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State of Florida vs Brian L. Glatzmayer

THE NEXT CASE ON THE COURT'S CALENDAR IS STATE VERSUS GLATZMAYER. MS. TERENCE, GOOD MORNING. YOU MAY PROCEED.

ON BEHALF OF THE STATE OF FLORIDA, ASSISTANT ATTORNEY JEANRAL TERENCE. WE ARE HERE ON AN APPEAL ON THE TRIAL COURT'S DENIAL OF A MOTION TO SUPPRESS. BRIAN GLATZMAYER WAS ARRESTED AND WAS MILES AN HOUR ANDIZED -- MIRANDAIZED. AT THAT TIME HE SIGNED A CONFESSION IN THE ATTEMPTED MURDER -- EXCUSE ME -- THE ATTEMPTED ROBBERY AND MURDER OF HIS FRIEND, ERIC SHUNK. WHEN THE POLICE ASKED HIM, THEN, TO PUT THAT ON TAPE, HE ASKED IF HE COULD SPEAK TO HIS -- EXCUSE ME -- HE ASKED THE OFFICER HIS OPINION. DO YOU THINK I NEED A LAWYER? THE OFFICER SAID THAT IS A DECISION ONLY YOU CAN MAKE. I CAN'T MAKE THAT FOR YOU. AND THEN HE SAID, WELL, CAN I SPEAK TO MY MOTHER. HE SAID OF COURSE YOU CAN. THE QUESTIONING STOPPED. THE MOTHER WAS FOUND. HE TALKED TO HIS MOTHER FOR ABOUT A HALF-HOUR, AND THEN HE CONFESSED ON TAPE. AT THE MOTION TO SUPPRESS HEARING, THE DEFENSE ARGUED THAT, UNDER OWEN, HIS QUESTION TO THE -- UNDER OWEN, HIS QUESTION TO THE POLICE, DO YOU THINK I NEED A LAWYER, WAS AN UNQIFCK -- AN UNEQUIVOCAL REQUEST FOR COUNSEL, AND NUMBER TWO, THAT THE OFFICER SHOULD HAVE GIVEN HIM SOME LEGAL ADVICE OR ANSWERED THE QUESTION AND OFFERED HIS OPINION ON WHAT MR. GLATZMAYER SHOULD HAVE DONE. THE TRIAL COURT FOUND, UNDER OWEN, NUMBER ONE, IT WAS NOT AN UNEQUIVOCAL REQUEST FOR COUNSEL, AND NUMBER TWO, THE RESPONSE WAS THE ONLY CORRECT RESPONSE THAT HE COULD HAVE GIVEN.

UNDER THE PRE-OWEN LAW, WOULD THAT STATEMENT HAVE BEEN CONSIDERED AN EQUIVOCAL REQUEST FOR COUNSEL?

SURE. AND I DON'T THINK OWEN IS THE ISSUE OR THE PROBLEM HERE. I THINK THE ONLY RESPONSE TO THAT QUESTION WAS IT IS UP TO YOU. I MEAN, I DON'T THINK THIS COURT, IN ALMEIDA OR OWEN OR IN ANY DECISION, HAS EVER SAID THAT POLICE OFFICERS ARE GOING TO BE REQUIRED TO GIVE LEGAL AT VICE.

THE MOST, THEN, -- ADVICE.

THE MOST, THEN, THAT WOULD HAVE BEEN REQUIRED IS TO STOP QUESTIONING?

AND REPEAT THE WARNINGS. OR IF THERE WAS A FACT-BASED QUESTION, FOR INSTANCE, AFTER RECEIVING MIRANDA WARNINGS, IF HE HAD SAID TO HIM, WELL, DOES THAT MEAN IF I START TALKING TO YOU, CAN I STOP AT ANY TIME? OBVIOUSLY THE ANSWER WOULD BE YES. UNDER ANY CASE THAT THIS COURT HAS DECIDED. OR, IF I TALK TO YOU NOW, DOES THAT MEAN I CAN NEVER SPEAK TO AN ATTORNEY? OF COURSE THE ANSWER IS NO. THOSE TYPES OF QUESTIONS, UNDER THIS COURT'S OPINION IN ALMEIDA AS, IT SAID THAT -- IN ALMEIDA, IT SAID THAT, WHEN THEY ARE ASKING FOR BASIC INFORMATION PERTAINING TO THOSE RIGHTS, OBVIOUSLY YOU ANSWER THEM, AND HERE THAT WASN'T THE QUESTION. HE WASN'T ASKING ABOUT HIS RIGHTS. HE HAD ALREADY WAIVED THEM, NUMBER ONE, AND, NUMBER TWO, IT IS CLEAR HE WAS ASKING THE OFFICER FOR HIS OPINION ON WHETHER OR NOT HE SHOULD CONTINUE TO WAIVE THOSE RIGHTS. AND I DON'T THINK THIS COURT'S OPINION, IN ALMEIDA, IS SUGGESTING OR EVER MEANT TO SUGGEST THAT A POLICE OFFICER'S PUTTING THE DECISION BACK ON THE DEFENDANT, WHERE IT RIGHTLY BELONGS, WAS INCORRECT, UNDER ANY DECISION OF THIS COURT, AND I THINK THAT

THE FOURTH DCA, AS A MATTER OF FACT, IN THEIR OPINION, IN A FOOTNOTE, THEY SAID THAT, IF THEY WERE TO DECIDE THIS, UNDER OWEN, THAT THEY WOULD HAVE DENIED, CUMULATIVE AFFIRM THE TRIAL COURT'S ORDER. HOWEVER, AFTER ALMEIDA, THE POLICE OFFICER THOUGHT THAT THE ANSWER TO THE QUESTION WAS EVASIVE TO THE DEFENDANT, AND I DON'T THINK THE COURT MEANT TO SAY THAT A POLICE OFFICER NEEDS TO GIVE LEGAL ADVICE.

IT IS THE STATE'S POSITION THAT THE POLICE OFFICER DID EXACTLY WHAT THEY SHOULD HAVE DONE THIS THIS CASE.

ABSOLUTELY.

GO ON BEYOND. THAT TELL WAS THE RECORD SHOWS, AS FAR AS THE REINITIATION OF THE CONTACT BETWEEN THE POLICE AND THE DEFENDANT, IN TERMS OF GOING AHEAD, THEN, AFTER MEETING WITH THE MOTHER, AND GIVING A STATEMENT. WHAT -- YOU KNOW, WHAT IS ON THE RECORD, OR DO WE HAVE THAT, AS TO WHAT OCCURRED? IN OTHER WORDS DID THE MOTHER COME INTO THAT ROOM AND THEN LEAVE, OR DID HE GO INTO ANOTHER ROOM, WHERE THE MOTHER WAS, AND SHE LEFT? TELL ME, IF YOU -- AND HE LEFT? TELL ME, IF YOU KNOW.

I BELIEVE, WHEN THE MOTHER WAS BROUGHT TO THE STATION, THE POLICE EXPLAINED TO HER WHAT HAD HAPPENED AND SAID HE IS ASKING TO SPEAK TO YOU. THEY LEFT THE ROOM. SHE WENT INTO THE ROOM AND TALKED TO HIM FOR AND APPROXIMATELY -- FOR APPROXIMATELY 30 MINUTS TO 45 MINUTES. SHE LEFT THE ROOM, AND THEN BRIAN GLATZMAYER SAID, TO THE POLICE, OKAY, I AM READY TO PUT THIS ON TAPE.

SO THE VERY NEXT THING THAT OCCURRED WAS HIS INDICATION TO THE POLICE THAT HE WANTED TO GO FORWARD WITH THIS. IS THAT CORRECT?

YES. YES, SIR.

AND WE HAVE THAT IN THE RECORD HERE?

YES, SIR. UNDER OWEN, UNDERAL MEAD, A I THINK WHAT HAPPENED IN THIS CASE WAS PROPER, AND FOR THE FOURTH TO SUGGEST THAT ALMEIDA, SOMEHOW, TAINTED THE VOLUNTARINESS OF THIS CONFESSION, BASED ON THE OFFICER'S RESPONSE, I THINK, IS INCORRECT. I THINK ONE OF THE CONFUSING ASPECTS OF THE ALMEIDA OPINION IS THE FACT THAT, IN THAT CASE, THE DEFENDANT SAID, WELL, WHAT GOOD IS A LAWYER GOING TO DO, AND ALTHOUGH THIS COURT FELT THAT THE POLICE OFFICER EVADED THE QUESTION, THE PROBLEM IS THAT THIS COURT, ALSO, DID NOT GIVE ANY GUIDANCE, AS TO WHAT THE OFFICER SHOULD HAVE SAID, AND I THINK THAT'S PART OF THE PROBLEM, WHERE, NOW, YOU ARE GETTING OTHER COURTS TO SAY, WELL, WHAT -- SHOULD YOU HAVE TOLD THEM DON'T SPEAK TO ME? AND, AGAIN, I CAN'T EMPHASIZE ENOUGH I DON'T THINK THAT THAT IS WHAT THIS COURT MEANT TO SAY, IN ALMEIDA.

UNLIKEAL MEAD, A YOU ARE CLAIMING -- UNLIKE ALMEIDA, YOU ARE CLAIMING IN THIS CASE THAT THE OFFICERS DID FORTHRIGHTLY RESPOND.

THE ONLY WAY THEY COULD HAVE. EXACTLY.

INAL MEAD, A THE OFFICERS JUST WENT RIGHT AHEAD WITH THEIR QUESTIONING. IS THAT CORRECT?

YES, SIR. I DO THINK I WANT TO SAY TWO THINGS ABOUT WHAT HAPPENED INAL MEAD A THE OFFICERS DID EXPLAIN, AND THE TRIAL COURT DID AGREE WITH THE OFFICER THAT THEY THOUGHT THE QUESTION WAS RHETORICAL AND DID NOT NEED A RESPONSE. I DO UNDERSTAND AND I DO RESPECT THE FACT THAT A SLIM MAJORITY OF THIS COURT DECIDED NOT TO TAMPA PRESUMPTION OF CORRECT NECESSARY TO THAT FACT AND FOUND THAT THE QUESTION WASN'T

RHETORICAL AND NEEDED A RESPONSE, SO, THEN, MY RESPONSE WOULD BE, THEN, WELL, I THINK AT THAT POINT, THEN, THE ONLY POSSIBLE ANSWER THAT DETECTIVE SHOULD HAVE GIVEN WAS, THEN, TO JUST, AGAIN, REPEAT THE MIRANDA WARNINGS. IF A RESPONSE WAS REQUIRED. AND I AM ASKING THIS COURT, IN DECIDING THIS CASE, IN HOPING TO EITHER, TO CLARIFY WHAT YOU DID MEAN, IN ALMEIDA, IS TO SAY THAT WOULD HAVE BEEN THE ONLY PROPER THING FOR DETECTIVE MEEK TO DO WAS TO, AGAIN, REITERATE THOSE MIRANDA WARNINGS, AND I THINK, ESPECIALLY AFTER THE UNITED STATES SUPREME COURT HAS RECENTLY SAID, IN VEHICLEERSON, THAT THE MIRANDA -- IN VICKERSON, THAT THE MIRANDA WARNINGS ARE NOW, ALMOST, MAGICAL WORDS. THOSE ARE THE WORDS, THOSE ARE THE THING THAT IS THE OFFICER SHOULD BE SAYING TO A DEFENDANT, AND THEN THE DECISION IS UP TO THE DEFENDANT, NOT THE POLICE OFFICER. HE IS ONLY THERE TO GIVE THE INFORMATION TO HIM, AS TO WHAT HIS RIGHTS ARE, AND THEN IT IS HIS DECISION AND HIS DECISION, ALONE, AS TO WHETHER OR NOT HE NEEDS TO WAIVE THEM.

WHAT WAS THE OFFICER, IN RESPONSE TO THE QUESTION -- WHAT IF THE OFFICER, IN RESPONSE TO THE QUESTION, SAID IT IS A -- HAD SAID PROBABLY BUT IT IS NOT GOING TO DO YOU ANY GOOD. WOULD THAT BE A CORRECT STATEMENT?

THE PROBLEM THEN IS THAT THE POLICE OFFICER WOULD BE ACCUSED OF TRYING TO INFLUENCE THE DEFENDANT IN MAKING THE DECISION. POLICE OFFICERS ARE NOT THERE TO MAKE A DECISION. THEY ARE SUPPOSED TO BE NEUTRAL. HE SAID THESE ARE YOUR RIGHTS. IT IS UP TO YOU TO DECIDE WHAT TO DO WITH THEM. AT THAT POINT, THE ONLY CONTINUING OBLIGATION OF THAT OFFICER IS TO MAKE SURE THAT HE KNOWS THOSE RIGHTS OR UNDERSTANDS THEM -- OR UNDERSTANDS THEM, AND TO ME, THE ONLY SAFE THING TO DO IS TO REPEAT THEM, OR, IF THE QUESTION IS ASKED, WELL, AGAIN, DO YOU THINK, CAN I STOP AT ANY POINT? OF COURSE THE ANSWER TO THAT IS YES, YOU CAN STOP, BUT THEN TO ENGAGE IN THAT KIND OF EXCHANGE, JUSTICE SHAW, THEN I THINK YOU ARE GETTING INTO DANGEROUS TERRITORY AND OPENING UP A CAN OF WORMS WHERE, THEN, THE STATE IS GOING TO BE TRYING TO INFLUENCE THIS DEFENDANT AND WHETHER OR NOT HE SHOULD EXERCISE HIS RIGHTS.

WHEN I WAS ASKING BUT PRE-OWEN, IN YOUR SEARCH OF CASES AROUND THE COUNTRY, BEFORE THE OWEN AND THE U.S. SUPREME COURT DECISION, IN TERMS OF THIS ISSUE OF UNEQUIVOCAL VERSUS EQUIVOCAL REQUEST, IF QUESTIONS LIKE THIS WERE ASKED OF POLICE OFFICERS, WERE THEY CONSIDERED TO BE EQUIVOCAL REQUESTS FOR AN ATTORNEY, WHERE THEREAFTER, THE POLICE WOULD SAY THE SAFEST THING WOULD BE TO STOP QUESTIONING, AS OPPOSED TO TRYING TO ANSWER QUESTIONS. DO WE HAVE ANY CASES THAT TALK ABOUT WHAT OTHER COLLOQUY SHOULD TAKE PLACE, BETWEEN THE POLICE AND THE DEFENDANT, WHEN THE DEFENDANT ASKS THESE KINDS OF QUESTIONS ABOUT HIS OR HER RIGHTS? DO YOU UNDERSTAND WHAT I AM ASKING? IT SEEMS LIKE THERE IS ONLY TWO CHOICES. THERE IS TWO CHOICES. YOU EITHER STOP QUESTIONING, OR YOU SAY, WELL, ALL I CAN DO IS REREAD YOU YOUR RIGHTS, AND THAT IS WHAT YOU ARE SUGGESTING WOULD BE THE -- YOU ARE SUGGESTING THE SECOND WOULD BE THE APPROPRIATE ALTERNATIVE.

WOULD BE THE PRUDENT THING TO DO. I THINK, IN THE DISSENT IN ALMEIDA, I THINK THE COURT CITED TO TWO FEDERAL CASES THAT I DO BELIEVE WERE PREDAVIS, WHERE A SIMILAR EXCHANGE OCCURRED.

DAVIS IS THE U.S. SUPREME COURT?

YES, MA'AM. I, ALSO, THINK THAT THIS COURT, IN STATE VERSUS CRAIG, BACK IN THE '70s, RIGHT AFTER MIRANDA CAME OUT, THIS COURT SAID POLICE OFFICERS DO NOT HAVE TO GIVE LEGAL ADVICE. I THINK, IN FACT, WHICH ACTUALLY WAS BETWEEN DAVIS AND OWEN, THIS COURT MADE SIMILAR COMMENTS, AND, ALSO, SAID, AS A MATTER OF FACT, WE NEVER MEANT FOR MIRANDA WARNINGS -- AS A MATTER OF FACT LET ME JUST READ YOU THE QUOTE. -- YOU MUST KEEP IN

MIND THE REASON FOR INFORMING INDIVIDUALS OF THEIR RIGHTS BEFORE QUESTIONING IS TO ENSURE THAT STATEMENTS MADE DURING CUSTODIAL INVESTIGATIONS ARE GIVEN VOLUNTARILY. IT WAS NEVER MEANT TO NOT PROVIDE THE INDIVIDUALS FROM EVER MAKING THE STATEMENTS, WITHOUT, FIRST, CONSULTING COUNSEL, SO, AGAIN --

BUT LET'S SAY YOU HAVE A 17-YEAR-OLD KID AND HE, IN THE MIDDLE OF THAT QUESTION, SAID DO I HAVE TO GIVE YOU THAT STATEMENT? AND THE POLICE OFFICER, IN RESPONSE TO THAT QUESTION, SAID, I WILL REREAD YOUR MIRANDA RIGHTS TO YOU. WHAT IS THAT?

I THINK, LEGITIMATELY THE OFFICER COULD HAVE SAID, NO, YOU DON'T HAVE TO ANSWER ANY QUESTION I ASK YOU, AND THAT IS WHAT I THINK I WAS REFERRING TO BEFORE, WHEN THE QUESTION IS FACT-BASED, BASED ON WHAT YOUR RIGHTS ARE, I THINK THE ONLY ANSWER WOULD HAVE TO BE, NO, YOU DON'T HAVE TO ANSWER THAT QUESTION OR ANY QUESTION I AM ASKING.

BUT IF THE ANSWER IS I WILL REREAD YOU YOUR MIRANDA RIGHTS, HE HAS NOT RESPONDED TO AN EQUIVOCAL QUESTION. IS THAT --

NO. I THINK HE HAS, BUT I THINK IN THAT SCENARIO, THE BETTER RESPONSE WOULD BE TO SAY YES OR NO. I THINK, TO REREAD MIRANDA WARNINGS IS MORE THE PROPER RESPONSE, WHEN YOU GET A QUESTION, LIKE YOU DID IN ALMEIDA, WHAT GOOD IS A LAWYER GOING TO DO? I MEAN, I THINK THAT IS A ---IT IS A LOADED QUESTION. HOW, REALLY, IS A POLICE OFFICER SUPPOSED TO ANSWER THAT? HE HAS -- AN OFFICER CAN'T TELL YOU, WELL, MAYBE HE CAN TELL THROUGH AND MAYBE HE CAN TELL YOU THAT. THAT IS OPENING A WHOLE CAN OF WORMS. I DON'T THINK THAT IS A ROAD THIS COURT WANTS TO GO DOWN. AN ANSWER, LIKE THAT, TO A -- ENDED QUESTION, WHERE, TO ME THE SAFE -- AN OPEN ENDED QUESTION, WHERE, TO ME THE SAFEST THING TO DO WOULD BE TO REREAD THE MIRANDA WARNINGS.

IF THE ANSWER WOULD BE, YES, WE THINK YOU SHOULD HAVE AN ATTORNEY, YOU ARE SAYING THAT IS NOT THE ROLE OF A POLICE OFFICER SAYING THAT, JUST SAME WAY AS SAYING, NO, WE DON'T THINK SO. THAT WOULD, ALSO, BE INAPPROPRIATE, IF THEY ANSWERED, NO, WE DON'T THINK YOU NEED AN ATTORNEY. WE ARE YOUR FRIENDS. THEN WE WILL PROTECT YOU.

IT IS GIVING LEGAL ADVICE, AND A YES OR NO ANSWER TO THAT IS NOT THE ROLE OF THE POLICE OFFICER. A POLICE OFFICER IS NOT THERE TO SAY, TO THE DEFENDANT, YES, I THINK YOU SHOULD EXERCISE YOUR RIGHTS OR, NO, I DON'T THINK YOU SHOULD. I THINK IT IS -- HE IS NOT A LAWYER, AND I THINK IT PUTS POLICE OFFICERS IN VERY UNTENABLE POSITIONS, GIVEN WHAT THIS COURT HAS SAID IN JOHNSON, THAT THEIR ROLE IS TO INVESTIGATE CRIMES NOT TO TRY AND CONVINCE DEFENDANTS NOT TO SPEAK TO THEM. THEIR JOB IS ONLY TO GIVE THEM THE BASIC INFORMATION ABOUT WHAT THEIR RIGHTS ARE, AND THAT IS IT. THAT IS THEIR ONLY ROLE, AND THEN IT IS UP TO THE DEFENDANT, AND IN THIS CASE, WHEN THE DEFENDANT STILL WASN'T SURE WHETHER OR NOT HE WANTED TO CONTINUE, THEN HE SOUGHT ADVICE FROM SOMEONE ELSE. HIS MOTHER.

YOU ARE IN YOUR REBUTTAL TIME.

I WILL SAVE THE REST OF MY TIME FOR REBUTTAL. THANK YOU.

THANK YOU.

MAY IT PLEASE THE COURT. GOOD MORNING, YOUR HONORS. MY NAME IS MICHAEL SALNICK.

LET ME ASK YOU HOURTION STRAIGHTFORWARD COULD THE OFFICER HAVE BEEN? WHAT WOULD YOU REQUIRE THE OFFICER TO DO, OVER AND ABOVE WHAT HE DID HERE, THAT YOU CAN SPEAK TO YOUR MOTHER. I CAN'T GIVE YOU LEGAL ADVICE. ISN'T THAT THE SUM AND SUBSTANCE OF

WHAT THE OFFICER SAID?

YOUR HONOR, I UNDERSTAND THE QUESTION, AND THAT IS THE SAME CONCERN THAT THE FOURTH DISTRICT COURT OF APPEAL HAD, AND I BELIEVE THAT IS WHY THEY CERTIFIED THE QUESTION TO THIS COURT. HONESTLY, I CAN'T SAY WHAT AN APPROPRIATE RESPONSE WOULD HAVE BEEN. OUR POSITION WAS, AT THE FOURTH DISTRICT AND NOW, HERE, TODAY, THAT THE RESPONSE THAT WAS GIVEN WAS INAPPROPRIATE, UNDER THE ALMEIDA DECISION. THE STATE HAS PROPOSED, THAT, IN A SITUATION LIKE THIS, THE STATE SHOULD REMIRANDAIZE THE DEFENDANT. I DON'T THINK THAT IS WHAT THEY DID IN THIS CASE.

HASN'T THIS COURT SAID, IN FACT, IN PREVIOUS OPINION THAT, THE POLICE ARE IN NO POSITION TO GIVE ADVICE?

I AGREE, YOUR HONOR, AND I THINK THAT THE STATE HAS EVENTUALLY COUCHED THEIR ARGUMENT, IN TERMS OF SOMEHOW THAT THE FOURTH DISTRICT COURT HAS PUT AN OWN US ON POLICE OFFICERS TO GIVER -- AN ONUS ON POLICE OFFICERS TO GIVE LEGAL ADVICE, AND THAT IS NOWHERE WITHIN THE GLATZMAYER OPINION.

BUT JUDGE KLEIN WROTE, WHEN HE SAID CLEARLY THE ONLY ANSWER TO THE QUESTION WOULD HAVE BEEN SOME TYPE OF AFFIRMATIVE RESPONSE, AFFIRMATIVE, MEANING, YES, SO THEREFORE, ASKED THE OFFICERS IF THEY THOUGHT HE SHOULD HAVE AN ATTORNEY, THE FOURTH DISTRICT IS SAYING THAT THE ONLY STRAIGHTFORWARD ANSWER WOULD HAVE BEEN YES. YOU ARE, EVEN TODAY, SAYING THAT IS NOT REALLY WOULD YOU WOULD HAVE EXPECTED THE OFFICERS TO HAVE RESPONDED.

NO, AND I THINK, CERTAINLY, THAT WAS DICTA. I DON'T THINK THAT WAS PART OF THE COURT'S HOLDING, AND I DON'T THINK THAT THAT WAS WHY THEY GRANTED THE APPEAL. BUT CERTAINLY THERE IS A PROBLEM, AND, NEW YORK CITY YOU CAN'T REQUIRE POLICE OFFICERS TO GIVE LEGAL ADVICE.

WHY DID THEY REVERSE IT?

THEY REVERSED IT BECAUSE PROBLEMS AROSE IN THIS CASE, AS THEY DID IN ALMEIDA, WHERE THE DEFENDANT, HAVING WAIVED HIS MIRANDA RIGHTS, GOES ON TO MAKE A STATEMENT, AS IN THE ALMEIDA CASE, SHOULD I HAVE AN ATTORNEY OR WHAT IS -- WHAT GOOD IS AN ATTORNEY GOING TO DO. THAT STATEMENT WAS, AT THAT POINT, KNOWING AND VOLUNTARY, AND AT THAT POINT, THE EMPLOYERS ARE UNDER AN OBLIGATION, AT THE MINIMUM, LET THE DEFENDANT KNOW HE HAS A RIGHT TO AN ATTORNEY. THEY CAN STOP AND REREAD THE MIRANDA RIGHTS, AND THAT IS A DECISION THAT YOU HAVE TO MAKE ON YOUR OWN.

WHAT ABOUT THE QUESTION OF MIRANDA THAT SAYS I WILL READ YOU YOUR RIGHTS AGAIN. WHAT LANGUAGE LEADS TO THAT?

THERE IS NO LANGUAGE IN MIRANDA THAT LEADS TO THAT. THAT WAS THE SUGGESTION THAT THE STATE GAVE, AND I AM AGREEING THAT THAT IS ONE OF SEVERAL POBLTHS THAT WOULD BE ACCEPTABLE. I THINK THAT, IN ALMEIDA, THIS COURT SPECIFICALLY SAID IT WASN'T GOING TO MAKE A BRIGHT-LINE TEST AND SAY THIS IS WHAT YOU HAVE TO DO, BECAUSE EVERY SITUATION IS DIFFERENT, AND THAT PUTS A STRANGLEHOLD ON THE POLICE.

WHERE IS THE DEFICIT IN WHAT HAPPENED HERE?

I AM SORRY, YOUR HONOR.

WHAT WAS WRONG WITH WHAT OCCURRED HERE?

WHAT WAS WRONG IS THAT, AFTER MR. GLASS -- GLATZMAYER ATTEMPTED TO WAIVE HIS RIGHTS, THE POLICE WENT ON TAPE. AT THE TIME THAT HE WENT ON TAPE, HE RAISED THIS ISSUE SHOULD I HAVE AN ATTORNEY. JUST AS IN ALMEIDA, IF SOMEONE IS ASKING THAT TYPE OF A QUESTION, HOW CAN WE SAY THAT HE KNOWINGLY AND INTELLIGENTLY WAIVES HIS RIGHTS, WHEN HE DOESN'T HAVE AN ATTORNEY. I MEAN, THERE WAS SOMETHING LOST IN THE TRANSLATION.

WHAT WAS THE POLICE OFFICER'S ANSWER TO THAT?

THE POLICE OFFICER REALLY DIDN'T ANSWER. HE SAID THAT IS UP TO YOU, AND HE MOVED ON.

IS THAT A HONEST AND FORTHRIGHT ANSWER?

I DON'T THINK THAT IS A HONEST AND FORTHRIGHT ANSWER TO THE QUESTION. HE WAS SEEKING FUNDAMENTAL INFORMATION ABOUT HIS RIGHTS. AND THE OFFICER JUST BRUSHED HIM OFF BY SAYING THAT IS UP TO YOU.

AND THEN HE ASKED THE SECOND QUESTION, CAN I SPEAK TO MY MOTHER. AND THE OFFICER SAID YES. HE WENT AND HE SPOKE TO HIS MOTHER. AND THEN HE CAME BACK, AND HE, STILL, MADE A STATEMENT. SO WHERE IS THE ERROR?

WELL, I -- THAT IS ANOTHER POINT THAT THE STATE HAS MADE, THAT, BECAUSE HE WAS ALLOWED TO SPEAK -- HE WAS ALLOWED TO SPEAK TO HIS MOTHER THAT, THE STATEMENT WAS MADE. I SUGGEST TO THE CONTRARY, THAT THE RECORD WOULD REFLECT HERE IS AN 18 YEAR-OLD KID. HE IS ASKED TO SPEAK. HE SAYS CAN I HAVE AN ATTORNEY. HE IS BRUSHED OFF. THEN HE SAYS CAN I SPEAK TO MY MOTHER. THE POLICE GO THROUGH HOOPS TO FIND HIS MOTHER AND BRING HER DOWN FROM, TO THE POLICE STATION, AND SHE WAS TOLD THAT IT WAS IN BRIAN GLATZMAYER'S BEST INTEREST TO COOPERATE. THEN HE WAS ALLOWED TO SPEAK TO HER.

YOU ARE SUGGESTING THAT THAT IS WHAT HAPPENED HERE, IS THAT THEY SHOULD HAVE JUMPED THROUGH HOOPS TO GO FIND THE LAWYER AND ANSWER ALL OF HIS QUESTIONS IN THE AFFIRMATIVE. THAT IS WHAT JUSTICE SHAW IS ASKING. WHAT IS WRONG WITH WHAT THEY DID? WHAT SHOULD THEY HAVE DONE?

I THINK THAT THEY SHOULD HAVE READVISED HIM OF HIS RIGHTS OR ASKED SOME TYPE OF A QUESTION, TO MAKE SURE THAT HE UNDERSTOOD HE HAD THE RIGHT TO AN ATTORNEY.

WHAT IS THE QUESTION?

DO YOU WANT AN ATTORNEY? ARE YOU ASKING FOR AN ATTORNEY? THE STATE HAS SAID THAT IT IS PROPER TO REMIND HIM. THAT IS NOT OUR POSITION, AND CERTAINLY WHETHER YOU HAVE TO REMIND SOMEONE OR WHETHER THEY COME UP WITH A WARNING, A GLATZMAYER WARNING OR WHATEVER IT IS, THAT DOESN'T AFFECT BRIAN GLATZMAYER'S CASE.

BUT IN THIS CASE, AS REGARDS THE HEARING, IT SEEMS VERY DIFFICULT TO TRY TO COMPARTMENTALIZE SOMETHING LIKE THAT AND HOW IT SHOULD BE PHRASED, WHEN THIS TYPE OF QUESTION COMES UP, AND I THINK THAT IS WHAT THE COURT IS ASKING FOR, IS WHAT IS THE PROPER RESULT, AND WE ARE NOT SEEMING TO GET THAT, WHAT WE ARE SEARCHING FOR HERE.

I THINK, AND THIS IS EXACTLY THE COURT ADDRESSED THIS ISSUE IN ALMEIDA, IT IS DIFFICULT TO SAY THESE FIVE WORDS, WHEN THE DEFENDANT SAYS THIS. I MEAN, THERE ARE SO MANY DIFFERENT PHRASES. SHOULD I HAVE AN ATTORNEY. WHAT GOOD IS AN ATTORNEY GOING TO DO. DO I NEED AN ATTORNEY. IT IS HARD TO MAKE A BRIGHT-LINE RULE.

ISN'T THE THRUST OF ALMEIDA, A THOUGH, THAT, IF -- ISN'T THE THRUST OF ALMEIDA, THOUGH,

THAT, IF THE QUESTION IS ASKED, THE OFFICER SHOULD NOT BE EVASIVE OR STEAM ROLL THE DEFENDANT, AND THAT -- ISN'T THAT THE THRUST OF ALMEIDA?

IT IS. YES.

WAS THAT DONE HERE?

I BELIEVE IT WAS, YES. THE --

WHAT WAS THE STEAM ROLLING THAT OCCURRED HERE?

WELL, I DON'T THINK THE FOURTH DISTRICT QUITE DECLARED IT TO BE STEAM ROLLING, BUT I THINK THEY SAID IT WAS EVASIVE, BECAUSE THEY ARE BASICALLY PUSHING IT BACK INTO HIS LAP. SHOULD I HAVE AN ATTORNEY? THAT IS UP TO YOU. THEY DIDN'T MAKE SURE THAT HE UNDERSTOOD THAT HE HAD THE RIGHT TO HAVE A LAWYER, AND I THINK IT IS INTERESTING THAT, BOTH, ALMEIDA AND DPLATS MEYER, REQUESTING LAWYERS ONLY -- THAT GLATZMAYER REQUESTING LAWYERS ONLY WHEN THEY COME ON TAPE, SAYING SHOULD I HAVE AN ATTORNEY OR WHAT GOOD IS AN ATTORNEY GOING TO DO, IT IS HARD TO SAY EXACTLY WHAT THEY SHOULD HAVE SAID, BUT JUST TO SAY THAT IS UP TO YOU, IS NOT A STRAIGHTFORWARD, P HONEST ANSWER, AND THAT IS WHAT WHAT IS REQUIRED BY THIS COURT, IN ALMEIDA.

IF HE SAID NO, AND HE WENT AHEAD AND CONFESSED, AND YOU WOULD BE UP HERE ON THAT, WOULD YOU NOT?

I PROBABLY WOULD. WE ARE NOT THE ONES THAT TOOK THIS APPEAL, OBVIOUSLY.

THE ONLY ANSWER THAT THE OFFICER CAN GIVE, TO BE SAFE, WOULD BE YES. HE WOULD HAVE TO SAY YES IN EVERY INSTANCE.

THAT SEEMS TO BE THE WAY THE FOURTH DISTRICT INTERPRETED ALMEIDA, AND I UNDERSTAND THAT THAT PUTS LAW ENFORCEMENT IN A VERY UNTENABLE POSITION. I AM CERTAINLY NOT ADVOCATING THAT LAW ENFORCEMENT SHOULD SOMEHOW BE REQUIRED TO GIVE LEGAL ADVICE, BUT THERE NEEDS TO BE SOME SAFEGUARDS, SO THAT WHEN A DEFENDANT IS ASKING A FUNDAMENTAL QUESTION ABOUT HIS RIGHTS, HIS EXPRESSION TO LAW ENFORCEMENT THAT HE IS NOT QUITE SURE WHETHER HE SHOULD HAVE AN ATTORNEY, THAT THEY NEED TO CLARIFY, TO MAKE SURE THAT HIS PREVIOUS WAIVER WAS KNOWING AND VOLUNTARY.

ISN'T YOUR ANSWER TO THE QUESTION THAT THE WAY OUR SYSTEM LOOKS AT COUNSEL, AT THIS POINT IN TIME, THAT YOU REALLY JUST HAVE TO SAY, YES, YOU HAVE TO HAVE A LAWYER. ISN'T THAT, REALLY, THE BOTTOM LINE OF WHAT THIS COMES DOWN TO? YOU CAN PLAY GAMES. WE CAN TALK ABOUT IT ALL KINDS OF DIFFERENT WAYS, BUT ISN'T THAT, REALLY, WHAT YOU ARE SUGGESTING?

NO. THAT WOULD CERTAINLY MAKE MY LIFE, AS A DEFENSE ATTORNEY, MUCH EASIER, BECAUSE I WOULD BE DEALING WITH A LOT FEWER CONFESSIONS, BUT I DON'T THINK THAT THAT IS WHAT THIS COURT IS INCLINED TO DO, AND I DON'T KNOW THAT THAT IS WHAT THE LAW REQUIRES. BUT, AGAIN, YOU KNOW, THE COURT CLEARLY SAID, IN ALMEIDA, THAT THIS TYPE OF A STATEMENT SHE DID DOUBT ON WHETHER THE PREVIOUS WAIVER OF MIRANDA WAS KNOWING AND INTELLIGENT, AND IF THAT IS THE CASE, THEN THERE NEEDS -- THEY NEED TO BE ABLE TO DO SOMETHING, AND, YOU KNOW, MAYBE IT IS APPROPRIATE FOR THIS COURT TO COME UP WITH A CARD SIMILAR TO THE MIRANDA CARD, WITH EXACT WORDING, SO THAT THE POLICE AREN'T FUMBLING WITH WHAT TO SAY, AD THEY DON'T HAVE TO BE IN A POSITION OF EITHER NOT GOING FORWARD WITH A CONFESSION OR KNOWING THAT IT MAY VERY WELCOME BACK ON APPEAL.

YOUR COLLEAGUE WANTS TO COMMUNICATE.

I THINK WHAT MY COLLEAGUE WAS SAYING AND WHAT WE REITERATE, THE SAFEST THING TO DO IS TO REITERATE THE MIRANDA WARNINGS, TO CLARIFY THE MIRANDA WARNINGS.

SO IF WE WROTE SOMETHING ON THIS FOR FUTURE GUIDANCE, YOU WOULD SAY THAT THE ONLY RULE WOULD BE THAT, AT ANY POINT LIKE THAT, THAT ALL THE OFFICERS COULD DO IS READ, ALL OVER AGAIN, WHAT THE RIGHTS ARE.

THEY SHOULD AFFIRMATIVELY ASK THE DEFENDANT ARE YOU ASKING FOR AN ATTORNEY. IF THEY SAY NO, YOU CAN GO FORWARD. IF THEY SAY YES, SOME OF THE OTHER CASES THAT WERE MENTIONED IN THE BRIEF --

YOU IMMEDIATELY -- FIRST YOU MADE THE SUGGESTION THAT, WELL, THE RULE SHOULD BE THAT THEY JUST REREAD THE RIGHTS, BUT, THEN, YOU SAID -- YOU HAVE ADDED ON TO THAT INTUITIVELY. YOU HAVE ADDED ONTO THAT AND SAID THAT THEY, NOW, SHOULD ASK AN ADDITIONAL QUESTION.

I THINK THAT MAKES SENSE, BECAUSE THEY ARE GOING TO BE READING THE SAME RIGHTS THAT THEY READ TO HIM BEFORE, AND IF HE HAD DIFFICULTY UNDERSTANDING THEM THE FIRST TIME, THEY NEED TO GO THE EXTRA STEP TO MAKE SURE THAT HE UNDERSTANDS THEM, WHEN THEY READ THEM THE SECOND TIME.

DOES IT MAKE ANY DIFFERENCE, IN THIS PARTICULAR CASE, THAT NO OTHER STATEMENTS WERE MADE, AFTER THIS POINT, UNTIL THE DEFENDANT CAME BACK TO THE POLICE AND SAID, NOW I AM READY TO MAKE A STATEMENT?

ARE YOU TALKING ABOUT AFTER HE SPOKE TO HIS MOTHER?

YES.

I THINK, AGAIN, THAT IT HAS BEEN MISCHARACTERIZED, THIS WHOLE CONVERSATION WITH HIS MOTHER. THAT CONVERSATION, IN MY OPINION, WAS DONE FOR THE SOLE PURPOSE OF HAVING HIS MOTHER CONVINCED HIM TO GIVE A STATEMENT. LAW ENFORCEMENT WAS MORE THAN HAPPY TO LET HIM TALK TO HIS MOTHER. WHEN IT CAME TO TALKING ABOUT A LAWYER, THEY KIND OF SHRUGGED IT OFF.

BUT THAT ISN'T THE POLICE COERCING HIM TO MAKE ANY KIND OF STATEMENT. I MEAN, HE HAD A BREAK BETWEEN THE TIME THAT HE MADE WHATEVER YOU WANT TO CHARACTERIZE HIS QUESTION AS, AN EQUIVOCAL REQUEST FOR COUNSEL OR NOT, THERE WAS A BREAK, AND THE POLICE DIDN'T DO ANYTHING, AND THE NEXT ACTION IS BASED ON THE DEFENDANT'S ACTION, ISN'T IT?

WELL, I DISAGREE THAT THE POLICE DIDN'T DO ANYTHING. WHAT THE POLICE DID WAS THEY CONTACTED MRS. GLATZMAYER. THEY TOLD HER IT IS IN YOUR SON'S BEST INTEREST TO COOPERATE, AND THEN SENT HER IN THERE TO GIVE HIM ADVICE.

BUT ISN'T THAT A DIFFERENT SCENARIO? WE ARE NOT TALKING ABOUT A TRIAL COURT FINDING, NOW, YOU KNOW, THAT BROUGHT TOGETHER DIFFERENT ELEMENTS, AND, FOR INSTANCE, CONCLUDED, HERE, THAT, IN ADDITION TO THE WAY THAT THEY RESPONDED TO THE QUESTION, THAT IN ADDITION TO THAT THEY DID SOME OTHER THINGS, WHERE THE TRIAL COURT ENDS UP MAKING A FACTUAL FINDING THAT THE STATE DOESN'T BELIEVE WAS VOLUNTARY. THAT IS NOT WHAT OCCURRED AT THE TRIAL COURT LEVEL.

I AGREE.

ALL OF THE FOCUS HAS BEEN ON THE APPROPRIATENESS OF THE POLICE OFFICER'S RESPONSE.

I AGREE, AND THE ONLY REASON I RAISE THAT IS, NUMBER ONE, THE COURT HAS ASKED QUESTIONS ABOUT THAT, AND NUMBER TWO, IN THE BRIEF THE STATE SEEMS TO ARGUE THAT SOMEHOW THIS CONVERSATION WITH HIS MOTHER NEGATED WHAT HAPPENED PRIOR TO THAT.

YOU ARE SAYING WE HAVE TO BE CAREFUL TO PUT RELIANCE ON THAT, AS FAR AS IN VIEW OF THE FACTS OF THIS PARTICULAR CASE.

EXACTLY.

BEFORE -- PRIOR TO DAVIS AND OWEN, HOW WOULD THE STATEMENT BY THE DEFENDANT BE REGARDED? WOULD IT BE REGARDED AS AN EQUIVOCAL REQUEST FOR COUNSEL OR MERELY A QUESTION THAT NEEDED A STRAIGHTFORWARD ANSWER?

AT THE TRIAL LEVEL, WE ARGUED THAT IT WAS AN EQUIVOCAL REQUEST FOR REQUEST FOR COUNSEL. AT THE MINIMUM, IT WAS AN UNEQUIVOCAL REQUEST FOR COUNSEL.

WHAT WOULD THAT HAVE MEANT?

THAT THE CONVERSATION WAS OVER AND THEY WOULD HAVE HAD TO AFFORDED A.M. ATTORNEY.

ARE THERE OTHER CASES LIKE THAT?

THAT IS MY UNDERSTANDING OF WHAT THE LAW WAS, PRIOR TO DAVIS AND OWEN.

BUT THE QUESTION THAT I AM TRYING TO GET AT, IS THERE IS A WEALTH OF CASES OUT THERE, WHERE THE QUESTION WAS ASKED, THEN THE ONLY RESPONSE WOULD HAVE BEEN A NONRESPONSE, TO SAY I AM GOING TO STOP QUESTIONING YOU, BECAUSE YOU HAVE NOW MADE AN EQUIVOCAL REQUEST FOR A LAWYER?

I CAN'T CITE TO A SPECIFIC CASE. MY UNDERSTANDING OF THE LAW IS THAT PRIOR TO THAT TIME, THAT IS THE LAW, THAT WHEN THEY MADE AN EQUIVOCAL REQUEST, THEY STOP THE QUESTIONING.

WHEN AN EQUIVOCAL REQUEST WAS MADE FOR COUNSEL, CAN YOU DETERMINE WHETHER THAT WAS, IN FACT, A REQUEST FOR COUNSEL, CAN YOU MAKE THAT DETERMINATION?

HONESTLY, YOUR HONOR, I DON'T KNOW, AND I WASN'T PREPARED TO ANSWER THESE QUESTIONS, BECAUSE WE ARE NOT ONLY, NOW, POST DAVIS AND OWEN BUT POST ALMEIDA, AND I THINK PART OF THE POINT THAT JUSTICE PARIENTE WAS MAKING WAS THAT THE TRIAL COURT WAS MAKING ITS DECISION ONLY ON DAVIS AND OWEN, AND ALMEIDA HADN'T BEEN MADE AT THAT TIME. THEY ARE SAYING THAT THE TRIAL COURT MADE A MISTAKE, BUT UNDER ALMEIDA, GLATZMAYER NEEDS TO BE DECIDED THE SAME WAY.

YOU BE LITTLE, OR AT LEAST YOU DON'T PLACE MUCH CREDENCE IN THE FACT THAT THE OFFICERS DID ALLOW HIM TO SPEAK TO HIS MOTHER. YOU -- I GATHER IT IS YOUR POSITION THAT THAT -- THE STATE DIDN'T GET MUCH MILEAGE OUT OF THAT, BUT SHOULDN'T THAT BE FACTORED IN AS PART OF THE TOTAL SCENE, HERE, THAT HERE IS A YOUTH, THAT WOULD BE MOST FAVORABLE TO YOU, ASKING A DIRECT QUESTION AND GETTING A DIRECT ANSWER, AND THEN THE OFFICER ALLOWING HIM TO TO TALK TO HIS MOTHER, BEFORE HE COMES BACK AND MAKES HIS DETERMINATION, WHETHER HE WANTS TO MAKE A STATEMENT OR NOT. DON'T WE HAVE TO FACTOR THAT IN?

I DON'T KNOW WHETHER YOU HAVE TO FACTOR IT IN OR NOT, BUT IF YOU DO FACTOR IT IN, THAT

IS WHY I RAISED THE POINT AND WHAT I ADDRESSED TO JUSTICE ANSTEAD, THAT, IF YOU ARE GOING TO CONSIDER THAT, DON'T CONSIDER IT IN A VACUUM. CONSIDER THE FACT THAT IT IS DUBIOUS, WHAT THE LAW ENFORCEMENT CONTENTIONS WERE IN ALLOWING HIM TO SPEAK TO HIS MOTHER, AND THE FACT THAT THEY TELL HIS MOTHER IT IS IN HIS INTEREST TO COOPERATE. HE GOES IN AND SPEAKS TO HIS MOTHER. UNDER VIDEO AND AUDIO SURVEILLANCE, THE POLICE RE WATCHING HIM THE WHOLE TIME, THEN HE COMES OUT, AND HE CONFESSES, SO IF YOU ARE GOING TO CONSIDER IT, YOU NEED TO KEEP IN MIND THAT THE POLICE USED IT AS A TOOL TO GET A CONFESSION, NOT TO SOMEHOW SHIELD THIS YOUNG CHILD FROM HURTING HIMSELF. THEY DID EVERYTHING IN THEIR POWER TO GET A CONFESSION.

IF YOU BELIEVE THAT THE POLICE USED IT AS A TOOL NECESSARILY, HOW THAT IS A PRETTY LONG STEP. THEY RESPONDED TO HIS REQUEST.

BUT YOU NEED TO, ALSO, CONSIDER THE FACT THAT THEY TOLD HIS MOTHER, BEFORE LETTING HER SPEAK TO HIM, THAT IT WAS IN HIS INTEREST TO COOPERATE WITH THE POLICE. AND, AGAIN, I AM NOT SAYING THAT THAT THEY SHOULD HAVE LET HIM SPEAK WITH HIS MOTHER OR THAT THEY SHOULDN'T HAVE. THEY CERTAINLY WEREN'T REQUIRED TO. BUT I DON'T THINK YOU CAN SAY, WELL, UNDER ANY OTHER CIRCUMSTANCE, THIS WAS WRONG, BUT SINCE THEY LET HIM SPEAK TO HIS MOTHER, NOW IT IS OKAY.

THAT MIGHT HAVE BEEN FACTUALLY TRUE, WHAT THEY TOLD HIS MOTHER, THAT IT IS IN HIS BEST INTEREST. WE HAVE GOT ALL OF THE EVIDENCE ON HIM.

THEN THEY ARE GIVING LEGAL ADVICE.

AND THE MOTHER MADE THAT DECISION. WE DON'T KNOW WHAT SHE TOLD HIM.

WELL, THE POLICE KNEW WHAT SHE TOLD HIM, BECAUSE THEY WERE LISTENING IN. WE WERE NOT PRIVY TO THAT, BECAUSE IT WAS NEVER TAPED. IT WAS JUST WATCHED AND LISTENED TO BY THE POLICE AS IT HAPPENED. IT IS A DIFFICULT SITUATION, BUT, AGAIN, THEY -- I DON'T THINK THAT THEY WERE HONEST WITH HIS MOTHER. CERTAINLY TELLING AN 18 YEAR-OLD TO CONFESS TO MURDER IS NOT IN HIS BEST INTEREST. IT MAY BE IN SOCIETY'S BEST INTEREST. IT MAY HAVE BEEN IN THE OFFICER'S BEST INTEREST, BUT TO SAY THAT TELLING THIS 18-YEAR-OLD'S MOTHER IT IS IN HIS BEST INTEREST TO COOPERATE WITH POLICE, NUMBER ONE IS GIVING LEGAL ADVICE, AND NUMBER TWO, I DON'T THINK IS CORRECT.

DID THEY HAVE SOME OBLIGATION? WHAT OBLIGATION DID THEY HAVE TO HIS MOTHER AT ALL?

NONE, AND THEY HAD NO OBLIGATION TO BRING HER INTO THE PICTURE, BUT ONCE THEY DO, AND ONCE THIS COURT STARTS TO LOOK AT THAT AS A FACTOR, YOU NEED TO LOOK AT THE WHOLE PICTURE. THEY WEREN'T DOING THAT TO HELP HIM. THEY WERE DOING THAT TO ENSURE THAT THEY GOT THE CONFESSION THAT THEY WANTED. AGAIN, YOUR HONORS, I WILL JUST GO BACK TO THE ALMEIDA OPINION. IF YOU LOOK AT THE FACTS IN THIS CASE, AND IF YOU LOOK AT THE FACTS IN ALMEIDA, THE QUESTIONS THAT WERE ASKED AND THE SEQUENCE OF EVENTS, I POINT OUT THAT ALMEIDA DOESN'T APPLY, WHEN THERE HAS, ALREADY, BEEN A PRIOR WAIVER OF MILES AN HOUR AND A THE ALMEIDA OPINION GIVES COLLOQUY OF WHAT WENT ON DURING THAT INTERROGATION, AND ALMEIDA WAS READ HIS RIGHTS ON TAPE AND THEN DID GO BACK ON TAPE AND RAISED THIS QUESTION, JUST AS MR. GLATZMAYER DID. CLEARLY HE ASKED A QUESTION, ASKING FUNDAMENTAL INFORMATION REGARDING HIS RIGHTS. HE WAS NOT GIVEN A STRAIGHTFORWARD ANSWER. HE MAY HAVE BEEN GIVEN A TRUTHFUL ANSWER, IN THE SENSE THAT, RIGHT, IT IS NOT UP TO THE POLICE OFFICER. IT IS UP TO HIM, BUT HE WAS ASKING FOR CLARIFICATION OF HIS RIGHTS. HE WASN'T GIVEN THAT CLARIFICATION. THEY THROW IN THIS ISSUE ABOUT THE MOTHER BEING BROUGHT INTO THE PICTURE, I, REALLY, DON'T FEEL THAT IS OF ANY RELEVANCE. -- INTO THE PICTURE. I, REALLY, DON'T FEEL THAT IS OF ANY RELEVANCE, NUMBER ONE, BECAUSE OF THE POLICE ACTION WITH MR. GLATZMAYER, AND, NUMBER TWO,

BECAUSE I DOUBT THE MOTIVES FOR THAT. I BELIEVE WHERE THE STATE GOT THEIR POSSIBLE SOLUTION ABOUT REREADING THE MIRANDA RIGHTS CAME FROM THIS COURT'S OPINION IN SLAWSON. I DON'T TAKE ISSUE WITH THAT. I DON'T KNOW WHETHER THAT IS THE CORRECT THING TO DO OR NOT. THE ONLY THING IN THIS CASE IS THAT MR. GLATZMAYER DID HAVE A CLEAR QUESTION REGARDING HIS FUNDAMENTAL RIGHTS. HE DID NOT GET A DIRECT ANSWER, AND THE FOURTH DISTRICT HAS ANSWERED THAT, WITH REFERENCE TO THE ALMEIDA OPINION. I SEE MY TIME IS UP. THANK YOU.

NUMBER ONE, WHETHER IT IS A POLICE OFFICER OR YOUR MOTHER OR YOUR WIFE, ASKING THEM THEIR OPINION ON WHETHER OR NOT YOU SHOULD INVOKE YOUR RIGHTS DOES NOT MEAN YOU DON'T UNDERSTAND THOSE RIGHTS. YOU ARE TRYING TO DECIDE, NOW KNOWING THEM, WHAT YOU ARE GOING TO DO ABOUT IT, AND HERE THE POLICE OFFICER, TO QUOTE MR. FELD ONE'S REMARKS -- MR. FELDON'S REMARKS, WHERE DOES THAT BE? THEY THREW BACK IN HIS LAP. IT IS THE DEFENDANT WHO HAS TO INVOKE, NOT THE POLICE OFFICER, NOT HIS MOTHER, AND I DON'T THINK THAT THIS COURT CAN SERIOUSLY SAY THAT, BY HIM ASKING SOMEONE ELSE'S OPINION TRANSLATES INTO AM NOT UNDERSTANDING WHAT HIS RIGHTS WERE. I, ALSO, THINK THAT, GOING BACK TO THE FOURTH DCA'S OPINION, THEY THOUGHT, UNDER OWEN, THAT THE CONFESSION WAS VOLUNTARY. HOWEVER, UNDER ALMEIDA, THEY THOUGHT THAT IT WASN'T, AND IN ALMEIDA, THIS COURT TOOK GREAT PAINS TO SAY THAT ALMEIDA AND OWEN SHOULD GO HAND-IN-HAND, BUT OBVIOUSLY THERE IS SOME CONFESSION OUT THERE THAT COURTS DON'T THINK THEY GO HAND-IN-HAND, BECAUSE OBVIOUSLY THEY SAY OWEN REQUIRES ONE RESULT AND ALMEIDA REQUIRES ANOTHER. THEY ARE INCONSISTENT. I WOULD URGE THIS COURT TO LISTEN TO THE ORAL ARGUMENT THEY FOURTH DCA, IN THIS CASE, AND YOU CAN GET A BETTER UNDERSTANDING OF WHAT THE COURT'S CONCERNS AND CONFUSION IS IN THE ALMEIDA OPINION. I THINK THIS GLATZMAYER OFFERS A GREAT OPPORTUNITY FOR THIS COURT TO CLARIFY WHAT IT MEANT IN ALMEIDA. THAT THE OFFICER'S RESPONSE WAS THE ONLY -- THAT THE OFFICER'S RESPONSE WAS THE ONLY APPROPRIATE THING TO DO. THAT OFFICERS SHOULD ONLY BE REQUIRED TO GIVE BASIC INFORMATION ON LITERAL QUESTIONS, AS TO WHAT MY RIGHTS ARE, AND NUMBER THREE, ON ANYTHING OTHER THAN THAT, THE SAFEST COURSE OF ACTION IS JUST TO REREAD THOSE MIRANDA WARNINGS. ARE THERE ANY OTHER QUESTIONS? THANK YOU. I WOULD ASK THAT YOU REVERSE THE OPINION OF THE FOURTH DCA. THANK YOU.

THANK YOU, MISTERENS YO. -- MISS TERENCE. THE COURT WILL BE IN RECESS FOR 15 MINUTES. THE MARSHAL: PLEASE RISE.