

>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
PLEASE BE SEATED.
>> THANK YOU, NEXT CASE ON THE
DOCKET IS WALLS v. STATE.
>> MR. CHIEF JUSTICE, MAY IT
PLEASE THE COURT, BILLY NIOLES.
TO MY LEFT IS BAYA HARRISON.
TIME IS LIMITED.
LET ME CUT TO THE CHASE WITH
RESPECT TO THE INTELLECTUAL
DISABILITY CLAIM WITH MR. WALLS.
HE IS THE ONLY POST PETITIONER
MADE A PROFFER WHICH WITHIN EACH
OF THE THREE PRONGS OF THE HALL
TEST AND HAS NOT BEEN PERMITTED
EVIDENTIARY HEARING FOR THE IN
ORDER TO THE FACTS TO DETERMINE
IN ORDER FOR THIS COURT TO HAVE
A RECORD WHICH IT CAN CONDUCT
REVIEW.
>> HAVE WE DETERMINED, DO YOU
SEE THAT WE HAVE DETERMINED HALL
IS RETROACTIVE?
HAVE WE DONE THAT YET?
>> YOU HAVE YOU HAVE NOT
EXPRESSLY DEALT WITH THE
RETROACTIVITY.
>> THAT'S WHAT WE'RE DOING HERE?
>> NO, WE'RE NOT.
>> I THINK THAT, I THOUGHT WE
WERE HERE TO MAKE A DECISION AND
MAKE SURE WE'RE UNIFORM ON
WHETHER HALL SHOULD BE
RETROACTIVE?
>> HE CAN DO THAT, IF YOUR HONOR
WANTS I CAN JUMP RIGHT TO THAT.
>> I THINK THAT'S GOOD IDEA.
>> SPECIFICALLY WITH RESPECT TO
THE RETROACTIVITY OF HALL, THE
REAL QUESTION IS ATKINS
RETROACTIVE.
>> IS WHAT?
>> IS ATKINS RETROACTIVE NOT
HALL.
IN EVERY POST-HALL CASE YOU HAD
HALLIBURTON, REMANDED BY THE
UNITED STATES SUPREME COURT
POST-HALL.

IN WRIGHT, WHERE THERE WAS A
REQUEST FOR-PROFIT HALL
EVIDENTIARY HEARING.

IN OATES YOU UNDERTOOK ANALYSIS
CHERRY IS OVERRULED AND THERE IS
NEW LANDSCAPE IN FLORIDA.

MOST RECENTLY CARDONA,
REITERATED APPLICABILITY OF
HALL.

IN EVERY ONE OF THOSE CASES YOU
HAD A EVIDENTIARY HEARING SO
THERE IS RECORD THAT CAN BE
REVIEWED WITH RESPECT TO THE
HALL CLAIM.

TO PUT IT ANOTHER WAY, THERE IS
NOT A CASE OF INTELLECTUAL
DISABILITY THAT THIS COURT HAS
HAD POST-HALL WHERE THERE HAS
BEEN A SHOWING IN EACH OF THE
THREE PROFFERS.

WHERE THERE IS I.Q. 6 THERE IS
I.Q. OF 75 OR BELOW WHERE YOU
HAVE NOT RULED ON THE MERITS.
YOU HAVE DONE THAT CONSISTENTLY
POST-HALL DONE THIS THE FACE OF
ARGUMENT FROM THE STATE THAT
HALL SHOULD NOT BE APPLIED
RETROACTIVELY I HAVE DONE THAT I
THINK WHAT YOU QUOTED IN OATES
AND OTHER CASES WHICH THAT
ATKINS SET AS CATEGORICAL
PROHIBITION ON THE EXECUTION OF
A PERSON WITH AN INTELLECTUAL
DISABILITY.

>> SO IS THAT YOUR ARGUMENT FOR
WHY HALL OR ATKINS ARE, SHOULD
BE APPLIED TO THIS CASE?

IS IT A FACT THAT,
CONSTITUTIONALLY, YOU CAN NOT
APPLY, IMPOSE A DEATH SENTENCE
ON A PERSON WHO IS
INTELLECTUALLY--

>> CONSTITUTIONALLY UNDER ATKINS
AS REITERATED IN HALL AND AS
REITERATED IN BRUMFELD, THE
UNITED STATES SUPREME COURT
OPINION AFTER HALL THAT ACTUALLY
FOUND THE STATE COURT
UNREASONABLY NOT JUST ERRONEOUS,
UNREASONABLE FAILING TO HOLD A

EVIDENTIARY HEARING WHEN THE EVIDENCE WAS AKIN TO THE EVIDENCE THAT MR. ATKINS ON ITS MERITS BECAUSE OF THE CATEGORICAL PROHIBITION ON EXECUTION OF SOMEONE WITH AN INTELLECTUAL DISABILITY.

JUSTICE QUINCE, JUST TO GIVE YOU AN EXAMPLE, IF MR. WALLS, IF THE CLAIM WAS HE WAS 14 YEARS OLD AT THE TIME THAT HE WAS SENTENCED TO DEATH, WE WOULD NOT BE TALKING ABOUT RETROACTIVITY OR PROCEDURAL DEFAULT OR LAW OF THE CASE OR ANY OF THOSE THINGS. WE WOULD BE CUTTING RIGHT TO THE MERITS BECAUSE OF THE CATEGORICAL CONSTITUTIONAL PROHIBITION.

>> NOW I WANT TO ASK YOU ABOUT THE THREE PRONGS WHICH IS, FIRST OF ALL, IT'S INTELLECTUAL DISABILITY AT THE TIME THE CRIME WAS COMMITTED, CORRECT?

>> IT'S--

>> THAT IS WHAT ATKINS SAYS. IT IS NOT, IF SOMEHOW SOMEBODY AFTER, WHEN HE IS IN PRISON, AFTER THE CRIME AND SOMEBODY BOPS HIM OVER THE HEAD AND HE BECOMES, YOU KNOW, BRAIN-DAMAGED, IS THAT PERSON--

>> YES, YOUR HONOR.

MY HESITANCY IS THAT CASE AND THAT IS NOT THE CASE HERE. THAT WAS MY HESITANCY.

>> THE ISSUE, I WANT TO UNDERSTAND THIS ISSUE OF MANIFESTATION BEFORE 18.

>> YES.

>> I THINK THAT IS WHERE THE STATE IS HITTING YOU ON. MANIFESTATION BEFORE 18 IS PART OF THE INTERDEPENDENT ANALYSIS TO ASSURE IT IS LEGITIMATE INTELLECTUAL DISABILITY CLAIM AND THAT IF THEY'RE INTELLECTUALLY DISABLED AT THE TIME OF THE CRIME. THAT IS THE RELEVANT TIME.

YOU'RE SAY NO.

WHAT IS THE RELEVANT TIME?

>> I'M NOT SAYING NO.

THE REASON YOU HAVE THE ONSET PRONG, THE REASON YOU LOOK AT ONSET BEFORE AGE 18 IS BECAUSE INTELLECTUAL DISABILITY IS A DEVELOPMENTAL DISORDER.

SO WHAT YOU LOOK FOR IS NOT, AS YOU SAID IN OATES, IT'S NOT, IS THERE A DIAGNOSIS PRE-18 IS THERE QUALIFYING I.Q. SCORE PRE-18?

IS THERE EVIDENCE HE WOULD HAVE BEEN TESTED WITHIN THE RANGE PRE-18?

WHAT YOU SAID IN CARDONA, WHAT YOU SAID IN OATES, WHAT THE SUPREME COURT HELD IN BRUFFELD AND WHAT THE SUPREME COURT HELD IN HALL, YOU LOOK WHETHER ADAPTIVE DEFICITS MANIFESTED PRE-18.

WHETHER THE DEFICITS IN ADAPTIVE FUNCTION.

>> IS THAT WHAT HALL SAYS?

>> THAT IS WHAT HALL SAYS AND THAT'S WHAT YOU SAID HALL SAID IN CARDONA AND THAT'S WHAT YOU SAID HALL SAYS IN OATES.

>> SO YOU'RE SAYING THAT, THE-- YOU DON'T, YOU DON'T LOOK AT BOTH THE INTELLECTUAL SCORE, FOR LACK OF A BETTER WORD AND THE ADAPTIVE FUNCTIONING BEFORE AGE 18?

>> WHAT YOU WROTE IN CARDONA WAS ONSET OF THESE DEFICITS DURING, THE ADAPTIVE DEFICITS DURING THE DEVELOPMENTAL PERIOD.

WHAT THE COURT--

>> THESE DEFICITS, OKAY.

>> WHAT THE SUPREME COURT WROTE IN BRUMFELD THAT IS UNREASONABLE TO DENY A HEARING WHEN THERE IS ADAPTIVE DEFICITS PRE-18.

>> THE DEFICITS ARE DEFICITS IN ADAPTIVE FUNCTIONING AND DEFICIT IN INTELLECTUAL FUNCTIONING? CORRECT?

>> WITH YOU WILL DUE RESPECT
THOSE ARE TWO SEPARATE
INQUIRIES.

THERE IS A THREE-PRONG TEST.
SIGNIFICANTLY SUBAVERAGE
PREINTELLECTUAL FUNCTIONING.
YOU LOOK AFTER HALL WHETHER
THERE IS I.Q. SCORE OF
APPROXIMATELY 75 OR BELOW.
IF THERE IS SUCH A THING IN
ADULTHOOD OR IN CHILDHOOD, THEN
UNDER HALL AND UNDER YOUR
OPINION IN OATES THAT DEFENDANT
GET AS HEARING, GET THE
OPPORTUNITY TO SHOW--

>> WHAT HAPPENS IN DEFENDANT
LIKE THIS ONE WHO HAD I.Q. OF--
101 AT AGE 14, AND WHAT DO WE DO
WITH HIM?

>> THAT'S THE ULTIMATE QUESTION.
SO I'LL JUST JUMP AHEAD TO THAT
THERE IS NO QUESTION HERE THAT
MR. WALLS HAS ADAPTIVE DEFICITS.
STAY WITH ME FOR A MOMENT.

>> YOU CAN SAY THAT FOR THE SAKE
OF ARGUMENT BUT I'M NOT SURE
THAT IS NECESSARILY TRUE.

>> DR. TUMOR CONDUCTED ADAPTIVE
DEFICITS TESTING AND POLLING
ADAPTIVE DEFICIT INSTRUMENT.

>> AS I SEE THE RECORD THERE IS
NO REAL EXPLANATION OF WHAT
THOSE DEFICITS ARE.

>> THERE ARE, LET ME LAY OUT
WHAT THOSE ARE FOR YOU.
FROM YOUR PRIOR POST-CONVICTION
APPEAL OPINION AND FROM
DR. TUMOR'S TESTIMONY.
HERE IS THE RUB, JUSTICE QUINCE.
DR. TUMOR PROVIDED ADAPTIVE
DEFICITS INSTRUMENT.
HE INTERVIEWED FAMILY MEMBERS.
HE LOOKED AT ENTIRE
DEVELOPMENTAL HISTORY AND
PROVIDED OPINIONS THAT MR. WALLS
HAS ADAPTIVE DEFICITS AND HAD
THOSE DEFICITS PRE-18.
HE PROVIDED AN OPINION BASED ON
THE ADAPTIVE TESTING INSTRUMENT
THAT MR. WALLS HAD THOSE

ADAPTIVE DEFICITS IN 13 SEPARATE AREAS OF ADAPTIVE FUNCTIONING. THAT OPINION WAS NOT ONLY NOT CONTRADICTED BY THE STATE, IT WAS QUOTED-- BY, WHAT THE STATE DID, IT SAID, AND I'LL JUST QUOTE IT HERE, HALL DOES NOT APPLY TO CASES SUCH AS THIS WHERE THE I.Q. SCORES PRIOR TO 18 WERE ABOVE THE RANGE OF 75. AND THE TRIAL COURT TOOK THAT AS ITS LEAD AND DID THAT AS ITS ANALYSIS.

NOW TO TELL BUT THE ADAPTIVE DEFICITS AT 18 I'LL JUST GIVE YOU THE ONE MINUTE, TWO MINUTE VERSION OF THE HISTORY.

MR. WALLS WAS ARRESTED AT AGE 19.

THE TRIAL COURT FOUND IN HIS SENTENCING ORDER THAT HE WAS IN CLASSES FOR THE HANDICAPPED. HAD BRAIN DAMAGE AND AT AGE 19, THE AGE OF THE CRIME FUNCTIONED AT THE LEVEL OF A 12-YEAR-OLD. THAT'S THE TRIAL COURT'S ORIGINAL MITIGATION FINDING. THIS COURT'S PRIOR POST-CONVICTION APPEAL OPINION AND DR. TOOMER'S PROFFER IS THAT WHEN MR. WALLS WAS A CHILD HE WAS HELD BACK IN ELEMENTARY SCHOOL, PUT IN SPECIAL CLASSES IN ELEMENTARY SCHOOL. BOUND TO HAVE HAD ADHD. FOUND TO HAVE BEEN LEARNING DISABLED.

HE WAS SUBSEQUENTLY AT AGE 15, AND JUSTICE QUINCE, THAT'S THE YEAR AFTER THOSE TWO TESTS YOU REFERRED TO, AT AGE 15 HE WAS PUT IN A SPECIAL YOUTH CAMP FOR THE HANDICAPPED.

-- HOSPITAL WHERE HE WAS GIVEN PSYCHOTROPIC MEDICATION. LET ME JUST AHEAD.

AT AGE 19, ONE YEAR AFTER 18 WHEN HE WAS ARRESTED FOR THIS CRIME, THREE OF THE FIVE EXPERTS WHO EXAMINED HIM FOR COMPETENCY

FOUND THAT HE WAS INCOMPETENT
BECAUSE HE WAS NOT CAPABLE OF
UNDERGOING A CRIMINAL
PROSECUTION.

>> LET ME ASK YOU A QUESTION
JUST ABOUT THIS 110 I.Q.

BECAUSE--

>> 102, THEN 101.

>> WHATEVER.

IT IS OVER 100, WHICH IS WAY
HIGHER THAN THE MAJORITY OF OUR
CRIMINAL DEATH PENALTY
DEFENDANTS.

HOW DO YOU EXPLAIN, AND I THINK
THIS IS WHAT IS, THE STATE IS
EMPHASIZING SOMEBODY THAT HAS
THAT HISTORY.

>> YES.

>> YOU'RE RIGHT, THE JUDGE FOUND
ALL THAT.

>> YES.

>> SORT OF WONDER WHY THE DEATH
PENALTY WAS IMPOSED EXCEPT THERE
ALL THE TERRIBLE AGGRAVATORS,
WHY, HOW CAN YOU HAVE 1110--
100 I.Q.?

>> THAT IS THE ULTIMATE
QUESTION.

>> DID SOMEONE EXPLAIN IT?
WAS IT EVER EXPLAINED.

>> NO.

THAT'S WHERE I'M GOING.

IN HIS HOOD HISTORY HE WAS FOUND
TO HAVE HAD LANGUAGE DEVELOPMENT
PROBLEMS, ATTENTION PROBLEMS,
SELF-CONTROL PROBLEMS.

>> DID SOMEBODY TAKE THE TEST
FOR HIM?

>> HE COULDN'T READ.

>> HE COULDN'T DO ARITHMETIC.

>> DID SOMETHING HAPPEN BETWEEN
14 AND 18.

>> ALL THE EXPERTS SAID THERE
WAS I.Q. DECLINE.

>> THAT IS WHY WE NEED TO HAVE
HEARING.

>> YES.

YOU DOESN'T KNOW WHAT HIS I.Q.
WAS AT 16, 17, AT 15.

BUT JUSTICE PERRY, THERE IS EVEN

MORE THAN THAT.
WHEN YOU LOOK AT HIS
DEVELOPMENTAL HISTORY THOSE
I.Q.s MAKE NO SENSE.
MR. WALLS WAS TESTED AT AGE 39
BY DR. MCCLAREN FOR OUR FRIENDS
FROM THE ATTORNEY GENERAL'S
OFFICE WHO INDICATED THAT HIS
I.Q. WAS 74.
DR. MCCLAREN GAVE THE WAYS 3.
IT SUBJECT TO CROSS-EXAMINATION.
HE TOLD US WHAT IT WAS.
TOLD US HOW HE SCORED IT.
MR. WALLS WAS TESTED AT PENALTY
BY DR. LARSON, AGE 23, 24.
HIS I.Q. WAS 72.
DR. LARSON TOLD US ABOUT THE
WAISIII HE GAVE, HOW HE SCORED
IT AND WHAT THE RESULT.
I.Q. SCORES FROM AGE 12 AND 14,
WE KNOW NOTHING ABOUT THEM.
WE DON'T KNOW WHO GAVE-- DATA.
WE DON'T KNOW IF THEY WERE A
FULLY-ADMINISTERED
INDIVIDUALIZED I.Q. TEST OR
GIVEN TO HIM IN A GROUP.
WE DON'T KNOW IF THEY WERE
ACCURATELY SCORED OR PRORATED.
WE KNOW NOTHING ABOUT THOSE
TEST, OTHER THAN REFERENCES TO
THEM IN THE REPORTS OF
DR. LARSEN, DR. MCCLAREN AND
DR. TOOMER'S.
SO, JUSTICE PERRY, THERE IS--
>> WHAT IS IT THAT YOU'RE
SUPPOSED TO DO?
YOU ARE ADVOCATING FOR
EVIDENTIARY HEARING ON THIS.
SO AT THIS EVIDENTIARY HEARING,
WOULD YOU PRESENT SOME TESTIMONY
ABOUT WHAT, HOW THIS SCORES, HOW
THESE TESTS WERE DONE, WHATEVER
ALL OF THAT?
IS THAT WHAT YOU'RE ADVOCATING
FOR?
>> THREE THINGS TO BE PRESENTED
AT AN EVIDENTIARY HEARING.
NUMBER ONE, MAKE A RECORD AS
JUSTICE PERRY SUGGESTED AS TO
WHAT HAPPENED IF THOSE TESTS ARE

VALID, WHAT HAPPENED BETWEEN
AGES 13, 14 AND AGE 18?
WHERE WAS HIS INTELLECTUAL
FUNCTIONING HAD BEEN.
WE KNOW HE SUFFERED MENINGITIS.
>> THAT WAS BEFORE THESE TEST.
>> WE DO KNOW HE SUFFERED
MENINGITIS AND HAD RITALIN.
THERE IS EXPERT TESTIMONY WHEN
YOU COMBINE THOSE THINGS YOU
HAVE PRECIPITOUS DROP IN I.Q.
WE DO KNOW BY THE AGE OF 19, THE
12-YEAR-OLD--
>> WE HAVE A I.Q. SCORE FROM
THAT AGE AT 19?
>> WE HAVE THE TRIAL COURT'S
FINDING AND WE HAVE DR. LARSEN
TESTIFYING THAT--
>> WE HAVE I.Q. SCORE FOR
THAT--
>> NOT FOR THAT AGE, NO.
THE TRIAL COURT'S FINDING BASED
ON DR. LARSEN'S TESTIMONY, BASED
ON I.Q. OF 72, WHICH WAS
ADMINISTERED APPROXIMATELY 23,
24.
NUMBER TWO, WE NEED TO MAKE A
RECORD AS TO THESE TESTS.
IF THESE TESTS ARE THE STUMBLING
BLOCK OF MR. WALLS' BEING HEARD
WE NEED TO HAVE EXPERT TESTIMONY
WHAT THOSE CHILDHOOD TESTS MEAN
TODAY.
AS SUPREME COURT SAID IN WALLS
AND YOU SIDE IN OATES, EXPERTS
MAY CHANGE THEIR MIND POST-HALL.
MORE SIGNIFICANTLY THAN ANY OF
THAT, YOU NEED AN ACTUAL
ANALYSIS BY THE TRIAL COURT OF
ALL THREE PRONGS.
THAT'S WHAT YOU SAID NEEDS TO BE
DONE IN OATES.
IN HALL AND BRUMFELD, UNITED
STATES SUPREME COURT, OATES,
YOUR HONORS CASES WHAT THE TRIAL
COURT WAS CASTIGATED FOR,
PICKING ONE THING, AND USING
THAT THING TO DENY RELIEF WHEN
WHAT IS REQUIRED UNDER ATKINS IS
A ROBUST ANALYSIS.

>> SO WHAT DID THE BE SAID THAT HE DIDN'T HAVE ANY SCORE, THAT HE HAD SCORES HIGHER THAN 75?

>> THE TRIAL JUDGE LOOKED AT THIS ENTIRE CASE THAT HAD A LEGITIMATE PROFFER ON ALL THREE PRONGS AND SAID THERE ARE THESE TWO SCORES FROM CHILDHOOD AND THEREFORE I DENY RELIEF.

I HAVE TO TELL YOU, JUSTICE QUINCE, THERE IS NOT ANOTHER CASE LIKE THAT HAS BEEN AFFIRMED WHERE A JUDGE PLUCKS ONE THING OUT OF THE ENTIRE HISTORY, CONTRARY TO OATES DOESN'T DO FULL ANALYSIS OF THREE PRONGS. DOESN'T EVEN DO A FULL ANALYSIS THAT LOOKS HOW DO YOU COMPARE THE ADAPTIVE DEFICITS?

HOW DO YOU COMPARE A KID THAT CAN'T SPELL, CAN'T READ, CAN'T WRITE, DEVELOPMENTALLY DELAYED, IN SPECIFIC CLASSES GIVEN PSYCHOTROPIC MEDICATION AND PUT IN YOUTH CAMPS AFTER THOSE TESTS HOW DOES THAT SQUARE WITH THAT TESTING?

YES, YOUR HONOR.

>> YOU'RE INTO YOUR REBUTTAL.

>> YES, MR. CHIEF JUSTICE, THANK YOU.

A JUDGE THAT LOOKS AT ALL THAT MAY VERY WELCOME TO A DIFFERENT RESULT BUT THE PARTIES IN THIS CASE NEVER HAD A CHANCE TO HAVE THAT TESTED AN AN ACTUAL EVIDENTIARY HEARING I WILL LEAVE YOU WITH THIS THOUGHT IN THIS FRONT PART.

OTHER PETITIONERS HAVE GOTTEN OATES, CARDONA, CONSISTENTLY THERE HAS BEEN A HEARING.

SO YOU DON'T HAVE ME SAYING BLAH, BLAH, BLAH, ABOUT THE TESTS AND THE STATE SAYING, BLAH, BLAH, BLAH.

YOU DON'T HAVE A RECORD TO REVIEW.

>> CARDONA WAS A REVERSAL.

SO DON'T THROW OUT EVERY CASE.

CARDONA REVERSED A DEATH SENTENCE.

>> NO, NO, I KNOW, RIGHT YOU REMANDED FOR A HEARING.

HALLIBURTON YOU DID.

OATES YOU DID.

THE SUPREME COURT REMANDED BRUMFELD WHEN MR. IS PROFFER OF ADAPTIVE DEFICITS PRE-18, THAT IS ADAPTIVE DEFICITS OF PRE-18 IN BRUMFELD AND I.Q. SCORE UNDER 75, NOT REASONABLE NOT TO HOLD A HEARING.

MR. WALLS YOU HAVE I.Q. SCORES UNDER 75 AND HAVE A ROBUST PROFFER OF ADAPTIVE DEFICITS PRE-18.

>> BUT THOSE PRIOR CASES GRANTED THEY DID HAVE THE LOW I.Q., DID THEY HAVE AN I.Q. OVER 100 BEFORE 18?

ISN'T THAT A DISTINGUISHING FACTOR IN THIS CASE?

>> THAT'S THERE IN THIS RECORD.

>> THAT'S DIFFERENT THAN THOSE CASES.

>> IT IS TO THIS EXTENT.

>> THAT'S FINE.

I UNDERSTAND.

YOUR ARGUMENT IS WE STILL HAVE TO--

>> JUSTICE LEWIS, LEAVE WITH YOU ONE THOUGHT.

THOSE CASES SUCH AS OATES THEY DID HAVE SCORES OF 80, 85.

THEY HAD SCORES OVER THE 75.

THANK YOU VERY MUCH, YOUR HONORS.

I WILL RESERVE THE REMAINDER OF MY TIME.

>> MAY IT PLEASE THE COURT.

SANDRA TAGGERT, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE.

ATKINS IS RETROACTIVE HALL IS NOT.

ATKINS ACTUALLY PLACED BEYOND THE POWER THE STATE'S ABILITY TO PUNISH TO GET--

>> HERE'S THE PROBLEM AS WE GO

INTO THIS.

IT IS HALIBURTON, WHICH IS CERTAINLY WAS REMANDED BY THE U.S. SUPREME COURT IN LIGHT OF HALL, SO, WE, THE, BUT WE WANT TO AVOID IS BLATANT INCONSISTENCY.

>> I UNDERSTAND.

BUT HALLIBURTON HAD, HAD, WAS ON AN INITIAL REVIEW OF HIS RETARDATION CLAIM AND ATKINS IS RETROACTIVE.

>> HALIBURTON COULDN'T BE--

>> OF THE RETARDATION CLAIM.

ATKINS IS RETROACTIVE.

HALLIBURTON FIND A MOTION.

EVENTUALLY GETS HIS CLAIM SUMMARILY DENIED WITHOUT EVIDENTIARY HEARING.

MR. WALLS HAD AN EVIDENT HEARING UNDER 302-- THAT WAS JUST--

>> WAIT, WAIT.

HE MAY HAVE HAD THE HEARING BUT ISN'T THE QUESTION WHETHER ALL THE ELEMENTS WERE CONSIDERED AND EXPLORED IN THAT HEARING?

ISN'T THAT, ISN'T THAT.

>> ONLY EVIDENCE HE PRESENTED AT THAT HEARING--

>> ISN'T THAT THE QUESTION BEFORE US, NOT WHETHER HE HAD A HEARING BUT WHETHER THAT HEARING ADDRESSED PERTINENT ELEMENTS?

>> WELL, NUMBER ONE, HE HAD THE OPPORTUNITY TO PRESENT ALL THAT EVIDENCE AND IN FACT THE ONLY EVIDENCE HE DID PRESENT AT THAT HEAR WAS DR. TOOMER'S WHO ACTUALLY TESTIFIED ONLY THAT HE HAD ADAPTIVE FUNCTIONING DEFICITS BEFORE THE AGE OF 11. HE ADMITTED HE DIDN'T EVEN ADMIT ADULT ADAPTIVE FUNCTIONING DEFICITS.

SO THE DEFENDANT CERTAINLY NEW DID BE.

>> HE ADMITTED WHAT?

>> HE ADMITTED DURING CROSS-EXAMINATION HE NEVER CONSIDERED ADAPTIVE FUNCTIONING

PAST THE AGE OF 18.
WE DON'T HAVE EVIDENCE PRESENTED
ON PRONG TWO OF RETARDATION.
THE THREE PRONGS OF RETARDATION
ARE, ONE, SIGNIFICANTLY
SUBAVERAGE INTELLECTUAL
FUNCTIONING, TWO, CONCURRENT
DEFICITS IN ADAPTIVE
FUNCTIONING, AND THREE, ONSET OF
THE CONDITION MEANING ONE AND
TWO BEFORE THE AGE OF 18.
AND THAT'S TO DISTINGUISH WHAT
JUSTICE PARIENTE WAS TALKING
ABOUT ARE UNDER 18.
SO IF THEY GET HIT IN THE HEAD
AND SUFFER BRAIN DAMAGE THEIR
DIAGNOSIS IS DEMENTIA DUE TO
BRAIN DAMAGE WHICH WOULD BE THE
DIAGNOSIS FOR THIS DEFENDANT,
WHO, OH BY THE WAY, WITH REGARD
TO MANIFESTATION BEFORE THE AGE
OF 18, IT HAS BEEN A REQUIREMENT
OF FEDERAL LAW THAT ALL STATE
EDUCATIONAL SYSTEMS HAVE IN
PLACE SYSTEMS TO IDENTIFY AND
DIAGNOSE DEFENDANTS WITH
RETARDATION AND PROVIDE THEM
TREATMENT WHICH IS--
>> YOU KNOW THE PROBLEM WITH
WHAT WE HAVE BEFORE US AND WHAT
WE'VE HAD OVER THE YEARS, AS WE
HAVE DISCUSSED, I GUESS IT IS
INTELLECTUAL DISABILITY NOW, IS,
THAT WE HAVE MAINTAINED THAT 70
CUTOFF PERIOD.
SO OFTEN DEFENDANTS OR JUDGES
DIDN'T EVEN WANT TO HEAR
INFORMATION ABOUT THE ADAPTIVE
FUNCTIONING AND THE ONSET OF
AGE, EXCUSE ME, LET ME FINISH.
BEFORE AGE 18, IF IN FACT THE
SCORE, THE I.Q. SCORE THAT WAS
PRESENTED WAS ABOVE 70.
AND SO WHAT-- NOW WITH A I.Q.
SCORE WE'VE GOT TO LOOK AT ALL
OF THESE OTHER FACTORS.
SO WHY IS IT MR. WALLS ENTITLED
TO A COURT LOOKING AT ALL THREE
OF THOSE FACTORS?
>> HE HAS HAD THAT EVIDENTIARY

HEARING.

AND HE FAILS--

>> WHAT DID THE TRIAL JUDGE SAY
THE AT END OF THAT EVIDENTIARY
HEARING?

>> AT THAT EVIDENTIARY HEARING
THEY PRESENTED ONE WITNESS WHO
TESTIFIED THAT HE HAD ADAPTIVE
FUNCTIONING DEFICITS BEFORE THE
AGE OF 18 AND NOTHING ELSE AND
ADMITTED HE DIDN'T MEET THE I.Q.
SCORE PRONGS.

>> BUT HERE IS THE PROBLEM WHAT
WE'RE STRUGGLING WITH.
WE APPRECIATE THE FRUSTRATION OF
THE STATE AND WE'RE FRUSTRATED
AS WELL SINCE WE WENT ALONG WITH
THE STATE SAYING IT IS A 70
CUTOFF AND YOU DON'T THINK OF
ANYTHING ELSE.

WE ARE DEALING WITH, DO YOU
AGREE IT IS INTELLECTUAL
DISABILITY AT THE TIME OF THE
CRIME THAT'S THE CRITICAL
FACTOR?

>> WELL I WOULD SUGGEST THAT
INTELLECTUAL DISABILITY SHOULD
BE EXISTING FROM CHILDHOOD
ONWARD AND CONTINUE TO THIS DAY
BECAUSE IT IS ONLY SUPPOSED TO
GET BETTER.

YOUR I.Q. IS NOT SUPPOSED TO
CHANGE AND SUPPOSED TO GET
BETTER WITH EARLY INTERVENTION.

>> HERE WE HAVE, SOMEBODY WHO
HAD APPARENTLY HAD A 100 POINT
AT 12, WHAT IS THE AGE?

101, SORRY.

101, THEN HAS A I.Q.--

>> 102 AT 12.

101 AT 14.

>> I ELEVATED HIS I.Q. SCORE.
AND THEN HAS A, MUCH LOWER I.Q.,
I WOULD LIKE, AS A TRIER OF FACT
TO UNDERSTAND IF IT'S ALL, THAT
HE FAKED, YOU KNOW, REMEMBER, A
ASSISTANT ATTORNEY GENERAL SAID
YOU CAN'T FAKE SMART.

>> YES YOU CAN.

>> I WOULD LIKE TO KNOW WHAT

HAPPENED TO THIS DEFENDANT WHO AT A CERTAIN AGE HAS A HIGHER I.Q. AND THEN HAS ALL OF THESE OTHER INDICATIONS OF BEING SEVERELY, EMOTIONALLY HANDICAPPED, AND I THINK THIS IS THE PROBLEM.

THE JUDGE WAS STUCK ON A NUMBER, AND I, UNDER HALL, THE U.S. SUPREME COURT HAS TOLD US THESE ARE INTERDEPENDENT FACTORS TO DECIDE THIS ISSUE.

>> WELL, U.S. SUPREME COURT HAS TOLD YOU NEED TO CONSIDER ALL THE PRONGS IF YOU HAVE AN I.Q. SCORE WITHIN THE STANDARD ERROR OF MEASURE OF 70.

THIS DEFENDANT--

>> YOU THOUGHT, YOU KNOW WHAT? LET'S TRY TO HAVE, ANSWER. I THOUGHT AFTER ATKINS THIS WOULD BE SOME SIMPLE ISSUE. WE WOULD CERTAINLY BE ABLE TO IDENTIFY THOSE DEFENDANTS LIKE MR. HALLIBURTON, LIKE MR. HALL, WHO WERE, WHAT WE CALLED MENTALLY RETARDED NOW, CALLED INTELLECTUALLY DISABLED. THAT THIS WASN'T GOING TO BE A MONUMENTAL UNDERTAKING BUT WE NOW UNDERSTAND IT'S A MUCH MORE OF A OBJECTIVE BUT THERE IS ALSO A WHOLE PANOPLY OF FACTORS AND I THINK JUDGES, THIS COURT WAS MISUNDERSTANDING IT, WERE STUCK ON THE I.Q. SCORE ALONE.

THAT IS WHY I THINK THAT IF WE AGREE HALL IS AT RETROACTIVE, AND I REALIZE YOU DON'T THINK SO, WE OUGHT TO ALLOW THESE EVIDENTIARY HEARINGS?

>> WELL, KEEP IN MIND THESE ARE CASES WHERE WE'VE HAD EVIDENTIARY HEARINGS. THESE AREN'T CASES--

>> SO DID MR. HALL. HE HAD ONE AND IT WAS UNDER THE WRONG FACTORS AND THAT IS WHY MR. WALLS IS IN THE SAME POSTURE AS MR. HALL, ISN'T HE?

>> NO, BECAUSE MR.-- HE HAD HIS RETARDATION.

>> HE DIDN'T GET THE BENEFIT, HE DIDN'T FIGURE OUT HOW TO GET SUPREME COURT TO TAKE HIS CASE THE FIRST TIME?

>> WELL HE PRESENTED EVIDENCE THAT HE WASN'T RETARDED. AND THIS DEFENDANT, WHILE THEY TALK ABOUT THESE PROBLEMS AS DEFENDANT HAD SINCE HE WAS A CHILD HE IS CONTINUINGLY BEING EVALUATED.

THE DIAGNOSIS IS NEVER RETARDATION.

IT IS CONDUCT DISORDER.

IT IS HYPERACTIVITY.

>> WHY ISN'T IT JUST A BETTER VIEW THAT THIS DEFENDANT HAVE THE OPPORTUNITY TO HAVE THE TRIAL JUDGE LOOK AT ALL THESE FACTORS, MAKE A DETERMINATION, THEN WE WILL HAVE NO DOUBT WHETHER OR NOT WE ARE GOING TO ALLOW EXECUTION OF SOMEONE WHO IS INTELLECTUALLY DISABLED OR NOT?

SIMPLY BECAUSE THAT IS SUCH, THAT IS SUCH A BAR, INTELLECTUAL DISABILITY, IS SUCH A BAR TO IMPOSITION OF A DEATH SENTENCE THAT WE NEED TO BE SURE THAT UNDER THESE CIRCUMSTANCES-- NOW I CAN TOTALLY AGREE THAT A TRIAL JUDGE, MIGHT UNDER THESE CIRCUMSTANCES WITH THIS, THESE HIGH-- FIND THAT HE IS NOT INTELLECTUALLY DISABLED BUT IT SHOULD NOT BE BASED ON SIMPLE FACT THAT HE HAD A I.Q. SCORE IN THE PAST OVER 75.

>> WELL, BUT HE HAS TO SHOW THAT HE HAD THE ONSET OF BOTH PRONGS BEFORE THE AGE OF 18 BECAUSE WHAT WE'RE TRYING TO DO IS DISTINGUISH THOSE PEOPLE WHO ACTUALLY ARE RETARDED FROM THOSE PEOPLE WHO HAVE ACQUIRED BRAIN DAMAGE.

>> LETTING THE TRIAL JUDGE MAKE

THAT DETERMINATION.

>> WE HAVE HAD A HEARING AND UNDER NIXON THIS COURT ALLOWED HIM TO PRESENT ALL EVIDENCE UNDER THE PRONGS.

HE CLEARLY KNEW THAT AS THE ONLY WITNESS HE CALLED TESTIFIED EXCLUSIVELY ABOUT HIS PRE-18 ADAPTIVE FUNCTIONING DEFICITS.

HE HAS HAD THE HEARING.

HE PRESENTED NO EVIDENCE WHATSOEVER ON PRONG TWO BUT DID THE TRIAL JUDGE CONSIDER THAT EVIDENCE?

WHEN YOU SEE THAT THE TRIAL JUDGE SAYS THAT HE HAD SCORES OVER 75 AT AGE 18, BEFORE AGE 18.

DID HE CONSIDER ALL OF THE OTHER THINGS?

>> IF HE DOESN'T MEET PRONG THREE HE IS NOT RETARDED SO IT REALLY DOESN'T MATTER AND HE IS NOT-- OR THERE IS AN EXPLANATION, THIS PERSON IS BRAIN-DAMAGED THIS PERSON IN HIS LATE TEENS STARTED ABUSING DRUGS.

THAT EXPLAINS THE I.Q. DROP IN THIS CASE.

>> LET ME ASK YOU THIS QUESTION BECAUSE IT GOES TO WHAT THE U.S. SUPREME COURT SAID IN ATKINS ABOUT MENTAL RETARDATION, INTELLECTUAL DISABILITY.

YOU SAY THAT IT IS REALLY A QUESTION OF, WERE THEY, WERE THEY BORN WITH A INTELLECTUAL DISABILITY?

IT ISN'T SOMETHING THAT IF THEY ARE DEPRIVED OF A, AT A LATER AGE OF OXYGEN, AND THEIR I.Q. DOCUMENTED GOES FROM A, 101 DOWN TO 70, THAT THAT'S BRAIN DAMAGE? THAT CAN NOT BE CLASSIFIED AS INTELLECTUAL DISABILITY?

AND I JUST, IF THAT'S THE CASE I WOULD LIKE TO HAVE AN EXPERT EXPLAIN THAT BECAUSE I DIDN'T UNDERSTAND THAT THAT WAS WHAT

THE U.S. SUPREME COURT WAS SAYING.

>> THE WHOLE POINT TO THE MEDICAL DEFINITION OF RETARDATION IS, IT IS A DEVELOPMENTAL DISABILITY.

>> BUT IS THAT WHAT THEY SAID-- I GUESS WHAT I'M LOOKING BACK ON, THE U.S. SUPREME COURT MADE A DECISION, I KNOW, MENTAL ILLNESS BEING ABLE TO UNDERSTAND THE CONSEQUENCES OF A CRIME MAYBE THAN SOMEBODY THAT'S GOT A LOW I.Q.

MAYBE WE NEED TO LOOK BACK AT ATKINS TO UNDERSTAND THAT A U.S. SUPREME COURT WAS SAYING THIS WAS SOME DSM WAY TO EVALUATE THE FACTORS AND YOU'RE SAYING IF WE LOOK BACK AT ATKINS WE'LL SEE THAT?

>> IF WE LOOK BACK AT ATKINS WE'LL SEE THEY ARE EXEMPTING THE MENTALLY RETARDED, NOT THE MENTALLY ILL, NOT THE BRAIN-DAMAGED.

>> WHAT ARE THE REASONS, WHY IS IT, WHAT PRINCIPLE JUSTIFIES SAYING THAT PEOPLE WHO ARE INTELLECTUALLY DISABLED SHOULD NOT BE SUBJECTED TO THE ULTIMATE PENALTY?

>> WELL--

>> WHAT IS THE UNDERLYING-- THERE IS A REASONING PROCESS THAT GOES ON THERE.

WHAT IS THAT?

AND WHY DOES THAT NOT EQUALLY APPLY TO A PERSON WHO HAS SUFFERED SOME DEVASTATING BRAIN INJURY, THE AT THE AGE OF 14, AND AT TIME THE CRIME IS COMMITTED, HAS AN INTELLECTUAL CAPACITY THAT IS NO DIFFERENT FROM SOMEONE WHO IS INTELLECTUALLY DISABLED ACCORDING TO--

>> WELL THE REASON THE U.S. SUPREME COURT WAS CONCERNED ABOUT THE RETARDED THERE WAS A

NATIONAL CONSENSUS, THERE WAS STATUTES ABOUT THE RETARDED AND THEY WERE CONCERNED THESE ARE PEOPLE WHO BY DEFINITION ARE NOT SUPPOSED TO BE ABLE TO LEARN AS WELL AS THE REST OF THE WORLD SO THEY CAN EVER LEARN FROM EXPERIENCE AND CAN'T FUNCTION THE WAY THE REST OF THE WORLD DOES WHEREAS SOMEBODY WHO HAS BRAIN DAMAGE--

>> SOMEBODY WHO HAS THAT TYPE OF DEVASTATING INJURY COULD ACTUALLY, IS, FORGETS EVERYTHING THEY LEARN BETWEEN THE AGES OF, UP UNTIL THEY WERE 14 OR 15 WOULD STILL HAVE THAT, LACK THAT CAPACITY TO MAKE A JUDGMENT. WE'RE NOT TALKING ABOUT THAT THEY'RE-- SO I'M NOT SURE YOU-- SO YOU'RE SAYING BECAUSE IT IS A NATIONAL CONSENSUS THAT SOMEBODY WHO IS MENTALLY RETARDED CAN NOT BE SOMEBODY THAT, THAT ACQUIRED THEIR INORDINATELY LOW I.Q. AS A RESULT OF A TRAUMATIC BRAIN INJURY?

YOU'RE SAYING THAT'S THE CONSENSUS IN THE MEDICAL WORLD?

>> I'M SAYING THE CONSENSUS AMONG THE AMERICAN PEOPLE, WHICH IS WHAT WE LOOK AT, WHEN WE'RE DOING AN EIGHTH AMENDMENT ANALYSIS LOOKS AT THE CONSENSUS OF THE AMERICAN PEOPLE-- THE FACT THAT THERE WERE STATES PASSING STATUTES DECLARING THE DEATH PENALTY IMPROPER FOR PEOPLE WHO WERE MENTALLY RETARDED.

THE U.S. SUPREME COURT DECIDED TO EXEMPT THE MENTALLY RETARDED. THEY HAVE NOT EXEMPTED THE MENTALLY ILL.

THEY HAVE NOT EXEMPTED THE BRAIN-DAMAGED.

AND THAT'S WHAT THIS DEFENDANT IS.

THIS DEFENDANT IS NOT RETARDED.

HE'S BRAIN-DAMAGED.

>> WELL YOU CAN COME WITHIN ALL THREE OF THOSE CATEGORIES EVEN THOUGH YOU WOULD NOT BE IN THE INTELLECTUALLY DISABLED ACCORDING TO YOU.

YOU COULD HAVE AN INDIVIDUAL WHO HAS TREMENDOUS I.Q., DOCUMENTED UP THROUGH ELEMENTARY SCHOOL, THEN HAS A VERY SERIOUS MEDICAL CONDITION, TEMPERATURE COMA, AND THAT, CAUSES IRREVERSIBLE BRAIN DAMAGE AND THEN BEFORE 18, WOULD BE UNABLE, WOULD HAVE AN I.Q. OF, IN THAT SAME RANGE, WOULD HAVE THE INABILITY TO ENGAGE IN ADAPTIVE FUNCTIONS.

AND ON SET IS BEFORE 18.

SEEMS TO ME THAT, THAT YOUR ARGUMENT IS NOT BASED ON REAL WORLD DISTINCTION.

BUT THERE IS NO DISTINCTION BETWEEN SOMEONE WHO HAS A NORMAL LIFE UP TO A CERTAIN POINT AND THEN SUFFERS A TERRIBLE DISEASE, THAT PRODUCES THE SAME RESULT BEFORE 18.

>> WELL THE REASON THE 18 IS THERE IS NOT, SOME PLACES ICE 21.

WE'RE TRYING TO CAPTURE THE PEOPLE WHO ARE DEVELOPMENTALLY IN TROUBLE, NOT THE PEOPLE WHO ARE--

>> THAT IS WHY I'M ASKING BUT THE UNDERLYING PHILOSOPHY.

HOW IS A PERSON IN A CATEGORY I JUST DESCRIBED DIFFERENT THAN SOMEONE WHO HAS AN I.Q. FROM THE OUTSET OF, WITHIN THAT RANGE?

>> HOW IS THAT?

>> YEAH.

>> BECAUSE THERE AREN'T STATES PASSING STATUTES DECLARING THAT WE'RE NOT GOING TO SUBJECT THESE PEOPLE TO THE DEATH PENALTY.

THERE IS NOT A NATIONAL CONSENSUS--

>> THEY MEET THE CRITERIA.

THEY HAVE AN INTELLECTUAL--

THEY HAVE MEASURED THEIR
INTELLECTUAL CAPACITY AS BEING
SUBSTANDARD, BELOW, CORRECT?
>> WELL THIS DEFENDANT DOESN'T,
KEEP IN MIND.
HE HAS ABOVE AVERAGE I.Q.
>> ISN'T THAT THE KISE?
YOU WOULD MEASURE I.Q. IN THE
SAME WAY FOR SOMEONE WHO HAD A
SERIOUS ILLNESS AS YOU WOULD
SOMEONE WHO HAS NOT?
ADAPTIVE BEHAVIOR FROM THE SAME
PERSON THE SAME WAY.
>> ADAPTIVE BEHAVIOR--
>> WOULD YOU NOT MEASURE THE
AGE, 18, 21, 41, WHATEVER NUMBER
YOU WANT TO PICK, YOU WOULD
MEASURE THAT THE SAME WAY,
WOULDN'T YOU?
>> WELL, YOU WOULD, BUT THE IDEA
HERE IS WE HAVE AN EIGHTH
AMENDMENT PROHIBITION AND YOU
HAVE A CONFORMITY CLAUSE ON THE
EIGHTH AMENDMENT.
SO UNLESS THERE IS THIS NATIONAL
CONSENSUS THAT--
>> WAIT, WAIT, WAIT.
WE MAY HAVE A CONFORMITY CLAUSE
BUT U.S. SUPREME COURT MAYBE
HASN'T DECIDED THIS ISSUE WITH
REGARD TO THE PERSON YOU
DESCRIBED AND THE PERSON I HAVE
DESCRIBED THAT DIFFERENCE.
>> WHAT THEY HAVE SETTLED IS
THERE'S ONLY FOR THE MENTALLY
RETARDED.
THEY HAVE NOT DONE THE MENTALLY
ILL.
>> THEY HAVE REJECTED THE CASE
OF A PERSON I JUST DESCRIBED,
THE CHILD WHO HAS SERIOUS,
SERIOUS MEDICAL CONDITION THAT
RENDERS THEM IRREVERSIBLY
BRAIN-DAMAGED?
THEY HAVE DECIDED THAT, THAT IS
WHAT YOU'RE TELLING US?
>> NO, WHAT I'M TELLING YOU THE
ENTIRE POINT OF ATKINS WAS A
NATIONAL CONSENSUS ABOUT THE
MENTALLY RETARDED.

IT IS NOT A NATIONAL CONSENSUS ABOUT THOSE PEOPLE THAT MEET THOSE THREE.

>> WHAT ABOUT THE NATIONAL CONSENSUS, DOES THERE HAVE TO BE SOME THING DEPRIVED OF OXYGEN DURING BIRTH?

WHAT IS IT?

I HAVE NEVER QUITE UNDERSTOOD THAT.

>> WELL--

>> IT IS THE BRAIN DEVELOPMENT THAT IS THE CAUSE FOR THE INTELLECTUAL DISABILITY, IS IT NOT?

IN OTHER WORDS, WHAT DOES SOMEONE'S BRAIN LOOKS LIKE THAT MEETS YOUR DEFINITION OF INTELLECTUAL DISABILITY VERSUS JUSTICE LEWIS'S EXAMPLE?

>> I'M SAYING THAT THE PERSON SHOULD HAVE A DEVELOPMENTAL DISABILITY--

>> HOW DID THEY ACQUIRE IS WHAT I'M ASKING?

DOES IT HAVE TO BE BEFORE BIRTH? DOES IT HAVE TO BE BEFORE BIRTH?

>> I CAN'T ANSWER BECAUSE THERE IS NO MEDICAL ANSWER TO THAT WE JUST KNOW IT IS SUPPOSED TO BE DEVELOPMENTAL AND NOT AN ACQUIRED DISABILITY.

>> WELL, DEVELOPMENTAL MEANS IT OCCURRED AFTER YOU WERE BORN? ARE YOU BORN INTELLECTUALLY DISABLED, THAT IS WHAT I'M ASKING YOU?

SO THAT A CHILD AT SIX MONTHS OLD, HAS HIGH FEVER AND THEREAFTER, OR IS IT THE DIAGNOSIS, THE MAGIC DIAGNOSIS OF A, OF A DOCTOR AND THEN FOR THOSE POOR PEOPLE THAT DON'T GET THAT DIAGNOSIS, THEY'RE OUT?

>> WELL, KEEP IN MIND-- THIS DEFENDANT WAS OVER AND OVER AND OVER AGAIN THAT THAT HOSPITALIZATION FOR 90 DAYS WHEN HE IS GIVEN AN EXTENSIVE PSYCHIATRIC TESTING THAT RESULTS

NOT IN A DIAGNOSIS OF
RETARDATION BUT A DIAGNOSIS OF
BRAIN DAMAGE AND BIPOLAR
DISORDER OCCURS WHEN HE IS
ALMOST 18 YEARS OLD.

>> YOU KNOW, WHAT WAS HE
HOSPITALIZED FOR?

>> FOR MAKING THREATS TO
TEACHERS AND ATTACKING PEOPLE.

>> SO YOU'RE LOOKING FOR A
DIAGNOSIS THAT IS GOING TO HELP
TO SEE IF YOU CAN REHABILITATE?
IN OTHER WORDS, I DON'T KNOW,
BECAUSE WE DIDN'T HAVE THIS
FULLY-DEVELOPED HEARING TO
EXPLAIN WHY THE DIAGNOSIS WAS
THAT VERSUS INTELLECTUAL
DISABILITY.

>> WE DID BECAUSE WE HAD A
PENALTY PHASE WHERE THIS
EVIDENCE WAS PRESENTED.
WE THEN HAVE A RETARDATION
HEARING WHERE THE DEFENDANT WAS
PERMITTED TO PRESENT ANY
EVIDENCE HE WANTED AND DIDN'T
PRESENT IT.

AND WE DON'T EVEN HAVE AN
ALLEGATION THAT HE HAS EVIDENCE
IN THIS MOTION, MOTIONS FOR
POST-CONVICTION RELIEF REFERS TO
BE FULLY PLED WHEN THEY'RE
FILED.

WE HAVE A GIVE ME A NEW HEARING.

>> WAS THIS HEARING--

>> IT WAS JUST AFTER CHERRY WAS
ORDERED BEFORE CHERRY OCCURRED
AFTER CHERRY.

>> AFTER CHERRY SAID THERE WAS
THIS BRIGHT LINE CUTOFF?

>> THE HEARING JUST OCCURRED
AFTER CHERRY, JUST A MONTH OR
TWO AFTER CHERRY BUT HE CALLED
DR. TOOMER, THE ONLY WITNESS HE
CALLED, TO TESTIFY ABOUT
ADAPTIVE FUNCTIONING DEFICITS
BEFORE THE AGE OF 18.

HE CLEARLY KNEW HE COULD PRESENT
THIS EVIDENCE.

HE JUST AS CLEARLY DIDN'T.

HE HAS HAD HIS HEARING AND THE

STATE RESPECTFULLY REQUESTS THAT YOU AFFIRM.

>> THANK YOU.

>> JUSTICE PARIENTE, DR. TOOMER TESTIFIED THAT MR. WALLS HAS ADAPTIVE DEFICITS IN ADULTHOOD AND ADAPTIVE DEFICITS IN CHILDHOOD IN 13 DISTINCT AREAS OF ADAPTIVE DEFICITS AND THEY ALL PRE-AGE 18.

THAT IS IN THAT HEARING.

>> EXPLAIN WHAT IS THE DIFFERENCE BETWEEN A DIAGNOSIS OF INTELLECTUAL DISABILITY.

>> YES.

>> AND A BRAIN DAMAGE?

>> YES.

I WILL GET TO THAT LET ME TELL YOU ONE MORE THING.

>> YOU DON'T HAVE A LOT OF TIME.

>> ONE MORE THING ABOUT THE LAST HEARING, DR. TOOMER WAS ASKED ON CROSS-EXAMINATION HE DOESN'T MEET THE CHERRY TEST BECAUSE ALL OF HIS I.Q.s ARE ABOVE 70.

DR. TOOMER SAYS, THAT'S RIGHT. THAT IS WHY YOU HAVE THE OPINION OF NOT MENTAL RETARDATION.

-- PROCEEDING AND THIS COURT AFFIRMED SAYING THERE IS NO SCORE UNDER 70.

YOU NEVER HAD ROBUST ANALYSIS OF ALL THREE FACTORS, NEITHER AT THE FIRST HEARING AND NOT AT THE SECOND HEARING.

NOW JUSTICE CANADY AND JUSTICE LEWIS IN RESPONSE TO YOUR QUESTIONS, AND YOU, JUSTICE PARIENTE, THIS RECORD HASN'T BEEN DEVELOPED IN THIS CASE BUT THERE ARE SORTS OF REPORTED OPINIONS WHAT TRIGGERS ADAPTIVE DEFICITS PRIOR TO THE AGE OF 18. THEY ARE CALLED PRECIPITATING FACTORS AND AMONG THOSE FACTORS ARE NEGLECT, ABUSE, AND HEAD INJURY.

SO YOU CAN HAVE THE KID WHO IS BORN NORMAL, SO TO SPEAK, TAKES PAINT CHIPS AND BY THE AGE OF 15

IS WITHIN THAT ONSET RANGE.
>> WILL THEY DIAGNOSE THAT PERSON AS INTELLECTUALLY DISABLED OR BRAIN DAMAGED?
>> THOSE PEOPLE WOULD BE DIAGNOSED AS INTELLECTUALLY DISABLED AND THERE IS THIS ISSUE IS BRAIN DAMAGE DIFFERENT THAN INTELLECTUAL DISABILITY? INTELLECTUAL DISABILITY IS A FORM OF BRAIN DAMAGE. THAT IS WHAT THE EXPERT CONSENSUS NATIONALLY IS TODAY. THAT IS WHAT THE AAID SAYS, THAT IS WHAT THE DSM SAYS. IT IS A FORM OF BRAIN DAMAGE. YOU CAN'T SPLIT HAIRS SAY TO YOURSELVES THIS IS SPECIAL DIFFERENT KIND OF THING. -- BRAIN DAMAGE IF YOU HAVE A SUBSTANTIAL HEAD INJURY.
>> WHAT SHE WAS REALLY SAYING WAS, BRAIN TRAUMA THEN?
>> BRAIN TRAUMA THAT CAUSES ADAPTIVE DEFICITS PRIOR TO A TEEN IS--
>> WE'RE TALKING ABOUT AFTER AGE 18.
>> AFTER AGE 18 AND THAT IS THE FINAL POINT I MAKE BEFORE I RUN OUT OF TIME. THAT AT THE AGE OF 23 OR 24 DR. LARSEN TESTS MR. WALLS AND TESTIFIES HIS I.Q. IS 72. YOU HAVE NO EVIDENCE, ZERO EVIDENCE, OF A HEAD INJURY OR DEMENTIA BETWEEN AGES 18 AND AGE 23. THAT EXPLANATION FOR THAT I.Q. SCORE DOES NOT EXIST ON THIS RECORD. MR. WALLS IN FACT WAS ARRESTED AT 19. SO THERE IS NOTHING AFTER 18 THAT EXPLAINS THAT I.Q. IT HAD TO GO BACK TO THE AGE OF ONSET. YOUR HONORS, THANK YOU VERY MUCH.

