>> THE NEXT CASE ON THE DOCKET
IS SNELGROVE VERSUS STATE.
TAKE YOUR TIME.
WHENEVER YOU'RE READY.
>> GOOD MORNING.
PLEASE THE COURT.
MY NAME IS ALI SHAKOOR.
I REPRESENT DEFENDANT, DAVID
SNELGROVE.
I WOULD LIKE TO ADDRESS THE
HEARST ISSUE.
>> PICK UP THE MIKE.
>> YES, YOUR HONOR.
FIRST OF ALL I LIKE TO ADDRESS
THE HEARST ISSUE.
MY CLIENT DID NOT RECEIVE
SUFFICIENT PENALTY PHYSICIAN.
I WOULD ASK THE COURT TO REMAND
THIS CASE TO THE CIRCUIT COURT
FOR PENALTY PHASE SO HE COULD
HAVE JURY OF FACT FINDERS AS
OPPOSED TO ADVISORY PANEL.
I TRUST HEARST IS RETROACTIVE.
>> WELL YOU CAN'T, IT IS 8-4 BUT
WHY DO YOU, I THINK THAT THE
ISSUE AS TO WHETHER IT IS
RETROACTIVE NOW THAT WE KNOW
WHAT HEARST MEANS IS SOMETHING
THAT HAS TO BE DECIDED.
ON HABEAS ON DIRECT APPEAL, IT
WAS VERY COMPETENT COUNSEL ON
THE SECOND DIRECT APPEAL, HEARST
WASN'T RAISED, BUT INTERESTINGLY
ON THE, I MEAN, RING.
BUT ON THE FIRST DIRECT APPEAL
THE, SAME OFFICE THE PUBLIC
DEFENDER RAISED THE RING ISSUE.
IS THERE ISSUE OF WHETHER WAIVER
WAS, OF THE RING-HEARST ISSUE
BECAUSE IT WASN'T RAISED ON
DIRECT APPEAL, BUT ON THE OTHER
HAND SINCE ABOUT ELSE WAS
RAISING IT, IS IT INEFFECTIVE
ASSISTANCE OF HABEAS RAISED?
>> YES, YOUR HONOR.
WE RAISED ON STATE HABEAS.
IT IS INEFFECTIVE ASSISTANCE OF
APPELLATE COUNSEL NOT TO RAISE
THE RING ISSUE OF THE AS THE
COURT FOUND IN HEARST, THE RING

ISSUES HAS BEEN RAISED AND
RELITIGATED DOZENS UPON DOZENS
OF TIME THE PAST 12 TO 15 YEARS.
>> BUT IT WAS REJECTED DOZENS
AND DOZENS OF TIME.
THE QUESTION WHETHER YOU CAN
RAISE SOMETHING THAT IN THE LAST
CASE, MR. HEARST THOUGHT WAS
FRIVOLOUS WOULD BE--
>> APPELLATE COUNSEL HAS
ABSOLUTE DUTY VIABLE CLAIMS.
BECAUSE IT IS REJECTED TIME AND
TIME AGAIN BY THIS COURT,
LOOKING NATIONALLY THE APPELLATE
COUNSEL SHOULD SEE FLORIDA IS AN
OUTLIER.
>> BUT YOU'RE RAISING HEARST
FIRST, BUT YOU RAISED A MENTAL
RETARDATION ISSUE.
WE'VE GOT SOME CASES NOW THAT
SAY THAT ALL WOULD APPLY IF, IF,
IN THIS CASE, YOU'RE NOT RAISING
A DIRECT CLAIM THAT HALL SHOULD
APPLY TO HIM.
YOU'RE RAISING AN INEFFECTIVE
ASSISTANCE CLAIM BUT IN THIS
CASE DIDN'T THE JUDGE, WASN'T
THERE EVIDENCE PRESENTED AT,
THAT IT WAS NOT BASED ON CHERRY,
ON A, CUTOFF, BUT ON THE FACT
THAT THERE WAS NO FINDINGS OF
ADAPTIVE FUNCTIONING AND ONSET
BEFORE 18?
SO, WHAT ARE YOU-- ARE YOU
ASKING FOR RETROACTIVE
APPLICATION OF HALL?
>> YES, MA'AM, YOUR HONOR.
>> BUT THEN, DOESN'T THE FACT
THAT IT WASN'T A STRAIGHT OR
REJECTING THIS BECAUSE THERE
WASN'T A CUTOFF, DOESN'T THAT
APPLY TO BAR-- AGAIN, I THOUGHT
YOU WERE RAISING IT MORE AS
INEFFECTIVE ASSISTANCE CLAIM AS
OPPOSED TO FREESTANDING CLAIM?
>> YES, YOUR HONOR.
ACTUALLY WE'RE RAISING IT AS
BOTH.
AS YOU SEE IN OUR CLAIM WE CITED
HALL V FLORIDA AND WE CITED AT

SKINS.
WE BELIEVE WE PRESERVED ISSUE.
AS FAR AS IAC COMPONENT WE'RE ARGUING THAT THE TRIAL COUNSEL WAS INEFFECTIVE FAILING TO FIND, CHRISTINE MATCH IS PROGRAM SPECIALIST, ADMINISTRATOR FOR SPECIAL EDUCATION--
>> BUT REALLY, HER TESTIMONY, YOU PRESENTED HER TESTIMONY. WHAT IF SHE-- WHAT DOES SHE ADD TO THE EQUATION OF ONSET?
>> SHE HELPS PROVIDE INFORMATION THAT MY CLIENT HAD EVIDENCE OF EARLY ONSET BECAUSE, FIRST OF ALL, HE WAS IN, CLASSES FOR THE EMOTIONALLY HANDICAPPED.
JUST LIKE THE CLIENT IN WALLS.
MR. WALL WAS IN CLASSES FOR EMOTIONALLY HANDICAP THAT GOES TO RETRO ACTIVITY ISSUE.
SHE MENTIONED MY CLIENT WAS DISHEVELED-LOOKING.
WASN'T MAIN STEELED INTO NORMAL CLASSES.
ONLY CLASSES HE WAS MAINSTREAMED INTO WAS PHYSICAL EDUCATION.
YOU KNOW, I MENTIONED HE DIDN'T TAKE CARE OF HIMSELF.
HE CAST DISHEVELED LOOKING.
HE WAS TRUANT A LOT.
SHOWS LACK OF SELF-DIRECTION.
THAT SHOWS EARLY SIGN OF ONSET BEFORE AGE 18 AND WHAT WALLS INDICATES AND OATES, PROGENY FROM HALL v. FLORIDA, YOU CAN'T JUST GO BY LACK OF A I.Q. SCORE.
I BELIEVE THE EXPERT IN HALL DECIDED THERE WAS NO EVIDENCE OF EARLY I.Q. SCORE.
SO HE DIDN'T THINK THE DEFENDANT IN HALL WAS INTELLECTUALLY DISABLED.
SIMILARLY IN THIS CASE THE DEFENSE EXPERT COULD NOT COMPLETE HIS INEFFECTIVE-- HIS I.D. ASSESSMENT BECAUSE HE THOUGHT HE NEED AD I.Q. SCORE PRIOR TO AGE 18.

THE CIRCUIT COURT JUDGE CITED
THAT IN HIS ORDER.
>> HERE YOU HAVE A DEFENDANT IN
CLASSES FOR THE EMOTIONALLY
HANDICAPPED AND THE-- WHAT YEAR
WAS HE IN SCHOOL?
>> BORN IN 1972.
SO WE'RE TALKING ABOUT THE
'80s.
>> NOT BACK IN THE '50s?
>> RIGHT.
>> SO WHAT WAS THE EXPLANATION?
THE SCHOOL NEVER DID AN I.Q.
TEST BEFORE PLACING HIM IN
SPECIAL EDUCATION CLASSES?
>> WE DON'T KNOW BECAUSE THE
RECORDS WERE DESTROYED IN 1999.
SO WE DON'T KNOW WHETHER OR NOT
AN I.Q. TEST WAS DONE WHILE HE
WAS IN HIGH SCHOOL.
>> SO THE JUDGE JUST FOUND OR
EXPERT THOUGHT BECAUSE THEY
COULDN'T GO AN I.Q. SCORE
COULDN'T FIND ONSET BEFORE AGE
18?
>> THAT IS WHAT THE DEFENSE
EXPERT SAID THAT IS WHAT THE
STATE EXPERT SAID.
MOREOVER YOU MENTIONED THE FACT
THAT THE TRIAL JUDGE WAS ABLE TO
DONE AN ASSESSMENT FOR ALL THREE
PRONGS.
ACTUALLY HE REALLY WAS NOT,
BECAUSE THE STATE'S EXPERT,
DR. PRITCHARD HE TESTIFIED AT
SPENCER HEARING AND EVIDENTIARY
HEARING, I.Q. SCORE 75 ACCORDING
TO HIS ASSESSMENT THAT PRECLUDED
FINDING OF I.D.
THAT IS FORBIDDEN BY HALL AND
OATES v. STATE AND
WALLS v. STATE.
THE STATE'S EXPERT AFTER
HALL v. FLORIDA WE CITED, WE
ARGUED IN OUR CLOSING ARGUMENT,
MENTIONED HALL v. FLORIDA
TWICE.
THE JUDGE DENYING OUR 3.851
MOTION IS SILENT TO THE MENTION
OF HALL IN FLORIDA.

WE DON'T KNOW WHETHER THE JUDGE
REALIZED HALL WAS GOOD LAW.
WHICH DON'T KNOW IF THE JUDGE
REALIZED HALL WAS RETROACTIVE.
NOW WE KNOW IT IS.
WE WOULD ASK THE COURT TO REMAND
THE CASE BACK TO THE CIRCUIT
COURT SO HE COULD HAVE A PROPER
EVIDENTIARY HEARING UNDER THE
UNDERSTANDING THAT
HALL v. FLORIDA IS THE LAW OF
THE LAND.
>> WHAT ABOUT THE ADAPTIVE
FUNCTIONING?
WHAT IS THE, WHAT WAS THE
PICTURE PRESENTED AS TO THIS
DEFENDANT HIS FUNCTIONING?
HOW OLD WAS HE AT THE TIME OF
THE CRIME AND WHAT WAS THE
EVIDENCE OF FUNCTIONING AS AN
ADULT?
>> AT THE TIME OF THE CRIME HE
WAS JUST SHY OF 28 YEARS OLD.
SO HE WAS 27 YEARS OLD AT THE
TIME OF THE CRIME.
HIS ADAPTIVE FUNCTIONING WAS
DEFICIENT IN ASPECTS HE COULD
NOT DO WORK BY HIMSELF.
HE WAS CONSTANTLY SUPERVISED.
HE COULD DO ONLY MENIAL LABOR
JOBS.
THE JOB HE WORKED FOR HIS FAMILY
WAS CLEANING CARPETS.
THEY COULDN'T TRUST HIM TO DO
THAT.
HE HAD TO BE SUPERVISED.
MULTIPLE LAY WITNESSES STATED
OVER AND OVER HOW SLOW THE
CLIENT WAS.
>> IN HIS ADULT LIFE, I.Q.
TESTING WERE ALL IN THE '70s?
>> YES, MA'AM.
EVEN THE STATE'S EXPERT HAD I.Q.
TEST SCORE OF 75 WHICH IS RANGE
CONTEMPLATED BY HALL.
DEFENSE EXPERT HAD I.Q. SCORE OF
70.
BOTH EXPERTS, PERHAPS EVEN A
CIRCUIT COURT JUDGE DID NOT
UNDERSTAND ONE ISSUE, OR LACK OF

A FINDING OF ONE PRONG IN THE
I.D. ANALYSIS DOES NOT MAKE IT
DISPOSITIVE THAT THE CLIENT IS
NOT INTELLECTUALLY DISABLED.
IT IS INTERCONNECTED.
IT IS CONJUNCTIVE ANALYSIS.
THAT IS DETERMINED BY THIS COURT
IN OATES v. STATE AND
WALL v. STATE.
MY CLIENT LIKE THE CLIENT IN
WALL IS CLASSES FOR EMOTIONALLY
HANDICAPPED.
THE DEFENDANT IN WALLS HAD I.Q.
SCORES IN THE HUNDREDS PRIOR TO
AGE 18.
YET THIS COURT STILL REMANDED
CASE FOR ANOTHER EVIDENTIARY
HEARING ON ISSUE OF I.D. EVEN
THERE WAS PRIOR EVIDENTIARY
HEARING WHERE ALL THREE PRONGS
WERE ADDRESSED, STILL THE FACT
THERE IS A MISUNDERSTANDING THAT
CHERRY WAS LAW OF THE LAND,
THERE IS MISUNDERSTANDING THAT
THERE IS CUTOFF OF 70, POSSIBLY
AFFECTED THE PRESENTATION OF THE
EVIDENCE.
THAT IS WHAT WE HAVE IN THIS
CASE.
BACK TO THE ISSUE OF
RETROACTIVITY, MY CLIENT--
>> I HATE, IF WE REMAND FOR
EVIDENTIARY HEARING ON MENTAL
RETARDATION, IF HE IS FOUND TO
BE INTELLECTUALLY DISABLED WHICH
IS, THAT IS THE SAME THING,
THEN, AND IF HE'S FOUND TO BE
INTELLECTUALLY DISABLED HE IS
NOT ELIGIBLE FOR THE DEATH
PENALTY.
>> CORRECT.
>> ISN'T THAT REALLY THE FIRST
STEP RATHER THAN FIGHTING THIS,
IN YOUR CASE THE APPLICABILITY
OF HEARST?
>> YES, MA'AM, YOUR HONOR.
ACTUALLY WE'RE NOT, I DON'T MEAN
TO NEGATE ONE CLAIM OVER THE
OTHER.
WE'RE ARGUING BOTH.

SO ABSOLUTELY WE'RE ASKING THIS COURT TO REMAND FOR AN EVIDENTIARY HEARING WITH EXPERTS AND CIRCUIT COURT JUDGE HAVING AN UNDERSTANDING THAT THE LACK OF A FINDING OF ONE PRONG IS NOT DISPOSITIVE.
OATES v. STATE SAYS WHICH OBVIOUSLY COMES FROM THIS COURT, IF ONE PRONG IS LACKING OR A LITTLE WEAKER PERHAPS ANOTHER PRONG IS STRONGER.
ANOTHER ISSUE REGARDING ADAPTIVE FUNCTIONING, OUR CLIENT HAD ISSUES AS FAR AS, HE HAD TO ALWAYS LIVE WITH SOMEONE.
I MENTIONED HE HAD MENIAL LABOR JOBS.
HE NEEDS A FAIR ASSESSMENT ON I.D. ISSUE.
THIS COURT DECIDED HALL v. FLORIDA IS RETROACTIVE.
WE ARE DEALING WITH PEOPLE INTELLECTUALLY DISABLED WE DON'T WANT TO HAVE SOMEBODY BE EXECUTED WHEN THEY'RE INTELLECTUALLY DISABLED BECAUSE THEY'RE AFFIRMED OF THE MIND.
REGARDING HEARST, ONCE AGAIN HEARST SHOULD BE RETROACTIVE AND I BELIEVE IT IS RETROACTIVE.
JOHNSON v. STATE IS NO LONGER GOOD LAW.
RIGHT NOW WE'RE DEALING WITH HEARST, WHICH IS A SIXTH AMENDMENT ANALYSIS AND EIGHTH AMENDMENT ANALYSIS.
ONCE AGAIN AS THIS COURT IS AWARE THIS IS WIT STATE.
UNDER WIT WE HAVE TO DETERMINE WHETHER OR NOT THE CASE IS RETROACTIVE.
SO YOU LOOK AT OBVIOUSLY THIS IS A CASE THAT COMES FROM THE FLORIDA SUPREME COURT AROUND UNITED STATES SUPREME COURT.
OBVIOUSLY WE'RE TALKING ABOUT THE SIXTH AMENDMENT AND THE EIGHTH AMENDMENT.

WHAT THIS COURT DID IN
HEARST v. STATE, THEY DECIDED
EIGHTH AMENDMENT PRINCIPLES
APPLY.
YOU DECIDED THIS COURT,
DEFENDANTS IN CAPITAL
PROCEEDINGS MUST HAVE UNANIMOUS
JURY RECOMMENDATION.
SO THE THIRD PRONG IN WIT WE
MUST DETERMINE WHETHER OR NOT
THIS IS WAYS OF FUNDAMENTAL
LEGAL SIGNIFICANCE.
AND OBVIOUSLY IT IS BECAUSE,
NOW, THE STATE CAN NO LONGER,
THE STATE IS PROHIBITED FROM,
THE STATE IS PROHIBITED FROM
IMPOSING SENTENCES ON CERTAIN
INDIVIDUALS, JUST LIKE IN
FALCON v. STATE WHERE THE
STATE CAN NO LONGER EXECUTE,
SORRY, WHERE THE STATE CAN NO
LONG ARE AUTOMATICALLY SENTENCE
JUVENILES TO MANDATORY LIFE IN
PRISON WITHOUT PAROLE.
LIKE IN WALLS WHERE THE STATE
CAN NO LONGER AUTOMATICALLY
DETERMINE SOMEBODY IS NOT
INTELLECTUALLY DISABLED BECAUSE
THEY HAVE I.Q. OVER 70.
HERE WE'RE TALKING ABOUT LIFE
AND DEATH.
THE STATE IS PROHIBITED FROM
SENTENCING ANYBODY TO DEATH WITH
ANYTHING LESS THAN A 12-0.
THAT MAKES IT A MATTER OF
FUNDAMENTAL LEGAL SIGNIFICANCE
BEFORE WE GET INTO THE OTHER
POSSIBLE FACTORS.
SO THE FACT THAT NOW WE'RE
TALKING ABOUT EIGHTH AMENDMENT
VIOLATIONS AND EIGHTH AMENDMENT
IN HEARST--
>> WAS THAT TRUE OF A APPRENDI?
>> APPRENDI, EIGHTH AMENDMENT
VIOLATION?
>> NO.
>> SORRY.
>> RETROACTIVITY, THE ANALYSIS
YOU APPLIED FOR RETROACTIVITY
HERE WAS THAT ALSO APPLICABLE IN

APPRENDI?
>> I DON'T THINK SO, IT WAS UNDER WIT STANDARD.
>> SAME PRINCIPLE WAS INVOLVED THERE THOUGH.
THE QUESTION OF THE JURY MAKING A DETERMINATION AS OPPOSED TO THE JUDGE MAKING THE DETERMINATION.
THAT IS WHAT IS GOING ON IN BOTH CASES, RIGHT?
>> EXCEPT FLORIDA HAS THE WOOD ANALYSIS THAT SEPARATES THE ISSUE.
FLORIDA HAS THE WIT ANALYSIS.
>> IN FLORIDA DID WE APPLY APPRENDI RETROACTIVELY?
>> NO.
WE DID NOT.
>> WE APPLIED THE WIT ANALYSIS TO THAT.
WHY IS DIFFERENT THAN THE ANALYSIS UNDER APPRENDI?
>> BECAUSE APPRENDI DID NOT INVOKE THE EIGHTH AMENDMENT WHICH THIS COURT DID, EVOLVING STANDARDS OF DECENCY OF A CIVILIZED SOCIETY.
TRYING TO REDUCE THE CLASS OR TRYING TO NARROW THE CLASS OF PEOPLE SUBJECTED TO THE DEATH PENALTY.
THAT IS WHAT THIS COURT DID IN HEARST v. STATE.
BY MAKING IT UNANIMOUS, MEANS COLLECTIVELY, 12 PEOPLE MUST DECIDE, FIRST OF ALL, THAT EACH AGGRAVATING FACTOR WAS FOUND.
THEN THEY MUST UNANIMOUSLY FIND THAT ALL THE ACTIVATING FACTORS OUTWEIGH MITIGATING CIRCUMSTANCE.
>> BUT HASN'T THE U.S. SUPREME COURT SAID UNDER SPAZIAN THAT THE EIGHTH AMENDMENT DOES NOT REQUIRE JURY SENTENCING IN DEATH CASES?
>> SPAZIANO IS NO LONGER IN GOOD LAW, YOUR HONOR.
>> I BELIEVE HEARST WAS

OVERRULED SPAZIANO.
>> IT WAS NOT OVERRULED AN BY
THE SUPREME COURT AS TO THE
EIGHTH AMENDMENT ARGUMENT.
HEARST--
>> HEARST VERY STATE INVOKES
EIGHTH AMENDMENT.
>> WE CAN'T ROVER RULE SPAZIANO.
>> I DON'T THINK YOU HAVE TO
OVERRULE SPAZIANO.
I THINK THEY'RE SEPARATE ISSUES.
I WILL SAVE MY REBUTTAL TIME,
THANK YOU.
>> GOOD MORNING.
SCOTT BROWNE ON BEHALF OF THE
STATE OF FLORIDA.
ON THE ISSUE OF RETROACTIVITY,
THE STATE'S POSITION IS CLEAR.
AND IT IS IN ACCORD WITH THIS
COURT'S OWN PRECEDENT IN
JOHNSON, IN JOHNSON AGAIN
ADDRESSING BLAKELY, IN HUGHS
WHERE THIS COURT ADDRESSED
APPRENDI.
THIS OCCURRED APPLIED WITT TO
EACH OF THOSE VARIATIONS AND
EACH OF THOSE APPLICATIONS OF
APPRENDI AND CAME TO THE SAME
CONCLUSION.
>> TO BE FAIR, TO BE FAIR,
BECAUSE JOHNSON, WE WERE
OPERATING UNDER HYPOTHETICAL
BECAUSE WE HADN'T, WE DIDN'T
EVEN APPLY RING IN THIS STATE
AND SO WE'VE GOT TO LOOK AT WHAT
JUSTICE ANSTEAD SAID WHO HAD
MORE DEVELOPED SENSE OF WHAT
RING OR HEARST MIGHT MEAN.
SO I'M CONCERNED ABOUT USING
JOHNSON.
AS FAR AS BLAKELY, YOU REALLY
COMPARE WHAT APPRENDI DID WHICH
IS APPLICABLE TO ALL SORTS OF
SENTENCES IN THE STATE OF
FLORIDA ABOUT A SINGLE JURY
FINDING, AND WHAT WE SAID IN
HEARST ABOUT DEATH BEING
DIFFERENT THAN ABOUT THE
IMPORTANCE OF UNANIMITY OF ALL
THE FINDINGS BEFORE SOMEBODY CAN

BE ELIGIBLE FOR THE ULTIMATE
SENTENCE OF DEATH.
I'M JUST HAVING TROUBLE, I
APPRECIATE, BECAUSE I WAS ON
BLAKELY, I THINK WAS ON BLAKELY,
I WAS ON JOHNSON BUT I JUST
DON'T SEE THOSE CASES WHEN YOU
GO TO WITT AND THE THREE-PRONGS
OF WHAT WE'RE SAYING ABOUT IT
BEING A FUNDAMENTAL
CONSTITUTIONAL SIGNIFICANCE THAT
YOU CAN IMPORT WHAT WE SAID IN
THOSE CASES.
HELP ME OUT WITH THAT.
>> EXCUSE ME, YOUR HONOR, I
THINK IT IS EVEN MORE IMPORTANT
NOW BECAUSE WE KNOW THAT HEARST
ON REMAND IS DIFFERENT FROM
HEARST IN THE SUPREME COURT
BECAUSE YOU'VE NOW BLENDED IN
THE EIGHTH AMENDMENT.
SO--
>> TAKE THE EIGHTH AMENDMENT OUT
OF THIS DISCUSSION.
>> YES.
>> NOW WHAT WE TALKED ABOUT THE
SIXTH AMENDMENT AND OUR
CONSTITUTIONAL RIGHT.
>> THIS COURT SHOULD REACH THE
SAME CONCLUSION.
YOU ARE NOT THE FIRST STATE
SUPREME COURT OR FEDERAL COURT
TO ASSESS THE RETROACTIVITY OF
RING WHICH IS A SIXTH AMENDMENT
CASE WHICH ASSESSED APPRENDI.
ALL OF THESE FEDERAL COURTS AND
STATE COURTS--
>> FEDERAL USE AS DIFFERENT
STANDARD THOUGH, AGREE?
>> YES, BUT THEY'RE ALSO STATE
COURTS LIKE NEVADA THAT--
>> COMPARE APPLES AND APPLES.
>> OKAY.
IF YOU WERE A STATE COURT, FIRST
OF ALL, WE HAVE GUIDANCE FROM
THE SUPREME COURT IN SUMMERLIN.
THIS COURT IS WELL ACQUAINTED
WITH THAT.
THERE IS EXTENSIVE ANALYSIS.
IS JURY FACT-FINDING SUPERIOR?

THAT IS OPEN TO DEBATE, MANY
EUROPEAN COUNTRIES HAVE
PROFESSIONAL JUDGES ADDRESS ALL
THE CASES THAT THEY HAVE.
IF YOU'RE TALKING ABOUT WHETHER
OR NOT A JUDGE SITTING ALONE AS
A JURY IS SUPERIOR FACT-FINDER,
THIS COURT CAN NOT SAY THAT
JURIES ARE SO SUPERIOR THAT IT
RENDERS FUNDAMENTALLY UNFAIR OR
UNRELIABLE ALL OF THOSE
SENTENCES HANDED DOWN IN THE
STATE.
REMEMBER, JUDGES THAT IS THEIR
JOB IN THIS STATE.
I HAD A CASE MANAGEMENT
CONFERENCE LAST WEEK BEFORE I
GOT TO ARGUE A JUDGE IS
RENDERING A SENTENCE IN ANOTHER
CASE.
THAT IS WHAT JUDGES DO.
WE--
>> I'M REALLY TALKING ABOUT THE
ISSUE OF, SEW YOU'RE SAYING.
NOT SO IMPORTANT THAT JUDGES DO
THE JOB.
AND DOESN'T MAKE SENTENCES
UNRELIABLE.
THAT IS, THE ARGUMENT IS
ANYTHING NOT ON DIRECT APPEAL,
THERE IS NOTHING TO SAY AT THE
SENTENCE OF MR. SNELGROVE IS
UNRELIABLE, CORRECT?
I MEAN THAT IS--
>> THERE IS NOTHING IN
MR. SNELGROVE'S SENTENCE OR
UNDER THE FACTS OF THIS CASE
THAT WOULD LEAD ME TO BELIEVE HE
WOULD BE-- THE OUTCOME IS
UNRELIABLE IN THIS CASE.
BUT LET'S LOOK--
>> BUT SNELGROVE, McGIRTH, 7-5
FIRST TIME AROUND.
>> CORRECT.
>> 8-4 SECOND TIME.
7-5.
>> CORRECT.
>> IS NOT IN, I MEAN IF WERE IN
UNANIMITY IN A DIFFERENT
SITUATION-- [INAUDIBLE].

EVEN 11-1 BUT THERE WERE DOUBTS
OF FIRST TIME FIVE JURORS,
SECOND TIME FOUR JURORS ABOUT
SOMETHING AND THAT IS WHERE MY
CONCERNS COME.
YOU KNOW, IF WE HAD REVERSED
SNELGROVE LIKE, AGAIN, AND IT
COMES UP POST-HEARST HE GETS
UNANIMITY.
SO, IT'S THIS CONCERN THAT I AM
HAVING ABOUT SOMETHING THAT IS
EQUIVALENT TO SOME ARBITRARINESS
IN HOW WE ARE ADMINISTERING
DEATH PENALTY IN FLORIDA BASED
ON WHO SORT OF COMES IN AT WHAT
STAGE AND WHO GETS RESENTENCED.
HELP ME ON THAT.
>> THE DIFFICULTY THAT THIS
COURT IS HAVING WITH THIS
HARMLESS ERROR ANALYSIS, AGAIN
WE SHOULDN'T BE HAVING IT IN A
CASE THAT WAS FINAL WHERE
MR. SNELGROVE WAS TRIED AND
SENTENCED IN ACCORDANCE WITH LAW
FROM THIS COURT AND THE SUPREME
COURT FOR THE PAST 30 AND 40
YEARS.
SO AGAIN, NOW WE'RE HAVING THIS
HINDSIGHT MIASMA ON CASES, THAT
IS DIFFICULT ENOUGH FOR THE
COURT ON DIRECT REVIEW.
AGAIN THAT STRONGLY MILITATES
AGAINST RETROACTIVE APPLICATION
OF THIS NEW RULE.
AGAIN YOU'RE TALKING ABOUT A
CLEAR BREAK WITH PAST PRECEDENT
NOW BECAUSE WE HAVE HEARST AND
WE HAVE HEARST FLORIDA, WHICH
INCLUDES THE EIGHTH AMENDMENT.
SO AGAIN THIS COURT MADE
SPECIFIC FINDINGS UNDER WITT
THAT IT WOULD BURDEN OUR JUSTICE
SYSTEM TO THE BREAKING POINT TO
HAVE TO RETRY THESE CASES.
AND AGAIN, FAIRNESS, I HEAR
ABOUT THIS ARBITRARY AND
FAIRNESS ARGUMENT.
WHAT ABOUT THE STATE?
WHAT ABOUT THE PROSECUTORS?
WHAT ABOUT THE VICTIMS FAMILY

MEMBERS WHO ARE GOING TO BE
WATCHING THIS?
THEY COULDN'T BE HERE.
DO THEY ENTER INTO THIS ANALYSIS
AT ALL?
FINALITY HAS A VALUE IN OUR
JUSTICE SYSTEM AROUND IT'S VERY
IMPORTANT.
SO TO DISREGARD THAT PRECEDENT
FOR EACH NEW RULE COMING ALONG
THAT WOULD BREAK AND BURDEN OUR
JUSTICE SYSTEM.
>> THIS DEFENDANT PRESERVE THE
ISSUE, MAKE THE ASSERTION THAT
PROCEEDINGS WERE INVALID BECAUSE
OF THE RING TYPE PROBLEM THAT
THE JURY DIDN'T, UNANIMOUS JURY?
>> YOUR HONOR IT WAS RAISED AS
AN ISSUE ON DIRECT APPEAL.
IT WAS NOT RAISED ON
RESENTENCING.
AGAIN IF--
>> IT WAS RAISED AT SOME POINT
IN TIME?
>> IT WAS RAISED, BY THE TRIAL
ATTORNEYS AT RESENTENCING.
HOWEVER TRIAL COUNSEL--
>> WE TALK ABOUT, I HEAR AND I
UNDERSTAND, I FEEL WHAT YOU'RE
SAYING ABOUT THE JUSTICE BUT
WHERE IS THE JUSTICE THAT WHEN A
INDIVIDUAL SUBMIT AS LEGAL
PRINCIPLE OF LAW AND SAYS, WHAT
IS GOING ON IS WRONG?
I MEAN HISTORICALLY THE QUESTION
OF PRESERVATION IS REALLY WHAT
WE'RE TALKING ABOUT.
WHERE IS THE JUSTICE THAT
SOMEBODY WHO TODAY DOES THE
IDENTICAL THING, WALKS AWAY AND
SOMEONE WHO MADE THE IDENTICAL
ARGUMENTS, MAYBE EVEN DID LESS,
DOES NOT GET THE BENEFIT OF
CONSTITUTIONAL LAW?
>> WELL, YOUR HONOR, I THINK
THAT IS PART OF YOUR WITT
ANALYSIS BECAUSE WE'RE TALKING
ABOUT WHETHER OR NOT, AGAIN,
THIS COURT ANSWERED THE
QUESTION, I SUBMIT, OF

RETROACTIVITY WHEN IT DETERMINED
IN HEARST-FLORIDA ON REMAND IT
WAS PROCEDURAL CHANGE.
YOU JOINED EVERY OTHER COURT TO
ADDRESS THE ISSUE.
IT IS NOT A SUBSTANTIVE CHANGE.
THERE IS A VERY STRONG
PRESUMPTION, REMEMBER, WE'RE
DRAWING LINES ON HOW, ULTIMATE
OUTCOME ISN'T THAT MR. SNELGROVE
COULD NOT BE SENTENCED TO DEATH.
YOUR LINE DRAWING IN THE PROCESS
HAS CHANGED.
AND AGAIN, VERY FEW PROCEDURAL
CHANGES HAVE EVER BEEN HELD TO
BE RETROACTIVE.
YOU HAVE TO GO BACK TO GIDEON.
>> I AM FOLLOWING, AND I THINK
YOU HAVE GIVEN IT A LOT OF
THOUGHT, AS ALWAYS YOU'RE VERY
THOUGHTFUL AT YOUR ANALYSIS BUT
I AM REALLY HAVING A HARD TIME
UNDERSTANDING YOUR
CHARACTERIZATION OF THE
FUNDAMENTAL RIGHT OF TRIAL BY
JURY, UNANIMITY, FLORIDA, AS
BEING, AND PROCEDURAL.
I HESITATE, I LOOKED AT THIS,
WENT ALONG WITH THE MAJORITY IN
JOHNSON, TO REALLY UNDERSTAND,
THAT IS NOT PROCEDURAL.
THAT GOES TO THE VERY HEART OF
WHAT YOU MAY SAY, WE'RE NOT IN
EUROPE, WE'RE NOT IN ANY OTHER
PLACE BUT THE UNITED STATES AND
IN FLORIDA WHERE RIGHT TO TRIAL
BY JURY, BY UNANIMOUS VERDICT
HAS BEEN THE LAW SINCE THIS
STATE WAS CREATED.
SO I'M, TELL ME WHY YOU'RE
CALLING THIS PROCEDURAL WHEN IT
COMES OUT OF A SUBSTANTIVE
CONS-- SUBSTANTIVE
CONSTITUTIONAL RIGHT?
>> YOUR HONOR, IF WE START
CHANGING EVERY OTHER COURT
ADDRESSING ISSUE, FOUND BLAKELY,
APPRENDI, HUGHES, EVERY STATE
SUPREME COURT TO ADDRESS THE
ISSUE, FOUND PROCEDURAL CHANGE

IN THE RULES, NOT A SUBSTANTIVE CHANGE.
THAT IS A SIGNIFICANT DISTINCTION BECAUSE IN FALCON WHERE YOU'RE TALKING ABOUT JUVENILE SENTENCES, AND AGAIN, WHEN YOU'RE DRAWING LINES, SOME DEFENDANTS WOULD NOT BE SUBJECT TO CAPITAL PUNISHMENT OR IN THE CASE OF JUVENILE SENTENCING, LIFE IMPRISONMENT BECAUSE OF THE CHANGE IN THE LAW AND THAT'S AN IMPORTANT DISTINCTION HERE.
WE'RE NOT--
>> GO BACK TO THIS QUESTION ABOUT RING AND THIS A POST-RING CASE.
IN HEARST VERSUS FLORIDA, WHAT DID THE SUPREME COURT ESSENTIALLY SAID, THAT RING APPLIES IN FLORIDA BUT THEY DON'T EXPLAIN WHY THEY TOOK 14 YEARS TO MAKE THAT DECISION THAT EVERYBODY WAS ARGUING FROM THE TIME RING WAS, CAME OUT, THAT OF COURSE IT APPLIED IN FLORIDA.
IT WAS EXACTLY, OR MAYBE WORSE, THAN WHAT EXISTED IN ARIZONA.
SO HOW DO WE TAKE THAT THE U.S. SUPREME COURT, AGAIN IN DEFERENCE TO THEM, JUST HAPPENS TO WAIT 14 YEARS TO DECIDE THAT RING APPLIES HERE?
IS THAT NOT, DOES THAT NOT COUNT FOR ANYTHING IN FAIRNESS OF DEFENDANTS WHO RAISED THIS DEFENDANT RAISED IT PRETRIAL IN A MOTION THAT ALMOST MIRRORS KIND OF MOTION THAT MR. HEARST HIMSELF RAISED ON RESENTENCING?
>> YOUR HONOR, FIRST OF ALL, FLORIDA WAS HYBRID SENTENCING UNLIKE ARIZONA WHICH HAD NO JURY PARTICIPATION WHATSOEVER.
AGAIN, ARIZONA WAS NOT RETROACTIVE, RIGHT TO JURY TRIAL.
THAT'S THE CASE.
WHERE YOU HAVE THE RIGHT TO A JURY TRIAL, AND REMEMBER,

HEARST, WHY DID IT TAKE SO LONG?
THE ANSWER TO THAT IS PRETTY
CLEAR.
HEARST PRESENTED THE COURT WITH
A PURE RING CASE.
IT, HE DID NOT HAVE A PRIOR
VIOLENT FELONY CONVICTION.
NONE OF AGGRAVATORS WERE
REFLECTED IN THE JURY VERDICT.
THEY'RE HANDFUL LIKE UNICORNS,
TRUE RING CASES THERE ARE FIVE.
>> WHAT MR. BUTLER?
>> WHAT ABOUT MR. BUTLER?
>> HE IS ONE OF A HANDFUL.
IF YOU LOOK WHAT DOES A JURY
SENTENCE ACTUALLY AUTHORIZE?
WE MADE FIRST-DEGREE MURDER AN
AGGRAVATED FORM OF MURDER.
NOW THIS COURT HAS A VERY
EXPANSIVE READING OF HEARST
WHICH WE DISAGREED WITH BUT THE
ONLY FINDINGS THAT ARE NECESSARY
UNDER RING AND UNDER HEARST IN
THE SUPREME COURT ARE, YOU HAVE
TO HAVE AT LEAST ONE AGGRAVATING
CIRCUMSTANCE, PERHAPS MORE.
THE WHOLE BALANCING PART, THIS
COURT WENT BEYOND WHAT HEARST
STATED IN THE SUPREME COURT.
AND WE ACCEPT THAT IS THE WAY
WE'RE GOING FORWARD.
HOWEVER, THAT'S WHY, YOUR
HONOR--
>> CAN I BECAUSE YOU'RE-- YOU
WANT TO ADDRESS, BECAUSE TO ME,
IF THIS NEEDS TO GO BACK FOR A
EVIDENTIARY HEARING ON
INTELLECTUAL DISABILITY, THAT IS
SORT OF THE FIRST THING, NOT
ELIGIBLE.
THE DEATH PENALTY THEN HEARST
DOESN'T MATTER AND THERE HAS
BEEN A PRETTY COMPELLING
ARGUMENT MADE THAT THE KIND OF
HOLISTIC REVIEW THAT WE'VE
LOOKED AT AND [INAUDIBLE]-- CAN
YOU ADDRESS THAT.
>> FACTUALLY THAT IS INCORRECT.
MR. SNELGROVE HAD A HOLISTIC
REVIEW OF HIS INTELLECTUAL

DISABILITY CLAIM.
HE WAS NOT, UNLIKE HALL,
PRECLUDED FROM PRESENTING
EVIDENCE ON ADAPTIVE
FUNCTIONING.
REMEMBER, THE TRIAL COURT IN
THIS CASE ADDRESSED ALL
THREE-PRONGS, NOT JUST
INTELLECTUAL DEFICITS BUT ALL OF
THEM AND SAID, THEY WEREN'T
CLOSE ON ANY OF THE THREE
PRONGS.
>> HOW CAN THEY NOT BE CLOSE
ON-- THERE WAS A 70, AND 75, HOW
COULD NOT BE CLOSE ON
WHETHER HE--
>> THERE IS A ALSO A 77
MENTIONED BY ANOTHER DEFENSE
DOCTOR.
AND, REMEMBER, 75, BUT YOU ALSO
HAD DR. PRICHARD TESTIFYING
THAT, USING SANFORD BENNETT
STRESS.
HE HAD ENTIRE POST-CONVICTION
HEARING WHERE HE COULD HAVE
PRESENTED EXPERTS IN SUPPORT OF
HIS CLAIM.
LOOK, I SHOULD HAVE HAD A
HEARING, NORTH ATKINS HEARING.
WHY DIDN'T HE SAY THAT BELOW?
THE ONLY PARTY TO CALL AN EXPERT
DURING THE POST-CONVICTION
HEARING WAS THE STATE.
WE CALLED DR. PRICHARD AND HE
EXAMINED THE DEPOSITION OF
CHRISTINE MACK, WHO HAD VERY
LITTLE TO SAY AND SAID, STATED
THAT, THIS CONFIRMED WHAT HE
KNEW AT THE SOMETIME OF
INTELLECTUAL DISABILITY HEARING
WHICH WAS HELD IN 2009.
SO WE'RE NOT TALKING ABOUT A
CASE WHERE THE DEFENDANT WASN'T
ALLOWED TO PRESENT LIST CASE,
EITHER AT TRIAL OR WAS PRECLUDED
FROM PRESENTING ANYTHING IN
POST-CONVICTION.
REMEMBER, THIS CLAIM COMES TO
THIS COURT AS A CLAIM OF
INEFFECTIVE ASSISTANCE OF TRIAL

COUNSEL.
SO AFTER REVIEWING THE RECORD,
REVIEWING ALL THE EXPERT
TESTIMONY, WHAT DID THEY FIND?
ONE WITNESS.
AND WAS THIS A CLOSE CASE ON THE
QUESTION OF INTELLECTUAL
DISABILITY?
IT WAS NOT.
AND THAT WAS FOUND BY THE TRIAL
COURT.
AND HE FOUND IT UNDER EITHER THE
CLEAR AND CONVINCING STANDARD OR
PREPONDERANCE, THAT SNELGROVE
FAILED TO--
>> TRIAL JUDGE ADDRESSED ALL
THREE-PRONGS OF INTELLECTUAL
DISABILITY?
>> THAT IS CORRECT, YOUR HONOR.
EACH PRONG, AND AGAIN ON
ADAPTIVE FUNCTIONING
MR. SNELGROVE HAD A CAR.
HE DROVE.
FAMILY MEMBERS LET HIM BABYSIT.
IT WASN'T A CLOSE QUESTION FOR
ANYBODY IN THIS CASE.
>> LET ME ASK YOU, WAS THE STATE
ARGUING AT THE TIME OF THE
EVIDENTIARY HEARING THE CHERRY
OR NOT?
>> YES, I BELIEVE WE, YOU KNOW,
AGAIN I'D HAVE TO CHECK THE
RECORD.
WE DID ARGUE THAT BUT HE
WASN'T--
>> I GUESS IF THE STATE WAS IN
FACT ARGUING CHERRY, WHAT
CONCERNS ME ABOUT THAT IS THAT
SOMETIMES IN THESE CASES IT
SEEMS TO ME THAT THERE'S NO REAL
PRESENTATION OR COMPLETE
PRESENTATION ON THE OTHER
TWO-PRONGS IF THE FIRST, YOU
KNOW, I.Q. PRONG IS NOT MET AS
THOUGH, DO WE HAVE THAT KIND OF
SITUATION HERE?
IS THERE, DID THE DEFENSE
PRESENT FULL EVIDENCE ON THE
OTHER TWO PRONGS?
>> THEY DID, YOUR HONOR, BOTH AT

TRIAL, AND THIS IS CRITICALLY
IMPORTANT.
AT TRIAL THEY WERE NOT PRECLUDED
PRESENTING EVIDENCE ON ANY
PRONG.
THIS WASN'T A CLOSE CASE.
DR. PRICHARD, THE STATE EXPERT
HAD 10 INCHES OF MATERIAL.
NO ONE EVER IDENTIFIED HIM OR
EVEN LABELED HIM AS SLOW.
MEETS ALL OF HIS NEEDS IN
PRISON.
HE COMMUNICATES WELL, AND AGAIN
WHAT CHRISTINE MACK CAME IN,
AGAIN, HE WAS GIVEN A
POST-CONVICTION HEARING.
NOW MR. SHAKOOR IS TELLING US I
WANT MORE EVIDENTIARY
DEVELOPMENT?
YOU HAD IT.
YOU HAD TWO HEARINGS.
YOU COULD HAVE PRESENTED
ANYBODY.
THE STATE DIDN'T ARGUE AGAINST A
HEARING BELOW ON THIS CLAIM.
NOW, I THINK IT IS DISINGENUOUS
TO COME UP HERE AND SAY, IF WE
COULD ONLY HAVE ANOTHER HEARING.
WHERE WERE HIS EXPERTS DURING
POST-CONVICTION?
THESE ARE VERY EXPERIENCED
POST-CONVICTION ATTORNEYS.
YOU DON'T GET A THIRD BITE AT
THE APPLE NOW TO PRESENT YOUR
CLAIM.
>> WAS THE EVIDENTIARY HEARING
BEFORE HALL VERSUS FLORIDA CAME
OUT?
>> 2014 HALL CAME OUT.
YOUR HONOR, I BELIEVE IT CAME
OUT RIGHT AROUND THE TIME OF THE
HEARING.
IT IS CLOSE.
>> THE PROBLEM IS FAIRNESS HERE,
BECAUSE UNLIKE YOUR HEARST
ARGUMENT, YOU HAVE THIS, IT'S
THE, THESE I.Q.s, SCORES, THE
DEFENSE OR STATE EXPERT SAID 75,
HE DOESN'T QUALIFY.
JUST SEEMS THAT WHEN WE'RE

TALKING ABOUT WHETHER SOMEONE'S
ELIGIBLE FOR EXECUTION, FOR THE
DEATH PENALTY, YOU OUGHT TO MAKE
SURE IT IS BEING DONE ON THE
RIGHT, IN THE RIGHT, WITH THE
RIGHT LAW, AND SO I APPRECIATE
YOUR ADVOCACY BUT THAT IS MY
CONCERN THAT, AND OTHER PRONGS
MAY BE SO CLEAR THAT NOTHING IS
GOING TO CHANGE BUT, SHOULDN'T
WE BE SURE BEFORE WE SET SOMEONE
UP FOR EXECUTION?
>> YOUR HONOR, I DON'T KNOW THAT
WE CAN EVEN CALL THIS, EVEN THE
DEFENSE EXPERT, DR. BLOOMFIELD
AT TRIAL SAID IT WAS A CLOSE
CALL.
STATE EXPERT SAID IT WAS NOT
REMOTELY CLOSE WHY WOULD YOU
GAVE HIM A THIRD BITE AT APPLE?
>> WHAT MADE IT NOT REMOTELY
CLOSE.
>> COMMUNICATION STALE STYLE,
MEETING NEEDS, HAD A DRIVERS
LICENSE, TALKING TO HIM, HIS
FLUID, CONVERSATIONAL STYLE.
HE WAS LABELED, WE KNEW ALL OF
THIS.
WE HAD SOME SCHOOL RECORDS.
WEIGH WAS LABELED EMOTIONALLY,
NOT INTELLECTUALLY SIGNIFICANT.
>> IT COULD BE SIGNIFICANT.
THESE RECORDS ARE REALLY
DESTROYED.
YOU'RE TELLING ME NO ONE PLACED
IN THE WRONG CASE FOR THE NATURE
OF THEIR DISABILITY?
I MEAN--
>> YOUR HONOR YOU'RE ASKING ME
TO SPECULATE.
>> BUT WE DON'T HAVE THE SCHOOL
RECORDS.
SO WE'RE NOW LOOKING AT WHAT DID
IT MEAN?
IT MEANT SOMETHING, RIGHT?
IT MEANT SOMETHING--
>> IT MEANT, THIS IS WHAT
MRS. MACK TESTIFIED IT MEANT.
IT IS A, FIRST OF ALL,
DR. PRICHARD SAID IT WOULD BE

ILLEGAL IF HIS PRIMARY PROBLEM
WASN'T TO MISLABEL HIM.
MRS. MACK SAID THERE IS TEAM
THAT EVALUATES HIM, TEACHERS,
GUIDANCE COUNSELOR, MAYBE A
PSYCHOLOGIST.
THEY DETERMINE WHAT HIS PRIMARY
DISABILITY IS.
IN MR. SNELGROVE'S CASE, IT WAS
NOT INTELLECTUAL.
IT WAS EMOTIONAL.
>> YOU KNOW WHAT?
BUT IF SOMEBODY IS HAVING
EMOTIONAL DIFFICULTIES BECAUSE
THEY HAVE GOT INTELLECTUAL
DISABILITIES AND PLACE EMOTIONAL
FIRST, I DON'T UNDERSTAND HOW
THAT RULES OUT THEY'RE NOT ALSO
INTELLECTUALLY DISABLED?
>> YOUR HONOR, WHEN YOU WERE
ASKING ME TO SPECULATE AGAINST
WHAT THE EVIDENCE WAS, THE
EVIDENCE IS MOST LIKELY HE WAS
CORRECTLY AND NOW YOU'RE TELLING
ME WE NEED TO REMAND FOR HEARING
BECAUSE WE'LL STILL SPECULATE
ABOUT THIS?
>> NO, I'M SAYING, THAT I'M
CONCERNED THAT THE HEARING WAS
FOCUSED, SO FOCUSED ON HIS I.Q.
WAS OVER 70, THAT IS
SORT OF ECLIPSED OTHER ISSUES.
>> I THINK THAT MISREPRESENTS
THE RECORD.
THERE WAS HOLISTIC REVIEW, YOUR
HONOR.
>> ALL RIGHT.
>> THE STATE DIDN'T EXCLUDE ANY
DEFENSE WITNESSES.
THERE WAS PRESENTATION ON
ADAPTIVE FUNCTIONING FROM
FRIENDS AND FAMILY DURING THE
HEARING.
SO HE HAD HOLISTIC REVIEW THIS
COURT ADVOCATED IN WALLS.
I SEE I'M, NOW, PERHAPS OVER MY
TIME.
IF I MAY JUST CONCLUDE.
AGAIN ON ISSUE OF RETROACTIVITY,
IT IS RATHER CLEAR THAT THIS

COURT HAS ALREADY DETERMINED
RETROACTIVITY.
HEARST ANNOUNCED A NEW
PROCEDURAL RULE.
IT WAS VARIATION OF APPRENDI.
THIS COURT HAS ALREADY MADE THAT
DETERMINATION.
IT WOULD BE FUNDAMENTALLY UNFAIR
TO APPLY NEW RULES RETROACTIVELY
IN THE STATE OF FLORIDA.
THANK YOU.
>> THANK YOU.
>> THANK YOU, YOUR HONOR.
REGARDING THE EVIDENTIARY
HEARING THAT WE HAD, REGARDING
THE FACT THAT OUR CLIENT WAS
DESIGNATED EMOTIONALLY
HANDICAPPED, ONCE AGAIN THE
DEFENDANT IN WALLS v. STATE
WAS DESIGNATED MOSTLY
HANDICAPPED.
>> HE IS SAYING YOU, THEY DIDN'T
RELY ON CHERRY AND YOU HAD EVERY
OPPORTUNITY TO RAISE ALL THREE
PRONGS.
THE JUDGE DIDN'T CUT IT OFF LIKE
THEY DID IN CHERRY.
AND SO, WHAT WASN'T FAIR ABOUT
THE HEARINGS AND YOU HAD ANOTHER
OPPORTUNITY IN THIS CASE TO
PRESENT ALL THIS EVIDENCE.
SO I MEAN WHY, WE DON'T WANT,
THAT'S HAD ENOUGH FIGHTS.
WE DON'T WANT TO GIVE YOU A
BITES, COME UP WITH THE SAME
CONCLUSION?
>> WHAT WASN'T FAIR WAS
MISAPPREHENSION OF THE LAW.
>> WHERE WAS THAT, WHO MISS
APPREHENDED IT?
>> DR. PRICHARD FOR ONE,MY
APPREHENDED THE LAW.
IN THE EVIDENTIARY HEARING HE IS
REPEATEDLY TALKING
ABOUT I.Q. SCORE OF 70.
NOT EVEN MENTIONING 75.
HE SAYS ON THE RECORD, WE CITE
ON PAGE 38 OF OUR BRIEF, ONE
PRONG IS DEFICIENT THE OTHER TWO
PRONGS ARE MOOT.

THAT IS COMPLETELY CONTRARY TO
OATES AND WALLS.
THIS CASE WAS ARGUED AT
EVIDENTIARY HEARING
POST-HALL v. FLORIDA.
WE DECIDED HALL v. FLORIDA IN
3.851 MOTION.
WE ARGUED IT IN THE CLOSING
ARGUMENT.
THE STATE WITNESS IS TESTIFYING
LIKE CHERRY IS STILL THE LAW OF
THE LAND.
>> WHAT DID THE TRIAL JUDGE DO
WITH THAT?
DOES THE TRIAL JUDGE IN FACT SAY
IT WAS STILL THE LAW OF THE LAND
OR THAT DID THE TRIAL JUDGE
EVALUATE IT UNDER THE THREE
PRONGS?
>> WHAT THE TRIAL JUDGE DID,
THANK YOU FOR ASKING THAT
QUESTION BECAUSE IN HIS ORDER
DENYING OUR 3.851 MOTION HE
MENTIONED ALL THREE PRONGS BUT
THEN HE CITED DR. BLOOMFIELD,
WHO WAS DEFENSE EXPERT WHO
TESTIFIED, WE GOT OUR
DR. BLOOMFIELD TESTIMONY IN FROM
THE SPENCER HEARING IN THROUGH
THE EVIDENTIARY HEARING.
WE REPRODUCED THE RECORDS.
DR. BLOOMFIELD'S TESTIMONY WAS
PRESENTED DURING EVIDENTIARY
HEARING THROUGH QUESTIONING OF
MR. VAL RENO AND PRESENTATION OF
OUR 3.851 MOTION.
BUT THE JUDGE STATE THE
DR. BLOOMFIELD RELIED ON THE
FACT HE COULD NOT FIND AN I.Q.
SCORE UNDER 70 PRIOR TO AGE 18.
AND AS WE KNOW IN OATES, OATES,
IN WALLS v. STATE, WHICH,
ANALYZES HALL v. FLORIDA, YOU
CAN'T DO THAT SO, STILL, AFTER
OUR LAST BITE AT THE APPLE,
THERE IS STILL A
MISUNDERSTANDING OF THE LAW OF
THE LAND.
>> WHAT DID HE SAY ABOUT
ADAPTIVE DEFICITS?

>> WHAT DID THE JUDGE SAY-- THE JUDGE DECIDED OUR CLIENT DID NOT HAVE TODAY, DEFICIENT ADAPTIVE FUNCTIONING OR DEFICIENT ADAPTIVE BEHAVIOR BUT I BELIEVE OPPOSING COUNSEL WAS MAKING THE MISTAKE TALKING ABOUT WHAT THE CLIENT CAN DO AS OPPOSED TO WHAT HE CAN NOT DO.
THE CLIENT HAS ABNORMAL BRAIN FUNCTIONING.
THE CLIENT CAN NOT WORK ANYTHING BEYOND A MENIAL JOB AND STILL HAS TO HAVE SUPERVISION DOING THAT THE CLIENT CAN NOT LIVE ALONE.
THE CLIENT WAS IN GROUP HOME OR REHABILITATION FOR HIS DRUG ADDICTION.
HE COULD NOT EVEN USE THE COMMUNITY SERVICE CORRECTLY BECAUSE HE GOT KICKED OUT OF THE DRUG ADDICTION OR DRUG REHABILITATION FACILITY BECAUSE HE HAD CARNAL RELATIONS WITH ONE OF THE OTHER INHABITANTS.
THIS PERSON REPEATEDLY SHOWS DEFICIENT--
>> THAT IS NOT NECESSARILY A SIGN OF INTELLECTUAL DISABILITY.
>> BUT YOUR HONOR, SOMETHING ELSE TO CONSIDER.
REGARDING RETROACTIVITY--
>> WHAT ABOUT BEFORE, WHAT WAS THE EVIDENCE OF ONSET BEFORE AGE 18?
>> EVIDENCE OF ONSET BEFORE AGE 18?
>> WAS IT JUST BASED ON THE, THE CLASS HE WAS IN.
>> DR. BLOOMFIELD EXTRAPOLATED FROM THAT BUT ALSO THE FACT THAT OUR CLIENT WAS DISHEVELED.
OUR CLIENT WAS TRUANT A LOT.
AND ALSO CHRISTINE MACK TESTIFIED, JUST BECAUSE IS IN CLASSES FOR EMOTIONALLY HANDICAPPED THAT DOES NOT MEAN MENTALLY RETARDED WHAT THEY CALLED THEM BACK THEN AND DOES

NOT MEAN THEY DID NOT HAVE A
I.Q. SCORE BELOW 70.
SOMETIMES CLIENTS OR SOMETIMES
STUDENTS WERE PLACED IN CLASSES
WITH EMOTIONALLY HANDICAPPED BUT
STILL POSSIBLY MENTALLY RETARD.
SHE STATED THAT WAS A
POSSIBILITY.
BECAUSE THE EVIDENTIARY HEARING
WAS CONDUCTED WITH CONFUSION OF
THE LAW, I THINK IT IS PROPER
AND NECESSARY TO REMAND THIS
CASE FOR ANOTHER EVIDENTIARY
HEARING WITH THE PROPER LEGAL
STANDARD IN PLACE.
AND REGARDING RETROACTIVITY--
>> LOOKS LIKE THE JUDGE, I MEAN
DID YOU ARGUE THAT THE JUDGE HAD
TO REEVALUATE THE, THE
INTELLECTUAL DISABILITY UNDER
UNDER HALL AND OATES?
WAS THAT ARGUED.
>> NOT OATES BUT UNDER HALL.
>> UNDER HALL.
>> WE SUPPLEMENTED OUR RECORD
WITH OATES.
>> I THINK THE JUDGE IS ONLY
LOOKING AT WHETHER THE TRIAL
COUNSEL WAS DEFICIENT NOT
PUTTING ON MISS MACK.
I DON'T SEE ANY DISCUSSION OF
REVEALING THE THREE PRONGS.
>> YET WE DID STILL CITE
FLORIDA v. STATE, I MEAN--
HALL v. FLORIDA.
>> DID YOU ASK TO ADDRESS THAT.
>> NO, YOUR HONOR, WE'RE ASKING
THE COURT TO SEND IT BACK.
REGARDING RETROACTIVITY, THE
STATE IS NOW PRECLUDED FROM
IMPOSING A SENTENCE ON ANYBODY
LESS THAN A 12-0.
THAT IS SUBSTANTIAL, FUNDAMENTAL
CHANGE IN THE LAW.
WE'RE TALKING ABOUT, FALCON
WE'RE TALKING ABOUT LIBERTY
INTERESTS.
HERE WE'RE TALKING ABOUT LIFE
AND DEATH.
THIS COURT GAVE A EIGHTH

AMENDMENT ANALYSIS IN
HEARST v. STATE.
DEATH IS DIFFERENT.
I'M RUNNING OUT OF TIME BUT I
WOULD ASK THIS COURT TO REMAND
THIS CASE FOR NEW SENTENCING SO
THERE CAN BE EVIDENTIARY HEARING
ON ISSUE OF INTELLECTUAL
DISABILITY UNDER THE PROPER
STANDARD, AND I WOULD ASK THIS
COURT TO REMAND THIS CASE FOR A
PROPER PENALTY PHASE WITH A
FACT-FINDING JURY, NOT A MERE
ADVISORY PANEL, A FACT-FINDING
JURY THAT HAS TO UNANIMOUSLY
FIND AGGRAVATORS.
UNANIMOUSLY DETERMINE WHETHER
THOSE AGGRAVATORS OUTWEIGH
MITIGATING CIRCUMSTANCES.
THEN UNANIMOUSLY, NOT 11-1 OR
10-2, UNANIMOUSLY BEYOND A
REASONABLE DOUBT THAT OUR CLIENT
BE SENTENCED TO DEATH.
WITH 8-4, EVEN WITH HARMLESS
ERROR ANALYSIS THE STATE DID NOT
REACH THE BURDEN.
THANK YOU FOR LETTING ME GO
OVER.
HAVE A NICE DAY.
>> THANK YOU.
JUDGE GROVER, HOW MANY DO YOU
HAVE, SIT FOR A SECOND.
HOW MANY DID DO YOU HAVE IN OUR
CLASS?
[INAUDIBLE]
17.
AND WHAT ARE THE GRADES, THE
GRADE LEVELS THEY'RE IN?
[INAUDIBLE]
ENJOYED IT?
HUH?
NOT MOST EXCITING PART OF THE
JUDICIAL SYSTEM BUT FOR THOSE OF
US WHO FOLLOW IT IS.
THANK YOU FOR COMING AND I HOPE
THAT, THAT YOU ENJOYED IT.
>> [INAUDIBLE].
>> COME BACK NEXT YEAR.
THANK YOU.