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Charles Globe v. State of Florida

MARSHAL: PLEASE RISE. PLEASE BE SEATED. QHEEF CHIEF WE APPRECIATE YOUR --

CHIEF JUSTICE: WE APPRECIATE YOUR BEING READY. WITH NO FURTHER DALE DELL I, YOU MAY -- WITH NO FURTHER DELAY, YOU MAY PROCEED.

GOOD MORNING. WE ARE HERE WITH REFERENCE TO CHARLES GLOBE. HE WAS SENTENCED TO DEATH, ALONG WITH ANOTHER PERSON, MR. ANDREW BUSBY, WHERE A CRIME WAS COMMITTED IN AN INSTITUTION, WHERE A CRIME WAS COMMITTED, THAT IS MR. BUSBY WAS STRANGLER IN JULY 2000. THIS CASE PRESENTS PRIMARILY THE ISSUE OF THE STATEMENT THAT THE STATE TOOK INITIALLY FROM MR. GLOBE ON JULY 3. THE FACTS, THAT I THINK ARE UNDISPUTED, WAS THAT, AFTER THE KILLING TAKES PLACE, WAS THAT THIS WAS SOMETIME BEFORE NINE O'CLOCK IN THE MORNING, BECAUSE ON THE REGULAR ROUNDS THAT THE CORRECTIONAL OFFICER MAKES, THAT IS WHEN THE BODY IS DISCOVERED IN THE CELL, AND SOMETIME BETWEEN NINE AND A FEW HOURS LATER, PROBABLY AROUND NOON, FDLE GETS INVOLVED AND SEND SOME AGENTS TO THE PRISON, AND ONE AGENT IN PARTICULAR GOES AND TALKS TO MR. GLOBE AND READS HIM HIS MIRANDA WARNINGS, AND MR. GLOBE TELLS HIM AT THAT POINT, I DON'T WANT TO TALK TO YOU.

IS THAT ALL HE SAYS? DOESN'T HE SAY AT THIS TIME?

THAT IS WHAT THE RECORD SAYS. HE SAYS I DON'T WANT TO TALK TO YOU AT THIS TIME.

TO ME, THAT IS DIFFERENT THAN SAYING I DON'T WANT TO TALK.

WELL, THE QUESTION IS JUSTICE PARIENTE, WHETHER THAT IS A CONSTITUTIONAL DISTINCTION AT THAT POINT, BECAUSE IF SOMEBODY SAID YOU WANT TO TALK, THE ANSWER IS NO, I DON'T WANT TO TALK, DO I HAVE TO SAY NO, I DON'T WANT TO TALK FOREVER AND EVER, NO I DON'T WANT TO TALK FOR THE NEXT FIVE MINUTES? IT WAS REPORTED BY THE POLICE OFFICER THAT, WHAT MR. GLOBE SAID WAS, NO, I DON'T WANT TO TALK TO YOU AT THIS TIME. OKAY.

SO WHAT IS THE DIFFERENCE EITHER WAY? IF HE SAID I DON'T WANT TO TALK. I DON'T WANT TO TALK TO YOU AT THIS TIME, WHAT IS THE POLICE OBLIGATION IN EITHER SITUATION?

AT THAT POINT, THE POLICE HAVE TO SCRUPULOUSLY HONOR HIS FIFTH AMENDMENT RIGHT TO REMAIN SILENT, BECAUSE THAT IS WHAT THE MIRANDA WARNING IS DIRECTED AT. YOU ARE TOLD YOU HAVE A CITE RIOT TO REMAIN SI -- YOU HAVE A RIGHT TO REMINE MAINE SILENT. I -- TO REMAIN SILENT. I AM EXERCISING MY RIGHT TO REMAIN SILENT, AND THE POLICE CANNOT INITIATE ANOTHER CONVERSATION.

WHAT, THEN, HAS TO TAKE PLACE, BEFORE THE POLICE CAN, THEN, EVER SAY ANYTHING TO YOU, ONCE YOU SAY I DON'T WANT TO TALK TO YOU?

I THINK WHAT WOULD HAVE TO HAPPEN IS THE POLICE CAN READ YOU YOUR MIRANDA WARNINGS AGAIN, WITH THE EXPRESS UNDERSTANDING THAT, OKAY, WE KNOW YOU INVOKED YOUR RIGHT TO REMAIN SILENT.

SO THEY HAVE TO USE THAT KIND OF LANGUAGE.

I THINK THAT IS RIGHT. YES, MA'AM. I THINK THAT THEY HAVE TO SAY, LOOK, YOU HAVE INVOKED YOUR RIGHT TO REMAIN SILENT. WE RESPECT THAT, BUT NOW YOU STILL HAVE THAT RIGHT. YOU STILL HAVE THE RIGHT TO REMAIN SILENT.

SO TELL ME WHAT CASE DO WE HAVE THAT SAYS THAT SPECIFICALLY?

I THINK THAT COMES DIRECTLY, THE SOURCE OF THAT INFORMATION COMES FROM MILES AN HOUR AND A I THINK IT COMES FROM MOSTLY VERSUS EVANS. I THINK THOSE -- FROM MOSELY VERSUS EVANS. I THINK THOSE ARE BOTH SUPREME COURT CASES THAT SAY YOU SPECIFICALLY HAVE TO DEAL WITH THAT REQUEST.

HOW DOES THAT RELATE TO BOSS BI, THEN, -- IN BOSBY, WHERE THEY SAID THAT LAW ENFORCEMENT OFFICIALS MAY QUESTION DEFENDANT BUT, RESUMING AT A LATER TIME.

I THINK THAT IS ONE OF THE THINGS YOU WOULD HAVE TO LOOK AT, JUSTICE BELL, A PASSAGE OF TIME, BUT THE PROBLEM IS HOW DO YOU INITIATE THAT CONVERSATION AGAIN? SURE, I DON'T THINK THERE IS ANY PROHIBITION ON THE POLICE GOING BACK TO TALK TO THEM AGAIN, BUT I THINK THERE HAS TO BE THE EXPLICIT RECOGNITION THAT YOU INVOKED YOUR RIGHT TO REMAIN SILENT.

IN WHAT CASE LAW IS THERE, THAT SUPPORTS THAT REQUIREMENT?

I THINK MOSTLY -- I THINK MOSELY DOES THAT. I THINK MOSELY SAYS YOU HAVE TO GO AND SAY LOOK, WE KNOW YOU DID THIS BEFORE AND SO WE ARE ASKING YOU AGAIN, AND IN THIS INSTANCE, IT WAS NONE OF THAT. AND ACTUALLY, WHEN THEY CAME BACK THE SECOND TIME ON THAT SAME DAY, ON THE THIRD, THE POLICE DID READ MR. GLOBE'S MIRANDA RIGHTS. IT WAS VERY PERFUNCTORY, AND MORE IMPORTANTLY, I THINK, FOR THE FACTS OF THIS CASE, BOTH MR. BUSBY --

WHAT PREIS SIZELY HAPPENED THERE, AT THE TIME -- WHAT PRECISELY HAPPENED THERE? AT THE TIME, I UNDERSTAND IT WAS SEVEN HOURS LATER WHEN HE SAID NOT AT THIS TIME.

THE RECORD SHOWS IT WAS 6 OR 7 HOURS.

WHAT HAPPENED THEN?

I THINK THE RECORD WILL SHOW THAT THEY TOOK MR. GLOBE TO A MORE SECURE AREA OF THE PRISON. I THINK THERE IS SOME KIND OF ISOLATION PLACE IN COLUMBIA CORRECTIONAL, AND THAT IS WHERE THEY ARE HOUSING HIM. IT IS HARD TO SAY FROM THIS RECORD, BECAUSE THERE IS ANOTHER TRIAL WITH ANOTHER DEFENDANT, MR. BUSBI, BUT IT APPEARS THAT, AT THE CONCLUSION OF THAT SIX-HOUR PERIOD, JUSTICE WELLS, HE IS BROUGHT FROM THE ISOLATION UP TO THE ADMINISTRATION BUILDING, WHERE THE FDLE AGENTS ARE, AND THAT IS PHYSICALLY WHERE MR. BUSBY IS, AND THE RECORD DOES SHOW THAT MR. BUSBY HAS RECENTLY TALKED TO HIS DAD AND IS VERY EMOTIONAL, SO WHAT THE POLICE DO IS BRING MR. GLOBE INTO THE SAME SPACE WHERE MR. BUSBY IS. IT IS SIX OR SEVEN O'CLOCK, THE SIX OR SEVEN HOURS AFTER THE INITIAL TIME THAT THE POLICE TALKED, ALONE, TO MR. GLOBE.

OKAY. IN BUSBY'S CELL THAT THIS OCCURRED, RIGHT?

YES.

AND THAT IS, OKAY, SO BUSBY AND GLOBE HAD THIS RELATIONSHIP.

I READ THIS RECORD, AND IT WAS A MYSTERY TO ME. I DIDN'T QUITE GET EVERYTHING BUT THAT SEEMED TO BE RIGHT. IT SEEMED TO BE THEY HAD SOME KIND OF RELATIONSHIP.

SO THEY BROUGHT THEM TOGETHER AND WHAT HAPPENED NEXT?

I AM NOT SURE THEY BROUGHT THEM TOGETHER. THEY WEREN'T TOGETHER, BUT APPARENTLY BUSBY WAS ALREADY IN THAT LOCATION AND THEY BRING GLOBE TO THAT LOCATION.

OKAY.

AND THEN AT THAT POINT, THE FDLE AGENT TELLS THEM, NOW DO YOU WANT TO MAKE A STATEMENT? THAT IS WHAT FDLE --

DID GLOBE SAY SOMETHING FIRST?

NO.

HE JUST CAME IN.

YEAH. BROUGHT HIM OVER THERE AND SAID NOW DO YOU WANT TO MAKE A STATEMENT? AND THE POLICE OFFICER DID SAY, HE DIDN'T HAVE A PARTICULAR MEMORY ABOUT THIS, BUT HE SAID IT WOULD NOT BE UNUSUAL FOR HIM TO SAY SOMETHING LIKE, YOU REALLY NEED TO TAKE THE LOAD OFF BUSBY. GLOBE WAS THE OLDER PERSON IN THE RELATIONSHIP AND BUSBY WAS VERY EMOTIONAL ABOUT WHAT WAS HAPPENING. HE HAD JUST SPOKEN TO HIS FAMILY ABOUT IT, SO THERE WAS SOME EFFORT TO APPEAL TO GLOBE'S ELDER STATESMAN STATUS IN THE RELATIONSHIP, SO THAT IS WHERE THAT IS. THE POLICE ARE CLEARLY THE PEOPLE WHO INITIATE THE CONVERSATION AT THAT POINT. WHEN BUSBY AND GLOBE ARE TOGETHER. GLOBE DOES SAY AT THAT POINT, OKAY, I WILL MAKE A STATEMENT, BUT ON THE CONDITION OF, THAT BUSBY GETS TO BE WITH ME WHEN I MAKE THE STATEMENT. WE ARE GOING TO MAKE THE STATEMENT TOGETHER, AND THAT IS WHEN YOU GET THE ODD CIRCUMSTANCE, WHERE THE POLICE ARE QUESTIONING BUSBY AND GLOBE TOGETHER, AND IF YOU, AGAIN IT IS HARD TO TELL FROM THE RECORD, BECAUSE ALL WE HAVE IN THE RECORD IS THE TRANSCRIPT. NOT THE TRANSCRIPT. I AM SORRY. THE COURT REPORTER'S TRANSCRIPTION OF THE TAPE. THE TAPE, ITSELF, DOES NOT IDENTIFY WHO SPEAKERS ARE, WHAT THE STATE HAD DONE AT TRIAL WAS THEY HAD THE POLICE OFFICER WHO TOOK THE STATEMENT, WRITE ON THE TRANSCRIPT THAT WAS USED AS AN AID DURING THE PLAYING OF THE TAPE, WHO SAID WHAT, BUT THAT IS NOT REFLECTED IN OUR RECORD, BECAUSE OUR RECORD IS SIMPLY THE COURT REPORTER WRITING DOWN WHAT SHE HEARS ON THE TAPE, AND THAT DOES NOT DISCRIMINATE.

WHAT WAS THE ISSUE THAT THE TRIAL COURT WAS GOING TO RESOLVE ON THE MOTION TO SUPPRESS? WHAT WAS THE FACTUAL ISSUE THAT THE TRIAL JUDGE WAS GOING TO RESOLVE? I MEAN, YOU AGREE, I BELIEVE, THAT THE STATE REINITIATING THE CONTACT --

YES, SIR.

-- IS NOT SUFFICIENT, THAT THERE IS NO PER SE RULE HERE, BUT THAT REINITIATION, DID IT NOT?

I THINK SO.

SO WHAT WAS THE TRIAL JUDGE FACING THEN, IN HAVING THIS HEARING, AND THEY CONCLUSION OF THE HEARING, SAYING, WELL, HERE IS WHAT I HAVE TO DECIDE, AND THEN WHAT HAPPENED HERE?

OKAY. IF I UNDERSTAND YOUR QUESTION CORRECTLY, CHIEF JUSTICE ANSTEAD, I THINK THE QUESTION WAS, THE LEGAL QUESTION WAS WHETHER THOSE STATES SHOULD COME IN AT TRIAL, AND THE FACTUAL BASIS WAS, BECAUSE SINCE MR. GLOBE WAS THE PERSON WHO SAID I WANT TO HAVE A RIGHT TO REMAIN SILENT, AND IT WAS NOT SCRUPULOUSLY HONORED BY THE POLICE, BECAUSE THEY REINITIATED IT, AND THEY USED MR. BUSBY --

WHAT I AM TRYING TO GET AT IS, WAS THE TRIAL JUDGE, THEN, REQUIRED TO SAY, WELL, THE QUESTION I HAVE TO ANSWER IS WHETHER THIS WAS VOLUNTARY?

THAT'S RIGHT.

OR WHAT WAS, THAT IS WHAT I AM ASKING YOU TO TELL US, WHAT WAS THE ISSUE THAT THE TRIAL JUDGE, THE CRITICAL ISSUE THAT THE TRIAL JUDGE HAD TO RESOLVE, AND THEN LET'S LOOK AT WHETHER OR NOT THE TRIAL JUDGE PROPERLY OR, ERRED IN RESOLVING IT OR NOT. WHAT WAS THE ISSUE?

I THINK THAT WAS THE LEGAL ISSUE. I THINK THE LEGAL ISSUE WAS WHETHER THE STATEMENT THAT MR. GLOBE GAVE, ON SEPTEMBER, ON JULY 3, THE FIRST STATEMENT, WAS VOLUNTARY.

AND NOT JUST LEGAL ISSUE, BUT A FACTUAL ISSUE. IS THAT RIGHT?

THAT'S CORRECT.

AND SO WHAT, WHAT INGREDIENTS WOULD GO INTO AN ANALYSIS OF WHETHER IT WAS VOLUNTARY, AND WHERE DID THE TRIAL JUDGE GO WRONG HERE?

OKAY. A FACTOR WOULD BE WHETHER THEY READ HIM THE MIRANDA RIGHTS AND WHAT HIS RESPONSE WAS, WHETHER IT WAS VOLUNTARY OR NOT.

THEY READ THEM, THEY DID.

THEY READ HIM HIS MIRANDA RIGHTS, AND HE SAID I WANT TO REMAIN SILENT, SO THAT IS AN ISSUE TO DECIDE WHEN WHETHER, WHEN HE LATER GIVES A STATEMENT, IS IT VOLUNTARY?

WHAT ABOUT AFTER THIS TIME, THOUGH, THE SIX OR SEVEN HOURS THAT WE ARE TALKING ABOUT HERE, WAS HE READ HIS MIRANDA RIGHTS AGAIN?

HE WAS. HE WAS, IN THE SENSE OF, YOU HAVE GOT TO REMEMBER BUSBY AND GLOBE ARE SITTING IN THE ROOM TOGETHER. THEY ARE BEING QUESTIONED TOGETHER, SO WHEN THE POLICE TALK ABOUT THE MIRANDA RIGHTS, THEY ARE NOT BEING SPECIFIC AS TO AN INDIVIDUAL, AND THERE IS NO WAY, FROM READING THIS RECORD, WHETHER YOU KNOW THAT GLOBE ANSWERED THAT HE DID UNDERSTAND THOSE RECORDS AND WHETHER GLOBE SAID HE WAS WILLING TO TALK.

WHAT WAS THE DISCUSSION, WAS THERE SOME POINT THAT YOUR CLIENT INDICATED THAT, YES, HE WOULD, IF, THAT HE WOULD GIVE A STATEMENT, IF BUSBY WAS IN THE ROOM?

YES. THAT WAS PART OF THE DISCUSSION THAT HAPPENS SEVEN HOURS LATER, WHEN HE ULTIMATELY DOES GIVE A STATEMENT WITH BUSBY IN THE ROOM.

THAT IS BEFORE ANY QUESTIONING ACTUALLY STARTS, IS THAT CORRECT?

WELL, IT IS BEFORE ANY PARTICULAR QUESTIONING, BUT IT IS NOT BEFORE --

THE CHICKEN AND THE EGG KIND OF --

RIGHT. IT IS NOT --

COME BACK AND TELL US, WHERE DID THE TRIAL JUDGE GO WRONG IN THE ANALYSIS HERE? AND INCOMING TO THE CONCLUSION THE FACTUAL AND LEGAL CONCLUSION, THAT THE STATEMENT WAS VOLUNTARY?

OKAY. WELL, THE TRIAL JUDGE IS WRONG, BECAUSE ONE IS THERE WAS A CONSTITUTIONAL VIOLATION OF MILES AN HOUR AND, A AS PART OF THE FACTUAL -- OF MIRANDA, AS FAR AS A FACTUAL EQUATION, AND AS FAR AS THE INITIATION OF CONTACT WITH MR. GLOBE, AND POLICE USED THE FACT THAT BUSBY WAS EMOTIONAL AND THAT YOU SHOULD GIVE THE STATEMENT TO HELP OUT BUSBY, ALL BEFORE READING HIS MIRANDA RIGHTS THE SECOND TIME, SO THOSE ARE ALL FACTORS, I THINK, THAT THE COURT COULD HAVE LOOKED AT, AND THERE IS NO POLICE EXPRESSION IN BETWEEN THE SEVEN HOURS THAT ACKNOWLEDGES THAT MR. BUSBY, MR. GLOBE, SAID THAT I WANTED TO NOT TALK. SO I THINK THOSE ARE THE FACTORS THAT THE COURT COULD HAVE USED, TO SAY THE STATEMENT WASN'T VOLUNTARY, AND, OF COURSE, ALL WE HAVE FROM THE JUDGE IN THIS CASE, IS KIND OF A TWO-LINE SENTENCE, SAYING I HAVE REVIEWED THE RECORD, AND I FIND IT A VOLUNTARY STATEMENT, SO WE DON'T HAVE A FACTUAL FINDING AS TO WHAT SPECIFICALLY, THE JUDGE CONSIDERED, BUT I THINK THOSE WOULD BE THE FACTS THAT WOULD MAKE THIS STATEMENT OF JULY 3, ABOUT, I THINK THE TIME THAT THE STATEMENT IS GIVEN, SOMEWHERE BETWEEN SIX AND SEVEN, IN THAT, THAT EVENING OF THE DAY WHERE THE MURDER OCCURS.

CHIEF JUSTICE: ALL RIGHT. WE HAVE DEVOTED A LOT OF TIME, AND I REALIZE YOU HAVE --

PERFECTLY OKAY, BECAUSE I THINK WHEN YOU LOOK AT THIS CASE, THIS IS NOT A WHODUNIT. I MEAN, IF YOU LOOK AT THE FACTS OF THIS CASE, THESE GUYS, AFTER THEY KILLED ARD, PUT A SIGN UP ON THE CELL THAT SAID CALL FDLE AND THEY PUT THEIR THUMB PRINTS WITH BLOOD ON THEM, SO WE ARE NOT SITTING HERE, ASKING WHO COMMITTED THE MURDER. THE QUESTION, REALLY, BECOMES WHETHER THIS IS

EITHER A FIRST-DEGREE MURDER OR A DEATH-PENALTY CASE, AND THE REASON THE STATEMENTS ARE SO IMPORTANT, IS BECAUSE THE STATEMENTS PROVIDE THE BASIS FOR BOTH THE JUDGE AND JURY AND ULTIMATELY IN THE SENTENCING PHASE, THE OVERWHELMING EVIDENCE THAT THIS WAS A PREMEDITATED, FIRST-DEGREE MURDER, AND FOR TWO OF THE AGGRAVATORS, COLD CALCULATED AND HAD, IT WAS ALMOST THE EXCLUSIVE EVIDENCE THE JUDGE RELIED ON IN FINDING THOSE AGGRAVATORS, SO THAT IS THE IMPORTANCE OF THESE STATEMENTS, BUT I DON'T WANT TO GIVE YOU THE IMPRESSION THAT, IF YOU THROW OUT THESE STATEMENTS, YOU WON'T KNOW WHO COMMITTED THE CRIME, BECAUSE THERE WAS OTHER EVIDENCE THAT DETAILED IT WAS THEM.

IS THAT ONLY FOR THE PENALTY PHASE?

-- THE PENALTY PHASE?

IN LARGE PART, JUSTICE PARIENTE. I THINK IN LARGE PART IT GOES TO WHETHER THE STATE TRIED THE CRIME BASED ON PREMEDITATION ONLY, AND THE STATEMENT THAT THE STATE HAD THAT THIS WAS PREMEDITATED, CAME FROM THE MOUTH OF CHARLES GLOBE, EXPLAINING THAT THEY HAD BEEN PLANNING THIS FOR TWO WEEKS AND THAT THEY HAD SIX OR SEVEN OTHER PEOPLE THAT THEY MAY HAVE TARGETED DURING THAT TIME, SO WITHOUT THOSE STATEMENTS FROM THE DEFENDANT, IT WOULD HAVE BEEN EXTRAORDINARILY DIFFICULT FOR THE STATE --

HOW DID THIS, WHAT DID THE MEDICAL EXAMINER SAY THAT WAS, HOW THIS PERSON DIED?

HE WAS STRANGLER.

AND STRANGULATION IS A PREMEDITATED EVENT, CORRECT?

IT COULD BE. I MEAN, IT IS PRESUMPTIVELY IT IS, JUSTICE WELLS, BUT THE MEDICAL EXAMINER IN THIS CASE, SAID I COULDN'T TELL WHETHER THIS GUY WAS ALIVE, NOT ALIVE, WHETHER HE WAS CONSCIOUS WHEN HE WAS STRANGLER, BECAUSE THERE WAS SOME EVIDENCE OF SOME OTHER PHYSICAL ATTACK, AND THE MEDICAL EXAMINER SAID I CAN'T TELL WHAT EVENT HAPPENED BEFORE. IT COULD HAVE BEEN THAT HE WAS UNCONSCIOUS AT THE TIME THAT HE GOT STRANGLER.

WHAT CAUSED HIS UNCONSCIOUS

HE WAS HIT IN THE HEAD. HE WAS PUNCHED A FEW TIMES, SO IT WAS JUST THAT THE MEDICAL EXAMINER TESTIMONY ALONE, WAS NOT SPECIFIC AS TO WHETHER THIS COULD HAVE BEEN A PREMEDITATION CRIME. CHARLES GLOBE'S WORDS GIVE THE STATE, BOTH THAT ELEMENT OF THE OFFENSE AND 50 PERCENT OF THE AGGRAVATORS THE TRIAL JUDGE FOUND IN THIS CASE. SO THERE IS NOT ONLY THE JULY 3 STATEMENT THAT HE GIVES. FOUR DAYS LATER, THE POLICE COME BACK AGAIN IN THE INTERIM. WHAT HAPPENS IS, AFTER THE POLICE FINISH TAKING THE JULY 3 STATEMENT, MR. GLOBE IS THEN TRANSPORTED TO THE LOCAL JAIL IN COLUMBIA COUNTY. THEY TAKE HIS FINGERPRINTS. THEN THEY ARE GOING TO ADMINISTRATIVELY MOVE HIM TO FLORIDA STATE PRISON, BECAUSE IT IS A MORE SECURE FACILITY, AND THEY DON'T WANT HIM IN THE FACILITY ANYMORE, SO HE IS TRANSPORTED, AFTER HE GOES TO THE JAIL THAT NIGHT, TO FLORIDA STATE PRISON. AND SO HE GIVES ANOTHER STATEMENT ON JULY 7, AND THIS STATEMENT IS GLOBE ALONE, UNLIKE THE FIRST STATEMENT, WHERE, WHEN YOU READ AND YOU ARE READING THE TRANSCRIPT OF THE STATEMENT, YOU HAVE NO CLUE WHO IS TALKING ABOUT WHAT IN RESPONSE TO QUESTIONS.

BY THE WAY, BEFORE YOU GET TO JULY 7, ON JULY 3, WHEN YOU TALK ABOUT YOU DON'T KNOW WHO IS ANSWERING, DID, WAS THERE ANY INDICATION, THERE, THAT, WHEN ONE PERSON WAS TALKING, ANOTHER PERSON DISAGREED WITH THE FACTS TOLD OR SAID, NO, IT WASN'T REALLY THAT WAY. IT WAS LIKE THIS?

RIGHT. I MEAN, IT WAS CLEARLY A JOINT EFFORT, JUSTICE BELL. IT WAS SOMEONE WOULD MAKE A STATEMENT AND SOMEONE MAY ADD TO IT. SOMEONE MAY DISAGREE ON THE DETAILS, BUT IT WASN'T TO THE EXTENT THAT YOU STRANGLER THEM, AND THE ANSWER WAS, NO, I DIDN'T.

BACK ON, THAT GOES TO ISSUE TWO, HOW DO YOU DISTINGUISH THIS CASE FROM NELSON, AND LET ME JUST, WHERE I AM COMING FROM, IT SEEMS LIKE A STRONGER CASE THAN NELSON, BECAUSE, AGAIN, GLOBE ASKED THAT THE CODEFENDANT BE PRESENT, SO HE WANTED HIM THERE, AND AS YOU SAID, HE HAS GOT ESSENTIALLY, A JOINT ENTERPRISE CONFESSION, WHERE THEY ARE BOTH SUPPLYING DETAILS, SO HOW

IS, HOW DO YOU DISTINGUISH NELSON, AND, AGAIN, ISN'T THIS SORT AFTER STRONGER CASE THAN NELSON, FOR THE ADOPTIVE ADMISSION CONCEPT?

I THINK THAT IS A WHOLE OTHER ISSUE ABOUT WHETHER THE STATEMENT COMES IN, ABOUT WHETHER IT IS ADOPTED ADMISSION. THE PROBLEM WITH IT, JUSTICE PARIENTE, IS THAT IF YOU DON'T IDENTIFY THE SPEAKER OF THE ANSWER, AND ALTHOUGH THERE IS CLEARLY SOME COMMON INTEREST IN WHAT OCCURRED IN THIS CASE, WHAT ULTIMATELY YOU HAVE TO DECIDE IS WHAT YOUR RELATIVE CULPABILITY IS, WHAT YOU REALLY DID. AND WITHOUT BEING ABLE TO DISCRIMINATE BETWEEN WHO SAID WHAT ABOUT WHAT WAS DONE, IT IS JUST IMPOSSIBLE TO MAKE THAT FINDING.

IS THAT, WAS THAT THE POINT RAISED BELOW, THAT THE TRANSCRIPT WAS INACCURATE, BECAUSE THE STATE SHOULD HAVE IDENTIFIED WHO THE SPEAKER WAS?

NO. ACTUALLY THE STATE, IN TRIAL, DID IDENTIFY THE SPEAKER, AND THE WRITTEN TRANSCRIPT -- IN THE WRITTEN TRANSCRIPT, BUT THAT IS NOT IN EVIDENCE, SO WE DON'T KNOW WHO THAT IS.

BUT WAS THE TRANSCRIPT PRESENTED TO THE JURY, TO HELP THEM DISCERN WHO WAS SPEAKING ON THE TAPE?

YES, SIR. THAT WAS USED AS AN AID FOR THE TRANSCRIPT.

WAS THERE ANY OBJECTION BY DEFENSE COUNSEL, THAT THAT AID WAS NOT A REASONABLY ACCURATE REPRESENTATION OF WHO WAS SPEAKING?

NO, SIR. THERE WAS NO OBJECTION BY THE DEFENDANT AT THAT POINT. ALL RIGHT. IF I CAN, JUST GET TO THE SECOND STATEMENT OF JULY 7, OF ARGUMENT ABOUT THAT, IS THAT THAT STATEMENT WOULD HAVE NEVER TAKEN PLACE, BUT FOR THE JULY 3 STATEMENT. I THINK THAT IS FOR TWO REASONS. ONE IS, I DIDN'T QUITE UNDERSTAND THIS, BUT PART OF THE REASON THAT MR. ARD WAS KILLED, I THINK, HAD TO DO WITH SENDING A MESSAGE TO THE PRISON, POWERS-THAT-BE, ABOUT THE CONDITIONS IN THE PRISON SYSTEM. AND THAT THAT IS A LOT ABOUT WHAT GLOBE AND BUSBY WANTED TO TALK ABOUT, TO THEIR INTERROGATORS, WAS THE UNFAIRNESS OF WHAT IS HAPPENING IN THE PRISON SYSTEM, AND WHEN THE POLICE LEFT ON JULY 3, THEY COMMUNICATE INDICATED TO GLOBE, THAT WE ARE GOING TO SEND PEOPLE BACK, SO THAT YOU CAN FULLY RAISE THIS ISSUE, AND WE CAN BRING THIS OUT AND DISCUSS IT, AND SO WHAT HAPPENS IS, FOUR DAYS LATER AT A DIFFERENT INSTITUTION, BASICALLY THE SAME INTERROGATORS COME OUT, BUT WHAT THEY REALLY WANT TO DO IS NOT TALK ABOUT THE ISSUES THAT BUSBY AND GLOBE HAVE RAISED ABOUT THE PRISON CONDITIONS. THEY WANT TO CLARIFY WHAT THEY LEARNED FROM THE JULY 3 INTERVIEW, AND THAT IS WHAT THEY START RIGHT OFF AND YOU READ THE TRANSCRIPT. THEY GO RIGHT INTO DETAIL ABOUT, ALL RIGHT, EXPLAIN TO ME MORE ABOUT THE INSTRUMENT THAT YOU USED TO KILL MR. ARD AND HOW THAT OCCURRED, AND --

WERE THERE WARNINGS ADMINISTERED AT THAT TIME, BEFORE GOING INTO THAT?

THEY DID, AGAIN, GENERALLY, READ THE MIRANDA WARNINGS, AND THIS IS ANOTHER INTERESTING TRANSCRIPTION. IF YOU, ON THE RECORD ON TRANSCRIPT 26, PAGE 659, WHERE THE TRANSCRIPT OF THE INTERVIEW IS, AGAIN, TRANSCRIBED BY THE COURT REPORTER, FOR PURPOSES OF THE RECORD, AND, THE POLICE, ARE READING MR. GLOBE HIS RIGHTS. THE POLICE ASK, DO YOU UNDERSTAND YOUR RIGHTS, AND THE ANSWER IS SURE. THE QUESTION IS, WITH YOUR RIGHTS IN MIND, WOULD YOU LIKE TO ANSWER QUESTIONS AND MAKE A STATEMENT AT THIS TIME? THE ANSWER IN THE RECORD IS, INAUDIBLE! WE DON'T KNOW WHAT HIS ANSWER IS IN THIS RECORD. AND THEN THEY GO ON, THE POLICE GO ON TO INTERROGATE HIM.

WHAT IS THE NEXT THING, AFTER IT SAYS INAUDIBLE?

THEN THE POLICE ASK A QUESTION. WHEN YOU WERE IN BUSBY'S CELL, THERE CAME A POINT WHERE YOU PUT SOMETHING AROUND HIS NECK, AND THEY ARE TRYING TO CLARIFY THE DETAILS FROM JULY 3, SO THEY GO RIGHT INTO ASKING THE QUESTION ABOUT WHAT YOU TOLD ME FOUR DAYS AGO.

ARE YOU SUGGESTING THAT HE SAID, NO, I DON'T WANT TO TALK TO YOU?

WELL, THE PROBLEM IS I AM NOT -- I CAN'T SUGGEST THAT FROM THIS RECORD, JUSTICE CANTERO, BUT WHAT I CAN TELL YOU IS THAT THIS

RECORD DOESN'T SAY, WITH ANY CERTAINTY, THAT THERE WAS A CLEAR AND KNOWING AND INTELLIGENT WAIVER OF THE RIGHTS THAT HE HAD JUST BEEN READ!

DID THE POLICE OFFICER EVER TESTIFY AT THE SUPPRESSION HEARING OR OTHERWISE, THAT HE DID WAIVE HIS RIGHTS AT THAT POINT, WHERE IT SAYS INAUDIBLE?

AT THE INITIAL SUPPRESSION HEARING, I WANT, IF MY MEMORY IS RIGHT, CHIEF JUSTICE ANSTEAD, HE DID TESTIFY AT THE SUPPRESSION HEARING. I AM NOT SURE IT CAME UP.

IT REALLY WAS NEVER ANY CLAIM MADE HERE, THAT HE REFUSED TO WAIVE HIS RIGHTS AT THIS SECOND INTERROGATION, AND THAT DESPITE REFUSING, THAT THEY INTERROGATED HIM. THERE WAS NEVER ANY CLAIM LIKE THAT PRESENTED IN THE TRIAL COURT, WAS IT?

NO, SIR. BUT, AGAIN, THAT GOES TO THE ISSUE OF WHETHER THESE STATEMENTS WERE VOLUNTARY, BECAUSE, AGAIN, IN THIS READING OF HIS RIGHTS, THE SECOND TIME ON JULY 7, THERE IS NO EXPRESSION, AGAIN, THAT, AND BY THE WAY, WE KNOW WHEN WE FIRST TALKED TO YOU ON JULY 3, YOU SAID TO US YOU DIDN'T WANT TO TALK TO US, AND AT THAT POINT YOU IMPOSED THE CONDITION AND WE LIVED UP TO YOUR CONDITION. WE DON'T EVEN HAVE THAT NOW, CHIEF JUSTICE ANSTEAD. WE DON'T HAVE ANY SAYING FROM THE POLICE. WE KNOW THAT YOU DID THIS. YOU AGREED TO DO IT BEFORE, BECAUSE WE ALLOWED YOU TO HAVE MR. BUSBY TALK WITH YOU, LIKE HE DID BEFORE. NOW WE JUST HAVE THE READING OF THE RIGHTS GENERALLY, BUT WE DON'T KNOW WHAT IT SAYS.

THERE ARE NO OTHER STATEMENTS MADE PRELIMINARY TO THAT?

NO, SIR. THIS IS --

THAT IS THE BEGINNING OF THE --

THAT IS THE BEGINNING OF THE SECOND INTERVIEW, WHERE THE POLICE SIT DOWN AND SAY HERE ARE YOUR RIGHTS. WE ARE HERE TO TALK TO YOU ABOUT THE HOMICIDE, AND THEY GO THROUGH THE MIRANDA WARNINGS.

AND THERE WAS NO ADDITIONAL TESTIMONY BY THE POLICE OFFICERS AT THE SUPPRESSION HEARING, AS FAR AS WHAT TOOK PLACE BEFORE THE BEGINNING OF THAT?

OFF THE TOP OF MY HEAD, I DON'T REMEMBER. THERE WAS A SUPPRESSION HEARING. I DON'T RECALL IF THE DEFENSE RAISED THAT AS A BAR TO THAT. BUT I, IT IS NOT CLEAR TO ME THAT, WHAT IS CLEAR TO ME, THAT THAT TAPE WAS NOT PLAYED AT THE SUPPRESSION HEARING, SO THAT CERTAINLY THE JUDGE WOULD NOT HAVE KNOWN, IN LISTENING TO THE TAPE, THAT HE COULD NOT HEAR THE RESPONSE, WHETHER SOME LAWYER POINTED OUT TO HIM, I DON'T THINK THAT HAPPENED. DURING THE SUPPRESSION HEARING.

TELL PEE WHAT HAPPENED, AS FAR AS BUS -- TELL ME WHAT HAPPENED, AS FAR AS BUSBY IS CONCERNED. WAS BUSBY CHARGED?

YES, SIR. HE WAS CHARGED. MY UNDERSTANDING WAS CONVICTED AND SENTENCED TO DEATH. HE IS ON SOME TRACK IN THIS COURT. I THINK HE HAS ARGUMENT IN A MONTH OR SOMETHING.

BEFORE YOU SIT DOWN, I JUST WANT TO ASK YOU ABOUT YOUR CALDWELL ISSUE. WAS THE STANDARD JURY INSTRUCTION READ IN THIS CASE?

YES, MA'AM.

HOW WAS THE CALDWELL ISSUE PRESERVED FOR APPEAL?

YOU MEAN THAT IT WASN'T --

WELL, WAS IT, DID THEY ASK FOR AN ALTERNATIVE INSTRUCTION? I THOUGHT THERE WAS SOMETHING ABOUT THAT THE JURY, THAT THE DEFENSE OR SOMEONE REQUESTED THAT THE JURY BE INSTRUCTED THAT THEIR SENTENCE, THAT THEY BE ADVISED THEIR SENTENCE WOULD BE GIVEN GREAT WEIGHT.

I DON'T REMEMBER THAT, JUSTICE PARIENTE, OFF THE TOP OF MY HEAD, BUT I WILL LOOK AND SEE WHEN I DO THAT. THANK YOU. CHIVE CHIEF MR. CHIEF JUSTICE

THANK YOU. GOOD MORNING.

GOOD MORNING, YOUR HONOR. MAY IT PLEASE THE COURT. CASSANDRA DALTON, ASSISTANT -- Z CASSANDRA DOLE GIN, ASSISTANT -- CASSANDRA DOLL GIN -- DOLL BEGIN, ASSISTANT -- CASSANDRA DOLGIN, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE OF FLORIDA. IT WAS UPHELD THAT THE REPEATED INSTRUCTION WAS UPHELD, AND AS TO THE CALDWELL CLAIM AND THAT IT WAS NOT PRESERVED TO THE EXTENT THAT THE DEFENDANT IS NOW TRYING TO WRAP IT INTO A RING CLAIM, SO WE ARE CLEAR ON THAT.

YOU SAY WHY NOT? WHAT WAS MISSING? YOUR CONTENTION, YOU SAY THAT THEY DID REQUEST A SPECIAL INSTRUCTION, BUT NOW YOU ARE SAYING THAT IT IS NOT ENOUGH. WHAT IS MISSING? WHAT IS NOT ENOUGH?

AS IT WAS PRESENTED. IT WAS WASN'T PRESENTED AS SIXTH AMENDMENT THAT THE JURY HAD TO MAKE THESE FINDINGS.

DIDN'T MAKE THE FULL RING ARGUMENT IS WHAT YOU ARE SAYING.

YES, YOUR HONOR.

WOULD THERE HAVE BEEN A DIFFERENT INSTRUCTION, IF RING HAD BEEN APPLICABLE, WITH REGARD TO THE JURY'S ROLE, AND IF SO, HOW SO?

I THINK THE ARGUMENT WOULD HAVE HAD TO BE MADE, THAT THIS IS NOT A CALDWELL CLAIM, AN EIGHTH AMENDMENT CLAIM BUT A SIXTH AMENDMENT CLAIM, AND THAT ARGUMENT WAS PRESENTED.

IT HAD TO BE A STATEMENT.

YES, YOUR HONOR.

BEFORE YOU CONTINUE, I PRESUME THAT THE JUDGE ASKED FOR THE STANDARD INSTRUCTION. THE STATE'S POSITION IS THAT THE STANDARD INSTRUCTION IS STILL VALID, SUBSEQUENT TO RING, BECAUSE EVENTUALLY WE ARE GOING TO HAVE TO CONFRONT IT, WHETHER WE CONFRONT IT IN THIS CASE OR NOT, AND CONSTRUCTION AS I UNDERSTAND IT, IS NOT ENOUGH TO INCORPORATE ANY OF THE HOLDINGS OF RING THAT THE JURY IS THE FACT FINDER, AT LEAST FOR THE AGGRAVATOR.

AS OF NOW, THE INSTRUCTION HAS NOT BEEN CHANGED. IT IS THE STATE'S POSITION THE INSTRUCTION IS PROPER AND THAT THE SIXTH AMENDMENT CLAIM WAS NOT PRESENTED AND THAT ISSUE IS NOT BEFORE THIS COURT IN THIS CASE. I DO, BEFORE ADDRESSING THE LEGALITY OF THE JULY 3 AND JULY 7 STATEMENTS, I WANT TO GO OVER THE FACTS, BECAUSE THERE IS SOME MISUNDERSTANDING AND INCOMPLETENESS. AT 12:13, AGENT GOATEE HAD ATTEMPTED TO INTERVIEW MR. GLOBE, AND THAT COMES OUT OF THE DEPOSITION OF THE AGENT, WHICH IS PART OF THIS ERROR. -- OF THIS RECORD. AT THAT TIME, MR. GLOBE SAID I UNDERSTAND MY RIGHTS BUT AT THIS TIME DO NOT WISH TO MAKE ANY STATES OR DO NOT WISH TO MAKE ANY STATEMENTS AT THIS TIME, AND I THINK THAT IS IMPORTANT, BECAUSE THAT OPENS THE DOOR. HE IS NOT SAYING I DON'T WANT TO TALK TO YOU AT ALL. IT OPENS THE DOOR FOR LAW ENFORCEMENT TO COME AND ASK HIM LATER, ARE YOU NOW WILLING TO MAKE A STATEMENT? I DON'T THINK THAT THAT IS REQUIRED. I MEAN, HE INVOKED HIS RIGHT TO REMAIN SILENT. HE DID NOT INVOKE HIS RIGHT TO COUNSEL, SO THERE WAS NOTHING THAT PRECLUDED LAW ENFORCEMENT FROM APPROACHING HIM LATER AND NOW ASKING HIM DO YOU WANT TO MAKE A STATEMENT.

BUT DO YOU AGREE THAT THIS WAS AN INVOCATION OF HIS RIGHT TO REMAIN SILENT, AT LEAST AT THIS TIME.

RIGHT. RIGHT.

SO IS THE ANALYSIS AS TO HOW LONG THEY HAVE TO WAIT, DIFFERENT BECAUSE HE GIVES A CAVEAT? IN OTHER WORDS LET'S ASSUME HE JUST SAID I DON'T WANT TO TALK. UNDER MOSTLY, WHAT IS THE --

THE STATE DOESN'T DISPUTE THAT LAW ENFORCEMENT HAD TO SCRUPULOUSLY HONOR. I THINK THE FACT THAT HE SAID I DON'T WANT TO TALK AT THIS TIME, OPENS, IT LEAVES THE DOOR OPEN, AS IT IS JUST ONE MORE FACTOR FOR THE COURT TO LOOK AT, AS TO WHAT IS REQUIRED IN SCRUPULOUSLY HONORING, AND IN THIS CASE, LAW ENFORCEMENT IMMEDIATELY CEASED QUESTIONING, SO THEY STOPPED QUESTIONING HIM, AND I ALSO THINK IT IS A MISSTATEMENT TO SAY THAT LAW ENFORCEMENT INITIATED, IN THIS CASE. MR. GLOBE AND --

I THINK THE QUESTION, THOUGH, REALLY GOES TO, BECAUSE HE SAID AT THIS TIME, DOES IT MEAN THAT LAW ENFORCEMENT COULD GO BACK TWO HOURS LATER, AS OPPOSED TO IF HE HAD JUST SAID I DON'T WANT TO TALK? THEY WOULD HAVE TO WAIT FIVE OR SIX OR SEVEN HOURS. DOES THAT REALLY MAKE ANY DIFFERENCE? BECAUSE HE SAID AT THIS TIME.

I THINK IT LESSENS THE BURDEN IN THAT SENSE, BECAUSE HE IS NOT SAYING I DON'T WANT TO TALK TO YOU EVER OR HE IS NOT SAYING NO. THERE WAS A CASE OUT OF THE, I BELIEVE THE SECOND DCA THAT IS CITED IN THE STATE'S BRIEF, WHERE LAW ENFORCEMENT HAD WAITED 45 MINUTES, AND THE COURT SAID 45 MINUTES IS NOT LONG ENOUGH, AND IN THAT CASE THE SUSPECT HAD JUST ANSWERED, AFTER BEING ADVISED OF HER RIGHTS, SHE SAID NO, SO HERE WE HAVE A CASE WHERE HE IS JUST SAYING AT THIS TIME, AND THEN LAW ENFORCEMENT WAITED AT LEAST SIX AND-A-HALF HOURS. IT WAS AT APPROXIMATELY 6:20 THAT --

DOES THAT -- 6:20 THAT --

DOES THAT ALSO MEAN THAT, IF HE SAID I DON'T WANT TO TALK WITH YOU EVER, THAT POLICE OFFICERS COULD NEVER GO BACK TO TALK WITH HIM? ARE YOU GOING TO SAY THAT BECAUSE HE SAID AT THIS TIME, DOES THAT LEAVE THE WINDOW OPEN? IF HE SAID NEVER, DOES THAT CLOSE IT COMPLETELY?

I DON'T THINK IT CLOSES IT COMPLETELY. IT IS A FACTOR THAT IS LOOKED AT. BUT THAT TIME ELEMENT IS NOT DISPOSITIVE. WE KNOW FROM MOSTLY, THAT INVOKING THE RIGHT TO REMAIN SILENT LEAVES THE DOOR OPEN. THE DEFENDANT OR THE SUSPECT, IS BASICALLY SAYING TO LAW ENFORCEMENT, YOU KNOW, IT IS NOT THAT I ONLY WANT TO DEAL WITH YOU AS COUNSEL OR THROUGH COUNSEL. I JUST DON'T WANT TO TALK TO YOU AND THUS SKRUMLOUSLY HONORED, DID LAW ENFORCEMENT IMMEDIATELY CEASE QUESTIONING? AND THEN PART OF THE FACTORS THAT THE COURT LOOKS AT IS, IN REINITIATING, DID LAW ENFORCEMENT SAY SOMETHING TO REASONABLY ELICIT AN INCRIMINATING STATEMENT? AND THAT DIDN'T OCCUR HERE. WHAT HAPPENED HERE WAS MR. BUSBY AND MR. GLOBE WERE BROUGHT TO THE OTHER BUILDING SO THEY COULD BE PHOTOGRAPHED. MR. BUSBY HAD SCRATCHES ON HIS FACE AND HANDS. LAW ENFORCEMENT WANTED TO PHOTOGRAPH BOTH MEN. AFTER BEING PHOTOGRAPHED, MR. GLOBE WAS BROUGHT OUT, AND HE SEES A PRISON CAPTAIN, AND HE MAKES A COMMENT, AND HE IS BEING ESCORTED BY AGENT UGLIANO, AFTERNOON HE MAKES A STATEMENT SAYING --, AND HE MAKES A STATEMENT SAYING THAT GUY DOESN'T NEED TO BE HERE, AND UGLIANO SAYS WHAT DO YOU MEAN OR WHY? AND THE DEFENDANT RESPONDED, WELL, THIS WHOLE PLACE IS SCREWED UP, SO THAT IS BEFORE MR. GLOBE WAS ASKED, ARE YOU NOW WILLING AND READY TO MAKE A STATEMENT? AGENT UGLIANO ASKS IF MR. GLOBE IS READY TO MAKE A STATEMENT, AND AT THAT TIME MR. BUSBY COMES WALKING OUT OF THE OFFICE. HE IS VISIBLY UPSET, AND GLOBE SAYS, IF I CAN TALK TO HIM, IF MR., IF BUSBY CAN BE PRESENT, THEN I WILL TALK TO YOU.

SO THE WHOLE, WHAT YOU ARE SAYING IS THAT, ALTHOUGH, NOT NECESSARILY THAT HE INITIATED THE REQUEST TO TALK. HE ACTUALLY AFFIRMATIVELY SAID SOMETHING THAT, THEN, LED THE DETECTIVE TO ASK THE QUESTIONS.

RIGHT. HIS STATEMENTS TO LAW ENFORCEMENT LED TO THIS INTERACTION. THE STATE DOESN'T DISPUTE THAT UGLIANO HAD TESTIFIED THAT HE HAD HOPED TO BRING THEM TOGETHER, BUT THAT IT WAS THROUGH THE COURSE OF GLOBE TALKING AND I WAS, THEN, ASKED -- AND HE WAS, THEN, ASKED ARE YOU NOW READY TO MAKE A STATEMENT. MIRANDA RIGHTS WERE READ AS BOTH MEN WERE SITTING TOGETHER.

AND HIS ANSWER WAS, AS LONG AS BUSBY CAN BE THERE? WHAT WAS HIS RESPONSE?

WHETHER HE WAS FIRST ASKED, ARE YOU NOW READY TO MAKE A STATEMENT, HE SAID IF BUSBY CAN BE PRESENT. THEN BUSBY CAME OUT OF THE OFFICE. GLOBE ASKED IF HE COULD GO TALK TO HIM, BECAUSE HE SAW THAT BUSBY WAS UPSET. UGLIANO ALLOWED HIM TO GO TALK TO BUSBY AND GLOBE SAID, LISTEN, I AM GOING TO TELL THEM WHAT HAPPENED. I WANT YOU TO BE THERE. DO YOU WANT TO SIT, DO YOU WANT TO BE THERE? AND BUSBY SAID YES, SO THE STATEMENT WAS ACTUALLY MADE, PURSUANT TO THE CONDITIONS THAT WERE DICTATED BY GLOBE. NEW MIRANDA WARNINGS WERE GIVEN, AND I CAN'T, YOU KNOW, I HAVE READ MOSTLY, AND I DON'T BELIEVE THAT MOSTLY SAYS OR IN NIL WAY INTIMATES THAT POLICE HAVE TO -- IN ANY WAY INTIMATES THAT POLICE HAVE TO EXPRESSLY SAY WE UNDERSTAND THAT YOU

HAVE INVOKED YOUR RIGHT TO SILENCE BUT WE ARE GOING TO ASK YOU AGAIN. MOSTLY DOESN'T STAND FOR THAT PROPOSITION, AND I HAVE NOT FOUND ANY CASE, WHILE EITHER OUT OF THIS COURT OR THE U.S. SUPREME COURT OR THE ELEVENTH CIRCUIT THAT, SAYS THAT POLICE CANNOT REINITIATE AFTER A PERIOD OF TIME, AND WHAT HAPPENED HERE, WE KNOW THAT AT 12:13, GLOBE INVOKED HIS RIGHT TO REMAIN SILENT, AND WE KNOW THAT AT 6:20, THEY WERE BROUGHT TOGETHER OR SAW ONE ANOTHER. IT WASN'T UNTIL 7:32 THAT THE STATEMENT WAS ACTUALLY MADE, AND THE STATEMENT ONLY LASTED FROM 7:32 TO 8:20. THEY WERE GIVEN, GLOBE WAS GIVEN HIS MIRANDA RIGHTS, AND I THINK THAT, WHEN YOU GO BACK, AND THE TAPE IS PART OF THE RECORD BEFORE THIS COURT, AND YOU LISTEN TO THE TAPE, IT IS OBVIOUS THAT GLOBE IS THE ONE WHO SAID, YES, I AM WAIVING MY RIGHTS, AND YOU CAN TELL THAT, BECAUSE AT SOME POINT, IT IS SHORTLY INTO THE TAPE, GLOBE EXPLAINS WHY IT WAS THAT THEY COMMITTED THE MURDER, AND THAT IS BECAUSE HE REFERS TO MY PARTNER WAS BEING CALLED A PUNK, AND YOU CAN TELL FROM THE VOICE, AND THE JURY HAD THE TRANSCRIPT THAT THEY USED AS AN AID, TO TELL THE DIFFERENCE BETWEEN WHO WAS SPEAKING.

WAS THERE, DID THE STATE POINT OUT AT THE BEGINNING OF THIS PLAYING OF THE TAPE, WHOSE VOICE WAS WHAT? WHICH?

I DON'T RECALL THERE BEING TESTIMONY TO THAT EFFECT. THE TRANSCRIPT, PART OF THE TRANSCRIPT, I BELIEVE IT WAS UGLIANO OR IT MIGHT HAVE BEEN, I THINK IT WAS INSPECTOR SCHNECK THAT HAD GONE BACK AND WRITTEN NEXT TO THE SIDE, WHO WAS SPEAKING, WHERE IT WASN'T, WHERE IT HADN'T BEEN TYPED IN. THERE ARE SOME ENTRIES IN THE TRANSCRIPT, THAT ACTUALLY IT IS ALREADY TYPED IN, AND THAT WAS DONE WHEN IT WAS TRANSCRIBED.

AND THERE IS A SCRATCH THROUGH THROUGH SOME OF THOSE, WHERE THE NAME WAS ACTUALLY CHANGED FROM ONE PERSON TO THE OTHER ON THAT TRANSCRIPT, WASN'T THERE?

I THINK THERE WERE A FEW INSTANCES, AND THAT IS BECAUSE THERE WERE TIMES THAT THEY WERE TALKING EITHER ON TOP OF ONE ANOTHER OR TALKING AT THE SAME TIME. AND WHEN YOU LISTEN TO THE TAPE, THERE IS TIMES THAT IT IS EASIER TO TELL WHO IS SPEAKING. THEY DIDN'T ALWAYS TALK SEPARATELY. BUT THE FACT OF THE MATTER IS THAT, NEW MIRANDA WARNINGS WERE GIVEN, MORE THAN SIX HOURS HAD PASSED, AND YOU KNOW, IN ADDITION, YOU KNOW, I THINK WHEN YOU LOOK AT DETERMINING WHETHER THE DEFENDANT'S RIGHTS WERE SCRUPULOUSLY HONORED, YOU DON'T LOOK AT, IN ISOLATION, JUST SECOND STATEMENT. YOU HAVE TO LOOK AT WHAT HAPPENED THE FIRST TIME, AND THAT BEING THAT HE INVOKED HIS RIGHT TO, YOU KNOW, I AM NOT GOING TO MAKE A STATEMENT AT THIS TIME, AND THAT A SIGNIFICANT PERIOD OF TIME PASSED, AND THAT IS WHAT THE SUPREME COURT LOOKED AT IN MOSTLY, IS -- IN MOSELY, WAS THAT THERE WAS A SIGNIFICANT PERIOD OF TIME. LATER COMMENTS BY GLOBE, I THINK, ATTENUATE HIS INVOCATION OF HIS RIGHT TO REMAIN SILENT. YOU KNOW, HE STARTS TALKING TO LAW ENFORCEMENT, AND I THINK THAT REASONABLY GIVES THEM REASON TO ASK ARE YOU NOW READY TO MAKE A STATEMENT? YOU WEREN'T BEFORE, AND, AGAIN, THE STATEMENT TO GLOBE WASN'T REASONABLY LIKELY TO ELICIT AN INCRIMINATING STATEMENT. IT WAS JUST ASKING HIM ARE YOU READY TO TALK NOW. ALL HE HAD TO SAY WAS NO. THIS ISN'T A SITUATION WHERE HIS WILL IS BEING OVER BORN AND HE IS BEING BANTERED BY LAW ENFORCEMENT. I MEAN, OVER SIX HOURS HAD PASSED. HE IS REGIVEN HIS MIRANDA WARNINGS

I ALSO DISAGREE WITH THE STATEMENT THAT -- THE CHARACTER OF THE STATEMENT THAT THIS WAS PREMEDITATION AND THAT -- THIS THIS WAS NOT PREMEDITATION AND WOULD NOT RENDER A DEATH-PENALTY CASE. NOW, THE STATEMENT WAS FOUND IN BUSBY'S CELL. THE CELL WAS LOCKED AND ARD, THE VICTIM, IS DEAD. ACCORDING TO THE STATEMENT, THE MURDER OCCURRED, AND THEY WENT TO BREAKFAST AND THE MURDER OCCURRED SOMETIME BETWEEN 6:45 AND 7:00 A.M. AND THEY WEREN'T LOCATED IN THE CELL UNTIL 8:40. AT NO TIME DID MR. GLOBE SHOUT OUT I NEED YOUR HELP. HELP! BUSBY HAS BECOME VIOLENT. HE DOESN'T DO ANYTHING TO DRAW ATTENTION THAT HE IS NOT INVOLVED. HE DOESN'T, AND HIS THEORY AT TRIAL WAS THAT THIS WAS AN ATTACK THAT WENT BAD, THAT HE HAD ACTUALLY SET OUT, MR. GLOCK HAD WRITTEN -- MR. GLOBE HAD WRITTEN LETTERS TO LAW ENFORCEMENT AFTER HE MADE THE STATEMENT, AND THOSE LETTERS, OF COURSE, WOULD BE ADMISSIBLE, AND WHILE HE DOESN'T ADMIT TO COMMITTING A PREMEDITATED MURDER IN THOSE WRITTEN LETTERS, HE IMPLICITLY DOES THAT IN A NUMBER OF WAYS, AND THERE IS A STATEMENT IN ONE OF THE LETTERS ABOUT ARRESTED HAD SAID TO HIM -- ABOUT MR. ARD ARRESTED HAD ---MR. ARD HAD SAID TO HIM SOMETHING ABOUT YOUR MONEY. I WANT YOUR LIFE.nr BUT IN ADDITION --

HOW ABOUT, WASN'T THIS REALLY THE CENTERPIECE OF THE CCP, TO GET TO THE PLANNING, BEYOND THE PREMEDITATION OF THE STRANGULATION?

IT IS PART OF IT, BUT WE ALSO HAVE EVIDENCE OF STATEMENTS THAT GLOBE HAD MADE, AND WE KNOW THAT AT LEAST ONE OF THE HANDMADE INSTRUMENTS, THAT A ROPE CAN BE USED FOR IS TO STRANGLE SOMEONE TO DEATH, AND THAT WAS FOUND, ACTUALLY,

WRAPPED AROUND MR. ARD'S WRIST, I BELIEVE, AND THERE WAS, ALSO, TESTIMONY THAT, AND THERE WAS A BEDSHEET THAT WAS FOUND IN GLOBE'S CELL THAT WAS TORN. NOW, THIS TESTIMONY CAME OUT DURING THE JULY 7 INTERVIEW, BUT THE POLICE OR THE LAW ENFORCEMENT HAD FOUND THE SHEET, AND THAT WOULD HAVE BEEN ADMISSIBLE. I MOON, CLEARLY THE FACT THAT THE TORN SHEET THAT WAS USED TO MAKE THIS ROPE, WAS FOUND IN GLOBE'S CELL AND GOES TO PREMEDITATION, EVEN IF YOU COULDN'T ESTABLISH THE FACT THAT GLOBE IS FOUND IN THIS LOCKED CELL WITH THIS HANDMADE INSTRUMENT THAT CAN ONLY BE USED TO COMMIT MURDER. IT SHOWS PREMEDITATION, AND GLOBE WAS PROSECUTED AS A PRINCE PEL PAL. IN ADDITION -- AS A PRINCIPAL. IN ADDITION, THERE WAS TESTIMONY THAT HANDWRITTEN NOTES WERE PUT UP IN THE CELL, CALL FDLE AND REMEMBER ANDY AND KD, 7-"P-2000", AND THERE WAS TESTIMONY THAT ONLY -- 7-3, 2000, AND NOT ONLY WAS THERE TESTIMONY, BUT THE FINGERPRINTS AND HIS HANDWRITING, AND IT CERTAINLY GOES TO THE PREMEDITATION, AND IN ADDITION, IT GOES TO THE HAC AGGRAVATOR. WHAT THE COURT HAD, IN ITS SENTENCING ORDER, HAD SET OUT, IN ADDITION, EVEN IF YOU COULD IGNORE ALL OF THE STATEMENTS THAT THE COURT HAD RELIED UPON FROM THE TAPED STATEMENT, THE TRIAL COURT HAD, IN FINDING THAT AGGRAVATOR, POINTED OUT THAT THE VICTIM HAD PLEADED WITH YOU TO STOP OFFERING YOU \$45. WE KNOW THAT FROM GLOBE'S WRITTEN LETTER. TO LAW ENFORCEMENT. AND THEN THE COURT ALSO RELIED UPON, BY THE TESTIMONY OF THE DEFENSE PSYCHOLOGIST, YOU DERIVED A SEXUAL PLEASURE FROM INFLECTING A TORTUROUS DEATH ON THE VICTIM, AND THEN FROM THE MEDICAL EXAMINER'S TESTIMONY AND THE PHOTOGRAPHIC EVIDENCE OF THE SCRATCH MARKS ON THE NECK, THE VICTIM ATTEMPTED TO RELEASE THE STRICTURES AROUND HIS NECK IN ATTEMPT TO BREATHE. HOWEVER HE WAS UNSUCCESSFUL IN HIS ATTEMPT AND DIED IN STRANGULATION. I THINK IT IS INACCURATE TO SAY THAT THERE WAS NO EVIDENCE TO SUPPORT THE HAC ORN CCP AGGRAVATOR, ABSENT THAT STATEMENT. IN ANY EVENT, WE, ALSO, HAVE THE ADDITIONAL AGGRAVATING CIRCUMSTANCES THAT WERE FOUND, WERE THE PRIOR VIOLENT FELONIES, AND HERE MR. GLOBE HAD, THERE WERE ONE CONVICTION WITH TWO COUNTS OF SEXUAL BATTERY, ROBBERY, AND A KIDNAPING. AS WELL AS THE, WELL, YOU HAVE THOSE FOUR, AS WELL AS THE HAC AND CCP. I ALSO WANT TO TURN TO THE JULY 7 STATEMENT, AND THE MIRANDA RIGHTS WERE READ. GLOBE SAID HE UNDERSTOOD HIS RIGHTS, AND THEN HE WAS ASKED, YOU KNOW, ASKING HAVING BEEN ADVISED OF THESE RIGHTS, ARE YOU NOW WILLING TO MAKE A STATEMENT OR ANSWER QUESTIONS, AND WHILE THE TRANSCRIPT REFLECTS THAT HIS ANSWER TO THAT WAS INAUDIBLE, THE VERY NEXT QUESTION HE IS ASKED ABOUT HIS INVOLVEMENT, AND HE STARTS TALKING. THERE IS NO REQUIREMENT THAT THE WAIVER BE EXPLICIT. AND I THINK, FROM THE RECORD, THE COURT CANNOT FIND AND THE COURT BELOW FOUND, THAT THE WAIVER THAT HE DID WAIVE HIS RIGHTS UNDER MILES AN HOUR AUD ACHT HE ACTED CONSISTENT WITH WAIVING HIS RIGHTS.

DOES THE RECORD DEMONSTRATE WHETHER OR NOT THE OFFICER WHO ACTUALLY TOOK THE JULY 7 STATEMENT, WAS EVER ASKED ABOUT THE GIVING OF THE MIRANDA AND WHAT THE DEFENDANT'S RESPONSES WERE?

I DON'T BELIEVE THAT IT WAS BROKEN DOWN INTO THE TWO QUESTIONS, AS TO DID YOU ADVISE HIM OF WHETHER HE UNDERSTOOD HIS RIGHTS AND THEN DID HE SAY, YES AND THEN THE SECOND QUESTION, HAVING BEEN ADVISED OF THOSE RIGHTS, ARE YOU NOW WILLING TO MAKE A STATEMENT? I THINK HE WAS ASKED, DID THE DEFENDANT WAIVE HIS RIGHTS, AND THE ANSWER WAS YES. THAT IS MY MEMORY OF THE RECORD, BUT I DON'T HAVE A COPY THAT WITH ME. AS TO THE ADOPTIVE ADMISSION, I AGREE WITH YOU, JUSTICE PARIENTE, THAT THIS CASE IS STRONGER THAN NELSON. YOU HAVE, BOTH, MR. GLOBE AND MR. BUSBY ANSWERING QUESTIONS, AND YOU HAVE BOTH INDIVIDUALS, WHERE ONE HAS ANSWERED, THE OTHER IS GIVING MORE DETAILS, EXPLAINING IN MORE DETAIL OR JUST ADDING SUBSTANCE TO THE OTHER. AND I THINK THAT, YOU KNOW, THERE IS INSTANCES ON THE TAPE THAT IT IS CLEAR HE IS TALKING, AND I THINK, THAT YOU CAN'T TELL, EVEN IF, THAT THAT IS NOT MR. BUSBY'S THE FACT THAT HE IS JUMPING UP AND DOWN WAIT A MINUTE. [B6HCJ% ITW3NR DIDN'T DO THAT. I MEAN, NELSON HAS TO BE SOME, YOU HEARD AND HE UNDERSTOOD WHAT WAS BEING SAID, THERE COULD BE SOME SMOKE HAN -- SHOWING THAT HE -- SOME SHOWING THAT HE IS DISAVOWING THOSE S HE DOESN'T DO THAT AND DOES, IN FACT, THE KPAT EXACT OPPOSITE AND SAYS -- THE EXACT OPPOSITE, AND HE GIVES MORE DETAIL, SO EVEN IF THE COURT WERE TO ASSUME THAT MR. BUSBY WASN'T TALKING IN VARIOUS INSTANCES IN THAT STATEMENT, THE STATEMENTS ARE ATTRIBUTABLE TO MR. GLOBE, BECAUSE HE DOESN'T DISAVOW THEM. IF THE COURT DOESN'T HAVE ANY FURTHER QUESTIONS, I WOULD RESPECTFULLY REQUEST THAT THE JUDGMENT OF CONVICTION AND SENTENCE BE AFFIRMED. CHIEF JUSTICE THANK YOU. MR. MARCH WILL MR. CHIEF JUSTICE

THANK YOU. MR. MARSHAL, HOW MUCH TIME? FOUR MINUTES.

I DO WANT TO SAY TWO THINGS SINCE I HAVE LOOKED AT MY NOTES. ONE IS THAT THE DEFENSE LAWYER DID ASK FOR THE INSTRUCTION, WE ARE TALKING ABOUT THE CALDWELL ISSUE, WHERE HE ASKED THE JUDGE TO GIVE THE JURY RECOMMENDATION AN EXTRAORDINARY WEIGHT. SON HE WANTED TO ADD THAT LANGUAGE, AS CALDWELL SUGGESTS SHOULD BE, AND I CANNOT TELL YOU I TRIED THESE CASES ALL THE TIME, AND NORMALLY THAT IS A GENERAL REQUEST, WELL, A DEFENSE LAWYER ASKS FOR THAT, BECAUSE THE JUDGE SAYS, RIGHT. WHEN HE DENIES THE REQUEST, HE SAYS AS A MATTER OF LAW, THE COURT MUST GIVE GREAT WEIGHT TO THE

RECOMMENDATION OF THE JURY, BUT HE REFUSES TO TELL THE JURY THAT, EVEN THOUGH THE JUDGE --

SHE SAYS THAT YOUR OBJECTION WOULD NOT BE SUFFICIENT, THE OBJECTION WITH WHICH YOU WORKED TODAY, IS NOT SUFFICIENT TO PRESERVE A CLAIM UNDER RING THAT THE JURYS7nr MUST BE THE FINDER OF FACT, WITHi REGARD TO THE AGGRAVATING FACTORS, ANDco]IN FROM A CALDWELL POSITION, THAT THIS IS REALLYYnr MISLEADING. SHE SAID YOU HAVE NOT PRESERVED TZaVco OR THIS RECORD HAS NOT PRESERVEDNi THAT ADEQUATELY. HOW DO YOU RESPONDconr TO THAT:ico

I THINK THT/S RIGa.Ni I DON'T SEE A SPU< REQUEST THAT THE JURY HASconrnrg%Binicru BE ADVISEDn:. EXIST, WHAT AGGRAVATORS,IST, AND THAT THE AGGRAVATORS HAVE TONiNicoNinLOUTWEIGHNi THE MITIGATORS, BUT THERE IS ANiNi SPCRFIC REQUEST UNDER CALDWELL, AND IT DOES SAY THAT IT IS INAPPROPRIATE TO USE THENico WORD "ADVISORY"nrcoNi-9, BECAUSE THAT IS WHAT THE JURY'S ROLE IS IN THESE CASES IS MUCH MORE THAN ADVISORY, AND THE JUDGE ACKNOWLEDGES THAT. THE OTHER POINT I WANT TO MAKE REAL QUICKLY IS THAT, IF YOU ORDER ABOUT HOW THENi STATEMENTS ARE USED, IT IS PREDOMINANTLY, BOTH QUANTITATE I FEEL AND CALL TATE I FEEL, THAT THE -- QUANTITATIVELY AND QUALITATIVELY, THAT THE JUDGE GIVE DETAILS ON WHAT HAPPENED AND WHY IT HAPPENED, AND THOSE GO DIRECTLY TO%dE HEART OF THE CCP AND THE HAC. THANK YOU.

CHIEF JUSTICE: THANK YOU BOTHNiNi, VERY MUCH. THE COURT IS GOING TO TAKE ITSnr REGULAR MORNING RECESS OF 15 MINUTES AT THIS TIME, BEFORE WE HEAR THE NEXT CASE. WE WILLNi STAND IN RECESS FOR 15 MINUTES.

Ni MARSHAL: PLEASE

RISE.coNinrNicoNinrNinrcoNiNiNicoNiN)oNiNiNiNiYmNinrNinrNiNiNiNiNicoNiiNinrcoNinrconrNinrNinrNiNiNinrNiNinrcoNinrnrNiNiNiNiNicow3NiNiNicoNinrNinrconr