

>> IT PROVED THAT HE COULD WORK
AND HOLD DOWN A JOB, SO HE GOT A
SPECIAL HIGH SCHOOL GRADUATION.

THAT'S WHAT WE KNOW ABOUT --

>> WAS IT WHERE HE WAS DOING ODD
JOBS AT THE TIME?

>> HE ACTUALLY HAD A PRETTY GOOD
HISTORY OF EMPLOYMENT.

HE WORKED FOR HIS FATHER WHEN HE
WAS, LIKE, 10 YEARS OLD.

I DON'T RECALL EXACTLY WHAT HIS
EMPLOYMENT WAS.

>> WELL, APPARENTLY IT'S THROUGH
HIS INFORMATION HE WAS COMING
OVER AND DOING SOME YARD WORK
FOR THE VICTIM AND COME --

>> WELL, HE CUT HER GRASS.

>> THAT'S WHAT I MEAN.

>> HE HAD OTHER EMPLOYMENT
BESIDES THAT.

THE JUDGE DID DECIDE HE HAD A
HISTORY OF CONTINUOUS
EMPLOYMENT.

>> I JUST WONDER WHAT THAT IS.

IT'S ONE THING TO BE MOPPING AND

GARBAGE CANS AND IT'S ANOTHER --

THE INTELLECTUAL IS WHAT I'M

TRYING TO UNDERSTAND.

>> I WISH I COULD TELL THAT,

YOUR HONOR.

>> OKAY.

>> TRYING TO RECALL.

ANYWAY, WE SORT OF SWITCHED

GEARS HERE, BUT I'LL GO AHEAD

AND CONTINUE WITH THAT FIRST

ISSUE.

HE WAS PICKED UP, BROUGHT DOWN

TO THE STATION WHERE HE WAS TOLD

THAT HE WASN'T UNDER ARREST AND

THAT HE COULD LEAVE WHENEVER HE

WANTED TO.

HE WAS GIVEN HIS MIRANDA RIGHTS

INCLUDING THE OBVIOUS RIGHT THAT

YOU CAN, UM, CUT OFF QUESTIONING

WHENEVER --

>> LET ME ASK YOU THAT.

IT SEEMED LIKE -- AND I HAVE NOT

WATCHED THE DVD.

>> YEAH.

>> IT SEEMED LIKE THEY HAD HIM

READ IT OUT LOUD.

IS THAT WHAT HAPPENED?

>> THE STATEMENT OF RIGHTS?

MY RECOLLECTION IS HE STARTED TO

READ IT, AND HE HAD A DIFFICULT

TIME READING IT.

HE READ IT HALTINGLY, I THINK.

>> THE RECORD WILL SHOW -- BUT

THEN --

>> YEAH.

>> BUT HE -- THEY KIND OF, WHAT

THEY SAY TO HIM IS WE'RE

BRINGING YOU IN, WE'RE JUST

GOING TO BE LOOKING AT THE WHOLE

NEIGHBORHOOD, AND WE'RE JUST

BRINGING YOU IN.

THEY DON'T HAVE THE DNA AT THAT

POINT.

>> RIGHT.

>> AND THEY SAY AND WE GIVE

EVERYBODY THAT COMES IN MIRANDA

WARNINGS.

THAT'S WHAT THEY TELL HIM?

>> YEAH.

THEY SAID THIS IS WHAT WE HAVE

TO DO FOR EVERY WITNESS.

I EVEN THINK HE SAID SOMETHING

LIKE, YEAH, IF YOU CONFESS TO

KILLING JFK, THEN WE'D BE IN

TROUBLE IF WE HADN'T DONE THIS.

THEY MINIMIZED IT.

>> YOU DON'T REALLY MAKE AN

ARGUMENT ABOUT DOWNPLAYING THE

MIRANDA WARNINGS AT THIS POINT,

BUT THIS SEEMS TO ME, AND I

WOULD ASK YOU TO ADDRESS THIS,

AT THAT POINT THEY TELL HIM HE'S

FREE TO GO, HE'S NOT UNDER

ARREST, AND THEY SORT OF GIVE

HIM THESE WARNINGS.

BUT, LIKE IN -- THIS IS SORT OF

STANDARD PROCEDURE, OKAY?

AND THEN WHY DON'T YOU CONTINUE

FROM THERE.

>> WELL, THEN --

>> LET ME JUST ASK YOU ONE

QUESTION.

YOUR NOT SAYING THAT SOME MENTAL

CAPACITY HAS ANYTHING TO DO WITH

AND WE SHOULD JUST NOT CONSIDER

THAT AS A CIRCUMSTANCE AS PART
OF THE INTERROGATION.

THAT'S WHERE I WAS GOING WITH
THIS.

SO YOU'RE CONCEDED LIKE THIS IS
JUST TREATING NORMAL ADULTS.

>> IN TERMS OF THE --

>> YES, MA'AM.

WHAT HAPPENS WITH THIS
INTERROGATION?

THAT'S ALL I'M ASKING.

SO THERE'S NOTHING ABOUT THE
INTERROGATION -- RAMIREZ AND
SOME OF THE OTHERS MAKE
ALLOWANCES FOR WHO IT IS THAT'S
BEING INTERROGATED.

THAT'S ALL I'M ASKING.

JUST A FRIENDLY QUESTION.

>> SURE, SURE, I UNDERSTAND.

IT'S THE RELEVANT FACTOR, BUT WE
HAVEN'T RAISED IT IN SEPARATE
ISSUE.

>> WELL, I DON'T MEAN SEPARATE
ISSUE.

>> INVOLUNTARY.

>> RIGHT.

SO THERE'S NOTHING ABOUT HIM WE SHOULD DEEM INSUFFICIENT IN ANALYZING THESE CIRCUMSTANCES.

>> OF COURSE, I THINK YOU HAVE TO CONSIDER ALL THESE CIRCUMSTANCES.

>> THAT'S WHAT I'M ASKING. IS THERE ANY MENTAL STATUS ELEMENT THAT SHOULD BE PART OF THIS ANALYSIS IN THIS CASE?

IS THERE ANYTHING PRESENT?

>> I MEAN, AGAIN, THE FACT THAT HE'S 18 AND HE'S LEARNING DISABLED, AND IS THAT -- IN TERMS OF LOOKING AT WHAT HE'S TOLD THE POLICE AT WHAT POINT IN TIME WHEN HE SAYS I WANT TO LEAVE, DOES IT MATTER THAT HE'S 18 VERSUS 38?

>> WELL, HE IS 18.

UM --

>> WELL, WAS HE EIGHT DAYS FROM BEING 19?

THAT'S CLOSER TO 19 THAN 18,

ISN'T IT?

>> I DON'T THINK THAT'S
RELEVANT, YOUR HONOR.

>> OKAY.

>> YOU KNOW, I THINK I HEAR YOUR
QUESTION.

IF MR. DEVINEY WAS A 40-YEAR-OLD
ATTORNEY, I THINK IT WOULD MAKE
A DIFFERENCE IN ANALYZING IT.

I THINK WE HAVE TO LOOK AT THE
FACT THAT HE'S JUST AN ORDINARY
18, UNEDUCATED, NOT PARTICULARLY
INTELLIGENT GUY.

>> BUT NOT PARTICULARLY
CHALLENGED.

>> SO WHEN HE SAYS --

>> BUT NOT PARTICULARLY
CHALLENGED EITHER, IS WHAT I
HEAR YOU SAYING THEN.

>> WELL, HE'S IN THE MIDDLE AS
FAR AS WE KNOW.

>> ALL RIGHT, OKAY.

>> HE'S 18.

HE STILL RESPECTS AUTHORITY.

HE'S VERY POLITE TO THESE

OFFICERS.

REGARDLESS OF THAT, I THINK HIS STATEMENT, "I'M DONE, I'M GOING, I'M READY TO GO NOW," REPEATED FIVE TIMES INCLUDING HIS CONDUCT OF GETTING UP AND SAYING HE'S READY TO GO AND TRYING TO WALK OUT THE DOOR CAN'T BE INTERPRETED AS ANYTHING OTHER THAN A DESIRE TO END THE INTERROGATION.

>> AND THAT'S WHAT I'M TRYING TO FIND OUT, IS -- OR FROM EARLIER.

WHAT IS IT THAT HAPPENED WHEN THE POLICE -- WHAT IS THE TIME PERIOD FROM WHEN THE POLICE FIRST SAID YOU'RE JUST HERE AS A VOLUNTEER, WE'RE JUST CALLING ALL WITNESSES, YOU KNOW, WE DO THIS TO ALL WITNESSES, AND YOU'RE FREE TO GO, WE DON'T LOCK THE DOOR, ANYTIME YOU WANT TO GET UP AND WALK OUT -- AND WHEN THEY, HE SAYS I WANT --

[INAUDIBLE]

[LAUGHTER]

THEY GO, YOU CAN'T.

I'M DONE.

NO, YOU CAN'T GO.

HOW MANY MINUTES ELAPSE

BETWEEN --

>> OKAY.

>> -- THE FIRST, STARTING IT AND

WHEN HE SAID, I WANT TO GO.

>> OKAY.

THEY GIVE HIM HIS MIRANDA

WARNINGS.

THE FIRST QUESTION IS, "DID YOU

HAVE ANYTHING TO DO WITH THIS OR

DO YOU KNOW ANYONE WHO DID?"

HE SAYS, "NO."

THEN THEY QUESTION HIM FOR ABOUT

AN HOUR.

I THINK IT'S APPROXIMATELY AN

HOUR.

HOW DO YOU KNOW HER, DID YOU SEE

ANYONE, WHEN DID YOU LAST SEE

HER, THAT SORT OF THING.

UM, AT THAT POINT THEY SAY TO

HIM WHY WOULD ANYONE SAY YOU DID

IT.

I THINK, AND, YOU KNOW, I'LL
HAVE TO CHECK, BUT I THINK THIS
IS THE SEQUENCE.

AND HE SAYS, I DON'T KNOW.

AND THEN THEY ASK HIM IF HE
MINDS GIVING A DNA SAMPLE.

HE AGREES, IT'S CONSENSUAL, THEY
GIVE HIM A FORM THAT HE SIGNS,
HE GIVES THE DNA SAMPLE.

THEN THEY LEAVE THE ROOM.

THEY COME BACK A COUPLE MINUTES
LATER AND SAY WE GOT YOUR DNA ON
HER, YOU DID IT, WE KNOW YOU
KILLED HER.

>> AND THAT'S WHAT I'M ASKING.

SO REALLY, AND YOU DON'T -- I
UNDERSTAND YOU DON'T USE THIS
AND THEY CAN BE DECEPTIVE, BUT
IT'S SOMEWHAT DECEPTIVE IN THAT
THEY'RE LEADING HIM TO BELIEVE
THAT BASED ON WHAT THEY'VE JUST,
IT SEEMS TO ME, BASED ON THESE
SWABS AND WHAT THEY JUST DID,
THEY NOW HAVE THE RESULTS OF THE

INVESTIGATION, AND IT CLEARLY
SHOWS YOU'RE THE PERSON WHO
KILLED HIM.

>> YES.

>> WHATEVER THEY HAD AN HOUR
INTO THE INTERROGATION, THEY HAD
WHEN THEY BROUGHT HIM IN.

>> EXACTLY.

>> BUT I -- OKAY.

SO NOW HE GOES I DON'T SEE -- SO
NOW HE STARTS TO GET, NOW HE
REALIZES HE'S NOT JUST THERE TO
HELP THEM SOLVE THIS MURDER.

HE'S NOW -- THEY'RE SAYING
YOU'RE THE ONE THAT KILLED HIM.

>> THAT'S RIGHT.

>> AND HOW QUICKLY AFTER THAT
DOES HE SAY I'M READY TO GO?

>> UM, I THINK IT'S --

>> WELL, I SEE IT IN THE
TRANSCRIPT.

>> YEAH.

>> HE'S BASICALLY, AFTER THEY
SAY, NO, I DIDN'T DO IT, I DON'T
SEE HOW YOU COULD DO IT, AND HE

SAYS, "YOU ALL, I'M READY TO
GO."

>> RIGHT.

>> IT'S REASONABLE FOR HIM TO
THINK THAT HE NOW CAN GO, I
MEAN, THAT HE CAN GO BECAUSE
THEY TOLD HIM AN HOUR AGO HE
COULD GO.

>> EXACTLY.

THEY TOLD HIM HE WASN'T UNDER
ARREST, HE COULD STOP WHENEVER
HE WANTED --

>> BUT IT SEEMS TO ME THE FIRST
TIME HE SAYS THAT, "I'M DONE,"
AND THEY ASK HIM, WHAT DOES THAT
MEAN, WHAT DOES "I'M DONE" MEAN?
IT MEANS "I'M DONE, I'M READY TO
GO HOME, AND I DID NOT DO THIS."
AND IF I DID DO IT, I WANT YOU
ALL TO SHOW ME WHAT I DID.
AT THAT POINT HE'S SAYING I'M
READY TO GO, BUT IF YOU THINK I
DID THIS, SHOW ME WHAT IT IS
THAT YOU HAVE.

AND SO THEN THEY START TALKING

ABOUT THE DNA.

AT THAT POINT WHEN HE SAYS, I'M
DONE BUT SHOW ME WHAT YOU HAVE,
WHAT SHOULD HAVE HAPPENED?
WHAT IS YOUR ARGUMENT THAT WHAT
SHOULD HAVE HAPPENED AT THAT
POINT?

>> YEAH.

OUR -- IN THE BRIEF WE LOOKED AT
EVERY SINGLE ONE OF HIS
STATEMENTS INDIVIDUALLY.

HIS FIRST STATEMENT WAS, "I'M
DONE, I'M GOING."

OKAY, TO ME THAT'S A CLEAR
STATEMENT, INDICATION OF HIS
RIGHT TO LEAVE, HIS RIGHT TO CUT
OFF QUESTIONING.

>> BUT THEN WHEN HE SAYS --

>> OKAY, I'M GETTING THERE.

>> OKAY.

COME ON.

>> AT THAT POINT, THEY SHOULD
HAVE CEASED THE INTERROGATION.
THAT'S THE ARGUMENT WE MAKE.
BUT THEY DIDN'T.

THEY KEPT TALKING TO HIM.

>> BUT WAIT A MINUTE --

>> IN THE SECOND STATEMENT, THE
ONE YOU MENTIONED --

>> WAIT A MINUTE, IT DOESN'T
JUST END WITH "I'M DONE, I'M
READY TO GO," IT'S ALL ONE
STATEMENT.

HE SAYS I DID NOT DO THIS, AND
IF I DID DO IT, I WANT YOU ALL
TO SHOW ME WHAT DID, WHAT I DID
DO.

>> YOUR HONOR, THAT WAS HIS
SECOND STATEMENT.

THAT WAS NOT HIS FIRST.

HIS FIRST WAS, "I'M DONE, I'M
GOING."

>> HIS FIRST ONE WAS, "I'M DONE,
I'M DONE."

>> WELL --

>> AND THEN THEY ASK HIM WHAT
DOES THAT MEAN, AND HE SAYS,
"I'M DONE," AND THEY SAY WHAT
DOES IT MEAN, "I'M DONE"?

>> WELL, THERE'S TWO DIFFERENT

TRANSCRIPTIONS OF THAT.

SO HE EITHER SAID "I'M DONE, I'M
GOING," OR "I'M DONE, I'M DONE."

>> THE ONE WE HAVE SAYS, "I'M
DONE, I'M DONE."

>> OKAY.

WELL, THAT'S THE STATE --

[LAUGHTER]

>> YOU CAN WATCH THE TAPE.

EVERYBODY CAN LISTEN TO IT.

>> THE FINAL THING IS BECAUSE HE
STILL DOESN'T CONFESS AT THAT
POINT.

HE SAYS AT THE POINT WHERE THE
DEFENDANT SAYS, I'M DONE, I'M
READY TO GO HOME, CAN I LEAVE,
AND IT SEEMS TO ME THAT THAT IS
BASED ON WHAT HE'S BEEN SAYING,
THERE'S NO EQUIVOCATIONS TO SHOW
ME WHAT I DID, AND THE DETECTIVE
SAYS, NO.

>> THAT'S RIGHT.

AND I'M TRYING TO GET THERE,
YOUR HONOR.

THERE WAS, THERE WAS ONE

EQUIVOCAL STATEMENT, THE ONE --

>> OKAY.

>> AND WE'VE CONCEDED THAT THAT

STATEMENT IS EQUIVOCAL BECAUSE

HE SAYS, "I'M DONE, I'M GOING."

BUT THEN HE SAYS, "YOU'VE GOT TO

SHOW ME."

SO THAT SHOWS SOME UNCERTAINTY.

BUT AFTER THAT STATEMENT THEY

KEEP GOING AFTER THAT ONE, I

THINK THERE'S THREE OTHERS.

THE ONE JUSTICE PARIENTE

MENTIONS, "I'M DONE, I'M READY

TO GO HOME, CAN I LEAVE," AND

THEN THERE'S, "WHY CAN'T I GO?"

"I'M READY TO GO."

"Y'ALL SAID I COULD LEAVE."

"CAN I GO?"

AND, "WHY CAN'T I LEAVE?"

AND DURING SEVERAL OF THOSE, HE

GETS UP AND TRIES TO LEAVE, AND

THEY SAY, NO, YOU CAN'T GO, AND

THEY SIT HIM DOWN.

>> NOW ALL -- IF HE HAD SAID I'M

DONE, I'M READY TO GO HOME, CAN

I LEAVE, IF HE HAD SAID, I'M

DONE TALKING --

>> UH-HUH.

>> THERE WOULD BE NO, WE

WOULDN'T BE HERE ON THIS ISSUE.

BECAUSE THAT WOULD BE, "I'M

DONE," AND, I MEAN, I GUESS

THAT'S WHAT I WOULD ASK YOU.

WHY ISN'T THAT -- I MEAN, I GET

THAT'S YOUR ARGUMENT.

WHY ISN'T THAT WHAT HE SAID, I'M

DONE TALKING?

>> BECAUSE HE'S 18 YEARS OLD --

>> WELL, I'M -- THIS IS, AGAIN,

A FRIENDLY QUESTION.

I KNOW IT'S HARD TO BELIEVE

YOU'RE GETTING FRIENDLY

QUESTIONS ALL THE TIME HERE --

[LAUGHTER]

BUT WHAT ELSE DOES "I'M DONE"

MEAN?

>> THAT'S EXACTLY OUR POINT.

THAT'S ALL IT COULD POSSIBLY

MEAN.

>> WELL --

[INAUDIBLE CONVERSATIONS]

>> DID HE --

>> I'M READY TO GO.

I'M DONE, I'M READY TO GO.

>> THAT HE'S DONE WITH THE
INTERROGATION.

HE'S BROUGHT IN TO BE
QUESTIONED.

ALL THAT'S HAPPENING IS HE'S
BEING QUESTIONED.

WHEN HE SAYS, "I'M DONE," I'M
LEAVING, WHAT ELSE COULD IT
POSSIBLY MEAN?

>> WELL, THE PROBLEM I HAVE IN
HERE, HE SAID, "I'M DONE," AND
THEN THEY ASKED HIM A
CLARIFICATION, "WHAT DOES THAT
MEAN?"

AND HE DIDN'T --

>> HE SAYS, "I DIDN'T DO IT."

>> AND NORMALLY, THEY DON'T ASK
THOSE KIND OF CLARIFYING
QUESTIONS EVEN THOUGH WE WANT
THEM TO.

BUT IN THIS CASE THEY DID.

>> HE SAID WHEN THEY SAID HIS
RESPONSE TO WHAT DOES THAT MEAN
IS, "I'M DONE."

THAT WAS HIS RESPONSE, CORRECT?

>> I'M READY TO GO HOME.

>> IT WASN'T SOME AMBIGUOUS
STATEMENT, IT WAS, "I'M DONE."

>> EXACTLY.

IT'S A CLEAR, UNEQUIVOCAL
STATEMENT.

THE POLICE HAVE TO STOP
QUESTIONING WHICH THEY DID NOT
DO HERE.

>> HE SAID, "I'M DONE, I'M READY
TO GO HOME."

I DID NOT DO THIS.

IF I DID, I WANT YOU TO SHOW ME
THAT I DID DO IT.

THAT'S WHAT HE SAID.

>> THAT WAS HIS SECOND
STATEMENT, YOUR HONOR.

HE MADE CLEAR, UNEQUIVOCAL
STATEMENTS --

>> WHAT SHOULD HAVE HAPPENED AS
A MATTER OF LAW WHEN HE SAID,

I'M DONE, I'M READY TO GO HOME,
I'M GOING TO LEAVE, AND THE
OFFICER SAYS NO?

WHAT SHOULD HAVE HAPPENED AT
THAT TIME AS A MATTER OF LAW?

>> AT THAT TIME THE
INTERROGATION SHOULD HAVE
CEASED, AND THEY SHOULD HAVE
SCRUPULOUSLY HONORED HIS RIGHT
TO END THE INTERROGATION.

THAT'S REQUIRED UNDER MIRANDA
AND MOSLEY.

>> HE WAS IN CUSTODY AT THAT
POINT IN TIME.

>> YES.

>> SO THEY SHOULD HAVE JUST
ENDED IT RIGHT THERE?

>> THEY SHOULD HAVE ENDED IT,
AND THEY COULD NOT HAVE RESUMED
IT UNTIL AT THE VERY LEAST --

>> OR GOTTEN ANOTHER WAIVER OF
SOME KIND.

>> RENEWED WARNINGS WERE GIVEN,
YES.

>> AT THAT POINT WHEN THEY SAID,

NO, RANDALL, NOW --

>> YOU'RE UNDER ARREST.

>> -- YOU'RE UNDER ARREST FOR

THE MURDER, YOU'RE NOT FREE TO

GO, AND WE ARE NOW GOING TO, YOU

KNOW, HEAR YOUR WARNING.

YOU KNOW, SO THAT'S, TO ME, WHAT

WAS CALLED FOR IN THIS

SITUATION.

>> RIGHT.

THAT'S CORRECT.

>> WELL, LET ME ASK YOU THIS.

ISN'T IT POSSIBLE THAT SOMEONE

IN THE SITUATION SUCH AS THE

DEFENDANT WHO DISCOVERS THAT HIS

DESIRE TO GO IS NOT GOING TO BE

HONORED BECAUSE THEY'VE DECIDED

HE IS GOING TO BE IN CUSTODY

MIGHT WANT TO TALK?

AND SO THE FACT THAT YOU WANT TO

GO DOES NOT NECESSARILY MEAN YOU

DON'T WANT TO TALK IF YOU'RE NOT

ALLOWED TO GO, SEE WHAT I'M

SAYING?

>> I DON'T --

>> BECAUSE HE, YOU KNOW, HE
NEVER SAYS HE DOESN'T WANT TO
TALK.

AND SO WE'RE INFERRING THAT HE
DID NOT WANT TO TALK.

I MEAN, WHAT YOU'RE ASKING US TO
DO IS TO INFER THAT HE WANTED,
HE WAS INVOKING HIS RIGHT OF
SILENCE BECAUSE HE WAS INVOKING
HIS RIGHT TO LEAVE.

CORRECT?

>> THAT'S CORRECT.

>> OKAY.

BUT ISN'T IT, ISN'T IT THE CASE
THAT SOMEONE WHO INVOKES THE
RIGHT TO LEAVE AND THEN FINDS
OUT THERE IS NO SUCH RIGHT IN
THESE CIRCUMSTANCES BECAUSE HE'S
BEEN TAKEN INTO CUSTODY MAY WISH
TO CONTINUE TALKING GIVEN THE
CIRCUMSTANCE THAT HE'S NOT GOING
TO BE ALLOWED TO GO?

>> YOUR HONOR, THERE'S NO FIFTH
AMENDMENT OR MIRANDA RIGHT TO
LEAVE.

THE FIFTH AMENDMENT RIGHT IS THE
RIGHT TO BE SILENT, NOT TO
INCRIMINATE YOURSELF OR TO CUT
OFF QUESTIONING ONCE AN
INTERROGATION HAS BEGUN.

SO THE RIGHT WE'RE TALKING ABOUT
IS THE RIGHT TO CUT OFF
QUESTIONING.

HE --

>> I UNDERSTAND THAT.

>> HE INVOKES THAT RIGHT WHEN HE
SAID, "I'M DONE" --

>> WELL, HE DID HAVE, IT MAY NOT
BE A MIRANDA RIGHT --

>> THAT'S HIS RIGHT.

>> PEOPLE HAVE A RIGHT NOT TO BE
HELD IN CUSTODY UNLESS THE
POLICE HAVE A JUSTIFICATION FOR
THAT.

AND, YOU KNOW, WE TALK ABOUT THE
DIFFERENT CIRCUMSTANCES WHERE
THAT'S JUSTIFIED, BUT CERTAINLY
THERE ARE TIMES WHEN PEOPLE DO
HAVE A RIGHT TO SAY, THIS IS
OVER, AND I'M LEAVING, AND YOU

DON'T HAVE A RIGHT TO MAKE ME
STAY.

AND HE WASN'T IN THAT SITUATION
AS IT TURNED OUT BECAUSE THEY
HAD PROBABLE CAUSE TO HOLD HIM.

BUT IT JUST SEEMS TO ME THAT
THERE IS A DISTINCTION BETWEEN
SAYING I WANT TO LEAVE AND A
DISTINCTION IN SAYING I DON'T
WANT TO TALK ANYMORE.

>> WELL, I THINK LEGALLY THERE
IS NO DISTINCTION.

THE ASSERTION TO LEAVE MEANS IN
THIS CASE, I DON'T WANT TO BE
INTERROGATED ANYMORE.

>> WELL, IT COULD -- THIS IS A
MIXED QUESTION OF FACT AND LAW,
AND WE HAVE THE VIDEOTAPE.

THERE COULD BE, AGAIN, IF YOU'VE
GOT THE 40-YEAR-OLD ATTORNEY
SAYING, I'M READY TO LEAVE, IS
NOT, I'M STOPPING, YOU KNOW?
OBVIOUSLY, WHEN YOU LEAVE YOU'RE
NOT GOING TO TALK ANYMORE.

SO, BUT ISN'T IT REALLY THE

CIRCUMSTANCES OF THIS CASE AND
THE AGE OF THIS DEFENDANT AND
THE FACT THAT IT WAS REPEATED
SEVERAL TIMES AND WASN'T HONORED
WHEN HE'S SAYING, "I'M DONE,"
AND THEY'RE TRYING TO SAY WHAT
DO YOU MEAN BY THAT, I MEAN, YOU
KNOW, ARE YOU, YOU HAVE A RIGHT
TO REMAIN SILENT.

ARE YOU SAYING THAT YOU DON'T
WANT TO TALK ANYMORE?
YOU'D EITHER SAY AT THAT POINT,
NO, I'M GOING TO TALK IF YOU'RE
NOT GOING TO LET ME LEAVE, BUT I
THINK THE OBVIOUS ISSUE WAS
THERE AN OBLIGATION ON THE
OFFICERS WHO ONCE HAVING HIM
ENSNARED INTO THIS BY PRETENDING
THAT HE WAS FREE TO LEAVE AND
THEN CONFRONTING HIM WITH
EVIDENCE THAT THEY HAD AT THE
POINT THEY TOLD HIM HE WAS FREE
TO LEAVE SAY NOW YOU'RE NOT FREE
TO LEAVE.

SO IT'S REALLY THEIR, THE

QUESTION IS WHETHER THEY HAD AN
OBLIGATION EITHER TO STOP THIS
INTERROGATION OR TO CLARIFY
THERE WHAT IS PROBABLY NOT
UNEQUIVOCAL BUT AT LEAST MAKE
SURE INSTEAD OF "I'M DONE" MEANS
YOU CAN'T LEAVE, YOU DON'T WANT
TO TALK ANYMORE.

>> YEAH.

IT IS THE OBLIGATION OF THE
POLICE.

AGAIN, TO ME THIS IS A CLEAR,
UNEQUIVOCAL ASSERTION THAT HE
DOESN'T WANT TO BE INTERROGATED
ANYMORE.

I DON'T SEE HOW YOU COULD LOOK
AT IT --

>> IS THERE LEGAL AUTHORITY?

ARE THERE CASES OUT THERE FROM
THE U.S. SUPREME COURT OR THIS
COURT THAT REQUIRES SOME KIND OF
RE-MIRANDIZING OF SOMEONE WHO
WAS GIVEN A MIRANDA WARNING, GOT
A WAIVER WHILE NOT IN CUSTODY
BUT NOW ONCE IN CUSTODY THEY'RE

REQUIRED TO RE-MIRANDIZE IN SOME
WAY?

>> I THINK THAT'S BASIC FIFTH
AMENDMENT LAW.

ONCE YOU'VE BEEN ARRESTED, YOU
HAVE TO BE GIVEN THE MIRANDA
WARNINGS.

IN THIS CASE I CITED IN MY
BRIEF --

>> ARE THERE ANY CASES IN THESE
FACTUAL CIRCUMSTANCES?

>> COSELL IS VERY SIMILAR.

THEY BROUGHT SOMEONE IN ON
EXECUTIVE ABUSE, TOLD THE PERSON
THEY WEREN'T UNDER ARREST, FREE
TO LEAVE.

WHEN THE QUESTIONING GOT HEATED,
THE PERSON IN THIS CASE MANAGED
TO STORM OUT OF THE ROOM.

THEY WENT AND GRABBED HER,
BROUGHT HER BACK INTO THE ROOM.

I THINK AT THAT POINT TOLD HER
SHE WAS UNDER ARREST AND
PROCEEDED TO INTERROGATE HER
WITHOUT RENEWING THE MIRANDA

WARNINGS.

THAT'S AN IOWA SUPREME COURT
CASE WHICH, I THINK, IS RIGHT ON
POINT.

AND THAT CASE HAS -- OBVIOUSLY,
TRYING TO LEAVE OR LEAVING THE
ROOM WAS AN INDICATION OF THE
RIGHT TO END THE QUESTIONING.

I THINK THE SAME THING APPLIES
HERE.

>> THIS IS EVEN STRONGER BECAUSE
THEY SAID, "I'M DONE."

IT'S NOT ONLY THE PHYSICAL ACT
OF TRYING TO LEAVE, THIS PERSON
SAID, "I'M DONE."

>> "I'M DONE."

>> ABOUT FIVE TIMES.

>> I DON'T KNOW WHAT ELSE HE
COULD BE DONE WITH.

UM, I SUPPOSE IF HE SAID, UM,
JUST GOING BACK TO YOUR
QUESTION, JUSTICE CANADY, I'M
NOT REALLY SURE WHERE YOU'RE
GOING, I SUPPOSE IF HE SAID, YOU
KNOW, I'M READY TO LEAVE, BUT IF

YOU GUYS WANT TO COME WITH ME
I'LL CONTINUE TALKING, THAT
WOULD BE A DIFFERENT SCENARIO.
THAT WASN'T ANYTHING AT ALL WHAT
HAPPENED HERE.

>> WELL, IF WE SAY THE LEGAL
STANDARD IS, AGAIN, IT'S NOT
THAT YOU HAVE TO SAY MAGIC
WORDS, SO IF WE LOOK AT MIRANDA
CASES LIKE IN CUERVO WHICH
EVERYONE SEEMS TO CITE, WHAT DID
HE -- HE SAID -- WHAT DID HE SAY
THERE?

I DON'T WANT TO -- HE SAID
SOMETHING, I DON'T WANT TO
DECLARE ANYTHING.

>> RIGHT.

>> IS THAT WHEN YOU SAY, WHEN HE
SAID, "I'M DONE," WHAT IT
CONVEYED, IS IT AN OBJECTIVE
STANDARD TO A REASONABLE OFFER
THAT HE DID NOT WANT TO SPEAK
ANYMORE?

>> YES.

>> THAT'S REALLY WHAT, AND

THAT'S A QUESTION OF FACTS IN
LAW AS TO WHETHER UNDER THE
CIRCUMSTANCES THAT'S WHAT IT
CONVEYED.

>> YES.

IT'S AN OBJECTIVE STANDARD.

AND, YOU KNOW, THIS CASE IS
TROUBLING TO ME NOT ONLY BECAUSE
THE POLICE CONTINUED
INTERROGATION, BUT AFTER THEY
ARRESTED HIM THEY WENT BACK
OUTSIDE, AND THE PROSECUTOR
APPARENTLY WAS STANDING THERE.
AND I GUESS THEY WENT TO ASK HIM
WHERE'D HE GO, THEY WENT RIGHT
BACK IN AND CONTINUED THE
INTERROGATION.

SO EVEN THE PROSECUTORS IN SOME
OF THESE CASES, NOT JUST THE
POLICE, DON'T SEEM TO UNDERSTAND
THAT A DEFENDANT HAS THE RIGHT
TO CUT OFF QUESTIONING.

AND THE ARGUMENT BELOW THE
PROSECUTOR ARGUED, HE DIDN'T ASK
FOR A LAWYER.

WE ALL KNOW THAT'S A DIFFERENT
RIGHT INVOLVED.

SO THIS IS THE SECOND CASE THIS
MONTH I'VE COME UP HERE ON THIS
ISSUE FROM THE SAME COUNTY, AND
I HAVE THE CASE RIGHT NOW WHEN
THE SUSPECT SAID 42 TIMES I WANT
TO GO BACK TO, "I WANT TO GO
BACK TO MY CELL, TAKE ME BACK TO
MY CELL," 42 TIMES.

>> I GUESS ONE OF THE THINGS
THAT'S TROUBLING HERE IS THE
POLICE ACTUALLY SAID SOMETHING
TO THE EFFECT OF YOU DON'T, YOU
CAN'T LEAVE, AND IF I HAVE TO
SIT ON YOU OR SOMETHING TO THAT
EFFECT.

WHAT IS IT?

IF I HAVE TO FORCE YOU TO SIT
DOWN, WE'LL DO THAT.

OR SOMETHING TO THAT EFFECT.

>> THEY ALSO SAID, AND "I CAN'T
TALK TO YOU ANYMORE."

WHICH TO ME SUGGESTS THEY KNEW
THEY COULDN'T TALK TO HIM

ANYMORE.

SO I JUST, I FIND THIS -- I

THINK IT MEANS I HAVE THREE

MINUTES LEFT, IS THAT CORRECT?

>> AND 17 SECONDS.

>> OKAY.

I THINK I BETTER SAVE THOSE

THREE FOR REBUTTAL THEN.

THANK YOU VERY MUCH.

>> PLEASE THE COURT, STEVE WHITE

REPRESENTING APPELLEE.

THERE ARE A NUMBER OF

PRELIMINARY FACTS THAT OPPOSING

COUNSEL MENTIONED THAT JUST FOR

THE RECORD I'D LIKE TO INDICATE

THE STATE --

[INAUDIBLE]

VIEW OF THOSE PARTICULAR FACTS

IN TERMS OF HIS AGE, JUSTICE

PARIENTE ALREADY CLARIFIED THAT.

OPPOSING COUNSEL INDICATES THAT

SHE DIED, AND THESE ARE RELEVANT

TO OTHER ISSUES THAT WE HAVEN'T

TALKED ABOUT, THAT THE VICTIM

DIED WITHIN SECONDS.

I BELIEVE THE EVIDENCE IS THAT SHE CALLED 911, PROTRACTED STRUGGLE, NUMEROUS, NUMEROUS INJURIES TO THE VICTIM OVER A PERIOD OF TIME.

THE MEDICAL EXAMINER SAID IT COULD BE SECONDS TO MINUTES IN TERMS OF LOOKING AT THE AUTOPSY.

>> THERE WERE DEFENSIVE WOUNDS, RIGHT?

>> YES, SIR, YOUR HONOR.

>> AND ASPIRATED BLOOD.

>> I'M SORRY, YOUR HONOR?

>> ASPIRATED BLOOD.

>> ASPIRATED BLOOD.

THE 911 CALL, THE POLICE ARRIVING AND FINDING HER BODY. SO SHE CALLED THE POLICE AT SOME POINT WHEN SHE WAS ABLE TO, AND IN THE MEANTIME, HE HAD CUT OUT THE CROTCH AREA OF HER PANTIES AND CUT HER BRA AND EXPOSED HER BREASTS IN THAT HALF HOUR OR SO.

>> THERE DID APPEAR THAT THE VICTIM HAD BEEN PLACED IN A

POSED POSITION, CORRECT?

>> THEY HAD, THERE WAS A
TESTIMONY FROM ONE OF THE
OFFICERS THAT IT LOOKED POSED,
MEANING UNNATURAL.

>> UNNATURAL.

>> AND, CERTAINLY, THE VIOLENT
RAPE, THEY TOOK TIME TO USE
SCISSORS AND CUT A NICE LITTLE
SWATH --

>> I DON'T THINK THERE'S, I
DON'T BELIEVE THERE'S ANY
EVIDENCE OF THAT IN TERMS OF
PATTERNS OF BEHAVIOR, YOUR
HONOR.

BUT IN THIS PARTICULAR CASE --

>> IT IS THE POSITION ONLY FROM
WHICH THE SEXUAL INNUENDO COMES
IN, CORRECT?

>> THE CUT BRA, THE EXPOSED
BREASTS, THE CUT CROTCH AREA,
HIM TELLING A NEIGHBOR THAT HIS
UNDERSTANDING THAT SHE WAS
VIOLATED, HIS --

>> IN HIS CONFESSION HE SAID HE

DID THAT TO SORT OF THROW OFF
WHAT HAD HAPPENED.

>> THAT DOESN'T MAKE ANY SENSE
TO ME.

HOW WOULD POSING A SEXUAL
ASSAULT OR AN ATTEMPTED SEXUAL
ASSAULT THROW SUSPICION OFF OF
HIM?

IT JUST INTERNALLY DOESN'T MAKE
ANY SENSE.

PLUS, HE SAYS IN ANOTHER PART OF
HIS STORY THAT HE WAS IN A RAGE.

THAT DOES -- WITHIN THIS HALF
HOUR HE WAS SUPPOSEDLY IN THIS
RAGE, AND HE'S METHODICALLY
STAGING EVERYTHING.

THAT DOESN'T WASH.

>> HOW ABOUT GOING INTO THE
CIRCUMSTANCES OF THE
INTERROGATION.

I THINK THAT'S REALLY THE --

>> YES, YES, YOUR HONOR.

>> -- THAT'S REALLY THE GUTS OF
THIS CASE.

>> YEAH.

>> YOU'RE A FINE LAWYER.

>> THANK YOU, JUDGE.

>> YOU COME HERE TO US, AND WE

TALK ABOUT CASES, AND HAVE YOU

EVER SEEN WHERE IT'S JUST

REPLETE LIKE THIS, "I'M DONE,

I'M DONE," I WANT TO LEAVE, I'M

DONE?

IS THERE ANOTHER CASE SOMEPLACE?

I MEAN, THE CLOSEST, TO ME,

SEEMS TO BE, YOU KNOW, I DON'T

WANT TO DECLARE.

THAT, TO ME, IS MORE AMBIGUOUS

THAN HERE.

>> I DON'T WANT TO DECLARE

ANYTHING, CUERVO, AND THAT WAS

RIGHT AT THE BEGINNING OF THE

INTERROGATION AS, I BELIEVE --

>> WELL, THAT'S NOT THE CRITICAL

FACTOR.

YOU CAN STOP INTERROGATION

ANYTIME, CORRECT?

CAN'T YOU?

>> YES, YOUR HONOR.

IF YOU'RE CLEAR.

IF YOU'RE UNEQUIVOCAL AND
UNAMBIGUOUS.

>> I UNDERSTAND.

I WANT YOU TO TELL US AND TELL
THE PEOPLE HOW IS IT THAT THE
ENGLISH LANGUAGE WHEN SOMEBODY'S
BEING INTERROGATED, NOT A LAWYER
SAYS I'M DONE, I'M DONE, I WANT
TO GO, I'M DONE, WHAT DO YOU
MEAN BY THAT?

"I'M DONE"?

>> YOUR HONOR, CAN I DROP BACK
JUST A SECOND REGARDING MR.--

>> SURE, IT'S YOUR ARGUMENT.
YOU CAN TAKE IT ANYWHERE YOU
WANT.

[LAUGHTER]

>> OF COURSE, I DO WANT TO TALK
ABOUT EXACTLY WHAT HAPPENED AND
THE SEQUENCE OF EVENTS, AND I
HAVE THE FULL TRANSCRIPT OF --

>> WE DO TOO.

WE DO AS WELL.

>> YES, YOUR HONOR.

FOR THE RECORD I'D LIKE TO TAKE

IT BLOW BY BLOW, BUT AS A
PRELIMINARY MATTER IN TERMS OF
MR. DEVINEY'S MENTAL STATE, HE
TOLD THE POLICE, LOOK, I DON'T
HAVE ANY MENTAL PROBLEMS, ANY
PHYSICAL PROBLEMS.

HE DID READ THE MIRANDA RIGHTS
FORM.

HE BRAGGED ABOUT -- LOOK, THIS
ISN'T MY FIRST RODEO, I THINK
ARE THE WORDS HE USED.

HE BRAGGED ABOUT KNOWING HIS
MIRANDA RIGHTS AND THEN
INITIALED EACH RIGHT AFTER HE
READ IT AND SIGNED THE FORM.

SO FROM THE REASONABLE OFFICER'S
PERSPECTIVE, WHICH IS WHAT WE'RE
TALKING ABOUT HERE, MR. DEVINEY
FULLY UNDERSTOOD HIS RIGHTS, AND
MR. DEVINEY SAID I WILL MAKE
SURE I'M CLEAR AS TO WHAT I'M
SAYING.

AND THE OFFICER AT WHAT POINT IS
WRITING THINGS DOWN, AND DEVINEY
SAYS, WHY ARE YOU WRITING THINGS

DOWN?

I WANT TO MAKE SURE I CLARIFY
EVERYTHING THAT YOU SAY.

>> AND HE DOESN'T -- I MEAN,
THAT THIS IS GOING TO BE THE
CRITICAL FACTOR.

HE DOESN'T KNOW HE'S BEING
VIDEOTAPED.

>> THAT'S CORRECT.

>> THERE'S NO REQUIREMENT THAT
HE HAD TO BE, AND WE'RE VERY
PLEASED -- YOU KNOW, IT'S VERY
HELPFUL --

>> DOOR TO DOOR.

>> BUT WHAT, AS YOU GO -- WE
HAVE THE TRANSCRIPTS SO, YOU
KNOW, WE HAVE THE INTIMATIONS
AND WHATEVER.

SO WE CAN GO AS TO WHAT HAPPENED
FIRST OR SECOND, BUT IN THE END
WE'LL BE ABLE TO LOOK AT THAT.

WHAT CONCERNS ME AND EACH TIME
WHETHER IT'S A BLAME/LOSS, YOU
KNOW, IF THE QUESTION IS WHAT'S
THE POLICE DOING, IT'S FINE THAT

THEY CAN DO WHAT THEY NEED TO DO
TO ELICIT A CONFESSION BECAUSE
THAT'S WHAT WE EXPECT THE POLICE
TO DO.

WHAT CONCERNS ME HERE IS THAT
THEY BRING HIM IN KNOWING
WHETHER IT'S AN UNCONFIRMED
MATCH --

>> IT'S --

[INAUDIBLE]

MATCH.

>> THEY HAD THE PROSECUTOR
THERE.

>> I'M NOT SURE ABOUT THAT.

>> AND THEY CALL THIS DEFENDANT,
THIS 18 OR ALMOST 19-YEAR-OLD
DEFENDANT, A YOUNG DEFENDANT --

>> VERY EXPERIENCED IN THE
SYSTEM.

>> -- THAT THEY ARE GOING TO,
THEY'RE JUST QUESTIONING HIM
LIKE THEY'RE QUESTIONING ALL THE
PEOPLE, THE WITNESS TO TRY TO
FIND OUT WHAT HAPPENED.

THAT'S WHAT THEY'RE SAYING.

YOU'RE NOT -- YOU CAN --

>> IN FACT, HE'S IN THE FRONT
SEAT OF THE PATROL CAR.

>> RIGHT.

SO HE'S VERY COMFORTABLE THAT
THEY HAVE NOTHING ON HIM.

AND SO HE'S GOING ALONG, YEAH,
I'LL SIGN MY RIGHTS, YEAH,

EVERYTHING'S FINE AND, YEAH, I
WANT TO HELP YOU OUT.

AND AN HOUR INTO IT THEY SAY,
WELL, AND CAN WE TAKE THIS DNA
SWAB?

SO THEY TAKE -- SURE, SURE, YOU
CAN TAKE IT.

THEY WALK OUT, TALK TO THE
PROSECUTOR --

>> WELL, I'M NOT SURE ABOUT
THAT.

>> TALK TO SOMEBODY AND TWO
SECONDS LATER THEY COME BACK AND
SAY THIS IS NOT AN
INVESTIGATION, WE'VE CONFIRMED
YOU KILLED HER.

SO ALL OF A SUDDEN NOW WE'VE GOT

A DIFFERENT CIRCUMSTANCE, AND
IT'S THAT THAT PARTICULARLY
CONCERNS ME ABOUT HOW THEN HE
STARTS TO SAY, I WANT TO LEAVE,
I WANT TO LEAVE, I'M DONE.

>> WELL, INITIALLY, HE JUST
DENIES IT.

HE SAYS THERE'S NO WAY, "HELL,
NO," QUOTE-UNQUOTE.

>> I UNDERSTAND.

WHERE IS THAT TACTIC WHICH IS
THAT WHEN YOU GIVE MIRANDA AND
TELLING SOMEBODY THEY'RE NOT
UNDER ARREST THEY'RE FREE TO
LEAVE WHICH, YOU KNOW, WE
USUALLY SAY MIRANDA SHOULD BE
GIVEN WHEN YOU'RE IN CUSTODY,
BUT THEY'RE TELLING THEM, NOPE,
YOU'RE NOT, BUT WE'RE GOING TO
GIVE YOU THESE RIGHTS.

THEN WHEN THEY ARE ACTUALLY
READY TO ARREST HIM, THEY DON'T,
THEY COME BACK AND, AND THEN
THAT'S WHEN THEY START THIS, AND
THAT'S WHEN HE SAYS, "I'M DONE."

AND I JUST, I GUESS THE QUESTION
THERE IS WHY WOULDN'T A
REASONABLE POLICE OFFICER UNDER
THAT CIRCUMSTANCE WHERE THEY'RE
NOW CONFRONTING HIM WITH
EVIDENCE THAT HE DID IT, WHY HE
FELT HE WAS LULLED INTO THIS
FALSE SENSE OF SECURITY, THEY
HAD NO FURTHER EVIDENCE, SO THAT
WAS NOT TRUE.

>> I DON'T THINK THE RECORD'S
DEVELOPED ON THAT, JUDGE.

>> WELL, IT WOULD BE PRETTY HARD
TO THINK IN -- HOW MANY MINUTES
BETWEEN WHEN THEY SWABBED HIM
AND THEY CAME BACK IN?

>> IT WASN'T HOURS, BUT IT WAS
MINUTES.

>> AND ARE YOU SAYING THERE'S
SOME DNA THING THAT COULD HAVE
CONFIRMED --

>> I DON'T KNOW.

I MEAN, THE RECORD'S NOT
DEVELOPED BECAUSE THAT WASN'T
BROUGHT UP.

>> OKAY.

>> THAT I CAN RECALL IN THE
TRIAL.

>> OKAY.

SO THAT CIRCUMSTANCE THAT IS YOU
GIVE -- INSTEAD OF GIVING THE
MIRANDA WARNING TO THE POINT
THEY COME BACK IN, THEY GIVE THE
MIRANDA WARNING AT THE POINT
HE'S TOLD HE'S NOT UNDER ARREST,
THEN WHEN HE ACTUALLY SHOULD BE
UNDER ARREST, THEY DON'T GIVE
THE MIRANDA WARNING?

>> IT'S 24 MINUTES LATER,
ACCORDING TO MY NOTES, JUDGE.
THE DNA GETS STARTED AT ONE HOUR
AND 50 SECONDS, AND THE
CONFRONTATION STARTED AT ONE
HOUR AND 24 MINUTES.

>> BUT EVEN IF THEY DID
SOMETHING WITH THAT SWAB THAT
CONFIRMED WHAT HAD GONE, WHAT
THEY HAD GOTTEN FROM THE --

[INAUDIBLE]

AT THAT POINT AND WHEN THEY TELL

HIM HE CAN'T LEAVE, HE IS NOW

UNDER ARREST, ISN'T HE?

>> WHEN THEY TELL HIM HE CANNOT

LEAVE, HE IS DETAINED AND IN

CUSTODY.

HE DOESN'T WANT TO BE.

>> WAIT A MINUTE.

>> THAT'S WHAT HE SAID.

>> BUT THE POLICE HAVE NOW TOLD

HIM, IN ESSENCE, THAT HE'S UNDER

ARREST.

IF YOU'RE UNDER ARREST, WHAT

IS -- AND THE POLICE WANT TO

INTERROGATE YOU, WHAT IS THE

POLICE SUPPOSED TO DO?

>> THEY HAD ABOUT AN HOUR BEFORE

THAT --

>> WAIT A MINUTE.

BUT AN HOUR BEFORE THAT HE

WASN'T UNDER ARREST.

WHEN YOU'RE UNDER ARREST, WHAT

IS THE POLICE SUPPOSED TO DO IF

THEY WANT TO INTERROGATE YOU?

>> WELL, THEY HAD BEEN

INTERROGATING THAT WHOLE TIME.

THIS IS ONE SEQUENCE.

ARE YOU SAYING THAT THE POLICE

HAVE A --

>> I'M JUST SAYING IF SOMEONE IS

UNDER ARREST, ANYONE IS UNDER

ARREST AND THE POLICE WANT TO

INTERROGATE THEM, WHAT DOES THE

POLICE HAVE TO DO?

>> INITIALLY, TO GIVE HIM HIS

MIRANDA RIGHTS.

HE WAS GIVEN HIS MIRANDA RIGHTS

WITHIN AN HOUR BEFORE THIS.

THERE'S NO QUESTION --

>> IS THERE ANY LAW, IS THERE

ANY LAW ONE WAY OR THE OTHER ON

A REQUIREMENT TO RE-MIRANDIZE?

>> NO, YOUR HONOR.

I MEAN, THE QUESTION IS WHETHER

HE WAS GIVEN HIS MIRANDA RIGHTS

AND KNEW THEM AT THE TIME THAT

THE POLICE WERE INTERROGATING

HIM, WHETHER IT WAS BEFORE OR

AFTER THE ARREST.

AND THEY HAD JUST GIVEN HIM HIS

MIRANDA RIGHTS ABOUT AN HOUR

BEFORE.

AND HE READ THEM TO HIM, HE TOLD
THE POLICE THAT HE FULLY
UNDERSTOOD HIS MIRANDA RIGHTS.

>> SO YOU CAN GIVE -- SO YOUR
ARGUMENT THAT YOU CAN GIVE
SOMEONE THEIR MIRANDA RIGHTS
WHEN YOU TELL THEM THEY ARE NOT
UNDER ARREST, AND THAT TAKES
CARE OF THEIR MIRANDA RIGHTS
WHEN THEY ARE UNDER ARREST?

>> IF IT'S ONE EVENT, YOUR
HONOR, AND IT'S CLEAR HE
UNDERSTOOD HIS RIGHTS -- THE KEY
ISN'T WHETHER WE HAVE A
TECHNICALITY OF, BAM, YOU'RE
UNDER ARREST, AND WE HAVE TO
REREAD THE MIRANDA RIGHTS, THE
KEY IS WERE YOU GIVEN YOUR
MIRANDA RIGHTS, AND DID YOU
UNDERSTAND THEM IN THE SEQUENCE
OF EVENTS IN THE INTERVIEW?
IT'S TO TAKE THE EDGE OFF OF THE
INTERROGATION.

THE SUSPECT KNOWING THAT HE HAS

NOT TALKED AND THAT HE HAD, HE
KNEW THAT RIGHT.

I'M SORRY, JUSTICE.

>> WHAT HAPPENS WITH THESE
CASES, THE UNDERLYING CURRENT IS
PERHAPS OUR EXPECTATION OR
PERHAPS THE STATE'S EXPECTATIONS
THAT THE PEOPLE RESPOND
APPROPRIATELY TO THE QUESTION OF
MIRANDA.

I MEAN, IDEALLY, IDEALLY THIS
18-YEAR-OLD SAID, ALL RIGHT,
OFFICER, I AM HEREBY EXERCISING
MY RIGHT TO REMAIN SILENT --

>> I DO NOT WANT TO TALK TO YOU.

>> I DO NOT WANT TO TALK TO YOU.

THAT WOULD HAVE BEEN THE IDEAL
SITUATION.

CAN WE POSSIBLY EXPECT THAT FROM
AN 18, 19-YEAR-OLD?

IF YOU HAVE CHILDREN THAT AGE,
AND I'VE BEEN THERE, THEY

COMMUNICATE IN A COMPLETELY
DIFFERENT LANGUAGE THAN I DO.

AND HERE THIS YOUNG GUY HERE'S

SAYING, "I'M DONE, I'M DONE, I'M
DONE."

THAT MAY BE HIS WAY OF
COMMUNICATING, I DON'T WANT TO
TALK TO YOU ANYMORE.

>> THAT'S THE OPERATIVE WORD,
YOUR HONOR.

>> BUT WE EXPECT THEM TO SAY, "I
DON'T WANT TO TALK TO YOU
ANYMORE."

>> THE OPERATIVE WORD THAT YOUR
HONOR JUST SAID, IT "MAY BE."

IF HE MIGHT HAVE BEEN EXERCISING
HIS RIGHT TO REMAIN SILENT, THEN
THAT'S AMBIGUOUS, AND THE POLICE
ARE NOT REQUIRED TO STOP
QUESTIONING.

THE FACT -- LET'S LOOK AT THE
TOTAL CONTEXT JUST TO GET BACK
TO THE TRANSCRIPT AND LOOK AT
THE TOTAL CONTEXT AS YOUR HONORS
HAVE ARE POINTED OUT.

WHEN HE SAID, "I'M DONE," THE
OFFICER -- NO MORE
INTERROGATION.

THE OFFICER JUST ASKED, "WHAT DO YOU MEAN?"

>> NO, I'M SORRY, LET'S WORK WITH THE ACTUAL RECORD.

>> YES, SIR.

>> HE WANTS TO KNOW WHY YOU DID IT BECAUSE IT'S A QUESTION, NOT A STATEMENT.

AFTER HE TELLS HIM HE'S READY TO GO HOME, HE SAYS, "I HAVEN'T DONE ANY OF THESE THINGS," AND THE NEXT QUESTION WAS BEFORE THE DETECTIVE STARTS, "SHE TOUCHED YOU, SHE --

[INAUDIBLE]

BEFORE HE GOES THROUGH THAT MONOLOGUE WITH ALL THE ALLEGATIONS HE SAYS WHY WOULD YOUR DNA BE ON HER, PROMPTED BY A QUESTION.

HE SAYS, "I'M DONE, I'M DONE."

WHAT DOES THAT MEAN?

THE DEFENDANT SAYS, "I'M DONE."

THE DETECTIVE SAYS, WHAT DOES IT MEAN, "I'M DONE"?

HE SAYS, I'M DONE, I DIDN'T DO
THIS, I WANT YOU ALL TO SHOW ME
THAT I DID NOT -- AND HE SAYS,
"WE TOLD YOU, RANDALL," AND HE
SAYS, "I DIDN'T DO IT."

BUT THEN THE NEXT ONE IS A
QUESTION, "WHY WOULD YOUR DNA BE
ON HER?"

SO IT WAS A QUESTION, NOT A
STATEMENT.

>> BUT IN BETWEEN, YOUR HONOR,
WHEN HE SAID, "I'M DONE, I'M
GOING" -- I'M LOOKING AT THE
UNREDACTED TRANSCRIPT IN VOLUME
FOUR -- HE SAYS THAT, THE POLICE
CLARIFY IT, THEN THE DEFENDANT
SAYS -- AFTER HE SAYS, "SHOW ME
THAT I DID IT IF I DID IT --

>> RIGHT.

>> AND THEN THE DETECTIVE SAYS,
"WE TOLD YOU" --

[INAUDIBLE]

THAT'S AN AFFIRMATIVE STATEMENT.

THAT'S NOT A QUESTION.

AND THEN THE DEFENDANT SAID, "I

DIDN'T DO IT."

BASICALLY, THE THREE THEMES TO
WHAT THE DEFENDANT SAYS IN THIS
SERIES OF EVENTS HERE, ONE IS
HE'S ASSERTING THAT I DIDN'T DO
IT.

OVER AND OVER AND OVER AGAIN, I
DID NOT DO IT.

THAT'S NOT INVOKING THE RIGHT TO
REMAIN SILENT.

HE'S ALSO SAYING, I WANT TO KNOW
WHAT YOU HAVE AGAINST ME.

HE REPEATEDLY SAYS THAT, "SHOW
ME."

IN FACT, THEY READ THE DNA
E-MAIL TO HIM AT ONE POINT
BEFORE --

>> THE PROBLEM, THOUGH, THAT AT
THE POINT IF THERE'S ONE
UNEQUIVOCAL INDICATION AND THEY
CONTINUE TO INTERROGATE HIM,
THAT'S NOT CORRECT.

AND WHAT I WANT TO ASK YOU IS
THIS -- I MEAN, THAT'S NOT
CORRECT BECAUSE HE SAYS

SOMETHING ELSE AFTERWARDS, IT'S
OKAY.

WHAT ABOUT THE COMMENT THAT
AFTER WHEN HE KEPT ON SAYING
SEVERAL TIMES, "I'M DONE," WHICH
THOSE OF US THAT HAD CHILDREN IN
THE PAST THAT WERE YOUNGER, "I'M
DONE" USUALLY MEANS YOU'RE IN A
CONVERSATION WITH YOUR CHILD,
THEY GO, "I'M DONE," AND OUT THE
DOOR THEY GO.

>> BUT THEY ASK YOU TO --

[INAUDIBLE]

>> WHY DIDN'T THEY SAY, LISTEN,
WE CAN'T TALK TO YOU, OKAY?

WE CAN'T TALK TO YOU.

THEY SAID THAT IN THE
TRANSCRIPTS.

WHAT WERE THEY SAYING IF THEY
DIDN'T KNOW HE HAD ALREADY

INVOKED HIS RIGHT TO SILENCE?

WHY WOULD THEY SAY, WE CAN'T
TALK TO YOU?

IS THAT AN ACCURATE STATEMENT
THAT THE DETECTIVE MADE?

>> THAT'S --

>> [INAUDIBLE]

>> THE CONTEXT FOR THAT, YOUR HONOR, IS, I BELIEVE, OPPOSING COUNSEL DISCUSSED THAT IN HER REPLY BRIEF.

THE CONTEXT FOR THAT IS YOU LOOK AT THE PAGE OR TWO BEFORE THAT, AND BY THE WAY, THE THIRD -- TO GET BACK TO THE POINT THAT I WAS GOING TO FINISH -- THE THIRD THEME IS THE DEFENDANT DIDN'T WANT TO BE ARRESTED, AND THAT'S NOT AN INDICATION OF A RIGHT TO REMAIN SILENT.

SO HE HAD THREE THEMES TO WHAT HE WAS DISCUSSING WITH THE DETECTIVES AROUND THESE EVENTS.

THE DETECTIVE DID SAY WE CAN'T TALK TO YOU AT ONE POINT.

RIGHT BEFORE THAT IF YOU READ THE FEW PAGES BEFORE THAT, THEY'RE TRYING TO LEAVE THE ROOM.

AND YOU WATCH THE VIDEO.

IN FACT, THE DOOR OPENS AT ONE
TIME, I THINK THE TRANSCRIPT
SHOWS -- SO THE DETECTIVES ARE
TRYING TO LEAVE, IN FACT, ONE
DETECTIVE GOES OUT OF THE
PICTURE IN THE VIDEO.

AND THERE'S CONTINUOUS
INTERACTION AND FINALLY
DETECTIVE SAYS, LOOK, WE CAN'T
TALK TO YOU, AND THEY LEAVE THE
ROOM.

IT WASN'T THE DETECTIVE'S
OPINION WHICH, BY THE WAY, THIS
IS A REASONABLE OFFICER TEST, AN
OBJECTIVE TEST AND NOT A
SUBJECTIVE TEST ANYWAY.

>> WELL, IT COULD JUST MEAN THEY
HAD SOMETHING ELSE TO DO.

>> YES, SIR.

I MEAN, BASICALLY, THEY WERE
JUST LEAVING THE ROOM.

AND THE INTERACTION WAS
CONTINUOUS.

WE CAN'T TALK TO YOU, AND THEY
LEFT.

IT DOESN'T MEAN THE DETECTIVE
CONCLUDED HE HAD -- IN FACT,
RIGHT AROUND THAT SAME TIME ONE
OF THE DETECTIVES SAID, HEY,
WE'LL BE BACK IN A FEW MINUTES
TO TALK TO YOU SOME MORE.

>> JUST AS YOU THINK "I'M DONE"
COULD MEAN "I'M THROUGH TALKING
WITH YOU," A REASONABLE
INTERPRETATION OF WHAT THEY'RE
SAYING IS THAT I CAN'T TALK TO
YOU BECAUSE YOU'VE SAID YOU WANT
TO STOP TALKING.

>> THEY DIDN'T SAY THAT.

>> I KNOW THEY DIDN'T SAY THAT
JUST AS HE DIDN'T SAY I'M DONE
AND I DON'T WANT TO TALK TO YOU,
BUT AN INTERPRETATION OF IT.

>> HE MIGHT HAVE BEEN INVOKING
HIS RIGHT TO --

>> THE INTERPRETATION OF WHAT
THEY ARE SAYING WHEN THEY SAID,
"I CAN'T TALK TO YOU."

I MEAN, THERE ARE A COUPLE OF
INTERPRETATIONS I BELIEVE THAT

YOU CAN MAKE OF THAT STATEMENT.

>> AND THAT'S CRUCIAL, YOUR
HONOR.

>> YOU ARE MAKING AN
INTERPRETATION OF WHAT --

>> THINK THAT FALLS IN THE
CATEGORY OF CAN'T HAVE THE CAKE
AND EAT IT TOO.

>> THAT MAKES IT AMBIGUOUS, YOUR
HONOR, AND IT'S NOT AN
IMPLICATION OF INVOKING SILENCE.

AS SOON AS YOU SAY IT MIGHT HAVE
BEEN SOMETHING ELSE TO A
REASONABLE OFFICER --

>> I'M SAYING THAT THAT
OFFICER'S STATEMENT MIGHT HAVE
BEEN SOMETHING ELSE.

I WASN'T REFERRING TO THE "I'M
DONE."

>> OH, I'M SORRY.

I MISINTERPRETED YOU.

I'M SORRY.

>> UNEQUIVOCAL TO ME.

>> BUT THE OFFICER DID CLARIFY
IT.

I MEAN, LET'S GO BACK TO THE
INITIAL EXCHANGE WHICH I KNOW
WE'RE BEATING THE DEAD HORSE
HERE, BUT THE OFFICER, THE
OFFICER DID CLARIFY IT.
THE OFFICER WAS REASONABLE.
HE SAID WHAT DO YOU MEAN BY --
AND THE DEFENDANT ASSERTS HIS
INNOCENCE AND WANTS TO SEE WHAT
THE POLICE HAVE.
AND THAT'S EXACTLY WHAT THEY DO
DOWN THE ROAD.
I MEAN, THE WHOLE CONTEXT OF
THIS, AGAIN, IS THE DEFENDANT IS
ASSERTING HIS INNOCENCE, HE
WANTS TO KNOW WHAT THE POLICE
HAVE, AND HE DOESN'T WANT TO BE
ARRESTED.
THAT'S THE THEME RUNNING THROUGH
THIS WHOLE TRANSCRIPT.
HE'S, HE DOES NOT EVER SAY EVEN
THOUGH HE'S EXPERIENCED IN THE
SYSTEM TO THIS REASONABLE
OFFICER, HE NEVER SAYS I DO NOT
WANT TO TALK TO YOU.

>> YOU'VE SAID THAT A COUPLE OF
TIMES.

WHAT WAS HIS EXPERIENCE WITH THE
SYSTEM?

>> WELL, HE BRAGGED ABOUT HAVING
A FELONY WITH A 25-YEAR MAXIMUM
ON IT.

IN FACT, HE ALSO MADE THE --

>> WAS THAT ONE OF THE
AGGRAVATING FACTORS, A PRIOR
VIOLENT FELONY?

>> NO, YOUR HONOR.

BUT THAT WAS PENDING.

>> EXCUSE ME?

>> I'M SORRY.

HE SAID THAT THAT WAS PENDING,
STILL PENDING, THE DEFENDANT
DID.

>> WELL, DO YOU KNOW -- I MEAN,
IS THERE, I MEAN, EXCEPT FOR
SAYING HE WAS BRAGGING, YOU
KNOW, THAT HE'S EXPERIENCED,
HE'S, AGAIN, YOU KNOW, 18,
ALMOST 19-YEAR-OLD THAT GOT A
SPECIAL DIPLOMA THAT HAS

LEARNING DISABILITIES AND,
APPARENTLY, HAD A PRETTY
HORRIBLE CHILDHOOD.

>> YEAH.

THAT'S IN THE PENALTY PHASE
SUBSTANCE.

>> I -- BUT I DON'T KNOW -- BUT
IN TERMS OF WHAT WE'RE LOOKING
AT, LET ME ASK YOU THIS.

DOES IT MATTER AT ALL IN LOOKING
AT WHAT WAS GOING ON HERE THAT
HE IS -- I WAS GOING TO SAY 19.

>> HE WAS 19 FOR ALL PRACTICAL
PURPOSES.

>> WELL, HE'S 18.

I MEAN, IF HE WAS 17 AND 11
MONTHS AND A FEW DAYS, HE WOULD
NOT BE HAVING THE DEATH PENALTY.
SO THE DAYS MATTER.

>> BY THE WAY, HIS DNA WAS IN
THE SYSTEM BECAUSE OF A PRIOR
SCRAPE WITH THE LAW.

I'M SORRY.

>> DOES IT MATTER THAT HE'S 18
VERSUS 28 AT ALL?

>> IN TERMS OF THIS STATEMENT?

NO, YOUR HONOR.

I MEAN, TO THE OFFICER SAYING --

WE GET BACK TO, "I'M DONE," WHAT
DOES IT MEAN.

IF IT MIGHT MEAN THAT HE WAS
INVOKING THE RIGHT TO COUNSEL,
THAT'S NOT UNAMBIGUOUS AND NOT
UNEQUIVOCAL.

IF IT COULD MEAN TO A REASONABLE
OFFICER THAT HE JUST DIDN'T WANT
TO BE ARRESTED AND HE WANTS TO
KNOW WHAT THE POLICE HAVE --

>> WELL, HE SAID SEPARATELY,
"I'M LEAVING."

THE "I'M DONE," IS I'M DONE WITH
THIS INTERROGATION.

I'M DONE TALKING.

>> HE DIDN'T SAY THAT.

>> WHAT ELSE WOULD "DONE" BE?

>> EXACTLY WHAT HE SAID WHEN HE
EXPLAINED IT.

HE SAID, I'M GOING, I WANT TO
LEAVE, I WANT TO GO HOME AND I
DIDN'T DO IT, AND IF I DID DO

IT, SHOW ME WHAT YOU'VE GOT

WHICH IS EXACTLY WHAT THEY

FOLLOWED UP WITH.

THEY DID EXACTLY WHAT HE

EXPLAINED HE MEANT.

THE POLICE FOLLOWED UP ON --

THEY BROUGHT THE --

>> THE PROBLEM WITH THAT

ARGUMENT IS THAT EVEN AFTER THAT

WHEN THEY FOLLOWED UP WITH HIS

"SHOW ME WHAT YOU'VE GOT," HE

THEN LATER SAYS, "I'M DONE, I'M

READY TO GO, WHY CAN'T I LEAVE?"

I MEAN, I CAN UNDERSTAND --

>> WELL.

>> I CAN UNDERSTAND YOUR

ARGUMENT ABOUT THE "I'M DONE"

AND "SHOW ME WHAT YOU'VE GOT."

BUT AFTER THAT IT'S NOT A "SHOW

ME WHAT YOU'VE GOT," IT'S AN

"I'M DONE, I WANT TO LEAVE, WHY

CAN'T I LEAVE?"

>> THAT'S ON PAGE 568.

AND LET'S LOOK WHAT HAPPENED

RIGHT AFTER THAT.

HE SAYS, "I'M DONE, CAN I GO

HOME, CAN I LEAVE?"

AND ACTUALLY GRABS HIS KEYS IF

YOU LOOK AT THE VIDEO.

HE WANTS TO GO.

AND THEN THE OFFICER SAYS, "NO."

THAT'S IT.

AND THEN THE DETECTIVE SAYS,

"NO."

IN ANY EVENT, DEVINEY SAYS,

"WHY?"

"I DIDN'T DO THIS S-H-I-T,

Y'ALL," AND THEN THE DETECTIVE

CONFRONTS HIM AGAIN, THEY

CONTINUE THE INTERVIEW.

THE BEST EVIDENCE OF WHAT HE

MEANT IS, AGAIN, THESE THREE

THEMES KEEP REPEATING

THEMSELVES.

THE DEFENDANT SAYS, I DIDN'T DO

IT.

HE WANTS TO KNOW WHAT THE POLICE

HAVE ON HIM, AND HE DOESN'T WANT

TO BE ARRESTED.

THOSE ARE THE THREE THEMES.

NONE OF THOSE THEMES ARE AN
UNEQUIVOCAL, UNAMBIGUOUS RIGHT
TO SILENCE.

>> DO YOU THINK BY LOOKING AT
THE VIDEOTAPE YOU GET THAT
FLAVOR BETTER, OR HAVING LOOKED
AT THE TRANSCRIPTS AND SEEN THE
VIDEOTAPE, MR. WHITE, WILL THAT
COME --

>> I'VE LOOKED AT THE VIDEO SO
MUCH.

[LAUGHTER]

>> DOES THAT COME ACROSS THAT HE
WAS NEVER REALLY STOPPED
TALKING, HE WAS, YOU KNOW, WHAT
YOU JUST SAID, THAT "I'M DONE,"
I'M DONE TALKING, THAT IT WAS
PRETTY CLEAR --

>> FROM MY PERSPECTIVE, I NEVER
SAW ANYTHING THAT INDICATED TO
ME THAT HE WAS EVOKING
UNEQUIVOCALLY AND UNAMBIGUOUSLY
HIS RIGHT -- HE WANTED TO GO.
SO YOU THINK THE VIDEOTAPE WOULD
HELP --

>> I WOULD HIGHLY RECOMMEND
VIEWING THE VIDEOTAPE AS WELL
AS, OF COURSE, COMPARING IT WITH
THE TRANSCRIPT IN VOLUME FOUR.
AND BY THE WAY, THE BOLD AND THE
PARENTHESES IN THAT TRANSCRIPT
ARE DISAGREEMENTS BETWEEN
COUNSEL AT THE TRIAL LEVEL AS TO
WHAT THE TRANSCRIPT IS SHOWING
THAT THE UNBOLDED AND
UNPARENTHESES, I GUESS YOU'D
SAY, THINGS IN THAT TRANSCRIPT
ARE THINGS THAT THE TRIAL
COUNSEL AGREED ON.

>> BUT AS TO THE CRITICAL, "I'M
DONE," THERE ISN'T ANY DISPUTED
WORDS --

>> IT'S -- NOTHING JUMPED OUT AT
ME, JUSTICE PARIENTE.

I MEAN, THE BOTTOM LINE IS
WHETHER I'M DONE IS CLEAR,
UNEQUIVOCAL, UNAMBIGUOUS RIGHT
TO REMAIN SILENT.

AND WHEN HE REPEATS, "I'M DONE,"
THE POLICE DON'T FOLLOW UP ON

ANYTHING UNTIL THE DEFENDANT
SAYS WHY AND REINITIATES THE
CONVERSATION AGAIN.

SO THE DEFENDANT, AGAIN, KEEPS
PERSISTING.

HE'S TRYING TO GET INFORMATION
FROM THE POLICE JUST AS MUCH AS
THE POLICE ARE TRYING TO GET
INFORMATION FROM HIM.

THAT'S A COMMON THEME, TRYING TO
FIND OUT WHAT THE POLICE HAVE.

HE ASKS THE POLICE TO READ THE
FDLE E-MAIL TO HIM.

AND IT'S AFTER THAT THE POLICE
READ THE E-MAIL THAT THE
DEFENDANT FINALLY CONFESSES.

YOU MADE A MISTAKE, THE POLICE
SAY, YOU MADE A MISTAKE,
RANDALL, AND WE CAUGHT IT.

YOU LEFT YOUR DNA ON HER.

THEN HE FINALLY CONFESSES, WHAT
ARE WE GOING TO TELL H, THE
LONGTIME FRIEND OF THE VICTIM?

>> WHAT WAS IT --

>> I'M SORRY.

>> HE ENDS UP WHEN HE CONFESSES,
HE SAYS SHE STARTED ASKING ABOUT
MY CHILDHOOD AND THAT, YOU KNOW,
I WENT OFF.

WHAT IS IT -- AND REALIZE THIS
WOULD BE IN THE PENALTY PHASE --

>> YES, MA'AM.

>> -- ABOUT HIS CHILDHOOD THAT
WAS INVOLVED IN THIS CASE?

>> I DON'T, I DON'T -- I MEAN --
HE SAID IT WAS SOMETHING --

>> IT DOESN'T COME OUT IN THE
PENALTY PHASE AS TO WHAT --

>> I THINK HE HAD A DISTRESSED
CHILDHOOD, YOUR HONOR, BUT I
DON'T --

>> HE DIDN'T FOCUS ON THAT?
AND THAT'S ALL RIGHT.

>> BUT, I MEAN, THE JUDGE DID
FIND THAT HE HAD A DEPRIVED
CHILDHOOD OR SOMETHING LIKE THAT
AS A MITIGATOR.

>> I THOUGHT IT WAS PRETTY -- I
MEAN, SOMETHING WITH HIS PARENTS
HAD ACTUALLY BEEN CONVICTED OF

KILLING THE FIRST CHILD AND THEN
AFTER THEY GOT OUT OF PRISON
THEY HAD HIM AND HIS BROTHER,
AND IT LOOKED LIKE HIS BROTHER
WAS CONSTANTLY --

>> I HONESTLY DON'T RECALL.

RIGHT OFF THE TOP OF MY HEAD.

I'M DRAWING A BLANK.

BUT IN ANY EVENT, AGAIN, I WOULD
ENCOURAGE THE COURT TO REVIEW
THE VIDEO FOR ITSELF, THE
UNREDACTED VERSION.

>> WHY SHOULDN'T THEY HAVE
GOTTEN CONSTRUCTION ON EXTREME
EMOTIONAL DISTURBANCE MITIGATOR?

>> YOUR HONOR, THAT'S ISSUE
THREE.

AND I THINK IT'S IMPORTANT TO
LOOK AT THE SEQUENCE OF EVENTS
IN THE TERMS OF WHAT HAPPENED.
THE DEFENSE DID INITIALLY
REQUEST THAT JURY INSTRUCTION.
NOW, THIS WAS BEFORE THE PENALTY
PHASE EVIDENCE HAD BEEN
INTRODUCED THOUGH.

THE ONLY EVIDENCE THAT THE
DEFENSE SPECIFICALLY TENDERED TO
JUSTIFY THAT JURY INSTRUCTION
WAS THE DEFENDANT'S STATEMENT TO
THE POLICE.

THE PROSECUTOR CITED DUNCAN
WHICH THE STATE ALSO DISCUSSES
IN ITS BRIEF, THAT THE
DEFENDANT'S SELF-SERVING
STATEMENT OUT OF COURT ALONE
ISN'T SUFFICIENT TO JUSTIFY THE
INSTRUCTION.

THE JUDGE RULED --

>> WELL, DOESN'T THE JUDGE
ACTUALLY FIND SOME KIND OF
MENTAL OR EMOTIONAL DISTURBANCE?

>> I'M GOING TO GET TO -- YES,
YOUR HONOR.

BUT IT'S IMPORTANT TO SEE HOW WE
GOT THERE.

OPPOSING COUNSEL ARGUES, THE
REPLY BRIEF ARGUES IT WAS
INCONSISTENT.

HER FINDING OF SLIGHT WEIGHT
EMOTIONAL DISTURBANCE, SHE

ARGUES IT'S INCONSISTENT WITH
HER REFUSAL TO GIVE THE JURY
INSTRUCTION.

IT'S NOT.

BECAUSE THIS IS HOW WE GOT
THERE.

OKAY, THE DEFENSE PRESENTS THE
DEFENSE SELF-SERVING STATEMENT
TO ATTEMPT TO JUSTIFY -- AND WE
GOT SOME OTHER, BUT IT DOESN'T
SPECIFY ANYTHING.

JUDGE SAYS, BASICALLY, THAT'S
NOT ENOUGH.

I'M NOT GOING TO GIVE THE JURY
INSTRUCTION.

THEN THE DEFENSE PRESENTS ITS
MITIGATION EVIDENCE.

INCLUDED IN THAT WAS NOT ONLY
THE GUILT PHASE DEFENDANT
STATEMENT, BUT ALSO EVIDENCE
THAT DEFENDANT HAD BEEN TAKING
ZOLOFT, THAT HE WAS UPSET ABOUT
SOMETHING THE VICTIM SAID ABOUT
HIS DAD.

YOU HAD EVIDENCE PRESENTED THAT

WASN'T PRESENTED AT THE RULING.

THE DEFENSE WAS ABLE TO ARGUE
THAT.

THE JURY WAS ENTITLED, YOU KNOW,
DID CONSIDER THAT EVIDENCE AS
MITIGATION.

AS ARGUED BY THE DEFENSE.

WELL, NOW, AFTER THIS ADDITIONAL
EVIDENCE WE HAD THE SPENCER
HEARING, AND WE HAD THE
SENTENCING --

[INAUDIBLE]

THE DEFENSE AGAIN ARGUES THIS
OTHER EVIDENCE, AND YOU LOOK AT
THE TRIAL CODE SENTENCING
ORDER --

>> YOU MEAN THERE WAS OTHER --
WHEN YOU SAY "OTHER EVIDENCE,"
ARE YOU SAYING THERE'S OTHER
EVIDENCE OF THE MENTAL AND
EMOTIONAL DISTURBANCE AT THE
SPENCER HEARING?

>> YES, YOUR HONOR.

>> AT THE, IN THE PENALTY PHASE
EVIDENCE AFTER THE RULING.

>> RIGHT.

I UNDERSTAND THAT.

BUT OTHER EVIDENCE, WAS THAT
OTHER EVIDENCE FROM ITS SISTER
HEARING TOO?

>> YES, YOUR HONOR.

THE FATHER TESTIFIED MORE ABOUT
THE ZOLOFT AT THE SPENCER
HEARING, SO THERE WAS ADDITIONAL
EVIDENCE ABOUT THE ZOLOFT AT THE
SPENCER HEARING AFTER THE
RULING.

AND SO THE JUDGE WHEN SHE DOES
THE ORDER, SHE CONSIDERS NOT
JUST WHAT WAS PRESENTED BEFORE
THE PENALTY PHASE AT THE TIME
SHE MADE THE RULING, BUT ALSO
THIS OTHER EVIDENCE.

AND, HENCE, SHE CONSIDERED IT
AND GAVE IT SLIGHT WEIGHT.

SO THE TWO ARE NOT INCONSISTENT.
WHAT SHE WAS PRESENTED AT THE
TIME OF THE RULING WAS DIFFERENT
FROM WHAT SHE HAD BEEN PRESENTED
AT THE TIME SHE DID THE ORDER.

>> WAS THERE ANY ADDITIONAL
REQUEST AFTER THE ACTUAL PENALTY
PHASE THAT THE TRIAL JUDGE GIVES
THE INSTRUCTION?

>> THE SENTENCING MEMO BY THE
DEFENSE, YES, YOUR HONOR, THE
SENTENCING MEMO AS WELL AS THE
SPENCER HEARING, THEY ARGUED NOT
JUST THE DEFENDANT'S
SELF-SERVING STATEMENT, BUT THIS
OTHER EVIDENCE AS WELL.

WHICH THEY DID NOT PRESENT TO
THE JUDGE IN GETTING THE RULING
INSTRUCTIONS.

AND ALSO, BY THE WAY, AT THE END
OF THE JURY INSTRUCTIONS THE
DEFENSE EXPRESSLY SAID THAT, FOR
THE RECORD, WE HAVE NO
OBJECTIONS TO THE INSTRUCTIONS
AS GIVEN.

I MEAN, EXPRESSLY NOT PRESERVING
THAT PARTICULAR ISSUE.

AND I SEE I'M DOWN TO 19
SECONDS.

THANK YOU, YOUR HONORS.

THE STATE WOULD REQUEST THAT YOU
AFFIRM THE CONVICTION AND
SENTENCE.

THANK YOU.

>> UM, I WOULD JUST URGE THE
COURT TO WATCH THE VIDEOTAPE.

UM, I THINK IT SUPPORTS OUR
POSITION.

UM, I'D ALSO LIKE TO ASK THE
COURT TO READ THE MEDICAL
EXAMINER'S TESTIMONY IN FULL.

UM, THE MEDICAL EXAMINER SAID
SOME OF THOSE BRUISES COULD BE
DEFENSIVE WOUNDS, THAT THEY
COULD BE LOTS OF OTHER THINGS.

WE HAD A DISAGREEMENT ABOUT SOME
OF THAT TESTIMONY, AND I WOULD
JUST ASK THE COURT TO READ IT.

AND ALSO TO, WHEN LOOKING AT THE
ESPECIALLY HEINOUS AND CRUEL

AGGRAVATING FACTOR, TO TAKE NOTE
OF THE FACT THAT THIS HAS TO BE
PROVED BEYOND A REASONABLE

DOUBT, AND MOST OF THE
SCENARIOS -- OF WHICH THERE WERE

MANY HYPOTHESIZED BY THE
STATE -- WERE PURE SPECULATION
AND WEREN'T SUPPORTED BY THE
EVIDENCE.

UM, I THINK IT MAKES PERFECT
SENSE THE DEFENDANT AFTER
KILLING THIS INDIVIDUAL WHO HE,
OBVIOUSLY, CARED ABOUT, UM, IN A
RAGE WOULD TRY TO DO SOMETHING
TO MAKE IT LOOK LIKE A STRANGER
MURDER.

AND I THINK THAT'S EXACTLY WHAT
HE DID.

UM, AND --

>> JUST ON THAT.

>> -- THE EVIDENCE SUPPORTS
THAT --

>> I CAN, IF YOU KILL SOMEONE IN
A RAGE, YOU MIGHT SAY, WELL, I'M
GOING TO MAKE IT LOOK LIKE IT
WAS A ROBBERY.

BUT WHY WOULD WE HAVE TO ACCEPT
THE DEFENDANT'S STATEMENT THAT
HE DID IT TO THROW THE POLICE
OFF WHEN IT'S AN OBVIOUSLY

SEXUAL POSITION SHE WAS FOUND

IN?

IN OTHER WORDS, ISN'T THAT

ENOUGH FOR THE JURY --

>> WELL, I DISAGREE BECAUSE THAT

HAPPENED AFTER HER DEATH.

WHATEVER HE DID AFTER HER DEATH

IS NOT RELEVANT.

SHE WAS DEAD ALREADY.

>> WELL, DID THEY --

>> THE MEDICAL EXAMINER AND BOTH

OF THE CRIME TECHNICIANS, THE

POLICE SAID SHE WAS KILLED

OUTSIDE --

>> WAS HE CONVICTED OF ATTEMPTED

SEXUAL BATTERY?

>> WE DON'T KNOW WHAT THE JURY

FOUND BECAUSE THE INSTRUCTION

WAS AS TO FELONY MURDER, AND IT

WAS GIVEN EITHER HE COMMITTED A

BURGLARY OR ATTEMPTED SEXUAL

BATTERY.

>> SO WHAT WAS THE STATE'S

EVIDENCE THAT THE ATTEMPTED

SEXUAL BATTERY OCCURRED BEFORE

THE DEATH?

>> THERE WAS NO EVIDENCE.

THE PROSECUTOR DIDN'T EVEN ARGUE

THERE WAS AN ATTEMPT BEFORE

DEATH.

THE ONLY THING THE PROSECUTOR

ARGUED WAS HE MAY HAVE GONE OVER

TO DO SOMETHING SEXUALLY TO HER.

HE MAY HAVE WANTED TO DO

SOMETHING SEXUALLY TO HER.

THE REAL -- THERE WAS NO

EVIDENCE.

THE CLOTHES WERE REMOVED AFTER

SHE WAS BROUGHT INSIDE AND AFTER

SHE WAS DEAD.

THERE'S NO EVIDENCE OF IT AT

ALL.

>> I FIND IT REALLY, I'M HAVING

A HARD TIME TRYING TO PICTURE.

NOW, THE VICTIM HERSELF WAS THE

ONE THAT CALLED 911?

>> THAT'S NOT CLEAR EITHER, YOUR

HONOR.

THE 911 CALL CAME IN AROUND

10:00 --

>> AND THE POLICE GOT THERE

AT --

>> 10:30 OR 10:35.

>> OKAY.

SO IS THE SCENARIO SUPPOSEDLY
FROM THE TIME OF THE CALL TO THE
TIME THE POLICE GOT THERE IS
WHEN THIS STAGING ALL WENT ON?

>> WELL --

>> I FIND THIS A LITTLE BIT
DIFFICULT --

>> WELL, IT'S NOT CLEAR ABOUT
THE 911 CALL.

THE ONLY THING I CAN -- IT
DOESN'T MAKE SENSE THAT SHE
CALLED AND THEN HE KILLED HER
BECAUSE THE PHONE WAS IN THE
HOUSE.

HE KILLED HER OUTSIDE.

WHY WOULD HE TAKE HER OUTSIDE
AND KILL HER, THEN BRING HER
BACK INSIDE?

THAT MAKES NO SENSE AT ALL.

UM, THE ONLY THING I CAN SUGGEST
IS THAT MAYBE SHE HEARD A NOISE.

THE LIGHTS WERE ON, THE TV WAS
ON, SHE MAY HAVE BEEN IRONING.
THE IRONING BOARD WAS SET UP.
SHE HEARD A NOISE, SHE MADE A
CALL, AND THEN SHE REALIZED IT
WAS HER NEIGHBOR AT THE DOOR, SO
SHE HUNG UP.

HE CAME IN, THEY WALKED OUTSIDE.

HE WAS ALREADY UPSET.

HIS MOTHER SAID HE WAS UPSET

THAT EVENING FROM A

CONFRONTATION WITH HIS FATHER.

SHE WAS A FRIEND, SHE COUNSELED

PEOPLE.

HE WAS TALKING TO HER, SAID SHE

STARTED TALKING ABOUT HIS

CHILDHOOD, AND HE GOT VERY UPSET

WHEN PEOPLE SAY, "I KNOW HOW YOU

FEEL."

HE GOT UPSET SEVERAL TIMES

DURING THE INTERROGATION WHEN

THAT CAME UP.

THAT TRIGGERED THINGS FOR HIM,

AND APPARENTLY SHE SAID

SOMETHING LIKE THAT TO HIM, AND

HE LOST IT.

BUT SHE WAS KILLED OUTSIDE.

AND THE EVIDENCE SUGGESTS IT

HAPPENED VERY QUICKLY.

AND, AGAIN, I ASK YOU TO READ

THE MEDICAL EXAMINER'S

TESTIMONY.

THE JUGULAR VEIN WAS SLICED.

THERE WAS A RAPID BLOOD LOSS.

THERE WERE MAYBE A COUPLE OF

BREATHS SHE TOOK, AND SHE WAS

GONE.

>> BUT THERE WAS ALSO THE

FRACTURE OF THE --

[INAUDIBLE]

BONE INDICATING STRANGULATION.

AND WAS THAT NOT --

>> THAT HAPPENED AFTER DEATH.

>> AFTER DEATH, TOO, YOU SAY?

>> AFTER SHE WAS CUT, YES.

>> BUT, WAIT A MINUTE, AFTER SHE

WAS CUT OR AFTER HER DEATH?

THERE'S TWO DIFFERENT ISSUES.

>> HE SAID AFTER CUT AND

PROBABLY AFTER DEATH BECAUSE

AFTER SHE WAS CUT, SHE ONLY TOOK
TWO BREATHS.

>> OKAY.

I THOUGHT THERE WAS SOME, SOME
QUESTION AS TO WHETHER THERE WAS
MANUAL STRANGULATION AFTER THE
CUT.

>> IT WAS --

>> AFTER THE CUT.

>> IT WAS UNCLEAR HOW IT
HAPPENED, SOME COMPRESSION
THERE.

UM --

>> IF YOU COULD SUM UP IN ABOUT
30 SECONDS.

>> OKAY.

THANK YOU, YOUR HONOR, I'M DONE.

[LAUGHTER]

>> DOES THAT MEAN YOU DON'T WANT
TO TALK TO US ANYMORE?

[LAUGHTER]

>> UH-OH.

>> OR YOU'RE LEAVING?

>> YOU THINK YOU CAN LEAVE?

[LAUGHTER]

>> THE COURT WILL NOW TAKE A TEN

MINUTE RECESS.

>> ALL RISE.