>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE.
THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEAD,
DRAW NEAR, GIVE ATTENTION.
YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
JUSTICE QUINCE IS NOT ABLE
TO ATTEND THE ORAL ARGUMENT
BUT WILL BE PARTICIPATING IN THE
CASES.
FIRST CASE IS HURST VERSUS STATE
OF FLORIDA.
>> MAY IT PLEASE THE COURT.
TIMOTHY McLAIN REPRESENTING
TIMOTHY HURST.
THIS IS A SENTENCING APPEAL.
TWO AREAS I WOULD LIKE TO
ADDRESS. ONE, PROPORTIONALITY OF
THE DEATH SENTENCE IN THIS CASE
AND SECOND, THE WAY THE COURT
HANDLED THE MENTAL RETARDATION ISSUE
IN THE CASE AND PROCEDURALLY AND
ON THE MERITS.
THE PROPORTIONALITY CASE WOULD BE
DISPOSITIVE AND I WILL START
WITH THAT ISSUE FIRST.
THIS IS NOT THE MOST AGGRAVATOR,
LEAST MITIGATOR CASES REQUIRED
TO GET PAST THE PROPORTIONALITY
ARGUMENT.
THERE WERE TWO AGGRAVATORS IN
THE CASE.
DURING THE COMMISSION OF A
ROBBERY AND HEINOUS, ATROCIOUS
AND CRUEL, WHICH WE ARE NOT
CONTESTING.
THERE WAS SIGNIFICANT
MITIGATION.
MITIGATION CAME FROM THE MENTAL
RETARDATION EVIDENCE THAT WAS
PRESENTED BEFORE THE JURY.

AND HE HAD THREE EXPERTS WHO
TESTIFIED FOR THE DEFENSE.
DR. KROP, WHO DID A NEUROPSYCH
EXAMINATION AS WELL AS A
INTELLIGENCE TESTING USING
WAIS IV EXAM.
CAME OUT WITH A 69 I.Q. ON THAT
EXAM.
HE, DR. KROP, ALSO USED THE ADULT
BEHAVIOR ASSESSMENT SYSTEM AND
ADAPTIVE BEHAVIOR EVALUATION AND
CONCLUDED THAT HE MET ALL THE
CRITERIA FOR MENTAL RETARDATION
AND THAT WAS HIS OPINION.
>> WE RECENTLY, NOW I FEEL LIKE
A FREE AGENT ALL THE WAY OVER
HERE.
THE CASE ALLEN VERSUS STATE.
IT WAS RELEASED BACK IN JULY OF
THIS YEAR.
IN THIS PARTICULAR CASE THE
VICTIM WAS HELD DOWN AND
CHEMICALS WERE POURED DOWN HER
MOUTH AND GAGGED AND WAS A
TWO-AGGRAVATOR CASE.
ONE OF THEM INCLUDING HAC AND
THERE WAS TESTIMONY OR EVIDENCE,
SUBSTANTIAL ORGANIC BRAIN DAMAGE
AND SUBSTANTIAL MENTAL ISSUES.
HOW DOE THIS CASE DIFFER FROM
ALLEN VERSUS STATE?
WE HAVE HELD ALLEN TO BE
PROPORTIONAL?
>> IT DIFFERS IN THE SENSE THAT
THE AGGRAVATION IN THIS CASE HAS
SOME, AGAIN THE FINDINGS
REGARDING THE MENTAL RETARDATION
QUESTION AND IMPULSE CONTROL
ISSUES AND THOSE KIND OF
VARIABLES, AGAIN, I'M NOT, I
DON'T REMEMBER THE DETAILS OF
THE MITIGATION IN ALLEN OTHER
THAN THOSE TWO COMMENTS BUT WE
HAVE MR. HURST, WE HAVE NO
SIGNIFICANT CRIMINAL HISTORY AT
ALL.
WE HAVE, HE WAS 19 YEARS OLD BUT
WE HAVE TESTIMONY THAT HIS
MENTAL AGE WAS ESSENTIALLY THAT
OF A 13-YEAR-OLD.

>> THE I.Q.s ARE VARIED.
WE HAVE AN I.Q. OF 70.
WE HAVE AN I.Q. OF 76.
WE HAVE AN I.Q. OF 78.
IT IS ONLY -- WAIS IV CAME OUT WITH
69.
>> SO HE IS RIGHT THERE.
>> THE WAIS IV.
I REFER TO DR. TAUB'S TESTIMONY
WHO TESTED BY THE WAIS III
EXAM AND WAIS IV EXAM.
THE WAIS WAS EVOLUTIONARY
DEVELOPMENT IN THE WAIS TESTING
SYSTEM.
THE WAIS IV RESEARCH BEGAN IN
1997 ON BRAIN DEVELOPMENT.
WAIS III HAS MORE RESEARCH IN THE
SYSTEM, MORE SUBTESTS.
MORE SENSITIVE TESTS TO
DETERMINE THE HIGH-END AND LOW
END OF THE INTELLIGENCE SCALE.
AND, JUST A SUBSTANTIALLY BETTER
TEST.
HE ALSO INDICATED THAT WHAT THEY
DISCOVERED WITH THE WAIS III WAS
THAT OVER A PERIOD OF TIME THE
SCORES TENDED TO INCREASE ON THE
WAIS III.
SO, MR. HURST WAS TESTED ON THE
WAIS III, 13, 14 YEARS AGO.
BUT THAT EXAM HAD BEEN IN PLACE
SINCE MUCH EARLIER THAN THAT.
SO THERE HAD BEEN A NUMBER OF
YEARS WHERE THERE HAD BEEN, HE
REEVALUATED THOSE WAIS III SCORES
IN LIGHT OF THE NEW RESEARCH AND
THE WAIS IV.
AND DID A RESCORING OF THAT
WHICH CAME OUT CONSISTENT WITH
THE NEW MOST RECENT WAIS IV EXAM.
THAT WAS DR. TAUB'S TESTIMONY,
CORROBORATING WHAT DR. KROP
FOUND IN HIS EXAMINATION.
I WOULD NOTE THE TWO PRIOR
SCORES, THE 76 AND THE 78, WERE
FROM, I'M JUMPING AROUND A
LITTLE BIT.
THIS CASE STARTED OUT BEFORE
ATKINS.
IN POST-CONVICTION ATKINS CAME

OUT SO THERE WAS MENTAL
RETARDATION DONE THERE.
THAT IS WHERE WE GOT THE 76 AND
78 SCORES.
THEY DETERMINED HE WAS NOT
MENTALLY RETARDED IN THE
POST-CONVICTION HEARING.
THAT ISSUE WAS NOT RAISED ON
APPEAL.
MOST LIKELY GIVEN THE 70
SCORING.
SUBSEQUENT, THAT WAS BACK, HE
WAS TESTED -- THE CRIME HAPPENED
IN 1998.
HE WAS TESTED IN ABOUT 2003 ON
THOSE PRIOR TESTS.
NOW, WHAT HAPPENED IN THE
INTERIM IS OF COURSE THE WAIS IV
CAME OUT AND, IN DEVELOPING
MITIGATION ON THE RETRIAL OF
THIS CASE, THIS COURT REVERSED
THE CASE BECAUSE INEFFECTIVE
ASSISTANCE OF DEFENSE COUNSEL
HAD NOT DEVELOPED MITIGATION.
SO IN THAT PROCESS THE NEW
TESTING CAME OUT WITH A 69 AND
TWO EXPERTS CONCLUDING THAT HE
MET THE QUALIFICATIONS FOR
MENTAL RETARDATION.
IN ADDITION WE HAVE DR. WU'S
TESTIMONY WHO DID A PET SCAN AND
CORROBORATED THE NEUROPSYCH EXAM
OF DR. KROP THAT HE HAD
SIGNIFICANT ABNORMALITIES IN THE
BRAIN, BOTH FRONTAL LOBE AND
LACK OF ACTIVITY IN THE BACK OF
THE LOBE, BACK PORTION OF THE
BRAIN WHICH WOULD HAVE GIVEN HIM
VERY POOR IMPULSE CONTROL, VERY
POOR ABILITIES TO REGULATE
AGGRESSION, VERY POOR ABILITIES
FOR JUDGMENT AND ALL OF THOSE
KIND OF VARIABLES.
SO THAT'S ESSENTIALLY THE EXPERT
MITIGATION WE HAVE IN THE CASE
AND, AGAIN, THE CRIME HERE
ITSELF, EVEN THOUGH IT WAS AN
HAC FINDING, THE NATURE OF THE
CRIME ITSELF IS CONSISTENT WITH
SOMEONE WHO IS MENTALLY

RETARDED.
IT WAS VERY POORLY THOUGHT-OUT
CRIME.
YOU KNOW, IT WAS, ADMITTEDLY
HEINOUS ATROCIOUS CRUEL FACTORS
WAS VALIDLY FOUND BUT THE
CIRCUMSTANCES HOW THAT OCCURRED,
WE DON'T KNOW ALL THE DETAILS.
WE DO KNOW THAT THERE WAS NO
INDICATION THAT THE MURDER WAS
PLANNED DURING THE COURSE OF THE
ROBBERY.
THERE WAS NO, THERE WAS, TWO
DAYS BEFORE MR. HURST HAD TALKED
TO HIS FRIEND, LEE-LEE SMITH,
WHO WAS YOUNGER BUT PEOPLE WHO
SAW THEM TOGETHER SAID HE WAS NO
DOUBT THE LEADER OF THE TWO,
HURST BEING MORE THE FOLLOWER,
THAT HE HAD PLANNED TO DO THE
ROBBERY AND THE ROBBERY ITSELF
WAS, I MEAN HE ROBBED THE PLACE
WHERE HE WORKED WITH SOMEONE WHO
KNEW HIM AND, WE DON'T KNOW
EXACTLY WHAT PRECIPITATED THE
ACTUAL MURDER.
WE KNOW SHE WAS BOUND.
SHE WAS CUT PRETTY EXTENSIVELY
BUT WHAT IS THE FIRST THING
THAT HURST DOES WHEN HE GETS
THROUGH WITH IT?
HE IMMEDIATELY, WHEN HE GETS
THROUGH WITH THE ROBBERY
IMMEDIATELY GO TO HIS FRIEND
LEE-LEE SMITH'S HOUSE, AND YOU
KNOW, no DOUBT WITH LEE-LEE
SMITH'S HELP HE, HE HIDES THE
MONEY IN LEE-LEE SMITH'S HOUSE.
LEE-LEE SMITH HELPS HIM WASH HIS
CLOTHES.
AND THEN THEY PROCEED TO SPEND
THE MONEY.
SO IS NOT A SOPHISTICATED CRIME.
THERE WAS NO INDICATION OF AN
INTENTIONAL CRIME GOING ON HERE.
>> HE TIED HER UP AND CUT HER UP
WITH A BOX CUTTER.
>> YES, YOUR HONOR.
>> BUT HE WORKED AT THE
POPEYE'S, DIDN'T HE?

>> HE DID.
>> WAS THERE ANY INDICATION OF
ANYTHING PERSONAL GOING ON
BETWEEN YOUR CLIENT AND THE
VICTIM IN THIS CASE?
>> NOT AWARE OF ANY.
>> ANY TYPE OF ANIMOSITY TOWARD
HER FOR ANY REASON?
>> NO EVIDENCE OF THAT.
>> HE WAS, HE IS 19 BUT HE WAS
ABOUT 200-POUND, BIG GUY.
SHE IS LIKE TINY.
>> YES, THAT'S CORRECT.
THAT'S CORRECT.
I THINK IT IS IMPORTANT --
>> WE ALSO HAD THE JUDGE PLACING
THE EMPHASIS ON WHAT OCCURRED
AFTERWARD, MENTAL ABILITIES OF
THE DEFENDANT?
>> AND THAT'S ONE THING I WANTED
TO POINT OUT.
THAT SEEMED TO BE THE ONLY
CRITERIA THAT THE COURT AND THE
STATE'S EXPERT USED TO SAY THAT
HIS ADAPTIVE FUNCTIONING DIDN'T
MEET THE MENTAL RETARDATION
STANDARD.
WELL, HE WAS ABLE TO DO SOME
COVER-UP AFTER THE CRIME.
HE WAS ABLE TO GIVE AN ALIBI TO
THE POLICE AND KIND OF REALLY,
THE STATE'S EXPERT ACTUALLY SORT
OF DISMISSED THE KIND OF
EVIDENCE THAT WAS USED IN AN
SING THE ADAPTIVE FUNCTIONING
ABOUT, FROM THE FRIENDS AND
FAMILY MEMBERS AND SOME
EDUCATORS WHO TESTIFIED.
WE HAD A WHOLE LIST OF THINGS
THE MAN COULD NOT DO OR YOUNG
MAN AT THE TIME.
HE WAS VERY SLOW.
DIFFICULTY LEARNING TO WALK.
THEY WANTED TO PLACE HIM IN
SPECIAL ED.
HIS MOTHER REFUSED TO ALLOW IT
BECAUSE SHE THOUGHT HE WOULD BE
STIGMATIZED.
HE COULDN'T ADDRESS HIMSELF
APPROPRIATELY FOR THE WEATHER.

HE COULDN'T MATCH HIS CLOTHES.
HE COULDN'T MANAGE MONEY.
HIS FATHER HAD TO DO THAT FOR
HIM.
COULDN'T FOLLOW DIRECTIONS
SOMEWHERE WITHOUT CALLING AGAIN
GETTING MORE DIRECTIONS OR
SOMEBODY GOING WITH HIM.
HE COULDN'T KEEP APPOINTMENTS.
ONLY REASON HE KEPT HIS JOB, HIS
MOTHER WOKE HIM UP EVERY MORNING
TO GET HIM TO WORK.
YOU KNOW HE COULDN'T USE THE
BUS.
HE DIDN'T, HE JUST HAD POOR,
DIFFICULTY, EVEN KNOWING HOW TO
ACT IN PUBLIC.
HE COULDN'T, HE COULDN'T
COMPLETE TASKS, EVEN SIMPLE
TASKS WITHOUT SOMEONE MONITORING
TO BE SURE HE COMPLETED THEM.
HE COULDN'T DO BASIC MATH.
HE COULDN'T EVEN, COULDN'T EVEN
PREPARE A MEAL FOR HIMSELF,
EVEN, FOLLOWING DIRECTIONS ON
THE BOX.
I THINK HIS SISTER MAY HAVE
TESTIFIED THAT IF YOU'RE RIGHT
THERE WITH HIM HE COULD PERHAPS
CONTINUE TO FOLLOW MEASUREMENTS
OF SOME DEGREE.
HE COULDN'T WASH HIS OWN
CLOTHES.
HE WOULDN'T TAKE A SHOWER OR
BATHE HIMSELF WITHOUT SOMEBODY
REMINDING HIM HE NEEDED TO DO
IT.
THE SCHOOL PRINCIPAL, HE SAID
THAT HURST AT 18, 19, ACTED LIKE
HE WAS A 12 OR 13-YEAR-OLD.
HE SHOULD HAVE BEEN IN SPECIAL
ED BUT HE WASN'T.
HE FREQUENTLY MISSED CLASSES.
HE WAS SOCIALLY PROMOTED THROUGH
MIDDLE SCHOOL.
HE SAID HE WOULD SKIP SCHOOL AND
THEY TOLERATED IT BECAUSE THEY KNEW
HE COULDN'T END UP SITTING IN
CLASSROOMS SO HE WOULD END UP AT
BASKETBALL COURT SHOOTING

BASKETS.
HE HAD A DRIVERS LICENSE.
HIS MOTHER SAID HIS DRIVING WAS ATROCIOUS AND SHE WAS SCARED TO DRIVE WITH HIM.
THIS IS THE KIND OF INDIVIDUAL WE HAVE IN THIS CASE.
THIS WAS THE FACTORS IN THE ADAPTIVE FUNCTIONING THAT THE, THAT DR. KROP USED IN HIS SYSTEM.
>> HOW DID HE GET A DRIVERS LICENSE?
>> I HAVE NO IDEA.
>> TAKE THE TEST?
>> I HAVE NO IDEA.
>> [INAUDIBLE]
>> THE STATE'S EXPERT IN THE CASE, ALL INFORMATION FROM THE FAMILY AND THE EDUCATORS, HE DISMISSED THAT AS JUST BEING, THOSE INABILITIES ARE ANECDOTAL.
WHEN THEY QUESTIONED, DON'T YOU PUT THIS INFORMATION INTO THIS ABS SYSTEM TO PROVE THIS?
WELL, YEAH YOU DO.
THIS IS LIKE FAMILY MEMBERS TRYING TO RECALL THINGS THAT HAPPENED 14 YEARS AGO.
MR. HURST HAS BEEN INCARCERATED FOR 12 OR 13 YEARS.
WHAT SIBLING WHO HASN'T LIVED WITH SOMEONE FOR 19 YEARS AND HAS THESE KINDS OF DISABILITIES ARE NOT GOING TO FORGET WHAT IT WAS LIKE.
THEY ARE NOT GOING TO FORGET THAT.
THAT IS WHAT HE REFERRED TO.
THIS COURT'S ALREADY ADDRESSED THE QUESTION WHETHER THE LAG TIME IN THE ADAPTIVE BEHAVIOR INFORMATION CAN BE USED AND THAT WAS IN THE HODGES DECISION.
THE ONLY THING DR. McCLAIRE REN, THE STATE'S EXPERT REFERRED TO HE GAVE A STATEMENT AND SUMMARY WHAT HE DID.
PRETTY CONCISE STATEMENT.
BUT THE DETECTIVE'S TESTIMONY IN

THAT CASE, WAY THE RECORDED
STATEMENT WAS MADE AFTER WE
INTERROGATED HIM FOR TWO OR
THREE HOURS.
WE PUT THE TAPE ON AND
SUMMARIZED.
SO HE ALREADY HAD THAT, YOU KNOW
THAT, THAT EXPERIENCE OF GOING
THROUGH THE TESTIMONY.
SO IT WAS A SUMMARY OF THE
STATEMENT AFTER THE LONG
INTERROGATION.
>> HE WAS WORKING AT POPEYE'S,
RIGHT?
>> HE WAS.
>> WHAT WAS HE DOING THERE?
>> HE WAS, THE ONLY THING I
HEARD HIM SAY THAT MORNING HE
WAS SUPPOSED TO COME IN AND HELP
WITH SOME OF THE PREPPING OF THE
FOOD FOR AND HE WOULD BE UNDER
SUPERVISION AT THAT TIME.
>> HOW LONG HAD HE WORKED THERE?
>> YOU KNOW I DON'T RECALL
EXACTLY HOW LONG HE HAD BEEN
THERE.
>> IS THERE, ARE THERE OTHER
EMPLOYMENT HISTORY THAT HE HAD?
>> NO OTHER EMPLOYMENT HISTORY
I'M AWARE OF.
THIS, LIKE I SAID, THE EXPERT
SAID HE WAS CAPABLE OF DOING
SIMPLE REPETITIVE TASKS IT IF HE
WAS UNDER SUPERVISION.
THIS IS THE TYPE OF PERSON
THAT WE'RE DEALING WITH IN THIS
CASE.
GIVEN THAT THE, THAT WHAT THE
VICTIM IN THIS CASE EXPERIENCED
WITH THE KNIFE WOUND WAS
HEINOUS, ATROCIOUS AND CRUEL BUT
ON THE OTHER HAND WE'RE ALSO
LOOKING AT AN INDIVIDUAL WHO NO
DOUBT GOT HIMSELF INTO A MIDDLE
OF A ROBBERY AND WE DON'T KNOW
WHETHER THOSE MULTIPLE WOUND
WERE INDICATIVE OF ANIMOSITY
TOWARD THE VICTIM.
WE DON'T KNOW IF IT WAS
INDICATIVE OF JUST, HE GOT INTO

A PANIC MODE, MAYBE DURING THE COURSE OF THE ROBBERY ITSELF. WE DON'T HAVE ANY EVIDENCE TO KNOW THAT.
>> I THOUGHT THERE WAS EVIDENCE THAT THE BOX CUTTER CUT THROUGH SOME OF THE TAPE TO MAKE SOME OF THE INJURIES WHICH WOULD INDICATE THAT THE VICTIM HAD ALREADY BEEN TAPED UP AND SECURED.
SO I DON'T UNDERSTAND THE, YOU KNOW, PANICKING BECAUSE SOMETHING THAT THE VICTIM DID, I MEAN IT SEEMS TO ME IT IS ALMOST CONCLUSIVE EVIDENCE THAT THE VICTIM WAS TOTALLY SUBDUED WHEN THE MUTILATION OCCURRED?
>> I DON'T KNOW IF IT WAS PANICKING AS A RESULT OF ANYTHING THE VICTIM DID AT TIME BUT WE'RE ALSO DEALING WITH SOMEONE WITH THESE KIND OF MENTAL DIFFICULTIES AND INTELLECTUAL IMPULSE CONTROL, AGGRESSION CONTROL, ALL SORTS OF THINGS.
IT MAY HAVE, AGAIN WE HAVE TO SPECULATE BECAUSE WE DON'T KNOW. IT IS NOT INCONSISTENT WITH SOMEONE IN THAT NATURE WHO GOT HIMSELF IN A SITUATION AND WAS PANICKED JUST BY THE SITUATION IN AND OF ITSELF AND MAY HAVE REACTED IN SUCH A WAY TO CAUSE THESE MULTIPLE WOUNDS, WE SEE MULTIPLE WOUND CASES WHERE THERE IS MENTAL PROBLEMS AND EMOTIONAL STATES AT THE TIME OF THE KILLING, OFTEN RESULTS IN SOME PRETTY HEINOUS ACTS THAT OCCUR.
>> YOU'RE NOT SAYING THIS IS ONE OF THESE ROBBERY GONE BAD CASES?
>> I'M NOT SAYING IT'S A ROBBERY GONE BAD IN THE CLASSICAL SENSE THAT WE TALK ABOUT THAT.
>> NOT EVEN REMOTELY.
NOT EVEN REMOTELY.
>> YOU'RE SAYING IT IS NOT

PROPORTIONATE THAT THERE IS
SIGNIFICANT MENTAL DISABILITY?
>> THAT IS PROPORTIONALITY
ARGUMENT.
>> HOW OLD WAS HE AT THE TIME?
>> HE WAS 19 AT THE TIME.
>> WHAT WAS THE TESTIMONY ABOUT
WHAT HIS MENTAL AGE WAS?
>> IN FACT THE TRIAL COURT, THE
TRIAL COURT'S FINDINGS ON THIS
MITIGATION IN THE ORDER SAID HE
HAD MENTAL AGE OF 12 OR 13.
>> THAT IS WHAT THE TRIAL COURT
FOUND THAT OR --
>> TRIAL COURT FOUND AGE AS A
MITIGATOR AND SPECIFICALLY NOTED
HIS SLOW INTELLECT AND
IMMATURITY AND INABILITY TO CARE
FOR HIMSELF AS BASIS FOR GIVING
WEIGHT TO THE STATUTORY
MITIGATOR OF AGE.
ALSO FOUND NO CRIMINAL HISTORY
AT ALL.
>> SO WE HAVE, AND IT IS 7-5
JURY RECOMMENDATION.
>> 7-5, THAT IS CORRECT.
>> THAT DOESN'T FIGURE IN AT ALL
IN OUR PROPORTIONALITY ANALYSIS,
AT YOU WILL, DOES IT?
THAT IS WHAT THE JURY
RECOMMENDATION IS?
>> WELL, YOU KNOW, I THINK IT
SHOULD CONSIDER IT PERSONALLY
BUT I THINK COURT HAS ALWAYS
LOOKED TO THE CLOSENESS OF THE
VOTE IN EVALUATING A LOT OF THE
ISSUES SURROUNDING THE DEATH
PENALTY.
>> THAT GOES TO YOUR ISSUE OF
THE CONSTITUTIONALITY OF THE
STATUTE WHERE THERE'S NO, THERE
WERE NO, WELL, THERE WAS NO
PRIOR VIOLENT FELONY AGGRAVATOR?
>> RIGHT.
THERE WAS NO PRIOR VIOLENT
FELONY AGGRAVATOR.
THERE WAS NO, THERE WAS NO PRIOR
CRIMINAL HISTORY, PERIOD.
I ALSO NEGLECTED TO MENTION THAT
DR. WU'S, JUST AS A SIDE, GOING

BACK A LITTLE BIT, DR. WU'S
EXAMINATION, HE SAID THE BRAIN
SCAN HE THOUGHT WAS CONSISTENT
WHAT HE HAD SEEN WITH PEOPLE
WITH FETAL ALCOHOL SYNDROME.
THAT IS CONSISTENT WITH THE
MOTHER'S TESTIMONY THAT SHE
DRANK HEAVILY THROUGHOUT THE
PREGNANCY.
THE OTHER ISSUE I WANT TO TOUCH
ON --
>> YOU'RE DEEP IN YOUR REBUTTAL
TIME.
>> I'M SORRY.
I JUST WANT TO BRING TO THE
COURT THE PROCEDURAL WAY IN
WHICH THE RETARDATION ISSUE WAS
HANDLED.
TRIAL, DEFENSE COUNSEL ASKED FOR
A NEW RETARDATION HEARING BASED
ON NEW EVIDENCE HE HAD
AVAILABLE.
THE JUDGE DENIED THAT SAID I
WILL ALLOW YOU TO PRESENT THE
EVIDENCE DURING THE PENALTY
PHASE.
IF I SEE ANYTHING THAT MAKES ME
CHANGE MY MIND FROM WHAT I RULED
IN THE POST-CONVICTION CASE
YEARS EARLIER I WILL DEAL WITH
IT THEN.
SO HE DID NOT GET A NEW PENALTY
PHASE WHICH I THINK IS
COMPLETELY CONTRARY WITH COURT
DID IN HALL VERSUS STATED WHEN
THEY ALLOWED THE STATE TO
RELITIGATE WHEN MENTAL
RETARDATION CAME UP
SUBSEQUENTLY.
THANK YOU.
>> STEVE WHITE, REPRESENTING THE
STATE OF FLORIDA, APPELLEE.
MR. HURST HAD TWO MENTAL
RETARDATION HEARINGS, FULL
HEARINGS.
HE HAD ONE IN THE
POST-CONVICTION PROCEEDINGS AND
HE HAD ONE HERE.
BASICALLY WHAT THE TRIAL COURT
DID IS, TRIAL COURT SAID, NO,

I'M NOT GOING TO LET YOU ARGUE
TO THE JURY THAT MENTAL
RETARDATION IS AN ABSOLUTE BAR
TO THE DEATH PENALTY.
BUT THE TRIAL COURT THEN TOOK
ALL THE EVIDENCE THAT DEFENSE
COUNSEL INTRODUCED AT THE
PENALTY THIS NEW PENALTY PHASE
AND REACHED HER CONCLUSION THAT
THE DEFENSE FAILED TO PROVE
DEFICIT IN ADAPTIVE FUNCTIONING.
THE TRIAL COURT IN HER ORDER, IN
HER SENTENCING ORDER, DISCUSSED
THE TEST SCORES AND THEN
SPECIFICALLY ACCREDITED
DR. McLAREN'S OPINION THAT
THE DEFENDANT DID NOT MEET THE
ADAPTIVE FUNCTIONING PRONG IN STATE
OF FLORIDA.
>> IF I UNDERSTAND THE ARGUMENT
NOT THAT MENTAL RETARDATION BARS
THE DEATH PENALTY IN THIS CASE
BUT THAT IS OVERWHELMING AND
SIGNIFICANT EVIDENCE AS TO
MITIGATION.
AND CERTAINLY I MEAN THE STATE
IS OF THE VIEW SIMPLY BECAUSE
YOU'RE NOT FOUND MENTALLY
RETARDED THAT EXCLUDES ALL THAT
EVIDENCE THAT FOR MITIGATION,
ARE YOU?
>> OH, ABSOLUTELY NOT, YOUR
HONOR.
>> THAT IS HOW HE IS ARGUING IT AS
I UNDERSTAND.
NOT THAT, AS YOU SEEM TO
BE SAYING, YOU'RE ARGUING THAT HE
IS NOT MENTAL -- SO WHAT?
THAT'S A LABEL. THAT ALL THE
OTHER INFORMATION IS PROPERLY
BEFORE THE COURT.
I THINK IT OUGHT TO ADDRESS THAT
WITH REGARD TO PROPORTIONALITY.
>> ABSOLUTELY, ABSOLUTELY YOUR
HONOR.
THE, TO DO OVERLAP, THE FACTS OF
THOSE FINDINGS DO OVERLAP A LOT.
LET'S LOOK AT THIS MENTALLY
RETARDED PERSON, SUPPOSEDLY
MENTALLY RETARDED PERSON WHO

CAN'T PLAN ANYTHING, CAN'T
REMEMBER THINGS.
WHO IS SUBJECT TO IMPULSIVE,
IMPULSES, ET CETERA.
WELL THIS SUPPOSED ORGANICALLY
BRAIN-DAMAGED PERSON TO WHAT
DEGREE WE CAN DEBATE AND OF
COURSE THE FACTS BELIE ANY
SIGNIFICANT ORGANIC BRAIN DAMAGE
ALTHOUGH THE TRIAL COURT DID
FIND THAT THERE WAS SOME.
BUT TO WHAT DEGREE?
HOW DOES IT AFFECT
PROPORTIONALITY IN THIS CASE AND
THE FINDING OF MENTAL
RETARDATION?
WELL, WE KNOW HE HAD A JOB.
WE KNOW THAT HE KNEW THAT HE WAS
GOING TO BE ALONE WITH THIS VERY
PETITE VICTIM, FOUR FEET 8 1/2
INCHES 86-POUND VICTIM.
HE IS 280 POUNDS, 300 POUNDS,
SIX FEET.
HE KNEW HE WOULD BE ALONE AT THE
POPEYE'S WITH HER AND HAVE
ACCESS TO HER WITHOUT ANYBODY
ELSE THERE, AT 8:00, ROUGHLY
8:00 IN THE MORNING.
HE PLANNED ROBBERY.
HE TOLD LEE-LEE SMITH TWO OR
THREE DAYS BEST ROBBERY, I'M
GOING TO ROB THE POPEYE'S.
HE ARRIVES AT THE POPEYE'S.
HAS ACCESS TO THE VICTIM ALONE
AT THE POPEYE'S.
KNOWS ENOUGH TO GET ELECTRICAL
TAPE AND BIND AND GAG HER.
KNOWS ENOUGH TO, TO BASICALLY
TORTURE. HE SOMEHOW GOT THE
COMBINATION TO THAT SAFE.
HE DIDN'T HAVE ACCESS TO THE
COMBINATION OF THE SAFE.
ONLY MANAGERS AND ASSISTANT
MANAGERS DID.
THIS SUPPOSEDLY MENTALLY
RETARDED PERSON, SOUNDS LIKE HE
IS ADAPTING QUITE A BIT WHAT HE
NEED TO DO TO GET THE MONEY OUT
OF THE SAFE.
THAT IS ADAPTATION, IF ONE EVER

SEES ADAPTATION.
HE DISABLES THE VICTIM.
HE GETS ACCESS TO THE SAFE.
HE ATTEMPTS TO CLEAN UP THE CRIME SCENE.
HE IS NOT THOROUGH ABOUT IT.
DR. BERGLUND TESTIFIED HE SAW WATER ON THE FLOOR WITH BLOOD ON THE FLOOR BUT THERE IS STILL BLOOD SPATTER ON THE WALL WHEN HE WAS TORTURING HER, CUTTING EVERY SIDE OF HER HEAD, LEFT, RIGHT, FRONT, TO THE BONE, THROUGH THE LIP AND EYELID.
AS YOUR HONOR INDICATED, AS JUSTICE LEWIS, YOU INDICATED SOME OF THE CUTS WERE THE TAPE THAT GAGGED HER.
HE ALREADY HAD HER GAGGED AND STILL TORTURING HER WITH A BOX CUTTER.
AFTER THE, AFTER THE ROBBERY MURDER HE GOES TO LEE-LEE SMITH'S.
HE KNOWS ENOUGH, HE IS ADAPTING.
HE KNOWS ENOUGH TO GET LEE-LEE SMITH TO THROW THE SHOES AWAY AND TO HIDE THE MONEY.
HE DOESN'T GO HOME WITH THE MONEY.
AND WITH THE SHOES.
LEE-LEE SMITH SEES SOME BLOOD ON HIS TROUSERS AND DEFENDANT KNOWS ENOUGH, ADAPTS TO TELL LEE-LEE SMITH, WASH THESE PANTS FOR ME.
THE DEFENDANT KNOWS ENOUGH RIGHT AFTER THE ROBBERY TO GO TO THE WALMART TO GET ANOTHER PAIR OF SHOES, HIS SIZE 14 SHOES.
THE DEFENDANT KNOWS ENOUGH TO GO TO THE JEWELRY STORE TO BUY SOME, I THINK IT WAS RINGS WITH SOME OF THE STOLEN MONEY.
HE KNOWS WHERE THE MONEY IS.
THEY GO BACK TO LEE-LEE SMITH'S TO GET MONEY TO GO BUY RINGS AT THE PAWN SHOP.
AND WE HAVE THE DEFENDANT'S STATEMENT, TO THE POLICE, WHICH THE COURT, TRIAL COURT RELIED ON

HEAVILY.
AND I ATTACHED IT AS AN APPENDIX
TO THE BRIEF WHERE HE GOES INTO
GREAT DETAIL, EXCEPT FOR WHEN IT
IS GOING TO INCRIMINATE HIM.
HE KNOWS ENOUGH TO ADAPT TO, NOT
SAY THAT I GOT, I ARRIVED AT THE
POPEYEíS.
HE SAYS, NO, MY CAR BROKE DOWN.
AND THEN WHAT DO WE HAVE IN THE
STATEMENT?
WELL, TWO OR THREE HOUR
SUPPOSEDLY STATEMENT, THIS
MENTALLY RETARDED PERSON WHO
CAN'T REMEMBER THINGS, HE
SUPPOSEDLY, HE REMEMBERS TIMES,
DIRECTIONS, PLACES, DETAILS,
ABOUT WHAT IS ACROSS THE STREET
FROM WHAT.
ALL IN HIS STATEMENT THAT WAS
RECORDED AND PLAYED FOR THE JURY
ON WHICH THE TRIAL COURT HEAVILY
RELIED.
HIS STATEMENT IS OBJECTIVE
EVIDENCE OF HIS, AND INDEPENDENT
OF ANY OTHER WITNESS, OBJECTIVE
EVIDENCE OF WHAT HIS MENTAL
CAPACITY WAS.
SO DR. McLAREN'S CONCLUSION
THAT THE DEFENDANT DOES NOT MEET THE
ADAPTIVE FUNCTIONING PRONG OF
ATKINS, FLORIDA'S DEFINITION OF
MENTALLY RETARDATION IS
SUPPORTED IN THE RECORD,
ABUNDANTLY SUPPORTED IN THE
RECORD BY MANY, MANY FACTS.
AGAINST THAT WE HAVE SOME
FAMILY MEMBERS WHO SAY, FOR
EXAMPLE, I HAD TO WASH HIS
CLOTHES OR SOMETHING.
BUT I ALSO WASHED HIS BROTHER'S
CLOTHES TOO.
IT SOUND LIKE TO ME THAT WELL,
MAYBE PERHAPS MR. HURST DIDN'T
WANT AND BROTHERS DIDN'T WANT TO
WASH THEIR CLOTHES.
WE DON'T KNOW WHETHER HE WAS IN
FACT CAPABLE OF WASHING HIS OWN
CLOTHES AND GIVEN WHAT WE HAVE
IN THE OTHER RECORD HERE, HE WAS

CERTAINLY CAPABLE OF A LOT OF
THINGS, PLANNING THIS MURDER AND
EXECUTING THE MURDER.
GETTING COMBINATION TO THE SAFE.
GETTING MONEY FROM THE SAFE.
HIDING THE MONEY.
DISPOSING OF CLOTHES.
DISPOSING OF OTHER EVIDENCE.
WHEN HE WANTS, WHEN MR. HURST
WANTS TO ADAPT, HE CAN ADAPT.
IN THIS PARTICULAR CASE UNDER
THE FACTS OF THIS MURDER HE WAS
IN FACT ADAPTING.
IN FACT THE TRIAL COURT
REJECTED MENTAL
MITIGATION BECAUSE OF A LOT OF
FACTS I'VE BEEN DISCUSSING.
>> I HAVE A QUESTION.
>> YES, YOUR HONOR.
>> I TAKE IT YOUR POSITION ON
RETARDATION THE I.Q.s
SHOULDN'T CHANGE?
IF IT IS A 70, IT SHOULD BE A
70?
NOT SOMETHING YOU CAN LEARN TO
DO BETTER IN, AM I CORRECT?
>> WELL, THERE IS SOME EVIDENCE
THAT, IF YOU TAKE THE TESTS
SEQUENTIALLY CLOSE AFTER, ONE,
ONE EXAMINATION CLOSE AFTER THE
OTHER THEY CAN BE SOME SORT OF A
LEARNING.
>> ONCE RETARDED, ALWAYS
RETARDED, THAT WOULD BE YOUR
POSITION?
>> YEAH, THAT'S, ACCORDING TO
THE FLORIDA STATUTE, YOUR HONOR,
AS WELL.
YOU HAVE TO, MENTAL RETARDATION
LASTS THROUGH LIFE.
BY THE WAY --
>> IT DOESN'T CHANGE?
>> CORRECT.
PRE-18 AND AS WELL AS POST-18.
>> LET ME ASK YOU THEN.
THE WAY WE DO IT NOW IN FLORIDA
THE PERSON GETS SENTENCED TO
DEATH.
AND THEN THERE IS THIS APPELLATE
PROCESS.

THEN YOU HAVE A DEATH WARRANT.
AND THEN THE DETERMINATION AS TO WHETHER THE PERSON IS NOT RETARDED TO BE EXECUTED IS DETERMINED AT THE END.
THEY'RE PROPOSING THAT WE DO THIS IN THE FRONT END.
WHY DON'T WE JUST HAVE A HEARING TO BEGIN WITH, IF ONCE RETARDED, ALWAYS RETARDED, WHY DON'T WE HAVE A HEARING TO BEGIN WITH BEFORE WE EVEN DO THE TRIAL TO SEE IF A PERSON IS RETARDED OR NOT.
AND IF HE OR SHE IS, THEN WE KNOW YOU WANT IMPOSE THE DEATH SENTENCE?
WHY DON'T WE JUST DO THAT ON THE FRONT END AND GET ALL THAT DONE?
>> IN FACT I THINK THE RULE 320.3 DOES PROVIDE THAT,
OUTSIDE 90 DAYS BEFORE THE TRIAL.
>> WHY DON'T WE MAKE THAT DETERMINATION AHEAD OF TIME AND DETERMINE THAT, OKAY, THIS PERSON IS RETARDED,
HE CAN NOT BE EXECUTED?
>> THIS PARTICULAR CASE THOUGH, YOUR HONOR, 2004, THE TRIAL COURT ASSESSED THE ATKINS HEARING EVIDENCE, THERE WAS AN ATKINS HEARING BACK IN 2004 AND FOUND THAT HE WAS NOT RETARDED.
AND, DECIDED THE ADAPTATION, FUNCTIONAL ADAPTATION PRONG OF THE DEFINITION AS WELL AS THE TEST SCORES OF 76 AND 78 AT THE TIME.
NOW, AGAIN, ADAPTIVE FUNCTIONING IS THE WHAT THE STATE'S RELYING ON.
THAT IS WHAT THE TRIAL COURT RELIED ON.
IN TERMS OF THE TEST SCORES, WE CAN HAVE A ACADEMIC DISCUSSION WHETHER THE 76 OR 78 SHOULD BE THE SAME AS 69 AND WHAT THE WAIS IV AND WAIS III COMPARE.

DR. McCLAREN SAID THAT THE TESTS
THREE AND FOUR ARE HIGHLY
INTERCORRELATED.
UNDER THE FACTS OF THIS CASE THE
COURT RELIED ON ADAPTIVE
FUNCTIONING AND THERE IS
COMPETENT SUBSTANTIAL EVIDENCE
TO SUPPORT THAT FINDING,
BOTH IN 2004 AND IN 2012.
HE HAD TWO ATKINS HEARINGS IN
ESSENCE.
AND, I'M SORRY, YOUR HONOR.
>> NO, I JUST GOING -- YOU
RECITED ALL THIS EVIDENCE ABOUT
HOW HURST WAS, HOW HE WAS
FUNCTIONING BUT THE JUDGE IN THE
SENTENCING ORDER SAYS HE DOESN'T
FIND HIM MENTALLY RETARDED. THAT
IS NOT TO SAY HE DOESN'T SUFFER
FROM SIGNIFICANT MENTAL ISSUES.
THE COURT ACCEPTS THE TESTIMONY
OF DR. WU THAT REVEALED
WIDESPREAD ABNORMALITIES IN THE
BRAIN AND MULTIPLE AREA
INCLUDING THE FRONTAL AREA WHICH
IS CRUCIAL TO JUDGMENT AND
IMPULSE CONTROL.
HE ALSO SAID THE PATTERN IS
CONSISTENT WITH FETAL ALCOHOL
SYNDROME.
THE TESTIMONY OF DEFENDANT'S
MOTHER THAT SHE WAS 15 WHEN SHE
BORE HIM AND DRANK TO EXCESS
EVERY DAY WHILE PREGNANT TO HIM.
COURT'S CONCLUSION IS VERY WELL MAY
SUFFER FROM FETAL ALCOHOL
SYNDROME.
ALL OF THE EXPERTS AGREE THAT
THE DEFENDANT HAS LIMITED
INTELLECTUAL CAPACITY.
IN FACT THE STATE CONCEDES AS
MUCH.
AND THEN THE JUDGE FINDS THAT IT
HAS BEEN ESTABLISHED.
NOW THAT DOESN'T TAKE AWAY FROM
THAT THIS WAS, THE NATURE OF THIS
CRIME BUT, DO YOU TAKE ISSUE
WITH THE TRIAL COURT'S FINDINGS
REGARDING THE MENTAL STATE OF,
AND STATUS OF THIS DEFENDANT?

THAT THIS DEFENDANT HAS TRUE
ORGANIC MENTAL DISABILITIES?
>> HE HAS, NO, YOUR HONOR.
SHORT ANSWER TO YOUR QUESTION IS
NO AND --
>> BUT YOU DISAGREE WITH THE
TRIAL JUDGE?
>> NO, MA'AM, I DO.
THE STATE ACCEPTED WHAT THE
TRIAL COURT FOUND.
TRIAL COURT RELIED ON, THE TRIAL
COURT REJECTED DR. KROP AND
DR. TAUB, AND REJECTED
DR. McCLAREN ON ADAPTIVE
FUNCTIONING.
THE TRIAL COURT DID FROM THE
ORDER WHICH I HAVE IN FRONT OF
ME RELIED UPON DR. WU.
THE QUESTION IS WHAT WERE THE
IMPLICATIONS OF THAT FOR
HIS PARTICULAR CASE?
HE HAS A ORGANIC BRAIN
PROBLEM. INFLUENCES HIS IMPULSE
CONTROL AND ALSO INFLUENCES HIS,
WELL, IMPULSIVITY AND CRUCIAL
JUDGMENT.
>> IF THIS GOES THROUGH AND IF WE
READ THE JUDGE'S FINDINGS THERE,
IS NOT EITHER, HE DOESN'T MEET
THE FAILURE TO OR ADAPTIVE
FUNCTIONING, THAT THE QUESTION
IS, IS THIS A PROPORTIONATE
SENTENCE?
I THINK THAT THE FACTS AGAIN, I
AGREE SUPPORT THAT HE'S --
[INAUDIBLE]
HE DID THIS AND NOT JUST SOME
KIND OF FRENZY.
AND SO, BUT HIS, I GUESS WHAT
CONCERNS ME IS HIS AGE, THE FACT
THAT THE JUDGE FINDS HIM TO BE
EQUIVALENT TO A 12 OR
13-YEAR-OLD IN TERMS OF HIS
FUNCTIONING AND THAT HE HAS NO
PRIOR HISTORY OF CRIMINAL
ACTIVITY.
THE JURY WAS CONFLICTED WITH THE
7-5 RECOMMENDATION AFTER HEARING
ALL OF THIS EVIDENCE.
WHY IS THIS A PROPORTIONATE

SENTENCE IN THIS CASE?
>> WHY?
>> WHY OR EITHER WAY?
>> COUPLE THINGS, YOUR HONOR, WE NEED TO COMPARE HOW THE TRIAL COURT DEALT WITH DR. WU AS YOUR HONOR QUOTED THE ORDER.
BUT THE TRIAL COURT ALSO DISCUSSED MENTAL RETARDATION AND ADAPTIVE FUNCTIONING.
WHAT ARE THE IMPLICATIONS OF HIS BRAIN DAMAGE IN THIS CASE?
WHAT WAS HE ABLE TO DO IN THIS CASE?
AND THE TRIAL COURT NOT ONLY ON MENTAL RETARDATION IN REJECTING SUBSTANTIAL IMPAIRMENT AND EXTREME EMOTIONAL DISTURBANCE TALKED ABOUT WHAT THE DEFENDANT WAS ABLE TO DO IN TERMS OF THE IMPLICATIONS OF THAT BRAIN DAMAGE.
HOW MUCH SHOULD IT IMPACT HER DECISION ON THIS PARTICULAR CASE.
>> SO YOU THINK THAT WHAT MIGHT SEPARATE THIS FROM OTHER CASES WHERE WE HAVE NOT FOUND IT PROPORTIONATE, THIS GOES TO HIS, NOT THAT IT IS NOT MITIGATION BUT IT DOESN'T REALLY, AS FAR AS WHAT WAS HAPPENING AT THE TIME OF THE CRIME, IT WASN'T A DOMINATING FACTOR CAUSING --
>> ABSOLUTELY NOT.
WHAT HE WAS ABLE TO DO.
WHAT HE OBJECTIVELY ESTABLISHED THAT HE WAS ABLE TO DO.
NOT JUST SOME FAMILY MEMBER'S OPINION ABOUT ANOTHER TIME --
>> WHAT DO YOU THINK THE CLOSEST CASES WHERE WE HAVE AFFIRMED THAT THE DEATH PENALTY WITH SIMILAR AGE, MENTAL DISABILITY?
>> THERE ARE FOUR CASES I WANT TO MENTION TO THE COURT.
I CITED THEM AND DISCUSSED A WHOLE BUNCH OF CASES IN THE BRIEF.

MAY I MAKE ONE OTHER PRELIMINARY
POINT ABOUT DR. WU, YOUR HONOR.
THE TRIAL COURT DIDN'T DISCUSS
DR. WU IN ANY DETAIL BUT IF YOU
LOOK AT HIS TESTIMONY HE
INDICATED THE PET SCAN IS ONLY ONE
THING THEY LOOKED AT.
IN THE CONTEXT OF OTHER FACTORS.
HE DID FIND ORGANIC BRAIN DAMAGE
AND ABNORMALITIES, THAT'S TRUE,
BUT HE ALSO TESTIFIED THAT THE
BEHAVIOR RESULTING FROM BRAIN
DAMAGE VARIES.
SO WHAT'S THE BEHAVIOR HERE THAT
VARIES?
WELL, THESE ARE ALL THE FACTS
THE STATE HAS BEEN DISCUSSING.
>> THE POINT ABOUT THE ROBBERY,
DID THE JURY FIND THAT
SEPARATELY IN THE GUILT PHASE?
WAS THERE A FINDING OF --
>> ACTUALLY I THOUGHT THAT THEY
DID BUT THEY DID NOT AND --
>> SO WE DON'T, AGAIN, AND I
REALIZE THE MAJORITY OF THE
COURT HAS NOT ACCEPTED IT, WE
HAVE A 7-5 WITH NO PRIOR VIOLENT
FELONY.
WE HAVE NO KNOWLEDGE WHETHER THE
JURY FOUND ANY AGGRAVATOR
UNANIMOUSLY IN THIS CASE.
>> THAT'S CORRECT.
WE'RE, THE STATE'S RELYING ON
FLORIDA LAW THAT PROVIDES THAT
THE DEFENDANT IS DEATH ELIGIBLE
BY VIRTUE OF THE JURY
INSTRUCTION TELLING THE JURY
THAW MUST FIND AN AGGRAVATOR IN
ORDER TO RECOMMEND THE DEATH
PENALTY.
IN TERMS OF A FEW CASES THAT I
WANTED TO DISCUSS, YOUR HONOR,
SLINE.
IS ONE.
THAT WAS 75.
THAT IS NOT DISPOSITIVE.
THE AGGRAVATORS WERE AVOID
ARREST AND DURING A ROBBERY.
HERE WE HAVE THE --
>> SLINEY, YES. 1997.

>> HOW OLD WAS HE?
>> HE WAS AGE 19.
HE HAD NO SPECIFIC PRIOR
CRIMINAL HISTORY LIKE HERE.
THIS COURT EMPHASIZED THERE WAS
NO STATUTORY MENTAL MITIGATION
LIKE WE HAVE HERE.
THERE WAS NO MENTAL MITIGATION
IN SLINEY BUT EMPHASIS WAS THERE
WAS NO STATUTORY MITIGATION.
IN THAT CASE HE BEAT THE VICTIM
WITH A HAMMER AND STUCK A
SCISSOR IN HER NECK.
HERE WE HAVE, I HOPE I DON'T
NEED TO CHRONICLE ALL THE
INJURIES THAT THE DEFENDANT
INFLICTED UPON THE VICTIM.
ANOTHER CASE I MENTION YOUR
HONOR, GERALDS.
IN THAT CASE CCP WAS STRUCK BY
THE COURT AND REMAINING
AGGRAVATORS WERE HAC DURING A
FELONY.
THERE A ROBBERY-BURGLARY.
HERE WE HAVE ROBBERY.
THE MITIGATORS INCLUDED AGE AND
MENTAL CONDITION, BIPOLAR MANIC.
IN THAT CASE THE VICTIM WAS
BOUND LIKE THIS CASE.
THAT CASE, 10 TO 15 BLUNT FORCE
INJURIES AND THREE STAB WOUND.
HERE WE HAVE 60 SLASH AND STAB
WOUNDS TO THE VICTIM INCLUDING
INJURIES THAT I HAVE ALREADY
MENTIONED.
WE HAVE STRUGGLE IN THAT CASE.
HERE WE HAVE THE AGAIN THE
VICTIM BOUND.
AT SOME POINT THERE'S BLOOD ON
HER KNEES.
SO AT SOME POINT SHE KNELT IN
HER OWN BLOOD.
WE DON'T KNOW WHETHER SHE WAS
FORCED TO KNEEL OR WHETHER SHE
FELL OR WHAT HAVE YOU.
BUT GERALDS IS ANOTHER CASE STATE
WOULD RELY ON.
HOSKINS IS ANOTHER ONE.
IT'S A 2007.
STATE RELIES ON ALL THE CASES IT

DISCUSSES ITS IN BRIEF AS WELL.
IN THAT CASE HAC LIKE HERE AND
DURING A FELONY.
THERE ADMITTEDLY THERE WAS
SEXUAL BATTERY INVOLVED WHICH
WOULD COME INTO PLAY.
BUT STILL HAC DURING ANOTHER
FELONY.
HERE A ROBBERY.
THERE, AVOID ARREST ALSO BUT
THERE YOU HAD VERY SIGNIFICANT
MENTAL MITIGATION.
LOW MENTAL FUNCTIONING ABILITY.
ABNORMALITIES IN THE BRAIN, POOR
ACADEMIC PERFORMANCE, ABUSIVE
BACKGROUND.
FAR MORE SERIOUS MITIGATION THAN
HERE.
AND THIS COURT UPHELD THE DEATH
PENALTY.
AND THAT ONE THE VICTIM WAS
GAGGED LIKE HERE.
AND HE LIED TO THE POLICE LIKE
HERE.
ONE OTHER CASE THAT I WOULD
MENTION, I'LL SUPPLEMENT WITH
IT, I DIDN'T BRING IT TO
OPPOSING COUNSEL'S ATTENTION
YESTERDAY, JEFFRIES IS A 2001 CASE.
I DID BRING -- IN THAT CASE
ENGAGED IN THE COMMISSION OF A
ROBBERY AND HAC AND THE COURT
FOUND THE STATUTORY MITIGATOR OF
IMPAIRED CAPACITY WHICH WE DON'T
HAVE HERE.
WE DON'T HAVE ANY STATUTORY
MENTAL MITIGATION.
THERE WAS A HISTORY OF EMOTIONAL
AND MENTAL PROBLEMS IN THERE.
ATTEMPTED SUICIDE AND DRUG AND
ALCOHOL ABUSE.
IN THERE, IN JEFFRIES THE VICTIM
WAS STABBED SEVERAL TIMES AND
ALSO STOMPED AND THERE WAS SOME
DEFENSIVE WOUND.
HERE OF COURSE WE HAVE THE
LENGTH OF TIME THAT IT TOOK TO
INFLICT THESE 60 CUTS AND
SLASHES ON THE VICTIM, GAGGING
HER, TYING HER UP AND GETTING

THE COMBINATION TO THE SAFE,
MAKING SOME ATTEMPT
TOWARDS CLEANING UP AFTERWARDS.
THOSE ARE FOUR CASES STATE WOULD
ESPECIALLY HIGHLIGHT FOR THE
PURPOSE OF ARGUMENT OF THE
OTHERWISE THE STATE RELIES ON
ALL THE CASE IT IS DISCUSSES IN
HITS BRIEF.
IF THERE ARE NO FURTHER
QUESTIONS THE STATE WOULD ASK
THE COURT TO AFFIRM THE JUDGMENT
AND SENTENCE OF DEATH.
THANK YOU.
>> REBUTTAL?
>> JUST QUICKLY.
ALL FOUR OF THE CASES THE
STATE CITES THERE ARE
DISTINGUISHING FACTORS IN ALL
FOUR OF THOSE CASES.
HE NOTED THERE WAS NO MENTAL
MITIGATION IN SLINEY.
THE MENTAL MITIGATION --
>> WHAT CASE IS IT LIKE WHERE WE
REDUCED IT TO LIFE?
>> PRIMARY CASE WE RELIED ON
WHICH IS MORE AGGRAVATING CASE
BUT THE MITIGATION WAS SIMILAR
WAS THE COOPER CASE.
WHICH YOU CITED IN THE BRIEF.
CASES ARE CLEARLY
DISTINGUISHABLE.
THE HOSKINS CASES,
THE GERALDS CASE EVEN THOUGH HE
HAD BIPOLAR DISORDER, GAINFULLY
EMPLOYED.
HE WAS 22 YEARS OLD.
HE HAD AN ABOVE AVERAGE I.Q.
WELL ABOVE AVERAGE I.Q.
SO, AGAIN, ALL OF THESE CASES
THAT THEY HAVE REFERRED TO ARE
DISTINGUISHABLE.
AND AGAIN THE COOPER CASE WAS A
MORE AGGRAVATED AND MITIGATION
WAS COMPARABLE HERE.
THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.