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Juan Carlos Chavez v. State of Florida

MR. CHIEF JUSTICE: GOOD MORNING. WE ARE CERTAINLY PLEASED TO HAVE ALL OF THOSE WHO ARE HERE TO WITNESS THE ORAL ARGUMENT CALENDAR OF THE FLORIDA SUPREME COURT ON THIS TUESDAY, APRIL 3. WE ARE PARTICULARLY PLEASED TO HAVE THOSE STUDENTS FROM FLORIDA A&M UNIVERSITY, WHO ARE IN THE CLASS ON AMERICAN COURT SYSTEM FOR CRIMINAL JUSTICE MAJORS, LED BY THEIR PROFESSOR, DR. HOWARD MYERS. AND SO WE WELCOME EACH AND EVERY ONE OF YOU TO YOUR BEING HERE AND YOUR INTEREST IN THE FLORIDA SUPREME COURT. SO OUR FIRST CASE FOR THE ORAL ARGUMENT CALENDAR THIS MORNING IS CHAVEZ VERSUS STATE. MR. HARPER.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. MY NAME IS ROBERT HARPER. WITH ME AT COUNSEL TABLE ARE STEVE WHITTINGTON AND JASON SAVITZ OF MY OFFICE, WHO, ALSO, APPEAR ON THE BRIEF. I HAD INTENDED TO START THE ARGUMENT IN SEQUENCE WITH THE BRIEFS, SINCE IT IS SUCH A LONG BRIEF, BUT I HAVE A COUPLE OF CHANGES I WOULD LIKE TO MAKE, WITH THE PERMISSION OF THE COURT, IN THE CONTEXT OF THE SEQUENCE, AND MAYBE SORT OF IN RESPONSE TO JUDGE TOPHLATT'S TECHNIQUE OF "GIVE ME YOUR BEST SHOT", AND THAT IS SORT OF THE WAY THE QUESTIONING GOES, AND I FEEL LIKE OUR BEST ISSUE IS MAYBE NOT SEQUENTIALLY LAID OUT IN THE BRIEF, AND I WOULD LIKE TO START IN THAT FASHION. THE ARGUMENT THAT I WOULD LIKE TO START OUT, IF IT PLEASES, THE CALDWELL ISSUE THAT WE SET OUT IN THE BRIEF AND STARTS AT PAGE 85 OF THE BRIEF, PARTICULARLY THE MOST OFFENSIVE PART OF THE ISSUE APPEARS IN THE RECORD, AT PAGE, VOLUME 56, PAGE 1132, AND AT THAT POINT, THE OBJECTION IS MADE BY DEFENSE COUNSEL. THE PROSECUTOR MAKES COMMENT TO THE JURY, FOR THE SECOND TIME DURING THE COURSE OF THE TRIAL, THAT, AGAIN, I WANT TO REMIND YOU, LADIES AND GENTLEMEN OF THE JURY, THAT YOU ARE NOT THE SENTENCE OR.

-- THE SENTENCER.

WHAT ISSUE IS THAT IN THE BRIEF?

THE SECTION CALDWELL PAGE 85, YOUR HONOR.

WHAT NUMBER?

8-D. YES, SIR. 8-DELTA.

YOU ARE -- YOU ARE NOT ASKED TO PASS SENTENCE. THAT IS SOLELY THE BURDEN OF THE COURT AND THE COURT ALONE. THE COURT WILL WEIGH YOUR RECOMMENDATION, AND AT FIRST BLUSH, I DIDN'T PICK UP ON ALL THE NUANCES IN THAT SIMPLE STATEMENT, AND I WAS CAUGHT UP, FRANKLY, INJUSTICE OVERTON'S ANALYSIS, AND CERTAINLY I HAVE ALWAYS APPRECIATED HIS ANALYSIS IN SPECIFIC-INTENT ISSUES, AND HIS ANALYSIS IN COMES, AND SO I -- IN KOEMS, AND I -- IN COMBS, AND I STARTED TO FOLLOW THAT AND FINALLY GET TO ROMANO VERSUS STATE OF OKLAHOMA, WHERE THE ISSUE IS LAID TO REST, UNLESS THERE IS A MISSTATEMENT IN THE LAW OR THE PROSECUTOR MISLEADS THE JURY, THERE IS NO SUCH THING IN EFFECT AS A CALDWELL VIOLATION, SO I LOOKED BACK OVER THIS THING AGAIN, AND FIRST OF ALL, YOU ARE NOT ASKED TO PASS SENTENCE, THE PROSECUTOR SAYS. WELL, THAT, CERTAINLY, IS DENIGRATEING THE ROLE OF THE JURY, BUT IF THEY ARE NOT ASKED TO PASS SENTENCE, WHAT ROLE DOES A JURY HAVE IN THE DEATH PENALTY PROCESS?

WAS THERE AN OBJECTION MADE TO THE COMMENTS?

YES, MA'AM.

AND DID THE TRIAL JUDGE DO ANYTHING?

GIVES A CURETIVE INSTRUCTION.

IN RESPONSE TO THAT OBJECTION? WHAT DOES THAT CURETIVE INSTRUCTION SAY?

IT IS THE STANDARD INSTRUCTION THAT HAS BEEN APPROVED BY THE COURT, IN SO MANY WORDS SAYING THAT THE COURT GIVES GREAT WEIGHT TO THE RECOMMENDATION OF THE JURY.

EXCUSE ME MUCH. I WAS JUST WONDERING WHY DID -- EXCUSE ME. I WAS JUST WONDERING WHY DID THAT NOT RESOLVE THE ISSUE?

YOUR HONOR, I WOULD SAY IT WOULD, BUT FOR IT HAVING BEEN PLANTED, WITHOUT OBJECTION, IN THE VOIR DIRE PROCESS, WHERE COUNSEL PLANTS THIS SEED WITH THE JURY AND SAYS, IN THE COURSE OF THE EXAMINATION OF ONE OF THE JURORS, JUROR -- LET ME SEE, I HAVE FORGOTTEN WHAT THAT NUMBER IS. I BETTER NOT SAY. THAT BUT SAYS TO ONE OF THE JURORS THAT YOU SEEM TO BE HAVING SOME TROUBLE WITH THIS DEATH PENALTY STUFF, AND WOULD IT HELP YOU, IF YOU UNDERSTOOD THAT THE SENTENCING RESPONSIBILITY IS THE COURT, AND THAT YOU ARE SORT OF AN ADVISORY BOARD? AND THE JUROR SAYS, AND OF COURSE THIS IS IN THE PRESENCE OF VENN IRE, THAT THAT TAKES THE BURDEN OFF OF ME.

WAS THERE WAS THERE ADDITIONAL INSTRUCTION IN REGARDS TO THE EVIDENCE, AT THE CONCLUSION OF THE PENALTY PHASE?

YES, SIR. THERE WERE TIMELY INSTRUCTIONS BY THE COURT. WHAT WE ARE SAYING IS THAT THOSE -- THE VIOLATIONS ARE NOT CURED BY THE INSTRUCTIONS, AND THAT THIS SYSTEMATIC PROCESS OF LESSENING THE RESPONSIBILITY OF THE JURY --

WAS THERE ANYTHING THE COURT COULD HAVE DONE?

ANYTHING THE JUDGE COULD HAVE DONE?

YES.

YOUR HONOR, I THINK THERE IS THINGS THAT THE JUDGE COULD DO. I THINK THERE IS AN ADMONITION TO THE PROSECUTOR THAT SHOULD HAVE BEEN DONE EARLIER. I THINK IT WAS CLEAR THE PROSECUTOR HAD BEEN TREADING ON THIS THIN ICE AND GETTING OUT, INTO SOME DANGEROUS TERRITORY. I THINK THERE IS SOME CORRECTIVE ACTION THAT SHOULD HAVE BEEN DONE.

BUT OBVIOUSLY THE DEFENSE ATTORNEY, AT THE TIME, DIDN'T SEEM TO THINK IT WAS SO EGREGIOUS, IF HE DIDN'T MAKE ANY KIND OF OBJECTION OR ASK THE TRIAL JUDGE.

THE DEFENSE COUNSEL MADE THE TIMELY OBJECTION DURING THE SENTENCING FACE, WHEN IT - SENTENCING PHASE, WHEN IT IS CRITICAL, AND IF YOU THROW A SKUNK IN THE JURY BOX, YOU CAN'T EXPECT THE JURY NOT TO SMELL IT.

YOU ARE TALKING ABOUT RIGHT AT THE BEGINNING OF ALL OF THIS.

IT HAPPENED TWICE, TWO TIMES, AT THE BEGINNING OF THE TRIAL AND AT THE END OF THE TRIAL.

BUT THERE WAS NO OBJECTION AT THAT POINT.

AT THE BEGINNING THERE WAS NO OBJECTION. AT THE END THERE WAS A TIMELY OBJECTION, AND --

AT THE BEGINNING, WHEN THE JUROR MADE THE COMMENT, THAT IS WHEN THE JUDGE ACTUALLY -- DIDN'T THE JUDGE VOLUNTARILY GIVE THE INSTRUCTION?

THE JUDGE MADE AN INSTRUCTION AT THE END OF THE CASE, WHEN THE OBJECTION WAS MADE, AND MADE A GENERAL INSTRUCTION AT THE BEGINNING OF THE CASE.

AND THAT IS WHEN THE JUDGE TALKED ABOUT THAT THE JURY RECOMMENDATION IS, IN FACT, GIVEN GREAT WEIGHT.

YES, MA'AM. EACH TIME THE JUDGE, I THINK, GAVE WHAT I WOULD SAY IS THE STANDARD INSTRUCTION APPROVED BY THE SUPREME COURT.

BUT DIDN'T YOU SAY A LITTLE MORE THAN THE STANDARD INSTRUCTIONS? SHE SAYS SO THIS IS NOT A SITUATION WHERE YOU COULD JUST SIT AS A JUROR AND SAY, WELL, IT DOESN'T MATTER WHAT WE DO, SO SHE IS TELLING THEM THAT IT DOES MATTER WHAT YOU DO, THAT THIS ISN'T, REALLY, THE WAY HE SAID IT TO YOU. YOU MAY BE ADVISORY, BUT I GIVE IT GREAT WEIGHT, AND IT IS VERY IMPORTANT THAT YOU LISTEN AND TAKE RESPONSIBILITY FOR WHAT YOU ARE DOING. THAT IS MORE THAN JUST -- WHAT MORE COULD THE TRIAL JUDGE HAVE SAID, AT THAT POINT?

AT THAT POINT, I AM SAYING THE CAT IS -- THE HORSE IS OUT OF THE BARN. I JUST FEEL LIKE IT IS TOO LATE, AT THAT POINT, FOR THE JUDGE TO DO MUCH MORE THAN THE JUDGE DID I THINK THE ERROR IS COMMITTED, AND IT IS ONE OF THOSE KIND OF -- THAN THE JUDGE DID. I THINK THE ERROR IS COMMITTED, AND IT IS ONE OF THOSE KIND OF ISSUES THAT IS MORE THAN CORRECTIVE ACTION. AT THAT POINT THAT IS THE ACTION THAT THE JUDGE TOOK.

WHAT MORE IS THERE FOR THE JUDGE TO DO AT TRIAL?

I WOULD HAVE ASKED FOR A MISTRIAL ON THE SPOT.

BUT THE LAWYER DID NOT ASK FOR A MISTRIAL.

THERE WERE RENEWED MOTIONS, AT THE END OF THE SENTENCING PHASE, WHICH I WOULD -- I THINK YOU COULD SAY, FAIRLY ASK FOR THAT TYPE OF RELIEF, BUT HE DIDN'T, RIGHT THERE ON THE SPOT, SAY I ASK FOR A MISTRIAL, SIR.

WAS THERE GROUNDS FOR A HIS TRIAL -- FOR A MISTRIAL, AT THE END OF THE TRIAL?

IT WAS RENEWED AS AN OBJECTION, AT THE END OF THE SENTENCING PHASE, IS THE WAY THAT I THINK IT WAS --

THE DIFFICULTY TO ME, IS IT SEEMS THAT YOU ARE SAYING THAT, FIRST OF ALL, WHEN THIS ISSUE WAS RAISED, THAT THERE WAS NO OBJECTION.

IN THE VOIR DIRE, IT WAS NOT OBJECTED TO.

LATER, DURING THE PENALTY PHASE, IS THAT CORRECT?

YES, SIR.

NOW IT IS RAISED AGAIN, AND AT THAT TIME THERE WAS AN OBJECTION, AND THE JUDGE GAVE AN INSTRUCTION TO THE JURY. THE JUDGE DID EVERYTHING THAT THE JUDGE WAS ASKED TO DO. IS THAT CORRECT?

YES, SIR.

AND THERE WAS NO MOTION FOR A MISTRIAL. IN OTHER WORDS WE ORDINARILY REQUIRE THAT, IF COUNSEL THINKS THE ERROR IS SO SERIOUS, AS TO VIRBIATE THE WHOLE TRIAL, THAT TO PRESERVE THAT ARGUMENT, THAT YOU HAVE GOT TO MAKE A MOTION FOR MISTRIAL THEN. OKAY. BUT THAT DID NOT OCCUR HERE. DO YOU AGREE?

I DO AGREE WITH THAT.

THE JUDGE DID EVERYTHING THE JUDGE WAS ASKED TO DO, SO I AM HAVING SOME DIFFICULTY, AS TO THIS BEING YOUR MOST SERIOUS ISSUE.

WELL --

IN TERMS OF THE WAY THAT IT HAS BEEN PRESERVED AND HANDLED AT THE TRIAL LEVEL.

WELL, YOUR HONOR, THE -- I GUESS SOMETIMES DESPITE PREPARATION, YOUR ARTICULATION, THERE IS SOMETHING MISSING HERE. IT, STILL, SEEMS LIKE, TO ME, THAT THE PRESERVATION OF THE ISSUE, BY VIRTUE OF THE MOTIONS MADE AT THE CONCLUSION OF THE SENTENCING HEARING, WHERE YOU RENEWED THE OBJECTIONS, THE MOTIONS FOR A NEW TRIAL THAT WERE MADE AT THE END OF THE CASE, WOULD SATISFY CONTEMPORANEOUS REQUESTS FOR A MISTRIAL.

WHAT REFERENCE WAS MADE TO THIS ISSUE, IN EITHER OF THOSE MOTIONS?

WHAT REFERENCE WAS MADE TO IT? IT IS LAID OUT.

WAS THERE SOME REFERENCE TO THIS ISSUE MADE, AT THE TIME, AT THE END OF THE TRIAL, AND THEN, AGAIN, AT A MOTION FOR NEW TRIAL?

YES, SIR. I AM ALMOST CERTAIN I CAN PUT MY HANDS ON THAT. I KNOW I CAN PUT MY FINGER ON THE SUMMARY MOTION FOR RELIEF, AT THE END OF THE SENTENCING PHASE. AND I JUST -- IT WOULD JUST TAKE A FEW SECONDS, BUT I WILL DO THAT, DURING THE TIME IN BETWEEN THE ARGUMENTS.

WELL, HOW ABOUT FINISHING UP ON THIS ARGUMENT, WITH, PERHAPS, GIVING US A RESTATEMENT. WHAT IS THE LAW, WITH REFERENCE TO THE ROLE OF THE JURY, AND THEN WHAT IS THE CALDWELL LAW? RESTATE THOSE TWO PRINCIPLES FOR US.

MY UNDERSTANDING OF THE STATUS OF THE LAW RIGHT NOW IS THAT, IF THE PROSECUTOR MISLEADS THE JURY OR MISSTATES THE ROLE OF THE JURY, IN THE CONTEXT OF THE LAW OF THE STATE OF FLORIDA, THEN A CALDWELL VIOLATION IS STILL A VIABLE ISSUE, AND MY REVIEW OF THIS COMMENT THAT WAS MADE BY COUNSEL, THAT THERE IS A MISLEADING OF THE JURY AND A MISSTATEMENT OF THE LAW, IN THAT THE SOLE RESPONSIBILITY OF THE PROCESS IS NOT THAT OF THE TRIAL JUDGE. IT IS A JOINT, DUAL RESPONSIBILITY WITH THE JURY. SECONDLY, IS THAT THE JUDGE DID NOT ENGAGE IN A WEIGHING PROCESS OF THE JURY'S RECOMMENDATION, AS SAID BY THE PROSECUTOR. THE JUDGE IS REQUIRED TO GIVE THAT RECOMMENDATION GREAT WEIGHT, AND FOR THOSE REASONS, I SAY THE PROSECUTOR HAS MISSTATED THE LAW. IF I MAY TRUDGE ON INTO THE ISSUES OF THE CASE, AS FAR AS THE FACTS OF THE CASE.

WE HAVE A PRETTY GOOD UNDERSTANDING OF THE FACTS. WOULD YOU ADDRESS SOME OF THE

OTHER, MORE SUBSTANTIVE ISSUES THAT WE ARE DEALING WITH, SUCH AS THE FIRST APPEARANCE PROBLEM AND THE PROBLEM WITH REGARD TO THE LENGTH OF THE INTERROGATION AND THE SUPPRESSION OF THE CONFESSION AND THE RELATIONSHIP THAT WE ARE DEALING WITH HERE.

YES, SIR. THE INTERESTING POINT, TO ME, THAT CAME OUT OF ALL OF THE PROCESS OF BRAKES, AND THIS BEING VOLUNTARY AND THE FINDINGS OF THE CRIME TRIAL JUDGE BOIL DOWN TO SEVERAL FACTORS. NUMBER ONE, A PERSON COULD HAVE BEEN SAID TO HAVE VOLUNTARILY A COMPANY THESE OFFICERS, WHEN THE OFFICER PUTS A GUN ON SOMEBODY AND SAYS "FREEZE". I CAN'T COMPREHEND, UNDER ROYER AND CASES THAT DEFINE WHAT AN ARREST IS, HOW THAT CAN BE CONSIDERED ANYTHING OTHER THAN THAT INFLUENTIAL FLEDGED ARREST.

WAS -- THAN A FULL-FLEDGED ARREST.

WHAT ARGUMENT IS THERE TO BE MADE FOR PROBABLE CAUSE?

A THIRD ARGUMENT IS TO BE MADE FOR PROBABLE CAUSE FOR ARREST, THAT MR. SHINER'S RESIDENCE WAS ENTERED AND TAKEN SEVERAL SPECIAL EFFECTS OF THEIRS, AND THAT MR. CHAVEZ WAS PLACED UNDER ARREST.

DID THEY FIND A BACKPACK IN A CLOSET OR SOMEPLACE IN THE TRAILER?

YES, MA'AM.

AND IT HAD THE VICTIM'S NAME ON IT.

IT DID.

AND IS -- YOU DON'T BELIEVE THAT THE OFFICERS WERE GIVEN PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT MIGHT HAVE BEEN INVOLVED IN THE DISAPPEARANCE OF THAT CHILD?

I THINK, WHEN YOU START THINKING ABOUT A REASONABLE OFFICER AND A REASONABLE SUSPICION, I THINK THERE IS A FAIR ARGUMENT TO BE SAID, YES, THERE IS PROBABLE CAUSE, AND I THINK, THEN, THERE IS A REASON TO TAKE THAT PERSON, WITHOUT UNDUE DELAY, TO A JUDICIAL MAGISTRATE. I THINK IT IS CLEAR THAT THIS MR. CHAVEZ IS BEING HELD, SOME 54 HOURS, WITH A PROSECUTOR IN THE NEXT ROOM BEING ASKED TO SIGN A WAIVER OF FIRST APPEARANCE, WITH A DEFENSE ATTORNEY OUTSIDE, TRYING TO GET IN TO SEE HIM, I THINK THERE IS AN EFFORT TO KEEP HIM OUT OF THE JUDICIAL PROCESS, AND THE EFFORT IS BEING DONE, IN ORDER TO GET FURTHER EVIDENCE, IN OTHER WORDS MORE STATEMENTS AND MORE ADMISSIONS AND MORE CONFESSIONS.

COULD YOU -- ARE YOU GOING TO ASK ABOUT THAT. COULD YOU GIVE MORE SPECIFICS ABOUT WHAT LAWYER WAS REQUESTING ACCESS AND WHEN THAT OCCURRED, WITH REFERENCE TO WHAT JUSTICE LEWIS ASKED ABOUT WHEN THE FIRST APPEARANCE SHOULD HAVE TAKEN PLACE.

ASSISTANT PUBLIC DEFENDER, HER NAME WAS GOERGIFF, WAS TRYING TO GET IN TO SEE MR. CHAVEZ APPROXIMATELY 24 HOURS AFTER HE WAS ARRESTED, AND SHE HAD NOT BEEN APPOINTED -- I THINK IT WAS CLEAR FROM THE RECORD THAT HE HAD NOT BEEN IN FRONT OF AN ATTORNEY. THE QUESTION OF HIS INVOKEATION OF HIS RIGHT TO COUNSEL WAS FOUND AGAINST HIM, AND SO THERE IS NOT ANY CLEAR INDICATION THAT HE SAID I WANT ANY LAWYER, BUT SHE WAS THERE. SHE HAD GOTTEN WORD THAT THE PERSON WAS IN CUSTODY, AND IT WAS HER SHIFT, AS ASSISTANT PUBLIC DEFENDER ON CALL, AND SHE WAS THERE, TRYING TO GET IN TO SEE HIM, AND WAS DENIED ACCESS.

BUT WHAT IS THE STATE OBLIGATION OR THE POLICE OFFICERS' OBLIGATION, IF THE DEFENDANT

HAS NOT REQUESTED AN ATTORNEY BUT SOME ATTORNEY SHOWS UP? WHAT IS THE POLICE OFFICER'S OBLIGATION AT THAT POINT?

WELL, I THINK THE LAW IS THAT THE POLICE OFFICER DOESN'T HAVE TO HONOR THE ATTORNEY ACCESS AT THAT POINT, UNLESS THE ATTORNEY IS A RETAINED ATTORNEY, WHICH IS A PECULIAR EQUAL PROTECTION ARGUMENT, TO ME, IN THAT, IF YOU HAVE THE FUNDS TO HIRE A LAWYER, THAT LAWYER CAN COME IN THERE. IF YOUR FAMILY HAS HIRED A LAWYER TO COME SEE YOU, THAT IS FINE, BUT IF YOU HAVE SOMEBODY SEEKING TO GET IN TO SEE A CLIENT WHO WOULD BE ENTITLED TO INDIGENT STATUS, THAT ATTORNEY IS DENIED ACCESS, AND WE BRIEFED IT THAT WAY.

DID HE ARGUE THAT, IF HE HAD BEEN PROPERLY BROUGHT BEFORE AN IMAGE STRAIGHT WITHIN 24 HOURS AFTER HIS ARREST, AN ATTORNEY AT THAT POINT WOULD HAVE BEEN APPOINTED FOR HIM?

I THINK THAT'S CORRECT, YES, MA'AM.

BUT I DON'T SEE THAT ARGUMENT. IS THAT AN ARGUMENT IN YOUR BRIEF, AS FAR AS WHY THIS CONFESSION SHOULD BE SUPPRESSED?

WELL, WE TRIED TO ARGUE THAT, UNDER THE HALLE BURTON LINE OF CASES -- HALIBURTON LINE OF CASES, THAT, HAD HE BEEN TIMELY BROUGHT IN FRONT OF AN IMAGE STRAIGHT, FIRST APPEARANCE, UNDER FLORIDA RULES OF CRIMINAL PROCEDURE, AN ATTORNEY WOULD HAVE BEEN APPOINTED, AND THE RIGHT TO HAVE COUNSEL WOULD HAVE ATTACHED.

CAN THERE BE A VALID WAIVER TO THE RIGHT OF A FIRST APPEARANCE?

I THINK THERE CAN BE. I DO NOT O'CLOCK THERE WAS HERE. -- I DO NOT THINK THERE WAS HERE.

IS THAT A FACT-BASED --

YES, MA'AM. I THINK IT SHOULD HAVE BEEN A CASE-BY-CASE BASIS, AND THIS IS ONE OF THOSE SCENARIOS, WHERE CLEARLY IT WAS ORCHESTRATED TO KEEP HIM OUT OF COURT, AND ONE IMPORTANT RESPECT IS THE TIME FOR HIS FIRST APPEARANCE HAD EXPIRED, WHEN THEY STARTED TO -- TRYING TO GET THE PAPERWORK TOGETHER FOR A WAIVER, AND SECONDLY, YOU HAVE GOT A PROSECUTING ATTORNEY SITTING IN THE NEXT ROOM, ORCHESTRATING THE DRAFTING OF THE WAIVER, AND I THINK IT IS PRETTY CLEAR, UNDER THE FACTS OF THIS CASE, THAT THIS WAS EXPLOITED AND WAS BEING EXPLOITED TO KEEP HIM TALKING.

WAS THIS CONSIDERED BY THE TRIAL JUDGE?

IT WAS CONSIDERED, IN THE -- THE DEFENSE ATTORNEY, ANDREW STANTON, WROTE A VERY LONG AND COMPREHENSIVE MEMORANDUM OF LAW ON THE SUPPRESSION OF THE CONFESSION ISSUES, AND THIS WAS PART OF THE ARGUMENT MADE IN THAT MEMO. I THINK IT WAS -- I HAVE FORGOTTEN HOW HAPPY PAGES, OVER 50 PAGES LONG.

AND THIS WENT TO, WHAT, THE SUPPRESSION OF THE CONFESSION?

CONFESSION. YES, SIR.

AND WHAT -- AND THE COURT CONSIDERED THAT MEMORANDUM AND ALL THE EVIDENCE AND DECLINED TO SUPPRESS THE CONFESSION.

YES, SIR. FOUND THE WAIVER WAS VALID.

AND WHAT IS OUR STANDARD OF REVIEW?

YOUR HONOR, ON THAT PARTICULAR POINT, I WOULD HAVE TO REASON IT THROUGH WITH YOU, TO SAY. I WOULD SAY THAT HIS FINDINGS OF FACT ARE ENTITLED TO SOME DEFERENCE. I THINK THE CONCLUSIONS OF LAW WOULD BE DE NOVO. I I WOULD SAY IT WOULD BE SIMILAR TO MOST OTHER TYPES OF SUPPRESSION CASES, AS FAR AS THE STANDARD.

WHAT WOULD BE THE ISSUES OF LAW?

I THINK THE ISSUE OF LAW WOULD BE WHERE -- WHETHER IT IS A VALID WAIVER OR NOT, AND I THINK THE FACTS WOULD LEAD UP TO THE CONCLUSION OF WHETHER IT WAS A VALID WAIVER OR NOT.

WOULD YOU ADDRESS THIS IN A PERSPECTIVE, PLEASE, SIR, BECAUSE WE HAVE THE ENTER RELATIONSHIP OF THE FIRST APPEARANCE, AND WE HAVE THE LENGTH OF THE INTERROGATION, ITSELF, BUT OVERLAID ON ALL OF THIS, WE HAVE THE MIRANDA WARNINGS AND THE SIGNING OF THE WAIVERS ON, AS I READ THE RECORD, AT LEAST THREE OR FOUR TIMES, SO COULD YOU PUT THAT INTO PERSPECTIVE, IN YOUR VERY BEST LIGHT, BECAUSE LOOKING AT THIS RECORD, IT APPEARS THAT, ON THE EVENING OF THE SIXTH, AT AROUND 8:50, THE MIRANDA WARNINGS WERE GIVEN, AND THERE WAS A WAIVER, AND AT EACH STEP, AS ADDITIONAL INFORMATION WAS GIVEN, IT SEEMS AS THOUGH, AND CORRECT US IF IT IS WRONG, THE AS EMINGS UMINGS -- ASSUMPTION, THAT AN ADDITIONAL WARNING WAS GIVEN AND ADDITIONAL SIGNATURE OBTAINED, AND HOW DOES THIS FIT INTO THE OVERALL ARGUMENT THAT YOU ARE MAKING THAT HE SHOULD HAVE HAD THE LAWYER, HE SHOULD HAVE HAD THE FIRST APPEARANCE, IT APPROACHES THE 48-HOUR TIME FRAME, IF YOU WILL, FOR THE OUTSIDE LIMITS ON THE FIRST APPEARANCE, AND THIS IS WHAT, I THINK, CREATES IT IS TROUBLING AS SPECTOR THE CONFLICT THAT IS IN HERE THAT WE HAVE TO RESOLVE.

YOUR HONOR, THE -- I UNDERSTAND WHAT YOU ARE SAYING, AND THAT IS CERTAINLY THERE, BUT I THINK THE HARD PART TO COMPREHEND, ABOUT THIS CASE, IS HOW LONG 54 HOURS IS, AND GOING OVER 24 HOURS, WITHOUT, REALLY, ANY BREAK, WHEN YOU START SAYING YOU ARE IN A WINDOW LESS ROOM IN THE POLICE DEPARTMENT, WHEN THE POLICE OFFICERS ARE NOT THERE, ARE YOU STILL LESS INTIMIDATED? ARE YOU STILL LESS INFLUENCED BY THE COERCIVE ATMOSPHERE? AND TO A CERTAIN EXTENT, I THINK, IN THAT CONTEXT OF A DARK ROOM, LOCKED INSIDE THE BOWELS OF THE POLICE HEADQUARTERS OFFICE, YOU HAVE GOT TO CONSIDER IT MAYBE EVEN MORE COERCIVE THAN BEING WITH PEOPLE.

HOW DO WE FACTOR IN, THOUGH, THESE TRIPS BACK OUT TO THE FARM, AND THE RED LANDS IS A GOOD DISTANCE FROM DOWNTOWN DADE, AND IT IS AN HOUR AND-A-HALF TO GET DOWN THERE, WITH THE TRAFFIC IN MIAMI.

THE WAY YOU THINK ABOUT THAT IS THE WAY SOME OF THE FACTS PLAY OUT IS THE WHOLE TRIPS, YOU HEAR THINGS LIKE THE CHRISTIAN BURIAL POINT BEING INITIATED, DURING THAT PERIOD OF TIME THAT HE IS TAKEN OUT, AND THE OFFICER CANDIDLY ADMITS "I WAS PLEADING WITH HIM", AND ONLY AS A POLICE OFFICER EXPERIENCED IN THESE TYPES OF INVESTIGATIONS CAN PLEAD, TO GIVE THIS FAMILY THE CLOSURE AFTER CHRISTIAN BURIAL. I WAS PLEADING WITH HIM, AND WE STOPPED AND PULL OVER TO THE SIDE OF THE ROAD, AND HE CRIES AND SAYS THIS HAPPENED, AND WE GO BACK TO THE STATION AND WE WARN HIM AGAIN. WE, THEN, GO THROUGH ANOTHER EMOTIONAL INTERVIEW PROCESS, AND IT IS JUST ONE CONTINUOUS THING AFTER ANOTHER. IT IS NOT LIKE WE WOULD SIT HERE AND THINK, IN OUR OFFICES, ABOUT, OKAY, HERE IS A QUIET READING OF THE MIRANDA WARNING. EVERYBODY SOUNDSS -- EVERYBODY UNDERSTANDS THE LANGUAGE. WE ARE SO FAMILIAR WITH THE LANGUAGE, WE CAN READ IT BACKWARDS, AND IT IS NOT THAT WAY IN THAT CONTEXT.

YOU ARE IN YOUR REBUTTAL TIME. IT IS UP TO YOU.

WELL, IT IS AS GOOD A PLACE AS ANY, YOUR HONOR. I WILL RESERVE, THEN. THANK YOU.

THANK YOU. MR. BROWN.

> GOOD MORNING. SCOTT BROWN FROM THE STATE ATTORNEYS OFFICE. WITH ME THIS MORNING IS PENNY BRILL FROM THE STATE ATTORNEYS OFFICE IN DADE COUNTY.

COULD YOU, FROM THE STATE PERSPECTIVE, EXPLAIN WHEN HE WAS ARRESTED, WHAT HE WAS ARRESTED FOR, WHAT THE MIRANDA WARNINGS WERE GIVEN, IN RELATIONSHIP TO IT, SO THAT WE MAKE SURE WE HAVE THAT PICTURE.

THE STATE HAS ALWAYS CONCEDED THAT HE WAS TAKEN INTO CUSTODY, AND WE HAVE ALWAYS CONCEDED THAT. FOR PURPOSES OF MIRANDA, HE WAS IN CUSTODY, BUT HE WAS IN CUSTODY FOR THE GRAND LARCENY OF SHINE HOUSE PROPERTY.

WAS HE TOLD THAT HE WAS BEING ARRESTED?

NOT AT THAT TIME. WE HAVE CONCEDED THAT A REASONABLE PERSON, PERHAPS, AND WE DID THAT BELOW, THAT HE WOULD FEEL THAT HE WAS IN CUSTODY. HE WAS NOT UNDER FORMAL ARREST, IF YOU WILL, AT THAT TIME, AND CERTAINLY NOT UNDER ARREST FOR ANYTHING REGARDING JIMMY RYCE, BUT THERE WAS CERTAINLY REASONABLE SUSPICION. REMEMBER THIS BOOK BAG WAS THE BIGGEST LEAD. THIS YOUNG BOY HAD DISAPPEARED THREE MONTHS EARLIER. THAT WAS A SIGNIFICANT LEAD. HIS NAME WAS ON IT, AND CHAVEZ, A PERSON WHO SHOULD NOT HAVE HAD THAT BOOK BAG UNDER ANY CIRCUMSTANCES, HAD THE BOOK BAG THAT JIMMY RYCE HAD, WHEN HE DISAPPEARED.

SO THEY TOLD HIM THEY WOULD LIKE TO TAKE HIM IN TO QUESTION HIM ABOUT THE --

THE LARCENY AND THE BOOK BAG, AND HE AGREED. HE SAID, OKAY, I AM GOING TO COME DOWN, AND THE TRIAL JUDGE SAID HE VOLUNTARILY ACCOMPANIED THE OFFICERS.

BUT YOU ARE ADMITTING THAT THIS WOULD APPEAR COERCIVE, AND THEN FIRST, BEFORE HE WAS SPOKEN TO, WAS HE GIVEN HIS MIRANDA --

EXACTLY, YOUR HONOR. WHEN HE CAME DOWN TO THE STATION, THERE WERE A FEW PRELIMINARY QUESTIONS. THEY DETERMINED THAT HE WAS MORE COMFORTABLE CONVERSING IN SPANISH, SO THEY DECIDED TO TALK TO HIM, ADVISE HIM OF HIS RIGHTS IN SPANISH, AND FROM THERE AFTER HE WAS TALKED TO AND APPROACHED IN SPANISH, BY THE DETECTIVES. NOW, THE RIGHTS WAIVERS FORMS -- YOUR HONOR?

HOW LONG HAD THE CHILD BEEN MISSING, WHEN THEY FOUND THE BOOK BAG?

THREE MONTHS, YOUR HONOR.

AND IT IS THE STATE'S POSITION THAT THERE WASN'T PROBABLE CAUSE TO BELIEVE, AT THAT POINT, THAT HE HAD SOME INVOLVEMENT RELATIVE TO THIS MISSING CHILD? THAT THE ARREST WAS STRICTLY FOR A BURGLARY OR THEFT OF THE BOOK BAG? IS THAT THE STATE'S POSITION?

YOUR HONOR, YOU COULD -- PROBABLE CAUSE IS, OF COURSE, FOUND IN THE REASONABLENESS OF AN ASSESSMENT. THE OFFICERS MADE AN ASSESSMENT THAT THEY HAD REASONABLE SUSPICIONS TO TALK TO HIM AT THAT POINT. WHETHER OR NOT IT ROSE -- SUSPICION TO TALK TO HIM AT THAT POINT. WHETHER OR NOT IT ROSE TO THE LEVEL OF PROBABLE CAUSE AS TO JIMMY RYCE, THEY HAD SPECIFIC, DETAILED INFORMATION REGARDING A LANGUAGE NUMBER OF ITEMS THAT WERE STOLEN FROM THE SHINE HOUSE RESIDENCE. SO THEY HAD REASON TO QUESTION

HIM FOR THE LARCENY AN ARREST HIM, BUT ALSO TO QEM ABOUT THE BOOK BAG. AT ALL TIMES MR. CHAVEZ WAS ADVISED OF HIS RIGHTS, INCLUDING THE RIGHT TO COUNSEL. HE REPEATEDLY WAIVED THOSE RIGHTS. THERE WAS NO ATTEMPT TO KEEP HIM FROM COUNCIL. -- COUNSEL. THERE WAS NO DOERTION INVOLVED HERE.

FROM -- THERE WAS NO COERCION INVOLVED HERE.

FROM THE TIME THAT HE WAS ARRESTED, WHEN WOULD HE HAVE BEEN BROUGHT BEFORE A FIRST APPEARANCE, IF HE HAD NOT WAIVED THIS RIGHT. WHEN DOES THE STATE CONCEDE THAT THE TIME PERIOD FOR BRINGING HIM BEFORE A NEUTRAL MAGISTRATE WOULD HAVE TAKEN PLACE.

IF YOU ARE TALKING ABOUT THE FIRST APPEARANCE FOR THE LARCENY, THAT TIME PERIOD HAD CERTAINLY ELAPSED. I BELIEVE THAT THE DETECTIVES TESTIFIED THAT, AT HAD SOME POINT ON THE -- THAT AT SOME POINT ON DECEMBER 7, AFTER THE APPELLANT GAVE HIS FIRST STORY, RECOUNTING HIS INVOLVEMENT, THE ACCIDENTAL DEATH STORY, WHERE JIMMY RUSE WAS ALLEGEDLY PUSHED AGAINST THE VEHICLE, THAT IS THE TIME WHEN THEY DECIDED THAT HE WAS NO LONGER FREE TO GO, SO THE TIME PERIODS WERE A BIT SKEWED BY THAT ASSESSMENT, BECAUSE ONCE HE ADMITTED INVOLVEMENT IN THE DEATH OF JIMMY RYCE, THE LARCENY APPEALED, IN COMPARISON AT THAT -- THE LARCENY PALED, IN COMPARISON, AT THAT POINT.

WHAT I AM TRYING TO FIND OUT IS TO UNDERSTAND WHETHER THERE HAS BEEN A DEPRIVATION OF SOME CONSTITUTIONAL GUARANTEES AND HOW THAT RELATES TO THE CONFESSION, IS IF HE HAD BEEN BROUGHT BEFORE A, FOR A FIRST APPEARANCE, WHAT WOULD HAVE HAPPENED AT THAT FIRST APPEARANCE? HE WOULD HAVE BEEN IN FRONT OF A JUDGE, AND WHAT WOULD HAVE OCCURRED AT THAT TIME?

YOUR HONOR, ESSENTIALLY HE WOULD BE ADVISED, AGAIN, OF THE CHARGES AGAINST HIM AT THAT POINT AND HIS RIGHT TO COUNSEL, BUT REMEMBER HE WAS REPEATEDLY WAIVING HIS RIGHT TO COUNSEL.

IT WOULDN'T HAVE BEEN A PUBLIC DEFENDER IN THE COURTROOM?

THAT IS NOT A CRITICAL STAGE OF THE PROCEEDINGS. HE IS NOT REQUIRED TO HAVE COUNSEL THERE AT FIRST APPEARANCE. HE CAN REQUEST COUNSEL, AND ONE WILL BE APPOINTED, AND ARRANGEMENTS WILL BE MADE -- ARRANGEMENTS WILL BE MADE TO HAVE ONE APPOINTED, BUT THE DeLAND AND-BOY THE FIRST APPEARANCE -- A CASE LIKE THIS, ULTIMATELY YOU HAVE A WAIVER OF THE FIRST APPEARANCE.

WHERE DID YOU GET THE WAIVER OF THE FIRST APPEARANCE? I THOUGHT THERE WAS NO WAIVER OF THE FIRST APPEARANCE.

YOUR HONOR, THERE WAS. IT CAME ORALLY. THAT CAME ON DECEMBER 8, IF I CAN GET MY TIME LINE.

WHAT IS THE EVIDENCE OF THE WAIVER OF FIRST APPEARANCE?

THERE IS AN ORAL -- THERE IS TESTIMONY FROM A DETECTIVE THAT HE ADVISED HIM OF HIS RIGHT TO A FIRST APPEARANCE, THAT HE AGREED TO WAIVE IT, AND THEN LATER ON, ADMITTEDLY WE ARE TALKING BEYOND THE 24 HOURS, BUT LATER ON HE DOES SIGN A WAIVER OF THE FIRST APPEARANCE, AND IN HIS TRANSCRIBED, SWORN STATEMENT, HE, AGAIN, AGREES THAT HE SIGNED AND AGREED TO THAT WAIVER, SO WHAT YOU HAVE HERE IS AN INDICATION OF A TIMING DELAY, PERHAPS, IN THE FIRST APPEARANCE, BUT ABSOLUTELY NO PREJUDICE TO THE APPELLANT, BECAUSE HE WAS DOING EXACTLY WHAT HE WANTED TO DO, AND THAT IS COOPERATE WITH THE AUTHORITIES, WITH THE INTENT OF THROWING THEM OFF. HE WANTED

THEM TO LOOK ELSEWHERE FOR JIMMY'S BODY.

WHAT WAS THE EXPLANATION BY THE POLICE, OF WHY THE REGULAR PROCEDURES FOR FIRST APPEARANCE WERE NOT HONORED?

YOUR HONOR, I AM NOT SURE A VERY GOOD EXPLANATION APPEARS ON THE RECORD.

WAS THE STATE ATTORNEY AWARE THAT HE WAS BEING HELD AND BEING QUESTIONED?

YES, YOUR HONOR.

OKAY. SO WHAT IS THE EXPLANATION FOR -- TO HAVE A RULE DOWN THERE,, IN OTHER WORDS WE DON'T ALLOW PEOPLE TO BE HELD INCOMMUNICADO HERE, IN THIS COUNTRY OR IN THIS STATE. WE HAVE THESE RULES OF FIRST APPEARANCES. THEY ARE SUPPOSED TO BE ABSOLUTELY HONORED, AND I AM TRYING TO FIND AN EXPLANATION ON THIS RECORD, AS OPPOSED TO HIM BEING ROUTINELY TAKEN IN, AS EVERY PRISONER IS SUPPOSED TO BE TAKEN IN FOR FIRST APPEARANCE, AND INSTEAD HELD, APPARENTLY INCOMMUNICADO FOR SOMETHING LIKE, WHAT, 54 HOURS?

YOUR HONOR, IN THAT 54-HOUR PERIOD, IT HAS TWO LENGTHY SLEEP BREAKS, BUT I WILL GET TO ANSWER YOUR QUESTION IN THIS MANNER. INITIALLY THEY HELD HIM FOR THE LARCENY OF THE PROPERTY, BUT WHEN HE ADMITTED HIS INVOLVEMENT --

LET ME GO QUESTION BY QUESTION. WAS THE STATE ATTORNEYS OFFICE AWARE THAT HE WAS BEING HELD BY THE POLICE?

YES, YOUR HONOR.

OKAY. AND IS THERE ANY EXPLANATION IN THE RECORD, FROM THE STATE ATTORNEY, AS TO WHY THERE WAS NOT A FIRST APPEARANCE?

I DID NOT SEE ONE. BUT NONETHELESS, YOUR HONOR --

WHERE WAS HE BEING HELD?

IN THE METRO DADE POLICE OFFICE.

OKAY. NOW -- YOUR OPPONENTS DESCRIBE THIS AS A WINDOW LESS ROOM.

IT IS NOT A DUNK ONE, YOUR HONOR. HE WAS REPEAT -- A DUNG ONE, YOUR HONOR -- IT IS NOT A DUNGEON, YOUR HONOR. IT IS A SMALL ROOM. THERE ARE LIGHTS INVOLVED.

IS THERE A BED?

NO, YOUR HONOR.

WHAT SLEEPING ARRANGEMENTS?

HE WAS OFFERED A PILLOW AND A BLANKET. HE DECLINED BOTH. HE WAS OBSERVED SLEEPING IN THE ROOM ON TWO OCCASIONS, ONE TIME FOR SIX HOURS AND ONE TIME FOR FIVE HOURS.

SO IT WASN'T ONE OF THOSE THINGS WHERE, AFTER TWELVE O'CLOCK OR SOMETHING, THEY SAID, WELL, NOW IT IS TIME FOR YOU TO GO TO BED. DO YOU WANT TO GO HOME AND GO TO BED OR DO YOU WANT TO GO TO A CELL?

YOUR HONOR, REMEMBER THERE IS A YOUNG CHILD MISSING. DETECTIVES SUSPECTED THAT HE

MAY HAVE BEEN DEAD BUT THEY WEREN'T SURE.

SO THE FOCUS, HERE, WAS ALL ON THE MURDER CASE.

NOT THE MURDER CASE. FINDING A MISSING CHILD, YOUR HONOR.

THIS IS THE WHOLE QUESTIONING OF THE -- FOCUS OF THE QUESTIONING. THEY DIDN'T TALK TO HIM --

THE APPELLANT KNOWS ALL OF HIS RIGHTS. HE KNOWS HE HAS THE RIGHT TO STOP QUESTIONING AT ANY TIME. HE KNOWS HE HAS THE RIGHT TO COUNSEL. WE HAVE REPEATED WAIVERS ON THE RECORD, WRITTEN AND SIGNED. THE APPELLANT DID EXACTLY WHAT HE WANTED TO DO. FOR THIS COURT TO GO AHEAD AND FIND HE WAS INVOLUNTARILY HELD, WOULD BE TO GO AGAINST THE FACTS READILY APPARENT IN THE RECORD AND GO AGAINST THE RULING OF THE TRIAL JUDGE. NOW, THIS COURT HAS SAID THAT A DELAY IN THE FIRST APPEARANCE WITHOUT MORE, DOES NOT RENDER AN OTHERWISE VOLUNTARY CONFESSION INVOLUNTARY, AND IN THIS CASE YOU HAVE CIRCUMSTANCES WHERE THE POLICE -- REMEMBER THE APPELLANT IS GIVING THEM FALSE STORIES OF JIMMY'S DEMISE. FIRST OF ALL, HE DIDN'T KNOW ANYTHING ABOUT THE BOOK BAG THEN HE DOES. HE TAKES A POLYGRAPH EXAMINATION. IT COMES UP DECEPTIVE, SO FINALLY, AT ELEVEN O'CLOCK ON DECEMBER 7, HE GIVES THEM THIS ACCIDENTAL DEATH STORY. WHAT DOES HE DO THEN? HE VOLUNTEERS TO GO SHOW THEM --

ARE THERE ANY OTHER COURSES ON DIRECT APPEAL, INVOLVING SOMEBODY BEING HELD FOR 54 HOURS?

I HAVE SOME OUT-OF-STATE CASES, NOT 54 HOURS, BUT IT IS PRETTY CLEAR --

WHAT IS THE LONGEST ONE IN FLORIDA?

I AM NOT AWARE, YOUR HONOR, BUT CLEARLY THE DELAY AND THE VAST MAJORITY OF JURISDICTIONS STATE THAT A DELAY, IN FACT A TEN' CASE, A 96-HOURDALE WAS NOT HELD UNREASONABLE, AND I CITED THAT IN MY BRIEF.

JUSTICE QUINCE, GO AHEAD.

YOU KEEP SAYING THAT A DELAY IS NOT GOING TO NECESSARILY RENDER THIS -- THESE STATEMENTS INVALID, BUT DO YOU HAVE TO HAVE SOME REASON FOR THE DELAY, OTHER THAN THE FACT THAT YOU ARE CONSTANTLY INTERROGATING THE DEFENDANT?

YOUR HONOR, NO.

SHOULDN'T THERE BE SOME REASON FOR THE DELAY, AND WHAT IS THE REASON FOR THE DELAY HERE?

THE DELAY IS, NUMBER ONE, THEY ARE TRYING TO LOCATE A MISSING PERSON. THEY SUSPECTED JIMMY RYCE WAS DEAD.

WHAT ARE THEY DOING TO TRY TO LOCATE HIM, OTHER THAN QUESTION --

VERIFYING ACCOUNTS, VARIOUS STATEMENTS, GOING TO THE SCENE, AND, AGAIN, THE APPELLANT IS NOT AN UNSOPHISTICATED INDIVIDUAL. HE KNEW HIS RIGHTS. HE EVEN KNEW SO MUCH AS TO TELL THE OFFICERS THAT POLYGRAPH RESULTS COULD NOT BE USED AGAINST HIM IN A COURT OF LAW. HE WAS TRYING TO THROW THE POLICE OFF TRACK, SO THEY WOULDN'T FIND JIMMY RYCE'S BODY, SO HE COOPERATED OF HIS OWN ACCORD, AND REMEMBER THE POLICE AREN'T HOLDING HIM FOR 54 HOURS IN THIS SMALL INTERROGATION ROOM. TO THE CONTRARY.

THEY ARE GOING BACK AND FORTH, DRIVING SOME DISTANCE TO THE RED LANDS, THE RURAL AREA OF DADE COUNTY. THEY ARE TRYING TO VERIFY APPELLANT STORIES, AND EACH TIME THE APPELLANT IS GIVEN THAT OPTION, TO EITHER CONTINUE, TO GO OUT TO THE FARM, TO SHOW THEM, AND THERE ARE PHOTOGRAPHS ON THE RECORD OF HIM WALKING AROUND WITH HIS WATCH ON.

DOES THE STATE HAVE TO SHOW THE REASON WHY THEY HAVE DELAYED, IN AFFORDING HIM A RIGHT THAT FLORIDA AFFORDS ALL DEFENDANTS? ARE YOU SAYING --

I DON'T BELIEVE THEY DO.

-- CIRCUMSTANCES OR IT JUST CAN BE DONE --

IT IS A FACTOR YOU CONSIDER. AGAIN THAT, IS JUST ONE MORE FACTOR, AND THE CASE LAW IS PRETTY CLEAR THAT THAT, ALONE, DOES NOT RENDER A CONFESSION INADMISSIBLE, THE DELAY IN THE FIRST APPEARANCE. THAT DOES NOT.

HOW FAR CAN YOU GO WITH THAT? HOW ABOUT IF THIS HAD BEEN FIVE DAYS, INSTEAD OF 54 HOURS?

AT SOME POINT, IT MIGHT OVERWHELM, ALONG WITH OTHER CIRCUMSTANCES, AND MAKE IT INVOLUNTARY, BUT REMEMBER THE APPELLANT KNEW THAT HE HAD THE RIGHT TO COUNSEL, AND THAT IS, REALLY, THE SIGNIFICANCE, ISN'T IT, OF A FIRST APPEARANCE, THAT SOMEONE SITTING IN JAIL KNOWS HE HAS THE RIGHT TO A LAWYER. WELL, THE APPELLANT ABSOLUTELY KNEW THAT HE -- DID THE POLICE EVER TELL ACTUALLY TELL HIM?

THEY DIDN'T KNOW, UNTIL HE GAVE THE FINAL CONFESSION. THEY KNEW THERE WAS SOME KIND OF CULPABILITY, BASED ON HIS STATEMENTS AND THE DISAPPEARANCE OF JIMMY RYCE. THEY DID NOT KNOW IF IT WAS MURDER ONE, SECOND-DEGREE MURDER OR MANSLAUGHTER. THEY WERE VERIFYING HIS STORIES EACH STEP OF THE WAY, AND THE APPELLANT, AGAIN, ALL HE HAS TO SAY IS I AM TIRED. I DON'T WANT TO GO ANYMORE, AND THAT IS NOT WHAT WE HAVE IN THAT RECORD.

ISN'T JUST PURPOSE OF FIRST APPEARANCE THAT HE KNOWS HE HAS THE RIGHT TO A LAWYER -- TO DEBATE STEPS.

I THOUGHT THAT THE PURPOSE OF FIRST APPEARANCE WAS THAT HE KNEW THAT HE HAD A RIGHT TO A LAWYER, NOT IN ANYTHING BUT A NEUTRAL SETTING, AND THAT HE CAN MAKE DECISIONS ABOUT WHETHER OR NOT HE WANTS A LAWYER IN THAT SETTING. ISN'T THAT ONE OF THE REASONS FOR THE FIRST APPEARANCE?

YOUR HONOR, THAT IS PROBABLY ONE OF THE REASONS FOR THE FIRST APPEARANCE, AND THIS COURT HAS HELD, IN Q VERSUS STATE, THAT A DELAY IN THE FIRST APPEARANCE DOES NOT QUALIFY --

WAS THERE A DELAY OF FIRST APPEARANCE?

THE FACT THAT HE HAD NUMEROUS BREAKS, THE FACT THAT HE WAS ALLOWED TO SLEEP WHEN HE WANTED TO, THE FACT THAT HE CONTINUED TO COOPERATE, OF HIS OWN ACCORD. THERE IS NO INDICATION, IN THIS RECORD, THAT THIS MAN WAS NOT DOING EXACTLY WHAT HE WANTED TO DO.

WHAT I AM TRYING TO UNDERSTAND, JUST TAKE THE SAME EXACT CIRCUMSTANCE AND LEAVE OUT THE FIRST APPEARANCE AND STILL HAVE THE STATE HAVING TO PROVE THAT A CONFESSION

IS VOLUNTARY.

THAT IS CORRECT.

AND THAT IS THE BURDEN. IN TERMS OF THE LAW, WHAT -- WHERE DOES THE FAILURE TO AFFORD SOMEONE A FIRST APPEARANCE FIT IN? DOES IT INCREASE THE STATE'S BURDEN TO, NOW, SAY, NOW, WE REALLY HAVE TO SHOW THAT THIS WAS, OR IT DOESN'T DO --

I DON'T THINK SO, BECAUSE THE FIRST APPEARANCE, REALLY --

SO THE STATE COULD REALLY, IN EVERY CASE, DENY PEOPLE A FIRST APPEARANCE.

NO, THAT IS NOT TRUE, YOUR HONOR. IF YOU HAVE A COERCIVE ATMOSPHERE, AND IF THEY WERE NOT CLEARLY INFORMED, REPEATEDLY, OF THE RIGHT TO COUNSEL --

YOU WOULDN'T NEED A FIRST APPEARANCE, IF IT IS A COERCIVE ATMOSPHERE AND YOU ARE NOT INFORMED OF YOUR RIGHTS --

EVENTUALLY, YOUR HONOR, I AM SORRY, I DIDN'T MEAN TO INTERRUPT YOU, BUT EVENTUALLY IN FLORIDA, THE DEFENDANT WILL GET A FIRST APPEARANCE, AS THE DEFT D.

BUT YOU ARE SAYING THE -- AS THE DEFENDANT DID.

BUT YOU ARE SAYING THAT THE RULE FOR FIRST APPEARANCES CAN BE VIOLATED REPEATEDLY AND IF, SOMEWHERE DOWN THE ROAD, YOU GIVE THE DEFENDANT A FIRST APPEARANCE, IT SHOULD HAVE NO EFFECT ON HOW COURTS SHOULD EVALUATE WHETHER A CONFESSION IS VOLUNTARY OR NOT.

YOUR HONOR, I HAVE NOT SAID THAT IT IS ABSOLUTELY NO FACTOR. IN THE CASES THAT I CITE, IT IS A FACTOR.

I AM TRYING TO DECIDE WHERE WOULD WE, IN THE MIX, FACTOR IN THE FAILURE TO GIVE A FIRST APPEARANCE.

YOUR HONOR, THE CASES CITED THAT YOU FACTOR IT IN, AS ONE MORE FACTOR, AND THAT IS A FACTOR TO BE DETERMINED. THAT IS A FACT THAT THIS COURT WOULD CONSIDER, BUT PERHAPS JUSTICE ANSTEAD AND YOURSELF WOULD ARTICULATE A PER SE RULE.

I AM ASKING YOU TO TELL US HOW YOU WOULD ARTICULATE A RULE.

THAT IS A FACTOR THAT WOULD GO AGAINST THE ADMISSIBILITY OF A SUBSEQUENTLY-GAINED CONFESSION. JUST A FACTOR. IT IS NOT A REASON TO THROW IT OUT, AND IN THIS CASE THE DEFENDANT WAS DOING EXACTLY WHAT HE WANTED TO DO. THE DETECTIVES WERE NOT THREATENING HIM, NOT COERCING HIM. HE VOLUNTEERED EVERYTHING HE DID. THERE IS NO INDICATION OF THIS RECORD OF A RELUCTANT DEFENDANT. EVERYTHING IN THIS RECORD, THE FACTS THAT YOU HAVE, AND THAT THE TRIAL JUDGE WEIGHED, AGAIN, THE TRIAL JUDGE IS THE ARBITER OF CREDIBILITY. YOU HAVE FIVE DETECTIVES HERE TESTIFY THAT HE WAS ALERT, HE WAS COOPERATIVE AND HE WANTED TO HELP. YOU, ALSO, HAVE MARY LOU BALBOUS, WHO WAS AN INTERPRETER. SHE WASN'T HIRED -- SHE WASN'T A EMPLOYEE.

HOW SOON WAS THE INTERPRETER BROUGHT IN?

LATER, PROBABLY 48 HOURS INTO IT OR 49, JUST AFTER HIS FINAL ORAL CONFESSION TO HAVING RAPED AND MURDERED JIMMY RYCE.

WHAT DID THE PUBLIC DEFENDER TESTIFY, AS TO WHAT -- WHY SHE WAS THERE AND WHAT --

SHE HAD HEARD, YOUR HONOR, THROUGH THE MEDIA, THAT THEY WERE HOLDING SOMEONE ON THE JIMMY RYCE CASE, AND SHE WANTED TO GO SEE THE SUSPECT. THERE HAD BEEN NO REQUESTS FOR COUNSEL AT THAT POINT, AND THIS COURT'S DECISIONS HAVE MADE IT CLEAR THAT, WHEN THERE IS NO REQUEST FOR COUNSEL AND OTHERWISE THE DEFENDANT, PUBLIC DEFENDER HAS NO RIGHT ON THEIR OWN, TO GO IN AND INTERRUPT AN INTERROGATION. YOU MIGHT AS WELL PUT UP A SIGN IN FRONT OF THE POLICE STATION, SAYING THE PD WILL BE --

ISN'T IT, IN FLORIDA, AT A FIRST APPEARANCE, IF HE HAD BEEN BROUGHT THERE, AREN'T PUBLIC DEFENDERS AT THE FIRST APPEARANCES, TO SPEAK TO THE DEFENDANTS WHO ARE ARRAIGNED AT THAT TIME?

CERTAINLY ARRANGEMENTS ARE MADE, IF A DEFENDANT REQUESTS COUNSEL, TO HAVE A COUNSEL APPOINTED, BUT, AGAIN, THERE IS NO SUBJUGATION OR SUBVERSION OF DEFENDANT'S RIGHT TO COUNSEL HERE. HE KNEW HIS RIGHT TO COUNSEL. HE REPEATEDLY WAIVED IT. HE WAIVED IT IN WRITING. YOU HAVE A STENOGRAPHER WHO TAKES DOWN, VERBATIM, THE APPELLANT. HE HAD A GUN GOING DOWN. YES. I SIGNED THE MIRANDA WAIVER. HE KNEW HIS RIGHT TO COUNSEL. HE COOPERATED.

WITH REGARD TO THE FULL ARTICULATION, I THINK THAT SOME OF THE JUSTICES ARE LOOKING FOR, ON THE FIRST APPEARANCE AND THE VIOLATION, IS IT A FAIR STATEMENT THAT MAYBE THIS COURT HAS NOT FULLY ARTICULATED EXACTLY HOW THAT FACTORS IN -- FACTORS IN, AND THAT MAYBE IN KEENAN THE DECISION THAT IS AROSE OUT OF KEEN IN FT. LAUDERDALE IS POSSIBLY THE CLOSEST THAT WE COME TO THAT?

THAT'S RIGHT, YOUR HONOR.

SO MAYBE WE NEED TO ARTICULATE WHERE THIS FITS INTO HAD THIS WHOLE MIX? A -- INTO THIS WHOLE MIX?

I THINK ON OTHER JURISDICTIONS LOOK AT IT. THE STATE DOES NOT SAY THAT YOU IGNORE A TIMING FACTOR IN THE FIRST APPEARANCE, AND THAT GOES INTO THE MIX, IF YOU WILL, ON DETERMINING WHETHER OR NOT A CONFESSION WAS VOLUNTARY, AND THAT IS CERTAINLY A FACTOR, BUT IF YOU ARTICULATE A PER SE RULE, THE STATE IS NOT AWARE OF ANY OTHER JURISDICTION THAT HAS YOU MISS A FIRST APPEARANCE AND THERE IS A TIMING DELAY. IF HE SUBSEQUENTLY CONFESSES, YOU THROW OUT THE CONFESSION? I AM NOT AWARE OF ANY LAW TO THAT EFFECT, AND I THINK IT WOULD BE WRONG OF THIS COURT TO DO SO, SO YOU LOOK AT AND ADD THAT INTO THE MIX AND YOU DETERMINE, BUT, AGAIN, YOU HAVE A PROFESSIONAL INTERPRETER WHO COMES IN, DOESN'T HAVE ANY VESTED INTEREST IN THIS CASE. SHE SAYS THAT THE DEFENDANT IS VERY ARTICULATE, HE IS CALM, HE IS NOT BEING FORCE FED ANY INFORMATION FROM THE POLICE. IT IS A NONCOERCIVE ATMOSPHERE. HE IS DOING WHAT HE WANTED TO DO, EVERY STEP OF THE WAY. HE TRIED TO THROW THE POLICE OFF. IT DIDN'T WORK. BY TELLING THEM FALSE STORIES. I WANT TO MOVE ON TO THE CALDWELL --

LET ME ASK YOU ABOUT THE ISSUE THAT WAS RAISED, CONCERNING THE CORPUS DELICTI OF THE SEXUAL BATTERY. WHAT DO YOU HAVE, OTHER THAN THE DEFENDANT'S CONFESSION, THAT THERE WAS A SEXUAL BATTERY INVOLVED HERE?

YOUR HONOR, FIRST OF ALL, WE HAVE A VERY DETAILED CONFESSION TO, FROM THE APPELLANT --

DON'T YOU HAVE TO SHOW SOMETHING ELSE, BEFORE THE CONFESSION OF THE DEFENDANT BECOMES ADMISSIBLE?

YOUR HONOR, WE DO, AND IF YOU RECALL FROM HIS STATEMENT, HE STATED THAT HE WENT TO

THE BATHROOM AREA OF THE HORSE FARM AND GOT SOME LUBRICANT OUT AND USED THAT TO RAPE JIMMY RYCE. WELL, WHEN THEY SEFERBLINGD THAT TRAILER, THEY FOUND LUBRICANT IN THE BATHROOM WHERE APPELLANT STATED HE GOT IT FROM. THAT IS SIGNIFICANT CORROBORATION, BUT MORE THAN THAT YOU HAVE THE CONDITION OF JIMMY RYCE'S BODY. ONE SOCK IS MISSING. ONE SHOE IS OFF. THE PANTS ARE UNZIPPED. THE PANTS ARE UNBUTTONED, SO CLEARLY HE WAS UNCLOTHED, WHILE IN APPELLANT'S CONTROL, AND YOU, ALSO, HAVE THE INHERENT CORROBORATION OF A GROWN MAN TAKING A YOUNG CHILD, NOT TO STEAL HIS BOOK BAG BUT TO SEXUALLY MOLEST HIM, AND I THINK, BASED ON THE VERY FAVORABLE STANDARD OF REVIEW ENTITLED TO THE STATE ON A MOTION FOR A JUDGMENT OF ACQUITTAL, THAT THE STATE DID, INDEED, PROVIDE SUFFICIENT CORROBORATION, RECALLING, AGAIN, THAT THIS IS NOT SOME -- THIS IS A VERY DETAILED CONFESSION TO SEXUAL BATTERY. HE EVEN DESCRIBED JIMMY AS CRYING DURING IT AND IN GRAPHIC DETAIL DESCRIBED THE RAPE, AND THE STATE DID, INDEED, PROVIDE SUFFICIENT CORROBORATION. MOVING ON TO THE CALDWELL ISSUE, YOUR HONORS, THERE WAS ABSOLUTELY NO OBJECTION IN VOIR DIRE, TO -- IN FACT IT WAS IN RESPONSE TO A JUROR'S STATEMENT THAT SHE FELT THAT IT PLACED A GREAT WEIGHT OFF OF HER. THE JUDGE REPEATEDLY EMPHASIZED, DURING THE TRIAL, THE GREAT WEIGHT GIVEN TO THE JURY RECOMMENDATION IN THIS CASE, AND IN CLOSING ARGUMENT, THERE WAS AN OBJECTION MADE TO THE COMMENT, BUT IT WAS IMMEDIATELY FOLLOWED BY A CURETIVE INSTRUCTION, AS THIS COURT RECOGNIZED. MOREOVER, THE PROSECUTOR, WHEN SHE BEGAN, AGAIN, HER CLOSING ARGUMENT, EMPHASIZED THE JURY ROLE, SO IF YOU LOOK AT THOSE COMMENTS OF THE PROSECUTOR IN THEIR ENTIRETY, THEY WERE NOT AT ALL IMPROPER, AND THEY WERE PROPERLY ADDRESSED BY THE TRIAL JUDGE BELOW.

WHAT IS THE STATE'S POSITION ABOUT WHY THE MATTRESS WAS INTRODUCED INTO EVIDENCE. THE BLOODY MATTRESS.

THE MATTRESS BECAME RELEVANT, YOUR HONOR. FIRST OF ALL IT IS PART OF THE CRIME SCENE, PERIOD, THE TRAILER.

IT WAS LINKED UP TO THE MURDER?

NO, YOUR HONOR, IT WAS NOT. THE JURY WAS TOLD IT WAS NOT LINKED UP, BUT HERE IS WHY THE MATTRESS WAS RELEVANT, BECAUSE THE APPELLANT, BASICALLY THROUGH HIS OPENING STATEMENT, SIMPLY SAID THE POLICE WERE FORCE FEEDING HIM DETAILS THAT THEY FOUND AT THE SCENE, TO MATCH THE PHYSICAL EVIDENCE THAT THEY WERE FINDING WHILE THEY WERE QUESTIONING HIM, SO THE BLOODY MATTRESS WAS THE MOST OBVIOUS BLOODSTAIN IN THE HORSE FARM TRAILER. THAT BEING THE FACT, THAT SHOULD HAVE APPEARED IN THAT SO-CALLED FALSE CONFESSION, IF THEY WERE SIMPLY FORCE FEEDING HIM DETAILS, BUT EVEN IF THIS COURT --

I DON'T UNDERSTAND HOW -- THIS CHILD WAS SHOT, CORRECT?

THAT'S CORRECT, YOUR HONOR.

AND I DON'T RECALL THAT THERE WAS A LOT OF BLOOD IN THAT PARTICULAR AREA, SO I AM STILL HAVING A HARD TIME CONNECTING THIS MATTRESS TO --

HE WAS MURDERED IN THAT HORSE FARM TRAILER. THERE WAS BLOOD. JIMMY RYCE'S BLOOD WAS FOUND, AND IT WAS MATCHED THROUGH HIS PARENTS, NEAR THE FRONT DOOR, WHERE APPELLANT, IN HIS CONFESSION, CLAIMED THAT HE SHOT JIMMY RYCE. THERE IS, ALSO, JIMMY RYCE'S BLOOD FOUND ON A CUSHION. THE MATTRESS IS ALSO FOUND IN THE TRAILER, BUT IT WAS THE MOST OBVIOUS BLOODSTAIN FOUND IN THE TRAILER, SO IF THE POLICE WERE SIMPLY FORCE FEEDING HIM DETAILS TO FORCE HIS CONFESSION, WHY PLACE HIM AT THE FRONT DOOR, WHERE THERE IS A SMALL LITTLE BLOODSTAIN? WHY NOT PLACE HIM ON THE MATTRESS, WHERE IT LOOKS LIKE THERE IS A MUCH LARGER BLOODSTAIN, SO IT BECAME RELEVANT FOR THAT

PURPOSE, TO REBUT THE STATE'S THEORY.

WAS IT PUT IN ON REBUTTAL, THIS MATTRESS?

NO, YOUR HONOR, ONCE THE OPENING STATEMENT, AND THIS COURT HAS PREVIOUSLY HELD THAT ONCE THE DEFENSE COMMITS THEMSELVES TO A CERTAIN DEFENSE IN OPENING, THAT CAN BE SUFFICIENT TO MAKE AN ITEM OF EVIDENCE RELEVANT, AND THAT IS WHAT HAPPENED HERE, BUT EVEN IF THIS COURT WERE TO FIND THE TRIAL JUDGE ABUSED HIS DISCRETION THERE IS NO WAY THAT THAT WAS HARMFUL ERROR, BECAUSE THE STATE PRESENTED ABSOLUTELY OVERWHELMING EVIDENCE OF APPELLANT'S GUILT IN THIS CASE. A DETAILED CONFESSION THAT WAS CORROBORATED IN EVERY SIGNIFICANT RESPECT, FROM APPELLANT SKETCHING OUT THE TOOL THAT HE USED TO DISMEMBER JIMMY'S BODY, TO THE SEXUAL BATTERY, TO HOW HE FORCED JIMMY INTO HIS TRUCK AT GUNPOINT, SO IN EVERY SIGNIFICANT RESPECT, THE CONFESSION WAS CORROBORATED, AND THE STATE DID PRESENT OVERWHELMING EVIDENCE OF GUILT. IF THERE ARE NO FURTHER QUESTIONS, THE STATE HAS NOTHING FURTHER.

FROM HARPER.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. ON THE CALDWELL ISSUE, I -- THE CLERK'S MINUTES REFLECT, AT PAGE 8847, A MOTION FOR MISTRIAL WAS MADE BY DEFENSE COUNSEL, DURING THE -- THIS POINT OF THE SENTENCING PROCEEDINGS.

THE CLERK'S NOTES?

YES, SIR.

IN OTHER WORDS THERE IS NO TRANSCRIPT?

I HAVEN'T GOT THE TRANSCRIPTS HERE, TO GIVE YOU A BETTER, BUT I WILL BE GLAD TO SUPPLEMENT WITH THAT NOTATION.

DO WE KNOW WHERE THAT WAS, WHERE THE MOTION FOR MISTRIAL --

I WILL CONFIRM THAT BETTER, BUT IT WAS ALL I WAS ABLE TO FIND THERE, IN RESPONSE TO YOUR QUESTION, YOUR HONOR. FROM THESE COMMENTS, I WOULD BRIEFLY LIKE TO SAY THAT THE STATE ATTORNEY WAS PRESENT, DURING THE WAIVER, THE PROCUREMENT OF THE WAIVER, WHICH WAS 42 HOURS AFTER THE DEFENDANT WAS TAKEN INTO CUSTODY. THAT THE LAW IS CLEAR THAT, WHEN THIS DELAY IS FOR THE PURPOSE OF EXPORTING EVIDENCE, AND I THINK, AS THE COURT SAID IN KEEN, THAT THE INTENT IS TO INDUCE FURTHER CONFESSION, WHICH THIS DELAY WAS, THEN WE HAVE A VIOLATION.

WOULD YOU CONSIDER PROBABLE CAUSE, THE POLICE HAVE PROBABLE CAUSE -- YOU SAY AT THE BEGINNING THEY DID NOT HAVE PROBABLE CAUSE TO ARREST HIM ON THE JIMMY RYCE MATTER. CORRECT?

YES, MA'AM.

AND SO AT WHAT POINT, DURING THESE INTERROGATIONS, DID THE POLICE HAVE PROBABLE CAUSE, IN RELATIONSHIP TO THE MURDER?

WELL, IN MY OPINION, YOUR HONOR, THE REASON WE TRIED TO BRIEF IT BOTH WAYS, WHEN SAYING WITHOUT PROBABLE CAUSE,, TO BEGIN WITH, IT IS A CATCH-22 SITUATION, IN THIS RESPECT. I THINK DURING THE TRIAL PROCEEDINGS, THE STATE WOULD NOT COME UP TO THE PLATE AND SAY, YES, WE ARRESTED HIM OFF THE BAT, FOR THE MURDER. WHICH I THINK, WITH THE FINDING OF THE BOOK BAG, THEY AT LEAST HAVE PROBABLE CAUSE TO ARREST HIM FOR

THE MISSING CHILD. AT THAT POINT OF THE INITIAL ARREST, CERTAINLY NOBODY CAN ARGUE ANY LATER THAN THE FIRST MENTION OF JIMMY RYCE BEING KNOWN TO THE DEFENDANT, EITHER BY THE ACCIDENT RECITEATION OR BY FINDING THE BOOK BAG.

HOW FAR IN THE PROCESS WAS THAT?

I CAN'T TELL YOU, OFF THE TOP OF MY HEAD, HOW MANY HOURS, BUT I BELIEVE IT WAS IN THE EARLY-MORNING HOURS AFTER HIS ARREST. HE WAS ARRESTED AT ABOUT 7:35 P.M., AND I THINK IT WAS IN THE EARLY-MORNING HOURS, FOLLOWING THAT.

IF YOU WOULD ASSUME THAT IT WAS AROUND TEN-THIRTY OR ELEVEN THE NEXT MORNING, WHERE WOULD THAT ANSWER THE QUESTION, THE FIRST MENTION OF THE CRUSHING OR THE INVOLVEMENT, TO ANSWER JUSTICE QUINCE'S QUESTION, ASSUME THAT IT IS AROUND TEN-THIRTY OR ELEVEN THE NEXT MORNING, HOW DOES THAT PLAY INTO ANSWERING HER QUESTION?

I THINK IT IS TIME TO GET THE MAN IN FRONT OF A JUDGE, IS THE WAY I RESPOND TO THAT THE. I THINK THAT THE HISTORICAL PERSPECTIVE ON THIS BODY OF LAW IS TAKING SOMEBODY IN FRONT OF A JUDGE WITHOUT UNREASONABLE DELAY, WHEN YOU ARREST WITHOUT A WARRANT.

DO YOU AGREE WITH THE STATE, MR. BROWN'S ASSESSMENT, THAT MAYBE THIS COURT HAS NOT REALLY ARTICULATED FULLY HOW THAT DELAY IN THE FIRST APPEARANCE, REALLY, IS TO OPERATE, OTHER THAN SOME MENTION IN THE KEEN CASE?

I THINK IT CERTAINLY DESERVES SOME ADDITIONAL JUDICIAL ATTENTION, YES, SIR, I DO, BUT I THINK THERE IS A CLEAR WRITING ON THE WALL, THE WAY IT NEEDS TO GO, IN MY OPINION. THERE SEEMS TO BE -- SOME EFFORT HAS BEEN MADE BY THE UNITED STATES SUPREME COURT, IT TO DRAW BRIGHT-LINE, WHICH, I THINK, IS PRETTY DIFFICULT, BUT WITHOUT SOME SORT OF BRIGHT LINE, WHAT ARE LAW ENFORCEMENT OFFICERS SUPPOSED TO DO SOME MOST IMPORTANT WHAT ARE PROSECUTORS SUPPOSED TO DO BUT WHAT ARE LAW ENFORCEMENT OFFICERS SUPPOSED TO DO?

IF THERE IS AN ARREST WARRANT OBTAINED, THAT REQUIREMENT IS NOT PRESENT, CORRECT?

I THINK THE MOST IMPORTANT THING IS TO PUT SOMEBODY IN TOUCH WITH A LAWYER.

BUT THAT, IF THE PERSON APPEARED, THEN, IF AN ARREST WARRANT HAD BEEN OBTAINED, THEN WHAT IS THE LAW?

AS FAR AS --

WHEN DOES HE, THEN, HAVE TO COME BEFORE A JUDGE?

I STILL THINK THEY HAVE TO BE FIRST-APPEARED, BUT I THINK THE PURPOSE OF THE FIRST APPEARANCE IS DIFFERENT. I STILL THINK THE PERSON NEEDS TO BE ADVISED OF HIS RIGHT TO COUNSEL. I DON'T THINK THERE IS NECESSARILY A PROBABLE CAUSE DETERMINATION, AS MUCH AS A RIGHT TO COUNSEL ISSUE.

YOU THINK IF WE ARE GOING TO FIND, AS WE LOOK BACK AT THE CASE LAW, THAT THE PURPOSE OF A FIRST APPEARANCE IS FOR A NEUTRAL MAGISTRATE, RATHER THAN THE POLICE TO ADVISE THE DEFENDANT OF HIS RIGHT TO COUNSEL?

-- IS THAT WAUR REPRESENTING TO US?

WELL -- IS THAT WHAT YOU ARE REPRESENTING TO US?

WELL, THE WHAT WAY -- THE WAY YOU PUT IT MAKES ME PAUSE, BECAUSE IT LOOKS LIKE, TO ME, LIKE THERE IS MAYBE A DIFFERENCE THERE, WITH SOME SIGNIFICANT MEANING.

I THOUGHT THE PURPOSE WAS TO MAKE SURE THAT THERE IS ACTUALLY PROBABLE CAUSE TO HOLD THE PERSON.

I THINK THAT HAS BEEN THE TRADITIONAL ROLE OF FIRST APPEARANCE, IS TO MAKE SURE NEUTRAL MAGISTRATE DETERMINES THERE IS PROBABLE CAUSE, BUT I THINK THE EVOLUTION OF THE LAW HAS BEEN THE ATTACHMENT OF THE RIGHT TO COUNSEL AND THE ADVERSARIAL PROCESS BEING INITIATED, PARTLY IN RESPONSE TO SPEEDY TRIAL AND TIME STANDARDS ISSUES, BUT, ALSO, IN PART IN RESPONSE TO THESE TYPES OF ISSUES.

IN FLORIDA, THE FIRST APPEARANCE, ARE THERE PUBLIC DEFENDERS THERE?

ABSOLUTELY, PARTICULARLY IT IS MADE WITH THE INDIGENCE ISSUE BEING A PART OF THE SITUATION. AND A PRIVATE LAWYER NOT BEING APPOINTED.

IF A PRIVATE LAWYER HAD BEEN RETAINED BY A FAMILY MEMBER, WOULD THAT LAWYER HAVE HAD ACCESS TO MR. CHAF SNES.

ISN'T YOUR OPPONENT CORRECT, THOUGH, UNDER THE EXISTING LAW, THIS IS JUST ONE FACTOR TO BE CONSIDERED, IN TERMS OF WHETHER OR NOT A CONFESSION WAS COERCED?

I --

THAT IS THE FAILURE TO TIMELY MEET THE FIRST APPEARANCE REQUIREMENTS?

YOUR HONOR, THAT IS THE WAY WE BRIEFED IT, TOO. THE MOST IMPORTANT THING, TO ME, IS THE INTEGRITY OF THE PROCESS AND THE INTEGRITY OF THE LAW, AND THE INTELLECTUAL HONESTY OF THE PROCESS AND THE CASE LAW PROCESS.

BUT DOES THAT COME BACK TO THE ROLE OF THE TRIAL COURT JUDGE, AND THAT IS THAT THE TRIAL COURT JUDGE IS THE PERSON IN THE BEST POSITION TO EVALUATE ALL OF THIS EVIDENCE, THAT IS THAT HE HEARS THE EVIDENCE ABOUT WHAT THE CONDITIONS WERE, HOW AND HOW MANY TIMES THE DEFENDANT WAIVED HIS RIGHT TO COUNSEL, HOW ALERT HE WAS, ALL OF THESE ISSUES LIKE THAT, THOSE ARE HEAVILY, FACTUALLY-LADEN, ARE THEY NOT?

YES, SIR, AND THE PRESUMES THAT IS ATTENDANT ON REVIEW --

DOES THAT CONCLUDE THAT, YES, IT WAS LIKE BEING HELD IN A DUNGEON AND IT WAS TERRIBLY COERCIVE AND HE WAS EXHAUSTED AND FALLING ASLEEP AND ALL OF THAT, HE MIGHT GO OR SHE MIGHT GO ONE WAY IN HER RULING, BUT IF SHE FINDS, NO, I FIND THAT HE WAS REPEATEDLY ADVISED OF HIS RIGHTS. HE GOT PLENTY OF REST AND WAS PROVIDED FOOD AND, YOU KNOW, THAT IT WASN'T COERCIVE, IT WOULD GO THE OTHER WAY. ISN'T THAT HOW WE RELY ON TRIAL COURT JUDGES?

THAT IS EXACTLY RIGHT, YOUR HONOR.

THE TRIAL JUDGE, HERE, FOUND NO COERCION.

WELL, I THINK, ON -- THAT IS TRUE, BUT I DO, ALSO, THINK THAT, IN THE CONTEXT OF REVIEWING THIS CASE ON THE RECORD, THAT THERE IS CERTAIN EMPHASIS ON CERTAIN FACTORS THAT ARE APPROPRIATE HERE, THAT A TRIAL JUDGE MAYBE LOSES IN THE HEAT --

WHAT FACTORS?

I THINK ONE THAT THE PROSECUTORS ARE A PARTICIPANT IN KEEPING THE MAN OUT OF COURT.

HOW DOES THAT APPEAR? I AM NOT SURE.

WELL, I THINK THAT, TO ME, INDICATES THAT THERE IS AN INTENTIONAL EFFORT TO KEEP THE PROSECUTOR --

WHAT EVIDENCE IS THERE OF THAT, THAT THERE WAS AN INTENTIONAL EFFORT TO KEEP HIM OUT OF FIRST APPEARANCE?

WHAT IS THAT?

WHERE IS THE EVIDENCE?

IT APPEARS IN THE RECORD, THAT THE PROSECUTOR WAS PRESENT, AT VOLUME 19, PAGE 4576, IN PARTICIPATING AND DRAFTING THE WAIVERS AND FOR THE DEFENDANT'S SIGNATURE, AND WAS BEING CONSULTED, PHYSICALLY, FROM THERE, BEING CONSULTED BY THE OFFICERS DURING THIS TIME PERIOD, AND I THINK THAT, WHEN YOU START SAYING THERE IS A DELIBERATE EFFORT TO KEEP THE MAN OUT OF COURT, THEN IS THIS FINDING BY THE JUDGE, REALLY, ENTITLED TO DEFERENCE AT ALL? AND I SUBMIT THAT IT IS NOT ENTITLED TO THE DEFERENCE THAT IT IS ERROR FREE AND IT IS PRESUMED CORRECT, BECAUSE THERE IS AN INVOLVEMENT OF THE EXECUTIVE BRANCH HERE. AND IT IS NOT FAIR, AND IT IS NOT RIGHT.

MR. HARPER, I THINK YOUR TIME IS UP.

THANK.

THANK VERY MUCH. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.