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**Juan Raul Cuervo v. State of Florida**

**SC06-1156**

>> ALL RISE, PLEASE.  
HEAR YE, HEAR YE, HEAR YE.  
THE SUPREME COURT OF FLORIDA  
IS NOW IN SESSION.  
ALL WHO HAVE CAUSE TO PLEA  
BEFORE THIS COURT, GIVE  
ATTENTION, AND YOU SHALL BE  
HEARD.  
GOD SAVE THESE UNITED STATES,  
THE GREAT STATE OF FLORIDA  
AND THIS HONORABLE COURT.  
>> GOOD MORNING.  
>> WELCOME TO ORAL ARGUMENT  
CALENDAR FOR FEBRUARY 13,  
THE FIRST CASE IS CUERVO vs.  
STATE OF FLORIDA.  
READY TO PROCEED?  
GOOD MORNING, YOUR HONOR AND  
CHIEF JUSTICE.  
MAY IT PLEASE THE COURT.  
I REPRESENT MR. CUERVO WHICH  
AFFIRM THE DENIAL OF HIS  
MOTION TO SUPPRESS.  
I'M FROM OSCEOLA COUNTY.  
THE ISSUE BEFORE THE COURT  
IS WHETHER MR. CUERVO  
UNAMBIGUOUS REQUEST TO  
REMAIN SILENT WAS  
SCRUPULOUSLY HONESTORDBY  
LAW ENFORCEMENT.  
CAN WE FOCUS ON THAT JUST A  
LITTLE BIT WITH REGARD TO  
THE TRANSLATION AND WHAT  
THAT ACTUAL STATEMENT IS IN  
THE SPANNISH VERSION.  
IS IT REALLY A FORGONE  
CONCLUSION THIS IS  
UNAMBIGUOUS, WHAT THAT  
STATEMENT IN THE FOREIGN  
LANGUAGE.  
THE FIFTH DISTRICT THEIR  
INTERPRETATION WAS THAT  
MR. CUERVO SAID I DON'T WISH  
TO DECLARE ANYTHING.  
AND DURING THE PRESS -- YOU

READ THE TRANSCRIPT ON THE MOTION TO SUPPRESS THE PAIN RECORDER WAS PLAYED BACK SEVERAL TIMES.

AND DEPUTY GARCIA WHO WAS THE INTERPRETER DURING THE INITIAL INTERVIEW WITH MR. CUERVO INTERPRETED AS I WISH I DON'T WANT TO DECLARE ANYTHING.

NOW THE INTERPRETER THAT WAS AT THE MOTION TO SUPPRESS AND MR. SPEAKER CUERVO'S TKPHAF INTERPRETED AS I DO NOT WANT TO -- I DON'T WANT NOTHING.

SOMETHING ALONG THOSE LINES WITH BY THE LOWER COURT ADOPTED AND FOUND TO BE AMBIGUOUS.

GO TO THE FIFTH DISTRICT THEIR READ OF THE CASE WAS THAT MR. CUERVO STATED I DO NOT WANT TO DECLARE ANYTHING.

WHICH WE CONTEND IS MORE REASONABLE INTERPRETATION AND IS UNAMBIGUOUS.

WE BELIEVE THE FIFTH DISTRICT ERRED IN FINDING THAT STATEMENT WAS UNAMBIGUOUS.

I ACKNOWLEDGE THERE'S SOME DISCREPANCY OF THE ACTUAL INTERVIEW AND THERE WAS SOME CONFLICT IN THE MOTION TO SUPPRESS HEARING ALSO AS TO WHAT THE PHRASE ACTUALLY MEANT.

BUT THE DEFENDANT ALSO ADOPTED THE TRANSLATION I DO NOT WANT TO DECLARE ANYTHING.

HE'S READING -- THE TRANSLATOR WAS READING FROM A PRESET -- IN SPANISH THE LIST THAT WAS INITIALLY INITIALED.

WASN'T THAT IN SPANISH.

>> THAT WAS IN SPANISH, CORRECT.

WHAT WAS THE SPANISH STATEMENT THAT HE WAS RESPONDING TO?

>> THE SPANISH STATEMENT  
THAT -- ON THE WRITTEN FORM?

>> YES.

WASN'T THAT WHAT WAS BEING  
ASKED?

>> WELL HE DID SAY HE  
UNDERSTOOD HIS WRITE TO  
REMAIN SILENT.

>> AT THAT POINT WHEN HE'S  
ASKED THE QUESTION WHAT WAS  
THE QUESTION THAT THE  
TRANSLATE O ASKED HIM IN  
SPANISH?

-- TRANSLATOR ASKED HIM IN  
SPANISH.

>> THE QUESTION THE  
TRANSLATOR ASKED HIM IN  
SPANISH AT WHAT POINT.

I'M NOT SURE --

>> WHEN HE RESPONDS WITH I  
DON'T WANT TO DECLARE  
ANYTHING IS THAT THE  
TRANSLATOR TOLD -- AND I  
MEAN BY TRANSLATOR I MEAN BY  
GARCIA --

>> DEPUTY GARCIA, YES.

>> HE IS TOLD THEN THAT HE  
DOESN'T WANT TO TALK  
ANYMORE.

>> RIGHT THAT'S DEPUTY  
GARCIA'S UNDERSTANDING OF  
MR. CUERVO'S RESPONSE.

>> ISN'T THAT REALLY THE  
VERSION THAT WE HAVE TO GO  
WITH IS WHAT DETECTIVE  
GARCIA ACTUALLY RELATED TO  
THE OTHER DETECTIVE.

>> AGREE.

I BELIEVE THAT'S THE REALITY  
THAT THE STATE CREATED AND  
THE REALITY THEY WERE  
WORKING WITH.

WHAT DEPUTY GARCIA  
TRANSLATED FOR THE BENEFIT  
OF DETECTIVE.

>> THAT'S A CLEAR STATEMENT  
HE DIDN'T WANT TO TALK TO  
US?

>> CORRECT.

>> NO THIS STATEMENT WAS  
MADE IN THE PROCESS IN WHICH  
GARCIA WAS GOING THROUGH THE  
MIRANDA FORM WITH HIM; IS  
THAT CORRECT?

>> HE HAD NOT COMPLETELY GONE THROUGH ALL THE FORMS AND GOTTEN THEM INITIAL AND SIGNED.

IS THAT CORRECT?

>> I DON'T THINK THAT CAN BE EXACTLY DETERMINED FROM WHAT WE HAVE AVAILABLE HERE.

THE DETECTIVE WAS CONCERNED HE HADN'T INITIALED.

I APPEARED DEPUTY GARCIA DID READ TO HIM AT THAT POINT AND HE INDICATED THAT HE UNDERSTOOD WHAT HIS RIGHT WERE.

BUT DEPUTY PALMARY WAS CONCERNED HE DIDN'T INITIAL.

>> I'M SAYING THE NORMAL COURSE OF THE PROCESS FIRST ASKED HIM HAVE YOU TALKED TO ANYBODY ELSE?

HE SAID NO.

LET ME READ YOUR RIGHT.

HE READ HIM HIS RIGHT.

THE NORMAL COURSE OF BUSINESS THEY GET THEM TO INITIAL AND SIGN.

AND THEN AFTER THEY BEGIN THE DISCUSSION.

>> CORRECT.

IT'S MY UNDERSTANDING HOW THAT'S -- THAT WOULD TYPICALLY OCCUR YES.

IT WAS IN THE PROCESS OF PRIOR TO THE INITIALING THAT THIS DISCUSSION --

>> YES.

>> THIS COURT HAS INDICATED!!!!!!!!!!!!!!!!!!!!!!

INDICATED -- LET ME TELL YOU WHAOU WE'RE HERE.

THIS COURT AND DISTRICT COURTS IN THIS STATE HAVE

INDICATED THAT THE STATEMENTS THAT WERE

UNAMBIGUOUS THAT A QUESTIONING OF A SUSPECT

MUST BE SCRUPULOUSLY HONORED.

YOU DON'T BELIEVE THIS HAPPENED.

THEREFORE THE TRIAL OUR ERRED IN NOT SUPPRESSING THE CONFESSION.

>> WHAT IS THE PRECISE RULE

ON THAT?

IS IT THAT ONCE A DEFENDANT  
UNEQUIVOCALLY STATES HIS  
DESIRE NOT TO SPEAK AT ALL  
THAT THE INTERROGATION MUST  
CEASE?

>> THAT'S CORRECT, YOUR  
HONOR.

HOW WE DEFINE FOR THESE  
PURPOSES WHAT AN  
INTERROGATION IS?

BECAUSE I WOULD ASSUME THAT  
THE RULE DOESN'T PROHIBIT AT  
LEAST ASKING DO YOU WANT TO  
HAVE A GLASS OF WATER.

DO YOU NEED TO GO TO  
BATHROOM?

NOT ALL QUESTIONING MUST  
CEASE ONLY AN INTERROGATION  
MUST CEASE.

>> I AGREE WITH THAT.

AN INTERROGATION WOULD BE A  
QUESTION THAT YOU ILICIT IN  
AN INCRIPPLENATING  
RESPOND -- RESPONSE.

I THINK YOU'RE RIGHT ON  
THAT.

AND TELL ME WHERE IN THE  
FOLLOWING QUAL QUE WITH THE  
DEFENDANT WHERE THERE'S  
QUESTIONS THAT -- COLLOQUY  
WITH THE DEFENDANT WHERE  
THERE'S QUESTIONS FOR AN  
INCRIMINATING RESPONSE?

>> I THINK THE -- I DOESN'T  
HAVE TO BE A QUESTION, BUT  
THE ENVIRONMENT THAT HE WAS  
SUBJECTED TO -- HE TWICE  
STATED HE DIDN'T WANT TO  
TALK.

AND DETECT ACTIVE PALMARY AT  
THAT POINT WAS CONCERNED AND  
WANTED TO -- SHE WANTED TO  
MAKE SURE THAT SHE  
UNDERSTOOD WHAT IS RIGHT FOR  
HIM.

AT THAT POINT THE MR. CUERVO  
DECIDED HE WOULD ANSWER ANY  
QUESTIONS.

THEN WE DON'T SEE THE SAME  
CONCERN AT THIS POINT ON  
PART OF DETECTIVE PALMARY IF  
HE UNDERSTANDS HIS RIGHT  
AGAIN.

OR DECIDES HE WANTS THAT.

>> WHAT QUESTION DO YOU SAY  
OR TYPES OF QUESTIONS WHERE  
THERE THAT WERE DESIGNED TO  
ILLCIT INCRIPPLENATING  
RESPONSE?

>> ATTEMPT BY DETECTIVE  
PALMARY -- AGAIN, AFTER HE  
SAID HE DIDN'T WANT TO  
FURTHER INKWEUR.

>> YOU KEEP SAYING "TWICE".  
THE WAY I INTERPRET IT IS  
THAT ONCE.

WHEN HE SAID I DON'T WANT TO  
DECLARE IT.

AND THEN THEY KEEP GOING ON.  
AND THE NEXT TIME HE SAYS  
THAT IS -- HE SAYS HE IS  
SAYING HE DOESN'T WISH TO  
SPEAK BECAUSE HE DOESN'T  
KNOW IF THE VICTIM ALREADY  
SAID ANYTHING OR THE  
VICTIM'S MOTHER AND NOW THAT  
STATEMENT REALLY BECOMES  
AMBIGUOUS.

SO THE FIRST STATEMENT IS  
UNAMBIGUOUS BUT THE NEXT  
TIME HE SAYS IT STARTS  
CREATING AN AMBIGUITY THERE.

>> I THINK HE'S GIVING AN  
EXPLANATION AS TO WHY HE  
DOESN'T WANT TO.

>> LET ME TRY IT THIS WAY.  
WHICH IS THAT -- AND I DON'T  
KNOW IF THIS IS A QUESTION  
OF LAW OR A QUESTION OF FACT  
AND MAYBE YOU CAN ENLIGHTEN  
ME ON IT.

IF THE COURT CONCLUDES THAT  
HE UNAMBIGUOUSLY SAID THAT  
HE DOESN'T WANT TO SAY  
ANYTHING CLEARLY YOU DON'T  
SEE ANYTHING WRONG WITH  
SAYING PLEASE HAVE HIM  
INITIAL THESE RIGHT RIGHT.  
DO YOU SEE ANY PROBLEMS FOR  
HIM TO INITIAL THE RIGHT?

>> I THINK IN THIS SITUATION  
IT'S QUITE CLEAR THAT HE'S  
ABLE TO READ WHAT THE RIGHTS  
ARE.

>> JUST INITIAL EACH ONE IN  
YOUR SIGNATURE.

BUT THEN TO ME THE COMMENT

AND I WOULD ASK THE STATE TO RESPOND THAT REALLY BECOMES SOMETHING THAT'S DESIGNED TO ELICIT -- AT LEAST ATTEMPT TO ELICIT HIM TO SPEAK YOU CAN EXPLAIN TO HIM AT THIS TIME IF HE DOES WISH TO SPEAK TO HUS HE CAN GIVE HIS SIDE OF THE STORY.

HE DOESN'T WISH TO THAT'S HIS RIGHT.

THAT'S RIGHT AFTER THE SIGNATURE.

WHY ISN'T THAT THE ONE THAT YOU ARE FOCUSING ON AS BEING THE ONE THAT'S DESIGNED TO ELICIT AN INCRIMINATING RESPONSE.

HE ALREADY SAID UNEQUIVOCALLY, I DON'T WANT TO SPEAK.

ARE YOU SURE YOU DON'T WANT TO SPEAK.

IS YOUR TIME TO GIVE YOU SIDE OF THE STORY?

ED DID YOU ARGUE THAT BELOW OR DID YOU ARGUE SOMETHING ELSE TO BE IN THE COURT BELOW?

>> THE ARGUMENT TO THE COURT BELOW WAS THAT THE QUESTIONING SHOULD HAVE STOPPED AT THE POINT WHERE HE SAID HE DID NOT WANT TO TALK.

WE DID NOT ARGUE THAT.

WE ARGUED THAT THE ADDITIONAL COMMENTS OR QUESTIONS BY DETECTIVE PALMARY WERE IMPROPER.

THAT'S WHAT ESSENTIALLY WORE HIM TIME.

THIS ALL TRANSPORTATION ENTIERED IN A BRIEF FEW MOMENTS.

HAD THERE BEEN PERHAPS SOME TIME FOR REFLECTION OR YOU KNOW THE NEXT DAY OR WEEKS LATER THE APPROACHED HIM AGAIN, MAYBE THAT WOULD HAVE BEEN A DIFFERENT SITUATION.

>> HOW DOES -- THE ANSWER TO JUSTICE CANTERO AND FOR ALL OF US.

YOU ARE REFERRING TO RHODE ISLAND VERSUS ENNIS ALTHOUGH IT'S NOT CITED IN YOUR BRIEF THAT'S THE CASE THAT SAID INTERROGATION IS ANYTHING THAT IS DESIGNED TO ELICIT AN INCRIMINATING RESPONSE. MY QUESTION IS HOW IS THAT DETERMINATION MADE? IS THAT A QUESTION OF LAW? A QUESTION OF FACT? MIXED QUESTION OF LAW OR FACT?

>> BECAUSE WE AGREE WITH YOU THIS IS UNEQUIVOCAL. IT'S NOT JUST THAT ANYTHING CAN'T BE SAID.

>> I AGREE.

QUESTIONS THAT ARE DESIGNED TO ELICIT AN INCRIPPLENATING RESPONSE?

>> SURE.

THIS WAS WE HAVE THE INTENT FROM THE TRANSCRIPT WOULD BE TO ELICIT AN ADDITIONAL RESPONSE.

NOT A SIMPLE WOULD YOU LIKE A GLASS OF WATER OR CREAM FOR YOUR COFFEE OR ARE YOU HUNGRY?

AND OFFERING HIM ANOTHER OPPORTUNITY TO MAKE A STATEMENT IMPLYING THAT SOMETHING -- NOT WAIVING HIS RIGHT TO SAY ANYTHING LATER BUT HE CAN SAY SOMETHING NOW.

HE'S GIVEN AN OPPORTUNITY TO.

CERTAINLY THE DESIGN OF THAT FURTHER INQUIRY WAS TO ELICIT AN INCRIMINATING RESPONSE.

IT WAS SOME INNOCUOUS QUESTION ARE YOUR NEEDS TAKEN CARE OF.

ARE YOU COMFORTABLE.

THE DESIGN CLEARLY WOULD BE TO ELICIT SOMETHING ADDITIONAL FROM HIM?

>> ARE YOU ARGUING THEN HERE THAT ANY STATEMENT ONCE THE DEFENDANT HAS UNEQUIVOCALLY DEMONSTRATED HIS DESIRE TO

REMAIN SILENT, THAT THE POLICE HAVE THEN NOT QUESTIONED HIM ABOUT THE EXERCISE OF THAT RIGHT? I MEAN, BECAUSE THAT SEEMS TO BE WHAT REALLY HAPPENED HERE.

ONCE HE HAD EXERCISED HIS RIGHT TO REMAIN SILENT, THE POLICE OFFICERS PALMAY DECIDED -- ARE YOU PRETTY MUCH SURE YOU WANT TO DO THAT.

SO IS YOUR ARGUMENT THAT YOU CAN NO LONGER QUESTION THE DEFENDANT ABOUT HIS EXERCISE OF HIS RIGHT?

>> THAT WOULD BE OUR ARGUMENT, RIGHT.

WE SEE NO REQUIREMENT THERE HAS TO BE A -- THAT HE NEEDED TO NITCH SHRUL THE STATEMENT -- THAT HE NEEDED TO INITIAL THE STATEMENT.

>> DIDN'T THIS EVEN OCCUR AFTER THE INITIALING.

ONCE HE EXERCISED HIS RIGHT THEY THEN GOT HIM TO ACTUALLY INITIAL THE STATEMENT AND THEN WE GET INTO THE QUESTIONING AGAIN ABOUT ARE YOU SURE YOU WANT TO DO THIS?

THIS IS YOUR OPPORTUNITY TO TALK TO US.

>> RIGHT.

BUT DETECTIVE PALMARY TESTIFIED THAT THE WHAT PRECIP TATED THE QUESTION WAS THAT THE MR. CUERVO HAD NOT INITIALED THE FORM. THAT'S WHAT KEPT THE WHOLE THING GOING.

THE TESTIMONY OF THE HEARING WAS THAT SHE WAS CONCERNED THAT THE -- THAT HE DIDN'T UNDERSTAND THAT HE WANTED TO INITIAL THE FORM.

SO OUR POSITION IS THAT THAT HE SHOULD NOT HAVE.

HE INDICATED EARLIER VERBALLY THAT HE UNDERSTOOD HIS RIGHT AND THAT WHEN HE STATED UNAMBIGUOUSLY THAT HE

DIDN'T WANT TO SAY ANYTHING  
ADDITIONAL THAT SHOULD HAVE  
BEEN THE END OF IT.

WHAT YOUR ARGUMENT IS THAT  
ONCE A DEFENDANT VERBALLY  
SAID "I DON'T WANT TO SPEAK,"  
THAT POLICE OFFICERS ARE  
PROHIBITED FROM GETTING HIS  
SIGNATURE ON A DOCUMENT  
MEMOIRIZING THAT HE  
UNDERSTANDS HIS RIGHT AND  
HIS REFUSAL TO WAIVE.  
I'M NOT AWARE OF ANY  
REQUIREMENT.

THAT'S A NECESSITY.

>> WELL, CERTAINLY HIS  
CREDIBILITY TO LEASE LATER  
ON IF THEY SAY THAT THEY  
CLAIM THE DEFENDANT WAIVED  
HIS RIGHT AND THEY CAN  
PRESENT A SIGNED FORM WHERE  
HE'S INFORMED OF HIS RIGHT.  
AND HE WAIVES THEM.  
APPARENTLY WOULD SEEM TO BE  
COULD POLICE WORK AND ALSO A  
GOOD WAY TO MAKE SURE THAT  
THE DEFENDANT UNDERSTANDS  
HIS RIGHT.

HE HAS THEM ORALLY AND IN  
WRITTEN FORM.

IT SEEMS YOU ARE ARGUING  
THEY ARE PROHIBITED FROM  
DOING THAT.

>> THERE MAY BE A SITUATION.  
WE DON'T KNOW IF MR. CUERVO  
WAS ABLE TO READ.

WHAT IF THE SUSPECT CAN'T  
READ THE FORM?

AND HE JUST --

>> WE DON'T KNOW HE WASN'T  
ABLE TO READ.

>> WE DON'T KNOW THAT.  
MAYBE THAT'S THE REASON HE  
DID NOT DO IT.

>> HE DID EVENTUALLY.

>> HE DID.

BUT THERE MAY HAVE BEEN A  
REASON WHY HE DIDN'T WANT TO  
INITIALLY.

>> AND DIDN'T THE POLICE  
ALLOWED TO INQUIRE WHETHER  
HE CAN READ?

WHY HE ISN'T SIGNING THE  
FORM.

WHY HE HASN'T INITIALED IT?

>> I THINK AT THAT POINT  
THEY SHOULD HAVE STOPPED.  
>> WELL, THE DISTRICT COURT  
SEEMS TO BE CONCERNED AND IN  
ITS OPINION ABOUT THE FACT  
THAT THIS DID HAVE TO DO  
WITH A LANGUAGE BARRIER.  
IT WAS A VERY BRIEF TYPE OF  
ENCOUNTER HERE, LESS THAN  
FIVE MINUTES AS THE DISTRICT  
COURT SAID.

THAT REALLY DIFFERS FROM  
TRAILER DOESN'T.  
BECAUSE TRAILER DIDN'T HAVE  
ANYTHING TO DO WITH THE  
LANGUAGE BARRIER.  
IT WAS -- AND ALL OF THAT  
LANGUAGE -- WHAT IS YOUR  
CONFLICT?

THE CONFLICT WITH THE  
DISTRICT COURT?

>> YES.

WELL, SPECIFICALLY I THINK  
THEY ARE SIMILAR IN THAT THE  
TIME FRAME WAS VERY BRIEF  
ALSO.

>> DID SMITH HAVE A LANGUAGE  
PROBLEM?

>> NO IT DIDN'T HAVE TO DO  
WITH A LANGUAGE PROBLEM.

>> DID DILLY.

>> PARDON.

>> YOUR OTHER CASE IS DILL?

>> I'M SORRY.

IT'S OUT OF THE THIRD  
DISTRICT.

AND THAT'S DEALING WITH A  
VERY COMPRESSED TIME FRAME.  
THE SUSPECT SAID HE HAD  
NOTHING TO SAY.

AND THEN THEY CONTINUED ON.  
AND HE SAID, WELL.

THE COURT FOUND THAT THE  
STATEMENT I HAVE NOTHING TO  
SAY WAS SUFFICIENT JUST TO  
CUT OFF THE QUESTION AND  
TERMINATE IT IMMEDIATELY AT  
THAT POINT.

>> YOU ARE TALKING ABOUT A  
COMPLETELY DIFFERENT ISSUE.  
ASSUMING YOU ARE CORRECT,  
ALL THE QUESTIONING MUST  
HAVE STOPPED, ALL THIS IS

SUPPRESSED.

WHY ISN'T IT HARMLESS ERROR  
BECAUSE OF ALL THE OTHER  
EVIDENCE OF THIS GUILT THAT  
WAS INTRODUCED?

>> WELL, CERTAINLY IT WOULD  
EFFECT TRIAL STRATEGY.  
THERE WAS NO PHYSICAL  
EVIDENCE TYING MR. CUERVO TO  
THE CRIME.

I WAS JUST THE TESTIMONY OF  
THE VICTIM IN THIS CASE.

>> THAT'S PRETTY STRONG  
TESTIMONY.

>> IT IS.

BUT WE THINK IT COULD HAVE  
BEEN CHALLENGED.

IT WAS DARK OUT.

HE WAS -- THE DEFENDANT WAS  
WEARING DARK CLOTHING.

>> WHAT TIME OF THE DAY OR  
NIGHT WAS IT?

>> IT WAS DARK.

I DON'T RECALL THE EXACT  
TIME.

>> DID THE EYEWITNESS SEE  
THE DEFENDANT?

>> I DON'T RECALL HER SAYING  
THAT SPECIFICALLY THAT SHE  
SAW HIM.

BUT IT WAS IMPLIED THAT SHE  
CERTAINLY KNEW WHO HE WAS.

>> NOT THE VICTIM, BUT THE  
PERSON THAT THE VICTIM  
FLAGGED DOWN?

>> I DON'T BELIEVE SHE SAW  
MR. CUERVO.

THE ONLY TESTIMONY OF  
HERS --

>> THIS IS NOT SWUNG WHO A  
STRANGER TO THE VICTIM.  
THEY KNEW EITHER VERY WELL.

>> YES.

AS FAR AS THE TRIAL SHOULD  
BE THE ATTORNEY HAD TO I  
SHAOEUPBT SAY HAD TO -- BUT  
CHOSE TO GO TO LESSER  
INCLUDED.

PERHAPS WITHOUT THE  
CONFESSION -- THIS IS YOU  
KNOW AN ANALOGY A CATEGORY 5  
LEVEL DEVASTATION TO THE  
CASE.

THIS WAS YOU KNOW A

CONFESSION.

IT COULD HAVE BEEN WORSE HAD  
HE SAID I INTENDED TO KILL  
HER.

BUT STILL IT WAS QUITE  
DEVASTATING.

>> THAT'S YOUR TIME.

THANK YOU.

>> YOU CAN USE IT AS YOU  
PLEASE.

THANK YOU.

MAY IT PLEASE THE COURT I'M  
KRISTEN DAVENPORT.

I REPRESENT THE STATE OF  
FLORIDA.

FIRST OF ALL WE DON'T AGREE  
THIS WAS AN UNAMBIGUOUS  
REQUEST TO REMAIN SILENT.  
WE HAVE A FACTUAL FIND  
BEINGTY TRIAL COURT THAT IS  
FULLY SUPPORTED BY COMPETENT  
EVIDENCE IN THE RECORD THAT  
HIS RESPONSE TO QUESTION OF  
DO YOU WANT TO TALK TO US OR  
MAKE A STATEMENT IS NO I  
DON'T WANT NOTHING.

WHAT THE COMPETENCE AND  
SUBSTANTIAL EVIDENCE SHOULD  
SUPPORT THAT, BECAUSE THE  
TRANSLATION ON THE SPOT WAS  
HE DOES NOT WANT TO TALK TO  
US.

SO WHAT IS THE OTHER  
SUBSTANTIAL COMPETENT  
EVIDENCE THAT SAYS THAT'S  
NOT TRUE.

>> THIS WAS ALL RECORDED ON  
AN AUDIO CD.

THEY PLAYED THE CD  
REPEATEDLY OVER AND OVER  
THIS PART BECAUSE THE  
DETECTIVE, THE DEPUTY WHEN  
HE WAS ON THE STAND WAS  
LISTENING TO IT AND HE SAID  
ROUGHLY THAT MEANS I DON'T  
WANT TO SAY ANYTHING.

AND THE PROSECUTOR SAID WE  
CAN'T HAVE ROUGHLY HERE.  
WE NEED TO KNOW EXACTLY WHAT  
HE SAYS.

THEY WENT BACK AND FORTH AND  
PLAYED THAT OVER AND OVER  
AND THE COURT INTERPRETER  
THERE TO HELP THE DEFENDANT

SAID THE TRANSLATION IS I  
DON'T WANT ANYTHING.  
OR A DOUBLE NEGATIVE IN  
SPANISH.

BUT, WHEN YOU LOOK AT THIS  
THE ACTUAL TRANSLATION THAT  
WAS GIVEN TO THE OFFICERS ON  
THE SCENE WAS THAT I -- HE  
DOES NOT WANT TO TALK WITH  
US.

RADIO IT.

>> AND SO WHY SHOULDN'T  
THAT -- WHETHER OR NOT  
THAT'S THE TRUE  
INTERPRETATION OF WHAT HE  
SAID OR NOT THAT'S  
THE -- THAT'S WHAT IS  
OFFICER RRS TOLD.

WHY SHOULDN'T THE OFFICERS  
HAVE TO RELY ON THAT AND TO  
THEN ACT IN ACCORDANCE WITH  
THAT?

>> BECAUSE FIRST OF ALL,  
IT'S NOT ABOUT WHAT THE  
OFFICER WAS TOLD.

IT'S ABOUT WHAT THE  
DEFENDANT SAID.

THE SUSPECT HAS TO  
ARTICULATE A DESIRE TO CUT  
OFF QUESTIONING.

>> THEY ARTICULATED THROUGH  
THE TRANSLATION OF THE OTHER  
OFFICER; CORRECT?

>> IT WASN'T EXACTLY A  
WORD-FOR-WORD TRANSLATION  
EITHER.

HE WAS PARAPHRASING.

THE DETECTIVE WHO DIDN'T  
SPEAK ANY SPANISH TESTIFIED  
AT THE HEARING AND THE TRIAL  
COURT FOUND THIS TO BE  
CREDIBLE THAT BASED ON THE  
CIRCUMSTANCES SHE COULDN'T  
TELL IF SHE WAS GETTING A  
WORD-FOR-WORD TRANSLATION OR  
EXACTLY WHAT THIS DEPUTY WAS  
TELLING THE DEFENDANT.

SO FOR EXAMPLE IF SHE TOLD  
HIM READ HIM HIS RIGHT AND  
HAVE HIM INITIAL THE FORM.

>> YOU KNOW WHAT CONCERNS ME  
ABOUT THIS ARGUMENT IS, WHAT  
WAS THE PURPOSE THEN OF  
HAVING THE OFFICER COME IN

WHO SPOKE SPANISH AND  
TRANSLATE TO THEM IF THEY  
WILL SAY, OH, WE'RE NOT SURE  
WE CAN RELY ON WHAT THIS  
OFFICER SAYS AND SO WE WILL  
KEEP GOING UNTIL WE GET  
SOMETHING WE THINK WE CAN  
RELY ON.

>> ALL SHE WAS DOING WAS  
HAVING THEM CLARIFY.

IT WAS CLEAR --

>> LET ME.

CAN I ASK A QUESTION.

I'M REALLY TROUBLED BY THAT  
ON CLARIFY.

BECAUSE I DON'T KNOW OF A  
MORE SUBTLE WAY TO GET  
SOMEONE TO TALK THAN TO SAY  
SOMETHING TO THE EFFECT "NOW  
IS YOUR CHANCE IF YOU WANT  
TO TELL YOUR SIDE OF THE  
STORY."

THAT TO ME JUST SEEMS THE  
REALLY UNDERMINES THIS WHOLE  
AREA TO SUGGEST THAT, THAT  
QUESTION IS NOT SUGGESTING  
TO THEM, YOU DON'T TALK NOW,  
YOU REALLY ARE GOING TO GET  
IT.

NOW IS YOUR CHANCE.

>> BUT THERE'S NOTHING  
MISLEADING ABOUT THAT.

THAT'S AN ACCURATE  
STATEMENT.

THEY READ THE RIGHT.

THE DETECTIVE TOLD THE  
DEPUTY TO HAVE THEM INITIAL.  
THEY WENT THROUGH THIS LONG  
SPANISH THING.

THIS DETECTIVE SPEAK NO  
SPANISH AT ALL.

THEY HAD NO IDEA WHAT THEY  
WERE SAYING TO HER.

THEN HE ASKED THIS QUESTION  
AND HE SAID HE DOESN'T WANT  
TO TALK ABOUT IT.

AND HE SAID OKAY YOU DIDN'T  
HAVE THE RIGHT INITIALS.

WE'RE NOT EXACTLY SURE HE  
UNDERSTANDS WHAT IS GOING ON  
HE HANDS THEM AND SAYS HAVE  
HIM WRAOET THIS AND INITIAL  
IT.

I GUESS WE CAN REALLY GO

BACK AND FORTH.  
I'M STILL NOT SURE I  
UNDERSTAND IF THE  
SPANISH-SPEAKING DETECTIVE  
TELLS THE ENGLISH SPEAKING  
DETECTIVE HE DOES NOT WISH  
TO TALK TO US, WHAT IS  
AMBIGUOUS ABOUT THAT  
STATEMENT.

>> WHAT'S AMBIGUOUS IS THE  
TOTALITY OF THE  
CIRCUMSTANCES.

SHE IS NOT SURE THAT HE  
UNDERSTANDS HIS RIGHT.  
THAT'S THE AMBIGUITY.  
THE WAY SHE NOW EXPLAINS IT  
YOU EXPLAIN AND I WILL JUST  
FOLLOW WHAT JUSTICE LEWIS  
SAID BECAUSE IT DISTURBED ME  
GREATLY.

HE DOESN'T WISH TO SPEAK  
WITH THEM THEN HE CAN GIVE  
HIS SIDE OF THE STORY.  
HE ALREADY SAID SHE'S HEARD  
HE DOESN'T WANT TO DECLARE  
ANYTHING OR HE DOESN'T WANT  
TO SAY ANYTHING.

WHICH IS WHAT THE DETECTIVES  
SAYS AS JUDGE THOMPSON SAID  
IN THIS THERE'S ONLY TWO  
THINGS THAT WILL COME FROM  
THAT.

EITHER HE WILL STILL SAY, I  
DON'T WANT TO TALK OR HE  
WILL NOW GIVE HIS SIDE OF  
STORY AND I THINK WHAT IS  
MISLEADING IS IT'S NOT  
COUPLED WITH THIS IS YOU GOT  
A RIGHT TO REMAIN SILENT AND  
ANYTHING YOU SAY CAN BE USED  
AGAINST YOU.

THIS IS NOT YOUR ONLY CHANCE  
TO TELL YOUR SIDE OF THE  
STORY.

ONCE YOU HAVE AN ATTORNEY  
WHICH CAN BE APPOINTED AT  
STATE EARNINGS PENS IF YOU  
CAN'T AFFORD ONE YOU WILL  
HAVE ANOTHER CHANCE TO TELL  
YOUR SIDE OF THE  
STORY -- STORY IF YOU WANT TO  
TELL YOUR SIDE OF THE STORY.  
SHE DID COUPLE IT WITH SHE  
DOESN'T -- IF HE DOESN'T

WISH TO TELL HIS SIDE OF THE  
STORY, THAT IS HIS RIGHT.  
HE DOES NOT HAVE TO.  
LET HIM KNOW THAT.  
THAT'S EXACTLY WHAT WAS  
TRANSLATED TO HIM.  
THIS IS YOUR CHANCE TO TALK.  
>> BUT IF YOU -- YOU ARE NOT  
OBLIGATED, BUT IF YOU WISH  
TO TALK THERE'S STILL TIME.  
AS IF IF YOU DON'T SPEAK OUT  
NOW OR FOREVER HOLD YOUR  
PEACE.  
>> BUT THEY'VE READ HIT  
MIRANDA TWO TIMES.  
YOU HAVE THE RIGHT TO REMAIN  
SILENT.  
ANYTHING YOU SAY CAN BE USED  
AGAINST YOU.  
HE TELLS HIM TO INITIAL.  
SHE WANTS TO MAKE SURE THE  
DEFENDANT UNDERSTOOD HIS  
RIGHT.  
YOU GET BROUGHT INTO THE  
POLICE STATION.  
IT'S A COERCESIVE  
ATMOSPHERE.  
MIRANDA IS DESIGNS TO COMBAT  
THAT.  
SO THAT PEOPLE AREN'T GOING  
IN NOT UNDERSTANDING THAT  
YOU WILL NOT GET BEATEN UP  
AND YOU CAN STOP TALKING AT  
ANYTIME.  
AND IT'S REALLY NOT A  
ONE-SIDED DEAL LIKE YOU  
MIGHT THINK -- THINK WHEN  
YOU ARE INITIALLY ARRESTED.  
THAT'S THE WHOLE POINT OF  
MIRANDA.  
THEY READ HIM MIRANDA.  
SHE'S NOT SURE HE  
UNDERSTANDS.  
GIVES HIM A WRITTEN FORM SO  
THERE'S NO QUESTION ABOUT  
TRANSLATION.  
STANDARD FORM IN ANY WAYTIVE  
LANGUAGE.  
IS YOUR CHANCE TO TALK BUT  
HE DOESN'T HAVE TO.  
BE DETECTIVE TOLD HIM THAT  
AGAIN THEN THE DEFENDANT  
SAID I NOTICE THE VICTIM  
ALREADY TALKED AND THEN GET

INTO MORE CONFUSING  
STATEMENT HOW LONG THEY'VE  
BEEN IN THE COUNTRY.  
THEY SAY OKAY THEY GO  
THROUGH --

>> THIS IS ADDITIONAL  
QUESTIONING REALLY IS WHAT  
STARTS THE CONFUSION.  
IF THE OFFICER HAD HONORED  
HIS ORIGINAL STATEMENT THAT  
HE DID NOT WANT TO TALK WITH  
US WE WOULDN'T HAVE ON THIS  
RECORD ANY CONFUSION ABOUT  
WHETHER OR NOT THE VICTIM  
HAD AND HER MOTHER HAD OR  
HAD NOT DIS -- DISCUSSED  
ANYTHING.

IM -- I'M REALLY CONCERNED  
THAT HERE WE HAVE WHETHER  
YOU AGREE OR NOT, THE  
OFFICER -- THE  
SPANISH-SPEAKING OFFICER  
TOLD THE OTHER OFFICER THIS  
MAN DOES NOT WANT TO TALK TO  
US.

AND WHAT IN THE WORLD IS  
AMBIGUOUS ABOUT THAT?

>> THERE'S NOTHING AMBIGUOUS  
ABOUT JUST THAT SINGLE  
STATEMENT WITHOUT VIEWING IT  
IN CONTEXT.

YOU HAVE TO VIEW KNIT THE  
CONTEXT SHE KNEW SHE WASN'T  
GETTING A WORD-FOR-WORD  
TRANSLATION.

SHE NYE SHE ASKED THE  
OFFICER TO ASK HIM TO  
INITIAL THE FORM AND SHE  
DIDN'T DO THAT.

SHE'S NOT SURE WHAT WAS SAID  
TO HIM IF THEY READ  
THEM -- THEM THE RIGHT OR IF  
HE WAS PARAPHRASING IN THE  
WAY THAT WAS MISLEADING TO  
THEM.

ALL THEY DID WAS CLARIFY  
THAT.

AND YOU CAN'T GO BY WHAT THE  
TRANSLATOR SAYS.

YOU HAVE TO GO BY WHAT THE  
DEFENDANT SAYS.

>> OKAY.

AND SO DIDN'T THE TRANSLATOR  
START WITH READING EACH OF

THE RIGHT AND THEN TRANSLATE  
HIS ANSWER, YES HE  
UNDERSTOOD.

SO WHAT WAS CONFUSING ABOUT  
THAT ASPECT OF IT WHEN THE  
OFFICER READ HIM THE RIGHT,  
HIS ANSWER, THE OFFICER'S  
TRANSLATION OF THAT ANSWER.

>> THE OFFICER DIDN'T  
TRANSLATE UNTIL AT THE END.  
HE READ HIM ALL OF HIS  
RIGHTS IN SPANISH.

THE DEFENDANT REPLIED IN  
SPANISH.

AND THE DETECTIVE DOESN'T  
UNDERSTAND ANY OF THIS.  
HE GETS TO THE VERY END AND  
HE SAYS OKAY.

YOU UNDERSTAND ALL YOUR  
RIGHT.

YOU WISH TO TALK ABOUT THE  
MATTER AND MAKE THE  
STATEMENT.

YES OR NOT?

THAT'S THE ONLY -- THE  
DEFENDANT SAYS "I DON'T WANT  
ANYTHING."

AND THE TRANSLATOR SAYS OKAY  
HE DOESN'T WANT TO TALK TO  
US.

LET'S MAKE SURE -- WHAT WAS  
THE SPANISH -- WE  
TALK -- YOU STARTED EARLIER  
SAYING THIS COMPETENT  
SUBSTANTIAL EVIDENCE.

THIS IS AN AUDIOTAPE.  
RIGHT.

>> AND IS THERE ANY DEBATE  
ABOUT WHAT THE AUDIOTAPE  
SAYS IN SPANISH?

>> NO.

I THINK THAT'S CLEAR.

>> WHAT IS THE SPANISH  
STATEMENT?

>> PARDON MY PRONUNCIATION.  
[SPEAKING IN SPANISH]

>> IS THERE ANY AMBIGUITY  
ABOUT WHAT THAT SAYS?

>> I THINK THERE'S A FACTUAL  
FINDING BY THE TRIAL COURT  
BASED ON WHAT THE COURT  
INTERPRETER SAID AT THE  
HEARING THAT THAT MEANS, NO,  
I DON'T WANT ANYTHING.

>> ANYTHING.  
>> BUT DECLARE SOUNDS PRETTY  
MUCH DECLARE.  
I MEAN, EVEN IF ENGLISH THAT  
SOUNDS LIKE DECLARE.  
>> IN ENGLISH -- I AGREE  
WITH THAT.  
BUT.  
>> I DON'T WANT TO DECLARE  
ANYTHING.  
>> SO WE CAN'T REALLY SECOND  
GUESS A FACTUAL FINDING BY  
THE TRIAL COURT THAT'S  
SUPPORTED BY COMPETENT  
FINANCIAL EVIDENCE.  
THIS COURT  
INTERPRET -- INTERPRETER  
SAID THIS IS WHAT HE SAID.  
EVERYBODY AGREED TO.  
THE TRIAL COURT CHOSE TO  
BELIEVE.  
EVEN THE DEPUTY SAID SHE IS  
BETTER THAN THIS THAN I AM.  
HE WAS GIVING ROUGH  
PROBLESMATION.  
>> THE PROBLEM WITH THAT TO  
ME IS THAT INTERPRETER DID  
NOT TELL THE OFFICER THAT  
THE NONSPANISH SPEAKING  
OFFICERS ON THE SCENE THAT,  
THAT'S WHAT THE DEFENDANT  
SAID.  
RADIO -- RIGHT.  
>> AND IF THAT'S ALL THERE  
WAS AND YOU HAD A WORD TO  
WORD TRANSLATION AND THE  
DEPUTY SAID I DON'T WANT TO  
TALK TO YOU AS THE  
WORD-FOR-WORD TRANSLATION  
AFTER FOLLOWING THE  
DETECTIVE INSTRUCTION AND  
HAVING THEM INITIAL THE  
MIRANDA RIGHT FORMS I THINK  
IT WOULD BE HARD FOR US TO  
ARGUE THERE WAS AN AMBIGUITY  
THAT NEEDED CLARIFICATION.  
THAT'S NOT WHAT THE FACTS  
ARE.  
THE FACTS ARE HE WASN'T  
FOLLOWING HER INSTRUCTION.  
SHE WASN'T SURE WHAT HE WAS  
TOLD.  
AND THE FACTS ARE WHAT HE  
ACTUALLY SAID WAS AMBIGUOUS.

>> CAN I UNDERSTAND ONE  
THING IS THAT YOU MADE THE  
STATEMENT A COUPLE OF TIMES.  
I WANT TO BE CLEAR ON THIS.  
IF THE DEFENSE IN THIS CASE  
AT THE TRIAL COURT LEVEL  
VIRTUALLY STIPULATED THAT,  
THAT'S WHAT WHAT WAS SAID.  
IS THAT WHAT YOU ARE TELLING  
US?

>> IT WAS A FINDING BY THE  
TRIAL COURT.

>> I'M ASKING WHAT YOU SAID  
THAT THEY DIDN'T PRESENT ANY  
OTHER TESTIMONY.

THERE'S NO OTHER EVIDENCE  
AND THEY VIRTUALLY AGREED  
WITH THAT.

WAS THERE ANOTHER STATEMENT  
AS TO WHAT THAT  
INTERPRETATION WAS?

OR THAT TRANSLATION?

>> THE -- THIS HAPPENED WHEN  
THE DEPUTY WAS ON THE STAND.

>> THAT'S THE ONLY ONE --

>> HE SAID ROUGHLY THIS  
MEANS I DON'T WANT TO SAY  
ANYTHING.

THE PROSECUTOR SAID WE CAN'T  
GET INTO ROUGHLY.

WE NEED TO KNOW EXACTLY WHAT  
HE SAID.

SO THE DEPUTY SAID HE  
DOESN'T WANT TO DECLARE  
ANYTHING AND THEN HE SAYS  
OVER AND OVER THE COURT  
INTERPRETER BY THE DEPUTY  
SAY SHE IS BETTER THAN THIS.

>> THE ONLY WITNESS PUT ON  
THAT WOULD CONTRADICT THIS  
IS THAT I AGREE WITH THE  
INTERPRETER, TRANSLATOR.

HE SAID SHE'S BETTER THAN  
THIS THAN I AM.

EVERYBODY WAS OPERATING  
UNDERSTAND THE -- UNDER  
TRANSLATION PROVIDED WAS "I  
DON'T WANT ANYTHING."

DURING THE FINAL WHEN HE  
MAKES HIS FACTUAL FINDING AT  
THE END HE SAID THIS WAS A  
LITTLE BIT CONCERNING.

ON THE TRANSCRIPT IT -- IT  
SAIDS NO I DON'T WANT NOT

NOW.  
WHICH WAS COMPLETELY  
INACCURATE.  
SO THE COURT HAD TO CHOOSE  
BETWEEN THE DIFFERENT  
INTERPRETATION HE CHOSE THE  
ONE INTERPRETED BY THE COURT  
INTERPRETER.  
>> WHAT'S THE STATE POSITION  
TO GET BEYOND THAT.  
THAT'S SAY HE MADE AN  
UNEQUIVOCAL REQUEST.  
WHAT'S THE STATE'S POSITION  
AS TO WHETHER THE  
QUESTIONING THAT CONTINUED  
CONSTITUTES AN INTERROGATION  
OR WHAT?  
>> IF THIS STATEMENT YOU  
HAVE TIME TO TELL YOUR STORY  
BUT YOU DON'T HAVE TO.  
IF THAT IS AN INTERROGATION  
THEN READING MIRANDA IS  
INTEAR TPWAEUGS.  
IT'S TELLING HIM IS WHAT THE  
SITUATION IS.  
YOU CAN TALK TO US NOW.  
YOU DON'T HAVE TO.  
HE SAID HE UNDERSTANDS HIS  
RIGHT.  
THAT'S NOT AN INTERROGATION.  
IT CAME WHEN HE SHE SAID  
TELL ME WHAT HAPPENED  
YESTERDAY.  
THAT'S WHEN THEY STARTED  
INTERROGATING HIM AND THAT  
DIDN'T HAPPEN UNTIL HE SAID  
YOU CAN ASK QUESTIONS AND I  
WILL ANSWER IF I WANT TO.  
HE SAID WILL ANSWER  
QUESTIONS.  
WHEN YOU LOOK AT HIS INTENT  
WHEN YOU LOOK HOW THIS WAS  
CLARIFIED.  
HE DIDN'T WANT TO MAKE A  
DECLARATIVE STATEMENT.  
HERE'S WHAT HAPPENED TO ME  
AND I WILL TELL YOU THE  
STORY.  
BUT HE WAS CERTAINLY WILLING  
TO ANSWER QUESTIONS.  
AND THAT'S WHAT HE DID.  
AND HE UNDERSTOOD THAT HE  
DIDN'T HAVE TO ANSWER ALL OF  
THE QUESTIONS.

>> I GUESS I'M GETTING BACK TO WHAT HE SAID. IF HE ACTUALLY SAID I DON'T WANT TO DECLARE ANYTHING, ONE CAN INTERPRET THAT AS SAYING I DON'T WANT TO MAKE A STATEMENT OR THAT I DON'T WANT TO ANSWER QUESTIONS. AS I CLARIFIED THAT'S EXACTLY WHAT HE WANTED TO DO.

HE KEPT SAYING I DON'T WANT TO MAKE A STATEMENT. THERE'S NO EVIDENCE APPARENTLY ACCORDING TO YOU -- THERE'S NO EVIDENCE IN THE RECORD OF AT ALL. THERE'S NOT EVEN A HINT IN THE RECORD. CORRECT?

>> THAT'S WHAT THE OFFICER. >> NO, THE OFFICER JUST SAID THAT.

YOU SAID THE OFFICER SAID HE DOESN'T WANT TO TALK TO US.

>> THAT'S WHAT HE SAID AT THE I'M. DURING THE HEARING.

>> THERE'S NO DISTINCTION, THOUGH.

THIS ARGUMENT IS GOING EVERYWHERE.

IT'S LIKE GRABBING JELL-O. YOU YOU ARE SAYING THAT THE DECORATION HE DIDN'T WANT TO GIVE A UNILATERAL STATEMENT. THAT'S NOT DISCUSSED AT THE TRIAL LEVEL.

IS IT?

>> LET ME MAKE MY POSITION MORE CLEAR.

FIRST OF ALL, THE FACT AND FINDING BY THE TRIAL COURT IS I DON'T FIND ANYTHING. THAT'S AMBIGUOUS.

IF WE GO WITH DECLARE OBVIOUSLY MEANS DECLARE IN SPANISH.

>> THERE'S NO EVIDENCE OF THAT YOU ARE SAYING?

>> THE OFFICER GAVE THAT AS HIS INTERPRETATION. THAT'S NOT WHAT THE TRIAL COURT FOUND.

>> THE OFFICER SAID HE  
DIDN'T WANT TO TALK WITH US.  
YOU ARE DRAWING NOW A  
STKEUFRBGS TO MAKE A  
DECLARATION AS TO GET A  
UNILATERAL STATEMENT.

>> I THINK THAT'S AN  
AMBIGUOUS ANSWER AND YOU  
ALSO HAVE TO CONSIDER THE  
QUESTION THAT WAS ASKED.  
YOU -- DO YOU WISH TO TALK  
ABOUT THE MATTER AND MAKE A  
STATEMENT?

>> THAT'S A COMPOUND KIND OF  
CONFUSING QUESTION.  
HE DIDN'T PHRASE IT VERY  
WELL.

>> RIGHT.  
THE WHOLE POINT OF IS THAT  
THIS AMBIGUOUS.  
DID HE MEAN AT THAT POINT I  
DON'T WANT TO SAY ANYTHING?  
LEAVE ME ALONE OR DID HE  
MEAN I DON'T WANT TO MAKE A  
DECLARATIVE STATEMENT BUT I  
WILL ANSWER QUESTIONS.

AS IT WAS  
DECLARE -- CLARIFIED THAT'S  
EXACTLY WHAT CAME OUT.  
THAT'S WHAT WAS INTENT WAS.  
COMPOUND QUESTION AND  
CONFUSING ANSWER.  
THEY READ HIM RIGHT AGAIN.  
THEY WENT THROUGH IN DETAIL  
AND SAID NOW IS YOUR TIME TO  
TALK BUT YOU DON'T HAVE TO.  
THAT'S NOT AN INTERROGATION.  
THAT'S INFORMING HIM WHAT  
THE DEAL IS.

AND ONLY WHEN HE SAYS HE'S  
REFUSING TO TALK TO US.  
NO, I WILL ANSWER QUESTIONS.  
THAT'S THE ONLY TIME THAT  
THEY ACTUALLY STARTED AN  
INTERROGATION.  
NOW IN DAVIS THE COURT SAID  
THAT THE POLICE OFFICER  
DON'T HAVE TO ASK CLARIFYING  
QUESTIONS BUT IT'S STILL A  
GOOD POLICE PRACTICE AND THE  
REASON THEY SAID IT'S A GOOD  
POLICE PRACTICE IS BECAUSE  
IT WILL PROHIBIT SECOND  
GUESSING BY THE JUDICIARY.

>> ASKING CLARIFYING QUESTIONS WHEN THERE'S SOME AMBIGUITY.  
>> AND IT'S OUR POSITION THERE IS AMBIGUITY. YOU SAY IN DAVIS THERE'S A DISTINCTION WE AT LEAST RECOGNIZE FOOTNOTE IN ALMEDA BETWEEN SOMETHING THAT COMES UP DURING INTERROGATION, AFTER SOMEBODY HAS ALREADY SAID "I WILL SPEAK." AND THEN SOMETHING OCCURS VERSUS WHAT THE INITIAL MIRANDIZING PROCESS.  
>> THE COURTS DO DRAW THAT DISTINCTION.  
>> AND THIS ONE IS REALLY, AGAIN THE ISSUE HERE THAT I'M STILL HAVING -- THIS PROBLEM WITH. WHICH IS THAT AND, AGAIN, YOU KNOW WE DON'T WANT TO HAVE A DISCRIMINATORY STANDARD FOR PEOPLE THAT DON'T SPEAK ENGLISH.  
>> RIGHT.  
>> AND IF THIS OFFICER WHEN SHE WENT ON TO ASK FURTHER QUESTIONS WAS TOLD BY DEPUTY GARCIA HE DOES NOT WISH TO TALK WITH ME. SO THE IDEA THAT THERE WOULD BE A FINDING THAT THE STATEMENT THAT HE MADE THAT THE OFFICER WHO THEN CONTINUES TO QUESTION BUT WAS AMBIGUOUS COULDN'T BE AMBIGUOUS BECAUSE THAT OFFICER DIDN'T UNDERSTAND SPANISH TO KNOW THAT THERE WAS SOME POTENTIAL AMBIGUITY. THE WHOLE TOTALITY OF THE CIRCUMSTANCES IS WHAT RENDER THIS AMBIGUOUS. LET ME ADDRESS THE TRANSLATEOR SAID THIS AT THE TIME. IF WE GO WITH WHAT THE TRANSLATOR SAID, INSTEAD OF WHO THE DEFENDANT SAID IF THE DEFENDANT SAID I WANT TO EXERCISE MY RIGHT TO REMAIN

SILENT AND THE TRANSLATOR  
SAID HE WANTS TO TALK US  
THEN WE WOULD HAVE TO GO  
WITH THAT TOO.

THAT'S NOT FAIR EITHER.  
YOU HAVE TO GO WITH WHAT THE  
SUSPECT ACTUALLY SAID.

WE HAVE A TRANSLATION OF IT.  
WE KNOW EXACTLY WHAT HIS  
WORDS ARE.

WE HAVE A AFRICA ACTUAL  
FINDING BY THE TRIAL COURT.  
WE HAVE A CD OF WHAT WAS  
SAID.

WE KNOW EXACTLY WHAT  
HAPPENED HEARD.

WE HAVE GO WITH WHAT HE  
ACTUALLY SAID.

NOT WITH WHAT THE DEPUTY  
TOLD HER.

IF YOU GO WITH WHAT THE KEPT  
TOLD HER HE SAID THEN YOU  
HAVE TO LOOK AT THE WHOLE  
TOTALITY THAT THE DEPUTY  
WASN'T FOLLOWING HER  
INSTRUCTION.

SHE JUST WANTED TO CLARIFY  
AND MAKE SURE HE UNDERSTOOD  
WHAT THE DEAL WAS.

NOW IS THE TIME TO TALK, BUT  
YOU DON'T HAVE TO.

YOU CAN ANSWER QUESTIONS AT  
THAT TIME.

YOU DON'T HAVE TO MAKE A  
STATE.

DY DIDN'T START  
INTERROGATION UNTIL HE SAID  
I WILL ANSWER YOUR  
QUESTIONS.

>> AND SO WHEN WE HAVE A  
NONENGLISH SPEAKING  
DEFENDANT THE POLICE CAN  
KEEP CLARIFYING UNTIL THEY  
GET TO WHERE THEY WANT.

>> IF YOU HAVE AN AMBIGUOUS  
SITUATION THE POLICE SHOULD  
CLARIFY SO THAT WE KNOW  
WHETHER HE WANTS TO WAIVE  
HIS RIGHT OR NOT.

THAT'S ALL HE DID.

WE'RE TALKING ABOUT TWO  
MINUTES.

HE DIDN'T COERCE HIM.

THEY DIDN'T YELL AT HIM.

THEY DIDN'T PLAY GOOD  
COP/BAD COP.

IT'S ALL VERY MATTER OF  
FACT.

THEY DID EXACTLY WHAT THEY  
SHOULD HAVE DONE WHICH IS  
MAKE SURE THEY UNDERSTOOD  
WHAT IS RIGHT.

HE HAS THE RIGHT TO NOT  
TALK.

HE UNDERSTOOD THAT.

THIS WAS HIS CHANCE TO TALK  
TO THEM TOO.

THERE'S NOTHING WRONG WITH  
TELLING A DEFENDANT THAT  
WHEN HE UNDERSTANDS WHAT HIS  
RIGHTS ARE.

THEY DID EXACTLY WHAT THEY  
SHOULD HAVE DONE.

THEY GOT A VALID WAIVER.

HE SAID I WILL ANSWER YOUR  
QUESTION.

AND THEN UNTIL THEY GOT THAT  
ABSOLUTE UNEQUIVOCAL WAIVER  
OF HIS RIGHT THEY DIDN'T ASK  
HIM ANYTHING  
INCRIPPLENATING.

ALL THEY DID WAS --

>> IS THAT A TRANSLATION  
ABOUT AN OFFICER THAT SAYS I  
WILL ANSWER YOUR QUESTIONS?

>> WHEN WE LOOK AT THE  
TRANSCRIPT THAT'S BEEN  
TRANSLATED FROM THE SPANISH  
TO ENGLISH HE SAID YOU CAN  
ASK QUESTIONS AND I WILL  
ANSWER IT.

>> SO WHEN THAT WAS  
TRANSLATED THAT'S WHAT HE  
SAID, THEY TOOK THAT AS THE  
ACCURATE TRANSLATION.

>> HE KEPT -- THE DEPUTY  
KEPT FOLLOWING UP AND SAYING  
YOU DO WANT TO TALK TO US WE  
NEED TO MAKE THAT CLEAR.

>> I'M JUST WONDERING HOW  
WE.

>> AT ONE POINT WE DON'T  
ACCEPT THE OFFICER'S  
TRANSLATION OF WHAT THE  
DEFENDANT SAID.

BUT AT THE OTHER POINT WE TO  
ACCEPT IT THE OFFICER'S  
TRANSLATION OF WHAT THE

DEFENDANT SAID.

>> I THINK YOU HAVE TO GO WITH WHAT THE DEFENDANT SAID ALWAYS.

AND WHAT THE DEFENDANT SAID IS I WILL ANSWER YOUR QUESTIONS.

IF YOU WANT THE GO WITH THE TRANSLATOR THE TRANSLATOR SAID HE WANTS TO ANSWER QUESTIONS UNLESS HE FEELS LIKE HE DOESN'T WANT TO.

EITHER WAY I THINK THAT'S A VALID WAIVER BASED ON WHAT THE DEPUTY SAID AND BASED O WHAPB THE DEFENDANT SAID.

20EB9SD LET ME JUST CLOSE BY SAYING THIS THE CLEARLY HARMLESS ERROR.

THIS IS VICTIM THEY ACTUALLY USED THIS IN HIS FAVOR.

WE WOULD ASK YOU TO AFFIRM.

THANK YOU VERY MUCH.

>> REBUTTAL.

>> THIS IS NOT A COMPLEX AGREEMENT THAT NEEDS TO BE HATCHED OUT AND HAVE REVIEWED BY ANY EXPERT IN VARIOUS LANGUAGES IT'S A SIMPLE.

NO I DON'T WANT TO SAY ANYTHING.

THERE WAS NO AMBIGUITY. HOW LONG WAS THIS GO ON.

WE NEED TO BRING, THREE?

FOUR?

FIVE?

INTERPRETERS TO MAKE SURE WE GET WHAT A SIMPLE STATEMENT OF "NO" MEANS.

>> THE PURPOSE OF MIRANDA TO PREVENT REPEATED ROUNDS OF QUESTIONING TO UNDERMINE THE WILL OF THE PERSON BEING QUESTIONED.

GIVE ME YOUR BEST SHOT AS TO WHAT QUESTIONING HERE UNDERMINED THE DEFENDANT'S WILL?

>> THE QUESTION, DOES HE UNDERSTAND WHY DID HE TPHEUFRP SHEUL IT?

THE UNDERSTANDING HE HAD AN OPPORTUNITY TO GIVE HIS SIDE

OF THE STORY.

THOSE ARE QUESTIONS THAT  
UNDER THE CIRCUMSTANCES WERE  
WORN DOWN AFTER HE -- IT'S  
OUR VIEW --

>> I HAVE A REAL PROBLEM  
WITH WEARING DOWN WHEN THIS  
HAPPENED WITH WHAT YOUR  
OPPONENT SAID WAS TWO  
MINUTES.

AND THE PERSON BE WORN DOWN  
IN TWO MINUTES?

>> IS THAT YOUR POSITION?

>> THAT'S OCCURRING IN TWO  
MINUTES.

HE HAD BEEN -- HE SLEPT IN A  
TREE THAT NIGHT.

>> I'M TALKING ABOUT WHAT  
THE POLICE WERE -- WHAT LAW  
ENFORCEMENT -- DOESN'T LAW  
ENFORCEMENT HAVE TO BE GIVEN  
SOME LEEWAY HERE?

SOME LEEWAY THERE THIS TIME  
OF SITUATION WHERE WE LOOK  
AT THE WHOLE PICTURE.

ISN'T THAT WHAT WE ARE  
SUPPOSED TO BE DOING?

>> AGAIN THE WHOLE PICTURE  
INCLUDES THE FACT THAT HE  
SLEPT IN A TREE OR INTENDED  
TO SLEEP IN THE NIGHT  
BEFORE.

HE SWAM ACROSS THE RIVER.  
HE DECIDED TO TURN HIMSELF  
IN.

HE WAS PICKED UP WHEN HE WAS  
WALKING DOWN THE STREET.  
SO I THINK HE WAS EXTREMELY  
TIRED AT THIS POINT.

I THINK WE CAN TAKE THE  
WHOLE LOOK AT THE TOTALITY  
OF THE CIRCUMSTANCES.

AND THESE CIRCUMSTANCES WHEN  
HE -- TERMINATED AFTER HE  
SAID I DON'T WANT TO DECLARE  
ANYTHING.

THAT'S WHAT THE DEFENDANT  
SAID.

AND IF THERE'S ANY  
ADDITIONAL QUESTIONS.

>> YOU'VE USED ALL YOUR  
TIME.

THANK YOU VERY MUCH.

WE WILL TAKE THE CASE UNDER

ADVISEMENT.