>> ALL RISE.
THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION, PLEASE BE
SEATED.
>> NEXT CASE IS JUSTIN CURTIS
HEYNE V. STATE OF FLORIDA.
WHENEVER YOU ARE READY.
>> GOOD MORNING.
I AM GOING TO BE ARGUING FOR THE
APPELLANT.
THE FIRST ISSUE I WOULD LIKE TO
ARGUE IS THE FIRST CLAIM WE
ADDRESS IN A BRIEF AND THAT IS
COUNSEL WAS INEFFECTIVE FOR NOT
FILING A MOTION TO SUPPRESS MR.
HEYNE'S CONFESSION TO THE POLICE
ON THE BASIS HE HAD IN FACT
INVOKED HIS RIGHT TO COUNSEL AND
ALSO REQUESTED THAT THE
CUSTODIAL INTERROGATION STOP.
THAT HAPPENED ABOUT 70 PAGES
INTO A LONG CUSTODIAL
INTERROGATION THAT OCCURRED AT A
THE POLICE DEPARTMENT, TAKEN HIM
INTO CUSTODY, HANDCUFFED HIM
BEHIND HIS BACK, REQUESTED THE
HAND OF THE TAKEN OFF.
>> DID IT STUCK?
>> HE SAID IT STUCK BECAUSE IN
THE TRANSCRIPT IT SAYS THE
POLICE OFFICER ASKED HIM HOW ARE
YOU GOING TO HANDLE THIS NOW?
IS ANSWER IS PUT ME IN A JAIL
CELL.
HE SAYS PUT ME IN A JAIL CELL HE
IS INDICATING HE WANTS TO BE
TAKEN AWAY AND THE CUSTODIAL
INTERROGATION BE PUT IN A JAIL
CELL.
UNDER THE TRAILER CASE.
>> THE CONTEXT THAT REALLY
SUPPORT THE CONCLUSION THAT HE
SPECULATED WHAT THE FUTURE MIGHT
HOLD FOR HIM AND HE IS NOT
MAKING A SPECIFIC REQUEST OF
ANYTHING.
>> IT IS NOT THE FUTURE.
>> THAT IS NOT YOUR POSITION.
>> THAT IS NOT WHAT THE WORDS
ARE.
>> GOT TO LOOK AT THE QUESTION
THAT WAS ASKED.
>> BEFORE THAT QUESTION IS
ASKED, HOW ARE WE GOING TO
HANDLE THIS NOW?

PUT ME IN A JAIL CELL WITH
>> HE IS THINKING THEY ARE GOING
TO PUT HIM IN A JAIL CELL.
I DON'T QUESTION THAT.
THE QUESTION WAS HOW ARE WE THE
LAW ENFORCEMENT OFFICER GOING TO
HANDLE IT?
HE IS RESPONDING TO THAT AND I
THINK HE WAS PROBABLY GIVEN A
PRETTY PERCEPTIVE, HAD A PRETTY
PERCEPTIVE APPRAISAL HOW THIS
WAS GOING TO GO.
THAT TRANSFORMS INTO A REQUEST
OF HIS, THAT IS WHERE I AM
LOSING IT.
WE ARE NOT FOLLOWING YOUR
ARGUMENT.
>> PUT ME IN A JAIL CELL MEANS
PUT ME IN A JAIL CELL.
THAT IS THAT REQUEST.
HOW ARE WE GOING TO HANDLE THIS
NOW IS NOT HOW THE POLICE
OFFICER IS GOING TO HANDLE IT.
HE IS ASKING TO BE TAKEN TO THE
JAIL CELL.
>> YOU INTERPRET THAT AS HOW WE
ARE GOING TO HANDLE IT NOW, TAKE
ME TO A JAIL CELL, YOU ARE
PUTTING TAKE ME TO MY JAIL CELLS
SORT OF IN FRONT OF THOSE WORDS.
>> THE EXACT WORDS ARE PUT ME IN
A JAIL CELL.
>> PUT ME IN A JAIL CELL.
>> HOW ARE WE GOING TO HANDLE
THIS NOW, PUT ME IN A JAIL CELL.
>> WHAT WAS SAID JUST BEFORE HOW
WE GOING TO HANDLE THIS NOW?
>> NOTHING RELATED TO THAT,
THERE ARE 60 PAGES OF
TRANSCRIPTS.
GETTING BACK TO WHAT JUSTICE
KENNEDY SAID ABOUT HIM THINKING
HE WAS GOING TO GET ARRESTED I
TOTALLY AGREE WITH THAT.
IT WAS ON PAGE 66.
THE DETECTIVE TELLS HIM HE HAS
SERIOUS PROBLEM AND HE SAYS WE
KNEW YOU ARE INVOLVED AND YOU
ARE RESPONSIBLE AND SO HE IS
ALREADY BEING TOLD HE HAS BEEN
ACCUSED FOR PRACTICALLY 70 PAGES
OF TRANSCRIPT.
>> THE ALREADY HAD HIS MIRANDA
WARNINGS, HE HAS WAIVED THEM,
THEY CONFRONTED HIM WITH VARIOUS

THINGS, HE KNOWS HE IS IN BIG
TROUBLE.
>> THAT IS WHY HE SAYS TAKE ME
TO MY CELL WHICH WAS AWAY FROM
WHERE DOES CUSTODIAL
INTERROGATION WAS TAKING PLACE.
>> LET'S JUST ASSUME, WAS THE
TRIAL LAWYER ASKED ABOUT WHY EAT
OR SHE DIDN'T FILE A MOTION TO
SUPPRESS AS TO THIS STATEMENT?
WHAT THE STATEMENT WAS A REQUEST
FOR A LAWYER AND STOP
QUESTIONING?
DID THE TRIAL LAWYER EXPLAIN WHY
HE OR SHE DID NOT FILE A MOTION
TO SUPPRESS?
>> THE TRIAL LAWYER SAID HE
DIDN'T THINK IT WAS AN
INVOCATION TO SEES THE
INTERVIEW.
>> LOOKING AT IT THE LAWYER WHO
WAS RIGHT THERE ON THE GROUNDS
SAYS I DON'T SEE THIS BEING
UNEQUIVOCAL, THE JUDGE FOUND
THAT IT WAS NOT SUFFICIENTLY
CLEAR THAT REASONABLE POLICE
OFFICER WOULD UNDERSTAND IS A
REQUEST TO BE FROM THE ATTORNEY
OR ASSERTION OF THE RIGHT TO
REMAIN SILENT.
I AM LOOKING AT THIS AND SAYING
THIS IS IN ALL THE CASES WE HAVE
EVER DECIDED CLEARLY DOES NOT
RISE TO INVOCATION OF RIGHT TO
COUNCIL.
SO WHETHER YOU HAVE A DEFICIENCY
FOR THE JUDGE, BUT WE'RE NOT
FILING THE MOTION, IF IT WOULD
NOT BE SUCCESSFUL YOU LOSE,
RIGHT?
>> YES IF THE MOTION IS NOT
SUCCESSFUL.
>> THE LAWYER DIDN'T THINK IT
WAS SUFFICIENTLY CLEAR, THE
JUDGE FOUND IT WAS NOT
SUFFICIENTLY CLEAR AND I THINK
YOU ARE HEARINGS UP HERE WE
DON'T THINK IT WAS SUFFICIENTLY
CLEAR SO MY SUGGESTION IS YOU GO
TO THE NEXT POINT.
I DON'T THINK ANY OF OUR CASE
LAW WOULD SUPPORT THAT FAT,
AFTER HE WAIVED HIS RIGHTS,
SAYING THAT WAS A CLEAR AND
UNEQUIVOCAL REQUEST EITHER TO

STOP QUESTIONING OR TO OBTAIN A
LAWYER.
>> I HAVE TO RESPECTFULLY
DISAGREE.
CASE LAW HAS SAID FOR EVEN
SOMEBODY SAYS I AM THINKING
SHOULD I GET A LAWYER, ASKING
THE POLICE OFFICER WITH THE THEY
SHOULD GET A LAWYER HAS BEEN
HELD BY THIS COURT AS INVOKING
THE RIGHT TO COUNSEL.
WHEN YOU SAY PUT ME IN MY CELL,
I WILL GET A LAWYER, I WILL GET
A LAWYER IS NOT IN ANY WAY HE
EQUIVOCAL.
IT IS SOMETHING TO BE EQUIVOCAL,
THERE HAS TO BE TWO OR MORE
DIFFERENT MEANINGS.
>> WE GO TO THE COURT, SPEND
THOUSANDS OF DOLLARS ON AN
INNOCENT MAN.
THAT IS HOW WE ARE GOING TO
HANDLE IT.
IF I AM CONVICTED AND THEY ARE
GOING TO CONVICT ME IS THAT I DO
TIME, HE IS INNOCENT, I WILL GET
MYSELF UP LAWYER AND DEFEND THIS
CASE, THAT IS THE CONTEXT.
WHAT HAPPENED AT BEFORE OR AFTER
YOU'D JUST CAN'T TAKE ONE LITTLE
SNIPPET AND SAY THAT IS THE
ANSWER THAT HE TOLD THEM TO NOT
QUESTION HIM ANYMORE.
>> HIS OPINION ABOUT WHAT IS
GOING TO HAPPEN AFTER HE GETS A
LAWYER IS NOT RELEVANT.
IT IS WHETHER HE ASKED, WHAT
TRIGGERS CONSTITUTIONAL
PROTECTION IS MERELY THAT HE ASK
FOR THE HELP OF AN ATTORNEY.
WHAT HE SAYS AFTER THAT, THE
ONLY WAY THEY CAN CONTINUE
QUESTIONING HIM IS HE INITIATES
THE QUESTION.
I WILL GET A LAWYER, I DON'T AND
IT WILL DO ME ANY GOOD, YOU
STILL INVOKED YOUR RIGHT TO A
LAWYER.
HE WILL HELP ME AT THE TRIAL, A
PERFECTLY NATURAL THING, THAT
THE LAWYER WOULD HELP HIM AT THE
TRIAL AND HE WILL EITHER BE
CONVICTED OR NOT CONVICTED.
THE SENTENCE I WILL GET A LAWYER
CAN'T BE VIEWED AS EQUIVOCAL

BECAUSE IT IS NOT SUBJECT TO TWO
OR MORE MEETINGS.
>> AFTER YOU HAVE BEEN ACCUSED,
HE SAYS, I WILL GET A LAWYER.
>> HE HAS BEEN ACCUSED IS 60
PAGES OF TRANSCRIPTS AT THE
POLICE OFFICER ALREADY TOLD HIM
THEY KNOW HE IS INVOLVED AND HE
KNOWS HE IS RESPONSIBLE SO THERE
IS NO FUTURE CONCERNING BEING
ACCUSED.
HE HAS BEEN ACCUSED DURING THE
ENTIRE INTERROGATION PROCESS.
>> THEY ARE ALSO ASKING TO FRY
HIM.
HIS RESPONSE TO THE QUESTION,
REQUEST THAT HE IS MAKING
PUBLICITY CHANGE IS NOT
REQUESTING THAT THEY FRY HIM.
IF HE IS CONVICTED I WILL DO MY
TIME AND THEY CAN TRY ME.
IF HE IS CONVICTED.
HE IS NOT ASKING TO BE TRIED, HE
IS ASKING TO BE PUT IN A JAIL
CELL WHERE HE GETS A LAWYER.
>> WE UNDERSTAND YOUR ARGUMENT.
>> I WOULD LIKE TO POINT OUT
THAT I THINK THE WAY THE COURT,
THE TRIAL COURT HANDLES IT, WHEN
THE TRIAL COURT DENIED IT,
STATING THAT HE NEVER REQUESTED
AN ATTORNEY TO BE BROUGHT DOWN
TO EAT THEMSELVES DURING THE
INTERROGATION.
THAT IS NOT NECESSARY FOR MORE
AND THE.
MIRANDA'S IS YOU HAVE A RIGHT TO
AN ATTORNEY AND HAVE THAT
ATTORNEY PRESENT FOR
QUESTIONING.
YOU HAVE THE RIGHT TO TALK TO AN
ATTORNEY.
THOSE ARE TWO DIFFERENT THINGS
WE YOU DON'T HAVE TO ASK FOR THE
ATTORNEY TO BE BROUGHT DOWN
THERE.
FROM THE UNITED STATES SUPREME
COURT, THE ACCUSED, THE PERSON
BEING INTERROGATED MERELY SAID
GIVE ME A WEEK, I WILL GET AN
ATTORNEY.
THEY HAD TO STOP THE
INTERROGATION.
YOU DON'T HAVE TO ASK FOR THE
ATTORNEY TO COME DOWN TO THE

STATION SO I THINK THE COURT,
THE TRIAL COURT, THIS SHOULD BE
A THEY NOVO REVIEW BY THIS COURT
BECAUSE THE WORDS THE ACCUSED
SAYS ARE RIGHT HERE ON THE PAGE.
THERE IS NOTHING THAT THE TRIAL
COURT LISTENED TO THAT WOULD
CHANGE ANYTHING LIKE NORMALLY
CREDIBILITY OF A WITNESS OR NOT
THE CREDIBILITY OF A WITNESS, IT
IS ALL IN BLACK AND WHITE THERE.
PUT ME AND MY CELL, I WILL GET A
LAWYER.
>> WAS THE INTERROGATION VIDEO
TIP?
>> THE INTERROGATION WAS
VIDEOTAPED.
>> DID THE JUDGE LOOK AT THAT
ALSO TEACH YOU THE LAWYER WHO
SAID HE DIDN'T THINK IT WAS AN
UNEQUIVOCAL RIGHT, HIS TRIAL
LAWYER TRYING TO SAVE HIS LIFE,
BUT THAT THE VIDEO TAPE?
>> I BELIEVE BOTH OF THOSE
THINGS HAPPENED.
THE VIDEO TAPE WAS INTRODUCED
INTO THE EVIDENCE AND THE JUDGE
SAID HE WOULD REVIEW IT AT THE
EVIDENTIARY.
>> IS THAT PART OF OUR RECORD?
>> IT IS PART OF THE RECORD.
WHAT REALLY HAPPENS IS PUT ME IN
A JAIL CELL, AS HE SAYS THAT HE
IS INTERRUPTED BY THE DETECTIVE
AFTER YOU ARE BEING ACCUSED, HE
SAYS I WILL GET A LAWYER.
AGAIN, THE WHERE, WHEN AND HOW
SOMEBODY GETS A LAWYER IS NOT
THE BUSINESS OF THE DEFENDANTS,
YOU'D CALL A LAWYER, SAY BRING
ME TO THE OFFICE OF A LAWYER,
TAKE ME TO MYSELF AND GET A
LAWYER IS A PERFECTLY NORMAL
OPERATING PROCEDURE TO TALK TO A
LAWYER.
AS WE SPEAK RIGHT NOW LAWYERS
TALKING TO THEIR CLIENTS IN THE
COUNTY JAIL ALL OVER THE STATE,
PERFECTLY NORMAL REQUEST WHERE
HE WOULD LIKE TO TALK TO AN
ATTORNEY.
HE SAYS THAT IS WHAT HE WANTS TO
DO, I WILL GET A LAWYER, NOT I
MIGHT GET A LAWYER OR I WILL GET
A LAWYER IF I AM ARRESTED, THAT

IS NONSENSICAL BECAUSE HE HAS
ALREADY BEEN TOLD HE'S GOING TO
BE ARRESTED.
IT IS I WILL GET A LAWYER.
IF HIS OPINION ABOUT IT IS
MEANINGLESS FOR HIS RENDITION OF
WHAT WILL HAPPEN AFTER HE GETS
THE LAWYER.
I WILL MOVE ON TO THE NEXT ISSUE
WHICH IS AFTER THESE EVENTS
HAPPEN, MR. IVORY
HAMILTON TO HIS GIRLFRIEND'S
HOUSE TO CHANGE CLOTHES, AND
BOUGHT SOME OTHER CLOTHES AND
PUT THOSE AND OTHER
INSTRUMENTALITIES AT THE CRIME,
THE GUN, CLOSE, INTO A BOX AND
HID IT IN THE ATTIC BEHIND SOME
INSULATION.
THE POLICE CAME TO SEARCH AND
ROXANNE LARAMIE SAID MR. HEYNE
MADE STATEMENTS ABOUT THE
SHOOTING, IT CONDUCTED A SEARCH.
ROXANNE WHERE SHE SAID NEVER
TOUCHED THE BOX IN ANY WAY AND
POLICE TO THE POSITION OF THE
BOX AND SEARCHED IT.
THEY FOUND THESE ITEMS.
THEY OBTAINED A SEARCH WARRANT
AND THAT IS WHEN THEY WENT DOWN.
MR. HEYNE DIDN'T CONFESS DURING
THIS INTERROGATION UNTIL THEY
WENT INTO THE INTERROGATION ROOM
AFTER ARGUING AND THE RIGHT TO
COUNSEL AND SHOWED HIM THE
CONTENTS OF THE BOX, SOME --
SOMEONE TAKES ACTION, THEY WOULD
SAY THEY HAVE EXPECTATION OF
PRIVACY, SEEK TO PRESERVE
SOMETHING AS PRIVATE LIKE A BOX
AND THEY ARE TOLD IT BELONGS TO
THAT PERSON AND THERE IS NO
RIGHT TO ALLOW THE SEARCH OF
THAT BOX.
>> WHAT IS YOUR ARGUMENT IS IF
SOMEONE TRIES TO HIDE SOMETHING,
THAT MEANS THEY NECESSARILY HAVE
A LEGITIMATE EXPECTATION OF
PRIVACY, IS THAT CORRECT?
>> THAT IS PART OF WHAT I AM
SAYING AND ALSO THAT ROXANNE
LEVY TOLD THE POLICE EXPLICITLY
THAT THAT WAS MR. HEYNE'S BOX
AND --
>> IT WAS IN HER ATTIC AND SHE

TOLD HIM SHE DIDN'T WANT A GUN
AROUND THERE, RIGHT?
>> I DON'T REMEMBER THAT
EXACTING BUT THAT WOULD NOT
SURPRISE ME.
I'M SURE SHE DIDN'T ON A MURDER
WEAPON IN THE HOUSE.
HOWEVER, HE IS MAKING EFFORTS TO
MAKE CONTENT.
>> HE IS NOT LIVING THERE, IS
HE?
>> HE IS NOT MEETING THEIR BUT
HE WAS A GUEST OF THE HOUSE.
>> HE WAS SHOWN THE DOOR I THINK
"FACE TO FACE" SUGGEST TO WAS
SHOWN THE DOOR.
>> HE WAS A GUEST WHO WAS ASKED
TO LEAVE.
HE WAS IN THE HOUSE.
>> HOW COULD HE POSSIBLY HAVE A
LEGITIMATE EXPECTATION OF
PRIVACY IN A BOX RELATED TO A
CRIME THAT HE IS TRYING TO HIDE
IN THE ATTIC OF THE PERSON WHO
HAS THROWN HIM OUT OF HER HOUSE?
>> I CITE A SERIES OF CASES WITH
SIMILAR CIRCUMSTANCES,
CONTAINERS LEFT AT ANOTHER
PERSON'S RESIDENTS, CLOSED
CONTAINERS, STILL HAVE
REASONABLE EXPECTATION OF
PRIVACY, BECAUSE YOU PUT IT IN A
CLOSED CONTAINER AND AFFECTED HE
DID IT INDICATE HE IS NOT
ABANDONING IT BECAUSE HE IS NOT
PUTTING IT IN A PLACE WHERE A
MEMBER OF THE PUBLIC WOULD FIND
IT.
>> ANY OF THOSE CASES INVOLVE
SOMEONE THROWN OUT OF THE HOUSE
AND BROUGHT SOMETHING HE WAS
TOLD NOT TO BRING IN TO THE
HOUSE?
>> I DON'T REMEMBER THAT EXACT
FACT BEING IN THERE BUT THE
QUESTION IS WHOSE BOX IS IT AND
POLICE WERE EXPLICITLY TOLD IT
WAS MR. HEYNE'S BOX SO THEY KNOW
IS HIS BOX, NOT THE CASE DECIDED
BY THE STATE IN THE BRIEF WHERE
YOU COME ON AN ABANDONED
CAMPSITE AND ALL KINDS OF STUFF
IS IN PLAIN VIEW, BUT IN THIS
CASE.
>> ON THE OTHER HAND HE WAS TOLD

LEAVE MY HOUSE, TAKE YOUR GUN
WITH YOU IN ESSENCE BUT HE
LEAVES IT BEHIND SO HE IS
BASICALLY ABANDONED THAT GUN IN
HER HOUSE.
>> ABANDONMENT OCCURS WHEN YOU
LEAVE SOMETHING THAT YOU THINK
WILL BE FOUND BY THE PUBLIC.
HE IS HIDING IT IN HER ATTIC.
HE DOESN'T THINK SHE IS GOING TO
FIND IT.
>> YOUR ARGUMENT WOULD SEEM TO
APPLY IF HE WENT OUT ON
SOMEBODY'S PROPERTY AND DUG A
HOLE AND BURIED THE BOX,
PROPERTY, NOT HIS PROPERTY BUT
EVERYBODY ELSE'S PROPERTY AND
BURIED THE BOX.
SHE WOULD HAVE A LEGITIMATE
EXPECTATION OF PRIVACY AND THIS
GUN THAT HE USED THAT HE BURIED
IN SOMEBODY ELSE'S BACKYARD.
>> IF THAT PROPERTY OWNER WAS
AWARE OF THE BOX AND TO OWN THE
BOX AND HAD NO INTEREST AND
DISAVOW ALL INTEREST IN THE BOX
THE ANSWER IS YES.
>> CALL THE POLICE AND SAID HE
BURIED IN A BOX IN MY BACKYARD?
>> THEY GET THE BOX AND GET THE
SEARCH WARRANT FOR THE BOX.
NO ACCIDENT CIRCUMSTANCES TO
PREVENT A SEARCH WARRANT FOR THE
BOX.
THEY GOT A SEARCH WARRANT FOR
OTHER STUFF AT THE SAME TIME,
THE HOUSE, SO THERE THEY ARE
WITH THE BOX, NO REASON THEY
CAN'T GET A SEARCH WARRANT.
A CONTAINER IS A CONTAINER.
THAT IS AN ACT OF KEEPING
CONTENTS PRIVATE.
>> UNDER THESE CIRCUMSTANCES,
YOU PUT IT OUT ON A CURVE,
PICKED UP BY THE GARBAGE FOLKS,
RIGHT?
UNDER THESE CIRCUMSTANCES THAT
WOULD NOT BE AN UNUSUAL
OCCURRENCE.
>> IF YOU DID THAT THE POLICE
WOULD NOT HAVE FOUND IT.
>> ONCE PUT ON THE SIDE OF THE
STREET FOR THE GARBAGE TRUCKS TO
PICK UP, IS THERE STILL AN
EXPECTATION OF PRIVACY?

>> IF MR. HEYNE HAD PUT IT THAT
OUT FOR THE GARBAGE PEOPLE THAT
IS NOT REASONABLE EXPECTATION OF
PRIVACY.
THAT IS DIFFERENT FROM HIDING IT
IN THE ATTIC UNDERNEATH THE
INSULATION.
>> DID YOU SAY -- LIKE YOU GO
INTO THE HOME --
>> NOT TO -- IT WAS TO GO WHERE
THE PEOPLE -- IT WAS ANOTHER
WARRANT.
A WARRANT FOR THE HOUSE.
JUST PERMISSION FROM ROXANNE
LARABEE.
>> WE DON'T HAVE THIS.
>> THERE WAS A SEARCH WARRANT
ISSUED IN THIS CASE, THE POLICE
HAD A SEARCH WARRANT FOR ANOTHER
REASON.
AS SAYING THEY HAD TIME.
>> FOR A DIFFERENT PREMISES.
JUST ASKING IF THERE WAS -- IF
IT WAS EXCLUSIVELY BASED ON
PERMISSION OF THE OWNER OF A
PROPERTY.
>> YOU ARE INTO REBUTTAL TIME.
>> LASTLY ON THE ISSUE OF I WILL
BRIEFLY HANDLE LAST ISSUE.
IN THE CASE THERE WAS AN ISSUE
WHETHER MR. HEYNE HAD DONE DRUGS
THE DAY OF THE HOMICIDE AND
BASICALLY RELIANCE UPON A REPORT
IN PARTICULAR FROM TAMMY VIC OR
THE SAME AFTERNOON AS THE
HOMICIDE, CONSUMED ALL HIS
ROADS.
THE REASON THAT IS IMPORTANT IS
STATUTORY MENTAL LITIGATORS WERE
NOT FOUND BY THE JUDGE IN THIS
CASE BECAUSE THERE WAS NO
INDEPENDENT EVIDENCE OF THAT
DRUG USE PRESENTED BY TRIAL
CAREFUL IN OSCEOLA OR THE
POSITION IS IN EFFECT TO HAVE
OCCURRED NOT HAVING PRESENTED
AVAILABLE EVIDENCE WHICH THE
COURT CAN REVIEW.
IT WAS CRITICALLY IMPORTANT
INFORMATION, STATUTORY MITIGATE
YEARS WOULD HAVE MADE A
DIFFERENCE CONCERNING THE DEATH
PENALTY IN THIS CASE.
>> MAY IT PLEASE THE COURT?
I AM STACEY KIRCHER APPEARING ON

BEHALF OF THE STATE.
I WOULD LIKE TO BEGIN BY
ADDRESSING A COUPLE QUESTIONS
THE JUSTICE ASKED THE APPELLANT.
TRIAL COUNSEL WAS ASKED WHY HE
DIDN'T FILE A MOTION TO SUPPRESS
ON THE FIRST ISSUE BASED ON A
MIRANDA VIOLATION OR INVOCATION
OF THE RIGHT TO KILL.
TRIAL CAN ALSO MORE DID FILE A
MOTION TO SUPPRESS THE ENTIRE
CONFESSION AND SUBSEQUENT
DIAGRAM THAT CAME OUT OF A
CONFESSION.
IT WAS THE TWINKIE MOTION TO
SUPPRESS THAT WAS FILED.
IT WAS LITIGATED OVER SEVERAL
HOURS AND THAT APPEARS IN THE
RECORD OF VOLUME II RECORD SITE
280.
THE HEARING WAS ON SEPTEMBER 5TH
AND THERE WAS AN ORDER BY THE
TRIAL COURT THAT HEYNE'S
CONFESSION WAS FULL LEAVE
VOLUNTARILY, NOT COERCED AND JOY
WHEN TRIAL HELD SOLD MORE WAS
ASKED IF THE EVIDENCE THEORY
HEARING WHY HE DIDN'T INCLUDE
THE MIRANDA VIOLATIONS OR
INVOCATION OF COUNSEL, HE SAID
BECAUSE THERE WAS NO INVOCATION
OF COUNCIL.
THAT WAS A MERITLESS ARGUMENTS
SO I DIDN'T INCLUDE THAT.
AMONG THE VARIOUS THEORY IS THAT
MY BEST ARGUMENTS IN MOTION TO
SUPPRESS.
I WON'T BEHAVIOR -- BE LABOR
THAT POINT.
AS TO ISSUE NUMBER 2, JUSTIN
HEYNE HAD CALLED ROXANNE LARABEE
AND ASKED TO PICK HIM UP.
WHEN SHE PICKED HIM UP HE WAS
WITTY, NERVOUS, JITTERY, SHE SAW
THAT HE WAS NOT AT THE MOON
WROTE ADDRESS WHERE THE MURDERS
OCCURRED BUT TRAVELING FROM THAT
AREA.
SHE SAID WHAT HAPPENED?
HE ADVISED HER HE HAD SHOT SARAH
BUCKOSKI AND THEN HAVE FULTON.
ONE YES WHAT HAPPENED TO THEIR
5-YEAR-OLD THAT HER AND SAID
SHE WAS GONE.
HE HAD A PILLOW CASE AND WAS

WEARING CLOTHING, WHITE T-SHIRT,
BLACK DICKIE SHORTS WITH BLOOD
SPATTER ON THE SHORTS.
SHE ASKED HIM WHAT WAS IN THE
PILLOW CASE AND HE SAID A GUN
AND SOME DRUGS.
SHE SPECIFICALLY KNEW ABOUT THE
GUN, THE PILLOW CASE, I AM NOT
SURE SHE WAS AWARE OF THE DRUGS
BUT SHE BECAME AWARE THAT WAS
WHAT HE WAS BRINGING INTO THE
HOME.
WHEN HE GOT TO HER HOME HE TOOK
A SHOWER.
SHE WAS CONTINUOUSLY TELLING HIM
IN RESPONSE TO JUSTICE KENNEDY'S
COMMENTS, YOU CAN'T BRING THAT
IN HERE, I HAVE CHILDREN.
YOU CANNOT BRING A GUN IN THE
HOUSE.
I DO NOT WANT THAT HERE.
WHICH BECOMES VERY IMPORTANT FOR
IS REASONABLE EXPECTATION OF
PRIVACY.
AT THAT POINT ONCE HE IS AWARE
HE IS NOT ONLY AN UNINVITED
GUEST BECAUSE SHE ASKED HIM TO
LEAVE, HE REFUSED TO LEAVE THERE
IS INDICATION THAT HE THEN ASKED
HER TO USE HER CAR, HE DROVE AND
THEY WENT TO J.C. PENNEY WHERE
HE HAD HER BY AN EXACT REPLICA
OF THE CLOTHING HE WAS WEARING
WHICH WHILE HE STAYED IN THE CAR
WITH HER CHILDREN.
AT ISSUE WAS EXCLUDED SO THE
JURY DIDN'T HEAR ALL OF THAT
ISSUE BUT HE WAS IN THE CAR WITH
HER CHILDREN.
WHEN SHE GOT BACK TO HER HOME HE
THEN WATCHED THE NEW CLOTHES TO
MAKE THEM APPEAR WORN, CHANGED
CLOTHES, PUT THE GUN, THE DRUGS
AND THE BLOODY CLOTHES IN TWO
SEPARATE BOXES IN THE ATTIC AND
THIS BECOMES IMPORTANT AS WELL
BECAUSE THE THINGS THAT WERE OF
VALUE, THE COCAINE AND MARIJUANA
HE PLANS TO GET, HE PUT IN A
SEPARATE BOX IN A SEPARATE
LOCATION.
THAT IS FOUND BY OFFICER WATSON.
THE CASE BOX THAT HELD THAT .38
REVOLVERS THAT MATCHED THE BLOOD
FOUND IN IVORY HAMILTON'S SKULL

AND THE BLOODY CLOTHES THAT HAD
BEN HAMILTON'S DNA AND BLOOD ON
SOME WAS HIDDEN BACK, DITCHED
BEHIND SOME INSULATION.
NEVER TO BE SEEN AGAIN.
AT THAT POINT BECAUSE HE KNEW HE
WASN'T SUPPOSED TO HAVE THAT IN
ROXANNE LARABEE'S HOME ANY
REASONABLE EXPECTATION OF
PRIVACY WOULD BE NEGATED BY THE
FACT AS RANDALL MORE SET IN THE
EVIDENTIARY HEARING SHE WOULD DO
WHAT SHE DID LEE JANZEN AS SHE
LEFT, WENT SHE TALKED TO
DETECTIVE WATTS AND ON THE PHONE
SHE SAID I GOT SOME THINGS I
NEED TO TALK TO YOU ABOUT IN
PERSON.
COME TO THE HOUSE, SHE TOLD HIM
THAT THERE WOULD BE CONTRABAND
IN THE HOUSE, THEY KNEW THEY
WERE LOOKING FOR A GUN, DRUGS
AND BLOODY CLOTHING AND WHEN
THEY FOUND THAT SHE HAD ALREADY
COOPERATED FULLY, SHE WANTED
THAT STUFF OUT OF HER HOUSE.
SO NOT HOLY ARE WE PROCEEDING
UNDER A THEORY OF ABANDONMENT
BUT HE NEVER INTENDED IT TO BE
FOUND AGAIN BUT HE HAD NO
REASONABLE EXPECTATION OF
PRIVACY.
>> YOU CAN SEE ACTUAL LOCATION
IN THE HOME IS NOT THE BASIS,
ONLY THE CONTENT OF THE BOX
WHICH WE HAVE THAT DISTINCTION
DRAWN IN THE LAW IN NUMEROUS
PLACES WHERE YOU MAY HAVE A
CONTAINER WITHIN SOMETHING AND
THESE SPECIFIC CONTAINERS, I
UNDERSTAND THE ARGUMENT THAT IT
WAS PROTECTED.
>> ABSOLUTELY.
PRIMARILY IT WAS ABANDONED.
ALL FACTORS POINT TO THE FACT
THAT HE NEVER INTENDED TO
RETRIEVE THAT ITEM.
>> COUNCIL MAKES THE ARGUMENT
THAT HAVE ABANDONMENT AS A
MATTER OF LAW, ONE MUST LEAVE IT
OUT FOR THE PUBLIC AND CANNOT BE
ABANDONED UNDER THE LAW AS A
MATTER OF LAW IN SOMEONE'S HOME
OR CUSTODY.
WHAT IS THE LAW ON THAT?

>> WE WOULD DISAGREE WITH THAT.
THE LAW ON ABANDONMENT
SPECIFICALLY STATES IS AN ITEM
THAT LEFT BEHIND IN AN AREA IN
WHICH A PERSON HAS NO REASONABLE
EXPECTATION OF PRIVACY.
ALSO AN IMPORTANT DISTINCTION
THAT APPELLANT BROUGHT UP WAS
THE CONFESSION AND SUBSEQUENT
DIAGRAM CAME OUT OF OFFICER
HUNTER COMING TO THE
INTERROGATION ROOM AND SHOWING
THE CONTENTS OF THE BOX.
THAT IS NOT WHAT OCCURRED.
IN THE EVIDENTIARY HEARING WE
HEARD FROM OFFICER HUNTER AND
DETECTIVE ESPEZINTO AN EASY THIS
ON THE VIDEO, YOU SEE --
YOU SEE HEYNE'S REACTION, THE
HUNTERS OFF-CAMERA BUT
SPECIFICALLY WHAT HAPPENS IS
AFTER ESPEZITO, IS A THREE OF
OUR INTERVIEW THAT SPANS 161
PAGES AND THIS EXCHANGE IS AT
PAGE 1 HUNDRED NINE, SO
DETECTIVE ESPEZITO SAYS THE
RECOGNIZE THAT?
AT THAT POINT WE KNOW FROM THE
EVIDENTIARY HEARING, OFFICER
HUNTER TOLD US HE IS STANDING
THERE AND IS A ATHLETIC SHOE BOX
WITH A HINGED LID.
IT IS NOT ONE THAT COMES OFF
COMPLETELY SO HE HAS HIS FINGERS
IN THE HINGE OF THE LID AND
SHOWING THE BOX.
ETNA POINT, THIS WAS CLEAR, DOES
HE TAKE OUT ANYTHING, DOES HE
SAY WHAT HE FOUND THERE, HE IS
MERELY SHOWING OF THE BOX.
AS YOU CAN SEE FROM MY BRIEF,
EVEN IF THE MOTION TO SUPPRESS
HAD BEEN FINE AND IF UNDER SOME
FEAR IT WAS GRANTED, THAT WOULD
NOT NECESSARILY MAKE A
CONFESSION AND DIAGRAM FRONT OF
THE POISONOUS TREE BECAUSE THOSE
ITEMS DIDN'T COME OUT AS A
RESULT, IT CAME AS A RESULT OF
SEEING THE BOX.
THE MOST SIMILAR CASE, I
UNDERSTAND APPELLANT'S ARGUMENT,
THE CASES THAT HE CITED ARE
DISTINGUISHABLE FROM THE CASE
BECAUSE THOSE ARE CASES WITH THE

INHABITANTS OR GUESTS OR THOSE
CONTAINERS ARE FROM SOMEONE WHO
HAS THE LEGAL RIGHT TO BE THERE
AND THAT IS NOT WHAT WE HAVE
HERE.
THIS IS SIMILAR TO THE CASE
WHERE THE COURT HELD THE SEARCH
WAS VALID WHEN IT WAS THE
HOMEOWNER'S GARAGE, CLEARLY A
BRIEFCASE BELONGING TO THE
DEFENDANT AND THE VIDEO TAPE --
>> THE DEFENDANT'S HOME OR SHED?
>> I DON'T BELIEVE SO.
HE MIGHT HAVE HAD A LEGAL CASE
TO BE THERE BUT THAT WAS A
SIMILAR CASE AS WELL.
BRIEFLY TOUCHING ON THE THIRD
ISSUE, THERE WAS NO
INEFFECTIVENESS FOR TRIAL
COUNSEL FAILING TO CALL THE
WITNESSES CALLED IN THE
EVIDENTIARY HEARING, TAMMY THAT,
DR. BUFFINGTON.
WE HAVE CUMULATIVE EVIDENCE,
TONS OF EVIDENCE FROM TRIAL
COUNSEL MORE TO GET A
COMPREHENSIVE INVESTIGATION, IN
THE EVIDENTIARY HEARING TALK
ABOUT TALKING TO EVERY DOCTOR
HEYNE HAD EVER SEEN, ALL OF HIS
FAMILY MEMBERS GOING THROUGH ALL
HIS TEACHERS, HE PRESENTS
MITIGATION PENALTY PHASE THAT
INCLUDES BOTH HEYNE'S SISTER,
HIS FATHER WHO TESTIFIED TO HIS
INTOXICATION, HE CALLS DR.
REEVES WHO TESTIFIED HEYNE TOLD
HIM HE'D DRINK TEN BEERS, SMOKED
COCAINE, ALL BEFORE 12:00 THAT
MORNING.
SUMMERS OCCURRED AT 2:30.
HE CALLS THREE EDUCATORS WHO HAD
SEEN HEYNE THROUGH VARIOUS
ASPECTS OF HIS LIFE, WAS
INTERVIEWED AND EVALUATED NOT
ONLY BY DR. REEVES AND DR. WU,
BUT BY DR. GOLDEN AND DR. RON
DIEBOLD AND MADE THAT
EVALUATION.
THE RACHFORDS HAD THEY BEEN
CALLED WOULD HAVE REFUTED THE
TESTIMONY THAT HE DRANK BEER IN
ADDITION TO DOING COCAINE AND
MARIJUANA.
THEY CAN ONLY TESTIFY TO THE

WITNESS'S EXACT WORDS, AN
ESTIMATE HOW MUCH COCAINE WAS
DONE THE NIGHT BEFORE THE
MURDERS, BETWEEN TWO AND THREE
CRAMS THAT HE IS FUZZY.
IS NOTABLE THIS WITNESS
COULDN'T REMEMBER HIS ADDRESS,
COULDN'T REMEMBER WHERE HE
WORKED, HE REMEMBERED WHAT
JUSTIN HEYNE HAD DONE.
IT IS CONTRADICTORY TO ONE
ANOTHER.
ONE SAID HE CAME A COUPLE TIMES
A WEEK, THAT WAS THE FIRST TIME
HE HAD BEEN THERE, TAMMY VICK'S
TESTIMONY AMOUNTED TO RECENTLY
AT A DRUG DEAL IN THE PARKING
LOT BEHIND HER WORK WHERE SHE
DID COCAINE.
THESE WITNESSES WOULD HAVE BEEN
LESS MITIGATING THAN WHAT TRIAL
COUNSEL MORE PUT ON IN THE
PENALTY PHASES.
DR. BUFFINGTON THERE WAS NO TALK
LOGICAL CASE WHATSOEVER.
LYLE KELLEY MOORE TALKS ABOUT HE
DIDN'T HIRE A TOXICOLOGIST.
HE THOUGHT ABOUT IT BUT HE HAD
NO HARD OR SOFT EVIDENCE TO GIVE
THE TOXICOLOGIST.
THE TESTIMONY IN THIS CASE
AMOUNTS TO PURE SPECULATION.
IN FACT SUPPLEMENTAL RECORD
VOLUME 1, VOLUME 71 HE STATES
THE ONLY THING THAT COULD HAVE
BEEN IN PAIRING HIM IN JOY --
UNDER HIS THEORY AT THE TIME WAS
COCAINE.
ON CROSS-EXAMINATION HE ADMITS
HE HAS TO ASSUME SLEEP
DEPRIVATION, STRESS, MARIJUANA,
ALCOHOL AND COCAINE TO SUPPORT
HIS OPINION.
ESSENTIALLY IF THESE WITNESSES
WERE CALLED, MR. HEYNE GOT THE
BENEFIT OF BOTH STATUTORY
LITIGATORS ONLY NOT TO THE LEVEL
OF STATUTORY.
HE GOT THEM AS NON STATUTORY
MITIGATION.
>> THREE VICTIMS WITH A
5-YEAR-OLD, HIS DEFENSE WAS HE
TO INTEND TO SHOOT THE
5-YEAR-OLD.
THIS IS SUCH A HEAVILY

AGGRAVATED CASE, AND I THINK WE
HAVEN'T MENTIONED THE FACTS, AS
FAR AS PROVING THE CASE, THE
LIABILITY ISSUES, WAS THERE ANY
WITNESS TO THIS CRIME OR DID ALL
THREE -- WAS ANYBODY WHO
TESTIFIED WHAT HAPPENED IN THE
BED ROOM OR WAS IT RECONSTRUCTED
BASED ON WHERE THE VICTIMS WERE
FOUND IN THE PROXIMITY OF THE
GUN?
>> IN ANSWER TO YOUR QUESTION
CALLED THREE INDIVIDUALS THAT
COULD HAVE TESTIFIED TO WHAT
HAPPENED IN THE BEDROOM ASIDE
FROM HEYNE HE ELIMINATED AS
WITNESSES.
THERE WAS BENJAMIN HAMILTON WHO
WAS SHOT FIRST.
SHE DID NOT DIE IMMEDIATELY.
SHE WAS STILL ALIVE STRUGGLING
FOR BREATH WHEN FIRST RESPONDERS
ARRIVED.
SARAH BUCKOSKI WHO SAW THE SHOT,
BOTH SCREAMING.
>> WHO TESTIFIED FOR SHE DOVE
SCREENING?
>> THAT IS FROM JUSTIN HEYNE'S
OWN STATEMENT.
ALL OF WHAT HAPPENED IN THE
BEDROOM COMES FROM MR. HEYNE'S
OWN CONFESSION.
>> IT WOULD HAVE BEEN FOR THE
DEFENSE LAWYER, KNEW THAT THE
AGGRAVATED PART OF THIS COMES
FROM HIS STATEMENT AND AS YOU
SAID GOING BACK TO THIS ISSUE OF
SUPPRESSION, IT APPEARS THAT THE
TRIAL COUNSEL LOOKED AT EVERY
WHICH WAY THEY COULD SEE TO
SUPPRESS, GET THIS STATEMENT
SUPPRESSED.
>> HE DID.
THAT WAS A COMPREHENSIVE AND
PRETTY THOROUGH MOTION TO
SUPPRESS THAT HE DID THAT
STATEMENT AND SUBSEQUENT
DIAGRAM, HE DID NOT INCLUDE THE
THEORY OF INVOCATION OF COUNSEL
BECAUSE HE DID NOT FEAR WAS A
MERITORIOUS ISSUE.
IN ADDITION HE DOES TESTIFY
TRIAL COUNSEL MORE TESTIFIES HE
THOUGHT ABOUT FILING A MOTION TO
SUPPRESS THE BOX AS TO ISSUE A 2

BUT GOING BACK TO WHAT JUSTICE
KENNEDY AND JUSTICE LEWIS SAID
THERE WAS NO, HE HAD NO
REASONABLE EXPECTATION OF
PRIVACY IN THAT HOME AND HAD
EVERY WARNING AND ROXANNE
LARABEE WHERE DO WHAT SHE DID
WHICH WAS COOPERATE WITH POLICE
TO GET IT OUT OF HER HOUSE.
THE ONLY WITNESS AND WHEN I
REFERENCE AN EYEWITNESS
TESTIMONY THAT WOULD BE THE
TESTIMONY OF ROXANNE LARABEE
BECAUSE SHE DID PICK HIM UP FROM
RIGHT AFTER THE MURDERS
OCCURRED, HE CONFESSED TO HER
WHAT HAD HAPPENED, WITNESSED HIM
CONCEALING EVIDENCE OF THE CRIME
AND TRYING TO DITCH AT AND HIS
FATHER ACTUALLY CAME AND GOT HIM
FROM ROXANNE LARABEE'S HOUSE,
HIS FATHER TESTIFIED TO
INTOXICATION, THAT HE WAS COMING
DOWN FROM A HIGH SO MITIGATION
WAS BEFORE THE JURY BUT AS TO
ANOTHER EYEWITNESS, NO.
WE KNOW ABOUT THE 12 X 13 BED
ROOM, WE KNOW ABOUT THE POSITION
IN WHICH THE PROSECUTOR AT THE
TRIAL LEVEL USED TO NEGATE HIS
THEORY OF SELF-DEFENSE BECAUSE
OF HIS OWN DIAGRAM AND TESTIMONY
TO THE INTERROGATION.
NO FURTHER QUESTIONS FROM THE
COURT, I ASK THIS COURT AFFIRMED
THE TRIAL COURT'S DENIAL OF THE
3851.
>> AS TO THE QUESTION, STATED IN
THE OPINION, THE STATEMENT TO
LAW ENFORCEMENT ON THE ISSUE OF
PREMEDITATION WHICH PRETTY MUCH
THEY COULD INDICATE THE ISSUE OF
WHAT PREJUDICE IS ASSOCIATED
FOLLOWING THE MOTION TO SUPPRESS
THE CONFESSION AND WE ARE
TALKING ABOUT MIRANDA RIGHTS,
FIFTH AMENDMENT AND SIXTH
AMENDMENT, VERY IMPORTANT RIGHTS
INCUMBENT ON THE DEFENSE
ATTORNEY TO PROTECT THOSE RIGHTS
ON BEHALF OF THE CLIENT.
WHEN YOU READ A CONFESSION WHERE
IT SAYS, THE CLIENT SAYS I WILL
GET AN ATTORNEY AND HE SAYS PUT
THE IN MY CELL, I WILL GET AN

ATTORNEY IS INCUMBENT ON THE
DEFENSE ATTORNEY TO FILE THAT
MOTION.
SHOULD HAVE BEEN DONE, IT WASN'T
DONE.
IT WAS INEFFECTIVE AND ACCORDING
TO THIS OPINION, IT WAS
PREJUDICIAL BECAUSE THOSE
FACTORS ARE WHAT AMOUNTED TO MR.
HEYNE BEING CONVICTED OF
FIRST-DEGREE MURDER ON THE BASIS
OF MEDITATION.
I URGE THE COURT PLEASE LISTEN
TO THAT INTERROGATION.
AND READ THE CASE LAW WHERE IN
THE PAST RULES ON MORE EQUIVOCAL
STATEMENTS WERE IMPLICATIONS OF
COUNCIL.
>> THE CASE THAT YOU BELIEVE
HONDA SHOE BOX NOT BEING
ABANDONED, IT HAS TO BE ON
PUBLIC AREA CANNOT BE ABANDONED
AS WAS DONE HERE?
>> I CAN SAY IN MY REPLY BRIEF,
TEN FEDERAL CASES CITED, I CAN'T
SPECIFICALLY SAY WHAT THE
LEADING ONE IS.
>> ALL OF THOSE DEALS WITH
EXCLUDING EVIDENCE WHERE IT IS
FOUND IN A HOME OR ABANDONED IN
A HOME.
>> OR LOCATED IN A HOME,
PROBABLY ABANDON THE CASE LAW,
ABOUT TEN DIFFERENT CASES
DEALING WITH CONTAINERS FOUND IN
SOMEONE ELSE'S HOME.
>> WOULD THAT LEAD TO
SUPPRESSION?
>> IT WOULD BE TO SUPPRESSION --
>> WHAT IS IN THE BOX.
WHICH IS BLOODY CLOTHES AND
MURDER WEAPONS.
>> THAT IS NOT THE CONFESSION.
>> NOT A CONFESSION.
THANK YOU.
>> WE WILL RECESS UNTIL TOMORROW
AT 9:00.