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Eugene W. McWatters v. State of Florida

>> PLEASE RISE.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> THE NEXT CASE ON THE COURT'S
AGENDA IS McWATTERS VERSUS
STATE OF FLORIDA.

MR.^ANDERSON?

>> THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT.

MY NAME IS JEFFREY ANDERSON.

I REPRESENT THE APPELLANT,

MR.^EUGENE McWATTERS.

I KNOW I HAVE MULTIPLE ISSUES

HERE, LET YOU KNOW WHERE I

INTEND TO GO --

>> WOULD YOU PLEASE SPEAK UP.

YOU HAVE WHAT KIND OF ISSUES?

>> I HAVE MANY ISSUES.

JUST SO LET YOU KNOW WHERE I'M

GOING, I'M GOING TO START OFF

WITH ISSUE 1, THE MIRANDA

ISSUE.

THEN IF I HAVE ANY TIME

REMAINING I'LL TRY TO ADDRESS

THE SUFFICIENCY ISSUES, POINTS

FOUR AND FIVE.

ISSUE NUMBER ONE INVOLVES, THE

POLICE INTENTIONALLY USING A

STRATEGY TO UNDERMINE MIRANDA.

>> IS THERE, I UNDERSTAND YOUR

ARGUMENT.

IS THERE, ARE YOU CONTENDING

THAT THERE IS A MAGIC AMOUNT OF

TIME ONCE IT BECOMES STEAL?

>> NO.

>> HELP ME UNDERSTAND EXACTLY.

CERTAINLY THERE IS A

DIFFERENCE, THIS IS NOT A MONTH

LATER OR SIX MONTHS LATER.

>> I'M NOT EVEN, THERE IS NO

BRIGHT LINE AS FAR AS TIME.

IN FACT IN MY RESEARCH ON THIS

I LOOKED UP THE TIME DIFFERENCE

DIFFERENCES.

THE COURTS WERE LIKE GOING ALL

OVER THE PLACE.

SOMETIMES TWO HOURS WOULD BE

TOO MUCH SEPARATION.
SOMETIMES FOUR HOURS WOULD BE
FINE.

>> COULD YOU GIVE US EXACTLY
WHAT HAPPENED HERE.
BECAUSE WHAT I'M CONCERNED
ABOUT, I'M NOT SURE IT IS
ADEQUATELY DEVELOPED, IS THAT
NOT THAT THE HALF HOUR
TRANSPIRED OR AN HOUR, BUT WHAT
I'M UNDERSTANDING MORE FROM,
READING YOUR BRIEF IS THAT,
THEY ARREST HIM, THEY KNOW THEY
WANT TO ARREST HIM ON THIS
CHARGE BUT THEY ARREST HIM ON
AN UNRELATED CHARGE.

>> CORRECT.

>> THEY READ HIM HIS MIRANDA
RIGHTS ON THAT UNRELATED
CHARGE.

SUBSEQUENTLY AFTER THEY PUT
HIM, GO THROUGH THE ROOM WITH
ALL OF THIS, HE IS THEN A NEW
DETECTIVE COMES IN AND THAT IS
WHEN HE STARTS TALKING.

SO MAYBE IF YOU COULD GIVE US
THAT SENSE.

TO ME THAT IS DIFFERENT THAN
SAYING HALF HOUR EXPIRED OR AN
HOUR EXPIRED.

>> EXACTLY.

WHAT I WAS GOING TO SAY --

>> WHAT THE RECORD SHOWS.

>> THOSE CASES COURTS EVOLVE
SAY WE CAN'T LOOK AT TIME.
WE HAVE TO LOOK AT TOTAL
CIRCUMSTANCES.

AND IT IS ALMOST LIKE A
BLUEPRINT FOR THIS CASE.

WHAT HAPPENED HERE WAS THE
DETECTIVE DAUGHERTY, THE ONE
INVESTIGATING THE THREE
MURDERS, HE HEARS ABOUT THIS
WARRANT ON AN UNRELATED CHARGE
AND HE MAKES THE DECISION TO
TAKE ADVANTAGE OF THAT.

HE FINDS AN OFFICER, NOT
CONNECTED WITH THE MURDER
INVESTIGATIONS, TO, AND I

ORDERS HIM TO GO ARREST
MR. McWATTERS, AWAY FROM THE
POLICE STATION.

IN FACT HE CONNECTS HIM UP TO A
McDONALD'S WHERE HE'S AT, AND

READ HIM, TAKE HIM INTO
CUSTODY.

READ HIM HIS --

>> ON THAT CHARGE?

>> UNRELATED CHARGE?

>> RIGHT.

AND GIVE HIM HIS MIRANDA
WARNINGS BUT DON'T QUESTION HIM
AT ALL.

>> SO HE'S TOLD AT THIS POINT,
THAT HE IS BEING ARRESTED FOR,
WHAT IS THE CHARGE?

>> WE DON'T EVEN KNOW FROM OUR
RECORD.

IT IS UNRELATED.

>> AND THEN HE SAID, YOU HAVE A
RIGHT TO REMAIN SILENT, SO
FORTH?

>> GAVE HIM MIRANDA WARNING.

>> AS TO THAT CHARGE?

>> YES.

>> OKAY.

>> AND THEN --

>> IT HAPPENS IN A McDONALD'S,
WHAT YOU'RE SAYING?

>> YES.

>> ALL RIGHT.

>> THEN HE'S, THE PLAN AND
EXECUTION OF THE PLAN ARE,
THEY'RE PERFECT.

EVERYTHING GOES ACCORDING TO
THE PLAN, WHICH IS TO TRANSPORT
THE DEFENDANT TO THE POLICE
STATION, BUT DON'T TAKE HIM TO
THE INTERROGATION ROOM.

TAKE HIM TO THE TASK FORCE
ROOM.

WHICH, IS, ALL THE EVIDENCE IN
THE THREE CASES HAS BEEN
GATHERED THERE.

DIAGRAMS, PHOTOS, REPORTS.
PHYSICAL EVIDENCE.

>> SOME EVIDENCE THAT HASN'T
BEEN GATHERED?

>> HUH?

>> THERE IS SOME EVIDENCE THAT
HASN'T BEEN GATHERED, RIGHT?
THERE ARE SOME STATEMENTS THERE
THEY DON'T KNOW?

>> IT IS ALL THE EVIDENCE THEY
HAVE AT THAT TIME.

>> MAYBE I'M CONFUSING THIS
WITH SOMETHING ELSE.

WASN'T THERE A STATEMENT ABOUT

DNA?

>> RIGHT. EXACTLY.

YOU'RE CORRECT.

IT'S, LAB REPORT OR A POLICE REPORT, STATEMENT ABOUT DNA, THAT WAS THE, POLICE MADE IT UP.

THERE IS NO REAL, THEY MADE UP FABRICATED REPORTS SAYING McWATTERS' DNA WAS FOUND ON THE VICTIMS IN THESE CASES.

OF COURSE, THE POLICE WANTED THE DEFENDANT TO SEE EVERYTHING IN THE TASK FORCE ROOM.

>> OKAY.

BUT, THAT PART OF IT, WHAT DIFFERENCE DOES THAT MAKE?

>> WELL, IT'S, WE'RE TALKING ABOUT THE MIRANDA PROCESS.

IT IS SIGNIFICANT FOR TWO REASONS.

IT'S, OBVIOUSLY THE FABRICATED REPORT IS SOMETHING YOU DON'T NORMALLY PUT IN THE TASK FORCE ROOM.

IT IS PUT THERE FOR McWATTERS TO SEE.

>> THEY WATCH HIM IN.

>> LATER WHEN THEY DO THE INTERROGATION IT IS BROUGHT OUT HE DID GO THROUGH EVERYTHING ON THE WALLS.

>> YOU KNOW IT, BECAUSE THEY START ABOUT THE OTHER PEOPLE, THAT GUY, THAT GUY, WHAT HE SAID.

>> RIGHT.

>> AND --

>> IN ADDITION THEY TALK ABOUT THE DNA YOU'VE SEEN THE DNA REPORT AND THAT SHOWS --

>> BUT LET'S GET BACK TO THE MIRANDA THING.

>> RIGHT.

>> WHETHER FORTUNATE OR UNFORTUNATE POLICE CAN USE A LOT OF DECEPTIONS TO GET A STATEMENT OUT.

SO, WHAT HE HAS NOW BEEN ARRESTED ON AN UNRELATED CHARGE.

GIVEN MIRANDA, AT SOMEPLACE OUTSIDE THE STATION.

BROUGHT IN.

INSTEAD OF BEING BROUGHT IN FOR INTERROGATION ON THAT CHARGE, HE IS THEN PLACED IN A TASK FORCE ROOM.

IS HE EVER ASKED OR IS HE EVER TOLD, AM I UNDER ARREST FOR THE MURDERS?

DOES THAT EVER COME OUT, THAT IN FACT OWE IS REALLY BEING BROUGHT IN?

>> NO, NO.

>> FOR THAT REASON?

>> THEY DON'T INFORM HIM OF HIS MIRANDA RIGHTS OR HE HAS BEEN ARRESTED OR IN CUSTODY FOR THESE THREE MURDERS.

>> I'M TRYING TO UNDERSTAND THE RELEVANCE OF THAT DO YOU HAVE ANY CASE AUTHORITY THAT SAYS, MIRANDA WARNINGS ARE SPECIFIC AND ARE ONLY GOOD FOR A PARTICULAR CHARGE ON WHICH THE DEFENDANT HAS BEEN ARRESTED? IS THERE A LAW THAT SAYS THE DEFENDANT IS ARRESTED ON, CHARGE A, AND THEN, IS INTERROGATED ABOUT CHARGE B, THAT SOMEHOW, THAT MIRANDA WARNINGS GIVEN AFTER THE ARREST ON CHARGE A, AREN'T GOOD FOR INFORMATION THAT RELATES TO CHARGE B?

IS THERE ANY CASE LIKE THAT?

>> I DON'T KNOW OF ANY CASE.

>> THAT'S WHAT YOU'RE ARGUING HERE.

>> NO, I'M ARGUING TOTAL

CIRCUMSTANCES OF THE POLICE --

>> THERE ACTUALLY IS A SUPREME COURT CASE --

>> THERE IS.

>> CITED IN THE BRIEF, IT ISN'T, THE FACT THEY ARREST HIM AND GIVE HIM MIRANDA WARNINGS ALONE THEMSELVES IN ITSELF AND START QUESTIONING ON ANOTHER CRIME DOES NOT INVALIDATE THE MIRANDA WARNING.

NOT RELYING SOLELY ON THIS IN THIS CASE I ASSUMING?

>> CORRECT.

CORRECT.

IN THAT CASE, IS DIFFERENT BECAUSE OF ALL THE OTHER

DIFFERENCES.

IT DOESN'T APPLY -- BUT IT
DIDN'T INVOLVE INTENTIONAL
POLICE --

>> WOULDN'T THE CONCERN BE IF
THERE WAS SOME CIRCUMSTANCE
THAT ESSENTIALLY VITIATES THE
WARNING, MAKES THE WARNING
INEFFECTIVE OR MEANINGLESS,
THAT THE SUPREME COURT DEALT
WITH IN SEIBERT, THEY ALREADY
EXTRACTED THE INFORMATION FROM
THE PERSON, AND THEN, YOU KNOW,
TO, GET IT AGAIN AFTER THE
WARNING, MAKES THE WHOLE THING
KIND OF A, THE WAY THEY VIEWED
IT, A CHARADE.

>> RIGHT.

>> THIS IS REALLY A LITTLE
DIFFERENT.

THE WARNING, HE HAS BEEN
GIVENING THE WARNINGS.
HE HAS BEEN TOLD WHAT HE NEEDS
TO KNOW TO UNDERSTAND HIS
RIGHTS.

WHAT MAKES, WHAT MAKES THIS
SEQUENCE OF EVENTS VITIATE
THAT?

>> BECAUSE THEY SEPARATED THE
WARNINGS IN SEVERAL DIFFERENT
WAYS, FROM THE ACTUAL, WHEN THE
INTERROGATION TAKES PLACE.
AND THAT'S ONE OF THE THINGS I
WAS SAYING ABOUT THE TASK FORCE
ROOM.

HE COMES OUT OF THERE, AND WHAT
IS HE THINKING ABOUT?
ESPECIALLY SEEING THE
FABRICATED REPORT ABOUT THE
DNA.

HE'S THINKING ABOUT THIS
EVIDENCE IN THESE THREE MURDER
CASES.

HIS MIND IS OFF THE UNRELATED
CASE THAT, AN UNRELATED OFFICER
ARRESTED HIM ON.

THEY'RE SEPARATING.

THAT WAS, DETECTIVE DAUGHERTY
ADMITTED THAT WAS WHAT HE WAS
TRYING TO DO.

THAT WAS THE WHOLE PURPOSE OF
THIS.

>> DON'T WE ALSO, YOU KNOW, AND
AGAIN, I'M NOT A BIG FAN OF

THIS KIND OF DECEPTION WITH NO DNA, BUT, AGAIN, THE SUPREME COURT HAS SPOKEN, BUT THE CONTEXT OF THIS, IS THAT, NOT LIKE HE IS JUST, PLUCKED OFF THE STREET FOR THIS OTHER ARREST WARRANT, AND, QUESTIONED THEN ABOUT THE MURDER. AS I'M UNDERSTANDING IT, AND THIS IS QUOTING FROM THE STATE'S BRIEF HE HAD SPOKEN WITH THE POLICE AT LEAST EIGHT TIMES BEFORE JUNE 23rd STATEMENT REALLY INVOLUNTARILY. YOU AGREE THERE WAS A HISTORY?

>> RIGHT. HE WAS NEVER IN CUSTODY ON ANY --

>> RIGHT.

THERE WAS ALREADY ONGOING COMMENTS, AND SO, THEN, AT THAT POINT, WE NOW, LET'S START, WE HAVE MIRANDA WARNINGS ON ANOTHER CHARGE.

HE'S BROUGHT INTO THE TASK FORCE ROOM.

THEN WHAT HAPPENS?

AS FAR AS NOW GETTING TO WHY THE TOTALITY SHOWS IT WAS MISLEADING, EXPLAIN WHAT ELSE WE HAVE THAT WOULD SAY THAT THIS IS DIFFERENT FROM OTHER CASES WHERE WE'VE UPHELD THE VALIDITY OF THE CONFESSION?

>> WELL, IT'S, I HAVE NEVER SEEN THIS TYPE OF ISSUE ADDRESSED AS FAR AS MIRANDA WARNINGS.

>> WHAT IS THE ISSUE?

WHEN YOU SAY THIS TYPE OF ISSUE, YOU ALREADY CONCEDED --

>> INTENTIONAL DECEPTION IN AN EFFORT TO UNDERMINE THE MIRANDA WARNINGS.

IT'S DIFFERENT --

>> TELL ME, OKAY --

>> DIFFERENT WHEN THEY'RE IN INTERROGATION AND QUESTIONING HAS ALREADY BEGUN.

WE, THEN, TOLERATE SOME DECEPTION.

BUT AS TO THE WARNING PROCESS, YOU'RE NOT SUPPOSED TO DECEIVE. THEY'RE NOT SUPPOSED --.

>> THERE IS NO DECEPTION TO THE

WARNING. WARNING WAS GIVEN.
YOU'RE NOT CHALLENGING VALIDITY
OF THE WARNING.

>> THERE IS DECEPTION IN THE
MANNER THEY'RE GIVING --
THEY'RE DISGUIISING THE FACT
THAT THEY'RE REALLY GOING TO BE
QUESTIONING ABOUT THE MURDERS
AND WHAT THEY APPLY TO THE
MURDERS.

>> WHOLE POINT ABOUT THE
DECEPTION, YEAH, THEY'RE
DISGUIISING FACTS.
TELLING THEM THINGS THEY DON'T
REALLY KNOW TO MAKE THEM THINK
THEY DO NO.

>> NO --

>> I DON'T UNDERSTAND HOW THIS
DECEPTION HERE IS REALLY ANY
DIFFERENT THAN THE, THE
DECEPTION THAT HAS BEEN
APPROVED BY THIS COURT AND BY
THE SUE SUPREME COURT?

>> I DON'T THINK ANY OF THOSE
COURTS EVER APPROVED DECEPTION
IN THE MIRANDA WARNING PROCESS.
THERE IS SOME DECEPTION THAT IS
PERMISSIBLE DURING THE
INTERROGATION PHASE.

ONCE INTERROGATION --

>> MY QUESTION, I DON'T
UNDERSTAND HOW IT IS DECEPTION
IN THE WARNING PROCESS.

IT ALL HAPPENS, ALL THIS
DECEPTION KEGS IN ON THE PATH
TO THE INTERROGATION, AFTER THE
WARNINGS HAVE BEEN GIVEN.

>> THEY'RE CREATING A SITUATION
TO MAKE IT LOOK LIKE THE
WARNINGS THAT WERE GIVEN,
WEREN'T REALLY APPLYING TO THE
MURDER CASE.

THAT'S WHY THEY USED THE
DIFFERENT OFFICER, THAT'S WHY
THEY USED THE MIRANDA ON A
DIFFERENT CHARGE.

>> HE WAS IN A CIRCUMSTANCE
WHERE HE DID NOT UNDERSTAND
THAT HE COULD REMAIN SILENT?

>> THE POLICE CREATED THAT RISK
BY THIS INTENTIONAL STRATEGY.

>> I GUESS, AS I'M THINKING
THIS, AND AGAIN, THAT, THIS
DOESN'T INDICATE I NECESSARILY

AGREE WITH YOU BUT AGAIN TRYING TO UNDERSTAND IT, WHAT MAKES THIS DIFFERENT AND PERHAPS WORSE AND PERHAPS, TOTALLY WRONG IN TERMS OF WHAT MIRANDA IS SUPPOSED TO DO, THEY GIVE A WARNING BY AN OFFICER HE IS NOT FAMILIAR WITH.

THEY THEN BRING HIM IN. AS YOU SAID IF THEY THEN BROUGHT HIM IN AND STARTED QUESTIONING HIM ABOUT THIS MURDER, YOU WOULD HAVE NOT HAVE A GOOD ARGUMENT.

DO YOU AGREE WITH THAT? WITHOUT THIS TASK --

>> THE TASK FORCE STUFF ADDS TO IT.

I STILL THINK I WOULD HAVE AN ARGUMENT.

>> LIKE A SHOCK AND AWE. YOU'RE NOW PUT IN THIS ROOM AND, YOU KNOW, LIKE A JACK BAUER FROM "24" ALL OF SUDDEN APPEARED, YOUR MIND IS NOW, THAT'S THE ARGUMENT, THAT HE CAN'T BE FOCUSED ON THE MIRANDA WARNING BECAUSE HE IS NOW BEING FOCUSED ON ALL THIS EVIDENCE AGAINST HIM IN THIS OTHER CASE. HOW LONG IS HE IN THAT TASK FORCE ROOM AND THEN WHAT HAPPENS?

>> THEY NEVER GIVE AN EXACT TIME THAT HE'S IN THE TASK FORCE ROOM.

ALL I CAN SAY IS I THINK IT IS SIGNIFICANT BECAUSE HE'S GOT TO LOOK THROUGH, WE KNOW FROM THE INTERROGATION HE LOOKS THROUGH EVERYTHING ON THE WALL AND ALL THE EVIDENCE.

AND EVEN SAW THE FABRICATED DNA REPORT.

SO THEY HAD TO HAVE LEFT HIM IN THERE FOR CONSIDERABLE AMOUNT OF TIME.

>> DOESN'T THAT BECOME, SOMEWHAT, AT LEAST, IF HE'S IN THERE FOR FIVE MINUTES, AND HE HAD JUST BEEN ARRESTED AND THEN THEY START QUESTIONING HIM, IF HE HAD BEEN LEFT THERE, THERE IN OVERNIGHT, IT SEEMS TO ME

THAT SOME IDEA OF WHETHER IT IS MINUTES OR AN HOUR, OR HOURS, ARE YOU SAYING THERE WAS NO TESTIMONY ON HOW LONG IT WAS UNTIL THEN INTERROGATION BEGAN?

>> THEY DIDN'T GIVE, THERE WAS NO TESTIMONY IN TERMS OF HOURS AND EXACT TIME.

>> WHO'S BURDEN IS THAT? THE BURDEN ON THE STATE TO SHOW THAT CONFESSION IS FREELY VOLUNTARILY GIVEN WHEN MIRANDA WARNINGS ARE GIVEN, BEFORE AN INTERROGATION?

ALMOST LIKE A PRESUMPTION IT IS NOW FREE AND VOLUNTARY YET SOMETHING ELSE HAS TO HAPPEN. IF YOU DON'T KNOW THE TIME, IS THE NEXT THING HAPPENS HE ACTUALLY ASKS TO SPEAK TO THE DETECTIVE WHO HAD BEEN QUESTIONING HIM?

>> NOT AFTER THE TASK FORCE ROOM HE DOESN'T. HE DOESN'T ASK TO TALK TO ANYONE AFTER THAT.

>> WHAT HAPPENS AFTER THE TASK FORCE ROOM SCENARIO?

>> THEY TAKE HIM IN?

>> INTERROGATION.

>> INTERROGATION BEGINS.

>> THE RECORD INDICATES WE'RE REALLY TALKING ABOUT A HALF HOUR PERIOD?

OR IS THAT INCORRECT?

THAT HE WAS ARRESTED ABOUT 12:30 I THOUGHT THE RECORD SAID AND THIS ALL OCCURRED AT 12:50 OR 55 SOMETHING LIKE THAT?

>> I DON'T KNOW ANYWHERE IN THE RECORD THAT THIS OCCURS AT 12:50 OR 12:55.

THE UNUSUAL THING WE HAVE TAPE OF INTERROGATION, AND THEY USUALLY START OFF WITH HERE'S THE TIME AND HERE'S THE PERSON BEING INTERROGATED BUT THEY LEFT THE, THE TIME IS NOT THERE.

>> THE DETECTIVE THAT HE ASKS FOR, WAS THE DETECTIVE THAT WAS IN THE ROOM, THE INTERROGATION ROOM WHEN THEY TOOK HIM THERE?

>> HE WAS, HE WAS ONE OF THE

DETECTIVES THAT WOULD BE IN THE INTERROGATION ROOM. BUT WHEN HE ASKS FOR HIM, HE DIDN'T SAY WHY HE WAS ASKING FOR HIM, AND, IT'S, AGAIN, IT'S SEPARATE, WE HAVE THIS SEPARATION BETWEEN WHAT WAS HAPPENING AT THE McDONALD'S AND THE INTERROGATION.

>> DON'T WE HAVE THOUGH, AND WE CAN GO THROUGH ALL THESE TOTALITY OF THE CIRCUMSTANCES BUT ULTIMATELY, FACTUAL FINDINGS ARE WITHIN THE PROVINCE OF THE TRIAL COURT. AND SO, WE COME UP HERE AND MY CONCERN IS, THAT, WHILE WE MAY DISAPPROVE OF SOME OF THE TACTICS AS TO WHETHER THE MIRANDA WARNINGS WERE RENDERED INVALID, AREN'T YOU ASKING US TO ENUNCIATE A RULE OF LAW THAT WOULD SAY IT IS NOT PERMISSIBLE, WHAT WOULD THE RULE OF LAW BE? IF.

>> THE RULE OF LAW --

>> GO INTO YOUR OTHER ISSUES.

>> HERE THREE SENTENCES.

CONFESSION IS NOT VOLUNTARY BECAUSE?

>> BECAUSE WHAT SEIBERT SAID.

POLICE INTENTIONALLY USED A STRATEGY TO UNDER -- TO UNDERMINE MIRANDA.

THAT WAS THEIR STATED STRATEGY.

WHEN DETECTIVE DAUGHERTY

TESTIFIED HE WAS ASKED A

QUESTION THE PSYCHOLOGICAL

RUSE, MEANING DIFFERENT

OFFICER, DIFFERENT CHARGE, THE

TASK FORCE ROOM, THAT

PSYCHOLOGICAL RUSE WAS AN

EFFORT TO GET HIM TO MAKE SURE

HE DIDN'T INVOKE HIS MIRANDA

RIGHTS.

AND HE SAID YES.

>> I FORGOT ABOUT THAT PART WHICH DISTURBED ME.

THEY SAID THEY INTENTIONALLY

DIDN'T ISSUE MIRANDA WARNINGS

WHEN THEY STARTED TO

INTERROGATE HIM ON THIS OFFENSE

BECAUSE THEY KNEW HE WOULD

INVOKE THEM.

>> EVERYTHING WAS PLANNED OUT.

>> IS THAT CORRECT?

>> AND THAT'S WHAT --, YES.

THAT'S WHY THEY WANTED TO SEPARATE THE MIRANDA WARNINGS THAT WERE GIVEN, FROM THE INTERROGATION.

IT WAS ALL A PLAN.

THAT WAS SEIBERT, JUSTICE KENNEDY'S OPINION, SPECIFICALLY CONDEMNS, THESE STRATEGIES THAT ARE USED TO UNDERMINED MIRANDA.

THAT INVOLVED THE SLIGHTLY DIFFERENT STRATEGY BUT I THINK ALL STRATEGIES THAT ARE INTENDED TO UNDERMINE AND CIRCUMVENT

MIRANDA ARE CONDEMNED.

THAT IS THE RULE OF LAW THAT COULD BE APPLIED TO THIS CASE.

>> THAT IS DIFFERENT?

INTENTIONAL TO UNDERMINE MIRANDA AS OPPOSED TO INTENTIONAL TO ENTERTAIN A CONFESSION?

>> YES.

THAT'S DIFFERENT.

THAT IS OCCURRING DURING THE INTERROGATION.

THERE ARE CASES AT LEAST TO A CERTAIN POINT THEY CAN DECEIVE THE DEFENDANT AND HAVE TRICKERY.

MIRANDA IN THE WARNING YOU'RE NOT TO USE DECEPTION OR TRICKERY.

THEY ADMITTED IT WAS A STRATEGY AND IT WAS TO SEPARATE THE WARNINGS THAT WERE GIVEN FROM THE ACTUAL INTERROGATION.

>> HOW ABOUT IF THERE'S NO ADMISSION IN THIS CASE OF THAT BEING A STRATEGY, THAT SOMEONE IS TAKEN INTO CUSTODY, THE WARNINGS ARE APPROPRIATELY AND PROPERLY GIVEN, AND, THERE'S A PERIOD OF TIME AND THEY TRANSPORT HIM BACK TO THE STATION HOUSE OR WHEREVER THEY'RE GOING TO BE, AND THERE IS NO ADMISSION?

LET'S SAY SOMETHING LIKE THIS, THERE'S DECEPTION, I UNDERSTAND

THAT IS BUILT BUT IS THAT THE SAME, DO WE END UP WITH THE SAME RULE OF LAW?

OR BECAUSE THERE IS THE AGREEMENT, OR THIS IS THE EFFECT, IS IT THAT IT IS DECEPTIVE IN EFFECT OR DECEPTIVE INTENT?

>> IT'S, WELL, SEIBERT, IT'S CONDEMNING THE INTENT, THE INTENTIONAL STRATEGY. BUT, LET ME PUT IT THIS WAY. SHOULD WE GET THE SAME RESULT IF HE DIDN'T SAY --

>> RIGHT.

>> THIS WAS HIS PLAN AND ALL THAT.

>> RIGHT.

>> AND I THINK WE WOULD BECAUSE OTHER CASE, I THINK I SAID STATE VERSUS DEWISS IN MY BRIEF, THEY LOOK AT THE CIRCUMSTANCES AND ANALYZE THOSE TO SEE IF THERE IS A SEPARATION BETWEEN THE MIRANDA WARNINGS AND THE INTEARGATION.

AND DEWISS DID A DIFFERENT OFFICER GIVE THE WARNINGS THAN DID THE INTERROGATION OR WERE THE WARNINGS ON THE SAME OFFENSE AS THE INTERROGATION WAS?

WAS IT AT THE SAME LOCATION AS WHERE THE INTERROGATION TOOK PLACE?

AND, AND THEY SAID WERE THE STATEMENTS, PRIOR STATEMENTS OF THE DEFENDANT DIFFERENT THAN THE STATEMENTS HE GAVE DURING.

>> THE CONFESSION THAT WAS THEN OBTAINED, WAS, DOES THE STATE HAVE, OBVIOUSLY THEY HAVE A LOT OF EXCULPATORY EVIDENCE AGAINST THE DEFENDANT.

BUT WERE THERE OTHER STATEMENTS MADE THAT WOULD NOT NECESSARILY BE THE SUBJECT OF YOUR SUPPRESSION ARGUMENT, OR IS THIS THE MAIN CONFESSION THAT --

>> THIS IS THE MAIN ONE. AFTER THIS THERE IS NOT REALLY --

>> OKAY.

HOW ABOUT, YOU SAID YOU WERE GOING TO DISCUSS SUFFICIENCY OF THE EVIDENCE.

ONE OF THE THINGS THOUGH, I JUST WANT TO UNDERSTAND IS, IS THAT I DON'T SEE FROM SIMILARITY POINT OF VIEW ANY QUESTION THAT THE TWO THAT OCCURRED ON THE SAME DATE, ARE REMARKABLY SIMILAR, TO THE TYPE OF STRANGULATION, AND TO THE TYPE OF VICTIM IT WAS, THAT THEY WERE, TO THE METHOD, ET CETERA.

BUT, YOU SEEM TO AND THE QUESTION I HAVE, AS TO THE BRADLEY MURDER, THAT THERE WAS, YOU KNOW, THE AGE, THE CIRCUMSTANCE OF HOW BRADLEY WAS HOMELESS.

HOW HE WAS LEFT WITH BRADLEY. THAT JUST, OBVIOUSLY, TO ME ANY RAPE IS GOING TO HAVE CLOTHING IN DISARRAY.

WHAT THOUGH, WHAT CONCERNED ME IS THAT, ASSUMING IF THE CONFESSION'S VALID OR THERE IS OTHER EVIDENCE THAT HE KILLED HER, IS THE STANDARD DIFFERENT FOR WHERE, IT IS NOT REALLY GOING TO IDENTITY, BUT IT IS GOING TO SAY, LISTEN, I RAPED THE PERSON, BUT, I DIDN'T REALLY KILL THE PERSON?

AND ALSO THIS WOULD GO TO THE CCP FROM BRADLEY ONTO THE OTHER TWO VICTIMS. IT GOES TO PREMEDITATION FOR THE LAST TWO CASES.

IT IS PRETTY HARD TO SAY ONCE YOU STRANGLED ONE PERSON, BRADLEY, YOU THEN GO THROUGH SOMETHING, IT IS NOT DISSIMILAR, BUT, YOU CERTAINLY KNOW WHAT IT IS TO STRANGLE SOMEBODY AND, THAT THERE'S, TO ME, THAT PUTS THOSE CASES IN CCP.

SO TELL ME, THE QUESTION I HAVE, I'M STRUGGLING A LITTLE THAT BRADLEY DOES SEEM DISSIMILAR.

I'M WONDERING IF IT GOES TO HIS, BUT IT IS DEFENSE, I

DIDN'T MEAN TO KILL THEM,
WHETHER THE STANDARD OF THE
FINGERPRINT SIMILARITY IS THE
SAME?

>> THE WAY THEY WERE ADMITTED
AND USED IN THIS CASE, IT IS.
BECAUSE, IT DOESN'T MAKE SENSE
TO ME THE WAY THE PROSECUTOR
UTILIZED THIS EVIDENCE BECAUSE
HE KIND OF SEEMED TO BE
THROWING UP ALL THREE MURDERS
ON THE WALL AND HOPE SOMETHING
WOULD STICK EVEN AS FAR AS
PREMEDITATION.

THE WAY I USUALLY SEE IT DONE YOU
HAVE THE COLLATERAL CRIME, YOU
MIGHT KNOW THE DEFENDANT DID
IT, YOU MIGHT HAVE IRONCLAD
CONFESSION IN THAT CASE.

IN THE CHARGED CRIME YOU DON'T
HAVE THE CONFESSION BUT YOU GOT
THE UNIQUE SIMILARITY, YOU CAN
GO OVER AND SAY, HE DID THE
SAME THING AS FAR AS
PREMEDITATION.

>> THEY DON'T HAVE TO WORRY --
HERE, AND I AGREE IT MAY NOT BE
A WAIVER BUT THE THREE WERE
CONSOLIDATED.

BUT FROM THE POINT OF VIEW FROM
THE PROSECUTOR, AS LONG AS AT
LEAST ONE OF THE MURDERS GET AS
CONVICTION.

EACH ONE ALONE.

I MEAN, I WOULD THINK, ARE,
DEATH PENALTY CASES, UNDER ALL
THE CIRCUMSTANCES.

SO MAYBE IT HAPPENED BECAUSE OF
THAT REASON.

MY QUESTION TO YOU, FROM THE
INITIAL ISSUE OF THE
ADMISSIBILITY OF THE BRADLEY,
IF, MURDER, IS THERE A BASIS
FOR A JUDGE SAYING, LISTEN,
BECAUSE YOU ARE GOING TO BE
SAYING, ASSUMING THE CONFESSION
COMES IN, THAT THIS WAS, I
DIDN'T MEAN TO KILL HER, THAT
THE, BASED ON THAT, IT DOESN'T
HAVE TO BE AS SIMILAR.

THE FACT THAT, THE NECK IS
BROKEN IN A DIFFERENT PLACE
JUST DOESN'T MATTER?

>> I THINK YOU'RE GETTING INTO

AN ARGUMENT WAS MADE I THINK BECAUSE, ONE MURDER OCCURS AND THEN A SECOND MURDER OCCURS AND A THIRD.

YOU KNOW, EVEN THOUGH YOU MAY NOT HAVE PREMEDITATED THE FIRST, YOU'VE PUT YOURSELF IN A POSITION WHERE YOU SHOULD KNOW WHAT'S THE RISKS AS TO THE SECOND AND THIRD, IS THIS KIND OF WHAT --

>> I THINK IT IS GOING FROM THE OTHER WAY.

GOES FROM THE SECOND AND THIRD TO THE FIRST.

IF HE IS OUT DOING THAT, THIS RESULT HE IS MEANT TO DO THIS. THIS SEQUENCE OF THREE IS NOT SOMETHING HE JUST STUMBLED INTO.

THE FACT THAT IT HAPPENS AGAIN, CAN, IN THE SECOND AND THIRD INSTANCES CREATE AS REASONABLE INFERENCE, IT DIDN'T HAPPEN BY MISTAKE THE FIRST TIME.

I DON'T THINK THAT'S UNREASONABLE, IS IT?

>> IT'S NOT REALLY, IT'S SLIGHTLY, IT'S NOT REALLY SAYING THERE WAS AN ACCIDENT. HE IS SAYING WHAT HE DID BUT HE JUST DIDN'T HAVE THE REFLECTIVE OR DELIBERATION GOING ON IN HIS HEAD.

IT'S'S NOT LOOK DOING CPR AND SHE DIES.

>> I MAY GO AND WE MAY GO BACK AND FORTH ON THIS.

I'M SAYING IT CERTAINLY THE FACT HE DID IT ONCE, YOU MIGHT SAY, ONCE COULD HAVE BEEN SOMETHING, BUT THEN IT CAN NOT, IT HAS GOT TO BE RELEVANT, THE FIRST ONE, TO PROVE, IT DOESN'T HAVE TO BE BUT TO ME IT IS RELEVANT TO PROVE PREMEDITATION AND CCP AS SECOND AND THIRD.

>> ONE OF THE THINGS IN THIS CASE I THINK IS IMPORTANT IS THAT HIS STATEMENTS SAY, TALK ABOUT HIS TAKING CRACK COCAINE DURING THIS TIME.

AND IT'S NOT JUST A SELF-SERVING STATEMENT.

WE HAVE INDEPENDENT WITNESSES SAYING THAT'S WHAT THE PEOPLE WERE DOING IN THE NICHOLSON HOUSE THAT NIGHT.

AND IT'S, I THINK HE PUT HIMSELF AT RISK THESE TIMES, ASSUMING HE DID THIS, THE THREE KILLINGS.

BUT IT'S, I COMPARE IT TO A DRUNK DRIVER WHO GOES OUT AND CAUSES AN ACCIDENT AND A DEATH AND THEN HE GOES OUT DRINKING AGAIN AND DRIVES AGAIN AND HE CAUSES A DEATH THE SECOND TIME, HE IS NOT PREMEDITATED THAT SECOND DEATH, OR THE FIRST ONE. IT'S JUST HE PUT HIMSELF IN A RISKY SITUATION.

I THINK THAT'S WHAT MCWATTERS DOES WHEN HE TAKES COCAINE.

>> THE FACT THAT HE IS NOT ABLE TO -- CRACK COCAINE.

JUST INABILITY TO FORM INTENT.

>> I'M NOT GOING ON TO FORM INTENT.

I THINK --

>> I MIGHT ARGUE THAT A DRUNK DRIVER KILLS SOMEBODY OR GOD FORBID, INJURES OR KILLS SOMEBODY ONE AND PROCEEDS TO DRINK AND DRIVE AGAIN, MAYBE THERE COULD BE AN ARGUMENT THAT PERSON IS NOW PREMEDITATED THAT MURDER.

>> WELL I DON'T THINK THEY'RE PLANNING TO MURDER SOMEONE. THEY'RE JUST TAKING A, AN UNJUSTIFIABLE RISK WHERE THEY KNOW THAT COULD HAPPEN.

>> THE SECOND AND THIRD AND FIRST WERE ALL STRANGULATIONS THAT WOULD HAVE TAKEN TIME TO FOR THAT PERSON TO DIE.

>> WELL THE MEDICAL EXAMINER SAID THREE MINUTES OR SHORTER.

DIDN'T DEFINE WHAT THE, OR SHORTER, MEANS.

I'VE COME ACROSS CASES NOT TOO MANY CASES ARTICLES ABOUT VAGAL INHIBITION WHICH CAN BE INSTANTANEOUS DEATH BY STRANGULATION.

>> DOESN'T OUR CASE LAW REALLY

SUPPORT THAT THE STRANGULATION
THAT THOSE CASES ARE SUFFICIENT
TO SUPPORT PREMEDITATION?
NOT CCP BUT TO SUPPORT
PREMEDITATION?

>> CASES GOING BOTH WAY YOU
LOOK AT THE OTHER
CIRCUMSTANCES.

THIS COURT REVERSED IN HOEFERT
AND GREEN.

ONE THIS SUMMER.

>> BINGHAM.

>> BINGHAM, YEAH.

>> YOU ARE WELL INTO YOUR
REBUTTAL TIME.

>> UNLESS THERE ARE ANY
QUESTIONS I'LL RESERVE THE REST
OF MY TIME, THANK YOU.

>> MISS LERNER.

>> GOOD MORNING, MAY IT PLEASE
THE COURT.

LISA-MARIE LERNER FOR THE
ATTORNEY GENERAL'S OFFICE.

STARTING OFF ON MIRANDA I
WANT TO TALK EXACTLY ABOUT WHAT
HAPPENED.

McWATTERS TALKED TO DAUGHERTY,
THE LEAD INVESTIGATOR ON THESE
THREE HOMICIDES, EIGHT TIMES
BEFORE JUNE 23rd.

THE LAST TIME HE SPOKE TO HIM
WAS ON JUNE 7th.

IT WAS A TAPED CONVERSATION.
HE WAS NOT IN CUSTODY.

AND MCWATTERS IN THAT TAPED
CONVERSATION TOLD DAUGHERTY I
KNOW YOU THINK I DID THESE
MURDERS.

McWATTERS WAS AWARE HE WAS A
PRIME SUSPECT.

IT IS ON THE JUNE 7th TAPE.

>> IN THOSE EARLIER
NONCUSTODIAL INTERROGATIONS
THERE WAS NEVER ANY MIRANDA
GIVEN?

>> NO, IT WAS NOT, IT WAS
VOLUNTARY CONVERSATIONS.

McWATTERS CAME IN ON HIS.

ON JUNE 23rd, SERGEANT HUMPHREY
WENT TO ARREST McWATTERS
AT McDONALD'S.

>> YOU'RE VERY GOOD ON THE
DETAILS.

AT THE TIME THEY GO TO ARREST

HIM THEY MADE THE DECISION EVEN
THOUGH THEY HAD ALL THAT
EVIDENCE ON HIM TO ARREST HIM
ON THAT UNRELATED CRIME AND
USED AN OFFICER THAT WAS
UNRELATED TO THIS
INVESTIGATION.

THAT'S ON THE RECORD, CORRECT?

>> THAT IS CORRECT.

>> OKAY.

AND THEY DO IT AT McDONALD'S.
SO AT THIS POINT, REASONABLE
PERSON IN THE POSITION OF
MR. ^McWATTERS, ASSUMING
ARRESTED ON FAILURE TO APPEAR
OR, DOES THE RECORD SHOW WHAT IT
WAS?

>> I THINK IT WAS PROBATION
VIOLATION.

IT WAS MINOR.

>> OKAY.

NO BIG DEAL.

I'M GETTING ARRESTED ON
SOMETHING, PROBATION VIOLATION.
GOES IN.

NOW CONTINUE.

>> WHAT WAS NOT BROUGHT OUT ON
MR. ^ANDERSON'S ARGUMENT WAS, IN
THE McDONALD'S PARKING LOT
HUMPHREY IS STANDING THERE WITH
ANOTHER OFFICER.

HE READS THE RIGHTS.

MCWATTERS WAIVES THE RIGHTS IN
THE PARKING LOT.

HE SAYS I WANT TO TALK BUT I
WANT TO TALK TO DAUGHERTY.

PLEASE TAKE ME TO DAUGHERTY.

THERE WAS A COMPLETE WAIVER.

HUMPHREY THEN TAKES McWATTERS
TO THE POLICE STATION.

>> THAT IS DAUGHERTY?

>> I'M SORRY?

>> NAME OF THE PERSON HE
WANTED TO TALK TO?

>> DAUGHERTY, THE LEAD
INVESTIGATOR.

>> AND THAT IS THE OFFICER WHO
HE HAD TALKED WITH REPEATEDLY
ABOUT THESE CASES?

>> ABOUT THE THREE HOMICIDES.

HE WAITS --

>> HE IS ON THAT HE SHOULD KNOW
HE WAS BEING ARRESTED ON THE
CRIME HE WASN'T BEING ARRESTED

FOR?

>> I'M NOT SAYING HE SHOULD KNOW BUT HE KNEW WHAT WAS UP. AND HE WANTED TO TALK TO DAUGHERTY.

HUMPHREY TOOK HIM TO THE STATION.

PUT HIM IN THE TASK FORCE ROOM.

>> WHAT DID THEY DO THEN?

WHAT DID THEY TESTIFY, INSTEAD OF TAKING HIM RIGHT TO SPEAK WITH DAUGHERTY, THEY PUT HIM IN THE TASK FORCE EVIDENCE ROOM FILLED WITH EVIDENCE THAT INCLUDES FABRICATED EVIDENCE?

>> THERE WAS ONLY INCIDENT, I MEAN, ONLY THING THAT WAS FABRICATED WAS A DNA. I DON'T BELIEVE IT WAS A REPORT.

I BELIEVE THAT DURING THE INTERVIEW, DAUGHERTY OR HIS PARTNER MENTIONED THAT THEY HAD DNA.

>> WHAT'S THE TESTIMONY AS WHY -- HE WANTS TO TALK TO DAUGHERTY.

BEEN MIRANDIZED ON UNRELATED CRIME.

THEY TAKE HIM INSTEAD TO THE INTERROGATION ROOM.

WHY DID THEY TAKE HIM TO THE TASK FORCE ROOM?

>> SO HE CAN SEE THAT THE POLICE HAVE EVIDENCE AGAINST HIM.

>> DID HE HAVE THEY ENOUGH EVIDENCE ON JUNE 23rd AT THE TIME THEY ARRESTED HIM AT McDONALD'S TO ARREST HIM FOR THE FIRST DEGREE MURDERS OF THESE THREE VICTIMS?

>> YES.

>> AND SO, WHAT IS THE REASON THEY DIDN'T ARREST HIM FOR THOSE MURDERS AND MIRANDA, ADMINISTER MIRANDA WARNINGS AS TO THOSE THREE MURDERS?

>> DAUGHERTY SAID HE DID IT BECAUSE HE HAD DEVELOPED OVER THE THREE OR 4-MONTH PERIOD, A RELATIONSHIP WITH McWATTERS, WHERE McWATTERS REPEATEDLY TRIED TO MANIPULATE DAUGHERTY

AND TO DANCE AROUND THESE
INCONSISTENCIES HE WAS ALWAYS BEING
PRESENTED WITH.

HE WASN'T WITH BRADLEY YET
PEOPLE KEPT SAYING HE WAS.
SO DAUGHERTY KNEW THAT THE ONLY
WAY SO GET McWATTERS TO BE
STRAIGHT WITH HIM WAS TO LET
HIM SEE THE EVIDENCE AND THAT'S
WHAT HAPPENED.

>> NO, NO.

I ASKED WHY DIDN'T THEN, THEY
ARREST, FIRST ARREST HIM ON THE
OTHER CHARGE --

>> BECAUSE DAUGHERTY --

>> AND THEN BRING HIM THERE AND
ADMINISTER, AFTER THAT
ADMINISTER HIS MIRANDA WARNINGS
AND CONTINUE IN.

>> DAUGHERTY SAID HE WANTED TO
CONTINUE THE RELATIONSHIP HE
ESTABLISHED PRIOR.

>> HE KNEW IF HE ASKED OR IF
HE, IF HE REWARNED HIM THAT HE
WOULD NOT TALK?

>> NO, HE DID NOT KNOW THAT.

>> I THOUGHT THAT WAS THE
TESTIMONY?

>> HE WAS AFRAID THAT MIGHT
HAPPEN.

BUT HE TESTIFIED THAT THE
REASON HE DID THIS WAS HE
WANTED TO MAINTAIN THE
RELATIONSHIP WITH McWATTERS.

BUFF I DO WANT TO SAY ONE --

>> DON'T YOU THINK, THE
QUESTION WE'RE DEALING WITH
HERE, I THINK IT IS DIFFERENT
FROM SOME OF THESE OTHER CASES.
WE'RE NOT TALKING ABOUT WHETHER
HIS WILL WAS OVER, WAS, --

[INAUDIBLE]

WHAT WE'RE TALKING ABOUT
WHETHER THERE WAS AN
INTENTIONAL PLAN TO UNDERMINED
MIRANDA WARNINGS.

SEEMS TO ME, LISTEN, THESE ARE
NOT EASY CASES, THAT WHEN YOU
GIVE MIRANDA WARNINGS, AT A
McDONALD'S, REGARDING AN
OUTSTANDING WARRANT ON A
PROBATION VIOLATION CASE, WHEN
YOU'VE GOT THREE FIRST-DEGREE
MURDERS AND YOU BRING THE

PERSON AND BRING HIM TO THE TASK FORCE ROOM AND THEN THE PERSON WHO YOU WANT TO HAVE SPEAK TO HIM SAYS, IF I GIVE HIM THE WARNINGS, HE IS NOT GOING TO TALK, WELL THE VERY IDEA MIRANDA IS TO MAKE SURE YOU KNOW THAT YOU DON'T HAVE TO TALK.

SO HOW IS THAT NOT INTENTIONAL DECEPTION?

>> MAY I RESPOND?

THE FOCUS ON MIRANDA IS NOTICE TO THE DEFENDANT OR SUSPECT. THE FOCUS IS ON WHAT McWATTERS KNEW AND UNDERSTOOD.

NOT ON WHAT THE POLICE OFFICER INTENDED.

THAT IS THE ESSENCE OF MIRANDA. McWATTERS WAS MIRANDIZED.

HE WAS ON NOTICE.

HE KNEW, HE WAIVED.

THAT IS WHY THERE IS MIRANDA, TO GIVE THE DEFENDANT NOTICE.

NOT TO HAVE THE POLICE OFFICER SAY, WELL I'M GOING TO EMPLOY PSYCHOLOGICAL STRATEGIES, WHICH HAPPENS EVERY DAY.

THAT IS HOW YOU GET A CONFESSION.

IT IS A PSYCHOLOGICAL BATTLE OF WILLS BETWEEN THE INTERROGATOR, AND THE SUSPECT.

AGAIN, THERE ARE NO CASES, AND I LOOKED.

THERE ARE NO CASES WHERE IN A HALF HOUR OR AN HOUR TIME PERIOD, A PERSON IS MIRANDIZED BY ONE OFFICER, ASKED TO SPEAK TO A SPECIFIC OFFICER, THAT THAT SECOND OFFICER MUST REMIRANDIZE HIM.

AND THAT'S THE SITUATION WE HAVE HERE.

EVERYTHING ELSE IS JUST GLOSS. HE WAS ARRESTED.

HE WAS MIRANDIZED.

AND WITHIN A HALF HOUR TO 45-MINUTE PERIOD HE WAS TALKING TO THE OFFICER HE ASKED TO TALK TO.

>> SO YOU THINK THOSE ARE THE ADDITIONAL FACTS THAT WOULD MAKE THIS, AGAIN GOING, WHAT

COULD BE, COULD BE EGREGIOUS
CASE DO ONE THAT IS REASONABLE
WITH THE ADDITION THAT HE ASKED
TO TALK TO DAUGHERTY.
THAT IT WAS NOT, THE RECORD
DOES NOT ESTABLISH IT WAS A
LONG TIME.

THAT HE WAS LEFT ALONE IN THE
TASK FORCE ROOM OR, BEFORE THE
INTERROGATION BEGAN?

THAT, THOSE FACTORS, DO YOU
AGREE IF HE WAS LEFT ALONE, IF
HE HADN'T ASKED FOR DAUGHERTY
AND BEEN LEFT ALONE FOR A DAY
OR SOMETHING, OR, YOU KNOW, SIX
HOURS, OR EIGHT HOURS, MIGHT
HAVE A DIFFERENT CASE?

>> YES.

I DO.

I MEAN, THERE ARE CASES WHERE
IF YOU MIRANDIZE SOMEONE ON THE
DAY OF THE ARREST AND GO TO
INTERVIEW HIM THREE DAYS LATER,
AND THINGS HAVE HAPPENED THAT
WOULD BE A DIFFERENT SITUATION.

THAT'S NOT WHAT WE HAVE HERE.

WE HAVE A WAIVER, A REQUEST TO
SPEAK TO A SPECIFIC OFFICER WHO
HE HAD A RELATIONSHIP WITH.

THE OFFICER WALKS INTO THE
INTERVIEW ROOM AND THAT
OFFICER, DAUGHERTY IS THE FIRST
PERSON TO SPEAK TO HIM.

HE IS NOT INTERROGATED BY
ANYONE ELSE, INCLUDING SERGEANT
HUMPHREY BETWEEN THE TIME HE IS
ARRESTED AND TIME HE IS PUT
INTO THE INTERVIEW ROOM.

HE WAS NOT SPOKEN TO IN THE
TASK FORCE.

HE WAS NOT SPOKEN TO IN THE
HALLWAY.

>> ONCE ACTUALLY HAPPENED ONCE
DAUGHERTY, HOW DID THE
CONVERSATION START?

ONCE HE GOT TO THE INTERROGATION
ROOM, DAUGHERTY AND SOME OTHER
OFFICER --

>> HIS PARTNER.

>> IN THE INTERROGATION ROOM,
HOW DID THAT WHOLE SEQUENCE
START?

>> McWATTERS SAID, I SAW ALL
THAT EVIDENCE IN THE TASK FORCE

ROOM.

YOU THINK I DID IT.

AND THAT'S HOW IT STARTS.

>> I WOULD LIKE TO ASK YOU ABOUT THE COLLATERAL CRIME ISSUE.

I'M NOT, MENTIONED TO MR.^ANDERSON, WIGGINS AND CAUGHEY?

>> CAUGHEY.

CAUGHEY I THINK I'M SORRY.

>> IN DEFERENCE TO THE VICTIM.

>> CAUGHEY I BELIEVE.

>> THAT, MR.^ANDERSON, STARTING ON PAGE 44 OF THE BRIEF, DISTINCTION BETWEEN BRADLEY AND WIGGINS AND CAUGHEY CRIMES.

THEY HAVE TWO VICTIMS, THAT, --

>> MAY 31st.

>> ON THE SAME DAY.

THE SAME AREA.

BOTH IN THEIR LATE TEENS OR EARLY 20s.

>> YES.

>> GOT BRADLEY WHO WAS 43.

WE HAVE EVIDENCE I THINK, PRETTY STRONG EVIDENCE THAT THE TWO VICTIMS, THERE WAS A STRUGGLE.

-- [INAUDIBLE]

LESS EVIDENCE, NO EVIDENCE OF BRADLEY STRUGGLING.

WE'VE GOT, A DIFFERENT PATTERN OF STRANGULATION.

WE'VE GOT TO GET THE TWO MONTH PERIOD, AND WE HAVE ISSUE THE WAY THE LEGS WERE -- BRADLEY AND NOT THE OTHER TWO.

AND, SHE, BRADLEY, WAS HOMELESS, PART OF A HOMELESS, I THINK IT IS REALLY UNFAIR THING TO JUST PUT TOGETHER A

43-YEAR-OLD HOMELESS PERSON WHO IS AN ALCOHOLIC FROM TWO OTHER PEOPLE BASICALLY LIVING AT HOME, WHOSE LIVING SITUATION MAY HAVE HAD DRUG ISSUES.

SO TO ME I'M HAVING A STRUGGLE, A PROBLEM, NOT WITH THIS LAST TWO BUT WITH THE FIRST ONE, AS TO, WHETHER THAT FINGERPRINT SIMILARITIES NEEDED TO REALLY PRESS HER WITH THE OTHER TWO.

YOU SEE I COULD PROBABLY GO TO

OUR CASE LAW AND WHEN THERE IS A RAPE, MURDER, WHAT IT LOOKS LIKE.

THEIR CLOTHING AMISS.

PERSON'S RAPED AND THEY'RE RAPED IN A LOCATION THAT IS, WHERE THEY DIDN'T WANT TO BE DETECTED.

THAT IS SOMETHING LIKE, EVERY LAST TEN YEARS WE PROBABLY HAD, THERE ARE MANY CASES.

UNFORTUNATELY, MANY CASES THAT, HAVE THOSE SAME THINGS WHICH IS WHY THE POLICE CAN SAY THESE ARE TYPICAL OF RAPE HOMICIDE BECAUSE THIS IS WHAT THEY LOOK LIKE.

SO WHAT IS IT ABOUT THE SIMILARITIES IN BRADLEY CASE, THAT MAKES THIS HAVE THE HEIGHTENED SIMILARITY NECESSARY AND THIS VERY PREDICATE TO ALLOW IT IN --

[INAUDIBLE]

>> FIRST OF ALL I WANTED TO RESPOND TO A QUESTION YOU ASKED MR. ^ANDERSON BEFORE.

THE STATE ATTORNEY IN THIS CASE ASKED TO BRING IN THE WILLIAMS RULE EVIDENCE ON A NUMBER OF ISSUES.

HIS PRIMARY ONE WAS CONSENT. ALSO ON THE INTENT TO KILL, ON PREMEDITATION, AND ONLY FINALLY ON IDENTITY.

THE TRIAL JUDGE DID A FUEL HEARING ON MAY 18th, 2006, AND THE STATE ATTORNEY SPECIFICALLY SAID HE WAS GOING AFTER THE CONSENT.

BY THAT TIME THEY HAD MCWATTERS TAPE WHERE HE SAID IT WAS CONSENSUAL SEX AND HE DIDN'T INTEND TO KILL.

SO UNDER THAT SCENARIO, YOU DO NOT NEED UNDER THE CASE LAW, A FINGERPRINT IDENTITY.

>> ONE CASE SAYS THAT I WAS LOOKING FOR THAT, IF IT GOES TO ANOTHER ELEMENT, THE THERE'S, A LITTLE BIT MORE OF A RELAXED STANDARD.

GIVE ME ONE CASE?

>> I BELIEVE IT IS COREL OR

CONDE.
I CITED IN MY BRIEF.
WHEN YOU'RE GOING FOR INTENT OR
CONSENT DOESN'T
HAVE TO BE FINGERPRINT.
ONLY MO TO PROVE IDENTITY.
>> YOU THINK THE CASE LAW IS
VERY CLEAR ON THAT?
>> I DO. I DO.
IN TERMS OF SIMILARITIES I
BELIEVE THERE ARE SUFFICIENT
SIMILARITIES TO ALLOW THE
BRADLEY EVIDENCE IN WITH THE
OTHER TWO AND VICE VERSA.
AS I SAID THE TRIAL COURT DID
AN EVIDENTIARY HEARING WHERE HE
ACTUALLY TOOK TESTIMONY ON THIS
WILLIAMS RULE ISSUE AND MADE
FINDINGS THAT THEY WERE
SIMILAR.
IN ALL THREE CASES, McWATTERS
MET THESE WOMEN IN A GROUP
OTHER PEOPLE.
GROUPS THEY WERE IN WERE
ACTUALLY, THEY WERE
INTERMINGLED.
HOMELESS COMMUNITY DID ALCOHOL
AND DRUGS AND THESE PEOPLE THAT
WIGGINS HANG OUT WITH, HUNG OUT
WITH, ALSO INTERSPERSE WITH
THEM.
AND --
>> I MEAN YOU REQUEST, WE HAVE,
WHAT THE JUDGE DID, I REALLY
APPRECIATE IT, THE JUDGE
ACTUALLY IN HIS SENTENCING
ORDER, ONE OF THE ORDERS GOES
THROUGH AND, LISTS ALL THE
SIMILARITIES.
DID A GOOD JOB.
MY PROBLEM, SOMETIMES
SIMILARITIES THEY'RE WHITE
WOMAN.
THAT IS 50% OF THE POPULATION.
SO YOU CAN GET TO BE SIMILARITY
THAT ALMOST, THEY HAD, COLORED
HAIR THAT WAS COLORED.
SO INDICATIVE OF MOST WOMEN.
NOW YOU SAY, WELL THEY MET IN A
GROUP.
SOMEONE MEETING IN A BAR.
OR THEY'RE MEETING HOMELESS
CAMPS.
>> I DON'T MEAN A GROUP BUT

THESE ARE FRINGE GROUPS.
YOU HAVE SERIOUS DRUG USERS.
THEY'RE NOT IN THERE HAVING A
BEER AND SMOKING POT AND
WATCHING FOOTBALL.
THEY'RE DOING CRACK AND HEROIN.

>> THE TWO WOMEN, THAT'S WHY I
SAY I THINK THAT IS VERY
SIMILAR TO -- THEY'RE VERY
DISTINCT.

I'M NOT SURE HOW YOU GET THAT
THEY'RE THAT SIMILAR, TO PEOPLE
LIVE IN A HOMELESS CAMP THAT
ARE, --

>> ALCOHOLIC.

>> ALCOHOLICS.

>> THAT'S WHY THOSE PEOPLE WERE
HANGING OUT THE DAY McWATTERS
WERE THERE.

THEY WERE DRINKING.

AGAIN, THEY'RE FRINGE GROUPS.

HE DELIBERATELY ISOLATES EACH
WOMAN, BRADLEY, WIGGINS AND
THEN CAUGHEY, BY PROMISING THEM
EACH SOMETHING TO SEPARATE THEM
FROM THE PREPARE THEY'RE WITH
-- PEOPLE THEY'RE WITH.

>> ONE IS, I PROMISE YOU A
BATH.

THE OTHER IS I PROMISE YOU
DRUGS.

>> HE PROMISES THE WOMAN WHAT
SHE ASKS FOR.

BRADLEY DIDN'T ASK FOR DRUGS
BECAUSE AT THAT POINT IN TIME
SHE WANTED A BATH.

AND THEN HE LURES THEM INTO AN
ISOLATED AREA, WHERE THERE'S NO
ONE ELSE.

AND I DISPUTE THE FACT THAT THE
STRANGULATIONS WERE DIFFERENT.
THE STRANGULATIONS WERE ALL THE
SAME.

THE ONLY DIFFERENCE WAS, THERE
WAS SO MUCH FORCE USED IN
BRADLEY'S MURDER, THAT HER
ENTIRE THROAT STRUCTURE WAS
CRUSHED.

CAUGHEY WAS 18 AND SHE WASN'T
OLD ENOUGH FOR THOSE STRUCTURES
TO HAVE, BEEN IN OLDER PERSON
AND IT WOULDN'T BREAK.

THE MEDICAL EXAMINER TESTIFIED
TO THAT.

GIVEN THE FACT THAT THE COURT, THE TRIAL COURT LAID OUT ALL THE SIMILARITIES, I BELIEVE THAT THE EVIDENCE WAS SUFFICIENT TO SUPPORT HIS RULING THAT THE BRADLEY MURDER COULD COME IN TO THE OTHER TWO CASES AND VICE VERSA.

ADDITIONALLY, IN TERMS OF THE SUFFICIENCY OF THE EVIDENCE OF THE SEXUAL BATTERY FOR ALL THREE CASES, YOU HAD EXPERT TESTIMONY IN THE BRADLEY CASE. AND THAT'S THE ONE CASE WHERE THERE'S NO EVIDENCE OF A STRUGGLE.

WITH WIGGINS AND CAUGHEY, IN BOTH OF THOSE CASES THERE WAS EVIDENCE OF A STRUGGLE THAT WAS TESTIFIED TO BY THE POLICE OFFICERS AND THE EVIDENCE OF THE TORN CLOTHING.

>> YOU KNOW, IT SEEMS TO ME, EARLIER THIS WEEK, AND, NOW THIS CASE, WE GET THIS KIND OF GENERAL TESTIMONY ABOUT, YOU KNOW, THESE SEXUAL BATTERY HOMICIDES GENERALLY DONE IN THIS KIND OF WAY AND, IS THIS SOMETHING THAT'S NEW, THAT'S BEING ARGUED IN THESE CASES? BECAUSE I REALLY DON'T RECALL SEEING ALL OF THIS IN PREVIOUS CASES.

YOU KNOW, THIS GENERAL, TESTIMONY ABOUT HOW THIS IS THE NORM FOR SEXUAL BATTERY HOMICIDES?

>> NO, I DON'T BELIEVE IT IS NEW.

I'M A TRANSPLANT TO THE STATE. I WORKED IN CRIMINAL LAW IN CALIFORNIA FOR 20 YEARS. AND, IT WAS DONE IN CALIFORNIA. THERE ARE TEXTBOOKS WRITTEN ON HOMICIDE INVESTIGATION, AND BY MEDICAL EXAMINERS WHO SAY, THAT IF I FIND A WOMAN WHO IS STRANGLERED, LOOK FOR SIGNS OF SEXUAL ABUSE, BECAUSE IT IS SO STRONGLY LINKED.

SO --

>> AND SO, NOW WE'RE GETTING INTO DOING THAT?

>> YES.

AND IN THIS CASE, MITTLEMAN,
DR.^MITTLEMAN AND DR.^DIGGS,
AND INVESTIGATOR SHIRK, WHO WAS
A FORENSIC OFFICER WITH THE
POLICE FORCE, ALL QUALIFIED AS
EXPERTS IN RAPE HOMICIDE.
THE COURT WENT THROUGH AND LAID
A FOUNDATION, QUALIFYING EACH
OF THOSE INDIVIDUALS AS
EXPERTS.

TO THE FACT THAT THERE WAS SUCH
A THING AS EXPERTISE WAS NOT
CHALLENGED, NOR WAS THEIR
QUALIFICATIONS.

>> DO WE KNOW IN THESE CASES
THAT THERE ARE RAPE HOMICIDES
AND STRANGULATION WITH --
[INAUDIBLE]

HAD CASES THERE WAS ONE IN THE
COURSE OF THE SEXUAL BATTERY,
WAS CHOKING AND, YOU DON'T KNOW
WHETHER THAT WAS, YOU KNOW, --
DO WE KNOW HERE WHETHER THERE
WAS EVIDENCE TO THERE WAS,
EITHER, MAY HAVE STARTED
POTENTIAL THINK SEX OR MAYBE
NOT, AND ESCALATED TO RAPE AND
THEN AFTER THE RAPE, THAT THERE
WAS STRANGULATION OR
DO WE KNOW WHAT THE
STRANGULATION WAS PART OF A
BEING SEXUALLY BATTERED?

>> THERE IS NO EVIDENCE THAT
THE STRANGULATION WAS PART OF
THE SEX ACT.
THERE IS ABSOLUTELY NO EVIDENCE
OF THAT.

AND THUS THIS IS
DISTINGUISHABLE FROM, I BELIEVE
IT IS RANDALL AND GREEN AND
HOEFERT.

>> DO WE KNOW THERE WAS
EVIDENCE IN FACT AFTER, WE
DON'T KNOW EITHER WAY, OR DO
WE?

>> NO. ALL WE HAVE IS McWATTERS'S
STATEMENT.

IN HIS STATEMENTS ON THE JUNE
23rd STATEMENT, HE SAID HE WAS
HAVING CONSENSUAL SEX, WHICH
THE STATE DOES NOT BELIEVE,
WITH --

>> WHAT DO WE HAVE THAT NEGATES

THAT?

THAT, IS SOMEWHAT TROUBLING TO ME IS THAT, YES, THERE MAY HAVE BEEN SEX BETWEEN THE PARTIES, BUT, WAS IT CONSENSUAL SEX AS OPPOSED TO SEXUAL BATTERY?

>> WELL, THE MOST PROBLEMATIC FROM MY POINT OF VIEW IS BRADLEY.

HOWEVER, WE HAVE THE TESTIMONY OF SHIRK, AND DIGGS, UNOBJECTED TO, UNOBJECTED TO, IN BRADLEY, THAT IT WAS A RAPE HOMICIDE. AND THAT SHE WAS SEXUALLY BATTERED.

>> THEY SAY IT WAS A RAPE HOMICIDE OR WAS IT POSSIBLY?

>> THEY SAID TO A MEDICAL PROBABILITY IS WHAT DR.^DIGGS SAID.

HOWEVER INVESTIGATOR SHIRK --

>> WHAT DO THEY BASE, AS YOU SAY, IN THE OTHER TWO THERE IS EVIDENCE OF A STRUGGLE BASED ON THE WAY THE PANTIES ARE TORN, THE BRA, THE HOOK IS TORN, THINGS THAT A JURY CAN OBJECTIVELY LOOK AT AND SAY, THIS WAS A RAPE.

PLUS YOU'VE GOT TO 18-YEAR-OLDS, YOU'VE GOT YOUNGER WOMAN, NOT NECESSARILY THAT THEY WOULDN'T ENGAGE IN CONSENSUAL SEX, ARE THEY WHITE THESE VICTIMS?

>> ALL THREE, YES.

>> McWATTERS WHITE OR BLACK?

>> HE'S WHITE.

>> BUT TO BRADLEY, WHAT WAS THE FROM THESE TWO EXPERTS AS TO WHY BRADLEY WAS A RAPE?

>> BECAUSE SHE WAS FOUND WITH HER BRA AND TOP PULLED UP UNDER HER ARMS AND AROUND HER NECK. SHE WAS NUDE FROM THE WAIST DOWN.

HER PANTS WERE ON, ABOUT 30 FEET AWAY, NOT ANYWHERE NEAR WHERE THE BODY OR THE TRAMPLED GRASS WAS AND HER SHOES WERE ACROSS THE CANAL, INDICATING SOME VIOLENCE IN TERMS OF THE CLOTHING DISPERSAL.

AND THE IN A STATE OF UNDRESS
AND THE WAY THAT THE CLOTHES
WERE UP THERE.

THERE WAS NO FORENSIC EVIDENCE
WITH BRADLEY BECAUSE SHE WAS
TOO BADLY DECOMPOSED.

THEY COULD NOT EVEN DO A DNA
PROFILE ON HER TO GET HER OWN
DNA BECAUSE SHE WAS SO
DECOMPOSED.

SO THERE IS NO, THERE IS
NOTHING ON THE CLOTHES OR
ANYTHING BECAUSE IT WAS ALL --
>> IN CASE, AGAIN I DON'T WANT
TO GET, I DON'T WANT TO -- ANY
ONE VICTIM, ASSUMING THE
EVIDENCE APPROPRIATELY ADMITTED
BRADLEY HOMICIDE, YOU'VE GOT
TWO CLEAR CASES OF DEATH
PENALTY.

IN TERMS OF WHAT WE WANT TO
MAKE SURE THE LAW, YOU DON'T
JUST LUMP EVERYTHING TOGETHER
IN TERMS OF GETTING
PROSECUTION.

I'M CONCERNED STILL ABOUT
BRADLEY, BOTH THE CCP ON
BRADLEY, SEXUAL BATTERY ON
BRADLEY.

AND, YOU KNOW, SOUND LIKE A
PROSECUTOR, WOULD GET TWO DEATH
PENALTIES SENTENCES.

THERE WAS EVEN A DIFFERENCE IN
THE VOTE FOR THOSE.

ONLY BY ONE ON THAT ONE.

AGAIN YOU'RE TELLING ME THERE
WAS A STILL A PATTERN IN
BRADLEY THAT WOULD INDICATE NOT
CONSENSUAL SEX BUT A FIGHT, OR
SOMETHING THAT WOULD BE
NON-CONSENSUAL?

>> YES.

AND THE EXPERT HAS TESTIFIED --

>> JUST TO ADD TO THAT.

DIDN'T, DIDN'T McWATTERS
TESTIFY THAT HE WAS LITERALLY
IN THE PROCESS OF HAVING SEX
WITH THE VICTIMS WHEN HE KILLED
THEM?

>> HE SAID THAT HE WAS
FINISHING HAVING SEX AND THEN
LOST IT, WAS LOOKING AT THEM
FACE-TO-FACE, AND, WOULDN'T
DESCRIBE WHAT HAPPENED.

SO, IT SOUND FROM THE McWATTERS STATEMENT IT WAS AFTER THE SEX. IT WAS NOT PART OF THE SEX ACT. IT WAS GOING TO BE DISTINGUISHABLE FROM THOSE OTHER CASES.

AND HE KILLED THEM.

ALSO, IN HIS STATEMENT, WITH BRADLEY, HE DID MAKE A STATEMENT SAYING THAT SHE WAS NOT WILLING, AT FIRST TO HAVE SEX.

BUT THEN THEY DID HAVE SEX.

>> IS THIS A CASE ALSO WHERE THE TWO OTHER VICTIMS WERE, WERE KNOWN TO HAVE SEX FOR DRUGS OR, NO?

>> MCWATTERS --

>> WASN'T THIS KIND OF A ENVIRONMENT WHERE THEY PROSTITUTED THEMSELVES FOR DRUGS?

>> THEIR, MCWATTERS SAID THEY WERE BUT THERE WAS NO EARTH EVIDENCE THEY WERE OUT PROSTITUTING FOR DRUGS.

THEY WERE IN A DRUG COMMUNITY BUT NO WITNESS CAME IN AND TESTIFIED THAT SHE ROUTINELY WENT OUT AND HAD SEX FOR DRUGS. AND THE COURT WOULD HAVE TO MAKE THE ASSUMPTION JUST BECAUSE THEY WERE USING DRUGS AND YOUNG THAT THEY WERE PROSTITUTES.

I DON'T THINK THAT IS APPROPRIATE ASSUMPTION WE CAN MAKE GIVEN WHO THE VICTIMS WERE AND THE EVIDENCE AT COURT.

FINALLY, I WANTED TO --

>> HOW DO WE KNOW, THAT GOES BACK TO, TO THE QUESTION TO ME ON THE SIMILARITIES.

WERE THESE TWO YOUNGER VICTIMS, LIVING AT HOME ARE OR NOT?

>> MISS CAUGHEY WAS.

MISS WIGGINS WAS NOT.

>> WHERE WAS MISS WIGGINS LIVING?

>> THERE IS NO TESTIMONY.

>> AND, WAS THE, HOW THE AGES OF MISS WIGGINS WAS?

>> MISS WIGGINS WAS IN HER EARLY 20s AND MISS CAUGHEY WAS

18.

>> 18, LIVING AT HOME?.

>> YES.

>> AND SHE WAS STILL IN HIGH SCHOOL?

>> I DO NOT KNOW.

>> SO REALLY, AGAIN, AS FAR AS, TRAINING SOMEBODY AS, I GUESS THIS STILL BOTHERS ME THAT, LUMP ALL THE VICTIMS TOGETHER AND LIVING ON THE FRINGES OF SOCIETY, BRADLEY --

[INAUDIBLE]

>> YES BUT THE WILLIAMS RULE EVIDENCE, IT JUST DOESN'T GO ONE WAY.

I CAN SEE THAT BRADLEY'S CASE IS, PERHAPS, NOT AS STRONG IN TERMS OF THE SEXUAL BATTERY AS THE OTHER TWO CASES.

HOWEVER, WITH THE WILLIAMS RULE EVIDENCE, AS JUSTICE CANADY POINTED OUT, IT CAN GO BACKWARDS TOO.

IF MCWATTERS WAS OUT RAPING AND DRAGGING THESE WOMEN INTO THE BUSHES AND KILLING THEM, IF HE DID THAT THE SECOND AND THIRD TIMES, THAT IS LIKELY WHAT HE DID THE FIRST TIME.

AND I'D ASK THE COURT TO AFFIRM.

UNLESS YOU HAVE ANY OTHER QUESTIONS?

>> THANK YOU VERY MUCH.

MR.^ANDERSON.

>> VERY BRIEFLY --

>> I'D LIKE FOR YOU JUST ON MIRANDA. BECAUSE I THINK THOSE TWO ADDITIONAL FACTORS, GIVE IT, JUST MAKE SURE WE HAVE IT, THE FACTOR BEING THAT HE ASKED FOR DAUGHERTY, THE PERSON QUESTIONING HIM ON THE MURDERS AND IT WAS NOT A LENGTHY PERIOD OF TIME UNTIL THE INTERROGATION BEGAN.

>> I, I THINK IT WAS A SIGNIFICANT AMOUNT OF TIME BECAUSE HE HAD TO BE IN THAT ROOM PICKING THINGS OUT.

>> AN HOUR COULD BE SIGNIFICANT BUT WE'RE NOT SO, WHAT ABOUT ASKING, ISN'T THAT SIGNIFICANT,

THAT HE IS PICKED UP.

HE ASKS FOR DAUGHERTY, AFTER GIVEN THE MIRANDA WARNING HE IS ASKING --

>> IT IS NOT A WAIVER.

>> BUT AS FAR AS IT BEING KNOWING AND VOLUNTARY, ASKING FOR DAUGHERTY FOR ONE REASON, ISN'T HE?

>> I'M PRIMARILY RELYING ON, I DON'T THINK I HAVE TO SHOW THAT WE HAVE A, INVOLUNTARY FROM THE DEFENDANT'S PERSPECTIVE BECAUSE OF THE MIRANDA PROCESS THAT THEY'RE USING.

BECAUSE I'M RELYING ON SEIBERT. THAT SEEMS TO PROVIDE A BRIGHT LINE TEST, THAT THE POLICE CAN'T USE INTENTIONAL STRATEGIES TO UNDERLINE, UNDERMINE THE MIRANDA WARNING PROCESS.

IF YOU LOOK AT THAT THEY TALK, ABOUT NOT ONLY DOES MIRANDA HAVE TO BE ADEQUATE, MEANING THEY HAVE TO GIVE THE SILENCE PART, THE RIGHT TO AN ATTORNEY, BUT IT'S GOT TO BE EFFECTIVE.

AND WHEN THEY SAY, YOU KNOW, THE POLICE START INTENTIONALLY UNDERMINING IT, THAT EFFECTS THE EFFECTIVENESS.

AND IF THIS COURT WERE TO AFFIRM WHAT WAS DONE IN THIS CASE, THE NEXT STEP IS, THIS PROCEDURE, HOW TO GET AROUND MIRANDA WOULD SHOW UP AT POLICE TRAINING SEMINARS.

IF YOU REALLY WANT TO TALK TO THE GUY, IF YOU WANT TO MAINTAIN YOUR RELATIONSHIP, THAT DAUGHERTY HAD WITH HIM, HIS RELATIONSHIP AND RAPPORT WAS TALKING ABOUT THE CASES WITH HIM AND HE DIDN'T WANT THAT INTERRUPTED.

SO HE CREATED THIS PLAN AND STRATEGY TO SEPARATE THE WARNINGS, DISGUISE THEM FROM HIS INTERROGATION SO THAT THE RIGHTS WOULD NOT BE INVOKED.

>> HE COULDN'T HAVE PLANNED THE DEFENDANT ASKING FOR HIM THOUGH?

>> NO.

I DON'T EVEN KNOW IF HE EVER REALIZED THAT THE DEFENDANT ASKED FOR HIM.

BUT YOU DON'T KNOW WHY THE DEFENDANT ASKED FOR HIM.

AND AGAIN, IT GETS SEPARATED BY THE OTHER STUFF THAT HAPPENS IN BETWEEN THE TASK FORCE ROOM.

VERY, VERY BRIEFLY ON THE CONSENT ISSUE, THE MEDICAL EXAMINERS ALL TESTIFIED THAT THE EVIDENCE THEY SAW WAS CONSISTENT WITH NON-CONSENT BUT IT WAS ALSO CONSISTENT WITH CONSENSUAL SEX AND THEN A HOMICIDE.

AND, THE ONE THING THAT BOTHERS ME ABOUT WILLIAMS RULE AND CONSENT, I KNOW THERE IS A CASE APPROVING IT.

THE QUESTION CAME UP DO YOU NEED FINGERPRINT TYPE CHARACTERISTICS FOR THAT TO HAPPEN?

IT WAS THE WILLIAMS CASE AND I THINK THEY USED THE UNIQUE SIMILARITY TO JUSTIFY IT.

BUT IT'S, TO ME IT'S A BIZARRE THING BECAUSE THE CONSENT IS BASED TOTALLY ON THE CONSENTER OR NON-CONSENTER PERSON.

THE DEFENDANT ACCOUNT DO IDENTICAL ACTIONS WITH DIFFERENT PEOPLE AND HE WILL GET DIFFERENT REACT UNISS.

SOMETIMES A PERSON WILL CONSENT.

SOMETIMES THEY WON'T.

I JUST DON'T THINK YOU CAN LINK UP CASES LIKE THAT.

AND WILLIAMS KIND OF RECOGNIZES THAT BY CITING TO A PRIOR CASE AND SAYING, CONSENT IS UNIQUE, TO THE VICTIM.

WILLIAMS, THEY, AND THAT WAS A DIFFERENT CASE ALSO IN ANOTHER WAY TO THIS CASE, IN THAT, IN WILLIAMS, VICTIMS CAME IN AND TESTIFIED THEY DIDN'T CONSENT.

WHEREAS THIS IS A CASE WHERE YOU DON'T KNOW ABOUT CONSENT IN THE COLLATERAL CRIMES.

AND, AGAIN, YOU'RE JUST

THROWING IT UP ON THE WALL AND YOU'RE NOT USING ONE CASE TO SAY, BECAUSE THERE IS NO CONSENT HERE WE CAN INFER NO CONSENT THERE.

I DON'T KNOW IF THAT MAKES SENSE.

BUT TO SHOW HOW UNIQUE IT IS TO THE INDIVIDUAL, IF, HYPOTHETICALLY, IF I OFFERED EACH OF YOU A TICKET TO THE FOOTBALL GAME TONIGHT IN OKLAHOMA AND FLORIDA, AND I SAID, FOR TEN BUCKS, AND, WE FIND OUT, I DO IT IDENTALLY, WE FIND OUT JUSTICE POLSTON SAYS, NO WAY, I'M NOT GOING TO THAT GAME.

CAN YOU USE THAT TO THE PROVE, FOUR, REST OF YOU WOULDN'T CONSENT TO THAT OR DIDN'T CONSENT?

IT IS CONSENT IS UNIQUE TO THE INDIVIDUAL.

>> BUT YOU ALSO HAVE OTHER FACTORS HERE WITH REGARD TO THE, WHAT THEY FOUND WITH REGARD TO THE CLOTHING AND ALL THESE OTHER THINGS.

THAT'S --

>> WELL, YOU STILL HAVE TO GO TO SHOW THEIR INTENT, NOT THE, NOT THE PERPETRATOR'S.

ALL THE REST OF IT PERPETRATOR ACTION INTENT TENT.

>> I UNDERSTAND.

>> IT IS DIFFERENT SITUATION.

>> AND WITH THAT.

>> THANK YOU SO MUCH.

>> YOU HAVE USED YOUR TIME, THANK YOU VERY MUCH.

THANK BOTH OF YOU.