No.

In The
Supreme Court of the United States

EDWIN ARVELO,
Petitioner,
v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA
Respondent.

On Petition For A Writ Of Certiorari To The Florida Fifth District Court of Appeal

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APPENDIX

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December 27, 2017

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-10757
Non-Argument Calendar

D.C. Docket No. 6:12-cv-01823-GAP-KRS

EDWIN ARVELO,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(May 10, 2017)

Before HULL, WILSON, and MARTIN, Circuit Judges.

PER CURIAM:

Edwin Arvelo, a Florida prisoner, appeals the district court's denial of his habeas corpus petition filed under 28 U.S.C. § 2254. The district court previously denied his petition without holding an evidentiary hearing, but this Court vacated that denial and remanded with instructions to conduct an evidentiary hearing and reconsider his claim. See Arvelo v. Sec'y, Fla. Dep't of Corr., 788 F.3d 1345, 1350 (11th Cir. 2015). After doing so, the district court again denied Arvelo's petition. This Court granted Arvelo a certificate of appealability ("COA") on the following issue:

> Whether trial counsel rendered ineffective assistance in failing to move to suppress Arvelo's confession because it violated his Fifth and Fourteenth Amendment rights before advising him to plead nolo contendere in his case.

We now consider this issue. After careful review, we affirm.

I.

This Court summarized the facts of Arvelo's case when it considered his previous appeal. See id. at 1346–47. On the morning of August 16, 2006, Arvelo attacked Carol Bergeron in a parking garage and dragged her into his car. Id. at 1346. Arvelo could not get his car to start, and when he got out to look at the engine, Bergeron locked him out and honked the car's horn. Id. at 1346-47. Two of Bergeron's coworkers noticed and called the police. Id. at 1347. Arvelo fled the scene. Id.

Later that morning, officers from the Maitland (Florida) Police Department took Arvelo into custody. Id. Arvelo said he understood his Miranda rights and immediately waived them. Id. Eventually, he admitted he forced Bergeron into his car intending to have sex with her. Id. However, neither Bergeron nor her coworkers said Arvelo touched Bergeron in a sexual manner or threatened to sexually assault her. Id. Thus, Arvelo's confession was the only piece of evidence supporting the state's charges of attempted sexual battery and kidnapping with the intent to commit sexual battery. Id. Arvelo's lawyer did not move to suppress the confession, and Arvelo eventually pleaded nolo contendere to: (1) kidnapping with intent to commit sexual battery; (2) attempted sexual battery using physical force; (3) aggravated battery causing great bodily harm; and (4) attempted first-degree murder. Id. at 1346–47. The state court sentenced him to 60-years imprisonment. Id. at 1346. After an unsuccessful direct appeal, Arvelo filed a state habeas petition arguing that his lawyer was ineffective for failing to move to suppress his confession. Id. at 1347. The state court found that Arvelo waived his ineffective assistance claim by entering a plea. Id.

Arvelo then filed a federal habeas petition under 28 U.S.C. § 2254 and argued the same ineffective assistance claim. Id. The district court acknowledged the state court's finding that Arvelo had waived this claim by entering a plea, and also offered three other reasons for rejecting it. Id. As a result, the court denied

Arvelo's petition without holding an evidentiary hearing. On appeal, this Court held that the state court's failure to consider Arvelo's ineffective assistance claim was "contrary to clearly established federal law" because "the Supreme Court has expressly held that a defendant does not waive an ineffective assistance of counsel claim simply by entering a plea." Id. at 1348–49. We also rejected the district court's alternative reasons for denying Arvelo's claim without holding an evidentiary hearing, and remanded with instructions to do so and reconsider his claim on that record. Id. at 1349–50.

On remand, the district court held an evidentiary hearing on Arvelo's ineffective assistance claim. Arvelo, his trial counsel, and the state prosecutor all testified. The district court also admitted into evidence the transcript and audio recording of Arvelo's August 2006 interrogation. Then, on February 3, 2016, the district court again denied Arvelo's claim. This Court granted a COA on the ineffective assistance issue.

II.

We review de novo the district court's denial of an ineffective assistance of counsel claim. Ward v. Hall, 592 F.3d 1144, 1155 (11th Cir. 2010). Under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), a habeas petitioner demonstrates ineffective assistance of counsel by showing that (1) counsel's representation fell below an objective standard of reasonableness; and

(2) counsel's deficient performance prejudiced the petitioner. Johnson v. Sec'y, Dep't of Corr., 643 F.3d 907, 928–29 (11th Cir. 2011). Because a petitioner must satisfy both prongs of the Strickland test to show ineffective assistance of counsel, we "need not address the performance prong if the petitioner cannot meet the prejudice prong, and vice-versa." Ward, 592 F.3d at 1163. In the context of pleas, the prejudice prong "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985). "In cases like this one, where a petitioner faults his lawyer for failing to pursue a motion to suppress prior to entering a plea, both the deficient performance and prejudice prongs of Strickland turn on the viability of the motion to suppress." Arvelo, 788 F.3d at 1348. For the prejudice prong, this is because a non-meritorious motion to suppress would not have affected the outcome if the defendant had rejected the plea and proceeded to trial. Id. Thus, we must determine whether a motion to suppress would have succeeded, which in turn requires us to resolve whether Arvelo's confession was admissible.

To determine the admissibility of a confession, courts apply a two-part inquiry: (1) whether the police complied with the requirements of Miranda;[1] and (2) whether the confession was voluntary. United States v. Jones, 32 F.3d 1512, 1516 (11th Cir. 1994) (per curiam). When deciding whether a defendant confessed

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966). Arvelo waived his Miranda rights. Arvelo, 788 F.3d at 1347.

voluntarily, courts look to the totality of the circumstances to determine whether the confession "was the product of an essentially free and unconstrained choice." Hubbard v. Haley, 317 F.3d 1245, 1252–53 (11th Cir. 2003) (quotation omitted). Among other factors, courts must consider the defendant's intelligence and education level, the length of his detention, the nature of the interrogation, the use of any physical force against him, and the use of any promises or inducements by the police. Id.; see United States v. Bernal-Benitez, 594 F.3d 1303, 1319 (11th Cir. 2010). Florida courts also apply a totality of the circumstances test to resolve whether a defendant's confession was voluntary. See Baker v. State, 71 So. 3d 802, 814 (Fla. 2011) (per curiam). At bottom, a confession was involuntary only when the circumstances show that "coercive police activity" overcame the defendant's free will. Colorado v. Connelly, 479 U.S. 157, 167, 107 S. Ct. 515, 522 (1986); see Blake v. State, 972 So. 2d 839, 844 (Fla. 2007) (per curiam). The voluntariness of a confession is a question of law that we review de novo. See United States v. Farley, 607 F.3d 1294, 1325–26 (11th Cir. 2010). However, we review the findings of facts underlying a district court's voluntariness determination for clear error. See id. at 1325.

Considering the totality of the circumstances here, Arvelo's confession was voluntary. At the time of the interrogation, Arvelo was 21 years old, was employed, and had a GED. Although the interrogation lasted for three hours, the

interrogating officer, Detective Collins gave Arvelo a 40-minute break. Further, the record does not indicate that Detective Collins physically coerced Arvelo, deprived him of any essential needs, or threatened him in any way. Neither did Arvelo ever say he was tired or unwilling or unable to proceed. In fact, Detective Collins allowed Arvelo to make a phone call at Arvelo's request. Thus, the district court did not clearly err in finding that Arvelo's interrogation was not overbearing.

Arvelo argues Detective Collins induced his confession with false promises of leniency. However, at the beginning of the interrogation, Detective Collins told Arvelo he could not "promise [Arvelo] anything." Detective Collins then asked Arvelo to "[t]ell me why I'm meeting you today," to which Arvelo replied he "hope[d] that it [was] because, you will help me, or find help." From there, Detective Collins talked about "getting [Arvelo] down the path of getting [] some help," and Arvelo continued saying he needed help, sometimes while crying. Although this part of the interrogation can be construed to contain offers of help from Detective Collins, Arvelo admitted at the evidentiary hearing that "all of [Collins's] promises of help were unspecified." He also testified that he "believed [Collins] was helping me with my mental issues" and "was providing me mental health treatment." Thus, at this point in the interrogation, even if Detective Collins was offering Arvelo help, it was not in the form of leniency. If anything, Detective Collins's offers were for some form of help with Arvelo's mental health. Florida

courts have held that offers of psychiatric assistance do not render a confession involuntary "so long as the aid is not offered in return for" the confession. See State v. Beck, 390 So. 2d 748, 749 (Fla. 3d DCA 1980). Here, Detective Collins was not offering help in exchange for a confession or statement. Detective Collins said up front that he could not make any promises to Arvelo, and Arvelo admitted that Collins's offers were non-specific. Further, Detective Collins never linked his offers to help with requests for information in a way that implied any sort of exchange or bargain. See Ramirez v. State, 15 So. 3d 852, 854, 856–57 (Fla.1st DCA 2009) (per curiam) (holding the appellant's statement was impermissibly induced where a police detective offered to help the appellant and made statements like "How am I going to help you if you're lying to me and you don't want to tell me the truth?" and "[I]f you want us to help you, you need to help us also."); Day v. State, 29 So. 3d 1178, 1181–82 (Fla. 4th DCA 2010). Therefore, the district court did not clearly err in finding that Detective Collins never offered Arvelo help in exchange for a confession.

During the interrogation, Detective Collins also said his job was to "get [Arvelo's] side" of the story and "all the facts" so that the judge, jury, and state could have a complete picture of both the accused and the alleged crime. Collins noted he thought this could be helpful for Arvelo's eventual sentence, but said so immediately after clarifying that he could not promise anything. As a result, the

district court did not clearly err in finding that Detective Collins did not offer Arvelo leniency in exchange for his confession.[2]

Arvelo further argues that law enforcement exploited his intoxication to unlawfully induce his confession. Although Detective Collins was aware that Arvelo had drunk almost an entire bottle of whiskey early on the morning of the interrogation, and had not eaten or slept since,[3] Arvelo, 788 F.3d at 1347, the mere fact that Arvelo was intoxicated during the interrogation does not render his statements involuntary. Thomas v. State, 456 So. 2d 454, 458 (Fla. 1984). Instead, a defendant's inebriated condition does not affect the voluntariness of his confession unless it undermines his ability to comprehend in a general way what he is doing and to communicate with coherence and context. Burns v. State, 584 So. 2d 1073, 1075–76 (Fla. 4th DCA 1991). Here, the district court did not clearly err in finding that Arvelo's mental faculties were not impaired to that point. Although Arvelo cried several times during the interview, his answers were generally coherent and rationally related to Detective Collins's questions and statements. Further, at the evidentiary hearing, Arvelo said he reviewed the transcript of the

[2] Arvelo also argues Detective Collins "distorted [Arvelo's] perception of the true peril that the confession would put him in" by "implying that there would be no prosecution" and "telling Arvelo that it was unlikely he would go to prison." Detective Collins did draw a contrast between Arvelo's offense and murder, and also distinguished Arvelo from "some hardened criminal that's got a 20 year history with a rap sheet longer than my arm." However, when Arvelo asked Collins if it was "necessary for me to go to prison," Collins clarified, "I don't know. I don't know what happened." Viewing the interrogation in its totality, we do not think Detective Collins suggested or hinted that Arvelo would not be prosecuted or imprisoned.

[3] Detective Collins also smelled alcohol during the interrogation.

interrogation and remembered saying "mostly everything" in it during the interrogation. And because Arvelo's intoxication did not undermine his ability to understand the interrogation and communicate coherently, it did not render his confession involuntary.

Similarly, Arvelo argues law enforcement exploited his mental weakness and emotionally vulnerable condition, and points out that he disclosed his mental illness issues (for which he had sought therapy and was prescribed medication) to Detective Collins during the interrogation. Although a defendant's mental illness and frail emotional state at the time of confession may have some bearing on whether that confession was voluntary, see Taylor v. State, 640 So. 2d 1127, 1137 (Fla. 1st DCA 1994); Rickard v. State, 508 So. 2d 736, 737 (Fla. 2d DCA 1987), "mere emotionalism, confusion, or depression," without more, does not render a confession involuntary. Taylor, 640 So. 2d at 1137 (quotation omitted). Instead, the defendant's mental and emotional state must undermine his competency. Id. As we have explained, the district court did not clearly err when it found that Arvelo's mental state did not impair his ability to understand the interrogation and communicate coherently. On this record, and in light of the totality of the circumstances, Arvelo's mental and emotional condition did not render his confession involuntary.

Because Arvelo's confession was voluntary, the state court would have denied a motion to suppress the confession. Thus, Arvelo was not prejudiced by his trial counsel's failure to file a motion to suppress—such a motion would not have influenced Arvelo's decision to enter a plea because it would have failed. See Hill, 474 U.S. at 59, 106 S. Ct. at 370. And because he has not satisfied the prejudice prong of the Strickland test, Arvelo cannot prevail on his ineffective assistance of counsel claim. See Ward, 592 F.3d at 1163. We therefore need not consider whether his trial counsel's performance was deficient. Id.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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May 10, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-10757-DD
Case Style: Edwin Arvelo v. Secretary, Florida Department, et al
District Court Docket No: 6:12-cv-01823-GAP-KRS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against the appellant.

The Bill of Costs form is available on the internet at www.ca11.uscourts.gov

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Sandra Brasselmon, DD at (404) 335-6181.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1A Issuance of Opinion With Costs

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-10757-DD

EDWIN ARVELO,

Petitioner - Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: HULL, WILSON, and MARTIN, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

Beverly B. Martin

UNITED STATES CIRCUIT JUDGE

ORD-42

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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August 29, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-10757-DD
Case Style: Edwin Arvelo v. Secretary, Florida Department, et al
District Court Docket No: 6:12-cv-01823-GAP-KRS

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Sandra Brasselmon, DD
Phone #: (404) 335-6181

REHG-1 Ltr Order Petition Rehearing

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 14-11441

D.C. Docket No. 6:12-cv-01823-GAP-KRS

EDWIN ARVELO,

Petitioner–Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents–Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(June 10, 2015)

Before MARTIN and ROSENBAUM, Circuit Judges, and PROCTOR,* District Judge.

MARTIN, Circuit Judge:

Edwin Arvelo, a Florida prisoner, appeals the District Court's denial of his 28 U.S.C. § 2254 federal habeas petition. In 2007, Mr. Arvelo was sentenced to 60 years in prison after he pleaded nolo contendere to kidnapping with intent to commit sexual battery, attempted sexual battery using physical force, aggravated battery causing great bodily harm, and attempted first-degree murder. He argues here, as he did in his state habeas petition, that he was questioned in violation of his rights under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966), and his lawyer was ineffective for failing to move to suppress statements he made during that interrogation. The District Court found that the state court's resolution of this claim was neither "contrary to, [nor] involved an unreasonable application of, clearly established Federal law." 28 U.S.C. § 2254(d). We conclude to the contrary, and remand to the District Court for further proceedings consistent with this opinion.

I.

On the morning of August 16, 2006, Mr. Arvelo attacked and choked Carol Bergeron in a parking garage and then dragged her into his car. Fortunately for

* Honorable R. David Proctor, United States District Judge for the Northern District of Alabama, sitting by designation.

Ms. Bergeron, Mr. Arvelo's car did not start. When he got out to look at the engine, Ms. Bergeron locked him out and began honking the car's horn. This attracted the attention of two of Ms. Bergeron's coworkers. They called the police, and Mr. Arvelo fled.

Later that morning, officers from the Maitland Police Department took Mr. Arvelo into custody. At the beginning of his interrogation, Mr. Arvelo confirmed that he understood his Miranda rights and immediately waived them. However, he went on to tell the interrogating police officer, Detective Nick Collins, that he had drunk almost an entire bottle of whiskey early that morning and had not eaten or slept since.[1] Perhaps for this reason, Mr. Arvelo's statements during the interrogation were occasionally incoherent; for instance, when asked why he was at the police station, he responded that he "hope[d] that it is because, [Detective Collins] will help him, or find help" and said that Detective Collins had been "appointed by God."

Although Detective Collins told Mr. Arvelo that he couldn't "promise" anything, he also repeatedly said that he would try to help Mr. Arvelo as long as Mr. Arvelo told the truth about what happened. And when Mr. Arvelo expressed concern about going to prison, Detective Collins downplayed the seriousness of Mr. Arvelo's offense, suggesting that he had made a "mistake" but wasn't being

[1] Detective Collins also said that he smelled alcohol.

questioned for "something that's going to take [his] life away." In fact, Detective Collins said that Mr. Arvelo may not serve any prison time at all.

Ultimately, Mr. Arvelo admitted that he forced Ms. Bergeron into his car with the intention of having sex with her. His confession was partially corroborated by eyewitness testimony and DNA evidence. Both Ms. Bergeron and one of her coworkers identified Mr. Arvelo as the attacker, and Mr. Arvelo's DNA was found under Ms. Bergeron's fingernails. Importantly, however, neither Ms. Bergeron nor her coworkers stated that Mr. Arvelo touched Ms. Bergeron in a sexual manner or threatened to sexually assault her. Thus, Mr. Arvelo's confession was the only piece of direct evidence supporting the State's charges of attempted sexual battery and kidnapping with the intent to commit sexual battery.[2]

Mr. Arvelo's lawyer did not move to suppress his confession, and he eventually pleaded nolo contendere to a four-count information. Consistent with his allegations here that his lawyer never discussed any potential defenses with him, when Mr. Arvelo unsuccessfully tried to withdraw his plea, his lawyer testified that her strategy had been to enter an open plea with the hope of avoiding a life sentence.

[2] "'Sexual battery' means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object." Fla. Stat. § 794.011(1)(h).

After an unsuccessful direct appeal, Mr. Arvelo filed a state habeas petition. As relevant here, he argued that the Maitland Police Department violated his Miranda rights and his lawyer was ineffective because she did not move to suppress his confession. Although Mr. Arvelo requested an evidentiary hearing, the state post-conviction court did not hold one. Instead, it denied his petition, finding that Mr. Arvelo had waived his ineffective assistance claim by entering a plea.

Mr. Arvelo next filed this federal habeas petition. The District Court denied relief. It first acknowledged the state court finding that Mr. Arvelo had waived his ineffective assistance of counsel claim "by entering his pleas." Then it offered three other reasons for rejecting Mr. Arvelo's claim: first, he "could have been convicted on the basis of eyewitness testimony and DNA evidence"; second, he had not shown prejudice because he "received the benefit of his plea in the form of a sentence lower than that which he could have expected following a trial"; and third, he had not proved that his confession was involuntary or coerced. Thus, the District Court held that the state court's denial of Mr. Arvelo's ineffective assistance claim was not contrary to, or an unreasonable application of, clearly established federal law. Mr. Arvelo now timely appeals.

II.

Where, as here, a state court's factual findings are not in dispute, federal courts may not grant habeas relief unless the state court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law." § 2254(d)(1). A decision is contrary to clearly established federal law if it "applied a rule that contradicts the governing law set forth by Supreme Court case law." Putman v. Head, 268 F.3d 1223, 1241 (11th Cir. 2001). If the state court decision was contrary to clearly established federal law, federal courts are not necessarily limited to the state court record; instead, we may hold an evidentiary hearing and consider new evidence. See Madison v. Comm'r, Ala. Dep't of Corr., 761 F.3d 1240, 1249–50 & n.9 (11th Cir. 2014); see also Sanchez v. Roden, 753 F.3d 279, 307 (1st Cir. 2014) ("[Cullen v. Pinholster, 563 U.S. ___, 131 S. Ct. 1388 (2011)], we believe, does not prohibit an evidentiary hearing once a petitioner has successfully shown the state court unreasonably applied federal law.").

To begin, we have little difficulty concluding that the state court misapplied binding Supreme Court precedent. Contrary to the state court's decision, the Supreme Court has expressly held that a defendant does not waive an ineffective assistance of counsel claim simply by entering a plea. Instead, because "voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases," courts must

continue to apply the familiar two-part test provided by Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). Hill v. Lockhart, 474 U.S. 52, 56–57, 106 S. Ct. 366, 369–70 (1985) (quotation omitted). Therefore, we decide (1) whether counsel's representation fell below an objective level of reasonableness, and (2) if so, whether a defendant suffered prejudice as a result. Id. at 57, 106 S. Ct. at 369.

In cases like this one, where a petitioner faults his lawyer for failing to pursue a motion to suppress prior to entering a plea, both the deficient performance and prejudice prongs of Strickland turn on the viability of the motion to suppress. This is because a lawyer's performance only falls outside the range of competence demanded of counsel if she did not pursue a motion to suppress that would have affected the outcome of the case had the defendant rejected the plea and proceeded to trial. Premo v. Moore, 562 U.S. 115, 124, 131 S. Ct. 733, 741 (2011) (addressing Strickland's performance prong and stating that the relevant question was whether "no competent attorney would think a motion to suppress would have failed"); Lynch v. Sec'y, Fla. Dep't of Corr., 776 F.3d 1209, 1219 n.6 (11th Cir. 2015) ("Hill makes clear that the prejudice inquiry in a case like this turns largely on an assessment of whether the defense likely would have changed the outcome at trial.").

We recognize that in deciding whether to enter a plea, defense lawyers carefully balance both "opportunities and risks" without fully knowing the strength

of the State's case. Moore, 562 U.S. at 124, 131 S. Ct. at 741. Therefore, we must, as we do for all Strickland claims, afford "substantial deference" to a lawyer's strategic choices. Id. at 126, 131 S. Ct. at 742. But because ineffective assistance of counsel claims are not waived by entering a plea, the state court's failure to consider those strategic choices at all was contrary to clearly established federal law.

We also reject the District Court's alternative reasons for denying relief. First, although Ms. Bergeron's and her coworkers' statements and the DNA evidence may establish that Mr. Arvelo attacked and choked Ms. Bergeron, they do not show that he intended to sexually assault her. Instead, Mr. Arvelo's confession is the only direct evidence supporting his convictions for kidnapping with the intent to commit sexual battery and attempted sexual battery.

Second, in finding that Mr. Arvelo had not shown prejudice because he had received the "benefit" of a 60-year sentence, the District Court applied the wrong legal standard. As the Supreme Court explained in Hill, our prejudice analysis must focus on whether Mr. Arvelo's motion to suppress would have succeeded at trial. 474 U.S. at 59, 106 S. Ct. at 371 (explaining that in cases like this, "the resolution of the 'prejudice' inquiry will depend largely on whether the . . . defense

likely would have succeeded at trial"). Thus, the District Court's speculation regarding Mr. Arvelo's sentence has no relevance.[3]

Finally, the District Court's holding that Mr. Arvelo had not already proved his confession was involuntary imposes too great a burden in light of the state court's refusal to consider the merits of Mr. Arvelo's claim or hold an evidentiary hearing. To be sure, the likely success of Mr. Arvelo's motion to suppress will be of critical importance in our Strickland analysis. See id. However, once a habeas petitioner has shown that a state court decision was contrary to clearly established federal law, he is not necessarily required to prove that he is entitled to relief solely on the basis of the state-court record. See Madison, 761 F.3d at 1249–50 & n.9. Thus, the District Court should have considered whether it was required to conduct an evidentiary hearing.

III.

In sum, we hold that the state court's decision that Mr. Arvelo had waived his ineffective assistance claim by entering a plea was contrary to clearly established federal law, and reject the District Court's alternative reasons for denying Mr. Arvelo's claim. Mr. Arvelo's federal habeas petition alleges that his lawyer was ineffective for failing to suppress a confession obtained in violation of

[3] Beyond that, it is questionable whether Mr. Arvelo received any "benefit" by pleading no-contest. The State made no bargain with Mr. Arvelo in exchange for his plea. And there is no evidence that the state court imposed a lesser sentence because of the plea. In fact, the court made clear that given the evidence presented by the State—which included Mr. Arvelo's confession—it was "not sure that a plea was driven by any level of remorse in this matter."

his Miranda rights, and that this confession is the only piece of evidence supporting his convictions for kidnapping with intent to commit sexual battery and attempted sexual battery using physical force. This allegation, if true, would entitle Mr. Arvelo to habeas relief.[4] See, e.g., Moore, 562 U.S. at 123–29, 131 S. Ct. at 740–43 (failure to file a motion to suppress can constitute ineffective assistance of counsel if a petitioner shows deficient performance and prejudice). However, because neither the state habeas court nor the District Court afforded Mr. Arvelo the opportunity to develop the factual basis for this claim, the record before us is insufficient to properly resolve Mr. Arvelo's petition. Therefore, we remand to the District Court to hold an evidentiary hearing and reconsider Mr. Arvelo's claim in light of this opinion.

REVERSED AND REMANDED.

[4] Mr. Arvelo requested, but was denied, an evidentiary hearing in his state and federal habeas petitions. Thus, he has not "failed to develop" the factual basis for his claim within the meaning of 28 U.S.C. § 2254(e)(2). See Williams v. Taylor, 529 U.S. 420, 437, 120 S. Ct. 1479, 1491 (2000).

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Douglas J. Mincher
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 10, 2015

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 14-11441-EE
Case Style: Edwin Arvelo v. Secretary, Florida Department, et al
District Court Docket No: 6:12-cv-01823-GAP-KRS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the CRIMINAL JUSTICE ACT must file a CJA voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for a writ of certiorari (whichever is later).

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Sandra Brasselmon, EE at (404) 335-6181.

Sincerely,

DOUGLAS J. MINCHER, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

EDWIN ARVELO,	)	
	)	
Petitioner,	)	**Case Number**
	)	
v.	)	**6:12-cv-1823-Orl-31KRS**
	)	
SECRETARY, DEPARTMENT OF CORRECTIONS, et al.,	)	
	)	
Respondents.	)	
	)	

Transcript of an evidentiary hearing

before the Honorable Gregory A. Presnell

October 5, 2015; 10:32 a.m.

Orlando, Florida

Appearances:

Counsel for Petitioner: Patrick Megaro

Counsel for Respondents: Rebecca Roark Wall
Bonnie J. Parrish

Proceedings recorded by mechanical stenography, transcript produced by computer.

Diane Peede, RMR, CRR
Federal Official Court Reporter
401 West Central Boulevard, Suite 4600
Orlando, Florida 32801

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P R O C E E D I N G S

THE COURT: Good morning, everyone. Be seated, please.

Lisa, call the case.

THE COURTROOM DEPUTY: This is the matter of Edwin Arvelo versus Secretary, Florida Department of Corrections, and Attorney General, State of Florida, case number 6:12-civil-1823-Orlando-31KRS.

THE COURT: Okay. And appearing for the State of Florida?

MS. WALL: Rebecca Wall, Your Honor, and co-counsel Bonnie Parrish.

THE COURT: Where's Ms. Parrish?

MS. WALL: I don't know, Your Honor.

This is Ms. Parrish.

THE COURT: Welcome, Ms. Parrish. You're only four minutes late.

MS. PARRISH: I apologize, Your Honor.

THE COURT: Four is better than five, but none of it's good to be late.

Anyway, who's appearing for the defendant?

MR. MEGARO: Good morning, Your Honor. Patrick Megaro on behalf of the Petitioner, Edwin Arvelo. I'm joined by my associate, Jennifer Manyen.

THE COURT: All right. Thank you.

We're here today for an evidentiary hearing, as ordered by the Eleventh Circuit in its opinion dated June 10th of this year, to consider Mr. Arvelo's federal habeas petition alleging that he received ineffective assistance of counsel by reason of counsel's failure to move to suppress an alleged confession obtained in violation of his Miranda rights.

Have y'all talked about how you want to proceed in terms of who goes first?

MR. MEGARO: We haven't discussed that, Your Honor, but I guess -- it's my understanding that since I'm the Petitioner, I would probably be going first.

THE COURT: That's fine.

Any disagreement from the State?

MS. WALL: No. I think it's the Petitioner's burden, Your Honor.

THE COURT: Okay.

So we'll go with you. How much time do you think we need for this today?

MR. MEGARO: That, I'm not sure about, Your Honor. I know that I have listed several witnesses: My client, the detective that took the statement from my client, and the records custodian from the Maitland Police Department. The records custodian and -- I'm sorry. Both detectives that took the statement from my client. All three other parties

have been subpoenaed and those subpoenas have been served and they have been noticed to be here today.

The only person that I saw here on our side besides my client, of course, is the records custodian from the Maitland Police Department. And there's a sort of wrinkle with respect to that. The reason why I subpoenaed the records custodian and requested the original records was because, as the Court, I'm sure, is aware, the whole case turns on the voluntariness of a statement, a recorded statement given by my client to two detectives from the Maitland Police Department. That statement was recorded by audio and by video.

Originally, the State of Florida -- or, rather, the Maitland Police Department had prepared a transcript of the recorded statement, which had been provided, and that had been filed in the lower courts and I believe in this court as well as part of an appendix or as part of the state court record in connection with the federal habeas corpus petition.

Once we received CDs from the Maitland Police Department pursuant to a subpoena duces tecum, I myself for the first time had the chance to get the actual CDs and I sought to have them transcribed at our own expense with our own court reporter to compare the two and see if there were any differences because the only ones that I had been operating on all these years were the ones that were part of

the record.

First, the Maitland Police Department gave us blank CDs. My paralegal contacted them last week and informed them they gave us blank CDs.

They gave us then additional CDs, and we noticed that we were missing -- I believe there are three audio CDs total. They gave us the first two out of the three and omitted the third.

We contacted them again and said we've had the first two transcribed, but you never gave us the third CD; and last week there were some back and forth with us and the Maitland Police Department records custodian, and I just said, well, just show up to court on Monday with the originals.

He is here and I saw that he has envelopes marked with evidence tape, that he believes are the original CDs.

I'm prepared to go forward with what I have, but I would like the opportunity to introduce the actual CDs themselves; and I just want the other side to be aware that my transcripts -- I'm planning on introducing the State's transcripts as well as mine, but mine are incomplete simply because the third CD had not been provided.

That third CD is present. It's in an evidence sealed envelope; and I don't know what the position of the respondent is, because if we start opening up sealed

evidence, I guess if we introduce that here, the State of Florida's original evidence would become part of federal court records. I'm not sure how that works.

THE COURT: We can copy it. It's not rocket science here. Let's just resolve it.

MS. WALL: I certainly have no objection to them offering that into evidence. If the Court would make a copy for its records and then the original, in case this would need at any point to go to trial --

THE COURT: Sure.

MS. WALL: -- then the evidence is --

THE COURT: Call your witness. If you want, put him under oath and establish the authenticity of these three. We'll introduce them in evidence with the understanding that we'll make a copy and return the originals to the Maitland Police. Is that acceptable?

MS. WALL: That's fine with the State, Your Honor.

THE COURT: Okay.

MS. WALL: We have not reviewed any transcript other than the transcripts that have been made part of the record for the federal habeas petition. So I can't say that we would necessarily agree to another transcript.

THE COURT: I understand, but we'll fight that battle when we get to it, if we get that far. Y'all might be able to work out your differences. If not, we'll deal with

it.

But the defendant's going to need time to, I guess, look at that third CD that they've never seen before, which means we're not going to get done today. That's all right. As I say, I've got a lifetime appointment.

Do you want to go ahead and call him as a witness and get that done?

MR. MEGARO: Yes, please, Your Honor.

THE COURT: All right. Bring him in.

MR. MEGARO: The Petitioner would call John Schardine.

THE COURT: You're going to have to go get him. We don't do that for you.

MR. MEGARO: All right. I'll go get him, then.

THE COURT: All right.

THE COURTROOM DEPUTY: Please come forward, sir, to be sworn. Come all the way up front, please. Raise your right hand.

Do you solemnly swear or affirm under the penalty of perjury that the testimony you give will be the truth, the whole truth and nothing but the truth?

MR. SCHARDINE: I do.

JOHN SCHARDINE, PETITIONER'S WITNESS, SWORN

THE COURTROOM DEPUTY: Thank you, sir. You may be seated. Once seated, please state your name into the

microphone for the record and spell your last name.

THE WITNESS: My name is John Schardine, s-c-h-a-r-d-i-n-e.

MR. MEGARO: May I inquire, Your Honor?

THE COURT: Yes, please.

DIRECT EXAMINATION

BY MR. MEGARO:

Q Good morning, Mr. Schardine. By whom are you currently employed?

A I work for the City of Maitland.

Q In what capacity?

A I am their records manager.

Q And are you the custodian of records for the Maitland Police Department?

A I am.

Q And what are your duties as the records custodian?

A I oversee all the records produced on a daily basis, from all levels of dealing with law enforcement.

Q Now, are you here today pursuant to a subpoena?

A I am.

Q And prior to arriving here today, did you inspect the records of the Maitland Police Department for any records regarding the State of Florida versus Edwin Arvelo?

A I did.

Q And what were you able to find as far as records

maintained by the Maitland Police Department?
A I have the original charging affidavits. I have the original report. I have a report written by the detectives during an interview.
There are some things that I am not aware of. What's taped up and marked as evidence was actually in evidence. I did not take them apart and look at them. So that may be a video. That may be a CD or an audio recording.
Q Okay. Now, the records that you have, are those true and accurate duplicates of the original records maintained by the Maitland Police Department with respect to Edwin Arvelo?
A These are the original reports.
Q Okay. And the CDs that are in evidence, are those the original CDs?
A I don't know. I didn't open them up.
Q Okay. Did you provide my office with copies of CDs?
A There were copies made of CDs for your office, but I didn't do it. I didn't have anything to do with that. That was an evidence tech type of thing.
Q Okay. Did the evidence technician provide with you those copies?
A He did provide me with CDs to give you, but I don't know if they were the original or copies or what.
Q Okay. Now, the records that are in your possession here today, are those records kept in the regular course of

business of the Maitland Police Department?

A **The hard files are the reports. They are.**

Q **Okay.**

A **I can't testify to the evidence.**

Q **You didn't recover the evidence; is that correct?**

A **Right.**

Q **But the evidence that is there, is that the business of the Maitland Police Department to keep that evidence in its custody?**

A **Yes.**

Q **Okay.**

THE COURT: So the evidence came back from the court and it stayed in the evidence envelope; is that what you're saying?

THE WITNESS: This came right from our evidence vault this morning.

THE COURT: Okay.

BY MR. MEGARO:

Q **And those CDs are the ones for State versus Edwin Arvelo, correct?**

A **Yes.**

Q **Okay.**

MR. MEGARO: Your Honor, at this time I would offer -- I'm sorry.

BY MR. MEGARO:

Q **And these are all for Maitland Police Department case number 06-016932?**

A **Correct.**

Q **Okay.**

MR. MEGARO: Your Honor, at this time I would offer into evidence for the Petitioner the records as testified to by John Schardine.

THE COURT: All right.

Any objection, cross?

MS. WALL: No objection.

THE COURT: All right. We'll admit those as Petitioner's Composite Exhibit Number 1, with the understanding that we will make copies of those and return the originals to the Maitland Police Department.

MR. MEGARO: Thank you, Your Honor.

THE COURT: Okay.

MR. MEGARO: I have nothing further from Mr. Schardine.

THE COURT: All right.

Thank you, sir. We'll get those back to you, hopefully, within a day or two.

THE WITNESS: Okay. Who would like them?

THE COURT: Just give them to Lisa here.

Let me ask you this, Mr. Megaro. Are you able to proceed before you have an opportunity to transcribe this

third CD?

MR. MEGARO: I can proceed, Your Honor, and I would ask that we just keep the hearing open for the opportunity to transcribe the third CD and admit that last transcript and, of course, to give counsel an opportunity -- my understanding is that from our transcript and the State's transcript, there are some differences but nothing --

THE COURT: The question is whether it's material or not.

MR. MEGARO: -- nothing major, as far as I can tell. There's some discrepancies; but I think even with the Maitland Police Department's transcript of the recording, I'm still more than able to make my argument, and I did use that to make my argument before the Eleventh Circuit, in any case.

THE COURT: Okay. All right. Let's go. I'll keep the hearing open. So we'll do what we can today.

MR. MEGARO: At this time we would call Edwin Arvelo to the stand, Your Honor.

THE COURT: All right.

You're going to have to come up here, sir, and be sworn.

THE COURTROOM DEPUTY: Please raise your right hand.

Do you solemnly swear or affirm under the penalty of perjury that the testimony you give will be the truth, the

whole truth and nothing but the truth?

THE PETITIONER: I do.

EDWIN ARVELO, PETITIONER'S WITNESS, SWORN

THE COURTROOM DEPUTY: Thank you. You may be seated. Once seated, please state your name into the microphone.

THE WITNESS: My name is Edwin Arvelo.

THE COURT: Okay.

MR. MEGARO: May I inquire, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. MEGARO:

Q Good morning, Mr. Arvelo.

A Good morning.

Q How did you get here today?

A I was transported by D.O.C. offices.

Q Are you currently in the custody of the Florida Department of Corrections?

A Yes, I am.

Q How long is your sentence?

A I have a 60-year prison sentence followed by 15 years' probation.

Q Okay. Total of a 75-year sentence?

A Yes, sir.

Q When and where were you convicted?

A **I was convicted in Orlando, Orange County, the circuit -- Orange County Circuit.**

Q **For what crimes?**

A **I have kidnapping with intent to commit sexual battery, attempted -- attempted murder, aggravated battery with severe bodily harm, and attempted sexual battery with physical force.**

Q **Okay. I want to draw your attention now back to August 15th of 2006. Do you remember that day?**

A **Yes, sir.**

Q **And what is significant about August 15th, 2006?**

A **What is significant is that I gave testimony -- I gave statements to the police, to the police officers, believing that he was going to help me.**

Q **Okay. Are you nervous right now?**

A **I'm just a lit- -- I'm very emotional.**

Q **Relax. Relax.**

THE COURT: Just take your time. We're not going anywhere. So we've got as much time as we need.

BY MR. MEGARO:

Q **Edwin, do you remember your 21st birthday?**

A **Yes, I do.**

Q **And when did you turn 21?**

A **August 15th.**

Q **2006?**

A **In 2006.**
Q **Okay. Now, were you working that day?**
A **Yes, I did work that day.**
Q **And what did you do for a living back then?**
A **I worked for an AC company, a warehouse. I did shipping and receiving. I drove forklifts, did loading and unloading.**
Q **And what hours did you work that day, on your birthday?**
A **I worked from 7:00 to 5:00, 7:00 in the morning until 5:00 in the afternoon.**
Q **All right. Prior to your 21st birthday, did you have any mental illness issues?**
A **Yes, I did.**
Q **Okay. What type of issues did you have?**
A **I was raised in a home where there was a lot of abuse, physical, mental, emotional and sexual.**
Q **So you were abused as a child?**
A **Yes.**
Q **By whom?**
A **My sister.**
Q **What about your father?**
A **My father, he sexually abused my sister.**
Q **Did he ever abuse you?**
A **No.**
Q **What about your mother?**
A **I -- not that I have knowledge of. There was just --**

there was a lot of physical abuse from him towards my mother.
Q As in hitting her?
A Pardon?
Q Like, hitting her?
A Hitting her. We saw her -- you know, we saw him beat her up a lot. He was an alcoholic and there was a lot of abuse, physical abuse from her -- from him towards my mother and towards my sister. You know, there was times that I would see him beat my sister.
Q It's obviously affecting you today.
A Yes.
Q How did it affect you prior to your 21st birthday?
A I -- I didn't know how to deal with it and I -- it led me to drugs, to alcohol. When I was in school, my mother tried to, you know, get me some -- some -- some professional help. They sent me to counselors but nothing really extensive, you know, nothing -- it never really lasted long. I had a couple sessions, and then I was -- as a kid, I felt that if you -- you know, going to a psychiatrist or a counselor made you -- you know, give you the title of being crazy, and I didn't want people to think, you know, he's crazy. So I wouldn't go. I'd tell them I didn't want to go anymore.

They put me on medication and things like that; but other than that, that's all I ever -- that's all the help I

ever got.

Q **What type of medication did they put you on?**

A **It was some -- it was psychotropic medication. I don't remember the name of it.**

Q **Did you ever take it for an extended period of time or did you stop?**

A **No. I took it maybe for a week or two and then I didn't want to take it.**

Q **So before your 21st birthday, did you have mental illness problems?**

A **Yes.**

Q **Did you have depression?**

A **Yes, I had depression. I would self-medicate.**

Q **How?**

A **Drugs, alcohol. Mainly alcohol. Mainly alcohol, marijuana, cocaine. I drank a lot of alcohol. I -- I -- I drank a lot of alcohol. I would -- I would -- I would get drunk five to six days a week on anything, wine, beer, hard liquor. It didn't matter.**

I was smoking marijuana every day. I was smoking maybe three grams of marijuana every day; and throughout the week I would use cocaine about two to three grams, maybe, each time, two to three times a week.

Q **Okay. Now, before your 21st birthday, did you have a girlfriend?**

A **Yes, I did.**

Q **Okay. And what was her name?**

A **Veronica.**

Q **And did you two have a kid together?**

A **She had a kid. He was my stepson.**

Q **Okay. And did there come a point in time where you and Veronica broke up?**

A **Yes. We argued a lot and it was mainly about, you know, my -- my -- my drug and alcohol problems, and we would go on -- off and on, and we broke up before my birthday.**

Q **Before your 21st birthday?**

A **Before my 21st birthday we had broken up.**

Q **After the breakup, what kind of mental state were you in?**

A **I was -- it was kind of hard on me because of experiencing -- having been through all the things I went through as -- as a child and as I grew up, I wanted to have -- I wanted to -- to be able to provide a stable home for my own kids and have my own family.**

And the last time we broke up, we broke up because of my alcohol and drug problems and we had a lot of arguments; and it was hard on me because I actually was the one who -- who told her I didn't want us to be together anymore because I -- I was seeing a pattern in my life.

Q **The same pattern as with your father?**

A **Yeah.**
Q **Okay.**
A **And I didn't want that for -- for my stepson and I told her I said, you know, this can't continue because I lived it and I'm not going to provide that type of home or that upbringing for him. And it was -- it was -- it was difficult. It was difficult for me.**
Q **Where were you living at the time?**
A **I was living in a -- in a studio. In a studio that's in Orlando.**
Q **Okay. Had you and Veronica been living together?**
A **Yeah, we had been living together. I -- I -- I moved out and I left her the apartment and I -- I moved into a studio.**
Q **Where was your family --**
THE COURT: When did this happen, this breakup?
THE DEFENDANT: June, around the middle of June.
BY MR. MEGARO:
Q **June of 2006?**
A **June of 2006. So about two months prior.**
Q **Now, in that two months -- well, let me go back.**
Your family, you know, your mother and your sister and your father, where were they living back in 2006?
A **They were all in Puerto Rico.**
Q **In Puerto Rico?**

A **Yes. My mother and my father were in Puerto Rico with my sister. My sister had lived here for some time and then she -- she broke up with her daughter's father and she moved to Puerto Rico with my parents.**

Q **So who did you have here as far as friends and family back in 2006, the summer of 2006?**

A **Really, I didn't have any family. I had a brother, one brother, and I didn't really have any family. I just had -- I had her and him, my stepson.**

Q **Okay. And after you broke up with Veronica, Veronica and your stepson are out of the picture kind of?**

A **Yes.**

Q **Okay. So in the summer of 2006, before your 21st birthday, were you drinking and using drugs?**

A **Yes. I was -- I've used -- I've used -- I've drank alcohol and used drugs since I was twelve years old. At that time, I was using a lot more frequently and -- and -- and a higher amount; but I've used drugs and I've drank alcohol since I was 20 (sic).**

So, yes, I was -- I was; but at that point for almost a year or more I had been getting drunk almost every day of the week, five to six days a week, five to six days a week, and I was -- like I said, I was smoking marijuana all day and using cocaine.

Q **So on your 21st birthday, you said before you were**

working that day from 7:00 to 5:00 p.m.?
A Yes, sir.
Q Did you use drugs during the day while at work?
A I used to wake up every morning and smoke marijuana as soon as I woke up.
Q Okay. Was that day any different?
A No.
Q And you have a specific recollection of using marijuana in the morning of August 15th, 2006?
A Yes. I woke up that morning and I smoked marijuana and then I went to work. On my lunch break I smoked again.
Q Okay. And you ended work at about 5:00 p.m.?
A About 5:00.
Q When you left work, what did you do?
A When I left work, I -- I -- I smoked again on my way home. I got home. I showered and I got dressed and I left to celebrate my birthday.
Q Okay. Who did you celebrate your birthday with?
A With my ex-girlfriend's sister, her boyfriend and one of her -- her friends.
Q Okay. By the way, did you eat dinner that night?
A No. The last time I ate was lunch; and when I got off of work, I went -- I stopped at a -- at -- at a corner store and I bought beer and I went home. When I left, I bought more beer and I drank -- I drank beer pretty much all that

night until I picked them up and went to my studio, and then that's when I started drinking from the bottle of whiskey.

Q Okay. Let me go back to the beer. Before you got to your -- back to your apartment with your friends, how much beer did you drink?

A I drank about a half a case of beer.

Q About twelve beers?

A About twelve beers.

Q Did you have a high tolerance for alcohol?

A For -- for beer.

Q Okay.

A For beer. I -- I -- I -- that's what I usually would drink was beer.

Q Now, when you got back to your apartment -- by the way, in between the beers, did you use any other drugs, any other substances?

A I -- I was smoking marijuana and using cocaine.

Q Now, you said there was a point in time where you picked up your friends and went back to your studio apartment?

A Yes.

Q All right. When you got back to the apartment, what did you guys do?

A We just watched TV and we smoked weed and I was the only one drinking. I had opened a bottle.

THE COURT: Can you tell me what time this was?

THE WITNESS: It was -- when I picked them up, sir?

THE COURT: No. When you got back to the apartment after drinking twelve beers.

THE WITNESS: Around 12:00, twelve midnight.

THE COURT: Okay.

A **And we just watched TV and all they wanted to do was smoke marijuana. So we smoked marijuana.**

I wanted to drink because it was my birthday. So I opened a bottle that someone had given me for my birthday, which was the bottle of whiskey or Crown Royal, and I just started drinking, and we just hung out, talked and I just drank and smoked with them. And they weren't using cocaine. So, basically, I was the only one drinking and snorting cocaine.

Q **Okay. And you said you opened a bottle. Was it a brand new bottle?**

A **Yeah, it was a brand new bottle.**

Q **Okay.**

A **Someone had given it to me for my birthday.**

Q **Was it a Crown Royal bottle of whiskey?**

A **Yes.**

Q **So that's about one liter, roughly?**

A **Pretty much, just about.**

Q **How much of that whiskey did you consume that night?**

A **All of it. All of it. There was -- what was left in**

the bottle was maybe one gulp.

Q **Okay. And no one else touched the bottle, just you?**

A **No, just me.**

Q **You said you were also using cocaine. How much cocaine did you use that night?**

A **I used three 20 bags, which is about three grams of cocaine, approximately.**

Q **That's a lot of cocaine?**

A **Yes, it is.**

Q **And you did it all yourself? Nobody else snorted any of that?**

A **No. All myself.**

Q **Okay. And during the time that you were drinking the whiskey and the cocaine, were you still using marijuana?**

A **Yes, I was.**

Q **Still smoking marijuana that night?**

A **Yes.**

Q **What time did the party break up at your studio apartment?**

A **About 3:00 in the morning.**

Q **Okay. And the people that you were with, they left on their own or did you bring them home?**

A **No. I took them home.**

Q **You were able to drive a car?**

A **Yes.**

Q **The cocaine kept you up?**
A **Yes, the cocaine.**
Q **After you dropped them off, about what time was it?**
A **When I made it back to my studio?**
Q **Yeah.**
A **It was maybe nearing 4:00, 4:00 a.m.**
Q **Now, between your lunch break earlier the day before and 4:00 a.m., had you slept at all?**
A **No.**
Q **Had you eaten anything other than whatever you had for lunch on your birthday?**
A **No.**
Q **After you dropped the -- your friends off at about 4:00 a.m., did you continue drinking? Did you continue using drugs?**
A **Yes.**
Q **Okay. How long did that continue for?**
A **Until I left that morning.**
Q **So you stayed up the whole night?**
A **I stayed up all night drinking and using cocaine and smoking marijuana.**
Q **By the way, this situation where you stayed up all night partying, was that limited only to this day or had you done that before?**
A **That was -- you could say that was my usual.**

Q **So you did that often?**
A **Often, yes. I would -- I would drink and -- I would drink until the alcohol was gone or the sun came out and sometimes I wouldn't sleep. I would go to work just like that. I would shower, get dressed and go to work drunk and under -- you know, under the influence of whatever drugs I had used that night; and I was doing that five to six days a week.**
Q **So this is a regular kind of thing for you?**
A **Yes, it was.**
Q **And that was what you planned to do on the next morning, the 16th?**
A **Yes.**
Q **And did there come a point in time when you left your apartment?**
A **Yes.**
Q **Okay. And where did you go?**
A **I was headed to go to work.**
Q **Did you make any stops on the way?**
A **Yes. I stopped by a parking garage in Maitland.**
Q **Why?**
A **I really -- I couldn't explain to you the thought process because I don't know what I was thinking. I -- I don't know what I was thinking.**
Q **Okay.**

A **I know that I wanted to meet someone and I drove that way. I was just driving. I ended up over there.**

Q **Okay.**

THE COURT: Where did you work in relation to Maitland?

THE WITNESS: In Maitland. I worked in -- in -- in another -- another -- it was by that parking garage. It was -- there's an avenue that comes down. My job was on this side of the avenue and the parking garage was on the other side.

THE COURT: Okay.

BY MR. MEGARO:

Q **Is -- that parking garage where this incident that we're here for today, is that where that occurred?**

A **Yes, it did.**

Q **Okay. I want to skip ahead to the point where you were arrested on August 16th, 2006. Who were you arrested by?**

A **If I'm not mistaken, I believe the Altamonte Police Department were the ones who actually arrested me and I was transported to the Maitland Police Department.**

Q **Okay. And is that because this section of Maitland is right near the border of Altamonte Springs?**

A **Yes, right on the border.**

Q **When you got to the Maitland Police Department, where were you -- where were you placed?**

A **They took me to a second floor and into an interrogation room.**

Q **Okay. And when you say "they," are you talking about police officers?**

A **Yes, there was a police officer with two detectives.**

Q **Okay. Was one of those detectives named Nick Collins?**

A **Yes.**

Q **All right. And is that the person you spoke with primarily that day?**

A **Yes.**

Q **All right. Other than Detective Nick Collins, did you speak to anyone else in the Maitland Police Department?**

A **No, I did not.**

Q **When you arrived in that interrogation room, were you still under the influence of all that stuff you had consumed the night before?**

A **Yes. I had still been -- I still had the bottle with me and I was drinking from it in the car.**

Q **Right up until the point of the incident?**

A **Yes.**

Q **And the incident occurred about how long before your arrest?**

A **About an hour and a half, maybe. An hour, hour and a half.**

Q **So you had been drinking up until an hour and a half?**

A **Prior --**

Q **Prior.**

A **-- to speaking to him.**

Q **Were you still drunk?**

A **Yes.**

Q **Were you still high?**

A **Yes.**

Q **And is it safe to say that you hadn't slept at all in that hour and a half time period?**

A **I hadn't slept since the day before.**

Q **Okay. When you were arrested and you saw the police put handcuffs on you, how did that make you feel?**

A **I was scared. I was scared and -- I was scared because I -- I felt that I had lost control of my life, because I knew I had a problem. I knew I had a problem with alcohol and I had, you know, mental -- mental problems and I had a drug problem, and now they're arresting me and it was overwhelming because I was -- I was seeing how -- how -- how out of control my life had became and I was scared because I didn't know what I was going to do.**

I was afraid. I was very scared. I was very emotional because, like I said, one of the reasons why I separated from Veronica was because I didn't want to give -- I didn't want to relive what lived growing up; and when I was arrested, it affected me strongly because I was seeing I was living -- you

know, how out of control my life was and it reminded me of everything that I saw, you know, in my father.

Q Did it make you feel worse at the time?

A Yes. I -- I -- I -- I felt lost. I felt that I no longer had control of my life.

Q Before you even stepped into the interview room, is it safe to say that all of these thoughts were going through your mind?

A Yes, sir.

Q Okay. And the alcohol and the drugs didn't help the situation?

A No.

Q Did that make it worse?

A Yes.

Q Now, when you got into the interview room, were you with Detective Collins?

A Yes.

Q And that interview was recorded audio -- by audio and video, correct?

A Yes.

Q All right. When you sat down with Detective Collins, how did he make you feel?

A How did I feel?

Q How did he make you feel?

A Well, when we began -- when we began speaking, I -- I

was asking him for help because, like I told you, I felt lost. I felt I had lost control and I didn't know what direction my life would turn to if I didn't have someone to help me. I knew I needed help. I knew I needed someone to help me. I needed -- I knew I needed to have someone that, you know, had the knowledge that would be able to help me and direct me in the right direction because my life was -- was spiraling out of control and I had lost control, and I was pleading to him, asking him for help.

Q **Did Detective Collins speak to you in a nice manner, in a nice tone?**

A **Yeah. He was -- he was -- he was very nice. He was, you know, real friendly, you know, and he was -- you know, appeared to be, you know, an easygoing type of person.**

Q **By the way, before you went into that interview room, had you ever been arrested before?**

A **Yes, I had.**

Q **How many times?**

A **Twice before.**

Q **For what?**

A **One for solicitation, one for indecent exposure.**

Q **When you say "solicitation," do you mean soliciting a prostitute?**

A **Yes.**

Q **And the other was indecent exposure?**

A **Yes.**
Q **Both of those are misdemeanors?**
A **Yes.**
Q **Okay. Had you ever spent any time in jail?**
A **Not a long length of time. The only -- what it would take to get bonded out.**
Q **Like, 24 hours, roughly?**
A **That or less.**
Q **Okay. When you got arrested for those misdemeanors, you knew that they weren't as serious as the charge back in 2006, right?**
A **Yes.**
Q **All right. When you got arrested for those two prior misdemeanors, did police interrogate you, bringing you to an interrogation room?**
A **No.**
Q **Did they even bother to question you?**
A **No.**
Q **So when you walked into that interrogation room, was it the first time you've actually been interrogated as a suspect by police?**
A **Yes.**
Q **A new experience for you?**
A **Yes.**
Q **Now, when you were in that interview room with Detective**

Collins, at any point in time did he make you feel like -- well, let me withdraw that question.

You said before that you were looking for someone to give you some help, right?

A **Yes.**

Q **Before your birthday in 2006, did you have anybody to turn to or did you feel like you had anybody to turn to that could help you?**

A **No, I didn't have anyone. I -- no. Earlier that year, I believe in January, I had -- I had went to -- it's a church that they give free counseling, but I didn't feel comfortable speaking with them. And around that time, in June, around June I had separated from Veronica. So I really had no one.**

Q **Okay. What did Detective Collins say to you that made you think that he was going to help you?**

A **Well, he asked me why -- why did I think that him and I had met that day, and I told him that -- that I felt and I hoped that it was that he would -- that he would help me or find me help.**

Q **Did you tell him that you believed God had sent him to help you?**

A **Yes, I told him that a little after, that we began speaking.**

And he told me that -- he asked me if I had ever heard of intervention and I told him that I had. And he told me

that maybe that's why him and I were meeting that day, and I told him that I knew, and he said you know it in your heart.

I told him on my way home, all I was asking God was for some help; and he told me that help started that day, that help was going to start that day; that starting that day, we were going to start getting me down a path of getting me some help.

Q **Okay. Now, before you even started talking about the incident in the Maitland parking garage, is it safe to say you had a very long conversation about help and the situation that you were in?**

A **Yes. Yes, we did.**

Q **Okay. And how long -- before you even started to make any statements about what occurred in the parking garage, how long did you talk to Detective Collins about your past and your desire to get help?**

A **I would proximate it at around an hour and a half to two hours.**

Q **Okay. Do you have a crystal-clear recollection of that entire interview on August 16th, 2006?**

A **No. No, I do not. I remember some things that -- that they affected me emotionally so strongly, because I -- I was crying out for help and I felt relieved that he told me that he was going to help me.**

Q **Okay.**

A **So there's things that I -- you know, as certain promises that he made that he would help me, I remember them because of the emotional effect that they caused.**

Q **Okay. Now, even though you don't have a crystal-clear recollection, it safe to say you've been able to review the transcript?**

A **Yes.**

Q **And you have reviewed that transcript several times?**

A **Yes, I have.**

Q **Do you remember saying everything in that transcript?**

A **Yes. Well, not everything but mostly everything, yes.**

Q **Okay. Now, when you were speaking to Detective Collins on, I'm going to call this the first part of the interview, that you said that was an approximate hour and a half to two hours, what type of emotional state were you in?**

A **I was -- I was devastated. I was devastated because. . .**

Q **You knew you were in trouble?**

A **Yes, and not only that. It's like I told him, I told him that you believe that -- you never believe that the things that you experience and go through as a kid, that you see them, that are reflected in the way that you act, and -- and -- and even though you see a pattern to -- I told him, like your father, I told him, you know, you have, you have, some guys they say, you know, they don't get along with their**

father and they say, "I'm not going to be like him when I grow up," but then they turn out to be like him and you see a pattern.

And I had begin seeing a pattern, because I was losing my life to alcohol and to drugs and I -- I -- I -- I -- I kept trying to find help, you know. I really didn't have anyone to help me. You know, my brother was an alcoholic. You know, I didn't have any family.

I really didn't have any friends. All I did was go to work and come home and drink and use drugs.

Q During the interview, were you explaining all this to Detective Collins?

A Yes, I was.

Q What was your emotional state? Were you crying, upset?

A Yes, I cried. I cried throughout almost the whole entire interview.

Q And at any point in time did Detective Collins tell you that -- well, did you ever tell him that you had consumed alcohol and substances the night before?

A He -- he -- he was filling out a questionnaire that they follow for -- for interviews and one of the questions is to ask if you have had any alcohol, and he answered in the positive for me, saying, yes, I do smell some alcohol.

And he asked me at what time I had drank, what I had drunk and so forth on that line of questioning towards the

alcohol.

Q **Did you tell him about the cocaine?**

A **No, I did not.**

Q **Why not?**

A **Because I was afraid that it would just cause me to be in more trouble than what I was in.**

Q **All right. But you did tell him that you smoked marijuana and drank alcohol?**

A **I told him that I had drunk alcohol.**

Q **Okay. Now, did there come a point in time during this conversation where you told Detective Collins that "I'm going to talk to you, but only because I need your help"?**

A **Yes. Yes, I did.**

Q **Or words to that effect?**

A **Yes, yes.**

Q **Okay. Is it safe to say that during this interview, you told him repeatedly, "I need help. Please help me"?**

A **Yes.**

Q **Okay. And what did he say to you that made you feel like he was going to give you help?**

A **There were a few things. For one, he made me feel that what happened that day was just a mistake. He kept telling me, you know, that it was just a mistake. And he made me feel like that my belief that, you know, I was in a lot of trouble wasn't so and that it was just a simple mistake.**

You know, he had told me at one point that -- you know, he said, you know, "Hey, you brought in your 21st birthday with some alcohol. Nearly every kid in America does that. Do you think you're the first one who's drank some alcohol and made a mistake?"

He said, "No, you're not. You're not the first one and you won't be the last one."

Q **So he made -- I'm going to kind of interrupt you, but he said getting drunk on your 21st birthday and making a mistake, not that big of a deal?**

A **He said -- he said -- he said that -- he said that's a mistake. He said, "But that's a mistake and that happens all the time."**

He said, "But now let's see what we can do." You know, things like that made me feel that he was going to help me, you know.

And at one point when I started talking to him, telling him about my -- my childhood and how I had been a victim of sexual abuse, he -- he had asked me how the thoughts that I had been struggling with were met, and I was -- I was a bit reluctant because I was embarrassed.

And he told me that it wasn't going to embarrass him and that I shouldn't be embarrassed because I was asking for help and I needed to get to that point. In other words, that, you know, in order to get to that help, I had to get to the point

where I could talk to him without being embarrassed.

He also told me that -- I told him that I was concerned. I was expressing my concern that my family would find out and they would look at me differently and they would push me away and they would turn their backs on me and that I would be alone.

And he told me that this was the road that I was at; that what I had to ask myself was, was I concerned about the embarrassment or did I want the help? Because I couldn't move towards the help by standing still, worrying about the embarrassment.

Q And what did he make you think you had to do in order to get help from him?

A That I had to basically speak about what had happened that day. At one point he was asking me questions to give him a description of -- of the lady, the victim in the case; and he told me that after I answered his questions, he told me that what he was trying to do was that he was trying to figure out what might have been different, what might have triggered the thoughts that day to be different from the other days that I had been dealing with this issue.

And then he asked me about the clothing that she was wearing; and when I had answered his questions, he told me that what we were trying to do, him and I, what we were trying to do was we were trying to figure out what might have

been different that day from the other days and that that was part of the helping process.

So I felt that speaking about what had happened that day was part of getting help, because prior to that, also he told me that -- he told me that what we were working on was on figuring out -- on figuring out the first step of what kind of help I needed.

Q **Did there come a point in time where he told you to trust him, that he was going to get help for you?**

A **Yes. He told me -- I told him that I felt like I was losing it all, and he told me no. He said, "You're too young for that."**

You know, he told me that it was at that time that I needed to -- that "You need to get help," and to trust him, that he had worked in hospitals before he was doing the job that he was doing then as a detective.

Q **Okay.**

A **And he told me that things were -- were a step at a time, and that the first step was to say, "I need help."**

And he told me for us to take things one step at a time, and he said the first step for someone to get some help is they have to admit that they need it and ask for it. He said, "So that's what you're doing. We're at step one."

He said, "So now what you have to do is you have to tell yourself, you know, 'I have a problem. I need some help and

it's going to start today.'"

And he said, "Tell yourself, you know, 'Today I'm going to ask for help.'" And he told me that that helping process was going to start that day.

Q And did you tell him -- I'm going to use your own words -- "I'm going to open up, you know, because I believe you can help me and I want you to help me, you know. I just don't want to open myself up and just be doing this and just end up, you know, locked up doing some time, because everything that I have now is so -- you know, so important to me. So everything that I love and that I have in my life, just to see it slip away, because it's going to slip away and it's never going to couple back" --

MS. WALL: Your Honor, I would object at this point. I would like to know what he's quoting from.

THE COURT: Well, yeah. It's awfully leading. I can read myself.

MR. MEGARO: Okay. Well, I'm quoting from my brief, which is quoting from part of the official record, which is --

THE COURT: Yes, but asking him if that's what it says doesn't help me.

MR. MEGARO: Okay. I'll paraphrase it.

BY MR. MEGARO:

Q Did -- let me withdraw that question, Edwin.

Did you tell him, "I'm only going to open up and talk to you because I believe you can help me," or words to that effect?

A **You see, at first -- at first when we started speaking, I was a bit reluctant in speaking to him because I didn't want -- I didn't want to get into any more trouble. I didn't want to say anything that would get me in more trouble, and I asked him for help.**

And he -- he promised me help in different ways, you know. He just phrased it differently, and he kept telling me what I had done was just a mistake, you know, and basically we just needed to clear it up.

So when I felt -- I finally felt that he was actually going to help me, I told him, I said -- I said, "I'm going to open up because I believe you can help me and I want the help." I told him, "I just don't want to be going through all this and end up in prison doing time, but I'm going to open up because I want the help."

Q **Now, you said he kind of made some things seem like they weren't that kind of big of a deal. The crime that you were under arrest for, did there come a point in time where he said something like, "Hey, don't worry about this. This is not something that's going to take your whole life away"?**

A **There was a point where -- there was a point where I had told him I didn't want to go to jail, and he told me, "No.**

You're young. You're 21 years old. You're not in here for something that's going to take your life away. You're in here for a mistake. There's a big difference," is what he said.

Q **And did he compare you with other people that he had arrested in the past?**

A **Yes. He told me that my -- my -- my criminal record wasn't even a record, that it wasn't a rap sheet; that he had guys that were sitting in that same seat I was sitting on and -- and -- and sitting in and they would take two days faxing them their -- their -- their record, their criminal record.**

Q **Okay. Did there come a point in time in this first part of the conversation where he actually talked to you about legal issues that you were going to face as a result of your arrest?**

A **He did.**

Q **Okay. And did he talk to you about mitigating factors?**

A **Yes, he did.**

Q **Did you know what mitigating factors were?**

A **No, I did not.**

Q **Had you ever heard that term before?**

A **Never.**

Q **And what did he say about those mitigating factors to you?**

A **He -- he told me that they would -- that they would be considered by the judge, the prosecutor and the jury.**

And he told me -- he asked me -- he told me -- he said, "I'm going to tell you why I think that that's important." He says, "Because the judge, when he has ten people sitting in front of him, all of them charged with narcotics sales, he's not going to sentence each one of them the same way because maybe one is poor and he's trying to feed seven children." He said, "The same with the state attorney."

He says -- he asked me a question. He said, "Do you" -- he says, "Does the state attorney think that young people make bad judgments?"

He said, "Of course they do. So does -- so does the jury."

Q **Okay. And did he say that, you know, maybe the judge and the state attorney would show you some leniency?**

A **For telling my side of the story, yes.**

Q **And I was just going to ask you that part. And the state attorney and the judge would show you leniency if you did what?**

A **If I -- if I shared my side of the story.**

Q **If you told him what had happened?**

A **What had happened there, yes.**

Q **Okay. And you believed that by talking to him -- after he told you things, you believed that by talking to him, that**

what would happen?

A That I would get help. He told me -- at one point he told me -- before I told him that I would open up, he told me -- he said -- he said that everybody makes mistakes. He said, "But when we make a mistake, we have two choices: One, we man up; and one, we don't."

He said, "When we don't man up, we're in danger of committing the same mistakes."

And then he told me, "You have remorse. You're asking for help. The last thing you need to do is man up."

And then after that is when I told him that I was going to open up.

Q And did all of these things that he was saying to you make you believe that if you spoke to him, the judge and the state attorney would do what for you?

A I was -- I was absolutely -- I was absolutely convinced that I would get help, answering all of his questions and telling him what had happened that day.

Q Did Detective Collins ever discuss with you prison and jail and what the differences were?

A Yes, he did. He told me that prison was where -- where -- where people that couldn't get help were sent to.

Q Okay.

A And he said, "Do I think that a person who has dealt with this issue for 13 years of his life need to go to

prison?" He said, "No, I don't."

He said, "Do I think that this person needs help?" He said, "Yes, I do."

Q **Okay. And what did you believe that you would go to after you spoke to him and told him your side?**

A **I believed I was going to go to a program, a treatment program.**

Q **Like a jail?**

A **To -- to jail and to -- to a -- a drug program or -- or a program where I would receive, like, mental health treatment.**

Q **Okay. And because -- and just to recap, that's because jail was for people for rehabilitation, prison was for people who could not be rehabilitated?**

A **Yeah, who could not be rehabilitated.**

Q **Okay.**

A **Who couldn't get help, is what he said.**

Q **Okay. Now, before you -- and did he ever discuss bail with you?**

A **Yes. Yes.**

Q **What did he say about bail?**

A **I asked him if -- if -- if he thought I would get a bond, and he said -- he said -- he said, "Of course. Are you kidding me? I've got guys in there for murder who get twenty -- a $20,000 bond."**

Q **And what did you have to do -- in your mind, what did you have to do in order to get that bond?**
A **Just answer his questions.**
Q **Open up and talk to him?**
A **Yeah.**
Q **Okay. Did you want to get bond?**
A **Yes.**
Q **How long did the whole interview process last?**
A **I believe a little over three hours.**
Q **And during this time was there anything going on inside the Maitland Police Department?**
A **Right outside the room where we were speaking there was some construction work being done.**
Q **Okay. And did it make a lot of noise?**
A **Yes.**
Q **All right. And did that noise ultimately come through on the audio recording?**
A **Yes, it did.**
Q **All right. You're aware of that now, right?**
A **Yes.**
Q **All right. In the interview room did Detective Collins ever have you write anything down?**
A **Yes.**
Q **Okay. What did he tell you to write down?**
A **He asked me to write an apology letter.**

Q **To who?**

A **To the victim.**

Q **Okay.**

A **And he told me that -- he told me that -- he told me that he thought that I should do that because -- I can't paraphrase it, but basically it was that because I needed to do that -- I needed to write that to a person who was going to help me understand and cope with the things that I was dealing with.**

Q **Did he lead you to believe that writing that apology letter to the victim would help you in any way in your legal case?**

A **Yes, he did.**

Q **What did you think would happen if you wrote that apology letter?**

A **I believed that it would help me receive some leniency.**

Q **Now, you've said throughout this entire interview you were crying and very emotional the entire time?**

A **Yes, I was.**

Q **Did you tell Detective Collins, I "haven't slept last night. I've been up all night"?**

A **He -- he asked me -- those were one of the questions in his questionnaire. He asked me if I had slept and I told him that I had not. And throughout -- during the interrogation, he asked questions -- he asked me if I stayed up all night**

drinking, and I told him that I had.

Q Now, other than the apology letter, everything we've just talked about here in court today, all of those discussions took place before you ever actually spoke to Detective Collins about the incident in the parking garage; am I correct?

A You're correct.

Q Okay. And the part about -- the part of the interview where you spoke to Detective Collins about what actually happened in the parking garage, how much time did that part of the interview take, about?

A About an hour, maybe.

Q Okay. Now, after -- after the interview was over, what was your emotional state? What was your mental state?

A I still felt that my life was out of control, you know, but I felt relieved because I felt that he was going to help me. You know, even at the end of the interview he tells me -- I tell him, I said -- I told him, you know, "I feel like this is my wake-up call."

And he told me, "It is." He says, "Man, as you're going down this road and there's a Y, and you're going to get the help that you need and this is never going to happen again."

Q So he repeated the part about helping you --

A Yes.

Q -- at the end?

A **He made me feel like everything that we had gone through was -- was to accomplish me getting help and that we had accomplished that.**

Q **Did Detective Collins ever get you any help?**

A **No.**

Q **When was the next time you saw him?**

A **I never saw him.**

Q **When was the next time you heard from him?**

A **I never heard from him.**

Q **So after you opened up and spoke to him on August 16th, 2006, you never heard from him again?**

A **No, I did not.**

Q **All right. Where were you transported after that interview?**

A **To the Orange County Jail.**

Q **And you were booked in?**

A **Yes.**

Q **Did you appear in court?**

A **For pre-arraignment, I believe so, yes.**

Q **Who was assigned to represent you?**

A **Catherine Chien.**

Q **And what office did she work for?**

A **For the Public Defender's Office.**

Q **Of Orange County?**

A **Of Orange County, yes.**

Q **When did you realize you weren't going to get any help in the Orange County Jail?**

A **Basically, after I began speaking with my attorney.**

Q **What made you realize you weren't going to get help?**

A **Because she was telling me she had ordered discovery and she read me the charges that were against me, and she just told me, you know, basically to stay put until she got the discovery and she went over everything.**

So then I realized that I wasn't going to get any help. I figured that if there was going to be anyone to help me, they would have already came to see me.

Q **Nobody ever came?**

A **No one ever came.**

Q **Now, during the course of the case that was in Orange County, did any other attorney represent you or was it just Ms. Catherine Chien?**

A **Just Ms. Catherine Chien.**

MR. MEGARO: I'll spell her name, C-h-i-e-n.

BY MR. MEGARO:

Q **Right?**

A **Yes.**

Q **Thank you. Catherine with a C, correct?**

A **Yes.**

Q **Okay. How many times did Ms. Chien come and visit you at the jail?**

A **Approximately eight, nine times, maybe.**
Q **How long did the case last?**
A **About eight months.**
Q **Okay. So it was approximately once per month, on average?**
A **Yes. It was mostly video. I seen her mostly video.**
Q **How many times did she come in person?**
A **Maybe about half of the times; four, five times, maybe.**
Q **And when you said she saw you on video, on a video monitor with a telephone?**
A **Yes.**
Q **Did you receive any of your discovery?**
A **I -- I -- no. While I was there, no. I didn't receive any documents pertaining to my case until after I had been sentenced or had arrived at prison.**
Q **Did Ms. Chien ever sit down and review with you the discovery of the evidence against you?**
A **No.**
Q **The paperwork?**
A **No.**
Q **And the first time you saw the paperwork was when?**
A **After I was in prison.**
Q **After you had already been sentenced?**
A **Yes.**
Q **Okay. Did you ever discuss a defense strategy with Ms.**

Chien if you were to go to trial, for example?

A **I -- I -- I -- I had -- I asked her about the premeditation issue for first-degree attempted murder, and she told me that her concerns were with the kidnapping charge because it carried a life sentence.**

And I was telling her, you know, but there's no premeditation for first-degree attempted murder; and she told me that she understood that, but that what was the point in -- in -- in -- in -- in beating an attempted murder charge and then being found guilty for kidnapping and getting a life sentence?

And she told me that -- at one point she told me that she could not formulate a defense for my case. She said, "I can't come up with a defense for your case." And she -- she told me to try to come up with a defense; and if I came up with anything, to write her and let her know, because she couldn't come up with a defense for my case.

Q **Did she ever discuss with you the statement that you gave to the police?**

A **I -- I -- I asked her about that also. I asked her if it could be suppressed, and she told me that she didn't believe it could be suppressed because I had basically confessed. She said, "Well, basically you confessed."**

It's the same reason she gave me for why she couldn't come up with a defense. She said, "I can't come up with a

defense because, you know, you know, you confessed. You know, basically, you confessed," is what she would tell me.

Q **Okay. Now, did you ever review, like, the actual video or audio of the confession?**

A **I didn't review -- I didn't have anything. I didn't have nothing.**

Q **Did you ever see the transcript while the case was going on in Orange County?**

A **I didn't see anything. I didn't -- I didn't -- I didn't have -- I didn't have or receive any documents whatsoever pertaining to my case until after I had been sentenced and I had been committed to prison.**

Q **Okay. By the way, did you know what "suppression" was while you were in the Orange County Jail?**

A **I -- I -- I -- all I knew is that it would be excluded. It was something that I had heard from someone that had told me.**

Q **Something you heard from other inmates, you mean?**

A **Yes, yes.**

Q **Okay. Did you ever have any discussions with your own lawyer about filing a motion to suppress?**

A **I had asked her about the suppression. I told her that I had heard about that confessions could be suppressed; and she told me that, you know, she didn't believe that it could be suppressed because I had basically confessed.**

Q **Okay. Basically, you confessed? That's it?**

A **That's it.**

Q **"There's nothing I can do about it"?**

A **It's over.**

Q **Did you have any -- any idea of what the law was regarding suppression while you were in the Orange County Jail awaiting trial?**

A **No, I did not.**

Q **Okay. Now, after Ms. Chien told you that she saw no way to formulate a defense for you, what did you feel like you had to do?**

A **You see, at the time -- she came to me at one point and she told me she had done -- she had issued subpoenas because she was going to do depositions, and she came and she saw me and she said, "Listen, I made this -- I've issued these subpoenas for depositions, you know, and I've -- I've" -- and she told me the list of people that she was going to do depositions of.**

She said before I go -- I go ahead and do these depositions, you know, she -- basically, she was telling me, "I need to know what you want to do. If we're going to go ahead and go to trial, then I'll go ahead and I'll take these depositions. If not, there's no point in me taking these depositions, you know. But I can't come up with a defense for your case. You know, you basically confessed."

She said, "And based on my experience, it's in your best interest that you take a plea to open court, that you plead to the mercy of the court."

Q **Let me stop you there. Before that, had there been any plea offer given to you by the State of Florida?**

A **The State offered life the entire eight months I was held in the county jail.**

Q **So the State was stuck on life in prison and that was it?**

A **On life, yeah. She said that they -- they -- they had a pretty solid case and they weren't going to be willing to negotiate.**

Q **Okay.**

A **So, basically, I was looking at a life sentence if I accept the plea from the State.**

And then another thing that she would tell me was she would say that -- she said, "If we go to trial and lose, which we most likely will lose" -- those were her exact words. She said, "If we go to trial and lose, which we most likely will lose, they're going to give you a life sentence."

So I was looking at either taking a life sentence as a plea offer from the State or going to a trial where my attorney cannot formulate a defense for my case because I confessed, and if I go to trial, I'm going to lose and get a life sentence or to take a plea to the court, where she told

me that she felt -- she believed that I would get 20 years, no more than 30.

Q Okay.

A So those are my options. Those were the options that she presented me.

Q Did you ever discuss with Ms. Chien the possibility that the sentences could be run consecutively to each other?

A No, she never spoke about that.

Q Did you ever discuss concurrent sentences and consecutive sentences? Did she ever talk to you about that?

A No.

Q Did she ever discuss with you the Florida sentencing guidelines?

A No.

Q Do you know -- did you know what the Florida sentencing guidelines were back then?

A No, I did not.

Q Did she ever discuss with you anything called a downward departure?

A No. Basically, she spoke to me about presenting mitigating circumstances.

Q Okay. And those mitigating circumstances would have been what?

A Just to show that -- things like I had family ties in the community, that -- a good character, that I was young,

and things along those lines.
Q Anything about your mental illness or your mental history?
A Yes, the mental illness issues.
Q History of abuse?
A Yes. She hired a doctor to evaluate me also.
Q Okay. I'm going to get to that point in a minute.
In February of 2007 did you appear in Orange County court with Ms. Chien for a pre-plea conference?
A Yes, I did.
Q And was that an informal hearing or a formal hearing? What type of hearing was it?
A Informal, I believe. I'm not sure.
Q Okay. And this was before you entered a guilty -- I'm sorry, not a guilty plea -- a plea of no contest?
A Yes, it was before.
Q Okay. When you were in court that day, was the state attorney there as well?
A Yes, she was.
Q And what about the victim?
A She was there also.
Q During that hearing did your lawyer talk to the judge about sentencing guidelines and downward departures?
A I believe she mentioned that she intended to present mitigating circumstances.

Q **Okay. Did you understand fully what was going on at that plea hearing?**
A **No, I did not.**
Q **Or at the pre-plea hearing, rather?**
A **No, I did not.**
Q **Okay. After that hearing in early March of 2007, did you enter a plea to the court?**
A **Yes, I did.**
Q **All right. And was that an open plea?**
A **Yes, it was.**
Q **Before you entered that plea, had you discussed that open plea with Ms. Chien?**
A **Yes.**
Q **What was in your mind? What did you think would result if you entered an open plea?**
A **I -- I believed that -- that -- that the advice that she had given me was -- basically, it was the time that I would get, because she told me that she believed that I would get 20 years, 30 max. So in my mind, I'm signing to 20 years, 30 max, but that she believed that what I would get would be 20 years.**
Q **And you had heard at the pre-pleading conference something about 168 months as a guideline sentence?**
A **Yes, on a score sheet.**
Q **Okay. Did Ms. Chien say that she would try to get you**

less than that?

A **Through -- through -- through the mitigating circumstances, yes.**

Q **Okay. Did she discuss with you the probability or the percentage that that wouldn't happen?**

A **No.**

Q **Did she say anything, like, "I think it's going to work," "I don't think it's going to work, "Maybe it'll work," "Maybe it won't," "It definitely won't"?**

A **No.**

Q **Okay. When you entered that plea, you thought you were signing on for how much?**

A **Twenty, 30 max.**

Q **Okay. When you entered that plea, did you know that that judge could stack those sentences consecutively on you?**

A **No, I did not.**

Q **Did you think that the -- did you think by pleading, you would get 60 years in prison?**

A **No. I thought -- I thought that I would get basically what she was telling me that she foresaw, would be 20 or 30 max.**

Q **Would you have entered that plea if you had known you would have gotten 60 years in prison?**

A **No.**

MS. WALL: Your Honor, I would object to this line.

This really doesn't go to whether or not counsel would have moved to suppress the confession and the results of what the suppression might have led to. You know, whether he knew what he was facing at sentencing apart from that really isn't relevant.

THE COURT: Yes, I don't recall that being one of your claims.

MR. MEGARO: Well, I think it goes part and parcel, Your Honor, with -- with the failure later, because, as I'm going to get to, I'm going to tie it directly in with that, but I think the two go hand in hand.

THE COURT: Well, I got the drift. So let's move on.

MR. MEGARO: Okay.

THE COURT: But for now, we're going to take a lunch break.

MR. MEGARO: Sure.

THE COURT: So we'll be back in session at 1:00.

(Recess taken from 11:50 a.m. until 1:05 p.m.)

THE COURT: All right. Be seated, please.

Are we ready to continue?

MR. MEGARO: Yes, Your Honor.

THE COURT: All right. Mr. Arvelo, if you will, step back up here, please.

Okay.

MR. MEGARO: Thank you, Your Honor. May I continue?

THE COURT: Yes.

BY MR. MEGARO:

Q **Mr. Arvelo, when we left off for lunch, I believe we were talking about your representation in the Orange County Circuit Court.**

A **Yes, sir.**

Q **Okay. Now, did there come a point in time after your conviction and sentence that you learned about suppression?**

A **Yes.**

Q **How did you learn about suppression?**

A **I -- I began studying it from the law books once I had arrived to prison.**

Q **Okay. Now, the -- and you say "the law books." Are you talking about a law library within the facility?**

A **Yes, the law library.**

Q **And that was within the facility within the Florida Department of Corrections?**

A **Yes, it was.**

Q **Did the Orange County Jail have a law library?**

A **Yes, they did.**

Q **Did you visit the law library while you were awaiting trial?**

A **Occasionally. A few times. Two or three times, maybe.**

Q **Did they have the same types of books and resources that the Florida Department of Corrections law library did?**
A **I believe they do.**
Q **Okay. Now, after you visited the law library at the Department of Corrections, what did you study?**
A **I took a correspondence course for -- to become a paralegal law clerk. I got my diploma, and then I sat to study Florida criminal law and procedure, Westlaw Florida laws annotated -- statutes annotated, and other Florida -- I mean, law books.**
Q **Okay. I'm sorry. Let me go backwards just for a little bit. Do you remember the day that you were sentenced?**
A **Yes, I do.**
Q **Okay. What day was that?**
A **It was April 20th, if I'm not mistaken. April 20th or April 21st.**
Q **Okay. Are you sure about that date?**
A **Yes.**
Q **Okay. And it was in April of which year?**
A **2007.**
Q **All right. In April of 2007, after that sentencing date, did you take any further action on your case?**
A **Yes.**
Q **All right. What did you do?**
A **I prepared and filed a post-conviction relief motion.**

Q **Okay. Before you prepared a post-conviction relief motion, did you do anything else right after April?**

A **As soon as I got to prison, I wrote my attorney, who had conducted the trial (sic). I wrote Ms. Chien and I asked her to forward me any documents she had pertaining to my case. That's when I finally received discovery and the actual transcripts of the interrogation and everything.**

Q **After your sentencing, did you ever make a motion or try to withdraw your guilty plea?**

A **Yes, there was a motion.**

Q **I'm sorry. I keep saying "guilty plea."**

A **I did not file that. She filed it. Ms. Chien was the one who filed it.**

Q **Okay. And it's not a guilty plea; it was a plea of no contest, right?**

A **Yes.**

Q **So I can correct myself. Do you remember when that motion was filed?**

A **Well, I was sentenced April 20th or April 21st, and she came and saw me maybe two days after and she was explaining to me the options that I had as far as appeals. Then she told me -- she asked me if I wanted to withdraw my plea and I told her that I did, and she said that she would file the motion.**

Q **Okay. You wanted her to withdraw your plea at that**

point?
A Yes.
Q Why?
A Because it was not what she had told me that I -- that I -- that I would be facing. She had told me that she believed I would get 20, no more than 30; and I got 60 years prison with 15 years probation.
Q And did Ms. Chien file that motion for you?
A Yes, she did.
Q What happened with that motion?
A It was denied. There was -- there was an evidentiary hearing held and it was denied.
Q Did -- and what was the nature of that motion? What claims did you make in that motion?
A It was -- it was a basic motion. There -- there really wasn't, I believe, any claims. She didn't put really any claims, just that I wanted to withdraw my plea.
Q How long was the motion?
A Two -- a page and a half, maybe.
Q Okay.
A It's your typical draft motion, like fill-in-the-blank-type motion.
Q Okay. When you went -- did you go back to court in Orange County for that motion?
A Yes, I did.

Q **And do you remember about when that was?**
A **That was -- the hearing was held on August 9th, I believe.**
Q **Of 2007?**
A **2007, yes.**
Q **At that hearing were you represented by Ms. Chien or by somebody else?**
A **I was represented by a conflict attorney.**
Q **Okay. And do you remember that attorney's name?**
A **I believe it was Cartajena.**
Q **Cartegena?**
A **Cartegena, yes.**
Q **C-a-r-t-e-g-e-n-a, something like that?**
A **C-a-r-t-e-g-e-n-a.**
Q **Okay. And that was a male or a female?**
A **It was a male.**
Q **Mr. Cartegena, did he make any arguments on your behalf at the hearing?**
A **No, not really.**
Q **How long was that hearing?**
A **It was fairly short. It was fairly short.**
Q **Okay. Now, after that hearing, did you file an appeal?**
A **Yes, I filed a 3.850.**
Q **Okay. And that's a Florida post-conviction relief motion?**

A **Yes.**

Q **In addition to that, did you file a direct appeal?**

A **A direct appeal was undertaken by the -- by appellate counsel of the Public Defender's Office.**

Q **Okay.**

MS. WALL: Your Honor --

A **They filed, I believe, an Anders brief.**

MS. WALL: -- I would object to the relevancy, to the actual issue that's before the court. The Court has all the procedural -- the record contains all of his procedural background, what he raised, when he raised it; and whether he filed a direct appeal or not really does not go to whether counsel was ineffective for failing to move to suppress.

THE COURT: Well, I tend to agree; but I don't know whether it's just background or whether we're wasting time. So you'll have to tell me.

MR. MEGARO: It's more in the way of background, Your Honor, but I'm kind of getting to the point where -- to the -- to the major issue here.

THE COURT: Well, let's kind of maybe speed that up a little bit.

BY MR. MEGARO:

Q **At any point in time in your direct appeals or your Florida post-conviction relief motions did you raise the issue of suppression?**

A **I -- I didn't have any control of what was filed in the direct appeal because there was appellate counsel from the Public Defender's Office.**

Q **Okay.**

A **So he -- he -- I believe, if I'm not mistaken, he filed that there was nothing to be raised and he withdrew from my case.**

Q **All right. Now, did there come a point in time after your sentencing, after everything was done in Orange County, that you realized that a suppression motion could have been made?**

A **That's when -- after I wrote Ms. Chien that she send me the discovery and all the other documents pertaining to my case, I started looking through them; and with the study that I was doing, I realized that there was -- there had been a possibility that that suppression (sic) could have been suppressed.**

Q **Okay. And what made you think that?**

A **Because incriminating statements are -- are -- are not to be elicited through overreaching police conduct of implied promises or of hope or fear or physical abuse or anything like that.**

Q **Let me pause you right there. Is it safe to say that you did legal research in the law libraries?**

A **Yes, I did.**

Q **And did you look up Florida State reported cases?**

A **Yes.**

Q **And when you looked at those cases, how did they compare to what you know happened at your police interview?**

A **Well, I -- I -- I -- I've read cases where the detective doing the interrogation had promised the -- the defendant that he would give him help, that he would receive help and -- either for a treatment program or things like that or that he would -- you know, he would say that he would give him -- put in a good word for them, basically, with the judge or the state attorney. And I realized, you know, that there was -- there were grounds for the suppression of the confession.**

Q **Okay.**

MR. MEGARO: Your Honor, I don't know why I've thought of this at this particular moment, but it just re-occurred to me. Dayne Krout is here under subpoena. I've made a decision that I don't need to call him. I know he's present in the courtroom, and I probably should have brought this up before we started.

I don't need to call him and I don't think the State needs to call him either. So with the Court's permission, I can release Mr. Krout from his subpoena.

THE COURT: Sure.

MS. WALL: No objection, Your Honor.

THE COURT: All right. With no objection from the State, it's fine with me.

MR. MEGARO: Thank you.

THE COURT: Do you want to check with him and make sure he understands that?

Do you understand you can leave?

MR. KROUT: What's that?

THE COURT: Do you understand you can leave?

MR. KROUT: Yes, sir.

THE COURT: Okay.

MR. MEGARO: Or stay and watch, either way.

BY MR. MEGARO:

Q **Mr. Arvelo, after you did your legal research and you found out about suppression, did you come to a realization about what could have happened in your case?**

A **Yes.**

Q **Okay. And what is that realization?**

A **That the only -- the only evidence to sustain attempted sexual battery are statements that I made of an intent. There is no actus reus to sustain that charge, and the only evidence to sustain a mens reas (sic) would be the statements that I made.**

And because he offered me help and my -- my -- my statements were made based on his offers of help and the hope that he would give me help that is clear in the transcripts,

the confession could have been suppressed. And upon its suppression, then the State no longer had an attempted sexual battery charge, which is the predicate felony to a kidnapping, which means that they wouldn't have a predicate felony to sustain the kidnapping, which they would have to lessen that or dismiss it, one of the two.

Q **Let me break this all down just kind of bit by bit. When you spoke to Detective Collins, is it fair to say you made some incriminating statements?**

A **Yes, I did.**

Q **Okay. And outside of those statements, from what you reviewed with the evidence, from what you had discussed with Ms. Chien, was there any other evidence that you intended to kidnap the victim with the intent to commit any sexual battery against her?**

A **None.**

Q **Was there any other evidence that you intended to kill the victim?**

A **No.**

Q **Did you tell the police, did you tell Detective Collins that you intended to kill her?**

A **No, I did not.**

Q **What did you say about that?**

A **I told him that my intentions were not to kill her.**

Q **Did you tell --**

MS. WALL: Your Honor, I would object to this whole -- certainly, that would be -- whether there was evidence to prove the elements of the crime or not would be determined by a jury at presentation, and whether he believed it or not may be relevant. But actually what evidence there was really doesn't come from him; it would come from the State, who carries the burden.

THE COURT: I agree. I mean, he can give me his opinion on that, but he's not the one who makes that determination.

MR. MEGARO: No. I know that, Your Honor; but our position would be it's what he was advised, what he knew about what the evidence was and how that affected his decision-making process.

THE COURT: Well, that's fine, but you need to ask it in that fashion, not whether there was any evidence.

MR. MEGARO: Okay.

BY MR. MEGARO:

Q **Given what you knew, your understanding of the charges against you, the evidence against you, was it your understanding, was it in your mind that the State could have proved those charges against you without your statements?**

A **At what time?**

Q **After the fact.**

A **After the fact? After -- after -- after the fact that I**

had studied and I did research upon the law, it became -- it came to my understanding, based on what the law says, that there wouldn't have been sufficient evidence to support the charges without my confession.

Q Okay. Now, before the fact, did you know all this before you pled no contest?

A No, I didn't.

THE COURT: Can we go back and explain to me why you contend there was no evidence of kidnapping?

THE WITNESS: Because, Your Honor, there's no actus reas for an attempted sexual battery. I never committed an act in furtherance of an attempted sexual battery. There was only statements that I made of an intent.

THE COURT: I understand that.

THE WITNESS: So upon that confession being suppressed, there's no longer any intent to support that charge, which leaves no basis, because no one ever -- no one ever accused me, not the victim nor any witnesses, of committing any crime of a sexual nature and I never committed an act of a sexual nature.

THE COURT: But the kidnapping charge wouldn't stand independent of that intent?

THE WITNESS: No, because the kidnapping is kidnapping with the intent to commit a sexual battery.

THE COURT: Well, that can be one kind of

kidnapping, but that's not the only kind of kidnapping. I haven't read the charges.

THE WITNESS: No. Of course. But their -- their -- their predicate felony for that kidnapping, that intent is an attempted sexual battery. So once you withdraw an attempted sexual battery, they no longer have anything to base that upon because there's no sexual battery.

MR. MEGARO: Judge, what I think he's trying to articulate is under Florida law, a regular, for lack of a better term, garden-variety kidnapping is a lesser offense than a kidnapping with intent to commit a sexual battery. It's a lesser-included offense, and I'll flesh this out.

BY MR. MEGARO:

Q Mr. Arvelo, during the course of this incident did you ever tell the victim "I'm going to rape you," or, "I'm going to sexually molest you" or use any words like that?

A No, I did not.

Q Did you ever touch her inappropriately in any parts of her body that would lead --

A No.

Q -- anybody to believe that you were --

A No, I did not.

Q -- intending to sexually molest anybody?

A No, I did not.

Q Did you display any unusual items or objects that would

lead a person to believe that you were going to sexually batter them or sexually molest them?

A **No, I did not.**

Q **Okay. What was the evidence that you intended to sexually assault the victim in this case?**

A **Just the statements that I made to Detective Collins.**

Q **Okay. And were those the same statements that you made to Detective Collins after that hour and a half to two hours of discussion about getting help?**

A **Yes.**

Q **And did part of those discussions about getting help concern your preoccupation with sexual thoughts?**

A **Yes.**

Q **Okay.**

A **I didn't make any incriminating statements until I believed that -- not only that he was going to help me, but that what had happened was a mistake and that speaking about it was part of the helping process, because that's what he told me. That's the only reason why I made any incriminating statements.**

Q **All right. Had all of this been explained -- let me go back for a moment. Were you ever represented by an attorney that did explain to you how suppression works and whether it would have been likely in your case or not?**

A **No, I was not.**

Q **Okay. Did you ever discuss that with any other attorneys?**
A **Yes, I did.**
Q **Okay.**
A **And their basic response in different varying ways was that they would have to look into it and they would get back with me, and they would never say anything about it.**
Q **Okay. Now, do you now understand how a suppression motion works?**
A **Yes, I do.**
Q **Okay. And do you see any value if a suppression motion had been made?**
A **Yes.**
Q **Okay. What's the best-case scenario that you understand that to be?**
A **The best-case scenario would be that upon a suppression, there will be nothing to sustain that attempted sexual battery, and that would mean that there would be no predicate felony for a kidnapping under a crime of a sexual nature.**
Q **Okay. What effect would that have on the charges and the sentence exposure?**
A **It would change my complete sentence, what time I would have been facing.**
Q **For the better?**
A **Yes.**

Q **Okay. Even if a suppression motion had been made and would have been unsuccessful, do you now see the value in that?**

A **Yes. Yes, of course.**

Q **What would be the value in that?**

A **Basically, the -- the -- the same -- the same issues that she argued at the mitigating -- at sentencing that she used for mitigating, she could have used that to -- to -- to set Detective Collins in the statements that he had made once he had testified and used that as a -- a false testimony defense at trial.**

THE COURT: Well, that's an interesting twist on Strickland, but go ahead.

BY MR. MEGARO:

Q **Now -- I'm sorry. I lost my train of thought for a second.**

THE COURT: I'm sorry. I have a habit of doing that to people.

MR. MEGARO: I'm sorry, Judge. The trial judge's last name was -- last name was Strickland, also.

THE COURT: Okay. I didn't know that.

BY MR. MEGARO:

Q **All right. Given what you know now, would you have pled guilty if your lawyer had made a suppression motion?**

A **No, I would -- I would -- I would not have pled.**

Q **What would you have done?**
A **I would have went to trial.**
Q **Okay. Why?**
A **Because there was a probability of a better outcome with the suppressed confession.**
Q **Okay. Even if you had gone to trial and lost, what would you have been able to do?**
A **I would have been able to appeal a lot of -- a lot of things that I was not able to appeal after I had tooken a plea.**
Q **Like suppression?**
A **Yes, which I did not know --**
Q **Okay.**
A **-- at the time I pled, either.**
Q **Was that ever explained to you, that you might have the right to appeal to a higher court --**
A **No.**
Q **-- from the denial of the suppression motion?**
A **No. All that was asked of me was if I knew that I was waiving rights with the plea, and I -- I agreed to it, because it's what she went over with me. She just read it with me and said, "You sign at the bottom," and I signed, basically.**
Q **So now you're doing 60 years in state prison?**
A **Yes, sir.**

Q **In your mind, is that any different than a life sentence?**
A **No, it is not.**
Q **Why not?**
A **I probably won't make it to 81 years old, I think it is.**
Q **Okay. What's your projected release date?**
A **2065.**
Q **How old will you be in 2065, assuming you're still alive?**
A **Eighty-one years old.**
Q **Okay. You might as well spend the rest of your life in prison?**
A **I would have went to trial.**

MS. WALL: Objection, Your Honor. It really has no relevance to -- his release date has no relevance to whether counsel was ineffective for failing to file a motion to suppress.

THE COURT: Sustained.

BY MR. MEGARO:
Q **If you were granted this writ of habeas corpus and you went back to court in Orange County, what would you do differently?**
A **I would seek a suppression of the confession.**
Q **Okay. And anything else?**
A **I would go to trial.**

Q **Okay.**

MR. MEGARO: One moment, Your Honor.

No further questions for Mr. Arvelo at this time, Your Honor. I do have some additional documents that I would like to introduce as evidence. I don't know if the Court wants me to wait for that until later. The State might want to use them to impeach Mr. Arvelo.

THE COURT: Go ahead and do them now, if you want. I don't care.

MR. MEGARO: I know the State has no objection. They have copies. But essentially plaintiff's -- or Petitioner's Exhibit Number 2 would be transcripts of the plea conference dated February 23rd, 2007, before the Honorable Stan Strickland.

Plaintiff's -- or Petitioner's Exhibit 3 would be transcripts of March 9th, 2007, which are the plea proceedings in Orange County.

Plaintiff's -- or Petitioner's Exhibit 24 (sic) would be the sentencing --

THE COURT: 24?

MR. MEGARO: -- dated April 13, 2007.

THE COURT: Excuse me. 24? You said --

MR. MEGARO: Did I say 24? Exhibit 4.

THE COURT: Thank you. So what is it?

MR. MEGARO: Exhibit 4, the sentencing transcripts

dated April 13, 2007.

And Exhibit 5 would be the transcripts of the motion to withdraw plea proceeding, dated August 9, 2007.

THE COURT: All right.

No objection from the State?

MS. WALL: No objection, Your Honor.

THE COURT: All right. Petitioner's 2, 3, 4 and 5 are admitted.

MR. MEGARO: Thank you. May I hand these to the clerk?

THE COURT: Sure.

Ms. Wall, do you have any questions?

MS. WALL: Yes, Your Honor. May it please the Court?

THE COURT: Yes.

CROSS-EXAMINATION

BY MS. WALL:

Q Mr. Arvelo, let's go back to you said in June you broke up with your girlfriend. You had been with her for how many years?

A For about three years.

Q And you broke up with her because you were starting to get physically abusive with her, weren't you?

A No. That's incorrect.

Q You said you were starting to get like your father;

isn't that what you said?
A We were having problems because of my alcohol consumption and drug consumption. I never laid a hand on her.
Q But you were afraid you were going to; isn't that correct?
A No. No, never.
Q You had been using alcohol since you were twelve years old?
A Yes, ma'am.
Q Hard, like almost daily for a year before this happened, correct?
A Yes. Yes.
Q Now, you say you been smoking and using cocaine, but you told the officer you hadn't been using that?
A That was because I was afraid.
Q Could you answer yes or no for me? Did you tell the officer you had not been using drugs that day?
A Yes, I told him I was not.
Q Okay. And you said earlier it's because you were afraid to get in more trouble?
A Yes, ma'am.
Q Afraid --
THE COURT: Wait a minute. You're going to have to slow down. You're starting to ask your next question before

he's finished his answer.

MS. WALL: Yes, Your Honor.

BY MS. WALL:

Q Is that correct?

A Can you repeat the question, please.

Q You said earlier, you testified that you were afraid you would get in more trouble if you admitted to Detective Collins that you had been using drugs as well as alcohol?

A That's correct, yes.

Q Did you think that would get you in more trouble than having choked a woman until she was unconscious and trying to abduct her in your car?

A I believe it would get me into additional trouble.

Q All right. So you started drinking at midnight and you drank -- you said you drank a whole bottle of alcohol except for one last swig?

A Yes.

MS. WALL: Your Honor, you'd like to offer into evidence State's Exhibit 14, a photograph of a Crown Royal bottle. I don't know if a copy is at the witness table.

THE COURT: Let me see it. I don't have anything up here.

Yeah, I'm sorry.

MS. WALL: It would be State's 14.

THE COURT: All right. Hold on.

BY MS. WALL:

Q **Mr. Arvelo, I'm not sure if there's a notebook in front of you that might have some tabs with numbers on it that would also have Number 14.**

THE COURT: I've got it up here.

BY MS. WALL:

Q **Mr. Arvelo, I believe your copy, once you find it, is probably a black-and-white copy, which is not as easy to see, but I think you can still see in the black and white, which I have in front of me, what appears to be probably a third of a bottle of Crown Royal still in the bottle. Can you see that?**

A **I cannot.**

Q **All right.**

MS. WALL: Well, the State would offer that into evidence.

THE COURT: Any objection?

MR. MEGARO: No, Your Honor.

THE COURT: All right. It's admitted.

BY MS. WALL:

Q **You also said that you had actually been drinking all the way up until the time that this happened?**

A **Yes, ma'am.**

Q **I would ask you to look at State's 13, which is another photograph, and ask if that appears to be the Crown Royal bag on the back seat of your car pulled closed?**

A **It is, but I didn't leave that bottle like that.**
Q **So someone planted that bottle there?**
A **It must have been, because I was driving. I was driving and as I drove, I drove with the bottle in between my legs so I could have access to it, so I could drink --**
Q **Okay. Then you --**
A **-- while I drive.**
Q **I'm sorry. But you parked that car, didn't you?**
A **Yes.**
Q **Okay. So you're saying you didn't put -- you didn't close the bottle up and put it in the bag and put it in the back seat? Someone else did that?**
A **No, I did not.**
Q **Maybe the victim did when she was in the back seat?**
A **I could not tell you that.**
Q **So you started drinking at midnight. You drank, like, twelve cans of beer?**
A **I think that was before midnight.**
Q **Okay. So when you got back to your house, you had already had the beer? You got back to the house about midnight?**
A **I had already drunk -- drank about twelve beers.**
Q **So from midnight until about 3:00 you drank whiskey?**
A **Yes.**
Q **And after twelve cans of beer and all that whiskey, you**

were able then to convince your friends to get in a car with you and let you drive them home?

A **Yes.**

Q **So you drove them home and were able to make your way all the way back home without crashing?**

A **There's not a lot of traffic.**

Q **That's a yes?**

A **At 3:00 in the morning.**

Q **Is that a yes?**

A **Yes. Yes.**

Q **And you did this routinely every night, almost five nights a week, at least five nights a week for a year before this happened?**

A **Yes. Yes.**

Q **Now, you went to that parking garage before this episode, didn't you, several times before that?**

A **Yes.**

Q **It was a place you frequented?**

A **Two or three times, yes, before.**

Q **Checking out other women?**

A **Yes.**

Q **Where were you arrested, actually?**

A **In Altamonte.**

Q **Can you be more precise?**

A **I believe it's Forest City Road.**

Q **Where do you live -- where did you live at that time?**
A **In Orlando.**
Q **You didn't -- let me ask you this. Were you arrested right near where your apartment was?**
A **No.**
Q **Where were you going?**
A **I was going to my brother-in-law's apartment.**
Q **And you had walked from the parking garage, hadn't you?**
A **I had ran.**
Q **Okay. So you ran?**
A **Yes.**
Q **From Maitland to Forest City Road?**
A **Yes.**
Q **Now, the events that occurred in the parking garage happened about 7:00 in the morning; isn't that correct?**
A **I couldn't tell you what time it was.**
Q **Okay. You didn't read any of the reports or anything?**
A **That's the approximate time that was in the charging affidavit.**
Q **You were going to do all this before you went to work at 7:00, though; isn't that correct?**
A **No.**
Q **Okay. So you were arrested and you were transported to Maitland Police Department and you said you were afraid?**
A **Yes.**

Q **Afraid because you got caught, correct?**
A **I was afraid because of everything that had happened and because I saw how my life -- everything was out of control.**
Q **Your urges were out of control, weren't they?**
A **My alcohol problem was out of control. My drug problem was out of control.**
Q **And your sexual urges were out of control?**
A **It was all out of control.**
Q **Now, you say that you asked Detective Collins for help. What specifically did you ask Detective Collins for? What help did you ask him for?**
A **I had told him that I had problems and he asked me if I had alcohol problems.**
Q **Okay.**
A **And then I had told him that -- after that, I told him -- I mentioned the thoughts I was having, and he asked me if I had had those thoughts before, and I told him that that's why I needed help.**
Q **Okay. The question was, what help did you ask Detective Collins to give you?**
A **I just asked him for help.**
Q **And what help did Detective Collins tell you he was going to give you?**
A **What it appeared to be was --**
Q **I'm sorry. Specifically, what help did he offer to give**

you?

A He did not make any specified promises of help, but all of his promises of help were unspecified, but he did offer help.

Q And what help was that?

A Well, what I believed was that he was helping me with my mental issues, because he began to discuss with me of how I had been a sexual victim, and when I told him that I had been a sexual victim, he told me that we knew that there was a cause and effect of things and that we knew that the cause was that I had been a victim of sexual abuse at eight years old, and that now what he was trying to do was try and find out what the effect it had, what it had led to.

And I had to remember that what he was trying to do was that he was trying to break that cycle.

Q Okay.

A So that led me to believe that he was providing me mental health treatment.

Q That he was providing you mental health treatment at that moment by listening to you?

A Yes. As if he was -- he was setting the groundwork to present before the judge or the state attorney to find me mental health treatment.

Q But he told you several times he couldn't promise you anything, that he wouldn't make any promises to you, that he

couldn't make any promises to you; isn't that true?

A **He didn't say it several times. He said it once after he read me my Miranda rights, before he offered me help numerous times.**

Q **Now, you had already gone to counseling before, hadn't you?**

A **Maybe three times in my lifetime.**

Q **Is that a yes?**

A **Yes.**

Q **You had also gone to more recently a church that you said had free counseling?**

A **One session, yes.**

Q **Okay. So you yourself had sought out counseling and you knew how to do that, didn't you?**

A **Yes.**

Q **Do you know what "intervention" is?**

A **It's -- it depends in -- in -- in which way you are using the word and what term you are using the word. But when you use it in the sense of -- of helping someone, it's when you step in to aid them with whatever problems they have.**

Q **Isn't "intervention" people who know the person and care about them stepping in to jolt them into realizing they need -- they need to get themselves help? Isn't that what an intervention is?**

A **Not to my understanding.**

Q **Okay. So you thought that an intervention was going to be that agent -- that Detective Collins was going to be your counselor?**

A **No. What I believed was that he was -- he was asking me -- he was asking me the questions to set a ground -- ground for -- in other words, like he was doing a psychoanalysis that he would present to someone who would then take over the case.**

Q **And when did he say he would do that?**

A **It's what it appeared he did --**

Q **He never said --**

A **-- with his offers of help.**

Q **But he never said, ever anything about counseling, that he would get you counseling?**

A **He said he would get me help.**

Q **Did he ever say he would get you counseling?**

A **That's what we were speaking of, were mental issues.**

Q **The question is yes or no. Did he ever say he would get you counseling?**

A **No.**

Q **Did he ever say he would get you treatment?**

A **No.**

Q **In fact, you told him -- he asked you specifically, "Do you have an alcohol problem?" And you specifically said,**

"No, no alcohol problem." Isn't that correct?
A That is correct.
Q Now, you said you testified that during all this you were just devastated. Isn't it true you were devastated because you got caught choking a woman until she became blue --
A No.
Q -- and unconscious and then dragged her in the back of your car?
A No, that's not the reason.
Q Isn't it true that you realized that your urges had gotten so out of control, that you had actually put your hands on a woman and attempted to force yourself on her and drag her away from there?
A Can you repeat the question?
Q Isn't it true that you were devastated because your urges had gotten so much control over you that you had actually gotten to the point of putting your hands on someone to choke them and drag them away and force yourself on them?
A Not that alone.
Q You knew you were in trouble, though, didn't you?
A Yes.
Q And you said that many times, that you were hoping -- you knew you faced big trouble and you were hoping you would ever sometime, maybe ever get to see your stepson and your

fiancée again?

A **I knew I was in trouble. I didn't know to what degree.**

Q **Now, at that time you were talking about Veronica as your fiancée, right? You never said anything about being broken up?**

A **No. He asked me if I had a girlfriend. That was all he asked me, if I had a girlfriend.**

Q **Okay. So you never referred to her as your fiancée or anything like that?**

A **No.**

Q **Okay. Is she the person you called that day at the end of when you finished talking with --**

A **Yes.**

Q **So you were communicating with her?**

A **Yes, because I had tried to call my brother-in-law and I couldn't get ahold of him.**

Q **So at that point, by the time your urges had gotten so much control over you that you had actually acted on them and grabbed someone you didn't know and tried to force yourself on them, you had gotten to the point where you were becoming physically abusive --**

A **No.**

Q **-- based on your urges; isn't that correct?**

A **No, that's not correct.**

Q **Can you tell me exactly what it is that Detective**

Collins said that led you to believe that you had to confess in order to get any kind of help?

A **There were a few things. For one, he had told me -- I was speaking to him about how I had been a victim of sexual abuse; and he told me that when something like that had happened, that someone needed to get help because it was too big to control.**

And I asked him, "How do you control it?"

And he said, "You need to get help. And our brains do thought and reason; and because our brain does thought and reason, we need to get some thought and reason from an outside source," which made me feel that he was speaking of himself because he had offered me help prior to that.

Q **Well, why would he be an outside source? He's sitting right there in front of you.**

A **Because he -- "an outside source" meaning -- because he had -- he had -- he had told me, he said, "Have you ever heard that no man is an island unto himself?"**

So when he said from an outside source, I understood that he was speaking about other than trying to help myself, me, because he said it was too big to control.

Q **So every time I've asked you to identify a specific statement by a Detective Collins where he told you that you had to confess to get help, you can't point to any statement where he said those words?**

A **Yes.**
Q **Okay. So it's your impression that you got from --**
THE COURT: Wait a minute. Wait a minute.
MS. WALL: Well, he sat back. I'm sorry, Your Honor. I thought he was done.
THE COURT: Well, you have to kind of listen as well as watch.
A **I -- I -- I -- I -- where I took the inference of that from was he had told me -- his statement was, he said -- he told me that everybody makes mistakes; and he told me that when we make mistakes, we have two choices: One, we man up; and one, we don't man up. And that when we do not man up, we're in danger of committing the same mistakes.**
Then he said -- he told me, he said, "You have remorse. You're asking for help. The last thing you have to do is just man up."
And I took that as him telling me that I had to speak in order for me to get that help that he was offering me.
Q **And you --**
A **And right after that -- I'm sorry. And right after that was when I told him that I was going to open up, because I believed he could help me and that I wanted the help.**
Q **All right. That brings me to my next question. You testified that you told him that you would only open up to him?**

A **No.**
Q **I believe that's -- am I wrong that you did not state that on direct?**
A **What I stated was I only opened up because I believed that he could help me.**
Q **Okay. So you're not testifying that you told him that you would only open up if he would get you help?**
A **No. I said, "I'm going to open up" --**
Q **Okay.**
A **-- "because I believe you can help me and I want the help."**
Q **Okay. Now, you say that when Detective Collins was talking to you about jail versus prison -- or let me remind you about that part of the interview. Detective Collins never mentioned any kind of program, did he, treatment program?**
A **No.**
Q **Can you -- I think you testified that you thought that you had to make a confession to Detective Collins in order to get bond. Is that what your testimony was?**
A **No. What I believed was that by speaking about what had occurred that day would be part of -- begin the process of getting me help.**
Q **Okay. So your confession wasn't -- your getting bond -- Detective Collins never told you that your bond would be**

based on whether you gave a confession or not; is that true?
A Not directly. Not directly like that.
Q All right. So you said -- you testified that Detective Collins told you to write an apology letter?
A He told me that he was going to afford me the opportunity; but he said that he thought that I should do that, that I should write it to a person that was going to help me understand and cope with the things that I did not understand.
MS. WALL: I would like to admit in evidence, Your Honor, the State's Exhibit Number 6. It's the transcript of the -- it's the State's transcript of the interview.
MR. MEGARO: I think it's already in there, but I have no objection to it.
MS. WALL: It's in our bench book.
BY MS. WALL:
Q If you would, look at Number 6, I believe, Mr. Arvelo, and if you would, turn to page 62.
THE COURT: All right. 6 is admitted.
BY MS. WALL:
Q Did you find page 62, Mr. Arvelo?
A Yes, ma'am.
Q If you look about in the middle -- well, about the top third of the page where Detective Collins says, "Let me ask you this."

A **Yes.**
Q **"I try to do this in every case. Do you want to tell the victim you're sorry? It may not seem important. It may not seem significant." And what did you answer to him?**
A **I told him I would, I do. I would like to take the time, you know.**
Q **So he didn't pressure you to do that at all, did he?**
A **A little underneath that I tell him that I don't feel sure to understand, and that's why I say I would like to take my time.**
Q **That's a yes or no. Do you feel that he pressured you to write a letter to the victim?**
A **I wouldn't say "pressured." I would say that he made it seem that it would be helpful, that it would be helpful and it would benefit me.**
In page 63, at the bottom he says, "Then I think you need to especially tell her, somebody who's going to help you understand what's going on and how to deal with it and cope with it. You know what I'm saying?"
I say, "Uh-Huh."
Q **All right.**
A **I said yes.**
And then on 64, he says, "That has to start."
MS. WALL: Your Honor, at this point that's not responsive. It was a yes or no question, and I'm trying --

THE COURT: Well, they can listen to it, they can brief it or we can argue about it. Let's just move on.

MS. WALL: All right.

BY MS. WALL:

Q **So you did write her a letter, didn't you?**

A **Yes, I did.**

MS. WALL: I would like to admit State's Exhibit Number 8.

MR. MEGARO: No objection, Your Honor. I think it's already in as Petitioner's 1.

THE COURT: Well, we'll admit it again. 8 is admitted.

BY MS. WALL:

Q **If you want to look at it, it's Number 8 in that notebook in front of you. In this letter that's close to a three-page letter to the victim, you told her that you're a person with problems and issues that must be dealt with; isn't that true? Yes or no?**

A **I believe so. I couldn't tell you exactly what was written.**

Q **It's in front of you. Do you have it?**

A **I would have to look through it to see.**

THE COURT: It either says it or it doesn't. Arguing with him about what it says doesn't get us anywhere, Ms. Wall.

MS. WALL: All right.

BY MS. WALL:

Q **If you have not looked at that since you wrote it -- is that correct?**

A **I haven't looked at it in -- no. I've looked at it after I wrote it, but I haven't looked at it in a long time.**

Q **All right. So the fact that there's no mention in here of the police officer making any promises to you or offering help to you, even though you indicated that's what you thought you needed to do?**

A **When he explained to me about the letter of apology, he never -- what he -- what he basically said, explained that it was letting her know what all was going on and what had happened and what I was thinking and things like that. So that's what I based the letter on.**

Q **Let's talk about your representation by Ms. Chien Collin -- Conlon. Pardon me. She's now married. Now, you say that you did not discuss with your counsel any motion to suppress?**

A **No, not at all. When I mentioned it to her, she told me that she didn't believe it could be suppressed.**

Q **Okay. I'm going to try to ask yes or no questions, Mr. Arvelo; and if you would, answer them yes or no. If you need more explanation, if you could, indicate that. And maybe we'll go that route.**

So do you remember writing a letter to you -- to your

attorney in September of 2006?

A Yes, I do.

MS. WALL: I would ask to admit in evidence State's 20.

THE COURT: Any objection?

MR. MEGARO: No. I think that's part of the record, Your Honor.

THE COURT: I don't think I have a complete copy, though.

MS. WALL: That's all the copy that the State got and that's all that was attached. I think the defendant had attached it to his post-conviction motion in state court, and that's the only page that was attached and that's the only page the State is offering.

THE COURT: Well, it's incomplete, but I'll admit it without objection.

MS. WALL: Thank you, Your Honor.

BY MS. WALL:

Q Mr. Arvelo, do you have that in front of you? It's Number 20.

A Yes, I do.

Q Would you take one moment to look at it? It's just one page. If you would, look at it, because I would like to ask you a question about that.

All right. Isn't it true that on September 15th, before

your first meeting with your attorney, you informed her that you thought there may be -- that your confession may have been coerced and that you had been drinking and were under the influence of alcohol?

A **Yes, ma'am.**

Q **All right. Do you remember if you did a sworn affidavit when you filed your federal habeas petition?**

A **Yes, I do.**

Q **Isn't it true in that Affidavit you actually said that your counsel told you that a motion to suppress would likely be denied?**

A **Yes, she told me that she didn't (sic) believe it would -- it would be denied.**

Q **So you did discuss suppression?**

A **When I spoke with her about it.**

Q **Now, you say that you now have come to the understanding that the State can't prove the underlying felony for the kidnapping? Is that your understanding now, without your confession admitting to any sex-related acts?**

A **Yes, ma'am.**

Q **Do you realize that the State could actually amend the information to charge kidnapping with aggravated battery or with robbery or with attempted murder and you would still face a life sentence?**

A **Yes.**

Q **All right. Now, you say that the best-case scenario for you would be that a motion to suppress would be granted and then you wouldn't face any of these sex-related charges?**
A **Exactly. Yes.**
Q **And, therefore, there would be no life sentence? That's your biggest concern, isn't it?**
A **Not necessarily.**
Q **So your biggest concern is no longer the life sentence?**
A **It is, but also the attempted sexual battery and the first degree attempted murder.**
Q **All right. So if you still faced life, even if a motion to suppress was granted, are you telling this Court that you would still insist on going to trial?**
A **Yes.**
Q **You would risk a life sentence?**
A **Yes, because I would not be a convicted sexual offender.**
Q **Even though you would be serving a life sentence?**
A **(No verbal response.)**

THE COURT: That was a yes?

THE WITNESS: Yes.

BY MS. WALL:

Q **You say you have a release date now; is that correct?**
A **Yes.**
Q **If you got a life sentence, what would your release date be?**

A **There would be no release date.**
Q **From the beginning of the interview with Detective Collins, you were upset, weren't you, Mr. Arvelo?**
A **In what way do you use the word "upset"?**
Q **You were crying?**
A **Yes, I was upset.**
Q **You were very emotional?**
A **Yes, I was.**
Q **And from the very beginning of the interview, early in, you initiated talking about help; isn't that correct?**
A **Yes. I told him that -- that all -- that -- he asked me why I thought that we were there, we were meeting that day; and I told him that I hoped, I felt and I hoped that it was because he could help me or that he would help me or -- or find help.**
Q **You even told him you thought that God brought him to you or God brought you to him; isn't that correct?**
A **Yes. That was -- once he had affirmed that help started that day and that he was going to start getting me down the path of help that day and I believed that he was going to help me --**
Q **And you -- I'm sorry.**
A **-- because as I had told him that on my way home, I had ask God for help. So when I told him, obviously, it's because you were appointed by God is because I felt -- I**

believed that he was going to help me and I felt that that was the answer to my prayer was him and how he was going to help me.

Q **So you told Detective Collins that you thought he was appointed by God, didn't you?**

A **Yes.**

Q **And you told him all about how abusive your upbringing was, correct?**

A **Yes.**

Q **About this sexual abuse from your sister, correct?**

A **Yes.**

Q **You told him about how you had tried to get help but nothing really -- it didn't really work?**

A **I told him I felt uncomfortable every time.**

Q **And you talked about your drinking and your drug abuse and you spent a lot of time telling him about those things, didn't you?**

A **Yes.**

Q **And you asked him many, many times or you told him you needed help and acknowledged that you needed help; isn't that true?**

A **Yes.**

Q **Isn't it true that you were the person manipulating that interview, Mr. Arvelo, in order to get the police officer to try to show leniency to you and to minimize your culpability,**

and you actually were in control of that interview from the beginning to end, trying to get as much sympathy from the detective as you could?

A No, that's incorrect.

MS. WALL: A moment, Your Honor.

Nothing else.

THE COURT: Redirect?

MR. MEGARO: Yes, please, Your Honor.

REDIRECT EXAMINATION

BY MR. MEGARO:

Q Did you manipulate Detective Collins?

A No, I did not.

Q Did you get sympathy from him?

A I did. He. . .

Q Don't put that book away. I'm sorry.

A He -- he made me feel like I was a young person who had made a mistake. You know, he made me feel like, hey, you know, you -- you -- you had some alcohol and you made a mistake. You messed up. It happens all the time. And. . .

Q Going back to the manipulation part, what did you get out of that interview?

A Nothing.

Q A 60-year sentence?

A Pretty much, yes.

Q Okay. Do you consider a 60-year sentence a benefit over

life in prison?
A No, sir.
Q What do you think the two are? Are they the same, different?
A They're the same thing.
Q Okay. I want to bring you back to -- I'm sorry.
MR. MEGARO: What was the transcript? Fourteen?
MS. WALL: Sixteen.
BY MR. MEGARO:
Q State's 16 -- 6. I'm sorry. State's 6 in that book in front of you, the transcript, you were asked questions about page 62. Can you turn to page 62 on page six?
A Yes.
Q Okay. And the questions that counsel just asked you about was towards the bottom third of the page, where it says -- you say, "I don't feel she would understand." Can you explain to the Court again why you said those words to Detective Collins?
A Because I felt that she would understand and I wanted to take my time before I decided to write anything.
Q Okay. Did Detective Collins give you time?
A No.
Q Okay. He answered you after you said, "I don't feel she would understand." What's the next thing you said to Detective Collins right after that? Could you read that to

the Judge?
A "That's why" --
THE COURT: Please don't read to me.
MR. MEGARO: Okay. All right. All right.
THE COURT: My time is fairly limited. I can read. I just bought some reading glasses, as a matter of fact.
You can ask him about the response but just don't read to me, please.
MR. MEGARO: Sure.
BY MR. MEGARO:
Q When you said to Detective Collins, "You know, this is overwhelming, you know," is that how you felt?
A Yes.
Q Did you feel overwhelmed the entire interview?
A Yes, I did, because I felt I had lost control of my life. I felt everything was just lost.
I -- I -- I asked him for help in the beginning because I didn't know what direction my life was headed. You know, I -- I -- I knew I had alcohol problems. I knew I had drug problems. I knew I needed help, and he promised me help.
And with what had occurred that day, it was just -- it -- it affected me a lot because I saw how -- how far, you know, I had lost control, and that's why I was asking him for help and, you know, that's why I was crying, because. . .
Q Is it fair to say, you know, without going over

everything all over again, you asked him for help a number of times during the interview, right?

A Yes.

Q All right. And did he say over and over again, "We'll get you help. We'll get you help. Help starts today"?

A No. He told me -- he said it in different ways. He said, "Help starts today." He said, "Today that's what we're going to work on." He said, "That helping process starts today."

He told me the role where I was at was -- he basically told me, you know, was I worried about the embarrassment or did I want the help? Because I couldn't be concerned about the embarrassment and move towards the help.

Q The State asked you some questions about whether Detective Collins had made any specific statements about specific help that he would give you. Do you remember those questions?

A Yes.

Q All right. Without going into the details, what was in your mind? Did you think the man was going to help you?

A I thought he was helping me. The whole time that I spoke with him, I thought that he was helping me, because even when he asked the questions about the description of -- of -- of the victim, he said that he was trying -- that he told me, he said that was part of the helping process. He

was trying to figure out what had been different that day from the other days and that that was part of the helping process.

So all that time I thought that answering his questions was part of getting me help, because his questions were based off of the thoughts that I had been struggling with.

So it all appeared to me to be, you know, like, mental health treatment in nature.

Q Okay. Now, the State asked you before about the letter that you wrote to your prior attorney while you were at the Orange County Jail. Do you remember that letter?

A Yes.

Q All right. And in that letter you told her you were high and drunk at the time of the interview, right?

A Yes.

Q Now, would you consider a letter a discussion or a face-to-face meeting a discussion?

A A face to face.

Q And did you actually discuss it with her --

A I did.

Q -- suppression?

A One time, yes.

Q Okay.

A In which she told me that she didn't believe it could be suppressed because I had basically confessed.

Q **And how long did that discussion about suppression last?**
A **Seconds.**
Q **Okay. After that, it wasn't mentioned again?**
A **No.**
Q **All right. Now, the State asked you also about whether they could recharge you with kidnapping with intent to commit a battery?**
A **Yes, she did.**
Q **They could amend the information?**
A **Yes.**
Q **Did they ever charge you with that?**
A **With?**
Q **Kidnapping with intent to commit a regular battery?**
A **No, they did not.**
Q **Okay. Correct me if I'm wrong, but the battery of the victim occurred before the kidnapping occurred, right?**
A **Yes, it did.**
Q **Okay. So, again, the only thing that would have supported a charge for battery or for kidnapping with a battery would have been --**

MS. WALL: Objection, Your Honor. I don't think he's qualified to answer what would have --

THE COURT: Well, I think you're treating him as a competent lawyer at this point, which I'm not sure you want to do; but I don't think that argument is a very good one.

MR. MEGARO: Okay. I'll move on.

BY MR. MEGARO:

Q **Are there different implications for a person who is convicted of a sex offense than a person who is convicted of a regular offense?**

A **Can you repeat the question?**

Q **You said when the State asked you before about being convicted as a sexual offender or not, is there a difference between being convicted as a sexual offender and being convicted as a regular offender in state prison?**

A **Yes, it is. Yes, there is.**

Q **Okay. What's the difference?**

A **The way that you're viewed, the treatment that you receive.**

Q **Okay. Is it fair to say that people who are serving sentences for non-sex crimes are treated differently in prison than people who are serving sentences for sexual offenses?**

A **Yes, that is true.**

Q **Thank you.**

MR. MEGARO: I have no further questions for Mr. Arvelo, Your Honor.

MS. WALL: No, Your Honor.

THE COURT: All right.

Thank you, sir. You can step down.

THE WITNESS: Thank you, sir.

MS. WALL: I'm sorry, Your Honor.

THE COURT: I'm sorry.

MS. WALL: I'm not sure the State offered into evidence Number 13. I intended to. If it wasn't, I would ask the Court to admit it.

MR. MEGARO: Which one was that?

MS. WALL: That was on the back seat.

MR. MEGARO: I have no objection to State's 13, Your Honor.

THE COURT: All right. Thirteen is admitted.

All right. Any other evidence Mr. Megaro?

MR. MEGARO: Your Honor, the only other evidence would come in the form of documents, which I believe the State has already stipulated to, in the form of the State court file. I have that all here reproduced, and I believe the State has it as well. It's more or less almost everything in the appendix and the State court record.

THE COURT: I mean, if it's everything, we've got it. If it's not everything, I need to know what's not.

MR. MEGARO: It's not everything. It's most things. It would include the transcripts that I've just introduced and there's some additional documents.

Perhaps I should wait, because they're really going to be more relevant to cross-examination of the State's

witnesses.

THE COURT: That's fine. You can reserve your right to put in whatever you want.

MR. MEGARO: Other than that, there are no further witnesses that the Petitioner intends to present at this time.

THE COURT: All right. Let's hear from the State.

I have a trial tomorrow, and by 4:00 I have to adjourn and start getting ready for that trial.

MS. WALL: Your Honor, I have three witnesses: the former trial counsel, the interviewing police officer, and the prosecutor who handled the case.

I'll be candid with the Court. The only -- I have very few questions I would ask the police officer, very few questions of the prosecutor. Probably the trial counsel would be a little bit longer but not. . .

THE COURT: Let's see how far we get.

MS. WALL: All right. It would depend on cross-examination as far as trial counsel, I think.

THE COURT: I understand.

MS. WALL: I would call, if the Court's asking for the State's case --

THE COURT: Yes, it's time for your evidence.

MS. WALL: I would call Catherine Chien Conlon, please, to testify.

THE COURT: Okay.

THE COURTROOM DEPUTY: Please come forward, ma'am, to be sworn. Come on way up front here, please. Please raise your right hand.

Do you solemnly swear or affirm under the penalty of perjury that the testimony you will give will be the truth, the whole truth and nothing but the truth?

MS. CHIEN CONLON: Yes.

CATHERINE CHIEN CONLON, RESPONDENT'S WITNESS, SWORN

THE COURTROOM DEPUTY: Thank you, ma'am. You may be seated. Once seated, please state your name into the microphone for the record and spell your last name.

THE WITNESS: My name is Catherine Chien Conlon. Last name Conlon, C-o-n-l-o-n.

DIRECT EXAMINATION

BY MS. WALL:

Q **Ms. Conlon, we have been referring to you as Ms. Chien. Do you prefer Collins -- or Conlon? I'm sorry. Conlon?**

A **Yes, please.**

THE COURT: Go by her Irish name.

MS. WALL: You can tell.

BY MS. WALL:

Q **All right. You did represent the defendant at the trial level?**

A **Yes.**

Q **Let me first ask you, how long have you been practicing law?**

A **Since 2003.**

Q **Has your entire time as a practicing lawyer been as a criminal defense attorney at the Public Defender's Office in Orange-Osceola?**

A **Yes.**

Q **All right. Do you remember getting a letter from the defendant before your first meeting with him, a handwritten letter? I'm referring to State's Exhibit Number 20 and it should be in that notebook in front of you.**

A **I believe this is a letter I received from Mr. Arvelo.**

Q **All right. And do -- I could have you sit here and read it. I would ask you actually if you just read the first few lines, there is reference to his concern about the voluntariness of his confession and some reference to alcohol.**

A **I see that.**

Q **All right. Let me ask you, have you been able to review your file from this 2006 case that you had in the Public Defender's Office?**

A **No, we were not able to locate that file.**

Q **All right. So you don't have the benefit of your actual notes and your file to help refresh your recollection for this?**

A **Correct.**

Q **Well, so it appears that at some point, since the letter makes reference to Mr. Arvelo having received a letter from you, that you came into this case in September of 2006. Would that be accurate?**

A **Yes.**

Q **And do you remember your first meeting with the defendant?**

A **No, but I testified at a motion to withdraw a plea hearing. So whatever -- I had the file at that time. So whatever dates I gave, that would be accurate.**

Q **All right.**

MS. WALL: I would like to turn then to State's Exhibit Number 1 and ask to admit it. It would be the plea conference that took place on February 23rd, 2007.

MR. MEGARO: That's fine by me, Your Honor. It's already in.

THE COURT: All right. We'll admit it again as. . .

MS. WALL: If it hasn't been admitted or if it's admitted, we would just refer to. . .

THE COURT: Respondent's 1.

MS. WALL: Okay.

BY MS. WALL:

Q **So if you would look at page four -- I'm sorry.**

MS. WALL: I said the wrong thing, Your Honor. The motion to withdraw plea. I'm not looking at the plea conference. I'm looking at the motion to withdraw plea, which would be the State's Number 4. Is that admitted yet?

MR. MEGARO: Do you mean my Number 4?

MS. WALL: No. State's Number 4, motion to withdraw plea, August 9, 2007.

THE COURT: I don't think it's been admitted, has it?

MS. WALL: I would offer it. It's numbered as State's Number 4, motion to withdraw plea hearing transcript, August 9, 2007, and that be would 4.

MR. MEGARO: Again, it's already in, but I have no objection to it coming in again, Your Honor.

THE COURT: We'll admit it as Respondent's 4.

BY MS. WALL:

Q **So I would ask you then if you'd find Number 4 and turn to page 22. So by. . .**

A **Okay.**

Q **So you've testified that at the time of this hearing, you did have your notes, and so your testimony at this hearing would reflect the times that you met with the defendant and what occurred?**

A **Yes.**

Q **All right. So according to this, when you met with him**

the first time, you did talk about the charges and the penalties and the elements? If you will, look at the bottom of page 22.

A **Yes.**

Q **And you asked him to tell you his version of the events?**

A **Yes.**

Q **All right. Do you remember what -- let me ask you what -- do you have an independent recollection of that visit?**

A **No.**

Q **All right. So your routine practice, I'd like to address that. When you meet with a client, is it your routine practice to discuss the charges and the elements and the potential penalties?**

A **Yes.**

Q **So if you testified to that at this hearing, do you have any reason to believe that you did not discuss all of that with the defendant when you met with him?**

A **No.**

Q **All right. Do you remember what he was faced with, what the charges were?**

A **Yes.**

Q **What was your biggest concern of those charges?**

A **The PBL, Count One.**

Q **Which was?**

A **Kidnapping with intent to commit a felony.**

Q **All right. Now, while the information, the actual body of the information did charge, to wit, sexual battery, did that have to be alleged in the information? In other words, could the State charge kidnapping with intent to commit a felony without alleging what the underlying felony is?**

A **I think they could have -- they would have had to show something at trial, like a felony at trial.**

Q **All right. Would attempted -- or would attempted first-degree murder have been a felony that would support the life sentence for kidnapping?**

A **Yes.**

Q **Would aggravated battery have supported a life sentence for kidnapping?**

A **Yes.**

Q **All right. So did the defendant have the same concern that you did about the kidnapping charge?**

A **Yes.**

Q **Did he also have concerns about any other charges?**

A **When I reviewed the motion to withdraw plea, I think it was mentioned that he had an issue with the attempted first-degree murder.**

Q **All right. What penalty was the maximum penalty for that as charged?**

A **Thirty, I believe.**

Q **Okay. So you met him later on in November. If you'll**

look at page 23, it also says you met him in November at the jail.
A Yes.
Q And explained his options of either a plea conference or a trial. Do you remember anything about more extensively -- do you have an independent recollection of what that discussion was?
A No.
Q All right. So you told him what the State's offer was, right?
A Yes.
Q Do you remember what the State's offer was?
A It was life.
Q Do you remember how that was presented to you?
A It was an e-mail.
Q And do you remember how the State typed in the offer of what -- the sentence the State was offering?
A Yes. She capitalized l-i-f-e.
Q Did you feel that the State had a strong case?
A Yes.
Q Did you feel that the State was not going to be open to any compromise of the charges?
A Yes.
Q All right. Do you remember discussing with the defendant any basis for a possible motion to suppress his

statement?

A **I have this vague recollection where prior to visiting him at the jail, that I had done some research about whether or not he was so intoxicated, that there would be a good basis for a motion to suppress.**

Q **So you did some legal research into the grounds to move to suppress based on intoxication that may make a statement involuntary?**

A **I have a vague recollection of that. I can't think of any other case where that was the issue. So I have a vague recollection of that and discussing that I didn't think that the criteria could be met.**

Q **Why would that be? Because he -- let me ask you this. Had you reviewed the video of the interview at that point?**

A **I don't recall what I had. Whatever the State had provided to me in discovery is what I would have reviewed.**

Q **So you discussed -- you don't have -- let me see if I get this correct. You don't have a clear recollection of actually discussing it with the defendant, but you do remember researching the issue?**

A **I have a vague recollection of it. I don't -- I think it was in this case; but in all fairness, I don't remember.**

Q **All right. So you discussed -- when you got the State's offer and you discussed it with the defendant, did you discuss with him the possibility of trying to get a mitigated**

sentence?

A **Yes.**

Q **Would that be a downward departure sentence? Is that what you were referring to?**

A **Yes.**

Q **Do you remember what you did to try to do that? Did you contact a Dr. Ming?**

A **Yes.**

Q **And what did you -- who was Dr. Ming?**

A **I hired him to evaluate the defendant for mitigation purposes to see if he could identify any issues that the defendant had so that it could provide grounds for a downward departure.**

Q **What kind of doctor is Dr. Ming?**

A **A psychologist.**

Q **All right. And did you bring Dr. Ming to the defendant prior to the motion to withdraw or the plea conference?**

A **Yes. Well, I didn't bring him. Dr. Mings visited with Mr. Arvelo because at the motion -- at the plea conference, I discussed what Dr. Mings could base a downward departure on. So in order to do that, he would have had to have interviewed Mr. Arvelo beforehand.**

Q **So you know that by your testimony at the motion to withdraw plea?**

A **At the plea conference.**

Q **At the plea conference you did mention Dr. Ming?**

A **Yes.**

Q **So you know by that, that he had already evaluated the defendant?**

A **Yes.**

Q **All right. And while we're referring to that plea conference where you mention Dr. Ming, that would be -- that would be the plea conference on February 23rd, 2007. The State has it marked as State's Exhibit Number 1, but I'm not sure if the defense has already admitted that as a different exhibit.**

MR. MEGARO: It's in my pre-plea conference as Number 2.

MS. WALL: I think he just said Number 2, Judge. I don't know if it's been admitted, but the State would like to refer to it.

THE COURT: Number 2?

MR. MEGARO: I believe the pre-plea conference, Your Honor, the transcripts are Petitioner's 2.

THE COURT: Okay.

BY MS. WALL:

Q **That would be in that notebook Number 1, in that notebook that you have, Ms. Conlon.**

THE COURT. This is the March 9th proceeding?

MS. WALL: No. I'm sorry, Your Honor. That's the

plea conference on February 23rd, 2007.

THE COURT: Well, that's not your 2, then. You are going to have to give me the right numbers.

MS. WALL: It's the State's Number 1, but I think counsel just said that he had already admitted it as his Number 2.

THE COURT: All right. I'll admit it as State's Number 1, then, so we can at least make it as confusing as possible.

MS. WALL: I'm sorry, Your Honor.

BY MS. WALL:

Q So have you found Number 1 --

A Yes.

Q -- the conference?

If you'll look at page number four, a little past the middle of the page, where you advised the court that Dr. Ming does not find anything that rises to the level of insanity, but that he basically found that the defendant had trouble controlling his urges. I'm kind of paraphrasing there.

So did you, in fact, consider and investigate whether or not you could present an insanity defense?

A I don't remember. I mean, I think that Dr. Mings looked at whether or not it rises to the level of insanity. That's what -- it was a defense expert.

Q So you also pointed out to the trial judge that the

substance abuse and the basically, for lack of a better term, diminished capacity might form the basis of a downward departure for the defendant? Would you say that that's what you were arguing?

A Yes.

Q Did you also attempt to characterize the events, the criminal events as an isolated incident and committed in an unsophisticated manner for which the defendant had remorse, which is one of the statutory mitigating or downward departure grounds?

A Yes.

Q And you presented that to the judge at this plea conference; is that correct?

A (No response.)

Q Let me ask it this way, since you don't recall. Was that the point of the plea conference, to present possible downward departure reasons to see if the trial court might agree to that?

A Yes.

Q Do you remember what the trial court decided or informed you?

A He would not downward depart.

Q Was there also a discussion about the trial date at that hearing? That would be at the very last few pages, I think, if you look at that.

A **I think, so because I remember reading a March 12th.**

Q **All right. So if this hearing took place on the 23rd and trial had been set for the 12th, it was on a trial docket to actually go to trial on the 12th?**

A **I -- I think so.**

Q **All right. Were you ready to go to trial at that time?**

A **Yes.**

Q **Had you conducted any depositions?**

A **Yes.**

Q **Do you remember how many?**

A **Because I didn't have the file, I asked to see the State's file and notes; and according to her notes, there was ten depositions that were done.**

I called the court reporters' office as well, and they had 16, but that might be -- they might be mistaken. However, their files had been destroyed December 2013.

So I think I took all the depos and they were completed by the end of December of 2006.

Q **Okay. So you had taken depositions even before February of 2007, before this hearing?**

A **Correct.**

Q **Did you also utilize the Public Defender's Office investigators to look into the defendant's personal background?**

A **Yes.**

Q **Question family members?**
A **Yes.**
Q **Looked into his school records?**
A **Yes.**
Q **Possible other counseling records?**
A **I believe so. I don't think I have an independent recollection of that.**
Q **All right. But is it fair to say that you did -- utilized investigators to investigate and prepare a case that would get the best sentence for the defendant?**
A **Yes.**
Q **Was your biggest concern from the beginning the possible life sentence that the defendant faced?**
A **Yes.**
Q **So you advised the defendant to enter a plea to the court and ask the court for a less-than-life sentence; is that correct?**
A **Yes.**
Q **And he did, in fact, enter a plea?**
A **Yes.**

MS. WALL: State's Exhibit Number 2 is the March 9, 2007, plea. If it's not already admitted, the State would ask to admit it.

MR. MEGARO: I think the plea proceeding is in as Petitioner's 3, but I have no objection.

MS. WALL: That's fine. I have no specific questions about that except that he did enter the plea after a full plea colloquy and --

THE COURT: Do you want to give me a chance to rule on the admissibility?

MS. WALL: I'm sorry, Your Honor.

THE COURT: It's admitted.

MS. WALL: Thank you.

BY MS. WALL:

Q **So after the -- after he entered his plea, the court allowed a full month before a sentencing hearing, which was on April 13th?**

A **Yes.**

Q **Okay.**

MS. WALL: The State then would turn to State's Exhibit Number 3, the sentencing hearing on April 3rd, 2007, and would ask that to be admitted.

MR. MEGARO: I believe the sentencing is my 4, Your Honor; but, again, it's fine by me.

THE COURT: Okay. Your 4, her 3, admitted.

MS. WALL: Thank you.

BY MS. WALL:

Q **You presented some witnesses at that hearing; is that correct?**

A **Yes.**

Q **Among those witnesses, you presented the defendant's sister?**

A **(No response.)**

Q **I could give you a page number if you. . .**

A **Oh, his sister, yes.**

Q **His sister. And do you remember whether his sister testified about the sexual abuse that had occurred?**

A **Yes.**

Q **You also presented his mother to testify; is that correct?**

A **Yes.**

Q **Do you remember if his mother talked about how bad the home life was?**

A **Yes.**

Q **Did you also call Veronica Matias?**

A **Yes.**

Q **Do you know who she was?**

A **Mr. Arvelo's girlfriend/fiancée.**

Q **Do you know whether they were together at that time?**

A **I think so. I don't have an independent recollection.**

Q **Did you present the testimony of Dr. Ming?**

A **Yes.**

Q **Do you remember what Dr. Ming testified?**

A **Everything that's in the transcripts.**

Q **All right. You don't have a recollection other than**

what's in the transcript?

A **Correct.**

Q **All right. So is it fair to say that after he entered his plea, you conducted a fairly lengthy sentencing hearing and presented mitigating testimony in an attempt to get a downward departure?**

A **Yes.**

Q **Did you believe there were any defenses available to the defendant for any of the crimes charged?**

A **I think the State had a strong case. If we had gone to trial, like I usually tell the clients, you know, there's usually two defenses in most cases: Either you didn't do it or the State can't prove its case beyond a reasonable doubt, and a sex case consent would be a third.**

Q **All right. Did you think that there was any question about consent in this case?**

A **No. I think the State could have -- I think it would have -- I think the State could have shown that there was no consent.**

Q **All right. So there was -- you did -- you may have looked into insanity by use of Dr. Ming, and you had mentioned that you have a vague recollection of looking into a possible intoxication to find his statement involuntary?**

A **Yes.**

Q **Is intoxication an available defense to any of the**

crimes charged?

A **No.**

Q **And why is that?**

A **You can't use it in Florida.**

Q **Is that because there's a statute that says that intoxication cannot be used to eliminate the necessary intent for any crime?**

A **Correct.**

Q **All right. So the extensive use of the defendant's alcohol and/or drugs, would that have provided him any defense whatsoever?**

A **No.**

Q **Was there -- did you see any possible defense to the kidnapping charge, regardless of what the underlying felony was the State was going to try to prove?**

A **No. I mean, it would have been whether or not the State could prove it; and from the discovery and depositions, I knew what the officer and what the victim was going to say.**

Q **And what was that?**

A **She didn't voluntarily go into Mr. Arvelo's car.**

Q **And isn't that because she was unconscious at the time she was put in the car?**

A **Yes.**

Q **The aggravated battery charge, did you see any possible defense to the aggravated battery charge?**

A **No.**
Q **Did you review the discovery that showed photographs of what the victim looked like as a result of the defendant's actions?**
A **I'm pretty sure the State provided it to me and I would have reviewed it.**
Q **Would manual strangulation to unconsciousness have qualified as an aggravated battery?**
A **Yes.**
Q **Did you think in your professional experience that manual strangulation while watching the victim turn blue and unconscious would amount to an attempted first-degree murder?**
A **Yes, I think it would have gone to the jury.**
Q **Is that because premeditation can happen in a split second and it would be up to the jury to determine that?**
A **Yes.**
Q **So you really could not think of any defenses that were available for the charges?**
A **Right. I mean, there's always -- you can still go to trial on whether or not the State can prove it; and I would have explained, you know, how I thought the State might be able to prove it.**
Q **Do you remember whether you did explain that?**
A **I'm pretty sure I did, especially, like, I think, in the -- when I -- at the motion to withdraw plea, I had said that**

I went over the elements and that -- and then another date I went over the discovery.

Q **Let me ask it this way. Was it your routine practice once you had the discovery, in light of what was charged in the information, would it have been your routine practice to discuss the elements and what evidence the State had to support those elements?**

A **Yes.**

Q **All right. If -- let me give you a hypothetical. If you had moved to suppress the confession or, for some reason, the defendant's confession had been suppressed and was no longer going to be available as evidence, did the State have evidence to support a charge of kidnapping with intent to commit robbery, aggravated battery or murder?**

A **Yes.**

Q **If the kidnapping was charged with any of those felonies, was the defendant still facing a life sentence if he was convicted?**

A **Yes.**

MS. WALL: I think that's all I have, Your Honor.

THE COURT: All right. While he's taking notes, with respect to the suppression issue, I guess two questions: One, how did you view the significance of the confession to the State's case; and, two, what was the down side of not filing a motion to suppress?

THE WITNESS: So the first question is?

THE COURT: What was the significance of the confession --

THE WITNESS: Okay.

THE COURT: -- to the State's ability to prove its case; and, two, what was the down side of not filing a motion to suppress? I mean, why wouldn't you just do that, unless there's a down side to it?

THE WITNESS: As far as the first question, as you know, what was the significance of his confession, I remember that there were other items that were found in the car, which was the lubricating jelly and the -- I guess there was an empty box of condoms. So. . .

THE COURT: Okay. So that would be independent evidence of the mens rea or motive for the kidnapping, even if you eliminated the confession?

THE WITNESS: Right.

THE COURT: Okay.

THE WITNESS: And the second question, as to what was the down side of filing a motion to suppress?

THE COURT: I mean, if you were counsel for him at trial and you had to try this case, wouldn't you be a lot better off not having that confession in front of the jury?

THE WITNESS: Yes.

THE COURT: So why didn't you try?

THE WITNESS: Why didn't I try it?

THE COURT: Yes. What was the down side --

THE WITNESS: He --

THE COURT: -- other than your time?

THE WITNESS: Well, he didn't -- my recollection was that he didn't want to risk going to trial and facing that possible life sentence after trial, because I think after the testimony of the witnesses, the judge could have -- and if there was a conviction, then the judge could have given him life; and the judge could have heard more evidence through what he had at either the plea and sentencing.

THE COURT: Well, I think what you're telling me is that by the time the suppression issue was ripe between you and your client, he had already decided he would rather plea than take a chance at trial, even if the confession were suppressed? That's what you're trying to tell me, I think.

THE WITNESS: I think I had a discussion with him about the motion to suppress. I guess I didn't think that it was likely to be granted.

THE COURT: I understand that.

THE WITNESS: Okay.

THE COURT: But if a confession is significant to your client's case, which I think in this case it was at least significant, I don't understand the down side of not filing it and I don't think you've told me one.

(A pause.)

THE WITNESS: I don't think I have an answer as to why I did not do it.

THE COURT: Okay.

Cross?

MR. MEGARO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MEGARO:

Q **Mrs. Conlon, right?**

A **Uh-huh.**

Q **Good afternoon. I have some questions.**

MR. MEGARO: Your Honor, at this time, before I begin, I would like to introduce Petitioner's Exhibit Number 6, which is one of the documents from the Orange County Court file. I believe there's no objection from my adversary.

THE COURT: Okay.

MR. MEGARO: May I offer that at this time?

THE COURT: Sure.

Any objection?

MS. WALL: No, Your Honor.

THE COURT: All right. We need to take a break. Let's take about a ten-minute break. And whatever documents you want in, get with the State and if there's no objection, Lisa can handle it.

MR. MEGARO: Certainly.

(Recess taken from 2:46 until 2:56 p.m.)

(Petitioner's Exhibit 6 is admitted without objection of the Respondent.)

THE COURT: All right. Be seated.

Let's continue, please.

MR. MEGARO: Thank you.

BY MR. MEGARO:

Q Mrs. Conlon, you've been a defense lawyer for how long?

A Since 2003.

Q Okay. Is it fair to say in 2006 this was not the first felony case you had had at the Orange County Public Defender's Office, correct?

A Correct.

Q Okay. And is it fair to say that this was not the only case in which you had a client that had confessed to police?

A Correct.

Q Now, you know from your experience that a client's confession is very frequently the worst evidence against them, right?

A Yes.

Q This case was no different, right?

A There was -- well, yes.

Q In this case, there was a three-hour video- and audio-recorded statement that Mr. Arvelo had given to the

Maitland Police confessing full out that he had committed these crimes, correct?

A **Yes.**

Q **Now, you said that you had reviewed the discovery that was provided to you by the State, right?**

A **Yes.**

Q **So you knew what was in the police reports, correct?**

A **Yes.**

Q **You knew what the victim had told police had occurred to her at that parking garage?**

A **Yes.**

Q **And it's fair to say that at no time did the victim ever tell police that Edwin Arvelo did anything that would have suggested an intent to commit any sex offense towards her?**

A **Correct.**

Q **And you would agree with me that an empty condom box in a car does not in and of itself prove a sexual intent, correct?**

A **Yes.**

Q **You would agree with me that the lubricating jelly in the presence of his car did not automatically prove that he had an intent to commit a sexual battery, correct?**

A **Yes.**

Q **So you knew that the main evidence against Mr. Arvelo with respect to the sexual battery was his own statement to**

the police, right?

A **Yes.**

Q **And he was also charged with attempted murder in the first degree, right?**

A **Yes.**

Q **And that was because of the allegation that he had choked the victim until she became unconscious, right?**

A **Right.**

Q **Now, it's fair to say that this is not the only case in which you had a client who is charged with choking out a victim, right?**

A **Right. Well, I don't know if at the time this was the only case where the defendant choked out the victim.**

Q **Okay. But in general, you've had cases where a defendant choked out a victim, correct?**

THE COURT: Not prior to this, she said. She didn't know.

A **I don't know.**

Q **Since?**

A **I mean, I'm trying to think of individual cases really fast as far as whether or not someone has been choked out. I can't think of one right off the bat right now.**

Q **Have you ever in your career had a case where a defendant choked, not necessarily unconscious, but choked a victim?**

A **Yes.**
Q **And I've just described for you a lot of domestic violence cases, correct?**
A **Yes.**
Q **Now, in those domestic cases, in all those cases you've had where a defendant choked a victim, how many of them were charged with attempted first-degree murder?**
A **Not all of -- not all of them.**
Q **Very few, right?**
A **Right.**
Q **Because just -- you would agree with me that just choking a person doesn't necessarily mean that they intend to kill them, right?**
A **Right.**
Q **And just choking a person doesn't necessarily mean that they had a premeditated intent to kill that person, right?**
A **Yes.**
Q **Otherwise, most of those domestic violence cases would probably be charged as attempted first-degree murders, right?**
A **Yes.**
Q **And you would agree with me they would be grossly overcharged, right?**
A **Yes.**
Q **Okay. So in this case, in Edwin Arvelo's case, just the fact that he choked the woman did not necessarily mean to you**

that he intended to commit a first-degree murder?

A **Correct.**

Q **And as a matter of fact, Edwin Arvelo told the police in his recorded statement that he did not intend to kill her, correct?**

A **Yes.**

Q **You would agree with me that that statement that he gave to the police could have formed evidence for you to use at trial at least against the attempted first-degree murder charge, right?**

A **Yes.**

Q **You could have argued to a jury, "Ladies and gentlemen, he told the police that he didn't intend to kill her and he didn't kill her. Therefore, he's not guilty of this crime"?**

A **Right.**

Q **And I think you told the Court before or the State that that could have been submitted to a jury, right?**

A **Yes.**

Q **Now, in this particular case, you had an audio-recorded statement and a video-recorded statement of the interview with Edwin Arvelo, correct?**

A **Yes.**

Q **Did you listen to the entire video?**

A **I don't remember. Whatever I was given by the State is what I looked at and reviewed.**

Q **Do you have any independent recollection of ever listening to the entire audio?**

A **No, I don't have an independent recollection.**

Q **Did you ever read the transcript of the audio recording?**

A **If the State provided it, I reviewed it.**

Q **But as you sit here today, you have no independent recollection of whether you did that or not?**

A **No.**

Q **Did you ever send out any audio recording or video recording for transcription by your own court reporter service?**

A **No.**

Q **Did you ever submit the audio or video recording for any expert analysis to see if maybe it had been tampered with or edited in any way?**

A **No.**

Q **Did you ever submit the audio or the video to any forensic psychologist for review?**

A **The only person I would have given it to would have been Dr. Mings, and I don't remember if I did that or not.**

Q **You have no recollection of whether you gave Dr. Mings the audio?**

A **I have no -- I don't remember.**

Q **Okay. Now, I want to draw your attention to Petitioner's Exhibit 2. Is that before you?**

A **Yes.**
Q **Okay. And that's the transcripts of the plea conference before Judge Strickland on February 23rd, 2007?**
A **Yes.**
Q **Now, that was an informal plea conference, correct?**
A **Yes.**
Q **And at that plea conference, you told the court that you had calculated Mr. Arvelo's score sheet under the Florida sentencing guidelines, correct?**
A **The State gave me the score sheet. So I brought it up to the judge as to what the bottom of the guidelines were.**
Q **Okay. And, well, did you independently calculate Edwin Arvelo's possible guidelines before you went into court on February 23rd, 2007, or did you just work off what the State had given you?**
A **I worked off what the State had given me, just to make sure the charges were correct.**
Q **Okay. Now, at that plea conference, if you look on page two at the bottom, lines 22 through 24, you told the court that you would be requesting a downward departure in this case, right?**
A **Yes.**
Q **And you also said that you had done some investigation, you had spoken with Arvelo's family members and found his records, and you had submitted all those records to Dr. Mings**

for forensic review?

A **Yes.**

Q **Now, at this point, as you testified before, you retained Dr. Mings solely for the purpose of preparing a mitigation report for the Court in aid of sentencing, correct?**

A **Yes.**

Q **Okay. No other purpose, right?**

A **Correct.**

Q **While you were at that February 23rd, 2007, hearing you went through Edwin Arvelo's childhood, his family history, his substance abuse history, his mental illnesses, all of those things -- if you look through pages three, four -- right?**

A **Yes.**

Q **And even into page five, correct?**

A **Yes.**

Q **Now, isn't it a fact that you had retained Dr. Mings the day before, on February 22nd, 2007?**

A **I don't think so, because it said that -- I think it said that he was interviewed.**

Q **Do you remember when you retained Dr. Mings to provide this mitigation report?**

A **No.**

Q **Do you have an idea of how long it was prior to the plea**

hearing -- I'm sorry -- prior to the sentencing hearing?

A **I don't remember, but if I was -- if I had a plea conference that was set and I presented what Dr. Mings would testify to, there's no way I could have just gotten him that day to do a evaluation the day before.**

Q **I'm going to ask you to take a look at Petitioner's 4, which is the sentencing transcripts dated April 13, 2007; and, if you would, turn your attention to page 36 of that transcript.**

THE COURT: Are you talking about the bottom pages or the top pages?

MR. MEGARO: I'm sorry. I'll rephrase that.

BY MR. MEGARO:

Q **I'll ask you to take a look at Petitioner's 4, page 35, lines 24 through 25.**

THE COURT: But there's two numbers on mine; there's a top number, which is page nine, and there's a bottom number, page 36. I'm trying to find out which number you're referring to.

MR. MEGARO: I believe you're referring to the Bates stamp, Your Honor. The top right corner of the transcript is the page number that I'm referring to.

THE COURT: So it's page what?

MR. MEGARO: Thirty-five, lines 24 through 25.

THE COURT: Thank you.

MR. MEGARO: And then into page 36, lines one through three.

A **Okay.**

Q **Now, you've read that portion?**

A **Yes.**

Q **Isn't it a fact that Dr. Mings testified that he interviewed and evaluated Edwin Arvelo on February 22nd of 2007?**

A **Yes.**

Q **Okay. So when you appeared at the February 23rd, 2007, pre-plea hearing before the same judge, Dr. Mings had interviewed him the day before, prepared a report and communicated those reports to you so that you could report them to the court the following day, all in 24 hours?**

A **I retained him prior to February 22nd. I believe that was your question. But we had done an investigation; and any documents we would have had, I would have sent it to him.**

And I don't know if he did a report. He probably called me the on phone.

Q **You have no independent recollection of that phone call, do you?**

A **Correct. I don't have an independent recollection.**

Q **But it's your understanding that Dr. Mings first saw him on February 22nd, the day before the pre-plea hearing, correct?**

A **Yes.**
Q **So when you retained Dr. Mings to prepare a presentence -- or a mitigation report in aid of sentencing, the decision to enter a plea had more or less been made, correct?**
A **Yes.**
Q **Because you wouldn't order something like that unless you were going to need it for sentencing, right?**
A **Right.**
Q **And you weren't going to need it for sentencing unless there was going to be a conviction?**
A **Right.**
Q **Okay. And as you said before, trial was not the way that you wanted to go in this case and you said trial was not the way that Mr. Arvelo wanted to go?**
A **Right.**
Q **Now, in this case, you said the State was not open to any compromise?**
A **Correct.**
Q **Did you try to negotiate a plea with the State?**
A **I don't remember if there was any negotiating, because to me, she was very clear in what the offer was.**
Q **Okay. So the first offer was life without parole, right?**
A **Yes.**
Q **And did you ask the state attorney for less?**

A **I don't recall.**
Q **It's possible that you didn't?**
A **It's possible.**
Q **And if they weren't going to budge off life without parole -- well, let me back up.**
You knew that, based on what he was charged with, he could be facing life without parole?
A **Yes.**
Q **So the choice was plead guilty and get life without parole, according to the State's offer, or go to trial and possibly get life without parole, correct?**
A **Yes.**
Q **You also said that there were possible trial defenses in this case, correct?**
A **Yes.**
Q **And you told the Court before there were only three defenses that you could see: One, the defendant didn't commit the crime; two, the State couldn't prove it beyond a reasonable doubt; or, three, that in a sex case, the victim consented, right?**
A **Right.**
Q **Which if there's consent, that would kind of be the same thing as number one? You didn't do it, right?**
A **Right.**
Q **Have you ever gone -- have you ever had a case where you**

believed your client was guilty of a lesser-included offense but not the actual charged offense?

A **Yes.**

Q **Isn't that a possibility in almost every case, that the State might not be able to prove the top count but might only be able to prove a lesser-included?**

A **Yes.**

Q **This case wasn't any different than that, right?**

A **Yes, it was possible.**

Q **Okay. So given what we talked about earlier, it was possible that Edwin Arvelo might have gone to trial and not been convicted of a sexual battery or not been convicted of attempted first-degree murder, correct?**

A **Yes.**

Q **And not been convicted of kidnapping with intent to commit a sexual battery?**

A **Yes.**

Q **You also said before that the State possibly could have amended the charges to charge him with a kidnapping with some other felony?**

A **Right.**

Q **What other felony would that have been that would have made him subject to a life sentence?**

A **There is the aggravated battery. They could have charged -- even though it was an attempted first-degree**

murder, they could have charged attempted second.

Q **And the same defense to attempted second-degree murder, the same defense as attempted first-degree murder, correct?**

A **Right.**

Q **Just the choking itself doesn't mean that he intended to kill anybody, right?**

A **Right.**

Q **Now, in this case the battery occurred prior to the actual kidnapping, correct?**

A **Yes.**

Q **So without his statement, it would have been difficult for the State to charge Edwin Arvelo with attempt to commit another felony if the other felony had already been completed prior to the kidnapping; wouldn't you agree?**

A **Yeah, it would be difficult.**

Q **Okay. And in that situation, he might go to trial and be found guilty only of kidnapping but not with kidnapping with intent to commit another felony, right?**

A **Right. But he was in the car and there was a struggle in the car, supposedly.**

Q **But the struggle in the car was -- you would agree with me the struggle in the car did not arise to an aggravated battery, right?**

A **Right.**

Q **The aggravated battery occurred outside, when he choked**

her and she blacked out or grayed out?
A Yes.
Q Okay. Now, let me go back to the pre-plea hearing or the plea conference on February 23rd, 2007, which is Petitioner's 2 in evidence. You laid out all of the factors that you believed that the court should take into account for a downward departure, right?
A Yes.
Q And we said them before. We're not going to say them again.
At that plea conference the victim also appeared, correct?
A Yes.
Q And at that plea conference the State again made it clear that they were seeking life without parole, no ifs, ands or buts?
A Correct.
Q And the victim gave basically a victim impact statement to the judge before the judge even -- weeks before the judge even accepted Mr. Arvelo's plea, correct?
A Right.
Q So on February 23rd, 2007, the judge had all of the information about his background and also the victim -- basically her testimony, because she spoke in court, about how this had affected her life?

A **Yes.**

MS. WALL: Your Honor, this really doesn't relate to not filing a motion to suppress, and I would object to the line of questioning.

THE COURT: Well, I don't understand it either, but I think we'll just get it done.

BY MR. MEGARO:

Q **Now, if you will, bear with me a moment.**

If you'll go to Petitioner's 2 in evidence, the same document, page 15, line 17 through 18 -- I'm sorry -- line 17 through 23. Take a moment to read that to yourself.

A **Okay.**

Q **Now, after you and the State had laid out your positions at the plea conference, the judge said two times in two paragraphs, "I'm not giving Edwin Arvelo a downward departure, based on everything I've heard here today," right?**

A **Yes.**

Q **And if you'll turn over to the next page, on page 16, and you read lines eight through 16 -- take a moment and read that to yourself.**

A **Yes.**

Q **The judge said again two more times, "There's no way I'm going to give you a downward departure, based on what has been presented to me here today"?**

A **Yes.**

Q **So now I want to turn your attention to Petitioner's 4 in evidence, the sentencing transcripts of April 13, 2007.**

THE COURT: Was this during a mandatory guideline age in Florida?

THE WITNESS: What does that mean?

THE COURT: The judge had no discretion to go below the guideline sentence unless there was an actual departure?

THE WITNESS: Correct, because he scored 168 months. So that's where it started, up to life. But you could only go below the 168 months if the judge were to find a basis for a downward departure.

THE COURT: Okay.

MR. MEGARO: I'll talk about that for a moment.

BY MR. MEGARO:

Q **Now, you're familiar with the statute and downward departures, correct?**

A **Yes.**

Q **And at the sentencing, you actually asked for a downward departure based upon Florida Statutes 921.0016(c), (d), (i), (j) and (k), right?**

A **Yes.**

Q **You are also aware that back then, as it is now, the statute basically says that a departure from the recommended guideline sentence is discouraged, right?**

A **Right.**

Q **And that was the case back in 2006, it was also discouraged?**

A **Yes.**

MS. WALL: Your Honor, again, the issue is not whether counsel was ineffective for not getting a better sentence or not knowing the downward departure statute. It's whether counsel was ineffective for failing to file a motion to suppress. I object to the line of questioning.

MR. MEGARO: Judge, I think this all goes -- it's all wrapped up together, because what I plan to argue is that the entire strategy was flawed and unreasonable objectively, and this is the way that I can argue it.

THE COURT: All right. Overruled.

BY MR. MEGARO:

Q **You're also familiar with the aggravating factors under the same statute, correct?**

A **Yes.**

Q **And is it fair to say that one of those aggravating factors was that the offense was one of violence and committed in a heinous, atrocious or cruel manner?**

A **Yes.**

Q **Do you think that possibly applied to this case?**

A **Possibly.**

Q **And another one of the aggravating factors under the Florida statute is that the victim suffered extraordinary**

physical or emotional trauma?

A **Yes.**

Q **At the plea conference, the victim basically said, "My life has been wrecked. I've suffered from extreme trauma," correct?**

A **Yes.**

Q **So you thought that aggravating factor applied to Edwin Arvelo, correct?**

A **Yes.**

Q **And you also know that the statute specifically states that a defendant's substance abuse or addiction, even intoxication at the time of the offense is not to be considered as a mitigating factor under the statute?**

A **Yes.**

Q **Now, at the sentencing, you called several witnesses on behalf of Edwin Arvelo, correct?**

A **Yes.**

Q **You called friends and family members, right?**

A **Yep.**

Q **You called Dr. Mings?**

A **Yes.**

Q **You even had Mr. Arvelo apologize?**

A **Yes.**

Q **And the State called the victim, her husband, her father and her friend?**

A **Yes.**
Q **I'm sorry. Two friends. And all of those people testified that the victim's life was ruined as a result of this incident, right?**
A **Yes.**
Q **And to sum up the testimony that you presented at the sentencing hearing, basically, it was all about Edwin Arvelo's prior family history, history of abuse, history of substance abuse and his mental illness, correct?**
A **Yes.**
Q **These were the same things that you had laid out on the record at February 23rd, 2007, at that pre-plea conference, correct?**
A **Right.**
Q **You laid out the same exact things as that conference and you asked the judge for the downward departure, right?**
A **Yes.**
Q **The same downward departure that he told you that he was not going to give you on those same facts?**
A **Yes.**
THE COURT: What would you have expected her to do at that point?
MR. MEGARO: Well, my expectation -- I'm going to cut to that chase, Your Honor. I'm going to. . .
THE COURT: That would be a good idea.

MR. MEGARO: Okay.

BY MR. MEGARO:

Q **Going back to the suppression issue, you said that you had a vague recollection of doing some legal research on intoxication, right?**

A **Yes.**

Q **And what type of research service did you use for this legal research?**

A **Westlaw or it could have been LexisNexis. I think we might have had both at the time. I don't know.**

Q **Basically, computer based?**

A **Right.**

Q **Okay. And you said you researched intoxication as far as how that would impact suppression, right?**

A **Right.**

Q **Other than intoxication, did you research any other issues regarding suppression?**

A **I don't believe so.**

Q **Did you ever look at promises -- unfulfilled promises of help or assistance or leniency by law enforcement and how that might impact voluntariness?**

A **Do you mean ever or in this case?**

Q **In this case.**

A **I don't recall.**

Q **Did you ever research a defendant's youth and history of**

mental illness and how that would impact voluntariness in a suppression hearing in this case?

A **Did you say -- you started with "ever." Do you mean or in this case?**

Q **In this case.**

A **I don't recall.**

Q **So the only thing you really looked at was intoxication, right?**

A **I seem to have a sort of vague recollection of that specifically in this case.**

Q **Your research would have indicated to you that intoxication is a factor under Florida law that a court can consider in determining whether a confession is voluntary, right?**

A **Correct.**

Q **And in this particular case, you knew that Edwin Arvelo had told the police that he consumed a large quantity of alcohol prior to the incident and his arrest, right?**

A **Yes.**

Q **He told you the same thing, correct?**

A **Yes.**

Q **In that letter -- I think the State introduced a letter, right?**

A **Yes.**

Q **He also told you that he consumed drugs?**

A **Yes.**
Q **And you also knew that the detective smelled the odor of alcohol on his breath during this interview, correct?**
A **Yes.**
Q **So there wasn't much question as to whether he was intoxicated at the time of the interview, right?**
A **Correct.**
Q **And if you had reviewed the transcripts or the actual audio or video, you would have known that he was under severe emotional distress?**
A **I saw him crying, yes.**
Q **Okay. And as the transcripts bear out, he told the detective several times that basically that he was an emotional wreck at that point?**
A **Yes.**
Q **Okay. The transcript also showed that he was begging the detective for help, right?**
A **Yes.**
Q **And the detective promised to help him?**
A **Yes.**
Q **Weren't those factors upon which you could have moved to suppress?**
A **Yes.**
Q **Now, if you had filed a motion to suppress -- let me back up. Have you ever successfully suppressed a defendant's**

confession?
A Yes.
Q Once a confession gets suppressed, that radically changes the case; you would agree with me, right?
A Well, yes.
Q Sometimes other defenses now become very relevant that may not have been relevant before, correct?
A Yes.
Q If a defendant, for example, in his confession places himself at the scene of a crime and the only evidence is his confession, now you might be able to argue to a jury that he wasn't actually there when this crime was committed, right?
A Yes.
Q You might be able to argue that it was a case of mistaken identification, correct?
A Yes.
Q Or if a defendant's confession is suppressed, now you might be able to argue to a jury that what the victim says happened didn't actually happen and present an alternative theory of what happened?
THE COURT: Mr. Megaro, I've been doing this for 50 years. There's not a jury here of lay people. I understand.
MR. MEGARO: Okay.
THE COURT: Really. I mean, I'll give you all week, if you want, but --

MR. MEGARO: That won't be necessary, Your Honor.

THE COURT: -- you're not helping me one bit with all of this tutorial on how the suppression of a confession affects the prosecution.

BY MR. MEGARO:

Q **Now, in this particular case, the only evidence of an intent to commit a sexual battery came from Edwin Arvelo's mouth, right?**

A **I think there was a lubricating jelly that was found in the car, an empty box of condoms. I know, according to the State's notes, I had asked Carol Bergeron, you know, "He didn't tell you what he was going to do with you; is that correct?"**

And I'm pretty sure she said that, you know, he didn't say anything as far as, like, an intent.

Q **So the most important evidence of a sexual intent was from his mouth, right?**

A **Yes.**

Q **You would agree with me that suppression of that statement would have changed the calculus as far as whether the State would have been able to prove an intent to commit a sexual battery against Edwin Arvelo?**

A **Yes, it could have.**

Q **When the judge asked you earlier why you didn't file a motion to suppress, I think the answer you gave was --**

THE COURT: I didn't ask her that question.

MR. MEGARO: Okay.

THE COURT: I asked her what was the down side of not doing so.

BY MR. MEGARO:

Q **Well, again, was there any down side in not filing a motion to suppress?**

A **I think my answer to the judge was I don't know. I don't think there is. I mean, I didn't file one.**

Q **You would agree with me that even an unsuccessful motion to suppress can still give you something to work with at trial, correct?**

A **It could.**

Q **And that didn't happen in this case, though, did it?**

A **Correct.**

Q **Now, in this particular case, Edwin Arvelo scored at 168 months, which is roughly 14 years and change, right?**

A **Yes.**

Q **Did you ever advise him that by pleading open to the court, that he could have consecutive sentences and he could get 60 years in prison?**

A **I believe I did.**

Q **Did you tell him that you thought that was likely to happen, not likely to happen or you didn't have an opinion on it?**

A **I don't think I would have told him after the plea conference that the judge was not going to do a downward departure, and so he would be facing up to life.**
Q **But you and I know that in representing defendants charged in criminal cases, that the question always is, "Well, what do you think I'm going to get," right?**
A **Right.**
Q **And he asked you "What do you think, Ms. Chien"?**
A **He probably did.**
Q **What did you tell him?**
A **I don't remember, but I would not have given him -- I would not have told him that the judge wouldn't -- or would give a specific amount, because the judge was not committing to a specific amount.**
Q **What did you tell him was, in your opinion, a likely scenario?**
A **I didn't -- I don't believe I gave a term of years.**
Q **Did you give an estimate or an approximation?**
A **I don't believe so.**
Q **You just told him it could be anything?**
A **Yes.**
Q **Including life without parole?**
A **Yes.**
Q **And do you consider 60 years a better situation than life without parole or do you consider them one in the same?**

A **I think 60 is almost a life sentence; and, obviously, had I known it was going to be 60, he would have said go to trial.**
Q **Say that last part again. I'm sorry. If I had known?**
A **If I had known that the judge was going to give 60, I'm sure Mr. Arvelo would have wanted to go to trial.**
Q **Did you know the judge was going to give him 60 years?**
A **No. I didn't know what the judge was going to do.**
Q **After the plea and after the sentencing, Mr. Arvelo moved to -- he wrote you, right? He contacted you?**
A **I don't think so. I think I contacted him. I went to the jail to see him.**
Q **After sentencing?**
A **Yes.**
Q **Why?**
A **Because he had just gotten 60 years.**
Q **At that point what's to say?**
A **What his other options are at this point.**
Q **And did you advise him as to those options?**
A **I know that I discussed a motion to withdraw a plea, which is what I filed.**
Q **And the motion to withdraw a plea was based on what grounds?**
A **What he told me.**
Q **Which was?**

A **That I coerced him and I think there was pressure from family members. But, obviously, after filing that, I moved to withdraw so that conflict-free counsel could supplement and go into details with that motion to withdraw plea.**

Q **And he also said that he wanted to appeal, correct?**

A **I think so.**

Q **And a notice of appeal was actually filed in his case?**

A **Yes.**

Q **And a hearing was held on the motion to withdraw plea?**

A **Yes.**

Q **And that was one in which Mr. Arvelo's interests were in conflict with yours, right?**

A **Yes.**

Q **If you were given the case today and you could do anything differently, what would you have done differently?**

A **Well, at this point I would have moved to with- -- moved to suppress.**

Q **Why?**

A **Because it's the basis for this hearing today.**

Q **Well --**

A **And I also know that he got 60 years.**

Q **Okay. So if you had thought that -- at the time, back in 2007, if you had anticipated that he was going to get slammed, for lack of a better term, with that much of a sentence, you would have moved to suppress?**

MS. WALL: Your Honor, 20/20 hindsight really isn't the rule. I object. And what counsel would have done now isn't what the standard is under Strickland.

THE COURT: I'm aware of the standard. Hindsight is great; but I think I understand her position, the position of any lawyer. You have to use hindsight in answering that question, and she didn't have that at the time.

MR. MEGARO: No further questions for Mrs. Conlon.

THE COURT: Redirect?

MS. WALL: Your Honor, I only have one question.

THE COURT: Let's see about that. I've heard that one before.

MS. WALL: I'm sure you have, Judge. This actually has to do with the Court's question about the down side of a motion.

REDIRECT EXAMINATION

BY MS. WALL:

Q **At the motion to suppress, would the defendant have had to testify himself?**

A **It would have made it stronger.**

Q **Do you think you could have presented the issue of whether he was coerced without his own testimony?**

A **I mean, there was a transcript, so it was all there. So I think it would have been stronger if he testified.**

Q **Do you think that any time the defendant testifies**

before the trial judge, that that's a risk that you may have testimony that you have to live with later at trial?

A **Yes.**

Q **All right.**

MS. WALL: That's all I have.

MR. MEGARO: May I?

THE COURT: That was two questions, but that's okay.

Yes, sir.

MR. MEGARO: Very brief.

RECROSS-EXAMINATION

BY MR. MEGARO:

Q **In this case you didn't have to call Edwin Arvelo to the stand because there was a video and an audio recording, right?**

THE COURT: She just said that.

MR. MEGARO: Right.

THE COURT: And I don't give double-cross. We're done.

MR. MEGARO: Thank you.

THE COURT: Thank you, ma'am.

Call your next witness.

MS. WALL: Judge, I would call Assistant State Attorney Linda Drane Burdick.

THE WITNESS: Am I free to go?

THE COURT: Yes. Well, I believe you are.

Is she free from her subpoena?

MS. WALL: I think she was under our subpoena, Judge.

And, yes, you're free to go.

THE COURT: Okay.

THE COURTROOM DEPUTY: Come all the way to the front here to be sworn, please. Raise your right hand.

Do you solemnly swear or affirm under the penalty of perjury that the testimony you give will be the truth, the whole truth and nothing but the truth?

MS. DRANE BURDICK: I do.

LINDA DRANE BURDICK, RESPONDENT'S WITNESS, SWORN

THE COURTROOM DEPUTY: Thank you, ma'am. You may be seated. Once seated, please state your name into the microphone for the record and spell your last name.

THE WITNESS: My name is Linda Drane Burdick. The last name is D-r-a-n-e space B-u-r-d-i-c-k, no hyphen.

DIRECT EXAMINATION

BY MS. WALL:

Q **Do you prefer Drane Burdick or Burdick?**

A **Burdick is fine.**

Q **Okay. Right out, do you have a recollection of this case?**

A **Yes.**

Q **Do you recall participating in depositions in preparation of this case?**

A **I do.**

Q **Do you remember specifically a deposition taken of Investigator Collins?**

A **Yes. Ms. Chien -- that's how I know her -- took Detective Collins' deposition on November, it looks like, 27th, 2006.**

Q **Do you recall whether any questions were asked of Detective Col- -- whether Ms. Chien asked Detective Collins anything about the defendant's intoxication?**

A **Yes. I have my original notes from those depositions with me; and upon reviewing them, there are several pages contained in the notes where she initially talks about Mr. Arvelo's appearance at the Maitland Police Department, that he had scratches on his face and hands and near his eyes.**

She then asked him if the defendant or the suspect at the time appeared to be coherent, and the response that I recorded was that he seemed to be aware of his surroundings.

She asked if he had received any injuries during his arrest. That response was no.

She inquired as to whether or not the suspect was responsive to the questions, which my recollection was her interpretation as to whether or not the defendant's answers would have made sense, given the question.

She asked about -- whether or not Mr. Arvelo was handcuffed at the time of the questioning, and I believe his handcuffs were off, was the notation that I made at the time of the deposition. Inquired as to why that was necessary, and that was to make him more comfortable if he's talking with his hands in the front.

They talked about Miranda, whether or not that was explained and read from the card, whether or not he understood English, whether or not the interview was recorded. Asked about his emotional state, not his mental state per se, but his emotional state, that he was initially crying and very apologetic, that the interview lasted two hours.

Got into background information and then discussed the prior -- his prior abuse.

Moving into questions specific to the incident, that it was his birthday, that he had been drinking, that he had a lust for a blonde woman, that he intended to fulfill that lust, and then details of what he had done after that.

Q **Do you remember whether or not -- and can I assume that you pretty much read what your notes are?**

A **Yes.**

Q **Do you have other recollections other than what's in your notes?**

A **At times.**

Q **Do you recall whether there was any mention of the investigator's talk of help?**

A **Further towards the end of the deposition, because she continued to ask whether or not the defendant had told him -- "him" being the detective -- whether or not he had been drinking or doing pot or how much he did, and then followed that up with were there any promises to get the statement and whether or not there was anything said as to whether or not he would -- "he," the detective -- would try to get help for him. And so she inquired on that subject.**

I did not record at that point the officer's answer --

Q **All right.**

A **-- because it was all on tape.**

Q **All right.**

A **The exchange, as it related to that, had been recorded.**

Q **Based on the facts of the case that you had, the evidence that you had, the witnesses that you had, if the defendant's statements had been suppressed, would you have still prosecuted the defendant for kidnapping?**

A **Absolutely.**

Q **For the attempted first-degree murder?**

A **Yes.**

Q **For the aggravated battery?**

A **Yes, ma'am.**

Q **Now, there have been questions about whether kid- --**

since the aggravated battery occurred before the kidnapping, whether that could be a basis for the kidnapping. Do you remember whether the evidence showed that even after the victim was in the defendant's car, he choked her again and threatened to kill her?

A Kidnapping in Florida is a continuing offense. It begins from the moment that he does something or acts in such a way as he's going to take her by force, threat or coercion.

So my argument and impression of the evidence when I charged this case was as soon as he put his hands on her with the intent to do a variety of things -- obviously, we charge with the intent to commit sexual battery, but there are other avenues that I could have pursued in the charging document.

But to me, it's irrelevant as to whether or not the aggravated battery would have occurred outside the car or in the car or at any other point in time because the kidnapping starts immediately when he does something to forcibly confine her.

My recollection and the evidence that I was considering at the time was that her testimony was that he had asked her for a light for the cigarette and when she turned, he attacked her, and that's where your kidnapping begins.

He caused substantial injury to her. He choked her to the point where -- which she does recall, so it's not like we're relying on his testimony exclusively to establish that

part -- to the point where she passed out. Again, she recalls that independent of his testimony to the officers that that occurred.

Obviously, choking is sufficient for the attempted first-degree murder, despite counsel's argument that that's not always charged. If you choke somebody for the length of time that it takes for them to pass out, there's considerable premeditation, to the point where in death penalty cases it's heinous, atrocious and cruel.

So I don't know if I'm continuing to answer your question or not; but, yes, I could have proceeded on kidnapping under various theories, and not just kidnapping with the intent to commit a felony.

Florida Statute 787.01(1)(a)(3), which is separate from kidnapping with the intent to commit a felony, is kidnapping with the intent to inflict bodily harm upon or terrorize the victim or another person. That is also a first-degree felony punishable by life.

So independent of any other felony that Mr. Arvelo was charged with or could have been proven, I could have amended the information to charge this alternative. Statement suppressed, statement not suppressed, it was irrelevant.

Q **If the defendant prevails and is -- his conviction is vacated so that he can withdraw his plea, what charges will he face?**

A **The charges in Counts One, Three and Four. Do you need me to tell you?**
Q **I'll ask you. That would be the kidnapping, punishable by life?**
A **Yes.**
Q **Attempted first-degree murder?**
A **Correct.**
Q **Punishable by 30 years?**
A **Yes.**
Q **Aggravated battery, punishable by 30 years?**
A **Fifteen.**
Q **That's a 15. So would the court be able to stack any of those sentences?**
A **Yes, but the stacking is irrelevant if he's convicted of Count One.**
Q **Okay. So the defendant will still face life if he gets everything he's asked for here, which would be for his convictions to be vacated and he goes back to facing charges?**
THE COURT: Well, yeah --
A **He could.**
THE COURT: -- if he's convicted.
BY MS. WALL:
Q **But he'd face -- the result of having -- getting relief from this court --**
THE COURT: You said "face." Yes.

BY MS. WALL:

Q **-- he's back to stage one and faces a life sentence; is that correct?**

A **Yes.**

Q **Thank you.**

THE COURT: Cross?

MR. MEGARO: Yes. One moment, Your Honor.

Your Honor, I have one more document I would like to introduce as Petitioner's 7, which I've shown counsel. It's another document from the Orange County Court, and I believe counsel has no objection to this document. It's a Notice of Provision of Supplemental Discovery filed on February 22nd, 2007.

THE COURT: Okay.

MS. WALL: No objection.

THE COURT: It's admitted.

MR. MEGARO: May I hand this to the clerk?

THE COURT: Yes.

MR. MEGARO: Your Honor, if it's marked, may it be shown to the witness?

THE COURT: Yes. Can I see it first?

MR. MEGARO: Yes.

THE COURT: Okay.

MR. MEGARO: May it be shown to the witness? May I, Your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. MEGARO:

Q **I'm sorry. I'm terrible with names. How do you pronounce your last name?**

A **Burdick.**

Q **Mrs. Burdick, how are you?**

A **Good.**

Q **I'm showing you Petitioner's Exhibit Number 7. That's a Notice of Provision of Supplemental Discovery, correct?**

A **Correct. Yes.**

Q **And the discovery -- that's your signature at the bottom?**

A **It is.**

Q **Now, is it true that in this case you furnished the CD and the transcript of the CD of the August 16, 2006, interview of Edwin Arvelo with the Maitland Police Department to Ms. Catherine Chien on February 20th, 2007?**

A **Yes. My recollection is --**

Q **I'm just asking you if that's when you -- is that what that document states?**

A **Yes, but there's an explanation.**

THE COURT: If your question is what does the document say, we don't need an answer from her. I can look at it and tell you what it says.

MR. MEGARO: Okay.

THE COURT: If you don't want her to tell you what she recalls, then don't ask the question.

MR. MEGARO: All right. I'll withdraw that question then, Your Honor.

BY MR. MEGARO:

Q **You provided that discovery to Ms. Chien on February 20, 2007, correct?**

A **Yes. That was supplemental discovery. It supplemented other things.**

Q **And the supplemental discovery was the actual CD and the actual transcript, right?**

A **I believe these were additional copies, yes.**

Q **When did you provide the original copies?**

A **According to the case progress notes in the file, the original set of discovery went out on October 17th of 2006 --**

Q **And the original --**

A **-- which is --**

Q **I'm sorry. October 17th, 2006?**

A **Right. Discovery and police reports hand-delivered to the Public Defender's Office, and it has the initials of my old assistant, Debbie Cammeto.**

Q **And that's the police reports, correct?**

A **Discovery and police reports.**

Q **Okay. That did not include the CD and the transcript of**

the CD?

A **I can't tell you that 100 percent. My recollection is, just like you had some difficulty getting items from the Maitland Police Department, that we requested, knowing that they existed, certain things. We would get -- one of these talks about a damaged and undamaged CD. So we were getting things that worked, things that didn't work; and as we received them, we would provide them.**

They also are a smaller agency. So, typically, they don't transcribe any of their recordings unless there's a request.

Because of the serious nature of the crime, we asked them to do that and they complied.

So when that happened, subsequent to August 16th of 2006, I cannot tell you, but it did take some time.

Q **Okay. But you would agree with me that the court records would indicate that the CD and the transcripts were only provided to defense counsel in February of 2007?**

A **The Notice of Provision of Supplemental Discovery says that. Now, at the time, our office procedure was when the original discovery was sent, we didn't necessarily file a pleading. That has changed. Most things are paperless now. So we can track them because they're e-mailed to people. But at the time, we would only file a pleading when supplemental discovery was filed.**

Q **Okay. And supplemental discovery would not include simply more copies of the same? That would include additional things that were not provided previously, correct?**
A **Not necessarily. It can be a corrected thing. It can be another version, because I'm not going to sit and compare things that have slightly different versions. I feel if the defense wants to do that, I'm going to provide them with everything that I have and they can compare disk one to disk two to disk three to see if there are some discrepancies. I'm just giving them everything that I have so that they can do their job.**

So it looks like that there was some damage to CDs or at least when it went over, there was a problem; and this, I believe, was an attempt to correct whatever problem may have existed with an original set of discovery.
Q **And that problem would have been a damaged CD or a CD that was blank or did not contain a readable file?**
A **That's possible, yes.**
Q **Okay. So it's possible that Ms. Chien never received an actual workable CD or transcript of Edwin Arvelo's statement to police until February 20, 2007?**
A **I believe she had transcripts before that. But typically a lot of the defense lawyers like to listen to the CD and compare it to the transcript, just to make sure that it's accurately done. So, honestly, I can't tell you.**

Q **Okay. And you have no independent record or recollection that the actual workable CD or transcript was provided prior to February 20th, 2007?**

A **The only other notation on our case progress sheet is that another set of supplemental discovery went out on 11/30 of 2006. The notation that I have here is that it included the name of Dorinda Blaney, who is a fingerprint analyst, and an F.D.L.E. analyst, because, of course, we got the results back that Mr. Arvelo's D.N.A. was under the victim's fingernails.**

So it just says supplemental discovery. It doesn't detail it, which is why we changed and went to more specific information than what was being provided and when.

Q **Okay. Do you have a copy of -- I'm sorry.**

MR. MEGARO: One moment, Your Honor.

(Discussion held off the record between counsel.)

A **But I can tell you that the depositions in November of the detectives with Maitland, Ms. Chien already had transcripts at the time of the depositions. Whether or not she had the CDs, because of the damage issues, I can't say.**

MR. MEGARO: Your Honor, could the Court permit me one moment to check Plaintiff's 1, that's already in evidence?

THE COURT: Yes.

MR. MEGARO: Thank you.

Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. MEGARO:

Q **Mrs. Burdick -- I'm sorry. Mrs. Burdick, I'm showing you a portion of the original Maitland Police Department files, which are in evidence as Plaintiff's -- or Petitioner's 1.**

If you would, turn to the packet of documents that you have on that very last page and just review that for a moment.

A **You're talking about the last page where the transcriptionist has dated it 2/4/07?**

Q **Yes.**

A **Okay.**

Q **This is the only transcript that was provided to the defense. It's the one that's in that Maitland Police Department file, correct?**

A **I don't know what's in the Maitland Police Department file that you have.**

Q **You have it in your hand.**

A **I don't know if that's the only thing that was provided to you.**

Q **Well, you didn't provide any other transcript -- not to me. I'm talking about here in court today.**

A **I don't know.**

Q **The deposition of Detective Collins occurred on which date again?**
A **I have it in my notes as November 27, 2006.**
Q **So that would have been one month before even CDs one and two were even transcribed?**
A **Can you point me to a specific thing aside from the date of the transcript that --**
Q **The date and signature of the last page of the transcript.**
A **It says 2/4/07. So that's three months.**
Q **And below that it says 12/28/2006, CDs one and two, right?**
A **Where?**
Q **The second to the last line of that page, the last page.**
A **Right there. Okay. 12/28/2006, CD one and two. 2/4/2007, CD three. I don't know -- I can infer what that means.**
Q **The transcript didn't exist until a month after the depositions; that's the long and short of it, right?**
A **The 12/28 date is a month after the deposition. So -- but whether or not something else was available, obviously, they were discussing it at deposition, as reflected in my notes; and Detective Collins' investigative report also detailed the conversation.**
Q **Okay. But that wasn't a transcript, right? His police**

report is his police report. It's not a verbatim transcript of the actual three-hour interview?
A It can't be.
Q Okay. Now, you never did charge Edwin Arvelo with any other crimes in this matter, right? You only charged him with the four charges for which he's convicted?
A That's what he committed.
Q Okay. And you obviously feel very strongly about that even here today, nine years later, correct?
A Do I feel very strongly about the fact that somebody abducted a woman and got charged with a crime that they have committed? Sure.
Q You don't want him to go free under any circumstances, correct?
A And he won't.
Q And that's why you even brought the victim here to court today, correct?
A I had nothing to do with that.
MS. WALL: Your Honor, the Florida Constitution allows the victim to be present at all criminal proceedings.
THE COURT: She has a right to be here. Let's move on.
BY MR. MEGARO:
Q Have you ever had any statements or confessions suppressed in any cases you've handled as a prosecutor?

A **Sure.**
Q **You would agree with me that it makes it a little bit more difficult to prove the case sometimes?**
A **If that's the only evidence I have, it makes it impossible to prove the case; but in this situation, it's not.**
Q **But if his suppression had been -- if his confession had been suppressed here, it would have certainly changed your theory of prosecution or the way that you would have gone about things, correct?**
A **No.**
Q **You wouldn't have been able to present his statement at trial, correct?**
A **I have not presented defendants' confessions at trial before, for strategic reasons, like making them take the stand.**
Q **Okay.**

MR. MEGARO: No further questions for Mrs. Burdick, Your Honor.

MS. WALL: I have nothing further, Your Honor.

I would like to move into evidence the State's copy of the CD because I'm not quite sure what's going to happen with this copy that's a sealed evidence. So if there's no objection, the State would offer in evidence its Exhibit 5, which is a copy of the CD that we received.

THE COURT: Any objection?

MR. MEGARO: No, Your Honor.

Is that the CD?

MS. WALL: It's that same CD with the very loud background noise, Your Honor. It is what it is.

MR. MEGARO: I'm sorry. The CD that I gave you, I think, is just the audio and the video of Altamonte Springs Police. I don't think it's the actual video of --

MS. WALL: I'm not talking about that one. I'm talking about --

THE COURT: Time out. Does she have to sit here and listen to this?

MS. WALL: No. She's excused.

THE COURT: Okay. Thank you.

MS. WALL: Thank you, Judge.

THE COURT: And she's released from her subpoena?

MS. WALL: She's released, and the State has no other witnesses.

THE COURT: Okay. Thank you, ma'am.

So Defendant's 5, I can admit it for -- I don't know why there's different transcripts floating around; but if there are, I'll have to figure out why.

MS. WALL: I'm not aware of another transcript either; but it sounds like Petitioner's counsel is attempting to create their version of one, which if they want to do

that, that's fine.

The State would like the Court to have the copy of the available transcript, which has been admitted. I would also like the Court to have the CD that has video on it.

I will inform the Court that the State's only copy that I received from the State Attorney's Office has a very loud background noise that made it difficult to hear; but the visual, the video is clear enough that it was not impaired.

We would like that to be in evidence and available to the Court.

THE COURT: Okay.

MS. WALL: So I would ask the Court to admit it.

MR. MEGARO: Likewise, Your Honor, I guess this loops us right back to where we started. I will continue to make efforts to obtain the original. I believe CD number 3, which we did not receive in response to our subpoena, is contained in that sealed evidence packet.

I do have additional transcripts, which I don't think the State has an objection to. It's not that I'm trying to create a difference or a discrepancy.

MS. WALL: I will acknowledge, Judge, that in what we did listen to, there were times when it appears in the transcript unintelligible, where you can hear some. So I could imagine that someone listening could pick up more.

THE COURT: All right. But here's the problem.

I'm not going to sit and read three hours worth of transcript to try to figure out whether it was conjunctive or not. You're going to have to show me what's different and why it's material.

MR. MEGARO: Would Your Honor just permit me just ten seconds to confer with my client, if you don't mind?

THE COURT: Sure.

(Discussion off the record.)

MR. MEGARO: Judge, I have spoken with my client, and rather than create controversy where none would otherwise exist --

THE COURT: I'm not concerned about controversy. Controversy is my middle name. Just make it easier on me to solve the controversy if you have an issue with it.

MR. MEGARO: One second.

(Discussion off the record between Mr. Megaro and the defendant.)

MR. MEGARO: Your Honor, I think, as I said earlier, right back to where we started at 10:30, I can make my argument or I can make my case with Petitioner's 1, which is the original transcript. That's what we've been working on all along. That's what this Court had and that's what the Eleventh Circuit had.

THE COURT: Okay.

MR. MEGARO: Rather than create extra work for Your

Honor, and I've spoken with my client about this, we can just let it ride as it is.

THE COURT: Okay. I'll give you ten days to reconsider. Unless you tell me within ten days there's a material difference, I'm going to rely on that representation, okay?

MR. MEGARO: Thank you.

MS. WALL: Then, Your Honor -- I'm sorry -- could we revisit then the Maitland Police Department's original evidence? Because the concern is if this Court grants relief and this does go back to the state court and he will move to suppress, then this will be relevant and the State will need that evidence. So it's --

THE COURT: If I don't need that -- a transcript is one thing, but I would like to listen and see what was going on.

MS. WALL: Right, which is why we wanted at least one copy of the video in. I have no way of knowing whether the videos that are in the Maitland Police evidence are better than what we have or not.

THE COURT: Well, and I don't know, either, and I won't know by looking at them. So why don't y'all figure out what's the best evidence for me to look at and give me that.

MS. WALL: Okay.

MR. MEGARO: The best evidence, I believe, is

what's in those sealed envelopes.

THE COURT: But you haven't seen those.

MR. MEGARO: I have copies of them from -- from Maitland.

MS. WALL: If the copies --

THE COURT: Well, then, why am I sitting here with the originals if you have copies? I don't want the originals.

MR. MEGARO: Because the copies that were given -- the copies that were given to us are technically incomplete. We're missing CD number three out of three CDs. That's what Maitland gave to us in response to the subpoena.

THE COURT: Look, you guys are both good lawyers, okay? I appreciate that. Y'all talk to each other, find out what the most complete, accurate representation is and give it to me. It's really not that complicated. Can we do that?

MR. MEGARO: Yes. We can figure out what to sub in for those originals to make it simpler.

THE COURT: All right. Can we give those back to you right now, then, or do you want us to keep them?

MR. MEGARO: I can't take custody of them because it's --

THE COURT: You can if I tell you to.

MR. MEGARO: That could potentially create an interesting dilemma for me if I were to continue to represent

Mr. Arvelo.

THE COURT: Well, that's true.

MS. WALL: I believe the evidence custodian has to or the records custodian from the Maitland Police Department has to come and retrieve them.

THE COURT: All right. Well, we'll keep them under lock and seal here -- we're pretty secure here -- until they come and get it.

MS. WALL: All right.

THE COURT: And to get it, I guess you're going to have to file a motion or make an appointment and we'll deal with it.

MS. WALL: All right.

THE COURT: In the meantime, get me something I can look at and mark up and watch, okay?

MR. MEGARO: Yes, sir.

THE COURT: All right. Now, neither one of you have any more evidence, right?

MR. MEGARO: No.

THE COURT: Correct?

MS. WALL: No, Your Honor. In the interest of time, I think we've presented all that we need to present.

THE COURT: All right. So here's where we are. I've got, obviously, your papers, but we now have a good bit of testimony. I suppose you would like to be able to analyze

that. I don't know if you want a transcript or not. Give me a post-hearing brief. What's your pleasure?

MR. MEGARO: I would prefer a post-hearing brief, Your Honor. That's probably the simplest, cleanest method.

THE COURT: I agree. How much time do you need?

(A pause in the courtroom.)

THE COURT: I said "need," not want.

MR. MEGARO: I would need at least 30 days, Your Honor. I would think that it's going to take some time to order the transcripts and some time to digest it, and we've been at it all day.

THE COURT: Well, ordering the transcript is one prong. Digesting it is another. I can solve the ordering question for you.

Diane, how long will it take?

THE COURT REPORTER: I can get it done in 30 days, two weeks or one week, whenever they need it by.

THE COURT: Okay. But what would be your normal delivery, based on what you're doing?

THE COURT REPORTER: Normal delivery in federal court is 30 days. I can get it done within a week or two weeks.

THE COURT: Yeah. But, I mean, without expediting it, we're talking a couple of weeks?

THE COURT REPORTER: I can get it done in two

weeks.

THE COURT: Okay.

So we'll get you the transcript in two weeks, and then give you another two weeks after that?

MR. MEGARO: That should be good.

THE COURT: You can always ask for more time, if you need it.

MR. MEGARO: Thank you.

THE COURT: Is that okay?

MS. WALL: We would ask for some responsive time to his pleading.

MR. MEGARO: Of course.

MS. WALL: Twenty days would be fine for us, if the Court would grant that.

THE COURT: I will. So assuming Diane can get the transcript within two weeks, you've got 30 days and the State's got 20 days to respond.

MR. MEGARO: Okay.

THE COURT: Y'all please sit down. I'm sorry. I didn't mean to keep you standing.

In terms of the motion to suppress itself, as to whether the waiver was voluntary, I think that's really what we're talking about, right? Whether the Miranda waiver was voluntary?

MR. MEGARO: I'm sorry. Go ahead.

MS. WALL: Your Honor, I don't think there's any question about whether Miranda was voluntary. I think what -- I take it back. I guess his allegation about intoxication would go directly to Miranda.

The claim for help would be a coercion after the fact.

THE COURT: And is that a right-to-counsel issue? I mean, I'm trying to understand that in a context of a Miranda claim or is it due process? What is it?

MR. MEGARO: I would characterize it more as a Fifth Amendment, you know, traditional voluntariness standard, which is part and parcel of Miranda; but I think the Miranda issue is not even an issue here. I think the transcript bears out that Miranda warnings were issued.

It's necessarily what occurred during the course of the actual interview that I think renders the statement involuntary, and I think there's -- you know, I've done my research and I've found plenty of case law that supports my position that analyzes the factors under Florida law as well as federal law, and I think my argument could be made on that point.

THE COURT: All right. Well, I think we're on the same wavelength here, because from what I've seen, a lot of what Collins did is just basic police interrogation theory -- not theory, but, I mean, that's what they're taught, to make

contact with the defendant, make them trust you and get them to admit. I mean, that's the way police work is done.

MR. MEGARO: Well, I would agree that that's the way police work is done; but I think there's also a line that's -- where. . .

THE COURT: I'm sure there is.

MR. MEGARO: -- where basic police work turns into, you know, classic coercion, and I think --

THE COURT: And that's the line you need to show me where it is in your brief, and related to this evidence, why under the facts of this case has that line been crossed.

MR. MEGARO: And I don't want to get too far ahead of myself, but essentially I argued the case in the Eleventh Circuit and that was exactly the same issue that the Eleventh Circuit latched on to, and I think that -- as far as I'm concerned, I believe I'm on strong legal ground with that.

THE COURT: Well, fine. I suspect you wouldn't be here if you didn't think that; and, obviously, the Eleventh Circuit agreed with you. So that's fine. I'll read your briefs; and if you think we need oral argument after that, I'll entertain it. Just ask me and I'll let you know when I can get back with you.

Okay. So we're done for today?

MR. MEGARO: Thank you, Your Honor.

MS. WALL: Thank you, Your Honor.

THE COURT: All right. Thank you.

(Proceedings concluded at 4:04 p.m.)

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Reporter's Certification

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Diane Peede, RMR, CRR
Official Court Reporter
United States District Court
Middle District of Florida

Date: October 7, 2015

Maitland Police Department

August 16, 2006

Case #: 06-016932

Detective Nick Collins' and Edwin Arvelo

TRANSCRIPT #2
UNDAMAGED CD

(Chairs moving from 00:00 to 00:16)

Lt. Krout: Is it already on?

Detective Collins: Uh huh.

Lt. Krout: If you want to go get him.

Detective Collins: I'll go get him.

Lt. Krout: I'll step out and rejoin.

(Chairs moving, papers shuffling and then silence 00:26 to 02:55)

Lt. Krout: This is Detective Collins. This is Eddie.

Detective Collins: My name is Nick, man. The first thing I am going to tell you is that I'm as good as anybody, if you're not the person, then everybody makes mistakes. My job is to get the other side of the story. One side and then the other side, okay? _____ (Unintelligible at 03:14) relax, okay? _____(Unintelligible at 03:17)

Lt. Krout: That I don't know. Seminole County, because they were on him. When we walked up, he was already in custody in the back of Altamonte's car, _____ (Unintelligible at 03:26) Deputy Lopez. He's a young guy, I don't know.

(Dictation became Unintelligible from 3:32 to 3:53)

Lt. Krout: I heard _____ (Unintelligible at 03:55)

Detective Collins: He was already up. I heard _____(Unintelligible at 04:02) make a statement that when he rolled up on the scene the Altamonte female had him on the ground and cuffed already.

Lt. Krout: Yeah, we just want to take _____(Unintelligible at 04:11)

(No speaking and/or Unintelligible from 04:20 through 05:12)

Edwin Arvelo: Can I use the bathroom, please?

Detective Collins: You need to use the bathroom?

Edwin Arvelo: Yes.

Detective Collins: He needs to use the bathroom.

Lt. Krout: Okay, I can escort him down, _____ (Unintelligible at 05:18) like

Detective Collins: Yeah, yeah, you pat him down.

(Radio/intercom interference - from 05:22 to 05:25)

(No talking from 05:25 to 08:43, then Unintelligible from 08:44 to 09:04)

Detective Collins: 1022 hours on my watch. 016932 is the case number. My name is Detective Nick Collins, call me Nick. My job, and what I like about it, and the way I do it is that, and I go on patrol all of the time, whenever anything happens, and I go out and, you know, everybody is excited and wants to make an arrest and stuff like that, I'm the reasonable guy in the agency _____ (Unintelligible at 09:38), you know what I'm saying? So, my job is to get your side of the story. Because you were placed in handcuffs and resisting police officers and stuff like that, I have to assume that you believe you are in custody. Has anybody told you that you were under arrest?

Edwin Arvelo: No.

Detective Collins: But, because you were placed in handcuffs, I have to go by our department rules, and actually that you are to believe that you are in custody, so based on that, I read everybody, that I believe that may believe they are in custody, Miranda. Whether you are down here or not, I don't know, I don't know if any charges or not, but that is what I do, that is just my housekeeping rule. What I do, is that I have a little card. I think everybody should know what their Miranda is, especially young people, everybody should know. Everybody, whenever they are in custody by the police, have the right to remain silent. Anything they say can be used in court against them, okay. You have the right to talk to an attorney now, or have him present now or during any time during questioning. If one cannot afford an attorney, one will be appointed for you, without cost. There is a question in here, and it says, "Do you desire to consult with an attorney first, or have one during this interview with me?" And the next question is, if at anytime hereafter you would wish to remain silent or have an attorney present, all questioning would be stopped, meaning that it is all in your control, do you know what I'm saying? Whatever you decide. You could be here saying okay, I have answered 25 questions, and I don't want to answer anymore, that's up to you. There is nothing I can do to say, "No, you started answering," we have to stop. There is nothing _____(Unintelligible 11:34). Also, I ask, has anybody at anytime threatened you, coerced you, or promised you anything in order to make you give me a statement. That is what Miranda is. So, I'll go back. What I try to do first is that I try to explain it to everybody so they have a good understanding of what it is and how you control the situation, not me, as far as what you want to say, what you don't want to say, when you want it

Detective Collins: to stop, or when you don't want to stop. I would like to tell you that, you know, I have one side of what I have gathered, and I would like to have your side, but, you have to understand what this is, and you have to understand how you want to do it, but you are in control of it; you are in control of how it goes, so I like to let you know that. You are a young person, so I will read it to you again.

You have the right to remain silent. Anything you say will be used in court as evidence against you. You are entitled to talk to an attorney now or have him present now, or at any time during questioning. If you cannot afford an attorney, one will be appointed for you without cost, and so I ask you the question, Do you desire to consult with an attorney first or have one during this interview, that's yes or no.

Edwin Arvelo: No, sir.

Detective Collins: Okay. At anytime here after, if you wish to remain silent or have an attorney present, all questioning will be stopped, okay? Has anyone at any time, because you are coming to me _____ (Unintelligible at 13:06), has anyone at any time threatened, coerced or promised you anything in order to induce you to make a statement to me?

Edwin Arvelo: No, sir.

Detective Collins: Do you understand these rights as I have read them to you?

Edwin Arvelo: Yeah.

Detective Collins: At this time, do you wish to talk with me? What I do, is I wrote your response, and I initialed it. If you want to initial next to me, and then on the next line, you will go ahead and sign the card.

(Unintelligible - lots of background noise from 13:43 to 13:56)

Edwin Arvelo: Can I ask you a question?

Detective Collins: Yes.

Edwin Arvelo: Do you think _____(Unintelligible 14:01).

Start of second CD voice file

Detective Collins: I'm going to explain to you my experience and what I feel. Have you eve sat on a jury?

Edwin Arvelo: No.

Detective Collins: Have you ever had any jury contact whatsoever, either negative or positive, but have you had any contact with any court system whatsoever?

Edwin Arvelo: Yes.

Detective Collins: Okay. The biggest thing, from my experience, is that judges, prosecutors, juries, defense attorneys, basically more people's question is, "what really happened?" Not necessarily what somebody gets arrested and the police say they did. Do you know what I'm saying? There is always a question like, "What really happened? You know what I'm saying? Sometimes you hear, you know, "hey this is this," and then you get all of this legal thing, and then most people are sitting there with the attitude of "Like what really happened," because there are always two sides of it. Maybe what somebody thinks somebody was intending to do was not exactly what they intended to do. You know what I'm saying? I can't say, you know, "My kid knocked over my wife's vase for the tenth time, and I got try and glue it back together." I can't say he intended to break it, you know what I'm saying? I have to say maybe he was just reckless, maybe he was running through the house, you know, he was excited, you know what I'm saying, there is always a reason, not necessarily what you believe. Now my wife's yelling because she says he is breaking it on purpose because it's the tenth time, and I'm like, "Honey, listen, that's not how things happen." Things happen because, for whatever reason they happen, but what somebody intends to do and what really happens is sometimes not even close, and so I attempt to explain that, and I take that with me because I have seven children. My oldest daughter is 18 and my youngest daughter is 2, so I take experiences as a parent first, and _____ (phone ringing - unintelligible 01:49) and things happen, and it is not necessarily what is intended. _____ (phone ringing - unintelligible 01:54) everything they did, you know what I'm saying? So, that's me, that's where I come from. So, I can't tell you or promise you anything. What I say to you is that I will attempt to get your side of it. Do I think that that's helpful? If it were something that went in front of a judge, a jury or the state attorney? I believe so, in my experience and my training, I definitely believe so. Why, and I'll tell you simply, when a judge is sitting there and he's got ten people accused of doing, lets say, for instance, narcotic sales, and each individual one. He's not going to sentence all ten the same way. Why, because one may be poor and be trying to feed seven children, you know what I'm saying? That's why it's good to get somebody's side of the story. The same way with the state attorney. Does the state attorney think that sometimes young people make bad judgments? One day they decide if they are going to press charges, or not, because, after all, who ultimately decides for us in a city, you know what I mean? Of course they do, and the same thing with the jury. They decide, hey look, you know, even though I think you did it, sometimes, you know, there is a reason and

Detective Collins: sometimes, you known, they are still not a bad guy, and that's my philosophy. I don't hold judgment, you know what I'm saying? So, as me and you get to know each other, and stuff like that and talk and stuff like that, that is what I want you to keep in mind, okay? I don't judge anybody. Are you Puerto Rican, are you Spanish? Yeah, you're Puerto Rican, yeah, so is my wife, so I know there is a lot of pride, you know, family and that sort of thing, and what not. Tell me why I'm meeting you today. Why do you think you are here today with me? Tell me what happened.

Edwin Arvelo: Honestly, I feel, in a way, and I hope that it is because, you will help me, or find help.

Detective Collins: Have you ever heard of intervention.

Edwin Arvelo: Yeah, I've heard that.

Detective Collins: Sometimes something happens.

Edwin Arvelo: Yeah, I know.

Detective Collins: In someone's live that, at this point, there is...

Edwin Arvelo: Crying.

Detective Collins: ...okay? That maybe today that's why we met, you know what I'm saying.

Edwin Arvelo: I know it.

Detective Collins: In your heart.

Edwin Arvelo: On my way home, that is all I was asking God was for some help.

Detective Collins: From today, that's where we are going to start. We are going to start getting you down the path of getting you some help.

Edwin Arvelo: And I was going to tell the officers _____ (unintelligible 5:25) from the ladies, I didn't know what to say, I didn't know what to say, forgive me or, you know, I didn't know what to say, but I felt so, so bad _____ (unintelligible 5:40) was like when my mother is standing in front of me (crying).

Detective Collins: But help starts today, man. You know what I mean? It's going to start today.

Edwin Arvelo: Still crying.

Detective Collins: That's what we are going to do today, okay? Alright? Who is in your house with you, you and your mom?

Edwin Arvelo: _____ (Unintelligible 06:28)

Detective Collins: Yeah.

Edwin Arvelo: I don't have anybody.

Detective Collins: Just you? And you live in an apartment? Let me do my questionnaire so I can fill this out. Edwin is your first name. What's your middle name?

Edwin Arvelo: I don't have a middle name.

Detective Collins: No middle name. Are you from the Island?

Edwin Arvelo: I was born over here, but raised over there and over here; we used to move a lot, all the time.

Detective Collins: Where were you born at, here?

Edwin Arvelo: Yeah.

Detective Collins: Were you born in Orlando?

Edwin Arvelo: No, Philadelphia.

Detective Collins: Philadelphia. How much do you weigh now, man?

Edwin Arvelo: Huh?

Detective Collins: How much do you weigh now?

Edwin Arvelo: About 195.

Detective Collins: Are you working out, at all?

Edwin Arvelo: Huh?

Detective Collins: Are you working out?

Edwin Arvelo: Every once in awhile.

Detective Collins: Your hair turns red when it gets longer?

Edwin Arvelo: No.

Detective Collins: No, okay. Your eyes are brown?

Edwin Arvelo: _____ (unintelligible 7:39)

Detective Collins: My daughter's change colors, man. What's your address right now?

Edwin Arvelo: 6521 Baywood Road.

Detective Collins: Is that in Orlando or Altamonte?

Edwin Arvelo: Orlando.

Detective Collins: Orlando. Is there an apartment with that?

Edwin Arvelo: It's Suite 1.

Detective Collins: And, do you have a phone right now?

Edwin Arvelo: 321-478-5820.

Detective Collins: Okay. And, where did you live before this address at Baywood?

Edwin Arvelo: Say again.

Detective Collins: Where did you live at before Baywood? There is a form that asks a bunch of crazy questions.

Edwin Arvelo: _____ (unintelligible 8:30)

Detective Collins: Is that in Orlando?

Edwin Arvelo: Altamonte.

Detective Collins: Altamonte. Are you working right now, are you working for Trane?

Edwin Arvelo: Yeah.

Detective Collins: _____ (unintelligible 8:5).

Edwin Arvelo: Warehouse.

Detective Collins: Warehouse. How long have you been there, man?

Edwin Arvelo: About a month now.

Detective Collins: Where did you work at before that?

Edwin Arvelo: Dell Air.

Detective Collins: Dell Air, okay, so you're an AC man, okay. You don't have your driver's license on you. Do you know your social?

Edwin Arvelo: 163-66-1104.

Detective Collins: Are you married at all?

Edwin Arvelo: Not _____ (Unintelligible 9:23).

Detective Collins: Okay. If you were to call somebody your spouse, who would that be?

Edwin Arvelo: _____ (Unintelligible 9:37).

Detective Collins: Yeah, do you have anybody that you call your spouse, a girlfriend.

Edwin Arvelo: Yeah, but um.

Detective Collins: You don't want me to put her down. That's cool, that's cool. You got any kids at all?

Edwin Arvelo: _____ (Unintelligible 9:51)

Detective Collins: You don't want me to put them down. Where did you go to school at?

Edwin Arvelo: Puerto Rico.

Detective Collins: In Puerto Rico. Did you graduate over there?

Edwin Arvelo: I got my GED. Can I _____ (unintelligible 10:06)

Detective Collins: Oh, this is my supervisor (laugh) he just has these forms that he makes me fill out, but if it bothers you, I can stop.

Edwin Arvelo: Nah, I just wanted, like the reason.

Detective Collins: Nah, it's just asking basic questions and stuff like that, that we have to ask and the form, just because my boss likes it, but I can stop it, all I have to do is tell him that, "Hey, my guy didn't like your sheet, man." So if there are too many questions, then...

Edwin Arvelo: _____ (unintelligible 10:37) the fact that what it's all for, you know?

Detective Collins: It's a nothing. I don't take this and put it on any other form, it's just for us in interviewing. For some people, like me and you, I think we have established a rapport already, but sometimes, some people come in here and, you know, it's kind of, you know, they're kind of more stand off because, you know, so, but with you, I'm comfortable that, you know, I don't need it. The only other thing it just asks is if you had had anything to drink or anything like that. You know, sometimes that is a consideration, you know. Have you have been drinking at all? Yeah? Yeah, I do smell a little alcohol. When was the last time?

Edwin Arvelo: A while ago.

Detective Collins: What did you drink, beer?

Edwin Arvelo: Whiskey.

Detective Collins: What kind of whisky do you drink?

Edwin Arvelo: I don't know.

Detective Collins: Do you remember how much you drank?

Edwin Arvelo: Almost a bottle.

Detective Collins: How big a bottle? Like a fifth, or...

Edwin Arvelo: It wasn't like that.

(No conversation from 11:38 to 11:44)

Detective Collins: And that's good, that is sometimes why my boss likes it, because that's good, sometimes..

Edwin Arvelo: I don't want to go to jail, man.

Detective Collins: I understand. Because sometimes it makes it, you know...

Edwin Arvelo: I need help.

Detective Collins: Right. You got alcohol problems?

Edwin Arvelo: I don't _____ (unintelligible 11:58).

Detective Collins: Okay.

Edwin Arvelo: But _____ (unintelligible 12:02)

Detective Collins: Okay. No cocaine, nothing like that, though?

Edwin Arvelo: No.

Detective Collins: Okay, alright.

Edwin Arvelo: You know, my mother, she is a little religious woman, you know.

Detective Collins: Catholic?

Edwin Arvelo: _____ (unintelligible 12:15)

Detective Collins: Okay.

Edwin Arvelo: And she brought us up in a way, and we saw too many things, you know?

Detective Collins: Right.

Edwin Arvelo: And to me, its like, you know as a kid I might have tried to ignore it, but at moments like this is when you can tell. (Crying from 12:45 to 13:23) And I _____ (unintelligible 13:25) because I know I need help, you know?

Detective Collins: And that's hard for a man to admit, that's hard for a man to say.

Edwin Arvelo: But _____ (unintelligible 13:35) All I have ever tried to do is to really get to the point where I just said, you know, I am this way, or I am like this. But _____ (unintelligible 13:56) and I tried to pick myself up.

Detective Collins: Listen, it takes, it's a big man that comes in here and sits with me and says, "I need some help," you know, because I get a lot of kids who try to come in here and, you know, try to act hard and try to act loose and stuff like that, you know, so it takes a lot. I'm just saying, you need that, and that's good.

Edwin Arvelo: All I have ever wanted is, you know that's why _____ (unintelligible 14:27). And I can't believe that _____ (unintelligible - crying 14:32)

Detective Collins: But sometimes you can't control that, you know what I mean? Sometimes somebody's problem is too big for them to handle by themselves, man. You know that, and as men, we have a hard time admitting that, but that happens all the time, okay? Don't beat yourself up about that. What you have to do from this point, is you have to say, I got to get help from today, from today I got to get help because I can't be in this position again. Right?

Edwin Arvelo: Yeah (crying).

Detective Collins: So for today, that's what we are going to do, man, okay?

Edwin Arvelo: I feel like I'm loosing it all, you know?

Detective Collins: Nah, you're too young for that.

Edwin Arvelo: I don't know, _____ (unintelligible 15:18) my family. I don't know, I think my _____ (unintelligible 15:21)

Detective Collins: But that's what, that's when you get help, and trust me, I have worked in hospitals before I did this, okay? At that time, you can't, don't think about all of the big things and all of the things you are going to have to think about. It's one step at a time. The first step is saying, "I need some help." Okay. Let's take it one step at a time.

Edwin Arvelo: I need.

Detective Collins: I know, but don't think about, don't think about 50 million things at once, let's agree you want to start from the, let's start from the beginning point, because that's the first thing. The first thing for somebody to get help, is they have to be able to admit they need it and ask for it. So, we're at step 1, right? Okay? So that's where we're at. So don't try to think about other things, okay, because you can't do that right now. The first thing you have to do is say, and that's what you are doing, is you have to tell yourself, and you have to tell your brain, "Look, there is a problem, and I need help, and it's going to start today." And what your brain is going to start to do, it's going to start to realize what you're saying, okay, alright? Okay? So you say that to yourself, "Today, I'm going to ask for help." Today is when that process is going to begin, okay? Don't think about everybody else, okay, because at this time, you have to think for you. You're young, okay.

Edwin Arvelo: I don't want to go to jail _____ (unintelligible 17:00).

Detective Collins: I understand that.

Edwin Arvelo: But it _____ (unintelligible 17:04).

Detective Collins: Nah. Listen to me. You're young, you're only 21-year-old. You ain't in here for something, for something that's going to take your life away, okay, alright? You're not in here for that, okay. You're in here for a mistake, right? Okay. There's a big difference.

Edwin Arvelo: A big one.

Detective Collins: Right. _____ (unintelligible 17:25 to 17:29 - Arvelo crying). The problem is to make sure they are not repeated, and what you're doing, which I do not see in 99.9% of the people that come through my door, is for people to walk in and say, "I need some help." Do you understand what I'm saying? Okay? That's the difference in when I look at somebody and say, "That person could get some help, they can get some assistance." Versus other people I look at and I know, I know when I look at them.

Edwin Arvelo: Crying.

Detective Collins: So for right now.

Edwin Arvelo: I got to calm down.

Detective Collins: I know. Remember what I said.

Edwin Arvelo: It's just hard.

Detective Collins: I know.

Edwin Arvelo: I'm afraid _____ (unintelligible - crying 18:10), it's just so _____ (unintelligible 18:12 - crying)

Detective Collins: But this is what we're working on.

Edwin Arvelo: Okay. You know what, I tried to keep it together. I did not want to be there for it.

Detective Collins: Think about it. What we're working on right now, is the first step in figuring out what kind of help you need. Okay, alright? Alright? So let's here it. What got us here today? What got me and you to meet today? And sometimes, what seems like a bad thing is not necessarily a bad thing as it can save you.

Edwin Arvelo: That's a good thought. I just _____ (unintelligible 18:50) 'cause I tried, we don't go into a psychiatrist, you know, to, you know _____ (unintelligible 18:59)

Detective Collins: Right.

Edwin Arvelo: And _____ (unintelligible 19:00) got to go with the _____ (unintelligible 19:03) through the church, but through churches, you know, things are so difficult, and people put so much pressure on you that you have to do so many things that you don't feel comfortable with. And to me, it's like, there has just been so much, you know, that I cannot believe _____ (unintelligible 19:28) because of what it is, and I've always thought, you

Edwin Arvelo: know, that deep inside, you know, the things that you see and the things that you learn as a kid you don't see reflected how you act, but you always think that you can control it, you know, that you never do, you will never be like that. Like, when you grow up with a father, you know, some people, they don' t have that relationship with their father, they don't get along with him, _____ (unintelligible 19:58) never going to be like him, no I'm never going to do this, but when they _____ (unintelligible 20:01), you know?

Detective Collins: You repeat the same mistakes unless you get some help. And that's what you got to do today. We 'gotta recognize what the problem is so we can recognize...

Edwin Arvelo: I regret so much. I just... (silence from 20:23 to 20:27)

Detective Collins: Why did me and you meet today? What would be the reason. If you were to give me one sentence, why did we meet today?

Edwin Arvelo: Obviously, _____ (unintelligible 20:38) because you were appointed by God. Because even if I wasn't living, you know, like I'm supposed to, you know, _____ (unintelligible 20:52) when you see yourself, you know, I can tell him where I'm at, how I feel, where I want I go and how I want to be. It's so hard sometimes.

(Phone ringing, Arvelo crying 21:08 to 21:17)

Detective Collins: What did you do yesterday when you got off work? You went to work yesterday?

Edwin Arvelo: Yeah.

Detective Collins: What did you do when you got off work?

Edwin Arvelo: I went to the dealership, trying to get me a new car.

Detective Collins: What kind of car?

Edwin Arvelo: I was going to get a _____ (unintelligible 21:33). I went to the Chevy dealer in Sanford.

Detective Collins: A truck or a car?

Edwin Arvelo: No, I'm looking for a car. That new Cobalt.

Detective Collins: Um huh.

Edwin Arvelo: But they did not want to approve it because I was a first-time buyer and I needed so much money so I could get into a car, so then from there, I went to the Toyota dealer, you know, and then there, they didn't approve it, there was the same think you know, first-time buyer, I needed so much money.

Detective Collins: So yesterday you had some frustration.

Edwin Arvelo: Yeah.

Detective Collins: What time did you start drinking?

Edwin Arvelo: About 1:00.

Detective Collins: 1:00 in the morning?

Edwin Arvelo: Yeah.

Detective Collins: Where did you go, were you at home?

Edwin Arvelo: No, I was trying to celebrate my birthday.

Detective Collins: Your birthday was yesterday? Happy Birthday, bud. Hey, you got every day that you wake up to see another one, man.

Edwin Arvelo: Not to me, man. Not if I go to jail either. Not if I do time.

Detective Collins: Listen, is this a mistake, or is this the worst crime scenario. Nobody's dead, right? Okay. So how would you describe it, a mistake or...

Edwin Arvelo: A big mistake.

Detective Collins: Okay, exactly. Alright. And I'm looking at a young person, and young people make mistakes all the time, okay. I'm not sitting in here with some hardened criminal that's got a 20 year history with a rap sheet longer than my arm, and I sit in here with them all the time. We're not talking about that, right? You're not that kind of guy, I'm not sitting here with that kind of guy. I know that. You know that and I know that, okay. I'm sitting in here with a young person that's made a mistake, okay. But I'm looking at a young person that, he's only 21, you know what I'm saying. You, you, you can get by mistakes as a young person and have a whole life ahead of you.

Edwin Arvelo: I want to lean so much. I want to do so much. I want to become so much.

Detective Collins: And you can do that. What you're doing is recognizing that you have a problem. What you're doing is recognizing the fact that you need some help with it, and you're not big enough to solve it, and that's hard for men. I mean, at your age, only being 21 to recognize that. Some men don't recognize it until they're 35 or 40 years old, okay? So don't sit here and beat yourself up about it. It's a good thing.

Edwin Arvelo: It hurts. You know (silence 24:24 to 24:27)

Detective Collins: So you sat at home. You swing one, it's your birthday man, you gotta have a drink, man, you're 21. Anybody to celebrate it with.

Edwin Arvelo: With some neighbors.

Detective Collins: Okay. Tough. Alright, so you brought in the 21 with some alcohol, man. Hey, every kid, probably in America, has probably done the same thing, and that is probably, let's say 75 million kids. Do you think you're the only kid that's made a mistake after having alcohol? Do you think you're the only one? Nah, come on man, come on. You ain't the first kid, and you won't be the last kid, okay. It happens all the time, but that's a mistake, okay? Now, let's see what we can do...

Edwin Arvelo: You know, I am so willing. You know, I wish you could understand and just talk.

Detective Collins: I want you to talk.

Edwin Arvelo: You know, because I was really, really ready to get all of this out of me and off my chest so I can be, you know.

Detective Collins: And I see that.

Edwin Arvelo: Because (crying 25:57 to 26:03)

Detective Collins: Did you get any sleep at all last night? No, you've been up all night. Have anything to eat? No.

Edwin Arvelo: _____ (unintelligible 26:10)

Detective Collins: So, no sleep, no food, just some alcohol. It leads to a mistake, man, it does all the time. Did you get in an accident at all? No. Do you feel bad about what happened today?

Edwin Arvelo: I feel embarrassed, I feel mad, I feel bad, I feel like crap, man. I feel like if all this time my mother is _____ (unintelligible 26:45) right now.

Detective Collins: That's called remorse.

Edwin Arvelo: I would look her in the eye not once.

Detective Collins: I know, and that's called remorse. (Arvelo crying) And you know what (Arvelo still crying). Most people don't have it because they don't have a heart. (Arvelo crying harder). You're different, man. (Arvelo still crying hard). You're different. You're different from 99% of the people who come in here and sit down. You got a heart, man. It's called remorse. It's called making a mistake and feeling bad about it, and you know what, everybody that's involved in my line of work, they all want to see remorse. How many times do you see it on TV, he had no remorse. They can't say that about you, right? Everybody makes a mistake.

Edwin Arvelo: But it's not going to help.

Detective Collins: It does help.

Edwin Arvelo: You know.

Detective Collins: It does help.

Edwin Arvelo: It's like, what's the use of it if _____ (unintelligible 27:55)

Detective Collins: Everybody makes a mistake, every body. Now, what you're supposed to do at that point. There are two decisions you make when you do that, especially as men: One we man up, and one we don't. When we don't, there is a great danger that we are going to repeat the mistakes that we are making because we are never..

Edwin Arvelo: I want to help, man.

Detective Collins: Exactly.

Edwin Arvelo: I mean, if

Detective Collins: You got remorse, you're asking for help, okay? The last thing you need to do is just man up. But you're the exception to the people that come in here and sit down with me, because they don't have remorse. They couldn't drop a tear trying to have a tear. They don't have embarrassment, and what you've done is nothing in comparison to some guys I've had sitting in that chair. Okay?

Edwin Arvelo: I hope so that way.

Detective Collins: You're a young person. You're drinking alcohol on your 21st birthday, without any sleep, without eating, you're going to make a mistake? Darn right you are. You've come in hear, you've looked at me, you've said, "I need some help," and I'm saying, "Wow, that's commendable." You're looking at me, and I'm looking at you, and you're describing feelings that you don't know what they are, and I know what they are, and I'm telling you they're called remorse. Okay? And I'm telling you I don't get to see that every day, Okay? I don't get to see that every day. Do I want to see it every day, of course I do, but I don't get to see it every day, why, because there are a lot of people out there who don't have a heart. What do you keep grabbing every time? That right there, because you still got one, right? It ain't hard for me to see that. It ain't hard for me to see that you got a heart. It ain't hard for me to look on your face and know that you feel bad about what happened.

(Someone sighing)

Detective Collins: Do you remember leaving your house at all? Do you know what time you left?

Edwin Arvelo: (Coughed)

Detective Collins: In the morning, or still last night?

Edwin Arvelo: Um, it was still dark.

Detective Collins: Do you remember where you went?

Edwin Arvelo: To drop off _____ (Unintelligible 30:42)

Detective Collins: Where'd you dropped them off at?

Edwin Arvelo: Down by _____ (unintelligible 30:54)

Detective Collins: On Forest City, okay.

Edwin Arvelo: _____ (unintelligible 30:58)

Detective Collins: And then what'd you do?

Edwin Arvelo: I went to play _____ (unintelligible 31:03)

Detective Collins: Just you? Did you have your bottle with you, or no.

Edwin Arvelo: I had it.

Detective Collins: You had the bottle with you? Okay. Remember what happened after that?

(From 31:17 to 31:53 - no talking. Occasional sighing)

Detective Collins: Do you remember what you were thinking?

Edwin Arvelo: Some, somewhat.

Detective Collins: What do you remember, mainly?

(From 32:07 to 32:17 - no talking)

Edwin Arvelo: Perverted, _____ (unintelligible 32:24)

Detective Collins: Have you ever had those thoughts before? Okay.

Edwin Arvelo: That's why I said I need help.

Detective Collins: So that's something you, you've been dealing with all your life, or since you've been a teenager.

Edwin Arvelo: To be honest, _____ (unintelligible 32:52 to 32:55) I do want to talk, I do want to help.

Detective Collins: And listen to what, remember what I told you.

Edwin Arvelo: You know.

Detective Collins: When I sit down, when I sit down with the state attorney and they tell me, they say, "Hey, listen, when you're interviewing guys, you let 'em know we just like to know the truth." "When you sit down with guys and interview them, you tell 'em judges like to know the truth. Why, because they're the decision makers, man.

Edwin Arvelo: I want to help. I mean.

Detective Collins: So tell me what the urges are, and trust me, man, you know...

Edwin Arvelo: I'm gonna open up, you know, 'cause I believe you can help me, and I want you to help me, you know. I just don't want to open myself up and just be going this and just end up, you know, locked up doing time. Because everything that I have now is so, you know, so important to me, so, and everything that I love and that I have in my life, to just see it slip away, 'cause it's going to slip away and is never gonna come back. But I wanna open up because I want the help, you know.

Detective Collins: Because inside all this stuff that you have seen growing up and experienced growing up...

Edwin Arvelo: _____ (unintelligible 34:20)

Detective Collins: There is still a good person inside you.

Edwin Arvelo: I've kept it in for long, so long, so long, and, you know, I'm trying to look for help to find, you know, a person that I could speak with that can understand me and, you know, guide me, you know? But, I can never really just let it all out, you know, or speak about it, because, you know, I'm embarrassed about it, you know. Some things, they just, you know, make me feel uncomfortable just to think about it, you know.

Detective Collins: Right.

Edwin Arvelo: But right now, man, I feel two things. The first one is that it's my chance to actually wake up and start, you know, _____ (unintelligible 35:14) help and move on to something better, and two, that if I don't do it, kind of like, you, like I think everything is _____ (unintelligible 35:28) you know?

Detective Collins: Right.

Edwin Arvelo: I believe, you know, and I don't want to have _____ (unintelligible 35:33) because I'm gone and because mommy and daddy are hear, you know. I got no sister, and my brothers are, my brothers are, you would call it...um...what do you call it once you went to prison and served time?

Detective Collins: A felon.

Edwin Arvelo: Accountant?

Detective Collins: Considered a felon.

Edwin Arvelo: A felon?

Detective Collins: Yeah. Convicted felon is what they say, and some people say convict for short.

Edwin Arvelo: His way of thinking, you know, dealing with things like in there, you know?

Detective Collins: Right, right, right.

Edwin Arvelo: I can't really deal with them.

Detective Collins: I know.

Edwin Arvelo: You know?

Detective Collins: Yes.

Edwin Arvelo: But he's that type of person, like, you know, things have to be his way, or it's not _____ (unintelligible 36:25) You know, you don't prove yourself to me, you known?

Detective Collins: Right.

Edwin Arvelo: So I'm not going to fault you, or I'm not going to be there, that you'll stay on your side, you know? And whatever, because I've pushed myself to make a difference, you know? But I can _____ (unintelligible - phone ringing 36:42) all of this and _____ (unintelligible 36:45 Suspect sobbing and phone ringing) messed it up. You know, when I came _____ (unintelligible 36:58) for about maybe a year and a half now, and you know, I came out here, you know, because I met this girl, and I really liked her and, you know, you know how it goes, you know?

Detective Collins: Right.

Edwin Arvelo: And, um, she has a kid, and I was so young, and everyone told me, "No, no, don't do that" _____ (unintelligible 37:26). You know, where we said is, follow your heart, you know,. Why listen to people, you know. I'll follow my heart. So, first, I moved up to New York, and I was working in New York for accounting while she was in Puerto Rico, and then, and then I wanted out from in New York, because the rent was too high, I wasn't making enough money, you know? So I moved back to Puerto Rico, stayed down there for a couple of months and then moved here to Florida. But my brother-in-law, of course, he was just, he's gonna be very upset, but, you know, he let me stay at his house, and I worked and saved my money, you know? I worked, saved my money, _____ (unintelligible 38:32), but, you know, at least an apartment that I rented and move in together, and you got our things a little by little. And then _____ (unintelligible 38:45) cause it just reminds me, it reminds me of when I was a kid, you know, my mother sleeping on the floor to give us her bed, a place to sleep, you know? My mother _____ (unintelligible 39:04) food to give us, because we were hungry, you know? There's always _____ (unintelligible 39:14) all of my life and, you know, now I have the opportunity, you know, to, to make a life, you know, with a woman that I love, you know, because I do care for her and I do try to take care of her 'cause she does the same for me and then make a different life, you know, don't worry that I didn't have, you know, try to be a father even though I'm only 21 and once I used to wait to at least go past 25, you know? And I don't know what happened, I don't know what happened tonight, you know? That's all that I have is that.

Detective Collins: Where did the thoughts come from that have been haunting you, where did they originate from?

Edwin Arvelo: My belief, you know, I can't tell you, you know, exactly, so you know this is what I think 'cause, I feel that if I can actually just be able to say, "No this is because this, then I can do something about it, you know?

Detective Collins: Well, don't try to say, don't try to say...

Edwin Arvelo: But when I

Detective Collins: Just tell me what _____ (unintelligible 40:44) when those thoughts first started.

Edwin Arvelo: What I feel...

Detective Collins: Tell me when those thoughts first started.

Edwin Arvelo: What I feel is that I grew up in a home there was a lot of abuse.

Detective Collins: Physical abuse, mental abuse, sexual abuse?

Edwin Arvelo: Not for me the sexual abuse.

Detective Collins: Who was that, who was the target of the sexual abuse when you were growing up?

Edwin Arvelo: I kinda don't feel comfortable...

Detective Collins: Okay.

Edwin Arvelo: talking about that. I could talk about it, but I just don't want to say anything that would get _____ (unintelligible 41:39), you know.

Detective Collins: Okay, okay, I understand.

Edwin Arvelo: Someone very close to me that comes from my mother and my father, you know?

Detective Collins: So you witnessed somebody being sexually abused when you were younger. Did you ever see it happening, or you just knew it was happening?

Edwin Arvelo: That person used to tell me, you know, _____ (unintelligible 42:05) all the fights and arguments over it.

Detective Collins: And then you would suffer the physical abuse of it?

Edwin Arvelo: I would see everything. You know, I was just maybe like 5 or 6, you know, and then the violence. There was a lot of domestic violence.

Detective Collins: And who was in the house at that time? Your mom and your dad or just your mom and boyfriends?

Edwin Arvelo: No, my mom and my dad. _____ (unintelligible 42:33)

Detective Collins: Good.

Edwin Arvelo: I have, I'm the youngest one in the family.

Detective Collins: Okay.

Edwin Arvelo: I had it all. _____ (unintelligible 42:43) sexual abuse and all my other brothers and sister _____ (unintelligible 42:48) you know?

Detective Collins: Right.

Edwin Arvelo: That doesn't mean that they're still trying to figure out, you know, who that is and that, you know. You know, my mother grew up, and I don't know what type of life she lived, but I know it was rough, and she just kept moving from, and the way I see it, she just kept going from man to man and handing down and down in the same situation, and then she would leave them because she would see that she was in the same situation all the time, you know? And then, since I was the youngest one, you know, she told me this after I was big, you know, she told me that she only stayed with my father because she didn't want me to grow up without a father, you know. But, there had already been like so much that I would tell her, like, "Mom, I'm already big, you know, I'm already big. Okay, I just knew _____ (unintelligible 44:06 - crying).

Detective Collins: Right.

Edwin Arvelo: (Loud sobbing from 44:13 to 45:00)

Detective Collins: But do you remember how old you were before you started having the thoughts and stuff? Do you remember the first time you started having those?

Edwin Arvelo: To be honest with you, and this is why I say, you know what, you'll be embarrassed and not able to understand when I was young and, um. (sighing). Remember I told you there was a person that had been sexually abused, well, then that person kind of like started bringing it down to me aspirin kid, and all of a sudden, you know, _____ (unintelligible 46:16)

Detective Collins: So when they brought it down to you, they would talk to you, or they would try to do it with you?

Edwin Arvelo: Uh huh.

Detective Collins: Okay, okay.

Edwin Arvelo: Maybe by, I don't know, 8 or 9.

Detective Collins: What's the age difference between you and the other person?

Edwin Arvelo: It's about 5 or 6 years.

Detective Collins: Okay, so, and I'm just using this as an example, you're 8 so they're probably 13 or 14, somewhere like that?

Edwin Arvelo: Yeah.

Detective Collins: And there's a cycle.

Edwin Arvelo: There has always been a cycle.

Detective Collins: Right.

Edwin Arvelo: (Sobbing) All my _____ (unintelligible 47:14)

Detective Collins: Right. There's something that starts and then somebody does something to somebody else and that person acts out, you know what I mean? And this person, they might have been the first victim, or who knows, right, but they're going to act out, come over here, you know. Why, because they're having those thoughts too, right, and now they transfer that to you at 8 years old. See what I'm saying. Somewhere along there, if somebody doesn't break it and get some help, it continues to go around, you know what I mean. That's why, the step you're taking today, to me, is a step you took. You have to break it, somebody has to break it, you know. It's not easy to do. It's not easy to do. So this started healing the thoughts. Was there an age where you did any acting out?

Edwin Arvelo: I don't know, I guess I would say like I missed school, you know, where it felt like _____ (unintelligible 48:38).

Detective Collins: Right. The change. You're body's changing and guys, all of a sudden you have urges and feelings and you don't know what in the heck is going on with my body, you know what I'm saying?

Edwin Arvelo: Yup.

Detective Collins: So, combined with the changes, as a man, as a young boy into puberty, did the thoughts increase at that time, or is that when you first realized they were there?

Edwin Arvelo: Well, I've always _____ (unintelligible 49:10) They've always been there, you know?

Detective Collins: Right, right. That's my tape, I have to record when I'm in the room, just so you know. _____ (unintelligible 49:28), and if you feel uncomfortable at any time, you can tell me, and I'll turn it off, but just because I'm a police officer, I have to make sure nobody doesn't think I'm hurting somebody.

Edwin Arvelo: Okay.

Detective Collins: So, and that's, trust me, that's what happens. This right here, I'm telling you that from experience because that's what happens, so, you know, that's what I know, and you're right, when this has happened, somebody needs help, or this continues to happen everywhere around people, you know what I'm saying? Because it's too big to control. It's something that's happened that shouldn't happen.

Edwin Arvelo: So how do you control it?

Detective Collins: You have to get help, because, you know the expression, "No man is an island unto himself," right? Because the difference in us and everything else on the planet is that our brain does thought and reason, you know what I'm saying? And so because of that, we have to get some thought and reason from an outside source to help us understand stuff. If not, it continues to go around. So, when you were in middle school, with the puberty change from child to adolescent and you started having puberty, you started having the thoughts, and how were the thoughts met, I mean, what...

Edwin Arvelo: I mean, _____ (unintelligible 51:08). It's like I would have (sighing).

Detective Collins: And it's not going to embarrass me, okay, and it shouldn't embarrass you because you're asking for help, so you got to get to that point.

Edwin Arvelo: It's just hard, it's just hard to talk about it.

Detective Collins: I know. Remember what I told you from the beginning, man, I don't hold judgment, you know, I don't put judgment on people, okay?

Edwin Arvelo: (Sighing) _____ (unintelligible 52:13)

Detective Collins: Right.

Edwin Arvelo: You know. _____ (Unintelligible 52:24) there was an incident with a cousin of mine, you know, and then forced it away but then I left, you know? But right here, that incident was _____ (unintelligible 52:46), you know. That's when you had the thoughts, _____ (unintelligible 53:00).

Detective Collins: Um huh.

Edwin Arvelo: And then, as you grow, you keep these thoughts and push them away and _____ (unintelligible 53:18) whether or not I'm a man.

Detective Collins: It screws up the whole process, it screws up the way the natural process of moving from...

Edwin Arvelo: That's the way I'm thinking, you know?

Detective Collins: And so, and so, your sister was abused, which made her come and share, she talked to you about it first and then she had sex with you?

Edwin Arvelo: Something like that.

Detective Collins: Oral sex? Regular sex?

Edwin Arvelo: In the first place, I was only 8.

Detective Collins: Okay. And she is just acting out and not understanding what happened to her, right?

Edwin Arvelo: Right. I don't even know exactly everything of what happened.

Detective Collins: And so from that, you, that stays with you from 8 years-old. That's a long time, man. That's a long time. That's a long time for you to be trying to figure out how to solve it.

Edwin Arvelo: I don't want to be like that no more.

Detective Collins: _____ (unintelligible 55:07)

Edwin Arvelo: I want to be safe.

Detective Collins: That's over half your life, man, trying to figure out why and how and.

Edwin Arvelo: I don't want it. I just want _____ (unintelligible 55:18)

Detective Collins: Now how did that make you feel towards women in general, after having that experience. I mean, as you started to get older, I mean. Did it change anything? How would you describe?

Edwin Arvelo: _____ (unintelligible 55:36).

Detective Collins: Did you lose respect, did you lose, you know.

Edwin Arvelo: Respect.

Detective Collins: You lost a lot of respect for women in general? Okay. That's understandable man.

Edwin Arvelo: That's not the way it's supposed to be, man.

Detective Collins: I know. That's not the way its supposed to be at 8 years old either. That's not the way it's supposed to be for a 13-year-old either, you know what I'm saying? But, in that cycle of things, if something goes wrong, it trickles down, man, it has an effect all the way around, right? I mean, you can see it now. You can't see it then, but you can see now how it has an effect. You can't see it at 8, you have no idea how its going to effect you, but that's over half your life you've been dealing with an issue, and not really understanding the who, what, where when and why it happened, you know what I'm saying? At 8 years old, man, I can't even imagine, at 8 years-old.

Edwin Arvelo: I remember I was in a situation _____ (unintelligible 56:45), you know.

Detective Collins: Tell me how this situation led up to what happened today.

Edwin Arvelo: _____ (unintelligible 57:05).

Detective Collins: Is this the first time the thoughts have come out?

Edwin Arvelo: This way? Yeah. _____ (unintelligible 57:17)

Detective Collins: Okay.

Edwin Arvelo: _____ (unintelligible 57:20) You know, it came to mind, and you try, you know, and then just today, I find in the car all I could tell the police, you know, that I was sorry, you know. And I was telling them, I was like, "I know you deal with people like this every day, and after _____ (unintelligible 57:50) you know I'm sorry, and I was like, I'm sorry you have to deal with me right now, you know? I feel like its disrespect.

Detective Collins: So for 4,745 days, man, you've been living with some bad thoughts, man.

Edwin Arvelo: I just want, I mean. To me it's always been like church, you now? _____ (unintelligible 58:21) you know?

Detective Collins: Do you think that alcohol has had an impact on the thoughts.

Edwin Arvelo: No.

Detective Collins: had you ever been drinking like that before?

Edwin Arvelo: Yeah.

Detective Collins: Okay. Did it affect any thoughts then, do you remember?

Edwin Arvelo: No. I mean, it does, but not like today.

Detective Collins: Not like today. Anything you can think of besides the alcohol today that triggered the thoughts to be when you couldn't control them - arguing with your girlfriend, seeing somebody who reminds you of something, you know, anything that you think that might have...

Edwin Arvelo: Sparked the desire?

Detective Collins: Yeah.

Edwin Arvelo: Nope.

Detective Collins: Do you think a lustful desire might have combined with the thoughts and the alcohol might have led _____ (unintelligible 59:27).

Edwin Arvelo: _____ (unintelligible 59:28)

Detective Collins: Okay, and Is it a certain type of person. Was it the person, was it, what was it? You tell me. Cause I know you got the thoughts, and I totally understand, I mean, you know, you've been holding that for 13 years, and I understand about the alcohol, so I know that combination, the alcohol and the sexual abuse victim that has been dealing with it for 13 years, but what made it happen today?

Edwin Arvelo: _____ (unintelligible 1:00:09) I don't know.

Detective Collins: But if I believe in lust, the lust can be _____ (unintelligible 1:00:12), describe that. Somebody that you're attracted to, that body type, that, you know, _____ (unintelligible 1:00:19)

Edwin Arvelo: Um huh.

Detective Collins: Okay. Now, I didn't see, I haven't been over there to see anybody that, what happened today. Like I said, I just got called. I was out working another detail over here, and stuff like that, just because my boss knows that I'm, you know, I'm better at talking to people and I'm non-judgmental, so he asked me to come in and speak with you. So tell me, what is it about that person, because I don't know what they look like.

Edwin Arvelo: Pretty good looking, I don't know.

Detective Collins: So, a good looking person. Puerto Rican person?

Edwin Arvelo: Nah.

Detective Collins: Okay. American?

Edwin Arvelo: Yeah.

Detective Collins: Okay. Brown hair, black hair?

Edwin Arvelo: Blonde.

Detective Collins: And is that part of the lust. Is that women you normally find attractive, or was it just this particular woman?

Edwin Arvelo: _____ (unintelligible 1:01:27) I mean.

Detective Collins: She's just an attractive person.

Edwin Arvelo: Yeah, I mean.

Detective Collins: Is it this woman you say is particularly attractive, or just woman, you know, American women with blonde hair, or how would you say, or just her?

Edwin Arvelo: I would say that (sighing)

Detective Collins: And I know it's difficult, cause it's something you've never put much thought to, you know what I'm saying?

Edwin Arvelo: _____ (unintelligible 1:02:07) women in general.

Detective Collins: Just women in general, okay. Good looking women, or just any woman?

Edwin Arvelo: Any woman.

Detective Collins: So any woman that you look at you have the thought.

Edwin Arvelo: Um hum.

Detective Collins: Okay. Now,

Edwin Arvelo: Not every single woman, but most.

Detective Collins: Okay, okay. That's honest, bro, that's honest. Now, with that in mind, today, and what brought you here today, was there anything particularly, cause I'm trying to figure out was there anything that might have triggered today to be different than the other 4,745 days you've been dealing with this. Was there anything today that you think of that might have triggered anything particularly. If no, you know. So we got that she was good looking, she was American and blonde. Anything about her clothing that might have.

Edwin Arvelo: _____ (unintelligible 1:03:25) The cleavage.

Detective Collins: Okay, you could see cleavage. _____ (unintelligible 1:03:31). You could see cleavage. What, what was she dressed like, what was her shirt like?

Edwin Arvelo: _____ (unintelligible 1:03:39).

Detective Collins: Do you know what color? No. What kind of pants, you don't know. But just the cleavage.

Edwin Arvelo: I don't know.

Detective Collins: Okay. Listen, that's, I mean, that, you know cause we're trying to figure out, and that's part of the helping process, man, that's trying to figure out exactly what, you know, what might have been different today than, than the other days. Okay.

Edwin Arvelo: (Sobbing)

Detective Collins: Now, where were you at when you seen her?

Edwin Arvelo: In my car.

Detective Collins: So you're sitting in your car. Okay. And were was she at?

Edwin Arvelo: In her car.

Detective Collins: She was in her car. Where was your car parked at?

Edwin Arvelo: _____ (unintelligible 1:04:47)

Detective Collins: Okay, parking lot, parking garage?

Edwin Arvelo: I was parked in the garage.

Detective Collins: In a parking garage. What floor were you on in the parking garage.

Edwin Arvelo: _____ (unintelligible 1:05:04)

Detective Collins: Okay. First floor on the floor, first floor going up the floor?

Edwin Arvelo: Going up.

Detective Collins: Going up. Okay. Did you see her park first, or did you park first?

Edwin Arvelo: She parked first.

Detective Collins: Okay, she parked first. Where were you at when she was parking? Were you still driving in, or what?

Edwin Arvelo: _____ (unintelligible 1:05:25)

Detective Collins: Nothing. If you don't want me to write it down either, I don't need to write it down. This is what I'm trying to do. We know that there is a cause of something and an effect. Now, with the cause, we already know what the root is, we already know. You were a victim, okay, at 8 years of age. That's the root, okay?

Edwin Arvelo: Alright.

Detective Collins: Now, the cause of that, you know, now we're looking at the cause and the effect, you know. Because you were sexually battered, now there is an effect on something, okay? So I'm trying to get to what effect it had, you know, with you being that, what did it lead to. Cause what I'm looking to do, remember, is I'm looking to break that cycle, man.

Edwin Arvelo: _____ (unintelligible 1:06:36)

Detective Collins: I need, you know. The intervention of me is me stopping and end, so Edwin's here and who knows who else is out here, and I say, "Hey, for Edwin, it doesn't go any further."

Edwin Arvelo: _____ (unintelligible 1:06:48) It's coming to the point where I was aggressive _____ (unintelligible 1:07:06).

Detective Collins: Okay, okay. So today it took you to be aggressive in order to calm the thought process that was going on?

Edwin Arvelo: To satisfy that urge.

Detective Collins: Okay, you had to be aggressive. Do you know how aggressive?

Edwin Arvelo: It was just.

(No speaking from 1:07:31 through 1:08:15 - intermittent sighing)

Edwin Arvelo: _____ (unintelligible 1:08:16)

Detective Collins: Do you know. Let me ask you this. Did you know what was going to happen when you got out of your car?

Edwin Arvelo: Yeah.

Detective Collins: Okay. Were you planning on speaking to her.

Edwin Arvelo: Uh huh.

Detective Collins: Okay. Do you know what you were planning on saying.

Edwin Arvelo: I...

Detective Collins: Yeah, yeah, you want a drink of water, or something? Okay, okay. Take your time, man, okay, alright?

Edwin Arvelo: _____ (unintelligible 1:09:03), and then he's like.

Detective Collins: Let me ask you this, do you think what happened today, do you think you did something wrong? Okay, okay. And you got how many sisters?

Edwin Arvelo: Two.

Detective Collins: Okay, you got two sisters, and you got a girlfriend.

Edwin Arvelo: And my mother.

Detective Collins: And you got a mother.

Edwin Arvelo: _____ (unintelligible 1:09:26). (Sobbing) So why did I do it to a _____ (unintelligible 1:09:34) person that was _____ (unintelligible 1:09:39)

Detective Collins: And, what happened _____ (unintelligible 1:09:52)

Edwin Arvelo: _____ (unintelligible 1:09:11) for not having myself get to that point, and how they're going to look at me. _____ (unintelligible 1:10:05).

Detective Collins: What you've got to think about is have you been able to look yourself in the mirror?

Edwin Arvelo: I want to.

Detective Collins: Okay.

Edwin Arvelo: I just.

Detective Collins: And how do you get to that point?

Edwin Arvelo: What I want, what I wish I could have is _____ (unintelligible 1:10:24). If I could have that hope, you know. I felt not very good and comfortable, even with you, but I felt comfortable.

Detective Collins: Um hum.

Edwin Arvelo: And if I could just have someone to help me, you know, like that.

Detective Collins: Right.

Edwin Arvelo: _____ (unintelligible 1:10:47).

Detective Collins: And, and, and...

Edwin Arvelo: And actually, I want _____ (unintelligible 1:10:56) you know. If I get locked up, I will be in there probably, you know, for a long time, and my girlfriend's going to find out about it, and she's going to know there is a whole dilemma of everything, and then she's going to look at me like that, and everybody else is going to look at me like that. And after everybody's going to turn their back on me, and I'm going to be even more alone than what I am, you know?

Detective Collins: But what you've got to think about.

Edwin Arvelo: _____ (unintelligible 1:11:28), and once out _____ (unintelligible 1:11:33)

Detective Collins: This is the road you're at. This is what you've got to ask yourself. Do I want, do I want the help, or am I concerned with the embarrassment, because you can't go towards the help by standing still worrying about the embarrassment. Cause, let's face it, whatever happened today has happened, right.

Edwin Arvelo: Um hum.

Detective Collins: Dude, you can't take it back, right.

Edwin Arvelo: Uh huh.

Detective Collins: What I did this morning, I can't take it back, right? I can't go back to the gym and say give me back those mile and a half that I ran on the treadmill, give me back the 472 calories I burned up. I can't do that. I can't take that back. The machine can't give it back to me. What you did this morning, you can't go back and reverse it. Can you move forward from this? Yes. Yes you can. And any mistake that anybody makes...

Edwin Arvelo: Is it necessary for me to go to prison?

Detective Collins: I don't know. I don't know what happened. You see what I'm saying? I'm coming into this, what my supervisor was like, "Hey, this is a young person, you're the best person at talking to people, you understand people, you, you have a good rapport with young people." You know, I got seven kids. Who else is going to beat me around here understanding, you know what I'm saying?

Edwin Arvelo: Uh huh.

Detective Collins: On top of that, I'm very diverse, man. You know, my wife's Puerto Rican, I grew up in a biracial family, so there's not anybody out there I don't like. You know what I'm saying. I like people, period. That's it. Do I know that people come before me that have made mistakes? Of course I do. Does that mean I don't go home and say a prayer for them at nighttime? No, I do, every single one of them. Okay.

Edwin Arvelo: Uh huh.

Detective Collins: Every single person I say a prayer for, okay? Cause I'm not greater than anybody. You know what I'm saying? That's the way I was raised. I'm not greater than anybody, man, you know, so, you know, I don't pass judgment. I have a job to do. I try to do my job the way I think it should be done, meaning, that if somebody made a mistake, why did they make a mistake? Because I think that everybody in the court system wants to know why, what happened. Do I think that there's a big difference in someone that comes in here with me and doesn't give two craps about a victim and a person who comes in here with me and says, Nick, I got a problem, this problem's been with me for 13 years and I don't know why, but I cannot beat this problem, and I need some help. Do I think there's a difference there? Ask yourself. There's a huge difference. That is why we have a court system not based, like some countries, where its like, you did that, forget about it. You know what I'm saying?

Edwin Arvelo: Uh huh.

Detective Collins: We have a court system based on, on, on factors. Mitigating, litigating factors. I mean, we can, those things are taken into consideration. Do you know what I'm saying? You know, that's what lawyers are for. People think, you know, well this and that. No. It's meant for somebody to say, "Look, this guy uh, you know, he's got this past, and what's this kid to do?" You know what I'm saying? That's why, I take the time to try and understand why something happened. You know what I'm saying. I could have told my boss, "Look boss, I'll go figure out what happened. Let me go over to the scene, let me talk to the victim, let me do this, let me do that, dah-dah-dah-dah-dah-dah-dah, let me do my paperwork, let me cart people to jail, and I'm done with it." I think, I think, I think, I think our job is bigger than that, you see what I'm saying, I think my job is to try to get all the facts so that if a judge and a jury and the state has to look at the case, they got all the facts. They just don't got what's-his-name, what'd you do, okay. You know what I'm saying? There's more to that. I try to put a face, I try to put, you know, I try to put things that have led somebody to make this mistake before the court so that they have everything, so that people understand that hey, there's people here, not just, you know, all this other legal jargon, you know what I'm saying. So what I give you the opportunity to do, and it's up to you, if you want to do it, I give you the opportunity to tell me why, and I think, I mean, you're, you're, you're showing me. And let me tell you something. When I'm looking at it, I know that that combination of your childhood is going to lead to some problems unless you get some help, I already know that. Why, because I see it all the time, so you're not the first person.

Edwin Arvelo: I just don't want to go to prison.

Detective Collins: I understand that.

Edwin Arvelo: _____ (unintelligible 1:16:19).

Detective Collins: I understand that, but jail and prison are two different things. Remember, understand the jail system. The jail system means something happened. The police officer's job, at that point, is to get him in front of a judge so a judge can cool things down, _____ (unintelligible 1:16:31), that's what the jail does. Prison is when a jury decides that what the person does they cannot get help for, they cannot be released back out into society, they cannot do that. You've went 4,745 days, okay, without a problem. Right? Even though you have been living with it, you have lived over 4,745 days with this issue. One time, one time, today, right, we're only talking about today, where it's raised its ugly head and you've made a mistake, right? Now, do I say this person has to go from a jail to a prison? I don't think so. Do I think that this person needs to get some help? Yes, I do. Yes, I do. Okay. So there's a difference in jail. There's a difference in jail and prison. Prison is where people that can't be rehabilitated, people that can't, you know, do this and that, that's where they end up. Jail means somebody made a mistake, whether they were driving drunk, or they were in a fight, you know what I'm saying? So that's what jail is. Jail is to restore peace and then let them see the judge and then we decide where it's going to go from there. Sometimes, it comes before a judge and the state and they never even take the case to court. It happens all the time. It happens more than you think. Okay. So, so that's something that, that, that I can tell you that that's the system, you know what I'm saying. But in my experience with the system, I think if you talk and listen, you watch Court TV and you listen to juries, and you listen to judges and people that have all...what really happened, what went wrong this day, what went wrong in this person's life that, that, that caused that mistake?

Edwin Arvelo: Has anyone spoken to you about my record? Has anyone looked at my record?

Detective Collins: I've looked at your record. Your record is _____ (unintelligible 1:18:42) dude, your record is two pages, man. Come on, what is that. You know, indecent exposure. That's anything from peeing in the bushes to, you know, mooning my buddy driving by in a car. Okay, you know what I'm saying.

Edwin Arvelo: Solicitation.

Detective Collins: Solicitation for a prostitute, "Hey, baby, what's up." Come on. You ain't no criminal, man, you ain't no hard-core criminal. This ain't no rap sheet. This is nothing to me. This is not even worth faxing over the fax machine. Dude, I got guys, I B.S. you not, man, I got guys that their packet is being faxed over here for a day and a half, getting, the fax machine is running out of paper, you know what I'm saying?

Edwin Arvelo: Uh huh.

Detective Collins: This ain't. What is this, a misdemeanor. Come on, dude, you're not a felon. There's no felony stuff there. You know what I'm saying? That's nothing to me. I'm not judging you on that. You know, that, that's my thing. That's nothing, man. You know. I've had some people in here that are bad guys and then bad girls, okay, and they ain't making mistakes no more, they've moved past that in their lives, you know. You know what I'm saying? They've moved past that. You're a different person. You're a young person, there is a mistake here. Now, do we want to talk about the mistake, well, it's up to you. You know what I'm saying.

Edwin Arvelo: And I want to.

Detective Collins: And my only thing with you is, is that if you decide you want to talk about it, we talk about it. Just, whatever you say has got to be the truth, because if one thing judges, juries, prosecutors hate...

Edwin Arvelo: Is a lie.

Detective Collins: Is a lie. Because then once you've established that you lie, they can never believe you.

Edwin Arvelo: Uh huh.

Detective Collins: You know what I'm saying? If it was to go forward in the court system then they would be like, we can't believe this guy.

Edwin Arvelo: I'm not lying.

Detective Collins: Right, and I don't believe you've lied to me since we stepped in here, so that's all I say to you is, you know, if you say something, just make sure it's the truth. So, it's up to you what you want to say. This is what I know so far. You've had a horrendous childhood, man, and I know what it's like, man. My mom was single parent up until she married my stepfather, and I had two sisters, and I was actually born in England, and you know, so I know what it's like being in another country and mom struggling and stuff like that. I can't understand what its like to be a kid and become the victim

Detective Collins: of sexual abuse, I didn't experience that. You now what I'm saying. So you've got some things that have happened to you that haven't happened to me and haven't happened to a lot of people, so you got things going on inside that, you know, you know that you're dealing with, man. But for me, what I would like is to see if you want to talk about it. I'd like to see if you want to apologize to the victim because I think that goes a long way, you know what I'm saying?

Edwin Arvelo: _____ (Unintelligible 1:21:45)

Detective Collins: Yup, you can write it, you can write an apology, man, but I think it means a lot. It means a lot in every case that I've had, I've been able to say...

Edwin Arvelo: I mean, I would like to, but I know I _____ (unintelligible 1:22:00)

Detective Collins: I understand, man. I understand.

Edwin Arvelo: You know, and I would, but I was going to break down.

Detective Collins: Right, and that's a personal choice, and I leave it up to you. That's why I have said that's a personal choice and I will leave it up to you in that. Now, tell me this. You saw her get out of the car. Were you parked close to her? How close?

Edwin Arvelo: Like this.

Detective Collins: Okay, so, and she was parking first?

Edwin Arvelo: She was already parked.

Detective Collins: Okay, so she was already parked. Was she standing outside her car, what was she doing?

Edwin Arvelo: She was sitting in the car.

Detective Collins: So she was sitting in the car. So then, did you know she was there before you parked?

(No talking, occasional sighing, from 1:22:41 to 1:22:56)

Detective Collins: And this is what we call responsibility. This is you taking responsibility. What old school guys call, we call it manning up. You know what I'm saying? There are two types of men out there, men that man up and men that don't, you know.

Edwin Arvelo: I just think about it and I get ill.

Detective Collins: I understand. But I think a lot of it for you to, man, is to help you maybe understand why.

Edwin Arvelo: I just can't believe it, you know. That I'll wake up and like that, you know?

(No talking, occasional sighing from 1:23:52 through 1:24:27)

Edwin Arvelo: I wish I could go back. _____ (unintelligible 1:24:32) Cause it's like now.

(No talking, occasional sighing from 1:24:42 through 1:25:02)

Edwin Arvelo: _____ (unintelligible 1:25:03) for it. You know.

Detective Collins: We ain't giving up, man.

Edwin Arvelo: I don't want to give up.

Detective Collins: Well, you ain't gonna give up.

Edwin Arvelo: I just. I want to go back to be _____ (unintelligible 1:25:14). I know I still can't accept my actions, you know?

Detective Collins: uh huh.

Edwin Arvelo: I kinda miss _____ (unintelligible 1:25:24), you know. To an extent.

Detective Collins: Why.

Edwin Arvelo: I'll do something, you know.

(No talking, occasional sighing from 1:25:32 through 1:25:51)

Edwin Arvelo: Cause I feel bad, you know? _____ (unintelligible 1:26:01) who do things like that, you know?

Detective Collins: Well, tell me what, because I don't know what happened. I didn't. I got called from a detail, so I'm in the dark. I don't know what happened.

Edwin Arvelo: I tried to. At the worst, I tried to force a woman, you know, to _____ (unintelligible 1:26:30)

Detective Collins: Okay.

Edwin Arvelo: You know? I mean that

Detective Collins: So was that your intention, to force her to have sex with you, or did you want to take her somewhere? What was your intention? Can you remember?

(No talking, occasional sighing from 1:26:50 through 1:27:27)

(There is a scratch on the CD and from 1:27:28 through 1:31:11 there is no audio heard.)

(From 1:31:12 through 1:31:48, there was shuffling of papers and furniture but no talking.)

Detective Collins: Let me step out, because I just want to check _____ (unintelligible 1:31:49)

(No talking. Occasional moving of furniture from 1:31:50 through 1:32:47)

Edwin Arvelo: Is it okay if we turn that off.

Detective Collins: Uh huh.

Edwin Arvelo: _____ (unintelligible 1:32:52)

Detective Collins: It makes no difference. I mean, you understand in this case, with what happened this morning, that there was a victim. Where's your car at now?

Edwin Arvelo: Huh?

Detective Collins: Where's your car at now?

Edwin Arvelo: It should be impounded.

Detective Collins: No, but where'd you leave it at? Where the incident took place?

Edwin Arvelo: Uh huh.

(THIS IS WHERE THE NEW CD STARTED - TRANSCRIBED ON FEBRUARY 4, 2007)

Detective Collins: I mean, so in this type of case, you're not dealing with a situation where we _____ (unintelligible 1:33:23) come in contact with you and not know you're involved. This is a situation where we know you're involved in this case. Right?

Edwin Arvelo: Uh huh.

Detective Collins: The thing for me is to try and take the time to understand the whys of why something happened, and that means a lot, because I don't want to just go on, well, you know, what's the highest charge we can charge him with? You know what I'm saying, that kind of mentality. I've been going with the mentality of saying, okay, what was Edwin thinking at the time, you know, why, what, _____ (unintelligible 1:34:00). Okay? Because you understand that there has obviously been something that has taken place that you're in trouble for. You don't know, and I don't know what degree that is, right? Okay. And that's just being honest. That's just being straight up. I'm straight up with you, you're straight up with me. We know a mistake happened today. We know its something that, that you're definitely going to have to go to the jail about, but we don' t know if it's something so big that you would have to go to prison about. Right? Because we don't know that. I don't that, I can't foresee that. I don't work for the state attorney's office. I don't know, you know, but there was obviously something that took place today that meant the police had to be called and somebody had to be arrested, wouldn't you agree with that?

Edwin Arvelo: Uh huh.

Detective Collins: Okay. Now, my job is to say, and some guys don't take the time to try to figure this stuff out. Some guys don't take the time because they want to know only the stuff. I do, because I think it's important. I think that for a young person 21 years old, that somebody needs to try and take the time to get to understand this young man to figure out why and not just assume, and that's what I'm doing, you know what I'm saying. And it's tough. It's tough on you, it's tough on me. I mean, I'm looking at you, man. I got, you know, my oldest is 18 years old, you know what I'm saying. You know, so it isn't like I'm not looking at you and I'm not saying you know, man, you know what I'm saying, you know. You know, I like people, man, I feel for people. Anybody who comes in here I don't say to myself, that, you know, I could care about. And you in particular, because you're a very young person, so I say to myself, that you, you still have your life ahead of you, you're darn right I do. I believe that, you know. Now, does that mean that I think that it's going to be helpful to me to understand what you were intending, you know at those points, and help figure it out, of course I do, to the best of our ability, because maybe you don't know all

Detective Collins: of the reasons why. But I'm not one of those guys who like to stand around and "Aw, man, that guy," you know, I'm not one of those types of people, man. I'm one of those people who say, "What happened?", and so that's why I'm spending time with you, bro.

Edwin Arvelo: I really want to _____ (unintelligible 1:36:20), you know, and then when I was aware of what I was doing, I just panicked.

Detective Collins: Right, right, exactly.

Edwin Arvelo: And I got scared, I didn't know what to do, and all, all I could think about was her screaming, you know.

Detective Collins: Was she hurt badly, I mean, was she conscious or unconscious?

Edwin Arvelo: She was conscious.

Detective Collins: Okay, okay, alright. Good, good, you know what I'm saying. Like I said, I don't know anything, I haven't seen anything at all, _____ (unintelligible 1:37:02), so good. So we're not talking about, were there any weapons involved?

Edwin Arvelo: No.

Detective Collins: Okay. Did you have a knife with you? Are they going to find a knife in your car?

Edwin Arvelo: No.

Detective Collins: Okay. Any guns?

Edwin Arvelo: No.

Detective Collins: Any ropes?

Edwin Arvelo: No.

Detective Collins: Nothing like that in your car? Okay. So, and she's conscious.

Edwin Arvelo: Yeah.

Detective Collins: Okay. So we're not taking about a body?

Edwin Arvelo: Or murder.

Detective Collins: Right, absolutely. We're not talking about that, you know what I'm saying. Those are offenses that you and I both know, you know, prison time is _____ (unintelligible 1:37:39), but we're not talking about that, right? Alright, so it's not that kind of case.

Edwin Arvelo: No.

Detective Collins: Okay, but it's obviously a case that something's happened to the point where somebody has to get arrested and between the state and the judge and everybody else deciding where to go from there, right? For me, a lot of my paperwork decides on what were the intentions of the suspect. I mean, that's just point blank. But some guys may not tell you that the basic fundamentals of my job, but that's it. What were you intending to do. And you've been pretty honest with me. I mean, you've talked to me about a really rough, rough, rough childhood, man. You explained to me, you know, honestly, I think. I don't think there would be any reason for you to lie, that hey, the lust, you know, you couldn't deal with it. You know what I'm saying?

Edwin Arvelo: It just went too far, you know?

Detective Collins: Uh huh. Do you know how far it would have went? How far do you think it would have went?

Edwin Arvelo: I don't know.

Detective Collins: When you were having the thoughts, how far did you want to go? When you first contacted her, what was your intention then? You had the lust and the desire, but what was that to do?

Edwin Arvelo: I have, you know?

Detective Collins: I have?

Edwin Arvelo: _____ (unintelligible 1:39:36), you know?

Detective Collins: Okay.

Edwin Arvelo: _____ (unintelligible 1:39:42).

Detective Collins: So, am I talking about a situation where you were intending to have sex, you were intending to take her with you? Where were you going to have sex at?

Edwin Arvelo: _____ (unintelligible 1:40:00)

Detective Collins: Were you planning on having it in the car?

Edwin Arvelo: Yeah.

Detective Collins: Okay. So, your intentions _____ (unintelligible 1:40:07) to contact her was to get her to come into your car and have sex?

Edwin Arvelo: Uh huh.

Detective Collins: Okay, and did you think about how you were going to get her in the car?

Edwin Arvelo: Uh huh.

Detective Collins: Did you try to talk to her to get her in the car?

Edwin Arvelo: I tried to _____ (unintelligible 1:40:24)

Detective Collins: Okay. So, were you able to come up behind her, where she did not see you coming, or what?

Edwin Arvelo: Yeah.

Detective Collins: Okay. Do you remember which hand you covered her mouth with, right hand or left hand?

Edwin Arvelo: No.

Detective Collins: But you remember coming up behind her. Did you grab her mouth first, or did you grab her first?

Edwin Arvelo: I grabbed her mouth.

Detective Collins: Okay, so you grabbed her mouth first. And then you grabbed her. Do you remember where you grabbed her at?

Edwin Arvelo: Around the throat.

Detective Collins: Okay, so you grabbed her by the throat with one hand and by the hair. Okay. Now, did you guys make it to the car, your car?

Edwin Arvelo: Uh huh.

Detective Collins: Okay.

Edwin Arvelo: _____ (unintelligible 1:41:04).

Detective Collins: Okay. Eventually, you made it to the car?

Edwin Arvelo: Yeah. We fell on the floor, and I told her to get in the car, and she was telling me she would not get in the car.

Detective Collins: She would, or she wouldn't.

Edwin Arvelo: She wouldn't.

Detective Collins: Okay.

Edwin Arvelo: _____ (unintelligible 1:41:18). That's when I realized, you know?

Detective Collins: Okay, okay.

Edwin Arvelo: You know, when I saw her face, I knew she was dying, you know? I see her fear and everything.

Detective Collins: Is that the first time you've ever seen fear in somebody like that? The first time?

Edwin Arvelo: Like that.

Detective Collins: Okay.

Edwin Arvelo: Because of _____ (unintelligible 1:41:46).

Detective Collins: Right. Okay, so you grab her, you guys go to the floor, and so do you let her go, or are you are still holding onto her when she said she will get into the car by herself.

Edwin Arvelo: I let her go, and then I was telling her, you know, get her in the car, she has to get in the car. And then, I look at her and she _____ (unintelligible 1:42:14) and somebody walking by. _____ (unintelligible 1:42:20).

Detective Collins: So, did you get in the car behind her? Did she ever make it into your car?

Edwin Arvelo: Uh huh.

Detective Collins: On the driver's side or the passenger's side?

Edwin Arvelo: Driver's side.

Detective Collins: On the driver's side. So, she made it into your car on the driver's side. In the front or the back?

Edwin Arvelo: The back.

Detective Collins: In the back. Now, did you get in behind her?

Edwin Arvelo: Uh huh.

Detective Collins: In the back seat?

Edwin Arvelo: Uh huh.

Detective Collins: Okay. And then, were you going to drive somewhere?

Edwin Arvelo: I thought _____ (unintelligible 1:42:58)

Detective Collins: So, did you try to get over.

Edwin Arvelo: Thought to go to an upper level.

Detective Collins: Okay.

Edwin Arvelo: _____ (unintelligible 1:43:04)

Detective Collins: Okay. So, did you get in your driver's seat at all to try and start the car?

Edwin Arvelo: _____ (unintelligible 1:43:12).

Detective Collins: Okay, and then were was she at then?

Edwin Arvelo: In the back seat.

Detective Collins: Okay. And, did you back the car out at all?

Edwin Arvelo: No, the car was not starting. After I started it, it would _____ (unintelligible 1:43:28). I then got out of the car and then, um.

Detective Collins: But she locked you out of the car.

Edwin Arvelo: I was going to tell her, you know, I let her go, you know.

Detective Collins: Right, right, right.

Edwin Arvelo: But I didn't want, you know?

Detective Collins: Did she say anything when she was inside your car?

Edwin Arvelo: _____ (unintelligible 1:44:01) please, just get out. _____ (unintelligible 1:44:06) please, and she was like, "What, what are you saying?" and I told her to get out, _____ (unintelligible 1:44:14) just get out, I'm going to let you go, you know? And she was like, "You're not going to let me go." _____ (unintelligible 1:44:23), and I said, "I'm going to let you go, just go." _____ (unintelligible from 1:44:28 to 1:44:39).

Detective Collins: So, if you would have got your car started, where were you going to go?

Edwin Arvelo: _____ (unintelligible from 1:44:44 to 1:44:57) I would most likely would have, you know?

Detective Collins: Right. But when you first put her in the car, do you remember where you were intending to go then?

Edwin Arvelo: _____ (unintelligible 1:45:07)

Detective Collins: Do you think you were going to take her home, do you think you, what were you going to do? Still having the desires?

Edwin Arvelo: _____ (unintelligible 1:45:16), you know? _____ (unintelligible 1:45:19 to 1:45:47) and to think, and realize that you're acting in such a way, you know, it just hurts.

Detective Collins: What do you remember her saying during this whole encounter? What do you remember her saying to you?

Edwin Arvelo: Nothing.

Detective Collins: Nothing? Was she crying?

Edwin Arvelo: Screaming.

Detective Collins: Okay. She just screamed a lot?

Edwin Arvelo: (Sighing).

Detective Collins: And who was the person that walked by? Do you remember what they looked like?

Edwin Arvelo: Nah.

Detective Collins: And, has this ever happened before, with anybody?

Edwin Arvelo: It hasn't. No matter what force, you know, made me be like that.

Detective Collins: Right.

Edwin Arvelo: I was _____ (unintelligible 1:46:51). That's why I was even, you know, trying to _____(unintelligible 1:46:55), you know?

Detective Collins: Right, right.

Edwin Arvelo: I never let it go to an extreme like that, you know?

Detective Collins: So what have you done about the thoughts? I mean, is that normally how you get rid of them, is the been to prostitutes to get rid...

Edwin Arvelo: Sometimes.

Detective Collins: Okay. Is that your coping mechanism for dealing with the thoughts.

Edwin Arvelo: You mean, stuff like that? Sometimes I try to _____ (unintelligible 1:47:20)

Detective Collins: Right.

Edwin Arvelo: Kind of like, _____ (unintelligible 1:47:26) um, psychology.

Detective Collins: _____ (unintelligible 1:47:30) that time of year.

Edwin Arvelo: (sighing) _____ (unintelligible 1:47:37)

Detective Collins: Now, so the marks on your face, did you get that from being arrested or are they from her?

Edwin Arvelo: From her.

Detective Collins: Do you remember at which point she scratched you?

Edwin Arvelo: When we fell on the floor.

Detective Collins: When you fell on the floor. Okay. Did you hit her at all?

Edwin Arvelo: No.

Detective Collins: Did you touch her anywhere besides the mouth and neck?

Edwin Arvelo: No.

Detective Collins: Okay. So you didn't touch her women's area, nothing like that?

Edwin Arvelo: No.

Detective Collins: No clothes pulling off?

Edwin Arvelo: No.

Detective Collins: Okay, okay. Now, and there is no other time that you have ever had the urge to do the same thing you did today, not when you did it, but at any other time, have you had the urge to do this?

Edwin Arvelo: What was the question again?

Detective Collins: Is there any other time, besides today, that you had the urge to do something like this?

Edwin Arvelo: The thought.

Detective Collins: The thought. Okay, so you had had the thought to do something like this. Is that thought to go meet somebody and then take them somewhere, is it the taking of them to go do it, is that what the thought is, or is it just to go meet somebody? How would you describe that thought?

Edwin Arvelo: Meet.

Detective Collins: Okay. And then, so what today made it where you wanted to get her in the car? Was that the thought that had been with you since you were 8, or was that just your urge today?

Edwin Arvelo: My thought.

Detective Collins: Okay.

Edwin Arvelo: And an urge.

Detective Collins: Okay. So today was a combination of both. A combination of your thoughts that you have been having since you were 8 and then maybe the urge to just want to have sex?

Edwin Arvelo: Uh huh. Pitiful.

Detective Collins: It's a lot of understanding. It's a lot of trying to understand, you know, what's going on, man. Put it like this, you know, if I don't try to understand something, I can't be understood. You see what I'm saying? So that's why, for me, that's why I try and talk and try to understand these things because, you know,

Edwin Arvelo: I honestly, you know, even though what happened happened, and I know it's nothing simple, like whatever else I have in my record, it's not something you're doing _____ (unintelligible 1:51:02). If I could go home to my lady _____ (unintelligible from 1:51:19 to 1:51:28), never, never, ever act on something like this again, you know?

Detective Collins: Yeah.

Edwin Arvelo: Even with the thought and the urge.

Detective Collins: Right.

Edwin Arvelo: You know, I'm always going to remember it. _____ (unintelligible 1:51:48) and the feeling I have now of, just the thought of losing my family, you know? Man, I just want to find help, you know?

Detective Collins: Uh huh.

Edwin Arvelo: I want to find help and I want to go from here to my house to my lady _____ (unintelligible 1:52:16 - pounding heard) and go and be able to speak _____ (unintelligible 1:52:24), you know, talk about so many things that I have not even spoken with you about, you now? The reason why and what caused that and everything, you know? Because, you know..

Detective Collins: Did you go anywhere else last night? Anywhere, nobody else is going to be, you don't have any other incidents last night?

Edwin Arvelo: No.

Detective Collins: Okay, okay.

Edwin Arvelo: I just can't believe this, you know, I can't believe that I could actually _____ (unintelligible 1:53:05), you know, when I've got a kid that I support, you know? And I really do not want to go to prison, you know? And I know I have to go with the judge and the jury and all that, but all I want is.

Detective Collins: So, is there anybody else that would say you've done anything like this to them? Is there anybody else out there?

Edwin Arvelo: No.

Detective Collins: There's nobody?

Edwin Arvelo: No.

Detective Collins: So, you're prints are not going to come back for any other crime related to this, nothing? Nothing else? You haven't been driving around looking at people with the thoughts in your head. You been doing any of that? Is there anything leading up to this, where maybe, you know, driving by seeing, you know, girls and...

Edwin Arvelo: Uh huh.

Detective Collins: Has there been an increase in that lately?

Edwin Arvelo: What do you mean?

Detective Collins: Where you have been, you know, when you're out driving and you see girls and, you know. 'Cause usually my experience is that it's not just zero and then ten, it's usually one-two-three-four-five-six-seven-eight-nine-ten.

Edwin Arvelo: Exactly.

Detective Collins: You know what I'm saying.

Edwin Arvelo: Uh huh.

Detective Collins: So we got ten today, but it couldn't have been zero before ten, you know what I'm saying? What led up to ten? So tell me, describe to me the thoughts and stuff, what has it done to you? How much control has it had of you leading up to today's incident? Because, it's a big step to drive into a parking lot, man, and say to yourself, you know, "I want this lady" and get out of your car and actually grab somebody. I mean, what's led up to that?

Edwin Arvelo: Driving around like you said, you know. Looking at girls and stuff.

Detective Collins: Okay. Did you expose yourself to any girls?

Edwin Arvelo: I have before.

Detective Collins: Okay. That's when you got arrested here. Anything since then, honestly?

Edwin Arvelo: _____ (unintelligible 1:55:21) once or twice, but, like I said, you know, _____ (unintelligible 1:55:26), and then I feel bad about it.

Detective Collins: Right.

Edwin Arvelo: Knowing that I can be some other dude, you know, and _____ (unintelligible 1:55:36).

Detective Collins: Right, right. But the thing about urges, man, is that they suck everything out of the brain, man. They push rational thoughts out of the brain when the urge comes along, you know what I'm saying. I mean, when you want to have sex with your old lady, you could be probably going to see the dentist, but are you thinking about the dentist at that time, nah, of course not, you know what I'm saying?

Edwin Arvelo: Uh huh.

Detective Collins: Because it's pushing that out of the way, it's pushing all of the rational stuff out of your way.

Edwin Arvelo: Yeah.

Detective Collins: So, now, if you have any thoughts and stuff like that, it's going to do the same thing. It's going to push out all of the rational thoughts. So even though may not want to drive down the street and do something, that thought's in your head, you know, and you may end up doing it, right.

Edwin Arvelo: I found myself like that.

Detective Collins: Right. So, how much has been occurring leading up to this incident? What's been going on? You know, like I used the analogy of zero to ten, and we're at ten, what's led up to this? You know. Driving around, exposing yourself to them, or you just being exposed where they don't know about it?

Edwin Arvelo: Both.

Detective Collins: Okay, both. Where at? In Maitland, where you live at in Orlando, in your work truck, in your car?

Edwin Arvelo: In my car.

Detective Collins: What kind of car is that?

Edwin Arvelo: _____ (unintelligible 1:57:06).

Detective Collins: Okay. What part of town?

Edwin Arvelo: _____ (unintelligible 1:57:12) and where I'm at. I'm thinking about it now.

Detective Collins: Right, right. And it has no bearing on me, because it's outside of my city, you know what I'm saying, you know what I'm saying, so I'm just concerned about here, but I'm trying to help you understand how these impulses happen. You know what I'm saying? And I know, from my experience, that you just don't get to today without having smaller incidents.

Edwin Arvelo: Working up.

Detective Collins: Right, exactly. So that's why I'm trying to understand the smaller instances. So, any time in Kissimmee. Have you ever gone into Kissimmee.

Edwin Arvelo: Not that I can remember. I mean, you want me to tell you, I mean, _____ (unintelligible 1:58:02) memorized, I would say Altamonte, I could say, Apopka, _____ (unintelligible 1:58:11. Also, phone ringing), Casselberry, and like that.

Detective Collins: Okay. Describe to me how that happened, so I can understand

Edwin Arvelo: Its just that, desires, you know.

Detective Collins: And so you would expose yourself

Edwin Arvelo: You know, not, not, not, not all the time.

Detective Collins: Okay.

Edwin Arvelo: You know, I would think about that or feel the urge, you know?

Detective Collins: Right, right. It's been taking over your brain since you were 8, man, for 13 years, man.

Edwin Arvelo: For me, it's just a perverted act, _____ (unintelligible 1:59:08).

Detective Collins: Any other time, besides today, where you physically touched somebody?

Edwin Arvelo: No.

Detective Collins: Are you sure on that?

Edwin Arvelo: Yeah, like I said.

Detective Collins: And you're positive on that.

Edwin Arvelo: Uh huh.

Detective Collins: Nobody's going to come forward and say, "That guy pulled up and tapped me on my shoulder"?

Edwin Arvelo: Nah.

Detective Collins: Okay. Anything significant about her being blonde hair?

Edwin Arvelo: That's about it.

Detective Collins: Okay. Has that been the people you have exposed yourself to in the past?

Edwin Arvelo: No.

Detective Collins: Is that something that you found that has triggered the urge, or you've had the urge but then you see that, that particular female.

Edwin Arvelo: Uh huh.

Detective Collins: Hey, everybody has something, you know. You know, some people see a girl 300 pounds, man, I'm looking at her weight, but they're not. You know what I'm saying, everybody has certain likes, and that's where.

Edwin Arvelo: That's where, and I got it, because I get these urges and like you said, it's like sometimes you end up doing it, when you really don't want to do it, and then when I find myself in that situation, I just try to go, you know, _____ (unintelligible 2:00:33) or about not doing that, you know.

Detective Collins: Right, right.

Edwin Arvelo: And not going there, and not pushing myself to that, because I know it was wrong, and I _____ (unintelligible 2:00:36).

Detective Collins: Right. But, you're a person that's 21 years old, man, who probably hasn't had any medical insurance to get yourself some appropriate psychiatric help. Have you ever went to a doctor?

Edwin Arvelo: No, I really haven't, I mean...

Detective Collins: Have you ever been Baker Acted for it before?

Edwin Arvelo: What's that?

Detective Collins: Where if they Baker you, it means for up to three days to get evaluated?

Edwin Arvelo: No.

Detective Collins: You've never had that happen?

Edwin Arvelo: No.

Detective Collins: So, you've never taken any drugs for mental or anything like that?

Edwin Arvelo: When I was younger, um, my mother _____ (unintelligible 2:01:21) back in Puerto Rico for some type of help that, you know _____ (unintelligible 2:01:28) with the medical insurance, with the card. I had, I don't know.

Detective Collins: Tell me this, man, as strong as the desire was today that made you get out and actually physically confront somebody. If she doesn't yell, and you put her in the car, where do you think it ends up?

Edwin Arvelo: In realizing _____ (unintelligible 2:02:04) not hurt her. It happened just like with the desires, you know. Once I realize that it's me, where I'm at, it disgusts me, just the fact, just anything, be the way that I am doing things, you know?

Detective Collins: Where do you think she would have ended up if you guys would have left the parking garage? Where do you think she would have ended up.

Edwin Arvelo: I say, probably outside the garage.

Detective Collins: Do you think you would have had sex with her?

Edwin Arvelo: I would have dropped her off.

Detective Collins: Do you think you would have had sex with her and dropped her off?

Edwin Arvelo: You mean is she.

Detective Collins: If she would have gotten in the car when you first touched her, what do you think would have happened.

Edwin Arvelo: By herself, at home?

Detective Collins: No, no, no. When you first walked up and put your hand on her mouth, if she doesn't struggle.

Edwin Arvelo: And she just gets in the car?

Detective Collins: Where do you think it ends up?

Edwin Arvelo: I think, I would see what I'm doing, seen I was taking advantage of an innocent woman. You know, and I would probably let her go, and I would have gone home and cried.

Detective Collins: So you think you would have let her go if she would not have fought, but when she did fight you still got her in the car?

Edwin Arvelo: _____ (unintelligible 2:03:52) for her to be screaming, you know. I was afraid that someone would walk by and see, you know, and then, it was like, you know, really, I was scared. It was like, I knew what I was doing, but it was more that I was afraid. That made me _____ (unintelligible 2:04:14) to control her, you know, and actually put her in the car so I would take her with me, you know?

Detective Collins: Right.

Edwin Arvelo: But then, as I'm putting her in the car and I see her, that's when I just start, you know, _____ (unintelligible 2:04:26). Start the car, take her upstairs, you know, so I could let her out anytime _____ (unintelligible 2:04:35).

Detective Collins: Right, right. And you think you would have been able to do that? With the thoughts that you were having, you think you would have been able to just let her out?

Edwin Arvelo: Uh huh. _____ (unintelligible 2:04:55), you know. _____ (unintelligible 2:05:01), you know. And I feel _____ (unintelligible 2:05:04) away, you know. _____ (unintelligible 2:05:07) in church for _____ (unintelligible 2:05:11) you know.

Detective Collins: But these thoughts man, they're, I mean, they're so strong, man. I mean, you think you would have been able to stop yourself if she would have got in that car? Even though your thoughts initially were to take her in the car and have sex with her?

Edwin Arvelo: Uh huh. But, _____ (unintelligible 2:05:42). Waking up from all of those thoughts, you know?

Detective Collins: Right.

Edwin Arvelo: To actually realizing, you know. It seems like the fear causes, you know, instead of causing us to put aside more the urge and thoughts...

Detective Collins: Right, right.

Edwin Arvelo: You know what I'm saying.

Detective Collins: Right, right, right a different emotion.

Edwin Arvelo: Yeah. Once I felt that I was scared, then it was like I was looking at what it is the pattern and what was going on...

Detective Collins: Right.

Edwin Arvelo: And if I get _____ (unintelligible 2:06:27), what am I thinking, no, what am I doing?

Detective Collins: Yeah.

Edwin Arvelo: The first thing I want to do is, you know, _____(unintelligible 2:06:38) what happened here in the first place. (Phone ringing). How to deal with the situation.

Detective Collins: That's a big thing, man. I mean, clearly you're intending to, to grab somebody and take then against their will to have sex, right?

Edwin Arvelo: Uh huh.

Detective Collins: I mean, that's a huge thing, man. From, from just exposing yourself. Have you done any burglaries before?

Edwin Arvelo: No.

Detective Collins: No. You never done any burglaries growing up?

Edwin Arvelo: Nah. Sometimes _____ (unintelligible 2:07:24)

Detective Collins: Huh?

Edwin Arvelo: _____ (unintelligible 2:07:26)

Detective Collins: What I'm trying to understand is to see if you can realize if you would have been able to stop yourself. You know what I'm saying? I mean, 'cause you tell me, when somebody grabs somebody and takes somebody somewhere and has sex with them, what usually happens to that person? I mean, how many cases do you see where somebody lets somebody go? You know what I'm saying?

Edwin Arvelo: Uh huh.

Detective Collins: Because that panic takes over, man.

Edwin Arvelo: Yeah.

Detective Collins: You know, and so, it's because of that panic that usually people wind up hurt or dead.

Edwin Arvelo: I would never go there. If she wouldn't have locked me out of the car, and that car would have started, I would have taken her up to the next floor and have her dropped off 'cause _____ (unintelligible 2:08:27) you know.

Detective Collins: And there's nothing in that car. There's no ropes, no duct tape, no knives, no guns.

Edwin Arvelo: I have _____ (unintelligible 2:08:43). I don't use that like that.

Detective Collins: Tell me...

Edwin Arvelo: What's in there is like a little tool set.

Detective Collins: Yeah, yeah.

Edwin Arvelo: Well that usually comes with a blade.

Detective Collins: Right. Okay.

Edwin Arvelo: _____ (unintelligible 2:09:00)

Detective Collins: But no ropes. Any duct tape in the car?

Edwin Arvelo: No.

Detective Collins: Okay. Is there liquor in the car, the bottle?

Edwin Arvelo: The bottle.

Detective Collins: The bottle is in the car. Any condoms?

Edwin Arvelo: No, an empty box.

Detective Collins: I just want you to realize how dangerous it is. Because, people don't just let people go. You know what I'm, saying?

Edwin Arvelo: I know.

Detective Collins: I mean, and that's the danger. And that is something you've got to see, man. That people, you know.

Edwin Arvelo: That's why, I _____ (unintelligible 2:09:48).

Detective Collins: So how did we get called, do you know, because I don't know. How did we get the call here?

Edwin Arvelo: I don't know.

Detective Collins: She didn't have a phone with her in the car.

Edwin Arvelo: My phone was in the car.

Detective Collins: Your phone was in the car?

Edwin Arvelo: Uh huh.

Detective Collins: So maybe she called from that. I don't know how we got the call. Like I said, I don't know those details.

Edwin Arvelo: _____ (unintelligible 2:10:08)

Detective Collins: What I have to show is a lot of what you intended. You weren't intending to kill her?

Edwin Arvelo: No.

Detective Collins: You are admitting that you were intending to have sex with her?

Edwin Arvelo: Uh huh.

Detective Collins: Okay. And that's a big difference. You know, that's a big thing, you know, 'cause, if you're gonna kill her, you know what I mean? I mean, one is bad, but this one is considerably, you know, I mean you understand the magnitude as if somebody was trying to take somebody and kill them, you can't even put a number as to how many times worse it is than that.

Edwin Arvelo: I know.

Detective Collins: But you're admitting to me your thoughts and history for obviously some urges and stuff like that, consistent with what you're telling me, so I believe what you're telling me. You understand?

Edwin Arvelo: _____ (unintelligible 2:11:00). I haven't mentioned it 'cause I _____ (unintelligible 2:11:05)

Detective Collins: Uh huh.

Edwin Arvelo: And, I don't know if I should say it, because it decides to go with everything, you know?

Detective Collins: Right.

Edwin Arvelo: _____ (unintelligible 2:11:26) you know?

Detective Collins: Right.

Edwin Arvelo: Well, it was like _____ (unintelligible 2:11:38) you know? But while she was screaming, I would think of what I would do with her to stay quiet, so covering her mouth wasn't enough, you know. So I grabbed her by the throat.

Detective Collins: Do you remember what you were thinking at that time, when you grabbed her by the throat?

Edwin Arvelo: Try to keep her quiet, you know?

Detective Collins: Was it hurting her?

Edwin Arvelo: (must have nodded his head yes)

Detective Collins: Yes, it was hurting her, and you knew it was hurting her?

Edwin Arvelo: Yeah.

Detective Collins: But to you, it's just to keep her quiet, you're not thinking to kill her?

Edwin Arvelo: No.

Detective Collins: Okay. What is she doing? What can you see when you have her by the throat?

Edwin Arvelo: I don't know that we're fighting, you know, and then I tried to get her in the car.

Detective Collins: But you didn't tear her cloths off?

Edwin Arvelo: No.

Detective Collins: Did you touch her vagina?

Edwin Arvelo: No.

Detective Collins: Did you touch her breasts?

Edwin Arvelo: No.

Detective Collins: Okay, okay. Did you say anything to her.

Edwin Arvelo: I tried to tell her, once she was in the car, I told her to keep quiet, you know.

Detective Collins: Right.

Edwin Arvelo: You know, she wasn't _____ (unintelligible from 2:13:02 through 2:13:10)

Detective Collins: Did you say anything excited when you told her to be quiet? I mean, 'cause I'll be honest with you, I mean, you know, I'm arguing with my wife and say, "Get in the car and shut the fuck up." You know what I'm saying? And your in a situation where you have actually grabbed somebody, you're fighting with them, and now you're putting them in the car. So, did you cure, did you yell.

Edwin Arvelo: Uh huh.

Detective Collins: Besides just, "Get in the car," do you remember any other words you might have said?

Edwin Arvelo: Yeah.

Detective Collins: What do you remember saying?

Edwin Arvelo: I threatened her.

Detective Collins: Do you remember what you said?

Edwin Arvelo: (Sighing). I told her that if she wouldn't stay quiet, I would take her life.

Detective Collins: Just like that, "I'll take your life"?

Edwin Arvelo: "I'll kill you."

Detective Collins: "I'll kill you"? Okay. And were you intending to do that?

Edwin Arvelo: I just wanted her to be quiet.

Detective Collins: You just wanted her to be quiet. Do you think that if she were to continue to yell that she could have gotten hurt more than she was already hurt? In the state that you were in at that time.

Edwin Arvelo: If she would have kept yelling? (Sighing). _____ (unintelligible 2:15:09) 'Cause I would have just gotten more scared than I was.

Detective Collins: Right. Did you get angry at all?

Edwin Arvelo: No, I got scared. Maybe a little bit angry.

Detective Collins: Right.

Edwin Arvelo: You know.

Detective Collins: Right.

Edwin Arvelo: I just wanted her to stay quiet, and she wouldn't stay quiet, you know. That's why I said what I said. _____ (unintelligible 2:15:44, also a vacuum cleaner running in the background). You know.

Detective Collins: How _____ (unintelligible from 2:15:48 through 2:15:55 - vacuum cleaner still running in background).

Edwin Arvelo: Pretty hard.

Detective Collins: How bad is her face, her neck?

Edwin Arvelo: I don't know.

Detective Collins: Did you punch her at all?

Edwin Arvelo: No.

Detective Collins: What about her neck? I mean, how much pressure was on her neck?

Edwin Arvelo: There was a lot.

Detective Collins: There was a lot of pressure. Was she turning blue?

Edwin Arvelo: For a minute.

Detective Collins: Where at? Where at in her face did you see her turning blue?

Edwin Arvelo: Her whole face.

Detective Collins: Her whole face went blue? Did she pass out at all?

Edwin Arvelo: I don't know.

Detective Collins: But definitely she was turning blue?

Edwin Arvelo: Yeah.

Detective Collins: How did that make you feel?

Edwin Arvelo: I was scared, you know.

Detective Collins: Yeah, man. Have you ever seen anybody turn blue like that before?

Edwin Arvelo: Nah.

Detective Collins: Let me ask you this, man, and I try to do it with every case, man, do you want to tell the victim you're sorry? It may not seem important, it may not seem significant.

Edwin Arvelo: Honestly?

Detective Collins: But in the _____ to lie, honesty, honesty, honesty.

Edwin Arvelo: I would. I do. I would like to take the time, you know?

Detective Collins: Right. And the reason why I ask you now, and here, and in this time and this place, is because I don't want people to say down the road, "He's just doing that because," you know. You know what I'm saying.

Edwin Arvelo: Uh huh.

Detective Collins: At the time and the place where it's fresh in your head, you know exactly what you were thinking at that time, so that person could understand. Just like if you had been victimized in the past, you don't.

Edwin Arvelo: I don't feel she would understand. That's why I said I would like to take my time.

Detective Collins: But she may understand. She may want to know why you intended to kill her. She may not want to know that, because she is probably going to be afraid to come to work again. I mean, do you think that she is going to be ale to go to work over there and park in that parking garage again, you know what I'm saying?

Edwin Arvelo: I know, I know. You know, this is overwhelming, you know.

Detective Collins: I know, think about her too, you know what I'm saying. How overwhelming is this for her?

Edwin Arvelo: I didn't think about any of that, you know. I let the thought and the urge and everything take control of me, and I didn't think about later down the road, you know?

Detective Collins: Right.

Edwin Arvelo: But I would like, you know, to do it, but I would like...

Detective Collins: I just want to give you the opportunity, you know what I'm saying? I mean, that's just me. I just would like to give you the opportunity. If you don't, I totally understand, I totally understand, but I just wanted to give you the opportunity to say, you know, that I did that, you know what I'm saying? I do it with every one of my cases, you know, that I try to do that with, you know, because, I mean, it helps, you know.

Edwin Arvelo: I would, I would. I mean, if it will help, if it will help her, _____ (unintelligible 2:19:24) that you know how would she feel, you know.

Detective Collins: If she felt safe enough to go back to work?

Edwin Arvelo: Really?

Detective Collins: Yeah, I mean, you know, 'cause women are different enough. Remember, we're men, we're kind of the dominant species walking the planet. Women kind of feel safe with us, you know what I'm saying? They're not built to be able to feel that, you know, that way. So, you know, as men, we have to understand that. So, for her, you know, when I say how she lives, if you're going to help her, in this particular type of thing, I would think so, I think she would want to know what you were intending to do. And I'm not talking about all of the history and stuff like that, I'm talking about short. You know: This is what happened when I pulled in. This is what I was thinking, dah-dah-dah-dah-dah-dah-dah." If you weren't intending to kill her, let her know that, you know, and I just want to give you that opportunity. If you can't, or if you don't want to, that's...

Edwin Arvelo: I wish I could. I want to make up for it. _____ (unintelligible 2:20:52 through 2:21:25) I pressure myself a lot more.

Detective Collins: Then I think, you need to especially tell her, somebody who's going to help you understand what's going on and how to deal with it and cope with it. You know what I'm saying?

Edwin Arvelo: Uh huh.

Detective Collins: That has to start. You know, it's a bigger issue than you're able to deal with, man.

Edwin Arvelo: I know. Now, _____ (unintelligible 2:21:52) the help, 'cause I want the help, you know? I also want to go home, man. It's just today has changed so much, you know? I mean, it's just like, to me, this is my wake up call, you know?

Detective Collins: It is man, it's a turning move. It's, it's you're going down the street and there is a big Y in the street, and it's going to mean that it's going to change your life, you're going to get the help you need, and this is never going to pop up and happen again. Or, these impulses are going to continue to happen. Where do you think you would end up if these impulses continue? What do you think you would end up doing to somebody?

Edwin Arvelo: If I don't go to jail?

Detective Collins: No. But I'm saying if you didn't get help from today's incident, where would you end up, what would happen? With these urges as strong as they are right now?

Edwin Arvelo: I can't _____ (unintelligible 2:23:23)

Detective Collins: What do you think would happen as far as these thoughts? I mean, 'cause it's...

Edwin Arvelo: It could get to a point where...

Detective Collins: So what if it does, man? You know what I'm saying? What I'm going to do, is I'm going to leave you with this statement and a pen. I leave it up to you if you can write anything to the victim today. If you can't I understand, but I want to give you the opportunity, in private, okay? I'm going to step out, get a glass of water. Do you want another glass of water?

Edwin Arvelo: Okay.

Detective Collins: But, I'm going to leave you this, and I want you to have some time, because I don't want it to be me saying I told you to apologize, I'm going to leave it up to you. If you want to apologize to the victim take any words from there, whatever you need, I leave it to you. If you're not ready right now, I totally understand, I just always want to afford that opportunity to somebody who made a mistake, because it goes back to childhood.

Edwin Arvelo: I don't know what to say.

Detective Collins: I leave it up to you, okay? Let me get you a glass of water. I'm going to get a glass of water, but I'm going to leave the opportunity to leave that with you.

Detective Collins left the room at this point, and Edwin Arvelo could be heard writing, moving around in his chair and sighing from time to time (from 2:24:48 through 3:05:52)

Detective Collins: It's 12:00 o'clock.

Edwin Arvelo: Yeah, I didn't realize time has gone by so fast.

Detective Collins: Okay, what I need to do is take some photos, if you're ready. We want to show that your knuckles are not blue, that you did not punch anybody, and you didn't have anything like that. If you will put your right hand here (taking pictures). Any marks on your arms anywhere?

Edwin Arvelo: I'm still going to jail, right.

Detective Collins: Yeah, I mean you gotta go to jail for the incident today. I mean, what, I mean, that's a given bro, I can't B.S. you about that, I mean, it's obvious, you know what I'm saying? Something happened significant.

Edwin Arvelo: You think they'll let me go?

Detective Collins: Turn your hands over like this, and let me see if there is anything else. Okay. Um, you're going to get arraigned, I mean, it's not going to be something where you're not going to get arraigned.

Edwin Arvelo: I'll be able to get out?

Detective Collins: Yeah, you should get a bond. You kidding me, man, I have guys in there for murder that get bond $20,000.

Edwin Arvelo: You know how much that will be? _____ (unintelligible 3:07:24)

Detective Collins: I don't know the bond amount, I have to see, because I don't know what the officers are doing on scene and stuff like that. You got anything on your neck, below your shirt line, anything?

Edwin Arvelo: Not that I know of.

Detective Collins: Okay, okay. We'll get your face.

Edwin Arvelo: _____ (unintelligible 3:07:43)

Detective Collins: Okay, okay, cool. Anything else? How did you get the knot in your forehead?

Edwin Arvelo: What knot?

Detective Collins: Is that from a pimple or something?

Edwin Arvelo: Up here?

Detective Collins: Yeah.

Edwin Arvelo: Right there?

Detective Collins: Yeah.

Edwin Arvelo: Yeah.

Detective Collins: Okay, okay. The other thing I would like to see if you would consent for, and that is a swab of your mouth. It's just for DNA. You say you haven't done anything like this before, but, you know, people have lied to me before. I don't think you're lying, but, it's just something I ask if you would consent to giving me a swab.

Edwin Arvelo: Yeah.

Detective Collins: Basically, it will go to a database _____ (unintelligible 3:08:26) and stuff like that.

Edwin Arvelo: Is there anyway I can make a phone call before I consent to this.

Detective Collins: Yeah, let me see if I can do that for you, man. You've been cool with me, and I don't see a problem with that.

(Detective Collins has left the room again to check on getting a phone for Mr. Arvelo)

Detective Collins: Yeah, I want _____ (unintelligible 3:10:07) in a few minutes. Yeah, he has been more than cooperative with me.

Edwin Arvelo: If I have some money in my account and my card, is there any way I could use that money to bond out?

Detective Collins: I don't think so, I think they do cash. I think they only do cash or bond. You could probably go to a bondsman and use a credit card, but not with the jail.

Edwin Arvelo: Do you know what they're charging me with?

Detective Collins: Not as of yet.

No conversation from 3:11:18 through 3:12:22)

Detective Collins: How long have you had the piercing, man?

Edwin Arvelo: About a year and a half.

Detective Collins: Did it hurt to get it?

Edwin Arvelo: Just a little bit. They're going to take me down to 33rd right?

Detective Collins: Yeah, that's where _____ (unintelligible 3:12:42). _____ (unintelligible 3:13:13) with that. And you're sure this is your first offense like this, nothing else?

Edwin Arvelo: Uh huh.

Detective Collins: Okay. I'll ask you if you recognize anybody in this photo I'm going to show you. Have you ever seen that young lady before?

Edwin Arvelo: I have seen her in other pictures.

Detective Collins: Okay, but you don't know her?

Edwin Arvelo: No.

Detective Collins: Okay. No incidents with her?

Edwin Arvelo: Not that I know of.

Detective Collins: The reason that I ask is because she is very similar in appearance to the lady today.

Edwin Arvelo: No, I've only, the only time I've seen her was, besides from the flyers was no.

Detective Collins: Okay. And do you remember the first place you saw the fliers?

Edwin Arvelo: At my job.

Detective Collins: Where's your warehouse at?

Edwin Arvelo: Just off of Maitland _____ (unintelligible 3:14:07)

Detective Collins: Where's that at? Is that in Orlando?

Edwin Arvelo: That's in Lake Mary. _____ (unintelligible 3:14:13)

Detective Collins: But you've never had any contact with her. We're not going to find any of your DNA in any of her stuff?

Edwin Arvelo: No.

Detective Collins: I have to ask because she's a blonde-haired, American girl, very, very similar in appearance to that lady today.

Edwin Arvelo: Uh huh.

Detective Collins: You know, I went out there and looked at the photo and thought, wow, she looks a lot like this girl, and that's what made me ask. And you're positive that you have never...

Edwin Arvelo: Yeah, I'm positive, I've never...

Detective Collins: I just have to ask, man, it's part of our detective things to ask and make sure, man. I have to make sure with my boss that I'm not missing anything or, you know. So what we have down here so far is a

(no conversation from 3:15:10 to 3:15:32)

Detective Collins: Your girlfriend lives at this house with you?

Edwin Arvelo: _____ (unintelligible 3:15:37)

Detective Collins: Okay.

Edwin Arvelo: _____ (unintelligible 3:15:40) some time, you know?

Detective Collins: When did that happen? Recently, or.

Edwin Arvelo: About two or three months ago.

Detective Collins: _____ (unintelligible 3:15:55).

Edwin Arvelo: The kind of relationship that _____ (unintelligible 3:16:02), you know?

Detective Collins: Right. I guess you're not living together.

Edwin Arvelo: _____ (unintelligible 3:16:11). (Sighs)

Detective Collins: You're office is in Maitland right now? Where's your warehouse at?

Edwin Arvelo: They're both at the same location.

Detective Collins: Where's that at?

Edwin Arvelo: Off of Keller Road.

Detective Collins: Oh, okay. Is that what brought you to that parking lot area, just because it was close to work, or.

Edwin Arvelo: Yeah.

Detective Collins: Oh, okay. Where are you at on Keller? Are you at Keller and Kennedy, by Eatonville?

Edwin Arvelo: No. Keller, in Maitland.

Detective Collins: So, you're Keller, like behind RDV Keller?

Edwin Arvelo: RDV Sportsplex?

Detective Collins: Yeah. You're behind the Sportsplex over in that area?

Edwin Arvelo: Yeah.

Detective Collins: Okay, alright, I think I know where you're at. And that's what brought you to Maitland, because it was close to work?

Edwin Arvelo: Yeah.

Detective Collins: Had you been to that parking garage before?

Edwin Arvelo: _____ (unintelligible 3:17:25)

Detective Collins: A month before. With one of your urges, or no.

Edwin Arvelo: Yeah.

Detective Collins: So you had come out there before. Had you seen this same lady before?

Edwin Arvelo: _____ (unintelligible 3:17:38)

Detective Collins: Okay. Did you act out then, I mean, did you expose yourself, or masturbate or do anything when you came out at that time?

Edwin Arvelo: I think I've been out there three or four times.

Detective Collins: Three or four times at the garage?

Edwin Arvelo: Uh huh.

Detective Collins: Is it just where there are a lot of attractive women?

Edwin Arvelo: Yeah.

Detective Collins: Okay, okay. Did you ever come with anybody else, with anybody, or what?

Edwin Arvelo: No.

Detective Collins: Oh, by yourself.

Edwin Arvelo: Yeah.

Detective Collins: When was the last time, before today, that you had come out there?

Edwin Arvelo: Last month.

Detective Collins: But you had never seen this lady before.

Edwin Arvelo: No.

Detective Collins: Okay. Did anybody see you when you came the other three times? Did anybody see you out there exposing yourself?

Edwin Arvelo: I don't know.

Detective Collins: Did you intentionally expose yourself to anybody when you came the other three times?

Edwin Arvelo: No.

Detective Collins: Okay. So, if somebody saw you those times, it would have been purely accidental?

Edwin Arvelo: Yeah.

Detective Collins: Okay, okay. Anyplace else in Maitland?

(No conversation from 3:18:51 through 3:19:21)

Edwin Arvelo: No.

Detective Collins: No. Okay, okay. 'Cause you know how it is, man, you know, one complaint and then the next thing you know, our phone is ringing off the hook, so I want to be able to say, "Nah, you're full of it," this guy, you know, pretty much told me everything, you know what I'm saying? So I appreciate your honesty. So, the last time you came to that garage was about a month ago, and you've only come to that garage three times but never...

Edwin Arvelo: Three or four times.

Detective Collins: Okay, and this is the first time there has ever been a confrontation between you and somebody ever?

Edwin Arvelo: Yeah.

Detective Collins: Okay, okay, okay. And, you know, you haven't given me any reason to doubt you up until this point, so I hope that that's true. I don't want to, you know, get any phone calls from any other police departments saying, "You know, this guy, that guy." Am I going to get anything like that, or is this going to be it? Nobody else.

Edwin Arvelo: Nah.

Detective Collins: Okay. When I talk to all of the other agencies, because I have to share and make sure nobody has similar incidents, nobody's going to report your car, you, or anything like that? The best time would be to talk about it now.

Edwin Arvelo: I mean.

Detective Collins: If you have something other than you've told me already.

Edwin Arvelo: _____ (unintelligible 3:20:23)

Detective Collins: Right. But no females are going to say they have been grabbed, no females are going to say...

Edwin Arvelo: No way.

Detective Collins: Okay.

Edwin Arvelo: This is the first time _____ (unintelligible 3:20:30)

Detective Collins: Okay. I appreciate it man, let me go out there and see.

Edwin Arvelo: Can I make a phone call?

Detective Collins: Yeah, I'll get you my cordless phone; I'll bring it back into you in a minute; let me get all of what I call my housekeeping done.

Edwin Arvelo: From here, I'm going to 33rd?

Detective Collins: Yeah, yeah. You know, it's a major incident. I mean, you know, it doesn't happen every day, so of course, it's something you definitely have to be arrested for, and because its probable cause, there's no way. It's not up to us. You know, on a ticket, it's up to us, but outside of a ticket, it's not up to us. If there's a crime, and there is victim, you know, and there's probable cause, we must do that, okay, that's how it works. Everybody is considered innocent until proven guilty in a court of law. Everybody has the right to bail and all the stuff on that card. That's everybody's right. That's from murder on down. Okay, and I've charged people with murder and I went to their bond hearing, and they even get bond, so everybody is entitled to that. Why, because everybody is innocent until proven guilty. Okay? So that's how the system works. I'm going to go out here and make sure there is nothing else needed, and we need to go over. I appreciate your honesty. I think it takes a big man to man-up after he's made a mistake. A big, big man. Okay? Because you, unfortunately, have to look yourself in the mirror, and before you can get friends, family and everybody else to accept you again, you have to accept yourself. Manning up, I think, does that. Okay? So, I thank you for that, and I respect you for that. Okay? Many guys come in here and tell me all kinds of lies and stories, and it never helps them, it never does. You have one of two choices: Shut up, or tell the truth and say how it got to that point, and you know, that way everybody involved in the court system knows what we're doing, and I think we did that, and I think you opened up to some history that I don't know if you've told anybody about that before. Okay?

Detective Collins: It's 8/16/2006 at 1:15 Maitland CID, Detective Collins with Edwin Arvelo. I'm going to end this interview. I am going to check with my boss to make sure if we need anything, and I will get you a phone. Okay?

(Detective Collins leaves the room. No conversation from 3:23:34 through 3:25:05, then Detective Collins re-enters the room)

Detective Collins: Hit talk and then press #9. Now, if you start getting too upset, I have to end it, so as long as you do that, I trust you, call somebody, don't tell anybody too much of your business.

(Phone dialing)

Edwin Arvelo: Hello, hello.

Detective Collins: Hey, you have to dial #9 too. You have to dial #9 to get an outside line.

Edwin Arvelo: Oh.

Detective Collins: So, yeah. Alright?

Edwin Arvelo: Okay.

Detective Collins: Alright. I forgot to tell you that.

(Phone dialing. No conversation from 3:27:00 through 3:29:03)

Detective Collins: Hey, are you trying to call Veronica?

Edwin Arvelo: Yeah.

Detective Collins: I told her you were going to call her right back. Are you calling her now?

Edwin Arvelo: Yeah.

Detective Collins: Okay, yeah.

(Detective Collins leaves the room again.)

Edwin Arvelo begins speaking Spanish into the phone, and the transcriptionist does not understand Spanish.

Transcribed by:

Kimberly A Lewis 2/4/07

Kimberly A. Lewis
L & L Transcription Services, LLC
12/28/2006 (CD #1 & #2)
02/04/2007 (CD #3)

U.S. Const. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Florida Statutes § 794.011

(1) As used in this chapter:

(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

(c) "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

(d) "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.

(e) "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(f) "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(g) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(h) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(i) "Victim" means a person who has been the object of a sexual offense.

(j) "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.

(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(4)(a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(d) A person commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the person commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), and such person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5);

2. Section 787.01(3)(a)2. or 3.;

3. Section 787.02(3)(a)2. or 3.;

4. Section 800.04;

5. Section 825.1025;

6. Section 847.0135(5); or

7. This chapter, excluding subsection (10) of this section.

(e) The following circumstances apply to paragraphs (a)-(d):

1. The victim is physically helpless to resist.

2. The offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.

3. The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

4. The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim.

5. The victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact.

6. The victim is physically incapacitated.

7. The offender is a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

(5)(a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(d) A person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the person commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury and the person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5);

2. Section 787.01(3)(a)2. or 3.;

3. Section 787.02(3)(a)2. or 3.;

4. Section 800.04;

5. Section 825.1025;

6. Section 847.0135(5); or

7. This chapter, excluding subsection (10) of this section.

(6)(a) The offenses described in paragraphs (5)(a)-(c) are included in any sexual battery offense charged under subsection (3).

(b) The offense described in paragraph (5)(a) is included in an offense charged under paragraph (4)(a).

(c) The offense described in paragraph (5)(b) is included in an offense charged under paragraph (4)(b).

(d) The offense described in paragraph (5)(c) is included in an offense charged under paragraph (4)(c).

(e) The offense described in paragraph (5)(d) is included in an offense charged under paragraph (4)(d).

(7) A person who is convicted of committing a sexual battery on or after October 1, 1992, is not eligible for basic gain-time under s. 944.275. This subsection may be cited as the "Junny Rios-Martinez, Jr. Act of 1992."

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but younger than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

(9) For prosecution under paragraph (4)(a), paragraph (4)(b), paragraph (4)(c), or paragraph (4)(d) which involves an offense committed under any of the circumstances listed in subparagraph (4)(e)7., acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.

(10) A person who falsely accuses a person listed in subparagraph (4)(e)7. or other person in a position of control or authority as an agent or employee of government of violating paragraph (4)(a), paragraph (4)(b), paragraph (4)(c), or paragraph (4)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Florida Statutes § 787.01 Kidnapping; kidnapping of child under age 13, aggravating circumstances.—

(1)(a) The term "kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to:

1. Hold for ransom or reward or as a shield or hostage.

2. Commit or facilitate commission of any felony.

3. Inflict bodily harm upon or to terrorize the victim or another person.

4. Interfere with the performance of any governmental or political function.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this subsection if such confinement is without the consent of her or his parent or legal guardian.

(2) A person who kidnaps a person is guilty of a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) A person who commits the offense of kidnapping upon a child under the age of 13 and who, in the course of committing the offense, commits one or more of the following:

1. Aggravated child abuse, as defined in s. 827.03;

2. Sexual battery, as defined in chapter 794, against the child;

3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04 or s. 847.0135(5);

4. A violation of former s. 796.03 or s. 796.04, relating to prostitution, upon the child;

5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151; or

6. A violation of s. 787.06(3)(g), relating to human trafficking,

commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Pursuant to s. 775.021(4), nothing contained herein shall be construed to prohibit the imposition of separate judgments and sentences for the life felony described in paragraph (a) and for each separate offense enumerated in subparagraphs (a)1.-5.

Florida Statutes § 784.045 Aggravated battery.—

(1)(a) A person commits aggravated battery who, in committing battery:

1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or

2. Uses a deadly weapon.

(b) A person commits aggravated battery if the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

(2) Whoever commits aggravated battery shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.