

>> All rise.

Hear ye, hear ye, hear ye.

The Supreme Court is now in  
session.

All those who have cause to plea  
draw near and you shall be  
heard.

God save these United States,  
the great state of Florida and  
this honorable court.

>> Ladies and gentlemen, the  
Supreme Court of Florida.

Please be seated.

>> Good morning and welcome to  
the Florida Supreme Court.

The first case on our docket  
this morning is Martin versus  
the state of Florida.

>> Thank you Your Honor.

May it please the court.

I am Nada Carey.

>> Speak up a little bit if you  
could.

>> I am Nada Carey and I  
represent Mr. Martin the

appellate in this case.

Martin was convicted of  
first-degree murder of Jacey  
McWilliams in March of 2008.

After a jury recommendation, he  
was sentenced to death.

We raise the issues in the  
brief.

I tend to focus argument today  
on first issue parts one and two  
involving the interrogation of  
Mr. Martin.

We have raised two issues here.

The first issue involves  
violation of his rights to  
silence.

During the interrogation, after  
about an hour of being  
interrogated during which  
Mr. Martin gave exculpatory  
statements, he told the  
detective I have nothing really  
to talk about.

>> If we go back there, at the  
beginning of the interrogation,

was he administered his Miranda warnings?

>> He was given his Miranda warnings.

>> At that point he gave them unequivocally?

>> He signed the warning.

>> But you are not challenging his initial waiver of his rights?

>> No Your Honor.

I believe he signed their rights and he responded to questions.

>> So don't we have looking at Cuervo, a distinction in the initial waiver when it may be equivocal and needs some clarification?

When you are now talking, that you say something in response to a question an hour in, and this was in response to a question.

If Davis and Owens, don't those all deal with the fact that subsequently, that you have to

be clear that you no longer wish  
to respond to questioning?

>> That's correct, Your Honor.

At that point in time the  
assertion must be clear and  
unequivocal.

>> The question was asked at  
that point, what was the  
question to Mr. Martin and what  
was his response?

>> Okay there was no question,  
there was a broad exultation for  
him to get it off his chest, to  
confess.

There was no specific question  
here and that is what makes this  
case distinguishable from Owen.

>> Do we look at it in context  
or do we look at one preceding  
question?

Do we look at a line of  
questions and responses or do we  
just look at one line and  
immediately responding with  
someone saying I don't want to

talk about that or I have said  
all I'm going to say about that?

>> It has its own particular  
meaning and in some cases the  
court has said the about that  
clearly refers to a specific  
question like in Owen.

Where did you put the bicycle?

I don't want to talk about that.

That is not what we have in this  
case.

>> It seems as though, and you  
put forth your argument to  
refute this.

It seems as though they are  
going through a questioning  
period inquiring about the  
location as to any knowledge or  
where is she and that kind of  
questioning.

Is that a fair statement up to  
this point that this is what  
they were doing initially?

>> Yes, they are asking him --

>> Right and then they started

asking to the extent of where it could refound and they kept going over the same kind of questioning.

Not necessarily accusing him of a crime or the murder but trying to locate the person and then the response was I don't know any more about that.

I don't want to talk about that anymore.

So would you start there?

If I'm looking at it, thinking that, tell me your response is, why that is wrong thinking under the cases that are out there?

>> I am not sure if I understand.

>> Let me make sure that you do.

As I am going through reading the colloquy that is going on here, this ongoing questioning, trying to locate a young woman and there are questions and responses to it.

They get to a point where they say I have told you all I can and I don't want to talk about that any more.

Is that a fair characterization of where they were?

>> Yes.

>> Then to my mind, reading the case law, it would seem that is equivocal so I would like to hear your rebuttal response to that that no, that is not equivocal.

That is clear and you would rely on that.

>> He didn't say, I don't want to talk about that.

He said, I have nothing to talk about.

This was after he told them he already told his story and now he is telling them I have nothing really to talk about.

It is not in response to a specific question.

It is in response to confess,  
get it off your chest, you will  
feel better.

He is nothing really to talk  
about.

He has been told he can decide  
at any time you can exercise  
your right to not answer any  
questions and I don't know what  
could be clearer than to say I  
have nothing to say.

>> I don't want to answer any  
more questions.

>> That would also be clear.

>> But saying I have nothing  
more to tell you puts you under  
a lot of pressure, which is what  
he said and I have nothing to  
tell you about the location of  
the body.

>> Well he didn't say that  
though Your Honor.

Confess, get it off your chest,  
cooperate.

He said I have really nothing

more to talk about.

>> And then what happened in sequence?

Now he had said that.

He went on.

How much longer did he talk?

>> Well, the detective

immediately argued that statement and said well, but your body says something different.

The detective argued with him.

He says yes, because I'm under a lot of pressure.

I think maybe three more pages of the exhorting him to tell the truth, to confess to tell them where the body was, he said hey I already gave you my answer.

This is a 21-year-old uneducated kid who never faced an interrogation before.

>> How long after that --

>> I think this was about an hour into it and he confessed I

think the entire interrogation  
was 3.5 hours long.

>> So it was at the end, another  
two hours of questioning?

>> Yes.

>> Did he answer during that  
time?

>> He continued to say he knew  
nothing about it.

A total of 42 times.

>> If someone is saying, can  
help you out because I don't  
know, I'm innocent, I mean if  
they said I'm going to confess  
to you immediately they wouldn't  
have this so that is not really  
that unusual.

The whole idea is that somebody  
starts out saying I didn't do it  
and by the end they go, well I  
did do it.

So we have to decide is what  
happened between night didn't do  
it and I did do it is a  
violation of either Miranda or

involuntary confession is your  
other point?

>> Right.

I think the issue has to do with  
you know, what does the  
layperson,, and adjudicate --  
uneducated person have to say to  
indicate he doesn't want to talk  
anymore?

That's his right.

>> I believe this was the  
unequivocal statement.

And equivocal statement --

But you don't even have to do  
that as I understand case law  
now.

So what did the police do so  
that you say this was an  
equivocal statement?

>> Well the law is clear.

It has to be unambiguous and  
unequivocal.

There is nothing equivocal about  
it.

Equivocal means hesitating.

>> The two statements, I'd rather not talk about it, I don't want to talk about it and in Owen, the equivocal --

>> In what case?

>> In Owen.

>> A response to, did you plan this?

Did you plan to go in this house and what did you do with the bicycle?

Those are very specific questions about the circumstances.

There was no specific question here and there was no about that.

It was simply, I have nothing to talk about and the case I cited, six or seven of them were very semantically similar statements were the court said you know, this is an assertion of a right to silence.

>> Were those after Davis?

>> Yes, yes.

>> First let's start with our court.

I wasn't able to find anything where a similar statement -- as Justice Quince is asking you, this is first of all unequivocal.

I think you agree that we consider and this is a mixed question, being equivocal?

>> I agree with that.

>> What case is similar to this?

I thought Owen was similar.

What case is similar to this that holds it to be unequivocal?

>> There is no case in this court, but there are dozens, Reed case, Christopher.

I have got nothing else to say,

I have nothing to say.

Really, I ain't got nothing to say.

That is Martin.

I think that is the District

court case in Florida.

At nothing to say.

I have nothing to say.

I am not saying any more.

[INAUDIBLE]

>> Well Smith and Martin and

Pierre are all District court

cases in Florida.

>> Are you talking about the

Court of Appeals?

The last statement that you read

was, read that last one.

I'm not saying --

>> I'm not saying any more.

>> Do you not see that statement

is a stronger statement than the

statement I am not saying any

more which is I am not talking

anymore?

>> I think it might be a little

stronger, but I still think this

court and the U.S. Supreme Court

has said there aren't any magic

words.

There is no statement the

defendant has to say.

They simply have to indicate  
they don't want to talk.

>> At that point the rule of law  
would eat at the police could  
not even ask a clarifying  
question.

You are saying you don't want to  
continue this interrogation.

They would just have to cease  
the interrogation?

>> I think of the defendant says  
I have nothing to talk about,  
that is crystal clear unless the  
context indicates otherwise.

There are cases where a  
defendant has said something  
like that, I have nothing to  
talk about, I don't want to talk  
and then they continue talking.

>> Did they continue talking  
here?

>> No, no.

>> What happened between in our  
and he said it was another two

hours.

He didn't say anything in those  
two hours?

>> What I mean is when they  
continued talking immediately  
following the assertion like in  
Pierre -- yes.

>> Continuing to talk without  
any questioning from the police.

>> Exactly.

>> Your assertion is then if we  
say this is an unequivocal  
statement, the police cannot say  
anything else and they have have  
to.

>> Right, the police have to  
stop.

He said he doesn't want to talk.

Other cases some bald saying I  
don't want to talk about this  
but my girlfriend was there and  
the other guy really did it,  
that's equivocal.

>> He began to talk on his own.

That is what you think is the

state of the law?

>> Yes, yes and there are cases  
that support that.

The Pierre cases the case in  
Florida.

The District Court of Appeal  
case in Florida and other cases.

In this case he made the  
statement and he sat mute.

He didn't say anything.

The detective immediately  
confronted him with it.

>> Well it doesn't look that  
way.

Your body seems to be saying  
something different.

Well I'm under a lot of  
pressure.

That is the exact type of  
coercion that Miranda and his  
right to say I don't want to  
talk anymore.

>> Is there a difference between  
saying, I don't want to talk and  
saying I really have nothing to

talk about?

>> I don't think so.

>> There is not?

>> I don't think so.

>> It seems a difference to me is, when you say I have nothing to talk about you are indicating you have no knowledge or you are referring to content or I didn't do anything that I would have to talk about.

So that seems a much different thing than to say, I don't want to talk period about anything.

>> Here is the problem.

And less you accept the words at face value are getting into games with language.

>> I don't know that we are though because really, we want to and I could say strongly -- I guess I'm saying trying to understand the ordinary meaning, and I agree that the idea is -- I would not fault the police for

not understanding what he was saying was, I am now the equivalent of I am now invoking my rights.

To me it is much more likely that it is more the idea that I am innocent, why do you keep on asking me these questions, which as I said before and I'm not an expert in interrogation but I think the parent interrogation start out with the defendant who is telling the police that they don't know anything about it, why are you bringing me in? I am innocent and I have nothing to tell you.

If we said that we would have to cut off all interrogations because they are proclaiming their innocence saying I don't know about this.

I've already told you, I don't know where my girlfriend's body is.

I have nothing to tell you about it.

>> I understand your point but again, you have rephrase what he said.

He didn't say I have nothing else to tell you about that.

He said I have nothing to talk about and that is different.

Honestly, I don't see a problem with teaching the police that if the defendant during questioning says I have nothing to say, I have nothing to talk about, that is when you have to back off.

>> I probably could understand it a lot better if this was the statement he made at the beginning of the interrogation.

That he has said, I don't have anything to tell you at the beginning of the interrogation.

But, this is an interrogation that has gone on for a while and they discussed several issues.

So I think it makes a real difference that this took place at that point in the interrogation.

>> I think it can make a difference, but again it depends on the context and what their remarks are in response to.

>> Did we look at this from the perspective of the officers who were doing the interrogation as to what they would have reasonably understood concerning hit the invocation of his rights?

>> Yes.

>> You get to look, as Justice Quince is saying, you have to look at the context and when the this suspect has been talking to them, and you know going through what they have been going through, it seems to me that given that history of their interaction, they are going to

think, well he just maybe  
doesn't want to answer that  
particular question.

He is not going to say anything  
about that.

>> There was no question, Your  
Honor.

>> That is a very different  
thing than saying, I don't want  
to talk to you anymore.

>> Again, you are suggesting  
that he has to say magic words.

There was no question here.

>> No, I'm saying we have got to  
look at it in the context.

I think there are any number of  
formulations that could be used  
that would communicate to the  
officers that this interrogation  
is over, because I'm not going  
to talk to you anymore but when  
you look at it in the context we  
have here, and that they would  
have reasonably understood that  
he was unequivocally asserting

that.

>> Well, a couple of things Your Honor.

They did understand that because they argued with him.

Number two what you are suggesting is they are imposing a standard on the defendant for asserting his rights.

Get already is against what the Supreme Court has said.

In any manner, if in any manner.

>> As long as it is unequivocal.

>> Yes and these words are unequivocal.

These words are unambiguous and there is nothing about the context that suggests otherwise.

But I am arguing, if there is something in the context, if the state can point to something in the context that suggests ambiguity, then that is fine but there is nothing here that suggest ambiguity.

>> He asserted a number of times  
that there was no question asked  
when he made the statement.

What did the police say to him  
with that statement exactly?

>> They said get it off your  
chest.

It is a weight off, man.

It is a relief for you to be  
able to lie down in your bunk  
knowing that is behind you.

He said do you know what?

I already feel that relief.

I already told you what I told  
you.

I have nothing really to talk  
about.

Following on that, in context,  
he is saying I have nothing else  
to say.

I don't think there is any other  
reasonable interpretation of it.

>> I just pulled up Pierre.

In Pierre the defendant said I  
am not saying any more.

I am not saying any more.

He then remained silent for  
nearly a minute.

The defendant, the detective  
himself didn't say anything and  
then change the subject.

I guess I need to look up Martin  
but it seems to me that I can  
agree that in Pierre, I am not  
saying any more.

I am not going to talk to you as  
opposed to I don't know anything  
else that I can tell you, which  
is, I think that is a  
distinction.

I think my colleagues do too.

>> He didn't say I don't know  
anything else.

He said I have nothing to talk  
about which is identical to, I  
have nothing to say.

My fear is that what you are  
suggesting is that he has to say  
it over and over, that he has to  
fight these people in this

high-pressure situation.

When they are arguing with him,  
when they are telling him, hey  
this is not what you mean.

We are looking at you and your  
body is not saying that.

That is not what the law is.

>> The problem we get into is if  
something requires  
interpretation, then how does  
one say it is unequivocal?

That is just the argument you  
just made, that you have to  
interpret this phrase to mean  
that and if it has, if there are  
more than one possible  
interpretations of it, does that  
not render a statement ambiguous  
or equivocal?

>> If there are more than one  
interpretation is.

>> We just made the argument  
that we have to interpret this  
to say I don't want to talk to  
you anymore when this is not

what these words they.

>> Well they do.

I have nothing to talk about.

I am saying that is what they mean at face value.

>> That means something and again, you would agree that if this is subject to a reasonable police officer hearing those words, if it is susceptible to more than one interpretation, it is not ambiguous.

It is ambiguous and is equivocal?

>> Yes.

My argument would be that the words are not subject.

There has to be some contextual reason for making it ambiguous.

>> Did you address your argument about the content of the other things about the chair, the electric chair that some would recall.

They made comments about that?

>> Yes, and that is the second argument of course that his statement was involuntary, that it was a product of coercion.

I've outlined I guess the six categories of types of coercive or deceptive tactics that the police use all of which have been condemned by this court, by the U.S. Supreme Court, by courts all over the country.

In some of those cases there was only one statement made and the court said that renders the confession involuntary.

In this case not only do we have four or five different categories of coercive statements, they are repeated over and over and over again relentlessly throughout the interrogation.

>> For example with regard to capital punishment, is the rule that a police officer cannot

mention what the possible  
outcomes are during an  
interrogation, or is it that law  
enforcement cannot use a fear to  
have of capital punishment, or  
is there a distinction between  
the two?

>> There is a distinction.

The latter is forbidden in the  
former is not.

It is not considered course of.

>> You say this is fear, not a  
discussion of possible  
alternatives that could happen  
as a result of this  
interrogation?

>> Correct and it is tied to  
whether he confessed.

That is also what makes it  
coercive.

>> In terms of -- you are going  
to be out of time shortly but  
quickly, from the time he said I  
have no more to tell you and he  
didn't know anything, you said

all of those tactics that you  
say where those done within the  
next two and a half hours?

What point in time did they  
occur during the interrogation?

For us we need to look at the  
whole interrogation to make  
sure -- was this interrogation  
videotapes?

>> It was videotaped.

You have the whole thing, yes.

I am trying to recall.

I think most of those statements  
came after -- he didn't want to  
talk any more.

After they confronted him, they  
have some cell site data that  
indicated her phone had never  
left Clay county.

>> There would be no problem  
with confronting him with true  
evidence of how they found --

>> No.

There is no problem with  
confronting him with true

evidence and in some cases --

Even when the police has  
deceived the suspect about the  
strength of the evidence that  
they have, the court has in some  
of those cases said, it is  
inappropriate.

It is not approved but it is not  
coercive and not compelling  
enough to render the confession  
involuntary.

But in this case, you know,  
there is the threat of the death  
penalty, of the electric chair  
and life in prison.

The other statements that I  
think were the most egregious  
were the many, many statements  
that assured him -- though they  
told him he gets the death  
penalty if he doesn't confess  
but if he does confess he is not  
facing the death penalty.

He is not really facing the  
death penalty.

If all he did was -- if this happened because he wanted the car, and of course that is exactly what happened.

>> What they are saying is, this happened accidentally, you are not going to face the death penalty?

Isn't that really what they were saying?

>> There were many statements that weren't just accidents.

They said if you wanted the car and you lost control, lest it lose than that is not a death penalty case.

You are not facing the death penalty.

They told him that pretty clear and again, they drew a diagram with premeditated murder at the top and other lesser offenses.

We don't have the diagram but they kept saying, you are not the top of the tree.

You are at the bottom of the  
tree.

A big difference between  
premeditated, planned,  
first-degree mobster  
cold-blooded murder to the other  
end.

It wasn't planned.

A lot was going on.

I was busting loose at the  
scene.

>> Isn't it true that is  
something blew up and in this  
case, it is what you challenge,  
assuming that --

Isn't that true that change is  
on the spur of the moment?

Isn't that a correct statement  
under the law?

>> It's not a correct statement  
to tell someone if they commit  
felony murder they are not  
eligible for the death penalty  
and that is basically what they  
did.

We all know that is first-degree murder.

It's an automatic aggravator.

That makes him eligible for the death penalty.

They implied not only would he not be eligible for the death penalty but he would be getting out of prison.

You have a future with a girlfriend.

You are going to be going to movies with her.

You are going to have kids with her.

You have a long life ahead of you.

This is relentless, on and on and on and on.

Of course he believed it.

He is talking to two respected, as they told them themselves, two respected law enforcement people.

At the end of this, he said to

them, I am probably not going to  
get out until I'm 50 years o.

That dilution is the sort that  
distorts rational life which is  
the definition of voluntary.

Is my time up?

>> You have exhausted all of  
your time.

I will give you an additional  
minute and a half.

>> Thank you, Your Honor.

>> Charmaine Millsaps, Assistant  
Attorney General.

May it please the court.

>> Can you address the questions  
that I'm concerned about?

It does seem that there is every  
quote trick in the book was used  
in the bag of tricks to equate  
with the kind of coercion where  
the will was undermined with  
police techniques?

>> Well Your Honor, I would sort  
of like to answer your question.

In Miranda at the very beginning

he confesses that the very end.

This is almost four hours.

But they take rakes in between.

None of those comments are closed to the confession at the end.

He wanted to talk to his girlfriend.

That is what immediately precedes the confession.

He wants to talk to his girlfriend and he said the two detectives, and remember one is from Jacksonville, JSO, Detective Wolcott and the detective from Clay county said this is not my jail.

Their standard policy is to not let you talk that we will see if we can plan a visit.

>> You can see that after the police, if after the police said something to the effect, you need to come clean or you will --

That is a reasonable interpretation of what they said or something along those lines.

He said I did it.

Would that be a problem?

>> Yes, Your Honor.

Let me make it a little stronger.

I think that would be a problem.

If you basically said to a suspect, if you confess he won't get the death penalty that is going to be a problem if he gets the death penalty.

If he immediately confesses but that is not what happened here.

Both, not what happened here in terms of statements.

>> What did they say about the chair?

>> They said monsters go to prison, monsters go to death row.

It was really more to try to get him, and another time they say

you are not a monster.

Be a hero, tell us where she is.

They were doing monsters versus

heroes so that is sort of a

theme through this.

But none of that --

>> Is it critical to the

decision as to whether it has to

occur right after the statement

or do we look at the totality of

the circumstances?

I think it is a relatively short

interrogation as interrogations

go, three or four hour

interrogations.

What time of day was this?

>> It was 12:58 when they signed

a Miranda, the very beginning

and that is the first thing you

are going to see on the DVD.

>> In the afternoon?

>> Yes, yes.

This is down in the Pinellas

county jail.

These detectives have come down

to an interview room.

It's 1:00 in the afternoon and

then at last and at one point

they say it is 3:00.

It lasts from basically 1:00 to

3:00.

>> Is the statement a statement

about you were not a monster and

if you come clean, the spur of

the moment, you are not going to

get the death penalty.

Was that set only once or was

that repeated?

>> I would save there were two

references to that, but Your

Honor, now, if you are talking

about the monster part, the

monster part goes on but it is

monster versus hero.

Not the death penalty part,

okay?

>> Monsters get the death

penalty and heroes don't?

>> What you are asking me what

is repeated.

>> That is repeated, monsters  
get the death penalty and heroes  
don't?

Did they say to him, he just  
wanted to get into the car and  
it was more of a spur of a  
moment that you won't get the  
death penalty?

>> No, Your Honor.

That is exaggerating what  
happened.

They said you weren't after  
Jacey.

You were after the car.

They did say that.

But they didn't say and  
therefore you won't get the  
death penalty.

They didn't say that.

There's not that second part.

>> The detective says, the best  
thing that David can do for  
David is to help us find Jacey.  
The detective then goes on to  
say, you look like a monster if

you don't.

You really do and you know where  
monsters go.

Monsters go to prison.

Monsters go to death row.

Monsters never see their life  
began.

>> That was the exchange.

That was the exchange.

And Your Honor, for example take  
the monsters go to prison part.

At one point he says he knows he  
is facing life later on but, so  
a lot of this and this occurs in  
the middle as well.

He tells them a story after that  
about her getting out of the car  
and his just driving off, okay?

>> He is 21 years old.

He is 21, and again, it is  
looking at the whole  
interrogation.

Did they tell him something that  
led him to believe that he is  
not going to jail or getting the

death penalty?

Is that a problem?

>> I think misrepresent --

misrepresentations of the law.

>> As Ms. Carey said, felony

murder, if there is felony

murder that still makes him

eligible for the death penalty.

>> That's true but Your Honor

it's not the only aggravator on

the table.

We know that at that point.

>> Yes they are homicide

detectives.

They expect this girl who hasn't

been home for nine days, that

something happened to her.

They didn't know -- though we

now know -- what he did.

We now know that yes he is

eligible for the death penalty.

The detective is sitting there

talking to him, they don't know

anything about hammers.

It is only at the end that he

tells him he hit them with a  
hammer.

All this happens before.

Your Honor, they don't know  
where she is.

They know she is missing and  
somebody who hasn't been home  
for nine days and always goes to  
work, that's not good.

They think something is happened  
to her but they certainly don't  
know that he killed her with a  
hammer.

It is only at the very and they  
find that out.

>> Put it in context and it  
seems to me reading the  
transcript that the whole issue  
came about and talking to him  
about they did not know what  
happened and only people, if  
they get first-degree murder,  
quote get the electric chair but  
they were talking to him about  
whether or not perhaps what

happened was something along the lines of second-degree murder where people would not get this. There was a promise that you are not going to get the electric chair.

>> I don't think there was a promise and secondly Your Honor remember we now know that he is at the top of the tree but the detectives, when they are using that analogy, they don't know that he is at the top of the tree because the fact that we all are now relying on they didn't have until the very end. They are making the statements they do not know she was hit with a hammer to the very end when he tells them that.

They do not know any of this. So the only thing they know, he wanted the car but they don't know if -- they don't know what happened until he tells them at

the very end.

>> Is that important in deciding, in the court, if a confession has been less than truthful.

Oh she tried to leave.

Can you tell pretty well with the eventual facts are?

>> That is why I think this is important.

The first one is, nothing happened and I just dropped her home in borrowed her car.

The second one is, and the second one comes after some of the statements that we are talking about.

He tells a false version of what happened, that she just stepped out of the car and I just drove off and he denies even hurting her or hitting her with a the car or anything.

They said come on, you know, that's ridiculous, that there

are a lot of houses around that area.

She would have walked.

Everybody knows 911.

Everybody knows how to dial 911

since they were five years old

so they tell him they don't

believe that version.

Then they talk about the

girlfriend and that is when he

tells them the correct version.

Right at the very end which is

he told her he was going to get

a cigarette.

He got a claw hammer out of the

car and hit her.

He admits hitting her once and

hitting her again and admitting

she was hit seven to nine times

with his claw hammer.

Dragging her body into the

Palmetto bushes and then taking

the car down to St. Pete.

But all of that is literally at

the very end.

Remember what we do have and I do think it is important, at the very beginning we have the Miranda red.

We have an hour of his telling just general whereabouts, what happened that night where he went and all this kind of stuff.

At the end about taking her back to Jacksonville.

They confront him with the cell phone records.

The cell phone records proving she did not go back to Jacksonville that night, that her cell phone, he took her cell phone when he took the car.

The cell phone headed down to Saint Tete in the car with him so they are confronting him, you were lying with the cell phones and that is there evidence, the cell phone records and they explain cell phone and how they do it with the towers.

So we know where that cell phone  
was, okay?

And then even after being  
confronted with that he tells  
what I call the horse tale story  
about driving off, getting her  
to go out of the car, screaming  
at her tube maker go out of the  
car and driving her off leaving  
her perfectly fine.

Then they tell him that make no  
sense, which it really doesn't.

Than they talk about the  
girlfriend visiting.

I wouldn't like to --

Then that is when he tells them  
the story about what happened  
that night, he told her he was  
going to get cigarettes.

They were by Clearlake.

Evidently he is from Middleburg.

He took her to this desolate  
area and on purpose, and because  
he knew that area and used to  
swim in that lake, he grew up in

Middleburg so he took her there  
on purpose.

Then he went to the car and got  
his claw hammer and came back  
and hit her on the head.

He admits and then he says yes I  
hit her multiple times.

I can't remember how many.

Then they get into the car.

Even with all this we are  
talking about, all he really  
does is tell him the horsetail  
story, you know the first  
version of I just drove off and  
she was fine.

So it is not until the very end  
that he'd -- this did not go  
worse.

Yes honor I do think it is  
important to note is not just a  
matter of immediately but if  
ours go on and you are telling a  
second version that isn't the  
truth I don't think that is very  
course of.

They did not know what degree it was.

If they knew a lot more about the crime and misrepresented not the facts, then the law, then Your Honor you do have a problem at that point.

I am not saying interrogations can't be coercive.

Of course they can.

Among the things to look at would-be misrepresentation of the law but you cannot do what we are doing here which is, after-the-fact, when we know what the correct facts are so we know which corrects law applies, say the officers who do not have any of those facts are misrepresenting the law.

>> How about the injection of religion into the interrogation?

Certainly didn't use the magic words that are prohibited, but certainly utilize the concept,

morality of religion, the  
feelings of his mother and give  
her back to her mother.

>> Yes, Your Honor.

They did at one point invoke the  
Bible and they said I'm not  
going to give you Bible lessons.

And this was very much a tell us  
where she is so we can give the  
mother some closure speech.

But that is different from  
Christian burial.

Yes, Your Honor, it is a plea to  
his conscience about the pain  
his mother is in.

I personally do not think that  
is coercive in the least.

>> How does the court look at  
all of these?

They said as we go through,  
there are six different elements  
that the defendant says he  
walked along, if not crossing  
the line of propriety you  
certainly will were right on it.

Do we look at this as each one independently or do we look at it cumulatively, this interrogation?

You are asking us to look at it cumulatively and we didn't know during big interrogation when it happened but each one of these, he really walked to the edge it seems.

The question is going to be, do they step over?

I understand that but at least the subject matter and topics that have been prohibited are approached oftentimes in this interrogation.

>> Your Honor, the state's argument, the law is clear.

It is totality.

I necessarily need to talk about them individually because I need to do that but no, but I would like to get a couple of them clear because I don't think they

exist at all.

The disappear comment, cases like this does appear.

That is not what was said Your Honor and at one point they say, justifiable and excusable cases can disappear.

Justifiable excuses but at another point in the interrogation they tell him, this case, your case is not going to just disappear.

I think disappears off the table.

That is just not a valid, I don't think you can read this interrogation and get the impression that this defendant thought this case was going to disappear.

He was directly told his case was not going to disappear and at one point he says you know he is facing life in prison.

So he was not, you know we can

discuss life versus the death  
penalty but the idea that he  
thought he was going to walk out  
of that room, he clearly did not  
think that Your Honor.

His own words out of his own  
mouth show he didn't think that.

He knew he was in serious  
trouble.

The detectives at several points  
tell him this is the biggest day  
of your life.

They do tell him this is  
important, okay?

So some of, I don't think all  
six are valid Your Honor.

So some of them just fall off  
the table.

Such as the disappear comment.

I don't think there is anything.

That is just not accurate in  
totality.

And then, the other one about,  
the other one that I thought.

I would like to talk a little

bit about the girlfriend because  
to me that is the one that  
precedes the confession.

I would like to talk about that  
one because that is, in a timing  
sense, one of the more important  
ones.

So I would like to tell you what  
happened regarding that.

They tell him that Pinellas  
county, he wants to talk to her.

He asks -- just like in Baker.

I did supplemental authority of  
Baker.

Which this court recently  
decided involving a girlfriend  
and a confession.

It was the defendant suggestion  
here just as an Baker, he wanted  
to talk to his girlfriend.

The tech is explained Pinellas  
county has the policy that they  
can't do cell phones.

They won't let him talk to her.

But we can arrange a visit.

What was happening was she was having trouble because she didn't have identification because it was in this victim's car, her I.D. was.

She was having trouble getting into the jail to visit him.

So they said we can make arrangements.

Now, what happens though, they never promised that, they never said that they would take her against her will down to see him.

Erin, his girlfriend, Erin Urban's half brother, is an officer.

She was cross during the trial.

They said your mother, your mother and your brother, half-brother, did not want you to see this guy any more.

They gave you grief about him.

That is how they found him.

The mother was suspicious of

David Martin being down there in  
the first place and had the  
half-brother who was an  
officer --

They did not want her near him.

So it was her choice Your Honor.

If you read everything in this  
record, defense counsel, so Your  
Honor I don't think --

Yes the visit did not occur but  
it wasn't really in their  
control.

>> Did the officer have that  
information at the time he was  
reading the statement?

>> They did know she was  
cooperatively, yes they did.

Her brother --

>> Did they know that the  
brother did not want her to  
actually visit the defendant?

It seems to me this was  
information that they gained  
later and how relative is it as  
to whether or not they were --

[INAUDIBLE]

>> They did know, they did know that her brother was an officer and she was quad cooperating and getting letters.

>> Did they know that he did not want her to visit, that she did not want to?

>> No, no, I don't think they knew that then.

That is my thing, they said we will take care of the I.D. problem and they thought that was the only problem.

It turns out there was a bigger one.

She did not want to see him.

I don't think that makes it false, when I tell you I'm going to fix the paperwork and it turns out the paperwork is not the problem.

>> They said they were going to fix the paperwork?

>> No, she said she was having a

trouble with the I.D..

They do reference the I.D..

She was having trouble getting  
into the Pinellas county jail.

They did talk about it during  
this time, about her having  
trouble getting into the jail  
because of her I.D..

>> The concern I have, it went  
like this.

Detective: I believe Urban  
signed on this defendant.

Are they going to let her have  
one?

Detective: Oh yeah.

Second Detective: Yeah, we can  
see it.

We can make the arrangements for  
visits that we have this issue  
right now David and we have to  
cover first, Clay?

The second detective says just  
tell me where I can find Jacey.

I mean, it sounds to me like  
they are telling him, tell us

where we can find Jacey and we will make it work so that Urban can see you.

That is what it looks like to me.

>> Okay but remember Your Honor in Baker, this court's recent decision of Baker, you said if the defendant suggests, I will tell you but let me see my girlfriend, that is fine.

This this court's case law, very recent case law says that the defendant wants to see a girlfriend and you let him see the girlfriend that doesn't make the confession coerced or involuntary.

>> The exchange though it seems to me was that he wanted to see her and she couldn't get in.

Okay, tell us where Jacey is and we will make it happen.

It sounds to me like that is the quid pro quo that they were

suggesting.

That may be admissible, I don't know.

>> Yes, I don't think that is a problem.

I don't think I disagree about what is going on there.

I'm just saying that is not a problem and this court has held that is not a problem.

You did that just recently in Baker.

The defendant wanted to see his girlfriend.

The police said we will arrange that but first we have got to talk.

That is pretty much exactly what happened in Baker.

So that is not a problem and this court has so held.

>> Before you are out of time I wanted to ask you about the aggravated --

The judge found is one of the

aggravators that he was  
previously convicted of a felony  
and he was on felony probation.

>> For burglary.

>> And gave that great weight.

He took his mother's

air-conditioning?

Is that the burglary?

>> Yeah, think that was it.

>> A third-degree felony.

>> Yes.

>> Do we look at that to say,  
why would you get that great  
weight if he is on probation for  
having committed an armed  
robbery or he had a prior  
violent felony of a murder?

But he took his mother's  
air-conditioning.

I mean, I know it is not but  
that was the sole aggravator.

You would agree that is giving  
it great weight is like, how  
could you give it great way to?

Do you agree that probably was

way too that more than would  
expect when we take every felony  
probation and look at this one.

It was not violent.

I don't know the circumstances  
with his mother's  
air-conditioning but I assume it  
is an air-conditioning unit?

>> Your Honor I don't know  
anything about air-conditioning.

>> What was making it great  
weight I guess is my question?

>> I think it was the fact that  
he was currently on probation.

>> I'm not questioning it is an  
aggravator.

The question is we are looking  
at issues of proportionality.

I don't find that to be a  
compelling aggravator.

I do want to just make sure and

I think I agree on this but I  
think it is critical is the CCP.

There is no question that he  
wanted this car.

>> No question.

>> What is it that shows, and I think the judge is --

Not only that he was going to take the car but that he was going to kill her?

>> Because there was a phonecall between air in urban, the girlfriend and him.

If you look at the cell records, where they talk about, he is going to steal a car, this is his part.

And she says well then what are you going to do with the person who owns the car?

He says he is going to kill him and she jokes back, and she said she thought this was a joke.

That is her perception.

It clearly turns out not to be a joke.

This conversation, if you narrow down the phone records, it occurred on March the 8th.

This crime, this murder occurred  
on the night of March 11.

That was days before.

>> We have the claw hammer, the  
murder weapon.

Where did he get the claw hammer  
from?

>> Your Honor I wouldn't want to  
be forthcoming about the  
records.

That is a little unclear.

She did have it in her car but  
that's not the murder weapon.

He was a construction worker  
person.

He had a toolbox and stuff like  
that for being in construction.

He probably either took his  
entire toolbox from the car that  
night or because he talks about  
getting the hammer.

So he brought the hammer, Your  
Honor.

>> This is somebody he knows he  
is friends with, right?

>> He could take her out, they go outside and take the car?

>> Yes he can and he did not.

>> What you are saying is and I think the judge says, he took her to an isolated area.

>> That he knows and she does not.

>> Then he gets the car and the hammer and comes back.

I DON'T THINK --

NOW THE STATE GAVE NOTICE OF AGGRAVATORS HERE, YOUR HONOR.

THAT WASN'T AS GREAT OF AN ISSUE, BUT THE STATE GAVE NOTICE OF AGGRAVATORS THEY WERE SEEKING IN THIS CASE.

SO YOUR HONOR EVEN --

>> IF IT INVOLVED FACTUAL CIRCUMSTANCES IT MIGHT NOT PASS, BUT THAT'S WHY I ASKED YOU IF THERE WAS ANYTHING MORE THAN A THIRD DEGREE FELONY PROBATION.

>> HE IS IN THE PINELLAS  
COUNTY JAIL FOR RETAIL LEFT.

>> IT'S AN AGGRAVATOR.

THE WEIGHT IT SEEMS THAT I  
SAID MANY TIMES AND I THINK  
PRIOR TO THE FELONY, IF  
THEY'RE TRULY HAVE A VIOLENT  
FELONY, THAT'S AN  
AGGRAVATOR.

WE DO THINK THAT THE MAIN  
AGGRAVATOR HERE IS CCP WHICH  
IS ALSO JUST LIKE HAC, PRIOR  
VIOLENT --

[UNINTELLIGIBLE]

>> YES, WE DO THINK THAT CCP  
WOULD MAKE THIS A DEATH  
PENALTY CASE GIVE THAN HE  
WAS, NO MATTER WHAT WEIGHT,  
HE WAS ON PROBATION, THANK  
YOU YOUR HONOR.

WE ASK THAT YOU AFFIRM THE  
CONVICTION AND SENTENCE.

>> A FEW BRIEF COMMENTS.

>> YOU HAVE TWO MINUTES.

>> THANK YOU, YOUR HONOR.

ONE THING THE STATE SAID

HERE IS THAT HE NEW --

KNEW HE WAS FACING LIFE IN

PRISON, AND I DON'T THINK

THAT'S ACCURATE.

I WOULD LIKE TO LEAVE A

COUPLE OTHER COMMENTS THE

DETECTIVES TOLD HIM THAT IF

YOU DON'T CONFESS YOU WILL

GET THE DEATH PENALTY.

THEY MENTIONED MONSTER 15

MORE TIMES, ARE YOU GOING TO

BE THE MONSTER, DON'T BE THE

MONSTER, TELL ME WHERE SHE

IS WHERE DOES IT SAY IF YOU

DON'T CONFESS YOU WILL GET

THE DEATH PENALTY.

>> "IF YOU DON'T TELL US

WHERE SHE IS YOU WILL BE THE

MONSTER" AND MONSTERS GET

DEATH SENTENCES.

AND YOU'RE A GOOD KID WITH A

LONG LIFE TO GO, THERE'S A

FUTURE, THIS IS JUST A MINOR

LITTLE [BLEEP]

THAT CAN BE TAKING CARE OF.  
DAVID GOT INTO A SITUATION  
HE COULD NOT CONTROL.  
THERE IS A SAFETY NET, A BIG  
DIFFERENCE BETWEEN, I THINK  
I READ THIS ONE BEFORE,  
PLANNED FIRST-DEGREE MURDER  
MURDER, A LOT WAS GOING ON.  
WE HAVEN'T LIED TO YOU,  
EVERYTHING WE TOLD YOU IS  
THE TRUTH.  
IT IS NOT PREMEDITATED  
MURDER, THOSE PEOPLE GO TO  
THE ELECTRIC CHAIR, THOSE  
PEOPLE GO --  
DO YOU WANT YOUR FIANCE TO  
GO TO THE MOVIES WITH YOU  
AGAIN OR STAND BEHIND A  
PIECE OF GLASS.  
THAT'S ALL SHE'LL HAVE, AND  
THEY SAY NO, THAT'S NOT,  
THAT'S WHAT YOU'RE NOT  
UNDERSTANDING.  
SHE'S GOING TO HAVE THAT IF  
YOU KEEP UP WITH THE LIES.

SHE'S GOING TO HAVE THAT IF  
WE HAVE TO PORTRAY YOU AS  
THE PERSON THAT TOLD  
EVERYONE TO [BLEEP]  
OFF.

I THINK IT'S PRETTY CLEAR,  
AND WE HAVE NOT TALKED ABOUT  
THE LAST CHANCE COMMENTS,  
BUT I THINK IT'S COERCIVE.

>> IN FAIRNESS, CAN WE NOT  
TAKE INTO ACT THAT THESE  
WERE OFFICERS FROM OTHER  
JURISDICTIONS.

AND THEY WERE NOT GOING TO  
BE THERE IN THE COUNTY WHERE  
HE WAS BEING HELD, ISN'T  
THAT TRUE?

>> THAT MAY BE TRUE, BUT  
THEIR --

>> I READ THAT AND I THOUGHT  
THAT WAS ONE OF THE WEAKS  
ONES BECAUSE THEY WERE GOING  
BACK TO DUVAL AND CLAY  
COUNTIES, AND THEY SAY WE  
HAVE OTHER DUTIES, WE'RE

ASSIGNED OTHER THINGS, AND

IF YOU WANT TO TELL US NOW

IS THE TIME WE'RE LEAVING.

THAT TO ME WAS A CORRECT

STATEMENT.

"ONCE I LEAVE YOU'RE A

MONSTER" IT'S NOT CORRECT,

THEY HAD A WARRANT, THEY

KNEW THEY WERE BRINGING HIM

BACK UP.

I DISAGREE WITH YOU.

I THINK YOU HAVE TO LOOK AT

IT IN TERMS OF HOW A

REASONABLE PERSON WOULD

INTERPRET IT.

I THINK THAT'S THE LAW.

THANK YOU YOUR HONOR.

>> THANK YOU BOTH FOR YOUR

ARGUMENT.