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**Rodney Calabro v. State of Florida**

**SC07-1105**

THE NEXT CASE IS CALABRO V.  
STATE.

CALABRO, PARDON ME, I'VE BEEN  
CORRECTED.

IT'S NOT THAT YOU OFFENDED THEM,  
BUT I THINK OUR FIRST CASE HAD  
SOME INTEREST.  
[LAUGHTER]

I HOPE NOT, YOU KNOW.

JUST TEASING WITH YOU.  
ANYWAY, MAY IT PLEASE THE  
COURT, MY NAME IS CHARLES WHITE,  
I'M HERE REPRESENTING RODNEY  
CALABRO AS THE PETITIONER.

CAN YOU ADDRESS TO ME WHAT IS  
A THRESHOLD ISSUE?

I KNOW I'M COMING RIGHT OFF THE  
BAT TO YOU.

ON THE ISSUE OF CONFLICT, I JUST  
DON'T SEE WHETHER YOU'RE RIGHT  
OR WRONG IN THIS CASE THAT THE  
DECISION BELOW REALLY CONFLICTS  
WITH ANY OTHER CASE IN FLORIDA.  
IT SEEMS LIKE IT'S A UNIQUE  
CIRCUMSTANCE THAT I DON'T SEE IN  
ANY OTHER CASE.

WELL, I THINK THAT IT  
CONFLICTED WITH DAVIS.

WELL, DAVIS THERE WAS A  
NEGOTIATION WITH THE STATE ON A  
PLEA, AND, IN FACT, THE JUDGE  
WAS INVITING PLEA NEGOTIATIONS.

I THINK THAT'S A TOTALLY  
DIFFERENT KIND OF SCENARIO THAN  
WHAT WE HAVE HERE WHERE AT THE  
ARRAIGNMENT THE DEFENDANT JUST  
BLURTED OUT THAT HE WAS GUILTY.

WELL, I THINK THAT THE WAY  
THAT THIS WAS DIVIDED, THIS  
ISSUE WAS DIVIDED IN STEVENS WAS  
ADOPTING THAT FEDERAL CASE.

ROBERTSON WAS WHETHER OR NOT THE

DEFENDANT WAS MAKING,  
SUBJECTIVELY MAKING AN OFFER TO  
NEGOTIATE.

AND THEN AT THAT POINT YOU  
DECIDE WHETHER OR NOT THERE WAS  
A REASONABLE, THAT WAS A  
REASONABLE ASSERTION.

IN DAVIS THERE WAS A  
NEGOTIATION, YES, THAT WAS GOING  
ON, BUT WHAT WE WERE TALKING  
ABOUT IN THE LARGER PICTURE WAS  
NOT THAT THERE WAS A NEGOTIATION  
GOING ON SPECIFICALLY, BUT THAT  
THERE WAS BASICALLY A REQUEST  
FOR A PLEA.

I MEAN, WE HAVE TRIAL COURTS,  
COURTS SET IN MIAMI-DADE COUNTY,  
THEY CALL IT DIFFERENT THINGS IN  
DIFFERENT COUNTIES.

IN PALM BEACH COUNTY THEY CALL  
IT --

THEY'LL HAVE THE PERSON COME  
BEFORE THE COURT AND SAY, WELL,  
ARE YOU GOING TO PLEAD GUILTY,  
NOT GUILTY?

ARE YOU GOING TO ASK FOR A  
CONTINUANCE?

WHAT'S GOING ON?

IN THOSE CONTEXTS THE DEFENDANT  
IS BASICALLY BEING ASKED TO MAKE  
A PLEA.

HERE WE'RE TALKING ABOUT  
ARRAIGNMENT.

EXACTLY.

WHERE A DEFENDANT IS BEING ASKED  
TO MAKE A PLEA.

THAT WAS MY POINT.

UNDER RULE 3.1 --

DID ANYBODY ASK THE DEFENDANT  
IF HE WANTED TO PLEA?

FIRST OF ALL, I'M GETTING TO THE  
CONFLICT.

IT SEEMS TO ME IT'S TOTALLY  
DIFFERENT WHERE THE STATE HAS  
NEGOTIATED, WHERE THE JUDGE IS  
NEGOTIATING, AND THE APPELLATE  
COURT SAYS THAT THE DEFENDANT  
HAD A REASONABLE BELIEF THAT  
THESE STATEMENTS WERE MADE IN  
THE CONTEXT OF NEGOTIATIONS.

DAVIS MAY VERY WELL HAVE BEEN  
WELL DECIDED, BUT THIS IS A

COMPLETELY DIFFERENT  
CIRCUMSTANCE WHERE NOBODY HAD

BROUGHT UP THE ISSUE OF  
NEGOTIATIONS AT THE TIME THAT  
THE DEFENDANT MADE THE  
STATEMENT.

SO CAN'T THOSE TWO CASES BE  
RECONCILED?

BUT PEOPLE HAD BROUGHT UP THE  
IDEA OF A PLEA.

AND THAT'S REALLY THE KEY HERE.  
BECAUSE THE DEFENDANT AFTER  
SPENDING -- APPARENTLY, HE  
THOUGHT SPENDING THREE WEEKS IN  
JAIL WAITING FOR HIS ARRAIGNMENT  
WAS A LONG TIME, AND HE WAS  
FRUSTRATED ABOUT THIS.

HE'S SITTING IN THE COURTROOM  
WATCHING EVERYBODY COME IN AND  
PLEA NOT GUILTY OR GUILTY.  
HE'S SEEING THIS IS A FORUM FOR  
PEOPLE TO COME FORWARD AND ENTER  
A PLEA.

AND HE IS, HE GETS UP, AND HE  
SAYS, WAIT A SECOND --  
IS THERE ANY EVIDENCE IN THIS  
CASE, WAS THIS FELONY  
ARRAIGNMENT?

YES, IT WAS A FELONY.  
WAS THERE ANY EVIDENCE THERE  
HAS BEEN FELONY GUILTY PLEAS  
ENTERED THAT WERE NOT BASED ON  
PRIOR NEGOTIATIONS BETWEEN THE  
STATE AND THE PUBLIC?

BEAUTIFUL POINT.

YOU SEE, WE NEVER GOT TO THAT  
POINT, AND THE REASON WAS  
BECAUSE THE STATE CONCEDED THAT  
FIRST INITIAL POINT ON THE FIRST  
STATEMENT.

THEY SAID HE SUBJECTIVELY  
OFFERED TO PLEAD GUILTY.

I'M SAYING YOU WERE SITTING  
HERE REPRESENTING THAT THIS WAS  
WHAT WAS HAPPENING, AND I'M  
SAYING IS THERE ANYTHING IN THE  
RECORD THAT DEMONSTRATES THAT  
THIS WAS WHAT WAS HAPPENING?

NO.

NO, THERE WAS NOT, JUSTICE.  
HOWEVER, THE REASON FOR THAT, IN  
MY OPINION, IS BECAUSE THE STATE  
CONCEDED THAT HE WAS  
SUBJECTIVELY MAKING A PLEA  
OFFER.

I'M NOT SURE --  
THEY TRIED TO DIVIDE THE  
STATEMENTS INTO TWO.  
WOULD YOU GO BACK FOR A  
MINUTE BECAUSE HAVE YOU ANSWERED  
JUSTICE CANTERO'S -- JUSTICE  
CANTERO HAS RAISED AN ISSUE WITH  
REFERENCE TO OUR JURISDICTION.  
THE JURISDICTION WE'RE  
OPERATING ON UP TO THIS POINT IS  
BASED ON CONFLICT WITH THESE  
SEVERAL DECISIONS FROM THE OTHER  
DISTRICT COURTS OF APPEAL.

I DON'T --  
I WOULD BE HAPPY TO TRY --  
WE SEEM TO BE GOING RIGHT --  
I REALIZE THAT YOU'RE GOING TO  
MAKE ARGUMENTS, BOTH OF YOU,  
ABOUT THE MERITS OF THE CASE.  
BUT COULD YOU MORE DIRECTLY  
ADDRESS HIS QUESTION IN TERMS  
OF, YOU KNOW, WHERE'S THE  
CONFLICT?

AND I'M NOT IMPLYING THAT THERE  
ISN'T, I'M ASKING YOU, THOUGH,  
TO RESPOND TO HIS QUESTION.  
THAT'S WHAT HE'S ASKING YOU.  
WOULD YOU MORE POINTEDLY  
DESCRIBE WHAT YOU BELIEVE TO BE  
THE CONFLICT IN THE DECISIONS  
THAT HAVE BEEN CITED IN THE  
SEVERAL OTHER DISTRICT COURTS  
AND THIS DECISION?

I BELIEVE THAT THE THRUST OF  
THE THIRD DCA'S OPINION AND THE  
STATE'S ARGUMENT IN THIS CASE IS  
AN UNSOLICITED PLEA OF GUILTY IS  
NOT COVERED BY THIS RULE.  
AND CONSEQUENTLY, THAT'S HOW I  
EXPLAINED IT IN MY BRIEF ON THE  
MERITS.

THAT'S THE THRESHOLD ISSUE.  
NOW, AS TO THAT ISSUE, THAT  
POSITION IS IN CONFLICT WITH THE  
McCRAE CASE AND THE RUSSELL  
CASE.

ALL THREE OF THOSE DEALT WITH  
UNSOLICITED PLEA OFFERS THAT  
WERE FOUND TO HAVE BEEN  
SUBJECTIVELY MAKING PLEA OFFERS.  
IT WAS THE FACT THEY WERE  
UNSOLICITED --

WELL, THOSE ARE CONCERN  
LETTERS THAT WERE SENT TO THE

STATE, CORRECT?

RIGHT.

AND THOSE WERE ALL LETTERS  
WHERE THE DEFENDANT OFFERED TO  
PLEAD IF THE STATE WOULD GIVE  
HIM A CERTAIN SENTENCE.

CORRECT.

CLEARLY, PLEA NEGOTIATIONS.  
BUT THEY WERE, THE THIRD  
DISTRICT COURT OF APPEALS AND  
THE STATE MADE A BIG DEAL ABOUT  
WHETHER THE STATE WAS TAKING  
OFFERS, OKAY?

THAT IF THE STATE WASN'T TAKING  
OFFERS, THEREFORE, AN  
UNSOLICITED OFFER WOULD NOT BE  
APPLIED, AND THEY CITED THE  
OWENS CASE AND SOME OF THE OTHER  
CASES FOR THAT PROPOSITION WHERE  
THE DEFENDANT IN OWENS, I  
BELIEVE IT WAS OWENS, OR I DON'T  
WANT TO BE INCORRECT HERE, OWENS  
WAS THE -- NO, IT WAS BOTTOSON.

THAT WAS THE CASE WHERE THE  
DEFENDANT CALLED THE MINISTERS  
INTO THE JAIL, AND HE SAID, I  
WANT TO PLEAD GUILTY.

I WANT TO NEGOTIATE A PLEA  
BARGAIN.

HERE'S SOME LETTERS TO THE  
STATE.

CONVEY THOSE TO THE STATE.  
AND THOSE WERE FOUND TO HAVE  
BEEN ON THE PRINCIPLE THAT --  
AND IT WAS CITED BY THE STATE  
AND THE COURT FOR THE  
PROPOSITION THAT THOSE WERE NOT,  
THEY COULD BE IGNORED BECAUSE  
THEY WERE UNSOLICITED OFFERS,  
AND THEY WEREN'T MADE TO THE  
STATE.

CORRECT ME IF I'M WRONG, IN  
THESE OTHER THREE CASES WHERE  
THERE WERE LETTERS SENT THE  
CASES APPLIED ARE PRECEDENT AND  
DECIDED IN THOSE CASES THE  
DEFENDANT HAD A SUBJECTIVE  
BELIEF THAT THESE WERE PLEA  
NEGOTIATIONS AND WAS REASONABLE  
IN THAT SUBJECTIVE BELIEF.

PRECISELY.

CORRECT?

AND IN THIS CASE THE COURT ALSO  
APPLIED THE SAME CASES AND

DECIDED THE DEFENDANT DID NOT HAVE A REASONABLE BELIEF THESE WERE PLEA NEGOTIATIONS. THE CASES I MENTIONED WERE CITED IN MY BRIEFS TO THE THIRD DCA, BUT THEY WERE NOT REFERENCED OR DISCUSSED IN THE OPINION, AND NEITHER WAS DAVIS. THE CASES THAT THE STATE BROUGHT UP, THE BOTTOSON CASES, THE RICHARDSON, THE OWENS, THOSE WERE DISCUSSED IN THE OPINION. THAT'S THE REASON I SOUGHT THE JURISDICTION OF THIS COURT BECAUSE THE VERY PERTINENT CASE LAW --

IT'S YOUR POSITION THAT THOSE CASES STAND FOR THE PROPOSITION THAT NOTHING NEED HAVE GONE ON BEFORE WITH REFERENCE TO NEGOTIATION TO PRECLUDE THE ADMISSION OF A FIRST OFFER, FOR INSTANCE, BY AN ACCUSED PERSON? EXACTLY.

AND THAT THE STATUTE EXCLUDES THAT EVEN THOUGH IT IS THE FIRST TIME NEGOTIATIONS ARE MENTIONED, THAT NOTHING HAD TO HAPPEN AND THAT THOSE OTHER CASES STAND FOR THAT PROPOSITION.

EXACTLY.

AND I THINK THAT'S WHY THE STATE CONCEDED DOWN AT THE TRIAL LEVEL, AND WHY THERE WAS NO RECORD MADE ABOUT WHAT HAPPENS IN FELONY ARRAIGNMENT COURT OF MIAMI-DADE COUNTY IN TERMS OF PEOPLE COMING IN AND PLEADING GUILTY OR OFFERING TO PLEAD GUILTY OR MAKING PLEA OFFERS OR PLEA DISCUSSIONS AND THINGS OF THAT NATURE WHICH DOES HAPPEN EVERY DAY, BUT THAT WASN'T MADE PART OF THE RECORD, BECAUSE THERE WAS NO NEED FOR IT.

AND IN THIS CASE THE FIRST STATEMENT WAS, I WANT TO PLEA? IT WASN'T, HEY, I'M GUILTY, SENTENCE ME.

IT WAS, I WANT TO PLEA?

RIGHT.

HE WAS COMPLAINING TO HIS LAWYER --

I UNDERSTAND THAT.

HIS FIRST STATEMENT WAS, I WANT TO PLEA.

I WANT TO PLEAD GUILTY, YES. THAT WAS HIS FIRST STATEMENT. AND, YOU KNOW, THAT WAS HIS FIRST COMMENT.

OF COURSE, THE POSITION THAT WAS TAKEN --

AND THEN LATER ON WHEN THE ACTUAL ADMISSION COMES IN DURING A SUBSEQUENT STATEMENT -- RIGHT.

SO REALLY THE ISSUE IS WHETHER THAT BY INITIATING IT IN THAT WAY DOES IT COME WITHIN THOSE OTHER CASES.

I'M SORRY?

IN INITIATING IT THAT WAY, HE WALKS IN AND SAYS, I WANT TO PLEA.

IS THAT SUFFICIENT TO INVOKE THOSE OTHER CASES?

YES, I BELIEVE IT IS, YOUR HONOR.

-- I'M GUILTY, SENTENCE ME.

CORRECT?

CORRECT.

THAT'S REALLY WHAT IT COMES DOWN TO.

AND THEN OUR POSITION WAS THAT THE VERY, VERY BRIEF DISCUSSION THAT OCCURRED ON THE RECORD WAS ALL PART OF THE SAME CONVERSATION.

DID YOU, DID THE CONTEXT, LIKE, TAKE BOTTOSON, AND IN BOTTOSON THE STATEMENTS WERE MADE TO THE MINISTER.

DO YOU DISTINGUISH THAT, I MEAN, FROM CIRCUMSTANCES HERE, THAT IS THAT IT IS, THAT WE HAVE TO LOOK AT THE FACT THAT THIS IS A ARRAIGNMENT, AND WE ALSO HAVE TO LOOK AT THE FIRST STATEMENT THAT WAS MADE THAT THE STATE, AS YOU SAY, CONCEDED IT WAS NOT ADMISSIBLE.

I GUESS, LET ME SAY IT THIS WAY, IF JUST OUT OF NOWHERE THE DEFENDANT SAYS, I JUST WANT YOU TO KNOW, JUDGE, I'M GUILTY, WOULD YOU AGREE -- I MEAN, THAT IN ITSELF IS CLEARLY NOT

ANYTHING THAT HAS TO DO WITH A PLEA NEGOTIATION.

THAT, BY THE WAY, IN THAT CONTEXT, YES, I WOULD AGREE WITH THE COURT.

SO WE HAVE TO LOOK AT WHAT YOU WOULD SAY IS THAT THE BEING AN ARRAIGNMENT, AND IT BEING THAT THE FIRST STATEMENT BEING MADE, CORRECT?

YES.

IF THAT WAS --

WITH THAT IN MIND, YOU KNOW, AND I VOTED TO TAKE THIS ON CONFLICT, THIS DOES SEEM DIFFERENT THAN THOSE ALL THE OTHER CASES WHERE THERE'S JUST THIS UNILATERAL LETTER THAT IS BEING SENT TO THE, TO THE STATE WHICH IS WHERE THAT PRONG TEST IS NOT USED BECAUSE IT JUST CLEARLY IS AN OFFER TO PLEA. SO HOW DO, WHAT DOES THIS CONFLICT DEAL WITH?

I THINK I UNDERSTAND WHAT THE COURT IS SAYING, BUT THE DISTINCTION YOU'RE MAKING -- BUT BOTTOSON, IT WAS, THERE WAS AN OFFER TO PLEA.

THE COURT FOUND THAT THERE WAS AN OFFER TO PLEA.

HOWEVER, IT WAS NOT REASONABLE FOR HIM TO CONSIDER THAT THIS WAS AN OFFER TO PLEA BECAUSE IT WAS MADE TO PEOPLE WHO WERE NOT AGENTS OF THE STATE.

OR FOR THAT MATTER, THE COURT. THEY WERE JUST MINISTERS THAT CAME IN.

THE STATEMENT THAT WAS MADE THAT WAS A ADMISSION, THE CONFESSION, WAS MADE IN THE LETTERS.

SO, IN ESSENCE, WHAT HAPPENED WAS THE MINISTERS CONVEYED THE LETTERS TO THE STATE AND SAID, HERE, HERE'S THE LETTERS.

THE PROSECUTOR GOES, OH, WONDERFUL.

I HAVE A CONFESSION NOW.

IT REALLY COMES DOWN TO THE QUESTION THAT IN FOLLOWING THAT FIRST STATEMENT, I WANT TO PLEA,

IS IT NECESSARY OR DOES IT MAKE  
A DIFFERENCE THAT THIS CASE IS  
DIFFERENT THAT HE DID NOT SAY, I  
WANT TO PLEA IN EXCHANGE FOR?  
IS THAT WHAT MAKES A DIFFERENCE?  
BECAUSE THAT REALLY SEEMS TO BE  
THE ONLY REAL DIFFERENCE HERE,  
IS THAT HE DID NOT OUTLINE HE'S  
WANTING TO PLEAD GUILTY IN  
EXCHANGE FOR SOMETHING, OR IF I  
GET SOMETHING.  
IS THAT WHAT MAKES IT DIFFERENT,  
OR IS THAT DIFFERENT?  
I THINK HE ASKED FOR A PLEA  
AGREEMENT.  
HE DIDN'T SAY WHAT.  
I DON'T THINK THIS ONE SAID WHAT  
HE WANTED.  
LET ME JUST MAKE SURE HERE.  
HE SAID, I'D LIKE TO AVOID THE  
TRIAL AND HAVE SOME --  
IT DOESN'T SAY WHAT.  
DOES THAT MAKE, DOES THAT MAKE  
THIS DIFFERENT?

WELL, HE WASN'T SPECIFIC  
ABOUT WHAT HE WANTED, THAT'S FOR  
SURE.  
IN THE OTHER CASES --  
IN THE OTHER CASES THERE WAS  
MORE OF A, YOU KNOW, OF, AGAIN,  
WE HAVE AT THE TRIAL LEVEL  
APPARENTLY THE UNDERSTANDING WAS  
THAT WHEN YOU ASKED FOR A PLEA  
AGREEMENT OR A PLEA BARGAIN,  
YOU'RE ASKING FOR A QUID PRO  
QUO, AND THAT'S WHY I THINK,  
THAT'S PROBABLY WHY -- I DID NOT  
REPRESENT MR. CALABRO BEFORE, I  
WAS APPOINTED --  
SO YOU'RE SAYING IT SHOULD  
NOT MAKE A DIFFERENCE --  
EXACTLY.  
BECAUSE THE CODE FOR PLEA  
AGREEMENT IS LET'S BARGAIN,  
LET'S TALK.  
AGAIN, IF WE GET PAST THE  
CONFLICT ISSUE, AND THIS WOULD  
BE A QUESTION FOR THE ATTORNEY  
GENERAL, WHAT BOTHERS ME ABOUT  
ALLOWING STATEMENTS, AND THIS IS  
JUST -- IS WHAT YOU SAID ABOUT  
THE CONTEXT WHICH IS TWO  
CONTEXTS.

FIRST OF ALL, WE DON'T KNOW, YOU KNOW, WHAT WAS HAPPENING IN THOSE LAST TWO CASES WHERE MR. CALABRO WAS ALSO IN THE COURTROOM AND WHETHER PLEA THINGS WERE GOING ON ALL AROUND HIM, SO THAT, AGAIN, MAKES IT MORE REASONABLE WHAT WAS GOING ON.

THE OTHER THING IS THAT HE KEEPS ON COMPLAINING ABOUT HAVING BEEN IN JAIL FOR THREE WEEKS, AND NO ONE COMING TO SEE HIM, AND THE STATE OF MIND BEING SUCH.

AND IS THERE ANY OTHER POLICY ARGUMENT THAT WAS MADE THAT IT IS, IT DOESN'T LOOK LIKE THE PUBLIC DEFENDER WAS GOING, YOU KNOW, GOING OVER TELLING HIM SHUT YOUR MOUTH, YOU KNOW?

[LAUGHTER]

WHAT ARE YOU DOING?

YOU KNOW, WE NEED TO TALK.

SO THAT THIS WAS REALLY NOBODY AT THE TIME REALLY THOUGHT MUCH ABOUT THIS OTHER THAN THIS IS A GUY THAT HAD BEEN WAITING IN JAIL AND REALLY WANTED TO GET THIS MATTER OVER WITH.

WAS ANYTHING, AGAIN, MADE ABOUT THAT, THAT THAT, TO ME, MAKES IT ALMOST LIKE IT'S A BAD POLICY TO ALLOWING THIS KIND OF STATEMENT IN.

WELL, IT'S INTERESTING THAT YOU MENTION THAT BECAUSE MR. -- THERE WAS SOME REFERENCE TO THIS IN THE HEARING THAT TOOK PLACE, THE EVIDENTIARY HEARING. THERE WASN'T THAT MUCH CONSIDERATION IN TERMS OF THE JUDGE, BUT THERE WAS AN ISSUE MR. CALABRO WAS VERY OFFENDED BY THE FACT THAT HE DIDN'T FEEL HE WAS PROPERLY REPRESENTED, AND HE HAD TO SAY SOMETHING BECAUSE, YOU KNOW, HERE HE WAS, HE HADN'T SEEN HIS LAWYER IN THREE WEEKS. SUDDENLY HE GETS TOLD SOMETIME FOUR MONTHS FROM NOW IS WHEN YOUR TRIAL DATE'S GOING TO BE, AND HE FELT HIS RIGHT TO COUNSEL

WAS BEING TRAMPLED ON HERE, AND HE WANTED THIS THING RESOLVED. HE WAS NOT BONDED? I MEAN, HE WOULD HAVE HAD TO REMAIN IN JAIL?

YES.

HE WAS, THIS WAS A SECOND-DEGREE MURDER CHARGE, AND HE WAS INCARCERATED, AND, YOU KNOW, I DON'T KNOW IF -- I HONESTLY DON'T KNOW IF THE STATE WAS CONTEMPLATING FILING NOTICE OF INTENTION.

SOMETIMES THEY HOLD YOU ON A SECOND-DEGREE MURDER CHARGE -- SO HE WAS CLEARLY UPSET WITH HIS COUNSEL AND WHAT ELSE AS FAR AS ANY OTHER -- NO BROWN WAS RAISED THAT THIS WAS ANY OTHER BASIS FOR SUPPRESSING THIS. HE WASN'T OFFERED A PLEA, IS THAT CORRECT?

THAT WAS THE MAIN ISSUE THAT WAS RAISED.

THERE WAS SOME REFERENCE MADE TO THE FACT THAT, YOU KNOW, IT MIGHT HAVE BEEN A SIXTH AMENDMENT VIOLATION.

I THINK I WAS ASKED BY THE PANEL ON THE THIRD DCA ABOUT THAT. I MENTIONED THE SIXTH AMENDMENT. I SAID THERE WAS A POTENTIAL, YOU KNOW, INEFFECTIVENESS IN A SENSE ISSUE OF A MAN WHO'S IN JAIL FOR A SERIOUS CHARGE WHO HASN'T RECEIVED ANY ADVICE, ANY COUNSEL AT ALL, AND NOW HE'S IN FRONT OF A JUDGE, AND THIS IS HIS ONLY CHANCE TO SORT OF, LIKE, LAY IT OUT AND SAY WHAT HE WANTS TO HAVE DONE.

AND TO HAVE THIS, NOW, COME, YOU KNOW, BACK TO HIM, WELL, IN THE CONTEXT OF ALL THIS, YOU KNOW, THE PANIC THAT YOU WERE UNDERGOING, NOW WE'RE GOING TO SAY A STATEMENT THAT YOU MADE DURING THAT PROCESS IS NOW GOING TO BE SUBSTANTIVE EVIDENCE OF YOUR GUILT AT TRIAL.

SO WE'RE MAYBE LOOKING AT AN INEFFECTIVE -- BUT THAT HASN'T BEEN RAISED AT THIS POINT.

WELL, IT WAS MENTIONED, I

BELIEVE, AT THE HEARING, AND I CAN TELL THE COURT THAT I DON'T WANT TO GO TOO FAR AFIELD, BUT IN ANSWER TO YOUR QUESTION, I HAVE A LOT OF CORRESPONDENCE WITH MR. CALABRO WHERE HE HAS EXPRESSED THAT CONCERN. IN FACT, HE WAS VERY ANGRY AT ME FOR NOT MAKING MORE OF AN ISSUE OF IT IN MY BRIEF. PERHAPS HE WAS RIGHT, AND I WAS WRONG. YOU'RE ABOUT OUT OF TIME. DO YOU WANT TO SAVE SOME TIME FOR REBUTTAL? THANK YOU.

USE YOUR TIME AS YOU WISH. YES, YOUR HONOR. GOOD MORNING. ROLANDO SOLER, ASSISTANT ATTORNEY GENERAL HERE ON BEHALF OF THE STATE. THERE IS NO CONFLICT JURISDICTION BECAUSE THE COMMON DENOMINATOR IN ALL OF THE CASES RELIED UPON BY CALABRO IS THAT THE DEFENDANT WAS SEEKING A CONCESSION FROM THE STATE, AND THAT'S THE KEY TO THIS CASE, NEGOTIATIONS. SO THAT'S THE DIFFERENCE, IT DOESN'T HAVE THE WORDS AFTER IT, "IN EXCHANGE FOR SOMETHING." THAT'S CORRECT, YOUR HONOR. LET ME, YOU KNOW, I'M HAVING SOME DIFFICULTY HERE BECAUSE I WANT TO READ TO YOU WHAT THE STATUTE SAYS.

YES.

AND I'M TAKING OUT THE PART THAT WOULDN'T, YOU KNOW, BUT I'M JUST GOING TO READ THE WORDS OF THE STATUTE. IT SAYS EVIDENCE OF AN OFFER TO PLEAD GUILTY OR NOLO CONTENDERE TO THE CRIME CHARGED FOR ANY OTHER CRIME IS INADMISSIBLE.

YES, YOUR HONOR.

NOW, I'M HAVING A LOT OF

DIFFICULTY, YOU KNOW, THERE'S A LOT OF STATUTES WE STRUGGLE WITH IN TERMS OF AMBIGUITY OR WHAT DID THE LEGISLATURE MEAN OR WHATEVER, AND THIS SAYS EVIDENCE OF AN OFFER TO PLEAD GUILTY OR OF NOLO CONTENDERE TO THE TIME CHARGED OR ANY OTHER CRIME IS INADMISSIBLE.

THAT'S CORRECT, YOUR HONOR. NOW, IT SEEMS TO ME THE PLAIN MEANING OF THAT COVERS WHAT THIS FELLA DID.

HE WAS OFFERING TO PLEAD GUILTY OR NOLO CONTENDERE.

IT'S CLEAR THAT LATER HE WAS TALKING ABOUT SOME KIND OF A DEAL BEING WORKED OUT, BUT HOW DO WE AVOID THE PLAIN MEANING OF THOSE WORDS THAT SAYS THAT A STATEMENT LIKE THIS IS INADMISSIBLE?

AND THAT'S WHAT WAS HELD IN THOSE OTHER CASES.

IT SEEMS TO ME THERE IS A BLATANT CONFLICT WITH WHAT THE THIRD DISTRICT HAS DONE, BECAUSE THEY HAVEN'T APPLIED THOSE PLAIN WORDS.

YES, YOUR HONOR.

THE STATE MAINTAINS THAT THESE ARE TWO SEPARATE STATEMENTS, AND WITH REGARD TO THE FIRST STATEMENT, CALABRO SAYS HE WANTS A PLEA AGREEMENT.

LET'S STOP RIGHT THERE.

YES.

AS THE STATE REPRESENTATIVE CANDIDLY DID IN THE TRIAL COURT --

CORRECT.

ARE YOU SAYING THAT THAT FIRST STATEMENT CLEARLY IS INADMISSIBLE?

CORRECT.

UNDER THIS LANGUAGE?

YES, YOUR HONOR.

WELL, YOU KNOW, WE VERY MUCH APPRECIATE -- WE DON'T ALWAYS SEE THAT KIND OF CANDOR, YOU KNOW, HERE.

BUT IT SEEMS LIKE AFTER THAT, THAT THAT'S JUST WHAT'S GOING ON.

IT'S CLEAR THAT HE WANTS TO, YOU KNOW, HE DOESN'T WANT TO STAY IN JAIL, HE WANTS TO GET IT OVER WITH.

BUT WHAT WE DON'T HAVE HERE, WHICH I WOULD CONTRAST WITH THIS AND WOULD THINK THAT A DEFENDANT REALLY HAS NAILED HIMSELF, IF THE DEFENDANT, YOU KNOW, IN THE SAME CONTEXT HERE AFTER THE LAWYER SAYS, ENTER A PLEA OF NOT AND REQUEST A JURY TRIAL OR THE USUAL WHATEVER THE STANDARD THING IS IF THE DEFENDANT SAID, NO, ABSOLUTELY NOT, I'M GUILTY, AND I WANT TO ENTER A PLEA OF GUILTY, SEEMS TO ME A DEFENDANT LIKE THAT WOULD HAVE NAILED HIMSELF.

THAT IS THAT, YOU KNOW, TALKING ABOUT AN OFFER OR WHATEVER KIND OF THING.

BUT WHATEVER WAS SAID AFTERWARDS IN THAT COLLOQUY JUST, IT SEEMS TO ME, ELABORATES MORE ON THE FACT THAT HE WANTS TO WORK OUT SOME KIND OF A DEAL AND THAT THAT IS EVEN CLEARER IN TERMS THAT IT'S IN THE CONTEXT OF TRYING TO WORK OUT, CAN'T WE WORK OUT SOME KIND OF A DEAL? ISN'T IT?

WELL, THERE ARE -- IN INTERPRETING THE RULE, THIS COURT HAS REPEATEDLY AND CONSISTENTLY HELD THAT THE STATEMENT IS INADMISSIBLE ONLY IF IT IS MADE IN BILATERAL NEGOTIATIONS WITH THE STATE. I MEAN, WE HAVE A LIMITED ABILITY WHEN THE PLAIN LANGUAGE OF THE RULE SAYS AN OFFER IS NOT ADMISSIBLE.

SO WHETHER IT'S THE FIRST ONE OR THE SECOND ONE -- BUT THE SECOND ONE, RESPECTFULLY, YOUR HONOR, IS NOT AN OFFER TO PLEAD GUILTY, IT'S A CLEAR CONFESSION.

IT'S CLEARLY A CONFESSION. IT'S NOT AN OFFER TO PLEAD GUILTY.

THE STATE MAINTAINS THESE ARE

TWO SEPARATE STATEMENTS AND DOES NOT SEEK THE ADMISSION OF THE FIRST STATEMENT BECAUSE THAT FIRST STATEMENT COULD BE CONSTRUED AS BEING AN INVITATION TO ENTER INTO PLEA NEGOTIATIONS. AND THAT WOULD BE PROTECTED BY THE RULE.

THE PROBLEM IS THAT CALABRO SAYS, I WOULD LIKE AN AGREEMENT, AND THEN HE MAKES A CONFESSION.

ISN'T THERE SOME LANGUAGE THAT JUSTICE ANSTEAD REFERS TO --

OH, YEAH.

HIS LAWYER SAID --

SO TOLD HIM TO DO THAT, AND THIS OCCURRED AFTER.

CORRECT.

WHAT ALL DID HE TELL HIM?

TOLD HIM TO STAND MUTE, GET A TRIAL?

WELL, THE LAWYER WAS, HIS ATTORNEY WAS ADDRESSING THE COURT.

HE SAID, STAND MUTE, DEMAND DISCOVERY.

THERE YOU GO.

THAT'S WHAT HE SAID, DEMAND DISCOVERY.

WHAT ELSE?

TRIAL BY JURY.

EXACTLY.

SO THE STATEMENT YOU WANT TO USE COMES AFTER THAT.

YES.

THERE WAS DIALOGUE BETWEEN STATEMENT, AND THEN HE MAKES A CONFESSION.

AND SO --

CAN I GO BACK TO THIS, AND I GUESS IT'S REALLY -- FIRST OF ALL, THE PUBLIC DEFENDER WAS JUST BEING APPOINTED.

HE SAID, STAND MUTE.

HE DOESN'T SAY YOU AGREE TO THE DEFENDANT, YOU KNOW, KEEP YOUR MOUTH SHUT, I'M REPRESENTING YOU NOW.

I DIDN'T EVEN KNOW WHAT THE STAND MUTE MEANT IN PLEADING

NOT, BUT THAT MUST BE --

IT'S IN THE RULING.

OKAY.  
AND THEN THE GUY STARTS WITH, I  
NEED AN EARLIER DATE.  
I WANT TO GET THIS OVER WITH.

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INCARCERATION BUT THAT IS I  
JUST, THAT MUST BE THE --  
IT IS IN THE RULING.

OKAY.  
I -- AND, THEN, THE GUY  
STARTS WITH I NEED AN EARLY  
DATE, I WANT TO GET THIS OVER  
WITH.  
I'D JUST LIKE TO AVOID TRIAL  
AND GET SENTENCED ON THIS  
YOU JUST -- YOU KNOW, THE  
DEFENSE LAWYER DOESN'T EVEN  
YOU KNOW HE IS JUST -- HE  
DOESN'T SAY ANYTHING.  
THAT'S THE POINT.  
THE JUDGE IGNORES IT  
FOUR. WEEKS OH, REPORT THEN  
GOES I KNOW THIS IS UNUSUAL,  
BUT I'M GUILTY OF THIS AND  
THEN GOES AND THEY KEEP ON  
IGNORING THE JUDGE, EVEN  
IGNORED IT, SAYS LISTEN THIS  
IS THE FIRST TIME I APPOINTED  
HIS GENTLEMAN TO  
REPRESENT YOU, SUPPOSEDLY --  
THERE WAS -- AND IT IS SO  
CLEARLY IN THE CONTEXT OF  
TWO THINGS WHICH MAKES -- TO ME  
IS THAT HE IS UPSET THAT  
NOBODY HAD EVER COME TO SEE  
HIM BEFORE.  
HE DOESN'T WANT TO SIT IN  
JAIL.  
HE IS OFFERING TO PLEAD  
GUILTY, BECAUSE HE WANTS TO  
GET THIS THING OVER WITH AND  
HOW WE COULD IGNORE THE  
FIRST STATEMENT AND SAY JUST  
LOOK AT THE SECOND STATEMENT  
IS WHAT IS TROUBLING ME.  
YES, YOUR HONOR, I BELIEVE  
THE CASE THAT THE RULE  
PROTECTS NEGOTIATIONS, ALL OF  
THIS COURT'S CASES HAVE  
ALWAYS HELD THAT A STATEMENT  
IS IN ADMISSION ONLY IF MADE  
DURING BILATERAL

NEGOTIATIONS WITH THE STATE.  
ISN'T THAT WHERE -- THAT  
IS WHERE THE CONFLICT COMES UP  
ALL THE OTHER CASES, FOURTH,  
SECOND, FIRST, THERE WERE NO  
NEGOTIATIONS GOING ON, THE  
LAWYER, I MEAN THE  
DEFENDANT, PROBABLY WITHOUT  
LAWYER'S KNOWLEDGE SENT THIS  
UNSOLICITED LETTER THEY SAID  
WE ARE NOT ALLOWING THAT,  
WOULDN'T WE HAVE TO  
DISPROVE IF IT HAS TO BE  
IN THIS COURSE OF  
NEGOTIATIONS, WOULDN'T WE  
HAVE TO DISPROVE THOSE  
OTHER CASES?

IF -- IN THE COURSE.  
TO APPROVE WHAT THE THIRD  
DISTRICT HAS SAID HERE --  
IF  
IN THE COURSE OF  
NEGOTIATIONS, BUT THERE WE --  
NEGOTIATION BY DEFINITION  
NEGOTIATION SEEKS QUID PRO  
QUO.

I THOUGHT YOU SAID THAT  
THE OTHER CASES THAT YOU --  
DO YOU THINK THAT THOSE  
OTHER CASES ARE CORRECTLY  
DECIDED --  
YES.

-- FROM THE OTHER?  
SO YOU  
WOULD NOT EVEN IF WE TOOK  
THIS, YOU WOULD SAY THIS IS

--  
YES.  
ABSOLUTELY.  
TO DISTINGUISH IT, BUT  
THAT THOSE OTHER CASES ARE  
APPROPRIATE EVEN THOUGH IN  
THOSE CASES, THE STATE DID  
NOT, THERE WERE NO ONGOING --  
YES.

-- NEGOTIATIONS.  
YES, YOUR HONOR, BECAUSE  
AN OFFER TO A STATEMENT HAS  
TO BE MADE WITH THE  
REASONABLE EXPECTATION TO  
NEGOTIATE A PLEA AGREEMENT,  
SO AN OFFER TO PLEAD GUILTY  
MAY BE CONSTRUED AS AN  
INVITATION TO SIT DOWN AT

THE TABLE AND NEGOTIATE, AND TO THAT EXTENT IT PROMOTES NEGOTIATIONS.

THAT IS WHY

THE STATE DID NOT SEEK TO EXCLUDE THE FIRST STATEMENT. HOWEVER, A CONFESSION THAT IS NOT A NEGOTIATION, IN THIS CASE THE DIFFERENCE BETWEEN THIS CASE AND ALL THE CASES CITED BY -- RELIED UPON BY THE DEFENDANT. THERE WERE NO NEGOTIATIONS -- CALABRO NEVER SOUGHT CONCESSION FROM THE STATE AT ANY POINT.

FIRST HE SAYS

I WANT A PLEA AGREEMENT, THEN SAYS I'M GUILTY, I CONFESS, IT IS VERY CLEAR THAT THAT SECOND STATEMENT IS A CONFESSION, SO -- BASICALLY, WHAT YOU ARE SAYING, INSTEAD OF SAYING I'M WILLING TO PLEAD GUILTY IF YOU WILL SENTENCE ME TO X, OR Y, OR Z, OR SOME OTHER CONDITION, THAT DIDN'T HAPPEN HERE, HE WASN'T -- HE WOULD HAVE BEEN NEGOTIATING, HE WASN'T NEGOTIATING HERE.

GO BACK TO THE STATUTE JUSTICE ANSTEAD READS DOESN'T SAY ANYTHING ABOUT NEGOTIATIONS IT TALKS ABOUT THE PLEA.

YES, YOUR HONOR.

DIDN'T SAY --

DOESN'T SAY HE WANTS TO PLEA SAYS HE WANTS AN AGREEMENT.

HE WANTS TO PLEA, FIRST SAYS HE WANTS TO PLEA. HE WANTS AN AGREEMENT. NO, NO.

PLEASE READ IT.

DOESN'T HE SAY I WANT TO PLEA?

THAT IS WHAT HE SAYS.

USE THAT WORD.

ISN'T IT --

HE SAYS I WOULD LIKE TO HAVE SOME KIND OF PLEA

AGREEMENT.

PLEA.

SO YOU -- USED THE WORD.

YES.

AGAIN, DOES THIS COME  
DOWN TO THAT YOU HAVE TO  
HAVE, AGAIN -- THAT YOU HAVE  
TO HAVE I WILL PLEAD FOR X,  
TO INVOKE THE \*ZWHAL JUSTICE  
ANSTEAD \*RATE OR DOESN'T THAT  
SAY --

YES, YES, THAT IS EXACTLY  
WHAT I'M SAYING, IS THAT THE  
RULING PROTECTING  
NEGOTIATIONS ALL OF THESE  
CASES HAVE HELD THAT A  
STATEMENT IS INADMISSIBLE ONLY  
IF MADE DURING BILATERAL  
NEGOTIATIONS, HERE  
NOT ONLY REQUESTING ANY  
CONCESSION FROM THE STATE  
THE DEFENDANT DID NOT EVEN  
INDICATE A WILLINGNESS TO PLEA  
BARGAIN.

IN STEPHENS DID WE  
INTERPRET THE RULE THE  
STATUTE WAS THAT AN  
INTERPRETATION OF THE RULE  
WHEN ARTICULATED AT --  
THIS COURT'S CASES SO  
FAR HAVE DEALT WITH  
ADMISSIBILITY OF -- ADMISSION  
IF THE COURT CONSIDERS THAT  
SECOND STATEMENT AN  
ADMISSION, A CONFESSION, NOT  
AN OFFER TO PLEAD GUILTY, IT IS  
CLEARLY --

MY QUESTION, DID STEPHENS  
DISCUSS THE RULE?

YES.

SO IN --

-- ADOPTING ROBERTSON'S  
ANALYSIS WE WERE  
INTERPRETING 3.172

--

ABSOLUTELY.

NOW, THIS CASE IT SEEMS AS  
THOUGH USING THOSE OTHER  
CASES, ABOUT THE LETTERS, IT  
WAS FOR ONLY THE SINGLE  
PRINCIPLE OF WHO NEGOTIATED IT  
SOMETHING IN PROGRESS,  
SOMEONE INITIATES IT, DAVIS  
WAS UNDER WAY, CORRECT?

ABSOLUTELY.

ONCE WE GET PAST TO  
INITIATIVES ISN'T DAVIS  
MORE CLOSELY RELATED TO  
THIS CASE?

WHAT DO YOU UNDERSTAND  
THE CIRCUMSTANCES IN DAVIS  
TO BE AND HOW ARE THOSE  
DIFFERENT?

WELL, IN DAVIS, THERE  
WERE NEGOTIATIONS, THE STATE

--

OCCURRED BEFORE THAT.

I'M SORRY.

IT HAD OCCURRED  
BEFORE THE DAY OF THESE  
STATEMENTS IN DAVIS.

YES.

OKAY.

THEN THAT HAPPENED --  
THERE HAD ALREADY BEEN --  
THE STATE ALREADY MADE  
DAVIS OFFER, DAVIS WAS TRYING  
TO OBTAIN A LETTER ON OR  
BEFORE DISTINGUISHABLE FROM  
THIS STATE.

WHAT HAPPENED IN OPEN COURT?  
NOT A LETTER?

I'M NOT SURE EXACTLY WHAT  
HAPPENED BEFORE THE TRIAL  
PROCEEDINGS BUT DURING THE  
TRIAL PROCEEDINGS THE JUDGE  
INITIATED THE  
NEGOTIATIONS --

SO A LETTER,  
BEFORE THE JUDGE, KEEP GOING.  
YES.

AND THE JUDGE SAID WELL  
THIS IS THE TIME WHEN YOU  
CAN -- GOING TO BE BACK AND  
FORTH.

AND THEN THE YOU KNOW  
DAVIS MADE HIS STATEMENT.  
SO THERE WAS CLEARLY A  
NEGOTIATION BETWEEN YOU KNOW  
BILATERAL STATE AND  
DEFENDANT CLEARLY ABSENT  
FROM THIS CASE.

IS THE STATEMENT OF PARTY  
AND DAVIS, DID IT SAY IN  
EXCHANGE FOR THE ACTUAL  
STATEMENT OF THE PARTY?

--

DID.

SO THAT IS WHERE --  
THE COURT FOUND THAT HE  
WANTS SOME JAIL TIME BUT NO  
PROBATION, HE HAD ALREADY  
BEEN OFFERED TWO YEARS OF  
COMMUNITY PAROLE AND THREE  
YEARS OF PROBATION.

WHAT WERE HIS WORDS, IN  
DAVIS?

HIS EXACT WORDS WERE I'M  
GUILTY OF THAT BUT NOT THE  
OTHER THING, NO, NO, NO, NO.  
SO IT WAS NOT AN EXCHANGE  
FOR ANYTHING, IT WAS I'M  
GUILTY OF THAT, BUT NOT THAT.  
THE STATE -- THE WORDS  
THAT WERE USED.

I CONFESS --

-- FIRST DISTRICT THAT HE  
COULD NOT BE  
UTILIZED.

BUT HE WAS -- BUT THE  
STATE HAD ALREADY -- THERE HAD  
ALREADY BEEN AN OFFER FROM AT  
A --

I UNDERSTAND BUT HIS  
STATEMENT WAS NOT PREDICATED  
UPON ANYTHING ABOUT AN  
EXCHANGE FOR THE STATEMENT  
THAT MORNING IN THE PRESENCE  
OF THE COURT, WAS JUST LIKE  
THE STATEMENT HERE.

WELL, I BELIEVE IT IS  
IMPLICIT, YOUR HONOR, THAT  
HE WOULD PLEAD GUILTY IN  
EXCHANGE FOR THE COMMUNITY  
CONTROL AND PROBATION --  
WASN'T STATED.

IT WASN'T EXPLICIT WE  
DON'T KNOW EXACTLY.

IN YOUR POSITION, THE  
STATE'S POSITION IS IS THAT  
-- THAT IN DAVIS THERE WERE  
ONGOING NEGOTIATIONS.

THE STATE HAD ALREADY  
MADE THE DEFENDANT AN --  
IN THIS CASE THERE HADN'T  
BEEN ANYTHING --

NO NEGOTIATIONS --

WHAT IS WHAT DOES THE  
RECORD REFLECT IF ANYTHING  
IS mR. cALABRO'S STATUS AT  
THIS POINT IN JAIL, OUT OF JAIL?

I BELIEVE --

I'M SORRY.

THIS HAPPENED IN 2002,  
THIS CASE HAD NEVER BEEN TRIED,  
RIGHT.

THAT IS CORRECT, YOUR  
HONOR.

HE HAS BEEN IN ON THESE  
CHARGES IN JAIL SINCE 2002.  
THAT'S MY UNDERSTANDING.

I BELIEVE WE ARE --  
BECAUSE I WAS, JUST --  
JUSTICE WELLS ASKED THAT WE  
LOOK AT THE ISSUE, LOOK AT THE  
WHOLE PICTURE HERE, AND DOES  
THE STATE -- IS THIS A -- THEY  
HAVE SOME STRONG EVIDENCE,  
OF THIS MAN'S GUILT. IS  
THERE A CONFESSION, ARE  
THERE EYEWITNESSES --  
OF COURSE THE STATE WOULD  
ARGUE THAT THIS IS THE  
CONFESSION, YOU HAVE IT  
RIGHT HERE IN FRONT OF YOU,  
I MEAN HE SAYS I KNOW THIS  
IS UNUSUAL, BUT UNFORTUNATELY,  
I'M GUILTY OF THIS, WHAT THE  
POLICE ARE SAYING IS TRUE.

AT TRIAL LOOK AT THE  
CONTEXT OF THIS, ALL THIS,  
NOW IN JAIL FOR SIX YEARS,  
BUT HE SAID IF AN ATTORNEY  
HAD COME TO SEE ME WITHIN THE  
PAST THREE WEEKS MAYBE THEY  
WOULD HAVE AN IDEA WHERE MY  
MIND IS, BUT RIGHT NOW I'M  
GUILTY.

TO ME IT MEANS I JUST  
GOT TO GET OUT OF THIS  
SITUATION, JUST PLEAD ME OUT  
AND GET ME OUT OF HERE, NOT  
THAT I'M -- YOU KNOW.

SO, ANYWAY, I THINK THAT IS --  
I AGREE I THINK THAT IS WHAT HE IS  
SAYING I WANT A PLEA AGREEMENT  
I'M GUILTY I WANT A PLEA  
AGREEMENT, AND THAT IS  
OBVIOUSLY COMPLETELY  
UNREASONABLE.

SHOULD -- STATE'S CASE?  
FRANKLY I DON'T KNOW WHAT  
-- WHAT IS GOING TO HAPPEN,  
BUT I PRESUME --  
I WAS ASKING IS THERE MORE  
ELABORATE CONFESSION

SOMEPLACE THAT YOU ARE AWARE OF?  
NOT IN THE RECORD NOT  
THAT I KNOW OF.

I DON'T KNOW.

I GUESS THE REAL ISSUE  
HERE, WAS THERE -- NOT THE REAL  
ISSUE BUT WAS THERE A STAY  
OF SOMETHING IN THIS CASE?

I MEAN, IT HAS BEEN SIX  
YEARS, HE COULD HAVE PLED,  
AND WHO KNOWS WHAT KIND OF  
NOT KNOWING WHAT HIS RECORD  
IS OR ANYTHING, WHAT KIND OF  
SENTENCE HE GOT?

HE COULD HAVE GOTTEN?

SO, WHAT HAPPENED?

IN OTHER WORDS, WHY HAS  
IT TAKEN SO LONG.

YES.

I BELIEVE, FROM MY  
READING OF THE RECORD I  
BELIEVE THAT HE WAS VERY  
UNHAPPY WITH HIS ATTORNEYS  
AND HE WOULD ALWAYS SEEK TO  
HAVE HIS ATTORNEY WITHDRAW,  
AND I THINK --

SAID NOTHING WHILE HE --  
ALLEGEDLY MAKES A STATEMENT  
THE STATE NOW WANTS TO USE  
TO PROVE THIS GUILT.

THIRD DCA CASE HAS AN 06  
CASE NUMBER SO IT HASN'T  
BEEN ON APPEAL ALL THAT  
LONG.

CORRECT.

SO IT SEEMS NOTICE OF APPEAL  
WASN'T EVEN FILED UNTIL  
SOMETIME IN 2006.

YES THIS WAS A DIFFERENT  
ATTORNEY, THE ATTORNEY THAT  
THAT REPRESENTS HIM AT THE  
ARRAIGNMENT, LATER HE WAS  
REPRESENTED, I THINK HE --  
AND COUNSEL MAY CORRECT HIM  
BUT I THINK HE WAS THROUGH A  
COUPLE OF LAWYERS.

PRETTY, LOOK AT THIS  
BELOW, WILLIAMS PUBLIC  
DEFENDER, FIRST -- DISCOVERY  
ALL THIS IS GOING ON THE  
ONLY OTHER THING HE SAYS IS  
SURE IS, I MEAN, YOU KNOW  
THIS IS MY CLIENT, I WOULD  
BE GOING, I DON'T THINK --

THE RECORD MIGHT NOT REFLECT THE PHYSICAL ATTEMPTS TO DO THAT. WHY ISN'T IT WHY NOT IT JUST A BETTER RULE IN THIS KIND OF SITUATION WHERE DEFENDANT COMES BEFORE A COURT -- ABOUT BEING EXASPERATED ABOUTED BEING IN JAIL, SAYS LOOK I WANT TO PLEAD GUILTY, I'M GUILTY, -- I REALLY AM GUILTY OR I WANT TO A PLEAD GUILTY, WHY ISN'T IT JUST A BETTER RULE THE RULE SAYS YOU CANNOT USE THAT AS AN ABSOLUTE RULE THE CONTEXT WHEN A DEFENDANT COMES UP AND SAID LOOK I AM MAKING -- TO PLEA, THAT JUST STOP RIGHT THERE, WHATEVER ELSE HE SAID CANNOT BE USED.

YOUR HONOR, IF HE HAD STOPPED THERE WE WOULDN'T BE HERE.

I'M NOT SAYING -- HE NEEDED TO DO STOP THERE, I'M SAYING THAT THAT IS WHY NEED TO LOOK AT NOT WHETHER OR NOT THE STATE THEN MAKES SOME COUNTEROFFER, AND THERE'S NEGOTIATIONS GOING BACK AND FORTH, ONCE HE MAKES THE OFFER TO PLEA WHAT GOES ON IN THAT SETTING IS

--

I WOULD SUBMIT THAT IS WHY THIS COURT ADOPTED THE STEPHENS TEST, WHICH IS I THINK PERFECTLY REASONABLE. STEPHENS TESTS TALKS ABOUT NEGOTIATIONS, I'M SAYING ONCE HE MAKES THAT OFFER, LET'S THEN SAY, WHATEVER HE SAID IN THE CONTEXT OF MAKING THAT OFFER IS JUST NOT TO BE USED BY THE STATE, THE STATE IS GOING TO HAVE TO -- IF THAT FALLS THROUGH THE STATE IS GOING TO HAVE TO USE WHATEVER EVIDENCE THEY ALREADY HAVE. I THINK THIS CASE IS A PERFECT EXAMPLE, BECAUSE IT

MAKES NO SENSE, HE SAYS I WANT A PLEA AGREEMENT, GOES ON TO CONFESS.

DID THE STATEMENT HAVE ANY OTHER EVIDENCE AGAINST HIM -- SHAKY CASE.

AT THE TRIAL LEVEL WHEN THIS CAME BEFORE THE TRIAL JUDGE WAS THE TRIAL JUDGE ASKED TO APPLY THE TWO-TIERED STANDARD?

YES, YOUR HONOR.

AND HE DID?

AND -- HE --

WHY IS THIS ANY DIFFERENT THAN THE LAWYER GOING TO THE STATE AND SAYING THE SAME THING? LOOK.

WE WANT SOME KIND OF PLEA AGREEMENT BECAUSE HE IS ANXIOUS TO GET THIS THING RESOLVED, HE ADMITS HE DID IT, IT IS THE BEST DEAL YOU ARE GOING TO GIVE US, AFTER HE SAYS HE WANTS SOME KIND OF PLEA AGREEMENT, BECAUSE HE DOESN'T WANT TO WAIT TILL -- WHATEVER, ISN'T IN EVERYTHING THAT HE SAYS AFTER IN THE CONTEXT OF HIS DESIRE TO GET THIS THING OVER WITH JUST LIKE HE WOULD INSTRUCT HIS LAWYER, YOU TELL THE STATE I DON'T WANT TO, SO I WANT THIS THING RESOLVED, TELL THEM I DID IT, YOU KNOW, AND WHAT IS THE BEST DEAL THEY WILL GIVE ME? ISN'T THAT -- ISN'T THAT THE CONTEXT OF EVERYTHING THAT IS BEING SAID HERE?

IT MAY BE IN THE CONTEXT, BUT CERTAINLY WASN'T RECOMMENDED, YOUR HONOR. WHAT DEFENDANT IN THEIR RIGHT MIND WOULD CONFESS TO SECOND-DEGREE MURDER TRYING TO SEEK A PLEA AGREEMENT? THIS IS A VERY UNUSUAL CASE, I ADMIT, EVEN SAYS -- JUDGE, THIS IS -- I HAVE TO ASK THIS, MAKE SURE

THIS IS CORRECT.  
THE TRIAL JUDGE,  
AFTER HEARING ALL THE  
TESTIMONY, EXCLUDING  
THOSE STATEMENTS, ENTERED  
AN ORDER.  
THAT IS CORRECT, YOUR  
HONOR.  
ISN'T THE TRIAL JUDGE'S  
FINDINGS ON WHETHER IT WAS  
REASONABLE, SUBJECTIVE  
BELIEF ENTITLED TO --  
WELL, I WOULD LIKE TO  
POINT OUT, FIRST OF ALL, THAT  
THE JUDGE AT ARRAIGNMENT WHO  
WAS THERE WHILE CALABRO  
MADE THESE STATEMENTS, WAS  
A DIFFERENT JUDGE.  
THAT JUDGE DIDN'T SAY, IT  
SOUNDED LIKE IT PASSED EVERYONE  
BY, ON ARRAIGNMENT.  
BUT THE JUDGE RULED ON  
THE MOTION TO SUPPRESS HE WAS  
RELYING ON TRANSCRIPTS LIKE  
THIS COURT IS, IT WAS NO --  
TESTIMONY --  
NO, YOUR HONOR THAT COURT  
JUST -- THIS COURT IS IN JUST  
AS GOOD A POSITION AS THAT  
COURT.  
-- YOU HAVE USED YOUR  
TIME.  
THANK YOU VERY MUCH.  
MAKE YOUR CONCLUDING  
REMARKS, WHAT YOU WANT US TO DO.  
THAT IS FINE.  
OKAY.  
I WANT TO POINT OUT TWO  
QUICK THINGS.  
I APPRECIATE THE EXTRA TIME FOR  
REBUTTAL.  
IF HE SAID I WANT TO  
PLEAD GUILTY BECAUSE I'M  
GUILTY THAT WOULD BE COVERED BY  
THE RULE, OR WOULD IT?  
WOULD HE HAVE TO SAY I WANT  
TO PLEAD GUILTY BECAUSE I'M  
GUILTY ONLY IF I GET  
PROBATION OR SOMETHING LIKE  
THAT?  
WILL YOU AGREE THAT WE  
HAVE TO -- WHATEVER THE  
CONCLUSION IS WE DO IT IN A  
CONTEXT OF TWO-TIERED

ANALYSIS THAT IS ARTICULATED IN  
STEPHENS?

YES, YOUR  
HONOR.

I DO WANT TO POINT OUT  
IN ANSWER TO ONE OF THE  
QUESTIONS PROPOUNDED  
EARLIER, STEPHENS, MY  
UNDERSTANDING WAS DID NOT  
VOLUNTEER A PLEA  
AGREEMENT, LIKE IN COURT, IT  
WAS A PLEA AGREEMENT HAD  
ALREADY BEEN COMPLETED.  
I'M NOT TALKING ABOUT THE  
RESULT OF STEPHENS.  
I'M TALKING ABOUT THE ANALYSIS  
THAT STEPHENS SAYS THE COURT  
SHOULD UNDERTAKE  
DETERMINING WHETHER THESE  
STATEMENTS SHOULD BE ADMITTED  
OR NOT.

CORRECT, BUT THAT IS THE  
ANALYSIS THAT SHOULD BE --  
SHOULD BE USED, YES, YOUR  
HONOR.

I THINK -- I THINK THE  
THIRD DISTRICT, IN THEIR  
DECISION, THEIR OPINION THEY  
DENIED OR SAID SPECIFICALLY  
THAT THERE WERE NO -- THIS IDEA  
OF ONE STATEMENT OR TWO  
STATEMENTS DIDN'T REALLY  
MATTER, THAT THEY WERE  
REALLY GOING TO SAY THAT THE  
STATE'S CONFESSION THAT HAS  
BEEN REITERATED HERE WAS  
IRRELEVANT TO THEIR DECISION  
BECAUSE -- AND THE ONLY REASON  
WHY THEY WEREN'T OVERTURNING  
IT WAS BECAUSE THE STATE HAD  
MADE THAT CONCESSION.  
THEY WOULDN'T HAVE  
ALLOWED THAT EVEN FIRST  
STATEMENT --  
YES.

DO YOU AGREE BEFORE THE  
TRIAL JUDGE HERE THE  
DEFENDANT DIDN'T TESTIFY,  
THERE WAS NOTHING BEFORE THE  
TRIAL JUDGE IN THIS CASE  
OTHER THAN WHAT THIRD DCA  
AND WE ARE REVIEWING?  
IS THAT ALL THERE WAS?  
YES.

I THINK, IF I UNDERSTAND  
YOUR QUESTION --  
I'M SAYING, THE DEFENSE  
COUNSEL DIDN'T -- SAID -- I  
WAS FRUSTRATED I'VE SEEN  
PEOPLE BEFORE ME ENTERING  
INTO AGREEMENTS WITH THE  
STATE, AND I WAS READY TO  
GET THIS OVER WITH AND I  
WANTED TO DO, HAVE AVAILABLE  
TO ME WHAT HAPPENED TO OTHER  
DEFENDANTS, I WANTED MY  
ATTORNEY AND THE STATE  
ATTORNEY STAFF TO SAY WELL  
HE PLEAS, THIS IS WHAT WE  
AGREE ON, I MEAN WHAT I'M  
SAYING IS THAT WASN'T  
PRESENTED TO THE TRIAL JUDGE  
TO MAKE A TWO-TIERED ANALYSIS.  
MY MEMORY OF THE RECORD  
THERE WAS VERY LITTLE  
TESTIMONY, BECAUSE THE STATE  
CONCEDED THE FIRST POINT  
WHICH IS THAT HE WAS MAKING  
A SUBJECTIVE PLEA BARGAIN.  
DIFFERENT TRIAL JUDGE,  
THOUGH.

YES, DIFFERENT THAN THE  
ONE AT ARRAIGNMENT BUT A  
DIVISION --

WE DON'T HAVE ANY ISSUE  
ABOUT A TRIAL JUDGE  
EVALUATING THE CREDIBILITY  
OF ANYBODY.

NO.

NO.

WE HAVE THE TRIAL JUDGE  
LISTENING TO THE STATE'S  
CONCESSION WHICH WAS A VALID  
CONCESSION.

THE COURT POINTED  
OUT AND OFFERED A PLEA.  
THE ISSUE THAT CAME BEFORE THE  
COURT AT THE TIME OF THE  
HEARING WAS WHAT ABOUT THAT  
SECOND STATEMENT THAT IS  
PART OF THE SAME STATEMENT?  
OR IS THAT PART OF A DIFFERENT  
STATEMENT?

WELL -- I MAYBE GOT  
LOST IN THE SEQUENCE HERE,  
BUT I THOUGHT THAT YOU HAD  
MADE A STATEMENT IN YOUR  
OPENING ARGUMENT HERE THAT

THERE HAD BEEN SOME KIND OF EVIDENTIARY HEARING IN WHICH MR. CALABRO HAD MADE SOME TYPE OF STATEMENT.

IS THAT NOT CORRECT?

MR. CALABRO DID NOT TESTIFY AT THE HEARING TO MY RECOLLECTION.

OKAY.

I DON'T REMEMBER, I DON'T THINK --

WENT ON FROM 2002 UNTIL 2006?

I THINK IT WAS THE -- I THINK THE SUPPRESSION HEARING TOOK PLACE IN 2005, SO WHATEVER HAPPENED FROM 2003 TO 2005 WAS HE WAS -- HIS LAWYER WAS PURSUING DISCOVERY, HIS TRIAL ATTORNEY PURSUING DISCOVERY.

THERE WERE SOME ISSUES, I WAS NOT AWARE OF ALL THE DETAILS WHERE HE WAS HAVING DIFFICULTIES WITH SOME LAWYERS GETTING NEW LAWYERS, REPLACING THEM, AND THAT THE POINT, AFTER DISCOVERY COMPLETED A MOTION TO SUPPRESS FILED HERE IN 2005, GRANTED THE APPELLATE PROCESS HAS BEEN GOING ON SINCE.

THESE ARE ALL APPOINTED ATTORNEYS AND THE TRIAL JUDGE RAN WITH THAT, APPOINTED NEW ATTORNEYS, THEY MUST HAVE GONE THROUGH THE PROCESS TO DETERMINE WHETHER THERE WAS SOME PROBLEM, AND IT WAS NOT THE CLIENT'S PROBLEM WHERE A JUDGE WOULD HAVE SAID YOU CAN DISCHARGE THEM BUT YOU HAVE TO REPRESENT YOURSELF; CORRECT?

THAT IS CORRECT, YOUR HONOR.

THERE MUST HAVE BEEN SOME PROBLEM FOR THREE YEARS FOR THE MAN'S JUSTICE IN DADE COUNTY; IS THAT WHAT YOU ARE TELLING US? YOUR HONOR, THERE WERE ISSUES THAT WERE NOT

MR. CALABROS' FAULT, SOME THAT  
WERE HIS FAULT.  
ONE OF HIS BIGGEST COMPLAINTS WAS THE  
LACK OF MOVEMENT ON HIS CASE.  
THAT HAS BEEN CONSISTENT  
THROUGHOUT.  
THANK YOU.  
THANK YOU FOR YOUR  
CANDOR.  
WE WILL TAKE THE CASE UNDER  
ADVISEMENT.  
COURT WILL TAKE ITS MORNING RECESS.  
ALL RISE.