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## **Ana Maria Cardona v. State of Florida**

THE NEXT CASE IS CARDONA VERSUS STATE. MR. SCHER.

THIS CASE IS CONSOLIDATED ON A 3.850 APPEAL ON HAS BEEN YAS CORPUS. MAY IT PLEASE THE COURT. I WILL DEFER TO THE WRITTEN SUBMISSIONS ON WAY BELIEVE TO BE SUBSTANTIAL -- ON WHAT I BELIEVE TO BE SUBSTANTIAL CLAIMS ON INEFFECTIVE ASSISTANCE OF COUNSEL. I WILL BE ADDRESSING THIS MORNING, SEVERAL OF THE CLAIMS WITH REGARD TO MY BRIEF ON THE ISSUE OF MS. GONZALEZ, THE CODEFENDANT OF MS. CARDONA IN THIS CASE, AND THROUGHOUT THE, EXCUSE ME, DURING THE POSTCONVICTION DISCOVERY PROCESS BY MY OFFICE, WE DISCOVERED THAT THERE WAS SUBSTANTIAL INFORMATION CONCERNING OLIVIA GONZALEZ'S INVOLVEMENT IN THIS CASE THAT HAD BEEN SUPPRESSED BY THE PROSECUTION, AS WELL AS SOME VERY IMPORTANT GIGLIO VIOLATIONS RELATING TO FALSE TESTIMONY THAT SHE PROVIDED AT MS. CARDONA'S TRIAL. THE SUPPRESSED STATEMENTS CONERNED INVOLVE THREE INTERVIEWS THAT MS. GONZALEZ GAVE TO STATE ATTORNEYS OFFICE INVESTIGATORS, MANY, MANY MONTHS BEFORE ENTERING INTO HER PLEA, WHICH OCCURRED ABOUT A WEEK OR SO BEFORE MS. CARDONA'S CASE ACTUALLY WENT TO TRIAL, AS WELL AS A PROFESSOR LETTER FROM MS. GONZALEZ'S ATTORNEY TO THE STATE, SETTING FORT WHAT HE -- SETTING FORT WHAT HE SUBMITTED -- SETTING FORT WHAT HE SUBMITTEDBOO -- SETTING FORTH WHAT HE SUBMITTED WOULD BE THE ISSUES IN THE CASE.

IT IS MY UNDERSTANDING THAT THIS DID NOT CONSTITUTE A BRADY, SO THE JUDGE COMMENTED ON THAT THIS WAS CUMULATIVE AND, IF YOU HAVE A LIST REGARDING TIME, WOULD YOU ADDRESS WHAT YOU SEE ARE THE TWO OR THREE MOST INCONSISTENT INCONSISTENCIES AND WHY SHOULD THAT -- WHAT YOU SEE ARE THE TWO OR THREE MOST INCONSISTENT INCONSISTENCIES AND WHAT YOU THINK OUR INVOLVEMENT SHOULD BE IN THE CASE.

MS. CARDONA'S DEFENSE WAS THAT OLIVIA GONZALEZ WAS MORE RESPONSIBLE FOR THE INJURIES OF THE CHILD AND INFLICTED THE BLOW WITH THE BASEBALL BAT WHICH RESULTED IN THE DEATH OF THE CHILD. THE SUPPRESSION OF THAT WAS HIGHLY MATERIAL TO MS. CARDONA'S DEFENSE AT A NUMBER OF VARIOUS AREAS, ONE OF WHICH WAS MS. DPONSLESS'S ACCOUNT OF NOVEMBER 1, WHICH WAS -- MS. GONZALEZ'S ACCOUNT OF NOVEMBER 1, WHICH WAS THE DAY THAT THE CHILD WAS BROUGHT TO MIAMI BEACH AND LEFT OUTSIDE. AT TRIAL, MS. GONZALEZ INDICATED THAT SHE CAME HOME. THE CHILD WAS BOTHERING HER. MS. GONZALEZ CAME HOME FROM WORK. THE CHILD WAS BOTHERING HERE AND THAT SHE, OLIVIA, WENT UP TO THE CHILD SORT OF THREATENING HIM WITH A BASEBALL BAT, THAT MS. CARDONA GRABBED THE BAT FROM ER AND STAYED WITH THE BAT, WHILE MS. GONZALEZ WENT TO TAKE A BATH. WHEN MS. GONZALEZ CAME OUT OF THE BATHROOM, MS. CARDONA WAS HYSTERICAL, SAYING I JUST KILLED HIM. I JUST KILLED HIM! AND MS. GONZALEZ SAID THAT SHE TRIED TO REVIVE THE CHILD TO NO ON VEIL AND THAT SHE WAS THE ONE WHO SUGGESTED THAT THEY TAKE THE CHILD TO GET SOME ATTENTION, MEDICAL ATTENTION. NOW, IN THE PROFFER LETTER, THERE IS A COMPLETELY DIFFERENT VERSION OF EVENTS FORM THE OTHER THING, ACTUAL -- VERSION OF EVENTS. THE OTHER THING, ACTUALLY, THAT --

LET ME ASK YOU THIS. WERE THERE ANY DIFFERING VERSIONS THAT THE DEFENSE DID, IN FACT, HAVE PRETRIAL FROM MS. GONZALEZ?

SOME, AND WE CONTEND, OF COURSE, THAT THAT WAS INSUFFICIENTLY BROUGHT OUT THROUGH HER, ON HER IMPEACHMENT. THAT IS ANOTHER CLAIM, AND THAT REMITS SPECIFICALLY TO THE

SLATTERY STATEMENTS THAT MS. GONZALEZ.

IF YOU COULD JUST KIND OF HOLD IT TO THE DISCUSSION WHAT STATEMENTS THEY DID HAVE AND WHAT IS NEW, AS YOU GO ALONG.

99 PERCENT OF IT THEY DID NOT HAVE, BECAUSE THE STATEMENTS TO MR. SLATTERY CONSISTED OF DENIALS AND THEN SOME SHE RECALLED AT THE TRIAL, AND THAT IS WHY HER FREE AND VOLUNTARY STATEMENTS TO INVESTIGATORS BECAUSE OF THE SIGNIFICANT DIFFERENCE AT THE TRIAL. WHEN BASICALLY CONFRONTED WITH SOME OF THE INCONSISTENCIES, SHE STATED I WAS AFRAID. THEY THREATENED ME AND I FELT PRESSURE, SO I TAKE BACK WHAT I SAID TO THEM, SO SHE SPECIFICALLY RETRACTED EVER HAVING HIT LAST ROW WITH A BASEBALL -- LAST A ROW WITH A BASEBALL -- LAZARO AND BATTERING HIM IN HIS LIFE.

WOULD YOU REPEAT WHAT YOU STATED, BECAUSE --

I UNDERSTAND. SPECIFICALLY ON THAT POINT TO DEAL WITH THE SPECIFIC ISSUE ON POINT, IN TERMS OF THE INTERVIEW THAT, A REPORT DATED SEPTEMBER 19, WHICH IS THE REPORT OF THE STATE ATTORNEYS OFFICE, IS THERE IS NO MENTION OF A BASEBALL BAT. DURING THAT INTERVIEW, MS. GONZALEZ SAID SHE CAME HOME AND MS. CARDONA LOOKED TO SEE HIM ON THE BED AND APPARENTLY DEAD AT THAT POINT. NONE OF THE EXTRAS THAT SHE PUT IN, GRABBING THE BAT FROM MS. GONZALEZ, SET CERTAINLY IMPLYING THAT SHE STAYED WITH THE BAT WHILE MS. CARDONA WENT TO TAKE A BATH, AND SHE BATTERED HIM.

WOULD YOU REPEAT WHAT WAS SAID AT TRIAL, BECAUSE THAT IS A PRETTY SIGNIFICANT DIFFERENCE IN WHAT HAPPENED THAT DAY, BECAUSE, AS TO THAT CARDONA THAT HAD TOLD GONZALEZ THAT HE HAD FELL OFF THE -- HAD FALLEN OFF THE BED AND HE WAS DEAD. DID HE COME FROM GONZALEZ IN ANY WAY?

THAT COME FROM ONE AND ONLY GONZALEZ. -- THAT CAME FROM GONZALEZ AND ONLY GONZALEZ.

THE FACT THAT HE CAME OFF THE BED?

I THINK THAT MAY HAVE BEEN SOMETHING THAT ONE OF THEM SAID TO THE POLICE WHEN THEY WERE ARRESTED, THAT VERSION.

IF SO, IF IT WAS MS. GONZALEZ THEN WHY WOULDN'T SHE BE ABLE TO BE IMPEACHED, IF THAT WAS A POLICE REPORT THAT GONZALEZ GAVE? MY RECOLLECTION IS IT WAS CARDONA THAT HAD SAID THAT AND THAT ACTUALLY WOULD HAVE BEEN SUPPORTIVE OF CARDONA'S STATEMENT THAT --

CORRECT.

-- HE FELL OFF THE BED.

THE THING, WITH IMPEACHMENT, THAT YOU HAVE TO KEEP IN MIND IS IT NOT ONLY GOES TO ACTUAL INCONSISTENCIES BUT ALSO GOES TO THE ISSUE OF COACHING. AS HER STATEMENTS PROGRESS, THEY GET MORE AND MORE SERIOUS FORMS -- SERIOUS. THE INITIAL VERSION THAT SHE PROVIDED IN THE PROFFER LETTER WHICH I SUBMIT WOULD HAVE BEEN MORE USABLE AS IMPEACHMENT OR MITIGATION AT LEAST, WAS THE MOST BENIGN VERSION OF EVENTS. AS THE SITUATION PROGRESSES AND MORE INTERVIEWS OCCURRED, MS. CARDONA'S INVOLVEMENT BECAME MORE AND MORE, ALTHOUGH HIGHLY INCONSISTENT WITH WHAT SHE SAID AT THE TRIAL. THE OTHER MAJOR INCONSISTENCY OCCURRED WITH RRS -- WITH RESPECT TO WHAT OCCURRED OF GONZALEZ'S ACCOUNT OF WHAT HAPPENED ON HALLOWEEN OF 19906789 THE HALLOWEEN INCIDENT WAS THAT THERE WAS PREMEDITATION PREMEDITATION. IT WAS

ESTABLISHED AT THE TRIAL THAT MS. CARDONA HAD A PLAN TO GET RID OF OR DUMP LAST A ROW -- LAZARO, WERE HER WORDS, BECAUSE THERE WERE A LOT OF KIDS OUT. HER VERSION OF THE SCENARIO ON HALLOWEEN, WHERE SHE CAME HOME FROM WORK AGAIN. SHE WAS PISSED OFF AND HIS LAZARO WITH A BASEBALL BAT. A HOLE OPENED UP IN HIS HEAD. HIS HEAD WAS CRACKED AND HE WAS BLEEDING AND BLEEDING. THAT WAS HER WORDS. SHE THEN GRABBED HIM BY THE NECK TO SHUT HIM UP. THAT WAS WHAT HAPPENED IN HER INTERVIEW ON NOVEMBER 19. THE INTERVIEW TO THE STATE ATTORNEYS OFFICE HERE IS HER VERSION OF WHAT HAPPENED. ONLY -- SHE CAME HOME, OLIVIA CAME HOME FROM WORKING, THAT WAS WHAT HAPPENED. END QUOTE. QUOTE NOTHING UNUSUAL HAPPENED. END QUOTE. MR. CHIEF JUSTICE

JUSTICE SHAW HAS A QUESTION.

YOU NEVER SPECIFIED WHAT HAPPENED THAT NIGHT. WAS IT ONE BLOW OR A NUMBER OF BLOWS OR A SPECIFIC BLOW?

NOTHING CAME FROM THE MEDICAL EXAMINER. WITH RESPECT TO BRADY CASE INFORMATION AS TO THE MEDICAL EXAMINER'S TESTIMONY AS TO CAUSE OF DEATH. THE CAUSE OF DEATH WAS PROLONGED CHILD ABUSE, HE TESTIFIED. HE DID ACKNOWLEDGE THAT THERE WAS A VERY SERIOUS HEAD WOUND BUT THAT WAS NOT THE ULTIMATE CAUSE OF DEATH. THERE WAS A BRADY CLAIM WITH RESPECT TO THAT ISSUE OF WHETHER WHERE, THE POLICE REPORT INDICATED THAT THERE HIMER HAD INITIALLY ADVISED THAT THE ULTIMATE CAUSE OF DEATH WAS THE BLUNT TRAUMA TO THE HEAD. ALL OF THIS GOES TO THE ULTIMATE ISSUE THAT MS. CARDONA PRESENTED TO THE JURY, WHICH WAS THAT OLIVIA GONZALEZ WAS THE ULTIMATELY ONE RESPONSIBLE FOR THE FATAL BELOW THAT OCCURRED ON OCTOBER 31 OR ON NOVEMBER 1, PLUS SHE WAS THE ONLY WITNESS TO THE EX-CLATING ABUSE THAT OCCURRED -- ESCALATING ABUSE THAT OCCURRED PARTICULARLY IN THE LAST MONTHS OF LAZARO'S LIFE. THIS STATEMENT STARTED OUT, OF COURSE THERE WAS NO ABUSE BEFORE OLIVIA GONZALEZ ENTERED THE PICTURE. IT WAS ONLY AFTER SHE ENTERED THE PICTURE THAT THIS ABUSE STARTED, AND THE STATE PRESENTED A NUMBER OF PICTURES WHERE THEY SAW LAZARO A NUMBER OF TIMES WHEN THEY WERE LIVING IN CITY HOTELS. HE LOOKED MALNOURISHED. PEOPLE SAW LAZARO BEING HIT AND SLAPPED AROUND, NOTHING VERY, VERY SERIOUS.

WHAT WAS THE TESTIMONY OF WHEN YOUR CLIENT HIT THE CHILD WITH THE BASELL BAT, AND IN RELATIONSHIP TO WHEN HE DIED?

WELL, THE ONLY INFORMATION WE KNOW ABOUT THAT IS FROM OLIVIA GONZALEZ, AND, OF COURSE, OLIVIA GONZALEZ TESTIFIED, IN ONE OF THE OTHER INTERESTING THINGS ABOUT HER PRETRIAL SUPPRESSED STATEMENT, WAS THAT, DURING THE LAST SEVERAL MONTHS OF HIS LIFE, OLIVIA TELLS THE STATE THAT SHE REALLY NEVER SAW LAZARO BECAUSE SHE WAS -- BECAUSE HE WAS IN THE CLOSET ALL OF THE TIME AND SHE REALLY COULDN'T BE SPECIFIC AS TO THE TIME AND PLACE OF SPECIFIC INJURIES. OF COURSE AT THE TRIAL, ONE WOULD BE HARD PRESSED TO BELIEVE THAT MS. GONZALEZ NEVER SAW LAZARO DURING THE LAST FEW MONTHS OF HIS LIFE. SHE DETAILS DAY BY DAY AND WEEK BY WEEK, SOMETIMES PINPOINTING SHE HIT HIM WITH A BASEBALL BAT OVER THE HEAD IN THE THIRD WEEK THAT WE WERE LIVING IN THAT HOUSE AT FIVE P.M., COMPLETE CONTRAST TO NEVER OR HARDLY EVER SEEING HIM. THE ONLY TESTIMONY THAT THIS CHILD WAS HIT BY A BASEBALL BAT FROM OLIVIA GONZALEZ REGARDING MS. CARDONA, SHE DENIED, PARTICULARLY THAT SHE HIT HIM WITH A BASEBALL IN THE LAST WEEKS OF HIS LIFE, PARTICULARLY IN HER TESTIMONY THE STATE GOT HER TO DISAVOW EVER HITTING HIM WITH A BASEBALL BAT IN THE LAST FEW MONTHS OF HIS LIFE.

WHICH DID THAT?

THE STATE REHABILITATED --

WHICH?

MS. GONZALEZ AND IN FACT HAD HER POINT TO MS. CARDONA AS THE ONE WHO DID. THE OTHER THING ABOUT THE BASEBALL ISSUE WAS THAT, IN ONE OF HER STATEMENTS, I BELIEVE IT WAS THE STATEMENT REFLECTED IN HER INTERVIEW OF SEPTEMBER 30, OLIVIA, HERSELF, ACKNOWLEDGES HAVING HIT LAZARO WITH A ASEBALL BAT AT LEAST IT THE TWO OR THREE TIMES AND TAT THE LAST TIME THAT SE SAW MS. CARDONA HIT THE CHILD WITH A BASEBALL BAT WAS AROUND A WEEK OR SO BEFORE THE CRIME. OF COURSE HALLOWEEN WAS NOT A WEEK OR SO BEFORE THE CRIME. IT WAS JUST DAY BEFORE THE CRIME AND SO WE HAVE GOT --

SHE SAID, IN THE INTERVIEW, THAT THE LAST TIME THAT SHE, GONZALEZ, SAW CARDONA HIT THE CHILD WAS A WEEK BEFORE?

YES.

WHAT DOES SHE SAY ABOUT WHEN THE LAST TIME WAS THAT SHE HIT HIM WITH THE BAT?

OLIVIA? SHE NEVER ACKNOWLEDGES HITTING HIM WITH A BAT. THE ONLY THING THAT SHE ACKNOWLEDGES IS THAT --

I THOUGHT IN THE INTERVIEW SHE DID.

YES AT THE INTERVIEW. NOT AT THE TRIAL. IN THE INTERVIEW --

THAT IS WHAT JUSTICE SHAW WAS ASKING, AS TO WHEN SHE HIT LAZARO WITH A BAT. WAS IT MORE THAN JUST IN A FEW-MONTH PERIOD? WAS THAT ANOTHER CONTRADICTION?

YES, IT WAS, AND SHE, ALSO, ACKNOWLEDGES THAT SHE MIGHT HAVE HIT HIM IN THE HEAD WITH THE WOODEN BASEBALL BAT. SHE ACKNOWLEDGES IN THE SEPTEMBER 30 INTERVIEW THAT IS REFLECTED IN THE SEPTEMBER 30 REPORT, THAT SHE HIT LAZARO WITH A BAT WITHIN THE LAST MONTH BEFORE HIS DEATH. SHE HIT LAZARO WITH A WOODEN BAT QUOTE/UNQUOTE, AT LEAST TWO OR THREE TIMES.

SHE BEING WHO?

SHE BEING OLIVIA, SHE, BEING HERSELF.

THAT IS IN CONTRAST.

MARKED CONTRAST. COMPLETE CONTRADICTION.

BUT THAT IS WHERE SHE WAS I AM PREACHED WITH WHAT SHE HAD TOLD THE SLATTERYS, CORRECT? SHE DID TELL THE SLATTERYS THAT SHE DID HIT HIM WITH A BASEBALL BAT. ANOTHER QUESTION WAS ASKED DIDN'T YOU TELL THE SLATTERYS THAT YOU HIT HIM WITH BASEBALL BAT? SHE AGO NOLINGD ONLY PERHAPS TAPPING HIM ON THE FOOT WITH A BASEBALL BAT. AND THAT IS IT, SHE ACKNOWLEDGED THAT SHE WAS AFRAID OF THE SLATTERYS. IN FACT, THIS CAME UP DURING CLOSING ARGUMENT WHERE THE STATE SAID OH, SURE MAYBE ON CROSS SHE TOLD THE SLATTERYS THAT, BUT HER TESTIMONY IS THAT SHE DID NOT HIT THAT CHILD WITH A BASEBALL BAT DURING THE LAST FEW MONTHS OF HIS LIFE.

WAS IT A SURPRISE DURING THE TRIAL, RELATIVE TO GONZALEZ'S TESTIMONY THAT YOUR CLIENT HIT HIM WITH A BASEBALL BAT PRIOR, JUST PRIOR TO HIS DEATH? IS THAT, ARE YOU ARGUING THAT THAT CAME AS A SURPRISE SOMEHOW, TO YOU?

THE FACT THAT OLIVIA WAS GOING TO SAY THAT MS. CARDONA HIT HIM WITH A BASEBALL BAT?

RIGHT. DIDN'T YOU KNOW THAT ALL ALONG, THAT THIS WAS GOING TO BE GONZALEZ'S TESTIMONY?

NO. I DON'T THINK SO. BECAUSE CERTAINLY THERE WAS NO INDICATION. THERE WAS NO TESTIMONY FROM GONZALEZ AT THAT POINT. AT THAT POINT SHE WAS CONTINUING TO GO TO TRIAL, AND SO TO THE EXTENT THAT YOUR HONOR SORT OF IS SUGGESTING THAT COUNSEL COULD HAVE BEEN MORE DILIGENT IN TRYING TO OBTAIN THESE REPORTS, I WOULD SUGGEST, AND THAT IN FACT IS AN ARGUMENT THAT THE STATE IS ATTEMPTING TO MAKE IN THIS APPEAL, I WOULD NOTE THAT THE PROSECUTORS, THEMSELVES, BELOW SAID THAT THEY WERE UNAWARE THAT THESE REPORTS EXISTED. THEY WERE CERTAINLY AWARE THAT SHE WAS INTERVIEWED, BUT THEY WERE UNAWARE THAT THE REPORTS EXISTED, AND SO I FIND IT DISINGENIOUS AT BEST, TO ARGUE THAT THE DEFENSE, IN ORDER TO HAVE BEEN DILIGENT, SHOULD HAVE GOTTEN REPORTS OR OBTAINED REPORTS THAT THE PROSECUTORS, THEMSELVES, SOMEHOW DENIED KNOWING ABOUT, SO I REALLY THINK THAT IS INCONSISTENT -- MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL.

YES.

ONE THING BEFORE YOU SIT DOWN ON THE CROSS-EXAMINATION, DR. HABER, YOU SAID THAT THE DEFENSE SHOULD HAVE DISCOVERED AND USED, IN CROSS-EXAMINATION, THAT, CONTRARY TO THE TESTIMONY OR THE PICTURE OF GONZALEZ AT TRIAL, THAT SHE HAD BATTERED AND WAS ARRESTED FOR BATTERING HER MOTHER AND AN AGGRAVATED ASSAULT ON A PRIOR LOVER. WAS THE TESTIMONY AS TO THE ATTORNEYS, THAT, DID THEY KNOW ABOUT THOSE CHARGES? DID THE JURY EVER HEAR ANYTHING ABOUT THE, THAT GONZALEZ, THAT SHE WAS IN HER BACKGROUND?

THE SECOND PART -- THAT THIS WAS IN HER BACKGROUND?

THE SECOND PART FIRTION THE JURY HEARD NOTHING ABOUT THAT, AND THE SECOND PART, AS TO MY RECOLLECTION, IS THAT THE ATTORNEYS DID KNOW ABOUT THAT AND THEY OFFERED NO STRATEGIC REASON FOR NOT HAVING DONE IT. THEY CERTAINLY DIDN'T PRESENT THAT IT WAS INCONSISTENT WITH THEIR DEFENSE. I THINK IT WOULD HAVE BEEN VALUABLE IMPEACHMENT NOT ONLY FOR DR. HABER BUT FOR MS. GONZALEZ, HERSELF, WHO SAID THAT SHE GOT ALONG WITH HER FORMER LOVER, AND OF COURSE THE RELATIONSHIP BETWEEN OLIVIA AND ANA, AND WHO WAS THE BATTERED SPOUSE AND WHO WAS NOT WAS ONE OF THE KEY ISSUES IN THIS CASE, SO CERTAINLY GONZALEZ'S DEMEANOR TOWARDS HER FORMER LOVER WAS HIGHLY RELEVANT. I WILL SAVE THE REST OF MY TIME FOR REBUTTAL. MR. CHIEF JUSTICE

THANK YOU. MR. AKE.

MAY IT PLEASE THE COURT. MY NAME IS STEPHEN AKE AND I REPRESENT THE STATE OF FLORIDA IN THIS CASE. AS TO THE BRADY ISSUE THE STATE WOULD SUBMIT THAT THE TRIAL COURT IMPROPERLY DENIED PELL -- THAT THE TRIAL COURT PROPERLY DENIED APPELLANT'S CLAIM ON THIS. WHAT YOU HAVE IS THREE REPORTS DONE BY THREE STATE ATTORNEY PERSONNEL AND THE INVESTIGATOR DID NOT EVER INFORM THE PROSECUTING AND TRIAL TEAM THAT SHE HAD DONE, PROPERLY, THESE REPORTS. THEY ARE IN THE RECORD AND ARE 3-TO-7 PAGES LONG, SINGLE-SPACE TYPE, AND THEY ARE THE SUMMARY OF THE OFFICERS TESTIMONY.

ARE YOU SUGGESTING THAT THE STATE ATTORNEY DIDN'T KNOW --

NO, YOUR HONOR. THEY CONCEDED BELOW THAT THEY SHOULD HAVE BEEN TURNED OVER. THAT IS NOT ISSUE AT ALL THIS AT ALL IN THIS CASE. THE ISSUE IS THAT IT WOULDN'T HAVE BEEN MATERIAL TO THE VERDICT, WHICH IS WHAT WE HAD ANYWAY. I BELIEVE THEIR TESTIMONY WAS THAT THEY TOOK A 7 OR EIGHT-HOUR DEPOSITION OF MS. GONZALEZ. THEY THE SLATTERYS.

THEY DEPOSED THE FATHER AND SON THAT THEY HAD DONE THESE EXTENSIVE INTERVIEWS.

EVEN THOUGH THEY DIDN'T HAVE THESE REPORTS.

RIGHT.

DID THEY KNOW THAT THERE HAD BEEN THESE THREE INTERVIEWS OF GONZALEZ, BY STATE ATTORNEY PERSONNEL?

THEY DID NOT KNOW THAT THERE WERE THESE SPECIFIC INTERVIEWS THAT HAD TAKEN PLACE. THEY KNEW THE STATE WAS IN, TALKING WITH OLIVIA GONZALEZ, TO SEE IF SHE WOULD FLIP AND TESTIFY AGAINST THE DEFENDANT, BUT THEY DID NOT HAVE DIRECT KNOWLEDGE THAT SHE HAD MET WITH THIS INVESTIGATOR ON THESE OCCASIONS. BUT IT COMES BACK AROUND TO THE FACT THAT THE INFORMATION CONTAINED IN THESE REPORTS, THE TRIAL COURT BELOW FOUND THAT THERE WERE SOME INCONSISTENT STATEMENTS THAT COULD HAVE BEEN USED TO IMPEACH OLIVIA GONZALEZ, BUT THAT INFORMATION WOULD NOT HAVE CHANGED ANYTHING, BECAUSE SHE WAS SO SUFFICIENTLY IMPEACHED AT TRIAL BELOW, AND IF YOU GO BACK AND LOOK AT THE DIRECT APPEAL RECORD, YOU WILL SEE THAT DEFENSE COUNSEL DID, IN FACT, IMPEACH HER WITH HER STATEMENTS TO THE SLATTERYS AND WITH HER DEPOSITION AND UTILIZED BOTH OF THOSE TO BRING OUT WHAT HE STATED WAS HIS STRATEGY OF CROSS-EXAMINING HER, AND THAT IS TO SHOW THAT SHE HAD AT ONE TIME ADMITTED TO STRIKING THE VICTIM WITH THE BAT AND HE WAS ABLE TO BRING THAT OUT IN HIS CROSS-EXAMINATION.

IS THIS SOMETHING THAT WAS WITHHELD AT, REALLY, PERMEATED THE WHOLE TRIAL, THAT HIS INFORMATION THAT THE STATE HAS THAT HAS NOT BEEN TURNED OVER TO THE DEFENSE, SO IT AFFECTS THE TRIAL STRATEGY. IT AFFECTS EVERYTHING.

WELL, YOUR HONOR, I DON'T SEE HOW --

ONCE YOU CONCEDE THAT OBVIOUSLY THIS SHOULD HAVE BEEN TURNED OVER, THE ISSUE IS VERY NARROW AT THAT POINT.

WELL, IT WAS CONCEDED BELOW THAT IT SHOULD HAVE BEEN TURNED OVER, BUT I DON'T SEE HOW YOU CAN SAY THIS THIS PERMEATED THE ENTIRE TRIAL, WHEN DEFENSE COUNSEL HAD ALL OF THIS INFORMATION AVAILABLE AND UTILIZED IT.

INFORMATION IS INFORMATION. THIS, THAT WAS WITHHELD, IS, IN MY OPINION, WAS MORE CRITICAL THAN SOME WE HAVE SEEN HERE.

I WOULD FIRST OFF LIKE TO CLARIFY SOME OF THE INCONSISTENCIES THAT COUNSEL ALLEGES, AND I THINK ONE OF THE MAIN ONES CENTERS AROUND THE SO-CALLED HALLOWEEN INCIDENT, AND I THINK WHAT IS VERY IMPORTANT TO LOOK AT IS TO GO BACK AND LOOK IN THE DIRECT APPEAL AT OLIVIA GONZALEZ'S TESTIMONY ABOUT THIS INCIDENT AT TRIAL BELOW, AND SHE SAID IT HAPPENED AROUND THE LAST DAY OF OCTOBER. SHE NEVER WAS PINNED DOWN TO SAYING THAT THIS HAPPENED ON HALLOWEEN. AND THAT IS PAGE 2897, I BELIEVE BUT SHE SAID IT HAPPENED AROUND THE LAST DAY OF OCTOBER, AND THEN THE INVESTIGATIVE REPORT, SHE RELATES TO THE INVESTIGATOR THAT ON HALLOWEEN NOTHING UNUSUAL HAPPENED. I CAME HOME. HE WAS BOUND AND GAGGED IN THE CLOSET. THAT WAS USUAL.

SO IN OTHER WORDS WHEN WE SAID IN OUR DIRECT APPEAL THAT, ACCORDING TO GONZALEZ, ON THE LAST DAY OF OCTOBER 1990, CARDOSA SEVERELY BEAT LAZARO WITH A BASEBALL BAT, IT WAS SHE WAS MISTAKEN, IN THAT IT HAPPENED ON THE LAST DAY --

I THINK WHEN WE LOOK AT THE RECORD, IT WAS STATED THAT IT HAPPENED NEAR THE LAST DAY OF OCTOBER. I DON'T THINK IT WAS PINNED DOWN AS TO HALLOWEEN. SHE NEVER WENT INTO

TESTIMONY THAT I CAME HOME, SO SHE COULD TAKE THE TWO KIDS OUT TRICK OR TREATING. THAT IS HOW SHE REMEMBERED IT IN THE INVESTIGATIVE REPORT. I WORKED ALL DAY AND CAME HOME. LAZARO WAS IN THE CLOSET, NOTHING UNUSUAL THERE AND THEN WE WENT OUT TRICK OR TREATING. AT TRIAL --

ONE THING AS TO THE DEFENSE ATTORNEY, WOULD WANT TO HAVE, IS THAT EXPLAINING WHAT HAPPENED ON THE LAST DAY OF LAZARO'S LIFE, IS THAT SHE CAME HOME AND NOTED NOTHING UNUSUAL ABOUT THE CHILD OR THE SITUATION.

WELL.

AGAIN, I UNDERSTAND THAT WE ARE, SOMETIMES THERE ARE QUESTIONS OF DEGREE, AND WHAT, LIKE THAT IS, DID THE DEFENSE ATTORNEY HAVE, TO IMPEACH THIS KEY STATE WITNESS, WITH, AS TO WHAT HAD HAPPENED OR WHAT SHE HAD SAID ON PREVIOUS OCCASIONS ABOUT THE LAST DAY OR THE DAY BEFORE THE LAST DAY OF OCTOBER?

THAT IS PART OF THE PROBLEM, IS THAT, AND SHE WAS NEVER PINNED DOWN AS TO WHAT HAPPENED, LIKE, LET'S TAKE THE LAST WEEK OF LAZARO'S LIFE. SHE WAS NEVER QUESTIONED ABOUT INCIDENTS ON THAT.

YOU MEAN THE DEFENSE ATTORNEY NEVER QUESTIONED IT AT TRIAL?

ALL OF THE SLATTERY'S POSITION. THERE WAS TESTIMONY THAT CAME OUT ABOUT THE DAY BEFORE HIS DEATH, WHICH HE WAS KILLED ON NOVEMBER 1, THE THING THAT IS OCCURRED ON THE DAY BEFORE WERE IN THE INVESTIGATIVE REPORT AND IT WAS NOTHING UNUSUAL. SHE CAME IN AND LOOKED AT HIM AND HE WAS LAYING THERE IN THE CLOSET. THAT WAS NOT UNUSUAL. HE WAS ALWAYS LIKE THAT.

ISN'T WHAT MAKES THAT SO DEVASTATING, AS FAR AS THE PROSECUTION NOT WANTING THAT TO BE IN THE TRIAL, NOT, AGAIN, ATTRIBUTE A MOTIVE, BUT IF YOU LOOK AT THAT THIS PERSON TOLD INVESTIGATORS THAT ON THE DAY BEFORE AND ON HALLOWEEN AND GRAPHICALLY DESCRIBES WHAT HAPPENED ON HALLOWEEN, THERE WAS NOTHING UNUSUAL ABOUT LAZARO, WHEREAS WE, IN OUR DIRECT APPEAL SAY, THAT ACCORDING TO HER ON THAT LAST DAY SHE SEVERELY BEAT HIM. YOU DON'T SEE THAT AS --

I SEE THAT ON NOVEMBER 1, THE DAY OF THE MURDER, IS THAT INCIDENT, AND THERE IS GREAT DETAIL ABOUT THAT INCIDENT, THE DAY THAT HE IS ACTUALLY MURDERED AND ADMITTEDLY SHE GAVE INCONSISTENT STATEMENTS ABOUT WHAT HAPPENED ON THAT DAY WHEN SHE CAME HOME. SHE TESTIFIED THAT SHE CAME HOME FROM WORK AND ANA SAYING HE FELL OFF THE BED AND THAT AND THEN WE HAVE THE OTHER VERSION WHERE SHE COMES IN WITH THE BASEBALL BAT AND SHE TAKES IT FROM HER AND WHAT HAVE YOU. THERE WERE INCONSISTENCIES, BUT YOU HAVE GOT TO LOOK AT THE FACT THAT THIS WAS ALL BROUGHT OUT AT TRIAL BELOW. DEFENSE COUNSEL WAS ABLE TO IMPEACH HER SUFFICIENTLY.

WHAT DID SHE TELL THE SLATTERY'S? WHAT DID THIS WITNESS TELL THE SLATTERY'S?

THIS WITNESS TOLD THE SLATTERY'S A NUMBER OF THINGS. SHE LATER RECANTED SOME OF THEM. SOME OF THEM WERE BASICALLY WHEN DID YOU LAST HIT HIM WITH A BASEBALL BAT? WAS IT TWO MONTHS BEFORE OR WAS IT A WEEK BEFORE, AND SHE WENT BACK AND FORTH ON THAT, AND THEN SHE TESTIFIED THAT SHE MADE THESE INCRIMINATING STATEMENTS THAT SHE MAY HAVE HIT HIM RIGHT BEFORE HIS DEATH, BASED ON THE PRESSURE THAT SHE WAS UNDER, GIVEN THE POLYGRAPH SITUATION.

THE SLITRYS WERE DEPOSED?

YES, THEY WERE.

THEY WERE AVAILABLE AT TRIAL BUT NOT CALLED?

CORRECT AND THE DEFENSE TESTIFIED AT THE 3.850 PROCEEDINGS THAT THEY WERE NOT CALLED TO TESTIFY BECAUSE THEY HAD IMPEACHED HER SUFFICIENTLY WITH THE STATEMENTS TO THE SLATTERY'S, SO THEY HAD NO NEED TO CALL THE SLATTERY'S, AND ALSO THEY BROUGHT OUT, THROUGH DR. HABER, WHEN THEY WERE CROSS-EXAMINING OLIVIA GONZALEZ, THAT SHE MADE THE SAME STATEMENTS TO DR. HABER, WHEN SHE WASN'T UNDER THE SO-CALLED PRESSURE OF THE SLATTERY'S. DEFENSE COUNSEL TESTIFIED AT THE 3.850 PROCEEDINGS THAT I GOT WHAT I WOULD LIKE TO HAVE GOTTEN OUT OF OLIVIA GONZALEZ. SURE, I WOULD HAVE LIKED TO HAVE SEEN THOSE REPORTS, BUT HE NEVER GAVE ANY DETAIL ABOUT I WOULD HAVE BEEN ALL OVER HER WITH THIS STATEMENT OR THIS STATEMENT OR THIS STATEMENT. HE TESTIFIED THAT I AM VERY CONTENT -- CONTENT WITH THE CROSS-EXAMINATION THAT I DID OF OLIVIA GONZALEZ.

ON THE DAY OF THE DEATH.

NOVEMBER 1.

NOVEMBER 1. IN THE 9-19 INTERVIEW, GONZALEZ SAYS THAT SHE CAME HOME AND THAT CARDONA WAS SCREAMING THAT HE FELL OFF THE BED. HE WAS DEAD. AND AT TRIAL, SHE SAID SHE CAME HOME AND LAZARO WAS IN THE CLOSET SCREAMING, AND SHE WENT TO TAKE A BATH, AND THEREAFTER HE WAS DEAD. THAT SHE TRIED TO REVIVE HIM. SHE SUGGESTED TAKING LAZARO TO THE HOSPITAL. WHAT CAME OUT AT TRIAL TO IMPEACH HER, AS TO THIS VERSION THAT WAS HER INITIAL VERSION TO THE STATE WAS THAT CARDONA WAS SCREAMING THAT HE, LAZARO, HAD FALLEN OFF THE BED AND WAS DEAD. DID THAT COME OUT AT TRIAL?

WHEN BOTH OF THEM WERE ARRESTED, THEY BOTH WITH THAT -- WENT WITH THAT STORY AND SHE HEARD ANA TESTIFY TO THE -- SHE HEARD ANA SAY TO THE POLICE OFFICER THAT HE FELL OFF THE BED AND SHE WENT WITH THAT STORY, THAT HE FELL OFF THE BED.

SO THE DEFENSE DIDN'T ASK HER ON CROSS-EXAMINATION.

I DON'T BELIEVE IT CAME OUT WITH CROSS-EXAMINATION. I BELIEVE IT WENT THAT WAY WITH THE TESTIMONY OF THE POLICE OFFICERS. BUT IT WASN'T BROUGHT OUT THAT WAY, PER SE, WITH CROSS-EXAMINATION OF OLIVIA GONZALEZ.

IS IT THE STATE'S POSITION THAT THERE ARE REALLY NO SIGNIFICANT DIFFERENCES BETWEEN THE TESTIMONY OF THIS WITNESS GIVEN IN HER DEPOSITION AND THE TESTIMONY THAT SHE GAVE TO THE INVESTIGATORS IN THE STATEMENTS THAT WEREN'T DISCLOSED?

-- DISCLOSED?

I THINK YOU HAVE TO LOOK -- THAT WEREN'T DISCLOSED?

I THINK TO LOOK AT IT NOT JUST TO THE STATEMENTS IN THE DEPOSITION AND NOT JUST AS TO -- THAT ISN'T MY QUESTION. THERE WAS A LENGTHY DEPOSITION, CORRECT?

CORRECT. CORRECT.

SO YOU HAD AN OPPORTUNITY TO EXAMINE THE DEPOSITION AND EXAMINE THE WITHHELD STATEMENTS, AND THAT IS WHAT I AM ASKING FOR IS YOUR ANALYSIS THERE. IS THERE ANY SIGNIFICANT DIFFERENCE BETWEEN --



I CAN'T HONESTLY RECALL SPECIFIC INCONSISTENCIES WITH THE DEPOSITION VERSUS THE STATEMENT AND HOW THEY WOULD HAVE AFFECTED THINGS. MAYBE COUNSEL CAN PROVIDE YOU SOME. BUT I DON'T RECALL THERE BEING ANYTHING OF THAT SIGNIFICANT IN THE DEPOSITION VERSUS WHAT CAME OUT AT TRIAL.

SO IT IS THE STATE'S POSITION THAT THERE ARE NO SIGNIFICANT DIFFERENCES BETWEEN THE DEPOSITION AND THOSE STATEMENTS.

THE STATE'S POSITION IS THAT THERE IS NO SIGNIFICANT DISTINCTION INS ANY OF THIS, THAT IT WOULD NOT HAVE BEEN MATERIAL -- -- DISTINCTIONS IN ANY OF THIS. GRANTED THERE WOULD HAVE BEEN OTHER MATERIAL, BUT NO SIGNIFICANT DIFFERENCES. ' I AM TRYING TO GET TO THE POINT.

OF THE DEPOSITION.

SO YOU ARE REPRESENTING TO US THAT WE WOULD FIND NO SIGNIFICANT DIFFERENCES BETWEEN THE DEPOSITION AND THE STATEMENTS THAT WERE WITHHELD.

NO, YOUR HONOR. MY REPRESENTATION IS I DON'T RECALL ANY. I DID NOT READ THROUGH THE DEPOSITION WITH A FINE-TOOTHED COMB. LIKE I SAID, IT IS A 7 OR 8 HOUR DEPOSITION, AND I WAS RECENTLY LOOKING AT IT TRYING TO GO THROUGH IT, BUT I CAN'T RECALL OF HERE ARE THE POLICE REPORTS AND HERE IS THE DEPOT AND LET ME LOOK AT THEM AND SEE IF THERE ARE INCONSISTENCIES --

ISN'T THAT IMPORTANT IN THE ANALYSIS FOR US TO GO THROUGH AND TRY TO DETERMINE --

NO, YOUR HONOR. YOU HAVE TO LOOK AT WHAT IS WITHHELD, WHAT IS THE SO-CALLED VALUABLE EVIDENCE THAT WAS WITHHELD THAT THEY COULD HAVE BROUGHT OUT, AND IF THEY HAD BROUGHT IT OUT, WOULD IT HAVE CHANGED THE VERDICT, AND IN THIS CASE WE ARE SAYING THAT EVEN IF THEY HAD HAD EVERYTHING THAT WAS DONE BY THE STATE ATTORNEY INVESTIGATORS, IT WOULD NOT HAVE CHANGED ANYTHING. IT WOULD HAVE NOT CHANGED THE CROSS-EXAMINATION ANY. DEFENSE ATTORNEY DIDN'T TESTIFY --

WHAT IS THE BRADY TEST? THE SUPREME COURT ARTICULATED THE PARTICULAR PRONG OF THE BRADY TEST.

I THINK THE TRIAL COURT MADE A FACTUAL FINDING THAT THERE WAS IMPEACHMENT EVIDENCE IN THE STATE ATTORNEY INVESTIGATIVE REPORTS. HOWEVER IT DOESN'T MEET THE MATERIAL PRONG. YOU HAVE TO HAVE A REASONABLE LIKELIHOOD THAT YOU THINK THE VERDICT OR THE OUTCOME WOULD HAVE BEEN DIFFERENT IN THIS CASE AND YOU CAN'T SAY THAT, GIVEN THESE FACTS. YOU HAVE TO LOOK AT THE FACTS OF THIS CASE, IN THAT ANA CARDONA HAD SOLE CUSTODY OF LAZARO FOR GREAT LENGTHS OF TIME. ALL OF THE TESTIMONY CAME OUT THAT, FOR THE LAST COUPLE OF MONTHS, ELIZABETH CARDONA WAS WORKING FROM 7:00 A.M. TO 7:00 P.M. AND SHE HAD A SIGNIFICANT DRIVE TO WORK AND FOR THE LAST PERIOD OF MONTHS THE NEIGHBORS SAID WE DIDN'T KNOW LAZARO LIVED THERE. HE WAS KEPT IN HIS CLOSET. BUT ALL OF THE DOCUMENTS CENTERED AROUND THAT ANA CARDONA HAD SIGNIFICANT RESPONSIBILITY AND CARE AND CONTROL FOR LAZARO AND SHE WAS RESPONSIBLE FOR HIS WELL-BEING AND HAD DONE THIS SIGNIFICANT ABUSE THAT WAS STATED IN THE MEDICAL EXAMINER'S TESTIMONY.

IN THE JUDGE'S ORDER, THE JUDGE SAYS THAT SHE AND HER CODEFENDANT, GONZALEZ, MEN DOSE A, SAID THAT -- GONZALEZ HAD ALL OF THE CUSTODY AND CONTROL. YOU DON'T ARGUE EW THAT THAT WAS A KEY WITNESS IN THIS QUESTIONING.

I DON'T THINK THAT THEY WOULD BE ABLE TO PROVE THAT SHE WAS THERE FOR ANY LENGTH OF

TIME AT THE RESIDENCE. THE TESTIMONY CAME OUT AND SHE TESTIFIED IN THE DEPOSITIONS THAT SHE WAS WORKING AT A FACTORY JOB FOUR DAYS A WEEK AND WITH HER MOTHER AT AN ELEMENTARY SCHOOL THE OTHER TWO DAYS A WEEK WEEK.

BUT IF THE JURY ENDS UP LOOKING AT THIS AND SEES THAT THE FIRST TIME THAT GONZALEZ TALKS TO THE STATE, THROUGH THREE DIFFERENT INTERVIEWS, THAT SHE TELLS A STORY THAT IS MARKEDLY DIFFERENT THAN THE STORY SHE IS TELLING AT TRIAL. DOES THE JURY, ALL OF A SUDDEN, START TO LOOK DIFFERENTLY AT THE DEFENSE, THAT IN FACT IT WAS REALLY GONZALEZ THAT WAS THE PRIME MOTIVATOR OR HERE, NOT CARDONA -- THE PRIME MOTIVATOR HERE, NOT CARDONA. THIS IS A TERRIBLE, TERRIBLE TRAGEDY AND TERRIBLE ACT, IN THAT TWO WOMEN WERE CHARGED AND ONE RECEIVED THE DEATH PENALTY, AND WHAT WE HAVE GOT TO LOOK AT IS, WHEN THE STATE WITHHOLDS SOMETHING AS SIGNIFICANT AS THIS WHICH COULD HAVE PROVIDED VALUE IMPEACHMENT, HOW DO WE, HOW CAN WE SAY THAT THE JURY VERDICT WOULD HAVE BEEN THE SAME, WITH THIS IMPEACHMENT EVIDENCE THERE?

WELL, YOU HAVE GOT TO GO BACK TO WHAT WAS SAID AT THE 3.850 HEARING BY DEFENSE COUNSEL. HE NEVER SAID, HE SAID SURE I WOULD HAVE LIKED TO HAVE HAD THAT. HE DIDN'T KNOW WHO SHE TALKED TO. BUT HE SAID SURE, I WOULD HAVE LIKED TO IMPEACH HER WITH THAT, BECAUSE HE DID IMPEACH HER WITH ALL OF THESE INCONSISTENT STATEMENTS. HE TRIED TO LET THE JURY KNOW THAT SHE DID ADMIT TO STRIKEING HIM WITH THE BAT. HE DID SUCCEED IN THAT AND THEY COULD NOT SHOW THAT IT WAS INEFFECTIVE STRATEGY IN DOING. THAT.

BUT WOULD YOU AGREE THAT WHAT HAPPENED THE DAY OR THE DAY BEFORE WAS A VERY SIGNIFICANT PART OF THE STATE'S CASE, IN TERMS OF SORT OF THE GRAPHIC DETAILS OF THE STRIKING OF LAZARO WITH THE BAT AND SPLITTING HIS HEAD OPEN?

I DON'T THINK IT IS THAT SIGNIFICANT, YOUR HONOR, BASED ON THE MEDICAL EXAMINER'S TESTIMONY, BASED ON THE LENGTHY 18 MONTHS OF ABUSE AND ALL THE INJURIES. THE VICTIM HAD SUFFERED NUMEROUS SKULL FRACTURES, SOME OF WHICH HAD STARTED TO HEAL AND SOME OF WHICH HADN'T.

DID THE STATE EMPHASIZE THAT FACT AT THE --

NO, I AM NOT SAYING IT WASN'T A SIGNIFICANT FACT THAT SHOULD BE ADDRESSED, BUT IT IS NOT THE END-ALL, BE-ALL OF EVERYTHING. THIS CHILD HAD 18 MONTHS OF ABUSE THAT WAS DOCUMENTED MONTHS AND MONTHS AND MONTHS, SCARS UPON SCARS. YOU KNOW, YOU HAVE SEEN THE OPINION AS TO HIS MUSCLES CALLSFYING INTO BONE, BASED UPON THIS REPEATED ABUSE, AND ALL OF THE STATE'S EVIDENCE IN THE CASE SHOWED THAT ANA CARDONA WAS RESPONSIBLE FOR THIS.

AND MOST OF IT COMING FROM GONZALEZ, WHO IS --

NOT NECESSARILY, JUST WITH THE LAST TWO MONTHS. THAT IS ALL THAT IS COMING FROM GONZALEZ. OTHER WITNESSES SAID WE SAW HOW CARDONA TREATED LAZARO. THERE IS, NOW, GRANTED, THE LAST FEW MONTHS THAT DOES COME FROM OLIVIA GONZALEZ. THE STATE'S EVIDENCE IS PRETTY MUCH FROM HER, AS TO DETAILING THE INCIDENTS THERE, AND SHE DID PROVIDE, YOU KNOW, IMPORTANT TESTIMONY AS TO THE OTHER INCIDENTS, BUT IT WASN'T JUST, IT WASN'T A CASE OF IT IS ONLY OLIVIA GONZALEZ. THERE WAS OTHER EVIDENCE IN THIS CASE.

I SEE. BUT, SO, I GUESS, GOING BACK TO LOOKING AT OUR DIRECT APPEAL DECISION, WHERE WE GO BACK TO THE DAY OR WITHIN THE DAY BEFORE THAT HOW THE JURY WOULD HAVE SEEN THE INCIDENT, TE LAST PRESIP STATING INCIDENT -- PRECIPITATING INCIDENT THAT AT ONE POINT HE, DR. HEMA THOUGHT THAT WAS THE CRACK, HIS SKULL BEING CRACKED OPEN AND THE LEFT FRONT LOBE HEMATOMA, YET THEY HAD NONE OF THAT INFORMATION THAT OLIVIA TOLD THE INVESTIGATORS WAS THAT NOTHING HAD HAPPENED THE DAY BEFORE.

THE DAY OF THE, THERE IS AN INCONSISTENCY AS TO WHAT HAPPENED THE DAY OF THE TRIAL. NOW, AS FAR AS ON HALLOWEEN, SHE DID SAY NOTHING UNUSUAL HAPPENED AND FOR HER, NOTHING UNUSUAL MEANT THE BOY IS BOUND AND GAGGED IN THE CLOSET AND NOT MOVING. THAT IS NOTHING UNUSUAL. WHETHER CARDONA DID ANYTHING PRIOR TO HER RIFING HOME FROM WORK THAT DAY, WE DON'T KNOW. IT WASN'T UNUSUAL TO HAVING HIS MOUTH TAPED AND TO BE LAYING THERE MOTIONLESS. THAT WAS, UNNORTH NATALIE -- UNFORTUNATELY, THE NORM IN THIS RELATIONSHIP.

WAS IT GONZALEZ'S TESTIMONY IN THE RELATIONSHIP THAT, YES, SHE BEAT THE CHILD, BECAUSE IT SEEMED TO HAVE PLEASED CARDONA.

THAT WAS PART OF HER TESTIMONY WAS THAT WAS SOME OF THE REASONS THAT SHE ENGAGED IN THIS ABUSE WAS THAT IT PLEASED CARDONA, AND WHEN THIS HAPPENED CARDONA WAS NICER AND MORE AFTER IRBT -- FERBT TO HER WHEN SHE -- AFFECTIONATE TO HER WHEN SHE PARTICIPATED IN THIS ABUSE, AND SHE DID SAY THAT IS WHY SHE PARTICIPATED IN THE ABUSE.

WHAT WAS THE MOST DAMAGING THING THAT SHE TESTIFIED TO AS RECEIPTS TO THE LAST DAY OF HIS LIFE?

IT ALL CENTERED ON HER TESTIMONY OF WHEN SHE CAME HOME AND SHE DISCOVERED AND THEY HAD A CONFRONTATION WITH A BAT AND SHE WENT IN AND TOOK A BATH AND CAME BACK OUT AND THE DEFENDANT IS NOW SAYING WE KILLED HER AND NOW WE HAVE TO GO ON THE RIDE.

THAT WAS IN THE INTERVIEW? THAT IS NOT IN THE INTERVIEW.

YES. THAT WAS, I BELIEVE, IN THE SEPTEMBER 19 INTERVIEW. IF I BELIEVE, IF I AM NOT CONFUSING THEM NOW.

I THOUGHT THAT WAS WHAT SHE SAID AT TRIAL.

WELL, IT WAS DIFFERENT. IN TRIAL, IT WAS I BELIEVE IT WAS I CAME HOME FROM WORK, AND MAYBE I AM CONFUSING THOSE TWO, FLIP-FLOPING THEM. THAT I CAME HOME FROM WORK AND IT HAD ALREADY TAKEN PLACE, WHEREAS THE OTHER STATEMENT WAS I WENT AND TOOK A BATH AND CAME BACK OUT. ONE OF THEM WAS I CAME HOME FROM WORK AND SHE SAID, OH, HE FELL OFF THE BED, AND THEN THE OTHER STATEMENT WAS I CAME HOME AND GOT A BAT TO SCARE HIM AND SHE TOOK THE BAT, AND I WENT AND TOOK A BATH AND CAME OUT AND THEN HE WAS DEAD. SO THAT IS THE DISCREPANCY BETWEEN THE TWO. REGARDLESS, THE STATE WOULD SUBMIT THAT THE TRIAL COURT PROPERLY FOUND THAT THEY HAD NOT ESTABLISHED THAT THIS WOULD HAVE CHANGED THE OUTCOME IN ANY WAY, SHAPE OR FORM, BASED ON THE EXTENSIVE TESTIMONY ESTABLISHING HER GUILT IN THIS CASE. I SEE I AM OUT OF TIME. I BELIEVE. I DON'T SEE A LIGHT ON, BUT I THINK IT IS 20 MINUTES. YEAH. THANK YOU. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. MR. SCHER.

JUST ON THAT LAST POINT, QUOTE, OPPOSING COUNSEL WAS FLIP-FLOPING THOSE TWO VERSIONS. THE TRIAL VERSION WAS THE BATH AND THE BASEBALL BAT. ON THE SECOND PAGE OF THE INTERVIEW THAT SHE GAVE TO THE SHERIFFS OFFICE DATED SEPTEMBER 19, WAS SHE CAME HOME AND IT ALL HAD SUPPOSEDLY HAPPENED. ONE THING I WANTED TO NOTE TO THE COURT, BASED UPON MY BREATHE. TWO TIMES I DATED NOVEMBER 30 AS THE DAY OF THE CRIME. IT WAS ACTUALLY NOVEMBER 1. I WANTED TO POINT OUT TO THE COURT THAT THERE WERE A FEW TYPE GRAPHICAL ERRORS: IN TERMS OF HALLOWEEN, IF IT DID NOT, WITH RESPECT TO WHAT HAPPENED ON HALLOWEEN, IF IT DID NOT HAPPEN, THEN THE STATE HAS TO EXPLAIN WHY THEY

ARGUED TO THE JURY THAT MS. CARDONA HAD A PREMEDITATED DESIGN TO DUMP HER CHILD ON HALLOWEEN. OLIVIA GONZALEZ TOLD THIS JURY THAT MS. GONZALEZ REPEATED TO HER ON A NUMBER OF OCCASIONS THAT HALLOWEEN WAS A GREAT NIGHT TO DO THIS BECAUSE IT WAS A GREAT NIGHT TO GET RID OF KIDS, AND THAT WAS THE PREMEDITATION THAT THE STATE WAS GOING TO USE AND USED.

THE JUDGE FOUND IN THE TRIAL SENTENCING ORDER THAT THE EVIDENCE SHOWED A SLOW, METHODOICAL TORTURE WHICH THE DEFENDANT KNEW WOULD CAUSE DEATH SOONER OR LATER.

THAT RELATES TO THE HEINOUS, CRUEL AND AT ATROCIOUS FACTOR.

AND THIS OCCURRED NOT JUST ON HALLOWEEN BUT OVER A PERIOD OF MONTHS.

CORRECT. AND THAT IS WHY THESE INTERVIEWS ARE SO SIGNIFICANT, BECAUSE IT WAS THOSE PERIOD OF MONTHS WHERE THE MORE HORRIFIC AND ESCALATING AND MORE SAYS, AND MORE GRAPHIC -- MORE SERIOUS AND MORE GRAPHIC SERIES OF INCIDENTS OCCURRED CAME FROM THE MOUTH OF OLIVIA GONZALEZ AND ONLY THE MOUTH OF OLIVIA GONZALEZ. SHE WAS THE ONLY ONETO WITNESS IT.

I ASK YOU, WHAT WAS THE MOST DAMAGING THING THAT CAME OUT OF THE INTERVIEW THAT WAS NOT GIVEN TO DEFENSE COUNSEL FOR YOUR BRADY CLAIM?

THAT IS A HARD QUESTION TO ANSWER, BECAUSE I THINK IT WAS ALL PRETTY DAMAGING. I THINK THE CUMULATIVE EFFECT OF IT WAS THE MOST DAMAGING, BUT CERTAINLY THE RECITATION OF WHAT HAPPENED ON NOVEMBER 1. I CERTAINLY THINK THE RECITATION OF WHAT HAPPENED ON HALLOWEEN, THAT TRIAL TESTIMONY WAS VERY, VERY, VERY GRAPHIC. ABOUT WHAT HAPPENED ON HALLOWEEN.

WHAT DO YOU DO WITH THE TESTIMONY OF DEFENSE COUNSEL AT THE 3.850?

DEFENSE COUNSEL, OPPOSING COUNSEL IS REALLY SORT OF MIXING UP TO ISSUES. DEFENSE COUNSEL WAS SHOWN THESE INTERVIEWS, SAID THAT THEY HAD NOT SEEN THEM, AND THAT THEY WOULD HAVE USED ANY INCONSISTENCIES IN THOPS STATEMENTS TO IMPEACH -- IN THOSE STATEMENTS TO IMPEACH MS. GONZALEZ, THAT THAT WAS ENTIRELY INCONSISTENT WITH HER DEFENSE. A WHAT OPPOSING COUNSEL IS -- WHAT OPPOSING COUNSEL IS REFERRING TO IS THE MISTAKE THAT WE MADE THAT DEFENSE COUNSEL S CALLED THE SLATTERYS IN THEIR CASE-IN-CHIEF, TO REFUTE THE TESTIMONY OF OLIVIA GONZALEZ IN HER TESTIMONY THAT EVERY ADMISSION THAT SHE MADE, SHE MADE OUT OF FEAR AND PRESSURE FROM THE SLATTERYS. SO THERE ARE TWO ISSUES. AT NO TIME IS THERE TESTIMONY IN THE TRIAL RECORD FROM DEFENSE COUNSEL THAT THEY WOULD NOT HAVE WANTED OR HAVE USED THE INFORMATION CONTAINED IN THESE INTERVIEWS OR THE PROFFER, IN ORDER TO IMPEACH OLIVIA GONZALEZ AND JUSTICE ANSTEAD HAD ASKED ABOUT OLIVIA GONZALEZ'S DEPOSITION. HER DEPOSITION ESSENTIALLY TRACKED HER TRIAL TESTIMONY. NONE OF THESE INCONSISTENCIES CAME OUT, AND CERTAINLY, I MEAN, THE MERE FACT THAT SHE HAD BEEN SECRETLY INTERVIEWED THREE TIMES AND SPENT HOURS UPON HOURS WITH THESE INVESTIGATORS, IS BRADY MATERIAL, IN AND OF ITSELF. THAT GOES TO SIGNIFICANT COACHING. IN ADDITION, IT ALSO AFFECTS THE GIGLIO CLAIM, WHICH I DIDN'T HAVE TIME TO ADDRESS.

COULD YOU EXPLAIN, IF YOU HAVE A COUPLE OF SECONDS HERE, THE PROFFER LETTER IS WHAT THE ATTORNEY SAYS THAT GONZALEZ IS GOING TO SAY, AND HE SAYS IT EITHER CAME FROM GONZALEZ OR FROM THE INVESTIGATOR. NOW, LET'S ASSUME THAT THEY HAD THAT LETTER. IS IT YOUR CONTENTION THAT THAT LETTER COULD HAVE BEEN USED AT TRIAL, TO DIRECTLY IMPEACH GONZALEZ?

MY FIRST ARGUMENT WOULD BE CERTAINLY IT IS SOMETHING THAT, BECAUSE IT PROVIDED VERY

MATERIAL SIGNIFICANT DIFFERENCES DIFFERENCES.

BUT --

SHE COULD HAVE BEEN ASKED ABOUT IT DURING DEPOSITION. SHE COULD HAVE BEEN ASKED ISN'T IT TRUE THAT YOU TOLD YOUR LAWYER, YOUR INVESTIGATOR, THAT IT WAS ANA WHO TRIED TO REVIVE THAT CHILD AND NOT YOU, MS. GONZALEZ? THEY COULD HAVE CONFRONTED HER, JUST LIKE THEY CONFRONTED HER WITH HER STATEMENTS TO THE SLATTERYS, AND IN FACT THEY DID CONFRONT HER AT THE TRIAL, WITH ONE OR TWO OF THE STATEMENTS THAT SHE MADE TO MR. FLIRBER, HER LAWYER, AND -- MR. FLEISCHER HER LAWYER, AND CERTAINLY THE DOOR WAS OPEN ABOUT ANY INFORMATION CONTAINED IN THAT PROFFER, AND FINALLY, JUST AS A FINAL NOTE, ADMISSIBILITY IS NOT THE TOUCHSTONE OF MATERIALITY, AND SO I WOULD SUBMIT THAT, UNDER BRADY, THAT SHOULD HAVE BEEN DISCLOSED AND THAT THIS CASE MUST BE REMANDED FOR A NEW TRIAL. MR. CHIEF JUSTICE

THANK YOU, MR. SCHER. THANK YOU, COUNSEL.