

WE NOW PROCEED TO THE FOURTH AND FINAL CASE ON THE DOCKET FOR TODAY, CAMPBELL V. THE STATE AND CAMPBELL V. JONES.

>> MAY IT PLEASE THE COURT. GOOD MORNING, MY NAME IS JULIE MORLEY, AND I, ALONG WITH CO-COUNSEL, REPRESENT MR. CAMPBELL.

I'D LIKE TO FOCUS ON ARGUMENT ONE OF OUR INITIAL BRIEF. MR. CAMPBELL ALLEGES THAT HE WAS PROVIDED PREJUDICIAL, INEFFECTIVE ASSISTANCE OF COUNSEL FOR TRIAL ATTORNEY'S FAILURE TO SUPPRESS THE FIVE INCRIMINATING STATEMENTS HE MADE AFTER HIS ARREST BUT PRIOR TO CONTACT WITH THE ATTORNEYS. THE ATTORNEYS HERE FAILED TO TAKE THE MOST BASIC STEP TO PROTECT MR. CAMPBELL'S RIGHT AGAINST SELF-INCRIMINATION.

>> WOULDN'T YOU HAVE TO FOR THAT HOLD THAT-- ALTHOUGH MAYBE THERE ARE SOME PLACES WHERE THAT'S DONE, THAT THE PUBLIC DEFENDER'S OFFICE WOULD HAVE TO BE CHECKING ON EVERYONE'S ARRESTED AND BEFORE THERE'S EVEN AN ARRAIGNMENT ACTUALLY SEEK TO REPRESENT THAT DEFENDANT?

>> SO THAT'S-- THAT ENCOMPASSES ARGUMENT TWO OF OUR MOTION ABOUT THE RAPID RESPONSE OF THE LACK OF--

>> SO WHAT WAS, I'M SORRY--

>> I'M SORRY.

ARGUMENT ONE HAS TO DO WITH THE VOLUNTARINESS OF THE STATEMENTS THEMSELVES.

>> BASED ON HIM BEING-- SORRY.

>> CORRECT.

AND THEIR FAILURE NOT TO FILE MOTIONS.

WE CAN ADDRESS THE SECOND PART LATER.

IN THIS CASE IT'S THE UNDISPUTED THAT THE TRIAL ATTORNEY NEVER HIRED A PHARMACOLOGIST AND NEVER

LEARNED MR. CAMPBELL WAS CONSUMING HIGH NUMBERS OF OPIATES AND HE WAS LEGALLY IMPAIRED DURING EACH OF THESE FIVE INTERVIEWS.

TO GIVE SOME CONTEXT TO WHEN THE INTERVIEW WAS GIVEN, SEVERAL HOURS AFTER THE HOMICIDE TO OCCURRED--

>> THE--

>> YES.

>> COUNSEL TESTIFIED TO A REASON FOR STRATEGICALLY DECIDING THOSE STATEMENTS SHOULD COME IN BASED UPON THE REMORSE THAT YOUR CLIENT EXPRESSED TOWARD KILLING HIS FATHER.

AND I THINK THAT THE TRIAL COURT FOUND THAT.

SO WHY ISN'T THERE COMPETENT AND SUBSTANTIAL EVIDENCE TO SUPPORT A TRIAL COURT FINDING OF A STRATEGIC REASON FOR NOT SEEKING TO SUPPRESS THE HOSPITAL STATEMENT?

>> SO WE BELIEVE THE TRIAL STRATEGY WAS FLAWED FOR TWO REASONS.

THE FIRST IS THAT A REASONABLE STRATEGY NEEDS TO BE BASED ON INFORMED JUDGMENT OF ALL THE FACTS, AND IT WAS UNDISPUTED AND THE TRIAL ATTORNEYS TESTIFIED THEY NEVER HIRED A PHARMACOLOGIST TO REVIEW THESE RECORDS, AND THEY NEVER LEARNED ABOUT MR. CAMPBELL'S SPECIFIC OPIATE NAIVETE THAT WOULD MAKE HIM MUCH MORE VULNERABLE TO THESE DRUGS THAT HE WAS ON. SECONDLY--

>> DIDN'T COUNSEL TESTIFY THAT THIS REALLY WAS A PENALTY PHASE CASE?

THERE WAS NO QUESTION THAT YOUR, THAT HE COULD REASONABLY RAISE WITH RESPECT TO GUILT AND, THEREFORE, THE STATEMENTS WHERE THE JURY HEARD THE STATEMENTS OF REMORSE WOULD BE HELPFUL.

I DON'T SEE WHY THAT HAS ANYTHING, IF YOU DECIDE THAT, WHY WOULD YOU EVEN BOTHER PURSUING A PHARMACOLOGIST?

>> SO TRIAL COUNSEL ARGUED THAT THEIR STRATEGY IN THE GUILT PHASE WAS TO ATTACK THE PREMEDITATION ELEMENT.

AND PART OF WHAT THEY SAW IN MR. CAMPBELL'S STATEMENTS WAS THE REMORSE WOULD BE HELPFUL WITH THAT.

BUT THEY DID TESTIFY THAT THE FIFTH STATEMENT, WHICH HAPPENED SEVERAL DAYS AFTER THE HOSPITAL AT THE LOCAL COUNTY JAIL WHILE HE WAS STILL UNDER THE INFLUENCE OF THESE NARCOTICS, WAS PROBLEMATIC BECAUSE IT WAS VERY DIFFERENT FROM THE FIRST FOUR STATEMENTS.

IT SHOWS A HEIGHTENED PREMEDITATION, AND THE ONLY WAY THE REALLY COUNTER THAT FIFTH STATEMENT WAS BY PUTTING MR. CAMPBELL ON THE STAND TO EXPLAIN THAT STATEMENT AWAY. THE REMORSE ANGLE AND THE STRATEGY THAT THE TRIAL COUNSEL WANTED IN THIS CASE COULD HAVE BEEN ACCOMPLISHED WITHOUT THESE STATEMENTS.

THERE WAS A STATE WITNESS, MARGARET DRIGGERS, WHO THE STATE USED TO BRING IN TEXT MESSAGES BETWEEN MR. CAMPBELL AND HERSELF AFTER THE HOMICIDE OCCURRED.

BUT PRIOR TO HIS ARREST AND LETTERS, MR. CAMPBELL SUBSEQUENTLY WROTE TO HER FROM THE COUNTY JAIL.

THE REMORSE ELEMENT THAT THEY WERE TRYING TO DEMONSTRATE IS SHOWN.

THERE IS A CONFESSION TO THE MURDER ITSELF, BUT THERE'S NO INTENT DESCRIBED IN IT.

THERE'S NO PLAN, NO PREMEDITATION DESCRIBED.

THERE IS NO DOUBT THAT ABSENT

THESE STATEMENTS PREMEDITATION WOULD HAVE BEEN VERY DIFFICULT FOR THE STATE TO PROVE IN THE GUILT PHASE.

AND THE PREJUDICE HERE ALSO APPLIES TO THE PENALTY FACE.

AND I, EVEN THOUGH MR. CAMPBELL IS RECEIVING A NEW PENALTY PHASE BECAUSE OF--

>> WAS THAT THE FINAL, WAS THAT THE STATEMENT WHEN HE WAS OUT OF THE HOSPITAL?

>> CORRECT.

>> THAT'S WHAT YOU'RE TALKING ABOUT.

AND SO IS THAT STATEMENT DIFFERENT?

I MEAN, HE'S BEEN RELEASED FROM THE HOSPITAL, HE'S NOT AT LEAST ON THE SAME LEVEL OF MEDICATION, IS HE?

>> HE'S STILL ON-- HE'S ON DIFFERENT MEDICATION AT THIS POINT.

>> EXACTLY.

DOESN'T THAT MAKE A DIFFERENCE AS TO WHETHER OR NOT THOSE PARTICULAR STATEMENTS WOULD HAVE EVEN BEEN SUPPRESSED?

>> THEY NEVER EVEN INVESTIGATED WHETHER THEY COULD SUPPRESS THEM.

>> I UNDERSTAND YOUR ARGUMENT, BUT I'M TALKING ABOUT ON THE MERITS OF IT.

IT SEEMS TO ME THAT GIVEN THE CIRCUMSTANCES OF HOW THAT STATEMENT WAS GIVEN, IT SEEMS VERY LIKELY-- LESS LIKELIHOOD THAT THAT STATEMENT WOULD HAVE BEEN SUPPRESSED.

>> THE CIRCUMSTANCES OF THE FIFTH STATEMENT, HE WAS RELEASED FROM THE ICU IN THE HOSPITAL TO THE MEDICAL WARD OF THE COUNTY JAIL.

HE WAS STILL IN A STRUCTURE.

HE WAS STILL TAKING HIGH-DOSE OXYCODONE AND CONTINUOUS RELEASE OxyContin, AND HE WAS

SUICIDAL AT THE TIME.  
UNDER THE TOTALITY OF THE  
CIRCUMSTANCES AND THE EXPERT AS  
TESTIFIED IN POST-CONVICTION  
THAT STATEMENT STILL WAS, HE WAS  
STILL LEGALLY IMPAIRED AT THAT  
POINT AS WELL.

>> THIS IS DR. O'DONNELL YOU'RE  
TALKING ABOUT?

>> YES, SIR.

>> DIDN'T HE ALSO TESTIFY ON  
CROSS-EXAMINATION THAT HE, UPON  
LISTENING TO THE TAPES, THAT HE  
SOUNDED COHERENT, WAS ABLE TO  
ANSWER ALL THE QUESTIONS AND  
MADE SENSE?

>> HE DID.

AND HE ALSO TESTIFIED THAT  
IMPAIRMENT DOES NOT NECESSARILY  
MEAN THAT ONE CAN'T COMMUNICATE.  
ONE WOULDN'T HAVE TO BE IN A  
RAGE OR HYSTERICS, THAT PART OF  
THE IMPAIRMENT FROM THESE  
SPECIFIC NARCOTICS THAT  
MR. CAMPBELL WAS ON AFFECTS THE  
ABILITY TO BE ABLE TO CONSIDER  
THE CONSEQUENCES OF THE WORDS OF  
THE PERSON SPEAKING.

SO THAT WOULD GO-- AND HE  
DESCRIBED THAT HE RUNS THESE  
INSTITUTIONAL REVIEW BOARDS AND  
THAT A PERSON LIKE MR. CAMPBELL  
UNDER THE SAME MENTAL DISTRESS,  
PHYSICAL DISTRESS AND THE LEVEL  
OF NARCOTICS HE WAS RECEIVING  
DURING THIS TIME AND BEING  
OPIATE NAIVE, HE WOULD NEVER  
ALLOW IN A CLINICAL OR RESEARCH  
SETTING THIS TYPE OF PERSON TO  
GIVE CONSENT.

WHAT'S IMPORTANT AND EVEN THOUGH  
MR. CAMPBELL IS GETTING A NEW  
PENALTY PHASE DUE TO THE HEARST  
CASE BY THE TRIAL COURT HERE,  
THE PREJUDICE IS STILL GOING TO  
BE EXTENDING TO A NEW PENALTY  
PHASE WHEN HE GOES BACK TO THE  
TRIAL COURT.

AND IN THIS CASE, THERE WERE  
FOUR AGGRAVATORS THAT THE TRIAL

JUDGE FOUND, THREE OF WHICH WERE SUPPORTED BY MR. CAMPBELL'S STATEMENTS.

THE CCP AGGRAVATOR WAS EXCLUSIVELY FOUND BY

MR. CAMPBELL'S STATEMENTS--

>> YOU THINK YOU'RE PRECLUDED A NEW PENALTY PHASE FOR MAKING SOME OF THE ARGUMENTS THAT ALTHOUGH THE AGGRAVATORS WERE FOUND, HIS GUILT IS THERE, THAT THOSE STATEMENTS WERE MADE WHEN HE WAS UNDER MEDICATION, DO YOU THINK YOU'RE PRECLUDED FROM PUTTING THAT TESTIMONY ON?

>> I AM NOT SURE, I'M NOT SURE, YOUR HONOR.

>> I DON'T KNOW WHY YOU WOULD BE PRECLUDED.

>> I'M SURE THE ATTORNEYS CAN STILL REARGUE THOSE ISSUES AGAIN.

>> I MEAN, BECAUSE IT GOES TO THE STRENGTH OF THE AGGRAVATORS.

>> RIGHT.

I AGREE.

ESPECIALLY THE CCP AGGRAVATOR WHICH WAS EXCLUSIVELY FOUND BY MR. CAMPBELL'S STATEMENTS ALONE AND UPHELD BY THIS COURT IN THEIR DIRECT APPEAL OPINION. WAIVERS OF THE CONSTITUTIONAL RIGHTS MUST BE VOLUNTARY, AND THE PERSON NEEDS AWARENESS OF ALL OF THEIR RELEVANT CONSEQUENCES.

DR. O'DONNELL TESTIFIED THAT THE NARCOTICS THAT MR. CAMPBELL WAS ON DURING EACH OF THESE FIVE INTERROGATIONS WOULD, IN FACT, HIS DELIBERATION, WOULD AFFECT DECISION MAKING ABILITY, JUDGMENT, ISSUES WITH IMPULSIVITY, THE ABILITY TO THINK CLEARLY AND CONSIDER CONSEQUENCES.

THERE WAS A GENERAL PRACTICE SPORTS MEDICINE DOCTOR THAT THE TRIAL ATTORNEYS CONSULTED WITH TO JUST REVIEW THESE MEDICAL

RECORDS GENERALLY.  
THE TRIAL ATTORNEYS DID SAY IN  
POST-CONVICTION THOUGH THAT IF  
THEY WERE GOING THE STRATEGY OF  
TRYING TO SUPPRESS THE  
STATEMENTS, THAT THEY WOULD  
ABSOLUTELY NEVER USE THAT AS AN  
EXPERT, AND THEY WOULD HAVE  
FOCUSED ON AN EXPERT IN  
PHARMACOLOGY OR TOXICOLOGY.  
IF THERE'S NO OTHER QUESTIONS AT  
THIS POINT, I'LL PASS AND SAVE  
THE REMAINDER FOR REBUTTAL.  
THANK YOU.

>> GOOD MORNING, MAY IT PLEASE  
THE COURT, I'M PATRICK BOBEK  
WITH THE ATTORNEY GENERAL'S  
OFFICE, AND I REPRESENT THE  
STATE IN THIS CASE.  
I'D LIKE TO START BY ADDRESSING  
THE ISSUE OF TRIAL COUNSEL'S  
INTENTIONAL STRATEGIC DECISION  
NOT TO ATTEMPT TO SUPPRESS  
MR. CAMPBELL'S CONFESSIONS.  
BEFORE WE EVER GOT TO HIS  
CONFESSIONS, THIS WAS A CASE  
WHERE ACQUITTAL WAS NEVER A  
REASONABLE OR REALISTIC OPTION.  
HE HAD ALREADY CONFESSED TO THE  
MURDER BEFORE HE WAS EVER IN THE  
CAR ACCIDENT VIA TEXT MESSAGE.  
THOSE TEXT MESSAGES WERE  
INTRODUCED AT COURT.  
WHEN THE BODY WAS FOUND, THERE  
WAS A SHIRT ON TOP OF IT AND A  
PICTURE OF THE DEFENDANT'S  
SISTER AND THE VICTIM'S DAUGHTER  
ON HIS FACE.  
AND THEN THAT WAS COVERED UP  
TOO, WHICH LED--

>> COULD YOU KEEP YOUR VOICE UP,  
PLEASE?

I'M HAVING A HARD TIME HEARING  
THE END OF YOUR SENTENCE.

>> SORRY.

SO THAT LED THE POLICE TO  
BELIEVE IT WAS A RELATIVE OR  
SOMEONE INVOLVED.  
THEY IMMEDIATELY WENT TO  
MR. CAMPBELL AS THE SUSPECT.

THEY FOUND OUT HE HAD BEEN USING HIS FATHER'S CREDIT CARDS MULTIPLE TIMES AFTER THE MURDER OCCURRED.

HE'S ON TAPE TALKING TO THE CREDIT CARD COMPANY TRYING TO GET IT REACTIVATED AFTER IT STOPPED WORKING.

THERE WERE 35 \$2 BILLS STOLEN FROM THE VICTIM'S HOUSE WHICH WERE RECOVERED.

ONE OF HIS FRIENDS TESTIFIED THAT HE WAS WITH HIM WHEN ALL THAT HAPPENED.

SO WE ALREADY HAD A CONFESSION--

>> WHEN YOU SAY YOU ALREADY HAD A CONFESSION, IS THIS A STATEMENT HE MADE TO THE GIRLFRIEND?

>> YES.

BEFORE THE CRASH OR HOSPITAL OR ANY OF THAT EVER HAPPENED, HE TEXT, HE SENT HER TEXT MESSAGES ADMITTING TO MURDER.

HE EVEN SAID HE USED AN AXE. SHE SAID SHE DIDN'T BELIEVE HIM, HE SAID YOU CAN CALL THE COPS, WHICH SHE DID, AND THEY TOLD HER TO KEEP IN CONTACT WITH HIM AND TO LET THEM KNOW IF HE KEPT CONTACTING HER.

SO BEFORE HE'S EVER ON ANY MEDICATION, WE HAVE A CONFESSION.

AND THEN WE HAVE HIM USING THE CREDIT CARD--

>> WAS THERE ANY FORENSIC EVIDENCE HERE?

I MEAN, WAS THERE ANY FINGERPRINT EVIDENCE?

THIS WAS HIS FATHER'S HOUSE--

>> RIGHT.

>> HE HAD ACCESS TO IT.

>> RIGHT.

HE ACTUALLY LIVED THERE WITH HIS FATHER.

THE EVIDENCE WAS THAT IT WAS BASICALLY A WHORE HOUSE WHEN HE GOT THERE, AND IT HAD BEEN KIND

OF CLEANED UP.  
THE ONLY EVIDENCE THEY HAD WAS  
THE VICTIM'S DNA ON THE HATCHET  
THAT WAS USED.

>> JUST THE VICTIM'S DNA.

>> RIGHT.

THEY DIDN'T LOOK FOR HIS DNA.  
THEY WOULD HAVE FOUND HIS  
FINGERPRINTS ALL OVER THE HOUSE,  
BUT I DON'T BELIEVE THEY-- I  
DON'T KNOW IF THEY LOOKED FOR  
THEM, BUT THERE'S NO TESTIMONY  
ABOUT HIS FINGERPRINTS ON THE  
HATCHET.

SO BECAUSE THIS WAS A CASE WHERE  
HE WAS ALWAYS GOING TO BE  
CONVICTED OF SOMETHING, THEIR  
STRATEGY WAS TO TRY TO ATTACK  
THE PREMEDITATION ELEMENT.

AND, HOPEFULLY, GET A  
SECOND-DEGREE MURDER CONVICTION  
OR TRY TO SWAY SOME JURORS OVER  
TO THEIR SIDE FOR THE PENALTY  
PHASE, WHICH I THINK THEY WERE  
SUCCESSFUL IN SINCE THIS WAS AN  
8-4 DEATH RECOMMENDATION.

>> JUST ONE QUICK QUESTION TO  
THE FACTS GOING BACK.

WHILE HE WAS BEING SOUGHT BY  
POLICE, DID HE NOT TEXT HIS  
GIRLFRIEND AND TELL HER HE HAD  
KILLED HIS FATHER WITH AN AXE?

>> YES, HE DID.

YEAH.

AND, AGAIN, THAT WAS BEFORE HE  
WAS EVER, THERE'S ANY QUESTION  
ABOUT VOLUNTARINESS TO THE  
MEDICATION.

>> BUT IF THEIR FOCUS WAS ON THE  
PENALTY PHASE OR HAVING IT  
REDUCED FROM A FIRST-DEGREE  
MURDER, IT SEEMS TO ME THAT THE  
STATEMENT POST-HOSPITAL IN THE  
JAIL IS A VERY DAMAGING  
STATEMENT TO THAT KIND OF  
STRATEGY.

SO WHY WOULDN'T THEY HAVE AT  
LEAST TRIED TO SUPPRESS THAT  
STATEMENT?

>> I AGREE THAT WAS DEFINITELY

THE MOST DAMAGING.  
BUT I WOULD POINT OUT THAT HE  
WAS ON DIFFERENT MEDICATION AT  
THE TIME, AND IT WAS FOUR DAYS  
AFTER THE CRASH.

SO HE WAS NO LONGER ON THE  
MORPHINE DRIP.

HE WAS ON OXYCODONE AND  
OxyContin--

>> ISN'T, JUST ON THAT, ISN'T  
THERE TESTIMONY OXYCODONE IS  
ACTUALLY WORSE THAN MORPHINE?

>> I THINK HE, I THINK THE  
EXPERT AT THAT--

>> I MEAN, MORE OF WHATEVER.

>> RIGHT.

I THINK HE WAS TRYING TO  
DOWNPLAY THE DIFFERENCES.  
HE SAID THAT OXYCODONE AND  
OxyContin DON'T REACH AS  
HIGH LEVELS AS MORPHINE AND  
DON'T REACH THEM AS QUICKLY, BUT  
HE WAS STILL SAYING HE WOULD  
HAVE BEEN JUST AS IMPAIRED.

I DON'T KNOW HOW YOU CAN SAY  
HE'S JUST AS IMPAIRED IF HE'S  
NOT REACHING THESE HIGH LEVELS  
OF INTOXICATION.

>> WHAT DOES THE JUDGE, AFTER  
HEARING THIS TESTIMONY, DID HE  
SAY HE WOULD HAVE SUPPRESSED THE  
STATEMENTS?

>> NO.

IN FACT, HE BASICALLY SUMMARILY  
REJECTED ALL OF IT AND SAID THAT  
IT WAS NOT SUPPORTED BY THE  
RECORD.

SO THIS WAS THE SAME JUDGE WHO  
SAT IN THE TRIAL AND HEARD ALL  
THE TESTIMONY AND THE SAME JUDGE  
WHO DID THE EVIDENTIARY HEARING.  
SO HAVING FILED THIS MOTION TO  
SUPPRESS, IT NEVER WOULD HAVE  
BEEN GRANTED.

SO THERE'S NO PREJUDICE.

>> IT JUST WOULD BE-- OKAY.

SO ON THE ISSUE THOUGH AS TO  
WHEN IT MIGHT HAVE ALTERED THE  
JURY'S DETERMINATION ON  
AGGRAVATORS, WOULD YOU AGREE

THAT THEY'RE NOT PRECLUDED FROM  
PUTTING THAT KIND OF EVIDENCE ON  
IN A PENALTY PHASE IF THEY--

>> I THINK IF THEY THINK IT'S  
RELEVANT EVIDENCE--

>>-- MITIGATE AGAINST CCP IF  
THERE'S SOMETHING THERE.

>> RIGHT.

I THINK IT'S JUST AS RELEVANT AS  
IT WAS AT THE EVIDENTIARY  
HEARING.

>> I MEAN, SO THE TRIAL JUDGE  
HEARD ALL THE EVIDENCE FROM THE  
PHARMACOLOGIST AND STILL, AT  
PAGE 13 OF THE ORDER, FOUND THAT  
THE STATEMENTS MADE WERE  
VOLUNTARY.

>> YES.

HE SAID THAT THE IDEA THAT THEY  
WERE INVOLUNTARY WAS REBUT BY  
THE RECORD.

>> AND THEN HE GOES ON AND SAYS  
THE STATEMENTS WERE VOLUNTARILY  
MADE.

>> RIGHT.

AND HE SAID IT WAS A STRATEGIC  
DECISION NOT TO CHALLENGE THEM.  
SO THEN I DID WANT TO GET INTO  
THIS RAPID RESPONSE ARGUMENT  
THAT WAS MADE IN THE BRIEF.  
I JUST WANTED TO LAY OUT THE  
TIMELINE OF EVENTS.

SO THE MURDER OCCURRED ON AUGUST  
10TH.

THE ARREST/CRASH WAS AUGUST  
11TH.

HE GAVE TWO THE STATEMENTS ON  
AUGUST 12TH, TWO ON AUGUST 13TH  
AND ONE ON AUGUST 16TH.

AND THEN AUGUST 17TH WAS THE  
FIRST TIME THE PUBLIC DEFENDER'S  
OFFICE WAS EVER APPOINTED TO  
REPRESENT HIM.

AND BEFORE THAT TIME, BEFORE  
AUGUST 17TH THEY HAD NO DUTY TO  
HIM.

SO I DON'T SEE HOW THEY CAN BE  
DEFICIENT IN THE REPRESENTATION  
WHEN THEY DIDN'T REPRESENT HIM.  
IT'S SORT OF--

>> 17 IS AFTER THE FINAL STATEMENT THAT WE'RE TALKING ABOUT.

>> RIGHT.

HE NEVER GAVE ANY MORE STATEMENTS TO POLICE AFTER AUGUST 16TH, AND THEY WEREN'T APPOINTED UNTIL AUGUST 17TH.

>> AND AT THAT POINT, HE DIDN'T ASK FOR AN ATTORNEY.

I MEAN, THAT WOULD BE A WHOLE DIFFERENT ISSUE.

>> SO IN HIS FIRST STATEMENT AS THEY ARE GETTING INTO ASKING ABOUT THE MURDER, HE SAID I DON'T WANT TO ANSWER ANY QUESTIONS WITHOUT A LAWYER. AND AT THAT POINT THEY CEASED QUESTIONING.

A FEW MINUTES LATER HE CHANGED HIS MIND AND SAID HE WANTS TO GO BACK ON RECORD.

>> THIS IS THE FIRST STATEMENT IN THE HOSPITAL.

>> YES.

>> OKAY.

>> AND SO, YOU KNOW, HE WAS COHERENT ENOUGH TO UNDERSTAND THAT HE COULD ASK FOR A LAWYER. HE WAS COHERENT ENOUGH TO UNDERSTAND HIS RIGHTS AND INVOKE THEM AND THEN WAIVE-- IN FACT, HE WAS READ MIRANDA BEFORE EVERY SINGLE STATEMENT HE GAVE ON TAPE.

SO THIS IS NOT A CASE WHERE, YOU KNOW, ONE OF THE CASES CITED BY DEFENSE WAS MENCIE V. ARIZONA, AND IN THAT CASE THE PERSON CAME TO THE HOSPITAL DEPRESSED TO THE POINT OF A COMA.

THEY WERE IN THE HOSPITAL FOR ALMOST A MONTH.

THEY COULDN'T GIVE VERBAL ANSWERS, THEY WERE INCOHERENT AND UNINTELLIGIBLE THAT SHOWED THEY WEREN'T THINKING CLEARLY, AND THOSE ANSWERS WERE THROWN OUT.

>> DID THEY HAVE HIM AS-- THIS

IS HE MURDERED HIS FATHER.

>> YES.

>> THEY-- THIS REALLY GOES TO, YOU KNOW, WOULD THEY DECIDE TO ACTUALLY ARREST HIM, WHAT WAS IT THEY NEEDED FROM HIM TO EFFECTUATE THEIR ARREST?

DIDN'T THEY ALREADY HAVE THE EVIDENCE ARE FROM, I MEAN, WHAT OTHER EVIDENCE DID THEY HAVE?

>> RIGHT.

I DON'T THINK THEY NEEDED THE CONFESSION, BUT EVERYBODY LOVES A CONFESSION, YOU KNOW?

>> YEAH.

ESPECIALLY A CONFESSION WITHOUT AN ATTORNEY.

>> WELL, YEAH.

I WAS THINKING FOR A JURY, YOU KNOW?

GOING TO A JURY AND HAVING A CONFESSION IS ALWAYS BETTER THAN NOT.

>> I KNOW, BUT WAS HE IN ICU AT THE TIME?

>> I CAN'T REMEMBER IF IT WAS ICU.

HE WAS DEFINITELY, YOU KNOW, HE HAD TO BE EXTUBATED FOR THE CONVERSATION.

>> WHAT?

>> EXTUBATED.

HE HAD BEEN INTUBATED.

I BELIEVE HE WAS IN ICU, IF I HAD TO GO BACK AND READ THE TRANSCRIPTS OF THE CONVERSATIONS.

BUT IF YOU LISTEN TO THE TAPES, BECAUSE I DID, AND YOU READ THE TRANSCRIPTS, HE WAS IN PAIN, YOU KNOW, HE'S POST-OP, BUT THIS IS NOT SOMEBODY WHO COULDN'T UNDERSTAND WHAT WAS HAPPENING.

>> RIGHT.

THE MAIN THING IS THAT WE'RE HEARING HERE THAT THE ATTORNEY WHO WAS IN CHARGE OF DECIDING WHAT TO DO WITH THIS THOUGHT THAT THESE STATEMENTS AS A WHOLE WERE ACTUALLY BENEFICIAL TO

MITIGATE AGAINST EXTREME  
PREMEDITATION OR-- AND, AGAIN,  
YOU KNOW, THIS ISSUE OF WHETHER  
HE WAS UNDER MENTAL OR EMOTIONAL  
DURESS WHEN HE AXED HIS FATHER.

>> RIGHT.

GIVEN THE OTHER EVIDENCE IN THE  
CASE, THE EXTREME REMORSE HE  
EXPRESSES IN THESE STATEMENTS  
AND THE GUILT HE FEELS THEY FELT  
OUTWEIGHED THE CONFESSION.

AGAIN, THIS IS NOT A CASE IN  
NEED OF A CONFESSION.

SO REALLY THE DAMAGE CAUSED BY  
THE CONFESSION WAS WAY  
OUTWEIGHED BY THE REMORSE HE  
SHOWED FOR THE JURY.

IF THERE ARE NO OTHER QUESTIONS,  
I'LL JUST RELY ON MY BRIEF.

THANK YOU.

>> THANK YOU.

MAY IT PLEASE THE COURT, JUST A  
FEW POINTS TO FOLLOW UP STATE'S  
COMMENTS.

THE FIRST FOUR STATEMENTS THAT  
WERE GIVEN THE CIRCUMSTANCES  
AROUND THOSE, HE, MR. CAMPBELL,  
AFTER THE CAR ACCIDENT WHERE HE  
DROVE 100 MILES AN HOUR WITHOUT  
HIS SEAT BELT ON INTO A PARKED  
CRUISER ATTEMPTING TO COMMIT  
SUICIDE.

HE WAS AIRLIFTED FROM THAT  
SCENE.

HE WAS BROUGHT TO A TRAUMA  
CENTER.

HE WAS IN THE ICU UNIT FOR THE  
FIRST FOUR STATEMENTS PROVIDED  
TO LAW ENFORCEMENT OFFICERS.

THE FIRST TWO STATEMENTS  
HAPPENED HOURS AFTER HE HAD  
EMERGENCY SURGERY AND ONLY  
SECONDS AFTER HE WAS, HAD HIS  
BREATHING TUBE REMOVED.

THAT'S WHEN THE LAW ENFORCEMENT  
OFFICERS TOOK THE FIRST TWO  
STATEMENTS.

THE NEXT DAY THEY CAME BACK AND  
TOOK TWO MORE STATEMENTS.

HE WAS STILL IN THE ICU, STILL

ON THE SAME LEVEL OF NARCOTICS THAT HE WAS ON THE DAY PRIOR. IN THIS CASE THE JUDGE'S SENTENCING ORDER-- NOT SENTENCING ORDER, THE JUDGE'S ORDER FOLLOWING THE POST-CONVICTION EVIDENTIARY HEARING, HE FOUND THE STATEMENTS TO BE VOLUNTARY, BUT IN HIS ORDER HE ONLY FOCUSES ON THE FIRST AND SECOND STATEMENTS. HE GIVES NO FINDINGS AS TO THE VOLUNTARINESS OF STATEMENTS THREE, FOUR OR FIVE.

SO WE WOULD ARGUE THAT, ONE, THE ORDER'S INCOMPLETE, AND THE REASON HE ONLY FOCUSES ON ONE AND TWO IS ABOUT MR. CAMPBELL ASKING FOR COUNSEL IN BETWEEN THOSE TWO STATEMENTS. THAT IS NOT REPORTED.

THAT WAS ONLY TESTIFIES TO BY THE LAW ENFORCEMENT OFFICER WHO TOOK THE STATEMENTS, THE MIRANDA WAIVERS WHICH WERE REREAD THE HIM AND READ TO HIM IN THE BEGINNING WERE ALSO NOT REPORTED.

SO THAT IS JUST COMING FROM THE LAW ENFORCEMENT OFFICER'S MEMORY.

THERE WAS NO OTHER PHYSICAL EVIDENCE, FORENSIC EVIDENCE TYING MR. CAMPBELL TO THE CRIME. AS JUSTICE PARIENTE WAS STATING EARLIER, HE DID LIVE IN THE TRAILER WITH THE VICTIM IN THIS CASE.

THE STATEMENTS HE MADE TO MARGARET DRIGGERS WOULD HAVE BEEN AN ADMISSION OF HIS GUILT. THE ISSUE IS ABOUT INTENT. IN THE STATEMENTS HERE, THE STATE USES REPEATEDLY THROUGHOUT THE GUILT PHASE TRIAL IN OPENING AND CLOSING, IN DIRECT EXAMINATIONS OF WITNESSES TO SUPPORT THE REFLECTION ELEMENT, HOW LONG IT TOOK FOR MR. CAMPBELL TO WALK OUTSIDE TO

GRAB A WEAPON AND COME BACK IN.  
HOW LONG HE WAS STANDING BEHIND  
THE VICTIM.

HOW MANY BLOWS WERE  
ADMINISTERED.

HOW MUCH TIME WAS BETWEEN THE  
BLOWS.

ALL OF THAT WHICH THEY USED TO  
SUPPORT THE PREMEDITATION  
REFLECTION ELEMENT COMES FROM  
MR. CAMPBELL'S STATEMENT SOLELY.  
THE PREJUDICE IN THIS CASE IS  
PARAMOUNT--

[AUDIO DIFFICULTY]

THE TRIAL COUNSEL'S STRATEGY  
COULD HAVE BEEN DONE IN  
ALTERNATIVE MEANS.

THERE SEEMS TO BE NO LOGICAL  
REASON WHY A TRIAL ATTORNEY  
WOULDN'T ATTEMPT TO SUPPRESS BE  
DAMAGING STATEMENTS GIVEN BY  
THEIR CLIENTS AND THEN IF A BAD  
RULING COMES, MAKE A NEW  
STRATEGIC DECISION OF HOW TO  
PROCEED FROM THERE.

WE WOULD ARGUE THAT WE WOULD ASK  
YOU TO REVERSE THE TRIAL COURT'S  
RULING IN THIS CASE AND GRANT  
MR. CAMPBELL A NEW GUILT PHASE  
TRIAL.

THANK YOU.

>> WE THANK YOU BOTH FOR YOUR  
ARGUMENTS.

THIS SESSION OF THE COURT IS NOW  
COMPLETED.