Adam W. Davis v. State of Florida

SC06-1444

>> ALL RISE.
>> GOOD MORNING.
GOOD MORNING.
>> COURT IS BACK IN SESSION.
PLEASE BE SEATED.
THE NEXT
CASE ON CALENDAR IS DAVIS
VERSUS STATE OF FLORIDA.
READY TO PROCEED?
>> YES, EXCUSE ME.
GOOD MORNING MY NAME IS
PETER, CCRC ON BEHALF OF
MR. ADAM DAVIS MAY IT PLEASE
THE COURT I WOULD LIKE TO
ADDRESS THE SECOND ARGUMENT
PRESENTED IN THE INITIAL
BRIEF CONCERNING LAW
ENFORCEMENT'S USE OF THE
QUESTION FIRST TECHNIQUE IN
ADVISING OF MIRANDA
SEIBERT AND THE FALSE
TESTIMONY PRESENTED
CONCERNING THE USE OF
THIS --
>> MR. CANNON, I NOTICED IN
YOUR BRIEF, YOU KEPT
REFERRING TO STATEMENTS OUT
OF SEIBERT AS IF THEY WERE
BY THE COURT BUT IN FACT
SEIBERT WAS A PLURALITY
DECISION; CORRECT?
>> SEIBERT WAS PLURALITY
DECISION, WITH REGARDS TO
GOOD FAITH.
>> WITH REGARD TO WHAT?
>> GOOD FAITH THE STATES BY
LAW ENFORCEMENT TO NOT --
>> SPECIFICALLY, IT WAS --
WHAT APPEARED TO ME TO BE
PERTINENT HERE WAS THAT
JUSTICE KENNEDY WAS THE
DECIDING VOTE ON THE
DECISION.
BUT JUSTICE KENNEDY MADE
ONE, REAFFIRMED HIS VIEW

THAT ALATAT WAS GOOD LAW.
>> ABSOLUTELY.
>> HE MADE THE STATEMENT THAT I WOULD APPLY A NARROWER APPLICABLE ONLY IN INFREQUENT CASE SUCH AS WE HAVE HERE IN WHICH TWO-STEP INTERROGATION TECHNIQUE WAS USED IN A CALCULATED WAY TO UNDERMINE MIRANDA.
>> ABSOLUTELY.
>> NOW THIS COURT FOUND SPECIFICALLY IN THE DIRECT APPEAL IN THIS CASE THAT THE OFFICERS IN NO WAY ATTEMPTED TO DOWNPLAY THE SIGNIFICANCE OF DAVIS' MIRANDA RIGHTS, AND THAT SPECIFIC FINDING ON DIRECT APPEAL.
SO IN ORDER -- WHY DOESN'T THAT MEET THE TEST THAT JUSTICE KENNEDY WAS STATING IN SEYFERT?
>> BECAUSE THE OFFICERS WHEN THEY TESTIFIED AT THE MOTION TO SUPPRESS THEY TOLD THE JUDGE THE REASON WE DIDN'T MIRANDIZE AT FIRST WE WENTED TO BUILD A RELATIONSHIP WANTED TO BUILD A RAPPORT WITH MR. DAVIS THAT WAS FALSE THEY ALSO TESTIFIED THIS WAS NOT PART OF A STRATEGY --
>> HOW DO YOU KNOW THAT THAT IS FALSE?
WHAT KIND OF INFORMATION WAS ELICITED DURING THAT PRE-MIRANDA DISCUSSION?
>> WHAT KIND OF INFORMATION FROM MR. DAVIS?
>> YES.
>> THEY OBTAINED A FULL CONFESSION, THAT WAS ACTUALLY MORE DETAILED THAN THE POST-MIRANDA CONFESSION -- IT -- THEY WENT IN KNOWING THAT BECAUSE THEY INTERVIEWED BOTH ROBINSON AND JOHN WHISPEL PRIOR TO TALKING WITH MR. DAVIS THEY KNEW AT THE

TIME THIS WAS A MURDER CASE
THAT MR. DAVIS WAS ONE OF
THE RESPONSIBLE PARTIES,
THEY WENT IN, NOT TO BUILD A
RELATIONSHIP, BUT TO GET A
CONFESSION, AND THE REASON
WHY THEY STOPPED WAS NOT
BECAUSE THEY HAD A
RELATIONSHIP, THE REASON WHY
THEY STOPPED AND DECIDED
TO GIVE MIRANDA
THEY HAD A FULL CONFESSION
AT THAT POINT THEY STOPPED
IMMEDIATELY DID MIRANDA
FORM, FILLED OUT THE RIGHTS
FORM, BELIEVE DAVIS DREW A
MAP AND THEN THEY WENT ON TO
THE TAPE THERE, WAS NO BREAK
IN THIS IS THAT WAS PRIMARY
PURPOSE.
>> HOW DIFFERENT THAN WAS
RAISED ON DIRECT APPEAL.
>> ON DIRECT APPEAL THE WHAT
BOTH THE DETECTIVES
TESTIFIED TO WAS THAT WE
DIDN'T GO IN WITH THAT IDEA
IN MIND.
WE WENT IN JUST TO BUILD A
RELATIONSHIP AND WHETHER YOU
READ THIS IS COURT'S OPINION
THE IMPRESSION THAT THIS
COURT HAD WAS THAT WELL AS
SOON AS MR. DAVIS MENTIONED
THAT HE IS INVOLVED IN THE
CRIME, THEY STOP IT,AND THEN
THEY GET -- GIVE HIM MIRANDA
RIGHTS, AND THEN THEY
PROCEED.
THAT IS NOT WHAT HAPPENED.
AS A MATTER OF FACT,
MR. DAVIS INITIALLY DENIED
INVOLVEMENT, PRE-MIRANDA A
DENIED INVOLVEMENT THE
OFFICERS PLAYED THE TAPE, A
PORTION OF THE TAPE OF
THE ROBINSON CONFESSION, AND THEN
WERE ABLE TO GET MR. DAVIS
TO MAKE AN ADMISSION OR
CONFESSION PRIOR TO MIRANDA,
ONCE THEY WERE SATISFIED
THAT THEY HAD ALL THE
INFORMATION THAT THEY
NEEDED --
>> SO WHAT IS NEW?

>> WHAT IS NEW IS THE TESTIMONY.
>> TRYING TO FIGURE OUT HOW THIS IS NOT REARGUMENT OF WHAT WAS PRESENTED ON DIRECT.
>> ABSOLUTELY, AT THEHE HE EVIDENTIARY HEARING.
>> SEIBERT IS NEW?
>> SEIBERT CAME OUT ONE YEAR AFTER, THAT IS NEW, BUT WHAT IS ALSO NEW IS THE INFORMATION STOPPED -- AT THE EVIDENTIARY HEARING THAT THESE OFFICERS USED THIS TECHNIQUE A LOT IN NEARLY EVERY INSTANCE THAT THEY CAN.
>> BECAUSE THIS IS MIRANDA. THIS IS AN UNUSUAL CASE.
>> WE WOULD UPHOLD THIS AND QUESTIONING WOULDN'T WE?
>> IF THIS WAS LIBELED BUT IT IS NOT.
IT IS FAR FROM IT.
OREGON VERSUS ELSTADT WAS A CASE WHERE IT WAS AN ADDED BURDEN MISTAKE.
IT WAS NOT ANY STATION HOUSE.
THEY DID NOT ATTEMPT TO ELICIT A CONFESSION FROM THE YOUNG MAN IN HIS LIVING ROOM HERE.
>> I UNDERSTAND YOUR ARGUMENT THOUGH BECAUSE YOUR BRIEF QUOTES FROM CITES, ARGUES SEIBERT LEFT AND RIGHT, NOW YOU ARE SAYING WE DON'T HAVE TO, WE WOULD NOT HAVE TO APPLY IT RETROACTIVELY.
>> WHEN I SAY YOU DON'T HAVE TO APPLY IT RETROACTIVELY, WHAT I AM SAYING, JUSTICE CANTERO, IS THAT SEIBERT IS NOT NEW LAW.
SEIBERT ITSELF SAYS WE ARE NOT MAKING NEW LAW HERE.
SEIBERT IS TELLING US THIS IS WHAT WE SAID, THIS IS WHAT HAS BEEN GOING ON AND WE DON'T LIKE IT.
WE DID NOT GIVE LAW ENFORCEMENT A BLANK CHECK TO QUESTION FIRST AND AGAIN WHEN YOU SAY WE DON'T LIKE IT.
>> YOU ARE TALKING ABOUT THE COURT JUSTICES OF THE NINTH.

>> AGAIN, THE PLURALITY GOES A LITTLE BIT FURTHER WITH REGARD TO THE ANALYSIS BUT THERE IS A MAJORITY, WHEN WE ARE TALKING ABOUT THE CIRCUMSTANCES OF THIS CASE, WE COME BACK TO.
>> YOU ARE GOING TO TALK ABOUT THE CIRCUMSTANCES OF THIS CASE. ELABORATIVE LITTLE BECAUSE YOU JUST SAID THE EVIDENCE NOW PRESENTED POST CONVICTION WITH REFERENCE TO THE OFFICERS AND THEIR TECHNIQUE AND WHAT THEY DID AND WHAT THEIR INTENT WAS. IT WAS COMPLETELY DIFFERENT, OR IT LEAST I'VE UNDERSTOOD YOUR ANSWER TO BE THAT SO HE ASKED YOU WHAT IS DIFFERENT NOW? WHAT IS DIFFERENT ON SOME POST CONVICTION SO WOULD YOU ELABORATE A LITTLE BIT ABOUT THAT IN TERMS OF CONTRASTING AT LEAST YOUR VERSION OF HOW THIS ISSUE WAS PRESENTED TO THIS COURT, WHAT WAS IN THE RECORD FOR THAT AS OPPOSED TO NOW, WHAT YOU HAVE SHOWN TO BE SUBSTANTIALLY DIFFERENT BECAUSE ONE OF THE IMPLICATIONS IN YOUR STATEMENT, AT LEAST I WAS HEARING, WOULD BE THAT YOU WERE SAYING THAT THE OFFICERS TESTIFIED BEFORE FALSELY OR WERE MISREPRESENTED OR WHATEVER, SO WHICH WOULD YOU GIVE US BECAUSE OBVIOUSLY THIS IS A SIGNIFICANT PART OF THIS CLAIM.
YOU GIVE US A MORE FLUSHED OUT PICTURE OF WHAT YOU CLAIM IS SIGNIFICANTLY DIFFERENT ABOUT WHAT THE OFFICER SAID BEFORE THE CIRCUMSTANCES WERE, AND NOW WHAT YOU HAVE PRESENTED IN POST CONVICTION.
>> CORRECT.
DURING THE MOTION, DEFENSE COUNSEL ASKED DIRECTLY DETECTIVES, WAS THIS PART OF THE STRATEGY?
WAS THIS THE PLAN?
THEY SAID NO.
EARLIER BEFORE THAT QUESTION, STARTING ON PAGE 11 OF THE ATTACHMENT THE MOTION TO

SUPPRESS, THE OFFICER SAID, WE
ARE HERE, WE JUST WANT TO BUILD
A RELATIONSHIP.
WE JUST WANT TO GET A RAPPORT
WITH MR. DAVIS.
OUR INTENT WAS TO MAKE HIM MORE
COMFORTABLE WITH US.
THAT IS NOT TRUE.
THAT IS FALSE.
>> YOU SAY IT IS NOT TRUE, THAT
IT IS FALSE.
IN OTHER WORDS THE OFFICER
TESTIFIED ON POST CONVICTION
THAT WHEN I SAID THAT, THAT WAS
FALSE?
>> NO.
I DID NOT COME BACK AND SAY I
LIED.
>> WE HAVE THE PICTURE NOW THAT
YOU ARE SAYING, BECAUSE I ASSUME
THAT EVEN IN A SITUATION WHERE
OFFICERS MIGHT INTEND YOU KNOW
TO GET A CONFESSION PERHAPS
WITHOUT GIVING THE MIRANDA
RIGHTS, THAT PART OF THAT WOULD
BE TO MAKE A DEFENDANT
COMFORTABLE IN ORDER SO THAT, SO
I'M NOT SURE BUT ALL RIGHT, SO
WHAT ON POST CONVICTION DID YOU
PRESENT TO SHOW THAT THE
OFFICERS LIED WHEN THEY
TESTIFIED AT THE SUPPRESSION
HEARING EARLIER?
>> I WOULD SAY THAT THE
TESTIMONY, TWO ASPECTS.
ONE IS NOT ONLY, NOT IN MR.
DAVIS'S CASE BUT THEIR PRACTICE
WENT INTO GREAT DEPTH IN WHICH
THEY SAID, THEY USE THIS
PRACTICE ALMOST ALL THE TIME AND
THIS TECHNIQUE, THIS QUESTION
FOR TECHNIQUE THEY USED ALMOST
ALL THE TIME.
>> SO THE OFFICERS TESTIFIED ON
POST CONVICTION THAT WHEN THEY
WENT TO TEXAS, IT WAS IN TEXAS?
THAT WENT TO TEXAS.
THERE WERE USING A TECHNIQUE AND
THAT THEY USED IT IN THIS CASE?
>> YES.
>> HOW DID THEY EXPLAIN THE
TESTIMONY THEY HAD GIVEN
PREVIOUSLY THAT THEY DID NOT DO
THAT?

>> THAT THEY DIDN'T USE A TECHNIQUE?
>> IN OTHER WORDS YOUR CONTENTION NOW IS THE SUPPRESSION HEARING THAT THE OFFICERS LIED.
>> CORRECT.
>> WHEN THE OFFICERS WERE QUESTIONED NOW I ASSUME THE POST CONVICTION ABOUT, WELL WHY DID YOU SAY THIS AT THE SUPPRESSION HEARING THEN?
WHAT IS THEIR EXPLANATION?
>> THERE WERE TAKEN TO A PLACE WHERE THEY DIDN'T WANT TO GO BUT WHAT DEVELOPED AGAIN, THEY DID NOT COME UP AND SAY WE LIED, BUT THEY DID COME OUT AND SAY THIS IS THE PROCEDURE, THIS IS THE STRATEGY WE USE ALL THE TIME.
>> SO THE QUESTION GOES BACK TO ON DIRECT APPEAL, THIS COURT KNEW THAT YOUR DEFENDANT HAD GIVEN A STATEMENT PRIOR TO THE ADMINISTRATION OF MIRANDA WARNINGS.
>> RIGHT.
>> ASIDE FROM WHETHER OR NOT THAT IS A TECHNIQUE THEY USE TO GET REPORT.
LET'S LEAVE THAT OUT OF THE MIX FOR A MOMENT.
WHAT IS NOW BEFORE THIS COURT THAT WAS NOT BEFORE THIS COURT WHEN WE MADE THIS DECISION, THAT THE SUBSEQUENT STATEMENT AFTER MIRANDA WAS TO SUFFICIENTLY ATTENUATE FROM THE ORIGINAL STATEMENT, SO THAT IT WAS ADMISSIBLE?
WHAT ELSE DO WE HAVE THAT WOULD MAKE US FEEL THAT THAT POSITION WAS NOT THE CORRECT DECISION?
>> WE NOW KNOW THAT THIS TECHNIQUE WAS DELIBERATE.
>> YOU KEEP SAYING THIS TECHNIQUE IS DELIBERATE BUT WE ARE SAYING, I AM ASKING YOU ASIDE FROM THAT, WHAT ELSE DO WE HAVE?
>> WE KNOW UNDER SIEBERT THAT THE SECOND CONFESSION WAS NOT OBSCURED IN ANY WAY.
>> BUT AND MR. CANTERO'S

QUESTION YOU SAID WE DID NOT
HAVE TO RELY ON THAT.
>> WHAT I AM SAYING, SIEBERT IS
NOT NEW LAW.
MIRANDA IT IS THE LAW, BUT IN
SIEBERT THEY SAID IT VIOLATES
MIRANDA WHEN YOU DO THIS.
>> MR. CANNON THERE IS A REAL
CONCERN HERE.
THREE TIMES THE SAME QUESTION
HAS BEEN ASKED AND YOU MAY WIN
HERE KEEP AN ANSWER THAT
QUESTION.
PLEASE GO RIGHT TO IT AND TELL
THEM WHAT IS DIFFERENT, WHAT
DEVELOPED DIFFERENTLY THAN WHEN
THE CASE WAS HERE BEFORE,
PLEASE?
>> THE OFFICERS TESTIFIED
SPECIFICALLY THAT THIS WAS THE
STRATEGY.
THE COURT ORDERED THE STRATEGY,
I UNDERSTAND.
>> THE COURT-ORDERED PAGE 11 ON
THIS ISSUE STATES DETECTIVE
IVERSON TESTIFIED THAT WHEN
INTERVIEWING SOMEBODY WHO
ROUTINELY DOES NOT GIVE MIRANDA,
SO HE CAN ESTABLISH RAPPORT WITH
THE INDIVIDUAL.
HE ALSO TESTIFIED HE DID NOT USE
A QUESTION TECHNIQUE AND
DEFENDANT'S CASE TO AVOID GIVING
MIRANDA RIGHTS.
THE EVIDENCE YOUR HEARING WHEN
THE QUESTION FIRST, A PROCEDURE
WAS A TECHNIQUE DETECTIVE
IVERSON RESPONDED IF YOU WANT TO
CALL IT THAT, YES SIR.
DEFENSE COUNSEL THEN STATED, TO
MAKE EASIER LET'S GO AHEAD AND
CALL IT A TECHNIQUE, HOWEVER THE
TESTIMONY ELICITED FAILED TO
SUPPORT DEFENSE CLAIMS THAT
DETECTIVE IVERSON'S PRIOR
TESTIMONY IS UNTRUE OR
MISLEADING.
>> RIGHT.
>> SO, WE HAVE TO GIVE DEFERENCE
TO THOSE FINDINGS UNDER THE
JUDGE'S ORDER.
>> NO, BECAUSE YOU ARE
MYTHIFYING THE LAW.
THIS IS WHERE SEIBERT DOES COME

INTO PLAY.
SIEBERT IS EXACTLY ON POINT.
AGAIN, AND I KNOW JUSTICE QUINCE IS SAYING BEYOND IS DELIBERATE.
YES IT WAS DELIBERATE AND THAT IS WHAT HAPPENED HERE.
IT TAKES IS OUT OF THE PLURALITY OF SIEBERT AND PUTS IT INTO THE MAJORITY THERE.
ALSO THE OFFICERS DID TESTIFY THAT, YES THIS IS THE STRATEGY EVEN THOUGH --
>> THE STRATEGY IS ACCORDING TO THE TESTIMONY AND THE ONLY THING YOU HAVE IS OPPOSITE TESTIMONY I ASSUME, THAT HE DOES NOT DO IT AT THE BEGINNING OF THE CONVERSATIONS SO HE CAN ESTABLISH A RAPPORT WITH THE INDIVIDUAL.
NOW WHETHER YOU TAKE SEIBERT OR ELSTADT OR ANY OTHER CASE IN BETWEEN, HOW DOES THAT VIOLATE THE MIRANDA WARNINGS?
>> ALSO WHAT DEVELOPED AT THE EVIDENCIARY HEARING WAS THERE WAS NO RELATIONSHIP, NO BUILDING OF A RAPPORT.
MR. DAVIS DENIED HE WAS INVOLVED IN THE CRIME.
>> THERE WAS LESS CHITCHAT.
YOU ARE SAYING THIS WAS A. CONFRONTATION IMPLICATED TO THE DEFENDANT OF THE CRIME WITHOUT ANY RAPORT BUILDING.
>> ABSOLUTELY AND IF THERE WAS JUST BUILDING A REPORT, WHICH WAS NOT DEVELOPED THE ORIGINAL TRIAL, THEN ONCE THE REPORT AND THE RELATIONSHIP WAS ESTABLISHED THEN THEY COULD HAVE MIRANDIZED HIM BUT THEY DIDN'T.
THEY CONFRONTED HIM WITH DENIAL WITH EVIDENCE.
EXCUSE ME?
>> THAT WAS ALL KNOWN BEFORE.
>> THAT WAS KNOWN BEFORE BUT WHAT WE DIDN'T KNOW AGAIN JUSTICE ANSTEAD WAS THAT THIS WAS DELIVERED.
THEY DIDN'T GO IN WITH THE PURPOSE OF BUILDING A RAPPORT.
THE FACT.
>> WHEN YOU SAY THAT IS NOT SURE

WHAT EVIDENCE DO HAVE THE THAT IS NOT TRUE?
THE STATEMENT THAT HE DOES IT TO ESTABLISH EIGHT RAPORT WHICH THE TRIAL COURT CREDITED WAS NOT TRUE.
WHAT EVIDENCE WAS SUBMITTED?
>> THE ACTUAL EVIDENCE WAS THAT THEY WENT THROUGH.
THEY STARTED OFF NOW WITH BUILDING A RAPPORT.
>> LET ME CUT THROUGH SOME OF THIS, WAS THE STATEMENT AND WHAT OCCURRED BEFORE THIS COURT AT THE TIME.
>> WHAT STATEMENT IS THAT?
>> THAT FIRST DISCUSSION.
IT WAS ALREADY HERE SO WE HAVE THIS DECISION ON DIRECT APPEAL.
IT HAD WHAT ACTUALLY OCCURRED BEFORE THE MIRANDA WARNING, SO THAT IS NOTHING NEW.
WE HAD IT THEN AND WE HAVE IT NOW, CORRECT?
>> THE OFFICER SAID I AM TRYING TO BUILD A RAPPORT.
IT WAS NOT DEVELOPED ANY FURTHER.
>> WE HAD EVERYTHING THAT WENT ON AND WE HAVE WHAT THE OFFICER SAID.
THE ONLY THING DIFFERENT AGAIN, IRRESPECTIVE OF YOUR ARGUMENT, THE ONLY THING DIFFERENT WAS THEY SAID THEY DID THIS AS A TECHNIQUE IN THE JUDGE SAID THAT IS TO BUILD A RAPPORT.
>> THAT IS THE CONCLUSION RATHER THAN A STATEMENT OF FACT.
>> NOW BECAUSE DURING THE INITIAL MOTION HE WAS OUT SPECIFICALLY, THE ONLY REASON WHY HE DID THIS PRIOR TO MIRANDA WAS TO BUILD A RAPPORT.
NOW THAT IS NOT TRUE.
THE OFFICER TESTIFIED.
>> WHY WOULD THAT MAKE ANY DIFFERENCE IF THE COURT WAS GOING TO SAY YOU CAN'T GO IN AND WHAT YOU CALL IT BUILDING RAPPORT OR WHATEVER AND GIVE A DETAILED CONFESSION WITHOUT MIRANDA AND THEN AFTER YOU HAVE GOT THE DETAILED CONFESSION,

THEN GIVE MIRANDA AND HAVE THEM REPEAT THE DETAILED CONFESSION. WHAT DIFFERENCE WOULD IT MAKE WHETHER THE OFFICERS CHARACTERIZED BUILDING RAPPORT OR WHATEVER, IF WE ARE REALLY GOING TO LOOK AT THE MERIT OF THAT ARGUMENT?
IN OTHER WORDS WERE HAVING SOME DIFFICULTY WITH THE DIFFERENCE THAT YOU SAY NOW EXISTS ON POST CONVICTION.
IF WE HAD ALL OF THIS BEFORE US BEFORE, AND DECIDED THERE WAS NO CONSTITUTIONAL VIOLATION EVEN THOUGH THE OFFICERS GOT A DETAILED CONFESSION BEFORE THEY GAVE MIRANDA, HOW WAS IT ANY DIFFERENT ON EXAMINING THE OFFICERS NOW IN POST CONVICTION, THAT YOU GET THEM TO SAY IF YOU WANT TO CALL IT THAT, THAT IS WHAT WE ARE MISSING IN YOUR ARGUMENT HERE.
>> BECAUSE THIS COURT WAS LEAD TO BELIEVE, THIS COURT WAS MISLED TO BELIEVE THAT THIS WAS INADVERTENT, SO IF AN OFFICER DID DID INADVERTENTLY, THEN IT IS PERFECTLY ALL RIGHT TO GET A DETAILED CONFESSION FIRST?
>> ELSTADT DOES TALK ABOUT IN A BURDEN.
WE DON'T WANT TO MAKE IT WHERE IT IS LIKE A TECHNICALITY.
>> SO IS THAT THE CRITICAL THING WITH YOUR ARGUMENT, THAT IS FINDING THAT THIS WAS INTENTIONAL AND THAT MAKES ALL THE DIFFERENCE IN THE WORLD, IS THAT WHAT YOU ARE SAYING?
>> THAT WAS THE ARGUMENT IN SEIBERT.
>> YOUR ARGUMENT HERE.
THAT IS CRITICAL THOUGH?
>> YES.
AND IT WAS INTENTIONAL AND THE OFFICERS DID NOT DENY THAT.
>> YOU ARE REALLY BEYOND YOUR TIME ALREADY BUT YOU HAVE ANOTHER POINT?
>> I UNDERSTAND I AM BEYOND MY TIME BUT WHAT I WOULD LIKE TO EMPHASIZE IS ON PAGE 33 AND 34

OF MY BRIEFS, THOSE SIX FACTORS
THAT WERE ESTABLISHED BY SEIBERT
IN LOOKING AT WHETHER THIS
VIOLATES MIRANDA OR NOT, WHERE
THE POLICY DENIES TO REDUCE THE
EFFECTIVENESS OF MIRANDA, THEY
ARE EXACTLY THE SAME, EXACTLY
THE SAME AS WHAT HAPPENED WITH
MR. DAVIS.
>> IS THERE ANOTHER POINT YOU
WANT TO DISCUSS THIS MORNING?
>> NO YOUR HONOR.
>> GOOD MORNING YOUR HONORS, MAY
IT PLEASE THE COURT.
I AM FROM THE ATTORNEY GENERAL'S
OFFICE REPRESENTING THE
APPELLATE IN THE STATE OF
FLORIDA.
OF THIS IS THE DIRECT APPEAL
ISSUE WHICH WAS RESOLVED ON
DIRECT APPEAL.
MR. DAVIS WAS GRANTED AN
EVIDENTIARY HEARING ON THIS
CLAIM BECAUSE IT WAS PLED AS A
VIOLATION, THAT THERE WAS FALSE
TESTIMONY PRESENTED AT THIS
QUESTION HEARING.
>> LET ME ASK YOU ABOUT THAT.
WHAT KIND OF REPORT WAS
ESTABLISHED DURING THE INITIAL
CONVERSATION BETWEEN THE
DEFENDANT AND THE POLICE?
>> ACCORDING TO WHAT DETECTIVE
IVERSON RECALLED AT THE
EVIDENTIARY HEARING HE SAID IT
WAS REALLY MORE OF A DIALOGUE.
IT WAS APPROXIMATELY SIX TO
EIGHT MINUTES BEFORE MIRANDA.
>> A DIALOGUE ABOUT WHAT?
>> HE SAID IT WAS A DIALOGUE
TALKING TO DAVIS ABOUT WHAT THEY
HAD DONE.
>> WHAT YOU HAD DONE?
>> DETECTIVE IVERSON.
THEY FLEW OUT TO TEXAS.
THEY INITIALLY WENT AND TALKED
WITH MS. ROBINSON BECAUSE SHE
WAS AT A DIFFERENT FACILITY.
FROM THAT POINT THEY WENT TO
THIS FACILITY WERE ADAM DAVIS
AND JON WHISPEL WERE HELD.
THEN THEY SPOKE WITH ADAM DAVIS.
>> DURING THIS CONVERSATION WITH
ADAM DAVIS THEY WERE REALLY

TELLING ADAM DAVIS WHAT THE
OTHER PERSON HAD SAID,
IMPLICATING HIM IN THE CRIME?
>> CORRECT AND WHAT IVERSON SAID
WAS HE WALKED IN AND THE FIRST
THING HE DOES IS INTRODUCE
HIMSELF, INTRODUCE -- WAS WITH
HIM.
HE SAID THAT IS WHAT HE DOES IN
EVERY CASE.
HE DOES NOT WALK IN.
>> WE ARE NOT TALKING ABOUT JUST
INTRODUCTIONS.
YOU CALL THAT A DIALOGUE.
WHAT WAS THE SUBSTANCE OF THAT
DIALOGUE?
>> WHAT IVERSON SAID WAS IT WAS
MORE OF A DIALOGUE AND LESS OF A
QUESTION AND ANSWER.
HE DID NOT BELIEVE THEY GOT INTO
THE DETAILS, THAT THEY GOT INTO
TAPERECORDINGS.
AFTER MIRANDA WAS GIVEN THERE
WAS AN AUDIO TAPE.
THERE'S ALSO A PORTION WHERE
DAVIS DRAWS THE MAP WHERE THEY
CAN FIND THE BODY.
>> THERE IS NO RECORD OF WHAT
OCCURRED.
>> THERE IS NO RECORD OTHER THAN
THE TESTIMONY THAT WAS OFFERED
AT THE INITIAL SUPPRESSION
HEARING WHICH IS ENTIRELY
CONSISTENT WITH WHAT IVERSON
SAID THAT THE EVIDENTIARY
HEARING.
IT WAS TALKING ABOUT WE HAVE
ALREADY TALKED TO VALESSA AND WE
HAVE TALKED TO JOHN AND
APPARENTLY MR. DAVIS QUESTIONED
WHETHER THESE PEOPLE WOULD BE
TALKING TO THE POLICE ARE NOT SO
THEY PLAYED LITTLE CLIPS OF
THEIR PRIOR INTERVIEWS WITH
VALESSA AND JON WHISPEL.
THEY DID NOT PLAY ENOUGH FOR HIM
TO HEAR WHAT THE CONVERSATIONS
HAD BEEN ABOUT.
THEY JUST PLAYED SNIPPETS SO YOU
COULD TELL THERE WERE HAVING A
DIALOGUE AND THEY HAD INDEED
TALKED TO THE CODEFENDANT.
>> THAT JUST SEEMS TO ME THAT
WHAT THEY ARE TELLING THE

DEFENDANT AT THIS TIME IS LOOK, WE A PARTY TALK TO THESE OTHER PEOPLE AND THEY ARE IMPLICATING YOU ALREADY, SO ONE SENTENCE OF DIALOGUE, AS YOU CALL IT, LIKE THAT ONLY TAKES PLACE AFTER THE DEFENDANT HAS BEEN GIVEN HIS MIRANDA WARNING US BE THE ISSUE IS THE ADMISSIBILITY OF THE STATEMENTS HE MADE AFTER THE MIRANDA WARNINGS BECAUSE OBVIOUSLY THE JURY DID NOT HEAR ANYTHING THAT HAPPENED BEFORE THE MIRANDA WARNINGS AND THAT IS EXACTLY WHAT THIS COURT THAT ON DIRECT APPEAL AND THE REASON THAT IS NOT INADMISSIBLE IS BECAUSE THERE WAS NO DOWNPLAYING OF THE MIRANDA HERE.
>> THIS IS COURT, THAT TESTIMONY OF WHAT EXACTLY HAD OCCURRED AT THE TIME OF THE DIRECT APPEAL. THIS COURT WELL KNEW EXACTLY WHAT TRANSPIRED BEFORE THE ACTUAL --
>> IVERSON SAID HE HAD THE SIX TO EIGHT MINUTE DIALOGUE.
>> HOW MUCH WAS ELABORATED?
>> WHAT HE SAID AT THE TIME OF THE MOTION TO SUPPRESS WAS HE FELT LIKE IT WAS SIMILAR STATEMENTS THAT IT BEEN MADE BUT THERE WAS MORE TIME TAKEN IN A RECORDED INTERVIEW THAT TOOK LONGER BECAUSE IT GOT INTO MORE DETAIL.
>> LET ME TALK ABOUT THAT. ONLY AFTER THIS WAIVER WAS OBTAINED DID DAVIS FULLY --
MS. CANNON SAID THE OPPOSITE, THE THERE WAS FULL EXPLANATION BEFOREHAND AND LESS AFTER.
>> THERE IS NOT TESTIMONY THAT SUPPORTS THAT REPRESENTATION BY MR. CANNON.
THAT THERE IS ANYTHING MORE DETAILED OR MORE INCRIMINATING PRIOR TO MIRANDA THAT WHAT HAPPENED AFTER THE MIRANDA WARNINGS WERE GIVEN.
>> YOU HAVE A TRANSCRIPT OF ANY KIND OF A STATEMENT.
I ASSUME THE FIRST ONE BECAUSE THERE WAS NO MIRANDA, THERE IS

NO TAPING, NO NOTHING AND WE HAVE NO REAL --
>> THEN IVERSON'S MEMORY AS IT WAS AT THE SUPPRESSION HEARING.
>> IS THERE A DIFFERENCE BETWEEN THOSE PERSONS TESTIFYING ABOUT THE CASE UPON DIRECT APPEAL AND THEY OR SOMEONE ELSE TESTIFIED AT THE EVIDENTIARY HEARING?
>> NO, NO.
IF THE EVIDENTIARY HEARING WHEN IVERSON WAS SAYING IN HIS MIND IT WAS NOT ANYWHERE AS DETAILED INITIALLY AS THE SUPREME MIRANDA CONVERSATION, HE WAS REMINDED OF TESTIMONY, HIS TESTIMONY FROM THE SUPPRESSION HEARING BY MR. CANNON WHERE HE SAID HE THOUGHT IT WAS BASICALLY THE SAME SO THAT IS THE DIFFERENCE, GOT MORE RESTRICTIVE IN THE EVIDENCE YOU ARE HEARING.
>> IS THAT PART OF THE TESTIMONY?
>> YES YOUR HONOR.
>> I AM CONCERNED ABOUT, LOOKING AT THE MAJORITY OPINION IN MY DISSENT, AND IT LOOKS LIKE IN THE ARGUMENT OF DIRECT APPEAL THAT THERE WERE SEVERAL BASES THAT WERE BEING ALIGNED AS TO WHY THE INITIAL STATEMENT WAS COERCED AND THEY SAID THEY DECEIVED HIM.
THEY DID NOT INQUIRE -- I DON'T SEE ANY FOCUS ON WHAT THE OFFICERS POLICIES WERE OR WHAT THEY WERE DOING.
>> IN TERMS OF THEIR POLICIES, THAT WAS NOT PART OF THE MOTION TO SUPPRESS.
IN TERMS OF THEIR POLICIES IN THE FACT THAT THEY INTRODUCE THEMSELVES AT THE BEGINNING AT EVERY INTERVIEW TYPE SITUATION, WHETHER IT IS A CUSTODIAL INTERROGATION, THE TESTIMONY WAS THEY COME IN AND INTRODUCE THEMSELVES, LET THE DEFENDANT KNOW WHY THEY ARE THERE OR WHAT THEY ARE DOING AND BOTH OF THESE DETECTIVES TESTIFIED AT THE SUPPRESSION HEARING, DON'T REALLY HAVE A SET THIS IS THE

WAY WE DO IT.
YOU KIND OF GO WITH HOW
RECEPTIVE THE PERSON IS YOU ARE
TALKING TO.
>> DID THEY CONSIDER HIM A
SUSPECT WHEN HE CAME IN?
HE HAD BEEN INCARCERATED IN
TEXAS.
>> THEY CERTAINLY HAD
INFORMATION, THEY RECEIVED
INFORMATION FROM THE INTERVIEWS
THEY HAD JUST DONE.
>> MRS. ROBINSON WAS DEAD.
HE DID IN THE INITIAL INTERVIEW
TO ADMIT HE KILLED
MRS. ROBINSON?
>> HE MADE INCRIMINATING
STATEMENTS.
OBVIOUSLY POST MIRANDA HE TALKED
SPECIFICALLY ABOUT SLITTING HER
THROAT.
>> I AM REFERRING TO THE DIRECT
APPEAL WHERE IT SAYS THAT IN THE
INITIAL TEN MINUTE DISCUSSION --
[INAUDIBLE]
I WOULD IMAGINE.
[INAUDIBLE]
SO ARE YOU SAYING THE FOCUS
INITIALLY WAS NOT ON THE PURPOSE
AND THE INITIAL TEN MINUTE
DISCUSSION THAT THE POLICE
OFFICER HAD?
THAT WAS NOT THE FOCUS?
>> I AM JUST TRYING TO GET WHY
IT IS NOT MENTIONED AT ALL IN
THE INITIAL OPINION BECAUSE IT
SEEMS TO ME IT IS PRETTY
CRITICAL AS TO, AND IT'S
CERTAINLY WHAT A BEEN CRITICAL
TO ME IN THE DISSENT THAT THEY
WERE THERE AND KNOWING HE WAS A
SUSPECT, THAT THEY USED THIS
TECHNIQUE OF GETTING, NOT GIVING
THE WARNINGS UNTIL HE CONFESSED.
>> THEY DID NOT CONSIDER IT A
TECHNIQUE.
THEY DID NOT CONSIDER IT A
STRATEGY.
THESE ARE MR. CANNON'S WORDS.
>> THERE IN THE FIRST OR SECOND,
EITHER IN THE INITIAL CASE OR --
DID SEIBERT AT ALL CHANGE THE
LEGAL LANDSCAPE OF WHAT THE LAW
WAS, BECAUSE IT DOES STRIKE ME

AGAIN, AND OBVIOUSLY MY VIEW WAS NOT ACCEPTED, THE SAME TYPE OF CONTACT, A SITUATION WHERE MIRANDA IS REALLY NOT MINIMIZED BECAUSE YOU GET THIS STATEMENT AND THEN YOU GIVE MIRANDA IS CERTAINLY SOMETHING WE DON'T WANT TO ENCOURAGE, DO YOU AGREE WITH THAT?
THAT WE DON'T WANT TO ENCOURAGE OFFICERS TO WAIT TO GIVE MIRANDA UNTIL THEY GET THE IMPRESSION?
>> YOU DON'T WANT THEM TO WAIT MIRANDA UNTIL THEY GET A CONFESSION BUT THAT IS NOT REALLY WHAT HAPPENED HERE.
THE IDEA THAT THE OFFICER WAS JUST DOING THIS, WHAT HAPPENED IN THE SEIBERT CASE IN THE U.S. SUPREME COURT WAS AN OFFICER CAME IN AND TESTIFIED.
WE WERE TRAINED TO USE THIS TECHNIQUE TO DIVERT MIRANDA SO THE QUESTION IS, WHAT DOES THAT MEAN WHEN THEY SAY THAT IS THE TECHNIQUE AND THE POLICY OF THE DEPARTMENT?
THAT IS CLEARLY NOT WHAT WAS HAPPENING HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT.
>> YOU ARE SAYING THAT KIND OF TESTIMONY WAS NOT CERTAINLY THERE THE FIRST TIME BUT IF THERE IT BEEN THAT TESTIMONY THE SECOND TIME AROUND THAT MIGHT BE A NEWLY DISCOVERED FACT?
>> YES, THE TESTIMONY COULD CHANGE AND THAT WOULD BE SIGNIFICANT, BUT WE DON'T HAVE THAT AND AS FAR AS THE DIRECT APPEAL OPINION THE REASON MAYBE THIS WAS NOT AS BIG AN ISSUE WITH DIRECT APPEAL WAS BECAUSE NOT ALL THOSE OTHER FACTORS WHICH MENTIONED.
IN DIRECT APPEAL THEY WERE TRYING TO MAKE THIS CASE LOOK LIKE RAMIREZ BECAUSE RAMIREZ WAS ANOTHER YOUNG DEFENDANT WHO HAD A LITTLE MORE PRESSURE PUT ON HIM THAN ADAM DAVIS COULD COME UP WITH AND THEY HAD A GOOD CASE THAT THEY WERE TRYING TO PUT IT ON THAT SO I DON'T THINK THEY

FOCUSED ON THE DETECTIVES IN THE MIRANDA ISSUE ALTHOUGH IT CERTAINLY WAS PLED AND IT CERTAINLY IS PART OF THE ISSUE AND THAT IS WHY THIS COURT SAID, LET'S GET ELSTADT AND IT WAS PERFECTLY FINE AND THAT IS THE SAME THING AND ONE SEIBERT, EVEN WITH SEIBERT IT WAS IN VIOLATION IN THIS CASE.
>> THERE IS NO RECORD AGAIN OF WHAT WAS SAID IN THE FIRST TEN MINUTES.
>> CORRECT.
>> WHAT WAS THE OFFICER'S REASON THEY GAVE EITHER THE FIRST TIME OR AT THE EVIDENTIARY HEARING AS TO WHY THEY DIDN'T TURN ON THE TAPE.
>> THEY WERE NOT ASK WHY THEY DIDN'T TURN ON THE TAPE.
THEY SAID THEY DON'T WALKING COLD AND GIVE SOMEBODY MIRANDA RIGHTS BECAUSE THAT IS NOT AN EFFECTIVE WAY TO GET SOMEBODY TO TALK TO THEM AND OBVIOUSLY OFFICERS ARE TRYING TO INVESTIGATE.
THIS COURT HAS RECOGNIZED THE GOOD THAT IT'S COME FROM VOLUNTARY CONFESSION.
>> I AM SMILING ONLY BECAUSE CLEARLY MIRANDA PREVENTS ANY AFFECT ON POLICE OFFICERS TRYING TO GET A CONFESSION AND THE WHOLE IDEA OF MIRANDA IT IS THAT WHEN SOMEBODY IS UNDER ARREST, WE ENCOURAGE SO THAT THEN WE HAVE THE ASSURANCE THAT IS VOLUNTARY SO THE IDEA THAT OBVIOUSLY THEY DON'T COME IN AND SAY, YOU KNOW, YOU HAVE A RIGHT TO REMAIN SILENT.
THERE IS A LOT MORE THAT WAS HAPPENING IN THE FIRST PART THEN JUST HOW ARE YOU DOING TODAY, ARE YOU BEING TREATED WELL?
>> THE ACCORD WAS WELL AWARE THAT WHAT THE DIRECT APPEAL.
>> EVEN THOUGH WE ARE WELL AWARE OF IT IT JUST STRIKES ME THAT THE OFFICERS AND I WENT IN TO BUILD RAPPORT, AND THAT IS THE THIS STRATEGY OR TECHNIQUE OR

WHATEVER TERM YOU WANT TO USE
WOULD BE TO CHATTING AND NOT
CONFRONTING THE DEFENDANTS WITH
INCRIMINATING EVIDENCE, WHICH
SEEMS TO ME THERE IS A
DIFFERENCE BETWEEN BUILDING A
RAPPORT WITH A DEFENDANT AND
TELLING A DEFENDANT LOOK, I HAVE
ALREADY TALKED TO THESE OTHER
PEOPLE WHO WERE INVOLVED IN THIS
AND THEY ARE IMPLICATING YOU.
HOW DOES THAT KIND OF EVIDENCE
BUILD RAPPORT?
>> I CAN'T SAY EXACTLY WHAT THE
CONVERSATION WAS.
IVIES THAT WAS NOT THERE.
IVERSON DID NOT REMEMBER
SPECIFICALLY HOW DOES IT COME
ABOUT, HE ENDS UP TELLING THEM
THAT HE WAS PART OF THIS.
WHAT ADAM DAVIS TOLD HIS EXPERT
AT THE TIME OF THE TRIAL WAS
THAT HE WANTED TO TELL THE
POLICE THAT HE HAD DONE THIS
BECAUSE HE WAS TRYING TO PROTECT
MELISSA AND THERE WAS TESTIMONY
THAT THEY HAD DISCUSSED THAT IF
THEY GOT CAUGHT THERE WERE GOING
TO COVER FOR EACH OTHER.
>> I AM NOT TALKING ABOUT THE
DEFENDANT'S STATE OF MIND, I'M
TALKING ABOUT OFFICERS RAPPORT
AND GETTING A DEFENDANT TO MAKE
A STATEMENT ARE IN MY MIND TWO
DIFFERENT THINGS SO WHEN YOU
START DOWN THE ROAD WHERE YOU
ARE ACTUALLY CONFRONTING THE
DEFENDANT WITH EVIDENCE, IT
SEEMS TO ME THAT AT THAT POINT
YOU ARE NOT ATTEMPTING TO
ESTABLISH ANY KIND OF RAPPORT
WITH THE DEFENDANT.
YOU ARE TRYING TO GET THE
DEFENDANT TO MAKE A STATEMENT
ABOUT HIS OR HER INVOLVEMENT IN
THE CRIME.
>> I DON'T KNOW HOW MUCH THEY
WERE CONFRONTING HIM WITH
EVIDENCE.
>> THEY HAD TAPERECORDERS.
>> I DON'T KNOW THAT THEY MADE
THE STATEMENT THE OTHERS HAD
IMPLICATED YOU OR THEY GAVE HIM
ANY INDICATION OF WHAT THE

OTHERS HAD SAID.
ALL THEY SAID WAS WE TALK TO VALESSA AND JON WHISPEL.
THEY MAY HAVE SAID MORE THAN THAT BUT THERE IS NO TESTIMONY THAT SUGGESTS THAT FOR ME THE SUPPRESSING HEARING OR THE EVIDENCE HERE HEARING BUT --
SEIBERT COMES BACK TO HOW EFFECTIVE WERE MIRANDA WARNINGS IN THE SITUATION?
HOW EFFECTIVE FOR THE MIRANDA WARNINGS TO PUT HIM ON NOTICE OF HIS CONSTITUTIONAL RIGHTS BEFORE THE REPORTED CONFESSION WAS MADE AND JUDGE BATTLE FOUND THAT MIRANDA WAS EFFECTIVE AND I THINK THAT IS A KEY FACTOR FOR THIS COURT ON DIRECT APPEAL IN DISTINGUISHING THIS CASE FROM RAMIREZ.
RAMIREZ HAS A LOT OF FACTS THAT ARE NOT IN HERE BUT THE QUESTION IS HOW CAREFUL WERE THEY AND EXPLAIN THE MIRANDA RIGHTS, DID HE EXPLAIN THAT AND THAT IS THE FOCUS OF SEIBERT AND IT IS WHAT THE CHILD JUDGE FOCUSED ON BELOW.
WE DON'T HAVE ANYTHING THAT IS COME OUT OTHER THAN THE SEIBERT DECISION BUT CERTAINLY THE TESTIMONY FROM THE OFFICERS WERE CONSISTENT FROM THE BEGINNING.
THERE'S NO FALSE TESTIMONY THAT HAS BEEN PRESENTED, THE TRIAL JUDGE SAID THE HEARING WAS NOT FALSE.
THERE ARE NOW OUT ABOUT.
>> I UNDERSTAND YOUR CONCERN THAT THIS WAS MORE THAN THEIR RAPPORT, BUT WE ARE GETTING INTO SOMETHING THAT WE REALLY DON'T HAVE ANY EVIDENCE ABOUT.
WE AREN'T SIX TO EIGHT MINUTES WHERE THEY TALK TO DAVIS, THEY INTRODUCED THEMSELVES, THEY TOLD AND THEY TALKED TO THE CODEFENDANT, THEY PLAYED ENOUGH OF THAT TAPE TO LET HIM KNOW THEY HAVE CONVERSATIONS BUT CERTAINLY DID NOT HAVE THE IMPRESSION FROM THE TESTIMONY THAT THEY WERE CONFRONTING HIM

OR TRYING TO GIVE HIM TO
INCRIMINATE HIM.
THERE WERE TRYING TO GIVE IN THE
BACKGROUND OF WHY THERE WERE
THERE AND WHAT THEY WERE DOING
AND HE WAS MORE THAN HAPPY TO
TELL THEM EVERYTHING THEY WANTED
TO KNOW.
[INAUDIBLE]
WHEN A TAPE RECORDER IS THEY ARE
SITTING READY TO BE USED, BUT IT
IS NOT USED FOR THAT TEN MINUTES
OF RAPPORT.
>> I DON'T KNOW WHETHER THE TAPE
RECORDER WAS OUT ON THE TABLE
READY TO BE USED.
>> YOU SAID THEY FINISHED AND
THEN THEY WENT RIGHT INTO IT SO
YOU DID NOT INDICATE THERE WAS
SOME INTERACTION.
>> IT WAS A CONTINUOUS THING BUT
I AM SAYING I DON'T KNOW IF IT
WAS SITTING OUT ON THE TABLE.
>> LET'S NOT QUIBBLE ABOUT THOSE
THINGS.
REALLY IT IS A MATTER OF JUST
COMMON SENSE, HOW CAN ONE REALLY
IN HINDSIGHT --
>> I THINK YOU LOOK AT THE
ADMINISTRATION OF THE MIRANDA
WARNINGS THEMSELVES.
IF YOU HAVE SOMEBODY THAT COMES
OUT AND SAYS HE OF THE RIGHT TO
REMAIN SILENT THAT IS NOT AN
EFFECTIVE WARNING PERHAPS GIVEN
THIS PREMIRANDA DISCUSSION.
HERE YOU HAVE TWO DETECTIVES WHO
CAREFULLY WENT THROUGH EACH AND
EVERY RIGHT WITH THE WRITTEN
WAIVER HAVING TO INITIAL EACH
AND EVERY RIGHT, SO THAT WAS ALL
THE TESTIMONY.
>> BUT THAT IS AFTER THE TRUTH
AND THE CONFESSION.
>> THE GIVING OF THE MIRANDA
WARNINGS THEMSELVES WHICH OF
COURSE THE ELSTADT CASE WAS
AFTER SOMEBODY INCRIMINATED
THEMSELVES SO THAT IS WHAT WE
WERE TOLD TO DO, LOOK HOW
EFFECTIVE THE MIRANDA WARNINGS
WERE.
THAT IS WHAT THE COURT DID UNDER
DIRECT APPEAL WHETHER IT WAS A

DIFFICULT THING OR NOT, YOU WERE ABLE TO DO IT.
THAT IS WHAT SEIBERT SAYS SO ALL OF IT HAS BEEN CONSISTENT THE THAT IS THE FOCUS, HOW EFFECTIVE FOR THE MIRANDA WARNINGS AND THAT WAS THE ISSUE THAT WAS BEFORE THE COURT.
IN THE TERMS OF, I THINK MR. CANNON SAID THEY USE THE TECHNIQUE IS HE CALLED IT IN EVERY SINGLE CASE AND THEY DID NOT SAY THAT.
THEY SAID THEY STARTED ATTACKS USING THEMSELVES AND HALF THE TIME YOU WILL TALK TO THE DEFENDANT FOR A FEW MINUTES AND MAYBE NOT.
IT JUST DEPENDS ON AGAIN WHO THEY ARE TALKING TO, HOW RECEPTIVE THEY ARE TO BEING A PART OF THE CONVERSATION.
ONE OF THE THINGS THAT WAS VERY DIFFICULT FOR THE DEFENSE TO OVERCOME WITH THE SUPPRESSION HEARING, AND ADAM DAVIS TESTIFIED AT THE SUPPRESSION HEARING AND THE THING THAT WAS DIFFICULT ABOUT THESE OTHER FACTORS WHICH JUSTICE WAS ALLUDING TO EARLIER AND ONE OF THE THINGS THAT IS DIFFICULT FOR DEFENSE TO OVERCOME IS WHEN YOU HEAR HIS VOICE ON THE AUDIO TAPE HE CERTAINLY DOES NOT SOUND TIRED, DOES NOT SOUND CONFUSED, DOESN'T SOUND LIKE SOMEBODY WAS NOT AWARE OF WHAT THEY WERE DOING AND WOULDN'T UNDERSTAND THE MIRANDA RIGHTS.
I DID NOT REALLY HAVE ANYTHING ELSE ON THIS ISSUE UNLESS THE COURT HAS ANY OTHER QUESTIONS.
THANK YOU.
>> MR. CANNON I WILL GIVE YOU A MINUTE.
YOU ARE OVER YOUR TIME.
>> THANK YOU VERY MUCH.
>> WHY YOU ARE RESPONDING, COULD YOU EXPLAIN HOW THIS MATTER WAS NOT BEFORE THE COURT IN PREVIOUS APPEALS, ESPECIALLY IN LIGHT OF THE FACT THAT JUSTICE PARIENTE WROTE A DETAILED DISSENT WITH

THIS ISSUE WHICH REALLY
INCORPORATES ALL OF THE
ARGUMENTS THAT YOU ARE MAKING
NOW.
THAT IS THAT, AND THE REASON I'M
ASKING THAT QUESTION IS SIMPLY
TO DEMONSTRATE, APPARENTLY THIS
ISSUE AND ALL OF THE
CIRCUMSTANCES SURROUNDING IT
WERE BEFORE THE COURT BEFORE.
THAT ACCOUNTS FOR WHY WE ARE
QUESTIONING USE SO CLOSELY WITH
REFERENCE TO WHAT IS DIFFERENT
NOW.
BECAUSE CLEARLY JUSTICE
PARIENTE'S DISSENT IN THE
PREVIOUS OPINION DEMONSTRATES
THAT ALL OF THESE CIRCUMSTANCES
WERE BEFORE THE COURT, SO WOULD
YOU HELP US, ESPECIALLY IN LIGHT
OF THAT DISSENT, SHOW WHAT IS
DIFFERENT NOW THAT WAS NOT
BEFORE THE COURT BEFORE?
>> AGAIN, PREVIOUSLY DURING THE
MOTION TO SUPPRESS, DETECTIVE
IVERSON TESTIFIED THE ONLY
REASON WAS JUST TO BUILD A
RAPPORT.
HE SAID SPECIFICALLY THAT IS THE
ONLY REASON WHY I DO IT.
DURING THE EVIDENTIARY HEARING,
DETECTIVE IVERSON AND MARSICANO
BOTH TESTIFIED, THIS IS A
PRACTICE THAT THEY DO AND IT IS
PRACTICE NOT TO GIVE MIRANDA
WARNING BECAUSE OF THE CHILLING
EFFECT AND SO FORTH BUT IT IS
NOT SOMETHING THAT IS CASE BY
CASE.
IT IS SOMETHING THEY DO
PURPOSEFULLY AND WHETHER YOU CAN
QUIBBLE OVER WHAT YOU LABEL AS A
TECHNIQUE OR NOT A TECHNIQUE, IT
IS STILL SOMETHING THAT THEY DO
REGULARLY AND PRACTICE AND THIS
IS A STRANGE COINCIDENCE.
I WOULD HAVE TO OFFER TO THIS
COURT, THIS IS A STRANGE
COINCIDENCE THAT HERE IN FLORIDA
IN HILLSBOROUGH COUNTY THAT THE
OFFICERS ARE DOING THE SAME
TECHNIQUE THAT ARE HAPPENING IN
MISSOURI, THAT THERE WASN'T SOME
SORT OF BELIEF THAT THIS IS AN

EFFECTIVE INVESTIGATIVE TOOL AND
DETECTIVE IVERSON SAID THAT, IT
IS 100% EFFECTIVE AND JUSTICE
PARIENTE, GOING BACK TO YOUR
DISSENT, YOUR FOCUS ON THE FACT
THAT SAID THIS COURT SHOULD BE
LOOKING AT, THE SUPREME COURT
SAID YOU HAVE TO LOOK AT THESE
OTHER FACTS THAT GOES TO THE
COURSE OF THIS.
HE WAS 19, BUT THESE OFFICERS
WENT IN PURPOSEFULLY TO GET A
CONFESSION PRIOR TO GIVING HIM
MIRANDA.
THAT WAS THEIR PURPOSE, AND THAT
IS THE THRESHOLD ISSUE IS WHAT
DETECTIONS DO -- PROTECTIONS DO
MIRANDA PROVIDE IS BEING
CIRCUMVENTED BY LAW ENFORCEMENT
AND WHAT IS NEW HERE IS THE
OFFICERS TESTIFIED IN DETAIL
ABOUT THEIR PRIOR -- THAT IS
WHAT IS NEW HERE AND I WOULD
SUGGEST THAT THIS IS DIFFERENT.
THIS IS EXACTLY LIKE SEIBERT.
>> WITH THAT I THINK WE HAVE
EXHAUSTED WAY OVER YOUR TIME.
>> THANK YOU VERY MUCH.