

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Juan Carlos Chavez v. State of Florida

SC07-952 | SC08-970

HEAR YE, HEAR YE, HEAR YE.

THE SUPREME COURT OF FLORIDA IS

NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW

NEAR, GIVE ATTENTION AND YOU

SHALL BE HEARD.

GOD SAVE THE UNITED STATES, THIS

GREAT STATE OF FLORIDA AND THIS

HONORABLE COURT.

LADIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO

OUR FINAL DAY OF ORAL ARGUMENT

FOR THIS WEEK AND THE FINAL DAY

OF ORAL ARGUMENT FOR JUSTICE

CHARLES WELLS.

THE FIRST CASE ON OUR DOCKET

THIS MORNING IS CHAVEZ VERSUS

STATE.

MS. NORGDARD ARE YOU READY TO

PROCEED?

>> MAY IT PLEASE THE COURT.

MY NAME IS ANDREA NORGDARD AND I

AM APPEARING ON BEHALF OF THE
APPELLATE, MR. CHAVEZ.

I HAVE FIVE MINUTES FOR REBUTTAL
TIME.

I WOULD LIKE TO BEGIN BY
ADDRESSING THE FIRST ISSUE IN
THE CASE, WHICH WAS THE TRIAL
COURT DECISION IN THIS
POST-CONVICTION PROCEEDING TO
PROHIBIT MR. MICHAEL AMIZAGA,
THE ATTORNEY LICENSED IN THE
STATE OF FLORIDA AND NEW YORK,
TO TESTIFY ABOUT THE CONTRAST
BETWEEN THE CONSTITUTIONAL
RIGHTS PROVIDED TO THE
CRIMINALLY ACCUSED IN THE STATE
OF FLORIDA, SPECIFICALLY
REGARDING WHAT PROTECTIONS ARE
PROVIDED TO A CRIMINAL DEFENDANT
DURING INTERROGATION BY VIRTUE
OF MIRANDA.

>> WAS THIS TO GO TO YOUR ISSUE
THAT COUNSEL WAS INEFFECTIVE OR
NOT PRESENTING THIS TYPE OF
EXPERT AT TRIAL?

>> CORRECT YOUR HONOR.

SO, IF WE LOOK AT THIS AND SAY
THAT, WHETHER THIS PARTICULAR

EXPERT MET THE QUALIFICATIONS OR ANOTHER EXPERT MET THE QUALIFICATIONS, BECAUSE I THINK WE CAN ALL TAKE NOTICE THAT CUBAN LAW IS DIFFERENT FROM THE AMERICAN LAW, AND IT WOULDN'T TAKE AN EXPERT ON THAT, BUT IF WE LOOK AT IT AND SAY THAT IS JUST-- BASED ON EVERYTHING I THOUGHT THE TRIAL COURT BASICALLY DID, THAT THERE IS NO DEFICIENCY AND NOT PRESENTING SUCH AN EXPERT AT THE TRIAL OR ALTERNATIVELY HOW DOES THAT UNDERMINE OUR CONFIDENCE IN THE FINDINGS AND THE JURY'S CONSIDERATION OF THE ADMISSIBILITY OF HIS CONFESSION? IN OTHER WORDS, LET'S ASSUME THE JUDGE FOR SOME REASON, NOT FINDING HIS QUALIFICATIONS SUFFICIENT, WHAT DIFFERENCE DOES IT MAKE?

>> HIS TESTIMONY WOULD HAVE BEEN CRITICAL AND THE LOWER COURT PROCEEDINGS WOULD HAVE BEEN DURING THE MOTION TO SUPPRESS, THE HEARING THAT WAS CONDUCTED BEFORE THE TRIAL.

>> USUALLY WE SEE THAT THE MENTAL HEALTH EXPERT, SOMEONE OF THAT EXPERTISE SHOULD HAVE BEEN, SHOULD HAVE BEEN PRESENTED.

ARE YOU SAYING THE DEFICIENCY WAS NOT PRESENTING THIS EXPERT?

>> THE DEFICIENCY WAS IN THIS COURT'S ORIGINAL OPINION, IN MR. CHAVEZ.

>> YOU UNDERSTAND WHAT I'M ASKING?

NORMALLY, AT POST-CONVICTION WE ARE SAYING THERE WAS A DEFICIENCY IN NOT PRESENTING A CERTAIN KIND OF EXPERT.

SO, WAS YOUR CLAIM THAT THERE WAS DEFICIENCY IN NOT PRESENTING AN EXPERT ABOUT THE COMPARISON BETWEEN CUBAN LAW AND AMERICAN LAW?

>> AS IT RELATED TO A KNOWING AND VOLUNTARY WAIVER OF MIRANDA RIGHTS.

>> THE ISSUE WASN'T THEY WERE DEFICIENT IN NOT PUTTING ON THIS EXPERT?

>> THERE WAS AVAILABLE TESTIMONY THAT WE COULD HAVE ESTABLISHED

AT THE POST-CONVICTION HEARING
THROUGH THIS EXPERT THAT COULD
HAVE BEEN PRESENTED DURING THE
ORIGINAL PROCEEDING.

>> NOW I AM ASKING, IF YOU LOOK
AT THE PROFFER, EVEN WITH THAT
PROFFER, IT WOULD NOT AFFECT,
FIRST OF ALL, THAT YOUR DECISION
BASED ON, WHY ISN'T THAT ANOTHER
WAY TO GO ON THIS PARTICULAR
CLAIM?

LOOK AT THE PROFFER, WHICH WAS
GIVEN, AND SAY IT DOESN'T MAKE A
DIFFERENCE.

>> YOUR HONOR, I BELIEVE IT
SHOULD HAVE BEEN CONSIDERED AND
HAVE THE POTENTIAL TO MAKE A
DIFFERENCE BASED UPON THE WAY
THIS COURT IN THE ORIGINAL
OPINION FROM THE DIRECT APPEAL
ADDRESSED THE QUESTION OF
ALIENATION-- HOW THAT PLAYS INTO
ULTIMATELY THE RULING ON WHETHER
OR NOT THE WAIVER OF MIRANDA BY
MR. CHAVEZ AFTER THE 20-SOME
PLUS HOURS DURING POLICE CUSTODY
HAD BEEN KNOWING AND VOLUNTARY.
IN THIS COURT'S OPINION,
ORIGINALLY, WHEN THE ORIGINAL

MOTION WAS FILED, THE ORIGINAL
MOTION TO SUPPRESS MADE A CLAIM
WHICH THEY REFERRED TO AS
ALIENAGE, AS BEING ONE OF THE
BASIS FOR WHICH A SUPPRESSION
MOTION COULD BE GRANTED UPON AND
THE WHOLE CONCEPT OF ALIENAGE
HAS ALSO BEEN RECOGNIZED IN THE
FEDERAL COURT BUT ESSENTIALLY
YOU COME FROM A BACKGROUND WHERE
IT WOULD NOT, BECAUSE OF YOUR
CULTURE, BECAUSE OF YOUR
CULTURAL DECISIONS, BECAUSE YOU
ARE NOT A NATIVE OF THIS
COUNTRY, YOU WOULD NOT HAVE
GROWN UP WITH THE TELEVISION
TELLING YOU WHAT MIRANDA IS ALL
THE TIME, EVEN OF COURSE
RECOGNIZE-- CHILDREN CAN ALMOST
RECITE, YOU TAKE SOMEONE WHO HAS
ABSOLUTELY NO IDEA OF WHAT THOSE
TYPES OF CONSTITUTIONAL RIGHTS
AFFORD YOU, THAT TO GIVE THEM
THAT MIRANDA WARNING IS TELLING
THEM SOMETHING THEY DON'T HAVE A
GRASP OF WHAT THEY ARE GIVING UP
IF THEY DO NOT HAVE THAT SIMILAR
EQUAL TYPE OF CONSTITUTIONAL

RIGHT IN THEIR OWN COUNTRY.

FOR EXAMPLE, IN THE CASE OF

PHUONG, THE WOMAN WAS FROM ASIA.

THERE IS NO INSTANCE WHEN SHE

WAS GIVEN MIRANDA, EVEN THOUGH

SHE WAS GIVEN IT IN HER NATIVE

LANGUAGE, THAT SHE WOULD HAVE

ANY IDEA WHAT THOSE RIGHTS

ACTUALLY EMBODY.

IN OTHER WORDS, TO HAVE A

VOLUNTARY WAIVER IS NOT SIMPLY,

I HEAR IT AND I SAY I DON'T WANT

IT.

IT IS THAT I HEAR IT, I HAVE AN

UNDERSTANDING OF WHAT THAT MEANS

FOR ME, AND THEN I CHOOSE TO

WAIVE IT, SO ALIENAGE WAS

SPECIFICALLY INCLUDED IN THE

ORIGINAL MOTION TO SUPPRESS.

HOWEVER, AT THE MOTION TO

SUPPRESS HEARING, THERE WAS NO

TESTIMONY PRESENTED WHATSOEVER

THAT WOULD HAVE ADDRESSED THE

ALIENAGE CRITERIA THAT HAS BEEN

ADDRESSED IN THE FEDERAL COURT.

>> THIS IS TWOFOLD.

THEY SHOULD HAVE HAD AN EXPERT

AND THIS PERSON, THIS ATTORNEY,

SHOULD HAVE BEEN ALLOWED TO

TESTIFY AT THE EVIDENTIARY

HEARING.

>> CORRECT.

>> BUT WHY, IN PARTICULAR, WAS

THERE ANY ERROR IN THE FAILURE

TO ALLOW THIS ATTORNEY TO

TESTIFY?

HE WENT TO CUBA A COUPLE OF

TIMES.

HE SPENT HOURS RESEARCHING CUBAN

CRIMINAL-JUSTICE SYSTEM AND YOU

ALLEGE THAT MAKES HIM AN EXPERT

ON ALIENAGE?

>> ALIENAGE IN THE CONTEXT OF

THE TERMINOLOGY THAT HAS BEEN

USED TO IDENTIFY THIS TYPE OF

ISSUE, WHERE YOU ARE TALKING

ABOUT, FOR EXAMPLE, HAS

MR. AMIZAGA COULD HAVE TESTIFIED

TO AND, AGAIN, HE WAS

PARTICULARLY IN NEED, EVEN

THOUGH HE IS NOT, FOR EXAMPLE, A

PROFESSOR OF CUBAN RELATIONS,

BUT HE STOOD IN THE POSTURE OF

BEING AS AN ATTORNEY LICENSED IN

THE UNITED STATES, WHO PRACTICED

CRIMINAL LAW AND, AS WE ALL

KNOW, AS ALL OF US GOING THROUGH

LAW SCHOOL KNOW, YOU CERTAINLY
LEARN ABOUT CONSTITUTIONAL LAW
AND MIRANDA IN LAW SCHOOL AND HE
PRACTICED AS A CRIMINAL
ATTORNEY, SO HE UNDERSTOOD THE
RIGHTS EMBODIED IN OUR SYSTEM
GUARANTEE OF THE RIGHT TO
COUNSEL AND WHAT COUNSEL CAN
PROVIDE.

>> HE CAME TO THIS COUNTRY WHEN
HE WAS A SMALL BOY.

>> THAT IS CORRECT YOUR HONOR.

>> HE WOULD BASICALLY--

[INAUDIBLE]

>> I BELIEVE THE RECORD ALSO
INDICATED THAT HE HAD, ON HIS
OWN, DONE FAIRLY EXTENSIVE
RESEARCH IN TERMS OF THE CUBAN
CONSTITUTION AND WHAT RIGHTS ARE
PROVIDED TO CUBAN NATIONALS IN
THEIR OWN COUNTRY WITHIN THE
FRAMEWORK OF THE CUBAN
CONSTITUTION THAT, WHEN HE WAS
IN CUBA, AND AGAIN, I DON'T
THINK IT CAN BE OVERLOOKED THAT
BEING ABLE TO BE PHYSICALLY
PRESENT IN CUBA TO SPEAK WITH
JUDGES-- CUBAN JUDGES-- WHO ARE
APPLYING THOSE CONSTITUTIONAL

PRINCIPLES, SPEAKING WITH CUBAN
CRIMINAL DEFENSE ATTORNEYS AND
HAVING THAT EXPERIENCE UNDER THE
CRITERIA THAT WE HAVE SET FORTH
AS WHAT YOU CAN QUALIFY SOMEONE
FOR AN EXPERT, CERTAINLY THAT
WOULD INCLUDE THINGS SUCH AS,
NOT ONLY YOUR KNOWLEDGE THAT YOU
WOULD LIKELY ASSUME FROM
ATTENDING A COLLEGE CLASS, BUT
ALSO THE TRAINING OR EDUCATION
OR OTHER SPECIAL EXPERIENCES
THAT CAN LEAD TO SOMEONE
OBTAINING SUFFICIENT KNOWLEDGE
TO BE CONSIDERED AN EXPERT.

>> WHEN YOU ARE TALKING ABOUT
THIS, ALTHOUGH, YES, MOST OF US
COULD AGREE THAT WE WOULD NOT
EXPECT THE BROADNESS OF THE
CONSTITUTIONAL RIGHTS THAT WE
HAVE THE FORTUNE IN THIS COUNTRY
TO BE AFFORDED TO US, THAT THOSE
ARE NOT LIKELY TO BE MIRRORED IN
A TOTALITARIAN SOCIETY.

I THINK THAT MR. AMIZAGA'S
TESTIMONY WAS CRITICAL IN THE
SENSE THAT, IN HIS PROFFER, HE
SPECIFICALLY STATED HE WOULD NOT

HAVE BEEN ENTITLED TO HAVE AN ATTORNEY DEFEND YOU BY APPEARING IN COURT AND ARGUING ON YOUR BEHALF IN CUBA IF YOU HAVE BEEN CHARGED WITH AN OFFENSE THAT CREATED INCARCERATION.

>> ON THE ISSUE OF HIS QUALIFICATION AS AN EXPERT, THE STANDARD IS ABUSE OF DISCRETION.

>> CORRECT YOUR HONOR.

>> CAN YOU REALLY ASSERT THAT NO REASONABLE JUDGE CAN DECIDE THAT HIS QUALIFICATIONS COULD MAKE HIM AN EXPERT ON CUBAN LAW?

>> YOUR HONOR, I BELIEVE THAT IT PREVENTS SUFFICIENT QUALIFICATION--

>> THAT IS NOT THE QUESTION. THE QUESTION IS, COULD NO REASONABLE JUDGE DECIDE THAT THE QUALIFICATIONS WERE TOO THIN?

>> I AM SURE THAT SOMEWHERE IN THE UNITED STATES SOMEONE COULD FIND A JUDGE THAT WE MIGHT CONSIDER TO BE REASONABLE, WHO COULD PROBABLY, BECAUSE THEY WANTED TO, DISAGREE.

HOWEVER, I DO BELIEVE THAT WHAT HAS TO BE ADDRESSED, THOUGH, WAS

THIS JUDGE'S DETERMINATION,
REASONABLE UNDER THE
CIRCUMSTANCES?

>> MAYBE I AM STILL MISSING
SOMETHING ABOUT THIS, BUT IN
POST-CONVICTION THE ISSUE
NORMALLY DOES AN EXPERT ASSIST
THE FACT-FINDER IN MAKING A
DECISION.

HERE, THE DECISION WAS THE
ORIGINAL LAWYER WAS DEFICIENT IN
NOT PRESENTING THIS TYPE OF
EXPERT?

>> I LOOK AT THIS AND LOOK AT
THE PROFFER, AND THE PROFFER IS
BASICALLY THAT HE WOULD HAVE
TESTIFIED IN THE DIFFERENCES IN
THE CRIMINAL JUSTICE SYSTEM THAT
MAY HAVE AFFECTED MR. CHAVEZ'S
UNDERSTANDING OF THE MIRANDA
RIGHTS.

QUITE FRANKLY, EVEN IF HE WAS
QUALIFIED IN THE COMPARISON, I
DON'T EVEN KNOW HOW THE JUDGE,
ORIGINALLY FACED WITH SOMEBODY
THAT HAD EXTENSIVE TRAINING IN
THE CUBAN SYSTEM MAY HAVE SAID,
I DON'T THINK THAT IS GOING TO

BE HELPFUL IN THE FINDER OF
FACTS OR TO THE JURY AND, FOR
THAT REASON, I AM NOT GOING TO
ALLOW IT BECAUSE IT IS
SPECULATIVE AS TO MR. CHAVEZ.
SO, I AM HAVING THAT HURDLE,
WHICH IS THAT, IN
POST-CONVICTION-- SO THE
QUESTION ISN'T REALLY WHETHER
THIS EXPERT, TO ME, WAS
QUALIFIED OR NOT.
IT IS WHETHER THE ORIGINAL
LAWYER COULD HAVE GOTTEN THIS
KIND OF EXPERT IN IF THIS KIND
OF EXPERT WOULD NOT HAVE BEEN
ADMISSIBLE IN THE ORIGINAL
PROCEEDING, AND THE WHOLE ISSUE
CAN BE RESOLVED BY SAYING THERE
IS NO DEFICIENCY.

DO YOU UNDERSTAND WHAT I AM
SAYING?

>> I BELIEVE THAT I DO YOUR
HONOR.

>> YOU ARE ASSUMING THIS EXPERT
SHOULD HAVE BEEN CALLED AT THE
TRIAL, BUT THE FIRST HURDLE THAT
WE HAVE TO ADDRESS IN
POST-CONVICTION, AND
POST-CONVICTION IS THE ONLY

FORUM THAT IS PROVIDED FOR DEFICIENCIES IN, BY ATTORNEYS WHO REPRESENT ORIGINALS IN THE ORIGINAL PROCEEDINGS, TO BRING THAT TO A COURT'S ATTENTION SO THIS WOULD BE THE APPROPRIATE FORUM FOR ARGUING DEFICIENCY. THEREFORE, IN THIS INSTANCE I DO NOT HAVE-- MY FIRST BURDEN IS TO ESTABLISH THAT THIS PERSON SHOULD HAVE BEEN ALLOWED TO PRESENT HIS TESTIMONY AS TO WHAT MADE TRIAL COUNSEL REFUSE THAT NATURE OR THAT TYPE OF TESTIMONY, WHETHER FROM HIM OR FROM SOMEONE ELSE, AT THAT ORIGINAL SUPPRESSION--

>> DID HE CONSIDER USING SUCH AN EXPERT?

BECAUSE THAT IS NORMALLY HOW THIS WORKS.

>> THE LAWYER THAT DRAFTED THE MOTION, MR. STANTON, INCLUDED IN THE MOTION THE CONCEPT OF ALIENAGE.

IT WAS NEVER PRESENTED AT THE HEARING.

>> YOU ASKED THE LAWYER, YOU

ASKED ALL THREE OF THE LAWYERS
WHY THEY DIDN'T CALL THIS
WITNESS.

>> THERE IS A VIEW AMONG ALL
THREE LAWYERS WHAT WAS DONE AND
WHAT WAS NOT DONE AND THE TWO
LAWYERS WHO REPRESENTED
MR. CHAVEZ AT THE TIME, THE
LAWYER WHO DRAFTED THE MOTION,
MR. STANTON, AND ARGUED THE
MOTION, COULD NOT RECALL WHY OR
WHY NOT-- ESSENTIALLY FROM HIS
PERSPECTIVE OF, WE SHOULD HAVE
AND WE DIDN'T.

WE DROPPED THE BALL.

MR. NALLY, WHO AT THE TIME WAS
WORKING ON THE PENALTY PHASE
PRESENTATION SOMEWHAT IN
CONJUNCTION WITH HARPER, HAD
NOTHING TO DO WITH THAT PART OF
THE CASE, SO HE COULD OFFER NO
INSIGHT, OTHER THAN THAT HE KNEW
THAT AN EXPERT HAD BEEN
CONSULTED.

THE ONLY INDIVIDUAL WHO WAS A
TRIAL ATTORNEY, WHO REPRESENTED
MR. CHAVEZ IN THE PROCEEDINGS
DURING THE MOTION TO SUPPRESS
HEARING, MR. KOCH, TESTIFIED HE

RETAINED AN EXPERT AND HE
THOUGHT THAT EXPERT MIGHT HAVE
ASKED MR. CHAVEZ QUESTIONS ABOUT
HIS ALIENAGE, BUT WE DON'T KNOW
THAT BECAUSE DR. OFSHE ENDED UP
TELLING THE DEFENSE HE COULD NOT
ASSIST THEM.

BUT HIS EXPERTISE WAS NOT IN THE
AREA OF ALIENAGE.

HE WAS AN EXPERT WHO WAS
RETAINED TO ADDRESS COERCED
CONFESSION, AND THERE IS A
SIGNIFICANT, A SIGNIFICANT LEGAL
DISTINCTION BETWEEN A COERCED
CONFESSION, WHERE IT TRIGGERS
AND RELIES UPON IMPROPER POLICE
CONDUCT AS OPPOSED TO AN
INVOLUNTARY WAIVER OF MIRANDA
THAT FOCUSES ON THE DEFENDANT,
THE INDIVIDUALS GRASP OF THE
CONCEPT OF THE RIGHT OF GIVING
UP.

>> THE BASIC PREMISE OF THIS
WHOLE THING, SO WE CAN
UNDERSTAND IT A LITTLE BIT, YOUR
ARGUMENT, CERTAINLY THE MIRANDA
WARNINGS ARE NOT
CONSTITUTIONALLY MANDATED.

THOSE ARE PROPHYLACTIC
PROVISIONS, AS DESCRIBED BY THE
U.S. SUPREME COURT, TO
EFFECTUATE OTHER CONSTITUTIONAL
RIGHTS.

YOU WOULD AGREE WITH THAT?

>> I WOULD AGREE THAT YOUR
STATEMENT DOES NOT CONFLICT WITH
POWELL.

>> THE UNITED STATES SUPREME
COURT HAS SAID SO HASN'T IT?

>> I BELIEVE THAT MIRANDA
WARNINGS ARE REQUIRED WHEN AN
INDIVIDUAL HAS BEEN TAKEN INTO
CUSTODY, AND I DON'T BELIEVE
THERE IS ANY DOUBT, GIVEN THE
LENGTH OF TIME--

>> THAT IS WHAT THE U.S. SUPREME
COURT HAS SAID, AND I'M
WONDERING WHAT THE PRACTICAL
EFFECT IS FOR LAW ENFORCEMENT
THAT, TO OBTAIN, TO VALIDLY GIVE
THESE WARNINGS THAT ARE REQUIRED
OF THE PROPHYLACTIC PROTECTION,
TO PROTECT THEIR RIGHT.

YOU ARE UNDERSTANDING ACCORDING
TO THE CASE LAW OF THIS NATURE
REQUIRED, IF THERE IS SOMEONE
FROM FRANCE, THAT THEY MUST

BRING IN SOMEONE EXPERIENCED IN
THE FRENCH CULTURE BEFORE YOU
CAN OBTAIN LAW ENFORCEMENT, CAN
OBTAIN A VALID CONFESSION OR
SOMEONE-- THAT WE HAVE SOMEONE
FROM THE OLD SOVIET UNION, THAT
LAW ENFORCEMENT MUST HAVE ACCESS
TO THAT KIND OF PERSON, TO KNOW
WHAT TO SAY TO THAT PERSON,
BEFORE THEY CAN TALK TO THEM.
I'M TRYING TO UNDERSTAND WHAT
THE BASIC FUNDAMENTAL LAW IS
HERE.

>> I'M NOT SUGGESTING THAT THEY
KEEP ON RETAINER INDIVIDUALS WHO
ARE WELL-VERSED.

IN ESSENCE, WHAT YOU ARE ASKING
IS, DID THEY HAVE A MINI STATE
DEPARTMENT AVAILABLE?

>> YOU ARE ARGUING, TO BE VALID,
THAT MUST BE TAKEN INTO ACCOUNT?

>> I AM JUST WONDERING WHAT THE
LAW IS, AS YOU READ IT, WITH THE
U.S. SUPREME COURT, WHAT NEEDS
TO BE DONE TO VALIDLY TELL THIS
PERSON ABOUT THEIR RIGHTS?

>> MY BELIEF WOULD BE, YOUR
HONOR, THAT IF IT IS NOT DONE,

IT IS A FACTOR THAT CAN BE
CONSIDERED, JUST AS THE FAILURE
TO GIVE SUFFICIENT MIRANDA
WARNINGS CAN BE CONSIDERED IN
DETERMINING WHETHER OR NOT--
>> THE CONTENTS OF THESE WORDS
IS THE SAME AS WHETHER SOMEONE
IS FROM A DIFFERENT CULTURE, IS
WHAT YOU THINK OUR U.S. SUPREME
COURT HAS SAID?

>> WHAT I BELIEVE, YOUR HONOR,
IS THAT THERE IS SUPPORT FOR OUR
ARGUMENT THAT, IN THE FEDERAL
SYSTEM, UNDER WHAT WAS DECIDED
IN THE INITIAL BRIEF, THAT ONE
CRITERIA THAT MAY BE CONSIDERED
BY A COURT LONG AFTER THE
MIRANDA WARNINGS HAVE BEEN
GIVEN, LONG AFTER THE
INTERROGATION HAS TAKEN PLACE,
IS WHETHER OR NOT THAT
INDIVIDUAL UNDERSTOOD THE RIGHTS
HE WAS GIVING UP.
IN THE SAME MANNER THAT, IF
SOMEONE HAS A MENTAL DEFICIENCY,
WE DON'T REQUIRE A POLICE
DEPARTMENT TO HAVE ON STAFF
PEOPLE THAT CAN'T EXPLAIN TO
THEM, YOU KNOW, IT TAKES INTO

CONSIDERATION THEIR MENTAL
DEFICIENCY.

BUT THAT DOES NOT PREVENT, LATER
ON, A REVIEWING COURT FROM
ADDRESSING THAT PARTICULAR
CHARACTERISTIC OF THE
INDIVIDUAL.

IN OTHER WORDS, THE STATE HAS TO
HAVE SOMEBODY THERE, WHO CAN
EXPLAIN MIRANDA IN A SIMPLE
LANGUAGE AND GO OVER EACH AND
EVERY ASPECT OF IT.

NO, THERE IS NO LAW THAT
REQUIRES THAT, BUT THE LAW
CLEARLY STATES BOTH ON THE U.S.
SUPREME COURT AND THE FEDERAL
DISTRICT COURT, THAT WHEN THAT
HAPPENS, WE ARE TO EVALUATE THE
UNIQUE CHARACTERISTICS OF AN
INDIVIDUAL TO DETERMINE WHETHER
OR NOT THEY KNEW AND UNDERSTOOD
THE RIGHTS THEY WERE GIVING UP
AND THAT IS WHERE THIS ISSUE
PLAYS IN, IS, IF YOU WERE TO
TELL MR. CHAVEZ, ACCORDING TO
WHAT MR. AMIZAGA WOULD HAVE BEEN
ABLE TO TESTIFY FROM A
SPECIALIZED KNOWLEDGE OF HIS

INTERVIEW WITH MR. CHAVEZ, THAT YOU'D BE TOLD YOU HAVE THE RIGHT TO AN ATTORNEY WOULD BE MEANINGLESS TO HIM, BASED UPON HIS EXPERIENCES IN CUBA, HIS EXPERIENCES HAVING BEEN INCARCERATED THROUGH A MILITARY PROCEEDING THAT, IN OTHER WORDS, WHY DO I NEED ONES THAT CAN HELP ME ANYWAY, WHICH IS OBVIOUSLY NOT THE RULE OF COUNSEL THAT OUR CONSTITUTION GUARANTEES AND PROVIDES TO INDIVIDUALS.

AND I THINK I'M DOWN TO SECONDS, SO I WILL--

THANK YOU VERY MUCH FOR YOUR TIME AND ATTENTION.

>> GOOD MORNING.

SCOTT BROWNE ON BEHALF OF THE STATE OF FLORIDA.

THE TRIAL COURT DID NOT ABUSE THE LAW DISCRETION IN FAILING TO RECOGNIZE MR. AMIZAGA AS AN EXPERT.

HE SIMPLY LACKS THE KNOWLEDGE, TRAINING AND EXPERIENCE REQUIRED TO BE RECOGNIZED AS AN EXPERT.

DOES YOUR QUESTION RECOGNIZE THAT-- TWO TRIPS TO CUBA.

THAT IS IT, AND MOSTLY

SELF-STUDY.

HE ATTENDED ONE SEMINAR, AND

ONLY THREE HOURS OF THAT FORMAL

SEMINAR WAS DEVOTED TO THE ISSUE

OF CRIMINAL LAW.

HIS SECOND TRIP TO CUBA IS EVEN

LESS IMPRESSIVE.

IT WAS A SELF-STUDY, ON HIS OWN,

GOING TO THE LIBRARY AND LOOKING

UP LAWS.

HE BELIEVES HE MAY HAVE--

>> I GUESS THE REAL ISSUE HERE

IS NOT SO MUCH THIS PARTICULAR

LAWYER AND WHETHER OR NOT HE IS

AN EXPERT.

IT REALLY GOES TO WHETHER OR NOT

THIS TYPE OF INFORMATION SHOULD

HAVE BEEN PRESENTED AT THE

MOTION TO SUPPRESS HEARING.

THAT SEEMS TO BE THE THRUST OF

HER ARGUMENT, IS THAT SOME

EXPERTS OR PERSON WITH THIS KIND

OF KNOWLEDGE, COULD HAVE BEEN

BROUGHT TO THE MOTION TO

SUPPRESS HEARING, TO MAKE THE

CASE THAT MR. CHAVEZ REALLY

DIDN'T UNDERSTAND WHAT THE

POLICE WERE TELLING HIM AND,
THEREFORE, HIS STATEMENT WAS NOT
VOLUNTARY?

>> I BELIEVE THAT IS THE THRUST
OF IT.

THAT IS HOW YOU GET TO THE
INEFFECTIVE ASSISTANCE, THE
COUNSEL PORTION OF IT.

>> THAT IS THE THRUST OF IT, BUT
THE POINT REALLY IS IF THE
BENEFIT OF A RECORD, IN
HINDSIGHT, A POST-CONVICTION
COUNCIL CAN'T COME UP WITH A
QUALIFIED EXPERT.

[INAUDIBLE]

>> WHAT THE RECORD REFLECTS IN
THIS CASE IS THAT LEAD COUNSEL,
ART KOCH, DID, IN FACT, FIND A
RECOGNIZED EXPERT, DR. RICHARD
OFSHE AND, UNLIKE MR. AMIZAGA,
HE HAD TESTIFIED IN A COURT OF
LAW.

>> WHAT KIND OF--

>> HE WAS AN EXPERT ON PROFFER.

>> WHAT WAS HIS PROFESSIONAL
EXPERTISE?

[INAUDIBLE]

>> OF WHAT DISCIPLINE?

>> SOCIOLOGY.

>> LET ME ASK YOU THIS.

IN SOME WAYS, THIS IS NOT THE
ISSUE, THE UNDERLYING ISSUE
HERE.

IT IS NOT A QUESTION OF
COMPARABLE LAW.

IT IS A PSYCHOLOGICAL QUESTION.

THE QUESTION IS WHETHER THE
PERSON COMING FROM THIS KIND OF
BACKGROUND-- THERE ARE GOING TO
BE BARRIERS IN HIS MIND TO
UNDERSTANDING WHAT HE IS TOLD,
AND THAT IS NOT REALLY AN ISSUE
OF COMPARATIVE LAW, BUT A
PSYCHOLOGICAL ONE, SO A LEGAL
EXPERT--

>> DR. RICHARD OFSHE TOLD ART
KOCH THAT HE HAD EXPERIENCE
DEALING WITH ADDRESSING
INDIVIDUALS WHO COME FROM PLACES
LIKE CUBA SO, AGAIN, TRIAL
COUNSEL CONSULTED WITH AND
RECOGNIZED EXPERTS, AND THE FACT
THAT THAT EXPERT FOUND-- WOULD
BE OF NO BENEFIT.

>> BUT YOUR OPPOSITION, THE
ARGUMENT THAT IS BEING
PRESENTED, IT SEEMS, IS THAT SHE

SAID THIS EXPERT IS ONE THAT IS
AN EXPERT IN COERCION
CONFESSIONS, AND NOT ONE THAT
REALLY GOES TO THESE OTHER
PSYCHOLOGICAL OR CULTURAL
BACKGROUNDS KINDS OF ISSUES, AND
THAT IS HER ARGUMENT.

COULD YOU RESPOND TO THAT ONE?

>> THERE IS TESTIMONY BELOW FROM
ART KOCH.

THIS INDIVIDUAL, DR. OFSHE, HAD
EXPERIENCE IN DEALING WITH THAT
ISSUE, SO HE WAS UNLIKE
MR. AMIZAGA.

IF WE GO FURTHER AND SAY
MR. AMIZAGA IS AN EXPERT IN A
LAW.

>> HE WAS NOT AN EXPERT WHEN
THIS CASE WAS TRIED.

>> I THINK WHAT JUSTICE KENNEDY
HAS ASKED, IN PROBABLY A MUCH
MORE ARTICULATE WAY-- I WAS
FLOUNDERING AROUND-- THE ISSUE
IS THE FOCUS OF THIS BEING
COMPARATIVE LAW, BUT IS A
TOTALITARIAN REGIME, AND AMERICA
HAS GOT ALL THESE RIGHTS.
THE QUESTION IS, IN THIS CASE,
WHAT WERE THE BARRIERS?

SO, I GUESS WE CAN STAY ON-- I
THINK, TO MAKE A GOOD POINT,
THAT HE COULDN'T FIND A
QUALIFIED EXPERT OR SHE
COULDN'T, THERE MIGHT NOT BE
ONE, BUT I WOULD RATHER FOCUS
AND SAY LET'S ASSUME EVERYTHING
THIS PARTICULAR EXPERT PROFFERED
WOULD BE OFFERED-- WOULD HAVE
BEEN OFFERED, WHICH IS THAT HE
MAY HAVE EXPECTED NOT TO HAVE A
COURT-APPOINTED LAWYER.

>> I STILL DON'T, AND MAYBE IF
YOU WOULD JUST ADDRESS THE
DEFICIENCY PRONG, WHICH IS,
BASED ON OUR OPINION, THAT GOES
INTO MR. CHAVEZ'S OWN UNIQUE
CIRCUMSTANCES.

MR. CHAVEZ GAVE A LENGTHY
HAND-WRITTEN STATEMENT IN
SPANISH THAT WAS GRAMMATICALLY
CORRECT, LOOKED LIKE A LITERATE
PERSON.

THERE IS NOTHING THAT HAS BEEN
SHOWN IN POST-CONVICTION, SO
THAT MR. CHAVEZ WAS OTHER THAN
THE PERSON THAT HAD AN
UNDERSTANDING OF WHAT IS GOING

ON, EVEN IF HE CAME FROM A
TOTALITARIAN REGIME. SO,
MAYBE IF YOU COULD COMMENT ON
THE DEFICIENCY ASPECT.

>> THAT IS EXACTLY CORRECT YOUR
HONOR.

HE WAS GIVEN MIRANDA AT LEAST
FOUR TIMES IN SPANISH.

THERE WAS NO TESTIMONY BELOW
FROM EITHER THE APPELLATE AT
TRIAL, AND, AGAIN, THE APPELLATE
CHOSE NOT TO TESTIFY DURING THE
HEARING.

THERE IS NO CREDIT FOR FINDING,
EVEN IF YOU ASSESS THAT THEY
SHOULD HAVE FOUND AN EXPERT,
THERE IS NO ACTUAL-- FOR FINDING
ANY DEFICIENCY.

REMEMBER, AT TRIAL THE DEFENDANT
TESTIFIED HE WAS AFRAID OF BEING
SENT BACK TO CUBA.

HE NEVER TESTIFIED THAT HE
DIDN'T UNDERSTAND HIS MIRANDA
RIGHTS.

THE MIRANDA RIGHTS ARE VERY
SIMPLE AND VERY PLAIN.

>> DID HE TESTIFY AT THIS
HEARING?

>> NO, I THINK THERE WERE 45

DIFFERENT GROUNDS ON THIS
PARTICULAR ISSUE.

COUNCIL DID-- THERE IS NO
DEFICIENCY AND MR. AMIZAGA'S
STATEMENT WOULD NOT BE
ADMISSIBLE IN COURT.

YOU DON'T ALLOW AN EXPERT TO
TESTIFY TO A PARTICULAR SET OF
FACTS AND MAKE A LEGAL
CONCLUSION.

HE WAS NO EXPERT AT MIRANDA.
HE COULDN'T COME INTO A COURT OF
LAW AND SAY HIS CONVICTION WAS
INVOLUNTARY.

[INAUDIBLE]

>> THAT WAS MORE THE STATE'S
UNDERSTANDING, AND REMEMBER WHAT
HAPPENED DURING THE
POST-CONVICTION HEARING, IS WE
ONLY GOT THE WRITTEN PROFFER OF
WHAT MR. AMIZAGA WOULD HAVE
TESTIFIED TO AFTER THE CLOSE OF
ALL THE EVIDENCE, AFTER THE
STATE HAD SUBMITTED ITS CLOSING
ARGUMENT, SO THEN HE DID A
PROFFER THAT WAS SO MUCH BROADER
AND THE STATE ARGUES THE MIRANDA
PORTION?

>> EVEN IF A SUFFICIENT EXPERT HAD BEEN FOUND AND THAT TESTIMONY COMES IN, TO GET TO THE PREJUDICE PRONG, FOLLOWING UP ON JUSTICE LEWIS'S QUESTION EARLIER WAS, DON'T WE EVENTUALLY GET BACK TO THE QUESTION OF, HOW FAR IS THE STATE REQUIRED TO GO TO MAKE SURE A WAIVER-- IS THE STATE REQUIRED TO MAKE SURE THAT SOMEHOW A DEFENDANT FROM A DIFFERENT CULTURE-- FIRST THEY HAVE TO FIND OUT IF THEY ARE FROM A DIFFERENT CULTURE AND THEN WHAT THAT CULTURE'S UNDERSTANDING IS WITHIN EVEN A U.S. CITIZEN? HOW FAR IS THE STATE SUPPOSED TO GO?

>> THEY MADE SURE THAT THE MIRANDA WARNINGS WERE GIVEN AND, REMEMBER, MR. CHAVEZ LIVED IN THIS COUNTRY FOUR YEARS. HE WAS RATHER SOPHISTICATED. HE WAS INTELLIGENT, AND WE KNOW THAT, FROM THE MENTAL HEALTH TESTIMONY DURING THE HEARING, HE ALSO KNEW THE POLYGRAPH WAS NOT ADMISSIBLE AGAINST HIM IN A

COURT OF LAW.

THIS WAS NOT SOME
UNSOPHISTICATED DEFENDANT, BUT
EVEN IF HE ASSUMED HE WAS, THE
LAW ENFORCEMENT DID EVERYTHING
CORRECT.

MIRANDA, ONCE IT IS GIVEN AND
PROPERLY GIVEN, IT DOES PROTECT
LAW ENFORCEMENT, PRESUMING--
ONCE YOU GET A VALID WAIVER, AND
THAT IS WHAT WE HAD.

THEY WERE METICULOUS.

THERE WERE WRITTEN WAIVERS IN
THIS RECORD SO, EVEN IF WE
ASSUME MR. AMIZAGA WAS QUALIFIED
AND HE COULD ACTUALLY PROVIDE
TESTIMONY THAT HE PROFFERED,
THERE IS ABSOLUTELY NO PREJUDICE
IN THIS RECORD, AND EVEN IF WE
ASSUME THERE IS SOME MIRACLE OR
SOME EVIDENCE THAT WAS NOT
PRESENTED BELOW, THAT HIS
CONFESSION WAS EVER ACTUALLY
THROWN OUT, THERE REMAINS
OVERWHELMING EVIDENCE OF HIS
GUILT.

REMEMBER, THIS IS A CASE WHERE
ALL OF THE PHYSICAL EVIDENCE--

THE WEAPON WAS FOUND IN HIS
TRAILER WITH HIS FINGERPRINTS ON
IT.

JIMMY'S BODY WAS FOUND IN THE ON
THE PROPERTY, IN THE RESIDENCE,
AND THE GUN HE HAD WITH HIS
FINGERPRINTS ON IT WAS
DETERMINED TO BE THE MURDER
WEAPON.

SO, AGAIN, HE CAN'T SHOW ANY
PREJUDICE BASED ON THIS RECORD
AND THE JUDGE DID NOT CARE AND
USE DISCRETION IN REFUSING TO
RECOGNIZE-- HE SIMPLY
SELF-STUDIED.

THERE IS NO CONFIDENCE IN
MR. AMIZAGA THAT THE CURRENT
STATE OF LAW IN CUBA--

>> THERE WAS ONE?

>> HE INDICATED HIS KNOWLEDGE OF
CUBAN LAW.

THERE HAD BEEN CHANGES.

THERE IS SIMPLY NO LEVEL OF
CONFIDENCE THAT WHAT WE WERE
GOING TO HEAR FROM MR. AMIZAGA
WAS AN EXPERT OPINION, WHICH WAS
RELIED ON BY THE COURT BELOW.

THEY HAD NOTHING FURTHER.

I ASK THAT YOU AFFIRM THE

JUDGMENT.

THANK YOU.

>> ALTHOUGH YOU HAVE USED MOST OF YOUR TIME, WE WILL GIVE YOU A MINUTE TO SUM UP.

>> I WOULD LIKE TO ADDRESS YOUR STATEMENT ABOUT MR. OFSHE AND WHETHER THIS IS A PSYCHOLOGICAL ISSUE OR NOT.

WE REALLY DON'T KNOW ANYTHING ABOUT DR. OFSHE.

THE ONLY TESTIMONY ABOUT DR. OFSHE'S QUALIFICATIONS CAME FROM MR. KOCH, THAT MR. KOCH WAS NOT A CREDIBLE WITNESS.

>> ON WHAT ISSUE?

ON SOME ISSUE, HE DID NOT FIND HIM CREDIBLE, ON THAT WHOLE IDEA OF MR. BRUMMER AND THE INVESTIGATION.

>> IT WAS VERY CLEAR FROM THE ATTORNEYS THAT TESTIFIED AT THE EVIDENTIARY HEARING, THAT DR. OFSHE WAS AN EXPERT, AGAIN, SPECIFICALLY IN THE COERCED CONFESSION, AND DR. OFSHE HAD A PARTICULAR PREDILECTION THAT HE WOULD BE UNWILLING TO TESTIFY AT

TRIAL, DESPITE WHAT HE FOUND,
UNLESS HE HAD A PERSONAL BELIEF
IN THE INNOCENCE OF THE
DEFENDANT.

SO, AND WE DON'T KNOW WHAT
DR. OFSHE FOUND.

ALL WE KNOW IS THAT HE ENDED UP
TELLING ART KOCH THAT HE COULD
NOT TESTIFY BECAUSE HE
PERSONALLY DIDN'T THINK
MR. CHAVEZ WAS INNOCENT.

>> REGARDLESS OF DR. OFSHE,
COMING BACK TO THE QUESTION YOU
SAID YOU ARE GOING TO ADDRESS,
WHAT DOES PROFFERED EVIDENCE
RELATED TO COMPARATIVE LAW HAVE
ANYTHING TO DO WITH ANYTHING?
THE QUESTION HERE ABOUT THE
VOLUNTARINESS OF THE WAIVER AND
THE THINGS THAT WOULD ADD ARE
PSYCHOLOGICAL QUESTIONS THAT ARE
DISTINCT FROM THIS COMPARATIVE
LAW THAT YOU GET INTO.

>> I BELIEVE, YOUR HONOR, IT IS
BOTH, AND THE FIRST THING YOU
HAVE TO ADDRESS IS, ARE THERE
DIFFERENCES, AND WHAT ARE THEY,
AND THEN YOU ADDRESS WHAT IMPACT
DID THOSE DIFFERENCES HAVE FROM

A PSYCHOLOGICAL STANDPOINT.

>> THE FIRST PART IS MEANINGLESS
BECAUSE YOU-- THE IMPACT IN THIS
PARTICULAR--

>> BUT, I BELIEVE THE SECOND
PART COULD HAVE BEEN
ESTABLISHED, HAD WE BEEN ABLE TO
ESTABLISH THE FIRST PART AS
EVIDENCE, HOWEVER WE WERE NOT
PERMITTED TO DO THAT.

AGAIN, I THANK THE COURT FOR ITS
TIME AND ATTENTION AND WOULD ASK
THE COURT TO ANALYZE THE CASE
CAREFULLY.

>> THANK BOTH OF YOU FOR YOUR
ARGUMENTS.