>> ALL RISE.
>> THE SUPREME COURT OF FLORIDA IS NOW SESSION.
PLEASE BE SEATED.
>> OKAY.
THE NEXT CASE ON THE DOCKET IS GLOVER V. STATE.
YOU MAY PROCEED.
>> GOOD MORNING, YOUR HONORS.
MR. CHIEF JUSTICE AND MAY IT PLEASE THE COURT, I'M BRIAN STULL REPRESENTING DEATH ROW PRISONER DENNIS GLOVER IN THIS, HIS DIRECT APPEAL.
THIS IS A CASE THAT WILL REQUIRE HURST REVERSAL BECAUSE THE JURY RECOMMENDATION WAS NON-UNANIMOUS.
UNDER HURST, THE JURY MUST FIND EVERY FACT NEEDED FOR A DEATH SENTENCE, AND JURY DID NOT DO SO HERE.
SO WE HAVE HURST ERROR.
AND UNDER THIS COURT'S CLEAR AND CONSISTENT PRECEDENTS, THE ERROR CANNOT BE HARMLESS WHEN THE JURY RECOMMENDATION WAS NOT UNANIMOUS.
SINCE THAT IS CLEAR, I WOULD LIKE TO SPEND MY TIME TODAY SHOWING WHY THE EVIDENCE OF MURDER IN THIS CASE IS LEGALLY INSUFFICIENT, WHY THE EVIDENCE OF THE VICTIM'S DRUG USE SHOULD HAVE BEEN ADMITTED UNDER POINT 11 IN THE BRIEF AND WHY IN ANY CASE THE DEATH PENALTY HERE IS DISPROPORTIONATE.
>> I ASK YOU AS WE START OUT HERE, BECAUSE I CAN APPRECIATE YOUR ARGUMENT THAT THIS IS THIN. HOWEVER, THERE'S BLOOD ON THE SHOES, CORRECT?
>> YES, YOUR HONOR.
>> CLEARLY, BLOOD ON THE SHOES.
>> YES, YOUR HONOR.
>> WE HAVE THE CASE OVER IN THE TAMPA AREA WHERE THERE WAS BLOOD-- THE ONLY EVIDENCE-- BLOOD ON THE UNDERSHORTS OF A

GUY ACCUSED OF KILLING A CHILD.
AND THE COURT HELD THAT THAT WAS
SUFFICIENT FOR A JURY TO,
AT LEAST TO GET
TO A JURY.
HOW IS THIS CASE DIFFERENT FROM
ONE LIKE THAT?
>> WELL, IT'S A CIRCUMSTANTIAL
EVIDENCE CASE--
>> RIGHT, I AGREE.
>> YES, YOUR HONOR.
IF THERE'S A HYPOTHESIS IN THE
STATE HAS FAILED TO REBUT, THEN
THIS EVIDENCE IS INSUFFICIENT.
AND HERE THE REASONABLE AND
INNOCENT HYPOTHESIS WITH RESPECT
TO THE BLOOD WAS THAT MR. GLOVER
WENT TO THE HOME OF MS. ALLEN
AND DISCOVERED HER DEAD BODY,
THERE'S BLOOD EVERYWHERE IN THIS
LITTLE TRAILER, AND HE REPORTED
THE DEATH IMMEDIATELY THEREAFTER
TO HIS NEIGHBORS.
AND THAT IS ALL VERY CONSISTENT
AND WELL ESTABLISHED IN THE
RECORD AND IN, GOING INTO THE
CRIME SCENE, INTO THAT VERY
BLOODY CRIME SCENE, HE COULD
HAVE GOTTEN BLOOD ON HIS SHOES.
>> DIDN'T THE NEIGHBORS GO IN
THERE AS WELL, INTO THE CRIME
SCENE?
>> THEY DID, MR. CHIEF
JUSTICE-- >> AND THEY DID NOT
GET BLOOD ON THEIR STUS.
>> THEY DID NOT.
>> OKAY.
WELL, ISN'T THAT A DIFFERENCE?
>> IT'S A DIFFERENCE, BUT A
REASONABLE INNOCENT HIGH POST
SINCE, THEN THE STATE HAS TO
REBUT IT.
AND ONE PERSON COULD GET BLOOD
ON THEIR SHOES AND ANOTHER NOT.
>> WOULDN'T WE HAVE SOME KIND OF
PRINTS OR SOMETHING?
AND THERE WAS NOTHING SEEN OF
ANY TRACKS IN THE HOUSE OUTSIDE
ANY PLACE.
HE WENT OUT OBVIOUSLY IF HE, IN

FACT, WAS IN THERE AND SAW THE
BODY FIRST AND THEN CAME OUT AND
TOLD THE NEIGHBORS, WOULDN'T
WITH THEY LOGICALLY HAVE BEEN--
THERE LOGICALLY HAVE BEEN SOME
KIND OF BLOOD LEADING OUT,
OUTSIDE?
SOMETHING?
>> THAT'S POSSIBLE, BUT THE
STATE'S INVESTIGATOR ON THE
SCENE, THE DETECTIVE SAID IT WAS
POSSIBLE FOR THOSE FOOTPRINTS TO
BE SUBSUMED BY THE POOLING OF
THE BLOOD THAT OCCURRED AFTER
THE FINGERPRINT WAS LAID DOWN.
>> YES, THERE.
BUT YOU'RE SAYING THEN THAT ALL
OF THE BLOOD THAT WAS ON THAT
SHOE WOULD HAVE-- THAT HE MADE
A PRINT?
ALL OF IT WOULD HAVE BEEN MADE
IN THE SPOT WHERE THE BLOOD WAS
POOLING?
WHAT ABOUT WHERE THE-- AS HE
WAS PROCESSING OUT?
BE.
>> AS HE WAS PROCESSING OUT?
WE DON'T KNOW WHY THERE'S NOT
BLOOD IN OTHER PLACES, BUT THE
POOLING WAS SUBSTANTIAL IN THIS
CASE.
AND I THINK THAT'S A SIGNIFICANT
FACT.
>> THERE'S NO-- I MEAN, ONE OF
THE THINGS THAT YOU HAVE ARGUED
OR PRESENTED WAS THAT THEY HAD
HAD A RELATIONSHIP BEFORE.
AND THE DAUGHTER REFUTED THAT.
THERE WAS POSITIVE EVIDENCE THAT
THEY DID NOT HAVE A PRIOR
RELATIONSHIP AND ALSO,
ALTHOUGH-- DID HE LIVE RIGHT
NEXT DOOR TO HER?
WHERE DID HE LIVE--
>> TWO DOORS DOWN, YOUR HONOR.
>> BUT THEY SAW HIM-- DID THE
NEIGHBORS SEE HIM ACTUALLY GO
INTO THE TRAILER?
>> NO NEIGHBOR IDENTIFIED DENNIS
GLOVER GOING INTO THE TRAILER.

AND WITH RESPECT TO THE
DAUGHTER--
>> WELL, WHAT ABOUT THOUGH, WHAT
DID THEY SEE HIM DOING THAT IN
THE TIME BEFORE THE MURDER?
>> ONE OF THE NEIGHBORS
TESTIFIED THAT DENNIS GLOVER WAS
WALKING DOWN THE STREET, THE
STREET WHERE HE LIVES, WALKING
DOWN THE BLOCK THREE TIMES THAT
MORNING.
>> RATHER ERRATICALLY.
>> YES. RATTIC.
>> DIDN'T THEY DESCRIBE HE WAS
WALKING AROUND ERRATICALLY?
WALKING A LITTLE STRANGE?
>> I CAN'T SAY THAT'S IN THE
TESTIMONY, BUT THAT MIGHT BE AN
INFERENCE THAT SOMEONE MIGHT
DRAW FROM WALKING AROUND ON THE
STREET THREE TIMES.
>> IT'S DOWN TO-- I MEAN, THE
VICTIM'S HOUSE WAS AT THE END OF
THE STREET.
YOUR KIND OF PORTRAYING THIS AS
WANDERING AROUND AIMLESSLY.
I MEAN, ISN'T THE INFERENCE FROM
IT HE WENT TO THE HOUSE?
ISN'T THAT WHAT WE'RE TALKING
ABOUT?
>> YES.
THAT'S WHY THE STATE PRESENTED.
THAT.
>> WHAT ABOUT THE DNA, IS
THIS-- WAS FOUND ON THE
VICTIM'S WOUNDS?
IS THAT, WAS THAT EVIDENCE THAT
WAS PRESENTED?
>> THAT WAS EVIDENCE THAT WAS
PRESENTED.
THERE WAS EVIDENCE OF THREE
PEOPLE'S OR DNA IN ADDITION TO
THE VICTIM'S DNA.
TOUCH DNA, IT WAS CALLED, ON HER
BODY.
AND ONE WAS IDENTIFIED-- TWO OF
THE SPOTS WERE IDENTIFIED AS
DENNIS GLOVER, AND TWO OF THE
SPOTS WERE NOT IDENTIFIED BY
ANYBODY.

>> BUT THAT-- WHY IS THAT NOT, AGAIN, GOING BACK TO NOT JUST THE BLOOD, BUT THE IDEA THAT HE SOMEHOW-- ALTHOUGH HE'S WANDERING AROUND AND NEAR THE TRAILER THAT MORNING AND SOMEBODY, ALTHOUGH DID NOT SPECIFICALLY IDENTIFY HIM, SAID SOMEONE LOOKING LIKE HIM ENTERED THE TRAILER EARLIER, THE-- WHY IS THAT NOT ENOUGH TO REBUT YOUR REASONABLE HYPOTHESIS OF INNOCENCE IN LIGHT OF ALSO THE POSITIVE TESTIMONY THAT THERE WAS NO, THAT THEY WERE NOT FRIENDS OR INTIMATE PARTNERS?
>> ALL RIGHT.
SO, YES, YOUR HONOR.
LET'S GO BACK TO THE FIRST PART ABOUT THE TESTIMONY FROM THE DAUGHTER.
THE DAUGHTER TESTIFIED THEY DIDN'T KNOW EACH OTHER, BUT THERE'S SEVERAL REASONS TO DOUBT THAT THAT'S TRUE.
AND NOT THAT SHE'S BEING UNTRUTHFUL.
SHE DOESN'T NECESSARILY KNOW IF THEY KNOW EACH OTHER.
SHE'S WORKING AT LITTLE CAESAR'S.
SHE'S OUT AT HER FRIEND ANGELA'S HOUSE THE ENTIRE NIGHT--
>> BUT THIS IS, THE JURY'S ALLOWED TO RELY ON THAT.
DID THE DEFENSE PRESENT EVIDENCE THAT THEY ACTUALLY HAD A RELATIONSHIP?
>> YES.
AND THIS GOES TO POINT 11 AND WHY THIS IS INTERRELATED WITH THIS LEGAL SUFFICIENCY ARGUMENT.
THE EVIDENCE OF THE DRUG USE BY THE VICTIM.
SO THERE WAS A PROFFER AND THERE WAS AN ARGUMENT ABOUT INTRODUCING THIS DRUG EVIDENCE.
AND DEFENSE COUNSEL--
>> BUT WHAT-- I'M CURIOUS ABOUT WHAT EVIDENCE WAS PUT BEFORE THE

JURY THAT A RELATIONSHIP EXISTED
BETWEEN THE DEFENDANT AND THE
VICTIM.
>> YES, YOUR HONOR.
SO THAT'S WHAT I'M ASKING.
THE DEFENSE ATTEMPTED TO--
>> YOU TELLING ME NONE OTHER
THAN YOUR ATTEMPT TO GET IN THIS
EVIDENCE THAT SHE HAD DRUG,
DRUGS IN HER SYSTEM?
>> THERE'S NO SPECIFIC, THERE'S
NO SPECIFIC EVIDENCE IN THIS--
>> AND WELL, IS THERE
NON-SPECIFIC EVIDENCE?
>> YES, THERE IS.
>> WHICH IS?
>> WHICH IS MANY PEOPLE WERE
GOING TO THIS TRAILER.
THAT'S WHAT THE STATE'S WITNESS
SAID.
MANY CARS WERE GOING TO THIS
TRAILER.
MANY--
>> OH, HE HAD A-- SO YOU'RE
SAYING THAT BUT HE HAD A
RELATIONSHIP WITH HER BECAUSE
OTHER PEOPLE WERE GOING TO THE
TRAILER.
>> I'M SAYING HE'S ONE OF MANY
PEOPLE WHO ARE GOING TO THE
TRAILER, AND I'M SAYING THAT
THIS COURT--
>> THE HYPOTHESIS OF INNOCENCE
HAS TO BE A REASONABLE
HYPOTHESIS OF INNOCENCE, ISN'T
THAT CORRECT?
>> I COMPLETELY AGREE.
AND I THINK WE HAVE THAT HERE.
I THINK IT'S IMPORTANT IN THE
FINNEY CASE THAT WE NOTICED IN
OUR SUPPLEMENTAL AUTHORITY THAT
THIS COURT CONSIDER THE EVIDENCE
THAT WAS EXCLUDED THAT DEFENSE
COUNSEL HAD PROFFERED AT THE
TRIAL AS PART OF THIS
SUFFICIENCY ANALYSIS.
AND I THINK THE COURT SHOULD DO
THE SAME HERE.
AND THE COURT SHOULD TAKE A LOOK
AT WHAT WAS PROFFERED ABOUT

THIS ARGUE COMING IN, AND THE
DEFENSE COUNSEL SAID THERE WAS A
CONNECTION BETWEEN GLOVER AND
ALLEN.
THEY HAD SOME SORT OF
RELATIONSHIP TOGETHER.
HE WAS THERE THE MORNING--
>> LET ME ASK YOU, IF THERE'S NO
EVIDENCE, DIRECT CLEAR EVIDENCE
OF, OR EVEN NO EVIDENCE THAT
THEY HAD A RELATIONSHIP AND
EVIDENCE THAT THEY DIDN'T, ISN'T
IT CALLED SPECULATION?
>> IF THERE'S EVIDENCE THAT--
>> I MEAN, EVIDENCE THAT SOME
PEOPLE WENT TO THE TRAILER.
ISN'T IT SPECULATION THAT HE WAS
ONE OF THEM?
DIDN'T--
>> I THINK IT'S A REASONABLE
INFERENCE WHEN YOU COMBINE WITH
THE FACT OF THE DRUG USE AND
WITH THE FACT THAT TWO OTHER
PEOPLE LEFT THEIR DNA ON HER
BODY.
WHEN YOU COMBINE IT WITH THE
FACT THAT THERE WERE TWO SPERM
HEADS IN HER VAGINA, THERE WERE
SIX HAIRS ON HER BODY THAT WERE
UNACCOUNTED FOR, FIVE THAT THE
STATE'S LAB NEVER TESTED.
SO THERE WERE A LOT OF PEOPLE
MAKING CONTACT IN THIS TRAILER
WITH THIS WOMAN WHO WAS USING
DRUGS WHICH IS EVIDENCE WE ARGUE
WAS ERRONEOUSLY EXCLUDED.
AND DENNIS GLOVER, BEING ONE OF
THEM, MADE THAT SAME INNOCENT
CONTACT AND WAS NOT THE PERSON
WHO KILLED HER, AND THERE'S NO
EVIDENCE REBUTTING HIS INNOCENCE
HYPOTHESIS THAT HE MERELY
STUMBLED UPON THE SCENE OF HIS
NEIGHBOR BEING KILLED.
>> YOU STILL HAVEN'T QUITE TOLD
US WHAT SPECIFIC EVIDENCE THERE
IS THAT WOULD SHOW, OTHER THAN
THE FACT THAT MANY PEOPLE CAME
TO THIS TRAILER, WHAT SPECIFIC
FACTS ARE THERE IN THE RECORD

THAT WOULD SHOW THAT THIS
DEFENDANT EVER PRIOR TO THE
NIGHT OR THE MORNING OF THE
MURDER EVER HAD ANYTHING AT ALL
TO DO WITH THIS PERSON?
>> SO WE'RE ASKING THE COURT TO
CONSIDER THE EVIDENCE THAT WAS
PROFFERED IN THE HEARING RELATED
TO THE DRUG EVIDENCE, AND THIS
IS WHAT DEFENSE COUNSEL SAID--
>> BUT THAT DOESN'T SPECIFICALLY
POINT TO THIS DEFENDANT, DOES
IT?
>> IT DOES.
HE SAID THERE WAS A CONNECTION,
WE NEED TO INTRODUCE THIS DRUG
EVIDENCE.
THERE WAS A CONNECTION BETWEEN
GLOVER AND ALLEN.
THIS IS A QUOTE FROM THE RECORD
AT 1685, THEY HAD SOMEWHAT OF A
RELATIONSHIP TOGETHER.
HE IS THERE THE MORNING PRIOR TO
THIS HOMICIDE OCCURRING.
MR. GLOVER KNOWS--
>> BUT THERE HAS TO BE-- AGAIN,
AND I APPRECIATE THAT IF THAT,
THE FIRST PART WHICH WAS THAT
THERE WAS TESTIMONY THAT HE WAS
ONE OF HER, THAT HE WAS A DRUG
USER AND SHE WAS SUPPLYING HIM
DRUGS, BUT THAT WASN'T IN THE
PROFFER.
YOU DIDN'T HAVE-- I MEAN, THAT
YOU COULD HAVE, YOU KNOW, IF HE
HAD THAT RELATIONSHIP AND THAT'S
WHY HE WAS THERE, THERE WOULD BE
POSITIVE TESTIMONY.
I THOUGHT THE PROFFER AND THE
DRUG USE WAS THAT THERE WAS
DRUGS IN HER SYSTEM.
>> IT'S PART AND PARCEL--
>> NO, NO, IT CAN'T BE.
ONE IS SOMEONE MIGHT BE USING
DRUGS AND THAT'S NOT RELEVANT TO
ANY FACT THAT IS BEING OFFERED
AND THE OTHER IS THAT THIS WOMAN
WAS A DRUG DEALER, AND HE WAS
EITHER IN HER BUSINESS,
THAT'S-- THERE'S NOTHING, THERE

WAS NOTHING PROFFERED OR OFFERED
ABOUT THAT.
JUST-- WAS THERE?
>> I THINK IDENTIFY GIVEN YOUR
HONEST OPINION THAT WAS
PROFFERED ON THAT, SO I'D LIKE
TO--
>> JUST LET ME.
>> YES, YOUR HONOR.
>> WHAT WAS PROFFERED THAT WOULD
HAVE BEEN INTRODUCED IN EVIDENCE
ABOUT THE WOMAN, THAT THE VICTIM
WAS A DRUG DEALER AND THAT
MR. GLOVER WAS ONE OF HER
CLIENTS?
>> THEY, THE PART OF THE RECORD
AT 1685 I WAS JUST QUOTING, I
THINK, IS THE PROFFER ON THIS,
AND WHERE HE SAYS THEY KNEW EACH
OTHER--
>> ISN'T THAT WHERE YOU WERE
JUST QUOTING THE ATTORNEY'S
SPECULATIVE MUSINGS?
>> NO.
THIS WAS THE ARGUMENT THAT THE
ATTORNEY WAS TELLING THE COURT
WHAT EVIDENCE HE WANTED TO
INTRODUCE.
>> HE WANTED TO INTRODUCE
EVIDENCE THAT SHE HAD COCAINE IN
HER SYSTEM.
IS THERE ANY OTHER EVIDENCE HE
WANTED TO INTRODUCE RELATING TO
THIS ISSUE?
>> THE STATE MOVED TO, MOVED
TO--
>> THAT'S SORT OF A YES OR NO.
IS THERE ANY OTHER EVIDENCE
PROFFERED OTHER THAN THE FACT
THAT SHE HAD COCAINE IN HER
SYSTEM?
>> YES.
THERE'S DRUG USE, DRUG
ACTIVITIES.
THAT'S WHAT HE REFERENCED--
>> WHO IS GOING TO TESTIFY?
HE SAYS THEY HAVE KNOWN EACH
OTHER FOR QUITE A WHILE AND NOSE
SOME OF THE COMES AND GOINGS.
WHO WAS GOING TO TESTIFY TO

THAT, THAT THE JUDGE EXCLUDED?
>> I THINK THIS IS GOING TO BE A VERY, VERY DIFFERENT CASE IF THE MEDICAL EXAMINER WAS ALLOWED TO TALK ABOUT DRUGS BEING IN THIS VICTIM'S--
>> OKAY, YOU'RE REALLY NOT ANSWERING MY QUESTION.
WERE THERE WITNESSES THAT THE DEFENSE WAS PREPARED TO INTRODUCE THAT THEY, MR. GLOVER AND MS. ALLEN HAD A RELATIONSHIP THROUGH DRUGS AND THAT HE KNEW OF THE COMES AND GOINGS OR SOME OTHER--
>> YES, YOUR HONOR.
WHAT I WAS TRYING TO SAY BEFORE IS MR. GLOVER CAN TESTIFY--
>> WELL, WAS HE PREVENTED FROM TESTIFYING?
>> IT'S A MUCH DIFFERENT CALCULUS WHEN HE'S DECIDED WHETHER TO TESTIFY WHEN THE EVIDENCE THAT'S UNCONTROVERTED--
>> ISN'T IN THE WAY IT WORKS, THAT IF YOU WANT YOUR CLIENT TO TESTIFY TO SOMETHING AND THAT RELATES TO OTHER EVIDENCE THAT YOU WANT IN, YOU SAY I'M GOING TO TIE THIS UP BY GIVING THIS EVIDENCE OR MAKING A PROFFER OF THE OTHER EVIDENCE IN ORDER TO ACTUALLY HAVE A RECORD ON APPEAL THAT WILL ALLOW YOU TO ARGUE SOMETHING.
YOU HAVE TO DEMONSTRATE WHAT EVIDENCE YOU WOULD HAVE INTRODUCED AND MAKE THAT ARGUMENT TO THE JUDGE AND HAVE THE JUDGE SAY, NO, I'M NOT GOING TO ALLOW THE TESTIMONY OR THIS.
I MEAN, YOU CAN'T JUST SPECULATE AS TO WHAT ELSE YOU MIGHT HAVE DONE, RIGHT?
>> NO, YOU CAN'T SPECULATE AS TO WHAT YOU MIGHT HAVE DONE.
>> AND ON TOP OF THAT, THE COURT DIDN'T EXCLUDE IT.
THE COURT SAID IF THE DRUG USE

IS A DEFENSE THEORY AND DEVELOPS
THAT THROUGH THEIR OWN
WITNESSES, THAT AT THAT POINT WE
MAY HAVE TO RE-EXAMINE THE
RULING.
ISN'T THAT WHAT THE-- THE JUDGE
DID NOT SHUT THE DOOR.
IT SAID IT KEPT THE DOOR OPEN
ENOUGH FOR YOU TO PUT ON
SOMETHING ELSE THAT WOULD HAVE
BEEN A PREDICATE THEN FOR THE
MEDICAL PERM.
>> WELL, THE DOOR WAS LEFT ONLY
PARTIALLY OPEN BECAUSE THE
PROSECUTOR ARGUED AND THE JUDGE
AGREE THAT IF IT'S A
SELF-DEFENSE CASE, THIS COMES
IN.
IF IT'S NOT, IT'S NOT.
OUR THEORY IS IT'S NOT A
SELF-DEFENSE CASE, BUT A REASON
FOR THE CONTACT.
AND PRESUMABLY EVEN IF
MR. GLOVER HAD TESTIFIED, HER
RULING WOULD STAND.
AND I IN THAT HAD AN IMI THINK
THAT HAD AN IMPACT ON HIS
DECISION.
WITH RESPECT TO PROPORTIONALITY,
THE DEATH SENTENCE IS
DISPROPORTIONATE BECAUSE IT IS
NOT BOTH ONE OF THE LEAST
MITIGATED AND MOST AGGRAVATED
CASES.
IT'S NOT ONE OF THE LEAST
MITIGATED CASES BECAUSE, FOR
SEVERAL REASONS.
AMONG MOUNTAINS OF MITIGATION IN
THIS CASE STAND THE TWIN PEAKS
OF SERIOUS MENTAL ILLNESS AND
INTELLECTUAL DISABILITY.
AND I'M GOING TO SAY
INTELLECTUAL DISABILITY AT LEAST
THIS ONCE BECAUSE I THINK THE
RECORD SUPPORTS IT.
BUT FOR THE PURPOSE OF
PROPORTIONALITY, WE ASSUME THE
COURT DOES NOT ACCEPT THAT
ARGUMENT.
AND IN THAT CASE, IT'S

BORDERLINE INTELLECTUAL
FUNCTIONING THAT ARE RAISING
NEAR TO THAT LEVEL.
>> WHAT DID THE DOCTOR SAY ABOUT
HIS INTELLECTUAL FUNCTIONING?
AS I RECALL, HE HAD AN IQ OF 80
AT ONE POINT AND 67 AT ANOTHER
POINT, SO WHAT DID THE TRIAL
JUDGE ACTUALLY SAY ABOUT HIS
INTELLECTUAL FUNCTIONING?
>> YES.
>> BECAUSE I THOUGHT THEY HAD,
HIS ADAPTIVE FUNCTIONING WAS NOT
IN DEFICIT, RIGHT?
>> ACTUALLY, EXPERTS ON BOTH
SIDES AGREE THAT THERE WERE
ADAPTIVE FUNCTIONING DEFICITS--
>> WHICH ADAPTIVE FUNCTIONING
WAS HE IN DEFICIT.
>> WHAT WERE THEY?
>> WHAT WAS THE DEFICIT IN
ADAPTIVE FUNCTIONING.
>> YES, YES.
SOCIAL DEFICITS, ACADEMIC
DEFICITS AND PRACTICAL DEFICITS.
HE WAS A PERSON WHO WAS
HOMELESS, HE WAS A PERSON WHO
NEVER HAD WORK, HE WAS A PERSON
WHO HAD DIFFICULTY WITH
RELATIONSHIPS, AND HE WAS IN
SPECIAL EDUCATION IN SCHOOL.
DR. PRITCHARD FOUND ADAPTIVE
DEFICITS, DR--
>> AND WHAT ABOUT THE ONSET
BEFORE AGE 18?
>> AGAIN, THIS WAS A PERSON WHO
WAS IN SPECIAL EDUCATION AS A
CHILD, AND HIS FIRST IQ SCORE IS
A 69 WHEN HE'S 11 YEARS OLD.
HE HAS, IN ADDITION
TO THE 80 YOUR HONOR
MENTIONED, HE HAS A 72 IQ SCORE
IN 2013 AND A 67 IN 2013.
AND WITH RESPECT TO THE 80,
DR. PRITCHARD-- WHICH IS WHAT,
YOU KNOW, THE STATE RELIES ON
AND WHAT THE COURT BELOW RELIES
ON-- EVEN HE SAID SEVERAL TIMES
THAT 80 IS BORDERLINE
FUNCTIONING.

AND MOREOVER TO, WE SHOULD DWELL
ON THE--
>> THERE'S OTHER, THOSE OTHER IQ
TESTS YOU MENTIONED, WHICH OF
THEM ACTUALLY MEET THE
REQUIREMENTS FOR CONSIDERATION
AS A, AS A VALID IQ TEST?
>> I THINK THE MOST, YOU KNOW,
THE MOST RELIABLE ONES
CONSIDERED BY AN EXPERT WOULD BE
THE ONE GIVEN IN JULY OF 2013
WHICH WAS A 72, AND THERE WAS NO
DISPUTE--
>> AND THE OTHERS WERE JUST KIND
OF ABBREVIATED?
>> WELL, ONE WAS AN ABBREVIATED
TEST WHICH WAS GIVEN IN
SEPTEMBER, AND THAT'S TYPICALLY
AN ABBREVIATED TEST IS GIVEN
AFTER A FULL TEST TO AVOID
PRACTICE EFFECT.
>> THE 80 WAS THE FULL-SCALE
TEST, CORRECT?
>> YEAH.
SO WE SHOULD DWELL ON THE 80 FOR
A MOMENT.
THIS IS WHAT THE WECHSLER
INTELLIGENCE SCALE FOR CHILDREN.
THIS IS A TEST--
>> IT WAS DESCRIBED BY THE
EXPERTS AS THE GOLD STANDARD?
AND--
>> AND THAT'S EXACTLY WHAT THE
EXPERTS SAID.
THEY RELIED ON IT VERY HEAVILY
AND SO DID THE COURT.
THIS WAS A TEST THAT WAS NORMED
IN 1947 AND 1948.
THIS WAS A TEST THAT WAS REVISED
IN 1974 AFTER WHICH IT CEASED TO
BE THE GOLD STANDARD BECAUSE NOW
THE TEST IS THE WECHSLER
INTELLIGENCE SCALE FOR CHILDREN
REVISED.
DESIGNATED BY--
[INAUDIBLE]
IN 1980, THE ROCKDALE SCHOOL
SYSTEM IN GEORGIA GAVE DENNIS
GLOVER NOT THE 1974 REVISE TEST,
BUT THE 1947-'48 ORIGINAL TEST

WHICH IS AN INVALID TEST.
ALL OF THE TREATISES ON THIS ARE GOING TO TELL YOU YOU HAVE TO USE THE MOST CURRENT TEST.
THAT'S THE GOLD STANDARD, FIRST OF ALL.
USE THE MOST CURRENT TEST.
IN ADDITION, THE WECHSLER INTELLIGENCE SCALE FOR CHILDREN WAS DESIGNED FOR CHILDREN FROM 1-15.
IT WAS GIVEN TO DENNIS GLOVER AT THE AGE OF 16.
SO I THINK THAT REALLY PUTS A LOT GREATER WEIGHT ON THE SCORES THAT ARE ALL HOVERING AROUND 70.
AND IN ANY CASE, THIS IS BORDERLINE INTELLECTUAL FUNCTIONING WHICH IS A VERY HEAVY MITIGATOR IN THIS COURT'S PROPORTIONATE JURISPRUDENCE--
>> JUST WANT TO ASK YOU, YOU SAID IN YOUR BRIEF THAT HURTS SHOULD CHANGE-- HURST SHOULD CHANGE THE WAY WE VIEW PROPORTIONALLY.
AS YOU ARE AWARE, WE'VE BEEN REVIEWING A NEW PENALTY PHASE, AND ONLY IN ONE DID WE LOOK AT THE AGGRAVATORS AND AFTER IT WAS STRUCK SAY IT WAS NOT PROPORTIONATE.
IF WE, IS IT IF WE DON'T FIND THE SENTENCE CLEARLY DISPROPORTIONATE, DO YOU CONSIDER IT BETTER THAT WE WAIT, NOT DECIDE ANYTHING ON--
>> LIKE, THIS RECORD IS PROPORTIONATE, OR ISN'T IT BETTER FOR THE DEFENDANT TO LET THE EVIDENCE GET FULLY DEVELOPED, LET THE JURY MAKE ITS DECISION FINDING THE AGGRAVATORS OR MITIGATORS, AND THEN IF THERE'S STILL A DEATH SENTENCE, THEN LOOK AT PROPORTIONALITY ON THE RECORD THAT'S PRESENTED AFTER, IN A NEW PENALTY PHASE WHERE YOU'LL HAVE A CHANCE TO REALLY FLESH OUT THE

INTELLECTUAL ISSUES BECAUSE IT
LOOKS LIKE YOU'VE GIVEN, YOU
KNOW, YOU'RE SORT OF CONCERNED
AS I SEE IT WITH THE PERFORMANCE
OF THE LAWYER THAT TRIED THIS
>> UNLESS THE COURT FINE IT
DISPROPORTIONATE.
NOTWITHSTANDING DEFENSE COUNSEL
REPEATED FAILURES, WE HAVE
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM ON THE RECORD HERE
THIS IS A CASE WHERE THERE IS
LOADS AND LOADS OF MITIGATION.
THERE IS ANOTHER CASE THAT
THIS COURT FOUND
DISPROPORTIONATE, PHILLIPS,
SINCE THE HURST DECISIONS, HURST
REVERSALS STARTED COMING OUT AND
IN HURST, IN PHILLIPS THIS COURT
NOTED THAT THE 18-YEAR-OLD
DEFENDANT WAS VERY CLOSE TO CAT
BORE CALL EXEMPTION FROM THE
DEATH PENALTY AND LOOKED AT THAT
IN TERMS OF SIGNIFICANCE OF HIS
AGE AS MITIGATOR AND THE COURT
SHOULD DO THE SAME WITH RESPECT
TO BORDERLINE INTELLECTUAL
FUNCTIONING HERE.
>> HOW OLD WAS MR. GLOVER?
>> MR. GLOVER WAS AN ADULT, 48.
IF HE IS ALMOST INTELLECTUALLY
DISABLED EXCHANGES IN THE OF
AUTHORITY IN THE DAYS BEFORE THE
ARGUMENT WHETHER HE
INTELLECTUALLY DISABLED, IF
WE'RE HAVE A DEBATE WHAT IS THE
GOLD STANDARD OR DEFICITS, WE'RE
THAT CLOSE--
>> I SEE A PROBLEM WITH YOUR
ARGUMENT.
THE STANDARD HERE WHETHER THERE
IS COMPETENT SUBSTANTIAL
EVIDENCE TO SUPPORT THE TRIAL
JUDGE'S FINDINGS BE THE TRIAL
JUDGE'S FINDINGS ON THIS ISSUE
WOULD NOT FAVOR YOUR CLIENT'S
DECISION.
YOU WOULD DISAGREE WITH THE
EVIDENCE, POINT TO OTHER
EVIDENCE, THERE IS EVIDENCE YOU

WOULD CONCEDE THAT WOULD SUPPORT
THE TRIAL JUDGE'S FINDINGS ON
THESE ISSUES?
HIS WORK HISTORY, THE FACT THAT
HE TOOK CARE OF HIMSELF, THE
FACT THAT HE TOOK CARE OF HIS
SISTERS WHEN SHE WAS IN NEED.
>> YOUR HONOR--
>> ADAPTIVE FUNCTIONING, HE MADE
DETAILED FINDINGS SUPPORTED BY
TESTIMONY THAT HE DIDN'T HAVE
DEFICITS IN ADAPTIVE
FUNCTIONING.
>> SO MY POINT, YOUR HONOR, IS,
IF WE'RE HAVING A BIG DEBATE
ABOUT INTELLECTUAL DISABILITY,
IF IT IS THAT CLOSE, WE'RE
SPENDING TIME DEBATING IT, IT'S
A VERY SIGNIFICANT MITIGATING
CIRCUMSTANCE THIS COURT SHOULD
CONSIDER.
IN ADDITION, THERE ARE SERIOUS
MENTAL ILLNESS ALL OVER THIS
RECORD.
THE TRIAL COURT FOUND THAT
SUBSTANTIAL AND COMPETENT AND
GAVE IT SOME WEIGHT, BIPOLAR
DISORDER, SCHIZOPHRENIA, SCHIZO
DEFECTIVE DISORDER, MEDICATIONS
THAT ARE VERY ANTI-PSYCHOTIC
MEDICATIONS.
>> AS YOU GET IN THE PENALTY
CHASE AS YOU HAVE A CHANCE, THE
ISSUE IS HOW DID THOSE SERIOUS
MENTAL ILLNESSES AFFECT, WE
DON'T KNOW WHAT THE MOTIVATION
FOR THE CRIME IS, TO BE ABLE TO
MAKE IT A STATUTORY MITIGATOR.
ALTHOUGH WE HAVE NEVER EVER
CLEARLY SAID IF IT IS STATUTORY
IT IS DIFFERENT BUT TO ME IT IS
BECAUSE ONE IS AFFECTING THE
PERSON'S ABILITY TO CONTROL HIS
OR HER BEHAVIOR AT THE TIME THE
CRIME IS OCCURRING, AKIN TO WHY
ATKINS CAME OUT ABOUT MENTAL
INTELLECTUAL DISABILITY AND
MENTAL ILLNESS, SERIOUS MENTAL
ILLNESS CAN FUNCTION IN THE SAME
WAY AND REDUCE CULPABILITY.

SO HOW DO YOU TIE UP OR HOW WAS IT TIED UP THAT THOSE SERIOUS MENTAL ILLNESSES WERE AFFECTING HIM?
THINK OF A CASE LIKE SINCE YOU SEEM TO BE FAMILIAR WITH OUR JERUSALEM PRUDENCE, CROOK, IT WAS A TERRIBLE MURDER BUT EVIDENCE OF MENTAL HEALTH MITIGATION WAS SERIOUS TO HAVING MURDER OCCURRING.
>> SOMETIMES NOT ALWAYS WHEN THE COURT FOUND PROPORTIONALITY, COURT FOUND DEATH SENTENCES DISPROPORTIONATE, ONE OF THE CASES OFFERED REALLY LOOKS AT THE FACT THAT SOME MENTAL ILLNESSES, THEY'RE NOT JUST A DIAGNOSIS THAT AN EXPERT HAS GIVEN BEFORE A CAPITAL TRIAL. THEY'RE A DIAGNOSIS OF A CHRONIC CONDITION THAT IS LIFELONG, THAT IS GOING TO BE TREATED THAT IS OCCURRING IN PATIENT HOSPITALIZATIONS, AND OFFERED THAT THE COURT TALKED ABOUT THE GLOBAL ASSESSMENT FUNCTIONING OF THE DEFENDANT WHICH WAS A 40 WHEN HE WAS IN THESE HOSPITALIZATIONS.
THE GLOBAL ASSESSMENT FUNCTIONINGS OF OUR SCORE IN THESE RECORDS ARE 20 AND 25.
THIS IS AN ON GOING THING.
HE CONTINUED TO BE IN TREATMENT FOR HIS BIPOLAR DISORDER AT THE TIME THAT THIS CRIME OCCURRED.
IT WAS CONTINUING CONDITION.
HE WAS IN TREATMENT AT AGAPE.
HE WAS BEING PRESCRIBED VERY SERIOUS ANTI-PSYCHOTIC MEDICATION WHICH SHOW THE SIGNIFICANCE OF HIS MENTAL ILLNESS.
HE WAS AT ONE POINT FOUND ON AN EXPRESSWAY TALKING TO HIMSELF, HEARING VOICES, TELLING HIM TO KILL HIMSELF.
HIS MENTAL ILLNESS WAS EXACERBATED.

>> YOU'RE WELL INTO YOUR
REBUTTAL.
YOU'RE WELCOME TO CONTINUE.
>> I WILL WRAP UP THERE IS OTHER
MITIGATION HERE AS WELL, THIS
CLIENT HAD STRABISMUS, A
CROSS-EYED CONDITION WHERE HE
WAS CRITICIZED AS CHILD.
HIS FATHER WALK THE OUT OF THEM
AGE 10, BEING IN MENTAL
FACILITIES, MOTHER LEFT OUT OF
HIGH SCHOOL, THERE IS NO WAY
THIS IS ONE OF THE LEAST
MITIGATED CASES AND
PROPORTIONALITY RELIEF SHOULD BE
GRANTED.
THANK YOU, YOUR HONOR.
>> MAY IT PLEASE THE COURT.
GLAD MORNING MY NAME IS DONNA
PERRY, I'M AN ASSISTANT ATTORNEY
GENERAL.
I WOULD LIKE TO START WITH ISSUE
NUMBER TWO.
>> WOULD YOU SPEAK UP.
>> CERTAINLY.
SUFFICIENCY OF EVIDENCE
SPECIFICALLY WITH REGARD TO I.D.
AS THE COURT ALREADY POINTED OUT
WE HAVE DNA OF THE DEFENDANT ON
THE WOUNDS OF THE VICTIM.
HIS DNA WAS FOUND ON HER NECK
AND FACE WHERE SHE WAS BEATEN
AND STABBED.
THE STATISTICS WERE ONE IN
3,000, EXPERT OF CLARK, THE
STATISTIC EXCLUDES 99% OF THE
POPULATION.
>> THERE WERE OTHER DNA ON HER
INCOME ALSO THERE?
>> THERE WAS A THIRD PERSON'S
DNA UNIDENTIFIED.
HOWEVER, THE DEFENDANT'S DNA WAS
ALSO ON HER LEFT HAND.
THAT STATISTIC BEING ONE IN
1.93 QUINTILLION.
IN ADDITION TO THE DEFENDANT'S
DNA ON THE VICTIM.
>> HIS DNA ON HER HANDS.
HIS THEORY HE FOUND THE BODY
ALERTED NEIGHBORS.

SO THAT COULD ACCOUNT FOR THE DNA ON HIS HAND, COULDN'T IT?
>> IT WOULDN'T, THE REASON THAT IT WOULDN'T IN THIS CASE BECAUSE HE NEVER MAKES THE CLAIM HE ACTUALLY WENT IN.
WHAT HE SAYS IS THAT THE DOOR WAS AJAR.
HE SAW HER ON THE FLOOR, THEN HE RUNS OVER TO THE ALVINS TO ALERT THEM.
THE TESTIMONY OF MR. AND ALVIN WAS CLEAR THAT THE DEFENDANT DIDN'T GO INTO THE TRAILER WHEN THEY RESPONDED TO THE RESIDENCE.
THE ONLY PERSON--
>> IS EVIDENCE IS WHAT NOW?
>> THAT THE DEFENDANT NEVER WENT INTO THE HOME.
>> WHO SAID THAT.
>> MR. ALVIN AND MARY ALVIN, HIS WIFE, BOTH SAID THAT.
>> WHEN THEY CAME HE NEVER WENT INTO THE TRAILER.
>> THAT'S CORRECT.
>> THESE ARE THE PEOPLE HE WENT TO SAY SOMETHING HAS HAPPENED TO HER.
SO AT THAT POINT WHEN THEY WENT IN THERE HE WAS STANDING OUTSIDE?
>> THAT'S CORRECT.
>> OKAY.
>> THEY ALSO, I'M SORRY?
>> WHO DID HE TELL, WHO DID HE MAKE THE STATEMENT TO THAT HE SAW THE DOOR AJAR, DID NOT GO IN AND GOT THE ALVINS?
>> DETECTIVE ANDERSON.
>> OKAY.
>> ADDITIONALLY WHEN MR. AND MRS. ALVIN WERE ON SCENE THEY TESTIFIED THERE WERE NO BLOOD TRAILS OR FOOTPRINT.
ONE OF THE DETECTIVES ACTUALLY SPECIFICALLY TESTIFIED THEY USED A DELPM MACHINE TO LOCATE FOOTPRINTS UNDER THE BLOOD AND NONE WERE FOUND.
IN ADDITION TO THE DEFENDANT'S

DNA FOUND ON THE VICTIM, THE
VICTIM'S BLOOD WAS FOUND ON BOTH
THE DEFENDANT'S SANDALS.
12 SPOTS ON THE LEFT AND TWO ON
THE RIGHT.
THE STATISTIC WAS ONE IN
90 QUINTILLION IT WAS THE
VICTIM'S DNA.
>> SOUNDED LIKE FROM THE
DESCRIPTION THERE WAS A LOT
BLOOD AROUND.
SO WAS THERE ANY, ANYWHERE ELSE?
I MEAN WAS THE BOTTOM OF THE
SHOES WITH BLOOD?
I MEAN WAS THERE, WAS HIS
CLOTHES TESTED FOR BLOOD?
>> HIS CLOTHES WERE TAKEN BUT
THERE WAS NO BLOOD FOUND
ANYWHERE OTHER THAN SHOES.
MARY ALVIN TESTIFIED THAT THE
DEFENDANT WALKED TOWARDS THE
SCENE THREE SEPARATE TIMES.
IF HE HAD COMMITTED THE MURDER
THE FIRST TIME HE WOULD HAVE HAD
TWO SEPARATE OPPORTUNITIES TO
TAKE HIS CLOTHING OFF.
ADDITIONALLY, I'M SORRY, GO
AHEAD.
>> IS THERE ANY, DO WE HAVE
EVIDENCE THAT HE CHANGED
CLOTHES?
>> WE DO NOT.
>> THAT IS KIND OF BIZARRE
BEHAVIOR, IF HE KILLED HER, WAS
THE STATE'S THEORY HE WAS, WHAT
WAS HE DOING WALKING BACK AND
FORTH?
HOW LONG HAD HE LIVED IN THIS
NEIGHBORHOOD?
>> HE HAD LIVED IN THE
NEIGHBORHOOD A COUPLE MONTHS.
HIS GIRLFRIEND WHO HE MOVED IN
WITH HAD LIVED THERE MANY YEARS.
THE TESTIMONY OF MARY ALVIN, SHE
SAW HIM FIRST AT APPROXIMATELY
8:00 P.M. SHE NEVER SEES HIM
LEAVE THE AREA BECAUSE SHE IS
BUSY DOING OTHER THINGS.
THEN SEES HIM GO AGAIN TOWARDS
THE VICTIM AS HOME AT 9:00 A.M.

AND THEN A THIRD TIME.
>> WHAT WAS THE THIRD TIME?
>> APPROXIMATELY 10:00 A.M.
>> WHAT IS THE TIME, WHEN DOES HE COME AND SAY, COME, SHE IS WHATEVER?
>> SHE, MARY ALVIN INDICATED THAT THE DEFENDANT WENT THERE THE THIRD TIME SOMETIME AROUND 10:00 A.M., BUT THEN SAID IT WAS 10:30 THAT THE DEFENDANT CAME AND REPORTED THE BODY.
HOWEVER SHE WADE IT WAS VERY QUICKLY AFTER THE THIRD TIME THAT SHE SAW HIM.
SO THE THIRD TIME MAY HAVE BEEN 10:00, 10:15, 10:30.
>> HE WASN'T OBVIOUSLY, THE CLOTHES, ANY INDICATION THE CLOTHES WERE COVERED, HAD ANY BROOD ON THEM?
>> NO.
>> DID THEY EVER FIND ANY BLOODY CLOTHES OF HIS OWN?
>> THEY DID NOT BUT THEY ALSO DID NOT SEARCH THE DEFENDANT'S RESIDENCE UNTIL THE NEXT DAY.
SO HE HAD PLENTY OF OPPORTUNITY TO GET RID OF THE CLOTHING.
>> WHERE WAS HE ARRESTED? WASN'T HE ARRESTED AT THAT SAME TIME?
>> NO, HE WAS ARRESTED MONTHS LATER.
>> WHAT WAS THE STATE'S THEORY OF THE MOTIVATION FOR THE CRIME?
>> SEXUAL ASSAULT.
THERE IS CASE CAME OUT JUST IN APRIL, APRIL 6th, FROM THIS COURT, GUZMAN, WHERE THE VICTIM WAS IN VERY SIMILAR CIRCUMSTANCE TO THE VICTIM FOUND IN THIS CASE.
THE VICTIM WAS ON THE FLOOR.
SHE WAS NAKED FROM THE WAIST DOWN.
HER SHORTS AND UNDERWEAR HANGING ON THE ANKLE LIKE WE HAVE HERE.
HERE IN GUZMAN THERE WAS NO SPERM.

HERE TWO SPERM HEADS WERE FOUND
UNFORTUNATELY NOT ENOUGH FOR
DNA.
IN GUZMAN SAID THE LACK OF
GENITAL TRAUMA WAS NOT
INDICATIVE THAT SEXUAL ASSAULT
DID NOT OCCUR AND COULD BE A
MOTIVE FOR THE MURDER.
>> IT WAS CLEAR FROM THIS RECORD
THERE WAS NO VAGINAL TRAUMA.
THERE WAS NOTHING, THERE WAS NOT
ENOUGH IN THE VAGINAL
CAVITY TO SAY MR. GLOVER'S
SPERM WAS THERE?
>> CORRECT.
HOWEVER PURSUANT TO GUZMAN THE
FACT THERE WAS NO TRAUMA DOES
NOT INDICATE SEXUAL SOUGHT WAS
NOT THE MOTIVE.
I WOULD SUBMIT THE FACT THE
EVIDENCE HERE WAS THAT THE
MOTIVE FOR THE MURDER.
>> THERE WASN'T A SEPARATE COUNT
OR SEXUAL ASSAULT OR BATTERY?
>> THERE WAS NOT.
IN ADDITION, THE DEFENSE CITED
THE FINNEY CASE IN REGARD TO
REASONABLE HYPOTHESIS OF
INNOCENCE.
I WANT TO QUOTE WHAT FINNEY
SAYS.
FINNEY SAID, QUOTE, THE STATE IS
NOT REACQUIRED TO REBUT EVERY
HYPOTHESIS INFERRED FROM THE
EVIDENCE.
IT NEEDS ONLY PRESENT EVIDENCE
WHICH IS INCONSISTENT TO THE
DEFENDANT'S VERSION OF EVENTS.
I WOULD SUBMIT PURSUANT TO
JACKSON I WOULD MEAN THAT IS
EVIDENCE HE PRESENTED AT TRIAL.
THE DEFENDANT REQUIRED
EXCLUSIVELY ON ALIBI WHERE THE
DEFENDANT REQUIRED EXCLUSIVELY
AT TRIAL IT WASN'T ME, THAT THE
ONLY POSSIBLE CONCLUSION FROM
THE EVIDENCE AT TRIAL WAS THAT
THE DEFENDANT WAS EITHER NOT
PRESENT OR HE COMMITTED THE
MURDER.

AND GIVEN THE LANGUAGE FROM
JACKSON, GIVEN THE LANGUAGE FROM
FINNEY, I THINK IT IS CLEAR
WE'RE NOT REACQUIRED TO RYE BUT
EVERY POSSIBLE INFERENCE.
WE'RE REACQUIRED TO REBUT
REASONABLE INFERENCES DRAWN FROM
THE EVIDENCE PRESENTED AT TRIAL
AND THERE WAS NO EVIDENCE
PRESENTED OR EVEN ATTEMPTED TO
BE PRESENTED AT TRIAL BY THE
DEFENSE THAT THE DEFENDANT HAD
ANY REASON TO BE THERE.
IN FACT THE ONLY EVIDENCE
PRESENTED AT TRIAL WAS FROM THE
VICTIM'S DAUGHTER, THAT THE
DEFENDANT DID NOT KNOW THE
VICTIM AND HAD NEVER BEEN IN
THEIR HOME.
>> DID, SPEAKING OF THAT, WHAT
WAS THE ACTUAL TESTIMONY OF THE
DAUGHTER?
DID SHE SAY DEFINITELY THAT THE
DEFENDANT HAD NEVER BEEN IN THE
HOME OR DID SHE SAY THAT AS FAR
AS SHE WAS AWARE.
THE DEFENDANT HAD NEVER BEEN IN
THE HOME?
>> SHE SAID HE HAD NEVER BEEN IN
THE HOME AND DID NOT KNOW HER
MOTHER.
>> OF COURSE THAT'S, OBVIOUSLY,
SHE DIDN'T LIVE WITH HER.
IF THERE WERE OTHER FACTORS
THERE, THAT ALONE--
>> SHE DID LIVE WITH HER.
>> OH, SORRY.
>> IN ADDITION, NOT ONLY DID SHE
LIVE THERE, SHE WAS ACTUALLY ON
HOUSE ARREST.
SO WAS AT THE APARTMENT ALL THE
TIME.
SO THE ONLY REASON SHE WASN'T
THERE NIGHT OF THE MURDER GIVING
THE DEFENDANT AN OPPORTUNITY TO
COMMIT THIS CRIME IS BECAUSE
QUITE FRANKLY SHE VIOLATED HER
HOUSE ARREST AND WENT OUT FOR
THE EVENING.
SO SHE WAS ALWAYS THERE AND

TESTIFIED THAT THE DEFENDANT HAD
NEVER BEEN IN HER HOME.
AND HER MOTHER ONLY LIVED THERE
FOR A COUPLE OF MONTHS.
THE DAUGHTER ACTUALLY WAS LIVING
THERE FIRST.
>> THE DAUGHTER WAS ACTUALLY
WHAT?
>> LIVING THERE FIRST.
>> IT WAS HER TRAILER.
>> IN REGARD TO PREMEDITATION,
THE EVIDENCE WAS MORE THAN
SUFFICIENT TO SUPPORT THAT.
IN FACT, THE GUZMAN CASE THAT I
MENTIONED EARLIER FROM APRIL
THIS YEAR HAD AGAIN VERY SIMILAR
FACTS.
PREMEDITATION WAS FOUND THERE.
ADDITIONALLY IN THE PERRY CASE,
IT WAS NOTED THAT THE NATURE,
NUMBER AND MANNER OF THE WOUNDS
SHOW THE DELIBERATE MANNER IN
WHICH THE DEFENDANT WAS TRYING
TO EFFECT WAIT MURDER.
I WOULD CITE TO RUSS, RUSS BEING
PARTICULARLY APPROPRIATE IN
REGARD TO PREMEDITATION BECAUSE
IN RUSS JUST LIKE WE HAVE HERE
THE VICTIM WAS BEATEN, THEN
STRANGLED, THEN STABBED, AND THE
COURT SAID IT WOULD BE A
ILLOGICAL TO CONCLUDE THE VICTIM
WAS ANYTHING BUT CONSCIOUS
DURING THE COURSE OF THAT ATTACK
AND THAT THE MULTIPLE USES,
MULTIPLE ATTEMPTS TO EFFECTUATE
DEATH SHOWED THE PREMEDITATED
NATURE OF THE ACT.
>> IF THE DAUGHTER WAS ON HOUSE
ARREST, WHERE WAS SHE AT THE
TIME OF THE MURDER?
>> SHE WENT OUT WITH HER FRIEND
FOR THE NIGHT.
SHE DID NOT COME BACK UNTIL SHE
FOUND OUT HER MOTHER HAD BEEN
MURDERED.
IF I COULD MOVE ON TO--
>> AGAIN, THERE WAS NO
SUGGESTION THAT SOMEHOW THE
MOTHER, THE DAUGHTER WITH

WHATEVER, I MEAN THAT IS SORT OF CONVENIENT, RIGHT?
THE DAUGHTER IS NOT THERE THE NIGHT THAT ANYBODY CONNECTED WITH THE DAUGHTER, ANYTHING WITH DRUGS, HAD ANYTHING TO DO WITH THIS CRIME?
>> NO, EVIDENCE, NO SUGGESTION OF THAT WHATSOEVER.
WHICH DISTINGUISHES THE CASE FROM THE WOODS CASE THAT THE DEFENSE TRIED TO CITE AND TRIED TO ARGUE WAS APPLICABLE, BECAUSE IN THAT CASE THE DAUGHTER ACTUALLY INHERITED A HALF A MILLION DOLLAR LIFE INSURANCE POLICY WHICH SHE USED WITHIN A YEAR OF HER MOTHER'S DEATH.
THERE WAS ACTUALLY SPECIFIC CROSS-EXAMINATION TESTIMONY IN THAT CASE IN REGARD TO HER POTENTIAL MOTIVE.
THERE WAS NOTHING LIKE THAT HERE.
IN REGARD TO THE EVIDENCE SUPPORTING A FINDING OF HEINOUS, ATROCIOUS AND CRUEL, I WOULD NOTE NOT ONLY THE MULTIPLE WAYS WHICH THE DEFENDANT CARRIED OUT THIS ATTACK BUT, HER HYOID BONE WAS BROKEN.
HER THYROID CARTILAGE IN HER NECK WAS BROKEN.
HER VOICE BOX WAS CRUSHED.
SHE WAS STABBED 12 TIMES.
FOUR OF THOSE STABS WERE FATAL.
ADDITIONALLY SHE HAD TO STILL BE CONSCIOUS WHEN THAT FIRST STAB WOUND OCCURRED.
THE REASON WE KNOW THAT BECAUSE THE DEFENSE ACTUALLY PRESENTED A BLOOD SPATTER EXPERT AND THE EXPERT TESTIFIED THAT THE BLOOD SPATTER, QUOTE ON THE WALL THAT IS ABOVE THE FLOOR WOULD MEAN MAYBE INJURIES ARE OCCURRING HERE NOT STANDING BUT NOT LYING ON THE FLOOR.
WHEN HE WAS PRESSED, HE ADMITTED THE ONLY LOGICAL INFERENCE WAS

THAT THE SPLAT ARE WAS CREATED
WHEN THE VICTIM WAS FALLING.
THAT IS SIGNIFICANT BECAUSE THAT
MEANS THAT FIRST STAB HAD TO
HAVE HAPPENED WHILE SHE WAS
STANDING WHICH WOULD MEAN SHE
WAS CONSCIOUS.
AND OF COURSE, PURSUANT TO
FRANCES, BULLS AND TOMKINS, HAC
APPLIES WHEN A DEFENDANT
STRANGLES A CONSCIOUS VICTIM.
PURSUANT TO GUZMAN, ROGERS, HAC
APPLIES IN CASES WITH MULTIPLE
STAB WOUNDS THAT THE VICTIM IS
CONSCIOUS.
WE HAVE SPECIFIC EVIDENCE HERE
THAT SHE WAS IN FACT WAS.
IF I COULD MOVE ON TO ISSUE
NUMBER SIX.
THE DEFENDANT DOES NOT MEET THE
CRITERIA FOR INTELLECTUAL
DISABILITY PURSUANT TO ATKINS
AND HALL.
THE DEFENDANT ACTUALLY REFUSED
TO MEET WITH BOTH DOCTOR,
PRITCHARD AND NADIG HOWEVER THE
DEFENSE MADE THE COMMENT THAT
THE TEST AT THAT WAS GIVEN TO
THE DEFENDANT AT THE AGE OF 16
WAS NOT THE APPROPRIATE TEST.
IN FACT THE TESTIMONY FROM
DR. PRICHARD IN VOLUME 12, THAT
WAS THE APPROPRIATE TEST TO BE
GIVEN AT THAT TIME.
THERE IS NO EVIDENCE ON THE
RECORD THAT WAS NOT THE
APPROPRIATE TEST.
DEFENSE CLAIMS THAT THE 67 SCORE
THAT RESULTED FROM THE
ABBREVIATED SCALE, THAT THE
ABBREVIATED SCALE WAS THE GOLD
STANDARD I BELIEVE IS IS THE
TERM THEY WERE USING, THAT'S
SPECIFICALLY REBUTTED BY THEIR
OWN EXPERT.
DR. NADIG TESTIFIED THAT HE DID
NOT EXAMINE THE DEFENDANT TO
EARLY DETERMINE IF HE WOULD
QUALIFY FOR INTELLECTUAL
DISABILITY.

BUT HE ONLY EXAMINED HIM FOR
COMPETENCY.
>> WASN'T THERE SOME PROBLEM
WITH THE, WASN'T HE GIVEN
ABBREVIATED TEST?
>> YES.
>> THERE WAS SOME PROBLEM WITH
THOSE TESTS?
>> YES.
DR. MADE DIG SPECIFICALLY SAID
HAD HE BEEN DOING AN VALUATION
FOR INTELLECTUAL DISABILITY HE
WOULD NOT HAVE USED AN
ABBREVIATED TEST BECAUSE IT IS
NOT APPROPRIATE IN CAPITAL CASE.
>> THAT IS THE 67 SCORE?
>> IT IS.
>> RIGHT.
>> IN ADDITION, TO, THEY MADE A
COMMENT ABOUT THE 2013 SCORE OF
67 BEING THE ONE WE SHOULD
CONCENTRATE ON BECAUSE IT IS THE
MOST RECENT.
DR. PRICHARD SPECIFICALLY
TESTIFIED THAT THAT WAS AN
ABBREVIATED SCHOLASTIC TEST, NOT
A FULL-SCALE I.Q. TEST.
AS SUCH SHOULD NOT BE CONSIDERED
IN CAPITAL LITIGATION.
SO THE TRIAL COURT FOUND THAT
THE 1998 SCORE OF 80, WHEN THE
DEFENDANT WAS 16 WAS THE MOST
RELIABLE BOTH EXPERTS GAVE
EVIDENCE LEADS TO THAT
CONCLUSION.
IT IS SUPPORTED BY COMPETENT AND
SUBSTANTIAL EVIDENCE.
>> WHAT TEST WAS THAT THAT WAS
GIVEN?
THAT RESULTED IN THE SCORE OF
80?
>> IT WAS THE WECHSLER
INTELLIGENCE SCALE FOR CHILDREN.
>> WHICH VERSION.
>> I DO NOT KNOW THE ANSWER.
HOWEVER IT IS THE VERSION THAT
WAS GIVEN PRIOR TO HIS 18th
BIRTHDAY WHICH GOES TO THE THIRD
PRONG AS WELL WHICH I GET INTO
IN A MOMENT.

I WANT TO GO IN ORDER OF THE PRONGS.
>> BUT I THOUGHT I HEARD THE ARGUMENT THAT THAT, IS THAT THE TEST THAT WAS ARGUED HE WAS GIVEN THE 1940 SOMETHING VERSION VERSUS THE VERSION THAT WAS MORE RECENT?
THE 1974 VERSION I BELIEVE WHICH-- 1940 SOMETHING VERSION OF THAT TEST?
>> THEY DID MAKE THAT ARGUMENT. THE TESTIMONY WAS THAT THAT WAS THE APPROPRIATE TEST AT THE TIME.
I DO NOT KNOW WHEN, WHAT YEAR THAT TEST WAS CREATED.
IN REGARD TO THE THREE PRONGS, SUBAVERAGE INTELLIGENCE THE 80 SCORE BELIES ANY CONTENTION THAT THE DEFENDANT HAS SUBAVERAGE INTELLIGENCE EVEN CONSIDERING THE STANDARD ERROR OF MEASUREMENT.
THE DEFENDANT WOULD NOT BE INTELLECTUALLY DISABLED.
HIS SCHOOL RECORDS STATE HE DID WELL IN ALL RECORDS.
HE IS A VERY GOOD MATH STUDENT.
HAS A GOOD POTENTIAL, SHOWN GREAT DEAL OF IMPROVEMENT IN ALL AREAS.
DR. PRICHARD INDICATED HE FOUND NOTHING IN THE SCHOOL RECORDS WHICH WOULD INDICATE INTELLECTUAL DISABILITY.
THE DEFENSE MADE MUCH OF THE FACT THAT THE DEFENDANT WAS IN LEARNING DISABILITY CLASSES.
THE CLASS HE WAS IN IS CALLED SPECIAL ED FOR SPECIFIC LEARNING DISABILITY WHICH DR. PRICHARD TESTIFIED IS NOT A CLASS FOR THOSE WHO ARE INTELLECTUALLY DISABLED BUT INSTEAD IS A CLASS FOR PEOPLE WHO ARE NOT PERFORMING AS WELL AS THEY SHOULD.
>> I ALWAYS ON THAT ONE, I ALWAYS THINK, SCHOOLS DON'T

MISDIAGNOSE OR PUT STUDENT IN PLACES-- DID HE GRADUATE HIGH SCHOOL?
>> HE DROPPED OUT AFTER 10th GRADE.
>> AND THEN FROM, I'M, IT SOUNDS TO ME LIKE, DO YOU AGREE THAT HE HAD SERIOUS MENTAL ILLNESS DURING HIS LIFETIME?
>> HE DID HAVE SOME DOCUMENTED MENTAL ILLNESS, HOWEVER, IN THE MEDICAL RECORDS IT WAS NOTED THAT HE WAS TAKING HIS MEDICATION AND IN FACT, NOT ONLY DID HE, IN REGARD TO SPEAKING WITH HIS DOCTORS, NOT ONLY DID THE DEFENDANT INDICATE HE WAS TAKING HIS MEDICATION AT THE TIME OF THE MURDER, BUT ALSO HIS FAMILY MEMBERS WHO TESTIFIED INDICATED THAT THEY HAD HAD CONTACT WITH HIM IN THE WEEKS AND MONTHS SURROUNDING THE MURDER AND DID NOT KNOW ANY MENTAL OR EMOTIONAL DIFFICULTIES THE DEFENDANT WAS HAVING.
SPECIFICALLY HIS GIRLFRIEND TESTIFIED THAT SHE MADE SURE THE DEFENDANT TOOK HIS MEDICATION EVERY DAY, AND THAT HE WAS FINE.
AND WAS ABLE TO NOT ONLY TAKE CARE OF HIMSELF BUT TAKE CARE OF EVERYONE ELSE IN THE HOUSEHOLD.
>> DOES THE RECORD REFLECT WHAT AGE THE DEFENDANT OBTAINED HIS GED?
>> I DO NOT RECALL.
I KNOW THAT HE DID GET IT.
I BELIEVE IT WAS LATER WHEN HE WAS IN PRISON FOR ONE OF HIS PRIOR CONVICTIONS BUT I DON'T KNOW HOW OLD HE WAS.
IN REGARD TO PRONG TWO, CURRENT DEFICITS AND ADAPTIVE FUNCTIONING I TALKED ABOUT HIS FAMILY MEMBERS TESTIMONY BUT SPECIFICALLY HIS SISTER-IN-LAW INDICATED THAT THE DEFENDANT LIVED WITH HER FOR OVER A YEAR.
DURING THAT TIME HE HELPED RUN

HER BUSINESS, TOOK CARE OF HER GRANDCHILDREN.
HE ALSO DURING THE COURSE OF THIS LITIGATION WROTE LETTERS TO THE COURT AND TO HIS DAUGHTER WHICH DR. PRITCHARD DESCRIBED AS NOT INTELLECTUALLY DISABLED LETTERS.
SO WE HAD HIS OWN WORDS TO BE ABLE TO JUDGE WHETHER HE WAS HAVING ANY INTELLECTUAL DEFICIENCY AND THAT WAS FOUND NOT TO BE OCCURRING.
IN REGARD TO NUMBER THREE, ONSET BEFORE 18, AS I NOTED THE 1980 SCORE OF 80 WAS WHEN THE DEFENDANT WAS 16.
SO JUST PRIOR TO HIS 18th BIRTHDAY.
THAT SHOWS THERE WAS NO DEFICIT IN HIS INTELLECTUAL FUNCTIONING.
THE TESTIMONY FROM HIS FAMILY MEMBERS AS WELL AS SPECIFICALLY HIS SCHOOL RECORDS SHOW NO DEFICITS PRIOR TO THE AGE OF 18.
IF I COULD MOVE ON TO ISSUE NUMBER 11.
THE TRIAL COURT WAS CORRECT TO, CONCLUDE THE EVIDENCE OF THE VICTIMS INTOXICATION.
THE DEFENSE TRIES TO SAY THAT IT WAS A FINAL RULING, THAT THE DEFENDANT DIDN'T TESTIFY BECAUSE THE TRIAL COURT HAD MADE IT CLEAR WHAT THEY WOULD DO.
THAT IS NOT THE CASE.
JUSTICE PARIENTE, YOU ACTUALLY QUOTED WHAT THE TRIAL COURT SAID.
THE JUDGE IN THAT CASE, SHE MADE IT VERY CLEAR NOT ONLY DID SHE, WAS SHE WILLING TO REVISIT BUT SHE WAS ENCOURAGING THE DEFENSE, GO AHEAD, PRESENT SOME EVIDENCE, GIVE ME A REASON TO RECONSIDER MY RULING AND I WILL.
THEY NEVER DID THAT.
THE DEFENSE NEVER TRIED TO PRESENT ANY EVIDENCE OF ANYONE WHO MAY HAVE SEEN THE VICTIM

TAKING DRUGS, ANYONE WHO MAY
HAVE SEEN THE DEFENDANT AND
VICTIM TOGETHER.
NOTHING WAS EVER PRESENTED.
THAT IRRELEVANT EVIDENCE WAS
PROPERLY EXCLUDED UNDER RULE
4403.
IN FACT THE REAL REASON THE
DEFENDANT WANTED TO GET THAT
EVIDENCE IN HE ADMITTED DURING
THE COURSE OF THE GOVERNMENT
TRIAL HEARINGS WHEN HE SAID HE
WANTED TO GET IT IN IN ORDER TO
ATTACK THE VICTIM AND HER
FAMILY'S CHARACTER.
AND THAT WAS AT VOLUME 11, PAGE
1916.
IF WE COULD TURN TO ISSUE NUMBER
FIVE, PROPORTIONALITY.
OF COURSE HEINOUS, ATROCIOUS AND
CRUEL HAS BEEN IDENTIFIED AS ONE
OF THE WEIGHT AT THIS
AGGRAVATING FACTORS, THAT IS
PURSUANT TO JOHNSON.
PRIOR VIOLENT FELONY THE SECOND
AGGRAVATOR WE HAVE HERE IS
CALLED ONE OF OUR WEIGHT AT
THISSEST PURSUANT TO HODGES AND
SYLVIA.
SPECIFICALLY IN REGARD TO
PARTON, A CASE WE CITED IN OUR
BRIEF, OTHER THAN TALKING ABOUT
PARTON I WILL REST ON THOSE
CASES, IN PARTON, WE HAD THE
EXACT SAME AGGRAVATORS THAT WE
HAD HERE.
WE ALSO HAD SEVEN NON-STATUTORY
MITIGATORS INCLUDING MENTAL
DISORDER, BRAIN ABNORMALITIES, A
HEAD TRAUMA, MAJOR DEPRESSIVE
DISORDER, BIPOLAR, EXACTLY LIKE
WE HAVE HERE, INTERMITTENT,
EXPLOSIVE PERSONALITY DISORDER.
IN THAT CASE THE VICTIM WHO WAS
SIMILAR TO OUR VICTIM HERE WAS
STABBED, STRANGLED, FOUND WITH
HER SHIRT PULLED UP OVER HER
SHOULDERS NUDE FROM THE WASTE
DOWN BUT NO EVIDENCE OF TRAUMA
FOR THE ASSAULT.

ONE OF THE DEFENDANT'S HAIRS IN
THAT CASE WAS FOUND IN HER
WOUNDS JUST LIKE WE HAVE THE
DEFENDANT'S DNA HERE FOUND IN
THE VICTIM'S WOUNDS.
AND THERE THIS COURT FOUND DEATH
WAS IN FACT PROPORTIONATE GIVEN
THE NATURE OF THE MURDER IN THAT
CASE.
UNLESS THERE ARE ANY OTHER
QUESTIONS I WILL RELINQUISH THE
PODIUM AND THANK YOU ALL FOR
YOUR TIME.
>> THANK YOU.
>> IF THIS IS A CASE, AS A CLOSE
CASE REGARDING ATKINS RELIEF,
THE COURT SHOULD CONSIDER THAT
AS HIGHLY SIGNIFICANT MITIGATION
AS BORDERLINE INTELLECTUAL
FUNCTIONING AND SHOULD GRANT
PROPORTIONALITY RELIEF.
>> BUT WHEN WE HEAR WHAT HAS
BEEN RECOUNTED, IT DOESN'T
REALLY SEEM LIKE A CLOSE CASE.
IT SEEMS LIKE THERE IS REALLY
VERY, VERY WEAK CASE ON THE
ADAPTIVE DEFICITS.
I MEAN WOULDN'T YOU AGREE?
I KNOW YOU WOULDN'T, BUT SEEMS
LIKE TO ME.
>> I DON'T AGREE YOUR HONOR, BUT
DR. PRICHARD WHOM THE STATE
RELIED ON SAID HE AGREED THERE
WERE ADAPTIVE DEFICITS AT PAGE
2008 OF THE RECORD.
>> HOW DID HE SAY THOSE, THE
DEFICITS WERE MANIFESTED AND
WHAT THEY WERE RELATED TO?
DID HE SAY THEY WERE RELATED TO
THE INTELLECTUAL DISABILITY OR
OTHER THINGS?
>> HE SAID THAT HE WAS CONCERNED
THAT THEY MIGHT NOT BE.
THAT'S INTERESTING BECAUSE IN
MOORE VERSUS TEXAS THE U.S.
SUPREME COURT SAID THAT--
>> NOT RELATED TO, HE THOUGHT
THEY WERE NOT RELATED TO THE
INTELLECTUAL DISABILITY BUT
OTHER BEHAVIOR ISSUES?

>> HE SAID TWO THINGS.
HE SAID, FIRST IT'S A MOOT ISSUE
BECAUSE HIS SCORE IS TOO HIGH,
WHICH VIOLATES HALL.
THEN HE SAID, IT MIGHT BE
RELATED TO MENTAL ILLNESS OR
PERSONALITY DISORDER WHICH THE
SUPREME COURT SAID IS NOT A
VALID BASIS FOR REJECTING
ADAPTIVE DEFICITS IN MOORE
VERSUS TEXAS IN OUR SUPPLEMENTAL
ANOTHER.
SO IT'S A VERY, VERY WEIGHTY
CASE AND SCORES CLUSTER AROUND
70, ALL THE SCORES EXCEPT FOR
THE 80 WHICH WAS THE WRONG TEST.
IT WAS A 1947 TEST GIVEN NOT
1974.
>> WHERE IS THE IN THE RECORD--
>> COURT CAN TAKE JUDICIAL
NOTICE.
WELL-ESTABLISHED.
SOMETHING DR. RICH HARD EVEN
RECOGNIZED HIS TESTIMONY.
THE ATTORNEY GENERAL SAID THIS
IS CASE INVOLVING SEXUAL
ASSAULT.
I WANT TO EMPHASIZE FOR THIS
COURT, THAT WAS NEVER ARGUED
BELOW.
THAT WAS NEVER PRESENTED TO
JURY.
THAT WAS NEVER PRESENTED TO
SENTENCING JUDGE.
IN FACT THIS IS WHAT THE
PROSECUTOR TOLD THE JURY.
WE DON'T HAVE TO PROVE MOTIVE AT
PAGE-- 871.
WE DON'T KNOW WHY THIS HAPPENED
OR HAVE TO PROVE WHY THIS
HAPPENED.
WITH RESPECT TO THE PARTON WHICH
IS THE PROPORTIONALITY CASE THE
STATE IS HIGHLIGHTING HERE THAT
CASE IS FAR MORE AGGRAVATED AND
NOWHERE NEAR AS MITIGATED.
PARTON ABDUCTED A 16-YEAR-OLD
GIRL, TOOK HER TO THE WOODS,
STRANGLED HER WITH A LIGATURE.
IT COULD HAVE BEEN A MURDER ONE

BUT HE PLED DOWN.
THE DIAGNOSIS OF MENTAL HEALTH ISSUES IN THAT CASE CAME ONLY IN PREPARATION FOR THE CAPITAL TRIAL.
IT WAS NOT BASED ON PRIOR DIAGNOSES, PRIOR IN PATIENT HOSPITALIZATIONS WITH BIPOLAR DISORDER WITH SCHIZOPHRENIA AND THERE IS NO CLAIM OF INTELLECTUAL DISABILITY OR EVEN BORDERLINE INTELLECTUAL FUNCTIONING IN THIS CASE.
BORDERLINE INTELLECTUAL FUNCTIONING ON A IF WE DON'T GET TO THE AT CONCERNS LEVEL HAS BEEN RECOGNIZED REPEATEDLY BY THIS COURT IN HESS.
IT WAS RECOGNIZED BY THIS COURT AND ALSO MOSS RECENTLY IN THE PHILLIPS CASE IT WAS RECOGNIZED BY THIS COURT.
THE COURT ASKED SPECIFICALLY, POINT-BLANK, WHAT DID THE DAUGHTER SAY ABOUT KNOWING MR. GLOVER, MR. GLOVER KNOWING MISS ALLEN?
THE ATTORNEY GENERAL SAID THEY DIDN'T KNOW EACH OTHER PERIOD.
THE TESTIMONY THE COURT SHOULD LOOK AT IS TO MY KNOWLEDGE.
TO MY KNOWLEDGE.
THEY DIDN'T KNOW EACH OTHER.
>> BUT OF COURSE, HER STATEMENT IS GOING TO BE TO HER KNOWLEDGE.
HOW IS SHE GOING TO KNOW SOMETHING THAT IS NOT TO HER KNOWLEDGE?
THAT SEEMS LIKE WOULD BE, SEEMS LIKE A CIRCULAR ARGUMENT.
>> I THINK IT'S A QUALIFICATION ON HER KNOWLEDGE.
AGAIN SHE WAS OUT AT LITTLE CESAR'S WORKING.
SHE WAS AT HER FRIEND D'ANGELO'S HOUSE.
I WOULD LIKE TO ADDRESS--
>> YOU SAID SHE WAS OUT AT LITTLE CESAR'S WORKING.
>> YES.

>> SHE HAD A JOB AND WAS ALLOWED TO GO TO HER JOB.
>> YES.
>> IT WASN'T THAT SHE WAS AT THE HOUSE 24/7.
>> SHE WASN'T.
>> THAT IS WHAT I MUST HAVE THOUGHT.
>> PETE ALVIN TESTIFIED THAT CARS WERE COMING TO CARS PICKING HER UP.
WE HAVE THREE PIECES EVIDENCE.