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03-73

MARSHAL: PLEASE RISE .

CHIEF JUSTICE: HELLO. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING. WE APPRECIATE YOUR BEING READY IN EVERETT VERSUS STATE. COUNSEL MAY PROCEED.

MAY IT PLEASE THE COURT. MY NAME IS DAVE DAVIS , WITH THE PUBLIC DEFENDERS OFFICE HERE, IN TALLAHASSEE , REPRESENTING MR . PAUL EVERETT IN THIS MURDER CASE , CHARGED WITH SEXUAL BATTERY , BURGLARY OF A DWELLING AND MURDER. THE COURT FOUND THREE AGGRAVATORS AND REACTED WITH AN UNANIMOUS SENTENCE O F DEATH BASED UPON RECOMMENDATION . ON NOVEMBER 19 , 2001 , MR. EVERETT HAD COME DOWN FROM ALABAMA , WHERE HE WAS ON SOME SORT OF AN APPEAL BOND , AWAITING RESOLUTION OF APPEAL IN ALABAMA. HE CAME DOWN TO THE BEACHNESS PANAMA CITY AND ON THE EVENING OF NOVEMBER 2 HAD APPARENTLY RUN OUT OF MONEY AND WAS TRIPPING ON LSD , AND H E DECIDED T O BREAK INTO THE HOUSE O F ONE MISS KELLY BAILEY. AS HE DID SO, MISS BAILEY CAME OUT O F HER ROOM AND THEY GOT INTO A STRUGGLE AND HE SEXUALLY BATTERED HER AND THEN BROKE HER NECK AND THEN TOOK HER CREDIT CARD AND A BAT OR SOMETHING THAT HE APPARENTLY BOUGHT, AND LEFT THOSE HE HAD BROUGHT, AND THEN LEFT THOSE APPROXIMATELY 130 FEET AWAY FROM THE HOUSE.

YOUR FIRST ARGUMENT IS THE STATEMENTS THAT HE MADE , I THINK , NOVEMBER 19 AND 27? STATEMENTS.

THE BAIL BONDSMAN GOT HIM ON THE SECOND. BY THE 14th , TWELVE DAYS LATER , THE POLICE HAD NARROWED THEIR SEARCH AND WENT UP TO THE BALDWIN COUNTY JAIL AND INTERROGATED HIM AND AT THAT POINT THEY READ HIM HIS MIRANDA RIGHTS AND AFTER BRIEF QUESTIONING HE INVOKED HIS RIGHT TO REMAIN SILENT. THE POLICE STOPPED. THEY DECIDED BY THAT TIME THAT THIS IS HIS MAN , SO WHAT THEY DID IS THEN ASKED THE BALDWIN COUNTY INVESTIGATOR , MURPHY, TO ASK HIM IF THEY COULD GET HIS BLOOD , CONSENT TO TAKING HIS BLOOD, AND ON THE 19th

DIDN'T HE , MAKE SURE, BECAUSE IT MAY BE IMPORTANT , DID HE INVOKE HIS RIGHT TO REMAIN SILENT?

NO. DID I SAY SILENT? I MEANT RIGHT TO COUNSEL E INVOKED HIS GIFT AMENDMENT RIGHT TO COUNSEL. WHEN THEY INTERROGATED AND CAME BACK AGAIN AFTER MURPHY TALKED WITH HIM, ON THE 15th , MURPHY APPROACHED HIM AND HE WAS TALKING TO M ABOUT SOME ALABAMA CRIMES. THE PANAMA CITY BEACH POLICE CAME IN ABOUT THAT TIME.

WAS THERE , CAN YOU CLARIFY. THAT IF HE HAS INVOKED HIS RIGHT TO AN ATTORNEY , AND WHEN , THEY REINITIATE CONTACT, YOU FOCUSED ON THAT THEY CAN'T REINITIATE CONTACT , TO GET HIS CONSENT TO DRAW DNA.

THAT'S CORRECT.

BUT THERE SEEMS TO AND LOT OF CASE LAW AGAINST ON YOU THAT ISSUE.

NOT FLORIDA CASE LAW.

THERE IS NO FLORIDA CASE LAW, ONE WAY OR ANOTHER. BUT YOU SAY  
RIGHT.

THAT THEY START TO SPEAK TO HIM ABOUT THE ALABAMA CASE?

NO. THAT WAS MURPHY. MURPHY WAS ALREADY TALKING TO HIM ABOUT THE ALABAMA CASES,  
WHEN

ARE YOU CONTENDING THAT THAT CONTACT, ALONE, WOULD VIOLATE, HAVE VIOLATED

YES. I AM SORRY. GO AHEAD.

BUT THAT THAT WOULD HAVE VIOLATED THE RIGHT TO, THAT HE HAD INVOKED FOR AN  
ATTORNEY.

YES.

THAT THEY ARE NOT EVEN ALLOWED TO QUESTION HIM ABOUT OTHER CRIMES.

THAT'S CORRECT. ONES HE HAS INVOKED HIS FIFTH AMENDMENT RIGHT TO COUNSEL, THE POLICE  
CAN'T TALK TO HIM ABOUT ANY OTHER CRIMES. THEY CAN'T APPROACH HIM FOR DNA, ANYTHING.  
THAT IS THE ISSUE.

THAT IS YOUR POSITION.

I AM SORRY. THAT IS MY POSITION. YES.

WE HAVE NEVER HELD THAT WAY. WHAT YOU ARE SAYING IS A BLANKET RULE OR TELL ME IF IT  
IS NOT A BLANKET RULE, THAT ONCE A DEFENDANT INVOKES HIS RIGHT TO COUNSEL, THEY  
SIMPLY CANNOT TALK TO HIM PERIOD.

THAT'S CORRECT.

SO WHAT IF, CAN I GET A WE CIGARETTE? WHAT KIND OF FOOD DO YOU WANT TONIGHT?

IF THEY SAY YOU HAVE GOT TO COME DOWN FOR A BOOKING OR HERE IS YOUR DINNER,  
ADMINISTRATIVE THING, BUT TO GO TO HIM AND SPECIFICALLY ASK HIM FOR EVIDENCE THAT  
WILL INCRIMINATE HIM IN THIS CASE, NO.

LET'S GET TO THAT POINT IT HAS BEEN DECIDED, HAS IT NOT, THAT THE STATE CAN GET A  
WARRANT FOR BLOOD SAMPLE.

IF THEY HAVE GOT PROBABLE CAUSE, YES. THEY CAN GET A WARRANT.

SO WHAT YOU ARE SAYING IS THEY CANNOT SIMPLY ASK HIM FOR HIS CONSENT, BEFORE THEY  
GET A WARRANT, LIKE IN EVERY OTHER SITUATION, WHERE A STATE IS, CAN GET A WARRANT,  
BUT CAN GET THE DEFENDANT'S CONSENT BEFORE OBTAINING A WARRANT, THIS WOULD BE AN  
EXCEPTION TO EVERY OTHER SITUATION CONSENT TO SEARCH, CONSENT TO ENTER AN  
APARTMENT, WHATEVER, THEY CANNOT GO THROUGH STEP ONE, BEFORE GETTING TO STEP  
TWO.

WHEN THE MAN HAS INVOKED HIS RIGHT TO COUNSEL IN A CUSTODIAL SETTING, WHICH IS WHAT

WE HAVE HERE, WHAT HE IS SAYING IS I CANNOT DEAL WITH THE POLICE, WITH THE CUSTODIAL SETTING, SO WHAT MIRANDA , EDWARDS , ARIZONA VERSUS ROBE SORNS ALL OF THESE OTHERCASES ARE SAY ING ROBESON , ALL OF THESE OTHER CASES ARE SAY ING YOU CANNOT APPROACH HIM.YOU HAVE GOT TO LEAVE THE MAN ALONE.

DOESN'T RHODE ISLAND AND ALL OF THESE OTHER CASES TALK IN TERMS OF QUESTIONING THAT IS DESIGNED TO ELICIT AN INCRIMINATING RESPONSE, AND HOW IS ASKING FOR CONSENT TO TAKE A BLOOD SAMPLE, AND IT HAS ALREADY BEEN HELD THAT TAKING A BLOOD SAMPLE IS NOT, ITSELF , AN INCRIMINATING RESPONSE. IT DOES NOT VIOLATE FIFTH AMENDMENT. SO HOW IS REQUESTING A BLOOD SAMPLE , DESIGNED TO ELICIT AN INCRIMINATING RESPONSE?

WHAT I AM SAYING IS MIRANDA , EDWARDS , AND CASES LIKE THAT , FOCUS ON INTERROGATION. THE FIFTH AMENDMENT RIGHT T O COUNSEL, AND THAT IS WHAT THE ISSUES WERE IN THOSE CASES.

THEY DEFINE INTERROGATION AS DESIGNED TO ELICIT AN INCRIMINATING RESPONSE.

WHAT I AM SAYING IS THAT MIRANDA GOES BEYOND SIMPLY INTERROGATION . IF YOU ARE GOING TO LIMIT MIRANDA SIMPLY AND THE RIGHT TO COUNSEL SIMPLY T O INTERROGATIONS, WHAT THAT MEANS IS IF YOU READ MIRANDAAND READ THE OPINION IN MIRANDA , THEY ARE TALKING ABOUT THE CORROSIVE EFFECT OF CUSTODIAL SETTINGS.

WE CAN'T JUST READ MIRANDA. WE HAVE GOT ROAD OOILED AND THE UNITED STATES SUPREME COURT CASE INTERPRETING MIRANDA AND EDWARD VERSUS ARIZONA . DON'T WE HAVE TO LOOK AT THOSE CASES?

THOSE DON'T AGREE MIRANDA. THEY WERE DESIGNED TO IMPLEMENT MIRANDA , AND WHAT THOSE CASES ARE SAYING IS ONCE YOU INVOKE YOUR RIGHT TO COUNSEL , YOU CANNOT DEAL WITH THE POLICE IN ANY SENSE.

DON'T POLICE HAVE THE RIGHTTO PUT HIM IN A LINE-UP?

I THINK NO. SIMPLY BECAUSE WHAT HE IS SAYING, HE HAS A RIGHT TO COUNSEL.BEFORE THEY CAN DO THESE SORTSOF THINGS.

AREN'T THERE PLENTY OF CASES OUT THERE, THAT THEY , THAT HE CAN BE PUT IN A LINE-UP , REGARDLESS OF

MAYBE A LINEUP. MAYBE A LINEUP.

ONC E YOU START DOWN THAT ROAD, YOU KNOW , MAYBE A LINEUP , THEN DON'T WE HAVE A DIFFERENT SCENARIO , COMING BACK TO JUSTICE CANTERO 'S QUESTION ABOUT WHAT I S AN ABSOLUTE IES. ABSOLUTEIVITY. WHERE IS THERE A CASE ABSOLUTIST. WHERE IS THERE A CASE, YOU SAY NO FLORIDA CASE, WHERE IS THERE A CASE THAT TAKES THAT VIEW?

THE ONE I CITED , UNITED STATES VERSUS YAWN OR SOMETHING LIKE THAT THAT I CITED IN MAY BRIEF.

TRIAL JUDGE WHERE?

NEW YORK. TALKING ABOUT A FEDERAL TRIALJUDGE IN NEW YORK THAT TAKESAN ACTUAL LY ABSOLUTIST VIEW, EVEN WITH REFERENCE TO LINEUPS?

I DON'T THINK IT WAS AT LINEUPS , BUT WHAT THEY SAID IS RHODE ISLAND VERSUS ENNIS AND EDWARDS CAN BE EXPENDED , I THINK , TO SEARCHES IN THAT CASE OR SOMETHING LIKE THAT.

I THINK I HAVE SOME PROBLEMS WITH YOUR ABSOLUTIST VIEW. AND I GUESS YOU DON'T HAVE AN ALTERNATIVE ARGUMENT OR DIDN'T MAKE THE, OR ARE YOU MAKING THE ARGUMENT THAT THE TOTALITY OF THE CIRCUMSTANCES MADE THE SUBSEQUENT QUESTIONING COERCIVE? BECAUSE WHAT I WOULD LIKE YOU TO FOCUS ON FOR ME, IS THAT THE FIRST TIME THEY TALKED TO HIM AND READ HIM HIS MIRANDA RIGHTS, HE SAYS ON HIS RIGHT-OF-WAY - - HE SAYS RIGHT AWAY, I WOULD LIKE TO HAVE A LAWYER PRESENT. I CAN SEE WHERE THIS IS GOING. I MEAN, I WANT A LAWYER.

THAT IS CLEAR.

THEY SAY YOU REQUESTED A LAWYER AT THIS TIME AT 4:36 P.M. DO YOU KNOW WHAT DAY?

THE 14th. THE FIRST INTERROGATION THEY HAD.

THAT WAS THE 14th.

THAT'S CORRECT.

AT THAT POINT, THEN, UNDER THE CASE LAW FROM THE UNITED STATES SUPREME COURT, DO THE POLICE HAVE ANY OBLIGATION TO HELP, TO SAY, WELL, IF YOU CAN'T AFFORD A LAWYER, WE ARE GOING TO APPOINT A LAWYER? IS THERE ANYTHING ABOUT, DO THEY, OR DO THEY JUST STOP QUESTIONING?

NO. WHAT I, I AM SORRY. IF YOU READ MIRANDA, IT INDICATES THEY HAVE TO DO MORE THAN SIMPLY SAY, OKAY, YOU WANT A LAWYER. YOU GO FIND ONE.

WAIT A MINUTE. HE HAD BEEN GIVEN HIS MIRANDA RIGHTS BEFORE, SO HE HAD BEEN TOLD BEFORE IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU, CORRECT?

CORRECT. CORRECT.

SO THIS HAD NOTHING TO DO WITH NOT GIVING HIM HIS MIRANDA RIGHTS.

NO.

SO HE SAYS, I MEAN, I WANT A LAWYER, SINCE THEY HAVE ALREADY READ HIM HIS MIRANDA RIGHTS, DOES THE POLICE, THEN, HE IS NOW IN ALABAMA, GET A PUBLIC DEFENDER FOR HIM TO

THAT IS WHAT, WHEN I READ MIRANDA, THAT IS HOW I READ IT.

ARE YOU MAKING THAT ARGUMENT?

YES. YES. FIVE DAYS LATER, THEN, INSTEAD OF HIM GETTING A LAWYER, THEY AND OVER THEY APPEAR WITH PANAMA CITY POLICE, TO SAY NOW WE WANT A BLOOD SAMPLE, AND I GUESS THE QUESTION, RATHER THAN THE ABSOLUTIST RULE, HAVE YOU TAILORED IT TO SAY IN THIS CASE, BY NOT PROVIDING HIM WITH A LAWYER, FIVE DAYS HAVE PASSED. WHAT IS THEIR EXPLANATION FOR NOT HELPING, NOT APPOINT A LAWYER FOR HIM?

IT IS MORE THAN JUST FIVE DAYS PASSED, BECAUSE AT THE SECOND INTERVIEW, AT THE TIME THEY REQUESTED THE BLOOD SAMPLE, HE FOR A SECOND TIME, REQUESTED A LAWYER, AND THEY CUT OFF THE QUESTIONING, AND THEN EIGHT DAYS LATER THEY COME AND SERVE THE ARREST WARRANT, AT WHICH TIME HE THEN CONFESSES, SO I AM SAYING THEY HAD ALMOST, FOUR PLUS EIGHT, ALMOST TWO WEEKS TO GET THIS GUY A MIRANDA.

DIDN'T HE, IN FACT, HAVE A FLORIDA ATTORNEY OR WAS TRYING TO CONTACT A FLORIDA

ATTORNEY HIMSELF AND SIMPLY HAD NOT BEEN ABLE TO GET IN TOUCH WITH THAT FLORIDA ATTORNEY?

RIGHT. RIGHT. BUT THAT DOESN'T EXCUSE THE POLICE NOT TRYING TO GET HIM ONE AS WELL.

BUT HE WAS TRYING TO GET HIMSELF AN ATTORNEY AND SIMPLY HADN'T SUCCEEDED IN MAKING CONTACT WITH THAT ATTORNEY YET.

YOU KNOW , MIRANDA SAYS IF THE MAN WANTS A LAWYER, THE POLICE ARE SUPPOSED TO - .

THAT IS THE EVIDENCE.

THE MIRANDA SAYS YOU HAVE GOT TO GET HIM A LAWYER. NOW, I AGREE WITH YOU THERE. HE TRIED TO GET A LAWYER. FAILED. BUT THAT DOESN'T EXONERATE THE POLICE AT THAT POINT AND SAY NOW , OKAY , WE CAN GO IN.

BUT DOES HE EVER TELL THE CORRECTIONS OFFICER I HAVE BEEN TRYING TO GET A LAWYER AND HAVEN'T BEEN ABLE TO GET THE ONE THAT I WANT. HAVEN'T CONTACTED HIM AND I NEED A LAWYER AT THIS POINT.

HE TRIED AND FAILED AND DIDN'T GO THE EXTRA STEP TO SAY NOW I WANT YOU TO DO IT. I MEAN, MIRANDA AND EDWARDS AND THOSE CASES CLEARLY SAY THAT THE POLICE HAVE TO DO THIS. THEY CAN'T SIMPLY SAY YOU ARE ON YOUR OWN. FIND A LAWYER.

BUT THE POLICE HAVE TO DO IT IF HE CAN'T AFFORD A LAWYER , CORRECT? IF HE CAN'T AFFORD A LAWYER , THE POLICE HAVE TO TRY AND FIND HIM A LAWYER. ANOTHER POLICE HAVE TO TRY AND FIND HIM A LAWYER, IF HE WANTS ONE.

HOW DOES IT WORK, THEN , IN THIS CROSS JURISDICTION SITUATION. THAT IS THAT HE IS BEING HELD BY THE ALABAMA AUTHORITIES ON AN ALABAMA CHARGE, THAT CORRECT?

YES. HE WAS ABOUT READY TO BE SENT BACK TO PRISON.

SO I REALIZE THAT NOW SOMEBODY COMES FROM FLORIDA. NOW , IS HE GOING TO BE PROVIDED A FLORIDA LAWYER OR AN ALABAMA LAWYER , AND WHO IS GOING TO PROVIDE THAT, THE POLICE THAT COME FROM FLORIDA TO BRING HIM BACK TO FLORIDA , OR THE ALABAMA PEOPLE THAT ARE HOLDING HIM FOR SOMETHING DIFFERENT AND REALLY AREN'T INTERESTED IN PROVIDING HIM A LAWYER FOR WHATEVER THE FLORIDA PEOPLE ARE GOING TO TAKE HIM BACK TO FLORIDA ON HOW DOES THAT

I THINK YOU ARE MAKING IT MORE COMPLICATED THAN IT IS. TIME TRYING TO EXPLORE HOW DOES SOMEBODY HAVE TO KNOW TO, SOMEBODY SAY IT IS OVER AND SAY, WELL , CAN YOU AFFORD A LAWYER, AND PRESUMABLY HE SAYS NO, AND THEN THEY SAY, WELL , IF YOU CAN'T AFFORD A LAWYER, THEN WHAT ? WE ARE GOING TO GET A FLORIDA LAWYER OR ALABAMA LAWYER OR WHAT?

I DON'T KNOW, I MEAN , IF YOU LOOK AT ARIZONA VERSUS ROBERSON, THEY SAY IT DOESN'T REALLY MATTER. ONCE THE DEFENDANT HAS INVOKED HIS RIGHT TO COUNSEL , SOMEBODY ELSE ON AN UNRELATED CHARGE CAN'T COME AND TALK TO HIM, SO UNDER THAT RATIONALE, I DON'T THINK IT REALLY MATTERS WHETHER IT IS ALABAMA

COME BACK HERE FOR US AND MAYBE APPROACH IT FROM THE STANDPOINT OF WHAT IS YOUR VIEW , INsofar AS WHAT, IF EVERYBODY WAS FOLLOWING THE RULES CORRECTLY, UNDER YOUR , WHAT WOULD HAVE HAPPENED HERE , AND WHAT WOULD HAVE BEEN THE CONSEQUENCES? START WITH IT . NOW , THE COURT AUTHORITY HAS BEEN NOTIFIED THAT HE IS IN CUSTODY IN

ALABAMA AND NOW YOU TAKE OVER.

AFTER HE INVOKED HIS RIGHT ON NOVEMBER 14, RIGHT TO COUNSEL , THE POLICE SHOULD HAVE NOTIFIED A LAWYER, EITHER AN ALABAMA OR A FLORIDA. IT DOESN'T REALLY MATTER. TO COME DOWN AND TALK TO HE HAVE RENT , AND TO EVERETT, COME DOWN AND REPRESENT HIM , AND BEFORE THEY CAN GO BACK TO TALK TO HIM AGAIN AND GET THAT BLOOD SAMPLE, THAT COUNSEL HAS GOT TO B E PRESENT.

DOES EVERETT HAVE TO SHOW THAT IS S THAT HE IS INDIGENT?

NO. IT DOESN'T MATTER IF HE HAS GOT A MILLION DOLLARS AND TEN CENTS, IF HE SAYS I WANT COUNSEL, SO THE STATE HAS TO PROVIDE IT.

THE STATE HAS TO PROVIDE HIM COUNSEL?

THE MIRANDA SAYS "YOU HAVE A RIGHT TO COUNSEL."

ARE YOU ASSERTING THAT IT WAS A CONSTITUTIONAL VIOLATION FOR THE FLORIDA AUTHORITIES TO COME AND DELIVER THE WARRANT THAT WAS BEING DELIVERED , AT THE TIME , LET'S STOP RIGHT THERE , THE WARRANT.

YES. WHAT I AM SAYING IS THEY CANNOT APPROACH HIM TO DELIVER THAT WARRANT, BECAUSE THE LIKELIHOOD WAS THAT THEY WERE GOING TO SIT THERE AND START TALKING , WHICH IS WHATHAPPENED HERE, IS THEY BEGAN TALK ABOUT THE CRIME. BEFORE THEY CAN DELIVER THAT WARRANT AND SERVE IT ON HIM , THEY HAVE GOT TO HAVE COUNSELPRESENT.

GOING TO THE THINGS SUCH AS THE LINEUP SITUATION , DIDN'T THE U.S. SUPREME COURT DECIDE THAT ADVERSELY O F YOU R POSITION IN ASH?

THEY SAY I THINK YOU ARE SAYING THEY DON'T HAVE , WAS IT A FIFTH AMENDMENT OR SIXTH AMENDMENT RIGHT TO COUNSEL AT THOSE HEARINGS? BUT WHAT YOU ARE SAYING

IT I S NOT A STAGE WHERE I GUESS WE WOULD BE AT A CRITICAL STAGE.

THAT IS SIXTH AMENDMENTTHERE , BUT WHEN YOU ARE TALKING FIFTH AMENDMENT , FIFTH AMENDMENT IS BROADER THAN THE SIXTH AMENDMENT RIGHT TO COUNSEL SO WHAT WE ARE SAYING IS I SUPPOSE IT IS ABSOLUTE , BUT WHAT IS THE PROBLEM WITH THAT? THE DEFENDANT HAS SAID I CANNOT DEAL WITH THE POLICE INANY WAY.

BUT THEN , IF WE TAKE YOUR ARGUMENT , THEN , I WOULD ASSUME THAT YOU WOULD ARGUE , ALSO , THAT THE WARNINGS YOU GIVE, PURSUANT T O MIRANDA , ARE INADEQUATE?

THAT

BECAUSE THE WARNINGS THAT THE POLICE, THE STANDARD WARNINGS THAT YOU GET AS A PART OF MIRANDA , SAYS THAT IF YOU CANNOT AFFORD AN ATTORNEY AN ATTORNEY WILL BE APPOINTED FOR YOU. THERE IS A CERTAIN ASSUMPTION HERE , THAT YOU ARE GOING TO REQUEST AN ATTORNEY AND SAY I CAN'T AFFORD ONE , OR REQUEST AN ATTORNEY AND YOU CAN AFFORD IT AND YOU ARE GOING TO GET THAT ATTORNEY, SO ARE WE WRONGIN SAYING WHAT WE SAY , AS, ARE THE MIRANDA WARNINGS?

NO. WHAT MIRANDA SAYS IS YOU HAVE A RIGHT TO REMAIN SILENT . AND YOU HAVE A RIGHT TO COUNSEL. IT DOESN'T GONE , AND THAT IS THE FUNDAMENTAL RIGHT. HOW

WHAT JUSTICE QUINCE I S SAYING IS THAT THE MIRANDA WARNINGS THAT EVERYBODY USES

NOW AND HAVE BEEN ACCEPTED SINCE 1963 , IS YOU HAVE A RIGHT TO AN ATTORNEY. IF YOU CANNOT AFFORD AN ATTORNEY, ONE WILL BE PROVIDED FOR YOU. DOES THAT, NOW THAT WE HAVE BEEN USING FOR 40 YEARS , IS THAT WARNING , NOW , UNCONSTITUTIONAL , WOULD BE YOUR POSITION?

NO.WHAT I AM SAYING IS HE HAS A RIGHT TO COUNSEL. HOW HE GETS IT

BUT DOESN'T HE HAVE TO DO SOMETHING? DOESN'T HE HAVE TO TELL THE POLICE "I CAN'T AFFORD THIS ATTORNEY. YO " ? " ? OTHERWISE YOU ARE SAYING THAT THAT WARNING IS MEANINGLESS, WHEN YOU SAY IF YOU CAN'T AFFORD ONE, ONE WILL BE APPOINTED.

BUT HE HAS SAID HE WANTS COUNSEL.HE TRIES AND FAILS TO GET IT. THAT DOESN'T MEAN THAT THE POLICE CAN COME BY AND SAY , WELL , SINCE YOU CAN'T GET A COUNSEL

I HAVEN'T GOTTEN TO THAT POINT. AT THE POINT WHERE HE SAYS I WANT AN ATTORNEY , DOES THE STATE JUST AUTOMATICALLY GO OUT AND GET AN ATTORNEY FOR HIM , OR DOES HE HAVE TO SAY I CAN'T AFFORD ONE , PLEASE GET ME AN ATTORNEY?

WHEN YOU READ MIRANDA , THE POLICE HAVE TO PROVIDE HIM ONE.

LET ME GO BACK TO THIS SITUATION. YOU GO, AND HE HAS INVOKED HIS RIGHT TO HAVE A ATTORNEY PRESENT , AND AS HE GOES OUT , YOU KNOW, HE IS GOING TO GET , THEY ARE SERVING HIM FOOD.

RIGHT.

SOMETHING THAT OBVIOUSLY , AND THEY SAY , YOU KNOW , WE HAVE GOT, EITHER I DON'T KNOW IF THEY SAY WE HAVE GOT THIS IN THE ALABAMA JAIL BUT WE HAVE GOT THIS FOOD OR WE HAVE GOT THIS. WHICH DO YOU WANT, AND HE SAYS I WANT THIS IS, AND BY THE WAY, I ALSO WANT T O JUST TELL YOU SOMETHING ELSE. OKAY. NOW , HE IS , NOW , UNDERSTAND THAT HE IS NOW AFFIRMATIVELY

RIGHT. REINITIATING .

RIGHT.

IN THE SITUATION , IF WE, I DO NOT AGREE WITH YOU , AND I JUST TELL YOU FROM ALL OF THE CASE LAW, THAT THEY CAN DO THINGS , LEGITIMATE THINGS LIKE SERVE ARREST WARRANTS AND SERVE , AND YOU KNOW, ASK HIM TO CONSENT TO EVIDENCE SUCH A S DNA , WHICH IS UNDER SMERBER IS NOT FIFTH AMENDMENT , SO I GET BACK TO THIS QUESTION , WHERE ARE YOU ABLE TO PAINT SCENARIO HERE , WHERE NOT SPECIFICALLY BECAUSE THEY ASK TO GET THE CONSENT TO SEARCH BUT THAT THE TOTALITY OF THE CIRCUMSTANCES THAT WERE PUT INTO EFFECT HERE , REENTERED HIS REENTERED HIS STATEMENTS NOT VOLUNTARY? HAVE YOU MADE THAT ARGUMENT OR ARE YOU TRYING TRYING TRYING TO MAKE IT, THAT WHEN WE GO INTO THAT FACT, THE POLICE'S MOTIVATION WHEN THEY CAME BACK TO QUESTION HIM WASN'T REALLY THAT THEY WANTED TO GET THE SALIVA OR BLOOD. THEY WERE JUST USING THAT AS A SUBTERFUGE UNDERMINE HIS WILL , AND YOU KNOW , THEY KNEW THEY COULD , THEY KNEW HE COULDN'T AFFORD AN ATTORNEY BUT THEY DID NOTHING AFFIRMATIVELY TO GET THE PUBLIC DEFENDER OVER THERE. IS THERE ANY , I DON'T HEAR ANY OF YOUR ARGUMENT OR ANY ARGUMENT THAT WAS MADE BELOW , REALLY , TAKING THAT TACK. ARE YOU AGREEING WITH THE MIRANDA THEORY OR WHAT?

WE DON'T LOOK AT THE TOTALITY .

I AM SAYING YOU COULD HAVE A CONFESSION THAT IS NOT VOLUNTARY , BUT THE TOTALITY OF

THE CIRCUMSTANCES SHOW THAT IT OVERALL , I T WAS A COERCIVE QUESTIONING , AND SO YOU ARE NOT MAKING

NO.WHAT I AM SAYING IS I A M LOOKING AT MIRANDA. MIRANDA ITSELF , SAYS THAT THE CUSTODIAL SCENARIO IS WHOLLY COERCIVE.

DOESN'T IT SAY CUSTODIAL INTERROGATION , AND REALLY WHATYOU ARE ASKING US IS TO DELETE THE WORD INTERROGATION, WHICH IS THE FUNDAMENTAL PREMISE BEHIND MIRANDA IS YOU HAVE TO CEASE INTERROGATION OF A DEFENDANT, ONCE A DEFENDANT INVOKES HIS RIGHT TO COUNSEL.

MIRANDA DOES NOT DEAL DEEHL WITH INTERROGATION. OTHER CASES THEY DOES NOTDEAL WITH INTERROGATION.

IN MIRANDA, THE COURT HELD THAT, ONCE THE DEFENDANT IN CUSTODY ASKED TO SPEAK WITH A LAWYER , ALL SBRINGATION MUST CEASE , UNTIL ALL INTERROGATION MUST CEASE, UNTIL YOU GET A LAWYER PRESENT.

THEY TALK ABOUT DEALINGS WITH THE DEFENDANT. IF YOU LOOK AT THIS COURT'S CASE IN TRAIL OR , YOU TALK ABOUT ENCOUNTERS WITH THE POLICE. WHAT I AM SAYING IS MIRANDA I S NOT LIMITED TO INTERROGATION.

IN RHODE ISLAND , DIDN'T THE COURTS SAY

IF YOU DON'T MIND, I F I UNDERSTAND YOUR ARGUMENT ABOUT THIS , THE , AFTER HE HAS DONE THIS , THE FLORIDA AUTHORITIES WITH A VALUEANT WARRANT FOR HIS SEIZURE , CANNOT COME TO THE JAIL IN ALABAMA AND SEIZE HIS BODY AND TRANSPORT HIM BACK TO FLORIDA?

THEY HAVE TO HAVE COUNSEL PRESENT. I MEAN

OKAY. OKAY. SO

BECAUSE THEY DID MORE THAN JUST SIMPLY SEIZE HIS BODY. THEY WENT

NOW YOU ARE DOING SOMETHING ELSE. IN OTHER WORDS NOW YOU ARE MAKING A DIFFERENT ARGUMENT , IF I UNDERSTAND I T , THAN YOU STARTED OUT WITH, ABOUT THIS ABSOLUTE THING, BUT THE MARSHAL HAS PUT NEW REBUTTAL .

I REALIZE THAT. I CAN GO ON.

OKAY .

I AM WILLING

HELP ME WITH THAT , THEN. IS THAT YOUR POSITION, THAT THE FLORIDA AUTHORITIES , NOWTHAT THIS SCENARIO HAS HAPPENED , THAT THEY COULD NOT COME AND SERVE THIS WARRANT, TAKE HIS BODY , AND PUT HIM IN A POLICE VEHICLE , AND TRANSPORT HIM BACK TO FLORIDA ? LET'S JUST STOP RIGHT THERE.

CORRECT.

IF THEY D O THAT

THEY HAVE TO HAVE COUNSELPRESENT.

OKAY. THAT IS WHAT I HAVE GOT TO KNOW. OKAY. SO THEY COULD NOT DO THAT WITHOUT

HAVING COUNSEL PRESENT.

AND THERE IS A CASE FROM, I GUESS, THE FOURTH DCA THAT I SUPPLEMENTED, PRAZADA , WHICH BASICALLY TAKES THAT POSITION , THAT ONCE THE DETECTIVE TOLD PRAZADA ABOUT THE NATURE OF THE CHARGE AGAINST HIM, HE SHOULD HAVE TERMINATED THE CONVERSATION AS IT BECAME CLEAR THAT THE CONTINUATION OF THE CONVERSATION WOULD LEAD TO AN INCRIMINATING RESPONSE.

THAT IS THE TERMINATION OF CONVERSATION, SO WE ARE TALKING ABOUT TWO DIFFERENT THINGS GOING ON , AS TO WHETHER OR NOT YOU ARE CONTINUING A CONVERSATION OR HAVING INTERROGATION OR WHATEVER , BUT YOUR VIEW, IF I UNDERSTAND IT CORRECTLY , AND YOU HAVE TAKEN IT AGAIN , IS THAT THEY COULD NOT SEIZE HIS BODY, WITHOUT A LAWYER BEING PRESENT. TELL ME WHAT CASE SAYS THAT .

IF ALL THEY DID WAS TAKE HIS BODY AND DIDN'T SAY ANYTHING THAT, IS ONE THING.

SEE , NOW , YOU ARE GETTING , I THINK, OVER TO JUSTICE PARIENTE'S, YOU ARE SAYING THEY DIDN'T JUST DO THAT. THEY DID SOMETHING ELSE.

RIGHT.

AND WHICH WAS IMPROPER. BUT IT WASN'T THE SERVING OF THE WARRANT OR TAKING HIM INTO CUSTODY AND TRANSPORTING HIM BACK TO FLORIDA. SO LET'S TRY TO - - WOULD YOU AGREE, THEN , THAT THEY COULD SERVE THE WARRANT WITHOUT A LAWYER?

IF ALL IS SAID IS HERE IS THE PAPERS THAT, IS GOOD.

AND THEY PUT HIM IN HANDCUFFS FORM.

AND TOOK HIM AWAY .

IN THE CAR. ALL RIGHT. NOW WE ARE IN THE CAR , GAG BACK TO FLORIDA.

THEY GOING BACK TO FLORIDA .

I AM DONE SAYING THEY CAN TALK TO HIM. I AM ABOUT TO ASK YOU A QUESTION FIRST .

ALL RIGHT.

HE IS SITTING IN THE BACKSEAT OF THE POLICE CAR, SO NOW HE STARTS TALKING , OKAY , AND HE STARTS SAYING , WELL , GOD , I AM HIM SO SORRY. I KNOW WHAT I AM ABOUT TO FACE IN FLORIDA. AND I HAVE GOT TO GET THIS OFF MY CHEST. AND WILL YOU GUYS LISTEN TO ME , AND HE ENDS UP - -

REINITIATING KACHBLTH.

WELL , HE ENDS UP, YOU KNOW, CONFESSING, YOU KNOW , KIND OF THING.

RIGHT .

NOW WE ARE IN THE FLORIDA COURTS AND WHAT HAPPENS WITH HIM MAKING ALL OF THOSE STATEMENTS IN THE BACK OF THE CAR?

IF THE POLICE WERE STONE FACED AND DRIVING THE CAR AND HE STARTS JABBERING LIKE THAT , THAT IS REINITIATING , BUT IF THEY START DOING THE ROAD ISLAND STUFF, WHERE THE COMMENTS ARE LIKELY

I AGREE WITH YOU THERE , BUT NOW WE ARE GOING OFF , YOU, ITSEEMS TO ME , THAT YOU HAVE TRANSFORMED YOUR ARGUMENT, REALLY, BACK TO WHAT JUSTICE PARIENTE WAS ASKING YOU , THAT IS IN THAT DIFFERENT SITUATION , AS FAR A S THE PARTICULAR FACTSOR CIRCUMSTANCES ABOUT WHETHER HE, REALLY , YOU KNOW , DID THIS ON HIS OWN OR WHETHER THEY IMPROPERLY REINITIATED A CONVERSATION, HAVE W E GOTTEN OVER A HUMP?ARE YOU RETRACTING SOME OF YOUR ABSOLUTIST?

I GUESS IF I NEED TO RETRACT, BUT IF WE LOOK AT THEFACTS OF THIS CASE , WHEN THEY GO UP TELL US WHAT HAPPENED IN THIS CASE.

THEY WENT UP THERE TO TALKTO HIM ABOUT GETTING THIS BLOOD SAMPES. NECKED NOT DO THAT , WITHOUT COUNSEL BEING PRESENT , EVEN THOUGH IT IS NOT A N INTERROGATION, AS YOU SAY. I AM SORRY.

THAT WHOLE SCENARIO , WHAT HE SAID, THEN , WAS NOT OFFEREDAT TRIAL. IS THAT CORRECT ?

I AM SORRY .

THE BLOOD SAMPLES WERE GOING TO BE OBTAINED , BUT THE STATEMENT THAT HE MADE O N NOVEMBER 17 WAS NOT OFFERED AT TRIAL.

NO. IT WAS JUST THIRSD AT THE TIME

THE THIRD STATEMENT IS WHEN THEY ARE GOING TO SERVE THE ARREST WARRANT.

THAT'S CORRECT.

AND ALL THEY SAID AT THAT POINT IS TO HAVE APPELLANT AVAILABLE FOR THE PURPOSE OF SERVING THE ARREST WARRANT ANDTHEY WOULD TAKE HIM BACK TO FLORIDA. AT THAT POINT, IT SAYS, OKAY,WE HAVE TALKED , FOUR IN THEPAST AND THE LAST CONVERSATION A FEW DAYS AGO , YOU SPOKE OF YOUR RIGHT TO HAVE AN ATTORNEY. YES, SIR. I HAVE PRESENTED THIS WARRANT. YOU ASKED TO TALK TO ME AGAIN. YES, SIR. DO YOU HAVE AN ATTORNEY? NO, SIR. DO YOU WISH TO TALK TO ME NOW WITHOUT AN ATTORNEY PRESENT? YES, SIR. AND DO YOU UNDERSTAND THAT YOU CAN STOP AT ANY TIME. YOU STILL HAVE YOUR RIGHTS. YES, SIR. AND THEN MY PROBLEM HE CONFESSES , AND I DON'T KNOW OF ANYTHING THAT SOUNDS LESKOERS I HAVE, IF YOU WERE TALKING ABOUT THE NOVEMBER THAT SOUNDS LESS COERCIVE , BUT YOU ARE TALKING ABOUT THE NOVEMBER 17 STATEMENT, BUT THE NOVEMBER 17 STATEMENT DIDN'T LEAD TOTHE NOVEMBER 27 STATEMENT. THIS LOOSE ALMOST LIKE JUSTICE ANSTEAD 'S SCENARIO?

HE HAS NO LAWYER AND HAS DONE NOTHING TO GET ONE. HE IS IN AN ENHANCED COERCIVE ENVIRONMENT. BY THE TIME HE HAD GOTTEN TO THE THIRD STATEMENT, HE HAD GIVEN UP.

WITHOUT EVER HAVING A LAWYER , YOU ARE SAYING YOU CAN'T EVEN REINITIATE CONTACT?

HE COULD REINITIATE , LIKE IN JUSTICE ANSTEAD'S SCENARIO.

BUT ISN'T THAT WHAT HE DIDIN THE THIRD STATEMENT?

NO.NO. THE POLICE CAME, WELL , IN THE THIRD STATEMENT , NO , NO. HE HE NO. NO. THEY CAME TO HIM AGAIN TALKINGTO HIM , AND THAT IS WHAT I AM SAYING IS THEY CAN'T DO. THAT YOU HAVE GOT TO , THIS RIGHT TO COUNSEL, I MEAN,IMPORTANT.

BUT THEY CAME TO HIM TO SERVE THE WARRANT.

IF THAT IS ALL THEY DID, THAT IS FINE, BUT APPARENTLY

HE SAID I WANT TO TALK TO YOU.

WHAT ELSE DID THEY DO BESIDES SERVE THE WARRANT?

APPARENTLY THEY BEGAN TALKING TO HIM AND IT IS NOT CLEAR IN THE RECORD EXACTLY.

IT HAS GOT TO BE VERY CLEAR, FOR US TO SAY THIS IS REVERSIBLE ERROR. YOU JUST ADMITTED IF ALL THEY DID WAS SERVE THE WARRANT AND SAY HERE IS THE WARRANT , THEN THAT IS FINE , SO WHAT ELSE IS THERE THAT MAKES IT NOT FINE IN THIS CASE?

THE SECOND TIME AROUND OR THE FIRST , INVOKE THE COUNSEL THE FIRST TIME , WHAT BECAME PROBABLE CAUSE IS THEY GOT THE BLOOD SAMPLE AND LINKED HIM WITH HIS OWN DNA, SO I AM SAYING SORT OF THE FRUIT OF THE POISONOUS TREE, THEY COULD NOT

WHAT DID THEY DO ON NOVEMBER 27 , BESIDES SERVE THE WARRANT, THAT VIOLATES THE FIFTH OR SIXTH AMENDMENT?

MY UNDERSTANDING IS THEY BEGAN TALKING ABOUT THE CASE, AND THEN AT THAT POINT

WHAT DID THEY SAY ABOUT THE CASE?

I DON'T KNOW. IT IS NOT IN THE RECORD.

IT IS NOT IN THE RECORD?

WELL , ALL WE HAVE IS

IF IT IS NOT IN THE RECORD, THEN OBVIOUSLY IT WASN'T IN THE MOTION TO SUPPRESS, AND HOW COULD THE TRIAL COURT HAVE ABUSED ITS DISCRETION IN DENYING THE MOTION TO SUPPRESS?

BECAUSE HE SAID THEY INITIATED BOTH CONTACTS AND HE DIDN'T. THE POLICE CAME TO HIM AND WHAT I AM SAYING IS , BEFORE THEY CAN DO THAT , THEY HAVE GOT TO HAVE COUNSEL PRESENT. THEY HAD TWO TIMES TO GET HIM COUNSEL AND THEY DID ABSOLUTELY NOTHING TO GET HIM A LAWYER , THAN IS WHAT I AM SAYING.

AND THAT IS WHAT I AM SAYING.

I WAS UNDER THE IMPRESSION WITH THE FACTS , THAT AT THE TIME THAT THE LAW ENFORCEMENT OFFICIALS SERVED HIM WITH THE WARRANT , THAT ALABAMA OFFICIALS KNEW THAT THEY WERE COMING AND WORD HAD BEEN TRANSMITTED TO THEM, THAT , HEY , THIS FELLOW WANTS TO TALK TO HIM. I THOUGHT THAT IS HOW IT OCCURRED. IS THAT NOT IN YOUR IS THAT NOT YOUR PINGS?

THE ALABAMA AUTHORITIES MUCH ASKED SPECIFICALLY TO GET THE CONSENT AND THEY WERE TALKING TO HIM ABOUT SOME OTHER STUFF , AND I AM SAYING ALABAMA AUTHORITIES COULDN'T TALK TO HIM ABOUT ANYTHING.

ALL OF THE TIME THAT ALABAMA , HE IS IN JAIL , THE ALABAMA AUTHORITIES' JURISDICTION, IT IS BECAUSE HE IS THERE UNDER A VIOLATION AFTER ALABAMA SITUATION. THIS ISN'T SOMETHING WHERE , FOR TEN OR FIFTEEN DAYS , HE IS BEING HELD ON THIS FLORIDA CHARGE.

RIGHT.

WE MAKE SURE THAT IS CORRECT.

THAT'S CORRECT.

THE COERCIVE ENVIRONMENT , THAT IS HE IS INCARCERATED , IS CREATED BY HIS OWN ACT OF HAVING VIOLATED

COURTS HAVE NEVER MADE A DISTINCTION OF, WELL , HE IS IN JAIL FOR THIS PURPOSE BUT NOT THAT.

IF HE WAS SOMEHOW BEING KEPT INCARCERATED WHILE THEY ARE ASKING HAVING A CUSTODIAL INTERROGATION , YOU WOULD HAVE A PRETTY DIFFERENT CASE , SO WE JUST WANT TO MAKE SURE THAT WE HAVE GOT THAT , AND THE OTHER QUESTION THAT I HAVE IS , IS THERE TESTIMONY IN THE RECORD, AS TO WHAT HE, HOW HE WAS FRUSTRATED IN HIS ATTEMPT TO GET A LAWYER?

NO.

SO WOULDN'T THAT BE SOMETHING THAT WOULD HAVE HAD TO BE OFFERED? THAT IS THAT, INSTEAD OF IT SHOWING IT LOOKS LIKE HE WAS TRYING TO GET A LAWYER AND SAY , LISTEN, I DIDN'T HAVE MONEY, AND THE ONLY, I DIDN'T KNOW HOW TO GET A LAWYER. I ASKED THEM TWICE. THAT THERE WOULD BE SOMETHING THAT WE COULD BASE WHAT YOU ARE SAYING, WHICH YOU KNOW, COULD BE A LOGICAL RESULT, IF THE EVIDENCE WAS THERE , THAT YOU KNOW, HE KEPT ON SAYING I NEED A LAWYER. PLEASE GIVE ME A LAWYER. THAT THERE IS NOTHING LIKE THAT IN THE RECORD.

NO. NO. THERE IS NOT. BUT WHAT I AM SAYING DOESN'T MAKE ANY DIFFERENCE. HE ASKED FOR A LAWYER TWICE.

LET ME ASK THAT QUESTION. HE WOULD HAVE HAD TO WAIVE EXTRADITION TO FLORIDA AND BE BROUGHT TO FLORIDA, RIGHT?

I SUPPOSE SO.

AND IN THE EXTRADITION PROCESS HE IS INFORMED THAT HE HAS THE RIGHT TO CONSULT AN ATTORNEY TO DETERMINE WHETHER OR NOT HE WANTS TO WAIVE EXTRADITION?

I THINK THAT IS CORRECT.

DID HE DO THAT IN THIS CASE?

I DON'T THINK SO.

DID HE HAVE AN OPPORTUNITY TO SEEK AN ATTORNEY FOR EXTRADITION IN THAT CASE?

NO. I THINK IT WAS TOO LATE. I UNDERSTAND MY TIME IS UP AND I APOLOGIZE, BUT THAT IS THE BASIC THING. HE IS ENTITLED TO A LAWYER . NO LAWYER WAS EVER MADE AVAILABLE TO HIM.

CHIEF JUSTICE: OKAY. THANK YOU VERY MUCH. COUNSEL.

> MAY IT PLEASE THE COURT. CASSANDRA DOLGIN ON BEHALF OF THE STATE OF FLORIDA . I WANT TO BEGIN BY MY UNDERSTANDING OF THE DEFENDANT'S ARGUMENT IS THAT HE IS SEEKING A BLANKET RULE, AND THAT , ONCE HE INVOKES HIS RIGHT TO COUNSEL UNDER THE FIFTH AMENDMENT , UNDER NO CIRCUMSTANCES , CAN THE POLICE APPROACH HIM, UNLESS THEY PRESENT , PROVIDE HIM WITH AN ATTORNEY. AND AS CITED IN THE STATE'S BRIEF, ARIZONA VERSUS ROBINSON , THERE IS A FOOTNOTE THAT THE U.S. SUPREME COURT INCLUDES, AND

WITHIN ROBINSON , IN WHICH THE U.S. SUPREME COURT EXPANDED THE FIFTH AMENDMENT AS TO LAW ENFORCEMENT CANNOT QUESTION THE DEFENDANT AS TO OTHER CRIMES, BUT THEY DROP A FOOTNOTE AND SAY IF LAW ENFORCEMENT ISN'T GOING TO PROVIDE COUNSEL , THAT IS FINE , AS LONG AS THEY DON'T REPROACH HIM TO INTERROGATE HIM. AND THAT IS THE SITUATION HERE , AND I VERY BRIEFLY

IN OTHER WORDS WHAT YOU ARE SAYING IS, EVEN THOUGH ON THIS NOVEMBER 14 , THAT HE SAYS I MEAN , I WANT A LAWYER , WHICH SOUNDS LIKE HE WANTS TO GET A LAWYER.

RIGHT.

I DON'T THINK WE ARE SAYING IT IS EQUIVOCAL , THAT THEY DONOT HAVE AN OBLIGATION TO HELP HIM GET THE LAWYER? THAT HE , IS THAT WHAT YOU READ FROM THAT FOOTNOTE, THAT I S AS LONG AS THEY DON'T

AS LONG AS THEY DON'T GO BACK AND INTERROGATE HIM.

IS IT ANY DIFFERENT THEN, IF HE HAD INVOKED HIS RIGHT TO REMAIN SILENT? IN OTHER WORDS WHO WHAT DOES, HOW DOES THE TWO DIFFERENT REQUESTS, WE ARE USUALLY FAMILIAR WITH THEM SAYING I DON'T WANT TO TALK ANYMORE. THAT REQUIRES , AGAIN, FOR THEM TO , HIM TO REINITIATE CONTACT , RIGHT , IF HE INVOKED HIS RIGHT TO REMAIN SILENT , THEY CAN'T APPROACH HIM AGAIN.

THEY HAVE TO SCRUPULOUS LY HONOR HIS INVOKING HIS RIGHT TO REMAIN SILENT.

IS IT MORE, IS IT A BROADER RIGHT WHEN HE INVOKES RIGHT TO COUNSEL? THEY CAN NEVER APPROACH HIM AGAIN , UNLESS HE HAS A LAWYER , THAT THEY DON'T HAVE TO GIVE HIM A LAWYER?

NOT IF THEY , I THINK THAT IS TAKING IT , THAT IS THE ABSOLUTE RULE THAT THE DEFENDANT IS SEEKING. THEY CAN'T APPROACH HIM, IN ORDER TO ELICIT AN INCRIMINATING RESPONSE , AND THAT IS THE INTERROGATION. THAT IS TESTIMONIAL INTERROGATION THAT IS DEFINED IN ENNIS.

IF HE TESTIFIED THAT I COULDN'T AFFORD ONE AND I ASKED THEM TO PLEASE HAVE A LAWYER APPOINTED , AND WE ARE NOW IN ALABAMA AND NOT FLORIDA, BUT PRESUMABLY THERE ARE LAWYERS THAT ARE AVAILABLE THROUGH THE PUBLIC DEFENDERS OFFICE OR MAYBE IN , THAT COULD BE OVER THERE WITHIN , YOU KNOW , A FEW HOURS, AND YET YOU HAVE, IN THIS CASE , FROM NOVEMBER 14- THROUGH- THE 19th , WHAT DO WE KNOW HAPPENED DURING THAT PERIOD OF TIME IN IS IT LIKE, IS THE RECORD JUST DEVOID OF ANY EVIDENCE AS TO WHETHER HE WAS IN CONTACT WITH SOMEONE REPRESENTING HIM IN THE ALABAMA CASE? WAS THE, YOU KNOW , DO WE KNOW ANYTHING, OR IS IT JUST AVOID?

WE HAVE NO RECORD EVIDENCE AS TO WHETHER LAW ENFORCEMENT AND THE DEFENDANT DIDN'T ESTABLISH THAT LAW ENFORCEMENT ATTEMPTED TO TALK TO HIM BEFORE THEY SOUGHT TO SEE IF HE WOULD PROVIDE CONSENT FOR THE DNA. NOW , WHEN DEPUTY MURPHY GAVE HIS PROFFER DURING TRIAL , AT THAT TIME HE DID SAY , AND I THINK IT IS IMPORTANT TO LOOK AT THE FACTS THAT GIVE RISE TO THE REQUEST FOR CONSENT. DETECTIVE TILLIE HAD GOTTEN BACK TO PANAMA CITY BEACH POLICE DEPARTMENT , AND HIS CAPTAIN SAID, WHY DON'T YOU CONTACT , THAN IS ON THE 19th. WHY DON'T YOU CONTACT BALDWIN COUNTY SHERIFFS DEPARTMENT AND SEE IF THEY WILL ASK THE DEFENDANT WHETHER HE WILL CONSENT TO A SEARCH , AND DETECTIVE TILLIE WAS GOING TO BE TRAVELING TO PENSACOLA ON THAT DAY. HE HAD AN FDLE AGENT WITH HIM. THEY WERE GOING TO DROP EVIDENCE OFF AT THAT TIME , IN PENSACOLA, A AND APPARENTLY BALDWIN COUNTY IS ACROSS THE BORDER VERY CLOSE , SO THEY WERE GOING TO GO TO BALDWIN COUNTY AND SEE IF THE DEFENDANT DID CONSENT, AND AS THE

COURT IS AWARE UNDER SCHMERBER, THAT IS NOT TESTIMONY, IN TERMS OF PROVIDING A , WHERE THERE IS A SEARCH, AND UNDER

BUT AT THAT POINT , AND, AGAIN, THEY HAD MURPHY THAT HE ALSO WOULD GO DO THAT , BECAUSE HE ALSO HAD UNRELATED ALABAMA CASES. HE WANTED TO TALK TO THE APPELLANT , AGAIN , ABOUT ANYWAY. WOULD YOU AGREE THAT , UNDER THE CASE LAW, THAT SOMETHING HAD COME OUT OF THAT, THEY , THAT THAT WOULD NOT BE , THAT WAS NOT PROPER , THAT IS THEY COULDN'T TALK T O HIM ABOUT UNRELATED CASES, ONCE HE INVOKED HIS RIGHT TO COUNSEL?

ONLY IF DEPUTY MURPHY HAD APPROACHED HIM TO TALK TO HIM ABOUT THOSE OTHER CASES , PREVIOUS TO THE DEFENDANT INITIATING , REINITIATING WITH THE POLICE , THAN IS WHAT HAPPENED HERE. DEPUTY MURPHY APPROACHED HIM , SAID ARE YOU WILLING TO CONSENT TO A DNA SAMPLE , AND THE DEFENDANT , HE SIGNED A CONSENT FORM. HE SAID YES. THEY WENT AND THEY DID THE SWAB. THEY TOOK THE BLOOD , AND AT THAT TIME EVERETT SAID T O DEPUTY MURPHY , HEY, I HAVE THIS PIECE OF PAPER HERE , WILL YOU GIVE IT TO DETECTIVE TILLIE, AND DEPUTY MURPHY , DURING HIS PROFFER AT TRIAL , HE TESTIFIED THAT THAT PIECE OF PAPER , WHEN THE ACCUSED GAVE HIM THE PIECE OF PAPER , HE WANTED TO PUT DETECTIVE TILLIE ON THE RIGHT TRACK. THAT PIECE OF PAPER DID NOT HAVE THE NAME OF HIS ATTORNEY . AND AT THAT TIME , DEPUTY MURPHY SPECIFICALLY REMILES AN HOUR AND IZED THE DEFENDANT , AND REMIRANDAIZED THE DEFENDANT , AND AT THAT TIME THE DEFENDANT SAID T O DEPUTY MURPHY, I WANT TO MAKE A STATEMENT BUT I WANT TO MAKE IT OFF THE RECORD, AND HE HAD JUST BEEN REMIRANDAIZED , AND MURPHY SAID TO HIM, WELL , IT CAN'T BE OFF THE RECORD EVERYTHING IS GOING TO BE RECORDED, AND THAT IS WHEN THE DEFENDANT SAID, WELL, I WANT TO MAKE A STATEMENT.

THAT IS NOVEMBER 17.

ACTUALLY IT WAS NOVEMBER 19. THAT'S CORRECT.

AND THAT STATEMENT , WHATEVER WAS SAID WAS NOT OFFERED IN EVIDENCE.

NO , IT WAS NOT.

S O WE NOW HAVE FROM NOVEMBER, AND THAT IS AT THAT POINT , HE SAID I AM NOT GOING TO, YOU KNOW , SO YOU ARE ASKING FOR A LAWYER, AGAIN , HE ASKED FOR A LAWYER. NOW, THAT IS NOVEMBER 17. WHAT HAPPENED BETWEEN NOVEMBER 17 AND NOVEMBER 27? IS THERE ANYTHING IN THE RECORD ABOUT ANY ATTEMPTS THAT LAW ENFORCEMENT MADE, TO HELP HIM GET A LAWYER , AND LET'S ASSUME , I AM NOT SAYING THAT THEY HAD TO DO IT. I JUST WANT TO UNDERSTAND IF THERE IS ANYTHING , OR AS JUSTICE BELL SAID , IN ORDER FOR HIM TO HAVE GONE INTO FLORIDA FROM ALABAMA , NEXT DOOR WHEN THEY ARE I N PENSACOLA, A YOU HAVE GOT T O BE EXTRA DATED - - EXTRADITED , SO DO WE KNOW ANYTHING AS FAR AS WHAT HAPPENED , AS FAR AS IF HE DID G O BEFORE A JUDGE DURING THAT PERIOD OF TIME OR DID HE SIGN A CONSENT TO B E EXTRADITEED?

THE RECORD DOESN'T ESTABLISH. THAT THE RECORD DOESN'T ESTABLISH THAT THERE WAS ANY CONTACT OR ATTEMPT TO INTERROGATE THE DEFENDANT , BETWEEN NOVEMBER 19 AND NOVEMBER 27.

BUT THERE IS ALSO NO RECORD THAT HE ACTUALLY TALKED TO THE LAWYER IN THAT PERIOD OF TIME?

THERE IS NO EVIDENCE THAT HE ATTEMPTED TO OR THAT, AND, AGAIN, I GO BACK T O ARIZONA VERSUS ROBINSON. UNLESS LAW ENFORCEMENT INTENDS ON INTERROGATING HIM , THEY DO NOT HAVE TO PROVIDE HIM WITH AN ATTORNEY.

SO WHEN SOMEONE , MIRANDASAYS THAT , YOU KNOW, YOU HAVE A RIGHT TO AN ATTORNEY , AND IF NO ATTORNEY IS , IF YOU CAN'T AFFORD AN ATTORNEY , YOU HAVE A RIGHT TO HAVE AN ATTORNEY APPOINTED FOR YOU , AND YOU SAY I WANT MY RIGHT TO HAVE AN ATTORNEY APPOINTED FOR ME , THAT LAW ENFORCEMENT HAS NO OBLIGATION TO, THEN , OBTAIN A LAWYER FOR HIM TO CONSULT WITH?

I BELIEVE, UNDER MIRANDA, IT IS NOT JUST THAT IF YOU CAN'T AFFORD ONE , ONE WILL BE APPOINTED TO YOU. IT IS IF YOU CAN'T AFFORD ONE , ONE WILL BE APPOINTED TO YOU BEFORE QUESTIONING , AND HERE WE DID NOT HAVE AN ATTEMPT TO INTERROGATE.

COULD THERE BE A SITUATIONWHERE , AGAIN , SOMEONE KEEPS O N ASKING FOR A LAWYER, AND, AGAIN , NOT THE ABSOLUTIST RULE BUT THIS IDEA THAT , AT SOME POINT , YOU KEEP ON SAYING THREE OR FOUR TIMES, I WANT A LAWYER. I WANT A LAWYER. AND THEY KEEP ON FIGURING OUT DIFFERENT WAYS THAT THEY CAN GET TO HIM. WELL , WE WILL TRY THE LINEUP THIS TIME. NEXT TIME WE WILL TRY THE CONSENT TO SEARCH. NEXT TIME WE WILL TRY YOU KNOW , SOMETHING ELSE THAT SEEMS , THAT IS APPROPRIATE , AND IS THERE SOME , ARE THERE ANYCASES THAT SAY AT SOME POINT , YOU HAVE GOT A TOTALITY , THAT THERE CAN'T BE A VOLUNTARINESS , THAT HIS WILL HAS BEEN OVERBORNE , AND AND BECAUSE THE REQUEST TO HAVE AN ATTORNEY HAS TO BE TEN TAEN INTO THE TOTALITY HAS TO BE TAKENINTO THE TOTALITY OF THE CIRCUMSTANCES, SO THAT WE HAVE AN INVOLUNTARY STATEMENT.

I THINK THAT IS A DIFFERENT STANDARD YOU ARE LOOKING AT, IN COMPARISON T O , AS AN ABSOLUTE , HAVING COUNSEL APPOINTED , VERSUS BADGERING, WHICH WE DON'T HAVE IN THIS CASE , AND I WILL TALK ABOUT THAT.

THE STANDARD IS WHETHER IT IS DESIGNED TO ELICIT A N INCRIMINATING RESPONSE, RIGHT?

EXACTLY.

SO AT SOME POINT , IF YOU KEEP TRYING DIFFERENT WAYS , I GUESS A JUDGE COULD FIND THAT THEIR TACTICS WERE DESIGNED TO ELICIT AN INCRIMINATING RESPONSE.

RIGHT, AND THAT GOES TO THE VOLUNTARINESS OF THE STATEMENT, AND THE VOLUNTARINESS O F THE DEFENDANT'S STATEMENT ON 11-27 HAS NOT BEEN RAISED.THERE IS NO QUESTION THAT HIS STATEMENT WAS NOT VOLUNTARILYMADE.

WHEN YOU GO BACK THROUGH THE CHRONOLOGY AND GETTING TO NOVEMBER 27, WHAT DOES THERECORD SHOW HAPPENED, WHEN THE OFFICERS SERVED THE DEFENDANTWITH THE WARRANT?

ACTUALLY WHAT HAD HAPPENED, YOUR HONOR, IS, ON 11-27 , DETECTIVE MURPHY OR EXCUSE ME , DETECTIVE TILLIE CONTACTED DEPUTY MURPHY I N BALDWIN COUNTY, AND SAID CAN YOU GET US AN INTERVIEW ROOM? I DO HAVE AN ARREST WARRANTTHAT I WANT TO PRESENT TO THE DEFENDANT . AND DEPUTY MURPHY ADVISED THE DEFENDANT OF THAT. NO QUESTIONING OCCURRED AT THAT TIME . AND THE DEFENDANT SAID , TO DEPUTY MURPHY , I DO WANT TO MAKE A STATEMENT, WHEN DETECTIVE TILLIE ARRIVES . AND WITHIN DETECTIVE TILLIE'S DEPOSITION AND BOTH HIS TESTIMONY , IN REESE'S DEPOSITION AND I BELIEVE, ALSO , HIS TESTIMONY AT TRIAL , IT WASN'T UNTIL HE GOT THERE AND THE DEFENDANT SAYS I WANT TO TALK TO YOU, AGAIN , HE IS REMIRANDAIZED.HE IS TOLD THAT I UNDERSTAND PREVIOUSLY YOU INVOKED YOUR RIGHT TO COUNSEL. ARE YOU TELLING ME THAT YOUWANT TO TALK TO ME WITHOUT COUNSEL BEING PRESENT ? AND THE DEFENDANT ANSWERS YES , AND DETECTIVE TILLIE SAYS YOU UNDERSTAND YOU STILL HAVE YOUR RIGHTS, AND AT THAT TIME THE DEFENDANT MAKES HIS STATEMENT.

WHAT DOES THE RECORD SHOW, IF ANYTHING , ABOUT WHAT I N PARTICULAR, OFFICER TILLIE SAID TO THE DEFENDANT , BEFORE THE DEFENDANT SAID I WANT TO TALK TO YOU, IN TERMS OF HANDING THE WARRANT AND THE CONVERSATIONS THAT OCCURRED THERE?

ACTUALLY THE RECORD INDICATES THAT THE DEFENDANT STARTED TALKING TO DETECTIVE TILLIE, BEFORE HE ACTUALLY HANDED HIM THE ARREST WARRANT OR SHOWED IT TO HIM , AND DETECTIVE TILLIE HAD TO SAY, WAIT A MINUTE, YOU KNOW, I NEED TO REMIND YOU, AND IT SOUNDS LIKE THAT HAPPENED CONTEMPORANEOUSLY , IN TERMS OF SHOWING HIM THE ARREST WARRANT AND THE DEFENDANT SAYING I WANT TO TALK TO YOU , AND IT GOES BACK TO IS A REQUEST FOR CONSENT AND PRESENTING TO A DEFENDANT OR AN ACCUSED , AN ARREST WARRANT, DOES THAT CONSTITUTE INTERROGATION? IS IT TESTIMONIAL , AND THERE HAS BEEN NO SHOWING THAT , IN FACT , EITHER ONE OF THOSE WOULD REASONABLY ELICIT AN INCRIMINATING STATEMENT.

SO IN THIS CASE , WAS IT THE 17th, WHEN THE DEFENDANT SAYS I TRIED TO GET A LAWYER. I DON'T , I HAVE NEVER BEEN ABLE TO GET ONE OR HAVE NOT BEEN ABLE TO GET IN CONTACT WITH ONE , THAT THE POLICE HAD NO OBLIGATION, EVEN THOUGH HE HAD INVOKED HIS RIGHT TO COUNSEL , AND HE IS NOW INDICATING THAT HE HAS BEEN UNABLE IN SOME FORM , TO FIND COUNSEL, THAT THE POLICE STILL HAD NO OBLIGATION TO, THEN , OFFER THE APPOINTMENT OF COUNSEL?

THE POLICE WOULD HAVE BEEN OBLIGATED , HAD THEY SAID, WELL , WE WANT TO INTERROGATE YOU. WE HAVE QUESTIONS FOR YOU. WE ARE JUST GOING TO SIT DOWN AND START QUESTIONING HIM, BECAUSE HE INVOKED HIS RIGHT TO COUNSEL, AND THAT WOULD CONSTITUTE, LAW ENFORCEMENT IS PRECLUDED FROM REINITIATING , ONCE THE REQUEST FOR COUNSEL HAS BEEN MADE.

WASN'T THERE SOME INDICATION, I HAD THOUGHT, THAT THE DEFENSE ATTORNEY SAID THAT THERE WAS SOME QUESTIONING ABOUT THESE ALABAMA CHARGES OR OFFENSE AT THAT POINT?

NOT ON NOVEMBER 19. THE ONLY THING THAT HAPPENED ON NOVEMBER 19 , IS DEPUTY MURPHY WENT TO THE DEFENDANT AND SAID ARE YOU WILLING TO CONSENT TO PROVIDING A DNA SAMPLE. IT APPEARS FROM THE RECORD, THAT, AND I BELIEVE THIS IS IN DEPUTY MURPHY 'S PROFFER AT TRIAL , THAT ON NOVEMBER 13th , BEFORE THE PANAMA CITY POLICE WERE EVEN AWARE OF WHERE THE DEFENDANT WAS , THAT DEPUTY MURPHY HAD APPROACHED THE DEFENDANT AND TALKED TO HIM ABOUT THE ALABAMA CHARGES.

BUT WASN'T THAT BEFORE THE 17th , WAS THAT WHEN DEPUTY MURPHY SAYS , HE IS CONTACTED BY PANAMA CITY , AND THEY WANT HIM TO GET THIS CONSENT FOR THE BLOOD SAMPLE, AND HE SAYS I AM GOING TO TALK TO HIM, ALSO , ABOUT THESE ALABAMA THINGS?

HE SAYS THAT HE HAS A RAPPORT WITH THE DEFENDANT AND THAT HE WAS PLANNING ON TALKING TO HIM. BUT THERE IS NO RECORD OF EVIDENCE THAT, WHEN HE WENT AND ASKED THE DEFENDANT ARE YOU WILLING TO CONSENT TO PROVIDING A DNA SAMPLE , THAT HE SAID YOU KNOW, LET'S TALK ABOUT THESE ALABAMA CHARGES. APPARENTLY AFTER THE DEFENDANT SIGNED HIS WAIVER AND PRESENTED, AND THE DNA SAMPLE WAS TAKEN , AT THAT TIME , THE DEFENDANT SAID CAN YOU GIVE THIS PIECE OF PAPER TO DETECTIVE TILLIE? I WANT TO PRESENT, I WANT TO DIRECT HIM IN THE CORRECT DIRECTION. AND THAT IS WHEN DEPUTY MURPHY PROMPTLY REMILES AN HOUR AND ANIZED REMINDING THE DEFENDANT , SO THERE IS NO RECORD THAT DEPUTY MURPHY ATTEMPTED TO INTERROGATE THE DEFENDANT ON ANY CHARGES, BEFORE THE DEFENDANT REINITIATED CONTACT.

ON THAT TIME WHEN THE DEFENDANT , THE DEPUTY APPROACHED HIM TO GET THE BIOLOGICAL SAMPLES , HE TESTIFIED THAT MURPHY SAYS THAT HE TOLD HIM THAT HE HAD BEEN ATTEMPTING TO CONTACT HIS ATTORNEY IN REFERENCE TO THE PANAMA CITY INVESTIGATION

AND HAD BEEN UNSUCCESSFUL. WAS HE AN ALABAMA RESIDENT OR A FLORIDA RESIDENT?

ALABAMA.

SO DO WE, IS THERE ANYTHING IN THE RECORD TO NOTE , DID HE ACTUALLY HAVE AN ATTORNEY IN THE ALABAMA CASE ?

D O W E - - - .

PRESUMABLY HAD HE AN ATTORNEY

DO WE KNOW ANYTHING ABOUT THAT ?

PRESUMABLY HAD AN ATTORNEY .

DID H E HAVE AN ABILITY TO USE A PHONE WHILE HE WAS IN THE JAIL OR ACTUALLY FRUSTRATED BY ANYTHING THE POLICE DID, IN TRYING TO GET HIS ATTORNEY?

NO.IN FACT , I THINK THAT DEPUTY MURPHY'S STATEMENT IS THAT THE DEFENDANT TOLD HIM, I WAS TRYING TO REACH HIM , AND THAT I COULDN'T REACH HIM.

IT WAS NOT REALLY, BUT, THEN , SO THEN THIS IS PROBABLY MORE FAVORABLE TO THE STATE IN A SITUATION , AS FAR AS THE FACTS , THAT , IT IS NOT AS IF HE WAS SOMEBODY THAT HAD JUST BEEN ARRESTED FOR THE FIRST TIME AND IS A NEO-FIGHT IN THESYSTEM. HE, IT SOUND LIKE THERE WAS A SPECIFIC PERSON HE WAS TRYING TO GET AHOLD OF .

RIGHT.

YOU WOULDN'T EXPECT, THEN , THE POLICE TO GO, IF HE CAN'T , I MEAN, THEY WOULDN'T HAVE TO SAY ANYTHING MORE UNDER THOSE CIRCUMSTANCES.

THAT'S CORRECT, YOUR HONOR, AND HAD DEPUTY MURPHY AT THAT TIME , WHEN THE DEFENDANT SAID,WELL, I HAVE BEEN TRYING TO REACH MY ATTORNEY AND I CAN'T, HAD THEY SAID, WELL , YOU KNOW, LET ME PULL YOU OUT AND TALK TO YOU , THEN THAT WOULD HAVE BEEN A PROBLEM.

WASN'T THERE A WAIVER OF EXTRADITION FORM IN THIS CASE? DO WE KNOW ANYTHING ABOUT THE EXTRADITION PROCEDURE OF WHAT HAPPENED?

NO. I AM SORRY. I AM NOT FAMILIAR WITH , I DIDN'T SEE THAT IN THE RECORD BUT THEN I WASN'T LOOKING FORIT. I COULD HAVE MISSED IT .

IT SEEMS TO ME THAT THERE MAY HAVE BEEN SOMETHING WHEREHE MAY HAVE BEEN IN TOUCH WITH AN ATTORNEY IN THIS PERIOD OFTIME, TO DECIDE WHETHER HE WASGOING TO AGREE TO GO BACK TO FLORIDA.

ABSOLUTELY .

IT IS HYPOTHETICAL, IF IT IS NOT IN THE RECORD , ONE WAY OR ANOTHER.

IT IS CERTAINLY, ALSO, REASONABLE THAT, BEGIN HE WASWILLING TO TALK TO LAW ENFORCEMENT AND HE CONTINUED TO REINITIAL WAITIATE - - REINITIATE WANTING TO TALK TO THEM AFTER THEY SOUGHT IN THE FIRST INSTANCE, NONTESTIMONIAL EVIDENCE .

LET'S NOT BE NAIVE. IF HE HAD BEEN ABLE T O CONTACT HIS ATTORNEY THE FIRST TIME HE REQUESTED ONE , NO ATTORNEY , I WOULD THINK , WOULD , UNLESS YOUKNOW , WOULD SAY ,

THE FIRST THING THEY WOULD SAY IS TO MAKE SURE YOU GIVE NO STATEMENT TO LAW ENFORCEMENT . WOULDN'T THAT BE, I MEAN, A LAWYER WOULD HAMMER THAT HOME TO HIM , I WOULD

I CERTAINLY WOULD HAVE BEEN ADVISED OF THAT , AND YOU KNOW, THERE HIS CASE LAW OUT THERE THAT, BECAUSE YOU DON'T HAVE A FIFTH AMENDMENT RIGHT TO COUNSEL , IN TERMS OF A SEARCH , THAT THAT WOULDN'T HAVE BEEN A VIOLATION , HAD LAW ENFORCEMENT OBTAINED THE DNA SAMPLE, EVEN THOUGH IT WAS CONTRARY TO ADVICE OF COUNSEL.

BUT WE WOULD HAVE HAD THE DNA SAMPLE. COULD MAYBE FOCUS ON HOW MUCH OTHER , IN TERMS OF A CONFESSION , OBVIOUSLY HE , YOU KNOW, THE CONFESSION IS CERTAINLY IMPORTANT, BUT THE FACTS OF THIS CASE , WHAT ELSE LINKED HIM TO THE CRIME AND WHAT OTHER EVIDENCE WAS THERE ?

HE WAS , ALSO , LINKED TO THE CRIME, ON THE BASIS THAT 130 , APPROXIMATELY 133 FEET FROM MS. BAILEY'S HOUSE, WAS LOCATED A MINIBAT , AND IT TESTED POSITIVE FOR THE PRESUMPTIVE PRESENCE OF BLOOD , AND THERE WAS A VIDEOTAPE FROM WAL-MART THAT SHOWED THE DEFENDANT PURCHASING THIS BAT IN HIS ORIGINAL STATEMENT , WHICH THERE IS NO QUESTION AS TO ITS VOLUNTARINESS , AND ADMISSIBILITY , THOUGH IT DIDN'T COME IN. THE DEFENDANT ADMITS TO BEING AT WAL-MART AND PURCHASING THIS BAT.

THAT IS ACTUALLY HOW THEY TRACKED HIM.

THAT IS HOW THEY TRACKED HIM DOWN, USING THAT VIDEOTAPE. ACTUALLY ONE OF THE OFFICERS SAW A BAT , YOU KNOW , JUST LIKE THE ONE THAT WAS RECOVERED FROM THE SCENE , WAS ABLE TO USE , GOING THROUGH THE WAL-MART PERSONNEL , TO DETERMINE THAT THAT BAT WAS PURCHASED AND IT WAS PURCHASED ON OCTOBER 27. JUST A FEW DAYS PRIOR TO THE MURDER. THAT IT CAME FROM WAL-MART. THEY USED A VIDEOTAPE. THEY , ALSO, WERE ABLE TO DETERMINE THAT THERE WAS A CHECK THAT THE DEFENDANT USED , A STOLEN CHECK THAT HE USED TO PURCHASE THE BAT. THE DEFENDANT'S T-SHIRT WAS , ALSO , FOUND AT THE SCENE . AND

WHAT ABOUT ANYTHING WITH HIS , HE SEXUALLY ASSAULTED THE VICTIM. WAS THERE ANYTHING THAT CONFIRMED THAT HE WAS THE PERPETRATOR OF THE SEXUAL ASSAULT?

YES. HER , THERE WAS DNA THAT WAS OBTAINED FROM THE VICTIM , AND FROM THE VAGINAL SWABINGS , AND THERE WAS A 13-MARKER MATCH , AS TO THE DEFENDANT. I BELIEVE ONE IN 15.1 QUADRILLION, AS TO THE MATCH , SO THERE WAS NO QUESTION THAT THE DEFENDANT , CONSISTENT WITH AT LEAST A PARTIAL AMOUNT OF HIS NOVEMBER 27 STATEMENT , YOU KNOW, NO QUESTION THAT HE WAS THE PERPETRATOR. HE HAD BEEN AT MISS BAILEY'S HOUSE AND HAD BRUTALLY RAPED HER AND MURDERED HER. IF THE COURT DOESN'T HAVE ANYTHING FURTHER , WE WOULD ASK YOU TO AFFIRM THE SENTENCE .

CHIEF JUSTICE: WE WILL TAKE THE REST OF THE CASE ON THE BRIEFS THAT HAVE BEEN FILED. THANK YOU. WE THANK YOU VERY MUCH. BEFORE I CALL THE NEXT CASE, I WANT TO WELCOME A GROUP OF STUDENTS FROM THE TRACE ACADEMY IN ORLANDO, FLORIDA. I UNDERSTAND THAT THEY ARE ESCORTED BY MARY ARCHER AND THAT THEY ARE ON A THREE-DAY VISIT TO THE STATE CAPITAL. I WANT TO ESPECIALLY COMPLIMENT THIS GROUP , IN AN ERA WHEN THERE IS MUCH CRITICISM ABOUT THE STATE OF CIVIC EDUCATION, IT IS TRULY INSPIRATIONAL TO SEE THESE STUDENTS BROUGHT TO THEIR STATE CAPITAL, TO SEE FIRSTHAND, HOW THEIR GOVERNMENT OPERATES, INCLUDING THIS BRANCH OF GOVERNMENT, SO WE WELCOME YOU AND WE HOPE THAT YOU HAVE A GREAT TIME , DURING YOUR VISIT TO TALLAHASSEE.