTHING THAT EXCLUDED THE TESTIMONY OF THE DOCTOR.

THE STATE'S EXPERT WAS ACCEPTED AND THAT'S PART OF THE EVIDENCE IN THE CASE.

>> HE WAS ACCEPTED AS AN EXPERT, BUT I'M SAYING HIS TESTIMONY REGARDING WHY MR. WRIGHT'S DID NOT HAVE A DEFICIT WAS NOT CREDIBLE AND ALSO HIS TESTIMONY REGARDING THE IQ SCORES IS NOT CREDIBLE.

>> WELL, THE TRIAL COURT DID
FIND IT CREDIBLE IN THAT IT --
I'M SORRY?

>> I'M SORRY.

I WOULD DISAGREE THAT THE TRIAL
COURT FOUND HIM CREDIBLE.

>> WELL, THE TRIAL COURT DID NOT
FIND ADAPTIVE DEFICITS AND
ADAPTIVE FUNCTIONING.

>> THE TRIAL COURT DID FIND
ADAPTIVE DEFICITS.

HE FOUND MR. WRIGHT'S --

>> NOT SUFFICIENT.

NOT SUFFICIENT TO FIND HIM
INTELLECTUALLY DISABLED, THOUGH,
WAS IT?

>> HE FOUND THAT MR. WRIGHT'S
HAD FAILED TO ESTABLISH BY CLEAR
AND CONVINCING EVIDENCE THAT HE
SUFFERED FROM DEFICITS.

>> THAT GOES BACK TO YOUR OTHER
ARGUMENT.

THERE IS EVIDENCE IN THIS RECORD
FROM THE TRIAL JUDGE THAT'S
THERE.

THAT'S WHAT WE HAVE TO EVALUATE,
WHAT'S IN THIS RECORD.

I UNDERSTAND YOU DISAGREE WITH
ALL OF THAT.

BUT I DON'T THINK THAT'S THE
POINT HERE THAT WE NEED TO TALK
ABOUT.

WE NEED TO TALK ABOUT WHAT'S IN
THE RECORD.

AND I DO UNDERSTAND YOU THINK
THAT MOST OF THE EVIDENCE -- AND
MAYBE YOU'RE CORRECT.

MAYBE IT'S PREPONDERANCE AND
THAT'S WHERE IT IS.

BUT WE DO HAVE THAT TO DEAL
WITH.

WE CAN'T JUST IGNORE IT.

>> IF YOU LOOK AT THE TRIAL
COURT'S FACTUAL FINDINGS, HE
CITED THAT MR. WRIGHT'S WAS A
SLOW LEARNER IN SCHOOL AND NEVER
DID WELL ACADEMICALLY.

HE HAS BEEN MANIPULATED, BULLIED
AND TAKEN ADVANTAGE OF HIS
ENTIRE LIFE.

DR. GAMASH SAID HE COULD FIND NO EVIDENCE OF MR. WRIGHT'S BEING TAKEN ADVANTAGE OF.

THE RECORD IS ROBUST WITH EVIDENCE OF MR. WRIGHT'S BEING TAKEN ADVANTAGE OF THROUGHOUT HIS LIFE, IN CHILDHOOD, IN THE JAIL AWAITING TRIAL, AROUND THE TIME OF THE CRIME.

SO I THINK THAT THE TRIAL COURT'S FINDINGS OF FACT SHOW THAT HE IS DISAGREEING WITH DR. GAMASH AND WHERE HE'S STRUGGLING IS WITH THE CLEAR AND CONVINCING STANDARD, THE 70 TO 75.

EVEN THOUGH HE FOUND THAT MR. WRIGHT'S SCORES FELL WITHIN THE TESTS STANDARD MARGIN OF ERROR, HE FOUND THAT HE HAD NOT DEMONSTRATED THAT PRONG BY CLEAR AND CONVINCING EVIDENCE.

AND THAT'S PART OF THE PROBLEM WITH THE CLEAR AND CONVINCING EVIDENCE STANDARD, THAT, YOU KNOW, ESPECIALLY WITH THESE DEFENDANTS WHO FALL WITHIN THE 70 TO 75 RANGE, IT'S GOING TO BE VERY DIFFICULT TO PROVE PRONG ONE BY CLEAR AND CONVINCING EVIDENCE.

THE INTERRELATED ASSESSMENT, YOU HAVE TO LOOK AT ALL THREE PRONGS.

BUT IF YOU'RE LOOKING FOR SOMEBODY TO PROVE BY CLEAR AND CONVINCING EVIDENCE WHEN HIS IQ FALLS WITHIN THE 70 TO 75, 76 RANGE, THEN IT'S GOING TO MAKE IT IMPOSSIBLE FOR THEM TO EVER PROVE BY CLEAR AND CONVINCING EVIDENCE AND THE HALL OPINION IS GOING TO BECOME A NULLITY AND NOBODY WOULD EVER BE ABLE TO GET RELIEF UNDER HALL.

ALSO, --

>> ON THE IQ ISSUE -- BECAUSE WE'RE GOING TO HAVE SOME OF THESE CASES WHERE -- IF SOMEBODY IS TESTED 80 DURING THEIR LIVES,

IS THAT GOING TO BE ENOUGH TO WARRANT A NEW HEARING BASED ON HALL?

IN OTHER WORDS, YOU'VE GOT HERE -- YOU'VE GOT IQ SCORES NO LOWER THAN 75, CORRECT?

>> NONE LOWER THAN 75, CORRECT.

>> OKAY.

AND THE HIGHEST BEING 82.

>> YES.

>> AND, AGAIN, THOSE TWO, 82 AND 75, WERE WITHIN A WEEK OF EACH OTHER.

IS THAT RIGHT?

>> YES.

>> SO DOES ANYBODY IN THE STANDARD ERROR OF MEASUREMENT CONTEXT SAY THAT EVEN ADJUSTED THAT HIS IQ WOULD BE BELOW 70?

>> YES.

THE 75 HE RECEIVED IN 1997 WHEN HE WAS 16 YEARS OLD, THE RANGE WOULD BE 69 TO 81.

>> WHAT WERE THE --

>> THAT WAS DR. KINDLEMAN

>> THAT WAS DR. FRIED'S TEST.

>> THIS HAS REALLY BECOME SOMEWHAT PROBLEMATIC.

THERE'S TWO THINGS.

WE GOT THE JUDGE AS THE FACT-FINDER WEIGHING EVIDENCE OF COMPETING EXPERTS ABOUT SOMETHING THAT YOU WOULD HOPE WOULD BE MORE SUSCEPTIBLE TO SOME DEGREE OF CERTAINTY, WHICH IS INTELLECTUAL DISABILITY.

AND SO THE JUDGE FOUND WHAT AS TO THE PRONG OF IQ?

WHAT DID THE JUDGE FIND?

>> HE FOUND THAT -- I HAVE IT RIGHT HERE.

WELL, THE DEFENDANT'S IQ SCORES DO NOT DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT HAS SUB AVERAGE FUNCTIONING.

THEY DO FALL WITHIN THE MARGIN OF ERROR.

HE DIDN'T FIND ANYTHING SPECIFICALLY REGARDING TO ANY OF

THE SPECIFIC SCORES, INCLUDING THE 82 SCORE.

SO MY QUESTION IS IF THE COURT'S FINDING IS THAT THE SCORES DO FALL WITHIN THE MARGIN OF ERROR, THEN HOW IS PRONG ONE NOT ESTABLISHED?

AND ALSO I'M INTO MY REBUTTAL TIME, BUT I WANTED TO --

>> I GUESS THE OTHER THING ABOUT THE JUDGE -- AND I GOT TO LOOK AT HIS -- BECAUSE IT'S A VERY EXTENSIVE ORDER.

IF THE JUDGE WAS CONCERNED, I GUESS THAT IT WOULDN'T MEET THE PREPONDERANCE OF THE EVIDENCE STANDARD, THERE'S NO -- IS THERE AN INDICATION IN THE JUDGE'S ORDER THAT HE WAS STRUGGLING WITH THE HIGHER VERSUS LOWER STANDARD, THAT HE WOULD HAVE FOUND HIM INTELLECTUALLY DISABLED UNDER A LOWER STANDARD?

>> I THINK THE MOST STRIKING INDICATION OF THIS COURT'S STRUGGLE WHAT THE STANDARD WAS HIS URGING THIS COURT TO PERFORM A RENEWED PROPORTIONALITY --

>> BUT THAT'S NOT -- AGAIN, I THINK YOU'D AGREE, WE'RE NOT -- I DON'T UNDERSTAND WHAT THAT WOULD BE.

WE LOOK AT ALL -- WE'RE THE ONES THAT DECIDE WHETHER EVERYONE'S INTELLECTUALLY DISABLED?

>> I DON'T SEE A PRECEDENT FOR DOING THAT.

HOWEVER, I THINK IT INDICATES THAT THIS JUDGE IS REALLY STRUGGLING IN LIGHT OF HALL WITH THIS.

THIS IS A JUDGE THAT BELIEVES THAT EVEN THOUGH MR. WRIGHT'S MAY NOT HAVE MET THIS HIGH STANDARD, WHICH WE THINK HE DID, BUT HE BELIEVES THAT HE HAS A REAL PROBLEM WITH THE OUTCOME IN THIS CASE AND HE BELIEVES THAT MR. WRIGHT'S ACTUALLY IS INTELLECTUALLY DISABLED AND THAT

HIS FINDING BELOW AFTER THE EVIDENTIARY HEARING THAT COUNSEL MADE EVERY ATTEMPT TO LOOK INTO THE ISSUE OF MENTAL RETARDATION AND FIND AN EXPERT TO TESTIFY, I THINK IS NOT TRUE.

AND I THINK IT REALLY UNDERMINES THE OUTCOME OF THE -- OR UNDERMINES CONFIDENCE IN THE OUTCOME AND IT GOES ALSO TO THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM AND THE PREJUDICE.

>> I KNOW YOU'RE IN YOUR REBUTTAL.

HE WAIVED A JURY TRIAL.

>> YES.

>> ARE YOU RAISING A HURST CLAIM?

>> WELL, WE HAVEN'T RAISED THE HURST CLAIM, BUT WE WOULD.

I WOULD ARGUE YOU CAN'T WAIVE YOUR RIGHT TO AN

UNCONSTITUTIONAL SENTENCING.

WHAT HE WAIVED WAS SENTENCING

UNDER AN UNCONSTITUTIONAL STATUTE.

AND, NUMBER TWO, THAT HE'S INTELLECTUALLY DISABLED AND EVEN WHEN YOU LOOK AT THE PLEA COLLOQUY, ALL IT IS IS THE JUDGE ASKING HIM QUESTIONS AND HIM SAYING YES, SIR BUT THERE'S NO INDICATION HE UNDERSTOOD WHAT HE WAS WAIVING.

>> MAY IT PLEASE THE COURT, ASSISTANT ATTORNEY GENERAL STEPHEN AKE ON BEHALF OF THE STATE OF FLORIDA IN THIS CASE.

I WOULD FIRST LIKE TO SUBMIT THAT THE CLEAR AND CONVINCING EVIDENCE STANDARD ISSUE WAS WAIVED BELOW BECAUSE COUNSEL AT THE OUTSET OF THE HEARING AGREED WITH THE JUDGE THAT IT WAS THE APPROPRIATE STANDARD UNDER FLORIDA LAW.

IT WASN'T UNTIL COUNSEL FILED THEIR SUPPLEMENTAL BRIEF THAT THEY ARGUED THAT THIS IS AN UNCONSTITUTIONAL STANDARD AND

THEY HAD MENTIONED IT BRIEFLY IN THEIR CLOSING ARGUMENT AND AS I POINTED OUT IN OUR SUPPLEMENTAL BRIEFS, YOU CANNOT PRESERVE SOMETHING IN A WRITTEN CLOSING ARGUMENT AFTER THE FACT.

>> I'M A LITTLE CONCERNED ABOUT IT BECAUSE I HAVE BEEN CONCERNED SINCE WE ADOPTED WHAT THE LEGISLATURE DICTATED, THAT THAT STANDARD CONTAINS A RISK OF SOMEONE WHO IS INTELLECTUALLY DISABLED BEING EXECUTED.

SO IN MATERIALS OF PRESERVATION, THEY ARGUED THE CASE AND PRESENTED AS IF THEY WERE GOING TO TRY TO PROVE CLEAR AND CONVINCING, BUT BEFORE THE JUDGE ENTERED HIS ORDER, THEY SAID, BUT WE ALSO WOULD ASK YOU TO CONSIDER THAT THAT STANDARD'S UNCONSTITUTIONAL AND TO THEREFORE APPLY A PREPONDERANCE OF THE EVIDENCE.

THE JUDGE THEREFORE HAD THAT INFORMATION AND THE STATE RESPONDED BEFORE THE JUDGE DELIBERATED AS TO THE ACTUAL DECISION, CORRECT?

>> YES, YOUR HONOR.
THAT IS CORRECT.

BUT --

>> SO I GUESS THE QUESTION IS HOW IS THE STATE PREJUDICED, SINCE THEY WERE TRYING TO PROVE IT UNDER THE HIGHER STANDARD, AND ARE YOU SAYING -- HOW WOULD YOU --

>> I THINK IT SHOULD HAVE BEEN SOMETHING THAT WAS BROUGHT UP AT THE OUTSET, YOUR HONOR.

>> BUT HOW IS THE STATE PREJUDICED BY THE FACT THAT AFTER ALL THE EVIDENCE COME IN THEY SAY BUT IT'S ALSO THIS HIGHER STANDARD IS UNCONSTITUTIONAL?

YOU WOULD ARGUE IT WOULD MEET EITHER STANDARD.

>> RIGHT.

RIGHT.
EXACTLY.
AND I WOULD ARGUE THAT THE
STANDARD IS CONSTITUTIONAL.
I MEAN, I DON'T THINK THERE'S
ANY QUESTION ABOUT THAT.
I KNOW THERE'S A --
>> BUT MIGHT IT NOT BE THE CASE
THAT IF THE STATE WOULD LITIGATE
THE MATTER DIFFERENTLY IF THE
STATE BELIEVED THE STANDARD
MIGHT BE PREPONDERANCE OF THE
EVIDENCE?
>> PERHAPS.
>> IT WOULD CREATE A SITUATION
WHERE THE STATE IS BASIC -- THE
STATE IS FACING A DIFFERENT
HURDLE.
>> YES.
>> IN THE PROCEEDING.
BUT WHEN IT IS CONCEDED THAT THE
CLEAR AND CONVINCING EVIDENCE
STANDARD APPLIES, THAT CREATES A
DIFFERENT DYNAMIC, AT LEAST,
POTENTIALLY FOR THE STATE.
>> POTENTIALLY.
I BELIEVE THAT'S A VALID FACTOR,
YOUR HONOR.
BUT I THINK -- I KNOW, JUSTICE
PARIENTE, YOU INDICATED THAT YOU
HAD VALID CONCERNS WITH IT AND I
JUST WANTED TO POINT OUT THAT
THIS STANDARD IS A
CONSTITUTIONAL STANDARD.
THE 11TH CIRCUIT IN A GEORGIA
CASE ADDRESSED IT WITH A BEYOND
A REASONABLE DOUBT STANDARD
GEORGIA HAD AND UPHELD IT UNDER
THAT.
THAT CASE HAD A LOT OF GOOD
ANALYSIS ON THIS ISSUE.
>> THERE IS NO WAY TO PREDICT
WHAT THE UNITED STATES SUPREME
COURT IS GOING TO DO.
YOU KNOW IT AND I KNOW IT.
EVERY TIME YOU THINK YOU KNOW
THEY'RE NOT GOING TO DECLARE A
STATUTE UNCONSTITUTIONAL, THAT'S
WHAT THEY DO.
ADKINS, ROPER.

EVERYTHING THAT'S HAPPENING.
I'M NOT PREDICTING BASED ON WHAT
THE 11TH CIRCUIT SAYS WHAT THE
SUPREME COURT MAY DO.

IT IS AN EIGHTH AMENDMENT ISSUE,
SO IT WOULD BE THEIR ULTIMATE
CALL AS TO THAT ISSUE.

I JUST DON'T KNOW THAT THE STATE
REALLY -- MOST OF THESE CASES
WHERE THERE'S NO INTELLECTUAL
DISABILITY, THE STATE CAN MEET
BOTH STANDARDS.

>> AND I THINK WE MEET BOTH IN
THIS CASE.

>> IT'S ALWAYS A PROTECTION IN
CASE SOMETHING DOES HAPPEN
RATHER THAN LEAVE IT OUT THERE
THAT THEY COULDN'T MEET THAT
OTHER -- OR, U KNOW, THAT THE
DEFENDANT COULD MEET THAT LOWER
BURDEN, BUT NOT THE HIGHER ONE.

>> I WANTED TO KIND OF GET INTO
THE ACTUAL NUTS AND BOLTS OF THE
ARGUMENT HERE, IS THAT COUNSEL
IS SAYING HE HAS THIS RANGE OF
BETWEEN 70 AND 82.

THAT'S NOT ACCURATE.

HIS RANGE IS 75 TO 82.

IT'S ONLY WITH THE TWO STANDARD
ERROR OF MEASUREMENTS THAT HE
FALLS DOWN INTO THIS LOWER
RANGE.

EVERY TEST HE'S EVER BEEN GIVEN,
THE LOWEST IS 75, THE HIGHEST IS
82.

>> DON'T WE RUN RISKS IF WE
START TALKING 75 IQ UNDER WHAT
THE U.S. SUPREME COURT HAS DONE
IN HALL?

>> DEFINITELY.

HALL RECOGNIZED THAT IF YOU'RE
WITHIN THAT STANDARD ERROR OF
MEASUREMENT, THAT YOU SHOULD BE
ABLE TO PRESENT EVIDENCE AS TO
ADAPTIVE FUNCTION.

THAT'S WHAT THIS JUDGE ALLOWED.
BUT YOU STILL HAVE TO FIND THAT
FIRST PRONG.

I WOULD SUBMIT TO YOU THERE'S
EVIDENCE THAT SUPPORTS THE TRIAL

COURT'S ORDER THAT HE DIDN'T MEET THAT FIRST PRONG.

>> OKAY.

>> THAT HIS SCORES, EVEN WHEN YOU APPLY THIS TWO STANDARD ERRORS OF MEASUREMENT, THE BULK OF THEM STILL SHOW THAT HE'S NOT MEETING THE STANDARD --

>> WHAT IS THE TWO STANDARD ERROR OF MEASUREMENT MEAN?

>> IT'S A CONFIDENCE INTERVAL, A STATISTICAL THING, WHERE, FOR EXAMPLE, THEY'LL SAY A 2.5 STANDARD ERROR OF MEASUREMENT. THAT IS ONE STANDARD OF ERROR MEASUREMENT WHICH WOULD BE EQUATED TO I BELIEVE IT'S 60 SOMETHING PERCENT CONFIDENCE, WHERE THEY SAY THAT'S THE RANGE, IN THAT PERCENTAGE OF CASES. YOU MULTIPLY IT BY TWO TO GET A 95% CONFIDENCE INTERVAL.

SO IF YOU TAKE A 2.5 STANDARD ERROR MEASUREMENT, MULTIPLY BY TWO, YOU HAVE THE PLUS OR MINUS FIVE.

THAT TELLS THE PSYCHOLOGIST OR WHOEVER THAT 95% OF THE TIME HE'S GOING TO SCORE WITHIN THAT RANGE OF PLUS OR MINUS FIVE. SO IF IT'S A 75 AND YOU HAVE A PLUS OR MINUS FIVE, HIS RANGE IS 70 TO 80 AT 90% CONFIDENCE INTERVAL.

>> WHO IS DR. FRIED?

BECAUSE HE PERFORMED AN IQ TEST BOTH IN 1997 AND THEN IN 2015, AND HE HAD WHERE HE SCORED 75 BOTH TIMES AND THEN AS A CORRECTED GAVE HIM A 69 AND A 70.

WHO IS THIS DR. FRIED?

>> DR. FRIED TESTED HIM -- TESTED WRIGHT WHEN HE WAS 16.5 FOR DISABILITY, FOR THE OFFICE OF DISABILITY, AND THEN HE WAS --

>> HE DID THAT ON BEHALF OF THE UNITED STATES GOVERNMENT?

>> I BELIEVE IT WAS -- YES.

I BELIEVE IT WAS FOR THE OFFICES, YOU KNOW, EVALUATION AS TO HIS BENEFITS UNDER THAT. I BELIEVE HIS MOTHER BROUGHT HIM IN TO BE TESTED TO I GUESS OBTAIN FINANCIAL ASSISTANCE. BUT HE WAS ALSO AN EXPERT APPOINTED BACK AT THE TIME OF TRIAL IN 2005 BY THE COURT.

>> BY THE COURT.

>> BY THE COURT.

>> SO I GUESS IN TERMS OF LOOKING, JUST ON THE IQ ISSUE, IS IT -- AND -- HOW DID THE JUDGE LOOK AT DR. FRIED'S VIEWS OF THIS DEFENDANT AND HIS IQ?

>> WELL, THE JUDGE DOESN'T REALLY BREAK THEM DOWN PER TEST AND TALK ABOUT EACH INDIVIDUAL EXPERT'S TEST.

HE JUST SAYS THAT THE DEFENDANT DIDN'T MEET HIS STANDARD OF SHOWING IT.

>> I GUESS FOR ME -- AND I'VE ALWAYS -- YOU KNOW, IT SORT OF MAYBE GOES BACK TO YEARS AS A TRIAL LAWYER.

WHEN SOMEBODY HAS TESTED SOMEBODY AND THEY'VE DONE IT NOT ON BEHALF OF THE DEFENDANT, BUT ON BEHALF OF THE STATE OR THE SCHOOL AND THEY DID IT WHEN THERE WAS NO MURDER CHARGES PENDING, I WOULD TEND TO GIVE THAT OPINION, DEVOID OF ANY OF THE LITIGATION ASPECTS, YOU KNOW, MUCH GREATER WEIGHT. AND SO IT IS -- WHEN YOU SEE THAT WITHIN A WEEK THERE'S AN IQ SCORE OF 75 BY DR. FRIED, WHICH WAS CONSISTENT WITH WHAT HE OBTAINED IN 1997, VERSUS DR. KREMPER, WHO FOUND HIM TO HAVE, ON THE SAME TEST, AN 82, THERE'S SOMETHING THERE THAT JUST DOESN'T SEEM RIGHT.

>> WELL, THE INTERESTING THING, YOUR HONOR, WAS FRIED'S WAS TEN DAYS AFTER KREMPER'S TEST, SO IT SHOULD HAVE BEEN MUCH HIGHER.

>> BUT, ON THE OTHER HAND,
DR. FRIED HAD NO AXE TO GRIND
HER.
>> NO.
NEITHER DID KREMPER.
THEY WERE BOTH COURT-APPOINTED.
>> WHAT'S THE STATE'S
EXPLANATION FOR THE 82 AND 75?
>> I DON'T THINK ANYBODY HAS
BEEN ABLE TO EXPLAIN THE 75.
THE TESTIMONY WAS YOU DON'T GIVE
THE SAME EXACT TEST IN A
ONE-YEAR INTERVAL BECAUSE OF THE
PRACTICE EFFECT.
>> BUT THERE WASN'T 75 IN 1997.
>> RIGHT.
RIGHT.
>> IS THAT DISPUTED?
>> NO.
I DON'T BELIEVE IT'S NECESSARILY
DISPUTED.
I MEAN, HE HAD A 76 WHEN HE WAS
TEN YEARS OLD AND A 75 WHEN HE
WAS 16 AND THEN IN '82, WHEN HE
WAS 20 SOMETHING YEARS OLD.
I THINK IT'S ALL WITHIN A RANGE.
>> BY DR. KREMPER.
>> A COURT-APPOINTED EXPERT,
RIGHT.
HE WAS THE FIRST ONE TO
ADMINISTER THAT TEST.
THEY SAY THE PRACTICE EFFECT.
HE HAD BEEN GIVEN THE TEST A
NUMBER OF TIMES.
BUT THE STATE'S EXPERT SAID NO.
I LOOKED AT THE SUBTEST.
HE HAD NEVER BEEN GIVEN THIS
TEST.
HE HADN'T EVEN BEEN GIVEN A
WECHSLER FOR OVER 2.5 YEARS.
HE HASN'T HAD ANY TEST FOR 2.5
YEARS.
>> IS THERE ANY TESTIMONY ABOUT
POTENTIAL MALINGERING?
>> THERE WAS.
DR. GAMASH TESTIFIED THAT NONE
OF THE TESTS THAT HE'S EVER BEEN
ADMINISTERED HAD DONE A VALIDITY
TEST WITH IT.
HE GAVE THE DEFENDANT A VALIDITY

TEST WHEN HE TESTED HIM AND HIS TESTS WERE INVALID BECAUSE HE WASN'T PUTTING FORTH PERFORMANCE.

YOU KNOW, IT'S A PERFORMANCE-BASED IQ TEST AND HE WASN'T PUTTING FORTH A GOOD FAITH EFFORT.

NONE OF THESE TESTS HAD ANY VALIDITY TESTS ACCOMPANYING THEM.

SO HE HAD A BASIC QUESTION ABOUT THAT, BECAUSE IT WAS BASICALLY ALL SUBJECTIVE ON EVERYBODY'S PART.

OH, YES, HE WAS PUTTING FORTH EFFORT.

>> I GUESS THAT'S WHY I TAKE A LOT OF VALIDITY IN A -- YOU KNOW, THE GOVERNMENT DOESN'T LIKE TO GIVE DISABILITY BENEFITS OUT, ESPECIALLY -- I MEAN, IF WE HAD EVERYONE THAT HAD SPECIAL EDUCATION GOT SOCIAL SECURITY DISABILITY, WE'D REALLY BANKRUPT THE SOCIAL SECURITY SYSTEM, PERHAPS.

BUT THERE'S SOMEBODY WHO IS DOING IT FOR THE PURPOSE OF LOOKING TO WHETHER HE QUALIFIES AND FINDING THIS IQ TEST.

I DON'T KNOW.

HOW WOULD WE THINK THAT HE AS A 16-YEAR-OLD WAS MALINGERING ABOUT HIS IQ TEST AT THAT POINT? I MEAN, NO KID WANTS TO BE LABELED AS, YOU KNOW, RETARDED OR WHATEVER.

>> THE ONLY EVIDENCE -- AND I HONESTLY DON'T KNOW WHAT THE CRITERIA FOR RECEIVING BENEFITS FOR YOUR SOCIAL SECURITY ARE, BUT I DO KNOW THAT THERE WAS TESTIMONY THAT THE MOTHER WAS PUTTING HIM UP TO THIS BECAUSE A NUMBER OF KIDS IN THE NEIGHBORHOOD WERE GETTING THESE CHECKS AND THAT SHE WOULD RECEIVE FINANCIAL BENEFIT FROM THIS.

SHE WAS A DRUG-ADDICTED, NOT MUCH INVOLVEMENT IN MR. WRIGHT'S LIFE, SO I DO KNOW THERE'S THAT. BUT I DON'T NECESSARILY THINK THAT HE WAS TRYING TO MALINGER AS A TEN-YEAR-OLD WHEN HE TOOK THESE TESTS IN THE SCHOOL SYSTEM OR WITH THE DISABILITY. I THINK A 75 TO AN 82 RANGE IS A VERY ACCURATE RANGE FOR MR. WRIGHT'S.

I MEAN, THAT'S WHAT ALL HIS TEST SCORES ARE SHOWING.

75 TO 82.

THAT IS NOT EQUIVALENT TO TWO STANDARD DEVIATIONS BELOW THE NORM.

IT'S A LITTLE HIGHER.

IT'S NOT A LOT HIGHER, BUT IT IS HIGHER.

SO HE DOES NOT FALL INTO THAT FIRST PRONG.

THAT'S WHAT THE TRIAL JUDGE HERE FOUND.

THE JUDGE DID ALLOW HIM TO INTRODUCE THE ADAPTIVE BEHAVIOR STUFF IN LIGHT OF HALL AND SAID

--

>> DID THE TRIAL JUDGE EVALUATE IT?

>> YES.

>> HOW DID THE TRIAL JUDGE TREAT THE OTHER PRONGS OF THE INTELLECTUAL DISABILITY?

>> RIGHT.

THE JUDGE MADE I BELIEVE A VERY -- HE KEYED IN ON THE DEFENDANT'S TESTIMONY IN THIS CASE, WHERE WRIGHT TESTIFIED AT THE GUILT PHASE AND PRESENTED ALIBI AS TO THIS MURDER.

I BELIEVE THE JUDGE FACTORED THAT INTO IT, AS WELL AS THE NATURE OF THE CRIME.

IN ADDITION TO ALL THE EVIDENCE THAT WAS BROUGHT OUT --

>> AS I RECALL, THE TRIAL JUDGE SAID SOMETHING ABOUT HIM ANSWERING QUESTIONS AND EVEN QUESTIONING WHAT HIS ATTORNEYS

WERE DOING.

>> RIGHT.

>> SOMETHING TO THAT EFFECT.
BUT WHAT ELSE WAS IN THE RECORD
ABOUT HIS ADAPTIVE FUNCTIONING?

>> WELL, WE PRESENTED EVIDENCE
FROM DR. GAMASH IN DETAIL ABOUT
THAT.

THEY PRESENTED AN EXPERT ON
THEIR SIDE.

WE ALSO HAD LAY WITNESSES
TESTIFY.

AND THERE'S A TOTAL CONFLICT AS
TO HIS ABILITIES BASED ON THE
LAY WITNESSES' TESTIMONY.

>> HOW OLD WAS HE WHEN THIS
CRIME WAS COMMITTED?

>> 19.

>> HE WAS 19.

DID HE FINISH HIGH SCHOOL?

>> NO.

HE WAS IN BOOT CAMP.

>> HAD HE EVER HAD A JOB?

>> HE HAD ONE JOB AT ALBERTSON'S
IN THE WAREHOUSE AS A SELECTOR,
WHERE HE WAS IDENTIFYING ORDERS
AND PLACING THEM ON A CONVEYOR
BELT.

>> DID HE LIVE ON HIS OWN?

>> ACCORDING TO MR. WRIGHT'S, HE
WAS ON HIS OWN FROM 13 ON.

THERE IS TESTIMONY HE LIVED WITH
VARIOUS FRIENDS AND GIRLFRIENDS
AND FAMILY MEMBERS THROUGHOUT
THAT TIME PERIOD.

SO HE CERTAINLY TOOK CARE OF
HIMSELF DURING ALL THAT TIME
PERIOD.

HIS TESTIMONY OR HIS STATEMENTS
TO THE EXPERTS WAS THAT HE WAS A
DRUG DEALER, IS HOW HE SUPPORTED
HIMSELF, AND HE WAS A MEMBER OF
A GANG AND THERE WAS EVIDENCE TO
SUPPORT THAT, THAT HE WAS INDEED
A DRUG DEALER, THAT THAT'S HOW
HE GOT HIS MONEY.

>> HE WAS IN BOOT CAMP.

I'M ASSUMING THAT WAS BOOT CAMP
THAT USED TO BE IN VOGUE A FEW
YEARS AGO.

WHAT WAS HE PLACED IN THE BOOT CAMP FOR?

>> I'M NOT SURE IT WAS BEHAVIOR PROBLEMS IN SCHOOL, BECAUSE HE CERTAINLY HAD A LOT OF THOSE, OR IF IT WAS AN ACTUAL CRIMINAL --

>> BOOT CAMP, USUALLY THOSE WERE FOR THOSE COMMITTING --

>> I DON'T KNOW WHAT THE UNDERLYING OFFENSE WAS THAT RESULTED IN THAT.

>> NOW, THIS ISSUE WITH ADAPTIVE FUNCTIONING, YOU WOULD AGREE THAT BEING ABLE TO SAY I'D LIKE A MOUNTAIN DEW IS NOT THE ADAPTIVE FUNCTIONING WE'RE TALKING ABOUT.

>> NO.

>> BUT THIS JUDGE WHO EVALUATED HIM WAS THE JUDGE WHO EVALUATED HIS TESTIMONY AT TRIAL?

>> AT THE HEARING, YES.
AT THE HEARING.

>> THE SAME JUDGE THAT FOUND THAT HE WASN'T INTELLECTUALLY DISABLED WAS THE TRIAL JUDGE?

>> NO.

THAT'S WHERE YOU WERE CONFUSING ME.

HE WAS NOT THE TRIAL JUDGE.

>> I THOUGHT YOU WERE SAYING THEY EVALUATED HOW WELL HE DID IN HIS TESTIMONY.

>> HE WENT BACK AND READ THAT, YES.

BECAUSE AS THIS COURT'S POINTED OUT IN A NUMBER OF CASES, WHEN YOU HAVE CCP, WHICH WE HAD IN THIS CASE, THOSE FACTS ALONE HELP ESTABLISH THAT SOMEBODY'S NOT INTELLECTUALLY DISABLED BASED ON --

>> HERE'S MY CONCERN ABOUT THAT. I WILL GO BACK AND LOOK AT MR. HALL.

I KNOW THAT IS A COMMON BELIEF.

>> RIGHT.

>> THAT YOU COULDN'T PLAN A MURDER IF YOU WERE INTELLECTUALLY DISABLED.

BUT HIGHER LEVEL, I MEAN, THOSE THAT ARE AT 70, BORDERLINE, THEY CAN FUNCTION PRETTY WELL IN SOCIETY EVEN THOUGH THEY HAVE IQ IN THEIR 60s, CAN LIVE ON THEIR OWN, CAN BUY FOOD, CAN GET DRIVER'S LICENSE.

SO WHAT IS IT THAT WAS THE TESTIMONY ABOUT HIM, YOU KNOW, BEFORE 18, THAT SHOWED TRUE ADAPTIVE FUNCTIONING?

>> WELL, IT'S TESTIMONY AS TO BEFORE AGE 18 AND AFTER AGE 18, CONCURRENT DEFICITS WAS THAT PRIOR TO AGE 18 THE DEFENSE PRESENTED EVIDENCE FROM FAMILY MEMBERS AND DR. CASPER, WHO HAD INTERVIEWED THESE, AND SAID THAT HE BASICALLY NEEDED ASSISTANCE IN TAKING CARE OF HIMSELF, BASICALLY NEEDING TO BE REMINDED TO BRUSH HIS TEETH AND TO TIE HIS SHOES AND THAT KIND OF STUFF.

BUT THEY REALLY DIDN'T KNOW -->> BUT, AGAIN, THAT WOULDN'T -- SOMEBODY CAN BE AT A 70 AND BE ABLE TO BRUSH HIS TEETH AND TIE HIS SHOES.

>> RIGHT.

SOME OF IT WAS OVER THE TOP. THERE WAS FAMILY MEMBERS TRYING TO, YOU KNOW, ASSIST, I GUESS, WOULD BE THE PROPER WORD, AND WAS A LITTLE OVER THE TOP.

BUT DR. GAMASH PRESENTED TESTIMONY THAT HIS ADAPTIVE BEHAVIOR, HE DIDN'T HAVE ANY DEFICITS IN IT.

HE WENT OVER ALL THE VARIOUS SUBCATEGORIES.

THERE'S LIKE 11 OF THEM.

>> TO YOU WHAT'S THE MOST SUBSTANTIAL?

BECAUSE THE THING FOR TRYING FOR US TO UNDERSTAND WHAT WE WANT TO EVALUATE TO MAKE SURE THAT WE ARE EITHER LIMITING IT BUT NOT EXCLUDING SOMETHING THAT FITS INTO THIS CATEGORY.

WHAT ARE THE --

>> WELL, THERE ARE 11
SUBCATEGORIES UNDER THE DSM AND
THE AAID DEFINITIONS AND THEN
THIS COURT THEY'VE NOW KIND OF
GROUPED THEM INTO THREE MAIN
COMPONENTS: CONCEPTUAL SKILLS,
PRACTICAL SKILLS AND SOCIAL
SKILLS.

EVEN THE DEFENSE EXPERT SAID HE
ONLY HAD DEFICITS IN ONE OF
THESE AREAS, CONCEPTUAL.
HE DOESN'T HAVE DEFICITS NOW IN
THE SOCIAL OR THE PRACTICAL
SKILLS.

IT'S ONLY CONCEPTUAL.

AND HER TESTIMONY, THE DEFENSE
EXPERT'S TESTIMONY, WAS
PRIMARILY BASED ON HIS
SCHOOLING.

HE WAS IN ESE CLASSES IN SCHOOL
AND HAD A LOW IQ AND THAT
NATURE.

BUT HE COULD READ AND WRITE.

HE WROTE LETTERS TO FAMILY
MEMBERS.

HE SENT THEM CARDS.

HE COMMUNICATED WITH THEM VIA
WRITING AND ON THE TELEPHONE.

HE -- I GRANT YOU THAT HE'S NOT
NECESSARILY BOOK SMART AND HAS
LEARNING DISABILITIES AND CAN'T
READ AS WELL, BUT HE ADAPTED BY
HAVING OTHER PEOPLE ASSIST HIM
IN DRAFTING THINGS.

THESE WERE ALL AREAS THAT THE
EXPERTS RELIED UPON IN SAYING
THAT HE DOES NOT HAVE DEFICIT
THERE.

HE FILED GRIEVANCES WITHIN THE
PRISON SYSTEM, CHANGED HIS DIET,
REQUESTING THINGS.

ALL THESE WERE AREAS THEY WERE
SAYING HE DOES NOT HAVE DEFICITS
IN.

AND BASICALLY I BELIEVE IT WAS
JUSTICE CANADY POINTED OUT, IT
WAS A BATTLE OF EXPERTS AT THE
TRIAL LEVEL BELOW, WITH THE
DEFENSE EXPERT SAYING ONE THING

AND THE STATE'S EXPERT SAYING
ANOTHER AS TO ADAPTIVE
FUNCTIONING.

SOMEWHAT THE SAME WAY WITH THE
LAY WITNESSES.

I WOULD SUGGEST WE HAVE EVIDENCE
TO SUPPORT THE JUDGE'S FINDING
IN THIS CASE AND THAT'S WHAT'S
REALLY BEFORE THIS COURT, IS
WHETHER THERE'S EVIDENCE TO
SUPPORT IT, AND I WOULD SUBMIT
TO YOU THAT THERE IS.

IF THERE ARE NO FURTHER
QUESTIONS, I WOULD ASK THIS
COURT TO AFFIRM.

THANK YOU.

>> THANK YOU.

>> DR. CASPER TESTIFIED THAT,
FIRST OF ALL, YOU ONLY HAVE TO
HAVE DEFICITS IN ONE OF THE
THREE AREAS OF FUNCTIONING IN
ORDER TO BE DIAGNOSED AS
INTELLECTUALLY DISABLED.

SHE TESTIFIED THAT HE HAS
DEFICITS ONLY IN THE CONCEPTUAL
AREA, BUT AT THE AGE OF 16 HE
HAD DEFICITS IN CONCEPTUAL AND
SOCIAL AREA AND THE SOCIAL AREA
HE HAS SHOWN SOME IMPROVEMENT.
BUT YOU'RE LOOKING AT IN THE
DEFICIT AREA, IN THE AREA WHERE
HE HAS DEFICITS, YOU WOULD BE
LOOKING AT THE FUNCTIONING FOR A
MILDLY INTELLECTUALLY DISABLED
PERSON OF SOMEBODY APPROXIMATELY
12.5 YEARS OLD.

IT'S NOT SOMEBODY THAT CAN'T DO
ANYTHING.

SOME OF THE DEFICITS DR. CASPER
FOUND GOES WAY BEYOND ACADEMIC
FUNCTIONING, ALTHOUGH HE DID
HAVE PROBLEMS READING AND
PROBLEMS IN SCHOOL.

I WOULD URGE THIS COURT TO LOOK
AT THE TESTIMONY OF THE LAY
WITNESSES FROM THE EVIDENTIARY
HEARING BELOW, WHICH WAS
EXTREMELY CONSISTENT REGARDING
MR. WRIGHT'S FUNCTIONING.
THE STATE PRESENTED TEN LAY

WITNESSES.

NINE OF THOSE TEN LAY WITNESSES
EITHER BARELY KNEW MR. WRIGHT'S
OR HAD SOME BIAS AGAINST
MR. WRIGHT'S.

THE ONE LAY WITNESS I WOULD URGE
YOU PLEASE TO LOOK AT THEIR
TESTIMONY IS TOYA LONGFORD,
PRESENTED BY THE STATE.

SHE WAS A CHILDHOOD FRIEND OF
MR. WRIGHT'S, A FEW YEARS
YOUNGER THAN MR. WRIGHT'S.
SHE TESTIFIED ABOUT EXTREME
DIFFICULTY SHE HAD WITH
COMMUNICATING WITH MR. WRIGHT'S.
SHE HAD TO ASK HIM YES OR NO
QUESTIONS.

SHE HAD TO USE SMALL WORDS.
SHE WOULD HAVE TO REPEAT
HERSELF.

EVEN THOUGH SHE WAS SEVERAL
YEARS YOUNGER THAN MR. WRIGHT'S,
SHE TRIED TO HELP HIM WITH HIS
HOMEWORK BUT BECAME SO
FRUSTRATED THAT SHE ACTUALLY
ENDED UP DOING HIS HOMEWORK FOR
HIM.

THESE PROBLEMS CONTINUED
THROUGHOUT HIS TIME IN JAIL,
WHEN HE -- YOU KNOW, HE WAS
MANIPULATED AND BULLIED BY THE
INMATES WHEN HE WAS A CHILD.
THE OTHER CHILDREN WOULD RATHER
PLAY WITHOUT HIM BECAUSE HE HAD
SO MUCH TROUBLE UNDERSTANDING
THE RULES OF GAMES, SUCH AS
BASKETBALL, FOOTBALL, THINGS
LIKE THAT.

THEY WOULD ACTUALLY HAVE RATHER
PLAYED WITH ONE LESS CHILD THAN
HAVE MR. WRIGHT'S ON THEIR TEAM.
AND THEN THESE DEFICITS
CONTINUED AS HE WAS AWAITING
TRIAL.

AND HIS TRIAL ATTORNEYS
TESTIFIED AT THE EVIDENTIARY
HEARING ABOUT DIFFICULTIES THEY
HAD COMMUNICATING WITH
MR. WRIGHT'S.

I SEE I'M PAST MY TIME, SO I

WOULD ASK THIS COURT TO REVERSE
MR. WRIGHT'S SENTENCES OF DEATH
AND IMPOSE A LIFE SENTENCE.
>> THANK YOU FOR YOUR ARGUMENTS.
COURT'S IN RECESS UNTIL TOMORROW
AT 9:00.
>> ALL RISE.