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## Michael Seibert v. State of Florida

NEXT CASE ON THIS MORNING'S CALENDAR IS SEIBERT VERSUS STATE OF FLORIDA. JUSTICE CANTERO APPEARS. GOOD MORNING.

MAY IT PLEASE THE COURT. MY NAME IS SCOTT SAKIN. I WAS APPOINTED BY THE TRIAL COURT, TO REPRESENT MICHAEL SEIBERT, WHO AS THIS COURT KNOWS, WAS CONVICTED OF FIRST-DEGREE MURDER IN A ONE-COUNT INDICTMENT, AFTER A JURY TRIAL, HE WAS, THE JURY RECOMMENDED BY 9-TO-3 THAT MR. SEIBERT BE SENTENCED TO DEATH, AND THE TRIAL JUDGE FOLLOWED THAT RECOMMENDATION, SENTENCING MICHAEL SEIBERT TO DEATH. THE ISSUES IN THIS CASE ARE, REALLY, TWOFOLD. THE PRIMARY ISSUE REGARDS THE SEARCH AND SEIZURE WHICH TOOK PLACE IN THIS CASE, AND THE FOCUS, REALLY, HAS TO BE UPON THE FACT THAT WHAT OCCURRED WITH THE POLICE WHAT WE DEEMED TO BE AN UNLAWFUL ENTRY INTO MR. SEIBERT'S RESIDENCE. IT IS WITHOUT DISPUTE THAT MICHAEL SEIBERT'S RESIDENCE, HE LIVED THERE. THIS IS WHERE IT OCCURRED AT. IT IS ALSO WITHOUT DISPUTE THAT THE POLICE ENTERED WITHOUT A WARRANT, SO IT WAS A WARRANTLESS SEARCH, AND THE STATE HAS ASSERTED THAT IT WAS BASED ON EXIGENT CIRCUMSTANCES.

CHIEF JUSTICE: THE FRAUD UNDER THIS ISSUE, WE HAVE A QUESTION IN CONNOR OF MIXED LAW AND FACT, BUT AS TO THE ISSUE OF WHETHER AN EMERGENCY EXISTED, IS THAT A QUESTION OF FACT THAT THE TRIAL COURT MADE A FACTUAL DETERMINATION, BASED ON ALL OF THE CIRCUMSTANCES, OR IS IT MORE OF AN OBJECTIVE ANALYSIS, BECAUSE YOU JUST ENLIGHTENED ME AS TO HOW WE SHOULD APPROACH THAT PARTICULAR ISSUE AS TO WHETHER AN EMERGENCY EXISTED.

YES. AS THE COURT KNOWS IN CONNOR, QUESTIONS OF HISTORICAL FACT, THE COURT GIVES GREAT DEFERENCE TO THE TRIAL COURT, IN TERMS OF THE ACTUAL FACTS OF WHAT TOOK PLACE, BUT IN TERMS OF APPLYING THE CONSTITUTIONAL LAW, THIS COURT SHOULD CONDUCT A DE NOVO REVIEW OF HOW THE COURT APPLIED THE LAW TO THE FACTS. FOR INSTANCE, IN THIS PARTICULAR CASE, FACTUALLY IT IS NOT IN DISPUTE THAT THE WITNESS SCREENED WILLIAM GREEN, AFTER BEING THERE AND PARTYING THERE WITH ME SAY THESE PEOPLE FOR MANY, MANY HOURS, LEFT THE PARTY FOR VARIOUS REASONS AND COULDN'T MAKE ENTRY BACK INTO THE APARTMENT WHERE MR. SEIBERT WAS LIVING, THAT ACE GREEN DID CALL THE POLICE AND THE POLICE DID RESPOND AND ACE GREEN TOLD THE POLICE AT SOME POINT THAT THE DEFENDANT WAS SUICIDAL.

WHAT DID HE TELL THE 911 OPERATOR?

HE TOLD THE 911 OPERATOR THAT HE THOUGHT -- THE 911 OPERATOR THAT HE THOUGHT MICHAEL SEIBERT WAS ACTING IRRATIONALLY AND HE THOUGHT THAT HE COULD BE SUICIDAL OR HURT HIMSELF.

AND THE OFFICERS CAME.

YES. THE OFFICERS RESPONDED.

AND ENCOUNTERED GREEN.

EXCUSE ME?

AND GREEN WAS THERE.

RIGHT. WHEN THE OFFICERS ARRIVED , MR. GREEN WAS THERE.

WAS THERE TIMING OF THE ELEMENT IN RESPONDING AT ALL?

IT COULD BE, BECAUSE THE ISSUES OF WHETHER OR NOT THE RESPONSE BY THE POLICE TOOK 5 MINUTES OR 15 MINUTES. THERE IS TESTIMONY WHICH GOES BOTH WAYS , BUT NEVERTHELESS WHEN THE POLICE ARRIVED , THEY DID CONFER WITH MR. GREEN. NOW , THE STATE IN THEIR BRIEF, TRYING TO ASSERT THAT MR. GREEN IS A CITIZEN INFORMANT. BURKES NEVERTHELESS THE POLICE HAD A VERY BRIEF DISCUSSION WITH MR . GREEN , AND DURING THE CONVERSATION WITH MR. GREEN , WE KNOW THAT MR . GREEN HAD BEEN UP MOST OF THE NIGHT. MR . GREEN , AS IT TURNS OUT , DOESN'T REALLY WORK. IS HE ON PROBATION. MR . GREEN HAS ALL OF HIS OWN BAGGAGE, BUT ONCE MR . GREEN GAVE THE INFORMATION TO THE POLICE, THAT MR . GREEN AT LEAST THOUGHT IN HIS OWN MIND FOR WHATEVER REASON THAT MR . SEIBERT WAS SUICIDAL --

BUT DID N'T HE ACTUALLY SAY THAT MR . SEIBERT SAID THAT HE WAS GOING TO COMMIT SUICIDE? I MEAN , THAT IS A LITTLE DIFFERENT, A LITTLE MORE FROM MR . GREEN THINKING HE MIGHT COMMIT SUICIDE , AS OPPOSED TO THE , HIM ACTUALLY SAYING IT . THAT HE WAS GOING TO COMMIT SUICIDE.

YOU ARE CORRECT. MR . GREEN DID TELL THE POLICE THAT MR . SEIBERT SAID THAT MR . SEIBERT MAY KILL HIMSELF . THAT IS IN THE RECORD. BUT ONCE THE POLICE GOT THERE AND THEY CONFERRED WITH MR. GREEN , WHAT I THINK HAS TO BE LOOKED AT IS WHAT , IF ANYTHING, DID THE POLICE CORROBORATE? WHAT IF ANY THING, DID THE POLICE LEARN THAT WAS INDEPENDENT OF MR . GREEN?

CHIEF JUSTICE: HOW WOULD , AGAIN , NOW , WE ARE TALKING ABOUT WHAT IS OBJECTIVELY REASONABLE , AS FAR AS WHETHER AN EMERGENCY EXISTED , AND YOU WOULD AGREE THAT , IF MR . SEIBERT HAD TURNED OUT TO BE SUICIDAL , THAT WOULD , WE WOULDN'T , THAT WOULD BE A CONCERN. YOU WOULDN'T WANT TO WAIT FOR SOMEONE, YOU WOULDN'T BE GETTING A WARRANT TO , YOU KNOW , AFTER IT CAME , WHETHER HE WAS COMMITTING SUICIDE OR NOT . MAYBE THEY WOULD BE CALLING , YOU KNOW, FOR BACK UP AMBULANCE, BUT WHAT COULD THEY REASONABLY BE DOING TO CORROBORATE WHETHER MR. SEIBERT WAS SUICIDAL ?

WELL , THEY DID SOMETHING HERE, AND WHAT THEY DID , THEY WENT TO THE DOOR OF WHERE MR. SEIBERT LIVED, AND WE HAVE NO GRIPE WITH THAT. WE BELIEVE THE POLICE DID WHAT THEY WERE SUPPOSED TO DO AND GO TO THE DOOR WHERE MR. SEIBERT LIVED.

CHIEF JUSTICE: BUT DON'T WE, NOW , GET INTO WHAT THE FACTUAL DETERMINATIONS ARE, BECAUSE YOU SAID THAT ONCE THEY SAW HE SEEMED TO BE OKAY, THAT WAS ENOUGH, BUT THEN THEY SAY THEY WERE CONCERNED, BECAUSE THEY DIDN'T SEE HIS ENTIRE TORSO. I MEAN , IT WOULD HAVE BEEN DIFFERENT, IF MR . SEIBERT HAD SIMPLY WALKED OUT THE DOOR , CLOSED THE DOOR AND SAID, HERE I AM. I AM FINE , AND THEN AT THAT POINT , THE POLICE WOULD HAVE NO REASON TO GO AND , I MEAN , AT LEAST I WOULD HAVE THOUGHT THAT THEY WOULD HAVE NO REASON TO GO INSIDE , IF HE CAME OUTSIDE AND CLOSED THE DOOR, BUT HE DID. HE OPENED THE DOOR , AND HE DOESN'T SHOW ALL OF HIS TORSO, SO ACCORDING TO POLICE, THEY CAUSED AN EXTRA CONCERN, CORRECT?

WELL , THAT IS WHAT THE POLICE SAY. WHAT OCCURRED WAS -- MR. CHIEF JUSTICE

BUT WHERE I AM GOING , THOSE ARE CREDIBILITY ISSUES AS TO IF THE , WHAT THE TRIAL JUDGE WEIGHS IN HAVING TO MAKE DETERMINATIONS ABOUT IT, CORRECT?

YEAH. THE TRIAL JUDGE, I DON'T BELIEVE THAT THOSE FACTS ARE IN DISPUTE, ANYWAY, IN TERMS OF WHAT HAPPENED INITIALLY, WHEN THE POLICE WENT UP TO THE DOOR.

ISN'T PART OF THIS SCENARIO THAT IT REALLY ISN'T UNLIKE, MAYBE, THE ISSUE THAT MAY BE RAISED IN OTHER CASES WITH ENTRANCES AND SEARCHES AND WHATSOEVER, IS THAT THERE IS ABSOLUTELY NOTHING PROTECTURAL HERE ABOUT WHAT THE POLICE ARE DOING, THAT THEY ARE ENTIRELY FOCUSED ON THIS EMERGENCY SITUATION AND THEIR CONCERN FOR THIS PERSON INSIDE THE APARTMENT THERE, SO DON'T WE HAVE TO VIEW THIS, REALLY, THROUGH THE EYES OF THOSE EMERGENCY RESPONDERS, AT THE TIME, AND WHAT IS PRESENTED TO THEM, BOTH, THROUGHOUT REPORTER PERSON THAT HAS CALLED THEM THERE, AND, ALSO, THROUGH THE CIRCUMSTANCES THAT THEY FACE IN GIVING THEM, REALLY, SOME DEFERENCE IN THAT RESPECT. THE OTHER SIDE OF THIS, OBVIOUSLY, IS THAT THEY COULD HAVE WALKED AWAY, AND NOW WHOEVER THOSE AUTHORITIES WERE, WOULD BE FACING SOME BIG LAWSUIT BY THE SURVIVORS OF THE PERSON THAT, THEN, TOOK HIS OWN LIFE INSIDE THAT APARTMENT, SO I AM HAVING DIFFICULTY SEEING THAT THE ORIGINAL ENTRANCE, HERE, IS TAINTED IN ANY WAY, THAT IT WASN'T SUFFICIENT CAUSE FOR THEM UNDER THESE EMERGENCY CIRCUMSTANCES, TO GO INTO THAT APARTMENT, TO BE CERTAIN THAT THIS PERSON IS ALL RIGHT.

THE REASON WHY WE ARE CERTAIN THAT WHAT THE POLICE DID WAS MORE THAN WHAT THEY SHOULD HAVE DONE WAS BECAUSE, WHEN MR. SEIBERT OPENED THE DOOR, HE INFORMED THE POLICE OFFICER THAT HE WAS OKAY. THERE IS NO EVIDENCE IN THE RECORD SHOWING THAT THE POLICE SAW ANY BLOOD. THERE IS NO EVIDENCE IN THE RECORD THAT MR. SEIBERT WAS NOT ABLE TO RESPOND TO THE POLICE. THERE WAS NO EVIDENCE IN THE RECORD THAT MR. SEIBERT WAS IMPAIRED IN ANY WAY, SUCH AS YOU WOULD SEE IN A DUI CASE, THAT HE WAS SLURRING HIS WORDS. THERE IS NOTHING IN THE RECORD TO SHOW --

BUT HE WOULDN'T OPEN THE DOOR, AND THEN HE, AND THEY ANNOUNCED THAT THEY WERE THE POLICE, AND THEN THEY HAD IN THEIR MIND, ACCORDING TO WHAT THEY ARE SAYING, THAT THIS FELLOW IS IN THERE, AND HE IS A DANGER TO HIMSELF, AND THEN HE OPENED THE DOOR SLIGHTLY AND SLAMMED IT, I MEAN, ALL OF THOSE CIRCUMSTANCES, SO FINALLY, THEY GET IT SO THEY CAN TAKE A LOOK AT HIM. I JUST HAVE A HARD TIME SEEING WHAT IS UNREASONABLE ON THAT.

BECAUSE WHEN MR. SEIBERT CAME TO THE DOOR INITIALLY AND OPENED IT ENOUGH, AS WE SAW, ABOUT FOUR OR FIVE INCHES, HOW LONG THAT CHAIN WOULD BE WHICH WAS ON THE DOOR, MR. SEIBERT TOLD THE POLICE THAT HE DIDN'T NEED ANY POLICE SERVICES.

CHIEF JUSTICE: BUT IN THE RECORD, AND THIS IS, AGAIN, WE ARE NOT THERE, THE OFFICER TESTIFIED THAT HE HAD ONLY BEEN ABLE TO SEE THE DEFENDANT'S TORSO. THE AREA WAS DARK. THEY WEREN'T CONVINCED THAT HE WAS ALL RIGHT, AND THAT ACCORDING TO STANDARD OPERATING PROCEDURE OF THE MIAMI BEACH POLICE DEPARTMENT, SEEING THE TORSO WAS NOT GOOD ENOUGH TO COMPLY WITH THAT SOP, AND ATTEMPTED SUICIDE CALL, SO I MEAN, GOING BACK TO THIS, WHERE WE ARE SO USED TO QUESTIONING WHETHER THE OFFICER, REALLY, IS DOING THIS BECAUSE THEY ARE GOING IN FOR ONE REASON BUT THEY, REALLY, HAVE AN OTHER REASON, AS JUSTICE ANSTEAD SAID, THERE IS NOTHING HERE THAT LOOKS LIKE, EVEN THAT THEY ARE TRYING TO OBTAIN ENTRY, BECAUSE THEY SUSPECTED SOMETHING ELSE WAS GOING ON.

NO, I DON'T BELIEVE THEY DID SUSPECT SOMETHING ELSE WAS GOING ON, BUT ONCE MR. SEIBERT CAME TO THE DOOR AND MR. SEIBERT WAS COHERENT --

HOW DO YOU EVALUATE THAT ON THE BASIS THAT SOMEBODY CLOSE TO HIM HAS TOLD THEM THAT HE SAID, JUST A FEW MINUTES BEFORE THAT, THAT HE WAS GOING TO TAKE HIS OWN LIFE.

ALL RIGHT. THE SAME , IN A SITUATION LIKE THAT , SIMILARLY, YOU KNOW , SURE , MAYBE ONE MINUTE HE IS GOING TO SAY I AM GOING TO KILL MYSELF, AND THEN THE NEXT MINUTE HE IS GOING TO SAY, NO , I AM ALL RIGHT, AND THEN WITH THE , SORT OF IN PARENTS , HE IS SAYING LEAVE ME ALONE SO I CAN KILL MYSELF.

BECAUSE THE ONLY INFORMATION THAT THE POLICE WERE OPERATING ON WAS WHAT THIS GUY, GREEN , HAD SAID.

ISN'T THAT ALL RIGHT TO HAVE THE OPPORTUNITY TO HAVE SOMEBODY THAT YOU CAN REACH OUT AND TOUCH AND GET A HANDLE ON , AND HE IS NOT GOING ANYWHERE, AND THAT IF HE IS GIVING YOU BAD INFORMATION OR WHATEVER , YOU HAVE GOT SOMEBODY TANGIBLE THERE THAT YOU CAN HOLD ACCOUNTABLE FOR THAT, SO THIS IS A PRETTY RELIABLE SOURCE OF INFORMATION TO THESE EMERGENCY RESPONDERS , IS IT NOT?

WELL , YES AND NO , BUT ONCE THEY WENT TO THE DOOR AND SAW THAT MR. SEIBERT WAS ABLE TO ANSWER THE DOOR. MR. SEIBERT WAS ABLE TO CONVERSE.

HE WAS ABLE TO ANSWER THE DOOR, BUT HE LEFT THE LOCKED CHAIN ON THERE , YOU KNOW, FOR THE POLICE , IS THAT CORRECT?

YES , HE DID. MR . SEIBERT OBVIOUSLY REJECTED ANY POLICE SERVICES AND DIDN'T WANT ANYTHING TO DO WITH THE POLICE. WE KNOW LATER ON WHY , OF COURSE, BUT AT THAT POINT --

HOW DO WE KNOW LATER ON WHY , EXACTLY, BECAUSE WE DON'T KNOW THAT THIS PERSON, AS YOU SAY LATER ON , WHY , BECAUSE THERE IS A BODY IN THERE THAT HE HAS KILLED AND DISMEMBERED , BUT WE STILL DON'T KNOW , OF COURSE , WHETHER HE WOULD HAVE TAKEN HIS OWN LIFE. MAYBE THAT WAS WHAT WAS NEXT, YOU KNOW, FOR WHAT WAS GOING ON HERE, BUT ARE YOU, ALSO , ASSERTING THAT THERE WAS A SEARCH INSIDE IN A , AN IMPROPER SEARCH INSIDE THE APARTMENT , ONCE THEY GOT INSIDE?

YES, I AM ASSERTING THAT , ALSO.

HELP ME WITH THAT , BECAUSE MY UNDERSTANDING OF THE WAY THE FACTS HAVE BEEN DESCRIBED BY BOTH OF YOU , IS THAT THE OFFICER , WHILE, RIGHT AFTER THE INITIAL ENTRY AND WHILE HE WAS, STILL, IN THAT SAME AREA , ESSENTIALLY, REALLY , JUST LOOKED AROUND AND COULD SEE INTO THE BATHROOM , YOU KNOW , THE BODY OF THE VICTIM. OR , WHATS , THE DISMEMBERED --, WHAT THE DISMEMBERED FOOT OR HAND.

YES.

DISMEMBERED FOOT. COULDN'T HE VIEW THAT FROM WHERE HE WAS, AFTER HE MADE INITIAL ENTRY?

ONCE THE POLICE MADE ENTRY INTO THE APARTMENT, AS YOU KNOW THEY FORCED THEIR WAY INTO THE APARTMENT, AND AFTER THEY FORCED THEIR WAY INTO THE APARTMENT, THEY WENT INSIDE . NOW , THEY HAD NO REASON TO BELIEVE THERE WAS ANYONE ELSE IN THE APARTMENT , BUT THEY ASSERTED THAT THEY WERE GOING TO LOOK AROUND THE APARTMENT AND SEE IF THERE IS ANYONE ELSE THERE, IF ANY OTHER PEOPLE WERE THERE.

THE OFFICER THAT SAW THE, WHAT WAS IT, A FOOT OR A HAND? WHAT? THE DISMEMBERED FOOT IN THE BATHROOM, IS THAT CORRECT?

YES, SIR.

ALL RIGHT. WHERE WAS THAT OFFICER STANDING ? WAS IT A MA N?

YE S. BOTH OFFICERS WERE ME N. YES.

WHERE WAS THIS OFFICER STANDING, WHEN HE SAW THAT DISMEMBERED --

IN THE RECORD , EXHIBIT NO. 48 IS A DIE GRAHAM OF -- IS A GUYING RAM. WHAT OCC URRERD WAS -- IS A DIAGRAM.WHAT OCCURRED IS THERE WERE TWO OFFICERS . ONE N AMED BALE S AS WE DISCUSSED IN THE BRIE F. BALES DEC LARED AT THE TR IAL THAT THE PURPOSE OF ENT ERING THE DE PARTMENT WAS TO MAKE SURE THAT THE DEFENDANT HIMSELF WAS NOT HURT , BUT ONCE THEY MADE ENTRY INTO THAT APARTMENT , THAT PURPOSE WAS ACCOMPLISHED --

LET' S GO BACK TO THE QUESTION BECAUSE MY QUESTION IS NOT A COMPLICATED ONE. WHERE WAS THE OFFICER THAT SAW THE DISMEMBERED BODY PART, STANDING , WHEN HE S AW THAT?

THE OFFICER , HE WASLOOKING FOR OTHER PEO PLE --

DON'T TELL ME ALL OF THE OTHER.I AM TRYING TO GET A LOCATION, YOU KNOW I TAKE ITTHAT THERE WAS A LIVING ROOM TO THIS APARTMENT.

YES.

AND YOU GO INTO THE LIVING ROOM.

YES.

WAS THE OFFICER STANDING IN THE LIVING ROOM WHEN HE SAW THIS?

THE OFFICER MOVED FROM THE LIVIN G ROOM AREA O VER TO THE BATHROOM AREA , LOOKING FOR OTHER PEO PLE.

SO THE OFFICER WENT INTO THE BATH ROOM?

YES. HE HAD TO GO INTO THE BATHROOM. BUT BEFORE HE WENT INTO THE BATHROOM --

THAT IS NOT --

LET ME EXPLAIN. ON HIS WAY TO THE BATHROOM , LOOKING FOR OTHER PEOPLE , ALTHOUGH THERE WAS NO EVIDENCE OF ANY PEOPLE BEING THERE , THE POLICE ALREADYKNEW THAT MR . SEIBERT WAS NOT INJURED , DURING THAT T IME FRAME , ONE OF THE OFFICERS , REICHMAN , WAS SEARCHING THE KITCHEN FORKNIVES OR SEAR CHING THE KITCHEN FOR WHATEVER , WHILE OFFICER BA ILS WENT OVER TO -- OFFICER BALES WENT OVER TO THE -- IT IS NOT THAT BIG OF AN APARTMENT.

A STUDIO APARTMENT.

YES. STUDIO APARTMENT, AND AS H E WENT OVER BY THAT PORTION, THAT IS WHERE OFFICER BALES PLAINLY SAW A FOOT S E TTING ON TO WHICH THE BATH TUB .

CHIEF JUSTICE: DID THE T RIAL COURT MAKE FINDINGS AS TO THE SCOPE OF THE SEARCH? BECAUSE, AG AIN, I THOUGHT THAT IT WAS THAT THEY WERE ESSENTIALLY STAN DING IN THE STUDIO APARTMENT , AND THAT BALES COULD SEE THE FOOT FROM SIX FEET AWAY , LOOKING TOWARDS THE BATHROOM AREA , THAT HE DIDN'T ACTUALLY GO TO THE BATHROOM .

BALES CLAIMED THAT HE COULD SEE THE FOOT IN THE BATHROOM, AND HE WAS NOT IN THE BATHROOM AREA. H OWEVER, AT THAT TIME , THEJUSTIFICATION FOR THE POLICE REMAINING IN

SIDE THE APARTMENT , WAS TO SEE IF ANYONE ELSE WAS THERE. CURSORY SEARCH TO SEE IF ANYONE ELSE WAS THERE.

WHY I S N'T THIS WHAT IS COMMONLY REFERRED TO AS SIM PLY A P LAIN VI EW THAT , IS THAT, ONCE HE GOT INTO THE LIVING ROOM O R THIS THING , AND HE DOES , HE JUST DOES A SCAN ALL THE WAY AROUND , AND APPARENTLY HE COULD SEE THIS BODY PART, YOU KNOW , FROM WHERE HE ORIG INALLY ENTERED. WHY ISN'T THIS, YOU KNOW,WHAT IS COMMONLY, AS I SAY , REFERRED TO AS PLAIN VIE W?

BECAUSE AT THIS POINT , THE POLICE ARE ALREADY , HAD ALREADY DETERM INED THAT MR . SEIBERT WAS NOT INJURED. MR. SEIBERT HAD NO B LOOD. THEY HAD SEEN MR . SEIBERT'S TORSO .

SO IS IT THE TIME ISSUE , THEN? IN OTHER WORDS THEY SHOULD HAVE BEEN IN AND O UT OF THERE, AND THEY EXTENDED THEIR STAY LONGER? IS THAT WHAT IT IS?

YES. THE EMERGENCY , THE SO-CALLED EMERGENCY HAD ALRE ADY BEEN INVADED. THEY ALREADY KNEW THAT MR . SEIBERT WAS NOT INJURED.

HOW LONG INTO THEIR ENTRYWAS , DID ANYBODY SAY, YOU KNOW, WE WERE IN THERE TWO MINUTES , ONE MINUTE? TWENTY MINUTES?

I BELIEVE THE TESTIMONY IS SE VERAL MINUTES . THERE IS NOT AN EXACT TIME, WHETHER IT WAS SIX MINUTES , TWELVE MINUTES.

CHIEF JUSTICE: I THIN K THE PROBLEM IS , I CAN SEETHE POINT IF, FOR EXA MPLE , THEY GET IN THERE. THEY DON'T SEE ANYTHING , AND NOW THEY THINK , WELL , WEHAVE GOT TO FIND IF THERE ARE MAYBE HE IS GOING TO T AKE P ILLS, S O NOW WE ARE GOING TO GO INTO THE BATHROOM, AND WE ARE GOINGTO OPEN UP THE MEDICINE CABINET, TO SEE IF HE HAS GOT PILLS IN THERE , OR WE ARE GOING TO GO AND NOW WE ARE GOING TO LOOK FOR KNIVES , AND THEY ARE LOOKING FOR KNIVES AND THEN THEY FIND THE MURDER WE A PON , BUT , ONCE , YOU GOT YOU WOULD AGREE THAT ONCE THEY SEE THE DISMEMBERED FOOT, NOW WE ARE IN A DIFF ERENT SITUATION, CORRECT?

YES. ONCE THEY SEE A DISMEMBERED FOOT.

TH EY DON'T JUST LEAVE THE APARTMENT.

ON CE YOU SEE A DISMEMBERED FOOT, THEY A REGOING TO INVESTIGATE F URTHER.

HE LE FT. HE LEFT THE APARTMENT.

HE? WELL , WANT WAS , ONCE THEY GO INSIDE , SEE , THE IMPORTANTPOINT I AM TRYING TO MAKE HERE, AND I HO PE THE COURT CAN FO LLOW ME HERE , IS ONCE HE WENT INSIDE , THE COURT HAS DETERMINED THERE IS AN EMERGENCY THERE FOR A RIGHT TO P USH THEIR WAY IN AND WE ARE PAST THAT POINT AND THEN HOW ABOUT FINDING THE FOOT. ONCE THEY WERE THERE, THEY DETERMINED, A LREADY, THAT MR. SEIBERT WAS NOT IN JURED. THEY HAD ABSOLUTELY NO PROBABLE CAUSE OR REASONABLE SUSPICION TO BELIEVE THERE WAS ANYONE ELSE IN THAT APARTMENT . ACE GREEN, THE - -

IF THEY HAVE A CALL FOR A SUICIDE ATTE MPT , A REN'T THEY JUSTIFIED IN LOOKING AROUND TO MAKE SURE THAT HE DOESN'THAVE ANY TO OLS OF SUICIDETHAT, THERE IS NOT A LOADED GUN ON A TA BLE THAT HE IS ABOUT TO USE OR A NOOSE THAT IS HE H A NGING FROM SOME KIND OF R ACK THAT IS HE IS A BOUT TO US E? IS HE JUSTIFIED IN DOINGTHAT?

I DON'T BELIEVE THEY AREJUSTIFIED IN SEARCHING THE APARTMENT AS THEY DID. IT IS AN

APARTMENT WHERE SOMEONE LIVED .

ONCE THEY GO INTO BEDROOMS AND OPEN DOORS AND GO INTO A ROOM THAT I S CLOSED, BUT IN A STUDIO APARTMENT, ARE THEY NOT JUSTIFIED IN JUST LOOKING AROUND, TURNING THEIR HEAD?

UNDER THAT , THEY CAN SEARCH EVERY CONTAINER AND EVERY SPOT.

I AM NOT TALKING ABOUT A CLOSED CONTAINER . I AM TALKING ABOUT WHERE THEY ARE STANDING , LOOKING AROUND TO MAKE SURE THAT HE DOESN'T HAVE ANY TOOLS THAT HE COULD USE TO COMMIT SUICIDE, WITHOUT OPENING ANY DOORS OR ANY CONTAINERS.

BUT THEY WENT FURTHER. WHILE THEY LOOKED --

AM I JUST ASKING THAT QUESTION. ARE THEY -- I AM JUST ASKING THAT QUESTION. ARE THEY JUSTIFIED IN DOING THAT?

ONCE THEY ENTERED AND DETERMINED THAT THE MAN WAS NOT ACTING IRRATIONALLY AND HE WAS NOT CUT, NO WEAPONS THAT THEY SAW , NO WEAPONS ON THE PREMISES AND NOT HAVING CONDUCTED A SEARCH.

THE BATHROOM DOOR WAS OPEN.

IT WAS OPEN. HE SAYS HE COULD SEE IT, OFFICER BALES TESTIFIED HE COULD SEE IT THROUGH A SIX-INCH OPENING, THE DOOR.

THAT IS WHERE THE , THE TESTIMONY WAS THAT WAS WHERE HE SAW THE SEPARATE FOOT.

HE SAW A FOOT THROUGH A SIX-INCH OPENING.

CHIEF JUSTICE: HE HASN'T EXTENDED, AND , AGAIN , THIS IS ALL WE GET , TO ME A VERY FACT SPECIFIC TESTIMONY HERE. IF WE SAY , YES -- A VERY FACT SPECIFIC TESTIMONY HERE. IF WE SAY , YES , THEY WERE JUSTIFIED TO GO INTO THE APARTMENT AND SPEND A GO MINUTE MAKING SURE HE WAS OKAY AND THAT THERE WASN'T ANYTHING OBVIOUSLY WRONG THAT WOULD CLUE THEM IN THAT THE SUICIDE WAS ABOUT TO OCCUR , THAT, THEN , THEY SHOULD HAVE LEFT , SO ISN'T THAT, AGAIN , A TRIAL COURT DETERMINATION THAT THEY DIDN'T EXCEED THE SCOPE OF THE INITIAL ENTRY , SIMPLY TO MAKE SURE THEY WERE OKAY , AND IT IS NOT THAT THE FOOT WAS LOCATED BY GOING INTO THE KITCHEN, BECAUSE I AM NOT SURE WHETHER THAT WOULD BE , BUT BALES IS JUST , HE IS RIGHT , STILL , WITHIN TALKING DISTANCE OF THE DEFENDANT, CORRECT?

YES. THE DEFENDANT IS IN THE LIVING ROOM AREA. BALES CLAIMS TO BE LOOKING FOR OTHER PEOPLE, AND MY POINT IS THERE IS NO EVIDENCE WHATSOEVER, ANY -- MR. CHIEF JUSTICE

IN LOOKING FOR OTHER OTHER PEOPLE -- IN LOOKING FOR OTHER PEOPLE, AGAIN WE GO BACK TO THIS FINITE SITUATION, BECAUSE AS JUSTICE WELLSAID, AT ONE POINT THE DEFENDANT LEAVES . HE RUNS OUT. IS THAT , WHAT IS THE BEST EVIDENCE THAT THE JUDGE FOUND -- THE BEST EVIDENCE THAT THE JUDGE FOUND , IN THE -- THE BEST TESTIMONY THAT THE JUDGE FOUND THAT , AT THIS POINT THAT IS IN THE LIGHT OF THE STATE, THAT COMING INTO THE APARTMENT AND SIMPLY LOOKING AROUND, AND THE WAY I HAVE THE IMPRESSION IS HE LOOKED THIS WAY TO THE LEFT AND THE RIGHT AND SEES THE BATHROOM DOOR AND SEES A FOOT!

BECAUSE WHAT THEY WERE DOING AT THAT POINT WAS NOT REACTING TO THE SO-CALLED EMERGENCY OF ATTEMPTED SUICIDE BY MR. SEIBERT , BUT INSTEAD, AT THAT POINT WE ARE

LOOKING AS THEY SAY , MAKING A PROTECTIVE SWEEP OR A CURSORY SWEEP , LOOKING FOR OTHER PEOPLE , WHEN THERE WAS NO REASONABLE SUSPICION , PROBABLE CAUSE OR ANY INFORMATION WHATSOEVER , FORMR. GREEN OR ANYONE , THATTHERE WAS ANOTHER PERSON OR ANYONE ELSE WAS PRESENT IN THAT APARTMENT.

SO IS THAT TO SAY THE ONLY THING THEY CAN DO IS THEY CAN ONLY HAVE EYE TO EYE CONTACT WITH THE PERSON IN THE APARTMENT AND NOT TURN THEIR HEAD AND SIMPLY LOOK AHEAD?

IF THEY ARE LOOKING IT IS ONE THING , BUT IF THEY CLAIMTHEY ARE LOOKING FOR OTHER PEOPLE WHEN THERE IS NO REASON TO BELIEVE THERE ARE OTHER PEOPLE THERE, THAT EXCEEDS THE SCOPE OF THEIR INQUIRY.

CHIEF JUSTICE: BUT IS THAT WHAT HE WAS DOING AT THE POINT THAT HE SEES THE FOOT , IS LOOKING FOR OTHER PEOPLE.

LOOKING FOR OTHER PEOPLE , AND WE ALREADY KNOW THATTHERE WAS NO EVIDENCE WHATSOEVER OF OTHER PEOPLE. THERE WAS NOTHING TO CORROBORATE AT THAT POINT , LOOKING FOR OTHER PEOPLE , THAT THERE WAS ANY SUICIDE ATTEMPT OR ANY INJURY WHATSOEVER TO ANYONE , AND THAT IS THE IMPORTANT POINT AND WHAT THE POLICE WERE DOING IN THE CURSORY SEARCH, LOOKING FOR OTHER PEOPLE -- IN THE CURSORY SEARCH, LOOKING FOR OTHER PEOPLE.

HE LPMED OUT , BECAUSE SUBSEQUENTLY WE KNOW 14 YEARS OF AGE ATTEMPTED SUICIDE, BROKE HIS ARMS , TRIED TO GET A LIGHT BULB TO CUT HIMSELF , HAD PRIOR HISTORIES OF PARTYING ALL NIGHT WITH COCAINE AND APPARENTLY DISMEMBERED A BODY. WHAT WERE THE POLICE SEEING ON THE RECORD BEFORE US, WHEN THEY CAME IN AND SEE SOMEBODY WHO WAS FOUND BY THE TRIAL JUDGE IN THE SENTENCING TO HAVE AN EMOTIONAL DISTURBANCE, A PERSONALITY DISORDER , WITH ANTISOCIAL FEAT URES, COMING IN AND SEEING SOMEBODY WHO WAS IN THESE CIRCUMSTANCES , WHAT WAS A REASONABLE PERSON OPEN OBSERVING FROM THE FACTS?

THE -- REASONABLE PERSON OBSERVING FROM THE FACTS?

THE POLICE WERE ONLY TOLDTHAT THERE HAD BEEN AN ATTEMPTED SUICIDE. ONCE THE POLICE MADE A FORCED ENTRY INTO THEAPARTMENT AND FORCED THEIR WAY, THEY SAW THERE WAS NO INDEPENDENT EVIDENCE WHATSOEVER OF HIM TRYING TO HURT HIMSELF, AND THERE WAS NO CORROBORATION OF ANY TYPE WHATSOEVER, OF HIM TRYING TO HURT HIMSELF.

WHAT WERE THEY, I MEAN , OBSERVING WHEN THEY ARE LOOKING AT THIS DEFENDANT WITH WHAT WAS ARGUED TO HAVE SEVERE MITIGATION , EMOTIONAL DISTURBANCE , PARTYING ALLNIGHT AND, AGAIN, IN THE PROCESS OF DISMEMBERING A HUMAN BEING -- DISMEMBERING A HUMAN BEING, WHAT WOULD THAT PERSON LOOK LIKE IN THE TESTIMONY?

POLICE DID NOT KNOW ANY BACKGROUND ON MR . SEIBERT AT THAT TIME , BUT ONCE THEY WENT IN THERE IN A SMALL APARTMENT IN AN APARTMENT COMPLEX THERE IN MIAMI BEACH, THERE WAS NOTHING TO SHOW THE POLICE THAT MR. SEIBERT AT THAT TIME WAS MENTALLY ILL AND MR . SEIBERT WAS A DANGER TO HIMSELF. I DON'T KNOW IF I FOLLOW YOUR QUESTION , JUSTICE BELL.AM I ANSWERING?

THEY ARE NOT LOOKING AT GRANDMAMOMESSETTING THERE KNITTING.

THAT'S RIGHT.

JUST AS JUSTICE PARIENTE WAS SAYING , IF WE TAKE THE LIGHT MOST FAVORABLE TO THE

STATE, WE HAVE WHAT SUBSEQUENTLY TURNED OUT TO BE A SEVERELY DISTURBED INDIVIDUAL, BUT I THINK JUST COMMON SENSE TELLS SOMEBODY IN THIS, EVEN A COMPLETELY RATIONAL PERSON IN THESE CIRCUMSTANCES, IS GOING TO LOOK TROUBLED AND ANXIOUS, AND THAT IS WHAT I AM TRYING TO FIGURE OUT.

THERE WAS NOTHING THAT THE POLICE TESTIFIED TO THAT, WHEN THEY FIRST WENT IN AND THEY FIRST SEE MR. SEIBERT, WHICH GAVE THE POLICE REASON TO BELIEVE THAT MR. SEIBERT WAS TRYING TO KILL HIMSELF. NOW, THEY THOUGHT MR. SEIBERT'S ACTIONS WHEN HE PUT A COUCH IN FRONT OF THE DOOR NOT TO LET THEM IN, THEY FELT THAT WAS ODD AND THEY MADE THEM WANT TO GO IN EVEN MORE BUT HAD MR. SEIBERT ON THE OTHER HAND DIDN'T WANT THE POLICE ATTENTION AND DIDN'T WANT THE POLICE. AT WHAT POINT CAN MR. SEIBERT REJECT THE POLICE FROM COMING ON TO THE PREMISES. HE DIDN'T WANT POLICE SERVICES AND DIDN'T WANT TO BE BOTHERED WITH THE POLICE AND HAD CLEARLY ARTICULATED TO THEM THAT HE WAS OKAY, DIDN'T NEED THE POLICE SERVICES.

SO ARE YOU, REALLY, ARGUING THAT, EVEN IF WE ACCEPT THAT THE POLICE COULD PUT THE BATON IN THE DOOR AND GO IN, THEY SHOULD NOT HAVE GONE ANY FURTHER THAN RIGHT THERE AT THE DOOR, WHERE THEY COULD SEE HIM FULLY?

THE POLICE CLAIM THAT THEY HAVE A POLICY THEY NEED TO SEE HIS TORSO, MORE THAN HIS TORSO, SEE HIS ARMS OR LEGS OR WHATEVER THEY WANTED TO SEE. THAT IS WHAT THEY CLAIM THE POLICY IS.

BUT ONCE THEY SAW THAT, NOTHING ELSE SHOULD HAVE TAKEN PLACE.

THEY HAD SEEN NOTHING AT ALL AND I INSIST UPON THE PHRASE THAT WAS INDEPENDENT OF WHAT MR. GREEN THIS HE TOLD THE POLICE OR THAT CORROBORATED -- MR. GREEN HAD TOLD THE POLICE OR THAT CORROBORATED ANYTHING THAT MR. GREEN HAD TOLD THE POLICE.

WOULD YOU, CLEAR UP THE RECORD, YOU REFER THIS AS A STUDIO APARTMENT ON MIAMI BEACH. WOULD YOU CLARIFY. IS IT A 8 BY 10?

YES, BIGGER THAN A 8 BY 10.

I DON'T RECALL.

THERE WAS A DIAGRAM WITH A KITCHEN AREA AND A BEDROOM AREA, A BEDROOM THAT WAS PARTITIONED OFF. IT WASN'T, I DON'T KNOW THE EXACT DIMENSIONS BUT IT CERTAINLY WAS NOT A TINY -- DIMENSIONS, BUT IT CERTAINLY WAS NOT A TINY STUDIO.

CHIEF JUSTICE: ARE THERE PHOTOGRAPHS OF THE APARTMENT?

YES, THERE ARE PHOTOGRAPHS OF THE APARTMENT. IT LOOKS JUST LIKE THIS AND YOU ALL HAVE IT. NUMBER 48. IT IS, I MENTION IT AND ADDRESS THAT, ALSO.

MY IMPRESSION FROM READING THE BRIEFS AND LOOKING AT THESE THINGS AND LOOKING AT THIS, AND WE WILL TAKE A LOOK AT THIS, IS IT IS REALLY NOT MUCH MORE THAN JUST BEING IN THE PRESENCE OF THE DEFENDANT AND THEN TURNING OF THE HEAD TO LOOK AT WHAT ELSE IS AROUND. IS IT MORE THAN THAT?

YES. BECAUSE --

WHAT IS MORE?

THE MORE IS THAT THERE ARE TWO OFFICERS THAT BOTH TRY TO LOOK FOR OTHER PEOPLE.

WHAT DID THEY DO , THEN , OTHER THAN SUR VEY THE ROOM? A ONE GOES INTO THE KI TCHEN --  
ONE GOES INTO THE KITCHEN . ONE OFFICER GOES IN TO THE KITCHEN

CHIEF JUSTICE: AGAIN, I F EEL LIKE W E ARE GOING AROUND IN A CIRCLE. THE ONE THAT FOUND  
THE FOOT , WAS THE UNDERSTANDING OF THE TESTIMONY IS THAT HE IS STILL TALKING WITH MR  
. SEIBERT, WITH THE DEFENDANT , AND HE LOOKS TOWARDS THE BATHROOM ARE THE --  
BATHROOM, WHICH IS SIX FEET FROM HIM, AND SEES THE FOOT THERE!

BALES BA CKS UP AND BEGANTO LOOK A ROUND , AND WH ILE BALES BACKED UP AND BEG AN TO  
LOOK AROUND , WHILE ZE ICHMAN IS IN THE KITCHEN , BALES BACKS UP AND AGAINST TO LOOK  
AROUND FOR OTHER PEOPLE, AND THAT IS WHEN HE SAW --

THE OFFICER IS ALREADY IN THE KITCHEN.

YES. BALES GOES AROUND TO L OOK FOR OTHER PEOPLE AND THAT IS WHEN BALES DISCOVERS  
THE FOOT. I NEED TO SAVE SOME TIME.

CHIEF JUSTICE: I UNDERSTAND AND THIS IS CERTAINLY A SUBSTANTIAL ISSUE. Y OUR BRIE F IN  
THIS CASE COVERED ALL YOUR PA INTS -- ALL YOUR POINTS , IN THAT YOU WERE AP POINT ED  
SPEC IAL COUNSEL.ARE YOU ALSO TRIAL COUNSEL?

NO. I WAS APPOINTED AFTER THE TRIAL COURT , ONCE THE PUBLIC DEFENDER , I WAS APPOINTED  
BY J UDGE B LAKE .

SA NDRA JAGGARD , ASSISTANT ATTORNEY GENERAL ON BEHALF THE ST ATE. IS THERE PAGE  
1311-TO-1312 OF THE RECORD , EVIDENCE THAT THE OFFICERS JUST PUSHED THEIR WAY INT O THE  
HOUSE. THEY HAVE GOT THE DEFENDANT AND HAVEN'T EVEN SPOKEN TO HIM AND THAT THEY  
BA RELY MOVE. AS HE T URNS AROUND AND T A KES A STEP, H E HA SN'T SPOKEN TO THE  
DEFENDANT YE T. ALL HE SAYS IS , IS THERE ANYBODY ELSE IN THE APARTMENT, AND HE TU RNS  
AROUND AND THERE IS A FOOT!

CHIEF JUSTICE: SO THE OTHER OFFICER ISN'T IN THE COURSE OF GOING INTO THEKITCHENEN?

MY UNDERSTANDING, YOUR HONOR, IS THAT HE IS STANDING AT THE E DGE OF KICHT EVEN IN  
THE STUDIO APARTMENT.HE IS NOT GOING I N -- KITCHEN , IN THE STUDIO APARTMENT.HE IS NOT  
GOING AROUND AND SEARCHING THE KITCHEN .

CHIEF JUSTICE: I THINKSEVERAL MEMBERS O F THIS COURT APPREC IATE THAT THEY WERE FACED  
WITH SOMETHING THAT JUSTIFIED GOING , C OMING INTO THE APARTMENT , BUT THEY, THEN, SEE  
HE I S O KAY . AND GOING ABOUT WHETHER THIS IS PLAIN VIEW OR NOT , THEY SAY THERE IS  
STILL CONCERNBECAUSE HE SA YS HE IS GOING TO COMMIT SUICIDE , HE HASN'T DONE IT YET.  
THEY, COULD THEY G O INTO , COULD THEY HAVE GO NE INTO THE BATHROOM , OPENED UP THE  
MEDICINE CABINET AND SEEN IF THERE WERE ANY PILLS IN THERE? COULD THEY HAVE GONE  
INTO THE BEDR OOM AREA , AND OPENED THE DRAWER AND SEE IF THEREIS A GUN OR A K N IFE ?  
COULD THEY GO INTO THE KITCHEN? OBVIOUSLY THERE ARE KNIVES IN THE KITCHEN. HOW,  
ONCE THEY SEE HE IS OKAY NOW, AND TALK TO HIM , WHAT IS THE ADDITIONAL JUSTIFICATION  
THAT THEY WANT TO SEE IF THERE ARE OTHER PEOPLE HERE.WHAT DO ES THAT HAVE TO DO W  
ITH IT, AND SO IF YOU COULD , I AM A LI TTLE CONCERNEDABOUT THE SCOPE OF THE SEARCH A  
FTER THE ENTRY.

THEY HAVEN'T SPOKEN TOHIM YET. NUMBER ONE. THEY HAVE PUSHED HIM IN. THEY HAVE GOT  
HIM DOWN , SITTING ON THE SOFA.THEY ARE GOING TO TALK TOHIM. THEY HAVEN'T SPOKEN TO  
HIM Y ET.

CHIEF JUSTICE: THEY PUSHED HIM DO WN?

THEY PUSHED HIM ON THE COUCH. THERE IS A COUCH BLOCKING THE DOO R. THEY PUSH IN AND GET , THIS IS NOT A BIG APARTMENT. THIS IS A STUDIO APARTMENT. THIS IS NOT A BEDROOM. THE BEDS ARE IN THE LIVING ROOM AREA. THEY GET HIM SEATED ON THE BED IN THE LIVING RO OM AREA. AFTER THEY HAVE HIM SEATED , THEY ARE GOING TO TALK TO HIM AND JUST TO MAKE SURE THERE IS NOBODY COMING OUT OF ANYTHING , THEY SAY IS THERE ANYBODY ELSE HERE, AND TURN , AND THEY ARE NOT SEARCHING THROUGH THIS APARTMENT, AS MY OPPONENT SAYS, AND THERE IS A TRIAL COURT FI NDING THAT THEY BARELY MOVED.

CHIEF JUSTICE: THAT IS WHAT I WAS TRYING TO GET AT , IS SO THE TRIAL COURT MAKES A FINDING THAT THIS PLAIN - VIEW SIGHTING OCCURS WHEN THEY ARE BARELY LY MOVED AND STILLIN THE PROCESS OF VERIFYINGIF HE IS OK AY.

YES, AND THE REASON THEY DON'T LE AVE IS THEY SEE THAT THERE IS NO PHYSICAL ENTRY , THEY WOULD LIKE TO TALK TO HIM AND SEE IF HE I S SLURING HIS SPEECH OR SEE IF HE IS RAMBLING OR INCOHERENT. WHAT THEY ARE CONFRONTED WITH IS SOMEONE WHO SAYS HE IS GOING TO KILL HIMSELF. THERE IS NO DISPUTE IN THE RECORD THAT THE DEFENDANT TOLD MR . GREEN HE WAS GOING TO KILL HIMSELF. THEY HAVE GONE UP TO THE DOOR AND KNOCKED ON THE DOOR FOR FOUR OR FIVE MINUTES ANDTHE PERSON CAME UP AND LOOKED THROUGH THE PEOPLE WHO AND HASN'T SAID A WO RDTO THEM AND THEY BANK ON THE DOOR. THEY CALL THE DEFENDANT BY N AME AND SAY WE HAVE INFORMATION YOU ARE SUICIDAL. WE NEED TO TALK TO YOU. HE OPEN S THE DOOR A C RACK AND SAYS I AM OKAY AND SLAMST THEY THEN SAY THAT IS NOTENOUGH. WE NEED TO SEE ALL OF YOU AND WE NEED TO MAKE SURE YOU ARE OKAY, AND THEY ARE GOING TO PUT THE A BATON IN THE DOOR SO IT DOESN'T GET SLAMMED AGAIN. THE DOOR OPENS. THEY GO TO PUT THE BATON. THE DEFENDANT GOES TO TRY TO CLOSE THE DOOR AND THEY PUSH PAST THE SOFA THAT I S PUSHED PAST THE DOOR THAT THE DEFENDANT PUT ON THE SOFA AND THE OFFICER IS SI MPLY GOING TO TALK TO HIM AND SAYWHAT IS G OING ON. WHY DID YOU TELL YOUR ROOMMATE, MR. GREEN IS , A LSO , A RESIDENT OF THIS APARTMENT , WHY DID YOU TELL YOUR ROOMMATE THAT YOU WERE GOINGTO KILL YOURSELF? WHAT IS GOING ON HERE? THEY HAVEN'T EVEN HAD THAT DISCUSSION YET. ALL THEY HAVE MAN AGED TO DO IS GET HIM SEATED AND LOOK AROUND, THEMSELVES , TO MAKE SURE THERE IS NOBODY THERE, AND THEY SEE THE FOOT, AND THEY WEREN'T EXPECTING AFOOT!

CHIEF JUSTICE: WELL , I GUESS THIS IS MA YBE SL ITTING HAIRS, BUT WHAT IS -- SPLITTING HA IRS, BUT WHAT IS , AS RELATES TO SUICIDE THAT THEY ARE IN THERE, WHAT ISTHE RELEVANCE OF WHETHER THERE ARE OT HER PEOPLE IN THE APARTMENT , AS MR . SAKINPOINTED OUT , THE RE WAS NO INDICATION THAT THERE WERE OTHER PEOPLE IN THE APARTMENT. THAT WASN'T WHAT THE CONCERN WAS.

RELEVANCE , YOUR HONOR, THAT THEY ARE ABOUT TO ST AND THERE AND TALK TO THE DEFENDANT ABOUT WHAT ISGOING ON , AND THEY DON'T WANT SOMEBODY COMING UP BEHIND THEM AND ATTACKING THEM AS THEY ARE DOING IT .

CHIEF JUSTICE: A SAFETY ISSUE?

OFFICER SAFETY ISSUE.

IT WAS TESTIFIED AS AN OFFICER SAFETY ISSUE?

THEY AS KED ABOUT IT AND WERE PLA NING TO LOOK AROUND AND SEE IF THERE WERE ANYINSTRUMENTS OF SUICIDE OUT AND AVAILABLE AND TO TRY TO TALK TO THE DEFE NDANT AND TRY TO AS SESS HIS ME NTAL STATUS AND SEE IF WE NEED TO "BAKER" ACT THIS PERSON , ANDAS A MA TTER OF OFFICERSAFETY, BEFORE THEY HAVE THAT CONFIRMATION , THEY TURN AND SEE THE FOOT!

CHIEF JUSTICE: LET ME GIVE YOU TWO VARIATIONS OF THIS CASE. MR. GREEN CALLS THE POLICE AND SAYS MY ROOMMATE IS IN THERE. THERE WAS AN OTHER GIRL IN THERE AND I AM REALLY WORRIED THAT SOMETHING HAS HAPPENED TO THIS GIRL, BECAUSE, WITH WOULD THE SAME SITUATION --, WOULD THE SAME SITUATION BE THAT, ENTRANCE TO THE APARTMENT? I AM GOING, TRYING TO UNDERSTAND TO WHAT EXTENT THEY NEED TO VERIFY THE RELIABILITY OF THE REPORTER OF THE TIP, BECAUSE THINKING OF CIRCUMSTANCES, PEOPLE WANT TO JUST HARASS THEM, WHEN ALL THEY NEED TO DO IS SAY, HEY, MY FRIEND IS ABOUT TO COMMIT SUICIDE AND THE POLICE CAN JUST GO INTO APARTMENTS. SO WHAT IS THAT SITUATION?

AGAIN, THEY DIDN'T INITIALLY ATTEMPT TO ENTER THE APARTMENT. DURING THE FIRST DOOR OPENING, THEY ARE NOT TRYING TO PUSH THE DOOR OPEN. THEY WANTED TO TALK TO THEM. IF HE HAD COME OUT AND SHUT THE DOOR AND TALKED TO THEM AND EXPLAINED THE SITUATION, THE STATE WOULD HAVE A PROBLEM WITH THEM GOING IN. THAT IS NOT WHAT HAPPENED. HE DOESN'T IMMEDIATELY ANSWER THE DOOR. HE, INSTEAD, COMES OUT AND LOOKS THROUGH THE PEOPLE WHO.

THAT IS, THAT SORT OF INDEPENDENT CORROBORATION, THEY ARE CONCERNED THAT HE IS --

WELL, UNDER YOUR MARSHAL CASE WHEN YOU HAVE AN IDENTIFIED CITIZEN INFORMANT, THEY ARE RELIABLE, EVEN AS MY OPPONENT IS TEMPTING TO CLAIM -- ATTEMPTING TO CLAIM THAT THEY MAY HAVE HAD A BONE WITH THE DEFENDANT. MARSHAL SAYS REPORT OF A CRIME. THIS ISN'T A REPORT OF A CRIME. THIS IS A REPORT OF COME AND CHECK ON MY ROOMMATE'S HEALTH AND SAFETY. THAT IS ALL THE POLICE WERE TRYING TO DO HERE, AND IT WAS STANDARD OPERATING PROCEDURE NOT ONLY TO SEE THE BODY AND MAKE SURE THAT WE DON'T HAVE ANY PHYSICAL INJURY BUT TO SEE AND SPEAK TO THE PERSON, AND THEY HADN'T ACHIEVED THAT YET. THIS IS ALL IN THE APARTMENT, ON THE SOFA, ANYBODY ELSE HERE, GOING TO TALK TO HIM, SEE WHAT HIS MENTAL STATUS IS, AND THEY FIND THE FOOT! AND THE DEFENDANT, THE OFFICER WHO FINDS THE FOOT IS QUITE SHOCKED AND STARTS SPUTTERING AND STUTTERING AND CALLS OUT THE WRONG POLICE CODE AND CALLS OUT THE RIGHT POLICE CODE, AND BY THE TIME HE TURNS AROUND, THE DEFENDANT, HIS PARTNER IS IN THE HAUL.

THIS IS AN APARTMENT WITH ONE ROOM AND A -- IN THE HALL.

THIS IS AN APARTMENT WITH ONE ROOM AND A BATHROOM, RIGHT?

THERE MAY HAVE BEEN SOME DIVIDERS, AND THERE IS A CLOSET THAT APPEARS TO BE ACROSS FROM THE BATHROOM, BUT IT IS ONE ROOM. IT IS NOT A HUGE, PATALIAL ESTATE WHERE THEY ARE GOING INTO OR OTHER ROOMS.

WHAT IS THE CONDITION OF THIS ROOM?

THAT THE DOOR WAS PARTIALLY SHUT AND THAT THE OFFICER SAW THE FOOT AS HE TURNED HIS HEAD TO LOOK AROUND.

WAS THERE A LIGHT ON IN THE BATHROOM? DO YOU RECALL?

I DON'T BELIEVE WHETHER THE LIGHT WAS ON OR OFF. IT WAS DAYLIGHT. IT WAS AROUND ELEVEN O'CLOCK IN THE MORNING.

CHIEF JUSTICE: THE OFFICER SAID THAT THE APARTMENT WAS, WHEN THEY OPENED IT UP, THAT THE APARTMENT WAS DARK, THE AREA WAS DARK, SO YOU DON'T KNOW, I MEAN, THAT WOULD BE, AGAIN, A CREDIBILITY ISSUE, BUT THE TRIAL COURT NEEDED TO DETERMINE WHETHER --

AND THE TRIAL COURT DID DETERMINE THAT THE OFFICER -- MR. CHIEF JUSTICE

BUT IT WASN'T, LIKE, COME ON , YOU CAN'T SEE A FOOT IN THE BATHROOM FROM THIS MANY FEET A WAY.

NO. THE TRIAL COURT'S FINDING IS THAT THE OFFICER BA RELY MOVED . IF THE COURT HAS NO OTHER QUESTIONS , THE STATE RESPECTFULLY REQUESTS YOU AFFIRM. MR. CHIEF JUSTICE

REBUTTAL.

YES. IF YOU, IN LOOK OVER THE BRIEF ON PAGE 62 OF THE BRIEF , I SPECIFICALLY PUT IN THERE WHAT PAGES OF THE TRANSCRIPT, OF WHAT TOOK PLACE, AND IS SAYS HERE SPECIFICALLY THAT, THE DEFENDANT OPENED THE DOOR , INITIALLY INFORMED THE OFFICERS HE WAS OKAY , AND THEY COULD GO BECAUSE THERE WAS NO PROBLEM . AT NO POINT WAS HE EVER ASKED TO STEP OUTSIDE. AS A MATTER OF FACT , OFFICER BALES TOLD THE DEFENDANT, THROUGH THE CLOSED DOOR, IT WAS NECESSARY FOR THE OFFICERS TO SEE THE DEFENDANT, ONE WAY OR ANOTHER , WE WILL SEE YOU , AND THAT IS FROM PAGE 1038. IN FACT , SERGEANT ZEICHMANN INFORMED THE DEFENDANT THAT, IF THE DEFENDANT DID NOT OPEN THE DOOR, THE OFFICER WOULD OBTAIN A KEY AND OPEN THE DOOR WITHOUT THE DEFENDANT'S POSITION. THE POLICE WERE GOING TO MAKE ENTRY INTO THAT APARTMENT , AND ONCE THEY MADE THE ENTRY , OUR POSITION REMAINS THAT THEY LOOKED AROUND FOR OTHER PEOPLE ALTHOUGH THERE WAS NO REASON TO BELIEVE THERE WERE OTHER PEOPLE, AND UNDER THE POLICE THEORY HERE , BASED ON ANY --

DO YOU AGREE THAT THE TRIAL COURT MADE THE FINDING THAT THE STATE IS SEEING THAT THE TRIAL COURT MADE , AS TO WHAT HAPPENED AS FAR AS FINDING THE FOOT?

THE TRIAL COURT MADE A FINDING THAT THERE WAS LITTLE MOVEMENT BY THE OFFICER. HOWEVER , I JUST WANT TO POINT OUT THAT THE OFFICER , THE TESTIMONY WAS THAT THE OFFICERS WERE INVOLVED , LOOKING FOR OTHER PEOPLE. SO ALTHOUGH THE TRIAL COURT MADE THAT FINDING , THIS COURT, IN APPLYING THE LAW , I THINK IT IS CLEAR THAT WHAT THE OFFICERS WERE DOING EXCEEDED THE SCOPE OF THE ENTRY INTO THE PREMISES THERE

AND IS THE STATE CORRECT THAT THE SEQUENCE OF THIS EVENT THAT THEY CAME IN , THEY HAD , SEIBERT SITTING ON THE COUCH, AND THEN THEY LOOKED AROUND AND SAW THE FOOT ? HE TOOK OFF.

THEY CAME IN. THEY HAD SEIBERT SIT DOWN. WHILE SEIBERT WAS SITTING DOWN, THAT IS WHEN THE POLICEMAN, SEARCHING THE KITCHEN, THAT IS WHEN DETECTIVE BALES OR OFFICER BALES WENT LOOKING FOR OTHER PEOPLE IN THE APARTMENT. THEN SHORTLY THEREAFTER , IS WHEN MR . SEIBERT RAN OUT OF THE APARTMENT.

HOW WOULD YOU CHARACTERIZE THE ENTRY? WE KNOW THAT THERE WAS THE KNOCK. AND THE OPENING WITH THE CHAIN ON .

YES, SIR.

AND THEN THE CLOSING OF THE DOOR. AND THEN, AGAIN, IT OPENED THE SECOND TIME.

RIGHT. WHEN IT OPENED UP THE --

THE SECOND TIME THEY INSERT A BATON.

YES.

DO THEY , THEN , BREAK THE CHAIN TO GO IN? WAS THE CHAIN ON? IS THAT FULLY DESCRIBED

IN THE RECORD?

I BELIEVE WHAT HAPPENED , ONCE THEY PUT THE BATON IN , THE CHAIN BROKE , THE DOOR OPENED.

THEY BROKE THE CHAIN TO GO IN, IS THAT YOUR --

THEY DIDN'T BREAK THE FRAME OF THE DOOR BUT THEY BROKE THE CHAIN , AND WHEN THEY TOLD HIM WE ARE GOING TO COME IN WITH OR WITHOUT YOUR PERMISSION, HE MADE IT CLEAR THAT HE DID NOT WANT THEM TO COME IN.

IS IT CLEAR THAT THE PERSON SEEKING ASSISTANCE OF THE POLICE WAS THE CO-OCCUPANT OF THIS APARTMENT.

HE RESIDED THERE. HE DIDN'T PAY RENT BUT HE RESIDED THERE AND LIVED AT THAT APARTMENT, ALSO. THE POLICE DIDN'T KNOW ANYTHING ABOUT HIM, AND I WANT TO POINT OUT --

THE POLICE KNEW THAT HE WAS THE CO-OCCUPANT OF THE APARTMENT .

THEY KNEW HE LIVED THERE , ALSO , BUT THEY ALSO KNEW THERE WAS NO ALLEGATION OF ANY TYPE OF WEAPONS THERE.

WASN'T THERE SOMETHING ABOUT A KNIFE?

A KNIFE IN THE KITCHEN , YES.

DIDN'T THE ROOM MATE SAY THAT HE WASN'T AWARE OF ANY GUNS, BUT HE WAS AWARE OF A KNIFE IN THE KITCHEN THAT COULD BE USED TO KILL SOMEBODY.

I THINK HE SAID THERE COULD BE A KNIFE IN THE KITCHEN , BUT I GUESS THERE IS A KNIFE IN THE KITCHEN.

HE IS NOT TALKING ABOUT THERE BEING A KNIFE IN THE KITCHEN , YOU KNOW, THAT HE IS A WHITTLE ERROR SOMETHING LIKE THAT -- A WHITTLES , OR SOMETHING LIKE THAT. THAT HE IS TALKING ABOUT THERE IS A KNIFE IN THE KITCHEN, IN THE CONTEXT OF IT MIGHT BE USED AS A SUICIDE WEAPON.

HE TOLD THEM THAT THERE WAS NO FIREARMS. THAT THERE COULD BE A KNIFE OR KNIVES, ACTUALLY, IN THE KITCHEN , AND HE ALSO SAID THERE WAS A KNIFE IN THE FLOWER POT, SO THEY ACTUALLY ADDRESSED THAT THERE WAS A KNIFE SOMEWHERE THERE, IN THE PREMISES.

THE REASON THAT HE WAS TELLING THEM THAT , THOUGH , IS HE WAS CONCERNED THAT THAT COULD BE USED AS A SUICIDE WEAPON.

WELL, THE POLICE ASKED HIM IF THERE IS ANY WEAPON AND HE SAID THERE IS NO FIRE ARMS OR GUNS IS WHAT HE SAID , THAT THERE COULD BE A KNIFE. THAT WAS THE RESPONSE OF MR . GREEN. BUT MR . GREEN , ALSO , TOLD THE POLICE THERE WERE NO OTHERS INVOLVED. ACTUALLY IT WAS NEVER EXPRESSED ACTUALLY WHETHER THERE WERE ANY OTHER OCCUPANTS IN THE APARTMENT OR NOT. I WANT TO MENTION BRIEFLY, I HAVE SEVERAL ARGUMENTS THAT I AM KNOWING THE GOING TO GET ON FOR AND I KNOW THE -- TO GET TO, AND I KNOW THE COURT IS GOING TO RELY UPON THE BRIEF -- MR. CHIEF JUSTICE

BECAUSE MS. JAGGARD DIDN'T HAVE A CHANCE TO ADDRESS IT , AND I THINK YOUR BRIEF IS ADEQUATE ON IT , IT IS NOT REALLY THE PURPOSE OF REBUTTAL.

OKAY.I DIDN'T GET INTO THAT BEFORE, SO UNLESS THERE ARE ANY OTHER QUESTIONS, I WILL RELY UPON THE BRIEF AND ASK THE COURT TO REVERSE THIS CASE AND REMAND BACK TO THE TRIAL COURT FOR A NEW SENTENCING PHASE.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL TAKE ITS MORNING RECESS OF 15 MINUTES.

MARSHALL: PLEASE RISE.