

>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
PLEASE BE SEATED.

>> OKAY.
THE NEXT CASE ON THE DOCKET IS
LEBRON VERSUS STATE.
WHENEVER YOU'RE READY COUNSEL.
>> GOOD MORNING, YOUR HONORS,
I'M ROY WASSON, REGION CONFLICT
COUNSEL REPRESENTING APPELLANT
JOEL LEBRON, BEFORE I WITH
RESPECT TO MR. EKC, I NEED TO
ACKNOWLEDGE UNTIMELY PASSING OF
MY ORIGINAL OPPOSING COUNSEL IN
THIS CASE, SAN JAGGARD.
DEDICATED ASSISTANT ATTORNEY
GENERAL WHO I HAD THE CHANCE TO
ARGUE SEVERAL TIMES IN THIS
COURT.

THE JUSTICE SYSTEM WILL MISS
HER.
SHE WAS A ZEALOUS ADVOCATE FOR
HER VIEW OF JUSTICE.
MR. LEBRON'S CONVICTION NEEDS TO
BE OVERTURNED I WILL SAY BUT I
WILL GO AFTER THE LOW-HANGING
FRUIT FIRST, THE SENTENCE.
THE DEATH PENALTY MUST BE
REVERSED FOR A NEW PENALTY PHASE
PER HURST AND THIS COURT'S
DECISION TWO WEEKS AGO IN
JACKSON BECAUSE HE WAS ONLY, THE
JURY, ADVISORY JURY, 9-3
RECOMMENDED DEATH WITHOUT MAKING
ANY FINDINGS OF AGGRAVATING
CIRCUMSTANCES, WITHOUT MAKING
ANY FINDING OF MITIGATING
CIRCUMSTANCES.

AS THE JACKSON CASE HELD, IN
ORDER TO SUPPORT THE DEATH
PENALTY, QUOTE, THE JURY WOULD
HAVE BEEN REQUIRED TO FIND THAT
SUFFICIENT AGGRAVATING
CIRCUMSTANCES EXISTED AND THAT
SUFFICIENT AGGRAVATING
CIRCUMSTANCES OUTWEIGHED THE
MITIGATING CIRCUMSTANCES.
THERE IS NOT ONE JURY FINDING OF
ANY AGGRAVATORS OR MITIGATORS IN

THIS CASE.

SO I THINK IT'S, IT'S FRANKLY
JUST A DONE DEAL ON THE, ON THE
PENALTY PHASE.

I ANTICIPATE THAT MR. AKE WILL
ARGUE HARMLESS ERROR.

THE JACKSON CASES SOMEWHAT
CONFUSING ON HARMLESS ERROR WITH
CONCURRING OPINION AND SO FORTH
BUT I THINK THE SIMPLE WAY OF
LOOKING AT THE HARMLESS ERROR
ISSUE IS THE FACT IT WAS NOT
UNANIMOUS RECOMMENDATION.

AS THE COURT HELD IN JACKSON,
QUOTE, THE FACT THAT A SINGLE
JUROR IN THIS CASE APPARENTLY
CONCLUDED THAT THE AGGRAVATION
WAS NOT SUFFICIENT TO OUTWEIGH
THE MITIGATION IS ITSELF OF
REASONABLE DOUBT THAT A
DIFFERENT RESULT MIGHT HAVE
OCCURRED BUT FOR THE HURST
ERROR.

WE'VE GOT THREE JURORS THAT
EITHER FOUND NO AGGRAVATING
CIRCUMSTANCES, OR, OR FOUND THAT
THE AGGRAVATING CIRCUMSTANCES
DID NOT OUTWEIGH THE MITIGATING
CIRCUMSTANCES IN THIS CASE, SO
UNDER THAT FIRST EXPRESSION OF
THE HARMLESS ERROR STANDARD IN
JACKSON THAT'S IT.

YOU CAN'T, A JUROR COULDN'T FIND
THE, THREE JURORS THAT DID NOT
RECOMMEND DEATH MUST HAVE
BECAUSE THEY FOLLOWED THE
JUDGE'S INSTRUCTIONS.

THEY MUST HAVE HAVE FOUND EITHER
NO AGGRAVATOR OR--

>> WE KNOW, WE KNOW THEY FOUND
AN AGGRAVATOR BECAUSE OF THE
OTHER CONVICTIONS.

I MEAN THERE WAS A UNANIMOUS
JURY VERDICT ON THE OTHER
CONVICTIONS THAT WOULD BE IN
AGGRAVATION, ISN'T THAT CORRECT?

>> YES.

>> NOT THAT MATTERS FOR PURPOSE
THE WAY THE MAJORITY HERE
ANALYZED IT.

>> THAT TAKES US TO, TO THE OTHER PART OF IT. JUST FINDING THE AGGRAVATORS WON'T DO IT AND I-- ASSUMING, THAT THE PROPER HARMLESS ERROR STANDARD FOR A HURST VIOLATION IS WHETHER THE JURY WOULD HAVE FOUND THE EXISTENCE OF THESE AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT, OKAY, SUCH A DETERMINATION WOULDN'T SATISFY THE STATE'S BURDEN OF SHOWING, QUOTE, THAT THERE IS NO REASONABLE POSSIBILITY THAT A LESSER SENTENCE WOULD HAVE RESULTED WITHOUT THAT ERROR UNDER DEJULIO, BECAUSE THE MERE FINDING-- YOU CAN FIND ALL THE AGGRAVATORS YOU WANT. THE MERE FINDING OF THE AGGRAVATORS IS NOT IT. THERE IS BALANCING TEST, BALANCING MITIGATORS AGAINST IT. WE CAN'T LOOK INTO THE JURY ROOM TO SEE WHAT THEY THOUGHT ABOUT THE BALANCING OF THE MITIGATING FACTORS. THERE MUST BE A FINDING THAT THE AGGRAVATING FACTORS OUTWEIGH THE MITT BAITING FACTORS. THAT WAS NOT FOUND. THE COURT IN JACKSON, TO ME CONFUSINGLY GOES ON TO DISCUSS THE INDIVIDUAL AGGRAVATORS AND WHETHER OR NOT AN INDIVIDUAL AGGRAVATING CIRCUMSTANCE FOUND BY THE JUDGE IS OR IS NOT HARMLESS ERROR AND IT CONFUSES ME BECAUSE IT SEEMS AS IF THE COURT IS FINDING THAT UNDER CERTAIN CIRCUMSTANCES THE JURY MUST FIND-- IT'S HARMLESS ERROR IF--

>> WE CERTAINLY, WE'VE CERTAINLY SAID, YOU KNOW, WHEN THERE IS ANOTHER FELONY COMMITTED, AND HE'S CONVICTED OF THAT, THAT IS CERTAINLY A JURY FINDING, ISN'T IT?

>> YES.

AND THAT'S SUBJECT TO THE
APPRENDI EXCEPTION ANYWAY.
>> IN THIS CASE HE WAS CONVICTED
OF SEXUAL BATTERY, HE WAS
CONVICTED OF KIDNAPPING, HE WAS
CONVICTED OF ROBBERY.
SO ALL OF THOSE ARE VIOLENT
FELONIES THAT CAN SERVE AS
AGGRAVATION, CORRECT?
>> YES, YOUR HONOR.
>> SO AND ROBBERY, NATURALLY
FOLLOWS PECUNIARY GAIN WITH
THAT, CORRECT?
I THINK--
>> YES, YOUR HONOR.
I JUST GO ON TO THE NEXT ONE.
THAT IS THE WEIGHING.
THERE WAS NO WEIGHING, NO
EXPRESS FINDING OF JURY OF
WEIGHING.
THREE JURORS DID NOT RECOMMEND
DEATH, WE MUST PRESUME WEIGHED
IT AND, AND FOUND THAT THE
MITIGATORS OUTWEIGHED.
HERE--
>> WHAT DO YOU SEE AS YOU WOULD
DESCRIBE TO US TO BE THE
MITIGATION THAT RATIONAL JURORS
COULD UTILIZE TO RULE IN FAVOR
OF LEBRON IN THIS CASE?
>> WELL, ON THE, ON THE,
MITIGATORS, HERE, WE HAD
EVIDENCE FROM DR. FISHER, THE
PSYCHOLOGIST, THAT, MR. LEBRON
WAS BASICALLY A MODEL PRISONER
IN THE JAIL FOR A LONG TIME THAT
IT TOOK 2002 TO GET THIS CASE
TRIED.
ASKED IF LOW LIKELIHOOD OF
FUTURE DANGEROUS, HE IS THE
EXCEPTION THAT FALLS INTO THE
NONE CATEGORY.
THIS FELLOW COMMITTED CRIMES
HERE THAT ARE GRUESOME BUT HE,
HE IS NOT A VIOLENT PERSON.
HE IS, HAS NO LIKELIHOOD OF
FUTURE DANGEROUSNESS.
OFFICER FRADY TESTIFIED HE HAD
NO ACTS OF VIOLENCE, NO PROBLEMS
WITH OTHER INMATES.

NO CORRECTION OFFICERS HAD PROBLEMS.

BEFORE TRIAL HE HAD INSTRUCTED HIS LAWYER TO PLEAD, PLEAD ME GUILTY.

SHOWED ACCEPTANCE OF RESPONSIBILITY.

HE HAD EVIDENCE OF BRAIN INJURY, OTHER, OTHER FACTORS, OTHER MITIGATING FACTORS.

>> I THOUGHT THAT THE DEFENSE POSITION IN TESTING WITH REGARD TO BRAIN INJURY WAS NOT ALLOWED. YOU HAVE EVEN ASSERTED THAT AS A SEPARATE POINT ON APPEAL?

>> YES, YOUR HONOR.

>> SO THE JURY DIDN'T HEAR THAT, RIGHT?

>> THAT THERE WAS OTHER EVIDENCE.

LOST HIS MOTOR SKILLS AFTER THE ACCIDENT.

HE HAD TO BE RETRAINED, RESTRAINED TO WALK, RETRAINED TO USE A WALKER.

THERE WAS OTHER EVIDENCE OTHER THAN JUST THE QEEG.

GO THROUGH SEVERAL OF THE NORTHERN STATUTORY MITIGATING FACTORS IN THE LONG QUOTE ON PAGE 44 AND 45 OF THE BRIEF. BUT TO, FRANKLY, YOUR HONOR, TO HOLD THAT NO REASONABLE JUROR COULD HAVE FOUND THE OUTWEIGHING OF THE AGGRAVATORS BY THE MITIGATORS, THAT, THAT IS ESSENTIALLY DIRECTING A VERDICT FOR THE PROSECUTION.

>> BUT AGAIN, THE, WE ARE INSTRUCTED THAT THE HARMLESS ERROR TEST APPLIES.

SO TRYING TO APPLY A HARMLESS ERROR, MAYBE IT'S, AS YOU GET CLOSER TO 11-1, 10-2, MAYBE THAT'S, THAT'S CLOSER TO IT BUT, APPLYING THE HARMLESS ERROR STANDARD WE HAVE TO LOOK AND THE TEST, ISN'T IT, YOU TELL ME, WHAT DO YOU SEE THE TEST ON HARMLESS ERROR TO BE?

IT IS WHETHER THE RATIONAL JURORS COULD REASONABLY FIND THAT, ISN'T IT?

>> I DON'T THINK SO.

I THINK IT'S, I THINK THE HARMLESS ERROR STANDARD UNDER DE JULIO COULD HAVE PUSHED THE JUROR JUST A LITTLE BIT FARTHER.

>> I AGREE WITH THAT.

WE HAVE TO LOOK AT THE MITIGATORS THAT ARE IN THERE. THIS IS A NASTY CRIME, A NASTY CRIME.

>> YES, YOUR HONOR, I AGREE IT IS.

BUT FRANKLY, I THINK THAT THE STANDARD HAS TO BE WHERE IT'S A NON-UNANIMOUS RECOMMENDATION-- MAYBE IN A UNANIMOUS RECOMMENDATION BUT NO FINDINGS OF FACT, NO FINDING OF AGGRAVATORS, THAT HARMLESS ERROR STANDARD SHOULD APPLY BUT WHERE YOU HAVE 9-1 THAT TAKES US BACK TO THE FIRST QUOTE OUT OF THE JACKSON CASE.

THE FACT THAT A SINGLE JUROR IN THIS CASE APPARENTLY CONCLUDED THAT THE AGGRAVATION WAS NOT SUFFICIENT TO OUTWEIGH THE MITIGATION IS THE SELF OF EVIDENCE OF REASONABLE DOUBT THAT IS DIFFERENT RESULT MIGHT HAVE OCCURRED BUT FOR THE HURST ERROR, BINGE GO, END OF STORY. THREE JURORS, IF WE FOLLOW JACKSON THAT SHOULD BE THE END OF THE HARMLESS ERROR--

>> YOUR VIEW YOU CAN NEVER HAVE HARMLESS ERROR IF YOU DON'T HAVE A UNANIMOUS VERDICT?

>>> WELL I DON'T THINK IT WILL BE A PROBLEM FOR LONG.

AFTER JACKSON, WE'LL HAVE TO HAVE--

>> NO, I UNDERSTAND.

THAT IS THE WAY YOU READ IT. OKAY.

>> I WOULD LIKE TO MOVE ON TO THE GUILT PHASE, BECAUSE FRANKLY

I THINK THAT ONE ANSWERS ITSELF.
HERE THE WAIVER OF THE MIRANDA
RIGHTS WAS INVOLUNTARY.

THE STATE FAILED, IN ITS HEAVY
BURDEN, THE STATE HAS A HEAVY
BURDEN OF DEMONSTRATING THAT A
WAIVER OF MIRANDA AFTER THERE'S
BEEN VOLUNTARY STATEMENT OR
ALLEGEDLY VOLUNTARY STATEMENT,
IS, IS ITSELF VOLUNTARY, NOT
COERCED.

>> ARE YOU, LET ME STOP YOU
RIGHT HERE.

ARE YOU ALLEGING, OR ARE YOU
CONCEDING THAT THE FIRST
STATEMENT THAT THE DEFENDANT
MADE WAS VOLUNTARY?

>> NO.

THAT WAS SUPPRESSED.

I'M SORRY.

>> OH, OKAY.

I THOUGHT I HEARD YOU SAY THAT.
I JUST WONDERED.

>> I MEANT UNWARNED.

I'M SORRY.

I APOLOGIZE, YOUR HONOR.

HERE, LET ME START THIS OUT WITH
THE STANDARD.

THE STANDARD HERE, THE STANDARD,
THE BURDEN IS ON THE STATE, HERE
THE COURT PRESUMES THAT THE
LOWER COURT'S FINDING OF FACTS
ARE CORRECT TO SUPPORT BY
COMPETENT SUBSTANTIAL EVIDENCE.
THAT IS THE CONNOR CASE.

WE HAVE A LITTLE DISAGREEMENT
WHO IS THE LOWER COURT HERE.
THE STATE'S BRIEF QUOTES IT AT
LENGTH FROM THE THIRD DCA'S
DECISION.

HERE WHAT HAPPENED WAS, JUDGE
THOMAS SUPPRESSED EVERYTHING.
THEY TOOK AN IMMEDIATE APPEAL OF
THAT SUPPRESSION TO THE THIRD
DISTRICT.

THE THIRD DISTRICT MADE ITS OWN
FINDINGS AND REVERSED BUT, AND
SO--

>> BUT THEY ONLY REVERSED
PART-- THEY AGREED WITH THE

TRIAL COURT ABOUT THE ORIGINAL STATEMENT THAT THE DEFENDANT MADE BUT THEY REVERSED THE TRIAL JUDGE WHO HAD SUPPRESSED THE POST-MIRANDA STATEMENTS, CORRECT?

>> YES, YOUR HONOR.

>> OKAY.

>> BUT AS A PROCEDURAL PUZZLE HERE BECAUSE WE'RE NOT REVIEWING THE THIRD DCA'S RULING BECAUSE THE-- WHAT WE'RE REVIEWING HERE IS THE FINDINGS OF FACT OF, OF THE PERSON WHO WAS THERE WATCHING THE WITNESSES, LISTENING TO THE TESTIMONY, JUDGING THE CREDIBILITY OF THE WITNESSES AND--

>> SO THE THIRD DISTRICT ACCEPT THE FINDINGS OF FACT MADE BY THE TRIAL COURT BUT REACH A DIFFERENT LEGAL CONCLUSION? EXPLAIN THAT TO ME.

>> WELL, I DON'T THINK IT ACCEPTED THE FINDINGS OF THE TRIAL COURT IN LIGHT OF THE BRIEF OF THE STATE THAT QUOTES AT LENGTH FROM BASICALLY FINDINGS MADE BY THE THIRD DCA. GRANTED IT IS A SITUATION WHERE IT'S A MIXED QUESTION OF LAW AND FACT BUT AS I WILL SUGGEST TO YOU, THE TRIAL COURT, JUDGE THOMAS, LISTENED TO THE WITNESSES AND--

>> THE FACTS ARE WHAT HAPPENED IN HISTORY, WHAT HAPPENED, WHO SAID WHAT WHEN, AND HERE THERE WAS NO DISAGREEMENT ABOUT WHAT TRANSPIRED, CORRECT?

>> THERE WAS DISAGREEMENT, YES, THERE WAS DISAGREEMENT ABOUT THE, ABOUT THE TOTALITY OF THE CIRCUMSTANCES WHICH IS THE STANDARD.

ABOUT WHETHER OR NOT THERE WAS--

>> NO, I'M ASKING ABOUT IS THERE A FACT AT WHAT HAPPENED AT WHAT POINT IN TIME, WHO SAID WHAT

WHEN, IS THERE A FACT THAT THE
THIRD DISTRICT COURT OF APPEAL
GOT WRONG?

>> I CAN'T POINT TO A SPECIFIC
FACT LIKE THAT.

>> SO YOUR BEEF IS WITH THEIR
LEGAL CONCLUSION AS TO, GIVEN
THE TOTALITY OF THE
CIRCUMSTANCES THE FACTS, THE
STATEMENT WAS VOLUNTARY, WHICH
IS THE LAW PART OF THAT MIXED
QUESTION OF LAW AND FACT,
CORRECT?

>> YES, BUT IT'S SO CLOSELY
CONNECTED WITH JUST THE OVERALL
TOTALITY OF THE CIRCUMSTANCES I
WOULD SUGGEST IT IS MORE FACT
ORIENTED THAN LAW ORIENTED IN
LIGHT OF THE FACTS HERE.
THE THIRD DISTRICT SEEMED TO,
JUST KIND OF POO-POO THE
TOTALITY OF THE CIRCUMSTANCES BY
POINTING AT SPECIFIC THINGS.
HERE, MY CLIENT WAS ARRESTED IN
THIS OPEN PARKING LOT.
HELICOPTERS ARE HOVERING AROUND,
SHINING LIGHTS DOWN ON HIM.
HE IS MADE TO STRIP DOWN NAKED,
INCLUDING HIS UNDERWEAR, HIS
EYEGASSES ARE TAKEN AWAY FROM
HIM.

AND IT'S TWO HOURS LATER, BEFORE
HE IS MIRANDIZED.

AND IN THE MEANTIME--

>> WHAT IS THE SIGNIFICANCE OF
THAT?

WHAT IS THE SIGNIFICANCE OF
THAT?

THE TWO--

>> BECAUSE--

>> IN YOUR BRIEFING YOU MAKE A
BIG DEAL ABOUT THE FACT THAT HE
WAS ARRESTED AND WASN'T
IMMEDIATELY GIVEN HIS MIRANDA
RIGHTS.

WHAT IS THE SIGNIFICANCE OF
THAT?

>> BECAUSE HE BEING SUBJECTED
TO THE COURSE OF POLICE POWER.

>> BUT ISN'T MIRANDA ABOUT

CUSTODIAL INTERROGATION?
IT IS NOT JUST ABOUT CUSTODY.
PEOPLE DON'T, IT IS NOWHERE
WRITTEN THAT PEOPLE ARE REQUIRED
TO GIVEN THEIR MIRANDA RIGHTS
TAKEN INTO CUSTODY.

THEY HAVE TO BE GIVEN THEIR
MIRANDA RIGHTS, WHEN THEY ARE
SUBJECTED OR PRIOR TO BEING
SUBJECTED TO CUSTODIAL
INTERROGATION, ISN'T THAT RIGHT.

>> YES, YOUR HONOR AND HE WAS
SUBJECTED TO CUSTODIAL
INTERROGATION IN ESSENCE BY, BY
DETECTIVE HIDALGO UTILIZING WHAT
HE HAD LEARNED IN MANY YEARS OF
QUESTIONING TECHNIQUE HOW TO GET
SOMEBODY TO TALK TO YOU
WITHOUT--

>> I THINK WE NEED YOU TO MAKE
IT CLEAR.

AT THE POINT THAT HE WAS PUT IN
THE SQUAD CAR WE ALL, HE WAS
UNDER ARREST, BUT MIRANDA
WARNINGS WERE IN THE NECESSARY
AT THAT POINT, IS THAT CORRECT?

>> NOT IMMEDIATELY, NOT RIGHT
THEN.

>> OKAY.

THEN HE, AT SOME POINT AFTER HE
IS PUT IN THE SQUAD CAR AND
HANDCUFFED HE IS TAKEN TO AN
INTERROGATION ROOM.

WHEN DO YOU MAINTAIN THAT
MIRANDA RIGHTS WERE
APPROPRIATE-- WHEN SHOULD HE
HAVE BEEN GIVEN THOSE RIGHTS,
READ THOSE RIGHTS?

>> A THE VERY LATEST, AT THE
VERY LEAST WHEN DETECTIVE
HIDALGO, CAME IN THERE, SAT NEXT
TO HIM, 30 MINUTES, WAITING FOR
THE MAN TO CRACK.

MR. LEBRON EVENTUALLY STARTED
CRYING AND SOBBING.

>> OKAY, WHERE IS THERE ANY CASE
THAT SAYS MIRANDA RIGHT, THE
RIGHT TO RECEIVE MIRANDA RIGHTS
TURNS ON WHETHER THE POLICE ARE
LOOKING AT YOU?

, ARE LOOKING AT A DEFENDANT?
BECAUSE THAT IS WHAT YOU'RE
SAYING NOW?

IS THERE ANY CASE THAT SAYS
THAT?

>> NO.

I'M JUST SAYING, THE TEST HERE
IS THE TOTALITY OF THE
CIRCUMSTANCES AND WE'RE, THAT'S
JUST ONE PART OF IT.

LOOKING AT IT--

>> MAYBE I CAN, LET'S GO TO WHAT
THE THIRD DISTRICT FOUND, THE
TRIAL COURT FOUND AND WHAT
HIDALGO TESTIFIED TO.

LEBRON STARTED CRYING.

AT THAT POINT HIDALGO BASICALLY
TOLD HIM I HOPE HE KNEW WHAT
TROUBLE HE IS IN.

HIDALGO ADVISED HIM THAT LEBRON
WOULD RESPOND WITHOUT FIRST
ADVISING HIS MIRANDA RIGHTS.

THAT IS WHAT THE THIRD DISTRICT
RELIED ON SAYING THAT INITIAL
CONFESSION WAS SUPPRESSED.

AGAIN, WE MAY REACH A DIFFERENT
CONCLUSION, BUT IF WE ASSUME
THAT, THEN THE QUESTION, HE THEN
IS MIRANDIZED.

SO WHAT YOU REALLY HAVE TO GET
OVER THEN WHAT IS THE CONCLUSION
WHETHER THERE WAS ENOUGH OF A
MIRANDA WARNING SO THAT THE
SECOND, MUCH MORE DETAILED
CONFESSION ALSO HAS TO BE
SUPPRESSED.

ISN'T THAT WHAT WE'RE DEALING
WITH HERE?

>> YES, YOUR HONOR, BUT--

>> FIRST, JUST-- BECAUSE THAT
FIRST, WHATEVER HE SAID
INITIALLY DID NOT COME IN AT
TRIAL.

>> RIGHT.

IT DIDN'T COME IN AT TRIAL BUT
IT WAS-- ONE OF THE TESTS HERE
OF WHETHER OR NOT THE
POST-NON-WARNED STATEMENT IS,
AND THE WAIVER OF MIRANDA IS
VOLUNTARY AND KNOWING IS HOW

CLOSE DOES IT COME, HOW CLOSE DOES THE POST-MIRANDA STATEMENT COME TO WHAT IS ALREADY SAID? BY THE TIME MIRANDA WAS GIVEN TO MY CLIENT, ANY REASONABLE PERSON WOULD HAVE THOUGHT THAT, WELL, THERE IS NO SENSE IN ME PRESERVING MY MIRANDA RIGHTS BECAUSE I HAVE ALREADY SAID EVERYTHING THAT I COULD POSSIBLY SAY HERE.

ON JUDGE THOMAS' ORDER GRANTING THE MOTION TO SUPPRESS--

>> I THINK YOU'RE, THE GIST OF WHAT YOU'RE TRYING TO ARGUE TO US IS THIS QUESTION FIRST, WARNED LATER TECHNIQUE, THAT THE OFFICER EMPLOYED.

>> THAT'S RIGHT.

>> WHERE YOU GET THEM TALKING, YOU GET THEM TALKING, ONCE YOU GET THEM TALKING, THEN YOU WARN THEM OF THE, OF THE MIRANDA RIGHTS, YOU JUST PRETTY MUCH CONTINUE WITH THE CONVERSATION. WHEREAS, I GUESS THE REASON FOR THE TECHNIQUE IS THAT BY WARNING THEM INITIALLY, YOU MAY SCARE THEM OUT OF TALKING.

SO YOU GET THEM TALKING.

AND THEN YOU STOP FOR A WHILE. AND YOU COME BACK AND WARN THEM OF THEIR RIGHTS, THEN CONTINUE WITH THE CONVERSATION, IS THAT WHAT YOU'RE SAYING.

>> THE CYBER CASE, THAT IS EXACTLY WHAT--

>> YOU'RE SAYING THAT THE MIRANDA RIGHTS GIVEN LATER, BASICALLY REALLY DID NOT IN ANY WAY DIMINISH THE OBLIGATION THAT THEY HAD TO PROVIDE HIM WITH THE RIGHTS TO BEGIN WITH, SOMETHING LIKE THAT.

>> EXACTLY, YOUR HONOR.

>> AS FAR AS TOTE ATTEMPT OF CIRCUMSTANCES-- TOTALITY OF CIRCUMSTANCES ARE CONCERNED IN THE BIG PICTURE.

>> YES, SIR.

IN THE CASE OF THIS DECISION
RAMIREZ VERSUS STATE WHEN ASKING
WHETHER OR NOT THE WAIVER, THE
WAIVER IS SUFFICIENT, THERE IS
TWO STEPS THERE.

ONE, WAS THE WAIVER NOT KNOWING,
INTELLIGENT AND VOLUNTARY AND
WE'VE, I TALKED ABOUT THE
VOLUNTARINESS BY THE TOTALITY OF
THE CIRCUMSTANCES BUT TWO, THE
IMPORTANT PART HERE, I THINK
TWO, IN LIGHT OF THE DETAILED
CONFESSION HE HAD MADE
PREVIOUSLY WHICH IS QUOTE, WAS
NOT MADE WITH A AWARENESS OF THE
CONSEQUENCES OF THE DECISION TO
ABANDON IT.

HE, MR. LEBRON, COULD NOT HAVE
BEEN AWARE OF THE CONSEQUENCES
OF HIS DECISION TO ABANDON HIS
MIRANDA RIGHTS--

>> DON'T YOU HAVE TO GET OVER
THE INITIAL HURDLE OF SHOWING
THAT THERE WAS A DELIBERATE,
TWO-STEP STRATEGY THAT THE
POLICE USED, THAT WAS, USING A
CALCULATED WAY, TO UNDERMINE THE
MIRANDA WARNING THAT THEY
SUBSEQUENTLY GAVE?

>> YES.

>> AND THAT'S THE TEST THAT
JUSTICE KENNEDY HAS ARTICULATED
AND THAT IS THE GOVERNING TEST,
IS THAT CORRECT?

>> YES.

AND I BELIEVE THAT WAS A FINDING
OF FACT BY JUDGE THOMAS THAT--

>> BUT WHAT-- IS THE SPECIFIC
FACT THAT, WHICH THAT IS BASED,
IS THE ONE ANSWER, THE ONE WORD
ANSWER TO THE QUESTION BY
DETECTIVE HIDALGO WHEN HE IS
ASKED, WHEN YOU SAID IT TO HIM,
THIS COMMENT WE'VE BEEN TALKING
ABOUT, DID YOU HAVE ANY
EXPECTATION THAT HE FACTUALLY
MIGHT RESPOND TO THAT STATEMENT
BY YOU?

AND THE DETECTIVE SAID, YES.
IS THAT--

>> NOT JUST THE ONE WORD, NOT JUST THAT ONE WORD BUT THE FACT THAT THAT ONE, THAT ANSWER WAS MADE IN THE CONTEXT OF DETECTIVE HIDALGO HAVING A LONG HISTORY OF KNOWING HOW TO QUESTION WITNESSES, OF KNOWING HOW TO GET THEM TO SAY THINGS WITHOUT QUESTIONING THEM, OF KNOWING WHAT THE PROPER STANDARDS ARE FOR QUESTIONING WITNESSES. JUDGE THOMAS BASICALLY FOUND DETECTIVE HIDALGO USED HIS SKILL TO SET HIM UP AND COERCE HIM WITHOUT IT BEING AS COERCIVE AS YOU MIGHT THINK, JUST LOOKING AT THAT ONE WORD, THAT ONE QUESTION, THAT ONE STATEMENT OUT OF CONTEXT. SO, I SEE I'M EATING INTO MY REBUTTAL TIME. I THINK THE COURT UNDERSTANDS MY POSITION ON THOSE ISSUES. I WOULD JUST QUICKLY SAY THAT, WE BELIEVE THAT THERE WAS A POSTILE VIOLATION HERE, OPENING STATEMENT AND DENY OF MISTRIAL WAS ERROR WHERE PROSECUTOR IN OPENING STATEMENT SAID TO THE JURY, HE WAS IN CUSTODY. AS A RESULT THEY KNEW THE OTHER PEOPLE THEY WERE LOOKING FOR. THIS CONVEYED QUOTE, INESCAPABLE INFERENCE FROM TESTIMONIES OF A NON-TESTIFYING WITNESS FURNISHED POLICE WITH EVIDENCE OF DEFENDANT'S GUILT. THE TESTIMONY IS HEARSAY OF THE DEFENDANT'S RIGHT OF CONFRONTATION IS DEFEATED NOT WITH STANDING THAT THE ACTUAL STATEMENTS BY THE NON-TESTIFYING WITNESS ARE NOT REPEATED. AND FINALLY, THE COURT SHOULD REVERSE BECAUSE THE PROSECUTOR OVERREACHED WHEN HE SAT THERE IN FRONT OF THE JURY BOX AND POINTED DOWN RIGHT BY THE JURY THREE TIMES AND CLICKED THAT GUN AND SAID, CLICK, CLICK, AND

BASICALLY PUT THE JURY IN THE POSITION OF THE VICTIM HERE.
>> IS THAT WHAT HAPPENED? THOSE WERE THE TRUE FACTS.
>> THOSE ARE THE TRUE FACTS.
>> RIGHT.
>> BUT WHY CAN'T THE PROSECUTOR RELATE TO THE JURY THE FACTS THAT HAVE BEEN PRESENTED IN EVIDENCE?
PULLED TRIGGER THREE TIMES AND FIRED.
THE FOURTH TIME, HE KILLED HER. WHY CAN'T PROSECUTOR DO THAT?
>> IT WAS THE DEMONSTRATION THAT PUT IT RIGHT IN THE JURORS FACE AND MADE THEM FEEL LIKE THE VICTIMS.
I BELIEVE IT WAS A GOLDEN RULE VIOLATION.
ASK THAT THE COURT REVERSE THE CONVICTION AND THE DEATH PENALTY.
>> MAY IT PLEASE THE COURT. ASSISTANT ATTORNEY GENERAL STEPHEN AKE ON BEHALF OF THE STATE OF FLORIDA.
>> JUST A QUESTION ON THE POSTURE OF THIS.
WE UPHELD THE DEATH SENTENCE AS TO WHO, THE CODEFENDANTS?
>> OF THE CODEFENDANTS I DON'T BELIEVE ANY OF THEM HAVE ACTIVE DEATH SENTENCE.
I BELIEVE ONLY ONE OF THEM HAD ONE AND I BELIEVE IT WAS REVERSED AND REMANDED FOR A NEW TRIAL IS MY UNDERSTANDING.
>> THAT CARABALLO?
>> I DON'T REMEMBER IF IT IS VICTOR OR HECTOR.
ONE OF THOSE TWO?
>> COUPLE OTHERS WERE NOT ELIGIBLE FOR THE DEATH PENALTY?
>> THE ONE WAS JUVENILE AND OTHER WAS ADULTS.
THEY GOT LIFE SENTENCES BASED ON MY LOOKING AT RECORD OR DOC--
>> HAS HECTOR CARABALLO HAD HIS TRIAL AND GOT LIFE SENTENCE?

>> NO, I DON'T KNOW WHAT HAPPENED ON REMAND, PRIOR DEATH CASE BEFORE THIS COURT AND I BELIEVE REVERSED AND REMANDED. I DON'T KNOW.

I HAVEN'T LOOKED TO SEE WHAT THE SUBSEQUENT--

>> THERE WERE TWO, IS THAT CARABALLO, VICTOR, CONVICTED FIRST-DEGREE MURDER?

>> I DON'T REMEMBER WHICH ONE GOT THE DEATH SENTENCE, YOUR HONOR, IS WHAT I'M TRYING TO SAY.

ONE DID NOT.

ONE OF THEM DID AND IT WAS REVERSED.

I WANT TO SAY IT WAS A WHILE AGO.

AND I DON'T KNOW WHAT, I DON'T KNOW WHAT HAPPENED ON REMAND ON THAT SO.

I WOULD LIKE TO BEGIN WITH THE CONFESSION, GUILT PHASE ISSUES. FIRST, I BELIEVE JUSTICE CANADY PUT IT CORRECTLY, BEFORE YOU GET TO THE TWO-STEP APPROACH COUNSEL IS ARGUING UNDER THE MISSOURI v. SEIBERT CASE, YOU HAVE TO SHOW THAT THE INITIAL STATEMENT WAS PRODUCT OF SOME KIND OF A INAPPROPRIATE TWO STEP PROCESS WHERE OFFICERS ARE TRYING TO EVADE MIRANDA. THAT IS SIMPLY NOT THE CASE HERE.

>> HERE IS WHAT CONCERNS ME WITH THIS CASE, AND I HAVE NOT-- HE IS ARRESTED AT 1:00 IN THE MORNING.

>> SOMEWHERE IN THAT TIME FRAME, YES.

>> HE IS STRIPPED AND THEY, WAS TRYING TO FIND OUT WHY.

I THINK YOUR BRIEF SAYS IT WAS, IF THERE WAS ANY TRACE EVIDENCE OWN HIS CLOTHES.

THEY DIDN'T WANT IT TO BE--

>> CORRECT.

>> TO BE REMOVED OR DISAPPEAR.

SO HE IS IN A, AND THEN HIS BROTHER-IN-LAW IS AT HIM WITH THE HELICOPTERS OVER AT IT, YELLING AT HIM.

HIS, HE IS THEN IN A POLICE CAR HANDCUFFED AND WHAT IS HE WEARING AT THAT POINT?

>> THEY DESCRIBE IT AS A HAZMAT SUIT I BELIEVE OR SOMETHING OF THAT.

WHATEVER THE CRIME SCENE TECHS WEAR WHEN THEY GO-- IN FACT ONE OF THEM WORE INTO A DUMPSTER AND WORE THE SAME TYPE OF CLOTHING.

>> THEN HE IS BROUGHT TO-- THERE IS NO QUESTION IN THIS CASE, WE SOMETIMES HAVE THE ISSUE HE WAS IN CUSTODY.

>> NO.

>> RIGHT THERE WITH NO, SIR QUESTION HE IS IN CUSTODY. THEY HAD ARRESTED HIM, UNDER ARREST AND IN CUSTODY.

HE IS BROUGHT, WHAT TIME IS HE BROUGHT TO THE--

>> THE TESTIMONY IS NOT EXACT. I THINK 2:40 SOMETIME WHEN HE IS BROUGHT TO THE FDLE ORLANDO OFFICE.

>> WHAT IS HE WEARING AT THAT TIME?

>> SAME THING, THE HAZMAT OUTFIT.

THEY SEIZED ALL HIS CLOUTS IN THE PARKING LOT.

CONTRARY TO COUNSEL THE HELICOPTER WAS NOT BUZZING DID--

>> DID THEY TAKE THE GLASSES?

>> THEY TOOK THE GLASSES.

>> DID HE NEED THE GLASSES FOR READING?

>> I DON'T BELIEVE ONE HE NEEDED THEM OR TWO HE GOT THEM BACK.

>> IS HE FULLY ENGLISH FLUENT?

>> NO.

FACT HE WAS EVERYTHING WAS GIVEN IN SPANISH.

HE SIGNED MIRANDA WAIVER FORM.

HIS PENMANSHIP IS IMPECCABLE.

I DON'T THINK SEEING HIS
SIGNATURE BLOCK WAS--
>> IS EVERYTHING AND CONFESSION,
EVERYTHING IN SPANISH?
>> THEIR WHOLE CONVERSATION IS
IN SPANISH, YES.
>> AND THEN, THIS ISSUE, ARE YOU
CONTESTING WHAT THE TRIAL COURT
FOUND AND THE THIRD DISTRICT
UPHELD AS FAR AS THE INITIAL
CONFESSION BEING, THAT MIRANDA
WARNING SHOULD HAVE BEEN GIVEN?
>> NO, YOUR HONOR.
THAT WAS SUPPRESSED.
THIRD DCA SAID THAT AND THEY
DIDN'T INTRODUCE IT AT TRIAL.
>> LOOKING AT WHAT HAPPENED
AFTER THAT, IS ROSS ON POINT,
THE ROSS CASE?
>> NO, YOUR HONOR.
IN FACT THIS CASE STANDS IN
STARK CONTRAST TO WHAT HAPPENED
IN ROSS.
ROSS, YOU HAVE, BLAINE ROSS
GOING INTO THE POLICE STATION I
BELIEVE ON TWO SEPARATE
OCCASIONS BEING INTERROGATED
OVER FOUR HOURS WITHOUT MIRANDA.
THE OFFICERS HAD BEEN
SPECIFICALLY TOLD NOT TO
MIRANDIZE HIM.
THEY CONFRONTED HIM WITH ALL
KINDS OF DISCREPANCIES IN HIS
STATEMENT IT AND ALL THAT.
HE RETURNS ON A THIRD TIME.
THEY GO THROUGH MORE
INTERROGATION.
FINALLY EVENTUALLY THEY
MIRANDIZE ROSS.
THIS CASE IS SO DIFFERENT FROM
THAT.
ALL YOU HAVE HERE IS OFFICER
HIDALGO IS BASICALLY BABYSITTING
THE DEFENDANT.
AND WHAT HAPPENED--
>> BABYSITTING HIM WITH SEVERAL
OTHER OFFICERS?
>> THEY'RE COMING IN AND OUT--
I WAS GOING TO SAY, LET ME SET
THE SCENE.

WE'RE IN THE FDLE ORLANDO OFFICE.

A NUMBER OF OFFICERS HAVE FLOWN UP FROM MIAMI THAT ARE INVOLVED IN THIS CASE AND THEY'RE IN A FOREIGN, BASICALLY JURISDICTION, MIAMI BEACH POLICE DETECTIVE HEADING IT UP.

THEY'RE BRINGING IN ALL THE OTHER CODEFENDANTS AND THEY'RE BASICALLY IN A BIG LARGE SQUAD ROOM WITH CUBICLES AND LEBRON IS AT A TABLE WITH OFFICER HIDALGO AND THEY'RE LOOKING FOR A TAPE RECORDER.

THEY DON'T HAVE A TAPE RECORDER WITH THEM.

SO THEY'RE ASKING THE FDLE LOCAL PEOPLE, DO YOU GUYS HAVE A TAPE RECORDER?

THEY WANTED TO SEE IF THEY COULD GET HIS STATEMENT ON TAPE.

WHILE OTHER OFFICERS ARE GOING IN AND OUT INTERROGATING OTHER CODEFENDANTS, LOOKING FOR THE TAPE RECORDER, HIDALGO IS SITTING THERE.

THEY HAVEN'T BEEN CONVERSING. DEFENDANT STARTS CRYING.

HE MAKES STATE I HOPE YOU KNOW WHAT KIND OF TROUBLE YOU'RE IN? HIDALGO STATES HE SHOT THE FEMALE VICTIM.

AT THAT POINT THEY DIDN'T KNOW SHE WAS DEAD.

THAT WAS IMPETUS FOR THEM TO GO IN.

HE INTERRUPTED INTERROGATION OF ANOTHER CODEFENDANT, CAESAR MEENA, HEY, WE KNOW SHE HAS BEEN KILLED, IT IS NOT 30 MINUTES LATER THEY COME BACK, THEY'RE DOING FORMAL INTERROGATION.

THIS WAS A VOLUNTARY STATEMENT. GRANTED, THERE WERE NO MIRANDA WARNINGS BUT THAT FIRST STATEMENT WAS NOT PRODUCT OF ANY KIND OF COERCIVE POLICE TACTICS TRYING TO GET AROUND MIRANDA.

>> WHAT DO WE DO WITH THE

DETECTIVE'S STATEMENT, HE MADE THIS STATEMENT HOPING AND BELIEVING THAT IT WOULD ELICIT A RESPONSE?

>> WELL I THINK, YOU KNOW, THE TRIAL JUDGE CITED TO THAT AND HE DID SAY THAT HE WAS HOPING THAT IT WOULD BRING OUT A RESPONSE BUT THE QUESTION AND ANSWER IMMEDIATELY BEFORE THAT WAS, BASICALLY, DID YOU EXPECT HIM TO DO ANYTHING INCRIMINATING, SAY ANYTHING INCRIMINATING?

NO.

HE WAS JUST MAKING A STATEMENT. BUT THAT STATEMENT WAS SUPPRESSED.

>> ALMOST A TRUISM THAT IF MAKE A STATEMENT TO SOMEBODY, YOU MIGHT EXPECT THEY WILL SAY SOMETHING IN RETURN?

>> EXACTLY.

>> NOT LIKE, WHAT THEY'RE GOING TO SAY IS A SEPARATE MATTER.

>> RIGHT.

>> BUT THE FACT THAT PEOPLE, JUST CHARACTERISTICALLY WILL RESPOND WHEN A STATEMENT IS MADE DOESN'T REALLY TELL YOU A WHOLE LOT.

>> RIGHT.

AND, THAT IS EXACTLY IT. HE IS NOT TRYING TO GET A DETAILED CONFESSION OUT OF HIM. HE DOESN'T CONTINUE INTERROGATING HIM.

AS SOON AS HE HEARS THIS HE TAKES OFF--

>> HE GAVE HIM, BASICALLY I TOLD HIM I HOPE HE KNEW WHAT KIND OF TROUBLE HE IS IN, THE GUY GIVES A FULL CONFESSION.

AND HE DOESN'T, SO NOW WE'RE-- AGAIN WE'RE NOT, THE ISSUE OF THE FIRST CONFESSION.

THE QUESTION REALLY IS--

>> RIGHT.

>> WHEN HE IS GIVEN THE MIRANDA WARNINGS AFTER THE FACT, THE QUESTION IS, DOES THE GUY KNOW,

US DID THE DEFENDANT KNOW THAT WHAT HE HAS JUST TALKED ABOUT IS SOMETHING THAT WILL NOT BE USED? OF COURSE NOT.

>> WELL, THE MIRANDA WARNINGS SPELL THAT OUT, YOUR HONOR.

>> IT SPELLS OUT WHAT IS GOING TO COME BUT NOT ABOUT WHAT ALREADY WAS--

>> RIGHT.

>> HE ALREADY SPILLED, AGAIN, THIS IS, THIS IS AN AWFUL, THE CASES AWFUL, YOU KNOW, CONSTITUTIONAL RIGHTS ARE SOMETIMES INCONVENIENT BUT WE'RE TRYING TO JUST SORT OF GET A GRASP ON THE SCENE HERE OF A DEFENDANT WHOSE ESSENTIALLY STRIPPED OF HIS CLOTHES, IN HANDCUFFED, IN A ROOM, AND NOW 3:00 IN THE MORNING.

>> WASN'T HANDCUFFED AT THIS POINT IN TIME IS MY UNDERSTANDING.

>> OKAY.

>> I THINK THIS IS CONTROLLED BY OREGON VERSUS ESLSTAT, YOUR HONOR.

YOU HAVE THE STATEMENT--

>> TO JUSTICE PARIENTE'S POINT, YOU WOULD CONCEDE UNDER KENNEDY'S ANALYSIS THIS WAS UNDER TWO-STEP PROCESS SUFFICIENT CURATIVE MEASURES WERE NOT TAKEN?

>> WELL, YOUR HONOR, I HAVE A PROBLEM WITH SAYING SEIBERT ANALYSIS APPLIES THIS CASE.

>> QUESTION IF IT DOES, THAT IS THE ISSUE, THEY DID NOT DO ANYTHING TO CURE TO LET HIM KNOW HIS EARLIER STATEMENTS COULDN'T BE USED.

THEY DIDN'T DO ANYTHING LIKE THAT, RIGHT?

>> THEY DIDN'T INFORM HIM HIS EARLIER STATEMENTS COULD NOT BE USED, NO, THEY DID NOT DO THAT.

>> RIGHT.

>> THERE ARE OTHER FACTORS IN

SEIBERT.

THE TIME DELAY.

LOOK TIME TRANSPIRED FROM THE
FIRST AND THE SECOND.

THE FIRST WAS, I SHOT THE FEMALE
VICTIM WHEREAS IN THE SECOND
POST-MIRANDA STATEMENT YOU HAVE
INCREDIBLY DETAILED STATEMENT
GOING OVER EVERYTHING IN THIS
CASE, ALL OF THE CRIMES THAT
WERE COMMITTED IN THIS CASE BY
LEBRON.

>> I THINK YOUR POINT IS, YOU
DON'T GET TO THAT ANALYSIS
WHETHER THOSE ADDITIONAL
CAUTIONARY MEASURES WERE DONE
UNLESS, UNDER KENNEDY'S APPROACH
THERE IS CLEARLY POLICE ARE
TRYING TO USE A TWO-STEP
INTERROGATION PROCESS, GET
EVERYTHING WITHOUT MIRANDA, GET
WHAT YOU NEED AND COME BACK AND
GIVE MIRANDA AND INTERROGATE?

>> THAT IS WHAT THE THIRD DCA
FOUND, THAT SEIBERT HAS NO
APPLICATION HERE.

>> RIGHT.

>> THIS HAS DONE SIMILAR IN THE
ADAM DAVIS CASE WHICH I POINT IS
VERY SIMILAR IN RESPECTS TO THE
FACTS OF THIS CASE.

I THINK THAT IT IS CLEAR THAT
HIS SUBSEQUENT MIRANDA, THE
WARNINGS HE VOLUNTARILY MADE THE
DETAILED CONFESSION.

>> AFTER A DETECTIVE MADE THE
STATEMENT, I HOPE YOU KNOW WHAT
KIND OF TROUBLE YOU'RE IN, WHICH
WAS PRECIPITATED BY THE
DEFENDANT CRYING APPARENTLY--

>> RIGHT.

>> AND THEN THE DEFENDANT SAID,
THE INCRIMINATING STATEMENT
ABOUT THE MURDER OF THE YOUNG
LADY, WHAT HAPPENED RIGHT AFTER
THAT?

>> WELL HIDALGO WENT OVER AND
TOLD OTHER OFFICERS THAT THE
VICTIM WAS DEAD.

THEY, HE INTERRUPTED ANOTHER

INTERROGATION OF ANOTHER--

>> IT IS NOT LIKE A CIRCUMSTANCE WHERE HIDALGO WENT ON AND SAID, TELL ME MORE?

>> NO.

>> HE CUT IT OFF.

>> RIGHT.

>> AND WENT ON AND THEN CAME BACK AND ULTIMATELY THEY GAVE THE MIRANDA WARNINGS?

>> RIGHT.

IT WAS ABOUT 30 MINUTES LATER. I THINK IT WAS, THE TESTIMONY WAS AT 2:42 WAS HIS STATEMENT. AT 3:15, THEY STARTED A LITTLE EARLIER BUT 3:15 HE SIGNED THE MIRANDA WARNINGS.

THERE ARE NO FACTUAL DISPUTES HERE.

WE'RE NOT TRYING TO SAY THIS COURT NEEDS TO DEFER.

THIS IS ALL LEGAL ANALYSIS.

THE TRIAL JUDGE DIDN'T FIND ANY RELEVANT FACTS REALLY.

HIS ANALYSIS WAS BASICALLY ALL SEIBERT AND IT WAS THIS WHOLE COERCIVE CONDUCT WHICH THE THIRD DCA RIGHTFULLY I WOULD SUBMIT SAID NO, THAT IS NOT THE CASE. COUNSEL BRIEFLY TOUCHED ON A COUPLE--

>> LET ME ASK YOU THIS AGAIN ABOUT WHAT IS FACT AND WHAT IS UNDISPUTED.

WE DON'T HAVE A VIDEO OF COURT, MAKING THE DECISION THIS WAS A SIEBERT SITUATION, AND ROSS'S OPINION --

>> IT WAS A LENGTHY SUPPRESSION HEARING WITH MULTIPLE CODEPENDENTS TO BUT WE HEARD FROM ALL THE OFFICERS, I WANT TO SAY IT WAS LENGTHY, AND IF YOU LOOK AT HIS ACTUAL ORDER WHICH I HAVE HERE, IN VOLUME, 5445, IS VERY BRIEF BUT THERE ARE NO FACTS WE ARE DISPUTING.

HE WAS ARRESTED AT 1:00 A.M. HE MADE THOSE STATEMENTS AT THAT TIME AND SUBSEQUENTLY AT 3:15

WAS GIVEN MIRANDA.
THEY BROUGHT OUT TAPE RECORDER,
IT WAS A MORE FORMAL
INTERROGATION AT THAT TIME.
THE TRIAL JUDGE MAKES NO
FINDINGS AS TO ANY COERCIVE
CONDUCT THAT MAY OR MAY NOT HAVE
HAPPENED PRIOR TO AGE AND
HIDALGO MAKING ONE COMMENT TO
MISTER LEBRON.
AND THE THIRD DCA, AND HIS
MIRANDA STATEMENTS WERE PROPERLY
ADMITTED.

COUNSEL TOUCHED ON THE PASTEL
ISSUE, YOU LOOK AT THE OPENING
STATEMENT, THE STATE SETTING
FORTH THE CHRONOLOGY OF WHAT
HAPPENED IN THIS CASE, THROUGH
VARIOUS LEADS INVESTIGATIVE
LEADS IS THE QUOTE THE
PROSECUTOR USES, THROUGH VARIOUS
INVESTIGATIVE LEADS FROM FBI,
MIAMI BEACH, THEY FIND AND
ARREST MISTER LEBRON.

>> BACK TO WHAT THE TRIAL COURT
FOUND IT DOES LOOK LIKE THE
TRIAL COURT, THE FACTUAL
FINDINGS, THEY FAILED TO PROVIDE
MIRANDA WARNINGS AND THE ONE
PHASE TOOK PLACE IN THE SAME
LOCATION AND PROCEEDED AFTER A
PAUSE OF 30 MINUTES, THE SAME
OFFICER WHO CONDUCTED THE FIRST
PHASE SAID NOTHING TO COUNTER
THE MISIMPRESSION THAT ANYTHING
LEBRON SAID WOULD BE AGAINST HIM
AND ALSO APPLIES DETAILS OF
OTHER STATEMENTS AND HE GOES
THROUGH TO ME A LOT MORE.
WHETHER THOSE ARE FACTS OR
ILLEGAL CONCLUSIONS, NOT LIKE
THIS IS AND A SUMMARY.

>> THOSE ARE NOT IN DISPUTE.
NOTHING YOU POINT DID IT AT THE
HOUSE, IS IT THE SAME LOCATION,
THE SAME TABLE, THAT IS WHERE
THEY BRING THE TAPE RECORDER AND
THREE OTHER OFFICERS.
NONE OF THAT IS IN DISPUTE.
>> YOU DON'T INC. AFTER SOMEONE

FULLY CONFESSED WHERE THE MIRANDA WARNINGS WERE NOT GIVEN THAT THERE IS ANY OBLIGATION ON THE PART OF THE POLICE TO COUNTER THE MISIMPRESSION THAT WHAT THEY HAVE JUST SAID WHICH IS NOW THERE CONFESION, IS NOT GOING TO BE USED.

>> THE SUPREME COURT SAID THAT IN OREGON, IT IS NOT REQUIRED, THERE'S NOTHING YOU DO NOT HAVE TO TELL HIM, WE ARE NOT GOING TO USE WHAT YOU SAID, THAT IS NOT REQUIRED.

>> THIS IS UNDER THE FIFTH AMENDMENT, ONE OF THE FEW AMENDMENTS WE DON'T HAVE TO FOLLOW IN THE SUPREME COURT.

>> I DON'T THINK IT IS A REQUIREMENT.

>> YOU SAID IN ROSS, WE SET FORTH MULTI-FACTORY TEST, THE FACTS WERE DIFFERENT. THE LOSS FACTORS ELABORATED ON SIEBERT.

>> THE COURT WAS FOLLOWING THAT FACTOR, THAT IS MY INTERPRETATION AND YOU WERE MAKING THAT THRESHOLD FINE AND SIEBERT IMPLIES BECAUSE OF THE INITIAL DEVELOPMENTS, I DON'T THINK THAT IS THE CASE HERE. HIDALGO'S SINGLE STATEMENT WHEN HE STARTS CRYING REALLY, IT WAS A FAIRLY INNOCUOUS STATEMENT THAT GAVE AN ANSWER HE WASN'T EXPECTING AND HE IMMEDIATELY STOPPED AND GOT OTHER OFFICERS, 30 MINUTES LATER DOING A MUCH MORE FORMAL INTERROGATION SETTING, AND AT THAT TIME THEY INITIATED THE MIRANDA WARNING. ALL THOSE STATEMENTS THAT CAME IN AFTER THAT, HE KNEW, HE SIGNED THE MIRANDA WARNING AND WENT OVER EACH PARAGRAPH, HE UNDERSTOOD THAT.

THAT ACCORDING TO THE SUPREME COURT YOURS ANY PROBLEM WITH PRE-MIRANDA STATEMENTS SO I

THINK THIS COURT SHOULD FOLLOW THE THIRD DCA'S LEAD.

>> THE PLURALITY IN SIEBERT WOULD HAVE BEEN A DIFFERENT TEST AND THAT IS CLOSER TO WHAT JUSTICE PERRY AND HE SAID BUT KENNEDY IS THE CONTROLLING VOTE.

>> THIS COURT GOES THROUGH THAT IN ROSS, HE GOES THROUGH THOSE DEFENDANTS.

I BELIEVE I WAS HITTING ON THE PASTEL ISSUE AND I COVERED THAT. IT IS DIFFERENT WHERE YOU HAVE A VERY DIRECT REFERENCE TO A PERSON NOT TESTIFYING AT SEEING A ROBBERY AND THE PROSECUTOR WAS ADMITTING EVIDENCE AS OPPOSED TO OPENING STATEMENTS NUMEROUS EXAMPLES OF THIS PERSON, YOU TALK TO SOMEBODY AND THE REST THE DEFENDANT.

I DON'T THINK WE HAVE THAT ANYWHERE CLOSE TO A PASTEL VIOLATION AND THE GUN SITUATION AGAIN WAS NOT PUTTING -- THE PROSECUTOR WAS NOT TELLING THEM TO PUT THEMSELVES IN THE VICTIM'S SHOES IN THAT INSTANCE BUT SIMPLY DEMONSTRATING WHAT THE EVIDENCE WAS, HOW THE MURDER TOOK PLACE.

I DON'T THINK THERE IS ANYTHING IMPROPER ABOUT THE PROSECUTOR'S ARGUMENT WITH THE GUN.

THE FINAL ISSUE IS HURST.

>> IF YOU WOULD SUMMARIZE FOR IT, THE ONLY FACT THAT SUGGESTS A TWO STEPPED PROCESS IS SUBJECTIVE THOUGHTS WHEN HE MADE THE STATEMENT.

ARE THERE ANY THOUGHTS THAT POLICE WERE EMPLOYING, A TWO STEPPED PROCESS?

WHAT ARE THE FACT THAT SUGGEST THEY WERE NOT?

>> THE FACT THAT THEY HAD BEEN SITTING THERE IN THE POLICE STATION WITH NO INTERROGATION AND --

>> BECAUSE POLICE WERE DOING

WHAT?

>> LOOKING FOR A TAPE RECORDER AND OTHER AGENTS WERE INTERROGATING OTHER CODEFENDANTS IN OTHER LOCATIONS IN THE BUILDING, BUT THE OFFICERS INVOLVED WITH LEBRON'S ARREST DEALING WITH HIM WERE KNOWN.

>> WAS THAT PROCEDURE, OPD OR ORANGE COUNTY SHERIFF?

>> IT WAS FT ELLIE.

>> WAS THE PROCEDURE TO ALLOW THE INVESTIGATING OFFICERS WHO COME FROM THE OTHER JURISDICTION TO CONDUCT THE INTERROGATION THE QUESTIONING?

>> HIDALGO WAS WITH FDLE AND SO WAS ANOTHER OFFICER AND THERE WAS ALSO A ORANGE COUNTY SHERIFF'S OFFICER AND HIS PATROL UNIFORM BECAUSE THEY NEED THEIR ASSISTANCE TO GO TO THESE SUSPECTS'S APARTMENTS.

HE WAS THERE IN THE VICINITY OF THE ROOM BUT THE MIAMI BEACH POLICE DETECTIVE DOING THE INTERROGATION HAD A MICRO CASSETTE RECORDER AND THEY WERE MAKING IT KNOWN THEY WERE LOOKING FOR AND TRYING TO FIND OUT WHERE THE ORLANDO PEOPLE KEPT THEIR TAPE-RECORDED AND GOT THEM SET UP.

THAT WAS EXPLAINING THE DELAY AND GETTING TO THE INTERROGATION AND THEY WERE JUST SITTING THERE.

LEBRON STARTS CRYING AND WE HAVE HIDALGO'S STATEMENT WAS I DON'T BELIEVE THERE ARE ANY OTHER FACT.

COUNSEL IS ALLEGING AT THE TIME OF THE ARREST WHAT TOOK PLACE, NONE OF THAT IS COERCIVE, AND --

>> IN THE CONTEXT OF OTHER SUPPRESSION, LAW ENFORCEMENT, THE CRIME TOOK PLACE, LAW ENFORCEMENT CONDUCTING THE ARREST ARRESTED THE TEAM AND PROTOCOLS ABOUT WHO DOES THE

QUESTIONING.

>> I DON'T KNOW -- AND FT ELLIE AND MIAMI BEACH WERE WORKING HAND IN HAND, AS TO THE HURST ISSUE THE STATE IS AWARE OF THE CASES THE COURT HAS COME WITH, WE DON'T AGREE WITH THE COURT'S INTERPRETATION.

AND THE COURT IS RIGHT, AND THE JURY UNANIMOUSLY, AND THE PRIOR CONVICTIONS FOR ALL THE CONTEMPORANEOUS ONES, AND THE SEXUAL BATTERY AND KIDNAPPING AND THAT WOULD BE SUFFICIENT UNDER HURST THE FLORIDA, IF THERE ARE NO FURTHER QUESTION, NO FURTHER CONVICTIONS.

>> THE CASE OF DETECTIVE HIDALGO GETTING, QUOTE, AN ANSWER, HE WAS NOT EXPECTING, JUDGE THOMAS MADE TWO FINDINGS OF FACT OR, 54, 53, THE SECOND FINDING FIRST.

THE STATEMENT BY DETECTIVE HIDALGO YOU KNOW WHAT KIND OF TROUBLE YOU ARE IN WAS INTERROGATION, INTERROGATION AS CHARACTERIZED, SECOND, QUOTE, ALTHOUGH THE POLICE NEW AND FULLY EXPECTED THE INTERROGATION LEADS TO AN INCRIMINATING RESPONSE, YES, HE EXPECTED THAT RESPONSE, WANTED THAT RESPONSE.

>> YOU HAVE TO GET TO THE FIRST POINT ABOUT THEIR EVER BEING A MIRANDA ISSUE COMING UP INITIALLY, RIGHT?

THAT IS HOW YOU MEET THE LITMUS TEST.

>> THAT FIRST PART IS THE INTERROGATION BUT THE SECOND PART IS BY FULLY EXPECTING IT WOULD LEAD TO AN INCRIMINATING RESPONSE --

>> THAT IS THE TEST.

>> THAT IS -- WAS JUST --

>> INES.

>> THEY WERE COERCING HIM DISCREETLY, COERCING HIM.

>> YOU SAID DISCREETLY?

DOES INES MAKE A DISTINCTION
BETWEEN THE INTERROGATION THAT
IS NOT PERMISSIBLE AND THINGS
THAT ARE SUDDENLY COERCIVE?
SUDDENLY COERCIVE?
THAT IS THE TERMINOLOGY, IS THAT
OKAY?

>> I'M NOT PREPARED TO ANSWER
THAT AND I DON'T KNOW THE
DISTINCTION BETWEEN THOSE TWO.
>> I WOULD LIKE TO CLOSE WITH
DETAIL, COUNSEL POOH-POOHED WHAT
WAS SAID IN THE UNWARRANTED
STATEMENT, BASICALLY HE ADMITTED
HE SHOT THE VICTIM BUT AS JUDGE
THOMAS FOUND, EVERY ELEMENT OF
ALL OF THESE CRIMES WAS
ESTABLISHED IN THE UNWARRANTED
CONFESSION.
I AM SORRY.
>> OKAY.

JUDGE THOMAS WENT THROUGH THE
VARIOUS ELEMENTS AND TESTIMONY
OF MISTER FINK, THE DEFENSE
TRIAL COUNSEL, ASKED DETECTIVE
HIDALGO, QUOTE, HIS RESPONSE WAS
IN EFFECT A COMPLETE CONFESSION
NOT ONLY TO THE FACT THE CRIME
HAD OCCURRED BUT HE HAD BEEN THE
PERSON WHO COMMITTED THE CRIME
AND NEXT ONE, HE HAD BEEN THE
PERSON TO INJURE THE VICTIM WHO
SURVIVED, CORRECT, A DIFFERENT
CRIME.

HE HAD BEEN THE FIRST TO INJURE
MISS ANGEL, CORRECT.

AND THEN THE NEXT ONE, HE
ADMITTED HE HAD PULLED THE
TRIGGER TWICE AND THEN A THIRD
TIME BECAUSE THEY HAD NOT GONE
OFF THE FIRST TWO TIMES,
CORRECT.

QUESTION BY MISTER THINK, HE
ADMITTED TO YOU THE MANNER IN
WHICH HE ATTEMPTED AND THEN
SUCCEEDED ACCORDING TO HIM AT
KILLING MISS ANGEL, CORRECT.
THEN MISTER FINK, DESPITE THE
FACT HE WENT ON TO GIVE A FULL
CONFESSION PRIOR TO THE TIME

MIRANDA RIGHTS WERE READ, HE ADMITTED TO EACH ELEMENT OF THE CRIMES, BEFORE THE MIRANDA RIGHT WERE READ, HE SAID EVERYTHING THAT COULD POSSIBLY BE SAID ON THESE CRIMES AND SO HE COULD NOT HAVE KNOWN, COULD NOT HAVE MADE A CONSCIOUS DECISION BECAUSE HE COULDN'T HAVE THOUGHT IT WOULD BE ANY GOOD.

>> YOUR TIME IS UP AND THANK YOU FOR YOUR ARGUMENTS.